

Regular Public Meeting of the Englewood Cliffs Planning Board
Minutes
February 11, 2016

The Regular Meeting of the Englewood Cliffs Planning Board was called to order by Vice Chairman Villari at 7:34 PM.

Present at Roll Call:

Ms. Rosenberg
Mr. Villari
Mr. Chinman
Mr. Kilmartin
Mr. Trovato
Mrs. O'Shea – Borough Rep
Mr. Kim – 1st Alternate
Mr. Porrino – 3rd Alternate
Mr. Lee – 4th Alternate
Councilman Park

Absent:

Mr. Fehre
Mr. Duffy – 2nd Alternate
Mayor Kranjac

Also Present:

Bernard Mirandi, PE, of Boswell Engineering, the Planning Board consulting engineer
Andrew Hipolit, PE, of Maser Consulting, the Borough's consulting engineer
Michael Kates, Esq., of Kates Nussman Rapone Ellis & Farhi, the Board's attorneys.

Public notice of this meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, The Star Ledger, and posting of notice on the Borough Hall bulletin board at 482 Hudson Terrace.

Flag Salute led by Mr. Kilmartin

Ms. Eastwood made a statement – At last night's Mayor & Council meeting a group of residences from Mauro Road gave a presentation on the serious stormwater run-off that they are experiencing. The residences engineer indicated the governing body that he believes the area is still experiencing these events because the stormwater run-off system was not properly designed by Boswell Engineering. Mayor Kranjac believes these allegations create a conflict of interest which precludes Boswell to serve as the Planning Board engineer.

Mrs. O'Shea has a motion to appoint Maser Consulting as Planning Board Engineer with condition that Maser does not charge any pending applications that Boswell Engineering has previously charged. Ms. Eastwood seconded the motion.

Mr. Kates stated that the appointing of the engineer is on the agenda and that the approval of the minutes is before that and also that Chairman Fehre and Mr. Duffy made a request to be phoned into the meeting for that particular vote.

Mrs. O'Shea stated she has a motion on the floor and it has been seconded.

Mr. Kates stated that he understands, but that he is raising the point that there are members who are not present who have requested to be able to participate by two way telephone conference. I had informed Mr. Villari of this earlier in the afternoon. Mr. Villari stated that he

received a call about 2 ½ hours ago altering him of this issue for the first time. Mr. Villari asked Mr. Kates to take a roll call on the allowing of the telephone voting.

Mr. Kates stated as per the Cox book section 3-8.3 two-way telephonic communication equipment should be sufficient for a board member to participate in routine matters such as a board's reorganization or a determination of meeting schedules. A member should be able to participate without being physically present in a reorganization meeting, or the portion of a regular or special meeting devoted to matters other than hearings on applications, by way of two-way communication equipment, such as telephone or computer. The communication equipment in the meeting room, however, should have a "speaker phone" or be otherwise audible to all board members and members of the public physically present.

Mr. Villari stated that what Mr. Kates has read is not binding of the board and that the waiting matter of the appointing of the engineer is an important matter for each member. Mr. Villari requested a roll vote be on whether or not a absent member can vote on this matter telephonically.

Mr. Kilmartin questioned Mr. Kates if this has ever happened before the board. Mr. Kates stated no not to his knowledge.

Mr. Villari mad a motion to disallow telephone voting for appointment of the Planning Board Engineer which was seconded by Mrs. O'Shea. Vice Chairman asked for roll-call vote of all the members: 6 Ayes (Mr. Villari, Mrs. O'Shea, Mr. Porrino, Mr. Lee, Councilman Park, and Ms. Eastwood) 4 Nays (Mr. Trovato, Mr. Kilmartin, Mrs. Rosenberg, Mr. Kim), 1 Absention (Mr. Chinman). Motion passed to not allow telephonic communication.

Mrs. O'Shea repeated her motion to appoint Maser Consulting as Planning Board engineer with the condition that they not charge any pending applications that Bosell Engineering has previously charged effective immediately. Ms. Eastwood seconded the moton. Vice Chairman asked for a roll-call vote of all the members present: 6 Ayes (Mr. Villari, Mrs. O'Shea, Mr. Porrino, Mr. Lee, Councilman Park, and Ms. Eastwood) 4 Nays (Mr. Trovato, Mr. Kilmartin, Mrs. Rosenberg, Mr. Kim), 1 Abstention (Mr. Chinman).

The minutes of the January 14, 2016 Re-Org meeting and the January 14, 2016 Regular meeting motioned by Mrs. O'Shea, seconded by Ms. Eastwood approved by voice vote.

Old Business:

Application #256KK - Rear Yard Variance for Deck
Mr. Cazim Ljuljanaj – 4 Summit St – Block 100 Lot 2
Approved – Resolution

Mr. Kates, Board Attorney, read the resolution which is incorporated herein as though fully stated and made a part hereof. The Vice Chairman asked for a motion to approve. Motion was made by Mr. Kilmartin, seconded by Mrs. Rosenberg. Vice Chairman asked for roll-call vote of the members that were eligible to vote: Mr. Villari, Mr. Trovato, Mr. Kilmartin, Mrs. Rosenberg, Mr. Chinman, Mr. Kim, Mrs. O'Shea, Councilman Park, and Ms. Eastwood they each voted to adopt this Resolution; it was unanimous.

Application #251K - New Home Site Plan Approval
Mr. & Mrs. Civan – 560 Floyd St. – Block 609 – Lot 10
Approved – Resolution

Mr. Kates, Board Attorney, read the resolution which is incorporated herein as though fully stated and made a part hereof. The Vice Chairman asked for a motion to approve. Motion was made by Mr. Kilmartin, seconded by Mrs. Rosenberg. Vice Chairman asked for roll-call vote of the members that were eligible to vote: Mr. Trovato, Mr. Kilmartin, Mrs. Rosenberg, and Mr. Chinman, they each voted to adopt this Resolution; it was unanimous.

Application #255K - Site Plan Approval for New Commercial Office Building w/
Variances
Lighthouse E.C., LLC – 922(980) Sylvan Ave. Block 1202 – Lot 2

See attached transcripts.

Application #238K - Major Subdivision
Estate of Josephine Mauro – 361, 365, 369 Mauro
Block 406 – Lot 1, 2, 3

See attached transcripts.

New Business:

Application #257K - Site Plan Approval w/Variances
FCA Realty, LLC – 100 Sylvan Ave. – Block 130 – Lot 23

Vice Chairman Villari announced that this application will be carried to the March 10, 2016 meeting and will not be re-noticed.

Application #258K - Site Plan Approval w/Variances
FCA Realty, LLC – 120 Sylvan Ave. – Block 130 – Lot 24

Vice Chairman Villari announced that this application will be carried to the March 10, 2016 meeting and will not be re-noticed.

Application #259K - New Home Construction with Variances
Mr. & Mrs. Pogharian – 8 Second St. – Block 129 – Lot 3

Vice Chairman Villari announced that this application will be carried to the March 10, 2016 meeting and will not be re-noticed.

Application #260K - Minor Subdivision
Senatore III Development, Inc. – 577 Floyd St – Block 802 – Lot 7

Vice Chairman Villari announced that this application will be carried to the March 10, 2016 meeting and will not be re-noticed.

Vice Chairman Villari asked for a motion to open to public on any matter. Motion was made by Mr. Kilmartin seconded by Mr. Trovato and carried unanimously by voice vote.

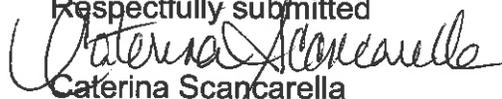
No Comments

Vice Chairman Villari asked for a motion to close to public. Motion was made by Mr. Chinman, seconded by Mrs. Rosenberg and carried unanimously by voice vote.

Mr. Kates reminded members that there will be a Special Meeting on February 24, 2016.

Vice Chairman Villari asked for a motion to adjourn the meeting at 10:43 pm. Motion was made by Mrs. O'Shea, seconded by Mrs. Rosenberg and carried unanimously by voice vote.

Respectfully submitted



Caterina Scancarella

Planning Board Administrative Secretary

ENGLEWOOD CLIFFS PLANNING BOARD
REGULAR MEETING – FEBRUARY 11, 2016 7:30 PM

10 Kahn Terrace, Englewood Cliffs, NJ

CALL TO ORDER

The meeting of the Englewood Cliffs Planning Board will come to order this (date). The time is (time).

"OPEN PUBLIC MEETINGS ACT" STATEMENT

Public notice of this meeting has been given in compliance with the Open Public Meeting Law by advertisement in The Record, and posting of notice on the municipal building bulletin board at 482 Hudson Terrace, Englewood Cliffs.

ROLL CALL

FLAG SALUTE LED BY:

APPROVAL OF MINUTES: January 14, 2016 Re-Org Meeting, January 14, 2016 Regular Meeting

APPOINTMENT OF BOARD ENGINEER

OLD BUSINESS:

- Application #256K - Rear Yard Variance for Deck
Mr. Cazim Ljuljanaj – 4 Summit Street – Block 100 Lot 2
Resolution – Approved
- Application #251K - New Home Site Plan Approval
Mr. & Mrs. Civan – 560 Floyd Street – Block 609 – Lot 10
Resolution – Approved
- Application #255K - Site Plan Approval for New Commercial Office Building with Variances
Lighthouse E.C., LLC – 980 (922) Sylvan Avenue – Block 1202 – Lot 2
- Application #238K - Major Subdivision
Estate of Josephine Mauro – 361, 365, 369 Mauro Road – Block 406 – Lots 1,2,3

NEW BUSINESS:

- Application #257K - Site Plan Approval w/Variances
FCA Realty, LLC – 100 Sylvan Avenue – Block 130 – Lot 23
- Application #258K - Site Plan Approval w/Variances
FCA Realty, LLC – 120 Sylvan Avenue – Block 130 – Lot 24
- Application #259K - New Home Construction with Variances
Mr. & Mrs. Pogharian - 8 Second Street – Block 129 – Lot 3
- Application #260K - Minor Subdivision
Senatore III Development, Inc. – 577 Floyd Street – Block 802 – Lot 7

Meeting date changes– October 13, 2016 and November 10, 2016- due to change in Mayor & Council meetings.

COMMITTEE REPORTS

PUBLIC COMMENTS OTHER THAN HEARING ON THIS AGENDA

ADJOURNMENT

**PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS**

IN THE MATTER OF THE APPLICATION OF CAZIM LIJULIANAJ FOR A DIMENSIONAL VARIANCE RELATING TO LOT 2 IN BLOCK 100, 4 SUMMIT STREET : **MEMORIALIZATION RESOLUTION APPLICATION NO. 256K**

WHEREAS, CAZIM LIJULIANAJ, applied on or about November 23, 2015 to the Planning Board of the Borough of Englewood Cliffs for a variance to construct a first floor deck at the rear of his single-family residence, which, because of the topography of the lot would be elevated from the grade of the rear yard approximately ten (10) feet, in the "R-B Residential Single Family" Zoning District; and

WHEREAS, a public hearing was conducted on January 14, 2016, upon proper notice certified by applicant's proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Borough; and

WHEREAS, applicant represented himself, assisted by Mark A. Stefanelli, RA, 301 Route 17 North, Rutherford, NJ 07070; and

WHEREAS, there were no interdepartmental communications and advisory reports of municipal departments and agencies;

WHEREAS, admitted into evidence as Exhibit A-1 was a photo-board showing 12 photographs of the subject property and abutting; and

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WHEREAS, admitted into evidence without exhibit references were the following:

- Application dated November 23, 2015; and
- Sheet 1 of Architectural Plan entitled "Rear Elevation" prepared by Mark A. Stefanelli, RA, dated November 15, 2015; and

WHEREAS, testimony in support of the application was given by applicant, Cazim Ljuljanaj and by his architect, Mark A. Stefanelli, R.A.; and no member of the public questioned the witnesses; and

WHEREAS, the Planning Board did consider the testimony and evidence presented, the following are the findings of fact and conclusions of the Board:

1. Applicant proposes to construct a ground floor, rear yard deck and railing. In his application and testimony, Mr. Ljuljanaj offers as justification the recent disability to his son, confining him to a wheelchair. A ground floor deck overlooking the wooded Flat Rock Brook Nature Center to the rear would greatly enhance his confined environment.
2. The term "undue hardship" in N.J.S.A. 40:55D-70c has been variously interpreted, but in Lang v. Zoning Board of Adjustment, 160 N.J. 41, 53, 55-56 (1999), the Court made clear that it refers solely to particular physical conditions of the property as those are described in subsection (c)(1) of the statute. It does not refer to personal hardship. See also Ten Stary Dom Ptp. v. Mauro, 216 N.J. 16, 29 (2013). An applicant's personal hardship also would require extraordinary enforcement oversight if the Board were to limit the deck's existence to the son's disability or the disabled individual's occupancy of the premises. For the reasons hereinafter set forth, the Board has granted variance relief for reasons other than the claimed disability.

The Variances

3. The proposed dimensions of the deck are 12 feet by 30 feet, with the 12 foot dimension extending into the rear yard setback. As per Code Section 30-6.1 (Schedule A), a 25-foot rear yard

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setback is required for the R-B Zone. Although elevated, the deck is considered part of the encroachment into the rear yard, as the definition of "Yard, rear" under Code Section 30-2.b. is measured from "the nearest point of the building". With the proposed extension of the building by the deck, the rear yard will be 13.66 feet, a deficiency of 11.34 feet.

4. In addition, Code Section 30-6.1 (Schedule A) limits lot coverage to 32%. With the deck addition, and notwithstanding it being elevated and not at the finished grade of the rear yard, the lot coverage would be 39%. The existing lot coverage is a nonconforming 34%¹, based upon building coverage of 2,368 sq ft (as shown on the "Lot Coverage Calcs., Sheet No. 1" Provided on the architectural plan. The deck addition of 346 sq. ft. bumps it up an additional 5%.

5. Code Section 30-6.1 (Schedule A) also Imposes an "impervious coverage" limitation of 51%. As the proposed deck is elevated, it would not be part of an impervious surface calculation, although a proposed concrete pad of 12 sq. ft. for the deck steps and supports would. Applicant has advertised for, and his architect's "Lot Coverage Calcs.", Sheet No. 1 show, nonconforming impervious coverage of 52%, which is 1% greater than the maximum 51% allowed.

6. The Board concludes that the foregoing variances are justified under the topographical "hardship" criterion of N.J.S.A. 40:55D-70c(1). It relates to the extraordinary slope of the rear yard, which essentially precludes most of the rear yard from being usable for outdoor entertainment or merely taking advantage of the rear yard vistas at the existing ground level grade. The elevated deck offers some compensation.

7. As to the negative criteria of the statute, there are no discernable adverse effects of a rear yard encroachment or excessive building and/or impervious coverages. The rear of the

¹ "Lot coverage" is defined in Code Section 30-2.b as "that portion of a lot covered by the largest floor area of all structures, both principal and accessory".

property abuts the Flat Rock Brook Nature Center woodland in Englewood. There are no homes in close proximity.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Englewood Cliffs that the development application be approved, subject to the following conditions:

GENERAL CONDITIONS

A. All representations made by applicant or his agents shall be deemed conditions of this approval and any misrepresentations by applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

B. The action of the Planning Board in approving this application shall not relieve the applicants of responsibility for any damages caused by this project, nor does the Planning Board of the Borough of Englewood Cliffs, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

MOTION BY: MR. KILMARTIN

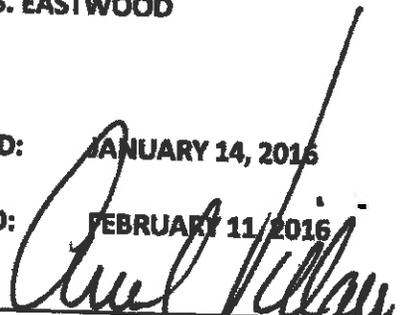
SECONDED BY: MR. TROVATO

IN FAVOR: MR. VILLARI, MR. KILMARTIN, MR. TROVATO, MS. ROSENBERG, MR. CHINMAN, MR. FEHRE, MRS. O'SHEA, COUNCILMAN PARK and MS. EASTWOOD

OPPOSED: NONE

DATE APPLICATION APPROVED: JANUARY 14, 2016

DATE RESOLUTION APPROVED: FEBRUARY 11, 2016


AUREL VILLARI, VICE CHAIRMAN
PLANNING BOARD

Attest:


CATERINA SCANCARELLA
PLANNING BOARD SECRETARY

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**PLANNING BOARD
BOROUGH OF ENGLEWOOD CLIFFS**

IN THE MATTER OF THE APPLICATION OF RAFFI :

CIVAN AND DENISE M. CIVAN FOR SITE PLAN : MEMORIALIZATION RESOLUTION

APPROVAL AND VARIANCE RELIEF FOR BLOCK : APPLICATION NO. 251K

609, LOT 10, 560 FLOYD STREET :

WHEREAS, RAFFI CIVAN and DENISE M. CIVAN applied on or about August 13, 2015 to the Planning Board of the Borough of Englewood Cliffs for site plan approval and variance relief to demolish an existing one-story ranch-style dwelling and construct a 2½ story single-family dwelling and amenities, in the "R-A Residential Single-Family" zoning district; and

WHEREAS, following a public hearing on October 8, 2015 and a denial of their application by a 5-3 vote, applicants applied for reconsideration on October 16, 2015, were granted that request, and filed their revised application on November 24, 2015; which was heard on January 14, 2016, upon proper notice certified by applicants' proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Borough; and

WHEREAS, applicant was represented by Saverio V. Cereste, Esq., 1624 Center Avenue, P.O. Box 845, Fort Lee, NJ 07024; and

WHEREAS, interdepartmental communications and advisory reports of municipal departments and agencies were accepted as part of the record, as follows:

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- Certification of Taxes Paid dated February 12, 2015 by Joseph Iannaconi, Jr., Tax Collector/Treasurer certifying payment of taxes through the 3rd quarter, 2015; and
- Engineering review letters from the Board's consulting engineer Bernard N. Mirandi, P.E., of Boswell McClave Engineering, 330 Phillips Avenue, South Hackensack, NJ 07606, dated October 1, 2015 and December 4, 2015; and

WHEREAS, admitted into evidence were the following exhibits:

Exhibit A-1 – Site Plan prepared by Mark S. Martins, P.E. & L.S., Mark Martins Engineering, LLC, 55 Walnut Street, Suite 201, Norwood, NJ 07648, dated April 30, 2015, consisting of two sheets, as follows:

Sheet 1 of 2 – Site Plan; and

Sheet 2 of 2 – Soil Erosion Plan /Details;

Exhibit A-2 – Architectural Plans prepared by Marios Lachanaris, R.A., Marios Lachanaris, Architect, LLC, 1610 Center Avenue, Fort Lee, NJ 07024, dated April 23, 2015, consisting of two sheets, as follows:

Sheet 1 of 2 – Front Elevation, Right Side Elevation and Rear Elevation; and

Sheet 2 of 2 – Basement Floor Plan, First Floor Plan and Second Floor Plan; and

Exhibit A-3 – Photographs of the front elevation of the subject property taken by applicant Raffi Civan;

Exhibit A-4 – Photographs of the Demarest Avenue elevation taken by applicant;

Exhibit A-5 – Photographs of the rear yard elevation of the subject property taken by applicant;

Exhibit A-6 – Drainage Calculations prepared by Mark S. Martins, P.E. & L.S., dated May 1, 2015;

Exhibit A-7 – Photo-board showing six photographs of surrounding properties;

Exhibit A-8 – Survey prepared by Mark S. Martins, P.E. & L.S., dated May 22, 2014 with latest revision October 8, 2014;

Exhibit A-9 – Colorized Sheet 1 of 2 entitled "Site Plan" prepared by Mark S. Martins, P.E. & L.S., dated April 30, 2015;

Exhibit A-10 – Architectural plans prepared by Marios Lachanaris, R.A., dated November 4, 2015, consisting of two sheets, as follows:

Sheet 1 of 2 – Front Elevation, Right Side Elevation and Rear Elevation; and

Sheet 2 of 2 – Basement Floor Plan, First Floor Plan and Second Floor Plan; and

WHEREAS, testimony in support of the application was given by applicant, Raffi Civan; David Spatz, P.P., 60 Friend Court, Harrington Park, NJ 07640; Mark S. Martens, P.E. & L.S.; and by Marios Lachanaris, R.A.; and Jeffrey Morris, P.E., of Boswell McClave Engineering (substituting for the Board's consulting engineer, Bernard N. Mirandi, P.E.) on October 8, 2015, and Bernard N. Mirandi, P.E., on January 14, 2016, questioned the witnesses on behalf of the Board and gave testimony; and no members of the public questioned the witnesses or commented on the application; and

WHEREAS, the Planning Board did consider the testimony and evidence presented, the following are the findings of fact and conclusions of the Board:

1. Block 609, Lot 10 (the "Site") is a corner lot located on the northwesterly intersection of Floyd Street and Demarest Avenue. Applicants seek to demolish an existing one-story ranch-style dwelling and construct a 2½ story dwelling with a permeable paver driveway fronting Floyd Street, an entry porch, a paver patio in the rear yard and "Keystone" retaining walls along the northwesterly property line and at both sides of the driveway. Also proposed are stormwater management improvements. The property is located in the R-A Residential Single-Family Zoning District, wherein the proposed single-family use is a permitted use.

2. The following variances were required:

- a. Minimum Lot Area: Code §30-6.1 – Schedule A requires a lot area of 10,000 sq. ft. The lot is an existing non-conforming 7,787 sq. ft.
- b. Minimum Lot Width: Code §30-6.1 – Schedule A requires a lot width of 100 feet. The lot is an existing non-conforming 49.26 feet.
- c. Minimum Side Yard - Corner: Code §30-6.1 – Schedule A requires a 15-foot corner side yard setback. The reduced building footprint results in a proposed corner side yard setback (from Demarest Avenue) of 10.1 feet to the building. The application denied on October 8, 2015 included a setback of 8 feet to the chimney stack. The fireplace is now relocated to the interior of the house, allowing for the increased setback along Demarest Avenue.

d. Minimum Side Yard – One Side: Code §30-6.1 – Schedule A requires a 10-foot side yard (one side) setback. The reduced building footprint results in a proposed side yard setback (one side) of 7.0 feet. The application denied on October 8, 2015 included a setback of 5.6 feet. The 7-foot setback mirrors the 7-foot setback of the adjoining property.

3. It is noteworthy that the impervious coverage has been reduced from a nonconforming 53.9% to a conforming 50.02% (51% allowed).

4. The analysis must begin with the reality that this severely narrow lot – 49.26 feet in width on Floyd Street and with an elongated 158.08± length along Demarest Avenue - has supported a single-family home on a 7,787 square-foot lot, in a zone requiring a minimum area of 10,000 square feet. It is taxed by the Borough as a viable homesite¹, and the Board is cognizant of the fact that it should not be zoned into inutility. As a single-story ranch, the structure is deficient, with only two bedrooms. The challenge for both the applicants and the Board is to find a better zoning alternative on this undersized and irregularly shaped lot. The Board's initial denial viewed the proposal as pushing the envelope too far. This plan revision is more accommodating to the neighborhood scheme, as hereinafter set forth.

5. Applicants' planner David Spatz, P.P. opined that the dimensional variances were justified under both N.J.S.A. 40:55D-70c(1) and c(2). A dimensional variance pursuant to N.J.S.A. 40:55D-70c(1)(c) asks the core question of whether there is an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. As stated above, the existing home is deficient, with only two bedrooms. By demolishing the single-story ranch and replacing it with a two-story colonial, the bedrooms will be increased to four. The unanimous vote of the Board on the amended application is predicated on the conclusion that the deficiencies of the existing structure justify the dimensional variance.

