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23	<u>NO. DESCRIPTION IDENT/EVID</u>	
24	(No Exhibits Marked.)	
25		

1 BOROUGH OF OLD TAPPAN
 2 PLANNING BOARD
 3 WEDNESDAY, JANUARY 11, 2023
 4 COMMENCING AT 7:00 P.M.
 5
 6 IN THE MATTER OF : TRANSCRIPT
 7 : OF
 8 CSH Old Tappan, LLC : PROCEEDING
 9 Coral/Capital Senior Housing :
 10 244 Old Tappan Road :
 11 Block 1606, Lot 3 :
 12 Assisted-living facility :
 13
 14 B E F O R E :
 15 BOROUGH OF BOROUGH OF OLD TAPPAN PLANNING BOARD
 16 THERE BEING PRESENT:
 17
 18 WILLIAM WEIDMANN, CHAIRMAN
 19 NICK MAMARY, VICE CHAIRMAN
 20 MICHAEL ALESSI, FINANCIAL SECRETARY
 21 WILLIAM BOYCE, COUNCILMAN MEMBER (ABSENT)
 22 THOMAS GALLAGHER, COUNCILMAN MEMBER (RECUSED)
 23 ANNA HAVERILLA, MEMBER
 24 CHARLES MAGGIO, MEMBER
 25 DAVID KEIL, MEMBER
 DANIEL ELLER, MEMBER
 NICKI LOULLOUDIS, ALTERNATE #1 MEMBER
 ROBERT SCOZZAFAVA, ALTERNATE #2 MEMBER
 VICKEN BEDIAN, ALTERNATE #3 MEMBER
 MICHAEL AZARIAN, ALTERNATE #4 MEMBER

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 21 DIANE FROHLICH, Board Secretary
 22
 23
 24
 25

1 CHAIRMAN WEIDMANN: In compliance with
 2 the Open Public Meetings Law, notification of this
 3 meeting has been sent to our official newspapers and
 4 other publications circulating in the Borough of Old
 5 Tappan.
 6 And notices posted on the bulletin
 7 board at Borough Hall.
 8 Can we stand and salute the flag?
 9 (Whereupon, all rise for a recitation
 10 of the Pledge of Allegiance.)
 11 CHAIRMAN WEIDMANN: Can I have a roll
 12 call, please?
 13 MS. FROHLICH: Chair Weidmann?
 14 CHAIRMAN WEIDMANN: Here.
 15 MS. FROHLICH: Mr. Mamary?
 16 (No Response.)
 17 MS. FROHLICH: Mr. Maggio?
 18 MR. MAGGIO: Here.
 19 MS. FROHLICH: Mr. Keil?
 20 MR. KEIL: Here.
 21 MS. FROHLICH: Mr. Alessi?
 22 MR. ALESSI: Here.
 23 MS. FROHLICH: Ms. Haverilla?
 24 MS. HAVERILLA: Here.
 25 MS. FROHLICH: Councilman Gallagher?

5

1 COUNCILMAN GALLAGHER: Here.
 2 MS. FROHLICH: Councilman Boyce?
 3 (No response.)
 4 MS. FROHLICH: Mr. Eller?
 5 (No Response.)
 6 MS. FROHLICH: Ms. Louloudis?
 7 MS. LOULLOUDIS: Here.
 8 MS. FROHLICH: Mr. Scozzafava?
 9 MR. SCOZZAFAVA: Here.
 10 MS. FROHLICH: Mr. Bedian?
 11 MR. BEDIAN: Here.
 12 CHAIRMAN WEIDMANN: Say Mr. Mammary one
 13 more time.
 14 MS. FROHLICH: Mr. Mammary?
 15 VICE CHAIRMAN MAMARY: Here.
 16 (Whereupon, the Board conducts other
 17 agenda items including reorganization,
 18 swearing in of one New Board Member Michael
 19 Azarian and swearing in of board members
 20 with renewed appointments. The public hearing
 21 in this matter continues at 7:12 p.m.)
 22 CHAIRMAN WEIDMANN: Can we have a
 23 motion to close the reorganization?
 24 VICE CHAIRMAN MAMARY: Motion to close.
 25 COUNCILMAN GALLAGHER: Second.

6

1 CHAIRMAN WEIDMANN: All in favor?
 2 (Whereupon, all present members respond
 3 in the affirmative.)
 4 CHAIRMAN WEIDMANN: Now we need a
 5 motion to open the regular meeting.
 6 VICE CHAIRMAN MAMARY: Motion to open.
 7 COUNCILMAN GALLAGHER: Second.
 8 CHAIRMAN WEIDMANN: All in favor?
 9 (Whereupon, all present members respond
 10 in the affirmative.)
 11 CHAIRMAN WEIDMANN: Can we have a roll
 12 call please, Diane?
 13 MS. FROHLICH: Mr. Weidmann?
 14 CHAIRMAN WEIDMANN: Here.
 15 MS. FROHLICH: Mr. Mamary?
 16 VICE CHAIRMAN MAMARY: Yes.
 17 MS. FROHLICH: Mr. Maggio?
 18 MR. MAGGIO: Yes.
 19 MS. FROHLICH: Mr. Keil?
 20 MR. KEIL: Here.
 21 MS. FROHLICH: Mr. Alessi?
 22 MR. ALESSI: Here.
 23 MS. FROHLICH: Ms. Haverilla?
 24 MS. HAVERILLA: Here.
 25 MS. FROHLICH: Councilman Gallagher?

7

1 COUNCILMAN GALLAGHER: Here.
 2 MS. FROHLICH: Councilman Boyce?
 3 (No Response.)
 4 MS. FROHLICH: Mr. Eller?
 5 MR. ELLER: Here.
 6 MS. FROHLICH: Ms. Louloudis?
 7 MS. LOULLOUDIS: Here.
 8 MS. FROHLICH: Mr. Scozzafava?
 9 MR. SCOZZAFAVA: Here.
 10 MS. FROHLICH: Mr. Bedian?
 11 MR. BEDIAN: Here.
 12 (Whereupon, the Board conducts other
 13 agenda items. The public hearing in this
 14 matter continues at 7:21 p.m.)
 07:21PM 15 CHAIRMAN WEIDMANN: Next up is 244 Old
 07:21PM 16 Tappan Road.
 07:21PM 17 COUNCILMAN GALLAGHER: I will be
 07:21PM 18 excusing myself, Bob.
 07:21PM 19 (Whereupon, Councilman Gallagher
 07:21PM 20 recuses himself and steps off the dais.)
 07:21PM 21 MR. REGAN: Mr. -- yeah, Mr. Boyce
 07:21PM 22 isn't here or he'd have to recuse himself.
 07:21PM 23 CHAIRMAN WEIDMANN: The floor is yours.
 07:21PM 24 MS. PRICE: Good evening, Members of
 07:21PM 25 the Board, Members of the Public, Gail Price from the

8

07:21PM 1 firm of Price, Meese, Shulman & D'Arminio, 50 Tice
 07:21PM 2 Boulevard, Woodcliff Lake, New Jersey.
 07:21PM 3 We're here this evening as follow-up to
 07:21PM 4 our December meeting. As you know we started
 07:22PM 5 hearings in February of last year. So we're just
 07:22PM 6 about at the one-year mark with our hearings and we
 07:22PM 7 all planned to have everything wrapped up this
 07:22PM 8 evening.
 07:22PM 9 You'll hear from Mr. Steinhagen, we
 07:22PM 10 have been working very hard to reach an agreement
 07:22PM 11 with Lakeview, including up until about an hour ago.
 07:22PM 12 And I'll let Mr. Steinhagen speak for his client.
 07:22PM 13 So I suppose that the one thing that
 07:22PM 14 was limited and reserved was an opportunity for
 07:22PM 15 Mr. Steinhagen to ask questions of our planner. I've
 07:22PM 16 had Mr. Williams here, he's here this evening. So I
 07:22PM 17 think that goes first. The record has been otherwise
 07:22PM 18 closed in the application.
 07:22PM 19 And I'll be ready to do summation and
 07:23PM 20 then would ask for instruction on the application
 07:23PM 21 unless there's other issues at that point in time.
 07:23PM 22 CHAIRMAN WEIDMANN: Okay.
 07:23PM 23 MR. REGAN: Mr. Steinhagen cross
 07:23PM 24 examine Mr. Williams.
 07:23PM 25 Mr. Williams is here?

07:23PM 1 MS. PRICE: Yes.

07:23PM 2 MR. REGAN: And Mr. Williams was

07:23PM 3 previously sworn and remains under oath.

07:23PM 4 MR. STEINHAGEN: So, good evening,

07:23PM 5 Members of the Board. Happy New Year. I hope you

07:23PM 6 had a nice holiday season.

07:23PM 7 For the record, Daniel Steinhagen,

07:23PM 8 member of the firm of Beattie Padovano, 200 Market

07:23PM 9 Street, Montvale, New Jersey, on behalf of Angeline

07:23PM 10 Sheridan and the Lakeview Association.

07:23PM 11 Ms. Price is correct and we had hoped

07:23PM 12 to be here under different circumstances tonight. We

07:23PM 13 had indicated I think back in the November that there

07:23PM 14 was a tentative settlement and Ms. Price and I were

07:23PM 15 on the phone, I can't even tell you how many times

07:23PM 16 today, and I want to compliment Ms. Price, her team.

07:24PM 17 They did a great job trying to get us to a point

07:24PM 18 where we can have an agreement and resolve the issues

07:24PM 19 between the applicant and Lakeview.

07:24PM 20 They really went above and beyond, but

07:24PM 21 unfortunately, we were unable to reach a deal. And I

07:24PM 22 apologize to her -- well, I apologize to her and her

07:24PM 23 team for the effort that we went through to do that.

07:24PM 24 It's not what I -- we had hoped to

07:24PM 25 happen, but we -- we just couldn't get there at the

07:24PM 1 last minute, but I mean I think we spoke at 6:00

07:24PM 2 tonight, 6:15 maybe.

07:24PM 3 MS. PRICE: That was the last one,

07:24PM 4 right.

07:24PM 5 MR. STEINHAGEN: But, yeah, that's --

07:24PM 6 that's where we are, but, again, my hats are off. I

07:24PM 7 think they did a -- her, her client, her

07:24PM 8 professionals did a great job in trying to get us

07:24PM 9 there and I -- I wish that it wasn't the way it is.

07:24PM 10 And, unfortunately, we are where we are

07:24PM 11 tonight. And the association is still in objection

07:24PM 12 to the project, but that is -- that is not a

07:24PM 13 reflection of the efforts that either the association

07:24PM 14 or the applicant put in to try to get us to that

07:25PM 15 point.

07:25PM 16 That's -- that's fair?

07:25PM 17 MS. PRICE: Yes, thank you, Dan.

07:25PM 18 And Mr. Williams is here.

07:25PM 19 MR. STEINHAGEN: Okay.

07:25PM 20 MR. REGAN: Mr. Williams, you were

07:25PM 21 sworn on November 9th, you remain under oath.

07:25PM 22 MR. WILLIAMS: Thank you.

07:25PM 23 MR. REGAN: Thank you.

07:25PM 24 MR. WILLIAMS: Good evening and Happy

07:25PM 25 New Year's.

1 MR. STEINHAGEN: I'm going to try to --

2 I'll let Mr. Williams have the mic.

3 I'm going to try to project. If you

4 can't hear me or if I'm talking too fast, let me

5 know.

6 CROSS EXAMINATION

7 BY MR. STEINHAGEN:

8 Q. Mr. Williams, good evening. How are

9 you?

07:25PM 10 A. Good evening. I'm well.

07:25PM 11 And yourself?

07:25PM 12 Q. Okay.

07:25PM 13 You testified, I guess -- it says last

07:25PM 14 month, but it was November, about a demographic

07:25PM 15 analysis based upon the American Community Survey.

07:25PM 16 Do you recall that?

07:25PM 17 A. I do.

07:25PM 18 Q. And that ACS, I'm going to shorthand

07:25PM 19 it, is based -- is prepared by the Census Bureau,

07:25PM 20 correct?

07:25PM 21 A. That is correct.

07:25PM 22 Q. And the Census Bureau puts -- has all

07:25PM 23 kinds of data about population, age, financial

07:25PM 24 resources, demographics, et cetera, yes?

07:25PM 25 A. Yes.

07:25PM 1 Q. Okay.

07:25PM 2 And you can sort the data into discrete

07:26PM 3 areas the Census tracks, correct?

07:26PM 4 A. Yes.

07:26PM 5 Q. And you testified that you looked at a

07:26PM 6 category for households having a person that is more

07:26PM 7 than 60 years of age or older to determine

07:26PM 8 eligibility for or potential users of the services

07:26PM 9 that the applicant would be providing.

07:26PM 10 Is that correct?

07:26PM 11 A. That's correct.

07:26PM 12 Q. Okay.

07:26PM 13 ACS doesn't have a category -- and tell

07:26PM 14 me if I'm wrong, ACS doesn't have a category for

07:26PM 15 persons in need of assisted living or memory care,

07:26PM 16 does it?

07:26PM 17 A. It does not.

07:26PM 18 Q. Okay.

07:26PM 19 Do you know what percentage of the

07:26PM 20 population needs memory care or assisted living

07:26PM 21 services?

07:26PM 22 A. That was not part of my testimony.

07:26PM 23 It may have been testified to by the

07:26PM 24 owner/representative, but, no, I do not.

07:26PM 25 Q. Okay. Did you review his testimony or

07:26PM 1 were you here when he testified?

07:26PM 2 A. I was.

07:26PM 3 Q. Do you recall that he indicated that

07:26PM 4 the average age of the residents of this community

07:26PM 5 would be 86 years old?

07:26PM 6 A. I don't recall.

07:26PM 7 Q. Okay. So -- excuse me.

07:26PM 8 A. Uh-huh.

07:27PM 9 Q. My notes indicate that you said that

07:27PM 10 there were 27.7 percent of the households in Old

07:27PM 11 Tappan have a person over the age of 60.

07:27PM 12 Is that right?

07:27PM 13 A. That sounds correct.

07:27PM 14 Q. That 27.7 percent of Old Tappan's

07:27PM 15 residents need the services that CSH hopes to provide

07:27PM 16 in Old Tappan?

07:27PM 17 A. That also sounds correct.

07:27PM 18 Q. Okay.

07:27PM 19 I'm going to represent to you and I'm

07:27PM 20 going to quote what Mr. McElwee said and you can --

07:27PM 21 I'd ask you to assume that it's an accurate quote,

07:27PM 22 but at the first hearing he said that there were

07:27PM 23 plenty of people in Old Tappan who are wealthy and,

07:27PM 24 "could afford to take care of their mother and

07:27PM 25 father".

07:27PM 1 Does that sound like something he might

07:27PM 2 have said?

07:27PM 3 A. Sounds like it's possible, yes.

07:27PM 4 Q. Okay.

07:27PM 5 If there are a lot of people who are

07:27PM 6 wealthy in Old Tappan --

07:27PM 7 A. Uh-uh.

07:27PM 8 Q. -- this is a nice community, as we all

07:27PM 9 know, wouldn't those folks who can take care of mom

07:27PM 10 and dad have alternatives, like in-home care?

07:28PM 11 A. So, not necessarily planning testimony,

07:28PM 12 but I can tell you both from my review of the

07:28PM 13 literature and in discussion with Mr. McElwee, while

07:28PM 14 that's true, I believe what Mr. McElwee testified to

07:28PM 15 was that the option of having this type of land use,

07:28PM 16 assisted living proximate to the primary household is

07:28PM 17 a benefit to families.

07:28PM 18 Q. Okay. Mr. McElwee also --

07:28PM 19 A. They're not mutually exclusive.

07:28PM 20 Q. Oh, sorry. Excuse me.

07:28PM 21 Mr. McElwee said that there were five

07:28PM 22 competitors within three miles of the site and one of

07:28PM 23 which of them is in New York and eight within five

07:28PM 24 miles.

07:28PM 25 Do you have any knowledge of that?

07:28PM 1 A. I remember reviewing the list of

07:28PM 2 similar uses or competitors. I don't recall what the

07:28PM 3 radius was for those, but I can certainly search my

07:28PM 4 file.

07:28PM 5 Q. Do you know how many beds are in each

07:28PM 6 of those communities?

07:28PM 7 A. I would have to search my file.

07:28PM 8 Q. Okay. So you don't know offhand --

07:28PM 9 A. No.

07:28PM 10 Q. -- you don't -- and you didn't testify

07:28PM 11 to it?

07:28PM 12 A. Correct.

07:28PM 13 Q. Okay.

07:28PM 14 So if I told -- if I gave you a list of

07:29PM 15 more than eight within five miles, you wouldn't have

07:29PM 16 any information as to how many beds?

07:29PM 17 A. Not without referring to the file.

07:29PM 18 Q. Okay.

07:29PM 19 Isn't it important when you're asking

07:29PM 20 the board to determine whether the benefits of

07:29PM 21 approving this project substantially outweigh the

07:29PM 22 detriments, because that's what really the Sica test

07:29PM 23 is all about, that you're able to accurately quantify

07:29PM 24 the market supply and demand?

07:29PM 25 A. The answer is: Yes, in the context of

07:29PM 1 the Sica test.

07:29PM 2 And my testimony was both based on our

07:29PM 3 demographic analysis and I relied heavily on the

07:29PM 4 testimony of Mr. McElwee, which went directly to his

07:29PM 5 market analysis or the market analysis of the

07:29PM 6 applicant.

07:29PM 7 Q. Do you know if that market analysis was

07:29PM 8 submitted?

07:29PM 9 A. I don't recall.

07:29PM 10 Q. Okay.

07:29PM 11 So -- and I'm going to pose a question

07:29PM 12 to you and you can tell me if you agree or not.

07:29PM 13 A. Uh-huh.

07:29PM 14 Q. It's one thing if there's a demand of

07:29PM 15 1,000 -- there's a shortfall of 1,000 beds and then

07:29PM 16 this is in the context of the first prong of the Sica

07:29PM 17 test, which is identifying the need.

07:29PM 18 A. The public interest, yes.

07:29PM 19 Q. Yes, the public interest at stake.

07:29PM 20 It's one thing if there's a shortfall

07:30PM 21 of a 1,000 beds versus -- and it's a completely

07:30PM 22 different set of facts if there is an oversupply of

07:30PM 23 1,000 units. The use is still inherently beneficial,

07:30PM 24 but would you agree that in the event of a surplus,

07:30PM 25 the nature of the public interest, the need for the

07:30PM **1** services that CSH hopes to provide, isn't quite -- it

07:30PM **2** doesn't push down on the positive side of the scale?

07:30PM **3** **A.** I think I follow the question.

07:30PM **4** And, again, I apologize to the board

07:30PM **5** and the audience, without reviewing the tables, I'd

07:30PM **6** be at a bit of a deficit.

07:30PM **7** But I will say this: Based on a review

07:30PM **8** of the Master Plan and hearing Mr. McElwee's

07:30PM **9** testimony, he referred to the "Silver Tsunami," he

07:30PM **10** provided his market analysis, which justifies the

07:30PM **11** need in this area and relied on the state certificate

07:30PM **12** of need. Our position was that there is a documented

07:30PM **13** or substantiated need for those spaces,

07:31PM **14** notwithstanding the surrounding competition.

07:31PM **15** **Q.** Doesn't the certificate of need look at

07:31PM **16** the financial viability of the site, not necessarily

07:31PM **17** the number of beds of competitors in the neighboring

07:31PM **18** communities or in this community?

07:31PM **19** **A.** The focus was on the need for the use,

07:31PM **20** as well as what you mentioned and I think it went

07:31PM **21** onto talk about, if memory serves me correctly, the

07:31PM **22** applicant's experience and success in this particular

07:31PM **23** land use area.

07:31PM **24** **Q.** Okay. But -- so as you stand here

07:31PM **25** today, having given testimony that there is a

07:31PM **1** significant need for this use, you don't know or you

07:31PM **2** can't personally quantify, within a reasonable degree

07:31PM **3** of planning certainty, the extent of the need?

07:31PM **4** **A.** I -- I can't without referring to my

07:31PM **5** notes or the file, but I would remind my testimony

07:31PM **6** included references to the Borough Master Plan, which

07:31PM **7** spoke to the need for this type of housing.

07:31PM **8** **Q.** Did it say specifically memory care and

07:31PM **9** assisted living or did it say senior housing?

07:31PM **10** **A.** It said both. It actually said the

07:32PM **11** ordinance should be reviewed to include -- to meet

07:32PM **12** the demand for the continuum of housing for

07:32PM **13** age-restricted housing and that included, in my

07:32PM **14** opinion, what's being --

07:32PM **15** **Q.** Would this -- would this -- this

07:32PM **16** wouldn't be a use specific to Old Tappan, would it?

07:32PM **17** There would be people coming from Old Tappan, but

07:32PM **18** also from other communities, correct?

07:32PM **19** **A.** The use will be specific to the site in

07:32PM **20** Old Tappan. But, of course, I think there was

07:32PM **21** testimony and discussion with the audience about

07:32PM **22** where potential users would come from. And they

07:32PM **23** would come from the region.

07:32PM **24** **Q.** So what was the date of the Master Plan

07:32PM **25** that you referred to?

07:32PM **1** **A.** I want to say 2016.

07:32PM **2** **Q.** So that may not have include -- so that

07:32PM **3** master planning document may not have necessarily

07:32PM **4** included an analysis of other developments in nearby

07:32PM **5** communities post-2016?

07:32PM **6** **A.** I believe it included projections, but

07:32PM **7** don't quote me on that.

