

CITY OF HACKENSACK  
ZONING BOARD OF ADJUSTMENT  
WEDNESDAY, OCTOBER 26, 2011  
COMMENCING AT 7:00 P.M.

.....  
IN THE MATTER OF: : TRANSCRIPT  
Application V#23-08 SP# 21-08 : OF  
Address 320 Summit Avenue/ : TESTIMONY OF  
329 Prospect Avenue : GREGORY POLYNIAK  
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

JOHN CARROLL, MEMBER

HUMBERTO GOEZ, MEMBER

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2 AL BORRELLI, ZONING OFFICER

3 GREGORY POLYNIAC, 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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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVID.</u>
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(NO EXHIBITS MARKED.)

1 CHAIRMAN GUERRA: Please rise for  
2 Pledge of Allegiance.

3 (All rise for recitation of the Pledge  
4 of Allegiance.)

5 CHAIRMAN GUERRA: In accordance with  
6 Public Law 1975, Chapter 231, Open Public Meetings  
7 Act, the Zoning Board of Adjustment of the City of  
8 Hackensack will conduct a public hearing, Wednesday,  
9 October 26, 2011, in the Council Chambers, City Hall,  
10 65 Central Avenue, Hackensack, New Jersey, at 7:00  
11 p.m.

12 The purpose of the meeting is to  
13 consider the below-listed cases, and if possible,  
14 render a formal decision.

15 Roll call please?

16 MR. BORRELLI: Mr. Carroll?

17 MR. CARROLL: Here.

18 MR. BORRELLI: Mr. Diana?

19 MR. DIANA: Here.

20 MR. BORRELLI: Mr. Goetz?

21 MR. GOEZ: Here.

22 MR. BORRELLI: Chairman Guerra?

23 CHAIRMAN GUERRA: Here.

24 Minutes from our September 15th, 2011  
25 meeting.

1 Do I hear a motion to approve?

2 MR. CARROLL: I'll make a motion.

3 CHAIRMAN GUERRA: Do I hear a second?

4 MR. GOEZ: Second.

5 MR. BORRELLI: Mr. Carroll?

6 MR. CARROLL: Aye.

7 MR. BORRELLI: Mr. Diana?

8 MR. DIANA: Abstain.

9 MR. BORRELLI: Mr. Goez?

10 MR. GOEZ: Aye.

11 MR. BORRELLI: And Chairman Guerra?

12 CHAIRMAN GUERRA: Yes.

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

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

21 One, use variance required pursuant to  
22 40:55D(1).

23 Two, insufficient lot area, required  
24 30,000 square feet, proposed 20,000 square feet.

25 Three, insufficient lot width, required

1 125 feet, proposed 100 feet.

2 Four, insufficient rear yard setback,  
3 required 40 feet, proposed zero feet to edge of R-3  
4 district.

5 Five, exceeds maximum lot coverage,  
6 permitted 30 percent, proposed 40.5 percent for R-3  
7 district.

8 Six, exceeds maximum height ratio  
9 side-yard, permitted 4 to 1, proposed 19 to 1.

10 Seven, insufficient buffer zone,  
11 required 6 feet, proposed zero feet to edge R-3  
12 district.

13 Eight, insufficient parking spaces,  
14 required 562, proposed 402.

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

17 Ten, no paving in side-yard.

18 Eleven; insufficient area for back up  
19 aisle spaces.

20 Twelve, exceeds maximum sign area,  
21 permitted 12 square feet, proposed 96 square feet.

22 Thirteen, insufficient sign setback,  
23 required 20 feet, proposed zero feet.

24 Fourteen, any other variance or waivers  
25 that may be required.

1 Counsel, please?

2 MR. BASRALIAN: Good evening, Mr.  
3 Chair, and Members of the Board. This is obviously a  
4 continuation hearing, in fact the 20th hearing on  
5 this application. We started in April 2009.

6 MR. MALAGIERE: Mr. Basralian, if I  
7 may, just to orient for the record, my understanding  
8 and recollection that we're going to continue with  
9 the testimony of Greg Polyniak in the form of cross  
10 examination. It's my recollection that his comments  
11 or his direct testimony were concluded, and that's  
12 where we're going to proceed.

13 Is that your recollection, Mr.  
14 Basralian.

15 MR. BASRALIAN: Yes, it is.

16 MR. MALAGIERE: Okay.

17 Mr. Chairman if I may, can we just get  
18 appearances by the other Counsel?

19 CHAIRMAN GUERRA: Yes, please.

20 MR. MALAGIERE: Mr. Basralian, of  
21 course made his appearance as noted by the Court  
22 Reporter although he didn't say it.

23 Thank you.

24 MR. DIKTAS: Good evening, Mr.  
25 Chairman, Christos Diktas, Diktas, Schandler, Gillen,

1 on behalf of Anastasia Burluk.

2 MR. MOSKOWITZ: Good evening, Mr.  
3 Chairman, Board, and Counsel, Theodore Moskowitz,  
4 McCarter and English, on behalf of Prospect Avenue  
5 Coalition, and of course my wife and I as unit owners  
6 in the Barrage House.

7 I did have a question of order for you,  
8 Counsel. I have two points of order I wanted to  
9 raise.

10 MR. MALAGIERE: Okay.

11 MR. MOSKOWITZ: It will take some time.

12 MR. MALAGIERE: The Chairman has  
13 indicated to me -- I don't mean to cut you off, sir.

14 Mr. Moskowitz, the Chairman wants to  
15 conclude Mr. Polyniak and then we'll hear  
16 applications, points of order and such after that  
17 testimony is concluded.

18 MR. MOSKOWITZ: I was just going to  
19 agree with that in advance.

20 MR. MALAGIERE: Thank you, sir. Nice  
21 to see you, Mr. Moskowitz.

22 Mr. Basralian, please proceed.

23 MR. BASRALIAN: Mr. Polyniak, you're  
24 still under oath from the last hearing when you were  
25 sworn in.



1 MR. MALAGIERE: Why don't we swear him  
2 in again, Mr. Basralian?

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

7 MR. POLYNIAK: Yes, I do.

8 G R E G O R Y P O L Y N I A K, P.P., P.E.

9 34 Park Avenue, Lyndhurst, New Jersey, having  
10 been duly sworn, testifies as follows:

11 MR. MALAGIERE: Would you please  
12 identify yourself for the record, indicate the  
13 capacity in which you will continue your testimony.

14 MR. POLYNIAK: Sure. Gregory Polyniak,  
15 Neglia Engineering Associates, Board engineer and  
16 Board planner.

17 CROSS EXAMINATION

18 BY MR. BASRALIAN:

19 Q. You were retained or Neglia Engineering  
20 was retained by the Board of Adjustment as its  
21 engineer and planner.

22 Neglia Engineering issued nine separate  
23 letter/comment reports regarding the application, and  
24 your predecessor H2M issued two reports before you.

25 In your testimony on September 15th

1 regarding the passive park, you said that:

2 "When you look at this project it is a  
3 creation of the passive park. Nowhere on  
4 Summit Avenue does a passive park exist".

5 A. That is correct.

6 Q. Your comments seemed to imply that a  
7 passive park is a negative, yet in your report dated  
8 September 18, 2009, at item six entitled "Design" on  
9 page 8 you state that:

10 "Both the extent of landscaping  
11 throughout the site, especially the garden  
12 area, will present a positive aesthetic effect  
13 on Summit Avenue and the Summit Avenue side of  
14 the site".

15 That same -- you also go on to say:

16 "The arrangement of the buildings  
17 within the R-3 district and the garden area  
18 within the R-75 district in appropriate  
19 arrangement," and then you go on about the  
20 extensive landscaping throughout the site.

21 That's the same thing that appeared in  
22 the H2M report of November 2008.

23 What's changed with respect to the open  
24 space feature that caused you to come to a different  
25 conclusion than your September 18, 2009 opinion?

1           A.       Sure. As we've stated and quoted  
2       within the review letter throughout the project,  
3       we've carried over the H2M comments during the entire  
4       proceedings and then added additional information  
5       with respect to it.

6                    When you look at the overall  
7       neighborhood and what exists in the area, nowhere  
8       does a passive park exist in the neighborhood. And  
9       that's my opinion.

10           Q.       Well, did you -- when you replaced H2M  
11       as the engineer and planner, did you review the  
12       report submitted by H2M?

13           A.       Yes, I did.

14           Q.       And you continued, even in subsequent  
15       reports to September 18, 2009 report say that the  
16       extensive landscaping throughout the site, especially  
17       the garden area, will present a positive aesthetic  
18       effect on the Summit Avenue side of the site.

19                    Let me ask you this, What's wrong with  
20       having a passive park on Summit Avenue complete with  
21       extensive landscaping and seating area that is open  
22       to the public at large?

23           A.       Again, it does not fit within the  
24       context of the neighborhood as a whole. And there  
25       are actually sections of the zoning ordinance which

1 discuss in the R-3 zone the location of buildings  
2 with respect to setbacks in the R-3 zone. And it  
3 discusses within one of the notation within the bulk  
4 requirements that buildings should not be set back  
5 more than a hundred feet in the R-3 zone.

6 And, again, this building is set back  
7 more than a hundred feet. So there are some bulk  
8 violations with respect to it.

9 And in addition, this passive park does  
10 not fit within the context of the overall  
11 neighborhood.

12 Q. Well, that's -- let me go back, though,  
13 I don't think you answered my question as to what  
14 changed with respect to the plans to warrant your  
15 different conclusion from September 18, 2009 or the  
16 conclusion that had been reached by H2M in its  
17 November 2008 report.

18 Why did you change your mind? Why did  
19 you change your conclusion?

20 A. I think I did answer that question.  
21 You look at the overall context of the neighborhood  
22 as a whole, you look up and down the Summit Avenue  
23 corridor. And it's fairly that an passive park does  
24 not fit within the context of the neighborhood.

25 Q. But that wasn't any conclusion that you

1 reached in your two -- your initial September 18,  
2 2009 report, so you changed it subsequent to 2009,  
3 September 18th. What was the basis for your changing  
4 your initial comment that it was aesthetically  
5 pleasing and would be a benefit?

6 A. Again, I'm going to repeat the same  
7 answer over and over and over.

8 CHAIRMAN GUERRA: He answered -- he  
9 said he answered the question, whether you like the  
10 answer or not, I'm not concerned about. He said he  
11 answered the question. Let's go on to the next one.

12 MR. BASRALIAN: No, Mr. Chairman, with  
13 all due respect, he didn't answer the question. He  
14 just said that he came to a conclusion that it's not  
15 appropriate because of a lot of other reasons. I  
16 asked him what changed his mind from September 18,  
17 2009 to subsequent.

18 CHAIRMAN GUERRA: Right.

19 MR. BASRALIAN: He didn't answer that  
20 question.

21 THE WITNESS: Again, when you look at  
22 the overall context of the neighborhood and you look  
23 at the surrounding areas, it's my opinion that it  
24 does not fit within this neighborhood, and that's my  
25 opinion with respect to it.

1 Q. Did you look at it before you wrote the  
2 September 18, 2009 report?

3 A. Most definitely. And again, those  
4 comments carry through from the H2M letter. So to  
5 have a basis, we didn't want to recreate the entire  
6 review letter from scratch, so we utilized the H2M  
7 review letter and then supplemented it with  
8 additional information.

9 As I stated before, I provided my  
10 opinion on the record. And I think I've answered the  
11 question numerous times now.

12 Q. Well, then your opinion is in conflict  
13 with the H2M position that I just read from their  
14 report?

15 A. I --

16 Q. This report?

17 A. Yeah, I can't answer. Again, what -- I  
18 provided you with what my opinion is and my opinion  
19 stands.

20 Q. When you review someone else's report  
21 and issue another report, do you usually carry over  
22 everything they have without any caveat because  
23 that's what your September 18, 2009 report said?

24 A. Again, what we did was we carried over  
25 the comments to maintain consistency within the

1 review letter so that your experts can address the  
2 situation accordingly and address the comments.

3 I'm providing my professional opinion  
4 through my testimony.

5 Q. Which you acknowledge are different  
6 than the H2M professional opinion and the opinion  
7 rendered by Mr. Burgis, the Applicant's planner?

8 A. I can only acknowledge what my opinion  
9 is.

10 Q. Well, you were here for Mr. Burgis'  
11 testimony, is it not in conflict with what he  
12 testified is appropriate use for that area?

13 A. Mr. Burgis and I have a different  
14 opinion.

15 Q. You also stated on September 17th --  
16 I'm sorry -- September 15th last that the shadowing  
17 effect of the building, proposed building, would  
18 effect light, air and open space.

19 And Mr. Zabate (phonetic) had testified  
20 that if it were moved east, south and west it would  
21 be the same matter.

22 I'm curious to know how the shadow  
23 effects -- how a shadow effects air, light, open  
24 space as it's always moving. And is there a  
25 different path for the other buildings that are on

1 that side of Prospect Avenue as it effects Summit  
2 Avenue?

3 A. No, there would be no different path  
4 with respect to the overall sunlight, but, again,  
5 with a 19 story building, there will be a shadowing  
6 effect on the properties.

7 Q. Well, there are other buildings that  
8 are that high along Prospect Avenue, don't they have  
9 the same shadowing effect?

10 A. They would have, the sun follows the  
11 same pattern, so they would have a shadowing effect.

12 Q. So, this one is no different than any  
13 other building of similar height?

14 A. Of similar height, but when you look at  
15 the buildings in the area, the buildings are not of  
16 that height in the proximity of this location.

17 Q. Well, it's irrespective if it still  
18 shadows out onto Summit Avenue properties whether  
19 it's up the block or down the block and it's 19  
20 stories or 18 or 21 stories, it still has the same  
21 shadowing effect that this one would have?

22 A. Yeah, I don't disagree.

23 Q. Thank you.

24 This building is -- has a footprint of  
25 about 12,000 square feet.



1                   Are you aware how it compares to other  
2 buildings along Prospect Avenue?

3                   A.        I am.

4                   Q.        And is it smaller than most or larger  
5 than most, in terms of its footprint?

6                   A.        When looking at the footprint, it is  
7 smaller than most.

8                   Q.        Thank you.

9                   During his testimony and cross  
10 examination, Mr. Miskovich concluded the methodology  
11 used by Mr. Keller for traffic and parking analysis  
12 is correct.

13                   In fact I believe he stated -- I know  
14 he stated, the increase in traffic on Central Avenue,  
15 Prospect Avenue, Summit Avenue and Passaic Street in  
16 the a.m. peak as projected by Mr. Miskovich was 204  
17 vehicles during that 7:30 - 8:30 a.m. peak, which is  
18 a little less, about six or seven cars less than Mr.  
19 Keller had proposed. When all is said and done,  
20 there are nearly 6,000 vehicles on the four roadways  
21 and the four intersection in the a.m. and p.m. peak.

22                   Even using Mr. Miskovich's numbers of  
23 2,004 (sic) a.m. and slightly less in the p.m. he  
24 concluded that the additional cars on the roadways  
25 would result in a 10-foot longer queue at one

1 intersection and a 40-foot longer queue at another  
2 intersection, The first being about a half car length  
3 and the other being about two car lengths.

4 Why did you conclude, however, that  
5 based upon the testimony of Mr. Keller and Mr.  
6 Miskovich, that the additional traffic during the  
7 a.m. peaks would result in a detrimental effect on  
8 the four roadways and intersections?

9 A. Sure. And to reiterate and discuss my  
10 testimony, when you look at what is a permitted use  
11 on the subject property, and compare it to what is  
12 being proposed by the Applicant --

13 Q. Excuse me, that wasn't the question.  
14 It wasn't a comparison. I asked what made you  
15 conclude that 204 cars added to 6,000 on the roadway  
16 in the a.m. peak, resulting in a queue of 10-feet and  
17 40-feet at different intersections was a detrimental  
18 effect on the roadways, that's what I asked you, not  
19 about a comparison of any other use.

20 A. Understand. And I'm going to answer  
21 the question and then we'll go through the aspects of  
22 what --

23 Q. No, no.

24 MR. MALAGIERE: Hold on, Mr. Basralian.

25 Q. Just answer the question.

1 MR. MALAGIERE: Mr. Polyniak, answer  
2 the question as responsibly as you can.

3 And, Mr. Basralian, if you think he's  
4 being unresponsive you can interject.

5 Go ahead.

6 THE WITNESS: Sure.

7 A. Again, when we looked at the -- the  
8 overall development as being proposed, and you look  
9 at what's being -- what could be constructed on the  
10 subject property --

11 Q. No, no, excuse me --

12 MR. MALAGIERE: Hold on. Hold on.  
13 Hold on.

14 For the record, let him put his  
15 response on the record. And then you can object to  
16 it and point out why he's not being responsive to  
17 your question.

18 Please proceed with your answer.

19 THE WITNESS: Sure.

20 A. (Continuing) Again, when you look at  
21 what is permitted on the subject property and compare  
22 it to what is being proposed on the subject property,  
23 You will notice that basically the traffic for this  
24 proposed use compared to a permitted use or trips  
25 generated, is going to be approximately five to six

1 times greater. And that's stipulated within Mr.  
2 Miskovich's report.

3 So you can see the detrimental impacts  
4 and substantial detrimental impacts that the proposed  
5 development will create when comparing it to what is  
6 permitted on the subject property.

7 The queues that are being provided at  
8 these intersections would be dramatically reduced  
9 with respect to any increase, whether it's 40-feet,  
10 10-feet or whatnot, with the implementation of a  
11 permitted use on the subject property, instead of the  
12 proposed application.

13 MR. BASRALIAN: Mr. Chairman, Mr.  
14 Counsel, that wasn't responsive to the question.

15 I asked how 204 cars added to the a.m.  
16 peak with 6,000 on four roadways and four  
17 intersections constitute the detrimental effect on  
18 the roadways. And that's not what he answered.

19 He gave me a story about a comparison  
20 to what is permitted on this property versus the  
21 question I asked him.

22 CHAIRMAN GUERRA: Mr. Polyniak, do you  
23 feel that you've responded to the question in the  
24 best way that you possibly can?

25 THE WITNESS: I think I have.

1                   MR. BASRALIAN: Well, for the record I  
2 find that the response was not correct and was  
3 evasive because you really had another answer in mind  
4 and you did not respond to my question.

5           Q.       Are you a traffic engineer?

6                   MR. MALAGIERE: Hold on. Hold on.  
7 Hold on.

8                   CHAIRMAN GUERRA: We're not going to  
9 start mind reading now.

10                   MR. MALAGIERE: Mr. Polyniak, please.  
11 Mr. Basralian, please ask another question or ask the  
12 same question.

13           Q.       The let me go back, Mr. Polyniak, you  
14 testified that you're an engineer and planner, are  
15 you a traffic engineer?

16           A.       I'm a site civil engineer with  
17 experience in traffic engineering. I've testified  
18 and qualified as an expert in traffic.

19           Q.       Have you prepared traffic reports and  
20 if so, how many?

21           A.       I have not, but I've reviewed many of  
22 them and have knowledge and means how they're  
23 prepared and have the ability to review their  
24 analysis.

25           Q.       Is there a person within Neglia

1 Engineering who's your traffic engineer?

2 A. We have a series of people.

3 Q. Okay. And are those people the ones  
4 that prepare traffic reports?

5 A. They are.

6 Q. Did you consult with any of them in  
7 connection with your testimony today regarding the  
8 detrimental effects of adding 204 cars to a roadway  
9 with over 6,000 over four roadways and four  
10 intersections?

11 A. I have not.

12 Q. So this is solely your own conclusion  
13 based upon your review of other traffic reports in  
14 the past, but not in consultation with the traffic  
15 experts?

16 A. Correct.

17 Q. Mr. Polyniak, in your testimony on  
18 September 15th, you raised the question that the  
19 proposed LTACH might be considered three separate  
20 uses all should be considered within a -- but your  
21 report said specifically, of September 18, 2009,  
22 that:

23 "All should be considered within a  
24 single (d)(1) use variance for a long term  
25 acute care hospital with a dialysis center and

1 an adult medical daycare".

2 Why question this issue some two years  
3 later, after your first report and every revision  
4 thereafter said the same thing?

