

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
February 15, 2018 – 7:30 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board of Adjustment Attorney, Gary Hall, called the 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.

REGULAR MEETING

The Roll call was taken and went as follows:

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

Mr. Flanagan noted that on February 12, 2018 at the Harding Township Committee meeting, the Township Committee made the following appointments:

Bill Kearns	4 year term expiring 12/31/2021	
Rita Chipperson	2 year term ending 12/31/2019	Alternate #1
Hugh Symonds	4 year term ending 12/31/2021	Alternate #2

Mr. Flanagan made a motion to approve the January 22, 2018 minutes. The motion was seconded by Mr. Rosenbach. On a voice vote all eligible members were in favor of approving the minutes.

Mr. Flanagan made a motion to approve the January 6, 2018 Site Inspection minutes. The motion was seconded by Mr. Newlin. On a voice vote all eligible members were in favor of approving the minutes.

RESOLUTIONS

Mr. Flanagan presented Resolution BOA #05-2018 for Peter Muratore. Mr. Flanagan made a motion to adopt the Resolution thanking Mr. Muratore for his service to the Township. It was seconded by Mr. Maselli. On a voice vote all were heartily in favor of approving the Resolution.

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# 17-17 Anthony & Linda Papadopoulos
38 Anthony Wayne Road, B26.01/L17, R-1 Zone

Mr. Flanagan made a motion to adopt Resolution BOA# 17-17 with amendments to page 4, paragraph c to specify that the barns maintain a rural appearance in accordance as to what was observed by the Board and that no substantial interior or exterior modifications are made to alter the rural character as well. It was seconded by Ms. Eichler. On a voice vote all were in favor of adopting the Resolution.

Application BOA# 19-17

Nancy McClelland
63 Millbrook Road, B15/L27.04

Mr. Flanagan made a motion to adopt the variance for BOA# 19-17 McClelland. It was seconded by Mr. Rosenbach. On a voice vote all were in favor of adopting the Resolution.

EXTENSION

Ginger Properties, LLC, 980 Mt. Kemble Rd.

Mr. Flanagan made a motion to approve an extension of this application. It was seconded by Mr. Newlin. On a voice vote, all were in favor of granting the extension.

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

A transcript of the testimony is appended to the minutes.

OTHER BUSINESS

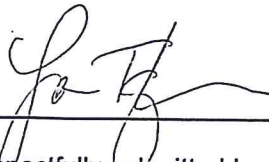
Mr. Flanagan and Mr. Newlin discussed ongoing training.

Mr. Flanagan note the Volunteer Seminar on February 24, 2018

Mr. Flanagan stated that the Board needs to hire a Planner.

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 10.36.

A handwritten signature in black ink, appearing to read 'Lori Taglairino', is positioned above a horizontal line.

Respectfully submitted by

Lori Taglairino, Board of Adjustment Secretary

HARDING TOWNSHIP
BOARD OF ADJUSTMENT

IN THE MATTER OF: : TRANSCRIPT
: :
CASE: BOA# S.Y.A.S, LLC : OF
1 Post House Road :
Block 33.03; Lot 1 :
R-1/B-2 Zones : PROCEEDING
X

Thursday, February 15, 2018
Municipal Building
21 Blue Mill Road
New Vernon, New Jersey
Commencing at 7:30 p.m.

BOARD MEMBERS PRESENT:

PHILIP ROSENBACH, Acting Chairman
MIKE FLANAGAN, Chairman
RITA CHIPPERSON
ALF NEWLIN
JOE SCHLEIFER
BILL KEARNS
DAN MASELLI
TERRI EICHLER

ALSO PRESENT:

PAUL D. FOX, P.E., CME

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1 APPEARANCES:

2

3 GARY HALL, ESQ.
Attorney for the Board

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5 DEMPSEY, DEMPSEY & SHEEHAN, ESQS
BY: BARTHOLOMEW SHEEHAN, ESQ.
Attorneys for the Applicant

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3 WITNESS: PAGE

4 WILLIAM HOLLOWS
By Mr. Sheehan.....29

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6 PAUL PHILLIPS
By Mr. Sheehan.....71

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9 EXHIBITS

10 IN EVD. DESCRIPTION PAGE

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12 No Exhibits were marked

13

14

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16 AUDIENCE MEMBERS:

17 Robert Ferraiuolo.....page 6

18 Joan Kellett.....page 19

19 Cathy Moore.....page 21

20 Matthew Cooney.....page 24

21 Diane Delmonico.....page 27

22 Cosmo Mastropaolo.....page 29

23 Dr. Robert Jutkowitz.....page 38

24 James Morgan.....page 43

25 Joseph Longo.....page 51

Robert Fritze.....page 61

Jennifer Ascari.....page 68

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1 CHAIRMAN FLANAGAN: SYAS is the only

2 application on the agenda tonight. We also need to

3 save a little bit of time at the end of the meeting.

4 We have some administrative items to go through. So

5 I'd like to save -- how much time do you think is

6 appropriate? Do you think 15 minutes.

7 BOARD MEMBER NEWLIN: Oh, yeah.

8 CHAIRMAN FLANAGAN: Fifteen minutes towards

9 the end of the meeting to cover these administrative

10 items rather than go through them now. So with that

11 said we are on to SYAS. And as we did last month, Phil

12 is going to continue to Chair this application for sake

13 of continuity.

14 MR. SHEEHAN: Thank you, Mr. Chairman.

15 ACTING CHAIRMAN ROSENBACH: Good evening,

16 Mr. Sheehan. I think we have to deal with a procedural

17 issue right off the bat. My understanding is when we

18 left last month we were examining -- actually, Mr.

19 Sheehan, and you were cross-examining Ms. Caldwell, our

20 planner called by Mr. Visconi. My understanding is

21 that she can't be here tonight.

22 And what you had said last month is that

23 you had 15,30 minutes of cross-examination left.

24 Thirty sounds like a lot. Fifteen sounds more

25 plausible, but it might be 30. In any event, the issue

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1 is do you have a suggestion or a request as to how you

2 would like to proceed given that you are not going to

3 be able to continue your cross-examination?

4 MR. SHEEHAN: I would waive further

5 cross-examination of the Objector's Planner relying on

6 the record as it exists.

7 ACTING CHAIRMAN ROSENBACH: Okay. I think

8 that's pretty straight forward. So be it. All right.

9 MR. SHEEHAN: All right. In terms of where

10 we are, Mr. Chairman --

11 ACTING CHAIRMAN ROSENBACH: Well, where we

12 are is, I believe, is if there is any other public

13 comment is where we are, and then if you have any

14 rebuttal that would be -- so why don't you please feel

15 free to sit there, you don't have to move.

16 So let me say to everybody here.

17 Throughout the months of this application people have

18 had plenty of opportunities to ask questions of

19 witnesses. They've had very few opportunities to make

20 statements as to how they view this application or any

21 aspect of it. Is there anyone here who wishes to make

22 a statement who has not already done so? This is your

23 chance. And if you don't do it now you're not going to

24 have another chance. Yes, sir. Please, sir, identify

25 yourself.

<p style="text-align: right;">Page 6</p> <p>1 MR. FERRAIUOLO: My name is Robert 2 Ferraiuolo. I am one of the owners of the property, 3 and I would like to make a statement. 4 BOARD MEMBER EICHLER: I'm sorry. For 5 clarification, you said you were one of the owners of 6 this piece of property? 7 MR. FERRAIUOLO: Correct. So if the Board 8 would allow me I'd like to make a statement. 9 ACTING CHAIRMAN ROSENBACH: Yes. 10 MR. HALL: Yes, we need to swear you in. 11 MR. FERRAIUOLO: I think I have been sworn 12 in. 13 ACTING CHAIRMAN ROSENBACH: That's fine. 14 That was several months ago. 15 MR. HALL: We'll do it again. Do you 16 solemnly swear the testimony you're about to give will 17 be the truth? 18 MR. FERRAIUOLO: I do. 19 MR. HALL: Thank you. 20 MR. FERRAIUOLO: Thank you. I have two 21 pages of notes but this won't take long. I just wanted 22 to point out by way of my background, I retired as the 23 statutory hearing officer for the environmental 24 enforcement for Hudson and Essex Counties. And that 25 experience has given me great respect and admiration</p>	<p style="text-align: right;">Page 8</p> <p>1 As I already have testified before the 2 Board, and I will do so again, I have first-hand 3 knowledge, and I think it's germane, as to the purchase 4 of this property. At the time it was purchased back in 5 the late '60s my father and Mr. Delmonico got together 6 and they purchased the two parcels. At that time there 7 was a deed restriction on the property which was going 8 to expire in 2000-and-something, as I recall, and it 9 was clearly established that our parcel would not be 10 suitable for a single-family home, but would have to 11 have some other kind of development in the future. 12 CHAIRMAN FLANAGAN: Sir, not to interrupt 13 you, but what are the two parcels? 14 MR. FERRAIUOLO: The Delmonico parcel which 15 is right across I guess it's 2 Post House right across 16 the street. 17 CHAIRMAN FLANAGAN: Across Post House from 18 your property? 19 MR. FERRAIUOLO: Right. 20 MR. HALL: It has the house on it? 21 MR. FERRAIUOLO: It has the house on it. 22 And that's the point that I wanted to make. 23 Mrs. Delmonico has come forward. I don't 24 know if she's here now or not. I'd love to discuss 25 this with her if she is. And she wants to know, well,</p>
<p style="text-align: right;">Page 7</p> <p>1 for this Board and the work that you've done. I mean, 2 it is precise. You go over every detail. You have my 3 utmost respect and I hope none of my comments are taken 4 as disrespectful because they certainly weren't 5 intended that way. 6 But I would just like to give you -- given 7 my background and my perspective, and listening to I'll 8 call them the objectors or the public over the past two 9 years and the transcripts that I've read, to me, my 10 perspective, this situation comes down to 11 sensibilities, unrealistic preferences, versus reason 12 and rights and fairness. That's how I see it. Let me 13 give you some examples. 14 I haven't really heard any substantive 15 objections to this project. I've heard nebulous 16 observations. I've heard baseless speculation -- I'm 17 going to give examples -- and just an abject lack of 18 reason. All without regard for basic fairness to a 19 family that has held this property for 50 years and is 20 now trying to take the opportunity to develop it. 21 Not one reasonable objection yet from the 22 applicant at great expense and effort. Every common 23 sense reason to support approval, again, in my opinion, 24 has been articulated in exquisite detail. Please allow 25 me to provide a couple of examples.</p>	<p style="text-align: right;">Page 9</p> <p>1 why can't we just build a single-family house there? 2 This was discussed 50 years ago. We had never had -- 3 in all of the years we have owned this property we have 4 never had a single offer from anyone or inquiry with 5 regard to a single-family home. Now, she feels that 6 there's an equivalency and I feel it's a false 7 equivalency. 8 And I would pose this: If her lot was 9 sitting there empty now, three acres to where it's 10 located, how fast would that sell for \$675,000 in 11 Harding Township? I leave that question. 12 We have -- I read in the transcript that 13 there are concerns about, well, is the property really 14 going to be marketable? Questions have arisen as to 15 what would happen if the property did not sell? Would 16 the applicant resort to rental? A wholly inscrutable 17 analogy was offered. Apparently from reading the 18 transcript someone made the case that they couldn't 19 sell their custom boat so how could we possibly feel 20 that, you know, it could be assured that this property 21 would sell? 22 First of all, the applicant in my opinion 23 has done market research to know that these properties 24 would be highly marketable to meet an increasing need 25 in the township. So if it were to occur I'm not sure I</p>

<p style="text-align: right;">Page 10</p> <p>1 understand why that would be a concern. This would be 2 something that a builder would deal with.</p> <p>3 One thing I do want to point out, in 4 reading the transcript, my last example, a resident 5 expressed a vague concern about being concerned about 6 public health. Something about protection of her lungs 7 or whatever. And if I understood that concern 8 correctly it really -- I can't understand how that 9 would really warrant a response, but I would like to 10 respond anyway as a licensed retired public health 11 officer, state of New Jersey, I can attest to the fact 12 that this project poses no credible threat to either 13 public or environmental health. So that should be, for 14 what it's worth, needs to be addressed.</p> <p>15 Now, in every meeting that I have attended 16 an attorney on behalf of someone, I don't think he's 17 here tonight, has consumed a substantial amount of time 18 poking and prodding at every small detail, the copious 19 amounts of information, drawings, plans, testimony, 20 that the applicant has brought forward. I take no 21 umbrage with the attorney. That's what they do. I 22 used to deal with attorneys all the time. This is what 23 he gets paid to do. But I ask to what end? What are 24 the objections of the clients? What are they? I 25 haven't been able to fathom those objections to this</p>	<p style="text-align: right;">Page 12</p> <p>1 the township's master plan who has a minimization of 2 commercial development and recognizes the need -- lack 3 of need for commercial space.</p> <p>4 Moreover, I would in all sincerity ask the 5 question: Would the residents in opposition truly 6 prefer a commercial establishment with all that entails 7 in terms of activity, traffic, aesthetics, over five 8 luxury condo units with extensive environmental 9 preservation and landscaping? Would that really be 10 preferred? I wonder. Maybe it's not. I don't know. 11 I don't know what the objections are and I really don't 12 know what the residents would prefer at this point.</p> <p>13 My family has a right to sell the property 14 on which it has paid taxes for 50 years. Continuing to 15 do so under present circumstances; i.e., having this 16 offer on the table imposes an undue and unjust hardship 17 on both the applicant and my family. The applicant has 18 made a proposal which benefits us as owners, the 19 applicant, and the township, while negatively impacting 20 neither the environment nor the public interest of 21 anyone -- property interest of anyone.</p> <p>22 The applicant addresses a clear need for 23 downsizing options for Harding Township seniors for 24 which a demand does, in fact, exist, perhaps even an 25 enhancement to property values for surrounding</p>
<p style="text-align: right;">Page 11</p> <p>1 point. I've only experienced wholly irrational 2 motivation on the part of opposition voices countless 3 times in my professional life. And if that is the 4 motive here it's unfair.</p> <p>5 Lastly, I have heard irrelevant commentary 6 questions about who will control, who buys and rents 7 here. Or how nice it is to have the land natural. I 8 agree, it's nice to have the land natural, but it 9 shouldn't be at my expense. If somebody wants to have 10 the trees and so forth they're certainly welcome to 11 purchase the property. But of course there are 12 interests of the owner and the applicant, which I 13 contend are entirely substantive and easily understood, 14 well documented, and most importantly in the best 15 interest of the township as well I would contend, all 16 parties.</p> <p>17 It has been reasonably demonstrated through 18 marketing analysis and activities that the property is 19 of low value for a single-family residence. Not a 20 single offer in the nine years we have had it on, or 21 the years that we owned it. Not a single offer for a 22 commercial project, not a single one, only preliminary 23 offers and informal discussion.</p> <p>24 I think it can be safely asserted that the 25 property is not really viable for a commercial use and</p>	<p style="text-align: right;">Page 13</p> <p>1 residents, and by my calculation backed by the envelope 2 the township will realize a tax revenue increase about 3 1,300 percent a year over what we're paying now.</p> <p>4 So I think it's reasonable to assert that 5 the applicant has put forth a long and expensive effort 6 to address any and all concerns of area residents and 7 comply with all requests made by the Board. Even to 8 the extreme extent of presenting professionally drawn 9 plans of a commercial building that no one had any 10 intention to build, just to show the Board the 11 comparison.</p> <p>12 The compendium prepared by the applicant, 13 which was handed out to all of you last week, does an 14 excellent job in setting forth in comprehensive detail 15 justification for the proposed project from every 16 aspect, including but not limited to assurances for 17 residents, environmental impact, conformance to the 18 master plan, market and need for housing units, 19 construction details, et cetera. Rather than taking up 20 the Board's time by verbally articulating these details 21 I would just refer anyone to the booklet that was 22 handed out.</p> <p>23 Clearly there is little or no need for 24 another commercial establishment at this location, but 25 a substantial need for downsized luxury housing for the</p>

<p style="text-align: right;">Page 14</p> <p>1 township's senior residents, for which the positive 2 benefits to all parties outweigh any negative impact 3 that I can see that could be brought forward. 4 So in closing I am hopeful that the Board 5 after due consideration of all that has transpired over 6 the past two years please favor us with an approval so 7 that we can move forward without further delay. Thank 8 you. 9 ACTING CHAIRMAN ROSENBACH: Are there 10 questions from Board members for Mr. Ferraiuolo? (No 11 response). I have some. 12 I think when you addressed us before you 13 gave us several potential types of uses that the 14 property had been approached by purchasers for use? 15 MR. FERRAIUOLO: Yes. 16 ACTING CHAIRMAN ROSENBACH: And actually at 17 the last hearing the witness who can't continue 18 tonight, Ms. Caldwell, noted that she didn't find that 19 testimony to be compelling because there were no 20 details about what had happened with regard to any of 21 those attempted uses. So let's see if we can fill that 22 in. 23 According to my notes, for instance, there 24 was an approach to this property for a construction 25 garage?</p>	<p style="text-align: right;">Page 16</p> <p>1 yes, that someone called about. There was nothing 2 formally put on paper on that one, you know, it was 3 just a general inquiry. 4 We also had a conversation with Quick Chek, 5 again informal, nothing put on paper. They said that 6 they would buy the property and they liked the lot and 7 they would possibly do a deal but there was not enough 8 traffic was there reason. They did not dispute the 9 price, but there was not enough traffic. 10 And there possibly could have been one or 11 two others. 12 ACTING CHAIRMAN ROSENBACH: Well, you 13 mentioned, actually going back to single-family homes 14 one of the things you said was a single-family home 15 with an office? 16 MR. FERRAIUOLO: Well, we never had an 17 offer for something like that. It was just a thought 18 we had. No one came forward. 19 ACTING CHAIRMAN ROSENBACH: Oh, okay. 20 MR. FERRAIUOLO: We asked one of the 21 realtors to market the property with that purpose in 22 mind thinking that maybe it could be sort of a 23 combination office and home and we had not a single 24 interest expressed. 25 ACTING CHAIRMAN ROSENBACH: So it is your</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. FERRAIUOLO: Yes. 2 ACTING CHAIRMAN ROSENBACH: So, I mean, 3 what was the price offered? 4 MR. FERRAIUOLO: The price offered for that 5 one, I believe, was \$625,000. And they made a formal 6 offer and they withdrew it within seven days. 7 ACTING CHAIRMAN ROSENBACH: And how much 8 was the price that you and your family wanted? 9 MR. FERRAIUOLO: We were asking the 10 \$675,000, if memory serves me correctly. 11 ACTING CHAIRMAN ROSENBACH: There was a day 12 care center, I believe? 13 MR. FERRAIUOLO: A day care center 14 approached us through a Realtor and they said that they 15 would have no problem with getting construction done 16 and so forth and so on. They had experience. And then 17 they withdrew. I don't remember the exact price but it 18 was in that same area. We accepted their offer and 19 they said, no, it's not going to work. 20 ACTING CHAIRMAN ROSENBACH: So there was no 21 price dispute or issue at that time? 22 MR. FERRAIUOLO: No. 23 ACTING CHAIRMAN ROSENBACH: Adult Novelty 24 Shop? 25 MR. FERRAIUOLO: That was an informal call,</p>	<p style="text-align: right;">Page 17</p> <p>1 testimony that since this property was put up for sale 2 in I believe 2009 -- 3 MR. FERRAIUOLO: Right. 4 ACTING CHAIRMAN ROSENBACH: There has not 5 been a single instance where a potential deal fell 6 apart because you wanted more money than a prospective 7 purchaser was willing to pay? 8 MR. FERRAIUOLO: That is correct. And I 9 would have to say in all honesty we were willing to 10 sell the property for less than when Mr. Geyer 11 eventually offered, but every deal fell through. 12 ACTING CHAIRMAN ROSENBACH: Thank you. I 13 have no -- 14 BOARD MEMBER CHIPPERSON: May I ask? I 15 think I asked this before and I don't recall getting an 16 answer, but from 2009 to 2018 was the property listed 17 on the multiple listing service? 18 MR. FERRAIUOLO: Yes. With Weichert-- 19 BOARD MEMBER CHIPPERSON: The entire 20 period? 21 MR. FERRAIUOLO: Caldwell Banker, and one 22 other agency. I think it might have been Weichert 23 twice with different people and Caldwell Banker. 24 BOARD MEMBER CHIPPERSON: But it was always 25 on-line?</p>

