

**HOWELL TOWNSHIP PLANNING BOARD
REGULAR MEETING**

**1
OCTOBER 5, 2023**

The meeting was called to order by Chairman Paul Boisvert and the opening statement was read by the Board Secretary.

ROLL CALL: Showed the following members were present: Brian Greenfield, Nicholas Huszar, John Leggio, Robert Seaman, Brian Tannenhau, Councilman Fred Gasior, Christopher Mercer, Jackie Pike and Chairman Paul Boisvert. Joseph Cristiano was excused.

Also in attendance were Ron Cucchiaro, Board Attorney, Laura Neumann, Board Engineer, Jennifer Beahm, Board Planner, Shari Spero, Board Licensed Tree Expert, Kevin Chen, Board Traffic Expert and Eileen Rubano, Board Secretary.

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES: There were no minutes to approve.

VOUCHERS: None

CORRESPONDENCE: The Board Secretary had a letter from Kenneth Pape, Attorney for Lowes which was on tonight's agenda. Mr. Pape asked that this application be rescheduled to another date with notice as they are revising the site plans.

RESOLUTIONS:

a. Case No. SD-3010 / Samuel Neiger

Mr. Huszar made a motion to memorialize the resolution granting submission waivers to Samuel Neiger. Motion was seconded by Mr. Mercer and carried with Mr. Greenfield, Mr. Huszar, Mr. Leggio, Mr. Seaman, Councilman Gasior, Mr. Mercer and Chairman Boisvert voting to memorialize.

b. Case No. SP-1046A / Bank of America

Mr. Seaman made a motion to memorialize the resolution granting submission waivers to Bank of America. Motion was seconded by Mr. Leggio and carried with Mr. Greenfield, Mr. Huszar, Mr. Leggio, Mr. Seaman, Councilman Gasior, Mr. Mercer and Chairman Boisvert voting to memorialize.

c. Case No. SP-1115 / JABE Howell, LLC

Mr. Leggio made a motion to memorialize the resolution granting submission waivers to JABE Howell LLC. Motion was seconded by Mr. Greenfield and carried with Mr. Greenfield, Mr. Huszar, Mr. Leggio, Mr. Seaman, Councilman Gasior, Mr. Mercer and Chairman Boisvert voting for the motion.

SUBMISSION WAIVERS BEFORE THE BOARD: There were no submission waivers.

**HOWELL TOWNSHIP PLANNING BOARD
REGULAR MEETING
APPLICATIONS BEFORE THE BOARD:**

2
OCTOBER 5, 2023

a. Case No. SD-2997A / Larrabee Realty, LLC

Jared Pape, Attorney for the Applicant, appeared and said this application was for an amendment to the conditions of the resolution adopted by this Board on January 6, 2022. The approval granted the minor subdivision of one lot into two lots with the property containing one single family dwelling which would be removed as a result of the application. There was a temporary variance also granted for the side yard setback for the existing residence conditioned in the resolution. The condition was that the dwelling be removed within twelve months which was January 6, 2023. Mr. Pape explained that they are requesting an extension of that condition as the house is still there due to economic conditions. They made this application in March to have the condition extended to January 6, 2024 but they would like to extend that for an additional six months to July 2024.

Board Attorney Cucchiaro asked what their time line was and Mr. Pape said they had no hard time line. Ms. Beahm, Board Planner, stated that what they were looking for was an 18 month extension on the condition of the removal of the single family dwelling. Neither Ms. Neumann, Board Engineer, nor Ms. Beahm, Board Planner took any exception to the granting of the extension.

Chairman Boisvert opened the hearing up to members of the public but since no one appeared the public portion was closed.

Mr. Tannenhause made a motion to approve the Amended Preliminary and Final Major Subdivision application for Larrabee Realty, LLC. Motion was seconded by Mr. Seaman and carried with Mr. Greenfield, Mr. Huszar, Mr. Leggio, Mr. Seaman, Mr. Tannenhause, Councilman Gasior, Mr. Mercer, Ms. Pike and Chairman Boisvert voting to approve the application.

b. Case No. SP-1105 / AAVRHW Property, LLC – Victory Road

SEE TRANSCRIPT OF HEARING ATTACHED.

MASTER PLAN STATUS REPORT: There will be a public hearing for the Reexamination Report at the next meeting.

Mr. Seaman made a motion to adjourn. Motion was seconded by Mr. Mercer and carried with all members voting to adjourn.

The meeting adjourned at 11:02 p.m.

Respectfully submitted,



**Eileen Rubano
Recording Secretary**

NOTE: A CD or DVD of this meeting is available on request.

TOWNSHIP OF HOWELL PLANNING BOARD
COUNTY OF MONMOUTH - STATE OF NEW JERSEY

REGULAR MEETING FOR:

AAVRHW PROPERTY, LLC
BLOCK 41, LOT 17
VICTORY ROAD

PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL
WITH DESIGN WAIVER RELIEF

APPLICATION NO. SP-1105

HOWELL TOWNSHIP MUNICIPAL BUILDING
4567 RT 9 NORTH, 2ND FLOOR
HOWELL, NJ 07731-3382

THURSDAY, OCTOBER 5, 2023

7:00 P.M.

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

AB COURT REPORTING, LLC
CERTIFIED COURT REPORTERS
26 ALGONQUIN TERRACE
MILLSTONE TOWNSHIP, NEW JERSEY 08535
TEL: (732) 882-3590
angelabuonocsr@gmail.com

BOARD MEMBERS PRESENT:

PAUL BOISVERT, Chairman
FRED GASIOR, Councilman (Recused)
BRIAN GREENFIELD
NICHOLAS HUSZAR, Vice-Chairman
JOHN LEGGIO
CHRISTOPHER MERCER
JACQUELINE PIKE
ROBERT SEAMAN
BRIAN TANNENHAUS (Recused)

BOARD CONSULTANTS AND STAFF PRESENT:

RONALD CUCCHIARO, ESQUIRE, Board Attorney
Weiner Law Group, LLP
JENNIFER BEAHM, P.P., AICP, Board Planner
Leon S. Avakian, Inc.
LAURA NEUMANN, P.E., Board Engineer
CME Associates
KEVIN CHEN, P.E., Board Traffic Engineer
CME Associates
SHARI SPERO, LTE, Board-Certified Tree Expert
CME Associates
EILEEN RUBANO, Administrative Officer, Planning/Zoning
Township of Howell

STENOGRAPHICALLY REPORTED BY:

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

A P P E A R A N C E S:

HEROLD LAW, P.A.

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T: (908) 657-2022
F: (908) 647-7721
Email: rsimon@heroldlaw.com

--Counsel for the Applicant, AAVRHW Property, LLC

LIEBERMAN BLECHER & SINKEVICH P.C.

BY: BRITTANY W. DEBORD, ESQUIRE
10 JEFFERSON PLAZA
SUITE 400
PRINCETON, NEW JERSEY 08540
T: (732) 355-1311
F: (732) 355-1310
EMAIL: BWD@LiebermanBlecher.com

--Counsel for Objectors:

Mirjana Scarselli, Chris Bates, Justin Gumley,
Diane Lindstrom, Frances Santore, Betty Velez,
Edwin and Marie Woolley, Marianne and Robert Wagner

ALSO PRESENT:

JEROMIE LANGE, Active Acquisitions

I N D E X

WITNESSESPAGE

TUNG-TO LAM, P.E.

Bohler Engineering

Redirect by Attorney Simon

45,
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Recross by Attorney DeBord

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KERRY PEHNKE, P.E.

Langan Engineering

Recross by Attorney DeBord

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GEOFFREY GOLL, P.E.

Princeton Hydro

Redirect by Attorney DeBord

79,
110

PUBLIC QUESTIONS/COMMENTS:

<u>NAME</u>	<u>ADDRESS</u>	<u>PAGE</u>
Betty Velez-Gimbel	97 Victory Road	116
Robert Wagner	1551 Maxim Southard Road	127
Mirjana Scarselli	191 Victory Road	131
Chris Bates	93 Victory Road	136
Peter Guilfoyle	47 Victory Road	138
Patrica Isbrecht	615 Fort Plains Road	143
Steven Mirabello	2 Flintlock Drive	145
Nicole Woolley	223 Victory Road	149
Marc Parisi	2 Castle Court	160
Paige Hackett	578 Newton's Corner Road	175
Ellsworth Burrows	11 Amanda Lane	178
Darin Nielson	104 Victory Road	183

APPLICANT EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A-44	Victory Road Widening Plan consisting of one (1) sheet prepared by Langan Engineering and Environmental Services, Inc., dated 6/13/23	*
A-45	Victory Road (and Route 547) Intersection Improvement Concept Plan consisting of one (1) sheet prepared by Langan Engineering and Environmental Services, dated 6/13/23	*
A-46	Pipe Joints Exhibit consisting of one (1) sheet prepared by Bohler Engineering, LLC, dated 6/12/23	*
A-47	French Drain Exhibit consisting of one (1) sheet prepared by Bohler Engineering, LLC, dated 8/9/23	*
A-48	Anti-Seep Collars Exhibit consisting of one (1) sheet prepared by Bohler Engineering, LLC, dated 6/12/23	*
A-49	Overall Site Layout Plan consisting of one (1) sheet prepared by Bohler Engineering, LLC, dated 2/28/22, last revised 8/14/23	*
A-50	Architectural Floor Plans and Building Elevations consisting of two (2) sheets prepared by Mitchell and Hugeback Architects, Inc., dated 3/4/22, last revised 8/17/23	*
A-51	Architectural Rendering consisting of one (1) sheet prepared by Mitchell & Hugeback Architects, Inc., dated 8/17/23	*
A-52	Letter from Bohler Engineering with key points for Stormwater Rebuttal Testimony dated 9/22/23	*
A-53	Proposed Topsoil Exhibit prepared by Bohler Engineering dated 6/12/23	*
(*) Exhibits marked prior to commencement.		

1 SECRETARY RUBANO: Planning Board
2 meeting, October 5, 2023. I hereby declare this
3 meeting of the Howell Township Planning Board to be
4 open. Adequate notice having been given pursuant to
5 the Open Public Meetings Act in the following
6 manner:

7 First, on March 31st, 2023, a copy of
8 said notice was mailed to the Asbury Park Press and
9 the Star Ledger;

10 Second, on March 31st, 2023, a copy of
11 said notice was hand-delivered to the clerk of the
12 Township of Howell;

13 Third, on March 31st, 2023, said notice
14 was posted in the office of the Planning Board and
15 on the bulletin board in the Howell Township
16 Municipal Building, 4567 Route 9, Howell Township,
17 New Jersey.

18 In accordance with the Fire Prevention
19 Code and your safety, please be advised that this
20 facility is designed with two emergency exits which
21 are on the right at the front and rear of the
22 meeting room.

23 Furthermore, smoking is not permitted
24 in the municipal building.

25 Please take note that this meeting is

1 being videotaped for possible future broadcast on
2 Howell Township TV-77.

3 Thank you.

4 CHAIRMAN BOISVERT: Roll call, please.

5 SECRETARY RUBANO: Mr. Cristiano has
6 been excused.

7 Mr. Greenfield?

8 MEMBER GREENFIELD: Here.

9 SECRETARY RUBANO: Mr. Huszar?

10 VICE-CHAIRMAN HUSZAR: Here.

11 SECRETARY RUBANO: Mr. Leggio?

12 MEMBER LEGGIO: Here.

13 SECRETARY RUBANO: Mr. Seaman?

14 MEMBER SEAMAN: Here.

15 SECRETARY RUBANO: Mr. Tannenhauus?

16 MEMBER TANNENHAUS: Here.

17 SECRETARY RUBANO: Councilman Gasior?

18 COUNCILMAN GASIOR: Here.

19 SECRETARY RUBANO: Mr. Mercer?

20 MEMBER MERCER: Here.

21 SECRETARY RUBANO: Ms. Pike?

22 MEMBER PIKE: Yes.

23 SECRETARY RUBANO: And Chairman

24 Boisvert?

25 CHAIRMAN BOISVERT: Here.

1 SECRETARY RUBANO: You have a quorum.

2 CHAIRMAN BOISVERT: Thank you.

3 So right now we're going to stand for the Pledge of
4 Allegiance and a moment of silence for the troops
5 serving here and abroad.

6 (Pledge of Allegiance.)

7

8 (Whereupon, the board continues with
9 the posted agenda.)

10 - - -

11 (Application commences at 7:14 p.m.)

12

13 CHAIRMAN BOISVERT: Case Number
14 SP-1105, AAVRHW Property, LLC, Victory Road.

15 ATTORNEY CUCCHIARO: Just before we
16 get started, Mr. Chair, I know we have some
17 recusals. Is that correct?

18 CHAIRMAN BOISVERT: That's correct.

19 SECRETARY RUBANO: Yes, Mr. Tannenhau
20 and Councilman Gasior.

21 ATTORNEY CUCCHIARO: So let's just
22 mark the recusals in the minutes and if those
23 recusing could step off the dais.

24 SECRETARY RUBANO: And Ms. Pike has
25 certified to be able still to vote on the

1 application.

2 ATTORNEY CUCCHIARO: Okay. That was
3 going to be my next question. So everybody sitting
4 tonight is able to vote?

5 SECRETARY RUBANO: Yes. And, Ms.
6 Pike, I left the form there, just sign it and give
7 it back.

8 ATTORNEY CUCCHIARO: Okay. So just,
9 you know, by way of housekeeping we're going to
10 start most of these hearings, I know that we have
11 multiple attorneys. If all of the attorneys could
12 just enter their appearances and identify the
13 clients that they're representing.

14 ATTORNEY SIMON: Sure. Is it okay if
15 I sit here?

16 SECRETARY RUBANO: Yes. That's
17 microphone right in the middle.

18 ATTORNEY SIMON: Right here, right?

19 SECRETARY RUBANO: Yes.

20 ATTORNEY SIMON: Good evening, ladies
21 and gentlemen of the board, board professionals.
22 Rob Simon on behalf of Herold Law, here on behalf of
23 the applicant, AAVRHW Property, LLC, Block 41, Lot
24 17, Howell.

25 ATTORNEY CUCCHIARO: Counsel?

1 ATTORNEY DEBORD: Good evening. My
2 name is Brittany DeBord. I'm with Lieberman --

3 ATTORNEY CUCCHIARO: Just, is she
4 close enough to the mike?

5 SECRETARY RUBANO: No. You have to
6 sit; there's a mike there.

7 ATTORNEY DeBORD: Here is good?
8 My name is Brittany DeBord. I'm with
9 Lieberman, Blecher & Sinkevich. I represent the
10 objector neighbors.

11 ATTORNEY CUCCHIARO: Can you just list
12 them?

13 ATTORNEY DeBORD: Oh, gosh. Can I say
14 Betty Velez, et al.?

15 ATTORNEY CUCCHIARO: No. Hold on, I
16 just want to make sure that the list we have is
17 accurate.

18 ATTORNEY DEBORD: Do you all have a
19 list?

20 MEMBER OF THE AUDIENCE: Can I call it
21 out to you?

22 BOARD PLANNER: No, you have to give
23 her the list and she has to enter it into the
24 record.

25 SECRETARY RUBANO: You know what,

1 Laura, can you bring up 0-2 I think is the one
2 list... That might be easier.

3 (Whereupon, a discussion is held off
4 the record.)

5 ATTORNEY CUCCHIARO: I think we're
6 going to be able to get it up on the screen.

7 ATTORNEY DEBORD: Perfect.

8 ATTORNEY CUCCHIARO: If you could just
9 read it off the screen, and then tell me if you have
10 anybody else.

11 ATTORNEY DeBORD: Okay. Can we zoom
12 in a little bit?

13 SECRETARY RUBANO: There's multiple
14 emails and lists so.

15 ATTORNEY DeBORD: All right. The
16 clients are Mirjana Scarselli, Chris Bates, Justin
17 Gumley, Diane Lindstrom, Frances Santore, Betty
18 Velez, Edwin Woolley and Marie Woolley, as well as
19 Marianne and Robert Wagner.

20 ATTORNEY CUCCHIARO: We have some more
21 on another exhibit. As well as Marianne and Robert
22 Wagner.

23 Thank you.

24 ATTORNEY CUCCHIARO: And that's still
25 accurate as of today?

1 ATTORNEY DeBORD: To my knowledge,
2 yes.

3 ATTORNEY CUCCHIARO: All right, before
4 we get into the substance of tonight, since the last
5 time we had a public hearing we did receive several
6 letter briefs both from the objector's attorney and
7 the applicant's attorney. The objectors's attorney
8 has raised an issue as to jurisdiction, which I
9 think the board needs to resolve before moving
10 forward.

11 Counsel, if you want to place your
12 objection on the record?

13 ATTORNEY DeBORD: Yes, please. So we
14 have a jurisdictional issue here with this
15 application and it precipitated from an off-site
16 improvement that was proposed at the last hearing.
17 My understanding is that the improvement is
18 necessary for the warehouse to operate as proposed
19 before this board, and it is an improvement and
20 accessway proposed on a private property at the
21 corner of Victory Road and Route 547.

22 And it's not just an accessway or an
23 improvement to the public right-of-way; it's an
24 improvement on the private property that, I believe,
25 is an auto body shop.

1 This accessway is an accessory to the
2 warehouse and case law which I won't belabor the
3 point, but I'm happy to answer any questions. The
4 case law --

5 ATTORNEY CUCCHIARO: Counsel, you can
6 feel free to cite the case law. I want to make sure
7 we have a complete record.

8 ATTORNEY DeBORD: Right, and I will.
9 But the case law indicates that such an improvement
10 should be considered part and parcel to the
11 application even if it's off-site. And it's
12 considered to have the same use as the application,
13 which is a warehouse.

14 So what we're dealing with is an
15 off-site improvement, it's considered part of the
16 warehouse on private property in a different zone
17 than the primary property is zoned, and that is in
18 an ARE-6 zone.

19 None of the neighbors surrounding this
20 property were noticed. This will cause a
21 significant change for these neighbors. As I
22 understand, it will facilitate truck traffic. That,
23 in and of itself, I believe, causes a jurisdictional
24 stopgap for this application.

25 In addition to that, by virtue of the

1 fact that this is a different zone, the rural zone,
2 warehousing is not permitted in this zone, which
3 causes this application to need a use variance
4 before the zoning board. So I would respectfully
5 submit that we're in front of the wrong board now.

6 And my final issue, and this is an
7 issue that I was just made aware of, my
8 understanding is that the developer intends this
9 space to be more of a flex space; the developer has
10 added a number of office spaces to this warehouse
11 development and it has discussed this development as
12 a flex space. That is not a permitted use in this
13 zone, in this SED zone. Flex space is permitted in
14 other zones, such as SED-2, not in this zone.

15 So yet another jurisdictional issue
16 where I would submit we're before the wrong board.

17 ATTORNEY CUCCHIARO: Okay. Counsel,
18 do you have a response to that?

19 ATTORNEY SIMON: Mr. Cucchiaro, thank
20 you.

21 So as this board is aware, all these
22 contentions began via counsel's correspondence to
23 this board on or about August 10th.

24 BOARD TREE EXPERT: We don't hear you.

25 BOARD PLANNER: I can't even hear you.

1 SECRETARY RUBANO: You can pull that
2 closer to you.

3 ATTORNEY SIMON: Can you hear me? I
4 will speak up. I apologize, I will go right in
5 front.

6 So as this board is aware and
7 professionals are aware, that these issues that
8 counsel has brought up tonight were initiated via
9 correspondence on or about August 10th, 2023. Our
10 office provided a written response dated
11 August 16th, 2023, that we rely on in opposition to
12 these so-called contentions.

13 There was then a response dated -- to
14 my letter of August 16th. And my recollection is
15 that other counsel, Mr. Gasiorowski, in particular,
16 I believe, submitted his own letter in opposition to
17 these contentions, I believe also dated August 16th,
18 2023. And I believe that counsel provided a
19 follow-up letter on August 17th of 2023.

20 Now, their contention that this
21 right-of-way improvement a half a mile away
22 constitutes a driveway for a warehouse that is part
23 of this application as an -- and I believe the quote
24 was, an integral part of the ingress and egress of
25 the warehouse, and that the applicant is proposing a

1 warehouse use on what will become a public
2 right-of-way widening is -- and I don't use this
3 word lightly -- ridiculous. And it's, also -- and I
4 don't, definitely, use this word lightly --
5 frivolous, as a matter of fact and as a matter of
6 law.

7 First of all, this board is aware, well
8 aware, that it has no authority to deny a site plan
9 for permitted use because of any anticipated
10 detrimental impact on off-tract traffic conditions.
11 That's the Dunkin' Donuts case, and I believe we
12 actually cited to that early on with regard to these
13 proceedings.

14 This easement would become part of a
15 public right-of-way improvement once offered by an
16 applicant in this case, our client, but it needs to
17 be accepted as such by the township and the county
18 and it needs to be required by this board.

19 And even if all those things happen,
20 what do we have? We have nothing more than an
21 off-tract improvement that is contemplated in the
22 Municipal Land Use Law. In Section 42, by
23 definition, an off-tract improvement means not
24 located on the property which is the subject of a
25 development application, nor on the closest half of

1 the abutting street or the right-of-way. And that's
2 based on the Municipal Land Use Law definitions in
3 Section V of the MLUL.

4 They then double down, "they" being the
5 objectors, and they say, oh, well we have case law
6 to support this. We have the Brower case and we
7 have the Nuckel case. Well, in the Brower case the
8 issue was whether notice was needed to be provided
9 to property owners within 200 feet of property that
10 was to be used by the applicant as a secondary
11 access road to that development in question, that
12 went through multiple private properties. And, in
13 fact, in that case, and I am well aware of for
14 reasons I don't need to get into, it comprised
15 approximately 20 percent of the actual traffic to
16 that site.

17 That is the Brower case. And the court
18 in Brower characterized that second adjacent roadway
19 not as an off-tract improvement but rather an
20 off-site improvement, which was located outside the
21 lot lines but within the property of which the lot
22 is a part which is the subject of the development
23 application.

24 So in Brower the secondary access road
25 to the site was determined to be part of the

1 property and, therefore, required public notice.
2 And in Nuckel, the issue was whether a developer who
3 proposed to place a private driveway on a lot to
4 service a hotel on an adjacent lot was required to
5 obtain a variance since that adjacent driveway was
6 to provide the hotel with highway access.

7 Neither one of those cases is remotely
8 close to the facts of this case. We're not building
9 a new road as part of this project. We're not
10 building a new driveway a half a mile away as part
11 of this project.

12 We're not connecting either a new road
13 or a new driveway, let alone one a half mile away
14 directly to our development. All we're doing here
15 is just proposing, if required by the board, to
16 widen a very small portion of an existing public
17 right-of-way contained within an intersection
18 located, again, a half a mile away as a public
19 safety benefit that will be usable, not just
20 exclusively by this development or those who are
21 accessing this development, but by the general
22 public.

23 The need for public road right-of-way
24 widening improvements, sometimes, of course, in more
25 than one location, frequently arises during the

1 course of a development application. Those public
2 improvements are never part of the application
3 notice; they're never considered for part of
4 jurisdiction purposes.

5 And here, instead of criticizing, there
6 should be an accommodation because what the
7 applicant did here was proactively and voluntarily
8 respond to concerns raised by the board members
9 during this application proceeding by securing those
10 off-tract rights under an easement to widen and
11 enable improvements to the existing intersection of
12 Victory Road and Lakewood Farmingdale Road.

13 We testified and we provided evidence
14 that we do not believe that any of the trucks in the
15 development will be making that right-hand turn in
16 the first place, and it's actually not necessary to
17 provide the easement for approval of the
18 application.

19 However, if the board determines that
20 the easement is necessary and it's accepted by the
21 township, accepted by the county, under those
22 circumstance the applicant is, then, willing to pay
23 the full course -- full cost, excuse me, of the
24 contemplated improvement.

25 So regardless of whether the board

1 requires the intersection improvements a half a mile
2 away from the property as contemplated by the
3 easement, regardless of that, those easement rights
4 were not required to be secured prior to any vote on
5 this application. And the easement has nothing to
6 do with direct access to or from the property or
7 with providing utility or other services to the
8 property. It was secured in advance on a purely
9 voluntary basis to benefit not only the applicant,
10 but the entire community.

11 And we do contend that it is not only
12 unprecedented, not only ridiculous, but, yes,
13 frivolous, with no legal support whatsoever to make
14 these claims.

15 I also am forced to respond, there was
16 another letter that was submitted two days ago --

17 ATTORNEY CUCCHIARO: Well, let's deal
18 with the first two issues.

19 ATTORNEY SIMON: Go ahead, yes.

20 ATTORNEY CUCCHIARO: The second issue
21 that counsel raised had to do with, perhaps, the
22 evolution of the use that is being proposed.

