

THE BOROUGH OF WATCHUNG
Planning Board
Regular Meeting
March 16, 2021

OFFICIAL MINUTES
Adopted April 20, 2021

Chairwoman Tracee Schaefer called the Regular Meeting to order at 7:30 p.m.

Board members present were

Ms. Tracee Schaefer, Chairwoman
Mr. Donald Speeney, Vice Chairman
Mr. Keith Balla, Mayor
Mr. Pietro Martino, Councilman
Ms. Ellen Spingler, Secretary
Mr. Al Ellis (arriving 7:42 pm)
Ms. Karen Pennett
Mr. Steve Pote
Mr. Paul Fiorilla

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

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

MINUTES

On motion by Mr. Pote, seconded by Ms. Pennett, the minutes and transcript from the meeting held on February 16, 2021, were accepted and carried on voice vote.

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.

BOA 2020 ANNUAL REPORT

The Board reviewed the Board of Adjustment 2020 annual report. Some of the recommendations were already addressed in the Master Plan Reexamination Report.

CANNABIS

The Mayor and Council directed the Planning Board to provide guidance concerning the issue of cannabis use within the Borough.

Chairwoman Schaefer designated the following board members to a cannabis subcommittee: Councilman Pete Martino, Mr. Mark Healey, Ms. Yvette Nora, Mr. Donald Speeney, and Madam Chair.

The subcommittee planned to meet prior to the next regular meeting of the Planning Board.

In order to give sufficient time to the cannabis issue at the next meeting, it was determined to begin the meeting at 6:30 pm.

ADJOURN

The Board unanimously voted to adjourn the meeting at 10:30 pm.

Respectfully Submitted,



Theresa Snyder
Board Clerk

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

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

TUESDAY, MARCH 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 (arriving at 7:42)
PAUL FIORILLA
PIETRO MARTINO, COUNCILMAN

YVETTE NORA
KAREN PENNETT
STEPHEN POTE
TROY SIMS
DONALD SPEENEY, VICE-CHAIRPERSON
ELLEN SPINGLER
ALSO PRESENT:
FRANCIS P. LINNUS, ESQUIRE, BOARD ATTORNEY
RICARDO MATIAS, P.E., BOARD ENGINEER
MARK HEALEY, P.P., BOARD PLANNER
JOSEPH FISHINGER, P.E., P.P., PTOE, TRAFFIC ENGINEER
JOHN JAHR, P.E., PTP, TSOS, BOARD TRAFFIC ENGINEER
THERESA SNYDER, BOARD SECRETARY
STENOGRAPHICALLY REPORTED BY:
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A P P E A R A N C E S: (Via Video Conference)
JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.

BY: STEPHEN F. HEHL, ESQUIRE

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--Counsel for the Applicant

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Email: cb@butlerlawnj.com

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

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I N D E X

FOR THE APPLICANT:

GERRY GESARIO, P.E. PAGE

BY MR. HEHL 9

BY MR. BUTLER 31

FOR THE OBJECTOR:

ALEXANDER LAPATKA, P.E. PAGE

BY MR. BUTLER 59

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-30 Drainage area exhibit 97

EXHIBITS NOT RETAINED BY REPORTER

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CHAIRPERSON SCHAEFER: Notice of this meeting has been given pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6.

In order to comply with the executive orders signed by the governor, and in an effort to follow best practices recommended by the CDC and in compliance with the DCA requirements for emergency meeting protocol, this meeting is being held virtually for all board members, board professionals, the applicant, the applicant's professionals, interested parties and members of the public. Notice has been posted on our website and are all in compliance with the DCA requirements for emergency meeting protocol and has been given to the Echoes-Sentinel, Courier News and The Star-Ledger. Notice has been filed with the borough clerk.

And now we'll move on to -- would you all if you can stand. Can we all stand and salute the flag, please.

(Pledge of Allegiance.)

CHAIRPERSON SCHAEFER: Thank you.
Roll-call, please.

BOARD SECRETARY: Mr. Ellis?

Ms. Pennett?

MEMBER PENNETT: Here.

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BOARD SECRETARY: Councilman Martino?

COUNCILMAN MARTINO: Present.

BOARD SECRETARY: Mayor Balla?

MAYOR BALLA: Here.

BOARD SECRETARY: Mr. Speeney?

VICE-CHAIRMAN SPEENEY: Here.

BOARD SECRETARY: Ms. Spingler?

MEMBER SPINGLER: Here.

BOARD SECRETARY: Mr. Pote?

MEMBER POTE: Here.

BOARD SECRETARY: Mr. Fiorilla?

MEMBER FIORILLA: Here.

BOARD SECRETARY: Mr. Sims?

MEMBER SIMS: Here.

BOARD SECRETARY: Ms. Nora?

MEMBER NORA: Here.

BOARD SECRETARY: Madam Chair?

CHAIRPERSON SCHAEFER: Here.

BOARD SECRETARY: Mr. Linnus?

ATTORNEY LINNUS: Here.

BOARD SECRETARY: Mr. Matias?

ENGINEER MATIAS: Here.

BOARD SECRETARY: Mr. Healey?

PLANNER HEALEY: Here.

BOARD SECRETARY: Mr. Jahr?

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ENGINEER JAHR: Here.

CHAIRPERSON SCHAEFER: Thank you.

Please indicate that we have a quorum to conduct business. I ask for a motion to waive the reading and approve the February 16, 2021 minutes and the transcript as of our regular meeting.

Do I have a motion?

(Simultaneous motion.)

CHAIRPERSON SCHAEFER: Okay. I'll take it from Steve.

Do I have a second?

MEMBER PENNETT: Second.

CHAIRPERSON SCHAEFER: Karen.

Discussion?

Hearing none, I'll call for a voice vote.

All in favor state by saying "Aye."

MEMBERS IN UNISON: Aye.

CHAIRPERSON SCHAEFER: Anyone opposed?

Anyone not voting?

Okay. Ellen, can you please call the next item?

MEMBER SPINGLER: Case Number PB

19-02, The Learning Experience, 100 Union Avenue,
Block 7801, Lot 1, BB zone, expiration 4/30/21.

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CHAIRPERSON SCHAEFER: Thank you.

So last month, we left off with

Mr. Butler's traffic engineer, and we all agreed
that we would begin tonight with the applicant's

engineer discussing -- and Mr. Butler's -- the
opposer, discussing how the ordinance and design
waivers affect or not affect this application.
It will then be followed by the
opposer's engineer presenting their side.
I'm going to start with you, Mr. Hehl.
Sorry.
And then, based on that discussion,
we'll have questions from our professionals, as well
as the opposer, our planning board members. And
then the opposer can bring in his engineer, if his
engineer is here tonight. But that's what we agreed
to at our last meeting.
There's a lot of feedback. I'm not
sure where it's coming from.
It's Don. So, Don, if you can stay
muted until you need to talk. There's a bad
feedback coming from you, from your computer or what
have you.
So with that all being said, are we
prepared to move forward, Mr. Hehl?

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Gesario - Direct

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ATTORNEY HEHL: Yes. Yes, we are, Madam Chairwoman. And, yeah, that is what we discussed at the last hearing and was articulated further in the -- in Mr. Linnus's March 11th, 2021, correspondence.

So with that being said, I see

Mr. Gesario is here, was previously sworn and qualified, and I'd like him to take us through the point that -- that we discussed at the last meeting with respect to the applicability of the various design items and the waivers.

CHAIRPERSON SCHAEFER: Okay.

G E R R Y G E S A R I O, P.E.,
previously sworn, testifies as follows:

E X A M I N A T I O N

BY ATTORNEY HEHL:

Q. Okay. So, Mr. Gesario, again, confirming that you're still under oath, still qualified. Your licenses are still in full force and effect.

As you recall from the last hearing -- and you saw the letters -- letter from Mr. Linnus. What I'd like to do, if you could take the board through -- the board and the board professionals through your evaluation of the applicable sections

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Gesario - Direct

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of the ordinance and discuss some of the waivers
that we've requested.

ATTORNEY HEHL: And as the board is
well aware, we did, a while back, submit some
revised -- we did not concede that there were
checklist items. I mean, we had a completeness
review of this file quite some time ago, but we did
submit some supplemental items that Mr. Gesario
could also touch on.

BY ATTORNEY HEHL:

Q. So, Mr. Gesario, let's -- I guess let's
begin with the flood elevation and the interplay
between the Chapter 22 and sections of the DEP
ordinance -- I mean, the DEP regulations.

CHAIRPERSON SCHAEFER: You're on mute,
Mr. Gesario.

THE WITNESS: Okay. Sure. What I
would like to do is in describing how we determined
the design flood elevation which currently show and,
in doing so, explain the flood elevation, how it
relates to the FEMA mapping and then get into the
relevance of Chapter 22.

So I believe the objector's engineer
early on had alluded to the fact that there are two
different lines. There is a 100-year flood line,

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Gesario - Direct

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and there is a flood hazard line. We don't dispute this. The 100-year flood line is simply the elevation of a flood that has a 1 percent annual chance of occurring. The flood hazard line, which the DEP actually refers to in their regulations as the design flood elevation, may be different than the 100-year flood.

For our site, to determine the design flood elevation, DEP requires the following:

One is research to see if there's state mapping available. If it is available and it's greater than -- or done in 2013 or later, then the state mapping is the design flood elevation, no need to look at any further maps.

If it's older than 2013, which is our case, we have to make a comparison. So you have to look at the state mapping, which was Exhibit A-7 that we submitted, and I'll share my screen if I can to just show what that is.

This was Exhibit A-7. This is the actual State of New Jersey Department of Environmental Protection mapping from their archives. And all we basically did was locate our site, go to the corresponding elevations and note those elevations.

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Gesario - Direct

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Again, because this map is prior than 2013, DEP requires that you compare it to the FEMA map, which is Exhibit A-6 that we provided. And let me get to that.

So this is the FEMA map which is actually from the Somerset County mapping, which is the correct map to use.

ATTORNEY HEHL: We're not -- we don't see an exhibit right now.

THE WITNESS: Okay. All right. Is it there? Yeah.

So this is the FEMA mapping that the state requires you to compare to, but it's not -- it's not a simple comparison. You have to get the elevation, and add 1 foot to that elevation. So you compare the state mapping to the "FEMA plus 1 foot" elevation. The higher of the two is what the DEP calls the design flood elevation, and that is what we showed on our exhibit -- I believe it was A-8. I'm looking for that. I lost A-8. I failed to grab Exhibit A-8.

Okay. So A-8 is, basically, the results of compare -- the comparison of two maps showing the design flood elevation along this line. In this particular case, the design flood elevation

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Gesario - Direct

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is greater than the 100-year flood. The 100-year flood line would sit inside this design flood elevation.

So looking at that and reading it into Chapter 22 -- Chapter 22, when we read it, was very specific in calling the flood hazard area the 100-year flood from the FEMA map. So I can stop sharing here. Where is it?

So the Chapter 22 cites that the flood hazard area is the 100-year flood elevation from the FEMA map. In this particular case, this is lower than the DEP criteria for the design flood elevation. So, in my opinion, because the DEP is more restrictive and creates a greater area of flood

hazard, by meeting the DEP requirements we effectively would meet the requirements of the borough's Chapter 22 ordinance.

So I -- you know, I think it's important to say we're not looking for waivers from Chapter XXII. We just believe by adhering to the DEP ordinance, based on what I just said, we -- it's a stricter ordinance and, by doing that, we would comply with Chapter 22.

I think the objector also raised concern that this was -- because it was a day care,

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Gesario - Direct

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that the board should consider, you know special -- to take special consideration for safety. Again, DEP accounts for this. Day care, according to the DEP, is defined as a critical building, and there are special requirements for critical buildings and flood hazard areas.

One note is just -- it's important to

note our building and the play area are 100 percent outside not only the 100 -- the 100-year flood, but the design flood elevation. DEP requires that first floor to be a foot above the design flood elevation, which we've done. And they also require means of access outside the flood hazard and 1 foot above, which we're also providing.

So, you know, DEP does take into consideration that this is a critical building, and safety is of the utmost importance so provisions are made. So, again, by following DEP guidelines, we think we're incorporating and accommodating Chapter 22 of the borough's ordinance.

That's really it. That's all I have on the flood hazard area and how we determined our elevation.

CHAIRPERSON SCHAEFER: Mr. Hehl, you're muted.

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Gesario - Direct

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ATTORNEY HEHL: Yes, sorry. I was trying to stay muted unless I was asking a question.

BY ATTORNEY HEHL:

Q. All right. And then, Mr. Gesario, if you could move on to some of the specific items, checklist items, and I know -- if you could give a recap of those?

A. Yeah. A couple of other things I'll touch on based on, you know, going through the transcripts of the prior hearings and Mr. Lapatka's testimony.

I think he talked about mitigation and like how we were taking care of this. I think he used the term "kicking the can down the road." I don't agree with this. Our plan -- our plans do show how we intend to mitigate for the site, and I think it's important to note that it's helpful when you have a site that was already approved not only by this board, but by the DEP for an individual flood hazard permit. And then although it was never constructed, we're in with the new plan, and our idea from the beginning was to basically adhere to the disturbance that was previously approved and not to push things with the DEP and basically propose similar, nearly same, mitigation that was proposed

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Gesario - Direct

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for that.

So, you know, this isn't done blindly.

We didn't just guess at that. We had a prior

approval to go on. I have spoken to the DEP.

Although they can't put this in writing, what they have told me is mitigation that was approved ten or so years ago, they would see no reason for not approving that same mitigation today, but, obviously, they would look at this new application when it gets submitted.

But there is a basis for the mitigation that we show on our plan, so I don't agree with the representation that we're kicking the can down the road. The DEP approval part we're proposing to come later.

