

The meeting was opened by **Ron Palmieri**, Chairman,

Mr. Palmieri read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

Present: Messrs. Palmieri, Diamond, Lomangino, Moafi, Battista and Rickert

Absent: Messrs. Slazyk & LaValle

Also present: Mr. Rauch, Board Engineer
Mr. Gleitz, Board Planner
Mr. Hirsch, Board Attorney
Mr. Gotfredsen, Board Secretary

Mr. Palmieri then read a statement of procedural guidelines.

QUICK CHEK CORPORATION	BA 2007 – 06
5119 ASBURY AVENUE	BLOCK 124 LOT 18
USE & BULK VARIANCES AND SITE PLAN APPROVAL	
CARRIED FROM OCTOBER 4, 2007	

Henry Kent-Smith, attorney for the applicant, came forward on behalf of his client.

Mr. Kent-Smith stated I'm here tonight to request a further extension of the Quick Chek matter and to apprise the Board of what we have been doing over the last four months. As the Board recalls, we began presentation of this application this summer and there was an objection filed by our neighbor, Asnek Hovnanian. After the second hearing, we had an opportunity to meet with the Hovnanians and their counsel. We have been over the last four months trying to work out the resolution of their objections by way of a comprehensive development plan that would include both parcels in a single project. We are making progress. Unfortunately that progress is painfully slow. I want to advise the Board that, given the nature of our discussions, one way or the other, the proposal will be modified, that will be presented to the Board. So, Mr. Chairman, I want to put on the record that we will be re-noticing for whatever date the Board elects to carry this matter to and we will provide new notice both by publication and certified mailing to all property owners. So I'm asking that the Board consider to carry this matter to whatever its next available date would be, again, subject to the stipulation of re-noticing.

Mr. Palmieri said usually on these applications when you ask to be carried, you know, the Board usually doesn't have any large problem with it and I know this application has been dragging on for quite a while...and normally I wouldn't ask for the representative from the applicant, like yourself, to come in front of the Board, but I think the Board needed to know some more information about what's going on. In all my years sitting up here, I don't remember us going to a fourth request to carry an application. I know we got some new Board members up here but, you know, there's got to be a reason or...at least in my mind to say "yes, we can grant it the first time." You know, things happen. And like you said, we had an objector involved with this and now we went to a second time and now you're talking with the objector about making some kind of joint effort to resolve things between yourselves as neighbors.

Mr. Kent-Smith replied absolutely.

Mr. Palmieri went on to say I was thinking a lot about this application and how difficult maybe or maybe not it is between you and your neighbor to come up with some kind of resolution to finalize...but four months.

Mr. Kent-Smith stated I know, Mr. Chairman, it's been painful, quite frankly, in that we had thought back in September that we had an agreement as to how to proceed. Some further issues arose, forcing us to further review and modify the plans that we were proposing. Again, I had contacted Mr. Guinco. We've had...I can't tell you how many meetings to try to work out the details. I have an agreement in writing right now that is being circulated to Hovnanian for their final review. That agreement will establish the terms. We have a concept that both parties have agreed to and literally the devil is in the details. You know, my client is extremely anxious to be in a position to proceed as am I and you know, God willing, that we will have this agreement and we'll be able to present the revised plans in front of this Board at its next meeting. However, given the history of this matter, I can't make any guarantees. I will say this...if we are not able to work the resolution of our issues out with Hovnanian by the end of this year, we will be proceeding on our own. I mean we simply can't afford to continue to just delay this.

Mr. Palmieri said I understand that at this point, and obviously because we have the unanswered question about whether you're going to resolve this or not with your neighbor, and we keep putting it on our calendar all the time...obviously the calendar gets full and all of a sudden...oh, like it happens, we're not going to hear the case so...and I know we've had some very large applications recently and obviously, you know our whole town is going through a whole zoning re-structure of Master Plan and all that good stuff too...so, I know what I want to say...I don't know if any of the Board members want to say anything.

Mr. Lomangino stated I feel bad for the situation bad for the situation that he's in. I think we've extended ourselves four times already...

Mr. Palmieri corrected him to say three times...this will be the fourth.

Mr. Lomangino said three times but it's not really us. We're here to serve the town. We're here to serve the people of the town. I just think it's been very unfair to other people who are waiting to get in front of the Board and get what they need to get done. So I think at some point we have to put a stop to it because it's costing other people, I'm sure, financial and time in these situations. Not so much for us because we're here every second Thursday anyway, it's just I don't think it's fair to other applicants that are getting pushed to later dates.

Mr. Palmieri asked do any other Board members have any feelings. Eric, I know you're the newest member of the Board.

Mr. Rickert replied this is the first I'm hearing of it.

Mr. Battista stated I just know that there were a couple previous Board meetings where people were really desperate to try and do stuff in here and the docket was full with things that people kept getting carried. So, these folks were desperately trying to come...even special dates and what not...and they couldn't get in because they were filled with people that kept motioning to extend. So I think three times was nice. I think four is a bit excessive.

Mr. Kent-Smith asked may I make a suggestion, Mr. Chairman.

Mr. Palmieri answered in the affirmative.

Mr. Kent-Smith said and that really is one of procedural...if the applicant withdraws... what we would ask is that we have application fees and escrow fees that have been paid and rather than forfeiting or having them refunded. Then having us turn right around and put in a new check...if the Borough would just maintain those fees on account. We could withdraw the application without prejudice and then once we have been able to work things out, simply re-submit. Both the fees and the escrows will already be paid to the Borough.

Mr. Palmieri stated obviously that's an administrative thing and I'm deferring to Doug a little bit on that.

Mr. Lomangino asked can we legally do that. I mean is that alright.

Mr. Palmieri replied I think going back that we've never really gotten to this point where in turn the Board is so inclined to say that we're not going to grant the application to be carried. We've usually gotten through it and made it to where we came up with some sort of resolution. So, obviously we actually doing new ground for the Board itself.

Mr. Kent-Smith said understood.

Mr. Gleitz asked if there are significant revisions, we're going to have to take another look at it.

Mr. Hirsch replied there's no question. I think the issue, and you're right, it's normally not your function to decide administratively what fees will or won't be paid...but obviously any escrows that have been paid to the extent the Engineer, the Planner...I wouldn't have done much myself other than maybe the technical review meeting...but to the extent they reviewed plans, that escrow is there to pay them and that money would come out. If there's going to be amendments to the plans, that escrow may have to be increased at some point...and I don't think the applicant is contesting that one way or the other. I think the only real issue is an application fee was paid. If you dismiss it, well, they don't normally get a refund of their application fee. They would have to file, potentially, a new application fee. So I think what the applicant is suggesting for two reasons...one, he doesn't have to file a second application fee for essentially the same case that he may re-file within a month. Secondly, it may save him some time, hopefully getting on the agenda somewhat quicker instead of starting over. I don't know if that's going to be the case that it's going to save you much time because you'll be off the agenda. You'll kind of being starting as if you had just filed anyway. I don't know that it will save you time. So I think really the only issue is whether it saves you a second application fee.

Mr. Kent-Smith said and that really, Mr. Chairman, is the crux of the matter.

Mr. Hirsch stated so I think your options are you either carry one more time with a drop dead date. ..you know, we'll put you on January something. If you don't show up that night prepared to go, we're doing to dismiss with prejudice that night without even any other consideration...or you vote to dismiss without prejudice tonight...which would require a re-filing and then you'd have to answer this question about the administrative application fee...whether you would allow them to keep that fee there and not lose that fee...under the somewhat odd circumstances of this case. I think that's the issues you have.

Mr. Palmieri said I was just having Doug look in the folder just to see what the application fees really were...just to give the Board maybe an idea if we're talking...like a homeowner is \$125 compared to what a corporation would have to pay for a commercial piece of property.

Mr. Hirsch asked Mr. Smith, so we're clear, I mean, are you suggesting to the Board that if the Board carried this...if they did...I mean you heard their comments...they don't seem to be inclined to but if they were to carry it to a date in January...that you would proceed regardless whether or not you have a resolution...

Mr. Kent-Smith replied that I can guarantee...

Mr. Hirsch continued or is there still a chance that you may not proceed...

Mr. Kent-Smith stated no, no, no, no. I can guarantee that if this gets carried to the January meeting, we are going to proceed...period.

Mr. Hirsch said I just want to make sure the Board understands what you're suggesting tonight.

Mr. Kent-Smith stated I mean we have had an agreement and then that agreement was modified and we had another agreement and those modifications now are being circulated.

Mr. Hirsch asked but would you be prepared to...

Mr. Kent-Smith interrupted saying we will be prepared, absolutely. I'll put it on the record.

Mr. Hirsch said no, no, let me finish. Do you believe you would have the modifications submitted in sufficient time for our experts to review...if you were on in January.

Mr. Kent-Smith asked how many weeks is that.

Mr. Palmieri stated just to follow along with Mr. Hirsch, the first available date in January is January 17th. So obviously when they get done with it, we have to get it. Obviously, the normal case is ten days prior to the meeting date.

Mr. Hirsch added well, they'd like to get it more than that but statutorily that's the minimum.

Mr. Palmieri continued but obviously we're talking...

Mr. Gleitz said it's better to have it at least two weeks so we have a week to review it and get you a memo and then you have a week for your packet to look at it.

Mr. Kent-Smith replied that's not a problem at all.

Mr. Gleitz stated it's more helpful for you guys to have our memos while you're looking at your packet.

Mr. Palmieri said but obviously the question's going to be that you're going through with your neighbor and say you guys don't come to a resolution on this until December 28th and then say "okay, we're going forward on this." So are you going to have enough time within that time to re-do all the plans, revise everything to do it with the new...

Mr. Kent-Smith replied the answer is yes because we've already been in that process of engineering. I mean this is not something that's just...we've been revising plans, going back and forth. We've modified...you know, one of the problems was we had to modify some of the building layouts from what we had originally conceived, just to address some issues raised by our neighbor, so...

Mr. Battista asked is there a possible way we can put this conditional...because clearly what we need is...if I can get that back into that date so if by...December 10th, you don't have an answer, then you're done. If we can give you that date and say your extension to the 17th is conditional upon you telling you're done...and if you're not done, you're done.

Mr. Kent-Smith replied yes, we can agree to that.

Mr. Palmieri said I'm just going to ask...

Mr. Battista stated I'm not saying whether we would do or not, I'm just saying could that be done.

Mr. Kent-Smith replied yes, we could do that.

Mr. Palmieri said but tonight's the night we have to make that decision.

Mr. Hirsch stated first of all, the applicant has indicated he's going to re-notice, regardless of what you do...as I understand it. I mean even if we carry it, we're not just going to announce it tonight, he's going to re-notice everyone in any event. It seems to me the easiest way to do is simply indicate that you're...a motion if you want to do this...a motion to carry it to the January date with the understanding that if the applicant is not prepared to proceed and start presenting the application that night, it will be dismissed without prejudice that night...instead of setting some other deadline, you know, before that that he's got to have some kind of...because what he's saying is even if he doesn't have an agreement with Hovnanian, he's going to go ahead. So, I don't know that you say we want to know you have an agreement. They may not...but he's still going to go ahead is what he's representing. So, if you make the condition that he doesn't go ahead, it's dismissed without prejudice. That probably is the simplest way.

Mr. Palmieri said I've got a question. If we go ahead with this...say Hovnanian comes back and you guys can't come to an understanding and you're thinking you're coming to the 17th to present on your own...and then all of a sudden ten days or five days before this meeting, they go "you were right the first time. We're going to..."

Mr. Kent-Smith stated we're going to have to proceed.

Mr. Palmieri said but you're going to proceed based on...

Mr. Kent-Smith stated I have to proceed, by law, based on the plans that are on file with the Board a minimum ten days in advance of the hearing...and we can actually agree to submit in advance even further than that. I can agree right now that January 3rd is the date that would give two full weeks of review time for both staff and the Board and that that's going to be the plan that's going to be presented and heard on the 17th...and if Hovnanian comes back. tough tooheys, you know.

Mr. Lomangino said it's just my feeling but if we're going to do anything, they don't get put back on until anybody we already have on...not just on this agenda but his next first date should be after our first completely open date, not sharing it with somebody, not...if that's February or March, then that's when it is.

Mr. Palmieri stated well, that's why I'm saying the 17th currently is the next clear, open, full date.

Mr. Lomangino said then I would condition that that should one of these people that are prior on, they go first before them.

Mr. Palmieri stated but if we say tonight we're carrying it based on the stipulations that were mentioned...they're on for the 17th. That's why...and this would be the fourth time we're carrying this thing.

Mr. Lomangino said I can see like a homeowner come on who's been on now and he doesn't get a chance to get on for his sidewalk...because we got all these big things in front of us...and then January 17th they come on and they go and there's that guy who's been waiting to hear since now about his sideyard or pool...

Mr. Palmieri stated anybody who'd be coming in front of the Board would have to meet the same requirements: ten days prior and all that other stuff.

Mr. Lomangino said that's why I'm saying anybody who's on already.

Mr. Hirsch stated I think you've got a couple applications here tonight. I don't think you should waste a lot of time. You guys have thought it through. You know this case. You either indicate you're going to dismiss it with prejudice...I mean without prejudice (laughter)...I guess I want to get rid of this, Henry. I'm sorry...without prejudice and make the decision on the application fee or just indicate you're going to carry it but he's not prepared to go forward on the carry date, it will be dismissed with prejudice on that night. I mean that's your choice. Let's not kill it. Pick one and move it so we can get to the other applicant.

Mr. Palmieri said my feeling right now...and I'll just let the Board know how I feel...I think it's time that, you know, we dismiss and just go forward and let him re-apply when it's time...even though we're trying to do all this stuff...not that I'm picking on the applicant. We've been through it three times. I feel we're done.

Mr. Hirsch asked does the Board have any objection about allowing the application fee to remain so if they refile, they don't have to file another application fee.

The Board indicated it did not have any objection.

Mr. Hirsch said so the Board has no objection just as long as the Administration finds no other ministerial objection to that.

A motion to dismiss without prejudice the Quick Chek application was offered by Mr. Lomangino and seconded by Mr. Moafi.

ROLL CALL

Yes: Messrs. Lomangino, Moafi, Palmieri, Diamond, Battista, and Rickert

No: None

Abstain: None

At this time Mr. Hirsch read the resolution for DeLisa Realty into the record.

A motion to adopt the resolution in the matter of DeLisa Realty was offered by Mr. Diamond and seconded by Mr. Battista.

ROLL CALL

Yes: Messrs. Diamond, Battista, Palmieri, Lomangino, and Moafi

No: None

Not eligible: Mr. Rickert

At this time Board member John Slazyk arrived at the meeting.

BOROUGH PROPERTY, LLC BA 2007 – 13
SHAFTO ROAD BLOCK 138 LOT 2, BLOCKS 139.01 – 139.10,
BLOCK 144 LOT 4.02 & BLOCK 145 LOT 26.01
MAJOR SUBDIVISION, USE & BULK VARIANCES AND SITE PLAN APPROVAL
CARRIED FROM OCTOBER 18, 2007

Peter S. Falvo, Jr., attorney for the applicant, came forward on behalf of his client.

**SEE ATTACHED TRANSCRIPT FROM CERTIFIED SHORTHAND REPORT
LISA NORMAN OF WEST LONG BRANCH, NJ.**

1 TINTON FALLS ZONING BOARD
2 COUNTY OF MONMOUTH - STATE OF NEW JERSEY

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5 REGULAR MEETING FOR: TRANSCRIPT OF
6 PROCEEDINGS
7 THURSDAY, DECEMBER 6, 2007

6

8 BOROUGH PROPERTIES, LLC

7 -----

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 8:10 p.m.

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10

11 BEFORE:

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13 RONALD PALMIERI, Chairman
14 RONNIE BATTISTA
15 MATT DIAMOND
16 SAYED MOAFI
17 JOHN SLAYZK
18 ERIC RIKERT

16

17

18 ALSO PRESENT:

19 THOMAS HIRSCH, ESQ., Board Attorney

JEFF RAUCH, P.E., Board Engineer
20 PAUL GLEITZ, P.P., Board Planner
DOUGLAS GOTFREDSSEN, Board Secretary

21

22

23

24 LISA NORMAN, CSR
15 Girard Avenue
25 West Long Branch, New Jersey 07764
732.229.5897

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

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3 ANSELL, ZARO, GRIMM & AARON, P.C.
1500 Lawrence Avenue - CN 7807
4 Ocean Township, New Jersey 07712
732.922.1000

5 BY: PETER S. FALVO, JR., ESQ.
Attorneys for the Applicant

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1 EXHIBITS

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EXHIBIT NO. DESCRIPTION PAGE NO.

