

BOROUGH OF FAR HILLS
Planning Board Special Meeting
MINUTES
November 23, 2021
VIA REMOTE MEETING ACCESS ONLY

CALL TO ORDER

Chairman Rochat called the virtual meeting to order at 7:04 p.m. and read the Open Public Meetings statement in accordance with the law. Those present stood for the pledge of allegiance.

ROLL CALL:

Present: Chairman Tom Rochat, Vice Chairman Richard Rinzler arrived at 7:05 p.m., Councilwoman Sheila Tweedie, Robert Lewis, Marilyn Layton, Jack Koury, Alt. #1 and Suzanne Humbert, Alt. #2

Also Present: Peter Henry, Board Attorney, Steve Bolio, Engineer, David Banisch, Planner and Shana L. Goodchild, Secretary

Absent: Mayor Vallone and John Lawlor

There were approximately 22 audience members present.

BILL LIST

- November 23, 2021

Mr. Lewis made a motion to approve the Bill List. Councilwoman Tweedie seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

Those in Favor: Councilwoman Tweedie, Mr. Lewis, Ms. Layton, Mr. Koury, Alt. #1, Ms. Humbert, Alt. #2 and Chairman Rochat

Those Opposed: None

MINUTES

- October 4, 2021 Regular Meeting

Chairman Rochat noted that the transcript for the Pulte Homes contained the heading 'Short Hills, Essex County'. Ms. Goodchild offered to request a corrected copy through the applicant's attorney.

There being no additional corrections, Councilwoman Tweedie made a motion to approve the minutes of the October 4, 2021 Regular Meeting for content and release with the correction noted. Ms. Layton seconded the motion. All were in favor.

RESOLUTIONS

- Resolution No. 2021-29 – Appointment of Substitute Legal Counsel

Mr. Henry noted his conflict of interest with the Robustelli application and that Frances Linnus had been selected to substitute; the resolution provides for his appointment for that purpose.

Councilwoman Tweedie made a motion to approve the resolution as written. Ms. Layton seconded the motion.

The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Councilwoman Tweedie, Mr. Lewis, Ms. Layton, Mr. Koury, Ms. Humbert and Chairman Rochat

Those Opposed: None

- **Resolution No. 2021-30** - Finding proposed ordinance No. 2021-15 not inconsistent with the Master Plan and should be adopted by the Borough Council

Mr. Henry outlined the purpose of the review of proposed Ordinance No. 2021-15 by the Planning Board. He offered two (2) comments, one (1) being the need for clarification on the flag that can be flown in connection with the American Flag and an editorial error in Section b.2. Mr. Henry read into the record the resolution he prepared which finds the proposed ordinance not inconsistent with the Master Plan with the comments noted above.

There being no additional comments, Councilwoman Tweedie made a motion to approve the resolution as read into the record. Ms. Layton seconded the motion.

The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Councilwoman Tweedie, Mr. Lewis, Ms. Layton, Mr. Koury, Ms. Humbert and Chairman Rochat

Those Opposed: None

PUBLIC COMMENT

There being no public comments, Chairman Rochat closed the public participation portion of the meeting.

APPLICATION/PUBLIC HEARING

- Appl. No. PB2021-07
Pulte Homes of NJ, Limited Partnership/Residences at Overleigh
Block 5, Lot 4
220 Route 202
Prel./Final Subdivision and Site Plan and Variance

A transcript of the Pulte Homes of NJ, Limited Partnership/Residences at Overleigh public hearing has been attached to the minutes.

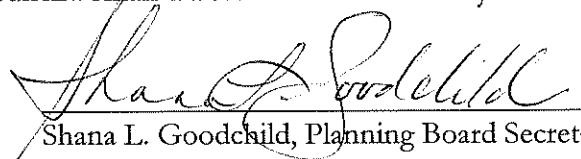
It was announced that the public hearing would continue at the December 6, 2021, 7 p.m. meeting (to be held remotely) without further notice.

CORRESPONDENCE

1. A letter dated November 5, 2021 from Paul Ferriero, Ferriero Engineering re: Pulte Homes – Far Hills, Preliminary and Final Major Site and Subdivision Plans, Block 5, Lot 4, Route 202.

ADJOURNMENT

Motion by Vice Chairman Rinzler, seconded by Councilwoman Tweedie and unanimously carried to adjourn the meeting at 10:01 p.m.


Shana L. Goodchild, Planning Board Secretary

APPROVED 1/3/22

BOROUGH OF FAR HILLS PLANNING BOARD
COUNTY OF SOMERSET - STATE OF NEW JERSEY

SPECIAL MEETING FOR:
PULTE HOMES OF NEW JERSEY, LIMITED PARTNERSHIP/
RESIDENCES AT OVERLEIGH
BLOCK 5, LOT 4
220 ROUTE 202

APPLICATION NO. PB2021-07

TUESDAY, NOVEMBER 23, 2021
COMMENCING AT 7:00 P.M.
TRANSCRIPT OF PROCEEDINGS
CONTINUED PUBLIC HEARING - VIA ZOOM

BOARD MEMBERS PRESENT:

TOM ROCHAT, CHAIRMAN
SUZANNE HUMBERT
JACK KOURY
MARILYN LAYTON
ROBERT LEWIS
RICHARD RINZLER, VICE-CHAIR
SHEILA TWEEDIE, COUNCILWOMAN

ALSO PRESENT:

PETER HENRY, ESQUIRE, BOARD ATTORNEY
STEVEN BOLLO, P.E., Board Engineer
DAVID BANISCH, P.P., Board Planner
SHANA L. GOODCHILD, Board Secretary
STENOGRAPHICALLY REPORTED BY:
ANGELA BUONANTUONO, CCR, RPR, License No. 30X100233100

HUDSON COURT REPORTING & VIDEO (732) 906-2078

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1 EXHIBITS

2	EXHIBIT	DESCRIPTION	PAGE
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4			
5	None presented.		

1 (Time noted 7:30 p.m.)
 2 CHAIRMAN ROCHAT: Now, we'll go on to
 3 Application PB2021-07, Pulte Homes of New Jersey.
 4 ATTORNEY GIANETTI: Yes, good evening,
 5 Chairman, members of the board. Craig Gianetti of
 6 the law firm Day Pitney on behalf of Pulte Homes of
 7 New Jersey, LP.
 8 The board is aware this is a continued
 9 application for preliminary final major site plan
 10 and subdivision approval. The property located at
 11 220 Route 202, Block 5, Lot 4. The board is aware
 12 this is our, I believe our seventh hearing on the
 13 application. We do appreciate the board making the
 14 time and making themselves available for this
 15 special meeting tonight so it can continue moving
 16 forward with the application.
 17 The board is aware also this
 18 application involves 134-unit residential
 19 development consisting of 105 age-restricted
 20 townhomes and 29 affordable apartments of which 25
 21 of those affordable apartments would be family, not
 22 age-restricted. And this is in the Township TH6 IAR
 23 affordable housing zone and the property was rezoned
 24 pursuant to affordable housing agreement between
 25 Melillo Equities and the Borough, dated December

1 to Mr. Ferriero's office so that they can, you know,
 2 complete their review and confirm the adequacy of
 3 the stormwater management system.
 4 And then we also have Paul Phillips
 5 here tonight who will provide the planning testimony
 6 in support of the relief being sought as part of
 7 this application, which has been highlighted in
 8 prior testimony.
 9 So with that, I would like to first
 10 call Ron Kennedy up and have him sworn in -- or
 11 confirm he remains sworn in.
 12 CHAIRMAN ROCHAT: Do we have him?
 13 RON KENNEDY: I'm here.
 14 ATTORNEY HENRY: Ron, you understand
 15 you are still under oath having been previously
 16 sworn.
 17 RON KENNEDY: I am. Thank you.
 18
 19 R O N K E N N E D Y, P.E.,
 20 previously sworn, continues as follows:
 21
 22 THE WITNESS: Good evening to the
 23 board.
 24 I just want to spend a couple of
 25 minutes going over the review letters that we have,

1 9th, 2019.
 2 At the prior meetings we presented a
 3 series of expert witnesses and fact witnesses, who
 4 we completed. We presented Jim Mullen and Rob
 5 Holmes from Pulte Homes. We've presented the
 6 architect, Bruce Englebaugh, who testified, I
 7 believe, actually twice. We completed his
 8 testimony. Our traffic engineer, Gary Dean, we also
 9 completed his testimony. Adam Stern, from NSU, the
 10 sewer engineer, testified at the last meeting and
 11 completed his testimony.
 12 And so what is effectively left is
 13 having Mr. Kennedy, Ron Kennedy, come back before
 14 the board. He completed his direct testimony at the
 15 last meeting on the revised plans, so at that time
 16 we had not had the board engineer's review letter
 17 which we did receive after that meeting, and we will
 18 be addressing this evening, as well as the updated
 19 board planner review letter which we received a few
 20 hours ago.
 21 So Mr. Kennedy will come up and address
 22 some of those points. You know, a lot of these
 23 stormwater management comments that you will hear
 24 will be able to be addressed through some additional
 25 soil testing which we will agree to do and provide

1 one from Ferriero Engineering and the -- actually
 2 there is two letters from Ferriero Engineering and
 3 one from Banisch Associates.
 4 The Ferriero Engineering letter, we've
 5 received and spent some time with Mr. Ferriero and
 6 Mr. Bolio going over some of the details of the
 7 letter. There is quite a bit of details on
 8 stormwater management which we talked about to this
 9 board already on the new rules with stormwater
 10 management.
 11 And based on the comments that we have
 12 in our discussions with Mr. Ferriero and Mr. Bolio,
 13 we do have to go out and do a couple more tests on
 14 the site. We're scheduling that for the beginning
 15 of next week and provide that data to Mr. Bolio and
 16 Mr. Ferriero for their review. The items are
 17 technical in nature. We feel we can comply with
 18 those items. We need to show the details of those
 19 stormwater -- not stormwater -- strike that -- the
 20 soil testing results to Mr. Ferriero and Mr. Bolio
 21 which we will gladly provide upon our completion.
 22 There is some other comments that are
 23 in that letter that are -- I will call --
 24 housekeeping, in the sense that they are notes on
 25 the plan or there are other details that we

1 certainly agree that we will add to the plans.
 2 There's a couple of particular items
 3 that I think we want to spend a couple of minutes
 4 talking about. One is about the EV charging
 5 stations and I think Mr. Gianetti is going to get
 6 into some details of that. But as the board may or
 7 may not know, there has been -- I do not know if it
 8 was an Executive Order or law passed about EV
 9 charging stations and we are going to comply with
 10 that and I think Mr. Gianetti will go through some
 11 of the details on that specific requirement.

12 ATTORNEY GIANETTI: Sure. I know I
 13 reached out to Mr. Henry and Mr. Banisch and Mr.
 14 Bolio on the subject earlier today and it is the
 15 legislation which, I guess is known as -- I guess we
 16 call it the EV parking charging station legislation
 17 was enacted in July of this year and required DCA to
 18 adopt a model ordinance which they did in
 19 September 2021 concerning the requiring in -- as a
 20 condition of preliminary site plan approval for new
 21 multifamily dwelling developments that a certain
 22 15 percent of the parking spaces be reserved for
 23 electric vehicle charging stations of which only a
 24 third need to be provided at CO, with the other
 25 third provided within three years of CO, and then

1 six years of CO.

2 You know, as I outlined and
 3 unfortunately the legislation does have a lot of
 4 ambiguities and kind of holes in it and lacking
 5 certain definition. But from our standpoint at the
 6 time of application rule, this application was filed
 7 well in advance of the legislation which created
 8 these new development regulations that the DCA
 9 adopted in September 2021.

10 And notwithstanding that we did, at our
 11 July hearing, testify as to what we were agreeable
 12 to do when the EV charging station topic came up
 13 where we noted that at the apartment building
 14 development we would agree to have nine of the
 15 parking spaces have, basically, they call it
 16 made-ready where the infrastructure is there for the
 17 parking space so you can put a charging station
 18 should there be tenant demand for such a charging
 19 station.

20 With respect to the townhouse portion
 21 of the development, there is a separate law that was
 22 enacted in September of 2020, which requires with
 23 these, you know, single-family and townhome
 24 developments that are fee-simple ownership and have
 25 garage that the developer has to offer, in the

1 offering statement to a perspective buyer, the
 2 option to have a charging station in the garage.
 3 And we noted that the applicant is aware of that law
 4 and we are agreeable to complying with that.

5 So it is kind of two distinct -- one
 6 for the townhomes and one for the apartment, but
 7 that is what we propose to do as part of this.

8 ATTORNEY HENRY: May I ask a question
 9 about the applicability of the time of application
 10 rule. Typically how that has surfaced in any kind
 11 of debates has been this -- the underlying purpose
 12 which was set forth when that rule was changed of
 13 not having municipalities change the zoning on
 14 property when it either was, in the course of its
 15 development hearings or filed, not yet underway, and
 16 the old time-of-decision rule was replaced by the
 17 time-of-application rule that said, essentially, you
 18 freeze those requirements as of the time of
 19 application.

20 I guess I am not sure -- looking at the
 21 statute and for that matter looking at even the
 22 DCA's model ordinance -- I am not sure that that
 23 applies to something which is mandated by state law
 24 that you shall do this under state law, although it
 25 then suggests in its statutory language that the DCA

1 will issue a model ordinance. The model ordinance
 2 will be effectively an ordinance of every
 3 municipality in the state the moment it has been
 4 issued, even if the municipality does not adopt its
 5 own version of it.

6 But still I am a little concerned and
 7 troubled by whether we can say we are permitting you
 8 not to follow state law and I guess I totally
 9 understand the position you took in July with
 10 respect to what you propose to either install or
 11 make available at this particular project, but I
 12 wonder whether it is at least appropriate that in
 13 the event of an approval there be some condition
 14 which reads in terms of compliance with the EV
 15 charging station statute as applicable. And
 16 somewhere along the line we are going to either
 17 figure that out for ourselves or start seeing things
 18 coming down from the state or by way of
 19 interpretations that will help us understand how
 20 much of that is or is not applicable regardless of
 21 the time of application rule.

22 I think everything is so unsettled at
 23 the moment on this that I am not sure that it is the
 24 kind of thing where the board can simply say, well,
 25 we understand the time of application rule applies

1 to this, because I do not think it is quite that
2 clear.

3 ATTORNEY GIANETTI: Yeah, I understand
4 and I guess, you know, it's -- I do not want to say
5 minor in nature, but under the law we would be
6 required to have 15 percent of the multi-family
7 dwelling apartment building spaces reserved for
8 these electric charging stations, which would come
9 out to nine spaces based upon -- I am just doing --
10 based upon, I think, 58 parking spaces in the
11 apartment for the apartment building. And so we
12 have agreed that we would do nine as make-ready.

13 Now, the law allows us -- or the law
14 says of those nine, three at CO have to have
15 charging stations, the rest can be make-ready, which
16 we are proposing. And then a third -- within three
17 years -- a third of that also has to be now a
18 charging station. And then within six years the
19 last third of that nine has to have it.

20 So I mean, I think we are okay with
21 that but we are -- I think we are there, you know,
22 complying with the spirit of the law. You know, it
23 is our position, not applicable, but
24 notwithstanding, we are having the nine spaces
25 make-ready, which is the same number, you know,

1 of the spaces to be made-ready and maybe if the EV
2 law is applicable, charging station shall be
3 supplied for those spaces within the schedule or
4 within the phasing?

5 ATTORNEY HENRY: Requirement with the
6 law.

7 ATTORNEY GIANETTI: Yeah.

8 ATTORNEY HENRY: We are going to have
9 to get to the question of phasing again, as well,
10 and depending on where you are coming out on that,
11 it may be the same or not as what the EV charging
12 station phasing would be.

13 ATTORNEY GIANETTI: I am not sure
14 which other phasing you are referring to.

15 BOARD PLANNER: Construction of the
16 affordable units, Mr. Henry?

17 ATTORNEY HENRY: Yeah.

18 ATTORNEY GIANETTI: Okay. I wasn't
19 sure how the -- how that connected to the EV
20 charging station.

21 ATTORNEY HENRY: Well, I just don't
22 want to get ourselves confused on which phasing we
23 are talking about.

24 ATTORNEY GIANETTI: Got it.

25 Understood. There was the EV and if the EV

1 contemplated by the statute, just a question being
2 whether or not an actual charging station needs to
3 be there or not.

