

THE BOROUGH OF WATCHUNG
Planning Board
Regular Meeting
May 18, 2021

OFFICIAL MINUTES
Adopted 6/15/21

Chairwoman Tracee Schaefer called the Regular Meeting to order at 7:30 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 positioned above the printed name.

Theresa Snyder
Board Clerk

MEMORANDUM

The following is what is believed to be missing from the recorded portion of the Planning Board meeting:

- 1) Roll call of board members and professionals. All members and professionals were present.
- 2) Tracee gave the proceedings for the night. We would review the professional reports. Mr. Hehl would have a chance to speak followed by Mr. Butler. After reports, Mr. Butler would have Mr. Bob Weldon and Mr. Simoff testify.
- 3) Mr. Hehl said the applicant would comply with the conditions set forth in the professional's memos. Some examples were the sidewalk contribution. If Somerset County required a sidewalk, the applicant would comply. The applicant would comply with the tree ordinance. If the applicant was not able to plant a sufficient number of trees on the site, they would make a contribution. The applicant would comply with Chap. 20 of the Zoning Ordinance. They would see any and all approvals from the NJDEP for flood hazard area.
- 4) Mr. Matias agreed that the NJDEP approvals could be obtained after and if the applicant received preliminary approval. Mr. Matias did not think it was the Planning Board's responsibility to make DEP determinations.
- 5) Mr. Butler disagreed with the timing of those NJDEP approvals. Mr. Butler stated those approvals should be obtained prior to the preliminary site plan approval of the Board. Mr. Butler directed questions to Mark Healey about Chap. 20 which Mr. Healey referred back to Mr. Matias as engineering issues.

-START OF RECORDING

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, MAY 18, 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
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:
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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.
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501 Lenox Avenue
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F: (908)233-4465
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--Counsel for the Objector, Weldon Materials, Inc.

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I N D E X

FOR THE OBJECTOR:

WITNESSES PAGE

BOB WELDON

Direct by Attorney Butler 24

Cross by Attorney Hehl 39

Redirect by Attorney Butler 57,65

HAL SIMOFF, P.E.

Direct by Attorney Butler 67

PUBLIC COMMENT:

NAME ADDRESS PAGE

None.

E X H I B I T S

EXHIBIT DESCRIPTION PAGE

NONE.

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(Stenographic record begins at 7:29 p.m.)

ATTORNEY HEHL: -- he has noted in his report, we will comply with Chapter 22. And that the ultimate determination of the mitigation and the other items are subject to the DEP. But again, we're not seeking any non-compliance with Chapter 22.

The comments with respect to the site plan are acceptable, also with the grading and drainage. Again all -- all acceptable to the applicant.

And then with respect to the traffic report, we again agree with their findings that there was a determination that the parking is adequate, the sight distances are adequate, and the circulation is adequate and acceptable, including the comment from the fire department.

So, Madam Chair, our witnesses are here in case your professionals have specific questions, but we find the reports supportive of our position and consistent with our position.

And again, if there's specific items that your professionals would like to ask our professionals, they're all here and ready to respond.

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CHAIRPERSON SCHAEFER: So I'm going to ask, Mark, John, Rick, Joe; anybody have questions for Mr. Hehl or his professionals? Or are you good so far to this point?

ENGINEER JAHR: I have no further questions.

BOARD PLANNER: Me neither, not at this point.

ENGINEER FISHINGER: Neither do I.

ENGINEER MATIAS: No, I think I'm good. If the applicant is agreeing to concur with some of the comments and revisions that I kind of stipulated in the memo just, for example, chain-link fence, that is something that probably just needs to be deleted from the detail sheet. I assume that's what he means when he says he's in agreement with the memo. We'll do a final compliance review with the plans.

CHAIRPERSON SCHAEFER: Okay.

ATTORNEY LINNUS: Mr. Hehl, what's your response to -- to Rick's comment?

ATTORNEY HEHL: On the fence, or all of it? Well just in general --

ENGINEER MATIAS: Yes, in general.

ATTORNEY HEHL: -- yeah. In general we

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have no problem complying with those.
Again there are a lot of good catches,
Mr. Matias, when you review this and again, no
problem.

ENGINEER MATIAS: So I would suggest
just making as part of a condition of approval
compliance not just with my memo but with all memos
just to make sure that we catch any comments from
any of the professionals as part of any possible
approval.

ATTORNEY HEHL: That's no problem at
all on behalf of the applicant.

CHAIRPERSON SCHAEFER: Mr. Butler, do
you have questions?

ATTORNEY BUTLER: I have no questions
but I do have comments on the professional reports
of Mr. Healey and Mr. Matias.
And I hope I didn't mispronounce your

name, Mr. Matias. If I did, please forgive me.

ENGINEER MATIAS: You got it.

ATTORNEY BUTLER: I got it? Oh boy,
that makes me feel good. Thank you.

I'm going to comment, if you give me
permission, on the last two reports of Mr. Healey
and the engineer.

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ATTORNEY HEHL: Just, Madam Chair, I
don't know what the comments would be. I mean he
has already talked about the -- as long as we don't
get stuck losing a lot of time.

CHAIRPERSON SCHAEFER: Mr. Butler, I
think what we'll limit it to is questions because
you do have a closing statement. Unless there's
specifics that you want to bring up, I think it
should really be limited to questions.

ATTORNEY BUTLER: Let me start by
asking Mr. Healey some questions, if I may.

CHAIRPERSON SCHAEFER: Mr. Healey.

ATTORNEY BUTLER: Mr. Healey, I would like to ask you a couple of questions regarding your last two reports. And then basically we agree with 99 percent of them, basically, but there are things I want to review.

The report is dated February 12th, 2021. And then you have your second report, dated April 14th, 2021. And regarding on your February 12th, 2021, report you indicate that Chapter 22 is -- the Flood Damage Prevention Ordinance applies to this application, and -- and we agree with that. And you also state, "The applicant needs to address compliance with Chapter 22." We

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agree with that.

You also state that the Chapter 22 has a flood hazard line, that's basically the 100 year storm, or the storm that is apt to occur 100 year, 1 percent. And Page 2 you say that consistently throughout the ordinance refers to the area to be

regulated as the flood hazard area. And you
enumerate five paragraphs which substantiate that
and we agree with you, okay.

Now you do indicate and you cite on
Paragraph 1, Section 28.401A, Floodplain Development
Restrictions, you cite that ordinance, which
indicates, and I quote, (as read):

No structure or use shall removed,
added to, enlarged or established, nor should
any fill be placed, nor shall elevation of
any land be substantially changed in the
flood plain hazard area, except in accordance
with the flood plain hazard ordinance.

And it includes a reference to Footnote
22, which as I indicated was the flood damage
prevention. So there's a flood hazard line required
under Chapter 22, and it's the 100-year storm line.
And it's different than the DEP flood hazard line.

Now what I would like to -- what I

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think the board should be concerned about,
and -- and the professionals, is possible flooding
of the tributary and flooding off of New Providence
Road. And I would like to just quote in Chapter 22
because the applicant has not provided --

CHAIRPERSON SCHAEFER: Is this a
question? Wait a minute, Mr. Butler. Is this a
question for Mr. Healey or is this going to be a
comment that can be part of your closing argument?

ATTORNEY BUTLER: Well this is an
introductory to a question for Mr. Healey, if I may.

CHAIRPERSON SCHAEFER: Okay.

ATTORNEY BUTLER: I want to put it in
perspective. Thank you, Tracee -- thank, you, Madam
Chair. Excuse me.

CHAIRPERSON SCHAEFER: Okay, Mr.
Butler.

ATTORNEY BUTLER: This applicant did
not provide a Chapter 22 flood hazard line
associated with the tributary. And as Mr. Healey
points out, there is a section for that in our
ordinance called Section 22-4.3B. And that section
of the -- of the ordinance states -- states this,
and this is from Mr. Healey's report. And correct
me, Mr. Healey, if I'm wrong, please.

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You cite 22.4.3 subparagraph little b
(as read):

Use of other base flood and floodway
data and base flood elevation and floodway
data have not been provided in accordance
with Subsection 22.3.2 -- and I interject
that's the case here -- bases for
establishing the area of the flood hazard the
Borough of Watchung engineer shall -- that's
a mandatory word, this is my interjection --
shall obtain review and reasonably utilize
any base elevation and floodway data
available on the federal, state or other
source.

So the applicant hasn't done it and the
engineer, that statute that Mr. Healey cites,
requires the engineer to do it. But, to my
knowledge, nobody has asked the engineer to do it.
And the board has not asked the applicant to do it.
And I think the applicant should -- I think the
board should be interested in whether or not during
a major rain event the tributary overflows and
floods on the subject lot.

I would think that this would be
something you would be very interested in in

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reviewing the site plan.

CHAIRPERSON SCHAEFER: Mark, do you want to read your third paragraph of that particular section of that letter? Because I just did.

ATTORNEY BUTLER: I'm sorry, did you make reference to what you want me to read?

CHAIRPERSON SCHAEFER: No, Mark. Mark Healey.

ATTORNEY BUTLER: Oh, okay.

BOARD PLANNER: Generally I'll say that I think we did address it. I think this was addressed at the last meeting.

With respect to the tributary and whether or not there should be some supplementary analysis done, the ordinance, my February 12th, 2021, memo and my testimony at the last meeting all refer to the engineer.

So, respectfully, the mapping of the tributary is -- is not a question for me as, again, the ordinance turns to the engineer, my memo cites that, and I indicated that as well at the last meeting. That's not an issue for me to determine.

ATTORNEY BUTLER: I agree, Mr. Healey.

But what I'm pointing out is that nobody has asked the engineer, nobody has asked the applicant to

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develop a flood hazard line pursuant to our ordinance or Chapter 22. And -- and Mr. --
CHAIRPERSON SCHAEFER: Wait a minute, Mr. Butler. Rick, would you please chime in on this one?

ENGINEER MATIAS: I believe we discussed on several occasions, approval of this application would be subject on DEP approval. They have to get a NJDEP permit.
The planning board is not in the business of governing or regulating these flood zones for applicants. Otherwise, it would be chaos down in Trenton at NJDEP if every single planning board was to nitpick on what's a flood hazard area, what is not a flood hazard area.
Applicants tend to come to planning boards prior to getting DEP approval. That is normal. Some applicants do it prior; some applicants do it afterwards.
And if they do it afterwards we just have to make sure that it's a condition of approval. The applicant has agreed to that. NJDEP takes it from there.
Anecdotal, I have even had discussions with NJDEP on that note and, yes, they

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don't expect or anticipate planning boards to force applicants to map flood hazard areas for tributaries and do flood hazard surveys --

(Board recording begins at 7:41 p.m.)

ENGINEER MATIAS: -- they want to ensure that their rules are followed. Our position here is that we're covering our bases to make sure that they do not get a building permit unless they get a flood hazard permit from NJDEP.

ATTORNEY LINNUS: Right. Before we proceed further, Theresa, I just heard -- I just heard that the proceeding is being recorded. Have we been recorded?

BOARD SECRETARY: Not since we came back from executive, sorry. But we will have a transcript.

CHAIRPERSON SCHAEFER: Frank. Frank?

ATTORNEY LINNUS: Yeah?

CHAIRPERSON SCHAEFER: Will a transcript suffice?

ATTORNEY LINNUS: A transcript will suffice. Do we have a shorthand reporter here?

CHAIRPERSON SCHAEFER: Yeah, we have --

ATTORNEY LINNUS: You're saying yes?

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CHAIRPERSON SCHAEFER: Yes.

ATTORNEY LINNUS: The transcript will suffice.

ATTORNEY BUTLER: And the objector, Weldon, agrees, agrees to that determination just made by Mr. Linnus.

ATTORNEY LINNUS: Linnus. I know you -- you've correctly stated Rick's name, but you always screw my name up. It's Linnus.

ATTORNEY BUTLER: I know. But I love you, Frank.

BOARD SECRETARY: I'm sorry about that.

My apologies. I forgot to do that when we got back from executive.

ATTORNEY BUTLER: I think Mr. Hehl

also should agree that the transcript will be sufficient.

ATTORNEY HEHL: Yes, I agree.

ATTORNEY BUTLER: Okay.

ATTORNEY LINNUS: We can proceed.

ATTORNEY BUTLER: Thank you. Thank you, Frank.

Let me talk to the engineer about his April 14, 2021, report, just two paragraphs I want to talk to him about. I have two more questions.

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That's Paragraphs 10 and 11, okay.

Now, Mr. Matias, you actually indicate that the board should just take this, these flood issue questions, and send them to the DEP and let the DEP decide the DEP's flood hazard area as well as our Chapter 22 flood hazard line. Is that correct.

ENGINEER MATIAS: As I noted in my previous statement, the planning board is not in the

business of regulating the flood hazard area. The NJDEP is.

ATTORNEY BUTLER: Well, the problem I have with that is that Chapter 22, Number 22-1.4, or 22-2, says, and this is Chapter 22, area of special flood hazards: "Shall mean the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

So that's the standard in our Chapter 22. And this is in most town ordinances. And -- and this is passed pursuant to state regulation. So I respectfully suggest that we have a standard.

Now here -- here is an important difference I would like to -- Mr. Matias,

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our -- are you aware that the DEP -- when you look at a waterway they determine whether or not 50 acres of land was awarded into any water way; is that

correct?

ENGINEER MATIAS: So first off, I don't work for DEP so -- but to come back to the -- a substantive answer to your question. A stream that has 50 acres or more is considered to have a flood hazard area.

ATTORNEY BUTLER: Right. Now our Chapter 22 says nothing about 50 acres source of water running into our waterway, does it?

ENGINEER MATIAS: I don't believe it does, no.

ATTORNEY BUTLER: Okay. So, in other words, with the DEP if -- if it doesn't drain 50 acres of water the DEP won't require the -- the flood hazard, but we don't have that requirements so that's a difference.

Now here is the other big difference, and I'm almost through, here is the other difference. In the -- in the DEP flood hazard line, they permit you to do -- to fill, to fill one area and to build up another area. They permit that. But as Mr. Healey has properly pointed out in his

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first report, that that's not permitted under Chapter 22 of our ordinance and Section 28-401A which I think I read, but says, "Floodplain development restrictions, no structure or use shall be moved, added to, enlarged and/or established, nor shall any fill be placed."

