

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
Re-Organization
January 18, 2018 – 7:30 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board of Adjustment Attorney, Gary Hall, called the Reorganization meeting of the Board of Adjustment to order at 7:30 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

REORGANIZATION

Before the start of the meeting former Chairman, Phil Rosenbach announced the resignation of Peter Muratore from the Board of Adjustment. Mr. Rosenbach expressed his deep gratitude and appreciation for Mr. Muratore's service on the Board.

Mr. Hall noted the following appointments were made to the Board of Adjustment:

Bill Kearns Alternate #1 2 year term ending 12/31/19

The Roll call was taken and went as follows:

Mr. Rosenbach	Present	Mr. Newlin	Present
Mr. Flanagan	Present	Mr. Maselli	Absent
Mr. Schleifer	Present	Mr. Eichler	Present
Mr. Muratore	Present	Mr. Kearns	Excused
Ms. Chipperson	Present		

Board Attorney, Gary Hall, Township Engineer, Paul Fox and Board of Adjustment Secretary, Lori Taglairino were also present.

Mr. Hall opened the floor to nominations. Mr. Rosenbach nominated Mr. Flanagan as Chair. It was seconded by Mr. Schleifer and Ms. Eichler. On a voice vote, all were in favor.

Mr. Hall turned the meeting over to Mr. Flanagan.

Mr. Rosenbach nominated Mr. Newlin as Vice-Chair. It was seconded by Flanagan. On a voice vote, all were in favor.

Mr. Flanagan made a motion to approve Resolution BOA #01-2018 for the Appointment of Professionals. It was seconded by Mr. Newlin. On a voice vote all were in favor.

Mr. Flanagan made a motion to approve Resolution BOA #03-2018 for the Do Not Exceed Limits for professionals. It was seconded by Mr. Newlin. On a voice vote, all were in favor.

Mr. Flanagan made a motion to approve Resolution BOA #02-2018 for the 2018 meeting dates. It was seconded by Mr. Newlin. On a voice vote, all were in favor.

Mr. Hall swore in Mr. Fox as Board of Adjustment Engineer.

REGULAR MEETING

Mr. Flanagan made a motion to approve the Resolution to retain Planner Christine Cofone for BOA# 16-16 SYAS application. It was seconded by Mr. Newlin. On a voice vote all were in favor.

Mr. Flanagan made a motion to approve the December 21, 2017 minutes. The motion was seconded by Mr. Rosenbach. On a voice vote all eligible members were in favor of approving the minutes.

RESOLUTION

Application BOA# 16-17 Andrew and Sarah Quigley
197 Village Road, B10/L 16. RR Zone

Mr. Flanagan made a motion to adopt resolution BOA# 16-17 Quigley with the amended date change of approved plans being January 12, 2018. It was seconded by Ms. Eichler. On a voice vote all were in favor of approving the resolution.

Application BOA# 18-17 Shalnee Arora
12 Welsh Lane, B49/L 41, R-1 Zone

Mr. Flanagan made a motion to adopt resolution BOA# 18-17 Arora. It was seconded by Ms. Eichler. On a voice vote all eligible members were in favor of adopting the resolution.

NEW BUSINESS

Application BOA# 17-17 Anthony & Linda Papadopoulos
38 Anthony Wayne Road, B26.01/L17, R-1 Zone
Applicant is requesting variance relief for building area as per NJSA 40:55D-70(c).

Presenting:
Nicole Magdziak, Attorney
John Heyrich, Architect

Mr. Heyrich was sworn in for testimony.

- Ms. Magdziak stated that the applicant is proposing two additions to the home. One addition would be over the garage and requires a front yard setback. One would be for a Master Bedroom suite and would require a building area variance if the Harding Township 225-122 C4 does not apply.
- Ms. Magdziak noted that there are accessory structures pre-existing on the property that will need variance approval.
- Mr. Heyrich presented Exhibit A-1, a color rendering of the existing and proposed conditions on the property.
- Mr. Heyrich presented Exhibit A-2, photographs of the barn and stable.
- Mr. Rosenbach noted that the bonus room addition cannot be used as a bedroom.
- There was a discussion about the interpretation of Township Code 225-122 C4 in the context of this application.

- Mr. Rosenbach noted for the record that the accessory buildings are visible from the road and thus contribute to the rural character of the streetscape.

Mr. Flanagan made a motion to grant approval of this application with the conditions that the barn and stable accessory buildings are to be used for agricultural and property maintenance only and that there are no changes to the outside of the structures. He also stipulated that the bonus room was not to be used as a bedroom. It was seconded by Ms. Eichler. A roll call vote went as follows:

For: Mr. Rosenbach, Mr. Flanagan, Mr. Schleifer, Mr. Newlin, Ms. Eichler, and Ms. Chipperson.

Against: None.

Application BOA# 19-17

Nancy McClelland

63 Millbrook Road, B15/L27.04

Applicant is requesting variance relief for lot coverage as per NJSA 40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

Nancy and James McClelland, Owners

Ryan Smith, Engineer

Mr. Smith and Mr. and Mrs. McClelland were sworn in for testimony.

- Mr. Smith presented plans for a proposed patio area.
- Mr. Smith noted that the property has two other property's' flagstaffs running through the property creating a hardship for the McClelland property.

Mr. Flanagan made a motion to grant the variance for BOA# 19-17 McClelland. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Mr. Rosenbach, Mr. Flanagan, Mr. Schleifer, Mr. Newlin, Ms. Eichler, and Ms. Chipperson.

Against: None.

OLD BUSINESS

Application BOA# 17-16

PSE&G

1498 Mt. Kemble Road, B46.01/L13.01, B-2 Zone

Applicant is requesting use and height variances per N.J.S.A. 40:55D-70(d) and front, side and rear setback relief to build a communication tower as per NJSA40:55D-70c. The applicant also is seeking a variance for total lot coverage and Preliminary and Final Major Site Plan approval. **(Open-ended adjournment per request of applicant: new notice to be provided prior to any further proceedings.)**

Application BOA# 16-16

S.Y.A.S., LLC

1 Post House Road, B33.03/L1, R-1/B-2 Zones

Applicant requesting variance relief for use and height, per NJSA
40:55D-70(d) for 5 proposed townhouse units subject to a subsequent
request for site plan approval.

Presenting:

Mr. Bart Sheehan, Attorney

Mr. Geyer, Contract Purchaser

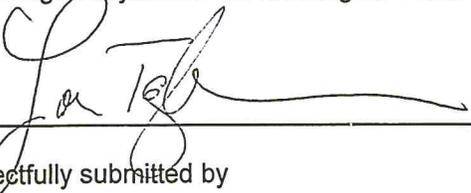
A transcript of the testimony is appended to the minutes.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11.02.



Respectfully submitted by

Lori Taglairino, Board of Adjustment Secretary

HARDING TOWNSHIP
BOARD OF ADJUSTMENT

In the Matter of:	:	
	:	Transcript
CASE BOA 16-16	:	
	:	of
S.Y.A.S., LLC	:	
1 Post House Road	:	Proceedings
Block 33.03, Lot 1	:	
-----x	:	

Thursday, January 18, 2018
 Kirby Municipal Building
 21 Blue Mill Road
 New Vernon, New Jersey
 Commencing at 8:45 p.m.

BOARD MEMBERS PRESENT:

MICHAEL FLANAGAN, Chairman
 PHILIP ROSENBACH, Acting Chairman
 ALF NEWLIN
 TERRI EICHLER
 JOE SCHLEIFER
 RITA CHIPPERSON

ALSO PRESENT:

LORI TAGLAIRINO, Planning Board Secretary
 PAUL D. FOX, P.E., CME
 CHRISTINE A. COFONE, Board Planner

BRIDGET LOMBARDOZZI,
 Certified Court Reporter

PRECISION REPORTING SERVICE
 CERTIFIED SHORTHAND REPORTERS
 (908) 642-4299

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1 APPEARANCES:
 2 GARY HALL, ESQ.
 3 Attorney for the Board
 4 DEMPSEY, DEMPSEY & SHEEHAN, ESQS.
 5 BY: BARTHOLOMEW SHEEHAN, ESQ.
 6 Attorneys for the Applicant
 7 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
 8 BY: JOHN VISCONI, ESQ.
 9 Attorneys for the Objectors - Post House Road, LLC
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1 CHAIRMAN FLANAGAN: All right. Next on
 2 the agenda is application 16-16 S.Y.A.S., LLC.
 3 And I would say in the interest of
 4 continuity, I'm going to ask Phil to continue to
 5 chair this application until it's finished. So
 6 thank you.
 7 Phil.
 8 ACTING CHAIRMAN ROSENBAACH: Does anybody
 9 want to take a five-minute break at this time?
 10 Because once we start, we're going through until
 11 11 o'clock or we finish, whichever comes first.
 12 Mr. Sheehan, do you have any opinion on
 13 this?
 14 MR. SHEEHAN: We're ready to go.
 15 ACTING CHAIRMAN ROSENBAACH: Let's go.
 16 Let's start.
 17 BOARD MEMBER SCHLEIFER: As we're
 18 starting, I want everybody to know I did read the
 19 minutes.
 20 MR. HALL: The transcript.
 21 BOARD MEMBER SCHLEIFER: The transcript,
 22 rather, I'm sorry. Both of December 21st and
 23 November 16th. Very well written. And I was able
 24 to understand them and I did read it. So I am up
 25 to date on the November and December meetings.

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 14 Mr. Geyer
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1 ACTING CHAIRMAN ROSENBAACH: Okay. Lori,
 2 do you have a full list of who's eligible then?
 3 SECRETARY TAGLAIRINO: Well, I
 4 believe -- Terri, did you sign yours?
 5 BOARD MEMBER EICHLER: Yes.
 6 SECRETARY TAGLAIRINO: And, Rita, did
 7 you sign yours?
 8 Because everybody has the transcript so
 9 everybody here would be eligible.
 10 BOARD MEMBER CHIPPERSON: I don't think
 11 I had the sheet when I came to my spot.
 12 SECRETARY TAGLAIRINO: Oh, I didn't give
 13 you the sheet? Then I will -- in the interim I'll
 14 run upstairs and get you the sheet.
 15 ACTING CHAIRMAN ROSENBAACH: Let's hand
 16 this down to Lori so it's part of the formal
 17 record.
 18 SECRETARY TAGLAIRINO: Yes. I'll be
 19 right back.
 20 MR. HALL: And we can note that there's
 21 six -- assuming that's okay, there's six members
 22 out of seven.
 23 ACTING CHAIRMAN ROSENBAACH: Tonight.
 24 MR. HALL: Tonight.
 25 MR. SHEEHAN: Did you say, Mr. Hall,

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1 that there were only six members available to
 2 vote?
 3 MR. HALL: Tonight.
 4 MR. SHEEHAN: Tonight. Mr. Kearns will
 5 be eligible next month if he reads the transcript.
 6 ACTING CHAIRMAN ROSENBAACH: And same for
 7 Mr. Maselli.
 8 MR. SHEEHAN: And Mr. Maselli. Fine.
 9 MR. HALL: Mr. Muratore is not on the
 10 Board now, but he stepped down before anyone --
 11 MR. SHEEHAN: Right. Right.
 12 ACTING CHAIRMAN ROSENBAACH: Okay. Why
 13 don't you set up. We are right on schedule. Mike
 14 predicted 8:45.
 15 CHAIRMAN FLANAGAN: It's 8:46. Thank
 16 you very much.
 17 ACTING CHAIRMAN ROSENBAACH: That was
 18 great.
 19 CHAIRMAN FLANAGAN: Yeah, I divvied it
 20 up actually between the two applications. That's
 21 how we got there.
 22 ACTING CHAIRMAN ROSENBAACH: So the
 23 last -- at least according to my notes, is that
 24 Mr. Phillips had finished his testimony and that
 25 people had questioned him. I think that's the

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1 last thing that happened.
 2 Oh, and Mr. Geyer had handed out his
 3 loose-leaf notebook. I don't know what you might
 4 call it.
 5 So what is next in line for us?
 6 MR. SHEEHAN: I would suggest,
 7 Mr. Chairman, that the applicant open and conclude
 8 with the testimony of Mr. Geyer in response to the
 9 request of Mr. Newlin at, I believe, the end of
 10 the November meeting with regard to the "cards"
 11 that had been mailed.
 12 BOARD MEMBER NEWLIN: Cards?
 13 MR. SHEEHAN: Yes.
 14 BOARD MEMBER NEWLIN: I didn't ask about
 15 cards.
 16 CHAIRMAN FLANAGAN: I think I may have
 17 asked you about that, but understood. I had asked
 18 you about postcards, survey cards.
 19 MR. SHEEHAN: Yes. And Mr. Geyer is
 20 prepared to --
 21 ACTING CHAIRMAN ROSENBAACH: And,
 22 Mr. Sheehan, I do have one comment, which is I
 23 assume that since it was handed out last month,
 24 that all the Board members have had the
 25 opportunity to look at the loose-leaf binder.

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1 I can see -- and I say this sincerely.
 2 I can see it's an effort of -- I mean, it's a real
 3 effort and an effort of love, in a sense. It's
 4 been lavishly done. I must also note that some of
 5 it is planning testimony, some of it is
 6 ordinances, some of it is master plan.
 7 It's your application and if you really
 8 want to, you can have Mr. Geyer go through this
 9 page by page by page. It will be very
 10 time-consuming and it will probably not add a lot.
 11 Okay? But, so with that note to you, I say please
 12 proceed as you see fit.
 13 MR. SHEEHAN: All right. As you
 14 indicated, it is Mr. Geyer's work, a work of
 15 sincerity, a work of commitment and intensity in
 16 terms of his involvement in the application.
 17 The book preceded the mailers and the
 18 reason that the book is offered is as a background
 19 and a foundation for the mailers, which were
 20 mailed out. And Mr. Geyer will give the
 21 reflection on the book and the summary of the
 22 mailers and that will be the end of the
 23 applicant's case.
 24 ACTING CHAIRMAN ROSENBAACH: Very well.
 25 MR. SHEEHAN: I would just ask that some

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1 focus -- or not focus. Some direction for the
 2 remaining aspects of the application be given so
 3 that we understand exactly where we're going.
 4 It was my understanding that tonight the
 5 applicant would conclude, the objectors would have
 6 the opportunity of putting on their case, and that
 7 there would be an opportunity at a subsequent
 8 meeting for the administrative reviews of the
 9 Board and summation and vote.
 10 ACTING CHAIRMAN ROSENBAACH: That's fine.
 11 I had -- first of all, I didn't know until
 12 tonight, we didn't know until tonight, that we
 13 would only have six members. Didn't know. All
 14 right? If we had seven voting members, I would
 15 leave it again to you as to how quickly we could
 16 push this and start deliberations tonight. And,
 17 who knows, even reach a vote.
 18 What I hear you saying is you don't want
 19 that to happen because we have only six members.
 20 We can't really start any discussion with the six.
 21 It's pointless. So in that case what's going to
 22 happen tonight is you're going to present your
 23 application. There is an opposition case,
 24 whatever it may be. I believe there's at least
 25 one planner. We have our own planner who may want

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1 to sound off on this application.
 2 And then, if there is still time at that
 3 point and if you decide that you want to present
 4 any rebuttal testimony of any sort, you are
 5 welcome to do so.
 6 On the other hand, if we reach the
 7 conclusion of all commentary, all testimony, we
 8 will close the record subject to any summations
 9 that counsel will want to make.
 10 I had suggested many, many months ago --
 11 and I'm going to repeat the suggestion -- that the
 12 law on use variances, particularly Medici and
 13 Price, is complicated enough that it would be very
 14 helpful if you from your perspective, if the
 15 opposition from its perspective, if Mr. Hall from
 16 his perspective, tells us what we think the law
 17 should be. I could do it myself, but I would
 18 prefer not to take that responsibility, quite
 19 frankly. Okay?
 20 So I think that's where we are and where
 21 we're going. Let's start doing it.
 22 MR. VISCONI: Mr. Chairman, if I may,
 23 while he's getting his papers, to the extent any
 24 testimony in the binder that Mr. Geyer may attempt
 25 to give regarding other people's opinions on the

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1 procedure, I don't want to jump up and object
 2 because this isn't a court, but I just want to
 3 note that unless the witness is physically here to
 4 testify, the Board can't consider it. So I'll
 5 leave that standing objection on the record.
 6 ACTING CHAIRMAN ROSENBACH: All right.
 7 I note that objection. Since the Board doesn't
 8 really know what's about to be happening next,
 9 let's see what actually happens.
 10 MR. VISCONI: Understand.
 11 MR. SHEEHAN: Okay. I would ask that
 12 the testimony of Charles Geyer, previously sworn
 13 in this matter, be continued at this time.
 14 ACTING CHAIRMAN ROSENBACH: Sure.
 15 MR. SHEEHAN: Mr. Geyer.
 16 THE WITNESS: I assume I've been sworn
 17 in, right?
 18 MR. SHEEHAN: Yes.
 19 MR. HALL: Yes, you have.
 20 CHARLES GEYER, having been
 21 previously duly sworn, remained under oath and
 22 testified as follows:
 23 DIRECT-EXAMINATION
 24 BY MR. SHEEHAN:
 25 Q. All right. Mr. Geyer, do you recall the

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1 comments made by Mr. Newlin at the end of the --
 2 I'm sorry, Mr. Flanagan at the end of the November
 3 meeting in which he asked a question with regard
 4 to the cards that were mailed out?
 5 A. Yes.
 6 Q. And do you recall at the end of the last
 7 hearing in December that a booklet was distributed
 8 which you prepared?
 9 A. Correct.
 10 Q. All right. Can you indicate in your own
 11 words for the Board how the book and the cards
 12 interrelate? And then give the Board, members of
 13 the interested public, your account of how the
 14 cards were developed, how they were mailed, how
 15 the returns came in, and what the findings of
 16 those cards were.
 17 Now, before you do that, I want to ask
 18 you whether or not you have placed all of the
 19 cards that were returned with the secretary of the
 20 Board earlier this week.
 21 A. It was a couple weeks ago, but the
 22 greater majority. A few more came in after the
 23 fact, but it was negligible. We took in ten,
 24 twelve cards, but the brunt of them I delivered.
 25 BOARD SECRETARY: They are here.

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1 MR. SHEEHAN: Now, I ask the Chair
 2 whether or not the secretary has those cards with
 3 her this evening.
 4 ACTING CHAIRMAN ROSENBACH: She does.
 5 If you would like them, why don't you just get up.
 6 And the secretary has them in the yellow bag if
 7 you would like to take them.
 8 MR. SHEEHAN: Do you need the cards
 9 themselves?
 10 ACTING CHAIRMAN ROSENBACH: No.
 11 MR. HALL: But as we speak, they're not
 12 in the record, into evidence.
 13 ACTING CHAIRMAN ROSENBACH: Right.
 14 MR. HALL: So why don't you do that.
 15 ACTING CHAIRMAN ROSENBACH: Right. So
 16 Mr. Geyer should take them. I understand they've
 17 been in our custody. Let's give them back to
 18 Mr. Geyer so Mr. Geyer can open up the back and
 19 tell us what they are. I don't think we have to
 20 do one by one by one as long as Mr. Geyer says
 21 that -- he gives us a few examples and then says
 22 all the rest are like that.
 23 BY MR. SHEEHAN:
 24 Q. All right. Mr. Geyer, I'm going to show
 25 you the red bag. Is this the bag that you

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1 delivered the cards in?