07:32PM **8** **Q.** Okay. Okay.

07:32PM **9** Do you know how many properties are

07:32PM **10** identified in the Master Plan that are within Old

07:32PM **11** Tappan that are designated as historic on either the

07:33PM **12** state or federal register?

07:33PM **13** **A.** I do not.

07:33PM **14** **Q.** Okay.

07:33PM **15** You know that this property is, though?

07:33PM **16** **A.** Correct.

07:33PM **17** **Q.** And you know that this property is

07:33PM **18** specifically referenced in the Master Plan for

07:33PM **19** preservation, correct?

07:33PM **20** **A.** And that came up in one of the prior

07:33PM **21** hearings, yes.

07:33PM **22** **Q.** Does approval of this project, with its

07:33PM **23** 81,000-square-foot assisted-living facility, preclude

07:33PM **24** the realization of the Master Plan goal of acquiring

07:33PM **25** this property and preserving the Gerrit Haring house

07:33PM **1** on this property for public use?

07:33PM **2** **A.** The -- the phraseology is interesting.

07:33PM **3** A simple answer would be, perhaps, yes.

07:33PM **4** But in the broader context, the answer

07:33PM **5** might be no.

07:33PM **6** For example, the testimony that was

07:33PM **7** provided was that the house in question would be

07:33PM **8** relocated and that was a relocation that was agreed

07:33PM **9** to by several parties and that open space would be

07:33PM **10** provided as well.

07:33PM **11** **Q.** When you say --

07:33PM **12** **A.** So in that sense the historic

07:33PM **13** preservation --

07:33PM **14** **Q.** So you're preserving it by conveying it

07:34PM **15** to the Borough?

07:34PM **16** **A.** Relocating and conveying, correct.

07:34PM **17** **Q.** And that's something is, obviously, of

07:34PM **18** value to the Borough?

07:34PM **19** **A.** Correct.

07:34PM **20** **Q.** In your opinion? Okay.

07:34PM **21** Another negative impact at least

07:34PM **22** potentially from the perspective of the Lakeview

07:34PM **23** board is how surface water or how stormwater is

07:34PM **24** addressed.

07:34PM **25** Are you aware or have you heard

21

07:34PM 1 testimony about -- in this application about the path
07:34PM 2 and flow of stormwater under existing conditions?
07:34PM 3 A. I am aware.
07:34PM 4 Q. And I'm going to generalize it, but
07:34PM 5 rain falls on the property and it generally moves in
07:34PM 6 a northeast direction; is that your understanding?
07:34PM 7 A. Yes.
07:34PM 8 Q. And it goes over onto the Lakeview
07:34PM 9 side, not in the specific -- do you understand that
07:34PM 10 or...
07:34PM 11 A. I follow you.
07:34PM 12 Q. And I understand that you're not an
07:34PM 13 engineer, and you're...
07:34PM 14 A. Correct.
07:34PM 15 Q. Okay.
07:34PM 16 Have you reviewed the plans?
07:34PM 17 A. I have.
07:34PM 18 Q. Okay. And so you're aware that the
07:34PM 19 current setup is not overland flow just as a natural
07:35PM 20 condition, instead the -- the detention basin at the
07:35PM 21 rear of the property is going to discharge through a
07:35PM 22 headwall, you're aware of that?
07:35PM 23 A. Yes.
07:35PM 24 Q. Okay.
07:35PM 25 Is that a different condition than

22

07:35PM 1 what's on -- than what is existing?
07:35PM 2 A. I think the site engineer's testimony
07:35PM 3 was that all conditions existing, and subsequent to
07:35PM 4 the initial submission of our plan, would be
07:35PM 5 improved.
07:35PM 6 Q. No, I understand that, but it's
07:35PM 7 different?
07:35PM 8 A. Correct.
07:35PM 9 Q. Is it possible that a -- from a
07:35PM 10 planning standpoint that a potential negative impact
07:35PM 11 associated with this project is discharging from a
07:35PM 12 single point, which is what the applicant is
07:35PM 13 proposing to do under the plans that are currently
07:35PM 14 before the board, onto the Lakeview property and that
07:35PM 15 could cause erosion and things of that nature?
07:35PM 16 A. Could that -- would that be -- if that
07:35PM 17 were to pass, erosion from a point source, would that
07:35PM 18 be a potential negative impact in your mind?
07:35PM 19 A. In -- under that hypothetical, if that
07:36PM 20 were possible or to happen, it could rise to the
07:36PM 21 level of a potential negative impact.
07:36PM 22 A. But my recollection of the site
07:36PM 23 engineer's testimony is that substantial effort was
07:36PM 24 made to mitigate any negative impact on the
07:36PM 25 surrounding properties.

23

07:36PM 1 And thank you for making it general,
07:36PM 2 because planner not engineer.
07:36PM 3 Q. I understand.
07:36PM 4 Getting back to the Master Plan, did
07:36PM 5 you review the 1994 Master Plan?
07:36PM 6 A. We did.
07:36PM 7 Q. Okay.
07:36PM 8 So if I read to you from page 82 where
07:36PM 9 it says:
07:36PM 10 "Old Tappan has an excellent
07:36PM 11 opportunity to retain some of its finest
07:36PM 12 historic buildings and facilities."
07:36PM 13 That would include the Gerrit Haring
07:36PM 14 House?
07:36PM 15 A. Sure.
07:36PM 16 Q. And then on page 83, it says:
07:36PM 17 "The Master Plan proposes to protect
07:37PM 18 and preserve these historic facilities."
07:37PM 19 Also referring to this property.
07:37PM 20 Okay. On page 58, referring
07:37PM 21 specifically to the Gerrit Haring House.
07:37PM 22 "This house is significant" -- and this
07:37PM 23 is a quote:
07:37PM 24 "This house is significant for its
07:37PM 25 architecture and its association with the

24

07:37PM 1 exploration and settlement of the Bergen
07:37PM 2 County, New Jersey area."
07:37PM 3 Are you familiar with or did you read
07:37PM 4 that in the 1994 Master Plan?
07:37PM 5 A. I did.
07:37PM 6 Q. Okay.
07:37PM 7 Now, jumping ahead a little bit to the
07:37PM 8 2006 document, page 64, this is a quote:
07:37PM 9 "Each municipality is unique in its
07:37PM 10 heritage and architectural characteristics and
07:37PM 11 these contribute greatly to the community
07:37PM 12 character, desirability, and sense of place."
07:37PM 13 And I'm going to emphasize "sense of
07:37PM 14 place."
07:37PM 15 "The preservation of historic sites,
07:37PM 16 neighborhoods, landmarks and buildings of
07:37PM 17 architectural significance are important, not
07:37PM 18 only to maintaining community pride, but also
07:37PM 19 because these features constitute a basis for
07:37PM 20 learning."
07:37PM 21 Are you familiar with that statement in
07:38PM 22 the 2006 Master Plan document?
07:38PM 23 A. It does sound familiar.
07:38PM 24 Q. Okay.
07:38PM 25 Now, the application, and the way

07:38PM **1** you're proposing it, is to lift the Gerrit Haring
 07:38PM **2** House off of its foundation and relocate it across
 07:38PM **3** the street onto municipal property?
 07:38PM **4** Is that correct?
 07:38PM **5** **A.** Correct.
 07:38PM **6** **Q.** Okay.
 07:38PM **7** Will that take the property off the
 07:38PM **8** historic register, as far as you're aware?
 07:38PM **9** **A.** I'm not a historic preservation expert,
 07:38PM **10** but my understanding is that it would not.
 07:38PM **11** **Q.** Okay.
 07:38PM **12** **A.** And the reason, I suppose that's true,
 07:38PM **13** is historic designations for significant events,
 07:38PM **14** architectural significance or a site.
 07:38PM **15** So the intent is to preserve that
 07:38PM **16** designation by relocating --
 07:38PM **17** **Q.** Were you here last month?
 07:38PM **18** **A.** I was.
 07:38PM **19** **Q.** Did you hear Mr. Adriance testify?
 07:38PM **20** **A.** I did not.
 07:38PM **21** I stepped out.
 07:38PM **22** **Q.** Oh, okay.
 07:38PM **23** Will the relocation of the building
 07:38PM **24** minus the foundation, you're going to -- the
 07:38PM **25** foundation is going to be destroyed, correct?

07:38PM **1** **A.** That I don't recall.
 07:38PM **2** **Q.** Okay.
3 Gerrit Haring didn't build his house
4 next to a fire station, did he?
5 I mean, it's an -- it's an obvious
6 question.
7 **A.** Right.
8 **Q.** That's -- that's a no?
9 **A.** Right.
10 **Q.** Okay.
 07:39PM **11** How does moving the house, not the
 07:39PM **12** foundation, to a new location that's shared with the
 07:39PM **13** fire department building, preserve the character and
 07:39PM **14** sense of place of the structure?
 07:39PM **15** **A.** I would defer to a historic
 07:39PM **16** preservationist on that.
 07:39PM **17** **Q.** Is that person going to testify?
 07:39PM **18** **A.** Not that I know of, no.
 07:39PM **19** **Q.** Okay.
 07:39PM **20** **A.** But I didn't provide any testimony on
 07:39PM **21** historic preservation.
 07:39PM **22** **Q.** I understand, but I want to understand
 07:39PM **23** the basis of your opinion that you're not going to
 07:39PM **24** impair the intent and purposes of the Zone Plan and
 07:39PM **25** Zoning Ordinance when the Master Plan says, let's

07:39PM **1** preserve this particular structure and the sense of
 07:39PM **2** place --
 07:39PM **3** **A.** Oh --
 07:39PM **4** **Q.** -- that this structure is on?
 07:39PM **5** **A.** -- so my testimony looked at the -- I
 07:39PM **6** think, three iterations to the Master Plan in total
 07:39PM **7** and spoke to a number of goals and objectives that
 07:39PM **8** would be advanced if this application were approved.
 07:39PM **9** My opinion in terms of the relocation
 07:39PM **10** is the considered negotiations for how best to
 07:39PM **11** relocate that historic structure within the Borough
 07:39PM **12** would not be a substantial negative impact.
 07:40PM **13** **Q.** So there's been negotiations about
 07:40PM **14** moving it and yet we have a document that says let's
 07:40PM **15** keep it here?
 07:40PM **16** **A.** We have a document that makes several
 07:40PM **17** recommendations about historic preservation.
 07:40PM **18** I think what I'm suggesting to you and
 07:40PM **19** the board is that a compromise has been struck that
 07:40PM **20** meets the intent and the spirit of that
 07:40PM **21** recommendation.
 07:40PM **22** **Q.** Okay.
 07:40PM **23** But they haven't amended -- this board
 07:40PM **24** hasn't amended the Master Plan --
 07:40PM **25** **A.** Not yet.

07:40PM **1** **Q.** -- to fix that?
 07:40PM **2** **A.** Correct.
 07:40PM **3** **Q.** Okay.
 07:40PM **4** Is moving it undermining -- and when I
 07:40PM **5** say "it," I mean, the Gerrit Haring House.
6 Does it undermine the manner in which
7 this area was settled?
8 **A.** Does it undermine the manner in
9 which...
10 **Q.** I mean, Gerrit Haring put his house in
 07:40PM **11** a specific location, not across the street, not in
 07:40PM **12** Hackensack, not in any other place, it was in this
 07:40PM **13** place?
 07:40PM **14** **A.** Correct.
 07:40PM **15** Again, not as a historic
 07:40PM **16** preservationist, but as a planner I would suggest,
 07:40PM **17** no --
 07:40PM **18** **Q.** Okay.
 07:40PM **19** **A.** -- it does not.
 07:40PM **20** **Q.** And I guess you're saying at the same
 07:40PM **21** time the Borough is getting something valuable in
 07:41PM **22** exchange for what's going on --
 07:41PM **23** **A.** That is correct.
 07:41PM **24** **Q.** For this variance --
 07:41PM **25** **A.** That is correct.

07:41PM **1** **Q.** -- and the approval? Okay.

07:41PM **2** If the Borough lost its ability to

07:41PM **3** secure historic preservation grants because this

07:41PM **4** house is no longer on the historic register, which is

5 what the historic preservation expert who testified

6 last month indicated, would that, in your opinion,

7 undermine the Master Plan's goal of preserving a

8 historic structure and -- because the access to

9 federal and state dollars to do so is no longer

10 there?

11 **A.** Again, not as a historic

07:41PM **12** preservationist. I would submit as a planner, not

07:41PM **13** necessarily.

07:41PM **14** **Q.** Okay.

07:41PM **15** Why not?

07:41PM **16** **A.** There are other sources of funding for

07:41PM **17** preservation and the intent of this relocation would

07:41PM **18** be not only to relocate the structure, but to

07:41PM **19** relocate it in a manner that keeps it intact.

07:41PM **20** **Q.** What happens if it breaks?

07:41PM **21** **A.** (No Response.)

07:41PM **22** MR. STEINHAGEN: Okay. Can the

23 transcript reflect that he doesn't have an answer.

24 Thank you.

25 BY MR. STEINHAGEN:

1 **Q.** I'm going to move on from historic

2 preservation.

07:42PM **3** You didn't talk a whole lot about the

07:42PM **4** bulk variances and I understand that's because -- you

07:42PM **5** gave some testimony on the C variance, that's because

07:42PM **6** it's your opinion that the other variances are

07:42PM **7** subsumed within the grant of the use variance.

07:42PM **8** Is that correct?

07:42PM **9** **A.** In part, yes.

07:42PM **10** **Q.** What do you mean in part?

07:42PM **11** **A.** So my testimony was twofold.

07:42PM **12** One, that there is general acceptance

07:42PM **13** that C variances or bulk and area variances can be

07:42PM **14** subsumed under granting the D-1 use variance, for a

07:42PM **15** number of reasons. And I went through those reasons.

07:42PM **16** **Q.** I -- and I --

07:42PM **17** **A.** But then I went through each of the

07:42PM **18** bulk variances separately and gave the proofs for

07:42PM **19** each.

07:42PM **20** **Q.** What about other D variances?

07:42PM **21** Are other D variances subsumed where

07:42PM **22** you have to have special reasons?

07:42PM **23** **A.** There is a treatise on land use written

07:42PM **24** by Cox or what we often refer to as Cox.

07:42PM **25** They're not subsumed, but there are

07:42PM **1** instances where they are -- there's an interplay

07:42PM **2** between --

07:42PM **3** **Q.** Sure?

07:42PM **4** **A.** -- D variances.

07:42PM **5** **Q.** Okay. So here you have the use

07:43PM **6** variance; you have a floor area ratio variance; and a

07:43PM **7** density variance. Is that -- do you agree with that?

07:43PM **8** **A.** Yeah, definitely the D-1 use variance.

07:43PM **9** I don't recall the density variance, but, yes, the

07:43PM **10** D-6, I'm sorry.

07:43PM **11** **Q.** D-6 is a height variance.

07:43PM **12** **A.** D-5, sorry.

07:43PM **13** **Q.** What about a D-4?

07:43PM **14** D-4 is a floor area ratio?

07:43PM **15** **A.** Yeah.

07:43PM **16** **Q.** So the maximum floor area -- there's a

07:43PM **17** floor area ratio in the zone. I believe it's a

07:43PM **18** sliding scale. The maximum you can do is 16 percent

07:43PM **19** up to 8400 square feet, that's the absolute maximum

07:43PM **20** you can do.

07:43PM **21** Is that right?

07:43PM **22** **A.** Give me one second.

07:43PM **23** So I'll ask you to repeat the question,

07:43PM **24** but before you do, I will say that the application

07:43PM **25** was amended to bring us into compliance, it was just

07:43PM **1** a D-1 use variance.

07:44PM **2** **Q.** So your -- it's your opinion that the

07:44PM **3** Borough's Zoning Ordinance permits an

07:44PM **4** 81,000-square-foot building in the R-40 zone?

07:44PM **5** **A.** No.

07:44PM **6** **Q.** Why not?

07:44PM **7** **A.** Because that's not what the code

07:44PM **8** requires.

07:44PM **9** **Q.** Is there a floor area ratio limit in

07:44PM **10** the R-40 zone?

07:44PM **11** **A.** Yes.

07:44PM **12** **Q.** Okay.

07:44PM **13** Do you exceed the floor area ratio

07:44PM **14** limit in the R-40 zone?

07:44PM **15** **A.** We do.

07:44PM **16** **Q.** Okay. So you need a D-4 variance --

07:44PM **17** **A.** Okay.

07:44PM **18** **Q.** -- is that a fair assessment?

07:44PM **19** **A.** That is.

07:44PM **20** **Q.** Okay.

07:44PM **21** Are there any other buildings in the

07:44PM **22** R-40 zone that are in the range of 81,000 square

07:44PM **23** feet?

07:44PM **24** **A.** Not that I'm aware of.

07:44PM **25** **Q.** So it's not consistent with the

07:44PM **1** neighborhood?
 07:44PM **2** **A.** (No Response.)
 07:44PM **3** **Q.** Yes?
 07:44PM **4** **A.** The FAR is not consistent, that's true.
 07:44PM **5** **Q.** Okay.
 07:44PM **6** Do you know what the purpose of the FAR
 07:44PM **7** variance is?
 07:44PM **8** **A.** Yes.
 07:44PM **9** **Q.** What is it?
 07:44PM **10** **A.** It's to limit or control --
 07:44PM **11** **Q.** Wait, excuse me, let me back up. The
 07:44PM **12** purpose of the FAR restrictions, not the FAR --
 07:44PM **13** **A.** I understood.
 07:44PM **14** **Q.** -- yeah, I just want to make sure that
 07:44PM **15** the transcript is --
 07:44PM **16** **A.** It's to control intensity of
 07:44PM **17** development.
 07:44PM **18** **Q.** And by intensity, we're not necessarily
 07:44PM **19** talking about traffic, we're talking about mass and
 07:44PM **20** bulk?
 07:45PM **21** **A.** That's correct.
 07:45PM **22** **Q.** Okay.
 07:45PM **23** And the Borough has elected to do that
 07:45PM **24** here in this zone by saying the absolute cap is
 07:45PM **25** 8,400 square feet, correct?

07:45PM **1** **A.** Correct.
 07:45PM **2** **Q.** And we're a little bit less than ten
 07:45PM **3** times the mass and bulk permitted on any particular
 07:45PM **4** lot in the R-40 zone.
 07:45PM **5** Is that correct?
 07:45PM **6** **A.** That's correct.
 07:45PM **7** **Q.** Okay.
 07:45PM **8** Now, with respect to density, do you
 07:45PM **9** know what the permissible density in the R-40 zone
 07:45PM **10** is?
 07:45PM **11** **A.** I'd have to double check my records.
 07:45PM **12** **Q.** Okay. So --
 07:45PM **13** **A.** That's part of my original testimony,
 07:45PM **14** but I'd have to --
 07:45PM **15** **Q.** Would you agree with me that a -- the
 07:45PM **16** R-40 zone, because it says the minimum lot area is
 07:45PM **17** 40,000 square feet, it requires one dwelling on at
 07:45PM **18** least 40,000 square feet?
 07:45PM **19** **A.** Yes.
 07:45PM **20** **Q.** That's the minimum?
 07:45PM **21** **A.** Yes.
 07:45PM **22** **Q.** And are you aware that there's case law
 07:45PM **23** that says that a municipality can regulate density
 07:46PM **24** not just by saying in the bulk chart, the max -- the
 07:46PM **25** minimum -- the maximum density is one unit per acre,

07:46PM **1** three units per acre, they can do it by way of making
 07:46PM **2** a minimum lot area requirement?
 07:46PM **3** **A.** I am aware.
 07:46PM **4** I forgot the name of the case, but,
 07:46PM **5** yes.
 07:46PM **6** **Q.** Okay. Would a density -- a permissible
 07:46PM **7** density -- if I told you the permissible density
 07:46PM **8** based on a 40,000-square-foot area, minimum lot area,
 07:46PM **9** 1.09 units per acre, would that sound about right?
 07:46PM **10** **A.** Sure.
 07:46PM **11** **Q.** It's a little bit less than --
 07:46PM **12** **A.** Yeah.
 07:46PM **13** **Q.** -- 40,000 is a little bit less than
 07:46PM **14** 43,560 --
 07:46PM **15** **A.** Right.
 07:46PM **16** **Q.** -- correct?
 07:46PM **17** **A.** Right.
 07:46PM **18** **Q.** And how many units per acre are being
 07:46PM **19** proposed here?
 07:46PM **20** **A.** So the DUs or dwelling units per acre
 07:46PM **21** were -- were testified both in my direct testimony
 07:46PM **22** and the site engineer. The reason we're before this
 07:46PM **23** board is because we exceed that.
 07:46PM **24** **Q.** I understand.
 07:46PM **25** What's -- what's the number?

07:46PM **1** **A.** I have to look that up.
 07:46PM **2** **Q.** You're doing 100 and it's about
 07:46PM **3** 5-and-a-half acres?
 07:46PM **4** **A.** Correct.
 07:46PM **5** **Q.** So it's a little bit less than 20?
 07:46PM **6** **A.** Yes.
 07:46PM **7** **Q.** Are there any zones anywhere in the
 07:47PM **8** Borough of Old Tappan that permit a density of about
 07:47PM **9** 18 units an acre that you're aware of?
 07:47PM **10** **A.** No, not that I'm aware of.
 07:47PM **11** **Q.** And are there any developments, whether
 07:47PM **12** permitted by zoning, preexisting or otherwise, are
 07:47PM **13** there any projects, any conditions anywhere in the
 07:47PM **14** Borough where they allow -- where there is, in fact,
 07:47PM **15** 18 dwelling units per acre?
 07:47PM **16** **A.** Allowed, no. Permitted -- approved,
 07:47PM **17** that I don't know.
 07:47PM **18** **Q.** So you have no idea whether or not
 07:47PM **19** this, with 18 units an acre, and I get that it's a
 07:47PM **20** different type of use than a traditional
 07:47PM **21** single-family --
 07:47PM **22** **A.** Correct.
 07:47PM **23** **Q.** -- or even a multifamily, there is
 07:47PM **24** nothing in the Borough that comes anywhere close to
 07:47PM **25** this density, is there?

