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CITY OF HACKENSACK  
ZONING BOARD OF ADJUSTMENT  
WEDNESDAY, OCTOBER 27, 2010  
COMMENCING AT 7:10 P.M.

.....  
IN THE MATTER OF: : TRANSCRIPT  
Application V#23-08 SP# 21-08 : OF  
Address 320 Summit Avenue/ : PROCEEDINGS  
329 Prospect Avenue :  
Block 344, Lots: 3,4,5,14 :  
Zone R-75 & R-3 :  
Applicant requests to demolish :  
the existing structures and :  
Construct a 19 story medical :  
office building. :  
.....

B E F O R E:

CITY OF HACKENSACK ZONING BOARD  
THERE BEING PRESENT:

- MICHAEL GUERRA, CHAIRMAN
- GEORGE DIANA, MEMBER
- FRANK RODRIGUEZ, MEMBER
- HUMBERTO GOEZ, MEMBER
- JOHN CARROLL, MEMBER

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
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GREGORY POLYNIAK, P.P., P.E., NEGLIA ENGINEERING

4

FRANK MISKOVICH, P.E., BIRDSALL ENGINEERING

5

6

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I N D E X

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1 CHAIRMAN GUERRA: Okay. All set. I'll  
2 read in the case.

3 Application V# 23-08, SP# 21-08,  
4 Address, 320 Summit Avenue/329 Prospect Avenue,  
5 Hackensack, New Jersey, Block 344, Lots 3, 4, 5, 14,  
6 Zone R-75 and R-3, Bergen Passaic Long Term Acute  
7 Health Care Hospital L.L.C.

8 Applicant requests to demolish the  
9 structures and construct a 19 floor medical office  
10 building. The following were found to be deficient:

11 One, use variance required pursuant to  
12 40:55D(1).

13 Two, insufficient lot area, required  
14 30,000 square feet, proposed 20,000 square feet.

15 Three, insufficient lot width, required  
16 125 feet, proposed 100 feet.

17 Four, insufficient rear yard setback,  
18 required 40 feet, proposed zero feet to edge of R-3  
19 district.

20 Five, exceeds maximum lot coverage,  
21 permitted 30 percent, proposed 40.5 percent for R-3  
22 district.

23 Six, exceeds maximum height ratio side  
24 yard, permitted 4 to 1, proposed 19 to 1.

25 Seven, insufficient buffer zone,

1 required 6 feet, proposed zero feet to edge R-3  
2 district.

3 Eight, insufficient parking spaces,  
4 required 562, proposed 402.

5 Nine, insufficient driveway width,  
6 required 18 to 22 feet for two-way, proposed 10 feet.

7 Ten, no paving in side yard.

8 Eleven; insufficient area for back up  
9 aisle spaces.

10 Twelve, exceeds maximum sign area,  
11 permitted 12 square feet, proposed 96 square feet.

12 Thirteen, insufficient sign setback,  
13 required 20 feet, proposed zero feet.

14 Fourteen, any other variance or waivers  
15 that may be required.

16 Counselor?

17 MR. BASRALIAN: Good evening, Mr.  
18 Chairman, Members of the Board. Joseph Basralian for  
19 the Applicant.

20 I have an updated exhibit list which  
21 I'll pass out. There's sufficient numbers for  
22 everybody here.

23 The purpose of this meeting this  
24 evening is to continue or start with our planner.  
25 Originally, we were going to put on, I guess, our

1 traffic consultant because Mr. Moskowitz had  
2 questions. I don't see him in the audience. I  
3 presume we will not get to that this evening.

4 So, we'll focus on then just the  
5 planning testimony, if that's satisfactory.

6 MR. MALAGIERE: Mr. Chairman, may I  
7 have opposing counsel, objector counsel, make their  
8 appearances?

9 CHAIRMAN GUERRA: Please.

10 MR. MALAGIERE: Counsel?

11 MR. SCHANDLER: Robert Schandler  
12 appearing on behalf of Anastasia Burlyuk, Objector,  
13 from Diktas, Schandler, Gillen.

14 Mr. Moskowitz did call me. He said he  
15 has a conflict tonight, but he wants to reserve the  
16 right to cross examine the planner at the next  
17 meeting.

18 And if there's any reports filed, if we  
19 could have a copy of any reports filed on behalf of  
20 the planner.

21 Thank you.

22 MR. MALAGIERE: Anyone else like to  
23 make an appearance?

24 Let me just ask Mr. Basralian, there  
25 was a request by Mr. Moskowitz to turn over some

1 background or foundation material from your traffic  
2 expert, was that ever provided?

3 MR. BASRALIAN: It was done the day  
4 after the meeting it was requested or directed to  
5 give him. We were directed to give him the dates of  
6 the plans. We gave him the entire plans.

7 MR. MALAGIERE: Yes, I'm really not  
8 concerned about the other application he was taking  
9 about. I was concerned about the survey information.

10 MR. BASRALIAN: Everything that he  
11 requested, he has received more than 60 days ago.

12 MR. MALAGIERE: That's fine.

13 I don't believe I got a copy of that.  
14 You and I could talk off-line. Again, I'd like to  
15 get a copy of it.

16 MR. BASRALIAN: I will give you a copy  
17 now then.

18 MR. MALAGIERE: I appreciate it. Thank  
19 you.

20 MR. BASRALIAN: There was the traffic  
21 report is like this (indicating).

22 MR. MALAGIERE: Right.

23 MR. BASRALIAN: We sent it in a PDF  
24 form.

25 MR. MALAGIERE: Yes, if you could have

1 someone sent it to me, I'd appreciate it.

2 Thank you.

3 MR. BASRALIAN: Okay.

4 MR. MALAGIERE: Mr. Chairman, with your  
5 permission we could have Mr. Basralian qualify his  
6 planner before we get the testimony.

7 CHAIRMAN GUERRA: Let's do that.

8 MR. BASRALIAN: Thank you.

9 Mr. Burgis?

10 MR. MALAGIERE: Good evening, how are  
11 you?

12 MR. BURGIS: Good. How are you?

13 MR. MALAGIERE: Good. Thank you.

14 Let me swear you in. Do you swear or  
15 affirm the testimony you're about to give before this  
16 Board will be the truth, the whole truth and nothing  
17 but the truth, so help you God?

18 MR. BURGIS: I do.

19 J O S E P H B U R G I S, P E.

20 25 Westwood Avenue, Westwood, New Jersey, having  
21 been duly sworn, testifies as follows:

22 MR. MALAGIERE: Please identify  
23 yourself for the record and provide us with a  
24 business address and indicate the capacity in which  
25 you will offer testimony.

1                   MR. BURGIS: Joseph Burgis, with Burgis  
2 Associates, located at 25 Westwood Avenue in  
3 Westwood.

4                   I am a professional planner licensed by  
5 the State of New Jersey.

6                   CHAIRMAN GUERRA: Mr. Burgis has  
7 appeared before us before, so...

8                   MR. BASRALIAN: Yes, I appreciate it.  
9 Just some questions I'd like to have for the record  
10 and for the audience to know some of his background.

11                   CHAIRMAN GUERRA: Okay.

12 DIRECT EXAMINATION

13 BY MR. BASRALIAN:

14                   Q. Mr. Burgis, how long have you been a  
15 planner?

16                   A. For over 30 years now.

17                   Q. And, Mr. Burgis, during the course of  
18 your 30 year plus career, have you represented  
19 municipalities, boards of adjustments, planning  
20 boards, with regard to Master Plans regarding  
21 studies, ordinances, preparation and guidance to  
22 municipalities and boards in connection with those?

23                   A. Yes. Over the past 30 plus years, I've  
24 represented in excess of 100 municipalities, well, in  
25 excess of 100 municipalities.

1                   Presently, my firm represents  
2 approximately 40 municipalities in New Jersey and in  
3 New York State.

4                   Q.       Thank you.

5                   Do you also represent applicants for  
6 development such as the one before the Board this  
7 evening?

8                   A.       Yes.   Historically, you know the Board  
9 is aware, my firm has had roughly a 50/50 split  
10 representing public and private interests.

11                   Obviously, with the state of the  
12 economy that split is now about 70/30 on the side of  
13 the municipalities.

14                   Q.       Thank you.

15                   And you've testified, obviously, before  
16 municipalities, planning boards, boards of adjustment  
17 as well as giving testimony in connection with  
18 Housing Elements, Master Plans pursuant to COAH?

19                   A.       Yes, on average, I guess I'm out two to  
20 three times a week during the course of the year  
21 testifying.

22                   MR. RODRIGUEZ:   Mr. Basralian?

23                   MR. BORRELLI:   Is your's on?

24                   MR. RODRIGUEZ:   It's kind of hard to  
25 hear you.   Sorry.

1 MR. BASRALIAN: What?

2 Q. Mr. Burgis --

3 MALE AUDIENCE MEMBER: Mr. Basralian  
4 please talk into the microphone.

5 Thank you.

6 MR. BORRELLI: Testing, testing, one,  
7 two.

8 MR. BASRALIAN: It's on.

9 BY MR. BASRALIAN:

10 Q. All right. Joe, since you're going to  
11 be moving around, maybe I can use this one.

12 Mr. Burgis, you're familiar with the  
13 application before this Board.

14 When did you first become involved and  
15 in what capacity, with the application?

16 A. Sometime in 2008 we got actively  
17 involved in the application. And we were asked to  
18 evaluate the merits of the application relative to  
19 the statutory criteria for a use variance, focusing  
20 on the positive and negative criteria. And also  
21 focusing on how the application comports with the  
22 Municipality's Master Plan and zoning regulations.

23 Q. And you were asked by the Applicant to  
24 conduct the planning analysis in conjunction with  
25 ultimately giving testimony for the LTACH, the

1 dialysis center and the adult medical daycare?

2 A. Correct.

3 Q. Did you, in fact, prepare that analysis  
4 and based on that analysis did you reach a conclusion  
5 as to the application and the variances that you  
6 sought by the Applicant?

7 A. Yes, I did.

8 Q. Would you please begin to explain to  
9 the Board the analysis you undertook and how you  
10 ultimately reached a conclusion that resulted in the  
11 opinion you will give at the end of your testimony.

12 A. Certainly, I'd be happy to.

13 Good evening, everyone.

14 The analysis we undertook was the very  
15 conventional land use analysis vis-a-vis the  
16 Municipal Land Use Law requirements.

17 We did a field inspection to see how  
18 the proposed project fits in with the surrounding  
19 development patterns and on the site.

20 We looked at the plans prepared by the  
21 various professionals hired by the client. We looked  
22 at the municipality's Master Plan and zoning  
23 regulations.

24 And we then took all that into  
25 consideration when we evaluated the MLUL requirements

1 an applicant has to address in terms of obtaining use  
2 variance relief.

3 Q. Thank you.

4 A. I should also say that I have been in  
5 attendance at nearly all of the meetings and those  
6 I've missed, I had to distinct pleasure of reading  
7 the transcripts.

8 Q. So, have we all.

9 Would you please start with a  
10 description of the property. And I know everybody  
11 has heard it many times, but for the purpose of your  
12 testimony it's required.

13 A. Okay. Just, I'll be brief on this one,  
14 because if we don't understand where the site is and  
15 what the characteristics of the site are, I think  
16 we're all in a little bit of trouble here.

17 The site is on the west side of  
18 Prospect Avenue and extends on a through lot over to  
19 Summit Avenue. It occupies an area of 1.15 acres in  
20 size, which is the equivalent of 50,000 square feet  
21 in area.

22 As I mentioned it's a through lot with  
23 about a depth of 400 feet. It has 100 feet of  
24 frontage on Prospect Avenue. And it also has a 150  
25 feet of frontage on Summit Avenue.

1           The site is characterized by a slope of  
2 less than three or so percent of slope. There is an  
3 existing dwelling on each of the individual tax lots.

4           The property is split into two zone  
5 districts, 30,000 square feet on the Summit Avenue  
6 side of the site is in the R-75 zone. And  
7 20,000 square feet, which I'll call on the Prospect  
8 Avenue side of the site, is in the R-3 residential  
9 zone.

10           Q.       And would you please, again, briefly  
11 describe the proposed application at least so far as  
12 the structure is concerned?

13           A.       Well, obviously all of the existing  
14 structures are to be demolished to make way for the  
15 proposed 19 story building.

16           The building has a footprint of about  
17 7140 square feet. This is a little less than what  
18 was originally testified to, because if you recall  
19 originally the building had an 8300 square foot  
20 footprint, but it has subsequently been reduced in  
21 size. And all of that footprint is in the R-3 zone  
22 portion of the site.

23           The LTACH will contain a total of  
24 207,300 square feet. Of that, 175,500 square feet is  
25 actually above grade. And there's three basic

1 components to the application --

2 Q. The balance you're talking about is  
3 based on the area that approximately 32,000 square  
4 feet is below grade --

5 A. Correct.

6 Q. -- of the building? Okay.

7 A. Thank you.

8 Q. Thank you.

9 A. There are three basic components to the  
10 application. There's a 120 long term acute care --  
11 there are 120 proposed long term acute care beds.

12 There are a total of 63 stations, a 63  
13 station dialysis center.

14 And a 180-person adult daycare center.

15 All of these numbers have slightly  
16 reduced from what was initially proposed. If you  
17 recall initially this was not a 19 story building,  
18 but a 24 story building. And it initially had 144  
19 acute care beds, an 84 station dialysis center and a  
20 250 person adult medical daycare center.

21 The LTACH, as you have been told many,  
22 many times, it really fits a category of a special  
23 hospital that provides acute care through a broad  
24 spectrum of clinical care services for acutely ill  
25 and medically complex patients who require on average

1 to have a stay of minimally of 25 days.

2 This type of facility, obviously, plays  
3 a very important role in our healthcare provision,  
4 since it addresses needs of a growing patient  
5 population that cannot be treated effectively in a  
6 traditional hospital setting.

7 And you've heard my client speak about  
8 that at the very outset of these proceedings.

9 The services that are included in an  
10 LTACH include trauma and cancer treatment,  
11 respiratory therapy for ventilator dependent  
12 patients, dialysis services, pain management and  
13 rehabilitation.

14 According to the New Jersey Department  
15 of Health and Services -- in health and senior  
16 services, excuse me, most patients are obviously  
17 elderly and dependent on life support systems such as  
18 ventilator, respiratory and cardiac monitoring and  
19 dialysis. That's one component of the proposal.

20 The second component is a medical adult  
21 daycare. There's two elements to this actually. One  
22 of the centralization aspect of this type of  
23 facility.

24 Many of these people are pretty much  
25 locked into their homes, this gives us an opportunity

1 to get out and socialize with others.

2 But, more importantly, or equally  
3 important, I should say, there are a number of  
4 skilled services that are provided to these  
5 individuals and they run the gambit from medication  
6 administration to respiratory or oxygen therapy,  
7 nurse monitoring, medical examines, infusions and the  
8 like.

9 So, it provides a significant resource  
10 for these residents.

11 Q. Would that includes dialysis as well if  
12 it's necessary?

13 A. Yes, it would.

14 And the third component is the dialysis  
15 that Joe had just mentioned.

16 You know, typically, this includes --  
17 or large incident of kidney failure. And while  
18 there's a large -- there is a significant portion of  
19 the population already affected, the statistics from  
20 the State's Health and Human Senior Services  
21 Department suggested that that need is growing by  
22 about 5 percent a year. That indicates that a third  
23 of the LTACH patients themselves, will be utilizing,  
24 or availing themselves of the dialysis treatment.

25 Now, the proposal is broken down, as

1 you've heard before, into 19 stories.

2 The ground floor will encompass a  
3 reception area, administration space and a gift shop.

4 The second floor encompasses a  
5 promenade area and a chapel.

6 The third floor is where the medical  
7 adult daycare facility is. And I don't think I  
8 mentioned this before, but that encompasses about  
9 7960 square feet of floor space.

10 The fourth floor is devoted to patient  
11 service and diagnostics.

12 And then floors 5 through 14 are the  
13 patient rooms and associated support areas.

14 The 15th floor is physical therapy  
15 services.

16 And then floors 16 through 18 is a  
17 dialysis center and associated equipment.

18 And then the 19th floor is for patient  
19 services and administrative offices.

20 As you have heard previously, there are  
21 a total of 413 parking spaces being provided to  
22 accommodate the needs of this facility. They are  
23 disbursed over five levels of underground parking.

24 Access to this parking area includes  
25 two driveways from Prospect Avenue and a circular

1 driveway from Summit Avenue.

2 And, in addition, there's a service  
3 driveway on Prospect. And a separate driveway  
4 entrance on to Summit into the underground garage.

5 I'm not going go into the details of  
6 the landscape amenity on the site, but it is  
7 significant. The entire Summit Avenue half of the  
8 property is characterized by a significant landscape  
9 feature. It's designed to be a passive open space  
10 amenity not only for the residents of this facility,  
11 but it would be open to the public. Again, it can be  
12 used by the residents of the area.

13 Q. There's also an existing landscaping in  
14 the front yard. The front yard facing Prospect  
15 Avenue.

16 A. Yes, there is.

17 In addition to that, there is a series  
18 of lights on the site that are typically designed as  
19 residential lights to minimize impact and glare to  
20 the surrounding residential community. These are  
21 12-foot high lights to make certain that they're, you  
22 know, in keeping with the residential area.

23 I believe my client as well as Eric  
24 Keller who testified about the number of employees  
25 on-site. There will be, in the span of 24-hour day,

1 a total of 337 employees on the property, broken up  
2 into three different shifts. The first shift starts  
3 at 6:30 in the evening and goes to 7:00 a.m.

4 I'm sorry. I got that all wrong. It's  
5 6:30 -- it's a long shift. They arrive from 6:30 to  
6 7:00 in the morning. And they leave for 3:00 to  
7 3:30 in the afternoon. Those were planner's hours by  
8 the way.

9 And there's 118 people working on that  
10 shift.

11 There is a second shift for people  
12 arriving between 2:30 and 3:00 p.m. and then leaving  
13 between 11:00 p.m. and 11:30. For those, there's a  
14 total of 96 employees during that time.

15 And then the following shift is from  
16 11:00 to 7:00 a.m. and they depart 7:00 a.m. to 7:30.  
17 And there's a total of 53.

18 That doesn't total up the 337, because  
19 there is an additional 70 people that basically work  
20 the nine to five shift and that's the administrative  
21 end of things.

22 And those numbers should total up to  
23 337.

24 Q. But that is Monday thru Friday, the  
25 number of people working at the LTACH and the other

1 facilities are reduced on weekends because  
2 administrative closes down itself?

3 A. That is correct.

4 I just wanted to give, you know, the  
5 peak hours -- the peak time. And that's the peak  
6 hours.

7 What I would like to do is hand out a  
8 series of exhibits that I have prepared.

9 I should say Joe is going hand out a  
10 series of exhibits that I prepared.

11 MR. MALAGIERE: He's good that way.

12 CHAIRMAN GUERRA: Is it 377 or 337?

13 MR. BURGIS: Yes, 337.

14 CHAIRMAN GUERRA: Then i wrote down  
15 377, I thought you said. My mistake.

16 MR. BASRALIAN: These are the same  
17 things that -- for the Board. These are the same  
18 things that Mr. Burgis will be referring to when he  
19 goes to the board.