23 Do you have a response to that?

24 ATTORNEY SIMON: So there was a,
25 without providing any written support or advance

1 notice, they're making a claim that this is an
2 application for flex space and that flex space is
3 not permitted in the zone.

4 This is a warehouse application. The
5 application is what was submitted by this board.
6 There has been no comment about the fact that
7 warehouse use is a permitted use in the zone. This
8 is an application that does not require any form of
9 use variance. It doesn't even require any form of
10 bulk variance.

11 And to say that, oh, well, I heard
12 things, and that now we believe this is a flex
13 application and, therefore, it is not permitted in
14 the zone, is not a --

15 ATTORNEY CUCCHIARO: Counsel, just a
16 question. Is there -- a plan has been submitted
17 that increased the number of office spaces as
18 asserted by the objector?

19 ATTORNEY SIMON: Any plan that was
20 submitted, that plan, actually, we're not going to
21 be relying on that plan.

22 ATTORNEY CUCCHIARO: I don't
23 understand that.

24 ATTORNEY SIMON: So we submitted in
25 advance, as a courtesy to this board, exhibits that

1 we may decide to rely on with regard to the
2 application. We're not relying on that plan.

3 We have not introduced it by way of any
4 testimony or witness.

5 ATTORNEY CUCCHIARO: The plan that you
6 testified to?

7 ATTORNEY SIMON: The plan that we
8 testified? You mean the prior plan that we
9 testified to? What are you talking about?

10 ATTORNEY CUCCHIARO: What am I talking
11 about? You come here, you filed an application.

12 ATTORNEY SIMON: Right.

13 ATTORNEY CUCCHIARO: The objector
14 claims that the number of office spaces has
15 increased since you filed the application.

16 I'm asking you, is the application the
17 same in terms of the number of office spaces?

18 ATTORNEY SIMON: My apologies, I
19 misunderstood your question. Yes, it's the same.

20 ATTORNEY CUCCHIARO: Okay. We'll get
21 to the most recent letter after we deal with these
22 jurisdictional issues.

23 Counsel, do you have anything more you
24 want to add?

25 ATTORNEY DEBORD: With regard to the

1 accessway, I guess my question is who is benefiting
2 from this accessway?

3 I strongly, strongly doubt that the
4 developer is doing this solely out of the goodness
5 of their heart. And, in fact, why would they
6 include this accessway as a component of their
7 application if that were the case?

8 The Brower Development Corp. case is,
9 in my opinion, spot on. It addresses an access road
10 that serves the development, an off-site access
11 road. And the question isn't are we parsing out the
12 size of the access road or what it does; the
13 question that the court was asking was this: With
14 respect to notice, will the people around this
15 off-site property be significantly affected by its
16 construction?

17 That was the question in the Brower
18 case. The court decided that it was, and that the
19 people around the other lot needed to be noticed
20 because this was an important component that would
21 significantly impact them, that was part of the
22 primary development.

23 This is the same case here. The people
24 around this intersection area should be noticed.
25 This is a lot that is grandfathered in. It's not

1 even consistent with the use of the zone. It's a
2 rural zone. It already has too much impervious[sic]
3 on this lot. In any other situation, if that
4 private owner was going to add impervious[sic] to
5 the lot they would need land use approvals.

6 Just because this is an improvement to
7 a public right-of-way, it encroaches on private
8 property, and it does not absolve the developer of
9 complying with the Land Use Regulations. It just
10 doesn't; they still need a variance.

11 ATTORNEY SIMON: It's a complete --

12 ATTORNEY CUCCHIARO: Well...

13 ATTORNEY SIMON: I'm sorry.

14 ATTORNEY CUCCHIARO: Let counsel
15 finish.

16 ATTORNEY SIMON: Yes.

17 ATTORNEY DeBORD: So, in short, that's
18 my conclusion, the developer cannot get around the
19 Land Use Code and propose a component of its
20 application and simply say that these people
21 shouldn't have been noticed and that they don't need
22 to worry about compliance with the land use regs;
23 it's part and parcel of their application.

24 And I will say if the board decides to
25 continue with this application, I would ask that we

1 be permitted to obtain testimony about how necessary
2 this component is to the application, period.

3 BOARD PLANNER: I'm sorry, what zone?

4 ATTORNEY CUCCHIARO: This is a legal
5 issue.

6 BOARD PLANNER: I know, but she said
7 the rural zone; I'm just trying to clarify what
8 zone.

9 ATTORNEY DeBORD: ARE-6.

10 BOARD PLANNER: Thank you.

11 ATTORNEY SIMON: Respectfully, it's a
12 complete misreading of the Brower case.

13 The Brower case involved an easement
14 that was directly next to the development in
15 question. And the court said that because it was an
16 on-site improvement, not on the lot but within the
17 development, it required notice.

18 This is an off-tract improvement which
19 is very different. It's governed by Section 42 of
20 the Municipal Land Use Law. It's a half a mile
21 away. It's not a new road, it's not a new easement,
22 it's just roadway widening in response to concerns
23 raised by this board, and that is it.

24 It has nothing to do with this
25 application in terms of conferring jurisdiction for

1 purposes of permitted uses, for purposes of notice.

2 ATTORNEY CUCCHIARO: Mr. Chair, so I
3 read all of the various letter briefs, looked at the
4 case law, I have listened to the arguments today.

5 I would, first, counsel the board to
6 not consider the characterization of the arguments,
7 you know, words like "ridiculous" and "frivolous,"
8 that's not anything this board needs to concern
9 itself with; it's reviewing merits of the arguments.
10 They have both been well argued.

11 I did take a look at the Brower case.
12 I was familiar with it. And the Nuckel case. We
13 also looked at the cases where these cases have been
14 cited, like the J. Star case, Conte v. Smith,
15 Lakewood Realty Associates, the Angel case. And
16 what these cases have in common is that they
17 involved access drives that were very direct; they
18 were on adjoining properties and they were direct to
19 the property that was the subject of the
20 application. And the purpose of it was to provide
21 access solely to that property.

22 Here the improvement is not the same,
23 or the proposed improvement is not the same; it's
24 not on an adjacent property providing an access
25 drive simply to this property to facilitate ingress

1 and egress through this property. It's a traffic
2 improvement some distance away, and everyone that
3 drives the road is going to be able to use it. It's
4 not anything that is necessary to ingress and egress
5 of the property where it would become part of the
6 application.

7 So I find that, and my counsel to the
8 board, and my recommendation to the board, is that
9 Brower and Nuckel are distinguishable and do not
10 require a 200-foot notice from that property.

11 Ancillary to that argument is whether
12 there needs to be a land use approval on that
13 property. That is not before this board. So, I
14 mean, you know, there may be a time when permits are
15 being sought, and there are changes to that property
16 and there may be the need for a land use approval;
17 we'll see if and when that happens.

18 So that's my recommendation; my
19 recommendation is that those cases do not deprive
20 the board of jurisdiction.

21 On the secondary issue, I don't know
22 what the banter is about in the community; I don't
23 know what goes over on websites or what people say
24 to each other or what may be contemplated in the
25 future. What I do know is what is being applied

1 for. And what is being applied for is not what
2 counsel is talking about, a flex use with the extra
3 offices.

4 That's why I asked the question,
5 whether the application had changed. I don't know
6 what the applicant wants to do in the future, and,
7 quite frankly, it's none of this board's business at
8 this juncture. There's an application that's before
9 the board; that's the application that we consider,
10 not an application that might be, hypothetically,
11 coming sometime in the future.

12 So I feel on both of those issues that
13 the board has jurisdiction.

14 Mr. Chair, if the board wants to take a
15 straw vote on whether it believes it has
16 jurisdiction or not?

17 CHAIRMAN BOISVERT: Yeah, we certainly
18 can do that.

19 ATTORNEY CUCCHIARO: So having heard
20 the arguments of both counsel, we'll take a formal
21 motion.

22 Is there a formal motion that the board
23 determines that it still retains jurisdiction?

24 MEMBER PIKE: I'll make a motion.

25 SECRETARY RUBANO: Can you turn on

1 your mikes.

2 MEMBER PIKE: I'll make a motion.

3 SECRETARY RUBANO: Thank you.

4 CHAIRMAN BOISVERT: I need a second.

5 VICE-CHAIRMAN HUSZAR: Second.

6 SECRETARY RUBANO: Mr. Greenfield?

7 MEMBER GREENFIELD: Yes.

8 SECRETARY RUBANO: Mr. Huszar?

9 VICE-CHAIRMAN HUSZAR: Yes.

10 SECRETARY RUBANO: Mr. Leggio?

11 MEMBER LEGGIO: Yes.

12 SECRETARY RUBANO: Mr. Seaman?

13 MEMBER SEAMAN: Yes.

14 SECRETARY RUBANO: Mr. Mercer?

15 MEMBER MERCER: Yes.

16 SECRETARY RUBANO: And Chairman

17 Boisvert?

18 CHAIRMAN BOISVERT: Yes.

19 SECRETARY RUBANO: Motion carries.

20 MEMBER LEGGIO: Mr. Simon, could I

21 just ask you? If you remember the testimony from

22 your traffic professional, I don't remember her

23 name, this whole issue with that intersection, okay,

24 was brought up for me. Okay?

25 And at first there was never, ever

1 going to make -- a truck going to make a right-hand
2 turn onto 547 heading towards the warehouse into
3 Lakewood, okay. We argued. Me and her argued a
4 little bit; went back and forth, okay. It was
5 never -- she never, ever agreed to that; no way,
6 they'll never make a right-hand turn. And then a
7 couple meetings later she came back and had this
8 whole new deal; we're going to widen the road for
9 you, move the telephone pole, because, you know
10 what, maybe the trucks will make the right-hand
11 turn, okay.

12 So, you know, I disagree with what you
13 said that, you know, you're doing this, you know, as
14 a favor to the town or a favor to the residents.
15 That's not true because you guys have testimony
16 saying that if that's what needs to be done, that's
17 what will be done. You know, go back in the minutes
18 and look at it, you know, your traffic expert said
19 that.

20 So, you know, I disagree with some of
21 your testimony. And I disagree wholeheartedly that
22 this -- at the end of the road doesn't, you know,
23 require maybe some other look at from our zoning
24 board or something, but that's, you know, I'm not an
25 attorney or one of our paid professionals.

1 All, right, sir. That's all.

2 ATTORNEY CUCCHIARO: Okay. So,
3 Mr. Simon, then, you wanted to address the most
4 recent letter?

5 ATTORNEY SIMON: Yes. Thank you,
6 Mr. Cucchiaro. And, just very briefly, just because
7 it was only submitted two days ago and I didn't have
8 a chance to provide a written response, but I would
9 like to briefly respond right now.

10 So there was a letter dated, I believe,
11 October 3rd from counsel. And they talk about the
12 issue of the applicability of a new inland flood
13 protection rules that are part of regulations
14 promulgated by the New Jersey Department of
15 Environmental Protection. And the argument goes
16 that under section -- I think the argument goes,
17 under Section 10.5 of the Municipal Land Use Law,
18 while there's a provision that states there that any
19 development regulations that are in effect from the
20 date of submission of an application for development
21 shall govern, but that if there is an ordinance that
22 relates to health and public safety that is adopted
23 subsequently, then that ordinance potentially could
24 be applicable to any application after it is being
25 deemed complete.

1 And I believe that counsel's argument
2 is that the new inland flood protection rules that
3 were adopted I think around July -- was it July 13
4 of 2023, thereabouts -- apply to this development,
5 to this application because it affects health and
6 public safety. That is not correct.

7 So, first of all, the new inland flood
8 protection rules are not an ordinance. Section 10.5
9 only talks about ordinances. And, in fact, in the
10 what is called the "Cox book," now the Cox and Drill
11 and Lisa John-Basta book --

12 ATTORNEY CUCCHIARO: The Cox and
13 Koenig book.

14 ATTORNEY SIMON: Yes. And Koenig, of
15 course, Stuart Koenig.

16 ATTORNEY CUCCHIARO: It states that
17 Section 10.5 only applies to municipal ordinances.
18 So the flood protection rule cannot be considered as
19 an exception to the Time of Application Rule for
20 health and public safety reasons, end of story.
21 There is no case law to the contrary. There is no
22 statute to the contrary. There is no regulation to
23 the contrary.

24 Furthermore, the Inland Flood
25 Protection rules modified two sections, two

1 regulations: The flood hazard control act, which is
2 Section 7:13; as well as the Stormwater Management
3 Rules, that's N.J.A.C., Section :8.

4 This project does not require a flood
5 hazard permit. So Section 7:13 that is cited by
6 objectors' counsel in their letter of October 3rd is
7 completely inapplicable. The correct citation has
8 to do with the Stormwater Management Rules in
9 Section 7.8.

10 And even if I was wrong -- which I'm,
11 respectfully, not -- in terms of interpretation of
12 the Time of Application Rule or statute under
13 Section 10.5 of the Municipal Land Use Law, there is
14 a grandfathering clause in the Stormwater Management
15 Rules that basically says that any application that
16 was -- in this case, the freshwater wetlands
17 application for the applicant, which included
18 stormwater review -- if deemed technically complete
19 -- in this case prior, which is on April 4th, 2022,
20 and Technical Review began on April 26th, 2022 --
21 because it was a complete application submitted to
22 the DEP on or after March of 2021 and prior to
23 July 17 of 2023, the project is subject to the
24 stormwater rules in effect on March 2nd, 2021.

25 So it's actually stated in the amended

1 stormwater rules that the new inland flood hazard
2 rules that came about in mid-July of 2023 do not
3 apply.

4 And, in fact, ironically, during the
5 comments that were published with regard to the
6 proposed Inland Flood Protection rules that a
7 certain member of the public said, hey, you know,
8 when you're considering finalizing these Inland
9 Flood Protection rules you should utilize what is
10 utilized in Section 10.5 to have exceptions for
11 public health and safety. And the DEP responded to
12 that and they actually said in response, and this is
13 published in the New Jersey Register [as read]:

14 "In cases where an applicant has
15 proposed a major development and applied for
16 a freshwater wetlands permit, which triggered
17 a review of stormwater management, the rules
18 in effect at the time of the DEP application
19 govern the department's review of the
20 project. The department cannot retroactively
21 apply newly adopted standards to projects
22 that were submitted prior to the rule-making
23 in question."

24 So for that reason, as well, that there
25 is no exception to the Time of Application Rule in

1 Section 10.5 of the Municipal Land Use Law.

2 And, finally, I believe that there was
3 a comment having to do with our Environmental Impact
4 Report and that it doesn't address alternative plans
5 that could be developed on the -- on the site. In
6 response to that I will tell you, if you look at
7 Page 5 of the Environmental Impact Report, it
8 specifically talks about project alternatives, such
9 as a no-build alternative, as well as alternative
10 uses. And as I stated, probably in the second
11 sentence before this board at the commencement of
12 this application proceeding, this board is now aware
13 that a solar panel application was submitted for
14 this property to the Board of Adjustment and denied.

15 Notably, you know, the Environmental
16 Impact Report has been submitted for review by the
17 board and we have not heard anything about the
18 report being insufficient.

19 Furthermore, should the board
20 ultimately find that it's not in compliance for some
21 reason, which we contend that it is, the board has
22 the right under the ordinance to waive portions of a
23 requirement for an Environmental Impact Report that
24 a particular section is not needed in order to
25 adequately evaluate the environmental impact of a

1 particular project.

2 That being said, we submit, as I just
3 stated, that we did submit what is required under
4 the ordinance for the Environmental Impact Report.
5 So I just wanted to touch on that because it was
6 raised via the letter of October 3rd.

7 ATTORNEY CUCCHIARO: Counsel, do you
8 want to make any comments with regard to the most
9 recent letter brief submitted?

10 ATTORNEY DeBORD: The MLUL statute
11 that was cited governs the authority of the
12 municipality. We're not talking about the DEP's
13 authority over the Inland Flood Protection rule;
14 we're talking about the municipality's authority.

15 The municipality must adopt the Inland
16 Flood Protection rule. They have no choice. If
17 there's not an ordinance now, there will be. The
18 municipalities can't have less protective stormwater
19 protections than the state.

20 The MLUL statute in question permits a
21 municipality, when there's a question of health and
22 safety, to leapfrog the Time of Application Rule in
23 order to be more protective with regard to whatever
24 development is being proposed.

25 I think it's undisputed that flooding

1 is a safety issue. This MLUL statute gives the
2 municipality the authority to consider if it wants
3 to apply the Inland Flood Protection rule. We
4 submit that it should in this case.

5 This property will have an enormous
6 impact on stormwater. I think that's undisputed.
7 It's a huge warehouse.

8 We would like to provide testimony from
9 our expert, Mr. Goll, that the application would
10 look significantly different if the Inland Flood
11 Protection rule were to be applied. And that
12 has -- that has meaning; it has meaning to the
13 neighbors around this site.

14 If there's flooding in the future, are
15 we going to question should we have applied that
16 Inland Flood Protection rule? Why not be overly
17 cautious? Why does the applicant try to avoid being
18 overly cautious to protect its neighbors?

19 I think in this case the board can step
20 in, the municipality can step in and decide, okay,
21 we want to apply this more protective rule for the
22 safety of everyone around us.

23 And with regard to the Environmental
24 Impact Statement, I have no further comment.

25 ATTORNEY CUCCHIARO: Mr. Chairman, I

1 just have a question for our board's professionals.

2 So under the Time of Application Rule,
3 an applicant has vested rights in the ordinances as
4 they exist at the time of application is deemed
5 complete, generally speaking. There is an exception
6 for health and human safety.

7 But my question is, has the township's
8 ordinance changed at all for stormwater management
9 since the filing of this application?

10 BOARD ENGINEER: No.

11 ATTORNEY CUCCHIARO: No? So there's
12 no -- there's no ordinances that we would apply in
13 place of the one that exists at the time that this
14 application was filed?

15 BOARD ENGINEER: Correct.

16 ATTORNEY CUCCHIARO: So with that
17 said, Mr. Chairman, we can't replace the ordinance
18 with an ordinance that doesn't exist under the Time
19 of Application Rule.

20 With regard to, you know, other
21 arguments that counsel has made, I don't think we
22 need to opine at all with regard to whether they're
23 going to be -- what rules they'll be subject to with
24 the NJDEP. That's an outside agency approval. That
25 process will take its course, and they will need to

1 have approvals.

2 But with regard to our local ordinance,
3 the ordinance hasn't changed; there is no new
4 ordinance to replace the current ordinance with. So
5 my recommendation is that The Time of Application
6 rule is not an issue with regard to the stormwater
7 management regs.

8 CHAIRMAN BOISVERT: Okay.

9 ATTORNEY CUCCHIARO: Now, there was
10 additional statements in the letter, and I think
11 applicant's counsel wanted to provide some arguments
12 with regard to additional testimony that the
13 objector wanted to put on tonight?

14 ATTORNEY SIMON: Well, so let me try
15 to summarize where I think we are procedurally with
16 regard to the application.

17 So the last thing that happened was
18 that Mr. Lieberman had the opportunity and asked a
19 few questions of our traffic consultant, Ms. Pehnke.
20 And then he stated he had no further questions.

21 So what we stated was going to happen
22 next and what we intend to proceed with tonight, is
23 to provide some rebuttal testimony from our engineer
24 in response to some of the comments made by the
25 objectors' expert, Mr. Goll.

1 At that point counsel would have the
2 right to, certainly, cross-examine any of that
3 additional testimony or new testimony that we're
4 presenting tonight. Once that is -- and, obviously,
5 board professionals and members of the board.

6 Once that is done and that witness
7 concludes testimony and cross-examination by
8 objectors' counsel, at that point I believe what
9 should happen and what was contemplated or is
10 contemplated, is that all of our witnesses that have
11 provided testimony in support of this application
12 from the very beginning, be made available to the
13 public for questions by members of the public.
14 Understanding that Mr. Lieberman's office would be
15 done with all questions because they have already
16 had the opportunity to ask those questions, with the
17 exception of any new testimony that is being
18 presented tonight.

19 And then the board would proceed, I
20 believe, presumably, with public comment on this
21 application.

22 ATTORNEY CUCCHIARO: Mr. Chair?

23 CHAIRMAN BOISVERT: Yes.

24 ATTORNEY CUCCHIARO: I think that's an
25 accurate restatement of what happened. However, I

1 don't think there's any, you know, constitutional
2 harm or any statutory impediment to the board
3 allowing additional cross-examination from counsel
4 for the objectors tonight.

5 And, then, I think there was an
6 additional witness, counsel, you said you wanted to
7 put up tonight?

8 ATTORNEY DeBORD: Yes. Mr. Chair, I
9 would like to cross-examine the traffic expert
10 again.

11 ATTORNEY CUCCHIARO: Well, I just
12 recommended that that be permitted so.

13 ATTORNEY DeBORD: Okay. Then I won't
14 belabor the point.

15 ATTORNEY CUCCHIARO: Unless you want
16 to argue with me about that?

17 ATTORNEY DeBORD: I do not.

18 ATTORNEY SIMON: With the
19 understanding that if any, you know, subject matter
20 that was already covered, that there shouldn't be a
21 repeat of those questions.

22 ATTORNEY CUCCHIARO: As is the rule
23 for anybody cross-examining, the Chair reserves the
24 right to, you know, limit anything that is
25 repetitive or irrelevant.

1 But you said there was a new witness?

2 ATTORNEY DeBORD: Not a new witness.

3 We have expert engineer, Mr. Jeff Goll. He already
4 testified, but he would like to provide supplemental
5 testimony in response to the revisions to the
6 stormwater.

7 ATTORNEY CUCCHIARO: Mr. Chair, I
8 would recommend that for purposes of allowing the
9 full hearing where all parties have an opportunity
10 to be heard, that you hear that expert testimony as
11 well.

12 CHAIRMAN BOISVERT: Yes.

13 ATTORNEY CUCCHIARO: All right. So I
14 think that's all the procedural issues.

15 Either counsel, are there any other --
16 any more procedural issues that we need to go
17 through?

18 ATTORNEY SIMON: Not that I'm aware
19 of, Mr. Chair.

20 ATTORNEY CUCCHIARO: Okay. So let's
21 get started.

22 ATTORNEY DeBORD: Thank you.

23 CHAIRMAN BOISVERT: Before we get
24 started we'll take five minutes, because we're going
25 to be here for a little while. So take a

1 five-minute recess, and then we'll just get rocking
2 and rolling.

3 SECRETARY RUBANO: The board will now
4 take a five-minute recess. They'll be back at five
5 after eight.

6 - - -

7 (Whereupon, a recess is taken.)

8

9 (Proceedings commence at 8:05 p.m.)

10 - - -

11 SECRETARY RUBANO: The planning board
12 will now reconvene.

13 ATTORNEY SIMON: Thank you, ladies and
14 gentlemen of the board, board professionals.

15 At this point I would like to recall
16 for some rebuttal testimony Tung-To Lam, please, our
17 engineer.

18 ATTORNEY CUCCHIARO: I remind you that
19 you remain under oath. Could you state and spell
20 your name for the record again.

21 TUNG-TO LAM: First name is Tung-To,
22 T-U-N-G-T-O, last name Lam, L-A-M.

23 ATTORNEY CUCCHIARO: Okay, go ahead.

24 SECRETARY RUBANO: If you could pull
25 that mike now closer. Perfect. Thank you.

1 E X A M I N A T I O N

2

3 ATTORNEY SIMON: So, Tung-To, as part
4 of your work on this application you recently
5 submitted or authored a letter to this board dated
6 September 22nd, 2023; is that correct?

7 TUNG-TO LAM: Correct.

8 ATTORNEY SIMON: And that letter has
9 been marked as A-52 for Identification, correct?

10 TUNG-TO LAM: Yes, correct.

11 ATTORNEY SIMON: And that letter
12 provides a summary with regard to some stormwater
13 rebuttal testimony with reference to certain
14 exhibits that have been previously submitted to the
15 board, correct?

16 TUNG-TO LAM: Correct.

17 ATTORNEY SIMON: So I'm going to ask
18 you to summarize the letter of September 22nd, 2023,
19 going through each enumerated item. And just
20 explain a little bit what each refers to.

21 TUNG-TO LAM: Will do.

22 Starting with the September 22nd
23 letter, also known as Exhibit A-52, Point Number 1
24 is about the topsoil. There was a question if we're
25 keeping it on-site. This is an affirmative; we are

1 keeping the topsoil on-site and we're not exporting
2 it off-site.

3 And that is Exhibit A-53, for the
4 topsoil exhibit that we prepared.

5 ATTORNEY SIMON: So A-53, Proposed
6 Topsoil Exhibit, prepared by Bohler Engineering,
7 dated June 12th, 2023, that is what 1A is referring
8 to?