07:47PM **1** **A.** Not that I'm aware of.

07:47PM **2** **Q.** Okay.

07:47PM **3** And what's the purpose of a density

07:47PM **4** restriction?

07:47PM **5** **A.** Also to -- well, there are a couple of

07:47PM **6** purposes.

07:47PM **7** One is to control intensity of

07:47PM **8** development. And the other is for impact on the

07:47PM **9** surrounding community.

07:47PM **10** **Q.** Okay.

07:48PM **11** Did you look at the 1994 Master Plan?

07:48PM **12** **A.** Again, I did, yes.

07:48PM **13** **Q.** Okay. So you're familiar with the

07:48PM **14** statement on the page 76 that says:

07:48PM **15** "The goal of the Master Plan is

07:48PM **16** directed to maintain the low-density

07:48PM **17** residential atmosphere in Old Tappan."

07:48PM **18** You're aware of that, right?

07:48PM **19** **A.** I am.

07:48PM **20** **Q.** Okay.

07:48PM **21** And 18 units an acre, in this

07:48PM **22** community, is not necessarily low density, is it?

07:48PM **23** **A.** No, it's not.

07:48PM **24** **Q.** Okay.

07:48PM **25** **A.** Again, our testimony, that's why it was

07:48PM **1** a team that provided testimony, that while this is

07:48PM **2** greater than the permitted density and the FAR, given

07:48PM **3** the nature of the use, the impact would not be, as

07:48PM **4** you mentioned in your question, similar to a density

07:48PM **5** if they were single-family or townhouses.

07:48PM **6** **Q.** So like -- here, what's the impact of

07:48PM **7** an 81,000-square-foot multifamily building in terms

07:48PM **8** of the visual appearance of a large building,

07:48PM **9** compared -- how does the 81,000-square-foot building,

07:48PM **10** because it's assisted living, memory care, differ

07:49PM **11** from the visual impact if it were fewer units, but

07:49PM **12** for a multifamily building?

07:49PM **13** **A.** Typically, and the testimony was, if I

07:49PM **14** remember correctly, the proposed use has a lower

07:49PM **15** traffic impact in terms of --

07:49PM **16** **Q.** But I'm asking about -- I'm asking

07:49PM **17** about the mass and bulk, the visual impact?

07:49PM **18** **A.** In terms of visual?

07:49PM **19** **Q.** Yeah.

07:49PM **20** **A.** Fewer curb cuts, fewer driveways, fewer

07:49PM **21** garages for assisted living.

07:49PM **22** **Q.** I'm asking about for a multifamily

07:49PM **23** building that had a parking lot and --

07:49PM **24** **A.** Less parking --

07:49PM **25** **Q.** Okay.

07:49PM **1** **A.** -- perhaps less driveways and garages,

07:49PM **2** yeah.

07:49PM **3** **Q.** Okay. I understand.

07:49PM **4** The project exceeds the impervious

07:49PM **5** coverage limit in the R-40 zone by approximately

07:49PM **6** 8,000 square feet, right?

07:49PM **7** Isn't a significant reason for that

07:49PM **8** variance that the a site is over parked compared to

07:49PM **9** what the RSIS requires?

07:49PM **10** **A.** I think the purpose for that variance

07:49PM **11** and, again, this goes hand and glove with the

07:49PM **12** testimony from the site engineer that the treatment

07:49PM **13** of the site's impervious surface and runoff and

07:50PM **14** stormwater treatment, that the site can accommodate

07:50PM **15** that --

07:50PM **16** **Q.** Sure.

07:50PM **17** **A.** -- extra.

07:50PM **18** **Q.** I understand, but the Dynamic plans say

07:50PM **19** that the parking requirement is 38, yet there's 46

07:50PM **20** parking spaces on the site, correct?

07:50PM **21** **A.** Yes.

07:50PM **22** **Q.** Why not reduce the number of parking

07:50PM **23** spaces, reduce the amount of imperious coverage,

07:50PM **24** reduce the amount of stormwater runoff, the amount of

07:50PM **25** water you need to treat, that might allow you to make

07:50PM **1** the basins smaller, expand the buffers?

07:50PM **2** Why are we over parking compared to

07:50PM **3** what's actually required?

07:50PM **4** **A.** I'm neither the traffic engineer or

07:50PM **5** site engineer, but I can tell you if the board made

07:50PM **6** that a condition of approval, I don't think that

07:50PM **7** would be a problem.

07:50PM **8** **Q.** Okay.

07:50PM **9** Do you need a building coverage

07:50PM **10** variance also?

07:50PM **11** **A.** I believe so.

07:50PM **12** **Q.** Okay. That's all -- if you believe so,

07:50PM **13** then that's -- that's the end of the question.

07:50PM **14** **A.** Improved lot coverage, maximum floor

07:50PM **15** area, maximum height, loading spaces, rear yard

07:50PM **16** buffer, side yard and the sign.

07:50PM **17** **Q.** Were you here when I asked Mr. Sehnaal

07:51PM **18** about -- and I think it was in May or June about the

07:51PM **19** buffer variance or waiver?

07:51PM **20** **A.** I don't recall.

07:51PM **21** **Q.** Okay.

07:51PM **22** Do you remember him agreeing that there

07:51PM **23** were no physical conditions that prevented

07:51PM **24** compliance?

07:51PM **25** **A.** I don't recall.

41

07:51PM	1	Q.	Okay. Last set of questions.
07:51PM	2		Are you aware that the Borough entered
07:51PM	3		into an affordable housing settlement agreement?
07:51PM	4	A.	Yes.
07:51PM	5	Q.	Did you review that settlement
07:51PM	6		agreement?
07:51PM	7	A.	No.
07:51PM	8	Q.	Okay.
07:51PM	9		Were you aware that the Borough
07:51PM	10		obtained a vacant land adjustment?
07:51PM	11	A.	No.
07:51PM	12	Q.	Okay.
07:51PM	13		So you have no knowledge of whether or
07:51PM	14		not it has a real estate development potential, an
07:51PM	15		unmet need?
07:51PM	16		What's -- what's the affordable housing
07:51PM	17		set-aside for this project?
07:51PM	18	A.	Ten.
07:51PM	19	Q.	Okay.
07:51PM	20		If I told you that the Borough has a
07:51PM	21		mandatory set-aside ordinance that requires at least
07:51PM	22		15 percent, not 10 percent, would that surprise you?
07:51PM	23	A.	Yes.
07:51PM	24	Q.	Okay.
07:52PM	25		Are you seeking a variance from this

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07:52PM	1		condition?
07:52PM	2	A.	No.
07:52PM	3	Q.	Okay. Is there any reason why you
07:52PM	4		can't comply with a 15 percent set-aside?
07:52PM	5	A.	Be a question more for the operator
07:52PM	6		than myself.
07:52PM	7		MR. STEINHAGEN: Okay.
07:52PM	8		That's all I have, Chairman.
07:52PM	9		Thank you for your time.
07:52PM	10		MS. PRICE: I just have a couple,
07:52PM	11		George, if you don't mind.
07:52PM	12		THE WITNESS: No.
07:52PM	13		REDIRECT EXAMINATION
07:52PM	14		BY MS. PRICE:
07:52PM	15	Q.	Mr. Williams, the questions from
07:52PM	16		Mr. Steinhagen dealing with units, the code talks
07:52PM	17		about dwelling units in terms of a house or an
07:52PM	18		apartment, a townhouse?
07:52PM	19		Some --
07:52PM	20	A.	That's correct.
07:52PM	21	Q.	We're not dealing with that type of
07:52PM	22		living arrangement in this case, correct?
07:52PM	23	A.	Very true.
07:52PM	24	Q.	So when there was an attempt to somehow
07:52PM	25		categorize and make it seem like this was

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07:53PM	1		astronomical to be looking at this with a density
07:53PM	2		calculation of the numbers that Mr. Steinhagen was
07:53PM	3		proposing, do you see that the same as the definition
07:53PM	4		of a dwelling unit that you deal with as a
07:53PM	5		professional planner?
07:53PM	6	A.	No, they're -- they're different
07:53PM	7		animals and I tried to answer that question a bit
07:53PM	8		clearer, but, yes. They are different. The use
07:53PM	9		that's being proposed for assisted living, very
07:53PM	10		different than the typical or traditional
07:53PM	11		single-family townhouses.
07:53PM	12	Q.	And this, in fact, is defined as beds,
07:53PM	13		bed count --
07:53PM	14	A.	That's correct.
07:53PM	15	Q.	-- correct?
07:53PM	16	A.	That is very true.
07:53PM	17	Q.	And our letter that you referred to as
07:53PM	18		our certificate of need from the New Jersey
07:53PM	19		Department of Health approves the certificate by way
07:53PM	20		of that bed count and unit count, correct?
07:53PM	21	A.	As opposed to dwelling units, that's
07:53PM	22		correct.
07:53PM	23	Q.	Okay.
07:53PM	24		And with regard to the size of the
07:54PM	25		property, again, the questions that were asked of you

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07:54PM	1		regarding minimum square footage, that was all for
07:54PM	2		the R-40, it wasn't looking at our 5-and-a-half-acre
07:54PM	3		site, correct?
07:54PM	4	A.	That is very correct.
07:54PM	5	Q.	So those code provisions that are
07:54PM	6		provided in the Old Tappan Zoning Code under R-40
07:54PM	7		when it lists all the different setbacks, building
07:54PM	8		coverage, each of the bulk regulations, those are
07:54PM	9		listed with regard to a 40,000-square-foot lot,
07:54PM	10		correct?
07:54PM	11	A.	Correct, which is why in the planning
07:54PM	12		testimony you often hear planners say that those
07:54PM	13		would be subsumed under the grant of the D-1, because
07:54PM	14		they don't really fit with what's being proposed.
07:54PM	15	Q.	And, in fact, in this case one of the
07:54PM	16		items that we were being asked to look at was the
07:55PM	17		number of loading spaces, which, in fact, in the R-40
07:55PM	18		wouldn't even be talking about loading?
07:55PM	19	A.	That's correct.
07:55PM	20	Q.	So we were being asked to look at
07:55PM	21		things two different ways depending on which bulk
07:55PM	22		regulation was being called into question, correct?
07:55PM	23	A.	That is correct.
07:55PM	24	Q.	And in terms of the historic structure,
07:55PM	25		and I know you're not a historic expert, but there's

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07:55PM **1** been different discussions on that historic structure

07:55PM **2** and you may have been out of the room during the

07:55PM **3** testimony and you may have been out of the room when

07:55PM **4** I was asked questions about this, but the home would

07:55PM **5** be preserved under Mr. Steinhagen's questions

07:55PM **6** regarding the 2016 and the 1984 Master Plans if, in

07:55PM **7** fact, the home was remaining on the property, which

07:55PM **8** is the current state of affairs?

07:55PM **9** **A.** Correct.

07:56PM **10** **Q.** The home is being proposed to stay on

07:56PM **11** the property, be given to the Borough, but not be

07:56PM **12** moved across the street, would that be consistent

07:56PM **13** with the questions that Mr. Steinhagen was posing in

07:56PM **14** terms of remaining in its environs?

07:56PM **15** **A.** Yes.

07:56PM **16** **Q.** And whether a historic structure stays

07:56PM **17** on a register or not, the bottom line is that this

07:56PM **18** property, whether it's under this application or not,

07:56PM **19** is private property, correct?

07:56PM **20** **A.** That is correct.

07:56PM **21** **Q.** So we're not talking about public

07:56PM **22** property here?

07:56PM **23** **A.** Correct.

07:56PM **24** **Q.** It could be, you know, obtained by

07:56PM **25** public funds or anyone in question?

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07:56PM **1** **A.** Yes.

07:56PM **2** **Q.** But efforts can be made to preserve the

07:56PM **3** home, correct?

07:56PM **4** **A.** Which is the -- yes.

07:56PM **5** **Q.** And this applicant has indicated that

07:57PM **6** it will and has retained a historic expert to take

07:57PM **7** all -- make all efforts to propose that the home is

07:57PM **8** saved and a new foundation is provided.

07:57PM **9** Is that correct?

07:57PM **10** **A.** Yes. Clearly and specifically, yes.

07:57PM **11** **Q.** I think that was all I had.

07:57PM **12** Oh, other than on the affordable

07:57PM **13** housing units, the 10 percent on affordable housing

07:57PM **14** calculations per Medicaid is, in fact, the

07:57PM **15** appropriate and required calculation for a Medicaid

07:57PM **16** bed; isn't that a fact?

07:57PM **17** **A.** That's correct. And it comports with

07:57PM **18** the Borough's regulations as well.

07:57PM **19** **Q.** Okay.

07:57PM **20** So it's not that we're out of whack

07:57PM **21** somehow or, you know, not dealing with our affordable

07:57PM **22** housing obligation?

07:57PM **23** **A.** No.

07:57PM **24** **Q.** To the contrary, 100 beds -- if 100

07:58PM **25** beds, and in fact we have less, but we've committed

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07:58PM **1** for 10?

07:58PM **2** **A.** That is correct.

07:58PM **3** MS. PRICE: Thank you.

07:58PM **4** That's all I had.

07:58PM **5** MR. REGAN: Mr. Steinhagen, any

07:58PM **6** redirect?

07:58PM **7** MR. STEINHAGEN: If you'll allow it,

07:58PM **8** sure.

07:58PM **9** MS. PRICE: Redirect on his cross of --

07:58PM **10** MR. STEINHAGEN: Yes.

07:58PM **11** MS. PRICE: -- of my witness?

07:58PM **12** MR. REGAN: Oh, that's right.

07:58PM **13** MS. PRICE: No, it's redirect --

07:58PM **14** MR. REGAN: I'm sorry.

07:58PM **15** MS. PRICE: That's okay.

07:58PM **16** MR. STEINHAGEN: He put new testimony

07:58PM **17** in.

07:58PM **18** MS. PRICE: No, he didn't.

07:58PM **19** Everything was on your questions.

07:58PM **20** MR. REGAN: I'm sorry. Okay.

07:58PM **21** I don't think there's any need for

07:58PM **22** redirect.

07:58PM **23** CHAIRMAN WEIDMANN: Okay.

07:58PM **24** MR. REGAN: Mr. Szabo, do you have any

07:58PM **25** questions of Mr. Williams?

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07:58PM **1** MR. SZABO: No, I do not.

07:58PM **2** VICE CHAIRMAN MAMARY: I would be

07:58PM **3** interested in knowing why Mr. Steinhagen was

07:58PM **4** mentioning the 15 as opposed to the 10, because

07:58PM **5** that's something that it wasn't made clear to us.

07:59PM **6** MR. REGAN: Well, the 10 percent -- the

07:59PM **7** 10 percent is a Medicaid regulation.

07:59PM **8** MS. PRICE: Medicaid, right.

07:59PM **9** MR. REGAN: Right.

07:59PM **10** MS. PRICE: It's a Medicaid regulation.

07:59PM **11** MR. REGAN: What he's talking about, in

07:59PM **12** the Borough's settlement with Fair Share Housing

07:59PM **13** Center, any new developments have a 15 percent

07:59PM **14** set-aside, any new developments of more than five

07:59PM **15** units, there's a 15 percent set-aside if you have

07:59PM **16** rental.

07:59PM **17** That's -- that's a boilerplate

07:59PM **18** provision in every settlement with Fair Share Housing

07:59PM **19** all across the state.

07:59PM **20** VICE CHAIRMAN MAMARY: Is that

07:59PM **21** applicable here?

07:59PM **22** MR. REGAN: I don't believe it is --

07:59PM **23** MS. PRICE: No.

07:59PM **24** MR. REGAN: -- because this is a

07:59PM **25** Medicaid regulation.

1 MS. PRICE: Right.
 2 The Medicaid regulation that governs
 07:59PM 3 this type of development is for 10 percent set-aside.
 07:59PM 4 That's why I wanted to be clear that we
 07:59PM 5 weren't violating any provision.
 07:59PM 6 VICE CHAIRMAN MAMARY: Well, that was
 07:59PM 7 my -- my point. I'm just getting some clarity.
 07:59PM 8 MS. PRICE: Right.
 07:59PM 9 That's why I wanted to make sure by my
 07:59PM 10 redirect that it's clear we're not asking for any
 07:59PM 11 relief. And we're not violating any regulations.
 07:59PM 12 We're compliant with the regulations.
 07:59PM 13 MR. REGAN: That's correct.
 07:59PM 14 CHAIRMAN WEIDMANN: Thank you.
 07:59PM 15 MR. REGAN: I think we're done with
 07:59PM 16 Mr. Williams.
 08:00PM 17 THE WITNESS: Thank you.
 08:00PM 18 MR. REGAN: Thank you.
 08:00PM 19 MS. PRICE: So...
 08:00PM 20 CHAIRMAN WEIDMANN: Do you have
 08:00PM 21 anything else?
 08:00PM 22 MS. PRICE: No, just to sum.
 08:00PM 23 CHAIRMAN WEIDMANN: Let's hear --
 08:00PM 24 MR. REGAN: Well, let's ask,
 08:00PM 25 Mr. Steinhagen, do you have any witnesses?

08:00PM 1 MR. STEINHAGEN: No, we're done as of
 08:00PM 2 -- no, we're done as of now.
 08:00PM 3 MR. REGAN: I thought. I thought the
 08:00PM 4 only thing was --
 08:00PM 5 MR. STEINHAGEN: No. No.
 08:00PM 6 MR. REGAN: -- your cross examination of
 08:00PM 7 Mr. Williams.
 08:00PM 8 MR. STEINHAGEN: I think the only thing
 08:00PM 9 that we have to do is for either Ms. Price -- well,
 08:00PM 10 not either, for Ms. Price and I to give some final
 08:00PM 11 remarks. I'll be brief, if I -- if the board will
 08:00PM 12 indulge me.
 08:00PM 13 MS. PRICE: Do you want to hear from
 08:00PM 14 Mr. Steinhagen before?
 08:00PM 15 MR. REGAN: Mr. Steinhagen, do your
 08:00PM 16 summation now.
 08:00PM 17 MR. STEINHAGEN: So I'm going to start
 08:00PM 18 with the question that was just asked, and I -- I
 08:00PM 19 represented a party -- again, for the record, Daniel
 08:00PM 20 Steinhagen from Beattie Padovano on behalf of
 08:00PM 21 Lakeview and Ms. Sheridan.
 08:00PM 22 First thing I want to do is thank the
 08:00PM 23 board for their attention to this application. I sat
 08:00PM 24 in your shoes for a number of years in my town. And
 08:00PM 25 I know from doing this and from doing that. And when

08:00PM 1 I say "that," it's what you are doing, it's not an
 08:01PM 2 easy job.
 08:01PM 3 And my client's appreciate the
 08:01PM 4 attention you've given to this issue, to their
 08:01PM 5 concerns and to the application.
 08:01PM 6 I'm going to start with the question
 08:01PM 7 that was just posed about affordable housing. I
 08:01PM 8 represented a party in the Borough's affordable
 08:01PM 9 housing declaratory judgement action. I'm going to
 08:01PM 10 check my -- check the citation, if you don't mind.
 08:01PM 11 It's Section 255-122 of the Borough's Zoning
 08:01PM 12 Ordinance, which is entitled, "Affordable Housing
 08:01PM 13 Mandatory Set-Aside."
 08:01PM 14 And it refers to any residential
 08:01PM 15 dwelling at a density of six units or more per acre
 08:01PM 16 whether permitted by a zoning amendment, a use
 08:01PM 17 variance granted by the board, Borough's planning
 08:01PM 18 board acting as a board of adjustment or the adoption
 08:01PM 19 of a redevelopment plan. That's what it applies to.
 08:01PM 20 The fact that the department of health
 08:01PM 21 says, you know, as a condition of your licensure for
 08:01PM 22 a certificate of need, you need to provide us, the
 08:02PM 23 DOH, with 10 percent of the beds for Medicaid has
 08:02PM 24 nothing to do with your affordable housing set-aside,
 08:02PM 25 mandatory set-aside ordinance.

