

**HOWELL TOWNSHIP PLANNING BOARD
SPECIAL MEETING**

**1
November 29, 2022**

The meeting was called to order by Chairman Tannenhaus and the opening statement was read by the Administrative Officer.

ROLL CALL: Showed the following members were present: Joseph Cristiano, Brian Greenfield, Nicholas Huszar, Robert Seaman, Robert Spanvill, Megan Talente and Chairman Brian Tannenhaus. Councilman John Bonevich was absent and Paul Boisvert and Robert Nicaastro were excused. Paul Dorato arrived late.

Also in attendance were Ron Cucchiaro, Board Attorney, Laura Neumann, Board Engineer, Christine Bell, Board Planner, and the Board Secretary, Eileen Rubano.

PLEDGE OF ALLEGIANCE:

The Board Attorney informed the Board that he needed a short executive session and the Board Secretary read the executive session resolution into the record. Mr. Cristiano made a motion to memorialize the executive session resolution. Motion was seconded by Ms. Talente and carried with Mr. Cristiano, Mr. Greenfield, Mr. Seaman, Mr. Spanvill, Ms. Talente and Chairman Tannenhaus voting for the motion. Mr. Huszar abstained.

The Board recessed into executive session.

The Board reconvened in public session at 7:36 p.m.

APPROVAL OF MINUTES: There were no minutes to approve.

VOUCHERS: There were no vouchers.

CORRESPONDENCE: There was no correspondence but Mr. Pape did address the Board and asked them to carry the application for AAVRHW Property, LLC (Victory Road) to December 1, 2022 with no further notice. Board Attorney Cucchiaro made the announcement for members of the public that the application would be carried to December 1, 2022 with no further notice and the Board Secretary said she would amend the agenda tomorrow.

RESOLUTIONS: There were no resolutions to memorialize.

SUBMISSION WAIVERS: There were no submission waivers.

APPLICATIONS BEFORE THE BOARD:

- a. **Case No. SP-1085 / AAFHFW Property, LLC – (Forman Family)**

SEE ATTACHED TRANSCRIPT

- b. **Case No. SP-1095 / AAFRHW Property, LLC – (Frisa)**

The Board Attorney made an announcement that the application for Case No. SP-1095 AAFRHW Property, LLC would be carried to the Board's reorg meeting, Thursday, January 5, 2023 with no further notice as the Board does not have any dates for next year. The Board Secretary asked Mr. Pape for an extension of time for the Board to act on this application and he said he would extend the time to January 5, 2023 on the record and would follow this up with a letter.

**HOWELL TOWNSHIP PLANNING BOARD
SPECIAL MEETING**

2

November 29, 2022

Since there was no other business, Mr. Seaman made a motion to adjourn. Motion was seconded by Mr. Cristiano and carried. Meeting adjourned at 10:42 p.m.

Respectfully submitted,



**Eileen Rubano
Recording Secretary**

NOTE: A CD or DVD of this meeting is available on request.

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TOWNSHIP OF HOWELL PLANNING BOARD
COUNTY OF MONMOUTH - STATE OF NEW JERSEY

SPECIAL MEETING FOR:

AAFFHW PROPERTY, LLC - FORMAN FAMILY
BLOCK 164, LOT 5.01
29 HOWELL ROAD

APPLICATION NO. SP-1085

TUESDAY, NOVEMBER 29, 2022

COMMENCING AT 7:00 P.M.

TRANSCRIPT OF PROCEEDINGS
VIRTUAL PUBLIC HEARING

AB COURT REPORTING, LLC
CERTIFIED COURT REPORTERS
26 Algonquin Terrace
Millstone Township, New Jersey 08535
Tel: (732)882-3590
angelabuonocsr@gmail.com

1 BOARD MEMBERS PRESENT:

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BRIAN TANNENHAUS, Chairman

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JOSEPH CRISTIANO

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PAUL DORATO

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BRIAN GREENFIELD

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NICHOLAS HUSZAR, Vice-Chairman (recused)

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ROBERT SEAMAN

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ROBERT SPANVILL

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MEGAN TALENTE

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ALSO PRESENT:

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14 RONALD CUCCHIARO, ESQUIRE, BOARD ATTORNEY

15 LAURA NEUMANN, P.E., Board Engineer

16 CHRISTINE BELL, P.P., Acting Board Planner

17 SHARI SPERO, Board Licensed Tree Expert

18 EILEEN RUBANO, Planning Board Secretary

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STENOGRAPHICALLY REPORTED BY:

25

ANGELA BUONANTUONO, CCR, RPR, License No. 30XI00233100

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

2

HEILBRUNN PAPE, LLC

3 BY: KENNETH L. PAPE, ESQUIRE

 516 State Highway 33

4 Millstone Township, New Jersey 08535

 T: (732)-679-8844

5 F: (732)-679-6554

 Email: kpape@hpnjlaw.com

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--Counsel for the Applicant

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19 ALSO PRESENT:

20 PATRICK LYNAM, P.E.

 Colliers Engineering & Design

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I N D E X

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2 WITNESSESPAGE

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4 None.

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9 PUBLIC COMMENT:

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NAMEADDRESSPAGE

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Mark Gerbino

16 Statesboro Road

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Erin Saker-Oese

853 Adelpia Road

24

13

Steven Merlino

51 Peachstone Road

28

14

Betty Velez

97 Victory Road

38

15

Mark Bonjavanni

44 Salem Hill Road

42

16

Janice Romisoukas

314 Baker Road

50

17

Kevin Scott

249 Fairfield Road

55

18

Shannon Cutrona

32 Five Points Road

58

19

Sarah Mitchell

3 Howell Road

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20

Adam Mitchell

3 Howell Road

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21

Mike Greenfield

417 Brickyard Road

79

22

Candace Dovenero

58 Victory Road

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23

Kathy Novak

16 Stratton Drive

110

24

Marc Parisi

2 Castle Court

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Pamela Richmond

185 Locust Avenue

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1 CHAIRMAN TANNENHAUS: Okay. Opening
 2 statement, Eileen.
 3 BOARD SECRETARY: Special Planning
 4 Board Meeting, Tuesday, November 29th, 2022.
 5 I hereby declare this special meeting
 6 of the Howell Township planning board to be open.
 7 Adequate notice having been given pursuant to the
 8 New Jersey Open Public Meeting Act in the following
 9 manner:
 10 First, on November 14th, 2022, and
 11 again on November 21st, 2022, a copy of said notice
 12 was mailed to the Asbury Park Press and The
 13 Star-Ledger.
 14 Second, on November 14th, 2022, and
 15 again on November 21st, 2022, a copy of said notice
 16 was hand-delivered to the clerk of the Township of
 17 Howell.
 18 Third, on November 14th, 2022, and
 19 again on November 21st, 2022, said notice was posted
 20 in the Office of the Planning Board and on the
 21 bulletin board in the Howell Township Municipal
 22 Building, 4567 Route 9, Howell Township, New Jersey.
 23 Members of the public will have a
 24 chance to ask questions and comment on applications
 25 once the chairman opens the hearing up to members of

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1 the public.
 2 If you wish to ask questions or comment
 3 on an application, you will need to use the Raise
 4 Your Hand feature and we will bring you into the
 5 meeting one at a time. You will need to have audio
 6 and video capability. You will be sworn in and you
 7 will need to provide your name and address.
 8 For anyone calling in, you can press *9
 9 to raise or lower your hand and *6 to mute or unmute
 10 yourself.
 11 This meeting is being videotaped for
 12 possible future broadcast on Howell Township TV-77.
 13 Thank you.
 14 CHAIRMAN TANNENHAUS: Thank you.
 15 Roll-call, please.
 16 BOARD SECRETARY: Mr. Boisvert was
 17 excused.
 18 Mr. Cristiano?
 19 MEMBER CRISTIANO: Present.
 20 BOARD SECRETARY: Mr. Dorato was
 21 excused.
 22 Mr. Huszar?
 23 VICE-CHAIRMAN HUSZAR: Here.
 24 BOARD SECRETARY: Mr. Greenfield?
 25 MEMBER GREENFIELD: Here.

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1 BOARD SECRETARY: Mr. Nicastro was
 2 excused.
 3 Mr. Seaman?
 4 MEMBER SEAMAN: Here.
 5 BOARD SECRETARY: Councilman Bonevich I
 6 have not heard from.
 7 Mr. Spanvill?
 8 MEMBER SPANVILL: Here.
 9 BOARD SECRETARY: Ms. Talente?
 10 MEMBER TALENTE: Here.
 11 BOARD SECRETARY: And Chairman
 12 Tannenhaus?
 13 CHAIRMAN TANNENHAUS: Here.
 14 BOARD SECRETARY: You have a quorum.
 15 CHAIRMAN TANNENHAUS: Thank you.
 16 Everybody, please rise for the Pledge
 17 of Allegiance and a moment of silence for all of our
 18 first-responders and those both serving here and
 19 abroad.
 20
 21 (Pledge of Allegiance.)
 22
 23 CHAIRMAN TANNENHAUS: Thank you.
 24 Okay, correspondence. Ron, Executive
 25 Session. You're muted.

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1 ATTORNEY CUCCHIARO: I think, Eileen,
 2 you have the resolution?
 3 BOARD SECRETARY: Yes, I do.
 4 ATTORNEY CUCCHIARO: Okay. So Eileen
 5 will read the resolution and we'll just need a first
 6 and a second and we'll vote on the resolution to go
 7 into Executive.
 8 BOARD SECRETARY: Okay.
 9 Whereas Title 10, Chapter 4, Section 13
 10 of the New Jersey Revised Statutes requires that the
 11 public shall not be excluded from any meetings of a
 12 public body unless a resolution authorizing such
 13 exclusion is adopted at a public meeting;
 14 And whereas, the Planning Board of the
 15 Township of Howell has determined that such a closed
 16 meeting is required to discuss certain matters which
 17 are exempted from consideration with the public in
 18 attendance under New Jersey Revised Statute 10:4-12,
 19 namely, litigation;
 20 Now therefore, be it resolved by the
 21 Planning Board of the Township of Howell that the
 22 public shall be excluded from the next portion of
 23 this meeting and that the Planning Board will
 24 reconvene in public session thereafter.
 25 Be it further resolved that minutes

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1 will be kept of the meeting in closed session and
 2 the time and circumstances under which the
 3 discussion conducted in that closed session can be
 4 disclosed to the public, cannot be determined at
 5 this time.
 6 ATTORNEY CUCCHIARO: Okay. Also just
 7 to be more specific, the caption of the litigation
 8 is AAFFHW Property, LLC v. Township of Howell
 9 Planning Board.
 10 So we just need a motion to adopt the
 11 resolution.
 12 CHAIRMAN TANNENHAUS: Thank you. Do I
 13 have a motion to adopt the resolution?
 14 MEMBER CRISTIANO: I make a motion.
 15 CHAIRMAN TANNENHAUS: Thank you. Do I
 16 have a second?
 17 MEMBER TALENTE: Second.
 18 CHAIRMAN TANNENHAUS: Okay.
 19 Roll-call, please.
 20 BOARD SECRETARY: Mr. Cristiano?
 21 MEMBER CRISTIANO: Yes.
 22 BOARD SECRETARY: Mr. Greenfield?
 23 MEMBER GREENFIELD: Yes.
 24 BOARD SECRETARY: Mr. Huszar?
 25 VICE-CHAIRMAN HUSZAR: I abstain.

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1 BOARD SECRETARY: Mr. Seaman?
 2 MEMBER SEAMAN: Yes.
 3 BOARD SECRETARY: Mr. Spanvill?
 4 MEMBER SPANVILL: Yes.
 5 BOARD SECRETARY: Ms. Talente?
 6 MEMBER TALENTE: Yes.
 7 BOARD SECRETARY: And Chairman
 8 Tannenhaus?
 9 CHAIRMAN TANNENHAUS: Yes.
 10 BOARD SECRETARY: Motion carries.
 11 For members of the public, the board
 12 will now go into Executive Session. They'll be back
 13 shortly.
 14 If anyone does get knocked off the
 15 Regular Meeting you will have to try to log back in,
 16 as we need to switch meetings.
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 18 (A recess is taken at 7:14 p.m.)
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1 (Proceedings resume at 7:31 p.m.)
 2 - - -
 3 ATTORNEY CUCCHIARO: Mr. Chairman, you
 4 can bring us back into public now.
 5 CHAIRMAN TANNENHAUS: Okay. The
 6 session for November 29th, 2022, will be back in
 7 session.
 8 ATTORNEY CUCCHIARO: Eileen, so you
 9 can take roll-call now.
 10 BOARD SECRETARY: Thank you.
 11 Mr. Boisvert is still excused.
 12 Mr. Cristiano?
 13 MEMBER CRISTIANO: Present.
 14 BOARD SECRETARY: Mr. Dorato?
 15 MEMBER DORATO: Here.
 16 BOARD SECRETARY: Mr. Greenfield?
 17 MEMBER GREENFIELD: Here.
 18 BOARD SECRETARY: Mr. Huszar has
 19 recused himself.
 20 Mr. Nicastro is excused.
 21 Mr. Seaman?
 22 MR. SEAMAN: Here.
 23 BOARD SECRETARY: Councilman Bonevich
 24 is absent.
 25 Mr. Spanvill?

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1 MEMBER SPANVILL: Here.
 2 BOARD SECRETARY: Ms. Talente?
 3 MEMBER TALENTE: Here.
 4 BOARD SECRETARY: And Chairman
 5 Tannenhaus?
 6 CHAIRMAN TANNENHAUS: Here.
 7 BOARD SECRETARY: You have a quorum.
 8 Shall I bring Mr. Pape in?
 9 CHAIRMAN TANNENHAUS: Yes.
 10 ATTORNEY CUCCHIARO: Bring Mr. Pape in.
 11 ATTORNEY PAPE: Good evening all.
 12 ATTORNEY CUCCHIARO: Good evening, Mr.
 13 Pape.
 14 CHAIRMAN TANNENHAUS: Okay. Ron, I
 15 think we were just in the middle of public.
 16 ATTORNEY CUCCHIARO: Just before we
 17 get to that, Mr. Pape, you have the other two
 18 applications on tonight, was there anything you
 19 wanted to let us know before we get started with the
 20 first one?
 21 ATTORNEY PAPE: Yes. Good evening,
 22 Mr. Chair, members of the board, board professionals
 23 and public.
 24 The three applications that are listed
 25 on the agenda are the one that we're about to begin,

1 the Whispering Woods on, the AAFHFW, followed by
 2 AAFRHW, and the third one is the AAVRHW. As
 3 ambitious as we all are, the Victory, the third one,
 4 is not going to be reached this evening with
 5 certainty and I would respectfully ask that it be
 6 announced that it will not be reached and
 7 respectfully ask that you carry it to December 1st.
 8 I know there's a commitment made to
 9 Monmouth Commerce on December 1st and I know that
 10 they have a priority. On the off chance that they
 11 don't go forward, we respectfully ask that the
 12 Victory be placed on that agenda so that that
 13 evening is not lost if the opportunity is there.

14 ATTORNEY CUCCHIARO: Mr. Chairman, as
 15 long as the applicant is aware that, you know, they
 16 may not get reached on that night, we can -- I can
 17 make the announcement.

18 BOARD SECRETARY: Ron, just before,
 19 that agenda has been posted. It's okay that I just
 20 revise it tomorrow?

21 ATTORNEY CUCCHIARO: Yes.

22 BOARD SECRETARY: Okay.

23 ATTORNEY CUCCHIARO: Okay. So the
 24 application of AAFRHW Property, LLC, Case Number
 25 SP-1095 will be carried to the board's --

1 BOARD SECRETARY: No, 1105.

2 ATTORNEY PAPE: It's VR. Not the FR,
 3 the VR, I'm sorry. Thank you.

4 ATTORNEY CUCCHIARO: All right.

5 ATTORNEY PAPE: Thank you so much.

6 ATTORNEY CUCCHIARO: Okay, the
 7 application of AAVRHW Property, LLC, Case Number
 8 SP-1105 will be carried to the board's December 1st,
 9 2022 meeting. That meeting is a virtual meeting
 10 beginning at 7:00 o'clock. All documents associated
 11 with the application are on file and can be reviewed
 12 and inspected by members of the public and any other
 13 interested parties.

14 There will be no further notice to
 15 property owners. So if you got notice in the mail
 16 that that application was being heard tonight, the
 17 application of AAVRHW is being carried to
 18 December 1st, 2022, 7:00 o'clock, virtual meeting,
 19 no further notice.

20 ATTORNEY PAPE: Mr. Cucchiaro,
 21 Mr. Chair, I have one further administrative
 22 element, if you would be so kind. I note that there
 23 are seven members of the board present this evening
 24 to hear --

25 ATTORNEY CUCCHIARO: Mr. Pape, we'll

1 -- let's just get started with the application, Mr.
 2 Pape. Okay?

3 CHAIRMAN TANNENHAUS: So we're not
 4 addressing AAFRHW?

5 ATTORNEY CUCCHIARO: Well, no, AAFRHW
 6 may get reached.

7 CHAIRMAN TANNENHAUS: Got it. Very
 8 good.

9 ATTORNEY CUCCHIARO: So we'll deal
 10 with that later on.

11 CHAIRMAN TANNENHAUS: Okay.

12 ATTORNEY CUCCHIARO: So the board may
 13 remember, the members of the public may remember
 14 that we began at the last hearing the Whispering
 15 Woods -- what's called a Whispering Woods hearing.
 16 The applicant placed on the record and gave us
 17 professional testimony concerning the modifications
 18 to the plan that were consistent with the Whispering
 19 Woods Settlement Agreement.

20 They provided their affirmative case
 21 and we began listening to members of the public.

22 We'll finish listening to the members of the public

23 tonight. We will -- well, Mr. Pape will have his

24 final closing remarks, we'll deliberate and the

25 board will vote.

1 I just wanted to make a couple -- I
 2 want to give legal -- provide some legal counsel on
 3 a couple issues. I was going to wait till the end
 4 but upon reflection after the last meeting, I think
 5 I want to do it at the beginning and it had to do
 6 with some of the issues that were raised during the
 7 public portion.

8 One, there was some testimony that the
 9 board should just deny the application because it's
 10 a use that may not be desirable to the board or to
 11 members of the neighborhood and just take your
 12 chances in court. I can't really counsel that
 13 that's the way to go.

14 The board is a quasi-judicial body. We
 15 are bound by the New Jersey Constitution. We are
 16 bound by the Municipal Land Use Law. We are bound
 17 by our ordinances. We don't get to make decisions
 18 on whether something should have been made a
 19 permitted use or not made a permitted use. We're
 20 given the ordinances, we apply them, we don't
 21 overrule them.

22 So my very firm counsel to the board is
 23 that as a Planning Board you are here to determine
 24 whether the ordinances have been satisfied and if
 25 they have not, whether relief should be granted.

1 The fact that you may not like a use is not a reason
2 to deny. It's not a reason that can be supported in
3 court. So that's really what you -- what you are
4 limited to.

5 Second, there was a lot of
6 understandable testimony about the traffic concerns.
7 And for many of you, yeah, you have heard this a
8 million times from me, but I think in this context,
9 you know, it bears repeating, that for a permitted
10 use the Municipal Land Use Law and our courts limit
11 what a board can consider. And what the board can
12 consider is the safety of the ingress and egress. A
13 general increase in the volume of traffic for a
14 permitted use is not a reason for denial. And
15 that's just been bedrock case law and it's not
16 something that would support a denial from this
17 board.

18 The last thing, you know, as a
19 carryover from the last meeting, there were some
20 comments about, you know, an entire neighborhood not
21 liking the application or an entire neighborhood
22 having some concern. And I just want to reinforce
23 that people can only testify for themselves. And
24 what they say is valuable and it needs to be
25 considered and it needs to be weighed appropriately.

1 I don't know where she is. Do we want
2 to try someone else?

3 ATTORNEY CUCCHIARO: Yeah, why don't
4 we try someone else and we'll come back to her.

5 BOARD SECRETARY: We have M. Gerbino.
6 ATTORNEY CUCCHIARO: Okay, if you could
7 just unmute yourself and turn your camera on.

8 Do you swear or affirm the testimony
9 you are about to give this board is the truth, the
10 whole truth, and nothing but the truth?

11 MARK GERBINO: I do.

12 ATTORNEY CUCCHIARO: Please state and
13 spell your name and give us your address.

14 MARK GERBINO: My name is Mark Gerbino.
15 Last name is G-E-R, B as in boy, I-N-O. I live at
16 16 Statesboro Road.

17 ATTORNEY CUCCHIARO: Okay, go ahead,
18 Mr. Gerbino.

19 MARK GERBINO: Okay. Yeah, I'm
20 concerned, you know, as everybody is concerned about
21 the warehouse at the site. And I'm reading on Page
22 12 of your State Planning Commission, Warehouse-Type
23 Guidance where it says, "Municipalities are
24 entrusted with the responsibility to ensure that
25 uses like warehousing are developed properly so they

1 But members of the public, residents in the area,
2 interested parties can only testify as to what they
3 feel. They can't represent entire neighborhoods.
4 It doesn't diminish their testimony, but I think it
5 has to be placed in the proper context.

6 So with that, Mr. Chairman, we can open
7 up and continue with the members of the public who
8 have not yet had an opportunity to speak.

9 CHAIRMAN TANNENHAUS: Thank you.
10 Appreciate that.

11 Eileen, can you please --

12 BOARD SECRETARY: Yes. For members of
13 the public, anyone wishing to ask questions or
14 comment on this application, that's AAFHW the
15 Whispering Woods, for that application, you can
16 raise your hand, press *9 if you're on the phone to
17 raise or lower your hand, *6 to mute or unmute
18 yourself. You'll be brought in one at a time,
19 required to give your name and address. You will be
20 sworn in.

21 CHAIRMAN TANNENHAUS: And also keep in
22 mind, as Ron said, if you've spoken already, please
23 give an opportunity for others to speak here.

24 BOARD SECRETARY: The first person we
25 have is Candace Dovenero.

1 can contribute to the economy and consumer welfare
2 without harming local communities and the
3 environment."

4 As to the last part of that sentence,
5 "harming local communities and the environment," can
6 you tell me how that is not going to happen with the
7 warehouse being built, number of trucks that go up
8 and down the street, the noise, the pollution, air
9 pollution, the infrastructure of the roads which are
10 not designed to handle heavy loads -- heavy trucks
11 going up and down because I'm afraid that we are
12 going have to pay for fixing it eventually. And
13 also with trucking brings in oils, fuels, that leak
14 off the trucks and pour onto the roads when it
15 rains. That oil and gas will seep into the sewer
16 system, but not only that, will seep into the ground
17 around it that have wildlife, that have land where
18 that -- that is pure land as of right now.

19 So I would like to know how that is
20 going to be rectified or how we're going to be
21 protected and you are going to make sure without
22 harming local communities and the environment does
23 happen?

