

**THE BOROUGH OF WATCHUNG**  
**Planning Board**  
**Regular Meeting**  
**February 16, 2021**

**OFFICIAL MINUTES**  
**Adopted 3/16/21**

Chairwoman Tracee Schaefer called the Regular Meeting to order at 7:30 p.m. Board members present were Mr. Al Ellis, Ms. Karen Pennett, Councilman Martino, Mayor Keith Balla, Mr. Donald Speeney, Ms. Ellen Spingler, Mr. Steve Pote, Mr. Paul Fiorilla, Mr. Troy Sims and Ms. Yvette Nora. Also present were Francis P. Linnus, Esq., Board Attorney, Mr. Ricardo Matias, PE, CME, CFM, Board Engineer, Mr. Mark Healey, PP, Board Planner, Mr. John Jahr and Mr. Fishinger, Board traffic engineers, and Theresa Snyder, Board Clerk.

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

**MINUTES**

On motion by Mr. Speeney, seconded by Ms. Spingler, the minutes and transcript from the meeting held on January 19, 2021, were accepted and carried on voice vote.

**RESOLUTION NO. PB21-R6**

Approving Settlement Agreement with Karka Investments, Inc. and Phillip Properties, Inc.

Mr. Linnus gave a synopsis of the settlement agreement which when fully executed would commence the continuance of the Bonnie Burn application.

Ms. Spingler read the above captioned resolution into the record.

On motion by Madam Chair, seconded by Mr. Speeney, the board adopted the resolution based on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Councilman Martino, Ms. Pennett,  
Mayor Balla, Mr. Speeney, Mr. Pote, Mr. Fiorilla,  
Mr. Sims, Ms. Nora and Chairwoman Schaefer

Nays:  
Not Eligible:  
Abstain:  
Absent:

#### RESOLUTION PB 21-R7

The appointment of Ricardo Matias, PE, CME, CFM to Board engineer

On motion by Madam Chair, seconded by Ms. Spingler, the board adopted the resolution based on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Councilman Martino, Ms. Pennett,  
Mayor Balla, Mr. Speeney, Mr. Pote, Mr. Fiorilla,  
Mr. Sims, Ms. Nora and Chairwoman Schaefer

Nays:  
Not Eligible:  
Abstain:  
Absent:

#### THE SWEARING IN OF RICARDO MATIAS, PE, CME, CFM

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.***

#### DISCUSSION

Mr. Linnus explained to the board that on February 4, 2021, PL 2021 Chapter 6 (A-2785-S-2607) was adopted as law. He further explained that because the board had recently finalized the Master Plan Review, the law did not apply to the board. He said the board could choose to amend the land use element which would then need to include an analysis of climate change. The board presently was compliant unless they so chose to make the changes to the land use element.

Mr. Healey concurred with Mr. Linnus and offered that the board had included a build-out paragraph in the Master Plan Review.

ADJOURN

The Board unanimously voted to adjourn the meeting at 10:39 pm.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'TS' or 'Theresa Snyder', written in a cursive style.

Theresa Snyder  
Board Clerk

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

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

- - - - -

TUESDAY, FEBRUARY 16, 2021  
COMMENCING AT 7:30 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:

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

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

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

BY: STEPHEN F. HEHL, ESQUIRE

370 Chestnut Street

Union, New Jersey 07083

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

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I N D E X  
FOR THE OBJECTOR:  
ALEXANDER LAPATKA, P.E. PAGE  
BY MR. BUTLER 23,50  
BY MR. HEHL 36  
HAL SIMOFF, P.E.  
BY MR. BUTLER 53  
BY MR. HEHL 84  
PUBLIC COMMENT:  
NAME ADDRESS PAGE  
None.

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#### E X H I B I T S

FOR THE OBJECTOR:

EXHIBIT DESCRIPTION PAGE

OW-7 Traffic report authored by Hal  
Simoff, dated January 8, 2021 with  
attachments

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OW-8 ITE definition of student count,  
parking calculations

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OW-9 Chart entitled, Comparison of Delay,  
Level of Service and Queue Union  
Avenue approach to the New Providence  
Road (Page 5 of traffic report)

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OW-10 Photo of site distance at Union  
Avenue and New Provident Road

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OW-11 Plot of Queue along Union Avenue 5  
OW-12 Circulation of single unit delivery  
truck

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OW-13A Parking circulation plotting 5

OW-13B Parking circulation plotting 5

OW-19

A-L

OPRA response by the Scotch Plains  
Police Department reflecting flooding  
on Route 22 from 2015-2019

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OW-20

A-C

Information from NJDOT reflecting  
accidents at intersection of New  
Providence Road and Bonnie Burn Road  
for years 2016, 2017 and 2018

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OW-21 Report of Al Lapatka, dated February  
12, 2021

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EXHIBITS NOT RETAINED BY REPORTER

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1 (Exhibit OW-7, Traffic report by Hal  
2 Simoff, dated January 8, 2021, with  
3 attachments, was marked.)  
4 (Exhibit OW-8, ITE definition of  
5 student count, parking calculations, was  
6 marked.)  
7 (Exhibit OW-9, Chart entitled,  
8 "Comparison of Delay, Level of Service and  
9 Queue Union Avenue approach to the New  
10 Providence Road," was marked.)  
11 (Exhibit OW-10, Photo of site distance  
12 at Union Avenue and New Providence Road, was  
13 marked.)  
14 (Exhibit OW-11, Plot of Queue along  
15 Union Avenue, was marked.)  
16 (Exhibit OW-12, Circulation of  
17 single-unit delivery truck, was marked.)  
18 (Exhibit OW-13A, Parking circulation  
19 plotting, was marked.)  
20 (Exhibit OW-13B, Parking circulation  
21 plotting, was marked.)  
22 (Exhibit OW-19A-L, OPRA response by  
23 Scotch Plains Police Department, was marked.)  
24 (Exhibit OW-20A-C, Information from  
25 NJDOT regarding intersection of New  
6  
1 Providence Road and Bonnie Burn Road for  
2 2016, 2017 and 2018, was marked.)  
3 (Exhibit OW-21, Report of Al Lapatka,  
4 dated February 12, 2021, was marked.)  
5 (Time noted, 7:50 p.m.)  
6 CHAIRPERSON SCHAEFER: Okay. Now  
7 we're going to go on to our next part of the agenda.  
8 Ellen, do you want to call?  
9 MEMBER SPINGLER: Yes. Case Number PB  
10 19-02, The Learning Experience, 100 Union Avenue,  
11 Block 7801, Lot 1, BB zone, expiration 4/30/21.  
12 CHAIRPERSON SCHAEFER: And, Frank,



13 before you talk, I just want to first make a  
 14 statement. Based on the recent submissions and  
 15 flurry of letters and emails by Mr. Butler and  
 16 Mr. Hehl, our professionals will, obviously, need  
 17 more time to review all this paperwork.  
 18 And with that said, Mr. Hehl, I'm  
 19 actually looking for testimony from your engineer at  
 20 our March meeting -- okay? -- to go over the  
 21 ordinances and design issues.  
 22 And then, Frank, if you just want to  
 23 elaborate?  
 24 ATTORNEY LINNUS: Yes, I do, Madam  
 25 Chairperson. You're absolutely correct. There's  
 7  
 1 been a flurry of activity in terms of documentation,  
 2 letters, information provided by both Mr. Butler and  
 3 Mr. Hehl subsequent to the January 19th meeting.  
 4 As the board and public may recall, we  
 5 concluded the January 19th meeting with Mr.  
 6 Lapatka's testimony, and what was supposed to happen  
 7 was that after Mr. Lapatka was done, in the normal  
 8 course of events Mr. Butler was going to present Mr.  
 9 Simoff, the traffic consultant, as well as the  
 10 planner. And then at that point, if those were his  
 11 remaining witnesses, then Mr. Hehl was going to do  
 12 the rebuttal situation.  
 13 But in terms of what the chair has just  
 14 indicated, after having conversations with our board  
 15 professionals, more information is needed on the  
 16 issues of preemption and the relationship of the  
 17 NJDEP to the jurisdiction of this board. So,  
 18 basically, that will be deferred until after we hear  
 19 more from Mr. Hehl's engineer, perhaps more from  
 20 Mr. Lapatka. And I think Mr. Butler is going to  
 21 present Mr. Lapatka tonight. And then in March,  
 22 after we hear more from Mr. Hehl's engineer  
 23 regarding that issue, and then our professionals --  
 24 that is to say Mr. Healey and Rick -- have an  
 25 opportunity to review whatever is disclosed to us.  
 8  
 1 I might also add that on some of the  
 2 issues that were raised, the legal issues that were  
 3 raised both by Mr. Butler and then responded to by  
 4 Mr. Hehl, I have some preliminary decisions. One --  
 5 one is critical and that's the notice. I have  
 6 determined that the notice is in order, and we can  
 7 proceed based on the Municipal Land Use Law statute,  
 8 N.J.S.A. 55D:-11[sic] and the Perlmutter case. With  
 9 that, there was an attack by -- contention by  
 10 Mr. Butler that notice was not proper because the  
 11 issues relating to ordinances that were cited by  
 12 Mr. Lapatka were not officially and specifically  
 13 raised in the notice. I'm pointing out to the board  
 14 that the notice is sufficient.  
 15 There was no indication at the time of  
 16 the filing of the application that these -- these  
 17 ordinances that were cited were not going to be  
 18 preempted. That's a legal issue to be determined.  
 19 There certainly was a sufficient basis in the notice  
 20 regarding the nature of the matters to be

21 considered. There was a catch-all provision in the  
22 notice whereby the applicant indicated whatever  
23 variances may come up, exceptions, design waivers,  
24 et cetera during the course of the hearing, and  
25 these were precisely the variances, and the design  
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1 waivers, and the exceptions that were -- that came  
2 up during the course of the hearing.

3 So, basically, the notice is in order,  
4 and the hearing can continue by -- as a result of  
5 the jurisdiction of the board.

6 Okay. On the issue of completeness,  
7 Mr. Butler raised some issue regarding completeness.  
8 Once a determination was made that the application  
9 was complete, the matter then gets scheduled for a  
10 hearing. So there's no question that the record  
11 will show that the application was deemed complete  
12 and, therefore, ready for a hearing. The hearings  
13 were scheduled. The hearings were noticed and here  
14 we are.

15 I might add for the board's  
16 edification, and for the applicant's edification,  
17 and also for Mr. Butler's edification, and for the  
18 public's edification that that doesn't mean that the  
19 board cannot -- even though an application has been  
20 deemed complete, meaning the applicant passes the  
21 first hurdle, the board can certainly -- and it's  
22 authorized by the Municipal Land Use Law in that  
23 Section 55D-10.3. You certainly, during the course  
24 of the hearing, can request additional information  
25 as you believe is reasonably necessary to make an  
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1 informed decision as to whether the requirements  
2 necessary for approval of the application have been  
3 met.

4 In addition, completeness does not  
5 diminish the applicant's obligation to prove in the  
6 application process that he's entitled to approval  
7 of the application.

8 So the door is not shut by virtue of  
9 the determination of completeness. If you find that  
10 there are designer waivers or, for that matter,  
11 variances that have not been applied for or  
12 recognized, you certainly can ask for more  
13 information. If you are not satisfied with the plan  
14 that is being presented to you for lack of  
15 information, for lack of anything that was on the  
16 checklist that were submitted in terms of this  
17 application, you have every right as a planning  
18 board member to give the applicant and the objector  
19 and the public a full hearing and for you to make an  
20 informed decision.

21 The issue of preemption, there are  
22 certain aspects of the application that are subject  
23 to preemption by the NJDEP. It'll be explained  
24 later -- further explained later in the proceedings,  
25 as well as other outside agencies. Preemption is a  
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1 legal determination subject to review by a court in  
2 order to evaluate whether any of the ordinances that

3 are suggested are preempted, meaning taken away from  
4 you totally, partially or in any respect, and  
5 whether you have concurrent jurisdiction with  
6 respect to any of the ordinances that are affected  
7 by state regulation.

8 So we'll need to hear from the board  
9 professionals, and after the board professionals  
10 provide a final review of all of the information  
11 provided by the applicant or the objector, as well  
12 as any supplemental information submitted by the  
13 applicant or the objector, then you should be in a  
14 position to hear from me regarding views of legal  
15 preemption and what you're considering and not  
16 considering.

17 Finally, I want to remind the board,  
18 since we do have new members and this is our -- I  
19 think our second meeting this year, you should not  
20 discuss with any other board member any substantive  
21 matter or issue arising out of a particular  
22 application. I should have told you that in  
23 January, but now I'm telling you in February. So  
24 any pending application before the board, please  
25 make sure that you don't discuss substance with any  
12

1 other board member. What happens at the public  
2 hearing happens at the public hearing; that's  
3 evidentiary. Anything else, do not discuss.

4 And that's what I have for you.

5 Mr. Hehl, did you have a comment?

6 ATTORNEY HEHL: Yeah. First, I do  
7 appreciate Mr. Linnus' overview, and obviously, we  
8 concur with his finding that the notice was valid  
9 and we could proceed, that the application was, in  
10 fact, deemed complete. And we really appreciate the  
11 board's professionals providing us -- and Theresa  
12 was kind enough to send over the memorandum from  
13 Mr. Healey, dated February 12th, the update from  
14 Bright View traffic on February 9th -- updated  
15 through February 9th.

16 And by the way, John, it really works  
17 nice when you -- different colors and the updates,  
18 it makes it so much easier to follow, we appreciate  
19 that.

20 And then having the new engineer, and  
21 welcome aboard, getting that report from  
22 February 11th.

23 And what I would like to comment is  
24 that the findings, your professionals are consistent  
25 with what the applicant has indicated all along,  
13

1 that this application is deemed complete and that we  
2 are going to need certain approvals, including  
3 county and the DEP. And as noted, we're not -- the  
4 quote/unquote waiver -- checklist items waivers are  
5 not a thing that cannot be supplied. They are going  
6 to be supplied. There is just a couple of them that  
7 we requested be -- be made a condition of final  
8 approval. Because we have agreed, and I think, Mr.  
9 Linnus, we did a letter to the board agreeing that  
10 we would be applying only for preliminary approval

11 and that all of the items whether they be other  
 12 jurisdictions -- again, DEP, county, and even the  
 13 DCA would be conditions of -- of final approval.  
 14 So I think there's a big difference --  
 15 ATTORNEY LINNUS: Mr. Hehl, not to  
 16 interrupt you but to set forth what my view of that  
 17 situation is and what I believe the law is, your  
 18 rights -- your client's rights, should you get  
 19 preliminary approval, are vested, to a certain  
 20 extent, in preliminary approval. So whether these  
 21 are -- would be conditions of preliminary or  
 22 conditions of final will be decided at a later date.  
 23 ATTORNEY HEHL: Sure. Yeah. No, we  
 24 don't disagree.  
 25 And I did have an opportunity to,  
 14  
 1 again, view the letters that Mr. Butler sent. We  
 2 obviously responded to his February 8th letter with  
 3 a detailed memo. We have already addressed the  
 4 notice issue, and, again, we feel that -- and your  
 5 professionals have cited that, in fact, that the  
 6 most recent memo from Mr. Matias highlights that  
 7 we're not seeking -- and I think, it's, let's see,  
 8 Item Number 9 on Page 3 -- that we aren't seeking  
 9 relief from Chapter 22; we say we're going to comply  
 10 with it.  
 11 So I -- I know that Mr. Butler is  
 12 planning to recall -- I saw his letter today --  
 13 Mr. Lapatka, but I think he has touched on all the  
 14 items that were outlined in that letter, and I don't  
 15 know what more he can say. And I would encourage to  
 16 hear from your professionals at this point and just  
 17 provide an overview of their reports to help guide  
 18 -- guide us and the board on what may be required  
 19 here. Because I don't -- we feel that what's  
 20 being --  
 21 CHAIRPERSON SCHAEFER: Mr. Hehl, I  
 22 understand what you're saying, but I think at this  
 23 stage whatever direction we should go, let  
 24 Mr. Butler do what he's going to do with Mr.  
 25 Lapatka, and that's why I'm asking that you have  
 15  
 1 your engineer present at our next meeting because  
 2 then it gives our professionals opportunity to  
 3 really answer the questions appropriately.  
 4 I know that there have been letters  
 5 circulated or memos circulated from Mark and from  
 6 Rick, but, in fairness, they really need to delve  
 7 more into it.  
 8 So I think that we need to address this  
 9 in our March meeting with your engineer and, again,  
 10 specifically for ordinances and design, and go from  
 11 there. And then hopefully we will have gotten to  
 12 traffic at that point. But I think to try to debate  
 13 back and forth right now, without the professionals  
 14 having the opportunity to finish delving into it, is  
 15 really -- you know, we're just jumping up the wrong  
 16 tree tonight.  
 17 ATTORNEY BUTLER: Madam Chair, this is  
 18 Bill Butler. May I finally be heard?