5 A. Well, when you -- when you look at it  
6 as a whole, they are three integral uses that are  
7 really separated from one another.

8 And taking a look at it and reviewing  
9 the testimony and the transcripts, it's my opinion  
10 that they are three separate uses.

11 Q. So, what changed from the time this  
12 application was submitted and you first reviewed it,  
13 that you reached another conclusion where you  
14 questioned whether or not it should be three separate  
15 variances or one?

16 A. Well, I am stating that they all fall  
17 within the (d)(1) use variance category.

18 But, again, they are three separate  
19 uses that function separately.

20 Q. Aren't they all inherently beneficial  
21 uses?

22 A. Yes.

23 Q. And you heard the testimony that about  
24 30 percent of the LTACH patients utilize the  
25 dialysis. You also heard the testimony that there

1 are a fair number of people in adult daycare that  
2 utilize the dialysis. Aren't those really integrated  
3 uses within the same building since they -- they  
4 facilitate the treatment of all people that visited?

5 A. Well, they do function and people do  
6 visit each one and another when they're located at  
7 the LTACH use, but other people that are unrelated to  
8 each of the individual uses are brought to the  
9 subject property. So I would argue that they are  
10 three separate uses.

11 Q. But you'd concede they're all  
12 inherently beneficial, they all fall under one (d)  
13 variance, is that not the case?

14 A. Correct.

15 Q. Okay. Thank you for the clarification.

16 On September 15th, you also stated that  
17 Prospect Avenue is predominantly high-rise  
18 residential and: "Again -- your quote "again,  
19 requisite living area and lot sizes ".

20 What do you mean by requisite living  
21 area and lot sizes, since there's no -- well,  
22 requisite living area since there are no provisions  
23 to the ordinance for living areas?

24 A. Well, when I'm discussing requisite  
25 living area I'm looking at the overall sizes of



1 individual lots and the building proposed on the  
2 subject property.

3 Q. So the living area, you're talking --  
4 or you're referring about buildings, but not living  
5 area within a building --

6 A. Correct.

7 Q. -- is that what you're saying?

8 A. Correct.

9 Q. I wondered what you were trying to  
10 imply with that statement.

11 What is a requisite lot size for each  
12 property on Prospect Avenue? And do they all comply?

13 A. It's 30,000 square feet for a  
14 non-residential.

15 Q. Okay. And the 30,000 square foot lot  
16 size is in the ordinance. And what is proposed for  
17 this application is 50,000 square feet, some 20,000  
18 greater than the unit -- than the minimum, albeit in  
19 two different zones.

20 We have a 50,000 square foot lot; is  
21 that correct?

22 A. With 20,000 square feet in the R-3, the  
23 entire site is 50,000.

24 Q. That's correct. Okay.

25 The entirety of the property above

1 grade of the LTACH is located on Prospect Avenue,  
2 that is the LTACH building, itself, with the three  
3 services.

4 And, again, taken as a whole the lot  
5 constitutes 50,000 square feet.

6 As far as I can tell, there's no  
7 prohibition in Hackensack for including the property  
8 of one zone to be considered as part of the property  
9 in another zone if it's contiguous and dedicated to  
10 the same use.

11 Do you not agree or do you disagree?

12 A. Well, I do disagree with respect to the  
13 application of some of the zoning requirements as it  
14 relates within the Hackensack Zoning Ordinance. And  
15 I refer to page 49 in the ordinance, section 175-5.3  
16 or 5.1 section G, which states that for a lot which  
17 is located in more than one zoning district all yard  
18 bulk and other requirements shall measured from the  
19 zone district boundary line and not the true lot  
20 line.

21 So that does create some issues with  
22 respect to the development as a whole when you look  
23 at it.

24 Q. But also the ordinance is not entirely  
25 clear on all of those issues regarding coverage and

1 lot lines given the way its drafted?

2 A. I mean it -- when I read that statement  
3 it's pretty clear to me what is stated.

4 Q. Let me ask you what was the -- what was  
5 the basis and what areas of expertise were you  
6 retained by the Board of Adjustment?

7 A. I've been retained by the Board of  
8 Adjustment as their Board planner and Board engineer.

9 Q. You weren't retained as a traffic  
10 consultant?

11 A. No, I was not retained as a traffic  
12 consultant, Mr. Miskovich was.

13 Q. It would have been unusual for a Board  
14 to have two separate traffic consultants, would it  
15 have not?

16 A. Correct, but as the site civil  
17 engineer, traffic is a consideration and circulation  
18 is a consideration on an application. So there is  
19 some overlap between the two.

20 Q. But you didn't do any counts, you  
21 didn't put any tube counters in the roadway. You  
22 didn't create a SIM system simulation program or any  
23 of those things, did you?

24 A. I did not, no.

25 Q. So, all of the information that you

1 have is resulting from Mr. Miskovich's report and Mr.  
2 Keller's report?

3 A. Correct.

4 Q. And you reached your own conclusion  
5 independent of anything they testified to or  
6 determined to be different than what you've said so  
7 far tonight?

8 A. Correct. I've reached my opinion and I  
9 believe I testified to it on September 15th.

10 Q. You talked about, in your testimony  
11 last month, about peak traffic periods and off peak  
12 traffic periods. And even though you're not a  
13 traffic expert, what do traffic experts mean when  
14 they talk about peak periods?

15 A. Those are the peak -- you would  
16 typically look at the peak hours on when trips are  
17 generated and how it affects the roadway systems  
18 during those peak trip generation time periods.

19 Q. Okay. So we established that the peak  
20 periods -- and in this case for the roadway affecting  
21 this area is 7:30 a.m. to 8:30 a.m. in the morning  
22 and 4:30 p.m. to 5:30 p.m. in the afternoon peak?  
23 That's what was in the report that you read.

24 A. I didn't know that was a question.

25 Q. But was that not in -- I'll rephrase

1 it.

2 Was that not in the report that you  
3 read?

4 A. Yes.

5 Q. Okay. You said it, again on September  
6 15th, and again earlier while I objected to the  
7 response because it wasn't responsive to my question  
8 that there's an increase in traffic compared with the  
9 permitted use on the property.

10 How does it matter from a planning  
11 perspective that there is less traffic with a  
12 permitted use during the peak periods, which they  
13 both -- both experts agreed upon, when it isn't the  
14 basis for the granting of a use variance, but rather  
15 a detrimental effects of that?

16 A. Well, we look at the detrimental  
17 effects, again that are created by the overall LTACH  
18 with respect to the peak periods and also with  
19 respect to the off peak periods due to the staggering  
20 of the employee shifts.

21 The utilization of the review of the  
22 traffic generated and the analysis for the permitted  
23 use on site illustrates that there's a substantial  
24 detriment through the impacts that are created by  
25 this implementation of this application.

1           Q.       Well, if you're suggesting, and you're  
2 more than suggesting that the use will increase  
3 traffic flow during non-peak hours, that's certainly  
4 the case, but when you say that any use on the  
5 property, other than its current single family  
6 residential use would constitute an increase in  
7 traffic also during non-peak hours?

8           A.       I -- I -- I would agree. But, again,  
9 when looking at what is permitted on the subject  
10 property versus what's being proposed, and the  
11 impacts of what's being proposed which are  
12 substantial, as I previously stated, there are  
13 detrimental effects created by this application.

14          Q.       Your opinion is there are detrimental  
15 effects created by this situation, correct?

16          A.       Most definitely.

17          Q.       Okay.

18                    Since you acknowledge the traffic  
19 engineers deal with peak periods, how would the  
20 traffic at, say, 11 a.m., that does not exceed what  
21 happens at 8:00 a.m. during the peak period, suggest  
22 that this is peak periods that was testified to by  
23 Mr. Miskovich and Mr. Keller?

24          A.       My testimony with respect to off peak  
25 periods was to illustrate that there are substantial

1 increases of traffic during the off peak hours which  
2 again will increase and lengthen the detrimental  
3 affects of the overall application over the entire  
4 timeframe of the day, not just the peak hours of the  
5 day.

6 Q. But if the peak hour traffic on the  
7 roadways or the off peak traffic hours that you're  
8 trying to say is increased because of this facility,  
9 doesn't reach the peak period for the roadways during  
10 the a.m. and p.m., how does that constitute a  
11 detrimental affect if it would only be affected  
12 during the peak periods that we examined for the a.m.  
13 and p.m.?

14 A. Well, what it illustrates is an entire  
15 change in quality of life issues with respect to the  
16 overall neighborhood and the increasing of traffic on  
17 the adjoining roadway systems when what's compared to  
18 a permitted use on the subject property.

19 And it's a substantial detriment with  
20 respect to what's being proposed by the Applicant.

21 Q. Well, that's a conclusion and opinion  
22 on your part that it affects quality of life because  
23 of increased traffic, even though it doesn't come  
24 close to the a.m. or p.m. peaks, correct?

25 A. Well, it's my opinion that, again, this

1 lengthening of the peak is going to substantially  
2 degradate the quality of life in the neighborhood  
3 when compared to what's permitted on the subject  
4 property and what's proposed there.

5 Q. Mr. Polyniak -- Mr. Polyniak, there was  
6 no testimony that there would be lengthening of the  
7 a.m. and p.m. peaks by Mr. Miskovich or -- or Mr.  
8 Keller.

9 A. Understand. But when looking at the  
10 traffic data and --

11 Q. No, just answer the question. Let me  
12 again, was there testimony by Mr. Miskovich or Mr.  
13 Keller that there would be a lengthening of the a.m.  
14 and p.m. peaks?

15 A. No, there was no testimony by them.

16 Q. Thank you.

17 You are probably far too young to  
18 remember when Prospect Avenue was residential, it  
19 certainly started to go to mid-rise and high-rise,  
20 everything changed on that street then the quality of  
21 life as you define it would have certainly changed  
22 for all those residential -- single family  
23 residential homeowners.

24 Would you agree that that would  
25 constituted a quality of life change?



1           A.       I can't speak to the history of zoning  
2 of the City of Hackensack at that point in time.

3           Q.       I'll withdraw the question.  Never  
4 mind.  Never mind.

5                    You mentioned that there's a change in  
6 quality of life.  And you mentioned -- you mentioned  
7 that there's an overall -- there would be an overall  
8 change of the character with respect to the Prospect  
9 Avenue frontage that -- with the construction of the  
10 LTACH.

11                   I'm sorry transporting here I lost my  
12 pad.

13                   Now, I'd like to show you -- okay.

14                   I grabbed the wrong pad.  All right.

15                   There was an exhibit that was marked as  
16 Exhibit A-46, I assume you've reviewed all the  
17 exhibits, and that showed all the various buildings  
18 with an aerial viewpoint of all the buildings on  
19 Prospect Avenue?

20           A.       I know I did, but I don't recollect it  
21 off the top of my head.

22           Q.       Do you remember an aerial viewpoint, I  
23 happened to grab the wrong folder and I apologize,  
24 that showed all of the views of the buildings ranging  
25 from -- along Prospect Avenue:  Prospect Towers at 18

1 stories; The World Plaza at 13; The Camelot is 21  
2 floors; Crystal House is 19 floors and so on, up and  
3 down Prospect Avenue.

4 Do you remember that?

5 A. I think so, but I don't want to go by  
6 memory.

7 Q. Okay. Very good.

8 Also you acknowledge that you reviewed  
9 the --

10 MR. MALAGIERE: Joe, use the microphone  
11 please?

12 MR. BASRALIAN: Yes.

13 Q. You also acknowledged that you reviewed  
14 the A2M (sic) report which --

15 MR. MALAGIERE: H2M.

16 MR. BASRALIAN: I'm sorry.

17 Q. H2M report dated November 30, 2008, on  
18 page 2 which shows "Figure 2: A bird's eye view of  
19 subject site". A lot of buildings on there, is there  
20 not?

21 A. Yes, there are.

22 Q. Okay. When you look at the --

23 MR. DIKTAS: Object. Object.

24 Objection, Mr. Chairman. There's been no foundation.

25 MR. BASRALIAN: These are exhibits in

1 the record. They're already part of the record.

2 MR. MALAGIERE: Put your objection on  
3 the record, we'll deal with it.

4 Go ahead.

5 MR. DIKTAS: This is marked?

6 MR. BASRALIAN: This is all marked,  
7 yes.

8 MR. DIKTAS: Okay. When you started  
9 the question you didn't say exhibit one, two, three  
10 which has been marked in...

11 MR. BASRALIAN: Well --

12 MR. MALAGIERE: What is that?

13 MR. BASRALIAN: I said it was Exhibit  
14 A-46.

15 MR. DIKTAS: That's all you have to  
16 say.

17 MR. MALAGIERE: Thank you.

18 MR. BASRALIAN: No problem.

19 CHAIRMAN GUERRA: That goes back to  
20 2009, Mr. Basralian?

21 MR. BASRALIAN: Yes. We keep them for  
22 a lot of reason, but...

23 BY MR. BASRALIAN:

24 Q. Also you have, within the record which  
25 is the H2M report of November 30th, now we can look

1 at that if you want to go over and look at it, there  
2 are a lot of mid-rise and high-rise buildings on  
3 Prospect Avenue. And we already established that the  
4 proposed building is 19 stories with a 12,000 square  
5 foot footprint which is smaller than many of the  
6 buildings there.

7 Does the building -- the building, the  
8 structure, change the character of Prospect Avenue?

9 A. Well, there are other --

10 Q. No. How does the building -- the  
11 question is how does the building --

12 MR. MALAGIERE: Hold on. Let him  
13 answer.

14 He heard the question.

15 MR. BASRALIAN: No.

16 MR. MALAGIERE: Let him answer the  
17 question.

18 Q. How does the building --

19 MR. MALAGIERE: Joe, if you don't like  
20 --

21 A. I can't answer --

22 MR. MALAGIERE: Hold on.

23 A. I can't answer that.

24 MR. MALAGIERE: Mr. Polyniak.

25 If you don't -- if you don't like his

1 answer or you think it's nonresponsive you can say  
2 so.

3 Mr. Polyniak, put it on the record.

4 THE WITNESS: Sure.

5 A. It doesn't, per se, relate to only the  
6 building as a whole. And I provided substantial  
7 testimony on September 15th. There are other impacts  
8 which are related to the building per se with the  
9 design of the loading docks, with the design of the  
10 garage and the sloping of the garage and the vehicles  
11 -- the types of vehicles that are entering the garage  
12 and the access patterns to the subject property.

13 Those items alone create substantial  
14 detriments and are safety issues with respect to the  
15 project. And those are the quality of life issues  
16 that the site will create.

17 Q. Well, that's not what you said in the  
18 statement that I was referring to.

19 You said that the building changes the  
20 character of the neighborhood.

21 My question to you is, does this 19  
22 story tall building with a footprint of 12,000 square  
23 feet change the character of the buildings on  
24 Prospect Avenue?

25 A. Again, the building has other aspects

1       which are related to it. And it ties in all those  
2       safety aspects, which creates a deleterious effect  
3       and a substantial detriment.

4               Q.       That is your opinion as a planner that  
5       those things constitute a deleterious effect?

6               A.       And as an engineer too.

7               Q.       Well, what about all the trucks that go  
8       up and down Prospect Avenue? Have you ever been on  
9       Prospect Avenue during the daytime?

10              A.       I have.

11              Q.       How many times?

12              A.       I can't even count, many, many times.

13              Q.       Have you ever seen moving vans parked  
14       on the street?

15              A.       I have.

16              Q.       Would you venture to say how many  
17       apartments, apartments units there are on all the  
18       buildings on Prospect Avenue?

19              A.       Again, I can't account for the total  
20       number.

21              Q.       Two-thousand, 3,000, 4,000?

22              A.       I don't want to give an erroneous  
23       answer.

24              Q.       Fair number of people moving out in any  
25       case, you'd say, right?

1           A.       I would.

2           Q.       Have you ever seen any garbage trucks,  
3 sanitation trucks, sorry, sanitation trucks on  
4 Prospect Avenue parked --

5                   MR. MALAGIERE: I'm sorry. Please, we  
6 need to have everybody be quiet please while the  
7 questioning is going on.

8                   Thank you.

9                   THE WITNESS: Could you repeat the  
10 question as well?

11           Q.       Yes. Have you seen sanitation trucks  
12 on Prospect Avenue?

13           A.       I have.

14           Q.       Have you seen them park on Prospect  
15 Avenue?

16           A.       I have.

17           Q.       Have you seen them backing into some of  
18 the structures on Prospect Avenue?

19           A.       I have not.

20           Q.       All right. Have you seen delivery vans  
21 on Prospect Avenue?

22           A.       I have.

23           Q.       Have you seen delivery vans on the  
24 street parked?

25           A.       I have.

1           Q.       Have you seen them parked on the sides  
2 of many of the buildings on Prospect Avenue?

3           A.       I have not because I haven't gone to  
4 the individual properties to look.

5           Q.       Well, have you ever seen any of them on  
6 the front of the properties, the driveway area or the  
7 porte-cochere or the portico area?

8           A.       I have.

9           Q.       You also talked about the change in the  
10 character you're familiar with Prospect Avenue, would  
11 you say that the surgical center or the doctors'  
12 offices are in character with the residential setting  
13 of the neighborhood, that you propose that the  
14 structure would change so dramatically?

15          A.       Again, when you look at the building as  
16 a whole, you're looking at the other impact that that  
17 building creates on that subject roadway. And I --  
18 again, I mention the issues with respect to safety  
19 and access to the subject property.

20          Q.       Well, if you're -- okay. What about  
21 The Restaurant which is called "The Restaurant" is  
22 that in character in keeping with the residential  
23 neighborhood in a building just north or just south  
24 of the site?

25          A.       If it's an accessory use in that



1 building.

2 Q. But this is a -- you know, you're  
3 trying to characterize this as a multi-family  
4 residential property, and if this LTACH will change  
5 the character of the neighborhood, and I asked you  
6 don't all of those other uses, ad there are a myriad  
7 of doctors' offices and a restaurant and a surgical  
8 center operating at the site --

9 MR. MALAGIERE: Mr. Polyniak --

10 Q. -- does that change the character?

11 MR. MALAGIERE: -- just for purposes of  
12 clarity of the record, do you agree with that  
13 statement, the characterization of what's there. Mr.  
14 Polyniak, do you agree with the characterization of  
15 what's on Prospect Avenue? There's a restaurant, a  
16 myriad of surgical centers and doctors' offices.

17 A. There are doctors' offices and there  
18 are -- The Restaurant does exist on Prospect Avenue.

19 MR. BASRALIAN: Not responsive, but  
20 I'll move on.

21 MR. MALAGIERE: You can ask the  
22 question now that we created a foundation for it.

23 Q. Are those in character of the  
24 residential neighborhood of Prospect Avenue?

25 A. Again, they're ancillary and accessory

1 uses within the subject buildings which are  
2 predominantly residential uses.

3 Q. Well, have you -- if you go all the way  
4 south to Essex Street, there's a rather large medical  
5 facility there, that is adjacent to a residential  
6 neighborhood. Does that have an adverse impact on  
7 the residential character?

8 A. I would argue that it would.

9 Q. By the way, what hours of the day did  
10 you visit Prospect Avenue?

11 A. It ranges -- it can range in the  
12 morning, it can range in the afternoon. I took a  
13 look at the site a variety of times at different  
14 points in time during the day.

15 Q. Did you ever do it at ten or 11 o'clock  
16 at night?

17 A. I have not.

18 Q. Did you do the same traveling up and  
19 down Summit Avenue?

20 A. Excuse me?

21 Q. Did you travel up and down Summit  
22 Avenue as equally as you say you traveled on  
23 Prospect?

24 A. Yes.

25 Q. Did you see any delivery trucks there

1 or other vehicles or cars parked at the doctors'  
2 offices there?

3 A. Up along Summit? There are doctor's  
4 offices that are there. I believe the majority of  
5 the doctors' offices within that subject neighborhood  
6 have their own ancillary parking lot with respect to  
7 each individual structure.

8 Q. Well, have you seen cars parked on  
9 Prospect Avenue in front of doctors' offices that  
10 don't have them?

11 A. Yeah, I can't -- I can't particularly  
12 answer that just because I haven't polled who's  
13 parking on what property.