Well, you can't do any of this stuff in in -- in our Chapter 22. Our Chapter 22 this is -- this is part of our zoning ordinance what I just read to you. Whereas in the DEP you can do activity. You can mitigate. But Chapter 22 does not provide for that.

And that's the critique I have. And your report's a good report. That is the only problem I have with your report. I'm not trying to be over critical. But I'm just saying there's two different flood hazard areas and there's two different activities between that and 22 and the NJDEP.

You can't kick the can down the road.

You've got to decide it. You got to make the applicant or you, pursuant to the statute, you have to do a flood hazard study regarding the tributary. And that's not done. Otherwise this board does not know how this property will be affected by a major

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rain event.

And I have -- I just have -- I just
have two more quick questions for you. I might not.
Yes, I do.

CHAIRPERSON SCHAEFER: Don, could you
please go on mute?

VICE-CHAIRMAN SPEENEY: Excuse me? I
want to say something but I'll put it on mute for
now. I'd like to be called on.

CHAIRPERSON SCHAEFER: As soon as
Mr. Butler is done I will call on you.

ATTORNEY BUTLER: Okay. I'm almost
done, Madam Chair.

Let me ask the engineer this question.

If the tributary floods with a major rain storm and
it flows into the subject property, is that
something that this board should be interested in
when it decides this preliminary site plan, Mr.
Matias?

ENGINEER MATIAS: That is for board
members to decide and for board members to take that
information and make a decision on their own. From
an engineering perspective we have to allow the
certain and different agencies to do what they are
required to do and what they are entrusted to do.

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NJDEP is entrusted to ensure that if they were to get a DEP approval that they are getting an accurate approval and a safe approval.

ATTORNEY BUTLER: Okay, Madam Chair, I don't have any further questions.

CHAIRPERSON SCHAEFER: Don, you had a question?

VICE-CHAIRMAN SPEENEY: A question and I did have some comments. But the question about getting DEP approval, does DEP impact the Site Plan itself? In other words, they could give an approval or -- or not, but does DEP assess, make an assessment on the site plan as well?

ENGINEER MATIAS: So they would make an assessment on the site plan as it relates to the flood hazard area. So if they were to request changes to the plan that would be reflected in a final approval. Here we're just seeking a -- or they're just seeking preliminary approval. But they request --

ATTORNEY LINNUS: Excuse me, Rick.

Rick -- Rick, you're correct.

In all likelihood, Don, in the event the NJDEP requires any site changes then it comes right back to this board for site plan review.

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CHAIRPERSON SCHAEFER: And this would
be a condition of an approval if we were to --

ATTORNEY LINNUS: Condition of
preliminary, yes.

CHAIRPERSON SCHAEFER: Correct.

ATTORNEY LINNUS: If we should have
preliminary, yes.

ENGINEER MATIAS: If they can't
produce a DEP permit, they -- if they were lucky
enough to get an approval, their approval would be
null and void. They would not have an approval
anymore.

ATTORNEY LINNUS: But, Rick, I think
Don's question is more to the point that, let's say,
the DEP reviews a preliminarily approved plan and
the DEP has requested certain changes either in the
line or whatever, which requires a re-review of the
site plan by the planning board. I think that's
Don's question.

VICE-CHAIRMAN SPEENEY: That would be
it, yeah.

ENGINEER MATIAS: Yes, they would have
to come back.

VICE-CHAIRMAN SPEENEY: Because, in

effect, it would change the site plan itself.

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Now, one thing I do want to say for the record, we had a discussion about draining 19 acres and draining 50 acres depending on who was presenting the data. Mr. Hehl's side was saying they drain 19 acres and the Weldon applicant -- the Weldon people were saying it's 50 acres. And at that time we were having that discussion I was saying I wanted to know where that flood hazard line was going to be, whether it was -- if it was for 50 acres. And I'll say this, that as much as I said I wanted to know that because I needed that information for voting, the board did not support going after that data at this time. So it's not like no one asked. It's just that the board has chosen not to go after the data at this time and rely on DEP in a -- in a later -- a later analysis. So that is my point about someone saying -- someone has been saying that

nobody wanted it but that's not the case. I did want it.

CHAIRPERSON SCHAEFER: You know, and Don is -- Don is correct. But we all -- we had a discussion about it and we all agreed we're going to just move on, let DEP handle it because that's their -- their expertise. We are not the experts,

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as Mr. Matias has said.

Mr. Butler, are you done questioning so we could --

ATTORNEY BUTLER: Yes, I am.

ATTORNEY HEHL: Mr. Hehl?

ATTORNEY HEHL: I have no questions.

CHAIRPERSON SCHAEFER: Okay.

So at this point we're going to go -- does the planning board have any further questions, any planning board members?

Does the public have any questions?

Okay, hearing none.

Mr. Butler, I know the next one you want to put up is Mr. Weldon; is that right?

ATTORNEY BUTLER: Yes. With your permission I would like to call Mr. Weldon. He testified about three months ago. I think Mr. Linnus will remember that he has been sworn. Mr. Linnus can remind him that he continues to be under oath.

ATTORNEY LINNUS: Mr. Weldon, you have been sworn in in these proceedings. Do you understand you still remain under oath?

BOB WELDON: I do, yes.

ATTORNEY LINNUS: Your witness,

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Counsel.

ATTORNEY HEHL: And I just -- we requested this -- he's already testified once before and this seems to be a recurring issue with the objector. I just want to make sure nothing he says

here is duplicative of his previous testimony.

ATTORNEY BUTLER: Well --

CHAIRPERSON SCHAEFER: I will -- thank you, Mr. Butler. I will, repeat, as I said in the beginning with Mr. Simoff, that Mr. Weldon will follow suit. We will not have any previous testimony. It will all be new.

And, Mr. Weldon, no disrespect, but I will shut you down if we start going backwards.

BOB WELDON: Yes, I understand.

ATTORNEY BUTLER: And again, the same as with Mr. Simoff, over two months ago I sent new OW exhibits regarding Mr. Weldon's testimony. And he's going to testify on those new exhibits, which he didn't have, which we didn't have when he first testified.

BOB WELDON: All right, let's do it.

ATTORNEY BUTLER: Okay, now -- now

Mr. -- Mr. Weldon. We okay? Can you hear us?

CHAIRPERSON SCHAEFER: Yes.

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B O B W E L D O N, previously sworn,
testified as follows:

E X A M I N A T I O N

DIRECT BY ATTORNEY BUTLER:

Q. Now, Mr. Weldon, who -- have you had a
chance to look at the application for this daycare
center?

A. Yes, I have.

Q. Who's the applicant?

A. The applicant is 100 Union Avenue
Holdings, LLC.

Q. And does it mention the principals of
that entity?

A. Yes, it does.

Q. And who are they?

A. Albert Mauti, Joseph Mauti and Ozzy
Yaseen.

Q. Now, I show you OW-14.

ATTORNEY BUTLER: Hal, can we get that
on the board. How do we do this?

THE WITNESS: Theresa, may I ask you
to put OW-14 up on the board, the resolution? If
not I can try to ask Hal to do it.

ATTORNEY HEHL: We sent it to you. I
think it's RF something -- when we sent --

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CHAIRPERSON SCHAEFER: This is going to require a lot from Theresa. We had some issues last time. So if you --

THE WITNESS: Okay. We'll have Hal try to come get it up.

ATTORNEY BUTLER: Okay. Just bear with us, Madam Chair.

CHAIRPERSON SCHAEFER: Sure.

ATTORNEY BUTLER: Thank you.

CHAIRPERSON SCHAEFER: And if you can't, then we'll ask Theresa, but I would prefer not.

ATTORNEY BUTLER: We can read in certain parts of it, which he's going to do but --

THE WITNESS: I think Hal's got it.

CHAIRPERSON SCHAEFER: Thank you.

ATTORNEY LINNUS: I think we would like to see the exhibit posted.

ATTORNEY BUTLER: Okay. And Frank, I think we just did it. We just did it. Now it's --

CHAIRPERSON SCHAEFER: We don't have it.

ATTORNEY LINNUS: I don't see it.

ATTORNEY BUTLER: -- it's six pages.

CHAIRPERSON SCHAEFER: We don't have

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it.

ATTORNEY LINNUS: We don't even have one page.

THE WITNESS: Theresa, can you share the screen?

BOARD SECRETARY: What exhibit is it?

ATTORNEY BUTLER: It's OW-14.

BOARD SECRETARY: Okay, just give me a minute.

ATTORNEY BUTLER: Thank you.

THE WITNESS: Thank you.

ATTORNEY BUTLER: Madam Chair, I'm sorry if we're causing any delay. It's just that, you know, this is beyond me, this stuff.

CHAIRPERSON SCHAEFER: It's okay.

It's beyond me too sometimes.

ATTORNEY BUTLER: Oh, I don't think so. I'm impressed.

CHAIRPERSON SCHAEFER: Well, I'm glad somebody is.

BOARD SECRETARY: Is this what you're looking for?

THE WITNESS: Thank you very much. Great job.

ATTORNEY BUTLER: Is the whole thing

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up?

THE WITNESS: Yes.

ATTORNEY BUTLER: Okay. Now the --

CHAIRPERSON SCHAEFER: Theresa, you're going to have to roll it down or up as they need. Where do you want her to go to, Mr.

Butler?

THE WITNESS: That's good, you can stop right there.

ATTORNEY BUTLER: Also, I'm going to talk about two resolutions which the applicant submitted with his application. It was the applicant, who is the applicant now, the day care center, was the same as the applicant in '07 and '08 with the car wash/lube center. It's the same. It's the same owner, okay. Now --

ATTORNEY LINNUS: Mr. Butler, excuse me, Bill, before you proceed, you just want to re-identify OW-14 for the record?

ATTORNEY BUTLER: Absolutely. OW-14 is resolution BA-2007-07. It's an application of the board of adjustment because in '07 this property

which is on Lot 1, which is where the day care center wants to go, was zoned quarry so they had to get a use variance. And they made an application

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for a car wash. And I just want to go through those two applications quickly.

Bob Weldon is not going to be a witness for long tonight unless there's a tremendous amount of cross-examination.

BY ATTORNEY HEHL:

Q. Now what is OW-14?

A. OW-14 is Resolution BA-2007-07.

Q. And what does it do?

A. It approves the car wash back in 2007 as good for site plan.

Q. And they granted a use variance; did they not?

A. They did, correct.

Q. And did Weldon object to that

application?

A. Weldon did not object.

Q. Okay. Now if you would be kind enough

--

THE WITNESS: Tracee, would you go to
Page 3 the middle -- or pardon me, Theresa, Page 3
the middle, please. Thanks. Number 15.

Q. Number 15. Wait until I ask you the
question. 15 are findings of fact. Would you
please read Paragraph 15?

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A. "There were no objectors present.

William B. Butler, Esquire of Westfield represents
adjoining property owner, Weldon Quarry. Weldon
does not object to the application but wanted to
place on record the details of its mining and
manufacturing activities which includes occasional
blasting."

Q. Okay. Now -- and the variance was

granted and they gave reasons. And would you read from page 4, paragraph 4?

A. Page 4, paragraph 4. It, says, "The applicant also proved that the use provides sufficient space in an appropriate location for a car wash. The use of the car wash is both environmentally sound and the location of the buildings on the site is a good and safe use in an environmentally sensitive area."

Q. Okay. Now, the -- we will now direct your attention, and I'm almost through this with resolution, on Page 6, would you read the conditions; Paragraph 6, the conditions?

A. Yes. "The final landscape plan will be reviewed by the borough landscape architect and William B. Butler, Esquire. The applicant shall comply with any modifications requested by either of

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them."

Q. Okay. Now, did -- did the applicant, which as I indicated is the same applicant presently before the planning board, did it -- what happened to this resolution; did it build the car wash spa center?

A. It did not. It went to the DEP at that point and the DEP required modifications to the site plan for environmental issues on the site.

A. Let me switch to the next.

Q. And -- and now we're going to, if I may, talk to Mr. Weldon regarding OW-15, which is Resolution BA-2008-11. And it was adopted July 7th, '2008 by the board of adjustment. It's a resolution associated with the remand because the site plan was changed by the DEP.

MR. WELDON: Theresa, do I need Hal to put up that one or can you grab that?

BOARD SECRETARY: That was OW-15?

THE WITNESS: Yep. It's resolution 2008.

BOARD SECRETARY: Okay. Okay, you're going to have to give me a minute. I have to search through my files for that.

THE WITNESS: Thank you very much.

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ATTORNEY BUTLER: What did she say?

THE WITNESS: She said she's going to
put up this resolution for us.

ATTORNEY BUTLER: Thank you.

THE WITNESS: Thank you very much.
Appreciate it. Good to go.

BY ATTORNEY BUTLER:

Q. In the new site plan application by the
same owner as the present applicant, did Weldon
object to the new site plan?

A. We did not approve(sic) to the
reapproved application, no.

Q. You did not object to it?

A. No, we didn't.

Q. Okay. Now, would you look at Page 2.

And there are some conditions/findings of fact by
the board. Would you read 15 for me, please?

A. Yeah. Down a little bit further.

And 15 says, "There were no objectors
present. William B. Butler, Esquire, of Westfield
represented the adjoining property owner, Weldon
Quarry. Weldon does not object to the application
and was working out the details of the landscape
buffer with the applicant."

Q. Okay. Now that last sentence, would

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you explain to me what that's talking about?

A. So what happened as they started to put the landscape plan together, Weldon wanted there to be more landscaping. But there wasn't enough area on Lot 1 to do it. So we owned Lot 2. So we offered Lot 2 for the car wash to put more landscaping actually on our property.

Q. On your Lot 2?

A. On our Lot 2.

Q. That was to assist the car wash application --

A. Right.

Q. -- right?

ATTORNEY HEHL: Madam Chair, excuse me one second. I just want to voice an objection to this entire line of questioning. I don't know what relevance, if any, that whether or not Weldon didn't object to a Use Variance which required board of adjustment approval over a decade ago and now is objecting to a permitted use, an inherently beneficial use in dealing with landscaping and buffering from that time. This is a totally new application, again over a decade later.