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A-15 Composite Plan 8

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10 A-17 Document entitled, "Potential 108
Items for Auction"

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1 CHAIRMAN PALMIERI: Next is Borough

2 Properties.

3 MR. LOMANGINO: I need to step down.

4 CHAIRMAN PALMIERI: Is everybody

5 eligible? I think everybody was here -- yes.

6 MR. FALVO: Was Mr. Rickert here for

7 August?

8 MR. GOTFREDSEN: He had the transcript.

9 CHAIRMAN PALMIERI: I know Mr. Slayzk

10 indicated he should be here quarter after eight.

11 MR. FALVO: Okay.

12 MR. HIRSCH: I don't know if we would

13 get to a vote, but he wouldn't be eligible to

14 vote.

15 MR. FALVO: Mr. Lavalley will not be

16 here?

17 CHAIRMAN PALMIERI: Correct.

18 MR. HIRSCH: Mr. Slayzk picking up the
19 15 minutes will not be a big deal, but he won't
20 be eligible tonight to get to a vote.

21 MR. FALVO: At the December 20th
22 meeting, Mr. Palmieri will be missing.

23 CHAIRMAN PALMIERI: That is correct.
24 And so is Mr. Slayzk, actually.

25 MR. FALVO: Should we wait 10 minutes?

6

1 CHAIRMAN PALMIERI: Let's go off the
2 record then.

3 (Whereupon, a five-minute break was
4 taken.)

5 (Whereupon, John Slayzk enters the room
6 at 8:20 p.m.)

7 CHAIRMAN PALMIERI: Let's go back to
8 Borough Properties, LLC. Mr. Falvo?

9 MR. FALVO: Thank you, Mr. Chairman and

10 Members of the Board, Peter Falvo, attorney for
11 the Applicant, Borough Properties. At the
12 October 18th meeting, the transcript was replete
13 on going over the letter of the engineer. Many
14 items were addressed or stipulated that we
15 comply with them.

16 What I'd like to do, in an effort to
17 move the application along, I'd like to go
18 through my traffic expert and my planner first
19 and then call the engineer back on, because I
20 believe as a result of the comments rendered by
21 some of the Board Members at the last meeting,
22 our review of the most recent letter, I think
23 that the engineer's testimony may be a lot
24 shorter than anticipated because the word
25 "comply" will be stated over and over, including

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1 with reference to sidewalks and curbs.

2 What I'd like to do is call Mr. John
3 Rea, traffic expert. I apologize for my sinus

4 condition, because it's driving me nuts.

5 CHAIRMAN PALMIERI: Mr. Falvo, was Mr.

6 Rea sworn in?

7 MR. FALVO: No.

8 (Whereupon, John Rea, P.E., is sworn and

9 testifies as follows:

10 MR. REA: I am a principal with

11 McDonough and Rea Associates traffic and

12 transportation engineers, 1431 Lakewood Road,

13 Manasquan, New Jersey.

14 MR. FALVO: For the purposes of

15 continuity, we have an exhibit that's been --

16 MR. HIRSCH: Hold on. Mr. Rea is being

17 offered as an expert in traffic engineering. I

18 believe he has been qualified before this Board,

19 so the Board has no objection. We will accept

20 Mr. Rea as an expert in the field of traffic

21 engineering.

22 CHAIRMAN PALMIERI: Sounds good.

23 MR. SLAYZK: Yes.

24 MR. FALVO: We have an exhibit that has

25 been put on the easel by our engineer, which is

REA - Direct

1 an updated exhibit, which he will testify to
2 later. For the moment, if we can mark that as
3 A-15, because I believe Mr. Rea may refer to it
4 as part of his traffic testimony.

5 (Whereupon, A-15 - Composite Plan, was
6 received and marked into evidence.)

7 CHAIRMAN PALMIERI: Mr. Falvo, we don't
8 have a copy of that one, do we?

9 MR. FALVO: I'm going to hand it out.
10 It's a composite plan.

11 MR. HIRSCH: Does it have a date?

12 MR. FALVO: It's originally dated
13 July 31, 2007, revised to November 21, 2007.

14 MR. HIRSCH: Thank you.

15 DIRECT EXAMINATION BY MR. FALVO:

16 Q. Mr. Rea, at the request of the
17 Applicant, did you undertake an evaluation from the
18 traffic point of view relative to the proposed
19 subdivision, as well as the proposed auction facility

20 that is sought to be located in one of the subdivided
21 lots?

22 A. Yes, I did.

23 Q. Could you please relate to the Board the
24 scope of your study and the findings and conclusions
25 that you arrived at? In conjunction with that, you

9

REA - Direct

1 prepared a Traffic Impact Study; is that correct?

2 A. I did. It's dated October 18, 2007.

3 Q. That has been submitted as part of this
4 application?

5 A. Yes.

6 MR. FALVO: We can mark that as A-16 in
7 evidence.

8 (Whereupon, A-16 - Traffic Impact Study,
9 was received and marked into evidence.)

10 Q. If you would proceed, in the Traffic
11 Impact Study, it contains a lot of diagrams and
12 turning movements and studies -- turning counts, as
13 well as traffic counts; is that correct?

14 A. It does.

15 Q. Would you please relate to the Board the
16 nature of your study and what you examined before
17 coming to a conclusion with regard to this
18 development?

19 A. Okay. The traffic study is dated
20 October 18, 2007. I believe it is a fully-detailed
21 Traffic Impact Study, which takes a look at the
22 impact that will result from the subdivision,
23 assuming uses are eventually constructed within the
24 lots that are subdivided that are consistent with
25 typical light industrial uses. I had to make some

10

REA - Direct

1 assumptions and I'll get into more detail. Eight
2 lots are being created and one will be for storm
3 water management. Another one of the lots, as you
4 know, is being proposed for the auction house, which
5 the Board is also considering for site plan approval.
6 I will discuss that in more detail as well. There
7 would be six remaining lots that would be for

8 industrial development.

9 The scope of the traffic study, I
10 believe, was a pretty far-ranging scope. We've made
11 numerous visits to the site to review existing
12 traffic conditions in the area. We've conducted a
13 series of quote, manual and automatic traffic counts
14 in the area. We've conducted traffic counts at the
15 two signalized intersections closest to the site. To
16 the north, it would be Shafto Road and Asbury Avenue.
17 To the south, it would be at the intersection of
18 Shafto Road and New Jersey State Route 33, which is
19 actually in Wall Township. We also conducted traffic
20 counts at the access to the existing facility,
21 because as you know there is activity there. There
22 is some recycling activity there. I believe Mr.
23 Mazza testified at length to that at the last
24 meeting.

25 We also installed an automatic traffic

1 recorder across Shafto Road and conducted

2 approximately two weeks' worth of traffic counts.
3 Several hundred hours of continuous traffic data was
4 collected. Before I get into the nuts and bolts of
5 the study, let me give the Board some numbers. I
6 think they will be important as I do my testimony in
7 understanding the impact from both the auction house
8 and the subdivision.

9 On Page 9 of my traffic study, and I'm
10 sure you don't have that available, but I'll go over
11 the numbers with you, the average daily traffic flow
12 on Shafto Road on a weekday is 13,700 vehicles per
13 day. On a Saturday, which is going to be the peak
14 day for the auction house, the average daily traffic
15 is 9,500 vehicles per day. You can see, from those
16 numbers, that Saturday traffic volume overall, on a
17 24-hour basis, is more than 4,000 vehicles, less than
18 it is on a weekday.

19 Typical morning peak hour, which occurs
20 between 7:30 and 8:30 out on Shafto Road has 1,340
21 vehicles traveling past the site driveway in two
22 directions, north and southbound. The p.m. peak hour

23 is a total of 1,250 vehicles traveling north along
24 Shafto Road. The Saturday peak hour, which occurs
25 basically during the middle of the day, basically

12

REA - Direct

1 consistent with when the auction house will be
2 operating, has a total two-way traffic volume of 800
3 vehicles past the site access on Shafto Road. So,
4 it's clear, from the automatic traffic counts that we
5 had conducted, that Saturdays are a little bit less
6 busy than weekdays and the Saturday peak hour itself
7 is also 400 to 500 vehicles less than a typical
8 weekday morning peak commuter traffic on Shafto Road.

9 In order to make an estimate how much
10 the subdivision will generate, what we needed to do
11 was take a look at the areas of the lots that are
12 being created and take a look at a worst-case
13 scenario, one in which the lots were all developed
14 with buildings that were at the maximum floor area
15 ratio which is allowed in the manufacturing district
16 and that floor area ratio is 0.2. Taking a look at

17 that floor area ratio and calculating the maximum
18 size on the building, that could be placed on the
19 remaining six lots, understanding that one is being
20 used for storm water management and one is being used
21 for the auction house, we did calculate a potential
22 for 263,000 square feet of building area to result
23 from this subdivision, if it was built out to its
24 maximum.

25 We then went to the Institute of

13

REA - Direct

1 Transportation Engineer's Trip Generation Manual and
2 calculated morning and afternoon peak hour trips for
3 an industrial park of that size. Those numbers came
4 out as follows: For the morning peak hour, we would
5 have an inbound traffic flow of 181 vehicles,
6 outbound flow of 40 vehicles for a total of 221. For
7 the p.m. peak, we would have an inbound flow of 51,
8 outbound of 194 and a total of 245. Those numbers
9 were then distributed north and south along Shafto
10 Road in accordance with existing traffic patterns

11 basically at the existing driveway and existing
12 patterns on Shafto Road in order to get a feel for
13 how traffic would be distributed.

14 CHAIRMAN PALMIERI: Mr. Rea, I was
15 reading your report. You are on Page 10 right
16 now?

17 MR. REA: Exactly, yes.

18 A. We basically assumed 45 percent of the
19 traffic would be generated to and from the north,
20 55 percent to and from the south and again that's
21 based on existing patterns of the driveway and
22 existing patterns on Shafto Road. We looked at a
23 design year of 2011 for the subdivision. We also
24 included other known projects in the area that we
25 were aware of and added that traffic to the

14

REA - Direct

1 background traffic growth, including some expansion
2 to the Monmouth Shores Corporate Park in Wall
3 Township, Collingswood Village Square, in Wall
4 Township, by the WaWa, the recycling expansion of the

5 Mazza property, which was previously considered and
6 also the approved Clayton Concrete application over
7 on Commerce Drive. Then, on top of all of that, we
8 also included a background traffic growth rate of
9 two percent per year in accordance with historical
10 NJDOT data for the area. If anything, I think we've
11 probably gone to great lengths to make sure that we
12 accounted for all of the other external background
13 traffic that would be on the area roadway network for
14 the design of the project.

15 We then looked at the impact that this
16 proposal would have on those two aforementioned
17 signaled intersections, in terms of the levels of
18 service created and also at the sight driveway.
19 Moving from north to south, I'll go through those
20 numbers. At the intersection of Shafto Road and
21 Asbury Avenue for the 2011 design year, that
22 intersection will operate at an acceptable level of
23 Service B, during both the morning and afternoon peak
24 hours, even with this project's impact.

25 MR. HIRSCH: Is that "B"?

REA - Direct

1 MR. REA: "B" as in "boy."

2 A. At the sight driveway, which is an
3 un-signalized T-intersection where our traffic comes
4 out, that intersection will operate at level of
5 Service F, which is technically an unacceptable
6 situation for an un-signalized driveway during the
7 2011 design year. I want to stress that is at full
8 build out. I will talk about that in a little more
9 detail. Down at the intersection of Shafto and Route
10 33, that current intersection operation is a Level of
11 Service F. I'm sure everybody is familiar with the
12 intersection. You've got the jug handle for traffic
13 going on eastbound on 33 going north for Shafto, you
14 have a dedicated left-turn lane for people traveling
15 westbound on 33 to make a left on Wyckoff. The
16 intersection gets locked up there on peak hours.
17 It's operating at Level of Service F.

18 The good news is Monmouth County has
19 sponsored a project which is being done in
20 cooperation with the New Jersey Department of

21 Transportation. At any rate, they have a
22 major-improvements project that has been designed and
23 awaiting final funding. It should be happening
24 within a year or two. When that is done, there will
25 be a significant widening done to the intersection.

16

REA - Direct

1 The far side jug handle will be removed, dedicated
2 left-turn lanes will be provided for and also the
3 northbound and southbound approaches, on Shafto Road
4 and Wyckoff Road, will be expanded by one lane on
5 each approach. The net result being that the
6 intersection will improve to a more acceptable Level
7 of Service D during the morning and afternoon peak
8 hours and that would include our traffic.

9 Really, the crux of the issue becomes
10 what do we do with our sight driveway which is
11 projected to operate at a Level of Service F at full
12 build out? At some point in time, a traffic signal
13 will be warranted at our access to Shafto Road. I
14 will tell you that the intersection is appropriately

15 set up for the installation of a traffic signal at
16 some point in the future. You already have a
17 dedicated southbound left turn lane at our sight
18 driveway which can be used in the final intersection
19 design. There are two northbound lanes, two
20 southbound lanes on Shafto Road. In addition to that
21 dedicated southbound left turn lane, we have two
22 dedicated lanes out of our access.

23 What I think needs to happen, in a case
24 like this, and I've been involved in several of them
25 over the years, when you have an industrial

17

REA - Direct

1 subdivision, and the Applicant is just asking for the
2 subdivision today, not knowing who the tenants may be
3 in the future, what has to happen is as site plan
4 applications come in for the subdivided lots, and we
5 know a little bit more about who the tenants are
6 going to be, what the uses are going to be and how
7 much traffic they are going to generate, you take
8 traffic studies for each of those site plan

9 applications and at some point you will generate
10 enough traffic at the intersection to get to the
11 point where Monmouth County and the DOT will approve
12 a traffic signal installation.

13 Quite frankly, we are not there yet. We
14 won't be there with the auction house. We still need
15 probably to get several of these lots in with site
16 plan applications generating more traffic, so that we
17 can meet the minimum threshold and requirement that
18 the County and the State will require before they
19 approve a traffic signal. I do ultimately believe
20 that a traffic signal will need to be installed at
21 the intersection as the site plans for the subdivided
22 lots come before the Board.

23 MR. HIRSCH: Mr. Rea, I realize this is
24 based on certain suppositions you are making,
25 but is there some point that the Level of

18

REA - Direct

1 Service F is reached at the driveway? I mean,
2 you did it based on an industrial park, assuming

3 maximum build out of 263,000-whatever square
4 feet. What is the point? You said it's not the
5 auction house. It's not the first lot.

6 MR. REA: That is the great unknown, Mr.
7 Hirsch. That is why we need, when the Board
8 considers this, it needs to consider how it
9 deals with that situation. I do believe, at
10 some point, we will reap Level of Service F and
11 we will get to a point where a signal will be
12 warranted.

13 Let me back up a minute. The current
14 Level of Service at the driveway is D for the
15 morning and C for the afternoon. It's not going
16 to change as a result of the auction house. We
17 have a little ways to go before we get to an F
18 Level of Service, but it's very important to
19 understand that a Level of Service F, at an
20 un-signalized driveway doesn't mean that a
21 signal is warranted. You still need to have a
22 minimum amount of traffic coming out of the
23 sight driveway to Shafto Road before the County

24 and the State will approve the traffic signal.

25 There is a manual that is called the

19

REA - Direct

1 Manual on Uniform Traffic Control Devices, and

2 it sets forth the criteria under which the

3 traffic signal is warranted. There is minimum

4 traffic volume thresholds that need to be met.

5 We're not there yet. We are not going to be

6 there at the auction house. That's why you need

7 to take a look at the site plans for the

8 subdivided lots as they come in. It could

9 happen within the first couple of lots. It

10 could happen towards the end of the subdivision.

11 It depends on the uses. It depends how much

12 traffic they will generate and we're not at that

13 point right now. I can't give you a definitive

14 answer. A lot of other things are happening,

15 too, because over time, of course, the

16 background traffic growth on Shafto Road is

17 increasing. Those other projects that I
18 mentioned, and maybe some others that are out
19 there as well, will generate additional traffic
20 flows on Shafto Road. It is a fluid situation,
21 but the signal is not warranted initially. It
22 ultimately will be, in my opinion.

23 As far as the auction house is
24 concerned, Mr. Mazza testified, at length again
25 at the last meeting, that will primarily be a

20

REA - Direct

1 Saturday activity when the daily traffic flow on
2 Shafto Road is approximately 4,000 vehicles less
3 than it is on a weekday. The peak hours on
4 Saturday, again, are significantly better than
5 they are during the week. At 800 vehicles in
6 two directions, as opposed to 1,300 vehicles, it
7 is my opinion that the auction house will
8 function acceptably understanding there may be,
9 over a period of several hours, several hundred
10 people coming in and several hundred people

11 going out, that that activity will occur over a
12 time span of, I believe, the auction will
13 actually start accepting people at 8:00 in the
14 morning on Saturday, but the primary activity
15 will occur between 10:00 in the morning and 1:00
16 in the afternoon. You are going to have the
17 activity, on Saturday, spread out between 8:00
18 in the morning and maybe 2:00 or 3:00 in the
19 afternoon, with most of the activity
20 concentrated between 10:00 and 1:00.

