

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

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REGULAR MEETING FOR: TRANSCRIPT OF
5 PROCEEDINGS
THURSDAY, JANUARY 17, 2008

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3230 Shafto Road Associates

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10 BEFORE:

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12 RONALD PALMIERI, Chairman
13 SAYED MOAFI
14 STEVE PORZIO
15 ERIC RICKERT
16 JOHN RAUCH
17 JOHN SLAYZK

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ALSO PRESENT:

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THOMAS HIRSCH, ESQ., Board Attorney
19 JEFFREY RAUCH P.E., Board Engineer

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PAUL GLEITZ, P.P., Board Planner
20 FREDRICK KNIESLER, JR., Landscape Architect
DOULGAS GOTFREDSSEN, Board Secretary

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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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3 WITNESS NAME PAGE NO.

4

JAMES PALMISANO

5

6 By Mr. Falvo

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13 E X H I B I T S

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15 EXHIBIT NO. DESCRIPTION PAGE NO.

16

17 A-1 Gas Storage Building 4

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1 CHAIRMAN PALMIERI: Next case is for a
2 minor subdivision, use, bulk variance and site
3 plan approval.

4 MR. HIRSCH: I believe we accepted
5 jurisdiction on this.

6 MR. FALVO: Yes.

7 CHAIRMAN PALMIERI: It was carried from
8 December 6th.

9 MR. FALVO: Thank you, Members of the
10 Board. This application is for a subdivision.
11 The Applicant here is 3230 Shafto Road
12 Associates, which is the owner of the property.
13 The application is to subdivide off a piece of
14 the property on the north side of the access
15 road and create another lot upon which we
16 propose to locate Sims Gas Products LLC, which
17 will be a tenant of 3230 Shafto Road. What I'd
18 like to do is mark as A-1 in evidence the gas
19 storage building exhibit.

20 MR. HIRSCH: Is that the board up here?

21 MR. FALVO: Yes. I also have smaller
22 versions for the Board.

23 (Whereupon, A-1 - Gas Storage Building
24 exhibit, was received and marked into evidence.)
25 MR. FALVO: We can mark -- I'll mark the

5
PALMISANO - Direct

1 site plans later. I'd like to call Mr. James
2 Palmisano as a witness, please?

3 MR. HIRSCH: Sir, state your name, spell
4 your last name and give us an address.

5 MR. PALMISANO: James Palmisano,
6 P-A-L-M-I-S-A-N-O.

7 MR. HIRSCH: An address?

8 MR. PALMISANO: 615 Winding River Road,
9 Brick, New Jersey.

10 (Whereupon, James Palmisano is sworn and
11 testifies as follows:

12 DIRECT EXAMINATION BY MR. FALVO:

13 Q. Mr. Palmisano, what is your position
14 with Sims Gas Products, LLC?

15 A. I am the principal of the company.

16 Q. And could you please relate to the Board

17 what Sims Products -- what do you do, what do you
18 sell?

19 A. We are a gas distributorship, an
20 industrial gas distributorship. What that means is
21 we buy pre-packaged gases, we store them and we
22 distribute them to end users.

23 CHAIRMAN PALMIERI: Would that be
24 propane gas?

25 MR. PALMISANO: Propane is one of the

6

PALMISANO - Direct

1 gases, yes, sir.

2 CHAIRMAN PALMIERI: You are not talking
3 a fuel station.

4 MR. PALMISANO: This is not gasoline.
5 These are industrial gases. It is the air we
6 are currently breathing.

7 CHAIRMAN PALMIERI: Hopefully, it's not
8 too industrial in here.

9 Q. Mr. Palmisano, your operation or the
10 proposed operation at this location is designed to be

11 both wholesale and retail?

12 A. In a sense. I mean, not wholesale. We
13 are really the wholesaler. We buy from gas
14 manufacturers. We would be the wholesaler and then
15 we would sell.

16 MR. HIRSCH: You are retailing it to
17 your customers?

18 MR. PALMISANO: Yes, sir. We buy it in
19 larger quantities. We hold onto it and ship it
20 to end users.

21 Q. With regard to what you would be selling
22 at this location, would that include the propane, for
23 example, that you use in a barbecue grill?

24 A. Correct.

25 Q. Now, with regard to the materials or the

7

PALMISANO - Direct

1 gases that you will be storing on your site, what
2 type of gases would you be storing?

3 A. Well, we are going to be storing --

4 there is only two gas products that we currently

5 propose that are flammable, and that is propane and
6 acetylene. All of the other gases are atmospheric
7 gases to include nitrogen, oxygen, argon and helium
8 are the only products that we propose to have what we
9 call bulk storage or liquid storage on site.
10 Everything else would be pre-packaged in a steel, gas
11 cylinder.

12 Q. Now, with regard to the materials that
13 you are --

14 MR. SLAYZK: Let me ask a question. Are
15 you like a Suburban or a Welco?

16 MR. PALMISANO: We are a miniature
17 Welco. They happen to be one of our suppliers.

18 MR. SLAYZK: You are a distributor of
19 gas products, is that what you are trying to
20 say?

21 MR. PALMISANO: Exactly. I am what
22 Welco was 40 years ago. I worked for their dad.
23 I worked for Welco for a long time.

24 Q. With regard to the containers that are
25 on site and contain the nitrogen, oxygen, argon and

PALMISANO - Direct

1 helium, if one of them develops a leak, what would be
2 the result?

3 A. Which cylinders?

4 Q. Of nitrogen, oxygen, argon or helium.

5 A. The air that we currently breathe is
6 made up 78 percent nitrogen, and 21 percent oxygen
7 and 1 percent of argon. Those are atmospheric gases.
8 They are vented into the atmosphere by companies
9 every day. Our raw product, we extract it out of the
10 atmosphere. That is not something we do.

11 Q. If, let's say, a nitrogen tank, or the
12 oxygen tank or the argon tank were to rupture, what
13 would be -- I mean, the gas would escape into the
14 atmosphere?

15 A. Correct. Oxygen, nitrogen and argon
16 would be stored as a liquid. The vessels that they
17 are stored in are nothing more than a very
18 sophisticated thermos bottle. They are
19 double-insulated. They are at extremely cold

20 temperatures. The minute they hit the atmosphere,
21 they would vaporize right into a gas very rapidly.
22 Were I to bring in a sample to show you what liquid
23 nitrogen looks like, it would look like a clear glass
24 of water boiling. As we sit and chat, the gas would
25 vaporize right before our eyes.

9

PALMISANO - Direct

1 Q. If any of these containers should be
2 ruptured, it would not cause a problem by way of a
3 spill or any sort of contamination?

4 A. None whatsoever.

5 Q. With regard to the propane, when you are
6 selling these, you distribute that in the same
7 fashion as Wells or Seaboard as well as the sale or
8 distribution of those products?

9 A. Exactly.

10 Q. They would come in various sizes, but
11 usually they are the large containers that fit on a
12 truck?

13 A. Correct.

14 Q. With regard to the propane that you
15 would sell, either in large quantities or small, the
16 propane that you would sell usually for a barbecue
17 would be similar to the containers you see at most
18 gas stations?

19 A. Most every gas station today and
20 delicatessen. You see them everywhere.

21 Q. With regard to this present operation,
22 what would be the hours of operation?

23 A. Normal operations are from 7:00 to 5:00.
24 Sometimes we are there 6:00 in the morning, but in
25 the evening it wouldn't be after 5:00 or so.

10

PALMISANO - Direct

1 Q. How many employees do you have?

2 A. There are currently three employees.

3 CHAIRMAN PALMIERI: On the proposed
4 site, if the Board were to approve the site, how
5 many employees would you have working at the
6 facility?

7 MR. PALMISANO: With the size of the

8 building, I couldn't see more than five or seven
9 employees.

10 CHAIRMAN PALMIERI: A maximum of seven?

11 MR. PALMISANO: They would be mostly
12 truck drivers. Most of the employees would be
13 truck drivers and office staff.

14 CHAIRMAN PALMIERI: How many office
15 staff would you say?

16 MR. PALMISANO: Maybe two.

17 CHAIRMAN PALMIERI: And the rest would
18 be the people coming in, pick their trucks up
19 and go on delivery?

20 MR. PALMISANO: Yes.

21 CHAIRMAN PALMIERI: You think a maximum
22 of two staff and five delivery people?

23 MR. PALMISANO: Yeah. I would think if
24 we would double or triple volume, we could do it
25 with a staff of less than 12 total. That is

11

PALMISANO - Direct

1 including drivers, in-house and myself.

2 CHAIRMAN PALMIERI: Let's go back.

3 MR. HIRSCH: We lost the numbers there.

4 MR. PALMISANO: Let me jot it down.

5 MR. HIRSCH: We said five to seven

6 employees. That is what the Chairman was

7 working off of.

8 MR. PALMISANO: Are we talking the day

9 you open or talking five years out?

10 CHAIRMAN PALMIERI: Maximum capacity

11 based on the facility you are proposing. Say

12 you don't get affected by the recession that's

13 coming.

14 MR. PALMISANO: Perfect world. I would

15 say 12 maximum.

16 CHAIRMAN PALMIERI: Of those 12 people,

17 two or three would be in-house staff people and

18 the remaining nine would be delivery people on

19 the road?

20 MR. PALMISANO: Yeah.

21 CHAIRMAN PALMIERI: That's fine.

22 Q. With regard to the tanks -- let me

23 rephrase that. In conjunction with this approval,
24 besides the zoning approval that you have to acquire,
25 are there any State approvals?

12

PALMISANO - Direct

1 A. The propane would require State
2 approval. We had applied for State approval on the
3 propane. They had given it to us. It was an
4 18-month window. That has since expired with
5 anticipation of coming before this Board at an
6 earlier date. Yes, they have requirements, NFPA
7 requirements, that need to be met.

8 MR. SLAYZK: Are you currently in the
9 business?

10 MR. PALMISANO: We are currently in the
11 business.

12 MR. SLAYZK: Where's your facility now?

13 MR. PALMISANO: The facility is in my
14 house right now. That's where I operate from.

15 MR. SLAYZK: Where do you store tanks?

16 MR. PALMISANO: Tanks are stored at this

17 site in trailers.

18 MR. SLAYZK: You lost your permit based

19 on?

20 MR. PALMISANO: We don't pump propane.

21 The tank had been there. The Mazzas had a

22 propane vessel that we were utilizing. They had

23 it there 30 some-odd years. We had gone to the

24 State to increase the size of that storage and

25 we never did it. We decided to bring a company

13

PALMISANO - Direct

1 in to bring in pre-filled propane cylinders to

2 us.

3 MR. SLAYZK: If you get approval of

4 this, you are going to go ahead with the storage

5 tank?

6 MR. PALMISANO: We would like to put an

7 1,850-gallon tank there. There is no tank there

8 now.

9 MR. SLAYZK: Thank you.

10 Q. With regard to the A-1 in evidence that

11 we've introduced, you are proposing a storage
12 building, covered loading dock and then you also have
13 a pad upon which you will have several tanks working
14 containers that will have oxygen, nitrogen and argon?

15 A. Yes.

16 Q. And you also propose a road that will go
17 around the building with parking. To the north of
18 that road is a rather large propane tank; is that
19 right?

20 A. No. That is the only propane tank.

21 Q. The one to the north of the site will be
22 the only propane tank?

23 A. Correct.

24 Q. And the other tanks are for what?

25 A. The way the proposal is laid out, on the

14

PALMISANO - Direct

1 north side of the facility, there is a propane
2 vessel, a concrete pad that would have a 14-ton
3 carbon dioxide tank to fill up fire extinguishers or
4 facilities used in bars for carbonating soda and

5 beer. With nitrogen, there is a liquid nitrogen
6 vessel, a liquid oxygen and a liquid argon vessel
7 proposed. Were we to get approval tonight, and I had
8 the building up tomorrow morning, we would not have
9 oxygen, or nitrogen or argon. We delineated it for
10 future growth. We wanted to show in the future we
11 would like to have the ability to have those tanks
12 there. We would put carbon dioxide, propane and the
13 helium trailer in on day one.