I guess I do want to touch on his statement that he feels this application should be done simultaneous with the DEP. Again, I disagree. I mean, personally, in my 30 years on an application where there's no guarantee of approval, for one, I would never advise a client to expend the resources, which are considerable between engineering fees and application fees, on a gamble that, one, the plan will get approved; two, the plan won't change as you go through the planning board. The last thing you

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Gesario - Direct

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want to do is submit to the DEP, go through the planning board process, have the plan change and go back to the DEP. You've wasted a lot of money and a lot of people's time. So it is very common to condition an approval on DEP approval.

I think there -- let's see, there were a couple other items before I get to the ordinance specifically.

I also want to touch on he -- he mentioned more than once, and basically stated as fact, that the tributary to the Green Brook that runs along our property line is greater than 50 acres and has to be studied separately. If I can go to -- there's a couple of things there. One, again, we have a prior flood hazard permit for this site. It was determined then that that tributary was included in the state study, the FEMA study, and did not require a separate study. And we also went and checked the drainage area. He stated it's over 50 acres. He gave no basis for this, no mapping. We took a look at -- I'm going to share my screen again. Hopefully it works.

So we took a look at -- what DEP would use is a USGS mapping with satellite imaging --

ATTORNEY LINNUS: Has that exhibit --

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Gesario - Direct

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excuse me, Mr. Gesario.

Has that exhibit been marked, Mr. Hehl?

THE WITNESS: This is the one we submitted as A-9.

ATTORNEY LINNUS: Okay.

THE WITNESS: Okay. So in yellow, this triangular-shaped thing, is our lot, which is about 2.23 acres. And then in blue is what I would call a conservative drainage area to that culvert in New Providence, which sits somewhere over here.

And, you know, this today is a conservative estimate. It's about 19 acres. If it's off, I certainly don't believe I'm off by over 30 acres.

So I definitely do not see how this drainage -- how he makes the statement this drains more than 50 acres and what that statement is based on. I think that was that.

I'm going to go back to Exhibit A-8.

And just in response to his comments regarding net fill for the site, this area that we hatched in yellow, that's the area that would be subject to the zero net fill. This is the floodplain area. This is where we're doing some work.

So we acknowledge that and we're

certainly aware that the requirement is for a zero

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Gesario - Direct

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net fill. If we're raising grading here, we've got to balance it out, give volume back elsewhere. We have a plan for that. It's part of our DEP application. It hasn't been submitted to this board. If the board wants to see what those calculations are and what that plan is going to look like, we'll be happy to submit it. It's something that is going to be part of DEP's review. We're well aware of it. Again, if the board wants to see it, we'll be happy to provide it to the board and the board engineers.

Another statement about the -- we're going back to the mitigation. Mr. Lapatka stated that our numbers, disturbance, were wrong. Again, no basis for this. I don't know where he calculated it from. He certainly doesn't have our digital files. We double-checked it. Our numbers are

right.

Part of what he based it on, if I'm not mistaken, he said that our riparian zone would continue across Union Avenue and we didn't account for that. That is not correct. The riparian zone, when it reaches a culvert, the line comes back in and follows the walls of the culvert. That riparian zone does not go across Union Avenue. So that is

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Gesario - Direct

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testimony that is incorrect.

CHAIRPERSON SCHAEFER: Can you show --

THE WITNESS: So again --

CHAIRPERSON SCHAEFER: Can you show us

that riparian zone on any of your -- your exhibits?

THE WITNESS: I can probably show it

on the plans that we submitted as part of our application. I don't have a separate exhibit for the riparian zone. I do have the plans we submitted.

CHAIRPERSON SCHAEFER: That would be fine, just --

ATTORNEY HEHL: Just refer to what particular exhibit it is.

THE WITNESS: Let me find it.

Okay. This is from the plans that we submitted. It's our existing conditions environmental constraints plan. And I'm going to try and follow the riparian zone.

Give me -- this -- this line here that I'm following is our riparian zone line. And because of the culvert, it would actually tuck back into the culvert and come across. We don't go across the road, as was suggested. DEP, in their regs, actually have nice color pictures of how this

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Gesario - Direct

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works when there's a culvert in a riparian zone.

This is our riparian zone. So 150 feet from the top of bank here and also 150 feet

off -- what is referred to as a ditch. I know he made remarks that it's a stream. The ditch actually -- terminology came from the survey that was provided. The DEP, in their wetlands review, didn't ask us to change it. But, nonetheless, we put 150-foot buffer on it.

And, you know, a ditch versus a stream, a ditch technically is something that is manmade. A stream is more naturally occurring. I don't know whether this was manmade at one time or not, but, regardless, we're applying a riparian zone to it and it is part of the FEMA study. So I believe whether it's a ditch or a stream is a nonissue.

I think that takes care of the testimony items. And then I guess I'll get into his comments directly related to the -- to the ordinance. Let's see. We talked about the culvert, the disturbance. I talked about the compensation we're proposing and the flood study, the zero net fill.

So with regard to the waivers, I think there's numerous times they mentioned that waivers

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Gesario - Direct

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are required but not requested. That's not true, in our opinion. We submitted a checklist. The checklist did request waivers, some of the partial waivers, and that is part of the record that is mentioned.

And, you know, a checklist, to me, when the town goes through the effort of requiring -- putting together a detailed checklist requiring it to be signed and submitted with the applications, I think that checklist is what's used to determine an application complete. It doesn't preclude the board from asking for additional information if you drill down the ordinance, but as far as completeness, you know, we follow a checklist that the borough puts together.

We did ask for a waiver on the --

partial waiver on the stormwater management, the maintenance plan, which we have since provided.

It's probably going to change, but, again, part of the reason for submitting revised plans was to address some of these, what I call, minor comments from the objector and, basically, to alleviate the board from having to issue waivers on things. And just, you know, if we can correct some things now, we'll correct some things now.

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Gesario - Direct

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So we did provide the maintenance plan,
although I can certainly tell you it's probably
going to change as we go through the approval
process.

Q. And I think, Mr. Gesario, at the last
hearing, that's when I was questioning, I believe,
Mr. Lapatka and indicating that the management plan
is how you're going to deal with it, and the
maintenance is a -- is how the system is maintained
to have that plan work; is that correct?

A. Yes. Did I say -- the maintenance
plan is what we just submitted.

Q. Correct.

A. Did I say "management plan"?

Q. No, no, no. You're right. I was just
clarifying --

A. Okay. Yeah. The maintenance plan is
how the system is -- needs to be maintained and the
records that need to be kept.

The management plan describes the
existing site, conditions, proposed conditions and
provides all the calculations, which we did provide.

He may not think it met his standards, but it
apparently meets the standards of the borough.

Other items, the trees, we showed the

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Gesario - Direct

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revised tree plan that adds the trees that meet the ordinance now. I think the only one is the street trees where I think we end up one shy. And part of that reason is of our 440-so feet of frontage, we're hindered by the fact that a portion of it is the culvert. Obviously, we can't plant trees across that -- the stream there.

So we're limited -- I think, between the existing trees we're saving and new ones we show, I think we're one shy on street trees. We show trees within the mitigation area. These are subject to change as we go through the DEP approval, but to eliminate the continuing comment that we're requesting relief on that, we've showed it.

Let's see the other waivers. The waivers for the utility standards, we actually have them for the will-serve letters. I don't know -- I don't recall -- I couldn't find if we submitted them to the prior engineer, but we did submit them for water, gas and electric. You can see they're dated 2019, so we did have them.

And I do want to touch on the sewer in a separate issue. I'll get back to that one.

Sidewalks, that's at the board's discretion per the ordinance. If the board wants a

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Gesario - Direct

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sidewalk, basically to nowhere, we will add a sidewalk. It's within the county; it's their right-of-way. If they're for it, we'll certainly do it.

I think he brought up the sight -- sight-triangle easements, too. We did the line-of-sight exhibit, and it does not encroach into the private property. So I'm not sure why he keeps saying we need an easement.

There may be permission from the county to remove a tree if it's in the way, but an easement, I mean, that -- I don't know who the easement would be to since it's all in the public right-of-way.

Another one, the driveway apron will be concrete. We changed that. Simple enough. The light pole base, 2 1/2 feet is a firm standard. The borough was 2 feet. We changed that to 2 feet.

Let's see. So those are just minor

items and, you know, we fixed a few other things with regard to that.

I think going back to -- oh, there's one more. Oh, the landscape screening within the parking lot. He stated as -- again, as a fact that

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Gesario - Direct

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we're less than 5 -- 5 percent is required, and we're less than that. Our calculations indicate 6.27 percent, so we do comply with that. He also states that we only provide 4 1/2 feet for the screening in our lot frontage. It's 5 feet. So I don't know why he keeps saying it's 4 1/2 feet. It is 5 feet. And that's clearly shown on Drawing C300.

And I think the last thing I have is regarding the sewer. He stated in his testimony that a utility company would never -- would never allow a utility line next to their utility poles or under their wires. Frankly, I don't quite

understand that comment. If they're high-tension lines and there's an easement associated with it, I would agree. But you can go down almost to any street and see storm drains along curbs, gas lines typically a couple feet off a curb with utility poles. It's done all the time. It's a very common occurrence. In this particular case, it's going to be a 2-inch force main that will probably be directionally through our site down there.

So the statement that this would never be allowed, I do not agree with.

And, again, with the will-serve for the

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Gesario - Direct

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sewer, again, the prior approval there was an inter-municipality agreement between Scotch Plains and the Borough of Watchung that Scotch Plains would accept the flow from this particular lot. It didn't get tied to a use; it just said to this lot. I have --

CHAIRPERSON SCHAEFER: Mr. Gesario --

THE WITNESS: Yes.

CHAIRPERSON SCHAEFER: -- can I just
stop one moment?

We have an Ozzy Yasdine(ph) who is on.

I would like you to please mute because your
background noise is interrupting his testimony.

MEMBER OF THE PUBLIC: Oh, I'm sorry.

CHAIRPERSON SCHAEFER: Thank you.

I'm sorry, Mr. Gesario.

THE WITNESS: That's okay. Yeah. I
was just talking about the sanitary sewer.

And, again, having the benefit of a
site that was previously approved, we realized there
was already an agreement in place from Scotch Plains
and Watchung that they would accept the flow from
this site.

Now, we haven't moved into those
discussions again because we would prefer to wait

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Gesario - Direct

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and see if we have approval before we start to waste the board's attorney time and the Borough of Scotch Plains' attorney's time to rehash this agreement and start that process over again.

So we know there was an agreement previously. We don't anticipate there's going to be an issue to get another agreement. It's actually -- I couldn't find a date that voided this agreement, so it may still be valid. I don't know. But we're going to visit that in the hope that the board grants approval to this application, and then we'll move down that path.

And I think that's it for the -- oh, I do want to touch on his -- the soils, and the stormwater, and the water table and the comments related to that.

Again, because this was a previously approved plan, we do have soil. There was a soil report done. We can't submit it because it's 11 years old or so, but I can pretty safely say the soils aren't going to change on a vacant site over 11 years. At that time, the soils were poor. They didn't allow for enough of a rate of infiltration to provide groundwater recharge.

Now, our design does call for

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Gesario - Direct

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perforated pipe and recharge because we do have to redo the testing. And maybe an error was made and we get infiltration rates that meet DEP requirements, we will stick with the infiltration basin, but our design was based on no infiltration. So if the results come back the same, no infiltration, our system doesn't change. What will change, the pipe from perforated to solid, but the size of the basin will not change. And for the most part, I rarely account for infiltration because sometimes it just fails down the road. So worst-case scenario, we design assuming zero infiltration.

So the results of the soil test, while we don't disagree, they're important, we need them, we do have a basis because we have a report from the prior design. And, like I said, our design is based on failing perforates, no infiltration, so our basin size will not change regardless of the results of the soil test. We'll have solid pipe. The water table was not an issue. If it comes up an issue, usually you have to deal with that. If it rises to the level of where the pipes are, you do buoyancy calculations. Sometimes you have to strap a pipe down, but the prior results didn't show the water

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Gesario - Direct

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table that high or that it would be a problem.

And I think that is all I have in response to the prior testimony by the objector.

ATTORNEY HEHL: And we do have -- we did submit some additional exhibits, but that's really dealing with site circulation and the like which Mr. Gesario will address during his rebuttal testimony on the main aspects of the case.

But I believe that covers the items. I know it's, I'd say, very technical in nature, but we wanted to have the testimony placed on the record at the request of the board from the last hearing.

CHAIRPERSON SCHAEFER: Thank you, Mr. Hehl.

Mr. Butler, do you have your engineer here?

ATTORNEY BUTLER: Yes, I do.

CHAIRPERSON SCHAEFER: How are you?

ATTORNEY BUTLER: Before I put my engineer on, I'd like to cross-examine his witness.

CHAIRPERSON SCHAEFER: I'm really having a hard -- I'm so sorry, I'm having a hard time understanding you.

ATTORNEY BUTLER: I'm sorry, Madam Chair. I do have my engineer present, but I'd like

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Gesario - Cross

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to ask this witness some questions.

CHAIRPERSON SCHAEFER: Okay. Go ahead.

ATTORNEY BUTLER: May I? Thank you.

CHAIRPERSON SCHAEFER: Yes.

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

BY ATTORNEY BUTLER:

Q. Mr. Gesario, my name is Bill Butler. I represent Weldon, the objector. I'm going to start my question a little different than I had planned to. About four or five times you mentioned prior approvals. I want to talk to you about those prior approvals.

Do you know anything about those prior approvals?

A. I am having trouble hearing you. I'm sorry? What about the prior approvals?

Q. I'm asking you: What do you know about the prior approvals?

A. I know that the site was approved for a car wash.

Q. When?

A. 2009 or '10.

Q. How about 2008?

A. Okay.

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Gesario - Cross

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Q. Well I'm going to -- I'm going to present testimony in about a month or so from one of the Weldons, but I participated in that application and a second one. It was '07. It was for a car wash and a spa. And Weldon did not object to that application. And then that application went to the DEP, and the DEP changed a lot of it, and they had to go back. It was before the board of adjustment. It was in the quarry at the time.