19 CHAIRPERSON SCHAEFER: After Mr. Hehl  
20 is done. He was right in the middle of saying  
21 something.  
22 ATTORNEY HEHL: Yeah. I was just  
23 going to say, certainly, Madam Chair, we appreciate  
24 your comments there. I just thought because they  
25 had done reviews -- I guess we can have Mr. Lapatka,  
16  
1 if he wants to say a few things, but I believe your  
2 professionals have already addressed those so -- but  
3 I'll see what Mr. Butler has to say.  
4 CHAIRPERSON SCHAEFER: It's my  
5 understanding --  
6 ATTORNEY BUTLER: Madam Chair has  
7 already made a decision on that just now.  
8 CHAIRPERSON SCHAEFER: Mr. Butler, one  
9 minute. I'm in the middle of a sentence.  
10 Mr. Hehl, it's my understanding that  
11 our professionals have expressed that they want a  
12 little bit more time to delve into it so, that, I'm  
13 going to give to them.  
14 I will let Mr. Butler move forward with  
15 whatever he has got from Mr. Lapatka tonight, and  
16 hopefully he will then move on into traffic.  
17 I will say this to everybody, we do  
18 need to end this tonight at 10:00 p.m. for the  
19 simple fact that we, as a board, have a lengthy  
20 discussion afterwards so -- on another matter.  
21 So with that being said, Mr. Butler,  
22 you were going to say something?  
23 ATTORNEY BUTLER: Yes. Madam Chair, I  
24 have two points to raise. One is tonight I plan on  
25 re-calling Al Lapatka. And then after we get  
17  
1 through with him, I'm going to call Hal Simoff my  
2 traffic engineer.  
3 Now, in March, I was going to call Bob  
4 Weldon and Peter Steck my planner. That's what I  
5 was going to do. And then I was going to rest with  
6 the right to call surrebuttal, depending upon what  
7 Mr. Hehl's engineer said.  
8 You have indicated that you are going  
9 to permit Mr. Hehl's engineer to come back in March.  
10 I would respectfully suggest that that be put off  
11 until April so I can finish my objection.  
12 CHAIRPERSON SCHAEFER: Frank?  
13 ATTORNEY LINNUS: Well, it's within  
14 your discretion, Madam Chairperson, to some degree.  
15 Mr. Butler's position could be conceivably accepted,  
16 but you -- you run the show in terms of the agenda  
17 and how an application is -- is being processed.  
18 It is true that in the normal course of  
19 events, it's now the objector's show in terms of  
20 whatever information they're going to provide, and  
21 then, of course, Mr. Hehl would have complete  
22 rebuttal on any of the applicant's -- any of the  
23 objector's information.  
24 So maybe, in an orderly fashion -- it's  
25 certainly up to the chair -- I would think that, if  
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1 Mr. Hehl consents to that approach and the chair is  
2 comfortable with it, that seems okay to me.  
3 CHAIRPERSON SCHAEFER: Mr. Hehl?  
4 ATTORNEY HEHL: Well, again, the  
5 applicant has been at this stage for quite some time  
6 now, and we certainly appreciate the board and the  
7 board professionals, but, again, we're talking about  
8 a permitted use with some minor variances, and this  
9 has to come to an end. And if Mr. Butler --  
10 CHAIRPERSON SCHAEFER: I don't  
11 disagree with that. But I think what we're looking  
12 at specifically is the ordinances that Mr. Butler  
13 has brought to our attention, and some design  
14 waivers and so forth. And that is where our  
15 professionals need to come in with -- with more  
16 input.  
17 Mark, can you jump in here and give me  
18 some input from what you're thinking?  
19 BOARD PLANNER: Well, I think hearing  
20 some of the testimony from the applicant's engineer  
21 and the objector engineer certainly could help, you  
22 know, myself and Rick give you our opinion. I think  
23 hearing some of Mr. Lapatka's testimony from last  
24 week -- or last month, I think, frankly, was helpful  
25 to some degree.  
19  
1 You know, it's one thing for an  
2 applicant to put something on paper or an expert to  
3 put something on paper, but then to hear them  
4 actually explain it, then you get the fuller breadth  
5 of what their point is, and I think we're better  
6 able, then, to provide the board with some clarity  
7 of what our opinion is on the subject.  
8 I mean, obviously, in my memo I had --  
9 in some cases I agreed with Mr. Lapatka and other  
10 places I didn't, but hearing his testimony and  
11 understanding what points he was making helped me  
12 provide my opinion to the board.  
13 CHAIRPERSON SCHAEFER: And, Rick, your  
14 feel?  
15 ATTORNEY BUTLER: Madam Chair, the  
16 other question I have is, do I understand Mr. Linnus  
17 to say that he is reserving decision on the  
18 preemption issue until all the engineering testimony  
19 is complete?  
20 ATTORNEY LINNUS: Until all the  
21 engineer -- you partially heard that correctly.  
22 ATTORNEY BUTLER: Okay.  
23 ATTORNEY LINNUS: Until all the --  
24 excuse me. Until all the -- I'll answer your  
25 question. Until all the engineering testimony is  
20  
1 complete and until I have final reports from our  
2 professionals.  
3 ATTORNEY BUTLER: Thank you.  
4 ATTORNEY LINNUS: And then there will  
5 be a determination as to the legal issue of  
6 preemption.  
7 I can tell you this, there are other  
8 agencies involved, and my preliminary assessment is

9 that there is some degree of preemption. But I have  
 10 to look at what specific ordinances are being  
 11 referred to at the time.  
 12 CHAIRPERSON SCHAEFER: So with all  
 13 this being said, I'm going to stick to what I  
 14 originally said. I want -- you can certainly bring  
 15 your engineer tonight to have his discussion. We  
 16 can start with your traffic. But next month -- I  
 17 want this resolved on the ordinances and the design  
 18 waivers.  
 19 Next month, I would like, Mr. Hehl, to  
 20 have your engineer in so that he can give his  
 21 testimony, you know in rebuttal to whatever we hear,  
 22 so that our professionals can make a final statement  
 23 on their recommendations to this board. And then we  
 24 can move forward, back with Mr. Butler.  
 25 I know that that is kind of out of  
 21  
 1 order, but I think this is of importance for our  
 2 professionals to be able to, you know, to make it a  
 3 little bit more concise for them.  
 4 Are you okay with that, Mr. Hehl?  
 5 ATTORNEY HEHL: Yeah, that's fine. I  
 6 think that adds some consistency because then we  
 7 have -- we have those issues brought before the  
 8 board. We think your professionals did a fantastic  
 9 job in reporting and responding in such a short  
 10 period of time with the submissions, but, certainly,  
 11 if they feel that they want to hear the testimony  
 12 tonight and be prepared to opine in more detail at  
 13 the next meeting, that's -- that's certainly  
 14 acceptable.  
 15 But I do think it makes sense to have,  
 16 rather than have planning left out --  
 17 CHAIRPERSON SCHAEFER: I'm sorry, can  
 18 you repeat that? You just totally cut off.  
 19 ATTORNEY HEHL: Oh, I'm sorry. I was  
 20 saying I think it makes sense to have -- to have our  
 21 engineer respond at the -- at the next meeting so  
 22 that we bring these issues to light.  
 23 CHAIRPERSON SCHAEFER: Yeah. I want  
 24 to get them behind us so that we can --  
 25 ATTORNEY HEHL: Yeah.  
 22  
 1 CHAIRPERSON SCHAEFER: -- move along.  
 2 And it's in front of our minds from the testimony  
 3 tonight rather than letting additional testimony of  
 4 other items and then people forgetting. I think it  
 5 behooves you, and it behooves Mr. Butler.  
 6 Okay, Mr. Butler?  
 7 ATTORNEY BUTLER: Okay.  
 8 ATTORNEY LINNUS: Before Mr. Butler --  
 9 one other item of housekeeping. I noticed that on  
 10 the agenda it indicated that the time the board  
 11 should act on this application was the end of  
 12 February. It's actually -- I think the applicant  
 13 has already agreed to an April 30th deadline for  
 14 action.  
 15 Is that correct, Mr. Hehl?  
 16 ATTORNEY HEHL: I believe so. And

17 I'll send a letter confirming that.  
 18 ATTORNEY LINNUS: Okay. Theresa, do  
 19 we have -- I think we have such a letter, Theresa,  
 20 correct?  
 21 BOARD SECRETARY: Yes. That was my  
 22 mistake to not transfer that date onto the agenda.  
 23 ATTORNEY LINNUS: Okay. Just for  
 24 clarity purposes, it is April 30th; is that correct,  
 25 Theresa?  
 Lapatka - Direct  
 23  
 1 BOARD SECRETARY: That's correct.  
 2 ATTORNEY LINNUS: Okay. Okay,  
 3 Mr. Butler, it's all yours.  
 4 ATTORNEY BUTLER: I would like to  
 5 start off by marking into evidence OW-1 through  
 6 OW-6, which we have already had testimony on.  
 7 When it's marked, is it sufficient, Mr.  
 8 Linnus, to be in evidence, or do we have to go  
 9 through a procedure for identification and then move  
 10 it into evidence?  
 11 ATTORNEY LINNUS: No, it's marked into  
 12 evidence. OW-1 to OW-6 is marked into evidence,  
 13 unless I hear something from Mr. Hehl to the  
 14 contrary.  
 15 ATTORNEY HEHL: No. I think -- I  
 16 thought they were already but --  
 17 ATTORNEY LINNUS: Yeah, I thought so  
 18 too.  
 19 ATTORNEY BUTLER: Thank you.  
 20 I would like to recall Al Lapatka.  
 21 A L E X A N D E R L A P A T K A, P.E.,  
 22 previously sworn, testifies as follows:  
 23 E X A M I N A T I O N  
 24 BY ATTORNEY BUTLER:  
 25 Q. Mr. Lapatka, I just remind you that  
 Lapatka - Direct  
 24  
 1 you're still under oath.  
 2 A. Yes.  
 3 ATTORNEY BUTLER: Now, today -- because  
 4 I just got this document yesterday, a document that  
 5 I want to be marked OW-21. It's a document that was  
 6 drafted by Mr. Lapatka. And I sent it to Theresa  
 7 Snyder today, February 16th, 2021, and I copied Mr.  
 8 Hehl.  
 9 And I assume you-all have copies of  
 10 OW-21?  
 11 CHAIRPERSON SCHAEFER: Can you tell us  
 12 what it is, Mr. Butler?  
 13 ATTORNEY BUTLER: Excuse me?  
 14 CHAIRPERSON SCHAEFER: Can you tell us  
 15 what it is that you are looking at so that we're  
 16 all concise?  
 17 ATTORNEY BUTLER: That was one of the  
 18 first -- first of all, it's dated 2/12/21, and I was  
 19 going to ask Mr. Lapatka, as a background, what it  
 20 is, and why he did it and what does it show.  
 21 CHAIRPERSON SCHAEFER: I understand  
 22 that, but for everybody that is here at this



23 meeting, you're saying that you sent an email. I  
 24 want to confirm that we have the correct paper in  
 25 front of us.  
 Lapatka - Direct  
 25  
 1 Does the top of it say "The Applicant's  
 2 Checklist"? Is that what you're going to be  
 3 reviewing with your engineer?  
 4 ATTORNEY BUTLER: Yes.  
 5 CHAIRPERSON SCHAEFER: Okay. Does  
 6 everybody on the planning board have a copy of this  
 7 email that was sent out today?  
 8 BOARD MEMBER: Yes.  
 9 BOARD MEMBER: Yes.  
 10 CHAIRPERSON SCHAEFER: Councilman,  
 11 you're shaking your head no. Theresa did send it  
 12 today.  
 13 ATTORNEY BUTLER: We can put it on the  
 14 screen, Madam Chairwoman.  
 15 CHAIRPERSON SCHAEFER: I think that  
 16 would be a great idea, Mr. Butler. Thank you.  
 17 Thank you.  
 18 THE WITNESS: Does OW-21 appear?  
 19 CHAIRPERSON SCHAEFER: Yes. We got  
 20 it.  
 21 THE WITNESS: Okay. I think they came  
 22 in reverse order. So I have Page 1 on the screen  
 23 right now.  
 24 BY ATTORNEY BUTLER:  
 25 Q. Okay. Now, Mr. Lapatka, did you draft  
 Lapatka - Direct  
 26  
 1 -- or was OW-21 drafted under your direction?  
 2 A. Yes.  
 3 Q. All right. What's the purpose of  
 4 OW-21?  
 5 A. Well, Mr. Butler asked me to take a  
 6 look at the applicant's checklist for the site plan,  
 7 and I reconciled it between some of the code  
 8 sections that I spoke about before. And I did that,  
 9 and OW-21 is a compendium of that.  
 10 If I could go to Sheet 2, at the bottom  
 11 of Sheet 2, there's a footnote key.  
 12 F1 denotes the items that are not  
 13 included in the checklist -- okay? -- but are  
 14 required per the various codes in Watchung, and  
 15 those code sections are listed in the exhibit above.  
 16 F2 denotes items that are included in  
 17 the checklist, were not provided, and the waiver was  
 18 not requested for them.  
 19 Q. Under Items F1, when you go through  
 20 each individual item, you're going to indicate F1  
 21 means it was not provided?  
 22 A. Correct.  
 23 Q. And it so indicates it on OW-21?  
 24 A. Yes.  
 25 Q. Okay. All right.  
 Lapatka - Direct  
 27  
 1 With that, why don't you start with the

2 top of Page 1, and that's Chapter 21 Stormwater  
3 Control.  
4 A. Yes. So the first item is a  
5 stormwater maintenance plan, and that was not  
6 provided. And I discussed that in my previous  
7 testimony.  
8 The second item was nonstructural  
9 design, and that's such as using natural things like  
10 landscaping to feed stormwater, and that is required  
11 under that code, and it was not addressed.  
12 There's also a requirement for  
13 environmental site analysis, a land use source  
14 control plan, a stormwater facilities map,  
15 and calculations -- (Audio interference).  
16 BOARD SECRETARY: Tracee.  
17 ATTORNEY LINNUS: Whoa, whoa.  
18 BOARD SECRETARY: Tracee, our court  
19 reporter can't hear this.  
20 CHAIRPERSON SCHAEFER: I know that.  
21 I'm trying to stop everybody from talking.  
22 We have feedback going on. Can  
23 everybody hit mute, please. We're getting bad  
24 feedback. Okay.  
25 THE WITNESS: Do you want me to repeat  
Lapatka - Direct  
28  
1 anything?  
2 CHAIRPERSON SCHAEFER: Yes, for the  
3 court reporter. Can she speak and tell us where she  
4 lost us?  
5 (Court reporter clarification.)  
6 THE WITNESS: Okay, so the stormwater  
7 facilities map was not provided. Chapter 21 also  
8 requires drainage calculations which were submitted,  
9 but also a part of that is a soils report, which was  
10 not submitted. And the soils conditions, which  
11 would be discussed in the soils report, would  
12 certainly impact the function of a drainage system  
13 and, I think, needed in order to design it properly.  
14 Chapter 24, tree preservation. I spoke  
15 about this in testimony. The demolition plan states  
16 that 46 replacement trees are required and that 18  
17 are proposed. And in addition to that, I spoke at  
18 previous testimony where it is -- in order to  
19 provide the required sight lines for exiting  
20 movements at the driveway, additional trees would  
21 have to be removed, which would also increase the  
22 requirement for replacement.  
23 Chapter 28, land development. Utility  
24 easements are not addressed. There's a sewer that  
25 is proposed to run down the street. I noted in my  
Lapatka - Direct  
29  
1 testimony before that that -- the location of that  
2 sanitary sewer is directly below a line of utility  
3 poles which I don't think is correct or accurate,  
4 and an easement may be needed. Neither of those  
5 things were addressed by the applicant.  
6 Also, a conservation easement along the  
7 water course, drainageway, channel or stream is

8 required per Chapter 28, and that was not provided.  
 9 Also, there are certain requirements  
 10 for sidewalks which were not provided and a  
 11 pedestrian circulation system which was not  
 12 provided.  
 13 So all of those items are F1 -- I  
 14 explained the footnote before -- except the  
 15 conservation easement is something that is in the  
 16 checklist, okay. It was not provided, but a waiver  
 17 was not requested for it.  
 18 28-604A is the same. A stormwater  
 19 management plan is required, and it was not  
 20 provided, and it does appear in the checklist. A  
 21 waiver was not requested for that.  
 22 Let's see. 28-604E was general  
 23 standards. Site plan and drainage calculations do  
 24 not adequately demonstrate that the site design  
 25 meets certain state requirements for groundwater  
 Lapatka - Direct  
 30  
 1 recharge, nonstructural components, water quality  
 2 and stormwater reductions. And, again, I feel very  
 3 strongly that you need a soils test and a report  
 4 before you could even address those things.  
 5 BY ATTORNEY BUTLER:  
 6 Q. Why, in your opinion, is a soil report  
 7 so important?  
 8 A. Well, in this case, if you were to  
 9 examine the site plan and look at the elevations of  
 10 the different components of the drainage system  
 11 underground and compare that against the elevations  
 12 of the streams, you will see that the design  
 13 is -- could be pushing things a little bit and  
 14 there's a -- the greater likelihood is that the  
 15 water table, when you do the soil test, will not  
 16 allow for that design to function properly.  
 17 In addition, the water quality filter,  
 18 if you examine the inverts of it and how it's  
 19 supposed to function, is not designed properly.  
 20 Let's see. 28-605 --  
 21 Q. So you've completed -- you completed  
 22 Page 1, right?  
 23 A. Yes.  
 24 Q. Okay. We're on page 2 now.  
 25 A. Going to the top of Page 2.  
 Lapatka - Direct  
 31  
 1 Q. Okay.  
 2 A. As a condition of completeness, the  
 3 applicant is supposed to obtain a sewer and water  
 4 utility certification allocating sanitary sewer  
 5 capacity to the property from the town governing  
 6 body and a will-serve letter from the water utility.  
 7 Neither was provided. And I think the sewer is  
 8 important because it may or may not be under the  
 9 direct control of the Borough of Watchung.  
 10 28-606 says sight triangles also should  
 11 be provided and sight triangle easements be  
 12 provided, and they were not. And I note that for  
 13 the easterly most driveway, there's probably going