4 ATTORNEY HENRY: I understand the
5 difference.

6 ATTORNEY GIANETTI: I just wanted to
7 make it clear.

8 ATTORNEY HENRY: Which one applies.

9 ATTORNEY GIANETTI: Yeah, when we are
10 saying, you know, not applicable, it is not like we
11 are not -- it is not substantial compliance with it,
12 I guess is the word I am looking for.

13 But, you know, with that, you know,
14 compliance if applicable, I guess the question is
15 what if we don't ever get, you know, there is no
16 court decision on it or any other kind of guidance
17 on it.

18 ATTORNEY HENRY: Well, and perhaps the
19 DCA will issue some guidance because I cannot
20 believe that the world understands this and it is
21 only we few folks here tonight who don't know
22 exactly how it is supposed to operate.

23 ATTORNEY GIANETTI: Understood. So I
24 guess, you know, maybe something or -- and just so I
25 write it down, that the applicant is proposing nine

1 legislation is applicable, the charging stations
2 will be supplied in the time frames contemplated by
3 the --

4 ATTORNEY HENRY: In the statute?

5 ATTORNEY GIANETTI: In the statute.

6 ATTORNEY HENRY: Right.

7 BOARD MEMBER: Now, this -- this law
8 that I haven't reviewed -- forgive me if I jump in
9 here, but this law that I haven't reviewed, are
10 these charging stations coin-operated? This
11 particular facility -- this part of the development
12 is not going to be sold, my understanding it's going
13 to be owned by Melillo Equities maybe.

14 If I owned it I might consider making
15 ready all the spots and looking towards a franchise
16 operation. I mean, you're not just going to pump
17 electricity into somebody's car without, you know,
18 collecting that toll.

19 ATTORNEY HENRY: They hope the statute
20 lays out a whole program for that and can be
21 utilized by the -- the owner or management of a
22 housing facility, or not, at their choice. What it
23 sets up is minimum requirements for development. A
24 developer can always put in more.

25 But it also addresses the right of the

1 owner/operator to limit time frames, to charge for
2 the power which is being supplied, but that's all in
3 the statute.

4 BOARD PLANNER: I think the bigger
5 question here, if I may, Mr. Chairman, inserting
6 myself into this discussion, I think the bigger
7 question is electric cars seem to be becoming more
8 and more prevalent and economical, or at least
9 affordable and at some point I think it's reasonable
10 to assume that the affordable households -- some
11 percentage of the affordable households that are
12 going to occupy those apartments will have electric
13 vehicles.

14 And I think the whole idea here is that
15 if at home, there are electric vehicle charging
16 stations -- not make-ready spaces where there's just
17 conduit put in place for the installation of an
18 electric vehicle charging station -- the actual
19 charging station itself. I think the idea here is
20 that if people can charge them up at home, they're
21 not going to be clogging up the commercial network,
22 looking to get a charge when they're out and about
23 running their errands, commuting to work, et cetera.

24 So I think the long-range objective
25 here, at least one I would -- I would suggest the

1 board give some consideration to, is requiring the
2 installation of the charging stations.

3 I understand what the applicant is
4 proposing and I understand the legal position that
5 applicant's counsel is taking. Speaking just
6 pragmatically from the perspective of "what are we
7 doing here," well, we are building an affordable
8 apartment building that's going to be occupied for a
9 very long time. And the world does seem to be
10 changing and electric vehicles seem to be coming
11 more wide-spread in their ownership and use.

12 So I think, you know, you should
13 probably take a step back and look at it from that
14 perspective.

15 ATTORNEY HENRY: Thank you.

16 If I could jump ship for a moment back
17 to Mr. Gianetti, can I clarify, what is it that you
18 are proposing to do at this point with the
19 individual townhouses?

20 ATTORNEY GIANETTI: So there's a
21 separate law that requires fee-simple ownership
22 units with garages to offer to home buyers the
23 option to have the garage -- or in the garage have
24 an electric charging station.

25 ATTORNEY HENRY: Understood. But what

1 is your intention, if any, with respect to the new
2 statute?

3 ATTORNEY GIANETTI: Well, I don't
4 think the new statute applies -- would apply to the
5 townhouse development because it's, A, subject to
6 the other one. And the way -- again, though, it's
7 not the clearest, when you read the electric vehicle
8 charging station statute it refers to "multi-unit
9 dwellings," which is not defined anywhere in the
10 MLUL.

11 There is a multi-unit dwelling in hotel
12 law which deals with, you know, inspections and
13 maintenance of -- of multi-unit dwellings, but that
14 applies to apartments. It doesn't apply to
15 fee-simple townhouse units.

16 So my interpretation, the garage and
17 the driveway -- the driveway are part of the unit.
18 They're obligated to offer the option to have the
19 charging station put into the garage and at that
20 point they don't, you know, they don't control it
21 thereafter --

22 ATTORNEY HENRY: That's the old
23 statute, right?

24 ATTORNEY GIANETTI: No, not old.
25 Well, the prior one, yes, it's not being replaced.

1 ATTORNEY HENRY: The new statute first
2 deals with multi-family or multi-occupancy. That's
3 section -- Subsection A.

4 Subsection B says, "As a condition of
5 preliminary site plan approval, each application
6 involving the parking lot or garage not covered by
7 Subsection A of this section," and it has
8 requirements.

9 ATTORNEY GIANETTI: I took that to
10 refer to commercial. I can bring up the --

11 BOARD PLANNER: It's tough to read that
12 into this because it doesn't exclude residential.
13 And actually, in Section B-1, where it addresses the
14 multiple dwelling requirements it says, "Each
15 application involving a multiple dwelling with five
16 or more units of dwelling space." Certainly
17 inartfully written but --

18 ATTORNEY GIANETTI: Correct. And it
19 goes on to -- I mean, and it goes on to -- I mean,
20 when you read the language like, too, when it said,
21 that can be held in a condominium or cooperative
22 form of ownership, mutual housing corp, that's
23 language almost identical to the multiple-dwelling
24 and hotel law. And that law excludes fee-simple
25 townhomes from the definition of multiple dwelling.

1 BOARD PLANNER: Well, this one doesn't --
 2 ATTORNEY GIANETTI: Yeah, this one
 3 doesn't define it at all. I don't think it does
 4 anywhere in the MLUL.
 5 BOARD PLANNER: I'm not surprised,
 6 frankly, to see an ordinance coming out of the DCA
 7 that regulates all that stuff, using language from
 8 one set of regulations, or statutes, to another as
 9 they offer something like a model ordinance. I
 10 think a plain reading of this suggests that there
 11 are requirements that apply to a development like
 12 this.
 13 And, you know, it doesn't say that it
 14 excludes fee-simple units, it just says, "It shall
 15 include a multiple dwelling that is held under a
 16 condominium or cooperative form of ownership a
 17 mutual housing corporation."
 18 ATTORNEY HENRY: That's 3-A. And
 19 that's why 3-B says, if you are not covered by 3-A,
 20 here are the rules. And what Mr. Gianetti is saying
 21 is he reads 3-B as applying to commercial parking
 22 lots and garages --
 23 ATTORNEY GIANETTI: Non-residential.
 24 ATTORNEY HENRY: Well,
 25 non-residential, but I don't see anything that says

1 that.
 2 BOARD PLANNER: No, it doesn't. I --
 3 I don't see anything that says that.
 4 ATTORNEY HENRY: Starting with the --
 5 the first requirement is to install at least one
 6 make-ready parking space if there will be 50 or
 7 fewer off-street parking spaces. Well, that's a
 8 pretty low number for a parking lot -- a commercial
 9 parking lot or garage. And you have well more than
 10 that.
 11 I mean, lots of non-multifamily
 12 residential developments have more than 50 parking
 13 spaces off-street.
 14 VICE-CHAIRMAN RINZLER: Can I ask a
 15 question?
 16 CHAIRMAN ROCHAT: Mr. Rinzler, go
 17 ahead.
 18 VICE-CHAIRMAN RINZLER: Mr. Gianetti,
 19 I'm just -- I'm curious. I would imagine that, from
 20 a building standpoint, it's probably easier to put
 21 in the X number of charging stations when the place
 22 is being constructed versus, let's say, any
 23 homeowner who doesn't opt for one, and then years
 24 later decides they've got an electric car and they
 25 have to install one.

1 Is that a lot more difficult? Because
 2 I would imagine permits would be needed. I mean,
 3 does it behoove the homeowner to do it up front
 4 then, you know, years later future homeowners of
 5 that unit decide they have to install one?
 6 ATTORNEY GIANETTI: Well, I think it's
 7 -- it's not difficult and it's no different than any
 8 other homeowner that wants to do it in their current
 9 house right now. So, you know, it's just a panel
 10 that goes in the garage and hooked up, you know,
 11 with a plug, at least from what I have seen.
 12 I think so from -- again, and that's a
 13 separate requirement that the applicant agrees to
 14 comply with that says we -- we have to offer that
 15 option.
 16 VICE-CHAIRMAN RINZLER: No, it's good
 17 to offer it. Yeah.
 18 ATTORNEY GIANETTI: Yeah. The parking
 19 spaces that we're talking about are referring to
 20 off-street parking spaces. So I think your
 21 language, you know, Mr. Henry, that, you know, it
 22 would apply as applicable and hopefully we'll get
 23 clarity on it.
 24 ATTORNEY HENRY: And I think that's
 25 probably the best way to try to deal with it now so

1 that we don't -- to the extent we can avoid it, we
 2 don't get it wrong. But also to the extent we can
 3 avoid it, we're not imposing a requirement that
 4 isn't intended to fit you.
 5 Although I gather that David Banisch is
 6 suggesting there ought to be electronic -- or
 7 electric vehicle charging stations for everybody,
 8 always, forever. And I can't blame him for
 9 suggesting that would be good because I think the
 10 world is, perhaps, headed that way. But I suspect
 11 that you may not think that's an appropriate burden
 12 to put on the developer in this case.
 13 ATTORNEY GIANETTI: Correct. And it's
 14 not to say that, like we've indicated, we're going
 15 to do the nine make-ready and if you require it and
 16 the applicant may put it in on his own.
 17 BOARD PLANNER: Can I ask you for some
 18 clarification on that offer?
 19 ATTORNEY GIANETTI: Yeah.
 20 BOARD PLANNER: Do you intend to
 21 contact DCA and procure something in writing to --
 22 to give the board some certainty, or is this just a
 23 condition that you want to leave in the resolution
 24 and then the Borough has to do the homework to
 25 figure out whether or not it's applicable?

1 ATTORNEY GIANETTI: Well, I think
 2 we'll both do the homework. Frankly, you know, the
 3 DCA had to come up with a model ordinance. The DCA
 4 doesn't interpret statutes -- or implement -- this
 5 is not something that, you know, they're regulating
 6 and basically have the authority to interpret,
 7 especially from the time of application rule. I
 8 mean, that's not necessarily their purview. But I
 9 think it's something both the applicant and the
 10 board professionals can deal with, whomever at the
 11 state to see if there's any guidance, you know, look
 12 at it further and come to a conclusion on it.
 13 BOARD PLANNER: Okay. Thank you for
 14 that clarification. And would it be your intention
 15 to have that matter disposed of by the time the
 16 board takes formal action?
 17 ATTORNEY GIANETTI: Say that --
 18 ATTORNEY HENRY: That's highly
 19 unlikely.
 20 ATTORNEY GIANETTI: Yeah, I think it
 21 would, as a condition of approval, would have to be
 22 addressed.
 23 BOARD PLANNER: Thank you.
 24 CHAIRMAN ROCHAT: But there's --
 25 there's a couple of things with this -- these

1 charging stations. I mean, we don't really know
 2 what they look like, where they'll be placed.
 3 Somebody has to maintain them. Does
 4 the association maintain them? Is it a franchise?
 5 The power source has to come from someplace. It's
 6 -- is it in the building?
 7 I'm sure there is some sort of
 8 switching apparatus that has to go along with this.
 9 I mean, is it an outdoor unit?
 10 You know, I mean there's a lot of
 11 questions about what it looks like and where you
 12 would even spot them or put them.
 13 ATTORNEY GIANETTI: Well, I
 14 think -- go ahead, Mr. Banisch.
 15 BOARD PLANNER: I would expect that
 16 they're owned and operated by, in the case of the
 17 affordable apartment building, by the owner of that
 18 building. They generally are -- use small stub
 19 structures. Sometimes they look like a gas pump or
 20 half a gas pump standing at the -- on the sidewalk
 21 at the head of a parking space. I suppose they can
 22 be lower profile than that. Those are commercial
 23 installations that are commonly seen in gas stations
 24 and elsewhere in the areas that are -- as they're
 25 being installed recently.

1 But it would be owned and operated and
 2 the maintenance responsibility and all that, I
 3 think, would be the private property owners. As to
 4 the other surface parking spaces in the townhome
 5 portion of the development, I would expect to see
 6 some in the -- in the two parking areas that the
 7 applicant's showing on their plans where there's,
 8 you know, multiple spaces provided for visitation
 9 and excess parking off-street, in addition to the
 10 driveways.
 11 But that seems to me, those would be
 12 the appropriate locations for these charging
 13 stations. And in that event, I think it would be
 14 the HOA that owns and operates the -- those charging
 15 stations, to the extent they may be required.
 16 ATTORNEY GIANETTI: I would agree with
 17 Mr. Banisch.
 18 CHAIRMAN ROCHAT: All right.
 19 ATTORNEY GIANETTI: So then -- Ron,
 20 are you still there?
 21 THE WITNESS: I'm here.
 22 ATTORNEY GIANETTI: Moving along.
 23 THE WITNESS: There was another letter
 24 from Mr. Ferriero's office from the traffic and it
 25 was one specific item on the sight distance easement

1 that we would be providing to the borough along
 2 Route 202, and it had to do with details on clearing
 3 limits there. And as we discussed at the last
 4 meeting, our intent is to have any condition of any
 5 approval have a requirement that the borough
 6 engineer and planner be involved with any of the
 7 clearing around the perimeters of the property to
 8 ensure that not over-clearing is done.
 9 So I think that would be part of it, as
 10 suggested in this letter, from the traffic engineer,
 11 from Mr. Ferriero's office, that we would have the
 12 easement A and B that limit the clearing as required
 13 by DOT. So we would agree to that.
 14 And the other item I just wanted to
 15 touch base on is, we got Mr. Banish's note on his
 16 review letter and there's a couple items I know that
 17 I can clarify that I wanted to just talk through on
 18 his review letter is that there was a suggestion
 19 that we raise the height of the fence around one of
 20 the walls that's nearest the affordable housing
 21 building to 6 foot, and we'll certainly agree to do
 22 that. We take no exception to that.
 23 There was another suggestion about the
 24 sewer line for the multi-family building. Currently
 25 we show that as a small pump that would lift up to

1 the gravity system. Since we got this letter we
2 have looked at it and we think we can do it by
3 gravity now and eliminate the pump, which I think is
4 a good thing if we can eliminate the pump, and we
5 would eliminate the -- the need for any backup
6 generation on that pump as well. But we could do
7 that and it wouldn't be a big change to the plan at
8 all, just behind some of the units.

9 There was an item about clarifying
10 homeowner association responsibilities for trash
11 collection. And there would be two separate areas,
12 one for the affordable housing unit as one unit,
13 that would be the responsibility of the owner of the
14 affordable housing unit, and then separately, there
15 would be for the 105 individual townhouses that it
16 would be trash and recycling collections for that
17 under the homeowners association separately.

18 BOARD PLANNER: Does financial
19 responsibility get worked out in the HOA documents?

20 THE WITNESS: Well, I think it's two
21 separate -- yeah, it would be in the HOA documents.
22 And it's two separate aspects, David, is one would
23 for the association, having to do with the 105
24 individual townhouse units, and then the separate
25 would be for the trash collection for the individual

1 affordable housing building itself.

2 I don't think they merge. I think
3 they're two separate entities, you know, from --
4 from the standpoint of trash and recycling.

5 BOARD PLANNER: I would expect that.
6 I just didn't -- I couldn't read that from the
7 commentary. Thank you.

8 THE WITNESS: Okay. There was
9 dialogue as well on the -- the planting and
10 long-term care of the planting, especially with the
11 reforestation. And I do want to just comment on
12 that aspect. There is a requirement with DEP in the
13 wastewater management plan, in the reforestation,
14 about a performance standard that makes sure that
15 actually the reforestation takes hold and there's a
16 five-year monitoring program, David, with that
17 program that we would have to comply with to show
18 that there's actual growth going on in those areas.
19 That would be much beyond any of the guarantees of
20 the MLUL that are required for landscaping.