When it came back the second time in

2008, we, again, approved it. We just wanted some shrubbery as a buffer between the car wash and the quarry. In fact, Weldon was willing to let the car wash use Lot 3, which we own, to help them out.

Now, during that application, to be very honest with you, I didn't hear -- I didn't hear

anything about a flood hazard line. I didn't hear anything, anything whatsoever, about a 100-year floodplain line. Nothing whatsoever.

A. Okay. What's the question?

Q. Well, the question is why do you see a similarity predicated upon the 2'07 car wash with all the elements that it didn't have that this application has; why do you as an engineer -- excuse me -- why do you think that those applications are

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Gesario - Cross

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analogous?

A. You're incorrect in saying that that site did not have a flood hazard line associated with it or riparian zone associated it. Whether it was talked about in testimony, I don't know, but the site absolutely had a flood hazard. The Green Brook has been there. There has been a flood hazard line associated with the Green Brook. And there's a riparian zone. Those laws have been in place since

2008. And it required a DEP individual permit, which was obtained.

Q. When the site plan was approved by the DEP, did it show a 100-year floodplain?

A. Yes. Whether they called it that or they called it a design --

Q. Who? The DEP?

A. Yes.

Q. Do you have a copy of that?

A. They had to.

Q. Do you have a copy of that plan?

A. I have a copy of the permit.

Q. Do you have a copy of the plan showing a 100-year floodplain in '07 when Weldon did not object to the car wash and the spa?

A. Not at my fingertips, but I'm sure we

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Gesario - Cross

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can get it.

Q. Well, would you?

A. Yeah. But if you're saying that this site did not have a 100-year floodplain associated with it in 2008, that's 100 percent incorrect.

Q. I'm saying the DEP did not discuss the issue, nor did the DEP discuss --

A. That's incorrect.

Q. Excuse me, ma'am -- sir. Don't interrupt me when I'm cross-examining you. Neither did the DEP have a flood hazard lane -- line on their site plan.

ATTORNEY HEHL: Mr. Butler, you have asked him the same question three times, and he's answered it, that you were wrong --

THE WITNESS: They're saying that net fill calculations were provided to the DEP, so I don't know how you do net fill calculations if there's no flood line associated with the development.

BY ATTORNEY BUTLER:

Q. Well, is it your sworn testimony as an expert that the NJDEP regulations regarding water are the same in 2021 as they were in 2007?

A. No. There have been amendments to it.

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Gesario - Cross

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Q. There's been amendments to it?

A. Yes.

Q. Do those amendments affect this application?

A. Not with regard to the riparian zone.

It's still 150 feet. The application numbers --

Q. In '07, was there a flood hazard buffer line associated with the tributary and with the flood brook in 2007?

A. -- what a flood hazard buffer line is?

I know what a riparian zone buffer is. And, yes, there were --

ATTORNEY HEHL: Mr. Butler.

Mr. Butler, you've told him not to interrupt you.

Would you please let him answer?

ATTORNEY BUTLER: Sure. What was his answer?

THE WITNESS: I don't know what a flood hazard buffer line is. There is a wetlands buffer. There is a riparian zone buffer.

ATTORNEY BUTLER: I'm referring to a flood hazard area buffer associated with the Green Brook and with the tributary to the Green Brook.

THE WITNESS: Again, I don't know what a flood hazard area buffer is.

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Gesario - Cross

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BY ATTORNEY BUTLER:

Q. Well, on your plan -- on your plan, you drafted 150-foot flood hazard buffer associated with the Green Brook, but you completely failed and eliminated any flood hazard area with the tributary to the Green Brook?

Does that refresh your memory as to what I'm talking about?

A. You're referring to a riparian zone buffer.

Q. That's correct.

A. That's very different from the flood hazard. Two separate items.

Q. Okay. In 2007, did either waterway have a riparian 100-foot buffer area? You're under oath.

A. Yes, I realize I'm under oath. I'm not sure what that -- you're insinuating. So repeat the question.

CHAIRPERSON SCHAEFER: You know what?

I think this -- Mr. Butler, I think he's answered this question. You keep asking it in many different ways. I think we need to move on. We're talking about waivers. We're talking about the ordinance. And this whole issue was supposed to -- or this

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Gesario - Cross

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whole part of this meeting was supposed to be their engineer's testimony, your engineer's testimony dealing with design waivers and the ordinance so that our professionals could then give us, the planning board, insight as to do they think that the waivers or the -- if the ordinance applied, or how they applied or did we have to worry about these things so that we could move on with this application.

This has been going on for months now.

I am getting very frustrated with this whole process. I suggest we move on and do what we said we were going to do tonight, and that is putting your engineer on to give his testimony so that my professionals can then ask their questions so we can move on to the next part of this application.

Am I clear?

ATTORNEY BUTLER: You are. And I'd like to respond, for the record.

Madam Chair, I didn't bring up the 2'07 approvals; their engineer did. I didn't bring up the 2'08 approvals; their engineer did.

CHAIRPERSON SCHAEFER: Mr. Butler, I understand that. I understand it completely. You are on the record for that. Let us move on. Get

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Gesario - Cross

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your engineer now to give his testimony so that I can get my professionals the information that they need so that this planning board can move on. We have other applications. We have other business. One thing I did not say is that I have to end this again tonight at 10 o'clock because we have additional business to discuss. I want to get through this, and I want to get through it quickly. Thank you.

ATTORNEY BUTLER: Ma'am, I understand that and I appreciate that. Both sides want to make a record. This is important to both sides, this case. We don't know what you're going to do. We're trying to make a record in case this is appealed. That's what we're doing.

CHAIRPERSON SCHAEFER: I understand that.

ATTORNEY BUTLER: We're not wasting your time on purpose.

CHAIRPERSON SCHAEFER: Mr. Butler, I understand. You keep asking the same question over and over again. I am not going to repeat myself again. I am asking that you, please, put your engineer on and let him give his testimony to the items that we wanted to discuss tonight before we

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Gesario - Cross

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move on with the application.

I want to give my professionals' input, but I can't if we're hung up on 2007, 2008. I understand, for the record, that Mr. Gesario brought up 2007/2008. I understand that. I want us to move on. Period.

ATTORNEY BUTLER: All right. Thank you. And I appreciate it. And I don't want to make you frustrated; I really don't. You're my jury. Okay?

CHAIRPERSON SCHAEFER: Well, you're making a bad case. Move on.

ATTORNEY BUTLER: Okay. Well, I just have some more questions on the environmental issues, the environmental ordinances of our town that are applicable, and I would like to ask this witness about them so that the board becomes -- becomes knowledgeable about these ordinances. All right?

CHAIRPERSON SCHAEFER: Yes, Mr. Butler.

ATTORNEY BUTLER: Excuse me? Thank you. Thank you.

And I'll be as brief as possible, but I'm not looking to -- look it, these plans have been

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Gesario - Cross

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revised --

CHAIRPERSON SCHAEFER: Mr. Butler, get on with your case. We got to get moving.

ATTORNEY BUTLER: All right.

BY ATTORNEY BUTLER:

Q. Sir, I'm going to read to you Article 28, Section 208. It's called "Critical Areas." It states this -- this is the definition of "critical areas," wetlands, 100-year floodplain or flood hazard areas.

Would you describe the subject site as a critical area pursuant to that definition?

A. I'd describe the site as having elements of those. There are wetlands on the site. There is a flood hazard area on the site. Not the entire site. 100 percent of the site is not an environmentally critical area. That's why our development is limited to the small portion of the site.

Q. So that part, you would agree with me, that the site is a critical area as it relates to wetlands, the 100-year floodplain and the flood hazard area and the steep slopes; would you not?

ATTORNEY HEHL: Madam Chair, he asked that question. He got the answer. Now he's asking

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Gesario - Cross

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the same question again.

Mr. Gesario said that -- a portion of the site, not the entire site.

CHAIRPERSON SCHAEFER: You're correct, Mr. Hehl.

Mr. Butler, please move on.

ATTORNEY BUTLER: Thank you.

Q. Now, I now refer you to Article 28-401, large A. It's called "Floodplain Development Restrictions." It says:

No structure or use shall be moved, added to, enlarged, and/or established, nor shall any fill be placed, nor shall the elevation of any land be substantially changed, in the floodplain hazard area except in accordance with the Floodplain-Flood Hazard Ordinance."

And it goes down to Flood Damage Prevention. Does this application violate that section in any way?

A. Well, our building and play area are completely outside the flood hazard area. The area where we're proposing fill is at our main driveway entrance, and we will comply with the zero net fill. So we intend to fully comply with that section.

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Gesario - Cross

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Q. Well, the -- Mark Healey, our long-time planning consultant, was asked whether the floodplain ordinance of town is applicable to this application. And in memo dated February 12th, 2021, he cites unequivocally, Paragraph 1: "Chapter 22 applies to the application."

And he further goes on and says that the flood hazard area line -- this is in his report. I assume you have his report, and the board has his report -- that the flood hazard area line is the 100-year floodplain. And would you agree with me that your site plan shows your primary ingress and egress within the 100-year floodplain?

A. Yes.

Q. It does? Okay.

A. Yes.

Q. Now --

CHAIRPERSON SCHAEFER: Mr. Butler, I'm not -- I will allow a few more questions, but I really want to move on with this. The agreement was your engineer was going to give testimony referencing the ordinance and the design waivers -- that was our agreement -- and that we would then have our professionals ask any appropriate questions so that they could guide

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Gesario - Cross

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this board appropriately.

I'm getting a little tired of your questioning when we really should be hearing from your engineer. I'm giving you latitude. I'm not stopping you, but I -- my -- my fuse is getting really short.

ATTORNEY BUTLER: Well, your statements are on the record and --

CHAIRPERSON SCHAEFER: Yes, they are.

ATTORNEY BUTLER: -- I want to put my statement on the record too. And I have great respect for the Madam Chair, great respect. And I have great respect for everybody on this board. But I think I'm being prevented from cross-examining their witness to the detriment of Weldon.

CHAIRPERSON SCHAEFER: Mr. Butler, I am not preventing you. I am just asking you to please move it along.

You ask the same question in two or three different ways; you get the same answer. I'm asking, please bring it to one question, get the answer, move on to your next question, get the answer and then let's get your engineer on.

ATTORNEY BUTLER: Okay. I'll try to expedite it as much as possible, Madam Chair. I

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Gesario - Cross

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mean, I don't want to antagonize you. That's not my role. It doesn't help my client.

CHAIRPERSON SCHAEFER: And I appreciate that. So let's move on. Thank you.

And I'm on the record that you are being allowed to continue on, so there you go. Move on, please.

ATTORNEY BUTLER: Well, but if I continue on, you're mad at me.

CHAIRPERSON SCHAEFER: Frank, what do we do?

ATTORNEY LINNUS: We move forward.

Mr. Butler, please ask your questions and don't repeat the questions when you get an answer.

ATTORNEY BUTLER: Thank you, Mr. Linnus.

ATTORNEY LINNUS: Linnus.

ATTORNEY BUTLER: Linnus. Excuse me.

That's why I keep on calling you Frank in private.

ATTORNEY LINNUS: You can call me Frank in public.

ATTORNEY BUTLER: I'm going to call
you Frank in public from now on.

ATTORNEY LINNUS: All right. Let's

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Gesario - Cross

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move forward, Mr. Butler, please.

CHAIRPERSON SCHAEFER: Please let's
just move on. You're starting to get the entire
board a little frustrated and that's not good.

BY ATTORNEY BUTLER:

Q. Mr. Healey -- again, I'm referring to
the report -- in paragraph 3, he states this, "It
appears that the applicant has probably delineated
the regulated area per Chapter 22 as it relates to
Green Brook. And we agree that was probably
delineated as far as the 100-year floodplain was
made. The board may wish to seek input" -- I'm
quoting -- "from the borough engineer with respect
to delineation of the area of special flood hazard
area as it relates to the tributary."

So now, that's a question I would respectfully request, pursuant to Mr. Healey's report, that you ask our engineer to have the applicant determine the 100-year floodplain associated with the tributary because I've already gone into the fact that you can't use -- you can't disturb -- you can't use or build on any part of the flood hazard area which is a 100-year floodplain, and you don't know what that is unless it's figured out. And Mr. Healey asked that twice. He asked

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Gesario - Cross

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that again on the next page, and I won't read it because, basically, he says the same thing.

ATTORNEY HEHL: Madam Chair, certainly

Mr. Healey's in this meeting and we hope that -- I'm sure he will comment on the items that -- the checklist and ordinance items after Mr. Butler puts on -- he already had an opportunity to cross-examine Mr. Gesario when he testified originally, and this

is going way beyond just describing the compliance with the ordinance and the checklist items, and that is what this -- the beginning of this meeting was supposed to be.

ATTORNEY BUTLER: This is the seventh revision of this engineer. I'm questioning him on his latest seventh revision. It's the first revision --

CHAIRPERSON SCHAEFER: Wait a minute, Mr. Butler. Mr. Butler --

ATTORNEY BUTLER: Yeah.

CHAIRPERSON SCHAEFER: -- now I'm going to tell you you're incorrect. Those revisions -- and, Frank, please correct me if I'm wrong -- those revisions, you'll be able to talk about, but right now we're here specifically just to speak about the ordinance and about the design

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Gesario - Cross

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waivers.

As I said at the beginning of the meeting, we were going to have the testimony from the applicant's engineer -- and this is what we agreed to, once again, at our last meeting in February -- we would have testimony from their engineer referencing the ordinance and the design waivers. We were going to have testimony from your engineer. Then our professionals were going to have the ability to ask their questions.