24 ATTORNEY CUCCHIARO: Mr. Pape, do you
25 have a legal position on that?

1 ATTORNEY PAPE: The only position that
2 I have is that this is a use that is expressly
3 permitted as a permitted use, that the road system
4 that is in place was determined by the municipality
5 to be adequate. And to embellish that, the
6 applicant has placed on the record that there are
7 substantial road improvements that are being made,
8 including the milling and resurfacing of Okerson at
9 the entire frontage of the property. And where
10 there is currently farm fields with no stormwater
11 management and no management of pollution that's
12 running off of the existing roadway, the applicant
13 will introduce a stormwater system that provides
14 them that.

15 MARK GERBINO: As far as traffic,
16 right now traffic in the morning is horrendous and
17 the trucks haven't even started to show up yet
18 because the structure hasn't been built completely
19 yet. So myself, going down Fairfield Road almost
20 got into an accident with one of the trucks going
21 into that development. And that's before all the
22 other trucks are going to start showing up. This is
23 a community.

24 I was listening to all of the
25 conversations back and forth about how nice a room

1 was the woman had, how that would add value to your
2 house. Well, this is not going to add value to our
3 homes here in this area. It's going to devalue our
4 homes because of the noise it's going to bring, air
5 pollution it's going to bring.

6 And we can talk technical and we'll put
7 all these sewer systems in, you know what, it's not
8 going to stop the pollution. Whether it's air
9 pollution, oils, fuels that leak onto the road which
10 causes issues, which gets into our ecosystem.

11 So, it's a lot -- it's easy to state
12 these things, oh, we did certain research, this
13 research. And also even the sewer system, we had a
14 sewer company where they said that they are not --
15 they don't even want to be involved because they are
16 not going to be -- they're not going to be handled
17 right.

18 So it's nice to hear all this research
19 when people have a lot of money to throw into it and
20 people, they say the town is making money on it --

21 CHAIRMAN TANNENHAUS: All right, all
22 right, sir -- sir, I'm sorry, I've got to cut you
23 off. You are making accusations that are not
24 appropriate.

25 MARK GERBINO: I didn't make

1 accusations.

2 CHAIRMAN TANNENHAUS: Yes, you did.
3 You accused the town of stating certain things.
4 That's not acceptable. What I would like you to do
5 is please keep your testimony to the facts. You
6 asked questions, the applicant's attorney answered
7 your questions.

8 But what we would really appreciate is
9 for legal reasons that you have against this
10 application. That is what this board would be
11 desperate to find from the public.

12 MARK GERBINO: Okay. Give me a second.
13 I didn't make an accusation but that's a way to
14 protect me from making statements, period.

15 Well, listen, all I can say is that
16 what's happening -- what's going to happen is that
17 this is going to devalue our property here. It's
18 going to create more noise pollution, air pollution,
19 and ground pollution. And it's going to create more
20 traffic. We have a school right down the street
21 which kids travel on, buses travel on and this is
22 not -- it's not conducive to a safe environment for
23 this community here.

24 So, you know, with that, that's what I
25 would like to say. In that, you know, ultimately

1 you have the authority to make whatever decision you
2 are going to make, but you need to understand that
3 you are -- your decision affects families around
4 this area -- adversely affects families around this
5 area.

6 With that, you have a great night, and
7 please vote and please understand that there are
8 people's lives here that are being affected.

9 CHAIRMAN TANNENHAUS: Thank you, sir.
10 Appreciate it.

11 Eileen, do we want to go back to the
12 first member?

13 BOARD SECRETARY: I brought in Erin
14 Saker already. If you want to --

15 ATTORNEY CUCCHIARO: Okay. Okay,
16 we'll take Erin.

17 Is she on camera?

18 ERIN SAKER-OESE: Hi.

19 ATTORNEY CUCCHIARO: Okay. Let me
20 swear you in first. Do you swear or affirm the
21 testimony you are about to give this board is the
22 truth, the whole truth, and nothing but the truth?

23 ERIN SAKER-OESE: Yes, I do.

24 ATTORNEY CUCCHIARO: Please state and
25 spell your name and give us your address.

25

1 ERIN SAKER-OESE: My name is Erin
 2 Saker-Oese. E-R-I-N, S-A-K-E-R, hyphen, O-E-S-E. I
 3 live at 853 Adelphia Road.
 4 ATTORNEY CUCCHIARO: Okay, go ahead.
 5 ERIN SAKER-OESE: I'm just kind of
 6 having the same concerns that most people have. I
 7 do have small children that ride bicycles. They
 8 have ridden them up to the baseball field as well as
 9 the pool club. And actually, my family lives down
 10 underneath the industrial park that is on the corner
 11 of 33 and Five Points Road so we travel on that road
 12 a lot.
 13 My concerns are, one, the signs on the
 14 road that say the weight limit is 2 tons, most
 15 pickup trucks with a heavy load is more than the 2
 16 tons that you're going to now put warehouse
 17 tractor-trailers on regularly. So how do the trucks
 18 get up and down that road if the signs say it's a
 19 2-ton limit?
 20 Number two, is there enough width for
 21 those tractor-trailers to be turning safely in and
 22 out from Howell Road with the narrow road to begin
 23 with, with people walking -- because we have a right
 24 to walk on our roads and bike ride?
 25 And again, the same pollution that

26

1 other people are discussing, if you haven't built it
 2 yet, so you don't know what they're going to be
 3 bringing in and out of the warehouses. Are they
 4 going to be food trucks, freezer trucks that are
 5 diesel trucks that have to run continuously? Will
 6 those trucks be running all night long or will there
 7 be timeframes that they'll be run? And what is that
 8 going to do again, to people at the pool club who
 9 have a right to sit out at the pool with trucks
 10 running diesel constantly?
 11 ATTORNEY PAPE: I can respond to that
 12 in part. We are prepared to stipulate that there is
 13 no refrigerator trucks that will be brought to the
 14 property. This is not a refrigerated facility.
 15 And there's state laws about how long a
 16 vehicle can be on a property with its motor running,
 17 and that law is three minutes.
 18 ERIN SAKER-OESE: I understand that.
 19 And my final thing is, again, I'm just a taxpayer
 20 who is born and raised 44 years in Monmouth County,
 21 grew up with family off Howell Road. I still have
 22 family here, so I'm not someone new who cares so
 23 much about what they bought into. This is the area
 24 I grew up in, this is my home. I think you would
 25 understand where we were coming from, Mr. Pape, if

27

1 we wanted to put a warehouse in your neighborhood.
 2 So it's just a generalized concern and
 3 a safety. And I just don't understand road-wise how
 4 these roads are going to take that kind of traffic,
 5 that kind of weight load continuously in and out.
 6 But thank you for considering and listening to me
 7 today.
 8 CHAIRMAN TANNENHAUS: You're welcome,
 9 Ms. Saker.
 10 Does that, Mr. Cucchiaro, does it make
 11 sense to, since, you know, it was heard last week,
 12 does it make sense to just briefly discuss or have
 13 Mr. Pape --
 14 ATTORNEY CUCCHIARO: Mr. Pape has put
 15 his case in.
 16 CHAIRMAN TANNENHAUS: Fair enough.
 17 Thank you.
 18 Next person.
 19 BOARD SECRETARY: I'm trying to bring
 20 Candace Dovenero in, but again, she's not coming in.
 21 CHAIRMAN TANNENHAUS: Her hand is
 22 grayed out, I don't know what that means.
 23 BOARD SECRETARY: Yeah, I don't know
 24 if she logged off, I'm not sure. So I'm bringing in
 25 AJC next.

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1 CHAIRMAN TANNENHAUS: Okay.
 2 BOARD SECRETARY: Who, I believe, may
 3 have spoken last week.
 4 ATTORNEY CUCCHIARO: Well -- well, I
 5 ask, if he spoke last week, we're opening it up
 6 first to people who have not spoken.
 7 BOARD SECRETARY: I have no one else
 8 with their hands raised.
 9 ATTORNEY CUCCHIARO: Mr. Chair,
 10 it's --
 11 BOARD SECRETARY: Now I do.
 12 ATTORNEY CUCCHIARO: Okay.
 13 BOARD SECRETARY: I have Steve
 14 Morlino.
 15 ATTORNEY CUCCHIARO: Okay. Go ahead,
 16 bring him in.
 17 Mr. Morlino, do you swear or affirm the
 18 testimony you are about to give this board is the
 19 truth, the whole truth, and nothing but the truth?
 20 STEVEN MORLINO: Yes, I do.
 21 Absolutely.
 22 ATTORNEY CUCCHIARO: Please state and
 23 spell your name and give us your address.
 24 STEVEN MORLINO: Yes. You know my
 25 name, Steven Morlino, M-O-R-L-I-N-O, Peachstone

1 Road, in Howell, New Jersey, 38 years.
2 ATTORNEY CUCCHIARO: Okay, go ahead,
3 Mr. Morlino.

4 STEVEN MORLINO: Okay. I just want to,
5 first of all, reiterate that these meetings should
6 be held in-person. This is a terrible way you're
7 doing this. I have trouble logging on to this
8 system. I can't see who else is logged on. I don't
9 know who's talking. I don't see the people that are
10 talking half the time. So you need to really bring
11 these meetings back in-house. And I'm a firm
12 believer that we do it virtually and in person.

13 So with that being said, I request the
14 chairman and this board consider it very sincerely
15 to make these meetings virtual and in person so that
16 the public can be recognized in-person at a meeting
17 and see everyone face-to-face.

18 With that being said, I have major
19 concerns with the traffic on that road over there.
20 To tell me you're going to mill the road and repave
21 it is really not going to be conducive to the
22 traffic that is going to be generated by these
23 facilities on that road.

24 And as the gentleman just indicated,
25 you have schools down the street, you have school

1 left and go up 547.
2 Well, all you need to do is sit outside
3 of my development and watch all the trucks coming
4 from that area, Up Windeler Road, Aldrich Road, Old
5 Tavern Road, there's Oak Glen Road. There are major
6 issues with trucks traversing those local roads.
7 They have trouble turning. When they make turns,
8 they have to make wide turns. Traffic has to back
9 up at times so the truck can actually get around the
10 turn, okay.

11 And I have major concerns about the
12 safety, especially with schools down the road, okay.
13 And like I said, there was a woman killed on that
14 road very recently that lived on the road. Okay?
15 So we really need to take into consideration
16 people's lives and the safety and welfare and health
17 of the children in this town. Okay? So just to
18 unilaterally say we're going to approve this thing
19 because the law says certain things -- well, the Cox
20 manual says a lot of things about planning board
21 issues, okay.

22 And of all people, Mr. Cucchiaro, you
23 have been around a long time, so I really think you
24 need to give the advice that the township needs here
25 on why these things shouldn't be constructed. I

1 buses, you have children. There was a woman killed
2 on that road going across the road by the railroad
3 tracks going to her business. She was struck
4 broadside, T-boned, and killed on that road, okay,
5 not too many years ago.

6 So the road is not conducive to all the
7 major traffic that is going to be generated by these
8 facilities that you're proposing to put there. It's
9 a major safety issue. Unless you're telling me
10 you're going to make that a four-lane divided road
11 so that there's some safety involved, I have major
12 concerns.

13 I also have an issue with coming off of
14 Route 33, okay. You can't access that road off of
15 Route 33. The way the road was built and
16 constructed there was a -- okay, on Howell Road you
17 can't. Okay, so I'm concerned where these trucks
18 are going to come and go.

19 And, Mr. Cucchiaro, you were around
20 when Fast Forward was approved, okay. And I was a
21 proponent. I actually was for the Fast Forward
22 property being used as a warehouse. But at the time
23 there was a stipulation agreement that the trucks
24 would not go through town, they would go up 547.
25 When they left the facility they could only turn

1 know you're paid by the town, okay, and that's your
2 job, but you have been wrong before, okay, such as
3 that you have a planning board member that doesn't
4 even live in the township and was in conflict being
5 on several different committees that you knew was a
6 conflict. So I have major issues with this entire
7 process.

8 So I wish you would reconsider --
9 ATTORNEY CUCCHIARO: Mr. Morlino --
10 STEVEN MORLINO: -- to make sure safety
11 was taken into concern.

12 ATTORNEY CUCCHIARO: Mr. Morlino --
13 STEVEN MORLINO: That's the major issue
14 is safety.

15 ATTORNEY CUCCHIARO: Mr. Morlino --
16 STEVEN MORLINO: Yes.
17 ATTORNEY CUCCHIARO: -- I understand
18 what your position is. That has nothing to do with
19 this application. And with regards to Cox --

20 STEVEN MORLINO: You're saying that the
21 life, safety, and welfare of the residents and the
22 students --

23 ATTORNEY CUCCHIARO: Mr. Morlino, I'm
24 not saying anything --
25 STEVEN MORLINO: -- are not important in

1 this process?

2 ATTORNEY CUCCHIARO: I'm not saying
3 anything because you -- I'm not saying anything
4 right now because you won't give me the courtesy
5 that I gave you and allowing --

6 STEVEN MORLINO: Be my guest.

7 ATTORNEY CUCCHIARO: -- allowing me to
8 speak.

9 STEVEN MORLINO: Be my guest. Go right
10 ahead.

11 ATTORNEY CUCCHIARO: So you referenced
12 the Cox book, which I have read thoroughly
13 throughout my entire career, I even happen to be
14 cited in the Cox book. And Cox references two very
15 specific cases, and I'm sure that you have seen them
16 if you've read the Cox's book; the Lionel's
17 Appliance case and the Dunkin' Donuts case, which
18 talk about traffic. And the bedrock case law on
19 traffic for a permitted use is that a general
20 increase in traffic is not sufficient enough to have
21 a denial. It has to be that it results in a
22 dangerous ingress and egress -- that the ingress and
23 egress will be dangerous.

24 The case law specifically says that the
25 amount of traffic -- the traffic volume is something

1 that was considered by the governing body when they
2 adopted the ordinance. And I know you've read
3 those, those passages in Cox, so I mean, I don't
4 think I'm illuminating anything new for you, but I
5 think that we have to place that on the record that
6 that is the law.

7 Now, I don't have the luxury that you
8 may have or other members of the public have and
9 just, you know, cite laws that don't exist,
10 misinterpret cases. That's the case law. It
11 doesn't matter whom I'm paid by. It's -- that's the
12 way that --

13 STEVEN MORLINO: Isn't safety an issue,
14 Mr. Cucchiaro? Safety is the issue; is that
15 correct?

16 ATTORNEY CUCCHIARO: The safety of
17 ingress and egress is an issue --

18 STEVEN MORLINO: Okay. So we have a
19 fatality on that road by a resident that lived
20 there, okay, without this structure.

21 ATTORNEY CUCCHIARO: No, what you said
22 was that I inappropriately advised the board and I
23 didn't understand the law. That's the law.

24 So if you're arguing that that -- what
25 you're saying impacts ingress and egress, that's

1 fine, but when you say --

2 STEVEN MORLINO: That's exactly what
3 I'm saying.

4 ATTORNEY CUCCHIARO: -- but when you
5 say I have misstated the law, that is not fine to go
6 un rebutted.

7 STEVEN MORLINO: I don't think that I
8 said you misstated the law. What I said was safety
9 is a major concern without the trucks ingressing the
10 property and exiting the property, okay. There has
11 been a fatality on that road.

12 Now, the road is very narrow to begin
13 with. That road floods quite regularly, okay. The
14 Verserloff[ph] property there floods. I've been
15 there many times where you couldn't even get past
16 that road because of flooding, okay. And now we're
17 going to put major traffic on that road. To tell us
18 we're going to mill the road and repave sections of
19 it without making that a double-lane road with a
20 median -- a Jersey barrier down the center so that
21 we don't have fatalities like we've had in the past
22 without all this traffic, I think it opens up a
23 major safety issue for this township and the people
24 that live in the immediate vicinity.

25 And I transverse that road quite often.

1 I go up Route 33, I go to Sam's Club, I go to
2 various places. I go past the Earle Naval Weapons
3 base to get to Route 18. I go over there to get to
4 Brookdale College in that route, to get to Colts
5 Neck High School that way, okay. So there's a lot
6 of traffic in that area. And I'm telling you to put
7 all these tractor-trailers on there that have to
8 make huge wide turns to ingress and egress that
9 property is going to be a major, major problem and a
10 safety issue.

11 And I hope -- I hope if you people
12 approve this, that you don't have to worry about at
13 night someday the number of people that may get
14 killed on that road because of your approvals. This
15 is a major safety issue in this township. And
16 that's about what I have to say about it.

17 And again, I want to stress the public
18 is not being heard properly the way these meetings
19 are being conducted, okay. These meetings need to
20 be held in person. Every other committee is meeting
21 in person except for the planning board and the
22 zoning board and I don't quite understand why.

23 If the Township Council can meet in
24 person, I'm not sure why this planning board is not
25 meeting in person. And I think we're having a lot

1 of exclusion of the public because of it. I,
2 myself, who I consider myself technically competent,
3 have trouble logging onto these sites. And I can't
4 see who's talking half the time, I don't see who the
5 residents are lined up that want to speak.

6 You bring me in the meeting, the whole
7 screen goes blank. Some people may just disconnect
8 because they have no idea what's really going on.
9 And then after I talk you're going to disconnect me
10 and I will lose several minutes of the meeting until
11 I get reconnected because the system you're using is
12 very poor. I don't understand why.

13 I have been on -- I have been on Zoom
14 meetings where there's hundreds of people on them
15 and you can actually see their faces and see their
16 names. I am not sure why we don't do that in this
17 current policy the way you're doing this. This is
18 really a disservice to the members of the public and
19 this community.

20 So with that being said, I bid you all
21 good evening. And, Mr. Tannenbaum, I wish you would
22 be a little more polite to the public.

23 CHAIRMAN TANNENHAUS: Have a good
24 night, Mr. Morlino.

25 STEVEN MORLINO: You too. Thank you.

1 BOARD SECRETARY: Next we have Mike G.
2 Mike G, can you unmute yourself, please?

3 I'm going to bring in someone else
4 while we wait for Mike G to...

5 ATTORNEY CUCCHIARO: Okay.

6 BOARD SECRETARY: I have Betty Velez.

7 BETTY VELEZ: Hello.

8 ATTORNEY CUCCHIARO: Okay, I just need
9 to swear you in first. Do you swear or affirm the
10 testimony you are about to give this board is the
11 truth, the whole truth, and nothing but the truth?

12 BETTY VELEZ: I do.

13 ATTORNEY CUCCHIARO: Please state and
14 spell your name and give us your address.

15 BETTY VELEZ: Betty Velez, V-E-L-E-Z,
16 97 Victory Road.

17 ATTORNEY CUCCHIARO: Okay, go ahead,
18 Ms. Velez.

19 BETTY VELEZ: My question is about the
20 traffic study. Was a traffic study done by the
21 township at the applicant's expense in this
22 warehouse proposal?

23 ATTORNEY CUCCHIARO: Well, Brian, you
24 can correct me if I'm wrong, what happens is that
25 the applicant -- and Mr. Pape as well -- the

1 applicant submits their application which includes
2 information concerning traffic and the board's
3 professionals review that information. So it was
4 reviewed by the board's professionals.

5 BETTY VELEZ: Traffic study specialists
6 or an expert? I'm sorry.

7 ATTORNEY CUCCHIARO: Well, I don't know
8 who specifically in our engineer's office looked at
9 it.

10 BOARD ENGINEER: Yes, my office has a
11 staff of traffic engineers which are responsible for
12 review of that information and the report that was
13 submitted by the applicant.

14 BETTY VELEZ: Okay. So I guess my
15 question is, why isn't the township requesting a
16 traffic study of its own where the residents are a
17 priority rather than the applicant, which has great
18 stake in this?

19 ATTORNEY CUCCHIARO: Well, does it
20 matter if --

21 BETTY VELEZ: I'm perplexed by it --
22 sorry.

23 ATTORNEY CUCCHIARO: Does it -- I'm
24 sorry, go ahead.

25 BETTY VELEZ: I said I'm just a bit

1 perplexed regarding the absence of the town's own
2 traffic expert at the expense of the applicant.
3 Just hearing the residents and of course myself, you
4 know, on deck at Victory Road, I feel that all
5 proposed warehouses which pose a significant change
6 should warrant a traffic study which places Howell
7 residents a priority.

8 I mean at this point, I mean, I implore
9 the planning board to adopt this practice. I know
10 for myself and many others, you know, are asking
11 that you keep Howell residents and our children
12 safe. And again, I invite the public to, you know,
13 this is -- across Facebook people are posting you
14 need to get on here and echo this request. I think
15 a traffic study should be done on the residents'
16 behalf.

17 ATTORNEY CUCCHIARO: The jurisdiction
18 of a planning board under the Municipal Land Use Law
19 is to review what the applicant has submitted. And
20 the applicant does pay for that through an escrow,
21 so the town is not paying its professionals to
22 review what the applicant does. But the board
23 doesn't just perform -- nor can it just perform
24 traffic studies.

25 What the board did do most recently was

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1 it had a circulation element that it incorporated
 2 into the Master Plan and that included traffic
 3 counts that were performed at certain roads. And
 4 the selection of those roads was based upon a survey
 5 that the town had placed on its website and
 6 residents were able to have input there. And what
 7 the board did through the Master Plan was to
 8 re-evaluate the classification of those roads.

9 So the board undertook it from that
 10 policy perspective and that is where the law allows
 11 us to. But it allows, and what did happen here, was
 12 that the applicant's submission is evaluated to
 13 determine its accuracy and, you know, truthfulness.

14 BETTY VELEZ: Okay. So one quick
 15 question, and I know that I shouldn't be speaking
 16 about other applications, but I know that there was
 17 a traffic study done for the Commerce, so what is
 18 the difference? I'm sorry.

19 ATTORNEY CUCCHIARO: No, there was not
 20 a traffic study that the board undertook for
 21 Monmouth Commerce. The board reviewed the traffic
 22 study that the applicant prepared and there were
 23 comments that the board's traffic engineer had on
 24 that traffic study, the same as happened in this
 25 matter.

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1 BETTY VELEZ: Thank you for the
 2 clarification.

3 CHAIRMAN TANNENHAUS: Any more
 4 questions, Ms. Velez?

5 BOARD SECRETARY: I think she signed
 6 off.

7 CHAIRMAN TANNENHAUS: Okay.

8 BETTY VELEZ: No, thank you.

9 CHAIRMAN TANNENHAUS: You're welcome.
 10 Have a good night.

11 BOARD SECRETARY: Next, I have Mark
 12 Bonjavanni.

13 MARK BONJAVANNI: I'm here.

14 ATTORNEY CUCCHIARO: Hold on, Mr.
 15 Bonjavanni, just let me swear you in. Do you swear
 16 or affirm the testimony you are about to give this
 17 board is the truth, the whole truth and nothing but
 18 the truth?

19 MARK BONJAVANNI: I do.

20 ATTORNEY CUCCHIARO: Please state and
 21 spell your name and give us your address.

22 MARK BONJAVANNI: Mark Bonjavanni, it's
 23 B-O-N-J-A-V-A-N-N-I, 44 Salem Hill Road.

24 ATTORNEY CUCCHIARO: Okay. Go ahead,
 25 Mr. Bonjavanni.

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1 MARK BONJAVANNI: First off, I want to
 2 thank you. I do appreciate the fact that you are
 3 holding these meetings and it's good that you're
 4 allowing public comment.