And the fact that Mr. Weldon and his

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company decided to apparently not object, but it certainly appears that maybe they wouldn't object because they wanted conditions from the applicant, but it has no relevance to this application.

CHAIRPERSON SCHAEFER: I understand, Mr. Hehl, but I'm going to let him finish. I believe you're almost done, Mr. Butler?

ATTORNEY BUTLER: Absolutely. And as I stated before, these resolutions accompany the application.

CHAIRPERSON SCHAEFER: Being that he's an opposer, Mr. Hehl, I want to give a little bit more latitude.

Go ahead, Mr. Butler.

ATTORNEY BUTLER: I'm almost through, Madam Chair, with this witness.

ATTORNEY LINNUS: Before you proceed, Mr. Butler, there is an objection on the table. And although you are proceeding, you want to give the board the benefit of why you think this is relevant?

ATTORNEY BUTLER: Absolutely. If this board in its wisdom denied this application, we've all heard the expression zoning into sterility. There is also site plan into sterility.

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This application, this property and this applicant had an opportunity to develop this site previously and it chose not to do so. The way it chose not to do so, I don't know. But it had two approvals to build the car wash and a car spa and it didn't. And -- and that's why I'm offering it into evidence.

ATTORNEY LINNUS: All right, Mr.

Butler, you do understand that each application stands on its own merits; you do understand that correctly?

ATTORNEY BUTLER: And I understand the zoning and the -- and the sterility of denying a site plan. And it doesn't apply to this case. And that's the reason why I'm putting it in. And I agree with you, each application stands on its own merits.

CHAIRPERSON SCHAEFER: Let's keep

going, Mr. Butler, please.

ATTORNEY BUTLER: All right. Okay,
that's all I have on those two resolutions.

I would like to now go into some
pictures that we have of Route 22 flooding, if I
may. And, of course, these were -- were sent to the
board over two months ago.

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THE WITNESS: Theresa, the first one
is OW-18. Thank you very much.

ATTORNEY BUTLER: Thank you, Theresa.

BY ATTORNEY BUTLER:

Q. All right. Mr. Weldon, what does OW-18
reflect?

A. This picture shows the Route 22
overpass looking east on a sunny day.

Q. And have you gone over that overpass
many times?

A. Many times.

Q. And does that picture accurately depict what you see if you're looking on the overpass looking east?

A. It does reflect that, yes.

Q. All right. I call your attention to OW-16, which is a -- what does OW-16 --

ATTORNEY LINNUS: Excuse me, Bill, before we go to OW-18. What is the date of that photograph?

THE WITNESS: The dates of the photographs are August 19th, 2015.

MR. WELDON: But -- but not that one.

ATTORNEY BUTLER: Not the one on a sunny day.

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MR. WELDON: I don't know the date on that.

ATTORNEY BUTLER: But the next two pictures were taken on August --

ATTORNEY LINNUS: You don't know the date of the photo?

ATTORNEY BUTLER: Excuse me?

ATTORNEY LINNUS: We do not have a date for that photo; we don't know when it was taken?

ATTORNEY BUTLER: Wait a minute. This is the photo showing the overpass?

ATTORNEY LINNUS: OW-18, I think.

THE WITNESS: Yeah. I'm looking for the date. Right there, it's just too little. I can't read it.

ATTORNEY BUTLER: Well obviously Route 22 wasn't flooded when it was taken, Frank.

THE WITNESS: The date is right there but I can't read it. I'm sorry.

ATTORNEY BUTLER: But he's already testified that that overpass is actually reflected in that photo.

And -- and would you go to OW-16.

BOARD SECRETARY: You have to give me

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a minute.

ATTORNEY BUTLER: Yes, I'm sorry.

BOARD SECRETARY: What else are you going to need?

ATTORNEY BUTLER: OW-16 and OW-17.

THE WITNESS: And that's it.

ATTORNEY BUTLER: And that's it for exhibits. And I have about four more minutes of testimony from this witness.

BOARD SECRETARY: Okay, just give me a minute.

ATTORNEY BUTLER: Thank you very much for helping us. We're...

THE WITNESS: Thanks, Theresa.

BOARD SECRETARY: This is OW-16.

BY ATTORNEY BUTLER:

Q. OW-16. What does OW-16 reflect?

A. So on August the 19th, 2016, OW-16 reflects Route 22, the overpass looking east towards Newark.

Q. And -- and what does it show -- how does it reflect Route 22?

A. It reflects Route 22 on that day when, as we can see cars and trucks are stranded in both ways and the waters almost reached the Jersey

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divider.

Q. Has that water reached Union Avenue?

A. It has. And in the next picture it will show it.

BOARD SECRETARY: Is that OW-17?

ATTORNEY BUTLER: Yes.

THE WITNESS: Right. And so OW-17 is Route 22 looking west. On the left you see the Scotchwood Diner and on the other side is Union Avenue. And the roadway is under water.

BY ATTORNEY BUTLER:

Q. And you can't even see the divider between the east and west; is that correct?

A. Correct.

Q. Okay. Now, Mr. Weldon, why are you objecting to this application?

A. We're objecting because the scale of this project is way too large. The quarry has been a heavy industrial use since the 1800s. And I don't believe that it's a suitable use to have six-week old babies, 2, 3, 4-year old kids across the street from the quarry.

There's 154 children. There's 22 staff. There's great intensity at New Providence Road and Union Avenue, right across from our quarry

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entrance. There's terrific gridlock in both the a.m. and p.m. hours, added to all the truck traffic coming in and out of the quarry.

I think that putting a childcare center in, we don't have anybody calling right now but I have a feeling that we could be inundated by parents and the operators. It's a -- it's a NIMBY situation. Usually in my industry it's neighbors not wanting a quarry to go into their neighborhood. But for us it's the opposite. It's a quarry, and we would rather not have a bunch of small children being right across the street from a heavy industrial use.

Q. Do you have anything else to add to that question?

A. That's it.

ATTORNEY BUTLER: Okay, cross-examination?

CHAIRPERSON SCHAEFER: Mr. Hehl?

E X A M I N A T I O N

CROSS BY ATTORNEY HEHL:

Q. Yeah, just a few questions. And I -- Mr. Weldon, I happened, while you were talking, to Google the -- that date, and all I googled on my phone was "8/19/2015, flooding in Scotch Plains,"

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and one of the captions is, "Why 25 square miles of New Jersey got a month's worth of rain in three hours." So you've -- if you recall, wasn't that an extreme flash flooding condition that certainly doesn't exist on a regular basis?

A. It was an extreme flash flood day that day. And I'm very thankful that there wasn't a childcare center with 154 kids in it when that flash flood happened.

Q. And you have come here with -- with two flooding pictures that occurred seven or eight years ago and armed with no other pictures; is that correct?

A. That's right.

ATTORNEY BUTLER: Now wait a minute, excuse me. Excuse me. Excuse me. We also had testimony from Hal Simoff regarding his OPRA request --

ATTORNEY HEHL: I'm examining your witness now.

ATTORNEY BUTLER: -- showing flooding on Route 22 about 8 or 9 times over three years.

ATTORNEY HEHL: Your witness.

CHAIRPERSON SCHAEFER: Mr. Butler,
he's asking questions of Mr. Weldon's testimony from
this evening. Let him proceed.

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ATTORNEY BUTLER: Okay.

THE WITNESS: I don't have any other
pictures.

BY ATTORNEY HEHL:

Q. Okay. And, Mr. Weldon, you're
objecting because there's a childcare center being
proposed for across the street because of your
quarry.

So is it your position that -- that
it's your quarry that is going to dictate the zoning
rather than the zoning of the -- of the borough; is
that correct?

A. It's detrimental to my business. We
have truck traffic. It's not only our own trucks,

it's mostly contractors' trucks, probably 90, probably 10 percent of the trucks are owned by us. Probably 90 percent of the trucks are owned by businesses in the area. And it's going to be very detrimental to add that much more traffic at the heaviest peak hours.

Q. So you're objecting to a permitted use, an inherently beneficial use, because it will have a negative impact upon your business?

ATTORNEY BUTLER: The question has been asked and answered.

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ATTORNEY HEHL: What? No, I just --

ATTORNEY BUTLER: Madam Chair, this is the second time he has asked the same question.

CHAIRPERSON SCHAEFER: Mr. Butler, let him ask. You've asked the same question or given testimony more than once on the same subject. Let Mr. Hehl --

ATTORNEY BUTLER: Really?

CHAIRPERSON SCHAEFER: Yeah.

ATTORNEY HEHL: He's answered my question in the affirmative. I have no further questions.

CHAIRPERSON SCHAEFER: Okay, I have a few questions. I'm going to back up a little bit. Mr. Weldon, in the testimony last -- at our last meeting by Mr. Steck, your planner, he had made mention -- in reading the transcripts and jogging my memory -- that he was concerned about the amount of parking spaces. He was concerned about the size of the building. And he alluded to the fact that if the building was made smaller, it really wouldn't be a problem. Do you agree with that?

THE WITNESS: If it was a much smaller scale than it wouldn't be as disagreeable.

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It sounds to me like the state or whoever has said that whether it's 34 kids or 154 kids or if -- if "Jumpy Childcare Center" wanted to put 600 kids there, this would be an all right place to do it as long as it met the other conditions.

So to me anything smaller is better; anything bigger is worse.

CHAIRPERSON SCHAEFER: Okay. So now off of that subject for a moment, on your pictures with the flooding. When the flood happened and you had taken the picture from the overpass, had you come from the quarry at that point?

Like how did you get to that overpass?

THE WITNESS: I didn't personally take the picture but you could drive on the overpass at that point.

CHAIRPERSON SCHAEFER: So you could get up to Bonnie Burn Road --

THE WITNESS: It was a quarry.

CHAIRPERSON SCHAEFER: -- you could get to New Providence Road, you could get to the other side, Park Avenue; it was just 22 that was flooded?

THE WITNESS: And Union Avenue, right.

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intersection between New Providence Road and Union Avenue, much of that was under water also.

CHAIRPERSON SCHAEFER: Well do you know how long that water lasted for?

THE WITNESS: I would say a few hours but I'm not 100 percent sure.

CHAIRPERSON SCHAEFER: Okay. Because I know some testimony has been given that it really didn't last long at all, that they had reopened the roadway. And it was only a section of Union Avenue that was closest to 22, and it opened within 30 to 45 minutes.

Was that also part -- was that also the microburst that caused your wall to fall?

THE WITNESS: Yes.

CHAIRPERSON SCHAEFER: So a lot of that water was coming off of your property, crossing over.

THE WITNESS: I --

CHAIRPERSON SCHAEFER: Because we have pictures of the water crossing over --

THE WITNESS: Yeah, I think all over the state wherever there's inclines there's runoff.

CHAIRPERSON SCHAEFER: And then my last question is I know you approved the lube

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center, you were okay with that on an environment -- I don't understand this, on an environmentally sensitive property, which Mr. Butler really zoned in on environmentally sensitive.

Why would a lube center be more appropriate than a day care center on an environmentally sensitive property?

THE WITNESS: We didn't feel like it was going to impact our business.

CHAIRPERSON SCHAEFER: Okay.

THE WITNESS: This is impacting our business.

CHAIRPERSON SCHAEFER: Okay.

Anyone else have questions for Mr. Weldon?

MEMBER FIORILLA: I do.

CHAIRPERSON SCHAEFER: Go ahead, Paul.

MEMBER FIORILLA: Okay, thank you.

Yeah, I actually want to commend you for being honest about, you know, or being so forthright and upfront about your -- the reasons for your objection. I think it's interesting.

I think that, you know, the inference that because you didn't object before that -- is that somehow that makes the current objections more

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credible; is that the argument there?

THE WITNESS: To us it didn't affect our business when it was a car wash because it wouldn't -- because most of the traffic that would -- that would be affecting our business would be off rush hour. So to me this is a traffic issue. And I didn't feel that the car wash would pose any traffic issues for us.

MEMBER FIORILLA: And I'm going to ask essentially the same thing that I asked Mr. Steck the last time. You know, if the quarry's activities -- I mean it sounds like what you're saying is that the quarry's -- the quarry's activities create a dangerous situation in the neighborhood. So if that's the case, why is the solution to not reduce the activities of the quarry instead of restricting other legal uses and other properties?

THE WITNESS: I don't believe the quarry is a danger in any way or in any form. What the quarry is is it's a high-traffic area for that -- for that part of New Providence Road and the entire intersection.

So we are not dangerous, but there are

a lot of trucks that come off of our property. So

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to me it's a -- it's a traffic issue that's
affect -- that would affect our business. There's
no danger involved.

MEMBER FIORILLA: So if it's not
dangerous then what's wrong with the, you know, the
permitted use?

THE WITNESS: As a property owner next
door, there's -- if this was 600 kids going into a
childcare center, it wouldn't make any common sense
to me. If it's 154 kids going into a childcare
center it doesn't make any sense to me.

If it's 30 kids or 50 kids and it's not
causing any more undue pressure on the roadways
there, then it doesn't affect our business.

MEMBER FIORILLA: Okay, thank you. I
don't have any other questions.

CHAIRPERSON SCHAEFER: Mr. Weldon,

just a quick question. When do you think most of the activity at the quarry happens, truck traffic-wise?

THE WITNESS: Well it's different times during the year. Right now when there's light out and contractors are working longer hours, our quarry starts up at 6, 6:30 in the morning delivering concrete and asphalt. Whereas in the

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winter when, you know, when the weather is poor and the light is not as good, we probably don't start till 8 or 8:30 in the morning.

But this -- this time of year especially, March through November, it's -- it's very busy.

CHAIRPERSON SCHAEFER: That's your busiest time, first thing in the morning?

THE WITNESS: Absolutely, yes.

CHAIRPERSON SCHAEFER: All right.

Anybody else, questions?

COUNCILMAN MARTINO: Yeah, Madam
Chair?

CHAIRPERSON SCHAEFER: Councilman
Martino, and then Mayor Balla.

COUNCILMAN MARTINO: Thank you.