08:02PM 1 There's no exemption, because a party
 08:02PM 2 is agreeing with some other entity to do something
 08:02PM 3 that they get a pass from your ordinance.
 08:02PM 4 Your ordinance does not allow a
 08:02PM 5 10 percent set-aside.
 08:02PM 6 MR. REGAN: Have you ever seen an
 08:02PM 7 assisted living or nursing home development with a
 08:02PM 8 set-aside of greater than 10 percent?
 08:02PM 9 MR. STEINHAGEN: Yes.
 08:02PM 10 MR. REGAN: And where was that?
 08:02PM 11 MR. STEINHAGEN: In the Borough -- in
 08:02PM 12 the Township of Mahwah right now.
 08:02PM 13 My firm is representing a developer
 08:02PM 14 where a substantially higher than 10 percent
 08:02PM 15 set-aside is required.
 08:02PM 16 MR. REGAN: And what was the Medicaid
 08:02PM 17 regulation applicable?
 08:02PM 18 MR. STEINHAGEN: It's -- the project is
 08:02PM 19 currently in the development process, but Fair Share
 08:02PM 20 Housing Center demanded a higher set-aside.
 08:02PM 21 MR. REGAN: Okay. They haven't
 08:02PM 22 demanded anything in --
 08:02PM 23 MR. STEINHAGEN: They haven't -- they
 08:02PM 24 have not -- I can't speak to what they've demanded.
 08:02PM 25 I can tell you that your ordinance says, any

08:03PM 1 application for a residential building with more than
 08:03PM 2 six units per acre that requires a use variance,
 08:03PM 3 which is what we're here for tonight -- we heard that
 08:03PM 4 this is 18 units an acre and it's a use variance --
 08:03PM 5 requires a minimum set-aside of 15 percent.
 08:03PM 6 Frankly that's not even correct under
 08:03PM 7 the COAH regulations which require a 20-percent
 08:03PM 8 set-aside.
 08:03PM 9 MR. REGAN: If it's a sale.
 08:03PM 10 MR. STEINHAGEN: No, it's if you have a
 08:03PM 11 vacant land adjustment. It absolutely is true and
 08:03PM 12 I'm happy to give you the citation later because I
 08:03PM 13 litigated that issue in the Englewood Cliff's case.
 08:03PM 14 I think that the applicant's position
 08:03PM 15 is wrong. I think that there is a chance that this
 08:03PM 16 project does not get affordable housing credit.
 08:03PM 17 They'll get credit for Medicaid units
 08:03PM 18 under their certificate of need, but you may not get
 08:03PM 19 any affordable housing credits and Fair Share Housing
 08:03PM 20 Center may come after you.
 08:03PM 21 MR. REGAN: But you've had the
 08:03PM 22 opportunity to speak to Fair Share, I assume, about
 23 that issue.
 24 MR. STEINHAGEN: I've talked to them
 25 about this issue in connection with another project

1 in Closter.
 2 MR. REGAN: Not in connection with this
 3 project?
 4 MR. STEINHAGEN: No, not in connection
 08:03PM 5 with this project, but a project in Closter that's
 08:03PM 6 currently in front of the board of adjustment and
 08:03PM 7 they want a -- well, I -- I can assure you that
 08:04PM 8 Mr. Bowers wants more than 10 percent.
 08:04PM 9 MR. REGAN: Well, I've had other issues
 08:04PM 10 with Mr. Bowers on assisted-living facilities where
 08:04PM 11 he accepted the 10 percent.
 08:04PM 12 MR. STEINHAGEN: Okay.
 08:04PM 13 This is an inherently beneficial use
 08:04PM 14 case. The applicant, while it says it did
 08:04PM 15 demographic studies, did not demonstrate the extent
 08:04PM 16 of the need. And that's a problem for the board,
 08:04PM 17 because on one hand you have the special reasons that
 08:04PM 18 are assumed to be satisfied versus the negative
 08:04PM 19 impacts.
 08:04PM 20 We don't know how -- how heavy that
 08:04PM 21 side of the scale is.
 08:04PM 22 We don't know how many beds there are
 08:04PM 23 in the community. When I say "the community," I
 08:04PM 24 don't mean Old Tappan, because there is another
 08:04PM 25 community -- there is another --

08:04PM 1 MR. REGAN: You're talking about
 08:04PM 2 regional surplus?
 08:04PM 3 MR. STEINHAGEN: Correct. I don't --
 08:04PM 4 we don't know that.
 08:04PM 5 MR. REGAN: Do you have any evidence of
 6 any --
 7 MR. STEINHAGEN: No, no, no. I don't
 8 have -- Mr. Regan, I'm sorry, I'm giving a
 9 summation.
 10 I don't have the burden --
 11 MR. REGAN: I'm just asking you the
 12 question.
 13 MR. STEINHAGEN: No.
 14 MR. REGAN: If you don't want to answer
 15 the question --
 16 MR. STEINHAGEN: No, no. I don't have
 17 the burden of demonstrating the extent of the need.
 18 That's the applicant's burden. The applicant hasn't
 19 done it.
 20 And the board can make a decision as it
 21 wants, but they have the burden of proof here, not --
 22 not any other interested party.
 08:05PM 23 The applicant also has the burden of
 08:05PM 24 demonstrating special reasons for the other two
 08:05PM 25 D variances. It didn't do it. It didn't -- it

08:05PM 1 didn't demonstrate, at least under the test, whether
 08:05PM 2 or not it's applicable, I don't know, but they have a
 08:05PM 3 density variance. They have a floor area ratio
 08:05PM 4 variance. And the building, whether it's for
 08:05PM 5 assisted living, memory care, apartments, it's ten
 08:05PM 6 times too big for this lot based upon the Borough's
 08:05PM 7 Zoning Ordinance.
 08:05PM 8 And if we divided it up into five lots,
 08:05PM 9 because that was what the Borough's Zoning Ordinance
 08:05PM 10 would theoretically allow, if they could fit it, it's
 08:05PM 11 still too big by a factor of two. You can have an
 08:05PM 12 8,400-square-foot building on a 40,000-square-foot
 08:05PM 13 lot. They might get five lots, they might get six.
 08:05PM 14 But they're not getting up to 80,000 square feet of
 08:05PM 15 building. And they're certainly not getting up to
 08:05PM 16 81,000 square feet of three-story building with three
 08:05PM 17 rows of windows with a long façade.
 08:06PM 18 And the same thing is true about the
 08:06PM 19 density.
 08:06PM 20 This applicant is turning the
 08:06PM 21 proverbial hose on onto my client's property.
 08:06PM 22 Yes, they are reducing the water in
 08:06PM 23 accordance with the DEP regulations, in accordance
 08:06PM 24 with the Borough's stormwater management ordinance.
 08:06PM 25 But you heard your own engineer, who's

08:06PM 1 not here tonight and I hope he gets better soon, he
 08:06PM 2 said, I have concerns about what this applicant is
 08:06PM 3 doing. They do not have our consent to change the
 08:06PM 4 way that water drains and turn on a hose and dump the
 08:06PM 5 water onto our property.
 08:06PM 6 I think that they have not satisfied
 08:06PM 7 their burden of proof here. We would ask that the
 08:06PM 8 board deny the application.
 08:06PM 9 I want to thank you, again, for your
 08:06PM 10 attention this evening. I appreciate it very much.
 08:06PM 11 Thank you.
 08:06PM 12 (Applause.)
 08:07PM 13 MS. PRICE: I have a bunch of things,
 08:07PM 14 so just give me one second.
 08:07PM 15 So, just on Mr. Steinhagen's first
 08:07PM 16 point and his reference to the property in Mahwah,
 08:07PM 17 that development is an independent living development
 08:07PM 18 with an assisted component, but it is not the
 08:07PM 19 development that we have here before this board
 08:08PM 20 tonight. And I have handled numerous assisted-living
 08:08PM 21 applications and have never ever been asked for more
 08:08PM 22 than a 10 percent --
 08:08PM 23 MR. REGAN: Didn't you do the Artis
 08:08PM 24 application --
 08:08PM 25 MS. PRICE: Yes.

08:08PM 1 MR. REGAN: -- a few years ago?
 08:08PM 2 MS. PRICE: Yes, the Artis application
 08:08PM 3 in this very Borough.
 08:08PM 4 MR. REGAN: That was the same thing,
 08:08PM 5 10 percent?
 08:08PM 6 MS. PRICE: Correct, 10 percent.
 08:08PM 7 And that is compliant with all
 08:08PM 8 regulations and Fair Share has never come knocking on
 08:08PM 9 my door saying you need to do more.
 08:08PM 10 They didn't do it in Norwood.
 08:08PM 11 They didn't do it in Washington
 08:08PM 12 township.
 08:08PM 13 And they haven't done it in other
 08:08PM 14 locations around the state where I have appeared in
 08:08PM 15 connection with these applications.
 08:08PM 16 MS. HAVERILLA: Why was -- is there a
 08:08PM 17 difference between the Medicare set-aside and the
 08:08PM 18 Fair Share Housing set-aside?
 08:08PM 19 MS. PRICE: No, the Fair Share just
 08:08PM 20 happens to be the party, you know, who was around the
 08:08PM 21 whole state --
 08:08PM 22 MS. HAVERILLA: All right. So we would
 08:08PM 23 still --
 08:09PM 24 MS. PRICE: -- seeking to get more and
 08:09PM 25 more.

1 MS. HAVERILLA: -- would still get the
 2 credits, the ten credits --
 3 MS. PRICE: Yes.
 4 MS. HAVERILLA: -- for that?
 5 MS. PRICE: Every -- every borough that
 08:09PM 6 I've appeared in and have given the 10 percent on
 08:09PM 7 behalf of the client or the client has given the ten
 08:09PM 8 units, all of those municipalities have always gotten
 08:09PM 9 credit in their affordable housing plans. None of
 08:09PM 10 the plans have ever been negatively impacted and I
 08:09PM 11 can state that unequivocally.
 08:09PM 12 So with that said, I also want to thank
 08:09PM 13 the board and its professionals. It's been a long
 08:09PM 14 road since December of '21 is when we filed this
 08:09PM 15 application, and it has gone through several
 08:09PM 16 different looks, because every time the board asked
 08:09PM 17 me to take something back to our client, our client
 08:09PM 18 looked at it, had the team work it up and the client
 08:09PM 19 came back and said okay.
 08:10PM 20 I have a list of 21 conditions that our
 08:10PM 21 client has agreed to over the course of this
 08:10PM 22 application and never, ever during the course has our
 08:10PM 23 client said no to anything that this board has asked
 08:10PM 24 for, whether it has involved your ambulance service,
 08:10PM 25 whether it has involved improving drainage for a

08:10PM 1 homeowner on Holbrook, despite the fact that the
 08:10PM 2 application had nothing to do with that.
 08:10PM 3 Whether it was a matter of addressing
 08:10PM 4 Mr. Skrable's concern about the extra lane on Old
 08:10PM 5 Tappan Road, had nothing to do with this application,
 08:10PM 6 we agreed to it, to enhance the public safety on Old
 08:10PM 7 Tappan Road.
 08:10PM 8 We agreed to look at the schedule shift
 08:11PM 9 changes because of the concerns for the school.
 08:11PM 10 We agreed to be cognizant of the
 08:11PM 11 construction hours along those same lines because of
 08:11PM 12 the school and the concern for safety of children.
 08:11PM 13 We responded to all of the requests
 08:11PM 14 from the fire department. We redesigned the building
 08:11PM 15 to make sure that there was full circular access with
 08:11PM 16 the pervious pavement to assist the trucks.
 08:11PM 17 And we did various other revisions that
 08:11PM 18 the fire department asked us to take into
 08:11PM 19 consideration.
 08:11PM 20 We addressed the parking spaces for
 08:11PM 21 electric vehicles. We said we'd take more comments
 08:12PM 22 under consideration, if the board wanted us, to
 08:12PM 23 either make-ready additional spaces or address them
 08:12PM 24 somehow else.
 08:12PM 25 We agreed to the Bi-Fuel generator that

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08:12PM 1 we were asked to look at and come back with and to
 08:12PM 2 respond to the concerns that have arisen on other --
 08:12PM 3 you know, other locations whenever we've had these
 08:12PM 4 weather emergencies that shut down power, especially,
 08:12PM 5 in consideration for our type of use.
 08:12PM 6 We spent a lot of time investigating
 08:12PM 7 that, and we came back with that type of generator
 08:12PM 8 that you asked us to look for.
 08:12PM 9 We made modifications to the elevator
 08:12PM 10 to ensure that we had the proper sizing for EMS to
 08:13PM 11 adequately, you know, be able to address the
 08:13PM 12 situation with a patient.
 08:13PM 13 We've addressed the historic home in a
 08:13PM 14 couple of different ways. At one point we were
 08:13PM 15 keeping the historic home on the property, and next
 08:13PM 16 we were moving it across the street. Last count, we
 08:13PM 17 were keeping it on the property.
 08:13PM 18 But in any event, we are donating it to
 08:13PM 19 the Borough for the Borough's use, and providing a
 08:13PM 20 foundation for that historic home, and the two acres
 08:13PM 21 plus of environmentally-constrained property.
 08:13PM 22 You don't get a lot of applications
 08:13PM 23 where the Borough gets the benefit of that type of
 08:13PM 24 beneficial and positive consideration from an
 08:14PM 25 applicant.

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08:14PM 1 There's been a lot of concern from the
 08:14PM 2 public about wetlands and vernal habitat and how to
 08:14PM 3 protect that area.
 08:14PM 4 The area is going to rest with the
 08:14PM 5 Borough. We won't have any rights to do anything
 08:14PM 6 with that acreage, because it will be the Borough's.
 08:14PM 7 And although we only had to do a
 08:14PM 8 50-foot buffer, we've provided an additional 10-foot
 08:14PM 9 buffer on the wetlands. So we've done a 60-foot
 08:14PM 10 buffer.
 08:14PM 11 DEP in their Letter of Interpretation
 08:14PM 12 said we were intermediate value, so 50 feet. And DEP
 08:14PM 13 did a site visit. It wasn't just based upon an
 08:14PM 14 application that was mailed in. They came out to the
 08:15PM 15 site and did a walk-through.
 08:15PM 16 And they said, yes, in fact, that there
 08:15PM 17 is a vernal habitat, but the only time that that was
 08:15PM 18 relevant would be if we were applying for any
 08:15PM 19 permits, which we're not.
 08:15PM 20 That LOI is part of this record. And
 08:15PM 21 that LOI is uncontradicted, in any respect, by any
 08:15PM 22 expert testimony. We're not applying for any
 08:15PM 23 additional permits. The LOI is in full force and
 08:15PM 24 effect to allow the construction of this project.
 08:15PM 25 Our expert testimony and our factual

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08:15PM 1 testimony by Mr. McElwee is also uncontradicted.
 08:16PM 2 There's nothing documentary in document format, in
 08:16PM 3 this record, that can contradict or that does
 08:16PM 4 contradict any of the testimony or examination of the
 08:16PM 5 written word of Mr. McElwee, our civil engineer, our
 08:16PM 6 architect, our traffic engineer, our landscape
 08:16PM 7 architect or our professional planner.
 08:16PM 8 This case clearly, as you all know,
 08:16PM 9 wasn't done in a couple of hours. A lot of thought,
 08:16PM 10 a lot of expense and a lot of redesign was put into
 08:16PM 11 this.
 08:16PM 12 Our use is an inherently beneficial
 08:16PM 13 use. And I'm sure you will hear from Mr. Szabo and
 08:17PM 14 Mr. Regan about what that means, but it's important
 08:17PM 15 for me to say the need is not what's at stake under
 08:17PM 16 the Sica test. There are four elements that you
 08:17PM 17 heard Mr. Williams testify to.
 08:17PM 18 The first is the designation of the
 08:17PM 19 public interest at stake. And the assisted living
 08:17PM 20 and memory care needs of our -- I can't even know
 08:17PM 21 that I'm saying this sitting here at my age now --
 08:17PM 22 (Laughter.)
 08:17PM 23 MR. REGAN: Senior citizens.
 08:17PM 24 MS. PRICE: I know, that's the public
 08:17PM 25 interest at stake here.

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08:17PM 1 You know, our seniors, me being one,
 08:17PM 2 that's the public interest. And that is recognized,
 08:17PM 3 specifically, in the Municipal Land Use Law.
 08:17PM 4 Senior citizen housing, and it's not
 08:18PM 5 qualified, it doesn't say senior citizen housing that
 08:18PM 6 cannot be assisted living or that cannot be memory
 08:18PM 7 care. It's a global use. That's one of the areas in
 08:18PM 8 law that's provided as that public interest.
 08:18PM 9 The second public -- the second prong
 08:18PM 10 to it which I think that we also had no problem --
 08:18PM 11 let me just globally say, we had no problem with any
 08:18PM 12 of the four prongs under the Sica test.
 08:18PM 13 The second was: Are there any
 08:18PM 14 detrimental effects. The third: Are we able to
 08:18PM 15 reduce any effect by the imposition of reasonable
 08:18PM 16 conditions. And then the weighing of the positive
 08:19PM 17 and the negative.
 08:19PM 18 I've already talked about the
 08:19PM 19 conditions, 21 of them. And this board is capable of
 08:19PM 20 coming up with more reasonable conditions over and
 08:19PM 21 above the 21 that I have listed if, in fact, there
 08:19PM 22 are more issues that need to be looked at and for
 08:19PM 23 this applicant to handle during a resolution
 08:19PM 24 compliance timeframe.
 08:19PM 25 This is an oversized piece of property.

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08:19PM **1** The drainage right now is an existing condition that
08:19PM **2** flows overland. We are reducing that drainage.
08:19PM **3** We're not increasing it. We're reducing it. We're
08:19PM **4** slowing the flow, the time and we're reducing the
08:19PM **5** amount. And we are not violating a single DEP or
08:20PM **6** local regulation. That's very significant for when
08:20PM **7** this board acts.
08:20PM **8** The board cannot overstep on governing
08:20PM **9** regulations in that or any other field, and if we
08:20PM **10** were violating a regulation, I certainly would have
08:20PM **11** had to address that with our engineer and have him
08:20PM **12** explain to you what we were violating and why. And
08:20PM **13** you can bet -- I never know whether it's donuts to
08:20PM **14** dollars or dollars to donuts -- but you can bet that
08:20PM **15** we would have heard specific testimony about those
08:20PM **16** regulations that we were violating because we heard a
08:20PM **17** lot during this case. And there are no regulations
08:20PM **18** being violated. So the drainage situation, we have
08:21PM **19** totally improved.
08:21PM **20** We tried to address things with the
08:21PM **21** church next door. I don't know how many times we
08:21PM **22** tried to set up an appointment with the church and we
08:21PM **23** were met with closed doors one, two, three, no
08:21PM **24** access. We wanted to get on the site. We had
08:21PM **25** offered to get a camera investigation to see if they

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08:21PM **1** were having a problem with their line, unable to do
08:21PM **2** it. And that was outside of the design. That was
08:21PM **3** another thing that we were doing outside of our
08:21PM **4** property and outside of our application, but all to
08:21PM **5** be a good neighbor and to see if there was any kind
08:22PM **6** of a problem that needed to be addressed.
08:22PM **7** We do not need a height variance in the
08:22PM **8** true sense of the word. We need a variance to go
08:22PM **9** from two-and-a-half stories to three, but we're
08:22PM **10** compliant with the measurement of height, which is
08:22PM **11** what the visual is. We're not asking to go to
08:22PM **12** 50 feet, 60 feet. It's a difference between, with a
08:22PM **13** half story.
08:22PM **14** And this board asked us again, go back
08:22PM **15** out onto Old Tappan Road and tell us what the
08:22PM **16** situation looks like with your site and the church
08:22PM **17** site, because is there going to be a big problem? Is
08:23PM **18** it going to look like you're over shadowing the
08:23PM **19** church?
08:23PM **20** So we did it. And Mr. Sehna
08:23PM **21** testified. And guess what? We're actually going to
08:23PM **22** be lower than the church.
08:23PM **23** So that exercise demonstrated that our
08:23PM **24** proposed plan had no negative impact on that visual
08:23PM **25** component.

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08:23PM **1** The same situation with the church with
08:23PM **2** regard to the side yard, you'll remember. You asked
08:23PM **3** whether we can increase the side yard. We looked.
08:23PM **4** We made it bigger.
08:23PM **5** At the same time we were doing that we
08:23PM **6** looked to see the existing side yard on the church,
08:23PM **7** and it turns out that they have less of a setback
08:23PM **8** than what we were proposing. And the entire area of
08:24PM **9** the church -- on the church's side is a driveway and
08:24PM **10** their air conditioning units.
08:24PM **11** But one of the questions came up and,
08:24PM **12** again, I was asked to take back to the client, can
08:24PM **13** you move the generator, because the generator's
08:24PM **14** located on that side. And we don't want any noise
08:24PM **15** issues. Can you schedule the testing time for the
08:24PM **16** generator to be totally not near any of the church
08:24PM **17** services? And can you mitigate the number of times
08:24PM **18** the generator needs to be tested?
08:24PM **19** We agreed to all of that. Another
08:24PM **20** condition that could be contained in an approval by
08:24PM **21** the board.
08:24PM **22** It's just one item after another that
08:25PM **23** we have tried to demonstrate how CSH can become a
08:25PM **24** very productive, very beneficial resident of Old
08:25PM **25** Tappan.