14 to have to be some additional tree removal in order  
 15 to get the sight lines.  
 16 Sidewalks are not provided.  
 17 This is a very minor point; there's  
 18 supposed to be a concrete apron, and it's not  
 19 provided.  
 20 And, again, all these things are in the  
 21 Watchung codes, and if they're not provided, it's my  
 22 -- you know, it's my opinion that you would need a  
 23 waiver or a variance for those items.  
 24 There's another, you know, point that's  
 25 somewhat minor, 26-607 [sic]. It says, "Access to  
 Lapatka - Direct  
 32  
 1 parking lot shall be designed so as not to obstruct  
 2 free flow of traffic." The dumpster was placed  
 3 right at the main driveway, and if the gate is open  
 4 or if a truck is servicing it, servicing the  
 5 dumpster, that would actually block the main  
 6 driveway to the site.  
 7 28-608 regards lighting. The pole  
 8 foundation does not meet what is required in the  
 9 code.  
 10 And let's see. Landscape and shade  
 11 tree standards, we have -- there's a provision where  
 12 the landscaping should not interfere with  
 13 underground utilities. And I believe you have some  
 14 trees proposed right on top of drainage pipes.  
 15 The parking lot street frontage  
 16 screening shall be a minimum of 5 feet wide. 4 1/2  
 17 is proposed. But, you know, it begs the question if  
 18 you can get so close, why not just give the 5 feet.  
 19 The code requires that the interior  
 20 parking area shall have a minimum landscaped area of  
 21 5 percent. The proposed landscaped area inside the  
 22 parking lot is less.  
 23 And street trees, the code requires  
 24 street trees at 40-foot centers. That would require  
 25 about 11 trees for this property, and two are  
 Lapatka - Direct  
 33  
 1 proposed.  
 2 So those are -- this is really a  
 3 reconciliation of some of the things I testified to.  
 4 And when you take them together with the checklist,  
 5 you will see that most of them are not in the  
 6 checklist but are, nevertheless, required. And the  
 7 few that are in the checklist, you know, they are  
 8 mentioned in the checklist; they were not provided,  
 9 and waivers were not requested for them.  
 10 I did not, in this exhibit, talk about  
 11 Chapter 22 at all. And I will just say a couple  
 12 comments. 22-3.5 --  
 13 Q. Well, what is the heading of Chapter  
 14 22?  
 15 A. That is the -- I just want to give the  
 16 proper -- it's "Flood Damage Prevention."  
 17 Q. Section 28-403, it refers to flood  
 18 plan-flood hazard ordinance, and there's an  
 19 asterisk, and it says, "See Chapter 22 for flood

20 damage prevention"; is that correct?

21 A. Yes.

22 Q. So would you interpret that to mean  
23 that the floodplain/flood hazard ordinance is the  
24 same or incorporates the flood damage prevention  
25 ordinance?

Lapatka - Direct

34

1 A. Yes.

2 Q. Thank you.

3 A. 22-3.5, Point A notes that the  
4 provisions of Chapter 22 should be considered as  
5 minimum requirements. That would certainly infer  
6 that the board can impose those stricter  
7 requirements.

8 22-2 under "Definitions," says the area  
9 of special flood hazard -- the area of special flood  
10 hazards would be defined by the 100-year floodplain.

11 22-4.3, Point B says that the borough  
12 engineer shall obtain and review other information.

13 I can read the whole section, if you want. And in  
14 regards to the tributary, okay, no information was  
15 given as far as the drainage area for that  
16 tributary, the water surface elevations for 100-year  
17 storm, et cetera.

18 And I also said that that -- the result  
19 of that study could impact the proposed floor  
20 elevation of the building, and it could also impact  
21 requirements of putting fill in the floodplain. So  
22 I think that it's very important that that tributary  
23 be studied now and addressed. I can't see how it  
24 can be ignored and a thorough job done of reviewing  
25 the application.

Lapatka - Direct

35

1 22-4.4 says that the planning board  
2 shall hear and decide appeals and variance requests  
3 from Chapter 22. Now, Chapter 22 doesn't -- does  
4 not have, I'll call it, bulk standards like a --  
5 such as setbacks, lot areas, things like that, but  
6 it has topics that have to be addressed. And I  
7 think that if the applicant decides not to address a  
8 topic that's supposed to be addressed under 22, that  
9 there should be, you know, a waiver or variance  
10 requested and reasons as to why they should not have  
11 to address it. And one of the main things there is  
12 the drainage and flood study for the tributary.

13 22-4.4.A.6(b) says that the board shall  
14 consider -- and that's part of Chapter 22 -- shall  
15 consider danger to life and property, and that goes  
16 towards the effects that flooding might have on  
17 access to the property or to the occupants of the  
18 building.

19 F, Item F under that same section, says  
20 that the board should consider availability of  
21 alternate locations for this use, not -- which  
22 locations are not a subject of flooding. Also, it  
23 says the board should consider the safety of access  
24 during flood events including for emergency  
25 vehicles.

Lapatka - Direct

36

1 And all of these items were not  
2 addressed by the applicant and, therefore, it makes  
3 the board's job pretty difficult in considering  
4 them.

5 So that's it.

6 ATTORNEY BUTLER: I have no further  
7 questions at this time of Mr. Lapatka.

8 CHAIRPERSON SCHAEFER: Okay.

9 Mr. Hehl? Mr. Hehl?

10 ATTORNEY HEHL: Yeah. No, I wanted to  
11 unmute myself. I was muted before.

12 Yeah, just a couple of questions. And,  
13 frankly, I don't think what Mr. Lapatka testified to  
14 is any different than what he said at the last  
15 meeting, and that's what I was --

16 ATTORNEY BUTLER: That's not a  
17 question, Madam Chair.

18 (Overlapping cross-talking.)

19 ATTORNEY HEHL: Mr. Butler,  
20 Mr. Butler, I didn't interrupt you --

21 CHAIRPERSON SCHAEFER: Mr. Butler, let  
22 him -- let him -- let him just ask.

23 Go ahead, Mr. Hehl.

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

25 BY ATTORNEY HEHL:

Lapatka - Cross

37

1 Q. Okay. Chapter 22, Mr. Lapatka, did you  
2 take a look at the February 11th, 2021, memo/letter  
3 from Mr. Matias?

4 A. Yes.

5 Q. Did you see -- did you see Item 9?

6 And we can take down this exhibit.

7 We've seen this. This was the same as what we've  
8 seen before.

9 A. Well, it's not. It's a little  
10 different, but we can take it down.

11 Q. Okay. I'm asking you about Number 9.

12 Isn't it --

13 A. He says that Chapter 22 does not apply  
14 to this application.

15 ATTORNEY BUTLER: No.

16 BY ATTORNEY HEHL:

17 Q. No. He says it does apply, but the  
18 next sentence says --

19 A. Does apply.

20 Q. -- the applicant -- and this is what  
21 we've testified to on numerous occasions; isn't it a  
22 fact that the applicant is not seeking relief and  
23 that the applicant will comply with this section?

24 Isn't that true, or are you going to  
25 disagree with the board engineer?

Lapatka - Cross

38

1 A. Well, I agree that they're not seeking  
2 relief, and I think that they should -- in my  
3 opinion, they should either seek relief or address  
4 the provisions of Chapter 22.

5 Q. And the applicant has agreed to do  
 6 that.  
 7 All right. Next --  
 8 A. But the applicant has not done it up  
 9 to this point, so my testimony is based on what I  
 10 have seen up to this point.  
 11 Q. Okay. In your --  
 12 CHAIRPERSON SCHAEFER: Mr. Hehl,  
 13 before you continue, can we get the screen off?  
 14 MR. HEHL: Yeah, I'm sorry.  
 15 CHAIRPERSON SCHAEFER: If we can go  
 16 back to our -- just our regular meeting screen; can  
 17 you get that off, please?  
 18 Thank you. Okay. Mr. Hehl.  
 19 ATTORNEY HEHL: Okay. Great.  
 20 BY ATTORNEY HEHL:  
 21 Q. Another item, you're talking about  
 22 stormwater management plan and a stormwater  
 23 maintenance plan. Now, isn't it a fact that the  
 24 maintenance plan is a document that is prepared  
 25 after acceptance of the management plan to ensure  
 Lapatka - Cross  
 39  
 1 that the management plan is properly maintained;  
 2 isn't that correct?  
 3 A. Yes.  
 4 Q. Okay. And isn't the stormwater  
 5 management plan -- not only is it going to come  
 6 under the purview of the board engineer, but isn't  
 7 it going to be subject to DEP approval?  
 8 A. Yes.  
 9 Q. Okay. And the applicant has agreed --  
 10 correct? -- that they will make any application here  
 11 subject to DEP approval, correct?  
 12 A. Yes. But I think that they still  
 13 should address the borough ordinances, and I -- for  
 14 instance, particularly in regard to the soil test  
 15 that would be required for the drainage system and  
 16 how it relates to the actual design.  
 17 Q. But, you know, it's interesting you  
 18 mention that. Isn't the system designed to handle  
 19 the drainage without any -- without any  
 20 infiltration, that they took a very conservative way  
 21 of assessing the drainage here?  
 22 A. I think that --  
 23 Q. No, it's just a --  
 24 A. It says that they did take a different  
 25 approach, but I think that the -- that the system  
 Lapatka - Cross  
 40  
 1 would violate the requirements of the separation  
 2 between the bottom of the system and the water  
 3 table, number one.  
 4 Number two, I don't think the water  
 5 quality filter is properly designed.  
 6 Q. Again, that's something we assume is  
 7 going to be vetted out and approved by the board  
 8 engineer and by the DEP, correct?  
 9 I mean, you're making your comments and  
 10 you're bringing these items to the -- to the board's

11 attention and to the board professionals, but you  
12 don't hear the applicant -- we didn't say in the  
13 direct, and certainly you're going to hear at the  
14 next meeting the applicant is going to agree to  
15 comply with these, correct?

16 A. I don't know what I'm going to hear at  
17 the next meeting, but if the board decides that they  
18 want to give their engineer full authority over  
19 reviewing this after the fact, they certainly can do  
20 that. In this case, because this is a critical  
21 area, I don't think that that's the right route to  
22 take.

23 Q. But ultimately it's going to be up to  
24 the board engineer, and the board, of course,  
25 listening to the board engineer, and the DEP,  
Lapatka - Cross

41

1 correct?

2 A. It's going to be up to the planning  
3 board and whatever they tell the board engineer to  
4 do, and it's also subject to the DEP as well as soil  
5 conservation.

6 Q. Okay. And, I mean, I know you know  
7 that these -- some of these are minor items like  
8 will-serve letters that are on the top of your  
9 Page 2. Obviously, will-serve letters are going to  
10 be required or else utilities aren't -- aren't going  
11 to work. And that's something, again, that the  
12 applicant would make a -- would need to get in order  
13 to get approval, correct?

14 A. They would have to get that in order  
15 to -- in order to build it. However, the code says  
16 that that's a prerequisite for completion, which  
17 would say that it should have been done already, you  
18 know, prior to this point.

19 Q. Okay.

20 A. And particularly given the sewer  
21 situation, I think it's something that really should  
22 be addressed because it goes to the very feasibility  
23 of the project.

24 Q. And you don't have any information that  
25 it's not -- that it's not available, correct?

Lapatka - Cross

42

1 You're just pointing out that you feel they should  
2 have will-serve letters at this point in time,  
3 correct?

4 A. Yes. And I also pointed out that the  
5 design of the sanitary sewer lines is, I'm going to  
6 say, in error.

7 Q. Okay. Now you also comment -- we  
8 talked before about the stormwater maintenance plan,  
9 but isn't it a fact -- because we went through this  
10 at the last hearing -- that a stormwater management  
11 was submitted, and reviewed in detail by the  
12 previous engineer and then endorsed in the review  
13 comments from -- in the letter from February 11th  
14 from Mr. Matias; isn't that correct?

15 I mean, yet, we admit the maintenance  
16 plan was not yet submitted, but isn't it a fact the



17 detailed -- detailed management was submitted? You  
18 may not agree with it, I get it, but wasn't it  
19 submitted?

20 A. The drainage calculations were  
21 submitted.

22 Q. Okay.

23 A. But the stormwater management plan,  
24 per se, was not submitted. The stormwater  
25 management plan is a much more comprehensive  
Lapatka - Cross

43

1 document which includes the drainage calculations,  
2 and the site plan, and also a discussion of the  
3 existing conditions, and how you're going to -- how  
4 you're going to manage construction and things like  
5 that. So it's not just drainage calculations; it's  
6 much more comprehensive than that.

7 Q. And ultimately, is that not going to be  
8 subject to the review and approval -- yes, we know  
9 the board, but with the guidance of their engineer  
10 and the DEP, correct?

11 A. Yes. And what I had said is that this  
12 is required by the code, and it was not -- it was  
13 not addressed and/or discussed until I brought it  
14 up, and I'm pointing out that a waiver was not  
15 requested for it.

16 Q. Okay. And to your knowledge, the  
17 applicant is not seeking or telling that it's not  
18 going to be submitted; they are, in fact, agreeing,  
19 as we've indicated before, that we will submit that.  
20 You're just saying that you think it should be  
21 submitted now before this is reviewed and approved  
22 by the board engineer and the DEP; is that your  
23 opinion?

24 A. Yes. And certainly in light of the  
25 fact that there is no soil information upon which to  
Lapatka - Cross

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1 base the design or the calculations.

2 Q. Okay. Now, a couple other items that  
3 are in your -- in your review here, the -- you talk  
4 about, on Page 2, the second item, about the sight  
5 triangle easement. I assume you're aware that a  
6 sight triangle or a sight distance exhibit was  
7 submitted and reviewed, correct?

8 A. Yes. That's not an easement, though.

9 Q. I know. So you're saying that we did  
10 submit where the sight triangles are going to be,  
11 but we just didn't submit the actual easement  
12 document to capsulize that and ultimately record it,  
13 correct?

14 A. Yes.

15 Q. So you're not challenging that document  
16 so the board can make a -- well, the board  
17 professionals and the board can make a determination  
18 that there's proper sight lines, that's been  
19 submitted, it's just the actual -- it's like going  
20 in for a minor --

21 A. I don't think there's -- I don't think  
22 there's proper sight lines, number one. And I

23 believe that your own expert said that additional  
24 trees may have to be removed in order to get sight  
25 lines, trees additionally removed over and above  
Lapatka - Cross

45

1 what's shown on the plan. So, to me, that item is  
2 not addressed.

3 And it's a little more complicated than  
4 that because that goes to your tree replacement  
5 ordinance. You're already not providing enough tree  
6 replacements, and this would exacerbate that  
7 condition.

8 Q. Okay. And haven't we indicated before  
9 in our presentation that if, in fact -- similar to  
10 the sidewalks, if the ordinance requires additional  
11 trees, that they would be provided, and if a  
12 sidewalk is required -- now granted, that's going to  
13 be somewhat under the jurisdiction of the county,  
14 but if that's required, that they would be provided,  
15 correct?

16 A. Well, as far as the trees go, I don't  
17 recall you or your witnesses saying that they would  
18 be provided. I recall the engineer saying that  
19 they'll address it at the time of the DEP  
20 application, which is a little different than  
21 saying, "Yes, we will comply."

22 Q. But -- but that comes back to hasn't  
23 the applicant amended its application, applied only  
24 for preliminary site plan and agreeing to make all  
25 of those conditions a condition of final approval;  
Lapatka - Cross

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1 isn't that correct?

2 A. Yes. And I think what the board  
3 should really consider here is the power of a  
4 preliminary approval. A preliminary approval  
5 basically vests the applicant's right to do that  
6 development after they sew up a few details.  
7 It's not like the board has a lot of  
8 control over the application after that. All your  
9 important decisions are made with the preliminary  
10 approval.

11 Q. Well --

12 A. The final approval is really just  
13 dotting the I's and crossing the T's. So unless the  
14 -- unless the applicant were to make a substantial  
15 change to the application, the board would,  
16 essentially, have to give final approval.

17 Q. The item --

18 A. It sounds like -- because the word  
19 "preliminary" is in there, it sounds like, you know,  
20 the idea of a preliminary approval is being  
21 downplayed, but that's -- that's -- it's a very  
22 strong thing.