21 And we're just not sure whether we need
22 deer fence in some of these areas or not. I think
23 it's going to be one of these things that we'll call
24 it in the field that as we plant and monitor the
25 deer in the area and see where appropriate areas may

1 be for some deer fencing that would be temporary in
2 nature for that growth. But too early to tell where
3 that would be right now.

4 But I think the requirement of
5 monitoring will fall on the applicant to make sure
6 that it's planted and it has sustainable growth to
7 it.

8 BOARD PLANNER: Removal of the
9 invasive exotics, I think, was a comment I made in
10 conjunction with all that.

11 THE WITNESS: Yeah, and again, I think
12 that's the same thing. We need to get out there
13 during the -- the priority tree removal with you and
14 Steve and go through what areas we keep and what
15 areas we look to -- to take out as far as some of
16 that growth that's invasive, whether it's a rose
17 bush or something else that we ought to take out,
18 some of those areas, and we have an extensive
19 replanting program.

20 But I think that's something that's
21 tough to do on a plan but I think that's something
22 that really needs to be done in the field. And
23 we'll -- we'll agree to that condition that we work
24 with the two borough professionals on that.

25 BOARD PLANNER: Okay. Thank you.

1 THE WITNESS: There was -- there's some
2 comments on the affordable housing. I'm not going
3 to comment on that. I think that Mr. Gianetti can
4 comment on that.

5 And then the only last item is just any
6 condition of approval that there's a time limit
7 associated with the responding back to any
8 conditions of -- of approval that we resubmit and we
9 certainly agree to that.

10 It really comes down to, as we know,
11 the outside agency approvals and the time it takes
12 for them and we know we're going to be responsive,
13 but sometimes those outside agency approvals do take
14 some time to get through the process before we're
15 going to make certain changes to the plans.

16 BOARD PLANNER: 90 to 100 days I
17 offered as a suggested time frame. Does one seem
18 more workable to you than the other?

19 THE WITNESS: Yeah. Knowing that
20 we've have already submitted to DEP for the
21 permitting with the land use, so with wetlands and
22 the stormwater management review, so I'm expecting
23 by 60 days out we'll start getting comments back.
24 So by the time we go back and forth we'll be more in
25 that 120-day area, by the time we get through that.

1 And again, I want to be in concert with
2 some of the comments Mr. Bolio and Mr. Ferriero have
3 at the same time and I really need to tie those back
4 together because I have to make sure stormwater
5 works for both; both for the borough and its review
6 of stormwater management based on the state
7 guidelines, as well as DEP and its review of the
8 same stormwater management plan.

9 BOARD PLANNER: Thank you. How about
10 those other changes -- editorial changes for notes
11 and things of that nature --

12 THE WITNESS: Yeah. That's fine.
13 Yeah, they were all just notes we'll add to the
14 plans. I don't see any issues with that.

15 The only thing I didn't comment on and
16 I don't know it needs to, it's just anything on the
17 affordable housing comments, I'm not commenting on
18 that.

19 ATTORNEY GIANETTI: Yeah, and -- and,
20 Mr. Banisch, I know we spoke about and I think we
21 talked about it at a prior hearing as well, I think
22 this is kind of an example of, again, you know,
23 trying to fit a square peg in a round hole with, you
24 know, state regulations.

25 You know, we're all aware there is a

1 phasing schedule with respect to inclusionary
2 developments where a certain number of market-rate
3 units have to be provided by a certain number of --
4 you know, before you could -- or you have to provide
5 a certain number of affordable units before you get
6 a certain number of COs for market-rate units. And
7 there's kind of a schedule that's typically applied
8 when you have a development that is a true mix of
9 affordable and market-rate units.

10 Where here, we almost have two
11 developments, one being a townhome development,
12 which is different type of ownership, different type
13 of development, and then the affordable apartments,
14 which again, different form of ownership and
15 different type of development, where with the
16 apartment building, you're pulling a building
17 permit, you are building all of the units,
18 essentially, at once and then getting a CO for the
19 building. So it's hard to tie it to the phasing of
20 the market-rate units as you're going, typically,
21 you know, one at a time with the buildings and then
22 getting the units up.

23 So, you know, I've done this in other
24 towns and the boards have agreed to modify the
25 phasing schedule for it, and in this instance what

1 we're proposing is that 100 percent of the
2 affordable units have to be provided by 80 percent
3 of the market-rate units.

4 And we would also be willing to post a
5 bond for the construction of the affordable units to
6 ensure, you know, the town's protected, that they
7 don't get stuck with market-rate units and no
8 affordable units. I think, you know, I know that's
9 been -- that type of modification for these type of
10 developments where you have a mix of townhomes and
11 apartments and the affordables are in the apartments
12 because they're encouraged to have it on the rental
13 side. It makes more sense since it's, you know, the
14 apartment building is being built all at once.

15 BOARD PLANNER: So that's 100 percent
16 of the affordables, if I heard you correctly, at
17 80 percent completion of COs on the market-rate
18 component --

19 ATTORNEY GIANETTI: Correct.

20 BOARD PLANNER: -- is that what you're
21 saying?

22 ATTORNEY GIANETTI: Yes. So
23 obviously, to get to 100 percent of the affordables
24 they would have to start, you know, construction on
25 the apartment building earlier.

1 BOARD PLANNER: Well, my concern is
2 the time element involved before any affordable
3 units are -- are put in service.

4 I had included some commentary in my
5 report about something that I think you made
6 reference to, which is, seeking an opinion from Fair
7 Share Housing Center with respect to modifying the
8 schedule for the delivery of the affordable units at
9 variance with the schedule that's included in
10 Chapter 93 in the borough's ordinance.

11 ATTORNEY GIANETTI: So I was under the
12 impression, if they were just modifying the schedule
13 we would, you know, seek Fair Share Housing Center
14 approval, but if we were going to post a bond, which
15 had the security there that the affordable units
16 would be built, that we wouldn't necessarily need
17 their approval because it's -- there's a backstop
18 for it and you're almost in compliance with the
19 phasing schedule, except it's just the money is
20 there for it, it just hasn't been built yet.

21 ATTORNEY HENRY: We need them agreeing
22 even to that, which is something other than a
23 straightforward delivery schedule?

24 ATTORNEY GIANETTI: I know there's
25 plenty of instances where it's done and their

1 blessing is not -- has not been given -- and I won't
 2 say hasn't been given, hasn't been sought. And, you
 3 know, again --
 4 ATTORNEY HENRY: If you don't ask, you
 5 won't be told no.
 6 ATTORNEY GIANETTI: But at the same
 7 time, the projects are built -- the units are built
 8 and there's -- there's nothing nefarious going on
 9 because there's a backstop. That's what the bond is
 10 for.
 11 ATTORNEY HENRY: I understand. But
 12 isn't that the pitch you should make to them if
 13 there's an in-place agreement that says, here is how
 14 they should be delivered?
 15 ATTORNEY GIANETTI: Well, I think
 16 that's just referring to the general ordinance
 17 that's required to be adopted in compliance with the
 18 phasing schedule.
 19 BOARD PLANNER: I have two concerns
 20 here. One is, I think first it should be reduced to
 21 writing as an offer.
 22 And secondly, I think that this is
 23 something that the borough council should look at
 24 and -- and it should be determined, prior to the
 25 grant of any preliminary as to whether or not the

1 borough council would agree to take a bond and
 2 assume any of the performance aspects for affordable
 3 housing production should this project go south.
 4 Now, obviously that's not anticipated,
 5 but I just can't say and -- and will not say that
 6 the borough would be okay accepting the shifting of
 7 the obligation to construct the units, vis-à-vis a
 8 performance bond.
 9 ATTORNEY GIANETTI: Well, I think we
 10 can maybe, you know, do the converse -- or the flip
 11 of that, and -- because there might be other
 12 modifications, you know, after final approval and as
 13 they kind of get more in the construction drawings
 14 with timing and exactly what can be provided then,
 15 is we know there has to be a developer's agreement
 16 with the town, we know that the requirement for the
 17 phasing is pursuant to an agreement between the town
 18 and Fair Share. Well, as part of the developer's
 19 agreement, why do we have to work out with the town
 20 if we're going to -- you know, our proposal to
 21 modify the phasing schedule; their agreement to it
 22 in the developers agreement, if they agree to it.
 23 And if they require, you know, the bond or sign up
 24 for Fair Share or whatever, I don't think it's
 25 anything that needs to hold up the grant of any site

1 plan approval or subdivision approval since it's not
 2 part of an agreement between the planning board and
 3 Fair Share Housing Center.
 4 BOARD PLANNER: It's a requirement of
 5 the site plan ordinance and it's a requirement of
 6 the zoning. And I think it does have to be
 7 determined and articulated as a condition in the
 8 approval or pursuant to an agreement that the
 9 borough council is willing to accept and authorize.
 10 I'm sorry, I just have to disagree with you on that.
 11 I do think that this is substantive element of the
 12 preliminary and I think it has got to be resolved.
 13 COUNCILWOMAN TWEEDIE: I agree, David.
 14 ATTORNEY GIANETTI: Well, why can't
 15 the planning board say they're agreeable to
 16 modifications subject to the borough -- in the end
 17 you acknowledge and agree that the borough council
 18 is the end decider of this.
 19 BOARD PLANNER: So let me just back up
 20 a minute and be clear that I understand what you're
 21 offering -- or what you're recommending.
 22 Are you recommending that you're going
 23 to -- that the resolution should read, consistent
 24 with the ordinance, that the affordable units will
 25 be delivered consistent with the phasing schedule

1 for the delivery of affordable units, unless the
 2 borough council relieves you of that obligation?
 3 Is that essentially what you're
 4 suggesting should be the condition of the
 5 preliminary?
 6 ATTORNEY GIANETTI: Yes. And it will
 7 be through a developers's agreement being relieved
 8 of that obligation.
 9 BOARD PLANNER: Well, I think that the
 10 issuance of authorization to construct should be --
 11 you know, the issuance of building permits should be
 12 held up until there's a resolution of that
 13 condition. In other words, I think no permits for
 14 any site --
 15 ATTORNEY GIANETTI: That's fine.
 16 BOARD PLANNER: -- until there's an
 17 absolute resolution of this issue.
 18 ATTORNEY GIANETTI: It would have to
 19 be addressed in the developer's agreement, which, if
 20 we don't have a developer's agreement we can't get
 21 building permits.
 22 BOARD PLANNER: Mr. Henry, does that
 23 make sense to you?
 24 ATTORNEY HENRY: Yes.
 25 BOARD PLANNER: In other words, you

1 think the borough is obviously, well protected from
2 any potential injuries that are a result of managing
3 it in this fashion; is that correct?

4 ATTORNEY HENRY: Well, I think what
5 I'm hearing is that it would be set up in a way that
6 says that the borough will not be exposed to that
7 risk unless it agrees to be exposed to it.

8 BOARD PLANNER: I think that condition
9 should also include something requiring the
10 applicant to return to the planning board should the
11 borough council decide it does not want to entertain
12 a variation from that schedule or some bonding, for
13 example.

14 In other words, it has got to come back
15 and the board has to look at it to determine just
16 exactly how this is going to proceed.

17 ATTORNEY GIANETTI: Well, I don't know
18 if it's -- I don't think it needs to be a condition
19 that we have to come back. It may -- it's either we
20 comply with the phasing schedule and so we don't
21 have to come back to the board, or the borough
22 agrees to something that is modified and potentially
23 blessed by Fair Share Housing Center.

24 I don't know why we would have to come
25 back to the board either way.

1 ATTORNEY HENRY: If we covered the
2 alternatives there should not be a need to come back
3 to the board.

4 BOARD PLANNER: Very well. I think,
5 just for the benefit of any of the public who may be
6 listening and not be completely familiar with what
7 we're talking about, what the applicant has said in
8 prior testimony and I believe what was made
9 reference to this evening, was the fact that because
10 all of the affordable units are going to be provided
11 in one single building, the delivery of the
12 affordable units does not fit neatly into the
13 regulatory schedule for the delivery of affordable
14 housing in an inclusionary development.

15 That schedule requires that, on the
16 basis of the percentage of certificates of occupancy
17 issued for the market-rate component of the project,
18 some number, some percentage of the affordable units
19 will be delivered before COs can be issued for
20 additional market-rate units.

21 That's the schedule that we're talking
22 about. And what the applicant has previously
23 advised is, because they're all included in one
24 building, it essentially is difficult to achieve
25 without completing the affordable housing building

1 all at once and delivering 100 percent of the
2 affordable units in advance of what would otherwise
3 would be required in the regulatory schedule.

4 ATTORNEY GIANETTI: Yes, that is
5 correct.

6 BOARD PLANNER: Thank you.

7 ATTORNEY GIANETTI: And looking at my
8 notes to see if there was another...

9 BOARD PLANNER: Condition 22 was one
10 that you and I had a brief discussion about,
11 Mr. Gianetti. Are you okay with that one?

12 ATTORNEY GIANETTI: Yes.

13 BOARD PLANNER: Okay. For the board's
14 information, that is a general condition that
15 requires that all plan revisions will be made
16 consistent with all the representations made by the
17 applicant, the conditions of approval suggested by
18 our office and suggested by the engineer's office.
19 So if there's any misunderstanding, the applicant's
20 essentially agreeing to revise plans for consistency
21 with conditions as outlined by the borough's
22 professionals. And if there have been any
23 oversights, the applicant agrees to address those in
24 terms of plan revisions or conformity with the
25 recommended conditions of approval.

1 ATTORNEY GIANETTI: When you say,
2 "oversights," you are referring to testimony that
3 was given, but not covered by a condition?

4 BOARD PLANNER: Or a revision.

5 ATTORNEY GIANETTI: Or a revision or
6 review letter, okay.

7 BOARD PLANNER: Yeah. So, for
8 example, something wasn't picked up that was -- that
9 you told the board, you know, you would make a
10 revision or something like that, that would be
11 addressed this way as well?

12 ATTORNEY GIANETTI: That's fine.

13 BOARD PLANNER: It's just a general
14 housekeeping thing, so we don't have to constantly
15 go back and forth and argue about.

16 ATTORNEY GIANETTI: Surely.

17 BOARD PLANNER: Thank you.

18 ATTORNEY GIANETTI: I think, last,
19 this might have been the Ferriero review letter of
20 November 5th. There was a question about the sales
21 trailer, model home plan with the number of signs
22 and the feather flag and the length of time the
23 materials would be there. You know, it's basically
24 there during the three-year build-out and sell-out
25 period. That's the estimated time frame.

1 MEMBER RINZLER: May I ask a question
 2 regarding that?
 3 ATTORNEY GIANETTI: Yes.
 4 VICE-CHAIRMAN RINZLER: I have been
 5 down to your Creekside property in Flemington and in
 6 the past year by the affordable housing it has had a
 7 big banner up that said, "Affordable Housing," and
 8 then the Market Homes at Creekside there were
 9 banners that say, "Only six homes left," for
 10 example, "Only three homes left."
 11 Are you looking to do similar types of
 12 signs or banners like that on this property?
 13 ATTORNEY GIANETTI: Within the
 14 property? Potentially. I would have to confirm
 15 with my client but, you know, unlike some of those
 16 other developments, we have taken great care to
 17 ensure that really not much of this is visible from
 18 the road. So it's not a -- you know, anything on
 19 buildings referring to rental or sales, it's not
 20 something that is going to be visible.
 21 So to the extent of their usefulness, I
 22 don't know. But I can't say something like that
 23 would not be proposed.
 24 BOARD PLANNER: Well, I think we
 25 probably need to nail that down and probably should

1 be in the form of a plan and a -- and a list of any
 2 temporary sales devices that might be installed and
 3 visible to the public.
 4 I thought I saw something along those
 5 lines, but I don't recall right offhand now what
 6 exhibit or example that may have been. If there's
 7 something, Mr. Gianetti, that was --
 8 ATTORNEY GIANETTI: Yes. Mr. Kennedy
 9 did show a sales trailer plan that did have a
 10 location of, you know, the feather flag that Mr.
 11 Bolio is referring to and identified where those
 12 are. So it's on the plan signage that he's
 13 referring to and we're referring to.
 14 BOARD PLANNER: The last sheet -- the
 15 second to last sheet of the plan revisions?
 16 ATTORNEY GIANETTI: Ron, do you know?
 17 THE WITNESS: Last sheet of plan
 18 revisions called, "Sales trailer and model home plot
 19 plan."
 20 BOARD PLANNER: Excuse me a minute.
 21 I'm going to take a look at that for a second.
 22 Would you like to move on to another
 23 topic, Mr. Gianetti?
 24 ATTORNEY GIANETTI: Well, I guess
 25 maybe if Mr. Bolio -- I know Mr. Kennedy indicated,

1 you know, a lot of the comments were kind of either
 2 plan revision or detail information and that he also
 3 agreed to provide -- or to perform the soil
 4 investigation or study and submit the same to Mr.
 5 Bolio.
 6 But I guess anything outside of that
 7 that we haven't already addressed, he can identify.
 8 Other than that, then I think we're ready to bring
 9 Mr. Phillips up.
 10 ATTORNEY HENRY: Do you think you have
 11 addressed everything where, particularly in the
 12 Ferriero Engineering letter, there was commentary on
 13 things that still required some testimony?
 14 BOARD ENGINEER: Under Page 4, Items 4
 15 and 6, if you could have -- Ron, if you could just
 16 provide some testimony with respect to those two
 17 comments?
 18 THE WITNESS: Yeah, as far as the --
 19 in the testing and the detailing of the stormwater
 20 management, we'll look to lower that wall so there
 21 won't be hydrostatic loads behind it rather than do
 22 the study to make it work and beef up the wall. And
 23 we talked about that in general terms that we would
 24 lower that basin and get the wall lower so there
 25 wouldn't be those types of issues.