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08:25PM **1** Everybody likes quiet, trees-lined
08:25PM **2** properties. And we've heard on several nights that
08:25PM **3** people like to walk by the property in its current
08:25PM **4** condition.
08:25PM **5** Well, there's a bunch of properties in
08:25PM **6** Ridgewood that I like to look at too, but I would
08:25PM **7** never, ever think that I had the ability to say to a
08:25PM **8** property owner, you can't do anything with your
08:25PM **9** property because I like the way it looks, which is
08:25PM **10** basically what some people are saying here.
08:25PM **11** AUDIENCE MEMBERS: No, no, no.
08:25PM **12** FEMALE AUDIENCE MEMBER: It's not true.
08:25PM **13** FEMALE AUDIENCE MEMBER: Not true.
08:25PM **14** (Audience Outburst.)
08:26PM **15** MS. PRICE: Certain people said they
08:26PM **16** like the way that the property exists today and they
08:26PM **17** want it to remain in a park-like setting.
08:26PM **18** And I submit that although the project
08:26PM **19** needs some variance relief, the bulk regulations, by
08:26PM **20** law, under the Price vs. Himeji case that
08:26PM **21** Mr. Williams cited, are subsumed within the
08:26PM **22** D variance, which is the inherently beneficial use of
08:26PM **23** the assisted living and memory care use.
08:26PM **24** So while we tried to minimize the
08:26PM **25** number of those variances. And we were able to do

08:26PM 1 that more as we went along. We eliminated the
 08:26PM 2 signage variance. We made some of the other
 08:26PM 3 variances smaller in number. Those variances are
 08:27PM 4 contained within the D variance, itself. And all
 08:27PM 5 those proofs are without contradiction by any
 08:27PM 6 professional expert testimony or documents, no
 08:27PM 7 evidence to show anything different.
 08:27PM 8 So it's our hope that with hearings
 08:27PM 9 that go back to February, and let me just see what
 08:27PM 10 the number is. I think we have exhibits numbering --
 08:28PM 11 Mr. Regan, you probably have the number
 08:28PM 12 of exhibits there.
 08:28PM 13 MR. REGAN: I have to go through my
 08:28PM 14 notes, 32 or 33 exhibits.
 08:28PM 15 MS. PRICE: Right, 32.
 08:28PM 16 MR. REGAN: The number of hearings is
 08:28PM 17 about seven or eight.
 08:28PM 18 MS. PRICE: Right, yeah. So 32 or 33
 08:28PM 19 exhibits that we've introduced without exhibits that
 08:28PM 20 go against those.
 08:28PM 21 I'd ask the board for its approval of
 08:28PM 22 this application. It will do a lot of good things
 08:28PM 23 for members of this community and members of the
 08:28PM 24 surrounding communities.
 08:28PM 25 FEMALE AUDIENCE MEMBER: No, no.

08:28PM 1 MALE AUDIENCE MEMBER: No.
 08:28PM 2 AUDIENCE MEMBERS: No. No.
 08:28PM 3 (Audience Outburst.)
 08:28PM 4 MR. ELLER: Excuse me.
 08:28PM 5 MS. PRICE: I think that the Municipal
 08:28PM 6 Land Use Law very clearly talks about regional
 08:29PM 7 benefits, as well as local benefits, and the fact
 08:29PM 8 that planning boards and zoning boards of adjustment
 08:29PM 9 are charged not just with looking at what's in our
 08:29PM 10 four corners of our municipality, but looking beyond.
 08:29PM 11 And your counsel and your planner may
 08:29PM 12 be able to go beyond that statement, because that's
 08:29PM 13 not for me to go very far on, but there is a regional
 08:29PM 14 component to the Municipal Land Use Law with regard
 08:29PM 15 to planning and developing.
 08:29PM 16 So, again, I thank you. I hope our
 08:29PM 17 case was clearly understood and that the relief that
 08:30PM 18 we are seeking can be acted upon in accordance with
 08:30PM 19 the Municipal Land Use Law and that we can show that
 08:30PM 20 everything that we agreed to along the way we stand
 08:30PM 21 by our commitment.
 08:30PM 22 So thank you.
 08:30PM 23 CHAIRMAN WEIDMANN: Thank you.
 08:30PM 24 Mr. Szabo, do you have any comments
 08:30PM 25 regarding...

08:30PM 1 MR. SZABO: Just a few, Mr. Chairman,
 08:30PM 2 if you can indulge me.
 08:30PM 3 I just wanted to, kind of, put things
 08:30PM 4 in context for the board for your deliberations and
 08:30PM 5 I'll -- and some of it may seem repetitive to some of
 08:30PM 6 the testimony that you had, but I want to share it
 08:30PM 7 from my perspective.
 08:30PM 8 The applicant is seeking a D-1
 08:30PM 9 variance, to permit a 100-bed senior assisted-living
 08:30PM 10 facility in a zone where it's not permitted.
 08:30PM 11 And I think it's important to
 08:30PM 12 understand and recognize that this board is acting in
 08:30PM 13 a quasi-judicial function.
 08:31PM 14 In other words, you're judges. And I
 08:31PM 15 think the public needs to understand that's why the
 08:31PM 16 Chairman was so hard on procedure, why certain things
 08:31PM 17 had to be done certain ways, because we're treating
 08:31PM 18 this case as a use variance as if we were in a court
 08:31PM 19 of law where there has to be witnesses. Then you
 08:31PM 20 have to have cross examination of witnesses. And
 08:31PM 21 then you get the summation as you've heard, but
 08:31PM 22 summation also comes from the public in the process.
 08:31PM 23 So there's a procedure. And the
 08:31PM 24 importance of that is because if you don't follow
 08:31PM 25 proper procedures, if you don't follow the structure

08:31PM 1 of the law in this kind of application, you run the
 08:31PM 2 risk of being overturned just on a procedural ground
 08:31PM 3 by disenfranchising someone, for example, or because
 08:31PM 4 you didn't follow some regulatory requirement.
 08:31PM 5 So please don't take offense if there
 08:31PM 6 was -- if you felt that you were hamstrung or that
 08:31PM 7 the structure of the hearing was such that you
 08:31PM 8 weren't given an opportunity to be heard.
 08:32PM 9 The reality is that the board really
 08:32PM 10 has to follow certain protocols in the capacity that
 08:32PM 11 they acting in now as a quasi-judicial body.
 08:32PM 12 And I'm sharing this because it's going
 08:32PM 13 to be important to understand where I'm coming from
 08:32PM 14 in some of my -- my comments.
 08:32PM 15 Now, again, case law supports the
 08:32PM 16 classifications, certain types of senior housing is
 08:32PM 17 inherently beneficial, and specifically
 08:32PM 18 assisted-living senior facilities have been
 08:32PM 19 classified as such.
 08:32PM 20 I'm sure Mr. Regan will elaborate on
 08:32PM 21 some of the case law, because I'm not an attorney,
 08:32PM 22 but I'm aware of the case law.
 08:32PM 23 But he'll opine and offer some guidance
 08:32PM 24 on what case law has been on how these types of uses
 08:32PM 25 are classified.

08:32PM 1 And what does that mean? What does it
 08:32PM 2 mean? Inherently beneficial means a lot of things to
 08:32PM 3 a lot of people, but in this proceeding what we care
 08:32PM 4 about is what does the law say? And when you look at
 08:32PM 5 the land use law, New Jersey Statutes annotated
 08:32PM 6 40:55D-4, it actually defines what an inherently
 08:32PM 7 beneficial use is.
 08:32PM 8 An inherently beneficial use means a
 08:32PM 9 use which is universally considered of value to the
 08:33PM 10 community because it fundamentally serves the public
 08:33PM 11 good and promotes the general welfare. Such a use
 08:33PM 12 includes, but is not limited to, a hospital, a
 08:33PM 13 school, childcare center, group home or a wind, solar
 08:33PM 14 or photovoltaic energy facility or structure.
 08:33PM 15 So having classified assisted-living
 08:33PM 16 facilities, senior assisted-living facilities as
 08:33PM 17 inherently beneficial, it falls within this global
 08:33PM 18 category.
 08:33PM 19 Well, what does -- what does that mean
 08:33PM 20 in terms of the application? Well, it means that
 08:33PM 21 it's given special status. It's the simplest way to
 08:33PM 22 put it, that, you know, the applicant doesn't have to
 08:33PM 23 demonstrate things that you normally would require
 08:33PM 24 under a D-1 variance, which would mean special
 08:33PM 25 reasons, particular suitability and the enhanced

08:33PM 1 burden under the Medici case.
 08:33PM 2 And the point here is, it gets a
 08:33PM 3 special status, a special review.
 08:33PM 4 Now, does that mean that we approve
 08:34PM 5 every inherently beneficial use that comes across the
 08:34PM 6 board's dais? No.
 08:34PM 7 So then what does the board do? How
 08:34PM 8 does it evaluate this type of application that's
 08:34PM 9 inherently beneficial? What are the standards?
 08:34PM 10 Well, fortunately because the board is
 08:34PM 11 acting in a quasi-judicial function, and because we
 08:34PM 12 have case law, we have guidance from the courts on
 08:34PM 13 how we are supposed to approach the review of this
 08:34PM 14 type of application. And that would be the Sica case
 08:34PM 15 that you've heard mentioned and testified to by the
 08:34PM 16 applicant's planner, Mr. Williams.
 08:34PM 17 And the applicant is required to go
 08:34PM 18 through a four-prong analysis, present that to the
 08:34PM 19 board, and the board has to then evaluate that
 08:34PM 20 analysis and reconcile it to determine whether or not
 08:34PM 21 the detriments outweigh the benefits and whether or
 08:34PM 22 not the negative criteria can be addressed with
 08:34PM 23 reasonable conditions. And that's important.
 08:34PM 24 So let's -- let's -- let's break it
 08:34PM 25 down. Okay. The public interest at stake, you've

08:34PM 1 heard a great deal of testimony about demographics
 08:34PM 2 and aging of -- of our population. And that has been
 08:34PM 3 provided on the record by the principal and also by
 08:35PM 4 the planner. And in my own experience, and I think
 08:35PM 5 we all know, that we're again as a society. I'm
 08:35PM 6 getting older. I'm now a senior. I didn't think I'd
 08:35PM 7 get there, but I did.
 08:35PM 8 I'm not -- I don't want sympathy, but I
 08:35PM 9 may end up in one of these places.
 08:35PM 10 But the bottom line is that we are
 08:35PM 11 living longer and we have growing numbers of seniors
 08:35PM 12 entering a period of time when they are required
 08:35PM 13 specialized care.
 08:35PM 14 There's a reason why residents of these
 08:35PM 15 type of facilities are in their 80s. I'm going to be
 08:35PM 16 64. And I'm feeling it now. I can't imagine what an
 08:35PM 17 80 or 80-plus-year-old at that point in their life
 08:35PM 18 where you just need specialized care. It doesn't
 08:35PM 19 mean that you're necessarily bedridden, could be, but
 08:35PM 20 that the normal functions of everyday living become a
 08:35PM 21 burden. And we try to relieve that burden with
 08:35PM 22 respect to the services that these types of
 08:35PM 23 facilities provide.
 08:35PM 24 So there's a public interest. It's not
 08:35PM 25 a market. It's not only specific to this town. The

08:36PM 1 land use law and planning, we do need to consider
 08:36PM 2 sometimes the community being more expansive. People
 08:36PM 3 move in. They move out. The need is still there,
 08:36PM 4 that's the interest.
 08:36PM 5 So that -- that was clarified by the
 08:36PM 6 applicant, provided to the board.
 08:36PM 7 We have to identify -- the applicant
 08:36PM 8 has to identify, the board needs to identify the
 08:36PM 9 detrimental effects that ensue from the grant of the
 08:36PM 10 variance, recognizing, and this is important, that
 08:36PM 11 there are always certain impacts associated with
 08:36PM 12 development from -- whether it's a permitted use or
 08:36PM 13 not, there's always going to be an impact from
 08:36PM 14 development. And we talked a lot about what those
 08:36PM 15 are.
 08:36PM 16 The discussions and concerns are
 08:36PM 17 centered on drainage, the loss of open space, tree
 08:36PM 18 coverage, traffic and the historic structure.
 08:36PM 19 Let's start with drainage, even though
 08:36PM 20 that's an in engineering issue. There's been a
 08:36PM 21 tremendous amount of testimony presented on drainage.
 08:37PM 22 I defer to the engineers that are licensed to do
 08:37PM 23 drainage work. Mr. Skrable, I have great confidence
 08:37PM 24 in his ability to review this to make sure that the
 08:37PM 25 drainage will be addressed.

08:37PM 1 But also remember that this is on a
 08:37PM 2 county road, the county is going to get involved in
 08:37PM 3 some of that drainage also because they have
 08:37PM 4 jurisdiction over drainage and right-of-ways within
 08:37PM 5 the county, if it's a county road. So you've got
 08:37PM 6 many eyes looking at this.
 08:37PM 7 You're -- I understand there's a
 08:37PM 8 controversy between adjoining property owners over
 08:37PM 9 who has the right to do what. I think we discussed
 08:37PM 10 that very early on in the process. And it was
 08:37PM 11 suggested, well, you know what that -- that really is
 08:37PM 12 a legal issue in many respects.
 08:37PM 13 I'm not prepared to comment on that,
 08:37PM 14 but I do know that drainage issues are things that
 08:37PM 15 can get resolved through engineering practices.
 08:37PM 16 And it's just -- I had a -- I have many
 08:37PM 17 good friends that are engineers and, basically, they
 08:37PM 18 tell me with enough money you can solve pretty much
 08:37PM 19 any engineering issue.
 08:37PM 20 But, again, the -- the reliance of our
 08:38PM 21 own professionals, the county and the applicant's
 08:38PM 22 professionals to ensure that, you know, these types
 08:38PM 23 of issues are addressed.
 08:38PM 24 And remember, as was testified to
 08:38PM 25 numerous times, there are -- there are all kinds of

08:38PM 1 regulations that protect wetlands, floodplain,
 08:38PM 2 drainage requirements, which are constantly being
 08:38PM 3 updated and upgraded to meet modern needs and
 08:38PM 4 standards.
 08:38PM 5 In fact, recently the NJ DEP issued
 08:38PM 6 orders to update, all municipalities to update their
 08:38PM 7 stormwater management standards and requirements and
 08:38PM 8 everybody had to do that as of last year.
 08:38PM 9 So the town of Old Tappan, the Borough,
 08:38PM 10 has done that.
 08:38PM 11 Loss of open space and tree cover.
 08:38PM 12 That -- that is always a troubling aspect of any
 08:38PM 13 development. I'm a strong advocate for preservation
 08:38PM 14 of open space and tree cover and fauna and flora and
 08:38PM 15 all of that.
 08:38PM 16 However, you can't ignore the fact that
 08:38PM 17 there are property rights to the developer associated
 08:39PM 18 with this property. So if a single-family developer
 08:39PM 19 came in for a five or six lot subdivision, there
 08:39PM 20 would be a lot of disturbance, tree removal and
 08:39PM 21 probably I suspect we'll be having the same
 08:39PM 22 conversation with that application we are having with
 08:39PM 23 this one.
 08:39PM 24 FEMALE AUDIENCE MEMBER: We don't know
 08:39PM 25 --

08:39PM 1 (Audience Outburst.)
 08:39PM 2 MR. SZABO: However, maybe not to the
 08:39PM 3 degree of the type of development.
 08:39PM 4 But, again, to expect there will be no
 08:39PM 5 consequences or any kind of impact from any
 08:39PM 6 development on that property I think is unrealistic.
 08:39PM 7 And -- and, furthermore, the Borough has opted not to
 08:39PM 8 purchase the property, either for historic
 08:39PM 9 preservation purposes or open space, despite the
 08:39PM 10 Master Plan's recommendation.
 08:39PM 11 And I'll get into that in a moment.
 08:39PM 12 And that's a policy decision made by
 08:39PM 13 the Borough. And that's -- that's reality.
 08:39PM 14 Traffic, the applicant has provided
 08:39PM 15 traffic testimony to indicate that the traffic
 08:39PM 16 impacts to Old Tappan Road would be minimal.
 08:39PM 17 I provided -- I -- there's been no
 08:39PM 18 contradictory testimony otherwise. And I would point
 08:39PM 19 out that when issues were raised regarding the access
 08:40PM 20 and the widening of that road, the applicant is
 08:40PM 21 actually improving the situation in that regard.
 08:40PM 22 The historic structure is proposed to
 08:40PM 23 be relocated. There's been discussions about whether
 08:40PM 24 or not it loses historic status or not.
 08:40PM 25 I'm not a historic preservation expert

08:40PM 1 either. However, I do know one important fact.
 08:40PM 2 Nothing is protecting that house now.
 08:40PM 3 The applicant can -- any developer who
 08:40PM 4 owns that property or this developer can knock that
 08:40PM 5 house down tomorrow. And the legacy would be lost
 08:40PM 6 forever.
 08:40PM 7 Now, sometimes when faced with those
 08:40PM 8 kinds of choices by a municipality or the government,
 08:40PM 9 you got to -- you have to pick. You have to decide
 08:40PM 10 what is the best way to preserve what we can and
 08:40PM 11 salvage what we can.
 08:40PM 12 And the decision was, we'll accept the
 08:40PM 13 donation. If you recall, originally the applicant
 08:40PM 14 was willing to subdivide the property and donate it
 08:40PM 15 to the Borough and leave it on its own tract.
 08:40PM 16 But through the discussions with the
 08:41PM 17 board and the municipality, it has evolved to a
 08:41PM 18 different solution. And it can go either way.
 08:41PM 19 However, I want to emphasize, nothing
 08:41PM 20 is protecting that historic structure today. And if
 08:41PM 21 the Borough feels that it can get some good use out
 08:41PM 22 of it on another location nearby, that's a policy
 08:41PM 23 decision on the part of the Borough.
 08:41PM 24 Ambulance and emergency service impacts
 08:41PM 25 have been discussed and -- and this comes up quite

08:41PM 1 often in the municipalities I represent with these
 08:41PM 2 type of facilities and the applicant's agreed private
 08:41PM 3 ambulance corps. We'll have an emergency management
 08:41PM 4 and he will do the types of things that we feel would
 08:41PM 5 relieve the Borough of the burden of having to
 08:41PM 6 allocate scarce resources to emergency services
 08:41PM 7 connected to this use.
 08:41PM 8 So they're trying to address the
 08:41PM 9 impacts as best they can and that was offered.
 08:41PM 10 The board can impose reasonable
 08:41PM 11 conditions, that's part of the Sica balance. And a
 08:41PM 12 lot of those conditions are already embodied, in my
 08:42PM 13 opinion, in the -- the conditions that have been
 08:42PM 14 enumerated that they've agreed to already, which
 08:42PM 15 should be enumerated in any resolution of approval
 08:42PM 16 should the board be so inclined. You have the
 08:42PM 17 ability to put a reasonable condition on the use.
 08:42PM 18 I think the bottom line for me in my
 08:42PM 19 experience with these, and I've handled, and I've
 08:42PM 20 seen many applications like this, is that it's very
 08:42PM 21 difficult -- and it's not just assisted living, but
 08:42PM 22 any inherently beneficial use, it's very difficult to
 08:42PM 23 deny these things under circumstances where a lot of
 08:42PM 24 the issues are being addressed.
 08:42PM 25 I have a recent case just couple of

08:42PM 1 weeks ago in another jurisdiction I represent, where
 08:42PM 2 the board of adjustment denied a use variance for
 08:42PM 3 this use. And the judge took two minutes to overturn
 08:42PM 4 the decision, remanded it back to the board for
 08:42PM 5 conditions only and specifically told the board you
 08:42PM 6 cannot touch the density.
 08:42PM 7 So it -- I'm not saying it's
 08:42PM 8 impossible. There could be issues that are raised,
 08:42PM 9 but you have to satisfy the negative criteria.
 08:43PM 10 That's the one thing you can hang your hat on.
 08:43PM 11 And that's where the board needs to
 08:43PM 12 reconcile everything that they've heard against the
 08:43PM 13 negative criteria and can you balance that against
 08:43PM 14 reasonable conditions.
 08:43PM 15 But I will tell you that it's a tough
 08:43PM 16 row to hoe in front of a court. And if you're -- and
 08:43PM 17 if you're going to deny, you're going to need very,
 08:43PM 18 very clear and specific reasons and you hope they
 08:43PM 19 hold up.
 08:43PM 20 THE COURT REPORTER: I'm sorry, very
 08:43PM 21 specific reasons and what?
 08:43PM 22 MR. SZABO: Very specific reasons why
 08:43PM 23 you would deny an inherently beneficial use. Any
 08:43PM 24 inherent use. I mean you need a good reason.
 08:43PM 25 It's not a blanket approval that you

08:43PM 1 could expect when you walk in to a board expecting
 08:43PM 2 approval just because you're inherently beneficial.
 08:43PM 3 But we're here a year talking about all
 08:43PM 4 the aspects of this application. And so all of that
 08:43PM 5 is part of the record that the board can weigh, and
 08:43PM 6 what has been agreed to, what remains outstanding and
 08:43PM 7 what needs to still be addressed.
 08:43PM 8 There had been comments about the
 08:43PM 9 Master Plan. I recognize that. I prepared the 2016
 08:44PM 10 Reexamination Report, periodic reexamination report
 08:44PM 11 on behalf of the board.
 08:44PM 12 It is -- yes, it is true that the prior
 08:44PM 13 plans did identify this property for preservation, it
 08:44PM 14 did say open space is important to the -- to the
 08:44PM 15 Borough and these are important comments and policy
 08:44PM 16 statements to makes in a document.
 08:44PM 17 The Master Plan documents also talk
 08:44PM 18 about providing for senior care, senior housing, both
 08:44PM 19 market and affordable. I think it's -- it's worth
 08:44PM 20 reading the policy statement.
 08:44PM 21 The Borough seeks to encourage the
 08:44PM 22 creation of both market-rate and affordable senior
 08:44PM 23 housing. And the policy statement is the baby boom
 08:44PM 24 generation continues to age. Old Tappan has
 08:44PM 25 witnessed the aging of its population. And there's a

1 general lack of housing design to service the unique
 2 needs of older residents.
 08:44PM 3 So what -- what does that mean? I
 08:44PM 4 mean, the Master Plan by, itself is not law. I mean,
 08:45PM 5 that's -- that's part of the -- the -- I think the
 08:45PM 6 public confusion about what is a Master Plan.
 08:45PM 7 The goals and policies of a Master Plan
 08:45PM 8 are an expression of a community's vision and desires
 08:45PM 9 intended to guide community decision-making, right?
 08:45PM 10 These are mostly aspirational. They're goals.
 08:45PM 11 They're policies. This is that what we want. This
 08:45PM 12 is what we're going to direct.
 08:45PM 13 But it is not unusual for plans to have
 08:45PM 14 a multiplicity of goals. You have more than one goal
 08:45PM 15 and you have to weigh what's important.
 08:45PM 16 And in this case the Borough's weighed
 08:45PM 17 the idea that, well, maybe we don't want to purchase
 08:45PM 18 this property right now for open space. We want to
 08:45PM 19 divert our resources elsewhere.
 08:45PM 20 And -- and so you have to reconcile all
 08:45PM 21 of those and it -- it doesn't mean that it's not
 08:45PM 22 important, it just means that you have to balance
 08:45PM 23 what your current needs are when you consider these
 08:45PM 24 matters.
 08:45PM 25 But you have two goals, but one of

08:45PM 1 which is the creation of senior housing and
 08:45PM 2 affordable senior housing. And there's one other
 08:46PM 3 goal that the Master Plan talks about and is
 08:46PM 4 addressing the affordable housing need.
 08:46PM 5 I prepared the Housing Element and Fair
 08:46PM 6 Share Plan and guided the Borough through the second
 08:46PM 7 -- the third round process. And the Borough has a
 08:46PM 8 third-round affordable housing obligation of 271
 08:46PM 9 units. And it has an unmet need of 240.
 08:46PM 10 Now -- and so the development would
 08:46PM 11 provide affordable housing units. And the Borough is
 08:46PM 12 kind of obligated under its settlement with Fair
 08:46PM 13 Share Housing to capture as many affordable housing
 08:46PM 14 units as it can as the opportunities arise, should
 08:46PM 15 they arise.
 08:46PM 16 And, again, you know, to sum up,
 08:46PM 17 additional consideration's here, not to marginalize
 08:46PM 18 the concerns expressed by the public, you know, I
 08:46PM 19 think that they're all valid. They're all concerns.
 08:46PM 20 But I have a concern going forward
 08:46PM 21 because the forth round is coming very quickly.
 08:46PM 22 July 1, 2025 is right around the corner. It's
 08:47PM 23 getting here, it'll be here before we know it. And
 08:47PM 24 we still don't have rules that go forward for the
 08:47PM 25 fourth round.

