

CITY OF HACKENSACK
 ZONING BOARD OF ADJUSTMENT
 THURSDAY, SEPTEMBER 15, 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

FRANK RODRIGUEZ, MEMBER (ARRIVAL 7:30)

JOHN CARROLL, MEMBER

HUMBERTO GOEZ, MEMBER

LARRY EISEN, MEMBER (RECUSED)

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
 CERTIFIED COURT REPORTERS
 P.O. BOX 505
 SADDLE BROOK, NJ 07663
 201-641-1812
 201-843-0515 FAX
 laccsr2@aol.com

1 A L S O P R E S E N T:

2 AL BORRELLI, ZONING OFFICER

3 GREGORY POLYNIAC, P.P., P.E., NEGLIA ENGINEERING

4 FRANK MISKOVICH, P.E., BIRDSALL ENGINEERING

5
6
7 A P P E A R A N C E S:

8 THE LAW OFFICES OF RICHARD MALAGIERE, P.C.

9 RICHARD MALAGIERE ESQUIRE

10 14 Bergen Street, 1st Floor

Hackensack, New Jersey 07601

Counsel to the Board

11 201-261-1414

12 WINNE, BANTA, HETHERINGTON, BASRALIAN & KAHN, P.C.

13 BY: JOSEPH L. BASRALIAN, ESQ.

21 Main Street

14 Court Plaza South

Hackensack, New Jersey 07601

15 Counsel to the Applicant

16 201-487-3800

17 McCARTER & ENGLISH, ESQS.

18 BY: THEODORE MOSKOWITZ, ESQ.

100 Mulberry Street

Newark, New Jersey 07102

19 973-639-2048

Counsel for Interested Party, Prospect Avenue

20 Coalition, LLC

21 DIKTAS, SCHANDLER GILLEN, ESQS.

22 BY: CHRISTOS J. DIKTAS, ESQ.

596 Anderson Avenue

23 Cliffside Park, New Jersey 07010

Counsel for Interested Party, Anastasia Burlyuk

24 201-943-8020

I N D E X

<u>WITNESS</u>	<u>SWORN</u>	<u>PAGE</u>
ERIC KELLER	14	
Examination By Mr. Moskowitz:		21
Examination By Mr. Diktas:		78
Questions by the Board:		96
Questions by the Public		109
Alexis Palinkas		109
235 Prospect Avenue		
Joanie Simchowitz		114
245 Prospect Avenue		
Lillika Weinberger		119
280 Prospect Avenue		
Thalia Endara		122
307 Prospect Avenue		
William Schroeder		123
245 Prospect Avenue		
Nita Kundanmal		125
277 Prospect Avenue		
Teri Binder		130
240 Prospect Avenue		
Carol Burnett		132
245 Prospect Avenue		
Peter Busciglio		133
260 Standish Avenue		
Nancy Price		136
130 Overlook Avenue		
Michael Hamilton		139
245 Prospect Avenue		
FRANK MISKOVICH	143	143
GREGORY POLYNIAC	150	
Voir Dire by Mr. Basralian:		150
Voir Dire by Mr. Diktas:		160

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVID.</u>
M-5	Mr. Keller's notes (19 pages) with attached Letter dated 3-3-11	18	
M-6	Boswell Engineering Traffic Impact Study dated 12-23-08	76	
M-6A	Appendix B under Trip Generation Calculations of Exhibit M-6	82	

REQUESTS FOR DOCUMENTATION

<u>PAGE</u>	<u>LINE</u>	<u>DESCRIPTION</u>
76/77	14/18	Was M-6 was previously marked?
181	2-8	List of ITE standards and others background, specific charts and references used in Mr. Polyniak's report.

1 CHAIRMAN GUERRA: Please rise to salute
2 the flag.

3 (All rise to Salute the Flag.)

4 CHAIRMAN GUERRA: In accordance with
5 Public Law 1975, Chapter 231, Open Public Meetings
6 Act, the Zoning Board of Adjustment of the City of
7 Hackensack will conduct a public hearing, Thursday,
8 September 15, 2010, in the Council Chambers, City
9 Hall, 65 Central Avenue, Hackensack, New Jersey, 7:00
10 p.m.

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

14 Roll call?

15 MR. BORRELLI: Mr. Carroll?

16 MR. CARROLL: Here.

17 MR. BORRELLI: Mr. Eisen?

18 MR. EISEN: Here.

19 MR. BORRELLI: Mr. Goez?

20 MR. GOEZ: Here.

21 MR. BORRELLI: Chairman Guerra?

22 CHAIRMAN GUERRA: Here.

23 Approval of the minutes for our July
24 26th meeting.

25 Do I hear a motion to approve?

1 MR. EISEN: So moved.

2 MR. CARROLL: Second.

3 MR. BORRELLI: Mr. Carroll?

4 MR. CARROLL: Aye.

5 MR. BORRELLI: Mr. Eisen?

6 MR. EISEN: Aye.

7 MR. BORRELLI: Mr. Goetz?

8 MR. GOEZ: Aye.

9 MR. BORRELLI: Chairman Guerra?

10 CHAIRMAN GUERRA: Aye.

11 I guess we're all set to start.

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

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

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

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

24 Three, insufficient lot width, required
25 125 feet, proposed 100 feet.

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

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

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

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

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

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

16 Ten, no paving in side-yard.

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

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

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

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

25 Counsel?

1 MR. BASRALIAN: Good evening, Mr.
2 Chairman, Members of the Board.

3 CHAIRMAN GUERRA: Good evening.

4 MR. BASRALIAN: Procedurally, a
5 question?

6 Mr. Eisen has appeared in opposition to
7 this matter and needs to be recused on the hearing --
8 on the application.

9 CHAIRMAN GUERRA: Mr. Malagiere?

10 MR. MALAGIERE: The reason Mr. Eisen is
11 here is to create a quorum to conduct the meeting.
12 It is not Mr. Eisen's intention to read 26 --

13 AUDIENCE MEMBER: Can't hear.

14 MR. MALAGIERE: Pardon me, I'm sorry.
15 Can you hear me?

16 Mr. Eisen is here to effect a quorum to
17 conduct the meeting. It is not his intention to read
18 the 26 volumes to vote on the application.

19 Unfortunately, it's the only way we can
20 open.

21 MR. BASRALIAN: Under the law, he
22 cannot even be on the dais or be included in the
23 quorum since he's recused from this matter. He can't
24 sit here on the application just for the purpose of a
25 quorum.

1 MR. MALAGIERE: Did he oppose?

2 MR. BASRALIAN: Yes, he was here. He
3 testified a number of times.

4 MR. EISEN: Not a number, just once.

5 MR. BASRALIAN: He just indicated
6 saying why he cannot sit on the dais. He cannot be
7 counted toward a quorum, other than to open the
8 meeting and approve the minutes, et cetera.

9 CHAIRMAN GUERRA: So we don't have a
10 meeting then.

11 MR. MALAGIERE: We don't have anybody
12 else coming.

13 Mr. Borrelli?

14 MR. BORRELLI: We have an indication --

15 CHAIRMAN GUERRA: Frank Rodriguez.

16 MR. BORRELLI: Frank Rodriguez will be
17 here momentarily.

18 Can we adjourn until then.

19 CHAIRMAN GUERRA: Okay. What do you
20 want me to do?

21 MR. MALAGIERE: That's fine. You've
22 approved the transcripts from the July 26th.

23 CHAIRMAN GUERRA: Right.

24 MR. BASRALIAN: Mr. Eisen voted on it;
25 did he?

1 He can't vote on the transcripts
2 either. So you'll have to redo that.

3 MR. MALAGIERE: That's fine.

4 Mr. Eisen, I appreciate your effort.
5 I'm sure the Chairman does, and the public, but
6 unfortunately we're not able to use you.

7 Have a nice evening, Mr. Eisen.

8 (Whereupon, Mr. Eisen recuses himself
9 and steps off the dais.)

10 MR. MALAGIERE: With the Chairman's
11 permission, we're going to take a few minutes until
12 Mr. Rodriguez gets here.

13 (Whereupon, a recess is taken during
14 which Mr. Rodriguez arrives.)

15 CHAIRMAN GUERRA: We're going to start
16 now, again.

17 We already did the Pledge of
18 Allegiance, so I think that counts.

19 We're going to actually do another roll
20 call, Al?

21 MR. BORRELLI: Mr. Carroll?

22 MR. CARROLL: Here.

23 MR. BORRELLI: Mr. Rodriguez?

24 MR. RODRIGUEZ: Here.

25 MR. BORRELLI: Mr. Goez?

1 MR. GOEZ: Here.

2 MR. BORRELLI: Chairman Guerra?

3 CHAIRMAN GUERRA: Here.

4 MR. MALAGIERE: Just for the record,
5 Chairman, if I may, so when we read this we
6 understand what happened, this was opened and a roll
7 call was taken, but Mr. Eisen was here. Mr.
8 Basralian objected, and appropriately so. Mr. Eisen
9 had -- well, I guess you could characterize it as
10 objected on this application during one of the
11 hearings. So we knew Mr. Rodriguez was on his way,
12 Mr. Rodriguez has arrived.

13 So now the Chairman has reopened the
14 meeting, reopened the roll.

15 Mr. Basralian, are you okay with the
16 Board as it's comprised?

17 MR. BASRALIAN: Yes.

18 MR. RODRIGUEZ: My apologies for being
19 late. Work just held me up.

20 CHAIRMAN GUERRA: That's all right.
21 Appreciate you coming.

22 Let's reapprove the minutes for the
23 July 26th meeting.

24 Do I hear a motion to approve the
25 minutes?

1 MR. RODRIGUEZ: Motion.

2 CHAIRMAN GUERRA: I'll second.

3 MR. BORRELLI: Mr. Carroll?

4 MR. CARROLL: Aye.

5 MR. BORRELLI: Mr. Rodriguez?

6 MR. RODRIGUEZ: Aye.

7 MR. BORRELLI: Mr. Goetz?

8 MR. GOEZ: Aye.

9 MR. BORRELLI: And Chairman Guerra?

10 CHAIRMAN GUERRA: Aye.

11 Do I need to read in the application
12 again?

13 MR. MALAGIERE: Could you put that in.

14 THE COURT REPORTER: Yes.

15 CHAIRMAN GUERRA: Application V#23-08,
16 SP#21-08, Address, 320 Summit Avenue/329 Prospect
17 Avenue, Hackensack, New Jersey, Block 344, Lots 3, 4,
18 5, 14, Zone R-75 and R-3, Bergen Passaic Long Term
19 Acute Care Hospital L.L.C.

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

23 One, use variance required pursuant to
24 40:55D(1).

25 Two, insufficient lot area, required

1 30,000 square feet, proposed 20,000 square feet.

2 Three, insufficient lot width, required
3 125 feet, proposed 100 feet.

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

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

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

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

15 Eight, insufficient parking spaces,
16 required 562, proposed 402.

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

19 Ten, no paving in side-yard.

20 Eleven; insufficient area for back up
21 aisle spaces.

22 Twelve, exceeds maximum sign area,
23 permitted 12 square feet, proposed 96 square feet.

24 Thirteen, insufficient sign setback,
25 required 20 feet, proposed zero feet.

1 Fourteen, any other variance or waivers
2 that may be required.

3 Counsellor?

4 MR. BASRALIAN: I brought back Mr.
5 Keller with respect to cross examination by
6 Objectors' Counsel relative to the minutes or his
7 notes, the excised notes, those excised portions that
8 haven't been excluded by the Court.

9 So he's here; I'd like to bring him
10 forward for cross examination. You may want to swear
11 him again. He testified --

12 AUDIENCE MEMBER: Can't hear, can't
13 hear.

14 MR. MALAGIERE: Good evening, how are
15 you? We're going to swear you in.

16 Sir, please put your left hand on the
17 Bible, raise your right hand.

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

21 MR. KELLER: I do.

22 E R I C K E L L E R,

23 54 Horsehill Road, Cedar Knolls, New Jersey
24 having been duly sworn, testifies as follows:

25 MR. MALAGIERE: Mr. Keller, welcome

1 back.

2 Please identify yourself, for the
3 record, indicate the capacity in which you will
4 continue your testimony.

5 MR. KELLER: Certainly.

6 Eric Keller, Omland Engineering, as a
7 traffic engineering consultant.

8 MR. MALAGIERE: Mr. Chairman, Mr.
9 Keller was previously qualified.

10 CHAIRMAN GUERRA: Yes.

11 MR. MALAGIERE: Thank you.

12 Just to orient the record, Mr. Keller
13 is back to be cross examined, be questioned in
14 connection with notes that he ultimately produced and
15 areas that are relevant to those notes, and that is
16 why he's here.

17 MR. BASRALIAN: Just for the record, we
18 should put forth the notes we're talking about: May
19 15th, 2009; July 16th, 2009.

20 MR. MALAGIERE: Why don't we just mark
21 the whole set in?

22 MR. BASRALIAN: They have already been
23 marked.

24 MR. MALAGIERE: Mark them for purposes

25 --

1 MR. KELLER: This is the only copy I
2 have.

3 MR. BORRELLI: Let me just put them all
4 in. We'll mark a set.

5 MR. BASRALIAN: I want to put it on the
6 record anyway, so we have a record of what it is:
7 July 23rd, 2000 --

8 MR. MALAGIERE: We're going to have an
9 exhibit. Let's talk about the exhibit because then
10 he'll have to go through the exhibit --

11 MR. MOSKOWITZ: Plan to.

12 MR. BASRALIAN: I'm not objecting, all
13 I'm saying is I want Mr. Keller to reference the date
14 of each of the notes that will be the subject of
15 cross examination.

16 MR. MALAGIERE: Yeah, it shouldn't be
17 an issue.

18 Counsel, while you're up here, why
19 don't you put your appearances on the record.

20 MR. MOSKOWITZ: Theodore Moskowitz,
21 from McCarter & English, on behalf of the Prospect
22 Avenue Coalition and my wife Sandra and myself, as
23 residents of Hackensack -- owners of the unit in the
24 Baridge House.

25 MR. DIKTAS: Chris Diktas, on behalf of

1 Ana Burllyuk.

2 CHAIRMAN GUERRA: Thank you.

3 MR. MALAGIERE: Mr. Moskowitz, could we
4 mark this in first and get that out of the way?

5 Show me what you have, show Mr.
6 Basralian, show Mr. Diktas, and we're all set.

7 MR. MOSKOWITZ: M-5 --

8 MR. MALAGIERE: Give it to everybody,
9 before you start characterizing it, so we all can
10 talk about it.

11 Let's see what you got, Mr. Moskowitz.
12 What do you want to call it?

13 MR. MOSKOWITZ: M-5.

14 MR. MALAGIERE: Characterize it for the
15 record, what M-5 is, and we can dispense with all the
16 issues.

17 MR. MOSKOWITZ: I'm going to do it in
18 some detail as we get into it, but M-5 is a group of
19 documents that are attached to a letter, dated March
20 3rd, 2011, to Mr. Joseph Basralian, Esquire, from
21 Leonard Seaman, of Mr. Malagiere's office, and it
22 speaks to the fact that Judge Escala has reviewed
23 certain documents that had been produced for him in
24 camera to review to see if any portions of those
25 documents would be covered by attorney/client

1 privileges.

2 Judge Escala did indicate certain ones,
3 they have been blanked out, although the pages
4 themselves were produced. And they were transmitted
5 subsequently to myself, to Mr. Diktas, to Joe Zisa,
6 and, of course, Mr. Basralian was a recipient of the
7 letter.

8 MR. MALAGIERE: Other than the cover
9 letter, these notes are marked consecutively, 1
10 through 19.

11 (Whereupon, Letter and Notes are
12 received and marked as Exhibit M-5 for
13 Identification.)

14 MR. MOSKOWITZ: Let me just do that.
15 There are 19 pages. And for ease of reference for
16 the hearing, I numbered the pages in date order so
17 that we could make, you know, ready reference to the
18 Board and all Counsel.

19 But number 19 was an undated page, so
20 it's -- I could only guess, but I can't be a witness
21 to what other page it belonged to.

22 MR. MALAGIERE: What's the matter?

23 MR. DIKTAS: He had an extra set.

24 MR. MALAGIERE: Mr. Basralian, take a
25 moment to look at this and make sure you're

1 comfortable with this exhibit, and it's what you
2 believe it should be.

3 MR. MOSKOWITZ: The only change
4 whatsoever was to add numbers to the bottom of the
5 pages so we could -- we'll be on the same page, as
6 they say.

7 MR. MALAGIERE: That's fine.

8 MR. BASRALIAN: These were -- Mr.
9 Malagiere, these were forwarded by your office, by
10 Leonard Seaman, to me, and copies to Mr. Diktas and
11 Mr. Moskowitz.

12 MR. MALAGIERE: Right.

13 MR. BASRALIAN: They were not in date
14 order, necessarily. So it would be helpful if we
15 just follow the same routine that we had, what you
16 sent out to everybody.

17 I have no objection to this package
18 going in, but we reference each date as a question is
19 asked so we know what page we're looking at.

20 MR. MALAGIERE: We can do that as it
21 comes up.

22 If you want clarification of what Mr.
23 Moskowitz is asking and the references, I'm sure we
24 can work it out.

25 MR. BASRALIAN: There's one undated

1 page, I guess it's page 19 that you're referring to
2 --

3 MR. MOSKOWITZ: Correct.

4 MR. BASRALIAN: Each time he asks a
5 question, let's make sure we're on the same page.

6 MR. MALAGIERE: That's all right.

7 We're okay, we have the exhibit marked.
8 We understand what it is.

9 Mr. Moskowitz, would you like to
10 examine Mr. Keller?

11 MR. MOSKOWITZ: Yes.

12 But prior to going forward with my
13 cross examination, I do want to express my
14 appreciation to the Board, to Chairman Guerra, to all
15 Board members, to Board Counsel Malagiere, for the
16 dedication, the courtesies, what I perceive to be
17 diligence, hard work and maybe, most of all, their
18 patience.

19 This is a matter of great import to the
20 lives and well-being of the people of Hackensack, the
21 residents of Hackensack of this community as a whole
22 and we thank you.

23 MR. MALAGIERE: Thank you, sir.

24 CHAIRMAN GUERRA: Thank you, Mr.
25 Moskowitz.

1 MR. MALAGIERE: Please proceed, thank
2 you.

3 CROSS EXAMINATION

4 BY MR. MOSKOWITZ:

5 Q. Mr. Keller --

6 A. Yes, sir.

7 Q. -- you were directed to produce all of
8 your notes, in these matters, through your Counsel,
9 were you not?

10 A. Yes.

11 Q. Did you search your files?

12 A. Yes.

13 Q. Did you so produce all of your notes?

14 A. Yes.

15 Q. Subject always, so I'm not going to
16 mention it anymore, but to review by Judge Escala and
17 what Judge Escala struck out?

18 A. Yes.

19 Q. Did you review the notes that were
20 discussed by you on August 25th, 2010, in your report
21 file?

22 A. August 25th?

23 Q. Yes. Well, I can give you reference
24 back to it. I'm reading from page 110.

25 A. From the transcripts?

1 Q. Yes.

2 A. You said my notes.

3 Q. Yes. We're going to get to that, but
4 there's some discussion of what's in the notes
5 perhaps tonight.

6 A. Hold on.

7 Q. I can read it for you if you'd like?

8 A. August 25th.

9 Q. Yeah.

10 A. I'm sorry, which page?

11 Q. Pages 110 and 111.

12 A. Okay.

13 Q. And on page 110, I asked you -- you
14 said to me in response to a question as to what date
15 you had looked at certain summaries. You said:

16 "I don't recall, I'll have to look at
17 my summary."

18 And I asked you, "Look at your summary
19 of what?"

20 Then you said, "When we summarized the
21 data, I don't remember."

22 Are you with me?

23 A. Yes.

24 Q. And you said -- I said:

25 "Well, so, you interrupted and said it

1 was done."

2 And I said: "How can you look at the
3 summaries and submit a summary besides this
4 one?"

5 You said: "No, it's just this, there's
6 tabulations that we did?"

7 And I said to you: "Well, look at it,
8 there's no date there."

9 And you said: "No."

10 And I said: "So what are you going to
11 look at to be able to tell me the date? You
12 already told me there's no other paper."

13 And you said: "Just the -- in my notes
14 as to when we -- we discussed this with Mr.
15 Pineles."

16 And I said: "What notes?"

17 And you said: "All the notes that I do
18 put together when I'm putting together the
19 report, questions that I have, discussion
20 items to go over that go into compiling the
21 traffic report."

22 Do you remember that?

23 A. Yes.

24 Q. In looking at your notes, can you point
25 me to the page of notes that you were going to look

1 at in that context? Or shall I save you time?