14 Q. The testimony was that the food  
15 deliveries for the LTACH would be by a WB40 once or  
16 twice a week; and that the sanitation truck or the  
17 dumpster would be twice a month; and the oxygen truck  
18 would come once a month.

19 Those trucks have to back up to get to  
20 the loading dock, have you ever driven a truck of  
21 that type or any of those or any one of those three  
22 trucks?

23 MR. DIKTAS: Objection, relevancy.

24 A. No, I'm not a truck driver.

25 Q. All right. Are you familiar at all

1 with how long it takes to back up a truck?

2 A. Yeah, I'm fairly familiar.

3 Q. But you haven't driven a WB40 or a  
4 larger or a smaller truck then?

5 A. No.

6 Q. Well, With the number of parking units  
7 in buildings on Prospect Avenue, how different is  
8 this facility from those others that require a  
9 sanitation truck to back into the site to pick up  
10 dumpsters or furniture delivery truck or a moving  
11 van?

12 A. They're substantially different because  
13 this is a clean site per se where you're starting  
14 from scratch. And it appears some site safety issues  
15 that will be created as part of your development.

16 These buildings were built, I would  
17 say, approximately -- just throwing a number off the  
18 top of my head, about 20 years ago. And at that  
19 point in time maybe those design considerations  
20 weren't considered as part of an application.

21 When looking at this application as a  
22 whole, that backing up into a situation where you're  
23 going to be delaying traffic from prior testimony by  
24 your expert of approximately two minutes on a  
25 roadway, with this amount of traffic, is a

1 substantial site safety issue. It needs to be  
2 remedied and cured as it is a substantial detriment  
3 to the project.

4 MR. BASRALIAN: Well, let me suggest  
5 something to you and it's not by way of a question,  
6 I've driven these trucks and if you're experienced it  
7 certainly doesn't take two minutes, but that was the  
8 testimony --

9 MR. DIKTAS: I will object to Mr. --

10 MR. BASRALIAN: Excuse me.

11 MR. DIKTAS: -- Basralian's testifying.

12 MR. MALAGIERE: There's no question  
13 pending.

14 Mr. Basralian, ask another question.

15 MR. BASRALIAN: Okay.

16 CHAIRMAN GUERRA: I'd like to hear what  
17 truck he's driven.

18 MR. BASRALIAN: WB40, oh, yeah.

19 CHAIRMAN GUERRA: Did you really?

20 MR. BASRALIAN: Yes.

21 Remember the Ballentine Brewery, I  
22 drove their trucks during Christmastime delivery.

23 MR. MALAGIERE: Is that when things  
24 were slow at the firm or is that --

25 MR. BASRALIAN: It's one of the reasons

1       why I decided to become a lawyer.

2                       I was in law school, and as you may  
3       recall, if I may digress, and all we had summer and  
4       Christmas jobs which were at the post office or the  
5       brewery.

6                       It's one of the reasons I have a bad  
7       back today because I delivered the barrels, but...

8                       CHAIRMAN GUERRA:   Interesting, Joe,  
9       thank you for that.

10       BY MR. BASRALIAN:

11               Q.       Instead of the WB40s pulling into the  
12       -- or backing into the loading dock, what if they  
13       just parked on the street in front of the building in  
14       the no parking zone and off-loaded with the skids  
15       with the proper material? I think the testimony was  
16       that they would be there 20 to 30 minutes at tops.

17                       Wouldn't that solve the backing in  
18       problem, remove up to eight vehicles a month from  
19       backing into the loading dock?

20               A.       That will solve one issue, but create  
21       another. Now you're going to create a sight distance  
22       issue for your driveway entering and exiting off of  
23       Prospect Avenue. And you have, now, a 20 to 30  
24       minute issue instead of a two or three minute safety  
25       issue.

1 Q. Well --

2 A. Both are detrimental impacts for the  
3 subject property which would need to be cured.

4 Q. I guess you're talking about this as  
5 now a planner or a traffic consultant on sight  
6 distance?

7 A. I -- I wear all hats and I represent  
8 the Board in all manners. So I've provided expert  
9 testimony throughout --

10 Q. But a WB40 --

11 A. At this point in time as either an  
12 engineer or a planner and, again, I have expertise  
13 with respect to traffic engineering.

14 Q. WB40s are 40-feet, is that right?

15 A. At least, correct.

16 Q. Okay. And a property which is  
17 100-feet, and if you had a person up there directing  
18 the cars out of the Prospect Avenue exit, would that  
19 not solve the problem?

20 A. I'm not sure that that's going to solve  
21 the issue because you're still going to have the  
22 sight distance issue. What are the qualifications of  
23 this person? Is it a police officer you're hiring?  
24 How is that going to be cured?

25 Q. It's someone with the expertise, would

1       that solve the part of the issue that you have with  
2       having any trucks anywhere on this site?

3               A.       No, I don't think it would because,  
4       again, you still have the same sight distance issue  
5       that would exist on the subject property.

6               Q.       Well, if it's a real problem then they  
7       would prohibit parking of moving vans on Prospect  
8       Avenue, which is substantially longer than a WB40.

9               A.       Yeah, I can't answer about what exists  
10      within the subject right-of-way on Prospect Avenue.

11              Again, those buildings have been there  
12      for more than 20 years. We're looking at a brand new  
13      site with issues that -- sight safety issues that we  
14      can cure when we have a clean slate.

15              We don't want to create additional  
16      traffic issues on the subject roadways. We want to  
17      fix them and create a neighborhood that fits the City  
18      of Hackensack.

19              Q.       Well, I'm not sure that all the  
20      buildings are more than 20 years old, but they have  
21      been there, a number of them, since the early '60s  
22      and many much -- many are -- some of them even in the  
23      '90s, but referring to that alone, if it's an unsafe  
24      condition wouldn't it be appropriate for the City of  
25      Hackensack and its police powers to prohibit the



1 parking of those vehicles on Prospect Avenue?

2 MR. DIKTAS: Objection, calls for  
3 speculation.

4 MR. MALAGIERE: I would agree.

5 Mr. Polyniak, if you can answer that  
6 you may.

7 THE WITNESS: Yea, I cannot.

8 Q. I'm sorry. You could or could not?

9 A. I cannot.

10 Q. Well, I guess in your opinion then it  
11 would solve the problem if the driveway came in one  
12 street and out another street, that would solve the  
13 issue. There would be no backing in, so if you came  
14 in off of one street and went out the other street.

15 A. No, I think what would solve it would  
16 be some sort of turnaround area so that a vehicle can  
17 enter in the subject site and then make a K-turn or  
18 180 degree turn so that it could resituate itself so  
19 it could be pulling into the roadway headfirst and  
20 entering the loading area.

21 Q. So your opinion, there's absolutely no  
22 way that a truck would be able to back into the site  
23 in the manner which wouldn't be detrimental for the  
24 travelling public, is that your opinion?

25 A. Correct. One vehicle that backs into

1 the subject site is a substantial sight safety issue  
2 and would create issues for the neighborhood and it  
3 needs to be cured from a site plan revision.

4 Q. Are you familiar at all of the trucks  
5 that back in and out of properties on, say,  
6 Hackensack Avenue and River Street?

7 A. Yeah, again, I'm not going to address  
8 what's occurring in --

9 Q. I asked you if you were familiar. I  
10 didn't ask you to address it.

11 Are you familiar with those?

12 A. I am familiar, yes.

13 Q. All right. Thank you.

14 You were present during Mr. Keller's  
15 eight appearances before the Board where he presented  
16 testimony, including last month --

17 MR. DIKTAS: Object to the form of  
18 questions. There's been no foundation that Mr.  
19 Keller's been here eight times.

20 MR. MALAGIERE: Please rephrase the  
21 question.

22 MR. BASRALIAN: I said numerous --

23 MR. MALAGIERE: Would you please?

24 Please rephrase the question, Mr. Basralian, unless  
25 Mr. Polyniak has specific recollection of the number

1 of times he's appeared.

2 MR. BASRALIAN: I'll make it easier.

3 BY MR. BASRALIAN:

4 Q. You were present during Mr. Keller's  
5 numerous appearances --

6 MR. MALAGIERE: Thank you.

7 Q. -- before, are you not? And that he  
8 testified that no delivery trucks of any type would  
9 be permitted to enter Summit Avenue access to the  
10 garage.

11 Do you recall that testimony?

12 A. Yes.

13 Q. Mr. Keller also testified, as did Mr.  
14 Zabate before him, that head knockers would be  
15 utilized as well as signage prohibiting trucks to the  
16 access point. Truck drivers -- withdraw that.

17 Would head knockers be a clear  
18 indication, given their height, that trucks could not  
19 enter, delivery trucks and the type, the vans and so  
20 on?

21 A. I'm sorry, is that a question?

22 Q. Yes. Wouldn't the head knocker be a  
23 clear indication to truck drivers that they can't  
24 enter?

25 A. Yes.

1           Q.       And given that the same companies will  
2       be making deliveries on a consistent basis and given  
3       that the Applicant has the ability to dictate where  
4       they would enter, all of them would be entering  
5       through the Summit -- or the Prospect Avenue side,  
6       you ever visualize the circumstance where a delivery  
7       truck would try to get into the Summit Avenue side  
8       with the head knockers at the street?

9           A.       I don't believe the head knockers will  
10      be at the street. I believe they will be further  
11      into the site.

12          Q.       Well, even further in. Okay. We'll  
13      get to that.

14                    So the answer is not likely to would  
15      happen, correct?

16          A.       If they're directed by the Applicant to  
17      enter the subject driveway, I would assume they would  
18      follow that.

19          Q.       And you recall that there were signs  
20      prohibiting trucks on the plan.

21                    Do you recall that there were signs  
22      prohibiting trucks?

23          A.       I believe so, correct.

24          Q.       Is that correct?

25                    Since you questioned the clearance of

1 the vehicles on the Summit Avenue entrance to the  
2 garage, and according to your statement a greater  
3 height would be necessary, would the plan be more  
4 acceptable if the clearance for the garage entrance  
5 was raised to 6-feet 9-inches or 6-feet 10-inches,  
6 with a corresponding change in the head knockers?

7 A. But what would then -- could occur is  
8 that the --

9 Q. No, just answer -- just answer the  
10 question.

11 MR. MALAGIERE: What's the question.

12 THE WITNESS: Yeah.

13 Q. I -- would you -- would you be more  
14 comfortable, would it be more in keeping with  
15 vehicles, non-truck vehicles entering the parking  
16 garage from the Summit Avenue side if the clearance  
17 was raised to 6-feet 9-inches or 6-feet 10-inches?

18 A. It would potentially allow some of the  
19 larger vehicles that enter that driveway a Ford  
20 Econoline, which I believe I quoted, or potentially  
21 -- and I don't know the height of the size of the  
22 wheels that could be retrofitted some of the Cadillac  
23 Escalades and other vehicles of that type.

24 Q. So, is it the average -- aren't  
25 Econoline vehicles generally under 9-feet

1 10-inches -- I'm sorry -- 6-feet 10-inches?

2 A. Generally they are.

3 Q. Okay. Are you familiar and have you  
4 ever reviewed the book entitled "Parking Structures,  
5 Planning and Design," Third Edition by Chrest, Smith,  
6 Bhuyan and Monahan?

7 A. Yeah, I'm not familiar.

8 Q. Let me refer you, if I can, and I will  
9 show it to you, page 49 of that book, which is some  
10 350 pages long, which states -- and I'll show this to  
11 you under, "Functional Design".

12 "The minimum floor to floor height in  
13 a post tension parking facility is 10-feet  
14 which provides overhead" --

15 THE COURT REPORTER: I'm sorry, Mr.  
16 Basralian, what kind of parking? I didn't hear you.

17 MR. BASRALIAN: "Post tension parking  
18 facility is 10-feet 0-inches, which provides  
19 overhead clearances of 7-feet 0-inches to  
20 7-feet 4-inches depending upon the structural  
21 depth of the system. A facility with a 7-foot  
22 0-inches clearance to meet code would then be  
23 signed with a 6' 8" to 6'10" of vertical  
24 vehicle clearance".

25 MR. DIKTAS: Objection, relevance.

1                   MR. MALAGIERE: Well, let him get the  
2 question in. Okay.

3                   MR. DIKTAS: I'm sorry.

4                   MR. MALAGIERE: Just put the whole  
5 question in, Joe.

6                   MR. BASRALIAN: Okay.

7           Q.       Given the statements in "Functional  
8 Design" which is this book (indicating) "Parking  
9 Structures", Third Edition which is generally  
10 considered the Bible --

11                   MR. MALAGIERE: Well, hold on --

12           Q.       -- for parking facilities --

13                   MR. MALAGIERE: Put it all in.

14                   MR. DIKTAS: That's where I was going.

15                   MR. MALAGIERE: Just finish the  
16 question.

17 BY MR. BASRALIAN:

18           Q.       Given the statements in this book,  
19 okay, would the design of the -- it's bracketed out  
20 at the bottom there, Greg (indicating).

21                   Would the design of 6-feet 9-inches,  
22 6-feet 10-inches, not comport with the design  
23 standards in this book which deals with parking deck,  
24 parking garage design?

25                   MR. MALAGIERE: Okay, hold on.

1 Now, is there an objection?

2 MR. DIKTAS: Yes.

3 MR. MALAGIERE: Go ahead.

4 Put it on the record. Use the mike.

5 MR. DIKTAS: I'm sorry.

6 MR. MALAGIERE: That's all right.

7 MR. DIKTAS: My objection is there's  
8 been no foundation for this book.

9 Mr. Basralian is quoting it as it is a  
10 treatise in the industry.

11 He's not qualified to categorize this  
12 as a treatise in the industry. As part of his  
13 multi-part question, he indicated that there's over  
14 829 pages and he hands Mr. Polyniak maybe 15 and  
15 Counsel and I don't have the 829 or the 15 pages to  
16 address the question simultaneously.

17 Even though Mr. Polyniak is an expert,  
18 without the foundation and the proffer of the book as  
19 a treatise, it's -- the question is improper?

20 MR. MALAGIERE: Mr. Moskowitz?

21 MR. MOSKOWITZ: Same objection, but  
22 added on is that Mr. Polyniak has not had the  
23 opportunity -- well, he's told us he wasn't familiar  
24 with it.

25 Before he can testify about his opinion



1 and the meaning of one or two or three pages of  
2 paragraphs, you would have to be familiar with the  
3 whole book. You would have to interview or at least  
4 research the value of the book because nobody here  
5 today, certainly not Mr. Basralian, that can tell us  
6 or attest to the fact that this is an accepted  
7 treatise in the field.

8 MR. MALAGIERE: Mr. Polyniak, you  
9 indicated that you had not reviewed this book. Are  
10 you familiar with it? Are you familiar with this  
11 publication?

12 THE WITNESS: Yeah, I am familiar with  
13 the publication, but I haven't come --

14 MR. MALAGIERE: Let me just ask the  
15 questions.

16 THE WITNESS: Sure.

17 MR. MALAGIERE: Are you familiar with  
18 the authors?

19 THE WITNESS: Yes.

20 MR. MALAGIERE: Would you consider the  
21 book to be authoritative in the area of parking  
22 garage design and use and implementation?

23 MR. MOSKOWITZ: I would object --  
24 object to your question, with all due respect.

25 MR. MALAGIERE: Okay. Yes.

1                   MR. MOSKOWITZ: How can you ask him if  
2 he would agree that it's authoritative.

3                   MR. MALAGIERE: Because he's an expert  
4 in the area.

5                   MR. MOSKOWITZ: He's never read the  
6 book.

7                   MR. MALAGIERE: Well, but he can  
8 indicate to me if he has --

9                   MR. MOSKOWITZ: He's never canvassed --

10                  MR. MALAGIERE: Hold on one second.

11                  MR. MOSKOWITZ: -- other experts --

12                  MR. MALAGIERE: Hold on. You go then I  
13 go. Hold on.

14                         There can be a treatise that is  
15 authoritative that an expert has not read but he  
16 recognizes as being authoritative.

17                   Mr. Polyniak, would you consider this  
18 to be an authoritative treatise, yes or no or you  
19 don't know?

20                   THE WITNESS: I would say there's other  
21 conflicting information with respect to other manuals  
22 and books that...

23                   MR. MALAGIERE: I'm asking if you  
24 consider it to be authoritative. You can say yes.  
25 You can say no. You can say you don't know. Or you

1 can say I'm asking you the wrong question.

2 THE WITNESS: I would say I don't know.

3 MR. MALAGIERE: Okay. In light of that  
4 could you answer Mr. Basralian's question?

5 And if you'd like it read back, you can  
6 have it read back of course.

7 THE WITNESS: Yes, I would like to have  
8 it read back.

9 MR. BASRALIAN: Okay. If you would  
10 read the question back. I think all of us have  
11 forgotten it.

12 MR. MALAGIERE: If you could read the  
13 last question.

14 THE COURT REPORTER: Yes.

15 I'm going to have to look for it  
16 because there was colloquy in between now and the  
17 question, so maybe we can take a quick break?

18 MR. MALAGIERE: Sure.

19 Mr. Chairman, can we take five minutes?

20 CHAIRMAN GUERRA: Yes, five minutes. A  
21 little early, but we'll take it.

22 (Whereupon, a short recess is taken.)

23 CHAIRMAN GUERRA: We're going to start  
24 again.

25 Joe, are you okay with that date?

1 MR. BASRALIAN: Yes.

2 MR. MALAGIERE: Let's just make sure,  
3 Mr. Moskowitz and Mr. Diktas, we're looking at --

4 MR. BORRELLI: December 8th.

5 MR. MALAGIERE: December 8th as what we  
6 believe to be the final hearing.

7 (Audience outburst.)

8 MR. MALAGIERE: Is that acceptable,  
9 gentlemen?

10 MR. DIKTAS: Let me check.

11 MR. MALAGIERE: You could think about  
12 it and we'll talk about it after the testimony  
13 tonight.

14 MR. DIKTAS: I'm fine December 8th.

15 MR. MALAGIERE: Mr. Moskowitz, is that  
16 a date that works for you?

17 CHAIRMAN GUERRA: Okay. So December  
18 8th, 7:00 is hopefully the last meeting.

19 MR. BASRALIAN: Mr. Basralian, if you  
20 want to continue with -- I'm sorry.

21 Madam Court reporter, if you could read  
22 back the last question.

23 THE COURT REPORTER: Sure.

24 MR. MALAGIERE: If you please we have  
25 to just please maintain some quiet. Thank you.

1                   If you could read back the last  
2 question to the witness.

3                   (Whereupon, the Court Reporter reads  
4 back the requested portion.)

5                   MR. MALAGIERE: Okay. Mr. Polyniak, is  
6 there a bracketed portion of that book, excerpt of  
7 that book in front of you?

8                   MR. BASRALIAN: Yes.

9                   THE WITNESS: Yeah.

10                  MR. MALAGIERE: Why don't you just read  
11 that into the record and, Mr. Basralian, you can just  
12 ask him the question.

13                  MR. DIKTAS: Do we have a copy of that?

14                  MR. MALAGIERE: Mr. Basralian will make  
15 a copy available to you after he testifies and you  
16 can ask questions to follow up.

17                  So, Mr. Polyniak, what I'm asking you  
18 to do is just read the bracketed excerpt of the  
19 treatise -- the excerpt of the treatise Mr. Basralian  
20 has just put in front of you.

21                  THE WITNESS: "The minimum floor to  
22 floor height in a post tension parking  
23 facility is 10-feet 0-inches which provides  
24 overhead clearances of 7-feet 0-inches to  
25 7-feet 4-inches, depending on the structural

1           depth of the system. A facility with 7-feet  
2           0-inches clearance to meet code would then be  
3           signed with 6-feet 8-inches to 6-feet  
4           10-inches of vertical clearance."

5                   And that's stated within the book.

6                   MR. MALAGIERE: Okay. Mr. Basralian,  
7           what's the question you would like to ask Mr.  
8           Polyniak based upon that excerpt?