08:47PM 1 And I'm anticipating that unless the
 08:47PM 2 legislature does something soon, very soon, we're
 08:47PM 3 going to be going through this process again through
 08:47PM 4 the courts. What does that mean for this property?
 08:47PM 5 If this property remains undeveloped, and it hasn't
 08:47PM 6 been developed, the zoning has been in place. No one
 08:47PM 7 has come forward to do a conforming development here.
 08:47PM 8 If this property is available on
 08:47PM 9 July 1, 2025, I'm willing to bet that this property
 08:47PM 10 will be in play at a much higher density than we have
 08:47PM 11 settled for before, because fair share is pushing and
 08:47PM 12 pushing units and density.
 08:47PM 13 So, again, the cautionary note. I
 08:47PM 14 think we'll be back here again, either with this or
 08:47PM 15 probably a multifamily development in the future. I
 08:47PM 16 don't see -- under current conditions whether or not
 08:48PM 17 someone is going to offer or come in to do a five or
 08:48PM 18 six -- I don't think you can get six lots, but a
 08:48PM 19 five-lot subdivision, because remember, the site is
 08:48PM 20 constrained.
 08:48PM 21 It has a wetland area. It has a buffer
 08:48PM 22 requirement, which the applicant is adhering to.
 08:48PM 23 But there is going to be that reality
 08:48PM 24 at some point.
 08:48PM 25 So those are the options that the

08:48PM 1 Borough has. They're not good ones, but they are
 08:48PM 2 what they are.
 08:48PM 3 So where does this leave the board?
 08:48PM 4 Having heard all the testimony, applying the Sica
 08:48PM 5 balancing, applying the calculus that the courts are
 08:48PM 6 requiring, it's going to be up to you now to
 08:48PM 7 determine whether or not the interest has been
 08:48PM 8 identified, whether the impacts are identified,
 08:48PM 9 whether they can be ameliorated with -- with
 08:48PM 10 appropriate conditions.
 08:48PM 11 And then finally weigh that and say
 08:48PM 12 this use can go forward. And that, unfortunately --
 08:48PM 13 well, it's your job, it falls on your lap.
 08:49PM 14 So I'll -- I'll defer to Mr. Regan --
 08:49PM 15 oh, and on the -- on the issue of subsummation, that
 08:49PM 16 came up tonight, it's a generally recognized
 08:49PM 17 principal and I -- I agree with Mr. Williams and --
 08:49PM 18 and Mr. Regan will speak to the case law. There are
 08:49PM 19 numerous -- there are numerous cases that talk to it.
 08:49PM 20 MR. REGAN: The main case being Price
 08:49PM 21 vs. Himeji, the Union City case.
 08:49PM 22 MR. SZABO: Right.
 08:49PM 23 I won't steal your thunder, but...
 08:49PM 24 (Laughter.)
 08:49PM 25 MR. REGAN: You already have.

08:49PM 1 MR. SZABO: I'm getting old.
 08:49PM 2 MR. REGAN: I'm older.
 08:49PM 3 MR. SZABO: Yeah, blame it on the age.
 08:49PM 4 I think that the -- it's interesting about
 08:49PM 5 subsummation.
 08:49PM 6 Yes, the C variances are subsumed, but
 08:49PM 7 you consider those variations from the zoning within
 08:49PM 8 the context of the D-1. You don't ignore it. You
 08:49PM 9 never ignore the impacts of a noncompliance.
 08:49PM 10 But the courts have long recognized
 08:49PM 11 that this is a single-family zone. If you were to
 08:49PM 12 put a gas station there, how do you apply setbacks
 08:50PM 13 and all kinds of requirements to a use that's not
 08:50PM 14 permitted or to an assisted-living facility, which
 08:50PM 15 has different design criteria?
 08:50PM 16 And, finally, one last thought, and I
 08:50PM 17 think this -- this aspect of the application has been
 08:50PM 18 marginalized, location. The proximity to Bi --
 08:50PM 19 Bi-County for the seniors, just because you're in
 08:50PM 20 assisted living doesn't necessarily mean you're
 08:50PM 21 bedridden. So, you have the benefit of the
 08:50PM 22 walkability to Bi-County. You have the benefit of
 08:50PM 23 walkability to town hall. You have the fire
 08:50PM 24 department right around the corner. You have
 08:50PM 25 ambulance corps. You have all the services you need

08:50PM **1** within -- within walking distance almost to the
 08:50PM **2** facility, to the location. And it adjoins -- it
 08:50PM **3** adjoins a church on one side and a house on the
 08:50PM **4** other. It's in a -- what I would characterize as,
 08:50PM **5** kind of, like a transitional, kind of, area that you
 08:50PM **6** -- you have the ability to kind of figure out what
 08:51PM **7** could go there if a single-family development was,
 08:51PM **8** and I think that the locational advantage this offers
 08:51PM **9** are advantageous to a senior development. You may
 08:51PM **10** not agree, but I'm just pointing out it's nice to be
 08:51PM **11** able to walk to the pharmacy. It's nice to be able
 08:51PM **12** to get, you know, to the Borough hall for whatever
 08:51PM **13** services and council you may want. Those kinds of
 08:51PM **14** things -- and it's in -- it's right there.
 08:51PM **15** So with that, I conclude and I also --
 08:51PM **16** Mr. Regan, whatever thunder you have left.
 08:51PM **17** MR. REGAN: Not -- not a lot, but I
 08:51PM **18** agree with everything you said.
 08:51PM **19** If I can ask you a question which is
 08:51PM **20** somewhat troubling me. This site is 5.46 acres
 08:51PM **21** approximately?
 08:51PM **22** MR. SZABO: Correct.
 08:51PM **23** MR. REGAN: My -- my concern is you
 08:51PM **24** expressed July 1, 2025 is just right around the
 08:51PM **25** corner.

08:51PM **1** Any vacant land within the Borough will
 08:51PM **2** be looked at, in my opinion, by Fair Share Housing
 08:51PM **3** Center.
 08:51PM **4** The Borough had an unmet need of
 08:51PM **5** approximately 240 units under its approved plan with
 08:51PM **6** the court and Fair Share Housing Center.
 08:52PM **7** I believe 40 of those units have
 08:52PM **8** satisfied out of Pearson, which would leave an unmet
 08:52PM **9** need of about 200, somewhere in that area, but it may
 08:52PM **10** be a little bit less because there may be some bonus
 08:52PM **11** credits at Pearson. But at least it's in the 180
 08:52PM **12** range for an unmet need.
 08:52PM **13** What exposure would the municipality
 08:52PM **14** have on July 1, 2025, if this land is vacant?
 08:52PM **15** MR. SZABO: It would be twofold. One,
 08:52PM **16** I don't know what the regulations in the future will
 08:52PM **17** be, but --
 08:52PM **18** MR. REGAN: No one knows, right?
 08:52PM **19** MR. SZABO: No one does.
 08:52PM **20** I mean, if we go on the tract, based on
 08:52PM **21** past history for the third round, what would happen
 08:52PM **22** is that the unmet need, and I fear this, but it's
 08:52PM **23** coming, will become prior round obligations.
 08:52PM **24** MR. REGAN: That's an add-on.
 08:52PM **25** MR. SZABO: It's an add-on.

08:52PM **1** MR. REGAN: Added on to the fourth
 08:52PM **2** round.
 08:52PM **3** MR. SZABO: That's what happened in the
 08:52PM **4** third round.
 08:52PM **5** MR. REGAN: Right.
 08:52PM **6** MR. SZABO: And then I think because
 08:52PM **7** the community has sewer capacity and there's sewer
 08:52PM **8** available, you're looking at densities of maybe in
 08:53PM **9** excess of 12, probably now Fair Share is looking at
 08:53PM **10** 15, 20.
 08:53PM **11** MR. REGAN: You're talking about
 08:53PM **12** exposure of maybe between 60 and 90 units?
 08:53PM **13** MR. SZABO: Possibly.
 08:53PM **14** I mean, it's speculative, Mr. Regan.
 08:53PM **15** MR. REGAN: I know.
 08:53PM **16** MR. SZABO: But let's -- let's assume
 08:53PM **17** --
 08:53PM **18** MR. REGAN: They're not going to be
 08:53PM **19** single-family homes?
 08:53PM **20** MR. SZABO: It won't be single-family
 08:53PM **21** homes.
 08:53PM **22** And -- and the way this -- this
 08:53PM **23** property would enter into the system would be by
 08:53PM **24** intervention, because there is a structure on it,
 08:53PM **25** unless that structure is -- is knocked down, it would

08:53PM **1** become vacant and be considered.
 08:53PM **2** By the way, the Borough does not have
 08:53PM **3** much vacant land. We were able to satisfy our
 08:53PM **4** obligation by virtue of the redevelopment of the
 08:53PM **5** Pearson property, which absorbed a lot of the RDP we
 08:53PM **6** --
 08:53PM **7** MS. HAVERILLA: But that -- that
 08:53PM **8** obligation -- that -- the 240 is actually what we
 08:53PM **9** have as an unmet need.
 08:53PM **10** MR. SZABO: That is correct.
 08:53PM **11** MS. HAVERILLA: That is the number we
 08:53PM **12** came down to with Pearson --
 08:53PM **13** MR. SZABO: Correct --
 08:53PM **14** MS. HAVERILLA: -- with Pearson --
 08:53PM **15** MR. SZABO: -- 271 --
 08:53PM **16** MS. HAVERILLA: We still have 240.
 08:53PM **17** MR. SZABO: Right, that's correct.
 08:53PM **18** That's correct.
 08:53PM **19** MS. HAVERILLA: And they counted every
 08:53PM **20** single part of Old Tappan when they did this number
 08:53PM **21** considering even Lake Tappan was in there and the
 08:53PM **22** golf course.
 08:53PM **23** MR. SZABO: Correct.
 08:53PM **24** MS. HAVERILLA: So who knows what
 08:54PM **25** they're going to put into this.

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08:54PM 1 (Audience Outburst.)
08:54PM 2 MR. SZABO: We don't -- we don't know.
08:54PM 3 So it is -- it is -- I think that -- I understand the
08:54PM 4 public. I sympathize -- I empathize with that. I --
08:54PM 5 I understand it.
08:54PM 6 We go through this in planning all the
08:54PM 7 time, but the reality is that the board -- is faced
08:54PM 8 with facts that are being presented to you tonight
08:54PM 9 and have been for almost a year.
08:54PM 10 And you have to weigh all of that. And
08:54PM 11 it's my job to just, kind of, lay it out and
08:54PM 12 providing context. What the board decides is -- is
08:54PM 13 up to you.
08:54PM 14 MR. REGAN: Yeah, just a couple of
08:54PM 15 things.
08:54PM 16 I'm not sure if what I was going to say
08:54PM 17 would be redundant, but it's -- the case law is
08:54PM 18 overwhelming when it comes to a nursing home use.
08:54PM 19 We've heard it's deemed to be an inherently
08:54PM 20 beneficial use, perhaps the most frequently cited
08:54PM 21 case is Urban Farms vs. Franklin Lakes which involved
08:54PM 22 a 120-bed home in that municipality.
08:55PM 23 I just want to read something from --
08:55PM 24 you've heard, I think, several people referenced the
08:55PM 25 Cox treatise on zoning and land use administration,

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08:55PM 1 the 2022 Edition. I just want to read an excerpt.
08:55PM 2 "It was also held that nursing homes
08:55PM 3 and hospitals are uses which are so similar
08:55PM 4 both physically and functionally."
08:55PM 5 And you heard Mr. Szabo mention that
08:55PM 6 hospitals are deemed an inherently beneficial use in
08:55PM 7 the language of the MLUL.
08:55PM 8 "That their disparate classification
08:55PM 9 for zoning purposes cannot be justified..."
08:55PM 10 citing the Urban Farms case.
08:55PM 11 And another case PDM Construction Corp.
08:55PM 12 vs. Welsh noting there was no question but a private
08:55PM 13 nursing home served the general welfare as much as
08:55PM 14 public.
08:55PM 15 And another case, Mercurio vs.
08:55PM 16 DelVecchio noting that nursing homes are inherently
08:55PM 17 beneficial uses.
08:55PM 18 I just want to read this other excerpt:
08:55PM 19 "Because medical and nursing home
08:55PM 20 facilities tend to involve very intensive use
08:55PM 21 of property there has been a great deal of
08:55PM 22 focus on the negative criteria when
08:55PM 23 applications for such facilities come before
08:55PM 24 boards. For purpose of this discussion it's
08:56PM 25 important to note that in reviewing board

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08:56PM 1 denials of such applications, courts have
08:56PM 2 emphasized the positive criteria, that is the
08:56PM 3 particularly great benefit to the community at
08:56PM 4 large inherent in these uses."
08:56PM 5 I think that that's exactly what
08:56PM 6 Mr. Szabo was referencing.
08:56PM 7 And that brings into play the four-part
08:56PM 8 analysis in Sica vs. Wall Township, which Mr. Szabo
08:56PM 9 referred to.
08:56PM 10 The first step is to identify the
08:56PM 11 public interest at stake. We know that nursing homes
08:56PM 12 are an inherently beneficial use. I think even more
08:56PM 13 significant to the public interest is that Medicaid
08:56PM 14 beds will be provided. And the courts have held that
08:56PM 15 Medicaid beds serve the general, and promote the
08:56PM 16 general welfare.
08:56PM 17 And we also have an affordable
08:56PM 18 component because of the Medicaid beds, which will
08:56PM 19 promote affordable housing, which is also deemed to
08:56PM 20 be a general benefit or a general welfare under the
08:57PM 21 Municipal Land Use Law.
08:57PM 22 Mr. Szabo talked about identifying
08:57PM 23 detrimental effects that will ensue from the granting
08:57PM 24 of the variance. And in Sica the court said, an
08:57PM 25 increase in traffic will usually attend any

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1 nonresidential use in a residential zone.
2 The court said that when minimal such
3 effect need not outweigh an inherently beneficial use
4 that satisfies the positive criteria.
5 The traffic report that the applicant
6 submitted, to my knowledge, has not been
08:57PM 7 contradicted, that there would be appropriate levels
08:57PM 8 of service at the site driveway.
08:57PM 9 And there's also been testimony that
08:57PM 10 the use will generate less traffic than even a
08:57PM 11 single-family residential development of four, five
08:57PM 12 or six homes.
08:57PM 13 FEMALE AUDIENCE MEMBER: Oh my God.
08:57PM 14 (Audience Outburst.)
08:57PM 15 MR. REGAN: That's what the testimony
08:57PM 16 was.
08:57PM 17 Now, Mr. Szabo referred to that in some
08:57PM 18 situations the board may reduce any detrimental
08:57PM 19 effect by imposing reasonable conditions on the use.
08:57PM 20 Any approval will have, as a condition, that
08:57PM 21 providing an ambulance service, a submission of a
08:58PM 22 contract for private ambulance service for the
08:58PM 23 development; that the shift changes will occur so as
08:58PM 24 not to interfere with school beginning and end times;
08:58PM 25 and also that the historic structure will be

08:58PM **1** relocated to the site designated by the Borough at
 08:58PM **2** the applicant's expense.
 08:58PM **3** And, again, I think it's undisputed
 08:58PM **4** that someone could go in there tomorrow, pull a
 08:58PM **5** permit for demolition and knock that house down.
 08:58PM **6** So to deny this application, the
 08:58PM **7** detriment must be substantial. And I think you'd
 08:58PM **8** have a hard time demonstrating to a court that the
 08:58PM **9** detriment will be substantial in this application.
 08:58PM **10** CHAIRMAN WEIDMANN: Okay.
 08:58PM **11** MR. REGAN: Thank you.
 08:58PM **12** CHAIRMAN WEIDMANN: Thank you.
 08:58PM **13** I'm going to ask each board member to
 08:58PM **14** ask a question and if they do, let's not be
 08:58PM **15** repetitive as to what we already heard.
 08:58PM **16** Okay. Do you have anything, Charlie?
 08:59PM **17** MR. MAGGIO: Yeah.
 08:59PM **18** Actually I have a couple of questions.
 08:59PM **19** I think they've been really answered by -- by John
 08:59PM **20** and Bob, but I just wanted to make sure I completely
 08:59PM **21** understood what the impact will be.
 08:59PM **22** Before I did that, I did want to make a
 08:59PM **23** couple of -- a couple of minor statements.
 08:59PM **24** You know, I work in the healthcare
 08:59PM **25** design and construction industry, so I have some

08:59PM **1** knowledge of this stuff.
 08:59PM **2** We've used the term "beds" a lot
 08:59PM **3** tonight and over the last eleven months. And -- and
 08:59PM **4** in the industry they're not considered beds, they're
 08:59PM **5** considered residents. And there's a reason for that.
 08:59PM **6** The reason for that is these are people, they're not
 08:59PM **7** furniture. And so we have to keep that in mind when
 08:59PM **8** we're developing senior housing of any type including
 08:59PM **9** assisted living, that these are residents, that's
 08:59PM **10** number one.
 08:59PM **11** Number two, there was the comment made
 08:59PM **12** about certificate of need and having submitted many
 08:59PM **13** certificates of need to the state in my career, I can
 08:59PM **14** tell you that the state is supposed to, I don't know
 08:59PM **15** if they do or not, because I don't know what goes on
 09:00PM **16** behind closed doors, what goes behind the curtain,
 09:00PM **17** but the state is supposed to look at the need and the
 09:00PM **18** requirement. They look at demographics. They look
 09:00PM **19** at the amount of residents, not beds in the
 09:00PM **20** community. And they -- and they evaluate that. And
 09:00PM **21** that's part of their decision when they make this.
 09:00PM **22** The same way they look at hospital
 09:00PM **23** beds. The same way they look at MRIs. The same way
 09:00PM **24** they look at urgent care centers, they're supposed to
 09:00PM **25** look at that as well.

09:00PM **1** So I just wanted to clarify a couple of
 09:00PM **2** things that were bugging me tonight that came up.
 09:00PM **3** Two questions I have, I think you --
 09:00PM **4** you answered them, but I really want to be extra
 09:00PM **5** clear, because the audience, the crowd needs to hear
 09:00PM **6** it clearly.
 09:00PM **7** So if this application is denied, will
 09:00PM **8** the courts perceive -- I'm writing this down, so I'm
 09:00PM **9** reading my notes -- will the courts perceive an
 09:00PM **10** assisted-living facility or any other senior housing
 09:00PM **11** as an inherently beneficial use?
 09:00PM **12** MR. REGAN: In my opinion, yes, no
 09:00PM **13** question about it.
 09:00PM **14** MR. MAGGIO: Okay.
 09:00PM **15** And then the second, and I think John
 09:00PM **16** answered this pretty clearly, the alternative is
 09:00PM **17** either now or some time in the next two-and-a-half
 09:01PM **18** years, before the fourth round comes along, we have
 09:01PM **19** an exposure that could be up to 60 to 90 units --
 09:01PM **20** MR. REGAN: Yes, you're right.
 09:01PM **21** MR. MAGGIO: And 60 to 90 units, even
 09:01PM **22** if you were on the small end of 60 units, it's going
 09:01PM **23** to be a lot more than 81,000 square feet.
 09:01PM **24** Is that safe to say?
 09:01PM **25** MR. SZABO: I can't speculate on the

09:01PM **1** size and massing of the building for that number of
 09:01PM **2** units, but, you know, it's not going to be a
 09:01PM **3** single-story --
 09:01PM **4** MR. MAGGIO: Right.
 09:01PM **5** MR. ELLER: A lot more parking spots
 09:01PM **6** for the building.
 09:01PM **7** MR. MAGGIO: Right, and then that's --
 09:01PM **8** that's my concern. My concern is what are we going
 09:01PM **9** to end up with as a result of that.
 09:01PM **10** I have other comments about -- about
 09:01PM **11** the presentation that was made. I'll save it for
 09:01PM **12** when I cast my vote.
 09:01PM **13** CHAIRMAN WEIDMANN: I have one question
 09:01PM **14** regarding the moving of the house.
 09:01PM **15** Has that been agreed to with the
 09:01PM **16** Borough of Old Tappan?
 09:01PM **17** FEMALE AUDIENCE MEMBER: We can't hear
 09:01PM **18** you.
 09:01PM **19** MALE AUDIENCE MEMBER: Can't hear you.
 09:01PM **20** (Audience Outburst.)
 09:01PM **21** CHAIRMAN WEIDMANN: The moving of the
 09:02PM **22** old house across the street, has that been agreed
 09:02PM **23** with the Borough of Old Tappan?
 09:02PM **24** MS. PRICE: We've put on the record
 09:02PM **25** here that we --

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09:02PM **1** CHAIRMAN WEIDMANN: But you have not

09:02PM **2** spoke to anybody from the Borough?

