

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

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

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

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

Present: Messrs. Palmieri, Lomangino, Battista, Rickert, Porzio & Roche

Absent: Messrs. Slazyk, LaValle & Moafi

Also present: Mr. Feist, Board Engineer
Mr. Rauch, Board Engineer
Ms. Gruel, Board Planner
Mr. Heyer, Board Planner
Mr. Burch, Board Planner
Mr. Hirsch, Board Attorney
Mr. Gotfredsen, Board Secretary

Mr. Palmieri then read a statement of procedural guidelines.

STEPHEN BLAKE 22 WILLIAMSBURG DRIVE FRONTYARD SETBACK FOR PORCH	BA 2008 – 03 BLOCK 124.04 LOT 22
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Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the Blake matter was offered by Mr. Battista and seconded by Mr. Lomangino. A voice vote in favor was unanimous.
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Mr. Hirsch then swore in the applicant, **Stephen Blake**, and **Philip Rush**, 5 Williamsburg Drive, the contractor.

Mr. Blake advised we presented plans for a residential makeover of the property and in doing so were going to bring the front porch out another foot and we were advised we would have to seek a variance.

Mr. Palmieri said I guess you're referring to the letter you received from Lori Paone dated January 24th. In the package that we got, we got a site plan.

At this time **Mr. Rush** introduced a survey that the Board had not received.

A-1 Survey prepared by Landmark Surveying dated 12/18/07
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Mr. LaValle, Board member, arrived at the meeting.

Mr. Rush said our intention to now have the porch come out a foot past the original.

Mr. Hirsch asked explain again...how big is the new porch.

Mr. Rush replied 17 x 4. The 3 feet was grandfathered but because we're going one foot more towards the front lot line, this is causing the variance.

Mr. Hirsch said well, according to the Zoning Officer's letter, the existing setback was 23.35 feet and the proposed, she has it at approximately 21. So what is it, 21 feet...you're asking for relief.

Mr. Rush replied yes.

Mr. Hirsch said okay, because if the Board grants it and the Building Department goes out, it had better be on that number or they're going to cite you. Do you understand...that's why I want to make sure we're accurate.

Mr. Palmieri said on this survey, there's a number, 22.29, to the porch. Is that supposed to be 21.

Mr. Rush stated we're going forward 2 feet past the old foundation towards the street.

Mr. Palmieri said alright, let's get some things on the record here. If I'm standing on Williamsburg and looking at the front of your house, Mr. Blake, how far is the house on your right, Lot 23, from your common property line.

Mr. Blake agreed it was 25 – 30 feet.

Mr. Palmieri asked and then the house directly behind you on Colonial Drive, Lot 21, how far is that from your common property line.

Mr. Rush replied it's about 15 feet to that structure.

Mr. Palmieri asked do the Board members have any questions. This new survey is pretty much the same thing as what was on the survey that was submitted with the application except with a little more detail.

There was some discrepancy between the measurements given on the survey and Mr. Rush's testimony but Mr. Rush reaffirmed that a 21 foot variance was sufficient for construction of the new porch.

Mr. Feist scaled the survey and agreed that 21 feet would be sufficient for the variance.

The Board members had no further questions.

Mr. Palmieri opened the floor to the public for questions or comments. There were none and Mr. Rush and Mr. Blake had nothing more to offer.

A motion to close the public portion of the Blake hearing was offered by Mr. LaValle and seconded by Mr. Porzio. A voice vote in favor was unanimous.

A motion to approve the variance as requested by Mr. Blake was offered by Mr. Lomangino and seconded by Mr. Battista.

ROLL CALL

Yes: Messrs. Lomangino, Battista, Palmieri, LaValle, Porzio & Roche

No: None

Abstain: None

3230 SHAFTO ROAD ASSOCIATES LLC BA 2008 – 07
3230 SHAFTO ROAD BLOCK 145 LOT 26.01
MINOR SUBDIVISION, USE & BULK VARIANCES & SITE PLAN APPROVAL
CARRIED FROM JANUARY 17, 2008

SEE ATTACHED TRANSCRIPT FOR 3230 SHAFTO ROAD ASSOCIATES HEARING.

A motion to adjourn the meeting was offered by Mr. Battista and seconded unanimously.

Respectfully submitted,

Doug Gottfredsen
Board Secretary

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, FEBRUARY 21, 2008

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3230 Shafto Road Associates
7 (SIMS GAS PRODUCTS)

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BEFORE:

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RONALD PALMIERI, Chairman
13 RONNIE BATTISTA
 JIM LAVALLE
14 STEVE PORZIO
 JOHN ROCHE

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18 ALSO PRESENT:

19 THOMAS HIRSCH, ESQ., Board Attorney

ERNEST FEIST, P.E., Board Engineer
20 JEFFREY RAUCH P.E., Board Engineer
JOHN BURCH, P.P., Board Planner
21 FREDERICK HEYER, Board Planner
DOULGAS GOTFREDSEN, Board Secretary
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LISA NORMAN, CSR
25 15 Girard Avenue
West Long Branch, New Jersey 07764

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1 APPEARANCES:

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

732.922.1000

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

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1 I N D E X

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3 WITNESS NAME PAGE NO.

4

TIMOTHY LURIE, P.E.

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6 By Mr. Falvo 8, 20

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JAMES PALMISANO

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10 By Mr. Falvo 16

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MICHAEL JOVISHOFF, P.P.

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15 By Mr. Falvo 42

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1 EXHIBITS

2

3 EXHIBIT NO. DESCRIPTION PAGE NO.

4

5 A-2 Preliminary and Final Major 6
 Subdivision Plan dated 8/31/07

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8 A-3 "Vicinity Plan and Project Data, 7
 SIMS Gas Products, LLC," prepared by
9 D.W. Smith Associates dated June 20,
10 2007, revised February 5, 2008,
 consisting of 11 sheets

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13 A-4 Mounted version of Sheet 1 of 1 7
 entitled, "SIMS Gas Products, LLC Gas
14 Storage Building Exhibit."

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1 MR. FALVO: Good evening, Mr. Chairman
2 and Members of the Board. Peter Falvo, attorney
3 for the Applicant. At the last meeting, we had
4 the testimony of the operator relative to the
5 nature of the business. At that time, Mr.
6 Palmisano testified as to the hours of
7 operation, days of operation and number of
8 employees. You raised some questions concerning
9 the height of the tanks, that were going to be

10 on the property, et cetera, et cetera. The
11 plans were revised and submitted and I'm going
12 to have the engineer testify as to the site plan
13 and to the height of the tanks, number of
14 parking, et cetera.

15 What I'd like to get resolved, however,
16 is, Mr. Battista, were you at the last meeting?

17 MR. BATTISTA: No. I have the
18 transcript. I've read it and I've signed an
19 Affidavit.

20 MR. FALVO: Terrific. Thank you.

21 MR. FALVO: Mr. Lavalle, did you read
22 the transcripts?

23 MR. LAVALLE: I did.

24 MR. FALVO: I appreciate that. So does
25 my client. What I'd like to do, if we can do

1 some housekeeping, I'd like to mark as A-2 in
2 evidence the Preliminary and Final Major
3 Subdivision Plan of SIMS Gas Products, LLC,

4 prepared by D.W. Smith Associates consisting of
5 one sheet dated August 31, 2007.

6 MR. HIRSCH: All right. We will mark
7 that Preliminary and Final Site Plan, one sheet.

8 MR. FALVO: Preliminary and Final Major
9 Subdivision Plan.

10 MR. HIRSCH: Oh, I'm sorry. I thought
11 you said, "site plan." Preliminary and Final
12 Major Subdivision Plan dated 8/31/07, prepared
13 by D.W. Smith Associates marked as A-2.

14 (Whereupon, A-2 - Preliminary and Final
15 Major Subdivision Plan dated 8/31/07, was
16 received and marked into evidence.)

17 MR. FALVO: As A-3 in evidence, I'd like
18 to introduce the Preliminary and Final Site
19 Plans entitled, "Vicinity Plan and Project Data,
20 SIMS Gas Products, LLC," prepared by D.W. Smith
21 Associates dated June 20, 2007, revised
22 February 5, 2008, consisting of 11 sheets.

23 MR. HIRSCH: Okay. Last revised
24 10/12/07?

25 MR. FALVO: No. Revised February 5,

1 2008.