21 What I see happening at the site access
22 is that I do believe the site access will
23 operate acceptably. A worst-case scenario would
24 be everybody decides to leave the auction at the
25 same time and this becomes a regular thing that

21

REA - Direct

1 happens on a Saturday. I think in a situation
2 like that a signal wouldn't be warranted,
3 because you are talking about one hour on a
4 Saturday where you need traffic control. I

5 think, in a situation like that, should it be
6 warranted, the Applicant would probably need to
7 hire a Tinton Falls police officer to control
8 traffic, as is done during special events, you
9 know, all across the County. You occasionally
10 will need that assistance of a traffic officer
11 to let traffic out during peak hours. It
12 happens at churches, Monmouth County Fair and
13 special events. This could be one of those
14 situations. I think that's something that might
15 be a possibility, on a Saturday afternoon, when
16 the auction house let's out about 1:00. I'm not
17 sure it's going to be needed, but that
18 possibility is there. It's something that you
19 need to take into consideration.

20 CHAIRMAN PALMIERI: Who would control
21 that? Would that be a function of the Town?

22 MR. REA: Usually, it's an agreement
23 worked out between the Applicant, in this case
24 Borough Properties, LLC, and the Borough that
25 would basically have the Applicant pay for the

REA - Direct

1 time of the police officer. It's been done in
2 other towns in cases like this where you may
3 occasionally need a traffic officer to control
4 traffic for an hour or two.

5 CHAIRMAN PALMIERI: I guess my question
6 was more of how did it get triggered?

7 MR. REA: Usually by the police
8 department saying -- you will basically know.
9 Let's put it that way. The police will say,
10 hey, we are seeing back-ups and queue of 15
11 vehicles waiting to get out, we think now is the
12 time. It's usually something that is left up to
13 the discretion of the police. That basically
14 summarizes the traffic study. I do believe a
15 lot of work has gone into it. A lot of traffic
16 counts were conducted. We did look at the two
17 signalized intersections. I think the main
18 thing that came out of the study was the
19 potential future need for the traffic signal as
20 things get developed within the subdivided

21 property.

22 Q. Mr. Rea, Mr. Mazza also testified that
23 perhaps in the summertime if the Saturday auction
24 seems to not draw enough people they may shift it to
25 Friday. If they did shift it to a Friday, do you

23

REA - Direct

1 have an opinion as to what impact that would have?

2 A. Well, as long as the auction was held
3 during the middle of the day, and not during peak
4 commuter hours, where it would be after 4:00 in the
5 afternoon, the impact would be similar to what it
6 would be on a Saturday. You might need a traffic
7 control officer on those one or two Fridays. That
8 would probably be the extent of it.

9 Q. With regard to the issue of the traffic
10 control officer, the Applicant is willing to
11 stipulate that if a condition -- if the approval is
12 granted, and that is a condition, that it would be at
13 the discretion of the police department as to when a
14 traffic control officer would be required and the

15 cost of that traffic control officer will be born by
16 the Applicant, if the auction gets to be that
17 successful.

18 MR. BATTISTA: I know the auction is
19 already taking place. As part of your study,
20 did you do any --

21 MR. REA: The traffic counts we
22 conducted on Shafto Road did include whatever
23 traffic was being generated by the auction. I
24 guess we theoretically could have taken a credit
25 from that and subtracted it, but we didn't do

24

REA - Direct

1 that.

2 MR. BATTISTA: Do you know what nights
3 those auctions were held?

4 MR. REA: I don't.

5 MR. BATTISTA: Do you know how often
6 they were held?

7 MR. REA: I'm not sure it's every
8 Saturday. It might be once a month, if I'm not

9 mistaken. About once a month it occurs.

10 MR. BATTISTA: Thank you.

11 MR. SLAYZK: Usually, with these

12 auctions, the traffic flow is kind of -- it's

13 not at one time in and all at one time out.

14 I've been to these auctions before. It's

15 normally, you know, I mean the guy is looking at

16 a piece of equipment. That piece of equipment

17 has been auctioned off and he is out of there.

18 The flow of the traffic is staggered.

19 MR. REA: I'm looking at a worst-case

20 scenario. It may turn out the traffic control

21 officer is not needed, because of that factor.

22 If control is needed, the Applicant is aware of

23 that and he is willing to pay for that service.

24 MR. MOAFI: This report, was it

25 submitted to Monmouth County for comments?

25

REA - Direct

1 MR. REA: We did have to submit it to

2 the County planning board. If it hasn't been,

3 it will be submitted to the County. It is a
4 County road.

5 MR. MOAFI: Do you know if these numbers
6 are consistent with what Monmouth County has in
7 their records?

8 MR. REA: I'm sure they are. We did
9 extensive traffic counts out on Shafto Road. I
10 can tell you they are consistent with some of
11 the other traffic studies that other consultants
12 have done on Shafto Road and the County will
13 look at that in detail. I can only tell you
14 that having done traffic work for the last 20 or
15 25 years in Monmouth County.

16 MR. MOAFI: Did you review their
17 records?

18 MR. REA: No. I think their records may
19 be older than our traffic counts. I didn't want
20 to rely on County traffic counts that might have
21 been three or four years old.

22 MR. MOAFI: You would have to go back to
23 them?

24 MR. REA: Yes. They will review my
25 study. They will make sure my counts are

26

REA - Direct

1 consistent with their counts.

2 MR. MOAFI: Don't you think you should
3 review their counts and make sure they are
4 consistent?

5 MR. REA: Not necessarily. I'm very,
6 very confident in the accuracy of my counts,
7 quite frankly. I don't want to sound arrogant
8 about it, but I am. I'm actually more confident
9 than the counts the County may have done.

10 MR. MOAFI: You are saying as part of
11 this application you will have to get Monmouth
12 County approval?

13 MR. REA: Yes.

14 MR. FALVO: Yes. We have to file an
15 application with the Monmouth County Planning
16 Board, which is in the process of occurring. We
17 submit all of this data with it. They come back

18 and determine what they want. For example, when
19 we did the Commerce Drive subdivision, the
20 County required us to put in a designated
21 left-turn lane, to stripe it, and they asked us
22 to put in the curb along Shafto Road and they
23 also wanted a dedication of so many feet for
24 future road widening. They didn't have a
25 problem with what we submitted to them. That

27

REA - Direct

1 was not Mr. Rea. That was a different traffic
2 consultant.

3 MR. REA: I do want to point out that we
4 already have at this location that southbound
5 left-turn lane that the County required of the
6 Commerce Drive location. It was a requirement
7 of the County some time ago.

8 MR. MOAFI: If this auction happens on
9 Fridays, you are comfortable --

10 MR. REA: My understanding is, if it
11 happens on Friday, it will be between 12:00 and

12 2:00 or 12:00 and 3:00.

13 MR. MOAFI: We know how the traffic is
14 there on Friday.

15 MR. REA: I wouldn't be comfortable if
16 the traffic was being discharged at 5:00 or 6:00
17 in the afternoon. I understand that is not the
18 case.

19 MR. MOAFI: Do you think 4:00 is better?

20 MR. REA: Yes. Four o'clock is the
21 beginning of peak hour. From three o'clock to
22 4:00, the traffic is starting. The actual peak
23 hour here is 4:45 to 5:45 in the afternoon.

24 MR. MOAFI: Are we talking about truck
25 traffic?

28

REA - Direct

1 MR. REA: From the auction?

2 MR. MOAFI: Yes.

3 MR. REA: It will primarily be people in
4 whatever vehicles they are arriving at for the
5 auction. Probably mostly passenger cars and

6 small trucks. The auction items themselves, as
7 I understand it, will be brought onto the site
8 over the course of a couple of weeks, because
9 the auction will take place once a month,
10 perhaps, on Saturdays. The equipment that will
11 be auctioned out at the auction house will be
12 brought in over a period of three weeks,
13 perhaps.

14 On auction day itself, I think most of
15 the traffic going in and out will be people
16 coming to the auction bidding on those items and
17 they are probably driving what the rest of us
18 are driving. At least I would make that
19 assumption. There might be some trucks going in
20 and out. As Mr. Mazza indicated, if there is
21 clear title on a piece of equipment, and
22 somebody pays cash for it, they can take it out.
23 There might be some truck traffic going out.

24 MR. MOAFI: As it exists now, this
25 intersection of the driveway operates at D.

1 MR. REA: D in the morning and C in the
2 afternoon.

3 MR. MOAFI: Without the auction?

4 MR. REA: Correct.

5 MR. MOAFI: Once we have the auction,
6 it's still C and D?

7 MR. REA: Let me take the D and C, we
8 are talking about the morning and the afternoon
9 peak hours when the traffic flow is 1,200 to
10 1,300 cars on Shafto Road. On Saturday, when we
11 are going to be having -- there might be one or
12 two Fridays. I think we can discuss that
13 separately. Most of the auctions will be held
14 on Saturday when you have 800 cars in two
15 directions during peak hour, far less than the
16 1,200 to 1,300 during the morning and afternoon
17 peak hours. I want to draw the distinction
18 between the peak hours during the morning and
19 afternoon.

20 MR. MOAFI: That is only for the
21 auction?

22 MR. REA: Yes. Right.

23 MR. MOAFI: You said this study was done

24 as if the whole site --

25 MR. REA: Yes.

30

REA - Direct

1 MR. MOAFI: -- was developed?

2 MR. REA: That is why --

3 MR. MOAFI: If the whole site was

4 developed today in the same time?

5 MR. REA: It will go to an F. That's

6 why I recommended a traffic signal, at some

7 point in the process, when the volumes are high

8 enough so a signal will be approved by the

9 County and the State. If you ask them to

10 approve a traffic signal today, based on what's

11 out there, they will say it's not warranted.

12 MR. MOAFI: What is the Route 33

13 intersection?

14 MR. REA: It's currently an F level of

15 service in the morning and an E in the

16 afternoon. That intersection is being
17 completely re-built by the County and the State
18 and that will be done by the time this project
19 is fully built out.

20 MR. MOAFI: Do you think the County
21 already re-designed it?

22 MR. REA: Yes. It's been designed.

23 MR. MOAFI: Based on the traffic today
24 or future?

25 MR. REA: No. They looked at future

31

REA - Direct

1 traffic. Whenever the County or the DOT does a
2 design like that, they normally go out 20 or
3 25 years in the future and project traffic
4 volumes way into the future to make sure the
5 intersection stays functional for 20 or
6 25 years.

7 MR. MOAFI: Once this intersection
8 improvement happens, everything will be okay.

9 MR. REA: Level of service D for central

10 New Jersey, yes. Is everything going to be
11 wonderful or great, no, you may have to wait for
12 a red light. I know myself a lot of times, in
13 the morning, I'm heading toward the Freehold
14 area and I still haven't figured out not to be
15 in the left lane, so I get stuck behind somebody
16 going into the WaWa. It might have been you.
17 You know, the County and the State have a plan
18 worked out. I've looked at the plan.

19 MR. MOAFI: The way Shafto Road is being
20 developed nowadays, it's very fast development.

21 MR. REA: Yes.

22 MR. MOAFI: Tones of traffic is dumped
23 into this road every day.

24 MR. REA: I agree with you, sir. One of
25 the good things the County did is when they

32

REA - Direct

1 rebuilt the section of Shafto Road years ago
2 they made it a four-lane highway. They were
3 looking ahead to what was coming. They had a

4 wide enough right of way that they constructed
5 in each direction. They were looking a little
6 bit forward and did the right thing.

7 MR. MOAFI: At your driveway, they have
8 enough room for a signal?

9 MR. REA: Yes. It's there already
10 today.

11 MR. MOAFI: Thank you.

12 MR. REA: Just to give you some numbers,
13 Route 537, in Freehold, parts of it are two
14 lanes, one in each direction, traffic volumes
15 are almost twice as high as they are here on
16 Shafto Road. I'm not saying that's a great
17 situation.

18 MR. MOAFI: We don't live on 537.

19 MR. REA: I understand that. We are in
20 reasonably good condition here, because the
21 County had some forward thinking years ago and
22 it is handling the traffic and will continue to
23 handle the traffic in the future, in my opinion,
24 at reasonable and acceptable levels of service.

25 MR. MOAFI: Thank you.

33

REA - Direct

1 MR. RAUSCH: Mr. Rea, when you were
2 working on the future count from the subdivision
3 and everything, did you take into account future
4 projections from the Sims Gas Products'
5 application that the same applicant has? Was
6 that included in the analysis?

7 MR. REA: I was aware of it, but I
8 wasn't sure 100 percent how much traffic it was
9 going to generate. It was my understanding it
10 wasn't going to be a very intensive use, from a
11 traffic standpoint. I felt because I was
12 calculating the other projects and a two percent
13 growth rate that would account for it. I didn't
14 make a direct analysis of that. I felt it was
15 more than accounted for in my background growth
16 rate and the other things that I may have
17 overestimated.

18 MR. RAUSCH: A couple of other things.

19 I know you did the analysis at two signalized
20 intersections on the both sides of Shafto and
21 Asbury and Shafto and 33, but there is two
22 non-signalized intersections that are sandwiched
23 in between there. One of them is Wardel Road
24 and Shafto and the other one is Shark River Road
25 and Shafto Road. In reviewing this, there are a

34

REA - Direct

1 number of large applications that have been
2 approved, especially on Wardel Road. There was
3 a 250 or 280 residential development on Wardel
4 Road right by the Shafto intersection. There
5 have been a number of new commercial and
6 industrial applications that have been approved
7 with flex space. There is one under
8 construction, which was a contractor's warehouse
9 or facility. Also, at the corner of Shafto and
10 Shark Road there was another subdivision that
11 was approved by the planning board. With all of
12 these other items being constructed, the

13 intersection at Shafto and the site and also
14 those intersections we feel they need to be
15 studied to see what the impact is now and what
16 the impact will be.

17 One of our concerns, especially with
18 Wardel Road, is that people coming out of the
19 auction, and having trouble making a left turn,
20 what they may do is make a right turn, go down
21 to Wardel and go to the back roads of Wardel
22 over to 33 and instead of waiting to try to get
23 out and make a left turn to go out that way. We
24 are a little concerned about increased traffic
25 on Wardel Road through a heavy residential area.

35

REA - Direct

1 MR. REA: I've done that trip myself,
2 Jeff, and I respectfully disagree with you. I
3 don't think anybody in their right mind would do
4 that, especially if we had a traffic control
5 officer or a traffic signal. I've done that to
6 see how long it will take and it will take you

7 twice a long to go that way. I understand there
8 is a concern about Wardel Road and Shark River
9 Road and those un-signalized intersections on
10 Shafto Road. I would tell you that I think if
11 you think about it the impact on this project,
12 because we are midway between those two
13 intersections -- not midway, but in between
14 them, we are going to have an indirect impact on
15 these intersections, because we will be adding
16 through traffic on Shafto Road. I don't
17 disagree with you. As some uses come in for
18 site plan approval, you may want to re-visit
19 those intersections, because we will be adding
20 some additional north and south through traffic
21 on Shafto. The primary impacts on those
22 intersections are going to be generated by the
23 land uses and by the very projects that you
24 mentioned before.

25 For example, I think up off of Wardel

1 Road, it's Fox Chase that you are talking about.

2 I see there are a couple of sections that are
3 still yet to be developed and maybe just got
4 their approval.

5 MR. RAUSCH: There is also opposite Fox
6 Chase another developer of 280 units.

7 MR. REA: What I'm saying is that
8 project, because all of that traffic is going to
9 use Wardel Road to get out to Shafto Road is
10 going to have a far greater impact than
11 something like this which is going to generate
12 some additional through movements on Shafto
13 Road. Although I didn't do that study, I would
14 hope that the Planning Board or Zoning Board
15 hopefully somebody did a traffic study in those
16 288 units to see what impact it would have on
17 the Wardel intersection with Shafto Road and
18 similarly anything down on Shark River Road that
19 would generate an additional load on that road
20 itself as it comes out to the intersection of
21 Shafto should have been studied.

