

1 Andover Township

2 Land Use Board

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4 THE TRANSCRIPT OF THE MINUTES . TRANSCRIPT

5 OF THE . OF

6 ANDOVER TOWNSHIP LAND USE BOARD . OPEN PUBLIC MEETING

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Date: March 1, 2011

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Time: 7:37 p.m.

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Place: Municipal Building

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134 Newton-Sparta Road

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Andover Township, N.J. 07860

14 B E F O R E:

JOHN O'CONNELL,

15

Chairperson

16

BOARD MEMBERS:

Diana Boyce  
Suzanne Howell  
Gerald Huelbig  
Gail Phoebus  
Ellsworth Bensley  
CeCe Pattison  
Christine Kretzmer  
Rick Melfi  
Paul Messerschmidt  
Kenneth Roberts

17

18

19

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21 STAFF:

Richard Brigliadoro, Esq., Board Attorney  
Michael Hanifan, Esq., Conflicts Attorney  
Joseph Golden, P.E., P.P., Township Engineer  
Charles McGroarty, P.P., Township Engineer

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Beverly Widmer

Aline Griffith

1 CHAIRPERSON O'CONNELL: I'd like to call order to this  
2 meeting of the Andover Township Land Use Board. Please stand  
3 for a flag salute.

4 (Flag salute conducted.)

5 CHAIRPERSON O'CONNELL: Call the roll, please.

6 BOARD SECRETARY: Ms. Boyce.

7 BOARD MEMBER BOYCE: Here.

8 BOARD SECRETARY: Ms. Howell.

9 BOARD MEMBER HOWELL: Here.

10 BOARD SECRETARY: Mr. Huelbig.

11 BOARD MEMBER HUELBIG: Here.

12 BOARD SECRETARY: Ms. Phoebus.

13 BOARD MEMBER PHOEBUS: Here.

14 BOARD SECRETARY: Mr. Melfi.

15 BOARD MEMBER MELFI: Here.

16 BOARD SECRETARY: Ms. Kretzmer.

17 BOARD MEMBER KRETZMER: Here.

18 BOARD SECRETARY: Ms. Pattison.

19 BOARD MEMBER PATTISON: Here.

20 BOARD SECRETARY: Mr. Bensley.

21 BOARD MEMBER BENSLEY: Here.

22 BOARD SECRETARY: Mr. Messerschmidt.

23 BOARD MEMBER MESSERSCHMIDT: Here.

24 BOARD SECRETARY: Mr. Roberts.

25 BOARD MEMBER ROBERTS: Here.

1 BOARD SECRETARY: Chairman O'Connell.

2 CHAIRPERSON O'CONNELL: Here. This is an open public  
3 meeting of the Andover Township Land Use Board. Notice of this  
4 meeting was given in accordance with the Open Public Meetings  
5 Act, Chapter 231, Public Law 85. The rules are, no new cases  
6 after 9:30 p.m. or testimony after 10:00 p.m.

7 Comments from the public are limited to five minutes  
8 per item. Transcript requests are to be in writing with a  
9 check for 100 percent of the costs. Material for the meeting  
10 is to be filed 14 days before the next meeting, once it has  
11 been heard, for completeness.

12 Individuals or members of a partnership must be  
13 present at the meeting or be represented by an attorney.  
14 Testimony is under oath. False testimony constitutes perjury.  
15 The first item, we have completeness review for Hummel/Andover  
16 Animal Hospital.

17 MR. SELVAGGI: Good evening, Mr. Chairman. Michael  
18 Selvaggi on behalf of the Hummels and the Andover Animal  
19 Hospital. We were here several months ago and we continue to  
20 express our gratitude. Obviously, we were successful in buying  
21 the property from the foreclosure proceedings.

22 In October, the Applicants were granted a use  
23 variance, subject to a site plan review. We've now filed for  
24 the site plan review. Mr. Golden, on February 24th, issued his  
25 completeness report, version number two, and Mr. Golden can

1 speak for himself, but I think, at least with respect to  
2 completeness, the matter is in a position to be deemed complete  
3 this evening.

4 MR. GOLDEN: Yes, I think the Board is pretty much  
5 familiar with the project from the use variance process. The  
6 plans have been modified and updated, if you will, and they're  
7 very complete. The only issue outstanding really is, from a  
8 checklist perspective, is the electronic copy, and that would  
9 be something we would get after the as-built is done, following  
10 any positive approval.

11 The remainder of the report, because this was  
12 complete, as it was -- I did somewhat of a substantive review  
13 -- but that's really for our next meeting -- is really just for  
14 the Applicant to have an opportunity, if you will, to address  
15 the following comments. So from a completeness perspective, I  
16 recommended it be deemed complete.

17 CHAIRPERSON O'CONNELL: Okay, any members of the Board,  
18 any comments, questions?

19 MR. BRIGLIADORO: Mr. Chairman, I would just like to  
20 point out that this was a bifurcated application and the Board  
21 previously granted the use variance, and also a "C" variance in  
22 regard to a front-yard setback for a new addition to the  
23 building. So this Board will continue to function as a zoning  
24 board would, in regard to the site plan aspects of the  
25 application. So those Board members who sit on the Board when

1 it acts as a zoning board will be permitted to sit.

2 CHAIRPERSON O'CONNELL: Okay, thank you. Anyone else?

3 BOARD MEMBER MELFI: Mr. Chairman, yeah, I had a  
4 question in regards to comments on the final site plan on page  
5 three, article number two, in regards to the turning template  
6 radius needed for the fire trucks.

7 Being that I sit on the fire department, I had an  
8 opportunity to talk to our chief in regards to this matter and  
9 I did reach out to Joe Golden this afternoon to basically let  
10 -- you know, the fire department looks at this as a utilization  
11 specifically for what it's looking for at the top of this  
12 parking lot.

13 That's really going to be ineffective for us because  
14 that turn that was looking to go up into the east parking lot,  
15 it comes up the ramp in the front of the building and then you  
16 turn to go right next to the back side of the building. Fire  
17 truck access wouldn't really be needed there. It's too close  
18 to the building, from the fire department's standpoint.

19 If there was a fire, they would be in a collapse zone  
20 of the building and you'd be cut off. So more than likely,  
21 fire prevention is going to have to -- or fire suppression  
22 would be done from the driveways and the existing streets of  
23 Limecrest and Newton-Sparta Road.

24 CHAIRPERSON O'CONNELL: Okay, thank you.

25 MR. GOLDEN: So that note can be scratched.

1 MR. SELVAGGI: Okay, thank you.

2 CHAIRPERSON O'CONNELL: Anyone else on the Board?  
3 Okay, folks, for people in the public here, before we go any  
4 further, the first three items on the agenda, this being one of  
5 them, the Andover Animal Hospital, Cumberland Farms, and  
6 Bridgeway Rehabilitation, are here for completeness matters  
7 only. There's no public portion. That is, this is an  
8 administrative function that we go through.

9 Once an Applicant has been found complete, that is  
10 when they'd be scheduled for a hearing and that's when the  
11 public would be heard, during that portion, going forward  
12 through the hearing process. So tonight is just an  
13 administrative function. We're not opening up for these three  
14 applications. It's strictly a matter of the completeness  
15 hearing. So I just wanted to make you aware of that. Next,  
16 I'm going to ask the Board to make a motion to find the  
17 application complete, subject to conditions mentioned in the  
18 engineer's report of February 24th.

19 BOARD MEMBER PATTISON: I'll make that motion now.

20 BOARD MEMBER BENSLEY: Second.

21 CHAIRPERSON O'CONNELL: Okay.

22 BOARD SECRETARY: Who is second?

23 BOARD MEMBER PATTISON: Bensley.

24 CHAIRPERSON O'CONNELL: Call the vote.

25 BOARD SECRETARY: Ms. Howell.

1 BOARD MEMBER HOWELL: Yes.

2 BOARD SECRETARY: Mr. Huelbig.

3 BOARD MEMBER HUELBIG: Yes.

4 BOARD SECRETARY: Mr. Melfi.

5 BOARD MEMBER MELFI: Yes.

6 BOARD SECRETARY: Ms. Kretzmer.

7 BOARD MEMBER KRETZMER: Yes.

8 BOARD SECRETARY: Ms. Pattison.

9 BOARD MEMBER PATTISON: Yes.

10 BOARD SECRETARY: Mr. Bensley.

11 BOARD MEMBER BENSLEY: Yes.

12 BOARD SECRETARY: Chairman O'Connell.

13 CHAIRPERSON O'CONNELL: Yes. Okay, thank you, sir.

14 MR. SELVAGGI: Thank you. And I believe, Madam

15 Secretary, we were March 15th for this one?

16 BOARD SECRETARY: I have you for April 5th. Will you  
17 be able to make the April 5th and do your notices? You need to  
18 notice, don't you?

19 MR. SELVAGGI: Yeah. Well, we had indicated earlier,  
20 because I think we already gave the notice, or we put it in --

21 BOARD SECRETARY: You did?

22 MR. SELVAGGI: -- for the 15th.

23 BOARD SECRETARY: All right. I'm going to have to do  
24 that. Did you already do your notices?

25 MR. SELVAGGI: Well, we sent it to the -- because I

1 was worried about the time frame, I sent it -- I didn't send  
2 them out, but I did send it on to the newspaper.

3 BOARD SECRETARY: All right. I need Rich.

4 CHAIRPERSON O'CONNELL: Rich?

5 BOARD SECRETARY: Rich?

6 MR. BRIGLIADORO: I'm sorry.

7 BOARD SECRETARY: They already sent the notice to the  
8 newspapers the 15th, so we'll have to pull them out.

9 MR. SELVAGGI: Because I don't know what your time --  
10 I know you have a lot on the agenda.

11 BOARD SECRETARY: Uh-huh. We do.

12 MR. SELVAGGI: I'm hoping this wouldn't take that long  
13 anyway.

14 (Pause.)

15 BOARD SECRETARY: All right.

16 MR. SELVAGGI: Okay, is that okay, then?

17 BOARD SECRETARY: Yeah, you are --

18 MR. SELVAGGI: Okay.

19 MR. BRIGLIADORO: Yeah --

20 BOARD SECRETARY: -- ready. You did already notice  
21 this, didn't you?

22 MR. SELVAGGI: We sent it on to the New -- because  
23 that was the date, like, a week or so ago, we were given. I  
24 was --

25 MR. BRIGLIADORO: Right.

1 MR. SELVAGGI: -- worried. I knew I had time to send  
2 out the notices, but getting it in the newspaper is --

3 MR. BRIGLIADORO: Right.

4 MR. SELVAGGI: Sometimes, they need, you know, a day  
5 or two.

6 BOARD SECRETARY: Okay.

7 MR. SELVAGGI: So I didn't want to --

8 BOARD SECRETARY: That's fine.

9 MR. SELVAGGI: -- take the chance. Okay.

10 BOARD SECRETARY: We'll put you on, sir.

11 MR. SELVAGGI: All right. Thank you.

12 BOARD SECRETARY: March 15th, March 15th.

13 CHAIRPERSON O'CONNELL: I just want to make sure. So  
14 you --

15 MR. SELVAGGI: Yeah, I mean, I would envision this --  
16 I mean, given Mr. Golden's report, we've already begun  
17 addressing a lot of it. I mean, God willing, this thing should  
18 be over in about 30 to 45 minutes.

19 CHAIRPERSON O'CONNELL: Don't jinx it. Don't say  
20 that, please.

21 MR. SELVAGGI: Well, no, I mean, given --

22 MR. BRIGLIADORO: Your comment -- Mr. Selvaggi, your  
23 comments are fair. When you came in for the use variance  
24 portion, that was a pretty substantive hearing and we --

25 MR. SELVAGGI: Yes.

1 MR. BRIGLIADORO: -- covered some ground in regard to  
2 the site plan.

3 MR. SELVAGGI: Uh-huh.

4 MR. BRIGLIADORO: So I understand.

5 MR. SELVAGGI: And it is a redevelopment.

6 MR. BRIGLIADORO: Yeah, right.

7 MR. SELVAGGI: I mean, we're not really --

8 MR. BRIGLIADORO: Right.

9 MR. SELVAGGI: -- proposing a lot going on with the --

10 MR. BRIGLIADORO: Right.

11 MR. SELVAGGI: -- building itself, so --

12 MR. BRIGLIADORO: Right.

13 CHAIRPERSON O'CONNELL: Then we'll see you March 15th.

14 MR. SELVAGGI: Okay, thank you.

15 CHAIRPERSON O'CONNELL: Thank you. Okay, next, for  
16 matters of completeness is Cumberland Farms's application.

17 MR. BRIGLIADORO: Mr. Chairman, just for the record, I  
18 spoke with the Applicant's attorney today, Guliet Hirsch, and I  
19 believe there's an e-mail that Linda has provided to the Board  
20 members. Unfortunately, she has a conflict that prevents her  
21 from being here today, but my understanding is that she is in  
22 receipt of Mr. Golden's completeness review report. And  
23 basically, she has no problems on behalf of the Applicant. So  
24 maybe you could have just Joe go through the --

25 MR. GOLDEN: Sure. This application is for an amended

1 site plan for the Cumberland Farms, previously approved, I  
2 believe, in December of 2005. The Applicant basically stated  
3 that because of economic conditions, that they weren't in a  
4 position to build the Cumberland Farms at that point.

5 Since then, all their approvals have expired and  
6 they've decided to change the site somewhat. The main change  
7 to the site at this point is, instead of tearing the building  
8 down and starting afresh, they're going to cut a front portion  
9 of the building down, and keep the rear portion, and  
10 reconstruct the building. So that's the main gist of what's  
11 happening.

12 And some minor changes beyond that, from a  
13 completeness checklist perspective, there's just a couple of  
14 minor comments with right-of-way widths, easements. The  
15 Applicant is actually going to get a new survey because their  
16 survey was outdated, based on the construction that's happening  
17 on both sides of this particular site.

18 There was a recommendation to investigate whether or  
19 not they can connect up to the new gas main, instead of using  
20 the propane that they had used, and show the existing gas main  
21 on the plan.

22 Contours within 200 feet -- I have no problem with  
23 that waiver, as well. An electronic copy will come in for  
24 final approval. The Applicant is requesting a waiver for the  
25 wetlands LOI. Clearly, there's no wetlands proximate to this

1 site.

2 Site distance profiles: These are existing entrances,  
3 and I also yield to the county, if they have any comments. So  
4 from the Town's perspective, I'm okay to waive that.

5 Fire protection plan: They don't have a fire  
6 protection plan currently, but they will have one by the time  
7 we have the actual hearing. The survey is being replaced, and  
8 then there are items 55 through 63 of the final approval really  
9 relate to post-construction-type documents, as-builts, et  
10 cetera. So those are very reasonable waivers. So what I did  
11 is, I recommended waivers for items seven, 10, 13, 15, and 46  
12 for completeness only, and the remaining waivers to be granted  
13 for the entire project, which would be whatever numbers I just  
14 had named.

15 CHAIRPERSON O'CONNELL: Okay, board members, any  
16 comments, questions?

17 MR. GOLDEN: As a general statement, because this is  
18 an amended site plan, they're really coming in with their  
19 former information. So it's substantially complete.

20 CHAIRPERSON O'CONNELL: Okay, and we have a motion to  
21 find the application complete, based --

22 BOARD MEMBER BOYCE: I'll motion.

23 CHAIRPERSON O'CONNELL: Wait. Can I finish?

24 BOARD MEMBER BENSLEY: Second.

25 CHAIRPERSON O'CONNELL: Can I finish? I do --

1 BOARD MEMBER BENSLEY: Sorry, buddy.

2 CHAIRPERSON O'CONNELL: I appreciate the enthusiasm,  
3 but a motion to find the application complete, subject to the  
4 items or waivers for completeness only, and the other waivers  
5 that we are granting, per the engineer's report of February  
6 28th, 2011?

7 BOARD MEMBER HOWELL: Motion.

8 BOARD MEMBER BENSLEY: Second.

9 CHAIRPERSON O'CONNELL: Call the roll, please.

10 BOARD SECRETARY: Ms. Boyce.

11 BOARD MEMBER BOYCE: Yes.

12 BOARD SECRETARY: Ms. Howell.

13 BOARD MEMBER HOWELL: Yes.

14 BOARD SECRETARY: Mr. Huelbig.

15 BOARD MEMBER HUELBIG: Yes.

16 BOARD SECRETARY: Ms. Phoebus.

17 BOARD MEMBER PHOEBUS: Yes.

18 BOARD SECRETARY: Mr. Melfi.

19 BOARD MEMBER MELFI: Yes.

20 BOARD SECRETARY: Ms. Kretzmer.

21 BOARD MEMBER KRETZMER: Yes.

22 BOARD SECRETARY: Ms. Pattison.

23 BOARD MEMBER PATTISON: Yes.

24 BOARD SECRETARY: Mr. Bensley.

25 BOARD MEMBER BENSLEY: Yes.

1 BOARD SECRETARY: Chairman O'Connell.

2 CHAIRPERSON O'CONNELL: Yes.

3 (Pause.)

4 CHAIRPERSON O'CONNELL: Okay, that application for  
5 Cumberland Farms will be heard on April 5th. Also, the record  
6 will also show that Gail has recused herself.

7 MR. BRIGLIADORO: Mr. Chairman, I'm going to be  
8 stepping down from the remainder of the items on the agenda and  
9 Mr. Hanifan will be staying for comments.

10 CHAIRPERSON O'CONNELL: Thank you, sir.

11 (Extended pause.)

12 MR. SELVAGGI: Good evening, Mr. Chairman. Again,  
13 Michael Selvaggi from Courter, Kobert and Cohen, on behalf of  
14 Bridgeway Rehabilitation Services, Inc. This is an application  
15 use variance. A subdivision subplan approval is being sought.  
16 It's Lot 1.01 and Block 108. The application was submitted,  
17 and in response, Mr. Golden, on February 23rd, issued his first  
18 completeness review.

19 Given the various forms of relief being sought, the  
20 report was a little more comprehensive. However, many of the  
21 waivers that were being sought and applied for, I think, Mr.  
22 Golden took no exception to, to any of them. I'm happy to go  
23 through, if you want, each one. We have our engineer here. Or  
24 we can just defer Mr. Golden to make comments or additional  
25 information here, or anyone else from the Board may want.

1 CHAIRPERSON O'CONNELL: Perhaps, we have Mr. Golden --

2 MR. GOLDEN: Yeah, basically, first off, the report is  
3 a little long because of the fact that this is a preliminary  
4 final and a variance. The Applicant put in all three  
5 checklists, but a lot of the checklists are redundant. So  
6 generally speaking, we can discuss most of the items that are  
7 out of checklist number two, which is another issue on the key  
8 map, to be consistent with the requirements of the ordinance,  
9 some on-site utilities, an electronic copy of the plans, the  
10 NJDEP letter of interpretation. There was a waiver requested  
11 there.

12 However, I feel that item 23 requires one of three  
13 types of wetland letter of interpretations, or positions, or  
14 gives the Board the opportunity to waive the LOI with a letter  
15 from a certified wetlands scientist, you know, further stating  
16 that in their professional opinion, no wetlands were within the  
17 site. I have not been able to look at the site close enough to  
18 determine whether or not I felt there were wetlands within 150  
19 feet.

20 So I would not -- I would say, for the completeness  
21 purposes, to grant the LOI, but I think that needs to be  
22 revisited when we get to the substantive comments. Some of the  
23 profiles, site distance -- center line geometry, I mean, these  
24 are a lot of items that are basically already completed because  
25 the site actually already exists.

1           The only other comment I have, it's not a completeness  
2 item, necessarily, is just some housekeeping with this  
3 particular site, in that it is part of a site that has not been  
4 remediated according to previous applications, and that's the  
5 bulk of the new site.