1 The last meeting -- maybe it was the
 2 first time I testified -- about the balancing of the
 3 site work as far as the cuts and fills on the site,
 4 generally, we look to have a balanced site on this
 5 project. And there's about 3,000 current yards that
 6 would show on the plans that we need fill, but that
 7 doesn't include calculations like where the trenches
 8 are and some of the expansion of the soils.
 9 So again, what we spent a lot of time
 10 with Pulte is to make sure that we have a balanced
 11 site, that we don't have to take material onto the
 12 property or off the property to construct this
 13 thing. And we're still making sure that we're
 14 working to make that work, that we just don't need
 15 to remove material or take material on.
 16 We're going to certainly be bringing
 17 raw material in, such as stone and concrete and the
 18 like, but as far as the fill on the property we're
 19 trying to balance the fill by the design that has
 20 been put forth to you.
 21 ATTORNEY HENRY: If for some reason
 22 you're not able to achieve that, I assume that you
 23 will then be prepared to work out schedule and
 24 timing and routes for whatever has to be --
 25 particularly whatever has to be taken off --

1 THE WITNESS: Yes.
 2 ATTORNEY HENRY: -- or for any fill
 3 coming in along with sourcing and testing that fill?
 4 THE WITNESS: Correct, we will do
 5 that.
 6 ATTORNEY HENRY: And you're hoping you
 7 don't have to do any of that?
 8 THE WITNESS: Yes. And that's the
 9 goal, is to balance -- but again, we don't know if
 10 some of the fill is suitable or not. There's so
 11 many different parameters, as we all know, with
 12 constructing a site like this for that.
 13 But the goal is just to balance it and
 14 make it work as a balanced site. If anything
 15 changes we will coordinate with Mr. Banisch's office
 16 and Mr. Bolio's office for any of those changes.
 17 The good news to that end is we are on a state
 18 highway. So we're not on back roads in order to
 19 bring anything in and out of the site. We are on a
 20 state highway.
 21 BOARD ENGINEER: Mr. Kennedy, you've
 22 indicated that the additional soil testing is going
 23 to be conducted to address the comments related to
 24 the soil testing permeability that we had in our
 25 letter. And that information is going to be

1 provided prior to the December 6th hearing?
 2 THE WITNESS: Yes. So the expectation
 3 is, we have been talking to our geotechnical
 4 engineer. We're going to get out there Monday and
 5 Tuesday and do the testing. We'll provide that from
 6 middle to end of the week, as soon as it's
 7 available, we'll get that off to your office, Mr.
 8 Bolio.
 9 BOARD ENGINEER: Thank you.
 10 And with respect to the other comments
 11 in our letter, the plan comments, the stormwater
 12 comments, do you anticipate being able to
 13 satisfactorily address all those comments within our
 14 letter?
 15 THE WITNESS: I do. And a lot of it
 16 comes from the soil testing, to make sure that we're
 17 consistent with the soil testing. And then those
 18 other comments, while there are a number of them and
 19 quite technical, we'll be able to make that work
 20 within the confines of the site plan that we
 21 submitted to the borough already.
 22 BOARD ENGINEER: Okay. And it's your
 23 anticipation -- you didn't address all those
 24 comments without major changes to the site plans,
 25 moving the roads, moving the buildings?

1 THE WITNESS: Correct. The intent is
 2 the basin areas may have to change in volume
 3 slightly here and there or an outlet structure, but
 4 the road system and the location of the specific
 5 buildings would not change in this.
 6 BOARD ENGINEER: Thank you.
 7 So, Mr. Chairman, there are -- we do
 8 have a lot of comments within our latest review
 9 letter, dated, November 5th, 2021.
 10 With respect to the stormwater, once we
 11 have the additional soil testing we'll be able to
 12 make evaluation on soil testing. Soil testing is, I
 13 would say, the most important aspect with respect to
 14 the stormwater management. The other comments
 15 pertaining to the stormwater management, while there
 16 are a lot of comments, there's nothing that cannot
 17 be worked out if the soils are adequate for what
 18 they're proposing.
 19 And there is some additional soil
 20 testing that we're requesting. They did provide
 21 soil testing prior to the issuance of our last
 22 letter and I did address some of the comments we had
 23 prior. So just the additional soil testing is going
 24 to be provided prior to the December 6th hearing,
 25 and we'll be able to take a look at that and

1 evaluate that and, you know, provide some direction
 2 to the board with respect to the stormwater
 3 management at that time.
 4 CHAIRMAN ROCHAT: Thank you, Steve.
 5 BOARD ENGINEER: And, Mr. Kennedy,
 6 you'd also indicated the NJDEP is also looking at
 7 the stormwater management for this site?
 8 THE WITNESS: Yes. And in this
 9 project, as we've testified, there are a couple of
 10 crossing permits for some of the roads that we have
 11 which also brings into jurisdiction that they will
 12 be reviewing stormwater management. That
 13 application was submitted about a month ago.
 14 We have technically been deemed
 15 complete and will go through some detailed reviews
 16 with them in the next 60 days.
 17 And again, we want the insight of what
 18 they have to say as well before we finalize the
 19 stormwater management design. So we'll have the
 20 borough comments and we'll have DEP comments and
 21 then we can coordinate those and revise the plans.
 22 BOARD ENGINEER: So really you're
 23 getting two levels of review on the stormwater
 24 management, one at the municipal level and then also
 25 at the state level?

1 THE WITNESS: And we'll also get the
2 Soil Conservation District and they'll have, you
3 know, specific reviews that they're doing on the new
4 stormwater rules, narrower scope, but they still
5 would be doing some pretty extensive reviews of
6 stormwater management designs as it relates to soil
7 erosion.

8 BOARD ENGINEER: And, obviously, they
9 would be conditions of any approving resolution that
10 the board may grant.

11 THE WITNESS: Absolutely, yes.

12 BOARD ENGINEER: Thank you.

13 BOARD PLANNER: Mr. Chairman, if Mr.
14 Bolio is finished, I did take a look at the sales
15 trailer and model home plot plan that Mr. Kennedy
16 made reference to, and it includes the location of
17 the sales trailer and the model home and quite a bit
18 of signage attending to it and six feather flags,
19 three on either side of the driveway entering the
20 site.

21 I know there has been previous
22 testimony and discussion about this, however, the
23 plan insofar as I can see, does not identify the
24 dimensions of the proposed signs or anything to that
25 effect. And I think that information should be

1 individual houses. Is there -- we didn't really --
2 I don't think we talked about as far as there will
3 not be any pickups in front of the site in the
4 future; a bus would have to come into the site to
5 pick up students?

6 Is that a possibility that we can look
7 at, or the school board?

8 THE WITNESS: Yeah, it's really the
9 school that determines that. But the school bus can
10 get in there, it can turn around, it's not a
11 dead-end and pick up.

12 And again, as we said before, it's an
13 age-restricted community except for the affordable
14 housing units. And I think there's 24 or 25 of
15 those units that are non-age-restricted in the
16 affordable housing building itself. But they can,
17 the bus can get in there and make turns in that area
18 and come back out to the road again.

19 BOARD PLANNER: Are you thinking of
20 like a small bus stop/station, like something for
21 kids to sit in while they're waiting for the bus?

22 THE WITNESS: We have done those,
23 David -- and I think we have had this discussion
24 with you or others -- is that when we have done
25 those in the past and put pads in there, it's not

1 provided. I seem to remember some discussion about
2 this in the past but I can't really put my finger on
3 that, but I think that, Ron, I would have to ask for
4 some supplemental information on that particular
5 plan identifying the sizes of the signs.

6 THE WITNESS: We can provide that.

7 BOARD PLANNER: Okay. And then I
8 think that's one comment we may have to return to
9 just for the board to understand what it's going to
10 see.

11 Most of the signage is to the interior
12 of this site. There will be six feather flags that
13 will be visible on the main road to passing traffic.
14 And I think we heard testimony about the kinds of
15 sales aids that the applicant believes they need and
16 want for the site.

17 But I do think sign dimensions are
18 important for a clear understanding of what's going
19 to be out there.

20 THE WITNESS: We can provide that.

21 BOARD PLANNER: Thank you.

22 CHAIRMAN ROCHAT: Mr. Kennedy, I just
23 wanted to go back to the site line for the entrance.
24 I was out on the site one early morning and I know
25 school buses do pick up students on 202 from

1 necessarily where the bus stops because the bus
2 is -- it's determined by -- you know, either the bus
3 company or the school determines where these busses
4 stop and it changes based on the number of students
5 and the types of busses. And we have seen it be a
6 pretty dynamic situation where, in a multi-family
7 development larger than this even, predicting where
8 that's going to occur.

9 We can coach our results, but that's
10 not necessarily where they're going to use that
11 particular pad that will be out there. I could say,
12 in front of the building itself, the affordable
13 housing building, there is a small loop that's there
14 and a bus can maintain and do that loop, and that
15 would be in an area that there are sidewalks
16 adjacent to that building that are right there.

17 So there is sidewalks that are in close
18 proximity to where that loop would be where a bus
19 could come in, turn around and pull back out again.

20 MEMBER KOURY: My concern was from a
21 safety standpoint with buses exiting the development
22 back onto 202, possibly northbound. With cars
23 coming down, buses aren't exactly the fastest moving
24 vehicles and I -- just in looking at that the other
25 day, cars can come down there at a pretty quick rate

1 and that school bus could be, in my opinion, it
2 could just be exposed a little bit. So that's what
3 I was looking at with regard to school busses coming
4 into the development.

5 THE WITNESS: I'm not the traffic
6 person to talk about that. I know Gary Dean did
7 talk about that already. But what we're providing
8 is sight distance so that there's adequate sight
9 distance to the state standard. But as far as the
10 timing and the gaps, I think he spoke about that at
11 the last -- a meeting. I wasn't at it, but a
12 meeting.

13 CHAIRMAN ROCHAT: There was just a
14 concern as far as relationship to Far Hills Country
15 Day and, you know, children crossing the road,
16 that's all.

17 THE WITNESS: And I -- I do think they
18 would probably come into a project like this, that
19 they would come in -- a bus would come in and not
20 just stop at the end of the road.

21 BOARD PLANNER: Seems like -- seems
22 like the best way to pick kids up is right in the
23 front of the building, if they can do that.

24 THE WITNESS: Yeah. And they
25 physically can, you know, as far as that is -- the

1 question is, is the board -- the school board or the
2 bus transportation group, would they do that as part
3 of the normal course?

4 ATTORNEY HENRY: That's something that
5 can be determined by inquiring of the School Board.

6 THE WITNESS: I can say this, we have
7 talked to people in the past at different school
8 boards and until the project is built, they're
9 non-committal, Peter. They're just not. They're
10 not going to focus on that.

11 We have gotten just -- just bad answers
12 by going to see those folks and talking to them
13 about it because, to them, until it's built they're
14 not going to spend much time chatting about it.

15 CHAIRMAN ROCHAT: I'm just concerned
16 if a bus can swing around that circle easy -- easily
17 enough to make regular pickups, that's all.

18 THE WITNESS: I have turning movements
19 through there for garbage trucks and fire trucks
20 that we have provided to the town engineer. I will
21 look at that loop just to make sure that we did it
22 just in that specific loop. But we did provide some
23 pretty detailed turning movements throughout the
24 project for, again, garbage trucks and deliveries
25 and fire trucks.

1 CHAIRMAN ROCHAT: Any questions from
2 the Board for Mr. Kennedy?

3 MEMBER LEWIS: I have a question. The
4 architect made some testimony when asked about
5 provisions on the houses approved for solar panels
6 and he stated that, you know, it wasn't right about
7 not having provision for solar panels because
8 windows, building siding, roof shingles and all
9 would be suitable. He anticipated there would be
10 suitable solar energy collectors in the future.
11 There -- Ron, there's no space for ground-mounted
12 solar on this development; is that correct?

13 THE WITNESS: There wouldn't be,
14 Mr. Lewis. There just wouldn't.

15 And even if there was a physical land
16 area, I think with the vegetation that surrounds
17 where we're proposing it, and as tied to it, you
18 would have no ability for, you know, any larger area
19 that -- you would get screened out before you would
20 put a couple of panels here and there.

21 But there's no large area. We do a lot
22 of solar work and it -- it just wouldn't be
23 conducive to put them a ground-mounted on a property
24 like this. Too many shadows. Too small of an area
25 to do it meaningful.

1 MEMBER LEWIS: Thank you.

2 CHAIRMAN ROCHAT: Anyone else?
3 Mr. Gianetti?

4 ATTORNEY GIANETTI: Sure. Hearing
5 none, I would like, at this time, to call Paul
6 Phillips.

7 ATTORNEY HENRY: Perhaps before we do
8 that we should open Mr. Kennedy to any questions
9 that the public may have concerning his testimony.

10 CHAIRMAN ROCHAT: We can open this up
11 to the public.

12 PLANNING BOARD SECRETARY: If there's
13 any member of the public that wishes to ask a
14 question of Mr. Kennedy, please raise your hand.

15 I do have a Jaimie Morais who's had her
16 hand up.

17 JAIMIE MORAIS: Hello. Can you guys
18 hear me?

19 PLANNING BOARD SECRETARY: Yes.

20 JAIMIE MORAIS: Hi, guys. Hi,
21 everyone. So I just have a quick -- a couple quick
22 questions. And I don't know anything about all of
23 this. I'm a mom. I have kids. But I have -- tell
24 me if this isn't the right platform, I should come
25 back at another meeting or whatever. I'm totally

1 open to that. But I have just two really quick
2 questions.
3 And my first question is, so
4 there's -- there's a lot of people living back there
5 now.
6 ATTORNEY HENRY: Do you have a
7 question for this witness about his testimony?
8 JAIMIE MORAIS: No, I don't -- I don't --
9 ATTORNEY HENRY: Because that's what
10 -- that's what this is the time for.
11 JAIMIE MORAIS: Mr. Henry, I don't
12 know when to ask the question. Like I'm not
13 well-versed in this. I'm not -- I'm just a mom.
14 ATTORNEY HENRY: That's okay. That's
15 okay. But at this point, what is permitted is
16 questions of this witness about his testimony. If
17 you have other questions you can raise them later,
18 but not now.
19 JAIMIE MORAIS: Okay. So -- okay.
20 So, I don't know. You tell me, Mr. Henry. So the
21 people living back there now, what are we going to
22 do with them? Like, that's not for this witness
23 now?
24 ATTORNEY HENRY: I suspect that an
25 engineer who is designing this project is not a

1 sociologist or anything else who can talk about what
2 happens to other people.
3 JAIMIE MORAIS: I didn't know.
4 ATTORNEY HENRY: I'm not sure who
5 talks about that, but I don't think it's this
6 engineer.
7 ATTORNEY GIANETTI: And I don't know
8 if it's, frankly, relevant, Mr. Henry, to the site
9 plan application.
10 JAIMIE MORAIS: Well, I'm sorry, guys.
11 Don't make me feel like I'm an idiot. I'm just
12 coming to the town saying this is my question, when
13 do I ask it?
14 BOARD PLANNER: Mr. Kennedy is --
15 ATTORNEY HENRY: And the answer is not
16 now.
17 BOARD PLANNER: Excuse me, Jaimie, Mr.
18 Kennedy's site plan shows removal of all the
19 existing structures on-site. So they're going to be
20 removed. So anything that is a --
21 JAIMIE MORAIS: Mr. Henry, I know -- I
22 know Mr. Kennedy personally. He's a very good guy.
23 He is a stand-up man and he would answer my question
24 if he could. What -- what are we doing with these
25 people?