2 A. No.

3 Q. There are no such notes.

4 A. No, that's not true. You asked me a
5 question --

6 Q. Okay.

7 A. -- I'd like the opportunity to answer
8 the question.

9 Q. You absolutely deserve it.

10 A. If you look at page 4, the last line
11 says "Trip Generation Table." It says, "Use 5
12 percent mass transit."

13 And there's also a note in the margin
14 about Prospect Heights having 210 beds. That was my
15 note, from a traffic engineering perspective, about
16 collecting the information on the modal split of the
17 Prospect Heights. We said use 5 percent until we got
18 the survey.

19 Q. Do you recall what day the traffic
20 survey was taken?

21 A. Not off the top of my head, no.

22 Q. Do you have any notes with you that
23 could tell you that?

24 A. No.

25 Q. Was it taken before or after July 31st,

1 2009 -- 2009?

2 A. I don't recall.

3 Q. Is there anything you can make
4 reference to?

5 (Pause.)

6 And I'm looking at page 4 -- well,
7 let's go back to it together for a moment, if that's
8 all right with you.

9 A. Yep.

10 Q. In the middle of the page, you have a
11 discussion of adult daycare, eight hour shifts,
12 medical adult daycare, must have qualified medical
13 needs, participants by van, living community, may not
14 use facility everyday, trip generation table,
15 employee populations.

16 What did that have to do with that
17 section of your report?

18 A. Well, all this goes to determining how
19 much traffic is going to be generated by this
20 project.

21 As I spent a lot of time talking about,
22 this is not your typical type of project. So we had
23 to generate our own traffic numbers by starting with
24 people and we know that not everybody dropped. And
25 that was my note, to me, I know that this meant I

1 wanted -- in my discussion with Mr. Pineles, was to
2 collect information specifically to use in our
3 analyses.

4 Q. And when did you have that discussion
5 with Mr. Pineles?

6 A. Well, I mean those discussions, and
7 there aren't notes for all of the discussions, most
8 of it was in July of 2009.

9 Q. Well, when you were asked, and the
10 transcript is what it is, when you were asked about
11 any notes that you needed to refer to, with respect
12 to that report, you told us there were none.

13 A. There were -- your question was, what
14 notes am I referring to. Let me go back to the
15 transcript.

16 Q. That's a new question, yes.

17 A. You're saying, what am I going to go
18 look at to tell me what the date?

19 I said at that point I thought it was
20 in my notes about when I had the discussion.

21 And these are the notes from my
22 discussion with Mr. Pineles. I didn't know that
23 specifically that topic was in there, I know we had
24 the discussion about it.

25 Obviously, in looking at my notes, this

1 was the level of detail that we got into.

2 As I said many times before, I didn't
3 think this was a really difficult survey to put
4 together. And I didn't write down anything more than
5 needing something about mass transit.

6 Q. And you're not about mass transit, is
7 that your note?

8 A. Yes.

9 Q. It says, "Use five mass transit"?

10 A. Correct.

11 Q. "Use five dropped off."

12 A. Okay. The bottom of my page got
13 chopped off.

14 Q. I can show you, there's nothing extra
15 written down here.

16 A. Okay. Five percent chopped off.

17 Now, it may be --

18 Q. You just picked that number out to use
19 it, right?

20 A. That was the number that -- I'm
21 presuming, back two years ago, that may have been our
22 initial supposition as to what the numbers would be.
23 And that's why I said let's refine that by getting
24 the information from Prospect Heights.

25 Q. And there's nothing on this page that

1 speaks to the survey, is there?

2 A. Not -- no.

3 Q. There's nothing on this page that
4 speaks to the data from the survey, when it was
5 taken, who it was going to be taken by, what the
6 results were, correct?

7 A. I found my e-mail from Mr. Pineles. We
8 had already gotten the survey information.

9 Q. Maybe you could answer my question?

10 A. So the point -- could you read his last
11 question back, please?

12 (Whereupon, the requested question was
13 read back by the Reporter as follows:

14 "There's nothing on this page that speaks to
15 the data from the survey, when it was taken,
16 who it was going to be taken by, what the
17 results were, correct?")

18 A. No.

19 CHAIRMAN GUERRA: Just a point of
20 clarification, the survey was prior to these notes,
21 is that what you're saying?

22 THE WITNESS: Correct. The July 31st
23 notes, now that I find all the information together,
24 was discussing with Mr. Pineles, okay, here's what we
25 found from Prospect Heights, what do we want to use

1 in here. Can I just look at your Sheet 5 because
2 mine --

3 CHAIRMAN GUERRA: The 5 percent wasn't
4 based on the survey, is what you're saying?

5 THE WITNESS: Five percent dropped off.
6 No, 'cause the survey --

7 CHAIRMAN GUERRA: Even though the
8 survey was already done.

9 THE WITNESS: Correct.

10 What we said was, okay, Prospect
11 Heights had 11 percent dropped off, let's use 5
12 percent, whereas the survey showed 16 percent of the
13 traffic would not be driving and parking on the site.
14 We said we would use 10 percent.

15 CHAIRMAN GUERRA: Okay.

16 BY MR. MOSKOWITZ:

17 Q. So, again, although you've answered the
18 question, there's nothing here that discusses that
19 survey?

20 A. Other than the fact that I summarized
21 what we were doing in the trip generation.

22 Q. Well, you didn't -- page 4 stands as it
23 is, I don't want to get stuck on page 4. If you
24 think that's what page 4 is about, we'll leave it.
25 We'll leave it to the less casual observer.

1 Now, when you searched your files to
2 find your notes, memos, et cetera, as you were
3 requested, can you tell us how long it took you to
4 serve those files?

5 A. I don't remember.

6 Q. A day, a week, a month, two hours, 15
7 minutes?

8 A. I did it within a day.

9 Q. Did you review your e-mail files?

10 A. No.

11 Q. Did you review any otherwise
12 electronically-created files?

13 A. I don't understand what you mean by
14 "other electronically-created files".

15 Q. Well, anything else it might be, a fax
16 --

17 A. Faxes are in my -- but, the request --

18 Q. Just answer my question, did you review
19 --

20 A. No, I reviewed my handwritten notes.

21 Q. Did you review any memo file on any
22 single issue at all in these proceedings?

23 A. I reviewed my handwritten notes as
24 requested.

25 Q. Well, I don't think that was the

1 request, the request was any and all notes of any
2 types. But did you decide that all you had to do was
3 look at your personal, handwritten notes to yourself;
4 was that your decision?

5 A. Mr. --

6 CHAIRMAN GUERRA: Wouldn't the
7 transcript say what Mr. Keller was asked to do?

8 MR. MOSKOWITZ: Yes, all notes --

9 CHAIRMAN GUERRA: Of any kind.

10 Is that what the transcript says?

11 MR. MOSKOWITZ: Yes.

12 MR. MALAGIERE: Let me ask, if I may,
13 are there any other notes?

14 THE WITNESS: No.

15 BY MR. MOSKOWITZ:

16 Q. Are there e-mails?

17 A. There's a lot of e-mails that go back
18 and forth between myself --

19 Q. To you and from you?

20 A. Yeah.

21 Q. You decided that those weren't notes of
22 yours; the ones that you got, you owned; the ones you
23 sent, you created.

24 Was it your decision to not look at
25 those notes and see if there were any to produce?

1 A. That was my discussion with Mr.
2 Basralian, it was the notes in preparing the traffic
3 study.

4 Q. Well, I'm not going to get into a
5 quarrel with Mr. Basralian.

6 Did you ask Mr. Basralian if you should
7 produce your electronic materials, your e-mails? I
8 don't think you did.

9 Did you ask him?

10 A. I don't remember. This request goes
11 back to last year sometime.

12 Q. This request is pending a long time, we
13 all know that.

14 Did you review your notes taken at
15 these meetings; you have been at many of these
16 meetings; that you know of?

17 A. Yes.

18 Q. Did you take notes, at all, of those
19 meetings?

20 A. Not at all of them, I took notes at
21 some of them.

22 Q. Did you review those notes?

23 A. No --

24 Q. That's a yes-or-no question.

25 Did you review those notes?

1 A. No.

2 Q. I take it, and it's been your
3 testimony, that you reviewed other material as well.
4 For example, we'll get to that later, but the
5 Tombalakian traffic report, did you review that?

6 A. Yes.

7 Q. Did you make any notes on it when you
8 reviewed it?

9 A. No, I don't believe so. I believe that
10 I made the notes on my list of questions that I had
11 for the client after I read it.

12 Q. Well, just to help me out, so I
13 understand what's going on here, is that list of
14 questions -- when did you make that list of
15 questions; do you recall? Just the list of
16 questions.

17 A. List of questions was a list --

18 Q. In other words, you sit down with Mr.
19 Tombalakian's report to review it, and as you're
20 doing that, you make yourself a list of questions?

21 A. Correct.

22 Q. Do you recall how long that report was?

23 A. Not offhand, no.

24 Q. About 150 pages sound right?

25 A. Well, with all the --

1 Q. Yeah, well -- well --

2 A. Can I answer the question?

3 Q. No, I'm going to let you be clear as to
4 what I'm asking.

5 A. Okay.

6 CHAIRMAN GUERRA: Gentlemen.

7 Q. The totality of the report, including
8 exhibits, is about 150 pages, isn't it?

9 A. I don't remember.

10 Q. Well, you read it all.

11 A. I did not read all the technical
12 appendices because I knew I was going to be redoing
13 them all. I read the body of the report so that I
14 can write the report in my fashion with my approach
15 to this project.

16 The technical backup to it is a
17 technical backup to it. Yes, there's things in there
18 about delivery trucks and all the other things that
19 I've testified to a number of times, and I did look
20 at those.

21 But I didn't look at every page of
22 every capacity analyses to look at, because we ended
23 up redoing the future build years based on Mr.
24 Miskovich's comments about looking at 2013, which is
25 not what Mr. Tombalakian had done in his report.

1 So anything that was in there on that
2 was not worth discussing or reviewing.

3 Plus, I don't review somebody else's
4 capacity analyses if I'm going to redo them myself.

5 Q. So, when you reviewed the original, the
6 Tombalakian report, you did it without pen in hand or
7 pencil, you made no notes on your copy?

8 A. No, I wrote 'em on pieces of paper so
9 that I'm not going to find that report when I want to
10 see what -- whether I got all my questions answered.
11 You know, there's notes from 7/16, which is page 2.
12 And some additional questions on page 3, which is
13 notes from July 23rd, 2009.

14 Q. Right. So page 2, questions you asked
15 of Mr. Pineles. Correct?

16 A. Correct.

17 Q. Did you actually ask him those
18 questions?

19 A. Yes.

20 Q. Did you write his answers down or did
21 you memorize them?

22 A. This got put into the report. I made
23 one, the first one, yes, that was an answer. It
24 says, "No."

25 Q. He said no. Did you write down his

1 answers to any of your other questions on that page?

2 A. Yes. Where did the transport vans come
3 from. He said, "See meeting minutes 7/31/09."

4 Q. That's what he told you?

5 A. No.

6 Q. You told me what you wrote down and you
7 wrote down what he told you?

8 A. I said these were questions. Now, in
9 the process of doing this, I got the answer at the
10 meeting of 7/31.

11 Q. Okay.

12 A. Which is starting on pages 4 and 5, is
13 where all those -- where all those items were
14 answered. We talked about, in detail -- you know,
15 that's page 4. And I'm not sure, maybe this is the
16 page --

17 Q. There's no attribution to any of those
18 pages of any of those answers to Mr. Pineles, is
19 there?

20 A. No, I didn't say Rich told me to write
21 this down. No, there wasn't.

22 Q. Did you say source of information was
23 Rich? I'm not suggesting that he was bossing you
24 around.

25 A. No.

1 Q. We're looking at an interesting few
2 pages here, considering everything that's gone on,
3 and it doesn't seem to be exhaustive. For example,
4 lets you and I look together at page 3.

5 Question, see that?

6 A. Yes.

7 Q. Where did you make those notes? You
8 didn't make those notes when you were reading the
9 report, did you?

10 A. I don't know what I -- it had to be
11 associated with the preparation of the report. I
12 don't know whether I was actually reading the report.

13 Q. So you don't know where those questions
14 came from? They didn't come from Mr. Pineles;
15 correct?

16 A. No, these are my questions, I presume
17 from reading Mr. Tombalakian's report, because we got
18 into the traffic -- rewriting the traffic report in
19 July of 2009, in August of 2009, because it was
20 submitted in September of 2009.

21 Q. Well, did you look at the date on the
22 page before you made up that presumption?

23 A. The date on what page, on page 3?

24 Q. Page 3.

25 A. It says July 23rd, 2009.

1 Q. Do you remember where you were that
2 night?

3 A. No.

4 Q. I do, because it was my wedding
5 anniversary. I was here at one of these meetings, as
6 were you. So it's hard to think that you were
7 working with Mr. Pineles on this at that meeting.

8 A. Just because it's the same date doesn't
9 mean that I didn't work on it in my office.

10 Q. No, it doesn't. No, it doesn't.

11 So now, let's just take the global
12 detail on these notes. Mr. Basralian has covered
13 most of it, I just wanted it to be clear again on the
14 record. They're 19 pages.

15 For clarity, I numbered them, I guess
16 in the lower right-hand corner. I put them in date
17 order. And page 19 is undated --

18 AUDIENCE MEMBER: Can't hear.

19 MR. MOSKOWITZ: Sorry, page 19 is
20 undated.

21 MR. BASRALIAN: Excuse me, the pages I
22 have stop at four and then it jumps to ten.

23 MR. MOSKOWITZ: I don't have anymore
24 copies.

25 MR. MALAGIERE: We'll get them for you.

1 Do you have an extra set, Mike?

2 (Pause.)

3 We got another set here. Here you go,
4 Joe.

5 MR. BASRALIAN: Those are the redacted
6 pages, okay.

7 Okay, fine, I'm fine. Thank you.

8 MR. MALAGIERE: Are you waiting for the
9 witness?

10 MR. MOSKOWITZ: Yeah.

11 THE WITNESS: I'm ready, yes.

12 BY MR. MOSKOWITZ:

13 Q. Just a small item, but while we're on
14 page 3, can you read us the first question that you
15 have listed on page 3?

16 A. "Truck activity at Prospect Heights,
17 how many beds, can you provide log".

18 Q. Okay. So, did you actually ever read
19 this to anybody and ask them for truck activity at
20 Prospect Heights?

21 A. I did discuss it with Mr. Pineles.

22 Q. You did?

23 A. Yes.

24 Q. But he never gave you a log?

25 A. They did not have a log in a fashion

1 that would have been useful to me. They have the
2 drivers sign in, but it wasn't my information, I was
3 looking for the size of the truck, what they were
4 delivering, and they don't have that.

5 Q. So, you didn't bother to look at
6 whatever truck log they had?

7 A. No, because when he described what
8 information was on there, I said that would not help
9 me in what I was trying to do.

10 Q. But you still stuck a page in your book
11 that made it sound like you knew what was coming.
12 You and I had this discussion before. That night you
13 told me that FedEx and UPS had merged.

14 A. However you want to recall that
15 response is your belief. Yes, we did spend many
16 times talking about truck traffic.

17 Q. Yes. And you stuck that page in your
18 report. That page was in your report?

19 A. Yes, it was.

20 Q. Where did you get it from?

21 A. Those were discussions based on the
22 operations of the facility, as I've said before, on
23 how the facility operates, how many needs.

24 All I was trying to do was like what we
25 did with the travel survey, was to certify it with

1 some information from Prospect Heights just to
2 provide a check and balance. Unfortunately, the
3 information wasn't available.

4 We're comfortable with the numbers, as
5 they have been put together, as reasonable for this
6 type and size of facility, as to what will be coming.
7 I'd like to point -- let me finish, Mr. Moskowitz.

8 Q. Go ahead.

9 A. Let me point out, is we did not reduce
10 those numbers in any way when the size of the
11 building was reduced by 25 percent. Even if we are
12 off by a little bit, we're still saying that the same
13 number of trucks are going to come now that the
14 facility is 25 percent smaller, than what it was
15 originally proposed to be. We didn't change those
16 numbers.

17 Q. But you have no notes of any of those
18 discussions, correct?

19 A. No.

20 Q. And isn't it a fact that you didn't
21 even have those discussions, you just took the page
22 that was in Mr. Tombalakian's report and pasted it
23 into yours and you have no idea the truck traffic or
24 who even prepared that page?

25 A. No, I --

1 Q. Who prepared that page?

2 A. It was -- I discussed that information
3 with Mr. Pineles and I don't know who prepared the
4 page, we went over it to make sure that all the items
5 were in there.

6 No, I have no notes on it because we
7 went through and I checked off and I said that's
8 reasonable.

9 Q. And after all of your notes and all of
10 your discussions, and forgetting about poor old UPS
11 and FedEx, you pasted the same page into your report
12 that was in the Tombalakian report, correct?

13 A. Yes.

14 Q. And you have not got one single written
15 note or word about that?

16 A. No.

17 Q. Just also for clarity sake, could you
18 tell me what the number 090501 stands for in these
19 papers?

20 A. That's our project number for this
21 project.

22 Q. Is that the file number?

23 A. Yes.

24 Q. Do you bill by time expended for some
25 of the services?

1 A. Yes.

2 Q. So that would also be a billing
3 reference number?

4 A. Correct.

5 Q. If someone were going to work on a
6 matter having to do with this case, they would record
7 their time under that number?

8 A. Correct.

9 Q. And if you did, you would -- you might
10 do the same thing?

11 A. Well, everybody has to file a
12 timesheet.

13 Q. Yes. That I know.

14 So, did you review those timesheets?

15 A. No.

16 Q. So you really don't know if anybody
17 did, on any day? Aren't those notes of your daily
18 activity? Wasn't that a description of your daily
19 activity and those of your peers and subordinates
20 working on this matter?

21 A. Yes.

22 Q. Why didn't you produce those?

23 A. They're not notes related to the
24 preparation of the traffic study.

25 Q. Hope you don't tell your client that.

1 What are these notes related to if
2 they're not notes related to the traffic and parking
3 study?

4 A. They're notes of activities that
5 occurred, they're not notes of why did I do this,
6 what was --

7 Q. I didn't ask you for the substance of
8 it, I asked you, don't they all pertain to your
9 report and your testimony, your exhibits and your
10 assumptions and Mr. Tombalakian's assumptions,
11 testing those assumptions?

12 A. No, they don't go to that level of
13 detail.

14 Q. Well, they might not, but if you
15 provided them, we would have been able to tell a
16 little better, wouldn't we?

17 A. Maybe.

18 Q. When does your engagement -- when did
19 your engagement in these matters begin?

20 A. As I've testified to before, in May of
21 2009.

22 Q. And when did it end?

23 A. I'm not sure yet.

24 Q. It's beginning to seem as if none of
25 them will ever end.

1 A. They all end at some point.

2 (Laughter.)

3 Q. So your engagement began some time in
4 May of 2009, probably in the little earlier part of
5 the month?

6 A. Probably.

7 Q. Early-to-mid, not the very beginning.

8 A. I couldn't tell you exactly.

9 Q. When your company was first engaged --
10 oh, I wanted to ask you, did you ask Chuck Thomas if
11 he had any of your notes?

12 A. No, 'cause I know he doesn't. He was
13 not involved in the traffic study portion at all.

14 Q. He was involved in the engagement, he
15 was involved in you getting hired, he brought you
16 into it, so how would you know that he has no notes
17 about the matter?

18 A. Actually, actually, it was the reverse.

19 Q. You brought him in?

20 A. Yes.

21 Q. I don't think it's an important enough
22 point to go back to the earlier transcripts, but you
23 might want to reread those pages.

24 A. My recollection --

25 Q. Did you ever prepare an outline of your

1 engagement tasks of what you were supposed to be
2 doing and what you were going to do and what the
3 requirements were?

4 A. I believe, at the request of the Board
5 Attorney, we ended up providing a copy of our
6 engagement letter and that would have --

7 Q. That actually wasn't my question. My
8 question was, did you prepare an outline, for
9 yourself or for your client, of your engagement tasks
10 and requirements, like a to-do list, the scope of the
11 engagement?

12 A. That was in the proposal, I was trying
13 to answer your question. What the scope is, it goes
14 into the proposals.

15 Q. Did you prepare an outline before that
16 letter?

17 A. No.

18 Q. Did you prepare a separate outline?
19 Did you sit down with a pad; what do we need to do,
20 what do I have to do, where are we going with this?

21 A. No.

22 Q. No to-do list?

23 A. No. I've been doing this for 30 years,
24 I know what I have to do when it comes to a traffic
25 study.

1 Q. Do you do the same thing every time?

2 A. Essentially. Each one has their own
3 individual components, but this was -- other than the
4 use being a little different, it was a standard
5 traffic study.

6 Q. So now, if you refer to the note
7 package, pages 8, 9, 16 and 18, are all completely
8 redacted, correct; basically by Judge Escala --

9 A. Yes.

10 Q. -- who told me they would be covered by
11 attorney/client privilege.

12 There are also six pages,
13 numerically-based notes, of what seems to be directed
14 to traffic observation of February 9th, 2010. Am I
15 correct with that?