6. Variance relief under N.J.S.A. 40:55D-70(c)(2) is "rooted in the purposes of zoning and planning itself and must advance the purposes of the Municipal Land Use Law." Kaufmann v. Planning Bd. for Warren, 110 N.J. 551, 562 (1988). The grant must therefore benefit the

¹ The Borough's tax records, of which this Board takes judicial notice, show ownership in applicants since January 2002, with the land assessed at \$837,200 and the home at \$71,300. There is a significant disproportionality between the low home value and the high land value.

community in that "it represents a better zoning alternative for the property", and may not be granted merely to advance the purposes of the owner. Kaufman v. Planning Bd. for Warren, at 563. Thus, the focus in a c(2) case is not whether the "hardship" on the owner warrants a relaxation of the standard, but "on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community." The Board determined that applicants met the statutory requirements under (c)(2) by engineering significant improvements to stormwater management, coincident with reducing the impervious coverage requirement. Stormwater management is a primary concern of the Borough and applicants' effort in this revision results in a community benefit, outweighing any detriment. See Lang v. Zoning Bd. of Adjustment of Borough of North Caldwell, 160 N.J. 41 at 60 (1999).

7. That said, a soil log and percolation test shall be performed at the exact locations of the proposed stormwater management structures to substantiate the soils acceptance of such a system and to determine the elevation of groundwater and rock; and the installation of the stormwater management facility will not be allowed to commence until the Board's consulting engineer has received and reviewed the aforementioned tests for acceptance.

8. No drainage from this property shall affect adjacent properties both during and subsequent to construction. Should any adjacent property be affected by runoff from this property, the Owner shall be responsible to remedy the matter at the owner's own cost.

9. According to the engineering drawings, five (5) trees are indicated for removal and no shade trees are proposed. In the absence of a viable Borough shade tree committee the Borough planner, Burgis Associates, or the Board's consulting engineer shall review and approve a tree replacement plan. Their review is required to ensure that any removal of selected trees and the preservation of trees to remain are in accordance with the Borough Code. Four of the five trees proposed for removal are within the building and driveway footprint. One of the five trees proposed for removal is along the northerly property border.

10. An "as-built survey" shall be provided by a licensed land surveyor prior to the issuance of a Certificate of Occupancy. A note to this effect should be indicated on a revised plan.

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NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Englewood Cliffs that the development application be approved, subject to the following conditions:

CONDITIONS SPECIFIC TO THE APPLICATION

A. The Board's consulting engineer shall have continuing oversight as to the implementation of stormwater management controls, as referenced above, in his review letter of December 4, 2015 and as filed conditions may warrant during the construction phase.

B. All other recommendations of the Board's consulting engineer as set forth in his review letter of December 4, 2015 and as filed conditions may warrant during the construction phase.

C. Applicants shall replace trees pursuant to a plan consistent with the Borough ordinance, approved by either Burgis Associates, the Borough planner, or the Board's consulting engineer.

GENERAL CONDITIONS

D. All representations made by applicant or its agents shall be deemed conditions of this approval and any misrepresentations by applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

E. The action of the Planning Board in approving this application shall not relieve the applicants of responsibility for any damages caused by this project, nor does the Planning Board of the Borough of Englewood Cliffs, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

MOTION BY: MR. TROVATO

SECONDED BY: MR. KILMARTIN

IN FAVOR: MR. TROVATO, MR. KILMARTIN, MR. CHINMAN, MS. ROSENBERG and MR. FEHRE

OPPOSED: NONE

DATE APPLICATION APPROVED: JANUARY 14, 2016

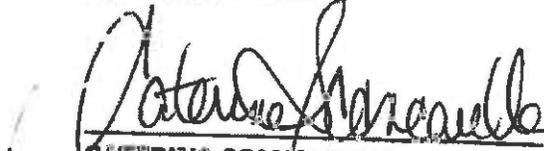
DATE RESOLUTION APPROVED: FEBRUARY 11, 2016

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AUREL VILLARI, VICE CHAIRMAN
PLANNING BOARD

Attest:


CATERINA SCANCARELLA
PLANNING BOARD SECRETARY

ATES NUSSMAN RAPONE
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COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

PRINCIPALS:
Joseph H. Burgis PP, AICP
Edward Snieckus, Jr. PP, LLA, ASLA

MEMORANDUM

To: Borough of Englewood Cliffs Planning Board
From: Ed Snieckus, Jr. PP, LLA and Tony Somers, MLA, ASLA
Subject: Lighthouse Property
Block 1202 Lot 2
922 Sylvan Avenue
Landscape Plan Review
Date: January 27, 2016
BA#: 3156.01

Pursuant to a request by the Planning Board regarding review of revised landscape plans dated September 30, 2015, the following comments are offered for the Board's consideration:

1. In general, we find the plant material and quantities specified to be sufficient.
2. The landscape plan shows a mix of planted and non-planted parking islands. It is recommended that the non-planted islands be sufficiently vegetated in order to further reduce impervious coverage on the site.
3. Screening shrubs along the eastern side of the trash enclosure should be extended to reduce the visibility of the enclosure from the proposed building.
4. The shrub planting section detail should be modified so that mulch is not proposed to sit against the base of the trunk. Mulch against the trunk of a tree or shrub can hold moisture which encourages disease and rot that may lead to decline of the shrub.

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ENGLEWOOD CLIFFS PLANNING BOARD
PLANNING BOARD MEETING

----- X

IN RE:
SITE PLAN APPROVAL FOR NEW COMMERCIAL
OFFICE BUILDING WITH VARIANCES
LIGHTHOUSE E.C., LLC, 980 (922)
SYLVAN AVENUE - BLOCK 1202, LOT 2

----- X

February 11, 2016
7:30 p.m.

PLANNING BOARD MEETING, in the
above-captioned matter, held at the
Englewood Cliffs Planning Board, 20 Kahn
Terrace, Englewood Cliffs, New Jersey,
before Cynthia Zoller, R.P.R., a Notary
Public within and for the State of
New Jersey.

Job No. NJ2232862

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2 BOARD ATTORNEY: Michael B. Kates, Esq.
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4 VICE CHAIRMAN: Aurel Villari
5
6 Macy O'Shea
7
8 Kiky Kim
9
10 JBI Rosenberg
11
12 Roy Kilmartin
13
14 Matthew Trovato
15
16 Jeff Chinman
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18 J.P. Lee
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20 Russell Porriao
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22 Bernard M. Mirandi
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24 Loran Eastwood, Myron's Representative
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1 CHAIRMAN VILLARI: Thank you.
2
3 The next order of business on tonight's
4 agenda is Application Number 255 K, Site
5 Plan Approval for New Commercial Office
6 Building with Variances. The owner is
7 Lighthouse E.C., LLC, at 980, also known
8 as 922 Sylvan Avenue, Block 1202, Lot 2.
9 Mr. Schepisi.
10 MR. SCHEPISI: Mr.
11 Chairman, thank you. This is a
12 continuation of a hearing. If the
13 board doesn't mind, I'm going to
14 sit here again because the leg --
15 CHAIRMAN VILLARI: That's
16 fine.
17 MR. SCHEPISI: When we
18 left off the last time, the board
19 asked us to contact, which we did,
20 Joe Burgis, to see whether he had
21 any comments on the landscape plan.
22 Joe submitted a report. I believe
23 it was transmitted to all of you.
24 We have reviewed it and stipulate
25 to everything that Mr. Burgis has
said and the changes he is

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3 PAGE
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5 WITNESS: ANTHONY KURUS,
6 TREE EXPERT
7 EXAMINATION BY MR. SCHEPISI: 6
8
9 WITNESS: MR. VERGONA,
10 LIGHTING AND SIGNAGE EXPERT
11 EXAMINATION BY MR. SCHEPISI: 27
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1 suggesting we will make to the
2 landscape plan if that's what the
3 board desires.
4 Anthony is here right now.
5 I was going to put him on to finish
6 our case and go onto the other open
7 items and then you were going to
8 open the meeting to the public.
9 CHAIRMAN VILLARI: Right.
10 MR. SCHEPISI: Anthony,
11 we'll put you on first and then
12 I'll put Mark on.
13 If the board remembers,
14 there was a question that was
15 raised by several of the board
16 members concerning the landscaping
17 on the site and whether we could do
18 something to improve the
19 landscaping and to show what was
20 being done and show it to Burgis.
21 We have done that.
22 Anthony has done a color rendering
23 of the landscaping, which is now
24 before you and he'll pass that out
25 to each one of you. What you are

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1 getting is exactly what's on the
2 board and I'd like to mark that.
3 CHAIRMAN VILLARI: Do you
4 have an extra one, please?
5 MR. SCHEPISI: We'll mark
6 that Applicant's Exhibit A-4, which
7 will be the marked-up colored
8 rendering of the landscape plan
9 with tonight's date on it so it's
10 A-4 with the February 11th date on
11 it.
12 EXAMINATION BY
13 MR. SCHEPISI:
14 Q Mr. Kurus, now in relation to the
15 plan, will you walk us through the
16 landscaping that you are proposing, which
17 has been concurred in, concurred with by Joe
18 Burgis's office?
19 A Sure. The first change that we
20 made was we added evergreen plantings around
21 the perimeter of the parking area,
22 basically, a row of arborvitae with other
23 shrubs, a variety of shrubs, mixed in. We
24 requested that our landscape architect
25 specify a variety of native shrubs,

Page 7

1 evergreen shrubs to create a visual screen
2 from the parking area so we've incorporated
3 that. That extends around the rear of the
4 parking area and also around the south side
5 to create a living screen for the parking
6 area.
7 Also, where we are running the
8 utilities out to Johnson Avenue, we have
9 some clusters of native shrubs again to
10 blend in with the existing landscape and
11 provide screening and greenery where we are
12 disturbing.
13 Also, you could see on this
14 exhibit, the large area that's not going to
15 be touched that's going to remain
16 undisturbed, undisturbed wooded area as it
17 exists today.
18 Q Now, does that address all of the
19 concerns that were raised by the board
20 members at the last meeting?
21 A I believe so, yes.
22 Q And does Mr. Burgis concur with
23 what you put there?
24 A Yes.
25 Q And did Mr. Burgis also make

Page 8

1 some comment about some of the plantings to
2 put certain ground cover in that you did not
3 show and that will be done and as a
4 condition of any approval that the board
5 were to grant this evening, we will agree to
6 put that in the next time?
7 A Yes. We comply with his report,
8 absolutely.
9 MR. SCHEPISI: I have
10 nothing further on this aspect of
11 this witness' testimony. If the
12 board wants to question any part of
13 this before we go on to something
14 else.
15 CHAIRMAN VILLARI: Yes, Ms.
16 O'Shea.
17 MS. O'SHEA: I was
18 following the revised landscape
19 plan. It's very difficult with all
20 the little codes and it's very
21 small print and I have to get a
22 magnifying glass out and make the
23 screen bigger, but I noticed that
24 there wasn't a great number of
25 trees, like trees that leaves fall

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1 off or, or pines on the Johnson
2 Avenue side and I was up there
3 today looking at it and I was
4 wondering, I know the Borough has a
5 right-of-way in from the curb on
6 all the streets so could you plant
7 pine trees, blue spruce, cedars,
8 you know, pine needle trees along,
9 along Johnson Avenue? You know, it
10 goes from the corner and across the
11 place where your electrical stuff
12 comes out so that it would help
13 shield the building and, and I know
14 there's a lot of trees on the
15 property and I saw there's a lot of
16 them that are uprooted and broken
17 and you did say you were going to
18 clean all that out, but I would
19 just like to see some more cover,
20 because most of the pine cover is
21 just around the parking lot and I
22 would like to try to shield the
23 building and the parking lot from
24 the residents and even if you had a
25 plant in the right-of-way, some of

Page 10

1 the trees, you know, like every 5
 2 or 10 feet, some type of a 5 foot
 3 pine, blue spruce, or evergreen
 4 type tree.
 5 MR. KURUS: The difficulty
 6 with trying to introduce pine trees
 7 where there's an existing canopy of
 8 deciduous trees is if there's not
 9 enough sunlight, they are not going
 10 to take.
 11 MS. O'SHEA: There is all
 12 sunlight there, because it's like
 13 about an over 10 foot width. It's
 14 not down the part where the
 15 wetlands is where the reeds and the
 16 grasses are growing.
 17 MR. SCHEPISI: Anthony,
 18 just point -- Anthony, take your
 19 finger or your pen, put it on the
 20 drawing.
 21 Ms. O'Shea, could you tell
 22 us where you would want to have
 23 them planted?
 24 MS. O'SHEA: From not that
 25 little triangle spot that's there.

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1 Below that. There, there going
 2 down.
 3 MR. KURUS: So off the
 4 property, you are saying?
 5 MS. O'SHEA: Even if it's
 6 off the property. It's the Borough
 7 property. I mean, you know, we
 8 have shade trees on Borough
 9 property all through town on the
 10 first 10 feet.
 11 MR. SCHEPISI: So you are
 12 asking us to put some type of an
 13 evergreen tree running along
 14 Johnson Avenue in or around 10 feet
 15 from Johnson Avenue running
 16 from the corner of Sage up to the
 17 edge of where --
 18 MS. O'SHEA: Where the
 19 wetlands are on that, where the tal
 20 grasses are, the weeds. You know,
 21 it wouldn't be, it wouldn't be, you
 22 know, a lot and if they would grow
 23 and it would make everything really
 24 pretty.
 25 MR. SCHEPISI: If this gets

Page 12

1 approved, it's done.
 2 MS. O'SHEA: Okay, thank
 3 you. Every 5 or 10 feet, 5 feet on
 4 center and 5 foot trees. I don't
 5 want, I don't want midgets.
 6 MR. SCHEPISI: Yeah, but
 7 don't want 5 foot trees 5 foot
 8 apart.
 9 MS. O'SHEA: All right, 5
 10 foot trees, 10 foot apart.
 11 MR. PORRINO: Mr. Chairman?
 12 CHAIRMAN VILLARI: Yes?
 13 Excuse me.
 14 MR. PORRINO: May I help
 15 here?
 16 CHAIRMAN VILLARI: I
 17 recognize Mr. Porrino.
 18 MR. PORRINO: Thank you,
 19 Mr. Chairman. Mr. Schepisi?
 20 MR. SCHEPISI: Yes, sir.
 21 MR. PORRINO: Our buffer
 22 ordinance depicts and I can clarify
 23 what is typically expected if
 24 there's going to be additional
 25 planting within the buffer and I

Page 13

1 think I'll read from it to make
 2 everyone's life easier.
 3 "In addition, evergreen
 4 trees between 10 feet and 14 feet
 5 in height shall be planted so as to
 6 provide a year-around visual
 7 screen, which shall be placed in an
 8 area of the buffer zone in a manner
 9 architecturally suitable to
 10 accomplish said screening."
 11 So that is the way our
 12 ordinance reads and I guess we are,
 13 we still have a 120 foot buffer,
 14 because there is a buffer zone that
 15 applies, even though, they haven't
 16 really talked about it so I think
 17 it's within the board's purview to
 18 ask for those additional plantings
 19 whether it's on the applicant's
 20 property or potentially in the
 21 right-of-way.
 22 MS. O'SHEA: In the
 23 right-of-way.
 24 MR. SCHEPISI: Anthony.
 25 MR. KURUS: I think, as

Page 14

1 you were suggesting, closer to the
 2 street we might get more sun to let
 3 them survive better.
 4 MS. O'SHEA: Fine. 10
 5 feet. Go down the middle -- 5
 6 feet.
 7 MR. SCHEPISI: If you make
 8 them 5 foot on center, you don't
 9 have a problem they are not going
 10 to grow so if you make them 10 feet
 11 on center, you should have a better
 12 chance to grow.
 13 MS. O'SHEA: Fine. Fine.
 14 CHAIRMAN VILLARI: Mr.
 15 Mirandi?
 16 MR. MIRANDI: Thank you,
 17 Mr. Chairman. I would just like to
 18 add too, that historically for
 19 applications before the board, the
 20 board does tie in and it's part of
 21 our review letter, the Shade Tree
 22 Commission and as Mrs. O'Shea
 23 pointed out, along Johnson Avenue
 24 you have right-of-way there. I
 25 believe you are on the Shade Tree

Page 15

1 Commission.
 2 MS. O'SHEA: Environmental
 3 Commission.
 4 MR. MIRANDI: On the
 5 Environmental Commission, okay, so
 6 actually, we tied in both the
 7 Environmental and Shade Tree. The
 8 Shade Tree ties in with
 9 right-of-way properties,
 10 Environmental more borderline so I
 11 think it's certainly appropriate
 12 for the board to include that as a
 13 condition which is part of our
 14 review letter that the Shade Tree
 15 Commission and/or the Environmental
 16 Commission review it, stake it out
 17 prior to plans being -- a building
 18 permit being issued.
 19 CHAIRMAN VILLARI: Thank
 20 you, Mr. Mirandi.
 21 MR. MIRANDI: You're
 22 welcome.
 23 MR. PORRINO: One more
 24 point, if I may, too, regarding
 25 landscaping. I think I brought

Page 16

1 this up last month. In terms of
 2 maintenance and if any vegetation
 3 should die, whether its the
 4 evergreen trees that we're talking
 5 about now or the plantings on the
 6 property, I would suggest that the
 7 memorialization contain language so
 8 that if any of these plantings die
 9 or are diseased, that they will be
 10 replaced at the applicant's cost.
 11 MR. SCHEPISI: The problem
 12 you've got with that is you are now
 13 for the first time us put them on
 14 the Borough property rather than
 15 our own property. Our own property
 16 I could see what you are saying,
 17 Porrino. Once I'm putting them on
 18 the Borough property, tomorrow
 19 morning a plant dies, I have no
 20 right to go on the Borough property
 21 and this board doesn't have the
 22 right to give me permission to do
 23 it.
 24 MR. PORRINO: I think if we
 25 had to do that, we can get a letter

Page 17

1 from the mayor and counsel if your
 2 concern is that they would not
 3 grant your right to replace the
 4 plantings.
 5 MR. SCHEPISI: Right. I'm
 6 just mentioning that -- either by
 7 an ordinance or resolution, that's
 8 very good.
 9 MR. KATES: Let me indicate
 10 too, the statute has a two-year
 11 limitation on what they call
 12 maintenance retainer from date of
 13 planting so that's where --
 14 MR. SCHEPISI: That's the
 15 cutoff.
 16 MR. PORRINO: That's the
 17 way the money is being held. We
 18 are talking about there being no
 19 bond in the future, but there would
 20 be an agreement that the, it won't
 21 be the board, but the zoning office
 22 would have the right to send a
 23 letter to the owner saying you need
 24 to replace that tree that died last
 25 year; for instance. Mr. Hipolit --

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1 Mr. Chairman, I think you've got --
2 CHAIRMAN VILLARI: Yes.
3 MR. HIPOLIT: Pretty much
4 in every other town that I
5 represent, planting in the
6 right-of-way adjacent to your
7 property so common. There's
8 nothing wrong with it and whether
9 you mayor and counsel need to give
10 approval over that, I'll weigh in,
11 but in my other towns they don't.
12 They allow the Planning Board,
13 because it's adjacent between your
14 property and the curb line and
15 property line to plant. Most
16 boards will include some type of
17 catch phrase that says, for a
18 period of two years the applicant's
19 are required to maintain it at
20 their cost, after two years they
21 don't have to and usually, you're
22 being paid the bond for that in
23 place for two years so I think Mr.
24 Porrino wants to go beyond the two
25 years, is that what --

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1 MR. PORRINO: Not for
2 bonding purposes.
3 MR. SCHEPISI: I think it's
4 -- to go beyond the two years. You
5 can't go beyond what the statute
6 permits; however, you have to
7 follow your own counsel's advice.
8 MR. KILMARTIN: I think the
9 statute pertains to the bond issue,
10 not to your obligation to
11 perpetually maintain the trees that
12 you plant.
13 MR. SCHEPISI: I don't
14 believe you can cause someone to
15 perpetually agree to maintain a
16 tree that's planted on Borough
17 property.
18 MS. ROSENBERG: But you
19 can agree to it.
20 MR. SCHEPISI: Under
21 protest we could agree to it,
22 correct.
23 CHAIRMAN VILLARI: Will you
24 make such an agreement?
25 MR. SCHEPISI: Yes. Under

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1 protest, we will.
2 CHAIRMAN VILLARI: Thank
3 you. Any other questions for the
4 planner? Would you like continue
5 your presentation?
6 MR. SCHEPISI: Yes,
7 please. Thanks.
8 Q The last time we were here, you
9 were talking about the monument sign.
10 A Yes.
11 Q Just take two minutes and go
12 through it once more so everybody
13 understands the issue with the monument
14 sign.
15 A Sure.
16 Q The monument sign that we have on
17 the site fully complies with the Borough
18 ordinances, does it not?
19 A I have a handout.
20 MR. SCHEPISI: Please, and
21 hand one to me since I haven't seen
22 your handout. Thank you. I just
23 -- I'm sorry, Anthony, you did show
24 this to me. We'll mark the handout
25 as Applicant's Exhibit A-5 with

Page 21

1 tonight's date on it.
2 Is Mr. Chairman, did you
3 hear me? We are marking that
4 Applicant's Exhibit A-5 with
5 tonight's date on it.
6 CHAIRMAN VILLARI: A-5,
7 thank you.
8 A We are proposing a two-sided
9 ground sign located along the Sylvan Avenue
10 frontage, setback will be 30.5 feet or 30
11 feet, as required, sign area 6 x 4, 24
12 square foot per side for forms, maximum
13 length 6 feet, maximum height 4 feet,
14 overall length 8 feet, overall height 6
15 feet. The idea was just to propose a
16 conforming sign to identify the location of
17 the site on Sylvan Avenue.
18 MR. SCHEPISI: And one
19 thing I wanted to point out to the
20 board, you'll notice that the
21 engineer prepared in the plan,
22 looks like bricks as to stanchions,
23 that may change to meet the facade
24 of the building as to be more
25 conforming that's -- I'm leaving

Page 22

1 that to the architect and the
2 client and we just wanted to show
3 you what we are seeking approval
4 for. It will either be brick or it
5 will be the facade of the building
6 or something in between. Any
7 questions on that?
8 MR. TROVATO: Looking at
9 the sign detail they are proposing
10 a halogen lamp. I'm would just
11 recommend an LED light there.
12 MR. SCHEPISI: We have no
13 problem with an LED light; in fact,
14 we would recommend to the client to
15 use a LED light also.
16 CHAIRMAN VILLARI: Ms.
17 O'Shea, you got a question?
18 MS. O'SHEA: Is the sign
19 area, the 24 square feet, is that
20 just the part where the writing is
21 or is that the whole building of
22 the sign, the whole monument?
23 MR. KURUS: That's just
24 the square that fits the writing.
25 MR. SCHEPISI: The 6 x 4,

Page 23

1 that's -- the sign itself is bigger
2 -- but the face of the sign is 24
3 square feet, not each individual
4 letter, but the box including each
5 individual letter.
6 MS. O'SHEA: Right. So we
7 require 32 square feet or do you
8 get extra because it's a longer --
9 MR. SCHEPISI: You permit
10 32. We are going less than what
11 you permit.
12 MS. O'SHEA: Per side so
13 that's 48, right?
14 MR. SCHEPISI: You go 32
15 per side.
16 MS. O'SHEA: 32 square
17 feet, but if you are doing a
18 double-sided sign, it's 48.
19 MR. SCHEPISI: No matter
20 which way -- I have a corner lot, I
21 front on two streets.
22 MS. O'SHEA: Right.
23 MR. SCHEPISI: You can
24 have a double-sided sign in
25 Englewood Cliffs not limiting each