14 Q. The entrance to this would be on the
15 east side of the building and you would have parking
16 and that's where your office area is?

17 A. Yes, sir.

18 Q. The rest of it would be essentially
19 storage, building and warehousing?

20 A. Correct.

21 Q. As the trucks came into load, the
22 loading dock would provide the opportunity for them
23 to put the cylinders on the truck before they --

24 A. Without having the need to go up and
25 down off the ground, we want the truck off the

PALMISANO - Direct

1 loading dock height as opposed to something on the
2 ground. The way the building is laid out or
3 designed, we would like to have the ability to drive
4 a fork truck into the building because the newest and
5 most efficient way of moving gas cylinders is
6 palletized. You can literally move cylinders with a
7 fork truck inside the building, if we chose to do a
8 palletized system as opposed to rolling them by hand.
9 Trucks are loaded from the dock yard.

10 Q. The hours of operation will be from 7:00
11 a.m. to 5:00 p.m. How many days a week would you be
12 operating?

13 A. Monday through Friday. Occasionally, we
14 would have a need to make deliveries on Saturdays, I
15 hope.

16 CHAIRMAN PALMIERI: Perfect world, you
17 will be open on Saturdays?

18 MR. PALMISANO: Just kidding.

19 MR. GLEITZ: Can I ask a question couple
20 of questions about the tanks? Why is the helium

21 in a trailer rather than a fixed tank?

22 MR. PALMISANO: Helium is one of the
23 coldest products and to keep that as a cryogen
24 is impossible. They ship it in bulk in high
25 pressure. Tube trailer is the method of

16

PALMISANO - Direct

1 transportation and storage.

2 MR. GLEITZ: It's a high-pressure
3 trailer?

4 MR. PALMISANO: Correct. It's a bundle
5 of elongated tubes. If you were to take a
6 standard oxygen cylinder, that you see bedside
7 at a hospital, you just elongate that to 30 or
8 40 feet and they bundle them and they are tied
9 into a DOT-approved trailer that you see riding
10 up and down the highways every day.

11 MR. GLEITZ: That would be a pad and
12 trailer that would come and go as needed?

13 MR. PALMISANO: Yes.

14 MR. GLEITZ: I see CO2, N2 and O2. I

15 don't see argon listed on the site plans. Is

16 that in addition to?

17 MR. PALMISANO: You are correct. It's

18 not on there.

19 MR. GLEITZ: That is something we want

20 to amend at some point.

21 MR. SLAYZK: What number are you looking

22 at?

23 MR. GLEITZ: You can see it real tiny on

24 the one handed out. I'm looking at Sheet 4.

25 MR. PALMISANO: It would go on that same

17

PALMISANO - Direct

1 pad. The argon would be the smallest of the

2 vessels.

3 MR. GLEITZ: If I'm looking at the CO2,

4 that is a tank that's laying horizontally.

5 MR. PALMISANO: Correct.

6 MR. GLEITZ: If I'm looking at the O2

7 and N2 --

8 MR. PALMISANO: Vertical.

9 MR. GLEITZ: What is the height of
10 those?

11 MR. SLAYZK: You can see these on this
12 map?

13 MR. GLEITZ: It looks like a Tylenol and
14 Advil on there.

15 MR. HIRSCH: This is what happens when
16 we go past 10:30.

17 MR. PALMISANO: I can give you the exact
18 height on the proposed tanks. What we tried to
19 show on the plan was the absolute largest-sized
20 vessel that is commercially available. I'm
21 going to guesstimate about 32 to 34 feet.

22 MR. HIRSCH: We can't do that.

23 MR. GLEITZ: The reason I ask -- we will
24 ask for additional information. My
25 understanding I've asked a few other tanks for

18

PALMISANO - Direct

1 manufacturing facilities. Typically, it's a
2 long cylinder that sticks up in the air and it's

3 on a footing of some kind, correct?

4 MR. PALMISANO: Yes.

5 MR. GLEITZ: It will be a platform.

6 MR. PALMISANO: Concrete slab.

7 MR. GLEITZ: Aren't there legs on these
8 things?

9 MR. PALMISANO: It's elevated in this
10 fashion. It's double-insulated and it will
11 normally have three or four support legs about
12 two feet in height and then you have the actual
13 vessel.

14 MR. GLEITZ: There is a maximum height
15 limitation in the zone. When I've seen some of
16 these other applications, we've had to add a
17 bulk variance for height. You want to double
18 check your numbers on these and find out exactly
19 how high these are going to be, because the
20 maximum height for all of the uses in this zone
21 is 40 feet. If you've got a 35-foot tank on
22 five-foot legs and you've got --

23 MR. PALMISANO: I can guarantee right

24 now it will not be over 40 feet.

25 MR. GLEITZ: You will need your engineer

19

PALMISANO - Direct

1 to confirm that.

2 MR. HIRSCH: We need the dimensions of

3 all of the tanks and some detail of what they

4 are going to be.

5 MR. PALMISANO: You want us to show

6 best-case scenario, the largest vessel we would

7 ever build in there? Day one, we are not

8 putting in those vessels.

9 MR. FALVO: Put the largest one in you

10 want, so when you go to put it in you have the

11 approval.

12 MR. PALMISANO: Okay. Okay.

13 MR. FALVO: Any other questions from the

14 Board?

15 CHAIRMAN PALMIERI: Yeah. The propane

16 sales, and you were talking about retail, are

17 any of the customers coming to the site to pick

18 up or is this more of a delivery service?

19 MR. PALMISANO: I would hope somebody

20 comes to pick up. That is not the nature of our

21 business, though. The nature of our propane

22 sales, per se, we would sell to garden centers.

23 We will sell the product to them and they will

24 sell. We are not in the business to sell one or

25 two tanks at a time.

20

PALMISANO - Direct

1 MR. SLAYZK: For instance, a resident

2 brings her five-gallon, or whatever the hell you

3 call it, small tank to you to fill up for a

4 barbecue.

5 MR. PALMISANO: If they found us and

6 knew we could do that, sure. There has been a

7 proliferation of kegalators, 5-pound CO2. We

8 probably get 20 calls. What we've done is set

9 up liquor stores to be able to change those with

10 customers. That is the market we are trying to

11 tackle. Not the individual homeowner.

12 MR. HIRSCH: You are maybe, to some
13 extent, wholesaling. Are you selling to
14 customers who are going to re-sell? There is a
15 margin from you to your client and then that
16 person. Are you selling directly to the end
17 user?

18 MR. PALMISANO: Ninety-nine percent of
19 the time we are directly to the end user. We
20 are targeting industrial and commercial.

21 MR. HIRSCH: You mentioned garden
22 centers.

23 MR. PALMISANO: The two customers that
24 we sell where they re-sell is garden centers and
25 kegalators for beer.

21

PALMISANO - Direct

1 MR. HIRSCH: The vast majority of your
2 business is to the end user?

3 MR. PALMISANO: Ninety-nine percent,
4 yes.

5 MR. RICKERT: If you do get into a

6 retail for the homeowner, and I know we just
7 finished Borough Properties, this road going in,
8 I know one way it was two lanes and one was a
9 single lane. Is that two lanes going in or two
10 lanes going out on this road?

11 MR. PALMISANO: Road A in front of the
12 site?

13 MR. RICKERT: If there is a lot of
14 retail, is there a single lane going in? Is
15 there going to be heavy traffic? That was my
16 only question.

17 MR. PALMISANO: To my understanding,
18 this roadway is two-way. There is a road
19 entering and a road exiting. It is a two-way.
20 Is that the proper way to say that?

21 MR. SLAYZK: He is asking, because
22 supposedly there were two lanes going in and one
23 leaving. Is that what you are asking?

24 MR. RICKERT: Yes.

25 MR. SLAYZK: It's a three-lane road.

1 MR. HIRSCH: Maybe you can address that
2 at the subsequent meeting with your engineer.

3 MR. GLEITZ: One other question, if I
4 may --

5 CHAIRMAN PALMIERI: Sure.

6 MR. GLEITZ: One of the reliefs you are
7 seeking is the drive in and part of the relief
8 sought is for a drive through as part of this
9 facility; is that correct?

10 MR. PALMISANO: Frankly, I don't
11 understand the question. Is the driveway coming
12 through the property?

13 MR. GLEITZ: If you look to the east of
14 your building, it says, "drive in."

15 MR. PALMISANO: The drive in that is
16 shown on the diagram means we have a garage door
17 with the ability to drive a fork truck into this
18 building to bring material into the building.

19 Am I explaining it?

20 MR. GLEITZ: That is a loading dock with

21 a garage door? It's not a drive through.

22 MR. PALMISANO: No one is driving
23 through that building. We are going to bring
24 product in through that door into that building.

25 MR. GLEITZ: That is a loading dock.

PALMISANO - Direct

1 MR. PALMISANO: It's ground level. It's
2 not a loading dock.

3 MR. GLEITZ: It's a loading bay.

4 MR. PALMISANO: Yes.

5 MR. GLEITZ: My read on the whole
6 application was that it sought further use
7 variance relief for a drive through. When our
8 office looked through this, we saw drive in as
9 drive in. We weren't quite sure what that was.

10 MR. PALMISANO: That is not the intent.

11 MR. GLEITZ: That is a loading bay and
12 we will remove that from the relief sought.

13 CHAIRMAN PALMIERI: Any Board Members
14 have any additional questions? I'm going to

15 open it up to the public. Seeing none, all
16 right, Mr. Falvo, we got started with this case.

17 MR. FALVO: Thank you.

18 CHAIRMAN PALMIERI: We will carry this
19 to February 21, 2008.

20 (Whereupon, the application was carried
21 to February 21, 2008.)

22

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1 CERTIFICATE

2

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: February 1, 2008

23

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

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REGULAR MEETING FOR: TRANSCRIPT OF
5 PROCEEDINGS
THURSDAY, JANUARY 17, 2008

6

BOROUGH PROPERTIES, LLC

7 -----

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8:00 p.m.

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11 BEFORE:

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13 RONALD PALMIERI, Chairman
14 SAYED MOAFI
15 ERIC RICKERT
16 STEVE PORZIO
17 JOHN SLAYZK

16

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18 ALSO PRESENT:

19 THOMAS HIRSCH, ESQ., Board Attorney

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24 15 Girard Avenue
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3 ANSELL, ZARO, GRIMM & AARON, P.C.
1500 Lawrence Avenue - CN 7807
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Attorneys for the Applicant

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24

25

5

1 CHAIRMAN PALMIERI: Mr. Lavallo is far
2 away. He is not going to make it. You have
3 five Members.

4 MR. FALVO: We are going to proceed.

5 CHAIRMAN PALMIERI: We are back on the
6 record. Next application is for Borough
7 Properties. It was carried from December 6th.
8 Let the record show that Mr. Lomangino will be
9 stepping down.

10 MR. FALVO: Mr. Chairman and Members of
11 the Board, as I understand we have five eligible
12 Members?

13 CHAIRMAN PALMIERI: That is correct.

14 MR. FALVO: In one of the letters there
15 was questions as to whether or not we submitted
16 the list of owners of Borough Properties. I'll

17 give this to Mr. Gotfredsen.

18 MR. FALVO: The first item we are going
19 to mark is the Waterway Composite Plan. That
20 will be --

21 MR. HIRSCH: I think we are up to A-18.

22 MR. FALVO: Yes.

23 MR. HIRSCH: Do you want to give me that
24 board and I'll mark it then? What are we
25 identifying A-18 as?

6

1 MR. FALVO: Waterway Composite Plan
2 dated January 15th. What I've handed to the
3 Board Members and professionals is just a
4 reduced version of that.

5 MR. HIRSCH: Thank you.

6 MR. FALVO: This way you won't have to
7 strain your eyes.

8 (Whereupon, A-18 - Waterway Composite
9 Plan, was received and marked into evidence.)