CHAIRPERSON SCHAEFER: And then Don.

COUNCILMAN MARTINO: Thank you. Thank
you, Mr. Weldon. I've got a question because,
again, I'm having a hard time figuring out all this
excess traffic. If you were -- I mean if there was
150 children there I would probably say there's
maximum 150 cars in the morning, 150 cars in the
afternoon. Drop off and pick up. And then whatever
the -- the staff would be. I don't know if you guys

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have those numbers or an estimation.

THE WITNESS: I think Hal Simoff's
going to speak to that.

COUNCILMAN MARTINO: I mean, if you approved a car wash and a lube center, I would probably think there would have been more cars that were -- more transient vehicles accessing those. I mean did you take that into consideration back in the day?

THE WITNESS: In 2007 when we looked at it we said we didn't think that cars -- most cars getting -- I don't know what the operating hours would have been, but it didn't seem like it was going to be this mass of traffic being shoved onto -- onto New Providence Road right at rush hour to me.

COUNCILMAN MARTINO: But, I mean, I know your quarry pretty well and it's pretty much a constant. I mean, you know, it's busy from 7 to 9 and then from 10 to 12 and 1 to 3. And there's different times that it has a higher rate of -- I know when to come in there to get stone, let's put it that way, so I can get in and get out. Yeah, so I know there are some different varying times like that. But again, I still have to, you know,

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understand how this 150-some-odd vehicles -- I'm not sure how many, you know, go past that site on a daily basis but I -- I still have to -- you know, I can't wrap my head around how it's, affecting, you know, your business. I need a little bit more information on how you got to that.

ATTORNEY BUTLER: Wait, wait. Okay, Councilman Martino, if you look at OW-7 it's the traffic report of Hal Simoff. It has traffic counts in there.

COUNCILMAN MARTINO: Okay.

ATTORNEY BUTLER: If you look at them you will see that you're underestimating the traffic and you will see what he got by doing the actual traffic counts. And he's going to be on here again tonight and if you want to further cross-examine him, be my guest.

COUNCILMAN MARTINO: Thank you very much. I appreciate that.

CHAIRPERSON SCHAEFER: Mayor Balla?

MAYOR BALLA: Yes. Can you point us to how many trucks turn right out of the site and how many trucks pull out of that site and go left on New Providence Road?

THE WITNESS: I think Hal Simoff has

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that in his report. If I was going to take a guess
off the top of my --

ATTORNEY BUTLER: Don't, don't guess.

THE WITNESS: I think Hal has the
actual numbers.

ATTORNEY BUTLER: And he will be here
tonight, Mr. Mayor.

MAYOR BALLA: Okay, thank you.

CHAIRPERSON SCHAEFER: Don?

VICE-CHAIRMAN SPEENEY: Thank you.

Mr. Weldon, how long has the quarry
been in business?

THE WITNESS: Since the 18 -- the
earliest pictures I've seen are the 1860s, 1870s.

VICE-CHAIRMAN SPEENEY: And has that
been in Weldon's control since 1860, 1870?

THE WITNESS: 1892.

VICE-CHAIRMAN SPEENEY: 1892?

ATTORNEY BUTLER: 1892 is the right
answer. 1860/1870 is not the right answer. 1892,
his third answer, is correct.

THE WITNESS: Don asked when the
quarry started.

ATTORNEY BUTLER: I thought 1892.

THE WITNESS: No, we were buying

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stone.

VICE-CHAIRMAN SPEENEY: Well, anyway,
there -- the planning board was approached back
around, I'll say, 2000 with the concept of
redeveloping the quarry.

And are you familiar with that plan
that was proposed at that time by Weldon?

ATTORNEY BUTLER: I think the plan was
proposed by the town.

VICE-CHAIRMAN SPEENEY: No. The first
plan -- the first plan was proposed by Weldon and
Mr. Steck drew it up.

THE WITNESS: Right. It was 21 years
ago. I don't remember.

VICE-CHAIRMAN SPEENEY: All right.

Well -- I'll move on.

ATTORNEY LINNUS: Excuse me, Don,
everyone. I want to caution Mr. Butler, you are not
the witness. The witness is Mr. Weldon.

ATTORNEY BUTLER: Okay. But when
somebody makes a factual mistake I think I'm
obligated to correct it.

ATTORNEY LINNUS: Correct it later on.

Let the board member and anybody else ask a witness
questions.

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VICE-CHAIRMAN SPEENEY: All right. So anyway, Mr. Weldon, you weren't around in 2000 when that particular proposal was made to the site review committee of the planning board, but let me -- let me bring it up around the overlay ordinance.

And did you folks object to the overlay ordinance that created the conference center/hotel?

THE WITNESS: I would say we did but I don't remember.

VICE-CHAIRMAN SPEENEY: Well, okay.

THE WITNESS: Bill probably remembers.

I don't remember.

VICE-CHAIRMAN SPEENEY: But the overlay ordinance -- the overlay ordinance only allowed recycling. So if -- if you would explain what recycling is, please, for your business?

THE WITNESS: So we have a Class B recycling permit for the property, which means that we can accept broken concrete and broken asphalt, bring it onto our property, processes it, crush it

up and resell it.

VICE-CHAIRMAN SPEENEY: Okay. So --
so based on the Borough's overlay plan, that
particular piece of your business would continue on
even if it was -- if we developed not we but you

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developed a hotel conference center at that
location.

Now have you considered realigning New
Providence Road?

THE WITNESS: That's been talked about
for decades and decades. I believe there was a
Green Brook study done and we -- I have gone with
Butler to Somerville to Somerset County to have this
discussion with multiple engineers, multiple
planners and we've done it for decades and every
time we've offered to give part of our land to
Somerset County to expand New Providence Road, and
each time it gets farther and farther down the road,

it comes to an end. And I can't remember the reasons why it does, but it would be better for us if it was expanded. And we've offered to give part of our property to the county to do that.

VICE-CHAIRMAN SPEENEY: So we have been through a cycle, I say "we" but the planning board has been through a cycle where quarrying was going on, it was a potential to change the use of the property with regard to hotel conference center, and now we're back to full quarry again without -- without any re-alignment of the road.

THE WITNESS: The quarry never pushed

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for a hotel and conference center. That was never part of our plan. We've always just wanted to be in the quarry business.

VICE-CHAIRMAN SPEENEY: I agree. I think what I'm suggesting is that you had the opportunity to do that, but you didn't do it. And

it turns out that the quarry business has expanded since the implementation of that overlay ordinance.

THE WITNESS: I don't think it's expanded. Why do you think that it's expanded?

VICE-CHAIRMAN SPEENEY: You bought all of the -- all the properties along --

CHAIRPERSON SCHAEFER: Bonnie Burn.

VICE-CHAIRMAN SPEENEY: -- Bonnie Burn Road.

THE WITNESS: That's true. Okay, to me expanding the business means making more stone or more asphalt or more concrete. We haven't expanded our business. But, yes, we do have more property. That's correct.

VICE-CHAIRMAN SPEENEY: And that -- that additional property is for purposes of continuing the life of quarry.

THE WITNESS: To continue to mine, that's correct.

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VICE-CHAIRMAN SPEENEY: Continue to mine, thank you.

So I just am trying to establish that we have cycled in the last 22 years, we have cycled from possibly reducing quarrying, and to the point where it would have been a total -- completely different use, a re-alignment of New Providence Road, and we're now back to the basic use, which is quarry use by the way, the zone has changed to quarry. And in that particular case, you're going to continue the business for -- let's say you started in 1892. Now you're going to continue the business for how long?

THE WITNESS: Our mine planner says that we have 60 or 70 years more stone at the level we're crushing right now.

VICE-CHAIRMAN SPEENEY: Okay. So this is not a trivial pause in any of your business; you're going to continue on. And this quarry, and I'll call it expanded use in the sense that you have more area to mine, is going to be next door to this proposed application. Okay.

THE WITNESS: And development.

VICE-CHAIRMAN SPEENEY: Okay. All right, thank you.

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THE WITNESS: Thank you.

CHAIRPERSON SCHAEFER: Any other questions for Mr. Weldon?

Okay, public --

ATTORNEY BUTLER: Madam Chair, I have some redirect for Mr. Weldon regarding some questions that Mr. Speeney asked.

CHAIRPERSON SCHAEFER: Okay, Mr. Butler.

E X A M I N A T I O N

REDIRECT BY ATTORNEY BUTLER:

Q. Wasn't it the Borough of Watchung's idea to have an overlay zone for the quarry?

A. That's correct. It was not the company's idea.

Q. Did Weldon ever make an application for the overlay zone?

A. The quarry company never made an application for the overlay zone.

Q. Did we ever support the overlay zone?

A. We did not.

Q. Did we retain Peter Steck to advise us regarding the overlay zone?

A. We did, yes.

Q. Okay. Did we ever encourage the use of

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the overlay zone in lieu of our regular quarry operations?

A. We did the opposite. No, we discouraged it.

ATTORNEY BUTLER: I have no further questions.

CHAIRPERSON SCHAEFER: Okay. I'm going to open it up to the public. Anybody from the public have questions of Mr. Weldon?

Okay. Thank you, Mr. Weldon.

THE WITNESS: Thank you, Madam Chair.

COUNCILMAN MARTINO: Madam Chair, I've got a quick question for the chair.

CHAIRPERSON SCHAEFER: For me?

COUNCILMAN MARTINO: Yes.

CHAIRPERSON SCHAEFER: Yes?

COUNCILMAN MARTINO: Mr. Butler just asked the question to Mr. Weldon about the overlay. Who from the Borough was responsible for that suggested overlay?

CHAIRPERSON SCHAEFER: We'll let Don answer.

VICE-CHAIRMAN SPEENEY: It goes back to the late '90s when Weldon approached the planning board with a redevelopment plan. And that

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redevelopment plan was submitted to us and the -- and that was Mr. Steck, the redevelopment plan. And it was about 2 million square feet of redevelopment and it was a mixed use, you name it and it was going to be put in there.

We, in turn, got a grant from the county to look at the overlay -- the aspect of an overlay zone. And then the planning board came up with an overlay zone of about a million square feet, and specifically as an office conference center location. And clearly, clearly there was no implementation of that overlay zone, but it was not -- I disagree that it -- it was not objected to by Weldon. Weldon was -- the Weldon Company was very much critical about what the uses would be in terms of quarry, if it stayed as a quarry, and what uses it would be if there was -- overlay was developed, the overlay zone was developed and that left them with just recycling.

So it was going to be, in our mind, that was going to be the big development for the Borough of Watchung. We even had the county look into the quarry as a comprehensive economic development. They had a priority growth investment

area and the quarry was 200 acres that they were

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interested in supporting change in use.

And so a lot of that stuff happened
from the late '90s up until very recently when we
did away with the overlay zone completely.

Now I realize that maybe Mr. Weldon
wasn't involved in all those years. Certainly Mr.
Butler was. And he might even remember some of the
earlier aspects of Mr. Steck's plan and doing 2
million square feet of development.

So that's pretty much the history of
the quarry, zoning and rezoning, and -- and going
back to the situation where it is right now. And
clearly, the fact that Mr. Weldon's talking about 60
or 70 more years of quarry, mining, of mining, was
one of the reasons that we changed the zone and also
we excluded that area from our --

CHAIRPERSON SCHAEFER: Fair Share
Housing.

VICE-CHAIRMAN SPEENEY: -- housing responsibility. So that's pretty much it. And you know, Tracee, if you want to add to any of that? Because you were around a good part of that.

MEMBER ELLIS: I was around for a great part of that, Don. And you're absolutely

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correct in the attitudes and the way that the planning board looked at the overall picture and have been there, readjusted the -- the quarry, in a sense the definition. But we never felt any real -- there was never any real what I would call hardcore objection from the quarry, from the Weldon operation, to what we were trying to accomplish in lieu of being under pressure of a Mount Laurel requirement that we were trying to make. So that's my comment.

CHAIRPERSON SCHAEFER: And that was part of the affordable, there was a conference

center. There was actually they were planning restaurants. They were planning a cinema. They were planning even independent living.

ATTORNEY BUTLER: Who is "they"? Who is "they"?

CHAIRPERSON SCHAEFER: The Priority Growth.

ATTORNEY BUTLER: Who?

CHAIRPERSON SCHAEFER: Somerset County, the Priority Growth. That was all part of that plan. That is what we had meetings on was what could potentially go there. And it was going to cover part of -- not that it was going to be built,

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but this was a Priority Growth from the county. And it would cover numbers, only numbers of affordable housing.

MEMBER ELLIS: Exactly.

CHAIRPERSON SCHAEFER: And that's why it then went over to the quarry zone and we got it

on record how long they would be quarrying for, so that that number or what we were having to build in affordable housing was reduced because we were taking a big portion of land, acreage out of the equation, because it now was a quarry and was going to be quarried for a very long time.

MEMBER ELLIS: That's correct.

ATTORNEY BUTLER: Madam Chair, if there's no other question, I have another question for Mr. Weldon.

CHAIRPERSON SCHAEFER: Well wait a minute. Mr. Ellis was speaking.

ATTORNEY BUTLER: Oh, I'm sorry.

MEMBER ELLIS: No. I was saying, well stated, Madam Chair. You have your facts correct, as well as Don does. I think it's a pretty well-designed plan from the Borough of Watchung as we move into this wonderful area of trying to compete with the Mount Laurel requirements. That's

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all.

CHAIRPERSON SCHAEFER: Pete, did you have other questions?

ATTORNEY BUTLER: Can I ask Mr. Weldon a question?

CHAIRPERSON SCHAEFER: I want to first hear from Mr. Martino. Did you have any --

ATTORNEY BUTLER: I'm sorry.

COUNCILMAN MARTINO: I'm sorry, Madam Chair. No, that's, I mean, listen, that's pretty much it. I find it hard to believe that we have all that overlay for a couple of million square feet. There were no traffic issues then. I'm still, you know, trying to figure out this, you know, all of this big traffic issue is. But I'm sure when Mr. Simoff talks later we'll get some more information. And thank you, Mr. Speeney. I appreciate that.