6           So I understand, and I'm not sure what the position of  
7 Town counsel is regarding that, but I just want the Board to be  
8 aware that subdividing this piece of property off will separate  
9 it from the area of concern. However, I don't know if that's  
10 appropriate, based on the fact that there remains an area of  
11 concern that's part of this parcel.

12           CHAIRPERSON O'CONNELL: Okay, so we should address  
13 that matter to the Township committee?

14           MR. GOLDEN: Yeah, I mean, I think it's important for  
15 completeness, because if we come to the actual hearing, if  
16 there is a problem, then we really need to have that resolved  
17 or possibly a condition of any favorable resolution. I don't  
18 know what the Applicant would like to do here. I know that  
19 there's a desire to get this --

20           MR. SELVAGGI: Speed forward.

21           MR. GOLDEN: Yeah, move forward. I don't really  
22 understand what the legal issues would be in this particular  
23 case. So I leave that to the Board now. I leave that to  
24 counsel, really, to discuss with the Applicant. I don't know  
25 if it's appropriate to deem it complete until that issue has

1 been resolved.

2 MR. HANIFAN: So basically, we're talking about the  
3 cover issue on the pit area?

4 MR. GOLDEN: Yeah, what it was is the -- no, to the  
5 best of my understanding, this parcel was previously approved  
6 for a senior housing facility of sorts and the Applicant  
7 proceeded at risk to do certain construction, remove topsoil,  
8 et cetera. And the conditions of the soil erosion permit is to  
9 restore with some sort of topsoil, vegetation, et cetera, on  
10 the remainder of the site.

11 The site, really, is mostly sand and gravel right now.  
12 The vegetation isn't properly growing. I do not know the  
13 status of the bonds that were in place, or whether or not Town  
14 counsel is pursuing those, or if the owner is intending on  
15 satisfying that somehow. So these are some of the things we  
16 discussed in the past. I don't know if anyone's taken this a  
17 step further.

18 MR. SELVAGGI: Well, I mean, it's a legitimate  
19 concern. I don't know if you can necessarily tie it to  
20 completeness. I mean, there may be other enforcement action  
21 that the Township can take. I mean, just --

22 MR. HANIFAN: Well, isn't it -- doesn't the property  
23 -- you know, the property has certain prerequisites before you  
24 can come for relief, correct?

25 MR. SELVAGGI: Yeah, mm-hmm.

1 MR. HANIFAN: Taxes have to be paid?

2 MR. SELVAGGI: Mm-hmm.

3 MR. HANIFAN: Property can't be in the act of  
4 violation, correct?

5 MR. SELVAGGI: But I don't know. Is there --

6 MR. GOLDEN: But I mean, I would defer to counsel --  
7 I'm just --

8 MR. SELVAGGI: Yeah, I don't know if --

9 MR. HANIFAN: Has it been --

10 MR. SELVAGGI: -- it's actually in -- I mean, if  
11 anybody's --

12 MR. HANIFAN: Has there been a determination?

13 MR. SELVAGGI: -- deemed it to be -- yeah, I don't  
14 know if there's been a determination. There's --

15 MR. HANIFAN: I do --

16 MR. SELVAGGI: -- the cleanup plan, but I don't know  
17 if there's --

18 MR. HANIFAN: I felt there was exception --

19 MR. GOLDEN: I do know for a fact that there has been  
20 correspondence to the owner relative to the restoration of the  
21 site. What the status of that is, though, I am not aware of.  
22 But I have seen somebody copying some of the correspondence.

23 MR. SELVAGGI: Yeah, see, we're not sure, either.

24 MR. HANIFAN: So I guess, what would happen is, it  
25 would have to be conditioned upon getting a status from the

1 committee, as it relates -- that you can make a condition of  
2 the completeness that they have a status that says that they  
3 are not in violation of the conditions that they had, as it  
4 relates to the previous application.

5 MR. GOLDEN: Yeah, I mean, I think the question that  
6 remains is whether or not you can move on a subdivision of a  
7 parcel that hasn't satisfied its previous commitments. I don't  
8 know how else to determine that.

9 MR. HANIFAN: So you're saying, for lack of -- since  
10 it's not -- they haven't completed, A, why would we let them go  
11 to B, so to speak?

12 MR. GOLDEN: More or less, I mean.

13 MR. HANIFAN: Has there ever been a final submitted on  
14 that approval, Chuck?

15 MR. GOLDEN: Chuck, do you have any comments on how  
16 that would work or have you experienced that?

17 MR. MCGROARTY: I'm not familiar with the application,  
18 but if it was a condition of approval, I'm surprised that the  
19 -- well, it's been a couple of years, I would imagine.

20 MR. GOLDEN: Yes, it has. The original approval was  
21 carried, and extended, and extended, and extended, and I  
22 believe the final denial was somewhere around 2007, when they,  
23 the Board finally decided not to grant any more extensions.  
24 And at that point, I believe the Applicant was asked to  
25 remediate or put the site back to original condition. So --

1 and --

2 MR. HANIFAN: And is there money owed? Is there money  
3 currently owed to the building department?

4 BOARD SECRETARY: Yes, that's what I was saying --

5 MR. HANIFAN: So there's actually an --

6 BOARD SECRETARY: -- soil erosion fees.

7 MR. HANIFAN: There's a soil erosion fee being held.

8 MR. GOLDEN: That I'm not aware of, but I understand  
9 that the soil erosion remediation is really where the bond, or  
10 where the remaining, and/or site plan --

11 MR. SELVAGGI: And I think there's still a bond  
12 outstanding on it, still --

13 MR. HANIFAN: Has it been pulled?

14 MR. SELVAGGI: -- out there.

15 MR. GOLDEN: I believe it is, and I believe there's  
16 also a site plan for phase one or something, but I don't know  
17 if those bonds have expired. Again, this is beyond the scope  
18 of --

19 MR. HANIFAN: I mean, did you get this from Mr.  
20 Cutler?

21 BOARD SECRETARY: Today, he told me, when I went in  
22 and asked him. He said that there were monies owed on his soil  
23 erosion fees.

24 MR. HANIFAN: But according to the building  
25 department, they're saying that they're owed money under the --

1 BOARD SECRETARY: Soil erosion fees.

2 MR. HANIFAN: -- soil erosion fees.

3 BOARD SECRETARY: Mm-hmm.

4 MR. HANIFAN: But I don't know what that exact -- I  
5 don't know what that entails. That's kind of amorphous. I  
6 don't know what exactly that stands for.

7 MR. SELVAGGI: Yeah.

8 MR. GOLDEN: So again, I leave it to --

9 MR. SELVAGGI: Yeah, I know --

10 MR. GOLDEN: I'm not sure how, if we are allowed, to  
11 proceed legally.

12 MR. HANIFAN: You know, just, I guess, what the whole  
13 issue is, is if there is an outstanding issue, obviously it's  
14 been brought to the attention of the committee. They know  
15 about it. I don't know what they've done with it, though. We  
16 would have --

17 MR. SELVAGGI: Yeah, I don't know.

18 MR. HANIFAN: -- to get some sort of clarification  
19 status from the --

20 MR. GOLDEN: Yeah, I'm comfortable with completeness,  
21 based on the engineering, the application, and then the  
22 information in front of us here.

23 MR. HANIFAN: I think we have to --

24 MR. GOLDEN: It's just a question of what the status  
25 of the property is.

1 MR. HANIFAN: Well, you could do it conditioned. You  
2 know, you could do it conditioned, the completeness conditioned  
3 upon any and all fees owed to the Town being cleared, and then  
4 we could go for final approval.

5 MR. SELVAGGI: Yeah, well, there's a question of  
6 whether it's fees and that's it, or there's --

7 MR. HANIFAN: Exactly. Was there a finding? I don't  
8 know. I know what --

9 MR. SELVAGGI: Yeah, that's --

10 MR. HANIFAN: -- you're saying.

11 MR. GOLDEN: I mean, does Counsel have the  
12 representative of the property that might be able to speak to  
13 this?

14 MR. SELVAGGI: We don't have a representative because  
15 we have the, you know, buyer. So the property owner, I don't  
16 believe, is here. So, you know, it's hard for me to commit to  
17 him. I mean, obviously, there are ways that we can work  
18 through us to get to him, but I'm not sure what we're trying to  
19 get to him. I don't know if anybody here knows what we're  
20 really trying to get him to do, obviously fees. There may be  
21 some outstanding fees. Is there other work or other things  
22 that need to be done beyond that?

23 MR. GOLDEN: I mean, the only other suggestion I could  
24 make is that we ask, as I think someone sort of started to say  
25 already, that we get a memo from Town Committee or from Town

1 Council on whether or not they feel we should be proceeding.

2 MR. MCGROARTY: Well, I'm not sure you want to  
3 interject them in the completeness review process, but --

4 MR. HANIFAN: Exactly.

5 MR. MCGROARTY: But I think, if there's a  
6 determination that when the site, whatever that site plan was  
7 -- and, you know, again, I'm completely in the dark. I have no  
8 history of this on that -- but if they didn't complete certain  
9 improvements or, you know, with soil removal and didn't do a  
10 soil restoration and the like, perhaps one way to do it is to -  
11 - if we step back for one second, unless the Town, unless  
12 Andover, at some point, went to prosecute them in municipal  
13 court for failure to adhere to the site plan or even to bring  
14 it to superior court, if they haven't done any of that, perhaps  
15 Joe, as the Board engineer, or maybe with the Applicant's  
16 engineer, figure out what the bond would be today.

17 And maybe they have to resurrect the bond and either  
18 get the work done now or resurrect the bond. After all, if  
19 they are going to subdivide the property, they do have to speak  
20 to the negative criteria because of the use variance.

21 MR. HANIFAN: Well, you know, that's where I think  
22 we're wrapping it around the axle slightly here. This is a  
23 very valid point and it has to be clarified, but as far as  
24 completeness goes, I think we're --

25 MR. SELVAGGI: Yeah.

1 MR. HANIFAN: -- outside the scope of completeness. I  
2 think, upon conditional approval, such as we say, you have to  
3 have DEP permits and proper permits from the DOT, et cetera --

4 MR. SELVAGGI: Well, I --

5 MR. HANIFAN: -- I think this falls into those  
6 categories of a condition for an approval, as opposed to a  
7 completeness issue. And I think that they are valid, and I  
8 think they're important, and I think it has to be clarified,  
9 but I think this is down the road. I think we're putting the  
10 cart before the horse, and that if this doesn't affect  
11 completeness, of course we're going to have a condition that  
12 they're not in violation, or owing the Town any money, and/or  
13 not having the site plan original obligations complete to  
14 include submission of final as-builts, approval of erosion,  
15 inspection by the building department, whatever those  
16 conditions are, we can put that after they present.

17 MR. GOLDEN: Mm-hmm.

18 MR. HANIFAN: But right now we don't have anything in  
19 front of us. We have the application, merely for completeness,  
20 and if they're willing to move forward with it, they should  
21 move forward with it. And if it's deemed complete, other than  
22 this issue, I think this issue is phase C. First, you come  
23 through completeness. Then it's presentation. Then conditions  
24 are set through the resolution. They have to meet those. I'm  
25 sure there'll be correspondence --

1 MR. SELVAGGI: Well, it may --

2 MR. HANIFAN: -- and clarification in the next weeks.

3 MR. SELVAGGI: As Mr. McGroarty said, it may have some  
4 bearing on the substance of the application, as well, in terms  
5 of --

6 MR. HANIFAN: Sure.

7 MR. SELVAGGI: -- at least how you guys treat it, so  
8 --

9 MR. HANIFAN: Well, and maybe the relief you're asking  
10 for will address these, too. There could be some sort of  
11 situation where that can happen, but I think that's B.

12 MR. SELVAGGI: Mm-hmm.

13 MR. HANIFAN: A is completeness. If the engineer is  
14 feeling comfortable with those checklist issues, I think, then  
15 --

16 MR. GOLDEN: Yes.

17 MR. HANIFAN: -- that's how we would proceed and I  
18 think the engineer's guidance on that is probably what we  
19 should be looking for.

20 MR. GOLDEN: Yeah, I mean, I did. At the end of my  
21 report, I do recommend completeness.

22 MR. HANIFAN: Okay, well --

23 MR. GOLDEN: At least, I thought I did.

24 MR. HANIFAN: -- Chairman?

25 CHAIRPERSON O'CONNELL: What, the --

1 MR. HANIFAN: Okay.

2 CHAIRPERSON O'CONNELL: Well, any comments, questions,  
3 from the Board regarding completeness? Okay. And could we  
4 have a motion, then, to find the application complete, per the  
5 conditions of the engineer's report of February 23rd?

6 BOARD MEMBER HOWELL: I do have a question. I'm  
7 sorry, John.

8 CHAIRPERSON O'CONNELL: Certainly.

9 BOARD MEMBER HOWELL: The summary of conditions --

10 CHAIRPERSON O'CONNELL: Okay.

11 BOARD MEMBER HOWELL: Is the summary of conditions for  
12 completeness?

13 CHAIRPERSON O'CONNELL: Well, what page are you on,  
14 then?

15 BOARD MEMBER HOWELL: I'm on what was passed around,  
16 the --

17 MR. SELVAGGI: I think that's for --

18 CHAIRPERSON O'CONNELL: No, that's --

19 MR. SELVAGGI: -- SW.

20 BOARD MEMBER HOWELL: Okay.

21 CHAIRPERSON O'CONNELL: That's --

22 MR. HANIFAN: Different.

23 BOARD MEMBER HOWELL: Thank you. That's all I had.

24 CHAIRPERSON O'CONNELL: The same players, different --

25 BOARD MEMBER HOWELL: Mm-hmm.

1 CHAIRPERSON O'CONNELL: -- different game.

2 MR. SELVAGGI: Yes, sure.

3 CHAIRPERSON O'CONNELL: Okay, then, is it -- do we  
4 have a motion?

5 BOARD MEMBER BENSLEY: I'll make a motion.

6 CHAIRPERSON O'CONNELL: Okay.

7 BOARD MEMBER MESSERSCHMIDT: Second.

8 BOARD SECRETARY: Who was that who made the motion,  
9 Bensley?

10 MR. HANIFAN: Yes, and Mr. Messerschmidt made the  
11 second.

12 CHAIRPERSON O'CONNELL: Call the roll.

13 BOARD SECRETARY: Okay, Ms. Howell.

14 BOARD MEMBER HOWELL: Yes.

15 BOARD SECRETARY: Mr. Huelbig.

16 BOARD MEMBER HUELBIG: Yes.

17 BOARD SECRETARY: Mr. Melfi.

18 BOARD MEMBER MELFI: Yes.

19 BOARD SECRETARY: Ms. Kretzmer.

20 BOARD MEMBER KRETZMER: Yes.

21 BOARD SECRETARY: Ms. Pattison.

22 BOARD MEMBER PATTISON: Yes.

23 BOARD SECRETARY: Mr. Bensley.

24 BOARD MEMBER BENSLEY: Yes.

25 BOARD SECRETARY: And Mr. Messerschmidt.

1 BOARD MEMBER MESSERSCHMIDT: Yes.

2 BOARD SECRETARY: And Chairman O'Connell.

3 CHAIRPERSON O'CONNELL: Yes.

4 MR. SELVAGGI: Notice for --

5 CHAIRPERSON O'CONNELL: Because I was just going to  
6 ask, when we --

7 MR. SELVAGGI: Yeah, I mean, I don't know what you  
8 have. I mean, obviously, this Applicant, like every applicant,  
9 you know, wants to be on there tomorrow. I don't know what  
10 else you have on the 15th. I mean, I'm cautiously optimistic  
11 that, you know --

12 BOARD SECRETARY: Our calendar --

13 MR. SELVAGGI: -- Hummel --

14 BOARD SECRETARY: -- will be too full for the 15th.

15 MR. SELVAGGI: Okay.

16 BOARD SECRETARY: And I think you had mentioned about  
17 asking for a special meeting.

18 MR. SELVAGGI: Yes, that was my next question or my  
19 next request. I know you guys have Cambridge. That's got some  
20 special meetings, as well.

21 MR. HANIFAN: It's very important because of --

22 BOARD SECRETARY: Unless you can wait until --

23 MR. HANIFAN: -- their funding. It's that his funding  
24 is contingent on --

25 MR. SELVAGGI: Yeah.

1 UNIDENTIFIED MALE: -- approval in a certain time  
2 frame.

3 BOARD SECRETARY: Yeah, I know.

4 UNIDENTIFIED MALE: So that's why.

5 BOARD SECRETARY: In other words, you couldn't wait  
6 until April 15th?

7 MR. SELVAGGI: April 15th?

8 BOARD SECRETARY: Mm-hmm.

9 MR. SELVAGGI: Okay.

10 MR. HANIFAN: Do you have any clarification on their  
11 submission to the State? Because I assume they were doing the  
12 State scenarios.

13 UNIDENTIFIED MALE: Yeah, the State funding -- they're  
14 in this year's cycle. The money has to begin being spent by  
15 June 30th, so it's a very tight time frame and they have to  
16 have the money spent by year end.

17 MR. SELVAGGI: I think it's -- actually, wouldn't it  
18 be the 12th, or excuse me, the 5th and the 19th, right?

19 BOARD SECRETARY: I don't know --

20 MR. SELVAGGI: Because the 15th's a Friday night.

21 BOARD SECRETARY: I mean, we're talking about April,  
22 right? Yeah, it can't be then, or am I totally off?

23 MR. SELVAGGI: I've gotten older, but I still --

24 BOARD SECRETARY: This is 2011.

25 MR. SELVAGGI: -- try to --

1 BOARD SECRETARY: It is the 5th and the 19th.

2 MR. SELVAGGI: Yeah.

3 BOARD SECRETARY: I'm sorry. It is the 5th and the  
4 19th. And we just did --

5 MR. SELVAGGI: I mean, again, obviously, given our  
6 time frames, you know, special meeting, one of the nice things  
7 -- I don't know if I want to say that -- you have the 29th, the  
8 30th, and the 31st, which actually happens to be the fifth  
9 Tuesday, Wednesday, and Thursday, which usually means the  
10 professionals are around, not that I would like to schedule or  
11 volunteer Board's time, but --

12 CHAIRPERSON O'CONNELL: I was just going to say, we  
13 don't get time and a half.

14 MR. SELVAGGI: I know.

15 MR. HANIFAN: What was that date? Was that --

16 MR. SELVAGGI: Well, look, I'm just throwing it out.  
17 I mean, yeah.

18 (Pause.)

19 BOARD SECRETARY: I didn't hear what he just said.

20 MR. SELVAGGI: The 29th, or 30th, or the 31st.

21 BOARD SECRETARY: Are you talking about April or  
22 March?

23 MR. SELVAGGI: No, no, March --

24 CHAIRPERSON O'CONNELL: March.

25 MR. SELVAGGI: -- because those just happen to be the

1 --

2 BOARD SECRETARY: 29th, 30th, and 31st.

3 MR. SELVAGGI: -- fifth Tuesday, Wednesday, and  
4 Thursday. So usually, the room's available. Usually, the  
5 professionals are available. I don't know when you have  
6 Cambridge, either. Because I know, last month, Cambridge, you  
7 guys talked about doing some special meetings for them in  
8 March, as well.