22 Again, I don't think this project is

23 going to have a significant impact. It's going
24 to have an indirect impact, because it's going
25 to be north/south traffic on Shafto. What's

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REA - Direct

1 going to drive the need for improvements at
2 either one of those intersections is the side
3 street traffic. Ultimately, it may be high
4 enough so you get a level of service F condition
5 and you need a signal or you need a turning
6 restriction or something. It's going to be what
7 gets developed on the side street that drives
8 the need for the improvements at those locations
9 and not something in between the two of them,
10 like this is, that is going to have an indirect
11 impact on it, in my opinion.

12 MR. RAUSCH: You had stated with the
13 Borough Properties' traffic counts that the
14 intersection at the site would not be a level F;
15 is that correct?

16 MR. REA: With the auction house.

17 MR. RAUSCH: With the auction house.

18 MR. REA: Right.

19 MR. RAUSCH: I'm confused. In your
20 findings, it said this intersection is projected
21 to operate at level of service F during a.m. and
22 peak street hours without additional traffic
23 resulting from the Borough Properties, LLC
24 proposal.

25 MR. REA: Right. What that means is I

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REA - Direct

1 added in my traffic study so much background
2 traffic growth that even without any additional
3 traffic being generated here, at some point the
4 traffic flow on Shafto Road will become high
5 enough so that the existing traffic volume will
6 go to level of service F, even if nothing else
7 is developed. Again, that wouldn't necessarily
8 mean that a traffic signal would be warranted,
9 because you need a minimum level of traffic on
10 the side street approach in order to get the

11 signal approved. Yes, that is being interpreted
12 properly.

13 MR. RAUSCH: Did you perform a
14 preliminary analysis to see under the current or
15 with the Borough Properties whether you would
16 hit --

17 MR. REA: Under the current situation,
18 the answer is no, it's not warranted. Under the
19 future situation, if you go back to Page 10, in
20 the report, and you look at the trip generation
21 table, Table 3, if those numbers are realized,
22 and that is the amount of traffic that's
23 generated by the subdivided lots when they get
24 tenants, then those volumes there will warrant
25 signalization. That's why I think it's very

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REA - Direct

1 important to take a look at how this whole thing
2 gets built out. We know, at full build out,
3 signalization is going to be required, but we
4 don't know how long it's going to take to get to

5 full build out with those lots being subdivided.

6 That's why the Board needs to keep looking at

7 the site plan applications as they come in, so

8 you can evaluate that and determine when the

9 signal is warranted. It's really a pretty fluid

10 situation.

11 I can tell you, from looking at those

12 numbers, they would warrant a traffic signal at

13 full build out. They would.

14 CHAIRMAN PALMIERI: Paul, do you have

15 anything?

16 MR. GLEITZ: No, Mr. Chairman.

17 CHAIRMAN PALMIERI: Do any Board Members

18 have any additional questions?

19 MR. DIAMOND: That was pretty thorough.

20 MR. FALVO: I have one omitted question.

21 CHAIRMAN PALMIERI: Sure.

22 BY MR. FALVO:

23 Q. Your assumptions are for full build out

24 predicated upon the square footage that you

25 anticipate using the maximum floor area ratio and

REA - Direct

1 also based upon what the anticipated vehicle count
2 would be generated from those uses?

3 A. That's correct, yes.

4 Q. It's conceivable, while you've taken a
5 very conservative approach, that depending on the
6 uses that actually go in there, there may be a much
7 lower traffic use?

8 A. That is very conservative. That's why
9 it needs to be continuously evaluated, as those uses
10 are done.

11 MR. SLAYZK: When we did Red Bank
12 Veterinarian, was that a county road -- I mean,
13 Hance Road.

14 CHAIRMAN PALMIERI: County road.

15 MR. SLAYZK: We had an application
16 before us with Red Bank Veterinarian when they
17 came in front of us. There was a situation on
18 Hance where we felt it was necessary to have a
19 traffic light at that particular location. At

20 that point in time, when Red Bank Vet was in
21 front of us, and they were making all of that
22 intersection and changing around it and adding
23 lights and that whole deal, at that point in
24 time you are talking about well, we are going to
25 sit there and evaluate when these lots are

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REA - Direct

1 developed. Who is going to pay for that traffic
2 light? Okay?
3 In the case of Red Bank Vet, Red Bank
4 Vet paid for the traffic light or made a
5 contribution for that traffic light. We have a
6 situation here that we don't know what's going
7 to go on those lots. You have a situation where
8 you have -- we don't know who is going to be in
9 here. Say the last lot is something or the last
10 two lots have extremely large amount of traffic
11 and now it warrants, you know, a traffic light
12 and the County says it warrants a traffic light.
13 Well, how does that traffic light get paid for?

14 MR. REA: I would tell you it would be
15 my expectation, just looking at this, the only
16 reason you would need a traffic light is because
17 one of these lots cumulatively generates enough
18 traffic. The light benefits no one coming from
19 the site. It would be the responsibility of the
20 Applicant. I wouldn't expect the County or the
21 Borough to pay for it.

22 MR. SLAYZK: Right. When we actually
23 sat here and made the approval or considered the
24 approval for it, we brought up the situation
25 where we felt it was necessary for Red Bank Vet

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REA - Direct

1 to be able to, you know, kick towards or add
2 some funds for the actual light. In actuality,
3 it came up to \$200,000. I think, if we look to
4 approve this, I think, you know, I'm not
5 necessarily thinking the Applicant needs to do
6 it, but maybe whoever is in these lots, or
7 however he needs to work it out, it's something

8 if we do approve this there should be some funds
9 allocated. If there is an approval down the
10 road, two or three or four years down the road,
11 then these funds are released for the actual
12 fees or cost for the light.

13 MR. REA: I understand what you are
14 saying. I agree with you. It's been my
15 expectation that eventually one of the tenants,
16 or some combination of, go into those lots would
17 understand a signal is needed, because how much
18 traffic is it going to generate? Mr. Mazza is
19 going to be the owner of that lot. I mean,
20 whether he pays for it or the tenant, I don't
21 know how those things get worked out. It would
22 be as a result of the development process and
23 neither the Borough nor the County would be
24 responsible for installing the traffic light.
25 It would have to be on the Applicant's side.

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REA - Direct

1 That's been my experience.

2 MR. FALVO: We will pay for it.

3 MR. SLAYZK: What is that?

4 MR. FALVO: We will pay for that.

5 MR. SLAYZK: Okay. We have to find out

6 how we are going to create --

7 MR. HIRSCH: A bond for it.

8 MR. FALVO: I guess we will have to bond

9 for it.

10 MR. SLAYZK: It may never need to be

11 used.

12 MR. FALVO: I understand. If you post a

13 bond for X-amount of years, if after several

14 years if the warrant is not there, the bond

15 would be released.

16 MR. REA: The subdivision itself isn't

17 generating the need for the traffic light. It

18 would only be when a site plan application comes

19 in. I can only say I think in other towns where

20 this situation has come up --

21 MR. SLAYZK: It may not.

22 MR. REA: It hasn't been done at the

23 subdivision process. It's been done as the site

24 plans come in.

25 MR. HIRSCH: If the Board were to put a

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REA - Direct

1 condition in a developer's agreement, or
2 whatever, is obligated to pay for the light when
3 and if it's required, I think the Applicant can
4 protect itself in terms of the contracts he
5 enters into when he sells these lots to put a
6 condition in the contract when and if a light is
7 needed every person will contribute, so the
8 Borough doesn't get involved in all of that.
9 Mr. Mazza can protect himself that way.

10 MR. FALVO: Exactly.

11 MR. HIRSCH: I think there is some way
12 to work it out.

13 MR. FALVO: We will work it out. The
14 ultimate responsibility would be the
15 Applicant's. How he works it out with his
16 individual tenants --

17 MR. HIRSCH: We won't care.

18 MR. FALVO: This is somewhat akin to
19 what was done with Jersey Shore premium outlets
20 where we've put in the conduits for the traffic
21 light on the main road and at some point a
22 determination will be made by the police
23 department, or whomever, that a light should go
24 there.

25 MR. HIRSCH: John, what is the average

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REA - Direct

1 cost for a traffic light?

2 MR. REA: It depends on the size of the
3 arm and foundation. For a four-lane County
4 road, you are probably looking at \$200,000 to
5 \$250,000. That is assuming you don't have to
6 change the geometry -- you already have the
7 southbound left-turn lane, so I'm assuming you
8 wouldn't have to do a lot of widening.

9 MR. SLAYZK: It's a three-way signal.

10 MR. REA: You are looking at \$200,000 to
11 \$250,000, probably.

12 MR. RICKERT: Who makes the decision to
13 put the light in?

14 MR. REA: Monmouth County would,
15 essentially. Even though it would have to be
16 approved by the NJDOT, since this is a County
17 road, once the County tells the DOT that it
18 warrants that, DOT will approve it.

19 MR. GLEITZ: I have a couple of
20 follow-ups. This road is privately-owned,
21 correct? Is that any cause for any other
22 concern about how the County would interact with
23 a private road rather than a public road?

24 MR. REA: I don't think so, because
25 Monmouth County operates differently than the

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REA - Direct

1 NJDOT. I know DOT has a policy that it is not
2 to install lights on a private driveway. The
3 County doesn't have that policy. I don't think
4 that would be an issue.

5 MR GLEITZ: If they change their policy,

6 it would be an issue.

7 MR. REA: It would be an issue a lot of

8 other places. Anything is possible.

9 MR GLEITZ: With your follow-up, you

10 mentioned that your assumption is, if we do a

11 maximum build out for the current FAR for these

12 lots, your assumption is with the trip

13 generation projected to warrant what would be

14 met?

15 MR. REA: Yes.

16 MR GLEITZ: Right now, this intersection

17 functions at a level F?

18 MR. REA: No.

19 MR GLEITZ: Right now, it functions at?

20 MR. REA: D in the morning and C in the

21 afternoon and probably something a lot better on

22 Saturday. Probably a C or B. It's not -- it

23 will go to an F in the future, ultimately, but

24 not today. It's not an F today.

25 MR GLEITZ: What happens if some of

REA - Direct

1 these might develop at less than their full
2 potential? What if we get to that tipping point
3 or non-tipping point where we are built out in
4 the back, our level of service has dropped to F,
5 yet we haven't met our warrants? Then we will
6 sit at a situation where we are not at a signal.

7 MR. REA: That will be a decision that
8 the Borough and County will need to make. You
9 may want to error on the side of safety and
10 install a signal.

11 MR. GLEITZ: The Borough couldn't push
12 the County to do that, could they?

13 MR. REA: Sure, they could. It happens.

14 MR. GLEITZ: As long as there is an
15 agreement how that gets paid for. We might get
16 some less than. This application itself is seen
17 as not the most intense use. We are talking
18 about Saturdays once a month. You may get two
19 more similar types of uses, where you might end
20 up with nightmare Saturdays and smooth-sailing

21 Monday through Friday. I don't know if the
22 County is interested in putting a full signal in
23 for nightmare Saturdays.

24 You will have the problem of Tinton
25 Falls finest out there every Saturday, even if

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REA - Direct

1 it's on the Applicant'S dime controlling traffic
2 in that area.

3 MR. REA: That's why I said this is the
4 great unknown. I tried to look at a worst-case
5 scenario, because I wanted to let you know what
6 that will be. It may never develop. If a lot
7 of less, you know, intense uses go into these
8 subdivided lots, that's why it's important to,
9 you know, keep updating the traffic studies as
10 the site plan applications come in, because you
11 need to continually know what's going on and
12 when the signal may be warranted.

13 These things are done all of the time
14 where a person comes in, gets a subdivision and

15 a site plan application is submitted 10,
16 15 years and you update the traffic studies.
17 This is standard operating procedure, as far as
18 I can tell.

19 MR GLEITZ: Real quick, Jeff mentioned a
20 bunch of other projects. You said impact
21 primarily on the side streets.

22 MR. REA: I do believe that, yes.

23 MR GLEITZ: Do you think they add to
24 your background data for Shafto Road itself?

25 MR. REA: I think, given what he

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JOVISHOFF - Direct

1 discussed, I've reasonably accounted for that
2 background growth. My estimates are usually,
3 because I look at worst cases and add the
4 background traffic growth, remember the projects
5 I included before that I added on top of the
6 two percent per year growth rate, if you look at
7 the historical data, the DOT data suggests if
8 you go back 10 years, and you look how the

9 growth rate on Shafto Road, it's been
10 two percent per year. That is the historical
11 background growth rate. Plus, I added these
12 other projects. If anything, I probably
13 overestimated the traffic. It happens more
14 often than not that I overestimate the traffic.

15 MR. GLEITZ: Thank you, Mr. Chairman.

16 CHAIRMAN PALMIERI: Do any Board Members
17 have any questions? I'll open it up to the
18 public. Any questions from the public on the
19 testimony so far? Seeing none, okay, Mr. Falvo.

20 MR. FALVO: Thank you, Mr. Chairman. I
21 would like to call our planner.

22 (Whereupon, Michael Jovishoff, P.P. was
23 sworn and testified as follows:

24 DIRECT EXAMINATION BY MR. FALVO:

25 Q. Mr. Jovishoff, would you please state

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JOVISHOFF - Direct

1 your educational and professional background and
2 experience for the Board, please?

3 A. Yes. I have a Master's in City and
4 Regional Planning. I am a licensed, professional
5 planner in the State of New Jersey. I'm an associate
6 with Phillips, Preiss, Shapiro Associates, a planning
7 and real estate consulting firm.

8 Q. How long have you been engaged in
9 planning and planning testimony? During the course
10 of that time, have you also appeared before various
11 zoning and planning boards within the State of New
12 Jersey?

13 A. I've been licensed as a professional
14 planner for about 10 years. I've appeared before
15 many planning boards and zoning boards in New Jersey
16 throughout New Jersey.

17 Q. Have you been accepted in your capacity
18 as a professional planner by any courts in the State
19 of New Jersey?

20 A. I have not appeared before courts.

21 CHAIRMAN PALMIERI: You've never
22 appeared before us before?

23 MR. JOVISHOFF: No.

24 CHAIRMAN PALMIERI: We will accept him

25 as a professional planner.

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JOVISHOFF - Direct

1 MR. FALVO: Thank you, Mr. Chairman.

2 Q. At my request and at the request of the
3 Applicant, did you undertake an examination of the
4 application, the relief being sought and its impact,
5 negative or positive, with regard to the zone in
6 which the property is located, the surrounding areas
7 and things of that nature?

8 A. Yes, I have.

9 Q. And could you please relate to the Board
10 the nature of your investigation and conclusions that
11 you've come to with regard to the various aspects of
12 this application?

13 A. Yes. For the record, I've reviewed all
14 of the application, the plans. I've reviewed the
15 review letters and review documents of Tinton Falls
16 professionals, the Borough's professionals. I have
17 also reviewed the Master Plan and the Zoning
18 Ordinance of the Borough. Just for the description

19 purposes, the review of the property of this
20 application includes -- it's actually two parts, it's
21 a 49-acre property.

22 The property, in terms of its contents,
23 is located in the undeveloped portion of the Borough.
24 Lands that surround the site and the existing
25 recycling facility generally are undeveloped and

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JOVISHOFF - Direct

1 forested. These lands are environmentally
2 constrained. The nearest development ranges from a
3 quarter to half mile away from the property in
4 question and the site of the auction facility. Along
5 Shafto Road there are some scattered commercial uses
6 and there are a number of homes. To the east, there
7 is no development between the site and the Garden
8 State Parkway.

9 As was described previously, the
10 Applicant proposes to subdivide three existing lots
11 into eight lots. One will be used for a detention
12 basin, one for the construction of an equipment

13 auction facility, the remaining six lots will be
14 developed for warehouse facilities or other permitted
15 commercial or manufacturing uses. The development
16 would be served by an extension of an existing access
17 road from Shafto Road and would be to the rear of the
18 existing Mazza recycling facility.

19 Q. With regard to compliance with this
20 development to the Zoning Ordinance, did you
21 investigate that as well?

22 A. Yes, I did.

23 Q. Would you please relate to the Board
24 your findings?

25 A. The property is located in the MFG,

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JOVISHOFF - Direct

1 manufacturing, district. The proposed auction
2 facility is not specifically permitted in the MFG
3 zone. The Borough has also deemed the soil removal
4 which is being done to grade the property in
5 preparation for the subdivision and the construction
6 on the auction house. It has deemed this to be

7 mining and this is also a non-permitted use in the
8 MFG zone. A D variance will be required for both of
9 those uses.

10 In addition, there is a variance that is
11 required here for a lack of frontage on a public
12 road. As you are aware, the site does front on the
13 fully-approved, but privately-owned access road that
14 will serve the proposed subdivision and auction
15 house. In addition, a waiver is being requested.
16 This is a waiver for minimum light levels. What is
17 required is a minimum of .5-foot candles. What is
18 proposed a portion of the site will have less than
19 .5-foot candles, plus there will be a C variance
20 required as well.