9           Q.       Given what this treatise --

10                   MR. MALAGIERE: Take that microphone.

11           Q.       Given what this treatise says, would  
12           not the 6-foot-9, 6-foot-10 clearance proposed for  
13           vehicle entries off Summit Avenue not comport with  
14           the terms of the design criteria of "Parking  
15           Structures, Third Edition"?

16           A.       Well, I guess in order to answer --

17                   MR. DIKTAS: Objection.

18                   MR. MALAGIERE: Hold on. An objection?

19                   MR. DIKTAS: Yes, I'll object.

20                   Again the -- the book hasn't been -- it  
21           hasn't been -- no foundation has been laid. It's 829  
22           pages. Mr. Polyniak read 15 lines.

23                   The question is not presented properly  
24           in light of the magnitude of the document if it is  
25           being as treatise.

1 MR. MALAGIERE: Objection's noted.

2 Mr. Polyniak, can you respond to that  
3 question?

4 THE WITNESS: I mean just based on what  
5 is submitted and provided to me, 6-foot-9 would be  
6 sufficient for the height that Mr. Basralian  
7 mentioned.

8 But I believe that 6-foot-6 is what's  
9 being provided as part of the application.

10 Q. Well, the Applicant would be willing to  
11 change it to 6-foot-9, all right, that can be done.  
12 So that would accommodate --

13 MR. DIKTAS: I --

14 MR. MALAGIERE: Hold on. Is there an  
15 objection?

16 MR. DIKTAS: I'm going to object. The  
17 Applicant --

18 MR. MALAGIERE: Hold on. Put the whole  
19 question in and then you can object.

20 MR. DIKTAS: Mr. --

21 MR. MALAGIERE: Let him put the whole  
22 question in.

23 MR. BASRALIAN: Let me just finish --

24 MR. DIKTAS: I'm sorry.

25 MR. BASRALIAN: -- you can make all the

1 objections you want.

2 MR. DIKTAS: Okay. I'm sorry.

3 MR. BASRALIAN: It's okay. That's what  
4 you get paid for.

5 MR. MALAGIERE: Okay. Go ahead.

6 Q. Would you recommend that the Applicant  
7 change the height from 6-foot-6 to 6-foot-9 --

8 MR. MALAGIERE: Based upon this  
9 treatise.

10 Q. -- based upon this treatise?

11 MR. DIKTAS: Thank you.

12 A. I would recommend it, but there --  
13 again, there still can be some issues with some of  
14 the vehicles entering -- trying to enter into the  
15 subject property just because the garage heights are  
16 differing in size, than the lesser value that you  
17 just mentioned.

18 Q. I believe in one of your reports you  
19 talked about the head knockers. And I believe that  
20 was the report revised to March 18, 2011.

21 There was testimony by Mr. Keller that  
22 the head knockers would be moved closer to the street  
23 to prevent -- to prevent a car from entering into it  
24 very early on along with the signage.

25 Do you remember that testimony?



1           A.       I don't recall.

2           Q.       I believe you addressed that in one of  
3 your reports regarding the head knocker, but that's  
4 an essential ingredient of the head knocker would  
5 have to -- if the garage entrance height is moved to  
6 6-feet 9-inches, so would the head knocker, would it  
7 not?

8           A.       I'm sorry.

9           Q.       Would the head knocker be at the same  
10 -- the same level as the maximum for the garage?

11          A.       I'm sorry.

12                    Could you repeat it?

13          Q.       Well, the head knockers do --

14          A.       Right. No, no, no, I understand what  
15 it is.

16          Q.       Okay.

17                    So, if it's moved closer to the street  
18 wouldn't it be the same height as the garage  
19 entrance?

20          A.       I can't answer what design is proposed.

21          Q.       Well, are head knockers used at the  
22 same height as the garage entrance or are they a  
23 little bit lower?

24          A.       They potentially typically are a little  
25 bit lower.

1           Q.       Okay. But if that were done that would  
2       -- would that accommodate at least the issue with  
3       respect to the entrance in the garage at 6'9?

4           A.       It would address that with respect to  
5       that vehicle.

6           Q.       Do you recall during the testimony that  
7       the vast majority of the trucks making delivery to  
8       this building would be going into the garage from the  
9       Prospect Avenue side?

10          A.       I do.

11                   MR. BASRALIAN: Okay.

12          A.       Not -- I guess my question --

13                   MR. MALAGIERE: Well, there's no  
14       question pending --

15                   THE WITNESS: Okay.

16                   MR. MALAGIERE: -- so let him ask the  
17       question --

18                   THE WITNESS: Okay, yeah.

19                   MR. MALAGIERE: -- Mr. Polyniak.

20                   THE WITNESS: Yeah, I apologize.

21                   MR. MALAGIERE: Unless you want to  
22       change your answer.

23       BY MR. BASRALIAN:

24           Q.       You either recall or you don't recall  
25       that that was the testimony.

1           A.       Yes.

2                   MR. MALAGIERE:   Are you okay with your  
3   response.

4                   THE WITNESS:   Yeah, I guess I would  
5   like to change my response.

6                   The -- being that the vast majority,  
7   it's my understanding --

8                   MR. BASRALIAN:   Let me rephrase the  
9   question.

10                  THE WITNESS:   -- there was a wall --

11                  MR. BASRALIAN:   Let me rephrase the  
12   question.

13   BY MR. BASRALIAN:

14                  Q.       Okay.   All of the trucks making  
15   deliveries, except for the WB40 for the food, the  
16   waste disposal and the oxygen truck, would be making  
17   deliveries in the garage, do you recall that  
18   testimony?

19                  A.       That I do.

20                  Q.       Okay.

21                   If the Applicant changed his plan to  
22   eliminate the north driveway for the WB40s, the  
23   garbage disposal and the oxygen truck, and provided  
24   for alternative vehicles that could enter the garage  
25   to make deliveries in their place, would that not

1 eliminate one of your concerns with respect to  
2 backing in and out from Prospect Avenue?

3 A. It would eliminate the backing in and  
4 out of, but then I think you're going to run into  
5 some issues with respect to vertical curves and  
6 sloping of driveways per the Urban Land Institute and  
7 their specifications of sloping of driveways.

8 Q. Well, I believe that the testimony has  
9 already been given that you can put a 30-foot truck  
10 into the garage with the turning radius there and it  
11 operates as well.

12 So, if they limit -- they kept their  
13 truck deliveries for the ones that they eliminated to  
14 30-feet or less, would they be accommodated in the  
15 design that's already been discussed at great detail  
16 by the architect and the traffic engineer?

17 A. No, I don't think so because we're  
18 going to run into issues with respect to the delivery  
19 trucks and the sloping of the driveway and entering  
20 and exiting and the design of the garage as a whole.

21 Q. Well, we went through all the design  
22 and all the discussion regarding trucks entering the  
23 building, entering the building.

24 Why is it that if you bring trucks --  
25 trucks no greater than 30-feet to replace the ones

1 that would have made the deliveries backing in off of  
2 Prospect Avenue, that there is all of a sudden a  
3 design problem?

4 A. No, it's not all of a sudden that has  
5 been included in my reports throughout the project,  
6 it's the sloping of the driveway is a substantial  
7 issue with respect to the project.

8 Q. Well, let's get to that. Okay. Let me  
9 ask you a question about that.

10 A. Uh-huh.

11 Q. Before I do, it just occurred to me  
12 when you made your trips to Prospect Avenue and  
13 Summit Avenue, did you ever see landscaping vehicles  
14 on the roadway?

15 A. Yeah, I did.

16 Q. Some of those can be rather large, can  
17 they not?

18 A. They can.

19 Q. And do they park on the street there?

20 A. They do.

21 Q. Do they have any impact, did you  
22 notice? Was there any impact on the visual character  
23 of the town or characteristic of the neighborhood or  
24 sight distances that could have been a problem that  
25 you observed as you were driving by?

1           A.       I didn't get out of the car and analyze  
2       the sight distances with respect to the way the  
3       vehicles were parked.

4           Q.       Okay.

5                    I think what you were referring to  
6       about the -- I guess the grade of the driveways going  
7       into the parking garage, is that what you were  
8       referring to in your last comment?

9           A.       Correct.

10          Q.       And that you had referred to the Urban  
11       Land Institute Dimensions for Parking, Fourth  
12       Edition, Parking Ramps?

13          A.       Correct.

14          Q.       Okay. And that you stated that they  
15       should be at a maximum 12 and-a-half percent grade,  
16       did you not?

17          A.       Correct.

18          Q.       In what you presented to the Board, a  
19       copy of which was sent to me through Mr. Malagiere,  
20       you read and stated in the record the following:

21                    "Speed ramps should be limited to 12  
22                    and-a-half percent grade".

23                    This is from the Fourth Edition  
24       Parking.

25          A.       Yes, I have a copy.

1           Q.       Okay. I would ask you to read the  
2       entirety of the bracketed area.

3           A.       "Speed ramps, non-parking ramps should  
4       be limited to 12 and-a-half percent grade  
5       unless signage specifically prohibits  
6       pedestrian use of the ramps. Ramps greater  
7       than 15 percent can be a psychological barrier  
8       to some drivers, particularly in the case of  
9       a down bound ramp, however, again in hilly  
10      areas ramps at 20 percent may be considered."

11          Q.       Okay. How come you didn't read all of  
12      that in your testimony you stopped at the 12  
13      and-a-half percent grade?

14          A.       I'm providing testimony with respect to  
15      how the ramp was designed, that's the 12 -- you're  
16      not providing a 12 and-a-half percent ramp and  
17      there's no signage that specifically prohibits  
18      pedestrians from walking in that area.

19          Q.       There was testimony that there was  
20      signage specifically prohibiting pedestrians from  
21      going into the ramps on both the Summit Avenue side  
22      and the Prospect Avenue side.

23          A.       Yeah, I don't particularly recall that.

24                   MR. MALAGIERE: Mr. Diktas.

25                   MR. BASRALIAN: Well --

1 MR. MALAGIERE: Hold on. Let him  
2 object.

3 MR. DIKTAS: The objection is Mr.  
4 Basralian just indicated there was testimony as to  
5 the signage. There's been no proof that this  
6 testimony occurred so for Mr. Basralian to present  
7 that question to Mr. Polyniak, he should have the  
8 book and page of the 19 transcripts before us so that  
9 he can confirm that statement so we know that it's  
10 not exceptional lawyering, rather than actual factual  
11 presentation.

12 MR. MALAGIERE: Mr. Polyniak has  
13 indicated he doesn't recall the testimony, the record  
14 speaks for itself.

15 Q.

16 MR. BASRALIAN: That's exactly the  
17 point I was going to make.

18 Q. But, Mr. Polyniak, what you just read  
19 says that ramps greater than 15 percent -- I'm sorry  
20 -- 12 and-a-half percent is the maximum unless signs  
21 specifically prohibited pedestrian use of the ramps.

22 So, if there were signage there, would  
23 that 12 and-a-half percent limitation still apply?

24 A. It would not, no.

25 Q. Okay. And that:



1                    "Ramps greater than 15 percent can be a  
2                    psychological barrier to some drivers...  
3                    however, in hilly areas ramps up to 20 percent  
4                    may be considered".

5                    Is that not what the Fourth Edition  
6                    says?

7                    A.            That's exactly what it says.

8                    Q.            Okay. And although Hackensack may not  
9                    be hilly right here, is a 16 percent ramp, under  
10                   those circumstances, out of the ordinary?

11                   A.            It doesn't follow the ordinance or code  
12                   that you just referred to.

13                   Q.            Well, just said that 15 percent or  
14                   greater -- in other words, you can have more than 12  
15                   and-a-half percent if there's signs?

16                   A.            Uh-huh.

17                   Q.            So let's assume for the moment that  
18                   there's signage that says pedestrians can't go in so  
19                   it can be more than 12 and-a-half percent, correct?

20                   A.            If we want to make that assumption.

21                   Q.            Okay. And it doesn't say that -- it  
22                   only states that ramps greater than 15 percent can be  
23                   a psychological barrier for some drivers, but it  
24                   doesn't prohibit ramps of 16 percent?

25                   A.            It wouldn't be sound engineering

1 practice to design anything different because it  
2 would be a psychological barrier.

3 Q. It can be a psychological barrier.

4 A. Well, it can be. And for that reason  
5 the design standard that we have a clean template,  
6 you should be designing for it.

7 Q. Well, it doesn't say anywhere in here  
8 that you can't design above 15 percent.

9 In fact, it says you can go 20 percent  
10 in hilly areas. Where does it say it's poor design  
11 if you go above 15 percent?

12 A. I would argue, again, this isn't a  
13 hilly area where we should be going into the larger  
14 slopes and for that reason I'm going to -- it's my  
15 opinion that the 15 percent should apply as long as  
16 signage is provided.

17 Q. Well, where does it say you cannot  
18 exceed 15 percent? Anywhere in that sentence -- in  
19 that -- the information that you provided to the --  
20 and utilized during the statement of September 15,  
21 2011?

22 A. Again, it's a design --

23 Q. Mr. Polyniak, answer the question  
24 please. Does it say that?

25 MR. MALAGIERE: Greg, answer the

1 specific question.

2 If you need to have it read back,  
3 please have it read back.

4 THE WITNESS: I'll have it read back.

5 MR. MALAGIERE: Can you read it back?

6 Q. Speed ramps --

7 MR. MALAGIERE: Hold on, let's read the  
8 question back.

9 MR. BASRALIAN: Okay.

10 MR. MALAGIERE: So we only have one  
11 question.

12 MR. BASRALIAN: I thought you wanted  
13 the quote read back.

14 THE COURT REPORTER: Is that what you  
15 want read back or the question, if you want the  
16 question read back I need to find it.

17 MR. MALAGIERE: Just read back the last  
18 question if you could so the record is clear.

19 (Whereupon, the Court Reporter reads  
20 back the requested portion.)

21 MR. MALAGIERE: Can you respond to  
22 that, Greg?

23 A. Where does it say that it's a poor  
24 design?

25 Well, we're talking about psychological

1 barriers to drivers, that's a poor design.

2 Q. Well, again, it says it can be a  
3 psychological barrier to some drivers, but it says  
4 you can go to 20 percent in hilly areas.

5 A. Agreed, that it does say that.

6 But, again, this is referring to cars  
7 and not loading zones. We're going to discuss  
8 loading zones, I'm sure in the future, and 15 to 20  
9 percent slope for a loading zone is --

10 MR. DIKTAS: In light of the  
11 question --

12 MR. MALAGIERE: Hold on. Let him  
13 finish. Let him finish.

14 Go ahead, Mr. Polyniak, want to finish.

15 MR. DIKTAS: I'm sorry.

16 A. It's ineffective and is not sufficient.

17 Q. Well, what's your --

18 MR. MALAGIERE: Hold on, let him  
19 object.

20 MR. DIKTAS: If I may? I object to the  
21 whole line of questioning, what can be, it's  
22 possible. Anything can be and anything is possible.

23 So let's get to the actual question of  
24 factual basis and true engineering rather than what  
25 can be or possibilities. It's not relevant. And the

1       answers call for speculation.   And I would request  
2       that Mr. Polyniak -- the question and the answer  
3       presented and responded to be stricken.

4                       Thank you.

5                       MR. MALAGIERE:   Mr. Basralian, the  
6       application is pending.

7                       Please proceed with your questions.

8       By MR. BASRALIAN:

9               Q.       Mr. Polyniak, how many parking garages  
10      have you designed?

11            A.       I've worked on many project with  
12      parking garages.

13            Q.       How many have you designed as an  
14      engineer?

15            A.       Designed?   I would say about four or  
16      five that I can think of --

17            Q.       Where?   Where?

18            A.       Cliffside Park --

19            Q.       Underground parking garages?

20            A.       Underground parking garages.

21            Q.       Okay.   Tell me which ones.

22            A.       The Town Center project that is located  
23      in downtown Cliffside Park.   I've worked on a parking  
24      garage located in Palisades --

25            Q.       No, you designed, not what you worked

1 on.

2 A. Oh, no.

3 Q. What did you design, as an engineer,  
4 you designed structurally the grades, et cetera for  
5 the garage.

6 A. I didn't -- I want to clarify my  
7 statement, didn't design the structure, per se, but  
8 the grading and sloping of the -- of the garage I  
9 designed. I designed the one in Palisades Park.

10 Q. But you didn't design the structure,  
11 just the grading and some of the garage structure.

12 A. Right. I didn't design the rebar. I  
13 didn't design the structural components.

14 Q. Did you design the Helix for the  
15 garage?

16 A. Exactly. Correct.

17 I've designed the parking garages in  
18 Cliffside Park. And I have to go through some of the  
19 other ones that I've designed, I wasn't prepared to  
20 address it, but those are two that I did design.

21 Q. Were any of them on hilly slopes?

22 A. I could argue that one, that's in  
23 Cliffside Park is, and also the one in Palisades  
24 Park.

25 MR. BASRALIAN: Thank you.

1           Q.       Are you familiar with the publication,  
2       Parking Structures, Third Edition, 2001?

3           A.       I am familiar with it, yes.

4           Q.       Okay.

5                   Are you familiar with the tables  
6       regarding grades of parking -- I mean the speed  
7       ramps?

8           A.       Not off the top of my head I am not.

9           Q.       Well, you indicated in your testimony  
10       that there were slope differentials that required --  
11       and that you -- that there had to be a transitional  
12       slope at the top and the bottom of the ramp.

13                   I show you, that you're familiar with  
14       this edition, table 3-3, Recommended Design  
15       Parameters For Non-Parking Roadways and Express  
16       Ramps, but particularly the first column which shows  
17       level of service D and express ramp slope of 16  
18       percent.

19                   MR. MALAGIERE:   Hold on, before Mr.  
20       Diktas interposes an objection.

21                   Mr. Polyniak, would you consider this  
22       volume, this treatise that is referenced by Mr.  
23       Basralian, to be authoritative?   And, if so, on what  
24       topic?

25                   THE WITNESS:    I wouldn't say it's

1 authoritative, there are other references that one  
2 can refer to.

3 MR. MALAGIERE: Okay. Mr. --

4 MR. DIKTAS: Based on the answer just  
5 presented by Mr. Polyniak I would request that no  
6 questions be presented. There's no foundation by any  
7 expert to present this question. And also do you  
8 have a copy for Mr. Moskowitz and I or that's  
9 the only --

10 MR. BASRALIAN: No, I don't. You can  
11 ask me for it and I will send it to you tomorrow.

12 MR. MALAGIERE: No, we'll make them  
13 available for you this evening.

14 MR. DIKTAS: Thank you.

15 My objection --

16 MR. MALAGIERE: Objection is noted.

17 MR. DIKTAS: -- is noted. And the  
18 answer -- there should be no questions from this  
19 document.

20 MR. BASRALIAN: Contrary to Mr. Diktas'  
21 statement --

22 MR. MALAGIERE: Hold on. Is there a  
23 question pending?

24 MR. BASRALIAN: Yes.

25 MR. MALAGIERE: Mr. Polyniak?



1                   Let him answer the question, it's of  
2                   record that he's acknowledged that he does not  
3                   necessarily consider it to be authoritative, so his  
4                   response is in that context.

5                   Mr. Polyniak?

6                   THE WITNESS: If I could have it read  
7                   back?

8                   (Whereupon, the Court Reporter reads  
9                   back the requested portion.)

10                  MR. MALAGIERE: Okay.

11                  MR. BASRALIAN: There was an objection  
12                  before I could finish that question.

13                  MR. MALAGIERE: You can ask one.

14                  MR. BASRALIAN: And contrary to Mr.  
15                  Diktas' statement --

16                  MR. MALAGIERE: You can ask the  
17                  question.

18                  MR. BASRALIAN: No, I'm answering the  
19                  objection.

20                  MR. MALAGIERE: You don't need to  
21                  answer the objection because you're allowed to ask  
22                  the question.

23                  MR. BASRALIAN: Okay.

24                  BY MR. BASRALIAN:

25                  Q.       Are you -- Mr. Polyniak, you reviewed

1 all the plans, you're familiar with P-1 which was  
2 submitted in evidence as part of the design drawings  
3 for the garage?