2 MR. HIRSCH: Okay. All right. We are
3 referring to our Board engineer's letter of
4 10/12?

5 MR. FALVO: Correct.

6 MR. HIRSCH: That will be A-3.

7 (Whereupon, A-3 - "Vicinity Plan and
8 Project Data, SIMS Gas Products, LLC," prepared
9 by D.W. Smith Associates dated June 20, 2007,
10 revised February 5, 2008, consisting of 11
11 sheets.)

12 MR. FALVO: As A-4, I'd like to mark
13 into evidence, and Tom I'll ask your guidance on
14 this one, we have a board and then we have
15 individual handouts. What would you like to
16 mark them?

17 MR. HIRSCH: We'll mark the board and
18 just give us the handouts.

19 MR. FALVO: All right. A-4 will be a

20 mounted version of Sheet 1 of 1 entitled, "SIMS
21 Gas Products, LLC Gas Storage Building Exhibit."

22 (Whereupon, A-4 - Mounted version of
23 Sheet 1 of 1 entitled, "SIMS Gas Products, LLC
24 Gas Storage Building Exhibit.")

25 MR. FALVO: As A-5 in evidence is the

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LURIE - Direct

1 tank details exhibit dated February 21, 2008,
2 prepared by D.W. Smith.

3 (Whereupon, A-4 - Tank details exhibit
4 dated February 21, 2008, was received and marked
5 into evidence.)

6 MR. FALVO: Just to keep the record
7 straight, the tank detail exhibit is also Sheet
8 10 of A-3 in evidence. I'd like to call Mr. Tim
9 Lurie, please?

10 MR. LURIE: My address is 149
11 Yellowbrook Road, Farmingdale, New Jersey.

12 (Whereupon, Timothy Lurie, P.E., is
13 sworn and testifies as follows:

14 CHAIRMAN PALMIERI: I guess we will
15 accept him as a professional in?

16 MR. FALVO: I'm getting to that.

17 MR. HIRSCH: We've accepted Mr. Lurie
18 before. The Board is willing to accept Mr.
19 Lurie as a professional engineer. Is he
20 testifying in any other capacity tonight?

21 MR. FALVO: Just as an engineer.

22 MR. HIRSCH: The Board has no objection
23 to him providing testimony as an expert witness.

24 DIRECT EXAMINATION BY MR. FALVO:

25 Q. Mr. Lurie, you were the site engineer

10

LURIE - Direct

1 with regard to the plans which have been marked into
2 evidence as A-2, 3, 4 and 5; is that correct?

3 A. That is correct.

4 Q. And could you just walk the Board, for
5 the moment, through the site plan and point out the
6 location of the parking, the building, the tanks,
7 landscaping and the other features of the site?

8 A. Sure. We are proposing to subdivide the
9 existing Lot 26.01 into two lots, into a new proposed
10 Lot 26.03, which consists of approximately
11 4.275 acres. It's located on the existing Lot 26.01.
12 We are proposing -- we have a wetlands line which
13 runs along the rear portion of the lot, which is
14 currently pending DEP approval for an LOI. In
15 addition to that, we are assuming a 50-foot buffer,
16 which is consistent with the LOI portion, east to the
17 project. The site itself is consisting of coming off
18 of proposed Road A, which was previously approved by
19 this Board, which we are providing 10 parking stalls,
20 now as a result of the parking calculations of
21 approximately six employees and four extra spaces for
22 any customers. We are also proposing the site access
23 is going to be off of the two accesses off of Road A
24 where we come into the east of the proposed building
25 where the parking lot area is, we have a road that

1 loops around the back of the building and we have an

2 exit back onto Road A.

3 The building will consist of 3,500
4 square feet with an additional 1,400-square foot
5 loading dock for loading and unloading of the
6 canisters. We are proposing the different storage
7 tanks to the rear of the building. We are proposing
8 carbon dioxide, oxygen, nitrogen and also argon. We
9 are proposing to the rear of the lot the propane tank
10 area and in addition to the propane tank area we have
11 a raised loading area which is 4 foot in the eastern
12 rear portion of the site and then in addition we have
13 a 10-by-40 helium pad trailer area to park the helium
14 truck.

15 As we come around the rear of the
16 building, we have a proposed trash enclosure area.
17 The utilities of this site are going to be consist of
18 proposed water line in Road A, which will provide
19 water service to the building. We will provide
20 septic fields also in the front of the building. And
21 then, in addition to that, we are providing
22 additional fire hydrant for fire safety purposes. We

23 are providing the access way for the roadway is

24 25 feet and parking stalls are 9-by-18.

25 The storm water system is collected

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LURIE - Direct

1 through a series of inlets, which will tie into the

2 infiltration basin that was previously approved and

3 in each of the inlets we have provided environmental

4 measures to help further water quality analysis.

5 We are providing landscaping on the

6 site. We are providing to reinforce the buffer, the

7 50-foot buffer area. In addition, we are providing

8 street trees along the frontage. We have one I.D.

9 sign, which is 40 square feet of area for a sign.

10 One additional note, the loading area, which is

11 previously to the east of the building, we have

12 relocated to the front of the building. Previously,

13 it was called a drive through, which was incorrect.

14 It is just an area with a garage door to pull inside

15 to load and unload.

16 Q. With regard to the tanks immediately

17 behind the proposed storage building, you have a
18 notation of a spill pad. Is that a correct
19 identification of that or is there another use for
20 that pad?

21 A. Since these are all gases and there is
22 no liquid involved, if they were to escape in the
23 air, this concrete spill pad, which is called a
24 concrete pad, is to allow them to unload and load the
25 oxygen tank into that spot. They need a flat area to

13

LURIE - Direct

1 do that. The labeling on the plan is incorrect and
2 that needs to be changed.

3 Q. With regard to the trash enclosure area,
4 what will be the enclosure? What will that be made
5 of?

6 A. It's board-on-board fence.

7 Q. And with regard to the septic system,
8 that is located in the front yard setback area; is
9 that correct?

10 A. That is correct. To get it as far away

11 from the wetlands as we can, we located it in the
12 front area of the site.

13 Q. And with regard to the number of trees
14 that you've placed across the frontage of this
15 property, that number is three, but it's limited
16 because of the presence of the septic field; is that
17 correct?

18 A. That is correct. I have had previous
19 conversations with the landscape architect consultant
20 and he recommended that I extend the street trees
21 that was previously approved on the 8-lot
22 subdivision. That's what we carried down.

23 Q. Okay. With regard to the signage, this
24 will be a ground-mounted sign that will identify the
25 SIMS Gas facility; is that correct?

14

LURIE - Direct

1 A. That is correct. It's also shown on the
2 detail sheet of the plans.

3 Q. It complies with the requirements of the
4 zone?

5 A. That's correct.

6 Q. So, several of the variances required is

7 that it's a 30-foot setback where the ordinance

8 requires 75 feet for the front yard setback?

9 A. That is correct. That is as a result of

10 wetlands and it covers three-quarters of this

11 property. We have to request that from that setback

12 variance for the front yard as a result of that.

13 Q. From an engineering point of view, given

14 the presence of the wetlands, the actual buildable

15 area is restricted and limited between the wetlands

16 and the buffer; is that correct?

17 A. Yes, that is correct.

18 Q. So, the property -- would it be fair to

19 conclude that the property suffers from some unusual

20 site constraints making it virtually impossible to

21 comply with the requirements of the ordinance?

22 A. Yes, that is correct. The actual lot

23 coverage allowed for this zone is 60 percent.

24 Because of the wetlands, we are only providing

25 13.2 percent. We're not even close.

LURIE - Direct

1 Q. With regard to the storage tanks, there
2 was a question with regard to the height of those
3 tanks and what they would look like. So, A-5 in
4 evidence gives you the detail of the various vertical
5 as well as the horizontal tanks; is that correct?

6 A. That's correct.

7 Q. With regard to these tanks, with regard
8 to the vertical tanks, there is 11,000-gallon model
9 and a 3,000-gallon model. Both of these tanks will
10 be bolted to a concrete base?

11 A. That is correct.

12 Q. Or concrete pad. Both of these tanks
13 are less than the 40-foot height requirement allowed
14 in the zone?

15 A. Yes. The 11,000-square foot tank is
16 36.1 feet and the 3,000-gallon tank is 16.2 feet.

17 Q. Okay. With regard to the propane vessel
18 that will be located in the rear -- I guess that
19 would be the northeast corner of the property?

20 A. Yes.

21 Q. That is detailed also on A-5 in evidence
22 in the middle of the page; is that correct?

23 A. That is correct.

24 Q. Now, with regard to that or with regard
25 to the tanks to the rear of the property, have you

16

LURIE - Direct

1 provided any security around the tanks or fencing or
2 something that keeps people out?