21 Q. With regard to the C variance and
22 waivers required, have you done an analysis first
23 with regard to the auction facility?

24 A. Yes. In terms of the D variance?

25 Q. Correct.

1 A. In my opinion, the site is
2 particularly-suited for the auction facility. As I
3 said, the 10-acre portion of the proposed
4 subdivision, which is lot 2.02, is particularly
5 suited. The proposed auction site, the site for the
6 auction is an isolated location. The auction
7 building itself is set back no less than about 1,500
8 to 2,000 feet from Shafto Road. The auction building
9 is set back 229 feet from the access road. It is
10 away from all other development, except of course the
11 development that will be proposed and will be built
12 on the adjacent lots in the subdivision.

13 The site is located in an industrial
14 area. It's surrounded by an extensive natural
15 buffer, again, the nearest existing uses is
16 2,000 feet away from the property, approximately.
17 Effectively, the site and the auction facility will
18 be encapsulated by a natural buffer. The use itself,
19 the auction facility, is a benign commercial
20 industrial use. The benign nature of the use, it's
21 isolated location will make this facility all but

22 transparent to the surrounding community.

23 In terms of other special reasons, this

24 would be in terms of the nature of the proposed

25 facility. Generally, these types of equipment and

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JOVISHOFF - Direct

1 vehicle auctions are ad hoc operations. They are

2 temporary and held on parking lots or held where the

3 equipment is, such as a DPW garage. This is an

4 opportunity to create a permanent, dedicated

5 facility. It should be noted no other such dedicated

6 auction facility exists in the Borough. My

7 understanding is the closest facility is in

8 Connecticut. Dedicated performance of the facility

9 provides enhanced safety for the buyers, sellers and

10 public in general. This is not possible in a

11 temporary location. It provides amenities for the

12 attendees. It may not be easily provided on a

13 temporary auction site. In this particular case, the

14 dedicated facility provides an opportunity for

15 off-site internet auction participation, which is

16 what is proposed for this site. This reduces the

17 on-site attendance.

18 All in all, this is a very unique,

19 regional facility. It is in a unique location. It

20 provides a unique service to the community and

21 region. In addition, the use will be very

22 occasioned, as was testified, once a month for

23 approximately six hours. The auctions will be held

24 predominantly on the weekend, as was testified. This

25 will be when the adjacent businesses generally will

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JOVISHOFF - Direct

1 be closed. This really results in sort of a shared

2 land use. I feel it represents an efficient use of

3 limited industrial use of land.

4 Q. With regard to the mining, which has

5 been the description provided by the Borough versus a

6 cut and fill operation, as has been testified by the

7 Applicant's engineer, did you look at affirmative

8 aspects of that variance as it relates to the D

9 variance?

10 A. Yes, I did. Let me say, however, as was
11 testified to as it was presented, the removal of the
12 rock and the removal of the soil is only in
13 preparation for the development of the property of
14 the auction house and the proposed industrial
15 development of the subdivision. My personal opinion
16 is that this is not mining in the traditional
17 definition of the word. In fact, no definition of
18 mining exists in the Borough's ordinance.

19 I have looked and found several
20 dictionary definitions for mining. Just to give you
21 a reference to quote one of the definitions, the dig
22 in the earth for the purpose of extracting coal, et
23 cetera. Another definition is industry or activity
24 or removing substances, such as coal or metal, from
25 the ground when digging. Another definition is the

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JOVISHOFF - Direct

1 business of removing valuable objects from the earth.
2 It's to uncover and remove valuable product for sale.
3 The implication is the mining activity is a

4 continuing activity, at least until the product

5 that's being mined is exhausted.

6 In this case, the removal of the soil is

7 only temporary. It will not be a continuing

8 activity. Its purpose is only to prepare the site.

9 It's essentially a variation of grading of the site

10 for development.

11 MR. BATTISTA: Can I ask a question? If

12 the soil is sold, is that considered mining? If

13 you're taking the soil and putting it someplace

14 else, okay, you are saying if it's used for a

15 profit. It's not gold, but the soil is sold,

16 would you consider that mining?

17 MR. JOVISHOFF: The definitions I'm

18 giving you are strict. I think there are sand

19 and soil mining. I think the critical issue,

20 even if the soil is sold, that is not the

21 primary purpose of mining. The primary purpose,

22 in this case, is to prepare the site for future

23 development.

24 CHAIRMAN PALMIERI: When we talked about

25 the development of the site, usually when you

JOVISHOFF - Direct

1 are talking grading, and we went through the
2 calculation about how many truck loads we are
3 talking about here, we're not talking 100 truck
4 loads. We are talking about 1,000.

5 MR. RAUSCH: I think it was 2,000.

6 CHAIRMAN PALMIERI: That's dump trucks.
7 One thousand dump truck loads.

8 MR. JOVISHOFF: I don't disagree.

9 CHAIRMAN PALMIERI: You are talking
10 about quite a bit.

11 MR. GLEITZ: 431,700 cubic yards of soil
12 will be removed from the site. With 20-yard
13 dump trucks, that's 21,500 dump trucks.

14 CHAIRMAN PALMIERI: That is a lot of
15 dump trucks.

16 MR. JOVISHOFF: I don't mean to claim it
17 is a simple grading. It is a variation of the
18 grading. The key thing is the purpose.
19 Obviously, this is more extensive than simple

20 grading of a site. I think the key thing is the
21 purpose of the soil removal. The purpose is to
22 prepare the site.

23 MR. HIRSCH: I don't understand how you
24 can distinguish that. I mean, if on the lot
25 next-door somebody wanted to get a mining

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JOVISHOFF - Direct

1 permit, to remove half of that amount of soil
2 and sell it, it would be a mining permit. You
3 have the same activity, trucks, digging, sale.
4 Because this site, which wants to do twice as
5 much ultimately wants to do it, to develop the
6 site that all of a sudden changes the definition
7 of mining?

8 MR. JOVISHOFF: It doesn't change the
9 definition. The definitions I gave you are
10 rather strict.

11 MR. HIRSCH: None of these definitions
12 talk about the ultimate purpose of the
13 development. They just say this is the

14 activity. You are digging sand and gravel to
15 sell. That would be the definition. Not that
16 ultimately I'm going to build something on this
17 site after I take all of the soil out.

18 MR. FALVO: I think --

19 MR. JOVISHOFF: This is one end of the
20 spectrum. The other would be simple grading of
21 the site. Someone could grade the site and sell
22 it and that wouldn't be mining. To me, the
23 original intent -- a mining operation may mine
24 soil or whatever it may mine for a period of
25 time, and they may be at the point when they've

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JOVISHOFF - Direct

1 exhausted that resource and they may take the
2 property and develop it for something else and
3 use what they've done to grade the property to
4 re-develop it. That's not what's happening
5 here. The original intent is to prepare this
6 property for development. It may take 21,000
7 whatever it was cubic yards to do that, but that

8 is the original intent.

9 Let me say one more thing, we're not
10 asking for an interpretation here. I'm just
11 trying to give you some content of what I
12 believe. I do have the proofs.

13 MR. HIRSCH: I understand that.

14 MR. JOVISHOFF: While I feel a variance
15 should be granted for this use, we will accept
16 you have deemed it as mining and we accept that.

17 MR. FALVO: By the same token, when you
18 talk about mining, you mean, this property, when
19 it's finished as per the plans submitted, is not
20 going to look, for example, like the Strato
21 (phonetic) tract on the corner of West Park and
22 35. We're not putting gorges of the earth that
23 remain hereafter. We are removing the soil.

24 MR. HIRSCH: You couldn't do that under
25 the mining ordinance anyway.

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JOVISHOFF - Direct

1 MR. FALVO: I understand.

2 MR. HIRSCH: It's governed to make sure
3 that doesn't happen anymore.

4 MR. FALVO: I understand. What I'm
5 having difficulty with, and what I've had
6 difficulty with, the definition of mining all
7 along is that if I have a piece of property, and
8 I own adjacent property and I want to bring that
9 piece of property to the same grade as my
10 adjacent property, in order to do that I have to
11 remove 50,000 or 100,000 cubic yards or 400,000
12 cubic yards of dirt so I can bring the grade
13 down so I can build out and I'm not trying to
14 put a building on the middle of a mound. If I
15 dispose of it by selling it, so what?

16 MR. HIRSCH: You see, if you took that
17 argument to its logical conclusion, there would
18 never be a mining ordinance, because everybody
19 could come in and say I'm only doing this, I'm
20 only going to mine this 500,000 cubic yards of
21 material. I'm only doing that so I can get my
22 site to the way I want it to develop it. Even

23 the mining ordinance says a site must be left in
24 the condition that it can be developed when the
25 mining operation ceases. Everybody could say

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JOVISHOFF - Direct

1 the same thing. As soon as I'm done taking that
2 half a million yards or million yards, I'm going
3 to develop the site, so therefore, I'm not
4 mining. I'm just getting the site down to where
5 I want it to be to develop it. If you go to
6 what's in somebody's mind, how do you --

7 MR. FALVO: Let's use your example, Mr.
8 Hirsch. If I use this site compared to the
9 Strato tract, I would have to fill the holes,
10 fill the area where they mine the sand and
11 gravel over X-amount of years to bring it up to
12 grade so it could be developed. In this
13 particular situation, the grade between the
14 front and the back property line creates a mound
15 of earth.

16 MR. HIRSCH: I understand that.

17 MR. FALVO: How do I get that 20
18 some-odd acres down to the point where I can
19 build it and have a road not going up a hill?
20 MR. HIRSCH: That is going to be your
21 argument of why you need a use variance. It
22 doesn't change what the activity is on the site.
23 I mean, as I said, boards are in an impossible
24 situation if everybody said, regardless of the
25 time and volume, when I'm done I'm going to

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JOVISHOFF - Direct

1 develop the site. Because I'm going to develop
2 the site, I'm not really mining, guys. Even
3 though I'm going to remove the hundreds of
4 thousands of cubic yards, I don't have to
5 because I'm going to develop the site when I'm
6 done. That seems to be the argument. It's not
7 entering into the equation.

8 MR. FALVO: We've asked for a mining
9 permit for a variance for mining, because the
10 mining permit was denied.

11 MR. HIRSCH: I understand. I'm
12 responding to the arguments being made. From my
13 perspective -- I realize you are here from a use
14 variance, so we are wasting a lot of time,
15 because you're not asking for an interpretation
16 and the witness is going to give us the reasons
17 to grant the use variance for the mining
18 application.

19 A. Let me go on then. If this activity
20 were mining or is mining, I do believe the site is
21 particularly-suited for the mining. This site has
22 extensive area where the soil has already been
23 removed, the natural lands have been disturbed. The
24 site is an isolated site. It's isolated,
25 significantly isolated, from neighboring development,

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1 from lands that are environmentally restricted. Most
2 of the lands that surround will not be disturbed.
3 They will remain as is and function as the buffer in
4 perpetuity.

5 In terms of other special reasons, I
6 believe the soil removal activity will result in the
7 re-development of these land areas for a productive
8 use, which is the goal of the restoration of mines
9 that have completed their role. The soil removal
10 will also result in significant visual improvement of
11 the lands that have been disturbed and lands that
12 have already been scarred by industrial activity.
13 The re-development will include grading of these
14 lands, additional landscaping and, of course, the
15 eventual development of the conforming uses on the
16 land. This activity, as you mentioned, meets the
17 intent of the zoning ordinance in Section 40-52,
18 which states abandoned operations, mines, are now in
19 the path of development. The proposed development is
20 a re-development of an existing mined area. It also
21 meets the purpose of the MFG zone, as stated in the
22 Ordinance, to provide a wider employment opportunity.

23 Ultimately, we may disagree the removal
24 of the activity will result in grading and
25 preparation for the land for re-development and the

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1 re-development of industrial uses. The proposed
2 development, the proposed subdivision, advances the
3 goals and objectives of the 2007 Master Plan. It
4 advances Goal 1, to encourage a balance development
5 pattern, which will protect and enhance long-term
6 economic and social interests of present and future
7 residents in order to maintain and improve the
8 Borough's quality of life. It also specifically
9 advances the Master Plan's economic objectives.
10 These are objectives 1 through 3 and number 5 in the
11 Master Plan. To promote continued growth and
12 development as far as economic base. Plan for a
13 continued economic viability by strengthening of the
14 tax base. The encouragement of private investment,
15 which are consistent with community needs, desires
16 and existing development. I believe it will do that
17 also. It will locate businesses appropriately
18 located in surrounding land use areas in character.
19 I believe it will do that.

20 I also believe the proposed use and the

21 removal of soil advances the Municipal Land Use Law.
22 The preparation of the property, as it exists today
23 for development and proposed auction facility,
24 advances Purpose A, which is to encourage municipal
25 action. And it advances Purpose G, which is to

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1 provide sufficient space for the development to meet
2 the needs of all citizens. Maintaining private
3 ownership of the access road reduces the fiscal
4 burden on the Borough. It advances Purpose F, which
5 is to encourage efficient expenditure of the funds.
6 We had the whole discussion before about the warrant
7 for the traffic light as well. Finally, the
8 replacement what is currently scarred landscape of
9 the development will advance Purpose I, which is to
10 promote desirable, visual element. Turning to the
11 negative criteria --

12 MR. HIRSCH: Before you go there, can
13 this site be developed for the auction house
14 without the removal of the whatever 400,000

15 cubic yards that was testified to?

16 MR. JOVISHOFF: Yes, it can be developed

17 without removal of all the material, correct.

18 That removal is required for the subdivision,

19 which is part of this application?

20 MR. HIRSCH: You have to speak up.

21 MR. JOVISHOFF: It can be removed -- the

22 auction house can be built without the removal

23 of all of the 500,000 cubic yards of soil.

24 However, that soil is being removed for the

25 subdivision, which is part of this application.

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1 MR. HIRSCH: Okay. Can the six lots

2 that will result -- I'm talking about the

3 developable lots, because one is a retention

4 basin and the other auction, can those lots be

5 developed as zoned without the removal of that

6 dirt?

7 MR. JOVISHOFF: No. My understanding is

8 they can not --

9 MR. HIRSCH: Isn't the approach here
10 simpler than what we've gone through? Wouldn't
11 the special reasons that you are suggesting here
12 be an undue hardship which, under the law, can
13 raise to the level of special reasons if you
14 can't utilize your property as it's zoned,
15 reasonably zoned, and therefore, it becomes a
16 justification for special reasons?

17 MR. JOVISHOFF: Yes, it could.

18 MR. HIRSCH: The short question here for
19 this Board, is it not, can the proposed
20 development occur and can the site be developed
21 as it's zoned without the removal of whatever
22 400,000 cubic yards?

23 MR. JOVISHOFF: That is an appropriate
24 question.

25 MR. HIRSCH: If the answer that the

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1 Applicant is going to give is it cannot, that is

2 the evidence the Board needs. I understand you
3 have to take that evidence as a planner, but to
4 be clear, Mr. Falvo, I think you want to make
5 sure the record is well-established that
6 development cannot occur without the removal of
7 that whatever 400,000 cubic yards.

8 For example, the engineer said, well, it
9 could happen with 200,000 cubic yards, but we
10 want to remove 400,000. It's a different issue.
11 If you can't reasonably develop it without the
12 removal of that, I think that's the issue you
13 want to put before the Board arguing it's an
14 undue hardship. I know you are going to get to
15 your negative criteria.

16 MR. FALVO: Mr. Hirsch, I agree with
17 you.

18 MR. HIRSCH: I thought you might.

19 MR. FALVO: Absolutely. I also believe
20 that if you look, with all due respect, at the
21 testimony at the initial meeting was that the
22 only way you could build this subdivision was to
23 bring this down. The engineer testified to

24 that.

25 MR. HIRSCH: I'm not suggesting whether

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1 it was or wasn't. That's not my job. I'm

2 pointing to what the record needs to reflect.

3 If you feel comfortable with whatever evidence

4 you put in, so be it.

5 MR. FALVO: We will re-emphasize it.

6 MR. HIRSCH: It's your case.

7 MR. FALVO: We will re-emphasize it. I

8 know it's been two months between hearings. We

9 will put that back on the record through our

10 engineer.

11 MR. HIRSCH: I think that might be a

12 critical aspect of the consideration that this

13 Board has for the use variance. I'm not saying

14 it shouldn't consider the other testimony of

15 your planner, but I think it jumps out as a

16 consideration of determination whether special

17 reasons should be established.

18 MR. FALVO: I agree.

19 MR. HIRSCH: I'm sorry, sir. You were

20 about to start your negative criteria.