<p style="text-align: right;">Page 18</p> <p>1 MR. FERRAIUOLO: Always on until we started</p> <p>2 negotiating with Mr. Geyer and we held it off the</p> <p>3 market while he --</p> <p>4 BOARD MEMBER CHIPPERSON: When did you take</p> <p>5 it off the market?</p> <p>6 MR. FERRAIUOLO: Gee, it was just when we</p> <p>7 started with this application. So it had to be --</p> <p>8 you're talking a couple of years now.</p> <p>9 BOARD MEMBER CHIPPERSON: And it was listed</p> <p>10 as residential?</p> <p>11 MR. FERRAIUOLO: Both residential and</p> <p>12 commercial when it was listed.</p> <p>13 BOARD MEMBER CHIPPERSON: I don't -- I</p> <p>14 mean, I just have to say we -- my family spent two</p> <p>15 years looking for properties and land to build in town</p> <p>16 and I never came across this property. I think I</p> <p>17 mention this very early on.</p> <p>18 MR. FERRAIUOLO: You did. You did. And I</p> <p>19 said if this doesn't work out I'd be happy to sell it</p> <p>20 to you.</p> <p>21 BOARD MEMBER CHIPPERSON: Well, we're</p> <p>22 settled now, and I think I had asked for some evidence</p> <p>23 or something like that. Because I don't recall ever</p> <p>24 seeing it on multiple listings.</p> <p>25 MR. FERRAIUOLO: We had the Realtor here</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. FERRAIUOLO: Transcript. Because it</p> <p>2 was in the transcript. That's where I got it from the</p> <p>3 transcript.</p> <p>4 MS. KELLETT: I would like to read the</p> <p>5 transcript. I do not recall saying anything to that</p> <p>6 effect?</p> <p>7 MR. FERRAIUOLO: Taking the risk of my</p> <p>8 70-year-old memory I will tell you that I can pretty</p> <p>9 much see those words in the transcript that indicated</p> <p>10 that you were very concerned with your lungs and your</p> <p>11 interest was a health issue, but as I said it wasn't</p> <p>12 altogether clear, it was very vague, but in reading</p> <p>13 just that little bit that is in the transcript I</p> <p>14 thought, gee, if anybody thinks there's a health issue</p> <p>15 with this I need to set it straight.</p> <p>16 MS. KELLETT: I would like to have those</p> <p>17 minutes and I did not say that.</p> <p>18 MR. FERRAIUOLO: Okay.</p> <p>19 MS. KELLETT: Did not say anything. I will</p> <p>20 tell you what I did say, but I did not say</p> <p>21 anything about --</p> <p>22 MR. FERRAIUOLO: Well, if there's anything</p> <p>23 else I can answer for you I'd be happy to.</p> <p>24 MS. KELLETT: Thank you. No.</p> <p>25 ACTING CHAIRMAN ROSENBACH: Okay. Yes,</p>
<p style="text-align: right;">Page 19</p> <p>1 once. I don't know -- did she testify? I don't recall</p> <p>2 whether she did or not, but we had both realtors here</p> <p>3 to testify.</p> <p>4 BOARD MEMBER EICHLER: And I think the</p> <p>5 specific question is, it could be listed with Weichert</p> <p>6 but not necessarily in multiple listings.</p> <p>7 MR. FERRAIUOLO: Yes. It was in multiple</p> <p>8 listings. It definitely was in multiple listings with</p> <p>9 both.</p> <p>10 As a matter of fact, kind of a comical</p> <p>11 story at this point, the first Realtor that came along</p> <p>12 in 2009 told us it was worth \$1.8 million. And he did</p> <p>13 a whole analysis and so forth and so on. We were all</p> <p>14 very excited. There's four of us in the family. And</p> <p>15 you know naturally be -- but by the time the wetlands</p> <p>16 issue, you know, came to take hold and then we tried to</p> <p>17 market it nothing happened.</p> <p>18 ACTING CHAIRMAN ROSENBACH: Any other</p> <p>19 questions by any Board members? Does any member of the</p> <p>20 public have any questions for Mr. Ferraiuolo?</p> <p>21 MS. KELLETT: Joan Kellett, 21 Post House</p> <p>22 Road. Mr. Ferraiuolo, I am evidently the one who has</p> <p>23 the lung issue. I do not recall saying anything about</p> <p>24 the health aspect and my lungs. So I would like to</p> <p>25 have that struck from the record.</p>	<p style="text-align: right;">Page 21</p> <p>1 please.</p> <p>2 MS. MOORE: Hi. I am Cathy Moore. I'm at</p> <p>3 19 Post House Road. You kind of positioned yourself as</p> <p>4 being some kind of environmental health expert and that</p> <p>5 we have not as a community raised a concern. But I</p> <p>6 think this concern has been raised time and time again</p> <p>7 that we have a nitrate study that says you need to have</p> <p>8 four-plus acres in that area to support a single-family</p> <p>9 septic system. We're putting in a five-family septic</p> <p>10 system. That's a concern that every one of us has</p> <p>11 right off the bat, yet you're sitting here saying we</p> <p>12 haven't made a concern. So I really have to question.</p> <p>13 MR. FERRAIUOLO: Well, okay. First of all</p> <p>14 as to my being an expert, as I said, I'm a licensed</p> <p>15 public health officer. I have a license from the state</p> <p>16 of New Jersey. For 40 years, 30 as executive director</p> <p>17 and chief hearing officer I ran the regional</p> <p>18 commissions for both Hudson and Essex County serving</p> <p>19 two million people. The nitrate standard that you're</p> <p>20 referring to I don't think applies in this particular</p> <p>21 case and I don't think it's going to be --</p> <p>22 ACTING CHAIRMAN ROSENBACH: Well, hold on</p> <p>23 one second. I -- I think this is extra testimony, and</p> <p>24 I -- unless you wish us to hear you as an extra witness</p> <p>25 I really ought to hear debate about it. Now, if you</p>

<p style="text-align: right;">Page 22</p> <p>1 really want us to have you accepted as an expert 2 witness we can go through the expert qualification 3 process which includes specific expertise regarding the 4 nitrate studies. 5 MR. FERRAIUOLO: Okay. Then I would not -- 6 like I said, I'm just telling you what my credentials 7 are. Public health is a very, very broad field. Let 8 me just say then even as a non-expert if you can get an 9 approval through DEP standards for a septic system 10 you're protected, because those standards are very 11 strict. So I'll offer that. 12 ACTING CHAIRMAN ROSENBAACH: Do you have any 13 further questions? 14 MS. MOORE: Okay. And then the second 15 question that you said is that we have not talked about 16 what is acceptable. And I'd like to kind of go back 17 and take a look. Do you know the other retail 18 properties along -- 19 MR. FERRAIUOLO: I'm very familiar with 20 them. 21 MS. MOORE: Okay. Candy shop. Low 22 traffic. Been around for a couple of years, so 23 obviously financially doing okay. Next door to it, an 24 art gallery. Low traffic. Been around for a couple of 25 years. Got a bridal shop. Again, low traffic, been</p>	<p style="text-align: right;">Page 24</p> <p>1 question, I think, in fairness, if I might. What is 2 wrong with luxury condos? That's the real thing. 3 MS. MOORE: It's five. 4 ACTING CHAIRMAN ROSENBAACH: Well, I'll tell 5 you what, hold on. We're still on questions. If you 6 want to make statement you're going to have your 7 chance. If you have questions you have to identify 8 yourself. 9 MR. COONEY: Matthew Cooney, 55 Post House 10 Road. I know it must be frustrating, you hold property 11 worth \$1.8 million at one point, and they were trying 12 to get \$675,000 and you've had this property for a long 13 time. I mean, everything has a market value. Isn't it 14 possible that perhaps maybe the market value is just 15 below that, and if you market it for say, I don't know, 16 just throwing a number out there, maybe \$500,000 maybe 17 all of a sudden you'll get five offers. So could it 18 just be that the issue is that, simply the price is too 19 high? 20 MR. FERRAIUOLO: We instructed the realtors 21 in all cases that the four of us, an estate, a family 22 situation that's beyond what Hollywood can come up 23 with, but horrible, we instructed the Realtor to take 24 the best offer. To bring all offers. 25 MR. COONEY: But you have a list price. If</p>
<p style="text-align: right;">Page 23</p> <p>1 around for many years so obviously doing okay there. 2 You've got a builder. You've got a financial planner. 3 You've got all kinds of these little businesses that 4 have popped up and been successful and been there for a 5 long period of time. Those are all uses that are 6 consistent with the zoning that we have now. 7 MR. FERRAIUOLO: Nine years on the market 8 not one single viable offer. Fifty years in property 9 ownership not one single approach on a commercial use. 10 MS. MOORE: There's a lot of reasons 11 though, right, why units don't -- property doesn't 12 sell. Like, what did you list it for initially, has it 13 always been listed as \$600,000? 14 MR. FERRAIUOLO: May have been a little bit 15 higher but not much. But for most of the time it was 16 listed at price. 17 MS. MOORE: Again, what you can get is not 18 up for issue here, but is not also a concern for all of 19 us. 20 MR. FERRAIUOLO: So my point is the 21 marketability as a commercial business. I understand 22 you have the minimart, you've got the gas station, 23 whatever, but the market is not -- it's not viable. 24 And, of course, what I would also add, if I might. I 25 don't know whether it's in sort of answering your</p>	<p style="text-align: right;">Page 25</p> <p>1 you have a high list price you're not going to attract 2 bidders. I mean, it's the basic -- 3 MR. FERRAIUOLO: I mean, the realtors felt 4 it was reasonable. 5 MR. COONEY: But that doesn't mean it's 6 right. If something is not selling there's either 7 something fundamentally wrong with it or the price is 8 too high. 9 MR. FERRAIUOLO: Well, I think there's 10 something fundamentally wrong with this price in those 11 terms. Don't forget one-third -- it's nobody's fault, 12 this is just what happens with the environmental 13 concerns -- one-third of the lot disappeared for all 14 intents and purposes. 15 MR. COONEY: Well, that's all property. 16 MR. FERRAIUOLO: Well, not in the '60s when 17 my father bought it. 18 MR. COONEY: I mean, you can't change 19 nature. 20 MR. FERRAIUOLO: You can't change that. 21 Now you're dealing with two acres that's got some 22 zoning issues there. So for us the frustration is 23 this: For somebody to finally come along something 24 that in my opinion is beautiful and will help the 25 township, will generate a lot of tax money, and it</p>

<p style="text-align: right;">Page 26</p> <p>1 won't have an impact.</p> <p>2 MR. COONEY: But it doesn't conform to the</p> <p>3 current zoning and that's what the issue is.</p> <p>4 MR. FERRAIUOLO: Right. That's why we're</p> <p>5 here with this Board to make a case.</p> <p>6 MR. COONEY: But the zoning is that way for</p> <p>7 a reason. So once again, maybe the price of that is</p> <p>8 the issue?</p> <p>9 MR. FERRAIUOLO: You know, I received a</p> <p>10 letter from the township about two years ago saying</p> <p>11 that they were looking at the zoning, and if you read</p> <p>12 the master plan they're really not encouraging. They</p> <p>13 come right out, I believe, and say they don't need</p> <p>14 additional commercial development.</p> <p>15 MR. COONEY: But the master plan makes</p> <p>16 sense. You have these little shops. Having five --</p> <p>17 these big luxury -- doesn't fit into the escape of that</p> <p>18 area.</p> <p>19 MR. FERRAIUOLO: See, in my opinion I think</p> <p>20 it enhances it. It's my opinion.</p> <p>21 ACTING CHAIRMAN ROSENBACH: Can I make a</p> <p>22 suggestion? Please. That --</p> <p>23 MR. FERRAIUOLO: I'm sorry.</p> <p>24 ACTING CHAIRMAN ROSENBACH: No, no. That --</p> <p>25 I mean, nobody is doing anything wrong, but I am hoping</p>	<p style="text-align: right;">Page 28</p> <p>1 subdivider of the area and we were deed restriction.</p> <p>2 It was always the intention of the neighborhood that</p> <p>3 residential homes would be built in number one and</p> <p>4 number two. So you did not ever market the home</p> <p>5 commercially. It was not allowed to be marketed</p> <p>6 commercially until after 2000.</p> <p>7 MR. FERRAIUOLO: One, I didn't say that I</p> <p>8 marketed it commercially prior to 2000. Two, what</p> <p>9 you're saying --</p> <p>10 MS. DELMONICO: I thought you said --</p> <p>11 MR. FERRAIUOLO: No, no. I said, in all the</p> <p>12 time we've had the property we've only had it on the</p> <p>13 market since 2009. And I have to tell you that you're</p> <p>14 categorically incorrect. I was personally there with</p> <p>15 my father when he was buying the property.</p> <p>16 MS. DELMONICO: I have a copy of the deed.</p> <p>17 ACTING CHAIRMAN ROSENBACH: Well, okay, you</p> <p>18 know what? I'll tell you what, let me say again, I'll</p> <p>19 tell you what, if you all want to have debates here's</p> <p>20 what we'll do. The Board will recess. We will come</p> <p>21 back next month and maybe you'll all be done.</p> <p>22 If you want to ask a question, which Ms.</p> <p>23 Delmonico, no offense, you did not do. You gave a nice</p> <p>24 speech. You said something. And again, and I'm not</p> <p>25 kicking on anybody, but we've now had two in a row</p>
<p style="text-align: right;">Page 27</p> <p>1 that we finish this application tonight. And one of</p> <p>2 the ways that we're going to finish is if we go through</p> <p>3 the drill, which is they ask questions, and where the</p> <p>4 witnesses answer them. And then if you have a</p> <p>5 statement to make you get to make a statement.</p> <p>6 So, no offence Mr. Cooney. I didn't want</p> <p>7 to hear a debate about is it, is it not. If you have a</p> <p>8 question, ask it; if you have a statement wait until</p> <p>9 later. Otherwise we're going to be here for a long</p> <p>10 time and I do not want this to be back on the agenda</p> <p>11 next month. Okay. I really don't, okay?</p> <p>12 Does anybody else have any questions for</p> <p>13 this witness?</p> <p>14 MS. DELMONICO: Diane Delmonico, 2 Post</p> <p>15 House Road. When your father bought the property in</p> <p>16 1973 --</p> <p>17 MR. FERRAIUOLO: It was in the '60s.</p> <p>18 MS. DELMONICO: I have a copy of the deed</p> <p>19 from 1973. It was purchased by the Post House Road</p> <p>20 Neighborhood Association and it was sold to your father</p> <p>21 because he planned to build a single-family home.</p> <p>22 There were deed restrictions in that deed that went</p> <p>23 from 1973 to the year 2000. And it says only a</p> <p>24 single-family home could be built on there.</p> <p>25 My lot same thing. My was purchased by the</p>	<p style="text-align: right;">Page 29</p> <p>1 after I just said it. If you have questions please ask</p> <p>2 them. If you don't have questions you're going to have</p> <p>3 your chance to say whatever you want to say and then be</p> <p>4 questioned about what you say. All of you.</p> <p>5 So are there questions for this witness?</p> <p>6 Yes, please.</p> <p>7 MR. MASTROPAOLO: Good evening. Cosmo</p> <p>8 Mastropaolo, 25 Post House Road. My question pertains</p> <p>9 to pervious and impervious requirements for the lot.</p> <p>10 Because where I came from in Mountain Lakes that was</p> <p>11 extremely important. They wouldn't allow any</p> <p>12 structures that impacted the impervious soil</p> <p>13 requirements or pervious soil requirements. And I'd</p> <p>14 like to know if this has gone through that process?</p> <p>15 ACTING CHAIRMAN ROSENBACH: That's a fair</p> <p>16 question. I don't think it's for this witness. And</p> <p>17 perhaps Mr. Burke will -- can you answer that question?</p> <p>18 Or, I'm sorry, Mr. Hollows, can you answer that, or is</p> <p>19 that a site plan issue that we're not at yet?</p> <p>20 MR. HOLLOWES: We're not at that part yet,</p> <p>21 but we've had a schematic diagram of what the</p> <p>22 stormwater management would be. It would take care of</p> <p>23 an impervious coverage for the site.</p> <p>24 MR. SHEEHAN: I think that the question</p> <p>25 was, does the site comply with the lot coverage</p>