4 A. Yeah, I'd like to see P-1 before I  
5 start referring to it.

6 Is it within the architectural manual?

7 Q. Yes. Yes it is.

8 A. Okay.

9 Q. Okay. Referring to the entrance drive,  
10 I'm now referring to the same document, Parking  
11 Structure, with which you said you are familiar.

12 CHAIRMAN GUERRA: Joe, what page are we  
13 on?

14 MR. BASRALIAN: Page -- P-1. It's --  
15 Chairman, it is here (indicating).

16 CHAIRMAN GUERRA: Oh, I got it.

17 Q. Same document I had given to you  
18 before. I'll read this. And I will give it to you  
19 to look at.

20 Page 54 Parking Structures:

21 "Where there's a difference in the  
22 slope of 10 percent or more between two  
23 sections of floor slab, a transitional slope  
24 is required to prevent a vehicle from  
25 bottoming out".

1                   One of the issues that you had.

2                   "The condition typically occurs in  
3           express ramps. In general, the transition  
4           area should have one half the slope" --

5                   THE COURT REPORTER: Mr. Basralian,  
6           you're speaking a little too fast.

7                   MR. BASRALIAN: Okay.

8           Q.       "The condition typically occurs in  
9           express ramps. In general, the transition  
10          area should have one half the slope of the  
11          differential slope. The length of the  
12          transition slope is presented in table 3.3,"  
13          which I had previously showed you, which is  
14          the highlighted area regarding the bottoming  
15          out issue which you raised on September 15th.

16                  MR. MALAGIERE: Are you reviewing it,  
17          Mr. Polyniak? There is not a question pending as I  
18          understand it.

19                  THE WITNESS: Yeah, I am reviewing it.

20                  MR. MALAGIERE: Okay. Thank you.

21           Q.       Here is P-1 which was entered into the  
22          record in, I think, May or June of 2009.

23                  And it refers here to the transitional  
24          slope, which comports with what you just read, that I  
25          read and you confirmed, which is in the Third Edition

1 of the Parking Structures.

2 What are the transitional slopes there?  
3 Does it not comport with the recommendations in the  
4 treatise that you just referred to or that you just  
5 read?

6 A. I believe -- I believe that that --  
7 that location does -- the question arises at the top  
8 of the slope.

9 Q. Well, it's an 8 percent grade at the  
10 top of a slope, goes to 16 and then --

11 A. I'm not -- I'm not talking in that  
12 area. I'm talking in the driveway, the entrance  
13 driveway.

14 Q. It is an entrance driveway there.

15 A. I'm talking at the location of the  
16 roadway.

17 Q. Well, you didn't make that -- I'm  
18 sorry.

19 You didn't make that clear in your  
20 testimony, what was the percent grade that you were  
21 concerned about that didn't -- that hasn't been  
22 addressed by this?

23 A. I think there's -- there's a series of  
24 percent grade changes that I'm concerned about.

25 I'm concerned about the 16 percent

1 slope as it relates to trucks and vehicles traveling  
2 up that ramp. Trucks typically have issues  
3 addressing slopes greater than 8 percent slope.

4 And then there are issues with respect  
5 to the transition of the steepness of the slope at  
6 the intersection of Prospect Avenue and the curb cut  
7 of the roadway, and vehicles entering into the travel  
8 way, being able to accelerate correctly so that there  
9 aren't any safety issues that the truck enters in.  
10 Because typically a truck will have issues beginning  
11 to start from a straight standstill and we're all  
12 aware of it when you are parked at a parking -- at a  
13 traffic light, that those larger single unit trucks  
14 typically take time to accelerate to enter traffic.  
15 And that's part of my concern.

16 Q. Mr. Polyniak, is anywhere in that  
17 statement that I read to you and you just read that  
18 would differentiate between cars and trucks?

19 It's very straight forward in what it  
20 says. There's got to be a transitional grade at the  
21 top and the bottom to prevent bottoming out.

22 A. Agreed.

23 Q. Okay. Thank you.

24 MR. BASRALIAN: May I have this back?

25 Q. Are you familiar with Central Avenue as

1 it goes from Prospect down to First Street?

2 A. Yes.

3 Q. What's the grade of that road going  
4 from Prospect Avenue to First Street if you're  
5 familiar with it at that point?

6 A. Yeah, I mean familiar with it, but I --  
7 I haven't performed any of -- or had any survey  
8 performed on it.

9 Q. But you're an expert, you've driven  
10 down it.

11 Do you have a feel or a guess? Is it  
12 more than a 16 percent perhaps?

13 A. I can't answer that.

14 MR. MOSKOWITZ: Hold on. Go ahead.

15 MR. DIKTAS: I'll object to the form of  
16 question. "You're an expert do you have a feel for  
17 it, can you guesstimate."

18 Where are we going?

19 MR. BASRALIAN: He considers himself as  
20 an expert. He gives a lot of --

21 MR. DIKTAS: But "feel"?

22 MR. MALAGIERE: Mr. Polyniak, don't  
23 guess.

24 THE WITNESS: Yeah, I can't --

25 MR. MALAGIERE: Can you -- hold on, Mr.

1 Polyniak.

2 Can you provide an estimate in your  
3 capacity as an engineer, as to the grade of that  
4 road, not having performed any calculations?

5 THE WITNESS: No, there's no way for me  
6 to do so.

7 MR. DIKTAS: Thank you.

8 BY MR. BASRALIAN:

9 Q. Again, on September 15th, you stated  
10 that there'd be a conflict between cars entering  
11 Summit Avenue side of the garage and the driveway.

12 Is the arrangement where the two cars  
13 are coming out side by side any different than a  
14 street with a through and a right-hand turn where one  
15 -- both come into the intersection and one has to  
16 wait for the other to clear before they get a line of  
17 sight?

18 A. It is different because, again, the  
19 cars are positioned at different locations. You have  
20 issues with respect to those two cars located next to  
21 one another in such a close proximity not at an  
22 intersection. It's an issue with respect to sight  
23 distances.

24 Q. Well, this -- in the case of the  
25 application, they're limited to right-hand turns out

1     only.

2                     In the case of the example I gave you  
3     that you said differentiated wasn't the same is that  
4     one could be going straight and one could be going  
5     right and blocking the vision of one to the other,  
6     what's the difference?

7             A.       Correct. But there is confusion with  
8     respect to it, which car moves first, which vehicle  
9     enters the traffic. And, again, you have the issue  
10    of sight distance with respect to the vehicles  
11    blocking one another.

12            Q.       Isn't the rule of the road the first  
13    one in the first one out?

14            A.       I'm not sure of that being any sort of  
15    engineering standard.

16            Q.       Well, what's the rule of the road? Are  
17    you familiar with the rules of the road?

18                    MR. MALAGIERE: Hold on. There's an  
19    objection.

20                    MR. DIKTAS: I'm going to object to the  
21    form of the question "the rule of the road," is that  
22    in the DMV manual or is that in the Ballentine truck  
23    manual?

24                    MR. MALAGIERE: Hold on.

25                    MR. BASRALIAN: It's in both.



1                   MR. MALAGIERE: Mr. Polyniak, there is  
2 a question pending, are you familiar with "the rule  
3 of the road".

4                   THE WITNESS: Yeah, again, I'm going to  
5 state that that is not an engineering standard.

6                   MR. MALAGIERE: Yes, but I'm going to  
7 ask you to answer the question in general.

8                   THE WITNESS: I'm not familiar with it.

9                   Q.       Do you recall the testimony, the cross  
10 examination of Mr. Miskovich, with respect to the  
11 parking calculations and then ultimately he agreed  
12 that the parking being provided for this site would  
13 be at the maximum, the peak period the maximum of 84  
14 percent filled?

15                  A.       I recollect the testimony, but the  
16 numbers that you're throwing out, I don't have those  
17 committed to memory.

18                  Q.       Do you recall his testimony regarding  
19 parking?

20                  A.       I do.

21                  Q.       Do you recall nothing about the  
22 capacity analysis that was done by Mr. Keller and by  
23 Mr. Miskovich?

24                  A.       No, I do remember that, but the exact  
25 numbers that you're responding to or referring to, I

1 don't have those percentages committed to memory.

2 Q. Do you recall irrespective or  
3 percentages, that at its peak period the shift change  
4 between 2:30 and 3:30 the garage was below capacity?

5 MR. MALAGIERE: Under whose analysis?

6 MR. BASRALIAN: Under Mr. Miskovich's  
7 analysis and under Mr. Keller's analysis.

8 MR. MALAGIERE: Is that your  
9 recollection, Mr. Polyniak?

10 THE WITNESS: That I do believe to be  
11 correct.

12 MR. MALAGIERE: Thank you.

13 MR. DIKTAS: I'm sorry.

14 Is it correct or he believes it to be  
15 correct? So we need a definitive answer.

16 MR. MALAGIERE: He's qualified his  
17 answer, that's it.

18 I don't know what else you can ask --  
19 on redirect you can expand that.

20 Q. You also stated that the assumptions  
21 made that the proposed parking facility might not be  
22 accurate, did that mean that you disagree with the  
23 conclusions I just referred to with respect to Mr.  
24 Miskovich and Mr. Keller as being inaccurate and  
25 faulty?

1           A.       Most definitely I do because as the  
2 testimony proceeded with respect to both experts, I  
3 think it came to light that there were some, I guess,  
4 data that was inputted with respect to the  
5 application that related to the Prospect Heights  
6 project and the facility and then it was determined  
7 after the report, I believe, it was testified to that  
8 there was a renting of parking spaces on, I believe,  
9 the synagogue site.

10           Q.       Excuse me, we were talking -- I was  
11 talking about the LTACH facility. I wasn't talking  
12 about --

13                   MR. MALAGIERE: Well --

14           A.       Yeah.

15           Q.       -- talking about --

16                   MR. MALAGIERE: Hold on, Mr. Polyniak.

17           Q.       I wasn't talking about Prospect  
18 Heights.

19                   MR. MALAGIERE: Hold on. Mr.  
20 Basralian, you asked him an open ended question so  
21 I'm going to let him respond.

22                   Go ahead.

23                   THE WITNESS: And then I'm going to --  
24 with respect to the Prospect Heights facility there  
25 were some, I guess, analysis and data that was

1 utilized and input into the LTACH traffic engineering  
2 report by both Mr. Keller and both Mr. Miskovich that  
3 may have been erroneous as it was illustrated that  
4 Mr. Pineles is renting parking spaces at a synagogue  
5 off-site thereby illustrating that that data  
6 potentially was faulty that was inputted into the  
7 analysis.

8 Q. You seem to have a selective memory on  
9 it. Nowhere was there ever testimony by anyone,  
10 especially Mr. Keller, that he relied on any data  
11 from Prospect Heights, other than how people got to  
12 work, whether by car, public transportation, bicycle  
13 or walking.

14 That was the only testimony.

15 MR. MALAGIERE: Is that a question or  
16 is that an argument?

17 Q. Do you recall that testimony?

18 A. I don't particularly recall it.

19 I do recall testimony with respect to  
20 the utilization of information from Prospect Heights  
21 and also information provided by Mr. Pineles to  
22 formulate the analysis.

23 MR. MALAGIERE: Counsel, you want to  
24 object?

25 MR. MOSKOWITZ: Yes, I would also

1 object. I think that --

2 MR. MALAGIERE: Would you just grab the  
3 mike.

4 Thank you.

5 MR. MOSKOWITZ: I think that the  
6 question doesn't fairly reflect the testimony. It's  
7 very general. It suggests that no comparison to  
8 Prospect Heights has been made. It ignores much of  
9 the totality of the questioning of Mr. Keller. And  
10 it omits Mr. Keller's frequent reference to Mr.  
11 Pineles as the source of data and information.

12 And if he wants to, if Mr. Basralian  
13 wishes to refer to a specific question and a specific  
14 answer of Mr. Keller's in his discussion with this  
15 witness, let him bring us to that testimony because  
16 what we had so far is what I think is a gross  
17 misrepresentation of the totality of Mr. Keller's  
18 testimony.

19 MR. MALAGIERE: While I agree it would  
20 be useful to have transcript pages and numbers, in  
21 cross examination it's not necessary. The  
22 information in the record speaks for itself.

23 Thank you.

24 MR. MOSKOWITZ: Well, it certainly  
25 does, but at least the witness --

1 MR. MALAGIERE: Mr. Moskowitz, I'm  
2 going to ask that your objection just be left at  
3 that.

4 Thank you.

5 Mr. Basralian, please proceed.

6 MR. BASRALIAN: Yes.

7 BY MR. BASRALIAN:

8 Q. Just so I can remember what was asked,  
9 you said that you don't recall that Mr. Keller said  
10 he relied for doing his parking calculations solely  
11 on the manner in which people came to Prospect  
12 Heights through a survey that was conducted.

13 A. I -- I recall that Mr. Keller testified  
14 with respect to the facility that data was inputted  
15 from the Prospect Heights facility into his model and  
16 that data actually that was utilized, created a  
17 potential situation at Mr. Pineles' existing Prospect  
18 Heights facility whereby he had -- he's under-parked  
19 by 30 parking spaces where he's renting them at a  
20 synagogue site.

21 Q. Well, that's not was -- that's not the  
22 way the testimony was characterized.

23 If Mr. Keller said he utilized only how  
24 people got to Prospect Heights to validate his census  
25 in Hackensack and no other information, how material

1 under, any circumstances, whether it would be with  
2 what the circumstances are with Prospect Heights and  
3 its parking?

4 MR. MALAGIERE: I just have to object  
5 to the question. I don't understand it.

6 If you want to cross examine what he  
7 just said to you then specifically ask him questions.

8 MR. BASRALIAN: Can you read back his  
9 response please?

10 (Whereupon, the Court Reporter reads  
11 back the requested portion.)

12 Q. I'll refer you to a quick reference on  
13 the January 21, 2011, transcript and a response to a  
14 question to Mr. Keller was that:

15 "The point of the matter was to collect  
16 information as to how, on a typical workday,  
17 people get to work".

18 There's nothing here that references  
19 any parking issue or that he relied on any parking  
20 data, parking space data from Prospect Heights.

21 MR. MALAGIERE: Mr. Polyniak, would you  
22 like to review the couple of pages of that transcript  
23 so you can put that response into context before you  
24 answer that question?

25 THE WITNESS: Yeah, I would like to do

1     that.

2                   MR. MALAGIERE:   Just, for the record,  
3     just indicate, I guess the date Mr. Basralian put on,  
4     just give us the pages that you are going to be  
5     referring to.

6                   MR. BASRALIAN:   I'm sorry.

7                   THE WITNESS:    It's Wednesday, January  
8     21, 2011.   And it's page 27.

9                   MR. MALAGIERE:   If you would just --  
10    and I will ask you to put it on the record, just take  
11    a look at that and go back as far as you need to, to  
12    put the responses into context and go forward a  
13    reasonable amount to understand the context in which  
14    the testimony was given.   (Pause).

15                   THE WITNESS:    (Complies).

16                   MR. MALAGIERE:   Okay.   Mr. Polyniak,  
17    just read the question -- Joe, let him have it back.

18                   If you could just read the question and  
19    the full response and that puts the -- and then that  
20    will put Mr. Basralian's question into context.

21                   And then you can respond to it.

22                   What's the question?

23                   THE WITNESS:    "So a car there once a  
24    week counted the same for you as a car that  
25    would be there five days a week?



1                   "The point of the matter was to collect  
2                   information" --

3                   MR. MALAGIERE:   Hold on.   Hold on.

4                   MR. BASRALIAN:   That's the answer --

5                   MR. MALAGIERE:   Yes, just state the  
6                   question.   And who is asking the question?   It should  
7                   be on the top of the page.

8                   THE WITNESS:   I believe it's Mr.  
9                   Moskowitz.

10                  MR. MALAGIERE:   What page are we on?

11                  THE WITNESS:   We're on page 27.

12                  MR. MALAGIERE:   And what's the  
13                  question?

14                  THE WITNESS:   "So a car there once a  
15                  week counted the same for you as a car that  
16                  would be there five days a week?"

17                  MR. MALAGIERE:   Okay.   Answer?

18                  THE WITNESS:   "Answer:   The point of  
19                  the matter was to collect information as to  
20                  how, on a typical workday, people get to  
21                  work."

22                  MR. MALAGIERE:   Can you answer Mr.  
23                  Basralian's question now that you've had a chance to  
24                  review the response?

25                  THE WITNESS:   I apologize.

1 Can I get the question re-read?

2 MR. MALAGIERE: As far as I know a  
3 question was pending please take a look.

4 Thank you.

5 THE COURT REPORTER: Sure.

6 (Whereupon, the Court Reporter reads  
7 back the requested portion.)

8 MR. MALAGIERE: Jump in there fine.  
9 What's the question?

10 Q. Where, anywhere in Mr. Keller's  
11 responses did he say that he was relying on the  
12 parking information as an analogy towards the LTACH,  
13 but instead -- but did he not then say -- did he then  
14 say he relied on the census how people got to work on  
15 a given day.

16 A. Well, the amount of parking, as Mr.  
17 Keller had mentioned, was determined by this mobile  
18 split that was utilized and accumulated though this  
19 survey.

20 And it's my opinion that there is  
21 substantial inaccuracies with respect to how people  
22 are getting to work because people are parking in  
23 different locations. They're parking in a different  
24 parking lot somewhere that has now come to light  
25 which could create erroneous issues with respect to

1       how people answer that question.

2               Q.       Did you read the survey?

3               A.       I saw the numbers and the tech marks,  
4       Other than that, that's all I saw.

5               Q.       And it said how they came to work. He  
6       didn't ask them where they parked?

7               A.       Yeah.

8                       And that could lead to an issue because  
9       as it relates to how people got to work and whether  
10      they thought they should be answering a question a  
11      certain way because they're parking in a different  
12      parking lot that isn't part of the complex, that can  
13      throw some doubt into how someone is going to answer  
14      the question.

15              Q.       Mr. Polyniak, you're splitting hairs on  
16      a survey --

17                      MR. MALAGIERE: Hold on. Hold on.

18              Q.       -- over and over and over again --

19                      MR. MALAGIERE: Mr. Basralian, please  
20      ask him a question.

21                      MR. DIKTAS: I'm going to object.

22                      MR. BASRALIAN: It's a statement it's  
23      not an objection (sic), okay?

24                      It's not a question. It's a statement.

25                      MR. DIKTAS: Thank you.

1           Q.       You then disagreed that the conclusions  
2       that Mr. Moskowitz -- Mr. Miskovich came to and Mr.  
3       Keller came to?

4           A.       Yes.

5           Q.       You stated in your opinion that --  
6       again, that with respect to the LTACH that the  
7       parking count was flawed.

8                    You went on to say that the Applicant  
9       should have used ITE standards or 3.9 from  
10      Hackensack.

11                   Do you recall that both Mr. Miskovich  
12      and Mr. Keller acknowledge that there is no -- there  
13      are no ITE standards for a building of this type  
14      containing three different services?

15          A.       Correct.   Yes.

16          Q.       Okay.

17                   Do you recall that Mr. Keller also  
18      analyzed the 3.9 parking spaces per bed calculation  
19      as it applied towards the medical center up the  
20      street or perhaps the LTACH?

21          A.       I don't recall because I don't believe  
22      he did because with respect to the LTACH I know there  
23      was testimony that there's no comparable facility in  
24      the area to base any of the calculations with respect  
25      to parking for both the LTACH, the dialysis center

1 and the daycare center.

2 Q. And that there were no -- there's no  
3 data in the ITE standards, either?

4 A. Well, there is no data --

5 Q. Not for a consolidated three service  
6 building such as is proposed?

7 A. Correct. Correct.

8 Q. Thank you.

9 Do you recall that the LTACH has no  
10 operating room, whereas HUMC has multiple operating  
11 rooms?

12 A. Yes, I am familiar.

13 Q. Okay.

14 Do you recall that the LTACH doesn't  
15 have an emergency room or a maternity ward where as  
16 Hackensack University Medical Center has three  
17 emergency rooms, an extensive maternity ward and a  
18 women's and children's center?