16 I couldn't -- I'm not that good with
17 numbers and I couldn't decipher it that well, but
18 basically it looks as if all of those numbers relate
19 to that.

20 A. Yeah. Those -- I think it's four
21 pages, 11, 12, 13, I'm sorry, five pages, 14 -- 15.

22 Q. Six pages?

23 A. Six pages were all field notes on
24 February 9th, 2010.

25 Q. Okay. Thank you.

1 So, do this arithmetic with me, if we
2 eliminate the six pages of traffic calculations of
3 that day, and the four pages of notes that are fully
4 redacted because they deal with Counsel matters,
5 you've produced us nine pages of notes for this
6 two-and-a-half year engagement. And actually, trying
7 to be fair, some have just one line on it, they're
8 about a half-page each?

9 So two-and-a-half years, all these
10 papers, all these studies, all these reports, all
11 these meetings, all these phone calls, you produced
12 four-and-a-half pages of notes, correct?

13 A. I take your math at face value.

14 Q. It is right.

15 A. Okay.

16 Q. Did that seem strange to you when it
17 came to producing all of your notes?

18 A. No.

19 Q. And you have no notes after June 18th
20 of 2010, correct?

21 A. I think most of my time at any meeting
22 since then has been answering questions and I didn't
23 make any notes after that, I presume. I know I've
24 testified after -- I think I testified after June of
25 last year, though I've lost track.

1 Q. That's all right, so have we all.

2 So now what we have here -- how long
3 was your traffic report; do you remember how many
4 pages the traffic report was?

5 A. I'll tell you in a minute.

6 (Pause.)

7 It was 25 pages of text and a whole lot
8 of calculations.

9 Q. Right, it's about 125 pages.

10 A. I'll take your word for it.

11 Q. And let's say you reviewed the, what I
12 call, Bergen Mall traffic pattern documents for these
13 hearings?

14 A. Yes, correct.

15 Q. Did you make any notes on those
16 reviews?

17 A. No.

18 Q. Did you make any annotations in the
19 margins?

20 A. I don't believe so.

21 Q. Did you do any underlinings?

22 A. I don't believe so.

23 Q. And no commentary?

24 A. I looked at it to answer the question
25 about whether any traffic from that project --

1 Q. I understand, I understand why you
2 looked at that --

3 MR. MALAGIERE: Closer to the mike,
4 please.

5 Q. We understand why you looked at it. Do
6 you still have your original copy of the Tombalakian
7 traffic report?

8 A. Yes.

9 MR. MOSKOWITZ: I'd like to ask --
10 direct the Board for them to be produced.

11 CHAIRMAN GUERRA: For what reason would
12 you want that, notes written on the report?

13 MR. MOSKOWITZ: Yeah. I think that
14 although things do happen that defy all credibility,
15 I think that when we're looking at four-and-a-half
16 pages over a couple -- a year-and-a-half, very
17 technical material, supposed review of Bergen Town
18 Center traffic reports, supposed review of
19 Tombalakian reports, supposed redrafting and rereview
20 when the building was scaled down, many, many
21 conferences, of course, with Mr. Pineles, a number of
22 conferences, unknown, with Mr. Tombalakian, no search
23 of electronic files at all, no check of billing and
24 timing files and notations, that it absolutely defies
25 credibility to think that four-and-a-half pages

1 constitute the entirety of Mr. Keller's notes.
2 That's why I'm asking the question.

3 CHAIRMAN GUERRA: Mr. Basralian, you
4 want to comment on that?

5 MR. BASRALIAN: Yes, I do. Putting
6 aside the comments about "supposedly," Mr. Keller is
7 under oath, he's answered the questions that have
8 been addressed to him. Tombalakian report is a part
9 of the record of this hearing, he's testified what he
10 did and did not do. And then Mr. Keller said he did
11 a new report and whatever he used, he used, whatever
12 he didn't, he made new traffic counts and study.

13 I think we are going well beyond what
14 was asked of us and that was to produce the notes,
15 which was done some time ago. And we're now here for
16 cross examination. I would submit that the
17 Tombalakian part of the report, as I say, is part of
18 the record. It's been available to Mr. Moskowitz
19 throughout the course of the hearings.

20 CHAIRMAN GUERRA: Mr. Moskowitz
21 requested Mr. Keller's specific report, that's not
22 part of the record. Mr. Malagiere, any thoughts on
23 this?

24 MR. MALAGIERE: Chairman, I'd like to
25 hear Mr. Diktas on this.

1 MR. DIKTAS: I'm going to join Mr.
2 Moskowitz's request because part of this testimony
3 here is based on his notes. We're here for his notes
4 and it's a reasonable segue, based on the questions
5 presented by Mr. Moskowitz, to review the Tombalakian
6 report to make a determination as to the credibility
7 of the gentleman, unless credibility is stipulated
8 that he doesn't have them, he doesn't remember and
9 that his notes are incomplete. And then we can just
10 move on.

11 MR. MALAGIERE: Mr. Chairman, I would
12 suggest that you reserve on this request, allow Mr.
13 Moskowitz to finish his examination and you can rule
14 on it.

15 I think there's a number of items that
16 have been requested over the period of these
17 hearings, you can rule on them at the end.

18 MR. MOSKOWITZ: That's fine with me.
19 I'll make no further questions to that point.

20 MR. BASRALIAN: I'll reserve my comment
21 until that ruling is made.

22 CHAIRMAN GUERRA: Okay, we'll handle
23 it.

24 BY MR. MOSKOWITZ:

25 Q. When did you first see the Tombalakian

1 report?

2 A. Some time after we were retained. I
3 don't recall when.

4 Q. Who gave it to you?

5 A. I don't remember.

6 Q. Do you remember whether or not you
7 reviewed it then?

8 A. I don't remember if I reviewed it
9 exactly when I got it or I reviewed it several weeks
10 later.

11 Q. You both spoke with and met with Mr.
12 Tombalakian concerning this report, correct?

13 A. Yes.

14 Q. And you both spoke with and met with
15 Mr. Pineles as to your reviews of the Tombalakian
16 report, correct?

17 A. Correct.

18 Q. How many times with Mr. Tombalakian?

19 A. I believe it was just once.

20 Q. I'm going to refer you to the
21 transcript -- and with Mr. Pineles?

22 A. I don't remember how many times I met
23 with him.

24 Q. Many times?

25 A. Yes. And it's many times over the

1 course -- the two-plus years that we have been
2 involved in this project.

3 I don't remember whether they were
4 before we wrote the traffic report, during the
5 writing. I don't recall when they occurred.

6 Q. Well, I'm talking about right after
7 your review of the Boswell -- the Boswell/Tombalakian
8 report.

9 A. I don't remember the timing of when I
10 met with Mr. Pineles.

11 Obviously, my notes from July of 2009,
12 I read the report because I've developed questions
13 that I have for Mr. Pineles so that I can write my
14 report. How many times I met with him, I don't
15 recall.

16 Q. I'm going to read you a section out of
17 the April 29th, 2010 hearing. I'm the questioner,
18 you're the answerer.

19 "Did you review the Boswell report?"

20 "Yes, I did."

21 "Did you speak with Mr. Tombalakian
22 about it?"

23 "I did."

24 "Did you have meetings with him?"

25 "I believe I did."

1 "How many times did you meet with him?"

2 "I don't remember."

3 Then I asked, "Did you meet with Mr.
4 Pineles with respect to your view of the
5 Boswell report?"

6 "Yes, a number of times."

7 Do you remember that?

8 A. I don't remember --

9 Q. Your testimony.

10 A. Obviously it's in the transcript, I
11 must have said it.

12 Q. I did read it verbatim.

13 A. I'll take your word for it.

14 Q. I asked you, too, if you remembered
15 about your conversations with Mr. Tombalakian. What
16 you said:

17 "I don't recall my conversations with
18 Mr. Tombalakian, with the gathered
19 information, the basis, the base data that he
20 used in preparing the reports so that I had a
21 complete package of information from him."

22 Where is that package?

23 MR. BASRALIAN: Excuse me, I'm going to
24 object to the line of questioning. We were here over
25 the course for cross examination as to the minutes of

1 the -- or the notes that were produced at the
2 direction of the Board. We're not here to rehash and
3 go back to April of 2010, or before, with respect to
4 the transcript.

5 I would ask the Board to direct this
6 cross examination to the minutes because that's why
7 we're here.

8 MR. MALAGIERE: Mr. Moskowitz, how does
9 your questioning in this regard relate and come from
10 these minutes -- these notes, rather?

11 MR. MOSKOWITZ: What comes from notes,
12 what comes from almost any document, is what is
13 there, what should be there, and the difference
14 between what exists and what should be.

15 I mean it's clear, I read you his sworn
16 testimony. You have seen that over two-and-a-half
17 years, there's four-and-a-half pages of notes and
18 there's no mention whatsoever of Mr. Tombalakian.

19 But we have, we're told, so that I had
20 a complete package of information from him, where is
21 that package.

22 Because when there's a production asked
23 for, what is produced may sometimes be very
24 important. But more often than that, what is not
25 produced, and what should have been produced, is

1 where the real answers lie.

2 And we were entitled -- I asked about
3 those minutes then and the Board and the public was
4 entitled to them then, they're entitled to them now,
5 or let Mr. Keller tell us he wants to change his
6 testimony.

7 MR. MALAGIERE: Can I just ask, are you
8 inquiring or probing as to whether or not there's
9 something other than the Tombalakian report and the
10 appendices that is in his possession or not turned
11 over, something other than the bound report?

12 MR. MOSKOWITZ: Well --

13 MR. MALAGIERE: Is that what you're
14 going at?

15 MR. MOSKOWITZ: What I'm going at is
16 that I think that we've not been told the full truth.

17 MR. BASRALIAN: I'll interpose my
18 objection because Mr. Keller has testified, under
19 oath, these are all of the notes that he made, that
20 there are no other notes that he made. They're in
21 his handwriting, he so testified.

22 Whether you characterize it as
23 four-and-a-half pages, because there's actually
24 19-some pages, some of which has been redacted,
25 that's what we're here about. And I think that it is

1 Mr. Moskowitz's intention to go well beyond the scope
2 of the examination with respect to the minutes,
3 perhaps even to prolong this hearing further so we
4 can exacerbate it even longer.

5 But the purpose of the hearing is on
6 the notes. Those notes have been produced. And they
7 were produced many, many, many months ago. And
8 that's what we're here for, not for something on a
9 conversation that Mr. Keller had with Tombalakian
10 back in -- prior to his retention in May of 2009.

11 It's well beyond the scope of where we
12 should be.

13 MR. MALAGIERE: Chairman, what I would
14 request that you advise the questioner, Mr.
15 Moskowitz, Mr. Chairman, that he limit his questions
16 to whether it be about the Tombalakian report or
17 anything else and tie them to the production of these
18 notes and why isn't that in those notes or that kind
19 of inquiry, so we stay focused on the notes and don't
20 go astray.

21 MR. MOSKOWITZ: I'll ask your exact
22 question.

23 BY MR. MOSKOWITZ:

24 Q. Why don't you have any notes from your
25 interviews with Mr. Tombalakian?

1 CHAIRMAN GUERRA: Did you take notes
2 when you were with Mr. Tombalakian? You don't
3 remember.

4 THE WITNESS: I don't remember. I mean
5 it was a long time ago, of reading through his
6 report. I'm not sure when I spoke to him.

7 CHAIRMAN GUERRA: How about this; when
8 you meet with an engineer or other professional, do
9 you normally take notes or is it just conversation?

10 THE WITNESS: Sometimes. It depends,
11 some of it is conversation. When we first kicked off
12 this project, there were other people in the room.
13 We focused on the site plan at first because that
14 needed to get back in so the hearing process could
15 continue.

16 Traffic study, even then we knew that
17 the traffic wasn't going to come up for testimony for
18 a little bit of time. So we possibly didn't discuss
19 it up front.

20 But I don't remember. Sometimes it's a
21 matter of just checking something off that, okay,
22 yeah, I understand what that thought process was.
23 Some of it could have been developed into those
24 questions that I ended up asking Mr. Pineles.

25 CHAIRMAN GUERRA: My thinking is that

1 you'd be going into this meeting with a whole laundry
2 list of questions, something that if I was meeting
3 with someone I wouldn't remember and, therefore,
4 maybe I would take some notes, you know, just the way
5 I would do it, I mean I don't know.

6 MR. MOSKOWITZ: I think the point is
7 made.

8 I'll move past this, Mr. Chairman.

9 CHAIRMAN GUERRA: All right.

10 BY MR. MOSKOWITZ:

11 Q. So that after you met with Mr.
12 Tombalakian, then you met with Mr. Pineles with
13 respect to your review of the Boswell report,
14 correct?

15 A. I don't recall the timing of
16 discussions with Mr. Tombalakian and then Mr.
17 Pineles. I would presume that I would speak to Mr.
18 Tombalakian first so that I can conform the questions
19 that I want to ask Mr. Pineles who can help me
20 address whatever open items that I have in preparing
21 my traffic report.

22 Q. Sure.

23 A. I would presume that that was the
24 process that I followed.

25 Q. I'll help you out there. On April

1 29th, 2010, I asked you --

2 A. What page are you reading from?

3 Q. Well --

4 A. No, I have my own. I brought it with
5 me.

6 Q. Well, I have the mini-transcript so I
7 don't know -- we can do it together.

8 A. Okay.

9 Q. Fine.

10 "Did you meet with Mr. Pineles with
11 respect to your review of the Boswell report?"

12 Your answer was --

13 A. "Yes, a number of times."

14 Q. Okay. Thank you.

15 So you did remember meeting with him.

16 Did you take any notes to that meeting?

17 A. They were the items that are in here
18 about questions that I have on July 31st. There's a
19 lot of stuff, of clarifications associated with that
20 -- with that meeting. Others may not have been, you
21 know, may not have been written down, they might have
22 been put right into the draft report that I
23 reformatted when I actually wrote the report.
24 Sometimes I pop in little notes into the report to
25 say, okay, expand upon this when I write the report

1 because I'd like to interject here.

2 Remember, there are a number of
3 redacted pages which the Court has found
4 inappropriate, or Judge Escala has found are
5 inappropriate to be a part of this --

6 MR. MOSKOWITZ: I'm going to object to
7 that. Excuse me, before we go too far, if what is
8 being posed is the attorney/client privilege to keep
9 those pages out --

10 MR. BASRALIAN: I didn't get a chance
11 to finish what I was going to say.

12 MR. MOSKOWITZ: You can't posit the
13 privilege.

14 (Interruption.)

15 MR. BASRALIAN: I was going to ask the
16 Board Attorney to remind Mr. Keller that he's not to
17 go beyond the scope of the minutes that are before --
18 or the notes, rather, that are part of this hearing
19 and not to -- his testimony should not expand to
20 anything that was in the redacted pages, irrespective
21 of what it is, because I don't know what it is at
22 this point.

23 That's all I was going to add. I'm not
24 suggesting anything else, what was in them or what,
25 I'm just asking him not to go beyond the scope of the

1 pages that were before us.

2 MR. MOSKOWITZ: There was a suggestion
3 as to what is on those pages to protect this witness
4 from giving further testimony, that suggestion
5 requires those pages be unredacted. And I defer to
6 the Board Counsel.

7 MR. MALAGIERE: The Board can take no
8 implication that Mr. Keller is not being -- is not
9 answering questions in a way that he'd like to answer
10 questions because somehow he's precluded from
11 answering them because of privilege taken on behalf
12 of his client, by Mr. Basralian.

13 If, in fact, he does say that or does
14 implicate or imply that and he puts the topic of the
15 material at issue, then the privilege is waived.

16 So, I just would caution you that Mr.
17 Basralian has interposed the reminder, which is fine,
18 we remind him not to do what his client is telling
19 him not to do. But there should be no implication
20 taken by the Board that somehow he's hamstrung
21 because there's certain privileged information in
22 this document.

23 MR. BASRALIAN: That's all I was
24 asking, that he be reminded that he cannot go beyond
25 the minutes, whether you characterize them as

1 four-and-a-half pages or 10 pages -- the notes,
2 rather.

3 MR. MALAGIERE: And that's not a law,
4 you don't go to jail for that, that is his client
5 directing him. Client owns the privilege. These are
6 privileged communications between Counsel, the expert
7 for the client, and the client. We do not want them
8 disclosed. Which is appropriate, okay?

9 But the client exercised that
10 privilege, Mr. Keller as the consultant of the client
11 is bound to not discuss that.

12 CHAIRMAN GUERRA: Okay.

13 MR. MOSKOWITZ: Are you going to give
14 us the pages with the black lines taken off?

15 MR. MALAGIERE: I'm sorry, what was the
16 question?

17 MR. MOSKOWITZ: Are we going to get
18 those pages now?

19 MR. MALAGIERE: Is it your position
20 that they have been put at issue?

21 MR. MOSKOWITZ: Yes, since we've been
22 told what may be on them.

23 MR. MALAGIERE: How?

24 MR. MOSKOWITZ: By Mr. Basralian.

25 MR. MALAGIERE: No, I don't believe so.

1 I don't believe so. If you'd like to put something
2 in writing to me, subsequent to this, to explain how
3 that comes forward, I'd be happy to reconsider.

4 BY MR. MOSKOWITZ:

5 Q. I want to go back to that truck log for
6 a minute or two.

7 A. Yes.

8 Q. You never got the truck log, right?

9 A. Correct.

10 Q. So I ask you again, for clarification,
11 you have no notes from the -- effecting these matters
12 under these hearings, except those four-and-a-half
13 pages?

14 A. These are the notes that I have --

15 Q. I know that's what you produced.

16 A. Yes.

17 Q. Are you going to check your e-mails?

18 A. I'll check whatever my client and his
19 attorney tell me to check.

20 MR. BASRALIAN: Excuse me, I'd like to
21 interpose an objection to keep the continued
22 reference to four-and-a-half pages. The notes speak
23 for themselves, there are some 19 pages of notes.

24 MR. MALAGIERE: You'll have time to
25 redirect, Mr. Basralian.

1 MR. BASRALIAN: It's not on redirect,
2 it's just a characterization of something. You have
3 19 pages of notes, some of which are redacted, some
4 of them are written on every line, some of them
5 aren't. It's not four-and-a-half pages as Mr.
6 Moskowitz's characterization. I want the Board to
7 know that's not the case.

8 MR. MALAGIERE: Cross examination is
9 the field of characterization. Mr. Moskowitz, you
10 don't have to respond to that.

11 MR. MOSKOWITZ: I understand, Mr.
12 Basralian. The fact is, we're here for -- we, Mr.
13 Keller, all of us, are here for several years and the
14 thousands of pages of reports, documents, studies, et
15 cetera, et cetera, et cetera, and there's a thought
16 that I am insinuating that it is very surprising to
17 find only four-and-a-half pages of substance. I'm
18 not insinuating it, I'm suggesting it.

19 MR. MALAGIERE: Mr. Moskowitz, please
20 ask questions.

21 Thank you.

22 BY MR. MOSKOWITZ:

23 Q. Do you have any notes -- well, I'll ask
24 you again; you have no other notes with respect to
25 Prospect Heights parking needs, do you?

1 A. No.

2 Q. Nor on transportation back and forth to
3 work?

4 A. No.

5 Q. No notes of any contacts or any
6 discussions, ever, with any other LTACHs?

7 A. No.

8 Q. No notes of your meetings with Mr.
9 Pineles?

10 A. I've produced my notes from my meetings
11 with Mr. Pineles.

12 Q. No other notes?

13 A. No.

14 Q. No notes from phone calls with him?

15 A. These are all of my notes in my file.

16 Q. No notes of your interactions with town
17 or county officials?

18 A. These are my notes.

19 Q. Do you have any notes from your
20 interactions with town or county officials?

21 A. No.

22 MR. BASRALIAN: Excuse me, the question
23 has been asked and answered three or four or five
24 times. These are all of his notes, there's no more
25 discussion about it.

1 MR. MOSKOWITZ: Well, perhaps his
2 memory will revive itself at a time as it did a
3 little earlier today.

4 BY MR. MOSKOWITZ:

5 Q. No notes of your study about schools in
6 the area, correct?

7 CHAIRMAN GUERRA: Answer the question.

8 A. No, there's no notes.

9 Q. No notes on your research on visitor
10 traffic, correct?

11 A. No.

12 MR. BASRALIAN: Excuse me, I'd like to
13 pose the objection again. It's been asked and
14 answered many, many times. These are all the notes.
15 He could ask 10 more questions about it, it's still
16 all the notes. It ought to be put at an end. It's
17 been asked and answered.

18 MR. MALAGIERE: He's highlighting
19 what's not in the notes. That is an area of inquiry
20 that is appropriate for cross examination. It is the
21 assertion of negative.