I'm really getting tired of repeating myself, but I will continue until I get what I need this evening. The questions you are asking can be asked at a later time when -- you know, when we get back to --

ATTORNEY BUTLER: That's fair enough.

Madam Chair, that's fair enough. As long as I get another crack at this engineer. I don't need it tonight. If -- if that's -- I didn't realize -- I might not be able to cross-examine him further. I better understand your position, Madam Chair, and I'll continue.

CHAIRPERSON SCHAEFER: Everyone -- Mr.

Hehl, please correct me if I'm wrong. When we get out of this section of the ordinance and the design

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Gesario - Cross

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waivers and we come to the conclusions whether -- what we're doing, we will then have you -- well, they'll finish -- the opposer will finish with whatever expert witness he has, and then you will come back and tell us what you have supplied this planning board with and updates to your site plan, correct?

ATTORNEY HEHL: That is correct.

CHAIRPERSON SCHAEFER: And then,

Mr. Butler, you can then question those particular experts of the applicant, as will our professionals question, on any revisions that have been made to that plan. Okay?

Mr. Hehl, is that correct?

ATTORNEY HEHL: That's correct.

ATTORNEY BUTLER: -- Madam Chair --

Madam Chair, okay.

CHAIRPERSON SCHAEFER: Okay. Let's move on. Let's move on.

ATTORNEY BUTLER: Now --

CHAIRPERSON SCHAEFER: Please put your engineer on. Please.

ATTORNEY BUTLER: I'm going to leave the environmental for a little bit because we have two reports that will assist Mr. Linnus and he

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Gesario - Cross

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has -- Mr. Linnus, excuse me.

Now, we have an exhibit that is dated
2/12/21. It's OW-21 --

CHAIRPERSON SCHAEFER: Are you putting
that up on the screen?

ATTORNEY BUTLER: It was presented by
Mr. Lapatka.

CHAIRPERSON SCHAEFER: Are you putting
that up on the screen, Mr. Butler?

ATTORNEY BUTLER: Okay. He'll do
that. I don't have the capability of doing that.
This is OW-21.

CHAIRPERSON SCHAEFER: Does this have
to do with the design waiver and the ordinance,
Mr. Butler?

ATTORNEY BUTLER: Yes, that's what it
is, Madam Chair.

AL LAPATKA: Can everyone see that?

CHAIRPERSON SCHAEFER: Yes.

BY ATTORNEY BUTLER:

Q. Let me go back now to the engineer.

OW-21 has either code sections or waiver sections
which Mr. Lapatka said were not part of the plans
last testified at the -- at the last month. I will
ask you these questions as quickly as I can.

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Gesario - Cross

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Section 21-4.5, non-structural design.

Do you -- Mr. Lapatka's response was, "Did not use any low impact, nonstructural design."

Did you revise the plans to reflect 21-4.5?

A. No, the plans weren't revised with respect to this. And I can go into it. It's a little more of a lengthy answer. The Watchung ordinance, which basically mimics the DEP BMP manual, lists nine items that they're associated with nonstructural design. You don't need to comply with all of them. You do your best to comply with as many as you can. And I'll read them off:

Protect areas that provide water quality benefits or areas where --

Q. You don't -- you don't have to do that.

All is your -- your answer is yes, you provided them. I think you said yes. On my end, I have different testimony, but I don't think you have to go through them all.

A. Okay.

Q. Madam Chair, I understand, has indicated that she and the board feel as though we have to move a little faster, and I'm going to get a chance to ask you questions again later.

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Gesario - Cross

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A. Okay. The answer is the plans do --

Q. Okay.

A. -- use some nonstructural measures.

Q. Okay. All right. Land use source control plan, is that in your new plans, your revised plans?

A. No.

Q. Okay. Stormwater facilities map, is that provided in your new plan?

A. Don't call it that, but we do have a stormwater map with all the inlets shown. We don't call it that exactly.

Q. Well, what do you call it? I'm --

A. It's our grading and drainage plans.

And I also disagree that these are checklist requirements. They do not show up on the official checklist.

These are supplemental items that the

board could require, if they want.

Q. Okay. The engineer will respond to that. F, calculations. Two, soil reports not provided.

Why haven't you provided any soil reports?

A. I think I answered this before.

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Gesario - Cross

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Currently, we relied on the prior soils. We realize we have to do soils report, but it's not going to change the size of our basin because we assume zero infiltration. If we get good soils --

Q. Excuse me. Go ahead.

A. If we get the current report and the soils somehow change and we get infiltration, then great; we have a basin that's slightly oversized. We'll get infiltration and we move from there.

Q. Suppose your soil report shows that you have contaminated or hazardous soil?

A. It's a whole different story and it's out of my purview.

Q. But, of course, you won't know whether you have hazardous soils unless you do soils tests; is that correct?

A. Not necessarily for stormwater. Stormwater could be a couple of borings and a test pit. You might not uncover anything.

Q. Well, your environmentalist had previously testified that there was a -- there was a pond on the property, and he and I talked about what happened to the pond. It shows up on the maps on 29, 39, 49 and 59. And there was a pond, and he thought that that pond either became part of the

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Gesario - Cross

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wetlands or was filled.

A. Possible. Don't know.

Q. If that pond was filled with contaminant or hazardous substances, that would have

a great effect on this property; would it not?

A. Yeah. And I believe -- I mean, there's other people who could testify to this, that there are parameters in place for environmental testing that, you know, if that were the case, the site wouldn't be approved or there would have to be mitigation to take place. But I believe --

Q. I --

A. -- someone might have to correct me -- that a Phase 1, at least, has been done already on this site.

Q. Well, a Phase 1 is just a superficial surface examination; is it not?

A. Well, it determines if a Phase 2 is necessary. But I'm not an expert -- I'm not an expert in that.

ATTORNEY HEHL: Madam Chair, this is going way beyond checklist items. This is -- and --

ATTORNEY BUTLER: Ordinances and checklist items. These are --

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Gesario - Cross

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CHAIRPERSON SCHAEFER: Frank --

Mr. Butler, you know --

Frank, please do something.

ATTORNEY LINNUS: Well, Mr. Butler, I

think you've been asking questions, and you should continue to ask your questions if you have different items to discuss. A lot of the items that you're raising, you've previously received answers to. So let's move forward.

ATTORNEY BUTLER: Sure. I don't think

I have, but I will do as you tell me. The -- and there aren't that many more, Frank.

Q. The Chapter 28-602(F), Chapter 2, it requires conservation easement along watercourse, drainage, channels or streams is required.

Sir, you have not provided any such conservation easements along the watercourses, have you?

A. There will be easements associated with the DEP approval for the --

Q. Well, wait a minute --

A. -- riparian zone, the wetlands. If this is referring to something the town -- a separate easement by the borough, they would have to tell us what conservation easement they want along

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Gesario - Cross

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the watercourse. There's already going to be easements along it. Wetlands line, the wetlands buffer, the riparian zone, they will be established when the DEP approvals --

Q. They asked for public easements along the waterways on the site. You haven't provided them. It's right in our ordinance.

A. As far as --

Q. I didn't make it up. I didn't put it in the ordinance.

CHAIRPERSON SCHAEFER: Okay.

Mr. Butler, I'm going to stop.

Mr. Matias.

ENGINEER MATIAS: Thank you.

So I'll jump in. And the easements will be decided upon when the DEP gets their submission. The DEP will review the application package. The DEP will decide at what areas -- in conjunction with the applicant and the applicant's engineer as far as the location, the size and exact wording of the easement.

ATTORNEY BUTLER: I -- I don't think the DEP requires a conservation easement along the watercourse.

CHAIRPERSON SCHAEFER: Whether the DEP

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Gesario - Cross

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requires it or not, that is the testimony of our engineer. We're not going to debate our engineer's testimony. Let's move on.

ATTORNEY BUTLER: Chapter 28-606, subparagraph (H), sight triangle easements. I don't see --

CHAIRPERSON SCHAEFER: He already answered that question.

ATTORNEY BUTLER: Excuse me?

CHAIRPERSON SCHAEFER: Let's move on.

He answered the question earlier in his testimony. Let's move on.

Sidewalks, he also answered that.

ATTORNEY BUTLER: I don't care about sidewalks.

CHAIRPERSON SCHAEFER: Residential driveway, he also answered that.

Shall I continue or shall you continue moving on? I'm going right down the code section.

ATTORNEY BUTLER: I think I'm through

-- I think I'm through with this exhibit, but I -- I haven't heard any testimony about sight triangle easements. That's a recorded document.

ATTORNEY HEHL: He answered that none of the -- that it did not go onto the private

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Gesario - Cross

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property, that it was on public right-of-way.
That's -- he said that.

CHAIRPERSON SCHAEFER: Yes, he did,
Mr. Butler.

ATTORNEY BUTLER: Okay. All right. I
-- I think the ordinance requires a sight --

CHAIRPERSON SCHAEFER: Excuse --

ATTORNEY BUTLER: Okay. Okay.

CHAIRPERSON SCHAEFER: You'll read the
transcript, you'll listen to the video, you'll hear
that he indeed testified to that.

ATTORNEY LINNUS: Maybe I can help
out. Mr. Butler, you will have an opportunity at
the close of this application, whenever that occurs,
to make a closing statement, a closing argument,
bringing together whatever position your client is
taking so that the board, after they hear
everything, and after we get to that point and after
everyone makes their closing statements, we'll have
an opportunity to digest everything and ultimately,
hopefully, make a decision on this application.

ATTORNEY BUTLER: All right. Listen.
I'm going to -- I'm going to turn it over to my
engineer. I think that's what the Madam Chair --
she doesn't want me --

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Gesario - Cross

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ATTORNEY LINNUS: That's a good idea,
Mr. Butler.

ATTORNEY BUTLER: Huh?

ATTORNEY LINNUS: That's a real good
idea.

ATTORNEY BUTLER: And it's a
continuation of my position -- yeah, I'm going to
call my engineer.

I just -- I just think the Weldons are
being not treated -- being[sic] -- fairly during
this hearing. I'll tell you that, and I don't mind
telling you that.

CHAIRPERSON SCHAEFER: Well,
Mr. Butler --

ATTORNEY LINNUS: On the contrary --
to the contrary, Mr. Butler. On behalf of the
board, I think the board has bent over backwards
giving everyone an opportunity, including your
client and you, to present whatever information you
think relevant and necessary to support your
client's case.

ATTORNEY BUTLER: I think the -- I
think the record --

ATTORNEY LINNUS: The record
will speak for itself, Mr. Butler -- excuse me. The

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Lapatka - Direct

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record will speak for itself.

ATTORNEY BUTLER: That's right. There
is no doubt about that.

A L E X A N D E R L A P A T K A, P.E.,
previously sworn, continues testifying as follows:

E X A M I N A T I O N

BY ATTORNEY BUTLER:

Q. Okay, Mr. Lapatka, you've heard the applicant's engineer testify; is that correct?

A. Yes.

Q. All right. Are you in a position to respond?

A. Yes.

Q. Without me cross-examining him any further?

A. Yes.

Q. Okay.

A. Okay. Mr. Gesario gave an explanation about how the flood hazard area is determined, and I agree with that. And basically that is consistent with what I have been saying up to this point. The plans have been revised. The 100-year floodplain line was taken off. And the flood hazard area line was put on there.

That line's a little bit larger. I'm

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in general agreement with it for most of the length of that except by the playground. I think the flood hazard area goes into the playground. And it is a matter of interpretation because of the irregular topography on this lot, but it's my opinion that in that one area of my exhibit is correct. I'd like to get an exhibit on the board.

THE WITNESS: Okay, can everyone see that?

CHAIRPERSON SCHAEFER: No.

THE WITNESS: Just hold on a second. Now?

CHAIRPERSON SCHAEFER: Yes.

THE WITNESS: Okay. So the -- I'm referring to OW-2. I previously testified about this. Mr. Gesario made a statement that I calculated the riparian zone within the Union Avenue right-of-way when I figured out the disturbance area, and I never did testify to that. I think his comment was a little misleading there, and this exhibit clearly shows the area of disturbance that I proposed. And I talked about that previously. There is -- I have no need for his

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digital files in order to perform such calculations.

Mr. Gesario said that the ditch or the

tributary was part of the FEMA study, and that is not correct.

There was a comment that the zero net

fill requirements of DEP will be met for a future

plan. The plan that the board has shows some fill

being placed in the flood hazard area. DEP has a

requirement that the -- an equal area be used as

compensation. So, in other words, it would have to be dug out.

And it's my opinion that that should be

shown to this board because that impacts other areas

of the site that may have to be disturbed and also

impacts the amount of soil movement.

Mr. Gesario said that they provided

street trees in a number of one shy of what the code

would require. The code requires 11 trees. And it

says that they have to be at a 40-foot minimum

spacing. This is not a big issue and something for

the board to determine, but 11 trees can certainly

be planted there. They don't have to be 40 feet

apart. The board says that's a minimum spacing --

or a maximum spacing, I should say.

And the plan notes that there are ten

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trees proposed as shade trees, however, if you count them, there's only 9. So 11 are required by code.

The plan notes that there are 10, but if you count the trees proposed, there's actually only 9.

Mr. Gesario said that the landscaping area within the parking lot is 6.27 percent. I disagree with that. Again, I did my own calculation on that, and it is less than 5 percent.

The issue about the sewer, I just want a little bit of explanation here. The prior plan before this revision showed the sewer actually under some of the telephone poles, directly under the telephone poles, and I think everyone realizes that's just not a practical -- it is not something that would be approved, nor is it good for anyone. The plan was revised, and it was shifted slightly. It's still pretty close to the utility poles. That's a matter for the utility company to determine.

And if a utility were crossing under a power line or near a pole at some angle or whatever, yes, that's done all the time. But the sewers, in my experience, have never been run right under the utility poles.