2 **A. That's true, yes.**

3 Q. All right. And I will open the bag,

4 expose a couple of the cards, and ask you to begin

5 by identifying the interrelationship between the

6 book and the cards.

7 ACTING CHAIRMAN ROSENBAACH: And the

8 book -- Gary, do we have to mark the book? I

9 mean, we all have it.

10 MR. HALL: If he wants to offer it. I

11 mean, I don't -- I don't do it as fundamentally

12 evidential. I do it more as a summation.

13 ACTING CHAIRMAN ROSENBAACH: Well, I

14 think the point is that -- Mr. Geyer, am I correct

15 in saying that the book was distributed to the

16 people before the cards were? Is that what you're

17 saying?

18 THE WITNESS: The books were, yes.

19 ACTING CHAIRMAN ROSENBAACH: Yes. And

20 every single person --

21 THE WITNESS: I'm sorry, the books were

22 delivered after I mailed the cards.

23 ACTING CHAIRMAN ROSENBAACH: All right.

24 Did every person for whom you have a card here

25 also get the book?

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1 THE WITNESS: No. No.

2 ACTING CHAIRMAN ROSENBAACH: Ah.

3 THE WITNESS: The only ones who got

4 books were the Board and all the neighbors on Post

5 House Road.

6 ACTING CHAIRMAN ROSENBAACH: All right.

7 All right. Thank you for clarifying that.

8 MR. VISCONI: Just procedurally, I think

9 we should mark the book. If this does gets

10 challenged, whether it's approved or denied, it

11 should be part of the record.

12 MR. HALL: We have to mark it for

13 identification.

14 ACTING CHAIRMAN ROSENBAACH: Right.

15 Right. So --

16 MR. SHEEHAN: All right.

17 MR. HALL: Lori, do you have a copy of

18 the book?

19 SECRETARY TAGLAIRINO: I have the -- the

20 last copy I had was --

21 MR. HALL: A print of the book.

22 SECRETARY TAGLAIRINO: Do you need them?

23 MR. HALL: No. The one for the record,

24 --

25 ACTING CHAIRMAN ROSENBAACH: Let's mark

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1 that.

2 MR. HALL: Let's see where we left off.

3 MR. SHEEHAN: I don't think it was

4 marked yet.

5 ACTING CHAIRMAN ROSENBAACH: No.

6 MR. HALL: No, I was looking for the

7 last one that was marked.

8 ACTING CHAIRMAN ROSENBAACH: I think it

9 was from Mr. Alexander.

10 MR. SHEEHAN: I think it's 17. This is

11 18, I think.

12 MR. HALL: Yes, I believe it would be

13 A-18.

14 SECRETARY TAGLAIRINO: Okay.

15 MR. HALL: For identification at this

16 point.

17 (Whereupon, exhibit is received and

18 marked A-18 for identification.)

19 MR. SHEEHAN: May I see the book that

20 was marked, please?

21 MR. HALL: Sure. You want to make sure

22 that's what we all got.

23 MR. SHEEHAN: I want to make sure it's

24 the book that Mr. Geyer testifies from.

25 MR. HALL: And if you can identify that

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1 and confirm that, that would be great.

2 MR. SHEEHAN: Right.

3 BY MR. SHEEHAN:

4 Q. Mr. Geyer, I'm going to show you what

5 has been marked for identification as A-18, a

6 booklet under the cover "S.Y.A.S. Application for

7 Five Luxurious Townhouses for the Benefit of

8 Harding Senior Citizens." I'm going to ask you

9 whether or not you can identify this book.

10 **A. Yes. This is a book that was put**

11 **together by myself and my four grandchildren.**

12 **Yes.**

13 Q. And what does the book purport to

14 disclose?

15 **A. Well, let me talk about the cards first,**

16 **if I may, so you'll know what's in here. There**

17 **was 800 mailed out, and I think probably some of**

18 **you people got them as well. There was 423**

19 **returns as of 12/8. There was 340 yeses, 36 nos**

20 **and 47 maybes. These are the cards. I separated**

21 **the yeses, the nos and the maybes.**

22 **A letter was sent out with a return card**

23 **with a stamp on it and these are the returns,**

24 **here, every one of them. They're all the same,**

25 **just marked differently.**

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1 ACTING CHAIRMAN ROSENBAACH: And what is
 2 on the cards?
 3 THE WITNESS: That's in the book as
 4 well. It says "Do you believe that you or someone
 5 you know in town would explore an interest in a
 6 downsize to a modern luxury townhouse?" This was
 7 done for the benefit of me trying to prove the
 8 need for senior citizens in this township.
 9 BOARD MEMBER FLANAGAN: Mr. Geyer, I'm
 10 sorry, can you go through it one more time, a
 11 little more slowly? 800 total were sent out, 423
 12 were returned to you, 340 were yes?
 13 THE WITNESS: Correct.
 14 CHAIRMAN FLANAGAN: How many nos do you
 15 have?
 16 THE WITNESS: Thirty-six.
 17 CHAIRMAN FLANAGAN: Thirty-six.
 18 THE WITNESS: And 47 maybe.
 19 CHAIRMAN FLANAGAN: So 47 maybe. Okay.
 20 Thank you.
 21 MR. SHEEHAN: All right. Now,
 22 Mr. Chairman, let's do a little bit of
 23 housekeeping here.
 24 BY MR. SHEEHAN:
 25 Q. I'm going to show you, Mr. Geyer, the

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1 three packets of cards that you indicated as being
 2 divided into yes, no, and maybe.
 3 **A. Correct.**
 4 Q. Is that correct?
 5 **A. Yes.**
 6 Q. All right. I'm going to ask you if you
 7 would examine each one of the packets and indicate
 8 whether or not those are the cards that you sent
 9 out. And do they have the legend that you just
 10 described on the back of the card where the
 11 indication of favorable, maybe -- yes, no or
 12 maybe is --
 13 **A. It's only printed on one side. The**
 14 **other side is blank.**
 15 Q. All right.
 16 **A. These are maybes, these are yeses.**
 17 **These are mixed up. There's a few nos here, but**
 18 **most of them are all yeses.**
 19 Q. I'm sorry.
 20 **A. These are the cards. These are the**
 21 **cards I received.**
 22 Q. These are the maybes?
 23 **A. Yes.**
 24 Q. Are these the nos?
 25 **A. There's the nos.**

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1 Q. All right.
 2 MR. SHEEHAN: I would offer them for the
 3 Board's inspection.
 4 ACTING CHAIRMAN ROSENBAACH: Sure. Do
 5 you want to see them?
 6 MR. VISCONI: I -- I'm fine.
 7 CHAIRMAN FLANAGAN: Can I ask one more
 8 question? So in the booklet it says there's
 9 800-plus cards?
 10 THE WITNESS: Yeah. There's, like, 810
 11 or something like that.
 12 CHAIRMAN FLANAGAN: Okay. So it's not
 13 like --
 14 THE WITNESS: No.
 15 CHAIRMAN FLANAGAN: So it doesn't reach
 16 900?
 17 THE WITNESS: No.
 18 CHAIRMAN FLANAGAN: Doesn't even reach
 19 850. So maybe 810.
 20 THE WITNESS: Correct.
 21 MR. HALL: And the page -- I guess it's
 22 30 is the number. Between 30 and 31 there's a
 23 list with the numbers?
 24 THE WITNESS: The book, page 30 in the
 25 book?

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1 MR. HALL: Yes. They seemed the match
 2 the numbers you gave us.
 3 THE WITNESS: Page 30 is the pictures of
 4 the --
 5 MR. HALL: No, after 30.
 6 THE WITNESS: Okay. Yeah. You have --
 7 in your book you should have the initial and then
 8 there was revised. The initial was on 11/8. The
 9 revised results are on 12/8, a month later.
 10 MR. HALL: Right. You said a few more
 11 dribbled in?
 12 THE WITNESS: A couple, yeah.
 13 MR. HALL: And you're representing that
 14 the stacks there match these numbers?
 15 THE WITNESS: These will match what's in
 16 the book, correct.
 17 MR. HALL: Okay.
 18 BY MR. SHEEHAN:
 19 Q. And, once again, summarize the cards for
 20 the Board, please.
 21 **A. Well, the chart.**
 22 Q. Yeah, the chart.
 23 **A. The chart and the book. And it shows**
 24 **the difference between yes, no and maybe.**
 25 Q. And what are those numbers?

Page 22

1 **A. I'll repeat them for you: 800 mailed**
 2 **out, 423 returned, 340 yeses, 36 nos, 47 maybes.**
 3 MR. SHEEHAN: All right. Mr. Chairman,
 4 I'm going to pass up the cards for inspection with
 5 the page exposed and what has been marked for
 6 identification A-18.
 7 ACTING CHAIRMAN ROSENBACH: You don't
 8 have to. We should all should have that --
 9 MR. SHEEHAN: All right.
 10 ACTING CHAIRMAN ROSENBACH: So if people
 11 aren't aware, there's no -- there's no -- it's
 12 between 30 and 31. There's no number on it. It's
 13 between 30 and 31, is the chart. Okay.
 14 CHAIRMAN FLANAGAN: Are you going to
 15 continue on with the cards? Is there more
 16 discussion of the cards?
 17 BY MR. SHEEHAN:
 18 Q. Mr. Geyer, would you like to offer a
 19 reflection on the cards that have been presented
 20 and the book that has been marked A-18 for
 21 identification?
 22 **A. Well, between the search and the**
 23 **demographics in the town, the state, the due**
 24 **diligence that was done that we put into this**
 25 **book, it's overwhelming in favor of senior**

Page 23

1 **housing. There's 21 percent in this town right**
 2 **now that are seniors 65 -- not 55, 65 -- years or**
 3 **older, which means every year's in addition to it.**
 4 **There's not one thing in this town that's been**
 5 **built to help these people for transitional**
 6 **housing. There's 65, or thereabouts, homes for**
 7 **sale right now, single-family homes, in New**
 8 **Vernon. So to build another single-family home,**
 9 **that's a fool's errand.**
 10 **But the seniors aren't being taken care**
 11 **of. Where do they go? People that have been here**
 12 **40 and 50 years, which is the center of your town.**
 13 **These are people that helped the township all**
 14 **these years. They're done. Once they reach that**
 15 **age and they can't function in their house as it**
 16 **is, they have no place to go but out of town.**
 17 **There's nothing.**
 18 **Even the master plan speaks of senior**
 19 **citizens. It speaks of senior citizen housing.**
 20 **Of course it says they want assisted living.**
 21 **That's not what I'm proposing. I'm proposing five**
 22 **townhouses, which wouldn't even scratch the**
 23 **surface, but it's a start.**
 24 Q. Can you remind the Board how long you
 25 have been a resident of Harding Township,

Page 24

1 Mr. Geyer?
 2 **A. Thirty-six years. And to answer this**
 3 **attorney's question about if there's any opinions,**
 4 **there's no opinions in the book. It's all**
 5 **factual. You know, words are only opinions, but**
 6 **facts are truth and it's factual. There's a lot**
 7 **of homework that went into this book.**
 8 CHAIRMAN FLANAGAN: Mr. Geyer, regarding
 9 the cards, to whom were they sent? So 810-ish
 10 were sent out.
 11 THE WITNESS: What I did is I went down
 12 to the post office in the middle of town and I
 13 gave the post office general, boxes and boxes of
 14 them. There's 800 or 850 boxes down there.
 15 CHAIRMAN FLANAGAN: Post office boxes?
 16 THE WITNESS: Excuse me?
 17 CHAIRMAN FLANAGAN: You said there was
 18 850 boxes.
 19 THE WITNESS: Yeah, thereabouts.
 20 CHAIRMAN FLANAGAN: Post office boxes?
 21 THE WITNESS: Post office boxes.
 22 CHAIRMAN FLANAGAN: Okay.
 23 THE WITNESS: And she proceeded to fill
 24 them each with an envelope which was marked
 25 "Occupant." Inside the envelope was this card

Page 25

1 with its return stamp. You see a lot of them have
 2 a cross. As they came back in, she just crossed
 3 them out.
 4 CHAIRMAN FLANAGAN: Okay.
 5 THE WITNESS: And she put -- you could
 6 go down there and check it out. She'll testify to
 7 everything that went down there.
 8 CHAIRMAN FLANAGAN: So your testimony is
 9 these were mailed to 800-some-odd --
 10 THE WITNESS: To everybody --
 11 CHAIRMAN FLANAGAN: -- post office box
 12 addresses in New Vernon, New Jersey?
 13 THE WITNESS: Correct.
 14 CHAIRMAN FLANAGAN: Thank you.
 15 BY MR. SHEEHAN:
 16 Q. When you say she struck them out, you
 17 mean she canceled the stamp?
 18 **A. Well, in other words, there was no way**
 19 **of me getting into the boxes. I just handed her**
 20 **boxes of these cards, which she proceeded to put**
 21 **in from behind, each one of them.**
 22 CHAIRMAN FLANAGAN: Okay.
 23 ACTING CHAIRMAN ROSENBACH: Do you have
 24 other direct testimony for Mr. Geyer?
 25 MR. SHEEHAN: I do not, no.

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1 ACTING CHAIRMAN ROSENBAACH: All right.
 2 Well, Mr. Geyer, you just mentioned some
 3 demographic data. And it appears on page 24 of
 4 your notebook. Now, this is the type of thing
 5 that -- this does concern me, which is the source
 6 of this data. Where is this data from?
 7 THE WITNESS: Wham am I looking for?
 8 ACTING CHAIRMAN ROSENBAACH: It's on page
 9 24.
 10 THE WITNESS: Twenty-four, you said?
 11 ACTING CHAIRMAN ROSENBAACH: Yes.
 12 THE WITNESS: Let's see. Township.
 13 Also the state.
 14 CHAIRMAN FLANAGAN: In other words, this
 15 is --
 16 THE WITNESS: You'll find --
 17 CHAIRMAN FLANAGAN: Go ahead.
 18 THE WITNESS: This one, I believe, was
 19 taken out of the master plan.
 20 CHAIRMAN FLANAGAN: Which one?
 21 MS. COFONE: Mr. Rosenbach, my read of
 22 it is that he indicates it's from the census.
 23 THE WITNESS: Yes.
 24 MS. COFONE: In the document that you're
 25 referring to, it reads "According to the 2010

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1 census data, the percentage of young children
 2 under five years of age was only..." and then it
 3 goes on to further read "this census data reflects
 4 an aging population among Harding residents."
 5 So I think it appears -- if what he's
 6 putting in here is accurate, it appears he got it
 7 from the U.S. Census data, which would be a
 8 reasonable source for data.
 9 ACTING CHAIRMAN ROSENBAACH: Yes. I did
 10 notice that it says it came from the 2010 census,
 11 but --
 12 MR. VISCONI: That's a paragraph in the
 13 master plan. It's in the housing element.
 14 ACTING CHAIRMAN ROSENBAACH: Okay. Good.
 15 Thank you.
 16 MR. HALL: There's a notation at the
 17 bottom of the page which I interpret to be the
 18 source.
 19 ACTING CHAIRMAN ROSENBAACH: Okay.
 20 MS. COFONE: The source of the data,
 21 though. The master plan is just regurgitating it.
 22 The master plan is not the source of the data.
 23 That data was not compiled in conjunction with the
 24 preparation of that master plan. That master plan
 25 relied on U.S. Census data. So it should be clear

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1 for the record that the data appears to have come
 2 from the U.S. Census data.
 3 ACTING CHAIRMAN ROSENBAACH: Thank you.
 4 Now, Mr. Sheehan, aside from having
 5 marked this notebook for identification, is it
 6 your intent to move it into evidence and have it
 7 part of the record that you can rely on page by
 8 page by page for its contents.
 9 THE WITNESS: It's all factual.
 10 MR. SHEEHAN: Well, it has been prepared
 11 by a witness who has been sworn, who has given
 12 testimony under oath. And I think that it is
 13 appropriate and probative and it can be admitted
 14 into evidence under the relaxed rules that apply
 15 in connection with the hearings before
 16 administrative bodies.
 17 ACTING CHAIRMAN ROSENBAACH: Okay.
 18 MR. HALL: But there's no testimony that
 19 this is the type of thing he's competent to
 20 prepare.
 21 ACTING CHAIRMAN ROSENBAACH: But you know
 22 what? I would like to cut through this, if I may.
 23 MR. HALL: Yeah.
 24 ACTING CHAIRMAN ROSENBAACH: I want your
 25 input on this, Gary, --

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1 MR. HALL: Okay.
 2 ACTING CHAIRMAN ROSENBAACH: -- but I
 3 would like to do the classic dodge, quite frankly,
 4 of saying on the one hand we will accept it for
 5 what it's worth, but on the other hand we will not
 6 accept it in terms of presenting expert-type
 7 findings or expert-type testimony.
 8 So if -- so I don't care if there's a
 9 quotation here from something. That doesn't
 10 trouble me. But to the extent that there may be
 11 calculations, projections, analyses from one page
 12 to the next, that would be typically presented by
 13 a planner or an engineer or someone else with
 14 professional credentials.
 15 Since Mr. Geyer has not shown himself to
 16 have those types of credentials, I don't want to
 17 go through this page by page; it's too
 18 time-consuming. But that is how I see it. That,
 19 again, for what it's worth, because I can -- and
 20 we understand what it was used for and what its
 21 purpose is, we'll take it. But when it comes time
 22 to decide this application, don't expect the Board
 23 to give any weight to, again, expert type of --
 24 THE WITNESS: Testimony.
 25 ACTING CHAIRMAN ROSENBAACH: -- testimony

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1 or analyses.

2 THE WITNESS: That's a fair -- That's a

3 fair analogy. However, you have to consider that

4 the master plan that I glean, that comes in this

5 book. It's right out of the master plan. I

6 didn't make that up.

7 MR. HALL: Then give us the master plan.

8 ACTING CHAIRMAN ROSENBAACH: Well, we

9 have access to the master plan.

10 THE WITNESS: Excuse me?

11 MR. SHEEHAN: No, wait, wait.

12 THE WITNESS: No, No, I'm saying the

13 pages here that I talk about, a good percent of

14 them are master plan. Okay?

15 MR. HALL: I understand that.

16 ACTING CHAIRMAN ROSENBAACH: And I assume

17 that Mr. Sheehan will be using that type of data

18 in his summation.

19 MR. SHEEHAN: Mr. Geyer has prepared the

20 book. He is a fact witness. The book can be

21 received for its value in the mind's eye of the

22 Board members. For the planning testimony and the

23 references in the planning -- in the book to the

24 master plan and reexamination document, we rely on

25 the testimony of the expert, Paul Phillips, who

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1 has testified fully and completely on the master

2 plan and its relationship to this application.

3 ACTING CHAIRMAN ROSENBAACH: That's

4 correct. So that is what I would like to do.

5 Gary, is there anything wrong with what

6 I'm doing?

7 MR. HALL: No, no. I'm just --

8 ACTING CHAIRMAN ROSENBAACH: Okay.

9 MR. HALL: We're splitting hairs in a

10 way, but at the same time to the extent you're

11 quoting the master plan, give us a copy of the

12 master plan.

13 ACTING CHAIRMAN ROSENBAACH: Well, again,

14 we have access to that.

15 MR. HALL: We do. We do.

16 ACTING CHAIRMAN ROSENBAACH: But there

17 might be other things that we don't have access

18 to. But, in any event --

19 MR. SHEEHAN: You don't have access to

20 the cards, and I would ask that they be moved as

21 A-19.

22 ACTING CHAIRMAN ROSENBAACH: All right.

23 They are collectively A-19. We will accept those

24 cards as evidence in this case. Again, for what

25 they're worth. It's not clear what the Board will

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1 do with them, but Mr. Geyer has testified as to

2 what they are. We accept that testimony. They

3 are authentic and we accept them.