22 He should be given leeway, Mr.
23 Chairman.

24 CHAIRMAN GUERRA: Mr. Moskowitz,
25 continue.

1 Sit down.

2 MR. MOSKOWITZ: Also --

3 MR. MALAGIERE: Mr. Moskowitz, you
4 don't need to respond.

5 MR. MOSKOWITZ: One spin, I would
6 remind the Board Attorney --

7 MR. MALAGIERE: I would ask you, Mr.
8 Moskowitz, to refrain from colloquy and ask
9 questions.

10 BY MR. MOSKOWITZ:

11 Q. No notes of any research of yours on
12 any visitor traffic?

13 A. No.

14 Q. No notes on service traffic through
15 labs, mail, trucks, FedEx, UPS?

16 A. No.

17 Q. No notes of yours on the so-called
18 employee parking and transportation survey, other
19 than the raw data that got sent over to you by
20 e-mail?

21 A. There was no need to make a note to say
22 these are the questions that I want asked so that I
23 can get the information that I'm looking for. As
24 I've said many times, I mean it's a matter of going
25 through and saying, okay, does this information make

1 sense. I don't need to write a note and say I
2 discussed this with my client and we discussed this
3 and, yes, I can understand how this was put together
4 and I agree with it.

5 Q. No, my --

6 A. It's a matter of checking it off and
7 saying, okay, I understand the basis for this and I
8 can move forward.

9 MR. MOSKOWITZ: My recollection is you
10 didn't even add up the numbers to see if they were
11 right.

12 Ms. Reporter, could you read my question
13 back?

14 (Whereupon, the requested question was
15 read back by the Reporter as follows: "No
16 notes of yours on the so-called employee
17 parking and transportation survey, other than
18 the raw data that got sent over to you by
19 e-mail.")

20 MR. MALAGIERE: He responded to that
21 question.

22 MR. MOSKOWITZ: No, didn't say yes or
23 no.

24 MR. MALAGIERE: He responded with a
25 statement. Save the trouble for redirect. But,

1 please.

2 BY MR. MOSKOWITZ:

3 Q. No notes, at all, on any of your
4 meetings with Mr. Tombalakian?

5 A. No.

6 Q. Nor on truck traffic?

7 A. I think I already answered the one on
8 truck traffic.

9 MR. MALAGIERE: I think you did.

10 Q. Did you ever review any of the
11 documents in this case, whether the initial ones or
12 extension requests, concerning Certificate of Need
13 applications along with the extension applications?

14 A. No, not relevant to my work.

15 MR. MALAGIERE: Yes or no.

16 THE WITNESS: No.

17 BY MR. MOSKOWITZ:

18 Q. Since the pendency of these matters,
19 have you discarded or thrown away any notes?

20 A. No.

21 Q. Did you destroy any notes?

22 A. No.

23 Q. Any outlines?

24 A. No.

25 Q. Just never made any outlines?

1 A. No, the traffic report, as I said
2 earlier, has a pretty standard format other than
3 adding in a lot of discussion on the employee
4 population.

5 Q. Well, we have gone over that, so I'm
6 not coming back to that.

7 A. Right.

8 Q. No notes as to your borrowing and
9 source checking up on the Tombalakian assumptions? I
10 know we discussed them at length, 21 to 23 virtually
11 identical objections. No notes at all on any source
12 checking you did with any of those assumptions, do
13 you?

14 A. Only what's in the notes, that you have
15 that are unredacted. There's questions in here that
16 I had about, you know, on page 3, about dropping off
17 at an adult daycare and the things in July --

18 Q. I'm asking --

19 A. If I can finish, Mr. Moskowitz?

20 Q. You're not answering the question.
21 Notes directed to your adoption of the Tombalakian
22 assumptions.

23 A. I was trying to answer the question.
24 Maybe it's not in the form that you want, but it's in
25 the form that my mind thinks as a traffic engineer

1 when I look at those things and say, okay, how did he
2 -- why did he make that assumption.

3 Q. Okay.

4 A. And that's what's in my notes in July
5 of 2009.

6 Q. That's when you met with Mr.
7 Tombalakian?

8 A. I don't remember when I met with him.
9 As I said, I don't remember when I met. I read the
10 report, I had questions, it was all in that --

11 Q. He answered the questions?

12 A. Yes.

13 Q. And you made notes of his answers?

14 A. Some of 'em may be --

15 Q. Where are those notes?

16 A. The questions are here, the questions
17 are on page 3 and actually you said there was one
18 undated page, which is page 19, which is actually the
19 second page of my --

20 Q. Well, you asked Mr. Tombalakian, where
21 dialysis patients come from?

22 A. No, no, that's not --

23 Q. Did you ask him --

24 A. That's not what I said, Mr. Moskowitz.
25 What I said was some of these questions might have

1 been directed to Mr. Tombalakian.

2 Q. There's nothing on this page that can
3 tell you who you directed these questions to,
4 correct?

5 A. No. When I write questions I'm not
6 worrying about who I'm going to ask the question of,
7 I have a question -- let me finish, please. I have a
8 question and I need to get an answer from either Mr.
9 Tombalakian or Mr. Pineles.

10 Q. But you wrote these questions, again,
11 you know, on my anniversary?

12 A. Yes.

13 Q. That's the meeting night of July 23rd.
14 Were you still meeting with Mr. Tombalakian at that
15 time?

16 A. It's possible. I don't recall when I
17 met with him or had a conversation with him.

18 Q. And, lastly, you have no notes,
19 whatsoever, from any of your conversations with Mr.
20 Tombalakian, correct?

21 A. Yes.

22 MR. MOSKOWITZ: Thank you. I have no
23 further questions for this witness.

24 MR. MALAGIERE: Mr. Guerra has
25 indicated to me that he wants to take a break at this

1 time. We'll return --

2 CHAIRMAN GUERRA: A few minutes.

3 (Whereupon, a recess was taken.)

4 MR. MOSKOWITZ: Thank you, Mr.

5 Malagiere.

6 Although there's been a great deal of
7 conversation and discussion with respect to the
8 Tombalakian/Boswell Engineering study, I am not
9 certain that anybody has entered it into evidence as
10 part of my examination did and previously of Mr.
11 Keller. I just wanted to make sure the record was
12 complete. And there's an unmarked copy of it to be
13 placed in the record.

14 MR. MALAGIERE: Mr. Basralian, you want
15 to look at this and see if you have any issues with
16 that. I don't recall if it's in, frankly.

17 MR. BASRALIAN: I don't have any way,
18 since I don't have the report with me, of knowing
19 that's the report that was submitted by Boswell
20 Engineering or by Mr. Tombalakian back in early 2009.
21 I believe there's a copy on file, as part of the
22 file, and that's the one that should prevail.

23 MR. MALAGIERE: Mr. Moskowitz, where
24 did you get the copy?

25 MR. MOSKOWITZ: I think I got it from

1 you.

2 MR. MALAGIERE: I don't remember ever
3 having that.

4 MR. MOSKOWITZ: At the very beginning
5 of these proceedings.

6 MR. MALAGIERE: I'll say this, we'll
7 mark it, for identification, as M-6. And, Mr.
8 Basralian, I will provide you with a copy of this and
9 you can reserve your objection to it and if you would
10 like to object to it as being something other than
11 what it is, you can do that and we'll go from there.
12 Next time we meet, we'll deal with this issue.

13 MR. MOSKOWITZ: Thank you.

14 (Whereupon, Traffic Impact Study for
15 the Proposed Bergen Passaic Long Term Acute
16 Care Hospital, prepared by Boswell
17 Engineering, dated December 23, 2008, is
18 received and marked as Exhibit M-6 for
19 Identification.)

20 MR. MALAGIERE: For the record, marked
21 as M-6, for identification, is the Traffic Impact
22 Study for the proposed Bergen Passaic Long Term Acute
23 Care Hospital, prepared by Boswell Engineering, dated
24 December 23, 2008, by Mr. Tombalakian and
25 professionally known as Tombalakian.

1 MR. BASRALIAN: If Mr. Borrelli could
2 check the records on this application and verify that
3 it's part of the records, then that is part of the
4 record and need not go further than that.

5 MR. BORRELLI: Not a problem. I'll
6 check first thing in the morning.

7 MR. MALAGIERE: Mr. Borrelli, I'm going
8 to ask that if you do have it, get it to me, compare
9 it to this and, Mr. Basralian, we'll square this away
10 one way or another.

11 MR. BORRELLI: It's in the file, it's
12 part of the record. There's no reason to have M-6
13 submitted, it's part of the record.

14 MR. BASRALIAN: Everything is, that we
15 submit.

16 MR. MALAGIERE: Right. If you can mark
17 the transcript for this, please, so that I have a
18 note to deal with this.

19 Thank you.

20 Mr. Diktas?

21 MR. DIKTAS: Thank you.

22 Mr. Chairman, before I start, first,
23 good evening, everyone. Chris Diktas, on behalf of
24 Anastasia Burluk.

25 I have Mr. Lacz here; can I release him

1 at this point?

2 MR. MALAGIERE: Mr. Basralian, do you
3 have any objection to that?

4 MR. BASRALIAN: No.

5 MR. MALAGIERE: Mr. Moskowitz, do you
6 have any objection to that?

7 MR. MOSKOWITZ: No.

8 MR. MALAGIERE: Mr. Chairman?

9 CHAIRMAN GUERRA: It's not a problem.

10 MR. DIKTAS: Thank you.

11 CROSS EXAMINATION

12 BY MR. DIKTAS:

13 Q. Mr. Keller, Mr. Moskowitz just moved
14 M-6 for identification into the record.

15 Can you identify this document?

16 A. It appears on the surface to be the
17 traffic study that he prepared, but I haven't looked
18 at this in a long time and couldn't tell you whether
19 it was complete or not.

20 Q. Is the page that you incorporated by
21 reference, is that in this document?

22 MR. BASRALIAN: Excuse me --

23 Q. If it is, what page?

24 MR. BASRALIAN: I thought we were
25 talking about his notes and not a report that was

1 never testified about by Mr. Tombalakian, but only
2 submitted back in the early part of this application.
3 I'd like to redirect the cross examination of Mr.
4 Keller to his notes, which is the real purpose we're
5 here.

6 MR. MALAGIERE: Mr. Diktas?

7 MR. DIKTAS: Just for the record, for
8 the last two hours I heard about the Tombalakian
9 report and the page that it incorporated by
10 reference, that there were questions of whether the
11 note existed, and Mr. Moskowitz asked him a hundred
12 different ways whether any of the notes that Mr.
13 Keller admitted that he used the Tombalakian page.
14 So if he opened his door with his answer to the
15 Tombalakian page, and this is the Tombalakian report,
16 all I asked him is, is the document that he adopted
17 by reference, without corroboration, in that report.
18 It's yes or no.

19 MR. MALAGIERE: Mr. Diktas, I don't
20 know about that last characterization, but the record
21 is what it is.

22 Mr. Chairman, it would seem logical to
23 allow him to identify the page, in light of the
24 questioning, and we'll keep an eye on the questioning
25 not going astray, respectfully.

1 MR. DIKTAS: It's a yes or no.

2 MR. MALAGIERE: Okay. Is it in there?
3 Can you identify it?

4 THE WITNESS: Page, page by reference.
5 BY MR. DIKTAS:

6 Q. In your testimony, earlier this evening
7 and two years ago, you testified, under oath, that
8 you took the Tombalakian data and you incorporated it
9 by reference without corroboration; is that correct?

10 A. I don't believe that that's what I
11 said, no.

12 Q. Okay. Then, did you take the
13 Tombalakian data and reconfirm it, the information?

14 A. Well --

15 Q. Yes or no?

16 A. It's not a yes-or-no question, it's
17 open-ended. Let me put it this way; there's traffic
18 counts in here, I didn't go out and redo the traffic
19 counts. We took that data, that Mr. Tombalakian had
20 put together --

21 MR. BASRALIAN: This is going afield.
22 While he asked the question, it doesn't go to the
23 notes that we were here for, it goes to a report.

24 MR. MALAGIERE: There was one response
25 and I don't specifically recall as to what table or

1 calculation table it was, but there was one response
2 that you gave, Mr. Moskowitz, that was incorporated
3 by reference, a table or some data from Mr.
4 Tombalakian's report into your report. I believe
5 what Mr. Diktas is asking is, can you identify that
6 table for us, that page.

7 Mr. Diktas?

8 MR. DIKTAS: That's all I'm asking.

9 THE WITNESS: Again, I can't tell you
10 whether there's -- you know, the only one -- I can't
11 tell whether anything in this report is exactly the
12 same as in my report unless I, you know, start
13 comparing pages.

14 MR. MALAGIERE: I think you testified,
15 and I wish I'd remember specifically as to what, that
16 there was one chart or one compilation that you had
17 incorporated into your report from Mr.
18 Tombalakian's. If you can identify it, please do so.
19 If you can't, you can't.

20 Take your time. If you need to take a
21 moment.

22 (Pause.)

23 THE WITNESS: It was probably the truck
24 deliveries, I think that's what we talked about.

25 MR. MALAGIERE: Can you identify that

1 as to the page of that report?

2 THE WITNESS: These pages are not
3 numbered, it is in Appendix B under Trip Generation
4 Calculations.

5 MR. MALAGIERE: Can you show it to Mr.
6 Diktas?

7 (Witness complies.)

8 MR. DIKTAS: Can we just mark, then,
9 this page, as M-7, for the record, as the document
10 that Mr. Keller utilized in his compilation of data?

11 MR. MALAGIERE: How about 6A?

12 MR. DIKTAS: 6A is even better.

13 MR. MALAGIERE: For identification.

14 (Whereupon, Appendix B under Trip
15 Generation Calculations of Exhibit M-6 is
16 received and marked as Exhibit M-6A for
17 Identification.)

18 THE WITNESS: I don't know that I used
19 that page.

20 MR. BASRALIAN: I don't know that he
21 said absolutely that he used that page. He said, I
22 think it is with trucks, but I don't recall that he
23 said absolutely he used that page.

24 CHAIRMAN GUERRA: Only way to find this
25 out is to go back in the transcript and find out what

1 was said.

2 MR. MALAGIERE: Your testimony stands.
3 I think I appropriately identified what you thought
4 it was and didn't use absolutes.

5 THE WITNESS: Okay. Thank you.

6 MR. MALAGIERE: The characterization
7 doesn't change the testimony.

8 CHAIRMAN GUERRA: Let's move it
9 forward.

10 MR. DIKTAS: I just want something
11 marked for the record.

12 BY MR. DIKTAS:

13 Q. Mr. Keller, in your survey, you
14 indicated, did it include 100 percent of all
15 employees?

16 MR. BASRALIAN: Excuse me, is this
17 directed to a provision of his notes that he's asking
18 this question about a survey?

19 And if it is, then he should reference
20 where it is in the notes, that he's asking the
21 question about, rather than out of the blank, talk
22 about a survey.

23 MR. DIKTAS: Employee population on
24 page 4 of three spreadsheets --

25 MR. MALAGIERE: The notes talk about,

1 deal with, amongst other things, information about a
2 survey across the street. I think it's far afield to
3 allow cross on, Mr. Chairman.

4 CHAIRMAN GUERRA: I agree.

5 MR. DIKTAS: Thank you.

6 MR. BASRALIAN: My objection is noted
7 for the record, please.

8 MR. MALAGIERE: Of course.

9 BY MR. DIKTAS:

10 Q. Did your survey include a hundred
11 percent of all employees?

12 A. I don't know if it included all
13 employees. We went through this. Mr. Moskowitz
14 asked this question a number of times. The survey
15 response, I mean there were -- now wait a minute.

16 (Pause.)

17 MR. BASRALIAN: He said -- excuse me, I
18 have to have a continuing objection here. He said he
19 didn't think it referred to all of them. We're not
20 going back into the report with respect to what he
21 used, just relate it to what he said. I believe he
22 said it didn't relate to all employees. We're not
23 going to go back into a cross examination of the
24 entire traffic report that Mr. Keller prepared and
25 submitted.

1 MR. DIKTAS: With all due respect, I
2 asked a question.

3 MR. MALAGIERE: I don't think that's
4 what's going on. A little leeway, Mr. Basralian.

5 Your objection is noted. Please
6 continue.

7 THE WITNESS: Let me -- I don't know
8 how many employees there are in Prospect Heights, I
9 don't -- I might have known at one point, I don't
10 now.

11 We got 285 responses.

12 BY MR. DIKTAS:

13 Q. On page 4 of the Exhibit M-5 in your
14 notes, the first question, it says -- you want to get
15 to that page first? I'm sorry.

16 A. No problem. Okay.

17 Q. It says, "Employee population three
18 spreadsheets breaking down by shift and type
19 of employee."

20 A. That relates to the LTACH, not the
21 Prospect Heights.

22 Q. So, you did one analysis potentially
23 for the LTACH and another one for the Prospect
24 Heights, is that what your notes say?

25 A. No, the Prospect Heights survey was

1 solely to get information on how people got to work.

2 Q. Then you were projecting that to the
3 LTACH?

4 A. Yes.

5 Q. You didn't take a breakdown of type of
6 employees, correct, full-time, part-time, per diem?

7 A. No.

8 Q. Do you think that by not taking into
9 effect the type of employees, it affected your
10 analysis?

11 A. No.

12 Q. So your conclusions stand as they do?

13 A. Yes.

14 Q. Your notes indicated about the Prospect
15 Heights renting parking spaces?

16 A. Not in my notes.

17 Q. I'll be going back to the transcript.

18 Let Mr. Basralian make his --

19 MR. BASRALIAN: Objection.

20 MR. DIKTAS: Thank you. Can you let me
21 finish.

22 MR. BASRALIAN: I know you had a hard
23 time, but if it's not in the notes, then we're not
24 talking about it.

25 MR. DIKTAS: I'm trying to get through

1 this.

2 BY MR. DIKTAS:

3 Q. The Prospect Heights has rented 30
4 parking spaces from the synagogue?

5 MR. BASRALIAN: Objection. We're
6 talking about the notes, let's relate it to the
7 notes.

8 MR. DIKTAS: Let me ask the question.

9 MR. BASRALIAN: It's not even relevant
10 because it's not in the notes.

11 MR. DIKTAS: I didn't ask for anything
12 --

13 MR. MALAGIERE: Please, Mr. Basralian,
14 I'm going to advise the Chairman to allow liberal
15 cross examination with regard to the basis for Mr.
16 Keller's finding as relates to the notes, but it
17 doesn't have to specifically come from an inquiry in
18 the notes or a notation in the notes. And I'm going
19 to ask the Chairman to be liberal in that.

20 Your objection is noted, I imagine it's
21 continuing.

22 Thank you.

23 CHAIRMAN GUERRA: We'll be liberal to a
24 degree. We'll keep an eye on this.

25 Let's go.

1 BY MR. DIKTAS:

2 Q. Prospect Heights rents approximately 30
3 spaces from the synagogue, correct?

4 A. That's my understanding from the prior
5 discussions at these hearings.

6 Q. Did you confirm that?

7 A. No.

8 Q. Did you accept it as fact from Mr.
9 Pineles?

10 A. It was not discussed. I found out
11 about it at these meetings.

12 As I've testified to in past hearings,
13 it wasn't relevant to the survey. Survey asked an
14 employee how did you get to work. Not where did you
15 park, but how did you get to work.

16 So it didn't matter whether they parked
17 at the synagogue or they parked at Prospect Heights,
18 they either drove or they got dropped off or they
19 took mass transit.

20 And I spent a lot of time talking about
21 what the survey was for and why -- if they're renting
22 spaces, does that affect anything. My answer is
23 still no.

24 Q. So those 30 parking spaces could be
25 absorbed into the LTACH building without an issue, is

1 that your testimony?

2 A. No, I didn't say that.

3 Q. So, do you know the answer to that; yes
4 or no?

5 A. I don't.

6 Q. There was some discussion about the
7 smaller truck deliveries in the lower level. You
8 went with that design feature of where the trucks are
9 going to go?

10 A. I reviewed the garage plans, yes.

11 Q. Is that correct; is that a correct
12 assumption?

13 A. That there's --

14 Q. Smaller truck deliveries will be made
15 in the lower level?

16 A. Yes, that's what we have testified to.

17 Q. Is there any way to police the trucks
18 going to the lower level based on the traffic
19 computations and traffic design and your discussions
20 with Mr. Pineles not to have these small box trucks
21 on the street?

22 A. I -- I don't know. I mean other than
23 the city establishing no parking or no stopping and
24 standing in front of this building, that would be the
25 way to enforce it.

1 But I mean that's a City Council
2 decision.

3 Q. Okay. During your review, you've
4 indicated many times that the LTACH is a unique type
5 of business and there's been no comparable business
6 for you to do other studies and review other studies.
7 That was the last time you testified; is that
8 correct?

9 A. That's correct.

10 Q. Since your last time that you appeared
11 here and made that statement on the record, have you
12 undertaken any review to see if there are any other
13 LTACH buildings in the state, county nearby, New
14 York, Rockland County, et cetera, so that you can
15 review that data to the data you presented to this
16 Board?