If, for instance, that's no good, if

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the plan is not acceptable to the utility company, it would have to be placed in the roadway or within the park across the street, at which time the easement would be needed. So that's when the easement would be needed.

The riparian zone regulations have changed since 2007. They are now more restrictive, and I think, at best, it's a stretch to compare this plan and a future DEP application with the previous DEP approval. It's kind of apples and oranges.

Some of the items that Mr. Butler had mentioned, Mr. Gesario responded to by saying that they are not checklist items. I agree they're not checklist items, but they're actually items in your own code. Okay? If you have a code on something, those items do not have to appear on a checklist.

A Phase 1 was done. I heard about that. And part of the previous testimony is that there was a pond there that was filled in. And the purpose of a Phase 1 -- and I'm not an environmental expert, but this is just common knowledge -- is that Phase 1 basically determines whether or not there is a need to go any further and do actual testing. And I think because there was a pond there that was

filled in, some testing certainly has to be done.

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As far as the sight triangle easements,
the purpose of the ease -- a sight triangle easement
is different from a sight line. Okay. The sight
triangle easement is a document that would protect
the integrity of the sight distances for drivers in
the future. Our traffic engineer will talk about
the sight lines of both the driveway and the
intersection.

Okay, the site plan -- the site plan
now shows the flood hazard area, as opposed to the
100-year floodplain as the previous revision did.
And I said before I generally agree with that except
by the playground.

I'm going to try to put up OW-1 here.

CHAIRPERSON SCHAEFER: Can I ask you,

Mr. Lapatka, when you put it up, can you place your
cursor to where you're talking about, please?

THE WITNESS: Sure.

So the -- this red line is the flood hazard line, and this brown/tan line was the 100-year flood line which was shown on the previous site plan. The site plan now shows the flood hazard line, and I generally agree with that except for the area by the playground. I think it comes up into the playground a little bit. If you look at the

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recently revised sight plan, you see that it's all out of the playground. So I have a -- you know, it's a relatively minor disagreement there.

This area over here by the driveway shows that some of the parking spaces and the driveway fall within that flood hazard area. There's going to have to be a balance to fill in the floodplain, so there's going to have to be some other area on-site that they pick out to excavate, and so that's additional disturbance and soil

movement. And I think the board should really hear about it, especially given the fact that the applicant says they already have the plans to do it. Let's see. I'm just going through my notes. I'm sorry.

CHAIRPERSON SCHAEFER: No problem.

THE WITNESS: The grading, the grading and drainage plan, shows -- it's a light line, and maybe it -- that's the applicant's plan, but it's right over here, okay; you see where I'm placing the cursor?

CHAIRPERSON SCHAEFER: Mm-hmm.

THE WITNESS: And the elevation -- and the driveway's already very steep going down from Union Avenue to the ball field. There's a gravel

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driveway. I believe there's a couple bollards or protective barriers out front.

And the Union Avenue in that area is

being proposed to be raised about a foot. So, in my opinion, in order to have any kind of safe driveway, that grade is going to have to be chased or transition down into the park, and the grading's not going to end right at the right-of-way line. I think it has to go into the park. The grading plan on the latest revision does not show the proposed grades of the -- of the driveway.

Let's see. Exhibit A-9 shows that the drainage area was some 19 acres or so and that the applicant relied on -- is my exhibit able to be seen?

CHAIRPERSON SCHAEFER: Yes. Thank you.

THE WITNESS: And the applicant's drainage area is this light blue line over here. And it was reportedly based on a USGS map. A USGS map is a very small-scale map where 1 inch equals 2,000 feet, as opposed to a site plan where it might be 1 inch equals 20 feet. And for small drainage basins -- and when I say "small," I mean less than a square mile, you know, or so, or possibly even half

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a square mile, but generally a square mile -- the DEP does not generally permit you to use a USGS map. I performed my own study, and I'm outlining another drainage area in red which I believe is the drainage area that's over 50 acres. And what I relied upon is the town topography maps, the Watchung topography maps, which are much more accurate than the USGS map. And we did a field investigation, and this is what we came up with. There's -- you have that townhouse development on Bonnie Burn Road, and if you look at those plans even, you'll see that the stream that starts there goes under Bonnie Burn Road, under the old restaurant property and then reemerges into an open ditch which flows down to New Providence Road. CHAIRPERSON SCHAEFER: You're saying -- excuse me, you're saying townhouses on Bonnie Burn?

THE WITNESS: Yeah. The stream --

CHAIRPERSON SCHAEFER: What town --

THE WITNESS: The stream starts there.

And it's shown on their map, and I believe it's on their plans, and I believe --

CHAIRPERSON SCHAEFER: What townhouses on Bonnie Burn?

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THE WITNESS: Is it condos? The --

CHAIRPERSON SCHAEFER: I'm sorry,
where on Bonnie Burn?

THE WITNESS: I'm sorry. BNE, the BNE
site plan.

CHAIRPERSON SCHAEFER: Oh, that's not
-- go ahead.

THE WITNESS: So I utilized the data
from that plan, and that helped me assess the
drainage area. And I agree what that plan shows;
the plan shows the stream starting on that property
and going under Bonnie Burn Road into the lot of the
-- the former restaurant there -- I forgot what it
was called -- underground and then reemerges into
the ditch which flows to New Providence Road and
under New Providence Road. So I'm coming up with a
drainage area of over 50 acres.

Now, DEP, in determining these drainage
areas -- and, again, I used that -- the topography
on that plan, I used the -- and the town topography,
as well as a Google map.

The DEP also uses another source, as
I'll call it an acid test for drainage areas, and
that is a program called StreamStat. It's on the
Internet. And it'll quickly calculate the

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approximate drainage area, you know, for any point along the stream. Okay? And if you use that program, it comes out to 50 acres upstream of New Providence Road. So downstream of New Providence Road, it would actually be a little more than 50 acres.

But that's just -- that's just a rough acid test that they use to make sure that something makes sense. Okay? So that's what I based my testimony on the drainage area on.

Let's see. Section --

ENGINEER MATIAS: Madam Chair?

CHAIRPERSON SCHAEFER: One second, Mr. Lapatka.

ENGINEER MATIAS: Just a quick question for Mr. Lapatka, if I may, please?

THE WITNESS: Yes.

CHAIRPERSON SCHAEFER: Yes.

ENGINEER MATIAS: Did you also take into account any potential storm sewers that are along Bonnie Burn Road and the conveyance of that water?

THE WITNESS: Yes.

ENGINEER MATIAS: I'm sorry?

THE WITNESS: Yes.

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ENGINEER MATIAS: Okay. Thank you.

ATTORNEY BUTLER: Who asked that question?

CHAIRPERSON SCHAEFER: Our board engineer, Mr. Butler.

ATTORNEY BUTLER: Thank you.

THE WITNESS: I'm having problems getting the people back on the screen. Let's see. Section 28-401(A) basically says -- and Mr. Butler read it before, I'm not going to read it again. But it basically says you cannot fill place -- you cannot place fill in the flood hazard area. And the flood hazard area in that context is referring to the 100-year floodplain. Now, there was testimony that because the flood elevation that DEP uses is higher and the floodplain is larger that the DEP regulations supersede all of the Watchung codes in that regard, and I disagree with that. The Watchung code, in certain aspects,

is actually more restrictive. Okay? For instance,
in the 100-year floodplain, it says fill shall not
be placed. The DEP regulations will say in the
flood hazard area, which is a greater area, the fill
has to be balanced out. So there's two totally

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different things.

And for this particular project, the
Watchung ordinance in that respect is actually more
restrictive. That's -- one caveat, I'm assuming
that there is actually a viable plan for flood
storage compensation.

Let's see.

CHAIRPERSON SCHAEFER: Mr. Lapatka,
can you get your screen off so that we can go to a
full picture, please?

THE WITNESS: Yeah, I will do that.

ATTORNEY BUTLER: Sorry, Madam Chair.

CHAIRPERSON SCHAEFER: That's okay.

THE WITNESS: There we go.

CHAIRPERSON SCHAEFER: Thank you.

THE WITNESS: Sorry.

CHAIRPERSON SCHAEFER: Thank you.

THE WITNESS: And then just a couple
comments about the drainage system.

The drainage system is designed as an
infiltration system. I heard -- I did, however,
hear the testimony that it may really not be an
infiltration system, but it is designed as an
infiltration system. And that design, whether or
not water infiltrates or not -- okay? -- is subject

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to certain regulations about the distance above the
water table and, you know, things like that.

We -- Section 21-9.3.F.2 of your code

says: When the proposed stormwater management

control measures depends on a hydrologic properties

in soils, then a soils report shall be submitted.

The soils report shall be based on on-site soil borings and soil profiles.

And I'm not going to go into it, but for reasons previously that I testified to, I believe that the soil test should be done now. And I really don't see a valid reason why they're not. And without them, your engineer cannot really properly evaluate the -- the drainage system. And, again, this is particularly in light of the fact that there was a pond here that was filled with material that we know nothing about. So that's -- that's that.

Hold on a second. I'm going to mute.

Okay. I spoke before about the drainage area of the -- of the tributary. I believe it's over 50 acres which would, under DEP requirements, say that you would have to prepare a flood study for it. Now let's forget about DEP requirements; let's talk about Watchung.

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Watchung analyzes the 100-year storm.

And there is no minimum -- there is no minimum drainage area under which you don't have to do a drainage calculation for, you know -- for that stream. Okay? Theoretically, it could be 1 acre, and you would still have to do it.

And I admit if it was 1 acre, no one would be questioning it. But, in my opinion, the 100-year flood study, in the context of Watchung, should be performed on that tributary and determine whether or not there are any adverse impacts of the flooding conditions on this project.

I may have said -- I may have said this before -- I'm not quite sure -- but my analysis indicates that the water will overtop the road and will flow onto the proposed day care center project. Now, I don't -- I don't know exactly how much that's going to be because a study's not been done. I haven't done an exact study, but I want to point out that the floor level or the floor elevation of the proposed building is about 5 feet lower than New Providence Road.

So, you know, to me, it is an issue, and I think it's something that really should be explored to make sure that we don't create a

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problem. There were photos shown before that the road floods and, you know, someone made the comment, well, it doesn't happen very often or it's very rare, but we're talking about a 100-year storm here that your code talks to. So you have to protect against these things for a 100-year storm, yeah, and --
ATTORNEY HEHL: Madam Chair --

THE WITNESS: -- certainly in light of the occupancy -- of the occupants that you're going to have in this building, you're going to have, you know, basically infants and young children.

ATTORNEY HEHL: Madam Chair, pardon me for interrupting, but this -- this is going beyond ordinance -- this is, again, the same testimony we heard from him over the last couple of hearings, frankly being critical of our design and touting his design. And where we really, you know -- it's our project. It's our project, it's our design. Again, this is adding nothing new that we haven't heard already from Mr. Lapatka.

THE WITNESS: Well, I'm not touting my design because I don't have a design here, number one.

And, number two, I'm putting -- I'm citing sections of the code, and I'm putting them

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into context for this board so they can determine whether or not they want to consider that. Okay?

I think the rest of it has really been spoken -- spoken about already. I think that's it.

CHAIRPERSON SCHAEFER: You're done?

ATTORNEY BUTLER: Madam --

THE WITNESS: Yes.

ATTORNEY BUTLER: -- Chair, I think he's done at this time.

CHAIRPERSON SCHAEFER: I'm sorry, Mr. Butler?

ATTORNEY BUTLER: Yeah, no. I think he's -- I think he's concluded at this time, Madam Chair.

I'm sorry, you didn't hear me? I'm not sitting right on top of the speaker. I'm sorry.

CHAIRPERSON SCHAEFER: That's okay.

Okay. So you're -- you're done and I can go on to my professionals asking questions of either of the engineers. Correct, Mr. Butler? I'm good to do that? Mr. Butler?

ATTORNEY BUTLER: I heard

"Mr. Butler." Go ahead.

CHAIRPERSON SCHAEFER: I am --

ATTORNEY BUTLER: What did you say?

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CHAIRPERSON SCHAEFER: I am now moving on to have my professionals, my planner and my engineers, to ask questions of your engineer and of the applicant's engineer. Okay?

ATTORNEY BUTLER: That's perfectly satisfactory for the objector, Weldon.

CHAIRPERSON SCHAEFER: I want it on record, Mr. Butler.

Okay. Our -- Mr. Matias, Mark, please ask --

ENGINEER MATIAS: If you don't mind, I'll start first with just a couple of questions for Mr. Gesario.

ATTORNEY LINNUS: All right, Mr. Matias -- Ricky, Ricky, just my --

ENGINEER MATIAS: Yes.

ATTORNEY LINNUS: -- you know, I can't remember what I did yesterday. Did I swear you in at the last meeting?

ENGINEER MATIAS: Yes, you did.

ATTORNEY LINNUS: Okay. You remain under oath. Okay. Go ahead.

ENGINEER MATIAS: Thank you.

Mr. Gesario, so is it your testimony that you're applying the more stricter of the two

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flood lines here in this application?

GERRY GESARIO: That's correct. We made the comparison of the state mapping which was pre-2013 compared to the "FEMA plus 1 foot" and used the higher elevation of those two.

ENGINEER MATIAS: Okay. And to that effect, the riparian zones don't change because of the -- the flood line, correct?

MR. GESARIO: Correct. Riparian zones are -- are separate from flood lines. They could be inside a flood hazard line; they could be outside a flood hazard line. They're separate and distinct.

ENGINEER MATIAS: Right.

And when you calculated the -- can -- I just want to touch a little bit on the acreage of the tributary, as that was a -- one of the last things we talked about.

Can you just go a little bit over how you calculated the 19 acres. And did you use -- or

did you take into account the local storm sewers, or Bonnie Burn Road, the Conover Road, et cetera.