9 CHAIRPERSON O'CONNELL: Yeah, but I don't recall them  
10 requesting anything within those dates.

11 BOARD SECRETARY: No, they didn't. They may do this  
12 one, though.

13 CHAIRPERSON O'CONNELL: So how does the Board feel in  
14 their availability for those dates?

15 UNIDENTIFIED FEMALE: Which date?

16 UNIDENTIFIED FEMALE: Which date?

17 UNIDENTIFIED MALE: Which date --

18 UNIDENTIFIED FEMALE: Which date?

19 UNIDENTIFIED MALE: -- is it that you want?

20 CHAIRPERSON O'CONNELL: A special --

21 MR. SELVAGGI: Look, I'll take whatever I can get.

22 UNIDENTIFIED MALE: The last Tuesday, Wednesday,  
23 Thursday of the month.

24 MR. SELVAGGI: I just said the 29th, the 30th, and the  
25 31st of March.

1 UNIDENTIFIED FEMALE: Of this month?

2 UNIDENTIFIED MALE: Of this month.

3 MR. SELVAGGI: Yeah.

4 BOARD SECRETARY: Mm-hmm.

5 MR. SELVAGGI: Because they tend to be -- that's the  
6 fifth Tuesday, Wednesday --

7 BOARD SECRETARY: This is every week.

8 MR. SELVAGGI: -- and Thursday.

9 UNIDENTIFIED MALE: How about our professionals? You  
10 know, make sure they're all there, available.

11 CHAIRPERSON O'CONNELL: Well --

12 MR. SELVAGGI: They're more likely to be available  
13 then.

14 MR. HANIFAN: I'll be on trial. No big deal.

15 CHAIRPERSON O'CONNELL: Gerry, you okay?

16 MR. HANIFAN: Yeah.

17 BOARD MEMBER HUELBIG: I'm good.

18 MR. HANIFAN: Trial all day, come here at night, yeah.

19 UNIDENTIFIED FEMALE: What's the date?

20 MR. GOLDEN: Well, Mr. Chairman, I don't know if you  
21 want me for this application, but I'm not available on the  
22 31st. I do have a hearing that night.

23 BOARD SECRETARY: Okay, and Michael's not available  
24 that week. He's on trial.

25 MR. HANIFAN: I'm available.

1 MR. GOLDEN: But I don't know if you need --

2 MR. HANIFAN: I'm just going to be cranky.

3 MR. GOLDEN: -- me here for that. I know they've --

4 CHAIRPERSON O'CONNELL: What else is new?

5 MR. HANIFAN: That's true. Actually, I change.

6 MR. GOLDEN: Tuesday, the 29th -- is that what's being  
7 proposed?

8 MR. HANIFAN: I'm on trial that week, so I'm going to  
9 be miserable.

10 BOARD SECRETARY: When aren't you available, Joe?

11 UNIDENTIFIED FEMALE: I don't know what date's being  
12 proposed.

13 UNIDENTIFIED MALE: The 29th is a Tuesday.

14 UNIDENTIFIED FEMALE: The 31st.

15 UNIDENTIFIED MALE: Wednesday.

16 BOARD SECRETARY: I'm going to check 31st.

17 UNIDENTIFIED MALE: I'm good.

18 UNIDENTIFIED FEMALE: No, it's the 31st.

19 MR. GOLDEN: I don't --

20 BOARD SECRETARY: And --

21 UNIDENTIFIED MALE: That's Tuesday, the 29th?

22 MR. GOLDEN: Again, it's up to the Board whether you  
23 need me here for that or not. If you don't --

24 CHAIRPERSON O'CONNELL: Well, only for use variance,  
25 you should be here.

1 MR. GOLDEN: Okay.

2 CHAIRPERSON O'CONNELL: And do give us your  
3 professional opinion regarding this.

4 MR. GOLDEN: Okay.

5 BOARD SECRETARY: So we're talking the 29th or the  
6 30th. The Board realizes they'll have a meeting almost every  
7 week, I think, anyway.

8 BOARD MEMBER HOWELL: Are they -- is that Tuesday and  
9 Wednesday?

10 BOARD SECRETARY: The 29th --

11 UNIDENTIFIED MALE: Yeah.

12 BOARD SECRETARY: -- is a Tuesday. The 30th is a  
13 Wednesday. Correct.

14 UNIDENTIFIED MALE: So both days?

15 CHAIRPERSON O'CONNELL: No, we're looking for one.

16 BOARD SECRETARY: Either day.

17 UNIDENTIFIED MALE: One or the other.

18 MR. SELVAGGI: Yeah, because then, you guys meet again  
19 the following week, right? Is that --

20 CHAIRPERSON O'CONNELL: Sue, would you be available  
21 for either of those? Because I'm not. You'll be chairing.

22 BOARD MEMBER HOWELL: Okay.

23 BOARD SECRETARY: What? You won't be here the 29th or  
24 30th?

25 MR. SELVAGGI: Also --

1 CHAIRPERSON O'CONNELL: I'm not coming back from  
2 Cancun for this hearing.

3 UNIDENTIFIED FEMALE: I don't see why not.

4 MR. SELVAGGI: God, where's your commitment and your  
5 sense of loyalty?

6 CHAIRPERSON O'CONNELL: I know where my sense of  
7 loyalty is.

8 MR. SELVAGGI: Also, too, this is an important  
9 consideration because it is a use variance, so you're already  
10 going to be down two people.

11 BOARD SECRETARY: Mm-hmm.

12 UNIDENTIFIED MALE: Yeah, we can't -- what do we got,  
13 the seven, nine --

14 CHAIRPERSON O'CONNELL: We'll get seven for the --

15 BOARD SECRETARY: Use you need seven.

16 MR. HANIFAN: Seven? So, you need five out of seven.

17 MR. SELVAGGI: Five out of seven, yeah.

18 BOARD SECRETARY: For affirmative --

19 MR. SELVAGGI: Yeah, if I only have five, that --

20 BOARD SECRETARY: Mm-hmm.

21 MR. HANIFAN: Yeah, it's --

22 MR. SELVAGGI: -- becomes a little more problematic

23 BOARD SECRETARY: Mm-hmm.

24 CHAIRPERSON O'CONNELL: Well, it gets carried to the  
25 next meeting from the first hearing. I mean --

1 MR. SELVAGGI: Well, you could do that, yeah.

2 CHAIRPERSON O'CONNELL: I'll just have to listen --

3 MR. SELVAGGI: And we can, you know --

4 CHAIRPERSON O'CONNELL: I'll have to listen to the --

5 MR. SELVAGGI: Tape.

6 CHAIRPERSON O'CONNELL: -- tape. Yeah.

7 BOARD SECRETARY: Great. Let's see what we got. What  
8 did I just say here?

9 UNIDENTIFIED MALE: So we'll do that one?

10 UNIDENTIFIED MALE: So we're proposing the 29th? Is  
11 that the motion we're --

12 CHAIRPERSON O'CONNELL: Yes, I believe we're looking  
13 for the 29th as the date for a special meeting, 29th of March.

14 MR. HANIFAN: What day of the week is that again? I'm  
15 sorry.

16 UNIDENTIFIED FEMALE: Tuesday.

17 MR. HANIFAN: I'm dense.

18 BOARD SECRETARY: Tuesday, the 29th, March 29th.

19 UNIDENTIFIED FEMALE: Are we starting at 7:00 or 7:30?

20 BOARD SECRETARY: That's another thing. How early can  
21 we make these special meetings instead of 7:30, being that it's  
22 going to be the only one on the agenda?

23 MR. HANIFAN: I skip dinner anyway.

24 CHAIRPERSON O'CONNELL: Uh-huh.

25 MR. SELVAGGI: Well, I mean --

1 MR. HANIFAN: You would never guess by looking at --

2 BOARD SECRETARY: Can anybody --

3 MR. SELVAGGI: -- we normally will give the notice  
4 it's a special meeting. We can choose to do it at 6:30, if you  
5 want to.

6 BOARD SECRETARY: Well, that's what I want to know.

7 CHAIRPERSON O'CONNELL: Well --

8 UNIDENTIFIED MALE: 6:30's fine with me.

9 CHAIRPERSON O'CONNELL: -- find out what's convenient

10 --

11 BOARD SECRETARY: How is --

12 CHAIRPERSON O'CONNELL: -- to everybody.

13 BOARD SECRETARY: How is everyone -- how is 6:30 with  
14 everyone here?

15 UNIDENTIFIED MALE: Well, I'm good. I don't know  
16 about everyone else.

17 UNIDENTIFIED FEMALE: He's in court, though.

18 MR. HANIFAN: No, I'm only there in the day. The  
19 Chairman's going to be on the beach, literally, which is a good  
20 thing. So the fear would be, you might want to -- should we  
21 give them the option not to call for a vote, if he wants to, or  
22 not? It's up to you.

23 MR. SELVAGGI: Well, I would --

24 MR. HANIFAN: Call for a vote and then we --

25 MR. SELVAGGI: I would -- I mean, you know, I mean, I

1 would --

2 MR. HANIFAN: He's willing to listen to the tapes, so

3 --

4 MR. SELVAGGI: If he's willing to listen to the tapes,  
5 I mean, the problem --

6 MR. HANIFAN: They're not tapes, actually they're  
7 buttons.

8 MR. SELVAGGI: -- is or the issue is, we need five out  
9 of seven people.

10 CHAIRPERSON O'CONNELL: Right.

11 MR. SELVAGGI: If there's only six, I still need five.  
12 So you'd like to have as many possible votes. And in this  
13 instance, if we were fortunate enough to be done on the 29th,  
14 your next meeting is the following week. I would probably  
15 guess we would be willing to wait that one week. This way,  
16 when the Chairman comes back, he can read the tape.

17 CHAIRPERSON O'CONNELL: Weeks.

18 MR. HANIFAN: He doesn't go for a week. What, are you  
19 kidding me?

20 MR. SELVAGGI: Two weeks?

21 MR. HANIFAN: Yeah.

22 CHAIRPERSON O'CONNELL: You got --

23 MR. SELVAGGI: So it would be the 12th. Wow.

24 CHAIRPERSON O'CONNELL: Well, the 19th would be our  
25 next meeting.

1 MR. SELVAGGI: The 19th, yeah.

2 BOARD SECRETARY: 19th.

3 MR. SELVAGGI: Two weeks in Cancun. Wow.

4 BOARD SECRETARY: Excuse me.

5 MR. HANIFAN: You know what? I hope some drug lord  
6 doesn't kill you.

7 BOARD SECRETARY: What do we do?

8 UNIDENTIFIED MALE: Yeah, that's right.

9 BOARD SECRETARY: I know.

10 (Indiscernible due to board members talking over one  
11 another.)

12 BOARD SECRETARY: Michael, we have two alternates.

13 UNIDENTIFIED MALE: Yeah, we have --

14 BOARD SECRETARY: We do have two alternates.

15 MR. HANIFAN: Two alternates?

16 BOARD SECRETARY: Yeah.

17 UNIDENTIFIED MALE: Yeah.

18 MR. HANIFAN: Tell me --

19 BOARD SECRETARY: We have Paul. And where's Ken?

20 UNIDENTIFIED MALE: Yeah, so there's eight remaining  
21 members --

22 BOARD SECRETARY: Will you be here on the --

23 UNIDENTIFIED MALE: -- so, there's eight remaining  
24 members, so we only need five -- seven.

25 MR. SELVAGGI: Okay, then if we have it --

1 MR. HANIFAN: We have alternates?

2 CHAIRPERSON O'CONNELL: They already made off.

3 MR. SELVAGGI: Yeah.

4 BOARD SECRETARY: We have two alternates, correct.

5 UNIDENTIFIED MALE: You could stay in Cancun for  
6 another week.

7 BOARD SECRETARY: That's why I didn't call everybody.

8 (Indiscernible due to board members talking over one  
9 another.)

10 UNIDENTIFIED MALE: Yeah, I'm here the 29th.

11 MR. SELVAGGI: Yeah, all right. Then that's fine.

12 MR. HANIFAN: Will you adopt me? I want to go to --

13 CHAIRPERSON O'CONNELL: Sure.

14 MR. HANIFAN: -- Cancun for two weeks.

15 BOARD SECRETARY: All right. So, then, we'll do the  
16 special meeting --

17 MR. SELVAGGI: But --

18 BOARD SECRETARY: Excuse me. But are we going to do  
19 the earlier 6:30 --

20 UNIDENTIFIED FEMALE: 6:30, March --

21 BOARD SECRETARY: Can everybody that's good --

22 UNIDENTIFIED FEMALE: March 29th --

23 BOARD SECRETARY: Anybody that's not good for 6:30,  
24 raise your hand.

25 UNIDENTIFIED FEMALE: I prefer not, but --

1 UNIDENTIFIED MALE: You've got to go raise your hand  
2 if you're not.

3 UNIDENTIFIED FEMALE: No, no, make it --

4 UNIDENTIFIED MALE: Make it seven, then.

5 UNIDENTIFIED FEMALE: Then have seven.

6 CHAIRPERSON O'CONNELL: How is 7:00, then?

7 UNIDENTIFIED MALE: Better.

8 CHAIRPERSON O'CONNELL: Split the difference.

9 MR. SELVAGGI: Yeah, that's fine. We can --

10 (Indiscernible due to board members talking over one  
11 another.)

12 CHAIRPERSON O'CONNELL: Okay, then we'll notice for  
13 March 29th, 7:00 p.m.

14 UNIDENTIFIED FEMALE: 7:00 p.m.?

15 BOARD SECRETARY: Get out of here earlier.

16 CHAIRPERSON O'CONNELL: That's 7:00 a.m.

17 UNIDENTIFIED MALE: 7:00 p.m.?

18 BOARD SECRETARY: Okay.

19 UNIDENTIFIED FEMALE: 7:00 on the 29th.

20 BOARD SECRETARY: So March 29th, special meeting, 7:00  
21 p.m. You're going to have to notice it.

22 MR. SELVAGGI: Okay, well, we'll notice it. Thank you  
23 very much.

24 UNIDENTIFIED MALE: Thank you.

25 CHAIRPERSON O'CONNELL: Thank you.

1 (Pause.)

2 CHAIRPERSON O'CONNELL: Well, on that, though, also,  
3 and for the Township, too, let's not drag our feet. Let's find  
4 out about these items --

5 MR. SELVAGGI: Well, we'll --

6 CHAIRPERSON O'CONNELL: -- regarding everything. If  
7 we could have those matters cleared up before the hearing, it's  
8 so much the better for everyone.

9 MR. SELVAGGI: Yeah, we will speak to the owner,  
10 seller, and try to get to the bottom of it. Obviously, it --

11 MR. HANIFAN: I suggest you have somebody talk to Mr.  
12 Cutler and clarify what the situation is --

13 MR. SELVAGGI: Okay, yeah.

14 MR. HANIFAN: -- probably your best -- one of your  
15 routes.

16 MR. SELVAGGI: Yeah, no, not a problem. I know Mr.  
17 Cutler very well.

18 (Pause.)

19 CHAIRPERSON O'CONNELL: Next on the agenda, we have  
20 the continued hearing of Sussex and Warren Holding Company, the  
21 SMA Corporation for the truck repair on Route 206.

22 MR. SELVAGGI: Good evening, again, Mr. Chairman,  
23 Michael Selvaggi.

24 (Indiscernible due to board members talking over one  
25 another.)

1 MR. SELVAGGI: And I feel like it's, like, 1998 again.

2 CHAIRPERSON O'CONNELL: I had all my hair.

3 MR. SELVAGGI: This is a continued application. We've  
4 been before you for several meetings. It's the proposed truck  
5 storage maintenance facility on Lot 5.08 and Block 1, right  
6 along Route 206. At the meeting last month, testimony, I  
7 believe, had concluded. Public comment was received.

8 And given the lateness of the hour, the fact that this  
9 had a rather lengthy time between the first meeting in October  
10 and last month, the Board had asked Mr. Hanifan to take a stab  
11 at trying to put together a list of conditions that would be  
12 considered or could be considered, depending upon what action  
13 the Board wanted to go and take. I know Mr. Hanifan contacted  
14 me earlier today and, also before the meeting, had provided us  
15 a list of those conditions. He could speak to those himself.

16 MR. HANIFAN: And I will not take credit here. Mr.  
17 Golden and I conferred and he gave a substantial amount from  
18 his notes and his brilliance, came up with most of this list,  
19 and I just kind of stole it. So it was helpful to me. Mr.  
20 Golden was very thorough, and took excellent notes, and made it  
21 easy. So I thank Mr. Golden for his efforts today. And I  
22 called Mr. Selvaggi and I verified --

23 MR. SELVAGGI: Yeah.

24 MR. HANIFAN: -- with Mr. Selvaggi. And these were  
25 just some of the conditions. We are batting around so many

1 conditions, I believe there came a fear that we would forget  
2 some of them, and not be prepared to discuss them fully, and  
3 use them for the discussion section by the Board, as it relates  
4 to discussing the positive/negative criteria, et cetera. So  
5 this is more of a guidance piece. And we have one for the  
6 planner, I hope?

7 MR. SELVAGGI: Here.

8 UNIDENTIFIED FEMALE: He didn't give you one?

9 MR. HANIFAN: He didn't get one.

10 UNIDENTIFIED MALE: You need -- well, I don't --

11 MR. HANIFAN: We have another one.

12 CHAIRPERSON O'CONNELL: I didn't get one, either.

13 MR. HANIFAN: We have extras. There's plenty of them.  
14 We have plenty of them. Do you have her folder?

15 CHAIRPERSON O'CONNELL: Do you have an extra one that  
16 --

17 MR. HANIFAN: So there might be some more in this, but  
18 I think it was --

19 UNIDENTIFIED MALE: Yeah, that's fine.

20 MR. HANIFAN: The planner can look at them. I did not  
21 get to confer with him. I do apologize. It's in a folder.

22 (Indiscernible due to board members talking over one  
23 another.)

24 BOARD SECRETARY: Everybody else get one? You didn't  
25 get one?

1 UNIDENTIFIED MALE: Thank you.

2 BOARD SECRETARY: You're welcome.

3 MR. SELVAGGI: And again, I think one of the most  
4 significant conditions, and one that was proposed is, this  
5 again, if you're inclined to go towards an approval, it's  
6 limited to a five-year deal. Last month, there was some debate  
7 about what happens towards the end. I mean, it's five years  
8 and the Applicant has agreed to that.

9 Again, we've looked at the conditions before this, you  
10 know. We're not trying to change it midstream. It'll be good  
11 for five years, and hopefully, in the intervening time, you  
12 will have an opportunity to review the master plan, economic  
13 conditions will improve, and there will be a more viable use of  
14 the property, particularly as it relates to the piece in the  
15 borough, and, you know, we hear transit villages, and all these  
16 other wonderful proposals. And maybe, obviously from the  
17 property owner's standpoint, we would look for that, as well.

18 MR. GOLDEN: If I could, just to expand on what Mr.  
19 Hanifan said, I took my best recollection, if you would, of  
20 some of the items discussed. I believe Mr. Bensley had asked  
21 to have something, so we can really see it. There's definitely  
22 potential for me to have missed a few items. So I think the  
23 Board really needs to have a look at that and possibly reopen  
24 discussion with the Board on some of these items.

25 MR. HANIFAN: So this is, by no means, to be

1 considered a final list. I think, if there's anything missed,  
2 please -- I'm sure the planner might have some perspective,  
3 too, on this.

4 MR. GOLDEN: Yeah.

5 CHAIRPERSON O'CONNELL: And again, these are the  
6 conditions for the use variance, not for anything regarding  
7 site plan or anything.

8 MR. HANIFAN: Only three people really reviewed this,  
9 the Applicant attorney and myself and Mr. Golden. So we could  
10 be your ears and eyes there.

11 MR. SELVAGGI: The 12th condition, Mr. Chairman, does  
12 say that there would need to be a subsequent site plan  
13 approval, much in the same way as we've done Hummel and the  
14 Andover Animal Hospital.