5 I do want to mention just in case
 6 anybody is aware of it, I am a former president and
 7 current vice-president of the Board of Education
 8 here in town. I am certainly speaking just on my
 9 own behalf. I'm not implying I'm speaking on behalf
 10 of any of the board or the district.

11 And the reason I mention that at all is
 12 because, like many boards, we have always considered
 13 the primary responsibility to be the safety of
 14 children in the town. No matter what we have
 15 studied, no matter what we have done, we've always
 16 looked at safety first, and said how do we keep
 17 children safe.

18 Early, before this meeting even really
 19 technically started I heard a couple of coaches
 20 talking about practices and stuff. So I know you --
 21 I know you understand what I'm talking about when we
 22 talk about the safety of children.

23 I also heard Mr. Cuchino -- Mr.
 24 Cucchiaro, I apologize, comment about what we can
 25 and cannot consider. Some of the things I'm going

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1 to talk about will override that anyway, but I hope
 2 you'll permit me to do this.

3 This location, I don't believe is a
 4 safe location. Just a few feet from this egress and
 5 entrance to the plant on the Okerson Road side is
 6 the ball fields. You heard testimony last week from
 7 a number of people, and I see it myself, that cars
 8 when these games are going on are parked on both
 9 sides of the road. So you have young children, 6,
 10 7-year-olds, running across this road at different
 11 times. Those fields are used probably
 12 three-quarters of the year between the different
 13 seasons.

14 So trucks are going to come out of
 15 there and they're going to make the left, which we
 16 heard was that 60 percent of the trucks are going to
 17 be using the Okerson Road exit and entrance. They
 18 will be coming out, they'll be making the left to go
 19 down to 33 which means they're going to be going
 20 right pass where all these children are out there
 21 playing. I just don't see how this is a safe
 22 situation.

23 It's my understanding that you have
 24 already actually changed the zoning for this area.
 25 Obviously it was done after this applicant made the

1 application, which is why this is even being heard.
 2 But if that's true that you've changed the zoning
 3 already, then in some respect you have already
 4 admitted to the fact that you don't think this is
 5 appropriate for the area. Whether it's to keep the
 6 rural situation in the area, or for safety or
 7 whatever reason, because it's a stop sign instead of
 8 a red light up there. And I haven't even brought up
 9 the Howell Road side with the pool club, but the
 10 Okerson Road side, only because I have been there
 11 for a number of times for games and I have seen what
 12 goes on, it just really concerns me.

13 I'd like to tell just a really quick
 14 story -- and I hope you will just be patient with me
 15 for a moment. I'm going back 50 years ago, but 50
 16 years ago I worked part-time for a place called
 17 Smith Transfer, which was similar to what you're
 18 describing here with all the trucking bays. The
 19 transfer was in the area, it was appropriate for
 20 something like that. You know, 100 garage doors,
 21 trucking that was right next to Rahway Prison in a
 22 very commercial area. So homes weren't being
 23 affected by this.

24 And I used to work the night shift from
 25 5:00 until 2:00 in the morning. When trucks are

1 ready to go, they go. It doesn't matter what time
 2 of the day, it doesn't matter what's going on. If
 3 it's 2 o'clock in the morning there trucks are
 4 unloaded, they're pulling out. So what have you, it
 5 impacted the neighborhood there in terms of trucks
 6 leaving 24/7, 740 trucks a day you said? I mean
 7 just think of what this does to the area.

8 Let me see, what else did I write down
 9 here for myself. Finally, look -- and thanks for
 10 listening, I know you have seen the comments on the
 11 Internet. I know you heard all the testimony last
 12 week. Nobody is coming out in favor of this. You
 13 have to be aware of that.

14 Mr. Cucchiaro, again, I apologize for
 15 saying this, but I recognize the fact that you said,
 16 look, you would not recommend to the board that
 17 their policy should be to deny something, let it go
 18 to court and let the court make a decision. But
 19 what I'm going to suggest is that, even though
 20 that's your opinion, I would suggest that maybe the
 21 Board wants to think about doing that, letting it go
 22 to the court. At least what you have done, then, as
 23 a board of citizens here in this town, is you have
 24 recognized the desire of the residents in the town,
 25 you have recognized their feelings, and their

1 opinions. And look, if you lose a court case so be
 2 it, that may happen, but at least you have
 3 demonstrated to the people here in this town that
 4 you heard their case, you understood what was going
 5 on.

6 Last piece, just real quick. You
 7 talked about the fact that you don't even know who
 8 the tenants are coming there yet. So if you don't
 9 know how the tenants -- I understand there is a book
 10 that can be used in terms of determining the traffic
 11 patterns, but books are sometimes wrong. So you
 12 don't know exactly what is going to be going on in
 13 this area in terms of the types of trucks. I heard
 14 you say there's not going to be refrigeration
 15 trucks, fine, I appreciate that, I understand that.
 16 But again, just think about what you're doing to the
 17 neighborhood. Think about the safety of the
 18 children. That should be everybody's primary
 19 concern regardless of what kind of board you sit on
 20 in this town.

21 Again, I thank you very much for
 22 listening. I will stay on for a second if anybody
 23 has a question for me. Apparently not, and I --

24 MEMBER SEAMAN: Mr. Chair, if I may?
 25 CHAIRMAN TANNENHAUS: Go ahead.

1 MEMBER SEAMAN: This is a question to
 2 Mr. Bonjavanni. Based on the statement of, okay,
 3 we'll go to a lawsuit, we'll see what happens; if we
 4 do a lawsuit and the builder gets to build whatever
 5 they desire regardless of changes we've required or
 6 requested them to make to make it the best possible
 7 outcome, would you rather have us lose and then have
 8 them do what they want, or try the best possible
 9 scenario out for the town that we're capable of?

10 MARK BONJAVANNI: Certainly the best
 11 possible scenario is the more desirable one.

12 So then maybe what I'm -- so regarding
 13 your question, I think what I'm hearing you say is
 14 if it goes to court and if the court sides with the
 15 applicant, then if it's strictly going back to the
 16 very first plan or the revised plan, or just they
 17 can do what they want and you have no --

18 ATTORNEY CUCCHIARO: Look, Mr.
 19 Bonjavanni, the way that it works is that this is
 20 the settlement. So if the board denies the
 21 settlement plan, which it can --

22 CHAIRMAN TANNENHAUS: Mr. Cucchiaro,
 23 if you could stop there for a second, we have a
 24 settlement, which means the board already went to
 25 court when we denied this application.

1 ATTORNEY CUCCHIARO: Well Mr. Chair,
2 if I could just finish, if this settlement does not
3 go through, then this plan goes away. And it goes
4 back to the appeal of the original denial. So
5 there's no sound wall, there's no flipping of the
6 building, there is none of that at all; it goes back
7 to the original plan.

8 CHAIRMAN TANNENHAUS: No road
9 improvements.

10 ATTORNEY CUCCHIARO: Correct.

11 MARK BONJAVANNI: I understand and
12 that's certainly -- you know, that's certainly very
13 disappointing to hear.

14 But, Mr. Seaman, I appreciate you
15 asking me that. You know, you're filling me in on
16 something I probably wasn't aware of, that if you
17 lose it they are going to have the right to do
18 whatever they want. Hopefully this board will find
19 some way to reach some type of agreement.

20 But, again, I know it's repetitious. I
21 know I'm saying it over and over again -- I know I
22 said it, I know a number of people said it last week
23 -- I am concerned about trucks pulling out. And you
24 talked about the only concern here is the egress,
25 you know, the coming in and out of that actual

1 saying about the traffic. I live there. I see the
2 trucks. I see the traffic. I see the speed of the
3 trucks and that worries me.

4 Today I was going down Fairfield Road
5 to get onto the bypass and had to stop dead because
6 the tractor-trailer coming in to go down Fairfield
7 Road couldn't make the turn. And supposedly that's
8 already been approved.

9 But my biggest question is what was
10 brought up before, what are you looking for legally?
11 You said you wanted something legal to stop this.
12 What legal could stop this? And all the multiple
13 warehouses on Fairfield because besides the two that
14 is, one, we also know next week on Thursday you're
15 going to hear about two more on Block 168. So we're
16 talking multiple, four more warehouses on Fairfield
17 Road.

18 ATTORNEY CUCCHIARO: Mr. Chairman, you
19 can certainly answer for yourself, but I think what
20 you were trying to elicit were comments that fit
21 within the parameters that the Municipal Land Use
22 Law gives us to review. You know, those were the
23 types of comments that are actionable, you know, by
24 this board. Is that a fair statement?

25 CHAIRMAN TANNENHAUS: That is correct.

1 development, that that's your only concern is that
2 few feet coming in and out of the project. 50 feet
3 down the road is where there are 7-year-olds
4 crossing the road. This has got to weigh on
5 somebody's mind.

6 Again, I thank you for listening.

7 CHAIRMAN TANNENHAUS: Thank you,
8 Mr. Bonjavanni.

9 MARK BONJAVANNI: Have a good night,
10 gentlemen and ladies.

11 CHAIRMAN TANNENHAUS: You too.

12 BOARD SECRETARY: I have Janice coming
13 in.

14 JANICE ROMISOUKAS: My camera isn't on.
15 My name is Janice Romisoukas.

16 ATTORNEY CUCCHIARO: Do you swear or
17 affirm the testimony you are about to give the board
18 is the truth, the whole truth, and nothing but the
19 truth?

20 JANICE ROMISOUKAS: Yes, I do. My name
21 is Janice, J-A-N-I-C-E, Romisoukas,
22 R-O-M-I-S-O-U-K-A-S, 314 Baker Road.

23 Now, you know where I live, I have a
24 big concern about Fairfield. But my question is,
25 one, I totally agree with everybody, what they're

1 Because I think the public sometimes thinks that we
2 sit up here on the board and we don't live in Howell
3 and we just feel like throwing and just ramming
4 stuff down the town's throats and just approving an
5 application and that couldn't be farther from the
6 truth. It may appear that way, but it's definitely
7 not the truth.

8 JANICE ROMISOUKAS: But I --

9 CHAIRMAN TANNENHAUS: And we are -- I'm
10 just trying to answer.

11 JANICE ROMISOUKAS: Sorry.

12 CHAIRMAN TANNENHAUS: As Mr. Cucchiaro
13 said, there are rules and regulations that we have
14 to be bound to. We're not the elected officials,
15 we're the appointed individuals. We have to follow
16 the rules and regulations that are put in place by
17 the elected officials.

18 JANICE ROMISOUKAS: Okay, so --

19 CHAIRMAN TANNENHAUS: So anything

20 legally, that the public can actually bring to our
21 attention, we really do value that input.

22 JANICE ROMISOUKAS: What is an example
23 of a legal thing that could help us right now?

24 CHAIRMAN TANNENHAUS: If I had
25 that --

1 ATTORNEY CUCCHIARO: Mr. Chairman --
2 CHAIRMAN TANNENHAUS: -- if I had that
3 answer, I wouldn't be asking you.

4 ATTORNEY CUCCHIARO: Mr. Chairman, let
5 me just be clear. The board will listen to any
6 comments, but in terms of comments that can
7 influence the board, those comments have to be
8 grounded in the areas that were outlined, ingress
9 and egress, compliance with ordinances.

10 So this is not -- this was not the
11 chairman trying to coach anybody on, you know, what
12 to say to deny an application. It was the chairman
13 saying that those -- the comments that are most
14 useful to the board are grounded in compliance with
15 the ordinance and safety of ingress and egress.

16 JANICE ROMISOUKAS: Okay, I understand.
17 I was just hoping for some more input.

18 ATTORNEY CUCCHIARO: No, I understand.
19 It was a good opportunity for us to clarify that.

20 JANICE ROMISOUKAS: I mean this, you
21 know, what's going to happen on Fairfield Road is so
22 greatly going to concern us. I mean, this past
23 summer when the warehouse that's already being
24 built -- which have you guys even seen the size of
25 that warehouse? I mean, I'm flabbergasted every day

1 when I go past it, it's so big.

2 But this summer when it was being
3 built, at 2 o'clock in the morning I could hear them
4 talking because they were pouring cement at
5 2 o'clock in the morning. So I'm across the road --
6 down the road, across the road, and I could hear
7 them speaking as they were pouring the cement,
8 myself and my neighbors. And we reported it to the
9 police every night. And the noise -- noise, I can't
10 say this -- noise ordinance officer did address it.
11 But that's only the beginning, and it scares me to
12 death.

13 But I agree with what the majority have
14 said, this traffic is so scary. Our mailboxes are
15 on Fairfield Road. You have to get out of the car
16 and get our -- get your mail. I'm sure that applies
17 to the people on Howell Road and Okerson. That it
18 is so scary to think -- I mean I get nervous with
19 cars and now I have to worry about an increase in
20 tractor-trailers. My biggest concern is the traffic
21 and the noise and the pollution. And thank you for
22 hearing me.

23 CHAIRMAN TANNENHAUS: You're welcome.
24 Thank you for your comments.

25 BOARD SECRETARY: Next I have Kevin.

1 ATTORNEY CUCCHIARO: Do you swear or
2 affirm the testimony you are about to give this
3 board is the truth, the whole truth, and nothing but
4 the truth?

5 KEVIN SCOTT: I do.

6 ATTORNEY CUCCHIARO: Please state and
7 spell your name and give us your address.

8 KEVIN SCOTT: My name is Kevin Scott,
9 it's k-E-V-I-N, S-C-O-T-T. And I live at 249
10 Fairfield Road, Freehold, New Jersey 07728.

11 ATTORNEY CUCCHIARO: Okay, Mr. Scott,
12 go ahead.

13 KEVIN SCOTT: I know we're trying to
14 look for something of a legal way to stop this. I
15 was just wondering what kind of noise ordinance we
16 have?

17 I do have three kids that live on
18 Fairfield Road and we go to the pool club last
19 summer. And in my mind, I think you're going to put
20 that business out of business with this warehouse
21 across the street. Nobody is going to want to go
22 there with the kids no more.

23 And how loud, you know, are all these
24 trucks coming in and coming out and/or idling,
25 whether it's for three minutes or for an hour? It's

1 going to affect this business and my time and my
2 kids time at this pool club where we were part of
3 the community and it seems like most of the
4 community is heading towards warehouse space
5 instead.

6 ATTORNEY CUCCHIARO: Mr. Pape, do you
7 have any response to the issue of the noise
8 ordinance?

9 ATTORNEY PAPE: Mr. Cucchiaro, it's my
10 understanding that the Township of Howell has a
11 sound ordinance that is consistent with the state
12 statute. There are daytime and nighttime
13 requirements that are imposed by the state on the
14 municipality. We acknowledge those and we have an
15 obligation to operate with those. There's no relief
16 that can be granted from them.

17 ATTORNEY CUCCHIARO: What I would add
18 to that is our noise ordinance is not part of land
19 use or zoning. So as Mr. Pape stated, it's nothing
20 that they can receive relief from.

21 So, you know, if they are operating
22 above the requirements, per the noise ordinance they
23 may get shut down so they're taking that chance.
24 But they have to comply. There is no -- there is no
25 options available to them.

1 KEVIN SCOTT: And it is supposed to be
2 a 24/7 operation, so they would have to meet the
3 night-time noise ordinances as well?
4 ATTORNEY CUCCHIARO: That is correct,
5 yes. So it's a risk to have them have this
6 warehouse there and get complaints.
7 ATTORNEY CUCCHIARO: And I can tell
8 you there have been other uses where that has
9 happened. The movie theater on -- the former movie
10 theater on Route 9, there was an enforcement action
11 concerning the noise. So it's something that the
12 town does have some experience with. And, you know,
13 they will -- they have no choice, they have to
14 enforce it as well.
15 ATTORNEY PAPE: If I may? If I may, I
16 think it's been commented that I have done more than
17 one warehouse application on behalf of applicants
18 before more than one board. I will tell you that
19 this is the first time that I have seen a sound
20 attenuation wall built on private warehouse
21 property. The request of the board that that be
22 included is unique. And the location of that sound
23 attenuation wall is intentionally designed to
24 protect the neighborhood that is in close proximity.
25 I would say that's an unusual and an

1 nothing but the truth?
2 SHANNON CUTRONA: Yes, I do.
3 ATTORNEY CUCCHIARO: Please state and
4 spell your name for the record and give us your
5 address.
6 SHANNON CUTRONA: My name is Shannon
7 Cutrona, S-H-A-N-N-O-N, C-U-T-R-O-N-A. I live at 32
8 Five Points Road, that's F-I-V-E, Points with an S,
9 Freehold, New Jersey 07728.
10 ATTORNEY CUCCHIARO: Okay, go ahead.
11 SHANNON CUTRONA: So I am a resident
12 that is directly impacted by multiple decisions by
13 this planning board. There are a number of
14 industrial places that have been built within a
15 two-mile radius of my home over the last 12 years
16 that I have lived here.
17 I am still struggling with the idea
18 that this board has even entertained this at this
19 point because down off Halls Mills, Okerson, near
20 the 33 entrance where the DMV is, you have a
21 warehouse currently being built. We do not have any
22 expectation of what that traffic will be in that
23 area.
24 Down off 33 heading towards 34, we have
25 an extensive amount of activity now that causes a

1 extraordinary step that this board asked the
2 applicant to do and the applicant agreed to.
3 KEVIN SCOTT: And then I guess my final
4 question is the possibility of this warehouse
5 putting businesses across the road out of business,
6 it doesn't matter legally in any sense to prevent
7 the warehouse from being built?
8 ATTORNEY CUCCHIARO: It's not a --
9 that's not one of the criteria that the Municipal
10 Land Use Law would allow us to consider.
11 KEVIN SCOTT: Okay. I also disagree,
12 this is my neighborhood. You know, I don't have any
13 other legal ways of preventing it besides stating my
14 opinion.
15 CHAIRMAN TANNENHAUS: Thank you,
16 Mr. Scott.
17 BOARD SECRETARY: I have Shannon
18 Cutrona.
19 SHANNON CUTRONA: Hi, can you hear me?
20 BOARD SECRETARY: We can't see you,
21 but we can hear you.
22 SHANNON CUTRONA: Okay, thank you.
23 ATTORNEY CUCCHIARO: Do you either
24 swear or affirm the testimony you are about to give
25 this board is the truth, the whole truth, and

1 lot of issues on my road turning left onto 33,
2 heading towards 34 because of all the housing that
3 was built. You have industrialization and
4 industrial buildings that have been built on the
5 corner. You have two gas stations. You have a ton,
6 ton of industrialization in what is supposed to be
7 an agricultural suburban area.
8 I have experienced such heartache
9 because of the pollution and devastation that has
10 occurred to our environment as a result of all this
11 build-out. Current, my husband, two neighbors
12 across the street, a third one recently, and around
13 the block have all been diagnosed with the same
14 classification or type of cancer. I have contacted
15 Monmouth County and other places to ask for an
16 environmental study of air, water, and anything I
17 can to find out why at this point in time there are
18 all of these issues.
19 And now at this point in time where I
20 have lost my husband to his cancer, the two previous
21 owners of my home died of what I can call
22 questionable circumstances. You are now asking us
23 to tolerate yet another building that will impede
24 upon the pollution and environment of where we live.
25 As of late, three years ago, if I were

1 to drive and turn left down 33, there would not be
2 more than ten minutes to get to the circle at 34.
3 It now takes 20 minutes.

4 The traffic in front of my house is
5 daunting at two times a day. In the last three
6 months the traffic of trucks because of all of this
7 construction has shaken my house to the point where
8 I wake up in the middle of the night thinking
9 someone is in my home. I have had china fall that
10 has never fallen in 12 years because of the weight
11 of the trucks going in front of my house. I have
12 had my mailbox turned over. I have had to sit there
13 in a heart-wrenching moment to watch my son attempt
14 to cross the road to get to his bus stop, as these
15 trucks plow down -- literally plow down my street.

16 And you're talking about the ingress
17 and egress of this location. The ingress and egress
18 does not just affect the placement of where those
19 trucks come in and out, it impacts the traffic
20 within a one-square-mile radius. You have the NJNG
21 now on Fairfield. You are adding this entrance.
22 What else can we expect? And what is our end game?
23 Are you going to relieve taxes based on this, while
24 increasing pollution and setting harm to our
25 children because you haven't done an environmental

1 study?

2 We still don't know what the impact of
3 the traffic is from where the old vitamin shop is,
4 that vitamin factory is. We have no idea. And I
5 look at those bays and say, wow, that's a lot of
6 bays for a lot of warehouse traffic and a lot of
7 trucks.

8 You have another truck stop where they
9 come in and out for Coca-Cola right on that corner
10 of Okerson. That is a lot of traffic. You have the
11 baseball fields there. I don't understand why we're
12 even entertaining this where the danger and
13 environmental impact -- much less everything else --
14 we're entertaining this.

15 When we moved here 12 years ago, my
16 husband and I because it was an agricultural
17 suburbia, and now you're adding suburban sprawl that
18 is going to heavily impact the lives of the citizens
19 that live here. And you have not yet made a case
20 legally as to how this is even acceptable when you
21 have a residential area. 700-plus trucks for this
22 location in addition to the other location that is
23 very close to that, is way too much. And what are
24 you going to do to safeguard my kids?

25 And then I was told that you're going

1 to run sewage through here. You have yet to fix
2 this road on Five Points on my side. There is
3 constant water. There is constant issues. We have
4 had multiple accidents in front of my house because
5 you have yet to fix the runoff. You have yet to fix
6 it.

7 And so now I have to worry about these
8 trucks coming through here. We are talking -- if
9 you are going to say to me that they're not going to
10 be coming on Five Points Road as these big
11 semi-trucks, you're lying. Because I see them at
12 night. They wake me up. They shake my house. It's
13 ridiculous. They're not supposed to be here, but
14 they are. And they did the traffic study. You
15 didn't sit there, I sat there and watched while they
16 sat there and watched. And it impacted my life and
17 my family as well as the other families.

18 28 Five Points, they've replaced their
19 mailbox six times. Six times in the last four
20 years. I have had to replace my mailbox because
21 people, they get out of control on that road, they
22 go too fast, and now you're going to add even more
23 traffic. There are days at 4 to 6 o'clock I can't
24 get out of my own driveway and you're adding more
25 traffic.

1 How are you going to guarantee me that
2 my children will be safe? And then are you going to
3 force me to pay that \$10,000 hookup for the sewage
4 that I'm told that this requires? That
5 now -- because I have my own septic and I'm happy
6 with it. I just put in a new well and I'm happy
7 with it. Am I now going to have to pay the Howell
8 water and sewer that I don't want to? And a \$10,000
9 hookup whether I do it or not? What about that?

10 ATTORNEY CUCCHIARO: This board does
11 not improve the roads or compel anyone to hook up to
12 anything. Those are issues for the governing body.

13 SHANNON CUTRONA: It doesn't matter; if
14 you are approving this plan, which we are told is
15 linked to that, then you are approving for us as
16 taxpayers to pay an extra 10,000 we don't want to,
17 when we are paying one of the highest tax rates in
18 the entire Monmouth County and the State of
19 New Jersey, as a matter of fact.

20 So what is the benefit of us having
21 this happen? What is the benefit to my family?
22 What is the benefit to the environment?