4 (Whereupon, exhibit is received and

5 marked A-19 in evidence.)

6 THE WITNESS: I can also say that the

7 book is a product of a request by the Board. Go

8 back to June, June 15th of last year, when

9 Mr. Sheehan tried to introduce the fact of the

10 master plan and I was told -- and it's in page 47

11 of the June 15th transcript -- that you have to

12 bring witnesses in -- that was Mr. Hall -- and

13 then Board Member Newlin said "or special

14 documents," or I wouldn't bring it up.

15 Now, these are pretty special documents

16 as I see. I don't know what else --

17 MR. HALL: That's what Mr. Phillips did.

18 He testified about these things.

19 ACTING CHAIRMAN ROSENBAACH: Okay. I

20 think that we can move on. I think that I have

21 stated how the record is going to accept this.

22 Mr. Sheehan, do you have anything

23 further for Mr. Geyer?

24 MR. SHEEHAN: No.

25 Do you want to put those cards back in

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1 the bag? Any witnesses -- any questions from any

2 members of the Board for Mr. Geyer?

3 ACTING CHAIRMAN ROSENBAACH: Apparently,

4 we do.

5 BOARD MEMBER CHIPPERSON: I have a

6 question. On the direct part mailing page -- and

7 I know we're not bringing this into evidence or

8 whatever, but it says "unbelievable and

9 overwhelming answer of yes as to the inquiry and

10 acceptance of building five townhouses in Harding

11 Township." But I don't see on the card where it

12 tells people that these townhouses are going to be

13 in Harding Township.

14 THE WITNESS: You'll find --

15 BOARD MEMBER CHIPPERSON: If I got

16 this --

17 THE WITNESS: I'm sorry?

18 BOARD MEMBER CHIPPERSON: If I got this,

19 it says am I interested downsizing?

20 THE WITNESS: Yes, but --

21 BOARD MEMBER CHIPPERSON: It doesn't

22 say --

23 THE WITNESS: -- these are residences.

24 And you'll find a lot of the cards where there's

25 handwritten notes coming back to me asking for

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1 brochures, for timing, for value of the homes.
2 BOARD MEMBER CHIPPERSON: But how
3 would -- are you -- are you submitting these cards
4 to us to say that these people --
5 THE WITNESS: Well, they weren't mailed
6 to anybody but residents of New Vernon.
7 BOARD MEMBER CHIPPERSON: But how do you
8 know that? Are you trying to say that this shows
9 that people want these homes in our town? Because
10 I don't see that on the card, is what I'm trying
11 to say. And we even have one here where he said
12 or she said "Where?" "Where is this located?"
13 THE WITNESS: Well, it's a natural
14 consideration. They have no place to go. They'd
15 either have to move out of town or stay in town.
16 BOARD MEMBER CHIPPERSON: Well, they
17 could look in Morristown.
18 THE WITNESS: I didn't specifically say
19 I'm going to build on 202 in the township.
20 BOARD MEMBER CHIPPERSON: It might
21 have --
22 ACTING CHAIRMAN ROSENBACH: Could I? On
23 page 29, where you have a sample card --
24 THE WITNESS: Right.
25 ACTING CHAIRMAN ROSENBACH: -- on the

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1 top of it, it says "Attention - Luxurious
2 townhomes coming soon. Dear Harding Residents."
3 And then it says --
4 THE WITNESS: That's a letter that was
5 sent with it.
6 ACTING CHAIRMAN ROSENBACH: That was a
7 letter that was sent with the card?
8 THE WITNESS: Exactly right.
9 ACTING CHAIRMAN ROSENBACH: With the
10 card?
11 THE WITNESS: Yes.
12 ACTING CHAIRMAN ROSENBACH: And the
13 first sentence says "We are conducting a consensus
14 to evaluate a possible need in Harding Township."
15 Maybe that's ambiguous, maybe not, but I think
16 it's -- I think it more directly answers your
17 question. I think so. Maybe not enough.
18 THE WITNESS: There was a card in the
19 letter --
20 BOARD MEMBER CHIPPERSON: There could be
21 a need to downsize to Morristown.
22 ACTING CHAIRMAN ROSENBACH: There could
23 be.
24 BOARD MEMBER CHIPPERSON: So I just
25 think the card could have been a little clearer

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1 about the fact that they were going into our town.
2 Okay. That's it.
3 ACTING CHAIRMAN ROSENBACH: That's a
4 fair evaluation that you might be able to make.
5 MS. COFONE: Mr. Rosenbach, I just had a
6 question as to who the mailing went to. It went
7 to -- you're certain that they're Harding
8 residents or people who maintain a P.O. box?
9 THE WITNESS: Well, I couldn't tell you.
10 It may be somebody else.
11 MS. COFONE: So you don't know. So
12 then -- I just want the record to be clear.
13 You're not even sure that all of them went to
14 Harding residents. They went to maybe people who
15 maintain a P.O. box here, but we're not certain.
16 Is there a disconnect there?
17 THE WITNESS: There would be no way of
18 me telling that.
19 ACTING CHAIRMAN ROSENBACH: I mean, the
20 testimony is what it is, that --
21 MS. COFONE: The testimony is that they
22 were sent to people who maintain a P.O. box.
23 THE WITNESS: Correct.
24 ACTING CHAIRMAN ROSENBACH: At the New
25 Vernon Post Office.

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1 MS. COFONE: At the New Vernon Post
2 Office. Whether they are one and the same as
3 residents or not is unclear.
4 ACTING CHAIRMAN ROSENBACH: That's
5 right.
6 MS. COFONE: Because we don't have
7 enough --
8 CHAIRMAN FLANAGAN: Well, I can tell you
9 for a fact not all post office boxes in New Vernon
10 belong to residents of New Vernon.
11 MS. COFONE: That was my question.
12 CHAIRMAN FLANAGAN: In fact, one of them
13 is the Township of Harding, for example. The
14 Township of Harding, the church --
15 THE WITNESS: Given that fact, you still
16 have an overwhelming number that are favorable.
17 MS. COFONE: I mean, it's fine. I was
18 just asking a question for clarification.
19 ACTING CHAIRMAN ROSENBACH: I mean, for
20 that matter, we also don't know -- and I'm not
21 criticizing Mr. Geyer. I'm just saying the fact
22 is that we don't know if a card went to some
23 address and a ten-year-old kid just filled it out
24 and stuck it in and returned it. We don't know.
25 But, nonetheless, I'm not -- but you've

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1 given us the benefit of this effort that you went
 2 through. Again --
 3 THE WITNESS: Beyond the cards, you have
 4 to consider 21 percent -- that's more than 1 in 5
 5 residents -- are 65 or older. Now, there's a lot
 6 of garden clubs, bridle clubs, a lot of good
 7 things in town for a lot of people. Tennis clubs,
 8 you name it. Not one thing to take care of
 9 senior.
 10 And like I say in the book, everybody in
 11 this room, if you're lucky, you're going to get
 12 old some day and you'll be in this same position.
 13 ACTING CHAIRMAN ROSENBACH: Okay. Are
 14 there other questions from Board members for
 15 Mr. Geyer?
 16 BOARD MEMBER NEWLIN: Mr. Chairman, just
 17 a quick comment. I just happen to have a 2010
 18 census. And I don't say why I do, but I do. And
 19 I did some spot checks on the numbers. Not all of
 20 them, but many of them, actually they do proof out
 21 to my independent calculations. So it is from the
 22 2010 census.
 23 ACTING CHAIRMAN ROSENBACH: Good. Thank
 24 you.
 25 Okay. Are there questions from any

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1 members of the public?
 2 Mr. Visconi, come on up.
 3 MR. VISCONI: Sure. Where would you
 4 like me?
 5 SECRETARY TAGLAIRINO: As close to the
 6 microphone as you can, or even up towards that
 7 corner is fine.
 8 CROSS-EXAMINATION
 9 BY MR. VISCONI:
 10 Q. Mr. Geyer, as you know, my name is John
 11 Visconi. I represent Post House Road, LLC, an
 12 objector to your application. Good evening. I
 13 have just a few questions for you. This should be
 14 pretty quick.
 15 Looking at the sample card that's in the
 16 booklet, if you wouldn't mind turning to page
 17 24 -- sorry, page 29 I guess it is.
 18 Who drafted the question on the card?
 19 A. **Twenty-four you said?**
 20 Q. I'm sorry, 29.
 21 A. **Twenty-nine. Go right ahead.**
 22 Q. Who drafted the question on the card
 23 that starts "Do you believe..."?
 24 A. **Who drafted the question? It was**
 25 **either -- a concert of my four grandchildren and**

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1 **myself probably. I don't remember exactly.**
 2 Q. Are any of you professional polling --
 3 polling professionals or have any experience in
 4 that?
 5 A. **I'm going to answer that as long as you**
 6 **answer one question I have for you.**
 7 MR. VISCONI: Do I have to be sworn in
 8 for this?
 9 ACTING CHAIRMAN ROSENBACH: Let's see.
 10 I don't think so.
 11 A. **No. The only thing I want to do is**
 12 **prove the need. And rather than knock on**
 13 **everybody's door, this was the best way. Is it**
 14 **professional? No.**
 15 Q. My question was simple: Are any of you
 16 polling professionals --
 17 A. **No.**
 18 Q. -- or do professional polling?
 19 A. **No. No.**
 20 Q. Did you consult with any kind of
 21 professional --
 22 A. **No.**
 23 Q. -- poller?
 24 A. **No.**
 25 Q. Did you have anyone other than you and

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1 your grandchildren review the language prior to
 2 sending the cards out?
 3 A. **I don't know who reviewed it. We worked**
 4 **as a team.**
 5 Q. That's all for that.
 6 A. **Is there a problem with the words? Tell**
 7 **me.**
 8 Q. No, no, I'm not judging one way or the
 9 other.
 10 A. **Okay.**
 11 Q. I was just asking whether you did or
 12 not.
 13 Okay. If you wouldn't mind turning to
 14 page 2. It's entitled "S.Y.A.S. Solemn Oath to
 15 Post House Road Residents."
 16 A. **Right.**
 17 Q. Are these -- are these promises you're
 18 making to residents of Post House Road?
 19 A. **Correct. It says "Solemn Oath."**
 20 Q. Are these things that you'd be willing
 21 to stipulate to as conditions of approval from
 22 this Board?
 23 A. **Most definitely.**
 24 Q. The first one, "We will inundate the
 25 entire" -- first of all, what is inundate --

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1 **A. Inundate.**
2 Q. What is "inundate the entire" --
3 **A. Inundate. In other words, forest. Load**
4 **it up with trees.**
5 Q. Okay. But to conceal anyone's view
6 either from Post House Road or Route 202?
7 **A. Correct.**
8 Q. Is that --
9 **A. If you put mature pines in within the**
10 **first three or four years, it will reach the top**
11 **of the building. You won't see anything.**
12 Q. So within four years you're saying this
13 construction will be not visible from Post House
14 Road --
15 **A. From either Post House or 202.**
16 Q. At all?
17 **A. No. No.**
18 Q. And you'll --
19 **A. You will see pine trees.**
20 Q. Are you willing to stipulate as a
21 condition of approval, if you were to be approved,
22 that the landscaping done would ensure that fact
23 in four years?
24 **A. I'm willing to stipulate to anything I**
25 **put in writing.**

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1 Q. I'm just asking for you to do that as a
2 condition of approval.
3 ACTING CHAIRMAN ROSENBAACH: Mr. Visconi,
4 I don't fault you for asking this question, but I
5 have an issue with it, which is that these things
6 to some degree are going to be, if we reach that
7 far, site plan issues.
8 And so could I ask you -- and you could
9 say no. You could say no. But could I ask you to
10 just say, if we reach the site plan phase of this
11 project, is Mr. Geyer agreeing now that each one
12 of these will become a condition of the project?
13 Unless, of course, the Board wants something
14 different.
15 MR. VISCONI: I think -- my issue with
16 that is only this: This booklet, in part, I
17 believe was intended to cull fears amongst some of
18 the Post House Road residents about not only the
19 site plan approval, but also this portion. So it
20 is representing those things to the residents
21 possibly in an attempt to either get them not to
22 come here tonight or to not be so vociferous in
23 dissent. I think it's important that that be
24 maintained to this Board even at this stage.
25 ACTING CHAIRMAN ROSENBAACH: Okay. Go

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1 ahead then.
2 THE WITNESS: I disagree to that. Okay?
3 BY MR. VISCONI:
4 Q. Okay.
5 **A. Now let me ask you a few things. You**
6 **stated at one time you wanted to know what the**
7 **trees would look like behind the office building,**
8 **is that correct?**
9 Q. I don't recall whether I did or not.
10 **A. I do.**
11 Q. Okay.
12 **A. Now, you're a real estate attorney, I**
13 **should assume, right? Are you not?**
14 Q. To an extent.
15 **A. Are you not?**
16 Q. To an extent.
17 **A. Are you or aren't you?**
18 Q. Well, I do land use --
19 **A. You can't be halfway.**
20 Q. Sure, I can. I'm a lawyer. I can be
21 anything I want.
22 ACTING CHAIRMAN ROSENBAACH: You know,
23 listen --
24 MR. HALL: This is not the time for
25 dialogue or questioning the questioner.

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1 ACTING CHAIRMAN ROSENBAACH: -- we've got
2 a lot of people sitting here, not least of which
3 are Board members.
4 THE WITNESS: Well, he shot a lot of
5 questions at me over the last year.
6 ACTING CHAIRMAN ROSENBAACH: I
7 understand. Come on, let's --
8 MR. VISCONI: I'm not trying to --
9 ACTING CHAIRMAN ROSENBAACH: Let's just
10 proceed. Just proceed with the questions.
11 MR. VISCONI: Again, I'm very nearly
12 done.
13 ACTING CHAIRMAN ROSENBAACH: No, no, no.
14 That's okay. You can do what you got to do. But
15 we'll put you on the stand a different day.
16 MR. VISCONI: I'm happy to.
17 ACTING CHAIRMAN ROSENBAACH: Not today.
18 BY MR. VISCONI:
19 Q. When you said the driveway has been
20 designed extra wide, do you know how wide exactly
21 it's going to be?
22 **A. I don't, but the architect can answer**
23 **that. But I'm making it wide enough, as you can**
24 **read, that you can park cars on either side.**
25 **Because one gentleman who wanted it, his concern**

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1 was if there's a party, are any cars going to be
 2 on Post House Road? If you consider the length of
 3 the driveway and the curvature to be wide enough
 4 for cars on either side to park and still access
 5 to get in and out, it will --
 6 Q. But, sir, so --
 7 A. Sorry?
 8 Q. I'm sorry. So it is the intent to allow
 9 residents to have either their cars or visitors'
 10 cars park in the driveway up to Post House Road?
 11 A. Yeah.
 12 MR. VISCONI: I think that's all I have
 13 on this document. I think that's sufficient.
 14 ACTING CHAIRMAN ROSENBACH: All right.
 15 MR. VISCONI: You know what? I'm sorry,
 16 Mr. Chairman. There was one thing. In the May
 17 transcript, the very first meeting, you did
 18 mention that you wanted the applicant to return
 19 with specifics about design aspects. Now, I don't
 20 know if the architect fulfilled that function at a
 21 prior meeting, but is that testimony we anticipate
 22 getting?
 23 MR. SHEEHAN: We have had an abundance
 24 of design testimony by the architect for
 25 commercial projects, residential projects, roof

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1 lines, height, et cetera.
 2 ACTING CHAIRMAN ROSENBACH: I agree.
 3 MR. VISCONI: Just clarifying. Thank
 4 you very much.
 5 ACTING CHAIRMAN ROSENBACH: Thank you.
 6 I actually have some follow-up from what
 7 Mr. Visconi asked, but before I do, is there any
 8 other member of the public who has questions for
 9 Mr. Geyer?
 10 Yes. Please come up and please identify
 11 yourself.
 12 MR. COONEY: Hello. My name is Matthew
 13 Cooney.
 14 So my question is, Mr. Geyer, your
 15 premise is that there's a need for senior housing
 16 in Harding?
 17 ACTING CHAIRMAN ROSENBACH: I'm sorry,
 18 where do you live?
 19 MR. COONEY: Post House Road, 55.
 20 There's a need for senior housing in
 21 Harding and these five townhouses would serve that
 22 need, is that correct?
 23 THE WITNESS: It wouldn't serve the full
 24 need, no.
 25 MR. COONEY: But it would -- it would

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1 help.
 2 THE WITNESS: It would help.
 3 MR. COONEY: I'm 45 years old. Would I
 4 be able to purchase one of these houses?
 5 THE WITNESS: No.
 6 MR. COONEY: I would not.
 7 THE WITNESS: No, you have to be 55
 8 years or older.
 9 MR. COONEY: So there will be a
 10 restriction on --
 11 THE WITNESS: You have to be 55 years or
 12 older?
 13 MR. COONEY: Fifty-five years old.
 14 Okay. Thank you.
 15 ACTING CHAIRMAN ROSENBACH: Anyone else
 16 have a question for Mr. Geyer?
 17 Yes, please. You have to identify
 18 yourself again.
 19 MS. MOORE: Sure. My name is Cathy
 20 Moore. I live on 19 Post House Road.
 21 Mr. Geyer, you talked about the fact
 22 that you guys and your children, no one is a
 23 market research professional or polling
 24 professional.
 25 THE WITNESS: No.

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1 MS. MOORE: So I just want to just touch
 2 on a couple of things and ask you a couple of
 3 questions.
 4 THE WITNESS: Okay.
 5 MS. MOORE: I am a market research
 6 professional. I have spent -- I have a degree in
 7 business and I've spent 15 years doing market
 8 research for major consumer products companies
 9 like Nabisco, Colgate, Binney & Smith crayola. So
 10 I can tell you the basics of what a survey needs
 11 to do and what it shouldn't do to give you some
 12 decent results.
 13 THE WITNESS: Sure.
 14 MS. MOORE: Okay? The first thing --
 15 there's three really important things.
 16 MR. HALL: I think you're testifying
 17 now, not asking questions.
 18 MS. MOORE: Yeah, but I don't know how
 19 else to do this.
 20 MR. HALL: Well, when they're done, you
 21 can present testimony.
 22 MS. MOORE: You want me to -- is that
 23 how you want to do it?
 24 MR. HALL: It's up to the Chairman.
 25 ACTING CHAIRMAN ROSENBACH: There is a

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1 way that you can do it.

2 MS. MOORE: I can ask him questions.

3 ACTING CHAIRMAN ROSENBAACH: You can say,

4 Did you do X?

5 MS. MOORE: Right.

6 ACTING CHAIRMAN ROSENBAACH: Did you do

7 Y?

8 MS. MOORE: That's how I --

9 ACTING CHAIRMAN ROSENBAACH: Did you do

10 Z? And then later on, once it is the opponent's

11 part of the case, you may have to come back and

12 say, I'm an expert in this, this is my expertise,

13 you would have to do X, Y and Z. All right?

14 MS. MOORE: Okay. I can do that.

15 ACTING CHAIRMAN ROSENBAACH: Let's try it

16 that way.

17 MS. MOORE: All right. So the first

18 question I have is, I guess, do you know the basic

19 pieces of what a good market research study survey

20 should have?

21 THE WITNESS: No. I'm not a market

22 researcher.