21 A. I don't believe there will be any

22 significant negative impacts to the properties that

23 surround it or the community, in general, or the zone

24 plan for the granting of these variances. As I

25 indicated, at the risk of repeating myself, the

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1 operation will be six hours once a month. Barely

2 operating. The site will be dormant otherwise. The

3 site improvements will include new landscaping, which

4 will make a significant contribution to the natural

5 environment. There will be significant improvements

6 of the existing condition, which I stated, the

7 auction site itself is buffered from the nearest

8 development by maybe a quarter of a mile or more of

9 forested land and because they are environmentally

10 constrained they are going to remain undeveloped.

11 Finally, as testified by the traffic

12 expert, the auction facility will not negatively
13 impact traffic on Shafto Road. Regarding the soil
14 removal, the activity has occurred on the property in
15 the past. The proposed removal is temporary. It
16 will result in an ultimate improvement to the
17 property, the auction site. The location is
18 isolated. It's well-buffered. In terms of the zone
19 plan, the site for the auction facility and removal
20 to have the soil is a particularly unique situation.
21 The auction facility is a particularly unique use.
22 As I said before, an auction like this, a dedicated
23 auction facility, is one of a kind in the region.

24 In this case, it's located in an
25 isolated site. I don't think the granting of any

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1 variance would set precedent. As far as the soil
2 removal, the purpose is to prepare the site for
3 development and not for a continuing mining
4 operation. Further, a dedicated and part-time
5 auction facility, as I said, is a very unique use.

6 Because it's a unique use, I believe understandable
7 that such use is not included as a specifically
8 permitted industrial use and not recognized by the
9 zoning ordinance. It's very unusual. The granting
10 of these variances for these reasons, I believe meets
11 the requirements of the enhanced burden of proof
12 under the Medici case. Finally, in my opinion, there
13 will be no substantial detriment of the granting of
14 these variances to the community as proposed.

15 Q. With regard to the C variances, have you
16 done a similar analysis?

17 MR. HIRSCH: Excuse me, before we leave
18 the negative impact, did you have a chance to
19 review the mining ordinance?

20 MR. JOVISHOFF: I did look at it, yes.

21 MR. HIRSCH: I want to be clear whether
22 or not the Applicant, assuming the Board was
23 willing to grant a use variance to permit the
24 mining operation, whether the Applicant is
25 prepared to comply with all of the requirements

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1 under the mining ordinance or I think you need
2 to look at that or whether you are going to be
3 seeking any waivers of any of those
4 requirements. Once we say okay, now you can do
5 it, and you are still forced to comply with all
6 of those ordinance requirements for mining and
7 some of those limit the area that can be
8 disturbed at any one time, slopes that must be
9 maintained, you know, if not what's going to
10 happen is you are going to be back here for
11 another application then seeking waivers of
12 various aspects on the mining, assuming it's
13 ever granted in the first place.

14 The point being, if you're going to
15 comply, part of your justification on the
16 negative impact is that you can comply with all
17 of the impacts, one of which is truck routes for
18 the truck. I don't know if you need Mr. Rea for
19 that. That could be a condition that you are
20 going to come in with that and that's going to

21 be subject to the approval on the Town. I guess
22 the Borough engineer would have to approve this.
23 It's not permitted anymore, I think it would
24 have gone to the Borough for a permit.
25 MR. GLEITZ: I think, if they are

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1 granted the use variance, they have to go
2 through the permit process.

3 MR. HIRSCH: Yes. That permit process
4 would be through the --

5 MR GLEITZ: Through the engineer and the
6 committee.

7 MR. HIRSCH: They issue the permit.
8 Then they are going to go in front of them and
9 say we can't comply with something, this is part
10 of the zoning ordinance so they could come back
11 to this Board. I'm trying to get ahead on this
12 to see whether that's what you are going to do.
13 I'm not trying to put you on the spot tonight,
14 but I don't think it's something we can ignore.

15 MR. FALVO: The answer is, I believe we
16 can comply with all of the mining questions. As
17 far as how the soil getting in and out, we will
18 get it in and out of the private road.

19 MR. HIRSCH: You have to have the routes
20 within Town where you are going to be taking it
21 and where --

22 MR. FALVO: The routes will determine
23 where the soil is going. Exactly.

24 MR. HIRSCH: You are going to have to
25 apply for a permit and deal with the Town and

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1 Borough engineer on this. I'm suggesting once
2 you get to that and say, oops, we can't do
3 something here, you are going to have to come
4 back.

5 MR. FALVO: I understand.

6 MR. HIRSCH: If they give you the use
7 variance to begin with --

8 MR. FALVO: I understand. We

9 understand.

10 A. Let me continue with the C variance. I
11 believe this variance can be granted by the C1 and C2
12 criteria in the Municipal Land Use Law. The reasons
13 are as follows: The access road to the proposed
14 subdivision, as you are aware in the Orchards site,
15 and the existing recycling facility, is not a public
16 right-of-way and will not become a public
17 right-of-way. There is a variance required for lack
18 of frontage on a public street. To a great extent,
19 this is actually a technical deficiency, because you
20 have to consider the nature of the road.

21 The access road will service the
22 proposed auction facility. The road currently meets
23 and will meet all of the design standards for a road
24 that services an industrial cul-de-sac in terms of
25 its configuration, dimensions, materials, et cetera.

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1 It will provide full and safe access to Shafto Road
2 for existing proposed development, as described by

3 Mr. Rea. All of the proposed lots along the access
4 road will meet the ordinance requirements for lot
5 frontage. On the other hand, there are advantages to
6 the Borough from the application -- from the
7 Applicant retaining ownership of the access road.
8 The Applicant will have full responsibility for
9 maintenance. That would be included repairs, snow
10 removal, et cetera. As a result, the Borough will
11 not have the additional burden, which is significant
12 for a road that will see regular truck traffic.
13 There is also a waiver requested for lighting of less
14 than half a foot candle at one location.

15 In this case, at the rear of the auction
16 facility, the proposed auction, as was testified,
17 will be operating and items will be brought in and
18 taken out only during daylight hours. Actually,
19 there is no need for lighting on the site, although
20 some lighting is proposed. The rear area where there
21 is less than one-half foot candle be use for storage
22 and no lighting is needed there. I think the point
23 I'm trying to make where lighting is not needed, it

24 means it will not be used.

25 In terms of the negative criteria, with

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1 regard to the variance, as I said, the property's
2 lack of frontage on a street is a technical
3 deficiency. The Applicant has agreed to install
4 curbs and make other improvements to the road. The
5 lack of frontage of the individual lots on a public
6 right-of-way does not impair the access to or from
7 the lots or from Shafto Road, in any manner, and the
8 property is surrounded by undeveloped land. These
9 are effectively buffers that would more than exceed
10 the requirements.

11 In my opinion, there will be no
12 substantial detriment to the surrounding properties,
13 community and zone plan for the granting of this
14 variance. Thank you.

15 CHAIRMAN PALMIERI: Does the Board have
16 any questions?

17 MR. MOAFI: As you said, it's a private

18 road.

19 MR. JOVISHOFF: Correct.

20 MR. MOAFI: It will carry public

21 traffic.

22 MR. JOVISHOFF: Correct.

23 MR. MOAFI: It is responsible for the

24 safety of the traffic.

25 MR. JOVISHOFF: I would assume the owner

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1 of the road is responsible.

2 MR. MOAFI: Who will enforce?

3 MR. FALVO: We can grant Title 39

4 powers, so the police have all of the motor

5 vehicle laws of the State of New Jersey

6 available to it.

7 MR. MOAFI: Thank you.

8 CHAIRMAN PALMIERI: Any other Board

9 Members?

10 MR. GLEITZ: I guess I'll start with the

11 auction house. You kind of did your positive

12 for both and negative for both. You talked
13 about a benign use.

14 MR. JOVISHOFF: That could be
15 interpreted as a very, very limited impact. As
16 I said, for six days a weeks, it will be closed.
17 Relatively nothing will be happening there. The
18 only thing that could occur is a vehicle or a
19 piece of equipment could be brought in or out.
20 It won't have constant use. When it is being
21 used, it will be for a period of a few hours.
22 It was indicated by Mr. Rea that it would be
23 specific impacts of that in terms of traffic.
24 It's not a particularly noisy use. Certainly
25 not within the context of an industrial area,

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1 which may have other noisy uses or ultimately
2 noisy uses going on five days a week.

3 MR. GLEITZ: I guess you are relying --
4 you said the light was particularly, well-suited
5 by being buffered, great setbacks and those

6 types of things. What were the purposes of
7 zoning being advanced by allowing the auction
8 house?

9 MR. JOVISHOFF: Purpose A and G. Let me
10 be specific. Purpose A encourages municipal
11 action to guide the appropriate development of
12 all lands. This is a commercial/industrial use
13 in an industrial zone.

14 MR. GLEITZ: That wasn't for the mining.

15 MR. JOVISHOFF: It's for the mining to
16 the extent its preparing the property for
17 subdivision.

18 MR. GLEITZ: I'm speaking for the
19 auction house.

20 MR. JOVISHOFF: Yes. Purpose G provides
21 sufficient space for development that meets the
22 needs for citizens.

23 MR. GLEITZ: A was?

24 MR. JOVISHOFF: To encourage municipal
25 action to guide the appropriate development of

1 all lands.

2 MR. GLEITZ: You find that placing the
3 auction house in the manufacturing zone is the
4 appropriate development for that particular
5 site?

6 MR. JOVISHOFF: Yes.

7 MR. GLEITZ: This is creating sufficient
8 space for the use of an auction house?

9 MR. JOVISHOFF: Correct. It's a
10 regional facility.

11 MR. GLEITZ: Mr. Hirsch stole my big
12 question. We've heard some testimony that the
13 site cannot be prepared without the full extent
14 of the mining going on at the site.

15 MR. JOVISHOFF: Correct.

16 MR. GLEITZ: Was there any difference
17 between the purpose of the site and -- never
18 mind. I'll skip that. You went on to speak
19 more about how this is particularly suited for
20 mining, because mining has already occurred.

21 Was that mining done under an existing permit?

22 MR. JOVISHOFF: I don't know.

23 MR GLEITZ: Okay. Then the visual

24 improvements would occur, because the lands are

25 already disturbed. Was that disturbed as a

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1 prior approval?

2 MR. JOVISHOFF: I don't know.

3 MR. GLEITZ: You are kind of relying on

4 these positive criteria of creating a visual

5 environment and allowing for re-development of a

6 disturbed site and it's already occurred on the

7 site, but it's almost as if events have occurred

8 on the site without, perhaps -- you have no

9 knowledge whether they occurred under a permit

10 or a prior approval, yet they've occurred on the

11 site and you are using that to advance the

12 purposes of your own application. Am I making

13 sense?

14 MR. JOVISHOFF: You are. I'm describing

15 conditions of the site and not events. The

16 condition of the site is a site that has seen
17 soil removal. With all due respect to my
18 client, it's not the most attractive site in the
19 world. What I am saying is that this
20 development will improve the property.

21 MR GLEITZ: I want to follow-up with any
22 kind of use variance application if the use has
23 kind of already occurred here that is not
24 necessarily an argument for saying the use
25 should occur here.

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1 MR. JOVISHOFF: The improvements of the
2 conditions, I think, is an argument that the
3 site is particularly suited and it constitutes
4 as special reasons.

5 MR. GLEITZ: Couldn't re-planting the
6 trees also improve it without removing the
7 couple of hundred thousand square feet of fill?

8 MR. JOVISHOFF: It could. Technically,
9 it could. Anybody could plant 100,000 trees or

10 50,000 trees. This re-development on the site
11 would be the vehicle to do that.

12 MR. GLEITZ: Was there ever development
13 on the site?

14 MR. JOVISHOFF: It's developed for a
15 recycling facility.

16 MR. GLEITZ: Not this site.

17 MR. JOVISHOFF: It's behind it.

18 MR GLEITZ: This site was forested.
19 Trees were removed, soil was removed. Now you
20 are coming and saying the purpose of improving
21 the site is because trees were removed and soil
22 was removed. It's a chicken and egg argument
23 that I'm not following.

24 MR. FALVO: The soil was removed without
25 a permit. That's stipulated. They were

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1 preparing the land for the proposed development.

2 MR GLEITZ: Once again, if you're
3 putting -- if you have a residential property,

4 and you pay it and you come in for a use
5 variance for a parking lot, you can't say, oh,
6 look, it's a parking lot.

7 MR. FALVO: That's not what we are doing
8 here.

9 MR GLEITZ: You are asking for a mining
10 permit. One of the reasons for the mining, and
11 why it's suited for mining, your whole argument
12 for the particular suitability for the site for
13 mining is because it's already disturbed, and it
14 has development on it, and trees removed and you
15 are relying on visual improvements, you are
16 doing rehab. You are allowing for
17 re-development of a site already disturbed,
18 because you disturbed the site. I don't think
19 that argument is really holding weight.

20 MR. FALVO: I think the biggest argument
21 is the definition of mining. I'm not going to
22 argue whether what constitutes mining or not.
23 As was mentioned earlier, the question was asked
24 and answered, there is no way you can develop

25 this property in the manner intended or in any

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1 reasonable manner without removing a certain
2 amount of soil to get it down to the appropriate
3 grade. That's what's being done. That was
4 testified at the very first meeting.

5 MR GLEITZ: That is the argument that
6 the Board attorney made for you.

7 MR. FALVO: I thought the evidence was
8 put in to make that argument. Mr. Hirsch
9 articulated it more clearly.

10 MR GLEITZ: I heard a lot of argument
11 for particular suitability and advancing the
12 Municipal Land Use Law and not hardship. We
13 heard a lot of testimony about particular
14 suitability purposes of the zoning argument
15 where in fact now -- I think we should be very
16 clear to the Board and the Board should
17 completely understand there are two ways to skin
18 this cat and we've heard testimony about one way

19 when I think they are relaying on the other way.

20 Am I being clear to the Board?

21 MR. BATTISTA: You are. I think one of

22 the -- you were talking about soil borings to go

23 four feet down on that big hill. If I drive

24 there tomorrow, is that hill going to be there?

25 MR. FALVO: One of the hills.

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1 MR. BATTISTA: The other one that was

2 removed was removed without permit.

3 MR. FALVO: Mr. Feist suggested -- that

4 was a question that we tried to determine at the

5 first meeting. There was a question for soil

6 borings. If we have a hill that's 18 feet high,

7 what good -- what does a four-foot soil boring

8 tell me? My contention is that it tells you

9 nothing.

10 MR. BATTISTA: I understand that. My

11 point --

12 MR. FALVO: If you go there today, there

13 are hills, as you say, or parts of the elevation

14 that haven't been changed.

15 MR. BATTISTA: What I'm trying to figure

16 out is, you are applying for a variance to do

17 whether we call it mining, or whatever we call

18 it, it's already being done. The soil -- has

19 soil been sold on the property already?

20 MR. FALVO: I don't know if it's been

21 sold. It's been removed. We stopped once the

22 Municipality said stop.

23 MR. BATTISTA: None has been removed

24 since?

25 MR. FALVO: Right.

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1 MR. GLEITZ: When we were talking about

2 soil borings, we were talking about finished

3 grade. You would have to go 44 feet. It wasn't

4 18 feet or 4 feet. It was they would require

5 soil borings of 40 to 50 feet to get to the

6 point below finished grade. The purpose of the

7 mining and doing those soil borings was to
8 figure out when you were done with the activity
9 what was the sub surface going to be like.

10 MR. FALVO: If you review the transcript
11 of the last meeting, the engineer, Mr. Feist,
12 said he didn't believe the borings were
13 necessary in that area, and that the soil was
14 removed and it was removed in the presence of
15 municipal engineers and that would satisfy his
16 concerns. We said fine.

17 MR. GLEITZ: In terms of the negative, I
18 have another question. In terms -- we get into
19 this a lot when you talk about use variances
20 when there are particular uses not permitted
21 specifically called out as no new mines shall
22 occur. No new mining sites are permitted and we
23 had this discussion before the Board about
24 suitability or hardship and other types of
25 things and we talk about no negative impact on

1 the zoning ordinance or no substantial impact on
2 the zoning ordinance. How do you reconcile
3 impact on the zoning ordinance when it says this
4 shall not be permitted?

5 MR. JOVISHOFF: That's why I introduced
6 it by saying we disagree and I don't believe
7 this is mining, because the intent is to reduce
8 the property to a point where it can be
9 developed. I don't think -- I honestly don't
10 think it was the intent of the ordinance, and I
11 can't speak for it, and I've read other
12 ordinances also. I believe this is not mining
13 as was intended or as is defined.