23 Q. But the items that you're talking about  
24 are, frankly, engineering and technical design.  
25 I want to touch on another one. You've  
Lapatka - Cross

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1 done --

2 A. That's what a lot of site plan review  
3 is about, is engineering.  
4 Q. You have done other -- you have  
5 testified in connection with other childcare  
6 facilities?  
7 A. Yes.  
8 Q. Okay. And I think I may have asked you  
9 this last time, isn't it a fact that in order for  
10 this to be utilized as a childcare facility, it has  
11 to get the approval of the department of human  
12 services?  
13 ATTORNEY BUTLER: That's right.  
14 THE WITNESS: Yes.  
15 BY ATTORNEY HEHL:  
16 Q. All right. And isn't it one of the  
17 conditions that, in order to get that approval, that  
18 you need -- that one of the checklist items there is  
19 DEP approval, correct?  
20 A. I believe so, yes.  
21 Q. Okay. Well, do you know so? I mean,  
22 you've done a bunch of these; isn't it one of the  
23 checklist items?  
24 A. I believe it is. On all my other  
25 applications that I've done that were in the  
Lapatka - Cross  
48  
1 floodplain, I applied to DEP at the same time as we  
2 applied to the borough, so I didn't come across that  
3 type of question.  
4 Q. Okay. All right. I don't think I have  
5 any -- let me just check.  
6 Yeah, and I again point to just a  
7 -- and I think you characterize these as minor  
8 items, such as utility easements. Again, if -- or a  
9 conservation easement. These are easement documents  
10 that, I assume, after there is the final design,  
11 that there would -- similar to the sight triangle  
12 easement, there would be documentation that gets  
13 recorded to make sure that if --  
14 A. Right.  
15 Q. -- those easements are required, that  
16 they go in those locations, correct?  
17 A. Yes. In the case of a conservation  
18 easement, I think it should be the -- the alignment  
19 of the conservation easement and the general terms  
20 of it should really be decided by this board. And  
21 then after approval, yes, you can actually draft the  
22 document that's going to be recorded. But I think  
23 the board really should have some input as to where  
24 that easement is, how big it is and what can or  
25 can't be done in it.  
Lapatka - Cross  
49  
1 Q. And --  
2 A. Regarding a utility easement, the  
3 actual recording of the document, you know, drawing  
4 up that easement and recording, yes, that is, you  
5 know, relatively minor in the context of what this  
6 board has to consider, but you -- if you need a  
7 sewer easement permit, you have to get that from

8 someone. So, you know, you don't necessarily have a  
9 right to have a sewer easement.

10 Q. Yeah.

11 A. There's another party that has to give  
12 you that.

13 Q. Yeah.

14 A. So the actual document, yeah, that's a  
15 minor -- that's a minor thing in the purview of the  
16 board. But the planning of it, I don't think is a  
17 minor thing.

18 Q. And ultimately, isn't that another item  
19 that comes under the jurisdiction of the DEP because  
20 it's along the water course?

21 A. The conservation easement is a Borough  
22 of Watchung thing, okay, and the DEP may -- they  
23 also require an easement which may or may not be the  
24 same. And the sanitary sewer easement, really, to  
25 show that you have a document is -- yes, the DEP  
Lapatka - Redirect

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1 wants to see that you have the right to put the  
2 sewer there, but the rights come from another party.

3 ATTORNEY HEHL: All right. I have no  
4 further questions at this time. Thank you, Madam  
5 Chair.

6 ATTORNEY BUTLER: Thank you, Madam  
7 Chair.

8 CHAIRPERSON SCHAEFER: Any questions  
9 from our board members?

10 Okay, Mr. Butler.

11 ATTORNEY BUTLER: Okay. Thank you,  
12 Madam Chair.

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

14 BY ATTORNEY BUTLER:

15 Q. Mr. Lapatka, you indicated that,  
16 basically, all the information, the important  
17 information, should be preliminary, and it shouldn't  
18 be conditioned -- preliminary shouldn't be  
19 conditioned to put it in final; is that your  
20 position?

21 A. For all the important things, yes.

22 Q. Do you know -- or if I make this  
23 statement, do you agree with it, that the Municipal  
24 Land Use Law does not even require notice of  
25 publication to get final approval?

Lapatka - Redirect

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1 A. Correct.

2 Q. Thank you.

3 ATTORNEY BUTLER: I have no further  
4 questions.

5 ATTORNEY LINNUS: Madam Chairperson,  
6 you may want to open this up to the public for  
7 questioning.

8 CHAIRPERSON SCHAEFER: Thank you. I  
9 always forget the public. I'm so sorry.

10 Anybody in the public wish to ask a  
11 question of this expert? If you do, I do need you  
12 to be on video.

13 No one? Okay. Close the public

14 portion to this witness.  
 15 Okay. Mr. Butler, do we have our  
 16 next --  
 17 ATTORNEY BUTLER: Yeah. I'd like to  
 18 call Hal Simoff as my traffic engineer.  
 19 CHAIRPERSON SCHAEFER: Okay. Go  
 20 ahead.  
 21 ATTORNEY BUTLER: Thank you, Madam  
 22 Chair. We sent a number of documents to the  
 23 director of the board in conjunction with  
 24 Mr. Simoff's testimony, and I just want to make sure  
 25 you have them all then. It's OW-8 to and including  
 52  
 1 OW-13(B). Do you have those documents?  
 2 CHAIRPERSON SCHAEFER: Are you going  
 3 to put them up on the screen?  
 4 Mr. Butler?  
 5 ATTORNEY BUTLER: Yes.  
 6 CHAIRPERSON SCHAEFER: Are they going  
 7 to be put on the screen?  
 8 AL LAPATKA: Just give us a second to  
 9 rearrange the conference room.  
 10 CHAIRPERSON SCHAEFER: Sure.  
 11 ATTORNEY BUTLER: Thank you.  
 12 MR. LAPATKA: Hal Simoff will get his  
 13 computer ready.  
 14 ATTORNEY BUTLER: Mr. Simoff, are you  
 15 ready?  
 16 HAL SIMOFF: Yes, I am.  
 17 ATTORNEY BUTLER: OW-7 was your traffic  
 18 report dated January 8th, 2021; was it not?  
 19 HAL SIMOFF: Correct.  
 20 ATTORNEY BUTLER: Okay. Now, before we  
 21 go into the report, would you -- yeah. Mr. Linnus  
 22 is going to swear you in.  
 23 ATTORNEY LINNUS: All right.  
 24 Mr. Simoff, would you raise your right hand, please.  
 25 Do you swear or affirm that the testimony you are  
 Simoff - Direct  
 53  
 1 about to give will be the truth, the whole truth and  
 2 nothing but the truth?  
 3 HAL SIMOFF: Yes, I do.  
 4 ATTORNEY LINNUS: Okay. Do you want  
 5 to state your name and address for the record,  
 6 please.  
 7 HAL SIMOFF: My name is Hal Simoff.  
 8 My address is 2 Shunpike Road, Madison, New Jersey.  
 9 ATTORNEY LINNUS: Your witness,  
 10 Mr. Butler.  
 11 ATTORNEY BUTLER: Thank you.  
 12 D I R E C T E X A M I N A T I O N  
 13 BY ATTORNEY BUTLER:  
 14 Q. Mr. Simoff, would you give the board  
 15 the benefit of your educational background, and your  
 16 experience and why you think you can give opinion  
 17 testimony to help this board decide this  
 18 application?  
 19 A. Yes. I am a graduate civil engineer  
 20 from New Jersey Institute of Technology. I'm a

21 licensed professional engineer and a licensed  
22 professional planner in the State of New Jersey.  
23 Both licenses are current. I'm a fellow with the  
24 Institute of Transportation Engineers. I've been  
25 qualified before multiple boards from Atlantic from  
Simoff - Direct

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1 -- I'm sorry, from Cape May County up to Bergen  
2 County as a professional engineer and, in some  
3 occasions, a professional planner.  
4 I've assisted in drafting of master  
5 plans in Atlantic County. I have -- and I've been  
6 qualified before at least 100 boards over the years.  
7 Q. And how many years have you been doing  
8 this?

9 A. About 40 years.

10 Q. Okay.

11 ATTORNEY BUTLER: Madam Chair, I offer

12 Mr. Simoff as a traffic expert.

13 CHAIRPERSON SCHAEFER: So accepted.

14 Thank you.

15 BY ATTORNEY BUTLER:

16 Q. Now, Mr. Simoff, I indicated that among  
17 the documents that you sent to the planning board  
18 was OW-7, which was your traffic report. And I'm  
19 going to suggest that we follow that report when you  
20 give your direct testimony so it'll be clear for the  
21 board members.

22 Now, also in addition to your report,  
23 you sent to the director of the planning board a  
24 list of your, OW-8 -- exhibits that I enumerated  
25 about five minutes ago; is that correct?

Simoff - Direct

55

1 A. Yes.

2 Q. Okay. Now, in your report, in the  
3 first part of your report starting on Page 3, you  
4 talk about parking --

5 ATTORNEY LINNUS: Mr. Butler, not to  
6 interrupt you, though, officially, you're  
7 introducing OW-7 as Mr. Simoff's January 8th, 2021,  
8 memo; is that what you're doing?

9 ATTORNEY BUTLER: Yes.

10 ATTORNEY LINNUS: Okay.

11 ATTORNEY BUTLER: I'm sorry. I wasn't  
12 clear on that?

13 ATTORNEY LINNUS: No, not to me.

14 ATTORNEY BUTLER: Okay. Well, that's  
15 the only thing that counts.

16 BY ATTORNEY BUTLER:

17 Q. Mr. Simoff, on Page 3 of that report  
18 you talk about parking; do you not?

19 A. Yes.

20 Q. And this proposal suggests how many  
21 parking spaces?

22 A. I believe it's 30 -- 31.

23 Q. And you critique that, don't you?

24 A. Yes.

25 Q. Okay. They -- and would you indicate  
Simoff - Direct

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1 why you think 31 parking spaces is insufficient for

2 this proposed 200 or 140 --

3 A. 154.

4 Q. -- 154 people and 22 instructors?

5 A. Yeah, well let me start off at the top

6 -- near the top of Page 3, there's a quote from

7 Section 28-503D(2), which states, "In the case of a

8 use not specifically mentioned in the parking

9 schedule" -- it goes on to say that "in the event

10 there is no similar, compatible or consistent use,

11 off-street parking requirements shall be determined

12 by the board based on accepted industry standards."

13 That's a direct quote from the ordinance.

14 I state, in my opinion, that the

15 Institute of Transportation Engineers has developed

16 a treatise entitled "Parking Generation Manual" and

17 it's in its Fifth Edition, peer-reviewed, published

18 in January of 2019.

19 Q. So, in other words -- let me interrupt

20 you there. In other words, in our ordinance, we

21 provide for a certain amount of parking spaces

22 depending upon the use; is that correct?

23 A. Yes.

24 Q. But -- but we don't have a parking

25 requirement for a child day care center use; is that

Simoff - Direct

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1 correct?

2 A. That's correct.

3 Q. And so -- so that's why you read that

4 last part of that ordinance which talks about

5 generally accepted industry standards; is that

6 correct?

7 A. Yes.

8 Q. Okay. Go ahead.

9 A. Now, the generally accepted industry

10 standard is the Institute of Transportation

11 Engineers. It's an accepted treatise by most -- by

12 virtually all of the state government and the

13 counties. And that's compared to what was submitted

14 by the applicant, Dolan & Dean, of two studies taken

15 in October of 2012 on two separate days.

16 And there were a couple comments to

17 that analysis. Number one, the counts are more than

18 eight years old where the ITE numbers are based on a

19 2019 treatise --

20 Q. Before you go on -- and I hate to

21 interrupt you, but I want the board to follow

22 visually what you're doing. Would you put OW-8 up

23 -- up on the screen?

24 A. Sure.

25 Q. Because that's the document that you're

Simoff - Direct

58

1 referring to, isn't it?

2 A. Well, no. I'm referring to -- OW-8 is

3 the memo.

4 Oh, okay. I got it.

5 ATTORNEY LINNUS: My records show OW-7

6 is the memo; is that correct?

7 ATTORNEY BUTLER: No. We're on OW-8,

8 Mr. Linnus.  
9 ATTORNEY LINNUS: For the record and  
10 for clarification, the January 8th, 2021, memo is  
11 identified as OW-8; is that correct?  
12 ATTORNEY BUTLER: That's correct. And  
13 on the top of it, it says, "Day Care Center 565."  
14 THE WITNESS: Okay. Now I have it on  
15 my screen. How do I get it to --  
16 ATTORNEY BUTLER: Well, I assume all  
17 the board members have OW-8 because I sent it three  
18 weeks ago.  
19 Am I correct in that assumption, Madam  
20 Chair?  
21 CHAIRPERSON SCHAEFER: Never assume  
22 anything. If you can put it on, I also have public  
23 here who need to see it.  
24 ATTORNEY BUTLER: Okay. We're going  
25 to do our best to get it on.  
Simoff - Direct  
59  
1 BOARD SECRETARY: If you look at the  
2 bottom of your screen or the top, there's four  
3 circles: Mic, camera, screen, leave. Hit the  
4 screen button, and we should be able to see your  
5 screen.  
6 ATTORNEY BUTLER: Thank you very much,  
7 Madam Chair.  
8 THE WITNESS: Okay.  
9 CHAIRPERSON SCHAEFER: That was  
10 Theresa.  
11 ATTORNEY HEHL: That was Theresa.  
12 THE WITNESS: Okay?  
13 CHAIRPERSON SCHAEFER: Okay.  
14 BY ATTORNEY BUTLER:  
15 Q. Do you have the full, whole thing on  
16 there.  
17 A. Yeah.  
18 Q. You do?  
19 A. Yes.  
20 Q. Okay. The --  
21 A. There are three criteria for  
22 calculating -- as you can see from -- this is a page  
23 from the ITE Parking Generation Manual.  
24 Q. And it's predicated upon how many  
25 studies?  
Simoff - Direct  
60  
1 A. 39 studies.  
2 Q. Okay. Go ahead.  
3 A. The average rate is .24 per student.  
4 Then there's a range of a 33rd percentile to the  
5 85th percentile where the 85th percentile is .34,  
6 which means that 85 percent of the time the number  
7 is less than .34. And then at the bottom is a  
8 formula, it's called a fitted curve. So there are  
9 three criteria where we can evaluate the parking  
10 requirement for 154 students.  
11 If we use the average rate, which is  
12 37, that means half the time it's more than 37, and  
13 half the time it's greater than 30 -- less than 37  
14 based on the data points. If we use the fitted  
15 curve, it comes -- which is the formula down at the  
16 bottom, it comes to 42 spaces --



17 Q. Without getting too complicated, can  
18 you explain to the board what "fitted curve" means?  
19 A. Well, at the bottom of the calculation  
20 is a formula for developing the requirement. As you  
21 can see, it's .3, times the number of students,  
22 minus 4.69, if that's too technical.  
23 So there are three criteria in which  
24 the ITE suggests for developing their parking  
25 demand, either the average rate, the 85th percentile  
Simoff - Direct  
61  
1 rate or the calculated rate. And at the bottom of  
2 Page 3 of my memo, it talks about those numbers.  
3 The average is 37, the fitted curve rate is 42, and  
4 85th percentile is 52.  
5 Q. And this ITE manual, this is commonly  
6 used by traffic engineers to determine parking where  
7 it isn't specified in an ordinance?  
8 A. Yes. And also, it's been -- the  
9 Institute of Transportation Engineers goes through a  
10 laborious process of peer reviewing these  
11 statistics.  
12 Q. Now, you indicated that the applicant  
13 is proposing 31 spaces?  
14 A. Yes.  
15 Q. How many is Mrs. Dolan -- Ms. Dolan  
16 promoting? Do you remember?  
17 A. I believe it's 29 or 30.  
18 Q. It's 29. Okay.  
19 A. So -- but her 29 is based on two  
20 studies done in October of 2012, more than eight  
21 years ago. This is a more recent study published in  
22 2019, and it was peer-reviewed before its  
23 publication.  
24 So my recommendation to the board is  
25 that this is a more applicable parking standard,  
Simoff - Direct  
62  
1 absent one not being in the ordinance.  
2 Q. And in your professional opinion, how  
3 many spaces would you recommend to this board for  
4 this proposed application?  
5 A. I would recommend somewhere between 42  
6 and 52, depending upon the location and the  
7 availability of off-street parking.  
8 Q. Okay. Now, on Page 40 you continue  
9 talking about parking?  
10 A. Yes.  
11 Q. Okay. And would you continue?  
12 A. At the top of page 4, Ms. Dolan talked  
13 about, in her October 20th -- 20th, 2020,  
14 memorandum, and I quote what she said in that  
15 memorandum where she said that the ITE parking  
16 demand is 37 spaces and that the enrollment is never  
17 more than 80 percent, so 80 percent of 37 is a  
18 requirement of 30 spaces.  
19 Q. So she takes the 37 --  
20 A. Which is the lowest number.  
21 Q. -- of the ITE, and she reduces it by  
22 20 percent because some kids won't be there all the