1 BOARD PLANNER: People have to find
2 another place to live.
3 JAIMIE MORAIS: I mean, we're -- we're
4 looking at bringing low-income housing in to make
5 other people's lives better, but what about these
6 people?
7 ATTORNEY HENRY: We have to stop now.
8 This is not the time to be heard on what you think
9 about the project.
10 JAIMIE MORAIS: No, no, no, I'm just
11 asking, when do I ask.
12 ATTORNEY HENRY: That's what you're
13 saying.
14 JAIMIE MORAIS: Sir, I'm asking when
15 do I ask it, then?
16 ATTORNEY HENRY: We will get to
17 those -- we will get to those kind of comments after
18 the applicant has completed his case.
19 Right now what you can do is question
20 specific witnesses about their specific testimony.
21 JAIMIE MORAIS: Well, then, I'm sorry.
22 ATTORNEY HENRY: That's okay. That's
23 okay. You are not assumed to know how this works.
24 JAIMIE MORAIS: Yeah. I'm sorry.
25 ATTORNEY HENRY: Once you're told how

1 it works, then you have to go with how it works.
2 JAIMIE MORAIS: Of course. Of course.
3 Thank you. I just need you to guide me. I don't
4 know.
5 ATTORNEY GIANETTI: They'll announce
6 when it's public comment. They'll announce it.
7 JAIMIE MORAIS: Mrs. Tweedie --
8 Mrs. Tweedie, like, so when is this?
9 ATTORNEY HENRY: Well, we can't tell
10 you because we don't know when they're finished with
11 their case.
12 JAIMIE MORAIS: Okay.
13 CHAIRMAN ROCHAT: Thank you, Jaimie.
14 COUNCILWOMAN TWEEDIE: Jaimie, it
15 won't be at this meeting because they haven't
16 completed their case. You just simply have to log
17 in for each meeting and follow along until they have
18 completed their case. That's when we can hear
19 questions from the public about general subjects
20 about this development.
21 JAIMIE MORAIS: Thank you. Thanks,
22 Mrs. Tweedie. Okay. I appreciate it. I'm not
23 trying to cause trouble. Okay. Bye-bye.
24 CHAIRMAN ROCHAT: Thank you.
25 Shana?

1 PLANNING BOARD SECRETARY: Yes, Mr.
 2 Schwester. If you unmute yourself, please?
 3 SKIP SCHWESTER: Can you hear me?
 4 PLANNING BOARD SECRETARY: We can.
 5 SKIP SCHWESTER: Okay. My question is,
 6 why did the application originate with public sewer
 7 and then it was moved to subterranean discharge of
 8 the wastewater; why was that done?
 9 THE WITNESS: My response is, by the
 10 time we made the application to the planning board,
 11 the application was made for on-site treatment.
 12 I know in the initial zoning
 13 discussions or initially they talked about two
 14 options, one, tying into the public system and the
 15 one going on-site. And by the time the application
 16 was made and submitted to the town for site plan
 17 approval it was decided by the applicant to go
 18 on-site.
 19 SKIP SCHWESTER: Why? When did that --
 20 you told me that's what they decided to do, you
 21 didn't tell me why.
 22 Why was it originally going to be a
 23 public sewer with a forced main and then all of a
 24 sudden without real -- a lot of notice, it went to
 25 subterranean on-site package plant.

1 THE WITNESS: I didn't study that. I
 2 don't -- I don't know that. We had a sewer
 3 consultant that talked at the last meeting but I --
 4 I don't know that answer.
 5 SKIP SCHWESTER: Yes, you do, but
 6 that's okay. So, in other words, it saved the
 7 developer about \$5 million.
 8 ATTORNEY GIANETTI: Objection. When
 9 it comes time for public comment, if he wants to
 10 present any evidence --
 11 SKIP SCHWESTER: It's not a comment.
 12 ATTORNEY GIANETTI: -- supporting his
 13 claim. That is a comment.
 14 SKIP SCHWESTER: It's not a comment.
 15 You know it's not. It saved the developer a lot of
 16 money and we --
 17 ATTORNEY GIANETTI: That's not a
 18 question. That's a comment.
 19 SKIP SCHWESTER: Well, the question is,
 20 do you also know of Drakewick, which has the same
 21 sewer treatment facility that has failed over the
 22 last 25 years some four or five times? Are you
 23 aware of that? That's a question.
 24 THE WITNESS: I believe that was
 25 talked about extensively with the sewer consultant

1 THE WITNESS: If I recall that, that
 2 the -- by the time the ordinance was written, it had
 3 both options in there to go with on-site or --
 4 Skip SCHWESTER: No, it didn't. No, it
 5 did not. I've read it. I've read the application.
 6 ATTORNEY GIANETTI: You say you read
 7 the application; what application are you referring
 8 to?
 9 SKIP SCHWESTER: The application that
 10 was submitted by Pulte for the development.
 11 Now, if I may submit, the answer is,
 12 you save 5 million bucks, and it's going to cost the
 13 town that in the future. That's the real answer.
 14 ATTORNEY HENRY: I think for the time
 15 being we have to go with -- you have posed the
 16 question and you have gotten their answer and,
 17 obviously, you don't think it's the complete or
 18 accurate answer, which you will get to address at a
 19 later time.
 20 SKIP SCHWESTER: Well, one follow-up.
 21 What is the cost difference going with the sewer
 22 line which would go into a -- into the sewer
 23 treatment facility that the rest of the town is on,
 24 versus the package plant; what is the cost
 25 difference?

1 at the last meeting, not me.
 2 SKIP SCHWESTER: Okay. And he -- if
 3 it's okay, I can tell you what he said. He said
 4 that the systems are a lot more scientifically
 5 improved. And he's correct, the mechanics are.
 6 They do -- or they're more efficient. They probably
 7 do sanitize the discharge better.
 8 But God has not changed -- the only one
 9 that can change the geology and the absorption rate
 10 is God. And to my knowledge, he hasn't changed it.
 11 So the earth, the land still has to absorb all of
 12 that discharge, and it just doesn't work. These
 13 systems are meant --
 14 ATTORNEY HENRY: We're back where you
 15 asked a question and you got an answer and you have
 16 an opinion on it. You may have facts. You may be
 17 able to testify. But that's for a different time.
 18 SKIP SCHWESTER: All right. Let me ask
 19 the final question.
 20 As experts, do you think the package
 21 plant and subterranean disposal of the effluent is
 22 better than hooking up to a sewer system?
 23 THE WITNESS: Again, I'm not the sewer
 24 person that testified at the last meeting. He's the
 25 expert that testified on that. He designs those for

1 a living. I don't. So I think that answer was
 2 borne at the last hearing when --
 3 SKIP SCHWESTER: Mr. Kennedy, you're a
 4 professional in this and you have done this your
 5 entire career. I'm going to ask you, do you think
 6 it's better?
 7 THE WITNESS: Well, again, I'm going
 8 to go back to, I do -- I have been involved in many
 9 design projects that have on-site package plants and
 10 right in this neighborhood. And I think he listed
 11 out six or seven of them. And we were involved in
 12 all those area projects within five or ten miles of
 13 the site that were -- were involved in projects
 14 where on-site treatment is being proposed and built
 15 on lots of different projects that we have done over
 16 the last 20 years. So it's an acceptable form of --
 17 of sewage disposal.
 18 SKIP SCHWESTER: Well then, the
 19 engineers at Drakewick are exonerated because they
 20 said they used all of the technology that was
 21 relevant at the time.
 22 ATTORNEY HENRY: We're back to ask the
 23 questions.
 24 SKIP SCHWESTER: Okay. Mr. Kennedy, do
 25 you personally think it's better and would you

1 personally -- this is a question -- would you
 2 purchase one of those units?
 3 THE WITNESS: That's, I can say,
 4 that's irrelevant because I don't know if I would
 5 purchase one of these units, based solely on whether
 6 it's sewer into a public system or on a treatment
 7 sewer. I can say that we have designed projects
 8 that have been successful doing it, and -- and I
 9 think it's --
 10 SKIP SCHWESTER: Do you -- do you think
 11 -- do you, honestly, do think it is better than a
 12 sewer, a public sewer?
 13 ATTORNEY GIANETTI: Mr. Henry, he
 14 asked the question several different ways and Mr.
 15 Kennedy has answered several times.
 16 ATTORNEY HENRY: Yes.
 17 ATTORNEY GIANETTI: I think it's
 18 appropriate to move on at this point.
 19 ATTORNEY HENRY: I have to agree
 20 that's correct, Mr. Schwester. If you have some
 21 other question, it might be time to ask it.
 22 SKIP SCHWESTER: I just -- the planning
 23 board is -- they really have to think about this.
 24 ATTORNEY GIANETTI: You will have an
 25 opportunity to give public comment at the end.

1 SKIP SCHWESTER: I will give public
 2 comment at the end then. Thank you.
 3 CHAIRMAN ROCHAT: Do we have any other
 4 questions for Mr. Kennedy?
 5 PLANNING BOARD SECRETARY: If anyone
 6 else has any questions, please raise your hand.
 7 Mr. Chairman, I don't see any other
 8 public questions for Mr. Kennedy.
 9 CHAIRMAN ROCHAT: All right. We'll
 10 close the public comment for Mr. Kennedy.
 11 Mr. Gianetti?
 12 ATTORNEY GIANETTI: Yes. At this time
 13 I would like to call Mr. Paul Phillips, our licensed
 14 professional planner.
 15 Paul, are you there.
 16 PLANNING BOARD SECRETARY: I am just
 17 trying to find him on the screen.
 18 ATTORNEY GIANETTI: I see him.
 19 PLANNING BOARD SECRETARY: Oh, there
 20 he is. Sorry.
 21 Mr Phillips, if you want to unmute
 22 yourself. There you go.
 23 ATTORNEY HENRY: Have you on the
 24 screen?
 25 PLANNING BOARD SECRETARY: He is, Mr.

1 Henry.
 2 ATTORNEY GIANETTI: Maybe you can say
 3 something, Paul, so you come up on his --
 4 PAUL PHILLIPS: Hello, Peter.
 5 ATTORNEY HENRY: Hello, Paul. There
 6 we go. You can keep that right hand up. Do you
 7 swear or affirm the testimony you are about to give
 8 in this hearing will be the truth, the whole truth,
 9 and nothing but the truth, so help you God.
 10 PAUL PHILLIPS: I do.
 11 ATTORNEY HENRY: And would you, for
 12 the record, state your full name and spell your
 13 last.
 14 PAUL PHILLIPS: Yes. It's Paul
 15 Phillips, P-H-I-L-L-I-P-S.
 16 ATTORNEY HENRY: Thank you.
 17
 18 E X A M I N A T I O N
 19
 20 DIRECT BY ATTORNEY GIANETTI:
 21 Q. Mr. Phillips, if you could please
 22 provide for the board your experience,
 23 qualifications, and credentials in the field of
 24 professional planning.
 25 A. Surely. So I am a principal in the

1 firm of Phillips Preiss. I have been practicing as
 2 a planner in New Jersey for over 40 years. I'm a
 3 licensed professional planner in the state. I'm a
 4 member of the American Institute of Certified
 5 Planners. I hold a master's degree in urban
 6 planning from Hunter College.
 7 My firm currently advises roughly 25
 8 municipalities and boards in New Jersey on matters
 9 relating to planning, zoning, redevelopment, and
 10 affordable housing.
 11 I have appeared and been accepted as an
 12 expert in over 250 municipalities in the state,
 13 including Far Hills, as well as on numerous
 14 occasions in New Jersey Superior Court.
 15 Q. And your license remains current and in
 16 good standing with the State of New Jersey?
 17 A. It does.
 18 ATTORNEY GIANETTI: At this time, Mr.
 19 Chairman, I would ask that Mr. Phillips be accepted
 20 as an expert in the field of professional planning.
 21 CHAIRMAN ROCHAT: Okay. Yes.
 22 ATTORNEY GIANETTI: Thank you.
 23 BY ATTORNEY GIANETTI:
 24 Q. So, Mr. Phillips, if you can just maybe
 25 describe briefly the scope of your engagement in

1 this matter and your investigation and study.
 2 A. Sure. So I was essentially asked to
 3 evaluate the application before the board from an
 4 overall planning perspective with a particular focus
 5 on the variance relief that is being sought.
 6 As part of my due diligence I did a
 7 number of things: I actually walked the site with
 8 Mr. Kennedy. I surveyed the surrounding lands. I
 9 conferred on numerous applications with the
 10 applicant and the development team. I reviewed the
 11 plans and the accompanying application materials. I
 12 reviewed the borough zoning ordinance and Master
 13 Plan. I reviewed the affordable housing agreement
 14 related to this property as well the overall
 15 settlement agreement by the borough. I reviewed the
 16 reports of the board's professionals.
 17 And I think, Craig -- I attended the
 18 initial hearing, I think, on the application or at
 19 least listened to it. And subsequent to that I did
 20 have occasion to read transcripts of the hearings
 21 that took place since that initial hearing.
 22 Q. So maybe to move forward, if you can
 23 now just describe the applicant's development
 24 proposal and its compliance with the zoning and the
 25 relief being requested?

1 A. Sure. So as --
 2 ATTORNEY HENRY: Paul, excuse me.
 3 THE WITNESS: -- the board is aware
 4 we're dealing with a 42-acre tract that fronts --
 5 ATTORNEY GIANETTI: Hold on. Paul,
 6 hold on a second.
 7 ATTORNEY HENRY: You indicated that
 8 you reviewed the transcripts of the hearings that
 9 have been held that you did not attend?
 10 THE WITNESS: Correct.
 11 ATTORNEY HENRY: Did that include the
 12 most recent hearing?
 13 THE WITNESS: I think there was a
 14 hearing, I believe, on November 4th.
 15 ATTORNEY GIANETTI: November 1st.
 16 THE WITNESS: November 1st, yes.
 17 ATTORNEY HENRY: And you have reviewed
 18 a transcript of that?
 19 THE WITNESS: Yes.
 20 ATTORNEY HENRY: Mr. Gianetti, I think
 21 we have not seen that transcript or at least I
 22 haven't.
 23 ATTORNEY GIANETTI: I think we did
 24 just -- I think we did provide it.
 25 Shana, do you have a copy of that?