9 TUNG-TO LAM: Correct.

10 ATTORNEY SIMON: Please proceed,
11 Number 2.

12 TUNG-TO LAM: Point Number 2 is the
13 summary under difference between point analysis
14 A -- sorry, Point Analysis 1 and Point Analysis 2.
15 We have, in a chart form, provided that summary for
16 the two-year storm, 10-year storm, 25-year storm,
17 and 100-year storm.

18 So the information has been provided
19 the same as the table in the stormwater report but
20 we just summarize it in a table format for
21 everyone's purpose.

22 ATTORNEY SIMON: Moving on to Number 3.

23 TUNG-TO LAM: Number 3, there was a
24 question about the French drain detail, whether
25 there was infiltration or not. We have added an

1 impermeable liner on three side of the French drain,
2 and keeping the top as filter fabric as previously
3 designed to eliminate any alleged groundwater
4 comments from the objector.

5 So on the three sides of the French
6 drain will be an impermeable liner, and on the top
7 will still remain as the filter fabric.

8 ATTORNEY SIMON: And does 3A of your
9 September 22nd letter refer to a particular exhibit?

10 TUNG-TO LAM: Sorry. That is Exhibit
11 A-47, which is up on the screen right now.

12 ATTORNEY SIMON: So that's entitled
13 French drain exhibit consisting of one sheet
14 prepared by Bohler Engineering, dated August 9th of
15 2023?

16 TUNG-TO LAM: Correct.

17 ATTORNEY SIMON: Please proceed
18 through the letter.

19 TUNG-TO LAM: Point Number 4 is about
20 if we modelled the existing embankment or not, and
21 in coordination with your board professionals, CME
22 and their review of our design, we did, in fact,
23 model the embankment, two of them, for existing E1
24 and E2. And they do have an impact. And for E1,
25 because we modeled an embankment, there's difference

1 between 15 to 19 percent, and that was provided in
2 the stormwater report that has been reviewed by your
3 board professional.

4 And, similarly, under E2, it ranges
5 from 10 to 32 percent in difference of stormwater
6 runoff. And we did, in fact, include those
7 empowerment in our models already.

8 ATTORNEY SIMON: Moving on to Number 5.

9 TUNG-TO LAM: Number 5, we would like
10 to bring up Exhibit A-48, which is the anti-seep
11 collars exhibit, prepared by Bohler, dated
12 June 12th, 2023.

13 ATTORNEY SIMON: So why don't you
14 explain what the purpose of this exhibit submission
15 is.

16 TUNG-TO LAM: There was a question
17 about this trench, the stormwater trenching and the
18 groundwater elevation. And the anti-seep collar is
19 to address that.

20 And we have located the location on the
21 plans on which the pipe run will have that feature.
22 And that is shown on Exhibit A-48.

23 ATTORNEY SIMON: Moving on to Number 6.

24 TUNG-TO LAM: Moving on to point
25 Number 6 is about the pipe joints; what type of pipe

1 joints are we using for this project, if they're
2 watertight or soiltight.

3 So if we refer to Exhibit A-46, titled
4 Pipe Joints Exhibit, prepared by Bohler, dated
5 June 12th, 2023. Once, again, we went through and
6 looked at the geotech information and our stormwater
7 design, and we highlighted the pipe runs, if they
8 are soiltight or if they are watertight joints.

9 ATTORNEY SIMON: Is that in reference
10 to A-46?

11 TUNG-TO LAM: Yes, the pipe joints is
12 shown on A-46.

13 ATTORNEY SIMON: That's dated
14 June 12th of 2023?

15 TUNG-TO LAM: Correct.

16 Point Number 7 we'll skip in order to
17 give back precious time to the board members. It
18 was about the grandfathering of the stormwater regs.
19 That has been discussed already.

20 ATTORNEY SIMON: That was part of the
21 discussion I had with counsel just a few minutes
22 ago, correct?

23 TUNG-TO LAM: Yes.

24 Skipping ahead to Point Number 8, it
25 was about whether soil replacement was required for

1 the various basin or not. In summary, Basin-1,
2 Basin-2, Basin-3 and Basin-4, soil replacement are
3 proposed and that has been part of the application
4 already.

5 Basin Number 5 we're not proposing any
6 soil replacement. And that's consistent with the
7 plans that has been previously submitted.

8 ATTORNEY SIMON: And, finally, Number 9.

9 TUNG-TO LAM: The last point, Point
10 Number 9, there was a comment about the 25 trees
11 that are proposed on the side of the basins. We
12 reviewed the landscape plan and we think that the
13 trees and the shrubs, the landscaping will actually
14 help keeping the soil in place and we believe that
15 is a good practice.

16 And the berm, the side slope that the
17 objector is talking about, is only 2 to 3 feet high.
18 And trees are proposed on the interior side of the
19 slope. There's no safety or stability of the
20 embankment being an issue.

21 And that concludes my testimony.

22 ATTORNEY SIMON: We have nothing
23 further from this witness.

24 ATTORNEY CUCCHIARO: Do you have any
25 other witnesses?

1 ATTORNEY SIMON: I do not, other than
2 making our witnesses available for
3 cross-examination, as we discussed.

4 ATTORNEY CUCCHIARO: Your affirmative
5 case is concluded?

6 ATTORNEY SIMON: For now, subject to
7 anything that anyone may state.

8 ATTORNEY CUCCHIARO: Counsel, do you
9 want to cross-examine?

10 ATTORNEY DeBORD: Yes, please.

11

12 E X A M I N A T I O N

13

14 ATTORNEY DEBORD: Good evening,
15 Mr. Lam. My name is Brittany DeBord. I have a few
16 questions for you. First is with regard to the
17 French drain. And can I ask whoever is controlling
18 the screen to -- perfect.

19 Mr. Lam, the change you made to the
20 French drain proposed for the site, that involves
21 impermeable -- an impermeable layer; is that
22 correct?

23 TUNG-TO LAM: Yes.

24 ATTORNEY DEBORD: And that impermeable
25 layer, it wraps around the drain on three sides and

1 then there's still filter fabric on the top of the
2 drain; is that true?

3 TUNG-TO LAM: Yes.

4 ATTORNEY DEBORD: Did you make this
5 change in response to my expert's concerns about the
6 seasonal high groundwater table?

7 TUNG-TO LAM: We made this change
8 because, we thought it was a silly comment, but we
9 don't want argument here, so we did it.

10 ATTORNEY CUCCHIARO: I'm sorry, I
11 didn't -- could you just repeat that?

12 TUNG-TO LAM: We made the change based
13 on comments from the objector. We didn't feel like
14 it was necessary to argue the point, so we simply
15 added the impermeable liner on three sides to
16 address that issue.

17 ATTORNEY CUCCHIARO: Okay, thank you.

18 ATTORNEY DeBORD: The concern was that
19 the seasonal high water table was above the French
20 drain.

21 Is that your understanding of the
22 concern?

23 ATTORNEY SIMON: Wait, wait.

24 Objection. Concern relating to what? In what
25 context is your question?

1 ATTORNEY CUCCHIARO: Mr. Simon, we
2 can't hear you.

3 ATTORNEY SIMON: I'm sorry. I just
4 posed an objection because I didn't hear the context
5 within which the question was asked. So if you can
6 repeat the question with a foundation.

7 Thank you.

8 ATTORNEY DeBORD: Sure.

9 Mr. Lam, you indicated that you made
10 this change in response to our expert's testimony
11 about the seasonal high groundwater table. And my
12 question to you is, was your understanding of his
13 testimony of his concern about the water table, that
14 it was above the French drain; in other words, in
15 elevation, the groundwater was above the French
16 drain?

17 ATTORNEY SIMON: Do you understand the
18 question?

19 TUNG-TO LAM: No.

20 ATTORNEY DEBORD: Help me understand
21 what your understanding was of my expert's testimony
22 about the seasonal high groundwater table and why
23 you made this change.

24 TUNG-TO LAM: We made --

25 ATTORNEY SIMON: Well, wait, wait,

1 wait. I'm going to -- I'm going to object because
2 you can't ask him what's his understanding about --
3 about testimony.

4 If you have a question, ask him a
5 question and you'll have an answer.

6 ATTORNEY CUCCHIARO: Mr. Chair, the
7 Rules of Evidence are not strictly applicable. But
8 in this instance the answer was there was an
9 objection, they were comfortable with the design as
10 it was proposed, but in order to eliminate the
11 objection they modified the plan.

12 So, I mean, that's -- I think that was
13 his answer.

14 ATTORNEY DeBORD: Okay, fine. Let me
15 ask you another question.

16 How do you believe the impermeable
17 layer will alleviate concerns about the height of
18 the seasonal high groundwater table?

19 ATTORNEY SIMON: Brittany, I'm sorry,
20 what are you referring to when you're asking the
21 question?

22 ATTORNEY DeBORD: I am referring to
23 the change in his design.

24 ATTORNEY SIMON: What in particular;
25 is there an exhibit?

1 ATTORNEY DeBORD: There's a single
2 change in the design, which was the addition of the
3 impermeable liner.

4 ATTORNEY SIMON: Right, which -- I'm
5 not trying to be argumentative, just tell me what
6 exhibit you are referring to?

7 ATTORNEY DeBORD: This very exhibit.

8 ATTORNEY SIMON: And which exhibit is
9 that?

10 SECRETARY RUBANO: A-47.

11 ATTORNEY SIMON: 47? Thank you.

12 Okay, if you can repeat the question?

13 ATTORNEY DeBORD: So my question to
14 you is do you believe that this impermeable liner
15 that you added, this change to your design, will
16 alleviate the concern about the seasonal high
17 groundwater table being so high and potentially
18 above the French drain?

19 ATTORNEY SIMON: Objection in that
20 there's a concern. But if you understand the
21 question, you can answer the question.

22 TUNG-TO LAM: We didn't have a
23 concern. I said we added the liner to avoid
24 arguments.

25 ATTORNEY CUCCHIARO: So, then, just

1 more in tune with the question, if you made the
2 change based upon the argument that was made, then
3 you believe that it addressed the argument?

4 TUNG-TO LAM: Yes.

5 ATTORNEY CUCCHIARO: So the testimony
6 is that the new -- they believe or this witness
7 believes that the new design addressed the argument
8 that was raised and the concerns associated with it.

9 ATTORNEY DeBORD: Mr. Lam, is the
10 seasonal high water table above the elevation of
11 this French drain?

12 TUNG-TO LAM: Above which elevation?

13 ATTORNEY DeBORD: The relative
14 elevation?

15 Is the seasonal high groundwater table
16 above the French drain; is it above relative to the
17 French drain -- the pipe? Excuse me.

18 ATTORNEY CUCCHIARO: I don't think
19 that's a difficult question. I mean, you're
20 familiar with the high water table, correct?

21 TUNG-TO LAM: Yes. I'll check. I am
22 looking for the number.

23 Yes, there's some area of the pipe
24 length where the seasonal high water is above the
25 invert of the pipe.

1 ATTORNEY DeBORD: So do you believe
2 there is a likelihood that this pipe will redirect
3 groundwater in the location of the pipe towards the
4 infiltration basins?

5 TUNG-TO LAM: No.

6 ATTORNEY DeBORD: Why not?

7 TUNG-TO LAM: My answer is no.

8 ATTORNEY CUCCHIARO: Well, she asked
9 -- that's a conclusory answer. It has to be based
10 upon something.

11 TUNG-TO LAM: Just looked at the pipe,
12 we added an impermeable liner around it. We got
13 data around the site. We've done multiple rounds of
14 geotech on this site.

15 We have actual information about this
16 site that we gathered, and that's what my
17 information is based on.

18 ATTORNEY DeBORD: The detail that
19 we're looking at right now, the French drain detail,
20 the caption to the right of the pipe says, "As
21 determined in field to capture subsurface seepage."

22 Would you agree that subsurface seepage
23 is groundwater?

24 TUNG-TO LAM: No.

25 ATTORNEY DEBORD: What is subsurface

1 seepage?

2 TUNG-TO LAM: That water is coming in
3 on the top of the pipe, where we designed it for.

4 ATTORNEY DEBORD: Okay, but that's
5 water that enters --

6 ATTORNEY CUCCHIARO: What is the
7 difference between subsurface seepage and
8 groundwater? Like, is there a different definition
9 for both of those terms?

10 TUNG-TO LAM: I believe the objector
11 is referring to the groundwater, and our design
12 intent to is capture the surface runoff, which is
13 why we left the top layer as a filter fabric.

14 ATTORNEY CUCCHIARO: Okay. Counsel.

15 ATTORNEY DeBORD: What I'm trying to
16 understand, and I won't belabor the point for the
17 interest of time, but why is it that you believe the
18 seasonal high water table is over the filter fabric,
19 which is -- the filter fabric is meant to take in
20 the water seepage; is that right?

21 TUNG-TO LAM: Yes.

22 ATTORNEY DEBORD: So if the seasonal
23 high groundwater water is above that filter fabric,
24 how in the world does that water not get redirected
25 by the French drain?

1 TUNG-TO LAM: That was not my
2 testimony; that's your testimony.

3 ATTORNEY DEBORD: No, I'm asking. I'm
4 asking you.

5 ATTORNEY CUCCHIARO: She's not
6 offering testimony.

7 TUNG-TO LAM: I never said the
8 seasonal high groundwater was above the filter
9 fabric. Those were not my words.

10 ATTORNEY CUCCHIARO: Well, perhaps you
11 could clarify what your testimony was.

12 ATTORNEY DeBORD: Thanks.

13 TUNG-TO LAM: I said we propose an
14 impermeable liner on three sides because the
15 objector had a concern that the seasonal high
16 groundwater would enter the French drain.

17 ATTORNEY DeBORD: Okay. So is it your
18 testimony that the seasonal high water table does
19 not exceed the elevation of the filter fabric?

20 TUNG-TO LAM: Correct.

21 ATTORNEY DeBORD: And based on what;
22 what is that testimony based on?

23 Have you done any calculations or
24 modeling?

25 TUNG-TO LAM: We have gone out there,

1 gathered test pits, recorded data throughout the
2 site, and based on what we have and what is shown on
3 the plans, that's what we designed it for.

4 ATTORNEY DeBORD: Is there any
5 specific data that we can look at that suggests that
6 the seasonal high water table will never exceed the
7 filter fabric in elevation?

8 TUNG-TO LAM: The information is
9 already submitted in the stormwater report.

10 ATTORNEY DEBORD: Okay. But you can't
11 recall sitting here?

12 TUNG-TO LAM: No.

13 ATTORNEY DEBORD: Okay. Is there ever
14 a scenario where the water table may exceed the
15 filter fabric; say heavy storms, unseasonably high
16 water table, any scenario?

17 TUNG-TO LAM: Not likely.

18 ATTORNEY DEBORD: Why not?

19 TUNG-TO LAM: We gathered the
20 information based on NJDEP requirements, and based
21 on the information that we have, it's not likely.

22 ATTORNEY DEBORD: And, in practice,
23 you believe that this French drain will never take
24 on groundwater?

25 TUNG-TO LAM: It has been designed not

1 to.

2 ATTORNEY DEBORD: That was not my
3 question. In practice, you don't believe this pipe
4 will ever take on groundwater?

5 TUNG-TO LAM: It's not what we
6 designed for.

7 ATTORNEY CUCCHIARO: That's the
8 answer, Counsel.

9 ATTORNEY DeBORD: I'm happy. Thank
10 you.

11 All right, let's move on to the
12 anti-seep collars. This is A-38. That was fast,
13 thank you.

14 Mr. Lam, you added the anti-seep
15 collars -- and this is my understanding, correct me
16 if I'm wrong -- to address the concern that the
17 subterranean piping you proposed will act as a
18 conduit for groundwater flow.

19 Is that right?

20 TUNG-TO LAM: Yes.

21 ATTORNEY DeBORD: And you indicate in
22 your rebuttal letter that the anti-seep collars were
23 proposed in order to retard groundwater from flowing
24 within those conduits.

25 Is that right?

1 TUNG-TO LAM: Within the stormwater
2 trench, yes.

3 ATTORNEY DeBORD: I think the question
4 is, do you believe that the anti-seep collars will
5 actually stop the groundwater flow around the
6 conduit, or simply slow it down?

7 TUNG-TO LAM: Stop.

8 ATTORNEY DeBORD: And based on -- I'm
9 reading your letter and it doesn't suggest that; it
10 says it would retar groundwater flow.

11 But you're telling me that you
12 actually, in fact, believe that the collars will
13 stop groundwater flow completely?

14 TUNG-TO LAM: Yes.

15 ATTORNEY DeBORD: Have you seen this
16 in action; have you utilized anti-seep collars
17 before for the purpose of stopping groundwater flow
18 along a conduit?

19 TUNG-TO LAM: Not exactly.

20 ATTORNEY DeBORD: Have you ever used
21 this as a solution for this problem?

22 TUNG-TO LAM: Yes.

23 ATTORNEY SIMON: Objection. What do
24 you mean by "problem"?

25 ATTORNEY DeBORD: Oh, sorry. Excuse

1 me.

2 Have you, Mr. Lam, in the course of
3 your work as an engineer, have you ever utilized
4 before anti-seep collars to address concerns about
5 groundwater flow along subterranean conduits?

6 TUNG-TO LAM: Yes.

7 ATTORNEY DEBORD: Can you give some
8 examples of projects where you have done that?

9 TUNG-TO LAM: Similar case for a sewer
10 pipe.

11 ATTORNEY DeBORD: And can you be more
12 specific? What town?

13 ATTORNEY SIMON: If you recall.

14 TUNG-TO LAM: I do not recall.

15 ATTORNEY DeBORD: And do you know if,
16 in fact, those anti-seep collars were effective in
17 completely stopping groundwater flow?

18 TUNG-TO LAM: That's what they're
19 designed for.

20 ATTORNEY DeBORD: No, no, in this
21 example that you're giving me about the sewer pipe;
22 have you seen the anti-seep collars in action; do
23 they actually work?

24 TUNG-TO LAM: Yes.

25 ATTORNEY DEBORD: Okay. And based on

1 what?

2 ATTORNEY SIMON: Wait, wait. Yes, you
3 have seen them in action and they work?

4 TUNG-TO LAM: Correct.

5 ATTORNEY DeBORD: And is that based on
6 follow-up visits? Reports from the client?

7 TUNG-TO LAM: Yes.

8 ATTORNEY DeBORD: The watertight pipe
9 joints, did you also propose watertight pipe joints
10 to address the objector's concerns?

11 TUNG-TO LAM: We did.

12 ATTORNEY DeBORD: With regard to the
13 trees proposed along the embankment, would you say
14 it's common practice to put woody vegetation along
15 embankments?

16 TUNG-TO LAM: It is.

17 ATTORNEY DeBORD: Have you proposed
18 woody vegetation in embankments in other projects?

19 TUNG-TO LAM: Yes.

20 ATTORNEY DeBORD: Can you give me an
21 example of those other projects?

22 TUNG-TO LAM: Let's just say I can't
23 think of one project where I haven't put vegetation
24 on the side slope of a basin.

25 ATTORNEY DeBORD: Does that include

1 embankments over five feet that are regulated as
2 dams?

3 TUNG-TO LAM: Yes.

4 ATTORNEY DeBORD: Are you aware that
5 it's best practice not to implement woody vegetation
6 on dam embankments because it causes structural
7 insecurity?

8 ATTORNEY SIMON: When you say "best
9 practice" what are you referring to?

10 ATTORNEY DeBORD: Well, actually, if I
11 may, we have a reference that my expert intends to
12 rely on, but I can --

13 ATTORNEY SIMON: Well, maybe you can
14 present whatever you want to present with your
15 witness.

16 ATTORNEY CUCCHIARO: Is there a
17 citation, like an Administrative Code provision, or
18 something like that?

19 ATTORNEY DeBORD: Well, this is a
20 guidance document from the Association of State Dam
21 Safety Officials.

22 ATTORNEY CUCCHIARO: All right. So I
23 think what we'll do is you can -- obviously, the
24 answer to the question is that the engineer believes
25 he's followed all necessary requirements. You will

1 have an opportunity to bring your witness to
2 disprove that.

3 ATTORNEY DeBORD: Will do. Thank you.

4 Mr. Lam, I just have one more line of
5 questioning for you about the interaction between
6 the French drain along the southerly portion of the
7 property and the infiltration basin adjacent to it.

8 Is it possible to zoom into the
9 southerly -- zoom down.

10 GEOFFREY GOLL: Exhibit A-46.

11 ATTORNEY DeBORD: Yes, thank you.

12 Just a little more to the south, yeah.
13 And centered. Down a little bit more. Down all the
14 way. Perfect, perfect. Thank you.

15 Mr. Lam, have you taken into account
16 any potential interactions between the infiltration
17 basin, along the south of the property right above
18 the -- on the top of the embankment with the French
19 drain on the bottom of the embankment?

20 TUNG-TO LAM: What exactly do you
21 mean?

22 ATTORNEY DeBORD: So the infiltration
23 basin it's designed to recharge groundwater; is that
24 right?

25 TUNG-TO LAM: Yes.

1 ATTORNEY DeBORD: And its function is
2 it will take on stormwater runoff, filter it, and
3 the groundwater will be distributed underneath this
4 infiltration basin.

5 Is that right?

6 TUNG-TO LAM: Okay.

7 ATTORNEY DeBORD: Well, is that...

8 TUNG-TO LAM: Yes.

9 ATTORNEY DeBORD: Okay. And the
10 infiltration basin is higher in elevation than the
11 French drain; is that true?

12 TUNG-TO LAM: It is.

13 ATTORNEY DeBORD: So are you concerned
14 at all that the groundwater that is getting
15 recharged by the infiltration basin will just enter
16 the French drain and get drained out into the
17 drainage basins to the west of the property -- east,
18 excuse me?

19 TUNG-TO LAM: No.

20 ATTORNEY DeBORD: And why not?

21 TUNG-TO LAM: We designed it in
22 accordance to NJDEP requirements, including an
23 analysis for mounding analysis and things of that
24 nature, and we have no concerns with our design.

25 ATTORNEY DeBORD: Well, have you done

1 any studies or modeling that takes into account the
2 interaction between these two features?

3 ATTORNEY SIMON: Two features being
4 which; the basin and the French drain?

5 ATTORNEY DEBORD: Right.

6 TUNG-TO LAM: We reviewed a mounding
7 analysis and we have no concerns.

8 ATTORNEY DeBORD: Well, I'm not
9 talking -- I will ask about the mounding analysis,
10 but my question is with regards specifically to the
11 groundwater recharging into soil that is above the
12 French drain, higher in elevation than the French
13 drain.

14 TUNG-TO LAM: My answer remains the
15 same.

16 ATTORNEY DeBORD: So you have done no
17 modeling or calculations to address that?

18 TUNG-TO LAM: I said I have done my
19 analysis in accordance with DEP requirements and I
20 have no concerns.

21 ATTORNEY DeBORD: And in terms of the
22 mounding analysis that you prepared for the
23 infiltration basin, that mounding analysis is the
24 function of the water table -- sorry, I'm trying to
25 figure out a way to put this.

1 The mounding is a function of the water
2 table being artificially higher than the surrounding
3 water table as a result of groundwater recharge; is
4 that right?

5 TUNG-TO LAM: Yes.

6 ATTORNEY DeBORD: When you calculated
7 the mounding, that articulate elevation, does that
8 mounding enter the French drain area?

9 TUNG-TO LAM: No.

10 ATTORNEY DeBORD: And is there
11 any -- document or calculations that you can point
12 to that evidences that statement?

13 TUNG-TO LAM: My calculations included
14 in my stormwater report that was previously
15 submitted to the board already.

16 ATTORNEY DeBORD: Okay. Does the
17 mounding in your mounding analysis in your
18 stormwater report show the location of the French
19 drain?

20 TUNG-TO LAM: No, because it's just a
21 spreadsheet. You have to actually look at the plans
22 and compare the two documents.

23 ATTORNEY DeBORD: And I have one final
24 question, your attorney may object, but with respect
25 to the intersection improvement at Victory Road and

1 Route 547, you haven't conducted any stormwater
2 analysis with respect to that site, have you?

3 ATTORNEY SIMON: Objection. Your
4 clairvoyance is impressive.

5 ATTORNEY DeBORD: Thank you.

6 I do think it's relevant.

7 ATTORNEY CUCCHIARO: Just restate the
8 question.

9 ATTORNEY DeBORD: The question was
10 just confirming that Mr. Lam didn't do a stormwater
11 analysis with respect to the off-site improvement.

12 ATTORNEY SIMON: Objection, relevance,
13 But if you want to answer the question.

14 ATTORNEY CUCCHIARO: Mr. Chair, Rules
15 of Evidence are not strictly applicable. It's part
16 of an overall plan that was submitted. I think the
17 witness can answer.