23 time?  
 24 A. That's what I interpret that comment  
 25 to mean.  
 Simoff - Direct  
 63  
 1 Q. Okay. And do you have a position on  
 2 whether she's right on that application?  
 3 A. Well, if you go further into the ITE  
 4 trip generation -- I'm sorry -- parking generation  
 5 treatise, right below that paragraph --  
 6 Q. On Page 4, right?  
 7 A. On Page 4.  
 8 -- it gives the definition of a  
 9 student. And a student is not just those present at  
 10 the time of the study conducted, but it's the  
 11 enrollment. So if the enrollment is 154, that's the  
 12 student number that should be used to establish this  
 13 number.  
 14 Q. And that definition you just read,  
 15 that's an ITE definition; is it not?  
 16 A. Yes. It's in the treatise.  
 17 Q. Okay. So even taking the lowest ITE  
 18 figure, the applicant would be six short --  
 19 A. Yes.  
 20 Q. -- is that correct?  
 21 A. And then down at the last paragraph, I  
 22 went to The Learning Experience website, and in  
 23 their website they recommend that their criterion  
 24 for parking -- for a typical location is 40 spaces  
 25 in their prototype application.  
 Simoff - Direct  
 64  
 1 Q. Okay. Now, you have that website  
 2 attached to your report as exhibit -- is it 1?  
 3 A. I think it's Exhibit 2.  
 4 Q. Okay. Exhibit 2?  
 5 A. Yes.  
 6 Q. And where in the website do you find  
 7 the 40 parking spaces?  
 8 A. Down at the bottom it says "build to  
 9 suit," and their requirement is 10,000-square-foot  
 10 building with 40 parking spaces.  
 11 Q. Okay. Would you continue?  
 12 A. The next topic that I talk about was  
 13 the intersection counts at New Providence Road and  
 14 Union Avenue. The Dolan & Dean analysis calculated  
 15 that capacity based on a T-intersection. If one  
 16 goes out at the intersection, there's a Weldon  
 17 driveway opposite Union Avenue which makes it a  
 18 four-way intersection, so that it's not a T; it's a  
 19 four -- it's a four-approach intersection.  
 20 And down at the bottom of  
 21 Page 3 -- sorry -- Page 5, I talk about the  
 22 difference if we determine the intersection as a T,  
 23 which Ms. Dolan did, or a four-way, which is the way  
 24 it actually operates --  
 25 Q. Now, now, now, that particular table on  
 Simoff - Direct  
 65  
 1 the bottom of Page --

2 A. 5.  
 3 Q. -- 5, that is OW-9; is it not?  
 4 A. Yes.  
 5 Q. Would you put that up on the screen,  
 6 OW-9?  
 7 A. All right. Right there.  
 8 Q. On the left is the T intersection,  
 9 which is Mrs. Dolan's analysis; is that correct?  
 10 A. Yes.  
 11 Q. And on the right is your analysis,  
 12 which is a four-way intersection, right?  
 13 A. Right.  
 14 And let me point out that in both  
 15 analysis -- now, I used the same numbers that the  
 16 Dolan & Dean report used, I just added the traffic  
 17 coming out of the Weldon Quarry driveway to make it  
 18 into a four-way intersection. But I might add that  
 19 both intersections calculated a Level of Service F.  
 20 Q. That's in the morning --  
 21 A. In the morning.  
 22 Q. -- is it not?  
 23 A. Yes.  
 24 Q. But there is a big difference --  
 25 there's an F and there's an F, but there's a time  
 Simoff - Direct  
 66  
 1 lag and a queue distance associated with the two  
 2 approaches; are there not?  
 3 A. Right. These are design -- these are  
 4 based on the numbers that Dolan report used for the  
 5 traffic heading westbound on Union Avenue. So that  
 6 the delay in the Dolan report was 94 seconds per  
 7 car, and if you calculate it as a four-way  
 8 intersection, it would be 142 seconds per car.  
 9 Q. That would be about 2 minutes and 20  
 10 seconds for a car --  
 11 A. Right.  
 12 Q. -- to make it through Union Avenue?  
 13 A. With a queue -- the Dolan analysis has  
 14 the queue at 202 feet, but calculating it as a  
 15 four-way intersection, it comes to 270 feet in the  
 16 morning.  
 17 Q. Okay. Now, the 270-foot queue -- you  
 18 have a document OW-11; do you not?  
 19 A. Yes.  
 20 Q. Now, could you put that up on the  
 21 board -- you have it up on the board?  
 22 A. Yes.  
 23 Q. Okay. Now, what does OW-11 show us?  
 24 A. OW-11 depicts the queue of 270 feet.  
 25 I might add that the driveways are like -- the  
 Simoff - Direct  
 67  
 1 right-turn exiting driveway is about 60 from the  
 2 intersection, and the two-way driveway is about  
 3 150 feet from the intersection. Both of those get  
 4 blocked from the queue whether we use the Dolan  
 5 analysis or my analysis. Obviously, my analysis is  
 6 more critical because there is a worse level of  
 7 service.

8 Q. Okay. So looking at your OW-11, if a  
9 car -- if a parent wanted to take a 6-year-old into  
10 this day care center and was using Route 22 west,  
11 they would make a right on Union Avenue; is that  
12 right?  
13 A. Yes.  
14 Q. And in the morning it would meet this  
15 gridlock?  
16 A. It would get behind the queue, yes.  
17 Q. It would get behind the queue. Okay.  
18 And --  
19 A. And if they wanted to enter from New  
20 Providence Road, they would have to wait for a gap  
21 in the queue.  
22 Q. And, of course, if anyone was in that  
23 queue and they weren't going to the day care center,  
24 they're stuck, or they have to go against ongoing  
25 traffic; is that correct?

Simoff - Direct  
68

1 A. Correct.  
2 Q. What is your professional opinion as to  
3 this queueing and this gridlock for the entrance and  
4 exit to the day care center?  
5 A. Well, I think it's a critical issue  
6 because of the discussion of flooding, because of  
7 the discussion of ingress and egress, and now we  
8 have 154 toddlers and young preschoolers on the site  
9 that make ingress and egress very difficult.  
10 Q. Now, did Ms. Dolan do a queue analysis  
11 like you did?  
12 A. Well, it showed up in her  
13 calculations, but she didn't talk about it.  
14 Q. She talked about the -- the lane but  
15 she didn't put the cars on Union Avenue --  
16 A. No.  
17 Q. -- to show --  
18 A. No, there was no depiction.  
19 Q. There was no depiction?  
20 A. And then I should also refer to the  
21 November 15th, 2019, Site Plan/Subdivision Committee  
22 report where it discusses the trucks, and the heavy  
23 traffic and the queueing in that report as well.  
24 Q. And that's at the Site Plan Committee  
25 report that was authored by Vice-Chairman Speeney?

Simoff - Direct  
69

1 A. Yes.  
2 Q. He pointed out the exit traffic from  
3 the quarry?  
4 A. He talked about the exit traffic and  
5 plus the lack of gaps in the traffic on both -- on  
6 New Providence Road.  
7 And I also might add that, you know, if  
8 one goes -- before the pandemic, traffic from the  
9 Bonnie Burn intersection backs up past this site,  
10 backs up so that Union Avenue ends up being  
11 gridlocked because of the heavy traffic at the  
12 Bonnie Burn intersection, which is not factored into  
13 these calculations.

14 Q. Let me ask you this. Let's say  
15 somebody wants to go to the day care center and he  
16 or she wants to get there using Bonnie Burn Road  
17 coming from Mountainside, in other words, using --  
18 excuse me, using New Providence Road from  
19 Mountainside. So that would be New Providence Road  
20 going south?

21 A. Yes.

22 Q. And they would have to make a left  
23 on --

24 A. Union Avenue.

25 Q. -- Union Avenue; is that correct?

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1 A. Yes.

2 Q. Okay. And how do they get into the  
3 site?

4 A. Well, they would have to wait for gaps  
5 in the traffic.

6 Q. Courtesy gaps?

7 A. Yes.

8 Q. And without that, they're -- they're  
9 waiting. And they're looking for a courtesy gap  
10 from somebody that's been in a queue for two and a  
11 half minutes?

12 A. Yes.

13 Q. Okay. All right. Now, do you have  
14 anything to add about the queuing on Union Avenue?

15 A. No. I think that I say in the  
16 conclusion this is a use that's going to generate  
17 about 150 movements during the peak hour. If we  
18 were to put an office building of the same size, it  
19 would be less than one-third this traffic volume  
20 using the site.

21 Q. Okay. So, in other words, a day care  
22 center generates more traffic than an office  
23 building?

24 A. Yes.

25 Q. Okay. Now, are you through talking  
Simoff - Direct

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1 about queueing?

2 A. Yes.

3 Q. Okay. Page 6, the -- you say the  
4 entrance to the site and six spaces are within the  
5 flood hazard zone. Would you tell us about that?

6 A. Yeah. Depicted on the site plan, this  
7 was drafted before Mr. Lapatka's plan, but depicted  
8 on the site plan were six parking spaces, plus the  
9 main entrance and exit to the site being within the  
10 floodplain.

11 Q. And as a traffic engineer, do you have  
12 a position regarding the desirability of having your  
13 entrance and exit, for kids as young as six weeks  
14 old, to be within a floodplain?

15 A. Well, the -- all the entrance moves  
16 have to be through the two-way driveway, and they're  
17 inundated in the flood event. So the only  
18 way -- the only issue is traffic leaving the site,  
19 which is where the applicant added the second

20 driveway to the west side of the parking lot. But  
21 still, if parents have to come back to pick up their  
22 child during a flood event, they can't get to the  
23 site.

24 Q. Now, do you have anything else to add  
25 regarding the entrance and exit being in the flood  
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1 hazard zone?

2 A. Yes. What I did was I OPRA -- I made  
3 an OPRA request to the Scotch Plains police to find  
4 out if there -- how often Union Avenue at Route 22  
5 was closed due to flooding. And we found that,  
6 based on the OPRA response, it was flooded once in  
7 2015, twice in --

8 Q. Once in 2015, right?

9 A. Twice in 2'16, three times in 2'18 and  
10 twice in 2019.

11 Q. Okay. Now, they -- they --

12 CHAIRPERSON SCHAEFER: I'm sorry. Can  
13 you just repeat that one more time?

14 ATTORNEY BUTLER: Sure.

15 THE WITNESS: It's on Page 6. Once --  
16 the first paragraph under the category of the  
17 entrance to the site and six spaces are in the flood  
18 hazard zone --

19 CHAIRPERSON SCHAEFER: Right.

20 THE WITNESS: -- the first sentence  
21 says, based on the Scotch Plains police records, the  
22 road was flooded once in 2015, two times in '16,  
23 three times in 2018. Then we did a further OPRA  
24 request, and we found that -- twice in 2019.

25 BY ATTORNEY BUTLER:

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1 Q. Okay. Now, these OPRA answers from the  
2 Scotch Plains Police Department, cumulatively  
3 they're OW-19(A) to OW-19 --

4 A. (L).

5 Q. -- (L); is that correct?

6 A. Yes.

7 Q. Okay. Now, if Route 22 is flooded,  
8 what happens to Union Avenue?

9 A. That gets flooded as well.

10 Q. Is there any way to get to Union Avenue  
11 if Route 22 west is flooded?

12 A. Well, it depends on the flooding on  
13 New Providence Road, which would be determined by  
14 the flood elevation of the tributary.

15 Q. Okay. So, in any event, in these  
16 flooding conditions that the police responded to  
17 your OPRA request, Route 22 and Union Avenue could  
18 not be used to gain access or to leave the site?

19 A. Yes.

20 Q. Is that correct? Okay.

21 Now, while we're talking about OPRA  
22 requests and before we go back to your report, you  
23 also submitted for the board accident data that you  
24 received from the New Jersey DOT, and there's three  
25 years. It's marked OW-20. The years are 2'16, 2'17

Simoff - Direct

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1 and 2'18; is that correct?

2 A. Yes.

3 Q. All right. Now, how'd you get this

4 data from the DOT?

5 A. The DOT -- New Jersey Division of

6 Motor Vehicles is part of New Jersey DOT, and on the

7 DOT website you can call out the number of accidents

8 at locations -- at any location in the State of New

9 Jersey. So what we did is we analyzed the

10 intersection of Bonnie Burn and New Providence Road,

11 and we found that in 2016, there were 37 crashes;

12 2017, there were 31 crashes; and in 2018, there were

13 35.

14 Q. All right. Now, in your professional

15 opinion, having done this for over 40 years, do you

16 draw any opinions on -- well, this is a dangerous

17 intersection?

18 A. Well, it's -- that intersection, as

19 well, is at capacity. And so what happens at an

20 intersection that is over capacity, people take

21 lesser gaps. They have a tendency to run the, you

22 know, the yellow and the all-red signals. And so

23 because they have been -- as an example, when you're

24 coming over the bridge over Route 22 from Park

25 Avenue, that, in the peak hour extends all the way

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1 over the bridge into Scotch Plains, and people end

2 up taking -- after waiting for extensive periods of

3 time, end up taking gaps and has a tendency to

4 increase the accident rate.

5 These are, you know -- with an average

6 of about 33 crashes a year, this is a very

7 high-accident location.

8 Q. Okay. Now, the -- on Page 7, you talk

9 about there's no loading space provided on-site or

10 site circulation is not adequate; is that correct?

11 A. Yes.

12 Q. And in order to show that, you've

13 submitted to the board an exhibit called OW-12; is

14 that correct?

15 A. Yes. I have that on the screen.

16 Q. You have that on the screen.

17 Now, just let me get a clarification

18 here. You're showing trucks that are blue in color?

19 A. Yes.

20 Q. And these trucks are coming from

21 Route 22?

22 A. Yes.

23 Q. Okay. And what's the problem with the

24 movement of those trucks as shown on OW-12?

25 A. Well, as you can see, I show them

Simoff - Direct

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1 making a right turn into the site, and then if they

2 have --

3 Q. Wait a minute. They make a right-hand

4 turn in the site. There's a stop sign there.

5 A. Well, they have to take up  
 6 both -- both lanes of the driveway.  
 7 Q. So -- so -- so a truck couldn't get in  
 8 if there was a car either going in or stopped  
 9 waiting to get out; is that correct?  
 10 A. Yes.  
 11 Q. Okay. All right. Now continue on with  
 12 the movement of that truck. Assume it gets by and  
 13 onto the site.  
 14 A. Then, in order to exit the site, they  
 15 have to -- they have to -- they have to wait for --  
 16 there's no parking -- there's ten parking spaces  
 17 adjacent to the building.  
 18 Q. Wait a minute. Before we get to the  
 19 building, that truck, is it doing okay?  
 20 A. When it comes in, yes. It heads to  
 21 the north.  
 22 Q. After it finally gets in the site, when  
 23 it goes to the north, it doesn't seem to be causing  
 24 any problems, does it?  
 25 A. Correct.  
 Simoff - Direct  
 77  
 1 Q. Okay. Then what happens as it makes  
 2 that circle?  
 3 A. Well, it has to either off-load,  
 4 blocking the 11 spaces on the right side of the  
 5 aisle, or it has to come around and off-load  
 6 adjacent to the building.  
 7 Q. So, in other words, if there's cars  
 8 parked where you show this truck going, that car  
 9 can't make that -- that truck can't make that  
 10 movement, can it?  
 11 A. Correct.  
 12 Q. What does it do?  
 13 A. I don't know.  
 14 Q. All right. Well, this is a truck that  
 15 would be delivering things; is that correct?  
 16 A. Yes. This is the smallest single-unit  
 17 truck, anything larger than a step van.  
 18 Q. All right. Well, where -- is there  
 19 anyplace for this truck to unload?  
 20 A. No.  
 21 Q. Is that a requirement of the zoning  
 22 ordinance?  
 23 A. Yes. On top of Page 7, 28-503E(1).  
 24 And I quote the ordinance.  
 25 Q. Go ahead.  
 Simoff - Direct  
 78  
 1 A. "Each principal use shall provide for  
 2 off-street loading and unloading with adequate  
 3 ingress and egress from streets with adequate space  
 4 for maneuvering and shall provide such areas as side  
 5 or rear of the building." And then it goes,  
 6 "Minimum of one space per each building. Additional  
 7 spaces may be necessary." And then it says, "There



8 shall be no loading or unloading from the street."  
9 Q. All right. Well, then the movement of  
10 that truck as shown on OW-12, in your professional  
11 opinion, what are your thoughts on that?  
12 A. Well, supplies are brought to the  
13 site. Milk, you know, refrigerated trucks are  
14 brought to the site.  
15 And then I might add that all these  
16 items where the applicant has said, "Well, we'll do  
17 it during off hours, or we'll make the concessions  
18 as to how we're going to operate," but the approval  
19 of this -- if this were to be approved, goes along  
20 with the land, not with the user.  
21 So conceivably, The Learning Experience  
22 could be the user today, but another day care could  
23 be the user tomorrow that would use a different  
24 means of operation. And so they might have -- they  
25 might provide heated lunches, or provide cooked  
Simoff - Direct  
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1 lunches or provide food --  
2 Q. Well, Mr. Simoff, you were here when  
3 the architect and the engineer testified for the  
4 applicant; were you not?  
5 A. Yes.  
6 Q. Didn't they testify that they were  
7 going to serve food as a matter of course?  
8 A. Yes. I think it was boxed lunches or  
9 non-prepared lunches.  
10 Q. Okay.  
11 A. And if they're brought in in anything  
12 larger than a car, they won't fit.  
13 Q. All right. Now, the -- a little  
14 further down, you talk about a fire truck?  
15 A. Yes. I had an opportunity to review  
16 the fire truck plotting, and the depiction has the  
17 fire truck pulling into the driveway and pulling  
18 forward to the building, approaching the building at  
19 90 degrees, and then it doesn't show how the fire  
20 truck can get out of the site.  
21 Q. Well, there's only -- it's got to back  
22 out. How else could it get out?  
23 A. Well, it'd have to back out, and it  
24 has to be -- it seems like it's a very difficult  
25 maneuver based on what has been presented by the  
Simoff - Direct  
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1 applicant.  
2 Q. Well, what's your position as a traffic  
3 engineer on requiring a fire truck to have to back  
4 out of a site?  
5 A. Well, it's a significant distance to  
6 back out and -- because they can't, if they pull  
7 forward towards the building from the eastern  
8 driveway, as is depicted on the plan, on the  
9 plotting that the applicant sent it, it -- it just

10 goes forward. And then in the parallel aisle to  
11 Union Avenue, it just has to -- it would be parked,  
12 and then it couldn't be -- I think it's a poor  
13 plotting.