GERRY GESARIO: No, we simply, as I stated, used the USGS map with satellite imagery. We did have an opportunity to check StreamStats while we were waiting. We come up with 46.4 acres

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at the confluence with Green Brook.

So, you know -- again, this is -- ultimately, DEP will decide. I mean, I bring up the prior approval only to say that they've already weighed in on this once before.

ENGINEER MATIAS: Right. That was going to be my next question, was -- you're obviously going to sign and seal these plans and submit them to DEP?

GERRY GESARIO: Yes.

ENGINEER MATIAS: So DEP is going to review that plan. And if they request changes to your flood line -- because it is an interpretation

-- obviously, you have to make those changes?

GERRY GESARIO: Correct.

ENGINEER MATIAS: And do you believe
that they may or may not make changes to the flood
line in regards to the tributary?

GERRY GESARIO: I do not. I feel that
the line we used, at this point, is very
conservative. When I get the chance to get before
them, I'm going to argue to move it in a little bit,
but we'll see. So we --

ENGINEER MATIAS: And --

GERRY GESARIO: -- think we're showing

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the worst case.

ENGINEER MATIAS: And on that note,
have you had -- you mentioned informal discussions,
but have you had a pre-application meeting with them
at all?

GERRY GESARIO: I did have one pre-app
a while back; I think it was pre-COVID.

ENGINEER MATIAS: Okay.

GERRY GESARIO: Since then I've had just telephone conversations with them, but that's it.

ENGINEER MATIAS: Have you had any discussions with them in regards to the soil tests and the percolation rate?

GERRY GESARIO: Not with the DEP, no.

ENGINEER MATIAS: Okay. So as you stated before, as part of this application, you would still be requesting a waiver of the infiltration requirement, correct?

GERRY GESARIO: We would plan on doing new soil tests.

ENGINEER MATIAS: Okay.

GERRY GESARIO: If they come back similar to the ones we have from 11 years ago, then, yes, we would request a waiver from the requirement

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for groundwater recharge.

ENGINEER MATIAS: Okay. Madam Chair,
I don't have any further questions for Mr. Gesario.

CHAIRPERSON SCHAEFER: What about
Mr. Lapatka?

ENGINEER MATIAS: No. The one
question I had for him is what was answered about
the storm sewer.

CHAIRPERSON SCHAEFER: Okay. Mark?

ENGINEER MATIAS: Thank you.

CHAIRPERSON SCHAEFER: Thank you.

Mark, do you have questions?

PLANNER HEALEY: No, I don't have any
questions. I just have one point of clarification,
which was Mr. Butler referenced my report a few
times and that I had indicated or made some
statements about the tributary. And, basically,
just to clarify what that was, my main -- one of my
main points was that, with respect to Green Brook, I
think the ordinance is abundantly clear that the
100-year floodplain on the FEMA maps apply. And at
the time that I wrote the memo, you had only heard
testimony from Mr. Lapatka who is indicating that
there should have been some separate study with
respect to the tributary.

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We've heard now different testimony from the applicant's engineer. And I continue to defer to the board's engineer to basically give an opinion to the board. I'm not qualified as an engineer to make that determination, so I would defer on that to the board engineer.

CHAIRPERSON SCHAEFER: Okay.

ENGINEER MATIAS: If you want, I can definitely jump in on that, and I think it's been -- we kind of just covered that with Mr. Gesario. If the DEP requests that be studied, they will.

CHAIRPERSON SCHAEFER: Does the planning board have any -- the planning board members have any questions of either of these two engineers? So what I'm going to do now --

COUNCILMAN MARTINO: Madam Chair, I do have a quick question.

CHAIRPERSON SCHAEFER: Councilman.

COUNCILMAN MARTINO: Councilman Martino.

CHAIRPERSON SCHAEFER: Yes, go ahead.

COUNCILMAN MARTINO: I have a quick question for the developer's engineer on Exhibit A-9 which shows what you figured as the 19 acres draining into the New Providence Road culvert. I

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was looking at that plan. That actual topography is a little outdated, I believe. It still shows the restaurant on Bonnie Burn Road. It does not show all of the new grading that was done to increase Weldon's blast zone for the quarry.

Is there any reason why it was not a current plan? And do you think that it would change anything since the -- I'm not sure -- they said piping was installed to connect, I guess, underneath all of the grading that was done, they installed a large berm and other objects along Bonnie Burn Road. GERRY GESARIO: Yeah. We used the latest USGS map that was available. If changes were made to topography in and around the area, could the area have changed? Yes. Did it change two and a half times? I would hope not, that someone would allow that much more area to drain to an existing culvert.

So we used the latest USGS map. If there are changes, it's possible it's a little more. We don't think it's more to the tune of 50 acres. And, again, as the board's engineer stated, the DEP, who's already ruled on this once in one application, will have the final say whether this stream requires further study.

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COUNCILMAN MARTINO: I'd like to ask

Mr. Lapatka that same question. Did he take into consideration the removal of all the homes along Bonnie Burn Road? I guess that would be the east side, which I believe Weldon removed to increase their blasting area.

Was that taken into consideration also, or did you use the same -- I'm going to call it an outdated map because it really isn't current?

AL LAPATKA: Well, first of all, the USGS map is something that we did not use because I don't think it's appropriate to use it for this purpose on this particular site because the drainage area is small, and a little variance is going to have a big change in the answer.

We did use the -- the Watchung topo maps which are -- have a lot more detail than the USGS, and we used that BNE site plan information. We did do a field walk up and around the whole drainage area. And we edited our drainage basin line to allow for, I guess, the current conditions, I'll call it. But we did not -- we did not actually perform a survey, you know, survey of the stream, but we tried to estimate it the best we can as it exists today.

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COUNCILMAN MARTINO: So, basically, we have no underground stormwater information -- okay? -- with inverts, discharges, location and direction of this 50 acres. I didn't see -- I saw a map on the screen. Was the board provided that same map? Because I don't remember getting it.

AL LAPATKA: No, they weren't. I just prepared that a couple hours before this hearing. I received A-9 yesterday, and that was, basically, the quickest I could react, and that's how come I didn't give it to the board before. On every other occasion, I always tried to give it to the board -- my materials to the board at least ten days in advance, but I -- this was a reaction to A-9, which I just saw yesterday.

COUNCILMAN MARTINO: Because I believe there's really no way for us to understand exactly how this water flows and exactly where it's going unless we have a true stormwater map.

AL LAPATKA: Right. And I --

COUNCILMAN MARTINO: So again --

AL LAPATKA: Yes. I totally agree

with you, and I think that's really the obligation of the applicant to prepare.

I will -- I will say one thing is that

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we did walk up and down the road. We looked in all the catch basins. We saw which way the water was flowing. We had two guys out there, and in some cases, you couldn't tell if pipes were connected. They would bang on one and hear it in the other, so, you know, we put a little effort into it. It wasn't just, you know, walking around the property; we actually looked into each storm structure that we saw.

COUNCILMAN MARTINO: Well, I'm assuming that all the work that was done on the Weldon site over the last few years, there would be a set of plans, I'm assuming, that had to be approved by the borough to actually change the zoning, okay, to a quarry, removal of all those structures and all of the regrading that was done on

that site. Can we receive those?

AL LAPATKA: I'm not aware of any such plans. When you say "structures," I think -- do you mean the buildings and not the drainage structures; is that correct?

COUNCILMAN MARTINO: Well, there was -- there was probably -- and don't hold me to it, there was probably at least a half a dozen homes, and there was also a large restaurant there that was

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all exposed. And somebody mentioned -- somebody mentioned something about installing underground stormwater. So I'm assuming there would have been a set of plans submitted to the borough. That's before my time, obviously, but --

AL LAPATKA: I don't think I mentioned installing any underground storm drainage in that area at all. Possibly something I said was, you know, misinterpreted.

We did look into the culvert that flows

from the opposite side of Bonnie Burn, you know, towards the old restaurant property, and we saw that the water does flow across the street. But we -- I don't -- I'm not aware of any storm drainage construction there.

COUNCILMAN MARTINO: Well, because I remember it was a storm drain or a -- whatever you guys want to call it, a tributary or a ditch, that was on the east side of the restaurant that ran behind it. And, obviously, that has to be gone now because there's probably 150- or 100-foot berm in its place so you know --

AL LAPATKA: I think that ditch is still there.

COUNCILMAN MARTINO: Okay.

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AL LAPATKA: But I'm not -- I'm not sure because I didn't see it before, I'm not sure what might have been there, you know, two or three years ago, but there is a ditch -- there is a ditch

there.

CHAIRPERSON SCHAEFER: Pete, let me just tell you. When we did the Weldon -- you know, designing the quarry area, yes, that ditch was there. It's actually a stream. It remains. The berm is on the other side of it. So none of that drainage or stream area has changed. And I'm sure that Theresa will get you a set of plans that you can look at, or you might even just look on the website.

Are you good with your questions?

COUNCILMAN MARTINO: So, yeah, like I said, trying to get -- I really think we need stormwater information if we're going to follow this -- this path of investigation. Thank you.

AL LAPATKA: I'm in total agreement.

CHAIRPERSON SCHAEFER: Rick, what is your input, please?

ENGINEER MATIAS: Thank you, Madam Chair.

My thought is it's up to the applicant

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to put something together for us. He has. He's presented it. If he would like to revise that and maybe take a deeper look, he certainly can. The DEP will call that out when they submit for their permit. We don't necessarily have to. I think that we've -- we've heard testimony to that effect from both sides, that we don't have to require that they perform this test.

But could they? Sure. Could the board request that of them? Yes, they could. But, again, they don't have to it as part of this approval.

CHAIRPERSON SCHAEFER: Why would we not want to require them to do that?

ENGINEER MATIAS: It almost comes down to the chicken and the egg scenario, which Mr. Gesario mentioned before. Most applicants of this nature -- or applications of this nature run simultaneous or slightly behind. So most developers and applicants, they don't want to submit to the DEP because of the revisions, because of the costs, until they have a planning board approval.

CHAIRPERSON SCHAEFER: So this would be covered once they were submitting to DEP?

ENGINEER MATIAS: I believe it would.

It could also spur changes to the

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approved plan, as was noted already. But this is a preliminary approval; they do have to come back for final approval.

CHAIRPERSON SCHAEFER: Correct.

AL LAPATKA: Yeah. I would -- I would think that the board would be interested in the flooding aspects of the tributary at least for the 100-year storm, which is in their ordinance.

CHAIRPERSON SCHAEFER: Well, that's going to be up to the board how they want to handle it, if it's covered with the DEP, and this is a preliminary -- if it is approved, it's preliminary, they're coming back for final.

Like our engineer said, it is the chicken and the egg. It's going to be up to the planning board members how they want to move forward.

What I want to do now --

ATTORNEY LINNUS: I might point out --

I might point out, Madam Chairperson, that a preliminary approval is a significant approval. And generally the preliminary approval protects the developer from any changes in zoning that might occur after preliminary, except for health and welfare.

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So I would -- if it gets to the point where the board is granting preliminary, it will be a condition of preliminary -- and I'm sure the applicant's attorney has no objection -- that in the event there's any change in the design required by any outside agency, that that is a condition of preliminary that they come back to the board to take another look at preliminary.

For example, if the DEP determines that the structures have to be relocated, that the playground area is no longer in an area where it was proposed, if there's any change at all, they'd have to come back as a condition of preliminary, to this board, to change the design or the improvements or things of that nature.

And I'm sure Mr. Hehl will agree with me on that.

ATTORNEY HEHL: Yeah, we're well aware of that.

And perhaps, if I could also just -- I believe Mr. Gesario wanted to just briefly comment.

GERRY GESARIO: Just one quick point regarding studying all this off-site and whether the drainage area is 19 acres, 25 acres, 40 acres. It's our position that this tributary was already part of

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the state study and the FEMA study and it's incorporated with the flood hazard.

So the DEP, who once has already agreed with that, it's going to go back to them for that same interpretation.

So studying it, to us, isn't worth it because we believe it's already included in the state study and the mapping, the FEMA mapping. It doesn't say "limit of study." It's shown. There's a little blue line that shows the tributary and the floodplain going around it. We think it's already studied.

AL LAPATKA: I would totally --

GERRY GESARIO: The DEP will determine that.

AL LAPATKA: I would totally disagree with that statement.

GERRY GESARIO: You disagree that DEP has that jurisdiction?

AL LAPATKA: Let me finish, please. Okay?

GERRY GESARIO: No. You had your turn.

CHAIRPERSON SCHAEFER: Let's play nice, guys.

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AL LAPATKA: The DEP -- the DEP flood study and/or the FEMA flood study do not incorporate the tributary into those studies.

GERRY GESARIO: Your opinion.

CHAIRPERSON SCHAEFER: Rick, what is your -- your input on that?

ENGINEER MATIAS: So it's a little bit of both. They do take into account overall amount of water going towards the stream, but they do not calculate the actual flood area of the tributary. So, in a way, they're both correct because it does take into account the amount of water that is going to the stream and from all surrounding areas. That is what they use to determine the elevation. If there is no -- if they didn't take into account all of the water going towards the stream, the elevation of the flood line would be relatively low. But they decided in their study not to study the tributary further.

CHAIRPERSON SCHAEFER: Would the DEP
require them to?

ENGINEER MATIAS: They could. They
could certainly do that as part of their flood
hazard permit application, yes. Once they sit down
and review it, they could request that the applicant

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do that study now.

And now, I know Mr. Gesario has said
back in the previous application that that wasn't
necessary. There is pretty frequent change at DEP
in how things are viewed at DEP. They may request
it this time; they may not.

The reviewers at DEP do have a say, and
they'll make that determination when that
application is submitted.