10 REDIRECT EXAMINATION BY MR. FALVO:

11 Q. Mr. Lurie, you've been previously sworn.

12 Could you please relate to the Board what A-18 shows
13 with regard to the Borough Properties' proposed
14 subdivision?

15 A. Sure. What this plan shows is the
16 relation of the C-1 waterway in relation to the
17 property, in addition to that the different revisions
18 that we have to make sure we maintain the C-1
19 waterway. What we have done in addition to the C-1
20 waterway, it shows the wetlands that's approved and
21 also the wetlands as pending with the DEP.

22 On this plan, in the lower corner by the
23 infiltration basin, we have approved wetlands
24 reservation which we have another line for and we've
25 completed a recitation in accordance with the DEP.

7

1 In addition, there is an area in between which in
2 turn we are going to re-vegetate to bring back that
3 300-foot buffer to its natural state.

4 MR. HIRSCH: What area is that that you

5 are going to vegetate?

6 MR. LURIE: It's to the north of the
7 site.

8 MR. HIRSCH: I thought --

9 MR. LURIE: To the north of Lot 2.01,
10 which is the infiltration basin.

11 MR. HIRSCH: I thought you started off
12 saying you completed the restoration of a
13 certain buffer area. I'm trying to define which
14 was completed and the one you are telling me you
15 are going to be completing.

16 MR. LURIE: It's two different things.
17 One is the restoration of the wetlands buffer,
18 which is located to the north of the C-1
19 waterway which the DEP has approved. It has
20 been vegetated by our client. In addition to
21 that, there is an area that is disturbed even
22 between the 300-foot buffer and the wetlands
23 buffer line, which abuts right adjacent to the
24 basin, which we are proposing to re-vegetate.

25 MR. HIRSCH: Thank you.

1 MR. SLAYZK: How long was it disturbed?

2 MR. LURIE: It was disturbed before the
3 C-1 waterway came into effect in '05. The
4 Applicant can actually disturb into that, but he
5 has proposed to pull everything out to maintain
6 the C-1 waterway.

7 MR. SLAYZK: He had rights for
8 disturbance of that waterway at that point?

9 MR. LURIE: Yes.

10 MR. SLAYZK: Did he have rights prior to
11 him disturbing it?

12 MR. LURIE: There wasn't a 300 foot --

13 MR. SLAYZK: I understand there was no
14 category one. What he disturbed in the
15 wetlands, did he have the rights to disturb the
16 wetlands before it was category one?

17 MR. LURIE: Well, to disturb the
18 wetlands --

19 MR. SLAYZK: You are not listening to my
20 question. I have one question. I'm trying to

21 figure out if the wetlands was disturbed by the
22 Applicant prior to the category one -- prior to
23 getting approvals.

24 MR. LURIE: The wetlands buffer was
25 disturbed prior to the C-1.

9

1 MR. SLAYZK: Prior to getting any
2 approvals. They basically went in there --

3 MR. LURIE: Yes.

4 MR. SLAYZK: The DEP came in there and
5 said, you guys need to --

6 MR. LURIE: Restore the buffer. We did
7 a buffer restoration plan which the DEP
8 approved.

9 MR. SLAYZK: Was there any mining in
10 that particular area?

11 MR. LURIE: I'm not sure if there was
12 necessary mining, but there was the remediation
13 of the tires in that area.

14 MR. SLAYZK: The tires were in that

15 specific area?

16 MR. LURIE: Yes.

17 MR. MOAFI: The wetlands buffer, how did
18 you determine it's 50 feet?

19 MR. LURIE: The DEP determines that
20 width.

21 MR. MOAFI: It's not approved?

22 MR. LURIE: The wetlands in this area is
23 approved.

24 MR. MOAFI: How about the rest of the
25 site?

10

1 MR. LURIE: It's pending the DEP
2 approval.

3 MR. MOAFI: If they come back and say
4 it's 100 feet, what happens?

5 MR. LURIE: They approved this and it's
6 a 5-year approval at 50 feet.

7 CHAIRMAN PALMIERI: How far does the
8 approval run along 2.01? Is it the darker --

9 MR. LURIE: Yes. It's the darker line.

10 The approval begins right here.

11 CHAIRMAN PALMIERI: "Here" meaning

12 where?

13 MR. LURIE: To the north of proposed Lot

14 2.01, you will see a slash and a heavy line.

15 CHAIRMAN PALMIERI: Right.

16 MR. LURIE: It runs to the west and

17 stops right there.

18 CHAIRMAN PALMIERI: That is the

19 already-approved DEP wetlands line?

20 MR. LURIE: Yes.

21 CHAIRMAN PALMIERI: Beyond that point is

22 the proposed wetlands line?

23 MR. LURIE: Yes.

24 CHAIRMAN PALMIERI: You already have an

25 application in, I guess, to DEP to get that

11

1 approved?

2 MR. LURIE: Yes.

3 CHAIRMAN PALMIERI: Do you have any
4 status about how far away that approval is?

5 MR. LURIE: I was out with them last
6 week walking the line, so now it's just
7 administrative for them to go through their
8 process. For the DEP, it probably would be
9 two months.

10 CHAIRMAN PALMIERI: Did they have any
11 comments about where the line was?

12 MR. LURIE: No. They didn't make me
13 pull any flags. They accepted the line as is.

14 MR. MOAFI: Do you think they accepted
15 the buffer of 50 feet?

16 MR. LURIE: I believe they will give him
17 a 50 foot buffer, yes, which is the same on the
18 north side.

19 MR. MOAFI: If, for any reason, they
20 come back and say it's 100 feet or 150 foot
21 buffer, what happens?

22 MR. LURIE: It would only be to the east
23 of proposed Lot 2.04. This line is already

24 approved.

25 MR. MOAFI: Yeah.

12

1 MR. LURIE: It would just be here.

2 MR. MOAFI: You would stop grading then?

3 MR. LURIE: We would show an increased

4 buffer. I would say it's going to be a 50-foot

5 buffer, because there are no endangered species

6 in that area to increase the size.

7 MR. FALVO: Mr. Moafi, the buffer size

8 is determined by the environmental worth, shall

9 we say, of the wetlands.

10 MR. MOAFI: It's the resource of the

11 wetlands. They have not determined the resource

12 yet.

13 MR. FALVO: It's pending. The DEP will

14 determine what the resource value is.

15 MR. MOAFI: Right.

16 CHAIRMAN PALMIERI: I guess you were

17 mentioning in Lot 2.04 that the wetlands

18 boundary line goes into Lot 2.04?

19 MR. LURIE: That is correct.

20 CHAIRMAN PALMIERI: That would affect

21 anything that would be built there would have to

22 be -- you would take that out of the

23 calculations with floor area ratios.

24 MR. LURIE: Correct. We show that on

25 our plans. Your setbacks are based off from the

13

1 buffer line.

2 MR. FALVO: We probably have to file a

3 conservation easement, the same as we did on

4 Woodbury Club, the subdivision where Clayton is

5 going and where DeLisa is going.

6 MR. LURIE: Then you also have the

7 opportunity when you do have a site plan for

8 this to reduce it.

9 MR. GLEITZ: The DEP approved the

10 restoration project prior to the determination

11 of the line; is that correct?

12 MR. LURIE: Well, we have two different
13 things. The DEP to the north of 2.01, they
14 approved the line and the restoration.

15 MR. GLEITZ: It's the remainder of the
16 line.

17 MR. LURIE: Correct.

18 BY MR. FALVO:

19 Q. Mr. Lurie, in the process of doing your
20 delineation, did you also engage and go out and mark
21 and photograph?

22 A. Yes. We went out and the survey crew
23 verified the center of the stream.

24 Q. At the time you did that you took
25 photographs?

14

1 A. Yes, sir.

2 Q. Are these the photographs that your
3 staff took?

4 A. That is correct.

5 MR. FALVO: I would like to mark these

6 as A-19 in evidence.

7 (Whereupon, A-19 - Photographs were
8 received and marked into evidence.)

9 MR. MOAFI: Just a quick question. For
10 the 300 feet, for the C-1 waterway, is that from
11 the center of the stream?

12 MR. LURIE: According to the DEP
13 regulations, if you do not have a defined
14 waterway, it's from the center of the stream.
15 As you will see in the photographs that we've
16 taken, for this section there is no defined
17 bank. We did cross-sections and traversed
18 through there to find the lowest point. There
19 is no defined channel and it's very small. As
20 you get to the back here, there is a defined
21 back.

22 MR. MOAFI: With the topography that you
23 show here, I can see there is a top back of the
24 bank right there. It's a flat area that goes
25 up, right?

1 MR. LURIE: Yes. There is no flowing
2 water in this section.

3 MR. MOAFI: It is a stream. Maybe it
4 was dry when you went there.

5 MR. LURIE: The width of that is only if
6 it's 7 feet wide.

7 MR. MOAFI: So, you took the center of
8 the stream?

9 MR. LURIE: Yes. Per the DEP
10 regulations.

11 MR. MOAFI: Okay.

12 MR. HIRSCH: For the record, Mr. Lurie,
13 your firm, either you or someone under your
14 direction, took photographs?

15 MR. LURIE: Yes. My survey crews when
16 they went out in order to find the center line
17 of stream, we did cross-sections.

18 MR. HIRSCH: The photographs that I
19 marked as A-19, do you know the exact dates of
20 the photographs that were taken?

21 MR. LURIE: I think it's on there.

22 MR. HIRSCH: Are they marked on the
23 photos?

24 MR. LURIE: 11/26/07.

25 MR. SLAYZK: Those flags mark the

16

1 center.

2 MR. LURIE: That shows the location
3 where we took the cross-sections.

4 MR. HIRSCH: The Board is looking at
5 photographs now. What do those photographs
6 indicate on the site plan exhibit?

7 MR. LURIE: The photographs were to the
8 north of Lot 2.01, in order to determine there
9 was no water flow on the stream there in order
10 to find the center of the waterway.

11 MR. MOAFI: But, it's not the water that
12 determines the stream. It's topography of the
13 area. You can see a flat area and steep banks.
14 You took advantage of that and took the 300 feet

15 and not from the top bank?

16 MR. LURIE: You have --

17 MR. MOAFI: I'm trying to figure out why

18 did you choose the center line of the stream?

19 MR. LURIE: The center line of the

20 stream is under normal conditions. This stream

21 is probably dry, I would say, 11 months out of

22 the year, and even 12 months, unless you have a

23 real severe rain storm, because this is the

24 start of this tributary. Under normal

25 conditions with the DEP, you take it from the

17

1 center line, because it's dry.

2 MR. MOAFI: DEP will approve that?

3 MR. LURIE: They will.

4 MR. SLAYZK: The DEP was out there to

5 determine the center line?

6 MR. LURIE: No. They've based it off of

7 their regulations.

8 MR. SLAYZK: How do we know it's

9 300 feet based on the DEP? Just based on the
10 regulations? No one goes out and confirms that?

11 MR. LURIE: No.

12 MR. SLAYZK: It's just the engineers
13 that are hired by the applicant to confirm that?

14 MR. MOAFI: When you submit your
15 application, will DEP approve your plats?

16 MR. LURIE: Since we are outside the
17 300-foot buffer, the DEP says we're outside of
18 that.

19 MR. MOAFI: Who will approve your
20 300-foot, C-1 water buffer?

21 MR. LURIE: It's approved based off of
22 the engineers who submit the plans.

23 MR. MOAFI: They just take your word for
24 it?

25 MR. LURIE: Yes.

18

1 CHAIRMAN PALMIERI: I guess the other
2 question is, at what point do you say that the

3 stream that you need to take your 300 foot
4 measurement from the bank of the stream as
5 opposed to the center line of the stream? At
6 what point do you say, okay, we are at a
7 measurement from the bank as opposed to the
8 center line?