15 CHAIRPERSON O'CONNELL: No, I understand. and we're --  
16 what's the word? We're bifurcating the application --

17 MR. SELVAGGI: Yes, uh-huh.

18 CHAIRPERSON O'CONNELL: -- for use variance and then  
19 site plan to follow.

20 MR. SELVAGGI: Uh-huh.

21 CHAIRPERSON O'CONNELL: Which we just got this this  
22 evening. So --

23 MR. GOLDEN: Would the Board like me to read these for  
24 the benefit of the public or would anyone?

25 CHAIRPERSON O'CONNELL: Well --

1 MR. HANIFAN: I think that's a good idea.

2 MR. GOLDEN: Shall I, or somebody else want to?

3 CHAIRPERSON O'CONNELL: Yes, you shall.

4 MR. GOLDEN: Okay.

5 MR. HANIFAN: With all due --

6 MR. GOLDEN: This is a summary of the conditions that  
7 were recommended for Board consideration, based on some of the  
8 discussions that were carried from the last meeting. Item one  
9 is Site Plan Approval Requirements. The site will have a  
10 well-landscaped entrance with a clear site distance, will act  
11 as a visual gateway to this site, and this will be to the  
12 satisfaction of the Board engineer.

13 Stormwater measures to include rain garden-type  
14 bioretention facilities along the regulated water courses,  
15 again, as determined and coordinated with the Board engineer.  
16 Require all regulatory permits, included but not limited to  
17 NJDEP permits, highway access permits, Sussex County Health  
18 Department. Number three, fire protection plan. Four is  
19 removal of all debris from the entire parcel, subject to Board  
20 engineer inspection. Building is to be renovated on all sides,  
21 provide elevations and/or sketches for Board approval on what's  
22 being proposed. A spill containment plan. There's not a lot  
23 said on that, but that's really just to talk about what happens  
24 if there's a gas spill inside the building, et cetera.

25 Buildings to contain air-handling units necessary to

1 evacuate truck exhaust and waste odors. System must be capable  
2 of filtering odoriferous air. Expand limit of fencing to allow  
3 adequate snow removal, no access via gate allowed, other than  
4 the main entrance. Fence to be of a style, material, and  
5 texture, as approved by the Board.

6 No disabled vehicles on the site more than 72 hours,  
7 approval from Andover Borough. Expanding a little bit, any  
8 motion will be strictly based on site plan approval. The  
9 Applicant should acknowledge the Board might require additional  
10 site improvements not previously discussed. Denial of site  
11 plan approval shall not constitute a legal reason for appeal of  
12 the use variance.

13 Board findings will not bear any proof for future  
14 applications. The Board's determination is strictly based on a  
15 five-year plan. Applicant's engineer to certify all  
16 appropriate permits or jurisdictional determinations have been  
17 obtained prior to final site plan approval. Will not be a  
18 transfer station for waste or any other type of material,  
19 strictly used for repair and vehicle storage.

20 There will be no unhitching of trucks, i.e. tractor  
21 from trailer, unless related to an emergency situation. And I  
22 want to add to that, there may be a comment, or two, or three  
23 in the report that they put together that's not reflected in  
24 here, but again, I think a lot of these items were conditions  
25 more of the site plan than they were for the use variance. And

1 I defer to Mr. McGroarty to be sure that any of those  
2 recommendations are not contrary to Land Use Law.

3 MR. MCGROARTY: Well, that's a big if that I'll leave  
4 to our attorney, but I just had a few things that I would add.  
5 Again, this is not to predispose that the Board is going to  
6 approve this, but just from my notes, too -- and it may be in  
7 here. I'm just looking there quickly. The testimony from Mr.  
8 McCabe --

9 CHAIRPERSON O'CONNELL: Yes, McCabe.

10 UNIDENTIFIED FEMALE: Uh-huh.

11 MR. SELVAGGI: Mm-hmm. Yes, okay.

12 MR. MCGROARTY: -- that there would be no outside --  
13 no trucks with material in the -- carrying materials will be  
14 parked outside at any time.

15 MR. GOLDEN: Right.

16 MR. MCGROARTY: So it was my understanding that the  
17 inside of the building can accommodate four trucks and any  
18 trucks with material, whether it's stone, municipal waste, or  
19 anything else, will always be inside. That's how I had it  
20 written down.

21 Hours of operation. I'm looking in my notes to find  
22 them. I had them and I can't put my finger on it at the  
23 moment. I have it as between Saturday evening and Sunday  
24 morning, there will be, between 1:00 a.m. and 5:00 a.m.,  
25 departure. I'm not sure if that's something the Board is --

1 MR. HANIFAN: My recollection was that it was so  
2 varied that it was very difficult to nail it down because they  
3 leave, they come out, if there's an emergency truck repair --

4 MR. MCGROARTY: Mm-hmm.

5 MR. HANIFAN: -- he has to come at off hours. In  
6 other words, the mechanic doesn't work the same hours as the  
7 drivers. The drivers come in early, leave late --

8 MR. MCGROARTY: Right.

9 MR. HANIFAN: -- et cetera. So I think there was  
10 really --

11 MR. MCGROARTY: So that was more in the way of  
12 testimony, but not a condition, as --

13 MR. HANIFAN: Yeah, I don't believe --

14 MR. MCGROARTY: Right.

15 MR. HANIFAN: -- it was a condition because it was  
16 just --

17 MR. MCGROARTY: Okay.

18 MR. HANIFAN: -- too varied. I don't believe, you  
19 know --

20 MR. MCGROARTY: One other thing I just noticed in my  
21 notes, I don't know if we have it here, is no washing or  
22 painting of vehicles would take place, outside again. Let me  
23 just go back for a second, though, to the first item, 1A, the  
24 well-landscaped entrance. The fact that the entrance, that we  
25 talked about -- is in the borough. I'm not sure Andover can,

1 although 11 does indicate approval from the Borough is  
2 required.

3           So I'm not sure how much this Board can approve a site  
4 plan that's within the Borough's jurisdiction, that is, the  
5 frontage on the highway. But I take it that, if the Board  
6 wants, and as Mr. Golden, and I think rightly so, argued for  
7 that kind of improvement, perhaps, they can at least agree to  
8 --

9           MR. HANIFAN: Well, also, I think on that issue  
10 they're inextricably connected, because in theory we could  
11 require fencing. And under that logic, which I understand,  
12 they could not put a gate in because we would say, well, the  
13 fence runs into another town. We don't want to put a gate up.  
14 So they're inextricably connected, and if they want to get the  
15 use, you can't have the -- because the fence is, you know --  
16 the gate will be probably on the Borough property.

17           MR. GOLDEN: Yeah --

18           MR. MCGROARTY: Yeah, I'm just saying that I'm just --

19           MR. HANIFAN: That's part of the reason --

20           MR. MCGROARTY: Ultimately, I guess, the Borough will  
21 have to make that determination.

22           MR. GOLDEN: Yeah, you know, I believe the law is  
23 clear that the Board cannot impose conditions in another  
24 township. However, my question for Mr. McGroarty is, because  
25 this is a use variance, and that is the access point, and it is

1 defined in our ordinance, if we have that ability?

2 I also noticed, when I was doing some of my  
3 investigation for this, that it's not unreasonable that when  
4 this ordinance was created, that there was some input from the  
5 borough. Cox talks about the fact that you can have a parcel  
6 of property zoned with input from both entities, and then that  
7 can carry forward, but I don't have any history on that to say  
8 whether or not that actually transpired, because the concern  
9 still is that the ordinance that was drafted required  
10 landscaping and certain things to happen along 206 in the  
11 Borough. I know this was litigated, so I don't know if that  
12 was flushed out. Because that really shouldn't have been in  
13 the original ordinance, because it's contrary, unless that's a  
14 newer law.

15 MR. MCGROARTY: I suspect it's probably not going to  
16 be worth a fight. I mean, I'm sure they're going to be willing  
17 to do it, and if the -- and I would be surprised if the Borough  
18 objected to having improvements done to the site. But I just  
19 wanted to mention it.

20 The other thing I wasn't clear about is item 12.  
21 Denial of site plan approval should not constitute a legal  
22 reason for the appeal of use variances. I'm not really sure  
23 what that is?

24 MR. GOLDEN: The intention here is that if there are  
25 conditions of the site plan -- and I didn't know how to say

1 this legally, but if there are conditions that the Board wants  
2 to see with the site that's reflected in the site plan process,  
3 if there's a denial based on the Applicant not willing to meet  
4 those conditions, that they don't have the ability to go back  
5 and appeal something. And I wasn't sure. I guess the use  
6 variance stands, irregardless to the site plan, or is it  
7 automatically denied, based on a denial of a site plan?

8 MR. MCGROARTY: Again, I mean, just on reading it, I  
9 mean, Mike can comment on this, but I mean, without the site  
10 plan approval, they're not doing anything. So by bifurcating  
11 it, they got the use variance, but the critical issue here is  
12 getting the site plan. I just wasn't sure if that language in  
13 there might be tweaked just a bit.

14 MR. HANIFAN: Yeah, I believe it's self-defined,  
15 obviously.

16 MR. GOLDEN: Okay.

17 MR. MCGROARTY: Okay.

18 MR. GOLDEN: Yeah, I mean, I don't know --

19 MR. SELVAGGI: And I mean, I wouldn't --

20 MR. GOLDEN: -- legally, if the site plan is denied,  
21 if the Applicant can come back and appeal?

22 MR. SELVAGGI: Well, I wouldn't appeal the use  
23 variance.

24 MR. GOLDEN: Yeah, because --

25 MR. SELVAGGI: First of all, I'd be out of time.

1 MR. GOLDEN: Okay.

2 MR. SELVAGGI: Second of all, I would have -- if we  
3 were at a point where we were talking site plan, that would  
4 presume the use variance was granted, so I wouldn't appeal on  
5 that. You know, quite frankly, if we took it out to its legal  
6 and logical conclusion, I would sit here, simply not say  
7 anything about the condition, get the approval, and then  
8 challenge one of the conditions. I mean --

9 MR. HANIFAN: By the time you're done --

10 MR. SELVAGGI: -- you know, without revealing any --

11 MR. HANIFAN: -- your years will be up.

12 MR. SELVAGGI: Yeah.

13 MR. MCGROARTY: But I think that, probably, the best  
14 way -- and our attorney, the Board's attorney can certainly do  
15 this if it is approved -- is that, I mean, the use variance is  
16 conditioned upon before granting site plan approval, as well.  
17 And if the Applicant and the Board can't agree when they get to  
18 that point, well, then, I don't think the use variance is going  
19 to be of much value to them, because they won't be able to  
20 implement it. But I thought it was a very thorough list, very  
21 good.

22 MR. HANIFAN: Is there anything that anybody else saw  
23 or commented on?

24 UNIDENTIFIED MALE: Wasn't there one thing about  
25 having to put that one part of the property back to the way it

1 was, where they had encroached on the --

2 CHAIRPERSON O'CONNELL: The wetlands encroachment?

3 UNIDENTIFIED MALE: -- environmental area.

4 MR. HANIFAN: Yeah, restore the "filled-in area," I  
5 guess we call it, the "filled-in wetlands."

6 MR. SELVAGGI: Yeah, it's existing fill, and on our  
7 plans, the note reads, "Existing fill area to be removed and  
8 restored to prior condition."

9 MR. HANIFAN: Okay, that was one. And was there any  
10 --

11 MR. SELVAGGI: I mean, so that was something that was  
12 already offered --

13 MR. HANIFAN: Sure.

14 MR. SELVAGGI: -- on the plans.

15 MR. HANIFAN: No, I think we forgot to put it on the  
16 list. It was a good point.

17 MR. SELVAGGI: Mm-hmm.

18 MR. MCGROARTY: Okay.

19 MR. HANIFAN: Anything else?

20 UNIDENTIFIED MALE: Well, there was the issue -- I  
21 guess, for the record, we ought to put to rest the issue of the  
22 uses of the office and the house. I think the Applicant's  
23 attorney probably should speak to that.

24 MR. HANIFAN: In regards to the more than two use,  
25 multiple-use issue?

1 MR. SELVAGGI: Yeah, well, I had corresponded with Mr.  
2 Hanifan. We had sent a letter, basically indicating that it  
3 was our opinion that -- let me just get to the letter here --  
4 that you couldn't take a use, even if the property was one  
5 property, in municipality A, and hold it against, if you will,  
6 another use in the other municipality.

7 And in effect, having municipality B more or less  
8 indirectly -- and it's a tough concept to explain, but hold or  
9 exercise some jurisdiction over the use and that portion of the  
10 property in a municipality outside of its own borders. And  
11 there was a case that I had given to Mr. Hanifan, which  
12 supported them. That had to do with a car wash, actually. A  
13 car wash.

14 MR. HANIFAN: And I understand. I think that there's  
15 arguments that could go in either direction on this. I think,  
16 though, that for as far as our condition goes, that they do  
17 have to go to the Andover Borough for approvals and for review,  
18 at least.

19 CHAIRPERSON O'CONNELL: Well, have you even gone to  
20 Andover Borough? Have you got anything pending, any  
21 application, any discussions?

22 MR. SELVAGGI: No, I mean, as a practical matter, that  
23 would almost be like the tail wagging the dog. I mean, most of  
24 the heavy lifting has to be done here in the Township and then  
25 we would go there, because Mr. Golden -- or I think Mr.

1 McGroarty had said, if we're willing to take down the gate  
2 that's there, willing to do some other enhancements, the  
3 Borough may just simply sign off on, say, the de minimis waived  
4 site plan, whatever, because it is taking a bad situation and  
5 trying to improve upon that.

6 But clearly, that'll be a discussion that we would  
7 have to have at some point. That's why we don't object to that  
8 condition. What it may be, it varies. I mean, I can tell you  
9 that we've been -- I've been in situations where Boards, the  
10 Borough, may very well write a letter -- I've had this  
11 situation -- to the Township, saying, look, we take no  
12 objection to what's going on here and if you want to, you know,  
13 impose a condition on property in the Borough, that's fine.  
14 But I mean, if you want to condition, because I guess it's  
15 better that we know sooner as opposed to later, that we contact  
16 the Borough prior to site plan, so you know, we can --

17 CHAIRPERSON O'CONNELL: Well --

18 MR. SELVAGGI: -- take that issue off the table so  
19 everyone knows what the Borough's position is. I think that's  
20 a reasonable condition.

21 CHAIRPERSON O'CONNELL: Well, it's just a concern for  
22 me and should be for your Applicant, as a business matter, that  
23 if we, hypothetically, approve everything here at this point,  
24 and we go to the Borough, and you don't get approval for, you  
25 know, the winding of the driveway or whatever --

1 MR. SELVAGGI: Mm-hmm.

2 CHAIRPERSON O'CONNELL: -- it might be that it's going  
3 to occur in the Borough, it's, again, a moot issue.

4 MR. SELVAGGI: Yeah, I don't have a problem with that.  
5 And again, probably, it would be premature to do that. I mean,  
6 look, there's no vote. I have no idea what's going to happen  
7 if you guys denied it. Any discussion we've spent with the  
8 Borough or any of the efforts we made in furtherance, that  
9 would have been a waste of everybody's time. But we can have  
10 an answer back to you in connection with any site plan. That's  
11 a fair and reasonable condition, as well.

12 CHAIRPERSON O'CONNELL: Anything else? Any other  
13 Board members?

14 UNIDENTIFIED MALE: Mr. Chairman, I'm not satisfied  
15 that we've gotten a definitive answer on this multiple-use  
16 issue, especially when the Applicant can just go to Andover  
17 Borough and say, well, you guys really can't decide what goes  
18 on in Andover Township, using the same argument that they're  
19 using with us, to say that, well, you guys can't decide the  
20 multiple-use issue either.

21 So it kind of seems like -- and if I recall correctly,  
22 the last time we listened to this, there was going to be  
23 further research done to determine whether we can -- where  
24 there is a truly multiple-use issue on the same piece of  
25 property. And I don't know that we've gotten an answer for

1 that.

2 MR. SELVAGGI: Well, we did submit our correspondence.

3 UNIDENTIFIED MALE: What was the correspondence?

4 MR. SELVAGGI: Basically, it was my legal opinion as  
5 to, you know, what --

6 MR. HANIFAN: I received a letter late last week that  
7 indicated that it was not a multiple-use issue because of the  
8 separation of municipalities. There's case law, though, that  
9 talks about, a lot is not dividable by municipal lines.

10 UNIDENTIFIED MALE: Right.

11 MR. HANIFAN: So it goes both ways. Since it --

12 MR. SELVAGGI: See, the lot may not be dividable, but  
13 for purposes of exercising jurisdiction, that municipal line --  
14 it may not legally separate the lot, but it separates it in  
15 terms of what you can do in Andover Borough and vice versa.

16 MR. HANIFAN: And I think the example would be along  
17 these lines. If we were using a smaller lot and we had an  
18 impervious cover issue, could the Township use the impervious  
19 in the other municipality on the same lot for their calculation  
20 of the percentage of impervious cover? That situation, I  
21 believe, would be under the single, unified lot. They couldn't  
22 just -- we could say, well, even though in Andover Township,  
23 it's only, let's say, a 50 percent requirement, the maximum.  
24 Only in Andover Township, it's 40 percent. But if you add the  
25 Andover Borough section, it's actually 70 percent because most

1 of that's impervious, we could use that for the calculation of  
2 impervious, okay? That's the logic behind that. It's not that  
3 we're using the jurisdiction of Andover Borough as the lead  
4 jurisdictional issue, as it relates to zone. We're using it,  
5 first, for calculation of a lot.

6 UNIDENTIFIED MALE: Mm-hmm.

7 MR. HANIFAN: So we use that en masse. So that  
8 scenario would be a situation where that could happen, I think.  
9 But this, what you're talking about now, is zoning is really,  
10 truly, a jurisdictional home rule issue, that I control my  
11 zoning where I live. Where I live, I zone. And if I choose to  
12 zone it differently from you, how can you dictate what affects  
13 you? And zoning is such more of a tangible power of a  
14 municipality that reserve, as opposed to calculating impervious  
15 site distances, calculating driveway usage, things that you  
16 have to do in the aggregate.

17 And I think that's partially where they talk about,  
18 one lot is one lot, because if your lot is divided in half by a  
19 municipal line, you still have to acknowledge what you have.  
20 You have to acknowledge that they are still real land and you  
21 have to be able to use those in your calculations for different  
22 things.

23 UNIDENTIFIED MALE: Right.

24 MR. HANIFAN: I think that's where they talk about the  
25 one-lot scenario, where you're talking about it. I think what

1 Mr. Selvaggi is saying is that when you're talking about the  
2 legal aspect of it, which the zoning is really more of a legal  
3 definition of what --

4 MR. SELVAGGI: Mm-hmm.

5 MR. HANIFAN: -- you can use the property for. Then  
6 you're stepping on the Borough's toes and not just using it for  
7 calculations, et cetera. Do you see the difference, the nuance  
8 difference?

9 MR. GOLDEN: Yeah.

10 MR. SELVAGGI: Yeah.

11 MR. HANIFAN: I think that's what we have here. Is  
12 that a fair statement, Mr. Selvaggi?

13 MR. SELVAGGI: Yeah. I mean, I think perhaps maybe  
14 the converse to this better represents it. Let's say we come  
15 in at some point with the Borough, and we want to put in a  
16 20,000-square-foot office building, and the Borough says, well,  
17 you know, it's really nice, but we think it should be set back  
18 further. And you know what? Since this is all one big lot,  
19 put the 20,000-square-foot office building on the Township's  
20 property, and we just want to have the landscaping and  
21 everything on ours.

22 I think the Township would rightly say, well, wait a  
23 minute. You can't dictate to us, because it's one big lot,  
24 that we have to accept this office building. So again, the  
25 converse is true to that. We can't then hold or hamstring this

1 Applicant or any applicant that's in a similar situation and  
2 say, well, wait a minute, we're going to eliminate or preclude  
3 you from doing anything on your property because on this other  
4 piece that we don't have jurisdiction over, you already have  
5 something there.