AL LAPATKA: Typically, just to shed a
little bit of light on this, the DEP regulations
would require that any stream over 50 acres in
drainage area be studied. Okay? The FEMA studies

and the DEP studies typically do not study streams that have a drainage area of less than 1 square mile or, in some cases, a half a square mile, which is 320 acres. 640 acres is a square mile.

And the reason they do that -- and that's a rule of thumb that they have and have had for decades -- is that they don't have enough money to study every little stream throughout the state, so they focus on the major ones. But that's why it's not studied.

CHAIRPERSON SCHAEFER: Rick?

ENGINEER MATIAS: I'll say -- I'll add

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a little bit to that and say, actually, that's why a lot of municipalities don't study them either.

There is language in the legislation that says the municipalities are supposed to study the streams, but they don't because that would mean an -- that would be an exorbitant amount of costs.

So generally what's done is when it's

-- when there's development in the area and they apply for a flood hazard permit, the DEP decides whether it's in the best interest of the public for the applicant to do that study.

ATTORNEY HEHL: And as we've said, this project is going to be -- we're seeking preliminary. This project is going to be subject to DEP submission and approval, and I certainly 100 percent concur with the board attorney that -- that this -- if it's determined that there's changes that need to be made, we'd be back before the board.

CHAIRPERSON SCHAEFER: I have another question for you, Rick. They were talking -- both engineers were -- well, actually, Mr. Lapatka was talking about the Phase 1 study, environmental study. I'm familiar with this because of what I do. So what would cause or what should cause a Phase 2 study?

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ENGINEER MATIAS: I believe that would

be when they submit to the NJDEP for the day care license. They do a review of the submission and then determine whether or not an additional study would need to be made. That's -- that's my understanding of it. I'm not an expert in that, but that's how I understand it. If Mr. Gesario understands it a different way, then he can certainly jump in.

CHAIRPERSON SCHAEFER: Mr. Gesario, do you --

GERRY GESARIO: No. As I stated, that is not my area, the environmental Phase 1 and Phase 2. I'll defer to Mr. Hehl if we have anyone who could speak to it. I think it was testified at the first hearing but I --

CHAIRPERSON SCHAEFER: I'm sorry. You got cut out.

ATTORNEY HEHL: Yeah, Mr. Jarmel had covered that.

CHAIRPERSON SCHAEFER: You know what, Don, you got to go off -- you've got to go on mute because I couldn't hear his response or Mr. Hehl's response. I'm sorry.

Don, can you go on mute for a moment?

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Your feedback. Thank you.

I'm so sorry, Mr. Gesario and Mr. Hehl.

Can you repeat what you just said?

GERRY GESARIO: What I just said is

I'm not an expert in environmental Phase 1 or

Phase 2, but I thought we did provide some testimony early on, but I was deferring to Mr. Hehl to confirm that.

ATTORNEY HEHL: Yes. And that's

correct; that was provided by Mr. Jarmel early on.

CHAIRPERSON SCHAEFER: Okay. Don, you had a question?

VICE-CHAIRMAN SPEENEY: First, a

comment. The document that Mr. Lapatka showed

should be marked into evidence. That's the one that he just made tonight.

ATTORNEY LINNUS: You're absolutely

correct, Mr. Speeney; it should be marked.

ATTORNEY BUTLER: I'll get it to you

tomorrow, Frank. I'll get it to you tomorrow.

ATTORNEY LINNUS: He displayed the

exhibit, so it should be marked tonight.

ATTORNEY BUTLER: Also, I'll get to

you all of Weldon's exhibits that I have not given to you already. I'll bring it up to date.

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CHAIRPERSON SCHAEFER: But,
Mr. Butler, can you mark the exhibit that
Mr. Lapatka showed tonight?

ATTORNEY LINNUS: And we'll take the
information tomorrow, but I want that exhibit marked
tonight.

ATTORNEY BUTLER: Why don't we mark
this -- because I'm not so sure. Why don't we mark
this OW-30?

(Exhibit OW-30, drainage area exhibit,
was marked for identification.)

CHAIRPERSON SCHAEFER: Okay. And then
you'll get that to us tomorrow. Thank you.
Go ahead, Don.

VICE-CHAIRMAN SPEENEY: Yeah. The
question I have is around the 19 acres, and the
50 acres and the drainage. And this goes to Rick.
What's the -- what's the impact and the
difference between the two again?

ENGINEER MATIAS: Well, the difference
between the two would be that there is -- the larger
drainage area would essentially be sending more
water towards the tributary.

VICE-CHAIRMAN SPEENEY: Does it affect
the riparian zone line or the flood hazard line?

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ENGINEER MATIAS: It does not affect
the riparian zone line. It -- it would affect a --
a flood hazard line.

VICE-CHAIRMAN SPEENEY: Okay. So --

ENGINEER MATIAS: And it's -- go
ahead.

VICE-CHAIRMAN SPEENEY: I think I want
to know that ahead of time. I don't think I want to
wait until DEP has to get ahold of it.
So I think I would want that
information now. It's part of the application for
this board to hear the impact of that on the
development.

CHAIRPERSON SCHAEFER: Other people's
viewpoint on that?

MEMBER NORA: Can I ask, there's such
a big discrepancy between the 19 acres and the
50 acres. Can we get a definitive number of what
the acreage is or which to use?

CHAIRPERSON SCHAEFER: That's a good
question.

Rick, how do we handle that?

ENGINEER MATIAS: If you're -- we can
certainly task the board engineer to -- with doing
that, although it's not an easy task to do. I would

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suggest if, as I alluded to earlier, if Mr. Gesario maybe would like to revise his submission, take another look at it. He is the applicant. He -- or, you know, he represents the applicant. He's the one that prepared the exhibit, maybe have a request made in to the applicant to make a revision and double-check it. Because there is a pretty large discrepancy between the two.

CHAIRPERSON SCHAEFER: Agreed.

Other comments on this particular topic from other board members?

MEMBER FIORILLA: Yeah. If we approve -- if we approve this project and then the applicant has to go before, you know -- submit an application and the DEP will determine whether they have any issues with drainage or flooding, and they would have to at that -- comply with whatever directives the DEP rules; is that right?

ATTORNEY LINNUS: That's correct.

ENGINEER MATIAS: Yes.

MEMBER FIORILLA: Okay. So --

ENGINEER MATIAS: And without --

they'll submit -- I'm sorry to cut you off. But they'll submit their application for a flood hazard permit to NJDEP. NJDEP would come back to them and

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say, you know here is a list of things that, you know, we would like to revise or that we want you guys to address or look at, and then they would have to comply with that or not get a flood hazard permit.

CHAIRPERSON SCHAEFER: Would DEP be the one that would recognize it as 50 acres or 19 acres?

ENGINEER MATIAS: They would most likely request -- they wouldn't do the study themselves, and they would not outline the tributary area. They would request that of the applicant. And, obviously, the applicant has to sign and seal that and submit that to them.

CHAIRPERSON SCHAEFER: They would request that?

ENGINEER MATIAS: Yeah.

CHAIRPERSON SCHAEFER: So, Don, why would we ask them to --

ENGINEER MATIAS: If they request it, though. They -- I'm sorry to cut you off. They may not request it in their review. We don't know if they would or wouldn't.

CHAIRPERSON SCHAEFER: Okay. So, Paul, you're --

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VICE-CHAIRMAN SPEENEY: That's one of the reasons I would like to know ahead of time so that we can make an informed decision relative to those flood hazard -- that flood hazard line.

CHAIRPERSON SCHAEFER: Karen?

MEMBER PENNETT: Yeah. Okay, if the DEP -- I mean, if the applicant submits that it's 19 acres, DEP is going to, I want to say, assume they're correct. But if it's actually -- but they're not going to know about the discrepancy of

the 50 acres, correct? They'll be blind to any --
ENGINEER MATIAS: Correct. They won't
actually even see the 19 acres.
What they'll do is -- the plan would
get submitted to NJDEP. They'll do the review, and
then they'll see the tributary and then they decide
whether or not they need to do further action on it
or whether the plan, as submitted, is okay to
proceed.

CHAIRPERSON SCHAEFER: So they won't
see the 19 or the 50. So even if it was determined
it was 30, DEP will not see that, correct?

ENGINEER MATIAS: Correct. Correct.

MEMBER SIMS: Can I ask a question?

CHAIRPERSON SCHAEFER: Yeah. I --

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ENGINEER MATIAS: They then decide
whether or not they want to have further information
on it.

CHAIRPERSON SCHAEFER: Troy?

MEMBER SIMS: Can I ask a question?

CHAIRPERSON SCHAEFER: Yes.

MEMBER SIMS: So -- so if they go to DEP and they have to certify the amount of acreage, whether there's 19 or 50, and DEP accepts whatever they say and then approves their flood certification plan, whatever we're looking at, can we just stipulate when they come back for final approval, if that is a concern, to have that back us to so we can differentiate what it is officially when they come become for final approval?

ATTORNEY LINNUS: No. Preliminary approval will establish their rights. If the DEP grants them the permits and all the approvals without any changes required, without any structural changes or any changes to the layout or any changes to the design, then no. The answer would be no. Preliminary approval gives them certain rights, certain vested rights.

CHAIRPERSON SCHAEFER: But wait a minute. Rick, I thought you just said that the DEP

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isn't going to look at -- won't know if it's 19 or 50, correct?

ENGINEER MATIAS: Right. So they're -- they're not going to see that. If they -- if they approve the -- or if they request changes to the site plan, they come back to the board with those changes.

Now, if the changes are because of the -- they request additional information on the tributary or because they would -- they don't agree with the flood line, they'll make those -- they'll request those changes. The applicant would have to come back to us.

And that's what Mr. Linnus was speaking with in regards to Mr. Hehl earlier, the preliminary approval.

CHAIRPERSON SCHAEFER: So I guess the point I'm making is DEP won't even be aware if it's 19 or 50.

ENGINEER MATIAS: Correct. They will not -- that will not be part of their original submission. Upon their review, they'll determine if they need more information on the tributary. Because it is shown on the site plan.

ATTORNEY HEHL: I just want to clarify

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that, ultimately, that line is -- is up to the DEP to confirm and rule on.

CHAIRPERSON SCHAEFER: So I, personally, think to have -- if the DEP isn't even going to look at this, we're not the experts to determine 50 or 19, or water or what have you. I think that we're not the experts for that. And if DEP -- in my opinion, if DEP isn't going to be looking at that, then I don't know if I'd want to pursue it with the applicant. Can I get other feedback from other members, please?

MEMBER FIORILLA: Will the DEP determine whether the project, you know, creates any flood hazards or, you know, creates any kind of negative environmental consequences? I mean, isn't that what their review is about?

ENGINEER MATIAS: Yeah. Their -- you know, their approval process is to ensure public safety and to make sure -- you know, the whole reason why the flood hazard rules are in effect are to prevent flooding from occurring in -- you know, in homes and developments and in structures. So they -- that is their reason for, you know, permitting and the application process.

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MEMBER FIORILLA: But my point is so that's their area of expertise, and they know more about that than, certainly, this board does. So I think that I'm confident that leaving that up to the DEP, you know, will ensure that the project meets all the standards and doesn't cause any undue harm. So I think for us to require something that's going to be, you know, covered in the DEP process is, you know, kind of overkill, I guess.

CHAIRPERSON SCHAEFER: I agree with you, Paul.

VICE-CHAIRMAN SPEENEY: I don't. And I -- I think I need that information for me to vote.

CHAIRPERSON SCHAEFER: But, Don, DEP isn't even going to look at the 50, or the 19 or whatever the number is.

VICE-CHAIRMAN SPEENEY: Okay. So my question now to Rick is: Is it 19 or is it 50?

ENGINEER MATIAS: I wish I could answer that question for you, but I don't have that answer for you. We could certainly, you know, take a look at either of -- well, we could look at both of the exhibits today, but I would say it's on the applicant's -- maybe it's in the applicant's best interest to submit that, and he submitted 19. I

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think he might have noted that it might be a little bit more depending on some changes, that he can certainly revise that.

But I haven't done the study. I'm not the applicant so if, you know -- I think it's up to the applicant.

COUNCILMAN MARTINO: Yeah. Madam Chair, if I may? Councilman Martino. Yeah, Councilman Martino.

I agree with you; I believe that the DEP has the knowledge, the background and has many more resources than we do to make this -- and probably a more educated decision. So I'm going to lean towards your recommendations.

Thank you.

AL LAPATKA: I would like to just make one --

CHAIRPERSON SCHAEFER: Anyone else?

AL LAPATKA: -- one comment. Is that forget about the flood hazard area in the DEP regulations. Watchung's own code says that fill cannot be placed in the floodplain. So if you don't calculate the floodplain for the tributary, you don't know if fill is being placed in it or not.

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And the 50-acre question is irrelevant in the context of the Watchung code. They don't -- they don't cite 50 acres. So the Watchung code is actually more restrictive in that regard.

CHAIRPERSON SCHAEFER: Well, with that -- and that's a point that I want to capture in one second.

Mayor Balla?

MAYOR BALLA: Yes, I would concur that the DEP has the area of expertise here. And for us to go beyond DEP to render our own decision without that expertise, I think it's inappropriate. We should rely on DEP.

CHAIRPERSON SCHAEFER: Thank you.

Mr. Lapatka actually just touched on the ordinance. So that's my next question for Mr. Healey and Mr. Matias.

Does the ordinance -- do you see the Watchung ordinance, you know, being affected here

with this application? Because I want Frank to rule on this tonight.

ENGINEER MATIAS: Sure. I'll --

PLANNER HEALEY: I'll just quickly --

ENGINEER MATIAS: Go ahead, Mark.

PLANNER HEALEY: I think what Mr.

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Lapatka is quoting is -- because Mr. Butler was referencing it before, which is 28 -- Section 28-401(A) where it says "no use or structure shall be moved, added to, enlarged, disturbed, nor shall any fill be placed, nor shall any elevation of any land be substantially changed into the floodplain." It does state that. But then it says, "except in accordance with the flood hazard ordinance," which is Chapter 22.