19 A. I'm aware of that.

20 Q. Do you recall the testimony that the  
21 LTACH doesn't provide outpatient surgical services,  
22 whereas the Medical Center has an extensive  
23 outpatient medical procedure services every day?

24 A. I'm aware of that.

25 Q. Do you recall the testimony that the

1 LTACH doesn't have a CAT scan or an MRI, whereas the  
2 Medical Center has several?

3 A. I'm aware of that.

4 Q. Do you recall the testimony that the  
5 LTACH doesn't have a radiology department and  
6 Hackensack University Medical Center does?

7 A. I'm aware of that.

8 Q. Are you familiar with the fact that  
9 under the Hackensack Zoning Ordinance that the  
10 Medical Center -- all the services that I just  
11 referred was subsumed in the 3.9 parking spaces per  
12 bed for the Medical Center?

13 A. I would assume so.

14 Q. Okay.

15 Now, given all of the differentials  
16 between an LTACH, which is a long term acute care  
17 hospital where the minimum stay is usually 25 days,  
18 versus an acute care hospital, would not you as a  
19 planner, logically look at the parking demand for  
20 that structure vis-à-vis the ordinance as compared to  
21 the fourth largest hospital in the country, which is  
22 down the street?

23 MR. MOSKOWITZ: Object to the form of  
24 the question.

25 MR. MALAGIERE: Hold on, Mr. Polyniak.

1 Mr. Moskowitz, what's your objection?

2 MR. MOSKOWITZ: The question is  
3 confusing and misaligned because it presents contrary  
4 view. It talks about the diversified functions and  
5 services in Hackensack Hospital, which they are, and  
6 then it refers back to the LTACH and parses out the  
7 one-third provided for the structure from the LTACH  
8 facility, and relies upon every -- a 25 day stay.

9 The fact of the matter, if the question  
10 is to be fair and honest, it needs to include the 25  
11 day stay, the one day -- one day at a time stay as  
12 everybody in the adult daycare center, and the one  
13 day at a time stay of everybody in the dialysis unit.

14 So, the fact is while one group may  
15 have an average or at least a stay of which is 25  
16 days, the other two uses, which vary in the question  
17 several times tonight, whether it needs to be an  
18 integrated single facility or three separate  
19 facilities, the fact of the matter is the witness has  
20 got to be asked an honest question about use of the  
21 facility, not pick which third you like each time.

22 MR. MALAGIERE: I think the objection  
23 points out an important aspect of the testimony.

24 However, Mr. Basralian is cross  
25 examining. And if his question is limited to one of

1 the three uses, then the response is limited to  
2 applicability in that same context.

3 Mr. Polyniak, answer the question  
4 please.

5 THE WITNESS: Could you please repeat  
6 it? I'm sorry.

7 MR. BASRALIAN: I will ask it again.  
8 I'll withdraw it.

9 MR. MALAGIERE: Go ahead, ask it again.

10 Q. Given the significant differences  
11 between the Medical Center and the LTACH, and given  
12 that all of those services I enumerated, plus many  
13 more that were testified to and are in the record are  
14 all subsumed within the 3.9 parking spaces per bed at  
15 the Medical Center and the LTACH has none of those  
16 services.

17 Would you as a planner, look at the  
18 realistic parking demand for that use, irrespective  
19 of what the ordinance states, given the proofs that  
20 have been presented by the Applicant?

21 A. You would look at a variety of things.  
22 You would look at the ordinance. You would look at  
23 comparable facilities. You would look at where the  
24 data had come from with respect to the number of  
25 staff members with respect to facilities and data



1       that's inputted into the model to determine the  
2       number of parking spaces required.

3               Q.       And didn't Mr. Keller do that in his  
4       report?

5               A.       Mr. Keller did do that, but, again, he  
6       relied on, with respect of some of the staff members  
7       as I've read through the testimony, Mr. Pineles and  
8       the information that he had supplied as it related to  
9       it.

10                      And, again, we're going to -- I'm going  
11       to go back to and rely upon that with that being  
12       utilized and the potential shortage of parking on the  
13       Prospect Heights facility and his testimony  
14       previously that the Prospect Heights facility doesn't  
15       have sufficient parking in that area that some of  
16       that information that could have been relayed also  
17       could carry over to this facility with respect to the  
18       deficiencies that Mr. Keller relied upon is his  
19       report.

20               Q.       But that's all speculation on your part  
21       because that wasn't the testimony. You're  
22       speculating that the deficiencies that may exist at  
23       Prospect Heights, which is 210 bed nursing home  
24       versus a 110 LTACH, is the same so that they  
25       analogize it?

1           A.           I'm -- I'm not stating that. I'm just  
2           stating that the data that was inputted as previously  
3           testified to may, again, have been erroneous and  
4           created a situation where the LTACH facility is not  
5           parked correctly. There -- again, there is no  
6           comparison with any other facilities as it relates to  
7           LTACHs. And there are LTACHs that exist. There are  
8           dialysis centers that exist. There are adult daycare  
9           centers that exist. That could have been utilized  
10          and applied those parking rates and trip generation  
11          rates to the size of the garage for that.

12          Q.          But both Mr. Miskovich and Mr. Keller  
13          are experts of their field, both concurred that the  
14          parking demand was at the 80 -- in the mid-80s as you  
15          may or may not recall, even at the peak period for  
16          the utilization of the center.

17                        You're disagreeing with their  
18          conclusions and that the parking, the parking  
19          consultants' conclusions.

20                        Is that what your statement is?

21          A.          I am disagreeing with them, again  
22          because some information came to light subsequent to  
23          the preparation of Mr. Miskovich's report. And also  
24          Mr. Keller's report.

25          Q.          The only information that they could

1       rely on was all the testimony that came before Mr.  
2       Keller testified with respect to how the calculations  
3       were done on employees. And that came from the best  
4       source which is the developer of the project?

5               A.       Correct, and again as I previously  
6       stated, the developer of the project has an existing  
7       facility that was utilized or some of the mobile  
8       information with respect to the preparation of the  
9       reports and staffing with respect to the preparation  
10      of the report.

11                   And that information comes from a  
12      facility that is deficient with respect to parking.  
13      And it throws into question the analysis of both  
14      traffic consultants.

15               Q.       Then we'll have to agree to disagree,  
16      your understanding and remembrance of what the  
17      testimony was and the record will speak for itself.

18                   With respect to the 63 bed dialysis  
19      center because it's some 26,000 square feet, you've  
20      analogized it to an office building at four per  
21      thousand. Do you recall the testimony that its very  
22      unlikely that someone who sat through  
23      three-and-a-half hours of dialysis would be able to  
24      drive?

25                   Do you recall that testimony?

1           A.       I do recall that.

2           Q.       Do you recall the testimony that Mr.  
3 Keller said he used a very conservative approach by  
4 applying a ratio of about 50 percent arriving by van,  
5 pick up and arriving and being taken home by van?

6           A.       I think I do remember that testimony.

7           Q.       And do you remember his testimony about  
8 how the calculation for the parking demand for all  
9 these people would be arrived at?

10          A.       Yeah, I do remember it. And it was  
11 something that did jump out at me with respect to the  
12 calculation --

13          Q.       Just do you remember -- do you remember  
14 his testimony about how he calculated it?

15          A.       Yes.

16          Q.       Do you also remember the testimony that  
17 about 30 percent of the LTACH patients require the  
18 use of dialysis?

19          A.       I do recall that.

20          Q.       Do you recall the testimony that a  
21 number of the participants in the adult medical  
22 daycare require dialysis?

23          A.       Can you repeat that?

24          Q.       Do you recall the testimony that a  
25 number of the participants in the medical adult

1 daycare would require or do require dialysis as well?

2 A. Yes, I do.

3 Q. Okay.

4 And that when they reach the -- when  
5 Mr. Keller reached his conclusion as to the parking  
6 demand, that he felt that applying a ratio of four  
7 per thousand for the dialysis center would be  
8 inappropriate, some hundred parking spaces for people  
9 that essentially don't drive.

10 A. I do recall that, but --

11 Q. Do you also recall that he calculated  
12 on the employees at the maximum time periods that  
13 would be employed with respect to the dialysis center  
14 as well as the adult daycare center?

15 A. As supplied by Mr. Pineles.

16 Q. Well, when you're meeting with one of  
17 your clients on a land use planning matter, do you  
18 not ask them how many employees he might have and how  
19 it would affect parking on the site?

20 MR. DIKTAS: Objection. When you meet  
21 with your clients, what do his clients have to do  
22 with Mr. Pineles --

23 MR. BASRALIAN: Let me finish the  
24 question then and you'll hear.

25 Q. When you're dealing with a land use

1 planning matter, do you not get the source of the  
2 employee parking, for example, from your client?

3 A. If it's required for a parking  
4 analysis, 99 times out of 100 the number of employees  
5 really doesn't matter with respect to the analysis.  
6 In this situation it does.

7 Q. If it did, would you not ask -- where  
8 would the best source of the information come from?

9 A. It would come from potentially two  
10 sources. It would come from a survey conducted by  
11 our office or it would come by the information  
12 provided by the client, but they would be checked and  
13 verified.

14 Q. Well, isn't it the same answer in what  
15 Mr. Keller, a professional, you know, parking traffic  
16 consultant did, not only if you recall the testimony,  
17 he took the census, he also took the census  
18 applicable in Hackensack. Which by the way, if you  
19 recall the testimony, showed that more people walked  
20 to work and didn't use -- and failed to use cars than  
21 the census that he did at Prospect Heights.

22 MR. DIKTAS: Objection. Is there a  
23 question?

24 Q. I said, do you recall the testimony  
25 that this is what he said -- he testified to?

1 MR. DIKTAS: Four times he said do you  
2 recall this, do you recall that, do you recall this.  
3 It's a multipart faceted questions.

4 MR. MALAGIERE: I don't understand it.

5 MR. DIKTAS: Is it possible -- I didn't  
6 understand it.

7 MR. MALAGIERE: I don't understand the  
8 question sufficient to let the witness answer. If  
9 you could --

10 MR. BASRALIAN: I'll rephrase it.

11 Q. Do you recall the testimony that he  
12 utilized two standards for employees arriving at  
13 work? One, was the census; and, two, was the census  
14 applicable in the City of Hackensack?

15 A. He also applied the survey that was  
16 utilized from Mr. Pineles.

17 Q. Excuse me.

18 A. And I believe that was the focus of his  
19 report.

20 Q. Excuse me. I asked you, do you recall  
21 that he said he used the census of how people arrived  
22 at Prospect Heights and the census of how people went  
23 to work in Hackensack? Yes or no? You recall it or  
24 you don't?

25 A. It's not a yes or no question because

1       there are other references that were utilized.

2               Q.       No.

3                       MR. MALAGIERE:   Well, he's only asking  
4       about two.

5               Q.       I am asking --

6               A.       He did use those two references.

7               Q.       Thank you.

8                       With respect to the adult medical  
9       daycare, do you recall the testimony which came from  
10      Mr. Pineles as well as Mr. Keller that 100 percent of  
11      transportation is paid for through Medicaid to bring  
12      participants to the adult medical health daycare  
13      center?

14              A.       I do recall that.

15              Q.       Okay. Do you recall the testimony that  
16      he felt he would use a more conservative approach and  
17      reduce that from 100 percent to 80 percent?

18              A.       I know he reduced it, but I don't  
19      recall to 80 percent.

20              Q.       Okay. Now, he reached a conclusion  
21      with respect to the parking demand for the building.

22                      And he submitted that and testified to  
23      and it was at the peak period within 2 percent of  
24      what Mr. Miskovich ultimately concluded.

25                      Do you recall any of that testimony?



1           A.       I do.

2           Q.       Okay. Yet your position is that all of  
3 the collection data has errors in it and as a result  
4 these two experts' conclusions were incorrect?

5           A.       Yes, it is.

6           Q.       Okay.

7                   Mr. Keller testified that at full  
8 occupancy, talking about all the responses in the  
9 parking analysis is based upon full occupancy of all  
10 three programs, but that at full occupancy the LTACH  
11 would be 120 beds and that the impact of parking  
12 would be arrival of 53 employees on the third shift  
13 with 22 employees for the early dialysis shift at  
14 5:30 a.m.

15                   Mr. Keller's conclusion was that it  
16 didn't have a negative impact.

17                   What is your opinion?

18           A.       My opinion is because when we're having  
19 early shifts, again, we're creating traffic in the  
20 roadway and deleterious and detrimental effects to  
21 the public within the surrounding roadway systems  
22 that doesn't exist.

23                   If you travel Summit Avenue and  
24 Prospect Avenue --

25           Q.       Well, you --

1 MR. MALAGIERE: Whoa, whoa, let him  
2 answer.

3 A. (Continuing) and introduce this traffic  
4 at 5 a.m., again we're getting back into the  
5 lengthening of the peaks when traffic is on the road  
6 system.

7 Q. It's your position that 22 people  
8 arriving at 5:30 a.m. creates a negative roadway  
9 impact?

10 A. It does.

11 Q. Okay.

12 A. Compared to what exists.

13 Q. And then your conclusion also is that  
14 all of these things lengthen the period of the -- the  
15 duration of the peak period even though neither Mr.  
16 Miskovich or Mr. Keller came to the same conclusion?

17 A. Yeah, I'm not sure if they addressed it  
18 at all. But it's something --

19 Q. Well, they --

20 A. -- it's something that I addressed in  
21 my analysis in review of it.

22 Q. But where there's traffic consultants  
23 it could be incumbent upon them if the peak period  
24 extended that that's part of their report?

25 A. Yeah, I'm looking at it with more --

1 with respect to the planning aspects and the effects  
2 to the neighborhood and the area.

3 They're referring to just the  
4 categories of the peak hours. I'm looking at it as  
5 the project as a whole and what the impact is of the  
6 project over the entire portion of the day.

7 Q. Well, if the medical building on the  
8 north side of Prospect Avenue had a dialysis center  
9 and its 22 employees came in, that would be a  
10 negative impact in your opinion on the roadways?

11 A. Yeah, that building exists and I mean  
12 that's an assumption I'm not sure how it would affect  
13 -- I didn't analyze that location but I looked at  
14 this location and the analysis that was provided by  
15 Mr. Keller and Mr. Miskovich, looked at the trips  
16 generated and looked at how, with the addition of  
17 those trips as it relates to employees during those  
18 off peak hours, what you're in effect doing is  
19 lengthening the time that the roadway or traffic  
20 exists within the roadway system, creating a  
21 detrimental effect to the neighborhood.

22 Q. So if there were an apartment building  
23 on this premises, okay, which is a permitted use and  
24 22 of the tenants left to go to work that day, that  
25 would be a detrimental effect because they were

1 adding traffic to the road --

2 A. Well, again, you have to think of it as  
3 this --

4 Q. No. Answer the question. Would that  
5 be a detrimental effect because they added 22  
6 employees to the roadway?

7 A. Well, again, I'd have to look at it in  
8 a different form or fashion because that really isn't  
9 something that would occur in the subject property.

10 If you'd be looking at an entirely  
11 different design with respect to the site and the way  
12 the parking garage is situated, we're talking --  
13 you're talking about a permitted use here. The  
14 building, itself, would not have a garage that would  
15 have access off of Summit Avenue. So I can't really  
16 address the comment --

17 Q. How do you know any of that except to  
18 say --

19 A. Because I'm -- because --

20 Q. -- except to say, when the question was  
21 if 22 tenants left and added themselves to the  
22 roadway, in your opinion because 22 employees coming  
23 into the LTACH is a detrimental effect on the  
24 roadway, wouldn't those 22 people have a detrimental  
25 effect as well?

1           A.       Yeah, I can't answer because I don't  
2       have the design of that roadway system.

3                   A permitted use on the subject property  
4       would be a multi-family development on the Prospect  
5       Avenue side. The side that was fronting Summit  
6       Avenue would have single family units with the  
7       potential of 30 percent of office space within the  
8       building, professional office space.

9                   So to say that that traffic would be  
10      going to those -- accessing off of Summit Avenue, the  
11      analysis really is incomparable.

12           Q.       Well, you were very quick to speculate  
13      on what -- that all the figures that were provided by  
14      Mr. Pineles would be erroneous, why can't you be  
15      quick to speculate on what happens when 22 people  
16      leave this building and go onto the roadway because  
17      you were more than happy to do it with respect to the  
18      22 people that are arriving.

19                   MR. MALAGIERE: Hold on.

20                   Go ahead.

21                   MR. DIKTAS: Objection.

22                   Mr. Polyniak, my understanding as an  
23      expert wasn't speculating that was his opinion.

24                   So, therefore, the question as  
25      presented, and "you speculated", its improper, it's

1 irrelevant.

2 And if he asks the question properly  
3 then I will withdraw my objection.

4 MR. MALAGIERE: Mr. Polyniak, can you  
5 answer the question as posed?

6 THE WITNESS: Yes, I will.

7 MR. MALAGIERE: Not implying your  
8 agreement that you're speculating, but nonetheless  
9 answering the question.

10 THE WITNESS: Yes.

11 I know that Mr. Basralian is  
12 questioning my theory and how -- and my opinion with  
13 respect to it. And what we're looking at with  
14 respect to the questions of Mr. Pineles, but that was  
15 data that was inputted into the design of a facility  
16 that's before you tonight.

17 The questions that you're asking, Mr.  
18 Basralian, I don't have a site plan or anything to  
19 analyze where the traffic is going to be generated,  
20 where the 22 trips entering and exiting the site.

21 So in reality, I can't answer whether  
22 or not that would create a deleterious effect and a  
23 substantial detriment to the neighborhood.

24 I can answer, based on what's proposed  
25 and how the site is situated, that those trips would

1 create a deleterious effect in the lengthening of  
2 peaks.

3 Q. Do you recall the testimony that the  
4 parking garage and the access drives were kept the  
5 same even though a significant number of stories were  
6 removed from the building?

7 A. I do recall.

8 Q. So anything based upon Mr. Keller's  
9 opinion that the parking demand decreased in the  
10 building by virtue of the number of facilities that  
11 were removed from it?

12 A. Again, that's just an assumption.

13 Q. Well, that's what they do based upon  
14 their -- expert do as you do based upon the facts  
15 presented and the gathering of the information that  
16 was provided.

17 A. Correct, correct. But the assumption  
18 with me without comparing any active LTACH facility,  
19 any active dialysis facility and any active daycare  
20 facility, again the staffing that was being supplied  
21 the mobile transportation routes being supplied and  
22 inputted into the model were supplied by Mr. Pineles.  
23 There was no other studies that were performed with  
24 respect to an existing facility.

25 Q. Well, He did, in fact, testify before

1     you came on board very extensively for over six hours  
2     about this information and how it's gather and  
3     inputted and that was the basis upon which the design  
4     was undertaken.

5                     That, would you not agree, is the  
6     primary source to go to for the information about how  
7     this facility will operate?

8             A.       It's one of the sources.

9             Q.       But it's a good source, would you  
10    agree?

11            A.       Not if it's vetted.

12            Q.       But you don't know that, do you?

13            A.       It would need to be vetted.   And I  
14    don't know --

15            Q.       But you don't know that it wasn't?

16            A.       Again, throughout Mr. Keller's report  
17    there is discussion and also testimony there is no  
18    comparable facility in the area.

19            Q.       But did you know that it wasn't vetted,  
20    yes or no?

21            A.       Again -- again --

22            Q.       Just yes or no.

23            A.       I --

24            Q.       Just yes or no?

25            A.       I know per his report that it wasn't



1 vetted.

2 MR. BASRALIAN: Thank you.

3 I have no further questions at this  
4 time, however, I reserve on any recross based upon  
5 what may come out after this --

6 MR. MALAGIERE: There's no right to  
7 recross, unless the Chairman allows it.

8 Mr. Diktas, would you like to ask  
9 questions? I will call on redirect?

10 MR. DIKTAS: I would, but I don't have  
11 any of the documents.

12 MR. MALAGIERE: Mr. Basralian, would  
13 you be kind enough to give Mr. --

14 MR. DIKTAS: I'm going to need at least  
15 15 minutes to read them.

16 MR. MALAGIERE: Okay. Mr. Moskowitz,  
17 would you like to ask some questions on redirect or  
18 we can take a break.