3 A. Yes. We provide a 6-foot high fence
4 with two gates. As you come into the eastern portion
5 of the site, there is a gate -- right after you go
6 beyond the parking area, there is a gate with a
7 six-foot high fence and it continues all the way
8 around to the western side of the building where
9 there is also another gate for access out and it just
10 closes itself up back onto the building. The whole
11 rear of the portion is secure.

12 Q. And with regard to the propane tank
13 specifically, is there any fencing around that?

14 A. Yes. There is fencing around the

15 propane tank also.

16 Q. And are there any features installed

17 around that tank to prevent against somebody

18 accidentally running into it? Aren't there a series

19 of bollards around that?

20 A. Yes. There are a series of bollards

21 around the tank.

22 Q. And with regard to the pad, I think it's

23 the 10-by-40 pad located across the driveway aisle

24 and to the rear, and I guess that would be west of

25 the propane tank. Is that the area where the helium

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PALMISANO - ReDirect

1 will be stored?

2 A. That is correct.

3 Q. And the helium is brought in on a

4 trailer and left there and then when it's empty

5 another trailer comes in?

6 A. Yes.

7 CHAIRMAN PALMIERI: I've got a quick

8 question, Mr. Falvo. With the helium being on
9 the trailer all the time, is that something that
10 is standard or why don't we have a stationary
11 tank to store the helium?

12 MR. FALVO: Mr. Palmisano is still under
13 oath. Maybe he can respond to that.

14 MR. PALMISANO: Jim Palmisano, SIMS Gas
15 Products.

16 MR. HIRSCH: You are still under oath,
17 sir, from the first hearing.

18 REDIRECT EXAMINATION BY MR. FALVO:

19 Q. Mr. Palmisano, the question that Mr.
20 Palmieri had is with regard to the trailer and the
21 tanks on the trailer. Is this the usual and
22 customary way that the helium is handled as
23 contrasted to the cryogenic vessels that you are
24 using for the other gases?

25 A. Helium, 99 percent of the time, is

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PALMISANO - ReDirect

1 stored in tube trailers because as a cryogenic it's

2 minus 452 degrees. It's the closest temperature to
3 absolute zero. To maintain that thermal integrity,
4 it's virtually impossible. It's very, very rare
5 where you will find liquid helium.
6 Ninety-nine percent of the time it's stored as a gas
7 in tube trailers.

8 CHAIRMAN PALMIERI: I guess the question
9 it's stored in the tube trailers because the
10 facility can't handle taking it out of those
11 tubes?

12 MR. PALMISANO: It's not physically
13 possible to keep it and maintain as you could
14 oxygen or nitrogen or argon. The atmospheric
15 gases are much warmer and can be kept in a
16 thermal container and stored as a liquid.
17 Helium is literally impossible to do that.

18 CHAIRMAN PALMIERI: Does the helium
19 trailer need any kind of power or anything to be
20 hooked up to it while it's standing there --

21 MR. PALMISANO: No.

22 CHAIRMAN PALMIERI: -- for delivering it
23 to however you transport it?

24 MR. PALMISANO: No. These are going up
25 and down the highways every day. They don't

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PALMISANO - ReDirect

1 require any energy or electrical power at all.

2 CHAIRMAN PALMIERI: I guess the question
3 would be when you have it in the storage tank,
4 how do you move it to that facility? Does
5 somebody come with another tank?

6 MR. PALMISANO: When this trailer gets
7 down to empty, we call up and they bring another
8 trailer with a tractor and pick up this trailer.

9 CHAIRMAN PALMIERI: I'm trying to get --
10 my question is, from the trailer, how do you
11 sell it?

12 MR. PALMISANO: It's cascaded pressure.
13 It's cascaded by virtue of pressure.

14 CHAIRMAN PALMIERI: That cylinder --
15 that procedure would be done outside. It's not
16 a hookup with this tank that runs into your
17 building?

18 MR. PALMISANO: Right. There would be
19 connections of all of these tanks to the
20 building where they would go into.

21 CHAIRMAN PALMIERI: Including the one on
22 the trailer?

23 MR. PALMISANO: Correct.

24 CHAIRMAN PALMIERI: You would have that
25 as a special hookup that comes out somewhere in

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PALMISANO - ReDirect

1 the building?

2 MR. PALMISANO: It comes through what
3 they usually use is a bull hose. It's a strong,
4 neoprene hose. It could be done with a pipe, a
5 solid pipe.

6 CHAIRMAN PALMIERI: I guess the way this
7 will be handled for this particular gas would be
8 what?

9 MR. PALMISANO: One of those two
10 methods.

11 CHAIRMAN PALMIERI: You haven't made

12 that decision yet?

13 MR. PALMISANO: Correct.

14 BY MR. FALVO:

15 Q. To elaborate on Mr. Palmieri's question,

16 will there be a hose or pipe running through this

17 trailer into your building?

18 A. Correct.

19 Q. And the building is where the other

20 vessels will be filled with the helium to go to

21 whatever location they are requested to go to?

22 A. Correct.

23 CHAIRMAN PALMIERI: You wouldn't need

24 any electricity out in the trailer for that.

25 It's done by pressure or some kind of vacuum

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LURIE - Continued Direct

1 system?

2 MR. PALMISANO: It's done by pressure,

3 correct.

4 CHAIRMAN PALMIERI: That pressure is

5 generated by pressure that gas is currently

6 under to get it to come to the building?

7 MR. PALMISANO: Correct. It's cascaded.

8 These tubes, they are opening one tube and then

9 you cascade the next tube at a higher pressure

10 and the next tube and continuously build the

11 pressure until you have the correct cylinder

12 pressure. It's a pretty simple process.

13 CHAIRMAN PALMIERI: Okay.

14 MR. FALVO: Thank you. I'd like to call

15 Mr. Lurie back up.

16 (Whereupon, Tim Lurie, P.E. testifies as

17 follows:

18 CONTINUED DIRECT EXAMINATION BY MR. FALVO:

19 Q. Now, with regard to the letter of Feist

20 Engineering, did you have the opportunity to review

21 that with regard to the plans which you submitted as

22 A-4 in evidence?

23 A. Correct.

24 Q. And with regard to that letter, are

25 there any items that we have a problem complying

LURIE - Continued Direct

1 with? Why don't you go through the technical aspects
2 of the site plan.

3 A. Okay. We can start off --

4 MR. HIRSCH: I'm not sure where we are
5 at, guys. You are having a conversation between
6 yourselves.

7 MR. FALVO: We are trying to find out
8 where we are going to start with regard to the
9 engineer's letter of February.

10 MR. HIRSCH: I thought the question was
11 can we comply with everything in it and I didn't
12 hear a response.

13 MR. LURIE: Yes. We can comply with
14 everything. There are a couple of issues.

15 A. One is pertaining to the soil boring for
16 seasonal high water table. Since we are providing
17 borings --

18 CHAIRMAN PALMIERI: What page?

19 MR. HIRSCH: What comment are you
20 referring to?

21 MR. LURIE: Comment on Page 5, Comment

22 9.

23 MR. HIRSCH: Your position is what?

24 MR. LURIE: We are currently providing

25 soil logs to the engineer from the basin in this

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LURIE - Continued Direct

1 corner all along the basin. Since its in close

2 proximity of the basin to the site, we would

3 like to utilize this soil boring for our

4 seasonal high water table.

5 MR. FEIST: I don't think we have any

6 objection. The basin is immediately adjacent to

7 the site.

8 MR. HIRSCH: That would be a waiver.

9 You are going to rely on the information of the

10 soil borings on the adjacent basin, right?

11 MR. LURIE: That is correct.

12 Q. What is the next item?

13 MR. HIRSCH: Any other items that you

14 can't comply with that you want to address?

15 MR. LURIE: No, we can comply with all
16 of the other items.

17 MR. FEIST: Mr. Chairman, we did raise
18 in the letter the detail for the helium tube
19 trailer indicates that the trailer without a
20 tractor is 43 feet in length. The concrete pad
21 provided for the helium tube trailer is 40 feet
22 in length. I would also note that the design
23 vehicle for the turning radii within the site is
24 a 30-foot box truck. I'm a little bit concerned
25 both with the size of the concrete pad for the

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LURIE - Continued Direct

1 storage of the helium tube trailer as well as
2 the ability to maneuver the helium 43-foot
3 helium trailer with a tractor. I'm sure a
4 tractor is 10 or 15 feet, so you are going to be
5 up to the 50 or 55 foot range tractor and
6 trailer maneuvering it around that site.