20 MR. BORRELLI: Are these exhibits?

21 MR. MALAGIERE: Al, they're probably  
22 going to introduced as exhibits as we go forward.

23 Thank you.

24 MR. BASRALIAN: Yes. They are listed  
25 on the exhibit list I've already presented.

1 THE WITNESS: Now --

2 CHAIRMAN GUERRA: Laura, do you have a  
3 copy?

4 MR. BASRALIAN: Here you go.

5 CHAIRMAN GUERRA: Thank you.

6 THE WITNESS: Mr. Malagiere?

7 MR. MALAGIERE: Yes, sir.

8 THE WITNESS: I don't know how you want  
9 to handle the marking, we have the exhibits that --

10 MR. BASRALIAN: They're already --

11 THE WITNESS: This is 17.

12 MR. BASRALIAN: They're already listed  
13 on the exhibit list, I forgot to put the number on  
14 it. So, you're going to work with Exhibits 40, 41  
15 42, 43, so in sequence. So, we'll just mark those  
16 and I'll replace them.

17 MR. MALAGIERE: So you're starting with  
18 40?

19 MR. BASRALIAN: Yes, that's where we  
20 started on the exhibit list.

21 MR. MALAGIERE: Right.

22 MR. BURGIS: Now, what I have also  
23 done, I've made two sets of exhibits. One for the  
24 Board and one for the public.

25 So, it will be helpful if somebody from

1 my side could serve as Vanna White and handle one  
2 set.

3 But the exact same thing, but it's just  
4 that I thought it would be easier for the public and  
5 the Board to see without having to constantly shift  
6 the exhibits.

7 MR. MALAGIERE: Thank you.

8 MR. BASRALIAN: Okay. They're marked  
9 now.

10 (Whereupon, Aerial View of Prospect  
11 Avenue, 1966 is received and marked as Exhibit  
12 A-40 for Identification.)

13 (Whereupon, Aerial View of Prospect  
14 Avenue, 1979 is received and marked as Exhibit  
15 A-41 for Identification.)

16 (Whereupon, Aerial View of Prospect  
17 Avenue, 1987 is received and marked as Exhibit  
18 A-42 for Identification.)

19 (Whereupon, Aerial View of Prospect  
20 Avenue, 2008 is received and marked as Exhibit  
21 A-43 for Identification.)

22 (Whereupon, Existing Land Use  
23 Map is received and marked as Exhibit  
24 A-44 for Identification.)  
25

1 (Whereupon, Multifamily Site with  
2 Commercial Uses is received and marked as  
3 Exhibit A-45 for Identification.)

4 (Whereupon, Aerial View of Prospect  
5 Avenue, 2010 is received and marked as  
6 Exhibit A-46 for Identification.)

7 (Whereupon, Lot Coverage Ratio Analysis  
8 is received and marked as Exhibit A-47 for  
9 Identification.)

10 (Whereupon, Floor Plan Ratio Analysis  
11 is received and marked as Exhibit A-48 for  
12 Identification.)

13 (Whereupon, Building Area Square Foot  
14 versus Site Area Square Foot is received and  
15 marked as Exhibit A-49 for Identification.)

16 MR. MALAGIERE: Thank you, Joe.

17 Just make it clear what exhibit you're  
18 referring to before you give your testimony.

19 Thank you, Mr. Burgis.

20 THE WITNESS: All right. Fine.

21 At the outset I'd like to say one of  
22 the things I've learned over 30 some years as a  
23 planner is that municipalities are constantly in a  
24 state of evolution.

25 Living in a community, it's sometimes

1 hard to discern that because you don't see the  
2 day-to-day -- you don't see changes day-to-day.

3 And you really need to take a step back  
4 and look at how things are changing over a period of  
5 time before you really get to understand that we  
6 don't live i a static environment. We live in a  
7 community that is constantly evolving and changing.

8 And this issue came to my mind, but in  
9 reading some of the earlier transcripts and listening  
10 to some of the comments, it struck me that there  
11 seems to be this belief that the Prospect Avenue  
12 corridor has been the way it's been forever. And the  
13 community of Hackensack has been rather static in its  
14 development.

15 In point of fact that is not the case.  
16 And in order to reinforce that point I went back and  
17 looked at a series of aerial photographs going back  
18 to 1966. Those were the earliest aerials that I was  
19 able to obtain. It was just when the first high  
20 rises were being developed along Prospect Avenue.

21 And the first exhibit is A-40. And I  
22 note if you're sitting in the back of the room you're  
23 never going see this, but just to orient everybody  
24 this is Prospect Avenue here (indicating). Summit  
25 Avenue is here (indicating). Essex Street is over

1 here (indicating). And the hospital is in this area  
2 here (indicating) the Second Street. And the  
3 hospital is right in this little area here  
4 (indicating).

5 What strikes one, if you could show  
6 that to the Board, just point to it with your finger.

7 MR. MALAGIERE: Mr. Burgis, could I  
8 just ask you, and I apologize for interrupting your  
9 direct testimony.

10 THE WITNESS: Uh-huh.

11 MR. MALAGIERE: How do you acquire an  
12 aerial map from 19 -- or "satellite" map, I'll call  
13 it from 1966.

14 THE WITNESS: There are services for  
15 everything these days. And there is a service, an  
16 aerial photographic service, that you could actually  
17 get aerials in some areas that go back to the -- I've  
18 got them back to the 1920s and '30s. But not for  
19 this area, unfortunately.

20 CHAIRMAN GUERRA: Not satellite.

21 MR. MALAGIERE: Maybe that's an  
22 airplane, right?

23 THE WITNESS: Yes.

24 MR. BASRALIAN: Here you do but there  
25 are also, in addition, the Sanborn maps. I know the

1 City of Hackensack used to have a big stack of them  
2 showing ever structure in the City of Hackensack.

3 So, all of those things going back and  
4 were updated. I don't know the Sanborn Maps, they  
5 used the aerials that are available.

6 THE WITNESS: Yes, with the advent of  
7 computerization and so forth.

8 MR. MALAGIERE: I just wanted it for  
9 your testimony which service did you obtain these  
10 from?

11 THE WITNESS: I'm not sure if it was  
12 Robinson Aerial or something like that. I can get  
13 that name for you.

14 MR. MALAGIERE: Great. Thank you.

15 THE WITNESS: It's very well -- it's  
16 worth it because there is a wealth of data to be  
17 obtained from these aerials.

18 So as I started to say, do you see two  
19 issues that play with these four aerials I'm about to  
20 show you and it's the evolution of Prospect Avenue.

21 And, purely, coincidental the evolution  
22 of the hospital. And having lived in the area for  
23 many years, I found it fascinating to see how both  
24 areas developed over time.

25 So, here we are on Prospect Avenue.

1 And Whitehall is the only high rise of note along the  
2 corridor. And if you look closely during the break,  
3 you'll see a number of very large estates. I know  
4 this, for example, is the Braen Estate (phonetic),  
5 which is about 15 acres in size. There is a number  
6 of other estates in the area, large single family  
7 houses on, you know, very large tracts of land.

8 And there we have the Whitehall  
9 (indicating).

10 Coincidental to everything else, the  
11 hospital encompassed all of this one little area here  
12 (indicating).

13 So, we move forward --

14 BY MR. BASRALIAN:

15 Q. Before you move on from that, of the  
16 upper portion here, where you referred to the  
17 hospital there's a parking lot and there appear to be  
18 structures there.

19 Could you describe what they are and  
20 what happened to them?

21 A. Yes, this is a little before my time in  
22 Hackensack, I wasn't even aware of this, but there  
23 are a series of garden apartments along the very end  
24 of Prospect Avenue, which was actually the Hospital's  
25 apartments for their nursing staff. And I see some

1 people in the audience nodding.

2 Q. As well as interns and residents,  
3 correct?

4 A. Yes. So, it's interesting to watch the  
5 change that occurs here and then along Prospect over  
6 time.

7 So, we have all these properties with a  
8 lot of vacant land and open space along Prospect  
9 Avenue.

10 And then here we are A-41 (indicating),  
11 I'm now referring to, and you see so many significant  
12 changes taking place from 1966; which was A-40, to  
13 A-41, which was flown in 1979.

14 And in 1979, all of the sudden in a  
15 short 13-year period, again the orientation is the  
16 exact same. Here's Prospect Avenue (indicating).  
17 Here's Summit (indicating). Here's Essex Street  
18 (indicating).

19 And you see roughly a dozen high rises  
20 along Prospect. And then also, three high rises  
21 along Overlook Avenue. And you see the beginnings of  
22 change.

23 You still see back in 1979, you know,  
24 some of the estates remaining that had not yet been  
25 redeveloped.

1                   The other issue, to continue the theme,  
2 is all of the sudden the Hospital went from this one  
3 little block to a very large building over here  
4 (indicating). A couple of buildings had been knocked  
5 down in this area (indicating) in anticipation of the  
6 additional development, obviously.

7                   So, we go from 1979, on Exhibit A-41,  
8 to Exhibit A-42 (indicating). This is 1987. And  
9 it's a few years after the A-41 exhibit. And you see  
10 a dramatic change a lot of filling in along Prospect  
11 Avenue as the high rise development pattern began to  
12 truly take shape.

13                   And you see all this on the north end  
14 of the area, a couple more buildings in the central  
15 portion, and a few building under construction right  
16 here (indicating).

17                   And then the Hospital is really taken  
18 hold over in this area with a lot of additional  
19 buildings.

20                   And all of the sudden, there's the  
21 garden apartment that I mentioned earlier and are  
22 going to make way for parking for the Hospital.

23                   Exhibit A-43 for all intents and  
24 purposes is a current exhibit. It was flown in 2008.

25                   And you can see how so much of Prospect

1 Avenue today is developed with high rise development.  
2 And up and down the corridor, you know the few  
3 remaining single larger estates, with single family  
4 homes are all gone. There are a few individual  
5 isolated single family houses, but not that many.

6 There are some on our site, for  
7 example. But the continuation of the high rise  
8 development truly has taken hold. And you see the  
9 large expanse that has become Hackensack University  
10 Medical Center (indicating).

11 And I show all these exhibits to  
12 illustrate how much things can change over a  
13 relatively short period of time. If you look at  
14 these roughly ten years increments, it's really  
15 incredible to see how much development has occurred.

16 The residents in the area, I don't  
17 think are necessarily aware of it as it occurs, but  
18 then we take a step back in time --

19 MALE AUDIENCE MEMBER: Oh, oh, oh, oh.

20 MALE AUDIENCE MEMBER: We're aware.

21 THE WITNESS: (Continuing) as we take a  
22 step back in time, we see the true magnitude of the  
23 change.

24 MALE AUDIENCE MEMBER: How about Summit  
25 Avenue? How about Summit Avenue that hasn't changed.

1 THE WITNESS: So, one of the things  
2 that we do as planners is identify land use patterns  
3 to show how one use fits in with another use. And  
4 the first exhibit which is -- the next Exhibit which  
5 I am showing is --

6 MR. BASRALIAN: A-45.

7 THE WITNESS: A-45.

8 MR. BASRALIAN: I'm sorry, A-44.

9 THE WITNESS: Excuse me. A-44 is an  
10 existing land use map. And basically what my office  
11 has done, we went out in the field. Actually, we  
12 first went through the tax records and identified how  
13 each and every property in this area is being used  
14 from tax records.

15 Then we went out and field verified it.  
16 And then we color coded all those land uses on the  
17 exhibit to get a sense of the distribution of uses in  
18 the area. And the areas shown in brown represent  
19 multifamily residential development (indicating).  
20 You can see the corridor there today of Prospect  
21 Avenue.

22 Again, to orient everybody, here is  
23 Essex Street on my left, going up Prospect Avenue  
24 (indicating).

25 Central Avenue is the center of the map

1 (indicating) along with the railroad line. And,  
2 then, you have Passaic Street to the far right of the  
3 exhibit and the subject site is right here  
4 (indicating).

5 And you can see the breadth of the  
6 multi-family residential development that has taken  
7 place. And the combination of both single family  
8 development, which is shown in the light orange tone  
9 and some of the office development that has occurred  
10 also in this corridor.

11 BY MR. BASRALIAN:

12 Q. And that office development that you're  
13 referring to is only on the east side of Summit  
14 Avenue you didn't show it on the west side of Summit  
15 Avenue, between Essex Street and Beech Street or  
16 Central Avenue; is that correct?

17 A. That is correct.

18 We purposely kept as our study area the  
19 east side of Summit, extending down to Second Street  
20 and Comet Way and Third Street and along up to  
21 Passaic Street.

22 Now, the one issue of existing  
23 development patterns is one thing, but one of the  
24 concerns we had was not only with how much  
25 multi-family residential development and high rise

1 development, but also what are the other uses in the  
2 area.

3 And we purposely looked at how other  
4 uses exist in multifamily developments because they  
5 had been a number of comments suggesting that this is  
6 a uniformly residential area. And in point of fact,  
7 it's not.

8 What we found is illustrated on this  
9 exhibit which is A-45 (indicating). These are all  
10 the multi-family sites along Prospect and along  
11 Overlook. They're existing multifamily developments,  
12 with some form of non-residential use in them.

13 Overwhelmingly, it's medical office  
14 use. It includes in one instance a surgical care  
15 facility in one building. And all these are  
16 identified on this Exhibit A-45.

17 It includes Executive House. It  
18 includes the Excelsior One & Two; the Stratford  
19 House; the Ivanhoe; Florentine Gardens; and Prospect  
20 Apartments; as well as, the Sherbrooke. And than  
21 further north Blair House.

22 All of these facilities have some form  
23 of non-residential activity in those buildings.

24 Now --

25 FEMALE AUDIENCE MEMBER: What

1 percentage?

2 CHAIRMAN GUERRA: We're going to have  
3 to hold off. We do have a time to ask question  
4 after.

5 Thank you.

6 MR. MALAGIERE: Thank you.

7 THE WITNESS: Now, beyond that issue I  
8 think --

9 BY MR. BASRALIAN:

10 Q. Mr. Burgis, is there also by the way,  
11 when you said "non-residential use" office use it's  
12 predominantly medical office --

13 MR. MALAGIERE: Joe, I'm sorry. Please  
14 use your microphone.

15 MR. BASRALIAN: Yes.

16 Q. You mentioned the non-residential uses  
17 such as offices and the surgical center. Is there  
18 not also a commercial use?

19 A. Oh, yeah, obviously I forget the  
20 restaurant, itself. Which is in the Excelsior.

21 Thank you.

22 While planners will be concerned about  
23 the distribution of uses and how much residential and  
24 non-residential exists in the neighborhood, the other  
25 thing that planners are concerned about, particularly

1 with respect to this application, is intensity of  
2 use. Because I think that is the critical issue  
3 here. I see a number of people nodding their heads.

4 So we tried to evaluate the issue of  
5 intensity of use in two different ways.

6 (Whereupon, off the record discussion  
7 between Mr. Burgis and Mr. Basralian.)

8 THE WITNESS: No, I didn't identify  
9 that.

10 Joe, just had reminded me that  
11 towards -- I guess up by Passaic Street, there is an  
12 office building, a two story building that was not  
13 reflected on that exhibit.

14 That building is actually initially  
15 proposed and approved for multifamily, if my memory  
16 serves me. It is a ten story building.

17 CHAIRMAN GUERRA: Yes.

18 THE WITNESS: They built two floors,  
19 the project stopped. It lay vacant now for many,  
20 many years. And then somebody converted it for  
21 office use.

22 Now, what I started to say is we were  
23 concerned about not only the land use pattern, but  
24 intensity of use, because I think that in many  
25 respects is the crux of the issue here today.

1                   And what we looked at is a number of  
2 different things.

3 BY MR. BASRALIAN:

4           Q.       Are you referring to a particular  
5 exhibit?

6           A.       I will be starting with A-46.

7                   MR. MALAGIERE: A-46. Thank you.

8                   THE WITNESS: Now, one of the things we  
9 are concerned about was the issue of building height  
10 and how our proposed 19 story building fits in with  
11 the corridor as a whole.

12                   Another thing we were concerned about  
13 was building coverage, because we wanted to measure  
14 how much coverage our project has in terms of filling  
15 up the property, in contrast to other properties  
16 along the corridor.

17                   And then we were also concerned about  
18 the measurement of intensity of use, called "floor  
19 area ratio" which enables planners to assess, in a  
20 comparative way, the amount of floor area versus lot  
21 area that exists on one site to another.

22                   So the next few exhibits illustrate  
23 that.

24                   And beginning with A-46, we'll talk  
25 about building heights.

1                   A-46 shows all buildings along the  
2 corridor, but it highlights around the perimeter of  
3 the exhibit.

4                   All the buildings that are minimally  
5 ten stories in height.

6                   And if you just go around the horn, so  
7 the speak, starting in the upper left-hand corner.  
8 We have Sherbrooke at 125 Prospect Avenue, which is  
9 right here (indicating), which is 18 stories in  
10 height.

11                   The second building is the Excelsiors I  
12 and II, which is right here (indicating). They're at  
13 140 Prospect Avenue. That's also 18 stories.

14                   As is the Eiffel Tower across the  
15 street, which is right here (indicating).

16                   The Pierre is right here (indicating)  
17 along Prospect and again opposite Excelsior, that is  
18 17 story at 185 Prospect Avenue.

19                   FEMALE AUDIENCE MEMBER: What?

20                   THE WITNESS: At Central and Prospect  
21 is the Blair House which is 15 stories.

22                   Down the street from that or right next  
23 door to that is Camelot at 245 Prospect Avenue, which  
24 I believe is the tallest building in the area at  
25 21 stories.

1                   Then we have the Bristol House at 19  
2 floors, Barridge House at 17 floors.

3                   We also added, to show where our  
4 project would fit in, our site is here (indicating)  
5 at 329 Prospect, that would be 19 stories.

6                   The Frontmat (phonetic) is over here at  
7 11 floors (indicating).

8                   The Executive House is here at  
9 12 stories (indicating).

10                  The Devonshire is 28 stories -- excuse  
11 me, that is the tallest (indicating).

12                  The Stratford House is along Overlook  
13 Avenue at 18 stories (indicating).

14                  The Ivanhoe also at Overlook Avenue is  
15 21 stories (indicating).

16                  We also have the Whitehall at  
17 11 stories (indicating).

18                  Then Prospect Towers at 18 stories  
19 (indicating).

20                  And then the final two World Plaza at  
21 13 and Carlyle at 13 (indicating).

22                  So, we have quite a range of  
23 intensities, in terms of building floor heights,  
24 ranging from, in this exhibit, as low as ten to as  
25 high as 28.

1                   So, the bigger concern is the lot  
2 coverage because this shows how the site is actually  
3 being occupied by the building footprint  
4 (indicating).

5                   What we found, and we did not include  
6 the parking garages here. We're just taking about  
7 the buildings, the apartment buildings, themselves.