23 How are you going to handle the
24 environmental impact of this? Not just at ingress
25 and egress, it doesn't -- that is not the sole issue

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1 because ingress --

2 ATTORNEY CUCCHIARO: Mr. Chairman?

3 SHANNON CUTRONA: -- because ingress

4 and egress impacts everything, all of the spiders

5 that go out, all of the roadways that go out.

6 ATTORNEY CUCCHIARO: Mr. Chairman?

7 CHAIRMAN TANNENHAUS: Yes.

8 ATTORNEY CUCCHIARO: The board's

9 jurisdiction is to determine whether the applicant

10 has complied with the site plan, the zoning, and the

11 design criteria, and where it hasn't, whether relief

12 should be granted. And the law requires that we

13 look at ingress and egress. I can't --

14 SHANNON CUTRONA: You don't care about

15 the safety of our children.

16 ATTORNEY CUCCHIARO: Mr. Chairman --

17 SHANNON CUTRONA: You don't care about

18 the environmental impact. You have six cancer

19 people within a block of each other.

20 ATTORNEY CUCCHIARO: Mr. Chairman --

21 Mr. Chairman.

22 SHANNON CUTRONA: You don't care about

23 that?

24 ATTORNEY PAPE: Mr. Chairman, I am

25 telling you what the law requires of the board --

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1 CHAIRMAN TANNENHAUS: I appreciate it.

2 ATTORNEY CUCCHIARO: -- not what I

3 care about or what the board cares about, but what

4 I'm telling you is that you don't get to make up the

5 law --

6 SHANNON CUTRONA: Then have an

7 environmental impact study because that can stop

8 them in their tracks. Because if you turn up that

9 ground --

10 ATTORNEY CUCCHIARO: Mr. Chairman --

11 SHANNON CUTRONA: -- and that ground is

12 impacted with pesticides --

13 ATTORNEY CUCCHIARO: Mr. Chairman --

14 SHANNON CUTRONA: -- that impacts the

15 air quality.

16 ATTORNEY CUCCHIARO: -- we have gone

17 beyond -- we have gone beyond what the law permits

18 us to consider.

19 SHANNON CUTRONA: No, you haven't. So

20 the law doesn't consider people? The law doesn't

21 consider people?

22 ATTORNEY CUCCHIARO: Mr. Chairman --

23 SHANNON CUTRONA: It doesn't consider

24 safety?

25 ATTORNEY CUCCHIARO: Mr. Chairman --

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1 SHANNON CUTRONA: It doesn't consider

2 how this will negatively impact the people that live

3 here?

4 ATTORNEY CUCCHIARO: -- I understand

5 there's a disagreement with the law, but the law is

6 the law --

7 SHANNON CUTRONA: No, there is not a

8 disagreement. It's that --

9 ATTORNEY CUCCHIARO: Mr. Chairman --

10 Mr. Chairman.

11 SHANNON CUTRONA: -- you have

12 ingress/egress, but you don't have the ingress and

13 egress in relation to --

14 ATTORNEY CUCCHIARO: Mr. Chairman,

15 this is out of order.

16 SHANNON CUTRONA: -- did you do the

17 study of ingress and egress at that site versus the

18 site off of Willow Grove and Hall Mills?

19 ATTORNEY CUCCHIARO: Mr. Chairman,

20 this is out of order.

21 CHAIRMAN TANNENHAUS: Okay, Ms.

22 Cutrona, we appreciate your comments. Do you have

23 anything else that you would like to add?

24 SHANNON CUTRONA: Yes, that you need to

25 consider the people impact, not just ingress and

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1 egress. It's not just when they enter and exit,

2 because they have to spider out into other places.

3 What is the environmental impact?

4 ATTORNEY CUCCHIARO: Mr. Chairman --

5 SHANNON CUTRONA: That also has to be

6 considered.

7 ATTORNEY CUCCHIARO: -- this is

8 repetitive and irrelevant testimony.

9 SHANNON CUTRONA: It's not irrelevant.

10 It's not irrelevant.

11 CHAIRMAN TANNENHAUS: Ms. Cutrona --

12 ATTORNEY CUCCHIARO: It's the law, Mr.

13 Chairman.

14 CHAIRMAN TANNENHAUS: -- we've got to

15 -- we've got to get on to other people. Do you have

16 anything else you can add?

17 SHANNON CUTRONA: I want to know who

18 lives on Five Points Road, Fairfield Avenue and

19 Asbury Avenue, and Howell Road on this board.

20 CHAIRMAN TANNENHAUS: Thank you.

21 SHANNON CUTRONA: Ridiculous. You just

22 don't care about people. That's what I get from

23 this. Thank you.

24 CHAIRMAN TANNENHAUS: Thank you, Ms.

25 Cutrona. Have a good night. Eileen?

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1 You know, people have said some things
 2 but, you know, Mr. Cucchiaro, this is why having the
 3 liaison between the board and the council is so
 4 important so that that person can bring this
 5 information back to the council board accordingly.
 6 BOARD SECRETARY: Do you want me to
 7 bring in the next person?
 8 CHAIRMAN TANNENHAUS: Yes.
 9 BOARD SECRETARY: I have Wayne
 10 Senatore.
 11 ATTORNEY CUCCHIARO: I think Mr.
 12 Senatore testified at the last hearing, didn't he?
 13 CHAIRMAN TANNENHAUS: I don't recall.
 14 Let me check my notes.
 15 BOARD ENGINEER: I have him in my
 16 notes.
 17 CHAIRMAN TANNENHAUS: Yeah?
 18 BOARD ENGINEER: 245 Thoroughbred,
 19 correct.
 20 BOARD SECRETARY: Then we'll go to the
 21 next person. Sarah?
 22 ATTORNEY CUCCHIARO: Okay, do you
 23 swear or affirm the testimony you are about to give
 24 this board is the truth, the whole truth, and
 25 nothing but the truth? I'm sorry, you have to

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1 unmute yourself.
 2 SARAH MITCHELL: Hi.
 3 ATTORNEY CUCCHIARO: Let me just swear
 4 you in again. Do you swear or affirm the testimony
 5 you are about to give this board is the truth, the
 6 whole truth, and nothing but the truth?
 7 SARAH MITCHELL: I do.
 8 ATTORNEY CUCCHIARO: Please state and
 9 spell your name and give us your address.
 10 SARAH MITCHELL: Sarah Mitchell,
 11 S-A-R-A-H, M-I-T-C-H-E-L-L, 3 Howell Road.
 12 ATTORNEY CUCCHIARO: Okay, go ahead.
 13 SARAH MITCHELL: Hi. So I wrote
 14 something that I would like to read.
 15 Good evening, Howell Township citizens,
 16 planning board, and Mr. Pape. Thank you for
 17 allowing public comment.
 18 I live here on 3 Howell Road with my
 19 husband and four children. They are 8, 5, 2 and 6
 20 months old. I say with overwhelming enthusiasm, I
 21 do not think this should be developed on Howell Road
 22 for many reasons, mainly is the safety of the
 23 ingress/egress.
 24 The uptick in traffic on Okerson and
 25 Howell Road has been very evident on Howell Road the

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1 last few years. It actually became a drag strip for
 2 cars crossing over Route 33. Once the light turns
 3 green they hit 70 miles an hour on a slow day. Cars
 4 that cross over 33 onto Howell Road go onto the ramp
 5 for Route 33 and speed very dangerously.
 6 I understand that legally what can only
 7 be considered to deny the application is the safety
 8 of the ingress/egress. I am testifying myself that
 9 turning onto Howell Road every day from my driveway
 10 puts my life at risk with my four kids in the car.
 11 I take the back driveway. It goes out to Michael
 12 Curtain Way. And I avoid pulling out of the
 13 driveway because I just -- it's dangerous. Once the
 14 light turns green you hear the cars coming and they
 15 speed, it's tractor-trailers and it's -- it's
 16 just -- it's not safe at all.
 17 I could not personally imagine a
 18 tractor-trailer pulling out of the ingress or
 19 whatever it's called, onto Howell Road, getting onto
 20 the ramp for, 33, doing it safely. They're going to
 21 go onto oncoming traffic. They're going to face
 22 speeding cars. There's blind spots.
 23 I am also not confident that adding 740
 24 tractor-trailers and cars turning onto Howell Road,
 25 that the planning Board can guarantee that they can

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1 do it safely especially if cars don't even do it
 2 safely driving out of driveways. There are
 3 several -- there are accidents all the time on this
 4 road, on Route 33. And that alone seems to be
 5 enough of a reason to question whether or not this
 6 should be passed.
 7 I am also concerned with the lights,
 8 the noise, and the emissions. On a summer night we
 9 could hear the music from Howell Pointe Swim Club,
 10 which is far away. We can see the lights, you know,
 11 10:00 p.m. comes around, they're still playing
 12 music. Great, because people are having a good time
 13 and I don't even care about that. But I don't see
 14 what putting up a wall is going to do when it's
 15 literally in the backyard. The light is not going
 16 to be blocked, it's going to light up the sky. It's
 17 going to be operating 24 hours. I just -- I don't
 18 see how it -- it can be done safely and positively
 19 without reducing the quality of our life. And
 20 emissions, it's just -- it's going to be a huge ball
 21 of smoke.
 22 On Okerson Road also, the Little
 23 League, you drive down there every day you see
 24 parents packing up the car, they have their older
 25 children with them. There's 2-year-olds running

1 into the street. I see this every day. I am not
2 making this up, it's a concern. My son played for
3 Howell Little League and I was one of the parents
4 chasing my child into the street and trying to get
5 my other kids into the car.

6 I just -- the last issue that I have
7 also that I want to bring to your attention,
8 somebody else just mentioned it. At the last
9 meeting you said how there's going to be 740 -- an
10 estimate of roughly 740 cars and mix of
11 tractor-trailers added to the traffic daily. But
12 that -- that doesn't include Fairfield, the traffic
13 from Fairfield that is going to, you know, that's
14 going to increase more. And then the traffic on
15 Halls Mills Road from that -- Halls Mills and
16 Okerson, that huge warehouse, that is going to
17 be -- so, you know, it's going to be like almost
18 3,000 more cars a day. Because if you multiply the
19 740 by three you're almost up to 3,000.

20 I just can't see it being done to
21 benefit our area and while yet guaranteeing the
22 safety of our children and the people that live
23 around here and drive around here. I just -- I take
24 issue with these things.

25 And that's all I have to say. And

1 thank you for hearing me. My husband would like to
2 speak also, if it's possible.

3 CHAIRMAN TANNENHAUS: Absolutely.

4 ATTORNEY CUCCHIARO: Let me swear him
5 in. Do you swear or affirm the testimony you are
6 about to give this board is the truth, the whole
7 truth, and nothing but the truth?

8 ADAM MITCHELL: I do.

9 ATTORNEY CUCCHIARO: Please state and
10 spell your name and give us your address.

11 ADAM MITCHELL: Sure. Adam Mitchell, 3
12 Howell Road, Freehold, New Jersey 07728.

13 I'm going to -- you know what, I'm
14 going to turn the light on. My wife's a little shy,
15 I'm used to doing this, so I'm going to turn the
16 video on so you all can see me.

17 Now, I know the -- I know the board
18 members are bound by the legal standard. What you
19 guys are able to decide versus the emotions that are
20 carried by a lot of the people today. I know that's
21 not understood by a lot. However, I did review the
22 original resolution. My question to the board is
23 has the original resolution that was --

24 ATTORNEY CUCCHIARO: Sir, you can --
25 you can ask questions to the applicant.

1 The way that it works is the board is
2 kind of like a jury in a trial. So they evaluate,
3 you know, people's testimonies, but they're not
4 witnesses. But you can certainly ask that question
5 to the applicant.

6 ADAM MITCHELL: Sure. So to the
7 applicant, are you in receipt of the original
8 resolution denying the application?

9 ATTORNEY PAPE: Yes.

10 ADAM MITCHELL: Okay. So if we're
11 looking at that, then has all of that been
12 satisfied? Meaning has that resolution been
13 completely combated, in your opinion?

14 ATTORNEY PAPE: My opinion isn't
15 important. I will tell you that our goal working
16 with the planning board and its professionals was in
17 2021 and continues to this date to address their
18 concerns and requirements. It was the applicant's
19 position that that occurred in 2020 -- [audio lost]
20 -- did not support that.

21 We believe the plan that is before the
22 board now is a much improved plan and the
23 improvements were specifically designed to address
24 the concerns that came out of that last resolution.

25 ADAM MITCHELL: All right. Can I ask

1 you how the safety concerns have been addressed?
2 Meaning how the semi-trucks will safely turn onto
3 Okerson Road and Howell Road exiting the facility?

4 ATTORNEY PAPE: I can't answer a
5 question that's a technical question such as that,
6 other than to tell you that Mr. Fishinger did
7 identify in his testimony last week and in his

8 report that the driveway will function. The ingress
9 and egress elements of the driveway will function
10 safely. And the applicant also went to the fire
11 department and asked them to review it and the same
12 comments came from the fire department.

13 ADAM MITCHELL: So, I mean, I'm not
14 sure how much anybody knows about the turning radius
15 of a semi-truck, but it well exceeds the feet even
16 available on Okerson Road. I mean, there even can
17 be a case made as to how you're going to make that
18 turn on Howell Road depending on where the exit and
19 entrance is.

20 However, you know, it seems that
21 we're at -- we're at an impasse here, it seems that
22 maybe the decision has already been made, as
23 evidenced by the Executive Session. And the board
24 is going to do what they want to do, and I thank you
25 for hearing me, but at the end of the day, you know,

1 this may well be in the bag, but I just want you to
2 think about it. You know, maybe you go to court,
3 maybe you lose based on a resolution denying this.
4 But, you know, ultimately a kid -- a kid is going to
5 die on this road, on Okerson Road. Somebody is
6 going to get hit at the Little League and they're
7 going to die. And at the end of the day that blood
8 is going to be on your hands.

9 Did you fight? Yeah. Maybe you lost,
10 maybe you didn't win. Maybe they get to build it
11 anyway. You know, it's still not going to be great.
12 So what, they rotated it around a little bit. So
13 what, the loading docks aren't on here. We're going
14 to have a 24/7 major hub here behind our house. And
15 maybe some people are okay with that.

16 I'm not one for fighting progress. I
17 think there's many use cases for that land if it's
18 not going to be a farm. However, if we're going to
19 turn this into an industrial park, then so be it.
20 I'm going to be calling the police and calling the
21 noise ordinances 24/7. Maybe we'll get them shut
22 down that way. But this isn't going to be the end.
23 This is only the beginning.

24 I thank the board for your time. And,
25 you know, do what's right, vote your conscience and

1 ADAM MITCHELL: How much did you pay
2 for that report?

3 ATTORNEY PAPE: It's not something
4 that goes on the record. I will tell you that all
5 of the experts that were hired were highly qualified
6 experts and all were directed to provide truthful
7 testimony.

8 ADAM MITCHELL: Thank you.

9 BOARD SECRETARY: I have Mike G again.
10 We tried to bring him in earlier and -- and we
11 couldn't get him.

12 MIKE GREENFIELD: Can you hear me?

13 ATTORNEY CUCCHIARO: Do you swear or
14 affirm the testimony you are about to give this
15 board is the truth, the whole truth, and nothing but
16 the truth?

17 MIKE GREENFIELD: Yes.

18 ATTORNEY CUCCHIARO: Please state and
19 spell your name for the record and give us your
20 address.

21 MIKE GREENFIELD: Mike Greenfield,
22 M-I-K-E, G-R-E-E-N-F-I-E-L-D, 417 Brickyard Road.
23 And I have one question for the board. Has anybody
24 looked on --

25 BOARD SECRETARY: Can you spell your

1 the legal system will sort itself out in the end.

2 ATTORNEY PAPE: If I could provide a
3 further response. The turning templates for the
4 trucks were provided by the applicant. Those
5 templates are part of the submission.

6 The testimony of Mr. Fishinger last
7 week, and this is on Page 43 of the transcript,
8 indicates that the total number of trips on a
9 typical weekday are 740. Those are in and out
10 movements. He also states, looking at the changes
11 at the Levels of Service due to the project, none of
12 the Level of Service rates changed. None of the
13 Level of Service rates changed, there's only modest
14 increases in levels of delay of a second or less on
15 any approach. And he continues with this statement:
16 "As far as the site driveways, they all operate at a
17 Level of Service B or better for all approaches and
18 movements for both time periods."

19 That is the applicant's commitment, to
20 make certain that the driveways are safe.

21 ADAM MITCHELL: Can I ask you one
22 follow-up question on that?

23 ATTORNEY PAPE: I don't control what
24 you do.

25 ATTORNEY CUCCHIARO: Go ahead.

1 name, sir, and give your address.

2 MIKE GREENFIELD: 417 Brickyard Road.
3 You got that?

4 BOARD SECRETARY: Yes. Can you spell
5 your last name, please?

6 MIKE GREENFIELD: Greenfield,
7 G-R-E-E-N-F-I-E-L-D.

8 BOARD SECRETARY: Thank you.

9 ATTORNEY CUCCHIARO: No relation to
10 our board member?

11 MIKE GREENFIELD: No.

12 ATTORNEY CUCCHIARO: Okay, Go ahead.

13 MIKE GREENFIELD: Okay, I have one --
14 one question in regards to Okerson Road. Has
15 anybody studied the culvert or the bridge just as
16 you're going up the hill to the motor vehicle center
17 to see the weight rating on that? And I'm asking
18 your professional.

19 There is a culvert there. There is a
20 stream there, you know.

21 ATTORNEY CUCCHIARO: Mr. Pape, is that
22 something you can address?

23 MIKE GREENFIELD: 80,000 pounds going
24 over a culvert.

25 ATTORNEY PAPE: There are no

1 restrictions. You can check that road system.

2 There are no weight restrictions imposed on that
3 culvert.

4 MIKE GREENFIELD: Well I'm not saying
5 there's a weight restriction, but has a study been
6 done on that culvert or that bridge, right where it
7 runs under the -- the stream runs underneath it,
8 just before you hit motor vehicle on the left. As
9 you are going up the hill by the old silo.

10 I'll tell you that. I have been in
11 Freehold 43 years. Believe me, I know a lot about
12 the town and I'm pretty sure nobody looked at that
13 culvert.

14 ATTORNEY PAPE: No specific study of
15 the culvert's capacity to handle weight traffic was
16 done because there is no weight restriction on that
17 portion of the road.

18 MIKE GREENFIELD: So let me ask you
19 something. There's no weight restriction. So the
20 first time an 80,000-pound tractor-trailer rides
21 over it and crushes it and that road is closed
22 indefinitely, who is going to pay for that?

23 ATTORNEY PAPE: My only response is
24 that, from the testimony of people this evening,
25 members of the community who are very familiar with

1 the area, that type of truck movement has been
2 ongoing for ten or more years. So we're not
3 expecting that the culvert is going to be crushed by
4 an 80,000-pound truck.

5 MIKE GREENFIELD: Well, have you seen
6 the culvert? Have your professionals seen it? Have
7 they been out there to view it?

8 ATTORNEY PAPE: Our entire team of
9 engineers is responsible for reviewing that, but,
10 no.

11 MIKE GREENFIELD: Does it show on your
12 maps? I don't even believe it even shows on your
13 maps.

14 ATTORNEY PAPE: It's not on our
15 property. It's not on the maps.

16 MIKE GREENFIELD: So let me ask the
17 board. If this culvert or bridge that has no weight
18 restriction right now collapses under who knows how
19 many 80,000-pound trucks going to Route 33, which
20 they're going to go that way, and it closes that
21 road indefinitely and they have to rebuild that
22 bridge, who pays for that?

23 ATTORNEY CUCCHIARO: It's not, as I
24 said to the last gentleman, the board doesn't get
25 cross-examined. It accesses the answers to the

1 questions you ask the applicant.

2 MIKE GREENFIELD: So we just don't
3 worry about it?

4 ATTORNEY CUCCHIARO: You can take that
5 however you please.

6 MIKE GREENFIELD: It's not that they
7 should do a study on that also just because there's
8 no legal weight restriction on it, to make sure that
9 it doesn't collapse?

10 I would think part of their traffic
11 study would have been making sure that culvert or
12 bridge would hold 700 tractor-trailers possibly
13 going over it in a couple of days?

14 I'm talking to your professional.
15 Because if he hired the traffic study people they
16 should have known all about this culvert or bridge.
17 True? I don't hear a response.

18 ATTORNEY CUCCHIARO: I don't
19 understand who you're asking the question to.

20 MIKE GREENFIELD: The professional who
21 hired the person who did the study on the roads.
22 And since there's no weight restriction did they do
23 their own study to see how much that bridge would
24 hold?

25 ATTORNEY CUCCHIARO: Are you asking

1 the board's professional or the applicant's
2 professional?

3 MIKE GREENFIELD: The applicant's
4 professional.

5 ATTORNEY CUCCHIARO: Okay.

6 ATTORNEY PAPE: I thought that that
7 question was answered. There is no published data
8 that says there's a weight restriction. We didn't
9 challenge the people who own and maintain the road.
10 That was the regulation. That is exactly the way we
11 accepted it. We didn't do another investigation of
12 it.

13 MIKE GREENFIELD: So I have a question
14 to you about the ball field there and the children
15 that come and go. And that bridge will hold the
16 width of a tractor-trailer and not a bicycle with
17 it, I can tell you that right now, it's that thin.

18 Is that going to be a spot where
19 children will be going across there on bicycles and
20 tractor-trailers will be coming past?

21 Do you have a width that you have
22 taken, your traffic study people on that? It's
23 maybe one tractor-trailer wide.

24 ATTORNEY PAPE: I do not --

25 MIKE GREENFIELD: I believe somebody

1 should do a study on it so it doesn't end up in the
2 water some day, or some child will end up hit by a
3 tractor-trailer because he tried to cross that
4 bridge at the same time a truck was coming.

5 There's quite a few kids play in that
6 Little League field there that I remember years ago
7 they picked that spot specifically because it's nice
8 and quiet over there and built the ball fields. And
9 now it's going to be not so quiet. And you are
10 going to have a lot of children, you are going to
11 have a bridge that is very thin that children will
12 be crossing.

13 And if nothing else, I would have
14 thought your traffic study people would have had a
15 width on that and would have done their own study to
16 see if it would hold up under multiple
17 tractor-trailers.

18 Did you even know it was there?

19 ATTORNEY PAPE: Did I know that the
20 culvert was there?

21 MIKE GREENFIELD: Yes.

22 ATTORNEY PAPE: No, as the attorney
23 for the applicant I did not know that the culvert
24 was there. It's not part of my responsibility.

25 MIKE GREENFIELD: And I believe

1 probably there was not a weight restriction on that
2 bridge because it was just an old rural road that
3 hasn't had much traffic over the years and nobody
4 has ever thought about it. And it sits there with
5 water underneath it and 80,000-pound
6 tractor-trailers are going to go over it. And
7 nobody is worried about that?

8 Don't you think you should worry about
9 that? I'm asking you, you're the professional. You
10 hired the people who did the study. Don't you think
11 that study should have been done on that -- on that
12 culvert?