<p style="text-align: right;">Page 30</p> <p>1 standards in the district? And my recollection was 2 that this plan did, and that the commercial plan did. 3 Can you respond to that, Mr. Hollows? 4 MR. HOLLOWS: I can. The allowable lot 5 coverage is 30 percent, and where the proposed plan is 6 15.4. 7 ACTING CHAIRMAN ROSENBACH: Okay. Thank 8 you. 9 BOARD MEMBER NEWLIN: Can I ask Paul? You 10 agree with that? 11 MR. FOX: Yes. 12 BOARD MEMBER NEWLIN: Thank you. 13 ACTING CHAIRMAN ROSENBACH: Does that 14 satisfy your -- does it answer your question? 15 MR. MASTROPAOLO: If it meets the 16 requirements of the township it meets mine. I didn't 17 hear those words brought up at the meetings, so I just 18 wanted to confirm that. 19 ACTING CHAIRMAN ROSENBACH: That's fine. 20 Are there other questions pointed at this witness, 21 whether or not he turns out to be the right person to 22 answer it? (Laughter.) 23 BOARD MEMBER CHIPPERSON: I do. I just 24 took a look at my notes from when you were here last 25 time. So when did you get an appraisal from your</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. FERRAIUOLO: I think the Realtor had it 2 on for like a couple of weeks or whatever, and we 3 started really becoming suspicious of what he had in 4 mind. He thought -- I can remember him saying that 5 maybe a Home Depot. I mean, come on, not even close. 6 So that wasn't a good choice of a Realtor, I don't 7 think. 8 BOARD MEMBER CHIPPERSON: And then when did 9 you reduce the price? 10 MR. FERRAIUOLO: Pretty soon thereafter I 11 would say -- I'd be happen to -- I can give you all of 12 these dates. If I go back and look up the dates that 13 we listed with the various realtors I'd be happy to do 14 that, but I don't recall. Sometime in 2009. 15 BOARD MEMBER CHIPPERSON: Okay. You think 16 you were at \$675,000 at some point in 2009? 17 THE WITNESS: Yes. 2009, 2010, yeah. 18 BOARD MEMBER CHIPPERSON: Okay. 19 ACTING CHAIRMAN ROSENBACH: Other questions 20 for this witness, please? (No response.) Okay. 21 Great. 22 MR. FERRAIUOLO: Thank you very much for 23 the opportunity. 24 ACTING CHAIRMAN ROSENBACH: Are there any 25 other members of the public? Mr. Mastropaolo?</p>
<p style="text-align: right;">Page 31</p> <p>1 Realtor? 2 MR. FERRAIUOLO: 2009, I believe it was. 3 BOARD MEMBER CHIPPERSON: Because last time 4 you were here, if my notes are right, it says that the 5 property appraised for \$600,000 in 2000? 6 MR. FERRAIUOLO: For tax purposes. 7 BOARD MEMBER CHIPPERSON: My notes say for 8 Harding assessment it was \$400,000 to \$450,000. 9 MR. FERRAIUOLO: I believe it was -- when 10 we closed out the estate we had to get an assessment on 11 the property, and I believe that, for IRS purposes, was 12 \$600,000. I'm not sure. 13 ACTING CHAIRMAN ROSENBACH: Which means 14 nothing to us. 15 BOARD MEMBER CHIPPERSON: Well, it was an 16 appraisal? 17 MR. FERRAIUOLO: We had an appraisal done 18 for the Internal Revenue Service. 19 BOARD MEMBER CHIPPERSON: By a real estate 20 appraiser? 21 MR. FERRAIUOLO: Yes. By a licensed 22 appraiser, I guess. What the township has it on, I'm 23 not even -- truthfully, I can't even tell you I know. 24 BOARD MEMBER CHIPPERSON: Okay. So did you 25 list the property for \$1.8 million in 2009?</p>	<p style="text-align: right;">Page 33</p> <p>1 MR. MASTROPAOLO: Yes. When my wife and I 2 moved here I guess it's going to be about 13 or so 3 years, we lived in Mountain Lakes, we came here, not 4 only was it the taxes, but also because of the whole 5 atmosphere that was here, and the minimum acreage was 6 three when we moved here. 7 Shortly after arriving here I attended a 8 few meetings where they increased the minimum to five 9 acres, I believe, which was fine by me because I still 10 had more than five acres and I wasn't subdividing, so 11 it was fine. That changed because of -- I understand 12 because of my septic and well water issues that we went 13 from three acres to five acres for minimum lot to build 14 a new home on it. 15 This I feel is a challenge to that based on 16 my interpretation of what I heard. The other is the 17 fact that my neighbors informed me that when we were 18 having a crises, a long time drought in Mountain Lakes 19 and I was on the main lake at the time, lost about 20 25 percent of the shoreline because of the distance and 21 the length of time of the drought. 22 I found out from neighbors here that people 23 along 202 their wells went dry during that period of 24 time. Now, I'm not saying that's going to happen every 25 other year, but the point was it had a definite impact</p>

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1 on the neighbors down in the lower level of Post House
 2 Road during a severe drought. I can't in my -- I can't
 3 fathom if all of this work hasn't taken any exception
 4 into its calculations.

5 It says everything is normal. Nothing
 6 changes, and we just prod along. I believe they're
 7 doing an injustice to the development, those people who
 8 buy into that development. And we all make bad
 9 decisions. It's a shame that the people who bought the
 10 lot 50 years ago waited this long, but I own stocks
 11 that went belly-up and what am I supposed to do? Who
 12 do I cry to?

13 So I thin, and I would agree with this
 14 gentleman here, that maybe the asking price is
 15 outrageous. Drop it to where it can move. Take your
 16 money, split it amongst all your kids and relatives and
 17 get out. That's my statement. Thank you.

18 ACTING CHAIRMAN ROSENBACH: Not quite done
 19 yet. Are there any questions for Mr. Mastropaolo?

20 BOARD MEMBER NEWLIN: Yes, I have a
 21 question. I'd like to just understand in summary, if I
 22 can say your primary concern is not the fact that it's
 23 townhouses but the density; is that correct? Or am I
 24 --

25 MR. MASTROPAOLO: It's a combination of the

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1 density and the ability of -- I don't look at it as
 2 five acres, I look at it as a three-acre lot, because
 3 two acres we can't each touch. And I don't know how
 4 they're going to proceed in avoiding anyone that lives
 5 there doing anything to the water that's going to have
 6 an impact down the street. But discounting that fact,
 7 yes, the environment is being impacted I think
 8 dramatically and no efforts have been made to my
 9 knowledge to take it to when we have these special
 10 situations like a major drought failure in the area.

11 And how are these homes going to operate with no water?

12 BOARD MEMBER NEWLIN: Okay. The
 13 environment impacted by density. I get that. Anything
 14 else?

15 MR. MASTROPAOLO: That and the fact that we
 16 are five acres, I believe, is now the minimum acreage?

17 BOARD MEMBER NEWLIN: That's for certain
 18 areas of the town, that's not throughout the town.
 19 Certain zones have five-acre zones, but not everywhere
 20 in town.

21 MR. MASTROPAOLO: So the people that adjoin
 22 this lot working your way towards the farm they have
 23 over six acres and they said based on what happens here
 24 they want to subdivide their lots and put up something.
 25 So then this thing can just take a life of its own.

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1 There's got to be some way of controlling it, because
 2 what you do for one you've got to kind of be prepared
 3 to do for the next one that belly's up to the podium
 4 and says, I've got five, six acres, how about putting
 5 five townhouses on my lot?

6 So just passing that information on because
 7 it's already being discussed.

8 BOARD MEMBER NEWLIN: Thank you.

9 MR. MASTROPAOLO: You're welcome.

10 CHAIRMAN FLANAGAN: So you're getting to
 11 the point to say the neighbor has a very similar lot.
 12 And I think it's stated previously, I forget, that why
 13 can't I install five townhouses. So I think what
 14 you're saying, correct me if I'm wrong, is that you
 15 don't think there's anything unique about this lot that
 16 could not be replicated in the neighbor's lot or across
 17 the street or elsewhere.

18 MR. MASTROPAOLO: I don't know that, but
 19 the party that's stating this who owns that property
 20 says, why not. I have no water problems on my lot. I
 21 have no wetlands. I should be able to get to do the
 22 same thing. So they're looking at whatever you do for
 23 the three-acre lot, which I call three acres not five,
 24 is that it should be just as easy to do for them. So
 25 this creates, you know, you do for one, you do for all,

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1 or you wind up with a lawsuit of some kind.

2 MR. SHEEHAN: Mr. Chairman, maybe it would
 3 be time to allay Mr. Mastropaolo's concerns by telling
 4 him that there are no residential values for zoning
 5 cases and I think that that might give him some
 6 comfort.

7 ACTING CHAIRMAN ROSENBACH: Well, what you
 8 are saying, Mr. Sheehan, I can see that it's literally
 9 true, but on the other hand I think that a point is
 10 being made to us also that if Ms. Delmonico were to
 11 come to us next month and say I would like to develop
 12 my lot for three or four or five townhomes I don't
 13 think -- and if we were to approve this application I
 14 don't think we can ignore the fact that right across
 15 the street we had approved a similar application. So
 16 say you are correct, and it is true that they're not
 17 residential, but nor are they non-existent or in a
 18 vacuum.

19 MR. SHEEHAN: And if her application
 20 enjoyed the same support under the statutory criteria
 21 she should get her approval, and in fact it would
 22 benefit beyond that need for this type of housing in
 23 Harding Township. Each case is site specific and must
 24 present the proofs that are required for approval.

25 ACTING CHAIRMAN ROSENBACH: When I say okay

<p style="text-align: right;">Page 38</p> <p>1 it doesn't mean I agree, it means we have heard you.</p> <p>2 Okay. Are there any other questions for Mr.</p> <p>3 Mastropaolo from any Board member or any member of the</p> <p>4 public. (No response.) Okay. Next, is there anyone</p> <p>5 who wants to make a statement? Yes, sir. Please</p> <p>6 identify yourself.</p> <p>7 MR. JUTKOWITZ: My name is Dr. Robert</p> <p>8 Jutkowitz, spelled J-u-t-k-o-w-i-t-z. First, I would</p> <p>9 like to refute what's been mentioned just now how this</p> <p>10 is going to solve the problem of seniors in Harding</p> <p>11 Township.</p> <p>12 ACTING CHAIRMAN ROSENBACH: Would you give</p> <p>13 us your address?</p> <p>14 DR. JUTKOWITZ: 54 Post House Road.</p> <p>15 ACTING CHAIRMAN ROSENBACH: Thank you.</p> <p>16 DR. JUTKOWITZ: It does not do that. It's</p> <p>17 indicated they cannot limit this to people in Harding</p> <p>18 Township. It can come from somebody from Spokane</p> <p>19 Washington can buy it or anywhere. And the survey that</p> <p>20 they did I think the Board understood that it was not a</p> <p>21 significant proper survey.</p> <p>22 The other thing I think you mentioned is</p> <p>23 that the rural character of Harding Township and</p> <p>24 certainly Post House Road. And I think the idea of</p> <p>25 taking down all the trees is environmentally</p>	<p style="text-align: right;">Page 40</p> <p>1 there are probably other possibilities in designing a</p> <p>2 commercial lot.</p> <p>3 BOARD MEMBER NEWLIN: Yes, it is, but the</p> <p>4 point, I think it's fair enough to say, is that they</p> <p>5 are practically legally entitled to build a property of</p> <p>6 that size because it conforms. And it's not a trick</p> <p>7 question, I'm just curious. Have you thought about a</p> <p>8 proposal versus that?</p> <p>9 DR. JUTKOWITZ: What is best suited for</p> <p>10 that property is a ranch house.</p> <p>11 BOARD MEMBER NEWLIN: I'm just asking you</p> <p>12 if they go to commercial property like that?</p> <p>13 DR. JUTKOWITZ: I think it's possible that</p> <p>14 it could be acceptable in my mind. But it's not just</p> <p>15 me that makes that decision for the people on Post</p> <p>16 House Road, so I think we have an organization that</p> <p>17 meets -- that comes together to talk about what's going</p> <p>18 on there.</p> <p>19 BOARD MEMBER NEWLIN: I think, but just to</p> <p>20 be fair, one of the options just to leave it as it is.</p> <p>21 Probably everybody on Post House Road would prefer</p> <p>22 that, but that's not necessarily a -- that's not one of</p> <p>23 the options that's out there. So I just want to</p> <p>24 understand if you thought about the development choices</p> <p>25 that they could make if you had to lien in somewhere.</p>
<p style="text-align: right;">Page 39</p> <p>1 destructive even though they're going to put up Fir</p> <p>2 trees eventually.</p> <p>3 As I talk about the rural nature of Harding</p> <p>4 Township I can see foxes walking in my backyard. I</p> <p>5 have deer there and an occasional bear. That's what I</p> <p>6 came here for. I came from Staten Island which was</p> <p>7 over built and I don't want to see that happening on</p> <p>8 Post House Road or in Harding Township. And I think</p> <p>9 this development is ill-thought-out, and not in keeping</p> <p>10 with the environment of the road itself. Thank you.</p> <p>11 ACTING CHAIRMAN ROSENBACH: Any questions</p> <p>12 for Dr. Jutkowitz?</p> <p>13 BOARD MEMBER NEWLIN: I do.</p> <p>14 ACTING CHAIRMAN ROSENBACH: I do too, but</p> <p>15 you go first.</p> <p>16 BOARD MEMBER NEWLIN: So let me ask you a</p> <p>17 question then, sir. Would you prefer to have a</p> <p>18 commercial property built in this lot?</p> <p>19 DR. JUTKOWITZ: If it was a reasonable</p> <p>20 commercial property and cars stored across the street</p> <p>21 that doesn't have a lot of traffic, yes.</p> <p>22 BOARD MEMBER NEWLIN: Did you see the</p> <p>23 conforming sample design that they provided? I mean</p> <p>24 it's exactly what we --</p> <p>25 DR. JUTKOWITZ: That's one possibility, but</p>	<p style="text-align: right;">Page 41</p> <p>1 But I think you've answered my question. Thank you.</p> <p>2 ACTING CHAIRMAN ROSENBACH: Here's mine.</p> <p>3 Let's distinguish two different types of community</p> <p>4 need: One, is a need felt or possessed by the existing</p> <p>5 residents of Harding to be able to downsize to a</p> <p>6 townhouse luxury townhouse instead of a large what's</p> <p>7 called an estate house. That's one thing.</p> <p>8 The other type is what's called a general</p> <p>9 community need where Harding Township itself has a need</p> <p>10 for an alternate type of luxurious living for people</p> <p>11 who want to move to Harding and enjoy the amenities,</p> <p>12 but not live on estate house but finding some other</p> <p>13 type of housing that they find compatible for their</p> <p>14 wealth and lifestyle and they could move for instance</p> <p>15 like from Staten Island.</p> <p>16 So can we not as a Board distinguish those</p> <p>17 two types of needs? I mean, is it important for us to</p> <p>18 find that this facility if it were to be built has to</p> <p>19 be limited to people already living in Harding? Would</p> <p>20 we be satisfying a Harding need if it were to draw</p> <p>21 people into Harding?</p> <p>22 DR. JUTKOWITZ: Well, can you limit it just</p> <p>23 to people in Harding?</p> <p>24 ACTING CHAIRMAN ROSENBACH: No.</p> <p>25 DR. JUTKOWITZ: You can't.</p>

<p style="text-align: right;">Page 42</p> <p>1 ACTING CHAIRMAN ROSENBACH: But why is that</p> <p>2 an issue? I mean, a lot of people have moved to</p> <p>3 Harding from other places, almost everybody.</p> <p>4 BOARD MEMBER MASELLI: Well, he presented</p> <p>5 it as being presented that way.</p> <p>6 ACTING CHAIRMAN ROSENBACH: Well, we can</p> <p>7 brush that aside.</p> <p>8 DR. JUTKOWITZ: But this can solve the</p> <p>9 problem of people 65 and over in Harding Township and</p> <p>10 it doesn't. It doesn't.</p> <p>11 ACTING CHAIRMAN ROSENBACH: Okay. But</p> <p>12 again if we as a Board said that we happen to agree</p> <p>13 with you, that it doesn't solve that in the slightest,</p> <p>14 but whether or not it is intended to it creates an</p> <p>15 alternative housing style that might be good for the</p> <p>16 community. It might not belong in this location, it</p> <p>17 might, that's a different issue, but abstractly it</p> <p>18 might be good for the community.</p> <p>19 DR. JUTKOWITZ: It might. I think it would</p> <p>20 be in another area, but not in this area.</p> <p>21 ACTING CHAIRMAN ROSENBACH: Okay. Thank</p> <p>22 you. Any other questions? (No response.) Okay.</p> <p>23 Thank you. Is there anyone else who wishes to make a</p> <p>24 statement at this time? Yes. Let's start with you.</p> <p>25 Go ahead. You have to identify yourself and your</p>	<p style="text-align: right;">Page 44</p> <p>1 years old, but it still has an effect today, I'm</p> <p>2 thinking. So it's close to number One Post House Road.</p> <p>3 It would adversely even in a</p> <p>4 quarter-billion years old impact the development that's</p> <p>5 being considered now in that it changed the underlying</p> <p>6 rock strata as faults do. I'm told by a geologist</p> <p>7 friend that these -- the width of these faults could be</p> <p>8 several hundred feet.</p> <p>9 ACTING CHAIRMAN ROSENBACH: Mr. Morgan, I</p> <p>10 just want to say that, you know, it's clearly -- that</p> <p>11 statement is clearly hearsay. Something that you've</p> <p>12 been told that you're now telling us, and it's also</p> <p>13 you're being told it by a geologist who is not here and</p> <p>14 so I appreciate that. I just want to tell you that I</p> <p>15 don't think the Board can take that last statement into</p> <p>16 account.</p> <p>17 MR. MORGAN: Okay. So the concern is that</p> <p>18 this could adversely impact water level yields and</p> <p>19 depths for One Post House Road, like I think it has for</p> <p>20 everybody down at the lower part of Post House Road.</p> <p>21 Me being one of them, and number 3 Post House Road and</p> <p>22 likely others.</p> <p>23 And as an interesting point, at the top of</p> <p>24 the hill on Post House Road the yields are the best.</p> <p>25 The shallowest and the most gallons per minute. You</p>
<p style="text-align: right;">Page 43</p> <p>1 address, please.</p> <p>2 MR. MORGAN: James Morgan, 4 Post House</p> <p>3 Road. And our property line at number 4 Post House</p> <p>4 Road is just 125 feet from number One Post House Road.</p> <p>5 And my wife and I are against this townhouse</p> <p>6 application for the reasons previously stated by the</p> <p>7 residents, such as large size of the structure not</p> <p>8 meeting the code; location of luxury townhouses right</p> <p>9 on busy and noisy Route 202 and nearby noisy 287 and</p> <p>10 other resident's concerns which I won't repeat again.</p> <p>11 But more -- what I haven't heard brought up</p> <p>12 so far, a second point I would like to make is several</p> <p>13 meetings ago there was talk about a geological study,</p> <p>14 and I suggest such a study might uncover very useful</p> <p>15 information for the lot owner and the Board of</p> <p>16 Adjustment. Specifically, we see two big geological</p> <p>17 concerns; namely, the Ramapo fault is nearby, and also</p> <p>18 the Ancient Lake Passaic covered this area, covered</p> <p>19 most of Harding, but let me go to the Ramapo fault</p> <p>20 first.</p> <p>21 It's a major fault line from Pennsylvania</p> <p>22 all the way through Flemington through my property, all</p> <p>23 the way up to the Ramapo mountains, and it goes in the</p> <p>24 backyards of the lower houses on Post House Road.</p> <p>25 You'll see a 6-foot drop. It's a quarter of a billion</p>	<p style="text-align: right;">Page 45</p> <p>1 get down to the bottom they're the deepest and the</p> <p>2 least gallons per second, per minute.</p> <p>3 So directly related to this is the well</p> <p>4 drilling experience of the original owner of number 3</p> <p>5 Post House Road across the street from me, Mr. Al</p> <p>6 Clause (ph.) When he built his house the driller went</p> <p>7 down 300 feet and said do you want me to go further</p> <p>8 with zero water? Mr. Clause says no let's try another.</p> <p>9 He went down another 300 feet and got a gallon and a</p> <p>10 half. And he said stop, I'll have to live with that.</p> <p>11 And he did live with it. He's no longer living there</p> <p>12 now, of course, but he couldn't water his lawn for more</p> <p>13 than a half an hour or he would just run out of water.</p> <p>14 So the other geological factor is Lake</p> <p>15 Passaic. Fifteen thousand years ago when the glacier</p> <p>16 came down, the Wisconsin Glacier came down and ended at</p> <p>17 Morristown when it started to recede and melt the water</p> <p>18 came down here and was stopped in Bernardsville by the</p> <p>19 mountain ranges so we ended up with a lake 30 miles</p> <p>20 long north and south beyond Boonton, Bernardsville to</p> <p>21 Boonton and beyond, and ten miles wide from Post House</p> <p>22 Road to Summit or somewhere eastward. And the bottom,</p> <p>23 well, it rose to 400 feet, which is right where Post</p> <p>24 House Road pond is. So all the lots below that and</p> <p>25 just about all of Harding was under water for a long</p>