8                   And when you look at our proposed above  
9 grade area, which is 175,500 square feet. And we're  
10 on a 50,000-square foot lot. We have a lot coverage  
11 of 14 percent. And what this Exhibit A?

12                   MR. BASRALIAN: A-46.

13                   THE WITNESS: A-46 shows --

14                   MR. MALAGIERE: A-47, I believe.

15                   MR. BASRALIAN: Yes. A-47. I'm sorry  
16 A-47.

17                   MR. MALAGIERE: A-47, correct.

18                   Thank you.

19                   THE WITNESS: Let me change that.

20                   What A-47 shows is the lot coverage  
21 ratio analysis. We examined the building footprints  
22 of all the buildings in relation to their lot area.

23                   And as you can see in terms of that  
24 intensity of use, we're at the lower -- first, we're  
25 at the lowest end of the spectrum. We're at 14

1 percent building coverage.

2 Of the 38 buildings in the corridor, we  
3 would be considered the second smallest of the 38.  
4 They range from 12 percent at Executive House, to  
5 upwards of 55 percent.

6 I'm not going to read off all of these  
7 numbers, but can see very clearly that we're at the  
8 lowest end of the spectrum.

9 Now, that's one level or -- excuse me,  
10 one way to look at intensity of use. The second way  
11 to look at intensity of use is floor area ratio.

12 Now, what we did is similar to what I  
13 was just talked about --

14 BY MR. BASRALIAN:

15 Q. Explain what floor area ratio is.

16 A. When you look at floor area ratio, you  
17 examine the ratio of floor space to total lot area.

18 For example if you have a 40,000-square  
19 foot lot and you have 10,000 square feet of floor  
20 space, you would have a floor area ratio of 25  
21 percent.

22 So, we did that calculation for all of  
23 these buildings. And what you see is out of the 38  
24 existing buildings, we are a little slightly to the  
25 left of the average size.

1                   Again, it goes from a low of .6, we're  
2 at point -- excuse me, 3.51. And it goes upwards of  
3 6.46. This is the Devonshire (indicating).

4                   I point all of this out to suggest that  
5 in terms of intensity of use, the building is not as  
6 large as has been suggested in many of the comments  
7 during the course of these proceedings.

8                   Q.        Before you move on from there, before  
9 you move on from there, could you just tell us about  
10 the floor area ratio is?

11                   Please explain why you use the floor  
12 area ratio, even though it is not applicable in the  
13 City of Hackensack it doesn't have an FAR  
14 calculation?

15                   A.        Yes. Thank your.

16                   The City Ordinance does not have an FAR  
17 calculation. But as a planning tool it just is  
18 representative of how intense one project is in  
19 comparison to the other. It's the same way on the  
20 one hand, that you measure density as a dwelling unit  
21 per acre calculation.

22                   One could say a 50 units to the acre  
23 here or 30 to the acre there.

24                   This measures a total amount of floor  
25 space and gives you a comparative assessment. So the

1 Board could understand what the distinctions are.

2 Okay?

3 MR. MALAGIERE: Now, how are you coming  
4 up with that number? It's not showing as a  
5 percentage. I don't need you tell me what the  
6 numbers are, but it's shown as 3.51. Is FAR usually  
7 represented it as a percentage?

8 THE WITNESS: It usually is, but in  
9 this -- it could be 351 percent. It choose to write  
10 it out as 3.51.

11 MR. MALAGIERE: Right.

12 THE WITNESS: Because it's  
13 three-and-a-half times the lot size.

14 MR. MALAGIERE: Okay.

15 CHAIRMAN GUERRA: It's 3.5 lot, is that  
16 it.

17 THE WITNESS: And the final exhibit --

18 MR. MALAGIERE: What's the numerator?  
19 What is the denominator?

20 THE WITNESS: The numerator is the  
21 floor space.

22 MR. MALAGIERE: Okay. Square feet.

23 THE WITNESS: Yes. And the denominator  
24 is the lot size.

25 MR. MALAGIERE: In square feet?

1 THE WITNESS: In square feet.

2 MR. MALAGIERE: Okay.

3 MR. BASRALIAN: And it excludes the  
4 parking structures --

5 THE WITNESS: Yes, I said that. I  
6 though I said that.

7 MR. BASRALIAN: Yes, you did.

8 THE WITNESS: We did not calculate  
9 parking garage. We just went in to see how much  
10 residential floor space exists throughout the  
11 developments.

12 MR. MALAGIERE: When you do this, you  
13 put floor space in, operational floor space?

14 THE WITNESS: Yes.

15 MR. MALAGIERE: Added it all up and  
16 then.

17 THE WITNESS: Did the math.

18 MR. MALAGIERE: And then on the bottom  
19 part of the fraction is the square footage of the lot  
20 itself.

21 THE WITNESS: Correct.

22 MR. MALAGIERE: And that's somewhat of  
23 an indicator of the intensity of the project on the  
24 site?

25 THE WITNESS: Yes, because it gives you

1 a numerical figure to compare with a consistent frame  
2 work all the other buildings in the area.

3 CHAIRMAN GUERRA: For the apartment  
4 buildings, is it just living space?

5 THE WITNESS: Well, it includes  
6 corridors as well.

7 CHAIRMAN GUERRA: Yes.

8 THE WITNESS: What we did is we took  
9 the footprint of the building, itself, and then  
10 multiplied it by number of stories to come up with  
11 the amount of floor space.

12 MR. MALAGIERE: So you grossed it up as  
13 a rectangle, right?

14 THE WITNESS: Basically.

15 MR. MALAGIERE: Yes.

16 THE WITNESS: Yes.

17 MR. POLYNIAK: Does this calculation  
18 include the areas of the R-75 lots?

19 THE WITNESS: It includes the lots,  
20 yes.

21 MR. POLYNIAK: Okay. Because just  
22 looking at this title, I didn't understand how you  
23 calculated it.

24 It included the R-75 lots because some  
25 of these buildings aren't within the R-75 zone. So I

1 just wanted to clarify that.

2 THE WITNESS: No, we looked at -- the  
3 way one does FAR calculations. You look at the total  
4 lot on which the project exists irrespective of zone.

5 CHAIRMAN GUERRA: But FAR ignores  
6 certain areas within a structure. For example, FAR  
7 doesn't it -- it's only livable space, right?

8 THE WITNESS: Well, ordinances deal  
9 with FAR differently. Some ordinances that address  
10 -- that impose FARs on single family dwellings, for  
11 example, will eliminate garage space and then again  
12 -- or attic space.

13 CHAIRMAN GUERRA: Balconies.

14 THE WITNESS: But when you're dealing  
15 with elements like this, it's fairly typical to have  
16 a gross figure and not shake out all the, you know,  
17 the minutia.

18 BY MR. BASRALIAN:

19 Q. Well, isn't it so, that in many  
20 municipalities they calculate basement space for  
21 commercial purposes, even though they aren't -- it  
22 isn't living space?

23 But what you're saying, as I  
24 understand, is that typically the FAR calculation is  
25 based upon the gross living area --

1           A.       Right.

2           Q.       -- which includes the corridors and --

3           A.       Yes, typically you take the perimeter  
4 of the building -- the perimeters of the building and  
5 do the math. And in that way you get your --

6           CHAIRMAN GUERRA: Well, not balconies.

7           THE WITNESS: They're consistent --  
8 pardon me?

9           CHAIRMAN GUERRA: Not balconies.

10          THE WITNESS: No.

11          CHAIRMAN GUERRA: That's usually not  
12 included in the FAR.

13          THE WITNESS: No, correct.

14          CHAIRMAN GUERRA: Some of these  
15 buildings, you're doing just a clear rectangle,  
16 probably going to be a difference based on balconies  
17 and so forth.

18          THE WITNESS: No, we tried to shake  
19 that out.

20          CHAIRMAN GUERRA: Oh, you did.

21          THE WITNESS: Yes.

22          CHAIRMAN GUERRA: You adjusted for it?

23          THE WITNESS: Yes.

24          CHAIRMAN GUERRA: Okay.

25          THE WITNESS: So the last exhibit just

1 illustrates the building --

2 MR. BASRALIAN: Exhibit A-49?

3 MR. MALAGIERE: Yes.

4 THE WITNESS: Yes.

5 It identifies building area versus site  
6 area, and plots the building. The lower part of the  
7 exhibit identifying site area. And the left-hand  
8 side identifying lot area (indicating).

9 And just to illustrate in a visual way,  
10 in another visual way, where our site, which is  
11 located here (indicating) fits in with all the  
12 surrounding buildings.

13 And it's fairly safe to conclude that  
14 in terms of the intensity of use, it appears that our  
15 building is generally in the middle of --

16 CHAIRMAN GUERRA: Right.

17 THE WITNESS: -- all the intensities of  
18 use in the area.

19 MR. MALAGIERE: So the Y axis is the  
20 square foot of the building?

21 THE WITNESS: Yes.

22 MR. MALAGIERE: Right. The square foot  
23 of the site is the X?

24 THE WITNESS: That's correct.

25 MR. MALAGIERE: Right? Okay.

1 MR. CARROLL: Does that include the  
2 R-75?

3 THE WITNESS: Yes, it does. So, that  
4 is part of our lot.

5 MR. BASRALIAN: Our application covers  
6 all four lots. So, you have to consider that as one  
7 lot, the total of 50,000 square feet.

8 THE WITNESS: What's interesting, Mr.  
9 Carroll, I noticed in Greg's memo, he was separating  
10 out the lot. In fact, he went to the extent of  
11 suggesting that we should be measuring a rear yard to  
12 the zone line.

13 But when you look in your ordinance  
14 definition of "lot", when you look at your ordinance  
15 definition of "yard". And when you look at your  
16 ordinance definition of "lot coverage", in ever  
17 instance, the ordinance talks about measuring total  
18 lot area.

19 It's doesn't suggest you measure a  
20 portion of the lot area. If you're in two or three  
21 or four different zone districts. You're obligated  
22 by your own ordinance to measure the total lot area.

23 MR. BASRALIAN: So, it's irrespective  
24 of zoning lines?

25 THE WITNESS: Yes, correct.

1                   And that's fairly typical --

2                   MR. MALAGIERE: As long as they're  
3 contiguous in one application.

4                   THE WITNESS: As long as they're  
5 contiguous, yes.

6                   If they were separated by a road then  
7 you would not do that.

8                   MR. MALAGIERE: Yes.

9                   THE WITNESS: Correct.

10                  So we looked at all that to come to,  
11 you know, some obvious conclusions about how our  
12 proposal fits in, in terms of intensity of use with  
13 the neighborhood.

14                  The second step, again, is to look at  
15 the community's Master Plan and see how we comply  
16 with, you know, specific land use recommendations.

17                  And, in addition, any other goals and  
18 objectives. And the land use recommendations are  
19 pretty straightforward.

20                  The Prospect Avenue portion of the site  
21 is recommended for high density residential use. And  
22 the Master Plan just simply notes that Master Plan  
23 designation is generally consistent with the  
24 municipality's of R-3 zone ordinance regulation.

25                  And it permits a building height of up

1 to 30 stories and 280 feet.

2 And the Summit Avenue portion,  
3 conversely, is identified or recommended for low  
4 density residential development.

5 What is interesting is that we have  
6 taken pains to make certain that none of the  
7 building, itself, is in the low density residential  
8 portion. We do have underground parking there.

9 But the building, itself, the above  
10 grade building, is all in the R-3 designation or the  
11 -- excuse me -- the high density residential  
12 designation to be consistent with the Master Plan.

13 The Master Plan also identified the  
14 series of goals and objectives and policy statements.

15 Many of them don't apply to this type  
16 of application, but there are two or three that do.  
17 One talked about promoting adequate community  
18 services for all portions of the City. And the one  
19 interesting comment that I could make is that this  
20 proposed development increases the availability of  
21 healthcare options to residents of the community, and  
22 admittedly to the surrounding area.

23 And, specifically, it provides  
24 assistance for medical adult daycare, where it's  
25 clearly lacking.

1                   We had looked at some statistics on the  
2                   availability of medical adult daycare. And what we  
3                   found is that there is a study from the Robert Wood  
4                   Johnson School that suggested -- conservatively, they  
5                   suggested we need 1.25 adult daycare slots for older  
6                   residents over age 65.

7                   Now, in the County we average a little  
8                   over 135,000 people who are over age 65. There are  
9                   only -- and that was suggesting we have a need for  
10                  about 1688 medical -- excuse me -- adult daycare  
11                  slots. We have about 900 such slots.

12                  So, we're woefully short of what the  
13                  standard is for this type of facility.

14                  This application serves to reduce that  
15                  shortfall by about 180 slots. So, in that context it  
16                  appears that we promote this particular goal of the  
17                  Master Plan.

18                  The second goal of the Master Plan  
19                  talks about promoting job opportunities in the City.  
20                  And as I had mentioned earlier, this proposal results  
21                  in a total of 337 jobs coming to the City of  
22                  Hackensack.

23                  So, consequently, we feel that we can  
24                  conclude that we meet this objective of the Master  
25                  Plan as well.

1                   And, then, finally -- and I have to  
2 admit to a somewhat lessor extent, but still there is  
3 a goal of the Master Plan that talks about improving  
4 the quantity and quality and availability of parks  
5 and open space.

6                   And as I mentioned earlier we are  
7 taking that portion of the Summit Avenue side of the  
8 site and making it impassive open space amenity for  
9 the residents of the area.

10                   FEMALE AUDIENCE MEMBER: What? What?

11                   MALE AUDIENCE MEMBER: Please.

12                   Just come here every week.

13                   CHAIRMAN GUERRA: Please, no more  
14 comments. You'll have your opportunity.

15                   THE WITNESS: Now, the third step in  
16 the process is to look at a municipality's Zoning  
17 Ordinance and make a determination as to what we do  
18 and don't comply with and then evaluate how we take  
19 all this information vis-a-vis the Municipal Land Use  
20 Law requirements.

21                   And I'm not going to repeat all of the  
22 areas and bulk standards. They were testified to by  
23 that Mr. Keller in a previous meeting. They're in  
24 the cover sheet of the Omland Engineering maps and I  
25 know Greg had put it in his memo.

1                   We do take exception --

2 BY MR. BASRALIAN:

3                   Q.       It was also testified to by Chuck  
4 Thomas the engineer who was describing the site plan  
5 as well?

6                   A.       Yes.   So I'm not going to go through  
7 all of that.

8                               Suffice it to say, we need a use  
9 variance for the LTACH and related facilities,  
10 itself.

11                               We need a lot width variance because we  
12 only have 100 feet on Prospect Avenue, where 125 feet  
13 is required.

14                               We need a variance for parking.   We  
15 have 413 parking spaces.   And we are required to  
16 have, I believe, 558 parking spaces.

17                               We need a side yard setback variance.

18                               If memory serves, Greg, I think you had  
19 suggested we need a front yard variance.   But in my  
20 analysis, I don't believe we do.   And if you could  
21 correct me on that.

22                   Q.       Well, go through the explanation as to  
23 why you believe it's not necessary while Greg thinks  
24 he's correct in his analysis?

25                   A.       Okay.

1           The ordinance has a specific front yard  
2 setback requirement for this.

3           The ordinance, separate and distinct  
4 from a yard requirement, has this height ratio  
5 requirement. But in my analysis and in my  
6 familiarity with other ordinances, it certainly  
7 reflects what I could only call the New York City  
8 wedding cake formula to create more open space as  
9 what -- more visual open space as one builds a taller  
10 building. It requires you to tier the building  
11 upwards like a wedding cake. You have to have a  
12 four-to-one ratio. And if you take your four-to-one  
13 ratio as you go up the first hundred and -- let me  
14 figure this out. Give me one second.

15           The building has a first linear  
16 dimension of 138 feet before it starts to tier back.  
17 And that 138-foot dimension or the first 138 feet, we  
18 would be required to have a 34.6-foot setback.

19           We have a 40-foot setback.

20           So for that dimension we comply. When  
21 it steps back past that 138-foot dimension, we have  
22 173-foot. You go up another 173 feet where we need  
23 roughly a 40-foot setback, which, again, we have.

24           The final tier of the building going up  
25 to 227 feet, requires a 57 1/2-foot setback. And at

1 that point we have 67 1/2 feet.

2 So, what I'm saying is you have to meet  
3 the tiers as they fall back and comply with that  
4 four-to-one ratio.

5 I'm going to show you an exhibit that  
6 was previously presented that illustrates that point.

7 Now, this exhibit shows the front yard  
8 is here (indicating). And there's a line extending  
9 from this point following, following, touching each  
10 point where it steps back (indicating). And in each  
11 point where that building steps back, the building  
12 meets that four-to-one ratio.

13 As I said earlier in New York City and  
14 in other communities, you know, big cities where you  
15 typically have this kind of feature, it's designed to  
16 show ensure: A, an interesting skyline because your  
17 tiering back -- it forces you to tier back buildings.  
18 And it also creates a more slender building as you go  
19 up in the air.

20 And having worked with Malcolm Kasler  
21 for many years before starting my own firm, I'm aware  
22 of the underpinnings of what he did with his  
23 ordinances. And I'm very comfortable in suggesting  
24 that that was his philosophy putting in that kind of  
25 regulation together.

1 Q. And Malcolm Kasler was the planner for  
2 the City of Hackensack for many years, correct?

3 A. Yes.

4 So, that's why I concluded that we  
5 don't need this one variance.

6 So -- but we do need a use variance.  
7 And in order for obtain a use variance, we're  
8 obligated to show certain things.

9 The Municipal Land Use Law requires  
10 that for a use variance, an applicant has to show  
11 there's two basic tests. There's the so-called  
12 positive criteria and the negative criteria.

13 And for the positive criteria, one can  
14 either argue that you are an inherently beneficial  
15 use or alternatively one can argue that the site is  
16 particularly suited for the use.

17 Clearly, you know, we're going to take  
18 the position, I'm going to do it in a moment, that we  
19 are an inherently beneficial use. The distinction  
20 between inherently beneficial and particular  
21 suitability is important, because depending upon  
22 which route you take, different case law and  
23 requirements follow.

24 For an inherently beneficial use you  
25 have to meet the so-called four part Sica test. And

1 I'll explain what that is that a moment.

2 But in addition to the positive  
3 criteria, which represents special reasons, there's  
4 the negative criteria.

5 And the negative criteria is a twofold  
6 testing unto itself.

7 One prong in the negative criteria,  
8 requires you to show that there's no substantial  
9 impairment to the intent and purpose of the zone plan  
10 or Master Plan and Zoning Ordinance of the community.

11 Then, secondly, you have to show that  
12 there's no substantial detriment to the public good.

13 So, let's talk about what an inherently  
14 beneficial use is first because basically it's  
15 defined as uses that clearly promote the public good.  
16 They have well recognized value or benefit to a  
17 community. And they justly deserve special  
18 consideration in the administration of zoning.

19 Now, the Municipal Land Use Law  
20 coincidentally was recently amended to finally give a  
21 specific definition of an inherently beneficial use  
22 and that definition is as follows:

23 "It's a use which is universally  
24 considered a value to the community because it  
25 fundamentally serves the public good and

1 promotes the general welfare".