7 Is there an error on the helium tube
8 trailer? Did you use the wrong design vehicle?

9 MR. LURIE: Well, we show a 30-foot
10 truck, because that is the normal delivery truck
11 for making their deliveries. We do show on the
12 site where the propane storage area is. This is
13 a striped area where we could bring the helium
14 truck in. I could throw a template on there and
15 show that we can fit the helium truck around
16 this radius right here.

17 CHAIRMAN PALMIERI: "Right here,"
18 meaning behind on the other side of the propane?

19 MR. LURIE: Yes. The helium truck would
20 come in the eastern entrance and this area back
21 in the rear portion of the site by the propane
22 area is all striped. That is all open. The
23 curb goes along the edge of the property back to
24 the helium pad, so there is additional space to
25 make that turn.

25

LURIE - Continued Direct

1 MR. FEIST: Well, I'd like to see that
2 template. It's going to be very, very tight.

3 Again, you are indicating a 43-long foot
4 trailer, not including a tractor pulling it. If
5 it's a 15-foot tractor, you are at a 58-foot
6 vehicle compared to the 30-foot design vehicle
7 that fits within the striped travel lanes. I
8 don't disagree that you have some additional
9 area for maneuvering in the striped areas, both
10 to the northeast corner of the property and also
11 to the westerly side of the property, as the
12 vehicle will be trying to back the trailer in.
13 Again, we still do have the issue of the
14 concrete pad that measures 40 feet and a trailer
15 that's got an overall length of 43. It seems
16 very tight. It seems like you are not going to
17 be able to back that trailer onto that concrete
18 pad. You are going to have to demonstrate that.

19 MR. LURIE: I will provide a template.

20 MR. HIRSCH: What comment was that?

21 MR. FEIST: I don't believe there was a
22 specific comment. There was a comment that
23 talked about the proximity of the tube to the
24 propane tanks and that was related that we felt

25 the helium tube trailer, if it overshot the

26

LURIE - Continued Direct

1 concrete pad, would be close to the propane
2 tank. This all ties together with the fact that
3 that area seems to be a little bit tight to
4 maneuver a 43-foot long trailer.

5 MR. HIRSCH: Okay. The Applicant will
6 provide additional turning templates to
7 demonstrate the tractor trailer's ability to
8 maneuver and park that tank on a 40-foot pad
9 without being at risk for hitting the propane
10 tank. What happens when helium and propane get
11 together?

12 MR. FEIST: Not so much that they get
13 together. You don't want the helium trailer to
14 hit the propane tank.

15 MR. LURIE: We have a little room to
16 push it back also. We will provide the
17 templates.

18 MR. FEIST: Perhaps you could slide the

19 trash enclosure perhaps to the west a little
20 further and give yourself a little bit more room
21 there, a little more concrete pad. Finally, on
22 that subject, perhaps a secondary row of
23 concrete bollards at the easterly and northerly
24 perimeter of the pad for the helium trailers, so
25 if they overshoot that concrete pad it will take

27

LURIE - Continued Direct

1 out those bollards rather than the bollards
2 around the propane tank.
3 MR. LURIE: Sure.
4 MR. FEIST: Mr. Chairman, if they can
5 comply with everything else in the letter, I
6 would remind the Board this is the third review,
7 the initial review was done by our predecessors
8 and we tried to work through the comments made
9 by the former engineers. I don't believe there
10 is anything else in that review letter that they
11 can not address. This was the one issue I felt
12 a little more discussion was warranted.

13 MR. HIRSCH: You guys agreed on the

14 secondary row of bollards?

15 MR. LURIE: Yes.

16 MR. FALVO: Yes.

17 MR. HIRSCH: That is on the easterly and

18 northerly perimeter of the helium pad?

19 MR. FALVO: Correct.

20 MR. HIRSCH: Other than providing

21 information that we discussed about turning

22 templates, you will comply with everything in

23 the engineer's report, including the

24 recommendation of the Board engineer concerning

25 the secondary row of concrete bollards, right?

28

LURIE - Continued Direct

1 MR. LURIE: Yes.

2 BY MR. FALVO:

3 Q. With regard to the report from Mr.

4 Kniesler from the landscape review, Mr. Lurie, do you

5 have any problems complying with that report?

6 A. No, we don't.

7 MR. HIRSCH: That is dated February 20,
8 2008, right?

9 MR. FALVO: Let's see. I believe so.

10 MR. HIRSCH: Okay. Will comply with all
11 requirements. All right.

12 CHAIRMAN PALMIERI: Do you want to go
13 over the planner's report?

14 MR. FALVO: I have a planner to go over
15 the planner's report.

16 Q. Item 9, with regard to Item 9 with the
17 signage on Page 7 --

18 MR. HIRSCH: What report are we on now?

19 MR. FALVO: The planner.

20 MR. HIRSCH: Which page?

21 MR. FALVO: We are referring now to the
22 report of the planner revised February 18, 2008.
23 Originally September 28, 2007 and revised
24 February 18, 2008.

25 Q. Mr. Lurie, with regard to Page 7, Item

1 9, signage, could you please address that issue?

2 A. Sure. Our plans show a proposed road
3 with a sign being 40 square feet. I'm not sure what
4 his comment is pertaining to on that. We note it on
5 our detail sheet. I don't know if it was carried
6 over.

7 MR. HIRSCH: You said there are two
8 signs, one building and one mounted?

9 MR. LURIE: I'm not sure where the
10 wall-mounted came from. And the sign saying
11 100 square feet, because we show in our detail
12 sheet 40-square foot sign.

13 MR. HIRSCH: Your position is you are
14 providing one freestanding sign at 40 square
15 feet which meets the ordinance?

16 MR. LURIE: Yes.

17 MR. HIRSCH: There is no facade sign or
18 anything else?

19 MR. FALVO: If we put a facade sign on,
20 we will stipulate it will comply with the
21 requirements of the ordinance.

22 CHAIRMAN PALMIERI: I guess that came

23 from the plans.

24 MR. LURIE: I believe that sign

25 conforms.

30

LURIE - Continued Direct

1 MR. HIRSCH: Anything else from Mr.

2 Lurie on the planner's report?

3 MR. FALVO: Everything else, from an
4 engineering point of view, we can comply with.

5 MR. HEYER: Just one other item, and I
6 don't know if this ground has been covered
7 before, but there appears to be an issue with
8 the wetlands on the site. This is a State
9 jurisdictional issue. The information we've
10 been furnished from the County indicates that
11 most of the water course that is adjacent to the
12 site are Category I streams which require the
13 large buffers just by way of information.
14 Again, it's the DEP issue. If 300-foot
15 buffers are required here, the site isn't

16 working.

17 CHAIRMAN PALMIERI: I think we covered

18 that at the last meeting. The stream that was

19 supposedly there --

20 MR. HIRSCH: Not the last meeting of

21 this application, but the related application.

22 MR. HEYER: Very good.

23 MR. HIRSCH: I don't know how that

24 testimony fits in with this particular building

25 and site. But, Mr. Lurie, why don't you address

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LURIE - Continued Direct

1 that now that it's raised?

2 MR. LURIE: We can comply with the

3 300-foot buffer is going to be along the rear

4 portion of the site.

5 MR. HIRSCH: Just so we are clear --

6 Q. The 300-foot buffer essentially

7 terminates at the rear of the property?

8 A. Correct.

9 Q. All of this development --

10 A. Is outside of the 300-foot buffer.

11 Q. With regard to the design waivers on

12 Page 4, those are still requested?

13 A. No. The design waiver about the

14 landscape along the driveway, according to the

15 landscape architect's review letter, that is no

16 longer needed.

17 MR. HIRSCH: I'm having a hard time with

18 that. Number 1 you are saying is addressed in

19 the landscape architect's letter?

20 MR. LURIE: Yes. That waiver goes away.

21 MR. HIRSCH: You don't need that waiver?

22 MR. LURIE: Correct.

23 Q. Number 2?

24 A. Number 2, the same.

25 Q. Number 3?

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LURIE - Continued Direct

1 A. Number 3, we will have the -- yes, we

2 can comply.

3 MR. HIRSCH: You are not requesting

4 waivers on any of those three items?

5 MR. LURIE: Correct.

6 Q. What about the shade trees on Number 3?

7 With regard to the waivers mentioned on Page 6, with

8 regard to the street trees, you are complying with

9 the request of the landscape consultant on that?