13 CHAIRMAN TANNENHAUS: Mr. Pape?

14 ATTORNEY CUCCHIARO: Mr. Pape -- I
15 mean, Mike, I think Mr. Pape has answered that they
16 did all of the studies they thought were appropriate
17 and required. That may not satisfy, you know, the
18 board or members of the public, but that's the
19 answer.

20 MIKE GREENFIELD: Okay. I would only
21 ask one more thing, that you send somebody out from
22 the Department of Public Works tomorrow and put a
23 tape across that bridge and find out that it's
24 barely big enough to hold the width of a
25 tractor-trailer. That's 108 inches, I believe,

1 102 inches in New Jersey. And I'm sure that bridge
2 isn't more than 120 inches wide.

3 And that's all I have to say tonight,
4 but somebody ought to do a study on it before either
5 somebody gets killed or the bridge collapses. Thank
6 you.

7 CHAIRMAN TANNENHAUS: Hold on. Hold
8 on, Mr. Greenfield.

9 MIKE GREENFIELD: Yeah. Yeah.

10 CHAIRMAN TANNENHAUS: Do any of our
11 professionals or any of Mr. Pape's professionals
12 have, or, Mr. Cucchiaro, is it even -- is it
13 even --

14 ATTORNEY CUCCHIARO: Mr. Pape has --
15 Mr. Pape has answered the question. You know, so I
16 mean that's the way that they have chosen to answer,
17 so the board can give it its appropriate weight.

18 MIKE GREENFIELD: I have one other
19 thing. The board, your group of people are getting
20 together and we're basing everything on
21 professionals. Well, we have a Department of Public
22 Works that goes over these roads all the time, and
23 maybe you should go to the supervisor of Public
24 Works and ask him what he thinks of that bridge.

25 I'm pretty sure you're going to get an

1 answer that it's not going to hold a lot of
2 80,000-pound vehicles. That's what he's paid for, I
3 believe, right? That's what we pay our taxes for.

4 ATTORNEY PAPE: Looking at the Google
5 Maps as you're testifying, it appears very clear
6 that the culvert that you're talking about is not in
7 Howell Township, it's in Freehold Township.

8 It also appears that the road is not
9 120 inches, which would be 10 feet wide, it appears
10 that each of the lanes is at least -- at least
11 12 feet wide, at least, not 110 --

12 MIKE GREENFIELD: Maybe I need to call
13 Freehold Township Public Works tomorrow and tell
14 them what you are planning on running over their
15 bridge. That would be the thing, I guess.

16 ATTORNEY CUCCHIARO: You're certainly
17 free to do that.

18 MIKE GREENFIELD: Okay. I thank the
19 board.

20 CHAIRMAN TANNENHAUS: Thank you, Mr.
21 Greenfield.

22 MIKE GREENFIELD: Thank you.

23 CHAIRMAN TANNENHAUS: Can we see if we
24 can try to get Candace back in?

25 BOARD SECRETARY: I'm trying. I think

1 she's in now.
 2 CANDACE DOVENERO: Hello.
 3 CHAIRMAN TANNENHAUS: Hello.
 4 ATTORNEY CUCCHIARO: Okay, do you
 5 swear or affirm the testimony you are about to give
 6 this board is the truth, the whole truth, and
 7 nothing but the truth?
 8 CANDACE DOVENERO: I do.
 9 ATTORNEY CUCCHIARO: Please state and
 10 spell your name and give us your address.
 11 CANDACE DOVENERO: Candace Dovenero, D
 12 as in David, O-V as in Victor, E-N as in Nancy, E-R
 13 as in Robert, O, 58 Victory Road, Howell, New Jersey
 14 07731.
 15 I'm sorry that I was not able to enter
 16 before. I am not feeling well and, as you can see,
 17 I have a fever but --
 18 CHAIRMAN TANNENHAUS: Sorry to hear
 19 that.
 20 CANDACE DOVENERO: No, I'm good, and
 21 I'll be fine. Tonight has just -- blood pressure
 22 through the roof. But here is the thing, you have
 23 heard testimony from several, you know, people in
 24 our town. Someone actually just spoke -- Mr.
 25 Greenfield just spoke about how the bridge is in

1 wasted to go to court when all you need to do is do
 2 a legitimate Howell traffic study. If you have this
 3 you will see that any person who is applying here,
 4 which they do not live here, obviously, and they do
 5 not reside here and they don't -- like, they're not
 6 on our roads. Our kids are not theirs.
 7 I am a teacher in Howell. I've already
 8 stated that. I have taught a few of the board
 9 members' children. And you know what, I don't want
 10 to see any of my kids hurt or any other -- nothing
 11 to happen. But let's just get down to the, like,
 12 business. You need a traffic study. Number one,
 13 Howell needs to make sure that the traffic study is
 14 there.
 15 Also, Howell needs to make sure that
 16 public notices -- the public is notified publicly,
 17 not on Facebook, for any other things that may
 18 occur. There are meetings that have been in the
 19 past that, guess what, no one has been notified. We
 20 had a Special Meeting --
 21 ATTORNEY CUCCHIARO: That's not --
 22 that's not true.
 23 CANDACE DOVENERO: Okay. You're right,
 24 Mr. Cucchiano -- Cucchario?
 25 ATTORNEY CUCCHIARO: Cucchiaro.

1 Freehold but Howell is not responsible for it. We
 2 are responsible for our streets. We are responsible
 3 for our warehouses. We are responsible for our
 4 traffic studies. At what point is this board going
 5 to take the authority and be responsible?
 6 You are appointed, I believe; you're
 7 all appointed?
 8 CHAIRMAN TANNENHAUS: Correct.
 9 CANDACE DOVENERO: Right. So,
 10 therefore, you are our representatives for the
 11 people of this town. At what point are you going to
 12 take responsible -- bility, I'm sorry, I'm like
 13 so...
 14 CHAIRMAN TANNENHAUS: Okay, take your
 15 time.
 16 CANDACE DOVENERO: It's been, like, two
 17 hours. I'm super tired. And there has not been a
 18 traffic study conducted by Howell. I'm going to
 19 calm myself.
 20 Howell has not paid money by -- you
 21 know, for a traffic study. James Winckowski has not
 22 done a traffic study for Howell. But you are
 23 willing to go to court over not having a traffic
 24 study for any of these warehouses. I don't
 25 understand why our taxpayer money is going to be

1 CANDACE DOVENERO: Cucchiaro. Thank
 2 you for clarifying -- because you know what, you
 3 would rather go -- have a court case than -- and
 4 take your chances, than rather settle this the right
 5 way.
 6 ATTORNEY CUCCHIARO: What?
 7 CANDACE DOVENERO: I don't want to
 8 waste our taxpayer money on you going to court. I'm
 9 sorry, I'm pretty sure --
 10 ATTORNEY CUCCHIARO: That's a complete
 11 misrepresentation.
 12 CANDACE DOVENERO: I don't really care.
 13 You said it.
 14 ATTORNEY CUCCHIARO: That's not what I
 15 said.
 16 CANDACE DOVENERO: It's recorded.
 17 ATTORNEY CUCCHIARO: That's not what I
 18 said. You don't get to make up what I said.
 19 CANDACE DOVENERO: It's recorded. I
 20 record everything that I do. You said it.
 21 ATTORNEY CUCCHIARO: You did not --
 22 no. No.
 23 CANDACE DOVENERO: You said the court
 24 case and you also said, "I'll take my chances."
 25 ATTORNEY CUCCHIARO: What?

1 CANDACE DOVENERO: This can be
 2 reviewed. That's fine, that's neither here nor
 3 there. You can negate or whatever. I don't really
 4 care at this point.
 5 I don't really feel that you are
 6 representing our town appropriately. I think that
 7 you feel that going to court and wasting taxpayer's
 8 money --
 9 CHAIRMAN TANNENHAUS: Mrs. Dovenero --
 10 ATTORNEY CUCCHIARO: First of all, I
 11 have not said go to court.
 12 CANDACE DOVENERO: Okay.
 13 ATTORNEY CUCCHIARO: We are in a
 14 posture where we're trying to settle the case.
 15 CANDACE DOVENERO: Okay.
 16 ATTORNEY CUCCHIARO: If we wanted to go
 17 to court, we would have gone to court. That's a
 18 complete, absolute, purposeful misrepresentation.
 19 CANDACE DOVENERO: I understand that
 20 you want to represent yourself right now, but right
 21 now --
 22 CHAIRMAN TANNENHAUS: Hold on.
 23 ATTORNEY CUCCHIARO: You know what, I
 24 have a client that I have to represent --
 25 CANDACE DOVENERO: I bet you -- I

1 already -- we've already been to court on this
 2 project.
 3 CANDACE DOVENERO: Right.
 4 ATTORNEY CUCCHIARO: We have not been
 5 to court on this project.
 6 CHAIRMAN TANNENHAUS: I'm sorry,
 7 sorry, we denied it.
 8 ATTORNEY CUCCHIARO: A lawsuit has
 9 been filed and rather than go to court the board
 10 entered into the Whispering Woods agreement to see
 11 whether there was an alternate plan. And if the
 12 board approves the plan we will not go to court.
 13 CANDACE DOVENERO: I would suggest
 14 strongly that the board does not approve the plan
 15 because, obviously, our intentions are
 16 somewhat -- like, we all need to work together.
 17 This is our town. We all love our town. We love
 18 Howell. So rather than go to court, waste
 19 taxpayers' money, which I pay, like, a lot, more
 20 than -- it's not important, that's not what this is
 21 about. I think we should just -- should just do a
 22 traffic study.
 23 And I'm super sorry that I wasn't
 24 available earlier. I will prefer not to go to
 25 court. But, you know what, the board is here. You

1 rescind my comment. I rescind my comment.
 2 ATTORNEY CUCCHIARO: Well, you can
 3 resent the comment, but for you to come up with a
 4 lie --
 5 CANDACE DOVENERO: No, I didn't say
 6 resent, I said rescind.
 7 ATTORNEY CUCCHIARO: You don't get a
 8 free pass on misrepresentation.
 9 CANDACE DOVENERO: No, I rescind it
 10 meaning I don't want to attack you. You already
 11 said it. It's on record.
 12 CHAIRMAN TANNENHAUS: This is going
 13 sideways here.
 14 Ms. Dovenero, just so I can
 15 understand --
 16 CANDACE DOVENERO: Yes.
 17 CHAIRMAN TANNENHAUS: -- are you
 18 trying to provide us, the board, some testimony from
 19 you in your wish to try to stay -- to keep the town
 20 out of court or --
 21 CANDACE DOVENERO: I don't want the
 22 town to go to court. We had enough -- we have
 23 already been to court.
 24 CHAIRMAN TANNENHAUS: Right, well,
 25 we're having this conversation and we've

1 are the people responsible for whether there is a
 2 death of a child, whether is -- there is -- it's not
 3 whether there is going to be, it's whether it
 4 happens -- when it happens. It's going to happen.
 5 And are you going to take responsibility?
 6 And, Shari, I'm sorry, because for once
 7 I'm not arguing about trees. Thank God.
 8 So for the rest of you, like, you will
 9 see me again on the 1st. You will see me every week
 10 from now on. I am not going to babble. And there
 11 is -- so apparently there were traffic engineers and
 12 this was all public knowledge on a public website.
 13 I would like that stated for the record, which
 14 public website were these -- did our people of
 15 Howell, were they knowledgeable of? Because I did
 16 not get any notification of a public website --
 17 ATTORNEY CUCCHIARO: The Municipal
 18 Land Use Law requires --
 19 CANDACE DOVENERO: Okay, could you
 20 please supply that link in maybe the agenda or
 21 somewhere else? Because not everyone has access to
 22 the Internet.
 23 ATTORNEY CUCCHIARO: Mr. Chairman --
 24 CHAIRMAN TANNENHAUS: I don't know how
 25 to answer.

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1 ATTORNEY CUCCHIARO: -- just for
 2 purposes of the record, the Municipal Land Use Law
 3 requires two forms of notice. One notice goes
 4 personally to the owners of property within 200
 5 feet --

6 CANDACE DOVENERO: Right, within
 7 200 feet, yes. Understand. Go.

8 ATTORNEY CUCCHIARO: I can wait.

9 CANDACE DOVENERO: No, I can let you
 10 go. And, well, my second question will be why --

11 ATTORNEY CUCCHIARO: Well, if you are
 12 going to let me go, then let me finish.

13 CANDACE DOVENERO: Actually, no, I
 14 won't. So the second part is how many --

15 ATTORNEY CUCCHIARO: Mr. Chairman, for
 16 purposes of the record, this resident, while arguing
 17 about notice, has expressed no interest in
 18 understanding what the legal requirements are for
 19 notice. So I just place that on the record.

20 Go ahead, ma'am.

21 CANDACE DOVENERO: That's fine.

22 I also want to know how many residents
 23 responded to this public notice as per website or
 24 any other means. Because some people don't have
 25 access to Internet, especially since --

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1 CHAIRMAN TANNENHAUS: Ms. Dovenero, I
 2 think Mr. Cucchiaro was going to --

3 CANDACE DOVENERO: Okay, I'll let him
 4 finish.

5 CHAIRMAN TANNENHAUS: -- answer the
 6 second question which is --

7 CANDACE DOVENERO: Apologize. Thank
 8 you.

9 ATTORNEY CUCCHIARO: The second --

10 CANDACE DOVENERO: Please continue, Mr.
 11 Cucchiaro.

12 ATTORNEY CUCCHIARO: -- the second
 13 means of notice is that it's published in the
 14 official newspaper at least ten days prior.

15 CANDACE DOVENERO: Which is -- what is
 16 the official newspaper?

17 CHAIRMAN TANNENHAUS: And how can, Mr.
 18 Cucchiaro --

19 ATTORNEY CUCCHIARO: Mr. Chairman?

20 CHAIRMAN TANNENHAUS: -- can you --

21 ATTORNEY CUCCHIARO: Mr. Chairman?

22 CHAIRMAN TANNENHAUS: Yes.

23 ATTORNEY CUCCHIARO: So there is no
 24 calculation of who looks at it or who has responded
 25 to it. What I can also tell you is that

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1 municipalities over the years have tried to increase
 2 the notice requirements and the courts have knocked
 3 it down.

4 There was a case in Edison where they
 5 tried to expand it to 500 feet and the court said,
 6 no, the Municipal Land Use Law is the minimum and
 7 the maximum. Some towns have tried to require that
 8 applicants put signs up on properties. That's been
 9 knocked down.

10 So, you know, we are subject to the law
 11 that regulates us and that's the notice
 12 requirements.

13 CHAIRMAN TANNENHAUS: And these
 14 documents are available at the township. Anybody
 15 can go to Eileen's office --

16 ATTORNEY CUCCHIARO: That is correct.

17 CHAIRMAN TANNENHAUS: -- and ask to
 18 see the documents at any time; is that a correct
 19 statement?

20 ATTORNEY CUCCHIARO: That is correct.

21 CHAIRMAN TANNENHAUS: If they don't
 22 have access to the Internet, they have -- they have
 23 that access.

24 ATTORNEY CUCCHIARO: Or they can come
 25 to town hall.

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1 CANDACE DOVENERO: Okay, I have one
 2 other question. So which jurisdiction are you all
 3 under? Because I know with the Board of Ed I get
 4 the Tri-Town News was, like, notified. I get Asbury
 5 Park Press was notified. I get these notifications,
 6 and they're all on the bottom of the agenda. But I
 7 have not received anything from Howell that we have
 8 all been notified. And I'm not --

9 ATTORNEY CUCCHIARO: Well, the
 10 applicant submits an Affidavit of Service and
 11 Publication that shows that the letters went out to
 12 everyone identified on the 200-foot-radius list.
 13 And there's also an affidavit that comes from the
 14 official newspaper showing that it was published at
 15 least ten days prior. And that's what the law
 16 allows us to do.

17 CANDACE DOVENERO: And where do you
 18 publish this exactly?

19 ATTORNEY CUCCHIARO: The official
 20 newspaper is the Asbury Park Press.

21 CANDACE DOVENERO: And that's it?
 22 Because I believe you need three.

23 ATTORNEY CUCCHIARO: Well, the law
 24 only requires that one newspaper have the
 25 publication for a Municipal Land Use Law notice.

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1 CANDACE DOVENERO: So only the Asbury
 2 Park Press; not the Tri-Town News, not any Internet?
 3 ATTORNEY CUCCHIARO: They get to
 4 select -- well, there are different outlets that the
 5 governing body selects. The governing body selects
 6 it, not the planning board. But, you know, if they
 7 choose -- they don't have to choose all three. They
 8 get to choose one under the Municipal Land Use Law.
 9 CANDACE DOVENERO: One? So basically
 10 half of our population of Howell, because I don't
 11 get any of the newspapers that -- I don't even get
 12 the Tri-Town News anymore.
 13 ATTORNEY CUCCHIARO: Well, what I can
 14 advise you is that your assemblyman and your state
 15 senator are probably who you need to speak to
 16 because they're the ones that have the power to
 17 change that statute. It's not an ordinance, it's a
 18 statute. So we don't adopt it, they do. So they
 19 would be the correct people.
 20 CANDACE DOVENERO: Okay, so no one
 21 really needs to be notified except for Asbury Park
 22 Press. How many times?
 23 ATTORNEY CUCCHIARO: That's the notice
 24 requirements.
 25 CANDACE DOVENERO: Okay. And then the

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1 other thing about the traffic study, that's my big
 2 thing, so --
 3 ATTORNEY CUCCHIARO: Well, the
 4 traffic -- I'm sorry.
 5 CANDACE DOVENERO: That's huge.
 6 ATTORNEY CUCCHIARO: As I stated
 7 previously, the board has traffic professionals who
 8 evaluate the applicant's traffic submittal and
 9 traffic testimony and that's what happened here.
 10 And they charge the applicant to do that.
 11 CANDACE DOVENERO: Okay, so the
 12 applicant -- the applicant supplied the traffic
 13 study, not Howell Township Board? James Winckowski;
 14 he did not?
 15 ATTORNEY CUCCHIARO: They review it.
 16 CANDACE DOVENERO: But he didn't
 17 conduct it?
 18 ATTORNEY CUCCHIARO: No, and he never
 19 does.
 20 CANDACE DOVENERO: But he is one of our
 21 board members just like you're a board attorney.
 22 ATTORNEY CUCCHIARO: Well, he's not a
 23 board member. Well, he was -- he's not with CME
 24 anymore, but he was --
 25 CANDACE DOVENERO: Not member, I meant

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1 a board...
 2 ATTORNEY CUCCHIARO: Professional.
 3 CANDACE DOVENERO: Yes.
 4 ATTORNEY CUCCHIARO: Yes, that's
 5 correct.
 6 CANDACE DOVENERO: So we did not -- he
 7 reviewed it but he didn't conduct it?
 8 ATTORNEY CUCCHIARO: And that doesn't
 9 happen anywhere, in any of the towns.
 10 CANDACE DOVENERO: Well, I would
 11 strongly suggest that that happens. Because you
 12 have five warehouses on your agenda -- or now three,
 13 I think, because you already passed some on special
 14 meetings. Okay? Yes, Ramtown was approved at an
 15 11 o'clock meeting that was not publicized. Didn't
 16 attend it. The Fish warehouse approved, okay? That
 17 is fine, I understand, but --
 18 ATTORNEY CUCCHIARO: Well the notice
 19 as required by the Municipal Land Use Law occurred.
 20 Whether you saw it or not I can't speak to, but the
 21 notice that's required by the law, the notice that
 22 is all that we can require under the law, has taken
 23 place for all of our meetings.
 24 CANDACE DOVENERO: So what exactly is
 25 your legal notice -- I don't know who's speaking.

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1 CHAIRMAN TANNENHAUS: That's not your
 2 background?
 3 CANDACE DOVENERO: That's not me. I'm
 4 alone. I have dogs.
 5 ATTORNEY CUCCHIARO: The notice
 6 requirement under the Municipal Land Use Law is each
 7 lot that's the subject of the application, you have
 8 to go to the tax assessor and they give you the
 9 addresses and names of everyone who is within
 10 200 feet. And you have to send letters out to them
 11 at least ten days prior to the hearing. And that
 12 there's a notice published in the official newspaper
 13 -- for some applications, the MLUL doesn't require
 14 it for all -- that's published in the official
 15 newspaper at least ten days prior to the
 16 application.
 17 Those are the Municipal Land Use Law
 18 notice requirements.
 19 CANDACE DOVENERO: Who is Joe
 20 Fishinger? He's on this meeting.
 21 ATTORNEY CUCCHIARO: That's the
 22 applicant's traffic engineer or civil engineer, Mr.
 23 Pape?
 24 CANDACE DOVENERO: But he's on this
 25 meeting, okay?

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1 ATTORNEY CUCCHIARO: He represents the
2 applicant.

3 CANDACE DOVENERO: Okay. Paul Dorato,
4 no video camera for either one of them.

5 ATTORNEY CUCCHIARO: When
6 Mr. Fishinger testified, he was on camera. And if
7 he testifies again he will be on camera.

8 CANDACE DOVENERO: Okay. So I don't
9 really know where the other --

10 MEMBER DORATO: I'm here.

11 CANDACE DOVENERO: You were the one who
12 spoke up. Great, Mr. Dorato.

13 I don't really know who just said
14 something because it wasn't me and it was implied
15 that it was me.

16 CHAIRMAN TANNENHAUS: No, it's okay,
17 it was just background noise.

18 CANDACE DOVENERO: So I have already
19 been called effing stupid by someone else on a
20 different board, but I'm not --

21 CHAIRMAN TANNENHAUS: No, we're not
22 going to --

23 CANDACE DOVENERO: I know that.

24 CHAIRMAN TANNENHAUS: -- ever play
25 those games. We heard some background noise and it

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1 was just you and Ron talking so I thought maybe it
2 was in your background, so that's all.

3 CANDACE DOVENERO: No.

4 CHAIRMAN TANNENHAUS: You're by
5 yourself, it's okay. We got it solved.

6 CANDACE DOVENERO: No, I actually am by
7 myself, actually. My husband is in Key West,
8 fishing. God bless.

9 CHAIRMAN TANNENHAUS: All right, any
10 other questions?

11 CANDACE DOVENERO: No. I just would
12 really implore that the board does a real traffic
13 study because I don't want any of you to have any
14 blood on your hands for any children that may not be
15 able to, like --

16 ATTORNEY CUCCHIARO: Mr. Chairman --

17 CHAIRMAN TANNENHAUS: Thank you.

18 ATTORNEY CUCCHIARO: -- I just want to
19 state again, I understand what the request is but
20 that's not what planning and zoning boards do; they
21 evaluate the information that's provided.

22 CANDACE DOVENERO: Okay, but they can
23 make sure, since this is a variance, that the proper
24 information is provided by Howell Township. We pay
25 taxpayer money --

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1 ATTORNEY CUCCHIARO: The proper
2 information has been provided. The proper notice
3 went out.

4 CANDACE DOVENERO: No, it's been
5 reviewed, it hasn't been provided. It has been
6 reviewed, not provided.

7 ATTORNEY CUCCHIARO: It was sent
8 to those --

9 CANDACE DOVENERO: By the applicant.

10 ATTORNEY CUCCHIARO: That's what's
11 required.

12 CANDACE DOVENERO: Wow, I can't wait to
13 run for the planning board. Yeah, I will be
14 appointed. That's my background noise, by the way,
15 that's my dog.