6           So I think that's probably the best way. I do agree  
7 with Mr. Hanifan. Look, if the Andover Borough piece was all  
8 covered with pavement, and we were going to come in and put in,  
9 you know, more pavement, you could say, well, wait a minute,  
10 guys, because it's going to have some impact. But in a  
11 situation like this, you're in essence -- and it's not even so  
12 much hamstringing the Applicant. I think that's probably an  
13 unfair or more myopic way to look at it -- but the better  
14 approach is this home rule, which we all can debate, whether  
15 that's good or bad, but clearly, in a situation like this, one  
16 municipality should be able to or cannot legally, in my  
17 opinion, say to another, well, you're stuck with this use or  
18 you're not stuck with it. I mean, I guess, look, the Borough  
19 could, if they chose to. They're an interested party. I mean,  
20 they could always appeal if they really wanted to, as a result  
21 of your decisions here on this piece of property.

22           MR. GOLDEN: If I could, I did a bit of research based  
23 on the case law that was cited here. And without being an  
24 attorney, to me it was clear that the Township cannot dictate  
25 and the Borough cannot dictate what happens in the other

1 Township. You can't dictate zoning, or setbacks, or anything,  
2 even though it's a contiguous property.

3 But the question that I felt still remained is, does  
4 that -- if you have a municipal boundary across your property,  
5 does that automatically entitle you to two uses? Because  
6 clearly, it's not a standalone lot. Now, Cox says something to  
7 the effect of, if that boundary existed and was previously  
8 developed, then that constitutes something and that's where I  
9 got a little bit beyond my understanding of the words.

10 But I don't believe it automatically allows you to  
11 have two uses. And the fact that this is a pre-existing  
12 condition -- it seemed to have a little bit more flexibility on  
13 whether or not it would be allowed. Because in fact, the  
14 office and residential facility is existing, and our site or  
15 this site, and "our" being Andover's site, is already  
16 previously developed. So --

17 MR. MCGROARTY: Yeah, I think, too, it -- I mean, it's  
18 a very -- I've actually relayed this conversation to someone,  
19 an attorney, after it's -- and they said you and the other  
20 participants probably had a great time and everyone else  
21 probably went to sleep. But you know, it's interesting to us.

22 But I think, to the Board, generally speaking, all the  
23 legal questions aside about the zoning and everything, is it  
24 too intense for the site? Because that really is the issue  
25 there. There are improvements which are on the property that

1 falls in the Borough and there are improvements which are on  
2 the property that are in the Township, and while you don't have  
3 to analyze the house and the rest of that stuff in terms of the  
4 Borough, you have the ability to analyze this building and its  
5 use on whatever number of acres it is. And I can't remember if  
6 it's 30-some acres or whatever it is in the Township.

7           So it really goes to the question, I think, of when  
8 they put their proofs on for the positive and negative  
9 criteria, did they satisfy you that this is not an  
10 over-intensification of the site, at least in the Township?  
11 And to me, that's something you'll -- you know, whether or not  
12 -- who has jurisdiction in terms of site plan review -- and I  
13 think, though, the question of if there are uses on the portion  
14 of the property in the Borough, I really don't believe that,  
15 that can completely preclude development in the Township.

16           Otherwise, if that were the case, the planned  
17 commercial development zone would be meaningless. It would  
18 make -- the Town would have all this acreage and would create a  
19 zone, but no improvements could ever take place on it because  
20 there's a house and some other things already in place on the  
21 Borough side. So I really think the Board could focus on the  
22 question of the intensity because that typically is in cases,  
23 that is when you have multiple uses, and if multiple uses are  
24 not permitted in the zone. And ironically, in the planned  
25 commercial development zone, multiple uses are permitted, but

1 if they're not permitted, it goes to the question of intensity.

2 Is it too intense?

3 CHAIRPERSON O'CONNELL: Well, there's also the  
4 additional option that if Andover Borough, whatever, they could  
5 still be ingress and egress from Forest Lakes Drive also, which  
6 is still totally within the Andover purview in that area.

7 MR. MCGROARTY: Yeah, the Borough -- I agree, Mr.  
8 Chairman. As Mr. Selvaggi said, the Borough may take the  
9 position like it's just a permit, an administrative process, or  
10 they may want to hear it. We don't know. And that's their  
11 risk, really.

12 CHAIRPERSON O'CONNELL: Well, that's their business  
13 risk and --

14 MR. MCGROARTY: Yeah.

15 UNIDENTIFIED MALE: It just seems to me -- well, let  
16 me ask you this question.

17 UNIDENTIFIED MALE: Mm-hmm.

18 UNIDENTIFIED MALE: What if they go before the Borough  
19 and the Borough says, we're not sure, but we think there might  
20 be a problem with multiple use, too? Now, you have the Borough  
21 with their parcel, having the same problem that we're having,  
22 saying there's a multiple use, when both municipalities are of  
23 the same mindset that they're concerned about multiple use, yet  
24 each municipality, in and of itself, their hands are tied  
25 because of the situation that supposedly the municipal line

1 only gives us the opportunity to govern over what's in Andover  
2 Township.

3 So if both municipalities feel the same way about a  
4 possible multiple use that shouldn't be allowed, it seems to me  
5 that there would be something wrong with that.

6 MR. MCGROARTY: But if I may, on that --

7 CHAIRPERSON O'CONNELL: The --

8 UNIDENTIFIED MALE: The --

9 MR. MCGROARTY: -- if I may to that point, that's why  
10 I'm saying, I think you, this Board, have this application in  
11 front of you for a use variance, for a limited time, for five  
12 years, as proposed. But you need to evaluate if you think that  
13 the existing uses in the Borough contribute to an  
14 over-intensification of the site if this building were restored  
15 to use. I mean, after all, it was -- at one time, presumably  
16 all of the things out there were in operation. But I think you  
17 have the right to decide if it's an over-intensification based  
18 on the house. And I guess it's an office or something that's  
19 out there?

20 If that's going to -- if you think that tips the scale  
21 too much, that should weigh, it seems to me, in your decision,  
22 at least on the negative criteria side of things that, hey,  
23 it's a little bit -- it's over-intensive. But you probably  
24 will want to refresh your memory on whether there was any  
25 testimony to that effect. I don't recall if there was or not.

1 I don't know if that question came up in the sense of, was it  
2 over-intensive --

3 UNIDENTIFIED MALE: The only reason I brought this to  
4 the table, because this is getting long and drawn out now, but  
5 it was just to be sure that any motion was crafted properly,  
6 legally, not necessarily whether we have or do not have  
7 jurisdiction, whether or not there is a concern. And if there  
8 is no concern, then it's --

9 MR. MCGROARTY: Well --

10 UNIDENTIFIED MALE: And I agree with you, Chuck, that  
11 it is an issue of intensity, so --

12 MR. MCGROARTY: -- I wouldn't put the concern in the  
13 motion. I wouldn't. I mean, that's what I'm saying. I  
14 wouldn't put the concern in the motion. I think the Board  
15 needs to decide --

16 UNIDENTIFIED MALE: Okay.

17 MR. MCGROARTY: -- as it decides -- the Board needs to  
18 consider, as it decides the application, whether that's an  
19 issue for them or not, for you ladies and gentlemen. If it's  
20 really not something that's going to be a deal breaker here,  
21 then there's really no need to put it in the motion, I don't  
22 think, because if that house burns down next week -- and I  
23 don't think that's a residential zone, but whoever owns that  
24 house goes to the Borough and says, we want to, you know,  
25 restore a pre-existing non-conforming use and they have to get

1 a use variance to do it, that'll be something the Borough will  
2 have to deal with, again, not the Township.

3 CHAIRPERSON O'CONNELL: Anything else? Any other  
4 Board members? Any questions? Any conditions that you think  
5 we've missed or should be added at this point?

6 BOARD MEMBER HOWELL: John, I have a question on 13.  
7 The Board findings will not bear any proof for future  
8 application and the Board's determination is strictly based on  
9 a five-year plan. Can we just go over that a little bit?

10 MR. HANIFAN: Well, what that means is that, after  
11 five years, the use expires. And if they come back in, they  
12 don't start from -- it's as if they started. They have to put  
13 an application in, be deemed complete, demonstrate the same  
14 conditions for the variance, come in again for site plan  
15 approval, because what happens if we discover things have  
16 changed, things need to be improved, whatever, that this  
17 doesn't prejudice, saying, well, we had that, why are you  
18 saying that? You know, well, last time, when we were here five  
19 years ago or six years ago, you said this, now you're doing  
20 this to us.

21 No, it's the slate gets cleaned. After they come back  
22 in five years, you take the chalkboard, you wipe it down clean  
23 and they start in again, if they want to come back in. Because  
24 what happens if the odors -- hypothetically, there's odors?  
25 What happens, hypothetically, if there was a spill and it got

1 into something? What happens? And I'm talking worst-case  
2 scenario.

3 I'm not trying to be -- or positive, let's say that  
4 they become great. I'm not going to go just negative. Let's  
5 say they're positive. It's great. It's actually been helpful.  
6 It's been employing people. And they ask, can they expand  
7 their yard larger, and they want to put more trucks in, because  
8 now they have a contract to repair trucks or something. That  
9 scenario maybe could happen. So it could go positive, too. So  
10 you know, it's saying, if you come back in, though, start  
11 again. And that --

12 UNIDENTIFIED MALE: And the master plan and zoning in  
13 the township may change.

14 MR. HANIFAN: Absolutely, and see --

15 UNIDENTIFIED MALE: And that makes their job  
16 immeasurably harder, at least --

17 MR. HANIFAN: Yeah, and if --

18 BOARD MEMBER HOWELL: Is this five-year plan something  
19 that comes before boards frequently?

20 MR. HANIFAN: Actually, they're not that common, but  
21 they exist.

22 UNIDENTIFIED MALE: No, there's --

23 BOARD MEMBER HOWELL: They do exist?

24 MR. HANIFAN: Yeah.

25 MR. SELVAGGI: There are some municipalities that, by

1 ordinance, limit a use variance, of course. So I mean, is it  
2 common? No. Is it so unorthodox that it shouldn't be  
3 considered? Absolutely not. And as we had indicated, and Mr.  
4 McCabe had testified to last time, it's an interim type of use,  
5 it provides some utility.

6 It does, at least in the short-term, take what most of  
7 us would agree is probably a substandard facility in terms of  
8 its looks aesthetically, and enhances that. The rain garden,  
9 not only would it handle some of the runoff from the proposal,  
10 but it's also going to do and work towards treating some of the  
11 runoff that's already being experienced there. So there are  
12 improvements that will be implemented. So during this  
13 five-year period, it's not just solely for the gain of the  
14 property owner or the user. I mean, there is some broader  
15 benefit. And then you know what? It gives you an opportunity,  
16 as a municipality, to take your breath, examine the master  
17 plan, and see what may make better sense for this property long  
18 term.

19 BOARD MEMBER HOWELL: And did I not hear last week  
20 that the Applicant would not come back after five years?  
21 Wasn't there that --

22 MR. SELVAGGI: It was -- you know what? I mean, that  
23 was what our testimony was.

24 UNIDENTIFIED MALE: Yeah, that's true.

25 MR. SELVAGGI: Yeah.

1 MR. HANIFAN: But in the same token, he says he's not  
2 coming back.

3 BOARD MEMBER HOWELL: Mm-hmm.

4 MR. HANIFAN: But if he comes back, he's starting back  
5 at ground zero.

6 BOARD MEMBER HOWELL: At zero.

7 MR. HANIFAN: He's at zero. So we all hope the  
8 financial conditions improve.

9 UNIDENTIFIED MALE: His lease is up.

10 BOARD MEMBER HOWELL: Hmm?

11 MR. HANIFAN: We hope the train station goes in.

12 UNIDENTIFIED MALE: His lease is up.

13 MR. HANIFAN: We hope that that lot becomes much more  
14 valuable as a --

15 MR. SELVAGGI: Yeah, is tied to the lease --

16 MR. HANIFAN: -- commercial entity enterprise, that  
17 they want to put a transit village in and all the great things  
18 that we hopefully will get out of a train station. But you  
19 know, who knows what's going to happen? And I understand the  
20 five-year expiration. And they said they're not going to be  
21 there anymore, but --

22 BOARD MEMBER HOWELL: They might be.

23 MR. HANIFAN: Well, no, they can't be there unless  
24 they come back in front and go --

25 BOARD MEMBER HOWELL: Mm-hmm.

1 MR. HANIFAN: -- for another round through this Board  
2 again. Would you agree with that, Mr. Selvaggi, that they'd  
3 have to come back in?

4 MR. SELVAGGI: Absolutely.

5 MR. HANIFAN: Otherwise, after five years, they would  
6 be in violation of the use, and the zoning officer could cite  
7 them and --

8 BOARD MEMBER HOWELL: Okay.

9 MR. HANIFAN: -- they could be removed because -- but  
10 they know that they would have to, you know, probably six  
11 months out, decide what they want to do, determine if they want  
12 to endeavor and come back in front of this Board. And also,  
13 the owner of the land might say, you know what? I think we  
14 want to go in a different direction with this site and try to  
15 mark it in a different area.

16 BOARD MEMBER: Yeah.

17 MR. SELVAGGI: Now, I mean, given a size, one would  
18 have to believe that the property owner would want to do  
19 something different that would generate more money than this  
20 type of an arrangement.

21 BOARD MEMBER HOWELL: Okay, thank you.

22 UNIDENTIFIED MALE: Mr. Chairman --

23 CHAIRPERSON O'CONNELL: Yes.

24 UNIDENTIFIED MALE: -- correct me if I'm wrong, but  
25 for the record, too, for number 13, that also was to cover that

1 -- if there was an approval this time, that they couldn't use  
2 that legal argument the next time to say, well, you gave  
3 approval once before, so you're going to -- you have to give  
4 approval now. That includes that.

5 MR. SELVAGGI: Yeah, there's no res judicata is  
6 actually the --

7 MR. HANIFAN: Yeah.

8 MR. SELVAGGI: -- legal term, which means something  
9 once decided is forever decided. There would be no implication  
10 of that in here.

11 MR. HANIFAN: In other words, it's granted without  
12 prejudice to the Township, which means he can't come in and  
13 say, well, you granted it. Why, now you can't say no. It's  
14 res judicata. It's not res judicata. It will not be res  
15 judicata --

16 MR. SELVAGGI: Yeah.

17 BOARD MEMBER HOWELL: Okay.

18 MR. HANIFAN: -- which, I don't know, just basically  
19 means they're coming back and they can't put in, oh, by the  
20 way, you already approved it. No, it's not allowed. It's,  
21 you're starting fresh. It's as if we never met Mr. Selvaggi,  
22 which would be hard to do because he gives such a good  
23 impression. But you know what I'm trying to say? In that  
24 note, it won't prejudice us --

25 UNIDENTIFIED MALE: Right.

1 MR. HANIFAN: -- if the Board is still in the same  
2 general machination. You're going to know because this Board  
3 remembers, on this application, the site when it initially  
4 changed the zone back 20 years ago.

5 MR. SELVAGGI: I don't think -- yeah, was it the  
6 Chairman?

7 MR. HANIFAN: The Chairman recalled, with great  
8 detail, how that went through. So the Boards are like  
9 elephants. They have very great memories. So you know, these  
10 issues will come back. So I think that, if anything, there'll  
11 be a better educated Board, because they're going to know  
12 exactly what's going on and it's going to be probably a quicker  
13 process, I'd venture to say, but probably not less thorough,  
14 not --

15 UNIDENTIFIED MALE: Right.

16 MR. HANIFAN: -- less examining. I mean, it doesn't  
17 vitiate your duties as a Board member, but it also doesn't give  
18 them leverage to say res judicata, you know, when they go for  
19 prerogative writ, oh, Judge, they already approved it. Why can  
20 they say no?

21 And what we're saying, too, is, part of this will be,  
22 you know, theoretically, the economic conditions of this area  
23 and of this country, if you were to grant, let's say, could be  
24 a reason granted that it's a utilization, temporarily based  
25 upon the conditions of the economy. You know, if that was so

1 to be granted or whatever you decide, that that is part of the  
2 reason why you're giving a term of use and that it's not the  
3 preferred use for the site.

4 And on the record, you can even state that the  
5 preferred use for this site is some large shopping center, or  
6 some commercial office park, or whatever we can get in there  
7 that's a denser, more, you know --

8 MR. SELVAGGI: The only thing you'd want to guard on  
9 that, you wouldn't want to necessarily have that thrown in your  
10 face on your master plan review. I don't know if you'd want to  
11 make that --

12 MR. HANIFAN: No.

13 MR. SELVAGGI: -- kind of finding.

14 MR. HANIFAN: Well, you can find it.

15 MR. SELVAGGI: Now, you could just say that we don't  
16 think this is the permanent --

17 MR. HANIFAN: Ideal use.

18 MR. SELVAGGI: -- long-term --

19 MR. HANIFAN: Permanent long-term use, yes.

20 MR. SELVAGGI: -- use of the property without  
21 necessarily offering other alternatives.

22 MR. HANIFAN: Yeah.

23 UNIDENTIFIED MALE: Well, it's like saying the Board  
24 is not surrendering the vision that's in the plan now, through  
25 the master plan now, in the ordinance now. But for a five-year

1 period, it'll allow this "interim use," as I guess it's --

2 MR. SELVAGGI: Mm-hmm.

3 UNIDENTIFIED MALE: -- been called. But it's not  
4 giving up the hope of that, or if it changes, then it changes,  
5 you know --

6 MR. SELVAGGI: Mm-hmm.

7 UNIDENTIFIED MALE: -- depending on what the future  
8 master plan does.

9 CHAIRPERSON O'CONNELL: Anything else from the Board,  
10 from members of the Board, professionals?

11 BOARD MEMBER HOWELL: I just have one thing.

12 CHAIRPERSON O'CONNELL: Yes.

13 BOARD MEMBER HOWELL: I just want to clarify. On  
14 four, when we say we're going to remove all the debris, that  
15 was the heavy equipment, the trailer, the oil tanks, the  
16 platforms?

17 UNIDENTIFIED MALE: Yes.

18 BOARD MEMBER HOWELL: Okay, I just wanted to make  
19 sure.

20 MR. MCGROARTY: It might be good, too, if I may? not  
21 to nitpick this as we start going through it, but on that point  
22 -- and this is something, I guess, again, if we're talking as  
23 if it's approved, then it just makes it easier to discuss it.  
24 Obviously, the Board has not made any decision yet -- but  
25 presumably, Mr. Golden would be the person or the Board

1 engineer, which is Joe, of course, at this time, he would make  
2 a list perhaps, and then perhaps there should be a deadline for  
3 that clean-up?

4 BOARD MEMBER HOWELL: I agree.

5 MR. MCGROARTY: Those usually are better, more  
6 effective, whether it's six months or whatever Mr. Golden and  
7 the Applicant figure is appropriate.

8 MR. SELVAGGI: That's fine.

9 CHAIRPERSON O'CONNELL: Anything else, anyone, any  
10 Board members?

11 UNIDENTIFIED MALE: Well, if I could, in concert with  
12 what Mr. McGroarty just said, I would say, at least prior to  
13 the application for a building permit, is that reasonable?

14 MR. MCGROARTY: Whatever --

15 MR. SELVAGGI: Yeah, I don't know. Well, hold on.  
16 Let me just -- okay.

17 UNIDENTIFIED MALE: Could you repeat what you had  
18 said? He just couldn't hear it.

19 MR. MCGROARTY: Just if there's any timing on cleaning  
20 the equipment, machinery, etcetera on the site, it would be in  
21 advance of applying for the building permit. This is assuming  
22 that you, at this point, have your zoning permit, but before a  
23 building permit, the site would be cleaned up.

24 MR. SELVAGGI: Yeah, that's fine.

25 CHAIRPERSON O'CONNELL: Any other Board members,

1 anything else at this point?

2 UNIDENTIFIED MALE: If I could, too, we don't have to  
3 word the resolution exactly as it's in this particular  
4 document?