14 MR. HIRSCH: Excuse me. You can't have
15 it both ways as a matter of law here. All
16 right? You can't come in front of us and say,
17 we're not asking for an interpretation, we're
18 not appealing the zoning officer's decision, we
19 acknowledge we need a use variance and then make
20 an argument that you don't need a use variance.
21 You can't have it both ways. Let me finish. If
22 that is your opinion, fine. I understand it.

23 You can't argue with the planner that your
24 justification is that this is really not mining.
25 You can't have it both ways. I think there are

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1 arguments. I can think of the arguments. I
2 think you can say why you can justify this
3 perhaps to the Board, but you can't argue that
4 we are here for a use variance, but it's not a
5 use variance.

6 MR. FALVO: Mr. Hirsch, let me ask you
7 this question and maybe the municipal planner
8 can answer the question. The property that is
9 the subject of this application up until
10 two years ago was a recognized subdivision of a
11 tax map of the Borough of Tinton Falls. Did
12 anybody think, when they drafted the ordinance,
13 how that subdivision could have been developed?

14 MR. HIRSCH: Mr. Falvo, that is a fine
15 argument to make. Those are the kinds of things
16 you should be arguing as to why you can do the

17 reconciliation under Medici. Don't argue, well,
18 we can reconcile it, because we're not really
19 mining. You can't do that. You can make
20 arguments to reconcile under Medici, such as, as
21 you were trying to suggest, you don't think this
22 is what the Borough Council had in mind when you
23 are preparing a site for development. You can
24 go down that road, but don't say it's not
25 mining. You admitted you are here for a use

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1 variance. The arguments you want to make is
2 fine. It makes sense. You can make those
3 responses. I'm not saying you don't have
4 arguments. I'm saying make sure you make the
5 right ones.

6 MR. FALVO: Mr. Hirsch, to be quite
7 honest, when we filed this application to begin
8 with, we showed the change in grades. If you
9 want me to state it again, as our engineer
10 stated at the beginning of this case, that we

11 had to reduce the grades in order to build. You
12 can't build it the way it is. That was
13 testified to by the engineer for the Applicant.

14 MR. HIRSCH: Okay. That is on the
15 special reasons of undue hardship.

16 MR. FALVO: The second argument we've
17 made is that the property we are purchasing from
18 the Borough of Tinton Falls was a subdivision
19 that up until several years ago was still on the
20 tax maps of the Borough. That subdivision
21 couldn't have been constructed as plotted with
22 the present elevations.

23 MR. HIRSCH: Forget that one, because
24 you are here for this subdivision. You are
25 getting the arguments confused. You are making

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1 the argument of undue hardship which was
2 discussed earlier on. The question Mr. Gleitz
3 has asked is that under Medici there has to be a
4 reconciliation of the grant of the use variance.

5 Here, there is a zoning ordinance provision for
6 mining permits, but it specifically says it's
7 for ongoing mining. No new permits will be
8 issued. He asked the question how to reconcile
9 the Board granting this variance with the
10 governing body establishing its ordinance.

11 There will be no more mining permits.

12 The only thing I directed here in my
13 position, as the lawyer for the Board, was
14 saying that you can't come in front of the Board
15 and acknowledge you are a use variance, despite
16 the fact you may disagree with it, but you
17 acknowledge you are a use variance. You are not
18 asking for an appeal or an interpretation, so
19 you can't respond to the question of how to
20 reconcile it by saying it's not really a mining
21 operation. That's all I said. Okay? You
22 started to make some arguments, which would be a
23 response to that question as to how you can
24 reconcile the grant of this use variance, even
25 though the ordinance says no new mining permits

JOVISHOFF - Direct

1 will be issued. That's what you have to direct
2 yourself to. I think your planner started
3 saying some of them. Don't argue it's not a
4 mining operation.

5 MR. JOVISHOFF: I think the point you
6 are making, and the point I would make, is that
7 this property -- to subdivide this property --
8 you could not do mining on this property in
9 order to further the subdivision. Maybe I'm not
10 being fully clear.

11 MR. FALVO: Let's qualify the question.

12 Q. As the Applicant is proposing to do
13 here, he wants to create this subdivision and the
14 lots will conform based upon the topography of the
15 property, would you say, from a planning point of
16 view, if you know, that it would be possible to build
17 or to develop the subdivision as proposed without
18 altering the grade of the property?

19 A. No. I don't think it would be.

20 Q. All right. In altering the grade of the
21 property constitutes mining then that is the variance
22 that is being requested?

23 A. Yes.

24 MR. HIRSCH: Do you have any idea, and I
25 forget if Mr. Mazza testified to this, how long

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JOVISHOFF - Direct

1 the operation might be in existence to remove
2 all of the soil?

3 MR. FALVO: I'll bring Mr. Mazza back.

4 He may have testified to it. Mr. Mazza can
5 testify, but he estimates it will take
6 approximately six months to a year.

7 MR. HIRSCH: One of the requirements of
8 the permit is for how long you are seeking the
9 permit. Even the permit ordinance anticipates
10 it's going to have a beginning and ending
11 period, unlike most variances that run with the
12 land forever. That might be part of your
13 consideration here that you are looking for a

14 mining operation that may last six months which
15 might not be what the ordinance was concerning
16 itself with that kind of short, temporary type
17 of use. There are ways to try to argue how you
18 can reconcile this.

19 MR. RAUSCH: From an engineering point
20 of view, in dealing with the soil removal and
21 the question of mining and everything, I think,
22 you know, the question is not whether there is
23 mining or not. There is mining. The question,
24 I think, is degree of soil removal from the
25 site.

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JOVISHOFF - Direct

1 The question I have, and I believe it
2 can be, can this subdivision be developed with
3 maybe only removing half the soil that they are
4 proposing? I believe it can be. I mean, the
5 slopes of the road range from one to one and a
6 half percent. There is nothing that says they
7 can't come out with maybe three percent and do

8 creative grading. Maybe there are some
9 retaining walls, four or five. Instead of
10 having one percent slope grading across the
11 site, you have three percent slope. The
12 question is the degree of soil removal from
13 here. I believe, when they went to design the
14 subdivision, they looked at it first how much
15 soil can we remove and develop the site
16 afterwards? I believe this site could, you
17 know, easily be developed with no problem with
18 the full subdivision with less soil removal than
19 they are asking for. Because they are coming in
20 for a mining permit maybe the question to what
21 degree is what they really need to develop the
22 whole site of the soil removal.

23 MR. HIRSCH: I think Mr. Falvo said even
24 though there was some testimony he would have
25 his engineer review that as to why, in his

1 expert opinion, he believes 400,000 cubic yards

2 are necessary as opposed to maybe 200,000 yards
3 or whatever the number. I think that's
4 important to establish that you did have your
5 engineer give good, sound reasons to establish
6 why the volume has to be what it is, so then our
7 engineer can review that and say I agree or
8 disagree and somehow that can be hashed out to
9 make this subdivision and site workable,
10 developable under the ordinance.

11 MR. FALVO: I agree with you, but I
12 think we are getting absorbed in the volume of
13 soil to be removed. If I had a 100-acre tract,
14 and I was removing two feet of soil under your
15 ordinance, I can do it and I don't have to come
16 before this Board, because I'm not altering the
17 grade more than two feet. I may be taking out
18 twice the amount of soil that I'm taking out
19 here, but that constitutes nothing in the
20 ordinance. It says so long as I'm not altering
21 the grade by two feet --

22 MR. HIRSCH: That means you don't need a

23 variance for altering the grade.

24 MR. FALVO: If I alter the grade a foot

25 and a half on 100 acres of land, I could

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JOVISHOFF - Direct

1 conceivably be taking out more soil than I am in

2 this particular development and it's not

3 considered, quote, mining.

4 MR. HIRSCH: Why? I don't believe it

5 wouldn't be considered mining just because you

6 don't need a variance to. I don't think we need

7 to go down that road. I don't know how

8 important -- this is an engineering issue.

9 MR. FALVO: I understand.

10 MR. HIRSCH: Your engineer may say this

11 is how the slopes have to be and this is why it

12 adds up to this amount of material and whether

13 it's 300 or 400, it might be such an

14 insignificant change that you can say I can do

15 it for 300, but the site will be more attractive

16 if I take 400 or the drainage could be better.

17 MR. FALVO: We've been addressing --

18 MR. HIRSCH: The arguments aren't hard
19 to make.

20 MR. FALVO: We've been addressing the
21 engineer's testimony for six hours and now all
22 of a sudden is maybe you don't have to take that
23 much out.

24 MR. GLEITZ: It goes to the proofs of
25 the variance. We are now getting into the

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JOVISHOFF - Direct

1 planning testimony. We've had the planning
2 testimony. It's a use variance for a mining and
3 that's where we are putting the arguments and
4 cards on the table about positive criteria for
5 the mining variance. Now we are exploring what
6 your arguments are and whether it's the purposes
7 and particular suitability. We've had
8 some discussion about that. We've heard a shift
9 into the hardship. The simple question was can
10 the site be prepared without the extent of

11 mining? The simple question was yes. Now we
12 are hearing it's further nuance with further
13 engineering testimony.

14 MR. FALVO: We didn't say yes, it could
15 be.

16 MR GLEITZ: They said no. I'm sorry.
17 Our engineer said maybe it could be.

18 MR. FALVO: You don't do that through
19 the planner.

20 MR GLEITZ: That's why we didn't talk
21 about it when we went through the technical
22 review letter on the engineer. I think there
23 was some questions. I think, at the very first
24 hearing, I think the Remington Bernick engineer
25 had a lot of questions. I think Jeff was asking

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JOVISHOFF - Direct

1 some questions about that. It didn't get
2 discussed at the last hearing, because we were
3 going through technical points of the review
4 letter. Now that we are back with the planning

5 testimony, and we are talking about the mining
6 again and soil removal again, I think that's why
7 it's being brought up again. It goes to your
8 argument for the use variance for the mining.

9 I think we need to have further
10 discussion. If it's truly a hardship, we can
11 not do this unless we remove the soil. It
12 becomes a question of how much is necessary and
13 how much is a hardship. Could you not do enough
14 grading on the site to retain the material on
15 the site itself? It's a large enough site. How
16 much has to be removed and how much has to
17 remain? Those are the questions we are asking.
18 I think the Board has every right to ask those
19 questions.

20 MR. FALVO: That's fine. This is the
21 wrong witness to answer the questions.

22 MR GLEITZ: Okay. We are discussing the
23 planning testimony. It all relates back. I
24 think we can move on. I guess the answer is, we
25 will hear more testimony when the engineer comes

JOVISHOFF - Direct

1 up.

2 As to the C variances, I think I tend to
3 agree with the witness that the intent is met.

4 Thank you, Mr. Chairman.

5 CHAIRMAN PALMIERI: No problem. A lot
6 of information to absorb tonight. That's for
7 sure. I was just asking Mr. Hirsch a question
8 about the mining requirements with the permit.
9 Obviously, Mr. Falvo, that is something that is
10 going to go in front of the Council. As far as
11 when you are going to get the permit, you need
12 the requirements to do the mining. That is not
13 part of this application; is that correct?

14 MR. HIRSCH: If the Board were to grant
15 the use variance to allow a mining operation,
16 then they would have to be conditioned on them
17 obtaining the permit pursuant to the mining
18 ordinance that exists in the Borough. That
19 permit, I guess, made to the Borough Council,
20 and all the engineer aspects reviewed by the

21 Borough engineer, because you had granted them a
22 use variance for mining, so you get over the
23 hurdle of no new mining permits permitted, this
24 Board has the power to grant the use variance.
25 So now that's granted it's like essentially

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JOVISHOFF - Direct

1 permitted so now they would have to apply for
2 this permit to do the mining.

3 CHAIRMAN PALMIERI: Right.

4 MR. HIRSCH: If they comply, the Borough
5 would give them the permit and for six months,
6 or whatever they need it for, they would do it
7 and they would be done. The permit would expire
8 and the mining operation would be gone.

9 CHAIRMAN PALMIERI: Got it.

10 MR. HIRSCH: You have to keep that in
11 mind. I don't want the Board to get sidetracked
12 with the legal argument. We are trying to set
13 standards. We are trying to get the evidence
14 into the record. We are trying to make sure the

15 Applicant has provided all of the appropriate
16 evidence on what we think are the critical
17 issues on the use variance application.

18 CHAIRMAN PALMIERI: All right. Do you
19 have any other questions of the planner? Do any
20 Board Members have any additional questions? At
21 this time, we are going to open it up to the
22 public. Does the public have any questions of
23 the testimony given so far? All right. None.
24 Mr. Falvo, we are getting late into the night.
25 I've had some indication they need a five-minute

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MAZZA - Redirect

1 break.

2 MR. FALVO: Fine.

3 CHAIRMAN PALMIERI: We will come back
4 right after that.

5 (Whereupon, a five-minute break was
6 taken.)

7 MR. FALVO: I'd like to re-call Dominick
8 Mazza.

9 (Whereupon, Dominick Mazza testifies as

10 follows:

11 RE-DIRECT EXAMINATION BY MR. FALVO:

12 Q. Mr. Mazza --

13 MR. HIRSCH: You are still under oath,

14 Mr. Mazza.

15 MR. MAZZA: Yes.

16 Q. Mr. Mazza, with regard to this site and

17 the history of what's led up to this application,

18 could you please relate to the Board from whom the

19 property is being purchased and what the intent was

20 and whatever else you know about this?

21 A. We had negotiations on this property

22 about five years ago. Three years ago, we purchased

23 the property with the understanding that 400,000

24 tires on the property were going to be cleaned up.

25 MR. HIRSCH: Say that again?

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MAZZA - Redirect

1 MR. MAZZA: There were 400,000 tires on

2 this property that had to be cleaned up at that

3 time. To cut a deal with the Town to Mazza and
4 Sons, we were going to purchase the property by
5 the Town and by cleaning up the site and
6 purchasing it for \$200,000, which we have done.
7 The past administrations, the mayor, the
8 administrator, as part of clean-up, they allowed
9 us to remove the dirt. That's why there was
10 disturbance on this piece of property and has
11 been continually going on from that past
12 operation.

13 At the time, the Town has never
14 indicated to us there was a mining issue. They
15 always knew of our intention. They didn't say
16 anything about me spending the \$1.8 million of
17 cleaning the tires up. I got the Town out of
18 the jam. I settled a CAFRA permit from the DEP
19 that was going against the Town. As a result of
20 cleaning up the tires and paying the Town, I now
21 own that property. The Town, as far as I'm
22 concerned, has not lived up to their
23 obligations. Part of this 50 acres had 23

24 stamped lots within 50 acres. The Town was
25 supposed to acquire those lots and give me the

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MAZZA - Redirect

1 50 acres free and clear either by eminent
2 domain, or whatever means necessary, to make the
3 property clear of all means or other obligations
4 that people had on the property. Nothing has
5 changed there.

6 Mazza has done all of its obligations.
7 The Town still to this day owes me nine lots.
8 Just recently, about six months ago, we went to
9 court again and got an order for the Town to
10 either condemn these lots in a quick manner,
11 which the Town still has not done to this day,
12 so you want to talk about hardship? I got
13 almost \$2 million out on this property and I
14 seem to be, for the most part, jerked around by
15 the Town by not letting me come in for site plan
16 approval, delaying giving me the lots and that's
17 where I stand.

18 CHAIRMAN PALMIERI: Mr. Mazza, do you
19 believe this Board is slowing the process?

20 MR. MAZZA: Not the Board. You have a
21 lawyer for the Town. If we haven't had 30
22 meetings about taking the dirt off, we haven't
23 had one. The administrator knows what we have
24 been doing. In the past, they did not care
25 about me taking dirt off. Now, all a sudden,

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MAZZA - Redirect

1 it's a big issue at this meeting. I would like
2 to know why.

3 MR. HIRSCH: The big issue is not really
4 what you took off before. The big issue is the
5 request to be able to remove 400-some thousand
6 cubic yards in the future in order to develop
7 the site. That is the issue.

8 MR. MAZZA: We have --

9 MR. HIRSCH: If anybody has been
10 listening tonight, it doesn't seem like you are,
11 because everybody seems to be missing the point.

12 You are not necessarily doing bad, Mr. Mazza,
13 but nobody seems to be getting it. I don't
14 know. You are not picking up on what we are
15 saying, unfortunately. It's not about anything
16 with the lots the Town owes you. All of that
17 may be wonderful. This is simply about an
18 application that this Board has in front of it
19 for site plan approval, major subdivision and a
20 use variance for warehouse -- strike that,
21 auction house and a use variance for a main
22 mining permit for the future and not for what
23 happened in the past.

24 MR. MAZZA: It's a very simple solution.
25 My existing recycling facility is at Elevation

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MAZZA - Redirect

1 115. Now the fire marshal has wanted us to put
2 an additional water main through this Borough
3 Properties and tie back into our existing water
4 main. The grades need to come down. It's a
5 manufacturing zone. We need to accomplish

6 meeting both grades on both on these properties.