16 CHAIRMAN TANNENHAUS: No worries.

17 ATTORNEY CUCCHIARO: I mean you're
18 certainly free to seek appointment to the planning
19 board. That's not our --

20 CANDACE DOVENERO: I will.

21 ATTORNEY CUCCHIARO: That's not our
22 purpose to --

23 CANDACE DOVENERO: I understand.

24 ATTORNEY CUCCHIARO: -- to solicit,
25 or to, you know --

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1 CANDACE DOVENERO: I'm sure we will be
2 best friends.

3 ATTORNEY PAPE: Mr. Chairman, if I
4 could intervene just for a moment -- I'm not going
5 to try to run the meeting -- our court reporter has
6 now been running for more than two hours.

7 CHAIRMAN TANNENHAUS: Yeah, I'm ready
8 for a potty break. It's two and a half hours here.

9 BOARD SECRETARY: Thank you.

10 CHAIRMAN TANNENHAUS: So I can see
11 everybody's faces, they all got their eyes crossed.
12 Ms. Dovenero, do you have any other
13 questions?

14 CANDACE DOVENERO: Sorry, I have two
15 dogs. Kelly, come to mamma.

16 MEMBER CRISTIANO: Brian, we got to
17 get moving on this. We're going to be here all
18 night long.

19 CANDACE DOVENERO: It's not late, no.

20 CHAIRMAN TANNENHAUS: Mr. Cristiano,
21 we are.

22 CANDACE DOVENERO: Yeah, we're like --
23 I'm asking for what I'm entitled to ask for, Mr.
24 Cristiano. Thank you.

25 MEMBER CRISTIANO: You're talking

1 about your dogs now.

2 CHAIRMAN TANNENHAUS: Ms. Dovenero...

3 ATTORNEY CUCCHIARO: Mr. Chairman, I

4 think the court reporter needs to take a break.

5 CHAIRMAN TANNENHAUS: We're going to

6 take a five-minute break. We'll come back. 9:21.

7 BOARD SECRETARY: The planning board

8 will now take a break. They'll be back at 9:26.

9

10 (Whereupon, a recess is taken.)

11 - - -

12 (Proceedings resume at 9:27 p.m.)

13

14 CHAIRMAN TANNENHAUS: The planning

15 board will now reconvene.

16 Next attendee, please.

17 BOARD SECRETARY: I believe the next

18 three or four that are on here have already spoken.

19 So I don't know whether you want me to bring them in

20 one at a time?

21 ATTORNEY CUCCHIARO: No, we're open to

22 people who have not spoken at all right now.

23 BOARD SECRETARY: All right. Then I

24 have Kathy Novak.

25 ATTORNEY CUCCHIARO: Okay, do you

1 swear or affirm the testimony you are about to give

2 this board is the truth, the whole truth, and

3 nothing but the truth?

4 KATHY NOVAK: I do.

5 ATTORNEY CUCCHIARO: Please state and

6 spell your name for the record and give us your

7 address.

8 KATHY NOVAK: My name is Kathy Novak,

9 N-O-V-A-K, and I live at 16 Stratton Drive in

10 Howell.

11 ATTORNEY CUCCHIARO: Okay, go ahead.

12 KATHY NOVAK: My question -- I live

13 about 9 miles from this area so I really can't speak

14 to what everyone else has spoken to, but my interest

15 lies in the Whispering Woods settlement. And, now,

16 it was stated that on August 10th, 2022 there was a

17 settlement of the Whispering Woods. I tried to find

18 any information out that I could on the settlement

19 and I couldn't.

20 So is there any documentation that a

21 resident could look at or a place to go to to look

22 at it?

23 ATTORNEY CUCCHIARO: Yes, I mean it's

24 a public document, so either the township clerk's

25 office or Eileen's office.

1 I don't know if they'll make you file

2 an OPRA request for it or not, that's not up to me.

3 But certainly the township clerk.

4 KATHY NOVAK: Okay, so I could OPRA it

5 at the township and I could get --

6 ATTORNEY CUCCHIARO: Oh, yeah.

7 KATHY NOVAK: It's not a -- because I

8 was wondering who represented the town and --

9 ATTORNEY CUCCHIARO: The town was not

10 a party. It was the planning board and the

11 applicant, they were the parties.

12 KATHY NOVAK: Okay. So the planning

13 board professionals and -- I heard that Mr. Pape and

14 his professionals and there were discussions by

15 various people, but I don't know who was there for

16 the planning board or our professionals.

17 ATTORNEY CUCCHIARO: As I said, the

18 Whispering Woods document you can certainly get

19 through OPRA from the clerk's office.

20 KATHY NOVAK: Correct. And one of the

21 things that I really have a question on, and maybe

22 the professional did say what it was but -- is the

23 sound attenuation fence that was part of the

24 settlement. And I'm wondering if there were any

25 specific details about, you know, what that fence

1 will look like, like, how thick it will be, what it

2 would be made out of. Were there any -- in the

3 settlement was there any direction or can the --

4 ATTORNEY CUCCHIARO: Well, the

5 applicant has placed it on the record. Mr. Pape,

6 you want to give the details?

7 ATTORNEY PAPE: It's a sound

8 attenuation wall. It's shown on the plan. Its

9 construction methodology is on the plan and it's

10 15 feet tall. The specific location is on the plan.

11 KATHY NOVAK: Yeah, but I don't really

12 know how to read plans. So I was just wondering

13 what it's made out of, how thick it is. Is that

14 asking too much?

15 ATTORNEY PAPE: I do not have a -- I

16 do not have the construction details. They are part

17 of the plan that was submitted and was reviewed by

18 the board's professionals.

19 KATHY NOVAK: And is that part of the

20 settlement?

21 ATTORNEY PAPE: Location and -- the

22 location and maximum height is part of the

23 settlement.

24 KATHY NOVAK: So I understand the

25 height, I got the height part because other people

1 asked about that. But how -- what's the percentage
2 of sound that will be reduced and how thick will the
3 wall be? You know, that sort of -- you know, I'm
4 wondering once this is approved and you agree to the
5 Whispering Woods settlement, what is the obligation
6 of -- what will they do to make the wall to be the
7 best that it can be?

8 ATTORNEY PAPE: The wall as designed
9 is the submission that the applicant has offered to
10 the town. There is no ordinance that requires this
11 wall. There is no ordinance that requires sound
12 attenuation as offered. It was a request that this
13 be included in the plan. We saw it as a way of
14 making the plan a superior plan.

15 Our client did retain an expert to
16 assist in its design and that information was used
17 for the design. The design is now part of the plan
18 that's before the Board.

19 KATHY NOVAK: Okay. So maybe Laura
20 Neumann or someone from our professionals could
21 comment on that? You know, do you know what the
22 wall is going to look like?

23 BOARD ENGINEER: The details of the
24 wall we have through the plans that were -- I didn't
25 mean to knock myself off of that, I was unmuting

1 myself.

2 We've been provided the construction
3 plan set for the wall. I mean, that's it. It
4 speaks to the height and the detail for it, but
5 that's the limit of it as Mr. Pape indicated.

6 KATHY NOVAK: Okay, but aren't there
7 like -- there's, you know, a cheap wall and there's
8 a better wall that's going to help the neighbors,
9 specifically the Cesteros, okay, so -- and I have
10 been reading about these walls and the thickness,
11 the thicker it is, the more effective it is.

12 BOARD ENGINEER: Well, again, as was
13 indicated, it's a sound attenuation wall.

14 Mr. Pape, I would think the onus is on
15 you guys to testify as to the material and the
16 likeness of the wall. I understand that you put it
17 under your direct, but I'm not going to speak to the
18 design of your sound attenuation wall.

19 ATTORNEY PAPE: Just one second. The
20 applicant designed the wall, they placed it on the
21 plans, agreed that it would build the wall as shown
22 on the plans. And I will add one additional comment
23 similar to what we have done in almost every other
24 instance where there was a question about the
25 quality; we'll agree that the final design of the

1 wall prior to making application for building permit
2 for the wall will be subject to the town -- to your
3 engineer --

4 KATHY NOVAK: I didn't hear the answer.

5 ATTORNEY CUCCHIARO: What he said was
6 that the final design or the materials that will go
7 into the wall will be subject to the review and
8 approval of the board's professionals.

9 But, ma'am, I think you said that you
10 have done some of your own research. Do you have a
11 request with regard to the construction of the wall?

12 KATHY NOVAK: Well, I think that the
13 planning board should do some research on it
14 because, you know, there is -- there is definitely
15 some --

16 ATTORNEY CUCCHIARO: Well, what I'm
17 asking is did you find something that you would
18 like?

19 KATHY NOVAK: Well, let me see. I will
20 tell you in a second. Red cedar, a red cedar wall
21 is probably the best for sound barrier. The thicker
22 it is -- tongue-and-groove. Tongue-and-groove is
23 probably better. You know, but what I'm saying
24 putting -- the better it is, the more expensive it's
25 going to be.

1 So I'm asking our professionals to --
2 and the planning board to look into this, and see
3 how this will best serve the people who are -- whose
4 place this is in their backyard.

5 CHAIRMAN TANNENHAUS: Okay.

6 KATHY NOVAK: That's all I'm asking.

7 ATTORNEY CUCCHIARO: Okay.

8 KATHY NOVAK: And I thank you for -- I
9 hope that everybody -- I don't agree that -- that
10 you need to settle this with this Whispering Woods.
11 And maybe the courts, if it did go to the courts,
12 they would be in our favor but we'll never know if
13 you don't try. And I just hope that you do the
14 right thing for all the people in that area who
15 spoke, and especially for the kids.

16 Thank you.

17 CHAIRMAN TANNENHAUS: Thank you,
18 Ms. Novak.

19 BOARD SECRETARY: I believe the
20 remaining -- now I have Marc Parisi who would like
21 to come in.

22 CHAIRMAN TANNENHAUS: Okay.

23 ATTORNEY CUCCHIARO: Mr. Parisi, do
24 you swear or affirm the testimony you are about to
25 give this board is the truth, the whole truth, and

1 nothing but the truth?
 2 MARC PARISI: Yes.
 3 ATTORNEY CUCCHIARO: Please state and
 4 spell your name for the record and give us your
 5 address.
 6 MARC PARISI: Marc Parisi, M-A-R-C,
 7 P-A-R-I-S-I, 2 Castle Court.
 8 ATTORNEY CUCCHIARO: Okay, go ahead,
 9 Mr. Parisi.
 10 ATTORNEY PAPE: I'm sorry, I didn't
 11 hear the address. I'm sorry.
 12 MARK PARISI: 2 Castle Court, Howell,
 13 New Jersey 07731.
 14 ATTORNEY PAPE: Thank you, sir.
 15 MARK PARISI: Mr. Pape, can you hear
 16 me well enough? I'll try to be...
 17 ATTORNEY PAPE: Yes. Very clearly,
 18 Mr. Parisi.
 19 CHAIRMAN TANNENHAUS: It just sounded
 20 like Pastle Court when you said it there, Marc. It
 21 sounded like you had a P, not a C.
 22 MARC PARISI: Okay.
 23 CHAIRMAN TANNENHAUS: That's why it
 24 was -- I heard it, too, differently.
 25 MARC PARISI: All right. So just a

1 and that's very much a part of the record.
 2 So it concerns me that that public
 3 document is not publicly available and there's no
 4 direction to the public that if they want to see it
 5 that they have to OPRA it, specifically.
 6 ATTORNEY CUCCHIARO: Well the board
 7 made no effort to conceal anything. So, I mean, it
 8 is a public document.
 9 MARC PARISI: Okay, well, I'm
 10 concerned about that.
 11 When this hearing started last Tuesday,
 12 Mr. Pape said that this hearing was a continuation
 13 of the 2021 hearings. Is that correct, Mr. Pape,
 14 that you did not put forth the full application last
 15 week or this week, that this is a continuation of
 16 those hearings?
 17 ATTORNEY PAPE: This was a hearing
 18 that was conducted in accordance with the Settlement
 19 Agreement and in accordance with the provisions with
 20 the rules that are set forth in the Whispering Woods
 21 decision. There was not a complete new application
 22 required.
 23 MARC PARISI: And you did say that you
 24 were -- you did say that your applicant was fully
 25 committed to all the promises that it had made

1 couple of things that I wanted to cover tonight. I
 2 understand it's been a long night. I'll try to get
 3 through some of my questions as quickly as I can.
 4 The Settlement Agreement that Ms. Novak
 5 referred to, is there a reason why that was not
 6 included in the online exhibits with all the other
 7 documents, why you would have to -- like, the
 8 public would have to specifically OPRA that document
 9 and that's not made part of the agenda documents?
 10 ATTORNEY PAPE: On behalf of the
 11 applicant we don't make the decision as to what the
 12 township puts online, but it's a public document.
 13 ATTORNEY CUCCHIARO: I'm not in that
 14 part of the administration that puts anything up but
 15 it's a public document so anyone who wants to can
 16 take a look at it.
 17 MARC PARISI: Well, I went on eCourts
 18 and it's not on eCourts.
 19 And so the other part of it is that
 20 when I read the Whispering Woods case, that that
 21 stipulation of settlement was a public record and
 22 that was made available to the public at the time
 23 that they had their Whispering Woods hearings. And
 24 I think the public should have been provided that
 25 document since you guys voted on that on August 4th

1 during the hearings in 2021 and those carried
 2 forward?
 3 ATTORNEY PAPE: When the opportunity
 4 comes for me to sum, amongst the comments that I'll
 5 make to the board will be a reaffirmation of those
 6 commitments.
 7 MARC PARISI: Okay. So for the
 8 planning board members that are here tonight, and
 9 there's three of them that were not on the planning
 10 board last year that did not participate in the
 11 hearings in September and October of 2021, how do
 12 they -- how do we know, how do the public know that
 13 those planning board members that were not part of
 14 the original application fully understand what
 15 revisions are being made and what the full scope of
 16 this project that they did not participate in those
 17 hearings?
 18 ATTORNEY CUCCHIARO: The Whispering
 19 Woods case provides the mechanics of how it works.
 20 So Mr. Pape's client has provided a plan. The plan
 21 shows what's being proposed and that plan also
 22 depicts, you know, changes and they've provided
 23 testimony as to those changes. But the plan that's
 24 being proposed was submitted. It's not an old plan,
 25 it was a new plan that they put together that was

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1 consistent with the agreement.

2 MARC PARISI: Well, it's not entirely

3 a new plan. He didn't put together a whole new

4 application. He put together a case of the

5 revisions based upon what the original plan was,

6 changes to the original plan.

7 ATTORNEY CUCCHIARO: The plan that we

8 have reflects the changes, so the plan that we have

9 reflects what's being asked for which is different

10 than what was being asked for initially. It

11 reflects the elements that were part of the

12 settlement that Mr. Pape's clients placed on the

13 record.

14 MARC PARISI: I understand. I don't

15 want to get into the semantics, but if you didn't

16 know what the original plan was because you weren't

17 part of that, and then you're only presented with

18 the revision of an original plan, now you're asked

19 to vote on an application in which you're really

20 only getting the second half of the application.

21 ATTORNEY CUCCHIARO: Well, I can

22 only -- this is the way that the Whispering Woods

23 process works. So I can understand your concern but

24 this is -- I don't know how better to answer it,

25 unfortunately, other than to say this is how this is

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1 the process that we're given by the case law.

2 MARC PARISI: Okay, so do the planning

3 board members need to certify that they watched the

4 hearings in September and October of 2021 so that

5 the public knows that they are fully aware of the

6 plan that was put forward at that time, so they have

7 the full picture?

8 That's what I'm trying to get at; do

9 they have the full picture?

10 ATTORNEY CUCCHIARO: I can understand

11 what your concern is. And I'm telling you what the

12 Whispering Woods case requires and we followed the

13 mechanics of Whispering Woods.

14 MARC PARISI: Okay. Well, I think in

15 the Whispering Woods case and some other cases that

16 followed the same hearings, that those hearings were

17 held in a -- sooner than, say, 13 or 14 months

18 afterwards.

19 ATTORNEY CUCCHIARO: There's

20 no -- there's no requirement, there's no temporal

21 requirement on that.

22 MARC PARISI: Okay. Another member of

23 the public testified that the zoning has changed.

24 And that we know to be true, that in May this

25 planning board adopted a land use element that

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1 recommended the creation of the SED-1 zone and

2 rezoning this property to SED-1, making this

3 warehouse a conditional use.

4 Can someone -- Mr. Cucchiaro or Mr.

5 Pape, can someone please educate myself and members

6 of the public that if this application or if this

7 zone was currently -- or this application was for a

8 conditional warehouse, what proofs and burden would

9 be on the applicant that are different than if it

10 was -- now that it's a permitted use?

11 ATTORNEY CUCCHIARO: It depends.

12 ATTORNEY PAPE: On behalf of the

13 applicant -- sorry.

14 ATTORNEY CUCCHIARO: Well, first of

15 all, it's not subject to a conditional use because

16 the law was changed. It used to be that towns had

17 the ability to change an ordinance whenever they

18 wanted and as long as an application was pending,

19 the applicant would be subject to it and it was

20 called The Time of Decision Rule. And what the

21 legislature did was they changed it to what they

22 call The Time of Application Rule, which means you

23 vest at the time that you're declared complete. So

24 in this instance they have vested in the old zone.

25 Now to answer your question more

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1 specifically, if it were a conditional use which

2 it's not for us, but if it were a conditional use

3 and they satisfied all the conditions, it would

4 proceed before the planning board as a permitted

5 use.

6 If it were a conditional use and they

7 did not satisfy one or more of the conditions, they

8 would go to the zoning board. It wouldn't be a use

9 variance standard, it would be a conditional use

10 standard but they would be before the zoning board.

11 But because of The Time of Application Rule, the

12 change in the law, they're not subject to that

13 new -- to that new ordinance.

14 MARC PARISI: Can you give us an

15 example of what a conditional use standard might be?

16 ATTORNEY CUCCHIARO: A conditional

17 use, and I don't know that this is one of them for

18 this, but, you know, just a generic one might be lot

19 size, you know, number of ingresses and egresses,

20 height, you know, things like that.

21 But it could be anything. A town can

22 select anything it wants to as a conditional use

23 standard. There is no -- there is no barrier or

24 limitation on what a town can do.

25 MARC PARISI: Okay.

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1 ATTORNEY PAPE: If I may, examination
2 of the board's attorney as to the law out of
3 curiosity, is not applicable to this application.
4 This is not a conditional use. We are here before
5 this planning under the ordinance that was in effect
6 when the application was filed.
7 The examination by Mr. Parisi and Mr.
8 Cucchiaro is not germane to the application before
9 the board.
10 MARC PARISI: I've looked at the
11 engineering review letter from November 18th, 2022.
12 It indicates that the sound attenuation wall may
13 need a -- require a variance because it's being
14 placed in a buffer. Is this a variance-free
15 application or not?
16 ATTORNEY PAPE: It's specifically
17 stated on the record and provided testimony from the
18 planner, Christine Cofone, that a variance is
19 required for the sound attenuation wall. And we
20 went through the balancing test, the benefits to the
21 town, the benefits to the neighbors versus any
22 detriments. We placed all of that on the record.
23 But in order for a sound attenuation
24 wall to be installed on the property, a variance
25 relief is required.

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1 MARC PARISI: Okay. So when people
2 have made representations that this is a fully
3 conforming application, that's not entirely true
4 because it does require a variance and in requiring
5 a variance, the planning board does get to weigh the
6 negative criteria and the impacts of this particular
7 project on the area, specifically with respect to
8 the fact that this applicant has now decided that a
9 sound attenuation wall is required because they
10 believe, naturally, that there's going to be some
11 sort of noise pollution that is going to --
12 ATTORNEY PAPE: Mr. Parisi, I have to
13 interrupt you because your statements are wrong. We
14 did not say this was a variance-free application.
15 From the very opening lines we pointed out that
16 there were variances associated with the wall. And
17 the wall is a request that was made by the planning
18 board and memorialized in the Settlement Agreement.
19 It wasn't something that we said, oh, we need a
20 wall. We were requested to include it and we agreed
21 to it. It's on the plan as agreed to.
22 MARC PARISI: No, I understand how
23 that came to be. I'm just simply stating --
24 ATTORNEY PAPE: Your explanation of it
25 was not that. Your explanation was that we had an

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1 ah-ha moment, that we were polluting the area, we
2 had to put a wall. That wasn't the case at all.
3 MARC PARISI: But clearly your clients
4 wouldn't go through the expense of building a sound
5 attenuation wall unless they felt that there was
6 going to be noise pollution to a level in which a
7 sound attenuation wall would be necessary to protect
8 the neighbors. I mean...
9 ATTORNEY PAPE: Mr. Parisi, those are
10 your words, they're not mine, and they are not the
11 thoughts that went through our clients as we worked
12 with the board cooperating to add the wall that was
13 requested.
14 MARC PARISI: Okay, that's fine. You
15 know, this is my testimony, I understand. You have
16 a right to, you know, address it.
17 To that point, is there -- are there
18 any documents, you know, on the agenda that discuss
19 the levels of noise, whether it's dBA scale, dBC
20 scale, regarding, you know, the idling of trucks?
21 I'm assuming that the trucks will be
22 the noise generator. Is there any documents that we
23 can look at regarding the volume of noise, levels of
24 noise?
25 ATTORNEY PAPE: The applicant's

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1 stipulation on that point made just a few minutes
2 earlier is that we will agree that the final design
3 of the wall shall be to the satisfaction of the
4 board's professionals, including the board engineer.
5 MARC PARISI: At this point in time,
6 is there a specific height of the wall or you're
7 still deferring to the professionals on that?
8 ATTORNEY PAPE: The height of the wall
9 is 15 feet.
10 MARC PARISI: Was the wall designed
11 specifically for the state noise code or the DEP
12 model noise ordinance that the town has adopted?
13 ATTORNEY PAPE: I don't have the
14 answers to that. And, politely, we've agreed to
15 design a wall, the final design to the satisfaction
16 of the --
17 MARC PARISI: Okay. But, I mean,
18 noise and sound is somewhat scientific. I mean,
19 it's not as though -- you know, you have to build a
20 sound attenuation wall that's going to mitigate a
21 certain type of sound and a certain volume of sound.
22 I mean, it's not just, like, do one of these things,
23 we're going to put up a sound attenuation wall, if
24 it doesn't work, well, you know, we tried.
25 ATTORNEY PAPE: The sound attenuation

1 wall is something that is offered by the applicant,
 2 not required by the ordinance. The ordinance has no
 3 standards for sound attenuation wall. We've shown
 4 it as requested and as promised and we've agreed
 5 that it will be designed to the satisfaction of the
 6 board's engineer.

7 I have nothing further for you.

8 MARC PARISI: And that wall is being
 9 built on the eastern side of the property to protect
 10 the residences on that side, if I'm not mistaken?

11 ATTORNEY PAPE: The wall's location is
 12 shown on the plan, yes.

13 MARC PARISI: If you eliminated the
 14 warehouse that's proximate to that sound attenuation
 15 wall, you might not need a sound attenuation wall;
 16 is that correct?