19 MR. MOSKOWITZ: No, thank you.

20 MR. MALAGIERE: Mr. Chairman, would you  
21 like to take a ten minute break so that Mr. Diktas  
22 can acquaint himself with the documents on cross  
23 examination?

24 CHAIRMAN GUERRA: Reluctantly, okay.

25 MR. DIKTAS: Thank you.

1 (Whereupon, a brief recess is taken.)

2 MR. MALAGIERE: Mr. Basralian, both  
3 objector counsels has indicated that they are not  
4 going to ask any questions of Mr. Polyniak. And I  
5 have no questions for Mr. Polyniak. So he's  
6 completed. This witness is completed.

7 Do you have any --

8 MR. BASRALIAN: Yes.

9 MR. MALAGIERE: Not for this evening,  
10 but do you have any rebuttal witnesses?

11 MR. BASRALIAN: Yes, I have one other  
12 witness.

13 MR. MALAGIERE: Who is your rebuttal  
14 witness, sir.

15 MR. BASRALIAN: I have yet to determine  
16 who that rebuttal will be.

17 MR. MALAGIERE: Mr. Basralian, I'm  
18 going to ask you to make representation as to who the  
19 rebuttal witness is.

20 MR. BASRALIAN: Well --

21 MR. MALAGIERE: Again, I'm not going to  
22 hold you to it, you can call more than just the  
23 person, but tell me who you have in mind.

24 MR. BASRALIAN: I had my planner as a  
25 rebuttal witness.

1                   MR. MALAGIERE: That's the only person  
2 you're planning on calling right now?

3                   MR. BASRALIAN: That's correct.

4                   MR. MALAGIERE: Do you think you can  
5 finish him before 10 o'clock?

6                   MR. BASRALIAN: I'd try.

7                   MR. MALAGIERE: Okay. Let's go.

8                   MR. BORRELLI: He's right there.

9                   MR. BASRALIAN: Oh.

10                  MR. MALAGIERE: Going to swear you in  
11 again, Joe.

12                  MR BURGIS: Yes.

13                  MR. BASRALIAN: Here you go, sir.

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

17                  MR. BURGIS: I do.

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

19                  25 Westwood Avenue, Westwood, New Jersey, having  
20 been duly sworn, testifies as follows:

21                  MR. MALAGIERE: Would you please  
22 identify yourself and indicate, for the record, the  
23 capacity in which you will offer rebuttal testimony?

24                  MR. BURGIS: I am Joseph Burgis,  
25 B-u-r-g-i-s, for the record, Giving rebuttal

1 testimony as a professional planner.

2 MR. MALAGIERE: Mr. Burgis, welcome.

3 Mr. Basralian?

4 Oh, he's leaving the podium.

5 MR. BASRALIAN: No, I forgot my notes.

6 MR BURGIS: I could have asked myself  
7 the questions.

8 MR. BORRELLI: You want this instead?

9 MR. BASRALIAN: I'm sorry. Let me find  
10 my notes.

11 MR. MALAGIERE: Take a minute, do what  
12 you have to do.

13 Off the record.

14 (Whereupon, a brief recess is taken.)

15 MR. MALAGIERE: Mr. Diktas did you  
16 accidentally take Mr. Basralian's notes?

17 MR. DIKTAS: I gave all the papers  
18 back. I only have my pad, you can have that if you  
19 want.

20 MR. MALAGIERE: While we're doing this,  
21 Mr. Moskowitz, it appears that you're going to need  
22 to make an application -- Mr. Chairman, with your  
23 permission. It appears you're going to need to make  
24 an application to seek to have Mr. Pineles and Mr., I  
25 guess, Keller if I read your submissions correct come

1 back for some testimony.

2 Why don't you make that application to  
3 the Chair?

4 MR. MOSKOWITZ: Thank you.

5 MR. MALAGIERE: Mr. Moskowitz has  
6 written a letter, and Mr. Basralian has responded.  
7 It appears Mr. Moskowitz believes that it's necessary  
8 to have Mr. Pineles back at least, and I think Mr.  
9 Keller as well. And he's going to make that  
10 application to the Chair.

11 Mr. Moskowitz, please proceed.

12 MR. MOSKOWITZ: Yes, thank you.

13 Chairman Guerra, members of the Board,  
14 Counsel, Mr. Basralian. Thank you for hearing me and  
15 my points of order.

16 First, with respect to my application  
17 pertaining to Mr. Keller. I am making specific  
18 reference to pages 50 through 53 of Mr. Keller's  
19 testimony of September 15th.

20 MR. MALAGIERE: Why don't you orient us  
21 first, then you can specifically go --

22 MR. MOSKOWITZ: Well, I'm going to --

23 MR. MALAGIERE: Just what's the genesis  
24 of your argument why you want him back.

25 MR. MOSKOWITZ: Well, I either need --

1 I guess -- well, I've always needed or we needed  
2 either his documents or his presence.

3 MR. DIKTAS: I'm sorry about that.

4 MR. MOSKOWITZ: That's okay.

5 I'm sure the Board will recall that on  
6 September 15th, I asked Mr. Keller a number of  
7 questions about the Tombalakian report.

8 And I asked him about his meetings with  
9 Mr. Tombalakian and their discussions and his notes  
10 of those meetings, and his notes of those  
11 discussions.

12 MR. MALAGIERE: That was the former  
13 engineer?

14 MR. MOSKOWITZ: Yes. Yes. Yes. For  
15 Boswell, call it the Boswell report with Mr.  
16 Tombalakian --

17 MR. MALAGIERE: Yes.

18 MR. MOSKOWITZ: -- was basically it's  
19 full author.

20 And he said he had no notes from any of  
21 those meetings. And then I asked him if he still had  
22 his copy of the Boswell Tombalakian report and he  
23 did, his original.

24 And I asked him to produce that. And  
25 actually, Chairman Guerra, you got into that with me.

1 And you realized that maybe he should produce it.

2 And we reserved on it.

3 I'm looking to see if he has any -- I  
4 want to see --

5 CHAIRMAN GUERRA: Any notes.

6 MR. MOSKOWITZ: -- any notes he has or  
7 if he doesn't because again he as I presented to the  
8 Board at the last meeting, sometimes the absence of a  
9 note is as important, as significant, as the presence  
10 of a note.

11 MR. MALAGIERE: So, what's the thought,  
12 Ted? What --

13 MR. MOSKOWITZ: The thought is --

14 MR. MALAGIERE: What is -- let me just  
15 ask this, my understanding of the calculus that we  
16 need to engage in, in order to call back a witness is  
17 not that you forgot to ask him something or maybe  
18 it's something that should have been asked of him, if  
19 something happened after he was finished with his  
20 testimony which now gives rise to a reason to have  
21 him back. And it's only fair to have him address the  
22 issue.

23 So, what's the issue that you were not  
24 able to examine that would prejudice your client that  
25 now you need to examine that was not just forgotten

1 or just not gone into.

2 MR. MOSKOWITZ: Well, it wasn't a  
3 question of forgotten, at least certainly not  
4 forgotten --

5 MR. MALAGIERE: Right.

6 MR. MOSKOWITZ: -- by me --

7 MR. MALAGIERE: Okay.

8 MR. MOSKOWITZ: -- or for that matter  
9 the Board.

10 Mr. Keller was asked for all of his  
11 notes in whatever way, shape or form they exist.

12 MR. MALAGIERE: Right.

13 MR. MOSKOWITZ: He produced 19 sheets  
14 of paper --

15 MR. MALAGIERE: Right.

16 MR. MOSKOWITZ: -- a section of it was  
17 ruled out by the Judge as dealing with  
18 attorney/client privilege matters. And what boiled  
19 down to was four-and-a-half pages.

20 MR. MALAGIERE: Okay.

21 MR. MOSKOWITZ: He testified to  
22 numerous meetings and phone calls with -- excuse me  
23 -- with Mr. Tombalakian.

24 He testified that he had the original  
25 report. And I asked him about notes and such in the



1 original report.

2 MR. MALAGIERE: This is Mr. Keller?

3 MR. MOSKOWITZ: Yes, Mr. Keller.

4 And he just kind of didn't know.

5 MR. MALAGIERE: Right.

6 MR. MOSKOWITZ: And I asked him while  
7 he was testifying under oath to produce it.

8 MR. MALAGIERE: Right. And we don't  
9 have it, right?

10 MR. MOSKOWITZ: And we don't have it.

11 MR. MALAGIERE: Okay.

12 MR. MOSKOWITZ: Mr. Basralian objected  
13 to that.

14 MR. MALAGIERE: Okay.

15 MR. MOSKOWITZ: So, there was a valid  
16 objection. And we don't have it.

17 I also asked him whether or not he  
18 truly had produced all of his notes.

19 MR. MALAGIERE: Right.

20 MR. MOSKOWITZ: And in that vein, I  
21 asked him whether or not the numbers on -- on the  
22 number of pages reference the matter number which  
23 indicated to me that there were other notes because  
24 they were his time records and the records of what he  
25 was doing with his time and who he was asking that he

1 did not produce those. He did not produce --

2 MR. MALAGIERE: The time sheets.

3 MR. MOSKOWITZ: He did not produce the  
4 time sheet.

5 I asked him if he had been engaged in  
6 any electronic conversation. He told us something  
7 about, oh, well they're over there.

8 MR. MALAGIERE: Right, e-mails.

9 MR. MOSKOWITZ: Yes, e-mails. He did  
10 not produce them.

11 MR. MALAGIERE: Let me just keep a  
12 laundry list. So -- and I'm not suggesting it to  
13 minimize it by characterizing it that way.

14 So, you're looking for the Tombalakian  
15 report, his report which --

16 MR. MOSKOWITZ: His --

17 MR. MALAGIERE: Hold on. Let me just  
18 say it, which may or may not have notes,  
19 interlineations, if you will.

20 You're looking for his time sheets and  
21 you're looking for any electronic communications.

22 What else?

23 MR. MOSKOWITZ: His engagement time  
24 records of Mr. Keller, plus others on the project.

25 MR. MALAGIERE: Okay. So time sheets

1 of everybody.

2 MR. MOSKOWITZ: Yes.

3 MR. MALAGIERE: Okay.

4 MR. MOSKOWITZ: His Tombalakian meeting  
5 notes, e-mail correspondences --

6 MR. MALAGIERE: Right.

7 MR. MOSKOWITZ: -- and he also  
8 mentioned faxes at one point when we were talking  
9 about electronic, and the faxes in relation to this  
10 application.

11 MR. MALAGIERE: With Mr. Tombalakian.

12 MR. MOSKOWITZ: Yes. Yes.

13 MR. MALAGIERE: Okay.

14 MR. MOSKOWITZ: Well, with Mr.  
15 Tombalakian and anybody else who he got some of his  
16 data from, because, you know, that gets to be another  
17 issue. And I respectfully ask the Board to require  
18 production of the Tombalakian report.

19 MR. MALAGIERE: And those items.

20 MR. MOSKOWITZ: His work copy, and  
21 those items --

22 MR. MALAGIERE: So you can ask him  
23 about them --

24 MR. MOSKOWITZ: -- or -- or if he  
25 doesn't have the items in his possession anymore for

1       whatever reason -- I want his certification under  
2       oath that no such documents exist.

3                       MR. MALAGIERE:   Hold on.   Didn't he  
4       testify to that?   Or he testified that these things  
5       did exist?

6                       MR. MOSKOWITZ:   No, he just never got  
7       it.   I didn't ask.   He didn't produce his time  
8       records.   He didn't produce the Tombalakian report.

9                       MR. MALAGIERE:   Right.   You're right.  
10      The testimony was these things exist and you don't  
11      have them and --

12                      MR. MOSKOWITZ:   The 19 -- the 19  
13      numbered pages are the product of many years of  
14      diligent, I am sure, work.

15                      MR. MALAGIERE:   Okay.   So just so I  
16      understand it for the record.   You're looking for the  
17      Tombalakian report, electronic communications,  
18      billing sheets, faxes to assume -- to the client and  
19      to assume to the client and to Mr. Tombalakian.   And  
20      that's basically it, right?

21                      MR. MOSKOWITZ:   Yes.

22                      MR. MALAGIERE:   Okay.   And then you  
23      would want to ask him questions about these things.

24                      What's the proffer?

25                      CHAIRMAN GUERRA:   Yes.

1                   MR. MALAGIERE: What is the relevance  
2 of it? What are you hoping to elicit? Why is it  
3 necessary?

4                   MR. MOSKOWITZ: It is necessary to show  
5 that there really is no such thing as the Keller  
6 report. The Keller report is what Mr. Keller was  
7 told by Mr. Pineles and what he copied out of the  
8 Tombalakian report. There's already been testimony  
9 that the assumptions in there basically, I'll  
10 paraphrase, it may sound -- if it's caustic I don't  
11 mean it that way -- from out of the sky. It's like  
12 the so-called employee survey. It's like the one  
13 visitor per day.

14                  MR. MALAGIERE: Well, couldn't we --  
15 couldn't we -- I'm sorry to interrupt you. And, Mr.  
16 Basralian, of course you reserve your comments,  
17 wouldn't it be expedient and wouldn't you get most of  
18 what you wanted if we made Mr. Keller produce the  
19 Tombalakian report. We marked it in. It's of  
20 record. And you can make whatever arguments you want  
21 to make about his testimony and what it means in  
22 light of the Tombalakian report. And if it's assumed  
23 -- as opposed to another day of hearings over this?

24                         Would that be a compromise that would  
25 be useful to you?

1                   MR. MOSKOWITZ: I think his working  
2 copy of the Tombalakian report and his time records  
3 of what he really did.

4                   Because as you remember, we read about  
5 discussions about counting how many schools in the  
6 area.

7                   MR. MALAGIERE: No, we understand. We  
8 understand the proffer.

9                   MR. MOSKOWITZ: You understand.

10                  MR. MALAGIERE: Let's let Mr. Basralian  
11 -- if I may, I'm sorry to cut you off.

12                  MR. MOSKOWITZ: No.

13                  MR. MALAGIERE: We have 27 hearings  
14 we're trying to move it along.

15                  Mr. Basralian, do you want to respond  
16 to that or do you just want to handle it?

17                  MR. BASRALIAN: Yes.

18                  The Tombalakian report is already part  
19 of the record. It's been submitted by -- as part of  
20 the record.

21                  MR. MALAGIERE: He wants his working  
22 copy. I see.

23                  MR. BASRALIAN: Yeah, and what he is  
24 looking for is apparently any notes that Mr. Keller  
25 would have made on the report for his own benefit.

1                   But Mr. Keller did testify that he took  
2 new traffic counts, he didn't rely on those. He had  
3 different assumptions when he felt they were  
4 incorrect. He validated them. And he, in his very  
5 first instance of the Board, in his testimony, he  
6 said that there were some things that he did, some  
7 things that he didn't do.

8                   And he had to redo the report for his  
9 own benefit since he had to certify it. He's already  
10 testified to that in numerous times.

11                   This is another fishing expedition for  
12 more information and perhaps more delay. Mr. Keller  
13 has appeared before this Board on eight separate  
14 hearings, has been cross examined innumerable times.

15                   MR. MALAGIERE: Hold on. Hold on.  
16 Hold on. I hear you.

17                   MR. BASRALIAN: Under that circumstance  
18 --

19                   MR. MALAGIERE: I hear you.

20                   MR. BASRALIAN: -- and what he's  
21 testified to, there's no reason for any of this.

22                   MR. MALAGIERE: I'm prepared -- Mr.  
23 Borrelli, do we have a copy of the Tombalakian -- and  
24 I appreciate, Mr. Moskowitz, that that's not the  
25 working copy that Mr. Keller has.

1                   We have the Tombalakian report, do we  
2 not?

3                   MR. BORRELLI: Yes, I believe we do.

4                   MR. MALAGIERE: Okay. And, Mr.  
5 Moskowitz, we can make that available. As a matter  
6 of fact I'm going to provide it to you.

7                   MR. MOSKOWITZ: No, I have it.

8                   MR. MALAGIERE: Oh, you do.

9                   MR. MOSKOWITZ: I provided it to you.  
10 But that's --

11                  MR. MALAGIERE: You provided it to us  
12 or it was the --

13                  MR. MOSKOWITZ: Well, at the last  
14 meeting. And no one seemed to have copies of it.

15                  MR. MALAGIERE: Okay. So you have it.

16                  Mr. Chairman, at this point, and in  
17 light of the 20 something meetings we've had. I  
18 think that the fact that we have the Tombalakian  
19 report, and that Mr. Moskowitz can point to it and  
20 draw conclusions about the fact or the arguments that  
21 it was assumed and there was no work done and the  
22 like is sufficient to allow him to make his arguments  
23 and not prejudice his client.

24                  And allowing time sheets, although I do  
25 understand why you want them, and I know they would



1 be useful, I am loathe to recommend to the Chair that  
2 time sheets be produced because I fill one out every  
3 day as all of us do and I really hate to have them  
4 produced in a litigation on a land use hearing.

5 But I think we wouldn't be sustained by  
6 a Special Master Or Judge if we were going to ask an  
7 expert to produce his time sheets to try and vet  
8 whether or not his testimony about what he did was  
9 proper.

10 I think it just goes off the page. But  
11 I understand the reason you want it.

12 MR. MOSKOWITZ: Well, I would, with all  
13 due respect --

14 MR. MALAGIERE: Of course.

15 MR. MOSKOWITZ: -- this is far from the  
16 first time that I have asked for all of Mr. Keller's  
17 documents. He has never provided all of the  
18 documents at the time when we asked about this  
19 so-called parking study. They dribbled out a day at  
20 a time, generally speaking, in two instances after  
21 the meeting, then they found the paper later. If you  
22 don't require him to produce the Tombalakian report  
23 --

24 MR. MALAGIERE: His working copy with  
25 Mr. Tombalakian.

1                   MR. MOSKOWITZ: His working copy, his  
2 working copy of that, his engagement, time records,  
3 any notes he may have of the Tombalakian -- from the  
4 Tombalakian meetings and his electronic  
5 correspondence, you have rewarded dilatory behavior.

6                   MR. MALAGIERE: Right.

7                   MR. MOSKOWITZ: He has deliberately  
8 withheld the material in the past. One time he  
9 showed up --

10                  MR. MALAGIERE: Well, we don't need  
11 specifics.

12                  MR. MOSKOWITZ: Okay.

13                  MR. MALAGIERE: Because we understand,  
14 the record is clear --

15                  MR. MOSKOWITZ: The day after the  
16 meeting --

17                  MR. MALAGIERE: -- and I appreciate  
18 what you're saying.

19                  MR. MOSKOWITZ: -- and I do not think  
20 that you should reward that type of behavior.

21                  MR. MALAGIERE: Mr. Diktas, do you want  
22 to weigh in on this?

23                  MR. DIKTAS: No. I'll accept the  
24 Chair's ruling.

25                  MR. MALAGIERE: Okay.

1                   Mr. Chairman, I'm going to recommend  
2                   that you rule that there be nothing else turned over  
3                   at this time.

4                   And, therefore, I'm going to recommend,  
5                   respectfully that you rule that we do not have any  
6                   further witnesses, the witnesses back that Mr.  
7                   Moskowitz wants.

8                   Now, the Applicant can, of course,  
9                   agree to produce these documents or produce whatever  
10                  is requested and to reproduce their clients for Mr.  
11                  Moskowitz. And, frankly, the Applicant argues and  
12                  does so -- when I say does so, does not produce  
13                  voluntarily these people and these documents to the  
14                  extent that they exist, at its own risk because the  
15                  Superior Court Judge if there is to be an appeal of  
16                  whatever ruling this Board may make, may seize on  
17                  this request and remand it back for further  
18                  exposition of this evidence.

19                  But at this point in time, the totality  
20                  of the circumstances presented and the timeframe and  
21                  the volume of testimony, and in light of the fact  
22                  that the Tombalakian report is of record and the  
23                  arguments can be made, I'm going to respectfully  
24                  suggest that you deny the application.