9 MR. LURIE: When you have normal flow
10 conditions and you have water flowing through
11 then you can take the bank.

12 CHAIRMAN PALMIERI: A description of
13 normal flow is what?

14 MR. LURIE: Water flowing.

15 CHAIRMAN PALMIERI: On a continuous
16 basis?

17 MR. LURIE: Yes.

18 MR. SLAYZK: Constant flow of water?

19 MR. LURIE: Yes.

20 CHAIRMAN PALMIERI: If we were to go out
21 to the stream now, 11 months out of the year, if
22 we follow the stream through the current route
23 by Wardell over by the existing care facility,
24 11 months out of the year that is mostly dry?

25 MR. LURIE: This portion, because this

19

1 is the beginning of the tributary, as you get
2 towards Wardell Road there is a defined channel
3 there.

4 MR. SLAYZK: You basically have it
5 marked off here where the start of the tributary
6 begins. On the actual drawing, on the --

7 MR. HIRSCH: Referring to A-18.

8 MR. SLAYZK: -- northern drawing
9 underneath where it says, "Supplemental planting
10 area," do you see that's the beginning of it?

11 CHAIRMAN PALMIERI: I follow that.

12 MR. SLAYZK: I'll give you an example.

13 I have wetlands on my adjoining property.

14 Ninety percent of the time it's dry. There are
15 times, you know, you get, you know, water there.

16 Maybe it stands there for a while. It may be
17 moving and sometimes two days later it's dry.

18 CHAIRMAN PALMIERI: When you get to the

19 back of the property parallel with Wardell and
20 it becomes a normal stream, does your
21 measurement go from the center?

22 MR. LURIE: No. It goes from the top of
23 the bank then.

24 CHAIRMAN PALMIERI: It looks like it's
25 in the center --

20

1 MR. LURIE: The bank itself is here, the
2 line on the plan at -- this stream in the back
3 is probably only if it's six to seven feet wide
4 just by the scaling of the plan, you are
5 basically putting it in. My line here is
6 approximately 10 feet for the scaling purposes.

7 MR. RAUCH: As part of your wetlands LOI
8 submittal, I'm pretty sure that under the
9 wetlands submittal, the LOI, which you are
10 within the C-1 buffer area, that the wetlands
11 division also looks at the C-1 buffer to see if

12 there is an issue with that with the site.

13 MR. LURIE: Yes. They review the whole
14 thing, but they don't necessarily comment back
15 and forth, because you can have with wide stream
16 channels, you can have your wetlands. If you go
17 into the stream encroachment, they are the ones
18 that have the jurisdiction or if you're going
19 for a general permit that would trigger it also.

20 MR. MOAFI: Do you know how many stream
21 encroachment applications there are for this
22 site?

23 MR. FALVO: As of November 5, 2007, they
24 don't exist anymore. Unless you had an approval
25 permit before that time, and you can move on

21

1 that, then --

2 MR. MOAFI: You don't need a floor
3 hazard permit for this application?

4 MR. LURIE: Correct. We are beyond the
5 300 feet, all of our disturbance.

6 MR. RAUCH: You had said that you had
7 done cross-sections along the head waters to
8 determine its location.

9 MR. LURIE: Yes. I can provide them to
10 you.

11 MR. RAUCH: For the Board, if the
12 Applicant can provide those cross-sections, our
13 office can review them to determine whether, you
14 know, what the center line of the head waters
15 are is accurate. I mean, we are at the head
16 waters. When you are at the head waters, it
17 starts with a drainage dip. What happens is,
18 the head waters drainage dip, when you have a
19 large rain storm, you are going to get water in
20 it and once the storm is over it's dry.

21 At this stretch here, I believe, you
22 know, that this is the head waters and that is
23 probably a drainage dip, but we can verify that
24 by looking at the cross-sections. If you
25 provide us with the cross-sections, we can

1 verify that.

2 MR. FALVO: We will supply you with the
3 cross-sections, but essentially the determining
4 of the wetlands buffer and the wetlands is
5 within the purview of the DEP. What they
6 ultimately decide will be prevailing.

7 Q. Now, did you also do a composite plan,
8 which is similar to the waterway plan, but zeroing
9 more in on the subdivision proposed?

10 A. Yes, I did.

11 Q. Would you please show that to the Board?

12 MR. FALVO: We'll mark that as A-20 in
13 evidence. That is dated July 31, 2007.

14 (Whereupon, A-20 - Composite Plan, dated
15 July 31, 2007, was received and marked into
16 evidence.)

17 MR. HIRSCH: Okay. This shows what?

18 MR. FALVO: Specifically, the
19 subdivision and the proposed development on Lot
20 2.02.

21 Q. Now, from this composite plan, did you

22 also do cross-sections to show the topography of the
23 property?

24 A. That is a different plan. This is just
25 an overall composite showing the site updated with

23

1 the additional plantings that we just discussed.

2 Q. Additionally, as a result of the last
3 meeting, some of the questions concerning the amount
4 of fill to be removed, did you take cross-sections of
5 the site so as to determine the amount of fill being
6 removed and reduction of the grade?

7 A. Yes, I did.

8 Q. What is the date of that plan?

9 A. It's January 4, 2008.

10 MR. HIRSCH: A-21 in evidence is the
11 site cross-sections, correct?

12 MR. LURIE: Correct.

13 (Whereupon, A-21 - Location of Site
14 Cross-Sections, were received and marked into
15 evidence.)

16 MR. HIRSCH: Showing the amount of soil

17 to be removed --

18 MR. LURIE: Cross-sections showing the

19 existing proposed rate.

20 MR. FALVO: You had another board that

21 we will mark as A-22.

22 MR. LURIE: It is an actual

23 cross-section comparing the existing and

24 proposed.

25 MR. HIRSCH: A-22 is the actual

24

1 cross-section?

2 MR. LURIE: Correct. The first one is

3 the location of the cross-sections.

4 (Whereupon, A-22 - Cross-Section, was

5 received and marked into evidence.)

6 Q. With regard to A-21, this plan shows

7 where you took the cross-sections of the site; is

8 that correct?

9 A. Yes.

10 Q. Would you please explain to the Board

11 what areas you took cross-sections from?

12 A. We took three entitled A, B and C. "A"

13 goes through the transfer station, straight through

14 the auction house building. Each cross-section goes

15 from west to east. The second cross-section is taken

16 in the middle of the proposed development, which

17 lines up with the proposed access road to the

18 property to the east. The third was taken along the

19 rear of the proposed eight-lot development from the

20 transfer station to the east of the property.

21 MR. SLAYZK: What are your

22 cross-sections doing?

23 MR. LURIE: It's just to show that the

24 elevation at the transfer station property and

25 also the elevation, once we get off the

25

1 property, because the property, as you will see

2 in the cross-sections, there are hills that were

3 on the property. In addition, since the tire

4 removal operation basically all of the soil
5 removal now is in this portion of the site.

6 MR. SLAYZK: These cross-sections, are
7 they going to show us prior to removal -- prior
8 to the mining?

9 MR. LURIE: It did show prior to the
10 mining.

11 MR. SLAYZK: It doesn't show after?

12 MR. LURIE: It doesn't show after. The
13 basic elevation of the site I did based off the
14 elevation we are at 118 and about 125 at the
15 back. From proposed Lot 2.03, 2.07, 2.02, 2.08
16 and 2.01, that area has been cleaned up of the
17 tire removal. The only soil removal, in
18 essence, is the Lots 2.04, 2.05, 2.06 and that
19 encompasses about 90,000 cubic yards of soil
20 that has to be removed.

21 MR. SLAYZK: That has to be removed or
22 was already?

23 MR. LURIE: That has to be removed.

24 Q. Could you please go to A-22 in evidence

25 and show what the actual cross-sections depict?

26

1 A. Cross-section A, which goes from the
2 transfer station through the auction house, as you
3 can see we are matching at grade at the transfer
4 station area and as we get to the rear portion this
5 is at a horizontal scale of 1 to 40, so you can see
6 the difference in the existing grade and proposed
7 grade. The existing grade is the dashed line. The
8 solid line is the proposed line.

9 As you can see, when we get to the first
10 400 feet of the site, traversing along this line from
11 the west to the east, we are matching the grade. As
12 you get towards the rear of the property of Lot 2.02,
13 you can see there was this big mound there and you
14 can see elevation lines. We went from 118 to the top
15 of that which was 184.

16 CHAIRMAN PALMIERI: You said what?

17 MR. LURIE: 118 to 184.

18 MR. SLAYZK: It's been cleared already?

19 MR. LURIE: Yes. As we go --

20 CHAIRMAN PALMIERI: I'm going to slow

21 you down. The one on the easel, is that A-22?

22 MR. LURIE: Yes.

23 CHAIRMAN PALMIERI: On the very top

24 cross-section to the right, what's already been

25 removed going back to the auction house, I see

27

1 the line going up. Is that existing currently?

2 MR. SLAYZK: That dark line.

3 CHAIRMAN PALMIERI: Is that the

4 elevation currently?

5 MR. LURIE: That is the proposed grade

6 tying back into the existing grade.

7 CHAIRMAN PALMIERI: That is the existing

8 grade, that dark line?

9 MR. LURIE: Correct.

10 MR. SLAYZK: That is the new grade?

11 CHAIRMAN PALMIERI: That is the existing

12 new as opposed to the light line that was

13 already there? From the auction house building
14 is going towards the rear of the building, what
15 would that distance be, approximately? Assuming
16 that block is representative of the auction
17 house.

18 MR. LURIE: Three hundred feet from the
19 auction house to the property line.

20 CHAIRMAN PALMIERI: Now, with that
21 cross-section, is there still more mining that
22 needs to be completed or is that --

23 MR. LURIE: This is the property line
24 where my pen is. There will be a little
25 transition of grade to remove that area.

28

1 MR. SLAYZK: You are saying that is the
2 property line?

3 MR. LURIE: Yes.

4 MR. SLAYZK: You are going to go on
5 somebody's else's property to transition the
6 grades?

7 MR. LURIE: That is owned by the
8 Township. There is a note on the plans to
9 obtain as part of the approval an easement to
10 transition this grade back to make it a safe
11 condition. Otherwise --

12 MR. SLAYZK: Why wouldn't you have just
13 stopped prior to where the property line is to
14 grade there versus going on somebody else's
15 property? Just because?

16 MR. LURIE: It stopped -- right now --

17 MR. SLAYZK: He doesn't understand my
18 question. Basically, my question is, how come
19 they didn't stop --

20 MR. LURIE: They did stop.

21 MR. SLAYZK: -- one hundred feet prior
22 to the property line and create the grade there
23 versus going back to somebody else's property
24 line to create the grade?

25 MR. LURIE: They have stopped at the

1 property line. There is a sheer wall there.

2 MR. SLAYZK: No. Why didn't they stop
3 100 feet before the property line and create the
4 grade there versus creating the grade on
5 somebody else's property?

6 CHAIRMAN PALMIERI: Or wanting to create
7 the grade.

8 MR. SLAYZK: It's been cut out. They
9 already created the grade.

10 MR. LURIE: I don't know.

11 CHAIRMAN PALMIERI: I guess they will be
12 seeking permission from the Town.

13 MR. LURIE: Your elevation is so high,
14 you have to transition over a long distance. At
15 a three to one slope, you have to cut into this.

16 Here, you are at the grade where your
17 proposed --

18 MR. SLAYZK: The problem is, why didn't
19 we stop before that?

20 CHAIRMAN PALMIERI: John, wait a minute.

21 Mr. Falvo, your client is wanting to say
22 something.

23 MR. HIRSCH: Mr. Falvo, you are now
24 calling Mr. Mazza --

25 MR. FALVO: Yes.

30

1 MR. HIRSCH: -- to perhaps address the
2 question of Mr. Slayzk. You are under oath, Mr.
3 Mazza. Go ahead.

4 MR. MAZZA: We are currently trying to
5 buy the Dwek properties behind us. The reason
6 for that is because there is probably 100 foot
7 or more between our property lines. It's very
8 difficult to determine where the true property
9 line is between our property and the Town's
10 property and the Dwek property. Our company is
11 now purchasing the Dwek property.

12 MR. SLAYZK: The Tinton Falls property.
13 It's called Tinton Falls property, if I'm not
14 mistaken. Not the Dwek property.