5 CHAIRPERSON O'CONNELL: No.

6 UNIDENTIFIED MALE: So --

7 CHAIRPERSON O'CONNELL: This is a good basis to work  
8 from.

9 UNIDENTIFIED MALE: It's just for discussion topics?

10 CHAIRPERSON O'CONNELL: Have we identified where it  
11 needs flushing out already and clarification?

12 (No verbal response recorded.)

13 CHAIRPERSON O'CONNELL: If there's nothing else from  
14 the Board or the professionals at this point, what I'd like to  
15 do at this point is take a 10-minute break. And then we'll  
16 open it back up to the public for any comments. And then,  
17 presumably, we will take action on the variance tonight, okay?  
18 Then we'll have a 10-minute recess. Thank you.

19 (Recess from 9:01 p.m. to 9:16 p.m.)

20 CHAIRPERSON O'CONNELL: All right, folks. We're going  
21 to come back to order at this time. As was stated before the  
22 break, at this point, we'd like to open it up to the public to  
23 speak on this application.

24 UNIDENTIFIED MALE: Mr. Chairman, before we open it up  
25 to the public --

1 CHAIRPERSON O'CONNELL: Yes.

2 UNIDENTIFIED MALE: -- there was one other thing that  
3 I wanted to see if we could get a more specific answer on. And  
4 that's regarding item 1B, the rain garden-type bioretention  
5 facilities, as to how big of a facility are we talking about?  
6 Is it a small 10-by-20 strip of land? Is it -- just so that we  
7 get some clarification on how big that would be.

8 CHAIRPERSON O'CONNELL: I don't know if at this point  
9 we need that type of information because that would become  
10 actually part of the site plan and would depend upon our  
11 approval and the engineer's input and design. I don't know if  
12 we need that level of detail.

13 MR. GOLDEN: If you notice, the intention here is to  
14 put the rain gardens along the regulated water, so that it  
15 would be potentially larger than it might normally be designed  
16 for. But the intention would be to have it on pretty much at  
17 least two sides of the building, wherever there's potential  
18 runoff into the category one streams.

19 UNIDENTIFIED MALE: So can we at least say, subject to  
20 the Township engineer's approval?

21 CHAIRPERSON O'CONNELL: Well, it's --

22 UNIDENTIFIED MALE: It does say that.

23 CHAIRPERSON O'CONNELL: 1B says as determined --

24 UNIDENTIFIED MALE: Well, it says as determined, but -

25 -

1 CHAIRPERSON O'CONNELL: -- by the Board engineer.

2 UNIDENTIFIED MALE: Yeah, but as long as that's on the  
3 record that it's by his approval.

4 MR. SELVAGGI: If he wants to put it as approved, I  
5 mean, obviously, you know, that's fine.

6 MR. HANIFAN: Just put in approved --

7 MR. SELVAGGI: Yeah.

8 MR. HANIFAN: -- for now.

9 UNIDENTIFIED MALE: Yeah.

10 MR. GOLDEN: And we'll discuss that in the site plan,  
11 too, so --

12 MR. SELVAGGI: Mm-hmm.

13 MR. GOLDEN: -- we'll have an opportunity to --

14 UNIDENTIFIED MALE: Okay.

15 MR. HANIFAN: If we get to site plan --

16 MR. SELVAGGI: Well --

17 MR. HANIFAN: -- obviously.

18 UNIDENTIFIED MALE: -- yeah.

19 UNIDENTIFIED MALE: That's --

20 CHAIRPERSON O'CONNELL: Thank you. Yes, sir.

21 UNIDENTIFIED MALE: You may --

22 CHAIRPERSON O'CONNELL: If you will, state your name  
23 and address.

24 MR. GARTLAND: Certainly. Name is Charlie Gartland,  
25 19 Crescent Drive North, Chairman of the Board, Forest Lakes

1 Water Company. Just in way of background, as well, I'll let  
2 you know that my education -- I'm an environmental engineer.  
3 Also, I've been in the water treatment industry for over 30  
4 years.

5 CHAIRPERSON O'CONNELL: Sir, if you think you're going  
6 to be giving testimony, we'd have to --

7 MR. GARTLAND: No testimony.

8 CHAIRPERSON O'CONNELL: We'd have to swear you in.

9 MR. GARTLAND: I'll do that if you like, certainly.

10 CHAIRPERSON O'CONNELL: You might as well.

11 MR. HANIFAN: Raise your right hand.

12 C H A R L I E G A R T L A N D, MEMBER OF THE PUBLIC, SWORN

13 MR. HANIFAN: Say your name for the record.

14 CHAIRPERSON O'CONNELL: Thank you.

15 MR. HANIFAN: Say your name.

16 MR. GARTLAND: Charlie Gartland.

17 BOARD SECRETARY: Spell it --

18 MR. GARTLAND: Charlie G-a-r-t-l-a-n-d. Got it?

19 BOARD SECRETARY: Thank you.

20 MR. GARTLAND: Thank you very much. I'll be brief. I  
21 know I have five minutes, but I want to make sure that I get a  
22 couple of points on the record that we brought out last time, I  
23 believe, at the last meeting. Jeff Vincent had read a letter  
24 to you, with Forest Lakes Water Company, Forest Lakes Club. I  
25 believe that was written into evidence. What I wanted to bring

1 up, though, is a couple of points that are expanding on it.

2 First off, I want to thank the Board for the time.

3           Secondly, I want to thank you and commend you for  
4 doing a pretty thorough job on this. You've got some very,  
5 very good salient points and I want to expand on a few of them.  
6 Mr. Golden, we talked a little bit about some of the concerns  
7 you had relative to storage and things of this nature. I have  
8 the same concerns: glycol, antifreeze, oils, solvents, greases.  
9 Things like that will be used at this particular facility.  
10 Concerned about how this is going to be stored, how it's going  
11 to be used, whether this stuff will get into the aquifer  
12 itself.

13           Forest Lakes Water Company is a pretty pristine water  
14 facility, one of probably the best I've seen across the  
15 country. That's why I've been the chairman for over 25 years  
16 and I don't think we want to take the chance, you know.

17           And the history is rife with, you know, environmental  
18 accidents. I don't need to cite, you know, what went on in the  
19 Gulf with BP and I don't want to equate that to this, but I  
20 want to make sure that you people understand that it's not  
21 worth the risk to do this. A gallon of glycol can contaminate  
22 my whole aquifer and that can happen very easily. You have to  
23 store this stuff on site until it's pumped out in the tanks  
24 that they referred to, the reuse and recycle facilities.

25           So any kind of potential contamination could occur.

1 I'm not sure of the refuse that's going to be here, what it's  
2 made of, what may happen, some of the runoff in the trucks, the  
3 wheels, those kinds of things.

4           When I was on the Environmental Commission, we had  
5 commissioned Mr. John Robinson, who was a hydrogeologist, to  
6 check on various pollutants and how they migrate through the  
7 soil. His findings were that pollutants, like organics, can  
8 migrate about 10 to 20 inches a year through the soil of that  
9 particular area. You did get that? Can my --

10           BOARD MEMBER MELFI: Just want to make sure it's not  
11 one of your homes before, and then I'll turn --

12           MR. GARTLAND: That's quite all right.

13           BOARD MEMBER MELFI: -- it off.

14           MR. GARTLAND: Could I have just 30 seconds?

15           CHAIRPERSON O'CONNELL: Your clock stopped. Don't  
16 worry.

17           MR. GARTLAND: Thanks.

18           UNIDENTIFIED MALE: Yes, actually, I live in the  
19 Borough.

20           BOARD MEMBER MELFI: All safe.

21           MR. GARTLAND: Good. Okay. So basically, what had  
22 happened there was that he had determined that pollutants can  
23 move 10 to 20 inches per year. This area, some of these areas,  
24 the wetlands that are located close to them are actually the  
25 tip of the aquifer, Forest Lakes Water Company, all right? So

1 contamination to some of these wetland areas from runoff can  
2 potentially damage the constituents' water. I'm very concerned  
3 about that.

4           The wellhead protection group of the DEP is very  
5 concerned about the water in the State of New Jersey.  
6 Obviously, they're pretty much commissioned to protect that.  
7 They have done work and established Tier 1, Tier 2, Tier 3 --  
8 I'm sure you're familiar with this, Mr. Golden -- relative to  
9 protection around the wellhead. The radius of Tier 1 is 1,500  
10 feet.

11           What that means is that Tier 1 pollution or any  
12 pollution sources within 1,500 feet -- Tier 1 means you can't  
13 allow any kind of building at all, any kind of activity. This  
14 is within 800 feet. I don't know that anything would occur,  
15 but I heard something tonight about a five-year plan. Why take  
16 that chance? Why even go down that road? We've got things  
17 that could potentially cause harm that I can't get out of the  
18 water in a quick period of time and can actually do damage  
19 before I even know they're there.

20           So I want you guys, please, to go cautiously on this  
21 thing. I've presented a lot of good points on concerns. I  
22 have the same kind of concerns that relate more to the water  
23 end of this thing, but I also have the same kind of concerns as  
24 a citizen, relative to the noise that may occur, the odor that  
25 may occur, the site situation, and the use of this property,

1 which is not a good use, in my mind. So I tried to stay within  
2 my five minutes. If you have questions, I will answer any of  
3 them.

4 CHAIRPERSON O'CONNELL: Thank you, sir.

5 MR. GARTLAND: You're welcome.

6 CHAIRPERSON O'CONNELL: Anyone else? Yes.

7 MS. TURCO MAGLIO: Thank you. Jeryl Turco Maglio. I  
8 just wanted to complete my testimony from last time because I  
9 had a few minutes. I only have a couple minutes more. I just  
10 want to point out that in April of 2010, in disregard of the  
11 Andover Town Planning and Zoning Codes, that this Sussex and  
12 Warren was -- Fred Fiasseler of Sussex and Warren was cited for  
13 operating a trucking company that hauled municipal waste from  
14 New York City, bringing illegal fill on this property --

15 CHAIRPERSON O'CONNELL: Excuse me.

16 MS. TURCO MAGLIO: -- violating five ordinances.

17 CHAIRPERSON O'CONNELL: I think we better swear you in  
18 also, because --

19 BOARD SECRETARY: Yes.

20 CHAIRPERSON O'CONNELL: -- you're giving testimony,  
21 not asking questions.

22 MS. TURCO MAGLIO: Okay, fine.

23 CHAIRPERSON O'CONNELL: So if you would, Mr. Hanifan.

24 MR. HANIFAN: Please raise your right hand.

25 J E R Y L T U R C O M A G L I O, MEMBER OF THE PUBLIC,

1 SWORN.

2 CHAIRPERSON O'CONNELL: Name?

3 MR. HANIFAN: Please state your name for the record.

4 MS. TURCO MAGLIO: The name? Jeryl Turco Maglio.

5 MR. HANIFAN: Thank you.

6 MS. TURCO MAGLIO: So I just wanted to point out that,  
7 that violated five ordinances. That included placing fill on  
8 property without site plan review and approval, failure to  
9 obtain a zoning permit for non-conforming use, failure to  
10 obtain a zoning permit prior to occupying a building, failure  
11 to obtain a certificate of occupancy prior to occupying a  
12 vacant building.

13 And this demonstrates a lack of respect for the  
14 authority of promulgating these laws, as well as a lack of  
15 concern for the welfare of the people and environment, whose  
16 interests these regulations were promulgated to protect. And  
17 having been caught and fined, now, they come before the Board  
18 to legitimize what is clearly contrary to planning and zoning,  
19 as well as inconsistent with the master plan in Andover  
20 Township.

21 It's also obviously incompatible with the existing  
22 uses, potentially damaging the environment, a threat to the  
23 aquifers, an eyesore in an otherwise residential community that  
24 enjoys a stunning, beautiful, and diverse natural setting. A  
25 second element that appears to be missing from the plan,

1 especially from the environmental, has to do with the  
2 consideration of the wetlands. I'm familiar with over 700  
3 acres of land being developed up here and have never seen the  
4 wetlands ignored.

5 This site has a significant wetlands, along with a  
6 pond, a small tributary, woodlands. And I've heard no  
7 discussion of the impact of garbage, trucking, odors, noise,  
8 leach -- PCBs, and other hazardous substances on the habitats  
9 in the wetlands. And I just point out that I sat through  
10 another application where 57 acres in Andover Township, same  
11 plan, same engineer, you know, indicated that only two homes  
12 could be built because of the wetlands considerations.

13 And then the last couple comments was what I didn't  
14 finish last time, just simply a couple things regarding the  
15 Andover plan. The -- where I left off had to do with the --  
16 where industrial uses are permitted. And there were three  
17 areas where this kind of use would be industrial, not  
18 necessarily garbage, hide the Hyper Humus bogs in the northern  
19 part of the Township. There are 600 acres in the Valley off  
20 Brighton Road, along the Andover boundary. And then the  
21 Limecrest area is also expanded to permit industrial uses. The  
22 State plan encourages industrial uses to be organized in a  
23 compact form and located in centers.

24 To deviate from this sound planning principle and  
25 locate an industrial use, which is strictly prohibited in a

1 planned commercial zone, contiguous to a substantial  
2 residential community, does not appear to be prudent. The  
3 critical planning has been developed over decades, from the  
4 State, county, local officials with professional and  
5 consideration for the benefits to the community, residents,  
6 environment, while balancing growth, traffic, quality of life,  
7 and other important factors.

8           It should not be disregarded in order to accommodate  
9 an application which has not demonstrated its compliance with  
10 any of the significant elements that effect local, regional, or  
11 state planning. The plan also addressed economic development,  
12 which, you know, I can repeat those.

13           There's one thing I want to point out, that in terms  
14 of design in the Andover Township amendment to the master plan,  
15 it does say community design should ensure that new development  
16 is visually and functionally compatible with the physical  
17 character of the Township to improve the visual and physical  
18 appearance of developed areas, while protecting residential  
19 neighborhoods from encroachment by incompatible uses, to  
20 establish land uses policies and standards that will enhance  
21 views along commercial corridors. And I don't think that this  
22 complies with any of those criteria.

23           And then my last sentence is simply, ultimately,  
24 whether we live here, work here, play here, or invest here, it  
25 must be our mutual goal to preserve the beauty of Andover. And

1 as the largest employer in the County, we are dedicated to  
2 promoting jobs and in economic development, while still  
3 protecting the environment, and maintaining planning and  
4 political integrity of this outstanding community.

5 CHAIRPERSON O'CONNELL: Okay, thank you. Yes, sir.  
6 Might as well just swear you in, right from the beginning.

7 MR. BRYANT: No, no, you don't need to.

8 CHAIRPERSON O'CONNELL: What?

9 MR. BRYANT: No, it's just some things I'd like to  
10 submit to the Board. By the way, thank you for your service,  
11 those of you that are volunteers. My name is Lieutenant  
12 Colonel Bill Bryant, U.S. Army, retired. I live at 6 Crescent  
13 Drive South, Forest Lakes.

14 BOARD SECRETARY: Bill Bryant, B-r-y-a-n-t?

15 MR. BRYANT: B-r-y-a-n-t, correct. Thank you. Okay.  
16 There are obviously going to be waste here, generated, both  
17 hazardous and non-hazardous. But I'm just going to read a  
18 short list of the things that need to be considered. There are  
19 going to be absorbents, antifreeze, batteries, brake and  
20 carburetor cleaners, brake fluid, engine and vehicle cleaning  
21 wash water, floor-cleaning wash water, fluorescent lamps, hot  
22 tank solutions, oils, oil filters, paint, parts washers,  
23 refrigerants, shop towels, solvents, spray cans, storage tanks,  
24 sump sludge, tires, transmission filters, and transmission  
25 fluid.

1 All of these, we need to consider, related to our  
2 aquifer. They are all potential risks for contamination. Last  
3 out, that is from the Georgia Tech Research Institute. I'll  
4 submit that to the Board. And also, I have here a document  
5 from the New Jersey Green Automotive Repair program that  
6 highlights similar recommendations and have numerous links on  
7 their website related to contamination of drinking water and  
8 how to prevent that. Any questions? Thank you.

9 CHAIRPERSON O'CONNELL: I'm going to mark these as  
10 Objector.

11 BOARD SECRETARY: Objector 1, Objector 2?

12 CHAIRPERSON O'CONNELL: Yeah, go ahead and mark them  
13 with Bryant 1, Bryant Objector 1.

14 (Objector's Exhibit No. 1 was marked for  
15 identification.)

16 BOARD ASSISTANT: Okay, come up here. Hi.

17 MR. VINCENT: Hi, my name is Jeff Vincent. I'm the  
18 chairman of the Forest Lakes Club. And I'm just here to -- I  
19 don't have any real facts, but I do have a couple of things to  
20 say about -- I represent the over 400 families that are located  
21 in Forest Lakes. And almost unanimously, they are vehemently  
22 opposed to this use variance and having a garbage truck repair  
23 depot at the entrance to beautiful Forest Lakes.

24 It's also across from a nursery school. And I was a  
25 little more upset tonight, when I heard the possibility that

1 the trucks could actually enter this site from Forest Lakes  
2 Drive, which would be totally --

3 MR. SELVAGGI: If I can, that's not the proposal.

4 MR. VINCENT: Well, I heard it mentioned and I just  
5 want to say that --

6 CHAIRPERSON O'CONNELL: That --

7 MR. VINCENT: -- that would be a very dangerous --

8 MR. SELVAGGI: That's not the proposal.

9 MR. VINCENT: Okay, then that's off. Then I'll take  
10 it off it. For all the reasons that the people in Forest Lakes  
11 oppose this, for all that we've talked about before, the noise,  
12 the smell, the pollution, the possible water contamination, the  
13 traffic, and basically what all mixed in when you have this as  
14 an entranceway to a community like ours, the lowering of the  
15 value of the homes.

16 And one other question I do have, too, is how will a  
17 lot of this be monitored? How do we know that they're -- they  
18 talk about 11 tractor trailers going in there every day. Who  
19 monitors this? Is this done by Andover Board? Is this -- how  
20 do we control this during this? Say, in the first two years,  
21 it doubles the amount of trucks. How does that happen and  
22 what, you know, do you do about that? Anyway, those are the  
23 statements that I really wanted to make, but just to go on  
24 record, as the community is very much against it and it will  
25 not be a good thing. Thank you very much.

1 CHAIRPERSON O'CONNELL: Thank you. Anyone else? Yes,  
2 sir.

3 MR. HOPKINS: My name is Carl Hopkins, 7476 Forest  
4 Lake Drive in Andover Township. Unfortunately, my property is  
5 adjacent to the property in question. A major problem that I  
6 have is, with the high taxes, as the way they are these days,  
7 and the lowering of property values, as they are, how is this  
8 going to help or hinder us with the valuation since my property  
9 is only a few hundred feet from where this facility actually  
10 is?

11 I'd like to ask the Board members and the attorney  
12 representing the Applicant how they would like it if this type  
13 of facility was located on the corner from where they live. I  
14 don't like it a damn bit. Thank you.

15 CHAIRPERSON O'CONNELL: Thank you. Yes, sir.

16 MR. GONZALEZ: Hi, thanks for giving me the  
17 opportunity to speak tonight.

18 CHAIRPERSON O'CONNELL: Mm-hmm.

19 MR. GONZALEZ: Adrian Gonzalez, 22 Sherwood Forest  
20 Drive, Forest Lakes. I actually just wanted to further Charlie  
21 Gartland's point about the wellhead protection area. I  
22 actually have a map of our wellhead protection area I'd like to  
23 submit from the DEP website.

24 CHAIRPERSON O'CONNELL: Okay. I'll mark this Gonzalez  
25 Objector 2.

1 (Objector's Exhibit No. 2 was marked for  
2 identification.)

3 MR. GONZALEZ: And you'll notice on the map that a  
4 majority of the -- a good portion of the property is within the  
5 two-year ring for our wellhead protection area. And the  
6 majority of the property is within the wellhead protection area  
7 itself. And I just read a little bit about what the wellhead  
8 protection area, what the State's guidelines, are for  
9 protecting that area. And some of the things in the document  
10 from the DEP -- they list some of the major contributors to the  
11 pollutants that we see in wellhead protection areas.