VICE-CHAIRMAN SPEENEY: Mr. Martino, we did have traffic issues with that overlay development and it required primary ingress/egress off of Valley Road, secondary ingress/egress off of New Providence Road, and I've got to tell you, we were -- we were trying to keep it at 1 million square feet and the reasonable proposal from Weldon

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was 2 million-plus square feet.

And -- and so we did try to possibly change the use of that property to some lesser density -- intensity work that was -- that's currently going on. And we haven't, obviously, been successful. So we tried.

CHAIRPERSON SCHAEFER: But the big thing, we took the use of property out of the affordable equation, okay.

Mr. Butler?

ATTORNEY BUTLER: The overlay zone would have increased your Mount Laurel obligations. And I convinced the town of that.

CHAIRPERSON SCHAEFER: But not under a quarry zone.

ATTORNEY BUTLER: Not under a quarry zone. The property is developed.

If you had this overlay zone, I told the town officials, including their attorney, that they're shooting themselves in the foot because they're increasing their Mount Laurel obligations, okay.

And I'm an officer of the court and if I'm lying about this, get me disbarred. I think too much of my license to misrepresent on this case.

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CHAIRPERSON SCHAEFER: I think we have gone off topic. We're here for an application.

VICE-CHAIRMAN SPEENEY: Right. Right, right.

CHAIRPERSON SCHAEFER: Mr. Hehl is being very patient.

So you had another question for

Mr. Weldon before we go on to Mr. --

ATTORNEY BUTLER: Yes, yes, yes.

E X A M I N A T I O N

REDIRECT BY ATTORNEY BUTLER:

Q. Mr. Weldon, whose idea was the overlay zone; Weldon's or the planning board?

A. It was not Weldon's idea.

Q. It was the planning board's idea?

A. Yes.

ATTORNEY BUTLER: I have no further question.

VICE-CHAIRMAN SPEENEY: Whose idea was it initially approaching the planning board to do a redevelopment zone for that property?

ATTORNEY BUTLER: What do you mean, recently? You mean --

VICE-CHAIRMAN SPEENEY: No, in --

ATTORNEY BUTLER: -- 20 years ago?

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VICE-CHAIRMAN SPEENEY: In 2000, in 1998.

ATTORNEY BUTLER: Oh, okay. Okay, go ahead.

THE WITNESS: I don't know.

VICE-CHAIRMAN SPEENEY: Look, I did a site visit with three planning board members on that property and the plan that we had in our hands was one that was developed by Steck that was a 2-million-plus square feet. That was proposed by Weldon to the planning board.

ATTORNEY BUTLER: Mr. Speeney, you told me to get a planner. The planning board came out with this overlay plan and you told me to retain a planner.

CHAIRPERSON SCHAEFER: I'm going to stop this. I'm going to stop this. We are really off topic. We need to get back to this application. Can we just move on to your next witness please?

ATTORNEY BUTLER: Sure. Absolutely. I would like to call Hal Simoff.

ATTORNEY LINNUS: Mr. Simoff, can I see you, please? Move over a little bit. A little bit more. There you are.

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H. Simoff, P.E.

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Okay. You were previously sworn in in these proceedings; is that correct?

HAL SIMOFF: Yes.

ATTORNEY LINNUS: And do you understand that you still remain under oath?

HAL SIMOFF: Yes.

ATTORNEY LINNUS: Okay. Mr. Butler, your witness.

ATTORNEY BUTLER: Thank you.

H A L S I M O F F, previously sworn, testifies:

E X A M I N A T I O N

BY ATTORNEY BUTLER:

Q. Mr. Simoff, I show you in these documents we sent over two months ago to the board. I make that representation to Madam Chair.

A. Do you want to put this one up?

Q. Put it up, OW-22?

A. Theresa?

BOARD SECRETARY: Give me a minute.
CHAIRPERSON SCHAEFER: What date was
this sent?
ATTORNEY BUTLER: One second.
BOARD SECRETARY: What's the date of
the memo?
ATTORNEY BUTLER: Mr. Simoff sent it

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to Mrs. Snyder January 8th, 2021.

THE WITNESS: No.

ATTORNEY BUTLER: No. Oh, no. Wait a
minute. Wait a minute. It was later than that. It
was about a month after that?

THE WITNESS: The exhibit is dated
March --

BOARD SECRETARY: Is this it?

THE WITNESS: The exhibit is dated
March 4th.

CHAIRPERSON SCHAEFER: We got to go

into March, Theresa.

BOARD SECRETARY: Okay. Hold on. It was in March?

THE WITNESS: The exhibit is dated March 4th, OW-22.

BOARD SECRETARY: Will you be using OW-23 and OW-24 also?

THE WITNESS: Yes.

BOARD SECRETARY: I just want to grab them all now. Just give me a minute.

THE WITNESS: As well as 25.

I appreciate it. It's easier for you to post it.

BOARD SECRETARY: OW-25, what was

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that? Was that the form of a letter?

THE WITNESS: Yeah, it was attached to a letter. And the letter was dated April 12th.

ATTORNEY BUTLER: OW-25 is A to D.

There are exhibits attached to OW-25.

BOARD SECRETARY: I think I have everything. So what do you want to start with?

THE WITNESS: 22.

BOARD SECRETARY: 22. All right.

Just hold on. Let's see. This is correct?

THE WITNESS: Yes.

OW-22 presents two scenarios for stacking going westbound on Union Avenue. One of them is what I presented in my previous report. I'm not going to discuss it. And the other one was --

BY ATTORNEY BUTLER:

Q. Which was that, the one in the previous report?

A. 270 feet and queuing.

Q. And that was cars on route -- Union Avenue going in what direction?

A. Westbound.

Q. That would be towards New Providence Road?

A. Yes.

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Q. Okay. Go ahead.

A. There was also -- in the Bright View report, there was a comment that called out the stacking as 225 feet. That's the shorter distance. So those two numbers are projected. Using the Bright View numbers, there's 9 cars of stacking; using my numbers, there's 11 cars are stacking. And so this is a representation of what happens when those 11 cars queue up at the stop bar on Union Avenue going westbound and how it gridlocks both the site -- because traffic will not be able to enter or exit the site -- and it also gridlocks eastbound Union Avenue for traffic that wants to enter make a left into the site. So it's a depiction.

So once there are seven cars queued eastbound on Union Avenue, then the overflow or the gridlock projects out onto New Providence Road. And once the -- once the two driveways are blocked -- the western driveway is 80 feet from the stop bar, and the two-way driveway is 170 feet from the stop bar.

So all of the projections, both the Dolan & Dean projections, the Bright View projections and my projections block all

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three -- both driveways on Union Avenue, and the resultant of that is gridlock.

One of the questions was what kind of intensity of traffic is being projected. Not -- the Dolan & Dean projection was 120 movements during the morning peak hour. It's -- so there's 120 cars trying to enter and exit the site during the morning peak hour.

Can we go to the next one?

Q. No, no, no.

A. I'm sorry.

Q. The OW-22 also has some cars on the site. Now what does that show us?

A. Well, that shows -- as I stated, with the intensity of traffic with drop-offs, those -- those cars are queued on-site blocking the parking and blocking circulation because of the queue on Union Avenue.

Q. So, in other words, those cars on the site, the stacking prevents them from getting onto the site and from leaving the site; is that your testimony?

A. Yes.

Q. And that's all reflected on OW-22?

A. Correct.

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Q. Okay.

A. And I might add that it's not just my calculations; it's the calculations of every -- all three traffic engineers that have been involved in this application.

Q. Okay. Do you have anything else to add regarding OW-22?

A. No.

Q. Okay. Now --

A. I want to move this along. I want to go to 23 and 24. I'll quickly discuss 23 and 24. Because of the constraints -- and they're dated the same time, I believe. 23 is dated March 3rd, '21, so they were submitted after my original testimony. But what it projects is because of the constraints and the -- and the -- and the constraints of the property due to the flooding or the riparian issues and the constraints of the parking area, when cars make the -- try to traverse the site, it's virtually impossible to stay to the right of the -- to the right of the centerline, both entering and exiting the site.

So that what happens is -- as I stated, there's 120 movements during the peak hour and that's why it's important. If this was 30 movements

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during the peak hours, like an office building that was on this site, these -- these two-way issues wouldn't be as critical, but the constraints of the development of the site force the circulation to cross over the centerlines in order to get in and out of the site.

Q. Now it that -- so you have two cars on the site, Car 1 and Car 2. What problems are shown with Car 1?

A. Car 1 is traveling northbound and wants to exit the site at the eastern driveway. In order to make the -- in order to make the turn to come around to the south, they have to cross over the centerline and block the parking on the northeast portion of the property.

And the same thing is applicable for traffic in Number 2, it wants to leave the site -- or wants to circulate the site and head towards the exit, the one-way exit on the western driveway. So because of the constraints of the -- of the layout of the parking -- and this is not a conventional

parking layout -- those issues become more critical because of the intensity of the use.

Q. Okay. And do you have any more observations regarding OW-23 to assist this board in

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deciding this application?

A. No.

Q. Okay. What next exhibit do you want to go to?

A. 25.

Q. You don't want to go to 24?

A. 24 shows the same scenario where traffic has to cross over the center.

CHAIRPERSON SCHAEFER: Wait a minute.

We have to get 24 up.

THE WITNESS: I'm sorry.

ATTORNEY BUTLER: I'm sorry.

CHAIRPERSON SCHAEFER: That's okay.

Let Theresa do her thing.

ATTORNEY BUTLER: I think I'm saying
"I'm sorry" all night.

CHAIRPERSON SCHAEFER: Yeah, stop
saying you're sorry.

ATTORNEY BUTLER: Well, you know, when
you're -- when you don't know anything about this.
I'm a dinosaur. I admit it.

CHAIRPERSON SCHAEFER: Don't say
you're sorry. It's okay. We'll get through it.

ATTORNEY BUTLER: You make me feel
better.

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CHAIRPERSON SCHAEFER: You know we
will. We don't have a choice, Mr. Butler.
Here we go, 24.

THE WITNESS: 24 shows the same
concept. Traffic -- as an example, traffic that
would want to leave the site and go left towards
Route 22 -- that would be Car Number 4 -- that

can't -- can't exit the site and stay to the left of center.

And the same thing would happen if Car Number 3 were to circulate the site. They would go to the left of center and impact the cars backing in and out of the parking field right adjacent to the building.

BY ATTORNEY BUTLER:

Q. In your opinion, is this a dangerous situation?

A. Yes. And, again, it's constrained by the -- by the layout of the site. It's not a conventional layout where -- where all the parking spaces are parallel to each other and the aisles are perpendicular. Because this site layout is driven by the -- by the constraints of the flood riparian and the flooding issues.

Q. Anything else you want to add to OW-24?

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A. No.

ATTORNEY HEHL: Madam Chair, if I may
for a moment? Mr. Butler -- Mr. Simoff was supposed
to touch on items -- this is all the same stuff.
Our plan --

ATTORNEY BUTLER: It's not the same
stuff. It's completely different.

ATTORNEY HEHL: All right. Mr.

Butler, would you please let me finish my objection?

He submitted. We had our plan
submitted. The plan has not changed. We had our
traffic expert, Betsy Dolan, testify when we
submitted the application. And then Mr. Simoff
testified. We've received the report. And your
traffic engineer, Mr. Jahr and Mr. Fishinger,
testified.

This is all -- I can see if we came in
with a modified site plan, but he is saying the same
things that he said at the first go-around. Our
site plan hasn't changed. He talked about these
same things, and your traffic engineer addressed it.
But this will -- this will never end
if -- I mean why is he being recalled to say, again,
the same things that he said when he testified?
And, again, I re-emphasize that if we changed our

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site plan and now that impacts what he said originally, but this is exactly the same stuff that he said when he first testified. That's --

CHAIRPERSON SCHAEFER: Mr. Butler, do you have one more exhibit and that's it?

ATTORNEY BUTLER: No, I have more than that. But I would like Mr. Simoff to respond to Mr. Hehl's objection as to the repeating testimony. Go ahead.

THE WITNESS: Well, the first issue is that we also reviewed -- we confirmed, based on the Bright way -- Bright View -- pardon me, John, for mispronouncing your company. We projected both the Bright View and my numbers on the Union Avenue. That is additional information. But this is just a -- and then this is also reinforced by the fact that there were constraints on the site because of the riparian and the flood plotting.

ATTORNEY HEHL: That always existed.

I wouldn't -- I guess if there was some limited testimony with Mr. Simoff responding to the Bright View report of February 22nd, which apparently was issued after his testimony. I would possibly see some response to that. But going through --

ATTORNEY BUTLER: We're going to get

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to that.

THE WITNESS: Well I'm done with these. I'm done with these exhibits.

BY ATTORNEY BUTLER:

Q. How about OW-24?

A. No. The next exhibits are after --

Q. Oh.

A. OW-25, which is the last exhibit that I presented, is -- was done in response to Mr. Hehl's letter of March 10th, which was after I testified.

Q. Now, what specific section of Mr. Hehl's letter are you referring to?

A. On page 2 of Mr. Hehl's letter, the --

BOARD SECRETARY: Excuse me.

ATTORNEY BUTLER: Yes.

BOARD SECRETARY: Is this the correct exhibit?

ATTORNEY BUTLER: Excuse me?

THE WITNESS: Yes.

BOARD SECRETARY: Okay. Thank you.

THE WITNESS: They were attached to that letter.

ATTORNEY BUTLER: His exhibits. He sent exhibits, and he explained the exhibits in the

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letter.

CHAIRPERSON SCHAEFER: Okay. Before we move forward, Frank, do you have a comment as to Mr. Hehl's objection?

ATTORNEY LINNUS: If, indeed, Mr. Simoff was testifying on matters that were presented by Mr. -- by Bright View's report dated February 21st and he hasn't presented that before to that extent, his testimony is in on those exhibits, so that's done and over with.

My concern is now identification of the next exhibit which is -- I need an identification of the next exhibit.

ATTORNEY BUTLER: OW-25A, Frank.

ATTORNEY LINNUS: Okay.

THE WITNESS: And that's what's on the -- that was what was on the screen just now.