10 A. That is correct.

11 Q. And the same with regard to 4?

12 A. Yes.

13 MR. HEYER: That is fine. We would

14 defer to the landscape consultant with the

15 placement of the street trees.

16 MR. HIRSCH: We're not requesting

17 waivers. Is that what I'm getting?

18 MR. LURIE: Correct.

19 Q. With regard to the proposed aisle width

20 and the arrangements of the parking and loading

21 areas, at the present time the only concern expressed

22 by the engineer is the ability to maneuver the helium

23 truck and you will provide the necessary templates to

24 show that can be accomplished; is that correct?

25 A. Correct.

LURIE - Continued Direct

1 Q. So, Item 6 from the parking and
2 circulation, will be addressed through the engineer.
3 That final determination will be made --

4 MR. HIRST: I think you are going to
5 submit that additional information.

6 MR. FALVO: Right.

7 MR. HIRSCH: And our engineer will
8 review it, and determine whether this site works
9 with the tractor trailer and size of the pad and
10 so on and so forth. If he has any other
11 recommendations, either you will comply or you
12 will have to come back to the Board.

13 BY MR. FALVO:

14 Q. With regard to the Item 7, that, too,
15 will be through the engineer?

16 A. Yes. That is correct. At first, we
17 showed a template for the 30-foot normal daily truck.
18 When I talked to the planner, I don't think he saw
19 that on the sheet.

20 MR. BURCH: I think, for clarity
21 purposes, if you can provide it on a separate
22 sheet that would be appreciated.

23 MR. LURIE: Sure.

24 CHAIRMAN PALMIERI: I want to go back to
25 the circulation thing. I guess I'm going to

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LURIE - Continued Direct

1 rely on the engineer on this one. Going forward
2 with this, you know, you are looking at the
3 review of the circulation and we are talking
4 about it's going to be your responsibility to
5 determine if it's good or not and coming back to
6 the Board, if it doesn't meet your satisfaction.
7 I'm just thinking that we are talking propane
8 gas and other stuff. Is this something you feel
9 comfortable just letting our engineer saying
10 this circulation works on the site?

11 MR. FEIST: Yeah. I think we can
12 proceed in that fashion. What we are looking
13 for specifically will be to take a larger

14 vehicle turning template and overlaying that on
15 the site plan that they provide. As the planner
16 indicated, get all of the other stuff off there
17 so we are looking at the base site plan, drive
18 aisles, the striped areas that are not curbed
19 and then we will take a look at those templates.
20 It either makes it or it doesn't. It's that
21 simple.

22 It's either a yes or no from me. I have
23 the same templates, so I'm going to go back to
24 the office and drop the template on the plan and
25 see if it works. Frankly, it was only this

35

LURIE - Continued Direct

1 evening, as I was flipping through the plans,
2 that I noticed the dimension of 43 feet for that
3 helium trailer.

4 CHAIRMAN PALMIERI: If they go forward
5 and say, based on the information they've given
6 us, they are going to drastically change the
7 site --

8 MR. FEIST: Then they are back here.

9 CHAIRMAN PALMIERI: At one point, they
10 were talking about moving the propane tank a
11 certain direction.

12 MR. FEIST: Right. We discussed moving
13 the propane tank to the east, moving the trash
14 enclosure area to the south and perhaps
15 expanding the concrete pad 10-by-40 pad to the
16 east and then adding bollards at the northeast
17 corner. Those are the items that we discussed
18 modifying to make sure that the templates work.

19 CHAIRMAN PALMIERI: Those are minor
20 enough adjustments to the plan where it won't
21 change the actual outcome of what we are looking
22 at today?

23 MR. FEIST: Yes. The movement of those
24 items, we are talking 10 or 15 feet in either
25 direction and the propane tank is sufficiently

1 far enough from the building, as it exists, and

2 it will be further away as we move it into the
3 direction I'm suggesting, so that is not an
4 issue of safety standpoint.

5 The trash enclosure can move 10 feet
6 from where it's shown now. The balance of the
7 site wouldn't be touched. If the template
8 doesn't work the way that exists right now, or
9 with those modifications that I've noted, I
10 believe it's back to the Board.

11 CHAIRMAN PALMIERI: Okay.

12 MR. FALVO: One other thing, I've been
13 informed by Mr. Palmisano although we show the
14 43-foot long trailer at that location, the
15 helium comes in smaller trailers. If the
16 43-footer doesn't fit, we will drop it down in
17 size.

18 CHAIRMAN PALMIERI: Well, you know, I
19 would like to see it can handle the
20 maximum-sized truck. Obviously, we can't police
21 back there and we want to set the site this is
22 the maximum trailer that could be doable.

23 MR. FALVO: I think that can be worked
24 out with Mr. Lurie and the engineer. If the
25 engineer says the largest truck in there is

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LURIE - Continued Direct

1 50 feet, and not whatever we think this one will
2 be, that will be the stipulation.

3 CHAIRMAN PALMIERI: I guess, Mr. Falvo,
4 you understand what I'm saying.

5 MR. FALVO: Right.

6 CHAIRMAN PALMIERI: If it's a 43-foot
7 trailer and that is usually the standard size,
8 even though they have smaller ones, I would like
9 to see the site handle the largest-capacity
10 trailer so we don't have to worry about is he
11 trying to take a 40-foot truck and putting it in
12 a 35-foot trailer spot.

13 MR. FALVO: I understand. My client
14 does also. That's it from an engineering point
15 of view.

16 CHAIRMAN PALMIERI: I guess Mr. Lurie

17 steps down.

18 MR. FALVO: Is there any questions from
19 the Board?

20 MR. BATTISTA: I've got a question. We
21 have a propane use variance for sale of this.
22 I'm not an expert on gases, but from my
23 understanding and reading the previous session,
24 if there was any rupture it would be gas leaking
25 into the atmosphere and there wouldn't be any

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LURIE - Continued Direct

1 issues of flammability. Obviously, propane is
2 one that I know there is, you know, an issue
3 there. When you've got trucks that have some
4 kind of gases on it and a propane tank and
5 oxygen and nitrogen, not being a scientist, my
6 concern, as a resident, is an environmental
7 catastrophe.

8 I would like to understand if there is
9 any studies on the efficacy of these tanks, how
10 many, if any, have faltered and how many issues

11 like this have come up. You hear about them
12 down south where people died at the big places.
13 I want to understand if this has happened, and
14 if there have been issues with tanks of this
15 size and I would also like to understand if
16 there is any issue with the combination of any
17 of these gases if a propane tank was to rupture
18 what potential impact could that have on
19 11,000 gallons of oxygen or nitrogen? If it's
20 nothing, it's nothing. I really want to
21 understand that before I granted a use variance
22 for propane.

23 MR. FALVO: I'll have Mr. Palmisano
24 address that.

25 MR. BATTISTA: Thank you.

39

1 MR. PALMISANO: The only gas that is
2 flammable is propane. All the other gases are
3 not flammable.

4 MR. BATTISTA: Okay.

5 MR. PALMISANO: As a matter of fact,
6 some of the gases are used to extinguish fires,
7 i.e., nitrogen, carbon dioxide. Keep in mind
8 that the air you are breathing right now is
9 78 percent nitrogen, 21 percent oxygen.

10 MR. BATTISTA: One percent argon. Got
11 it. Totally.

12 MR. PALMISANO: Exactly. Again, in
13 terms of propane, it's extremely common
14 throughout the county, throughout the State. I
15 don't know if N.F.P.A. provides anything with
16 regard -- I have no idea whether they do or
17 don't. I know, in terms of industry standards,
18 there is mandatory training. The site, in fact,
19 is X-rayed. We've had State approval for the
20 site. We hold ourselves to very high standards
21 with regard to safety issues.

22 MR. BATTISTA: Okay. I know you say
23 oxygen is needed to fuel a fire. I keep
24 thinking -- I've got this picture of this huge
25 thing next to a big, flammable device that

1 potentially could be something that could
2 explode and what could be the effect of that.
3 If you're saying if a propane tank exploded and
4 punctured an oxygen tank, that would not
5 exacerbate, that would not have any additional
6 impact?

7 MR. PALMISANO: No. The way these
8 systems are designed, you know, they are fail
9 safe.

10 MR. BATTISTA: Okay.

11 MR. PALMISANO: They are designed, there
12 are certain restrictions in terms of the
13 footages and distances from each other. It's
14 common practice.