14 Q. Okay. Now, did you want to talk about  
15 sight distance, or did you want to go right to  
16 internal circulation?

17 A. Well, just quickly --

18 Q. We have until -- we have to be through  
19 at 10:00, and there's cross-examination.

20 A. Well, I can just -- I've added to my  
21 detail a picture of what happens when one is at the  
22 stop bar, which is OW-10 -- when one is at the stop  
23 sign or the stop bar on Union Avenue and looking to  
24 the right, you can see that the sight distance -- it  
25 clearly is not 445 feet, and you can see there's  
Simoff - Direct

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1 large trees and some clearing that has to occur, and  
2 some regrading that has to occur in order to get  
3 sight distance, and the applicant has not shown  
4 that.

5 Then the last topic for discussion is  
6 the -- is the plotting of some of the parking  
7 spaces. Some of the parking spaces --

8 Q. All right. Wait. A plotting of the  
9 parking spaces?

10 A. Yeah. Internal circulation.

11 Q. Internal circulation. And -- okay.

12 And that's OW-13(A) and OW-13(B)?

13 A. Yes.

14 Q. Okay. Talk to us about OW-13(A) and  
15 what problem you see there.

16 A. Well, as you can see from OW-13(A),  
17 the car in order -- the car that is parked in the  
18 northern part of the parking lot has to back up  
19 35 feet in order to exit. If they put anything less  
20 than 35 feet, it's not an adequate turning radius  
21 for a car to leave the site. The same problem  
22 exists on OW-13(B) where the car has to back up  
23 55 feet in order to exit because of the shape and  
24 the fact that the parking is -- parking aisle is  
25 reduced in dimension.

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1 Q. In your professional opinion, what is  
2 wrong with the movement shown on OW-13(A) and  
3 OW-13(B)?

4 A. Well, it's kind of abnormal for a car  
5 to have to back up 55 feet in order to get out of a  
6 parking space. Normal is 24.

7 Q. And where is that shown, on OW-13(A) or  
8 (B)?

9 A. (B).

10 And I might add that those were brought  
11 out in some of the site plan review comments by  
12 Mr. Speeney.

13 Q. Okay. Give me one second.

14 All right. Now, on Page 8, you have

15 conclusions; do you not?

16 A. Yes.

17 Q. Now, basically, have you already

18 testified as to what you have in those conclusions?

19 A. Yes. I think that, you know, you've

20 heard from Mr. Lapatka about the flooding issues. I

21 think that this is also compounded by the fact that

22 this is not a -- this is a bad site for a day care

23 center. It may be permitted, but I think it's

24 hazardous from flooding. It's hazardous from

25 circulation. It's hazardous from access. And it's

Simoff - Direct

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1 a use that generates significantly more than some of

2 the other permitted uses in the zone, in the BB

3 zone.

4 So for that reason, when the -- the

5 projection is 120 vehicles during the peak hour --

6 during the a.m. peak hour, compared to something of

7 less than 30 for an office building of the same

8 size, if you can fit it.

9 Q. All right. Do you have anything

10 further by way of conclusion?

11 A. No. Just the comment that the

12 variances and the site plan approval goes with the

13 land, and there has been concessions or statements

14 that -- as to the operation, but it's a very

15 difficult condition to impose to say that the

16 deliveries, that the -- and -- and also the key

17 issue is there's inadequate parking, based on the

18 accepted standards of the ITE.

19 Q. Any other critique that you have of the

20 site plan?

21 A. Well, I think those are reinforced by

22 Mr. Lapatka in his -- in his flooding site plan

23 issues.

24 Q. I think I forgot to ask you, you have

25 an engineering firm; do you not?

Simoff - Direct

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1 A. Yes.

2 Q. What is the name of it?

3 A. Simoff Engineering Associates.

4 Q. All right. And do you do site plans?

5 A. Yes.

6 Q. Do you do site plans for applicants?

7 A. I do site plans for applicants, and I

8 also do review for towns. I'm on the planning board

9 in another town in Somerset County.

10 ATTORNEY BUTLER: Okay. I have no

11 further questions at this time, Madam Chair.

12 CHAIRPERSON SCHAEFER: Okay.

13 Mr. Hehl?

14 ATTORNEY HEHL: Yeah. Thank you very

15 much. Just a few questions.

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

17 BY ATTORNEY HEHL:

18 Q. Mr. Simoff, I assume, based on the

19 parking, that you -- you disagree with the analysis

20 that was done by the board engineer on multiple

21 occasions finding that the parking was sufficient;  
 22 is that correct?  
 23 It's a simple question. The board  
 24 engineer found that the parking that the applicant  
 25 was proposing --  
 Simoff - Cross  
 85  
 1 ATTORNEY BUTLER: Did you say the  
 2 board engineer?  
 3 ATTORNEY HEHL: Yes. The board  
 4 traffic engineer.  
 5 ATTORNEY BUTLER: I don't think  
 6 Mr. Jahr is a traffic engineer.  
 7 CHAIRPERSON SCHAEFER: Yes, he is.  
 8 ATTORNEY BUTLER: Well, when he signs  
 9 his report, he doesn't put "P.E." after his name.  
 10 BY ATTORNEY HEHL:  
 11 Q. The traffic expert. You disagree with  
 12 that finding, correct?  
 13 A. The way you -- I disagree with your  
 14 characterization, and I disagree that it's  
 15 conclusively the accepted treatise.  
 16 Q. No, I'm not -- I'm saying that you've  
 17 read that Mr. Jahr supports the conclusion of  
 18 Ms. Dolan, that parking that's provided on the site  
 19 plan is adequate, correct?  
 20 A. I disagree with that comment, yes.  
 21 Q. Okay. Flooding. You cited to eight  
 22 times in seven years, correct? So approximately  
 23 once a year?  
 24 A. Well, in one year it was three times,  
 25 four times.  
 Simoff - Cross  
 86  
 1 Q. But it -- but over a seven-year period,  
 2 it's eight times, which is approximately once a  
 3 year, correct?  
 4 A. I think it's -- I think it's like five  
 5 years, so it's more --  
 6 Q. 2015?  
 7 A. '15, '16, '17 --  
 8 ATTORNEY BUTLER: '17, '18 --  
 9 THE WITNESS: -- '18 and '19 --  
 10 ATTORNEY BUTLER: Five years.  
 11 THE WITNESS: -- five years.  
 12 BY ATTORNEY HEHL:  
 13 Q. What happened in '20?  
 14 A. There were no numbers available.  
 15 Q. When you say "no numbers," there was no  
 16 flooding in '20, then?  
 17 ATTORNEY BUTLER: No.  
 18 THE WITNESS: There was nothing --  
 19 ATTORNEY HEHL: Mr. Butler, I'm asking  
 20 your witness the question, not you.  
 21 THE WITNESS: I didn't -- I didn't --  
 22 I don't know. I was under the assumption because  
 23 the -- that it was -- that the statistics were not  
 24 available for '20 --  
 25 BY ATTORNEY HEHL:  
 Simoff - Cross

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1 Q. Okay.

2 A. -- because the request was made early  
3 in 2021.

4 Q. All right. And having done site plans,  
5 and you've heard my questions before, that this site  
6 is subject to review and approval by the Department  
7 of Human Services, correct?

8 A. Yes.

9 Q. And, therefore, if --

10 ATTORNEY BUTLER: Excuse me. Let him  
11 finish.

12 THE WITNESS: If I can finish?

13 ATTORNEY BUTLER: Let him finish.

14 ATTORNEY HEHL: I'm trying to ask

15 him --

16 THE WITNESS: Wait. If I can finish  
17 the comment, the response. The department reviews  
18 the -- reviews the facility after it's built to  
19 limit the capacity.

20 BY ATTORNEY HEHL:

21 Q. Okay. But isn't it also subject, as we  
22 said earlier, to DEP approval?

23 A. Of course, yes.

24 Q. Okay. And then you talked about  
25 emergency vehicles. So I guess in addition to  
Simoff - Cross

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1 disagreeing with the board traffic engineer, you  
2 also disagree with the Watchung Fire Department, the  
3 chief of that department, with the review and  
4 assessment as to the access for the fire apparatus,  
5 correct?

6 A. Fire apparatus -- there's no question  
7 the fire apparatus can get in. I question how they  
8 get out.

9 Q. Okay. But the fire -- the fire chief  
10 said, and I quote, after looking at it, if he -- and  
11 the quote is, "This satisfies my concerns regarding"  
12 (technical glitch) -- is that correct?

13 A. Yes.

14 Q. Okay. And then another question, you  
15 analyzed the intersection of Bonnie Burn Road and  
16 New Providence Road, correct?

17 A. Yes.

18 Q. Okay. And you would consider that  
19 off-site, correct?

20 A. Yes.

21 Q. And you're well familiar with the  
22 Dunkin' Donuts case, correct?

23 A. I'm familiar. I wouldn't -- I don't  
24 know it chapter and verse.

25 Q. Matter of fact, you -- and I would  
Simoff - Cross

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1 venture to say that you've testified as a traffic  
2 engineer in connection with projects for permitted  
3 uses that off-site traffic -- and I'm saying  
4 off-site, not ingress and egress from the site, but  
5 off-site traffic is not a consideration; is that

6 correct?

7 ATTORNEY BUTLER: I object to the  
8 question. Excuse me. I object to the question.  
9 The Dunkin' Donuts sites -- and I've done a memo on  
10 this -- that refers to a use that was permitted by  
11 the local town. This is a use that was permitted by  
12 the state of New Jersey.  
13 And the reason why they said traffic  
14 can't be taken into consideration if a local town  
15 says a permitted use is permitted because they know  
16 their town, and they know their traffic.  
17 In addition to that, Dunkin' Donuts  
18 says that ingress and egress is appropriate issue  
19 even if the town makes a site a permitted use.  
20 ATTORNEY HEHL: All right. You've  
21 said your -- (simultaneous cross-talking) -- I'm  
22 going to ask Mr. Simoff.  
23 THE WITNESS: In addition to that  
24 comment is if there are no variances required.  
25 BY ATTORNEY HEHL:  
Simoff - Cross  
90  
1 Q. Okay. So, Mr. Simoff, it's your  
2 position that if a "c" variance is required, that  
3 you throw the Dunkin' Donuts case out the window and  
4 a board can consider off-site traffic?  
5 A. Yes.  
6 Q. And it's also your opinion, and you  
7 espouse the position of Mr. Butler, that on  
8 childcare centers or other uses that are permitted  
9 by state statute, that you also throw the Dunkin'  
10 Donuts case out the window and off-site traffic on  
11 intersections that are not adjacent to a site  
12 is -- is a proper consideration?  
13 A. I'd leave that to Mr. Butler.  
14 Q. Well, have you testified to that  
15 before? We can -- we can get transcripts --  
16 A. I just testified to variances on  
17 Dunkin' Donut cases.  
18 Q. All right. So if a Dunkin' Donuts,  
19 which happens to be a permitted use and has a "c"  
20 variance -- so let's say it has a setback variance  
21 -- then you have a setback, let's say, of the  
22 building to say the edge of the property. If you  
23 have that variance, then a board is allowed to  
24 consider off-site traffic?  
25 A. That's my understanding.  
Simoff - Cross  
91  
1 Q. That's your -- you sure you're not  
2 mixing it up when, let's say, a drive-through isn't  
3 permitted and --  
4 A. No.  
5 Q. -- you're before a board?  
6 A. If a bulk variance is required, the  
7 board has to -- the board can evaluate the health,  
8 safety and welfare of the community.  
9 Q. Well, that's not what I'm saying. I'm  
10 asking are they then allowed to consider  
11 off-site -- you already indicated that intersection

12 is off-site.  
13 A. Yes.  
14 Q. They can? And you -- and so you  
15 haven't testified in cases that -- for childcare  
16 centers or other uses that are permitted by statute  
17 that, and you have not espoused that you can  
18 use -- you do not use the Dunkin' Donuts case and  
19 say that is not a proper consideration? You've  
20 testified --  
21 A. I don't understand your --  
22 Q. Okay. I'm asking if you've testified  
23 in other cases where there is a use that's permitted  
24 by the statute, such as childcare centers, such as  
25 other areas that are permitted by a statute, and  
Simoff - Cross  
92  
1 said that a board cannot consider off-site traffic;  
2 have you --  
3 A. Once the application does not conform  
4 to the Land Use Law, off-site traffic becomes an  
5 issue. Safety becomes an issue.  
6 Q. Isn't it a fact that that's in cases  
7 where it's a permitted use, as opposed to a  
8 nonpermitted use?  
9 A. It can be a permitted use, but if  
10 you're -- if you're requiring variances like -- as  
11 an example, if you require a variance for parking,  
12 it opens the discussion to off-site.  
13 Q. Okay. All right. That's --  
14 A. The traffic --  
15 Q. That's your position, and we can check  
16 previous transcripts.  
17 ATTORNEY BUTLER: Can you move on?  
18 We've spent about five minutes on this question, and  
19 the witness is not changing --  
20 ATTORNEY HEHL: Mr. Butler, we've  
21 spent five hearings on this case, so let me ask my  
22 questions.  
23 But I have no further questions at this  
24 time.  
25 CHAIRPERSON SCHAEFER: Okay. I do  
93  
1 have a couple of questions.  
2 ATTORNEY BUTLER: Sure.  
3 CHAIRPERSON SCHAEFER: In reference --  
4 I'm going to just kind of go off of Mr. Hehl on the  
5 accidents. I know all your reports are  
6 showing -- and I'm not a legal person here, but  
7 they're all showing at the intersection of Bonnie  
8 Burn and New Providence Road.  
9 Do you have any statistics on accidents  
10 at Union Avenue and New Providence Road?  
11 HAL SIMOFF: No, I do not.  
12 CHAIRPERSON SCHAEFER: Okay. The  
13 other thing is, I was looking at all of these police  
14 reports for flooding, and what I found interesting  
15 is that the majority of the flooding was at 22 and  
16 Park Avenue, Bonnie Burn and Route 22. There was  
17 only one on Route 22 and Union Avenue, and it was  
18 only shut down for a few minutes, according to what

19 I'm reading.  
 20 Can you shed any further light on that,  
 21 that there was actual flooding on Union Avenue?  
 22 HAL SIMOFF: No. I believe that they  
 23 referred to where Route 22 was closed. So because  
 24 my request to -- my OPRA request included Route 22  
 25 and Union Avenue, and if Union Avenue was --  
 94  
 1 CHAIRPERSON SCHAEFER: There's only  
 2 one. Route 22 west closed at Union Avenue.  
 3 Everything else is Park Avenue, Bonnie Burn. That's  
 4 the only one closed at Union Avenue. But, you know,  
 5 neither here nor there. That's what I'm seeing,  
 6 only one --  
 7 HAL SIMOFF: But Route 22 --  
 8 CHAIRPERSON SCHAEFER: I'm asking --  
 9 excuse me?  
 10 HAL SIMOFF: Route 22 is closed. But  
 11 I'm saying if Route 22 is closed at Bonnie Burn,  
 12 it's obviously closed -- it restricts traffic from  
 13 Union Avenue. I just --  
 14 CHAIRPERSON SCHAEFER: I don't know  
 15 that. I don't know that. I don't know that as a  
 16 fact. I mean, unless you can show me that, indeed,  
 17 22 at Union Avenue was closed in addition too, I  
 18 don't know that.  
 19 I only see one report here saying that  
 20 22 was closed at Union Avenue. It doesn't even tell  
 21 me that Union Avenue was closed at New Providence  
 22 Road or that New Providence Road was closed at  
 23 Bonnie Burn Road.  
 24 HAL SIMOFF: Well, that would take an  
 25 OPRA request to Watchung Police Department --  
 95  
 1 CHAIRPERSON SCHAEFER: Well --  
 2 HAL SIMOFF: -- because Union Avenue  
 3 and Route 22 -- and New Providence Road is in --  
 4 CHAIRPERSON SCHAEFER: Well, in these  
 5 reports, if you read them, state "as per Watchung  
 6 Police Department"; that's the only reason why I'm  
 7 questioning it. But more importantly --  
 8 HAL SIMOFF: Scotch Plains.  
 9 CHAIRPERSON SCHAEFER: -- the  
 10 accidents at the corner of Union and New Providence  
 11 Road, we have no -- no documentation for that,  
 12 correct?  
 13 HAL SIMOFF: No. I did not OPRA the  
 14 Watchung Police.  
 15 CHAIRPERSON SCHAEFER: Okay. That's  
 16 all I've got.  
 17 Do other planning board members have  
 18 questions.  
 19 Steve Pote.  
 20 COUNCILMAN MARTINO: Yeah. Madam  
 21 Chair -- Madam Chair, I've got a question.  
 22 CHAIRPERSON SCHAEFER: Wait, wait.  
 23 Mr. Pote first.  
 24 MEMBER POTE: Just a couple questions.  
 25 One was, in addition to what Tracee was just talking  
 96