Page 24

1 sign to 16 feet, total 32 feet --
2 MS. O'SHEA: Right.
3 MR. SCHEPISI: You can
4 have each sign 32 feet. We are
5 making each sign 24.
6 MS. O'SHEA: Okay, thank
7 you.
8 MR. SCHEPISI: Thank you.
9 Anthony, anything further on that?
10 Any questions from the board?
11 CHAIRMAN VILLARI: No.
12 Q And lastly, we told the board we
13 would bring them up to date on what the
14 status was of the DEP and DOT.
15 DEP, we finally got the Historic
16 Preservation Group to say that the beer
17 bottle and the macadam we found on the site
18 is not a historical artifact so they signed
19 off this past week?
20 A They did.
21 Q And the only thing we are waiting
22 for is DOT, which is supposed to sign off
23 last week and where is that?
24 A We spoke with them today. The
25 reviewer is on vacation, they'll be back

Page 25

1 tomorrow so we are going to stay on top of
2 them to, hopefully, get a response from them
3 in the upcoming --
4 MR. SCHEPISI: The only
5 thing we've had from the DOT were
6 positive responses from meetings.
7 A year and a half ago I was down
8 there during a snowstorm and
9 everything has been going forward
10 so it's just a matter of
11 bureaucracy at its best.
12 Hopefully, we'll get it done
13 quickly.
14 CHAIRMAN VILLARI: Is this
15 letter from the DOT the final
16 hurdle from the DOT?
17 MR. SCHEPISI: That's it.
18 MR. KURUS: Yes.
19 MR. SCHEPISI: Then we're
20 done.
21 CHAIRMAN VILLARI: Any
22 questions?
23 MR. SCHEPISI: No
24 questions? I have nothing.
25 Anthony, you have anything you want

7 (Pages 22 - 25)

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1 to volunteer? No, right?
2 MR. KURUS: No.
3 MR. SCHEPISI: Okay. The
4 next witness, I just want to call
5 Mr. Vergona. There's a question of
6 the signs that were going on the
7 building and that is -- Mr. Vergona
8 has already been sworn. He was
9 sworn at the last hearing.
10 MR. KATES: Mr. Vergona,
11 you are under oath.
12 MR. SCHEPISI: This exhibit
13 was previously marked. Danny what
14 was this marked?
15 DANNY: A-1.
16 MR. SCHEPISI: A-1?
17 DANNY: Yes.
18 MR. SCHEPISI: A-1 -- and
19 we're sorry that we are doing it
20 this way, but the original marked
21 items were left here and Kathy is
22 not here tonight and we don't know
23 where they are.
24 EXAMINATION BY
25 MR. SCHEPISI:

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1 A So last time there was a question
2 regarding the building signage and there was
3 a note on the site plan that showed the
4 rough location of it and we've done a
5 drawing here that more clearly depicts where
6 we are proposing the building sign. I'll
7 pass it out.
8 CHAIRMAN VILLARI: A-6?
9 MR. SCHEPISI: This will be
10 Applicant's Exhibit A-6 with
11 tonight's date.
12 A So what we are indicating on this
13 sign.
14 MR. SCHEPISI: Do you have
15 a copy for us? Send me one
16 tomorrow.
17 A So what we are depicting on this
18 sign is -- what we're depicting is a, this
19 is the Sylvan Avenue east elevation of the
20 building. It's the same elevation that was
21 in the original packet. To that elevation
22 we've added the proposed location for the
23 sign. The location is in the northeast
24 corner of the facade and what we've depicted
25 is the square footage requirement that's

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1 in the ordinance, which would be maximum,
2 which would be 32 square feet. We don't
3 know the exact name that will be on the
4 building yet so we can't give the exact
5 proportions of that 32 square feet, but what
6 we are telling you is that the 16 foot
7 length, which is a maximum, will be adhered
8 to, the 4 foot height maximum would be
9 adhered to and the 32 square foot total area
10 of the sign would be adhered to. This
11 particular one, if it ends up being called
12 Lighthouse Realty, will be actually slightly
13 less than the 32 square feet just by the and
14 shape of it and we are not making the
15 letters as high as they can be. They can be
16 4 feet. We don't really want 4 foot high
17 letters so underneath that elevation is just
18 an example. We basically, trolled the
19 Internet to find the lettering that we're
20 looking for. This is a back-lit channel
21 letter. It's a metal-type of letter, that's
22 mounted on pins and behind the letters there
23 would be an LED light that would, that would
24 kind of make the letter appear that it
25 glows. It's an indirect light source and

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1 these are just some examples of signs that
2 look similar and have that type of lighting.
3 CHAIRMAN VILLARI: Excuse
4 me, what was the term you used, a
5 back-lit channel letter?
6 MR. VERGONA: Yes.
7 CHAIRMAN VILLARI: And all
8 the three examples that you show
9 here are all of that same type
10 channel letter?
11 MR. VERGONA: Yes. So if
12 there's any questions on the
13 signage. I would be happy to
14 answer them. Yes?
15 MR. PORRINO: Mr. Chairman,
16 may I?
17 CHAIRMAN VILLARI: I'm
18 sorry. I recognize Mr. Porrino.
19 MR. PORRINO: Mark, do you
20 know what lumens are produced by
21 the backlighting of the signs?
22 Maybe I'm going to ask the engineer
23 the question. You know, do you --
24 do the engineers like to limit the
25 amount of light that's actually

<p style="text-align: right;">Page 30</p> <p>1 emitted for purposes of lighting 2 these signs so they are not left 3 with, you know, a sign much 4 brighter than we all anticipated? 5 That was brought up in the last 6 meeting, I think, at one of the 7 other buildings that were permitted 8 in town. 9 MR. SCHEPISI: I think 10 somebody was concerned about that 11 building on Sylvan that the signage 12 came out to much brighter than what 13 everybody anticipated. 14 MR. VERGONA: You know, 15 back-lit signs in the City of 16 Summit are a big deal there. The 17 brightness are also a very big deal 18 there. I would tell you, you want 19 it as middle as possible, because 20 it's back-lit so even if there's 21 modest lighting behind it, it will 22 make that sign really pop out. We 23 can look at some values here. It's 24 very low. It's looks like a 25 regular 60 watt light bulb, it's</p>	<p style="text-align: right;">Page 32</p> <p>1 tasteful so we can review that with 2 him. 3 MR. SCHEPISI: We will be 4 happy to follow that. 5 MR. VERGONA: Okay. 6 MS. O'SHEA: Excuse me. Do 7 we have a sheet with the sign on it 8 besides the one you just gave us 9 now? 10 MR. SCHEPISI: That's the 11 only one you have. 12 MS. O'SHEA: Nothing that 13 was submitted previously? 14 MR. VERGONA: There was a 15 note on the site plan referring to 16 the sign, but there was no separate 17 drawing of the sign. 18 MS. O'SHEA: Okay. 19 CHAIRMAN VILLARI: I'm 20 sorry. 21 MR. KIM: Is that LED 22 light, do you know what color is in 23 the back light? 24 MR. VERGONA: I would 25 assume, it's going to be an</p>
<p style="text-align: right;">Page 31</p> <p>1 not a lot. It's a very low number. 2 You don't want a 100 watt or 3 greater light bulb, you know, it's 4 just going to be too bright. It's 5 actually going to block the sign 6 out. 7 MR. SCHEPISI: We would 8 agree to the following: We will 9 have our lighting consultant when 10 we are there, give us a sample, 11 give us a cut, submit it to the 12 engineer for his approval, to the 13 end if you are not there with Time 14 Square, we are not looking for 15 that. I know the client likes to 16 be very subdued and it will be that 17 type of a sign. 18 MR. MIRANDI: And Mr. 19 Chairman, if I may add -- 20 CHAIRMAN VILLARI: Yea. 21 MR. MIRANDI: -- there was 22 a suggestion previously to look at 23 the Cadillac dealership signage on 24 Sylvan Avenue, which is back-lit 25 and the board felt that that was</p>	<p style="text-align: right;">Page 33</p> <p>1 off-white or a white. We weren't 2 planning on having a colored sign 3 in mind. 4 MR. KIM: White is too 5 bright. 6 MR. VERGONA: Well, when 7 we say white, I don't mean -- 8 MR. KIM: It's such a nice 9 design. 10 MR. VERGONA: Right, 11 right. 12 MR. SCHEPISI: It will be 13 aesthetically pleasing for the 14 building and again we'll make it 15 subject to the Borough engineer's 16 input, no problem. 17 MR. KIM: I understand. 18 CHAIRMAN VILLARI: Any 19 other comments or questions from 20 the board? 21 MS. O'SHEA: So this is 22 additional 32 square feet of 23 signage besides the monument sign? 24 MR. SCHEPISI: You have 25 your monument sign and this is your</p>

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1 building sign.
2 MS. O'SHEA: Mr. Kates, can
3 I ask you, are we allowed, does the
4 zoning permanent two, a monument
5 sign and a building sign?
6 MR. KATES: I believe it
7 does.
8 MS. O'SHEA: It does?
9 MR. VERGONA: It actually
10 permits two building signs in our
11 case, because we are on a corner
12 lot, possibly three.
13 MS. O'SHEA: And it's
14 because of the size of the
15 property, right?
16 MR. SCHEPISI: Size of the
17 property, the frontage, the three
18 streets. You know, this is going
19 to be very subdued. This is not --
20 MS. O'SHEA: You know, I'm
21 new so you've got to bear with me.
22 MR. SCHEPISI: I
23 understand.
24 MS. O'SHEA: I'm going to
25 ask a lot of questions. Will that

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1 sign go off at 11 o'clock, the one
2 on the building?
3 MR. SCHEPISI: I'm going to
4 do whatever you want.
5 MS. ROSENBERG: I don't
6 remember I think we said earlier
7 last time.
8 MR. SCHEPISI: You did.
9 I'll take 10 o'clock.
10 MS. ROSENBERG: I think
11 it's on the record, so...
12 CHAIRMAN VILLARI: Mr.
13 Schepisi, anything further from
14 this witness?
15 MR. SCHEPISI: Nothing
16 further from this witness.
17 CHAIRMAN VILLARI: Do you
18 have any additional witnesses?
19 MR. SCHEPISI: No
20 additional witnesses.
21 CHAIRMAN VILLARI: Any
22 other comments or questions from
23 the board for this witness?
24 MR. KILMARTIN: Yes. I
25 have a question or two, okay. So I

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1 note that on your drawings your,
2 and I'm looking at the beautiful
3 building and I'm not seeing any
4 mechanicals or anything like that
5 on the roof so is that what we are
6 going to see when the building is
7 there or are you putting
8 mechanicals up.
9 MR. VERGONA: Well, there
10 will be some mechanicals on the
11 roof. Because we don't show them,
12 we don't know exactly where they
13 will be located, we don't know how
14 high they will be, but in general,
15 this building will be heated and
16 cooled, likely, with rooftop units,
17 they'll be located in the center.
18 Let me go to the floor plan just so
19 I can --
20 MR. SCHEPISI: Will they
21 either be visually screened or put
22 -- placed on the building where
23 they cannot be seen by the
24 traveling public? That's the idea.
25 MR. MIRANDI: Mr.

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1 Chairman, just to add, the last
2 exhibit, sign exhibit does indicate
3 a penthouse mechanical-type unit so
4 you could see that right on the
5 last exhibit.
6 MR. VERGONA: Right. That
7 would be the elevator penthouse
8 that you can see on that.
9 MR. MIRANDI: Right.
10 Right.
11 MR. VERGONA: The
12 elevations do depict that. If you
13 imagine this being the shape of the
14 building on the roof, we expect to
15 be, the equipment to be in the
16 center of this vicinity so -- keep
17 it away from the edges of the roof
18 so that the line of sight will be
19 harder to see it and we can screen
20 it if, if it becomes --
21 MR. SCHEPISI: If it is
22 visible from the street, we will
23 screen it; is that correct.
24 MR. VERGONA: Yes.
25 MR. KATES: Mr. Vergona,

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1 you are referring to a plan. Could
2 you identify it, please?
3 MR. VERGONA: Yeah. This
4 is Sheet A-4 as part of the
5 architectural set that was part of
6 your A-1.
7 MR. KATES: What is the
8 heading?
9 MR. VERGONA: This is just
10 the first floor plan but --
11 MR. KILMARTIN: So the
12 mechanicals will not be visible
13 from Sylvan or Sage Road?
14 MR. VERGONA: That's
15 correct.
16 MS. EASTWOOD: What about
17 Johnson Avenue? That's the
18 residential street.
19 MR. VERGONA: We can
20 screen it from all sides.
21 MR. SCHEPISI: It will be
22 screened from all sides. No
23 visible on any of the three
24 streets.
25 MR. VERGONA: I guess, one

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1 question I would have is regarding
2 the mechanical equipment, is there
3 a threshold, I mean, if we have a
4 fan that's a foot higher than the
5 roof.
6 MR. SCHEPISI: You can't
7 see. If it's a foot higher than
8 the roof, the line of sight is
9 going to block you from seeing it
10 so we are not concerned with that.
11 CHAIRMAN VILLARI: Mr.
12 Schepisi, anything further?
13 MR. SCHEPISI: Nothing
14 further.
15 CHAIRMAN VILLARI: Is your
16 presentation concluded?
17 MR. SCHEPISI: Except for
18 my summation and is Mr. Sokolitch
19 here yet?
20 MR. TROVATO: He's out in
21 the back there.
22 MR. SCHEPISI: Is he? Then
23 I don't have to do a summation.
24 CHAIRMAN VILLARI: All
25 right, fine. Do I have a motion to

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1 open this meeting to the public for
2 public for their comments on
3 questions?
4 MS. ROSENBERG: Yes.
5 Motion.
6 CHAIRMAN VILLARI: Second?
7 MR. KILMARTIN: Second.
8 CHAIRMAN VILLARI: Okay.
9 The meeting is open. Is there
10 anybody in the public who would
11 like to make a comment or ask a
12 question about the matter that's
13 under consideration that's been
14 discussed? Yes, Miss. Will you
15 please identify yourself.
16 MS. McMORROW: I'm going
17 to say Councilwoman McMorrow, only
18 because there are were just a
19 couple of things that came up on
20 the landscaping, if I may.
21 Mr. Schepisi, can we put
22 the picture up with the
23 landscaping? It's a beautiful
24 building, I have to say. My home
25 address is 7 Ridge Road. Thank

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1 you.
2 MR. SCHEPISI: We are going
3 to call back Anthony Kurus, who is
4 responsible for that now.
5 MS. McMORROW: Thank you,
6 very much. I agree with Ms. O'Shea
7 in the fact that it should be
8 continued. Thinking from the
9 Borough's standpoint, can we not do
10 the 10 foot buffer? Can we not
11 leave it in the 10 feet so that
12 there is no confusion as to who
13 would be responsible for the
14 maintenance? I happen to agree
15 with you, Mr. Schepisi. Did you
16 think you would ever hear that?
17 MR. SCHEPISI: It's a
18 first.
19 MS. McMORROW: Can you do
20 11 feet, because there wouldn't be
21 any confusion as to who is going to
22 be maintaining. This is my
23 concern.
24 MR. SCHEPISI: We will put
25 it on our property.

11 (Pages 38 - 41)

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1 MS. McMORROW: Right at
2 that buffer only, because the
3 residents and the taxpayer
4 dollars --
5 MR. SCHEPISI: We will
6 accomplish that on our property.
7 MS. McMORROW: Okay.
8 Wonderful -- and the only other
9 question I had and this is just
10 because to alleviate anything in
11 the future, when you do the
12 memorialization for the, for the
13 upkeeping of the, whatever the
14 landscaping is, I'm going give the
15 board my opinion. Like our homes,
16 we don't only maintain our bushes
17 and shrubs for two years, we
18 maintain them in perpetuity and
19 this gentleman here has made a
20 beautiful presentation of a
21 building and that is a reflection
22 on him as well and I would like to
23 believe that he will be maintaining
24 that shrubbery.
25 MR. SCHEPISI: On one

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1 condition.
2 MS. McMORROW: Uh-oh,
3 what?
4 MR. SCHEPISI: They can
5 chase the dogs that people have on
6 their leash, peeing on our bushes.
7 MS. McMORROW: Okay.
8 That's -- we could put ordinance
9 signs up for you on that, but if
10 you could, Mr. Kates, when you draw
11 up the memorialization, that it's
12 clear that it's in perpetuity to
13 maintain the landscaping.
14 MR. SCHEPISI: Knowing that
15 we're agreeing to that under
16 protest, I don't know what the
17 client's going to want to do.
18 MS. McMORROW: What do you
19 mean, under protest?
20 MR. SCHEPISI: There's an
21 ancient case, there's an ancient
22 case that if a municipality is
23 extracting something that
24 statutorily they cannot extract no
25 matter what it is, you can do it

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1 under protest and fight about it
2 later. I doubt if we are going to
3 fight about a couple of trees.
4 MS. ROSENBERG: You agreed
5 to it.
6 MS. McMORROW: I don't
7 want the "under protest" word, I
8 have to tell you --
9 MR. SCHEPISI: I agreed to
10 that when I stated under protest.
11 MS. McMORROW: I thought
12 you were joking. I would agree to
13 under protest from an attorney,
14 especially one like you, Mr.
15 Schepisi.
16 MR. SCHEPISI: I don't like
17 giving your money away.
18 APPLICANT: I'm not going
19 to be here perpetually.
20 MS. McMORROW: Well, I
21 mean, you know, what we want to
22 know about the landscape and the
23 buffers, the buffers to the
24 residents in this town are very
25 important and what we found, that

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1 sometimes, I won't say all the
2 commercials, but I'm sure they are
3 not representative in something
4 like this, but that they have not
5 maintained the buffers and for the
6 residents, like I just want to make
7 sure that those buffers are going
8 to be protected and the landscaping
9 that's presented.
10 MR. SCHEPISI: Anything
11 that we are planting, we'll
12 maintain. The word "perpetuity"
13 scares people away.
14 MS. ROSENBERG: Shouldn't
15 it be as long as they own the
16 building? I mean, we could put
17 that in, as long he owns the
18 ownership or if you convert to an
19 LLC or any of the others, as long
20 as --
21 MS. McMORROW: The problem
22 with that is it should carry with
23 the building --
24 MS. ROSENBERG: That's what
25 we're saying. I mean, if he sells

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1 it to you, he's done.
2 MS. McMORROW: He's done,
3 but then I inherit it.
4 MS. O'SHEA: The new owners
5 keep it.
6 MS. McMORROW: Sure.
7 MR. KILMARTIN: I thought
8 that that's what we had agreed to
9 and what you had stipulated to.
10 MR. SCHEPISI: I had to
11 play lawyer, because my client also
12 is a lawyer and I had to put that
13 in there. We're done. What Carol
14 wanted to have.
15 MS. McMORROW: We took it
16 out of the buffer.
17 MR. SCHEPISI: We'll
18 maintain it will run with the land
19 not personal to the developer or
20 the building, it will run with the
21 land.
22 CHAIRMAN VILLARI: Thank
23 you. That's what we are looking
24 for.
25 MR. KILMARTIN: Do you have

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1 the room? My recollection from
2 that area is that the buffer is
3 close to the street.
4 MR. KURUS: Yes.
5 MR. KILMARTIN: In other
6 words, is there enough room without
7 being in the right-of-way?
8 MR. KURUS: There's
9 definitely some overgrowth that
10 grows out towards the curb so --
11 MS. McMORROW: We don't
12 want it in the --
13 MR. KURUS: I know, I
14 know.
15 MR. SCHEPISI: You want it
16 in the buffer area, am I correct?
17 MS. McMORROW: Yes.
18 MR. SCHEPISI: So if we
19 can do it in the buffer area --
20 MR. KURUS: If we could do
21 it on our property, yes,
22 absolutely.
23 MR. SCHEPISI: We have
24 enough property there to do it,
25 unless the DEP stops us and then if

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1 the DEP stops us that's because
2 somebody from the town called the
3 DEP.
4 MS. O'SHEA: You said 10
5 foot trees.
6 MR. SCHEPISI: You don't
7 want to put a 10 foot tree on the
8 initial planting. Maybe --
9 MR. KURUS: 10 foot on
10 center.
11 MS. O'SHEA: How tall?
12 MR. SCHEPISI: 10 foot on
13 center you want to let it grow up.
14 10 foot on center you are going to
15 put in a 6 foot tree and let it
16 grow out to 10, you don't want to
17 plant a 10 foot tree.
18 MS. O'SHEA: So it's going
19 to be 6 foot tall?
20 MR. SCHEPISI: Yeah. I'm
21 6 foot tall, can you see over me?
22 MS. O'SHEA: No, not
23 unless I stare at you. Okay. So
24 there will be 6 foot --
25 MR. SCHEPISI: 6 foot

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1 trees on 10 foot centers.
2 MR. KILMARTIN: Again I
3 just want to clarify something,
4 because it looks to me that you
5 might not be able to put those
6 evergreens in the buffer, because
7 then you do have tall trees and it
8 may not be so if they have to go in
9 the right-of-way and you are
10 obligated to maintain it in
11 perpetuity, then what's the issue?
12 Why are we saying it has to be on
13 the buffer as opposed to --
14 MR. SCHEPISI: Whatever you
15 worked out with Ms. McMorrow, I'm
16 fine with.
17 MS. McMORROW: I just
18 don't want to bind the counsel if
19 you can do the other way without
20 going --
21 MR. SCHEPISI: Can I make
22 this simple so we can get on with
23 the rest of the night? We will
24 plant the trees if we can in the
25 buffer -- I'm sorry -- on our

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1 property if the shade -- the cover
2 does not preclude it. If it does
3 preclude it, occasionally, a tree
4 will go on the Borough
5 right-of-way, which you are
6 granting permission for, period.
7 MS. O'SHEA: You'll plant a
8 tree either in or out of the
9 property.
10 MR. SCHEPISI: Right. I'm
11 going to shoot for in the property.
12 MS. O'SHEA: Right.
13 MR. SCHEPISI: And make it
14 easy for everybody.
15 MR. KILMARTIN: Fair
16 enough.
17 MR. KATES: And one other
18 point Mr. Mirandi made in his
19 review letter, Mr. Chairman --
20 CHAIRMAN VILLARI: Please.
21 MR. KATES: -- that the --
22 there's a contribution, a voluntary
23 contribution to the Borough --
24 MR. SCHEPISI: We just made
25 it, this contribution.