17 MR. BASRALIAN: Excuse me, objection
18 again. While the Chairman said they are going to be
19 liberal in cross examination, this is far outside of
20 where we started out with his notes and we're going
21 back to rehashing his testimony going back some 10
22 months ago. I'd ask the Board to redirect it to the
23 notes.

24 CHAIRMAN GUERRA: I don't think it's
25 that far outside, so we're going to continue.

1 MR. BASRALIAN: My objection is noted.

2 MR. DIKTAS: I have three questions
3 more. I can get finished in 10 minutes.

4 MR. BASRALIAN: Make them the three
5 right ones.

6 MR. DIKTAS: That's subjective.

7 A. The answer is no.

8 BY MR. DIKTAS:

9 Q. You talked at length about the tractor
10 trailer pulling in from Prospect, the 10 foot wide
11 driveway and 120 foot length and the maneuvers a
12 truck would take.

13 Do you remember that?

14 A. Yes.

15 Q. Without the unloading of the vehicles,
16 how long would it take, in your professional opinion,
17 to back that truck out?

18 A. As I've testified to many times before,
19 it's a fairly short duration, couple of minutes to
20 pull up and back into the service drive.

21 Q. Couple minutes?

22 We'll start it at 20 seconds. Right
23 now.

24 (Pause.)

25 Mr. Keller, one minute has just passed.

1 You have to double-take time so when I have the
2 tractor trailers lining up, I have people whistling
3 "Jeopardy" in the background. That's quite a long
4 period of time, isn't it, to do that kind of maneuver
5 when you have trucks backed up and traffic on
6 Prospect? You think the design is adequate for that
7 type of maneuver, the time necessary based on your
8 testimony?

9 A. Based on the frequency of the trucks
10 and the width of the street and the setting, yes, I
11 do.

12 Q. Have you done any other buildings, any
13 other traffic reports, with a 10 foot wide aisle and
14 120 foot length driveway?

15 A. In an exact situation like this, I
16 can't -- I don't believe so. That doesn't mean that
17 there aren't other situations where this type of
18 arrangement exists.

19 Q. I don't care "other," do you know of
20 any?

21 A. That is like this?

22 Q. Yes.

23 A. The new county -- not so new anymore,
24 the county administration building has a loading dock
25 set back off of Kansas Street, is one that comes to

1 mind. And they're back-in docks. It's not a 10 foot
2 wide driveway, no, but you're still backing in off a
3 public street.

4 Q. How wide is the -- what's the width of
5 the driveway?

6 A. There's a couple of bays there.

7 Q. So then, that's at least 30 feet?

8 A. Probably.

9 Q. Maybe more, maybe 36, 12 foot width?

10 A. Yeah.

11 Q. So we have this truck back up 120 feet,
12 an 18-wheeler, in two minutes?

13 A. All's they have to do is get off the
14 street and then they're out of the way of traffic.

15 Q. Did you have any discussions, with Mr.
16 Pineles, about LTACH being a controlled garage for
17 the access?

18 A. What do you mean by "controlled
19 garage"?

20 Q. Gate.

21 A. Gate? No, not that I recall.

22 Q. So it's completely opened without
23 control?

24 A. The plans as they've been developed,
25 that's the way it shows, but I don't recall ever

1 having a conversation about, you know, access control
2 or anything like that.

3 Q. So then it can be opened to anyone to
4 park their vehicle?

5 A. I guess, theoretically, it could be.
6 You know, that may -- that's an operational issue.
7 Maybe that changes, I don't know. That was not part
8 of my discussion with Mr. Pineles.

9 Q. Do you think it should be a controlled
10 situation?

11 A. I don't know. I haven't studied it.

12 Q. In other hospital buildings, office
13 buildings, are the garages controlled or
14 uncontrolled?

15 A. It depends. I've been at too many
16 hospitals lately. Morristown is controlled.
17 Somerset Medical Center is not controlled. There are
18 some that are and some that aren't. It depends on --

19 Q. What about in Hackensack; have you been
20 to the courthouse?

21 A. No.

22 Q. Have you been to the county building?

23 A. Not to the new county building, no.

24 Q. Have you been to Courthouse Plaza?

25 A. Yes.

1 Q. Is that controlled or uncontrolled?

2 A. It's uncontrolled. There's an
3 attendant that's there, you wave to him and in you
4 go.

5 Q. Do you have to sign in?

6 A. No.

7 Q. They like you better.

8 A. They may know you're an attorney, so...

9 Q. What about the Hackensack Hospital?

10 A. Thankfully, I haven't been there.

11 Q. So you don't know that all of the large
12 office complexes in Hackensack are gate controlled?

13 A. I do not.

14 Q. Before I release you, at this point,
15 would you like to address any part of your testimony
16 that you've incorporated by reference from the
17 Tombalakian report, and make any amendments, or do
18 you stand by the uncorroborated data that you
19 accepted?

20 That's my last question?

21 A. I stand by the findings of the report
22 -- of my report. I stand by the testimony that I've
23 given since December of 2009. I feel that the
24 traffic analyses and the findings that we have had,
25 been reviewed by Mr. Miskovich, I stand that they're

1 appropriate and they accurately indicate the impacts
2 or the effects of this project on the city streets.

3 Q. That's subjective, right?

4 A. Traffic engineering is not an exact
5 science, but I've testified to it, Mr. Miskovich has
6 reviewed it in detail and done his own study. And
7 I've certainly spent a lot of nights expounding upon
8 that through cross examination.

9 MR. DIKTAS: I have no further
10 questions.

11 Thank you.

12 MR. MALAGIERE: Mr. Chairman, do you
13 want your professionals to ask any questions of this
14 individual with regards to the notes?

15 CHAIRMAN GUERRA: Yes. Let's start
16 with the Board, too. I don't know if there's any
17 questions.

18 MR. RODRIGUEZ: Are you going to have
19 redirect, Mr. Basralian, or are you waiting until --

20 MR. MALAGIERE: Why don't you wait
21 until the end.

22 MR. BASRALIAN: I am.

23 MR. RODRIGUEZ: I've just got a couple
24 questions.

25 On page 3 of your notes, one of the

1 questions you had, little further than halfway down:

2 "DOH requirements for staffing?"

3 Do you see that?

4 THE WITNESS: Yes.

5 MR. RODRIGUEZ: First of all, that
6 question was for who, Mr. Pineles?

7 THE WITNESS: That question was
8 definitely for Mr. Pineles.

9 MR. RODRIGUEZ: Then I see, I think
10 what I see, there is an answer on page 5, way down
11 towards the bottom:

12 "Staff needs far exceed DOH
13 requirements."

14 THE WITNESS: Yes.

15 MR. RODRIGUEZ: So, was that specific
16 to the LTACH or to everything or what did that refer
17 to?

18 THE WITNESS: What this referred to is,
19 one, are there DOH requirements for the various
20 components? And if there are, you know, where are we
21 with those?

22 And I know that there's DOH
23 requirements for the dialysis center, but that
24 focuses on the patient treatment. I don't recall if
25 there's DOH requirements for the LTACH. I know

1 there's not for the adult daycare.

2 But those are focused on -- DOH,
3 Department of Health, focuses on patient care.

4 MR. RODRIGUEZ: Right.

5 THE WITNESS: So our numbers include
6 well beyond that.

7 MR. RODRIGUEZ: So the -- but this is
8 -- do you look at the DOH requirements, yourself, or
9 just Mr. Pineles?

10 THE WITNESS: No, I did look at some of
11 them. There's a lot of information there. It's not
12 regulations that I read on any kind of basis.

13 MR. RODRIGUEZ: Sure.

14 THE WITNESS: I looked at some of it
15 and I just -- instead of me trying to fumble through
16 all the pages, I said, "Let me ask Mr. Pineles."

17 MR. RODRIGUEZ: This:

18 "Staff needs far exceeds DOH
19 requirements."

20 That's not your opinion, that's what
21 Mr. Pineles told you?

22 THE WITNESS: In part, you know, 'cause
23 we went through what the DOH requirements were and it
24 says, you know, it's only limited to patient care.

25 So the staff that we put in there, you

1 know, when we broke it down by administration,
2 support staff and so on, you know, is well beyond
3 what just using DOH numbers are. 'Cause DOH numbers,
4 in looking at it in detail, don't give a complete
5 picture 'cause they don't cover everything.

6 MR. RODRIGUEZ: Right, they don't cover
7 everything.

8 But do you have an understanding, for
9 patient care, what it is they require?

10 THE WITNESS: To some degree, yes, but
11 it's as a layperson, either visiting somebody in the
12 hospital or being in the hospital.

13 I don't know the full range of it and
14 that's why the DOH requirements say, you know, for
15 dialysis you need to have, you know, X number of
16 medical people for each dialysis patient.

17 MR. RODRIGUEZ: Right.

18 THE WITNESS: I know Mr. Miskovich also
19 had raised some of that and confirmed, you know, what
20 information was -- what is in the DOH regulations,
21 when he corrected, when we originally did the study,
22 that the dialysis didn't have enough employees for
23 the number of seats. But when it was reduced to the
24 63 stations, we didn't change the employee numbers
25 because that addressed --

1 MR. RODRIGUEZ: Mr. Miskovich.

2 THE WITNESS: Correct.

3 MR. RODRIGUEZ: On the LTACH end, did
4 you have an understanding of what the staff
5 requirement is?

6 THE WITNESS: We did discuss it. I
7 don't remember --

8 MR. RODRIGUEZ: Okay.

9 THE WITNESS: -- the numbers because
10 it's a small component. Well, it's a relatively --

11 MR. RODRIGUEZ: It's not so relative.

12 THE WITNESS: It's not that the medical
13 care is a small component, it's what -- if there's a
14 D -- and I don't recall if there is a DOH requirement
15 for LTACH.

16 MR. RODRIGUEZ: You know, let me just
17 -- on page 4, you know, you write down:

18 "Prospect Heights has 210 beds."

19 Was there any discussion -- you see
20 that on the margin?

21 THE WITNESS: Yes, yes.

22 MR. RODRIGUEZ: Was there some sort of
23 discussion about the staffing requirements for the
24 LTACH being somehow related to the staffing
25 requirements for Prospect Heights?

1 THE WITNESS: No, no.

2 MR. RODRIGUEZ: Not at all?

3 THE WITNESS: This was, I think we were
4 relating it to the amount of parking that was
5 provided.

6 MR. RODRIGUEZ: So --

7 THE WITNESS: The staffing requirements
8 for Prospect Heights are completely different than
9 what are needed for an LTACH.

10 MR. RODRIGUEZ: Okay. Good. I'm glad
11 -- right, I'm glad you said that.

12 THE WITNESS: Yeah.

13 MR. RODRIGUEZ: Did you consult any
14 medical professional about those staffing
15 requirements?

16 THE WITNESS: I did not personally, no.

17 MR. RODRIGUEZ: Thank you.

18 That's all I have.

19 THE WITNESS: Okay.

20 CHAIRMAN GUERRA: Anybody else on the
21 Board?

22 (NO RESPONSE.)

23 MR. MALAGIERE: Mr. Miskovich, did you
24 have any questions of Mr. Keller with respect to
25 these notes?

1 MR. MISKOVICH: Mr. Rodriguez had
2 covered some of the questions already. I wanted to
3 go back to the truck activity.

4 THE WITNESS: Sure.

5 MR. MISKOVICH: I'm looking at notes,
6 Mr. Keller --

7 THE WITNESS: Which page, Mr.
8 Miskovich?

9 MR. MISKOVICH: Page 3. I didn't have
10 the numbered pages.

11 MR. MALAGIERE: Here, you go.

12 MR. MISKOVICH: Basically you're
13 looking at the truck log over at Prospect Heights?

14 THE WITNESS: Okay, that is page 3.

15 MR. MISKOVICH: You said you were
16 looking for the size of the trucks and that was not
17 available. But it was indicated, and I thought I
18 wrote down that he did have a log, they signed in
19 when they came in. And did they record FedEx,
20 laundry, UPS, whatever services, that would give you
21 an idea, as far as the type of truck deliveries there
22 were, and the number so that that could relate back
23 to the -- I guess the prior report, the Tombalakian.

24 THE WITNESS: That's not my
25 recollection.

1 It would still be an assumption that
2 even if they said it was, you know, laundry or this
3 kind of truck, as to what exactly type of truck it
4 would be.

5 But I know, in discussing and going
6 through it at the time, is that the information
7 really wasn't in a form and content that it was going
8 to be really helpful.

9 MR. MISKOVICH: Helpful in terms of as
10 far as being able to say, okay, we have X number of
11 types of deliveries by small truck, UPS, or large
12 truck?

13 THE WITNESS: That's correct, correct.

14 MR. MISKOVICH: And I guess then the
15 question is, relating to what the truck activity was
16 based on, after that, if that was not available, what
17 was it based on?

18 THE WITNESS: Looking at operations of
19 the facility, you know, what are the things you're
20 going to have to bring into this facility, food,
21 supplies, paper products, you know, oxygen,
22 obviously, refuse on the way out.

23 MR. MISKOVICH: And discussions with
24 Mister, I guess, Pineles --

25 THE WITNESS: Correct.

1 MR. MISKOVICH: -- as far as what he
2 anticipated operation, what would be needed?

3 THE WITNESS: That's correct.

4 MR. MALAGIERE: Mr. Keller, what was
5 the use -- how did you use the survey, I'll call it,
6 that Mr. Pineles obtained from Prospect Heights? How
7 did you use that? What was the function of that data
8 for you?

9 THE WITNESS: That was to take the
10 person trips. We had all the employees, we had
11 visitor -- well, actually it just related to
12 employees. I mean we had X number of employees that
13 came in on the shifts based on which program they
14 were in, what time their shift started.

15 Now, every person doesn't necessarily
16 mean a vehicle trip. And that's what the survey was
17 used for. The survey said that 86 percent of the
18 employees -- I'm sorry, 84 percent of the employees
19 at Prospect Heights drove themselves, 11 percent were
20 dropped off and 5 percent were walked or took the
21 bicycle or took public transportation.

22 So we used that to take those people
23 trips and convert them into vehicle trips, and then
24 also into parking demand.

25 So we used it for two things: The

1 people trip for traffic, somebody that gets dropped
2 off, that's still a car, so we only reduce the
3 traffic volumes by 5 percent for people who take, you
4 know, non-automobile modes of transportation.

5 The parking demand, we reduced by, you
6 know, the drop-off vehicles because -- drop-off
7 vehicles are not staying.

8 MR. MALAGIERE: That presupposes that
9 that population, the cross-section of that
10 population, how they came and went to work, and that
11 was going to be representative of the employee
12 population of the LTACH; isn't that correct?

13 THE WITNESS: That's correct.

14 MR. MALAGIERE: Is that a good
15 assumption, in your estimation?

16 THE WITNESS: I believe so. I mean
17 they're both health care functions, they're both
18 health care operations. They're different types, but
19 a lot of the types of employees that you're going to
20 have are common between the two.

21 MR. MALAGIERE: Did you -- and that's
22 just your general expertise in the area that allows
23 you to make that kind of an assumption or is there
24 something that dictates that you take that kind of an
25 assumption?

1 THE WITNESS: No. I mean, it's a
2 similar type land use and we also did verify or some
3 are supported by looking at the journey-to-work data
4 that the census had published for this area of
5 Hackensack, which showed a lot of carpooling, which
6 as I had said at past meetings, I should have asked
7 -- had that as a question, did you share a ride with
8 another employee in coming to work?

9 And that was in the same range --

10 MR. MALAGIERE: That would have made
11 the data better?

12 THE WITNESS: Yeah, it would have
13 reduced the number of vehicle trips.

14 So, in that context, with that check
15 and balance, I'm comfortable that our projections are
16 correct.

17 Mr. Miskovich, in his testimony and
18 under cross examination, I think, basically -- I
19 think everything is in that range.

20 MR. MALAGIERE: When you did that and
21 took that data to come up with your projections,
22 extrapolation, as to what the parking that was going
23 to be required, at least for employees at the LTACH,
24 did you take into account the parking or did you
25 compare it, did you analogize it to the parking

1 requirement for the amount of folks at the Prospect
2 Heights and then kind of geometrically expand that or
3 did you just do a brand-new calculation saying these
4 are the --

5 THE WITNESS: Yeah, we did a brand-new
6 -- all's I took from Prospect Heights was how did you
7 get to work. We then took the information, and
8 there's the spreadsheets in the back, in the
9 appendices of my traffic report, that lists every, I
10 think half-hour, you know, the employees that are
11 coming in, and, you know, how many of those employees
12 end up parking and so on. We did our own
13 calculations for this facility for both traffic
14 generation and for parking.

15 MR. MALAGIERE: Thank you, Mr.
16 Chairman.

17 CHAIRMAN GUERRA: How do you want to do
18 for the public?

19 MR. MALAGIERE: Mr. Basralian has the
20 right of redirect.

21 MR. BASRALIAN: I have no redirect at
22 this point.

23 MR. MALAGIERE: Okay. Mr. Chairman, I
24 think it has been your practice, in the last couple
25 of meetings, to only allow a limited amount of public

1 questioning, no comments.

2 You indicated, if memory serves, that
3 you're going to reserve period of time for public
4 comments at the end of all testimony.

5 CHAIRMAN GUERRA: At the end, right.

6 MR. MALAGIERE: So we can kind of pick
7 up the pace a little bit. My recollection was that
8 you had kind of a loose, three-minute limit and you
9 were going to ask the public to ask questions and not
10 make statements.

11 CHAIRMAN GUERRA: And only relating to
12 this testimony, nothing --

13 MR. MALAGIERE: If there's a motion to
14 open to the public for that specific purpose.

15 CHAIRMAN GUERRA: Let's open to the
16 public.

17 MR. MALAGIERE: Is there a second?

18 MR. CARROLL: Second.

19 MR. MALAGIERE: All in favor?

20 (Whereupon, all present members respond
21 in the affirmative.)

22 MR. MALAGIERE: Anyone from the public
23 wish to come forward and ask questions only of this
24 individual?

25 CHAIRMAN GUERRA: Rough three minutes.

1 MR. MALAGIERE: Since you're only going
2 to ask questions, I'm not going to swear you in. I
3 have to ask you to please give your information.
4 Name and address, please.

5 Thank you very much.

6 MS. PALINKAS: Alexis Palinkas,
7 P-A-L-I-N-K-A-S, 235 Prospect, Hackensack.

8 MR. MALAGIERE: Thank you.

9 MS. PALINKAS: I think these are proper
10 questions, you'll tell me if it's not.

11 MR. MALAGIERE: Okay.

12 MS. PALINKAS: How far away from this
13 proposed facility is the Hackensack Medical Center;
14 about 3,000 feet?

15 THE WITNESS: I couldn't tell you.

16 MS. PALINKAS: About 3,000 feet.

17 THE WITNESS: A couple of blocks.

18 MS. PALINKAS: Yeah, just a couple of
19 blocks. And that offers similar programs to what
20 this would -- I mean it's a medical center.

21 THE WITNESS: Hackensack is a medical
22 center, they offer a lot of services, but --

23 MS. PALINKAS: Okay, it is a hospital
24 as is this is a hospital. Let's keep that in mind,
25 that this is a hospital.

1 Is this a hospital? Let me ask you
2 that; is this a hospital?

3 CHAIRMAN GUERRA: We're going to keep
4 the questions as pertains to this --

5 MR. MALAGIERE: What we're really
6 focused on, just so you know, with the notes, was
7 really the preliminary foundational data that Mr.
8 Keller was using to ultimately come through this
9 calculation and come to his conclusions. That's
10 really the inquiry.

11 Where did you come up with the number
12 of spots, what did you -- how did you start --

13 MS. PALINKAS: Okay, maybe this one is
14 better.

15 MR. MALAGIERE: Questions are all good,
16 it's a matter of the limitation we're putting on it.

17 MS. PALINKAS: Okay. How could the
18 staff -- is the staffing -- you were talking about
19 the staffing being similar, Prospect Heights versus
20 the LTACH?

21 THE WITNESS: No, that's not what I
22 said.

23 MS. PALINKAS: That's not what you
24 said?

25 THE WITNESS: No.

1 MS. PALINKAS: What did you say?

2 MR. MALAGIERE: What did you say?

3 THE WITNESS: I said Prospect Heights,
4 we looked at for survey -- I said, in general, the
5 type of people that work at Prospect Heights are
6 similar in some ways to what's at this proposed
7 facility in that they're healthcare professionals and
8 there's support staff.

9 I'm not saying anything more than that,
10 other than that they're in the healthcare profession.

11 MS. PALINKAS: Well, that's really --
12 what is Prospect Heights?

13 THE WITNESS: It's a nursing home and
14 rehabilitation center.

15 MS. PALINKAS: Okay. And --

16 THE WITNESS: And this was from the
17 perspective of calculating or estimating what I call
18 "modal split," whether people drive by themselves or
19 take mass transit.