2 And the definition goes onto identify  
3 examples of what that is.

4 "Special uses include, but are not  
5 limited to: A hospital, a school, a child  
6 care center, a group home and then they also  
7 throw in wind, solar and photovoltaic energy  
8 facilities."

9 That is the most recent change. But  
10 that is what the MLUL now defines as an inherently  
11 beneficial use.

12 And I would suggest that the social  
13 benefits that derive by the proposed use, clearly are  
14 consistent with that definition.

15 And it's consistent with that  
16 definition whether we're talking about the LTACH,  
17 whether we're talking about the dialysis center, or  
18 whether we're talking about the medical adult  
19 daycare.

20 Now, the public -- excuse me. The Sica  
21 test then comes into play for an inherently  
22 beneficial use. And that is a four part test. And  
23 the four parts require an Applicant to show and the  
24 Board to evaluate the application in the following  
25 context.

1                   First, you are obligated to identify  
2 the public interest which is at stake.

3                   Secondly, you're obligated to identify  
4 that detrimental effect that may result from the  
5 approval and the variance.

6                   Then, thirdly, you identify what  
7 conditions can be reasonably imposed to ameliorate or  
8 address those detrimental affects.

9                   Then, finally, you weigh the positive  
10 and the negative criteria and determine on balance,  
11 whether or not there is a substantial detriment to  
12 the public good.

13                   I'm not here to use the word  
14 "substantial" myself. That's in the Sica  
15 requirement. There's a recognition that any  
16 development application may have a detrimental  
17 effect, but the Board is obligated to evaluate  
18 whether the detrimental effects in the end are  
19 substantial or not and weigh that against the  
20 positive aspects of an inherently beneficial use.

21                   So, let's take each of those points in  
22 turn. Let's talk about the public interest which is  
23 at stake.

24                   And, in terms of the LTACH, I would  
25 suggest that it's a provision of the care for the

1 patients who are clinically -- you know who have  
2 clinically complex problems. And as you've heard in  
3 detail from my client, how those problems can be  
4 addressed.

5           Secondly, is the issue of dialysis  
6 facility. And here we are providing necessary  
7 treatment for patients that don't need a hospital  
8 stay, permitting them to get their services while  
9 still living at home.

10           And then, finally, is the medical adult  
11 daycare. And as I've already indicated that the need  
12 from the studies that we've read clearly suggested  
13 the need is not being addressed properly in Bergen  
14 County, and this helps -- this project helps address  
15 that shortfall.

16           I would also say that the LTACH has  
17 received a Certificate of Need. And that in and of  
18 itself represents the special reason identifying this  
19 as an inherently beneficial use.

20           Q.       And it is correct the Certificates of  
21 Need are not -- a Certificate of Need are not issued  
22 by the State of New Jersey with respect to dialysis  
23 units and medical adult daycare, but rather they're  
24 licensed as they go forward; is that correct?

25           A.       That is correct.

1 MR. MALAGIERE: How do you know that?

2 THE WITNESS: Excuse me?

3 MR. MALAGIERE: How do you know that?

4 THE WITNESS: I have read so much of  
5 this subject.

6 MR. MALAGIERE: Okay. Okay.

7 THE WITNESS: No. We have been involved  
8 in assisted living facilities, many assisted living  
9 facilities throughout the State.

10 We represent Valley Hospital.

11 We've represented Hackensack Hospital.

12 We represent Westwood where --

13 MR. MALAGIERE: It's not your area of  
14 expertise, but have knowledge of that; is that  
15 correct?

16 THE WITNESS: Yes, correct.

17 The second prong of the Sica criteria  
18 is to identify the detrimental effect the grant of  
19 the variance would have.

20 And I think there's been a lot of  
21 discussion on the very significant obvious one. And  
22 I think it boils down to traffic, parking and truck  
23 movements on this site.

24 In listening to both traffic  
25 consultants and reading their reports, I think in the

1 end what I come to is that under the peak hour  
2 traffic conditions it appears that Mr. Keller and Mr.  
3 Miskovich eventually concurred that at peak hour  
4 you're going see two or three cars -- additional cars  
5 stopped at lighted intersections.

6 FEMALE AUDIENCE MEMBER: Oh, that's  
7 ridiculous.

8 THE WITNESS: And we can all groan  
9 about that.

10 You know we may all groan about that,  
11 but that was the testimony.

12 So, when you weigh the addition of  
13 three cars at peak hour at a light, and admittedly we  
14 understand that at these lights there's a lot of cars  
15 there already, but the addition of three cars,  
16 weighing that, what I'll call slight additional  
17 inconvenience, to the fact of health care for all the  
18 people that we've identified at the outset of this  
19 proceeding, suggests that the balance falls in favor  
20 of the LTACH and the associated facilities.

21 FEMALE AUDIENCE MEMBERS: No, no, no.  
22 You're wrong.

23 THE WITNESS: When you talk about the  
24 parking issue, now admittedly we are short by over a  
25 hundred and some odd parking spaces.

1                   We're required to have 568. We have  
2                   413.

3                   But if I recall from the testimony of  
4                   both Mr. Keller and Mr. Miskovich in the end  
5                   concurring that at peak demand our parking garage  
6                   will be at 84 percent capacity or 86 percent  
7                   capacity.

8                   BY MR. BASRALIAN:

9                   Q.            You're correct at 84 percent.

10                  A.            So 84 percent.

11                  So, consequently providing 413 parking  
12                  spaces, rather than 568, is not necessary and doesn't  
13                  do anything but provide additional cost to this  
14                  application and for no obvious benefit.

15                  Q.            Isn't it correct that part of the  
16                  analysis why there is a disparity by the 500 some odd  
17                  parking spaces was calculated because they calculated  
18                  the medical adult daycare as an assembly hall and  
19                  they calculated the 63 seats that would be utilized  
20                  for the dialysis unit as an office space at the rate  
21                  of four per thousand.

22                  And in the analysis when all is said  
23                  and done those ratios did not apply to these  
24                  particular uses?

25                  A.            That is correct.

1                   And on top of that, they used the 3.9  
2 spaces per hospital bed as the standard. And I  
3 recognize that this ordinance really does not  
4 adequately address this particular use. And this is  
5 not unusual. Many times you find ordinances that do  
6 not deal with every type of use.

7                   So, when you look at the kind of  
8 facilities that exist in this proposed project, and  
9 compare it to the many different types of facilities  
10 that are found in conventional hospitals, clearly we  
11 do not have many of those kinds of activities.

12                   And, consequently, suggesting the 3.9  
13 spaces per bed is an appropriate standard for this  
14 use, I think, significantly overstates the case.

15                   And I think it bears itself out by the  
16 fact that in the end, if both traffic consultants  
17 said 84 percent occupancy of the garage at 413  
18 spaces, I would certainly suggest that the parking  
19 requirements are in compliance with this use and  
20 adequately address the issue.

21                   The third issue is the truck backing  
22 out onto Prospect Avenue.

23                   What's interesting is in terms of the  
24 intensity of the use that will occur. And if memory  
25 serves, you will see the equivalent of one or two

1 trucks a week come to this site.

2 Q. That would utilize that --

3 A. That would utilize that, it may be as  
4 few as seven times a month. It could be up to we  
5 calculated 11 times a month.

6 Now, what was interesting is with the  
7 third prong, where it says:

8 "Can you identify or impose a  
9 reasonable condition to address some of those  
10 issues".

11 We'll talk about each in turn. One of  
12 the things is the staggered staffing. So, people  
13 arriving at different times. And I think th client  
14 has talked about that previously.

15 The second issue is the use of the ten  
16 passenger van for patient arrivals and pick-ups.

17 The third issue is something that Mr.  
18 Keller talked about. And that is changing  
19 signalization and providing a turning movement at  
20 Central and Summit to partially address, at least,  
21 the problem of with back up at that intersection.

22 BY MR. BASRALIAN:

23 Q. You also addressed, did he not, in his  
24 testimony -- pardon me -- some timing changes on --

25 MR. MALAGIERE: You have to use the

1 microphone, Joe.

2 MR. BASRALIAN: Sorry.

3 Q. To be complete, he also suggested in  
4 his testimony timing changes at the light at  
5 Prospect -- I'm sorry -- Prospect and Passaic and at  
6 Summit and Passaic to ameliorate the queue lines  
7 where there was no -- where there was in traffic in  
8 the opposite direction.

9 A. That is correct.

10 And then with respect to the truck  
11 problem backing up. We are limiting the trash  
12 pick-up to once a week or once every other week, I  
13 should say, which partially addresses that issue.

14 FEMALE AUDIENCE MEMBER: You got to be  
15 kidding me.

16 A. (Continuing) I do know that in many  
17 instances trucks park on Prospect Avenue and handle  
18 deliveries to buildings that way.

19 MALE AUDIENCE MEMBER: Prospect  
20 Heights.

21 A. (Continuing) and we could also do that  
22 as a way to address the concern of trucks potentially  
23 backing out onto the street.

24 In the end, Sica says you weigh the  
25 positive and the negative criteria and determine on

1 balance whether to grant of a variance would cause a  
2 substantial detriment to the public good.

3 And I would submit that when we're  
4 talking about the provision of a 63 station dialysis  
5 center, 120 long term acute care beds and 180-person  
6 medical adult daycare center against what I will  
7 again describe as a modest additional number of cars  
8 at a light and the problem of backing out into the  
9 street seven to eleven times a month, I think the  
10 balance clearly falls out in the way in which we as a  
11 community and we as a state address the healthcare  
12 needs of our residents.

13 So, consequently, in terms of the  
14 specifics of the negative criteria, we have concluded  
15 that there is no substantial detriment to the public  
16 good for all of the reasons I have mentioned.

17 And I also concluded that there's no  
18 substantial impairment to the intent and purpose of  
19 the Master Plan, because as I've indicated, clearly  
20 there's two overriding goals of the plan that we  
21 affirm.

22 And, as I said, even with the laughter  
23 in the audience, to a much lessor degree, we do  
24 address, partially, a third goal is the Master Plan.

25 MR. BASRALIAN: Mr. Chairman, since Mr.

1 Burgis' voice is going.

2 I know you usually take a break at  
3 8:30, might we break five minutes early so he can do  
4 what he has to do to continue.

5 CHAIRMAN GUERRA: Of course.

6 MR. BASRALIAN: So he can continue his  
7 testimony.

8 CHAIRMAN GUERRA: That's fine.

9 We are going to take a break right now.

10 (Whereupon, a short recess is taken.)

11 CHAIRMAN GUERRA: Mr. Basralian, are  
12 you ready to continue?

13 MR. BASRALIAN: Mr. Chairman, it was  
14 pointed out by Mr. Malagiere that there was an error  
15 on Exhibit A-46, we transposed The Devonshire for The  
16 Ivenhoe. So, where it says "The Devonshire" it  
17 should be "The Ivenhoe". Where it says "The Ivenhoe"  
18 it should be "The Devonshire".

19 That's corrected on the record for that  
20 purpose. Okay?

21 CHAIRMAN GUERRA: No problem.

22 MR. BASRALIAN: Thank you.

23 MR. MALAGIERE: Actually, I think the  
24 Stratford House comes after of The Ivenhoe.

25 Is that accurate?

1 MR. DIANA: First The Ivenhoe then the  
2 Stratford.

3 MR. MALAGIERE: Yes, from Beech Street  
4 it's the Ivenhoe, Stratford and then Devonshire.

5 Mr. Diana pointed that out to me. So,  
6 just for purposes of the record.

7 MR. BASRALIAN: Thank you.

8 MR. MALAGIERE: Thank you.

9 MR. DIANA: And also you've got a  
10 mistake here. I believe between The Ivenhoe and The  
11 Stratford there's a lot. There is a residential lot  
12 in between those two.

13 MR. BASRALIAN: Oh, there's a little  
14 single family house there.

15 MR. DIANA: Yes.

16 MR. BASRALIAN: The correction is  
17 noted.

18 Thank you.

19 MR. MALAGIERE: Just for the record so  
20 that the exhibit is identified properly.

21 MR. BASRALIAN: Yes, that would be on  
22 A-48.

23 MR. MALAGIERE: Yes, it would.

24 MR. BASRALIAN: Okay.

25 MR. MALAGIERE: Thank you, Mr. Diana.

1 MR. BASRALIAN: Thank you.

2 Let's continue.

3 BY MR. BASRALIAN:

4 Q. Mr. Burgis, you've just gone through  
5 the Sica test and we're about to -- I'm sorry -- we  
6 are about to start with respect to the variances.

7 You have gone through the parking, the  
8 traffic, the detrimental effects and positive.

9 And now the bulk variances that are  
10 involved in the application.

11 A. The bulk variance include a lot width  
12 variance, simply for we've got a 100-foot lot width;  
13 where 125 feet on Prospect is required.

14 And there is an inability, obviously,  
15 to acquire additional land.

16 On one side of us we have a 7 story  
17 building. On the other side an 11 story building.

18 And if we were to take property from  
19 either one of those, then they would be  
20 non-conforming.

21 So, consequently, it's a preexisting  
22 condition that cannot be corrected.

23 Q. And it would also affect their parking  
24 ratio, since they park adjacent to those areas or  
25 have driveways; is that not correct?

1           A.       That is correct.

2           Q.       Thank you.

3           A.       I previously had talked about I don't  
4 think there's a need for a front yard. In addition,  
5 where you had indicated there's a need for a rear  
6 yard variance, you're measuring it to the zone line.

7                   And as I had indicated earlier the  
8 definition in the Ordinance for "yard" specifically  
9 says you measure to property lines of the lot, not  
10 the internal zone lines.

11                   So, I don't think that variance is  
12 required.

13           Q.       And that is because we're also seeking  
14 a subdivision to collapse the lot into one so that it  
15 constitutes on lot and everything is subsumed within  
16 one lot; is that correct?

17           A.       That is correct.

18           Q.       Thank you.

19           A.       The same holds true for the lot  
20 coverage issue that Greg mentioned in his report,  
21 when you look at the totality of our lot, you have 24  
22 percent coverage factor. And that is less than  
23 either the 25 percent permitted in the R-75 zone or  
24 the 30 percent permitted in the R-3 zone. So, I  
25 don't believe we need that variance.

1                   And then, finally, there is the side  
2 yard requirement.

3                   And what we are attempting to do is put  
4 all of our development in the Prospect Avenue portion  
5 of the property. And in so doing, it didn't allow us  
6 to spread the building out and provide for a greater  
7 setbacks.

8                   We felt that there was a benefit to  
9 doing the design that way. And, thereby, reducing or  
10 requiring a variance. It enabled us to provide a  
11 more concentrated structure in the portion of the  
12 site zoned for high rise residential use and maintain  
13 more open space on the property in a meaningful  
14 fashion.

15                  Q.        You're taking about the side yard ratio  
16 that was developed it was similar to the front yard  
17 ratio; is that right?

18                  A.        Yes, correct.

19                  Q.        You mentioned that you represented  
20 hundreds of municipalities. Have you ever seen that  
21 kind of ratio any place but the City of Hackensack in  
22 the municipalities you represent?

23                  A.        No. The only -- I've often seen that  
24 kind of standard in -- basically, in ordinance as I  
25 mentioned New York, but never in suburban communities

1 or applied to side yard diminishment this way.

2 Q. Thank you.

3 A. And then, finally, the issue of the  
4 sign. We have 108 square foot sign. You're  
5 permitted only a 12-square foot sign.

6 And, simply put it, Bergen, Passaic  
7 Long Term Acute Care Hospital is a lot to get into  
8 12 square feet. Considering we have --

9 CHAIRMAN GUERRA: Could you use little  
10 letters.

11 THE WITNESS: You could. You could.  
12 It would be like driving by and seeing, you know,  
13 this Poland Springs lettering (indicating) as one  
14 drives down Prospect.

15 The dimensions of the letters are such  
16 that the sign would be readable from Prospect. As a  
17 matter of fact it's not a freestanding sign. It's on  
18 the wall of the building itself.

19 So, it is setback from the street also.

20 Q. That's a retaining wall that's part of  
21 the garage. So it's not a freestanding sign --

22 A. Correct.

23 Q. It's part of the building, itself,  
24 correct?

25 A. Correct.

1                   So in terms of its scale, it certainly  
2 is complimentary to the site. And will ensure that  
3 the sign will be readable.

4                   Q.       I believe, there is another --

5                   A.       Well, the other issues were wavier  
6 issues.

7                   Q.       Right. Why don't you just review the  
8 waiver issues?

9                   A.       The waiver issues are I think four or  
10 five -- four in the nature. One is the minimum  
11 driveway width of the service driveway. Our service  
12 driveway is 10 feet, you're required 18 feet.

13                               Technically, it's identified as a  
14 two-way driveway, although clearly as a service road  
15 this is serving the compactor.

16                               And only one vehicle would ever be  
17 there at a time. And, consequently, while it's a  
18 two-way movement, you never will have cars or trucks  
19 going at the same time in different directions. So  
20 the 10-foot dimension seems reasonable. The  
21 narrowness, that it would function well, and serve to  
22 minimize the curb cut along the street.

23                               So, we felt that it was reasonable, you  
24 know given that fact.

25                   Q.       The driveway?

1           A.           The driveway, you do not permit  
2 driveway aisles in the side yard. We are providing  
3 them in the side yard.

4                       In terms of the dimension of the  
5 property, you're hard pressed to place side yards --  
6 excuse me -- driveways on this site without violating  
7 this requirement and providing a safe and efficient  
8 circulation design for the site. And that's why --  
9 that's the rationale for that relief.

10           Q.           You indicated earlier that there are  
11 buildings on either side, the side of this building  
12 are they not -- are they paved up to the property  
13 lines or do they have driveways within them and  
14 park --

15           A.           Yes, they do. And as you drive up and  
16 down Prospect Avenue you see this type of situation  
17 up and down the street. Clearly, it's not unique to  
18 this property.

19                       Then, finally, is the issue of the back  
20 up aisle for 64 degree angle parking spaces, you're  
21 required 22 feet -- excuse me, you're required  
22 18 feet. And for 64 -- excuse me. For 32 of our  
23 parking spaces, we have a 16 1/2 foot dimension.

24                       In terms of, you know, when you talk  
25 about ways to ameliorate the conditions, the 32

1 spaces could be identified for compact cars. Compact  
2 cars only need a 16 1/2 foot dimension for backup.

3 So, it can function that way. And that  
4 would adequately address the issue.

5 Q. Thank you.

6 You talked about evolution of towns and  
7 municipalities and particularly in the City of  
8 Hackensack; how things have changed over the time  
9 period that you showed us aerial photographs.

10 Are you aware of a current proposal or  
11 discussion regarding an evolution of Main Street and  
12 how that would change the municipality. And how it  
13 changes the face of it?

14 A. Certainly, just last week there was a  
15 meeting here in town to talk about the continued  
16 evolution of the State Street corridor. There was a  
17 planning firm retained by the Hackensack City  
18 Alliance to talk about how the next step in the  
19 redevelopment of State Street should occur and that  
20 identified a three pronged approach, including, you  
21 know, more intense office development near the  
22 courthouse, municipal and public functions in the  
23 municipal building. And then farther to the north,  
24 more intense residential development to the tune of  
25 about 2,000 additional dwelling units over time.