15 MR. MAZZA: We purchased the Tinton
16 Falls property already. The Dwek property,

17 which is Lot 1 and Lot 5, overlap our property

18 which we are in front of a judge to try to

19 decipher where the property lines are.

20 MR. SLAYZK: I understand.

21 MR. MAZZA: Unfortunately, it creates a

22 problem for all of the property owners to

23 determine where the true property lines are at.

24 MR. SLAYZK: Okay.

25 CHAIRMAN PALMIERI: Go to the next one

31

1 then.

2 A. As you see in cross-section B, as you

3 see in the center of the site there was existing

4 fill, per se, that goes up to Elevation 139 and then

5 as we get towards the eastern portion of the site, it

6 comes back to existing grade and then at the property

7 line we come back in. As you can see, from this

8 portion of the site, the earth moving is not that

9 dramatic. This area to the north has been cleared.

10 MR. RAUCH: I have a question. On that

11 cross-section, the middle cross-section on the
12 exhibit, is that taken along where there is an
13 access easement along the southerly line of the
14 auction house?

15 MR. LURIE: Yes, it is. It's taken at
16 the access easement which is between Lots 2.03
17 and 2.02, to be able to tie back into the
18 existing grade in case there is any need for
19 access.

20 MR. RAUCH: Now, you are looking at the
21 cross-section to the right there where you go up
22 the property. Is that grade there going to
23 allow an access to that back property? It looks
24 like you have a small -- a steep rise there.

25 MR. LURIE: I think that is the

32

1 exaggeration of the scale of the actual drawing.
2 You are going approximately 75 feet. You are
3 going from Elevation 129.2 to 133.

4 MR. RAUCH: I'm looking at the property

5 line, to the left of the property line. It
6 looks like you have a little bit of a steep
7 proposed grade.

8 MR. LURIE: Correct. As you can see by
9 the existing grade, we come up to a hill.

10 MR. RAUCH: If I may, I'm talking about
11 on the other property line here. Does the slope
12 of that grade there allow access to that rear
13 property?

14 MR. LURIE: I have to verify it. I can
15 make it adequate.

16 MR. RAUCH: To allow access through the
17 easement.

18 MR. LURIE: Yes.

19 BY MR. FALVO:

20 Q. Mr. Lurie, as part of the grading, there
21 is a piece of property to the rear of Lot 4.02. That
22 is property owned by the Borough of Tinton Falls; is
23 that correct?

24 A. Correct.

25 Q. That property is land-locked as of now?

1 A. Yes.

2 Q. Or at least it's land locked. Does that
3 go out to Wardell Road or stop short of Wardell Road?

4 A. I believe it goes to Wardell Road.

5 Q. All right. Between that property and
6 Wardell Road, you also have large wetlands area?

7 A. Correct.

8 Q. So, the logical means by which the
9 Borough of Tinton Falls could get to its property
10 would be through this subdivision that you are
11 creating and the easement or the proposed -- the
12 easement that was created so you can put a roadway in
13 along Lot 2.03?

14 A. That is correct.

15 Q. But that road really would not be
16 feasible, unless you reduced the grade of the
17 property from what it was.

18 A. From what it was, yes.

19 Q. That aspect of the soil removal will

20 facilitate, should the Borough ever want access to
21 that property, the ability to access that property
22 off of this internal road that you are constructing?

23 A. Correct.

24 Q. As a result of that -- as a further
25 result of the soil removal that you've done thus far,

34

1 and propose to do as you get further into the
2 property, you would be bringing the grade down so it
3 would match more evenly with the grades on Lot 36.01
4 and Block 145?

5 A. Correct.

6 Q. Okay. You are also in the process of
7 doing your grading and your soil removal, as you go
8 further in your cross-sections, those are designed to
9 bring the grade of the property down so it's more
10 manageable as far as your ability to construct them?

11 A. Yes. And to be able to meet the
12 elevations on the east and west of the property
13 lines.

14 Q. Other than that, you would have mounds
15 in the middle and you would be trying to construct --
16 in order to construct, you would need retaining walls
17 and other things in order to maintain the grades and
18 the ability --

19 A. Yes, that is correct. We would need
20 retaining walls. You want level lots. In addition
21 to that, the storm drainage system we have the
22 regional basin for this whole system and the
23 bio-retention system so if you step it, that would
24 get deeper and deeper.

25 Q. Also, as part of this, you created a

35

1 swale, I believe, along the common property line
2 between Lots 12.08, 2.07, 2.06, 2.05 and Lot 26.01?

3 A. Yes. That is the bio-retention system
4 that I just referred to.

5 Q. That, in turn, will feed into the
6 infiltration basin?

7 A. Yes. To give it additional water

8 quality for the storm water.

9 Q. Continuing with your last cross --

10 A. We are onto cross-section 3, which is

11 cross-section C. It is at the rear of the proposed

12 Lot 2.05. This is showing where we match the

13 transfer station elevation. As you can see, the

14 existing topography that goes up to elevation 144 and

15 we tie back at the existing elevation before we even

16 get to the property line of approximately 400 feet

17 from the property line.

18 Q. Now, in addition to this grading and the

19 contemplated soil removal, one of the benefits would

20 be, as we discussed, the ability of the Borough to

21 access its property should it desire to do so,

22 correct?

23 A. Correct.

24 Q. Are you aware of a request by the fire

25 marshal to loop the water line in this area, so it

1 comes into the subdivision, loops around and comes

2 back toward the transfer station?

3 A. That is correct. I can show it.

4 Referring back to Exhibit A-1, as a result of the
5 transfer station with the fire hose to ensure water
6 pressure, we had to provide a separate 12-inch water
7 main line which is going to start off at Shafto Road,
8 come all the way up the entrance road into the 8-lot
9 lot development to service the 8-lot development.

10 In addition, it loops around and ties
11 into an existing 10-inch water main in the transfer
12 station site in order to provide adequate pressure
13 for the transfer station in the case of a fire or
14 emergency.

15 Q. And, if you had to effectuate that
16 looping without excavating, that would present some
17 exceptional practical difficulties to the developer
18 in accomplishing; is that correct?

19 A. Correct. It's at an elevation as if you
20 were to step this site up with the water line you
21 would be raising the water line because the water
22 lines are installed 5 feet below the proposed ground
23 surface. If you were to raise this up, you would

24 decrease the pressure that is needed for the transfer
25 station. In order to maintain adequate fire

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1 pressure, we have to keep the water line at this
2 elevation.

3 MR. SLAYZK: Can I ask a question?

4 Correct me if I'm wrong, where's the Borough's
5 property on that drawing? Can you show me?

6 MR. LURIE: The Borough's property is
7 right in this area.

8 MR. SLAYZK: How is the Borough going to
9 access that property?

10 MR. LURIE: We have an access easement
11 which runs in between 2.03 and 2.02.

12 MR. SLAYZK: Is it on this drawing?

13 MR. LURIE: No. The original set of
14 subdivision plans.

15 MR. SLAYZK: You have access for a road?

16 MR. LURIE: Yes. It's a 50-foot
17 easement built into this lot.

18 MR. SLAYZK: Thank you.

19 MR. FALVO: If you're looking at the

20 composite plan, the far right side of --

21 MR. SLAYZK: I'm fine.

22 MR. HIRSCH: The Borough property is Lot

23 4.02?

24 MR. LURIE: Correct.

25 MR. FALVO: The Borough of Tinton Falls

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1 versus the Applicant --

2 MR. SLAYZK: I understand.

3 MR. FALVO: Just to keep the record

4 clear.

5 MR. LURIE: The access easement is shown

6 on Sheet 3 of 17 and 4 of 17.

7 MR. SLAYZK: I'm fine.

8 Q. As a result of the proposed soil

9 removal, mining, the easement to the Borough

10 Properties would function better and the looping of

11 the water line would also be more efficient.

12 A. Correct.

13 Q. You are equalizing, to some degree, the

14 grades as these lots meet adjoining properties.

15 A. Correct.

16 Q. As a result of the soil removal that's

17 contemplated, the lots that are to be created, for

18 lack of a better word, are more conventional for the

19 ability for them to be built upon without developing

20 grades between the various lots.

21 A. That is correct. We set up, just in

22 case somebody wants say Lot 2.07 and 2.06, they are

23 all at the same elevation. It makes it more

24 beneficial for them to be able to purchase the two

25 lots, if they have that use or need.

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1 Q. And from the point of view of

2 developing, this would be an economically more

3 beneficial and efficient way for preparing this

4 subdivision than if you were to attempt to leave the

5 grades where they were?

6 A. Correct.

7 MR. RAUCH: If I may, Mr. Chairman? On
8 the water surface, did you perform a hydraulic
9 analysis to determine if by layering the site to
10 the grade you want whether the system worked
11 better than if you hadn't?

12 MR. LURIE: Yes. I performed a couple
13 different iterations of the cross analysis.
14 First, the one the fire marshal wanted at the
15 elevation and then in turn increasing the
16 elevation of the pipe and also adding additional
17 fire flows in case for the subdivision and as it
18 got higher up the pressures got less.

19 MR. RAUCH: Okay. By raising the site,
20 the pressure within the loop system decreased?

21 MR. LURIE: That's correct.

22 MR. FALVO: We wanted to go back to the
23 review letter prepared by your engineer.

24 MR. RAUCH: November 29th.

25 Q. With regard to this letter, Mr. Lurie,

1 what issues can we not comply with and why?

2 A. Comment 5 A, the entrance drive --

3 MR. HIRSCH: All right. Mr. Kniesler's
4 report of 11/29/07, and you are referring to
5 Comment 5 A.

6 MR. LURIE: Correct.

7 MR. HIRSCH: Go ahead.

8 MR. LURIE: He recommends on the
9 entrance drive a double row of evergreen trees.
10 I am requesting a single row of evergreen trees
11 along the entrance drive, with the
12 board-on-board fence in lieu of the double wide.
13 The double row would be on the side of the
14 transfer station and with the transfer station
15 operations and it's beneficial to their use.

16 MR. KNIESLER: That's fine with me.

17 MR. FALVO: You are proposing a single
18 row would be on what side of the access drive?

19 MR. LURIE: On the north side between
20 the fence and the proposed roadway.

21 MR. HIRSCH: Between the fence and
22 roadway on the north side. Okay. Single row of
23 evergreen trees.

24 MR. LURIE: All of his other comments we
25 can adhere to.

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1 MR. SLAYZK: Great. It makes it quick.

2 MR. FALVO: For the record, with regard
3 to Mrs. Kearny's report of November 13th, which
4 is the Shade Tree Commission, we can comply with
5 that.

6 I believe, with regard to the police
7 department, we had stipulated at the last
8 meeting that we would post a bond for the
9 construction of a light, should it be determined
10 at some point. In the interim, we would use
11 police to control traffic on Shafto Road the
12 days we had the auctions. At the discretion of
13 the chief, he would tell us when he wants an
14 officer there. With regard to the engineer's

15 report of November 29th, we can comply.

16 MR. HIRSCH: You will comply?

17 MR. FALVO: Correct. The planner's

18 report of December 4th, we want to address some

19 issues within that report.

20 BY MR. FALVO:

21 Q. Would you address the planner's report?

22 MR. HIRSCH: Okay. Planner's report of

23 December 4th. Another exhibit?

24 MR. FALVO: What is that entitled?

25 MR. HIRSCH: This will be A-23. Okay.

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1 This is what? Rendered site plan of the auction

2 house site?

3 MR. LURIE: Yes. Revised auction house

4 site plan that was submitted two meetings ago.

5 MR. FALVO: What is the date on that?

6 MR. LURIE: 11/21/07.

7 (Whereupon, A-23 - Revised Auction House

8 Site Plan dated 11/21/07, was received and

9 marked into evidence.)

10 A. The auction house site plan was revised
11 back in November, per the comments of the planners
12 and engineer, and take into account the 60 percent
13 coverage. The change we've implemented to the stored
14 area to be concrete for machinery as requested by the
15 Board. In addition, we have provided an oversized
16 vehicle parking area to the north of the site and
17 then in addition we have provided three oversized
18 parking stalls to come into the entrance of the back
19 yard storage area and then in addition we've reduced
20 the parking down to 178 parking spaces for a total of
21 12 truck spaces in there.