20 MR. MALAGIERE: Can I ask a question.
21 Why is that useful?

22 You testified that it's not the same
23 function. Although it's a healthcare function, it's
24 not on all fours, as we say in my profession.
25 You get the idea, it's not the same exact thing.

1 Why is the split, the modal split? Why
2 is the breakdown of who takes cars and who carpools
3 and who comes by bike and who comes by -- why is that
4 useful to use in applying to Bergen LTACH?

5 THE WITNESS: It's useful in the fact
6 that we don't have -- I can't open my Trip Generation
7 book and say, office building, I got square footage,
8 I can calculate what the trip generation will be.

9 In this particular facility, we didn't
10 have that. So all that I can do is go through the
11 process, is coming up with how many people work
12 there. And not everybody who works there is going to
13 drive by themselves. You know, in the healthcare
14 profession, some of the jobs are not high paying and
15 they'll take public transit. They'll carpool.

16 And I said, here's the facility, right
17 essentially across the street, let's use that to get
18 a sense. We still had 84 percent of the people, I
19 think, driving by themselves. They drove to work.

20 MR. MALAGIERE: That's what you figured
21 in your ultimate calculation.

22 THE WITNESS: That's what I used. That
23 was the sole reason of doing that, was to look at how
24 much traffic, how many cars are coming through the
25 site, and then how many of those cars would only park

1 in the garage.

2 MR. MALAGIERE: You think that's a
3 fair, reasonable, and appropriate extrapolation?

4 THE WITNESS: Yes, absolutely.

5 MS. PALINKAS: Even though they're very
6 different facilities, very different facilities?

7 THE WITNESS: From operational, yes,
8 they're different but they're --

9 MR. PALINKAS: Would you say that
10 again, please, operational?

11 THE WITNESS: Operationally, they're
12 different because -- in some ways they're different.
13 There are -- I'm not going to --

14 MR. MALAGIERE: You've answered the
15 question.

16 CHAIRMAN GUERRA: Let him finish
17 answering the question.

18 Go ahead.

19 MR. MALAGIERE: If you want to expand.

20 THE WITNESS: Both are dealing with
21 patient care.

22 Yes, there are -- obviously in a LTACH,
23 a much higher level of professionals in there, to
24 some degree, but you also need orderlies and aides.

25 MS. PALINKAS: And doctors.

1 THE WITNESS: They both have doctors.
2 More on a different level in the LTACH, but the LTACH
3 is only a component of this. You also have dialysis.
4 And you have the adult daycare.

5 I think when I looked at the
6 cross-section of all the programs in this proposed
7 building, in the context of this, I think it was an
8 appropriate survey to take to get an estimate on how
9 people come to -- how they would come to work at this
10 facility.

11 MS. PALINKAS: I think I made my point.

12 MR. MALAGIERE: Thank you for your
13 questions.

14 We're going to ask you to identify
15 yourself.

16 MS. SIMCHOWITZ: Joanie Simchowitz; and
17 I live at 245 Prospect.

18 MR. MALAGIERE: Thank you.

19 MS. SIMCHOWITZ: I have a question
20 regarding how you figured out the parking spaces.
21 You said you used the amount of spaces at Prospect
22 Heights --

23 THE WITNESS: No.

24 MS. SIMCHOWITZ: Okay, go ahead, to --

25 THE WITNESS: I jumped in. Finish your

1 question.

2 MS. SIMCHOWITZ: Well, my question was,
3 you were comparing spaces to figure out how many
4 spaces you needed at the LTACH, correct?

5 THE WITNESS: No.

6 MS. SIMCHOWITZ: Okay, I twisted it
7 around?

8 THE WITNESS: As I said, we took -- I
9 didn't care how many people worked there, how many
10 parking spaces they had, all I cared was how did you
11 get to work today.

12 MS. SIMCHOWITZ: Correct.

13 THE WITNESS: That's it.

14 MS. SIMCHOWITZ: Correct.

15 THE WITNESS: We then looked at, for
16 this proposed building, okay, how many people do we
17 have working there --

18 MS. SIMCHOWITZ: Right.

19 THE WITNESS: -- and reduced that
20 because not everybody will park in the garage.

21 MS. SIMCHOWITZ: Correct.

22 THE WITNESS: But we added in the
23 visitors and to a degree we added in the transport
24 vans, the private vehicles that would bring adult
25 daycare patients and also dialysis patients, and said

1 okay, they are going to park in the garage for X
2 amount of time, and we looked at, on a half-hour
3 basis throughout the day, when did people come in,
4 when are they leaving, and we have summed that so we
5 know, okay, here's how many parking spaces I need to
6 have to accommodate -- the critical time is the shift
7 overlap. It had nothing to do with how many people
8 are working at Prospect Heights, how many parking
9 spaces they have, we just used it to say here's how
10 many people -- how they get to work and then applied
11 it to the data we had for this facility.

12 MS. SIMCHOWITZ: I used to work at
13 Prospect Heights, I'm a registered nurse.

14 THE WITNESS: Okay.

15 MS. SIMCHOWITZ: And as such, Prospect
16 Heights used to have a tremendous problem with
17 parking.

18 The reason I'm bringing it up, and
19 perhaps I phrased that incorrectly when I started
20 out, is at some point you said something about
21 comparing one point to the -- one institution to the
22 other, to the other --

23 THE WITNESS: Okay.

24 MS. SIMCHOWITZ: -- regarding LTACH to
25 the rehab as far as --

1 THE WITNESS: I think, if I can, I
2 think what Mr. --

3 MS. SIMCHOWITZ: The phraseology --

4 MR. MALAGIERE: I think, if there's a
5 hundred folks that work -- when the survey was taken
6 at Prospect Heights, 84 of them drove --

7 MS. SIMCHOWITZ: Right.

8 THE WITNESS: Correct.

9 MR. MALAGIERE: I think, correct me,
10 Mr. Keller, I think Mr. Keller said that's useful and
11 I'm going to take that ratio and I'm going to apply
12 it to my population of employees which I guess --
13 where did you get that from.

14 THE WITNESS: That was in the
15 discussions with Mr. Pineles. I went through all
16 that.

17 MR. MALAGIERE: I'm going to say, of
18 the thousand people, of course an arbitrary number,
19 that work at the Bergen Passaic Long Term Acute Care
20 facility proposed, 84 percent of them are going to
21 drive and I'm going to provide parking for that. Is
22 that an accurate way --

23 THE WITNESS: Yes.

24 MR. MALAGIERE: Roundabout.

25 THE WITNESS: Correct.

1 MS. SIMCHOWITZ: You also mentioned
2 just that, maybe I heard one thing, but you were
3 referring to the LTACH needing parking, yet the
4 dialysis staff also needs parking and the long-term
5 care staff also needs parking. Forget about all the
6 visitors.

7 THE WITNESS: When we say LTACH, that's
8 the project as a whole. It includes --

9 MS. SIMCHOWITZ: You're talking about
10 the entire facility?

11 THE WITNESS: Dialysis -- yes.

12 MS. SIMCHOWITZ: Sorry, I was bringing
13 it directly in.

14 MR. MALAGIERE: That's what questions
15 are for.

16 THE WITNESS: It's the whole thing,
17 it's the whole facility.

18 MS. SIMCHOWITZ: So there's a lot of
19 parking in the building.

20 THE WITNESS: Yes. There's more than
21 enough, based on our analysis. So if our analyses is
22 off by a couple percent, Mr. Miskovich checked these
23 numbers, we still have more than enough parking.

24 MS. SIMCHOWITZ: Okay.

25 MR. MALAGIERE: There's a parking --

1 just for the record, there's a parking shortage.

2 There's a parking shortage here, right?

3 THE WITNESS: Well, according to the
4 City Ordinance, how Mr. Polyniak has calculated.
5 There's no specific criteria that best fit.

6 MR. MALAGIERE: Is it your position
7 you're creating your own standard?

8 THE WITNESS: Yes.

9 MR. MALAGIERE: Is there someone next?
10 I would ask you to just identify
11 yourself.

12 MS. WEINBERGER: Lillika Weinberger;
13 and I live at Whitehall, 280 Prospect Avenue.

14 MR. MALAGIERE: Thank you. Welcome.

15 MS. WEINBERGER: Next to the building
16 that had the minor collapse, so we know what the
17 traffic can be like when they're taking away debris
18 or they're taking away dirt. It was horrible.

19 But my question is, you mentioned the
20 driveways on either side of the building for
21 deliveries and you said smaller trucks? Right?

22 THE WITNESS: Small trucks go into the
23 garage.

24 MS. WEINBERGER: Small trucks. And the
25 driveways are about 10 feet?

1 THE WITNESS: No, only the service
2 drive or to the loading dock. The driveway to the
3 garage, that the trucks will use, is 22 or 24 feet
4 wide.

5 MS. WEINBERGER: Okay. Because where
6 I'm sitting in the first row, it seems to me that the
7 distance from this structure to there is about 10
8 feet. And I couldn't understand how you could have
9 efficient delivery and a lot of it in such a very
10 small space without very complicated maneuvers, okay?

11 Now, that's one point. You want to
12 answer that?

13 MR. MALAGIERE: I think that's a --
14 we're really trying -- I don't mean to be
15 discourteous, we're really trying to stay focused on
16 the issue of --

17 MS. WEINBERGER: Traffic.

18 MR. MALAGIERE: Traffic and parking, of
19 course, are critical issues, of course, this man's
20 expertise.

21 We're really trying to stay focused on
22 where he gets his data from and how that's useful and
23 supports his conclusion. That's really what we're
24 trying to stay focused on.

25 MS. WEINBERGER: Okay, in that case --

1 MR. MALAGIERE: In light of the fact
2 that she asked you the question, why don't you please
3 answer it?

4 THE WITNESS: A tractor trailer is 8
5 feet wide.

6 MS. WEINBERGER: A tractor trailer is 8
7 feet wide?

8 THE WITNESS: At a maximum. And the
9 driveway does flare at the end. It may be possible.
10 And this is more to the architect and the site
11 design.

12 MS. WEINBERGER: But they really would
13 have to stop traffic for a tractor trailer to
14 maneuver to get into the driveway because there has
15 to be -- I mean it really will interrupt the flow of
16 traffic for something as big as a tractor trailer to
17 deliver supplies.

18 THE WITNESS: Absolutely, that's what
19 we discussed and that's why Mr. Diktas wanted to
20 stand and watch the clock tick. That was the time
21 that it takes for a truck to back in.

22 Yes, it will be some momentary
23 disruption to the flow of traffic on Prospect Avenue.

24 MS. WEINBERGER: A lot. Okay.

25 Thank you.

1 MR. MALAGIERE: Is there another
2 question?

3 MS. ENDARA: Thalia Endara, 307
4 Prospect. I have a quick question.

5 This is an inpatient facility, right,
6 of, you said, about 200 beds?

7 THE WITNESS: No, no, the LTACH is
8 inpatient.

9 MS. ENDARA: So it's basically an
10 outpatient facility?

11 THE WITNESS: Well, the dialysis and
12 the adult daycare are outpatients, they're not -- let
13 me just --

14 MS. ENDARA: What I'm trying to get at
15 here is if you have basically two visitors for each
16 person a day, did you have any studies based on the
17 traffic for that?

18 THE WITNESS: All that was included in
19 our study.

20 MR. MALAGIERE: How did you do it? How
21 did you deal with that? In non-mathematical terms,
22 just in qualitative terms, how did you do it?

23 THE WITNESS: We had -- the 120 beds in
24 the LTACH. Let me just go to the visitors, 'cause I
25 don't remember what we did.

1 MR. MOSKOWITZ: One visitor every other
2 day.

3 MR. MALAGIERE: Mr. Moskowitz, please.

4 MR. MOSKOWITZ: You want the
5 transcript?

6 CHAIRMAN GUERRA: No, no, please.

7 (Pause.)

8 THE WITNESS: In my traffic report, we
9 talked about visitor activity, which is solely
10 related to the LTACH operations. And we did it
11 uniformly throughout the day and we added up with 120
12 beds, we said that there were 82 visitors per day,
13 everyday.

14 MS. ENDARA: That's going to slow
15 traffic down.

16 THE WITNESS: The visitors are a car
17 that drive into the garage. It's a car on the
18 street, yes.

19 CHAIRMAN GUERRA: Sir.

20 MR. MALAGIERE: Please identify
21 yourself, for the record?

22 MR. SCHROEDER: William Schroeder, 245
23 Prospect Avenue, Hackensack.

24 I have a question, with regard -- I
25 guess with regard to traffic. This whole discussion

1 is almost academic because the traffic would be
2 Summit Avenue, 60 percent of the facility is on
3 Summit Avenue and 40 percent on Prospect. Both
4 two-lane thoroughfares, major, north and south,
5 within the City, okay? The location, totally
6 inappropriate, could not think of a location that is
7 more inappropriate.

8 Anyway, the area is already saturated,
9 all right, when it comes to traffic saturated with
10 facilities like the one you proposed.

11 MR. MALAGIERE: We're going to need to
12 make you focus on the specific reason he's back.
13 Question has to be related to where his data came
14 from that he ultimately -- that's because --

15 MR. SCHROEDER: I think there's a
16 bigger issue.

17 CHAIRMAN GUERRA: There's time for that
18 at the end.

19 MR. MALAGIERE: He testified to it over
20 three days in his cross examination of that. We're
21 just asking, for the purpose of practicality, to
22 limit just to that for now, because that's what he's
23 back for.

24 MR. SCHROEDER: Maybe we can do it some
25 other time.

1 MR. MALAGIERE: At the end. He's
2 testified to the --

3 CHAIRMAN GUERRA: At the end.

4 MR. MALAGIERE: -- as to the basis of
5 his report and he's been cross examined on it.

6 I don't want to be discourteous, I want
7 to limit it to this.

8 MR. SCHROEDER: At the end of what?

9 MR. MALAGIERE: At the end of the
10 hearings.

11 MR. SCHROEDER: This is at the end of
12 this hearing right now.

13 CHAIRMAN GUERRA: No, no.

14 MR. MALAGIERE: At the end of all of
15 the hearings.

16 Please, sir, you've been here --

17 MR. SCHROEDER: I was under the
18 impression, this was the final hearing.

19 MR. MALAGIERE: You understand we're
20 never going to get everyone to speak, it's going to
21 be 3:00 in the morning. You'll get your chance to
22 speak.

23 MR. SCHROEDER: Okay. Thank you.

24 MS. KUNDANMAL: Nita Kundanmal, 277
25 Prospect Avenue.

1 Good evening, Mr. Keller. Couple
2 questions, couple quick questions about your notes
3 itself.

4 On page 3 you have the note:

5 "DOH requirements for staffing."

6 THE WITNESS: Yes.

7 MS. KUNDANMAL: I know that Mr.
8 Rodriguez asked a question, but I couldn't hear in
9 the back, so I apologize if you have to repeat any of
10 the things that you said before, but what are those
11 requirements; do you know?

12 THE WITNESS: I don't recall off the
13 top of my head.

14 MS. KUNDANMAL: Now, DOH, is that the
15 Department of Health?

16 THE WITNESS: Yes. Department of
17 Health and Senior Services, officially.

18 MS. KUNDANMAL: So now, with reference
19 to the note on page 5, where it was brought up that
20 there is a statement, there's a note:

21 "Staff needs far exceed DOH
22 requirements."

23 What is the meaning of your statement,
24 your notation:

25 "Staff needs far exceed DOH

1 requirements"?

2 THE WITNESS: Essentially that the
3 staffing for this facility is not driven by DOH
4 requirements, it's driven by the needs of the various
5 programs within this building. That's all it was
6 implying.

7 What DOH requires is not -- it's a very
8 small component of the total employee population in
9 the facility.

10 MS. SIMCHOWITZ: And so, what would the
11 implication of that be?

12 THE WITNESS: It just was to deal with
13 the fact that, you know, DOH, we had to deal with
14 only a small component of the facility and that the
15 staffing for the facility was based on the
16 operational needs of the three programs.

17 MS. KUNDANMAL: Okay.

18 MR. MALAGIERE: Could I ask, do you
19 mean by that, that you were -- that staffing was not
20 a function of the DOH requirement, you weren't trying
21 to meet DOH, you were far exceeding it so you didn't
22 need to worry about it?

23 THE WITNESS: That's correct. That's
24 all. That's all.

25 MS. KUNDANMAL: You don't mean, by

1 that, that, in fact, you weren't far in excess of
2 what could be provided or had to be provided. That's
3 really why I'm asking these questions to understand,
4 you have the word "staff needs" in the margin. You
5 first have the statement, I assume, "Far exceeds DOH
6 requirements," and then seems like maybe it's an
7 afterthought that you put that in.

8 So, maybe you can explain that better?

9 THE WITNESS: No, it was just -- I
10 wrote, "Far exceeds DOH requirements," then thought
11 about it and said I'm not going to remember what that
12 means, so that's why I put "staff needs" in front of
13 it.

14 When you go through all the programs,
15 you have operational staff, facility staff,
16 administration, you know, cafeteria staff, and those
17 are all not controlled by DOH.

18 So -- because at the time that I did
19 the traffic study, I had some benefit of some of the
20 preliminary hearings that already -- not the
21 preliminary, the hearings had already started, so I
22 knew some of the questions that had been asked. And
23 I needed to incorporate or to address and make sure
24 we had covered that in the report. That's all that
25 we were implying with that.

1 MS. KUNDANMAL: For the purpose of
2 answering this question and comparing what the answer
3 to that was, how would we find out what the DOH
4 requirements were?

5 I don't know if this is very important,
6 but I'm trying to make some sense of it.

7 THE WITNESS: I mean they're published
8 regulations.

9 MS. KUNDANMAL: Okay. But you had
10 access to them back then?

11 THE WITNESS: I mean everybody has
12 access to the DOH requirements, they're on the Web.

13 MS. KUNDANMAL: But you had them at
14 some point?

15 THE WITNESS: Yeah. I mean -- yes.

16 MS. KUNDANMAL: Okay. What are your
17 staffing needs; what was that; is that the 84 percent
18 that you talked about?

19 THE WITNESS: No, no, that's vehicle
20 trips -- I mean that's percentage of drive trips.
21 The vehicle -- the employee breakdown are the various
22 tables in the report that I talked about months ago
23 and it all clearly spells out by program, by shift,
24 the aggregate number of employees.

25 MS. KUNDANMAL: Okay. Thank you.

1 THE WITNESS: You're welcome.

2 CHAIRMAN GUERRA: Thank you.

3 MS. BINDER: Teri Binder, 240 Prospect.

4 At an earlier meeting you testified
5 that you projected no impact at all of the LTACH on
6 the traffic on Berry Street; is that correct?

7 THE WITNESS: Correct.

8 MS. BINDER: Now, when people exit onto
9 Summit Avenue, from the LTACH that's being proposed,
10 they cannot take a left turn if they want to go
11 south, they have to take a right turn out onto Summit
12 Avenue, take a right on Berry Street and then a right
13 on Prospect; is that correct; if they're going in a
14 south direction?

15 THE WITNESS: If they left the garage
16 through Summit Avenue and they wanted to go south,
17 yes, that's what they'd have to do. However --

18 MS. BINDER: It was my understanding
19 that they --

20 THE WITNESS: Let me just finish.

21 MS. BINDER: Okay.

22 THE WITNESS: That was part of it. The
23 thing, the garage is all one integrated whole, if
24 they are going to go south on Prospect, they're just
25 going to go out the Prospect driveway and turn right

1 onto Prospect Avenue. There's no reason for them to
2 make the long route around onto Berry Street.

3 MS. BINDER: Oh, I think I might have
4 misinterpreted, I thought that people had to exit
5 onto Summit Avenue.

6 THE WITNESS: No. No, ma'am, they
7 don't. They can go out either driveway.

8 MS. BINDER: So, how -- yet, I think
9 you just said earlier, that it would be 60 percent
10 using Summit Avenue and 40 percent using Prospect.

11 THE WITNESS: Mr. Schroeder said that.

12 MS. BINDER: What did you base your
13 estimate that there would be no impact on the traffic
14 on Berry Street? The medical office building also
15 has a parking lot that I believe exits on Berry
16 Street.

17 THE WITNESS: I mean that medical
18 building has a parking lot because obviously they're
19 going to have an impact on Berry.

20 MS. BINDER: If they are, why?

21 THE WITNESS: I'm saying this facility
22 has a driveway on Summit Avenue and it has a driveway
23 on Prospect. If they're going to go south on
24 Prospect -- go south, and want to go west on Central,
25 they are going to go out Prospect, which is in my

1 report. They are going to go down Prospect and
2 either turn left to go east on Central, continue
3 straight on Prospect or make a right and go on
4 Central Avenue.