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1 MR. KATES: In lieu of,
2 there's a one dollar per square
3 foot of additional impervious cover
4 that --
5 MR. SCHEPISI: We all know
6 that that's not enforceable, your
7 ordinance was never adopted and you
8 have not gotten -- when is the last
9 time you got a voluntary
10 contribution in this town, except
11 for when I handled the application
12 for CNBC when he we did a \$500,000
13 voluntary contribution.
14 MR. KATES: Regularly.
15 CHAIRMAN VILLARI: There
16 have been several.
17 MR. SCHEPISI: We will
18 discuss that with the governing
19 body, Ms. McMorrow, and we'll come
20 up with a favor number; is that
21 fair?
22 MR. KILMARTIN: No, that's
23 vague.
24 MR. SCHEPISI: It is
25 definitely, but before you

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1 memorialize your resolution; is
2 that fair?
3 MR. KILMARTIN: That's
4 fair.
5 MR. CHINMAN: Make a motion
6 to close the meeting to the public.
7 MR. KILMARTIN: Second.
8 MS. VILLARI: Hi, Maria
9 Villari, 45 Jane Drive. It looks
10 like a lovely plan. Welcome to the
11 neighborhood.
12 Anyway, I'm hearing some
13 good things. I understand that you
14 have wetlands and you know, you
15 can't plan certain things because
16 you are under restrictions by law
17 and whatever. My only concern is,
18 is that, that property, the trees
19 have been coming down regularly
20 every year, but they haven't been
21 replaced so it's becoming extremely
22 sparse.
23 I don't want to put any
24 undue expense on the gentleman,
25 obviously, but I would like to see

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1 some of these trees that are coming
2 down replaced, only because the
3 noise level has been going up
4 tremendously.
5 MR. SCHEPISI: As soon as
6 that building's up, you've got a
7 natural shield for noise.
8 Everybody forgets that buildings
9 are the best buffer you can have,
10 because that will stop any noise
11 from 9W coming towards the
12 residential area.
13 Remember, we are owner --
14 they are owner/occupants. They
15 want their property to look nice,
16 they are going to do what's right.
17 MS. VILLARI: Right. And
18 what we want as residents, is to
19 maintain that country look that
20 we've become accustomed to and
21 unfortunately, I've seen it too
22 often where parking lots are
23 getting closer and closer to the,
24 to the streets, we are seeing
25 buildings where we never saw them

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1 before and I just want to, you
2 know, it's a really nice area. I
3 loved Sage Road when I moved in.
4 You can see anything now, we can
5 see the building, the parking lot,
6 the people, whatever so I don't
7 want to see that happening on this
8 side as well.
9 MR. SCHEPISI: You won't.
10 MS. VILLARI: And so just,
11 you know, let's, let's keep it
12 country like. It doesn't have to
13 be special expensive trees, but
14 something that will look nice, have
15 leaves and keep the greenery.
16 MR. SCHEPISI: Thank you,
17 very much.
18 MS. VILLARI: Thank you.
19 CHAIRMAN VILLARI: Mr.
20 Schepisi, just one comment. You
21 indicated that the building shields
22 Johnson from noise from the
23 highway, but what about the noise
24 from the parking lot itself, cars
25 coming into and out of the parking

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1 lot adjacent to the building?
2 MR. SCHEPISI: You are
3 talking such a small area. Cars
4 coming into this building, I think
5 if you traffic count on this size
6 building with the number of spaces
7 you have, if a car went in and out
8 an hour, one every hour, which is
9 unheard of, you are talking 100
10 cars in the course of a day.
11 CHAIRMAN VILLARI: But
12 still, they are generating some
13 amount of noise and they are closer
14 to Johnson than they could be if
15 they were on Sylvan Avenue; that's
16 the only point I'm making.
17 MR. SCHEPISI: That's why
18 we put up the landscaping right
19 around the whole parking lot.
20 You've requested that.
21 CHAIRMAN VILLARI: Yes.
22 MR. SCHEPISI: And based
23 upon this plan, you've got a full
24 landscape buffer around the entire
25 parking lot, on top of the 120 foot

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1 buffer between the parking lot and
2 Johnson so you are more than
3 covered.
4 CHAIRMAN VILLARI: Okay, I
5 understand.
6 MS. O'SHEA: Mr. Kates?
7 MR. KATES: Yes.
8 MS. O'SHEA: Would you also
9 make sure to, in the resolution,
10 the gentleman agreed to put those
11 light switches that go out when the
12 people leave the room so that the
13 interior lights go off, okay?
14 Because I have a nursery school by
15 me that the lights are on all night
16 and no kids are in there.
17 MR. SCHEPISI: Is that the
18 same one we talked about the last
19 time?
20 MS. O'SHEA: Yeah. And he
21 agreed to it, but I just want to
22 make sure it's in the resolution
23 that the lights are off.
24 MR. SCHEPISI: You want it
25 in the resolution or the developers

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1 agreement to?
2 MS. O'SHEA: I want it in
3 the resolution.
4 MR. SCHEPISI: We agreed to
5 it, anyplace you want to put it.
6 MS. O'SHEA: I want it in
7 there so that it happens.
8 MR. KATES: Before the
9 vote, the board votes, I want to
10 review the conditions that we've
11 discussed.
12 MR. CHINMAN: Make a
13 motion to close.
14 CHAIRMAN VILLARI: Any
15 further questions or comments from
16 the public?
17 Seeing none, do I have a
18 motion to close this meeting to the
19 public?
20 MR. KILMARTIN: Yes.
21 MS. ROSENBERG: Second.
22 CHAIRMAN VILLARI: All in
23 favor?
24 (All said "Aye.")
25 CHAIRMAN VILLARI: All

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1 opposed? The meeting is closed to
2 the public.
3 MR. KATES: Mr. Schepisi,
4 I've listed the following as
5 conditions to an approval. I think
6 you've documented it already, but I
7 have an note, appropriate permits
8 from DEP filed with our building
9 department, the automatic turnoff
10 of the lights, there's a 10 p.m.
11 turnoff with respect to side
12 lighting on an automatic timer.
13 MR. SCHEPISI: They went
14 onto something else. On the
15 lights, when somebody leaves a
16 room, the light would go off also
17 so besides an automatic timer at 10
18 o'clock in the parking lot, they
19 want automatic when people leave
20 the room.
21 MR. KATES: The tree
22 replacement program, I think that's
23 now been documented by way of the
24 revised plan.
25 MR. SCHEPISI: Correct.

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1 MR. KATES: I have
2 reference to Burgis as generating
3 that and you've already produced
4 it. The mechanicals not to be
5 visible from any of the three
6 abutting streets; the engineer is
7 to review and approve.
8 MR. SCHEPISI: Can I just
9 on that last one, not to be visible
10 to either be set back or screened.
11 I just want to make sure we have
12 the option to do either one.
13 MR. KATES: The engineer is
14 to review and approve the lumens
15 relating to the signage that was
16 introduced tonight with the
17 Cadillac dealership as, perhaps, a
18 reference point.
19 I have a notation that if
20 we are going to any form of
21 condition running with the land
22 relating to maintenance of the
23 trees, that I would suggest that it
24 be in some recordable form.
25 Now, is the board saying

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1 that it doesn't survive -- it runs
2 with the land.
3 MR. SCHEPISI: Yes.
4 MR. KATES: If you folks
5 sell it, it's going to come to a
6 successor in title so what I'm
7 going to suggest is that there be a
8 recorded deed either to yourselves
9 or --
10 MR. SCHEPISI: Rather than
11 a recorded deed, I would like to
12 just record a copy of the
13 resolution affecting this property,
14 I don't want to have a deed in
15 there so for financing purposes, it
16 gets very difficult. Sometimes the
17 resolution gets recorded and --
18 MR. KATES: That's fine.
19 It accomplishes the same thing as
20 far as I'm concerned. I'm going to
21 put in the resolution that a
22 voluntary contribution for storm
23 water capital improvement.
24 MR. SCHEPISI: To be agreed
25 upon.

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1 MR. KATES: To be agreed
2 upon.
3 MR. SCHEPISI: And that
4 will be agreed by the next meeting.
5 MR. KATES: That's all I
6 have. Now, I haven't look at the
7 --
8 MR. KILMARTIN: Are you
9 talking about the landscape plan,
10 but then we added the evergreens in
11 the -- on the Johnson Avenue row to
12 be either in the buffer zone or,
13 and/or right-of-way.
14 MR. SCHEPISI: Correct.
15 MR. KATES: And I think you
16 wanted it maintained on your
17 property now.
18 MR. SCHEPISI: If we can.
19 If not, we'll go on the Borough
20 property if the Borough permits it.
21 MR. KILMARTIN: That's
22 where the replacement came in and
23 the two-year maintenance retainer.
24 MR. SCHEPISI: Correct.
25 MR. VERGONA: You just

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1 need to add to your resolution, DOT
2 approval along with DEP, also at
3 Bergen County Soil Conservation
4 approval.
5 MR. KATES: These are
6 standard forms.
7 MR. SCHEPISI: And Bergen
8 County Planning Board already
9 waived, they said we don't need it,
10 they've given us a waiver.
11 MR. KATES: Okay. That's
12 all I have.
13 MR. PORRINO: One more item
14 that we touched on last meeting was
15 parking on residential streets. I
16 think there's something in the
17 ordinance that prohibits commercial
18 vehicles from the commercial
19 properties parking on residential
20 streets that I think we should have
21 something in the resolution as
22 well, Mr. Attorney, that puts teeth
23 into that particular item so that
24 we don't have cars parking on
25 specifically, on Johnson Avenue.

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1 MR. SCHEPISI: You can put
2 whatever you want and we will abide
3 by it. We have no intention on
4 parking on residential streets, but
5 you really can't legally do that.
6 It's not within your domain.
7 Whatever you put in, we'll agree
8 with.
9 MR. PORRINO: I'll leave it
10 to Mr. Kates to create the language
11 to, to deal with that and the trees
12 that are being planted whether it's
13 on the Borough property or on the
14 applicant's property, would be
15 maintained in the future --
16 MR. SCHEPISI: 10 foot on
17 center, six foot on planting.
18 MR. PORRINO: Okay.
19 That's all I have.
20 CHAIRMAN VILLARI: Do we
21 have a motion to open this
22 discussion to the board, this
23 application for discussion by the
24 board? Do I have such a motion?
25 MS. O'SHEA: So moved.

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1 CHAIRMAN VILLARI: Thank
2 you. Any board members want to
3 have any further discussion with
4 regard to this application?
5 MR. TROVATO: You didn't
6 talk about any lighting in the
7 parking lot itself.
8 MR. SCHEPISI: It's on the
9 plan.
10 MR. TROVATO: And will
11 those be shut off the same time --
12 MR. SCHEPISI: The same
13 time as the building.
14 MR. TROVATO: Thank you.
15 CHAIRMAN VILLARI: Anything
16 else?
17 VOICE: Last month I
18 thought we had some issues about
19 parking, the size of the parking
20 stalls and the aisle and the number
21 of parking spots. Was that all
22 resolved or are they still seeking
23 the variance on those?
24 MR. SCHEPISI: On what,
25 I'm sorry?

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1 MR. KATES: The size of the
2 lots --
3 MR. SCHEPISI: That's the
4 whole purpose of the application.
5 VOICE: We haven't
6 discussed anything about it.
7 MR. SCHEPISI: There was
8 testimony on it.
9 VOICE: Last month.
10 MR. SCHEPISI: Right.
11 VOICE: I just want to
12 clarify.
13 MR. KATES: Applicant is
14 seeking variances for the size and
15 the number of spaces.
16 MR. SCHEPISI: Size,
17 number, and aisle width.
18 MR. KATES: And aisle
19 width.
20 MR. SCHEPISI: Cutting the
21 spaces down from 19 x 11 to 18 x
22 11 -- 9 x 18 and the other one, the
23 aisle width to 2 x 12 -- 24 rather
24 than 25.
25 CHAIRMAN VILLARI: Any

<p style="text-align: right;">Page 66</p> <p>1 comments or questions from board 2 members regarding the size of the 3 parking paces? 4 MS. O'SHEA: I'm not 5 concerned about the size of the 6 parking spaces, I just wish there 7 were more parking or less building 8 so coming to closer terms with each 9 other. The building is very nice 10 and I understand the wetlands and 11 the client is being very 12 accommodating on the trees and I 13 appreciate that, that means a lot. 14 How many spaces are you 15 short, 60 something? 16 MR. SCHEPISI: If you 17 follow -- 18 MS. O'SHEA: Just tell me 19 so I don't have to find it -- 20 MR. SCHEPISI: The 21 ordinance requires 5 per thousand. 22 The standard is somewhere between 23 2.5 and 3.5. We are providing 3.83 24 so we are .17 shy of what's 25 required under your reduced</p>	<p style="text-align: right;">Page 68</p> <p>1 square footage of the building? 2 MR. VERGONA: 31,-833. 3 MR. SCHEPISI: 4 per 4 thousand, that's 132. 127 where 5 are -- 6 MR. VERGONA: 127. 7 MR. SCHEPISI: Thank you, 8 mark and we are providing how many. 9 MR. VERGONA: 122. 10 MR. SCHEPISI: 122, so 4 11 per thousand. 12 MS. O'SHEA: 172 versus 13 127? 14 MR. VERGONA: We have 122. 15 127 would be 4 per thousand. 16 MR. SCHEPISI: 4 per 17 thousand, which is the norm in 18 every municipality in the world, 19 except for Englewood Cliffs. You 20 end up with how many spaces, 127. 21 MR. VERGONA: Yes. 22 MR. SCHEPISI: And we're 23 providing 122. 24 MR. VERGONA: A difference 25 of 5.</p>
<p style="text-align: right;">Page 67</p> <p>1 requirement and we are saying that 2 all the things that you've just 3 extracted from the client, my 4 suggestion is approval, vote 5 unanimously. 6 MS. O'SHEA: But I just 7 want to you to tell what's the 8 number? I forgot. 9 MR. MIRANDI: It's 160 is 10 required, 122 is provided. 11 MS. O'SHEA: 160? 12 MR. SCHEPISI: That's based 13 upon 5 per thousand. 14 MR. KURUS: And gross 15 flora. 16 MR. SCHEPISI: And gross 17 flora. Based upon 4 per thousand, 18 Bernie, what is it? 19 MR. MIRANDI: I don't have 20 that right in front of me, but -- 21 MR. SCHEPISI: It's on the 22 slide rule. 23 MR. MIRANDI: Anthony has 24 the slide rule. 25 MR. SCHEPISI: What's the</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. SCHEPISI: We are 5 2 spaces shy. Thank you. 3 CHAIRMAN VILLARI: Anything 4 else? Do I have a motion to close 5 the board discussion of this 6 application? 7 MR. KILMARTIN: Yes. 8 CHAIRMAN VILLARI: Second? 9 MR. CHINMAN: Second. 10 CHAIRMAN VILLARI: All in 11 favor? 12 (All said, "Aye.") 13 CHAIRMAN VILLARI: All 14 opposed? The motion is adopted and 15 passed. 16 MR. SCHEPISI: Just for 17 the record, I don't believe you 18 ever called for a vote to approve, 19 you just called for a vote to 20 discuss. 21 MR. KATES: It's coming. 22 CHAIRMAN VILLARI: All 23 right, the matter is now closed to 24 board discussion. Mr. Kates, will 25 you please call the roll?</p>

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1 MR. KATES: We need a
 2 motion.
 3 CHAIRMAN VILLARI: Do we
 4 have a motion to approve the
 5 application?
 6 MR. CHINMAN: So be it.
 7 MS. O'SHEA: Second.
 8 CHAIRMAN VILLARI: All in
 9 favor -- all opposed?
 10 MR. KATES: Let me do a
 11 roll call. Okay, on the vote, Mr.
 12 Trovato?
 13 MR. TROVATO: Yes.
 14 MR. KATES: Mr. Kilmartin?
 15 MR. KILMARTIN: Yes.
 16 MR. KATES: Ms. Rosenberg?
 17 MS. ROSENBERG: Yes.
 18 MR. KATES: Mr. Chinman?
 19 MR. CHINMAN: Yes.
 20 MR. KATES: Mr. Kiky Kim?
 21 MR. KIM: Yes.
 22 MR. KATES: Ms. O'Shea?
 23 MS. O'SHEA: Yes.
 24 MR. KATES: Ms. Eastwood?
 25 MS. EASTWOOD: Yes.

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1 MR. KATES: Councilman
 2 Park?
 3 COUNCILMAN PARK: Yes.
 4 MR. KATES: Mr. Villari?
 5 CHAIRMAN VILLARI: Yes.
 6 MR. KATES: -- nine.
 7 Approved.
 8 MR. SCHEPISI: Thank you,
 9 very much. Everyone, thank you for
 10 your time.
 11 (Thereupon, the matter was
 12 concluded. Time noted: 9:05 p.m.)
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1
 2 CERTIFICATE
 3
 4 I, CYNTHIA ZOLLER, R.P.R., a
 5 Notary Public and Certified Shorthand
 6 Reporter of the State of New Jersey,
 7 License No. 30X100178500, do hereby
 8 certify that the foregoing is a true and
 9 accurate record of the proceedings.
 10 I DO FURTHER CERTIFY that I am not
 11 related through blood or through
 12 marriage, to any of the parties to this
 13 action, and that I have no financial
 14 interest in this action.
 15
 16
 17
 18 *Cynthia Zoller, R.P.R.*
 19 _____
 20 Cynthia Zoller, R.P.R.
 21 Notary Public of the State of New Jersey
 22
 23 My Commission Expires June 4, 2016
 24
 25

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ENGLEWOOD CLIFFS PLANNING BOARD
PLANNING BOARD MEETING

- - - - - X

IN RE:
APPLICATION #238K, MAJOR SUBDIVISION
ESTATE OF JOSEPHINE MAURO - 361,
365, 369 MAURO ROAD - BLOCK 406,
Lots 1, 2, 3.

- - - - - X

February 11, 2016
9:10 p.m.

PLANNING BOARD MEETING, in the
above-captioned matter, held at the
Englewood Cliffs Planning Board, 20 Kahn
Terrace, Englewood Cliffs, New Jersey,
before Cynthia Zoller, R.P.R., a Notary
Public within and for the State of
New Jersey.

Job Number: NJ 2232862

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1
2 BOARD ATTORNEY: Michael B. Kates, Esq.
3
4 VICE CHAIRMAN: Aurel Villari
5 Mary O'Shea
6 Kiky Kim
7 Jill Rosenberg
8 Roy Kiltmartin
9 Matthew Trovato
10 Jeff Chimman
11 J.P. Lee
12 Russell Porrino
13 Bernard M. Mirandi
14 Lauren Eastwood, Mayor's Representative
15 Councilman Mark M. Park
16 Andrew w. Hipolit, P.E.
17 Maser Consulting
18
19 LAW OFFICES OF MARK J. SOKOLICH
20 Attorneys for Applicant,
21 ESTATE OF JOSEPHINE MAURO
22 1223 Anderson Avenue
23 Fort Lee, New Jersey 07024
24
25 BY: MARK J. SOKOLICH, ESQ.
PHONE: 201-224-4000
FAX: 201-224-8105

Page 4

1 CHAIRMAN VILLARI: The
2 next order of business tonight is
3 Application Number 238K, Major
4 Subdivision, the Estate of
5 Josephine Mauro, the owner of 361,
6 365, and 369 Mauro Road, Block 406,
7 Lots 1, 2, and 3. Good evening.
8 MR. SOKOLICH: Good
9 evening. Mr. Chairman, members of
10 the board, professionals, members
11 of the public, for the record, my
12 name is Mark Sokolich, on behalf of
13 the applicant this evening, the
14 Estate of Josephine Mauro, if I may
15 just provide a brief background.
16 CHAIRMAN VILLARI: Please.
17 MR. SOKOLICH: If the board
18 recalls, we initially filed an
19 application concerning a request to
20 perfect and otherwise ratify a
21 subdivision approval, which was
22 previously granted by the then
23 Planning and Development Commission
24 of the Borough of Englewood Cliffs.
25 There was a filed map that was

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3 I N D E X
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5 PAGE
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7 WITNESS: MARK MARTINS, P.E.
8 EXAMINATION BY MR. SOKOLICH: 12
9 WITNESS: KENNETH OCHAB, P.P.
10 EXAMINATION BY MR. SOKOLICH: 72
11
12
13 EXHIBITS MARKED FOR IDENTIFICATION:
14 A-10 Major Subdivision Plan 17
15 A-11 Filed Map 17
16 A-12 Existing Condition Map 22
17 A-13 Site and Subdivision Plan,
18 11/12/15 26
19
20 A-14 Grading and Utilities Plan,
21 11/12/15 43
22 A-15 Photographs 75
23 O-1 2/11/16 Cover Letter from Taylor
24 Law Firm, LLC including Memorandum
25 to lMr. Taylor from Nicholas
Warner, P.E.; Report on drainage
along Mauro Road, 2/9/16. 106
O-2 5/14/15 Scott Cullen, Registered
Consulting Arborist, Report 107
O-3 CD ROM with PowerPoint presentation
and paper of CD ROM. 108

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1 initially filed that we'll mark
2 during the course of the testimony
3 of Mr. Martins, that established
4 three separate and distinct
5 property lots.
6 Subsequent to that, in
7 1978 an application was then made
8 to your Planning Commission for
9 purposes of just moving those lot
10 lines a bit. Where they went isn't
11 important for purposes of this
12 introduction. That was unanimously
13 approved.
14 Subsequent to that, in
15 1979 another application was filed
16 to further to tweak those lot
17 lines, for whatever reasons I don't
18 know. I wasn't engaged to even
19 practice law at the time, but this
20 was back in 1979. For reasons
21 which I cannot explain, there was
22 never a, either plan or
23 alternatively, a deed perfecting
24 that subdivision which was
25 subsequently filed with the Bergen

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1 County Clerk's Office. If that was
2 done, I wouldn't be here tonight,
3 there would be three lots and
4 people would have lived happy ever
5 after. Instead, when the property
6 owner went to sell the middle lot,
7 it turned out that a title report
8 revealed that the lot, that there
9 was no filed plat, nor
10 alternatively, there was not a
11 filed subdivision.
12 I then appeared here. I
13 marked all of those documents. I
14 had presented them in my
15 application package and I was
16 hopeful that, perhaps, we can
17 simply ratify the actions that the
18 Borough has taken 25, 30 years ago
19 and the reason why I did that was
20 simple; it wasn't to take a
21 shortcut, it wasn't to be cute, it
22 wasn't to pull some legal maneuver,
23 you know, it was because since
24 1978, in fact, since the filed map
25 was filed, the town has been taxing

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1 these lots separately with three
2 separate tax bills.
3 Since those approvals 30
4 years ago, there have been three
5 separate property record cards and
6 we know that because we file an
7 open request and found all of this
8 information out.
9 When we presented the
10 application, we then learned that
11 there is a pervasive flooding
12 problem in the area and we
13 acknowledge that, we're not
14 ignoring that so what we decided to
15 do, what the applicant decided to
16 do is rather to pursue the
17 administrative remedy that we
18 originally had sought and hoped to
19 ratify the approval that was
20 previously provided by the Planning
21 Commission here in Englewood
22 Cliffs, we engaged the services of
23 Mr. Martins for purposes of
24 preparing a very detailed
25 subdivision plan, a very detailed

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1 conceptual draining and grading
2 plan and present that to you this
3 evening and start, effectively,
4 from scratch, without waiving our
5 rights as to what rights we have,
6 if any, from those prior approvals,
7 we've opted to go the more detailed
8 route.
9 I will tell you, though,
10 that counsel is present, and all
11 members of the neighborhood are
12 present. I could tell you we are
13 certainly cognizant of the problems
14 they are having in that
15 neighborhood. We understand that.
16 We, however, are here for the
17 approval of a single-family
18 residential lot. We are here to
19 otherwise ratify what was
20 previously approved and we are
21 willing to start from scratch and
22 present our engineer this evening.
23 We've also engaged the
24 services of a planner, because when
25 we maneuvered these lines and when

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1 we are about to present these lines
2 to you, it actually creates a very
3 minor di minimus variance, rear
4 yard variance for one of the
5 existing houses. Bear in mind,
6 there two houses that are on the
7 two outside lots. It's the middle
8 lot that we are talking about.
9 After the 1979 approval,
10 building permits were actually
11 issued for a house to get
12 constructed on one of those lots so
13 the point that I'm making, I don't
14 want to beat a dead horse, everyone
15 has acknowledged that it's three
16 separate lots, I'm just here to
17 perfect it in the hopes of
18 obtaining that resolution. It's
19 been deem a major, because it's
20 three lots or more than two lots so
21 in consequence, I would have to
22 perfect it by way of subdivision
23 plat, which we are prepared to do,
24 obviously, if the board acts
25 favorably on the application so