1 about, relating to when you're on 22 going  
 2 westbound. The fact is we're talking about the  
 3 flooding. We should find out if the flooding was  
 4 closing both 22 and Union, and 22 and Bonnie Burn.  
 5 Because if it's just flooding on  
 6 Union, you do have the ability to go around Bonnie  
 7 Burn, get on New Providence and pick up your child  
 8 the other way. So it is important to understand  
 9 when those closures occurred exactly in those two  
 10 locations, Union and 22, and Bonnie Burn and 22.  
 11 The second question I had was, what was  
 12 the length of the smallest truck you said you used  
 13 as part of that study we just looked at?  
 14 HAL SIMOFF: 30 feet.  
 15 MEMBER POTE: 30 feet. Okay. Thank  
 16 you.  
 17 And then the third and last question I  
 18 had was, a couple of times you talked about -- and I  
 19 don't want to put words in your mouth -- childcare  
 20 creates more blank than -- than a regular office  
 21 building. Was it congestion?  
 22 What was the word you used a couple of  
 23 times?  
 24 HAL SIMOFF: It's trip generation.  
 25 MEMBER POTE: It's what?  
 97  
 1 HAL SIMOFF: Trip generation. If you  
 2 use -- if you compare an office building to a day  
 3 care of the same size, it's about three or four  
 4 times as much traffic from a day care.  
 5 MEMBER POTE: Three to four times more  
 6 traffic in a day care.  
 7 HAL SIMOFF: Right.  
 8 MEMBER POTE: Traffic volume?  
 9 HAL SIMOFF: Right.  
 10 MEMBER POTE: Okay. Thank you.  
 11 CHAIRPERSON SCHAEFER: Who was the  
 12 other question? Someone had a question?  
 13 COUNCILMAN MARTINO: Yeah. That was  
 14 me, Councilman --  
 15 CHAIRPERSON SCHAEFER: Mayor?  
 16 COUNCILMAN MARTINO: -- Councilman  
 17 Martino.  
 18 CHAIRPERSON SCHAEFER: Mayor, hold on.  
 19 Let's go to Councilman Martino, and then we'll go to  
 20 the mayor. Thank you.  
 21 COUNCILMAN MARTINO: Thank you. I  
 22 appreciate it.  
 23 Thanks for those comments, ma'am. They  
 24 were on my list also.  
 25 I have a quick question, and maybe you  
 98  
 1 can give me a quick explanation. How are you coming  
 2 to the conclusion of it being a four-way versus a T  
 3 simply because -- I'll be honest with you; I do a  
 4 lot of work out of that quarry, and I -- by law, I  
 5 have to enter and exit the main entrance of the  
 6 quarry, which is probably 1,500 feet north of that.  
 7 So I'm trying to figure out where we're getting the  
 8 four-way versus the T.  
 9 HAL SIMOFF: The four-way, we --  
 10 originally, I projected 30 vehicles -- I'm sorry --

11 40 vehicles exiting the quarry at that driveway  
 12 opposite Union Avenue. It's an exit only. And  
 13 I -- it was brought up by Bright View that I made an  
 14 estimate and I -- and I went out, and I did a count  
 15 and I found that it was 33 vehicles exiting the  
 16 quarry at that location. And so I redid the  
 17 calculations based on the actual count.  
 18 COUNCILMAN MARTINO: So I'm still  
 19 trying to figure out how you came up with a four-way  
 20 versus a T.  
 21 HAL SIMOFF: Well, there's an exit from  
 22 the quarry at that location right opposite Union  
 23 Avenue.  
 24 COUNCILMAN MARTINO: I -- I've -- I  
 25 mean, there's no curbing probably for about  
 99  
 1 2,500 feet in front of that quarry. So how do you  
 2 -- you mean the entire front of the quarry becomes  
 3 part of that intersection?  
 4 Because I'm trying to -- again, you  
 5 know, I just want to make sure I'm understanding  
 6 what you're constituting as that type -- because  
 7 this does come into a calculation that are pretty  
 8 vastly different.  
 9 So I'm just wondering how many trucks  
 10 come out of the quarry daily; do you have any idea?  
 11 HAL SIMOFF: I've been told it's about  
 12 500 trucks a day.  
 13 COUNCILMAN MARTINO: And you're only  
 14 taking into consideration 30 in that portion of the  
 15 driveway?  
 16 HAL SIMOFF: Well, they have to -- when  
 17 they come off the scale, they come to -- they come  
 18 south to the intersection of Union Avenue.  
 19 COUNCILMAN MARTINO: Scale?  
 20 HAL SIMOFF: There's a scale parallel  
 21 to New Providence Road.  
 22 COUNCILMAN MARTINO: Is that scale  
 23 used on a daily basis?  
 24 HAL SIMOFF: Yes.  
 25 COUNCILMAN MARTINO: It is?  
 100  
 1 HAL SIMOFF: That's my -- well, based  
 2 on the counts that I have, I have 33 cars -- 33  
 3 vehicles coming off the -- coming out of that  
 4 driveway. So there's a parking area there. There's  
 5 the scale exit. There's multiple use --  
 6 COUNCILMAN MARTINO: I'm just  
 7 questioning you because the scale is inside the  
 8 quarry. That's the old scale, and I believe the  
 9 only time they use that is if the main scale is down  
 10 because I'm not allowed to use that scale anymore so  
 11 that's probably a difference -- that's probably why  
 12 you're only getting 34 out of 500.  
 13 HAL SIMOFF: Well, that's -- no.  
 14 Mr. -- Mr. Weldon will clear that up.  
 15 COUNCILMAN MARTINO: Okay. Thank you.  
 16 CHAIRPERSON SCHAEFER: Mayor, you had  
 17 a question?  
 18 MAYOR BALLA: Yes. My question is  
 19 what's the distance from Route 22 to this building?  
 20 And what's the change in the elevation from Route 22  
 21 to where the building is?

22 HAL SIMOFF: I think you'd have to ask  
 23 somebody else other than me.  
 24 MAYOR BALLA: Well, due to the  
 25 flooding, you know, the distance and then the  
 101  
 1 elevation from Route 22.  
 2 HAL SIMOFF: I just observed that it  
 3 seems to be lower. 22 seems to be lower than the  
 4 site.  
 5 MAYOR BALLA: Okay.  
 6 CHAIRPERSON SCHAEFER: Are you able to  
 7 answer that, Mr. Butler, or not?  
 8 ATTORNEY BUTLER: No.  
 9 CHAIRPERSON SCHAEFER: Okay.  
 10 Mr. Speeney, you had a question? You're on mute.  
 11 You're on mute.  
 12 VICE-CHAIRMAN SPEENEY: I'm on mute.  
 13 Okay. I'm unmuted. I don't really have a question;  
 14 I have a comment. The comment is based on the site  
 15 review report that's in the record. And we were  
 16 there around 10 o'clock in the morning, and there  
 17 were trucks coming out where Mr. Simoff is  
 18 indicating he had measured -- he had measured that  
 19 there was 30-some-odd trucks coming out.  
 20 We did not consider that a four-way,  
 21 but it's only through this testimony that it seems  
 22 like that's really what it is, a four-way. And you  
 23 know, given that -- that we were only there for  
 24 about an hour and a half, and these trucks were  
 25 coming out at that intersection -- at that site,  
 102  
 1 that point. I think -- I think it just validates  
 2 the observations of Mr. Simoff, clearly.  
 3 The second thing, I do have a question,  
 4 and I'd like to refer to OW-13(A) and (B). When I  
 5 first saw this plan, I made a comment I didn't think  
 6 the internal parking worked. And what Mr. Simoff  
 7 has provided here is some specific drawings as to  
 8 what the problems are and highlights, in my mind,  
 9 why this stuff -- this internal parking doesn't  
 10 work.  
 11 I questioned, initially, the  
 12 farthest -- the farthest northerly parking stall  
 13 that's adjacent to the building and then the one  
 14 that right angles next to it at 90 degrees, and I  
 15 just said, you know, when I saw this, "This stuff  
 16 doesn't -- this doesn't work." But it seems that I  
 17 was unable to provide any calculation, and I think  
 18 Mr. Simoff has provided the necessary documentation  
 19 as to why that doesn't work.  
 20 And so it's really not a question, it's  
 21 a comment, but that's it. Thank you.  
 22 CHAIRPERSON SCHAEFER: Any other  
 23 questions from members?  
 24 Okay. I'm going to open it up to the  
 25 public for questions.  
 103  
 1 ATTORNEY LINNUS: Before we do that --  
 2 before we do that, Tracee, you may want to open it  
 3 up to see if either Mr. Fishinger or Mr. Jahr, our  
 4 traffic consultants who are here, have any  
 5 questions.  
 6 CHAIRPERSON SCHAEFER: I just assumed

7 when I say "planning board member" that they would  
 8 speak up, but I will open it up to you. Mr. Jahr?  
 9 ENGINEER FISHINGER: My apologies. I  
 10 didn't know if you wanted for us to wait until the  
 11 board was finished. I do have a number of  
 12 questions. Again, Joe Fishinger, excuse me, with  
 13 Bright View Engineering.  
 14 Looking at the time, I believe you  
 15 wanted to end at 10 o'clock. I'd be happy to ask my  
 16 questions if you'd like me to continue.  
 17 CHAIRPERSON SCHAEFER: Yeah, go ahead.  
 18 Let's finish while we're here.  
 19 ENGINEER FISHINGER: Okay. All right.  
 20 Hal, have you done any traffic studies for day care  
 21 centers or reviewed similar day care center sites  
 22 for municipalities?  
 23 HAL SIMOFF: Well, it's interesting; I  
 24 did one in Closter, Bergen County, where Dolan &  
 25 Dean was the reviewing firm, and there was an  
 104  
 1 application about the same size as this with 40  
 2 parking spaces. That was the last one I did.  
 3 ENGINEER FISHINGER: Have you done any  
 4 -- you said Gloucester County. Have you done any --  
 5 HAL SIMOFF: No. It was Closter in  
 6 Bergen.  
 7 ENGINEER FISHINGER: I'm sorry, I  
 8 thought you said Gloucester.  
 9 Which do you believe is more  
 10 appropriate for parking data, the ITE information or  
 11 local studies from similar sites in the same  
 12 geographic area?  
 13 HAL SIMOFF: I think, in this case, the  
 14 ITE because the studies are eight years old, and  
 15 they were just two locations in October, two sites  
 16 in October.  
 17 ENGINEER FISHINGER: Let me rephrase  
 18 the question. In general, which do you believe is  
 19 more accurate, studies from other sites or the ITE  
 20 information? I'm not talking about just the  
 21 information provided by Ms. Dolan.  
 22 HAL SIMOFF: It depends on the -- it  
 23 depends on the degree of the variation. I think  
 24 the -- I think that Ms. Dolan even goes on to say  
 25 that 37 spaces are recommended by the ITE where this  
 105  
 1 is short six or seven spaces, plus the ones that are  
 2 unusable.  
 3 So, you know, if we were close, I  
 4 would say, you know, maybe the statistics would  
 5 meld, but there's a significant difference here.  
 6 ENGINEER FISHINGER: Again, I'll ask  
 7 the question slightly differently. Are you aware of  
 8 any parking studies for similar sites prepared by  
 9 other traffic consultants?  
 10 HAL SIMOFF: No.  
 11 ENGINEER FISHINGER: And have you  
 12 reviewed any -- so you haven't reviewed any sites  
 13 prepared by other consultants?  
 14 HAL SIMOFF: Not that I can recall.  
 15 ENGINEER FISHINGER: And do you  
 16 know -- going back, you reference the ITE numbers.

17 Are you aware of where those studies were taken  
18 across the U.S.?  
19 HAL SIMOFF: They were throughout the  
20 U.S. Some of them were in New Jersey. I did look  
21 at the sources.  
22 ENGINEER FISHINGER: Moving on to the  
23 analysis, did you have or can you provide  
24 information on what the queueing at this  
25 intersection of Union and New Providence is under  
106  
1 the no-build condition or without this site?  
2 HAL SIMOFF: Well, it would probably --  
3 it for sure would block both driveways.  
4 ENGINEER FISHINGER: But do you know  
5 how many cars are expected to queue there today or  
6 in the no-build condition?  
7 HAL SIMOFF: I don't have that handy.  
8 It's in Betsy Dolan's report.  
9 ENGINEER FISHINGER: And it's OW-11, I  
10 believe, is the figure I'm referring to. You're  
11 showing, I believe, approximately ten cars on the --  
12 queued up at that movement. How many left  
13 turn -- and I believe they're all shown in the  
14 left-turn lane.  
15 How many cars are projected to make  
16 that left-turn movement?  
17 HAL SIMOFF: It has -- I would have to  
18 verbally correct that drawing. The -- there  
19 are -- there's about 100 -- my recollection is  
20 there's, like, 190 cars making a right turn and  
21 16 cars making a left turn out of the Union Avenue,  
22 but the queue -- but the analysis for both my  
23 analysis and Betsy's analysis analyzed it as a  
24 two-way -- I'm sorry, a two-lane approach. And the  
25 right turn is the queueing lane. The left turn  
107  
1 queueing is limited.  
2 So the ten vehicles is the right-turn  
3 queue.  
4 ENGINEER FISHINGER: Not the left-turn  
5 lane?  
6 HAL SIMOFF: Correct.  
7 ENGINEER FISHINGER: Okay. Moving on  
8 to your turning templates, do you recall the speed  
9 of the vehicle you used when creating the  
10 truck-turning templates?  
11 HAL SIMOFF: I believe it's, like,  
12 15 miles per hour. It's minimal turning -- it's  
13 minimal turning speed.  
14 ENGINEER FISHINGER: And then there  
15 were a couple of locations where the truck didn't,  
16 I'll say, hug the curbline. Do you believe that  
17 that's the most conservative path for the truck, or  
18 could the truck maneuver differently onto the site?  
19 HAL SIMOFF: I had them hugging the  
20 center line in order to get the best approach angle.  
21 ENGINEER FISHINGER: And then next one  
22 I -- do you believe that an SU-30 is the appropriate  
23 design vehicle for deliveries to a day care center?  
24 HAL SIMOFF: If you have food

25 deliveries, milk deliveries, refrigerated trucks, I  
108  
1 think yes. And then, you know --  
2 ATTORNEY BUTLER: 22 employees.  
3 HAL SIMOFF: And plus the 22 employees.  
4 ENGINEER FISHINGER: I'm not sure what  
5 the employees has to do with this but --  
6 HAL SIMOFF: As an example, I think  
7 that you have to plan for something that is a  
8 realistic vehicle to approach the site. And to say  
9 that all the deliveries are going to be in -- in 18-  
10 or 20-foot vans is not a -- is not a reasonable  
11 assumption. When you're planning a site, you should  
12 plan for something that you think is going to be a  
13 reasonable assumption.  
14 ENGINEER FISHINGER: Well, then maybe  
15 you should -- then I'll ask you to clarify your  
16 earlier testimony.  
17 I believe you said this was the  
18 smallest truck that would be making deliveries; did  
19 I understand your earlier testimony correctly?  
20 HAL SIMOFF: The templates, there's a  
21 30-foot single-unit truck, there's a 40-foot  
22 single-unit truck and then there's an articulated  
23 truck. When I meant the smallest, I meant the  
24 smallest delivery truck.  
25 ENGINEER FISHINGER: So what -- is a  
109  
1 FedEx truck or UPS truck, what would commonly be  
2 referred to as a bread truck, is that larger than an  
3 SU-30?  
4 HAL SIMOFF: No.  
5 ENGINEER FISHINGER: Would a site like  
6 this typically get deliveries from those smaller  
7 vehicles?  
8 HAL SIMOFF: They get deliveries from  
9 multiple vehicles.  
10 ENGINEER FISHINGER: And so why do you  
11 say that an SU-30 is the smallest truck that would  
12 be delivering to the site when --  
13 HAL SIMOFF: No. I said -- let me  
14 clarify. I said that an SU-30 is the smallest  
15 delivery truck. There's a single-unit 30-foot  
16 truck, there's a single-unit 40-foot truck and then  
17 there's a 40-foot trailer. So there, you know -- if  
18 you want to use an articulated semi, they could  
19 never get on the site, but I chose the smallest  
20 single-unit truck.  
21 The next truck down -- or the next  
22 vehicle down is a passenger car.  
23 ENGINEER FISHINGER: We'll have to  
24 disagree on what's between a passenger car and an  
25 SU-30.  
110  
1 But when you looked at your truck  
2 movements, did you look at the truck making a hard  
3 left turn and stopping parallel to Union Avenue  
4 instead of looping around the entire site?  
5 HAL SIMOFF: You mean to enter?  
6 ENGINEER FISHINGER: When entering,