23 MS. MOORE: Number two, do you

24 understand about how to do an appropriate sample

25 so not to have a totally unreliable or biased

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1 sample?

2 THE WITNESS: I don't know what that

3 means. All I do know is if I sent out 800 and I

4 get that kind of response, it hit a nerve.

5 MS. MOORE: Well, that -- the response

6 can be -- I can go over that later, but the

7 response can be a biased response or an accurate

8 response.

9 THE WITNESS: Well, when you say

10 "biased" --

11 MS. MOORE: Each response --

12 THE WITNESS: Well, it's a yes or no

13 range. It's not a big range, so it can't be

14 biased. How can --

15 MS. MOORE: Biased. Do you understand

16 the basics of bias, what --

17 THE WITNESS: Yes.

18 MS. MOORE: -- can drive bias?

19 THE WITNESS: When you have three -- we

20 have yes, no or maybe. Why would someone say

21 maybe if they meant yes or no?

22 MS. MOORE: There's such a thing as --

23 have you ever heard of a thing called "response

24 rate bias"?

25 THE WITNESS: No.

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1 MS. MOORE: That has to do with select

2 when you mail into a response.

3 Do you have an idea of anything called a

4 "leading proposition bias"?

5 THE WITNESS: No, not my field.

6 MS. MOORE: That has to do with where

7 you set up your first question in the beginning

8 telling people this is what I'm expecting from you

9 and this is the answer I want and then it affects

10 it.

11 The last one, do you know anything about

12 question bias?

13 THE WITNESS: No.

14 MS. MOORE: How you ask the question.

15 THE WITNESS: No, it's not my expertise.

16 What I do know is if I go to the mailbox and hand

17 them 800 and I get that kind of response from the

18 people that have their boxes in that mailbox,

19 that's a true response.

20 MS. MOORE: Okay. Just one more

21 question.

22 Do you know any person who could have

23 responded no to that survey, even one single

24 person?

25 THE WITNESS: Do I know them?

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1 MS. MOORE: No.

2 THE WITNESS: No. There's 47 that did.

3 MS. MOORE: Do you know personally any

4 person --

5 THE WITNESS: No.

6 MS. MOORE: Okay. Does anybody in this

7 room know anyone? No. Because the way the

8 question was answered (sic), there's an impossible

9 no answer. You would have to answer that yes.

10 And that's where I'll leave it and I'll

11 come back and do the rest if you would like.

12 THE WITNESS: There's a box that said

13 "No."

14 MS. MOORE: But it's the way the

15 question's worded.

16 ACTING CHAIRMAN ROSENBAACH: You got the

17 answer to your questions. That's fine.

18 MR. SHEEHAN: Mr. Geyer presented a

19 simple survey in a simple manner and got a simple

20 response. He summarized it. It is what it is.

21 It's for what its value has and it is reflective

22 of the effort that he put into it, and the

23 conclusion that you take from it is one that is

24 supported by the cards themselves.

25 ACTING CHAIRMAN ROSENBAACH: Are there

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1 any other members of the public who have questions
2 for Mr. Geyer?
3 Yes, please. You have to come up and
4 identify yourself and give us your address.
5 MR. RHODES: Sure. I'm Steve Rhodes. I
6 live at 38 Post House Road. So I've got a set of
7 parents that don't live in Harding: An
8 80-year-old father, 72-year-old mother.
9 Would they be able to buy a townhouse in
10 your development?
11 THE WITNESS: I wouldn't have a problem
12 with that. The only thing I'm telling you is
13 there's such a response right now from the
14 residents in New Vernon, I wouldn't know who comes
15 in first. I mean, just like there's 65 homes for
16 sale, I don't know how you would monitor who's
17 going to buy them.
18 MR. RHODES: But you --
19 THE WITNESS: It would not be my
20 restriction to say you can't buy them.
21 MR. RHODES: There's no ZIP code
22 restriction then. You don't have to have a --
23 THE WITNESS: That would be biased. I
24 can't do that.
25 MR. RHODES: So anyone from anyplace --

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1 Brooklyn, Queens, Newark, Hoboken -- you name it,
2 any --
3 THE WITNESS: I was born and raised in
4 Newark. I've living in New Vernon, so.
5 MR. RHODES: No, I'm just curious. I do
6 have parents who are older and I moved up here
7 from Staten Island recently.
8 THE WITNESS: All right.
9 MR. RHODES: I just have to know that.
10 The -- the --
11 THE WITNESS: Yeah. Why would I
12 restrict anybody?
13 MR. RHODES: I'm just curious --
14 THE WITNESS: Yeah.
15 MR. RHODES: -- because there's a lot of
16 wording in the documents that says they're being
17 built for the benefits of Harding's senior
18 citizens. So I don't want to take that --
19 THE WITNESS: Well, that's my first
20 reason. I'm 84.
21 MR. RHODES: Okay.
22 THE WITNESS: I'd like to take one
23 myself. There's a lot of people in Harding.
24 There's not one piece of housing to help all these
25 old people. There's 21 percent of seniors that

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1 are 65 or older. Now they're buying all over the
2 place. Half a dozen bought in Morristown. They
3 can't handle the housing.
4 MR. RHODES: Understood. But there's no
5 ZIP code restriction?
6 THE WITNESS: There's no restriction.
7 Otherwise, I would have put it there.
8 MR. RHODES: I have friends a little bit
9 older who have younger kids. They're going to be
10 55 in about two years. Their kids will be
11 school-aged. The document states that there will
12 be no additional burden put in the Harding
13 schools.
14 Will the buildings be deed restricted to
15 not be sold to --
16 THE WITNESS: No, again, I couldn't do
17 that.
18 MR. RHODES: -- individuals with
19 children?
20 THE WITNESS: But I'm saying if you get
21 these 65- or 70-year-olds, I don't think they're
22 going to overload the school system.
23 MR. RHODES: But if I'm 55 and I've got
24 kids school-aged, I can't be restricted from
25 buying --

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1 THE WITNESS: Well, I don't know if they
2 have kids school-aged in Harding and they have to
3 go to Madison. It only goes up to, what, seventh
4 or eighth grade.
5 MR. RHODES: Yeah, I have a good friend
6 I was talking with today. His son is in my son's
7 class --
8 THE WITNESS: Yeah.
9 MR. RHODES: -- in sixth grade in
10 Harding. He's 58.
11 THE WITNESS: I can't argue the
12 exception.
13 MR. RHODES: No, I'm just curious.
14 THE WITNESS: Yeah.
15 MR. RHODES: I want to make sure. I
16 read the document very closely.
17 THE WITNESS: If you're 55 --
18 MR. RHODES: You know, I have friends
19 that have kids and you said no burden to the
20 schools. I happen to know of a friend who's got
21 kids, he's 58, his kid's 11 years old, sixth grade
22 --
23 THE WITNESS: Well, if his two children
24 come out of that complex, I don't think that's a
25 burden on the school system.

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1 MR. RHODES: I'm just trying to read the
2 letter --
3 THE WITNESS: Yes.
4 MR. RHODES: -- and have an
5 understanding completely before we have public
6 comment --
7 THE WITNESS: Yeah.
8 MR. RHODES: -- exactly what's written
9 in the document and then the folks who live on
10 Post House Road can make an adequate and fair set
11 of questions or comments.
12 THE WITNESS: That's fair.
13 MR. RHODES: So these things, as I read
14 this --
15 THE WITNESS: Yeah, I hope I answered
16 your questions.
17 MR. RHODES: I've got an MBA. I've got
18 a business background. I take these documents
19 quite seriously.
20 THE WITNESS: And my oath is my oath.
21 MR. RHODES: Yep. In terms of the
22 actual housing, you had said that the master plan
23 supports just such a senior citizens facility --
24 THE WITNESS: It's in --
25 MR. RHODES: -- near the end of it. I'm

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1 sorry, I'm not finished with my question.
2 THE WITNESS: It's in there. It's in
3 the book. I think page 15 --
4 MR. RHODES: It's a very specific
5 question. It's about -- you're saying that the
6 units will benefit or the master plan calls for
7 just quite such a senior citizens facility.
8 Now, I know my parents have looked at
9 Canal Walk in Somerset. Canal Walk is a 55-plus
10 community. It's lovely townhouses and condos,
11 townhouses, bigger houses. There's no facilities
12 for oxygen tanks. There's no additional rooms for
13 a live-in nurse. There's no --
14 THE WITNESS: Well, here's what --
15 MR. RHODES: -- panic buttons or things
16 that are really that -- I've been to assisted
17 living, unfortunately, because my grandfather died
18 and he had to live in an assisted-living home.
19 THE WITNESS: Yeah.
20 MR. RHODES: You're not building units
21 for --
22 THE WITNESS: I'm not building assisted
23 living, no.
24 MR. RHODES: Assisted living. Are there
25 no facilities within the -- I've been to every

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1 meeting and I haven't seen anything structured --
2 THE WITNESS: No.
3 MR. RHODES: -- for design of those.
4 This -- your document just states the master plan
5 calls it just such a senior citizen facility
6 which --
7 THE WITNESS: Well, it does.
8 MR. RHODES: -- I think is separate and
9 distinct --
10 THE WITNESS: Yeah.
11 MR. RHODES: -- from five townhouses
12 that someone in Brooklyn can buy who's 55 and
13 older. So I'm just trying to make sure I'm clear
14 --
15 THE WITNESS: You're exactly right.
16 It's not assisted living. It's for the benefit --
17 when you have elevators and, you know, all the
18 rest of the stuff that's going to go in as
19 accessories, it's to help the age. But the senior
20 citizens -- or assisted living is separate living.
21 MR. RHODES: Yeah, because my father is
22 80 and he's got trouble with his knees. I just
23 want to know if the place -- eventually if my
24 parents move down the block from me -- what does
25 it have? What doesn't it have?

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1 So I'm just curious. Does it fit the
2 bill? Is it a townhouse that's being sold to
3 people under 55, which they can get at Canal Walk,
4 which are not \$1.4 million. They're about -- it's
5 mostly used property, so it's on-the-market
6 property, about \$400,000. So --
7 MR. SHEEHAN: Is there a question there,
8 Mr. Chairman?
9 ACTING CHAIRMAN ROSENBAACH: This is a
10 combination question.
11 MR. RHODES: I've been -- I've been --
12 I've actually lived in places with my parents.
13 I'm looking at -- I just want to be really clear.
14 What are they getting for 1.4 million? Is it
15 assisted living? Is it built for people who --
16 MR. HALL: The testimony was two
17 bedrooms only with elevators. I think that
18 probably covers it.
19 MR. RHODES: Right. That sounds like --
20 my friend owns a property in Hoboken. It sounds
21 like a Hoboken townhouse.
22 ACTING CHAIRMAN ROSENBAACH: Well --
23 MR. HALL: Limited to 55 and above.
24 ACTING CHAIRMAN ROSENBAACH: In any
25 event, there's been no testimony that it's an

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1 assisted living facility.
2 MR. RHODES: Got it.
3 ACTING CHAIRMAN ROSENBACH: I mean, I
4 don't think that's -- it's a --
5 MR. RHODES: I haven't read this
6 document. I got confused because it was saying
7 that the master plan was calling -- he was quoting
8 something right towards the end of it. That the
9 master plan called for such a senior citizens
10 facility. We've heard a lot about the master plan
11 bandied about in the meetings.
12 ACTING CHAIRMAN ROSENBACH: Well, again,
13 I would request -- it's not your fault, but I
14 would request that you not even get into a debate
15 with Mr. Geyer about the master plan.
16 MR. RHODES: Sure, that's fine.
17 ACTING CHAIRMAN ROSENBACH: Because it's
18 not going to mean anything to us either way.
19 MR. RHODES: Let me make sure there's
20 any other questions. Just give me one second.
21 Were you planning, Mr. Geyer, to build
22 any deed restrictions for people not to rent the
23 houses? It's obviously 55 and older. If they're
24 in Florida six months of the year --
25 THE WITNESS: They're for sale. They're

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1 not for rent.
2 MR. RHODES: They're for sale. But is
3 there going to be a deed restriction that if
4 someone buys it, if my parents buy it, and they go
5 to Florida for six months, that they can't rent
6 the property?
7 THE WITNESS: That's a good question. I
8 haven't got that far. We have to get past this
9 first.
10 MR. SHEEHAN: That would be subject to
11 the condominium association.
12 THE WITNESS: That's right. It would be
13 up to the association, the five owners.
14 MR. RHODES: In terms of rentals?
15 THE WITNESS: All of it.
16 MR. RHODES: Right, but if potentially
17 they were rented, they could be rented to folks
18 who are less than 55 who --
19 ACTING CHAIRMAN ROSENBACH: No, no. Not
20 so. Not so.
21 MR. HALL: They're restricted to 55,
22 period.
23 MR. RHODES: And then rentals are not --
24 THE WITNESS: Whether you rent or
25 whatever -- you can't walk around it that way.

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1 MR. RHODES: And then would the -- if
2 the person, God forbid, they pass away -- we all,
3 as we all said, pass away -- if they were to pass
4 away, will there be a restriction in the sale of
5 the property to only be sold to people 55 and
6 older? Once this person of 55's gets sold --
7 THE WITNESS: It will be the same
8 requirement.
9 MR. RHODES: -- will it be --
10 ACTING CHAIRMAN ROSENBACH: It is our
11 understanding, it's the Board's understanding,
12 that this property must be owned, occupied --
13 actually I don't know who may own it, but it's got
14 to be occupied by people who are 55-plus. Now, I
15 think there are federal rules on that.
16 MR. SHEEHAN: Object --
17 MR. VISCONI: There just has to be one
18 person in the home 55.
19 ACTING CHAIRMAN ROSENBACH: All right.
20 We've got to educate ourselves on that, but it is
21 a permanent condition. It doesn't stop after the
22 initial owner.
23 BOARD MEMBER CHIPPERSON: One person has
24 to be 55?
25 ACTING CHAIRMAN ROSENBACH: Well, that's

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1 what Mr. Visconi says. I don't know the federal
2 rules. We're going to have to find out if we get
3 that far.
4 MR. RHODES: Okay. Got it. I think
5 that was it. Thank you.
6 ACTING CHAIRMAN ROSENBACH: Okay. Thank
7 you.
8 Any other questions for Mr. Geyer?
9 Because I do have -- Mr. Geyer, I do
10 have one, which is I want to go back to page 2,
11 which is the page that Mr. Visconi was asking you
12 about.
13 THE WITNESS: Page 2.
14 ACTING CHAIRMAN ROSENBACH: Yes. And my
15 question is, the specific details here about the
16 construction or about the layout, the site plan,
17 did you review these with either Mr. Burke or
18 Mr. Hollows?
19 THE WITNESS: No.
20 ACTING CHAIRMAN ROSENBACH: So you
21 actually don't know, you don't know, if your
22 professionals would be able to support what you
23 are saying here?
24 THE WITNESS: Well, which one in
25 particular? And then I'll tell you.

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1 ACTING CHAIRMAN ROSENBACH: Well, for
 2 instance, the width of the driveway.
 3 THE WITNESS: Which? I'm sorry?
 4 ACTING CHAIRMAN ROSENBACH: The width of
 5 the driveway, to use an example.
 6 THE WITNESS: The width of the driveway.
 7 Well, I'll be in the final planning of it. It's
 8 going to be wide. I did that in my own home.
 9 ACTING CHAIRMAN ROSENBACH: But the
 10 answer is that you did --
 11 THE WITNESS: I did not confer with
 12 them, no.
 13 ACTING CHAIRMAN ROSENBACH: -- not
 14 confer with your professionals?
 15 THE WITNESS: No. No.
 16 ACTING CHAIRMAN ROSENBACH: All right.
 17 So it's your intent to do this. You actually just
 18 stated that you're bound to it --
 19 THE WITNESS: Well, I will agree to all
 20 these --
 21 ACTING CHAIRMAN ROSENBACH: Okay.
 22 THE WITNESS: I mean, the architect and
 23 planner works for me. If I want to make it wider,
 24 it's going to be wider. And it will be. If I
 25 sign an agreement to do everything that's on this

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1 page, and I will, it's going to be just that way.
 2 ACTING CHAIRMAN ROSENBACH: Okay. Thank
 3 you for clarifying.
 4 MR. SHEEHAN: Now, Mr. Chairman, if the
 5 Board reaches the point where this becomes a site
 6 plan issue, this document will be brought back
 7 before the Board and used as a template to test
 8 whether or not the representations, in fact, have
 9 been honored.
 10 ACTING CHAIRMAN ROSENBACH: Well, not
 11 "if." According to Mr. Geyer, they have to be
 12 honored.
 13 MR. SHEEHAN: How they're being honored.
 14 BOARD MEMBER CHIPPERSON: I have another
 15 question on that. On the same page, it says "We
 16 will at all times maintain these units in the most
 17 pristine character."
 18 If this is going to be, you know, five
 19 townhouses, wouldn't there be, I don't know, a
 20 co-op board or something where each of the
 21 residents is on the board? So how can you make
 22 that promise about the long-term maintenance of
 23 the facility where we don't know who's going to
 24 own them --
 25 THE WITNESS: Well, I'm going to be one

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1 of them, so...
 2 MR. SHEEHAN: It would be a part of the
 3 condominium association --
 4 THE WITNESS: Rules.
 5 MR. SHEEHAN: -- bylaws and rules and
 6 regulations that Mr. Geyer would be directly
 7 involved in crafting at the time that the
 8 condominium association was created.
 9 BOARD MEMBER CHIPPERSON: But if
 10 Mr. Geyer leaves, then the rules --
 11 THE WITNESS: But the rules stay the
 12 same.
 13 BOARD MEMBER CHIPPERSON: -- could be
 14 rewritten based on a vote of the co-op board. I
 15 mean, they can really do whatever they want. It's
 16 their --
 17 MR. HALL: Well, you can have revisions.
 18 It can't be changed.
 19 BOARD MEMBER CHIPPERSON: You can?
 20 MR. HALL: Sure.
 21 ACTING CHAIRMAN ROSENBACH: If we get
 22 that far ahead, it's a condition. Without
 23 worrying about what "the most pristine character"
 24 might actually means as words, there can be
 25 maintenance requirements that could be imposed.

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1 And that whatever the condo association --
 2 BOARD MEMBER CHIPPERSON: And not
 3 changeable.
 4 ACTING CHAIRMAN ROSENBACH: Whatever the
 5 condo -- I mean, that would be a deed restriction,
 6 a covenant that would run with the land and it
 7 would be part of an approval process if we get
 8 that far.
 9 BOARD MEMBER CHIPPERSON: Okay.
 10 ACTING CHAIRMAN ROSENBACH: Okay?
 11 That's a good question but there's a way to do
 12 that.
 13 BOARD MEMBER CHIPPERSON: No, that's
 14 helpful. Very helpful.
 15 BOARD MEMBER NEWLIN: Phil, may I ask a
 16 question?
 17 ACTING CHAIRMAN ROSENBACH: Of course.
 18 BOARD MEMBER NEWLIN: Mr. Geyer, I'm
 19 quite certain you probably answered this before,
 20 but I just want to come back to it. Why five
 21 units? Or I should say one of the concerns I have
 22 is the density. You're looking for five units --
 23 THE WITNESS: Correct.
 24 BOARD MEMBER NEWLIN: -- that has quite
 25 a lot of density implications. Why five? Why not

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1 three? Why not four?
2 THE WITNESS: Because it doesn't work
3 economically. That question was asked of me --
4 BOARD MEMBER NEWLIN: It was.
5 THE WITNESS: -- maybe two and a half,
6 three years ago, when I went in for my first plan,
7 which was we had to go before the Board to find
8 out what you wanted to do. And the first question
9 was: Why not four rather than five?
10 And I answered that. I said, look, I
11 don't want to waste your time or my time and
12 money. It's five. It's the only way it works
13 economically.
14 BOARD MEMBER NEWLIN: So financially
15 you'd have to -- to make money on the deal, it
16 would have to be five units. Otherwise, it just
17 wouldn't work.
18 THE WITNESS: Well, to build luxury
19 townhouses, yes. You have --
20 BOARD MEMBER NEWLIN: Can you tell us a
21 little bit more why that's -- I'm not being --
22 this is an honest question. Why couldn't you make
23 it work with three units?
24 THE WITNESS: Why couldn't I make it
25 three units?