5 And that's where they are going to go.
6 There's no reason for them to drive on Berry Street.

7 MS. BINDER: Thank you.

8 CHAIRMAN GUERRA: Thank you.

9 MR. MALAGIERE: Thanks so much.

10 MS. BURNETT: Carol Burnett, 245
11 Prospect Avenue, Hackensack.

12 I have a question about delivery with
13 the trucks.

14 THE WITNESS: Okay.

15 MS. BURNETT: You'll have dialysis,
16 medical material being delivered, you'll have to have
17 medical waste material being removed. You'll have to
18 have laundry brought in, also removed. You'll have
19 to have food brought in, also removed. Waste from
20 the building, also removed.

21 How many times do you think these
22 various -- and also stationery and things like that
23 come in and removed. Also, UPS come in and removed.

24 How many times do you think this will
25 be done during the week?

1 THE WITNESS: We had, I forget where it
2 was -- hold it.

3 (Pause.)

4 MS. BURNETT: It's going to create a
5 tremendous amount of traffic, especially if the
6 trucks are large.

7 THE WITNESS: I'm not sure where it
8 was, in testimony or in my notes, we estimated 20
9 trucks per week, which would be, on average, three
10 per day.

11 MS. BURNETT: Three per day?

12 THE WITNESS: Correct.

13 MS. BURNETT: I think it will create a
14 tremendous amount of traffic on this street for
15 various in and outs, holding off traffic. I think
16 I'm very much against it with those results.

17 CHAIRMAN GUERRA: Thank you, ma'am.

18 Anybody else?

19 MR. BUSCIGLIO: Peter Busciglio, 260
20 Standish Avenue, Hackensack.

21 I'd like to know, since in your study,
22 you used Hackensack Heights (sic) medical facility
23 where the traffic over there is very small compared
24 to where you want to put your facility. Due to the
25 fact that Hackensack Hospital is a large facility and

1 we have more traffic there, how do you rate that
2 hospital compared to the area where you want to put
3 yours and the traffic? Because there are only two
4 lanes, one up and one down.

5 THE WITNESS: I can't talk to what kind
6 of traffic conditions there are in Hackensack Medical
7 Center, we haven't studied that. The traffic
8 conditions at this site are -- you know, are what
9 they are, what we counted and what we analyzed and
10 what Mr. Miskovich, in his study, basically, you
11 know, verified that the counts were in the same area.
12 So I don't know what the counts are at Hackensack
13 Medical Center.

14 MR. BUSCIGLIO: The reason why I'm
15 saying that is because Hasbrouck Heights, the
16 facility is very small compared to the one you're
17 trying to propose. This is what I'm saying with the
18 traffic.

19 MR. MALAGIERE: What does the Hasbrouck
20 Heights facility -- is it Prospect?

21 CHAIRMAN GUERRA: Prospect.

22 MR. BUSCIGLIO: No, it's on Polifly
23 Road when you go on the Hasbrouck Heights side. It's
24 very small, it's like 46, it's further down.

25 MR. MALAGIERE: Are you familiar with

1 that?

2 THE WITNESS: No, never looked at it.

3 MR. BUSCIGLIO: It was a hospital, like
4 an annex years ago. And there was a hospital there
5 and this is the hospital I think that he was
6 referring to.

7 MR. CARROLL: I think it's a branch of
8 Hackensack Hospital now, but it used to be an
9 independent hospital. South Bergen, was it?

10 MR. BORRELLI: Yeah, South Bergen.
11 It's on Hackensack Avenue --

12 MR. MALAGIERE: Did you analyze that,
13 sir?

14 THE WITNESS: No.

15 MR. BUSCIGLIO: It's a very small
16 facility.

17 THE WITNESS: I never looked at that.
18 It's not anything that is built into my report.

19 MR. BUSCIGLIO: That's the hospital I
20 was thinking that you was referring to.

21 THE WITNESS: I was referring to
22 Prospect Heights.

23 CHAIRMAN GUERRA: Right across the
24 street.

25 THE WITNESS: Which is across the

1 street.

2 MR. MALAGIERE: Across the street,
3 owned by the same people.

4 MR. BUSCIGLIO: Thank you very much.

5 MS. PRICE: Nancy Price, 130 Overlook
6 Avenue, Hackensack.

7 I just want to ask a question. When
8 was the study done that you were basing your report
9 on the traffic?

10 THE WITNESS: The traffic counts were
11 done in 2008. Our traffic study was prepared in
12 November of 2009.

13 MS. PRICE: Okay. Has anything been
14 updated since that time?

15 THE WITNESS: No.

16 MS. PRICE: Okay. The traffic in that
17 particular area now is very, very, very bad and very
18 crowded. And I would think that you took a study
19 back in 2008/2009, and that it should be looked at
20 more -- now, more carefully, because it's just a
21 nightmare. When you get to the corner of Passaic and
22 Prospect, and I use this everyday because I'm in
23 business and I'm all over the place, and it's just
24 absolutely cars getting into the building, which is
25 Hartz Mountain, I understand now, Prospect Heights,

1 trucks backing up and people are busy and they have
2 to go to work and they have other things that they're
3 doing.

4 So, there's been a great increase of
5 the population in Hackensack, a lot more doctors and,
6 you know, people in different fields have entered our
7 City. And I think it's much heavier, the traffic
8 now, than it was before.

9 And I'm wondering, why this hadn't been
10 updated?

11 THE WITNESS: Well, let me amend or add
12 to my testimony.

13 Our last counts were done in 2009. Mr.
14 Miskovich did counts in, I believe, January of 2010.
15 Maybe February of 2010. His counts were the same as
16 the ones from 2008. Traffic hasn't changed in this
17 particular area over that two-year period.

18 CHAIRMAN GUERRA: When did the cancer
19 center open; does anyone remember?

20 MS. PRICE: Which one?

21 CHAIRMAN GUERRA: The cancer center on
22 Atlantic Street.

23 MR. BASRALIAN: It's a little less than
24 a year ago, about a year ago.

25 CHAIRMAN GUERRA: So none of these

1 counts, either Frank's or Mr. Keller's, reflect any
2 of that change, right? If any?

3 MR. BASRALIAN: If you're asking me the
4 question, he did projected growth, that would answer
5 the question.

6 CHAIRMAN GUERRA: Do you think that
7 projected growth would encompass the increase based
8 on the size of, what is it, forty-something-thousand
9 square foot cancer center?

10 THE WITNESS: I do. I do, Mr.
11 Chairman. We projected our numbers out five years.
12 We grew the traffic by, I believe it was, 10 percent
13 from 2008.

14 CHAIRMAN GUERRA: Does that allow for a
15 facility the size of the cancer center in Hackensack?

16 THE WITNESS: Yeah. I mean 40,000
17 square feet is pretty big, but when you put it in the
18 context of these streets in Hackensack, it's not a
19 lot of, you know, traffic.

20 Remember, that traffic is dispersing
21 from that facility, you know, and if they don't go on
22 Prospect --

23 CHAIRMAN GUERRA: A lot of it goes on
24 Prospect, a lot are on Prospect.

25 Okay. I'm sorry, ma'am, I didn't mean

1 to interrupt you.

2 MS. PRICE: That's okay. No, that's
3 fine.

4 CHAIRMAN GUERRA: Thank you.

5 MR. HAMILTON: My name is Michael
6 Hamilton, 245 Prospect.

7 I've understood the testimony, you have
8 done things where you've extrapolated cars from total
9 people that were going to be at the facility and the
10 fact that this seems to be a more transient facility,
11 with dialysis people, who I assume are there on a
12 daily basis, as opposed to nursing home people that
13 are officially living at the nursing home.

14 But I guess the question I have, I
15 overlook Central and Summit, on the south corner, and
16 every night the traffic is backed up trying to get to
17 X. It's a nightmare.

18 I'm not a traffic expert, but from a
19 common sense standpoint, you just look at the volume
20 of traffic.

21 At the corner of Prospect and Passaic,
22 they have just expanded the parking for that
23 hospital, whatever that doctor's office is. They
24 just paved over the entire front lawn. It looks like
25 they put in 40 or 50 additional parking spaces.

1 I guess the fundamental question I have
2 is, if you're not correct with respect to your
3 assumptions, what happens to any additional traffic
4 that would be generated as a result of that?

5 THE WITNESS: Well, I think the
6 analysis approach that's been taken, where we take
7 the counts that we have and project them out and show
8 growth in an urban, stable environment, on the
9 surface isn't borne out by history.

10 When you look at the counts just over a
11 two-year period, there isn't -- we should have seen 4
12 percent growth. We didn't see that growth. But our
13 calculations show that. So that's a built in safety
14 factor.

15 I think we are conservative, I think
16 Mr. Miskovich's calculations show that our traffic
17 volumes were similar. Maybe off by a little bit, but
18 that's certainly within the context.

19 We also did propose, as part of this
20 project, improvements at Summit and Central. That
21 doesn't help with those issues at Prospect and
22 Central, but without going through my old report
23 again, I don't know what the results were, but we
24 were proposing, as part of this project, to do
25 improvements at Summit and Central.

1 MR. HAMILTON: I'm sure you both are
2 experts at what you do, but I just from a common
3 sense standpoint, having lived there for the last
4 eight years, it just seems like there has been a
5 marked increase in traffic that doesn't seem to have
6 been reflected in the studies.

7 Thank you very much.

8 MR. MALAGIERE: Seeing no one, Mr.
9 Chairman.

10 CHAIRMAN GUERRA: Okay.

11 MR. MALAGIERE: Public portion of
12 questions is closed on this witness.

13 Mr. Basralian, I believe this witness
14 is released?

15 MR. BASRALIAN: Yes, I have no
16 questions.

17 MR. MALAGIERE: Do you have any
18 redirect?

19 I'm sorry, Mr. Basralian?

20 MR. BASRALIAN: No.

21 MR. MALAGIERE: Mr. Basralian, do you
22 have any other witnesses you wanted to call?

23 MR. BASRALIAN: No.

24 MR. MALAGIERE: Of course, you reserve
25 your right to rebuttal?

1 MR. BASRALIAN: Right.

2 MR. MALAGIERE: Mr. Chairman, it was my
3 thought that we'd allow Mr. Miskovich to add his
4 thoughts, maybe not this evening, it's up to you, and
5 Mr. Polyniak add his thoughts, with regard to their
6 respective areas of expertise. It's 10:00, you
7 usually adjourn now.

8 MR. BASRALIAN: I did have a question.
9 Mr. Miskovich testified --

10 MR. MALAGIERE: He'll just testify as
11 to the additional.

12 MR. BASRALIAN: Just as to the
13 additional?

14 MR. MALAGIERE: Yes.

15 Of course, you have the right to cross
16 him.

17 MR. RODRIGUEZ: Mr. Miskovich and Mr.
18 Polyniak have their commentary ready now?

19 MR. MALAGIERE: You know what may be
20 useful is to allow them both to try and get in and
21 Mr. Basralian can reserve his cross.

22 MR. MISKOVICH: If I may follow up on
23 something, Mr. Rodriguez, you had before.

24 MR. RODRIGUEZ: Okay.

25 MR. BASRALIAN: Excuse me, the

1 questions or testimony is really directed, again,
2 back to the notes and not to the entire traffic
3 report.

4 MR. MALAGIERE: I think you can testify
5 as to anything that Mr. Keller testified to this
6 evening, I think that's fair game. Let me just swear
7 you in.

8 Sir, please put your left hand on the
9 Bible, raise your right hand.

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

13 F R A N K M I S K O V I C H,

14 611 Industrial Way, West Eatontown, New
15 Jersey, having been duly sworn, testifies as
16 follows:

17 MR. MISKOVICH: I do.

18 MR. MALAGIERE: Please identify
19 yourself, for the record, and indicate the capacity
20 in which you'll testify.

21 MR. MISKOVICH: Frank Miskovich, with
22 Birdsall Services Group, traffic consultant for the
23 Board.

24 It relates to what was in the notes
25 tonight and there was some discussion regarding the

1 Department of Health requirements and I believe page
2 3 of 5 of your notes.

3 And correct me if I'm wrong, and I
4 believe we pointed this out in our report also, the
5 Department of Health has minimum staffing
6 requirements for the dialysis center; is that right?

7 THE WITNESS: That's correct.

8 MR. MISKOVICH: I don't recall seeing
9 any for the long term acute portion of it; is that
10 correct?

11 THE WITNESS: That's what I couldn't
12 recall.

13 MR. RODRIGUEZ: There definitely are.
14 I looked at them.

15 THE WITNESS: Okay. I didn't recall,
16 I, you know --

17 MR. MISKOVICH: I recall it was in the
18 report. How about for the adult daycare portion?

19 THE WITNESS: No, there's nothing for
20 that, that I know.

21 MR. MISKOVICH: So that, to some
22 extent, the adult daycare is based on projections as
23 far as usage, number of attendees and discussions
24 with Mr. Pineles as far as activity?

25 THE WITNESS: That's correct. That's

1 correct.

2 MR. MISKOVICH: We did discuss about
3 occupancy as far as van access and that type of
4 thing.

5 THE WITNESS: Correct.

6 MR. MISKOVICH: For the LTACH, again,
7 it was a projection of staffing, probably more than
8 DOH might require.

9 THE WITNESS: Well, based on my notes,
10 you know, that had been pointed out, yes. It's more
11 than what DOH requires because, again, I don't recall
12 the specific -- my microphone.

13 (Pause.)

14 I don't recall the specifics, I'll go
15 by what Mr. Rodriguez says.

16 Again, I got to presume that the DOH
17 requirements for the LTACH are going to relate to the
18 medical care, not to all the other back-of-house
19 facility management type things that would be in
20 there, administration and so on.

21 MR. MISKOVICH: Thanks for that
22 clarification.

23 I think that's what I was getting at.
24 They might have a requirement for actual medical
25 professional requirements, but the ancillary

1 part-timers, that might be aged or other things, may
2 not be in there.

3 THE WITNESS: Correct. I don't know
4 specifically what it requires, but I know that the
5 DOH requirements don't cover the full breadth of what
6 you need to have in any kind of medical facility.

7 MR. MISKOVICH: And all of the numbers,
8 that you had in the report, consider all that
9 staffing requirements?

10 THE WITNESS: Correct.

11 MR. MISKOVICH: Professional,
12 nonprofessional?

13 THE WITNESS: That's correct.

14 MR. MISKOVICH: And any part-timers
15 that might be there throughout the day?

16 THE WITNESS: Correct.

17 MR. MISKOVICH: And, again, I believe
18 we also discussed earlier, it might have been in the
19 report, that there's no standalone facilities that
20 had all three uses?

21 THE WITNESS: Correct, and there are
22 also no standalone LTACHs. The ones that do exist
23 are either part of a hospital or part of some other
24 operation that isn't part of this facility.

25 MR. MISKOVICH: So, as Mr. Malagiere

1 asked in the question then, now it's really
2 developing a parking requirement based upon an
3 anticipated parking demand for this type of facility.

4 THE WITNESS: Correct, correct. That
5 takes into consideration the usage as well as the
6 shift nature of any kind of medical practice.

7 MR. MISKOVICH: Correct, but nothing
8 specifically that you referred to in a document or a
9 book that we normally would use?

10 THE WITNESS: Correct, correct.

11 MR. MISKOVICH: That's all I have.

12 CHAIRMAN GUERRA: Thank you.

13 MR. MALAGIERE: Mr. Keller, I'm sorry,
14 you said today, that this was not -- correct me if
15 I'm misquoting you, this was not particularly
16 difficult? Did you say that?

17 THE WITNESS: Yes.

18 MR. MALAGIERE: Can you explain that in
19 light of the fact that you're creating your own
20 standard and basically, you know, making up a parking
21 standard based upon mathematical projections.

22 THE WITNESS: That statement was
23 related to creating the questionnaire of how did you
24 get to work today, that's all. That's what that
25 statement was for.

1 MR. MALAGIERE: In order to get the
2 data for the percentage profile of people driving a
3 car?

4 THE WITNESS: Right, to set the
5 baseline of, okay, how many people am I going to
6 assume go into the -- that are going to drive and
7 park. The parking calculations were very difficult,
8 that was a --

9 MR. MALAGIERE: Okay.

10 THE WITNESS: -- nonstandard practice
11 that we did.

12 MR. MALAGIERE: In your estimation,
13 would it have been better, would you have gotten a
14 better percentage, more accurate percentage, a more
15 realistic percentage, if you had conducted a survey
16 at, say, Hackensack Hospital as opposed to the
17 Prospect Heights? If you know?

18 THE WITNESS: There's -- it's such a
19 much larger facility that has a lot of different
20 functions in there that don't relate as well, I think
21 the data would have been much harder to collect.

22 MR. MALAGIERE: That's fine. Assuming
23 you could have collected it, though.

24 THE WITNESS: Yeah, if we could have
25 gotten any kind of information from Hackensack

1 Medical.

2 MR. MALAGIERE: Would it have been
3 better than the data you got from Prospect?

4 I mean Prospect Heights doesn't have
5 two of the components. Would it have been better
6 data? Or Hackensack has more than the three
7 components.

8 THE WITNESS: Yeah. I don't know.

9 MR. MALAGIERE: Any sense of it?

10 THE WITNESS: I don't think I would
11 quantify it as better data, it would be additional
12 data that could be factored in. But I don't know,
13 you know --

14 MR. MALAGIERE: Let me ask you this; if
15 Mr. Pineles had said, listen, I can give you the data
16 from Prospect Heights or I can give you Hackensack
17 Hospital, which one do you want?

18 THE WITNESS: I'd take Prospect
19 Heights.

20 MR. MALAGIERE: Okay. Thank you.

21 Mr. Basralian?

22 MR. BASRALIAN: No further questions.

23 CHAIRMAN GUERRA: What do we want to do
24 here?

25 MR. MALAGIERE: Mr. Chairman, did you

1 want to have Mr. Polyniak have his thoughts in his
2 capacity as the engineer and planner? I don't
3 believe that's been done yet.

4 CHAIRMAN GUERRA: Yeah.

5 MR. BASRALIAN: Before he does that, I
6 would like to do some voir dire with Mr. Polyniak.

7 MR. MALAGIERE: Let me just swear him
8 in.

9 Mr. Polyniak, please put your left hand
10 on the Bible, raise your right hand.

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

14 MR. POLYNIAK: Yes.

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

16 34 Park Avenue, Lyndhurst, New Jersey, having
17 been duly sworn, testifies as follows:

18 VOIR DIRE EXAMINATION

19 BY MR. BASRALIAN:

20 Q. Would you tell us the capacities in
21 which you will offer testimony?

22 A. Sure; as a professional engineer and as
23 a professional planner in the State of New Jersey.

24 Q. Mr. Polyniak, how long have you been a
25 licensed engineer in the State of New Jersey?

1 A. Ten years.

2 Q. And how long have you been associated
3 with Neglia Engineering?

4 A. Seven.

5 Q. Prior to that?

6 A. Langan Engineering for approximately
7 another seven.

8 Q. Where did you receive your education in
9 order to obtain your degree in civil engineering?

10 A. Sure. I received my bachelor's and
11 master's degree, in civil engineering, from Lehigh
12 University in Bethlehem, Pennsylvania.

13 Q. You also indicated you're testifying as
14 a planner; did you obtain a master's degree in urban
15 planning or in city and regional planning in order to
16 be able to qualify to take an examination for your
17 planner's license and did you -- and where did you
18 undertake your two-year, mandatory tutelage, under a
19 professional planner, in order to sit for your
20 license?

21 A. Well, as a licensed engineer in the
22 State of New Jersey, I automatically qualify to take
23 the test and acquire my planning license and I
24 followed that protocol to acquire my planning
25 license.

1 Q. You didn't get a master's degree in
2 urban planning or city and regional planning as a
3 professional planner does who is a planner that sits
4 with a license and does two years tutelage under a
5 licensed planner?

6 A. Correct, I did that.

7 Q. Thank you.

8 How many times have you testified
9 before boards as an engineer?

10 A. I can't say. Hundreds.

11 Q. How many times have you testified
12 before boards solely as a planner and not as a part
13 of your engineering testimony?

14 A. I could say on numerous occasions in
15 the City of Hackensack. As it relates to the Borough
16 of Rockleigh, I'm also their professional planner.
17 With respect to their planning board and also the
18 Borough.

19 Q. How many times have you testified
20 solely as a planner and not as an engineer or in
21 conjunction with the two?

22 A. Solely as a planner, I would say a
23 handful of times.

24 Q. Five, six times, something like that?

25 A. Yeah, solely as a planner.

1 Q. As a planner, since that's what you
2 represent you are, how many Master Plans have you
3 prepared for municipalities, and if so, which
4 municipalities?

5 A. I haven't.

6 Q. How many Zoning Ordinances have you
7 prepared for boards or for municipalities as a
8 planner?

9 A. Zoning Ordinances with respect to
10 different types of sections of ordinances, I would
11 say at least ten.

12 Q. Thank you.

13 I looked at your website -- let me
14 retract that.

15 How many times have you been retained
16 by a municipality as the planner on Master Plans? I
17 guess you answered that, you said you didn't do that
18 at all.