<p style="text-align: right;">Page 46</p> <p>1 time, thousands and thousands of years. And I know, I 2 see on my property I have a 3-foot deep layer of clay, 3 real tough impervious yellow clay and that, of course, 4 severely -- well, a perk test failed, of course. I had 5 to go to something else. And hard to garden with clay. 6 So I'm suggesting that from Post House 7 Road's pond downward you're going to have clay all the 8 way down as a sediment of the lake, and you're going to 9 have a tough time with -- that will impact the septic 10 system for number One Post House Road. 11 So I see these two things potentially 12 causing a major problem for anyone who builds on number 13 One Post House Road. The impervious clay and the tough 14 drilling. I had to go down 300 feet. Got two gallons 15 a minute. I'm number four again. So I just wanted to 16 bring that point up. The two geological points. 17 ACTING CHAIRMAN ROSENBACH: Before you 18 proceed, if I may, I'd like to ask both Mr. Hollows and 19 Mr. Fox if they have any comments on what you've just 20 been addressing. Mr. Hollows, may I start with you? 21 Do you have any comments, or if you're prepared to 22 address this? 23 MR. SHEEHAN: Do you have the perk test? 24 MR. HOLLOWS: Well, we did do a perk test 25 for the site and it was satisfactory. We wouldn't be</p>	<p style="text-align: right;">Page 48</p> <p>1 you. All right. Mr. Morgan, thank you for raising 2 those points. Why don't you continue. 3 MR. MORGAN: Could I just ask one question 4 of Mr. Fox? 5 MR. FOX: Sure. 6 MR. MORGAN: What do you suppose is the 7 answer? Why would the top of Post House Road have 8 excellent water yields and shallow then when you get 9 below the fault it falls apart? You go -- on Route 202 10 they go 600 feet. Post House Road two of them went 11 300 feet. Why do you suppose that is? 12 MR. FOX: I would expect the reason is that 13 the higher elevation properties there is more grinding 14 and geological wear on the bedrock that's below the 15 topsoil in the overlying burden. And the grinding of 16 the glaciers as it moves across the high points of the 17 topography creates a much better zone for permeability 18 and ground water. 19 ACTING CHAIRMAN ROSENBACH: Okay. 20 MR. MORGAN: One more point, shorter. So 21 our third and last point going back to our concern 22 regarding the large size of the townhouse structure, 23 our view from 4 Post House Road would be somewhat 24 impacted half a year in winter. And we built our house 25 55 years ago with many large windows to take advantage</p>
<p style="text-align: right;">Page 47</p> <p>1 here if it wasn't. And we sized it according to what 2 would be allowed by DEP regulations. 3 BOARD MEMBER NEWLIN: Besides what -- 4 MR. HOLLOWS: The bed. 5 BOARD MEMBER NEWLIN: I'm sorry? 6 MR. HOLLOWS: The disposal bed. 7 ACTING CHAIRMAN ROSENBACH: Based on the 8 size of the development that has been presented to us? 9 MR. HOLLOWS: Correct. 10 ACTING CHAIRMAN ROSENBACH: Okay. Mr. Fox, 11 do you have anything you want to add to this? 12 MR. FOX: I would agree that there is a 13 geological fault that runs through the area. It tails 14 right up to the Indian Point Nuclear Plant, in fact. 15 However, generally a fault would increase 16 the amount of available water just due to the fact that 17 it increases the cracks in the rock, increases 18 availability of water. So my instinct would be I think 19 the Board and the applicant agree that a test would be 20 performed as any condition of potential approval to 21 demonstrate that, number one, that they have sufficient 22 water, and number two that their water usage would 23 negatively impact the adjacent neighbors. And I think 24 that's satisfactory. 25 ACTING CHAIRMAN ROSENBACH: Okay. Thank</p>	<p style="text-align: right;">Page 49</p> <p>1 of our beautiful location, I mean, north, south, east, 2 west, beautiful. 3 Looking south we can see the Minuteman 4 Restaurant. Sometimes we'll sit there having a 5 cocktail and we can tell if the Minuteman is doing good 6 business that night. So we can see that. And hence 7 we'll see some part of the townhouses. So we're 8 concerned then about what that townhouses will bring; 9 namely, a large structure suddenly appearing, and 10 nighttime lights, and who knows what else. 11 And so that's what I have typed here, but a 12 couple of other thoughts. We were told that there will 13 be trees hiding the townhouses from the neighbors and 14 everyone, but keep in mind that goes two ways. The 15 residents won't be able to see out either. I don't 16 think that's going to be considered luxury townhouses 17 that you're in a box. That's one thought there. 18 And one other thought, some of you were 19 talking about maybe someone else would like to build 20 townhouses. Maybe you would have to look out for 21 townhouse row could form when several other owners want 22 the same thing. Allow me one more. 23 ACTING CHAIRMAN ROSENBACH: Go ahead. 24 MR. MORGAN: What might I -- I asked my 25 wife, what might we like to see instead? In general,</p>

<p style="text-align: right;">Page 50</p> <p>1 something more appropriate for Harding's 2 well-considered country mile. Maybe a small specialty 3 quality store. It could be a small professional 4 building for medical, lawyer, accounting, engineering, 5 a sports shop, an antique shop. That's the kind of 6 thing. And we even have -- there's even in existence a 7 flyer describing country mile. Here it is. You 8 probably all seen this, and it lists all the 9 properties. We would be pleased with those. So that's 10 my spiel.</p> <p>11 ACTING CHAIRMAN ROSENBAACH: Okay. Are 12 there questions that anybody has for Mr. Morgan? 13 BOARD MEMBER NEWLIN: I have one question. 14 Mr. Morgan, why would you prefer to see those 15 commercial properties? 16 MR. MORGAN: Well, I think it's in being 17 with what we have now we're satisfied with it. We like 18 being near country mile. It's just that the townhouse 19 we don't like the idea of the townhouse. It doesn't 20 fit. It's too large. 21 BOARD MEMBER NEWLIN: Is it the height? 22 MR. MORGAN: The height, yeah. It's not in 23 fitting. We think it will lower our ratables -- not 24 ratables, our property values. 25 BOARD MEMBER NEWLIN: Thank you.</p>	<p style="text-align: right;">Page 52</p> <p>1 but the owner or the purchaser had to know that there 2 were serious risks in his purchase. It's not something 3 that he was unaware of. And as time went on and the 4 property was offered for sale time and time and time 5 again, and while I empathize with the owners having all 6 these expenses, I've carried some of those for quite 7 some time on Route 10 where the Harley Davidson is now 8 for like five years, I understand what that means, but 9 why has it not sold? 10 It has to be undesirable one would say, 11 possibly, probably. And this building, this 12 construction doesn't fit in our neighborhood. It just 13 doesn't, and it doesn't belong there. Interestingly, 14 the builder said that two businesses across the street 15 were in favor of the project. I would ask him what 16 about the two in between. We didn't hear anything 17 about the two in between; namely the accounting firm 18 and the depot. Convenient. 19 Two, when I spoke to one of the ones he 20 said had approved she immediately said I didn't sign 21 anything. Not committed. 22 Business investment, as I said before, 23 entails one word, risk. Two of my favorite words in my 24 value basis judgment are risk/reward. Now, the 25 purchasers obviously had in the back of their minds a</p>
<p style="text-align: right;">Page 51</p> <p>1 ACTING CHAIRMAN ROSENBAACH: Any other 2 questions? Okay. Any other -- anyone else want to 3 make a statement? 4 MR. LONGO: May I come up and sit down? 5 ACTING CHAIRMAN ROSENBAACH: Sure. Please 6 let us know who you are and your address. 7 MR. LONGO: Joseph Longo, 8 Post House 8 Road, L-o-n-g-o. 9 I have served on Boards like yours for 10 probably 40 years. I can say I welcome and I thank you 11 for what you're doing and also to my next-door neighbor 12 Peter. Great job. I know what you do and how many 13 hours you spend here and how many hours you spend 14 getting ready for these meetings. 15 My take on this thing is very different and 16 I hope you won't take offense at what I have to say, 17 but it is very, very different. I come at this thing 18 from a businessman's perspective. I was a businessman 19 for over 50 years. Started in a small business with my 20 father in the basement for \$700 and built it into a 21 national business today. So there are many 22 observations and many wins and many losses in that 23 process. 24 This property was bought I understand in 25 1972 with some caveats. Albeit the caveats ran out,</p>	<p style="text-align: right;">Page 53</p> <p>1 plan of how they might make some money from this 2 purchase, otherwise you wouldn't buy it. It would be 3 fool-hearted. 4 So the original owner knew the risk. The 5 caveat was clear. But he is willing to take the risk. 6 I would say gutsy. But the risk remained. Albeit, the 7 caveat time has expired. The property has not sold in 8 many years since. 9 One can empathize with the owners, 10 obviously. I've been there. It's not fun. They know 11 all too well that they have a very difficult situation. 12 To the builder. As a former businessman I 13 can say I understand his MO. I was where he is once and 14 I can say that to undertake a project of this scope 15 without a financial plan seems most inappropriate. He 16 has agreed without any way to assess the cost and value 17 to request the changes such as wood shakes on the roof. 18 That's a significant amount of difference in money, 19 cost. 20 This is not a small undertaking. He may 21 very well be dependent on square-foot estimates which 22 are generally exceeded and without a financial plan 23 he's apparently winged it with its possible pitfalls. 24 This is not anything to criticize. I am very 25 empathetic with him, but to make you aware, which I'm</p>

<p style="text-align: right;">Page 54</p> <p>1 sure you are.</p> <p>2 Others have talked about the precedent</p> <p>3 setting of this proposal. So what to do. I've heard</p> <p>4 folks here ask unjustly so, what do you think ought to</p> <p>5 happen with the property. I think that's a valid</p> <p>6 question. I have some very different idea about that.</p> <p>7 May seem a little bit rash and arbitrary, but I've been</p> <p>8 known for that all my life, nothing new.</p> <p>9 So here it goes. Recognizing the owner's</p> <p>10 in a pickle, that's stated by the owner, understanding</p> <p>11 that their investments involve risk and they have very</p> <p>12 limited options, this may very well just be a bad</p> <p>13 investment.</p> <p>14 So then what? They could consider -- I'm</p> <p>15 sorry, am I offending somebody? I was just reading</p> <p>16 your body language and maybe I read it incorrectly.</p> <p>17 ACTING CHAIRMAN ROSENBACH: No. No.</p> <p>18 Somebody's phone was going off.</p> <p>19 MR. LONGO: Okay. Thank you. They could</p> <p>20 consider an option to possibly "sell, impartially give</p> <p>21 the property to some charity or other tax advantage</p> <p>22 entity." They cover what they can. Takes the tax</p> <p>23 write-offs and move on. That's what I did with some of</p> <p>24 my losers. Get rid of them. Because the longer you</p> <p>25 keep a bad investment the less sleep you get at night.</p>	<p style="text-align: right;">Page 56</p> <p>1 many different purposes, every single one of which is</p> <p>2 inconsistent with it remaining vacant.</p> <p>3 MR. LONGO: What? I'm sorry.</p> <p>4 ACTING CHAIRMAN ROSENBACH: With it</p> <p>5 remaining vacant and treed, and nothing but trees. Any</p> <p>6 use. And so the potential of rural nature of Harding</p> <p>7 has nothing to do with the fact that this property is</p> <p>8 sold to a developer.</p> <p>9 And is it also not the case that if the</p> <p>10 owners were to bite the bullet and say we give up.</p> <p>11 We're going to get a tax write-up and donate this</p> <p>12 property to some charity wouldn't the charity promptly</p> <p>13 try to monetize the property? That's what charities</p> <p>14 do. They don't just hold onto assets likes that.</p> <p>15 MR. LONGO: Well, no. I don't think so. I</p> <p>16 always look at the trust at the top of Bridge Road,</p> <p>17 there's one there. Bird Trust or something of sorts.</p> <p>18 I don't know what it's called.</p> <p>19 ACTING CHAIRMAN ROSENBACH: So you're</p> <p>20 saying if it were given to the right type of charity?</p> <p>21 MR. LONGO: Of course. Yeah. I think one</p> <p>22 of the conditions of that transfer would be you can't</p> <p>23 sell it. Period.</p> <p>24 ACTING CHAIRMAN ROSENBACH: Okay. So as</p> <p>25 you said that is a rash and I think you had one other</p>
<p style="text-align: right;">Page 55</p> <p>1 Finally, in a brochure of the Morris County</p> <p>2 Heritage Commission several years ago stated about</p> <p>3 Harding Township, today residents continue the work of</p> <p>4 preserving Harding's historic landscape in its natural</p> <p>5 environment, which has made the township such a unique</p> <p>6 and captivating place. We have no less a goal. Thank</p> <p>7 you.</p> <p>8 ACTING CHAIRMAN ROSENBACH: Okay. Mr.</p> <p>9 Longo, before you go, I just want to follow up on one</p> <p>10 of Mr. Newlin's questions earlier to somebody else,</p> <p>11 which is you do recognize, this is a fact, that this</p> <p>12 property could be developed in a large variety of</p> <p>13 commercial ways, right, it could be?</p> <p>14 MR. LONGO: Certainly.</p> <p>15 ACTING CHAIRMAN ROSENBACH: Without</p> <p>16 requiring any zoning changes at all. It wouldn't even</p> <p>17 come before us. You realize that?</p> <p>18 MR. LONGO: Well, I would say it may be</p> <p>19 with the exception that part of the property is in a</p> <p>20 residential zone.</p> <p>21 ACTING CHAIRMAN ROSENBACH: Well, no?</p> <p>22 MR. LONGO: Okay. I may be wrong. I'm</p> <p>23 just addressing the question.</p> <p>24 ACTING CHAIRMAN ROSENBACH: Well, no. This</p> <p>25 property is zoned in a certain way. It can be used for</p>	<p style="text-align: right;">Page 57</p> <p>1 adjective word.</p> <p>2 BOARD MEMBER MASELLI: Offensive.</p> <p>3 ACTING CHAIRMAN ROSENBACH: No. But it</p> <p>4 would be up to the owners of the property to decide</p> <p>5 that that is something that they --</p> <p>6 MR. LONGO: Oh, that's certainly true. We</p> <p>7 take -- I know. I understand that. And I told you</p> <p>8 that my ideas were rather radical, but that's not</p> <p>9 untypical of me.</p> <p>10 ACTING CHAIRMAN ROSENBACH: Okay. Any</p> <p>11 questions of Mr. Longo from any Board member or anyone</p> <p>12 in the public? (No response.)</p> <p>13 Hold on. Just way in the back. Mr.</p> <p>14 Delmonico, you wanted to speak for some time. Do you</p> <p>15 still want to?</p> <p>16 MS. DELMONICO: Well, I guess this isn't a</p> <p>17 question. This is a statement.</p> <p>18 ACTING CHAIRMAN ROSENBACH: No, no. This is</p> <p>19 statement time. This is your chance. And by the way,</p> <p>20 you already made plenty, but if you have something new</p> <p>21 to say, please.</p> <p>22 MS. DELMONICO: Part of your Master Plan</p> <p>23 says new development should be compatible and to scale</p> <p>24 with existing neighborhoods. This building, especially</p> <p>25 at 35-feet high, three-and-a-half-stories high is not</p>