22 In addition, we are requesting that
23 these two islands be painted islands and not curbed
24 and we have provided curbed islands on the north side
25 of the vehicle parking lot for the access way of the

1 vehicles existing on the site. In addition, we are
2 providing a loading ramp to load up equipment for the

3 trucks to be able to load up their vehicles. In
4 addition to that, we would provide some water quality
5 swale all along the frontage of the property, along
6 the end of the drainage area of the storage area to
7 provide additional water quality measures before it
8 goes into the infiltration basin.

9 MR. SLAYZK: Is the lot concrete?

10 MR. LURIE: This is pavement.

11 MR. SLAYZK: Asphalt?

12 MR. LURIE: Yes. I'm referring to the
13 comment on Page 2 of the variances and waivers.
14 Item B in the variance and waivers, it should be
15 25 feet from the setback.

16 CHAIRMAN PALMIERI: I didn't get that.

17 MR. LURIE: Item B says, "Variance
18 requested from 40-772G location of the driveway
19 at least 25 feet from any lot line or street
20 right-of-way." The driveway has been set back
21 25 feet from the --

22 CHAIRMAN PALMIERI: So you comply?

23 MR. LURIE: We comply.

24 CHAIRMAN PALMIERI: I thought you were

25 asking for a waiver?

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1 /HROR: No. The other comment is Item E
2 for minimum lighting requirements of .5-foot
3 candles. We provide lighting of .5-foot candles
4 in the parking lot. We are requesting some
5 lights for safety in the back area, but not to
6 the full extent of the .5-foot candles. This
7 area is all fenced off and it's basically a
8 storage area.

9 Q. The storage area you are going to have
10 some light back there, but it's basically for
11 security and not to illuminate the entire lot?

12 A. Correct.

13 MR. HIRSCH: Do you know what you are
14 proposing?

15 MR. GLEITZ: You have to meet the
16 ordinance provisions in the front.

17 MR. LURIE: Correct.

18 MR. GLEITZ: There will be sections of

19 that where it will be zero.

20 MR. LURIE: They would be security.

21 CHAIRMAN PALMIERI: I don't think the
22 rear was paved.

23 MR. LURIE: Before it was gravel. Per
24 our TRC meetings, they recommended --

25 MR. GLEITZ: The Board had discussion of

45

1 leakage of hydraulic fluids. They've removed
2 the whole gravel area and made it concrete.

3 MR. SLAYZK: That's why I was asking
4 before. I thought the front was concrete as
5 well. The front is asphalt and the back is
6 concrete?

7 MR. GLEITZ: If there are any spills,
8 they can be addressed on the concrete a whole
9 lot easier than gravel. I don't have a real
10 issue, if it's a secured area for vehicle
11 storage. They are not proposing any auctions at
12 night. They are not -- you want to propose

13 access to that area, correct?

14 MR. LURIE: Correct.

15 MR. GLEITZ: That will be during
16 daylight hours. I don't have a problem with
17 that partial waiver, unless the engineer has
18 further comment.

19 MR. RAUCH: It's basically security
20 lighting and it's just storage. I don't have
21 any problem with the waiver. Just to make sure
22 the plans are revised to show the lighting and
23 the point-by-point analysis would be --

24 MR. LURIE: Certainly. We will work
25 that out.

46

1 MR. HIRSCH: We are going to leave that.
2 I understand you don't have any problem with the
3 waivers. Is it one light, two lights?

4 MR. RAUCH: I don't know that.

5 MR. HIRSCH: I'm trying to find a way to
6 say it in the resolution. The plan will be

7 worked out between the Applicant's engineer and
8 Board's engineer.

9 MR. RAUCH: That's fine. We can work it
10 out between us. If the Board would prefer, I
11 don't know what lights they are proposing.

12 MR. HIRSCH: I understand that. That's
13 why I'm asking the questions. We want to leave
14 it open subject to the Applicant submitting a
15 security lighting plan for the rear area. The
16 Board is willing to grant the waiver of the
17 .5-foot candle requirement subject to review of
18 the Board engineer's review of the proposed
19 security lighting plan.

20 MR. FALVO: Are there any other items in
21 the planner's report?

22 A. The planner has some comments about the
23 tractor trailer parking spaces which I went over and
24 explained the revised parking areas. Unless he has
25 any comments.

1 MR. GLEITZ: At some point, you are
2 going to provide the building height.

3 MR. LURIE: Yes.

4 MR. GLEITZ: Lighting we just discussed.
5 Any discussion of a different lighting standard
6 or no? I'll refer to my Page 4 -- actually, on
7 Page 3, I have a number of comments about the
8 site plan. Number 1, they've addressed my
9 concern. Number 2, we need to see the building
10 height on the plans. It's never been provided.
11 I don't assume there is going to be a variance
12 situation.

13 MR. FALVO: No.

14 MR. GLEITZ: As for the lighting, I made
15 a suggestion that they upgrade from shoe box
16 lighting. We have not heard a response. It's
17 not a make or break kind of thing. I've been
18 asking commercial sites. This is a more retail
19 site. It's an auction house where there will be
20 a lot more public involved. However, it is an
21 industrial subdivision. I tend to request an

22 upgrade to the lighting standards on these types
23 of applications. We haven't heard an answer
24 from the Applicant about this concern. It's a
25 request and not a requirement.

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1 MR. HIRSCH: Is there a response?

2 MR. FALVO: You are talking about
3 putting in the Acapella series?

4 MR. GLEITZ: It's an example. There are
5 a lot of these out there. We found a few other
6 ones. They are designed to be parking lot
7 lights, but they are a little more designed.
8 They are rounded in shape. They have different
9 kinds of shapes than you would typically have
10 with your straight square shoe box. It dresses
11 the site up a little better.

12 MR. FALVO: We will give you a cut sheet
13 on a different light fixture.

14 MR. GLEITZ: Great. As to the parking,
15 we did have some discussion about the parking

16 requirements and the storage area. There are no
17 parking standards for an auction house, so we've
18 been going back and forth. You indicated a 5.5
19 per thousand according to a flex retail space.
20 We had considered the outdoor storage area also
21 as generating a parking requirement. I just
22 wanted to see a revision on the site plan to
23 address these.

24 MR. LURIE: Okay. Based on your
25 comment, it comes down to 53 spaces.

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1 MR. GLEITZ: These are housekeeping
2 details.

3 MR. HIRSCH: You are now proposing 178
4 spaces, 13 tractor trailer.

5 MR. LURIE: Twelve tractor trailer, 178
6 total spaces of parking and 12 truck spaces.

7 MR. HIRSCH: Is that part of the 178?

8 MR. LURIE: No.

9 MR. HIRSCH: Is it 12 truck or tractor

10 trailer?

11 MR. LURIE: Tractor trailer.

12 MR. HIRSCH: Of the 178, 26 are

13 handicap?

14 MR. LURIE: Correct.

15 MR. GLEITZ: To continue with the

16 concerns we had, it's your contention the three

17 along the southern entrance are necessary?

18 MR. LURIE: Yes. This is to provide

19 access when they need to get into the storage

20 area.

21 MR. GLEITZ: For queuing.

22 MR. LURIE: Yes.

23 MR. GLEITZ: Okay. I find that

24 acceptable then. That would go towards -- my

25 aim through the entire process was to get as

50

1 much landscaping in the parking field as

2 possible. We've gone back and forth about

3 striping versus curb and landscape area. That

4 was what drove the entire discussion about a
5 segregated parking area. As you can see, you
6 want to have striped areas in the truck parking
7 area to give those truck drivers more
8 maneuverability.

9 As you can see, I provided two landscape
10 islands in the car parking area. If it does
11 make sense to have a queuing area for trucks
12 delivering, you would want to provide as much
13 flexibility for maneuvering in that area. I
14 have no problem with leaving the remaining
15 southern area parking instead of striped.

16 Again, we've gone over this. You
17 believe this now with the revised parking
18 arrangement and the reduction in numbers still
19 provides adequate parking for the proposed use.

20 MR. LURIE: Yes.

21 MR. GLEITZ: I think you need to update
22 a note. You have a, "limit of paving" note.
23 That will comply. Under, "landscaping," of
24 course we defer to Mr. Kniesler's letter. You
25 do have two new parking islands. That note,

1 "overflow parking area," is that new to this
2 set? Was that included in the original
3 submission?

4 MR. LURIE: That's always been there. I
5 can take that off.

6 MR. GLEITZ: Are you anticipating using
7 that for overflow parking area? My second note
8 was that the northern boundary should be
9 landscaped with shrubs. If you do intend to use
10 that for an overflow parking area, landscape
11 might get in the way. If you do not, I would
12 like the perimeter to match the rest of your
13 design.

14 MR. LURIE: We will use it as an
15 overflow parking area.

16 MR. GLEITZ: Okay. There is no
17 practical reason to put landscaping in that
18 area. We had one final note about the septic
19 beds. We thought there could be additional

20 landscaping in front there between the parking
21 spaces.

22 MR. LURIE: Sure.

23 MR. HIRSCH: He is complying with your
24 comment.

25 MR. GLEITZ: He is going -- the first

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1 comment under, "landscaping" was informational.
2 The second planning he will not comply as that
3 area is an overflow parking area and shrubs
4 would get in the way. He will comply with the
5 third note regarding, "If feasible, providing
6 additional landscaping between the 7 or 8
7 head-on parking spaces and the proposed area for
8 the septic." Our intention is to provide
9 buffering around the perimeter of the parking
10 lot.

11 CHAIRMAN PALMIERI: I have a question
12 about the overflow parking. In the parking lot,
13 there won't be any curb over there.

14 MR. LURIE: There is curb there.

15 CHAIRMAN PALMIERI: How will the
16 overflow work? Would the people go up the curb?

17 MR. LURIE: We can do it like a roll
18 curb.

19 MR. GLEITZ: I think you will need to
20 make an amendment to the site plan then.

21 MR. RAUCH: On Sheet 2 of 8 on the
22 revised set, they label depressed curb. Are you
23 going to put concrete curb there?

24 MR. LURIE: Yes.

25 MR. RAUCH: Right next to the two truck

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1 spaces there, you have a label there for
2 depressed curb.

3 MR. LURIE: Yes. I can do whatever you
4 prefer.

5 MR. RAUCH: When you do it, because it
6 looks like it's depressed curb the light fixture
7 there is kind of in the middle of the depressed

8 curb that you have there. Whatever the access
9 is, just make sure you have clearance that way
10 from the light fixture.

11 MR. LURIE: Sure.

12 MR. GLEITZ: I think, usually with
13 overflow parking areas, it makes sense to show
14 the access point and to show the number of
15 spaces provided. They remain lines on the map.
16 We're not going to stripe the grass, but it's
17 indicative of the size and extent of what the
18 overflow parking area would be.

19 MR. LURIE: Certainly. I can delineate
20 that for you.

21 CHAIRMAN PALMIERI: I guess that's not
22 considered banked parking.

23 MR. GLEITZ: No. I think we've come up
24 with a good solution between the balance between
25 automobile parking and truck parking. They are

1 hoping if they have certain Saturdays they might

2 need some overflow parking.

3 MR. HIRSCH: I want to go back to that
4 one landscape comment. You indicated that
5 between 7 to 8 head-on parking spaces and
6 septic, they would provide additional
7 landscaping subject to your approval or are we
8 going to designate how much? I don't like those
9 additional --

10 MR. GLEITZ: Subject to my approval or
11 Mr. Kniesler's approval.

12 MR. KNIESLER: I see where he is going
13 with that. That's fine.

14 MR. GLEITZ: That was my comments from
15 December 4th as it related primarily to the
16 revised site plan on 2.02. I would like a
17 chance to go back to my -- there were additional
18 major subdivision comments. I believe we
19 covered most of those as well. I'm referring to
20 my September 12th memo. Under the major
21 subdivision plan, under number one, the waiver,
22 has that been addressed in terms for a landscape

23 architect to prepare those plans?