1                   And, again, it's an effort, you know,  
2                   to jump-start the redevelopment of that portion of  
3                   the municipality. And it's a process that, as I said  
4                   earlier, this is the type of process that is ongoing  
5                   one, in every municipality, whether it's, you know,  
6                   more urbanized stuff like in the City of Hackensack  
7                   or in rural suburbs where we're seeing transit  
8                   villages being proposed near train stations.

9                   It's the philosophy of the state right  
10                  now to encourage this sort of redevelopment. And you  
11                  could point to many successful communities where this  
12                  has occurred. And has been a benefit to the town.  
13                  And your's is obviously in the very beginning of this  
14                  process by retaining street works out of Connecticut  
15                  to pursue this idea.

16                 Q.           At the very beginning, Mr. Burgis, I  
17                 asked if you had a conclusion and before you gave  
18                 your conclusion would you go through your analysis  
19                 which you had to support the conclusion.

20                 Would you please state for the Board  
21                 your conclusions and perhaps briefly reiterate the  
22                 rationale and reasons why?

23                 A.           Well, I think the conclusion is  
24                 obvious. I think, in terms of the statutory burden  
25                 there's clearly special reasons in support of the

1 application.

2 In terms of the Sica test, I think it's  
3 clear that we met all four prongs sufficiently to  
4 enable the Board to give consideration to the  
5 application and approve it.

6 Clearly, in terms of the Master Plan  
7 and zoning issues, I think in terms of the Sica test,  
8 we've addressed the Master Plan issues.

9 In terms of the negative criteria test,  
10 I think we've met the statutory burden.

11 I think in the end, and I touched upon  
12 in my testimony, you know there is significant merit  
13 to this type of a use.

14 I understand how some residents feel  
15 strongly that the use doesn't belong here, but in  
16 point of fact, it certainly can be designed to  
17 compliment the established development pattern along  
18 Prospect Avenue.

19 In addition to that, we've taken pains  
20 to try to design the Summit Avenue portion of the  
21 site, so it's free of buildings. It has an open  
22 space feature.

23 From our perspective it compliments the  
24 open space design of some of the houses along Summit  
25 Avenue corridor.

1                   And within that context, I think the  
2 burden has been met by this application and warrants  
3 approval.

4                   MR. BASRALIAN: I have no further  
5 questions at this time, Mr. Chairman.

6                   CHAIRMAN GUERRA: Okay. Why don't we  
7 open up to the public.

8                   MR. MALAGIERE: Okay. Mr. Chairman.

9                   Mr. Chairman, as I've shared with you,  
10 objector Counsel have graciously offered to cross  
11 examine after the public has had an opportunity.

12                   So, the Chairman does want to open to  
13 the public for comment on this witness' testimony and  
14 questions from this witness.

15                   Thank you, Counsel.

16                   Why don't you, Mr. Burgis, put that  
17 microphone back in that slot if could you and use  
18 that microphone down by Ms. Carucci. This way you'll  
19 get some distance. The other one.

20                   THE WITNESS: The other one.

21                   MR. MALAGIERE: This way you'll get  
22 some distance and we won't have feedback, hopefully.

23                   THE WITNESS: Thank you.

24                   MR. MALAGIERE: Does anyone from the  
25 public wish to ask any questions of this witness or

1 comment on this witness' testimony?

2 Please come forward, please. I'm going  
3 to have to swear you in please.

4 MS. PALINKAN: Okay.

5 MR. MALAGIERE: Do you swear the  
6 testimony you're about to give before this Board will  
7 be the truth, the whole truth and nothing but the  
8 truth, so help you God?

9 MS. PALINKAN: I do.

10 A L E X I S P A L I N K A N,  
11 Residing at 235 Prospect Avenue, Hackensack, New  
12 Jersey, having been duly sworn, testifies as  
13 follows:

14 MR. MALAGIERE: Could you please  
15 identify yourself for the record. Spell your last  
16 name and provide us with an address, please.

17 MS. PALINKAN: Alexis Palinkan,  
18 P-a-l-i-n-k-a-n, 235 Prospect.

19 MR. MALAGIERE: Thank you, welcome.

20 MS. PALINKAN: Okay. Before I get into  
21 the other questions, Main Street development,  
22 wonderful, wonderful plan. I think you should go  
23 there.

24 Second is the park on Summit, opened to  
25 the public. We've discussed this many times. I

1 don't know if you were at those meetings. A lot of  
2 issues about the fact that it's not a park. How  
3 would safety be guaranteed. I won't go into that.  
4 If you look in the transcript, you will see those.

5 I think most of us in this audience  
6 take offense at the trip down memory lane. We  
7 certainly know what Prospect was before the high  
8 rises came up. And we also know that it is a  
9 residential high rise street and don't feel that  
10 there is a need for a hospital in a residential high  
11 rise area.

12 The fact that there are doctors'  
13 office. Yeah, maybe one or two, three, in some  
14 buildings, not in all buildings. Those doctors'  
15 offices, if you check, are part-time, usually,  
16 they're not the main office. So, you would have  
17 people coming in once in a while, maybe two days a  
18 week, limited hours. If you check that further, I  
19 think that would kind of shoot down part of your  
20 statement that it's really not all residential.

21 The intensity of use, I -- I -- I don't  
22 quite know if I'm interpreting it correctly. I live  
23 in The Blair House. Blair House is 15 stories. It  
24 is a small building, 114 units. Basically it's  
25 occupied by singles or couples, two bedrooms are the

1 largest units, very few of those.

2 So, total day and night, you have maybe  
3 150 people in that building, total, 24 hours.

4 The numbers you're giving us for the  
5 LTACH totals with employees, daycare, dialysis, acute  
6 care, 481; 24 hours a day, and that doesn't include  
7 visitors and the services.

8 So, that seems to be an -- an -- an  
9 awful lot more than what is occupying in the current  
10 buildings that are on the block.

11 MR. MALAGIERE: Would you like him to  
12 respond to that?

13 MS. PALINKAN: Yes, yes.

14 MR. BASRALIAN: If there's a question  
15 here, I'd like to hear it because --

16 MR. MALAGIERE: No, Mr. Basralian.  
17 That's unfair.

18 Would you like him to respond to that  
19 one?

20 MS. PALINKAN: Yes, I guess the  
21 question is how does he compare something that has  
22 481 --

23 MR. MALAGIERE: Right.

24 MS. PALINKAN: -- not counting visitors  
25 and services to a residential building that has a set

1 number of people 24 hours a day.

2 THE WITNESS: Okay.

3 First of all, I was not making the  
4 comparison you were suggesting.

5 MS. PALINKAN: Okay.

6 THE WITNESS: I don't think one can  
7 easily make that comparison, because you've got 38  
8 different multi-family developments along the  
9 corridor. Each with their own characteristics in  
10 terms of population.

11 What I was attempting to do is  
12 identify, in terms of the intensity of use of the  
13 building, itself, in terms of its size and bulk. How  
14 this proposal fits in with that character of the  
15 corridor.

16 And that, I think, is a valid -- from a  
17 planning perspective a very valid approach. We were  
18 looking at the amount of floor space in terms of  
19 comparing it to lot size. We were looking at  
20 building coverage and lot coverage in trying to  
21 compare the size and scale of this building with all  
22 38 other buildings in the area. And you heard the  
23 analysis.

24 MS. PALINKAN: Okay. I don't -- I  
25 think that's apples and oranges.

1 THE WITNESS: Actually, it's apples and  
2 apples.

3 MS. PALINKAN: Well, that's your  
4 opinion. I mean, we have our opinion.

5 Again, high density residential use.  
6 That's high density residential use.

7 Parking variance is a big issue, big  
8 issue.

9 Now, the 413 you need 568. I've asked  
10 many times and haven't gotten an answer, whether or  
11 not the people in Prospect Heights, who currently  
12 can't park in Prospect Heights, will be assumed into  
13 this new parking garage.

14 Did you factor that in?

15 THE WITNESS: No, I factored in the --  
16 and, in fact, the actual traffic consultant factored  
17 in the amount of cars coming to the site, the amount  
18 of parking and thus the amount of parking spaces that  
19 are needed. I look at their analysis. I look at the  
20 municipality's traffic consultants analysis. And  
21 found that in both instances they concluded that 413  
22 parking spaces is more than sufficient to accommodate  
23 demand.

24 I would also add that from my planning  
25 perspective, I found that the parking standards that

1 were being applied to this use, just simply don't  
2 make sense. They don't make sense for a variety of  
3 reasons, because, one, the adult medical daycare  
4 center doesn't generate remotely the kind of parking  
5 demand that an office standard would suggest.

6 The same holds true for the two other  
7 standards that were applied to the dialysis and the  
8 beds.

9 The standards just didn't stack up. So  
10 --

11 MS. PALINKAN: Okay. Again -- I'm  
12 sorry. Go ahead.

13 THE WITNESS: No, I was just going to  
14 say in conclusion, it is very evident that if you  
15 don't have standards that make sense, you have to  
16 look at actual field observations and analysis to  
17 decide, okay, what will the actual traffic generating  
18 potential and parking demand be?

19 And Mr. Mr. Pineles' traffic consultant  
20 and the Board's own traffic consultant came to the  
21 same conclusion, felt at peak hour, at peak demand of  
22 about 84 percent of the parking spaces would be used.

23 MS. PALINKAN: Okay. But, it still  
24 doesn't answer my question. This is -- I don't know  
25 how many times I've asked this and I still haven't

1 gotten an answer, will those cars, the employees of  
2 Prospect Heights, will those people be parking in the  
3 new garage?

4 THE WITNESS: I'm not aware -- I'm not  
5 aware of that they are planning that.

6 MS. PALINKAN: What do you mean they're  
7 not going to park there.

8 MR. BASRALIAN: I think, Mr. Pineles  
9 testified, no, that they would not be utilizing this  
10 parking garage. This parking garage is solely for  
11 the LTACH and the associated services and not for any  
12 other purpose.

13 MS. PALINKAN: Oh, well, that's bad.  
14 That's bad. That's -- that's very, very, very bad.

15 Okay. And if you think about it,  
16 you'll know why it's bad, because you have all these  
17 cars that are parking on the street or in empty  
18 parking spaces.

19 THE WITNESS: But, the reality is,  
20 ma'am, this site is for -- this parking is for this  
21 use. And that's what it's designed for. And it is  
22 for this application, not that application.

23 MS. PALINKAN: Okay.

24 The sign issue, I think it wouldn't be  
25 too hard to assume that if you have a 19 story

1 building that's between and across from several  
2 mid-rise, low buildings, that you really wouldn't  
3 need a giant sign to tell people that this is the  
4 facility. You didn't -- in all those picture, you  
5 did not show that -- I don't know how -- facing it to  
6 the north of the building, how high is the apartment  
7 building to the north?

8 THE WITNESS: It's 11 stories.

9 MS. PALINKAN: And the one to the  
10 south?

11 THE WITNESS: Seven.

12 MS. PALINKAN: Okay. So 19 stories  
13 between those, and across the street there are couple  
14 of lower ones too.

15 So, it's not really that it's in this  
16 17 story, 15 story grouping. It going to stick up,  
17 among a group of local buildings.

18 THE WITNESS: The signage is designed  
19 to identify the building for the moving public along  
20 Prospect.

21 And, hopefully, as you're driving down  
22 the street you drive down, you're not looking up at  
23 19 stories. You're keeping your eye the road. And  
24 that's the purpose of the signage.

25 MS. PALINKAN: Okay.

1                   Now, in this area, I think, I'm  
2 overtime. Could you tell me, what is currently --  
3 since there's pressing need to put this on Prospect  
4 and Summit, in the past you've talked about, you  
5 haven't, it's been talked about that this would  
6 attract people since it's Bergen/Passaic, attract  
7 people from within a 35-mile radius.

8                   Has anyone gotten any numbers or in  
9 your research, have you gotten any numbers to show  
10 just how many dialysis units are available within the  
11 35 mile radius adult daycare LTACH.

12                   Meadowlands Hospital was approved to be  
13 an acute care hospital for at least 7 years and  
14 that's like 230 something beds in that.

15                   Do you have any information why we  
16 would need this on Prospect Avenue in Hackensack,  
17 when there are obviously many, many facilities within  
18 a 35-mile radius?

19                   THE WITNESS: Well, The State of New  
20 Jersey has made the determination that -- you know by  
21 granting a Certificate of Need that there is a  
22 continued need for this use.

23                   MS. PALINKAN: In New Jersey.

24                   THE WITNESS: In this area and in New  
25 Jersey, both.

1 MS. PALINKAN: Right.

2 Well, we got the numbers earlier on in  
3 the testimony that you needed X number for the State  
4 of New Jersey and that's why I wanted to have a  
5 comparison what do we have here. There is one in  
6 Rochelle Park that just opened. There seems to be a  
7 lot. And just, I don't think that we really need  
8 another one on Prospect.

9 So, if you decided to move it down to  
10 Main Street, that will be fantastic.

11 Thank you.

12 MR. MALAGIERE: Thank you.

13 (Applause).

14 MR. BASRALIAN: Just for clarification,  
15 the testimony early on was that the LTACH draws from  
16 a 35-mile radius. The dialysis and the adult daycare  
17 are five to ten miles. There's a distinction between  
18 the radius draw for those.

19 MR. MALAGIERE: The testimony will bear  
20 that out.

21 Thank you, Counsel.

22 Next? Welcome, please, let me swear  
23 you in.

24 MR. SCHRODER: Thank you.

25 MR. MALAGIERE: I still need to swear

1 you in, sir.

2 Do you swear -- put your left hand on  
3 the Bible, raise your right hand.

4 So you swear the testimony you're about  
5 to give before this Board to be the truth, the whole  
6 truth and nothing but the truth, so help you God?

7 MR. SCHRODER: I do.

8 W I L L I A M S C H R O D E R,  
9 residing at 245 Prospect Avenue, Hackensack, New  
10 Jersey, having been duly sworn, testifies as  
11 follows:

12 MR. MALAGIERE: Could you please  
13 identify yourself for the record, spell your last  
14 name and provide us with your home address, please?

15 MR. SCHRODER: William Schroder,  
16 S-c-h-r-o-d-e-r, 245 Prospect Avenue.

17 MR. MALAGIERE: Welcome, Mr. Schroder.

18 MR. SCHRODER: Thank you.

19 Hello.

20 THE WITNESS: Hello.

21 MR. SCHRODER: You testified to the  
22 fact that you've been engaged in this activity  
23 testifying on behalf of primarily private developers,  
24 perhaps, for what, 30 years or so?

25 THE WITNESS: Yes.

1                   But not primarily for developers. The  
2 majority of my practice is representing  
3 municipalities.

4                   MR. SCHRODER: Yeah. Now, you brought  
5 us all through the history of the development in  
6 Hackensack and the show and tell.

7                   The City of Hackensack was established  
8 in 1693, 317 years ago, 60 percent of the footprint  
9 of your project is on Summit Avenue, 150 feet  
10 frontage on Summit?

11                   THE WITNESS: No.

12                   MR. SCHRODER: A hundred feet frontage  
13 --

14                   THE WITNESS: No.

15                   MR. SCHRODER: -- on Prospect?

16                   THE WITNESS: No, 100 percent of the  
17 footprint is on the Prospect side of the site.

18                   MR. SCHRODER: And 150 feet frontage on  
19 Summit Avenue, correct?

20                   THE WITNESS: Yes.

21                   MR. SCHRODER: Okay. At 60 percent of  
22 the sidewalk frontage --

23                   THE WITNESS: No.

24                   MR. SCHRODER: -- is on Summit Avenue.

25                   THE WITNESS: Yes.

1 MR. SCHRODER: Okay. We're all aware  
2 of that.

3 Are you also aware of the fact that for  
4 317 years, there's been no commercial development on  
5 Summit Avenue between Route 4 to the north and the  
6 corner, one block inside Essex Street.

7 MR. NIX: Not true, not true.

8 MR. SCHRODER: Can we control this  
9 fellow over here?

10 MR. NIX: He swore on the Bible.

11 MR. SCHRODER: Okay.

12 So from Route 4 to the north, to Essex  
13 Street on the south, one block inside that there's  
14 been no commercial development for 317 years.

15 THE WITNESS: Well, I can't vouch for  
16 what took place for the first 250 years, but I can  
17 tell you that -- or 300, but I can tell you recently  
18 that all those offices that you see, in a planner's  
19 parlance, is commercial development. There's varying  
20 grades of commercial development. There's retail and  
21 service commercial development. There's office  
22 commercial development. There's medical service  
23 commercial development.

24 MR. SCHRODER: Retail and retail?

25 THE WITNESS: Just hear me out. I'm

1 explaining to you that the term "commercial  
2 development" in the planners and zoners world, is I  
3 think a little different than what you're thinking.  
4 You're thinking "commercial" just simply means  
5 retail. It doesn't. It also includes office. And  
6 unless you're going to tell me that the chiropractor  
7 that I've been going to on Summit for a long time  
8 now, just recently moved, but is not a commercial  
9 venture, you're wrong. It is.

10 And all of those other offices along  
11 Summit Avenue that are -- you know, that exist,  
12 they're commercial development. They're commercial  
13 uses.

14 MR. SCHRODER: They're converted single  
15 family homes?

16 THE WITNESS: That is correct.

17 MR. SCHRODER: That is correct.

18 They're not high rise buildings.

19 THE WITNESS: Not on Summit, no.

20 MR. SCHRODER: Correct.

21 You also testified to the fact that you  
22 were amazed, and you remarked that the development of  
23 Prospect Avenue in the last 20 or 30 years has gone  
24 from one high rise, The Whitehall, to dozens, dozens.  
25 So, from Essex Street to Passaic practically all high

1 rises on Prospect.

2 THE WITNESS: Mr. Schroder, I don't  
3 think that I used the word "amazed". I was just  
4 identifying the fact --

5 MR. SCHRODER: No, you remarked.

6 THE WITNESS: -- the fact of the  
7 change.

8 MR. SCHRODER: So, then if this were  
9 approved by the Board, this commercial development  
10 high rise with frontage on Summit Avenue, we could  
11 see in 20 or 30 years perhaps a similar situation on  
12 Summit Avenue. You'll be holding up more 20, 30  
13 years from now and saying, "Wow, look what's happened  
14 here". Now --

15 THE WITNESS: No, actually that doesn't  
16 necessarily happen.

17 MR. SCHRODER: What I'm getting at.

18 THE WITNESS: But, let me finish. You  
19 made a statement that begs an answer.

20 And the reality is, if the municipality  
21 focuses on appropriate planning and zoning, and  
22 recognizes needs over time, you know, while there may  
23 be change, it doesn't necessarily result in 20 story  
24 buildings on Summit.

25 The City's already recognized the

1       evalunationary character of the City by allowing  
2       existing single family houses, as you've noted, to  
3       convert to office buildings.