<p style="text-align: right;">Page 58</p> <p>1 compatible with any of the businesses and it's not 2 compatible with the surrounding homes. The height is 3 excessive.</p> <p>4 There are no businesses along 202 that are 5 three-and-a-half-stories high. They're all held to 6 25 feet, I believe. And, of course, the surrounding 7 homes are all one-story high. This is being placed 8 like 50 feet from our neighborhood. Every other 9 residential home is over a hundred feet.</p> <p>10 But the height is just excessive. And to 11 say that we're not going to see it from Post House 12 Road, it's not just the roof, we're going to see the 13 whole building. I mean, it's a 35-foot high brick wall 14 is what we're looking at. The plan there, I mean, they 15 make it look like it's the size of a garden shed. I 16 mean, that's a 35-foot high brick wall 50 feet from our 17 road. And there is nothing else. This time of year 18 when you're there there's no leaves on the trees. You 19 can stand anywhere along Post House Road and you can 20 see all the way down to the market, you can see all the 21 way down to -- everything else around there looks like 22 a home. This is going to look like a giant office 23 building, and it's actually a story higher than the 24 existing office buildings on 202. But, I mean, the 25 height is just excessive.</p>	<p style="text-align: right;">Page 60</p> <p>1 statement. Gould, G-o-u-l-d, his father drilled most 2 of the wells on Post House Road. He was the one that 3 brought to my attention when we purchased the home 13 4 years ago at the top of the mountain how fortunate we 5 were that we'll never run dry up there. I always 6 understood water runs to its lowest point. I asked 7 that question, why would I have water and he was 8 telling me that everybody on 202 was bone dry and 9 they're not going to see any water for quite some time. 10 So that's not my field.</p> <p>11 I'm hearing it from professionals, not 12 hearsay from a neighbor, but my neighbor also 13 solidified that by his comment also. So it's something 14 that should be looked into. It's kind of like taking a 15 boat out, your 30-footer on a sunny day and there's no 16 waves and you're just putting along and the next time 17 you go out you're in the middle of a thunderstorm, 18 five-foot waves and your radio is out and you don't 19 know what the hell to do. So I'd rather get that out 20 of way now than find out anything happening later on. 21 It just seems to be inevitable. It will happen. Thank 22 you.</p> <p>23 Now I know what my son-in-law has been 24 doing in Mendham for 20 years. The eight meetings that 25 I've come to I now see how hard everyone works and how</p>
<p style="text-align: right;">Page 59</p> <p>1 I mean, it's supposed to be 25-feet high. 2 They're cherry picking. They want the residential 3 height. They want the setbacks that's for business. 4 And I just think it's going to look like somebody 5 dropped an office building there. This is over 6 22,000-square feet and 35-feet high.</p> <p>7 And I can add about the water, too. Being 8 where I'm located every month, every two months my well 9 starts to suck air. I mean, it sputters, it spumes out 10 air. The well men have said it's not mechanical. 11 We're probably going to run out of water and have to 12 build a new deeper well. So there are problems at the 13 lower part of Post House.</p> <p>14 CHAIRMAN FLANAGAN: Ms. Delmonico, where 15 across the street?</p> <p>16 MS. DELMONICO: I'm directly across the 17 street, I'm Two Post House. I am same thing, so I'm 18 half business, half residential. Although I have three 19 full buildable acres not just two. So it's a 20 one-family home. And again these lots were sold with 21 deed restrictions that only a single-family home could 22 be built.</p> <p>23 ACTING CHAIRMAN ROSENBACH: Would anybody 24 else like to make a statement?</p> <p>25 MR. MASTROPAOLO: I just want to add to her</p>	<p style="text-align: right;">Page 61</p> <p>1 interested they are. He's been doing it over there at 2 Mend ham now for a long time and I never understood how 3 many hours it required, but thank you for your efforts.</p> <p>4 ACTING CHAIRMAN ROSENBACH: I appreciate 5 that. Anyone else have anything they wish to say?</p> <p>6 MS. KELLETT: I'll take it off so it's 7 correctly transcribed. Adding to Mr. Morgan and Mr. 8 Mastropaolo's comments, having lived at the top of the 9 hill, 21 Post House Road, I am concerned about when the 10 well goes dry at One Post House Road what affect it is 11 going to have on my well water?</p> <p>12 And also, Mr. Longo, the property you were 13 referring to as the charity or whatever is the Scutter 14 Property. That's ten acres. It was -- if you read on 15 Post House Road the Harding Latrans, the Doris Duke 16 foundation --</p> <p>17 MR. MORGAN: Autobahn Society owns it.</p> <p>18 MS. KELLETT: But they were all 19 instrumental in creating what is, I thought, it just 20 ended upstairs, there used to be a map and a picture of 21 what -- they called it the Scutter Tract because 22 Scutter founded it. So that's my --</p> <p>23 ACTING CHAIRMAN ROSENBACH: Thank you.</p> <p>24 Does anybody have something?</p> <p>25 MR. FRITZE: I'll wait my turn.</p>

<p style="text-align: right;">Page 62</p> <p>1 ACTING CHAIRMAN ROSENBACH: This might be 2 your turn. 3 MR. FRITZE: My nay name is Robert Fritze. 4 I am at 51 Post House Road. Among other things I heard 5 tonight I have two concerns: And the first is parking. 6 And the first is street parking. Where if there's five 7 units there with "X" number of bedrooms I'm guessing 8 there are three and four. I forget. 9 BOARD MEMBER NEWLIN: Two bedrooms. 10 MR. FRITZE: Two bedrooms, two garages. I 11 don't know. I guess my point is, I'm expecting there 12 to be an overflow of parking. Especially around the 13 holidays where cars will be parked on the street. Now, 14 if you look around the neighborhood it's very seldom 15 that there is a car on the street now. I mean, it 16 happens every so often. But most of the driveways are 17 long where they can accommodate all of that. 18 But I'm concerned about the visual of 19 stranger's cars in the street. I'm concerned to some 20 degree about safety of cars we don't know that will be 21 parked on the street. And just an overall eyesore that 22 adds to the dynamics of the building that we heard 23 earlier. 24 My second concern is that we have already 25 talked about credibly argued that the next door</p>	<p style="text-align: right;">Page 64</p> <p>1 question for you first and then I have a statement I 2 would like to make as well. And that is when Mr. Geyer 3 came up and talked about his need and his survey I was 4 given a chance, you know, I could ask a couple of 5 questions. I guess my question is, is there any 6 clarification that you need to understand why I was 7 asking those questions? Because that survey was really 8 just -- went against every basic rule of doing a survey 9 to make it any kind of specifically significant or 10 valid. 11 ACTING CHAIRMAN ROSENBACH: I think you've 12 made your points very clearly when you made them last 13 month. 14 MS. MOORE: Okay. I just want to make sure 15 there's no other questions about that before I make my 16 statement. Okay. 17 ACTING CHAIRMAN ROSENBACH: No. 18 MS. MOORE: Okay. In the interest of time 19 I will move on. My name Cathy Moore. I've been a 20 property owner on Post House Road for over 35. I sat 21 here almost at all these meetings over almost now this 22 past year, and through it all the applicant, all this 23 application stuff, I come out with a simple conclusion: 24 That the applicant has failed to prove the two key 25 elements needed to obtain a use variance, to prove this</p>
<p style="text-align: right;">Page 63</p> <p>1 neighbor, the next lot could be the next one to go into 2 condo should this happen. And I don't know if there's 3 anything, maybe you guys do know this, but I don't know 4 if there's any reason why another home on Post House 5 Road with three and a half or five acres whatever it 6 may be couldn't be sold, knocked down, and have more 7 condos interspersed throughout the neighborhood. 8 Again, I don't know if that's possible, but 9 I don't know what would stop that if this site that is 10 owned for single family could turn into multiple. 11 ACTING CHAIRMAN ROSENBACH: Let me just say 12 that I believe the applicant's own planner, doesn't 13 bind us, but it's just reminding me you said that this 14 property is suited particularly because it's on 202 and 15 is across the street. So theoretically under that 16 analysis if you go even just one lot up Post House Road 17 you're no longer on 202, and it would be suitable. 18 So that, as has been indicated here by many 19 people, every lot has to be looked at on its own and 20 there's nothing to prevent a single one of you from 21 coming before and giving us this identical variance 22 wherever your property is. 23 Are there any other statements that anybody 24 wishes to make? 25 MS. MOORE: Cathy Moore, again. I have one</p>	<p style="text-align: right;">Page 65</p> <p>1 site is particularly well suited for the use, and to 2 prove no harm to the neighbors or community. The 3 master plan specifically states that high density 4 residential development is suitable in areas designated 5 PRN/RC. This site is not in that zone. That is 6 because of the available public water and sewer 7 infrastructure. And that's in the Master Plan Land Use 8 Section as well. 9 That is how the Master Plan and the 10 township committee have defined what is particularly 11 well suited for high density development. This site 12 does not meet that requirement. In fact, the master 13 plan also specifically states that land use policy 14 should continue to be established low density, 15 single-family development pattern consistent with the 16 planning policies of the master plan. This proposed 17 project is clearly not consistent with this as well. 18 The applicant keeps making the argument for 19 this use variance as it fulfills the need mentioned in 20 the Master Plan for senior citizen housing. So I went 21 back and checked the master plan. And the only need 22 identified in the P2 Zone specifically mentions, and 23 I'm going to quote this, is the development of an 24 assisted living facility for the elderly. 25 The definition of an assisted living</p>

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1 facility is where residents stay for two to three years
 2 prior to entering a nursing home. Provides assistance
 3 of daily living, including dining, nursing care,
 4 medication. Again, this is clearly not what this
 5 project or proposed project is about.
 6 The second question that has failed to be
 7 addressed is proving no harm to the neighbors in the
 8 community. The applicant has submitted no evidence
 9 proving no harm and has been required to really prove
 10 nothing. We've kind of put it all back on the back
 11 burner.
 12 I think this is especially egregious since
 13 the only scientific study that has been done, the
 14 nitrate study based it on the current study you need at
 15 least three and a half to 4.2 acres for a single-family
 16 home to have no degradation to ground water quality.
 17 That's the only scientific study that has been done so
 18 far. And it proves that there could be harm so there's
 19 nothing to disprove that.
 20 Based on the failure to meet the two most
 21 basic requirements to grant the proposed project and
 22 based on the erosion that it would represent to the
 23 master plan and the precedent it would set I feel that
 24 the Board should not approve this proposal. Thank you.
 25 ACTING CHAIRMAN ROSENBAACH: Any questions

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1 for Ms. Moore from anybody? (No response.)
 2 MS. KELLETT: I would just like to comment
 3 to Cathy. We still have no idea how dense this
 4 property will be. There are two bedrooms but does that
 5 mean there are two people, four people, five people per
 6 unit? Again, that's a question that remains unsolved.
 7 There are so many questions that remain unsolved.
 8 Lighting, someone mentioned the issue of lighting. We
 9 don't know how that's going to pan out. Although I
 10 would agree with Cathy --
 11 ACTING CHAIRMAN ROSENBAACH: Although the
 12 same happens to be true for single-family home as well.
 13 MS. KELLETT: No.
 14 ACTING CHAIRMAN ROSENBAACH: I don't think
 15 there are any lawful limits on how large one's family
 16 could be.
 17 MS. KELLETT: No, but they're saying that
 18 based on the well water I think in one of the meetings
 19 it was mentioned how much well capacity per unit.
 20 Well, I don't know if I quite agree with that because
 21 like I said we have no definite number of people that
 22 will be living there. And lighting also was brought
 23 up --
 24 ACTING CHAIRMAN ROSENBAACH: Okay. If
 25 that's your point.

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1 MS. KELLETT: -- is that it's going to be
 2 different than residential lighting.
 3 ACTING CHAIRMAN ROSENBAACH: Okay. Thank
 4 you. Anybody else have any comments to make? Okay.
 5 MS. ASCARI: May I ask a quick question?
 6 ACTING CHAIRMAN ROSENBAACH: I don't know.
 7 Who are you asking it of.
 8 MS. ASCARI: Jennifer Ascari, A-s-c-a-r-i,
 9 37 Post House Road. Just for clarification because I
 10 missed one of the meetings. What prevents someone,
 11 because we cannot contain it only for Harding Township
 12 residents to purchase this property, what prevents
 13 someone from purchasing this and then renting out to
 14 someone else?
 15 And I raise this because the prices in this
 16 area are compatible to where I came from in Silicon
 17 Valley. And what's happening is are people are renting
 18 homes and they are stacking cots in bedrooms. And so
 19 there are bunk beds so that people can actually live in
 20 a decent property, but there are 20 people in a home.
 21 So I'm asking this because our area not
 22 only as a teacher who makes not enough to live in this
 23 area because I'm staying with my mother at this point,
 24 but the fact is that you can't live on your own in this
 25 area, so therefore people are doing these kinds of

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1 things. So my concern is simply just what was raised
 2 before.
 3 And one other thing, I worry about fire.
 4 Coming from California we have been decimated. And I
 5 wonder because the pond, as I understood it when we
 6 moved here in 1976, was there so that we would have
 7 water to put out fires. And I raise this because
 8 perhaps this fault that Mr. Morgan spoke of has caused
 9 the pond not to hold and retain the water that it used
 10 to. And that it currently -- it's probably at
 11 one-third of its capacity, and that is also a place to
 12 draw water in the event of a fire. While many people
 13 have pools my pool right now is frozen solid so it
 14 would be very difficult to actually access that water.
 15 So I guess I have a question about that.
 16 ACTING CHAIRMAN ROSENBAACH: Well, I think
 17 those are actually comments. I think you've made
 18 certain points. I don't think they're for us to answer
 19 offhand, but they are points that you've made.
 20 Does anyone have any questions of Ms.
 21 Ascari about the points that she's made?
 22 MS. ASCARI: Bunk beds, 20 people living in
 23 a two-bedroom home. That's possible having that may
 24 people in there. And nobody would know unless people
 25 in the neighborhood would start looking and seeing the

<p style="text-align: right;">Page 70</p> <p>1 multiple cars or perhaps they're going to Uber, but 2 we're not that far off of Silicon Valley and our 3 ability for technology and the resources. 4 ACTING CHAIRMAN ROSENBACH: Okay. Thank 5 you for those points. 6 MR. SHEEHAN: Mr. Chairman, the 7 organizational documents would certainly address those 8 issues that the woman from California has just raised. 9 ACTING CHAIRMAN ROSENBACH: Well, Mr. 10 Sheehan, all we know so far about the proposed 11 organizational documents is that they will limit the 12 residents to two-plus 55, and whatever that entails. I 13 don't think there's been any mention about whether 14 units can be rented. On the other hand when an 15 application comes before us we do not presume that the 16 application is a subterfuge to permit massive unlawful 17 uses behind the facade of a lawful use. We don't make 18 that presumption. 19 MR. SHEEHAN: Thank you. 20 ACTING CHAIRMAN ROSENBACH: It sometimes 21 happens, but we don't make that presumption. Okay. 22 Thank you. Are there any other comments that anybody 23 wishes to make? (No response.) 24 All right. So then here's my suggestion. 25 Mr. Sheehan, I assume you want to make a closing</p>	<p style="text-align: right;">Page 72</p> <p>1 planner. 2 ACTING CHAIRMAN ROSENBACH: That is fine. 3 Mr. Phillips has already been sworn. And I trust he is 4 not simply repeating things that he has already told 5 us? 6 MR. SHEEHAN: He will not. 7 ACTING CHAIRMAN ROSENBACH: Go head, 8 please. 9 PAUL PHILLIPS, having been previously 10 sworn, testifies as follows: 11 EXAMINATION BY MR. SHEEHAN: 12 Q. Mr. Phillips, would you give the Board the 13 benefit of your reflections on the testimony that has 14 previously been presented by the Objector's Planner? 15 A. Yes. And I promise to be brief, Mr. 16 Chairman. 17 ACTING CHAIRMAN ROSENBACH: Take as much 18 time as you need. 19 THE WITNESS: But I do want to address some 20 of the issues that were raised by Ms. Caldwell and some 21 of which have also been raised by the public this 22 evening. And the first issue that I'd like to address 23 is the issue of the intensity of the use. 24 Ms. Caldwell asserted that the proposed use 25 was too intense for the site and relatedly she was of</p>
<p style="text-align: right;">Page 71</p> <p>1 summation? 2 MR. SHEEHAN: I have one rebuttal witness 3 that will take perhaps ten minutes at the most, a 4 closing statement, and the case is over. 5 ACTING CHAIRMAN ROSENBACH: Okay. Let's do 6 this. Let's take a five-minute break. Okay. We're 7 going to pick up at 9:20. Take a break. Stretch your 8 legs, and we'll do your rebuttal witness, and present a 9 summation. 10 (A break is taken at 9:15 p.m.) 11 (Back on the record at 9:22 p.m.) 12 ACTING CHAIRMAN ROSENBACH: Let me just 13 state for the record that during the break Mr. Flanagan 14 advised me that someone here has a copy of the deed 15 from many years ago. I don't think we need it as part 16 of the record. Quite frankly, I don't think it matters 17 whether it was 1969 or 1972, and there's no dispute 18 that the property was restricted for many years and 19 that's already part of the record. So I thank whoever 20 it is for the offer. We do not need it. 21 Mr. Sheehan, you have a rebuttal witness? 22 MR. SHEEHAN: I do, Mr. Chairman. I would 23 ask that the testimony of Paul Phillips, professional 24 planner, continue to address some of the issues that 25 have come up in the testimony of the objector's</p>	<p style="text-align: right;">Page 73</p> <p>1 the opinion that the floor area ratio or the FAR that 2 is being sought was excessive. And I think they're 3 very much tied together. 4 I would indicate first that by any 5 reasonable measure I think five townhouses is much less 6 intense than a number of the potentially developable 7 zone uses. And I mention those in my direct testimony. 8 A convenience store or a restaurant were two that I 9 mentioned. They're each permitted in the B2 District. 10 The property owner is allowed to pursue that, as the 11 Chairman indicated, basically not before this Board but 12 before the Planning Board. 13 And just very briefly, in relation to that 14 zone use, of those zone uses, five townhouses fewer 15 vehicular trips; no commercial traffic on Post House 16 Road; clearly less on-site activity; no parking lot and 17 associated activity directly abutting the residential 18 property to the rear of the subject property; no 19 potential nighttime hours of operation; no significant 20 noise; the issues of trash collection and disposal; 21 lighting concerns all of which come into play when you 22 have a retail commercial use with associated parking, 23 and specifically as I mentioned during nighttime hours. 24 I think without question these types of commercial uses 25 which are permitted in the zoning would have far</p>