18 TUNG-TO LAM: The answer is no.

19 ATTORNEY DeBORD: Okay.

20 ATTORNEY CUCCHIARO: Do you have any
21 more questions, Counsel?

22 ATTORNEY DeBORD: I'm just making
23 sure. I don't have any further questions.

24 Thank you very much, Mr. Lam.

25 ATTORNEY CUCCHIARO: Okay. And I

1 think you said you wanted to ask some additional
2 questions to the applicant's traffic engineer?

3 ATTORNEY DeBORD: I do.

4 ATTORNEY SIMON: I'm sorry, Rob, just
5 is she going to do that now?

6 ATTORNEY CUCCHIARO: Yeah, we'll do
7 that now.

8 ATTORNEY SIMON: Okay.

9 ATTORNEY CUCCHIARO: Get all of the
10 objectors' questions done. So if we could just have
11 your traffic engineer.

12 I'll just remind you, you remain under
13 oath. Just state and spell your name for the
14 record, again.

15 KERRY PEHNKE: Yes, of course. Kerry
16 Pehnke, K-E-R-R-Y, P-E-H-N-K-E.

17 ATTORNEY CUCCHIARO: Okay, Counsel, go
18 ahead.

19 ATTORNEY DeBORD: Thank you.
20 Good evening, Ms. Pehnke.

21 Would someone blow up A-45. I'm
22 looking for the concept plan; is that A-45?

23 BOARD ENGINEER: It's not A-35.

24 ATTORNEY DEBORD: A-43, maybe?

25 SECRETARY RUBANO: A-45.

1 BOARD ENGINEER: A-45? Sorry, I heard
2 A-35.

3 ATTORNEY DeBORD: Perfect, that's it.
4 Thank you.

5

6 E X A M I N A T I O N

7

8 ATTORNEY DEBORD: Ms. Pehnke, the
9 applicant, representative of the applicant,
10 indicated that the -- strike that.

11 Ms. Pehnke, would you confirm that the
12 accessway is necessary for tractor-trailers to be
13 able to take right turns onto Route 547?

14 ATTORNEY SIMON: Wait, first of all,
15 when you say -- you're referring to Exhibit A-45.
16 And which accessway are you referring to?

17 ATTORNEY DeBORD: The proposed
18 accessway.

19 ATTORNEY SIMON: Okay. Do you know
20 where I'm talking?

21 KERRY PEHNKE: The channelized right
22 turn?

23 ATTORNEY DEBORD: Correct.

24 KERRY PEHNKE: Yeah, the easement.
25 It's necessary for buses to make the right-turn

1 movement without encroaching over the centerline.

2 ATTORNEY DeBORD: And as well as
3 tractor-trailers?

4 KERRY PEHNKE: Yes. Those are wider
5 than buses.

6 ATTORNEY DEBORD: And, to your
7 knowledge, is there a bus route on Victory Road?

8 KERRY PEHNKE: We did count school
9 buses making that right turn, correct.

10 ATTORNEY DeBORD: School buses?

11 KERRY PEHNKE: Um-hum.

12 ATTORNEY DEBORD: Okay. And in order
13 to make a right turn at this time, do large
14 vehicles, such as buses and tractor-trailers, have
15 to make illegal turns, for lack of a better term?

16 ATTORNEY SIMON: A couple of
17 objections. First of all, what do you mean by at
18 this time?

19 KERRY PEHNKE: The current conditions.

20 ATTORNEY SIMON: And do you mean
21 currently?

22 ATTORNEY DeBORD: Yes.

23 KERRY PEHNKE: Under current
24 conditions of the intersection?

25 ATTORNEY DEBORD: Right.

1 KERRY PEHNKE: School buses will
2 encroach on the centerline of both Victory Road and
3 Lakewood Farmingdale Road to be able to make that
4 right turn.

5 ATTORNEY DeBORD: And how many school
6 buses a day?

7 KERRY PEHNKE: If you would let me
8 check, I do have the count. I think I know it but I
9 just want to be able to get it to you.

10 So the total buses we counted making
11 that right turn was two throughout our count
12 periods. We counted from 6:00 a.m. to 10:00 a.m.
13 and 3:00 p.m. to 6:00 p.m.

14 ATTORNEY DeBORD: And did you count
15 tractor-trailers, as well?

16 KERRY PEHNKE: We counted articulated
17 and single-unit trucks, so that includes a wide
18 range of trucks. And only one had made the right
19 turn.

20 ATTORNEY DeBORD: Do you know if any
21 of those trucks came from businesses along Victory
22 Road?

23 KERRY PEHNKE: I do not know their
24 origin.

25 ATTORNEY DeBORD: With regard to the

1 warehouse, the subject development, the warehouse,
2 would you agree that this accessway is necessary for
3 the warehouse to conduct operations as planned?

4 KERRY PEHNKE: I do not.

5 ATTORNEY DeBORD: And help me
6 understand why.

7 KERRY PEHNKE: I do not because the
8 tractor-trailers, the larger size, WB-67s, in my
9 professional opinion, are going to be oriented to
10 and from the regional roadway network, and it would
11 be quite infrequent for them to make the right turn
12 there and --

13 MEMBER GREENFIELD: But it could
14 happen, right?

15 KERRY PEHNKE: Yeah, I said it would
16 be quite infrequent, but they could do it.

17 And per DOT code, actually, because of
18 the infrequency that we would anticipate of that
19 size vehicle going, it does allow for encroachments
20 over centerlines for design purposes.

21 ATTORNEY DeBORD: So as it exists
22 right now, the only way that trucks would be able to
23 get to and from the warehouse are from the
24 northerly -- the portion of 547 that is to the north
25 of Victory Road; is that right?

1 KERRY PEHNKE: That's the routes that
2 we would expect for this land use for the trucks to
3 be oriented to and from.

4 ATTORNEY DeBORD: And Victory Road
5 itself, do you know the weight limit for that road?

6 KERRY PEHNKE: I don't believe there
7 is a posted weight limit, not that I've observed.

8 ATTORNEY DeBORD: Are you aware, are
9 there any permits required for trucks to access that
10 road?

11 KERRY PEHNKE: Not that I'm aware.

12 ATTORNEY DeBORD: And do you know if
13 the road is on the DOT map of permitted trucking
14 roadways?

15 ATTORNEY SIMON: Which road, Victory
16 Road?

17 ATTORNEY DeBORD: Yes, Victory Road.

18 KERRY PEHNKE: I don't have the map in
19 front of me so I can't answer that specifically, but
20 it's not a restricted truck route.

21 ATTORNEY DeBORD: Okay. That's a good
22 answer.

23 Do you anticipate that the addition of
24 this accessway will increase truck traffic in this
25 area?

1 ATTORNEY SIMON: What accessway are
2 you referring to?

3 ATTORNEY DeBORD: The same turn, the
4 -- what did you call it, the accessway that --

5 KERRY PEHNKE: The channelized right
6 turn, the easement area.

7 ATTORNEY DeBORD: Correct. Do you
8 anticipate that the channelized right turn will
9 increase truck traffic in this area?

10 KERRY PEHNKE: I don't believe so, no.
11 It will benefit the current vehicles that use it.
12 The proposed warehouse, we anticipate the trucks are
13 going to and from the regional network so, you know,
14 I don't think people -- my professional opinion
15 doesn't change, trucks aren't going to be going
16 right there. It would be very infrequent for trucks
17 of that size to make that turn.

18 ATTORNEY DeBORD: Other than the
19 addition of the trucks that will be accessing the
20 warehouse, right?

21 KERRY PEHNKE: Not making the right
22 turn; the larger vehicles going to and from the
23 regional network, the Interstate.

24 ATTORNEY DeBORD: I have no further
25 questions. Thank you.

1 ATTORNEY SIMON: Thank you.

2 ATTORNEY CUCCHIARO: Okay, Counsel,
3 were there any other witnesses that you wanted to
4 ask additional questions to?

5 ATTORNEY DeBORD: No, sir. I only
6 would like to present my witness.

7 ATTORNEY CUCCHIARO: Now you said that
8 you have a witness that you wanted to have provide
9 additional testimony tonight?

10 ATTORNEY DeBORD: I do. And that is
11 Geoff Goll, a professional engineer.

12 ATTORNEY CUCCHIARO: Okay, Mr. Goll,
13 you were previously sworn, correct?

14 GEOFFREY GOLL: Yes.

15 ATTORNEY CUCCHIARO: I remind you, you
16 remain under oath. If you could just state and
17 spell your name for the record.

18 GEOFFREY GOLL: Sure. My name is
19 Geoffrey, it's G-E-O-F-F-R-E-Y, middle initial M,
20 last name Goll, G-O-L-L.

21 ATTORNEY CUCCHIARO: Okay, go ahead,
22 Counselor.

23 ATTORNEY DEBORD: You don't need me to
24 qualify him, do you?

25 ATTORNEY CUCCHIARO: No. He has

1 already been qualified.

2

3

E X A M I N A T I O N

4

5

ATTORNEY DEBORD: Good evening,

6

Mr. Goll.

7

8 Mr. Goll, have you reviewed the
9 proposed changes to the stormwater plans that were
10 submitted by the applicant? And specifically I'm
11 referring to the impermeable layer around the French
12 drain and the anti-seep collars?

12

GEOFFREY GOLL: Yes.

13

14 ATTORNEY DEBORD: And would you
15 provide an explanation as to whether you believe
16 this -- these changes will allow the stormwater
17 system to function as intended?

17

18 GEOFFREY GOLL: So the applicant's
19 engineer initially tonight stated that the liner was
20 installed because my concern that this drain -- this
21 French drain, as they call it, would infiltrate
22 ground, you know, water into the ground below it.
23 And, in fact, it was the opposite of what I was
24 concerned about.

24

25

Number one, and I did a -- you know,
it's my own hand-sketches that I did, but when you

1 look at the seasonal high groundwater table compared
2 to the invert of the French drain, the French drain
3 has an invert; in other words, the bottom of that,
4 can you pull the detail up? Thank you.

5 So at the bottom of the 10-inch
6 diameter perforated pipe it's at Elevation 73, and
7 based on reviewing test pits in the area the
8 seasonal high water table is at 74.8, which is about
9 1.8 feet above the bottom of the invert.

10 So the question then became, okay, well
11 the detail doesn't provide a specific depth or a
12 height of where that impermeable liner is going to
13 come up, but what's contrary to what is being --
14 that liner would do if it was high enough to block
15 the seasonal high groundwater, is the label on the
16 right that says "as determined the depth," it shows
17 the depth of what this trench will be, as determined
18 in field to capture subsurface seepage.

19 So it's either surface water, you know,
20 water flowing over the ground; and if it's
21 underground, it's groundwater.

22 And so what the intent of this detail
23 is, the original intent of this detail was to
24 capture water, number one, from ponding because this
25 was a naturally low area in the back corner of this

1 property. And because they're filling right up to
2 the property boundary they knew that if they were to
3 not put a drain here, surface water would back up
4 and it would pond and extend onto the neighbor's
5 property, because they're losing that localized
6 storage area.

7 Now, they are capturing some of that in
8 the parking lot, they're capturing some of that in
9 the slope, and they put this in to capture that
10 surface water that would be going into the drain.
11 And I think the engineer had testified to that, it's
12 really to capture surface water, but, I think, the
13 other concern that they have is that there would be,
14 potentially, groundwater that may come up and then
15 go into the -- into the -- well, they should be
16 concerned about water going into this trench with
17 the stone, and then -- and be basically negating any
18 kind of infiltration volume for volume that this
19 groundwater -- the recharge systems provide.

20 Another thing I did was I -- sorry.

21 ATTORNEY DeBORD: And your concern is
22 based on the level of the seasonal high water table,
23 right?

24 GEOFFREY GOLL: Correct, the seasonal
25 high being 1.8 feet above the invert of this basin.

1 The applicant's engineer stating that
2 they did it just to simply satisfy our comment is
3 not -- I don't believe is true. And that would have
4 to be further defined on that detail to figure out
5 how high that impermeable liner should go to isolate
6 that, the seasonal high groundwater from the trench.

7 But there's another complication here.
8 And if you could pull up the anti-seep collar and
9 zoom in on that Basin Number 5 at the southern end.
10 Pan down. Thank you. A little over to the left,
11 no, down, down, down. Like somebody scratching my
12 back, I need to move over a little. There you go.

13 So if you look at where the horizontal
14 line --

15 ATTORNEY SIMON: Could I make a
16 suggestion, just reference the exhibit --

17 GEOFFREY GOLL: Okay, thank you.

18 ATTORNEY SIMON: -- so the public knows
19 what you're talking about.

20 GEOFFREY GOLL: Which exhibit is it?

21 ATTORNEY DeBORD: A-48.

22 GEOFFREY GOLL: Thank you.

23 ATTORNEY SIMON: You're welcome.

24 GEOFFREY GOLL: This is Exhibit A-48.

25 And what I'm pointing to it's called Basin Number 5.

1 It's a subsurface infiltration basin underneath the
2 parking lot. And it shows that in relation to the
3 French drain, which is that darker line. Well, for
4 lack of a better words, to the south and below it,
5 at the toe of the slope. And if you draw a simple
6 stretch you can see that the, obviously, the invert
7 of that French drain is four feet lower than the
8 invert of the infiltrated surface of that basin
9 here.

10 Now, when water goes into an
11 infiltration basin, it doesn't simply go vertically
12 down, it goes vertical -- it goes down as well as
13 going sideways. So as this basin were to fill up
14 with water, water not only seeps out the side, it
15 seeps out the bottom, it seeps out the sides. And
16 so you're going to get a lateral movement of water.

17 The mounding that they talked about is
18 where the water is traveling down at a certain rate
19 where as soon as the groundwater cannot -- it's sort
20 of like a traffic jam; there's a certain amount of
21 water going down but only a certain capacity of the
22 groundwater system to absorb it. So water
23 artificially rises up as it queues waiting to be
24 absorbed by the ground, so you get this what they
25 call a mound; the groundwater goes like this

1 underneath the basin.

2 The centerline of that detention basin
3 along the long side is 35 feet -- excuse me -- yes,
4 it's 35 -- I'm sorry, it's 30 feet to the centerline
5 of the infiltration trench. So that's 30 feet.
6 When you look at the mounding analysis for Basin 5,
7 the outer extent of that mound from the centerline
8 of that infiltration basin where it stops being --
9 you know, stops elevating above normal conditions,
10 is 35 feet. In other words, that mound extends to
11 the property line, actually a little bit -- it
12 probably goes right to if not just past the property
13 line but gets intercepted by that French drain.

14 So depending on where you put that
15 impervious liner may impact how that water then
16 travels into the -- water gets from that
17 infiltration basin into that drain.

18 Why is that important? Because that
19 groundwater is supposed to literally go into the
20 ground. The basin that it goes to, which I believe
21 is Basin Number 2 on the right -- all the way to the
22 right. Do you see where the -- the one on the
23 bottom right, that is basin number -- I believe
24 that's basin number -- let's see, where is the
25 label? I'm sorry, that's Basin Number 4. So Basin

1 Number 4. Not on the bottom, on the right.

2 That was designed to capture a certain
3 amount of surface water from the project site, but
4 it was not designed to capture water from the one
5 infiltration basin, get intercepted by the French
6 drain, and then be discharged to that Basin Number
7 4.

8 What that could do is, during the
9 winter months especially, it could add additional
10 hydraulic loading to that basin as the water gets
11 intercepted. That basin then holds potentially --
12 you know, the applicant's engineer still has to
13 prove this -- will hold that water for longer than
14 72 hours, which is the maximum amount of time the
15 basin is allowed to have visible water at the
16 surface. And so it's going to overload the basin
17 potentially and have an impact on how that basin
18 functions.

19 Those are a couple of very large
20 concerns I have about that French drain they
21 installed on that side of the property.

22 ATTORNEY DeBORD: And, Mr. Goll, just
23 to clarify based on your understanding of this
24 design, is it your opinion that at some point during
25 the year the groundwater table level will be higher

1 than the French drain by virtue of the table
2 naturally, and mounding?

3 GEOFFREY GOLL: Yes.

4 ATTORNEY DeBORD: And do you believe,
5 based on scientific certainty, that the French drain
6 will essentially drain groundwater from one area of
7 this site to the basins in other portions of the
8 site?

9 GEOFFREY GOLL: That's correct.

10 ATTORNEY DEBORD: And is it your
11 understanding that this basin was not designed to
12 receive excess water beyond stormwater runoff?

13 GEOFFREY GOLL: Besides surface
14 runoff, correct.

15 ATTORNEY DeBORD: Besides surface
16 runoff. And aside from the basin not being able to
17 drain in compliance with the 72 hours in the BMP
18 manual, what are the other adverse impacts of this
19 basin being filled with excess water?

20 GEOFFREY GOLL: Well, so if water
21 stays in too long and let's say we get into the
22 springtime, in the growing season, and, you know,
23 and it warms up, you can get algae, you can get
24 surface scums that will actually -- because if the
25 water sits there for a long period of time, we have

1 seen this in basins that have failed, it's going to
2 permit algae growth and organics and then clog up
3 and require more maintenance to the basin.

4 The other thing, obviously, if water is
5 sitting there for a very long period of time, it
6 could end up being a mosquito breeding issue. And
7 these basins are sand; they're covered with
8 basically sand. There's not really a habitat
9 associated with them, and so it will end up creating
10 an optimal area for mosquito breeding.

11 ATTORNEY DeBORD: Thank you.

12 GEOFFREY GOLL: So, I mean I can go --
13 do you want me to go on to other...

14 ATTORNEY DeBORD: Yes.

15 GEOFFREY GOLL: Can we pull up the
16 topsoil detail, which is A-53.

17 I'm going to be frank, this is the
18 first time I have seen this detail. On the website,
19 when I looked at the listing of exhibits, it stops
20 at A-52. I'm not saying it wasn't submitted; I'm
21 just saying we didn't have a chance to observe it.

22 But I was able to intuitively
23 understand what they're going to be doing. So the
24 prior plans that I critiqued last time I was here I
25 explained that -- I forget the exact amount,

1 naturally there's, like, 12 or 15 inches on average
2 of topsoil on the site. And the plans, there were
3 two different locations on the plans, the one called
4 for four inches of topsoil to be placed back, and
5 one called for six inches of topsoil.

6 I'm assuming this was, then, prepared
7 in response to that comment that I had made because
8 of the concern for exportation of topsoil. So what
9 you will notice, though, is I'm assuming they're
10 going to be spreading this topsoil. I made the
11 assumption that this 29 inches of topsoil they're
12 going to be placing around the site will be done
13 relatively evenly; that's all I could make the
14 assumption about.

15 And a couple of things to understand.
16 So, for example, how that will impact? Well,
17 topsoil itself is an organic material, and that's
18 why it's good for plants; it has organics in it;
19 biodegradable materials and plants uptake the
20 nutrients and it's the natural soil surface.

21 But it also can degrade over time as
22 well. So, for example, that's why you're not
23 allowed to put topsoil underneath the foundation of
24 a building, for example, or a roadway. Because it
25 has detrimental effects, once it starts to decompose

1 the organics, you can get settlement.

2 So, as just a for instance, a couple of
3 examples. So you will see those little small little
4 islands there, a lot of those islands and adjacent
5 to the roadway, the access road, you're going to
6 have a six-inch-high curb. When you look at the
7 detail for the curb on the plans, which I believe is
8 on sheet -- well, Sheet C901, Detail Number 5, it's
9 called "Concrete Curb Six-Inch Reveal." You don't
10 have to go to it at this point, unless you want to
11 see the detail. I can describe it.

12 Below the lawn side, so you've got the
13 curb, right, and it drops six inches and you've got
14 the asphalt on the landscaping side, it's six inches
15 higher than the road, or the asphalt or the walkway
16 or you name it, and then it goes down six inches.
17 So the bottom of the concrete footing for these
18 curbs is 18 inches. But right next to it they're
19 going to put 29 inches of topsoil. So now you're
20 going to have 11 inches of organic topsoil not
21 underneath the footing, but right next to the
22 footing. And then in other areas where it's either
23 next to pavement or sidewalks, you're now going to
24 have a pretty thick layer of topsoil next to it.

25 So that's a concern in terms of the

1 long-term stability of the sidewalk or the curbs,
2 for example, and the roadway edges that might be
3 affected if those curbs were then to settle because
4 now there's -- the volume goes down as the soil
5 decomposes and you may get soil that shifts from
6 underneath the curb.

7 So is that the end of the world? I
8 don't know. I just think it's more of a quality
9 issue in terms of the construction. And that's
10 something that is going to be -- that I just wanted
11 to bring to the board's attention.

12 ATTORNEY DeBORD: Mr. Goll, do you
13 want to speak to your understanding of the efficacy
14 of anti-seep collars?

15 GEOFFREY GOLL: Yes. So the key term
16 that I did notice in the anti-seep collars was and
17 it's a correct statement, it says "In order to
18 retard the groundwater from flowing within the
19 stormwater pipe trench, anti-seep collars will be
20 installed."

21 Anti-seep collars do not stop flow.
22 Anti-seep collars were originally developed -- they
23 used to put them in embankment dams, so like
24 stormwater basins -- and some stormwater basins they
25 still use them, although dam safety, New Jersey Dam

1 Safety and actually the Association of State Dam
2 Safety Officials doesn't recommend the use of them
3 anymore -- this is more of an aside -- because water
4 still goes along them and it carries soil with it.
5 Now for dams they request that you put in what are
6 called sand diaphragms; it captures the water as it
7 seeps out; doesn't stop the leaking but it stops the
8 soil from being dragged out.

9 Soil being dragged along the stormwater
10 pipe is not the concern. The concern is that these
11 anti-seep collars, the way they function is they,
12 essentially, they don't eliminate seepage along the
13 pipe; they create an effectively longer length.

14 So, as an example, if you have a pipe
15 that is 200 feet in length and they put anti-seep
16 collars that essentially -- because now it has to,
17 instead of going along the pipe it zigzags along the
18 anti-seep collar -- it doesn't just hit the
19 anti-seep collar and stop; it's going to go to --
20 well, the path of least resistance. So if there's a
21 discharge at the end of this, for example, and a
22 manhole at the end, the water will eventually
23 travel. So it will slow it down but it's not going
24 to stop it.

25 So you will still get a net export of

1 groundwater when seasonal high water rises above the
2 stormwater pipes. So that's, I just wanted to point
3 that out, it's not going to stop it; it's just going
4 to slow it down. So it still will have, likely, a
5 net effect on seasonal high groundwater.

6 The pipe joints -- I'm glad also to see
7 that they put watertight joints in there because the
8 watertight joints will eliminate water from getting
9 into the pipes, you know, from joints. Because I
10 did bring up the last time, I'm glad that they
11 listened to that, is you provide watertight joints
12 because that's -- that's even a shorter distance for
13 water to get into the pipe and then off the site.

14 The only issue I have with that is they
15 probably should check their buoyancy calculations
16 because now if it's watertight and you've got all
17 this water around it, it's like a boat, it has
18 displacement.

19 So normally if you have an open void,
20 like a pipe or a tank, or an underground tank, it's
21 called -- you don't want it to float out of the
22 ground. And I am not saying this one is going to
23 float out of the ground, but it could still shift.
24 And so the applicant should provide buoyancy
25 calculations to prove that these pipes aren't going

1 to lift out of the ground, or lift up and do that.

2 So that's one of the issues. But,
3 regardless, you know, there's going to be less water
4 leaving the site; that's something I can definitely
5 agree with. But it's not going to stop the water
6 leaving from the site; it's still going to go around
7 these anti-seep collars because it's below the
8 seasonal high water table.

9 ATTORNEY DEBORD: In other words, it
10 remains your opinion that the stormwater system will
11 function as intended, right?

12 GEOFFREY GOLL: The stormwater pipes
13 will basically negate some of the recharge benefits
14 that you might get from the basins, the infiltration
15 basins.

16 ATTORNEY DeBORD: And then why don't
17 we address the vegetation on the embankment.

18 GEOFFREY GOLL: Sure. And we are
19 jumping around a little bit, but I think this is
20 important point.

21 I 110 percent disagree with the
22 applicant's engineer that putting a tree on an
23 embankment that is designed -- I don't care if it's
24 1 foot or 20 feet -- to hold back water, it is not a
25 good idea to put woody vegetation on an embankment

1 of a dam, whether it's inside the embankment or on
2 the outside or on top of it.

3 As a matter of fact, I have worked on
4 -- you know, I work on everything from small
5 stormwater designs to working on levees, you know,
6 earthen levies for the -- to the U.S. Army Corps of
7 Engineers, and I have never heard that putting a
8 tree on an embankment is a good idea.