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1 BOARD MEMBER NEWLIN: Yeah, or four
2 units.
3 THE WITNESS: Well, why not six?
4 BOARD MEMBER NEWLIN: Why are the
5 financials --
6 THE WITNESS: Why not six? It's the
7 same --
8 BOARD MEMBER NEWLIN: Well, because --
9 THE WITNESS: It's the same question. I
10 mean, had I known that going in -- and that was
11 the question. It's on -- it's on the record. I
12 said, listen, five is the only thing that works
13 economically. And I think if you go back -- I
14 don't know if it was at the November or December
15 meeting -- that question was brought up. It's in
16 the transcript.
17 BOARD MEMBER NEWLIN: I'm sure that --
18 I'm quite certain you're right. It was and you
19 did answer, but I don't -- I guess, is there any
20 more information why five works and four doesn't
21 financially?
22 THE WITNESS: I just answered it.
23 Economically.
24 BOARD MEMBER NEWLIN: Well, I heard
25 that.

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1 THE WITNESS: Because the price of the
2 land --
3 ACTING CHAIRMAN ROSENBAACH: -- is
4 \$600,000.
5 THE WITNESS: Excuse me?
6 ACTING CHAIRMAN ROSENBAACH: \$600,000?
7 THE WITNESS: 675.
8 ACTING CHAIRMAN ROSENBAACH: Okay.
9 THE WITNESS: Okay? And that's -- and
10 the maintenance. So the option for the last two
11 or two and a half years, all right, and the taxes
12 and the insurance, which I'm -- which I'm
13 handling, you have to plug all that in. So, I
14 mean, it's not my first time developing anything.
15 I've been at this over 50 years and I know what
16 works and what doesn't work.
17 MR. SHEEHAN: I guess he's saying that
18 his -- his either actual pro forma or conceptual
19 pro forma in his mind indicates that five units is
20 the minimum at which the cost of the land, the
21 cost of the application and the cost of
22 construction for luxury units --
23 THE WITNESS: The material alone, we
24 talked about the roof, wouldn't --
25 MR. SHEEHAN: -- is the limit.

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1 THE WITNESS: But --
2 BOARD MEMBER NEWLIN: Yeah, I understand
3 that's what he was saying. I was just trying to
4 get more -- more --
5 THE WITNESS: More information. That's
6 a good question. Also bear in mind that I agreed
7 before the Board six, eight months ago that if it
8 doesn't meet the standards of the state or local
9 environment as far as the well is concerned or the
10 septic system, I have to walk away. I've
11 guaranteed that. I think it was 75 or 80,000
12 something like that. I think this gentleman over
13 here can verify that. So if it doesn't satisfy
14 the needs, I can't do it.
15 BOARD MEMBER NEWLIN: Okay. Thank you.
16 BOARD MEMBER CHIPPERSON: Are you saying
17 if you built four units, you would actually take a
18 loss on this project?
19 THE WITNESS: Well, I wouldn't do it
20 because I would take a loss.
21 BOARD MEMBER CHIPPERSON: You would.
22 THE WITNESS: Yeah.
23 ACTING CHAIRMAN ROSENBAACH: All right.
24 Mr. Sheehan, I ask you, as counsel -- and you
25 might want to confer with Mr. Geyer. I'd actually

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1 be curious, I really would, to see a pro forma
 2 that on land that's 675, even with option prices
 3 and taxes and insurance, if we're going to sell
 4 five units at roughly 1.4 each, which is \$7.
 5 million, and taking into account upper scale of
 6 construction costs, I'm still not sure how we're
 7 going to get to a loss selling four units.
 8 And I would actually be very curious to
 9 see a pro forma that would establish that. I'm
 10 not sure it ultimately has any bearing on our
 11 decision.
 12 MR. SHEEHAN: I don't think it does.
 13 ACTING CHAIRMAN ROSENBACH: But if it
 14 doesn't, then, likewise, it has no bearing on us
 15 that Mr. Geyer would take a loss if we were to
 16 consider a number other than five.
 17 THE WITNESS: Yeah, but you're not
 18 taking into consideration the needs of this town.
 19 ACTING CHAIRMAN ROSENBACH: That's a
 20 different issue.
 21 THE WITNESS: Twenty-one percent of
 22 seniors. So if you build three, there's two more
 23 that could have been satisfied. And the land will
 24 handle five.
 25 ACTING CHAIRMAN ROSENBACH: Well, we're

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1 not a senior living board. We're a Zoning Board.
 2 THE WITNESS: I understand, but the
 3 question -- your question leads to that. Why
 4 build three when I can build five? Why not
 5 satisfy five rather than three seniors?
 6 ACTING CHAIRMAN ROSENBACH: All right.
 7 But, in any event, so --
 8 MR. SHEEHAN: Mr. Chairman, what I'll do
 9 is I'll talk to Mr. Geyer about that and if a hard
 10 pro forma can be developed that will answer the
 11 questions that Mr. Newlin and you have asked,
 12 we'll present it at the next meeting.
 13 ACTING CHAIRMAN ROSENBACH: All right.
 14 Or, again, you may simply say -- as you seem to
 15 have said, but I'm not going to hold you to it at
 16 this moment -- Mr. Geyer's potential profitability
 17 has nothing to do with our decision anyway.
 18 MR. SHEEHAN: I think that's true.
 19 ACTING CHAIRMAN ROSENBACH: Okay.
 20 Then -- then -- okay. Then you decide whether or
 21 not you think that information will be helpful to
 22 us.
 23 MR. SHEEHAN: Thank you.
 24 ACTING CHAIRMAN ROSENBACH: Okay.
 25 BOARD MEMBER CHIPPERSON: And to answer

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1 your question why build three instead of five, I
 2 mean, in our last application we were debating
 3 over .2 percent difference in, you know, the use
 4 of the land. So as a Board, I mean, we try to
 5 work with people to keep the variances to a
 6 minimum. So obviously it's a much smaller
 7 variance for three units compared to five units.
 8 So that is very important to us.
 9 THE WITNESS: I understand that.
 10 BOARD MEMBER CHIPPERSON: I just wanted
 11 to make that clear.
 12 ACTING CHAIRMAN ROSENBACH: Okay. Are
 13 there any other questions for Mr. Geyer from
 14 anybody in the room? Yes.
 15 MS. KELLETT: I have one final question
 16 to ask.
 17 ACTING CHAIRMAN ROSENBACH: All right.
 18 Please identify yourself.
 19 MS. KELLETT: This is for my own
 20 protection. I have a terminal disease --
 21 ACTING CHAIRMAN ROSENBACH: Oh, I'm very
 22 sorry to hear that.
 23 MS. KELLETT: -- and I'm protecting my
 24 lungs.
 25 ACTING CHAIRMAN ROSENBACH: Okay.

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1 Please identify yourself and your address.
 2 MS. KELLETT: Joan Kellett. I'm from 21
 3 Post House Road.
 4 Mr. Geyer, what provisions or what --
 5 what have you thought about doing if they do not
 6 sell for 1.4 million, they just don't sell?
 7 THE WITNESS: Then I take the beating.
 8 What provision, I mean --
 9 MS. KELLETT: They're built.
 10 THE WITNESS: I guarantee you, young
 11 lady, before I break ground, they'll be -- those
 12 units will be sold. That's my -- that's my
 13 gamble, though.
 14 ACTING CHAIRMAN ROSENBACH: Okay.
 15 BOARD MEMBER NEWLIN: But is your
 16 question what if he has to reduce price or -- tell
 17 us why you're asking that question.
 18 MS. KELLETT: Yes, I'd like to know what
 19 he proposes to do. Would they remain vacant if
 20 they don't each go for 1.4 million? Would they
 21 become --
 22 THE WITNESS: Simple answer: You only
 23 have to build but one to find out where you're
 24 going. I would not build all five simultaneously.
 25 I'd build one. And if that doesn't sell, that's

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1 the extent of it. But the response --

2 CHAIRMAN FLANAGAN: Mr. Geyer, are they

3 not attached? I thought these were two buildings.

4 MR. SHEEHAN: Yeah.

5 THE WITNESS: Excuse me?

6 CHAIRMAN FLANAGAN: I thought there were

7 two buildings, so I would think it would be --

8 THE WITNESS: There's three and two.

9 CHAIRMAN FLANAGAN: Okay. So could you

10 realistically build one or are you saying --

11 THE WITNESS: I could build two.

12 CHAIRMAN FLANAGAN: You could build two.

13 THE WITNESS: Build the minimum.

14 MR. SHEEHAN: One unit. He would build

15 one unit.

16 MR. HALL: Well, one building.

17 MR. SHEEHAN: Yes, one building.

18 CHAIRMAN FLANAGAN: One building.

19 MR. HALL: Two units.

20 THE WITNESS: Correct.

21 MR. SHEEHAN: Right.

22 CHAIRMAN FLANAGAN: Fine. Thank you.

23 ACTING CHAIRMAN ROSENBAACH: Yes,

24 Mr. Rhodes.

25 MR. RHODES: Let me paraphrase my

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1 neighbor's question.

2 So, Mr. Geyer, in the event that they

3 were -- either the building with two units were

4 built or the three units were built, if they

5 weren't sold, would they be rented? I guess it's

6 a different way of asking the same question.

7 THE WITNESS: Well, with the response of

8 the cards, after I build two, like I say, I'm

9 going to have these things sold before I break

10 ground.

11 MR. RHODES: I own a lot of boats. I'm

12 a big boat guy. I've had so many people walk up

13 to me and say, When are you going to sell that

14 boat? That boat's unbelievable. When you go to

15 sell it, I'm the first guy that's going to buy it.

16 And when I go to sell the beautiful boat that I

17 custom built, there's crickets in the room.

18 So I personally have been --

19 THE WITNESS: Building boats and

20 building houses are two different things. Look at

21 the --

22 MR. RHODES: Well, they're custom built

23 so --

24 THE REPORTER: One speaker, please.

25 MR. RHODES: My bad. So, but I'm

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1 curious to note -- let's suspend this belief. We

2 can all suspend this belief. If, as a resident,

3 they're not sold, the vacant property is a problem

4 for our housing prices. The very last bullet

5 point, I believe, on page 2 is that you'll

6 guarantee that if these houses are built, that the

7 real estate value of our homes will increase. And

8 many folks in the room here are older and they

9 want to sell their homes.

10 So if we have a building that's vacant

11 with three units, it looks like partial

12 construction, if I'm -- I just bought up here in

13 July of 2016. I know whenever I drove by a place

14 that had townhouses that are un -- that are

15 vacant, kind of open land, I look at that and go,

16 ugh, Just keep driving real estate agent.

17 So we, as residents, need to know or

18 we're curious to know if, in fact, they don't sell

19 and it's economically not feasible, are they going

20 to be built? If you can suspend the belief --

21 THE WITNESS: Well, I think I just

22 answered that by saying I'd build two first, one

23 unit.

24 MR. RHODES: You build two. There's a

25 building, a structure, that we've heard are

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1 different heights, are very tall. The pine trees

2 aren't tall enough to hide them yet, so they're

3 still -- there's about a five-year plan for the

4 height of the pine trees to grow.

5 THE WITNESS: That's correct.

6 MR. RHODES: Two buildings are there.

7 They're vacant. What are your plans to begin to

8 recoup your economic investment?

9 MR. SHEEHAN: I think that that

10 speculation is bootless at this point. Why should

11 he engage in a speculative question that presumes

12 the failure of a project that he's spent \$200,000

13 --

14 THE WITNESS: Before he starts.

15 MR. SHEEHAN: -- trying to get approved?

16 MR. RHODES: I can answer that. You

17 know, I've sat here and I've seen testimony given

18 about the vacancy rates of properties along 202.

19 So I've sat in this room, all these meetings --

20 MR. SHEEHAN: Commercial vacancy rates.

21 THE WITNESS: No, you'll find a --

22 MR. RHODES: We're splitting hairs

23 because -- I can phrase that question differently.

24 How many townhouses have been bought for

25 \$1.4 million in this ZIP code that were on land

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1 that was zoned commercially, close to 202 and
 2 close to 287? So I think we can keep going around
 3 the questions. The question I asked is, strictly,
 4 if there's units that are unsold, will they be
 5 rented?
 6 ACTING CHAIRMAN ROSENBACH: Okay. Let
 7 me understand via your question, the point -- and
 8 we understood it anyway -- that this project could
 9 be built or partially built and fail. And that is
 10 something that we would certainly have to, and
 11 will, take into account when it comes time for us
 12 to start thinking about how to decide this. Okay?
 13 We get it.
 14 MR. RHODES: Thank you.
 15 ACTING CHAIRMAN ROSENBACH: Okay. Are
 16 there any other questions for Mr. Geyer?
 17 Okay. Mr. Sheehan, are you done
 18 presenting your case?
 19 MR. SHEEHAN: We are, Mr. Chairman.
 20 Thank you.
 21 CHAIRMAN FLANAGAN: All right. It's 10
 22 of 10.
 23 Mr. Visconi, do you have a planner here
 24 tonight?
 25 MR. VISCONI: I do.

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1 ACTING CHAIRMAN ROSENBACH: All right.
 2 MR. VISCONI: We're ready to go.
 3 ACTING CHAIRMAN ROSENBACH: All right.
 4 Let's go.
 5 And let me tell you that I'm going to
 6 afford our planner the same opportunity that she
 7 had when Mr. Phillips testified, which was to
 8 interrupt to her heart's content.
 9 MR. VISCONI: Of course.
 10 MS. COFONE: Thank you, Mr. Rosenbach.
 11 MR. VISCONI: We anticipate this being a
 12 little informal. Anyone interrupt at any time.
 13 MS. CALDWELL: Good evening.
 14 JESSICA CALDWELL, having
 15 been duly sworn, was examined and testified as
 16 follows:
 17 DIRECT-EXAMINATION
 18 BY MR. VISCONI:
 19 Q. Good evening, Ms. Caldwell. Would you
 20 give the Board the benefit of your education and
 21 professional experience?
 22 A. I'm a licensed professional -- I'm
 23 sorry. There's a lot going on.
 24 Okay. I'm a licensed professional
 25 planner in the State of New Jersey. I'm certified

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1 by the American Institute of Certified Planners.
 2 I've been a practicing planner for about 20 years.
 3 I have a firm in Newton, New Jersey. I represent
 4 11 municipal clients as well as private clients.
 5 Over the last five years, I counted, I've
 6 testified and been accepted as an expert in
 7 planning before about 80 municipal boards.
 8 ACTING CHAIRMAN ROSENBACH: Very good.
 9 Thank you.
 10 MR. VISCONI: We offer her as a
 11 professional planner.
 12 ACTING CHAIRMAN ROSENBACH: You're
 13 qualified to be here.
 14 THE WITNESS: Thank you. Thank you for
 15 having me. My first time in Harding.
 16 ACTING CHAIRMAN ROSENBACH: Gary, please
 17 swear in Ms. --
 18 MR. HALL: I already did.
 19 THE WITNESS: I got sworn in, so...
 20 BY MR. VISCONI:
 21 Q. Ms. Caldwell, have you had an
 22 opportunity to visit the property in question?
 23 A. Yes, I have.
 24 Q. Did you drive by it or what did you do
 25 to take a look at it?

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1 A. Yeah, I drove through the area, drove by
 2 the site, went up and down the various roads and
 3 surrounding areas.
 4 Q. And did you review the transcripts of
 5 all the previous meetings for this application?
 6 A. Yes, I did.
 7 Q. Did you review the documents and
 8 exhibits that have been marked so far?
 9 A. Yes.
 10 Q. And did you review the master plan and
 11 the zone plan for Harding Township?
 12 A. Yes, I did.
 13 Q. Okay. This application is seeking a D-1
 14 use variance.
 15 You're aware of that?
 16 A. Yes.
 17 Q. And there's been a lot of talk about the
 18 positive and negative criteria.
 19 Are you prepared to testify about that
 20 tonight?
 21 A. Yes.
 22 Q. Let's start with positive criteria and
 23 the particular -- particularly suitable criteria
 24 for this property.
 25 Do you have general thoughts on whether

1 this property is particularly well suited to this
2 application?

3 **A. Yes. I heard Mr. Phillips' testimony**
4 **last meeting. I was here. I was able to listen**
5 **to it. And I had formed a different opinion about**
6 **the site suitability with respect to whether or**
7 **not it's suitable to multi-family at the density**
8 **that's proposed.**

9 **Some of the aspects of site suitability**
10 **that were raised, one of them was that the**
11 **property's constrained by wetlands and the**
12 **development pushes the -- the development gets**
13 **pushed closer to Post House Road, but it's also**
14 **closer to 202.**

15 **As part of the application process, the**
16 **developer and the applicant submitted a fully**
17 **conforming site concept plan for commercial**
18 **development, which I thought really showed that**
19 **the site is particularly suited to the zone that**
20 **it's in, to the commercial zone, in that the site**
21 **constraints don't limit the site from being**
22 **developed as a commercial development. There are**
23 **no variances required. Although it does get**
24 **pushed closer to Post House Road, it's still**
25 **within the setbacks of the zone.**

1 **So I think there is some basis of an**
2 **assumption in a lot of the arguments, and I think**
3 **the Board picked up on it, that there's an**
4 **assumption that commercial development on this**
5 **site is bad while it's zoned for commercial**
6 **development and that part of the site suitability**
7 **is that somehow residential development becomes**
8 **better.**

9 **But the master plan and the zone plan**
10 **already set up the site for commercial**
11 **development. And the fact that it gets pushed**
12 **closer to Post House Road, it's still within the**
13 **setbacks, doesn't make it particularly suited to a**
14 **use that's not permitted in the zone.**

15 **Q. You mentioned in there the compliant**
16 **commercial plan.**

17 **Is that the plan that was marked Exhibit**
18 **A-11?**

19 **A. Yes.**

20 **Q. And is it your testimony that that or**
21 **something like it that's a permitted use is more**
22 **suitable to the zone or to the property?**

23 **A. Yeah, I think it actually shows that the**
24 **site is perfectly well suited to a commercial**
25 **development. It can fit onto the building**

1 **envelope. There are some constraints on the site.**
2 **It's not unusual that a site that hasn't been**
3 **developed as of yet has some constraints. It's**
4 **typically why the latter parcels that get**
5 **developed aren't quite developed yet is because**
6 **there are constraints on the site.**

7 **The other issue I think is that even**
8 **though it has these constraints, even though**
9 **things are pushed closer to Post House Road, even**
10 **if you entertain the idea that residential might**
11 **be a better use on the site, why is it then**
12 **suddenly multi-family or some type of use that's**
13 **not in character with the area?**

14 **The leap -- there's just no logical**
15 **connection to that leap. And, you know, one of**
16 **the -- I'm kind of jumping ahead to some of the**
17 **negative criteria and why I think an approval of**
18 **this application actually erodes your master plan**
19 **is that once you establish that character, if I'm**
20 **a planner and I come in on another site that's**
21 **very similar, while it doesn't set precedent, you**
22 **now have a neighborhood character. That's one**
23 **thing you don't have now.**

24 **BOARD MEMBER NEWLIN: You have what? I**
25 **sorry, I didn't hear you.**

1 **A. You have the ability to tie this to**
2 **neighborhood character. You have a townhouse**
3 **development right here. Our site's very similar.**
4 **It has these same types of characteristics.**

5 **I think that another aspect of the site**
6 **suitability is that this site isn't particularly**
7 **unique. There are other sites that are similar to**
8 **it. The site just across the street on Post House**
9 **Road is a very similar one. It has a**
10 **single-family residence. Most of the other**
11 **characteristics are the same such that that**
12 **argument could be made across the street, and**
13 **that's where it starts to erode the zone plan and**
14 **the master plan.**

15 **But I think from a site suitability**
16 **perspective, there's nothing that was presented in**
17 **my mind that really makes it particularly suited**
18 **to high-density multi-family use.**

19 **Q. So is this property located in a zone**
20 **that welcomes high density or high intensity**
21 **according to the master plan?**

22 **A. It's higher than, say, some of the**
23 **residential uses, but it's a lower-density**
24 **business zone. And I think what's really telling**
25 **is that you also need a floor area ratio**

1 variance -- and that's the density variance for a
2 commercial zone -- proposing twice what's
3 permitted. So not only is it somehow particularly
4 suited to multi-family; somehow it's particularly
5 suited to twice the density of the zone. And I
6 just don't think that that holds water, that
7 argument.