<p style="text-align: right;">Page 74</p> <p>1 greater impacts on the nearby residences.</p> <p>2 The next issue, as I mentioned, she talked</p> <p>3 about FAR floor area ratio. She had asserted that</p> <p>4 the proposed FAR that we are seeking was excessive.</p> <p>5 Let me try and provide a framework from a planning</p> <p>6 standpoint. The primary purpose of an FAR requirement</p> <p>7 is to control the intensity of development on a given</p> <p>8 site. It's the primary purpose. That's what the tool</p> <p>9 is there for.</p> <p>10 Secondly, FAR requirements also</p> <p>11 basically regulate building mass. But principally it's</p> <p>12 the intensity of use. And that is why you typically</p> <p>13 find FAR requirements in commercial zones and not</p> <p>14 residential zones for the very reason that commercial</p> <p>15 uses are more intense than residential uses all else</p> <p>16 being equal. And by intense it's trip generation, it's</p> <p>17 parking generation, it's on-site activity circulation.</p> <p>18 All the things that go hand-in-hand with retail</p> <p>19 commercial use.</p> <p>20 The permitted FAR in the B2 Zone is</p> <p>21 8.5 percent. The applicant, again, proposing for a</p> <p>22 residential use is seeking an FAR of 17 percent.</p> <p>23 First, I think it's -- this is very much an apples and</p> <p>24 oranges comparison, and I think to drive that point</p> <p>25 home I think the applicant is actually below the -- is,</p>	<p style="text-align: right;">Page 76</p> <p>1 are seeking on this site I think the applicant's</p> <p>2 proposal is not too intense for the property.</p> <p>3 The other point I'd like to just address,</p> <p>4 while I don't recall Ms. Caldwell contesting the issue</p> <p>5 of need for this type housing, she seems to suggest</p> <p>6 that the only appropriate alternative location for sort</p> <p>7 of empty-nesters down-sizers was in an urban context.</p> <p>8 And I know she mentioned Morristown. That's just not</p> <p>9 true.</p> <p>10 And while many down-sizers may prefer urban</p> <p>11 living, others prefer a less developed setting and</p> <p>12 there's no one size fits all with regard to</p> <p>13 empty-nester-type housing or age-restricted housing as</p> <p>14 being proposed by the applicant.</p> <p>15 Ms. Caldwell addressed the question from</p> <p>16 Mr. Flanagan, I believe it was Mr. Flanagan, regarding</p> <p>17 the commercial development opportunity that would be</p> <p>18 lost if the variance were granted for the residential</p> <p>19 use that we are seeking.</p> <p>20 As I recall Ms. Caldwell acknowledged that</p> <p>21 the retail business climate has become much more</p> <p>22 challenging in the light of E-Commerce. And putting</p> <p>23 aside this issue of how long the property's been on the</p> <p>24 market, again, I would just reiterate that your own</p> <p>25 master plan one of the goals for this quarter is</p>
<p style="text-align: right;">Page 75</p> <p>1 in fact, below the allowable FAR for your PRN district,</p> <p>2 which is we talked about is the district that allows</p> <p>3 townhouses at the northerly end of the township along</p> <p>4 Route 202. That I think is a more appropriate standard</p> <p>5 by reference. At least it provides you a guide for the</p> <p>6 use. The standard in that zone, the allowable FAR is</p> <p>7 20 percent.</p> <p>8 I would add that on the issue of building</p> <p>9 mass what the applicant has sought to do in the concept</p> <p>10 plan is basically limit the building mass by proposing</p> <p>11 two buildings, by having a break in the five units as</p> <p>12 opposed to a single massive building that's two</p> <p>13 groupings of townhouses to address that particular</p> <p>14 issue.</p> <p>15 The applicant's density is also well below</p> <p>16 the density in the PRN zone. It's 1.67 units per acre.</p> <p>17 That zone is four units per acre. And even if you</p> <p>18 deduct the wetlands, even if you take the wetlands out</p> <p>19 the density that we would be seeking on a net basis is</p> <p>20 under three units per acre. It's probably about 2.75</p> <p>21 units per acre.</p> <p>22 I think bottom line on these issues of</p> <p>23 intensity, and FAR, and density in the context of the</p> <p>24 underlying business zoning and what you currently</p> <p>25 permit as a guide in a zone that allows the use that we</p>	<p style="text-align: right;">Page 77</p> <p>1 minimization of commercial development. And the master</p> <p>2 plan also recommends that permitted uses in the B2 Zone</p> <p>3 be considered for update, which kind of leads me again</p> <p>4 to Medici.</p> <p>5 And Mr. Rosenbach you asked Ms. Caldwell</p> <p>6 whether there's been any changed circumstance. I</p> <p>7 remember you asked her that since the adoption of the</p> <p>8 Master Plan and zoning. And specifically you asked in</p> <p>9 relation to the viability of I think you characterize</p> <p>10 it as small-scale retail business uses on the property</p> <p>11 in question. Just what I see in my practice what's</p> <p>12 going on I believe there's sort of no question that</p> <p>13 certain retail businesses face serious challenges in</p> <p>14 the current marketplace today, and they're unlikely to</p> <p>15 build or locate here, at least for the foreseeable</p> <p>16 future. And I think the Objector's Planner</p> <p>17 acknowledged that as well.</p> <p>18 Just think just by example think of</p> <p>19 clothing, a panel, other hard goods, think of book</p> <p>20 sales, think of sporting goods. Those are among the</p> <p>21 type of businesses that have been most impacted by</p> <p>22 E-Commerce. And they're all permitted in the B2</p> <p>23 district.</p> <p>24 So I think if you look at the Master Plan</p> <p>25 language and you look at sort of the changes, vis-a-vis</p>

<p style="text-align: right;">Page 78</p> <p>1 what some of the permitted uses that are allowed in 2 this zone and their likely prospects moving forward, 3 and recognizing that the master plan does indicate that 4 the use we're seeking that there is a community need 5 for that use, so I think in that context I think the 6 Medici directive can be addressed, as well as the two 7 Master Plan directives, which is consider taking a good 8 hard look at the B2 Zone in terms of uses, and consider 9 looking at basically expanding the variety of potential 10 senior housing opportunities in the community. 11 Lastly, Ms. Caldwell opined that the site 12 was not particularly suited for the proposed use. She 13 also indicated that the variance would set an 14 undesirable precedent. And I think she also said it 15 would unduly impact the neighborhood character. Yet I 16 think the very reason that the site is particularly 17 suited for the use is that it is in my opinion an 18 outlier in the context of other properties on the same 19 side of Route 202. It's vacant. Unlike I think all 20 but one other property, and I know I dealt with this, 21 Mr. Chairman, on my direct, but I think it's vacant 22 except for one other property along this stretch on the 23 same side of Route 202, and including the property 24 directly across Post House Road which has a house on 25 it. It's not spoken for. It presents a unique</p>	<p style="text-align: right;">Page 80</p> <p>1 governing body's legislative function. 2 I would also note that the Master Plan 3 recognizes that the character of Route 202 is not as 4 rural as in other parts of the township. 5 And lastly, with the issue of impacting 6 neighborhood character I think the granting of this 7 variance, again, in an underlying business district 8 would not adversely impact an immediate neighborhood 9 character. Because that immediate neighborhood 10 character is residential, and what's being proposed is 11 consistent with that character relative to the 12 underlying business zoning. 13 So Mr. Chairman, I promised I'd be brief. 14 That's all I have in rebuttal. 15 ACTING CHAIRMAN ROSENBAACH: Thank you. I 16 appreciate that. Does any Board member have questions 17 for Mr. Phillips? 18 BOARD MEMBER CHIPPERSON: So you're saying 19 that the Master Plan represents senior housing. How do 20 you define senior housing? 21 THE WITNESS: Well, I think senior housing 22 can be anything and it depends what age you want to 23 pick for senior housing. I would pick senior housing 24 it could either be age-restricted which is 55. It 25 could be traditionally before it was age 55 it was 62.</p>
<p style="text-align: right;">Page 79</p> <p>1 development opportunity. The Post House Road access, 2 Mr. Chairman, you acknowledged that several minutes 3 ago. 4 ACTING CHAIRMAN ROSENBAACH: I acknowledged 5 that you said it. 6 THE WITNESS: It's going to be required and 7 it's unique to this site and it's going to be required 8 to be used to access this property whether it's 9 developed for commercial or residential use that's what 10 the highway management code says. 11 The lot is not as deep as other lots, 12 including the lot directly across Post House Road, and 13 a number of the flag lots that I mentioned in my 14 testimony which presently accommodates single-family 15 homes. The majority of the lot is owned for business 16 use, unlike other lots that accommodate single-family 17 homes along Route 202, including the lot directly 18 across Post House Road. Every abutting property, every 19 property which abuts this property and including the 20 property directly across Post House Road is in 21 residential use currently. 22 So I think the granting of the variance 23 would not, at least in my professional opinion, set an 24 undue precedent. I don't think it would compromise or 25 undermine the B2 Zone scheme generally, or usurp the</p>	<p style="text-align: right;">Page 81</p> <p>1 But I think where, at least the way I read the Master 2 Plan where it's going, is that as the indigenous 3 population ages they're saying that there needs to be 4 more of a variety of housing to suit their particular 5 needs of that population. 6 BOARD MEMBER CHIPPERSON: Isn't senior 7 associated with retirement? You would associate 8 someone 55 as a senior? Because I think the retirement 9 age is I think 67 now. 10 THE WITNESS: Well, I think the retirement 11 age is 62, which doesn't mean that someone 55 is not 12 retired or semi-retired. It's sort of a lifestyle 13 option. And certainly what we are proposing here is, 14 and as we've indicated on the record we would limit it 15 to age restricted in order to specifically meet that 16 need which is acknowledged in the Master Plan. 17 BOARD MEMBER CHIPPERSON: And how would 18 that be done? Would one owner need be to be over 55 19 and be living in the facility? What if I'm 55 but my 20 wife was 37? 21 THE WITNESS: Your 37-year old wife would 22 be allowed to live there. 23 BOARD MEMBER CHIPPERSON: And the 55-plus 24 owner has to live there? 25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 BOARD MEMBER CHIPPERSON: There's rental 2 restrictions?</p> <p>3 THE WITNESS: Well, it's whatever the form 4 of tenancy is, whether it's owner or rental, those 5 restrictions would be in place.</p> <p>6 BOARD MEMBER CHIPPERSON: Would be co-op 7 allowed rental, isn't that a co-op decision?</p> <p>8 THE WITNESS: Well, the rental issue 9 doesn't have anything to do with the age-restriction 10 limits.</p> <p>11 BOARD MEMBER CHIPPERSON: But what if I'm 12 56 and I buy it and I rent it to people?</p> <p>13 THE WITNESS: I don't think that that would 14 be allowed based on what we have represented or what 15 would be on the condominium documents, but I'll refer 16 to learned Counsel on that.</p> <p>17 BOARD MEMBER CHIPPERSON: So to rent it it 18 would have to be to be to somebody older than 55-plus?</p> <p>19 MR. SHEEHAN: Yes.</p> <p>20 BOARD MEMBER CHIPPERSON: And the other 21 question I have, I'm just not clear. When you're 22 comparing the FAR to the PRN Zone I'm snot quite 23 understanding how that's relevant here since we're not 24 in the PRN Zone.</p> <p>25 THE WITNESS: Well, again, I think it's</p>	<p style="text-align: right;">Page 84</p> <p>1 question and indicates why Mr. Phillips is using the 2 PRN Zone as something that is illustrative. And in 3 that case the language appears that if you have a 4 proposed use that is not permitted in the zone it is 5 not intended that the bulk standards of the zone that 6 it is proposed to be located in would be applied or 7 appropriate to the proposed use which has different 8 standards objectively stated.</p> <p>9 And if you look at an ordinance and try and 10 find some legitimate source of comparison in Harding 11 Township's ordinance, the multifamily zone, the PRN 12 zone, is the zone most likely to have a dimensional 13 regulation standard, a standard that would be 14 characteristic of the type of use that's being 15 proposed.</p> <p>16 BOARD MEMBER CHIPPERSON: Okay. Thank you.</p> <p>17 BOARD MEMBER NEWLIN: I'd also like to echo 18 Ms. Chipperson's question, too, because I did hear you 19 say about comparing the PRN to the FAR and the density, 20 and to me I just can't understand how you can compare 21 this area of Harding to quite a different area of 22 Harding which has totally different considerations to 23 make that zone. And I think I understand your legal 24 comment as to why you would have to go somewhere else.</p> <p>25 I know, Gary, if you can give us any</p>
<p style="text-align: right;">Page 83</p> <p>1 relevant because from a planning standpoint what we're 2 proposing here in terms of the intensity and the use 3 which is less intense than the zoning use. I don't 4 think it's fair or appropriate to compare the FAR that 5 we're seeking to the allowable FAR for business use.</p> <p>6 So the question that I ask is, well, then 7 what should be the standard? And what I would look to, 8 which I always look to just as a guide, is are there 9 other zones in the -- within the limits of the 10 municipality where the use is permitted to get some 11 guide as to what they deemed would be appropriate? And 12 obviously there's a zone that permits townhouses. It's 13 also on Route 202. So I looked to it to get some 14 indication as to whether or not we were within that 15 limit or whether we exceeded it. And as I mentioned 16 that limit is 20 percent. And I think we're at 17 17 percent, which tells me that in this context the FAR 18 that we're seeking is not too intense for the use.</p> <p>19 BOARD MEMBER CHIPPERSON: For the town?</p> <p>20 THE WITNESS: Correct.</p> <p>21 BOARD MEMBER CHIPPERSON: But this is not, 22 so I'm really not clear.</p> <p>23 MR. SHEEHAN: I think, Ms. Chipperson, the 24 case of Puleio versus North Brunswick as referenced in 25 Price versus Himeji provides the answer to your</p>	<p style="text-align: right;">Page 85</p> <p>1 guidance on that, because I can't make that jump.</p> <p>2 MR. HALL: Well, the issue is if you -- the 3 use to the bulk standards for the use, the zone applies 4 to a different use.</p> <p>5 BOARD MEMBER NEWLIN: I understand that.</p> <p>6 MR. HALL: It may or may not, because 7 looking at the impact on neighbors it may be relevant, 8 how big, how close it is. Otherwise, I think it's all 9 just comparison.</p> <p>10 MR. FOX: I think Al's point is also that 11 where that PRN zone is there's utilities such as water 12 and sewer.</p> <p>13 MR. HALL: Right. To justify higher 14 density, of course.</p> <p>15 BOARD MEMBER NEWLIN: And a lot more units 16 and a lot more consideration of having a lot more 17 units, and to me it's -- and it's also not something 18 that we hear -- that I'm aware of, been studied.</p> <p>19 MR. HALL: Right, but we're talking about 20 five units here. It's not like -- it's on the other 21 side, but it's a very unique situation.</p> <p>22 MR. FOX: Right.</p> <p>23 CHAIRMAN FLANAGAN: I think what I hear, 24 though, Mr. Phillips, is when you look at the 25 development that they're proposing, these townhouses,</p>

<p style="text-align: right;">Page 86</p> <p>1 the closest comparison in this township that you can 2 find is what would only be allowed in the PRN zone? 3 THE WITNESS: That's correct, under the 4 zone plan. 5 CHAIRMAN FLANAGAN: So if you're asking for 6 a use that is most similar to what is only allowed in 7 the PRN zone where they have water and sewer. 8 THE WITNESS: That's correct, but you can't 9 neglect the fact that the point of comparison has to be 10 to the underlying zoning here, and the underlying 11 zoning here is principally business, as opposed to, for 12 example, single-family residential where I think those 13 comparisons would be much more difficult and much more 14 of a heavy lift to make if this property were zoned for 15 single family. 16 The whole point has to do with intensity of 17 use, and you have to compare five townhouses with their 18 trip generation and their activity to the underlying 19 commercial use. And my point is that at an FAR of .17 20 it is still far less intense when compared to the 21 permitted business uses that I cited at an FAR of 22 8.5 percent, or half as much. It's still more intense. 23 And also just in response to Mr. Newlin's 24 comment, you are correct. Those sites were zoned. 25 They presumably have access to water and sewer, but</p>	<p style="text-align: right;">Page 88</p> <p>1 the FAR we're proposing. 2 BOARD MEMBER NEWLIN: In terms of traffic, 3 but in terms of height it's actually quite a bit more 4 than commercial use. 5 THE WITNESS: The height would be higher. 6 That's the only comparison, in my opinion, that where 7 the impacts would be greater than the proposed use. 8 BOARD MEMBER NEWLIN: And the water usage 9 is quite a bit more. 10 THE WITNESS: Yes, but I think we kind of 11 discussed the water usage and not only would we -- do 12 we still have to satisfy that issue even if this Board 13 were predisposed to grant an approval conditioned on 14 that? 15 ACTING CHAIRMAN ROSENBACH: No, that's a 16 whole different issue. That's -- would you agree that 17 a study would have to be taken to establish what the 18 consequences of this use would be, but Mr. Newlin's 19 point is that when you compare the five units to the -- 20 let's say standard commercial use it's higher? 21 THE WITNESS: It's somewhat higher. I 22 don't know if I characterized it as quite a bit, but 23 it's higher. 24 ACTING CHAIRMAN ROSENBACH: There's no 25 further study needed for that. I mean, we're all</p>
<p style="text-align: right;">Page 87</p> <p>1 we're also proposing this at a significantly lesser 2 density than is allowed in that PRN Zone, four-units 3 per acre there, and 1.67 units per acre here. 4 CHAIRMAN FLANAGAN: But it would more 5 similar to PRN than it would be to business or -- 6 THE WITNESS: I'm sorry, I don't -- 7 CHAIRMAN FLANAGAN: You're saying it's 8 significantly different but I'm saying you said, 9 correct me if I'm wrong, that the most similar 10 comparison to what you're proposing is that of PRN? 11 THE WITNESS: Right. And we're well below 12 that permitted density. 13 CHAIRMAN FLANAGAN: Right. But that means 14 it is less similar to single-family residential or 15 commercial than it is to PRN? 16 THE WITNESS: It's less than single family 17 -- the single family I'd agree with you, but again this 18 site's zoned for business use. So the comparison in my 19 opinion in terms of intensity has to be what we're 20 proposing relative to how this property would develop 21 if you were not to grant the variance. It would be 22 developed for commercial uses, and the commercial uses 23 that are permitted include those as I highlighted by 24 example that are very, very intense. Far more intense 25 than townhouses at the density we're proposing here or</p>	<p style="text-align: right;">Page 89</p> <p>1 engineers. 2 THE WITNESS: It's higher. 3 BOARD MEMBER NEWLIN: Paul, do you know 4 what the height is on the PRN? 5 MR. FOX: No. 6 MR. SHEEHAN: I can tell you that. 7 MR. FOX: I would also point out just for 8 historical purposes, the genesis of the PRN Zone was 9 not from a Master Plan document, but rather from a 10 lawsuit where the Board of Adjustment denied an 11 application and then as a result of an appeal, 12 successful appeal zoning fell from that. So it was not 13 an intentional planning. 14 CHAIRMAN FLANAGAN: Understood. We had 15 this bit of a conversation with Christina last month. 16 When I look at the PRN Zone and I look at the 17 development off the FAR it is not -- on Kitchell, does 18 that have public water and public service? 19 MR. FOX: Yes, it does. 20 CHAIRMAN FLANAGAN: So the only two places 21 in the township where you see high density townhomes 22 and the development of the farm is where you have water 23 and sewer. And I don't think that's a coincidence. 24 Tell me if I'm wrong. 25 MR. FOX: With respect to the farm you're</p>

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1 correct. With respect to the PRN Zone there was no
 2 sewer there. They built it as a result of the PRN zone
 3 being developed.
 4 CHAIRMAN FLANAGAN: But there is now,
 5 right?
 6 MR. FOX: Correct.
 7 CHAIRMAN FLANAGAN: So, I think I get your
 8 point, it is not that there was water and sewer except
 9 for in this area the PRN is in, there was some
 10 development, this stuff was built. I have to imagine,
 11 though, as part of building the Shadow Brook and any
 12 other PRN buildings that they extended the sewer at the
 13 same time, right? It could not -- tell me if I'm
 14 wrong, but I can't imagine it was the case that they
 15 built those with septic and wells and then some point
 16 down the road sewer came in.
 17 MR. FOX: They got the approval and then
 18 before starting construction extended the sewers.
 19 CHAIRMAN FLANAGAN: Right. So before they
 20 built those, or coincidence with building those they
 21 had water and sewer.
 22 MR. FOX: That's right.
 23 CHAIRMAN FLANAGAN: And I would have to
 24 imagine it was an important consideration, and the
 25 Master Plan says it was an important consideration.