25                  CHAIRMAN GUERRA: For everything? The

1 report with the notes, the time sheets, the  
2 electronic correspondence?

3 MR. MALAGIERE: Everything.

4 Now, again, the Applicant can agree to  
5 do this and Mr. Basralian can weigh in, a Superior  
6 Court Judge may disagree with me if it gets to that  
7 point and remand back for the turnover of those  
8 documents and that testimony. That is the risk the  
9 Applicant takes.

10 CHAIRMAN GUERRA: Even though we did  
11 ask, Mr. Malagiere, in the past and it just  
12 went ignored maybe --

13 MR. MALAGIERE: Well --

14 CHAIRMAN GUERRA: -- for lack of a  
15 better word?

16 MR. MALAGIERE: To the extent that  
17 you're dealing with an expert, and there is a point  
18 in time where you do need to stop asking for stuff  
19 that they have. You know you get their report. You  
20 get to hear their testimony. You get to vet out the  
21 basis for their opinion. That's truly what you do  
22 with an expert. And you attack the factual basis for  
23 their opinion.

24 You don't typically vet their  
25 timesheets. You don't typically have all of their

1       communications.  You don't typically get a whole lot  
2       more than just the basis for their opinion and their  
3       expert report.

4                       And you do have their other expert  
5       report here.  And the arguments can be made that they  
6       are so similar as to suggest that no analysis was  
7       done.  So be it.  That is what it is.

8                       But I don't think at this point in  
9       time, in light of how long these hearings have gone,  
10      and for just a substantial jump to move forward, I  
11      don't believe it warrants the production of those  
12      documents and further testimony.

13                      Mr. Basralian, do you want to weigh in  
14      on that?

15                      MR. BASRALIAN:  I concur.

16                      MR. MALAGIERE:  Would you like to  
17      voluntarily produce these documents and/or your  
18      clients?

19                      MR. BASRALIAN:  No, we provided what we  
20      were asked to do which is all of his notes.

21                      MR. MALAGIERE:  Okay.

22                      MR. MOSKOWITZ:  Well, then give us the  
23      certification from the witness --

24                      MR. MALAGIERE:  The witness has  
25      testified --

1                   MR. MOSKOWITZ: That he has no -- that  
2 he has no -- no, he hasn't. He didn't testify that  
3 there were no -- no more --

4                   MR. MALAGIERE: I'm not suggesting that  
5 he did. All I'm saying is that --

6                   MR. MOSKOWITZ: He has testified --

7                   MR. MALAGIERE: That there's some stuff  
8 out there that he has, that he hasn't turned over.

9                   MR. BASRALIAN: He also testified that  
10 he turned over all of his handwritten notes, all of  
11 the notes that he gave this Board vis-a-vis --

12                  MR. MOSKOWITZ: Well, you know what he  
13 turned over. You don't know that they were all his  
14 handwritten notes.

15                  MR. MALAGIERE: I guess at this point  
16 --

17                  MR. BASRALIAN: He did it under oath.

18                  MR. MALAGIERE: Hold on. At this point  
19 in time I am not prepared to recommend to the Chair  
20 that there be such a ruling.

21                  Mr. Moskowitz, I respect your  
22 arguments. And they're well thought out. And I  
23 understand what you're doing.

24                  If you feel that I'm misapplying the  
25 law or there's some authority I have not looked at

1       which would suggest that I'm recommending a ruling in  
2       an improper way, please cite it to me.

3                       But at this point in time we're going  
4       to go forward.

5                       MR. MOSKOWITZ:  No, I'm certainly not  
6       suggesting that your --

7                       MR. MALAGIERE:  And it's --

8                       MR. MOSKOWITZ:  -- misrepresenting the  
9       law, what I think that you are perhaps slightly  
10      misgauging the tenor of the Board.

11                      I think that this Board would like to  
12      know whether or not there are any notes whatsoever on  
13      Mr. Keller's copy of the Tombalakian report.

14                      CHAIRMAN GUERRA:  I don't know how you  
15      -- why would you say that?

16                      MR. MALAGIERE:  Well, and ultimately,  
17      Mr. Chairman, I think what Mr. Moskowitz is  
18      appropriately identifying is that the Chair had  
19      indicated a sense of reasonableness to the request  
20      and I share that sense of reasonableness and I  
21      understand what Mr. Moskowitz is asking.

22                      And, frankly, if I were in his shoes  
23      I'd be asking for it as vehemently as he is.

24                      However, there does come a time when  
25      you have to weigh the potential value of these

1 documents and the further extension of these hearings  
2 and what we're likely going to get.

3 It's unlikely to me that there is going  
4 to be, in my speculation, any sort of smoking gun or  
5 highly prejudicial to the Applicant's case notes or  
6 indicia identified in any of the faxes, the e-mails  
7 or the interlineations.

8 It's not a court proceeding where we  
9 have court rules where people have to turn over  
10 discovery and have all kinds of sanctions identified  
11 against them. It's unlikely that we're going to get  
12 anything that's going to weigh substantially so that  
13 it would make sense to delay these hearings into next  
14 year, which is what that will do, Mr. Chairman.

15 Mr. Moskowitz, thank you.

16 Mr. Basralian, I thank you.

17 MR. MOSKOWITZ: I have one other thing.

18 MR. MALAGIERE: Of course.

19 MR. MOSKOWITZ: My second request is  
20 that on June 25, 2009, I made a second point of order  
21 I respectfully requested -- the transcript always  
22 helps your memory -- I respectfully requested the  
23 Chair and this Counsel that Mr. Pineles the principal  
24 of Pineles -- principle examination remain open,  
25 remain under oath, until all experts finish



1     testifying, for purposes of answering supplemental  
2     questions and questions unanswered by experts.

3                   As the Board will certainly recall in  
4     many instances --

5                   MR. MALAGIERE:   Well, what's the  
6     proffer.   I mean I hate to cut you off, but the hour  
7     is late.

8                   MR. MOSKOWITZ:   Yeah, Mr. Pineles told  
9     us in his testimony that questions would be answered  
10    and when he didn't answer them and repeated the  
11    assertions that his experts would answer them.

12                   I would like -- and I want to ask at  
13    that time that Mr. Pineles' examination be held open.

14                   MR. MALAGIERE:   What specifically --

15                   CHAIRMAN GUERRA:   Mr. Moskowitz, what  
16    questions --

17                   MR. MALAGIERE:   Right.

18                   CHAIRMAN GUERRA:   -- went unanswered,  
19    that you're referring to?   Can you give me an  
20    example?

21                   MR. MOSKOWITZ:   Yes, the questions --  
22    yes, the question of the interactions between Mr.  
23    Pineles and Mr. Keller because Mr. Keller testified  
24    that he discussed the number of things with Mr.  
25    Pineles that Mr. Pineles did not discuss with us.

1                   Now, we didn't ask him the questions  
2                   because we didn't know that would be the tone of Mr.  
3                   Keller's testimony. Because Mr. Keller -- for  
4                   example, Mr. Keller told us on the 29th of April, in  
5                   2010, when I asked him about assumptions that came  
6                   from the Tombalakian report and they were wholesale  
7                   incorporated into his report, I asked him the  
8                   question -- I want to share this with you and would  
9                   you like to come over and look at my transcript --  
10                  the report and each patient receives one visitor  
11                  every other day. And Mr. Keller said yes.

12                         "QUESTION: Do you recognize that?

13                         "ANSWER: Yes.

14                         "QUESTION: And, yes, it was exactly  
15                         that way in the Boswell report.

16                         "ANSWER: And we discussed that with  
17                         Mr. Pineles as to the operations of an LTACH  
18                         and his experiences with that".

19                         Then I asked Mr. Keller: "Does he  
20                         operate another LTACH?

21                         Mr. Keller said, "well, I don't  
22                         recall".

23                         Then I said, "Well."

24                         And he said, "I don't believe so."

25                         And then I said, "but you -- so his

1           experience with operating an LTACH must have  
2           been very interesting because it was nothing.  
3           So now did you try to objectively verify,  
4           anything at all, about that assumption that  
5           was one of a pack of 20 others in the Boswell  
6           report that you took lock, stock and barrel".

7           MR. MALAGIERE:   Well, I think, Mr.  
8   Moskowitz --

9           MR. MOSKOWITZ:   So --

10          MR. MALAGIERE:   -- it's clear what  
11   you're trying to do.

12          Mr. Chairman, I think it behooves the  
13   Applicant to have presented evidence which would  
14   support the factual predicates relied upon by their  
15   experts in giving the traffic and parking opinion.

16          The Applicant does itself no favor by  
17   not putting in sworn testimony which supports the  
18   ultimate conclusion of an expert.  An expert relies  
19   upon data outside of his or her own knowledge as  
20   they've done here.

21          If the expert here -- if the opinion of  
22   this Board that the expert here, Mr. Keller, has  
23   relied upon data which is antidotal, unsupported or  
24   if the Board is not sure where he gets his data from,  
25   it's to the Applicant's prejudice and the Board will

1 act accordingly.

2 To call him back at this point as an  
3 objector, it doesn't make a lot of sense, in my mind,  
4 because if its missing, it's a failing of the  
5 Applicant's case in chief. It is not a prejudice to  
6 an objector.

7 Mr. Basralian, you want to be heard on  
8 this?

9 CHAIRMAN GUERRA: Mr. Moskowitz, your  
10 contention is that there's a possibility that these  
11 numbers were pulled out of thin air to come to an  
12 opinion favorable to the Applicant?

13 MR. MOSKOWITZ: I think that the  
14 wholesale importation of the numbers from the  
15 Boswell/Tombalakian report into the Keller report.  
16 And all the testimony that surrounds it you can --  
17 you've been running the hearings. You have the same  
18 transcripts I do. You have the same judgment of the  
19 witnesses. Makes it very clear that there wasn't  
20 really a Tombalakian report. There wasn't really a  
21 Keller report. What there really was was a report  
22 crafted by Mr. Pineles for his experts spit back out.

23 MR. MALAGIERE: And I think ultimately  
24 that's an argument that Mr. Moskowitz is going to  
25 surmise for this Court in his summation and point to

1 evidence and seize on and marshall the transcripts  
2 and the exhibits. And I don't see any reason to  
3 delay the hearings to put Mr. Pineles back up here  
4 and to cross examine him on where he came up with  
5 these numbers. If Mr. Pineles in this case -- and I  
6 don't recall specifically the testimony, haven't  
7 reviewed it lately, if Mr. Pineles has not testified  
8 and substantiated that he has any basis to provide  
9 the data to these experts, then the Board is free to  
10 ignore the opinions of the experts. And that's the  
11 risk of the Applicant.

12 Mr. Basralian?

13 MR. MOSKOWITZ: I understand the tenor  
14 of the Board and its Counsel and I'll withdraw my  
15 request.

16 MR. MALAGIERE: Thank you.

17 Mr. Basralian, do you want to -- Mr.  
18 Basralian, you want to call Mr. -- thank you, Mr.  
19 Moskowitz. Do you want to --

20 MR. BASRALIAN: It's going to be brief,  
21 I promise.

22 MR. MALAGIERE: What's brief?

23 CHAIRMAN GUERRA: Yes, what's your --

24 MR. BASRALIAN: I'd say 15, 20 minutes,  
25 that's all.

1                   MR. MALAGIERE: Please, you're under  
2 oath, sir.

3                   MR. BASRALIAN: Thank you.

4 REBUTTAL DIRECT EXAMINATION

5 BY MR. BASRALIAN:

6               Q.           Mr. Burgis, Mr. Polyniak seemed to  
7 indicate during his testimony as to whether or not  
8 the proposed use is an LTACH, a medical dialysis -- a  
9 medical healthcare or medical -- adult medical  
10 daycare and dialysis, it could be said there's three  
11 separate uses. I'm not sure if there was testimony.  
12 Whether or not, he in fact acknowledged that they  
13 were one use variance.

14                   Would you just briefly describe, in  
15 your opinion, whether or not they're considered one  
16 use variance subsumed within the same -- the same  
17 project that's before the Board?

18               A.           I believe they are one use variance and  
19 I thought that in the end Mr. Polyniak suggested as  
20 much.

21                   I think in his earlier testimony he  
22 just didn't acknowledge the symbiotic relationship  
23 between all the uses that we placed on site.

24                   As testified to previously, 30 percent  
25 of the LTACH patients will be using the dialysis

1 treatment, and a number of people also who are doing  
2 dialysis will be using the adult daycare. So there  
3 is this relationship amongst all three of the  
4 activities on site.

5 And in the end I do believe Mr.  
6 Polyniak did indicate that they're all inherently  
7 beneficial uses within the context of the case law.

8 Q. He also raised the question, though, as  
9 to whether or not it was inherently beneficial  
10 because the certificate of need was only for 72 beds  
11 at this point and the application is for 110.

12 Would you please explain the Municipal  
13 Land Use Law's definition of inherently beneficial.  
14 And as further expanded perhaps by case law for the  
15 inherently beneficial use and a certificate of need?

16 A. Okay. Well the Municipal Land Use Law  
17 was --

18 MR. DIKTAS: Can I object?

19 MR. MALAGIERE: Sure.

20 MR. DIKTAS: Isn't the real issue what  
21 Mr. Basralian first said about the differential  
22 between the 72 beds and the 40 and not what the  
23 inherent beneficial use is.

24 MR. MALAGIERE: I understand the issue  
25 is being framed as the difference between what's

1 permitted in the certificate of need --

2 MR. BASRALIAN: Right.

3 MR. MALAGIERE: -- and what's allowed  
4 for and what's being sought here.

5 MR. DIKTAS: So as long as he's going  
6 to answer it both ways. He's just going to tell us  
7 that it's all -- either way it's an inherently  
8 beneficial use because if the latter answer is he  
9 didn't know that, let's answer the first part of the  
10 Basralian question, the differential in the permit as  
11 the 72 versus 40.

12 MR. MALAGIERE: Mr. Basralian, do you  
13 agree that we can kind of streamline this by asking  
14 that question that way and another one --

15 MR. BASRALIAN: And I'll follow up with  
16 another question, sure.

17 MR. MALAGIERE: All right. Let's --

18 MR. DIANA: Can I read the transcript,  
19 if I leave now?

20 MR. MALAGIERE: Sure.

21 CHAIRMAN GUERRA: All right.

22 MR. DIANA: Good night.

23 MR. BASRALIAN: No, there's no ability  
24 to conduct the meeting.

25 MR. DIKTAS: Yes, there's no quorum.



1 MR. MALAGIERE: Excuse me?

2 MR. BASRALIAN: There's no ability to  
3 conduct the meeting if he leaves. There's no quorum.  
4 We're not allowed to conduct the meeting, I don't  
5 know --

6 MR. DIKTAS: Maybe it's time to go  
7 home. It's late.

8 MR. MALAGIERE: All right.

9 MR. DIANA: I have to go to work  
10 tomorrow.

11 MR. MALAGIERE: All right.

12 Well, Mr. Chairman --

13 MR. BASRALIAN: Then the meeting is  
14 over. It's okay.

15 MR. MALAGIERE: Well, that's up to the  
16 Chair.

17 Mr. Chairman, in light of this do you  
18 want to --

19 CHAIRMAN GUERRA: Yes. Yes.

20 MR. DIANA: You know it's not going to  
21 be 15-minutes. You know it's going to be 45 minutes.  
22 There's going to be objections. They're going to  
23 this. There's going to be that.

24 MR. MALAGIERE: Yes, let me just do --

25 MR. DIANA: I have to be at work in a

1       few hours.

2                       MR. MALAGIERE:   If I could just clear  
3       up on thing.

4                       Mr. Basralian, I just want to -- okay.  
5       That's fine.

6                       Mr. Chairman, we're going to cut the  
7       testimony.

8                       MR. BASRALIAN:   We'll do it on the 8th.

9                       MR. MALAGIERE:   Mr. Chairman, I just  
10       want to get Mr. Basralian to make representation that  
11       this is his only rebuttal witness or if he has others  
12       to identify them now because if you don't identify  
13       them now I'm going to suggest to the Chair to bar  
14       testimony other than completion of this witness.

15                      CHAIRMAN GUERRA:   That's what we are  
16       going to do.

17                      MR. MALAGIERE:   Mr. Basralian, do you  
18       want to identify your other --

19                      CHAIRMAN GUERRA:   He said that before.  
20       This will be your only witness.

21                      MR. BASRALIAN:   This is my only  
22       rebuttal witness.

23                      MR. MALAGIERE:   Okay.   That's the  
24       representation, that's fine.

25                      CHAIRMAN GUERRA:   Then that's it.

1                   MR. MALAGIERE:   Okay.   So, we're going  
2   to carry the application --

3                   MR. BASRALIAN:   As a matter of law,  
4   though, if I had wanted another I don't think the  
5   Board can bar me, but I'm only -- this is the only  
6   one.

7                   MR. MALAGIERE:   I would disagree with  
8   that.   But --

9                   MR. BASRALIAN:   Yeah, that's why we're  
10   all lawyers.

11                  MR. MALAGIERE:   The Applicant -- I'm  
12   sorry?

13                  MR. DIKTAS:    I have one of the  
14   residents this young lady had a question could you  
15   just put on the record the procedure for the next  
16   month for the public portion because they are unclear  
17   and I don't blame them that --

18                  MR. MALAGIERE:   The issue is -- the  
19   issue is -- well, the application is carried, without  
20   further notice to November 8th --

21                  MR. BASRALIAN:   No, December.

22                  MR. BORRELLI:   December.

23                  MR. MALAGIERE:   December 8th.   Pardon  
24   me.

25                  MR. BASRALIAN:   It should be November

1 8th.

2 MR. DIKTAS: It should be December 7th.

3 MR. MALAGIERE: December -- right,

4 Pearl Harbor --

5 MR. BORRELLI: December 8th.

6 MR. MALAGIERE: December 8th, 2011

7 without further notice, 7:00 these chambers.

8 After the conclusion of the last

9 witness, no further testimony will be taken.

10 The meeting will be open to the public

11 at the discretion of the Chair with regard to time.

12 And people will be able to make general comments on

13 the application and/or ask questions about the

14 witnesses who have testified, ask questions of those

15 witnesses who are present, if they have any

16 questions.

17 After that, the Board will engage in

18 its dialogue and, hopefully, a vote on the

19 application.

20 MR. BASRALIAN: Excuse me, why would

21 the public have an opportunity to ask questions of

22 witnesses that are present with all cross examination

23 except perhaps with respect to tonight --

24 MR. MALAGIERE: Because a bunch of the

25 witnesses were not open to the public in the last few

1 meetings.

2 MR. BASRALIAN: Oh, everyone that was  
3 required to be here was. Mr. Keller was the one that  
4 was --

5 MR. MALAGIERE: It's not up for debate  
6 the Chairman's directing.

7 MR. BASRALIAN: Well, excuse me, how is  
8 it that you can --

9 MR. MALAGIERE: It's not excuse me.  
10 It's just the way it's being ordered.

11 MR. BASRALIAN: But that doesn't make  
12 it right that you can do it.

13 MR. MALAGIERE: Well, it doesn't make  
14 it that it doesn't happen just because you dont think  
15 it's right.

16 MR. BASRALIAN: Well, since I had all  
17 of my witnesses here. They were all subject to cross  
18 examination --

19 MR. MALAGIERE: Mr. Basralian --

20 MR. BASRALIAN: -- how could they be  
21 subject to more cross examination --

22 MR. MALAGIERE: -- that's what's  
23 happening.

24 CHAIRMAN GUERRA: We're going to open  
25 it up to the public.

1 MR. MALAGIERE: That's how it's going  
2 to be.

3 CHAIRMAN GUERRA: That's the way it's  
4 going to go.

5 MR. BASRALIAN: Well, the meeting for  
6 the public absolutely, of course. I agree.

7 MR. MALAGIERE: But that's how it's  
8 going to happen, not withstanding Mr. Basralian's  
9 dislike.

10 Mr. Chairman?

11 CHAIRMAN GUERRA: Yes. That's it.

12 Motion to adjourn.

13 (Whereupon, this matter will be  
14 continuing at a future date. Time noted 10:15  
15 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.

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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: \_\_\_\_\_