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1 having said that, I'm presuming
2 that there are no questions of I.
3 We re noticed for the
4 application and we presented that
5 to Kathy in advance of the hearing.
6 We have also presented the return
7 green cards. For this evening's
8 purposes, it's our intentions to
9 present the testimony of Mark
10 Martins, who is a licensed
11 engineer, who will provide you with
12 the existing conditions and all of
13 what we believe to be the
14 justification for subdivision
15 approval as set forth in the
16 ordinances here in the Borough of
17 Englewood Cliffs. We're prepared
18 to review the review letter from
19 Boswell that we received and
20 respond to the comments that were
21 made and we also, because of the
22 di minimus variance and I don't use
23 that word lightly, but because of
24 that di minimis variance that's
25 created because of the

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1 establishment of the lot line with
2 an existing house, we also have
3 planning testimony to confirm and
4 to, hopefully, establish before the
5 board that there's no negative
6 impact whatsoever, as a result of
7 that variance so it's two
8 witnesses, Mr. Martins and Mr.
9 Ochab, and of course, me.
10 CHAIRMAN VILLARI: Thank
11 you, very much.
12 MR. SOKOLICH: Thank you.
13 CHAIRMAN VILLARI: You may
14 present your first witness.
15 MR. SOKOLICH: Mark.
16 MR. KATES: Mr. Martins,
17 would raise your right hand.
18 (Witness complies.)
19 Do you swear the testimony
20 you are about to give this board,
21 shall be the truth, so help you,
22 God?
23 MR. MARTINS: I do.
24 MR. KATES: Your name?
25 Please identify your name and your

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1 business address.
2 MR. MARTINS: Mark
3 Martins, M-A-R-T-I-N-S, 55 Walnut
4 Street, Norwood, New Jersey.
5 MR. KATES: Mr. Martins is
6 being qualified as a professional
7 engineer. You have appeared before
8 this board and I recommend his
9 qualifications.
10 MR. MARTINS: Do you mind
11 if I just grab the easel?
12 MR. KATES: I think we can
13 accept him. It's up to the board.
14 MR. SOKOLICH: I'll
15 briefly, for the record, I can just
16 put some stuff on.
17 EXAMINATION BY
18 MR. SOKOLICH:
19 Q Mark, you are -- can you just
20 state your name for the record and your
21 chosen profession, how many years you're
22 doing it.
23 A Yes. I'm a licensed professional
24 engineer and a licensed land surveyor in the
25 State of New Jersey. I have been practicing

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1 since I graduated, but I graduated from
2 NJIT in 1983, been in the field since then,
3 been licensed as a professional land
4 surveyor since 1991 and as an engineer since
5 1992.
6 Q And have you provided engineering
7 and surveying services in the past for
8 clients in connection with both minor and
9 major subdivision applications?
10 A Yes, I have.
11 Q Have your credentials been
12 accepted before other planning boards and
13 boards of adjustment and joint boards here
14 in the State of New Jersey as an expert in
15 both fields?
16 A Yes, they have.
17 Q Have you testified before, before
18 either this board or prior to this board,
19 the Board of Adjustment and/or the Planning
20 Board of the Borough of Englewood Cliffs?
21 A Yes, I have.
22 Q And those credentials have been
23 likewise accepted in the fields of both
24 engineering and surveying, correct?
25 A Yes, they were.

1 Q And in advance of this of
 2 meeting you prepared plans, did you not?
 3 A Yes, we did.
 4 Q We, in fact, engaged in a rather
 5 lengthy conversation about the history of
 6 this property and when I say property, I
 7 mean 361, 365, and 369 Mauro Road, correct?
 8 A Correct.
 9 Q We talked a little bit about the
 10 history of it, we talk a little bit about
 11 where we've been with the first night of
 12 this application and we asked you to
 13 commence in preparation of detailed
 14 engineering services. For the benefit of
 15 the board, could you just explain in your
 16 own words, what you understand to be the
 17 scope of your engagement?
 18 A Yes. The scope of our engagement
 19 was to prepare subdivision and engineering
 20 plans to subdivide what is currently three
 21 tax lots into three conforming residential
 22 lots. Two of those lots already have
 23 existing lines on them. There's one lot in
 24 the middle, which will be newly created, if
 25 you will, and which will be a conforming

1 single-family residential lot.
 2 Q And in preparation for, or in
 3 advance of the preparation of those plans, I
 4 believe it's pretty common that engineer
 5 surveyors do a survey, or actually not a
 6 survey, but a history and analysis of the
 7 property to determine whether there are any
 8 filed maps, for example?
 9 A Yes.
 10 Q Did you conduct that?
 11 A We did. We looked at some title
 12 work, we looked at some history of the tax
 13 maps and some other filed map information,
 14 as well as the survey that was I originally
 15 provided by Bullseye Surveying.
 16 Q I'm going to show you a copy of a
 17 filed map, if you would just identify it for
 18 me and confirm for the benefit of the board
 19 and the record as to whether or not that's
 20 the filed map that includes that's the
 21 subject of this application this evening.
 22 A Yes, it does and it's entitled,
 23 "Section 1 Subdivision Waldy Homes
 24 (phonetic), Part of Block 46, Lot 9, Borough
 25 of Englewood Cliffs, Bergen County,

1 New Jersey" and it's known as Map Number
 2 5741, which was filed in the Bergen County
 3 Clerk's Office on September 15th, 1961, and
 4 it depicts, basically, the three lots shown
 5 on the key map here and somewhat in a
 6 different configuration than the tax lots.
 7 Q But three lots?
 8 A Yes, correct.
 9 CHAIRMAN VILLARI: A-1?
 10 MR. KATES: Before you do
 11 that, mark the subdivision since we
 12 are starting over.
 13 MR. SOKOLICH: I'm starting
 14 over, but I'm reserving my rights
 15 pursuant to what we presenting thus
 16 far.
 17 MR. KATES: Understood,
 18 but what I would like to do is mark
 19 your major subdivision plan as A-1.
 20 MR. SOKOLICH: We already
 21 have A-1 through 4. May I suggest,
 22 Counsel, we jump to A-10 to keep it
 23 clear; is that acceptable?
 24 MR. KATES: That's fine.
 25 MR. SOKOLICH: Okay. I

1 just didn't want to confuse the
 2 record.
 3 MR. KATES: And give us a
 4 date, please, the date of the
 5 plans, I'm sorry.
 6 MR. MARTINS: Our plans
 7 are dated October 12th, 2015.
 8 MR. SOKOLICH: And
 9 Counsel, I'll mark the filed map as
 10 A-11. I'll initial it and date it
 11 today, the 11th.
 12 MR. KATES: Yes.
 13 (Whereupon, Exhibits A-10 and A-11
 14 were marked for Identification.)
 15 Q Now, Mark, again since we are, in
 16 theory, this is the second phase of this
 17 application, what you've now marked as A-10,
 18 would you just -- first of all, in fact, you
 19 prepared it?
 20 A Yes, I did.
 21 Q Okay. And in anticipation of this
 22 meeting and during the course of your
 23 preparation of these plans, you conducted
 24 physical inspections of these properties?
 25 A Yes, I did.

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1 Q And you also had the
2 opportunity, I trust, to review the survey
3 and the documents that were submitted in
4 connection with this application when last
5 we were here, correct?
6 A Yes, I did.
7 Q Although, you were not the
8 surveyor or the engineer at that time?
9 A That's correct.
10 Q Okay. You've also had the
11 opportunity, I trust, to review and
12 familiarize yourself with the applicable
13 ordinances and of the Borough of Englewood
14 Cliffs?
15 A Yes, I did.
16 Q And that would include the
17 subdivision ordinance?
18 A Yes.
19 Q Could you, based on that, based on
20 your own personal knowledge and the
21 assessments and the observations that you've
22 made, if you could just explain to the board
23 what A-10 represents?
24 A Again A-10 is our major
25 subdivision plan, it is consisting of five

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1 sheets, cover sheet, existing divisions
2 map, a site and subdivision plan, grading
3 and utilities plan and finally, soil erosion
4 plan and details. The first sheet presented
5 tonight is the cover sheet, which indicates
6 the tax map and the key map of the areas
7 within 200 feet. The hashed area are the
8 areas in question, the subdivision exhibits
9 set forth tonight and it consists currently
10 of Lots 1, 2, and 3 in Block 406 on your tax
11 map.
12 MR. MIRANDI: Mr. Chairman,
13 just before we leave that plan
14 there, can you reconfirm the date
15 of the plan? I believe you
16 mentioned an October date.
17 MR. MARTINS: Yes.
18 MR. MIRANDI: I have plans
19 dated November 12th, 2015, so I
20 just want it could be consistent
21 for the record.
22 MR. MARTINS: November
23 12th?
24 MR. MIRANDI: November
25 12th.

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1 MR. MARTINS: Mine are
2 10/12.
3 MR. MIRANDI: You are
4 October 12th?
5 MR. MARTINS: Yes.
6 MR. MIRANDI: The rest of
7 them are 11/12.
8 MR. MARTINS: Maybe,
9 perhaps, on the print that I
10 printed tonight, for some reason,
11 there was a typo in that.
12 Q Were there changes on any of
13 these?
14 A No. There no changes. These were
15 same plans that were submitted to the board
16 so a typo on the presentation plan that I
17 brought with me tonight.
18 Q Okay. So the, what we are looking
19 at, what's the date of the one that's marked
20 as A-10?
21 A This is actually on this
22 presentation dated October 12th, in reality,
23 my plans that were admitted were in November
24 12th.
25 Q Are there any distinction

Page 21

1 whatsoever other than date?
2 A No.
3 MR. SOKOLICH: I'm going
4 to ask you to turn to the next page
5 and we'll mark that.
6 MR. KATES: We are going
7 with October 12th?
8 MR. SOKOLICH: October
9 12th.
10 MR. MARTINS: Well,
11 November 12th, I believe the plans
12 were submitted.
13 MR. MIRANDI: The board
14 should have plans there are dated
15 November 12th as part of the
16 submission package.
17 MR. SOKOLICH: So November
18 12th, right.
19 Q Mark, mark as A-12, if you would
20 the plan that's now at the easel.
21 A Certainly.
22 Q And if you could, identify it both
23 by way of title block and the title as well.
24 A And this is entitled, "Existing
25 Condition Map, 361, 365, 369 Mauro Road."

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1 (Whereupon, Exhibit A-12 was
2 marked for Identification.)
3 Q And is that a plan in fact, that
4 you prepared also?
5 A Yes, it is.
6 Q Okay. And that was based on again
7 your review of the ordinance and your own
8 observations so forth and so on, as we
9 discussed before with A-10?
10 A Yes. This was based on the
11 original survey that was done by Bullseye
12 Surveying and based on the actual topography
13 that we measured on the site ourselves.
14 MR. KATES: What's the
15 date?
16 MR. MARTINS: This is
17 dated June -- I'm sorry, August
18 5th, 2015.
19 MR. KATES: And the sheet
20 number?
21 MR. MARTINS: Sheet
22 Number 2.
23 Q In your own words, Mark, if you
24 would be good enough to please describe what
25 A-12 represents.

Page 23

1 A Yes. A-12 is a map of the
2 existing conditions of the property as they
3 exist now and what it shows are the two
4 existing buildings that currently are
5 occupying the sites, one on 361 Mauro and
6 one 369 Mauro, which shows the locations of
7 the existing structures, the setbacks of the
8 property lines, it also shows the dimensions
9 of the existing lots and also topography of
10 the site in the vacant area between the two
11 buildings.
12 Q And the road is bounded by Mauro
13 Road, correct?
14 A On the northerly side of the
15 entire subject premises we are bounded by
16 Mauro Road and on the easterly side by Toni
17 Drive and on the westerly side by Rock Road.
18 Q And as you face this plan or as
19 you look at the plan as depicted on the
20 easel, to the left is 361 Mauro Road,
21 correct?
22 A Correct.
23 Q What we are calling or what is the
24 middle lot or Lot 2, Tax Map Lot 2, is 365
25 Mauro Road, correct?

Page 24

1 A Correct.
2 Q And then the other existing house
3 all the way to the far right, if you would.
4 Is 369, correct?
5 A That's correct.
6 Q And are there any exceptional
7 circumstances that exist on this property
8 and what I mean by that is, is there an
9 exceptional topographic condition, are there
10 excessive rock outcroppings, are there any
11 environmental, adverse environmental
12 conditions, abandoned oil tanks, things of
13 that nature, that you would have seen or
14 observed during the course of your
15 observations and due diligence?
16 A No. There is a slope to the
17 property if anybody has been out to the
18 site. The property goes up from Mauro Road
19 to the back by approximately 15 feet.
20 Q And the two houses -- or excuse
21 me, strike that.
22 You are familiar with a flooding
23 issue that exists in the neighborhood, I
24 believe?
25 A I do understand that there is a

Page 25

1 flooding condition in the area.
2 Q Okay. And do you know if that
3 takes place on Mauro Road or on the roads
4 that bound it to the right and the left?
5 A I believe it's involving the
6 existing storm drain that runs from Toni
7 Drive and down Mauro Road and then Rock
8 Road.
9 Q Okay. Is there any part of our
10 application or proposal other than,
11 eventually, I would presume, connecting to
12 it, did we plan on amending it or replacing
13 it or doing or performing any work to it,
14 whatsoever?
15 A No, we are not.
16 Q Is there anything else that you
17 would like to add with respect to your
18 existing conditions map?
19 A No.
20 Q I'm going ask you to flip to the
21 next page, if you would. Mark, if you would
22 identify the plan. I believe we are up to
23 A-13. If you could identify it by title, by
24 correct date, also identify your sheet
25 number and indicate whether there are any

1 last revised dates.
 2 A This is entitled, "Site and
 3 Subdivision Plan" and the correct date would
 4 be November 12th, 2015, and Sheet Number 3.
 5 (Whereupon, Exhibit A-13 was
 6 marked for Identification.)
 7 Q And no different than the other
 8 plans that you prepared? These plans were,
 9 in fact, prepared by you?
 10 A Correct. And this plan depicts the
 11 proposed subdivision that we are presenting
 12 to the board tonight.
 13 Q Now, before we get to the proposed
 14 subdivision, do you show by way of dotted
 15 line where the existing plot lines are?
 16 A Yes, we do.
 17 Q Could you just point those out to
 18 the board?
 19 A Certainly. I'll try to highlight
 20 them if I can. So the corner lot of Rock
 21 Road and Mauro Road, known as 361 Mauro
 22 Road, that existing lot line right now is
 23 running in that direction, which is
 24 approximately 100 feet of frontage along
 25 Rock Road.

1 Q And the other lot line?
 2 A And the other lot line, which is
 3 the tax map lot line, it's kind of hard to
 4 see here, but let me try to do the best I
 5 can for you, is running as such and that is
 6 in close proximity to the proposed
 7 subdivision line.
 8 Q But both of the houses, the houses
 9 that exist to the right and left don't
 10 overlap those existing tax map lines,
 11 correct?
 12 A It's a bit confusing, because the
 13 existing tax map lines don't conform to the
 14 original filed map line so it is difficult
 15 to see.
 16 Q And that's reflected in the 1978
 17 and the 1979 approvals and applications?
 18 A Right.
 19 Q So there -- and both of the
 20 residences that exist now are single
 21 families, correct?
 22 A Correct.
 23 Q Okay. You also have the zoning
 24 schedule for Proposed Lot 1, Proposed Lot 2,
 25 and Proposed Lot 3, correct?

1 A Yes, I do.
 2 Q And I believe with respect to
 3 Proposed Lot 1, which is your 361 Mauro
 4 Road, there are no variances that are being
 5 sought based on the RB Zoning District in
 6 the regulations set forth in that ordinance,
 7 there are no variations that are being
 8 sought from the ordinance; is that correct?
 9 A That's correct.
 10 Q Notwithstanding the fact that the
 11 residence at 361 exists now as we stand
 12 here?
 13 A That's correct.
 14 Q You've also done a zoning schedule
 15 for Proposed Lot 2, did you not?
 16 A We did.
 17 Q And were this board to act
 18 favorably on this application, are there any
 19 variances whatsoever, that the applicant
 20 would be seeking from this board?
 21 A No.
 22 Q And would you just briefly review
 23 for me the requirements in the RB zone and
 24 how it applies to Proposed Lot 2.
 25 A Sure. RB zone requires a 7,000

1 minimum square foot lot and a lot that is
 2 70 feet in width so our lot will both exceed
 3 those dimensions and we are proposing 8,782
 4 square feet and a lot width 70.03 feet.
 5 Now, I should mention that again, we
 6 previously had surveyed it when another
 7 surveyor previously submitted the
 8 subdivision to subdivide this property, we
 9 basically, recreated the subdivision that
 10 was prepared and approved by the board in
 11 1979 so what we've attempted to do is
 12 basically, follow that same footprint, so to
 13 speak, because don't forget, this corner lot
 14 was built upon based upon those presumptions
 15 that that actual dimension was in fact it
 16 was recorded in the County Clerk's Office
 17 and filed; of course, we know now, that's
 18 not the case; however, we wanted to follow
 19 that line as closely as possible. The only
 20 change we did make compared to what was
 21 previously submitted to the board was,
 22 there's a comment from the engineer that the
 23 lot width requirement was not technically
 24 met by that original subdivision.
 25 Q Now, just if I could back you up

1 for a second, lot width dimensions are, I
2 don't want to say typically, but in most
3 parts are measured from the street, correct,
4 from the frontage on the street?

5 A There's different ways of
6 measuring it.

7 Q But here I believe it's measured
8 from the mid-point line on either side?

9 A Right. So frontage is really not
10 part of the requirement. The lot width is
11 defined not along the frontage of the
12 right-of-way line of the street, but really,
13 more of a middle dimension so you would take
14 a mid-point in the front property line, a
15 mid-point in the back property line and from
16 that measuring point, you would go in the
17 middle of that line and measure the lot
18 perpendicular to that lot depth, if you
19 will.

20 Q And the last plan that was
21 presented to this board had by, I believe a
22 few inches, was short of the minimum lot
23 width of 70 feet, correct?

24 A Yes. So what we've done is to
25 modify the lot lines to make that 70 foot

1 minimum dimension work and we've done
2 that.

3 Q So that there's no longer
4 necessity to request a variance associated
5 with lot width for that middle lot?

6 A Correct. So now we have a totally
7 conforming Lot 2, which will have a 70.03
8 lot width and an 8,782 square foot area.

9 Q If you would continue in summary
10 fashion with regard to the rest of the
11 regulations --

12 A Certainly. I'll just go down the
13 list. So the front yard again we are
14 showing a conceptual footprint of the
15 building on this lot here. Our applicant is
16 not proposing to do any construction, per
17 se; merely, meaning to subdivide the
18 property and sell the lots off, but if you
19 want to indicate to the board a possible or
20 a conceptual footprint, just for discussion
21 purposes, to show the board what could
22 feasibly be built and to give an indication
23 of what the setbacks would look like so the
24 required setbacks for the front yard are 25
25 feet and we are indicating that we would

1 have a conforming setback for 25 feet as
2 well. The rear yard setback requirement
3 will be 25 feet. The building that we are
4 showing, conceptual building has a setback
5 of 37.84 feet. The side yard dimensions,
6 you have two side yard requirements, a
7 minimum of 7 foot on one side and there's a
8 total side yard requirement in this case,
9 will be 25.44 feet, that's a percentage of
10 the overall lot width and we would comply
11 with both of those requirements.

12 Building coverage as well, based
13 on the lot area, the maximum building
14 coverage will be 30.22 percent, of the
15 footprint that we have shown will be 22.5
16 percent, which would conform and again we
17 would also be conforming with the height
18 requirements as well.

19 I actually want to make the point
20 that the applicant is not proposing to
21 construct this specific footprint, we are
22 merely trying to present to the board
23 something that you could visualize yourself
24 to see what could possibly be built on this
25 site.

1 Q -- this site and I think we
2 could stipulate to this, the applicant
3 doesn't intend to actually build anything,
4 the applicant probably intends or will
5 intend to sell the lot --

6 A Correct.

7 Q -- to someone that might or
8 probably would ultimately build a
9 single-family residence.

10 A Correct.

11 Q So again just to reconfirm, there
12 are no variances that are being sought in
13 conjunction with that middle lot?

14 A That's correct.

15 Q We are going to get back to the
16 middle lot in a second, but we'll stay there
17 for the moment.

18 A Sure.

19 Q Do you have the -- have you
20 proposed any type of utilities or anything
21 of that nature for the new proposed lot,
22 sir?

23 A Yes. We do have --

24 Q That's on the next plan so let's
25 stay there. Move along then, if you would,

1 to 369 Mauro Road and you've also prepared
2 the zoning schedule for that what you call
3 Proposed Lot 3 as well?

4 A Yes. That's in the upper
5 right-hand section of the plan.

6 Q And I would ask you to kindly
7 review the zoning schedule for the Proposed
8 Lot 3 in connection with this application.

9 A Sure. So now Lot 3 would be the
10 corner of Mauro Road and Toni Drive.

11 Q Now, this residence and all the
12 improvements on this lot exist now, correct?

13 A They do and we are not proposing
14 to remove or add to any of the improvements,
15 the improvements that exist on the property.

16 Q And that's the case also for 361
17 Mauro Road?

18 A Correct. So this lot again, same
19 zone RB, is minimum requirement 7,000 square
20 feet. Our proposed lot will have an area of
21 18,607 square feet. Minimum lot width
22 requirement is 70 feet and this lot would
23 have a minimum lot width of 135.62 feet.

24 Now, I will note that because we
25 are on a corner piece of property, the way

1 you measure the lot frontage or the lot
2 front yard, I should say, is depending upon
3 the actual dimensions of the frontages on
4 the two streets so which -- in other words,
5 whatever street has the narrowest frontage
6 becomes the front yard. So in this case,
7 Toni Drive has the narrowest frontage and
8 that is considered to be the front yard,
9 even though, the address of the property is
10 369 Mauro Road and the building is really
11 facing more on Mauro Road than Toni Drive --
12 one end -- off of Mauro Road. Technically
13 speaking, the front yard is abutting Toni
14 Drive.

15 Q And I believe that's significant,
16 correct, Mark?

17 A It is, because it does create some
18 variance conditions.

19 Q Pre-existing, nonconforming
20 conditions?

21 A Exactly, exactly, and the first
22 one I'll mention is the front yard
23 requirement, 2 Toni Drive is required to be
24 25 feet and the existing building is 18.64
25 feet so that's an existing nonconformity.

1 Q Now, let me ask you a quick
2 question. If the Mauro estate and the
3 representatives that are here this evening,
4 if they filed no application, if they took
5 no action, if they just allowed things to
6 remain exactly as they are and effectively,
7 allowed that middle lot to exist with a
8 question mark around it, would that variance
9 or that pre-existing nonconforming condition
10 change or go away?

11 A No.

12 Q In other words, does by virtue of
13 the filing of this subdivision, is that
14 variance expanded or is it in any way
15 affected or is it in any way heightened as a
16 result of the filing of this application?