8 Q. Well, let me ask you to back up a bit.
9 So reading from the B-2 business zone in
10 the master plan, it is an area that "was not
11 conceived of as a high-growth, high-intensity
12 commercial area because of its many sensitive
13 features." And I'll skip ahead just a bit. "It
14 was an area for commercial uses at modest scale
15 and intensity."

16 Now, the floor area ratio maximum in
17 this zone is 8 and 1/2 percent. Would you equate
18 that with commercial uses at modest scale and
19 intensity?

20 A. Yes. I think that's the purpose of
21 having that type of floor area ratio. And it is
22 very clear in the master plan about this area,
23 while it is more intense, it doesn't know that
24 this area is more intense in development. It
25 still notes that it's a rural character area that

1 is a lower-intensity commercial area.

2 So to maintain that character is a very
3 important part of the master plan and it goes all
4 throughout the master plan. Maintaining -- and
5 particularly goal three, from the very beginning
6 of the master plan, the objectives, goals and
7 objectives. On page 1-2 I think is what I had, or
8 I-2. "The protection of rural development pattern
9 and density." And there's a line there that says
10 "Harding is noted for its historical and spatial
11 continuity of agricultural uses, small village
12 center, roadways, low-density residential
13 structures, early American architectural style,
14 open spaces and development of scale."

15 And it goes on really to say that that
16 historic rural development pattern should be
17 maintained and that really goes throughout the
18 master plan. And I think it's really true of the
19 character of Harding. When you come into the
20 town, you know you're in Harding. You get a
21 different sense because of the pattern of
22 development. And I think that's what the master
23 plan's really trying to uphold. And to take such
24 a strong diversion from the master plan from
25 intensity, density and use, I think undermines the

1 master plan.

2 Q. So is it fair to say that in your
3 opinion, this site is suitable for a use or
4 construction that is consistent with the zone's
5 requirements of a modest scale and intensity
6 represented by the maximum FAR of 8.5 percent?

7 A. Yeah, I think absolutely. And I think
8 it's shown it can be constructed. There's
9 nothing limiting this development from being
10 constructed in a completing conforming site plan
11 to the zone.

12 Q. So regardless of the proposed use, any
13 proposal, be it a convenience store or office
14 space or a single-family home or a multi-family
15 home, whatever it is, if it's significantly more
16 intense than what's contemplated in the zone, you
17 don't feel that this site is particularly suited
18 to that?

19 A. I see nothing that supports that.

20 Q. And the proposed use, this multi-family,
21 five townhomes, what's the floor area ratio that's
22 proposed?

23 A. I believe it's 17 percent.

24 Q. So a little over double? Just about
25 double?

1 A. Correct. Correct.

2 Q. And is that consistent with modest scale
3 and intensity?

4 A. No, I don't believe so. I think -- I
5 think the intensity is too high. I think that
6 this is -- this area -- I mean, part of the
7 argument is this area is surrounded by residential
8 uses. The character of Route 202 and the
9 commercial character is that low-density rural
10 character of the commercial area. Even though
11 it's in the master plan, that doesn't support
12 strip malls; that the use should be singular.

13 And that's really what's constructed
14 there and it has a very nice feel, very nice
15 character, it's very quaint. And I believe that's
16 what the master plan is trying to continue. And
17 increasing the density on the site and introducing
18 a use that isn't in the area isn't consistent with
19 the master plan.

20 Q. Now, single-family homes are a permitted
21 use in this zone, correct?

22 A. Correct.

23 Q. Now, there was some testimony that
24 because this site is predominantly B-2 commercial,
25 somehow multi-family is more -- is better suited

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1 than single-family.
2 Do you agree with that?
3 **A. I don't agree with that. I don't see**
4 **where the multi-family fits into the equation**
5 **because it's not in the area. There's nothing**
6 **pointing to that it would be a better character or**
7 **suitability on this road. And there are other**
8 **homes. The home across the street is in a similar**
9 **scenario of a lot abutting Route 202.**
10 Q. Is there any -- should the Board give
11 any consideration as to what the highest and best
12 use of the property is or to what would be the
13 most financially beneficial to the property owner?
14 **A. Obviously I heard the testimony tonight**
15 **and the idea that there's a need and that's all**
16 **well and good. I don't think we're disputing**
17 **that. There might be a need, but the use variance**
18 **aspect isn't the place to address this. This**
19 **isn't the Planning Board. I think these issues**
20 **should be taken up with the Planning Board and the**
21 **governing body and studied and perhaps located in**
22 **places that are suitable to the community if this**
23 **is a community concern.**
24 Q. So if there's a need for townhomes, if
25 there's a need for senior living facilities,

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1 that's something that the Planning Board should
2 study and incorporate into the master plan and the
3 zoning ordinance as opposed to by --
4 **A. Absolutely.**
5 Q. -- variance?
6 **A. Absolutely. I mean there's a sense that**
7 **--**
8 ACTING CHAIRMAN ROSENBAACH: Excuse me,
9 Mr. Visconi. I know we're not in a court, but you
10 might want your questions not to be quite so
11 leading. Because if you want to be the planner,
12 just say you are. But otherwise it would be
13 helpful if you would allow the planner to do --
14 occasionally say other than yes or no. Okay?
15 MR. VISCONI: Sure. Sure.
16 **A. Sorry, I lost my train of thought.**
17 Q. That's okay.
18 **A. I think what we're -- you know, my -- my**
19 **point of view is that I don't think that -- well,**
20 **I'll sound like a lawyer, but the courts don't**
21 **support zoning by variance. And simply because**
22 **there's a need for a use doesn't mean that a use**
23 **variance should be granted. And I don't believe**
24 **it's part of the criteria.**
25 **I mean, there's senior citizens**

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1 **living and supporting that is one of the goals of**
2 **the Municipal Land Use Law. However, is this that**
3 **type of senior living community that the Municipal**
4 **Land Use Law is looking for? I'm not really sure.**
5 **It's only age-restricted high-end townhomes. I'm**
6 **not sure exactly what that provides that the**
7 **Municipal Land Use Law was looking for.**
8 **It's not the type of senior community**
9 **that has amenities; that might provide a certain**
10 **type of, I guess, community sense of belonging or**
11 **place for seniors to go; and it's not sort of a**
12 **low-income type of senior housing that allows for**
13 **seniors on fixed incomes to live.**
14 **So I'm not sure that it really meets**
15 **that type of goal. If there is a need and it's**
16 **specific to Harding Township, then I believe**
17 **that's something that should be studied by the**
18 **master -- studied by the Planning Board, put in**
19 **the master plan, and the community should be**
20 **evaluated with community input as to where that**
21 **should go.**
22 **I don't see any evidence personally that**
23 **supports that there's some particular reason that**
24 **the general welfare would be served by putting it**
25 **in this exact location.**

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1 ACTING CHAIRMAN ROSENBAACH: That's not
2 the test, though.
3 THE WITNESS: I'm sorry?
4 ACTING CHAIRMAN ROSENBAACH: That's not
5 the test, though, is it?
6 THE WITNESS: That's not the test?
7 ACTING CHAIRMAN ROSENBAACH: The
8 applicant doesn't have to show that this facility
9 should go at this exact location. Doesn't the
10 applicant just have to show that this location
11 happens to be particularly suitable for this use?
12 THE WITNESS: Yeah. That's what I was
13 getting at, that this site is particularly suited
14 for this use.
15 ACTING CHAIRMAN ROSENBAACH: Right, but
16 he doesn't have veto every other --
17 THE WITNESS: Oh, every other site? No.
18 No. I'm not saying there might be other sites
19 that are suitable, and that should be studied
20 through the zoning process.
21 ACTING CHAIRMAN ROSENBAACH: Okay.
22 BY MR. VISCONI:
23 Q. Is there anything about this site that
24 you think does make it more particularly suited to
25 this use as opposed to any others?

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1 **A. No, there's nothing that I saw.**
 2 **Specifically unique or particular? I mean, there**
 3 **are other sites that are similar along the road.**
 4 **There are other sites that would -- you know, just**
 5 **the site across the street, while it had -- the**
 6 **only difference is that it had a residence on it.**
 7 **I didn't find that to be such a high difference**
 8 **that it would limit the same type of argument**
 9 **being made on that site.**
 10 Q. Are the need for other variances
 11 relevant to a Board's decision as to grant a use
 12 variance in a particular case?
 13 **A. Well, I think in this case we're looking**
 14 **at the intensity of the proposed use. And the**
 15 **fact that a floor area ratio variance is needed is**
 16 **relevant to this case because you're asking for**
 17 **not only a use that's not permitted, but a use**
 18 **that's twice the density or intensity of what is**
 19 **permitted.**
 20 **So to me those are -- those are two**
 21 **things that point to perhaps the use is too**
 22 **intense for the site that it's being proposed on.**
 23 MS. COFONE: Mr. Rosenbach, you said I
 24 could interrupt.
 25 THE WITNESS: Sure.

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1 MS. COFONE: Ms. Caldwell, good evening.
 2 Christine Cofone, the Board's planner. I just had
 3 a question when you talked about intensity.
 4 Were you here or did you listen to the
 5 traffic testimony that was presented on this
 6 application?
 7 THE WITNESS: I read the transcript.
 8 MS. COFONE: You did.
 9 So as a planner, would you think that
 10 traffic impacts are something that speaks to the
 11 intensity of a use, though?
 12 THE WITNESS: Yeah, I think in this case
 13 what I'm looking at is the density in terms of the
 14 size of the use and the impact of the scale of the
 15 use versus -- I understand that the traffic would
 16 be less than a commercial use.
 17 MS. COFONE: Substantially, right?
 18 Especially during the peak hour.
 19 THE WITNESS: Yeah. I understand that.
 20 MS. COFONE: And the building is not --
 21 it's not one -- in fairness to the applicant, it's
 22 not one building that would be massed at that 17
 23 and 1/2 percent FAR. It's broken up into two
 24 different structures.
 25 THE WITNESS: Yeah.

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1 MS. COFONE: Do you think that two
 2 different structures have an impact on the massing
 3 rather than one large office building?
 4 THE WITNESS: It could. I haven't
 5 really looked at that too much. I suppose it
 6 could, but I still think overall you still have
 7 twice the amount of structure on the property.
 8 MS. COFONE: And then I had one other
 9 question that I wanted to ask earlier in your
 10 testimony but there really wasn't a good point for
 11 me to break in, so I'm going to ask it now if
 12 that's okay.
 13 As a planner, do you think that there is
 14 a difference between the way single-family homes
 15 and multi-family homes are utilized?
 16 THE WITNESS: From what perspective?
 17 MS. COFONE: From an intensity
 18 perspective. From the lot, how the lot is used,
 19 the impacts associated with it. Are there
 20 differences in the impacts that you might see?
 21 For example, you're not going to have a
 22 pool associated with a multi-family. There's
 23 going to be, likely, a prohibition that restricts
 24 you from having a pool, a tennis court, a
 25 trampoline. Things that you might see associated

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1 with a single-family home, you're just not going
 2 to see those same types of impacts from a
 3 multi-family home.
 4 THE WITNESS: But there might be other
 5 impacts, like larger parking areas, garbage
 6 enclosures, outdoor lighting, and lighting of the
 7 parking lot. I would actually kind of think
 8 multi-family is more intensive from that
 9 perspective.
 10 MS. COFONE: So the use of a
 11 multi-family, though, with a parking lot and
 12 refuse, it would probably be more consistent,
 13 though, with the commercial utilization
 14 utilization of the property rather than a
 15 single-family. Because if you have a commercial
 16 parking lot, you'll certainly have a refuse area
 17 and you'll have to have it lighted.
 18 So I would think that those impacts
 19 would actually be more akin to a commercial use.
 20 That's just my opinion as a professional planner.
 21 THE WITNESS: Okay.
 22 MS. COFONE: And then I just had one
 23 other question. If you can comment on the access
 24 to Mount Kemble at this property. Your
 25 understanding of what type of access it would have

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1 available to it and how that does or does not, in
2 your opinion as a planner, facilitate a
3 development of the property for one of the myriad
4 of commercial uses that are permitted in the B-2
5 zone.
6 THE WITNESS: Yeah, I understand that,
7 you know, because of the State Highway Access
8 rules, that there would be ingress -- there would
9 be an ingress and egress off of Post House Road.
10 At least from the concept plan, perhaps on egress
11 onto Route 202. Perhaps it would be a right
12 in/right out. It's hard to say at this point.
13 Actually, when I went out to the site, I
14 found it interesting because when I turned up into
15 Talbot's, I found the site driveway access and
16 setback to be pretty similar to what would be
17 proposed here. The site driveway's almost the
18 same width and character as Post House Road. You
19 would have to actually drive back further than, I
20 think, a development on this site to access that
21 commercial use, which seems to be quite thriving.
22 So I don't see how that's a hindrance to
23 the site.
24 MS. COFONE: Thank you.
25 BY MR. VISCONI:

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1 Q. What impact, if any, does the vacancy of
2 the site have as to its suitability?
3 A. **In my mind, I don't think that that**
4 **means that it's not developable as a commercial**
5 **property under the zoning. I think that, as I**
6 **said earlier, a site that has some constraints,**
7 **like this site has the wetlands and it has maybe**
8 **some access constraints, I might point to the fact**
9 **as to why it's a later developable piece within**
10 **the zone.**
11 **And usually that's the case. The easy**
12 **pieces get developed first and then, as you go**
13 **along, the last ones to go in are the more**
14 **difficult pieces. That doesn't necessarily mean**
15 **it can't be developed for something in the zone,**
16 **within the zone plan.**
17 Q. Are sites that have either a
18 single-family or owner construction, do those get
19 redeveloped for new uses?
20 A. **Yes. That certainly is something that**
21 **happens more and more in New Jersey.**
22 **Redevelopment is more the norm.**
23 Q. What about the proposed development's
24 impact on surrounding neighbors?
25 A. **Well, as I spoke to previously, I do**

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1 think that there's a negative impact by the floor
2 area ratio. The fact that it's a use that's not
3 existing in the zone now I think creates a, you
4 know, dysfunction in the character of the area.
5 The master plan really points to maintaining the
6 rural nature and character of the area and I think
7 that proposing something like this really flies
8 afoul of that.
9 And then I think that the neighbors
10 have -- if you purchased your property and you're
11 researching the zone and the master plan, you have
12 some expectation that what is permitted is what
13 would be built if you have vacant properties
14 around you. And I think this level of intensity
15 adjacent to their properties is a negative impact
16 to them.
17 Q. And what's the historic character of
18 this zone, this area, the Country Mile area?
19 A. I think that this is low-density type of
20 rural -- rural type of use and townhouses are
21 really more of a suburban type of use. And
22 there's a lot in the master plan about not going
23 toward the suburban strip mall, not going toward
24 the suburban type of cookie-cutter look. And I
25 think this really is counter to that.

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1 Q. Do you find that senior citizens who are
2 downsizing or leaving their single-family home,
3 are there certain things that they're looking for
4 in that downsized property or neighborhood?
5 A. Well, typically what we see is seniors
6 that are looking to downsize are moving more to
7 downtowns and mixed-use areas where there's
8 walkability and access to more retail uses and
9 nightlife, going to coffee shops and that type of
10 thing. I'm not sure that this area is really
11 conducive to that type of downsizing, that type of
12 development.
13 Q. What about amenities within a community?
14 A. And there's another type of senior
15 development that I mentioned before where you have
16 access to tennis courts and swimming pools and
17 community centers and ability to meet with other
18 seniors and do activities. I think that's --
19 those are really -- that's the kind of type of
20 senior development that I think is more typical.
21 Q. Are there any environmental concerns
22 with the proposed density?
23 A. There has been -- there is a concern
24 about the proposal to place septic systems for
25 five units. And there was discussion about, you

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1 know, nitrate dilution standards and this being in
 2 excess of not only DEP's restrictions on nitrate
 3 dilution standards, but what is in the master plan
 4 in terms of what is proposed.
 5 And I think that's -- another reason
 6 this is counter to the master plan is that it
 7 really does specifically state that these types of
 8 developments should be in areas where sewers are
 9 located and that's clearly not the case here.
 10 ACTING CHAIRMAN ROSENBAACH: I have a
 11 question about this. I don't recall any previous
 12 testimony to the effect that there are DEP nitrate
 13 dilution standards that this development would
 14 violate. I just don't recall any testimony like
 15 that, so --
 16 THE WITNESS: That was at the last
 17 hearing from the planning testimony about nitrate
 18 dilution standards. That it's higher than what's
 19 permitted for the -- I believe for this area.
 20 ACTING CHAIRMAN ROSENBAACH: But --
 21 MR. VISCONI: Well, it comes from the
 22 master -- that information comes from the master
 23 plan, but it does relate to setting a cap of 2 --
 24 was it 2 milligrams per whatever nitrate in the
 25 soil. And that to do that, you need to set a

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1 limit of 3.5 acres or 4.2 areas of development.
 2 BOARD MEMBER NEWLIN: That's Harding.
 3 He asked about the state. The state --
 4 MR. VISCONI: Right, but that --
 5 THE WITNESS: Those are based on DEP
 6 regulations.
 7 BOARD MEMBER NEWLIN: Excuse me.
 8 MR. VISCONI: Sorry.
 9 BOARD MEMBER NEWLIN: You said there's
 10 state standards. Our former chair asked about
 11 state standards. What state standards are you
 12 talking about?
 13 THE WITNESS: The state standards that
 14 set those nitrate dilution standards according
 15 to --
 16 MR. VISCONI: Which then the master plan
 17 took --
 18 MR. HALL: But there was no testimony
 19 about the state standards. I think that's what --
 20 THE WITNESS: Okay. All right. Well,
 21 I'll retract that part, that portion.
 22 ACTING CHAIRMAN ROSENBAACH: Well, not
 23 only that, but if there are state standards and if
 24 they are being violated, why is there even -- I
 25 mean, I would think there could be no application.