4                       So, you know there's -- change can  
5       occur, but if you do it sensitively, you know,  
6       there's nothing wrong with it.

7                       MR. SCHRODER: Well, I understand what  
8       you're getting at.

9                       But I'm questioning the appropriateness  
10      of this private purpose, for profit project, on  
11      Summit Avenue primarily.

12                      THE WITNESS: Well, that is --

13                      MR. SCHRODER: Now, I don't disagree.

14                      THE WITNESS: But you and I differ --  
15      let me finish. That is where we do disagree.

16                      MR. SCHRODER: This is -- this --  
17      pardon me?

18                      THE WITNESS: Because, I'm not  
19      acknowledging your contention that the building is on  
20      Summit. The building is on the Prospect portion of  
21      the property.

22                      It does not encroach into the single  
23      family residential zone portion of the property.  
24      There is underground parking on that part, but at  
25      grade; and what one would see on the Summit Avenue

1 side of the site, is an open space passive amenity,  
2 not a building.

3 MR. SCHRODER: Right.

4 I'm saying, it's not on an appropriate  
5 spot compared to other spots. Now, the only reason  
6 you may maintain that this is appropriate for this  
7 for profit, private purpose venture, is because  
8 Mr. Pineles already brought the property. So, that's  
9 why it's appropriate for you, and the developer.

10 Now, of course, he can sell the  
11 property. It is liquid.

12 THE WITNESS: May I comment?

13 MR. SCHRODER: Now, there are streets  
14 in Hackensack--

15 THE WITNESS: -- can I reply to that?

16 MR. SCHRODER: There are many, many  
17 streets in Hackensack. There are many, many streets  
18 in Hackensack. You're familiar with Hackensack?

19 THE WITNESS: Very, yes.

20 MR. SCHRODER: That are dedicated to  
21 commercial activity and development. They are  
22 dedicated to it.

23 Essex Street, Main Street, River Road,  
24 portions of Route 17, Route 4, Hudson Street, Temple,  
25 Polify Road. I mean, you want to hear some more?

1 THE WITNESS: It's your hour.

2 MR. SCHRODER: State Street, Johnson  
3 Avenue, Temple Avenue, Anderson Street, Lodi Street  
4 South Newman, there are dozens of locations. I don't  
5 disagree with you. And I heard your lecture, sort  
6 of, to the Board about redeeming social value and the  
7 grand plan.

8 It has redeeming social value, but not  
9 in this location.

10 FEMALE AUDIENCE MEMBER: Right, right.

11 MR. SCHRODER: Not to intrude on Summit  
12 Avenue. It's never been intruded upon for 317 years.  
13 Why now? Why now?

14 Will this Board make that exception?  
15 Will this Board look back five or ten years from now,  
16 say, "we decided to make a change, after 317 years  
17 there should be changes on Summit Avenue, the finest  
18 residential street in town, the best houses, the  
19 houses we're most proud of, some converted to doctors  
20 offices, but no high rises, with 150-foot frontage on  
21 Summit Avenue.

22 Would you have the Prospect and Summit  
23 Avenue ridge in Hackensack look like the island of  
24 Manhattan? Is that your ideal?

25 THE WITNESS: No, that's not it.

1 MR. SCHRODER: In 10, 20, 30 years?

2 There are --

3 THE WITNESS: Now that yo have asked me  
4 a question.

5 Can I answer your question.

6 MR. SCHRODER: Should I repeat the  
7 streets?

8 THE WITNESS: No, now you've asked me a  
9 question. Let me answer.

10 And I can't be more definitive and  
11 assertive in my comment. We are not proposing a high  
12 rise on the Summit Avenue portion.

13 The high rise is going solely in the  
14 area that's zoned for high rise.

15 Okay. I know you don't want to hear  
16 that. Or you refuse to listen to it --

17 MR. SCHRODER: Well --

18 THE WITNESS: But that's the reality.

19 MR. SCHRODER: This Board -- this Board  
20 does not operate with blinders. The Board looks  
21 ahead. They don't look behind. They look ahead,  
22 two, three, five, 10, 20 years from now.

23 What are we going to see?

24 FEMALE AUDIENCE MEMBER: Skyscrapers.

25 MR. SCHRODER: High rises.

1                   The Board is smart enough. They don't  
2 need lectures, okay, from you or anybody else, about  
3 redeeming social values and LTACHs and schools and  
4 developments and energy production; whatever else.

5                   The only reason you want this property  
6 converted for commercial use is because he bought it.  
7 He can sell it. Okay? Get out of it. There are  
8 plenty of places.

9                   Do you want me to repeat the places?  
10 Does anyone want to hear them again?

11                   MALE AUDIENCE MEMBER: No.

12                   MR. MALAGIERE: The record is clear.

13                   CHAIRMAN GUERRA: No.

14                   MR. SCHRODER: There are plenty of  
15 places.

16                   CHAIRMAN GUERRA: Thank you.

17                   MR. SCHRODER: Thank you.

18                   MR. MALAGIERE: Thank you, sir.

19                   (Applause.)

20                   MR. BASRALIAN: Excuse me, this really  
21 is just a question period. I really object to the  
22 vast statements and talking to the public.

23                   CHAIRMAN GUERRA: Objection noted.

24                   MR. BASRALIAN: Can I.

25                   MALE AUDIENCE MEMBER: Sit down.

1 CHAIRMAN GUERRA: Thank you.

2 FEMALE AUDIENCE MEMBER: Sit down.

3 MR. BASRALIAN: Excuse me. I have to  
4 note the record --

5 CHAIRMAN GUERRA: It's noted.

6 MR. BASRALIAN: And I would like to  
7 also on rebuttal when we're done with this side I  
8 would like to some redirect.

9 CHAIRMAN GUERRA: Okay. Thank you.

10 MR. MALAGIERE: Good evening, sir.  
11 We're going to swear you in please.

12 Do you swear the testimony you're about  
13 to give before this Board to be the truth, the whole  
14 truth and nothing but the truth, so help you God?

15 MR. LENDER: I do.

16 D A V I D L E N D E R,

17 Residing at 565 Prospect Avenue, Hackensack,  
18 New Jersey, having been duly sworn, testifies  
19 as follows:

20 MR. MALAGIERE: Would you please  
21 identify yourself for the record, spell your last  
22 name and provide us with an address, please.

23 MR. LENDER: David Lender, L-e-n-d-e-r.  
24 I live at 565 Summit Avenue.

25 MR. MALAGIERE: Welcome.

1                   MR. LENDER: I have some questions  
2 about zoning.

3                   Particularly, given the board you put  
4 up about the development, specifically about Prospect  
5 and how it occurred in the town as a planner.

6                   Isn't it the case that when Prospect  
7 was developed from being residential, that it was a  
8 planned development, that the town or the City,  
9 however you define it at that time, changed the  
10 ordinances so that you had, instead of residential  
11 you had or -- whatever you had.

12                  THE WITNESS: It went from single  
13 family to high rise.

14                  MR. LENDER: Correct.

15                  THE WITNESS: Yes. That's correct.

16                  MR. LENDER: That was something that  
17 the City of Hackensack decided was desirable or  
18 whoever was responsible for that. They changed the  
19 zoning. It wasn't someone asked for a change where  
20 the developers came in and said, we're just going to  
21 co-op this residential property and build a high rise  
22 on it. This was obviously consistent with the  
23 zoning, right.

24                  THE WITNESS: It is my understanding  
25 that the developers approached the City and they

1 asked for the zone change.

2 MR. LENDER: Right. But regardless of  
3 how it happened the City --

4 THE WITNESS: No, but you were right.

5 MR. LENDER: -- the City decided to  
6 change the zoning --

7 THE WITNESS: At some point in time the  
8 zoning was changed.

9 MR. LENDER: -- for a reason.

10 Right. So, that development occurred  
11 consistent with city planning and zoning?

12 THE WITNESS: Yes.

13 MR. LENDER: And you put up some other  
14 -- another board that showed red spaces that were  
15 commercial properties.

16 And you said they were in the same  
17 neighborhood. But the fact is those are zoned for  
18 the Hospital and commercial properties, are they not?

19 THE WITNESS: Not in every instance.

20 If you overlaid the zone lines on  
21 some of those properties, some of those properties  
22 are pre-existing, nonconforming conditions.

23 MR. LENDER: But not single family  
24 residential?

25 THE WITNESS: Correct.

1 MR. LENDER: So -- and then you put up  
2 another slide or board that showed the uses of the  
3 property.

4 And you only went to the east side of  
5 Summit, but if you went to the west side of Summit it  
6 would have showed that those were all residential  
7 properties. Some of which might have been converted  
8 to light commercial use as in doctors' offices, thing  
9 like that.

10 Many of which require them to be in  
11 residence, whether, in fact, they actually do that,  
12 or not, but that's what the zoning requires, does it  
13 not?

14 THE WITNESS: That is correct.

15 MR. LENDER: So, isn't that a different  
16 neighborhood than where the Hospital is? And isn't  
17 that different zoning than where the Hospital is?

18 THE WITNESS: Yes, but the hospital has  
19 its own particular zoning.

20 MR. LENDER: And isn't -- isn't the --  
21 what is it R-75? I believe you called it?

22 THE WITNESS: Yes.

23 MR. LENDER: The R-75 fundamentally  
24 different zoning than the R-3?

25 THE WITNESS: Yes, it is. I thought I

1 pointed that out.

2 MR. LENDER: Well, that's the point I'm  
3 trying to get to as well.

4 Doesn't the City try to preserve, and  
5 you as a planner I know this, I presume, preserve the  
6 integrity of certain neighborhoods by setting up  
7 zoning in a certain way so that you keep that  
8 neighborhood consistent throughout that zoning.

9 THE WITNESS: That is correct.

10 And the Municipal Land Use Law, Mr.  
11 Lender, does talk about how one tries to encourage  
12 compatible land use arrangement. And it also talks  
13 about encouraging a variety of other things, and  
14 allows what I'll call an "escape valves" for those  
15 uses that may not have been contemplated, but may be  
16 appropriate and serve the public purpose.

17 My testimony was designed to suggest  
18 that this is one of those cases. That a tall  
19 building in an area characterized by very tall  
20 buildings is one thing, a complementary thing.

21 The fact that it's very close to a  
22 hospital and very close to other medical facilities,  
23 certainly suggests a certain level of compatibility  
24 as well.

25 Beyond that is the issue of need for

1 this kind of a use. Reality is when you talk about  
2 this type of a use, time and time again, you hear  
3 people say, it's needed. It's needed. But not here.  
4 It's always that case. It's needed, but it's not  
5 needed in this particular location --

6 MR. LENDER: Or in a way that's not  
7 going to have a negative disruptive influence --

8 THE WITNESS: And the reality is that  
9 -- but the reality is th Municipal Land Use Law makes  
10 specific provision for allowing this Board to vary  
11 from the ordinance in particular cases where one is  
12 dealing with an inherently beneficial use, because  
13 the courts have made a determination that when you're  
14 dealing with an inherently beneficial use, they  
15 should be given, you know, additional and further  
16 consideration. And that's -- simply put, that's what  
17 this application is all about.

18 MR. LENDER: I think it's interesting  
19 and ironic that you use the term "escape valve"  
20 because I think that's what you're providing for by  
21 having all the parking and all of the exits from the  
22 parking enter into Summit Avenue, which a residential  
23 neighborhood that's already overburdened with too  
24 much traffic.

25 THE WITNESS: But that's not correct.

1 MALE AUDIENCE MEMBER: It is right.

2 THE WITNESS: No. There is a driveway.

3 MR. LENDER: An exit?

4 THE WITNESS: Yes, out to Summit, but  
5 there's an exit out to Prospect.

6 MR. LENDER: Where is the majority of  
7 the parking going to go? All the parking --

8 THE WITNESS: I think the testimony --

9 MR. LENDER: The testimony is the  
10 majority of the parking is going to go out on Summit  
11 Avenue?

12 THE WITNESS: No, I don't recall that  
13 to be true.

14 MR. BASRALIAN: No, no.

15 THE WITNESS: It's my recollection of  
16 the testimony was that the majority goes out to  
17 Prospect, that was the testimony.

18 MR. LENDER: That is not my  
19 recollection.

20 The record will show it.

21 THE WITNESS: Yes, it will.

22 MR. LENDER: That's all I have.

23 MR. MALAGIERE: Thank you.

24 (APPLAUSE.)

25 CHAIRMAN GUERRA: Thank you.

1 MR. MALAGIERE: Next. Come forward to  
2 be sworn in.

3 Do you swear the testimony you're about  
4 to give before this Board to be the truth, the whole  
5 truth and nothing but the truth, so help you God?

6 MS. WEINBERGER: I do.

7 L I L L I K A W E I N B E R G E R,

8 Residing at 280 Prospect Avenue, Hackensack, New  
9 Jersey, having been duly sworn, testifies as  
10 follows:

11 MR. MALAGIERE: Could you please  
12 identify yourself for the record.

13 MS. WEINBERGER: My name --

14 MR. MALAGIERE: Hold on one second.  
15 Spell your last name for me and give your address.

16 Thank you.

17 MS. WEINBERGER: My name is Lillika.  
18 Last name Weinberger. W-e-i-n-b-e-r-g-e-r. Lillika  
19 L-i-l-l-i-k-a.

20 MR. MALAGIERE: Ma'am, will you please  
21 give us your address.

22 MR. WEINBERGER: I live at the  
23 Whitehall.

24 MR. MALAGIERE: Thank you.

25 MS. WEINBERGER: At 280 Prospect

1 Avenue.

2 MR. MALAGIERE: Welcome.

3 MS. WEINBERGER: Mr. Burgis, I think  
4 you gave a very good presentation. It was very  
5 interesting. And you're a smooth speaker so --

6 THE WITNESS: However.

7 MS. WEINBERGER: That's a --

8 THE WITNESS: There's a bug "but"  
9 coming along.

10 MS. WEINBERGER: No, not really.

11 THE WITNESS: Thank you.

12 MS. WEINBERGER: No, not really.

13 THE WITNESS: Well, thank you.

14 MS. WEINBERGER: I'm not going to beat  
15 up on you.

16 Many of the points have been covered by  
17 other people.

18 But what my question is -- my question  
19 is that you mentioned that if this building were to  
20 go up there might be three more cars, more or less,  
21 at the intersection.

22 THE WITNESS: That was the testimony of  
23 the traffic consultants.

24 MS. WEINBERGER: Okay. Well -- okay.  
25 Have you been on Prospect Avenue lately?

1 THE WITNESS: Yes.

2 MS. WEINBERGER: Do you see what a  
3 disaster it has become?

4 THE WITNESS: I don't think anyone  
5 could deny that there's not a lot of traffic on  
6 Summit and on Prospect, but the testimony, however,  
7 was that, you know, that traffic is not going to go  
8 away. But at peak hour what this project will do to  
9 that existing traffic is add roughly three cars at  
10 the lighted intersection.

11 MS. WEINBERGER: Well, this is  
12 presumably three years after it takes to put this  
13 building up. So, that no one will be able to go onto  
14 Prospect Avenue or to Passaic Street -- not Passaic  
15 Street.

16 THE WITNESS: Why you the say that?  
17 Why do you say that?

18 MS. WEINBERGER: I'm sorry. Prospect  
19 and Summit.

20 THE WITNESS: Why do you say that?

21 MS. WEINBERGER: Because with the  
22 collapse of the -- of the parking garage next door to  
23 us, they detoured the traffic. No one was able to go  
24 by.

25 And now there is heavy equipment there

1 taking away debris. And it's a disaster.

2 THE WITNESS: Well, I understand that,  
3 but that doesn't -- that doesn't suggest.

4 MS. WEINBERGER: And this building is a  
5 disaster.

6 THE WITNESS: That doesn't suggest that  
7 that would occur here. You know, there will be a  
8 plan submitted to identify how construction would be  
9 handled on the site.

10 MS. WEINBERGER: You still have to  
11 displace a lot of dirt.

12 And that leads me to my next thing; how  
13 close is this going to be to the buildings on either  
14 side?

15 Are you on the property line? Would  
16 you be on the property line?

17 THE WITNESS: No, we're 12 feet away, I  
18 think.

19 MS. WEINBERGER: So 12 feet away.

20 THE WITNESS: It's either 12 or 15  
21 feet.

22 MS. WEINBERGER: And you're going to  
23 dig down at least five --

24 THE WITNESS: Five levels, yes.

25 MS. WEINBERGER: -- stories?

1 THE WITNESS: Yes.

2 MS. WEINBERGER: Won't that compromise  
3 the foundations of the two buildings on either side?

4 THE WITNESS: The Applicant will be  
5 required and the City will certainly probably inspect  
6 this closer than any other building's ever been  
7 inspected in Hackensack because what has happened  
8 across the street to ensure --

9 MS. WEINBERGER: Well, I would like it  
10 to be --

11 THE WITNESS: -- to ensure that it will  
12 be done in a safe and efficient manner.

13 MS. WEINBERGER: Well, I'm sure that  
14 they would do their best, but I think that it seems  
15 to me like an incredibly unwise thing to do.

16 And I note that it's a useful building.  
17 And I know that you have a Certificate of Need. I  
18 understand that. No one is questioning the good that  
19 the building would do if it were built in another  
20 place.

21 Thank you.

22 THE WITNESS: Thank you.

23 (APPLAUSE.)

24 MR. MALAGIERE: Thank you.

25 THE WITNESS: Thank you.

1 MR. MALAGIERE: Anyone else who wishes  
2 to be heard?

3 We're going to swear you in, please.

4 Do you swear the testimony you're about  
5 to give before this Board to be the truth, the whole  
6 truth and nothing but the truth so help you God?

7 MS. JOHNSON: I do, yes.

8 J U D Y J O H N S O N,

9 Residing at 339 Summit Avenue, Hackensack, New  
10 Jersey, having been duly sworn, testifies as  
11 follows:

12 MR. MALAGIERE: Could you please  
13 identify yourself for the record, spell your last  
14 name and provide us with an address, ma'am.

15 MS. JOHNSON: Judy Johnson,  
16 J-o-h-n-s-o-n, 339 Summit.

17 MR. MALAGIERE: Welcome, Ms. Johnson.

18 MS. JOHNSON: Thank you.

19 I just have a couple of quick  
20 questions.

21 What is the square footage of the  
22 building, again?

23 THE WITNESS: It's 207,300 square feet.

24 MS. JOHNSON: And could you give me the  
25 square footage of the parking?

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THE WITNESS: Of the parking?

MS. JOHNSON: Of all the parking.

THE WITNESS: That I don't have. I really don't know.

MS. JOHNSON: Then does anyone have that?

MR. MALAGIERE: Mr. Basralian, can you make a representation?

MR. BASRALIAN: I -- not without going into -- I can't. I don't know the answer to that.

MS. JOHNSON: It's approximately what, seven stories underground?

THE WITNESS: Five.

FEMALE AUDIENCE MEMBER: Five.

MS. JOHNSON: Five. Okay. So, 150 feet wide, I think I remember?

MR. MALAGIERE: It's staggered, I would believe, right?

THE WITNESS: Yes, it's staggered going down.