1 PLANNING BOARD SECRETARY: Not the
 2 November 1st, no.
 3 ATTORNEY GIANETTI: Okay. I will
 4 circulate that.
 5 PLANNING BOARD SECRETARY: Thank you.
 6 ATTORNEY HENRY: Sorry, Paul. I
 7 didn't mean to interrupt --
 8 THE WITNESS: That's okay, Peter.
 9 So again, we're dealing with a 42-acre
 10 tract. The proposal is for a combination of 105
 11 age-restricted townhouses, together with 29
 12 multi-family affordable units, four of them would be
 13 age-restricted. The development would assist the
 14 borough in satisfying a significant portion of its
 15 affordable housing obligation per its settlement
 16 agreement with Fair Share Housing Center.
 17 As Mr. Gianetti indicated this evening,
 18 the property is located within the borough's TH6 IAR
 19 zone. It's a townhouse inclusionary age-restricted
 20 residential zone. And that zoning was created in
 21 furtherance of the settlement agreement that was
 22 entered into between the Borough and Melillo
 23 Equities back in 2019.
 24 So the application largely comports
 25 with the underlying bulk and development regulations

1 in the district, with the exception being building
 2 height. Roughly about a third of the market-rate
 3 age-restricted units are up to about 2 feet higher
 4 than this 36-foot height limit. And as you have
 5 heard, these units are in relation to the buildings
 6 with rear walk-out basements that are located in
 7 down-slope areas of the property.
 8 All of the other remaining
 9 zone-specific standards are met. However, there are
 10 three other variances that the applicant is seeking,
 11 and they are in relation to what I characterize as
 12 generic zone standards, which are applicable to
 13 properties throughout the borough. They're not
 14 zone-specific. And they are for disturbance of
 15 steep slopes in excess of what the ordinance
 16 permits, encroachment within the municipal stream
 17 buffer area limits, and also disturbance within the
 18 municipal scenic corridor area basically fronting
 19 along Route 202.
 20 So in terms of the planning proofs that
 21 would support the variance relief, the board has
 22 already heard from Mr. Kennedy on all the variances.
 23 I think his testimony serves as a foundation or a
 24 framework as to how and why the particular site
 25 conditions are driving the applicant's request for

1 relief.
 2 For purposes of the record, I will
 3 offer specific testimony which I believe supports
 4 Mr. Kennedy's representations and also addresses the
 5 planning proof requirements that are necessary for
 6 this board to grant the relief, consistent with the
 7 municipal land use statute and also relevant case
 8 law.
 9 So with that preamble, I'm going to
 10 start with the building height variance.
 11 And if we -- and, Ron, if you -- there
 12 are probably certain exhibits that would help if we
 13 can put up on the screen. I think you can kind of
 14 follow my testimony and you can put up the exhibits
 15 that have already been entered as part of the
 16 record.
 17 So I'm going to start with the building
 18 height variance. So as noted, there are over 30 of
 19 the townhouse units that have building heights in
 20 excess of 36 feet, which is the limit for the zone.
 21 And, again, this is based on how building height is
 22 measured per your ordinance. And it's measured as
 23 the vertical distance to the highest point of the
 24 building from the average elevation of the
 25 foundation or finished grade. And that's measured,

1 I guess, 6 feet out from the foundation.
 2 So in actuality, the height of these
 3 units with the walk-out condition is marginally
 4 excess -- in excess of the 36-foot high standard.
 5 They range from about 37.3 feet in height to just
 6 over 38 feet in height. And the highest measurement
 7 is 38.07 feet.
 8 So what you have is certain of these
 9 buildings that exceed the height limit by anywhere
 10 from about 1-and-a-third to 2 feet, which I would
 11 characterize as relatively de minimis. But I think,
 12 kind of most importantly, from a planning standpoint
 13 in these -- in all of these down-slope areas, the
 14 applicant is effectively working with the underlying
 15 site grades and topography rather than against the
 16 topography.
 17 So as the board is aware if you look at
 18 this entire site the grades sort of drop from front
 19 to back and in certain areas the topography is more
 20 level, and in other areas it's what I characterize
 21 as somewhat more moderate. And when I say that, I'm
 22 not dealing with steep slope areas, meaning slopes
 23 over 15 percent.
 24 So what the applicant has sought to do
 25 is provide sort of walk-out basements for those

1 townhouses within those down-slope areas. And not
 2 only does this serve as a nice feature for the
 3 units, but I think more importantly, it ultimately
 4 results in less earthwork and grading and fill and
 5 it potentially eliminates the need for, sort of more
 6 retaining walls. I see it as being environmentally
 7 responsible and appropriate.
 8 I would also note that in these
 9 instances with the walk-out basement condition the
 10 rear elevations, despite the de minimis excess
 11 height, they don't face any internal streets from --
 12 so from most perspectives the public is not even
 13 going to see the walk-out condition. But even with
 14 the walk-out basement -- and they all are in
 15 instances with a slope roof -- the rear of these
 16 units appear as two stories.
 17 So I principally -- I would see this as
 18 principally a C(2) type variance where the benefits
 19 would substantially outweigh the detriments. And
 20 the granting of relief, I think, would advance at
 21 least two purposes of the statute. And they would
 22 be Purposes A and J. And A being, essentially, to
 23 guide development in a manner which promotes the
 24 general welfare. And J, basically, in relation to
 25 preventing degradation of the environment.

1 I also believe that the variances can
2 be granted without substantial detriment to the
3 public good or substantial impairment of the zone
4 plan and zoning ordinance.

5 The next variance would be for the
6 steep slope disturbance.

7 BY ATTORNEY GIANETTI:

8 Q. I'm sorry, Paul, before you go to the
9 steep slopes, in connection with that, you recall
10 there was testimony from our architect in response
11 to, I think, a member of the public that, you know,
12 they said if the board required conformance to the
13 height, he asked how many units we would lose. And
14 the response was, we actually wouldn't lose any
15 units just -- it was just grading would change and
16 the -- the units would not look as nice because you
17 would fill the grade but have a pretty exposed
18 basement; do you recall that testimony?

19 A. Yeah, and I would agree with that
20 representation because I think you're correct,
21 Mr. Gianetti. You can just raise the grade by that,
22 you know, 1.3 to 2 feet to eliminate the variance
23 and you also would probably have a less attractive
24 exposure on that rear facade without that walk-out
25 condition. So I would agree with that

1 characterization as well.

2 With regard to slopes -- so there are
3 thresholds of varying degrees for each of the three
4 regulated slope categories in the borough's
5 ordinance. They are from 15 percent to 25 percent,
6 and the ordinance allows you to disturb up to 10
7 percent without seeking relief. And in the 25 to
8 35 percent, and over 35 percent category, the
9 ordinance really doesn't allow any disturbance
10 without a variance relief.

11 If you look at those categories -- and
12 this is shown I think in the grading plan -- so in
13 all instances the applicant exceeds the allowable
14 level of disturbances. On a percentage basis, it's
15 43 percent in the 15 to 25 percent category.
16 Remember, 10 percent is allowed. And I think it
17 ranges in the over 25 to over 35 categories from
18 about 68 to 77 percent.

19 But I will also say that if you look at
20 those last two categories on an absolute
21 square-footage basis, the actual proposed level of
22 disturbance from 25 to 35 is about -- it's just
23 under 8,700 square feet and in the over 35 it's just
24 over 5,400 square feet, just to put that in a
25 context.

1 So if you look at this screen which
2 shows now from the plan set the areas of steep slope
3 and categories which are shown in the purple
4 gradient, you will see that they're pretty much
5 concentrated in the central portion of the site and
6 there -- there is also some slopes generally to the
7 rear portion of the site. The rear portion is not
8 being disturbed at all. It's pretty much within the
9 centrally located areas where the slope disturbance
10 is proposed. And in the area that basically has the
11 largest purple area, what is essentially proposed in
12 that area is a -- is a large detention basin.

13 I think, as the board I think can
14 appreciate, I know that there was a site inspection
15 by members of the board. As I mentioned, I went out
16 and walked the site. I mean, these slopes, in my
17 mind, clearly are man-made slopes. This area, if
18 you just look around at the rest of the site, it's
19 not part of what I characterize as the natural site
20 topography. It's apparent to me that there has been
21 previous disturbance in this area to accommodate
22 some prior usage of the -- of the premises.

23 So I think, bottom line here, in terms
24 of disturbance, I sort of see no inherent benefit in
25 protecting these man-made slopes as would be the

1 case for natural slopes where, you know, preserving
2 natural slopes are good in terms of -- of preventing
3 erosion and -- and changes to natural drainage
4 patterns and preserving natural vegetation or
5 forest.

6 In addition, I think on this site there
7 are other environmentally sensitive lands that are
8 more worthy of protection than, again, these
9 previously disturbed lands. So I kind of see this
10 as kind of a combination of C(1) and C(2) type
11 variance.

12 With regard to the latter, I think that
13 the benefits of granting the relief would outweigh
14 the detriments and I think there are at least two
15 purposes in the statute that would be advanced:
16 Purpose G, which is to provide sufficient space in
17 appropriate locations for a variety of uses. In
18 this case, by being able to utilize these areas for
19 detention, it furthers the plan before you, which is
20 consistent with the underlying zoning. And then
21 Purpose M, which really addresses, sort of the
22 encouragement of a more efficient use of land. And
23 lastly, I see no substantial detriment to either the
24 public good or the zone plan if this variance is --
25 is granted.

1 The third variance has to do with
2 disturbance within the municipal stream corridor
3 buffer. And perhaps we can put an exhibit up which
4 shows those limits. And as you have heard in prior
5 testimony --

6 Q. Actually, I think on this plan, Paul,
7 that might be the orange line.

8 A. Yes. Correct. It is. I always have
9 trouble finding the orange line. Indeed, it is --
10 it is on this plan. And now it's been -- you will
11 see a close-up of it.

12 So as you heard from Mr. Kennedy, the
13 relief is triggered by the fact that the ordinance
14 stipulates that the 100-foot buffer be measured from
15 the banks of the water course and also include
16 contiguous wetlands and slopes greater than
17 12 percent.

18 So when you plot the buffer limits, as
19 you can see from the exhibit, they actually extend
20 beyond the state-regulated wetlands areas, the
21 wetlands transition areas and the riparian zone.
22 You also see that a portion of the municipally
23 regulated stream buffer also encompasses some of the
24 man-made slopes which I just discussed.

25 So I think really the issue here

1 becomes, you know, can you reasonably meet the
2 intent of the inclusionary affordable housing zone
3 and also provide the unit yield which will help the
4 borough satisfy the affordable housing obligation
5 without there being some disturbance within these
6 areas that are contiguous to but, again, outside the
7 state-regulated wetland buffer and riparian zones.
8 And I asked that question also recognizing that, as
9 you can see, that much of the municipal stream
10 corridor buffer will actually be preserved under the
11 plan, particularly the areas sort of above or to the
12 east of the designated state-regulated wetlands and
13 riparian, which are in the black and dotted black
14 shown on the plan.

15 So in my opinion, there really are no
16 other areas on the site where you would want to
17 consider alternative construction or disturbance. I
18 don't think you would want to reduce the setback
19 from Route 202 or place dwelling units within the
20 scenic corridor. I don't think it would be prudent
21 to extend development beyond any of the perimeter
22 setback areas which the applicant complies with.

23 I see the disturbance here as sort of
24 the path of least resistance. And I think it makes
25 the most sense holistically for this tract, given

1 the underlying zoning.

2 And I think really important here -- I
3 think there's really a mitigating factor here, and I
4 know that Mr. Kennedy discussed this, but the
5 applicant is actually providing a conservation
6 easement on additional lands beyond the municipal
7 stream corridor buffer extending all of the way up
8 to that easterly lot boundary. And that also allows
9 for a connection to the conservation lands on three
10 of the adjacent single-family lots which are on
11 Castle Court. And three of those -- there are four
12 lots, two of which have been improved, but three of
13 the lots actually have conservation lands and
14 easements, which when connected with what's proposed
15 here, beyond the limits of the municipal stream
16 corridor buffer, what you basically end up with is a
17 single, large, contiguous conservation area that,
18 again, encompasses multiple properties, which I
19 think would more than compensate for the variance
20 sought.

21 So I see this as sort of a combination,
22 also C(1) C(2) variance, and with regard to the
23 latter in addition to --

24 Q. Just for the record, Paul, we have
25 Exhibit A-2 up on the screen, correct?

1 A. Yes, that's A-2. And it shows the
2 subject property relative to the properties I just
3 referred to in the four-lot subdivision off Castle
4 Court.

5 So in addition to Purpose G, which I
6 just described, I think Purposes C and J would be
7 advanced if this variance is granted. And they
8 would basically rely to providing open space and
9 promoting open space conservation. And with this
10 variance I also see no substantial detriment to the
11 public good or -- or the zone plan, again, if this
12 -- if this relief is granted.

13 And then the last variance is in
14 relation to the below-grade groundwater recharge and
15 that area, as you can see on the plans which I think
16 Ron is highlighting with his cursor --

17 Q. We have Exhibit A-14 up on the screen?

18 A. Yeah, which is the site plan. And it
19 is located within the limits, as you can see, if we
20 can zero in on that within the 200-foot scenic
21 corridor area.

22 And I think, as you heard from Mr.
23 Kennedy, this is being driven by the fact that there
24 really is no other viable location on the tract
25 which can achieve, sort of the acceptable levels of

1 recharge. And I know others testified, including
2 Mr. Kennedy, that there has been extensive testing,
3 hydro-geological testing on the property and, again,
4 the results actually showed that there are different
5 geological formations on the property and much of
6 the site actually is characterized by shallow depth
7 to bedrock in areas with poor, sort of infiltration
8 capabilities.

9 I see this as a classic C(1) type
10 variance, but I also see some significant mitigation
11 or mitigating factors here. First, there are no
12 above-ground structures being proposed within the
13 scenic corridor, which I think is -- is important.

14 Secondly, the recharge area is actually
15 located on a portion of the property which is not
16 currently heavily vegetated. It's mostly open --
17 large, open lawn area. So there are no, sort of
18 heavily treed or forested areas that have to be
19 removed. There is only a small number of mature
20 trees that actually will have to be removed. I
21 think it's roughly about a dozen.

22 And then lastly, as you have seen from
23 the representation of the landscape plans, the
24 applicant is proposing extensive new plantings on
25 all sides of this recharge area along the Route 202

1 frontage, along either of the ends, if you will, and
2 also in the area between the limits of the recharge
3 area and the nearest townhouses which, again, are
4 300 feet removed from Route 202.

5 So I think certainly the applicant
6 is -- has done its best to meet the spirit of the
7 ordinance. And I think the scenic view shed will
8 largely be preserved, which is what I believe the
9 ordinance intended. So I think for all of these
10 reasons, I think this variance can be granted also
11 without substantial detriment to the public good or
12 substantial impairment of the zone plan.

13 And then there's just one final point
14 that I would like to offer for the board's
15 consideration, and that is that in -- actually in
16 COAH's second-round rules -- now the second-round
17 rules were the rules that were not invalidated by
18 the courts, and everyone dealing with affordable
19 housing still relies on second-round rules. They
20 actually have a provision which states that
21 municipalities be expected to cooperate with
22 inclusionary housing developers in granting -- and
23 they used the term reasonable variances to construct
24 the inclusionary development.

25 I think in that context, and based on

1 all of the testimony provided, I think the variances
2 sought would meet that reasonable test, again, given
3 the testimony and the circumstances involving this
4 particular tract, this particular zoning and the
5 proposal before the -- before the board.

6 And I think, Craig, that I have covered
7 all of the relief that is being sought.

8 Q. Yes, Mr. Phillips. Thank you.

9 And in addition, you know, you
10 mentioned you reviewed the affordable housing
11 agreement between Melillo Equities and the borough.
12 You are aware there was a concept plan that was
13 attached to that settlement agreement?

14 A. Yes, I am.

15 Q. And in your opinion, is that concept
16 plan substantially consistent with the site plan as
17 being presented here as part of this application?

18 A. I think it's a fair characterization.

19 There are some areas where you can see where there
20 are distinctions but, in my opinion, that's not
21 unusual when you get into the details of basically
22 engineering a site plan and laying out the
23 development with the benefit of more detailed
24 engineering information.

25 But I think that characterization is --

1 is -- is accurate.

2 Q. Thank you.

3 ATTORNEY GIANETTI: That's all I have
4 for the direct presentation of Mr. Phillips. If
5 there are any questions from the board or the board
6 professionals?

7 CHAIRMAN ROCHAT: I guess that's a no?

8 BOARD PLANNER: Mr. Chairman, I don't
9 have any questions for Mr. Phillips on his
10 testimony.

11 CHAIRMAN ROCHAT: Okay.

12 BOARD ENGINEER: Mr. Chairman, I also
13 do not have any questions for Mr. Phillips on his
14 testimony.

15 CHAIRMAN ROCHAT: Okay. Any from the
16 board, any questions?

17 BOARD MEMBER: No.

18 BOARD MEMBER: No.

19 CHAIRMAN ROCHAT: I will now open it
20 up to the public for questions for Mr. Phillips.

21 PLANNING BOARD SECRETARY: If there's
22 anyone in the audience that has any questions for
23 Mr. Phillips, please raise your hand.

24 We have an Arthur Owens. Mr. Owens, if
25 you would unmute yourself.

1 ATTORNEY OWENS: Hi, good evening. My
2 name is Arthur Owens from Lum, Drasco & Positan.
3 I'm here with my co-counsel, Keith McKenna. We're
4 attorneys for Ken and Susan Voorhees who reside at 5
5 Castle Court Road. I do just have a few questions
6 concerning the planning testimony that we just
7 heard.

8
9 EXAMINATION

10
11 CROSS BY ATTORNEY OWENS:

12 Q. First of all, I would like to ask about
13 the design standards that were put in place to
14 incorporate and integrate the affordable housing
15 units into the market-rate units and what was done
16 in terms of overall site design to incorporate the
17 market-rate and the affordable housing?

18 A. So I think, as you're aware, that
19 under this plan the affordable units are being
20 accommodated in a separate building. The bulk of
21 those units are affordable family units. And the
22 age-restricted townhouse units will be separate so
23 that there's no integration of units. That is the
24 plan before the board.

25 And there's nothing that I'm aware of

1 that would require the developer, per the zoning
2 standards, to provide what -- where I think you're
3 going -- in terms of integration of the affordable
4 market-rate units within the same buildings.

5 Q. Okay. Was the presence of any active
6 contaminated sites in the vicinity considered
7 incorporated into the design of the site?

8 A. I can't answer that question. I
9 didn't -- I did not study that at all and I -- I
10 don't know the answer to it.

11 Q. Was the potential identification of the
12 site having any historical significance considered
13 in connection with the design?