12 And from the DEP's documentation, it includes  
13 underground storage tanks, septic systems, surface fills,  
14 leaking drums, and above-ground storage tanks, which we talked  
15 about, you know, may be present on the property. And I'd also  
16 like to just read one of the statements from the guidelines.  
17 It is hope that the preventative and voluntary nature of the  
18 wellhead protection program will encourage cooperative efforts  
19 at the county and municipal government levels to protect an  
20 essential and shared public resource, the underground water  
21 supply.

22 The delineation of wellhead protection areas will help  
23 communities understand the nature of their groundwater  
24 resources and provide protection for their drinking water  
25 supply. Geographic targeting through wellhead protection area

1 delineations enables decision makers to designate drinking  
2 water sources within wellhead protection areas as a priority  
3 for groundwater protection efforts.

4           So I just hope that you guys consider, you know, what  
5 the real meaning of what that wellhead protection area is, and  
6 what the State has given you for guidelines on how you make  
7 land use decisions that affect things in that area. Thank you.

8           CHAIRPERSON O'CONNELL: All right. You're welcome.  
9 Thank you. Anyone else? Yes.

10           MS. WIDMER: Thank you, too, for looking at this. My  
11 name is Beverly Widmer and I'm a resident of Forest Lakes.  
12 I've lived there for 18 years, almost, and I live on Roseville  
13 Road, which is all the way over on the other side from this  
14 particular area. And I am very concerned about what this will  
15 do to our community, to the children in our community, to our  
16 drinking water.

17           We have wonderful drinking water and I just ask, will  
18 you please take that into consideration? This is our water.  
19 It could be maybe your children's water. And if you decide to  
20 let it in our wonderful community, please take it into  
21 consideration. We want to keep it clean. I thank you.

22           CHAIRPERSON O'CONNELL: Thank you. Anyone else? Yes,  
23 sir.

24           MR. DESANTIS: Hi, Gary DeSantis at 19 Woodlawn Drive,  
25 Andover. I'm about two streets above the facility, looking out

1 over the -- up from where I live, you can actually see down  
2 onto 206, practically when the trees' leaves are down. I'm an  
3 architect. I'm not prepared to bring up any issues or anything  
4 at this time, but I would like to speak as a resident,  
5 moreover. Architecturally, I'm very concerned.

6 I've done a lot of homes in the area for many years.  
7 I've lived in this location, built and designed it myself. 37  
8 years, I've been here now. We all love this community. We  
9 want it to be a good place to live and I'm near retirement.  
10 I'm retired, semi-retired, at this point, and look to sell my  
11 home in the next few years, and I'm concerned that this type of  
12 a facility at my front door, at the entrance of our beautiful  
13 Forest Lakes will denigrate the appearance of our neighborhood,  
14 and when we go to sell, anybody that comes in, that knows that  
15 that's there, won't want to even attempt to give you an offer  
16 on your home.

17 Our houses are reduced in value so much over the last  
18 period of time. And I think that's one of the things that we  
19 need to know, what's happening with our facility here. I'm  
20 concerned that the value will absolutely skyrocket to the  
21 bottom and we won't even be able to sell it. So I'm just  
22 mentioning it to you as a homeowner, that we really, really  
23 love our community, and we hope that the Board will not grant  
24 this variance, and have another type of use on that property in  
25 the future that would enhance Forest Lakes.

1           So just from a professional standpoint, as an  
2 architect, I think it really, really does not improve our area,  
3 where we live, and I appreciate your not approving it. Thank  
4 you.

5           CHAIRPERSON O'CONNELL: Thank you. Anyone else from  
6 the public at this point? Yes.

7           MS. GRIFFITH: Aline Griffith. And I was able to  
8 speak last week, but I just feel that the five-year situation,  
9 besides being irregular, also invites the idea of get in, do  
10 some stuff, and get out. It's not conducive to, this is my  
11 community, and I'm going to be here, and I'm going to build  
12 things better. And unfortunately, that's the way tenants often  
13 treat their homes. Thank you.

14          CHAIRPERSON O'CONNELL: Well, if you would, what was  
15 your address, for the record?

16          MS. GRIFFITH: 220 Old Stage Coach, Andover.

17          CHAIRPERSON O'CONNELL: Okay, thank you.

18          MS. GRIFFITH: Thanks.

19          CHAIRPERSON O'CONNELL: Anyone else? Okay, then, at  
20 this point, I'd like to bring it back to the Board.

21          MR. HANIFAN: Yes, the Board has a decision to make  
22 tonight with regards to this use variance or "D" variance, as  
23 it's called. No variance or other relief may be granted under  
24 the terms of this section, including the variance relief  
25 involving inherently beneficial use, without showing that such

1 a variance or the relief that can be granted without  
2 substantial detriment to the public good, and not without  
3 substantially impairing the intent or purpose of the zone  
4 planner, zoning ordinances, and also the master plan.

5 We add that in there, but that's not part of the  
6 actual statute. But we always mention the master planning  
7 because it comes up later. What the Board has to do is find  
8 the positive balance and the positive versus the negative  
9 criteria, that they've been met. And to be more specific, it's  
10 the Applicant's obligation to meet the negative criteria, just  
11 as it is to meet the positive criteria, okay?

12 And you have to determine whether the use would be  
13 unreasonable in the particular environment as a possibility.  
14 And remember that it's the quality of the proof that was put in  
15 front of you, not the quantity of proof. We've had many  
16 hearings, which have to determine the quality of the proof, not  
17 just the quantity of the proof. The vote would have to have at  
18 least five affirmative out of seven voting members to pass  
19 this.

20 Being that you heard the positive criteria described  
21 by the planner for the Applicant and you heard the negative  
22 criteria being met by the Applicant. But it is your sole  
23 purpose to determine what you believe to be meets these levels  
24 and that you can understand, and articulate them for us on the  
25 record. Now, a Board can act, and just do a straight vote

1 without giving its reasons, and that is per se valid. You have  
2 to give what you're thinking, because unfortunately, the  
3 machine doesn't read your mind. It only listens to your voice.

4 So what we're going to do is have you, as a member,  
5 starting from my right to the left, please describe your  
6 thought process as it relates to this matter and then the  
7 Chairman can call for a vote on the use variances as a  
8 bifurcated application, which does not, however, address issues  
9 of site plan, which we did address indirectly for a numerous  
10 amount of time.

11 Now, with that being said, since Mr. Messerschmidt is  
12 standing up and volunteering, he can go first. Mr.  
13 Messerschmidt, for the Board's benefit and for the Applicant's  
14 benefit, what are your thought processes with regards to  
15 positive criteria, negative criteria?

16 BOARD MEMBER MESSERSCHMIDT: Okay, from a positive  
17 criteria standpoint, I'm not sure that the five items that were  
18 posited for the positive criteria have been met or are truly  
19 substantial positive criteria. Specifically, that the access  
20 directly from Route 206 -- that access is actually Andover  
21 Borough property, not Andover Township property. Encouraging  
22 the free flow of traffic -- I'm not quite sure how that affects  
23 -- how this would affect the free flow of traffic, as the flow  
24 of traffic is now.

25 So I'm not sure that, that, really, is a positive

1 criteria. More efficient use of the land -- there really  
2 hasn't been any use of the land in quite a long time, so I'm  
3 not so sure that this is a more efficient use of the land.  
4 It's just a different use of the land than the current zone of  
5 planned commercial development. As far as the negative  
6 criteria, I think you have met most, if not all, of the burden  
7 on the negative criteria.

8           Actually, I have my concerns about, you know, the  
9 residents that live around this particular piece of property,  
10 and how it could affect their land values, and their quality of  
11 life. So I have to weigh that along with the good that this  
12 will bring to the Township.

13           MR. HANIFAN: Mr. Bensley?

14           BOARD MEMBER BENSLEY: Yes. Yeah, listening to the  
15 Applicant, the positives would be the cleaning up of the site,  
16 making it more of a viable piece of property. Negatives would  
17 be, possibly the odors, the running of trucks, and would it or  
18 would it not have any affects on the property values. That's  
19 about it.

20           MR. HANIFAN: Okay. Ms. Pattison?

21           BOARD MEMBER PATTISON: I've tried to listen very  
22 carefully to all the residents of Forest Lakes, and I think we  
23 all have that concern when something's going to be in our  
24 backyard, and we don't like it. We've had that happen where I  
25 live. I've been here for 50, 60 years now, or more. And you

1 know, Andover has changed a lot. And sometimes we have to  
2 accept certain things and sometimes they turn out not to be as  
3 bad as we think they are going to be.

4 I did visit that property and I think it is a mess.  
5 And you've been living -- it's all hidden by all the shrubbery,  
6 I mean, all the weeds and whatnot that are around there. And  
7 that would be -- my positive would be that this piece of  
8 property would be cleaned up. I am glad to hear that they were  
9 offering only a five-year application. In that five years, I  
10 realize that all the terrible things that might happen could  
11 happen, but they could happen anywhere. There's gas stations  
12 all over, you know, and I think we sometimes have to live with  
13 some of those things.

14 So I think on the positive, for what it does for that  
15 piece of property, and since it's been left so vacant for so  
16 long, and made such a mess -- and I can't say that the entrance  
17 to that place is exactly a beauty, even if it is in the  
18 Borough. So that would be my feeling I have. I have to weigh  
19 both the positive and the negative, and I'd probably go with  
20 more of the positive.

21 MR. HANIFAN: Mr. Melfi?

22 BOARD MEMBER MELFI: Yes, just to add on to some of  
23 the points that were made previously by the other Board members  
24 here, obviously, understanding the dynamics of the property,  
25 the way they remain vacant. And it is an eyesore, as it's left

1 unattended to. There is a need for some improvement. And  
2 eventually, as things develop, this was an opportunity to start  
3 the five-year lease.

4           There's an interesting point that was brought up to  
5 the Board and this allows a temporary use for a business to  
6 come in, to do some business, to get the area cleaned up, and  
7 then it would go away. It is a planned commercial development  
8 zone. We understand that, at this time, they're continuing the  
9 rail ties out to Andover Township on the back side, on  
10 Roseville Road, which I believe one of the residents here lives  
11 back in that area, where there could possibly be a transit  
12 station.

13           And this planned commercial development zone could be  
14 affected by that and that's a good thing. But listening to the  
15 residents, I would think that, if that was to happen, I'm sure  
16 we'd have just as many residents coming in and saying please  
17 don't allow this in our backyard. It's going to cause traffic.  
18 There's going to be cars coming in and out. There's going to  
19 be, you know, commercial business on this property that we may  
20 not want next door, our neighborhood of Forest Lakes. So that  
21 has to be looked at.

22           I do sit on the Economic Development Committee. It is  
23 important that we look at businesses for what their value is to  
24 the community, and what they can do for our Township, and for  
25 our area. I believe, at one point before the change of zoning,

1 that the building was used for a similar-type operation. And  
2 it was there at the same time the Forest Lakes homes were. So  
3 that was another consideration that I have to think about.

4 MR. HANIFAN: Okay, Ms. Kretzmer?

5 BOARD MEMBER KRETZMER: All right. I also agree with  
6 CeCe, Ben and Paul and Rick, about the fact that cleaning up  
7 the site would be a very good positive, especially since  
8 there's a category one stream, and waterway, and I think  
9 there's Forest Lakes' wellhead protection area, and everything  
10 else, especially to the fact, to the extent, that they're going  
11 to clean up the property.

12 They're going to remove the abandoned tanks that are  
13 on the property, and the equipment, and the office trailer  
14 thing that's by the roadway, which in my opinion it definitely,  
15 definitely needs to be done, and the fact that a business would  
16 be coming in there, I think, would also help the fact that if  
17 -- I also have been there and I've noticed that children, or  
18 teenagers, or kids, or something seem to be hanging out there,  
19 and they're spray-painting, and they're just destroying the  
20 building, which is, I guess, kind of a negative.

21 But I mean, the positive definitely would be that the  
22 property would get cleaned up. And it is horrible there and it  
23 is a severe eyesore. One of the negatives would be the fact  
24 that it is so close to Forest Lakes' water supply and the fact  
25 that the category one -- so I think there's, like, some issues

1 that would have to be really thought about there.

2 MR. HANIFAN: Should I save you for last, Chairman?

3 CHAIRPERSON O'CONNELL: Whatever's your desire.

4 MR. HANIFAN: Okay. Mr. Huelbig?

5 BOARD MEMBER HUELBIG: Okay, well, one of my concerns  
6 is, there is an owner of the property now. And when I looked  
7 at the property and I walked the property, I was pretty  
8 disappointed at the state that it was kept in for this amount  
9 of time. And you know, that sort of, like, created a feeling  
10 with me about, you know, like, why do we -- you know, to get  
11 the property cleaned up, we're going to accept something that's  
12 basically the same use that it was.

13 And I really don't think it meets the criteria, why  
14 you give a variance, to make it a more beneficial use. You  
15 know, like we're going to -- you know, the zoning is for  
16 something else, and now we're going to let it stay as what it  
17 was? And like I say, I just don't think that -- that overall  
18 just tainted how I felt about this project, just seeing the  
19 shape that it was in. And now, you have a tenant come in that  
20 was brought up by that young lady out there about, you know, my  
21 mother owned a three-family house. What a nightmare when you  
22 had a tenant, a couple-year lease, and what you can go through  
23 when people know they're only going to be there two years or  
24 whatever. So, that also tempers how I feel about it. Plus,  
25 the idea of walking and the wetlands being so close to the

1 facility, you know, and knowing the damage that antifreeze, and  
2 oil, and stuff like that can cause. It just makes me very  
3 concerned about the placement of that there. That's my --

4 MR. HANIFAN: Ms. Howell?

5 BOARD MEMBER HOWELL: Well, initially, I also walked  
6 the property, and I, in my opinion, felt it was a dump, and I  
7 felt that the Applicant coming in and being required to clean  
8 up the property would be a great benefit for everybody  
9 involved.

10 However, probably listening to the last lady who stood  
11 up and just said the five-year lease is a five-year, I don't  
12 know, license, and I know it wouldn't necessarily be that, but  
13 I have a hard time now deciding whether or not this is  
14 beneficial to the community. But having said that, it is  
15 already in a commercial area. I mean, it fronts Route 206.  
16 It's got commercial, too, across the street from it. It's got  
17 commercial all the way up the left of it, almost all the way  
18 into Byram. And so I'm torn. That's about the best I can put  
19 it.

20 MR. HANIFAN: Although, Mr. Roberts, you can't vote as  
21 an alternate, what is your opinion?

22 BOARD MEMBER ROBERTS: I have the same concerns as the  
23 other members about the water. That seems to be the main thing  
24 that I worry about in the negative. The only positive thing  
25 I've said is that the storm measure, and the engineer following

1 up on the DEP and stuff seems to be enough to control something  
2 like that, but accidents do happen. So my positive is cleaning  
3 up the site. My negative is the water.

4 MR. HANIFAN: Okay. Mr. Chairman?

5 CHAIRPERSON O'CONNELL: I feel, as many of the Board  
6 members have spoken and brought up many valid and good points,  
7 but I have been much closer to this piece of property over the  
8 past 20 years, having worked with the original applicants and  
9 owners then, and developing the PCD ordinance, which was  
10 supposed to make this piece of property a showcase and an  
11 entrance way into Andover Township, as well as control and take  
12 in consideration the neighbors and the community there, as well  
13 as the ensuing litigation that occurred with the Township, with  
14 the Applicant again, when they wanted to put in an industrial  
15 use again, where the Township was upheld with the PCD  
16 ordinance, that there was no industrial use there. Those are  
17 my feelings at this point.

18 MR. HANIFAN: Okay.

19 CHAIRPERSON O'CONNELL: So on that note then, since  
20 we've all articulated our position, and positive and negative  
21 criteria, I guess we should entertain a motion. I guess it'll  
22 be a motion to grant the variance with the conditions. To have  
23 a motion to grant it, pass, we need five yes votes, in that  
24 case, out of the seven members that can vote on this. So  
25 somebody want to make the motion? You --

1 BOARD MEMBER PATTISON: All right. I'll make the  
2 motion, because we have to have the motion in order to vote, so  
3 --

4 CHAIRPERSON O'CONNELL: Right.

5 BOARD MEMBER HUELBIG: I'll second that.

6 CHAIRPERSON O'CONNELL: And do we have a second now?

7 BOARD MEMBER HUELBIG: I'll second it.

8 CHAIRPERSON O'CONNELL: Okay. Can we call the roll,  
9 please?

10 BOARD SECRETARY: So the motion is to grant the  
11 variance with conditions?

12 CHAIRPERSON O'CONNELL: Correct.

13 BOARD MEMBER PATTISON: Right.

14 BOARD SECRETARY: Ms. Howell.

15 BOARD MEMBER HOWELL: Yes.

16 BOARD SECRETARY: Mr. Huelbig.

17 BOARD MEMBER HUELBIG: No.

18 BOARD SECRETARY: Ms. Kretzmer.

19 BOARD MEMBER KRETZMER: No.

20 BOARD SECRETARY: Mr. Melfi.

21 BOARD MEMBER MELFI: Yes.

22 BOARD SECRETARY: Ms. Pattison.

23 BOARD MEMBER PATTISON: Yes.

24 BOARD SECRETARY: Chair O'Connell.

25 CHAIRPERSON O'CONNELL: No.

1 BOARD SECRETARY: We have three nos and three yeses,  
2 so who's missing? Who did I miss? Mr. Bensley.

3 BOARD MEMBER BENSLEY: I'm going to say no.

4 CHAIRPERSON O'CONNELL: So the motion does not carry.

5 MR. HANIFAN: The motion didn't carry.

6 MR. SELVAGGI: Thank you.

7 MR. HANIFAN: Counsel --

8 CHAIRPERSON O'CONNELL: All right. Now, back to the  
9 agenda, the upcoming meetings -- there will be a special --

10 (Extended pause.)

11 BOARD SECRETARY: We're still on record. We're not --  
12 we didn't write --

13 CHAIRPERSON O'CONNELL: Yeah, no, we're still on the  
14 record. There's no break.

15 BOARD SECRETARY: Okay.

16 (Extended pause.)

17 CHAIRPERSON O'CONNELL: We're still on the record,  
18 folks. The upcoming meetings -- there's going to be a special  
19 meeting on March 9th for Cambridge Pavers. The regular  
20 meetings coming up are March 15th and April 5th, 2011. Now, at  
21 this time, I'd like to open it up to the public again for any  
22 items that have not been discussed. Anyone from the public?  
23 Let the record show no one from the public wanted to speak.  
24 Okay. Folks, can we have a motion on the vouchers, then?

25 UNIDENTIFIED MALE: I'll make a motion.

1 BOARD MEMBER MESSERSCHMIDT: I'll make a motion.

2 BOARD MEMBER HOWELL: I'll second.

3 UNIDENTIFIED MALE: I'll second. Well --

4 CHAIRPERSON O'CONNELL: Okay.

5 UNIDENTIFIED FEMALE: The 9th is a Wednesday.

6 BOARD SECRETARY: Wait a minute. Who's first? Who

7 made the motion first? Paul?

8 UNIDENTIFIED FEMALE: Paul did.

9 BOARD MEMBER MESSERSCHMIDT: I did.

10 UNIDENTIFIED MALE: That's --

11 BOARD SECRETARY: Another time --

12 BOARD MEMBER MESSERSCHMIDT: The guy standing.

13 BOARD SECRETARY: And who did the second, Howell?

14 UNIDENTIFIED MALE: Ken.

15 BOARD MEMBER HOWELL: Or Ken, either one.

16 BOARD SECRETARY: Okay. Ken.

17 BOARD MEMBER ROBERTS: It doesn't matter.

18 BOARD MEMBER HOWELL: It was a tie.

19 BOARD SECRETARY: We'll give Ken this one because he

20 doesn't -- okay. Taking the roll call?