9 Two reasons. One is more important
10 than the other in this situation because it's not a
11 big dam -- these aren't big -- and, by the way,
12 they're still dams. They're not regulated dams but
13 these are small dams. They're not over five feet
14 where the New Jersey DEP would regulate them, but
15 they're still -- they're still designed to hold back
16 water and function.

17 So one of the concerns would be a tree
18 gets older, it falls over. The root ball rips up
19 the embankment and threatens the integrity of the
20 system. Now, obviously, if a tree fell down, you
21 could go in there and repair it and take care of it
22 and fix it relatively quickly.

23 But the other problem is that the tree
24 roots themselves create conduits through the
25 embankments. And so trees are going to both chase

1 where the water is and where it's looking for the
2 water. So if you put a tree on an embankment, on
3 the inside of an embankment, it's going to start
4 spreading its roots both into the basin but
5 underneath the embankment as well.

6 And so one of the things that I've --
7 just as an aside, I mean, I could have brought in
8 the levee -- the levy standards and inspection
9 standards where you have to stay 11 feet from the
10 edge of the toe of either side of a levy, but that
11 may have been a bit of overkill for this. But the
12 Association of State Dam Safety Officials on their
13 website has trees and brush -- and I can provide
14 this to the board if they want to see it, it's -- or
15 I could just read it into the record, it's up to
16 you.

17 ATTORNEY CUCCHIARO: Counsel, it's up
18 to you. What do you want to do?

19 ATTORNEY DeBORD: You can read it into
20 the record.

21 GEOFFREY GOLL: Okay. So this is from
22 the Association of State Dam Safety Officials. I
23 accessed this today. It's called "Trees and Brush."
24 There is a website for it; you go to damsafety.org
25 and it's under the dam owners tabs, for them to --

1 when they're doing inspections; and it says about
2 trees and brush.

3 Trees and Brush Hazards. Trees and
4 brush should, and it emphasizes in bold, not be
5 permitted on earthen embankment surfaces or in
6 vegetated earth spillways. Extensive root systems
7 can provide seepage paths for water. Trees that
8 blow down or fall over can leave large holes in the
9 embankment surface that will weaken the embankment
10 and can lead to increased erosion, as is the case in
11 the failed earth embankment shown in this photo, and
12 they show a photo of an embankment that failed.

13 Brush obscures the surface limiting the visual
14 inspection, providing a haven for burrowing animals,
15 and inhibiting the growth of grass and vegetation.

16 So -- and then it goes on that trees
17 and brush should not be also allowed next to
18 concrete walls and structures, as well. So this is
19 a national authority on embankments and dams and it
20 should not be being used on embankments of any kind.

21 ATTORNEY DeBORD: Have you made any
22 other conclusions with regard to the changes to the
23 stormwater design?

24 GEOFFREY GOLL: Yes. There is a few
25 other items. The topsoil, the drain, watertight

1 joints so -- oh, yes.

2 So the final thing was, it was Item 8.
3 They do talk about using soil replacement. I guess
4 they recognize that there are certain soil horizons
5 underneath where the proposed basins are going to
6 be, and they're proposing to remove that soil and
7 replace it with a more permeable soil, because of
8 the concern that it's not going to infiltrate at the
9 rate they would like, or the rate that would comply,
10 and they're trying to comply with the rules.

11 And that is Basins Number 1 through
12 Basin Number 4. That is the underground basin on
13 the top left, or the western side of the property.
14 That is an underground basin. And then the three
15 basins on the right, surface basins on the right
16 side.

17 And so there is a concern in the BMP
18 Manual, and this wasn't clear, and I'm assuming
19 because they are replacing -- I'm not sure if
20 they're doing a wholesale replacement or not, but in
21 the BMP Manual, under Chapter 12, perched water
22 table requirements it states: "If the hydraulically
23 restrictive horizon does not extend beyond the
24 footprint of the bottom of the basin, in parenthesis
25 for me, the hydraulically restrictive horizon may be

1 excavated and replaced with sand."

2 The reason they do that and they put
3 that limitation is I can dig down and I can replace
4 the soil to try to connect to the groundwater, but
5 if there's a limiting horizon around it, you've just
6 created a tub, water that rides along that more
7 restrictive horizon outside the basin is going to go
8 into the basin and then into the subsurface.

9 It may sound like a good thing but it's
10 not because now you're adding more of a hydraulic
11 load to the system, and you're asking the subsurface
12 in that location now to take water from the perched
13 areas around the basin and go into it.

14 Again, that is something that the
15 applicant -- the applicant has not proven. The idea
16 behind the soil replacement is for, like, spot
17 replacements where you find -- you know, soil is
18 heterogenous, it's not always the same all over, you
19 find a spot, you know or a small area, and you want
20 to remove that, that limiting horizon and replace it
21 with sand.

22 The other issue that I have is that the
23 mounding analysis was performed using the existing
24 conditions. And this is also going to sound a
25 little bit counterintuitive. When you replace soil

1 with a higher permeability soil, the mound that
2 we've talked about earlier, where that mound -- it
3 actually rises up further and faster. The reason
4 being is because it's so permeable at the top, once
5 it gets down to the groundwater the water kind of
6 rushes down relatively quickly compared to what the
7 other -- the old soil would have permitted, and that
8 mound can pop up. So they really need to do a
9 mounding analysis on those four basins using a soil
10 replace system with the K class or the permeability
11 class that these basins are required, that they are
12 required to put in to make these basins work.

13 So that is my testimony.

14 ATTORNEY DEBORD: Thank you.

15 Thank you for permitting us to add
16 additional testimony.

17 ATTORNEY CUCCHIARO: Just one
18 question. In all of your testimony where does the
19 applicant not satisfy any of the stormwater
20 management regulations; can you pinpoint for the
21 board where the stormwater management plan does not
22 satisfy the ordinance requirements?

23 GEOFFREY GOLL: Again, the issue
24 with -- well, some of the -- and by the way some of
25 the items I pointed out, there is the regulations

1 and then there is the engineering design that goes
2 with it.

3 So I just wanted to -- like the trees,
4 there's nothing necessarily in the regulations that
5 say stormwater regulation, you can't put trees
6 there. But, as an engineering judgment, you have to
7 make sure that you're doing what all the authorities
8 say.

9 ATTORNEY CUCCHIARO: Well, but my
10 question is, in your testimony, if you could help
11 parse out where it is that you have found violations
12 or non-compliance with our stormwater management
13 ordinance, I think that would be helpful for the
14 board.

15 GEOFFREY GOLL: Sure. Again, the
16 interception of groundwater is negating the
17 infiltration benefits of the recharge basin. So the
18 recharge volumes that they're required, they have to
19 look at what's called the recharge deficit, you have
20 -- with this area of the site, as I understand, it's
21 second-growth forest and shrubs and brush. And that
22 has, you know, it was all pervious, right. And when
23 you put all that impervious down, the warehouse and
24 the parking lots and everything else, it creates
25 what is called a groundwater recharge deficit.

1 That's in the rules.

2 And in order to satisfy that you figure
3 out what the deficit is, so you get a certain amount
4 of groundwater recharge down, you are going to
5 build. You are going to lose that recharge, and
6 then you have to build these basins to make up for
7 it and get that volume into the ground.

8 The stormwater pipes that they're
9 talking -- the French drain and the stormwater pipes
10 that intercept the groundwater elevations, the
11 seasonal high groundwater elevations, will actually
12 circumvent the stormwater rules and, in my opinion,
13 violate that, that recharge part of the ordinance.

14 ATTORNEY DeBORD: Mr. Goll, in other
15 words, they're taking groundwater that is already in
16 the ground that doesn't need to comply with the
17 deficit, and putting it in another portion of the
18 property, right?

19 GEOFFREY GOLL: Yeah. And basically,
20 you know, there's a couple of cubic -- there's a
21 cubic foot of water that's going into the ground
22 through recharge, what they're supposed to do, but
23 now it's getting -- the same volume is being pulled
24 out somewhere else. So it's not -- they're not
25 necessarily -- maybe they're getting some recharge

1 but they're not getting the recharge that they're
2 required to obtain.

3 ATTORNEY CUCCHIARO: Okay. Is there
4 anything else?

5 GEOFFREY GOLL: I mean, well, there
6 were a number of issues that I pointed out in my
7 last testimony that weren't necessarily addressed.
8 There was the issue of distance; you're supposed to
9 have two feet of separation between seasonal high
10 groundwater and the infiltrative surface of a basin.
11 There were a couple of test pits, I would have to go
12 back to my notes, but -- that weren't necessarily
13 making that clearance, which is, I think, where they
14 were saying they're going to do their soil,
15 replacement, but that's not clear so I don't think
16 they're meeting the ordinance there.

17 They're not meeting the requirement for
18 the soil replacement, if that infiltrative surface
19 or that limiting horizon goes beyond the basin. And
20 also I know on basin number -- I think it's one,
21 which is the underground basin on the northwest
22 side, there was a couple of instances where there
23 was seasonal high. While they met the seasonal high
24 in a test pit within the footprint of that
25 infiltration basin, on either side groundwater is

1 actually higher. Seasonal high evidence was higher
2 up. You don't get a trough in the groundwater;
3 groundwater doesn't just simply avoid the basin and
4 you can't do it. I mean, water seeks its level even
5 underground.

6 And I questioned the last time I was
7 here whether or not those soil tests were valid in
8 meeting the intent of the stormwater management
9 ordinance.

10 ATTORNEY CUCCHIARO: Okay.

11 GEOFFREY GOLL: There may have been
12 other things, but I don't recall. I was really
13 focused on the specific items that were addressed in
14 the most recent submittal.

15 ATTORNEY CUCCHIARO: Okay.
16 Mr. Simon, do you have any cross-examination?

17 ATTORNEY SIMON: Could I just have two
18 minutes with my client?

19 ATTORNEY CUCCHIARO: Sure.

20 CHAIRMAN BOISVERT: We'll take a
21 five-minute recess.

22 SECRETARY RUBANO: The board will take
23 a five-minute recess.

24 - - -

25 (Proceedings recommence at 9:21 p.m.)

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SECRETARY RUBANO: The planning board will now reconvene.

ATTORNEY SIMON: Mr. Chairman, members of the board, in the interest of time, in lieu of me, you know, cross-examining Mr. Goll based on his testimony, I'm just going to re-call Mr. Lam just to go through a couple of quick points that he touched upon, and I think that will be more an efficient use of time for this board. Thank you.

CHAIRMAN BOISVERT: Up to you, yeah.

ATTORNEY SIMON: Okay.

E X A M I N A T I O N

ATTORNEY SIMON: Mr. Lam, I would like you to touch upon a few issues that Mr. Goll raised. Let's start with the issue regarding the setting of the liner that you mentioned.

TUNG-TO LAM: Yes. Can we pull up Exhibit A-47, please. When we're talking about a liner on that exhibit, we're referring to blue lines on the three sides of the trench. In order to just to simply put this to bed, we could extend that liner all the way to the surface, eliminate any

1 nonsense of back and forth necessary.

2 ATTORNEY SIMON: When you say "any
3 nonsense of back and forth," just be clear about
4 that, please.

5 TUNG-TO LAM: About re-draining
6 groundwater, or the water from the infiltration
7 Basin Number 5 getting into this French drain. We
8 can eliminate all that simply by adjusting that
9 liner detail.

10 ATTORNEY CUCCHIARO: What do you mean
11 by "adjusting the liner"?

12 TUNG-TO LAM: Raising it. Because
13 right now we set it at a minimum. We will agree to
14 extend the liner all the way to the surface of the
15 trench itself. So we're going to bring the two
16 vertical lines up to the surface.

17 ATTORNEY SIMON: And what will that --
18 by doing that, what are you accomplishing?

19 TUNG-TO LAM: It totally prevents any
20 groundwater from entering into this French drain.

21 ATTORNEY SIMON: Thank you.

22 Next, Mr. Goll talked about these
23 anti-seep collars and their efficacy and about
24 stopping the preferential path in the stormwater
25 trench. Can you please talk about that for a

1 second?

2 TUNG-TO LAM: Look at Exhibit A-48,
3 which is in front of you right now. The intent for
4 anti-seep collar is there was concern about the
5 stormwater trench. The ground is the ground. The
6 water is the water. Where it is, is where it is.
7 But the concern was will the water from the
8 groundwater enter this stormwater trench because
9 it's constructed of stone, it flows easier. Which
10 is why we're putting these anti-seep collars, to
11 slow it down so it doesn't go into the trench; it
12 goes in the trench, it goes a certain distance, it
13 hits the concrete.

14 So it's creating a slower -- it's
15 creating a not -- it's no longer creating a
16 desirable path for the groundwater flow in the
17 trench. And that's what our intent is, and that's
18 what we're going to accomplish by what we're
19 proposing.

20 ATTORNEY SIMON: And then there was a
21 comment or comments by Mr. Goll regarding planting
22 trees on the embankments of the basin.

23 TUNG-TO LAM: That's, quite frankly,
24 silly; the geometry of that berm is --

25 CHAIRMAN BOISVERT: Okay, enough.

1 Enough. Listen, I get it, okay. But there's
2 absolutely no reason to have that tone. Okay?

3 Because in a couple of minutes the
4 public is going to be up here, okay? And while I'm
5 going to expect them while they're up here asking
6 questions to show courtesy and be respectfully, I'm
7 going to expect the same from you.

8 This individual here, he has not been
9 disrespectful to you. She hasn't been disrespectful
10 to you. You have done it many times. I'm not going
11 to tolerate it.

12 Am I clear?

13 TUNG-TO LAM: Yes, sir.

14 ATTORNEY SIMON: So the comment that
15 was made by Mr. Goll had to do with some concerns
16 relating to, particularly, trees and tree roots on
17 the embankments of the basin.

18 Can you comment on that, please?

19 TUNG-TO LAM: Once, again, the trees
20 are planted on the inside of the basin, inside
21 slope. The top of the berm itself is 10 feet wide.
22 The slope to the basin is 3-on-1. Just do simple
23 math. It's 3 feet deep on that embankment, height,
24 just, for example, 10 feet wide. Three feet down
25 times three feet to get to the horizontal, three

1 times three is nine, times two, and then you add
2 another 10, that's almost 30 feet.

3 So you're saying the tree root would go
4 through 30 feet of it to fail the embankment as
5 opposed to being on the inside where the actual
6 drainage and water is available.

7 ATTORNEY SIMON: So notwithstanding
8 the testimony from Mr. Goll, respectfully, you
9 contend that you do not see an issue with the
10 proposed plantings in that area?

11 TUNG-TO LAM: Mathematically it
12 doesn't make any sense to have a concern.

13 ATTORNEY SIMON: And then, finally,
14 there was a question from -- or an issue that was
15 raised by Mr. Goll relating to soil stability based
16 on some fill. Just comment on that, please.

17 TUNG-TO LAM: The concern was about
18 the topsoil exhibit, which was Exhibit A-53, about
19 the height of the -- the depth of the topsoil that
20 is going to be adjacent to the curb.

21 Just keep in mind the curb detail
22 remains the curb detail. The super fill underneath
23 the curb is still being proposed. We're not
24 switching that, we're simply replacing the soil on
25 the high side with topsoil available from the site.

1 So the structural stability concern is
2 not there.

3 ATTORNEY SIMON: So you don't have a
4 concern with regard to the soil as proposed creating
5 any type of stability issue, correct?

6 TUNG-TO LAM: No.

7 ATTORNEY SIMON: Mr. Chairman, I don't
8 have anything further. I think that covers...

9 ATTORNEY CUCCHIARO: I just have one
10 conclusory question.

11 ATTORNEY SIMON: Go ahead. I'm sorry,
12 Mr. Cucchiaro.

13 ATTORNEY CUCCHIARO: After all your
14 testimony and your responses, and you have heard the
15 testimony from the applicant's professional, it's
16 your testimony tonight that you satisfy and comply
17 with all the requirements of the township's
18 stormwater management ordinances?

19 TUNG-TO LAM: Absolutely.

20 ATTORNEY CUCCHIARO: All right.

21 Counsel, do you have any other
22 witnesses you would like to put up tonight? I think
23 you had indicated one more.

24 ATTORNEY DeBORD: I have no more
25 witnesses.

1 Would it be possible for our expert to
2 respond very briefly to one of the changes to the
3 design that was just made?

4 ATTORNEY CUCCHIARO: Very briefly.

5 ATTORNEY DeBORD: Thank you.

6

7 E X A M I N A T I O N

8

9 ATTORNEY DEBORD: Mr. Goll, would you
10 speak to -- thank you, Mr. Chair.

11 Mr. Goll, would you speak briefly to
12 concerns associated with the impermeable layer
13 extending to the surface?

14 GEOFFREY GOLL: Oh. No, I mean, the
15 concern I might have there is now, similar to the
16 piping, is when they put the watertight seals on the
17 pipe, is now you're putting a liner, impermeable
18 liner all the way to the top. So now, if it's
19 completely separated and you get elevated seasonal
20 high water, well, what will that do to the integrity
21 of the liner?

22 If you ever look at a -- there are
23 always concerns about, like, putting a lined pond,
24 you know, so they put plastic liners in, like,
25 large-scale ponds and groundwater fluctuations can

1 sometimes push it up. So I'm not sure if that would
2 have -- it may -- excuse me, there's a probability
3 that the liner could get compromised if there's
4 enough pressure on it, to, you know, from the
5 groundwater around it rising, you know, coming up
6 and down.

7 ATTORNEY DeBORD: Have you ever seen
8 an engineering design similar to this, where a
9 French drain is surrounded completely by an
10 impermeable layer for the purpose of stormwater?

11 GEOFFREY GOLL: No.

12 ATTORNEY DEBORD: Okay, thank you.

13 GEOFFREY GOLL: If anything, they
14 could have eliminated it and maybe just put two
15 inlets in and that would have been -- they would
16 have been done with it but.

17 ATTORNEY CUCCHIARO: So does that
18 conclude all of your experts?

19 ATTORNEY DeBORD: That does. Thank
20 you.

21 ATTORNEY CUCCHIARO: So, Mr. Chair, at
22 this portion of the meeting --

23 CHAIRMAN BOISVERT: I know a couple of
24 the board members have a couple of questions.

25 ATTORNEY CUCCHIARO: Okay, go ahead.

1 CHAIRMAN BOISVERT: Oh, you're good?

2 MEMBER GREENFIELD: Yeah.

3 VICE-CHAIRMAN HUSZAR: I have a
4 question regarding the topsoil exhibit.

5 And just for clarification, Tung, the
6 letter dated September 22nd, 2023, right, it's
7 14,905 cubic yards. That's as it is right now with
8 topsoil, correct, in the undeveloped phase?

9 TUNG-TO LAM: Sorry, can you repeat
10 that number, again?

11 VICE-CHAIRMAN HUSZAR: Yeah, Tung.
12 It's -- so 14,905 cubic yards; that's under existing
13 conditions as it is right now --

14 TUNG-TO LAM: Yes.

15 VICE-CHAIRMAN HUSZAR: -- undeveloped,
16 right?

17 Okay, now in the exhibit, it's Sheet
18 Number C2, it's the topsoil exhibit, the proposed.
19 The green-hatched areas, okay, that is where you're
20 proposing to put the excess topsoil when the site is
21 developed, correct?

22 TUNG-TO LAM: Yes.

23 VICE-CHAIRMAN HUSZAR: Okay. I guess
24 my question is, if there's 14,905 cubic yards, and
25 then this is saying that the green-hatched areas

1 will be approximately 29 inches, is that correct, of
2 topsoil?

3 TUNG-TO LAM: Yes.

4 VICE-CHAIRMAN HUSZAR: Okay. What is
5 the -- I guess, for clarification, what, in the
6 hatched legend, what is this five-inch thickness
7 referring to and the estimated volume of 2,254 cubic
8 yards?

9 Because I'm looking at an estimated net
10 backfill volume of your original topsoil of 14,905,
11 minus five inches, which equates to 2,254.

12 What is that 12,651 cubic yards?

13 TUNG-TO LAM: That first five inches
14 where we want, like, the best topsoil possible. So
15 we'll screen it, we'll amend it in order to meet the
16 spec of the topsoil that we have on the plans.

17 So for planting purposes we want the
18 top five inches to be, like, the best topsoil we can
19 have.

20 VICE-CHAIRMAN HUSZAR: Okay. So that's
21 the 2,254?

22 TUNG-TO LAM: Yes.

23 VICE-CHAIRMAN HUSZAR: Okay. So then
24 there's 12,651 cubic yards of net backfill topsoil?

25 TUNG-TO LAM: That's, if you take 29

1 minus five, that's what the balance is.

2 VICE-CHAIRMAN HUSZAR: Got it. Okay.

3 So all of those green areas will be
4 29 inches, plus or minus, of topsoil?

5 TUNG-TO LAM: Correct.

6 VICE-CHAIRMAN HUSZAR: Okay.

7 CHAIRMAN BOISVERT: Anybody else from
8 the board?

9 MEMBER SEAMAN: Yeah. And this is, I
10 guess, really more for our professionals than anyone
11 else.

12 Just because we have had such a
13 difference of opinion with the plantings around the
14 edges of the berm, can we just get some
15 clarification from...

16 BOARD ENGINEER: I mean, it's been
17 very typical of this board to require basin areas to
18 be landscaped along the slope. You can ask Shari.

19 BOARD TREE EXPERT: It's also part of
20 the latest green infrastructure that the state put
21 out. They do have an example for woody plants that
22 you could have throughout your entire basin.

23 ATTORNEY CUCCHIARO: Shari, I don't
24 think your mike...

25 BOARD TREE EXPERT: Sorry. I was

1 saying the latest stormwater regulations, the green
2 infrastructure actually has, as an option, you can
3 plant a basin with woody plant material.

4 MEMBER SEAMAN: Thank you.

5 CHAIRMAN BOISVERT: Everybody good?

6 ATTORNEY CUCCHIARO: Okay, Mr. Chair,
7 at this point it would be open to the public for
8 questions of any of the witnesses, whether it be the
9 applicant's witnesses, the objectors' witnesses, as
10 well as testimony.

11 What I would ask, though, first, is,
12 Counsel, your clients don't have the ability to
13 cross-examine because you have done that, but do you
14 have any clients that want to provide testimony?

15 ATTORNEY DeBORD: Yes, I believe the
16 objectors would like to provide testimony.

17 ATTORNEY CUCCHIARO: All right. So
18 why don't we start with counsel calling her clients
19 to provide testimony.

20 ATTORNEY DeBORD: Okay.

21 ATTORNEY CUCCHIARO: So why don't you
22 do that now.

23 ATTORNEY DeBORD: Anyone?

24 ATTORNEY CUCCHIARO: Okay, if you
25 would just get up to the microphone, I need to swear

1 you in. Do you swear or affirm the testimony you are
2 about to provide this board is the truth, the whole
3 truth, and nothing but the truth?

4 BETTY VELEZ-GIMBEL: I do.

5 ATTORNEY CUCCHIARO: Please state and
6 spell your name, and give us your address.

7 BETTY VELEZ-GIMBEL: Betty
8 Velez-Gimbel, V as in Victor, E-L-E-Z, hyphen,
9 Gimbel, G-I-M-B-E-L, 97 Victory Road.

10 ATTORNEY CUCCHIARO: Okay, go ahead.

11 BETTY VELEZ-GIMBEL: So I was trying
12 to keep up with everything as well, because some of
13 the things I did have may have been answered. So if
14 I could have a little patience from the board, that
15 would be great. Thank you so much for having me
16 tonight.

17 So I wanted to focus on the
18 environmental impact, specifically Ordinance 188-6
19 where it says, "Upon completion of all reviews and
20 public hearings the planning board shall consider
21 the environmental impact record. And if the
22 Planning Board finds that the proposed development
23 will result in substantial damage to any of the
24 elements of the environment set forth in this
25 section, which is not adequately resolved or avoided

1 by the applicant's proposal, the planning board may
2 deny the application."

3 So I wanted to take a look at, number
4 one, which is the stability of the soil during and
5 after the proposed alteration. So, bear with me,
6 I'm not an engineer. However, I'm looking at 87,000
7 cubic square yards of -- being imported. An
8 elevation proposed, the building, about seven feet
9 above existing grade. Looking at now the topsoil
10 that was just discussed, the 15,000 cubic yards, and
11 it's now -- it was supposed to be removed but now
12 staying, so my question for that is --

13 ATTORNEY CUCCHIARO: There's no
14 question.

15 BETTY VELEZ-GIMBEL: Oh, I'm not...

16 ATTORNEY CUCCHIARO: Your attorney has
17 asked questions.

18 BETTY VELEZ-GIMBEL: Oh, okay. I'm
19 sorry.

20 ATTORNEY CUCCHIARO: You can make
21 statements, though.

22 BETTY VELEZ-GIMBEL: I apologize. I
23 didn't know I wasn't allowed to ask questions.

24 So the soil now, the 29 inches plus or
25 minus is going to be on top of that seven feet of

1 the grade. Plus then you now have the building on
2 top of that which is, like, 45 or so feet high.