17 ATTORNEY PAPE: I do not know the
 18 answer to that but that's not the application before
 19 the board.

20 CHAIRMAN TANNENHAUS: Mr. Cucchiario --

21 ATTORNEY CUCCHIARIO: Yes?

22 CHAIRMAN TANNENHAUS: -- the line of
 23 questioning is asking about the need. Just so that
 24 the board is -- just so I understand for the board's
 25 understanding, so when we finally deliberate and

1 make a decision we understand properly, the sound
 2 attenuation wall is not a need; the sound
 3 attenuation wall is not a requirement in our
 4 ordinance. The sound attenuation sounds like to
 5 me -- and I'm just going to put it into simplistic
 6 terms and tell me if I'm off base -- it sounds like
 7 it's we think it would be nice to give and that is
 8 what was discussed in the Whispering settlement and
 9 that's where we're at?

10 ATTORNEY CUCCHIARIO: The sound
 11 attenuation wall is not required in our site plan,
 12 zoning, or design criteria ordinance. Obviously,
 13 the applicant would still have to comply with all
 14 noise ordinances, but in the context of a
 15 settlement, the board took the opportunity to be
 16 somewhat aggressive and to see if it could obtain
 17 things that the ordinance didn't require and would
 18 not ordinarily be obtainable in a conventional
 19 application. That was one of them, you know,
 20 something that would just not be on the table at all
 21 but the board was able to get something that's not
 22 required in the context of a settlement negotiation.

23 CHAIRMAN TANNENHAUS: Right. And then
 24 for the board and the public's understanding, the
 25 applicant is still beholden to whatever our general

1 noise ordinance requirements are and they'll have to
 2 make whatever adjustments on the site that are
 3 necessary in order to meet those noise requirements.

4 Is that a fair statement?

5 ATTORNEY CUCCHIARIO: That's correct.

6 ATTORNEY PAPE: We would agree.

7 CHAIRMAN TANNENHAUS: Mr. Parisi,
 8 please continue.

9 MARC PARISI: Okay. I mean, listen, I
 10 appreciate your comment as well but, you know,
 11 you're about to approve a warehouse that has more
 12 bays than it's required to have, okay, which means
 13 more trucks. There's more parking spaces than it's
 14 required to have. And now it's -- you're allowing
 15 them to add a sound attenuation wall because, you
 16 know, it's something that you agreed to in a
 17 settlement. It seems as though that sound
 18 attenuation wall might not be needed if the project
 19 was designed in a manner that the warehouse wasn't
 20 as close to the residents as it is and was, frankly,
 21 smaller, with less bays and less trucks. Because I
 22 would imagine that the more trucks you have that are
 23 idling or running at any given time simultaneously,
 24 it's going to increase the level of noise. If it's
 25 one truck that's running versus ten or 50 trucks

1 that are running, the noise gets magnified, or
 2 amplified, to use a noise term.

3 So, you know, that's what I'm trying to
 4 get at so the board understands. I mean, that's my
 5 testimony. And as Mr. Cucchiario said earlier, there
 6 was, you know -- you know, there has been other
 7 incidents of noise in this town and I'm somewhat
 8 keenly aware of it and I'll leave it at that.

9 So I just wanted to say that, you know,
 10 that this isn't -- there's a variance associated
 11 with this application. It relates to a sound
 12 attenuation wall. It's probably understood and
 13 believed and reasonable to expect that there's going
 14 to be sound from these trucks that are going to be
 15 impacting the neighbors, and I think that that
 16 should be something that the board considers in
 17 their deliberations.

18 I'll move on.

19 CHAIRMAN TANNENHAUS: Thank you for
 20 your comments.

21 MARC PARISI: Yes. The other thing
 22 that I wanted to address is that, Mr. Cucchiario, you
 23 said that there hadn't been a court hearing but it
 24 said that on the court documents that you guys did
 25 have a case management conference on October 13th.

1 ATTORNEY CUCCHIARO: But that's not a
2 hearing, That's a --

3 MARC PARISI: I understand. Again,
4 it's semantics. But you've been to court? The
5 statement was, "have you been to court?" The answer
6 is, yes, you have been to court but you haven't --

7 ATTORNEY CUCCHIARO: Well, no, we have
8 not had any oral arguments. There have been no
9 motions. There have been -- you know, it has been
10 procedural case management conferences.

11 So there have been no court
12 proceedings.

13 MARC PARISI: Okay. But the plaintiff
14 submitted their brief, the judge set a date for when
15 you guys would submit your opposition briefs, reply
16 briefs, and a trial date was set in January; is that
17 correct?

18 ATTORNEY CUCCHIARO: If the case is
19 not settled, yes.

20 MARC PARISI: Okay.

21 ATTORNEY CUCCHIARO: As I stated
22 before, the case will go to trial if it's not
23 settled.

24 MARC PARISI: Okay. Which raises -- I
25 have another question. Mr. Pape, why is it that

1 there's another law firm that's representing this
2 property owner in the litigation and you're handling
3 the application before the planning board? Isn't it
4 typically the same law firm represents both the
5 application before the planning board and the
6 litigation end?

7 ATTORNEY PAPE: I don't know that
8 that's a rule or a typical situation. There are
9 many times where I am the land use attorney, which
10 is how I make a living, I am not a litigator, our
11 clients made a litigator selection to handle the
12 litigation.

13 MARC PARISI: Okay. Mr. Cucchiaro, if
14 this case went to court, is it not uncommon that a
15 judge would remand the case back to the planning
16 board for additional testimony or hearing, that it
17 wouldn't just, necessarily, the judge just decides
18 that they're going to grant the approval and that's
19 it? That you've probably been a part of cases that
20 the town loses to a certain extent or the planning
21 board, I mean, loses the case, but it's remanded for
22 additional testimony or hearing?

23 ATTORNEY CUCCHIARO: Rarely, to tell
24 you the truth. Quite frankly, we win a lot of the
25 cases that we're -- we're in court. And other cases

1 that are lost, the courts are very clear that the
2 board was arbitrary, unreasonable and capricious.
3 And if there's a remand, it's to specifically
4 approve the application.

5 So very rarely have I been in a
6 situation where there has been a remand, for like,
7 new hearings in -- in totality. A couple of times,
8 maybe, but very, very rarely over my career.

9 MARC PARISI: With respect to the
10 traffic, there was a woman earlier, I think her name
11 was Betty, that asked about the Monmouth Commerce
12 Center having a -- the board hired its own traffic
13 expert. I don't know if it was quite clear but
14 during those applications, the board's traffic
15 expert participated in the hearings and
16 cross-examined the applicant's traffic expert, if
17 I'm not -- am I correct?

18 ATTORNEY CUCCHIARO: In that instance,
19 yes.

20 MARC PARISI: Okay. Why -- whose
21 decision is it as to whether or not the planning
22 board hires their own traffic expert?

23 ATTORNEY CUCCHIARO: Well, the
24 planning board didn't hire anybody special in that
25 case. Mr. Winckowski was an engineer that's part of

1 the -- well, at that time, he was part of CME. So
2 it wasn't a special hire, it was just someone within
3 CME who possessed that expertise. And what Ms.
4 Newman said tonight is that it was that same group
5 of people who evaluated this application from a
6 traffic perspective.

7 MARC PARISI: Okay. But my question
8 is who is ultimately the decision-maker as to
9 whether or not CME or any other engineering firm
10 decides that it would be in the best interest of the
11 planning board and the public that a traffic expert
12 participates in the hearing and cross-examines the
13 applicant's witnesses; who makes that decision?

14 ATTORNEY CUCCHIARO: It could be made
15 by anybody. The board can request it, CME can
16 determine unto itself that there is a complexity
17 involved that would benefit from the personal
18 appearance of the professional.

19 MARC PARISI: Okay. I would suggest
20 that in the future with all of the warehouse
21 applications, that when you have a warehouse
22 application that's greater than 100,000 square feet,
23 that the board consider asking their professional
24 engineering firm to have a traffic expert
25 participate in these hearings and elicit testimony

1 and cross-examine, you know, the applicant's traffic
2 experts. So that, you know, we're putting on record
3 the full scope of the traffic impacts and asking the
4 right questions.

5 And I'm not at all suggesting that our
6 professionals aren't competent to do that, but
7 having somebody that's specifically trained in that
8 one area might be a benefit to the board.
9 Especially on applications that are, you know --
10 with warehouses that are several-hundred-thousand
11 square feet, where you're talking about impacts of
12 740 cars or tractor-trailers on a daily basis. I
13 mean these are sizable impacts on the area.

14 And, you know, I won't belabor it
15 because you've heard, you know, just about every
16 single person testify on this application about
17 those impacts, but maybe having a traffic expert
18 would have helped, you know, resolve some of that in
19 a manner, so that you wouldn't have heard the same
20 testimony as often as you did tonight.

21 With that I -- can somebody pull up an
22 exhibit, the CO1, Circulation Plan, WB-67. I have
23 it up on my screen. I just had a question about
24 ingress and egress. We were talking about
25 ingress/egress. I wanted to just -- there's

1 PATRICK LYNAM: This is the plan?
2 MARC PARISI: Yes, it is. Can you
3 zoom into the top left-hand corner across from the
4 cemetery?

5 So when the truck is leaving, exiting
6 the site, and you see -- you see that little unusual
7 curve, underneath the word white, where it says,
8 "white line," it looks like the truck is turning and
9 it's going to cross over the edge of the pavement
10 onto the grass, but then the line just kind of juts
11 down to the left, and then it swings back up towards
12 the edge of the pavement.

13 Can you explain what is going on there?
14 Because from my view, it looks like the truck is
15 going to swing off the road onto the grass before it
16 corrects back onto the road.

17 PATRICK LYNAM: So the truck is
18 exiting, as you noticed, and this little hump is
19 actually the difference between the cab and the
20 trailer. So you can see the truck is making the
21 turn here, and also turning the wheel to correct
22 itself, like you mentioned.

23 So that whole movement is happening
24 realtime, and that's why it shows the curve there.
25 But the curve does go over the white line, but it's

1 something, you know, that I'm seeing on -- on the
2 turning radius of a WB-67 making a left-hand turn
3 out onto Okerson Road that concerns me, and I just
4 wanted to ask Mr. Pape about that.

5 ATTORNEY PAPE: Who would put up that
6 plan, is that Ms. Rubano or Mr. Lynam?

7 BOARD SECRETARY: If Mr. Lynam has it,
8 he'll have to do it. I don't have access to the
9 records.

10 MARC PARISI: Mr. Lynam, if you -- I
11 don't know if you can hear me, it looks like your
12 camera is off and you're muted.

13 ATTORNEY CUCCHIARO: Let's just --
14 let's give him a moment.

15 PATRICK LYNAM: I hear you. I'm going
16 to share my screen.

17 ATTORNEY CUCCHIARO: Hold on, Mr.
18 Lynam, you have to turn your camera on. Okay. I
19 remind you, you remain under oath.

20 PATRICK LYNAM: Yes.

21 MARC PARISI: Did you hear what
22 exhibit I had mentioned?

23 PATRICK LYNAM: Yes, is this --

24 MARC PARISI: It was CO1 Circulation
25 Plan.

1 staying within the edge of pavement.

2 MARC PARISI: Okay. So when they talk
3 about safety of ingress/egress, in this particular
4 case this is egress onto Okerson Road. Are the
5 trucks supposed to stay within the lines, or are
6 they allowed to pull onto the shoulder? I mean,
7 what is the general rule of thumb with that?

8 PATRICK LYNAM: Well, in this case,
9 since they're within the pavement line, there are
10 shoulders out there that vehicles use to make
11 vehicle maneuvers. So it is using the shoulder to
12 make that maneuver here in front of the access point
13 to correct itself so it stays within the lane.

14 MARC PARISI: Okay. I was just, you
15 know, I saw that, kind of like that little bump in
16 and bump back out, and I didn't -- I wasn't sure
17 what was causing that. But you -- you explained
18 that it's the movement of the truck -- the cab
19 versus the truck --

20 PATRICK LYNAM: Yes.

21 MARC PARISI: -- or the trailer?

22 PATRICK LYNAM: Correct.

23 ATTORNEY PAPE: It's not in the grass.
24 Also, I think important to note that you used the
25 WB-67, which is the largest vehicle that's on any of

1 the roads in the United States, but it's not one
2 that's allowed in New Jersey. WB-62 is the maximum
3 that's allowed in New Jersey.

4 PATRICK LYNAM: That is correct.

5 MARC PARISI: So there will not be
6 WB-67s because they're not permitted in New Jersey;
7 is that what you said, Mr. Pape?

8 ATTORNEY PAPE: That's the law, Mr.
9 Parisi.

10 MARC PARISI: Okay, thank you.

11 Well, guys, I have gone through all my
12 questions. I appreciate you taking the time to
13 answer them, and your patience with, you know, my
14 testimony and everyone else's testimony tonight.
15 That's all I have and I will allow you to move on to
16 the next.

17 CHAIRMAN TANNENHAUS: Thank you. Have
18 a good night.

19 MARC PARISI: All right, Thank you.

20 BOARD SECRETARY: I have Deputy Mayor
21 Richmond on the call or on the meeting rather.

22 MARC PARISI: Eileen, you can take me
23 out of the -- as a panelist, I'm going to sit down
24 and watch.

25 BOARD SECRETARY: I am. Thank you,

1 Marc.

2 MARC PARISI: Thank you. All right,
3 bye-bye.

4 DEPUTY MAYOR RICHMOND: Okay. Am I
5 good, Eileen?

6 BOARD SECRETARY: Yes, you are.

7 ATTORNEY CUCCHIARO: Do you swear or
8 affirm --

9 DEPUTY MAYOR RICHMOND: Hi.

10 ATTORNEY CUCCHIARO: -- the testimony
11 you are about to give this board is the truth, the
12 whole truth, and nothing but the truth?

13 DEPUTY MAYOR RICHMOND: Yes, I do.

14 ATTORNEY CUCCHIARO: Please state and
15 spell your name and give us your address.

16 DEPUTY MAYOR RICHMOND: Pamela
17 Richmond, P-A-M-E-L-A; Richmond, R-I-C-H-M-O-N-D,
18 and I am at 185 Locust Avenue, Howell, New Jersey.

19 ATTORNEY CUCCHIARO: Okay, go ahead.

20 DEPUTY MAYOR RICHMOND: Okay. So for
21 starters, I know it's late, I'm going to make this
22 as quick as I can. I have been watching the meeting
23 all -- all night, and I have been on the planning
24 board. I sat on the planning board last year when
25 this application first came. I was taking some

1 notes, I also, obviously, I sit on the council now.
2 And I would be remiss if I didn't sit here and
3 mention how -- how insulting and disrespectful it is
4 when I hear some residents who come on this meeting
5 and disrespect and interrupt and make a lot of
6 insinuations and implications that our professionals
7 are doing something wrong.

8 That bothers me more than anything, and
9 this probably isn't the platform for that, but as I
10 sit here and listen, we have the best professionals.
11 I take pride in that because I was part of the
12 selection process in appointing the professionals,
13 what they get paid or not is not the issue. We sat
14 for days and for hours with the professionals and
15 worked on our Master Plan, which was way
16 out-of-date. And as many of you know, warehousing
17 has come very far in the last few years since COVID,
18 and we decided to work on the Master Plan based on
19 that information we had.

20 Ten years ago, we didn't know
21 warehouses would be such a -- such a big -- a big
22 thing right now. As you all know, this is a problem
23 we're dealing with, and I think our professionals
24 are doing a heck of a job maintaining that, the
25 character of Howell.

1 Our zoning was a mess and our
2 professionals, as I stated before, did a heck of a
3 job on our Master Plan, and some residents will
4 think otherwise. I'm inside the bubble, they're
5 outside the bubble. And I give kudos to Ron and
6 Laura and Jen Beahm and everybody that I've worked
7 with for the last four years on this Master Plan.
8 I'm proud of it. I'm proud of you guys. And the
9 board members here that sit here for hours and
10 hours, special meetings are not -- nothing nefarious
11 is going on. They sit here and they give their
12 time. Whether it's zoom or in person it doesn't
13 matter, as far as I'm concerned, work is getting
14 done for the township, and it's getting done
15 efficiently, it's getting done cost-effectively.
16 Our applicants are happy. Our attorneys are happy.
17 Our township employees are happy.

18 So when people come on this meeting and
19 they -- and they start making -- looking for those
20 gotcha moments, I would be remiss if I didn't defend
21 you guys. So thank you for that.

22 Onto business. We don't know what the
23 use of this -- of this warehouse is, correct? I
24 just want to make sure we're clear on that, Mr.
25 Pape.

1 CHAIRMAN TANNENHAUS: Well, no, they
2 did, they did testify, there are two -- two uses
3 they testified that it will not be. I'll let Mr.
4 Pape opine on that.

5 DEPUTY MAYOR RICHMOND: Please.

6 ATTORNEY PAPE: We agreed it is not a
7 refrigerated building and it is not a fulfillment
8 center.

9 DEPUTY MAYOR RICHMOND: It is not.
10 But right now the use has not been determined; is
11 that correct.

12 ATTORNEY PAPE: The tenants, Deputy
13 Mayor, the tenants have not been determined. This
14 building is not built.

15 DEPUTY MAYOR RICHMOND: Okay.

16 ATTORNEY PAPE: We haven't gone to the
17 market. We placed on the record and we will agree
18 to abide by all of the restrictions on uses in the
19 warehouse building, all the ordinance restrictions
20 on the warehouse building.

21 DEPUTY MAYOR RICHMOND: I understand.
22 I just want to put that on the record because I am
23 sitting here listening to everything about the
24 traffic and all that stuff. It's hard for me to
25 process the number of trucks and all the assumptions

1 Cucchiaro?

2 ATTORNEY CUCCHIARO: Sure, I mean it's
3 absolutely that. So, I mean, you as deputy mayor
4 can interact with them and let them know that this
5 is an area of concern and request that there be some
6 attention given to compliance.

7 DEPUTY MAYOR RICHMOND: And based
8 on --

9 ATTORNEY PAPE: I can add to that.

10 DEPUTY MAYOR RICHMOND: Go ahead, Mr.
11 Pape, please.

12 ATTORNEY PAPE: I can add to that and
13 indicate your applicant previously stated and
14 continues to state, that we will request Title 39 to
15 be fully enforced on the private portions of the
16 property so that the police can enforce the same
17 regulations on private property.

18 DEPUTY MAYOR RICHMOND: And I like to
19 hear that. And, like I said, I think it's important
20 to bring in the police department, the traffic
21 division and have them, you know, be made aware of
22 our residents concerns of the -- of the traffic
23 safety issues, the speeding, the tonnage, the wrong
24 turns. You know, of course, our safety of our kids
25 comes first and I think we have to work together

1 everyone is making based on not knowing what the use
2 is, so I just want to put that on the record. And
3 the traffic I understand.

4 And please don't mistake the fact that
5 our board members, I know them all personally, our
6 professionals, for them -- for you to say, anyone to
7 say that they don't care about this town and they
8 don't care about our children's safety, that's the
9 furthest thing from the truth. And I can say that
10 because again, I know these people, I've worked with
11 them day in and day out.

12 With that said -- and we used to have
13 the chief of police on our planning board, but now
14 we have the benefit of having Mr. Greenfield on here
15 instead as a township employee. How can we work
16 with the police department on enforcement when we
17 have signage posted for restrictions and stuff like
18 that?

19 Is there something we could do maybe,
20 or talk to our police department? And I guess
21 that's something maybe I could -- I could
22 facilitate, maybe with our township manager, and
23 talk to the police chief and have more enforcement
24 once the signs are posted and the speed limits and
25 tonnage and no right turns and all that, Mr.

1 with them to do that.

2 And since we don't have representation
3 from the police department here anymore, I would be
4 happy to facilitate that. I think that's really
5 important. And I hope the residents know that we're
6 all doing our part and trying our best and
7 especially, our volunteers and our board members.

8 So thank you, everyone, and sorry for
9 keeping you guys so late.

10 CHAIRMAN TANNENHAUS: Have a good
11 night. Thank you.

12 DEPUTY MAYOR RICHMOND: I'm good.
13 Have a good night. Thank you.

14 BOARD SECRETARY: The remaining people
15 with hands up are people that have already spoken.

16 ATTORNEY CUCCHIARO: Mr. Chairman, I
17 mean everyone has a constitutional right to address
18 the board. They've done that and it's up to you as
19 to whether they have, you know, infinite ability to
20 return.

21 CHAIRMAN TANNENHAUS: As much as I
22 would love to continue to open up this dialogue box,
23 I think we -- it's after 10:00 o'clock.

24 ATTORNEY CUCCHIARO: Well, I think, I
25 just also want to make clear that everyone has had

1 an opportunity to address the board once at least,
 2 you know, for purposes of the record.
 3 CHAIRMAN TANNENHAUS: Yeah, as a
 4 matter of fact, you know --
 5 ATTORNEY CUCCHIARO: And so with that
 6 said, Mr. Chairman, if you want to close public?
 7 CHAIRMAN TANNENHAUS: Would we need --
 8 do we need to have an extension of the meeting?
 9 ATTORNEY CUCCHIARO: Extension? I
 10 don't understand. If the public is done, you can
 11 close public and allow Mr. Pape to give his closing
 12 comments.
 13 CHAIRMAN TANNENHAUS: Then I'll close
 14 the public portion of the meeting.
 15 ATTORNEY CUCCHIARO: Okay.
 16 Mr. Pape, if you want to provide
 17 closing comment?
 18 ATTORNEY PAPE: I do. Before I do
 19 closing comments, are there any comments from the
 20 board's professionals on what has been heard
 21 tonight? I want to make certain of that.
 22 ATTORNEY CUCCHIARO: Well I'm going
 23 to -- I'm going to provide the board with counsel
 24 after you're finished.
 25 ATTORNEY PAPE: Very fine.