17 A No, it's not.

18 Q Please continue.

19 A So the next requirement would be
20 the corner side yard. In this case, the
21 corner side yard would be along Mauro Road
22 and that requirement would be a minimum 15
23 feet, the existing building is 20.08 feet so
24 that's conforming. The side yard
25 requirements are 7 feet again and in this

1 case, the total side yard requirement
2 would be 31.84, we have a side yard 16.65
3 feet, which is really on the southerly side
4 of the lot, the total side yard of that in
5 the corner of 36.83 so we are conforming
6 with that requirement.

7 The minimum -- the maximum
8 building coverage, I should say, in this
9 case, since it's an oversized lot, maxes out
10 as at a certain square foot, it's not a
11 percentage of the lot area -- and once you
12 get to 14,000 square feet and over, you are
13 only permitted to have a maximum footprint
14 of 3,500 square feet. The existing house
15 has a footprint of 4,025.1 square feet so
16 it's an existing nonconformity on both the
17 existing lot and also on the proposed lot as
18 subdivided.

19 The other requirements as far as
20 grade level and building height and grade
21 level and curb level are concerned, that's
22 the existing building. Obviously, we are
23 not changing the height, we are not changing
24 the structure at all, it will remain. I do
25 believe there's a comment in your engineer's

1 letter that he wanted us to get those
2 measurements for him and we will.
3 And the final ones are regarding
4 impervious coverages and rear yard
5 impervious coverages and we do comply with
6 both of those requirements.

7 MR. SOKOLICH: Now,
8 meanwhile, we do have a planner on
9 deck, but I wanted to at least
10 identify what the, what the impact
11 was as far its relationship with
12 the zoning ordinance here in
13 Englewood Cliffs.

14 Q The maximum building coverage
15 pre-existing condition that you noted, 3,500
16 max 4,025 is what's existing and that's been
17 noted as a preexisting nonconformity. Is
18 that affected by virtue of the filing of the
19 subdivision?

20 A No, it's not, because it's not a
21 percentage of the lot so even though, we are
22 reducing the lot area, it's still an
23 oversized lot, it still requires a maximum
24 of 3,500 square feet so the subdivision does
25 not change that fact.

1 Q Okay. So its same answer as to
2 the first one, the first question?

3 A Correct.

4 Q But to be candid, the new variance
5 that's being sought is the rear yard
6 variance where 25 is required and 18.1, in
7 fact, is proposed, correct?

8 A Yes, correct. So again where the
9 original or the existing lot line, if you
10 will, is closer to 361 Mauro Road and we are
11 moving that line over, recreating the
12 subdivision that was previously approved in
13 1979, that rear yard now, because again the
14 front yard is on Toni Drive and not Mauro
15 because of the definition of the front yard,
16 that rear yard becomes 18.1 with the
17 proposed subdivision and that is a variance.

18 Q So in sum, Mark, you were able to,
19 with respect to 361 Mauro Road, the lot line
20 where it's proposed will allow the house to
21 exist absolutely variance free. The middle
22 lot that's being proposed and shifted so as
23 to avoid a de minimis lot width variance in
24 a place where there are no variances being
25 sought, provided that, of course, the

1 residence that's depicted in the envelope
2 will be constructed in the middle lot and
3 then, of course, we have the final 369 where
4 there are two conditions that are not
5 impacted whatsoever by virtue of the
6 subdivision; however, by virtue of the
7 definitions in the ordinance on what a rear
8 yard is and how you measure it, we find
9 ourselves in that variance setting, correct?

10 A That's correct.

11 Q And I just want it to be clear,
12 your testimony where you indicate conceptual
13 two and a half story single-family dwelling,
14 that's just what we'll call the approved box
15 and built within that box, within that
16 framework, it wouldn't deviate and then
17 trigger one of the -- a variance condition
18 for that house, correct?

19 A Anybody who -- when this property
20 or if this property is subdivided and those
21 lots are sold off, any future development,
22 any future developer or builder would have
23 to submit plans to the Building Department
24 that would conform totally to the
25 requirements of the Zoning Board regarding

1 height, regarding setback, etcetera so it
2 may not necessarily look exactly like what
3 we've shown here, again this is only a
4 conceptual footprint so they would have to
5 comply with all those requirements, if not,
6 they would have to come back to the board
7 and seek variance approval.

8 Q And is it common or frankly, is it
9 required to have to completely design a
10 house that we don't know will ultimately be
11 built for purposes of presenting a
12 subdivision application?

13 A No, we can't, because we are not
14 looking to build a house on this. We don't
15 have a specific buyer who is going to buy
16 this property and wishes to put this
17 particular footprint on the property so we
18 don't know at this point.

19 Q And hypothetically, if for
20 example, a builder were to buy this lot and
21 were to say, you know what, I don't want to
22 adhere to a 25 foot front yard setback, I
23 only want a 20 foot front yard setback what
24 then would have to happen?

25 A They would have to apply for a

1 variance before the board.
 2 Q And same thing with all the other
 3 conditions and all the other requirements in
 4 the RB single-family residential dwelling,
 5 if there isn't complete and full compliance
 6 as contemplated in your proposed -- in your
 7 conceptual drawing and your proposed
 8 conceptual residence, they would have to
 9 notice and reappear by way of formal
 10 application before this board?
 11 A Yes, they would.
 12 Q You have a series of computations
 13 on the left side of what we marked as A-13.
 14 Is there any type of testimony you would
 15 like to give there or is that included in
 16 your description?
 17 A Yeah. It's just a breakdown of
 18 what we already discussed in the zoning
 19 schedule.
 20 Q If it's okay with you and you've
 21 completed your testimony on A-13, I would
 22 like to move on to your last page. I
 23 believe we are up to A-14 and if you would
 24 be good enough to identify the title of the
 25 map, the correct date, your sheet number

1 and confirm whether there are any last
 2 revised dates.
 3 A This is entitled, "Grading
 4 Utilities Plan," Sheet 4, dated November 12,
 5 2015.
 6 (Whereupon, Exhibit A-14 was
 7 marked for Identification.)
 8 Q Okay. Are there any last revised
 9 dates?
 10 A That's it.
 11 Q That's your last revised date?
 12 A Yes.
 13 Q Could you indicate to the board
 14 and to the public what this page represents.
 15 A Yes. This page indicates a
 16 potential grading scheme for the new Lot 2,
 17 which is the vacant parcel between the
 18 existing lots so what we're showing is our
 19 contemplation of how this potential lot
 20 could be developed with a single-family
 21 structure so what we're proposing is
 22 basically, a driveway coming in more or less
 23 through the center of the property into what
 24 would be at least a minimum of a two-car
 25 garage and because of the site rating, we do

1 have to provide for some retaining walls
 2 so we're providing retaining walls along the
 3 easterly side, along the westerly side of
 4 the building and also along -- the property,
 5 but they're off the back of the building so
 6 there's some recreational space behind it.
 7 Now, we're only showing one wall, but
 8 potentially could be a two-tiered wall, a
 9 three-tiered wall -- where the specific
 10 design builder actually submits the building
 11 plan, but we showed it as a maximum 6 foot
 12 high wall because that's what your ordinance
 13 allows and we wanted to show -- with one 6
 14 foot high wall that would comply with the
 15 ordinance and not require any variance for a
 16 retaining wall.
 17 Q Or it could be, as they say,
 18 terraced --
 19 A It could be terraced.
 20 Q -- with smaller, lower walls?
 21 A Correct. So anyway, that's the
 22 grading. As far as the drainage and
 23 utilities, we are proposing connections for
 24 the sanitary sewer, obviously, water and
 25 gas, electric connections where the existing

1 utility remains, which is located in Mauro
 2 Road. We are also proposing underground
 3 retention facilities, which will capture the
 4 runoff from the roof and comply with
 5 residential site approval standards and as
 6 well as your Borough requirements in regards
 7 to drainage so the net impact is that we
 8 will not have any negligible impact on the
 9 surrounding neighborhood on this property
 10 due to the development of this site.
 11 We did review the engineers review
 12 letter. He has some comments regarding
 13 drainage and we will -- and do intend to
 14 fully comply with his requirements --
 15 MR. KATES: So
 16 notwithstanding the fact that
 17 that's a conceptual middle house,
 18 you are putting in storm control
 19 now?
 20 MR. MARTINS: No. That --
 21 this would only be installed as
 22 part of a Building Department
 23 submission, along with more
 24 specific plans on exactly the
 25 footprint, exactly the impervious

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1 areas built on this lot so we are
2 not proposing any construction,
3 this is merely to again show to the
4 board what potential development
5 could like on this property.
6 MR. KATES: Does this
7 subdivision have any storm water
8 management controls as part of
9 subdivision or not?
10 MR. SOKOLICH: Mark, did
11 we prepare any? I think we did,
12 correct?
13 VOICE: You're indicating
14 as part of that --
15 MR. MIRANDI: You are
16 indicating some on the existing
17 house of Lot 369.
18 MR. MARTINS: Well, in
19 addition to, again there was a
20 comment you had made, Bernie, about
21 trying to make some improvements to
22 the overall area so in addition to
23 taking care of whatever we need to
24 be taken care of on the what's
25 called the new lot, two developed

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1 lots and that would be subject to
2 change based on the actual building
3 footprint, the actual site
4 development plan that's submitted
5 to the Borough for review and
6 approval, but I think what we would
7 do, which could be part and parcel
8 of the approval as given, if need
9 be, would be additional
10 improvements on other properties,
11 specifically, Lot 3, which is the
12 corner lot of Mauro Road.
13 MR. SOKOLICH: 369?
14 MR. MARTINS: Correct, 369
15 Mauro Road. And that was based on
16 a comment that Mr. Mirandi had made
17 in his engineering report
18 previously that we would like to
19 see some kind of control over the
20 runoff in that area so currently,
21 there's no, I'll call it retention
22 systems or any kind of drainage
23 control. The roof leaders from
24 that building all just go out onto
25 the ground and out to the street so

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1 what we did propose to do is add a
2 seepage pit in the northwesterly
3 corner of the property in order to
4 catch some of the roof drainage and
5 to make some kind of an impact in
6 the area. We propose to connect,
7 basically, an area of the one-story
8 addition to this building, if you
9 will, located adjoined to the
10 garage. I believe there was also a
11 comment from the engineer's most
12 recent letter that we tried to
13 capture more of that roof runoff,
14 because the pit as we have it, is
15 really oversized; in other words,
16 it has more capacity than is needed
17 in that roof area that we are
18 connecting it to and we could
19 certainly look into that and
20 provide more of that runoff or
21 direct more of that runoff into the
22 seepage pit.
23 Q Mark, and I perfectly understand
24 why, because of the conditions and the
25 problems that, that the Mauro Road area is

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1 experiencing, but you have proposed this
2 drainage system and I believe you indicated
3 before, I don't know if you used these
4 words, but were the board to act a favorably
5 and a house constructed with your system, it
6 would have a di minimus impact on the public
7 utilities, correct?
8 A Correct.
9 Q And we also indicated that we
10 don't know exactly what the system is going
11 to be, because the builder would ultimately
12 design that and have to present it to the
13 Building Department, but based on your
14 approved footprint, this is what you would
15 propose and it would work?
16 A Yes.
17 MR. SOKOLICH: I have just
18 conferred with the applicants and
19 we would be willing to stipulate,
20 subject to, of course, the approval
21 by the board and any comments from
22 the engineer, that we would be
23 willing to require that this system
24 actually be constructed and
25 incorporated into any residential

1 dwelling that were built there; in
 2 other words, so that there's
 3 clearance with the board so that
 4 somebody doesn't come along and
 5 build a system lesser than what you
 6 designed.
 7 Q Did you understand what I just
 8 said?
 9 A I do.
 10 Q Okay. Now, is that a requirement
 11 generally, for subdivision approval?
 12 A Not specifically.
 13 Q Okay. But I think then, that
 14 would provide at least some clarity that
 15 whatever system you designed and based on
 16 the comments we hear from Bernie, we would
 17 stipulate that we would achieve that same
 18 system?
 19 A I honestly, don't even think
 20 that's necessary, Mark, because any
 21 application before this board or the
 22 Building Department is going to have to
 23 comply with that at any rate so...
 24 Q But I want to be clear with the
 25 board, because I don't, and I don't mean to

1 bicker with my own witness or not, but I
 2 certainly don't want this board or the
 3 public to even remotely think that a lesser
 4 system will be constructed if and when that
 5 lot were sold to someone else that came in
 6 with plans, is the point that I'm making.
 7 A Yes, I would agree.
 8 MR. SOKOLICH: If we
 9 reached the level of satisfaction
 10 here and said, look, you've done a
 11 great job, this is hypothetical,
 12 you've done a great job with your
 13 lot, your storm water management is
 14 in place, it meets Boswell's
 15 muster, you know, you are going to
 16 have a di minimis impact on your
 17 neighbors and on the public system
 18 that exists, if that's the one that
 19 satisfies everyone's concerns,
 20 we'll be willing to stipulate to
 21 construct that system.
 22 Q Is there anything else that you
 23 would like to add with respect to the
 24 grading and utilities plan?
 25 A No.

1 Q Is there anything else that you
 2 would like to add with respect to any of
 3 the plans that we've marked during the
 4 course of your testimony?
 5 A Not at this point.
 6 Q You do acknowledge receipt of
 7 Boswell Engineering's reports concerning the
 8 plans that you had prepared?
 9 A Yes.
 10 Q Okay. And you had an opportunity,
 11 obviously, to review them?
 12 A Yes, I did.
 13 Q Are there any conditions or issues
 14 or inquiries that are made in that report
 15 that you do not believe can be satisfied or
 16 reasonably satisfied by the applicant, were
 17 that report to be a condition of any action
 18 by this board?
 19 A No. We do intend to fully comply
 20 with his recommendations.
 21 Q Thank you. Anything else you
 22 would like to add?
 23 A No.
 24 MR. SOKOLICH: Mr.
 25 Chairman, I offer Mr. Martins.

1 CHAIRMAN VILLARI: Thank
 2 you. Yes.
 3 MR. HIPOLIT: I just have
 4 a quick question on the drainage.
 5 The application is a major
 6 subdivision. Do you not have to
 7 comply with the RSIS requirements
 8 for -- adhering -- for the whole
 9 project?
 10 MR. MARTINS: I do not
 11 believe that's the case. We're
 12 looking at this for the developed
 13 of portion of the property so these
 14 lots are existing, they are not
 15 impacting them --
 16 MR. HIPOLIT: They are not
 17 existing anymore.
 18 MR. SOKOLICH: No, that
 19 not-- I take issue with that, Mr.
 20 Hipolit. They are existing. They
 21 are separate tax maps in this
 22 borough. We're just trying to
 23 perfect the subdivision, we are not
 24 here for those other lots. They
 25 are exiting lots and they are taxed

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1 as such here in Englewood Cliffs.
2 MR. HIPOLIT: Are those
3 lines that are shown --
4 MR. SOKOLICH: Those lines
5 are shown and they are in your
6 records. We're here because we're
7 here, but to start to redesign lots
8 that exist with residences that
9 exist, I think would be an unfair
10 burden placed on my client. Any
11 safeguards you suggest that we can
12 incorporate into our plan, we would
13 be more than happy to consider.
14 MR. HIPOLIT: I'm must
15 basically, though, I'm just
16 commenting on the residential site
17 approval standards, when you have a
18 major subdivision, you are required
19 to comply with the 210 (phonetic)
20 under your storm reductions. It's
21 not my --
22 MR. SOKOLICH: No, I got
23 it.
24 MR. HIPOLIT: Now, you
25 could ask for a waiver from the

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1 board to the state, but I think the
2 board needs to consider it.
3 MR. SOKOLICH: We need not
4 ask for one, but that's the
5 position. We don't plan on asking
6 for one because we don't think we
7 need one.
8 MR. KILMARTIN: Okay. So if
9 I was going to try to put that
10 conversation in English, how would
11 I do that? Are we saying -- first
12 of all, you are moving one of the,
13 proposing to move one of the lots
14 slightly; is that not the case?
15 MR. MARTINS: Yes. The
16 corner lot line would be above. I
17 just want to make that point.
18 MR. KILMARTIN: But then
19 so, so your storm water management
20 plan, very elaborate plan that you
21 were talking about was really
22 limited to Lot 2?
23 MR. MARTINS: Correct, the
24 center lot.
25 MR. KILMARTIN: Okay. And

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1 then earlier you were talking about
2 a seepage pit on Lot 1, but that
3 was the extent of what you were
4 planning to do --
5 MR. MARTINS: On Lot 3.
6 MR. KILMARTIN: Excuse me,
7 Lot 3.
8 MR. MARTINS: Again we
9 don't, and this is where it's a
10 little bit tricky, the applicant
11 does not technically own this
12 property here on the corner. We
13 are merely again, we divided that
14 line back to where it was
15 originally intended to be back in
16 1979.
17 MR. KILMARTIN: Okay. But
18 you own Lot 2 and 3.
19 MR. SOKOLICH: Yes.
20 MR. KILMARTIN: So -- and
21 there is a big water problem so we
22 could conceivably put some
23 additional safeguards onto Lot 3.
24 MR. SOKOLICH: Absolutely,
25 absolutely, absolutely, and I

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1 wouldn't want to suggest otherwise.
2 We would absolutely be willing to
3 consider any, any recommendations
4 by the board or any of its
5 consultant.
6 MR. CHINMAN: Lot Number 1,
7 the title insurance has metes and
8 bounds.
9 MR. MARTINS: It does.
10 MR. CHINMAN: So are you
11 buying property?
12 MR. SOKOLICH: We have
13 owner consent from them to adjust
14 that lot line to cure this middle
15 problem.
16 MR. CHINMAN: So currently
17 they have more property as far as
18 the title is concerned?
19 MR. SOKOLICH: That's
20 correct and they acknowledge that
21 and we've explained that to them
22 and they acknowledge that. They've
23 been neighbors of Mrs. Mauro for
24 25, 30 years, they acknowledged the
25 issue and they signed a consent to

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1 the application and they have not
2 problem on the issue and you are
3 right, there was title insurance,
4 apparently, issue.
5 MR. MARTINS: Interesting
6 enough -- in their description,
7 their legal description follows the
8 proposed subdivision line, which
9 was the, again the lot that was
10 created, subdivided in 1979.
11 MR. CHINMAN: So I want to
12 follow up on Mr. Kilmartin's
13 question, if you are, if you are
14 dividing three lots versus really
15 dividing two lots, what's the
16 difference in terms of site water
17 drainage issues?
18 MR. MARTINS: Then it's
19 really a minor subdivision if it's
20 just two lots.
21 MR. SOKOLICH: Correct.
22 Correct.
23 MR. MARTINS: That's
24 really, in effect, what we have
25 here. We are not really creating

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1 three lots, even though, there's
2 three lots in this subdivision
3 plan.
4 MR. SOKOLICH: Good point,
5 Mark. The net result were this
6 board to act favorable on this
7 application, would be you have
8 three lots now, you will have three
9 lots tomorrow. There's no net
10 increase in lots. As a matter of
11 fact, that's been the case since
12 the map was filed back in, I forget
13 the date, but --
14 MR. MARTINS: 1961.
15 MR. SOKOLICH: Since 1961
16 and it's been modified by
17 iterations by this board in '78 or
18 '79, but we are certainly not
19 turning a tin ear to the problem
20 that lies in the street in front of
21 you so whatever safeguard we can
22 incorporate, I don't think we'll
23 have much objection to do.
24 MR. KILMARTIN: And what
25 were the additional safeguards that

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1 are recommended by Mr. Mirandi as
2 to Lot 3 on what you are doing?
3 MR. MARTINS: Capturing
4 some of the roof runoff from the
5 existing building, which currently
6 just goes right out to the street.
7 MR. KILMARTIN: And how
8 would you do that?
9 MR. MARTINS: Again we are
10 proposing a seepage pit and we
11 would direct the roof drains from
12 the westerly portion of the
13 building into that seepage pit. I
14 did comment before on Mr. Mirandi's
15 letter, which had asked us to
16 incorporate some additional or
17 connections from the roof into that
18 seepage pit so we will take a look
19 at that and --
20 MR. KILMARTIN: Because
21 the western portion is only maybe
22 20 percent of the roof, right?
23 MR. MARTINS: So if we can
24 take, let's say, half the roof and
25 get into some kind of drainage

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1 system, we would certainly be
2 willing to do that.
3 MR. TROVATO: The overflow
4 of this seepage pit should be able
5 to --
6 MR. MARTINS: Well,
7 typically -- we handle flows by
8 means of roof T's, those things
9 that come down to the ground to the
10 grade level, we put a T there and
11 then it surcharges and flows over
12 so once that seepage pit fills up,
13 then we back up and fill over the
14 land out to the grade or in this
15 case, out to the street. You're
16 taking a significant amount of
17 water away that is already going
18 out there so it will be an
19 improvement.
20 MS. EASTWOOD: Is it
21 possible to capture all of the roof
22 runoff from Lot 3?
23 MR. MARTIN: It's an
24 existing site so it is rather
25 difficult.