ATTORNEY BUTLER: And then we're going to go into the Bright View, and I think we're through.

THE WITNESS: I just want to discuss OW-25. And then my response to the Bright View letter of February 28th, I believe.

ATTORNEY BUTLER: I'm trying to get

him through tonight, Madam Chair. I'm going to do

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everything I can. We stripped down his testimony as much as we can. Go ahead.

THE WITNESS: On --

BOARD SECRETARY: Just tell me where to go.

ATTORNEY BUTLER: Excuse me?

BOARD SECRETARY: Just direct me if I need to scroll down.

THE WITNESS: Scroll down. The first exhibit is OW-25A. That's it.

CHAIRPERSON SCHAEFER: Mr. Hehl, I'm going to let him go because he's almost done. I'll let you cross-examine him, questions from the planning board from our engineer, and we'll get this done tonight.

ATTORNEY HEHL: Great. Thank you.

THE WITNESS: I'm reading from the

March 10th, 2021, letter of Mr. Hehl to the planning board, to Theresa.

ATTORNEY LINNUS: Mr. Simoff, please identify what OW-25 is.

THE WITNESS: OW-25 is the source of the truck sizes that are referenced in Mr. Hehl's letter.

ATTORNEY LINNUS: Is it a letter?

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THE WITNESS: OW-25A.

ATTORNEY LINNUS: Okay. Is a letter dated April 12th -- I need you to identify the exhibit.

THE WITNESS: Yeah. OW-25A is the exhibit. Down at the bottom of that sheet, if you just scroll down, it says OW-25A. Right there.

CHAIRPERSON SCHAEFER: And the date of this is?

THE WITNESS: It was transmitted under

my letter of April 12th, which is further up the screen.

But I'd like to -- yeah, it was under that letter transmittal, but I would just like to discuss OW-25A first.

CHAIRPERSON SCHAEFFER: Go ahead.

THE WITNESS: What prompted me to submit this OW-25A was Mr. Hehl's letter of March 10th. If I can read the one paragraph, it says, "Further, the objector's traffic expert provided testimony regarding the circulation, delivery and passenger vehicles on-site. Exhibits A-10 through A-13 address the circulation of the largest delivery vehicle that will deliver to the site, which is a typical FedEx or UPS vehicle that

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is 23 feet long. The objector presented testimony based on a 30-foot box delivery vehicle which has no relevance to this application."

So -- and then it also states,
"Moreover, the passenger vehicle maneuvers into certain parking spaces are provided in Exhibits A-11 and A-12. We note that these templates are based on a 19-foot-long vehicle, larger than the typical vehicle used today. Exhibit A-13 confirms typical car length per vehicle class."

I'm not going to discuss Exhibits 8 through 12, but on A-10 there is a plotting of a 23-foot delivery vehicle, which is shown in -- in OW-25A.

I might add that OW-25A is taken from a reference source entitled design -- The National Association of City Transportation Officials. That is listed on the top. I had trouble finding this reference because it's not an accepted reference. The accepted reference for design vehicles is AASHTO, American Association of State Highway and Transportation Officials, not this national association as noted.

BY ATTORNEY BUTLER:

Q. Is that the -- does Mr. Hehl use

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the --

A. He used the design vehicles from that organization.

Q. Which you -- have you ever heard of that organization?

A. No. In the 40 years of my practice, I have not.

Q. Okay. Go ahead.

A. Now, what he showed was what this -- if you scroll down just a couple inches, there are two vehicles shown there. The top one is a 22-foot-6-inch vehicle which is noted as DL23, which is basically the 23-foot vehicle, and it's called out as "neighborhood and residential streets." The next one down is a designated truck -- next one down is called "downtown and commercial streets." And that is the 30-foot vehicle that I projected on the site that can't circulate without the cars being -- without the site being empty.

Q. How would you categorize this site? As residential or commercial?

A. No, this is a commercial site.

Q. Okay.

A. It would have frequent visitors of

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deliveries. Basically, there's 154 students and 22 employees that have to -- that have to -- you know, need supplies. You know, food, paper supplies, et cetera. So I think that a typical FedEx or UPS vehicle 23 feet long is not a realistic assumption in designing this site.

Now, if we go to --

Q. In your exhibits, didn't you show a UPS site, a Federal Express site?

A. Right. Now, if we --

Q. Go ahead.

A. -- go down to 25B, the next exhibit.

CHAIRPERSON SCHAEFER: It's a picture of a UPS truck, correct?

THE WITNESS: Yes.

CHAIRPERSON SCHAEFER: Theresa, can you scroll down? Theresa? That's not good. Theresa?

BOARD SECRETARY: Yes.

CHAIRPERSON SCHAEFER: Can you scroll down?

ATTORNEY LINNUS: We're looking for OW-25B.

BOARD SECRETARY: I'm sorry. I'm seeing it on my screen but -- I'm sorry, the

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computer is, like, jammed up right now.

THE WITNESS: There we go.

CHAIRMAN SCHAEFER: There you go.

THE WITNESS: That depicts a UPS truck making commercial deliveries in downtown Madison. I was out to lunch. And that truck is 27 feet long.

BY ATTORNEY BUTLER:

Q. Now, now, Mr. Hehl says his trucks are -- UPS trucks are 23 feet long?

A. Yeah.

Q. Okay.

A. The next -- and then just to move this along, the next one is a FedEx truck, FedEx delivery in downtown Madison. I don't know why it doesn't come up, but that truck --

BOARD SECRETARY: Sorry. Do you see it?

ATTORNEY BUTLER: Wait till it comes up.

BOARD SECRETARY: Because I don't see it.

THE WITNESS: No. Maybe it has to take some time.

BOARD SECRETARY: Just give it a minute.

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CHAIRPERSON SCHAEFER: What about that; can you see that? I have it up on my screen if you look up at my screen.

THE WITNESS: That basically depicts a Federal Express delivery, and that truck is 35 feet long.

BY ATTORNEY BUTLER:

Q. And Mr. Hehl represents that the trucks -- those kind of trucks are no bigger than how big?

A. 23 feet.

Q. 23 feet, okay.

Okay. And his projection of trucks is 23 feet?

A. Right. He shows -- in A-10, he shows a -- what's -- he depicts as the largest delivery vehicle being 23 feet long.

Q. Okay. And these pictures counteract that?

A. Yeah.

Now, the last -- the next one, 25D --

CHAIRPERSON SCHAEFER: I have it up on my screen.

THE WITNESS: -- depicts a single-unit 30-foot truck with a refrigerator -- with a refrigerator contraption, I will call it. So

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that -- because there may be a need for refrigerated trucks, refrigerated material, milk or whatever is being served to the children. And, number one, you can't deliver that by FedEx because it's just not practical.

And, number two, this is the truck, the 30-foot single-unit truck is what I plotted that cannot fit on the site. And, therefore, whether it be the 27-foot UPS truck or the 35-foot FedEx truck, none of those can fit on the site as depicted on A-10.

MEMBER PENNETT: Excuse me. Tracee, I could see the UPS truck, but the other two pages are

blank. I don't know.

CHAIRPERSON SCHAEFER: Can you see it
on my screen? Look at my screen.

MEMBER PENNETT: The only thing I can
see, I can see Al Ellis and a very large blank piece
of paper. Now I see everybody.

CHAIRPERSON SCHAEFER: Do you see it
now?

THE WITNESS: Oh, right. She's --

MEMBER PENNETT: Yes, I see it now.

THE WITNESS: That is -- what is on
the chair's screen is the single-unit 30-foot truck

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which has a refrigerated component. That's OW-25D.

CHAIRMAN SCHAEFER: And the one
previous to it, Karen, was the FedEx truck.

MEMBER PENNETT: Okay. Thank you.

THE WITNESS: That FedEx truck, I
measured it to be 35 feet long, which is obviously

significantly more than the 23.

CHAIRPERSON SCHAEFER: Is that it?

ATTORNEY BUTLER: No.

THE WITNESS: One more.

BY ATTORNEY BUTLER:

Q. One second now. The -- okay. Go ahead. Wait a minute. Now, now, there's -- does this application -- they're looking for a variance; are they not? They don't want to have a loading space for these trucks?

A. Right. The application requires a variance for a loading space.

Q. Okay. What is next?

A. The next is a question -- or there was a submission entitled by the applicant E-100 where they plotted the sight distance of about 200 -- about 400-and-some feet --

Q. Now, sight distance in what direction?

At what intersection? Be specific.

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A. I'm sorry. I shouldn't apologize.

Q. I shouldn't apologize. I got off on that, not you.

A. The -- there was a plotting entitled E-100 which the applicant plotted the sight distance. Now, that sight distance was plotted from the extension of the curblane, not from the stop bar. So what I project as OW-26 is I took my car, I stopped at the stop bar, and I looked to the north on New Providence Road, and the available sight distance is 205 feet.

Oh, there are the pictures. That's it.

CHAIRMAN SCHAEFER: Can you turn it around? Otherwise, I have it here on my screen. It's turned -- you got it. Great.

THE WITNESS: So what is -- sitting in my car, the front bumper is pulled up to the stop bar on the stop sign at New Providence Road on Union Avenue looking to the right, looking to the north, and you can see 205 feet.

BY ATTORNEY BUTLER:

Q. Where? To the left or the right?

A. To the right.

Q. To the right. Okay. Go ahead.

A. So the required sight -- intersection

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sight distance is in excess of 400 feet. And I suggest that the applicant plotted it in E-100 wrong. They plotted on a -- they plotted it on an aerial looking down, but the reality is that it should have been plotted from eye view.

The other -- the point that I make to this is that there's a variance required for 40 feet of frontage on the property so that, clearly, you can't clear or grade the property to allow for the additional sight distance. And, therefore, I think that this goes to the variance requested for the property frontage on New Providence Road.

Q. Anything else you want to talk about OW-26?

A. No.

Q. Okay. Now, we're getting near the end of your testimony, aren't we?

A. Yes.

Q. And now we're going to talk about the Bright View, the last Bright View. It was February 22nd, 2021; is that correct?

A. Yes.

Q. And their summary is on Page 10?

A. Yes.

Q. Okay. Would you please give us a

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critique, in your opinion, about what Bright View said on Page 10 and Bright View is advising this board? Go ahead.

A. Yes.

Q. On traffic.

A. Yes. It references a sample application for a proposed learning center in Morris Township by another engineer's data without confirmation of its -- of its accuracy.

Learning Experience hired Stonefield Engineering to present a justification for a parking variance in Morris Township in September of 2019, and they showed studies that this -- that Bright View adopted as their own. And I suggest that without verification by Bright View this is not a valid way of presenting data.

Q. So just let me interrupt you. Bright View used a traffic consultant from one of their prior applications, from one of the prior applications of the Learning Experience?

A. Yes.

Q. Right? And what town?

A. Morris Township.

Q. And then he took that and he incorporated it into his report?

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A. Yes.

Q. Is that correct?

A. Yes.

Q. What is your opinion of that, that methodology?

A. It should have been data that Bright View collected, not Stonefield.

Q. And how many locations or schools were in the Stonefield application?

A. Four. Four facilities.

Q. Okay.

A. And the other critique -- the other critique I have of this Bright View analysis is that they did the analysis based on square footage, not on students.

Q. Now, is this on parking spaces?

A. Yeah. They developed the parking demand based on the square footage of the building, not on the student population.

So that -- and then based on their analysis, they said that the -- the average demand was 15 spaces and the -- and the 85th percentile demand was 19 spaces. But when one steps back and

looks at -- whenever somebody presents data, you
have to step back and say does this data make sense?

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And to suggest that 15 to 19 spaces would serve 22
employees plus 154 children being dropped off, I
think, doesn't make sense.

And, therefore, I question the
conclusions -- not I question -- I disagree with the
questions that are the -- the way the Bright View
analysis came up with the 19 spaces as being the
requirement and also the data that was presented.

Q. Do you have any other comments
regarding Page 10 of the Bright View report?

A. No.

ATTORNEY BUTLER: I have no further
questions at this time, Madam Chair.

CHAIRPERSON SCHAEFER: Mr. Hehl,
before I let you move forward, I would like to go to
John and Joe, John Jahr and Joe Fishinger.

Can you please respond to Mr. Simoff's comment?

ATTORNEY HEHL: And I agree, Madam Chair. I think that makes sense.

ENGINEER FISHINGER: I will start, if I may, Madam Chairman -- Chairwoman. Sorry. I'll start with the last comment with the parking data. I'm sorry, Mr. Butler; is there an issue?

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THE WITNESS: No. We were just trying to find your picture on the screen.

ATTORNEY BUTLER: Just wanted to see how good-looking you are.

ENGINEER JAHR: Certainly better than me.

ENGINEER FISHINGER: I'll start with the last point that they made.

Hal, have you ever used or referenced

research conducted by another traffic engineer,
another engineering firm?

THE WITNESS: Not by the same
applicant. These studies were done by Stonefield.
I would question -- if I was going to use somebody
else's data, number one, I would verify it, and,
number two, I would look at the source of the data.
It was done to justify a parking
variance. Stonefield tried to justify a parking
variance in Morris Township at a planning board
application on behalf of -- on behalf of Learning
Experience.

ENGINEER FISHINGER: Were you present
at any of those hearings, Hal?

THE WITNESS: No.

ENGINEER FISHINGER: For the record, I

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was. I was the reviewing traffic engineer on that
application. And I did review the data at that time

and again for this application. And as you're well aware that -- we made it clear that this was not our research; it was conducted by another engineering firm.

My recommendation to the board is to keep in mind that this is -- to take that information for what it is. It is additional data prepared by a third-party engineering firm that has been reviewed and accepted by Bright View Engineering.

As far as doing our own counts, or Hal doing his own counts or Dolan & Dean doing their own counts, none of us could do the counts because of COVID pandemic and other issues, so we're forced to rely on historical data.

So as I -- I stand behind that research. We reviewed, and I personally went to some of those sites and did spot counts of the parking at that time. As far as Bright View is concerned, we stand by the information that we presented regarding the parking.

ATTORNEY BUTLER: Madam Chair, could

Mr. Simoff respond to what Joe just said?

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THE WITNESS: Well, that --

ATTORNEY BUTLER: Wait a minute. You
got to get her permission.