14 A. Not to my knowledge but -- you know,
15 certainly not to my knowledge.

16 Q. What other planning studies, documents,
17 including the state plan -- the Master Plan were
18 considered as part of the design process?

19 A. Well, I think the major impetus for
20 the design process was twofold. There was a
21 settlement agreement between Melillo Equities and
22 the borough that had a conceptual plan attached to
23 it and memorialized as part of the settlement
24 agreement and I think that was sort of the starting
25 point.

1 And then subsequent to the settlement
2 agreement, there was implementing zoning adopted,
3 which created this age-restricted inclusionary
4 townhouse zone and, provided basically standards for
5 development, which to some extent were modeled after
6 the conceptual plan.

7 The engineer basically laid out the
8 site plan to, in an attempt to comply or comport
9 with the underlying zoning wherever possible. That
10 was basically the impetus for the design. Those
11 two -- the settlement agreement concept plan and the
12 underlying zoning.

13 Q. Okay. I believe your testimony was
14 that 30 percent of the units would need to be
15 included in the height variance request?

16 A. Yes, over 30 of the 105, basically
17 have that walk-out condition.

18 And again, they exceed the 36-foot
19 height by roughly about 1-and-a-third feet to 2
20 feet, depending on the location on the tract.

21 Q. And in your experience as a planner, is
22 roughly 30 percent more common to get the -- that
23 variance relief?

24 A. Well, I think the fact that it's
25 30 percent of the overall market-rate townhouses is

1 really related to the fact that when the -- the site
2 plan was designed and the units were designed, the
3 attempt was made to basically work within the
4 existing topography. And it's not unusual in my
5 experience to see where you have a down-slope that
6 within -- within a townhouse prototype or product,
7 this walk-out condition is very frequently seen
8 because it provides an amenity for the unit and it
9 also doesn't work against the land in terms of
10 having to do more grading and fill and retaining
11 walls and et cetera.

12 So I don't see it as an unusual
13 condition. And also the fact that it's 30 percent
14 of the townhouses really relates to that down-slope
15 condition. The applicant's designer looked at where
16 it made the most sense to do it on the property. No
17 more, no less.

18 Q. Would there have been alternative
19 options to have less than 30 percent or less than 30
20 of the units?

21 A. Well, the alternative option -- I
22 think Mr. Gianetti asked me the direct question --
23 would have been simply to basically grade up in
24 those areas so that the -- the applicant can conform
25 to that 36 foot, but in -- in doing that you'd --

1 you probably wouldn't have the same aesthetically
2 appealing rear elevation with the walk-out basement.

3 I think you could have eliminated the
4 basement without losing any -- and the condition and
5 the height variance without losing units. I think
6 this is clearly a better planning alternative which
7 is envisioned under the C(2) section of the MLUL for
8 granting bulk variance relief.

9 Q. All right. As to the issue of
10 disturbance of steep slopes, are you aware of any
11 NJDEP regulations that address disturbance of steep
12 slopes?

13 A. Not in -- not anything outside the
14 regulated areas in wetlands and riparian where there
15 may be slopes there, but not independently on steep
16 slopes. There are no NJDEP steep-slope regulations
17 that apply generically to municipalities. They
18 don't have jurisdiction as they do over wetlands and
19 riparian and flood hazard.

20 Q. But none were considered in connection
21 with this project, I guess is what you're saying?

22 A. There are none, as far as I'm
23 concerned.

24 Q. Does the Master Plan address
25 disturbance of steep slopes?

1 A. Yes. The master plan has a -- I think
2 a conservation element. And certainly there's
3 language in the Master Plan and policy objectives in
4 the Master Plan that deal with preservation as a
5 policy matter, preservation of steeply-sloped areas.

6 But again, I think what's unique here
7 is that the overwhelming majority of disturbances
8 proposed in areas that have been previously
9 disturbed, basically man-made slopes, and I think, a
10 distinction from a planning standpoint can be made.

11 Q. And you have reviewed the current
12 Master Plan, correct?

13 A. I have.

14 ATTORNEY OWENS: All right. For the
15 moment, I don't think I have any more questions.
16 I'll turn it over to other members of the public,
17 and I may have some follow-ups.

18 CHAIRMAN ROCHAT: Okay. Thank you,
19 Mr. Owens.

20 ATTORNEY OWENS: Thank you for your
21 time.

22 PLANNING BOARD SECRETARY: If there's
23 any other members of the public for questions of Mr.
24 Phillips, please raise your hand.

25 Chairman Rochat, I don't see any other

1 questions.

2 ATTORNEY GIANETTI: I just have a
3 couple follow-up questions on redirect, Mr.
4 Chairman.

5 CHAIRMAN ROCHAT: All right. Yeah.
6 I'd like to -- Mr. Owens, last chance. I would like
7 to close the comment for Mr. Phillips.

8 Mr. Gianetti, go ahead.

9
10 EXAMINATION

11
12 REDIRECT BY ATTORNEY GIANETTI:

13 Q. Mr. Phillips, I guess, starting at the
14 last point in the Master Plan concerning -- talking
15 of steep slopes and disturbance of steep slopes, as
16 far as you know, that's nothing new in the Master
17 Plan, correct?

18 A. No. It's been part of the -- the
19 Master Plans going back. And I reviewed the
20 reexamination report. It's very clear that in the
21 Borough of Far Hills' Master Plan preservation of
22 slopes has been a clear policy objective probably
23 for some time.

24 Q. And as part of the town's Housing
25 Element and Fair Share Plan, they recently amended

1 the Master Plan to call for this inclusionary
2 development; is that correct?

3 A. That is correct. And I believe there
4 is a Housing Element and Fair Share Plan that was, I
5 think, adopted and I think it was 2019, which also
6 highlights this particular property as being one of
7 the inclusionary sites, basically intended for the
8 borough to, in part, satisfy its affordable housing
9 obligation. And also cited is the total number of
10 units and the total number of affordable units as
11 proposed by the applicant as part of this plan.

12 Q. So when this board and this governing
13 body amended the Master Plan concerning the --
14 including this site for inclusionary development, it
15 was well aware of the existing steep-slope
16 requirements, correct?

17 A. I mean, I can't answer that factually.
18 I presume that that's correct, Craig, but I
19 can't -- I can't factually say with 100 percent
20 certainty, that that's the case.

21 Q. I guess from a planning perspective,
22 though, don't they, when there's, for instance
23 like -- if they don't change something, you assume,
24 you know, they're aware of it when they adopt it
25 going forward?

1 A. Look. All I can say is I would assume
2 that people responsible for, you know, the
3 affordable housing plan amending the zoning had
4 some, you know, sense that this site did have some
5 steeply sloped areas. And then beyond that I can't
6 say.

7 Q. And with respect to the integration of
8 the affordable rate -- affordable housing units and
9 market-rate units, there was an affordable housing
10 agreement that contemplated the development as
11 proposed with the affordable apartments separate
12 from the townhouse; is that correct?

13 A. Yeah, that's clearly set forth in the
14 affordable housing agreement between the parties.

15 Q. And Fair Share Housing Center also had
16 a settlement with the borough as well?

17 A. That is correct.

18 Q. And did that call for this project as
19 well?

20 A. My recollection is, it did.

21 Q. And both the Fair Share Housing
22 settlement agreement, as far as you know, was the
23 Fair Share Housing settlement agreement and the
24 Mellillo Equities settlement agreement with the
25 borough approved by the court at a fairness hearing?

1 on this site and specifically the affordable units
2 without some variance relief being granted, no.

3 Q. But my question was about the specific
4 variances that we just discussed.

5 A. My answer was about the specific
6 variances just discussed.

7 Q. So your testimony is that the
8 affordable housing component necessitated the
9 variance relief that you're seeking here today?

10 A. The entire inclusionary development,
11 meaning both the -- everything, the market-rate
12 townhouses, the affordable -- everything. That is
13 the context of my response.

14 Q. But I guess my question was, is
15 there -- would there have been an alternative design
16 that could have addressed the affordable housing
17 component and not required the variance relief that
18 you're seeking today?

19 A. In my opinion, not consistent with the
20 settlement agreement, the Housing Element and Fair
21 Share Plan, and the underlying zoning designed to
22 effectuate those -- those documents.

23 MR. OWENS: Okay. I have no
24 questions.

25 CHAIRMAN ROCHAT: All right. Thank

1 A. That's my understanding.

2 ATTORNEY GIANETTI: That's all I have
3 for redirect.

4 CHAIRMAN ROCHAT: Okay. Any other
5 questions?

6 PLANNING BOARD SECRETARY: Chairman
7 Rochat, we have Mr. Owens with another question.

8 CHAIRMAN ROCHAT: Okay. Open up
9 public comments. Mr. Owens?

10 MR. OWENS: Thank you. Yes, just one
11 follow-up.

EXAMINATION

15 RECROSS BY ATTORNEY OWENS:

16 Q. Mr. Phillips, would there have been an
17 alternative design that could have addressed the
18 need -- that could have addressed the affordable
19 housing component without the need for the variances
20 that we're discussing today?

21 A. I don't think there could have been a
22 design that could have been effectuated to the level
23 of basically meeting the intent of the zoning, the
24 housing element, the settlement agreement, the
25 affordable housing plan, in terms of the total yield

1 you, Mr. Owens.

2 MR. OWENS: Thank you.

3 CHAIRMAN ROCHAT: Close public
4 comment. Mr. Gianetti, do you have --

5 ATTORNEY GIANETTI: No, we have
6 nothing further to present in terms of witnesses.
7 You know, as we indicated, Mr. Kennedy's office is
8 going to be providing testing results -- soil
9 testing results to Mr. Ferriero's office, but we
10 view it as kind of confirmatory information. We
11 don't plan to present Mr. Kennedy any further, you
12 know, unless there's an issue with the soil sampling
13 test results.

14 So I think from our standpoint, you
15 know, we would be open to having it open to public
16 comment or at least beginning public comment to the
17 extent that we can.

18 CHAIRMAN ROCHAT: What was that? Go
19 ahead.

20 ATTORNEY GIANETTI: I don't know which
21 part you didn't hear me on but --

22 CHAIRMAN ROCHAT: You're kind of
23 breaking up a little bit.

24 ATTORNEY GIANETTI: Yeah, I have
25 something that says your network bandwidth is low

1 and your screen is kind of small right now. I don't
 2 know if anybody else has that.
 3 But we have nothing further to present
 4 witness-wise. As I noted, we have Mr. Kennedy's
 5 office going to be providing soil sampling results
 6 to Mr. Ferriero's office which we, you know, believe
 7 address the outstanding comments in his review
 8 letter. So we don't anticipate having to call him
 9 at the next meeting.
 10 So in our mind I think, you know, we
 11 can start public comment this evening and then move
 12 to, if we can't finish, to the next meeting.
 13 CHAIRMAN ROCHAT: So you're saying,
 14 not tonight, though, you don't want the public to
 15 comment tonight?
 16 ATTORNEY GIANETTI: Well, it's 9:30,
 17 so if we want to start and to whatever point we end,
 18 then carry it to, if we don't finish, carry it to
 19 the December 6th for them to continue.
 20 CHAIRMAN ROCHAT: Mr. Henry?
 21 ATTORNEY HENRY: Yes.
 22 CHAIRMAN ROCHAT: Mr. Henry, what do
 23 you think; is that appropriate?
 24 ATTORNEY HENRY: Well, I think you
 25 can -- you can do either in the abstract. I mean,

1 under oath. As you indicated at the beginning, have
 2 to be available on the meeting in both video and
 3 audio. They can present witnesses if they have
 4 witnesses to present. We have gotten to that time.
 5 I think it probably behooves us, after
 6 these many months, to take advantage of at least
 7 some of that time tonight, unless the board has
 8 reason to call it a night.
 9 CHAIRMAN ROCHAT: It's 9:38 right now.
 10 Yeah, might as well open it up to public comments,
 11 questions, or testimony.
 12 VICE-CHAIRMAN RINZLER: If I may?
 13 CHAIRMAN ROCHAT: Go ahead, Rick.
 14 VICE-CHAIRMAN RINZLER: Just a quick
 15 question, at what point will there be discussion
 16 regarding Mr. Banisch's letter about the name of the
 17 neighborhood being changed?
 18 ATTORNEY HENRY: Well, maybe that --
 19 if that's a question that you have for the
 20 applicant, maybe we should deal with that before we
 21 go to public comment or testimony.
 22 ATTORNEY GIANETTI: Sure. Yeah, we
 23 understand there will be a proposed name change. We
 24 saw the recommendations. We can submit what the
 25 name would be in advance of the next meeting and/or

1 it is 9:30, now going on towards 9:40. I don't know
 2 at what point the board would want to wrap up
 3 tonight's meeting.
 4 There is nothing wrong with starting
 5 public comment. You can do that. I think it's a
 6 matter of trying to continue to move this ball
 7 forward. The applicant has been before the board
 8 for some time. They certainly are anxious to
 9 conclude the matter. I think probably everybody who
 10 has been involved in it is looking forward to that
 11 day.
 12 But before we can get there, there are
 13 a number of people who have been told more times
 14 than anybody would care to hear, I think, that
 15 things that they wanted to say or things that they
 16 wanted to express were not appropriate at the time
 17 questions were being asked. And we now have finally
 18 arrived at that time when it is appropriate for
 19 people to be heard on either their comments, their
 20 conclusions, their issues, their problems, their
 21 concerns. They can testify if they have facts to
 22 offer that are appropriate to go into the record as
 23 facts, as distinguished from mere comment and
 24 opinion.
 25 If they testify, they have to do that

1 as part of, you know, again, the developer's
 2 agreement, whichever the board decides. It won't be
 3 the --
 4 VICE-CHAIRMAN RINZLER: Right, I
 5 understand --
 6 ATTORNEY HENRY: You may want to have
 7 that before the last meeting so that the board can
 8 be at least weighing in on it.
 9 BOARD PLANNER: Yeah. And I suggest,
 10 you know, my comments and my suggestions were my
 11 own. And I don't know how they landed or how they
 12 resonate with the board. I don't know if board
 13 member comments have anything to say about those
 14 suggestions tonight or --
 15 VICE-CHAIRMAN RINZLER: They were
 16 good. I mean, I thought they were good.
 17 BOARD PLANNER: Well, to whatever
 18 extent anyone else has a comment, I think that might
 19 be useful to the applicant and his consideration of
 20 what he needs to make for a name change.
 21 ATTORNEY HENRY: If we're on that kind
 22 of subject, did anything ever get produced in the
 23 way of detail on the mailboxes?
 24 BOARD PLANNER: Not so far as I know.
 25 COUNCILWOMAN TWEEDIE: I think there

1 was some discussion that the post office regulations
 2 would be limiting on those as well.
 3 ATTORNEY HENRY: Okay. Whatever is
 4 proposed has to be approved by both the USPS and the
 5 local post office.
 6 COUNCILWOMAN TWEEDIE: Right.
 7 ATTORNEY HENRY: Presumably it would
 8 be worthwhile to see what is being proposed in its
 9 detail.
 10 Is that likely to be forthcoming,
 11 Mr. Gianetti?
 12 ATTORNEY GIANETTI: Well, I don't
 13 know. I mean, that's not typically something you
 14 get the approval for prior to site plan approval.
 15 ATTORNEY HENRY: No, I'm talking about
 16 your presenting what you intend to propose so that
 17 the board can react to it.
 18 ATTORNEY GIANETTI: Well, as to the
 19 detail for the mailboxes?
 20 COUNCILWOMAN TWEEDIE: I think we asked
 21 at some point.
 22 ATTORNEY HENRY: At the last hearing.
 23 COUNCILWOMAN TWEEDIE: We did ask for
 24 more detail on what you were planning.
 25 ATTORNEY HENRY: Yes.

1 that's any site plan provision in dealing with
 2 mailboxes --
 3 ATTORNEY HENRY: You could propose a
 4 gang mailbox that's 25 feet high and has a ladder up
 5 the side --
 6 ATTORNEY GIANETTI: I don't think the
 7 post office would approve that --
 8 ATTORNEY HENRY: -- people who are
 9 living age-restricted housing climbing ladders to
 10 get their mail.
 11 ATTORNEY GIANETTI: I would think the
 12 post office would reject that proposal.
 13 ATTORNEY HENRY: Could be. But I
 14 think the board should have first crack at it.
 15 Presumably, it's going to be relatively
 16 straightforward. It would be a kind that, I
 17 suspect, is commercially available. It will be
 18 something where they will see what it's going to
 19 look like and perhaps see how it will be positioned
 20 in a way that will allow them to say, okay, that's
 21 not going to be an unfortunate addition to the
 22 landscape.
 23 If you think there's something wrong
 24 with asking the board what it thinks about it, I'm
 25 not sure why.