3 So that's quite towering. So I'm left
4 to wonder -- and, of course, I'm not going to ask
5 the question -- whether or not now you have the
6 1,800 yards of clay, the crushed stone, the slab
7 pavement, the asphalt, so you've got about 8,000
8 heavy trucks, round trip, coming with all materials
9 to this site. It's very alarming.

10 And, of course, let's go to, you know,
11 obviously our brilliant engineer has pointed out
12 that the potential for greater normal total
13 sediments is great, and I would imagine so. As I
14 said I'm not an engineer, but this is a lot of fill.

15 You know, I'm wondering, you know, it
16 leaves me to wonder how the settling of all this
17 compacted fill is going to affect the surrounding
18 homes, my farm, my septic.

19 We heard North Howell residents crying
20 and pleading their case before the Council that
21 their foundations are cracking, their homes are
22 shaking, from the tractor-trailers and the dump
23 trucks barreling through their neighborhoods. So
24 imagine the fear that I have of this.

25 Going to Number 2, the drainage -- of

1 the same ordinance, drainage patterns and effect on
2 surface water runoff. So for me, I'm seeing that
3 the drainage is going to the Squankum Brook, which
4 flows behind my farm, along the whole street, and
5 also the Muddy Brook, which flows behind this
6 property as well, okay. I didn't see any study on
7 the impact of the freshwater.

8 There has been an increase of rain
9 storms that have caused significant flooding to our
10 area, more than before. And I have been there for
11 18 years, and I have residents who have been there
12 30, 40 years, and we haven't seen this. And so it
13 is really the average rainfall that they're
14 proposing I think -- I don't know what year it was,
15 I can't remember, but we can all -- I think we can
16 agree that the climate is changing in some way.

17 Let's see, the GP6 hasn't been
18 approved, and so, therefore, that leads me to
19 question. I'm sure that there is some issue there.

20 I would like to touch upon something
21 that the attorney, Mr. Simon, continually touts; the
22 solar application comment. I'm really tired of it
23 as a badge that you're willing to try -- to let us
24 know that you are trying to do the right thing.
25 It's taken out of context.

1 The application for the solar was in
2 front of the zoning board because the applicant
3 wanted to usurp 8 acres of ARE-6 into an SED zone.
4 It doesn't change the environmental impact whether
5 it's a warehouse or if it's a solar field. It
6 doesn't change it.

7 Taking a look that for this -- this is
8 the same lot, 17, that was part of the solar
9 application in front of the zoning board. According
10 to the zoning board's denial of the solar proposal,
11 the filling of the wetlands on Lot 17 is
12 significant.

13 They also described this lot as an
14 environmental significant land. The need to fill in
15 the wetlands reinforces the common sense that the
16 property is too small for this warehouse.

17 The Environmental Commission in Howell,
18 and other boards during this application, solar,
19 described this lot as environmentally sensitive and
20 strongly advised to not remove trees and fill in the
21 wetlands.

22 The DEP report section of the
23 environmental report by the Trident Company listed
24 multiple threatened species and species of special
25 concern, not just the pine barren's tree frog.

1 And I have a list that I can go through
2 for you or submit it, if you would like to take a
3 look at it. You have the barred owl. A special
4 concern, okay. It's threatened in New Jersey
5 because, why? The habitat. We are losing the
6 habitat, which is what exactly we are doing here.

7 This habitat is for multiple
8 organizations. The pushing out of these species
9 significantly impacts my farm, a produce farm, and
10 places undue financial hardship and not to mention
11 the strain in trying to make sure that the
12 surrounding species that are going to be pushed from
13 this lot onto my land. The resources are not enough
14 for these organisms.

15 Nothing has changed about this lot;
16 it's still the same lot that the solar was trying to
17 be put on.

18 Potential -- Number 5, potential air
19 and water pollution, especially any potential
20 increase in siltation. It's common sense that a
21 24/7-day a week, over 100 diesel tractor-trailers,
22 85 tractor-trailer parking spaces, will the trucks
23 idle during cold days and nights waiting to unload?
24 I don't think we need a study to answer that
25 question; it's just common sense.

1 Number 6, effect of any construction
2 plans or other environmental changes on critical
3 slope areas or sewage disposal systems. Septic
4 systems -- the septic system hasn't even been
5 approved? Why? Because they want a 24/7 operation
6 and it has not been designed for that.

7 How do you know it's going to fit in
8 the borders within the riparian buffer? Do you have
9 room? I don't think so.

10 This actually brings me back to
11 May 4th when your engineer couldn't answer any of
12 the questions that I considered really important,
13 such as being asked about the calculations, and I
14 quote Tung-To Lam: "I don't know, I haven't
15 constructed my math yet."

16 Again asking, "What is the approximate
17 fill, can you answer that?" "Not at the moment."

18 The attorney, Lieberman, again asked,
19 "Are you keeping the topsoil onsite?" "No
20 determination." And, "Are you aware of the amount?"
21 "I am now" -- of the soil that is supposed to be
22 removed.

23 Very disrespectful.

24 And so moving to Number 7, I'm not sure
25 if rock is being removed from the site, I haven't

1 seen.

2 Number 8, the amount of resulting
3 non-agricultural displacement of soil. We have
4 already talked at length about that.

5 Number 9, potential noise pollution.
6 What is the expected noise-level increase of the
7 proposed 24/7-day operation in total: 109
8 tractor-trailers coming in and out, waiting in the
9 lot; 25 loading docks; additional cars; employees.

10 Did you know that the 1,500 trees on
11 this lot and the surrounding lots presently serve as
12 a sound barrier to the New Jersey Gas liquefaction
13 tanks and the warehouses on Oak Glen?

14 Are you aware of the two new warehouses
15 on Oak Glen diagonal from this site just approved by
16 the zoning board?

17 Again, taken out of context this solar
18 badge you wear.

19 Number 10, increase in the amount of
20 industrial waste. Well, we don't know who the
21 tenant is going to be so I guess we'll mark this
22 unknown, too.

23 Where is the common sense in all this?
24 The tenant is unknown; therefore, the use is
25 unknown; therefore, the amount of industrial waste

1 is unknown. And then we're submitting plans for
2 multiple office spaces, but we're not going to use
3 those, we just put those in there but we're not
4 going to use them.

5 Number 11, increased problems of
6 industrial or non-industrial waste disposal such as
7 the review of the problems with the Board of Health;
8 will there be an increase in problems of industrial
9 or non-industrial waste?

10 Again, the applicant doesn't have a
11 tenant, so we don't know what activities are going
12 to be in place, and we're not sure if it's going to
13 be one tenant or ten.

14 What we do know, and correct me if I'm
15 wrong, is the applicant's plan is a 24/7-day
16 operation; over 100 tractor-trailers coming in and
17 out; 85 tractor-trailer parking spaces.

18 What can we expect -- what we can
19 expect are strangers coming from all over the
20 country and possibly across borders which is what a
21 24/7 operation brings.

22 A more common description used by CDL
23 drivers, truck drivers, is a gypsy driver; a driver
24 who has no ties to a particular corporation which
25 enforces accountability. And without this it

1 introduces a level of danger to the residents, thus
2 affecting safety.

3 We, the Victory Road residents, hired
4 an expert engineer, Jeff Goll of Princeton Hydro, to
5 review your proposed plans. The stormwater
6 management and all your little adjustments do not
7 work and significantly impact the surrounding
8 environment.

9 How many chances do you get to revise,
10 to revise, to revise? As an educator I would not
11 permit that many revisions. You should know what
12 you're supposed to do and not guess it, or be
13 schooled by our expert.

14 We, the Victory Road residents, hired a
15 traffic engineer. Just knowing he was on board was
16 enough to keep everyone on their toes.

17 And, finally, our legal team, which we
18 undoubtedly needed on this most difficult journey.
19 We are emotionally spent. In debt financially,
20 upwards of almost \$60,000. Our lives have been
21 completely disrupted and our future as a Howell
22 resident, my future as a Howell resident, is in
23 question here.

24 It's up to you, the planning board, to
25 decide which experts you agree with. The applicant

1 will do what is best for the interest of the
2 application. Our team members have reputations to
3 protect. Our small farms are an asset to this
4 community. And we have big plans, which will
5 continue to be an enormous asset to this community.

6 And I take offense to those who, in a
7 negative tone, label me an activist. I am not an
8 activist. I'm a resident trying to protect my home,
9 way of life, and offer something to the community
10 which has always been in my heart.

11 We have worked so hard to live here and
12 we love Howell, but we don't want your warehouse.
13 And we expect more of so-called professionals than
14 the arrogance that you have shown today and the
15 disrespect for our way of life and everything that
16 we've worked so hard for.

17 You should be ashamed of yourself. And
18 I can see that you are because you can't even look
19 me in the face.

20 Thank you so much.

21 ATTORNEY CUCCHIARO: Do you have any
22 other clients, Counsel, that you want to testify?

23 CHAIRMAN BOISVERT: Hold on one
24 second, Mr. Cucchiaro.

25 Usually we stop at 10 o'clock; does

1 anybody on the board have any objection to just
2 extending it to 10:30?

3 All right. So we'll extend it to 10:30
4 so we can get some more people in, tonight, all
5 right. So I just want to put that on the record.

6 ATTORNEY CUCCHIARO: Sir, do you swear
7 or affirm the testimony you are about to give this
8 board is the truth, the whole truth, and nothing but
9 the truth?

10 THE WITNESS: I do.

11 ATTORNEY CUCCHIARO: Please state and
12 spell your name and give us your address.

13 ROBERT WAGNER: My name is Robert
14 Wagner. My address is 1551 Maxim Southard Road.

15 I was in the Marine Corp. I was a
16 corrections officer in Rikers Island, and a police
17 officer, retired. I volunteer at Meals on Wheels
18 two days a week -- I volunteer at Meals on Wheels
19 two days a week, up to four days a week.

20 I moved to this county 2017. Nice
21 county. Animals, everything. People are nice,
22 okay. I want to have respect for you people.

23 Sir, I don't have respect for you.
24 You're the lawyer for this county; I don't have no
25 respect for you. This lawyer and his client were

1 having a problem answering a question from counsel;
2 you helped them out to answer the question. Now
3 you're the county lawyer. You should have just been
4 very straightforward and let them try to figure it
5 out.

6 But since the lawyer and the architect,
7 whatever he is, can't answer the question, I have a
8 question about you, then, now the integrity right
9 here, I have a question with; who are you
10 representing, okay?

11 This is a good county. You don't need
12 the warehouse, okay. I understand you want to bring
13 taxes, you want to bring business, but the fact of
14 the matter is this; this is going to destroy this
15 place.

16 If you go to New York City and you want
17 to see trucks, traffic, okay, you go to the Lower
18 East Side, all right. Traffic is phenomenal.
19 You're all going to have -- what do you have, 25
20 bays? You go to Oak Glen, you got three warehouses,
21 or a warehouse with 39 bays and you got two other
22 buildings over there.

23 I watched tractor-trailers today. They
24 have no route they take. They take any route they
25 want to take. Mrs. Velez is right; they will do

1 what they have to do when they got to get where they
2 got to go.

3 I worked for Brink's. We had armored
4 car trucks; we has tractor-trailers. They come from
5 out-of-state, they come from out of the country, and
6 they deliver. And they have a schedule; they have a
7 time element, okay. Some of their trucks are not
8 working properly. Some of their trucks are throwing
9 out the fumes and stuff like that.

10 When I drive around with Meals on
11 Wheels, okay, I will tell you this, these little
12 roads back here, they can't handle your big trucks.
13 I see dump trucks coming by, 40 miles an hour,
14 45 miles an hour. Well, what is their weight, their
15 tonnage?

16 I have a little Toyota Prius I move to
17 the side because they're coming over the double
18 yellow. And the bottom-line is they're coming on to
19 oncoming traffic.

20 Now, if you go down Victory, you go to
21 Oakland and Maxim Southard Road, okay. I'm standing
22 over by the community church one day and here comes
23 a dump truck coming down to Oak Glen, towards Maxim,
24 makes the left. Takes two cars lengths on the
25 oncoming traffic, and has to stop and almost hits me

1 when I'm talking to one of the people by the church,
2 okay.

3 These people don't know how to drive
4 their trucks. They don't know how to drive the
5 tractors. You're going to put them on these little
6 roads. So I got a question for you; somebody gets
7 killed or seriously hurt, are you going to take
8 responsibility for it?

9 If you are going to approve this --

10 CHAIRMAN BOISVERT: Don't do that.
11 Don't do that.

12 ROBERT WAGNER: Why not? Why not?

13 You had ample time to speak, correct,
14 sir? Am I being respectful to this board?

15 ATTORNEY CUCCHIARO: Mr. Chairman, the
16 comments have to be relevant to what we're
17 reviewing.

18 ROBERT WAGNER: Okay, relevant. I'll
19 take that away. I'll take that away.

20 People are going to get hurt. They're
21 going to get hurt. It's not a question of they're
22 not; they are, but when?

23 And what kind of injuries are going to
24 occur? There's going to be death. There's going to
25 be serious maiming injuries. You have heavy trucks

1 on these small roads. They shouldn't be there.

2 We live here. We're going to suffer.
3 We're going to suffer severely. There's going to be
4 flooding. There's going to be everything that they
5 talked about today.

6 But my question today is, sorry, sir,
7 you should never help them answer a question. They
8 should have been -- he gets paid enough, and he's an
9 expert, and they should have knew the question she
10 was asking.

11 Thank you for your time.

12 CHAIRMAN BOISVERT: Have a good night.

13 ATTORNEY CUCCHIARO: Do you have any
14 more clients, Counsel?

15 Do you swear or affirm the testimony
16 you are about to give this board is the truth, the
17 whole truth, and nothing but the truth?

18 MIRJANA SCARSELLI: I do.

19 ATTORNEY CUCCHIARO: Please state and
20 spell your name, give us your address.

21 MIRJANA SCARSELLI: Mirjana Scarsella,
22 191 Victory Road.

23 ATTORNEY CUCCHIARO: Could you just
24 spell your name for us.

25 MIRJANA SCARSELLI: M-I-R-J-A-N-A, last

1 name Scarselli, S-C-A-R-S-E-L-L-I.

2 We're fairly new to Howell. We moved
3 here three years ago. I live with my mother and my
4 daughter at 191 Victory Road. And we come from
5 Staten Island, New York City, Brooklyn. We are no
6 strangers to the city, the trucks, the traffic, the
7 pollution, the noise. At a time it was soothing.

8 We are a 9/11 family, an FDNY family.
9 We moved for a better life, a better quality of
10 life. We had a community that raised us after that,
11 and we moved here three years ago and we found
12 almost the same thing on Victory Road.

13 And as a single mother I wanted to give
14 my daughter a safe place to grow up, better school
15 system. The people are better. No disrespect to
16 New York, but the people are better. Everything
17 about it; Victory Road, the landscape, the farm
18 animals everywhere. It was like the American dream,
19 especially during COVID.

20 We moved during COVID. We wanted to be
21 self-sustainable. We didn't know where the world
22 was going, and to us this was our dream, this was
23 our forever home; this is where we wanted to end up.
24 Now we're faced with a 200,000-square-foot
25 warehouse.

1 And what concerns me the most -- I
2 share all the concerns of my neighbors -- my
3 daughter gets on and off that bus every single day,
4 five days a week. In the evening drop-off she gets
5 off the bus from across the street because the route
6 can't accommodate coming in front of the driveway.
7 The bus has to pull in the middle of the street just
8 to let her cross because he's nervous.

9 For two years, 6th and 7th grade, I sat
10 out there because my nerves were shot. It's a
11 50-mile-an-hour road. God forbid. Two years I sat
12 out there morning and evening. The cars that came
13 through, by the end of the two years, rolled down
14 the window, waved hello. They were the same cars.
15 It must have been their cut-through, a normal road
16 for them, never anything out of place. It was like
17 a normal day every day.

18 So now in 8th grade, this year she can
19 get on the bus herself. The fact of all these
20 tractor-trailers and cars coming in to and from work
21 scares the life out of me. And it's not going to be
22 a place that I want to raise my daughter just for
23 that fact that I have to worry for the next four
24 years of her getting on and off the bus, or when she
25 starts driving and she's coming out of the driveway.

1 Sometimes I have cars light up at the
2 back of my car when I'm making a right-hand turn out
3 of my driveway that I didn't see from my long fence.
4 There is no sign to slow down on the S curve. It's
5 a 50-mile-an-hour road.

6 The road, you are able to pass on that
7 road right up until the front of my house. So if
8 somebody is aggravated with the way -- how slow
9 somebody is driving -- I drive only 35/40 miles an
10 hour on that road. I have gotten passed so many
11 times. The one car that passed me was actually the
12 car that got hit by the train last month, okay.

13 Who is to say they're not going to try
14 to pass another car and slam into my daughter's bus
15 or while she's crossing the street in the p.m.?
16 These are the things I worry about as a mother. I
17 didn't move here for that.

18 I did send an email to Mr. Cucchiaro
19 and the board regarding the Planning Board do their
20 own traffic study and their own quality of life
21 study, and I never heard back. I think I emailed
22 twice. I never heard back, and I think that's so
23 important. Because what the applicant is saying as
24 far as their traffic study to what we observe every
25 day are two different things.

1 And I'll keep it short and simple. We
2 just -- I stand with my neighbors. Again, I am new
3 but I know community. I love this community. I
4 love Howell. I want to be a part of it. I don't
5 want to go anywhere. And if this warehouse is
6 built, we will have no choice but to leave because I
7 will not raise my daughter on a road where
8 tractor-trailers are driving, air is being polluted.

9 I mean, we have garbage on the side of
10 the streets now. Right, there's pros and cons to
11 every neighborhood. I knew we were on a road like
12 that. I pick up my garbage, whatever is dropped on
13 the side of the road. This is going to bring more
14 pollution to a beautiful neighborhood, and it's just
15 not okay.

16 Thank you.

17 ATTORNEY CUCCHIARO: Mr. Chair, just
18 for purposes of the record, the board's traffic
19 engineer did review this and, in conjunction with
20 our board engineer, put a report together. And the
21 traffic engineer is also here tonight.

22 So there was a traffic review by our
23 traffic engineer.

24 MIRJANA SCARSELLI: But there was no
25 response.

1 ATTORNEY CUCCHIARO: Counsel, do you
2 have any more clients?

3 ATTORNEY DeBORD: Anyone else?

4 ATTORNEY CUCCHIARO: Just your clients
5 at this point.

6 ATTORNEY DEBORD: Yes.

7 ATTORNEY CUCCHIARO: We'll open it up
8 to everyone else after that but.

9 Okay, sir, do you swear or affirm the
10 testimony you are about to give this board is the
11 truth, the whole truth, and nothing but the truth?

12 CHRIS BATES: I do. I don't -- my
13 name is Chris Bates, I live on Victory Road. I have
14 lived there for 18 years.

15 I don't have a whole lot to touch on
16 because, I think, they have covered much of it. But
17 I do have to bring up that I think the entire
18 project is completely inappropriate, unnecessary.

19 And I have to honestly say I have just
20 met a lot of these people for the first time in the
21 past few weeks as I really started to get engaged,
22 and these people are traumatized. I have seen
23 numerous people break out in tears, people that look
24 like they haven't slept for days. This is their
25 community and they're really counting on their

1 public officials to step up for them.

2 I mean, we're floundering here. We're
3 not rich people; we're small farms. That's what we
4 knew we were moving into, and we're up against big
5 money. And I can honestly say that myself, I'm in
6 it for the long run, I will do whatever it needs to
7 do. I have already told my girlfriend no vacations,
8 because I'll keep funding it and keep fighting it,
9 because it means so much to these people, many of
10 whom are older, they have been there for generations
11 and they're on fixed incomes. And their
12 neighborhood is going to completely transform.

13 I mean, we bought six-and-a-half acre
14 lots 18 to 20 years ago with the condition that we
15 were going to keep four of those acres untouched
16 woodlands. And I have never even been back past my
17 wood line because I don't want to disturb the
18 ecosystem.

19 But I think -- yeah, we're in this for
20 the long haul. No, whatever what you decide -- I
21 implore the board to do the right thing and deny
22 this application. But, no matter what, I'm not
23 going to walk away from it. We're going to keep
24 fighting.

25 Thank you very much. Thank you.

1 ATTORNEY DeBORD: Anyone else? Are we
2 done? Please.

3 UNIDENTIFIED SPEAKER: I'm not a -- I'm
4 not a...

5 ATTORNEY DEBORD: Oh, just of my
6 group; if anyone else wants to come up, they can
7 come up.

8 BETTY VELEZ: That's all.

9 ATTORNEY DEBORD: Okay. That's all.

10 ATTORNEY CUCCHIARO: Okay. So then
11 we'll open it up to the general public not
12 represented by counsel.

13 Since the general public was not
14 represented by counsel, you can ask questions to any
15 of the experts and also provide testimony. So
16 anyone can come up to the mike.

17 Do you swear or affirm the testimony
18 you are about to give this board is the truth, the
19 whole truth, and nothing but the truth?

20 PETER GUILFOYLE: I do.

21 ATTORNEY CUCCHIARO: Please state and
22 spell your name for the record and give us your
23 address.

24 PETER GUILFOYLE: My name is Peter
25 Guilfoyle, G-U-I-L-F-O-Y-L-E, 47 Victory Road.

1 ATTORNEY CUCCHIARO: Okay. Go ahead,
2 sir.

3 PETER GUILFOYLE: I have a couple of
4 concerns. One is I live north of this proposed
5 warehouse, and I believe you've said that there will
6 be no trucks going north, which after hearing the
7 testimony at the council meeting about the Victory
8 Road -- the Fairfield Road residents, the truckers
9 don't obey it there and I'm sure they won't obey it
10 here. So we know there's trucks going to come north
11 on Victory Road. And that means they have to turn
12 onto Maxim Southard and then engage Maxim Southard
13 and Oak Glen Road, which is one of the most
14 dangerous intersections in this city, in the
15 township. There is accidents there at least monthly
16 and I would say weekly.

17 I don't -- there is no way they can
18 make the turns currently, even -- well, certainly
19 not going north without crossing over into the other
20 lanes.

21 So we're going to have to deal with
22 that. There's going to be accidents there.

23 Also, I live -- where I live, it's a
24 hidden driveway. And when those trucks come around
25 that curve, they're going to encounter me someday

1 trying to come out of my driveway, I know that. And
2 that concerns me. So that has been one of my
3 concerns is the traffic going north.

4 One of the others is the applicant is
5 putting in a septic system and city water. Now, I
6 don't know why the applicant can't put in a well,
7 like the rest of us do.

8 We have a pretty good environment going
9 there right now; we take water out of the ground and
10 we put water back in. They want to add 2,500 gallons
11 a day of water into the ecosystem, which, since the
12 water already spills off into our properties, that
13 extra 2,500 gallons is going there, too, because
14 that's going to come in through the city water.

15 In addition to that, when they tear up
16 the road and put in the city water, they're going to
17 thank us by giving us a bill for about \$300,000.
18 There is 20 residents on that street and our
19 properties are -- our houses are pretty far off.
20 And so it's going to cost us between 10- and \$20,000
21 apiece to hook up to that city -- to hook up to that
22 city water.

23 And we don't need it. I have my septic
24 pumped every two or three years just to keep it
25 going. Everything is working pretty good.

1 As far as the water runoff, I have
2 noticed in the last -- well, with the rain we've
3 had, the deer are starting to come close to my yard,
4 and they don't -- they always stay back. They're
5 coming up close to my yard because the water back
6 there in the wetlands is getting more and more
7 soaked, and they're coming up just for a while. I
8 know they'll go back there. But that's how much
9 water we have.

10 And as far as trees falling down, the
11 gentleman said before; I just cut one up today that
12 fell right over because the water is so -- the
13 ground is so saturated. So those are real things
14 that are happening.

15 And I'm concerned about that extra
16 \$20,000 apiece that we have to lay out. Some of the
17 houses are 400 feet off the road. You know, even at
18 \$100 a foot, that's \$40,000, just to save the
19 applicant the cost of putting in a well.

20 Here is my other -- oh, we're not sure
21 the electrical grid can handle this either. I don't
22 know if you studied the electrical situation. But I
23 have a generator, of course, I turn it on monthly
24 because that's how often the power goes out.

25 What is this mega warehouse, it's mega

1 to us, going to do to the electrical problems on the
2 street? We're constantly losing power. And I don't
3 know how -- if that's going to help. It's not going
4 to help. I don't know how it's going to be
5 resolved.