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1 I think that the engineers in support of the
 2 applicant would already know that. So I'm
 3 confused by this.
 4 THE WITNESS: Well, I think they have to
 5 apply for a special type of application. They
 6 have to apply to the DEP to get that approval.
 7 ACTING CHAIRMAN ROSENBAACH: Okay.
 8 MR. HALL: Approval for what?
 9 MR. SHEEHAN: Mr. Chairman, does the
 10 planner realize that this is a bifurcated
 11 application?
 12 ACTING CHAIRMAN ROSENBAACH: Well,
 13 obviously they're questions so I can't fault her
 14 for trying to answer them.
 15 MR. VISCONI: I think I can redirect
 16 this a little bit.
 17 ACTING CHAIRMAN ROSENBAACH: I mean, I'm
 18 asking.
 19 So, Mr. Sheehan, if what you're saying
 20 is that there are DEP standards, but you don't
 21 view them as part of the application, that might
 22 be the answer.
 23 MR. SHEEHAN: I think it is the answer.
 24 ACTING CHAIRMAN ROSENBAACH: Okay.
 25 MR. SHEEHAN: And there's been no

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1 testimony on it in direct and it is an integral
 2 part of the site plan application when the septic
 3 and the water issues are being addressed.
 4 ACTING CHAIRMAN ROSENBAACH: Okay. Then
 5 --
 6 BOARD MEMBER NEWLIN: Actually, can we
 7 just ask our engineer what he thinks about that?
 8 That issue is a very interesting issue that's been
 9 raised.
 10 So are there state standards?
 11 MR. FOX: Not that would be applicable
 12 to this project, no.
 13 BOARD MEMBER NEWLIN: There's no nitrate
 14 dilution state standards?
 15 MR. FOX: Right. Because the total
 16 sewage generation rate from this project would be
 17 less than 2,000 gallons per day, it would be
 18 approved by the local health department. And as
 19 part of the approval for an individual subsurface
 20 disposal system, there's no standards relative to
 21 nitrate dilution.
 22 BOARD MEMBER NEWLIN: But if goes over
 23 that amount -- and they're close, right?
 24 MR. FOX: Then that would be a
 25 consideration.

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1 BOARD MEMBER NEWLIN: It's 1,750 or
 2 whatever it is.
 3 MR. FOX: Two thousand.
 4 BOARD MEMBER NEWLIN: Two thousand cap,
 5 but they're at 1,750.
 6 MR. FOX: Correct.
 7 ACTING CHAIRMAN ROSENBACH: Okay. So,
 8 fine. I think we've gotten the answer to that
 9 question.
 10 THE WITNESS: I stand corrected.
 11 ACTING CHAIRMAN ROSENBACH: No, that's
 12 okay.
 13 THE WITNESS: Okay.
 14 ACTING CHAIRMAN ROSENBACH: But, again,
 15 it did not appear to come up before. And our
 16 engineer is telling us it's not applicable.
 17 Mr. Sheehan is saying it might be applicable, but
 18 I gather it's really not. So, okay.
 19 BY MR. VISCONI:
 20 Q. I don't -- is it fair to say -- and
 21 excuse the leading question -- is it fair to say
 22 it's not a state standard that caps the amount of
 23 nitrate dilution, but it's a state guideline that
 24 impacts zoning considerations?
 25 MR. SHEEHAN: The question probes an

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1 irrelevant issue.
 2 MR. VISCONI: Well, if it -- if it's a
 3 guideline for zoning standards, now we're right
 4 back in this Board's ballgame.
 5 ACTING CHAIRMAN ROSENBACH: We are,
 6 but -- I'm going to allow the question, but,
 7 again, let's go back to our engineer. And I
 8 guess, first of all, I'd like to actually have the
 9 Board be able to see the standard in writing.
 10 MR. VISCONI: It's all in the master
 11 plan.
 12 ACTING CHAIRMAN ROSENBACH: The master
 13 plan incorporates the DEP standard?
 14 MR. VISCONI: Yes.
 15 ACTING CHAIRMAN ROSENBACH: Okay.
 16 MR. VISCONI: Incorporates -- sure.
 17 ACTING CHAIRMAN ROSENBACH: Now, you
 18 might remember we all seem to have different
 19 versions and page numbers of the master plan.
 20 MR. VISCONI: We do.
 21 ACTING CHAIRMAN ROSENBACH: So I'll tell
 22 you what. I don't want it right now. If what you
 23 are asking your planner -- and you could, of
 24 course, be asking us directly -- is, is the DEP
 25 standard something we should be taking into

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1 account in determining the use? The answer might
 2 be yes, it might be no. You've raised it as an
 3 issue.
 4 We will make sure that by the time we
 5 decide, we will have the standard either because
 6 you provide it to us or because Mr. Fox does, but
 7 I think you can safely move on.
 8 MR. VISCONI: Fair. I'll just point
 9 the Board to the conservation plan element. It
 10 has --
 11 ACTING CHAIRMAN ROSENBACH: Okay. It's
 12 in the conservation plan element.
 13 MR. VISCONI: Yes. Yes. It's also
 14 mentioned in the housing element -- or the land
 15 use plan element.
 16 BY MR. VISCONI:
 17 Q. Does the master plan talk about what
 18 sustainable levels of development are in Harding
 19 Township? And what does it say to that effect?
 20 A. Yeah. I mean, the conservation element
 21 talks about the intensity and density of
 22 development and the potential for groundwater
 23 pollution. And I think that's, you know, kind of
 24 what we were -- we were looking at is the higher
 25 density types of uses aren't encouraged on septic

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1 systems because of the potential to add nitrates
 2 to the groundwater. So I think that's one of the
 3 issues that the master plan raises in terms of
 4 guiding density of development.
 5 Q. And do you know what the permitted
 6 residential density is in the abutting R-1 zone?
 7 A. Yes. It's 1 per 3 acres.
 8 (Pause)
 9 BOARD MEMBER NEWLIN: There's lots of
 10 questions waiting to be asked when you're
 11 finished.
 12 MR. VISCONI: By all means.
 13 BOARD MEMBER NEWLIN: From many Board
 14 members.
 15 MR. VISCONI: I'm just going through my
 16 notes to make sure I've hit them all. Go
 17 ahead. Open it up to the Board.
 18 ACTING CHAIRMAN ROSENBACH: Do you want
 19 to start?
 20 BOARD MEMBER NEWLIN: I got lots of
 21 questions.
 22 ACTING CHAIRMAN ROSENBACH: Go ahead.
 23 BOARD MEMBER NEWLIN: Okay. So one
 24 question I have, there's been testimony from
 25 Mr. Phillips that the parcel is not suited to a

<p style="text-align: right;">Page 114</p> <p>1 single-family house being put there. I'm just 2 curious. And he gave several reasons why. I'm 3 curious what you think about that. 4 THE WITNESS: I don't see any reason 5 that it's not suited. There certainly are other 6 development -- other single-family residences on 7 Route 202 and others. There's another one on Post 8 House Road directly across from this site, 9 although set a little further back. I don't see 10 any reason why it couldn't be developed like that. 11 BOARD MEMBER NEWLIN: One of his points 12 that I recall is that it's too shallow. The 13 property's too shallow for -- 14 THE WITNESS: It doesn't provide as much 15 of a buffer as the adjacent property, but that 16 doesn't mean that it couldn't be buffered from 17 Route 202. I mean, you can put a conforming 18 commercial development on there. I think you 19 could fit a single-family residential development 20 on there. 21 BOARD MEMBER NEWLIN: A lot of what you 22 talked about is the intense use, the density. I 23 certainly think that's what the crux is of this 24 application. 25 So I'll ask you the same question. What</p>	<p style="text-align: right;">Page 116</p> <p>1 area and what impact it has. You said there's 2 several other properties that you thought could 3 equally have the same weight -- the same 4 suitability, so to speak, for doing this. 5 Can you provide any of that to us? Can 6 you give us some examples of other properties that 7 pretty much are close -- 8 THE WITNESS: Well, in particular, the 9 one that's across from Post House Road. 10 BOARD MEMBER NEWLIN: What's that? 11 THE WITNESS: The one across Post House 12 Road is very similar in character. 13 BOARD MEMBER NEWLIN: Is that 14 something -- I don't know, Phil, if that's worth 15 getting a list of those properties. 16 THE WITNESS: It's not a vacant 17 property, but then there are also vacant 18 properties along Route 202. 19 BOARD MEMBER NEWLIN: That reasonably 20 could also be proposed as being suitable for 21 something like this, at least they're the same -- 22 THE WITNESS: Potentially. I didn't see 23 enough in this site that made it unique and 24 separate from other types of sites on Route 202. 25 BOARD MEMBER NEWLIN: I think, maybe you</p>
<p style="text-align: right;">Page 115</p> <p>1 if he cut the density down to three units? Would 2 that change -- I mean, a lot of the FAR ratio -- 3 and you brought this up several times about the 4 intensity, separate from the fact that it's 5 single-family versus commercial versus 6 multi-family. Aside from that issue. You talked 7 about density. Really half your concerns are 8 about it. 9 So the same question. What if he went 10 down to three units? Would a lot of your concerns 11 go away or would they be lessened? 12 THE WITNESS: I think they would be 13 lessened, but it is a somewhat different 14 application so I think that the proofs would need 15 to be put on. Particular suitability for a 16 multi-family? I don't feel that they've met 17 that. Perhaps it would be a better case if it was 18 less. 19 MR. VISCONI: Okay. 20 BOARD MEMBER NEWLIN: And you said that 21 you thought there were other sites. I think that 22 the Board is probably concerned about the 23 precedent aspect. You can call it whatever you 24 want. It's not legal precedent, but I think we're 25 all concerned about a new use being put in this</p>	<p style="text-align: right;">Page 117</p> <p>1 don't want to spend the time on that, but any 2 example properties by block and lot, I would be 3 happy to see those. 4 What about the -- I think it's my 5 last -- last question. Impact on neighbors. 6 So you think that a commercially 7 developed property, a conforming commercial 8 building, it's your testimony that that would have 9 more positive impact on the neighborhood than this 10 proposed multi-family use? 11 THE WITNESS: Not necessarily. I think 12 that the use is permitted by the zone so -- and I 13 heard this from the Board at the last meeting. 14 I'm not presuming that's the use. I think there's 15 a lot of testimony that somehow a commercial 16 development in this commercially zoned site would 17 be a negative. And not necessarily. I mean, 18 maybe it gets built as a flower shop. It's pretty 19 low in intensity. It's a cute, little, 20 residential-type building. 21 I mean, there's this kind of presumption 22 that if it's a commercial use, it's suddenly going 23 to be massively intense and a negative impact on 24 the surrounding community. Well, most of the 25 commercial uses on that corridor are very</p>

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1 low-intensity type uses.
 2 BOARD MEMBER NEWLIN: I think I have to
 3 push you on this, because what we have to look at
 4 is what a property owner is able to do by right.
 5 And the applicant gave us a very helpful and nice
 6 plan with conforming commercial properties.
 7 So that's our benchmark, not something
 8 less than that. That's what somebody's able to do
 9 pretty much by right. That's our benchmark. And
 10 you're saying that that would be preferable
 11 than -- that would be preferable than giving the
 12 applicant what he's asking for?
 13 MR. VISCONI: I'm sorry, I'm not sure
 14 that's -- I get where you're going with that, but
 15 that's not the standard here.
 16 BOARD MEMBER NEWLIN: I'm not going
 17 anywhere. That's my simple question.
 18 MR. VISCONI: The standard is, is this
 19 particularly suited to a multi-family? Not --
 20 MR. HALL: He asked a question, whether
 21 it's the standard or not. I think he's entitled
 22 to an answer.
 23 BOARD MEMBER NEWLIN: It's a very simple
 24 question.
 25 THE WITNESS: It's hard to say. I mean,

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1 it depends on what type of use it is. I can't
 2 speak for the neighbors in terms of what type of
 3 commercial use would -- would -- how that would
 4 impact them or not. I mean, if it was me and it
 5 was a restaurant, I'd say, great, I can walk down
 6 the street and I've got this nice restaurant, but
 7 some people might be bothered by the traffic.
 8 I think that the density and intensity
 9 of the use is obviously bothering the neighbors
 10 because many of them are out tonight and --
 11 BOARD MEMBER NEWLIN: But we don't know
 12 what they're going to say. I can't wait to hear
 13 what they have to say because I think that's
 14 extremely important.
 15 THE WITNESS: I think that may be a good
 16 question to ask them, but I don't think that --
 17 from my standpoint as a planner, I'm not
 18 evaluating whether or not the commercial use is a
 19 bad -- a bad use. It's permitted by the zone. If
 20 you can build a conforming as-of-right, then you
 21 can do that.
 22 BOARD MEMBER NEWLIN: I kind of gathered
 23 you were saying it was a preferred -- it's a
 24 better use, it's better suited, it's better for
 25 the neighborhood, but you're not really saying

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1 that. You're saying maybe, maybe not.
 2 THE WITNESS: I mean, it depends. It
 3 depends on the type of use. But I think, like
 4 Mr. Visconi said, I don't think they've made the
 5 case for what they're proposing.
 6 BOARD MEMBER NEWLIN: Okay. So I think
 7 I'm taking it as maybe, maybe not. And our
 8 planner did give lots of points to our Board. I
 9 think about the traffic. I think it seems pretty
 10 clear that a commercial use traffic would be lot
 11 higher by the testimony. So there are some --
 12 some points.
 13 That's it. That's all I have.
 14 CHAIRMAN FLANAGAN: Can I ask you one
 15 question? Our planner previously had said if we
 16 were to grant this variance and allow a
 17 multi-family residential building to be built
 18 there, one thing we need to consider is we're
 19 losing an opportunity or a piece of property which
 20 could be part of the business district, right.
 21 And we look up and down that area, it's mostly
 22 businesses. I know that there are some
 23 residentials, some split zones. I know that there
 24 is just recently some applications that came in
 25 for -- to put a new business down at the other end

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1 of 202.
 2 What are your views on the potential
 3 loss of a piece of property that could be a
 4 business? Is that something we should consider,
 5 that by allowing this to be residential, that
 6 we're losing the opportunity to put a business in
 7 there? Is that a positive or a negative? Does
 8 that have any impact?
 9 THE WITNESS: I think in a community
 10 that has limited commercial, I think that's a
 11 valid concern. To the extent that you might have
 12 to try to find other areas where commercial would
 13 be permitted to allow for additional commercial
 14 development and where that might not fit into the
 15 character, but there's a residential development
 16 here instead where it may have fit better. I
 17 think that is a concern.
 18 ACTING CHAIRMAN ROSENBAACH: Do you have
 19 any data that you could share with us on whether
 20 the business model of having a local retail shop,
 21 let's say on 202, has remained pretty much
 22 constant over the last 20 years or whether, in
 23 fact, that model has been injured by the
 24 development of internet retail businesses now?
 25 I'm just asking if you have any data.

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1 THE WITNESS: I don't have any specific
 2 data on Route 202's commercial --
 3 ACTING CHAIRMAN ROSENBAACH: Or in
 4 general. I mean, is the idea of a small-scale
 5 retail shop different from the larger commercial
 6 office building, which is the A-11 complying
 7 model? I mean, is it still a viable model? And
 8 I'm not asking for your personal opinion. I'm
 9 asking if you actually have any data on the
 10 question of whether small retail shops are viable.
 11 THE WITNESS: I don't have any --
 12 ACTING CHAIRMAN ROSENBAACH: Certainly on
 13 Route 202.
 14 THE WITNESS: I don't have any data on
 15 that, no.
 16 ACTING CHAIRMAN ROSENBAACH: Okay.
 17 Because it goes back to Mike's question, of
 18 course, on if we preserve this lot for future
 19 commercial development, and either perhaps it
 20 awaits until the office market supports it or it
 21 just never gets developed -- I'm not saying either
 22 one of those has to happen, but I just -- I'm not
 23 comfortable that I have enough information to
 24 answer it.
 25 I gather you're not comfortable or

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1 confident to be able to give an answer?
 2 THE WITNESS: I can give you an answer.
 3 I just don't have any data. I have my
 4 professional opinion as a planner --
 5 ACTING CHAIRMAN ROSENBAACH: Well, what
 6 would that be then?
 7 THE WITNESS: -- that I can give you
 8 that. I think that retail is more difficult. I
 9 mean, I think that's obvious, you know, with
 10 Amazon and the internet. It is harder to support
 11 smaller retail.
 12 But the types of uses that are getting
 13 put into places are more active-type uses, more
 14 experience related: Restaurants, food. Places,
 15 you know, like the escape rooms are different
 16 places where people can go and do something, or an
 17 arcade.
 18 Places where people can meet and do
 19 things that you can't do on the internet are the
 20 types of retail that is replacing, you know, the
 21 more standard retail. Although, you know, some
 22 smaller shops in certain areas under certain
 23 conditions, if they have a unique product, can do
 24 very well. It just depends. But it's -- without
 25 a doubt it's more difficult now than it used to

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1 be.
 2 ACTING CHAIRMAN ROSENBAACH: I asked
 3 because -- and if we go to the potential uses in
 4 the B-2 zone and there are, I'd say, give or take,
 5 30 of them, they're overwhelmingly retail shop --
 6 I mean, there's some services: Lady hairdressing,
 7 we just gave a variance for a dog shampoo place.
 8 We did. There's shoe repair. There is a tailor.
 9 But they are almost overwhelmingly retail.
 10 And I know that one of the factors that
 11 we are allowed to look at from the courts is
 12 whether the world has changed since the zoning
 13 ordinance in question was adopted.
 14 And so do you agree or disagree with
 15 that, that we're allowed to look at changed
 16 circumstances since the --
 17 THE WITNESS: I agree that it's changed.
 18 That doesn't mean that there's not a permitted use
 19 that could be viable. I mean, restaurants I think
 20 still work. You know, retail services still work.
 21 And it's not a use variance for a different type
 22 of commercial use on the property. It's for
 23 something totally different, so.
 24 ACTING CHAIRMAN ROSENBAACH: And I gather
 25 you would say, in any event -- in any event -- I

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1 am putting words in your mouth here. You can
 2 agree or disagree.
 3 THE WITNESS: All right. We'll see.
 4 ACTING CHAIRMAN ROSENBAACH: That even if
 5 the world has changed, that does not make this
 6 location particularly suitable for the application
 7 that has been brought before us?
 8 THE WITNESS: And that's the point. And
 9 I think a lot of these discussions, while it's
 10 something that, you know, you should consider, I
 11 think are better placed into the zoning process of
 12 the Planning Board to reconsider the potential
 13 uses.
 14 ACTING CHAIRMAN ROSENBAACH: I want to
 15 make just one thing clear. What I just said
 16 doesn't necessarily mean I'm endorsing it. It's
 17 just that I meant I expected that you would say.
 18 THE WITNESS: Understood.
 19 ACTING CHAIRMAN ROSENBAACH: I just want
 20 to be clear.
 21 THE WITNESS: Understood.
 22 ACTING CHAIRMAN ROSENBAACH: Any
 23 questions -- any questions from Board members?
 24 MS. COFONE: I have two questions.
 25 ACTING CHAIRMAN ROSENBAACH: Excuse me.