15 MR. BATTISTA: Okay.

16 CHAIRMAN PALMIERI: One quick question.
17 What is the life on these tanks, like the
18 propane and oxygen?

19 MR. PALMISANO: All of these tanks are
20 DOT and ICC approved vessels. They are all

21 pressure vessels. In terms of, you know, we
22 have vessels that have been in use since the
23 '20s. They get a mandatory hydrostatic test
24 every five years. If it passes the test, it's
25 blessed for another five years. If it files the

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1 test, it's taken out of service immediately.

2 It's mandatory testing by the industry.

3 MR. LAVALLE: I have one question. If
4 we move -- if we move the pad back to the east
5 more, is that going to affect your bull hose
6 going into the building? Is there a maximum
7 length?

8 MR. PALMISANO: Not at all. It is in a
9 gas state. None whatsoever.

10 MR. RAUCH: Part of the submittal was a
11 letter from NJDEP, Department of Community
12 Affairs regarding review of the gas facility.
13 Now, does the Department of Community Affairs
14 have final review of the gas facility, the

15 layout, you know, of the tanks to each other,
16 the relationships, any safety precautions?

17 MR. PALMISANO: To my knowledge, with
18 the State we have to apply for State approval
19 with that tank. As long as we can comply with
20 their regulations, which we have, there
21 shouldn't be an issue whatsoever.

22 MR. RAUCH: It says, in this letter
23 dated March 28, 2006, from DEP, at the bottom
24 portion, construction inspections required by
25 this office during the testing of equipment

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1 before final approval can be given for the
2 facility to begin operation. They will come
3 down and view or inspect all of the equipment,
4 the tanks and the operation?

5 MR. PALMISANO: The installers have to
6 be certified installers and the State will in
7 fact come in and make sure everything is in
8 compliance before we are allowed to turn it on,

9 yes.

10 MR. RAUCH: Now, this letter says they
11 performed their review in the reference of
12 drawing D2738 revision 2/28/06. Is that drawing
13 that was submitted to the State for their review
14 similar to this?

15 MR. PALMISANO: I believe we mimicked
16 the exact specs, yes, sir.

17 MR. LURIE: It is shown on the site plan
18 where the old location was where it was approved
19 and where we are relocating it to.

20 MR. RAUCH: Do you have to go back to
21 the State to say you've made any changes to the
22 site plan or layout? Do you have to go back to
23 the State for amended approval?

24 MR. PALMISANO: We do, yes, because
25 there was an 18-month window.

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1 CHAIRMAN PALMIERI: All right. I'll
2 open it up to the public. Does any public have

3 any questions of the testimony given so far?

4 Seeing none, Mr. Falvo?

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

6 I'd like to call our planner.

7 MR. HIRSCH: State your name and spell

8 your last name and give us an address.

9 MR. JOVISHOFF: Michael Jovishoff,

10 J-O-V-I-S-H-O-F-F. I'm associated with

11 Phillips, Preiss & Shapiro, 434 Sixth Avenue.

12 (Whereupon, Michael Jovishoff, P.P. is

13 sworn and testifies as follows:

14 CHAIRMAN PALMIERI: The Board accepts

15 his credentials.

16 MR. JOVISHOFF: Thank you.

17 DIRECT EXAMINATION BY MR. FALVO:

18 Q. Mr. Jovishoff, at my request, and the

19 request of the client, did you undertake a review of

20 the application and the site plan presented, as well

21 as the use proposed, in assessing its applicability

22 or incompatibility with the present ordinance?

23 A. Yes, I did.

24 Q. And would you please relate to the Board

25 what steps you took, prior to coming to a conclusion

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1 and preparing for your testimony on this matter?

2 A. Well, I reviewed the site plan, I

3 reviewed other documents that were provided by the

4 Applicant. I've reviewed the planner's letter, the

5 engineer's letter, the review letters for this

6 application. I've visited the site, inspected the

7 property. I've reviewed the Master Plan and the

8 zoning ordinance of the Borough.

9 Q. With regard to your review of these

10 documents and the site, did you formulate an opinion

11 as to whether or not this variance or whether or not

12 this plan can comply with the spirit and intent of

13 the ordinance and whether or not the negative and

14 positive criteria, as required under the Municipal

15 Land Use Law, can be complied with?

16 A. Yes, I have.

17 Q. Can you relate to the Board your

18 conclusions and how you arrived at them?

19 A. Okay. In terms of the proposed facility
20 itself, I do believe the site is particularly-suited
21 for a gas storage and sales facility as proposed
22 here. The site is an isolated location. It is set
23 back considerably from Shafto Road. It is away from
24 most other development, of course with the exception
25 of any adjoining development in the subdivided area

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1 and the auction house which has been approved.

2 It's located in an industrial area.

3 It's located in an industrial zoning district. It is
4 surrounded by a natural buffer area. The nearest
5 other uses from its location are somewhere between
6 2,000 and 2,500 feet from the site. These uses are
7 separated by an existing forested area, which
8 portions of which will be re-forested immediately
9 surrounding the site. It's an isolated location.

10 For this particular use, I believe that
11 significantly enhances the security and the safety of

12 the facility which, of course, is always a concern
13 and that is further enhanced by the fact it will be
14 completely fenced and gated.

15 In terms of the other special reasons,
16 as was indicated, over three-quarters of the site,
17 and that would be three acres out of the total four
18 plus acres, is encumbered by wetlands and cannot be
19 developed. In addition, roughly 600 foot depth of
20 the site, of that depth only about 180 feet is
21 available for the development. The developable area,
22 which effectively is about one acre, is effectively
23 too small for any practical development of the kind
24 of uses that are permitted in the MFG zone. It
25 should be noted that the lots that have been created,

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1 the 8 lots, as part of the subdivision for the 4-acre
2 in size. I think it will be very significant
3 practical difficulties in developing this site for
4 the uses that are permitted under the MFG zone.

5 The facility itself and the products,

6 the gas products, are used primarily by industry or
7 sold retailed industry or wholesale. This is a
8 unique facility. It is necessarily unique services
9 and services of other industrial businesses to a
10 great extent. As was indicated, the facility will
11 meet all of the governmental safety and security
12 requirements for the storage and for the transport
13 for the sales of gases.

14 Finally, the facility will replace what
15 is in existing gas storage operation that is already
16 on the site. The replacement will be
17 state-of-the-art. As I said, it will be fully secure
18 and up-to-date and efficient. It will be a vast
19 improvement over what is on the site now, both
20 functionality as well as visually.

21 Regarding the Master Plan, the
22 April 2007 Master Plan recommends the area, this
23 area, which the site is located, to be continued to
24 be zoned for manufacturing. It recognizes, and I'll
25 get here, the uses that are anticipated in the

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1 manufacturing area include those which may involve
2 some level of outdoor activity and outdoor storage.
3 It also advances the goals and the objectives of the
4 Master Plan and advances Goal 1, which is to
5 encourage development patterns. It advances the
6 economic objectives of the Master Plan which is to,
7 and I'll quote, "Locate businesses appropriately
8 based on surrounding land uses and character."

9 In terms of the Municipal Land Use Law,
10 I feel it advances purpose A, which is to encourage
11 municipal action for appropriate development of all
12 land. And purpose G, which is to provide sufficient
13 space for development that meets the needs of
14 citizens.

15 In terms of the negative criteria, the
16 site is well-buffered from the nearest development.
17 It is also well-buffered from the traffic on Shafto
18 Road. The buffer, the lands that make up the buffer
19 are environmentally constrained and will remain
20 undeveloped. It will always provide a buffer that is

21 in excess of any of the Borough's buffer requirements

22 for the industrial use.

23 In addition, commercial propane,

24 industrial gas sale facility is not a

25 usually-occurring use. It's sort of a one-of-a-kind,

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1 even in industrial areas. Understandable that a use,

2 such as this, is not specifically permitted as an

3 industrial use is not specifically recognized in the

4 zoning ordinance. Thus, I believe the granting of

5 the variance does meet the requirements of the

6 enhanced burden of proof under Medici

7 in a case where a use is not specifically permitted

8 by zoning.

9 I don't believe there will be any

10 substantial detriment to the granting of the

11 variance, either to neighboring properties,

12 communities or zone plan.

13 Regarding the C variances, I believe

14 these variances can be granted under the C-1 criteria

15 where there is a hardship, particular to the property
16 and the C-2 criteria of the Municipal Land Use Law
17 where there are benefits that outweigh the detriment
18 from granting a variance.