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1 MR. MIRANDI: Our
2 suggestion was that we disconnect
3 the leaders running out open to the
4 curb line and let them, through
5 that T-type connection drain on the
6 lawn in that area so you are
7 capturing it more and we'll work
8 on, we'll review the revised
9 submission on that.
10 MR. MARTINS: We have no
11 objection.
12 MR. HIPOLIT: I'd like to
13 answer the question. It's possible
14 to say they would collect in, say,
15 the running roof leaders to a
16 seepage pit, to collect a whole
17 house is absolutely impossible.
18 MR. CHINMAN: Is that right
19 now, the leader running out?
20 MR. MIRANDI: Leader right
21 through the curb.
22 MR. CHINMAN: The
23 old-fashioned way.
24 MR. KILMARTIN: So I think
25 with want to know specifically what

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1 the most is that you are willing,
2 so to speak, I don't know how else
3 to say it, before we decide.
4 MR. SOKOLICH: May I confer
5 with the engineer for a moment?
6 MR. KILMARTIN: You don't
7 have to tell us now, because we are
8 probably --
9 MR. SOKOLICH: No, I
10 understand.
11 MR. KILMARTIN: -- coming
12 back.
13 MR. SOKOLICH: I understand
14 that. I would like to respond, but
15 may I take just one minute, Mr.
16 Chairman.
17 (Thereupon, a brief recess was taken.)
18 Q Mark, we have had the opportunity
19 to confer with the applicant, who is
20 present, concerning the question on storm
21 water management for the third lot and do
22 you have a response for the board?
23 A Yes. We can discuss that and we
24 have agreed to, in essence, as Mr. Mirandi
25 suggested, not only to cut off any of those

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1 roof drainage connections which are going
2 out directly into the street, but to also
3 contain them on site with some sort of
4 retention system so all the roof drainage
5 will be handled on-site.
6 Q As is the case with Lot 2?
7 A Correct.
8 MS. EASTWOOD: Have there
9 been any perc tests to see if
10 that's feasible?
11 MR. MARTINS: No. At this
12 point, we have not done that.
13 MR. MIRANDI: And that is a
14 condition of approvals that's
15 typically indicated by the board in
16 their resolution.
17 MR. PORRINO: Mr. Kates, I
18 have a question maybe you can help
19 us with. Mistakes were made,
20 obviously, years ago by a different
21 attorney. Would you like to
22 comment on it? If this was an
23 application today and what happened
24 in the 1970's did not happen, are
25 we as a board, facing the same set

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1 of questions or should the board's
2 judgment be impacted by the fact
3 that a subdivision was almost
4 completed? Do you understand the
5 question?
6 MR. KATES: No, I don't
7 understand, I'm sorry.
8 MR. SOKOLICH: I do. I
9 understand exactly what you mean,
10 because I lived with it, Michael,
11 I'm sorry, I don't mean to suggest
12 I know it.
13 MR. PORRINO: Let me
14 rephrase it again. Let me rephrase
15 it again. So if there were no
16 houses on that property there at
17 all yet and it came in for a major
18 subdivision, that's the application
19 in itself, right?
20 MR. KATES: Yes.
21 MR. PORRINO: This is
22 different, because there was a
23 history where the property was
24 attempted to be subdivided, it was
25 subdivided, but it wasn't

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1 perfected. Does that distinction
2 have any bearing on tonight and are
3 you recommending to this board that
4 it should impact or could impact
5 our decision; in other words, is
6 the board, on some level -- how
7 should you have this?
8 MR. KATES: Constrained?
9 MR. PORRINO: Not
10 constrained, but more inclined to
11 approve an application because of
12 what happened in 1979?
13 MR. KATES: Not
14 necessarily, and I want to reserve
15 on that, because I really have to
16 examine it a little closer, but I
17 am concerned that off-site
18 conditions are being attempted to
19 be cured by this application and
20 for reasons that I think I'll be
21 sharing with you at some point,
22 there's strong law that talks about
23 surcharging this developer with a
24 pro-rata share, but not a share for
25 the neighborhood and we have to

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1 balance that in terms of what's
2 being done here.
3 We can't cure in cases
4 related to traffic; for example,
5 where a developer was taking vacant
6 land and creating a commercial use
7 in a neighborhood where there was
8 terrible traffic problems and they
9 wanted this developer to do things
10 beyond the property that dealt with
11 traffic, install traffic control
12 systems, widen beyond the property
13 line to deal with more cars, and
14 the court said, no, you can't do
15 that. There are limits to what a
16 person can contribute or be
17 required to contribute and that
18 limit is that proportionate excess
19 that the developer is contributing,
20 not curing the whole neighborhood.
21 It goes to traffic, it goes to
22 storm water drainage, it goes to a
23 lot of things, so, but that's in
24 the balance, that's in the
25 formulation that we are dealing

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1 with here. I don't know the extent
2 of it. I heard RSIS standards
3 relating to a major three-lot
4 subdivision. I'm not so sure.
5 MR. PORRINO: I understand
6 what you are saying about off-site
7 improvements. I'm trying to just
8 distill what impact the 1979
9 subdivision attempt, how that
10 should impact our decision, if at
11 all. That's maybe a more focused
12 question.
13 MR. KATES: The three lots
14 are brought into play tonight,
15 aren't they, so it's fair game to
16 the extent that there are no
17 limitations, otherwise; in other
18 words, fairness and reasonableness
19 and proportionality, they all come
20 into play, but at least, it's on
21 the table, because the three lots
22 are involved.
23 MR. CHINMAN: Just to
24 further his question, though, if,
25 if the Lot Number 1 is actually

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1 owned by a different party and the
2 applicant owns Lots Number 2 and 3,
3 of which 2 and 3 has an existing
4 house with a nonconforming use
5 anyway, does the board have the
6 right to look at it as a minor
7 subdivision and considering the
8 facts?
9 MR. KATES: You are talking
10 about substance over form. I don't
11 know. I think that that's a good
12 argument, that it really is a
13 minor, a two-lot minor subdivision,
14 since they don't own that other
15 property.
16 MR. SOKOLICH: We initially
17 filed as a minor subdivision.
18 MR. KATES: I know. I
19 directed you to make it a major.
20 MR. SOKOLICH: But
21 respectfully, I understood the -- I
22 did, Counsel I understood the
23 reasoning, I did. Whether I agree
24 or not isn't important, but I
25 understand the reasoning is that it

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1 was so clear but.
2 MR. KATES: The reason this
3 town, we as a board, we have to
4 what they call, cut square corners.
5 We have to be fair and fairness
6 permeates this application in a lot
7 of ways. We haven't covered
8 everything yet, but the whole idea
9 is to be fairer, not just to the
10 applicant, but to the neighbors.
11 How do you balance and this is a
12 tough one.
13 MR. CHINMAN: I mean, in
14 reality, if they tore down Lot
15 Number 3, they probably would have
16 two, could make two conforming
17 lots, I'm guessing.
18 MR. MARTINS: We have two
19 conforming lots. The only
20 nonconformity would be the rear
21 yard setback so if we were to --
22 MR. TROVATO: I think he
23 means three conforming lots.
24 MR. CHINMAN: No. I'm
25 saying, if you took off that little

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1 wing, you could make it a
2 conforming lot.
3 MR. SOKOLICH: Without the
4 necessity of even appearing.
5 MR. CHINMAN: Right.
6 MR. SOKOLICH: Because you
7 can do it without variance in a
8 minor subdivision without variance,
9 generally, without a variance;
10 although, that's dangerous, right,
11 counsel, not something I would
12 generally do.
13 CHAIRMAN VILLARI: Any
14 other comments or questions from
15 the board? Mr. Sokolich, are you
16 done with this witness?
17 MR. SOKOLICH: We are, Mr.
18 Chairman.
19 CHAIRMAN VILLARI: Do you
20 have other another witness?
21 MR. SOKOLICH: We do.
22 CHAIRMAN VILLARI: May I
23 present him?
24 MR. SOKOLICH: Thank you.
25 (Thereupon, a brief recess was taken.)

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1 MR. KATES: Raise your
2 right hand.
3 (Witness complies.)
4 Do you swear the testimony
5 you are about to give to this board
6 will be the truth, so help you,
7 God?
8 MR. OCHAB: Yes.
9 MR. KATES: Could you
10 identify yourself for the record,
11 please.
12 MR. OCHAB: Yes, thank
13 you. Kenneth Ochab, O-C-H-A-B as
14 in boy, 12-16 Fair Lawn Avenue, in
15 Fair Lawn, New Jersey.
16 EXAMINATION BY
17 MR. SOKOLICH:
18 Q Mr. Ochab, for the board, your
19 chosen profession, for how long your
20 credentials, please?
21 A Professional Planner, License
22 Number 2149, State of New Jersey; got my
23 license in 1979. Since that time, I've
24 worked for a number of agencies, including
25 the Bergen County Planning Board, New Jersey

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1 Meadowlands Commission. I have had my own
2 firm since 1989.
3 Q And you've -- I'm sorry. And
4 you've testified, have you not, on behalf of
5 applicants in the past, seeking subdivision
6 approval, variance approval, site plan
7 approval, correct?
8 A Correct, I have.
9 Q Your credentials have been
10 accepted before other boards in Bergen
11 County and the State of New Jersey as an
12 expert in the field of planning?
13 A They have.
14 Q How about this board?
15 A Yes, with the Bank of New Jersey.
16 MR. SOKOLICH: Mr. Kates,
17 unless -- or Chairman, unless you
18 require anything further, we would
19 offer Mr. Ochab as an expert in the
20 field of planning.
21 CHAIRMAN VILLARI: We
22 accept him as an expert.
23 MR. SOKOLICH: Thank you,
24 sir.
25 Q Ken, just in light of the late

1 hour, if you would please provide to the
 2 board in your own words, the scope of what
 3 you understand to be your engagement.
 4 A Yes. My, my role in this
 5 application was to work with the engineer on
 6 the subdivision designs and also to analyze
 7 the zoning, zoning ordinance with respect to
 8 the subdivision application and the lots and
 9 work with him as well on the application of
 10 those requirements in the zoning ordinance
 11 and identify the variances and then discuss
 12 those variances with him, with the board.
 13 Q In fact, you prepared a planning
 14 assessment, correct?
 15 A I have, yes.
 16 Q And in conjunction with your
 17 preparation of that planning assessment, did
 18 you conduct a physical observation of the
 19 properties in question and now before the
 20 board consideration?
 21 A I did, yes.
 22 Q And you've also familiarized
 23 yourself, I trust, and have reviewed the
 24 applicable ordinances here in the Borough of
 25 Englewood Cliffs and in particular, the

1 zoning ordinances?
 2 A I did.
 3 Q And in fact, you conducted and
 4 prepared a planning assessment?
 5 A I did.
 6 Q Do you have some exhibits that you
 7 would like to mark?
 8 A Just one.
 9 MR. SOKOLICH: Counsel,
 10 A-15, I believe. Let me see if
 11 that's correct, I might be wrong.
 12 MR. KATES: That's
 13 correct.
 14 MR. SOKOLICH: Thank you.
 15 I'm going to conditionally mark
 16 this A-15, I'm doing to date it
 17 today, which is the 11th of
 18 February, 2016 and initial it.
 19 (Whereupon Exhibit A-15 was marked
 20 for Identification.)
 21 Q There are four photographs that
 22 appear on A-15. Ken, those are photographs
 23 that were taken by you?
 24 A Yes, they were.
 25 Q And are those -- do those

1 photographs accurately depict what's
 2 within the four corners of the photograph?
 3 Did you crop it? Did you modify it? Did
 4 you make anything smaller or larger or is it
 5 identical to what exists?
 6 A No. These are photographs as it
 7 exists in the field. They were taken with a
 8 50 millimeter lens, no wide-angle, no photo
 9 enlargements. What you see here is what you
 10 get.
 11 Q Conceding in whichever direction
 12 you deem most, would please describe what's
 13 in each photo, please.
 14 A Yes. The upper left photo is a
 15 photograph of the existing home on Lot 1,
 16 Mauro is to the, just to the left of that
 17 photograph.
 18 The upper photograph on the right
 19 is a photograph of the existing Mauro house
 20 at Mauro and Toni. We are looking at it
 21 from standing in front of the property on
 22 Mauro, basically, looking more or less, up
 23 the property line, the proposed property
 24 line between Lots 2 and Lots 3.
 25 The lower photograph is a

1 photograph of Lot 3 from Toni Drive.
 2 Looking at it from that frontage inward,
 3 this would be, apparently, to the south.
 4 And the fourth photograph is just
 5 a photograph of the vacant land area
 6 commonly referred to now as Lot 2 so just to
 7 get an analysis and a picture of visually
 8 what we see when we look at the, when we
 9 look at the property and the respective
 10 three lots.
 11 So shall I just continue? So with
 12 respect to the three lots, Mr. Martins had
 13 mentioned Lot 1, which is the upper left
 14 photograph is totally conforming with
 15 respect to all bulk requirements, area
 16 requirements. It's a corner lot so it does
 17 two front yards. It has a side yard
 18 requirement of 15 feet to the east and a
 19 rear yard.
 20 Now, interesting enough, if we
 21 just go to A-14, as Mr. Martins indicated,
 22 the rear yard is based on where the frontage
 23 of the lot is so in this case, under your
 24 ordinance, the lot frontage is on Mauro
 25 Road, which is the narrower of the two

1 fronts; therefore, the rear yard is
2 directly opposite that, opposite that and we
3 meet this rear yard requirement. That means
4 that the other lot, the internal lot becomes
5 a side yard and there we meet that side yard
6 requirement as well, I believe it's 7 feet.

7 Okay. So with respect to again Lot 1, again
8 --

9 With respect to Lot 2, which again
10 the vacant lot, again I don't belabor the
11 point. Lot 2 again in the center meets all
12 the requirements with respect to a lot area,
13 lot width, lot depth, side yard setbacks and
14 rear yard setbacks and this is a more
15 conventional lot, because it's not a corner
16 lot so it's a typical rectangular lot. We
17 don't have any corner analysis here.

18 With respect to Lot 3, Lot 3 again
19 is shown in my exhibit on A-15 on the upper
20 right photograph from Mauro and from Toni on
21 the lower left photograph and you can see if
22 you look at the subdivision on A-14 that
23 it's a large house, it's very stately, it's,
24 it's, it's constructed on an axis, it's not
25 square off facing Mauro and it's not square

1 off facing Toni, it's very nicely done,
2 obviously, very stately and -- in manner,
3 but in this case, we have two frontages
4 again and in this case, the frontage
5 according to your ordinance, is really on
6 Toni Drive, this is the front yard, because
7 it's the narrower of the two frontages,
8 which means that the rear yard is directly
9 behind it so the rear yard in this case, is
10 the area between the side, what becomes the
11 side of the house on Lot 3 and the Lot 2
12 area. That means that the lot line which is
13 to the south off of Toni is a side yard and
14 this area back here is also a rear yard as
15 well.

16 So what happens, because of this,
17 is, is we wind up having a rear yard setback
18 variance where 25 feet is required, we have
19 18.1 feet between the corner, the corner of
20 the building here and the proposed lot line
21 on 2. Visually, that area is on the upper
22 right photograph. This back corner here
23 where you see there's a little portico or
24 little patio area and a roof area that comes
25 down, well, that, that setback line, pretty

1 much, goes through the edge of that
2 little portico back here and as it were,
3 then relates to the lot line on Lot 2. So
4 what's the issue here? The issue here is, I
5 think, one of hardship, because of the way
6 in which the property is shaped and also the
7 way in which the existing building is
8 constructed on the property.

9 It's pretty obvious to anyone who
10 would go look at the property, that you
11 would think visualizing the property that
12 the front yard would be on Mauro, because
13 that's where the front of the building,
14 essentially is. You don't have that same
15 affect on Toni from a visual perspective or
16 from my point of view, from a planning
17 perspective, because this is what you see on
18 Toni, the lower left photograph. It's
19 basically, from Toni you are looking at the
20 side of the house. When you come around to
21 Mauro, and again looking at a side, but as
22 you move around a little bit towards the
23 intersection, you basically look at the
24 front so effectively, what happens on A-14,
25 is you have frontage, the functional

1 frontage of the house on Mauro and the
2 rear yard of the actual home is in the rear
3 corner of the property, because it's very
4 oddly shaped and very uniquely shaped. Even
5 without the subdivision line, it's still
6 uniquely shaped because of this
7 configuration of the rear lot line so from a
8 functional standpoint, the rear yard is
9 actually around the house directly. The
10 area where the rear yard is measured
11 according to the ordinance, from a
12 functional standpoint, is really a side yard
13 of the home, because there's nothing,
14 there's no area here that would constitute a
15 usable rear yard; there's no patio, there's
16 no play area, there's no area for sitting;
17 there's no swimming pool. There's nothing
18 in that area other than open space so
19 functionally, it acts as the side yard and
20 the side yard is then related to the side
21 yard for the Proposed Lot 2 building, no
22 matter what configuration it takes so
23 according to the Municipal Land Use Law,
24 there's two types of C variances, a C1,
25 which is a hardship variance based on the

1 uniqueness of the property, the shape of
 2 the property, the relationship of the
 3 existing buildings and how the existing
 4 buildings might relate to the conformance
 5 with the zoning ordinance and the two -- the
 6 second type of C variance is a C2 variance,
 7 which is basically, a variance with the
 8 benefits of approving the variance would
 9 outweigh any detriment, a planning variance
 10 where the design, basically, it's a better
 11 design alternative than, than total
 12 conformance with the ordinance so in this
 13 case, I think we certainly have a C1
 14 argument in that, there's a hardship based
 15 on the existing conditions of the property,
 16 the shape and the building on the property
 17 as they exist today and also from a C2
 18 perspective, I'll certainly say and here,
 19 what Mr. Chinman said earlier, I think what
 20 he was driving at was that if the building
 21 didn't exist, you could probably subdivide
 22 this Lot 3 into
 23 to two conforming lots so you would have
 24 three lots or four lots where you now have
 25 three.

1 From a planning perspective,
 2 it's a wonderful objective to try to keep
 3 this building in place. As I said, it's
 4 very stately, it has a positive image to the
 5 neighborhood and sets a, an architectural
 6 image at this intersection, which is very
 7 delightful and a positive element to the
 8 neighborhood itself.
 9 So from a negative criteria
 10 standpoint, the two issues are, one, does
 11 the granting of this year yard variance have
 12 a substantial detriment to the public good.
 13 What does that mean. What it's the impact
 14 of granting this variance. We'll, the only
 15 impact is on Lot 2, which will have
 16 recognized when the building is constructed,
 17 that there is a building at 18 feet and if
 18 in fact, we did have a side yard to side
 19 yard situation, these two buildings could
 20 actually be 14 feet apart, 7 feet on each
 21 side would meet the zoning ordinance
 22 criteria. In this case, we have 18 feet on
 23 one side and 7 on the other. 7 might be
 24 more, depending on where they put that
 25 building so I think from an impact

1 perspective, there's no impact on the
 2 neighborhood in general, there's only a
 3 small impact on whatever happens in here and
 4 generally, when we have an impact on a house
 5 that's not built yet, basically, we say,
 6 well, that's going to be taken into
 7 consideration when the new home gets built
 8 and how that home design emulates back to
 9 this.
 10 The second aspect of the negative
 11 criteria is whether or not there would be a
 12 substantial impairment of the zone plan and
 13 here I think it's quite obvious that this is
 14 a, I don't want to say di minimus variance,
 15 but it's a minor variance. It's created, in
 16 effect, by the definition of lot frontage
 17 and how we measure the setbacks off of that
 18 lot frontage governess, we pretty much,
 19 which is to say that in this case, we have
 20 to use Toni Drive as our frontage or as our
 21 front yard, which makes the opposite, the
 22 rear yard. Under any other circumstance,
 23 the front yard would be on Mauro, the rear
 24 yard would be back along the southern
 25 property lines and this would be a side yard

1 which would then meet the requirements.
 2 MR. OCHAB: So, Mr.
 3 Chairman, I wanted to be brief. I
 4 hope it was.
 5 CHAIRMAN VILLARI: Thank
 6 you. You've been very informative
 7 and helpful.
 8 Mr. Sokolich, any further
 9 questions of this witness?
 10 MR. SOKOLICH: I'm not
 11 going to. I'm going to refrain. I
 12 have no further questions.
 13 CHAIRMAN VILLARI: Do you
 14 have any other witnesses?
 15 MR. SOKOLICH: I do not,
 16 Mr. Chairman.
 17 CHAIRMAN VILLARI: Do you
 18 have any final comments or
 19 statements you would like to make
 20 to the board?
 21 MR. SOKOLICH: By way of
 22 concluding remark?
 23 CHAIRMAN VILLARI: Yes.
 24 MR. SOKOLICH: May I do
 25 that at the conclusion of public

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1 comment or you would rather hear me
2 now?
3 CHAIRMAN VILLARI: Okay.
4 We'll defer to waiting until after
5 public comment.
6 MR. SOKOLICH: That's
7 acceptable.
8 CHAIRMAN VILLARI: Board
9 members. Any questions for Mr.
10 Sokolich?
11 MR. KATES: Ken, either Ken
12 or Mr. Kurus, the -- there are
13 three lots now so there is, the new
14 home site has right now, a defined
15 as it relates to the number 3 lot,
16 I believe, the Toni Drive lot.
17 MR. OCHAB: Yes.
18 MR. KATES: You said that
19 now it's an 18.1 foot rear yard.
20 That's as reconfigured by the
21 subdivision, right?
22 MR. OCHAB: Correct, yes.
23 MR. KATES: And was that
24 line altered so that the present
25 so-called rear yard is more or

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1 less?
2 MR. SOKOLICH: I
3 understand. So you need to see
4 those blue lines Mr. Martins marked
5 before, in order to do that.
6 MR. KATES: Just tell us
7 what the existing rear yard is for
8 that.
9 MR. MARTINS: So the
10 existing setback from that towards
11 building to the current property
12 line is indicated under the zoning
13 schedule and that dimension is
14 65 --
15 MR. KATES: Say it again.
16 MR. MARTINS: 65.6 feet.
17 MR. SOKOLICH: No, no, no.
18 MR. CHINMAN: Lot Number 3,
19 what was supposed to be Lot 2 to
20 what it was supposed to be as -- on
21 the original footprint is nearly
22 identical.
23 VOICE: That's what I
24 though.
25 MR. CHINMAN: I mean,

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1 there's a slight change there and
2 when we moved it over a little bit,
3 but it was more of an angular
4 change so graphically, that
5 difference there, perhaps, it was
6 20 feet.
7 MR. KATES: So when you
8 call it a new variance, it's really
9 only because you are altering the
10 lines left and right?
11 MR. MARTINS: That was the
12 line that was previously approved
13 by the board in '79, but that was
14 never perfected.
15 MR. CHINMAN: So as far as
16 you know, on the original three-lot
17 subdivision, was the middle lot 70
18 feet?
19 MR. MARTINS: The middle
20 lot was intended to be. It was
21 slightly nonconforming.
22 MR. SOKOLICH: Right, okay.
23 It gets a little more complicated
24 now because we believe based on
25 review of all ordinances, that the

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1 lot width may have been measured by
2 different formuli back then. The
3 lot as proposed in '79 did comply
4 with the 70 foot, but once we went
5 to the mid-point, we suspect that
6 that's where that several inches
7 came into play and that's what
8 triggered the, the variance.
9 MR. KILMARTIN: Okay.
10 Since you are moving the lot line,
11 how much closer to the rear of
12 existing structure on 3?
13 MR. MARTINS: Yes.
14 MR. KILMARTIN: How much?
15 MR. MARTINS: About two
16 feet.
17 MS. O'SHEA: How much?
18 MR. MARTINS: Two feet.
19 Ms. O'SHEA: Two feet?
20 MR. SOKOLICH: Is it that?
21 MR. KATES: Two feet
22 closer.
23 CHAIRMAN VILLARI: Yes.
24 MR. HIPOLIT: So it really
25 negates the question I have for Mr.

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1 Ochab is, a little more on the
2 justification for the variance,
3 from the planning perspective
4 putting my planning hat, the
5 variance being created is somewhat
6 of a self-creation, it's not really
7 a hardship creation, in my opinion,
8 at least, from what I heard. I
9 know the lot shape has a certain
10 shape to it, it's on a corner lot,
11 but because they want to add a
12 third lot in and not have two, they
13 are moving the line closer to the
14 house, it's self-creating. If it
15 was just a corner lot, I think of
16 it a little differently, but the
17 middle lot, the creation or the
18 recreation of the middle lot, I
19 won't argue that, you can guys can
20 argue that legally, the recreation
21 of the middle lot is creating the
22 variance. If you just left the
23 line in the center of the two lots,
24 there will be no variance so it's
25 almost like a self-created

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1 hardship, which I don't necessarily
2 need anybody to speak to, but I
3 don't necessarily buy it right now.
4 MR. SOKOLICH: I think, I
5 think Mr. Ochab is about to explain
6 to you there were definitional
7 issues here that are built into the
8 ordinances.
9 MR. OCHAB: I thought
10 about this in doing my analysis,
11 that self-created hardship when you
12 have a totally conforming lot in
13 all respects other than one
14 component and not, not
15 nonconforming with respect to the
16 lot that you are creating, but with
17 respect to the lot that exists and
18 the structure that exists on that
19 lot, which on the larger lot is
20 totally conforming as well, with
21 the exception of that one variance
22 issue; that is not self-created
23 hardship. Self-created hardship is
24 created when you are taking
25 advantage of an existing situation

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1 saying that you have a hardship,
2 because in order to create,
3 substantially create a deviation
4 from the ordinance.
5 This is not the case here,
6 because if you are arguing the
7 hardship argument, then as I said,
8 it's di minimis and it's based on
9 the shape of the property and
10 that's also why I also included the
11 C2 argument for the board's
12 consideration, based on the fact
13 that we -- it enables us to keep
14 that house in existing form and not
15 create an additional lot, which
16 might be the result of some other
17 scenario for development.
18 MR. KATES: Self-created
19 hardship doesn't apply to a C2, is
20 your point?
21 MR. OCHAB: It does not.
22 MS. ROSENBERG: Can you,
23 Mr. Kates, you know, shed some
24 light on this as far as what it is
25 in a hardship and what is not a

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1 hardship as far as the lots are
2 concerned now?
3 MR. KATES: I will.
4 Between now and the time that we
5 reconvene, I will be able to give
6 you some guidance and I'll share it
7 with counsel, but let's back up a
8 second.
9 Mr. Porrino's original
10 question to me looms. We are
11 looking still at three separate tax
12 lots billed separately,
13 notwithstanding the failure to
14 perfect what happened previously.
15 There was a previous, am I right,
16 Mr. Sokolich?
17 MR. SOKOLICH: Yes, you
18 are.
19 MR. KATES: All right.
20 When I raised my question, I meant
21 the existing lot line, not what was
22 the previous subdivision that
23 wasn't perfected. The middle lot,
24 there's a third lot, separate tax
25 bill --

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1 MR. SOKOLICH: Correct.
 2 Separate property record card.
 3 MR. KATES: -- and that --
 4 and a house adjacent to it.
 5 MR. SOKOLICH: Correct.
 6 MR. KATES: So the rear,
 7 so-called theoretical rear yard,
 8 based upon three lots that exist
 9 and the house that exists, are
 10 roughly, equivalent difference of
 11 two feet?
 12 MR. SOKOLICH: Correct.
 13 MR. HIPOLIT: I think it's
 14 conforming under -- before you move
 15 the line, the rear yard is
 16 conforming, correct?
 17 MR. SOKOLICH: It is not.
 18 MR. HIPOLIT: It's still
 19 not.
 20 MR. SOKOLICH: Correct. I
 21 get the sense that disappoints you.
 22 MR. HIPOLIT: No, no, no.
 23 I'm just an engineer.
 24 MR. SOKOLICH: That's the
 25 sense I got.