6 The last thing I want to bring up is
7 the widening of Victory Road and the fixing of
8 Victory Road just to accommodate the applicant. The
9 applicant says that you've got to approve this
10 because it's zoned for a warehouse and you have no
11 choice. You do have a choice in setting parameters
12 of how it's built. You can cut back the size of the
13 warehouse, you can cut back the hours of the
14 warehouse to be reasonable.

15 They put in their plans 1,700 gallons
16 of water a day because they only calculated one
17 shift. Why did they put three shifts 24/7 in their
18 application if they're only contemplating one?
19 Because they want the right to do it.

20 You can do that. You don't have to
21 accommodate -- the township does not have to
22 accommodate them by widening Victory Road, knocking
23 down the trees that are protecting the houses that
24 are closer to the road and putting in, what, I don't
25 imagine there's lights going up there, is there?

1 There's supposed to be reflectors going up to keep
2 the trucks safe.

3 Knocking down those trees is a big deal
4 when you take some of these houses that live on that
5 curve. And that curve, by the way, is part of the
6 beauty of Howell Township. That S-curve that is in
7 there is part of the character of Howell Township.
8 And a lot of people know about that curve and a lot
9 of people know about the alpaca farm that lives on
10 that road and the bee farm and the bamboo farm and
11 the horse farms.

12 I mean, Howell Township is known for a
13 lot of activities on Victory Road. And we're
14 supposed to, according to the Planning Board, try to
15 maintain the rural character of Howell Township.
16 And I'm asking the board to consider some of those
17 ideas.

18 Thank you.

19 ATTORNEY CUCCHIARO: Do you swear or
20 affirm the testimony you are about to give this
21 board is the truth, the whole truth, and nothing but
22 the truth?

23 PATRICIA ISBRECHT: Yes.

24 ATTORNEY CUCCHIARO: Just get close to
25 the mike. And state and spell your name for the

1 record and give us your address.

2 PATRICIA ISBRECHT: Yes. Patricia
3 Isbrecht, 615 Fort Plains Road.

4 ATTORNEY CUCCHIARO: Could you spell
5 your last name for us.

6 PATRICIA ISBRECHT: I-S-B-R-E-C-H-T.

7 ATTORNEY CUCCHIARO: Go ahead, ma'am.

8 PATRICIA ISBRECHT: I'm here today to
9 ask the planning board to not destroy these people
10 behind me quality of life the way my quality of life
11 was destroyed with Walters Group affordable housing.

12 I see many of the same expert
13 testimony here tonight as I did back with the
14 Walters Group. Walters Group, no dirt in, no dirt
15 out. That property is now six feet higher than me
16 right next door. No berm for my property next to
17 Walters Group.

18 It was not until I had to alert the
19 township and all of Facebook that my property and my
20 neighbor's property were flooding. I have a septic
21 system and I have a leach field. Tommy Russo had to
22 come to my house and was the only councilman who
23 came to my house to view that flooding and to demand
24 a berm goes up.

25 My quality of life has not been the

1 same since Walters Group. Now on Fort Plains and
2 Sunnyside you're going to rearrange that to an
3 astronomical amount. That road can't handle it.

4 We didn't need a light on Fort Plains
5 and West Farms; now we need a light.

6 You arranged exits out of the Walters
7 Group so you could only make a right-hand turn in
8 from Fort Plains Road and a left -- and a right turn
9 out of the complex. I had Santa Claus and the fire
10 trucks making a left-hand turn out of Walters Group
11 down Fort Plains Road. So if the fire department is
12 not going to obey the road signs, what makes you
13 think any other public is going to?

14 So, please, I beg you, don't destroy
15 their life the way you destroyed me and my backyard.
16 Thank you.

17 ATTORNEY CUCCHIARO: Do you swear or
18 affirm the testimony you are about to give this
19 board is the truth, the whole truth, and nothing but
20 the truth?

21 STEVEN MIRABELLO: Yes, I do.

22 ATTORNEY CUCCHIARO: Please state and
23 spell your name and give us your address.

24 STEVEN MIRABELLO: Name is Steven
25 Mirabello. I live at 2 Flintlock Drive.

1 ATTORNEY CUCCHIARO: Sir, could you
2 spell your last name?

3 STEVEN MIRABELLO: M-I-R-A-B-E-L-L-O.

4 ATTORNEY CUCCHIARO: Okay, go ahead,
5 sir.

6 STEVEN MIRABELLO: Hi. So I have had
7 the opportunity to go and take a look at a lot of
8 the environmental reports, the Phase 1 and Phase 2
9 that have been in these applications. One for the
10 initial warehouse application and also even going
11 back to the solar farm that was proposed before
12 that, and in doing research for the property at
13 hand, I have also looked at New Jersey DEP DataMiner
14 and looked at some of the environmental concerns for
15 the properties that are surrounding it.

16 So in there's, in the Phase 1 and Phase
17 2 that discussed the environmental impact on the
18 property itself, but there's also in going in -- so
19 there's been some contradictory information between
20 those two reports. So I have some concerns in
21 taking a look at that, that there's some gaps there.

22 And I'm not confident that all the
23 environmental issues for the site have been properly
24 addressed.

25 So, for instance, and if you take a

1 look at the available groundwater data from the
2 stormwater reports for the test pits, it's unclear
3 whether the groundwater flows to the north to the
4 sandy property, which is in the New Jersey DEP
5 DataMiner, or if it flows onto the site from that
6 property. And the reason, one reason that that is
7 particularly relevant is the investigations on the
8 property to the north are -- they're still active,
9 still ongoing. There's no real public data. It's
10 an incomplete record for what's there. So to me
11 there's still a potential risk that there could be
12 contaminants flowing onto the site.

13 When you take a look at the Phase 1 and
14 Phase 2 reports that were provided, initially for
15 the solar farm, the recommendations of the LSRP for
16 that had said that, in his opinion, the proposed use
17 of the solar farm was appropriate; however, if they
18 want to go and change the property use to
19 warehousing, he would recommend doing a report for
20 vapor intrusion, to see if there would be any
21 volatile chemicals that might get into the warehouse
22 and might affect the workers.

23 I haven't seen any such investigation
24 that would happen currently. And I don't know if
25 the current warehouse takes into account some sort

1 of vapor barrier or sub-slab system, like you would
2 usually have for radon to go and mitigate any vapors
3 that may be there.

4 There was, when you take a look at the
5 reports, Phase 1 and Phase 2 reports done for the
6 warehouse, they describe that there's still after
7 some areas of concern, the AOC's that would still
8 need to be investigated, and I think that part of
9 their plan is to go and do their investigation test
10 pits as part of the concurrent with construction.

11 So I certainly have a concern that in
12 getting into this process they may discover/unearth
13 that the contamination that may or may not be there
14 is much larger. And now the proposed site of the
15 warehouse is completely inappropriate for the
16 cleanup or the site remediation they may need to do.

17 So, and just going back and thinking
18 about recent events in our town, just not too long
19 ago we can think of what happened at Marl Road where
20 that contamination still isn't cleaned up, there's
21 still groundwater issues. That has been known about
22 for 30 years on now.

23 So my recommendation is to go and wait
24 until all the environmental investigations are done
25 for this subject property, for the property to the

1 north, have all the environmental professionals and
2 the board an opportunity to review it before we even
3 go and put something in place that may be wholly
4 inappropriate.

5 The best time to do any sort of cleanup
6 is now, before anything ever gets built and we have
7 to make any sort of accommodations. So I would
8 recommend to wait until all the environmental work
9 is completed.

10 Thank you.

11 ATTORNEY CUCCHIARO: Do you swear or
12 affirm the testimony you are about to give this
13 board is the truth, the whole truth, and nothing but
14 the truth?

15 NICOLE WOOLLEY: I do.

16 ATTORNEY CUCCHIARO: Please state and
17 spell your name for the record, and give us your
18 address.

19 NICOLE WOOLLEY: Nicole Woolley,
20 W-O-O-L-L-E-Y. 223 Victory Road.

21 I was born and raised on Victory Road
22 and have several family members still living there.
23 My parents moved there in 1964. We have local
24 knowledge about the area that outsiders do not have.
25 We have an appreciation for the character of the

1 street and the environment that the applicant does
2 not have. A warehouse will turn a quiet, rural back
3 road with farms and residences into a high-traffic,
4 unsafe, loud, aesthetically unpleasing street that
5 will negatively affect our property values.

6 I have a few questions. Has a quality
7 of life study been done?

8 ATTORNEY CUCCHIARO: Who are you
9 asking the question to?

10 NICOLE WOOLLEY: I don't know.

11 ATTORNEY CUCCHIARO: I guess it would
12 be to the applicant.

13 NICOLE WOOLLEY: To the applicant.

14 ATTORNEY CUCCHIARO: So, Mr. Simon --
15 let's hear the questions, and then Mr. Simon will
16 respond and perhaps identify who the witness...

17 ATTORNEY SIMON: Right. I can't
18 provide any testimony but I will identify a witness
19 that I think is appropriate to answer that question.

20 ATTORNEY CUCCHIARO: Okay. So go
21 ahead.

22 NICOLE WOOLLEY: And then I have
23 comments after the questions. Is that okay?

24 ATTORNEY CUCCHIARO: Well, let's get
25 the answers to the questions first.

1 NICOLE WOOLLEY: Okay. Has a quality
2 of life study been done?

3 Has there been a study on the runoff
4 and its potential effect to wildlife and plant life
5 and to our drinking water? That's more of a
6 concern.

7 Have tractor-trailers turning onto
8 Victory at rush hour with a car in the other lane
9 been actually attempted from both directions, not
10 assimilation?

11 I think those are all my questions.

12 ATTORNEY CUCCHIARO: Okay. So,
13 Mr. Simon, do you have...

14 ATTORNEY SIMON: Yeah. So when you
15 say a quality of life study, just so I can identify
16 the proper witness, what do you mean?

17 ATTORNEY CUCCHIARO: Mr. Simon, just
18 get closer to the mike.

19 ATTORNEY SIMON: I'm sorry. I'm
20 trying to --

21 NICOLE WOOLLEY: Well, for me it
22 entails a lot. It entails about the air pollution,
23 the light pollution, the noise pollution, how it's
24 affecting our homes, our everyday life, our safety.
25 I can go on.

1 ATTORNEY SIMON: Okay. So that's one.

2 And then you have a question about the stormwater?

3 NICOLE WOOLLEY: Yes, runoff.

4 ATTORNEY SIMON: Runoff. And then a
5 question about tractor-trailers.

6 And, Kerry, why don't you come up to
7 answer the question.

8 So this is our engineer. Tung-To Lam
9 has provided testimony. Why don't you ask the
10 questions, I think the quality of life, maybe,
11 question and the stormwater question.

12 Have there been any quality of life
13 studies done?

14 TUNG-TO LAM: Environmental Impact
15 Statement has been submitted to the board.

16 NICOLE WOOLLEY: How it affects our
17 quality of life, not just the environment and the
18 animals?

19 THE WITNESS: For this property.

20 ATTORNEY CUCCHIARO: Well, why don't
21 you explain what the Environmental Impact Statement
22 contains; what elements does it address?

23 THE WITNESS: There's a checklist
24 based on the township requirement on what needs to
25 go into an Environmental Impact Statement and the

1 Natural Resource Inventory. And those have been
2 submitted.

3 ATTORNEY CUCCHIARO: Well, some
4 specifics, please.

5 TUNG-TO LAM: Rob, do you have a copy?

6 ATTORNEY SIMON: Yeah. Hold on a
7 second.

8 TUNG-TO LAM: If you refer to page I,
9 which is the Table of Contents for the Environmental
10 Impact Statement prepared by EcoSciences,
11 Incorporated, March 2nd, 2022, it goes through a
12 list of items. And, in fact, it's two pages of
13 Table of Contents. It starts with a description of
14 the development, the project alternative, inventory
15 of the existing natural resources, assessments of
16 environmental impacts, steps to minimize
17 environmental impacts, irreversible and commitment
18 to resource, unavoidable impacts, and then the rest
19 licenses and references. But in each one there's
20 subcategories to it.

21 For example, under inventory of
22 existing natural resources, it talks about the
23 geology, topography, the soil, the groundwater
24 quality and quantity, the surface water quantity and
25 quality, vegetation, wildlife, wetlands, aquatics,

1 floodway, floodplain, air qualities, sound, land
2 use, aesthetics, historical and cultural resources,
3 demographics.

4 And that's just one sample of it.

5 ATTORNEY SIMON: So in response to the
6 question in terms of quality of life study, you
7 contend with the Environmental Impact Report and its
8 subcategories that have been submitted to the board
9 addresses issues that would go into such a study,
10 correct?

11 THE WITNESS: Yes.

12 ATTORNEY SIMON: And, I apologize,
13 ma'am, with regard to the stormwater question, can
14 you just repeat that question just so we get it
15 accurately?

16 NICOLE WOOLLEY: Yeah. Just for the
17 sake of time I'm going with a yes-or-no answer.

18 Has there been a study on the runoff
19 and its potential effects to Squankum Brook's
20 wildlife, plant life, and our drinking water?

21 TUNG-TO LAM: No, the stormwater
22 impact is designed for this property, not beyond.

23 NICOLE WOOLLEY: So, no, there hasn't
24 been any study about the runoff affecting that,
25 okay.

1 And the last question was about the
2 tractor-trailers. And, again, a yes or no for the
3 sake of time would be fine.

4 Have tractor-trailers turning onto
5 Victory Road at rush hour with a car in the other
6 lane been actually observed, attempted from both
7 directions, not a simulation but actually having
8 tractor-trailers do this?

9 KERRY PEHNKE: No, we don't look at it
10 that way.

11 NICOLE WOOLLEY: Okay. Then that's
12 it. Thank you.

13 ATTORNEY SIMON: Thank you.

14 KERRY PEHNKE: Thank you.

15 NICOLE WOOLLEY: Okay. I am concerned
16 with the effects that pollution and disturbances
17 will have on the health and quality of life of the
18 residents, pets, farms, animals and numerous
19 wildlife species, due to the increased human
20 activity and tractor-trailer traffic, increased cars
21 and trucks, and construction vehicles creating
22 noise, air, light and light pollution during the
23 construction phase and once the warehouse is
24 operational.

25 So some concerns pertaining to the

1 financial impact. In addition to the water line and
2 probable decrease in property values, damages to the
3 homes, lands or financial hardship, Victory Road was
4 not intended for such heavy traffic. My concern is
5 that the taxpayers will have to bear the expense of
6 the road repairs.

7 My family will be negatively affected
8 even more so since most of the land they're
9 proposing to take is from the front yards of our
10 properties. This is so a rich businessman from
11 New York can make money at our expense. How is that
12 just? Farmers' livelihoods are their land, and
13 their nest egg is the property. What happens when
14 their land loses its value?

15 Regarding traffic and safety. As a
16 person with local knowledge I feel confident in
17 saying that the traffic impact will not be minimal.
18 Tractor-trailers will be backed up from 547 down
19 Victor, blocking driveway and spewing fumes into
20 homes. At rush hour the backup could potentially go
21 as far down as the S-curve, which, would be very
22 dangerous.

23 And what about the tractor-trailers
24 passing the mailman on the curve when a vehicle is
25 coming in the other direction, not to mention all

1 the hidden driveways.

2 The other day I was unable to turn left
3 off of Easy Street onto 547 south due to the traffic
4 being backed up from Soldier Field past Easy Street
5 almost to Victory, and it wasn't even rush hour. I
6 can only imagine the traffic once tractor-trailers
7 are added to the mix.

8 The roads are narrow, without
9 shoulders. People ride bikes, walk their dogs and
10 ride horses. One neighbor's geese cross the road
11 several times a day. What will be done to ensure
12 the safety of the people and the animals?

13 In addition to the danger posed by the
14 trucks, the farm animals, wildlife and pets will be
15 startled and stressed by the noise.

16 Widening the road to supposedly soften
17 the curve will not help. Eastbound cars speeding
18 don't just cross the line; quite a few have ended up
19 on the other side of the road in my front yard.

20 The danger will only increase with
21 tractor-trailers routinely traveling Victory Road.
22 To think everyone, including truckers on a schedule,
23 are going to slow to 25 miles per hour is
24 unrealistic. Tractor-trailers going around the
25 curve crossing over the lines due to their size at

1 the same time as another vehicle traveling in the
2 opposite direction is a tragic accident waiting to
3 happen. Signage will have minimal impact at best.
4 It would just be a matter of time before someone is
5 killed.

6 As far as the signage, where will the
7 speed limit, curve ahead, yellow arrows and
8 truck-tipping signs all be located? In my front
9 yard, not only junkying it up, but taking even more
10 of our yard.

11 What the applicant calls improvements I
12 see as useless Band-Aids that are ruining the beauty
13 of my yard and street, not to mention my property
14 value. Victory is a rural road. Trying to turn it
15 into a city road is not an improvement.

16 And if you would bear with me just one
17 more minute, I would like to -- my brother wasn't
18 able to be here today. He lives across the street
19 from the auto body. And to say that that easement
20 is an improvement, that it's for us, that everyone
21 could use, well, every single person here on Victory
22 Road will agree, it is not for us. It is for that
23 warehouse. And you're going to promote those
24 tractor-trailers to go by our houses, to be sitting
25 outside my brother's house.

1 They talked about the study wasn't done
2 about the runoff, well, that runoff will go right
3 into my brother's field and ruin his trees which is
4 his livelihood. So don't spin it that it's for us,
5 that we actually need that, because we don't.

6 I'm sorry, I just want to make sure I
7 mentioned that one other thing about -- for my
8 brother. Ridiculous that they won't turn right off
9 of Victory; there's Brick, there's Lakewood, there's
10 Route 9 South. If it wasn't necessary, they
11 wouldn't have paid money for the easement for the
12 property.

13 The neighbors are greatly affected.
14 The fact that they weren't notified is sad. If my
15 brother didn't care about the quality of life, his
16 own and our neighbors, he would have sold out too
17 and sold the corner of his property when he was
18 approached. But he didn't because quality of life
19 is more important than money.

20 Thank you very much for your time. I
21 appreciate you listening to my testimony. Thank
22 you.

23 CHAIRMAN BOISVERT: All right, it's
24 10:29 and there ain't no way you're done in two,
25 minutes, Marc, we know that.

1 MARC PARISI: I don't think I can do
2 that in two minutes. With all respect, can we go an
3 extra ten minutes? I'm only going to take, like,
4 maybe five or six minutes.

5 CHAIRMAN BOISVERT: You're going to
6 take five or six minutes?

7 MARC PARISI: Yeah.

8 CHAIRMAN BOISVERT: You swear?

9 ATTORNEY CUCCHIARO: Do you swear or
10 affirm the testimony you are about to give this
11 board is the truth, the whole truth, and nothing but
12 the truth?

13 MARC PARISI: Yes.

14 ATTORNEY CUCCHIARO: Please state and
15 spell your name and give us your address.

16 THE WITNESS: Marc Parisi,
17 P-A-R-I-S-I, 2 Castle Court.

18 Good evening. Thank you for the time.

19 I know there has been a lot of talk
20 about the easement. Has that been entered into
21 Evidence as an exhibit?

22 If not, I have a copy. Can I enter it
23 in as a public exhibit?

24 BOARD PLANNER: I think it is an
25 exhibit.

1 ATTORNEY CUCCHIARO: Well, you can
2 enter in whatever you would like; whether it's been
3 entered or not, if you want to submit something, go
4 ahead.

5 BOARD PLANNER: Is that what you're
6 talking about?

7 MARC PARISI: I'm talking the actual
8 easement.

9 BOARD PLANNER: Oh. No.

10 MARC PARISI: The deed.

11 ATTORNEY CUCCHIARO: I'm telling you,
12 if you want to submit something to make sure --

13 MARC PARISI: Yes.

14 ATTORNEY CUCCHIARO: -- that your
15 point is made, go ahead.

16 THE WITNESS: Okay. So who should I
17 give this to?

18 ATTORNEY CUCCHIARO: So we'll mark
19 this as P-1.

20 Do you have an extra copy for counsel?

21 MARC PARISI: I don't but, I mean, it's
22 a public record. It's the recorded deed for the
23 easement.

24 ATTORNEY CUCCHIARO: Why don't you
25 just show it to counsel, first --

1 ATTORNEY SIMON: Can I just see it?

2 ATTORNEY CUCCHIARO: -- to see if he
3 has an objection.

4 MARC PARISI: All right. So I'll just
5 get into my testimony since I'm now only five and a
6 half minutes.

7 I have concerns that the applicant did
8 not comply with the local ordinance related to
9 public notice, Ordinance 188-5.1 regarding notice
10 signs. It states [as read]: All applications
11 requiring public notice as here and above set forth
12 shall require a notice sign. A notice sign is a
13 sign which is freestanding and erected on the
14 property which is the subject of an application for
15 development. Notice signs are required to be
16 created on the property which is the subject of an
17 application for development to state the name of the
18 application, blah, blah, blah.

19 The sign is supposed to be between
20 32 square feet in area and 64 square feet in area.
21 It's supposed to face the street abutting the
22 property. I never saw such a sign erected on the
23 property. I don't believe they were granted a
24 waiver. And it's my understanding that this
25 applicant did not comply with this ordinance

1 requirement. That is Ordinance 188-5.1.

2 I have a statement about some traffic
3 stuff and then a question for the traffic expert.

4 Victory Road is a local road. This
5 Planning Board adopted a new Circulation Element of
6 its Master Plan in May of 2022. The planning board
7 had the opportunity to recommend changing the
8 designation of this road, but they did not. The
9 goals of the Circulation Element included, and I
10 quote: "Remove high intensity uses from areas where
11 roads cannot support." Another goal was: "Relocate
12 high intensity uses to appropriate roadways and
13 discourage development on lower classification
14 roads."

15 As I said, Victory Road is a local
16 road; it's the lowest classification. This
17 applicant is proposing to make significant off-site
18 improvements to Victory Road to accommodate
19 tractor-trailers using their warehouse. These
20 proposed improvements include widening the S-curve
21 but reducing the speed limit so trucks can safely
22 pass each other on the S-curve, as well as obtaining
23 an easement at the corner of Victory Road and 547.

24 The easement states as -- Counsel, are
25 you okay with me entering that into the record?

1 ATTORNEY CUCCHIARO: We're marking it
2 as P-1.

3 MARC PARISI: Okay. The easement says,
4 "To enable tractor-trailers to make right turns from
5 Victory Road onto Lakewood Farmingdale Road." That
6 is the specific purpose of the easement; it says so
7 in the recorded deed.

8 I want to draw the board's attention to
9 Ordinance 188-118 titled "Streets". It states:
10 "Local streets shall be designed to discourage
11 through traffic." So my question for your traffic
12 expert, is it her professional opinion the proposed
13 improvements will encourage or discourage through
14 traffic on this local road?

15 Now, in the interest of time, I don't
16 know if you want to bring her up here and answer the
17 question, but I'll just opine that I do not believe
18 that it is -- that these proposed -- I do believe
19 that these proposed improvements are inconsistent
20 with that ordinance and that they're going to
21 encourage through traffic.

22 By changing the S-curve and redesigning
23 Victory Road, you're now going to have traffic that
24 is on Maxim Southard that is going to say, hey, I
25 can cut through Victory now. And that goes against

1 your Ordinance 188-118.

2 I think it's important that the board
3 knows that the Monmouth County Planning Board has
4 designated 547 as a scenic road. This project is
5 going to increase traffic that is going to be using
6 547. That's inconsistent with the Monmouth County
7 Planning Board.

8 I urge the board to deny this
9 application and not allow them to make the offsite
10 improvements for those reasons.

11 Question about is Victory Road a
12 residential zone or an Industrial Zone? Well, I did
13 a little unscientific math and basically 90 percent
14 of the frontage on Victory Road is residential. But
15 for the steel factory and this property those are
16 the only two lots on Victory Road that are not zoned
17 ARE-6. So it's fair to say that Victory Road is a
18 residential road. And since, like, 90 percent of
19 the frontage is residential.

20 So this applicant's proposing to
21 operate a warehouse distribution facility 24/7 in a
22 residential zone. There are -- I looked at the list
23 of all the SED -- permitted uses in the SED zone.
24 There's very few uses in there that would operate
25 24/7 except for this warehouse distribution.

1 I believe that consistent with what has
2 been written in legal briefs from Mr. Cucchiaro's
3 firm it says, "The planning board has the power to
4 impose certain conditions on site plan approvals,"
5 and then goes on to quote a case or what is that --
6 it's from Cox, it says, "The board unquestionably
7 has the right to impose reasonable conditions. The
8 condition was an exercise of the board's
9 quasi-judicial power."