So, in effect, what that is saying is if you are going to disturb, place, fill, et cetera, Chapter 22 applies. So it's not -- it's not saying you can't do any fill, but if you do do fill, you

have to -- then chapter -- or any disturbance in a floodplain, then Chapter 22 comes into play. And I don't think the applicant is -- is disputing that. They're -- I think they made the point that they feel that DEP's regs are even more restrictive. So to the extent that they met DEP, then they've met Chapter 22, but they're not saying that Chapter 22 doesn't apply at all.

ATTORNEY LINNUS: I agree. As I heard the applicant in terms of the ordinance, they're not disputing that Chapter 22 does apply.

ENGINEER MATIAS: And to piggyback

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on --

ATTORNEY LINNUS: If Chapter 22 does apply, then indeed they may be seeking either a variance or a waiver, whichever it is. If it's in the zoning section of the ordinance, it's a variance. If they're in the design waiver section of the ordinance or the site plan exception portion

of the ordinance, then it would be a design waiver. So as I understood the testimony tonight, there was no dispute by the applicant that Chapter 22 does apply. And at that point they would have to request either a waiver or a -- or an exception or a variance, if they're not going to comply with Chapter 22, as stated by Mr. Healey.

ATTORNEY HEHL: But we are going to comply and we've said that.

ENGINEER MATIAS: Yeah, and I would piggyback on Mr. Healey's comments that for them to be in compliance with Chapter 22, they would need to apply to the NJDEP for a flood hazard permit. So they haven't requested a variance or a waiver of Chapter 22. It's my understanding on everything I've reviewed so far that they plan to comply with Chapter 22 and will be applying -- they've testified and we've talked about it, they will be applying to

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DEP.

CHAIRPERSON SCHAEFER: Okay. So,
Frank, your legal position so we can end this?

ATTORNEY LINNUS: Yeah. Let's back
up. There's a number of legal positions that
were -- that I have to espouse based on the flurry
of emails that have gone back and forth between the
applicant's attorney, myself and Mr. Butler. We
start out at the beginning. And I hate to start out
at the beginning, but that's the only place we can
start.

An application was filed, and the
application did not comply with some of the
checklist requirements. The application was
nevertheless deemed complete. Therefore, scheduled
for the public hearings that we've been going
through. So that's not an issue, whether they've
complied with the checklist or not.

What we've been going through the last
couple of hearings is whether they -- the board
wanted additional information so that the board
would be satisfied that they could indeed make a
decision after all the evidence is in. And then
tonight we went through whether the ordinance --
what ordinances apply, whether they need design

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waivers, and so on and so forth.
So, basically, what I heard tonight was that the applicant is going to comply with Chapter 22, and I also heard that they're going to be seeking some design waivers on the other sections of the ordinance and that's what I heard tonight. So the real question tonight is whether the board needs any more information from their professionals, that is, Ricky and/or Mark, to get some guidance as to whether the board needs any additional information from the applicant. And that's where we are.
So the first question to the -- your board -- your professionals, the board engineer and the board planner, are they satisfied, at least from a technical aspect that they have all the information they need?
ENGINEER MATIAS: I can certainly jump in on that and say as far as a -- DEP and as far as the site plan in relation to Chapter 22, I'm satisfied. There are other -- I have a list of items outside of Chapter 22 and outside of drainage that I don't believe -- and I did go through the previous meetings. I don't know if there's been testimony on everything, but I do have a small list

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of other items outside of this.

CHAIRPERSON SCHAEFER: Mark?

PLANNER HEALEY: Yeah. I mean, I think -- at this point, I think, generally in terms of the hearing -- and I know we're going to have to have future hearings -- I think we -- I recommend we just -- we keep going. There's still going to be testimony from the applicant, from the objector. I think at some point there's going to be a point where all of the testimony is out there. I think at that point perhaps the board's engineer and myself need to kind of regroup and maybe do updated memos, kind of trying to bring it all together as to where these different issues stand before the board.

Because I know -- you know, the board as well, I think we're going to have to kind of collect our notes and make some decisions about, you know, what the facts are, where this stands in terms of different -- I don't know -- as of right now, I'm not sure exactly what variances and checklists or waivers are required. I have to -- there's been, you know, new plans submitted. They're probably going to change as testimony goes on.

I would just suggest we just keep

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going, and then at some point we have to regroup.

CHAIRPERSON SCHAEFER: Frank?

ATTORNEY LINNUS: Okay. Here we are.

CHAIRPERSON SCHAEFER: So we're just going to continue on?

ATTORNEY LINNUS: Yes, absolutely.

CHAIRPERSON SCHAEFER: Okay. Okay.

So we've gotten through that portion of it. As tedious as it was, we got through it. We're going to continue on. And we will get some updated memos from our borough -- from our board engineer and from our board planner that will be part of our next meeting.

We are getting to the hour that we're not even going to start with Mr. Butler's next witness because it's 9:53, and we do have other board business that we have to do. I'm going to say that there is a possibility that in our April meeting -- maybe starting an hour earlier because we -- why are we starting -- my mind is -- I'm so sorry, everyone, my mind just blanked out -- oh, we may have some discussion about cannabis, which I want to talk to our board members later, but if we do end up having a discussion on that, I'm going to start the meeting at 6:30, and then go into --

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immediately into our regular meeting.
So there's a good chance that you guys
could be heard before 7:30 in April. And, of
course, I'll have Theresa reach out and let you know
if we're going to be planning on starting at 6:30
instead of 7:30.

I'm going to open it up to the public
for any questions.

Okay, hearing -- hearing none from the
public, I close the public.

Mr. Butler? You're on mute,
Mr. Butler.

ATTORNEY BUTLER: Can I talk for one
second? All's I do is want to say "peace." I've
gotten along with you for years, and I don't want
tonight to destroy that at all.

CHAIRPERSON SCHAEFER: Mr. Butler, it
won't. It hasn't. Don't worry. I really
appreciate that. This is what it's about; you know
it. So we just move on.

ATTORNEY LINNUS: Madam Chairperson,
before we proceed further, I note that the time

within which the board has to make a decision in
this matter is April 30th. In light of tonight's
proceedings - especially in light of the fact that

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Mr. Healey and Mr. Matias will be submitting new
memos, new reports; and in light of the fact that I
understand that Mr. Butler will be presenting a
planner -- I assume he still intends to do that; I
understand that the applicant will be doing some
type of rebuttal, also has a planner on board, I
guess - it's unlikely that the board will be in a
position to conclude this matter by April 30th.
So I think it's appropriate to request
that the applicant grant an extension of time so
that the board has all the information it needs to
ultimately make a decision on the application.
Secondly, if you're jiggling the start
date -- the start time, if you are going to carry
this matter, it's important that we inform the
public that the meeting will start at 6:00, 6:30, or

7:00 or 7:30, certainly with respect to the applicant's situation so that they would not have to renounce.

So there's two questions there, one, will the applicant grant an extension? And, secondly, when do we start the meeting?

CHAIRPERSON SCHAEFER: Okay. Before we get in to you, Mr. Hehl, why don't we just schedule it for 6:30. And if we don't end up having

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the conversation that we need to have about the cannabis, we can just start our regular meeting at 6:30 and go right into Mr. Butler's next witness for this application?

Is everybody good for 6:30 at our April meeting?

MEMBER SIMS: Yes.

MEMBER PENNETT: Yes.

VICE-CHAIRMAN SPEENEY: I'm okay.

BOARD MEMBER: Sure.

BOARD MEMBER: Yes.

MEMBER POTE: Yes.

CHAIRPERSON SCHAEFER: Okay. Great.

So that's what we're going to do; we're going to carry this application to our April meeting. We will be starting at 6:30. You will be either first or second on the agenda.

ATTORNEY LINNUS: Extension.

CHAIRPERSON SCHAEFER: But with -- with that being said, Mr. Hehl, our attorney is correct, we're going to need to look for an extension.

ATTORNEY HEHL: Yeah, we'll --

CHAIRPERSON SCHAEFER: Go ahead.

ATTORNEY HEHL: Why don't we just at

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this point extend it through the end of -- the end of May. Then we can address it at the next meeting.

ATTORNEY LINNUS: Okay. And you'll put that in writing, Mr. Hehl?

ATTORNEY HEHL: Yeah.

ATTORNEY LINNUS: Okay. All right, if we've concluded the proceedings tonight, for purposes of the public, the continuation of this public hearing will occur at the next planning board meeting which will be conducted on April -- What is the date, Theresa?

BOARD MEMBER: 20. April 20th.

ATTORNEY LINNUS: What's that, April 20th? Okay.

BOARD SECRETARY: April 20th.

ATTORNEY LINNUS: And it will be a virtual meeting.

And the meeting will start at 6:30; is that correct, Madam Chairperson?

CHAIRPERSON SCHAEFER: Correct.

ATTORNEY LINNUS: Okay. And this is your notice. There'll be no further notice requirements on the part of the applicant.

CHAIRPERSON SCHAEFER: Before you-all go, Mr. Butler, who is going to be your next expert

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testimony?

ATTORNEY BUTLER: My next expert

testimony is going to be Hal Simoff. And then I'm going to call Bob Weldon. And then I'm going to call Peter Steck. And then, hopefully, I will rest.

VICE-CHAIRMAN SPEENEY: Madam Chair?

ATTORNEY HEHL: Yeah. I have a question, though.

VICE-CHAIRMAN SPEENEY: Well, I'm looking for some additional information, and I expect it to come out with these next set of witnesses, but on the original -- original Objector's 2 -- OW-2, there was some kind of transition area -- transition area, compensation easement mentioned, and I don't think I've heard anything since then about the impact of that and what it means.

So, Mr. Hehl and Mr. Butler, if you will please keep that in mind that you would bring that up and clarify it.

ATTORNEY BUTLER: Well, Mr. Speeney, I will have Al Lapatka with us at the next meeting. If he's asked questions, he's here to answer them. If he's not answered any questions, he tells us he loves our company.

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CHAIRPERSON SCHAEFER: Okay. I'm sorry, can you please give me again -- you're going to have Hal Simoff go first?

ATTORNEY BUTLER: No, I'm not going to have Al, until somebody asks him any questions, I don't think.

I'm going to start off with Hal -- Hal, H-A-L, I'm sorry. H-A-L Simoff.

CHAIRPERSON SCHAEFER: Right.

ATTORNEY BUTLER: Bob Weldon, just give his piece, and Peter Steck. But I'll have Al Lapatka -- are you going to be here?

AL LAPATKA: I have nothing else to do.

ATTORNEY BUTLER: Okay. So I'll have Al Lapatka. If they have questions of him, fine. If they don't, well, they don't have questions of him. I don't know.

CHAIRPERSON SCHAEFER: Okay. But Hal Simoff is going to be your next expert that you're going to be --

ATTORNEY BUTLER: And I don't think he's going to be long.

CHAIRPERSON SCHAEFER: And then after him is going to be Bob Weldon?

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ATTORNEY BUTLER: And he's not going to be long.

CHAIRPERSON SCHAEFER: And then you'll have Peter Steck. Okay.

ATTORNEY BUTLER: And he's not going to be long.

CHAIRPERSON SCHAEFER: And, Mr. Hehl, you were aware of this?

ATTORNEY HEHL: Well, I -- the question I have is I believe -- I don't know why, Mr. Simoff testified already.

ATTORNEY BUTLER: Well, Mr. Simoff's testified, but since he's testified, there's been a revised traffic report which has mentioned his testimony and we think inaccurately mentioned his testimony. He wants to correct that. Plus, there were exhibits that he introduced into evidence at the last month showing problems with internal circulation, and the applicant has a different internal circulation with different-sized trucks. And Mr. Simoff wants to make those arguments to show that these trucks are way too small, especially if you are going to deliver refrigerated food like they're going to do at this site.

ATTORNEY HEHL: It just -- when do

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these witnesses end? They have a traffic engineer testify and now -- well, now he wants to dispute what your board traffic engineer said.

ATTORNEY BUTLER: Well your engineer has testified four times, Mr. Hehl.

ATTORNEY HEHL: Because they were requested to.

ATTORNEY BUTLER: No, they were not requested to testify the second and the third time.

CHAIRPERSON SCHAEFER: All right, we're going to allow Mr. Simoff, this last time, to make his testimony.

ATTORNEY BUTLER: Thank you.

CHAIRPERSON SCHAEFER: We're then going to go to Bob Weldon. That will be his last time to make his testimony.

ATTORNEY BUTLER: First time. Oh, no, he went once before. You're absolutely right. He went very short and -- okay. Yeah.

CHAIRPERSON SCHAEFER: That will be his last time. And then Peter Steck.

And then, Mr. Hehl, you can introduce whatever final you have -- I don't know where you went -- there you are -- whatever final you have. And then we'll have our closing statements, and then

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this board will go into discussion and vote.

But I'm going to be honest; it's not going to happen in April. I just don't see it happening, but we'll do our best.

ATTORNEY BUTLER: All right. You're right. You're right. But Mr. Hehl was gracious enough to say that that's not the end of it possibly, as far as the extension of dates.

CHAIRPERSON SCHAEFER: But we don't know, and I'm not going to go there. Right now we're just -- we have our game plan. That's what we're sticking to. And once you're done, you know, your side is over. And then Mr. Hehl can certainly, you know, revisit whatever he's given us. And then it's up to the planning board what decision they make and how they vote.

Okay? All right, thank you.

ATTORNEY BUTLER: Thank you.

ATTORNEY HEHL: Thank you very much.

Have a great evening, everyone.
ATTORNEY LINNUS: Have a good evening.
ATTORNEY HEHL: All right. Take care,
now.
(Application adjourned at 10:05 p.m.)

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C E R T I F I C A T E

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