1 ATTORNEY GIANETTI: Well, again, I
 2 guess on the detail of the mailboxes, I thought we
 3 identified the location. But in my experience,
 4 that's typically something done as part of
 5 resolution compliance. We don't -- we can show the
 6 board but in the end --
 7 ATTORNEY HENRY: It's hard to comply
 8 with something that hasn't been established in the
 9 first place.
 10 ATTORNEY GIANETTI: Well, yeah, but we
 11 could show you something and then the post office
 12 could say, change it. I don't think that
 13 necessarily means we have to come back to the board.
 14 ATTORNEY HENRY: No, but you can show
 15 the board something that they want you to change.
 16 ATTORNEY GIANETTI: I'm sorry, say that
 17 again?
 18 ATTORNEY HENRY: You can show
 19 something to the board and the board may ask you to
 20 change it.
 21 ATTORNEY GIANETTI: Well, I don't know
 22 if -- I mean, under what purview?
 23 ATTORNEY HENRY: It's a site plan
 24 application. That's part of your site plan.
 25 ATTORNEY GIANETTI: I don't think

1 ATTORNEY GIANETTI: Well, I mean, only
 2 because if we're saying the board has a say in it,
 3 so let's say the board says, yes, we like that.
 4 Then the post office says, no, we want this. Does
 5 that mean we have to come back to the board?
 6 ATTORNEY HENRY: I think that would
 7 have to be a part of the discussion with the board.
 8 And it could be that the board is ultimately going
 9 to have to yield to whatever the post office is
 10 going to approve. But it doesn't mean that they
 11 can't at least try to be happy with what you submit
 12 to the post office.
 13 ATTORNEY GIANETTI: Well again, like I
 14 said these things are normally done with resolution
 15 compliance. I think Mr. Banisch and Mr. Bolio have
 16 a pretty good handle on what the board likes and
 17 doesn't like.
 18 And so when we get the sign-off from
 19 the post office -- or presenting it to the post
 20 office, we can show it to them as part of resolution
 21 compliance.
 22 ATTORNEY HENRY: Well, I guess when
 23 you were asked by the board last meeting to present
 24 this, that might have been a better time, if we're
 25 going to have an argument about your willingness.

1 ATTORNEY GIANETTI: If the board says
 2 they want to see a mailbox detail prior to the next
 3 meeting, we will show them a mailbox detail. But we
 4 can't, you know, subject to whatever the US -- you
 5 know, the post office is going to approve.
 6 ATTORNEY HENRY: They understand
 7 that's where the ultimate authority lies.
 8 ATTORNEY GIANETTI: Okay.
 9 CHAIRMAN ROCHAT: And do you want to
 10 go back to the naming of the development? How are
 11 we going to handle that?
 12 ATTORNEY GIANETTI: Well, we'll submit
 13 the proposed name prior to the next meeting.
 14 CHAIRMAN ROCHAT: I don't know if the
 15 council would want to have their --
 16 ATTORNEY GIANETTI: Well, that's why
 17 my suggestion was -- typically how it was done in
 18 other applications, it's part of the developer's
 19 agreement, you know, agreeing upon the name and, you
 20 know, it's signed off on by the borough council as
 21 part of the developer's agreement.
 22 CHAIRMAN ROCHAT: Okay. But we would
 23 like to hear something.
 24 BOARD PLANNER: Well just dealing with
 25 it, since the board has been operating under the

1 assumption that this application or this site was
 2 going to be called the Residences at Overleigh and
 3 so has the public who's been in attendance, it might
 4 be good idea to button it up for everybody here who
 5 has been involved with interest up until this point
 6 in time.
 7 I don't disagree with Mr. Gianetti, it
 8 being the subject of a developer's agreement, but I
 9 think it makes sense for the board to say something
 10 about it, if it chooses to.
 11 MEMBER LEWIS: That's because it's so
 12 bad --
 13 ATTORNEY GIANETTI: I'm sorry, what was
 14 that Board Member Lewis? I couldn't hear that.
 15 MEMBER LEWIS: It's a poor choice --
 16 ATTORNEY HENRY: You're breaking up
 17 and hardly hearable.
 18 MEMBER LEWIS: My opinion, the name is
 19 a poor choice.
 20 ATTORNEY GIANETTI: Something was a
 21 poor choice? So you're saying that "Residences at
 22 Overleigh" was a poor choice?
 23 MEMBER LEWIS: Yes.
 24 ATTORNEY HENRY: Okay.
 25 MEMBER LAYTON: I was thinking of

1 something with the word "meadow" in it. "Meadows in
 2 Far Hills" or "Far Hills Meadows." I mean, there's
 3 going to be a lot of greenery. And I'm not exactly
 4 sure about the landscaping, but that was something I
 5 was thinking and not just always do something about
 6 horses or the hunt, do something different.
 7 COUNCILWOMAN TWEEDIE: Well, we can
 8 wait and see what else they come up with for the
 9 next meeting, which is December 6th.
 10 MEMBER LAYTON: Right.
 11 CHAIRMAN ROCHAT: Any other board
 12 members have a comment on this?
 13 I would like to open it up to the
 14 public.
 15 ATTORNEY GIANETTI: If I may, Chairman
 16 and Mr. Henry, I guess, and this may have been
 17 discussed at a prior meeting, but kind of the ground
 18 rules with respects to public comment? And also if
 19 there is any time limit on the public comment?
 20 Especially given a lot of the public questioning has
 21 contained public comment, so I think we're well
 22 aware of some of the public comment already.
 23 CHAIRMAN ROCHAT: We do have a
 24 five-minute rule.
 25 BOARD PLANNER: Mr. Chairman, I'd like

1 to also just -- to give everybody a sense of what to
 2 expect this evening, do you have an idea of what
 3 time you would want to basically call it a day and
 4 end the proceedings this evening?
 5 COUNCILWOMAN TWEEDIE: We usually
 6 finish like 10:30 and -- but we need to allow time
 7 to finish up any correspondence and things on our
 8 agenda, so I would say no later than 10:15.
 9 CHAIRMAN ROCHAT: Sounds good.
 10 ATTORNEY HENRY: Mr. Chairman, you can
 11 set time limits, which I think you were in the
 12 middle of saying, but typically have been five
 13 minutes. Though I think it's appropriate that,
 14 depending on what's being discussed and the way in
 15 which someone is presenting their positions on this,
 16 that may have to be somewhat flexible rather than
 17 just cutting someone off in the middle of their
 18 presentation.
 19 The other thing is that I would hope
 20 people have, in the course of these meetings, been
 21 able to assemble their thoughts and their -- the
 22 content of what their presentations will be and
 23 that, for the most part, people will have one
 24 opportunity to make their case or to present their
 25 evidence or to present their opinions and not come

1 back around a second or a third time, but put it all
 2 into one appearance before the board.
 3 And secondly, on the question of
 4 timing, I think people should be cautious that they
 5 not be repetitive about things that have been
 6 presented. Somebody can say, I agree with what the
 7 person before me just said and then move on to
 8 anything new that they want to add, rather than
 9 saying, I agree with the person and then repeating
 10 it all.
 11 Just a matter of trying to keep this
 12 somewhat efficient in moving forward, but not doing
 13 anybody out of the opportunity of letting their
 14 sense of this application be heard by the board.
 15 CHAIRMAN ROCHAT: That sounds good.
 16 COUNCILWOMAN TWEEDIE: So, Tom, are we
 17 agreeing on, say five minutes with an additional
 18 minute or two with a warning that you have reached
 19 the end?
 20 CHAIRMAN ROCHAT: Yeah, that's what I
 21 was thinking. Like Mr. Henry said, we, you know, I
 22 respect that they have an opinion but don't want to
 23 keep repeating the same thing over and over.
 24 COUNCILWOMAN TWEEDIE: Right.
 25 CHAIRMAN ROCHAT: We would like get

1 through this.
 2 COUNCILWOMAN TWEEDIE: Just so we have
 3 some ground rules.
 4 CHAIRMAN ROCHAT: Sure. So I would
 5 like to open it up to the public.
 6 PLANNING BOARD SECRETARY: Any members
 7 of the public that wish to make a comment, please
 8 raise your hand. I'll take you in order.
 9 Mr. Owens.
 10 ATTORNEY OWENS: Yeah, I'd just like
 11 to be heard on sort of the procedural issue and sort
 12 of address the five-minute rule. I communicated
 13 this to the board attorney already, but my client
 14 has retained a proposed expert that would like to
 15 provide some counter-testimony. It's a planning
 16 expert. I think we'll obviously be respectful of
 17 everyone's time, but I would request somewhat relief
 18 from the five-minute suggestion.
 19 And I would also request that we be
 20 able to present that at the December 6th meeting.
 21 My anticipation is that it would be in the
 22 30-minutes to 45-minute range, certainly no more
 23 than that. And again, we'll obviously be respectful
 24 and certainly do not want to waste anyone's time.
 25 And the other point I wanted to note is

1 just in terms of beginning the public comment period
 2 now, I know that at some points during the two
 3 professionals -- the discussions involving the two
 4 professionals tonight, there was at least a
 5 suggestion that the applicant was not going to
 6 complete their presentation at today's hearing, so
 7 it's at least possible that members of the public
 8 may have logged off already, understanding that the
 9 public comment period wasn't going to be today.
 10 So I would -- and I do notice that the
 11 number of participants has decreased -- so I do want
 12 to make sure that we can repeat some of these
 13 instructions to the public at the next hearing.
 14 CHAIRMAN ROCHAT: Yes, there will be
 15 an opportunity for others to comment, yes.
 16 ATTORNEY GIANETTI: If I may, Mr.
 17 Owens, do you have your planner with you this
 18 evening?
 19 ATTORNEY OWENS: We do.
 20 ATTORNEY GIANETTI: And who is your
 21 planner?
 22 MR. OWENS: Barbara Woolley-Dillon,
 23 who is present with us today.
 24 But as I said to the board, I would
 25 like to have the opportunity to present her

1 testimony at the December 6th hearing.
 2 ATTORNEY GIANETTI: And my suggestion,
 3 Mr. Henry, Mr. Chairman, is in the normal course
 4 when there's an objector counsel with objector
 5 witnesses, they would kind of go first, you know,
 6 before the public comment. But if Mr. Owens is
 7 asking to go on the 6th, then just to kind of not
 8 have it disjointed, if we allow the public comment
 9 to start and proceed, that would be appreciated.
 10 CHAIRMAN ROCHAT: I wouldn't object to
 11 having him come back on the 6th. That's not a
 12 problem.
 13 ATTORNEY OWENS: Thank you.
 14 CHAIRMAN ROCHAT: So who's next?
 15 PLANNING BOARD SECRETARY:
 16 Mr. Schwester. Would you please unmute yourself,
 17 please.
 18 SKIP SCHWESTER: Am I unmuted?
 19 PLANNING BOARD SECRETARY: We can hear
 20 you.
 21 SKIP SCHWESTER: Public comment. It's
 22 not a question, it's a comment to the planning
 23 board.
 24 The planning board has a big
 25 responsibility here. This original application was

1 for a sanitary sewer system. We all know that we're
 2 stuck with this housing development. I, personally,
 3 think that the design is lacking any appeal for Far
 4 Hills, but it is what it is. It's a Pulte, it's not
 5 a Toli Brothers. We're stuck with what we've got.
 6 But the application anticipated and
 7 called for the sanitary sewer system to be brought
 8 up on a pressure line so that no other residences or
 9 businesses could be tied in. It was well thought
 10 out and that was what was supposed to happen. Not a
 11 good project to begin with, but at least we had the
 12 sanitary sewer system going down Route 202 and not
 13 trying to dispose all of -- I forget what the number
 14 is -- but some astronomical 33- or 39,000 gallons a
 15 day subterraneously.
 16 Approve this project. I don't like it,
 17 but approve it -- but approve it with the sanitary
 18 sewer system because if you don't, all the engineers
 19 are saying, "Well, everything was done according to
 20 the engineering of the day." That's what they're
 21 saying at Drakewick. "Well, we did it 25 years ago
 22 and it was all -- that was the science." Well, the
 23 science failed. The system works, not as efficient
 24 as the new ones 20 years, 30 years later. Yes,
 25 they're more efficient, they're smaller, but they're

1 still putting the same amount of effluent into the
 2 ground. And as I said before, God hasn't changed
 3 the geology. The ground is only going to take so
 4 much water.
 5 They've designed for the impervious
 6 surfaces, the roofs, walkways and the streets. That
 7 all goes underground too. Now in a perfect world,
 8 if we're living in the Sahara it would absorb it.
 9 But they were very clever and did it properly, they
 10 have escapes. So when the groundwater won't accept
 11 the rainwater from the roofs and the streets, it
 12 will run down to the Mine Brook.
 13 Well, what happens? When it rains
 14 heavily and the ground can't take the rainwater, do
 15 we stop flushing toilets? Do we stop doing laundry?
 16 No, it has to be pumped underground. When the
 17 ground isn't taking the rainwater, it's not going to
 18 take the treated sewer water.
 19 Approve it. But approve it the way it
 20 was originally planned, with the sewer line. Yes,
 21 it's going to cost the developer a few million
 22 dollars more. Once it's done, Pulte's gone. He's
 23 not going to come back. We're going to be stuck
 24 with it, just like Mendham is stuck with Drakewick.
 25 You people are either going to still be

1 living here, and if you are, you're a disgrace to
 2 approve this. If you're not, you will read about it
 3 in the paper.
 4 Use your conscience. Don't do what
 5 you're being told to do, "Approve this because we
 6 have to." Oh, Judge Miller is going to -- he's
 7 going to spank this all. That's fine. Approve it
 8 with the sewer. Because it's not going to be
 9 pretty, five, ten years down from now.
 10 I might be gone, but I still care about
 11 the town. Be responsible, planning board. If you
 12 have to approve this because we need it, I get it.
 13 But let's not be stuck with a problem five,
 14 ten years from now. Let them do it right, the way
 15 it was planned.
 16 Planning board, you are the planners.
 17 It's not a good project. But at least don't make it
 18 a catastrophe. And that's what I'm appealing to
 19 you, please don't sell us down the river on this.
 20 And that's -- that's all I have to say.
 21 CHAIRMAN ROCHAT: Thank you, Mr.
 22 Schwester.
 23 PLANNING BOARD SECRETARY: Is there
 24 anyone else in the public that wishes to make a
 25 comment? Please raise your hand.

1 Chairman Rochat, I don't see any other
 2 public comment tonight.
 3 CHAIRMAN ROCHAT: Okay. Close the
 4 public comment.
 5 ATTORNEY HENRY: All right.
 6 Presumably there will be more on December 6th.
 7 CHAIRMAN ROCHAT: That's it.
 8 Any final comments?
 9 Mr. Gianetti, we'll see you
 10 December 6th.
 11 ATTORNEY GIANETTI: Yes, December 6th.
 12 We will provide some of the information that the
 13 board has requested and we will work on getting the
 14 soil testing to Mr. Bollo's office and continue with
 15 public comment.
 16 ATTORNEY HENRY: 7:00 o'clock on
 17 December 6th. And a virtual meeting without further
 18 notice.
 19 ATTORNEY GIANETTI: Thank you, Mr.
 20 Henry.
 21 CHAIRMAN ROCHAT: Correct. All right.
 22 We have some correspondence. And any comments from
 23 the board?
 24 Do I hear a motion to adjourn?
 25 BOARD MEMBER: Motion to adjourn.

1 BOARD MEMBER: Second.
 2 CHAIRMAN ROCHAT: Okay. All in favor?
 3 BOARD MEMBERS IN UNISON: Aye.
 4 CHARIMAN ROCHAT: Thank you.

5
 6 (Application adjourned at 10:00 p.m.)
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1 CERTIFICATE

2
 3 I, ANGELA C. BUONANTUONO, a Notary Public
 4 and Certified Court Reporter of the State of New
 5 Jersey and Registered Professional Reporter, do
 6 hereby certify that prior to the commencement, the
 7 witness was duly sworn to testify the truth, the
 8 whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a
 10 true and accurate transcript of the deposition 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
 15 any of the parties to this action, and that I am
 16 neither a relative, nor employee of such attorney or
 17 counsel, and that I am not financially interested in
 18 the action.
 19
 20
 21
 22

23 _____
 24 Angela C. Buonantuono, CCR, RPR, CLR
 25 NJ State Board of Court Reporting
 License No. 30XI00233100
 Dated: December 20, 2021

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