10 So I ask this board to deny the
11 application, but if you're not inclined to deny the
12 application that you condition this -- any approval
13 and limit the hours of operation on this warehouse
14 -- and that you have the authority to do that --
15 that you would limit the hours of operation to
16 7:00 a.m. to 10:00 p.m. or whatever discretion you
17 believe is appropriate since you're now putting a
18 non-residential use in a residential neighborhood.
19 And you have the authority to do that.

20 With respects to Exhibit A-49, which
21 was the exhibit that was talked about in the
22 beginning of this hearing tonight, in which it was
23 submitted, you know, into the record, and then
24 counsel said that they didn't intend to rely upon
25 that, I think it's very skeptical that they entered

1 into evidence a site plan that shows that they're
2 increasing the office spaces from two office spaces
3 to six office spaces.

4 To me it looks like a flex-space type
5 of operation, where they're going to have multiple
6 different tenants in that building that are going to
7 be operating with different uses.

8 I don't know, there was no testimony
9 as to whether or not, you know, all of the potential
10 tenants are going to be operating as warehouse
11 distribution or they're going to be operating as
12 other types of uses, but I do think that it's
13 important to know that, with respects to the amount
14 of loading bays on this building, that the State
15 Planning Commission on warehouse guidance says that
16 the industry standard is one loading bay for every
17 10,000 square feet.

18 This building, I believe, has 26
19 loading bays. The exhibit A-49 had 28 loading bays
20 on it. It's 190,000 square feet of warehouse space.
21 So they technically have between 7 or 8 or 9 more
22 loading bays than are required under the industry
23 standards. Why? Why?

24 And if they are intending to use flex
25 space, which I don't know if they are, if they plan

1 to do that or not, but they certainly don't need
2 that many loading bays if they were going to use
3 flex space. Maybe one bay for each unit.

4 So I would -- I would encourage the
5 board to be skeptical about what their end game is
6 with this actual building based upon their
7 submission of Exhibit A-49.

8 There's no reason this building needs
9 to be 45-foot high and have 40-foot clear ceilings,
10 if they're going to be dividing it into six separate
11 units. They could easily have turned around and
12 limited the building height to 25 or 30 feet. That
13 would fit the character of Victory Road. There is
14 no structures on Victory Road with that height.

15 Paul, I'm trying to -- I'm trying to go
16 through as quick as I can.

17 CHAIRMAN BOISVERT: No, you've got it,
18 you got it.

19 MARC PARISI: Okay. So, you know, I
20 would just, respectfully, submit that there's no
21 reason why this building needs to be as large as it
22 is and literally consume and take over Victory Road.

23 They could have -- if they really
24 wanted to fit into their neighborhood, they could
25 have moved this building back off of Victory Road;

1 maintained wooded frontage along Victory Road;
2 reduced the height to 25 or 30 feet; reduced the
3 size of this building substantially, maybe in half;
4 reduced the number of loading bays; and reduced the
5 number of trucks coming to this building.

6 There's so many things that they could
7 have done that would have probably been acceptable
8 to the residents behind me and to this community and
9 maybe to you guys, but they chose not to do any of
10 it and this is the application they put forth and
11 this is the application that you have to now
12 consider.

13 And with respects to Exhibits B-20,
14 B-27, and B-38, the septic system was denied by the
15 county health department in August of 2022. They
16 haven't put any testimony -- I haven't heard any
17 testimony as to whether or not they've submitted
18 plans to the DEP for a new septic system. We don't
19 know where the septic system is going to go. We
20 don't know how big it has to be. I don't even know
21 how you can approve a site plan without knowing
22 where a septic system is going to go on the
23 property.

24 I mean, I have watched a lot of
25 planning board applications. I'm shocked that there

1 hasn't been any statements from any professionals
2 anywhere that says how do we know -- where are you
3 putting your septic system? How are you going to
4 engineer around a septic system that needs an
5 outside agency approval?

6 I mean, it's just shocking to me that
7 there hasn't been more comments about we don't --
8 how can we approve where your slab is going to be,
9 where your basins are going to be, where your
10 parking lots are going to be, or anything, when you
11 haven't even presented to us with the concept that
12 you provided to the DEP regarding the size of your
13 septic system and all the requirements under state
14 law? It blows my mind.

15 So those are my -- pretty much
16 everything that I want to say. My last thing that I
17 want to say to you guys is just more of a personal
18 note. You guys are like a jury, okay. I mean,
19 you've heard two sides of a case and now you have to
20 decide who you believe in more. And, you know, that
21 is up for you guys to decide but you've heard, you
22 know, the applicant's story, the objector's story.

23 And it's my understanding that you, if
24 you guys were to decide to deny this and you say we
25 believe the objector's experts in their testimony

1 and we find that the applicant's testimony was not
2 credible and not reliable, that a court is not going
3 to overturn your decision, as long as you can
4 explain and come to some reasonable basis as to why
5 you denied this application. And I'm asking you to
6 deliberate and do that tonight.

7 Thank you.

8 ATTORNEY CUCCHIARO: Mr. Chairman,
9 just one note on the comment regarding the notice
10 signs. The New Jersey courts have held that those
11 requirements are invalid. There was a case in
12 Edison, similar ordinance. The court said that the
13 notice requirements in the Municipal Land Use Law
14 prevailed and that you couldn't require greater
15 notice than that.

16 So a lot of towns tried but the courts
17 have said that it's not something that you can
18 enforce.

19 CHAIRMAN BOISVERT: Okay.

20 ATTORNEY CUCCHIARO: With that we have
21 taken a look, Mr. Chair, at some of the upcoming
22 agendas.

23 CHAIRMAN BOISVERT: Okay. Well, for
24 now let me close the public portion, for now. For
25 now.

1 ATTORNEY CUCCHIARO: We have on
2 October 19th, we have our Master Plan hearing; that
3 may take some time.

4 CHAIRMAN BOISVERT: Okay.

5 ATTORNEY CUCCHIARO: And we have the
6 Wadsworth application, which is a Whispering Woods
7 application, that the court requires us to proceed
8 with.

9 And we do have some other larger
10 applications on that night, so I would not recommend
11 October 19th.

12 November 2nd we may be able to get
13 this done. And then we have December 14th, as well.

14 ATTORNEY SIMON: So it's my
15 understanding there is a consideration to carry the
16 application until November 2nd, 2023, without any
17 further notice to the public.

18 ATTORNEY CUCCHIARO: That's correct.

19 ATTORNEY SIMON: Now, my only question
20 is really a procedural one, in terms of whether we
21 would need to bring all of our witnesses back again
22 in which case I would have to go poll them and find
23 out about their schedules.

24 ATTORNEY CUCCHIARO: Well, why don't
25 you take five minutes and do that because the answer

1 is, yes, because the public has their right to
2 cross-examine. So we'll give some time to poll.

3 ATTORNEY SIMON: So, let me ask you a
4 question. Obviously, you can visually see with
5 regard to our traffic expert that she may have some
6 issue in being back here for the next meeting.

7 ATTORNEY CUCCHIARO: So I never
8 presume anyone's condition.

9 ATTORNEY SIMON: Very fair. And maybe
10 that was erroneous for me to state. Nevertheless,
11 what I would ask, Mr. Chairman, in deference to her,
12 if it's possible, that should members of the public
13 have questions for her that maybe we can extend
14 tonight's meeting just for that sole purpose. There
15 may not be any, but if there are...

16 CHAIRMAN BOISVERT: So if anybody from
17 the public that has just a specific traffic
18 question?

19 ATTORNEY SIMON: Correct, for Kerry
20 Pehnke.

21 CHAIRMAN BOISVERT: Yeah, because
22 clearly...

23 ATTORNEY SIMON: Yes.

24 CHAIRMAN BOISVERT: I mean, that's fair
25 enough. You guys, the board doesn't have any

1 problem doing that?

2 ATTORNEY DEBORD: Mr. Chair, Mr. Goll
3 is not available for the November 2nd date.

4 ATTORNEY CUCCHIARO: Whoever is
5 talking, I can't hear...

6 ATTORNEY DEBORD: Oh, I'm so sorry.
7 Mr. Goll is not available for the November 2nd date.

8 CHAIRMAN BOISVERT: That's...

9 ATTORNEY SIMON: Well, I guess you can
10 ask whether any member of the public has a question
11 for Mr. Goll.

12 ATTORNEY CUCCHIARO: So why don't we
13 open it just for -- not for any comments but only
14 for questions of Ms. Pehnke and Mr. Goll.

15 CHAIRMAN BOISVERT: Questions for the
16 traffic engineer or questions for Mr. Goll, that's
17 it.

18 ATTORNEY CUCCHIARO: Right. So if
19 anybody has any questions, not any comments but any
20 questions for Ms. Pehnke or Mr. Goll, please come
21 up.

22 ATTORNEY CUCCHIARO: Okay, please
23 state and spell your name for the record and give us
24 your address. And, remember, this is questions
25 only.

1 PAIGE HACKETT: Paige Hackett, 578
2 Newtons Corner Road, P-A-I-G-E, H-A-C-K-E-T-T.

3 I do have a question for Ms. Pehnke.
4 My question is in regards to your traffic study. I
5 attended a lot of these meetings and I might have
6 missed it, but I don't think I have heard anything
7 about the traffic coming off of 195 onto 547
8 Lakewood-Allenwood Road and the intersection at
9 Herbertsville and Oakland Road.

10 Was that under consideration in your
11 traffic study?

12 KERRI PEHNKE: That was not part of
13 our scope of study.

14 PAIGE HACKETT: So the main route that
15 you're routing -- that you're considering with these
16 tractor-trailers will be taking is from 195 off of
17 the exit onto Lakewood Allenwood Road, through that
18 intersection straight, continuing down to Victory
19 Road, correct?

20 KERRI PEHNKE: Correct.

21 PAIGE HACKETT: So you haven't looked
22 at that intersection at all?

23 KERRY PEHNKE: That's correct.

24 PAIGE HACKETT: So I travel that road
25 every day. That's how I get home from work; I take

1 195 South. Often traffic, and the time from
2 anywhere from 3:30 to 6 o'clock, is backed up all
3 the way to 195. It's a very, very dense
4 intersection.

5 I don't see any way that you could add
6 that many tractor-trailers through that intersection
7 all day long every day, especially during rush hour
8 time. You know, you haven't looked at it, so I
9 guess you don't have an answer for it.

10 That's my question to the board; it's a
11 very -- something that should be considered.

12 And the other just kind of it's not
13 really a question for Ms. Pehnke but it's in regards
14 to her previous testimony before the easement was
15 considered; she mentioned that the right-turning
16 tractor-trailers onto 547 from Victory Road should
17 be able to make that turn because school buses make
18 that turn.

19 What is the turning radius of a school
20 bus?

21 KERRI PEHNKE: The radiuses are
22 different. I had said the tractor-trailer could
23 make the turn within the existing pavement area.

24 PAIGE HACKETT: I'm sorry, what?

25 KERRY PEHNKE: The tractor-trailer --

1 BOARD PLANNER: Pull it closer. Move
2 it closer, because they definitely cannot hear you.

3 KERRY PEHNKE: My apologies. A
4 tractor-trailer can make the turn in the existing
5 pavement area.

6 Not that it was similar to a school bus
7 but the school bus also had issues making the turn
8 without crossing over the centerlines as well.

9 PAIGE HACKETT: With respect, that
10 wasn't your testimony. Your testimony was I have
11 seen school buses do it, tractor-trailers can do it.
12 You were comparing the two as being comparable. So
13 that is just something I want to bring up to the
14 board that, you know, they are not comparable really
15 at all. The turning radius of a school bus, I'm
16 going to bring it up because I looked it up because
17 I am not a traffic expert, nor do I know anything
18 about school bus length or tractor-trailers, but I
19 looked it up and a school bus is 20 to 30 feet while
20 a tractor-trailer is 55 feet.

21 So the difference from a school bus to
22 a tractor-trailer is very different. And I'm -- not
23 being a traffic expert, I would say not to compare
24 the two. That's all.

25 Thank you for your time. And I hope

1 you could consider that intersection as being
2 completely problematic to this plan. Thank you.

3 ATTORNEY CUCCHIARO: And, again,
4 questions only to Ms. Pehnke and to the objector's
5 witness. Please state and spell your name for the
6 record.

7 ELLSWORTH BURROWS: First name
8 Ellsworth, E-L-L-S-W-O-R-T-H, last name --

9 ATTORNEY CUCCHIARO: Just get a little
10 closer to the mike.

11 ELLSWORTH BURROWS: Last name, Burrows,
12 B-U-R-R-O-W-S.

13 ATTORNEY CUCCHIARO: And your address?

14 ELLSWORTH BURROWS: 11 Amanda Lane.

15 ATTORNEY CUCCHIARO: Okay. Do you
16 have some questions?

17 ELLSWORTH BURROWS: Yes, about the
18 traffic planning. Again, what I'm hearing is there
19 wasn't any planning besides Victory Boulevard.

20 The last person that was up brought up
21 the Herbertsville/514. Also, you have to look at
22 Maxim Southard and 547 because now you're increasing
23 traffic volume along this road that is already a
24 problem from both directions. And there must be
25 some kind of survey done for these roads. You can't

1 just plop a bunch of trucks on the road and expect
2 everybody to be content with the volume that is
3 going to happen.

4 On that road there are sports fields;
5 they have games. People come and go on these roads.
6 Now you're putting tractor-trailers in here where
7 people are leaving with kids from games. How long
8 is that going to take for people to go home or get
9 to the fields? That is my concern.

10 So I would say if you guys are going to
11 do anything, please also look at the traffic
12 patterns.

13 ATTORNEY CUCCHIARO: Well, no, this is
14 for questions.

15 ELLSWORTH BURROWS: Yes.

16 ATTORNEY CUCCHIARO: So do you have
17 any more questions?

18 ELLSWORTH BURROWS: Yes. I want to
19 know if you guys are going to do a traffic survey
20 for that road completely, not just for Victory
21 Boulevard.

22 Victory Boulevard dumps on both 547 and
23 Maxim Southard. So the traffic study must comprise
24 both of those things, and I would like to know if
25 that's going to be done.

1 KERRY PEHNKE: The scope of our study
2 included both ends of Victory Road, so the Maxim
3 Southard intersection as well as the Victory Road
4 intersection. And the additional traffic associated
5 with the warehouse, the intersection was expected to
6 still operate at good levels of service on both
7 ends.

8 ELLSWORTH BURROWS: It's not working
9 right now, so I don't think...

10 ATTORNEY CUCCHIARO: Well, but those
11 are comments, so do you have any more questions?

12 You will have an opportunity to
13 comment, also.

14 ELLSWORTH BURROWS: Okay.

15 ATTORNEY CUCCHIARO: This is just for
16 the questions.

17 ELLSWORTH BURROWS: I understand. But
18 what I'm hearing is a survey has been done but I
19 don't think it's appropriate.

20 ATTORNEY CUCCHIARO: That's a comment.
21 Do you have another question?

22 ELLSWORTH BURROWS: That's my
23 question.

24 ATTORNEY CUCCHIARO: Okay. Well, she
25 has answered. You may not like the answer but

1 that's her answer.

2 ELLSWORTH BURROWS: That doesn't make
3 any sense to me. You can answer something without
4 an appropriate answer, that doesn't make an answer.

5 ATTORNEY CUCCHIARO: Well, it's an
6 answer. It's an answer you're not satisfied with.

7 ELLSWORTH BURROWS: No, that's an
8 answer but it doesn't answer the question. Answer
9 the question.

10 ATTORNEY CUCCHIARO: Mr. Chair, the
11 witness has answered.

12 ELLSWORTH BURROWS: The witness has
13 given me an answer. The witness did not answer.

14 ATTORNEY CUCCHIARO: You asked if he
15 performed that study.

16 ELLSWORTH BURROWS: An appropriate
17 survey of the traffic. Is it appropriate?

18 CHAIRMAN BOISVERT: So, I mean, she
19 did answer your question.

20 ELLSWORTH BURROWS: She did a survey.

21 CHAIRMAN BOISVERT: Yeah. However, I
22 mean, do...

23 KERRY PEHNKE: We follow industry
24 methodologies and standards and we prepare all our
25 analysis.

1 CHAIRMAN BOISVERT: No, but I was
2 going to ask, is it seems that the last two
3 questions, they may not understand what the
4 requirement -- like the scope of how far we go
5 off-site, like what's...

6 KERRY PEHNKE: I can explain that real
7 quick, if that would be helpful.

8 CHAIRMAN BOISVERT: Yeah, maybe that's
9 what we need to do.

10 KERRY PEHNKE: Okay. So we determined
11 study locations based on a significant impact, which
12 is defined by -- New Jersey, it's 100 trips or more
13 added to an intersection. We're actually with this
14 site, even to the two ends of Victory Road, don't
15 add 100 trips, yet we still analyzed those, which is
16 why our scope doesn't have to go out further than
17 that because of that definition of a significant
18 impact of traffic being 100 trips, new trips, or
19 more added to an intersection.

20 CHAIRMAN BOISVERT: Better?

21 ELLSWORTH BURROWS: No. But I can't
22 make a comment, so there's no point.

23 ATTORNEY CUCCHIARO: Sir, state your
24 name and spell it.

25 MEMBER OF THE PUBLIC: I will make it

1 brief, I have to be at the airport at 5:00 a.m.

2 ATTORNEY CUCCHIARO: Well, it's a
3 question, so I don't need to swear you in.

4 DARIN NIELSON: Okay.

5 ATTORNEY CUCCHIARO: But we need you
6 to state and spell your name and give us your
7 address.

8 DARIN NIELSON: 104 Victory Road.

9 ATTORNEY CUCCHIARO: And your name,
10 sir.

11 DARIN NIELSON: Nielson,
12 N-I-E-L-S-O-N.

13 ATTORNEY CUCCHIARO: Your first name?

14 DARIN NIELSON: Darin, D-A-R-I N.

15 ATTORNEY CUCCHIARO: Go ahead.

16 DARIN NIELSON: My question basically
17 comes up from reality, living it, and the pictures
18 of the drawing of the traffic, and hopefully a study
19 comes a little bit because I did talk to the school
20 over there, so you have come up with a very nice
21 drawing of showing that this is where the front
22 bumper is going to go, this is where the back tires
23 are going to go, and being able to make the turn,
24 right?

25 Okay, so with that picture, which it

1 looks beautiful in black and white, but then we
2 also -- I noticed we had an aerial picture of
3 reality, okay. There is a tree, there is a house,
4 the farm with all the visual appendages to make it
5 so, that, one, if you go back to that picture, the
6 black and white, that shows that, yep, you can make
7 this turn without crossing that double yellow line,
8 okay. At what point, how far back from 547's yellow
9 line or center line, how far back is the white line
10 or sidewalk going to have to be for this
11 tractor-trailer -- and I really don't care if it's
12 making a right or left -- to be able to make that
13 turn safely and be able to see oncoming traffic?

14 And I don't care where it's coming
15 from, north, south, east or west, how can that be
16 done safely?

17 I know it can be done on a picture but
18 can it be done safely?

19 ATTORNEY SIMON: Before you answer the
20 question, do you understand the question?

21 KERRY PEHNKE: I'm not sure I'm
22 understanding what you're asking.

23 DARIN NIELSON: Okay. Let's start
24 with how far back is the truck going to have to be
25 to make that turn? We'll say right; we'll say going

1 to Lakewood on 547.

2 KERRY PEHNKE: You're talking about
3 the stop bar?

4 DARIN NIELSON: Excuse me?

5 KERRY PEHNKE: You're talking about the
6 location of the stop bar?

7 DARIN NIELSON: What stop bar?

8 ATTORNEY SIMON: I think it would be
9 easier if you just break it up and ask Ms. Pehnke
10 the question based on a specific location.

11 So just identify the location you're
12 talking about and then ask her the question at that
13 particular location.

14 DARIN NIELSON: How many intersections
15 are we talking about for this company that are going
16 to get reconstructed?

17 ATTORNEY SIMON: I think you have to
18 repeat the question, please.

19 DARIN NIELSON: Are you familiar with
20 the intersection that needs to be reconstructed to
21 make this thing feasible?

22 KERRY PEHNKE: The one on the screen,
23 correct; the Lakewood Farmingdale Road and Victory
24 Road intersection, correct?

25 DARIN NIELSON: There you go.

1 THE WITNESS: Okay.

2 DARIN NIELSON: Now, I'll let you pick
3 a direction going -- what is that, east or west; how
4 far back on Victory Road does the -- we're calling
5 it the stop bar, the sidewalk, the line crossing,
6 okay, how far back does that truck need to stop to
7 be able to facilitate this turn legally?

8 KERRY PEHNKE: It will be designed to
9 industry standards to be able to accommodate that.

10 DARIN NIELSON: Oh, I know it will be
11 designed, okay.

12 Now, is that design going to be legal;
13 is it going to be safe to be able to see with the
14 bamboo farm and the tree and the house on the other
15 side?

16 We're talking about a tractor-trailer
17 that can't get to zero to 60 in five seconds. So
18 I'm saying things we need to look at is, one, the
19 speed of the traffic on that road; and, two, more
20 importantly, how far back are we talking for that
21 truck to be sitting back to be able to make that
22 turn the way the picture shows it?

23 KERRY PEHNKE: It will be designed to
24 the industry design standards, which will account
25 for sight distance and all of the requirements that

1 we need to take into account.

2 DARIN NIELSON: Okay, I would like
3 feet. Because I'm going to go out there with a
4 measuring tape and I'm going to make a little chalk
5 line on the side of the road so that I can just
6 physically see how this is going to even be done.

7 Now we talk about the buses and stuff
8 like that. Well, buses are great because they have
9 a stub nose. The long ones, okay, the long ones
10 have a stub nose; they can get right up there and
11 they can see left and right. A tractor-trailer,
12 they've got a 10-foot extension on the front, it's
13 called an engine, okay.

14 Do you know how far back those things
15 have to be to make this turn? That's a real
16 question.

17 ATTORNEY SIMON: Do you understand the
18 question?

19 KERRY PEHNKE: I do. It will all be
20 on the design plans when...

21 DARIN NIELSON: I rest my case. Thank
22 you.

23 ATTORNEY CUCCHIARO: Okay. So are
24 there any more questions for either of these two
25 witnesses?

1 I don't see any, Mr. Chairman.

2 CHAIRMAN BOISVERT: I was going to say
3 anybody else have any questions for the traffic
4 engineer?

5 ATTORNEY CUCCHIARO: Or...

6 CHAIRMAN BOISVERT: Or Mr. Goll?

7 ATTORNEY CUCCHIARO: Yeah.

8 CHAIRMAN BOISVERT: Okay, seeing that
9 there's none, I'm now closing the public portion.

10 ATTORNEY CUCCHIARO: For tonight.

11 CHAIRMAN BOISVERT: For tonight.

12 KERRY PEHNKE: Thank you. I appreciate
13 it.

14 CHAIRMAN BOISVERT: Good luck.

15 KERRY PEHNKE: Thank you.

16 ATTORNEY CUCCHIARO: Mr. Simon, did
17 you have an opportunity...

18 ATTORNEY SIMON: Yeah, I just want to
19 have two minutes.

20 CHAIRMAN BOISVERT: Sure.

21 ATTORNEY SIMON: Maybe even one
22 minute, just to check on the availability of the
23 remaining witnesses, please.

24 CHAIRMAN BOISVERT: Of course.

25 ATTORNEY SIMON: Thank you.

1 (A brief recess is taken.)

2 ATTORNEY CUCCHIARO: Okay, Mr. Chairman,
3 they're good for November 2nd, so I'll make the
4 announcement.

5 SECRETARY RUBANO: And you also grant
6 the board an extension of time.

7 ATTORNEY SIMON: Yes, we will grant
8 the board an extension of time through that next
9 date. Thank you.

10 SECRETARY RUBANO: Through
11 November 3rd?

12 ATTORNEY SIMON: November 3rd, yes.

13 SECRETARY RUBANO: Thank you.

14 BOARD ATTORNEY: The application
15 SP-1105 AAVRHW Property, LLC, will be carried to the
16 board's November 2nd, 2023, meeting.

17 That's a live meeting beginning
18 7:00 o'clock here in the Main Meeting Room in Town
19 Hall. There will be no further notice to property
20 owners. Also, all documents associated with the
21 application are on file and available for inspection
22 during normal business hours at the planning
23 department. Again, there will be no further notice
24 to property owners.

25 (Application adjourned at 11:01 p.m.)

C E R T I F I C A T E

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

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

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



Angela C. Buonantuono, CCR, RPR, CLR
NJ State Board of Court Reporting
License No. 30XI00233100

Dated: October 27, 2023

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Angela C. Buonantuono

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