24 MR. LURIE: We will have it signed. I'm

25 waiting for us to finalize it.

55

1 MR. GLEITZ: Okay. That is a will
2 comply. We did have some discussion of lighting
3 on the internal roadway. The continued lighting
4 on the road A all the way through the entirety
5 of the subdivision. I'm not sure if it was Jeff
6 and I or the other engineer, but we did have
7 some questions about the adequacy of the
8 lighting along the entire length. There seems
9 to be dark spots. It was under it. While we
10 don't have proposals for the other 7 lots, if
11 this is a major infrastructure, they are going
12 to be putting in the road and lights. It seems
13 they should address it now rather than retrofit.
14 If you look at their lighting plan, there seems
15 to be dark spots along that roadway. We had
16 some questions and we wanted to hear some

17 comment from the Applicant on that.

18 CHAIRMAN PALMIERI: I remember, from
19 prior testimony, they were saying the only
20 people that would be accessing the proposed area
21 would be the people that would be going to the
22 designated lots and it's not going to be retail
23 businesses back there.

24 MR. GLEITZ: I'm not sure we know that.

25 The intention is for that. The first

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1 application is for an auction house. It's
2 non-traditional, but it's open to the public.

3 MR. FALVO: We will put a couple
4 additional fixtures in to eliminate the dark
5 spots.

6 MR. GLEITZ: Number 3, they added some
7 additional landscaping. That was a, "will
8 comply." We've addressed everything on Page 3
9 of that memo. I believe the December 4th memo
10 does, with the exception of B under the

11 preliminary final major subdivision plans, that
12 did adequately encapsulate the relief sought by
13 the Applicant.

14 MR. FALVO: Are there any questions of
15 Mr. Lurie?

16 MR. HIRSCH: The only thing I want to be
17 clear about, which is one of the critical
18 issues, Mr. Lurie did mention out of all of that
19 testimony that we just heard that the soil that
20 needs to be removed now, I believe, his number
21 was 90,000 cubic yards.

22 MR. LURIE: That is correct.

23 MR. HIRSCH: I want to make sure that
24 point got across. It was a throw-out comment
25 when you were going through the exhibits. At

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1 the prior hearings, we were talking about the
2 Applicant removing whatever 400-some thousand
3 cubic yards. There was an analysis that was
4 20,000 tandem truck loads. I think it's

5 important if you're making that point to be
6 clear to the Board, you know, so that 400,000
7 cubic yards is not in everybody's mind exactly
8 how many cubic yards you now believe has to be
9 removed. I think your other number was premised
10 on material that it had already been removed.

11 The total soil to be removed might be previously
12 as you mentioned. What's left to be removed is
13 approximately 90,000 cubic yards.

14 MR. LURIE: That is correct. I had the
15 survey crews go out -- I had the survey crews go
16 out and an as built of the transfer station
17 through where the existing cut has taken place
18 already and I calculated a new earth work and
19 based on the new earth work number it came out
20 to 90,000 cubic yards.

21 MR. HIRSCH: The mining permit, assuming
22 the Board grants the variance, the mining permit
23 that you would be seeking would be to remove --

24 MR. LURIE: 90,000 cubic yards.

25 MR. HIRSCH: I don't know -- there was

1 some testimony, I believe by Mr. Mazza at the
2 last hearing, I think there was a question from
3 one of the Members how long would that would
4 take to remove. Of course we were thinking it
5 was 400,000 cubic yards. I don't know if you
6 want to give some information about that, Mr.
7 Falvo, about what time period it would take to
8 complete that operation. Obviously, it's an
9 estimation. We understand that.

10 BY MR. FALVO: Six to nine months.

11 MR. HIRSCH: That way the Board has some
12 concept. It's not going on for years. I'm
13 trying to put it in the framework.

14 MR. GLEITZ: If the original was 431 and
15 the new was 90, would that mean the difference
16 has been removed?

17 MR. FALVO: Probably.

18 MR. GLEITZ: Okay. That is the extent
19 of the prior removal, prior to them coming
20 before us.

21 MR. HIRSCH: There was testimony about
22 soil being removed and the tires. There was
23 testimony tonight about taking that large hill
24 down. What's been done has been done.

25 MR. FALVO: We are saying it's

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1 approximately 90,000 cubic yards. Maybe not
2 90,000.

3 MR. HIRSCH: We understand it's an
4 approximate 90,000 cubic yards.

5 MR. SLAYZK: We are going to stop you at
6 90.

7 MR. HIRSCH: If you get the use
8 variance, it will be in that range.

9 CHAIRMAN PALMIERI: I have a question
10 along that line. The original number was 430-
11 whatever thousand cubic yards of removal. Now
12 the mining permit you would put in, would you
13 put into -- say you are also encompassing the
14 amount that's already been removed to be

15 included as part of the mining to make sure you
16 are covered. You've already done two-thirds of
17 the mining already. I guess it's a technical
18 question, when you put in a permit, I'm only
19 going to remove 90,000.

20 MR. HIRSCH: I don't think that is a
21 question for the Board to answer. If the
22 Applicant was being cited for the removal of the
23 prior material, if there was some violation that
24 had been issued to him, and he was trying on an
25 appeal, then the Board could address it. I

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1 think the Applicant is before this Board to seek
2 a variance to remove whatever soil from this
3 date forward has to be removed and not what was
4 removed in the past.

5 Now, if the Town, when he has to get a
6 mining permit, says you previously removed soil
7 and there needs to be some kind of charge for
8 that, I have no idea.

9 MR. FALVO: Right.

10 MR. HIRSCH: I think that would be a
11 Borough administration decision to make. If
12 there is some violation issue then they come
13 back to us. I don't think that is the issue in
14 front of us now.

15 CHAIRMAN PALMIERI: Just a question.

16 MR. FALVO: I understand. That is all I
17 have of this witness, unless there are other
18 questions.

19 CHAIRMAN PALMIERI: Do any Board Members
20 have any questions on the testimony given so
21 far? All right. I guess I can open it up to
22 the public. If there is anybody in the audience
23 that would like to ask any questions of the
24 testimony given so far? Seeing none --

25 MR. FALVO: I want to re-call the

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1 planner to supplement his testimony based upon
2 that which was testified to this evening.

3 MR. FALVO: Mr. Jovishoff was previously
4 sworn at the last meeting.

5 REDIRECT EXAMINATION BY MR. FALVO:

6 Q. Mr. Jovishoff, your testimony this
7 evening is basically supplementing your testimony
8 from the last proceeding; is that correct?

9 A. That's correct.

10 Q. And this is based on the new information
11 that was presented as a result of the questions
12 raised by the Board and at the Technical Review
13 Committee meeting and as presented by Mr. Lurie this
14 evening?

15 A. Correct.

16 Q. Based upon what has been presented, and
17 with regard to the D variance for the quote, mining
18 operation, do you feel that there is -- have you done
19 an analysis to determine if there is sufficient
20 basis, from a planning point of view, to grant the
21 requested variance?

22 A. Yes, I do. I do believe the soil
23 removal that's characterized as mining is required

24 for the practical development of the property in the
25 manner or as per the permitted uses in the MFG zone.

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1 Effectively, I believe that without the soil removal,
2 effectively the development of these sites is
3 precluded, extremely difficult. As a result, I
4 believe this results in a hardship to the owner in
5 the development of the properties, particularly in
6 the development of the properties as per the MFG
7 zoning.

8 As was testified by the engineer, the
9 property is currently very hilly. It's not suitable
10 for development of industrial subdivision, as
11 proposed here, and as promoted by the zoning. The
12 extent of soil removal is required to provide useable
13 sites which the uses again that are promoted under
14 the zoning can be developed. This is required for a
15 number of technical reasons which would describe
16 including some requirements of the Borough's fire
17 department regarding the water line. The result

18 would be development in a reasonable and efficient
19 manner which can not be done without the removal of
20 the soil.

21 The removal of the soil is also required
22 for the construction and access road for which an
23 easement is being provided to the land-locked
24 Borough's property. It's my opinion without the
25 proposed soil removal, the development of the

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1 property and again the development of the property,
2 as promoted in the MFG zone, would be costly and
3 inefficient. It would require extensive use of
4 retaining walls to prepare the property. They are
5 issues of construction on the property of assembling
6 of lots. They are essentially on hills. This is not
7 an efficient use of Borough land, meaning land of
8 Tinton Falls and land zoned for industrial
9 development.

10 The land development without the
11 proposed soil removal, in my opinion, would be

12 extensive and expensive. It would require extensive
13 structures. More importantly, I think it would be
14 contrary to the intent and purpose of zoning which is
15 expressed in the Municipal Land Use Law. I would
16 like to note that the Municipal Land Use Law
17 specifically states as one of the purposes of zoning,
18 Purpose M, and I'll quote, "To encourage coordination
19 of various public and approximate procedures and
20 activities shaping land development with a view on
21 lessening the cost of such development and the more
22 efficient use of land." I believe the soil removal
23 in this case is a reasonable activity considering the
24 conditions for the purpose of developing the
25 property. It promotes the effective use of the lands

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1 that are designated for industrial development.

2 All in all, I believe the property as is

3 has some very significant practical difficulties in

4 developing and being developed for the property which

5 constitutes a hardship that the removal of the soil

6 would eliminate.

7 Q. Based on the testimony presented by Mr.

8 Lurie relative to the conditions and in specific

9 reference to 40:55 D-7, under the powers of the

10 Board, do you feel that the reasons as set forth in

11 C-1 B, by reason of exceptional topographic

12 conditions or physical features uniquely affecting a

13 specific piece of property that this property falls

14 within that category?

15 A. I do. I think it would be warranted to

16 grant a variance in this case.

17 Q. Also under C-1 C, by reason of

18 extraordinary and exceptional situation uniquely

19 affecting a specific piece of property, would this

20 piece of property and its topographic conditions fall

21 into that category?

22 A. I believe it would.

23 MR. FALVO: I have no further questions

24 of Mr. Jovishoff unless Board Members do.

25 CHAIRMAN PALMIERI: Do Board Members

1 have any questions? Paul?

2 MR. GLEITZ: Thank you, Mr. Chairman. I
3 just have some questions. We're not approaching
4 the D variance from the standpoint of hardship.
5 If the soil removal were not to occur, it would
6 be practically -- the Applicant would be unable
7 to develop the property as it's zoned for.

8 MR. JOVISHOFF: Correct. It would be
9 extremely difficult. It would effectively be
10 precluding development.

11 MR. GLEITZ: Even though we had some
12 testimony it could be done, but it would require
13 retaining walls and stepped properties rather
14 than a single site at one single elevation.

15 MR. JOVISHOFF: It would require
16 extraordinary measures. From the testimony of
17 the engineer and my understanding of the site,
18 it would require extraordinary measures. I
19 don't think it would be effective in creating a
20 marketable development as is promoted by the
21 zoning.

22 MR. GLEITZ: Okay. Under Purpose M, "To
23 encourage consolidation or cooperation between
24 public and approximate entities," correct?

25 MR. JOVISHOFF: Yes. Generally

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1 speaking, it's a coordination which is
2 coordinated between the government actions and
3 approximate development, which is one aspect of
4 that coordination. I don't interpret it meaning
5 joint activities for development.

6 MR. GLEITZ: No. What is the public
7 side of the coordination that you see here with
8 this particular application?

9 MR. JOVISHOFF: The public said, the
10 development of the property in the manner that
11 the Municipality wishes to see it developed,
12 which is for industrial/commercial uses.

13 MR. GLEITZ: I have nothing further, Mr.
14 Chairman.

15 CHAIRMAN PALMIERI: Does anybody in the

16 public have any questions of the testimony given
17 so far?