MS. JOHNSON: Staggered. Could you tell me, I mean, we don't consider that to be part of the building, because it's underground and not seen.

However, we're using the four properties together as the ratio that you're using

1 for your floor space or area whatever.

2 So, I think it's kind of important  
3 though, because even though you didn't include the  
4 parking garage to that other building.

5 MR. MALAGIERE: Excuse me, Ms. Johnson,  
6 pardon me. Mr. Basralian has a number he's like to  
7 make.

8 So, maybe you can make your point more  
9 clearly.

10 MR. BASRALIAN: Yes, below grade  
11 196,560 square feet.

12 However, Mr. Burgis was incorrect it's  
13 175,500 square feet above grade.

14 THE WITNESS: Above grade.

15 MR. BASRALIAN: The additional  
16 33,000 square feet is subsumed within the 196 because  
17 it's all below grade.

18 MS. JOHNSON: Okay. So, basically that  
19 garage is about 20,000 square feet bigger than the  
20 building. And even though it's hidden it's a  
21 substantial part.

22 And although you didn't include the  
23 parking garages in your other building, can we get  
24 give a percentage of those building to the property?  
25 Their parking garage is, if I'm not mistaken, none of

1       them go down five stories. And none of them are four  
2       lots large, correct?

3                       THE WITNESS: I can't comment to the  
4       first part of that question, but certainly in the  
5       second part when those properties were initially  
6       developed a number of them encompassed multiple tax  
7       lots.

8                       And then the property as far as in the  
9       tax office, merged all of those lots into one.

10                      So, for example, The Excelsior at one  
11       point in time encompassed, represented, I would say  
12       half a dozen different tax lots at one time. Now, it  
13       is one tax lot.

14                      MS. JOHNSON: I understand.

15                      But if you were to do the ratios of the  
16       property just in the Prospect side, and I know that's  
17       not part of your calculations, but if you were to  
18       just do it to the Prospect lot itself, what would  
19       your calculation be and where would it fall in your  
20       chart?

21                      CHAIRMAN GUERRA: On what the floor  
22       area ratio? The floor area ratio?

23                      MS. JOHNSON: The floor area ration  
24       because basically your chart says R-3 so, if you  
25       actually showed your chart everything that was within

1 the R-3 district, where would that building show on  
2 your chart.

3 THE WITNESS: Well, I haven't done the  
4 calculation. Obviously it would be at to the far  
5 left end portion of the exhibit.

6 MS. JOHNSON: So, basically --

7 THE WITNESS: But that's not what the  
8 municipality's own ordinance says you do.

9 MS. JOHNSON: No, I know.

10 THE WITNESS: The ordinance says you  
11 consider the entirety of a lot that's under  
12 consideration for an application.

13 MS. JOHNSON: But you're basically  
14 building -- you have a building that is larger than  
15 the one on Prospect underground on Summit, basically.

16 If you took that building and increased  
17 it by 20,000 square feet and laid it on its side,  
18 that's what --

19 THE WITNESS: But also recognize --

20 MS. JOHNSON: That we're not even  
21 considering.

22 THE WITNESS: But recognize that for  
23 all of these other buildings we purposely didn't  
24 include parking as well.

25 MS. JOHNSON: I would doubt that they

1 have the equivalent --

2 THE WITNESS: So all of the --

3 MS. JOHNSON: -- of a 200,000-square  
4 foot garage.

5 THE WITNESS: Well, you would be  
6 surprised because a lot of those buildings are pretty  
7 high up in terms of their dwelling count.

8 So, presumably, they have a significant  
9 parking area in terms of a garage of some sort to  
10 accommodate that need.

11 MS. JOHNSON: No, I disagree with you.

12 THE WITNESS: So, to suggest -- let me  
13 finish.

14 MS. JOHNSON: No, I disagree with you.

15 THE WITNESS: No, let me finish. To  
16 suggest that our site would then be moved to the far  
17 left portion of this exhibit, is really unfair,  
18 because it's adding something for our site that is  
19 not to be added to all these other properties.

20 MS. JOHNSON: Would it be a good  
21 exercise to actually add for the other properties to  
22 see what it looks like?

23 THE WITNESS: No, I think the numbers  
24 wouldn't be dramatically different. I think knowing  
25 many of the high-rises, as I know then, our building

1 would be moved a little further to the left, but not  
2 to the far left.

3 MS. JOHNSON: Do you think it would  
4 substantially move though, the buildings in the  
5 closest proximity to where this is going up? Because  
6 those are seven stories --

7 THE WITNESS: Yeah.

8 MS. JOHNSON: -- 11 stories, 14  
9 stories. Would it make a difference for those  
10 building?

11 THE WITNESS: But their -- but their  
12 site sizes are also smaller, so you know, there's a  
13 lot of analysis that would have to be done to make  
14 that determination.

15 MS. JOHNSON: One of the other comments  
16 that you had is as far as the evolution and the  
17 change we buildings or uses that are not  
18 contemplated.

19 Are you aware we have a hospital zoned  
20 area --

21 THE WITNESS: Yes, I am.

22 MS. JOHNSON: -- in this City,  
23 Hackensack?

24 THE WITNESS: Yes, I am.

25 MS. JOHNSON: At one of the very first

1 meetings there was a question for Mr. Pineles as to  
2 why he didn't consider to put this building in the  
3 hospital zoned area, which is appropriate. And I  
4 think we agree that we wouldn't be here, I don't  
5 think, if it was going in that area.

6 His comment was that it was extremely  
7 expensive to build the required parking for that  
8 area.

9 So, I'm going to go back. So, it  
10 wasn't something you looked at because of the price  
11 cost associated with that.

12 So, my question is, it would be  
13 inherently beneficial to be in the hospital zone; is  
14 that correct?

15 THE WITNESS: The concept of --

16 MS. JOHNSON: The hospital zoned area.

17 THE WITNESS: The concept of an  
18 inherently beneficial designation wouldn't be lost by  
19 being located in the hospital zone.

20 MS. JOHNSON: It's not tied to the  
21 property.

22 The inherent benefit comes from the --

23 THE WITNESS: The use.

24 MS. JOHNSON: The servicing --

25 THE WITNESS: Right. And that's why

1 the Sica case specifically says, the use, itself,  
2 isn't not necessarily tied to the land. But it's the  
3 use that's inherently beneficial and then you make  
4 the determination as to whether or not there is those  
5 negatives that I spoke about. And that's how you do  
6 that balancing analysis.

7 MS. JOHNSON: I'm -- I'm sorry. Okay.

8 THE WITNESS: The court gave  
9 consideration to the issue that you're raising.

10 MS. JOHNSON: One of the things -- I am  
11 not an expert by any means, but I did do a little bit  
12 of research on this.

13 So, one of the things that I read was  
14 basically that inherently benefit isn't obtained  
15 because of the cost to do it elsewhere.

16 So, the fact that Mr. Pineles owns the  
17 property and he owned that property all four lots,  
18 that in and of itself doesn't give him inherent  
19 benefit.

20 THE WITNESS: Right.

21 MS. JOHNSON: Because he's building  
22 there, but what did that mean?

23 THE WITNESS: But, you did note, I  
24 hope, that when I gave my planning rationale for how  
25 we meet Sica, I didn't touch the economics of it at

1 all. You know, I focused on what the Court said to  
2 focus on.

3 So, to me whether that's his issue or  
4 not is immaterial to my planning analysis.

5 MS. JOHNSON: So, it doesn't matter  
6 that there are 363 beds down in the units in  
7 healthcare that he will put out more than that for  
8 just the people around because he decided -- I mean  
9 how many people live in Hackensack, do you know,  
10 approximately.

11 THE WITNESS: Yes, 49,000.

12 MS. JOHNSON: Which is a lot.

13 And do you know how many people live  
14 just on the Prospect area that you designated as part  
15 of your study, the Prospect Avenue on just the east  
16 side?

17 THE WITNESS: I try once --

18 MS. JOHNSON: The one side?

19 THE WITNESS: I had an estimate but the  
20 -- for the -- the whole corridor, but I forget what  
21 it is.

22 It's a significant number obviously.

23 MS. JOHNSON: So, the 363 beds?

24 THE WITNESS: Where are you getting 363  
25 beds?

1 MS. JOHNSON: Well, 363 -- I added up  
2 the numbers, and you do the dialysis units and all of  
3 that dialysis, the adult daycare.

4 THE WITNESS: The adult daycare is not  
5 beds.

6 MS. JOHNSON: No, I'm sorry. But just  
7 the people that would be --

8 THE WITNESS: Okay.

9 MS. JOHNSON: -- serviced during the  
10 day, 363 patients.

11 THE WITNESS: People.

12 MS. JOHNSON: Patients?

13 THE WITNESS: People.

14 MS. JOHNSON: People.

15 Does that come into consideration at  
16 all, that 363 is a much smaller -- while, a very  
17 important number, but a much smaller number than the  
18 residents of Hackensack and even the number of  
19 residents that live on Prospect and the east side of  
20 Summit.

21 THE WITNESS: I don't know. I mean you  
22 could say that. And the reason I say that is because  
23 the inherent benefit is there whether it's for, you  
24 know, these 300 people, as you say or 250 or 450.

25 The Court never focused on the number

1 per se.

2                   Clearly, the more people that are  
3 involved in the application, the greater the inherent  
4 benefit, because more people are getting served.

5                   MS. JOHNSON:   Okay.

6                   THE WITNESS:   You know to deal with  
7 what the State has determined is the need.

8                   MS. JOHNSON:   And just one final  
9 question, the evolutionary character, you had talked  
10 about this and how this City has been changing.  
11 We've got condos and apartments and things, all going  
12 up all over the City, there's Main Street.  How do  
13 you reconcile that would be infrastructures, the  
14 ability of the town, the infrastructure within the  
15 town to support those changes --

16                   THE WITNESS:   Well --

17                   MS. JOHNSON:   -- because --

18                   THE WITNESS:   Well, presumably the  
19 municipality's planner will be looking at that to  
20 make certain that the infrastructure is affirmatively  
21 dealt with.

22                   One of the problems that I noticed, I  
23 didn't mention it in my direct testimony, you have a  
24 2001 Master Plan.

25                   MS. JOHNSON:   2006.

1 THE WITNESS: That's nine years old.  
2 That's a reexamination.

3 The last comprehensive Master Plan is  
4 nine years old.

5 And given the dramatic changes now  
6 being contemplated for State Street and some of other  
7 things that have occurred, it may be appropriate to  
8 deal with that comprehensive Master Plan again and  
9 open it up and examine it.

10 I will tell you that that comprehensive  
11 Master Plan in '01 and the re-ex in '06 didn't really  
12 address the issue of infrastructure at all. It was  
13 basically a land use plan.

14 You have a housing section as well,  
15 but, you know, there's many more things that your  
16 City can be looking at to address to make sure that  
17 you have the appropriate comfort level that all those  
18 issues are appropriately dealt with.

19 MS. JOHNSON: Do you think it's  
20 appropriate for us to make -- to hold off any  
21 decision such as this project until that's done?

22 THE WITNESS: No.

23 On the one hand, I would say it's good  
24 to plan. But on the hand, there is a very specific  
25 case law specifically says that you cannot do that.

1 MS. JOHNSON: Okay.

2 THE WITNESS: And that case and a  
3 number of cases on that issue, specifically said if  
4 you want to plan, plan don't wait.

5 MS. JOHNSON: Okay. Thank you.

6 (APPLAUSE.)

7 MR. MALAGIERE: Mr. Burgis, if this  
8 application were brought in the hospital overlay  
9 zone, it would not require a variance; a use  
10 variance.

11 THE WITNESS: In all likelihood that is  
12 correct.

13 MR. MALAGIERE: It would be a permitted  
14 use?

15 THE WITNESS: Yes.

16 MR. MALAGIERE: So, the concept of  
17 inherently beneficial use and the Sica analysis would  
18 be irrelevant to this application if it were in the  
19 overlay?

20 THE WITNESS: That is correct.

21 MR. MALAGIERE: Sir, let me swear you  
22 in.

23 MR. HEANEY: Sure.

24 My name is --

25 MR. MALAGIERE: Sir, left hand on the

1 Bible, raise your right hand, sir.

2 Do you swear the testimony you're about  
3 to give before this Board to be the truth, the whole  
4 truth and nothing but the truth, so help you God?

5 MR. HEANEY: I do.

6 K E V I N H E A N E Y,

7 Residing at 261 Summit Avenue, Hackensack, New  
8 Jersey, having been duly sworn, testifies as  
9 follows:

10 MR. MALAGIERE: Please identify  
11 yourself for the record, spell your last name and  
12 give us an address, sir.

13 MR. HEANEY: Yes, my name is Kevin  
14 Heaney, H-e-a-n-e-y.

15 I live at 261 Summit Avenue in  
16 Hackensack.

17 MR. MALAGIERE: Thank you.

18 MR. HEANEY: And I am a dentist. And I  
19 have a home office. Where I am has been a home  
20 office for the last over 50 years. I live there and  
21 I see patients there.

22 I just have a couple of questions.  
23 One, I believe that you said that you have a  
24 Certificate of Need from the State for 120 LTACH  
25 beds; is that right?

1 THE WITNESS: No, I believe it's for  
2 75? For 75 beds.

3 MR. HEANEY: You're asking for a  
4 19 story building?

5 THE WITNESS: Yes.

6 MR. HEANEY: Do you need that many for  
7 75 beds?

8 THE WITNESS: No. But, in addition to  
9 that we also have other elements to this project.  
10 There's the dialysis and there's the adult medical  
11 daycare.

12 MR. HEANEY: The adult daycare will be  
13 on how many floors; do you know?

14 THE WITNESS: I said that at the  
15 outset.

16 Hold on one second.

17 MR. HEANEY: Why don't we mention it  
18 again tonight, so ...

19 THE WITNESS: The adult daycare is on  
20 one floor.

21 MR. HEANEY: One floor?

22 THE WITNESS: The patient rooms and  
23 support areas are on floors 5 through 14.

24 There is physical therapy --

25 MR. HEANEY: Is it --

1 THE WITNESS: Let me just get through  
2 the list.

3 MR. HEANEY: Well, I only asked about  
4 the adult daycare.

5 THE WITNESS: Yes, that's one full  
6 floor.

7 MR. HEANEY: One floor, okay.

8 So, you will have 19 floors.

9 How about the dialysis, how many  
10 floors?

11 THE WITNESS: Wait, yes, the dialysis  
12 are on floors 16 through 18.

13 And physical therapy is on floor 16.

14 And floors 5 through 14 are the patient  
15 rooms.

16 MR. HEANEY: I have another question  
17 about the dialysis.

18 Has the State put forth -- you  
19 mentioned that they have a need for LTACH beds. How  
20 much dialysis has the State recommended that we need  
21 increased dialysis?

22 THE WITNESS: They do not have a CN  
23 requirement for dialysis.

24 MR. HEANEY: Right.

25 Are you concerned at all about the

1 potential for competition with not for profit  
2 dialysis facilities in the area or is that not a  
3 concern?

4 THE WITNESS: Yes, you're asking the  
5 wrong person.

6 MR. HEANEY: I'm asking the wrong  
7 person.

8 THE WITNESS: I am the planner who  
9 evaluated the planning and zoning issues.

10 MR. HEANEY: Okay.

11 I guess one of the other questions that  
12 I had is you mentioned case law regarding public  
13 benefit. And I'm sorry, I forget the term that you  
14 used for it.

15 MR. MALAGIERE: Inherently beneficial.

16 MR. HEANEY: Inherently beneficial.

17 Yes, thank you.

18 Is there any case law that  
19 distinguishes setting up a hospital such as  
20 Hackensack University Medical Center which is a  
21 not-for-profit institution, what about setting up a  
22 for-profit institution. Does the case law  
23 distinguish between those two? Is one more  
24 inherently beneficial than the other?

25 THE WITNESS: Not that I'm aware of,

1 no.

2 MR. MALAGIERE: I would agree with  
3 that.

4 MR. HEANEY: What do you think about  
5 that personally one way or the other?

6 THE WITNESS: In terms of land use  
7 impact, it's really immaterial.

8 MR. HEANEY: I see. Okay. Well, thank  
9 you very much.

10 (APPLAUSE.)

11 MR. MALAGIERE: Thank you.

12 Let me swear you in, do you swear the  
13 testimony you're about to give before this Board to  
14 be the truth, the whole truth and nothing but the  
15 truth so help you God?

16 MR. HURWITZ: I do.

17 H O W A R D H U R W I T Z,

18 Residing at 326 Prospect Avenue, Hackensack, New  
19 Jersey, having been duly sworn, testifies as  
20 follows:

21 MR. MALAGIERE: Will you please  
22 identify yourself for the record?

23 MR. HURWITZ Howard Hurwitz,  
24 H-u-r-w-i-t-z. I live at 326 Prospect Avenue.

25 MR. MALAGIERE: Welcome.

1                   MR. HURWITZ: I would like to follow up  
2 on something that Dr. Heaney was addressing.

3                   THE WITNESS: Before you do that, I  
4 just have one correction from what I just said. The  
5 adult daycare is actually on two floors. I think I  
6 has said one.

7                   MR. HURWITZ: Okay.

8                   The question which is very important  
9 deals with the Certificate of Need.

10                   Have seen the Certificate of Need?

11                   THE WITNESS: Yes.

12                   MR. HURWITZ: Can you tell us when it  
13 was issued.

14                   THE WITNESS: Originally?

15                   MR. HURWITZ: No, now. No, now. The  
16 one now.

17                   THE WITNESS: Initially it either '06  
18 or '07.

19                   MR. MALAGIERE: If you don't know, sir,  
20 you're going to have to say you don't know.

21                   THE WITNESS: I don't know but --

22                   MR. MALAGIERE: You can't just guess.

23                   THE WITNESS: -- I know it -- it  
24 follows the Permit Extension Act to the year 2012.

25                   MR. HURWITZ: All right. And that is

1 for some number of beds; is that correct?

2 THE WITNESS: Yes, 75. Yes.

3 MR. HURWITZ: And in order to obtain a  
4 Certificate of Need there's a complex process where  
5 you fill out a great deal of information and send it  
6 to the State and then they review it and then they  
7 decide how many beds --

8 THE WITNESS: Correct.

9 MR. HURWITZ: -- they're willing to  
10 provide.

11 I believe that the minimum you can  
12 apply for is 50 for a stand alone.

13 They won't permit anything less.

14 But my question is, is this a document  
15 that is available to the public and to the Board so  
16 that they can take a look at where these people are  
17 coming from?

18 THE WITNESS: I don't know.

19 My office did not write the  
20 application. We're not involved in that.

21 MR. HURWITZ: But you did review the  
22 application?

23 THE WITNESS: Yes, I know that it's a  
24 public document.

25 MR. HURWITZ: I'd like to ask the Board

1 to consider whether they would like to see what the  
2 Applicant said when he applied for the 75 -- the 72  
3 beds. In fact, whether there was an application for  
4 72 beds or it was a different number then how it got  
5 to be 120 in terms of building this building. And  
6 maybe you can answer that. If you're going to  
7 testify here that this is an inherently beneficial  
8 use based on the CN --

9 THE WITNESS: It's my understanding --

10 MR. HURWITZ: -- and the CN -- let me  
11 just finish.

12 And the CN is not for all these many  
13 stories because it's only for 72 beds. What's that  
14 12 bed on a floor, I think, whatever the numbers may  
15 be.