CHAIRPERSON SCHAEFER: Go ahead. Go
ahead.

THE WITNESS: That should be -- that
should have been referenced in your letter. It
should have been saying that --

CHAIRPERSON SCHAEFER: Okay. You know
what, we're not going to be up for debate here. Our
professional looked into this. I have to -- I have
to stop everybody. You know, we're relying on our
professionals. And however they came to the
conclusions that they came to, you know, it's not up
for debate. You have your side, and our
professionals have their side.

Unless there can be something proven
that they did absolutely wrong, which I am not
seeing based on the testimony I'm hearing -- I know
Mr. Hehl just walked out of the room because I was
going to come to him next and say would you like to --

ATTORNEY LINNUS: Before we proceed
further with Mr. Hehl, Madam Chair -- before we
proceed any further, Madam Chair, any planning board
proceeding has various experts providing testimony.

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It's the duty of the planning board to judge all of the experts -- their experts, the applicant's experts, the objector's experts -- as to credibility and what opinions they issue.

So until there's a decision made, the planning board has an open mind with respect to all experts' opinions.

CHAIRPERSON SCHAEFER: Thank you.

That is correct.

ATTORNEY HEHL: And, Madam Chair, I was just saying I just got up to open the doors in the conference room to get some air in here.

CHAIRPERSON SCHAEFER: That will teach you.

So do you want to ask some questions of Mr. Simoff? Mr. Hehl? You're on mute.

ATTORNEY HEHL: I don't think -- I think -- I didn't know if Mr. Fishinger was done. I think he hit on one point and then was going to --

CHAIRMAN SCHAEFER: I'm sorry, Joe.

Were you going to continue on?

ENGINEER FISHINGER: I have -- I have other questions for Mr. Simoff, if you want me to ask all of mine at once.

CHAIRMAN SCHAEFER: Go ahead.

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ATTORNEY BUTLER: Does it have to do with the testimony he gave tonight?

ENGINEER FISHINGER: Yes, it does, Mr. Butler.

ATTORNEY BUTLER: All right.

ENGINEER FISHINGER: Going back to Exhibit OW-22, you showed queuing in the -- I guess the left lane. Did you make any consideration for the right-turn lane that has been proposed by the applicant and shown on that exhibit?

THE WITNESS: That graphic is based on the right-turn queue because all the calculations are based on two lanes entering the intersection on Union Avenue. The right-hand queue is -- based on your representation, is 270 feet --

ENGINEER FISHINGER: Hal, that was not my question. My question was did you consider --

THE WITNESS: Yes.

ENGINEER FISHINGER: Then why aren't the cars in the right-turn lane?

THE WITNESS: It's a plotting error. It's a description of the right-turn queuing. And that's --

ENGINEER FISHINGER: Even though it's showing in the left lane?

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THE WITNESS: All of the --

ATTORNEY BUTLER: Let him answer,
please.

THE WITNESS: All of the traffic
analyses -- Betsy Dolan, mine, yours -- all consider
two lanes approaching Union -- on Union approaching
New Providence. And the queued is based on the
number of cars queued to make a right turn.

ENGINEER FISHINGER: Okay. Were you
aware or did you review the correspondence between
the applicant on the county regarding prohibition of
that left turn?

THE WITNESS: I believe that that was
brought up after I submitted this -- after I
submitted the -- the sight distance.

ENGINEER FISHINGER: Are you aware of
it? Did you have any -- do you have an opinion on
that recommendation or that --

THE WITNESS: Well, I think that the

-- what then happens is traffic that wants to come on -- come from the site on Union Avenue and make a -- that traffic would have to go down to Route 22 and then merge onto 22, go west, and then go either onto Bonnie Burn, you know -- onto Bonnie Burn or to go -- yeah, to go on Bonnie Burn and then go over

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the Park Avenue overpass. I think that the pluses and the minuses have to be evaluated. It's not a surefire response.

ATTORNEY BUTLER: Madam Chair, has Union County ever responded to the prohibition against a left-hand turn?

THE WITNESS: Somerset County.

ATTORNEY BUTLER: Somerset County? I have never seen it.

CHAIRPERSON SCHAEFER: Mr. Fishinger, do you know the answer?

ENGINEER FISHINGER: It is my

understanding that the county did not have an issue with that, with the left-turn prohibition, that they were amenable to it. But I did not have that -- I did not have that conversation with the county. I'm sure the applicant's traffic engineer can answer that question at the appropriate time.

ATTORNEY BUTLER: Do you have any document to substantiate what you just said?

ENGINEER FISHINGER: Again, I am sure that the applicant's traffic engineer can produce any letters if there are.

THE WITNESS: And just one more point to that issue, that impacts the New Jersey DOT

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because it adds additional traffic to the merge onto Route 22 at Union Avenue, and I think the DOT should be consulted as well because of the -- because of the impact.

ENGINEER FISHINGER: Okay. Moving on

to OW-23 and 24. The -- you were showing -- you're questioning cars turning over the middle of the drive aisle.

THE WITNESS: Yes.

ENGINEER FISHINGER: Does that occur in a normal parking lot?

THE WITNESS: In some locations it does but not -- I'm suggesting that this use is -- is a significantly higher trip generator, and we have children being escorted from the car into the building. It has a higher test for safety and -- and circulation. If it was just a -- if it was an office building of 10,000 square feet, we would be talking about a different -- a different study.

ENGINEER FISHINGER: Is a 24-foot drive aisle typical for commercial parking lots?

THE WITNESS: Yes. But the angle -- the angle that the parking is presented and the -- and the circulation pattern is not typical. The

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way -- a typical 24-foot aisle is with the parking aisles parallel to each other, and the 24-foot aisle in between serves both uses. The problem relates to the -- to the fact that this site is being compressed because of the flood issues.

ENGINEER FISHINGER: I'm going to move onto 25 -- or, sorry, one more question on 23 and 24.

Where you show the turning path of the vehicle, what speed were you using for the path of those vehicles?

THE WITNESS: It's like 4 or 5 miles per hour. It's a standard AASHTO template.

ENGINEER FISHINGER: Is that typical for a parking lot maneuver?

THE WITNESS: Yes.

ENGINEER FISHINGER: And then on OW-26, the sight distance, how does AASHTO require intersection sight distance be calculated? You said -- I heard curb lines and stop bars. What does the AASHTO requirement for intersection sight distance say?

THE WITNESS: The AASHTO sight distance requirement is usually -- I believe it's 14 or 15 feet behind the curbline extension. The

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applicant --

ENGINEER FISHINGER: Would you believe

me if I -- would you agree if I said it was 14 1/2
feet behind the edge of traveled way?

ATTORNEY BUTLER: Were you through
with your answer?

THE WITNESS: No, I wasn't.

ATTORNEY BUTLER: Please let him get
through with the answer before you start asking him
another question, please. Be fair.
Go ahead.

THE WITNESS: This, in this scenario
we have the -- first of all, this is not a 90-degree
intersection. So when you measure the distance,
when you measure the setback of -- when I said 14 to
15 and you said 14 1/2, I think we're talking about
the same number.

But in this scenario, we have a stop
sign, and we have a stop bar. We have what is
modeled as the requirement for where the car stops
at the stop bar and where the car looks to the
north. And the fact that this is -- and the fact
that this is not a -- not a 90-degree intersection,
that's the best way to model the projection, the
measurement.

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ENGINEER FISHINGER: With all due respect, that was not -- the question I asked was what was AASHTO's requirement, not what you thought it should be.

THE WITNESS: That's what I said. And whenever you look at a requirement, you have to look at what is reality. You know, the stop -- there's an existing stop bar, there's an existing stop sign, and prudent and common sense would indicate that you project -- you pull up to the stop bar and you look to the left and to the right. And to the right, you can only see 200 feet, 205 feet, when you need approximately -- I believe it's like 400 -- 445. So even if you pulled up to 14 or even if you pulled up to the projection of the curblane, the driver's eye is not at the curblane. The driver's eye is approximately 5 feet back because of the hood of the car. We can talk about this, but common sense dictates what I show in OW-26.

ENGINEER FISHINGER: Madam Chairwoman, that's all the questions I have. I'll save any direct testimony for my commentary.

ATTORNEY BUTLER: In other words, Mr. Fishinger is going to testify on direct?

CHAIRPERSON SCHAEFER: Frank, my

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intention was -- well, Frank, you answer, please.

ATTORNEY LINNUS: If Mr. Fishinger would like to make statements or provide commentary, he certainly should be allowed to do so.

ATTORNEY BUTLER: And I should be allowed to cross-examine him. Do you agree with that?

ATTORNEY LINNUS: I certainly do.

ATTORNEY BUTLER: Thank you.

CHAIRPERSON SCHAEFER: Mr. Hehl?

ATTORNEY HEHL: Yeah. Madam Chair, I really don't have much. I think, as I said before, Mr. Simoff merely regurgitated, frankly, the same --

ATTORNEY BUTLER: Is there a question?

Madam Chair, is this a question or a summation? If he has a question, let him ask it.

ATTORNEY HEHL: Mr. Butler, you have been interrupting me for a year now, so please --

CHAIRPERSON SCHAEFER: Let me stop this. It's not a summation. I asked him a question. He answered it. He is saying that he doesn't have any further questions of Mr. Simoff.

Correct?

ATTORNEY HEHL: And I'm saying that we
feel that our professionals have addressed all these

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issues and that we -- we concur with the findings in
the Bright View Engineering report, that we have
adequate sight distances, adequate stacking and
would also commit to the prohibition on the
left-hand turn.

CHAIRPERSON SCHAEFER: Okay. Before
we continue on -- well, actually, I'm going to open
it up to the public.

Does the public have any questions of
Mr. Simoff?

Okay. Does the planning board have any
questions? Paul?

MEMBER FIORILLA: Yeah. Mr. Simoff,
you're a traffic expert, right?

THE WITNESS: I'm a professional

engineer, yes.

MEMBER FIORILLA: And the part of what you were talking about today was, you know, the trucks, you took pictures of trucks, and I guess you're kind of making assumptions that they need large trucks to do deliveries. Is that what you were talking about?

THE WITNESS: The March 10th letter from Mr. Hehl talks about how the typical FedEx and UPS vehicles --

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MEMBER FIORILLA: Okay.

THE WITNESS: -- make deliveries to the site.

MEMBER FIORILLA: But your testimony today is that they're going to --

ATTORNEY BUTLER: Let him -- Paul, let him get through. He didn't get through answering your question.

MEMBER FIORILLA: Because he wasn't --
he didn't -- look, I'm not -- I don't talk very
much. You talk a lot. Just let me talk, please.
He didn't -- that wasn't the question that I was
asking. That was not --

ATTORNEY BUTLER: I'm representing --
I'm representing the objector. We have as much
rights as the applicant.

CHAIRPERSON SCHAEFER: Okay, let's
just stop here.

Paul, go on.

MEMBER FIORILLA: All right. So
you're saying that they need these large trucks
because they have a lot of supplies or something; is
that kind of what your point was?

THE WITNESS: No. My point was that
the trucks that they depicted at 23 feet long are

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not typical FedEx and UPS trucks. The UPS truck

that I found was 27 feet and I --

MEMBER FIORILLA: Because you took a picture of a couple of trucks? Have you done any studies on --

THE WITNESS: Since then --

MEMBER FIORILLA: -- FedEx trucks?

THE WITNESS: Since then I have been looking around, and I see that UPS and FedEx come in -- come in larger trucks than 23 feet.

MEMBER FIORILLA: Based on your personal observance?

THE WITNESS: Yes.

MEMBER FIORILLA: Do you have any data on the average size of a truck, FedEx trucks? Or is this all based on, again, your anecdotal --

THE WITNESS: The source that the applicant used -- the source that the applicant used was a study done by -- by the National Association of City Transportation Officials. That -- that categorizes deliveries -- UPS and FedEx deliveries in two categories. It says that the neighborhood and residential streets use 23-foot trucks, and commercial and downtown streets should use 30-foot trucks. And that is -- so I'm suggesting that when

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they -- when they coined the 23-foot truck and plotted it, it was a misrepresentation. That was for residential streets. And a residential delivery is a lot different than a commercial delivery.

The trucks that I pictured and the trucks that observed --

MEMBER FIORILLA: Do you have any --

THE WITNESS: -- were all been done at commercial locations.

MEMBER FIORILLA: Do you have any knowledge of the amount of materials that are delivered to a typical day care center?

THE WITNESS: Well, I would -- I would think that they're going to have refrigerated -- they have to have refrigerated material -- milk, and butter, and bread and whatever they feed the children on break. Obviously, you can't -- you can't order that in advance by -- and have it delivered by FedEx.

MEMBER FIORILLA: But you're not testifying you know how much or you've done any studies?

I'm just trying get at whether you've done any studies, you have any data, or is this just all anecdotal?

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THE WITNESS: No, it's common sense.

When you have 154 children and you feed them every day, you can't have your deliveries by FedEx, by a residential FedEx vehicle.

CHAIRPERSON SCHAEFER: I think the record --

MEMBER FIORILLA: But that, again is your -- okay. Thank you.

CHAIRPERSON SCHAEFER: Yvette? You have to unmute yourself.

MEMBER NORA: Yeah. No. Just --

MEMBER FIORILLA: Are you talking to me?

CHAIRMAN SCHAEFER: No, talking to Yvette.

MEMBER NORA: Well, just having had my children go through day care and go through the situation, most -- and Learning Experience is going to have to confirm this, that, you know, we were required to bring our snacks, breakfast, lunch and such. So, you know, it's an assumption that there are going to be large deliveries there. I think there are going to be minor provisions. But, you know, Learning Experience will have to, you know, confirm this.

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CHAIRPERSON SCHAEFER: Mr. Hehl, I think you had -- I don't have my notes in front of me. Was there not testimony as to what was actually being delivered to the day care center?

ATTORNEY HEHL: Yes. There was testimony as to what was being delivered, the type of vehicles that were being delivered, and that was all within control of the operator.