19 In terms of the variances, you are aware
20 that the access road to the proposed use, which is
21 identified as Road A, will not be a public road.
22 This variance is a variance, thus for a lack of
23 frontage on a public road. This road will meet all
24 on the design standards for a road that services the
25 industrial cul-de-sac in terms of the dimensions,

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1 materials, configuration and, to a large extent, this
2 is really a technical deficiency. On the other hand,
3 there is an advantage to the Borough from the
4 Applicant retaining ownership. Clearly, the
5 Applicant will have the full responsibility for
6 maintaining the road, for removing the snow and
7 anything else that has to be done or in terms of
8 repair or maintenance of the road. As a result of,

9 the Borough is not going to have the additional
10 burden of maintaining another road with additional
11 cost to taxpayers.

12 This is especially important because
13 this is a road that will see regular truck traffic.
14 I feel the benefits here outweigh any of the
15 detriments for the granting of this variance. There
16 are also variances requested for the deficient front
17 setback, the driveway setback as was indicated. As I
18 indicated, these are a result of the fact that the
19 bulk of the lot area is incumbered by wetlands and
20 wetland buffers. This creates a significant
21 practical difficulty in maintaining the 75-foot
22 setback to the road and maintaining the minimum 25
23 foot driveway setback. A 20-foot driveway setback
24 will be provided, however.

25 Within this context, it will be

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JOVISHOFF - Direct

1 extremely difficult to construct a suitable facility.

2 Thus, I believe this is a significant hardship to

3 developing the site within the bulk requirements of
4 the zone.

5 Again, regarding negative criteria, the
6 property's lack of frontage on a public street, as I
7 said, is a technical deficiency. However, the access
8 drive, Road A, meets all of the requirements and
9 functions as a public road serving this development.

10 With regard to the other variances, the
11 property is surrounded by extensive forested,
12 under-developed lands, lands that will never be
13 developed. As such, the existing buffers that
14 exists, the natural buffers, more than exceed the
15 buffer requirements of the ordinance. I believe
16 there will be no substantial detriment to the
17 surrounding properties, to the community or the zone
18 plan for granting these variances.

19 Q. Based upon the testimony of Mr.
20 Palmisano and the engineer, the product or these
21 gases being stored do not -- or do they, in your
22 opinion, pose any threat to the public safety, health
23 and welfare?

24 A. No, they do not. Especially considering

25 their isolated location.

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JOVISHOFF - Direct

1 Q. And with regard to your testimony that
2 the property has particular constraints¹¹, would it
3 be fair to conclude that similar to the situation in
4 the Borough Properties subdivision that the
5 constraints of the development of this property are
6 such that the hardship generated by those restraints
7 in and of itself may rise to the level of sufficient
8 special reason?

9 A. I do.

10 Q. I believe you also testified, and if I'm
11 being redundant I apologize, but the fact it is so
12 isolated and surrounded by virtually un developable
13 properties places that unique and particular
14 situation where it's sort of out of sight and out of
15 mind?

16 A. That is correct. That has significant
17 security implications as well as safety implications.

18 MR. FALVO: I have no further questions

19 of Mr. Jovishoff, unless the planner or Members
20 of the Board do.

21 MR. HIRSCH: I want to get one thing
22 clear in my mind, because I'm trying to remember
23 the relationship to this to the Borough
24 Properties subdivision of the auction house.
25 Everybody is making a point about everything

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JOVISHOFF - Direct

1 being 2,000 feet away and nothing around it.
2 Isn't this going to be in proximity to the
3 auction and the other six lots that were
4 subdivided and we will have uses on them.

5 MR. JOVISHOFF: That is correct. I
6 indicated that with the exception of those lots
7 and the auction house, it really is very
8 isolated, yes.

9 MR. HIRSCH: That could be
10 fully-developed with six other manufacturing
11 uses, so it's not exactly sitting out there by
12 itself. You can't look at it like that in the

13 future.

14 MR. JOVISHOFF: Correct. In terms of
15 the existing development that surrounds the
16 property, it surrounds the property at a
17 significant distance.

18 MR. HIRSCH: How close would this use be
19 to the auction house? I'm trying to get back to
20 my mind where this is in relationship to
21 everything else.

22 CHAIRMAN PALMIERI: I think the
23 detention --

24 MR. FALVO: I think Mr. Lurie can give
25 you that figure.

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JOVISHOFF - Direct

1 MR. HIRSCH: Just a general idea.

2 MR. LURIE: About 600 feet at least.

3 MR. HIRSCH: From the property lines?

4 MR. LURIE: Yeah.

5 MR. HIRSCH: And then in terms of its
6 relationship to the other lots that were

7 subdivided as part of that, how close is it to
8 the other lots that were subdivided?

9 MR. LURIE: Approximately, 100 feet from
10 the proposed Lot 1.08.

11 MR. JOVISHOFF: That would be the
12 closest one?

13 MR. HIRSCH: The closest lot would be
14 100 feet away.

15 MR. FALVO: That is property line to
16 property line?

17 MR. LURIE: Not structure to structure.

18 MR. HIRSCH: All right. This site is
19 using the same access as part of that whole
20 subdivision that we discussed in Borough
21 Properties.

22 MR. JOVISHOFF: That's correct.

23 MR. HIRSCH: The only thing I should
24 mention to you, because I have the Resolution
25 tonight for Borough Properties, and I'm speaking

1 with Mr. Falvo earlier in the meeting about
2 clarifying the issues of sidewalks, which I was
3 unclear about. You may recall when Mr. Rea
4 testified, your traffic expert, he indicated
5 when the site, you know, the subdivision was
6 fully-developed, a traffic light would be
7 required. That was Mr. Rea's testimony.

8 The Applicant agreed to bond for a
9 traffic light, but there was the issue whether
10 the County would allow a traffic light on an
11 intersection with a private road. We were
12 waiting ultimately the Applicant to give that
13 information.

14 The question I raised in the other
15 Resolution was that if, for some reason, that
16 traffic light is not permitted, you know, that
17 raises a concern for the Board, because we were
18 left there with your expert's testimony that you
19 needed a traffic light. That Resolution is
20 indicating that while the Board's conclusion is
21 that the auction house could function as a

22 separate lot with that use without a traffic
23 light, we had talked about having a police
24 officer there, you know, when it let out.

25 MR. FALVO: Correct.

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JOVISHOFF - Direct

1 MR. HIRSCH: It wouldn't affect that.

2 But, that the other lots to be developed, if the
3 traffic light can't be put there, that perhaps
4 the Applicant would then, and I don't know if
5 Monmouth County Planning Board would deny it,
6 but you might have to come back to the Board and
7 clarify how it would be handled if a traffic
8 light was not possible.

9 I'm pointing that out to the Board,
10 because, you know, obviously the lots are going
11 to develop as we are getting one by one by one.
12 At some point, we have to know what's going to
13 go on with the traffic light before we keep
14 approving applications or else make conditions
15 on those applications. You might say, well,

16 this use and the auction house, that wouldn't
17 kick in the light. Do you follow me? It's not
18 fully-developed, so maybe it's a moot issue on
19 this application. I just wanted you to be aware
20 that's sitting out there.

21 MR. BATTISTA: As they go, we have to
22 start thinking about this.

23 MR. HIRSCH: At some point. That was
24 Mr. Rea's testimony. I don't know if our
25 engineer has any input. That's what's in this

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JOVISHOFF - Direct

1 Resolution we are about to adopt that we need
2 you to get back to us about the County allowing
3 you the traffic light, because you've already
4 agreed to take care of it.

5 MR. FALVO: Right.

6 MR. HIRSCH: What if they don't? I've
7 looked at my notes and the transcript. I don't
8 know where we are left with if they say no, we
9 will not put a light there.

10 MR. FALVO: I believe his testimony was
11 when it was fully-developed and the auction
12 house was in full operation, you will need a
13 light there.

14 MR. HIRSCH: Yeah.

15 MR. FALVO: We'll have to impose upon
16 the County.

17 MR. HIRSCH: I know. I'm giving you the
18 what if and that's why the Resolution said we
19 got that far, but I didn't know how to address
20 it if the County says we are not going to give
21 the light there and the Board was relying if
22 there was a light maybe we would have to come
23 back and discuss how the rest of the development
24 would develop. Not the auction house. Now we
25 have another use here.

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JOVISHOFF - Direct

1 MR. FALVO: I believe Mr. Rea's
2 testimony was when all of the lots are
3 fully-developed and the auction house is

4 functioning, you will need a light. We
5 indicated that until a light came, we would rely
6 upon the police department to tell us if we want
7 an officer there.