09:02PM **3** MS. PRICE: I think that would be

09:02PM **4** premature, Mr. Chairman, because until we have an

09:02PM **5** action --

09:02PM **6** CHAIRMAN WEIDMANN: Okay. So if this

09:02PM **7** is approved, it's going to be a condition?

09:02PM **8** MS. PRICE: Correct.

09:02PM **9** MR. REGAN: At your cost.

09:02PM **10** MS. PRICE: At our cost, correct.

09:02PM **11** CHAIRMAN WEIDMANN: Right.

09:02PM **12** MS. PRICE: Yes.

09:02PM **13** CHAIRMAN WEIDMANN: Okay.

09:02PM **14** That's all I have.

09:02PM **15** VICE CHAIRMAN MAMARY: The question of

09:02PM **16** the -- the applicant and the objector and the idea

09:02PM **17** that you did not reach an agreement, how does that

09:02PM **18** supposedly affect our decision?

09:02PM **19** It's a legal -- it's a legal matter

09:02PM **20** between the two property owners or the developer and

09:02PM **21** the property owner?

09:02PM **22** MR. REGAN: I agree.

09:02PM **23** VICE CHAIRMAN MAMARY: And so they then

09:02PM **24** have the ability to potentially stop the application

09:02PM **25** if they wanted?

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09:02PM **1** MR. REGAN: They can sue. They can --

09:02PM **2** if the board approved the application, obviously they

09:03PM **3** can appeal that decision in superior court.

09:03PM **4** They can also sue the applicant if

09:03PM **5** there's some undue burden on the neighboring property

09:03PM **6** owner.

09:03PM **7** VICE CHAIRMAN MAMARY: Now, inherently

09:03PM **8** beneficial use, that term has been brought up several

09:03PM **9** times, and that's property specific or overall to the

09:03PM **10** town?

09:03PM **11** MR. REGAN: It's use specific.

09:03PM **12** VICE CHAIRMAN MAMARY: It's use

09:03PM **13** specific.

09:03PM **14** MR. REGAN: Right.

09:03PM **15** VICE CHAIRMAN MAMARY: So -- so this

09:03PM **16** particular property for this particular use is what

09:03PM **17** they're actually making the application for and

09:03PM **18** that's what the judge would view.

09:03PM **19** MR. REGAN: A nursing home is

09:03PM **20** inherently beneficial period.

09:03PM **21** VICE CHAIRMAN MAMARY: But that

09:03PM **22** particular property only.

09:03PM **23** MR. REGAN: On any property.

09:03PM **24** VICE CHAIRMAN MAMARY: No, because this

09:03PM **25** is the application.

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09:03PM **1** MR. REGAN: Well, of course.

09:03PM **2** VICE CHAIRMAN MAMARY: So -- but if

09:03PM **3** somebody was to say or the public was to say they

09:03PM **4** wanted it, but they just didn't want it there for

09:03PM **5** whatever their reasons are, is that a defense of the

09:03PM **6** --

09:03PM **7** MR. REGAN: No, you would have to --

09:03PM **8** VICE CHAIRMAN MAMARY: -- who would

09:03PM **9** defend -- who would defend the public in a case like

09:03PM **10** this where if the public did not want it and we voted

09:04PM **11** no. And so we turned it down and then they sue the

09:04PM **12** town.

09:04PM **13** MR. REGAN: They sue the board.

09:04PM **14** VICE CHAIRMAN MAMARY: They sue the

09:04PM **15** board. So we're sued.

09:04PM **16** And now we defend our --

09:04PM **17** MR. REGAN: Decision.

09:04PM **18** VICE CHAIRMAN MAMARY: -- decision for

09:04PM **19** saying --

09:04PM **20** MR. REGAN: Right.

09:04PM **21** VICE CHAIRMAN MAMARY: -- no.

22 MR. REGAN: Right.

23 VICE CHAIRMAN MAMARY: And who do they

24 -- how does that actually work?

25 MR. REGAN: It goes to a --

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1 VICE CHAIRMAN MAMARY: Just explain to

2 us how that works.

09:04PM **3** MR. REGAN: The process is, it goes to

09:04PM **4** a superior court judge in Hackensack, superior court

09:04PM **5** law division.

09:04PM **6** The court looks at and reviews the

09:04PM **7** record, the transcripts, most of you have seen copies

09:04PM **8** of the transcript --

09:04PM **9** VICE CHAIRMAN MAMARY: Yeah.

09:04PM **10** MR. REGAN: -- all the evidence,

09:04PM **11** documents that have been marked -- exhibits that have

09:04PM **12** been marked into evidence.

09:04PM **13** Briefs are submitted.

09:04PM **14** And then the court renders a decision,

09:04PM **15** usually without any testimony, based on the record

09:04PM **16** before the board.

09:04PM **17** VICE CHAIRMAN MAMARY: So it's based on

09:04PM **18** just this proceedings, not what the public would be

09:04PM **19** able to bring --

09:04PM **20** MR. REGAN: Right.

09:04PM **21** VICE CHAIRMAN MAMARY: -- in as

09:04PM **22** additional evidence.

09:04PM **23** MR. REGAN: No, no. It's based on the

09:04PM **24** record established before the board, transcripts,

09:04PM **25** exhibits, argument of counsel.

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09:04PM **1** VICE CHAIRMAN MAMARY: Okay.

09:05PM **2** I have no more questions.

09:05PM **3** CHAIRMAN WEIDMANN: What are your --

09:05PM **4** what are your odds of winning before the superior

09:05PM **5** court in Hackensack?

09:05PM **6** How many cases have won? Zero.

09:05PM **7** Thank you.

09:05PM **8** MALE AUDIENCE MEMBER: Speculation.

09:05PM **9** MALE AUDIENCE MEMBER: Go ahead.

09:05PM **10** MR. SZABO: Mr. Chairman, I think --

09:05PM **11** VICE CHAIRMAN MAMARY: That might be

09:05PM **12** under the current administration.

09:05PM **13** MR. SZABO: I think -- I think the

09:05PM **14** point that needs to be made is that you can deny the

09:05PM **15** application, just make sure that Mr. Regan has

09:05PM **16** substantial reasons that outweigh everything that

09:05PM **17** you've heard tonight.

09:05PM **18** MR. REGAN: Substantial reasons.

09:05PM **19** MR. SZABO: Substantial is the word,

09:05PM **20** right.

09:05PM **21** It doesn't help to speculate whether we

09:05PM **22** go to court or not.

09:05PM **23** MR. REGAN: No.

09:05PM **24** MR. SZABO: I think it's -- you need to

09:05PM **25** make a decision based on the facts that have been

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09:05PM **1** presented and follow the Sica balancing and then

09:05PM **2** state your reasons on the record.

09:05PM **3** MR. REGAN: Right. In the resolution.

09:05PM **4** MR. SZABO: Correct.

09:05PM **5** CHAIRMAN WEIDMANN: Mr. Szabo, how many

09:05PM **6** cases that have gone to Hackensack have won?

09:05PM **7** MR. SZABO: In this town?

09:06PM **8** CHAIRMAN WEIDMANN: No, how many cases

09:06PM **9** in Bergen County on applications similar to this have

09:06PM **10** won?

09:06PM **11** MR. REGAN: In a nursing home type of

09:06PM **12** use?

09:06PM **13** CHAIRMAN WEIDMANN: Yeah.

09:06PM **14** MR. REGAN: The only one I'm familiar

09:06PM **15** with is the Franklin Lakes case. That's a recorded

09:06PM **16** decision.

09:06PM **17** MR. SZABO: Oh, I -- I -- and the case

09:06PM **18** that I just -- well, it was another jurisdiction --

09:06PM **19** MR. REGAN: Another county.

09:06PM **20** MR. SZABO: It's another county.

09:06PM **21** MR. REGAN: But the same --

09:06PM **22** MR. SZABO: Same outcome. Same

09:06PM **23** outcome.

09:06PM **24** VICE CHAIRMAN MAMARY: Mr. Regan, do we

09:06PM **25** -- do you defend the board's decision that we would

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09:06PM **1** come to or do we get outside counsel to represent the

09:06PM **2** board?

09:06PM **3** MR. REGAN: That would have to be

09:06PM **4** discussed.

09:06PM **5** The board would have the option to

09:06PM **6** discuss that.

09:06PM **7** VICE CHAIRMAN MAMARY: And then do you

09:06PM **8** become someone that testifies?

09:06PM **9** MR. REGAN: No, there's no testimony.

09:06PM **10** VICE CHAIRMAN MAMARY: You don't

09:06PM **11** testify.

09:06PM **12** MR. REGAN: There's no testimony at all

09:06PM **13** by anybody.

09:06PM **14** VICE CHAIRMAN MAMARY: Okay.

09:06PM **15** And that's at -- that's at our

09:06PM **16** taxpayers' expense?

09:06PM **17** MR. SZABO: Correct.

09:06PM **18** VICE CHAIRMAN MAMARY: Our board --

09:06PM **19** MR. REGAN: Yes.

09:06PM **20** VICE CHAIRMAN MAMARY: -- being

09:06PM **21** defended by our town is an expense of our town?

09:06PM **22** MR. REGAN: Right.

09:07PM **23** CHAIRMAN WEIDMANN: You're up.

09:07PM **24** MR. ALESSI: Okay.

09:07PM **25** Been a resident of this town almost

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09:07PM **1** 60 years. Been a volunteer fireman for almost

09:07PM **2** 45 years.

09:07PM **3** Over the past year a lot of testimony

09:07PM **4** about how many trees have been cutting down.

09:07PM **5** Now, the reason why I'm saying I've

09:07PM **6** been here for 60 years, I've been here before

09:07PM **7** Lakeview, before the church, before Klein Corp.,

09:07PM **8** before Sunden's, before Pearson.

09:07PM **9** So we can start by saying, and we can

09:07PM **10** discuss this forever, 200 trees are being cut down,

09:07PM **11** 244 Old Tappan Road. How many trees were cut down

09:07PM **12** for Lakeview?

09:07PM **13** I believe somebody said over 900 dump

09:07PM **14** trucks of dirt will be taken off 244 Old Tappan Road.

09:07PM **15** Where the church stands, there's a

09:07PM **16** giant mountain. I'm sure more than three times the

09:07PM **17** amount of dirt was taken off that property, plus the

09:07PM **18** trees, plus where we used to have the turkey shoot as

09:07PM **19** kids.

09:07PM **20** Klein's Farm, we used to run across

09:07PM **21** before Old Man Klein would yell at you or throw rocks

09:07PM **22** at you.

09:08PM **23** How many trucks of dirt did they take

09:08PM **24** out of there?

09:08PM **25** Like I said, we can discuss that

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09:08PM **1** forever.

09:08PM **2** But last meeting it was brought up

09:08PM **3** about being disrespectful.

09:08PM **4** Mr. Steinhagen just said before, unless

09:08PM **5** you sit up here, you don't know what it's like.

09:08PM **6** Let me tell you about disrespect.

09:08PM **7** Somebody out there misunderstood what happened at a

09:08PM **8** meeting, called my neighbors, called my friends,

09:08PM **9** constituted lies that I was taking bribes from the

09:08PM **10** client.

09:08PM **11** Well, my neighbors and friends, and

09:08PM **12** some of them are here, you can ask them yourselves,

09:08PM **13** didn't work.

09:08PM **14** They went to the Mayor and Council and

09:08PM **15** to try and get me removed.

09:08PM **16** That didn't work, they came to the

09:08PM **17** board to try to get me removed, wanted get me

09:08PM **18** arrested for taking bribes.

09:08PM **19** So I ask a rhetorical question of

09:08PM **20** everybody in this room: What is more disrespectful,

09:08PM **21** rolling your eyes or you guys clapping or having

09:08PM **22** somebody create lies about you that you have to

09:08PM **23** explain to your wife and your children that didn't

09:08PM **24** happen. Because unless you're sitting up here, you

09:08PM **25** don't know what's going on.

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1 So, again, the rhetorical question:

2 What is more disrespectful, rolling one's eyes or

3 having somebody create lies about you that you have

4 to defend yourself to -- to your family and your

5 children and your friends?

6 And that's all I have to say.

09:09PM **7** CHAIRMAN WEIDMANN: Anna?

09:09PM **8** MS. HAVERILLA: I'm going to read a

09:09PM **9** statement and I know it's maybe things that you've

09:09PM **10** heard, but rather than going off the cuff, I'm going

09:09PM **11** to read this so I can be clear and on point.

09:09PM **12** I have lived here for a long time.

09:09PM **13** I've lived here for 32 years and have seen many

09:09PM **14** changes, but even with all these changes, this town

09:09PM **15** is still one of the most beautiful and desirable

09:09PM **16** towns in the area. If it was not, I don't think we'd

09:09PM **17** have any development whatsoever.

09:09PM **18** Progress happens and the more people on

09:09PM **19** this earth, the more land will be built upon.

09:09PM **20** Just to be absolutely clear, I have --

09:10PM **21** because I have read many statements on Facebook, on

09:10PM **22** social media. My decision is my own, not the Mayor

09:10PM **23** and Council's. And it is solely based upon the facts

09:10PM **24** that were presented here.

09:10PM **25** As a planning board representative, I

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09:10PM **1** have tried to weigh the pros and cons of this

09:10PM **2** application. And, honestly, other than losing

09:10PM **3** attractive wooded property, I do not see many other

09:10PM **4** cons, other than maybe the size being a bit large.

09:10PM **5** I would love to see this property stay

09:10PM **6** as it is, but I know that is an option that we don't

09:10PM **7** have.

09:10PM **8** And for me this application is the

09:10PM **9** lesser of many evils.

09:10PM **10** The pros, though, are many.

09:10PM **11** No impact to our schools. No impact to

09:10PM **12** our EMS. No impact to the traffic on Old Tappan

09:10PM **13** Road.

09:10PM **14** A great tax revenue source for the

09:10PM **15** town. COAH credits for future use. And a beneficial

09:10PM **16** need for our seniors.

09:10PM **17** Aside from the fact that the town will

09:10PM **18** still have the wetlands as open space and be able to

09:11PM **19** keep the historic house on Borough property, rather

09:11PM **20** than it deteriorating on someone else's property the

09:11PM **21** way it has been for the last few years.

09:11PM **22** One of the issues everyone voiced was

09:11PM **23** that so many trees are going to be cut down and the

09:11PM **24** wetlands destroyed.

09:11PM **25** Just to clarify some of the

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09:11PM **1** misinformation that has been posted on social media,

09:11PM **2** the wetlands will not be touched no matter what is

09:11PM **3** done there. It is protected land.

09:11PM **4** As for the trees being cut down, that

09:11PM **5** would happen no matter what construction were to take

09:11PM **6** place.

09:11PM **7** Since this is private property and the

09:11PM **8** land is so valuable, the owner of this property will

09:11PM **9** be developing it at some point, even if this

09:11PM **10** application does not pass.

09:11PM **11** And, yes, the property owner could

09:11PM **12** theoretically put three to four house development on

09:11PM **13** property.

09:11PM **14** I'm sure not -- that would not be as

09:11PM **15** lucrative as he would like, but that would still

09:11PM **16** entail the clearing of the property. Or the property

09:11PM **17** owner could just sit on the property for another two

09:11PM **18** years -- and I have been through all of this

09:12PM **19** affordable housing situation, waiting for our Housing

09:12PM **20** Element to expire in 2025 and seek a 66- to 100-unit

09:12PM **21** development for that property, which would be between

09:12PM **22** 12 to 20 units per acre. And I'm assuming it would

09:12PM **23** be the larger of the number.

09:12PM **24** I wonder how many people would like to

09:12PM **25** see that happen in town? Affordable housing is not a

09:12PM 1 friend to the municipality, and they don't care what
 09:12PM 2 the residents want. They just require you to put in
 09:12PM 3 additional housing no matter what the cost.
 09:12PM 4 Stormwater was another issue voiced.
 09:12PM 5 The state and the town takes stormwater management
 09:12PM 6 very seriously.
 09:12PM 7 Also, when you have an application this
 09:12PM 8 size, the requirements for stormwater management are
 09:12PM 9 much more stringent than would be for just a few
 09:12PM 10 houses.
 09:12PM 11 Our engineer is licensed and very
 09:12PM 12 familiar with the requirements and has worked with
 09:12PM 13 this applicant to make sure all requirements are met.
 09:12PM 14 Although I have heard many residents
 09:12PM 15 questioning the plan and the knowledge these
 09:13PM 16 engineers have, I have a lot of trust in our engineer
 09:13PM 17 and feel that he will require the applicants to do
 09:13PM 18 the best job for our town and for the Lakeview
 09:13PM 19 residents located behind the development.
 09:13PM 20 Traffic, yes, the applicant will cause
 09:13PM 21 some traffic when construction starts. But any
 09:13PM 22 construction being done there would do the same
 09:13PM 23 thing, whether it's a single-family house, a
 09:13PM 24 community center or any other kind of development
 09:13PM 25 that has been suggested to the board.

09:13PM 1 The truth of the matter is that after
 09:13PM 2 construction is done, there will be minimal traffic
 09:13PM 3 going in and out of this development and the traffic
 09:13PM 4 will not affect the school traffic, which is a huge
 09:13PM 5 inconvenience on Old Tappan Road.
 09:13PM 6 The applicant has been very open and
 7 candid with the planning board and they have tried to
 8 compromise with every issue the board and the
 9 residents have brought forth.
 10 The rendering of the facility is
 11 beautiful and fitting for that property.
 12 Even though the property is zoned
 09:13PM 13 residential, I don't see an issue with this
 09:13PM 14 application since the property abuts a huge church
 09:14PM 15 that sits right next to a shopping center on one
 09:14PM 16 side, and on the other side it has a huge natural
 09:14PM 17 buffer, which is the wetlands.
 09:14PM 18 Finally, I have no doubt that should
 19 the planning board deny this application, the
 20 applicant will appeal to the Superior Court of New
 21 Jersey, which will cost the town a good amount in
 22 legal fees and the applicant will end up getting
 23 exactly what they want without having to make any
 24 concessions that the town requested.
 25 That is why, in my humble opinion, this

09:14PM 1 is a good use for this property.
 09:14PM 2 That's all I have.
 09:14PM 3 CHAIRMAN WEIDMANN: Thank you.
 09:14PM 4 MR. KEIL: Yeah, the only thing I
 09:14PM 5 wanted to mention is that after the last meeting, we
 09:14PM 6 received an independent tree inventory, which I -- I
 09:14PM 7 took a look at and it looks like there's a
 09:14PM 8 substantial difference between the inventory that was
 09:14PM 9 offered up by the applicant and the independent
 09:14PM 10 survey.
 09:15PM 11 So if this application would be
 09:15PM 12 approved, I hope that we would somehow find a way to
 09:15PM 13 reconcile --
 09:15PM 14 MR. REGAN: I already have that written
 09:15PM 15 as a condition if it's approved. The number will be
 09:15PM 16 the Borough's number, not the applicant's.
 09:15PM 17 MR. KEIL: Okay.
 09:15PM 18 That's been agreed to.
 09:15PM 19 MR. REGAN: I don't know whether they
 09:15PM 20 agree to it or not, I really don't care.
 09:15PM 21 (Laughter.)
 09:15PM 22 MR. KEIL: That's all.
 09:15PM 23 MR. ELLER: Well, the first thing I
 09:15PM 24 want to say is, I don't know -- I don't know anything
 09:15PM 25 other than saying I'm sorry for Mike and what you had

09:15PM 1 to go through there.
 2 I think that whoever was involved with
 3 that should be ashamed of themselves. And it's
 4 absolutely pathetic.
 5 Everybody sits here, we're all
 6 volunteers. We don't get a salary, stipends,
 7 benefits, nothing. We sit here month after month to
 8 do this.
 9 Most of you I've never seen before.
 10 Some of you are here on a regular basis.
 11 We hear the applications for your pool,
 12 your driveway, your addition, your mother/daughter
 13 suite so your parents can move in with you.
 14 All those things go on constantly and
 15 we make sure that it happens in the best interest of
 16 the town, which is what we did here this time.
 17 And I think for anybody to go out on
 18 that kind of a limb and attack somebody personally
 19 and go after them, their family and anything else is
 20 absolutely disgusting.
 21 So whoever did that, I hope you at
 22 least, at a minimum, turn around and apologize to
 23 Mike.
 09:16PM 24 Second, now, after that I just want to
 09:16PM 25 move onto the rest of my comments regarding the

09:16PM 1 process, what we did here and how we go forward.
 09:16PM 2 First thing I'd say is I think that
 09:16PM 3 just going forward on some of our next hearings,
 09:16PM 4 especially big applications, we should consider
 09:16PM 5 having Bob and John open the hearings with some of
 09:16PM 6 what you did tonight. I think that would ease a big
 09:16PM 7 portion of what happened and the confusion as to how
 09:16PM 8 these proceed, what people can do, when to speak,
 09:16PM 9 when to ask questions, who to ask questions, of all
 09:16PM 10 those things was a cause of a lot of a frustration
 09:16PM 11 and hardship during these meetings.
 09:16PM 12 So I think that's something we should
 09:16PM 13 consider going forward just to make it easier.
 09:16PM 14 My next question is for Bob. If this
 09:16PM 15 application were approved, does that give -- does
 09:16PM 16 that have any impact or any bearing on another -- an
 09:16PM 17 another lawsuit?
 09:17PM 18 Say Lakeview turns around and sues CSH
 09:17PM 19 for whatever regarding the easements, the drainage,
 09:17PM 20 does our approval grant any weight to one side -- one
 09:17PM 21 way or the other.
 09:17PM 22 MR. REGAN: I don't think it does.
 09:17PM 23 Your approval relates to the board and the board
 09:17PM 24 only.
 09:17PM 25 MR. ELLER: Okay.