18 MR. FALVO: Mr. Palmieri, that's all we
19 have. I would like to point out one more issue.
20 Under 40:55-70D, one of the last paragraphs, if
21 an application for development requests one or
22 more variances, but not a variance for a purpose
23 enumerated in Subsection D, which is the use
24 variance section, the decision on the requested
25 variance or variances shall be rendered under

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1 Subsection C of this section. It's basically
2 saying you go back to the hardship element and
3 that is how you render a variance for something
4 that's not specifically under the D section.

5 I believe we've shown by a preponderance
6 of the credible evidence, particularly Mr.
7 Lurie's diagram showing where these hills and
8 piles are within the property, that to develop
9 it other than we have proposed presents an

10 exceptional and unreasonable request on the
11 Applicant to develop it by using retaining
12 walls, or stepping the property or putting a
13 greater grade on the road when, in essence, it's
14 not necessary and it's more efficient to do it
15 as we propose.

16 I believe, based upon the totality of
17 the evidence presented, we've carried the burden
18 of proof and we would request the waivers and
19 variances requested as well as preliminary and
20 final site plan approval and subdivision
21 approval be granted.

22 MR. HIRSCH: The only comment I would
23 have to that, so we don't get confused on the
24 legal standard, as you indicate, Mr. Falvo, that
25 language would be applicable if a D variance was

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1 not necessary.

2 MR. FALVO: No. The D variance is
3 necessary.

4 MR. HIRSCH: We had a discussion that
5 the Applicant was conceding that a C variance
6 was necessary and that's why we are applying the
7 special reasons standard and not the hardship
8 standard, other than undue hardship which can
9 rise not to the level of special reasons. While
10 this may be a topographical issue, that would
11 come under your typical C-1 variance, the
12 standard would be under Section D and not C-1 or
13 C-2, because it is a use variance.

14 MR. FALVO: I understand that. What I'm
15 saying is, as I read the statute, it says if the
16 variance you are asking for is not one of the
17 specifically enumerated 1 through 10 --

18 MR. HIRSCH: But it is. You've conceded
19 that. It's a use not permitted in the zone.
20 That's 1 through 6, a primary use not permitted.
21 The Applicant, at the last hearing, conceded
22 yes, they agree a use variance is necessary. It
23 is one of the ones, 1 through 6.

24 CHAIRMAN PALMIERI: We are talking about

25 the use.

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1 MR. FALVO: We would call it a temporary
2 use. The mining operation is not the primary
3 purpose of what we are doing of the development.

4 MR. HIRSCH: I understand. I don't want
5 to go back down that road where you are making
6 an argument that we should apply the C-1 where
7 you have agreed it is a D variance. Albeit it's
8 going to end in nine months, but why we've taken
9 jurisdiction in this case is that it's a use
10 variance.

11 MR. FALVO: Fine. At the last meeting,
12 when you brought up the point if the hardship
13 can rise to a level to create any special
14 reasons --

15 MR. HIRSCH: I agree. I agree. As to
16 that aspect, I absolutely agree.

17 MR. FALVO: All right.

18 MR. GLEITZ: We are relying on the prior

19 testimony in terms of the use of the auction

20 site.

21 MR. FALVO: Yes.

22 CHAIRMAN PALMIERI: Obviously with this

23 case, it is not our typical, normal setback kind

24 of case. This is a little more intense and

25 complicated. I know we are getting to the point

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1 of the end, hopefully.

2 MR. FALVO: Respectfully, we are at the

3 end.

4 CHAIRMAN PALMIERI: It feels like it. I

5 guess I should open it up to the public, if the

6 public has any comments about the testimony so

7 far.

8 MR. SLAYZK: Nobody is running up.

9 CHAIRMAN PALMIERI: I'm blocked by signs

10 here. All right. I guess we can go forward.

11 MR. HIRSCH: Wait a second. We have

12 only have five votes. Mr. Falvo, we only have

13 five votes tonight. You put your case in. Did
14 you want a vote tonight, assuming the Board is
15 willing to vote tonight?

16 CHAIRMAN PALMIERI: Besides that,
17 because the case has gone on for quite a while,
18 I'm pretty sure -- is there anything that
19 anybody needs clarity on? Maybe we should go
20 over the mining, with the auction site and the
21 different lots that are involved. Is everybody
22 clear? It's an 8-lot subdivision. I was going
23 to ask Mr. Falvo to give us a quick recap.

24 MR. FALVO: I'm sorry?

25 CHAIRMAN PALMIERI: I think it would be

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1 to the benefit of the Board if you give a quick
2 conclusion about everything that was involved
3 with this case, so they understand where we are
4 at.

5 MR. HIRSCH: The actual relief. You
6 don't have to go through the legal arguments.

7 MR. FALVO: We're seeking a use variance
8 with regard to the mining operation. We're
9 seeking a use variance with regard to heavy
10 equipment auction and we are seeking whatever
11 variances are required and/or waivers with
12 regard to the auto auction site. I think we've
13 worked most of those out. We are also
14 requesting major subdivision approval to create
15 the number of lots, together -- we are looking
16 to create 8 lots, one of which will be a
17 regional detention basin. We are looking for a
18 variance to permit these lots to exist
19 essentially on a private road rather than a
20 public road. It will be paved. It will be
21 illuminated.

22 We've stipulated that we would, as part
23 of any approval, post a bond or a fund with the
24 Municipality that if and when it's determined
25 that the lights should be there, the money will

1 be there to construct the traffic light.

2 MR. SLAYZK: Do we have a dollar amount?

3 MR. FALVO: I believe we discussed

4 somewhere in the area of --

5 CHAIRMAN PALMIERI: \$250,000 or

6 \$225,000.

7 MR. FALVO: We said between \$200,000 and

8 \$250,000. We priced out what has to be done.

9 One of the things we can probably do, as part of

10 this, on our side of the road, if we do work on

11 the road, we can probably put the conduits in,

12 while we are doing the work so we don't have to

13 tear the road up later. That's about it. I

14 think all of the sites meet or exceed -- all of

15 the lots meet or exceed the lot requirements for

16 the zone. We've shown you a typical development

17 warehouse on the site. We don't know what's

18 going to go there yet, but it's something that

19 is permitted in the zone. If it's not permitted

20 in the zone, they will come back here for

21 relief.

22 CHAIRMAN PALMIERI: Too bad it wasn't

23 that easy to present it in the first place.
24 Seeing there is no comment from the public, and
25 there is nothing else to add, I guess we'll need

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1 a motion. I'll go back to Mr. Falvo if you want
2 us to go forward.

3 MR. FALVO: Yes.

4 CHAIRMAN PALMIERI: We need a motion to
5 close the public portion.

6 MR. SLAYZK: I make a motion to close
7 the public portion of the meeting.

8 MR. MOAFI: Second.

9 (Ayes have it).

10 CHAIRMAN PALMIERI: Any Board
11 discussion?

12 MR. SLAYZK: I'm going to make a motion,
13 unless you want to have a discussion.

14 MR. HIRSCH: Whoever is going to make a
15 motion, in light of the fact that we have two
16 use variances and then we have site plan and

17 whatever waivers or bulk variances, I think
18 there should be a motion -- a separate motion on
19 each of the use variances. A motion to grant
20 the use variance for mining, a motion to allow
21 the auction, you know, business, and if those
22 pass then a motion on the approval of the major
23 subdivision. I think that should be a vote and
24 then a motion on the site plan bulk variances
25 and waivers. It's odd. Normally, I wouldn't

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1 break it down that many ways, but I think it
2 should be in this case.

3 MR. SLAYZK: Okay. I'll make a motion
4 to approve the use variance for the mining.

5 MR. RICKERT: Second.

6 CHAIRMAN PALMIERI: Roll call?

7 MR. SLAYZK: Yes.

8 MR. RICKERT: Yes.

9 CHAIRMAN PALMIERI: Yes.

10 MR. MOAFI: Yes.

11 MR. PORZIO: Yes.

12 MR. SLAYZK: I'll make a second motion

13 for a use variance for the auction. Should I do

14 use variances and waivers?

15 MR. HIRSCH: Just use variance. That

16 takes the five votes.

17 MR. RICKERT: I'll second that.

18 CHAIRMAN PALMIERI: Roll call?

19 MR. SLAYZK: Yes.

20 MR. RICKERT: Yes.

21 CHAIRMAN PALMIERI: Yes.

22 MR. MOAFI: Yes.

23 MR. PORZIO: Yes.

24 MR. SLAYZK: I'll make a motion for the

25 approval for the major subdivision for 8 lots,

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1 including no waivers on that.

2 MR. GLEITZ: If I may? Under the major

3 subdivision plan, there was a variance for the

4 lack of frontage on the public street and there

5 was 4 waivers and a partial waiver. Those
6 included landscaping along the driveway, the
7 lighting in the rear area, the three soil
8 borings per acre, a provision of a maintenance
9 and repair plan and landscape plan prepared by
10 our landscape architect. I guess that gets
11 removed, because they will comply with that. A
12 variance for the lack of frontage on the public
13 street, 4 waivers and a partial waiver.

14 MR. SLAYZK: Are we good?

15 MR. HIRSCH: The motion would include
16 the approval of the major subdivision, the one
17 variance, four waivers and one partial waiver.

18 MR. SLAYZK: Correct. That would be the
19 motion.

20 MR. RICKERT: Second.

21 CHAIRMAN PALMIERI: Roll call?

22 MR. SLAYZK: Yes.

23 MR. RICKERT: Yes.

24 CHAIRMAN PALMIERI: Yes.

25 MR. MOAFI: Yes.

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1 MR. PORZIO: Yes.

2 MR. SLAYZK: All right. I make a motion
3 to approve the site plan and any waivers.

4 MR. GLEITZ: If I may, they would need
5 the same variance for the fronting on a public
6 street and they need 3 waivers, because they are
7 going to comply with the landscape architect.

8 MR. SLAYZK: Do we have to mention
9 anything about the traffic light?

10 MR. HIRSCH: That will be a condition.
11 The representations of the Applicant are
12 included in the approval which will be outlined
13 in the memorializing Resolution for final
14 action. Subject to the approval of all reports
15 and any representations that have been made they
16 will be conditions that we will address in the
17 Resolution.

18 MR. GLEITZ: That would be the variance
19 for the lack of frontage on a public street, a

20 waiver for location of trees 6 inches or above,
21 a waiver for landscaping and all parking and
22 loading areas and a partial waiver on the
23 provision of the 25 foot candles. Two waivers
24 and a partial.

25 MR. HIRSCH: Okay. That is the motion

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1 on the site plan.

2 MR. RICKERT: Second.

3 CHAIRMAN PALMIERI: Roll call?

4 MR. SLAYZK: Yes.

5 MR. RICKERT: Yes.

6 CHAIRMAN PALMIERI: Yes.

7 MR. MOAFI: Yes.

8 MR. PORZIO: Yes.

9 MR. FALVO: Thank you very much,
10 gentlemen.

11 CHAIRMAN PALMIERI: Before you run away,
12 with the mining thing and the permit and I know
13 it's not part of our jurisdiction --

14 MR. HIRSCH: It will be part of the

15 conditions.

16 MR. FALVO: We will file --

17 CHAIRMAN PALMIERI: I go into that big

18 number we discussed and going in for 90,000,

19 even though there is mining dug already and

20 obviously we've don't have the jurisdiction and

21 I don't know if you'll -- I think they should be

22 aware of the scope. Even though we agree that

23 mining should be done to finish the project,

24 they should understand it was already removed

25 and you have some left to do. I'm not saying we

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1 don't want you to do it. I don't want them to

2 come back and say to us about the 90,000.

3 MR. FALVO: I understand. We will plead

4 our case before the Council. I'm going to plead

5 my case. When Mr. Gleitz drafts the new

6 ordinance, he needs to put in a provision for

7 soil removal. Under this ordinance, if you want

8 to be a technicrat, after you dug your pool the
9 hole for your pool, you couldn't remove the
10 soil.

11 CHAIRMAN PALMIERI: That is an awful big
12 pool, 90,000. That is a like --

13 MR. FALVO: Off the record.

14 (Whereupon, at 10:03 p.m., the
15 application was concluded.)

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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: February 1, 2008

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