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1 MR. HIPOLIT: -- I'm just
 2 trying to make sure.
 3 MR. SOKOLICH: Okay. It
 4 doesn't conform.
 5 MR. CHINMAN: So if you
 6 left the lots the way they were,
 7 you would be asking for the middle
 8 lot to be a non-conforming 68 foot
 9 lot?
 10 MR. SOKOLICH: Correct.
 11 MR. HIPOLIT: I don't think
 12 they could build a house on that.
 13 MR. CHINMAN: They could
 14 come in and ask for a have a
 15 variance.
 16 MR. SOKOLICH: We most
 17 certainly could.
 18 MR. CHINMAN: So it's a
 19 question if we gave them a variance
 20 for that or for the other one.
 21 MR. KILMARTIN: So that
 22 line, that 68 foot, 70 foot, that
 23 line, that was moved in '79 or not,
 24 Mr. Sokolich?
 25 MR. SOKOLICH: I

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1 apologize.
 2 MR. KILMARTIN: That line,
 3 that 68, 70 foot line we are
 4 talking about, that blue line that
 5 was moved in '79?
 6 MR. SOKOLICH: That was
 7 moved, it was adjusted in '79.
 8 MR. KILMARTIN: And when
 9 was the house on Lot 3 built?
 10 MR. SOKOLICH: The Mauro,
 11 when was the house built,
 12 Josephine's house?
 13 VOICE: Josephine's house
 14 was built, probably about '71 or
 15 '72.
 16 MR. SOKOLICH: '71.
 17 MR. KATES: He should
 18 identify himself.
 19 MR. SOKOLICH: It's '71. I
 20 mean -- I can also stipulate that
 21 the house here was built after the
 22 '79 approval when it was owned by
 23 Shirli, LLC, S-H-I-R-L-I.
 24 CHAIRMAN VILLARI: Any
 25 further comments or questions from

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1 the board?
 2 Seeing none, do I have a
 3 motion to open this application for
 4 public comment?
 5 MR. KILMARTIN: Yes.
 6 MR. KATES: Questions and
 7 comments.
 8 CHAIRMAN VILLARI:
 9 Questions and comments. Seconded?
 10 MS. O'SHEA: Second.
 11 CHAIRMAN VILLARI: Second.
 12 All in favor?
 13 (All said, "Aye.")
 14 CHAIRMAN VILLARI: All
 15 opposed? Okay. The meeting is
 16 open to the public. Is there
 17 anyone here from the public who
 18 would like to ask a question or
 19 make a comment about the
 20 application that you've just heard
 21 presented to the board?
 22 Sir, please approach, give
 23 us your name and your address.
 24 MR. TAYLOR: Good evening.
 25 My name is Steven Taylor. I'm an

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1 attorney out of Fort Lee, One
2 Bridge Plaza North, Suite 275, it's
3 Fort Lee.
4 CHAIRMAN VILLARI: Steve
5 with a "PH" or "V"?
6 MR. TAYLOR: V. Thank you
7 for asking.
8 I represent a group of
9 property owners within the Mauro
10 Road, Rock Road, and Toni Drive
11 area. I know that we are pressed
12 for time. We initially planned to
13 have testimony here tonight from a
14 horticulturist that we have here to
15 talk about some issues, but we also
16 have evidence that we would like to
17 enter into the record if we may
18 tonight, and then I guess when we
19 come back at your next meeting, we
20 could delve into anything.
21 CHAIRMAN VILLARI: Sure.
22 MR. TAYLOR: Two threshold
23 issues I would like to present to
24 the board tonight, we believe that
25 there is a real conflict of

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1 interest regarding the application
2 and what I mean by that is, the
3 entity, engineering company that
4 reviewed the application, we have
5 issues with the drainage in the
6 road, because that entity
7 constructed or designed the
8 drainage so we don't know feel it's
9 appropriate for that entity to then
10 review this application, because
11 there are drainage issues with this
12 lot that may or may not affect the
13 drainage in the road and we believe
14 that those are ethical issues based
15 on the New Jersey Engineering
16 Ethical Standards and we believe
17 that those are conflict of interest
18 issues based on New Jersey Supreme
19 Court Law Randolph versus
20 Brigantine Planning Board. It's
21 not, it's not even a real conflict
22 of interest, but even a perceived
23 or appearance of conflict that can
24 cause a conflict so we believe
25 that's one issue threshold that the

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1 board should discuss at sometime,
2 because maybe the new board
3 engineer should review this
4 application as well.
5 The second threshold
6 issue, I believe the board should
7 talk about and you've already
8 touched upon it a little tonight
9 is, what exactly is being created
10 here. I always think about
11 something my aunt says to me. She
12 always says, "Kiss. Kiss. Kiss.
13 Keep it simple, Stupid."
14 Were there three lots
15 before? Are there three lots now?
16 Are the new three lots, do those
17 legal descriptions, are they
18 exactly the same as the three lots
19 before? If the legal descriptions
20 are not exactly the same as the
21 three lots before, guess what, you
22 have three new lots.
23 The legislative body of
24 Englewood Cliffs had the
25 opportunity to say three lots and

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1 less can be a minor subdivision,
2 but that's not what happened. The
3 subdivision code and the
4 legislative body said three or more
5 are major subdivisions. That's
6 your code. Three or more are major
7 subdivisions, pursuant to the New
8 Jersey Municipal Land Use Law, when
9 you have a major subdivision, the
10 board is then empowered to look at
11 issues of drainage.
12 I heard the comment
13 earlier from Attorney Kates where
14 you spoke about are we putting more
15 of a burden on Lot 2 when we talk
16 about the drainage of Lot 2 in
17 relationship to the drainage in
18 Mauro Road. The issue with the
19 drainage on Lot 2, it's about
20 containing that drainage on-site,
21 which is a requirement of your
22 code. Any development on Lot 2,
23 you have to contain that drainage
24 on-site so the issue and the
25 interplay between the drainage on

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1 Lot 2 and the drainage in Mauro
2 Road is not putting a burden on Lot
3 2, but making sure, pursuant to the
4 New Jersey Municipal Land Use Law,
5 that that drainage is contained on
6 site.
7 The residents at their
8 expense, hired a professional
9 engineer licensed in New Jersey
10 take a look at the plans. As a
11 part of the information, we will
12 place into the record his report on
13 this development, is a part of
14 that. That engineer also has
15 reviewed the drainage calculations
16 for the design of the drainage
17 within Mauro Road. That report is
18 also in the packet as well and then
19 the third report is from the
20 horticulturist or the arborist
21 regarding the stand of trees that
22 currently exists on Lot 2 and the
23 effect of removing those trees,
24 what that affect that will have on
25 the drainage in Mauro Road as well.

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1 So again if I don't want
2 to take up too much time, I already
3 have.
4 MR. KATES: I think it
5 would be advantageous for you to
6 mark your exhibits so that they can
7 be distributed --
8 MR. TAYLOR: Absolutely.
9 MR. KATES: -- both to Mr.
10 Sokolich, have you seen these
11 before?
12 MR. TAYLOR: We have
13 presented to Mr. Sokolich the --
14 our engineer's comments on this
15 application. We have also in the
16 past presented to him our
17 arborist's comments as well. I
18 will send to him first thing in the
19 morning, the report that our
20 engineer did regarding the drainage
21 in Mauro Road that was just
22 completed and presented to the
23 council like night so I will get
24 him a copy of that as well.
25 MR. KATES: But you can

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1 mark now --
2 MR. TAYLOR: Yes.
3 MR. KATES: -- for the
4 identification.
5 MR. TAYLOR: Absolutely.
6 MR. KATES: We are not
7 accepting it into evidence.
8 MR. SOKOLICH: Just a point
9 of clarification, the report that
10 you marked, Mr. Taylor, last night
11 relates to the public improvements
12 or it relates --
13 MR. TAYLOR: Yes. Public,
14 public, public. We would not and
15 it is not appropriate to have
16 discussed anything regarding this
17 application at the council last
18 night and we did not discuss
19 anything --
20 MR. SOKOLICH: I wasn't
21 even going there, I just wanted to
22 know where the report was headed.
23 Thank you.
24 MR. TAYLOR: Absolutely.
25 So I will have those marked now, if

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1 you like and then you can --
2 MR. KATES: Let's use the O
3 identification, Opposition 1. How
4 many sets of each did you bring?
5 MR. TAYLOR: I brought 12
6 sets.
7 MR. KATES: Of each?
8 MR. TAYLOR: Right. For
9 everyone here so if you would like,
10 at this time I could just mark one
11 for you to hold as not in the
12 record, but to hold for the next
13 meeting --
14 MR. KATES: Do that.
15 MR. TAYLOR: -- and then
16 I'll bring the other ones back, if
17 you like or whichever way you like.
18 MR. KATES: No, give us
19 everything, but let's mark one set
20 for that purpose and identify it on
21 the record now. Let's start with
22 O-1 and put today's date, February
23 11th, and identify it for us and
24 maybe we can at least get copies to
25 our engineering consultants --

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1 MR. TAYLOR: Absolutely.
2 MR. KATES: -- so they can
3 begin, and Mr. Sokolich.
4 MR. TAYLOR: O-1 dated
5 February 11th, 2016, cover letter
6 from Taylor Law Firm, LLC,
7 including a memorandum to Steven
8 Taylor from Nicholas Warner,
9 Professional Engineer, and also a
10 report on drainage improvements
11 along Mauro Road dated February
12 9th, 2016.
13 MR. KATES: That's what was
14 referred to as having been brought
15 to the council last night?
16 MR. TAYLOR: The drainage
17 report on Mauro Road, yes.
18 MR. KATES: All right, we
19 have that. That would be O-1.
20 (Whereupon Exhibit O-1 was marked
21 for Identification.)
22 MR. TAYLOR: O-2, dated May
23 14th, 2015, is a report by Scott
24 Cullen, Registered Consulting
25 Arborist, concerning the stand of

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1 trees on Lot 2.
2 (Whereupon, Exhibit O-2 was marked
3 for Identification.)
4 MR. TAYLOR: And Lot 3,
5 which I will put today's date,
6 February 11th, 2016, is a CD ROM of
7 a PowerPoint presentation, which
8 Dr. Hart Anewski (phonetic) will
9 present as a member of the public
10 at the next meeting.
11 MR. SOKOLICH: Counsel, may
12 I be heard? Counsel, excuse me, I
13 apologize.
14 We trust that any report
15 that's being presented to this
16 board and marked for identification
17 will have its author at the next
18 public hearing and be subjected to
19 cross-examination.
20 MR. TAYLOR: Absolutely.
21 MR. SOKOLICH: So anyone
22 that signs the report, whether it
23 be the horticulturist or the
24 engineer or the professional
25 engineer, they will be available at

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1 time of hearing.
2 MR. TAYLOR: Yes.
3 MR. SOKOLICH: Okay.
4 MR. TAYLOR: We planned
5 that anyway.
6 MR. SOKOLICH:
7 MR. KATES: Just the CD
8 ROM, you don't have the paper
9 PowerPoint?
10 MR. TAYLOR: We actually
11 do. I believe there is paper, yes.
12 There is paper along with the CD
13 ROM.
14 MR. KATES: Let's mark both
15 the same, both are O-3.
16 (Whereupon, Exhibit O-3 was marked
17 for Identification.)
18 MR. SOKOLICH: Sorry, I
19 have a client to represent. For
20 the record, I am going to
21 respectfully, object to any
22 evidence, any document that's
23 marked for identification which
24 relates solely and exclusively to
25 what appears to be the systemic and

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1 inherent problems within the public
2 improvements on Mauro Road and the
3 other public thoroughfares that
4 bound the lots that are the subject
5 of the application. I am certainly
6 not suggesting there isn't a
7 problem, I'm only suggesting that
8 the relevance of those problems
9 should not negatively impact the
10 relief that my client seeks in this
11 application. Having said that, I
12 leave.
13 MR. KATES: We won't accept
14 them tonight, we are only marking
15 them.
16 MR. SOKOLICH: But marking
17 them, I -- but distributing them --
18 MR. KATES: We'll withhold
19 distribution.
20 MR. SOKOLICH: Please.
21 MR. KATES: But what I
22 want to do is get them into the
23 hands of you so you can look at
24 them in advance and the engineering
25 expert. We'll withhold them from

1 the board until we resolve those
 2 issues, but let's mark them. We
 3 have one more, O-4, right?
 4 MR. TAYLOR: No, that's it.
 5 MR. KATES: That's it,
 6 okay. So let me ask you to give me
 7 the originals, they will not be
 8 distributed and would you give
 9 copies, please, to Mr. Sokolich,
 10 Mr. Hipolit subject to the conflict
 11 issues, Mr. Mirandi, for him to see
 12 what is wrong or we are not sure.
 13 MR. TAYLOR: I would like
 14 to discuss that for a second. If,
 15 if -- before we turn everything
 16 over to Mr. Mirandi, I think that
 17 the conflict issue should be
 18 decided upon. I don't think it is
 19 appropriate for Mr. Mirandi as an
 20 employee of Boswell, to review,
 21 access, have anything to do with
 22 the issue until you have fleshed
 23 that out or made a decision one way
 24 or the other.
 25 MR. KATES: What's

1 confusing in my mind is whether
 2 what's out there in the road in
 3 terms of public deficiencies in the
 4 public drainage system is relevant
 5 to what the subdivision is all
 6 about.
 7 MR. TAYLOR: I understand
 8 that concern.
 9 MR. KATES: If we are
 10 focused just on the three lots,
 11 maybe there is no conflict, but we
 12 do have the advantage Mr. Hipolit
 13 here and the possibility of that
 14 being done and we are talking about
 15 a professional whose reviewing,
 16 whether we are going to use him or
 17 not, is a whole different issue. I
 18 would certainly like him to be
 19 informed about it.
 20 MR. TAYLOR: Well, I
 21 believe he should be informed --
 22 but I believe he should be informed
 23 after the decision regarding the
 24 conflict. If you say, okay, we
 25 don't feel there's a conflict, I

1 have no problem with that, but
 2 until that discussion has been had,
 3 I think that's an open issue.
 4 MR. KATES: Somebody wants
 5 to speak behind you. Sir?
 6 DR. ANEWSKI: My name is
 7 Hart Anewski, I live at 368 Mauro
 8 Road. I am a witness for the past
 9 ten years of the flux that the
 10 knowingly wrong engineering
 11 calculations --
 12 MR. KATES: You are a
 13 member of the public?
 14 DR. ANEWSKI: I
 15 understand, of Mr. Mirandi have
 16 cost -- please let me explain.
 17 MR. KATES: No. This is
 18 not the time for that. It's really
 19 out of order.
 20 CHAIRMAN VILLARI: You will
 21 be given a fair opportunity to say
 22 everything you want.
 23 DR. ANEWSKI: What I wanted
 24 to say is that Mr. Mirandi knows
 25 since 2006 ever aspect --

1 CHAIRMAN VILLARI: Isn't
 2 this just what we said we weren't
 3 going to hear? Please withhold
 4 your comments. You are welcome to
 5 reappear at the next meeting and to
 6 tell us everything you want us to
 7 hear and we'll be happy to consider
 8 it.
 9 MR. KATES: I'll take it
 10 under advisement. Why don't you
 11 give Mr. Hipolit a set --
 12 MR. TAYLOR: Done.
 13 MR. KATES: -- and Mr.
 14 Sokolich and then hold the others.
 15 MR. TAYLOR: Both of those
 16 have been done.
 17 MR. KATES: If you want to
 18 send the copies up to me, I'll save
 19 the municipality --
 20 MR. TAYLOR: I'm sorry?
 21 MR. KATES: -- save the
 22 municipality the obligation of
 23 copying -- Again, I'll hold them
 24 all.
 25 CHAIRMAN VILLARI: Yes?

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1 MR. HIPOLIT: I said one
2 thing, you are going to close, and
3 the one thing I would just throw to
4 the board for suggestion is the
5 applicants talking a little bit
6 about drainage and some
7 improvements they are willing to
8 make or not willing, whatever they
9 may be, but I think those
10 improvements are subject to soil
11 testing. I think a simple soil
12 test would be the recommendation we
13 would make. I think it's something
14 they could easily do, because the
15 center line has no house on it so
16 they could do a test close to Lot 3
17 and they could do a test on Lot 2 to
18 just see if it's even possible to
19 install a drainage in there.
20 That's my recommendation.
21 MR. KATES: Mr. Sokolich,
22 how do you feel about that?
23 MR. TAYLOR: That's it for
24 me.
25 MR. KATES: That's it for

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1 tonight.
2 MR. TAYLOR: Thank you for
3 your consideration.
4 CHAIRMAN VILLARI: Thank
5 you, Mr. Taylor.
6 MR. SOKOLICH: I represent
7 clients that are going to be as
8 cooperative as they can possibly
9 be, but I think we are being held
10 to a higher standard, because I'm
11 not so sure under circumstances of
12 a subdivision where those perc
13 tests would ever be undertaken
14 before the next public hearing. We
15 would kind of like to move this
16 along.
17 Mark, is it possible to
18 conduct perc tests there? Can we
19 get it done in advance of the next
20 hearing?
21 MR. MARTINS: I don't think
22 we have enough time to do that.
23 MR. SOKOLICH: I really not
24 want to delay the process. I mean,
25 look, were the board to act and the

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1 perc tests fail, and as a
2 consequence, our storm water
3 management initiatives on any of
4 these lots are unable to be put
5 into place, we are back, no?
6 MR. MARTINS: Yes.
7 MR. KATES: So an issue
8 with frozen ground, perc tests on
9 froze ground?
10 MR. SOKOLICH: That, too.
11 MR. KATES: I think that's
12 really your real problem here.
13 MR. HIPOLIT: I don't, I
14 don't, I don't necessarily practice
15 law and you really don't practice
16 engineering, but you can easily get
17 a machine that can cut through 18
18 inches of frozen ground. That's
19 not an issue.
20 You know, the issue that I
21 have with the subdivision as a
22 whole, the drainage is a big part
23 of on these lots, I'm not talking
24 about the external and part of what
25 they testified to today, I didn't

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1 solicit it, they garnered that
2 would add additional drainage on
3 not only the lot, they are going to
4 subdivide and create. They are
5 going to add on Lot 3.
6 MR. SOKOLICH: It was in
7 response to the engineering
8 comments.
9 MR. HIPOLIT: I get that,
10 but you don't know if you can do
11 it. If you can't do it, we could
12 all be wasting our time here.
13 MR. SOKOLICH: Well, you
14 know what, is that an incredible
15 waste of time, Mr. Hipolit, when
16 you think about it? I mean, I
17 trust that the perc test being
18 completed prior to this board
19 acting on other subdivision
20 applications in this town is going
21 to be now common practice going
22 forward, I mean, is that --
23 MR. HIPOLIT: Should be.
24 MR. SOKOLICH: You think
25 so?

1 MR. HIPOLIT: Absolutely,
 2 yes. I don't know if they've done
 3 it in the last number of years, but
 4 it should be.
 5 MR. SOKOLICH: Not this.
 6 We think because of the weather
 7 conditions that it will be
 8 difficult to have those perc tests
 9 in advance of the next meeting and
 10 understand, though, that if those
 11 perc tests fail, then it would be
 12 an impossibility to do the
 13 improvements that we are offering
 14 and would have to reappear before
 15 the board, as highly as unlikely as
 16 that is.
 17 MR. CHINMAN: I have a
 18 question for Mr. Mirandi. How
 19 often have you had a situation in
 20 Englewood Cliffs where perc tests
 21 have failed?
 22 MR. MIRANDI: There's been
 23 a few cases where they failed
 24 and they had to go back and
 25 redesign a system to meet the

1 appropriate standards.
 2 MR. CHINMAN: What
 3 appropriate standards are we
 4 talking about, 2, 2 percent, 10
 5 percent, 50 percent?
 6 MR. MIRANDI: I would say,
 7 less than 10 percent.
 8 MR. KATES: Well, the
 9 applicant, the applicant's case,
 10 the recommendation has been made.
 11 It's the applicant's decision, not
 12 the board's decision whether the
 13 tests have to be made so we'll
 14 leave it in Mr. Sokolich's hands.
 15 If he's not willing to do it, then
 16 it may or may not reflect on the
 17 way the boards is treating this so
 18 we are not making the decision for
 19 him and you don't have to make that
 20 decision tonight.
 21 MR. SOKOLICH: Mark, we
 22 don't have that make that decision
 23 tonight so I think to honor the
 24 chairman's request, we should --
 25 CHAIRMAN VILLARI: Do I

1 have a motion to adjourn the
 2 meeting?
 3 MR. KATES: No. We have
 4 to close the public meeting.
 5 CHAIRMAN VILLARI: I'm
 6 sorry. Do we have a motion to
 7 close the public comments?
 8 MS. ROSENBERG: So be it.
 9 MR. KILMARTIN: Second.
 10 CHAIRMAN VILLARI: All in
 11 favor?
 12 (All said, "Aye.")
 13 CHAIRMAN VILLARI: All
 14 opposed? The public comments
 15 portion of this meeting has been
 16 closed for tonight.
 17 (Thereupon, the matter was
 18 concluded. Time noted: 10:32 p.m.)
 19 * * *
 20
 21
 22
 23
 24
 25

1
 2 CERTIFICATE
 3
 4 I, CYNTHIA ZOLLER, R.P.R., a
 5 Notary Public and Certified Shorthand
 6 Reporter of the State of New Jersey,
 7 License No. 30X100178500, do hereby
 8 certify that the foregoing is a true and
 9 accurate record of the proceedings.
 10 I DO FURTHER CERTIFY that I am not
 11 related through blood or through
 12 marriage, to any of the parties to this
 13 action, and that I have no financial
 14 interest in this action.
 15
 16
 17
 18
 19 *Cynthia Zoller, R.P.R.*
 20 _____
 21 Cynthia Zoller, R.P.R.
 22 Notary Public of the State of New Jersey
 23 My Commission Expires June 4, 2016
 24
 25

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