1 in that matter.
 2 And this summer there were discussions
 3 that culminated in August with a Settlement
 4 Agreement being drafted and executed. Attached to
 5 the Settlement Agreement was a plan. The plan was
 6 called the Yield Sketch. Attached to the Settlement
 7 Agreement was an exhibit of the requirements, things
 8 that had to be in the plan. The Settlement
 9 Agreement acknowledged that the board was to review
 10 this matter in a Whispering Woods format.
 11 The Settlement Agreement, and now all
 12 that we have presented to you, are now part of the
 13 record. The current application is still two
 14 buildings. It's still for warehousing. It's still
 15 permitted. The proposed development is still
 16 consistent with the various bulk standards of the
 17 zoning ordinance, subject only to the variance
 18 relief required for the wall and two waivers for
 19 landscape design.
 20 The Settlement Agreement sets forth
 21 with specificity all of the revisions to be made,
 22 and these revisions in Exhibit A are the addendum,
 23 were all addressed by the applicant. The exhibit
 24 required that Building B be flipped so that the
 25 loading docks are facing west towards the center of

1 Recognizing that the hour is late but
 2 also recognizing the importance of this hearing, I'm
 3 going to take a few moments longer than I usually do
 4 in a summation.
 5 The board and the public has just
 6 concluded a Whispering Woods hearing. The applicant
 7 completed its presentation of the proposed improved
 8 plan. And the board reviewed and discussed that
 9 plan, and the public has had an adequate and ample
 10 opportunity to comment.
 11 Now the board knows, this is not the
 12 first time that the applicant has appeared before
 13 this board with regard to this property. Last year,
 14 this property was presented to the board for two
 15 warehouse buildings, the same two warehouse
 16 buildings that are proposed at this time. The
 17 property is, as has been said a number of times
 18 tonight, permitted by the zoning that was in place
 19 at the time the application was deemed complete.
 20 This application was voted on by six
 21 members. The vote was 3 to 3. Legally that is a
 22 denial and as a result of that denial, the applicant
 23 availed itself of its rights to bring an action in
 24 Superior Court. The defendant is the lawsuit in
 25 that matter -- the planning board is the defendant

1 development and not east, and the parking areas be
 2 to the east of the building and not the west.
 3 The purpose of the change was to
 4 provide mitigation of potential sound and visual
 5 impacts of the warehouse activity, loading docks, on
 6 the neighbors. The loading docks of the warehouse
 7 building now face the interior, as required.
 8 A sound attenuation wall was required
 9 and has been added to the plan as requested and set
 10 forth in the Settlement Agreement. There were other
 11 modifications to the plan to accommodate these
 12 changes, which have all been incorporated into the
 13 plan.
 14 One of the results of all those
 15 revisions was a reduction in impervious coverage of
 16 approximately 6,800 square feet.
 17 We also had the opportunity to move the
 18 water tank further from the road, where it would be
 19 less visible to the traveling public.
 20 The sound attenuation wall height was
 21 allowed to be as much as 28 feet. It is now shown
 22 as 15 feet, which addresses the requirements that
 23 are in the Settlement Agreement.
 24 We also agreed that there would be no
 25 open spaces in any of the walls. There was a

1 concern that walls with open spaces would allow
2 light and/or sound to leave the site. There are no
3 open spaces in any of the walls. That too was
4 language in the Settlement Agreement.

5 There is limited disturbance to the
6 buffer areas. That disturbance was actually called
7 out in the settlement. The language -- and I'll
8 read it, it's brief -- says [as read]: "The added
9 sound attenuation wall modifications to retaining
10 walls will require disturbance within the buffer
11 areas among other potential disturbances of buffer
12 areas including [audio lost] pipes, manholes, scour
13 holes, and light poles." There were, in fact,
14 limited revisions to the buffer areas to accommodate
15 the sound attenuation wall, all of which was
16 contemplated in our settlement.

17 Driveway widths have been modified on
18 the plan. Those driveway widths have been modified
19 to reflect the requests that were made by the board,
20 the board's professionals, and most recently by Fire
21 Chief Lewis. The actual dimensions of -- the actual
22 dimension of all those driveways were placed on the
23 record by Mr. Lynam and with the settlement.

24 There is a waiver requested for
25 landscaping under the loading docks. The one

1 we have presented. It's consistent with what's
2 stated in the Settlement Agreement. We followed the
3 nationally recognized IES lighting standards for the
4 lighting on site. We agreed during the hearing that
5 there would be shielding on the light to make
6 certain there's no light spillage onto adjacent
7 property owners.

8 There was a colloquy with the board
9 that was joined in by members of the public about
10 sidewalks. We are prepared to install sidewalks, as
11 shown on the plan. We're prepared to remove the
12 sidewalks, if that is the direction of the board.
13 Any sidewalks removed that are along the frontage of
14 our property, we've agreed that we would fund the
15 sidewalk account maintained by the township. We
16 look to you for your final determination on that
17 point.

18 The architectural treatment of the
19 building remains unchanged and remains consistent
20 with the requirements and recommendations of the
21 board's planner from last year.

22 The signage remains unchanged. We have
23 two monument signs compliant in size and location,
24 consistent with the ordinance. And we have removed
25 the signage from the building.

1 reading of the town's ordinances with regard to
2 landscaping is that there's to be landscaping along
3 all foundation walls. Ms. Cofone indicated on the
4 record that she did not believe that was the
5 ordinance's purpose, that the landscaping was to be
6 along the foundation walls, along parking areas. In
7 any event, we have not shown landscaping under the
8 loading docks. Technically that is a waiver. It
9 was something contemplated in our settlement.

10 The storage of solid waste and
11 recycling was testified by Mr. Lynam. We do not
12 have trash receptacles, we have compactors. The way
13 that the compactors are situated on the property,
14 they're screened from view from the traveling public
15 first by ramps, and then by landscape islands at the
16 end. This is not technically consistent with the
17 ordinance, so a waiver is required. And the
18 purposes of the ordinance of screening the materials
19 from the public was met. And it's also worth noting
20 that the recycling is handled as an internal matter,
21 and recycling will be removed by private haulers, as
22 necessary, not stored outside.

23 We also have the lighting plan that we
24 offered is one that we believe is superior to what
25 the ordinance requires. It's consistent with what

1 These are the revisions that were
2 required by the settlement. These are all line
3 items in Exhibit B. The applicant has done what it
4 said it was going to do when it signed that
5 agreement. The revisions that the applicant has
6 made to the plan and the representations made by the
7 applicant are now part of this record.

8 In addition, the applicant will
9 continue to be bound by all of the commitments and
10 conditions that were placed on the record last year
11 with no exception, if the board approves this
12 application.

13 Mr. Chairman, members of the board,
14 during the hearing there were some questions as to
15 how is this plan better or [audio lost] than 2021.
16 The outline that I just provided to you are --
17 represent those improvements; there is an
18 introduction of a sound attenuation wall with all
19 the benefits derived from that. The reorientation
20 of Building B has internalized the movements
21 associated with Building B's loading activity. And
22 although not required to meet any state or municipal
23 regulations with regard to sound attenuation, the
24 sound attenuation wall that has been added will
25 provide an additional benefit for residential

1 neighbors to the east.
 2 We've also modified the soil erosion
 3 and settlement control plan. There is mitigation or
 4 existing erosion that exists on the farm fields to
 5 the west, and there was some additional stormwater
 6 BMPs added to enhance the system.

7 The lighting plan as I indicated
 8 remains the same, only better. We've agreed to
 9 shielding to prevent spillage of glare off-site.
 10 And we also agreed to the dimming of lights during
 11 off-peak hours.

12 There's a reduction in impervious
 13 coverage. The driveway system has been reduced in
 14 dimension, but is now still fully compliant with
 15 your engineer's and with the fire department's
 16 request.

17 I think one last point that's worth
 18 making is that the landscape plan is very robust.
 19 There's over 1,000 deciduous and flowering trees,
 20 and there's 22 street trees in addition to that.

21 Thank you for listening. It is
 22 important to memorialize tonight that the revisions
 23 to the plans were in response to comments of the
 24 board and the board's professionals and the board's
 25 consultants.

1 inherent in the settlement plan, which were
 2 delivered by the applicant in response to the board
 3 and the board's professionals' requests, will not be
 4 heard by the court if this matter returns to the
 5 court.

6 Respectfully, board members, we ask
 7 that the board confirm that the Whispering Woods
 8 hearing has been conducted as required by the court,
 9 and to the satisfaction of the board the plan that
 10 has been presented during this Whispering Woods
 11 hearing is accepted by the board.

12 I thank you for your diligence and the
 13 time spent on this application.

14 ATTORNEY CUCCHIARO: Mr. Chairman, a
 15 few -- a few sort of legal comments that I have in
 16 counsel for the board.

17 One, just to go over -- and I went over
 18 this at the beginning of the hearing, but I think it
 19 bears repeating -- that the process here is, as Mr.
 20 Pape stated, it's a Whispering Woods hearing. So
 21 what the Whispering Woods case says is that planning
 22 boards and zoning boards and plaintiff applicants
 23 have the ability to settle cases. But those cases
 24 can't be settled to the exclusion of a public
 25 hearing and to the exclusion of public input.

1 All of the commitments made by the
 2 applicant to this board and to the Township of
 3 Howell on the record in September and October
 4 continue as commitments of the applicant to this
 5 board and the Township of Howell as conditions of
 6 approval. The only variances that are requested are
 7 those directly associated with the attenuation wall.

8 The applicant's position remains that
 9 the plan presented initially and now, is a plan that
 10 is protected by the ordinance and is of right. I
 11 think that we can all agree that this plan -- which
 12 was presented in 2021, we attribute that to the work
 13 of the board and the board's professionals and I
 14 would also attribute it to the applicant's
 15 cooperation with you -- is superior for all of the
 16 reasons that have been placed on the record by the
 17 board's professionals and as I have taken a few
 18 moments to outline in the summation. When approved,
 19 this is the plan that will be implemented.

20 If the plan is not approved, as it was
 21 indicated a couple of times this evening, if this
 22 plan is not approved, the plan that is before the
 23 court and the plan that will remain before the court
 24 is the original plan without all of these
 25 enhancements. All of the improvements and benefits

1 So what happens is there is an
 2 agreement upon a plan that is going to be presented.
 3 It's not required to be approved, but it's -- that's
 4 the agreement about the plan that is going to be
 5 presented, and it's reached collaboratively between
 6 the board and the applicant. So that's what was
 7 done in this case. What you saw placed before you
 8 at the last hearing and this hearing were
 9 modifications to the original plan.

10 Now again, the Whispering Woods hearing
 11 requires that the public hearings take place and
 12 most critically, that comments, questions, and
 13 testimony from the public be taken. So Whispering
 14 Woods is not an agreement to necessarily approve the
 15 application, but certainly it's an agreement to hear
 16 an application whose design has been reached in
 17 cooperation between the parties.

18 So it doesn't change what the
 19 jurisdiction of a board is. And planning boards and
 20 zoning boards are different. So a zoning board you
 21 go to because you're trying to do something you're
 22 not allowed to do, and there are burdens of proof
 23 associated with that. Planning boards you go to
 24 when your use is permitted.

25 So we start off with the fact that the

1 use is permitted. As I stated, there was an
2 amendment to the Municipal Land Use Law within
3 probably about five or six years now, called the
4 Time of Application Rule, which means that the
5 ordinance that exists when the application is filed
6 and declared complete, the applicant has vested
7 rights to that ordinance even if it changes.

8 So the rules that we operate under for
9 this application are under the prior zoning, not the
10 new zoning. Not our decision, not the township
11 council's decision, but the State of New Jersey, the
12 legislature's decision. That was a bipartisan bill
13 that was -- that was passed. Those are the rules
14 that we're given. We don't get to decide that in
15 certain cases we don't follow them.

16 The jurisdiction of a planning board in
17 a permitted use is to determine whether the zoning
18 site plan and design criteria have been satisfied.
19 Where they have been satisfied and complied with,
20 you can't make an applicant do more. You can't
21 disagree with the township council and say I
22 wouldn't have zoned for this. That's what the rules
23 are. We don't get to change the rules. We don't
24 get to make up the rules because for particular
25 applications we like some better than others.

1 That's the very definition of what is being
2 arbitrary, unreasonable and capricious. When --
3 even when it's coming from a good place, even when
4 it's coming from the thought that you want to
5 protect people, when you're making up different
6 rules yourself for different applications in a zone,
7 that's arbitrary, unreasonable and capricious. You
8 don't get to do that. You don't get to make the
9 rules up. They're given to us and we get to make
10 sure they're complied with. We don't get to make
11 them up.

12 Now, in this case, it is undisputed
13 that there's one variance that is required. That
14 variance is for the sound attenuation wall. Now,
15 you could deny it, I suppose, and there wouldn't be
16 a sound attenuation wall because one is not
17 required. It doesn't -- it doesn't speak to whether
18 the rest of the application is compliant or not.
19 The applicant has put his proofs on the record where
20 they believe that the purposes of the zoning have
21 been advanced and that there's no substantial
22 detriment to the zone plan, zoning ordinance or
23 public welfare associated with the wall.

24 Now, that wall is a sound attenuation
25 wall. The wall does not provide a vehicle for the

1 board to say, I'm going to kill warehouses as a
2 permitted use. So that's not an option.

3 Now, if you believe they haven't
4 satisfied their burden of proof for the positive and
5 negative criteria, that's something you can take
6 into account. But you can't use it as a back door
7 to negate what the permitted zoning is.

8 And then you've heard the two design
9 criteria, that design waiver relief is required
10 from. And if you wanted, if you believe that the
11 ordinance should be applied, you could just make
12 those conditions of approval; that the applicant has
13 to provide the buffering in between the loading
14 docks and the appropriate buffering -- well the
15 landscaping having to do with the trash compactor,
16 not a trash receptacle, but the trash compactor, you
17 could just require that. You could grant the
18 relief. But if you deny it, my recommendation would
19 be that you just require it. Not that it be denied,
20 just denied, but that it would be denied and
21 compliance is required.

22 But, you know, at the end of the day,
23 you know, one of the big issues that we heard
24 tonight was the traffic. And again, I cited the two
25 cases that are out there. Every treatise cites

1 them. Every court cites them. Every board
2 struggles with it. And it's not an expression that
3 the board is unsympathetic, doesn't care, is without
4 concern. To the contrary, it's a testament to the
5 tight rules that the board is under.

6 When you look at the Supreme Court case
7 law they actually describe the jurisdiction of a
8 board as being, quote, tightly circumscribed and
9 very limited. And with traffic it has to do with
10 ingress and egress. I know that there is going to
11 be disagreement with that, I suppose, disappointment
12 with that. But again, the board doesn't get the
13 ability to make it up as it goes along because it
14 would prefer a different set of rules on particular
15 applications. The nature of a quasi-judicial board
16 is you apply the law as it's written, as the courts
17 tell us to.

18 It's not required that you like the
19 law. It's not required that you agree with the law.
20 But it is absolutely required that we follow the
21 law. And that's what those oaths of office are for
22 when you take your -- when you take your seat that,
23 you know, you understand the Constitution of the
24 United States, you understand the Constitution of
25 New Jersey and you're going to apply the laws.

1 And I can't tell you the slippery slope
2 that happens when you decide that there's going to
3 be a different set of rules for every application
4 because in certain applications we like a use better
5 or we don't like a use. It just doesn't work that
6 way. We have rules, we have laws, we have
7 ordinances, and they get applied. And in the
8 instance of traffic, if you find that that ingress
9 and egress is dangerous, you can deny it. But if
10 you have a dissatisfaction with the volume of
11 traffic, our laws don't permit a denial based upon
12 that.

13 So I think that's, you know, basically
14 where we are, you know, where we were, how we got
15 here and the rules that are associated with that. I
16 can certainly answer any questions, but if the board
17 wishes to deliberate and make a motion, you know,
18 we're at that part of the process.

19 CHAIRMAN TANNENHAUS: Thank you, Mr.
20 Cucchiaro. Does the board have any -- anybody on
21 the board have any comments or questions for the
22 applicant or our professionals?

23 MEMBER SEAMAN: Just for my
24 clarification, I may have missed this, were the
25 applicants waiting on anything from the

1 Environmental Commission or the Environmental
2 Commission signed off on that?
3 ATTORNEY CUCCHIARO: The Environmental
4 Commission had questions -- and Laura, you can
5 assist me in this -- with regard to the stormwater
6 management plan, but the stormwater management plan
7 hadn't changed since the original application. It
8 was the same stormwater management plan.

9 Laura, is that a correct statement?

10 BOARD ENGINEER: That's correct. As
11 was indicated, additional best management practices
12 were implemented, however, the design has not
13 changed.

14 MEMBER SEAMAN: Thank you.

15 ATTORNEY CUCCHIARO: So there are --
16 there are comments, you know, regarding the plan
17 either from last year to this year.

18 MEMBER SEAMAN: Fair enough, thank you.

19 ATTORNEY CUCCHIARO: Just one question
20 before we go further. Eileen, everyone who is here
21 tonight was here at the first Whispering Woods
22 hearing as well, correct?

23 BOARD SECRETARY: No. Mr. Spanvill and
24 Mr. Seaman were not at the first one. Mr. Seaman
25 indicated earlier that he read the transcript and he

1 certified.

2 ATTORNEY CUCCHIARO: Okay.

3 BOARD SECRETARY: I don't know about
4 Mr. Spanvill.

5 MEMBER SPANVILL: I did, yes.

6 ATTORNEY CUCCHIARO: Okay, so everyone
7 is -- okay, thank you.

8 BOARD SECRETARY: They're both
9 certified then.

10 ATTORNEY CUCCHIARO: Okay.

11 BOARD SECRETARY: So you have seven
12 voting members, everyone present.

13 ATTORNEY CUCCHIARO: Okay, so as I
14 said, you know, anyone who has any more additional
15 questions, you know, Laura, Christine, Shari, and I
16 are here. If not, you know, we can have a motion.

17 CHAIRMAN TANNENHAUS: Anybody else on
18 the board have a question? If not, we'll entertain
19 a motion.

20 MEMBER CRISTIANO: I'll make a motion.

21 ATTORNEY CUCCHIARO: To approve?

22 MEMBER CRISTIANO: To deny.

23 CHAIRMAN TANNENHAUS: Do I have
24 another motion?

25 ATTORNEY CUCCHIARO: Well, is there a

1 second.

2 CHAIRMAN TANNENHAUS: Or a second?

3 MEMBER SPANVILL: I'll second.

4 ATTORNEY CUCCHIARO: Is there any
5 discussion?

6 CHAIRMAN TANNENHAUS: So a yes vote --
7 if you say yes, you're saying yes to the denial? If
8 you say no --

9 ATTORNEY CUCCHIARO: That's correct.

10 CHAIRMAN TANNENHAUS: -- you're saying
11 no to the denial?

12 ATTORNEY CUCCHIARO: That's correct.

13 CHAIRMAN TANNENHAUS: Okay.

14 BOARD SECRETARY: Roll call.

15 CHAIRMAN TANNENHAUS: Are we going to
16 need to have a reason why we made the denial, Mr.
17 Cucchiaro?

18 ATTORNEY CUCCHIARO: The board
19 can -- can do what it wants with regard to that. I
20 mean, I can put together -- basically, it really
21 doesn't matter because if there's a denial we go
22 back to the original application.

23 CHAIRMAN TANNENHAUS: Okay, roll call.

24 BOARD SECRETARY: Roll call. Mr.
25 Cristiano?

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1 MEMBER CRISTIANO: Yes.

2 BOARD SECRETARY: Mr. Dorato?

3 MEMBER DORATO: Yes.

4 BOARD SECRETARY: Mr. Greenfield?

5 CHAIRMAN TANNENHAUS: You're muted.

6 MEMBER GREENFIELD: Yes.

7 BOARD SECRETARY: Mr. Seaman?

8 MEMBER SEAMAN: No.

9 BOARD SECRETARY: Mr. Spanvill?

10 MEMBER SPANVILL: Yes.

11 BOARD SECRETARY: Ms. Talente?

12 MEMBER TALENTE: Yes.

13 BOARD SECRETARY: And Chairman

14 Tannenhaus?

15 CHAIRMAN TANNENHAUS: No.

16 BOARD SECRETARY: That's five yeses,

17 two no's.

18 ATTORNEY CUCCHIARO: Well, the

19 Whispering Woods plan is denied.

20 CHAIRMAN TANNENHAUS: Okay, with that

21 being said we have another application that needs to

22 be carried?

23 BOARD SECRETARY: Yes, the application

24 for AAFRHW Property, LLC, FRISA.

25 You're muted, Mr. Pape.

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1 ATTORNEY PAPE: Mr. Chair, Ms. Rubano,

2 we're looking to you for working that into your

3 calendar.

4 BOARD SECRETARY: Well December 1st

5 now has three applications. December 15th has your

6 application for 90 Industrial Court, which I believe

7 you're kind of caught up, and a small minor

8 subdivision. Otherwise we're into next year.

9 ATTORNEY CUCCHIARO: Well here is what

10 I would recommend. We haven't adopted the official

11 calendar for next year. I would recommend that we

12 carry it to reorg in 2023 and we'll see if we can

13 hear it on reorg, if not we can schedule it. But we

14 don't have a calendar beyond reorg that has been

15 adopted for 2023.

16 CHAIRMAN TANNENHAUS: And for the

17 record just make note, Eileen, I'm going to have a

18 conflict for that application so just make sure that

19 you have a quorum.

20 BOARD SECRETARY: Okay.

21 ATTORNEY CUCCHIARO: So, Eileen, what

22 is the reorg date; do you know?

23 BOARD SECRETARY: The reorg date is

24 January 5th, 2023.

25 ATTORNEY CUCCHIARO: Okay. Then we'll

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1 carry it until then, and as we draw closer to that

2 we can determine whether that's a real night that

3 we're going to hear it or whether it's going to be

4 for scheduling purposes.

5 And this is AAFRHW, correct?

6 ATTORNEY PAPE: Yes, sir.

7 ATTORNEY CUCCHIARO: Okay, the

8 application of AAFRHW Property, LLC, it's number --

9 CHAIRMAN TANNENHAUS: Oh, it's number

10 FR? I'm sorry, Ron, I thought it was the VR one.

11 BOARD SECRETARY: No, it's FRISA.

12 CHAIRMAN TANNENHAUS: Oh, I'm sorry. I

13 don't have a conflict with that one.

14 BOARD SECRETARY: Okay.

15 ATTORNEY CUCCHIARO: AAFRHW Property,

16 LLC, Case Number SP-1095 will be carried to the

17 board's January 5th, 2023, meeting.

18 At this moment in time that's going to

19 be a virtual meeting, 7:00 o'clock. The

20 instructions on how to access the meeting will be

21 available on the township's website. All documents

22 are available for review and inspection on the

23 township's website as well as in town hall for

24 personal physical inspection. There will be no

25 further notice to property owners.

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1 BOARD SECRETARY: Mr. Pape, can I get

2 an extension of time on the record for that?

3 ATTORNEY PAPE: On the record through

4 the January 5th date, we'll memorialize it in a

5 letter. And further reasonable request of this

6 board will be granted.

7 BOARD SECRETARY: Thank you.

8 ATTORNEY PAPE: Welcome.

9 ATTORNEY CUCCHIARO: Okay, with that

10 said, Mr. Chair, unless there's anything else, we

11 can have a motion to adjourn.

12 CHAIRMAN TANNENHAUS: Okay, I'll

13 entertain a motion to adjourn.

14 MEMBER SEAMAN: So moved.

15 MEMBER CRISTIANO: Second.

16 CHAIRMAN TANNENHAUS: Thank you.

17 Everyone in favor?

18 BOARD MEMBERS IN UNISON: Aye.

19 CHAIRMAN TANNENHAUS: Everyone have a

20 good night.

21 BOARD SECRETARY: Thank you. See you

22 Thursday. Good night.

23

24 (Hearing concluded at 10:42 p.m.)

25

CERTIFICATE

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I, ANGELA C. BUONANTUONO, a Notary Public and Certified Court Reporter of the State of New Jersey and Registered Professional Reporter, do hereby certify that prior to the commencement, the witnesses were duly sworn to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceeding as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative, nor employee, nor attorney, nor counsel of any of the parties to this action, and that I am neither a relative, nor employee of such attorney or counsel, and that I am not financially interested in the action.



23 Angela C. Buonantuono, CCR, RPR, CLR
24 NJ State Board of Court Reporting
25 License No. 30XI00233100

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