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1 Mr. Sheehan, I assume you're going to
2 have questions.
3 MR. SHEEHAN: I do, Mr. Chair.
4 ACTING CHAIRMAN ROSENBAACH: Okay. Okay.
5 Christine.
6 MS. COFONE: Yes. Ms. Caldwell, do you
7 understand the burden of proof for a D-1 use
8 variance to be that the applicant has to
9 demonstrate that the site cannot be utilized for a
10 conforming use in the zone?
11 THE WITNESS: The hardship. No. No.
12 MS. COFONE: So that that is not part of
13 the burden of proof. This applicant does not have
14 to demonstrate that the use cannot be utilized for
15 a permitted use.
16 THE WITNESS: No, I understand that, but
17 I think a lot of the testimony was around why it
18 doesn't work for commercial. So I'm putting in --
19 that's part of my argument for that.
20 MS. COFONE: Okay. And then my second
21 was you cited from the master plan, referring back
22 to the planned residential neighborhood, that one
23 of the reasons in the master plan why it was cited
24 where it was cited was due to the availability of
25 water and sewer infrastructure. But there was

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1 another reason in the master plan as to why it was
2 cited there.
3 Do you recall what that is?
4 THE WITNESS: No, I don't.
5 MS. COFONE: I have it in front of me so
6 I'll read it. It was also the location of major
7 roads. So it was not just sewer and water as to
8 why the town chose in 1976, which is, as far as
9 land use, almost ancient history, but one of the
10 other considerations was the proximity of major
11 roads.
12 So back then when, in 1976, when you put
13 that zoning in place, you looked at sewer and
14 water, but you also looked at availability of
15 transportation and road networks.
16 So I just wanted the Board to have a
17 clear picture as to the thinking at the time that
18 seemed to go into the master plan, because there
19 were other things cited in there beyond the water
20 and sewer infrastructure.
21 CHAIRMAN FLANAGAN: Christine, sorry, I
22 missed a few of the words in the beginning. I
23 think what you're saying is the reason that the
24 Zoning Board and the Township Committee chose the
25 PRN zone as it exists is due to three factors,

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1 which are enumerated in the master plan: Water,
2 public water, public sewer, and transit? Is that
3 what you're saying?
4 MS. COFONE: Proximity to major road
5 networks. At least that's what it would seem back
6 in 1776.
7 CHAIRMAN FLANAGAN: And if one thinks
8 about those three things, there are very few
9 places in this township that have public water and
10 public sewer. There are many places in this
11 township that have a road akin to Route 202.
12 So in your view, then, of those three
13 things, what do you think was the most unique
14 characteristic of where the PRN zone is now?
15 MS. COFONE: It's hard to say. You
16 know, I don't know what was -- I don't know what
17 was in their -- I think they're all important.
18 CHAIRMAN FLANAGAN: I mean, I'm just
19 thinking. If we're going to say, well, roads were
20 important, public sewer and public water was
21 important, and one could go to many places in the
22 township and find a road, right? Then one would
23 have to ask what's the difference between this
24 particular spot that has a road similar to where
25 the PRN zone is and this spot, where the PRN zone

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1 currently isn't, that has a very similar road? I
2 would argue -- I would guess, I mean I'd like your
3 opinion on it, but I would guess the real
4 difference is the fact that there's water and
5 sewer, right?
6 MS. COFONE: At the time back in 1976,
7 that might have been. But, again, this is four
8 decades of planning and time in between.
9 CHAIRMAN FLANAGAN: But even today there
10 are very few places in this township -- and you
11 can correct me if I'm wrong, or, Paul, maybe you
12 can tell me. I think the only places in this
13 township that have public water and sewer are on
14 that 202 corridor. Maybe there's some over by the
15 farm as well.
16 MR. FOX: A little bit by Kitchell Road.
17 CHAIRMAN FLANAGAN: Other than by
18 Kitchell Road. But in this township the only
19 places one can find public water and public sewer
20 are where they were zoned the PRN zone back in
21 1976 and a little bit in Kitchell Road, which is
22 where the farm is. And nothing's changed since
23 1976 in terms of where one can find sewer and
24 water.
25 It just seems to me, I guess, that the

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1 real difference between the spot where they put it
 2 and other spots with roads in town is the fact
 3 that there's water and sewer.
 4 MS. COFONE: At the time, sure.
 5 CHAIRMAN FLANAGAN: Well, no, but
 6 nothing's changed since 1976 in terms where one
 7 can find public water and sewer.
 8 MS. COFONE: Yeah, I don't know that I
 9 can agree with that because it could have been the
 10 size of the tract, the available vacant land. I
 11 mean, there could have been a lot of things that
 12 went into that planning analysis.
 13 Planners would certainly look at other
 14 things beyond public water, sewer, and those were
 15 two things that were cited in the master plan.
 16 Three things. Water and sewer -- put water and
 17 sewer separately. Three things.
 18 So there could be a lot of other things
 19 they could look at. They could have looked at the
 20 adjacent land uses. They would have looked at the
 21 size of the tracts that were available. There
 22 were certainly other factors that, as a planner, I
 23 would be surprised to learn that those were the
 24 three limited or controlling factors that went
 25 into that due diligence to choose those sites. I

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1 would be surprised they were the only three; that
 2 there weren't some other factors that they
 3 considered at the time.
 4 CHAIRMAN FLANAGAN: Okay.
 5 BOARD MEMBER EICHLER: Sand Spring Road
 6 and Sand Spring Lane, some of the residences do
 7 have city water.
 8 ACTING CHAIRMAN ROSENBAACH: Mr. Sheehan,
 9 would you like to cross-examine at this point?
 10 MR. SHEEHAN: I would.
 11 CROSS-EXAMINATION
 12 BY MR. SHEEHAN:
 13 Q. Ms. Caldwell, it is not your testimony
 14 that this Board does not have the capacity and
 15 authority to grant variances upon proof by the
 16 applicant that satisfies the required positive
 17 criteria and negative criteria, is it?
 18 A. No, that was not my testimony.
 19 Q. All right. Are you aware that the
 20 subject property has been listed for sale for a
 21 significant number of years without any activity?
 22 A. Not specifically, no.
 23 Q. Did you read the transcripts that --
 24 A. I mean, I have the transcripts of what
 25 the testimony was, but I don't know --

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1 Q. You don't recall.
 2 A. -- what actual real estate transactions
 3 may have been occurred or how much the developer
 4 or the owner tried to sell or not sell. I mean,
 5 that was the testimony.
 6 Q. Do you think it's relevant that the
 7 property has been for sale for a significant
 8 number of years and that no conforming
 9 residential -- no conforming commercial
 10 development has been realized on the site?
 11 A. I don't know that it's relevant to the
 12 actual case for a use variance.
 13 Q. Is it a relevant fact in the
 14 consideration of the use variance application?
 15 A. I think the Board can take it into
 16 consideration, but what we don't know is how
 17 much -- whether the price was lowered, whether the
 18 price is reasonable, if people offered -- made
 19 offers and they weren't accepted. We don't really
 20 know the true facts of what was going on.
 21 Sometimes people --
 22 Q. I'll represent to you that there was a
 23 significant amount of testimony in the first and
 24 second hearings that was given in that regard.
 25 Let me ask you this: You realize that

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1 this application is a bifurcated application,
 2 don't you?
 3 A. Yes, I do.
 4 Q. And that the site plan issues have not
 5 been addressed by the applicant in any detail
 6 awaiting a decision of the Board on the principal
 7 question whether the use variance was granted?
 8 A. Yes.
 9 Q. All right. In your summary of the site,
 10 you reference the wetlands.
 11 Did you take any notice of the
 12 topography of the site?
 13 A. Yes, I did.
 14 Q. And does the topography of the site have
 15 any significance in your mind in the requisite
 16 floor area ratio variance that has been applied
 17 for by the applicant?
 18 A. No.
 19 Q. Does topography of the site in your mind
 20 create any advantage for locating the parking lot
 21 and the access driveways and the fronting garages
 22 in the front of the property along 202 as opposed
 23 to the residential section of the property to the
 24 rear?
 25 A. I didn't evaluate from a site plan

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1 perspective.

2 Q. Does it make it any easier to screen

3 from the Post House Road residence?

4 **A. I didn't evaluate it based on that.**

5 Q. All right. Now, you did say that you

6 read the master plan and the reexamination

7 reports, is that correct?

8 **A. Yes.**

9 Q. You would acknowledge, then, that the

10 reexamination report of 2013 questioned whether

11 there is sufficient variety in housing types to

12 accommodate the needs of older residents and

13 lower-/middle-income households?

14 **A. Yes.**

15 Q. Do you recall reading that?

16 **A. Yes.**

17 Q. All right. You would acknowledge that

18 the proposed application is designed to provide

19 residential accommodations for five residences for

20 occupancy of persons over 55 years of age,

21 correct?

22 **A. Yes.**

23 Q. Would you admit that there are no

24 current examples of the housing type proposed by

25 this application currently in Harding Township?

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1 **A. That's my understanding.**

2 Q. And, as such, is it fairly characterized

3 as an unmet need in Harding Township?

4 **A. It may be, but as my testimony pointed**

5 **to, that I don't think that this is the process to**

6 **answer that unmet need if it's there. I think it**

7 **should be before the Planning Board because I**

8 **don't think they met site suitability in this**

9 **case.**

10 Q. Would you acknowledge that the master

11 plan and the land use element under that topic,

12 B-2 business zone, discourages strip development

13 and sprawl in the B-2 zone and encourages

14 development and uses comparable with the overall

15 character of the township?

16 **A. Yes. And my testimony was I didn't**

17 **think this met the character of that area.**

18 Q. All right. In fact, in the statement of

19 objectives and goals of the master plan, the

20 planners, referring to traffic congestion on Route

21 202, stated "The continuing importance of Route

22 202, as the dominant local traffic artery within

23 the township, will be greatly impaired unless

24 greater development control is exercised and

25 business activities are limited to specific areas.

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1 Needless traffic congestion, plus the recognition

2 that the majority of all resident shopping has

3 taken place and will continue to take place

4 outside of the township, indicates the lack of

5 need for additional commercial space to serve

6 township residents. As a result of this traffic

7 congestion, a 1980 Abbington-Ney traffic

8 engineering investigation concluded that, based

9 upon actual traffic counts, there is no excess

10 vehicle capacity along Route 202 in Harding

11 Township."

12 Does that sound a familiar bell for you?

13 **A. Well, there's been no zone change.**

14 **There's been no significant change to this**

15 **commercial zone. I mean, they may have been**

16 **pointing to the fact that there shouldn't be**

17 **additional zones for commercial because of that**

18 **reason.**

19 Q. Do you take issue with the statement

20 that there's no excess vehicle capacity along

21 Route 202?

22 **A. Yeah, I think there's excess vehicle**

23 **capacity on Route 202.**

24 Q. I'm sorry, Ms. Caldwell, I didn't hear

25 you.

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1 **A. I don't have any evidence that it's**

2 **maximized, the use.**

3 Q. Consistent with those statements, are

4 you aware that the reexamination of 2013, at Part

5 4, recommended that specific changes regarding the

6 B-2 zone should be considered updating the

7 permitted uses and other provisions applicable in

8 the B-2 zone along Route 202?

9 **A. I think that's similar to the discussion**

10 **that we just had. It doesn't point to what they**

11 **wanted to change it to exactly, but there may be**

12 **other uses that would be beneficial to the zone.**

13 Q. All right. I'm going to ask you if you

14 recall your reading of the transcript of July

15 20th, 2017, in which the residents along Post

16 House Road -- one, Mr. Bigler, or Ms. Bigler; one,

17 Mr. Muratore; one, Mr. Addonizio; and, one,

18 Dr. Jutkowsky --

19 DR. JUTKOWITZ: Jutkowitz.

20 Q. -- expressed concerns of an extreme

21 nature over the traffic and the fear that traffic

22 was a major issue at the intersection of Post

23 House Road and Route 202?

24 **A. Okay.**

25 Q. Do you recall reading that?

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1 **A. Yes, I do.**
2 Q. How would you characterize the permitted
3 uses in the B-2 zone?
4 **A. From what perspective?**
5 Q. Would you say that they were commercial?
6 retail? single-family residential? professional
7 office?
8 **A. Yes.**
9 Q. How many permitted uses are there in the
10 B-2 zone?
11 **A. I don't know. There's a list here. We**
12 **could count them.**
13 Q. How about if I help you out --
14 **A. Okay.**
15 Q. -- and tell you that there are 30?
16 **A. Okay.**
17 Q. Would that be acceptable?
18 **A. That's your testimony.**
19 Q. I'm asking you for your testimony. You
20 can count them if you want.
21 **A. I don't see the need.**
22 Q. I'm sorry?
23 **A. I don't see the need.**
24 Q. Okay.
25 **A. Unless the Board would like me to. I**

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1 **can, but I think -- I have it sitting in front of**
2 **me. If you have a specific question, you can ask.**
3 **Go ahead.**
4 Q. Would you admit that there are a number
5 of those uses that are significant trip
6 generators?
7 **A. I haven't studied them and I'm not a**
8 **traffic expert, so I'd really rather not go there.**
9 Q. Well, how about banks and savings and
10 loans institutions?
11 **A. I don't think those are high-traffic**
12 **generators.**
13 Q. How about a drugstore? a CVS?
14 **A. Not particularly, no.**
15 MR. VISCONI: I think -- I think this is
16 included in what she answered, that she's not a
17 traffic expert and she can't comfortably testify
18 as to the generation.
19 MR. SHEEHAN: I think that these uses
20 are so familiar with common experience that any
21 traffic -- any planner with a modicum of expertise
22 can address the questions that are being asked
23 regarding trip generation.
24 ACTING CHAIRMAN ROSENBAACH: So you are
25 suggesting that -- all right. I understand what

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1 you're suggesting.
2 BY MR. SHEEHAN:
3 Q. How about a restaurant with 40 seats and
4 liquor sales? Is that a heavy trip generator?
5 **A. You know, I think --**
6 UNIDENTIFIED SPEAKER: To what?
7 **A. Heavy compared to what, you know?**
8 ACTING CHAIRMAN ROSENBAACH: Excuse me.
9 Hold on. This is not a performance in which we
10 ask for audience applause or feedback or
11 criticism. This is testimony before a
12 quasi-judicial body.
13 Go ahead, Mr. Sheehan.
14 MR. SHEEHAN: Thank you, Mr. Chairman.
15 BY MR. SHEEHAN:
16 Q. Two more. Let's try two more. How
17 about a market? Heavy trip generator?
18 **A. I think it's just too vague really to**
19 **say.**
20 Q. All right.
21 **A. Size, scope, what type of market. Is it**
22 **a natural foods store? Is it a 7-Eleven? I mean,**
23 **I don't -- I'm just not comfortable answering**
24 **those questions.**
25 BOARD MEMBER NEWLIN: I don't understand

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1 your questioning either. Heavy compared to what?
2 It might be helpful if you say heavy compared to
3 what.
4 BY MR. SHEEHAN:
5 Q. Well, would you acknowledge that all of
6 the above uses in response to Mr. Newlin's inquiry
7 create more traffic than the proposed five-unit
8 townhouse development?
9 **A. Yes, most likely. I already answered**
10 **that when the planner asked me that question.**
11 Q. Was the answer yes?
12 **A. Yes.**
13 Q. Thank you.
14 MR. VISCONI: We've not -- we've not
15 discussed any traffic. We've not disputed any of
16 the traffic testimony. There was earlier traffic
17 testimony that commercial by the RSIS standards
18 was higher than this. We've not even addressed
19 that. We'll leave it to what the testimony is on
20 the record.
21 BY MR. SHEEHAN:
22 Q. All right. Is it true that the
23 development of the site for the certain permitted
24 uses in the zone enumerated in the prior questions
25 that I asked you would have a greater impact on

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1 adjacent residential uses in terms of not only
 2 traffic, but noise from operations, lighting, lot
 3 coverage, off-street parking and the like than the
 4 proposed use?
 5 **A. I think it's speculative. Like I said,**
 6 **we don't have a plan for an exact type of**
 7 **commercial use so I can't really compare and**
 8 **contrast.**
 9 Q. Do you acknowledge that the proposed
 10 development would be less dense than that of the
 11 multi-family uses permitted in the PRN zone?
 12 **A. That, I didn't evaluate.**
 13 Q. All right. Would you agree that the
 14 proposed parking in the front yard is more
 15 desirable than the required rear yard parking for
 16 retail uses in the B-2 zone?
 17 **A. Not necessarily. That depends on what**
 18 **your perspective is. If you're looking at the**
 19 **streetscape on Route 202, having the parking**
 20 **behind the building is more desirable.**
 21 Q. More desirable?
 22 **A. Yes.**
 23 Q. All right. Does the subject lot abut
 24 any other property developed for commercial uses
 25 permitted in the B-2 zone?

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1 **A. No.**
 2 Q. Is the property directly across Post
 3 House Road developed for residential or commercial
 4 use?
 5 **A. Yes. I testified that it was a**
 6 **residence across the street.**
 7 Q. Thank you.
 8 CHAIRMAN FLANAGAN: Excuse me,
 9 Mr. Sheehan. One moment. Let me do an
 10 administrative function here.
 11 It's one minute of 11. The important
 12 question is going to be -- and this is important
 13 for Ms. Caldwell -- is, is she going to be coming
 14 back here? Okay? And I'm not saying you're done
 15 or you're not done. For all I care, you have
 16 another hour. That's your business. But just in
 17 terms of trying to plan ahead. How much longer do
 18 you think you have?
 19 MR. SHEEHAN: I would think 15 minutes
 20 to 30 minutes.
 21 ACTING CHAIRMAN ROSENBAACH: Okay. Then
 22 we're adjourned for the evening. Okay?
 23 MR. SHEEHAN: All right.
 24 MR. VISCONI: Thank you.
 25 ACTING CHAIRMAN ROSENBAACH: All right.

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1 So our next regular meeting is when, Mr. Chair?
 2 CHAIRMAN FLANAGAN: That would be the
 3 third Thursday in February, which I don't know the
 4 date.
 5 MR. VISCONI: It's the 15th.
 6 BOARD MEMBER EICHLER: The 16th?
 7 MR. VISCONI: The 15th.
 8 SECRETARY TAGLAIRINO: That would be
 9 February 15th, everyone.
 10 ACTING CHAIRMAN ROSENBAACH: Okay.
 11 Mr. Sheehan, we will continue with your
 12 cross-examination.
 13 MR. SHEEHAN: Thank you.
 14 ACTING CHAIRMAN ROSENBAACH: And let me
 15 just say that there may be more questioning by the
 16 Board. Any member of the public who wishes to can
 17 also examine Ms. Caldwell. All right? When the
 18 time comes. Okay.
 19 CHAIRMAN FLANAGAN: Thank you.
 20 (Whereupon, the hearing adjourned at
 21 11:01 p.m. to February 15, 2018, at 7:30 p.m.)
 22
 23
 24
 25

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1 **CERTIFICATE**
 2
 3 I, BRIDGET LOMBARDOZZI, Notary Public
 4 and Certified Shorthand Reporter of the State
 5 of New Jersey, do hereby certify that the
 6 foregoing is a true and accurate transcript of
 7 the testimony as taken stenographically by and
 8 before me at the time, place and the date
 9 hereinbefore set forth.
 10 I DO FURTHER CERTIFY that I am neither
 11 a relative nor employee nor attorney nor
 12 counsel of any of the parties to this action,
 13 and that I am neither a relative nor employee
 14 of such attorney or counsel, and that I am not
 15 financially interested in the action.
 16
 17 -----
 18 BRIDGET LOMBARDOZZI,
 19 Certified Shorthand Reporter
 20 C.S.R. License No. XI01201
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