21 CHAIRPERSON O'CONNELL: Yes, please.

22 BOARD SECRETARY: Ms. Boyce.

23 BOARD MEMBER BOYCE: Yes.

24 BOARD SECRETARY: Ms. Howell.

25 BOARD MEMBER HOWELL: Yes.

1 BOARD SECRETARY: Mr. Huelbig.

2 BOARD MEMBER HUELBIG: Yes.

3 BOARD SECRETARY: Mr. Melfi.

4 BOARD MEMBER MELFI: Yes.

5 BOARD SECRETARY: Ms. Kretzmer.

6 BOARD MEMBER KRETZMER: Yes.

7 BOARD SECRETARY: Ms. Pattison.

8 BOARD MEMBER PATTISON: Yes.

9 BOARD SECRETARY: Mr. Bensley.

10 BOARD MEMBER BENSLEY: Yes.

11 BOARD SECRETARY: Mr. Messerschmidt.

12 BOARD MEMBER MESSERSCHMIDT: Here. I mean, yes.

13 BOARD SECRETARY: Mr. Roberts.

14 BOARD MEMBER ROBERTS: Here, yes.

15 BOARD SECRETARY: Chairman O'Connell.

16 CHAIRPERSON O'CONNELL: Yes. Okay. Now, old and new

17 business -- anything have -- anybody have anything to bring up?

18 UNIDENTIFIED MALE: I do, Mr. Chairman.

19 CHAIRPERSON O'CONNELL: Okay.

20 UNIDENTIFIED MALE: I have one thing. Tonight, you

21 have a copy of a draft, a document which is a combined

22 re-examination report, although it's an abbreviated re-exam

23 report, and a master plan, or I should say, an amendment to the

24 land use element of the master plan, which would establish the

25 basis for the change in the industrial zones, certain

1 industrial zones, to create this new hybrid, a  
2 commercial/industrial zone. The ordinance, right, was prepared  
3 and discussed a while back.

4 Obviously, it should wait until and unless you decide  
5 that this is an appropriate measure. But anyway, this, we've  
6 talked about a little bit over the past couple of months. The  
7 draft you have in front of you will be discussed after the  
8 notice has been given or will be given for a public hearing on  
9 March 15th, for this is to amend the master plan.

10 Obviously, what you have in front of you is just a  
11 working draft at this time and it's subject to some change if  
12 you have a desire to change it. And we'll go from there. But  
13 there will be a public hearing that night, as far as -- unless  
14 you decide otherwise, Mr. Chairman.

15 CHAIRPERSON O'CONNELL: No, are we intending to have  
16 the hearing on that night? I was going to mention that and  
17 thank you for bringing it up. So everyone, please, read it.  
18 Formulate any questions, any ideas. Bring them to the table  
19 for the 15th, please. Anyone else?

20 UNIDENTIFIED MALE: If I could, when do you think it's  
21 worth discussing the site plan waiver process? Leave it for  
22 next meeting?

23 BOARD SECRETARY: It hasn't been brought to the Board,  
24 although I haven't given them anything, but if you feel that  
25 you --

1 UNIDENTIFIED MALE: I do.

2 BOARD SECRETARY: -- need clarification from them --

3 UNIDENTIFIED MALE: Well, until it's a proposal, we  
4 don't need to do anything, really.

5 BOARD SECRETARY: Yeah, I mean, I was just given a  
6 copy from -- you're talking about with Jim --

7 UNIDENTIFIED MALE: Yeah, if I could, just so the  
8 Board's aware, I received a correspondence from the Town  
9 building inspector, building construction official, to modify  
10 the site plan waiver rules. That's as much as, really, we'd  
11 want to talk about. I just wanted to make the Board aware  
12 there is some -- well, I'm not exactly sure what to do with it.  
13 But it was sent to me for comment and I recommended -- I think,  
14 Mr. Chairman, I might have sent you an e-mail, stating that --

15 CHAIRPERSON O'CONNELL: I think that was a mistake.

16 UNIDENTIFIED MALE: The recommendation I had had is  
17 that we meet with the administrator to discuss it in advance of  
18 coming to the Board.

19 CHAIRPERSON O'CONNELL: Okay, then let me check the  
20 e-mail and we'll set up a meeting. So I guess it would be  
21 yourself, Linda, myself, the administrator, and Mr. Cutler,  
22 too?

23 UNIDENTIFIED MALE: Yeah, I don't think I actually had  
24 -- I mean, did I send you that e-mail or not? I'm not sure.

25 BOARD SECRETARY: Yeah.

1 UNIDENTIFIED MALE: I didn't -- I thought I copied,  
2 but I didn't invite you.

3 BOARD SECRETARY: We spoke of it. You didn't send it  
4 to me.

5 CHAIRPERSON O'CONNELL: Okay. Well --

6 UNIDENTIFIED MALE: You did invite -- you're out of  
7 the party.

8 CHAIRPERSON O'CONNELL: Well, why don't we set that up  
9 offline before --

10 UNIDENTIFIED MALE: Okay.

11 CHAIRPERSON O'CONNELL: -- before we present anything  
12 for the --

13 UNIDENTIFIED MALE: Okay.

14 CHAIRPERSON O'CONNELL: -- Board and we can --

15 UNIDENTIFIED MALE: That's --

16 CHAIRPERSON O'CONNELL: -- meet as a subcommittee on  
17 that.

18 UNIDENTIFIED MALE: That sounds good, yes.

19 CHAIRPERSON O'CONNELL: So very, very good. Thank you  
20 for bringing that to our attention. Anyone else? Yes, sir.  
21 All right. Okay.

22 BOARD MEMBER MELFI: Yeah, Mr. Chairman, I don't know  
23 if this is the appropriate time in old and new business here,  
24 but as I do sit as Chair of the Economic Development Committee,  
25 the Economic Development Committee is an advisory committee to

1 the Township committee, which made a recommendation, and I  
2 think it has something to bear on this Board, at least to be  
3 aware of what's going on.

4 One of the advices from our committee to the Township  
5 committee is to take a look at the ordinance currently  
6 involving commercial businesses in the Township, as far as the  
7 disrepair and condition, deterioration conditions, that are  
8 existing in our Township. We have quite a bit of property, if  
9 you drive up along 206 and other parts of the Township, where  
10 we have business owners that have just neglected their  
11 properties.

12 The Economic Development Committee, in trying to  
13 revise business and future development, the Township has asked  
14 that they look at the ordinance and put some teeth into these  
15 ordinances so that we can go back to the owners and get some  
16 sort of remedial clean-ups and reconditioning of these  
17 properties.

18 UNIDENTIFIED MALE: But I thought --

19 CHAIRPERSON O'CONNELL: But you --

20 BOARD MEMBER MELFI: And I think that this came up in  
21 regards to even what was discussed with this last Applicant.

22 UNIDENTIFIED MALE: I gave a draft copy of some  
23 numbers a month ago, actually, of our property maintenance code  
24 --

25 BOARD MEMBER MELFI: Okay.

1 UNIDENTIFIED MALE: -- to review. And I don't know --

2 UNIDENTIFIED MALE: Newton has one --

3 CHAIRPERSON O'CONNELL: There's been several property  
4 maintenance codes brought in. I brought in Morristown, Town of  
5 Morristown's property maintenance. And there was also a  
6 recommendation of getting a copy of Hampton Township's property  
7 maintenance, which had come recommended from someone. Mr.  
8 Melfi, since we have started with our ordinance review  
9 committee once we finally got it off the ground, I think we did  
10 admirable work in a matter of a couple hours the last time.

11 BOARD MEMBER MELFI: Mm-hmm.

12 CHAIRPERSON O'CONNELL: Do you want us to set up  
13 something like that and get moving on it?

14 BOARD MEMBER MELFI: I think it's the progressive next  
15 step. I mean, again, you know, the Land Use Board should have  
16 some input on this, and give the committee some direction to go  
17 forward with.

18 BOARD SECRETARY: Can I ask --

19 BOARD MEMBER MELFI: And we are in an advisory  
20 capacity. You know, we are nothing more than an advisory  
21 committee.

22 CHAIRPERSON O'CONNELL: No, but we would --

23 BOARD MEMBER MELFI: But you guys would have a much  
24 more --

25 CHAIRPERSON O'CONNELL: We want the input --

1 BOARD MEMBER MELFI: So --

2 CHAIRPERSON O'CONNELL: -- from the advisory  
3 committees also.

4 BOARD MEMBER MELFI: Correct.

5 CHAIRPERSON O'CONNELL: So it's a team effort.

6 BOARD MEMBER MELFI: Yes.

7 CHAIRPERSON O'CONNELL: So --

8 BOARD SECRETARY: Chuck, can I ask who you gave a copy  
9 of your --

10 MR. MCGROARTY: To Vita.

11 BOARD SECRETARY: To Vita?

12 MR. MCGROARTY: To Vita, to Fred, that is, the  
13 Township attorney, to the Township Clerk, the Township  
14 administrator a while back. We talked about it at the  
15 ordinance committee, I think, last year. I mean, it was one  
16 that I've used and, you know, I've worked on it.

17 There's no perfect ordinance. I mean, it depends if  
18 you have other models. That's fine, too, and I know that Mr.  
19 Cutler had talked about using -- they're not called Boca  
20 anymore, but the building codes had a specific one, which each  
21 one has its strengths and weaknesses.

22 UNIDENTIFIED MALE: Yeah --

23 MR. MCGROARTY: But having something is important,  
24 because you don't -- I mean, we looked at certain properties  
25 that Mr. Melfi just mentioned. There were some right off the

1 highway, where tractor trailers are accumulating, and etcetera,  
2 etcetera. And that stuff is easily dealt with, with property  
3 maintenance, very easily. Well, it's easy to process the  
4 complaints and get it moving. Getting it cleaned up is not --

5 CHAIRPERSON O'CONNELL: It's so you've got something  
6 with teeth to do something.

7 UNIDENTIFIED MALE: Do something behind it, right.

8 CHAIRPERSON O'CONNELL: I remember several months ago  
9 I went up and down 206, and I counted what I considered 11  
10 dilapidated -- is that a technical term -- buildings.

11 UNIDENTIFIED MALE: Yes.

12 MR. MCGROARTY: It is a technical term.

13 UNIDENTIFIED FEMALE: I think dump comes to mind.

14 CHAIRPERSON O'CONNELL: So Mr. Melfi, let's see what  
15 we can do about setting up an ordinance review committee  
16 meeting in the near future.

17 BOARD MEMBER MELFI: Great, thank you, Mr. Chairman.

18 CHAIRPERSON O'CONNELL: Anyone else?

19 BOARD MEMBER KRETZMER: Wait, I do.

20 CHAIRPERSON O'CONNELL: Yes, Christine.

21 BOARD MEMBER KRETZMER: Okay, the Environmental  
22 Commission went to Sustainable Jersey last Tuesday and we are  
23 starting up a green team. And we are hoping that some people  
24 from the Land Use Board will be willing to join our green team  
25 rally. Eric Olsen is our chair. And he is very gung-ho about

1 this project and we're hoping to start with our kickoff at  
2 Earth Day, which would be at Hillside Park. We're just waiting  
3 for approval from the Township committee.

4 UNIDENTIFIED MALE: Earth Day?

5 BOARD MEMBER KRETZMER: Earth Day. So Earth Day is  
6 actually during the week, but we're going to do it on a  
7 Saturday and we're looking to have some members. And  
8 hopefully, if we're very successful, the first grant that's out  
9 there is \$25,000, which is awarded out by Wal-Mart.

10 If anybody has a problem with Wal-Mart -- but Sparta  
11 is asking us to model after them and they have been very  
12 successful. Sparta's already gotten their bronze and they're  
13 almost at their silver, according to the meeting. And it's  
14 just easy projects in town that we're looking to do. And the  
15 money that we are looking to get, we're going to do community  
16 activities, like maybe a movie at Hillside Park one night with  
17 a big screen and see if some of the business owners would be  
18 willing to donate popcorn and stuff. And the police are behind  
19 us 100 percent.

20 UNIDENTIFIED MALE: How is that green?

21 BOARD MEMBER KRETZMER: Because it would --

22 UNIDENTIFIED MALE: It's green --

23 UNIDENTIFIED MALE: The popcorn is green.

24 BOARD MEMBER KRETZMER: -- be a green movie.

25 CHAIRPERSON O'CONNELL: The popcorn inspired the --

1 UNIDENTIFIED MALE: Okay, yeah.

2 UNIDENTIFIED FEMALE: We're also planting trees.

3 BOARD MEMBER KRETZMER: There's movies out there that  
4 are environmental movies.

5 UNIDENTIFIED FEMALE: We also talked about planting  
6 trees.

7 UNIDENTIFIED MALE: As a citizen, I object.

8 BOARD MEMBER KRETZMER: Yes, we were talking about  
9 planting trees. We're talking --

10 UNIDENTIFIED FEMALE: Little trees.

11 BOARD MEMBER KRETZMER: -- about getting activities  
12 together at the parks. We're talking about having a hiking day  
13 to show off some of our new hiking trails.

14 UNIDENTIFIED MALE: Can I give you my list of green  
15 movies?

16 BOARD MEMBER KRETZMER: No, you can't come.

17 UNIDENTIFIED MALE: Okay.

18 UNIDENTIFIED MALE: Kissing frog movies.

19 BOARD MEMBER KRETZMER: So --

20 UNIDENTIFIED MALE: Plight of the Penguins.

21 BOARD MEMBER KRETZMER: -- that's where we're at, and  
22 I also wanted to let you know that there is, actually, a  
23 committee that has formed that is now in search of seeing the  
24 eagle and the last report of the eagle in town has been hiding  
25 out at the top of Skytop, up at the corner of the lake up

1 there, by the dam.

2 And that was Super Bowl Sunday, so apparently, Mr.  
3 Golden is not the only person now who has seen it. I  
4 personally have not seen it. It was in my neighbor's yard, but  
5 I just wanted to let you know about the green team, so we are  
6 looking for volunteers. It's fun and you can bring your  
7 children, and your family, or your grandkids, or whatever you  
8 have, your pets, your dogs. You're welcome to, when we do our  
9 activities.

10 CHAIRPERSON O'CONNELL: Okay, anyone else at this  
11 point?

12 UNIDENTIFIED MALE: Yes, me. We --

13 UNIDENTIFIED FEMALE: No.

14 UNIDENTIFIED MALE: Where there are cancellations that  
15 we've had of meetings, I'm just wondering how we're moving  
16 along. I believe it's you, Mr. Melfi, Mr. Messerschmidt,  
17 Stickle Pond. We've never revisited that as to what --

18 CHAIRPERSON O'CONNELL: We have --

19 BOARD MEMBER MELFI: In fact, if you read this --

20 UNIDENTIFIED MALE: I didn't get a chance. I'm sorry.

21 BOARD MEMBER MELFI: Okay, it's in there.

22 CHAIRPERSON O'CONNELL: Well, we just got that.

23 BOARD MEMBER MELFI: It's, like -- it's only --

24 CHAIRPERSON O'CONNELL: We did meet --

25 UNIDENTIFIED MALE: Okay, buddy.

1 UNIDENTIFIED FEMALE: You're talking about the --

2 CHAIRPERSON O'CONNELL: -- the -- that's right. It  
3 just started with Mr. Melfi.

4 UNIDENTIFIED MALE: To revisit --

5 CHAIRPERSON O'CONNELL: The ordinance review committee  
6 did meet. We hammered out some stuff on the draft, made our  
7 recommendations back to the professionals, and that's the  
8 product we have here now, which is why, on the 15th, we will  
9 have to re-examine the master plan. And then we'll be moving  
10 forward to the ordinance work for the commercial/industrial  
11 zone. So once we've met, we have gotten things moving.

12 UNIDENTIFIED MALE: Okay.

13 CHAIRPERSON O'CONNELL: Confidence is high. We're  
14 moving ahead rapidly.

15 UNIDENTIFIED MALE: Very good. And then the thing  
16 that you and Mr. Melfi spoke about -- that starts here and then  
17 goes to the committee, regarding the businesses that -- well,  
18 businesses, structures, whatever, like let's use a -- lot.

19 CHAIRPERSON O'CONNELL: Well, there will be an  
20 ordinance or recommendation for the committee to adopt an  
21 ordinance of X type to --

22 UNIDENTIFIED MALE: Either fix it up or tear it down?

23 CHAIRPERSON O'CONNELL: Basically.

24 UNIDENTIFIED MALE: That sounds good to me, because we  
25 got a few from --

1 CHAIRPERSON O'CONNELL: Well, there's a few in the --

2 UNIDENTIFIED FEMALE: There's one on Lake --

3 CHAIRPERSON O'CONNELL: Well, property maintenance  
4 codes get very tricky because some of them can get down to when  
5 you look at models of how many inches your lawn can be. I  
6 mean, I would be getting citations about twice a year, you  
7 know. There's things like that, so --

8 UNIDENTIFIED MALE: I understand, but I'm saying,  
9 something like that -- really, those are hazards.

10 CHAIRPERSON O'CONNELL: This is where we want to start  
11 --

12 UNIDENTIFIED MALE: Start --

13 CHAIRPERSON O'CONNELL: -- bringing something forward,  
14 work with Jim and the other professionals to get to what we  
15 want, what we think the Township needs, not down the, you know  
16 --

17 UNIDENTIFIED MALE: So we don't have you summonsed.  
18 No.

19 CHAIRPERSON O'CONNELL: Yeah, yeah, so I don't get a  
20 summons. You're right.

21 UNIDENTIFIED MALE: I'm only kidding. Anyway, thank  
22 you.

23 UNIDENTIFIED FEMALE: I think we should have one about  
24 trailers.

25 CHAIRPERSON O'CONNELL: Well, that could be part of

1 it, so yeah, this is the type of stuff --

2 UNIDENTIFIED FEMALE: Those huge --

3 UNIDENTIFIED MALE: Campers?

4 UNIDENTIFIED FEMALE: No, the maintenance trailers in  
5 -- yeah, campers. I don't think you should be able to park  
6 your RV across your lawn.

7 UNIDENTIFIED MALE: You're not allowed.

8 CHAIRPERSON O'CONNELL: Yeah, that's all --

9 UNIDENTIFIED FEMALE: I had Jim Cutler come out and he  
10 said it was legal.

11 CHAIRPERSON O'CONNELL: Yeah.

12 UNIDENTIFIED MALE: I didn't -- I'm just --

13 CHAIRPERSON O'CONNELL: You can bring that up to us.

14 Let us know about that and we can get into that with the  
15 property maintenance, also. Anything else, anyone?

16 UNIDENTIFIED MALE: Thank you, Mr. Chair.

17 CHAIRPERSON O'CONNELL: Okay, then can we have the  
18 final motion of the night?

19 BOARD MEMBER BENSLEY: I'll make a motion.

20 CHAIRPERSON O'CONNELL: Second?

21 BOARD MEMBER BOYCE: I'll second.

22 UNIDENTIFIED MALE: I'll second.

23 CHAIRPERSON O'CONNELL: And do all in favor --

24 BOARD MEMBERS COLLECTIVELY: Aye.

25 CHAIRPERSON O'CONNELL: Those extensions, motion

1 carries. Thank you all. I'd like to thank you all for your  
2 vote tonight.

3 (Proceedings concluded.)

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6 C E R T I F I C A T I O N

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8 I, ERICA L. VAN OSTRAND, certify that the foregoing is  
9 a correct transcript from the electronic sound recording of the  
10 proceedings in the above-entitled matter.

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*ERICA L. VAN OSTRAND*

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October

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18, 2011

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ERICA L. VAN OSTRAND, CERT\*\*D-521

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