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1 Whether the Master Plan wants to take credit for having
 2 designated water and sewer, it's neither here nor
 3 there, the fact is there is water and sewer.
 4 MR. FOX: Sure.
 5 CHAIRMAN FLANAGAN: And it is, in my read
 6 of the Master Plan, and tell me from an engineering
 7 perspective, it is an important reason why you could
 8 have that density.
 9 MR. FOX: That's right.
 10 CHAIRMAN FLANAGAN: So having public water
 11 and public sewer is an important criteria when deciding
 12 where to put height density.
 13 MR. FOX: Yes.
 14 ACTING CHAIRMAN ROSENBACH: By the way,
 15 Section 225-156 states that in the PRN Zone the maximum
 16 height of buildings shall be 35 feet and not more than
 17 two and a half stories.
 18 BOARD MEMBER NEWLIN: Not more than what?
 19 ACTING CHAIRMAN ROSENBACH: Not more than
 20 two and a half stories, Section 225-156.
 21 MR. SHEEHAN: For whatever that's worth to
 22 anybody.
 23 BOARD MEMBER SCHLEIFER: What's the
 24 setback?
 25 ACTING CHAIRMAN ROSENBACH: The setback,

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1 PRN? Didn't we have a case on that?
 2 BOARD MEMBER SCHLEIFER: Yes, but I was
 3 wondering.
 4 ACTING CHAIRMAN ROSENBACH: Minimum setback
 5 between the line of a lot occupied by a single-family
 6 detached dwelling existing at the time of filing the
 7 site plan application and the nearest building in a
 8 planned development is 75 feet. That's also in Section
 9 225-156.
 10 BOARD MEMBER SCHLEIFER: Thank you.
 11 ACTING CHAIRMAN ROSENBACH: Any other
 12 questions for Mr. Phillips from Board Members? (No
 13 response.)
 14 I do have one. It goes back to something
 15 Mr. Sheehan said about one of the cases cited in Price
 16 versus Himeji, a case called Puleio. I don't have the
 17 full case with me, but I do have at least one reference
 18 to that case. And going back to this issue of why you
 19 refer to the nearest comparable zone, okay. It says
 20 the Board -- this is -- and, again, I don't know, Mr.
 21 Sheehan, if this is the part you refer to, I just don't
 22 know, but the Supreme Court's talking about what the
 23 Board had done in this Price case. The Board concluded
 24 that the height and density variances were to be
 25 decided based on an evaluation of whether the

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1 applicants proof demonstrated the cycle accommodate the
 2 problems associated with the greater height, et cetera.
 3 And I can -- and I understand from that you say, well,
 4 let's look at the zone where the Planning Board and
 5 this township will consider these issues, and then they
 6 break down those standards, and we meet those
 7 standards, we get that. But on the other hand what
 8 that does not take into account, at least it seems to
 9 me, is how those standards even on a five-unit
 10 development as opposed to a hundred-unit development
 11 affect -- directly affect the neighborhood which has a
 12 different expectation as to what might be built on a
 13 vacant lot.
 14 Do you have any comments on that, Mr.
 15 Phillips?
 16 THE WITNESS: I do. I think density is
 17 actually the better standard for residential. I've
 18 always felt it's a better standard than FAR. Even
 19 though, again, I mentioned we are lower than the FAR
 20 standards in PRN.
 21 And I think the point of comparison here
 22 again is largely two things: One, is how does this
 23 compare to the underlying zone use in terms of
 24 intensity? And it's less based on the FAR we're
 25 seeking and the density we're seeking, in my

<p style="text-align: right;">Page 94</p> <p>1 professional opinion.</p> <p>2 And the other issue is that, and I dealt</p> <p>3 with this in my direct testimony which you didn't want</p> <p>4 me to go through again, but you're correct, the</p> <p>5 standards for an FAR variance comes out of the Randolph</p> <p>6 Town Center Case. And I put in testimony on the record</p> <p>7 to at least attempt to address that and convince you</p> <p>8 that basically the site can still function, can</p> <p>9 overcome any problems, not withstanding the fact that</p> <p>10 we're seeking an FAR higher than what is permitted.</p> <p>11 I will also say that it's just my</p> <p>12 experience that basically on larger sites where there's</p> <p>13 more land area the FAR, because there's more area is</p> <p>14 typically less than on a smaller site. That's just my</p> <p>15 experience. So here we have a smaller site, but we're</p> <p>16 still at an FAR that's less than the zone that permits</p> <p>17 the townhouses which is a larger area. Those two</p> <p>18 projects are certainly larger projects than the five</p> <p>19 units that would be built here.</p> <p>20 ACTING CHAIRMAN ROSENBACH: Just if I may</p> <p>21 stay on Price for a moment. I know that Price, and I</p> <p>22 guess it was helping judges and lawyers and planners</p> <p>23 and landowners to understand Medici, I guess it was</p> <p>24 trying to help do that, and it says to be particularly</p> <p>25 suitable doesn't mean that the site in question is</p>	<p style="text-align: right;">Page 96</p> <p>1 that across the street they've got to address those</p> <p>2 other issues. And the biggest one is is that the bulk</p> <p>3 of that site is zoned residential as opposed to</p> <p>4 business.</p> <p>5 And I think you heard me at another hearing</p> <p>6 say that if this site were zoned for single-family</p> <p>7 residential I would not be here. And I stand by that</p> <p>8 testimony. That's what differentiates this site from</p> <p>9 the site across the street and other lots that are on</p> <p>10 the same side as 202.</p> <p>11 ACTING CHAIRMAN ROSENBACH: So if I --</p> <p>12 speaking for myself, not other Board Members, say I</p> <p>13 don't care that there's already an improvement on that</p> <p>14 other property, to me that means nothing, and it is on</p> <p>15 202, it shares Post House Road. So according to one of</p> <p>16 the real key point of your analysis that makes it</p> <p>17 particularly suitable for this type of development,</p> <p>18 okay. And then it would just be a matter of the extent</p> <p>19 to which one lot has more "B" and one has more "R"?</p> <p>20 THE WITNESS: Absolutely.</p> <p>21 ACTING CHAIRMAN ROSENBACH: And you think</p> <p>22 that that would be a telling factor?</p> <p>23 THE WITNESS: I think all three in</p> <p>24 combination are telling factors. All three of them as</p> <p>25 to why this site is different.</p>
<p style="text-align: right;">Page 95</p> <p>1 uniquely the only site available for this. So I just</p> <p>2 want to go back to something that continues to trouble</p> <p>3 me, which is the property, I guess it's number 2 across</p> <p>4 the street. So I do say that that is a deeper lot, I</p> <p>5 guess, is a deeper lot?</p> <p>6 THE WITNESS: Yeah.</p> <p>7 ACTING CHAIRMAN ROSENBACH: And are you</p> <p>8 saying that because number 2 is a deeper lot it is not</p> <p>9 equally suitable for townhouses?</p> <p>10 THE WITNESS: I'm saying three things:</p> <p>11 Number one, it's spoken, for it's built.</p> <p>12 ACTING CHAIRMAN ROSENBACH: Well, let's say</p> <p>13 it burns down.</p> <p>14 THE WITNESS: Let me finish -- give you all</p> <p>15 three reasons. It's built. It's been part of the</p> <p>16 fabric and character of that area for some time.</p> <p>17 Secondly, it's a deeper lot. The house is</p> <p>18 set back deeper because it is deeper. The house is set</p> <p>19 back deeper than where these townhouses would be</p> <p>20 because the subject lot doesn't back as deep.</p> <p>21 And the other thing is, the majority of</p> <p>22 that lot is zoned residentially as opposed to zoned for</p> <p>23 business. Those are three things that differentiate</p> <p>24 the subject lot from that lot. And even if the house</p> <p>25 burns down and someone would come in and seek to do</p>	<p style="text-align: right;">Page 97</p> <p>1 CHAIRMAN FLANAGAN: All right. To carry on</p> <p>2 that point. Let's go through and look at all three</p> <p>3 factors. So there are plenty of houses in town that</p> <p>4 can be torn down and some that don't. So if we</p> <p>5 discount the fact that there's a building already --</p> <p>6 two factors. The two factors are one is deeper. And</p> <p>7 are you trying to say that because it's deeper that</p> <p>8 somehow makes it less well suited for townhouses?</p> <p>9 Wouldn't that be a good thing, because the townhouses</p> <p>10 could be placed further back?</p> <p>11 THE WITNESS: No, that's not what I'm</p> <p>12 saying. I'm saying it's relatively more suited for</p> <p>13 single-family residential because it's deeper. And the</p> <p>14 proof is the fact that the existing residence is set</p> <p>15 back further, because it's a deeper property.</p> <p>16 CHAIRMAN FLANAGAN: We're asking questions,</p> <p>17 though, is the property that you're applying for</p> <p>18 particularly well suited for your townhouse? And</p> <p>19 you're saying yes it is because it's very shallow. And</p> <p>20 I don't follow that, right, because it would seem you</p> <p>21 could just as well build townhouses on a less shallow</p> <p>22 property.</p> <p>23 THE WITNESS: It's particularly suitable</p> <p>24 for townhouses because it's shallow relative to the</p> <p>25 issue of whether or not it could appropriately</p>

<p style="text-align: right;">Page 98</p> <p>1 accommodate a single-family residence. That was the 2 crux of my testimony.</p> <p>3 CHAIRMAN FLANAGAN: But I think the 4 question is, is it particularly well suited for 5 townhouses? And is it your testimony that a property 6 that is very shallow is particularly well suited for 7 townhouses?</p> <p>8 THE WITNESS: That's not the key factor as 9 to why it's particularly suitable for townhouses. It's 10 only the key factor in comparison to single family.</p> <p>11 CHAIRMAN FLANAGAN: And I'm asking about 12 townhouses, right? Because I think what we have to ask 13 here is this property particularly well suited for 14 townhouses?</p> <p>15 THE WITNESS: I think I've addressed that. 16 I think it is for all the reasons that I stated.</p> <p>17 MR. HALL: Well --</p> <p>18 CHAIRMAN FLANAGAN: Okay. Particularly 19 suited for townhouses. And I'm trying to understand 20 that. You made a statement that a shallow property is 21 more suitable, I guess, than a deeper property. I'm 22 just trying to understand.</p> <p>23 THE WITNESS: I said it three times. It's 24 in relation to perspective single-family development of 25 that lot. This is what differentiates -- one of the</p>	<p style="text-align: right;">Page 100</p> <p>1 there.</p> <p>2 BOARD MEMBER NEWLIN: Can you just clarify 3 -- clear this up by stating it this way, that the 4 subject property is not suited for residential 5 development because it's shallow. Is that what you're 6 saying?</p> <p>7 THE WITNESS: No. It's not suited for 8 single-family residential development because it's 9 shallow.</p> <p>10 BOARD MEMBER NEWLIN: It's not suited for a 11 single-family house because it's too shallow. Is that 12 what you're saying?</p> <p>13 THE WITNESS: That is what I'm saying.</p> <p>14 BOARD MEMBER NEWLIN: Okay. Would you say 15 anything more that that with regard to this? 16 Shallowness, is that it?</p> <p>17 THE WITNESS: I'm not quite sure where this 18 is going in terms of -- I'm not quite sure where you're 19 getting at.</p> <p>20 BOARD MEMBER NEWLIN: I think he's saying 21 something pretty simple about developing a 22 single-family house on that property.</p> <p>23 CHAIRMAN FLANAGAN: I think what you're 24 saying is you can't put a single-family house on the 25 shallow property, right, that's what I'm hearing?</p>
<p style="text-align: right;">Page 99</p> <p>1 differentiations between the subject lot and the lot 2 across the street, which again is deeper.</p> <p>3 CHAIRMAN FLANAGAN: Is the question is it 4 better relative to another use?</p> <p>5 THE WITNESS: Is what better relative to 6 another use?</p> <p>7 CHAIRMAN FLANAGAN: Is changing the zoning 8 to allow for townhouses.</p> <p>9 THE WITNESS: We're not changing the 10 zoning. We're seeking a use variance.</p> <p>11 CHAIRMAN FLANAGAN: Mr. Phillips, so you 12 just said it's a question of whether it's particularly 13 more suitable relative to another use. So if you're 14 going to consider relative to another use you're going 15 to consider whether or not it's residential. So I 16 think the question is, is it suitable to particular --</p> <p>17 THE WITNESS: Particular suitability 18 doesn't have to be in relation to another use.</p> <p>19 CHAIRMAN FLANAGAN: But you just said it. 20 Just said it's deeper, therefore relative to a 21 residence.</p> <p>22 THE WITNESS: In response to a number of 23 questions by this Board over the course of these 24 proceedings, as well as issues raised by the public as 25 to why wouldn't you build a single-family residence</p>	<p style="text-align: right;">Page 101</p> <p>1 BOARD MEMBER NEWLIN: You could, but he's 2 saying it's not --</p> <p>3 CHAIRMAN FLANAGAN: It's less desirable. 4 And I don't know if this is the time for this, but the 5 question is what does this mean?</p> <p>6 ACTING CHAIRMAN ROSENBAACH: Well, we're 7 going to get to that. Gary's going to help address 8 that. I'm sure Mr. Sheehan is also, but right now 9 we're still questioning Mr. Phillips. And while we're 10 questioning Mr. Phillips, forgive me and I still can't 11 get rid of Lot number 2, forgive me, which is -- and I 12 understand very well what you're saying, which is that 13 this lot, I guess lot number one is particularly suited 14 not for single residential use, because of the 15 shallowness of the lot. And I can understand that you 16 can distinguish Lot number 2 in that way where you can 17 say you can't make the same argument for Lot number 2, 18 and that Lot number 2 has no room to put a 19 single-family home. But nonetheless I have to give my 20 concern that if we approve this application, which 21 means "A" we have determined that there is a need in 22 the community for this type of housing, and "B" that 23 one side of Post House Road is an appropriate location 24 for it. I'm still not sure if we would have enough 25 distinguished right across the street simply because it</p>

<p style="text-align: right;">Page 102</p> <p>1 could fit, would be a better fit for a single-family 2 home. Maybe yes, maybe no. I don't know, but I have to 3 admit I'm a little troubled by that. 4 BOARD MEMBER EICHLER: I am as well. 5 BOARD MEMBER MASELLI: What keeps that 6 deeper lot say that there's no house on it or it's 7 being torn down that person from moving that house just 8 as close as the townhouses? Are you saying just 9 because you could push the house further back that's 10 desirable. That's an assumption. 11 THE WITNESS: That just related to the 12 issue again of comparing it to single-family 13 development which is one of the zone uses. You're 14 still left with the other two, which I think are 15 critical and I respectfully take a different opinion in 16 the fact that this is a developed property and this is 17 spoken for. 18 ACTING CHAIRMAN ROSENBACH: You are 19 allowed. 20 THE WITNESS: I take that, and I think 21 that's a strong factor. But the other strong factor, 22 and Mr. Chairman raises that, again, this property is 23 basically zoned for business use and the other property 24 is not. And you cannot make those similar comparisons 25 in terms of intensity of development and what may be</p>	<p style="text-align: right;">Page 104</p> <p>1 evidence where that is true of One? 2 THE WITNESS: Well, I don't think my 3 standard is physically viable. My standard is whether 4 or not it's appropriate. It's not zoned for single 5 family. It's zoned basically for business use. The 6 single family happens to be one of the permitted uses, 7 but I look at the site given the zoning. It's a 8 business zone and that's the proper basic point of 9 comparison. 10 CHAIRMAN FLANAGAN: How does making it a 11 business zone -- business zone make it the better fit 12 for what you're proposing. I don't know. 13 THE WITNESS: I can go through this a 14 million -- one of the things is the Post House Road 15 access. That commercial traffic has to, based on the 16 Highway Access Management Code, use Post House Road. 17 CHAIRMAN FLANAGAN: Let me ask it a 18 different way. So we have a split zone, residential, 19 single=family residential and business, and you looked 20 at the property across the street and say, well, it's 21 mostly residential. That doesn't make it suitable for 22 building what you're talking about, which is 23 residential. 24 THE WITNESS: It's also developed. You may 25 not agree with that, but I want that to be clear for</p>
<p style="text-align: right;">Page 103</p> <p>1 relatively more appropriate given the residential 2 context of the neighborhood. 3 ACTING CHAIRMAN ROSENBACH: I guess you can 4 also say, I don't know if you said this or not, but you 5 could also say the fact that there has been a 6 single-family residence at 2 Post House for many years 7 indicates that it is quite a suitable use. 8 THE WITNESS: Well, that's why I said. 9 It's part of the historic fabric of the neighborhood. 10 It's an established use. 11 ACTING CHAIRMAN ROSENBACH: That one being 12 undeveloped is also been a long-term part of the 13 neighborhood. 14 THE WITNESS: But that's not fair. 15 ACTING CHAIRMAN ROSENBACH: I understand, 16 but I thought -- 17 THE WITNESS: It's a vacant site and you 18 can't -- I think you even mentioned it to a member of 19 the public, the vacant site's not the standard of 20 comparison here. 21 ACTING CHAIRMAN ROSENBACH: All right. 22 Again, to me long-term means this is not the standard 23 either, except to say that the actual history does show 24 that a single-family residence can be built in the 25 socially and fiscally viable at 2 whereas there's no</p>	<p style="text-align: right;">Page 105</p> <p>1 the record. 2 CHAIRMAN FLANAGAN: I don't disagree it's 3 developed. I question whether or not a house could be 4 torn down and something could be built. It happens 5 every day. But you made the statement, the fact that 6 it's a business, zoned business, how does that make it 7 more suitable for your residence, which is what you're 8 asking? 9 THE WITNESS: On a comparative basis, okay, 10 the townhouses, in my opinion, are more suitable with 11 an area where every abutting property and the property 12 across the street has a residential character. And 13 combined with the fact that you have the Post House 14 Road access to commercial use, a far more intensive 15 use, I think the modest townhouse development is 16 actually more compatible and a better fit with the 17 established residence that adjoin this property than 18 some of the commercial uses that are permitted in the 19 B2 Zone. 20 I mean, I've said it a half a dozen times 21 at least. You may not agree with my, but I'm not going 22 to change that opinion. 23 CHAIRMAN FLANAGAN: I don't understand your 24 opinion, and that's fine. It's your case to make. I 25 don't understand your argument why having a residence</p>