7 yes.  
 8 HAL SIMOFF: So if you would explain.  
 9 They would enter by the garbage dumpster, and then  
 10 what, back out?  
 11 ENGINEER FISHINGER: And then make  
 12 the --  
 13 HAL SIMOFF: Oh, no. They can't make  
 14 that move.  
 15 ENGINEER FISHINGER: Okay. And then  
 16 I'm going to move on to the sight distance. I  
 17 believe you said 445 feet of sight distance; is that  
 18 correct?  
 19 HAL SIMOFF: Intersection sight  
 20 distance. We had this discussion before.  
 21 ENGINEER FISHINGER: Where did that --  
 22 where did you get that number from?  
 23 HAL SIMOFF: 45-mile-an-hour speed  
 24 limit on New Providence Road. So I used the  
 25 40-mile-an-hour design speed. The intersection  
 111  
 1 sight distance for 40 miles an hour is 445 feet.  
 2 ENGINEER FISHINGER: Are you aware of  
 3 Somerset County's sight distance requirement, what's  
 4 in their road and bridge handbook?  
 5 HAL SIMOFF: Specifically, no.  
 6 ENGINEER FISHINGER: And then my last  
 7 question, going back to the --  
 8 HAL SIMOFF: If I might interrupt for  
 9 an second, OW-10 shows virtually no sight distance  
 10 to the right. So whatever the sight distance in the  
 11 Somerset County handbook is, I kind of doubt whether  
 12 this could meet it.  
 13 ENGINEER FISHINGER: I'm just trying  
 14 to confirm where the numbers are coming from right  
 15 now.  
 16 My last question regarding the car  
 17 turning, maybe you can pull that exhibit back up  
 18 again quickly.  
 19 ATTORNEY BUTLER: OW what?  
 20 ENGINEER FISHINGER: I apologize. I  
 21 don't have the --  
 22 ATTORNEY BUTLER: What does it depict?  
 23 What is he looking for?  
 24 ENGINEER FISHINGER: Specifically, I'm  
 25 looking at the next -- the last page of your report.  
 112  
 1 The last page.  
 2 ATTORNEY BUTLER: OW-13(B). You mean  
 3 here, of the exhibits?  
 4 CHAIRPERSON SCHAEFER: Yes.  
 5 ENGINEER FISHINGER: Yes.  
 6 ATTORNEY BUTLER: Okay. Here it is.  
 7 We're having trouble getting this up on the screen,  
 8 Madam Chair.  
 9 CHAIRPERSON SCHAEFER: You're doing  
 10 good, Mr. Butler.  
 11 ATTORNEY BUTLER: I'm not doing  
 12 anything. I'm not qualified to do anything.  
 13 HAL SIMOFF: You see from OW-10  
 14 there's, like, no sight distance at the stop bar.

15 All right, OW --  
 16 ATTORNEY BUTLER: 13(B).  
 17 HAL SIMOFF: B?  
 18 ATTORNEY BUTLER: B.  
 19 HAL SIMOFF: Right there.  
 20 ENGINEER FISHINGER: Is it possible  
 21 for a car to access those spaces in another -- in  
 22 another format or another direction? Could they  
 23 pull into the space?  
 24 HAL SIMOFF: Well, I'm sure they could  
 25 pull in, but in order for them to get out, that's  
 113  
 1 the way they have to exit.  
 2 ENGINEER FISHINGER: Could they --  
 3 could they start turning as they back out?  
 4 HAL SIMOFF: Well, you still have to  
 5 back -- if you start turning, you still have to go  
 6 to the same point in order to make the turn around  
 7 the island. If you were going to back out --  
 8 CHAIRPERSON SCHAEFER: Can I --  
 9 HAL SIMOFF: -- and go the opposite  
 10 direction.  
 11 CHAIRPERSON SCHAEFER: Can I ask a  
 12 question? Is -- this diagram is only for that one  
 13 parking spot?  
 14 HAL SIMOFF: Well, because I had the  
 15 other one for the other adjacent parking space.  
 16 CHAIRPERSON SCHAEFER: But all the  
 17 others you could maneuver?  
 18 HAL SIMOFF: Yes.  
 19 CHAIRPERSON SCHAEFER: Okay.  
 20 HAL SIMOFF: But this effectively  
 21 reduces the supply by another two or three spaces.  
 22 ENGINEER FISHINGER: Okay. That's all  
 23 the questions I have for now, Madam Chairman --  
 24 Chairwoman. Sorry.  
 25 CHAIRPERSON SCHAEFER: Okay. Any  
 114  
 1 other questions before we let Mr. --  
 2 MEMBER FIORILLA: Can I ask you a  
 3 question about OW-8, I think it is?  
 4 CHAIRPERSON SCHAEFER: Who is this  
 5 talking?  
 6 MEMBER FIORILLA: This is Paul. I'm  
 7 sorry.  
 8 CHAIRPERSON SCHAEFER: I'm sorry.  
 9 MEMBER FIORILLA: Can you see me?  
 10 CHAIRPERSON SCHAEFER: Yep, I can see  
 11 you.  
 12 MEMBER FIORILLA: Okay. This study,  
 13 I'm a little confused.  
 14 HAL SIMOFF: Okay.  
 15 MEMBER FIORILLA: So all these X's  
 16 represent day care centers where that -- and the  
 17 number of parking spaces for different day care  
 18 centers?  
 19 HAL SIMOFF: Right. The X axis is the  
 20 number of students, and the Y axis is the parked  
 21 vehicles.  
 22 MEMBER FIORILLA: Okay. Do we have



23 any information about the kind of locations that  
 24 these properties are in? Are they urban, suburban?  
 25 Are they near public transportation?  
 115  
 1 Do we have any other variables that  
 2 we're looking at?  
 3 HAL SIMOFF: Well, they do have -- my  
 4 recollection is that there is a -- there is a  
 5 category for urban, but this says "general urban  
 6 suburban," as you can see on the third line.  
 7 MEMBER FIORILLA: Okay. And do we  
 8 know, like, when these were built or what the, you  
 9 know -- what the requirements were in the, you  
 10 know -- the municipalities where these were built  
 11 or --  
 12 HAL SIMOFF: No. These are actual  
 13 counts.  
 14 MEMBER FIORILLA: Right. But we're  
 15 talking about properties -- I mean, I don't know  
 16 where these properties are. I don't know, you know,  
 17 what the situations are with regard to the usage or  
 18 the, you know -- the traffic regulations or  
 19 anything. I mean, there's so many variables that  
 20 you could consider other than --  
 21 HAL SIMOFF: If I might -- if I might  
 22 address that, this is a peer-reviewed publication in  
 23 its fifth edition. So there were four editions  
 24 before that. Because I've been -- I've been  
 25 involved in situations where we've submitted data to  
 116  
 1 the ITE because we thought that the requirement  
 2 was -- was not correct for not this use but for  
 3 other uses.  
 4 And so this is -- this was published as  
 5 a guide to developing parking requirements. It's a  
 6 more -- and I would suggest that it's more accurate  
 7 or it's more of a treatise to refer to than two  
 8 studies done eight years ago by the applicant.  
 9 MEMBER FIORILLA: Okay.  
 10 CHAIRPERSON SCHAEFER: You good, Paul?  
 11 MEMBER FIORILLA: Yeah. That's  
 12 the -- that was my question.  
 13 CHAIRPERSON SCHAEFER: Any other  
 14 questions? Mark?  
 15 BOARD PLANNER: Just a quick  
 16 clarification on -- and I'm sure Mr. Hehl will  
 17 address Mr. Butler's comment about the applicability  
 18 of -- or the ability of the board on a permitted use  
 19 to enforce off-tract improvements or address  
 20 off-tract issues.  
 21 But Mr. Butler was saying that the use  
 22 was only permitted by virtue of it being included --  
 23 or specified in the Municipal Land Use Law, but, in  
 24 fact, the borough ordinance also indicates:  
 25 28-401S(2). Family day care homes and childcare  
 117  
 1 centers, as such terms are defined in the MLUL,  
 2 shall be permitted in the Borough ordinance -- shall  
 3 be permitted in the Borough in accordance with the  
 4 requirements of the MLUL.

5 So, you know, I think you can say that  
6 similar to the discussion before about Chapter 22,  
7 you know, being incorporated by reference in the  
8 borough zoning ordinance, I would say child care  
9 centers are as well, both included in your ordinance  
10 and permitted as, you know, a principal permitted  
11 use by the MLUL.  
12 CHAIRPERSON SCHAEFER: Okay. Thank  
13 you.  
14 ATTORNEY BUTLER: Mr. Healey, I would  
15 just say that the local ordinance copied the MLUL,  
16 that's all. It wanted to be in conformity with it.  
17 It certainly wasn't like they went out of their way  
18 and they made this site permissible for a day care  
19 center if it hadn't already been done so by the  
20 state legislature.  
21 BOARD PLANNER: I know a lot of  
22 ordinances don't bother to do that, and I think that  
23 the borough specifically -- I think it is what it  
24 is. In the general zoning district regulations, the  
25 borough specifically put it in there, that it's a  
118  
1 permitted use.  
2 ATTORNEY BUTLER: And also, the  
3 Dunkin' Donuts case specifically states that -- when  
4 it mentions off-site traffic, it says, "But you can  
5 consider traffic going in and out of a site," and  
6 that's specifically indicated.  
7 CHAIRPERSON SCHAEFER: Any other  
8 questions?  
9 ATTORNEY LINNUS: Public, Madam  
10 Chairperson.  
11 CHAIRPERSON SCHAEFER: I'm heading  
12 there, Frank.  
13 ATTORNEY LINNUS: Okay. Not to rush  
14 you.  
15 CHAIRPERSON SCHAEFER: I am opening it  
16 up to public. And, again, anyone from the public  
17 who has a question of this witness, they must be on  
18 video.  
19 Okay. Hearing none, Mr. Butler, that's  
20 the end of this witness's testimony, correct?  
21 ATTORNEY BUTLER: Yeah. I'm through  
22 with Hal Simoff. Of course unless they bring back  
23 Mrs. Dolan, then I'll bring back Hal probably for  
24 surrebuttal.  
25 CHAIRPERSON SCHAEFER: Okay. So  
119  
1 here's what's going to happen --  
2 ATTORNEY BUTLER: That's going to  
3 depend on what she says, if she comes back.  
4 CHAIRPERSON SCHAEFER: Okay. So in  
5 March, Mr. Hehl, you'll bring your engineer.  
6 And, Mr. Butler, you'll have your  
7 engineer.  
8 ATTORNEY BUTLER: Yes.  
9 CHAIRPERSON SCHAEFER: And you both  
10 can be prepared to deal with the ordinance and  
11 design issues. This way, Mr. Healey and Ricky and  
12 whomever else, can delve a little bit further into  
13 it. And then --  
14 ATTORNEY BUTLER: I assume that will  
15 cover the whole meeting?

16 CHAIRPERSON SCHAEFER: We never assume  
 17 anything. Who else do you have to put up?  
 18 ATTORNEY BUTLER: I guess I will have  
 19 Bob Weldon here in case we get through early. Bob  
 20 comes to all the meetings. But I won't have Peter  
 21 Steck. I probably will lose him if I can't get him  
 22 in March because he's tied up a lot so --  
 23 CHAIRPERSON SCHAEFER: And who is he,  
 24 I'm sorry, Mr. Butler?  
 25 ATTORNEY BUTLER: Excuse me?  
 120  
 1 CHAIRPERSON SCHAEFER: Who is he?  
 2 ATTORNEY BUTLER: Peter Steck. He's  
 3 the planner.  
 4 CHAIRPERSON SCHAEFER: Okay.  
 5 ATTORNEY BUTLER: I'll have to call  
 6 him tomorrow --  
 7 CHAIRPERSON SCHAEFER: That's your  
 8 choice about --  
 9 ATTORNEY BUTLER: I'll have to call  
 10 him tomorrow and find out whether he's available in  
 11 April. It was tough for me to get him for March.  
 12 So we'll see. We'll carry on.  
 13 CHAIRPERSON SCHAEFER: All right.  
 14 ATTORNEY LINNUS: Madam Chairperson or  
 15 Theresa, what is the date of the March hearing?  
 16 CHAIRPERSON SCHAEFER: The 16th.  
 17 ATTORNEY LINNUS: Okay.  
 18 VICE-CHAIRMAN SPEENEY: Tracee?  
 19 Tracee?  
 20 CHAIRPERSON SCHAEFER: Yes.  
 21 VICE-CHAIRMAN SPEENEY: Trying to get  
 22 a clarification on what we marked into evidence.  
 23 Where's Frank? OW-7 was the Simoff  
 24 Engineering Associates primary document?  
 25 ATTORNEY BUTLER: The report.  
 121  
 1 VICE-CHAIRMAN SPEENEY: Did that get  
 2 changed? Did that get changed?  
 3 ATTORNEY LINNUS: No. I think what  
 4 happened, Don -- it was a little confusing. But the  
 5 memo dated January 8th, 2021, is indeed O-7 and O-8  
 6 was a portion of it so --  
 7 VICE-CHAIRMAN SPEENEY: Right. Okay.  
 8 Good.  
 9 ATTORNEY BUTLER: Now, Mr. Linnus,  
 10 what I'm going to do is to send to you, and Theresa  
 11 and Mr. Hehl a copy of all my exhibits and properly  
 12 identified so our record --  
 13 ATTORNEY LINNUS: That would be  
 14 wonderful. That would be wonderful, Mr. Butler.  
 15 ATTORNEY BUTLER: You said something  
 16 nice about me.  
 17 CHAIRPERSON SCHAEFER: Okay. So,  
 18 Mr. Hehl, be prepared for next month. And this will  
 19 be carried till March with no further notice.  
 20 Anything else that you need to add  
 21 or --  
 22 ATTORNEY HEHL: My only question --  
 23 ATTORNEY LINNUS: For the record, it's  
 24 March 16th at 7:30 p.m.  
 25 ATTORNEY HEHL: Just one comment that,

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1 certainly, we will have our engineer and I'm sure  
2 the board professionals, but I would hope that --  
3 that we would be able to proceed with the other  
4 witnesses, if Mr. Butler has Mr. Steck available. I  
5 think that particularly because the professionals  
6 will be exchanging or have an opportunity to digest  
7 the testimony, that wouldn't preclude us from moving  
8 on. We would really like to -- I don't want to  
9 already forecast us being in April with Mr. Butler's  
10 planner. So if Mr. Steck is available, let him be  
11 available for the next month.

12 CHAIRPERSON SCHAEFER: I think that's  
13 a --

14 ATTORNEY BUTLER: Madam Chair, I  
15 assume that Mr. Lapatka will be also testifying in  
16 March.

17 CHAIRPERSON SCHAEFER: Yes, but it's  
18 only on the two issues, and it's primarily for our  
19 planner and our engineer.

20 So I have to agree with Mr. Hehl; have  
21 your planner here. I leave that up to you. I'll  
22 leave that up to you. If you don't have your  
23 planner, have Mr. Weldon, have somebody.

24 ATTORNEY BUTLER: Mr. Weldon will  
25 definitely be here. I'll talk to Mr. Steck  
123

1 tomorrow.

2 CHAIRPERSON SCHAEFER: Okay. All  
3 right. I think that's it for this one. I thank  
4 you, everybody.

5 ATTORNEY HEHL: Thank you.

6 CHAIRPERSON SCHAEFER: The planning  
7 board still has one other item on the agenda.

8 ATTORNEY LINNUS: For the purposes of  
9 the record, this public hearing, for purposes of the  
10 public who may or may not be here, the next  
11 meeting -- the continuation of this public hearing  
12 will be at the March 16th, 2021, regular meeting of  
13 the planning board, which starts at 7:30 p.m.

14 ATTORNEY HEHL: Again, thanks,  
15 everyone, for their time tonight and see you on the  
16 16th.

17 CHAIRPERSON SCHAEFER: Thank you.

18 ATTORNEY HEHL: Take care now.

19 ATTORNEY BUTLER: Good night.

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21 (Application adjourned at 10:24 p.m.)

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C E R T I F I C A T E

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

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

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

---

Angela C. Buonantuono, CCR, RPR, CLR  
NJ State Board of Court Reporting  
License No. 30XI00233100  
Dated: March 10, 2021

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