8 MR. HIRSCH: That is okay for the
9 auction house. That wasn't intended for the
10 police officer with six other lots developed.
11 Do you follow me? We are going lot-by-lot. At
12 some point, we have to say, hold it, until we
13 have an answer on the light. I'm not saying
14 based on this case, but I want the Board to be
15 aware of that.

16 MR. FALVO: We've communicated with the
17 County. We've sent them Mr. Rea's report. I
18 believe Mr. Sampson called the office. It was
19 already late, so I assumed this is why he called
20 so he can set up a meeting. It would be in our
21 best interest, as we are running our
22 infrastructure in, to at least put the conduits
23 in, in the event that a light is required.

24 MR. HIRSCH: I wanted everybody to be on
25 the same page. It's going to be mentioned in

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1 the other Resolution. At some point, we have to
2 have an answer on that before we get too many
3 lots developed with uses and more traffic, you
4 know, without having an answer on that light.

5 MR. FEIST: If I could add a quick
6 comment in that same vain, certainly any
7 development of the subdivided lots will require
8 site plan approval. They will be coming in case
9 after case. The point is well-taken. At some
10 point, you will get a trip generation number
11 that triggers the warrants that would
12 necessitate a signal under DOT standards.

13 The other thing I would point out,
14 because this is being maintained as a private
15 road, each of these site plans will trigger an
16 application to the Monmouth County Planning
17 Board, because it's on a private road. If it
18 was not a private road, Monmouth County Planning
19 Board would not have jurisdiction on the site

20 plan. It's a private road. Every application
21 for site plan, in my opinion, will be an
22 application to the Monmouth County Planning
23 Board as well. They will be seeing it each time
24 someone come in to develop one of those lots.

25 MR. HIRSCH: I'm hoping the County will

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JOVISHOFF - Direct

1 take care of it and we won't have to worry about
2 it, but I didn't know what to do, so the
3 Resolution did indicate in the event or whatever
4 unknown reason, the County says a light can't go
5 there, the developer would come back to the
6 Board and we would have to discuss it.

7 MR. FALVO: Fair enough.

8 MR. HIRSCH: That's all I have.

9 CHAIRMAN PALMIERI: That's it?

10 MR. HIRSCH: I think our planner --

11 MR. FALVO: Was he sworn?

12 MR. BURCH: I have one quick question.

13 In this case, if you could touch on how the

14 driveway will be shared between the two lots?

15 MR. JOVISHOFF: You mean Road A?

16 MR. BURCH: Yes.

17 MR. JOVISHOFF: Road A fronts, of
18 course, on this site. The opposite side would
19 be Road A fronts on the existing which would be
20 the other lot.

21 MR. BURCH: Will there be a cross-access
22 easement, because the proposed Lot 26.03 is
23 guaranteed access onto Road A.

24 MR. FALVO: I can answer that. The
25 answer is yes, we will provide cross-access

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1 easements to all of the users. I mean, at the
2 present time, everything is going to be owned
3 either by 3230 Shafto Road Associates or Borough
4 Properties, LLC, both of which have common
5 members.

6 MR. BURCH: Okay.

7 CHAIRMAN PALMIERI: Any questions from

8 the Board Members? Anything else? Peter?

9 MR. FALVO: That's our case.

10 CHAIRMAN PALMIERI: Mr. Falvo, at this
11 point, I'm going to open it up to the public. I
12 think the public is sitting on this side of the
13 room. As Mr. Falvo indicated, he presented his
14 case. I know we have five eligible Members
15 tonight, Mr. Falvo.

16 MR. FALVO: Let me speak to my client.

17 CHAIRMAN PALMIERI: Is there anything
18 else that the professionals have to add?

19 MR. FEIST: Mr. Chairman, I have nothing
20 else to add. I think the conditions that we
21 have laid out, with regard to the circulation,
22 are sufficient so that we can certainly make
23 sure nothing is developed here that doesn't
24 work.

25 With regard to safety issues, just to go

1 a little bit further, there are extensive notes

2 on Sheet 11 of 11, the tank detail sheet. Those
3 notes go into the specifics of outside agencies
4 that regulate L.P. gas. It goes back to the
5 letter that Mr. Rauch indicated received from
6 DCA by the Applicant for the previous location,
7 as well as their need for approval for the
8 future location of propane tanks. It cites the
9 appropriate statutes, both at the State level as
10 well as the construction code and they will get
11 it from a building permit standpoint. They have
12 cited those. They are on the plans.

13 The only thing I would add, as I looked
14 at that, because the size of the helium tube
15 trailer is situated on the detail as 43 feet,
16 if, for some reason, the maximum size cannot be
17 43 feet, we would require that Sheet 11 be
18 modified to show what is the maximum allowable
19 helium trailer on that site.

20 MR. BURCH: I have nothing else to add.

21 CHAIRMAN PALMIERI: Okay. I guess we
22 are going to need -- Mr. Falvo, you are done?

23 MR. FALVO: Yes, I am. Mr. Chairman,
24 Members of the Board, just briefly, you heard
25 the testimony. I think it's a rather innocuous

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1 use. It's a low-traffic generator. I believe
2 that between the engineer and the planner we've
3 addressed all of the professionals' questions.
4 I believe we've carried the burden of proof to
5 establish a sufficient basis to grant the use
6 variance and preliminary and final site plan
7 approval, subject, of course, to amending the
8 plans to reflect all of the items that were not
9 noted to have been complied with. We will
10 comply with the engineer's letter, the planner's
11 letter and the letter of the landscape
12 architect.

13 CHAIRMAN PALMIERI: All right.

14 MR. FALVO: My clients are willing to go
15 with five Members.

16 CHAIRMAN PALMIERI: With all of that

17 being said, we need a motion to close the public

18 portion.

19 MR. HIRSCH: Before that, he needs all

20 five. Do any Board Members have any comments

21 about this case pro or con that the Applicant

22 might want to know before he takes a vote of

23 five Members?

24 MR. FALVO: Thank you.

25 CHAIRMAN PALMIERI: Any feelings at all?

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1 Anything that needs to be expressed? Any

2 concerns that Mr. Falvo might be addressing?

3 Seeing none. All right. Get back to my

4 original statement. I need a motion to close

5 the public portion.

6 MR. PORZIO: Second.

7 MR. ROCHE: Second.

8 MR. LAVALLE: I'd like to make the

9 motion to approve it with all of the engineer's

10 conditions.

11 CHAIRMAN PALMIERI: This is just on the

12 use variance.

13 MR. LAVALLE: Correct.

14 CHAIRMAN PALMIERI: Okay. Motion.

15 Second?

16 MR. PORZIO: Second.

17 CHAIRMAN PALMIERI: Roll call, please?

18 MR. LAVALLE: Yes.

19 MR. PORZIO: Yes.

20 CHAIRMAN PALMIERI: Yes.

21 MR. BATTISTA: Yes.

22 MR. ROCHE: Yes.

23 MR. HIRSCH: Okay. That is the use.

24 You need a motion -- we have a subdivisions and

25 we have a site plan.

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1 MR. FALVO: Right.

2 MR. HIRSCH: With the site plan, you can

3 wrap together any waivers, which I don't think

4 there are really any, or any bulk variances that

5 were testified to. That would be part of one

6 motion.

7 CHAIRMAN PALMIERI: We need a motion.

8 MR. FALVO: On the subdivision.

9 MR. BATTISTA: Motion.

10 MR. LAVALLE: Second.

11 CHAIRMAN PALMIERI: Roll call, please?

12 MR. BATTISTA: Yes.

13 MR. LAVALLE: Yes.

14 CHAIRMAN PALMIERI: Yes.

15 MR. PORZIO: Yes.

16 MR. ROCHE: Yes.

17 MR. HIRSCH: Okay. Site plan with

18 waivers and variances.

19 CHAIRMAN PALMIERI: Motion on site plan?

20 MR. PORZIO: I'll make a motion.

21 MR. LAVALLE: Second.

22 CHAIRMAN PALMIERI: Roll call?

23 MR. PORZIO: Yes.

24 MR. LAVALLE: Yes.

25 CHAIRMAN PALMIERI: Yes.

1 MR. BATTISTA: Yes.

2 MR. ROCHE: Yes.

3 MR. FALVO: Thank you very much,

4 Gentlemen. I appreciate it.

5 (Whereupon, at 9:27 p.m., the

6 application is approved.)

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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: March 5, 2008

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