THE WITNESS: And if I can just make one point to justify what I'm projecting, this application is for a day care center. So when -- when and if this is approved, the -- the use -- I'm sorry, the operator does not necessarily have to be Learning Experience. It can be one of half a dozen other operators. So because -- and I have said this in my previous testimony, the approval goes with the land.

And so if the applicant -- if it seems reasonable that refrigerated material are being delivered to the site, then the site should accommodate refrigerated material is my point. Because it may not be Learning Experience. It may be XYZ learning center, and they might have ice cream, or milk or refrigerated material delivered to the site, which is not an unreasonable assumption.

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ATTORNEY BUTLER: Juice, soda.

THE WITNESS: And so I think that the variance that is requested for no loading area just should be looked at with a fine-toothed comb by this board.

CHAIRPERSON SCHAEFER: Mayor Balla?

Mayor Balla?

MAYOR BALLA: Yes. Question, how many cars or how many vehicles actually travel north on Union Avenue, and how many vehicles travel south on Union Avenue on a daily basis?

THE WITNESS: Oh, I can't tell you the daily. The traffic counts were presented -- I'll have to --

ATTORNEY BUTLER: Peak hour.

THE WITNESS: I have the peak -- you have the traffic report?

ATTORNEY BUTLER: Yeah. Yes.

THE WITNESS: We did counts in November of -- November 9th, 2020. And northbound in the morning -- I'm sorry, westbound in the morning. There were 102 vehicles. But this was during the pandemic. I think making a right were 102. I think it was -- my recollection, it was about 170 vehicles based on the Dolan & Dean report.

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MAYOR BALLA: And how many is it that went south towards 22?

THE WITNESS: We have the Dolan & Dean?

ATTORNEY BUTLER: Hm?

THE WITNESS: Do we have the Dolan & Dean reports?

I defer to the Dolan & Dean counts because they were done pre-pandemic. Maybe, Joe, do you have those numbers?

CHAIRPERSON SCHAEFER: Joe?

ENGINEER FISHINGER: In the morning peak hour, the Dolan & Dean existing numbers westbound towards New Providence was 173, and eastbound towards 22 was 92.

THE WITNESS: So my 170 recollection was pretty close.

MAYOR BALLA: Okay. And then one other question, what is the count of the vehicles on New Providence Road that make a left across the lane to turn down Union Avenue?

THE WITNESS: Well, Joe has those numbers in front of him.

ENGINEER FISHINGER: Existing is 67 in the morning and 311 in the evening, per the Dolan &

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Dean report.

MAYOR BALLA: And evening is at what hour?

ENGINEER FISHINGER: 4:30 to 5:30 p.m. Again, from the Dolan & Dean report.

MAYOR BALLA: Okay. Thank you.

CHAIRPERSON SCHAEFER: Any other questions?

Okay. Mr. Butler, this was your last witness, correct?

ATTORNEY BUTLER: This is my last witness. Of course, I reserve the right to call back then for rebuttal or surrebuttal, depending upon what's testified to by the applicant.

CHAIRPERSON SCHAEFER: Okay.

ATTORNEY BUTLER: Right, tonight this is my last witness.

CHAIRPERSON SCHAEFER: Okay.

ATTORNEY BUTLER: As I promised, I got through with them.

CHAIRPERSON SCHAEFER: Thank you.

Here's where we're at, I just got a text from Theresa that, apparently, the court reporter had some issues in the beginning, that the computer audio was not working well in the beginning

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of the meeting.

So, Frank, how do we handle this?

Because that was the beginning of the professional memo review.

ATTORNEY LINNUS: All right. Theresa, were you taking -- is there any device that we have, either you taking minutes or anything relating to that portion of the meeting, that we can rely on or that the parties can rely on?

ATTORNEY BUTLER: Is there audio?

BOARD SECRETARY: No. We had the court who had computer problems, and I did not start recording the meeting, so we don't have anything right now for the -- for the professionals' memos.

ATTORNEY BUTLER: Madam Chair? Madam chair, what is the problem? I'm sorry, I don't hear too well. What did you say the problem was?

CHAIRMAN SCHAEFER: The recording of this meeting Theresa started later than when we first started to, you know, just hit the button and she didn't, and I can't fault her.

So we were relying on the court reporter of Mr. Hehl's. The court reporter, apparently had some issues with her computer audio, so she also missed the beginning of the meeting.

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The beginning of the meeting was the testimony for the reports, the engineer -- our engineer and our, yeah, and our planner. Probably the first ten minutes of the meeting were not covered on a video or on -- either on video, on recording, on transcript. There is nothing.

ATTORNEY BUTLER: Is there only ten minutes missing?

CHAIRPERSON SCHAEFER: It was approximately ten because when Theresa said something to us, I looked at the clock, and it was about ten minutes.

ATTORNEY BUTLER: You know, I -- we -- Frank, the objector, is going to ask for another meeting for the ten minutes.

ATTORNEY LINNUS: Yeah, the problem we have is if, indeed, there's an appeal of these proceedings, we're missing ten minutes of testimony and, you know, evidence that was presented to the board that may be challenged in an appeal. So I think we have to recreate the ten minutes.

ATTORNEY HEHL: My suggestion, and unfortunately, we have had this happen even maybe a little more so during the pandemic, but if we could

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find out at what point the proceedings started -- I think it really wasn't a whole lot.

I think, if I recall, I gave an overview of my position of agreeing to comply with the provisions and again -- I have my -- I actually wrote down my notes, so I can go through them again, but if I recall, I began with that overview and concurrence with the findings of that report, and then your professionals briefly discussed it.

So, Theresa, do we have that?

ATTORNEY LINNUS: I think we have to first found out, you know, when the transcript started and when the audio started.

ATTORNEY HEHL: Yeah. Exactly. Yeah.

ATTORNEY LINNUS: And then we can backtrack it and see what was presented beforehand, and perhaps, with the agreement of counsel, it looks like at the next meeting you could recap?

Because my concern is that if there was evidence presented in that ten minutes, that there will be a gap in the event there's any appeal.

ATTORNEY BUTLER: Frank, whatever you agree to do, I -- I don't want to do another meeting. You've spent enough time on this case. You have been very patient. We're going to be

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cooperative on this.

This is something that the technology is beyond me, so I'm very sympathetic to this type of an issue.

CHAIRPERSON SCHAEFER: Theresa, is there a way you can tell how far into the meeting it was before you hit the record button?

BOARD SECRETARY: I can't tell that until the meeting ends, and then I could try it back when I, like, replay the video. But I can't do that while we're meeting.

CHAIRPERSON SCHAEFER: Okay. And the court reporter, can she tell us when hers was working, when she was able to start recording?

ATTORNEY HEHL: Can the court reporter go back to the beginning of the transcription and indicate verbally what was discussed at the beginning of her transcription?

CHAIRMAN SCHAEFER: I can only see the top of her head if she can unmute herself and talk to us, please.

(Discussion was had off the record.)

ATTORNEY BUTLER: Can I make a suggestion, Madam Chair? Let the court stenographer send us the three pages before the machine broke

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down and then the three pages after it broke down,
and I think we will be able to piece it together and
solve this thing, especially if it's only ten
minutes.

ATTORNEY HEHL: And our team can put
together an overview from the notes that everyone
has taken as to what transpired during that
beginning time period.

ATTORNEY LINNUS: If both parties find
it acceptable, it's acceptable to the board.

ENGINEER MATIAS: Madam Chair?

CHAIRMAN SCHAEFER: Who's talking?

ENGINEER MATIAS: Rick.

If I may, I'll just interrupt real
quick because, actually, the record sound came on as
I was speaking, so it's a little bit fresh in my
mind. Just -- I don't know if this adds anything to
everyone, but Mr. Hehl had given his brief summary.
Mr. Butler had presented some questions relevant to
Chapter 22 and the flood damage prevention ordinance

initially to Mr. Healey. And then that line of questioning came to me, and we discussed essentially NJDEP and agreed, as we have on various times, that the condition of approval would be subject to NJDEP permitting being obtained by the applicant.

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Obviously, there was more in there, but that's basically the gist and that's -- and then that's when the recording came on. So I just wanted to throw that out there.

ATTORNEY BUTLER: And I gave my --

Rick, I gave my reasons why I disagreed with you, too.

ENGINEER MATIAS: Correct, yes. Yes, sir.

ATTORNEY BUTLER: You're right.

ATTORNEY LINNUS: I do think we have to have a complete record, and the suggestion that Mr. Butler offered is certainly acceptable to the board if it's acceptable to Mr. Hehl.

ATTORNEY HEHL: Yeah. Like I said, I think that if we put together an overview of what transpired once we get the time period, we could certainly put that together. And if you want, we can take the lead on that and submit it to -- to Theresa and copy Mr. Butler on that to take a look at it. ATTORNEY LINNUS: We also have to determine what's left in this hearing. As I understand it, the applicant presented its case. The objector has presented its

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case, and it's ripe for rebuttal if the applicant wants to rebut.

UNIDENTIFIED SPEAKER: No.

ATTORNEY BUTLER: No rebuttal, is that what you said?

ATTORNEY LINNUS: Rebuttal.

CHAIRPERSON SCHAEFER: Mr. Hehl, is there rebuttal?

ATTORNEY HEHL: Yeah, Madam Chair, at this point it looks like we're not proceeding tonight. We would take the opportunity just to discuss what transpired tonight with our professionals and certainly respond back to the board shortly.

ATTORNEY LINNUS: Okay. I note the time within which the board has to act on the application is through June 30th. Who knows where this is going at this point. I would ask that the applicant consent to an extension of time perhaps through the end of July.

ATTORNEY HEHL: Yeah. I don't see any problem with that, Frank.

ATTORNEY BUTLER: Madam Chair, would you ask Mr. Hehl -- and I have known Hehl -- Steve longer than you, Tracee. Will you let me know about

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what you're going to do on the 15th of June?
When you tell the board, will you copy

me?

ATTORNEY HEHL: Yeah, we will.

CHAIRPERSON SCHAEFER: What we're doing next at our next regular scheduled meeting -- is June what, Theresa?

BOARD SECRETARY: 15.

CHAIRPERSON SCHAEFER: On June 15 we're going to allow Mr. Hehl to do his rebuttal. Okay? And we're going to open it up to final questions, final commentary.

Then Mr. Hehl will do his closing statement, you'll do your closing statement, and we will see where we go from there.

ATTORNEY BUTLER: Yeah, I do mine.

Mr. Hehl goes last.

CHAIRPERSON SCHAEFER: Okay. Then you do your --

ATTORNEY LINNUS: The only comment I have is that before Mr. Hehl does any rebuttal, we have to reconstruct the 10 missing minutes or the 15 missing minutes by way of overviews.

ATTORNEY BUTLER: Absolutely.

Absolutely. And, Frank, if you will just keep Steve

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and I in the loop, we'll try to work it out before the 15th.

ATTORNEY LINNUS: Okay.

CHAIRPERSON SCHAEFER: I don't see why we can't wrap -- get through this in our June meeting. There's absolutely no reason.

ATTORNEY BUTLER: The June meeting?

The June meeting; is that what you said, Tracee?

CHAIRPERSON SCHAEFER: Yes.

June 15th.

ATTORNEY BUTLER: Okay.

CHAIRMAN SCHAEFER: I -- yeah,

June 15th. Our regular meeting. Starts at 7:30.

There will be no further notice required. And anybody who is here for TLE can come back on June 15th.

In the meantime, recreation of the first 10, 15 minutes of this meeting will happen with Mr. Butler, Mr. Hehl. I'll get it to -- Theresa will look, the court reporter will look, and we'll try to recreate as best as we can. And we'll introduce that one more time at the next meeting so at least it's on record.

Right, Frank?

ATTORNEY BUTLER: Madam Chair, we --

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ATTORNEY LINNUS: Sounds right, Madam
Chair.

CHAIRPERSON SCHAEFER: I'm sorry,
Frank?

ATTORNEY LINNUS: Sounds right, Madam
Chair.

CHAIRMAN SCHAEFER: Mr. Butler.

ATTORNEY BUTLER: Bob Weldon and I
just want to thank Theresa for her great assistance
putting these exhibits up on the screen. She's
continually -- she's the best, and the board's lucky
to have her. And I don't want to patronize anybody
either, but it's wonderful.

CHAIRPERSON SCHAEFER: You're
absolutely right. She is -- she's a gem. She
really is. If she ever left, Mr. Butler, I'm going
too.

ATTORNEY BUTLER: Hey, Tracee, I'll go
with you.

CHAIRPERSON SCHAEFER: All right. Any
questions? Do we all understand where we're at?
Okay.

ATTORNEY HEHL: Okay by us. Thank
you.

CHAIRMAN SCHAEFER: Thank you.

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ATTORNEY LINNUS: All right. We've got to make the announcement that this public hearing is continued through the meeting of -- to the meeting of June 15th, which will be conducted, I believe, virtually. And what's the time of the meeting, Theresa?

BOARD SECRETARY: 7:30.

ATTORNEY LINNUS: 7:30.

To the public who is here, this is your pronouncement -- this pronouncement is your notice that this hearing will be continued on June 15th at a virtual meeting to begin at 7:30. You will get no further notice.

ATTORNEY BUTLER: And I'll look forward to, Frank and Steve, working out this ten-minute thing.

CHAIRPERSON SCHAEFER: Thank you.

ATTORNEY HEHL: All right. Thank you, everyone. Have a great night. I appreciate everyone's time and assistance.

CHAIRPERSON SCHAEFER: We appreciate it as well.

ATTORNEY LINNUS: And Steve, you'll confirm the extension in writing; you will, right?

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ATTORNEY HEHL: Of course. I'll send
a letter to Theresa.

ATTORNEY LINNUS: Okay.

CHAIRPERSON SCHAEFER: Planning board
members, please stay on.

(Application adjourned at 10:05 p.m.)

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C E R T I F I C A T E

I, ANGELA C. BUONANTUONO, a Notary Public
and Certified Court Reporter of the State of New
Jersey and Registered Professional Reporter, do
hereby certify that prior to the commencement, the
witnesses were duly sworn to testify the truth, the
whole truth and nothing but the truth.

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

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

Angela C. Buonantuono, CCR, RPR, CLR
NJ State Board of Court Reporting
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