16 How does it get to be larger? And how  
17 do you extend this and say, well, if it's -- if it's  
18 inherently beneficial for a small number, it must be  
19 inherently beneficial for a larger number.

20 And just a little extension here,  
21 obviously the State has determined, you know, you  
22 only applied for 72 or 75 or the State determines you  
23 weren't entitled to more.

24 So, I would like to -- I think the  
25 public has a right to know how it got to be that

1 number.

2 THE WITNESS: It's my understanding  
3 that you are entitled to request additional beds at  
4 some point in time. We're not doing that until we  
5 find -- we're not going to do that until we find out  
6 whether or not we're entitled to use the site. And  
7 then we would amend the application for the  
8 additional CN -- CN beds.

9 There are Certificates of Need, that  
10 are approved throughout the northern part of the  
11 state or throughout the entire state that never get  
12 used. So, the State will transfer such beds.

13 MR. HURWITZ: That's correct. Do you  
14 have any idea why they don't ever get used?

15 THE WITNESS: Sometimes it's the  
16 economics. Sometimes, they're not successful in  
17 pursuing their application before local boards, all  
18 sorts of reasons.

19 MR. HURWITZ: All right. The reason  
20 I'm asking is, you're probably right that building a  
21 large stand alone LTACH it not all that economical.  
22 That's probably why they don't get built.

23 On more --

24 THE WITNESS: I was thinking in terms  
25 of the state of the economy today.

1                   MR. HURWITZ: Well, no, isn't this  
2 Medicare funded typically? And wouldn't have  
3 anything to do with the state of the economy.

4                   THE WITNESS: You're asking the wrong  
5 person.

6                   MR. HURWITZ: Okay. Well, then you  
7 testified it was the state of the economy that's why  
8 I followed up.

9                   I just have one more separate question  
10 on that. And it had to do with, I think your  
11 testimony on what do you call it "lot coverage" and  
12 somebody else talked about that.

13                   And I don't mean to be facetious, but I  
14 just want to ask this question in terms of land use.

15                   You're talking about five lots of  
16 50,000 square feet and a lot coverage of 14 percent.  
17 Okay?

18                   If, hypothetically, the Applicant were  
19 to buy the adjacent property on Summit Avenue, so  
20 that he had four lots on Summit Avenue instead of  
21 three lots, adding 10,000 square foot, would then you  
22 say, well, now, okay, the lot coverage is less than  
23 14 percent?

24                   THE WITNESS: Yes.

25                   MR. HURWITZ: And would you have to say

1 --

2 THE WITNESS: If that was then  
3 incorporated into your original design.

4 MR. HURWITZ: Okay. Thank you.

5 I'm sorry. What do you mean by  
6 "overall design"?

7 THE WITNESS: Well, you couldn't keep a  
8 single family house, for example. You would have to  
9 remove that.

10 MR. HURWITZ: You would have to remove  
11 that, that was my question. You would have to remove  
12 the house and have a vacant piece of land there?

13 THE WITNESS: Correct.

14 MR. HURWITZ: Even if it was not  
15 participating in the project at all?

16 THE WITNESS: Correct.

17 MR. HURWITZ: Okay. Thank you, very  
18 much.

19 THE WITNESS: You're welcome.

20 (APPLAUSE.)

21 MR. MALAGIERE: Please come forward?

22 CHAIRMAN GUERRA: Mr. Malagiere?

23 MR. MALAGIERE: Yes.

24 CHAIRMAN GUERRA: Could we request to  
25 see that original application?

1                   MR. MALAGIERE: Mr. Basralian, the  
2 Chair has made request that you provide the original  
3 application for the Certificate of Need or  
4 applications for the Certificates of Need. And that  
5 you do that prior to the next hearing. You could  
6 produce it directly to me.

7                   MR. BASRALIAN: Okay. Sure.

8                   MR. MALAGIERE: Thank you. I  
9 appreciate it.

10                   Ma'am, I'm going to swear you in  
11 please. Come forward to be sworn in, please.

12

13                   MS. JANKOWSKI: Yes.

14                   MR. MALAGIERE: Do you swear the  
15 testimony you're about to give before this Board will  
16 be the truth, the whole truth, nothing but the truth  
17 so help you God?

18                   MS. JANKOWSKI: I do.

19                   A N N E T T E       J A N K O W S K I,  
20                   Residing at 344 Prospect Avenue, Hackensack, New  
21                   Jersey, having been duly sworn, testifies as  
22                   follows:

23                   MR. MALAGIERE: Would you please  
24 identify yourself for the record, spell your last  
25 name and give us a home address, please.

1 MS. JANKOWSKI: Annette Jankowski,  
2 J-a-n-k-o-w-s-k-i, 344 Prospect.

3 THE COURT REPORTER: Ma'am, please  
4 spell your first name also.

5 MS. JANKOWSKI: Annette, A-n-n-e-t-t-e.

6 MR. MALAGIERE: Thank you, welcome.

7 MS. JANKOWSKI: Thank you.

8 Mr. Burgis, I'd like to address the  
9 issue of the underground garage and if there is  
10 something that's not within your domain, then my  
11 question is for the Board.

12 Many of us have serious concerns about  
13 the idea of digging a five story underground garage,  
14 especially in light of what has happened at 300  
15 Prospect.

16 Have any geological studies been done  
17 on Mr. Pineles' property at this point?

18 MR. MALAGIERE: I think, unfortunately,  
19 the planner is not going to be able to field that  
20 question.

21 MS. JANKOWSKI: Okay. Then --

22 MR. MALAGIERE: The Board could not  
23 answer that.

24 The issue is this, it's a very  
25 important question. It's a very important concern.

1 It's just not the province, statutorily, of this  
2 Board. This Board hears land use applications. And  
3 that would come -- if the Board were to consider the  
4 application, and act favorably on it, that would come  
5 from the land use department and the engineers and  
6 the professionals in that department. They would  
7 require this be done, as well as state agencies which  
8 overlap. Of course any approval this Board may give,  
9 would be subject to all of that. It's a very  
10 important consideration. It's just not for this  
11 Board and this witness.

12 MS. JANKOWSKI: Okay. Because the  
13 concern is that should there be any digging and  
14 certainly I don't know anything about digging  
15 garages, but if any blasting were to occur, how and  
16 who would guarantee the integrity of the surrounding  
17 buildings? Because I don't believe for one moment  
18 that it wouldn't effect any of the surrounding  
19 buildings.

20 MR. MALAGIERE: That would be --

21 MS. JANKOWSKI: What guarantee would we  
22 have, say that the geological studies were done and  
23 they said everything is wonderful. And they start  
24 blasting.

25 What happens then.

1                   MR. MALAGIERE: I just think it's  
2 unlikely there'd be blasting, but to whatever extent  
3 there is going to be, obviously, substantial digging  
4 and rock removal, and it would be governed by the  
5 state regulations as implemented by the land use  
6 department. And as oversight by the Department of  
7 Community Affairs from the State, which is how it  
8 would be in any municipality for any building.

9                   Mr. Borrelli, do you agree with that?

10                  MR. BORRELLI: That's absolutely  
11 correct. Everything is going to have to be compliant  
12 to the Uniform Construction Code by the State of New  
13 Jersey.

14                  MS. JANKOWSKI: And for the record, I  
15 don't doubt that your building is necessary  
16 somewhere, between the two counties, what I am  
17 opposed to is the location.

18                  Regardless of the fact that there are  
19 some doctors' offices and we are not a residential  
20 area, trust me, we are.

21                  We are a residential neighborhood. We  
22 have families. We jog. We bike. We go to work  
23 everyday.

24                  It is no less a residential area than a  
25 street with single family houses.

1 THE WITNESS: Ms. Jankowski, I don't  
2 think I suggested otherwise.

3 I don't think I suggested otherwise.

4 MS. JANKOWSKI: You did, you did.

5 THE WITNESS: I don't think I suggested  
6 otherwise.

7 MS. JANKOWSKI: You did. You said that  
8 since there are mixed use buildings in the high rises  
9 that we don't qualify as residential.

10 THE WITNESS: No, I think that the  
11 record will clearly indicate that --

12 MS. JANKOWSKI: Listen to the record  
13 you did --

14 THE WITNESS: -- that I did not.

15 MS. JANKOWSKI: Trust me, it was  
16 semantics, sir.

17 MR. MALAGIERE: Would you a like to  
18 address that comment, Mr. Burgis?

19 THE WITNESS: Well, clearly it is a  
20 residential neighborhood.

21 However, the suggestion by members the  
22 public that there is absolutely no nonresidential  
23 activities taking place, was one I felt it was  
24 necessary to address.

25 And, I did so by pointing out that in a

1 number of the high-rises there are some  
2 non-residential activities taking place. And in  
3 addition you have the restaurants.

4 And that was not meant to suggest that  
5 it's a non-residential area. I was simply pointing  
6 out the facts of the situation, rather than let the  
7 innuendoes go by the Board.

8 MS. JANKOWSKI: And for anyone that  
9 thinks only three cars are going to be on that  
10 street, just come to Summit and Prospect now and see  
11 what happens.

12 THE WITNESS: Please, let me address  
13 that too because that was not the testimony. Nobody  
14 said only three care were coming.

15 MS. JANKOWSKI: Extra, extra --

16 THE WITNESS: The testimony.

17 MS. JANKOWSKI: Extra.

18 THE WITNESS: No, that was not the  
19 testimony either.

20 FEMALE AUDIENCE MEMBER: Yes, it was.

21 THE WITNESS: Listen to me --

22 MS. JANKOWSKI: I heard it too.

23 THE WITNESS: -- listen to both traffic  
24 consultants.

25 CHAIRMAN GUERRA: Let him answer the

1 question.

2 MS. JANKOWSKI: I'm listening.

3 THE WITNESS: Those traffic consultants  
4 said that there will be more traffic.

5 MS. JANKOWSKI: Uh-huh.

6 THE WITNESS: But at a light there will  
7 be an additional three cars at peak hour, in addition  
8 to what is there now.

9 There will be other vehicles generated  
10 by this project, but that was the testimony.

11 At the light, when that light is red,  
12 there will be three additional cars on average  
13 stopped there.

14 MS. JANKOWSKI: We have gridlock now,  
15 without the three additional cars.

16 THE WITNESS: What I was suggesting,  
17 taking their testimony, was to suggest that if that  
18 is one of the significant detrimental effects, three  
19 additional car doesn't weigh out against --

20 MS. JANKOWSKI: Does not outweigh?

21 THE WITNESS: Right, outweigh. Thank  
22 you. The inherently beneficial use.

23 MS. JANKOWSKI: All right. Thank you.

24 (APPLAUSE.)

25 MR. MALAGIERE: Thank you.

1 CHAIRMAN GUERRA: Mr. Burgis, I just  
2 got a quick question.

3 MR. MALAGIERE: Mr. Burgis, the Chair  
4 would like to ask a question.

5 CHAIRMAN GUERRA: Well, actually it can  
6 be directed to Al.

7 MR. MALAGIERE: Let me swear him in.

8 CHAIRMAN GUERRA: Probably not.

9 MR. MALAGIERE: Let me swear you in.  
10 Mr. Burgis, real quickly, do you live  
11 in Hackensack now?

12 THE WITNESS: No, I once did, but not  
13 now.

14 MR. MALAGIERE: Do you swear the  
15 testimony you're about to give before this Board to  
16 be the truth, the whole truth and nothing but the  
17 truth so help you God?

18 MR. BORRELLI: Yes, I do.

19 MR. MALAGIERE: Please identify  
20 yourself for the record?

21 MR. BORRELLI: My name Al Borrelli. I  
22 am Zoning Officer for the City of Hackensack.

23 MR. MALAGIERE: Thank you, Mr.  
24 Borrelli.

25 CHAIRMAN GUERRA: Al, this might be an

1 unfair question, but the fact that a resident asked  
2 an interesting point. And, again, I don't know it's  
3 not our purview, so forth, but has anyone ever gone  
4 down five stories in any of the construction, I know  
5 it's --

6 MR. BORRELLI: I know I may --

7 CHAIRMAN GUERRA: Do you recall a  
8 parking garage going down that far.

9 MR. BORRELLI: Well, I know that there  
10 -- I have been down in a lot of those garages  
11 recently, especially.

12 CHAIRMAN GUERRA: Yeah.

13 MR. BORRELLI: And there are some that  
14 are, I believe --

15 CHAIRMAN GUERRA: Five stories?

16 MR. BORRELLI: -- at least three and  
17 four down, you know, four down at least.

18 CHAIRMAN GUERRA: Because I don't even  
19 remember the Hospital going down that far.

20 MR. BORRELLI: I can't think of any --

21 CHAIRMAN GUERRA: Most recently.

22 MR. BORRELLI: There are excavations  
23 that went down that far, but not the garages.

24 CHAIRMAN GUERRA: Well, it's the same  
25 idea for this. They're probably going to have to go

1 down further for the footings and so forth, who  
2 knows. Right? For five stores. I know it's not in  
3 our purview, it's just an interesting point.

4 Again that was brought up, I remember  
5 bringing that up during the first day of testimony.

6 But, whatever for whatever --

7 MR. BORRELLI: I'll be more than happy  
8 to research it.

9 CHAIRMAN GUERRA: If you come across  
10 it.

11 Thank you.

12 MR. MALAGIERE: Mr. Chairman?

13 CHAIRMAN GUERRA: Yes. Where are we?  
14 Are we all done?

15 We are going to close the public  
16 portion.

17 MR. MALAGIERE: Seeing no one else from  
18 the public.

19 CHAIRMAN GUERRA: The public is closed.

20 MR. MALAGIERE: On this witness'  
21 testimony.

22 Mr. Borrelli, did you want to suggest a  
23 date for the November Special Meeting on this  
24 application?

25 MR. BORRELLI: I want through our

1 calendar and the only date that we have available in  
2 November would be November 30th.

3 MR. MALAGIERE: What day of the week is  
4 that?

5 MR. BORRELLI: It's a Tuesday evening.

6 MR. BASRALIAN: That is a Tuesday  
7 evening.

8 THE WITNESS: That's a Tuesday evening.

9 MR. CARROLL: I'm unavailable.

10 CHAIRMAN GUERRA: All right.

11 MR. DIANA: I should be okay.

12 MR. MALAGIERE: How about you, Joe?

13 MR. BASRALIAN: It's the only date I  
14 have open.

15 MR. BORRELLI: Mr. Goez?

16 MR. GOEZ: Yes, I'm okay.

17 MR. BORRELLI: You're okay.

18 MR. GOEZ: I'm okay with November 30th.

19 MR. MALAGIERE: It is November 30th.

20 MR. BASRALIAN: I note that it is Saint  
21 Andrew's Day, is a bank holiday in the UK, but --

22 CHAIRMAN GUERRA: We're all right with  
23 that.

24 MR. BASRALIAN: Mr. Carroll has a  
25 problem.

1 CHAIRMAN GUERRA: Mr. Carroll?

2 MR. MALAGIERE: We would hope to  
3 continue the cross examination by Counsel of Mr.  
4 Burgis at that time and to complete the cross  
5 examination by Counsel of the traffic expert and, of  
6 course, we anticipate Mr. Basralian will provide, as  
7 he always has throughout these proceedings, documents  
8 that were requested tonight by the Chairman so you  
9 make use of that during cross examination.

10 And then at that point, we'll see  
11 what's left.

12 MR. BASRALIAN: Might we tentatively  
13 schedule December as well, it's the 30th and that  
14 leaves very little time with holidays, if we don't  
15 schedule it ahead of time.

16 MR. MALAGIERE: Let's see how far we  
17 get in November?

18 CHAIRMAN GUERRA: Well, what do we have  
19 in November. It's going to be traffic again, Mr.  
20 Burgis.

21 MR. BASRALIAN: Well, I guess Mr.  
22 Moskowitz wanted to cross examine Mr. Keller with  
23 regard --

24 MR. MALAGIERE: Just on the added  
25 information.

1 MR. BASRALIAN: Right. And cross  
2 examination of Mr. Burgis.

3 CHAIRMAN GUERRA: Would someone inform  
4 Mr. Moskowitz that that has to happen on  
5 November 30th.

6 MR. SCHANDLER: I will.

7 CHAIRMAN GUERRA: That he be here.

8 MR. MALAGIERE: We also have other  
9 Counsel here who will complete their examination.

10 THE WITNESS: You know what, I have a  
11 conflict I'm not available on the 30th.

12 MR. MALAGIERE: There is it. Right  
13 there, November 30th I noted it in here.

14 THE WITNESS: Apparently, there is an  
15 issue with the 30th.

16 CHAIRMAN GUERRA: There are no other  
17 dates in November?

18 THE WITNESS: Well, it's a tough month  
19 we have the League of Municipalities.

20 MR. MALAGIERE: Well, that doesn't get  
21 to our purview.

22 MR. BORRELLI: Yeah.

23 MR. MALAGIERE: No, it doesn't get in  
24 our consideration. Nobody on this Board, except --

25 MR. CARROLL: That's the week of the

1 17th, right.

2 MR. MALAGIERE: -- is going down there.  
3 We convene.

4 MR. BORRELLI: Okay. I've got the 16th  
5 open it's a Tuesday and the 17th is a Wednesday.

6 MR. BASRALIAN: The 17th I'm not  
7 available as I'm out of town.

8 CHAIRMAN GUERRA: The regular meeting?

9 MR. MALAGIERE: Yes, it is changed.  
10 Okay, well, we can convene on the 30th and complete  
11 your traffic. The planning witness is unavailable on  
12 the 30th.

13 THE WITNESS: Maybe I can get here  
14 later.

15 MR. BASRALIAN: I'm anxious to move  
16 forward. So, I will put on as much on as I can to  
17 get done on the 30th.

18 CHAIRMAN GUERRA: Okay. Let's stay  
19 with November 30th.

20 Mr. Burgis, you're going attempt to get  
21 here later on?

22 THE WITNESS: Yes, if my other meeting  
23 ends early enough I will come over.

24 CHAIRMAN GUERRA: Let's stay with the  
25 30th.

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All right, that being said --

MR. MALAGIERE: The application is carried without further notice to November 30th these chambers at 7:00 p.m.

Mr. Chairman?

CHAIRMAN GUERRA: Motion to adjourn.

MR. DIANA: I'll make that motion.

CHAIRMAN GUERRA: Second.

Thank you.

(Whereupon, this matter will be continuing at a future date. Time noted 10:01 p.m.)

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C E R T I F I C A T E

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #15855, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

-----  
LAURA A. CARUCCI, C.C.R., R.P.R.  
License #XI02050, and Notary Public  
of New Jersey #15855, Notary  
Expiration Date March 1, 2014

Dated: \_\_\_\_\_

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