7 MR. HIRSCH: Okay. These are the facts
8 you put in front of the Board. The Board will
9 eventually vote whether they think that is a
10 justifiable reason and there is a hardship to
11 grant a variance for a mining permit. It seems
12 like you are listening to the Board and assuming
13 that everything you've heard is negative to your
14 application. I don't think that is the case.
15 I'm telling you, from my viewpoint because I've
16 been doing the talking, but the Board is going
17 to vote on it.

18 MR. FALVO: I believe Mr. Mazza felt he
19 had to give some background on the situation.

20 MR. HIRSCH: I understand. He wasn't
21 sneaking out in the middle of the night and
22 taking the soil off.

23 MR. SLAYZK: If I were to come out with
24 that statement, the testimony you just gave,
25 three or four meetings ago, do you know what I'm

1 saying, this conversation about the soil has
2 been floating around for three or four meetings.
3 We've never heard any of this. This is the
4 first we are hearing what you just stated.

5 MR. MAZZA: If I'm not mistaken, I did
6 say it.

7 MR. SLAYZK: We've heard bits and
8 pieces. I've never heard what you said to me
9 just now. I've heard pieces of it and not the
10 whole thing at one time.

11 MR. MAZZA: Okay. You are informed now
12 what I've been going through and the hardship
13 that our company has been having with trying to
14 get this deal to happen.

15 MR. SLAYZK: Right.

16 BY MR. FALVO:

17 Q. With regard to the auction house, at the
18 last meeting, there was a lot of back and forth, as
19 far as what you were going to auction or what types
20 of items you were going to auction off. I believe
21 Mr. Hirsch's statement was he wanted a list, so if

22 you said you were going to sell heavy equipment, and
23 somebody came in with a heavy truck, you couldn't get
24 stopped from selling that. I show you a document
25 entitled, "Documents for Potential Items for

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MAZZA - Redirect

1 Auction." I would ask you, if this was the list that
2 was compiled by your organization outlining items
3 that you would potentially or could potentially
4 auction off at this site?

5 A. Yes.

6 Q. Now, these don't necessarily mean --
7 this list doesn't mean that you are going to auction
8 each and every one of these items; is that correct?

9 A. Yes.

10 Q. It's a pretty inclusive list. If the
11 opportunity presents itself, and it can be handled
12 without any disruption to your normal operation,
13 items in these categories would be potentially
14 auctioned at your location?

15 A. Yes.

16 MR. FALVO: I'd like to mark this as

17 A-17.

18 MR. HIRSCH: Am I to understand the list

19 you are going to give to us that is with the

20 limitations that we've already heard testimony

21 about, that the auction was still only occur

22 once a month on a Saturday, although you may

23 indicated you might want to do an auction on

24 Friday. I'm not sure what the parameters are,

25 you know, that goes along with this list.

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MAZZA - Redirect

1 MR. MAZZA: If we a auction on Friday,

2 then obviously we won't have one on Saturday.

3 MR. HIRSCH: I'm trying to get it

4 straight. Are we going to have one auction a

5 month or more than one? What are you asking

6 for, so the Board knows what it's voting on.

7 MR. MAZZA: I'm assuming, in talking to

8 the auctioneer, one auction a month would

9 probably be likely, if it's a heavy-equipment

10 type auction.

11 MR. HIRSCH: Right.

12 MR. MAZZA: If it's smaller items, maybe

13 two a month.

14 MR. HIRSCH: Two a month of those, plus

15 heavy equipment, so it's three.

16 MR. FALVO: Total two a month.

17 MR. HIRSCH: Okay.

18 MR. MAZZA: One might be a smaller, like

19 contractor's equipment type small stuff.

20 MR. HIRSCH: There would be no more than

21 one heavy equipment auction per month. There

22 might be a second auction per month for other

23 items on this list, not involving heavy

24 equipment.

25 MR. MAZZA: I could say that.

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MAZZA - Redirect

1 MR. HIRSCH: Would the second auction be

2 what day of the week?

3 MR. MAZZA: The majority of the time

4 would be on Saturday. I've indicated in the
5 past that Friday, during the summertime, seems
6 to be a better day for an auction.

7 MR. HIRSCH: If the Board gets to vote
8 on this, at some point, the approval you are
9 seeking is to have auction of heavy equipment
10 once a month, either on a Saturday or a Friday.

11 MR. MAZZA: Yes.

12 MR. HIRSCH: I'm not trying to put words
13 in your mouth. I'm trying to understand. In
14 addition, you are requesting permission to have
15 an auction, a second auction, during the month
16 on either a Saturday or Friday for the items,
17 other than heavy equipment.

18 MR. MAZZA: Again, if it's in the
19 summertime, we'll probably have it on a Friday.

20 MR. HIRSCH: Are you saying Friday would
21 only be during the summer months or do you want
22 to leave it any time of the year?

23 MR. MAZZA: Let's leave it any time of
24 the year.

25 MR. HIRSCH: I'm trying to get the

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MAZZA - Redirect

1 parameters.

2 MR. HIRSCH: What I'm marking as A-17,

3 this list of categories of potential items for

4 auction.

5 (Whereupon, A-17 - List of Potential

6 Items for Auction, was received and marked into

7 evidence.)

8 CHAIRMAN PALMIERI: Any particular

9 questions about any items on the list or

10 anything that stands out.

11 MR. SLAYZK: I have no problem with the

12 list.

13 CHAIRMAN PALMIERI: I have know problem

14 with it either.

15 MR. FALVO: I stated earlier, the reason

16 the list is so all-encompassing is so we don't

17 get into a situation.

18 MR. SLAYZK: We have no problem with the

19 list.

20 MR. HIRSCH: That's why I suggested you

21 did the list, so you didn't get cited down the

22 road.

23 MR. FALVO: Absolutely. We took your

24 suggestion.

25 MR. SLAYZK: The list is fine.

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MAZZA - Redirect

1 MR. FALVO: I have no further questions

2 of this witness, unless Board Members do.

3 CHAIRMAN PALMIERI: Any questions of Mr.

4 Mazza? All right. I'll open it up to the

5 public. Did the public have any questions?

6 State your name for the record.

7 MR. BRENNAN: John Brennan, attorney of

8 the law, in Spring Lake Heights. I represent

9 Shark River Clean-up Coalition. Shark River

10 Clean-up Coalition is volunteers protecting and

11 promoting the preservation of the water shed on

12 the Shark River, of which this development is

13 located entirely within and, in particular, the

14 surface waters of the water shed which --

15 CHAIRMAN PALMIERI: Talk closer to the

16 microphone.

17 MR. BRENNAN: The Shark River which has

18 category one status, which we were largely

19 responsible in obtaining with the people down in

20 Trenton, because that waterway contains the

21 purest water in Monmouth County and the source

22 of drinking water.

23 MR. HIRSCH: You are here as an attorney

24 and not as a witness.

25 MR. BRENNAN: I'm letting you know who

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BRENNAN - Cross

1 we are.

2 MR. HIRSCH: You are giving facts.

3 MR. BRENNAN: That is our mission

4 statement. We are an environmental organization

5 for volunteers looking out for the best interest

6 of the water shed.

7 CROSS EXAMINATION BY MR. BRENNAN:

8 Q. Mr. Mazza, how much soil did you move
9 from this property?

10 A. I would have to do a calculation. I
11 don't really know.

12 Q. You don't know?

13 A. I would have to do a calculation to come
14 up with a number.

15 Q. Has the calculation ever been done?

16 A. I don't believe so.

17 Q. Have you made a mention to any person of
18 the volume of soil?

19 A. No.

20 Q. We are talking about the property that
21 you are seeking to develop.

22 A. Yes.

23 Q. And this was property that had you
24 acquired two lots, and then you are acquiring a
25 number of stamp-size lots from the Borough, correct?

1 A. No. It was three lots.

2 Q. Well, you said there were 28 stamp-size
3 lots.

4 A. Within the 50 acres of the three lots.

5 Q. Within the 50 acres.

6 A. Right.

7 Q. The tires that you removed, the 500,000
8 tires, where were they located?

9 A. On the front side of the property.

10 Q. Was that the stamp-size lots? Who owned
11 that property?

12 A. It was part of the Borough Properties.

13 Q. When you say, "The Borough Properties,"
14 you are talking about the Borough of Tinton Falls
15 owned that land?

16 A. Yes.

17 Q. And how did the tires get there, if you
18 know?

19 A. From past operations from the different
20 scrap yards.

21 Q. So, existing scrap yards, meaning in the
22 lots and areas where you presently operate Mazza

23 Brothers?

24 A. Yes.

25 Q. People were illegally dumping back onto

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BRENNAN - Cross

1 the Borough's property?

2 A. Tires were back from Yacarino. There

3 were white walls there the size of five or

4 six inches, so the tires were there many, many years.

5 Q. The only access to that site is over the

6 operation of yours, correct?

7 A. Yes.

8 Q. Whoever put the tires there accessed the

9 Borough-owned land over the property that you

10 presently own?

11 A. Yes.

12 CHAIRMAN PALMIERI: How long have you

13 been at the location?

14 MR. MAZZA: 1980.

15 CHAIRMAN PALMIERI: Before that, who was

16 the owner?

17 MR. MAZZA: Yacarino and Batalia.

18 CHAIRMAN PALMIERI: With these tire
19 locations, were they there before you took the
20 possession of the property?

21 MR. MAZZA: Yes.

22 CHAIRMAN PALMIERI: Did you have
23 anything to do with adding the tires there?

24 MR. MAZZA: No. One of the issues we
25 had when purchasing the property was the tires.

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BRENNAN - Cross

1 I think the judge, at the time, said they are
2 not on your property so don't worry about them.
3 That was the determination way back when I
4 purchased the property.

5 Q. I gather no determination was made -- it
6 certainly wasn't the Borough that placed the tires.
7 You are not making an allegation --

8 A. I can't answer the question.

9 Q. You are not making any allegation that
10 the Borough placed the tires there.

11 MR. HIRSCH: I'm not quite sure the
12 relevancy. I know Mr. Mazza has testified.
13 That's why I'm letting you go here for a while.
14 We are focused on this application which has
15 nothing to do with the tires or how much soil
16 was removed in the past.

17 Q. What did you do with the soil that you
18 removed?

19 A. I got rid of it.

20 Q. When you say you got rid of it, you sold
21 it?

22 A. Yes.

23 Q. You made a profit on it. Let me ask you
24 this, is it your testimony that you never improperly
25 dumped off of your operations?

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BRENNAN - Cross

1 A. Dumped what?

2 Q. Improper fill or dumped anything off of
3 your property?

4 A. I don't believe I did, no.

5 Q. Have you ever been sanctioned by the DEP
6 for improper filling?

7 MR. HIRSCH: Mr. Brennan, I can't hear
8 you.

9 Q. Have you ever been sanctioned by the DEP
10 for improper filling?

11 A. Yes.

12 Q. How many times have you been sanctioned
13 by the DEP for improper filling?

14 A. We are in dispute right now with DEP.

15 Q. How many times? How many times?

16 A. I would have to go back and check.

17 Q. More than a dozen times?

18 A. No. I don't believe it's more than a
19 dozen times.

20 Q. About a dozen times?

21 A. I don't know.

22 CHAIRMAN PALMIERI: There is a question
23 there. How did that relate to the application
24 itself?

25 MR. BRENNAN: I'm just asking questions

BRENNAN - Cross

1 with respect to credibility, because he has
2 testified that he wasn't responsible for putting
3 the tires back there. I asked him has he ever
4 done anything improper. He said no. I asked if
5 he has been sanctioned and he said yes.

6 CHAIRMAN PALMIERI: The sanctions were
7 relating to what kind of violations?

8 MR. BRENNAN: For improper filling.

9 MR. MAZZA: I don't classify it as
10 improper filling.

11 MR. BRENNAN: The DEP did.

12 MR. MAZZA: So what. Just because they
13 come out and do a violation --

14 MR. HIRSCH: I don't want to get too far
15 a field. The credibility here is not the issue.

16 MR. BRENNAN: That's all I have.

17 MR. HIRSCH: Any other questions of this
18 witness?

19 CHAIRMAN PALMIERI: Anybody else from

20 the public? What else, Mr. Falvo?

21 MR. FALVO: I know the engineer --

22 CHAIRMAN PALMIERI: Mr. Falvo, do we

23 have any idea how long we are going to be with

24 this?

25 MR. FALVO: We believe we will be

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BRENNAN - Cross

1 relatively quick, because we are going to

2 stipulate that we will comply.

3 MR. SLAYZK: We are asking for certain

4 things with regard to the soil. Are you going

5 to be testifying about that?

6 MR. FALVO: We are going -- with regard

7 to the soil, at the last meeting we stipulated

8 we would provide soil borings within the

9 vicinity of the basin.

10 MR. SLAYZK: No. What we discussed this

11 evening.

12 MR. HIRSCH: About the need to remove

13 400,000 cubic yards.

14 MR. FALVO: He can talk about that.

15 MR. SLAYZK: We are going to be talking
16 about that this evening?

17 MR. FALVO: Yes. We can talk about that
18 this evening.

19 MR. SLAYZK: Within a short period of
20 time? To me, this is going to go a lot longer
21 than what you think it's going to go.

22 MR. FALVO: It may very well.
23 Initially, we came in tonight to address the
24 reports that were submitted to us. A question
25 has come up by your engineer, after three

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BRENNAN - Cross

1 meetings, that perhaps we can take out less
2 fill. I believe our engineer is going to
3 testify that the amount of fill we are taking
4 out is what we have to take out to do this
5 development.

6 CHAIRMAN PALMIERI: Mr. Falvo, it is
7 11 o'clock, and I know we tried to complete

8 this. We are starting to get late in the
9 evening.

10 MR. FALVO: The problem we have is that
11 the next meeting is December 20th, which you and
12 Mr. Slayzk are going to be missing. That puts
13 me into January. When can we be heard in
14 January? If we get heard in January, can we
15 finish in January?

16 CHAIRMAN PALMIERI: The first available
17 date we have, because you don't want to go to
18 December 20th, is January 17th. There is nobody
19 on that date right now. That was originally
20 what Quick Check wanted. It is 11 o'clock at
21 night. We are going through a lot of testimony
22 tonight. I'm getting the feeling from the Board
23 Members that they are spent. Right now, the
24 only thing on for the 17th would be you.

25 MR. FALVO: For both cases?

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BRENNAN - Cross

1 CHAIRMAN PALMIERI: We can carry both

2 cases and lock up the 17th. You can have Shafto
3 Road Associates also on the 17th. This way,
4 they will both be on the same night. Hopefully,
5 there is not much more left with this.

6 MR. FALVO: I hope not either. Quite
7 honestly, I had no intention of bringing my
8 planner or my traffic consultant back. We
9 thought we would finish with the engineer and
10 proceed to a vote. On the 17th, do we know if
11 we are going to have a full Board? Does anybody
12 have vacation planned?

13 MR. SLAYZK: I'll be here.

14 CHAIRMAN PALMIERI: I'll be here.

15 Everybody says they are going to be here.

16 MR. SLAYZK: We would like to see this
17 resolved as well.

18 MR. FALVO: I understand entirely.

19 CHAIRMAN PALMIERI: It is 11 o'clock.

20 MR. FALVO: I understand, Mr. Palmieri,
21 believe me.

22 CHAIRMAN PALMIERI: Before we get --

23 MR. FALVO: Can we carry it without the

24 necessity of any additional notice?

25 CHAIRMAN PALMIERI: I don't see that

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1 being a problem.

2 MR. HIRSCH: You can carry it to the
3 next scheduled meeting without any additional
4 notice.

5 MR. FALVO: To the extent required, we
6 will extend the time in which the Board must
7 render a decision on both applications.

8 (Whereupon, at 11:04 p.m., the
9 application was carried to January 17, 2008.)

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1 CERTIFICATE

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3 I, LISA NORMAN, a Notary Public and

4 Certified Court Reporter of the State of New Jersey,

5 do hereby certify that prior to the commencement of

6 the examination, the witness was duly sworn by me to

7 testify the truth, the whole truth and nothing but

8 the truth.

9 I DO FURTHER CERTIFY that the foregoing

10 is a true and accurate transcript of the testimony as

11 taken stenographically by and before me at the time,

12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a

14 relative nor employee nor attorney nor counsel of any

15 of the parties to this action, and that I am neither

16 a relative nor employee of such attorney or counsel,

17 and that I am not financially interested in the

18 action.

19

20

21 Notary Public of the State of New Jersey

License No. 30X100177700

22 Dated: December 15, 2007

23

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