09:17PM 1 Is -- do either you or John, do you
 09:17PM 2 know any -- do you have any examples to demonstrate
 09:17PM 3 what the substantial reasons for a denial would be?
 09:17PM 4 Like how -- what is -- have you ever --
 09:17PM 5 can you give us any examples that you -- that have
 09:17PM 6 been upheld and recognized and affirmed by a court
 09:17PM 7 and affirmed the court's -- a board's decision.
 09:17PM 8 MR. SZABO: No, no. They're generally
 09:17PM 9 overturned.
 09:17PM 10 MR. REGAN: I can't either, because
 09:17PM 11 when it's an inherently beneficial use, you're in a
 09:17PM 12 different atmosphere, a totally different situation.
 09:17PM 13 MR. ELLER: Thank you.
 09:17PM 14 And then all I would say, honestly, I
 09:17PM 15 -- I tend to agree with everything Anna had to say
 09:17PM 16 here.
 09:17PM 17 I think that this is the least of a
 09:17PM 18 bunch of bad -- this is the least evil of a bunch of
 09:17PM 19 bad decisions or a bunch of bad outcomes.
 09:17PM 20 I don't think anyone here wants to see
 09:18PM 21 this developed, but by the same token I don't think
 09:18PM 22 there is any other even remotely better situation or
 09:18PM 23 better outcome that can happen than this because of
 09:18PM 24 the COAH -- because of the COAH situation and how
 09:18PM 25 this is going to go.

09:18PM 1 Over the last few years we've seen it,
 09:18PM 2 our settlement, we've beat that horse dead in the
 09:18PM 3 last 12 months talking about it and what goes on and
 09:18PM 4 why.
 09:18PM 5 I think that by putting this here now
 09:18PM 6 we are protecting the town. No one wants to see -- I
 09:18PM 7 would love to see a park there tomorrow, but I don't
 09:18PM 8 think that's ever going to be a viable situation.
 09:18PM 9 When these kind of things happen, I look at it and
 09:18PM 10 say, what would I do.
 09:18PM 11 I'm the property owner, as far as I
 09:18PM 12 know, that -- the purchase of this property was never
 09:18PM 13 brought to the town. I know the statement was made
 09:18PM 14 about a policy and an affirmative decision by the
 09:18PM 15 town. The town was never offered an opportunity to
 09:18PM 16 purchase this property to the best of my knowledge.
 09:18PM 17 This is a private transaction, a private sale.
 09:18PM 18 And if I was the property owner and
 09:18PM 19 this -- and this contract wasn't able to go through
 09:18PM 20 and the sale fell apart, I ask myself what would I
 09:18PM 21 do? Would I sit on it for two years and turn around
 09:18PM 22 and sell it to somebody who's going to put 60
 09:18PM 23 townhouses on it, probably make a lot more money or
 09:18PM 24 would I -- or would I try to turn around and sell it
 09:18PM 25 for half the price to make a park out of it?

09:18PM 1 I don't believe that's a viable option
 09:19PM 2 and a really -- I don't think that's ever something
 09:19PM 3 that can happen. I wish it would. I -- honest to
 09:19PM 4 God, I wish it would happen. No one wants to see it
 09:19PM 5 here. I'm third generation in this town. My mother
 09:19PM 6 still tells me about the dirt roads and when there
 09:19PM 7 was no traffic lights and the same farms Mike grew up
 09:19PM 8 with.
 09:19PM 9 I just don't think that there is any
 09:19PM 10 realistic better option for this. And it's truly
 09:19PM 11 unfortunate and the problem is it's a political
 09:19PM 12 problem. It is not a -- it is not something that we
 09:19PM 13 have really any control over.
 09:19PM 14 We can turn around and deny this right
 09:19PM 15 now. We go to court. All of our professionals are
 09:19PM 16 sitting here telling us they expect it to be -- our
 09:19PM 17 decision to be overturned if it's denied.
 09:19PM 18 I think that's a misuse of tax dollars.
 09:19PM 19 And it opens us up to a whole slew of other negative
 09:19PM 20 -- negative outcomes that I think would be far more
 09:19PM 21 detrimental to the town.
 09:19PM 22 So that's my opinion.
 09:19PM 23 Like I said, no one wants to see this,
 09:19PM 24 but I think it's, unfortunately, the best of a bad
 09:19PM 25 situation.

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09:20PM 1 MS. LOULLOUDIS: I'll just make a quick
 09:20PM 2 comment, because I know, Anna, you touched on a lot
 09:20PM 3 of things that I probably would have said as well.
 09:20PM 4 And Mr. Szabo, I want to thank you for
 09:20PM 5 your, kind of, breakdown of, you know, your
 09:20PM 6 perspective of the testimony.
 09:20PM 7 I was going to touch, actually, on
 09:20PM 8 those five key issues: Stormwater, traffic, the
 09:20PM 9 preservation of the trees, the house and what was the
 09:20PM 10 last one? I guess it was --
 09:20PM 11 VICE CHAIRMAN MAMARY: Historic.
 09:20PM 12 MS. LOULLOUDIS: What's that?
 09:20PM 13 The historic house.
 09:20PM 14 Those have always been, kind of, the
 09:20PM 15 things that I found were the key issues.
 09:20PM 16 Once I confirmed in an earlier hearing
 09:20PM 17 that there was nothing precluding the historic house
 09:20PM 18 from being taken down, to me that was kind of the key
 09:20PM 19 to everything, because it can be taken down. It can
 09:20PM 20 be developed as five single families.
 09:20PM 21 I'll just say that as a practicing
 09:21PM 22 engineer myself, I have sat on a planning board like
 09:21PM 23 this as a citizen. I've sat in Tom Skrable's chair
 09:21PM 24 for other towns. I've sat in Mr. Sehnal's seat.
 09:21PM 25 And your -- your position is the

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09:21PM 1 hardest, and I appreciate all of your team's very
 09:21PM 2 hard work.
 09:21PM 3 I also appreciate the public and their,
 09:21PM 4 you know, questions and their concerns, because I
 09:21PM 5 live in this town as well. And I validate a lot of
 09:21PM 6 your concerns.
 09:21PM 7 I also see it from the perspective of
 09:21PM 8 stormwater drainage and how the DEP works and how the
 09:21PM 9 regulations are. The regulations are going to be
 09:21PM 10 worse in about six months. And we're going to be
 09:21PM 11 designing for 2 feet above whatever the flood
 09:21PM 12 elevations are now. And we're going to be designing
 09:21PM 13 for storm events that are the year 2100, I think, or
 09:21PM 14 2050, I forget.
 09:21PM 15 So this is hurting developers. It's
 09:21PM 16 hurting towns. It's hurting residents. It's -- it's
 09:22PM 17 just the regulatory nightmare that we all have to
 09:22PM 18 deal with.
 09:22PM 19 So that's -- that's my two cents.
 09:22PM 20 MR. SCOZZAFAVA: I'm conflicted with
 09:22PM 21 what has happened here. I think the amount of time
 09:22PM 22 that we spent on this was good.
 09:22PM 23 I worked for a company, my entire
 09:22PM 24 career was in change management and nothing stays the
 09:22PM 25 same. And that's the part that the public and myself

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09:22PM 1 as a resident are -- are troubled by.
 09:22PM 2 When we moved to this town 22 years
 09:22PM 3 ago, it's changed dramatically. Most change is good,
 09:22PM 4 some change challenges you a little bit.
 09:22PM 5 Mr. Szabo, I'm sure when the 2016
 09:22PM 6 Master Plan was written and talked about senior
 09:22PM 7 housing, probably we thought about a different type
 09:23PM 8 of senior housing, because there are none.
 09:23PM 9 I am 66 years old. So I am in the
 09:23PM 10 demographic. And this residence is for people mostly
 09:23PM 11 in their mid-80s, but at 70 years old and 72 years
 09:23PM 12 old, there is no where in Old Tappan that I can go to
 09:23PM 13 that maybe will be on an apartment building, one
 09:23PM 14 level. So right now my wife and I sit alone in a
 09:23PM 15 4,000-square-foot house. Probably the smallest house
 09:23PM 16 in this town is 2,000. And some of my neighbors have
 09:23PM 17 moved to other towns because there was nothing for
 09:23PM 18 them in this town.
 09:23PM 19 I'm a little perplexed and concerned
 09:23PM 20 about how this is beneficial to the community when
 09:23PM 21 there are so many other facilities within the general
 09:23PM 22 radius of our town.
 09:24PM 23 They're -- the one thing that we've
 09:24PM 24 learned in this town with Bi-State plaza losing its
 09:24PM 25 supermarket, we can go anywhere in 10 minutes.

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09:24PM 1 So if somebody needed to go into an
 09:24PM 2 assisted facility in Closter or in Norwood or in
 09:24PM 3 Westwood, it's a short drive, you can get there.
 09:24PM 4 That's not something that we benefit
 09:24PM 5 just by having another one in our town.
 09:24PM 6 On the flip side, there's another
 09:24PM 7 aspect to that as well. My dad spent the last five
 09:24PM 8 years of his life in an assisted living and memory
 09:24PM 9 care facility. And I would have loved to have him
 09:24PM 10 here in our town.
 09:24PM 11 At that point of my life, I was
 09:24PM 12 traveling and on an airplane five days a week,
 09:24PM 13 sometimes gone three weeks at a time.
 09:24PM 14 So where did my dad go? He went up
 09:25PM 15 about 60 miles from here to be next to my older
 09:25PM 16 brother who had more of an opportunity to visit him.
 09:25PM 17 I feel the same is going to happen in
 09:25PM 18 our town because most of our children can't afford to
 09:25PM 19 live in this town.
 09:25PM 20 So when it's time for me at 86 years
 09:25PM 21 old, if that's -- I'm going 100, so don't worry about
 09:25PM 22 that.
 09:25PM 23 (Laughter.)
 09:25PM 24 MR. SCOZZAFAVA: But at the time that I
 09:25PM 25 need it, I'll be going to where my children are, in

09:25PM 1 that general vicinity. I hope they grow to be able
 09:25PM 2 to live here. I definitely don't want to leave this
 09:25PM 3 town, you know, when I get too old to maneuver
 09:25PM 4 through a 4,000-square-foot house.
 09:25PM 5 So I'm in the middle here. I don't
 09:25PM 6 think I have a vote. I'm an alternate.
 09:25PM 7 But the -- the traffic situation, I
 09:25PM 8 think, if you remember I brought up, because I do
 09:26PM 9 substitute crossing guard, the people in the morning
 09:26PM 10 that move their kids down Old Tappan Road are very
 09:26PM 11 efficient in doing that.
 09:26PM 12 This is obviously better than having a
 09:26PM 13 group of townhouses going on there.
 09:26PM 14 So change is tough, people, but it's
 09:26PM 15 not going to stop. And we just have to do our best.
 09:26PM 16 We can't lose the concessions that CSH has given us.
 09:26PM 17 Those are important.
 09:26PM 18 And if we need more, we should work
 09:26PM 19 through that as part of the resolution.
 09:26PM 20 MR. REGAN: Well, everyone will get a
 09:26PM 21 draft of the resolution before the meeting when it's
 09:26PM 22 scheduled, and if there is -- it is an approval, the
 09:26PM 23 conditions will be detailed with specificity.
 09:26PM 24 MR. SCOZZAFAVA: Thank you.
 09:26PM 25 MR. BEDIAN: I don't want to sound

09:26PM 1 repetitive.
 09:26PM 2 Most of, you know, my colleagues here,
 09:26PM 3 the board members covered, you know, pretty much
 09:27PM 4 everything I had in mind to say.
 09:27PM 5 I'm still conflicted. I didn't buy the
 09:27PM 6 beneficial use argument that much.
 09:27PM 7 In my opinion the historic house will
 09:27PM 8 not survive moving it from current location couple
 09:27PM 9 hundred feet to the parking lot here.
 09:27PM 10 I am a civil engineer registered in the
 09:27PM 11 State of New Jersey. I work for a construction
 09:27PM 12 company.
 09:27PM 13 One of my projects, I wasn't the
 09:27PM 14 project manager for that particular, you know,
 09:27PM 15 contract, Thank God, was an old firehouse in
 09:27PM 16 Peekskill, New York. You can Google it and you can
 09:27PM 17 see it, was to move the firehouse a couple hundred
 09:27PM 18 feet because it was in the way of building a highway.
 09:28PM 19 It did not survive. It was 200-year-old house like
 09:28PM 20 the one we have here. It's -- it's -- it's very,
 09:28PM 21 very difficult to move very old building.
 09:28PM 22 But, again, on the flip side of the
 09:28PM 23 coin is, it's a private property. There's nothing
 09:28PM 24 preventing any owner to knock it down and there's
 09:28PM 25 nothing we can do about it.

09:28PM 1 I know the COAH, you know, it's bearing
 09:28PM 2 on everybody's mind, but we're only getting ten
 09:28PM 3 credits. It is something, it's better than zero, but
 09:28PM 4 it's not -- it shouldn't be the major or -- or the
 09:28PM 5 factor to, you know, vote on this application.
 09:28PM 6 I hope it doesn't come to my vote,
 09:28PM 7 anyway I'm --
 09:28PM 8 (Laughter.)
 09:29PM 9 MR. BEDIAN: -- I'm the bottom of the
 09:29PM 10 pecking order here so...
 09:29PM 11 MR. SZABO: There's a seat right here.
 09:29PM 12 MR. BEDIAN: So I have more freedom to
 09:29PM 13 express my opinion.
 09:29PM 14 It -- it has been a journey. For me it
 09:29PM 15 was, you know, this was my first, you know, serving
 09:29PM 16 on a board, so it was -- it's a good experience.
 09:29PM 17 And, you know, really enjoyed, like,
 09:29PM 18 being here every -- every month, I would say, and the
 09:29PM 19 public engagement is commendable. And that's what
 09:29PM 20 makes Old Tappan a great, you know, community.
 09:29PM 21 And thank you.
 09:29PM 22 (Applause.)
 09:29PM 23 MR. ELLER: Can I have one more
 09:29PM 24 question to Bob?
 09:29PM 25 Just quick, if it goes to a lawsuit, if

09:29PM 1 it's denied, does -- is there any other factors that
 09:29PM 2 are similar to if it was an intervenor situation
 09:29PM 3 where any of the restrictions or anything are in
 09:29PM 4 question anymore, as far as the -- it would only
 09:30PM 5 pertain to the exact application, correct?
 09:30PM 6 MR. REGAN: That's correct.
 09:30PM 7 MR. ELLER: Nothing can be expanded or
 09:30PM 8 changed or altered --
 09:30PM 9 MR. REGAN: Right.
 09:30PM 10 MR. ELLER: -- as part of this --
 09:30PM 11 MR. REGAN: Is there's a denial, the
 09:30PM 12 decision would be to contest the board's denial,
 09:30PM 13 request that the court order the approval of the plan
 09:30PM 14 as submitted.
 09:30PM 15 MR. ELLER: Thank you.
 09:30PM 16 VICE CHAIRMAN MAMARY: So the
 09:30PM 17 conditions that you were going to write would now no
 09:30PM 18 longer be applicable?
 09:30PM 19 MR. REGAN: That's correct.
 09:30PM 20 VICE CHAIRMAN MAMARY: So there's no --
 09:30PM 21 MR. REGAN: Unless -- unless the court
 09:30PM 22 reads -- it's possible the court could -- the court
 09:30PM 23 reverses a denial.
 09:30PM 24 The court could send it back to the
 09:30PM 25 board for the imposition of conditions that are

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1 reasonable.

2 MR. SZABO: That's what happened in the

3 town that I was talking about the denial was sent

4 back --

5 MR. REGAN: With the court being able

6 to review those conditions.

7 MR. ELLER: Correct.

8 MR. REGAN: That's the remand.

09:30PM 9 That's in a denial situation.

09:30PM 10 MR. ELLER: But any of that leverage we

09:30PM 11 have is kind of out the window on some of the other

09:30PM 12 ones.

09:30PM 13 MR. REGAN: That's true.

09:30PM 14 Chairman WEIDMANN: Welcome to the

09:30PM 15 State of New Jersey.

09:30PM 16 (Laughter.)

09:30PM 17 CHAIRMAN WEIDMANN: There is no meeting

09:31PM 18 open to the public this evening because we had that

09:31PM 19 at the last meeting.

09:31PM 20 So what the board is going to do now is

09:31PM 21 consider the vote on this application.

09:31PM 22 Just so you know, there are seven

09:31PM 23 people eligible to vote.

09:31PM 24 The applicant must receive five votes

09:31PM 25 in the affirmative. If they don't receive five votes

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09:31PM 1 in the affirmative, the application is turned down.

09:31PM 2 So that's the way it works. You're

09:31PM 3 going to hear seven people up here vote, you know, up

09:31PM 4 or down, and depending upon the number of votes, they

09:31PM 5 need five votes in the affirmative, okay, for this

09:31PM 6 application to pass.

09:32PM 7 I'm just saying that, you want me to

09:32PM 8 make a --

09:32PM 9 MR. REGAN: That's absolutely correct.

09:32PM 10 CHAIRMAN WEIDMANN: Okay.

09:32PM 11 Anyway I will make a proposal in the

09:32PM 12 affirmative that this application be approved in what

09:32PM 13 we heard over the last 11 months.

09:32PM 14 MR. REGAN: Subject to all the

09:32PM 15 conditions that we have --

09:32PM 16 CHAIRMAN WEIDMANN: Subject to --

09:32PM 17 MR. REGAN: -- which are probably like

09:32PM 18 30 or 40.

09:32PM 19 CHAIRMAN WEIDMANN: Subject to all

09:32PM 20 conditions that the applicant must agree to.

09:32PM 21 And that the seven -- if it's in the

09:32PM 22 affirmative, the people that voted in the

09:32PM 23 affirmative, must read Bob's --

09:32PM 24 MR. REGAN: There will be a resolution.

09:32PM 25 CHAIRMAN WEIDMANN: -- resolution and

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09:32PM 1 agree to it.

09:32PM 2 So with that --

09:32PM 3 MS. HAVERILLA: Second.

09:32PM 4 CHAIRMAN WEIDMANN: I need a second.

09:32PM 5 MS. HAVERILLA: Second.

09:32PM 6 CHAIRMAN WEIDMANN: Second by Anna.

09:32PM 7 Do you have the list of the seven

09:32PM 8 people?

09:32PM 9 MS. FROHLICH: Yes.

09:32PM 10 CHAIRMAN WEIDMANN: Diane?

09:32PM 11 MS. FROHLICH: Yup.

09:32PM 12 CHAIRMAN WEIDMANN: Okay.

09:33PM 13 MS. FROHLICH: Ready?

09:33PM 14 CHAIRMAN WEIDMANN: Bill Weidmann.

09:33PM 15 Go ahead.

09:33PM 16 MS. FROHLICH: Mr. Maggio?

09:33PM 17 MR. MAGGIO: Yes.

09:33PM 18 MS. FROHLICH: Mr. Keil?

09:33PM 19 MR. KEIL: No.

09:33PM 20 MS. FROHLICH: Mr. Alessi?

09:33PM 21 MR. ALESSI: Yes.

09:33PM 22 MS. FROHLICH: Mr. Eller?

09:33PM 23 MR. ELLER: Yes.

09:33PM 24 MS. FROHLICH: Ms. Haverilla?

09:33PM 25 MS. HAVERILLA: Yes.

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09:33PM 1 MS. FROHLICH: Mr. Mamary?

09:33PM 2 VICE CHAIRMAN MAMARY: No.

09:33PM 3 MS. FROHLICH: Mr. Weidmann?

09:33PM 4 CHAIRMAN WEIDMANN: Yes.

09:33PM 5 The vote carries in the affirmative.

09:33PM 6 MR. REGAN: Five/two.

09:33PM 7 CHAIRMAN WEIDMANN: Five to two.

09:33PM 8 MS. PRICE: Thank you very much.

9 (Whereupon, this matter is concluded.)

10 Time noted: 9:33 p.m.)

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I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #50094914, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.



LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Notary Public
of New Jersey #50094914, Notary
Expiration Date December 3, 2023

Dated: 1/17/23

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