<p style="text-align: right;">Page 106</p> <p>1 in a business zone is better, but we'll leave it at 2 that.</p> <p>3 ACTING CHAIRMAN ROSENBAACH: But I do want 4 to also go back to one other thing. And I believe we 5 also discussed this the last time you were here and I 6 just want to make sure that we as a Board do understand 7 your position.</p> <p>8 There's been significant testimony 9 presented to us, for instance just tonight, that this 10 property can't be developed for commercial reasons, 11 can't be. My recollection is that when you testified 12 you said that is not part of your planning testimony. 13 Am I correct about that? That the track record of this 14 property in terms of it hasn't been developed in this 15 year or that year or that year, is not part of your 16 planning analysis. Am I correct about that?</p> <p>17 THE WITNESS: Sort of yes and no.</p> <p>18 ACTING CHAIRMAN ROSENBAACH: Can you clarify 19 that?</p> <p>20 THE WITNESS: I think it's perfectly 21 acceptable for you to take a look at changed 22 circumstances, the permitted uses in the zone, the 23 changing in the retail environment based on E-commerce, 24 what's in the master plan statements about this 25 particular area. I think it's perfectly appropriate</p>	<p style="text-align: right;">Page 108</p> <p>1 And those uses that I use I think are the 2 uses that are more than likely to be the uses that this 3 site would be developed for. And that answers your 4 question.</p> <p>5 ACTING CHAIRMAN ROSENBAACH: Okay. And is 6 it your testimony that proposed townhouses are a better 7 use for this site than those other probable types of 8 uses if this application gets denied?</p> <p>9 THE WITNESS: It is.</p> <p>10 ACTING CHAIRMAN ROSENBAACH: Because?</p> <p>11 THE WITNESS: Because that I think -- as I 12 mentioned, those other uses I think are far more 13 intense. Will have far more negative impacts on, 14 again, all of the adjacent residential uses compared to 15 a relatively benign modest five-unit townhouse project 16 which fits and is compatible with residential. That's 17 why.</p> <p>18 ACTING CHAIRMAN ROSENBAACH: And using as a 19 particular example since you just mentioned it, a deli?</p> <p>20 THE WITNESS: Convenience store, deli, 21 three to five times as many trips. Could be hours of 22 operation. Parking lot in the rear, lighting concerns, 23 impact, traffic parking generation. You just don't 24 have that with five townhouses. It's a residential 25 environment.</p>
<p style="text-align: right;">Page 107</p> <p>1 for you to look at those issues. I just lost my train 2 of thought.</p> <p>3 ACTING CHAIRMAN ROSENBAACH: Well, the 4 question was, does it matter to you, yes or no, that 5 this property has a poor track record of ever being 6 developed?</p> <p>7 THE WITNESS: So, do I think that this is a 8 challenging site for the zone uses? I absolutely do. 9 But by the same token a property owner has a right to 10 seek out something in terms of a permitted use if this 11 Board is so predisposed to deny this application.</p> <p>12 What I'm saying is, when I look at the 13 permitted uses in the district, and I touched upon this 14 a little bit, you're not going to see a shoe store, 15 you're not going to see an apparel store. It just 16 doesn't happen in this environment. But you could see 17 a restaurant. You could see a convenience store, a 18 deli. Those are the uses based on my professional 19 opinion based on what I see out there representing 20 municipalities as well as developers, as what would 21 likely be developed there. What I'm saying is an owner 22 has a right to seek out use his property in accordance 23 with the zoning if this Board denies that variance. 24 And the owner, I think you have to assume, is going to 25 seek out something.</p>	<p style="text-align: right;">Page 109</p> <p>1 ACTING CHAIRMAN ROSENBAACH: And so, if I 2 may sum up this one aspect of your testimony. I'm 3 trying to not mislead anybody, is that given this 4 neighborhood as it now exists, which at least on the 5 one side of 202 which is purely residential, that this 6 proposed use is better for the neighborhood and is 7 better than what is otherwise zoned in terms of the 8 potential intensity of use?</p> <p>9 THE WITNESS: Yes.</p> <p>10 ACTING CHAIRMAN ROSENBAACH: Okay.</p> <p>11 THE WITNESS: That's what I'm saying, yes.</p> <p>12 ACTING CHAIRMAN ROSENBAACH: And I'm not 13 saying you're not saying other things, but on that one 14 aspect.</p> <p>15 THE WITNESS: I'm absolutely saying yes.</p> <p>16 ACTING CHAIRMAN ROSENBAACH: Okay. Other 17 questions?</p> <p>18 BOARD MEMBER CHIPPERSON: Along the same, 19 I'm not clear why -- I understand why you're saying you 20 feel these types of establishments will go there, but 21 why are you so sure it's going to be something along 22 those lines and not a residential home based on the 23 history of the property?</p> <p>24 THE WITNESS: Again, for two reasons on the 25 residential home. I don't think that it's appropriate.</p>

<p style="text-align: right;">Page 110</p> <p>1 We've gone through the reasons. I won't hatch that 2 out, but I don't think it's appropriate there in that 3 context on that lot given the constraints, and given 4 the lack of depth of that particular lot.</p> <p>5 So I don't see residential happening. And 6 the other thing is the property owner basically has the 7 ability to seek any of the permitted zone B2 uses, 8 again if this Board is so inclined to deny this 9 application. And I would assume he will do so. And 10 while I'll admit that given that list of uses many are 11 challenging in the current retail environment the owner 12 has a right to seek to use his property. I just 13 offered to you what I think are the more likely uses 14 based upon my knowledge of what kind of what is 15 happening in a retail environment.</p> <p>16 BOARD MEMBER CHIPPERSON: So you think that 17 there will be more financial profit to sell to a 18 residential home? That's really what the homeowner 19 looks to do.</p> <p>20 THE WITNESS: He has the right -- if this 21 is zoned for single family, as I said, I wouldn't be 22 here advocating this. I couldn't be here advocating 23 this application. But it's zoned for intensive 24 commercial development. And I have to assume that the 25 property owner will continue to seek some type of</p>	<p style="text-align: right;">Page 112</p> <p>1 members of the public for Mr. Phillips? (No response.) 2 All right. Mr. Sheehan, does that conclude 3 your case?</p> <p>4 MR. SHEEHAN: It does, Mr. Chairman. 5 ACTING CHAIRMAN ROSENBACH: Okay. Very 6 good. Now, thank you, Mr. Phillips. 7 THE WITNESS: Thank you. 8 ACTING CHAIRMAN ROSENBACH: Now, how long 9 do you expect to -- well, we have three things going 10 on: One, is Gary is going to help advise us of what 11 the applicable legal standards are, which I assume is 12 going to take some number of minutes. How long do you 13 think you are going to take -- and again I'm not 14 rushing you. 15 MR. SHEEHAN: No longer than 15 minutes at 16 the most. 17 ACTING CHAIRMAN ROSENBACH: Okay. Because 18 what that means is it's going to be about 20 of 11 at 19 the earliest before we start to vote on this. I would 20 be very surprised, I hate to say, but I would be very 21 surprised if we come to a decision tonight. There's a 22 huge amount of testimony tonight. But I suggest that 23 we go as long as we are able to, and if I am surprised 24 and we reach a decision by eleven so be it, and if not at 25 least we have gotten somewhere and we can wrap it up at</p>
<p style="text-align: right;">Page 111</p> <p>1 commercial use, and it is a challenge. I'll admit it's 2 a challenge.</p> <p>3 I think we all have to assume that he's 4 going to find something down the road. I don't know 5 what the issue of the financial and what the property's 6 on the market for. That's not a concern to me. I just 7 look at the site from a locational standpoint and look 8 at those list of permitted uses and can tell you what I 9 think is reasonably probable.</p> <p>10 BOARD MEMBER CHIPPERSON: You don't think 11 that the owner's going to seek out what's most 12 financially attractive for the site? Why would you go 13 with commercial versus residential if residential 14 offers you a better financial gain?</p> <p>15 THE WITNESS: Again, I'm not an appraiser, 16 but I would venture to guess that commercial is going 17 to be more financially viable than a single-family 18 home. That's not my expertise, but I can't imagine 19 that it would be. That's why the owner's going to seek 20 commercial as an alternative if this variance isn't 21 granted.</p> <p>22 BOARD MEMBER CHIPPERSON: Thank you. 23 THE WITNESS: You're welcome. 24 ACTING CHAIRMAN ROSENBACH: Other questions 25 from Board Members? Are there any questions from any</p>	<p style="text-align: right;">Page 113</p> <p>1 the next hearing. You are the Chairman. 2 CHAIRMAN FLANAGAN: Well, we do have a 3 handful of issues that we have to cover which we need 4 to address tonight, so we don't have until 11, maybe 5 until ten of 11.</p> <p>6 ACTING CHAIRMAN ROSENBACH: Then can I make 7 this suggestion that the hearing is closed. It's 8 closed, okay. And for all of you out there that means 9 you have asked all your questions, you have made your 10 comments, and the Board thanks you for them. That I 11 would suggest then, Mike, if it's okay with you, that 12 since we are not apparently going to reach a decision 13 today that what we will do is that at our next meeting 14 this is the first items on the agenda. That Mr. 15 Sheehan makes his remarks. Gary instructs us on the 16 law. We deliberate. We take as long as it takes and 17 we reach closure.</p> <p>18 CHAIRMAN FLANAGAN: Given all the time 19 we've put into it I want to give it every moment it 20 deserves. I don't want to rush. Is it possible, 21 though, that we can finish it tonight if we skip the 22 administrative stuff?</p> <p>23 ACTING CHAIRMAN ROSENBACH: If we do then 24 what we are saying is that we're taking roughly 25 20 minutes of our time to decide something that's taken</p>

<p style="text-align: right;">Page 114</p> <p>1 months and months to be presented to us. And I think 2 that it's unfair to the applicant. I think it's unfair 3 to the public and undue haste. 4 CHAIRMAN FLANAGAN: I agree. Mr. Sheehan? 5 MR. SHEEHAN: Mr. Chairman and Acting 6 Chairman, I agree with Mr. Rosenbach's statement. And 7 I have to with sincere but adamant conviction say to 8 you that on March 22nd I am not available. That it 9 would have to be put off to another date, whatever date 10 it is that the Board chooses. 11 ACTING CHAIRMAN ROSENBAACH: Okay. Well 12 then let me make -- you know, I have this odd role of 13 being the vestigial Chair, but with Mr. Flanagan's 14 consent I'm running this. Then here's what I would 15 suggest. Again, this hearing is closed. We are not 16 going to be hearing any more testimony. We are not 17 going to be hearing any more exhibits or remarks. 18 I leave it to you, Mr. Sheehan, because I 19 don't want to create more work. I leave it to you 20 whether you want to submit something in writing for us 21 to review and then supplement, or you wish by oral 22 comments at, I guess, our April meeting, or whether you 23 simply want to wait until our April meeting and at that 24 point just expect that it will help you if you help us 25 by taking all the time you need to remind us of what</p>	<p style="text-align: right;">Page 116</p> <p>1 But I think it would be very helpful to the 2 Board Members because we can throw around this 3 vocabulary particular suitability and things like that 4 and I happen to know that it has given the legal 5 meaning and Gary knows it, and Mr. Phillips knows it, 6 and you know, but most of the people here, I believe, I 7 can say don't really understand what the standard is, 8 and I'm not sure the Supreme Court does either, by the 9 way. So if you are willing to do that, I mean, you 10 have plenty of time to do it. 11 MR. SHEEHAN: That's fine. I have it right 12 here. 13 ACTING CHAIRMAN ROSENBAACH: But I think 14 that would be very helpful to us. And, again, it would 15 not foreclose you from saying anything that you want to 16 say when you come back to us. Okay. Gary, does that 17 sound all right? 18 MR. HALL: Yeah, but one question: You 19 said March 22nd? 20 MR. SHEEHAN: Yes. 21 MR. HALL: Fifteen is the next meeting. 22 ACTING CHAIRMAN ROSENBAACH: Yes. Thank 23 you. Are there two months where -- 24 MR. SHEEHAN: That's good. 25 MR. HALL: No, it's the third Thursday.</p>
<p style="text-align: right;">Page 115</p> <p>1 you think is in the record and how we should be using 2 that. 3 MR. SHEEHAN: If the Board feels that a 4 written submission would be helpful I'm prepared to do 5 that without any problem. If you would rather it be an 6 oral summation I'm willing to do that. 7 ACTING CHAIRMAN ROSENBAACH: Well, I do have 8 one suggestion, but I'd like to ask for the Board's 9 feedback on this, which is, I have mentioned several 10 times during the course of these many months that 11 unless someone happens to be a land use attorney the 12 standard for this application is not at all clear. And 13 I have suggested that -- several times -- that you 14 advise us of what you think the standard is. 15 So if you are willing, and if the Board 16 thinks it will be helpful, I think it would be very 17 helpful, but you can do this orally as well, but I felt 18 it might help the Board if it is in writing, that you 19 say focusing on the positive and negative criteria 20 here's the standard. And for each one of these aspects 21 here's what we think the proofs show. And I won't hold 22 you to it, in the sense that everything you say I 23 assume you're not going to withdraw but that you can 24 supplement it as you wish when you give us a summation, 25 if you wish.</p>	<p style="text-align: right;">Page 117</p> <p>1 BOARD MEMBER NEWLIN: You're right. It's 2 the 15th. 3 CHAIRMAN FLANAGAN: Yes, the first is 4 Thursday. 5 ACTING CHAIRMAN ROSENBAACH: Thank you, 6 Gary. Glad somebody's paying attention. 7 MR. HALL: Glad I can do something. 8 MR. SHEEHAN: So it's the March 15th, is 9 it? 10 ACTING CHAIRMAN ROSENBAACH: So does that 11 change your availability? 12 MR. SHEEHAN: I'm on board. 13 ACTING CHAIRMAN ROSENBAACH: Good. 14 Terrific. Because I really didn't not want to -- 15 MR. SHEEHAN: But Mr. Chairman, if the 16 Board members would find it useful to put together a 17 memo and get it out between now and a week or so that's 18 easy to do. 19 ACTING CHAIRMAN ROSENBAACH: I think it 20 would be -- especially if you think -- I think it would 21 be very helpful if you're willing to do that. 22 MR. SHEEHAN: Yes. 23 ACTING CHAIRMAN ROSENBAACH: Okay. 24 Appreciate that. 25 So everybody, here's where we are. We are</p>

<p style="text-align: right;">Page 118</p> <p>1 returning here on March 15th subject to Mr. Flanagan 2 deciding otherwise, because of things that come up 3 between now and March. This will be the first item on 4 the agenda. Again, hearing is closed. 5 BOARD MEMBER SCHLEIFER: Not closed to the 6 public but closed to public. 7 ACTING CHAIRMAN ROSENBACH: Closed to 8 input. Closed to testimony and evidence. 9 BOARD MEMBER SCHLEIFER: But it's an open 10 public meeting. 11 ACTING CHAIRMAN ROSENBACH: Of course, it's 12 an open discussion. But of course, when we discuss 13 things you can be sitting in the back there and say I 14 want to be heard, I want to be heard, and we're going 15 to ignore you. You have had every opportunity you 16 want. 17 So, again, Mr. Hall is going to make sure 18 that we understand the law, so will Mr. Sheehan. This 19 document that Mr. Sheehan provides to us will be made 20 publicly available and will be accessible to you 21 through our secretary's office. 22 I had said it earlier that I thought we 23 were going to take a vote tonight, but it didn't happen 24 because you all had a lot of comments and questions and 25 again we as a Board appreciate that.</p>	<p style="text-align: right;">Page 120</p> <p>1 three Board members aren't here and Mr. Sheehan will 2 probably say he doesn't want me. 3 CHAIRMAN FLANAGAN: If I can just ask you 4 to be kind of quiet on the way out. 5 MR. SHEEHAN: I would like to have the 6 witnesses excused so they don't have to attend since 7 the hearing is closed. 8 CHAIRMAN FLANAGAN: They don't have to. 9 ACTING CHAIRMAN ROSENBACH: They don't have 10 to attend. 11 CHAIRMAN FLANAGAN: Fine. All right. 12 Thank you. 13 (Whereupon, the hearing on this application 14 concludes at 10:23 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 119</p> <p>1 CHAIRMAN FLANAGAN: All right. Thank you, 2 Mr. Sheehan, we'll see you next month. 3 MR. SHEEHAN: Thank you. 4 CHAIRMAN FLANAGAN: Ladies and gentlemen of 5 the public, we have just a few administrative things. 6 You're welcome to stay and listen to it. It's going to 7 be a little bit dry, but if you plan on leaving I would 8 just ask you if you can do it quietly in the next few 9 minutes or so. 10 UNIDENTIFIED VOICE: I'm sorry. I just had 11 a quick question. So Mr. Sheehan's going to present 12 his closing argument. Mr. Visconi, the attorney for 13 Post House Road Association is not present tonight. 14 Would Mr. Visconi have the same opportunity to provide 15 something to the Board? 16 ACTING CHAIRMAN ROSENBACH: Yes, he would. 17 And if you have a route to Mr. Visconi you can let him 18 know what we have determined that we are going to be 19 voting. That the record is closed. 20 UNIDENTIFIED VOICE: And there will 21 definitely be a vote on the 15th of March. 22 CHAIRMAN FLANAGAN: If there's not Phil is 23 done. I'm taking it over from that point. 24 ACTING CHAIRMAN ROSENBACH: The only way 25 that I can foresee is if there is a flu epidemic and</p>	<p style="text-align: right;">Page 121</p> <p>1 CERTIFICATE 2 3 I, IRIS LA ROSA, a Notary Public and Certified 4 Shorthand Reporter of the State of New Jersey, do 5 hereby certify that the foregoing is a true and 6 accurate transcript of the testimony as taken 7 stenographically by and before me at the time, place, 8 and on the date hereinbefore set forth. 9 I DO FURTHER CERTIFY that I am neither a 10 relative nor employee nor attorney nor counsel of any 11 of the parties to this action, and that I am neither a 12 relative nor employee of such attorney or counsel, and 13 that I am not financially interested in the action. 14 15 16 IRIS LA ROSA, CSR, RPR 17 Certificate No. 30XI 00162800 18 Dated: 19 20 21 22 23 24 25</p>

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