19 A. Me personally, no.

20 Q. I looked at your website, which is very
21 interesting and very nice, and you have many, many
22 things on your website but I notice that of all the
23 professions that are mentioned, the only time you
24 mention the word "planner" or the website mentions
25 the word "planner" is in the business section which

1 says, quote:

2 "Since our founding a half-century ago,
3 we have amassed a wealth of practical
4 experience in the field of civil and
5 environmental engineering, municipal
6 engineering, surveying, construction
7 inspection, and planning".

8 You have on your website, as I'm sure
9 you're familiar, two, four, six, eight, ten, twelve,
10 different service links. None of them are planning
11 and nowhere in your literature, other than that one
12 word "planning," is it mentioned that Neglia
13 Engineering Associates are professional planners,
14 municipal planners, Master Plan providers, other than
15 that one word.

16 Is that not correct?

17 A. Yeah. I can't speak to when the
18 website was last updated, but you may be correct. I
19 haven't memorized our website.

20 Q. Okay. So, from your experience, you're
21 the person who does the planning testimony, you're
22 the one who's attended these meetings on behalf -- as
23 the engineer/planner for the Board and advises this
24 Board, correct?

25 A. Correct.

1 Q. You haven't done any Master Plans
2 yourself?

3 A. Correct.

4 Q. Okay. And you haven't had the
5 educational background, the master's degree in
6 regional planning and city planning, which is
7 generally the criteria -- or is the criteria for
8 someone to sit for the planning exam?

9 A. Correct, but I'd like to just add --

10 Q. No. Yes or no?

11 A. Could you repeat that?

12 Q. So that you have not received the --
13 you did not obtain a master's degree in regional
14 planning or planning services which is customary for
15 those who -- which is mandatory for those who sit for
16 the planning examination?

17 A. Incorrect. No, that's not mandatory.

18 Q. Well, in order to have a -- to be a
19 professional planner, to sit for the exam, there are
20 certain criteria which is a master's in planning
21 services?

22 A. Incorrect. I have a professional
23 planning license in the State of New Jersey.

24 Q. I said to sit for the exam. You said
25 that you automatically qualified, the way you did, in

1 effect, because you're an engineer?

2 A. Correct. And I studied the materials
3 and I qualified and passed the examination just like
4 every planner in the State of New Jersey is required
5 to do.

6 Q. You waived in on that basis rather than
7 taking the educational courses that Mr. Burgis did or
8 other planners that have testified before this Board?

9 A. I can't speak to what other planners
10 have done.

11 Q. Okay. Are you a traffic engineer?

12 A. I'm not a traffic engineer, but I have
13 testified as a traffic engineer on some occasions.

14 Q. If you're not a traffic engineer and
15 that's not one of your expertise, how can you testify
16 as a traffic engineer?

17 A. As a civil engineer I have a wealth of
18 knowledge of topics, with respect to engineering,
19 whether it's traffic engineering, civil engineering.
20 It's all interrelated.

21 Q. Do you have, within the Neglia
22 Engineering Associates, an individual or individuals
23 who are traffic engineers who prepare traffic plans
24 similar to what Mr. Keller has done?

25 A. Yes, I have and do.

1 Q. But that's not you?

2 A. No, but again --

3 Q. Is that you?

4 A. Again, it's not me who prepares the
5 report, but there are occasions and instances where I
6 do have knowledge with respect to traffic engineering
7 when you prepare any site plans, just as I have
8 prepared site plans with you, Mr. Basralian, and
9 testified with you in locations, such as Palisades
10 Park. I was deemed an expert in professional
11 engineering and planning under your supervision of
12 the application when we presented an application.

13 Q. I didn't ask you if you ever prepared a
14 Master Plan, if you recall the questions?

15 A. No, but --

16 Q. Excuse me, excuse me. Yes, as a civil
17 engineer, you have to be cognizant of traffic, but
18 you're not a traffic engineer that prepares the
19 testimony and prepares reports and submits, such as
20 Mr. Miskovich or Mr. Keller?

21 MR. MALAGIERE: Mr. Basralian, the
22 question has been asked, and he's answered already.

23 CHAIRMAN GUERRA: Yeah, come on.

24 MR. BASRALIAN: It's fine.

25

1 BY MR. BASRALIAN:

2 Q. Let me ask you this; are you an
3 architect?

4 A. No, I don't think I've ever stated
5 that.

6 Q. Thank you. Thank you.

7 In connection with all of the work that
8 you've done with this Board, in terms of the
9 consultation on this application, have you had any
10 discussion or telephone communications with any Board
11 member or any Council member, the City Attorney, the
12 traffic consultants, or any of the administrative
13 staff, discussing this application, outside of the
14 confines of the public meetings?

15 A. I have talked with Mr. Miskovich, since
16 we're consultants with respect to this application,
17 forwarding materials on to him that I have in my
18 files.

19 Q. Have you had any discussions with
20 anybody in those other groups of people that I've
21 mentioned?

22 A. Have not.

23 Q. None whatsoever, outside of the
24 confines of these hearings?

25 A. Have not.

1 Q. Have you had any written communications
2 with any of them?

3 A. Have not.

4 Q. What were the kind of communications
5 you had with Mr. Miskovich?

6 A. I know I forwarded materials to him,
7 but other than that, I don't particularly remember.

8 MR. BASRALIAN: Thank you. Thank you.
9 I think --

10 For the record, I wanted to illustrate
11 the difference between a professional planner and one
12 who is waived in or obtains a license by virtue of
13 being a planner.

14 I'm not denigrating what it is, but
15 there was a difference in the work that they do
16 vis-à-vis Master Plans and studies.

17 I don't have any objection to him
18 testifying.

19 MR. MALAGIERE: No objection.

20 MR. BASRALIAN: Other than the caveat
21 that I've just mentioned.

22 MR. MALAGIERE: Mr. Diktas?

23 MR. DIKTAS: I have one question.

24

25

1 VOIR DIRE EXAMINATION

2 BY MR. DIKTAS:

3 Q. Does the State of New Jersey
4 distinguish your planning license to that of Mr.
5 Burgis?

6 A. It does not whatsoever.

7 MR. DIKTAS: Thank you.

8 MR. BASRALIAN: I will add, for the
9 record, that I did check, his planning license is
10 still in force and effect.

11 CHAIRMAN GUERRA: Thanks, Mr.
12 Basralian.

13 MR. MALAGIERE: Mr. Polyniak, would you
14 like to offer planning testimony first or engineering
15 testimony; how do you think it best works?

16 MR. POLYNIAC: I think I'm going to
17 flow and tie them both in together because they're
18 both applicable to the application.

19 MR. MALAGIERE: Mr. Chairman?

20 CHAIRMAN GUERRA: Fine.

21 MR. BASRALIAN: Just so I understand,
22 what you're proposing here is to have him testify as
23 engineer/planner or whatever his testimony is going
24 to be?

25 MR. MALAGIERE: Engineer/planner.

1 MR. BASRALIAN: Whatever his testimony
2 is, is going to be, I will have an opportunity to
3 cross-examine him at the next meeting?

4 CHAIRMAN GUERRA: Yes.

5 MR. MALAGIERE: Sure.

6 MR. POLYNIAC: For a use variance
7 application such as this, one must look at both the
8 positive criteria, or special reasons, and the
9 negative criteria.

10 There are three separate criteria to be
11 applied as it relates to the positive criteria. One
12 is that the use is a proposed inherently beneficial
13 use, which the proposed Bergen LTACH facility
14 presumptively satisfies for grant of the use
15 variance. Although this proposed use does satisfy
16 this criteria as an inherently beneficial use, there
17 are still a series of questions that exist with the
18 proposed use.

19 The first is related to -- first
20 question is, is the use that's inherently beneficial,
21 if a certificate of need has not been acquired for
22 the total bed count requested for the LTACH component
23 of this building, is the use considered inherently
24 beneficial, still.

25 And another question is, with respect

1 to it, should this proposal be considered three
2 separate uses, which is in the LTACH, the adult
3 daycare, and the dialysis, instead of one use, which
4 the Applicant's looking at this application to be,
5 when each use does function independently.

6 When considering the negative criteria,
7 the granting of the use variance can only occur
8 without substantial detriment to the public good and
9 that will not substantially impair the intent and
10 purpose of the Zone Plan and Zoning Ordinance. Since
11 the use has been established as inherently
12 beneficial, the satisfaction of the negative criteria
13 does not depend on the enhanced quality of proof, it
14 instead depends on the balance of the negative and
15 positive criteria.

16 And for this inherently beneficial use,
17 the Board needs to look at the four-step test per the
18 Sica case. And it must identify the public interest
19 at stake. It must identify the detrimental effects
20 that would ensue from the granting of the variance.
21 And the Board may reduce the detrimental effects by
22 imposing reasonable conditions. And then the Board
23 should weigh the positive and negative criteria and
24 determine whether on the balance, the granting of the
25 variance would cause substantial detriment to the

1 public good.

2 When looking at the overall
3 neighborhood, Summit Avenue contains mostly
4 one-family residences having the requisite lot area
5 and lot size.

6 Prospect Avenue is predominantly high
7 rise residential with, again, the requisite living
8 area and lot size.

9 When considering the project as a
10 whole, it's my opinion that the following detrimental
11 effects are created through the implementation of the
12 proposed LTACH use.

13 The first relates to the increase in
14 traffic when you compare it to the permitted uses.
15 And that was discussed and disclosed within Mr.
16 Miskovich's report. Portions of the site are zoned,
17 on the Prospect Avenue side, as high-density
18 multi-family. The Summit Avenue portion of the site
19 is zoned R-75, which is single-family with the
20 permission of 30 percent being a building or
21 professional use.

22 Traffic testimony has been provided,
23 that there will be a significant increase in traffic
24 as it relates to the roadway system, when comparing
25 it to the permitted uses for the subject property.

1 There's an increase -- the second item is there's an
2 increase in lengthening of the peak of the traffic on
3 both Summit Avenue and Prospect Avenue.

4 The testimony has been provided, by the
5 Applicant's experts, that employee shifts will be
6 timed to not coincide with the roadway system's peak
7 hours. Although this is an attempt to create traffic
8 -- to reduce the traffic issues onsite during the
9 peak hour, the employee traffic patterns will
10 actually negatively impact the site and the
11 surrounding area during off-peak hours.

12 It can be said, when you look at
13 overall traffic impacts, that they'll be lengthened,
14 thereby increasing the lengths of time for the
15 overall traffic impacts, and this creates
16 quality-of-life issues for the entire neighborhood,
17 specifically between 11 and 7 p.m., 11 p.m. and 7
18 p.m., at the shift-change hours.

19 There's an overall change in character
20 of the neighborhood along Summit Avenue as a whole,
21 along the frontage. When you look at this project,
22 there's a creation of the passive park. Nowhere on
23 Summit Avenue does a passive park exist.

24 When you look at the drop area and loop
25 area along the frontage of Summit Avenue, nowhere

1 along Summit Avenue is there a drop-off loop that
2 exists for a building of this scale.

3 When you look at the driveway/garage
4 access to Summit Avenue along the frontage, nowhere
5 along Summit Avenue does a below-grade garage exist
6 which contains 413 parking spaces.

7 There's an overall change in character
8 to the neighborhood with respect to the Prospect
9 Street frontage.

10 Again, there's a creation of traffic
11 and also impediments with respect to garage traffic
12 and traffic with respect to the loading dock located
13 on Prospect Street.

14 Again, the loading dock will create a
15 situation, as the expert's testimony has stated,
16 where traffic will be blocked on a highly-utilized
17 roadway for a series of minutes.

18 In addition, with respect to the plans
19 that were submitted for the traffic, as part of the
20 site plan package, the WB-40 vehicle, which accesses
21 this loading dock, is actually going to block traffic
22 in the opposite lane traveling southbound and both
23 northbound which is going to create sufficient and
24 substantial traffic concerns with respect to vehicles
25 traveling along Prospect.

1 There are also other series of safety
2 issues that are created through the implementation of
3 the proposed design. Again, the loading, the backing
4 up of vehicles in and out of the loading area. The
5 driveway from the garage on Summit's frontage has no
6 notification that the access to the garage is not
7 permitted by larger vehicles, other than a hanging
8 block which extends deep into the site and deep into
9 the garage area.

10 Should a larger vehicle turn into this
11 garage area, a vehicle would need to back out onto
12 Summit Avenue or make a multipoint turn within that
13 exit driveway to exit the site, as stated by the
14 Applicant's professionals. This too is a significant
15 safety issue. The safety of the vehicle which cannot
16 access from the Summit Avenue driveway is blocking it
17 and other vehicles follow into the Summit Avenue
18 driveway, there's going to be a significant safety
19 and stacking issue that would occur at this driveway
20 location.

21 It should be noted that the clearance,
22 as designed, would create access issues for common
23 SUV vehicles such as vans, such as Econoline vans,
24 which exceed the height of 6-foot 6-inches which is
25 the height of the bollard system that's located along

1 the frontage.

2 The Summit Avenue below-grade access
3 drive and loop drive roadway, that are directly in
4 front of the Summit Avenue frontage, conflict with
5 one another entirely. If two vehicles are present at
6 that location, sight distance issues will exist as
7 you'll have two vehicles, located at the same
8 location, attempting to make right-hand turns at that
9 same location.

10 In addition, there's going to be
11 conflicts with respect to those two vehicles, as with
12 respect to the knowledge of who turns first and what
13 safety issues would be created with respect to that
14 knowledge of not understanding what movement and who
15 to be making the movement at that point in time.

16 When you look at the garage with
17 respect to the Prospect Avenue garage and access
18 related to it, and the sloping of the driveway, there
19 are a series of concerns.

20 Although this isn't a Bergen County
21 roadway, when you look at Summit Avenue as a whole,
22 the application of design standards require a 50-foot
23 section with two percent slope or less to provide
24 adequate acceleration for vehicles that would be
25 exiting that driveway and entering into the Summit

1 Avenue roadway system.

2 In addition, the driveways don't
3 illustrate any vertical curves which would require
4 reduction in slope so that vehicles wouldn't bottom
5 out neither the top of either the garage and/or the
6 lower area of the garage.

7 Added onto that, if one reviews the
8 Urban Land Institute, the Dimensions of Parking, 4th
9 Edition, speed ramps and non-parking ramps, which are
10 the entrance drives off of Summit and also the
11 entrance drive off of Prospect, that manual basically
12 states that those ramps should be limited to 12
13 and-a-half percent slope at their max.

14 The Applicant's provided slopes which
15 are 16 percent slope in those areas and that steep
16 condition should be eliminated as basically this
17 manual states that 12 and-a-half percent slopes
18 should be utilized.

19 When you look at the site as a whole,
20 there are significant issues related to the overall
21 development and its effects with respect to the
22 surrounding neighborhood and to the above.

23 There's a shadowing effect, with
24 respect to the building, as it relates to both Summit
25 and Prospect. It could affect adequate light and air

1 and open space of the buildings in the adjoining lots
2 and the adjoining properties. There are issues with
3 respect to lot area, lot width, height ratio with
4 respect to front yard, rear yard, lot coverage,
5 height ratio with respect to side yard and buffer
6 zones, which all impinge on the adjoining properties.

7 When you look, again, at items that I
8 discussed with respect to safety, what it does
9 illustrate, and also these requested bulk variances,
10 that the development scope and scale is just too
11 large for the surrounding neighborhood, based upon
12 these bulk variances, and that the site is too small
13 to support this development as designed and that
14 substantial change would be needed to eliminate these
15 site safety conditions.

16 There's been significant testimony, by
17 both Mr. Keller and Mr. Miskovich, as it relates to
18 the overall parking. And it appears, with respect to
19 some of the testimony and some of the answering with
20 respect to questions that the public and some Board
21 members have had, that there's discrepancies as it
22 relates to the potential accuracy of the surveying
23 information provided. The Applicant's traffic
24 engineer assumed that the long-term care, acute care,
25 dialysis and adult daycare facility, were comparable

1 with the Prospect Heights facility. Questions were
2 asked of the project owner to gather info, as it
3 related to the report and the analysis and the
4 calculations, and when you look at the two
5 facilities, if this comparison is not valid, the
6 entire analysis and all the assumptions that are
7 provided, related to parking, fails.

8 The Applicant did not use similar ITE
9 rates, which I'll discuss further, and they didn't
10 use the Hackensack Zoning Ordinance, with respect to
11 parking, to perform their analysis. A lot, again, of
12 the testimony related to the Prospect Heights
13 facility and assumptions that were utilized as their
14 basis of design.

15 In previous testimony by the project
16 owner, there was discussions that he had wished that
17 the parking garage for the entire existing facility
18 at Prospect Heights was larger, and then through
19 further testimony, with respect to an adjoining
20 parking lot, the statement was further that the
21 Applicant was renting approximately 30 parking spaces
22 from a synagogue in the vicinity of the building.

23 This, to me, illustrates that some of
24 the assumptions that may have been made with respect
25 to this facility, may not be applicable for this

1 project as a whole.

2 MR. BASRALIAN: If this is a written
3 report that he has, instead of reading it, why don't
4 I get the report instead of reading it in? It seems
5 that it's a prepared text, that's what he is
6 utilizing.

7 If there's been a report that he was
8 going to submit to this Board --

9 CHAIRMAN GUERRA: I'd like to hear it.

10 MR. BASRALIAN: I'm not objecting to
11 hearing it, because I do want to hear it, but if
12 there's a written report, shouldn't I be entitled to
13 it?

14 MR. MALAGIERE: He's put his notes in
15 place, that he's reading from. There's no written
16 report.

17 Your objection is on the record. The
18 record is clear that you characterize it as reading
19 from his prepared statement.

20 MR. BASRALIAN: That's what he's
21 reading from.

22 You can ask him.

23 CHAIRMAN GUERRA: He's going to
24 continue to read. Mr. Basralian, sit down.

25 Thank you.

1 MR. BASRALIAN: I'd like a copy of it
2 as part of the entirety.

3 MR. MALAGIERE: You're going to get a
4 transcript.

5 MR. BASRALIAN: But I'll make my
6 objection on the record after he's done.

7 MR. MALAGIERE: You did.

8 CHAIRMAN GUERRA: Go ahead.

9 MR. POLYNIAC: Based upon the statement
10 and the need of additional off-site parking, the
11 question that needs to be asked is, how could the
12 same analysis be utilized for the Bergen LTACH
13 facility when a facility that has an insufficient
14 amount of parking is being utilized for the design
15 and analysis and it's been proven to be incorrect
16 with the insufficiency of parking.

17 It's my opinion that the assumption
18 inputted to determine the number of required parking
19 spaces, based on review of this facility, are flawed.

20 When reviewing the Zone Plan and Master
21 Plan, there's no reference to the medical use on the
22 subject property. In particular, the site is not
23 located within the healthcare services zone, which is
24 bound by Prospect Avenue, Essex Street, Atlantic
25 Street, Railroad Avenue, which would specifically

1 permit this use.

2 The development as a whole, when you
3 look at it, would substantially impair the Zone Plan
4 and Zoning Ordinance. And a series of applicable
5 goals and objectives, with respect to the Master
6 Plan, are going to be violated. In addition, a
7 series of general plethoras of the MLUL will also be
8 violated as part of this project.

9 As a whole, the third prong of the
10 criteria relates to reasonable conditions with
11 respect to the proposed development. I testified to
12 a series of safety issues with respect to
13 development. I'd like to discuss them a little bit
14 further and I think that all of the safety issues
15 that I've discussed should be considered to be
16 eliminated as part of this project.

17 Again, to go into them further, no
18 vehicle should be permitted to back in or back out of
19 the subject loading area. A new loading area,
20 eliminating this condition, should be required as
21 part of this development. We have heard testimony
22 that other facilities in the area make the same
23 backing out movement onto Prospect Avenue and that
24 the number of vehicles is insignificant. This is
25 really the only justification that we have heard

1 throughout this proceeding, to permit this movement.
2 This reasoning, in my opinion, is unacceptable when
3 considering the safety aspects of the development.

4 To add on, with respect to some of the
5 traffic engineer's testimony tonight, the Applicant's
6 traffic engineer could not think of a design, in his
7 30-year career, where a driveway of this type has
8 been proposed or designed as part of any proposal
9 that he's looked at, reviewed and/or designed.

10 When looking at the conflicts of the
11 driveways on Summit Avenue, again, an entirely
12 different access arrangement should be proposed.
13 Again, we have a condition where we have confusing
14 traffic movement, sight visibility issues with
15 respect to those two driveways, and a series of
16 conflicts that create safety conditions at the
17 driveway locations.

18 The driveways in those locations should
19 be designed and/or eliminated to limit those issues.

20 Again, as I testified, there are
21 applicable manuals with respect to driveway sloping.
22 They haven't been utilized as part of this
23 application. We would recommend that those driveways
24 be redesigned accordingly with respect to the sloping
25 of a 12 and-a-half percent sloped driveway.

1 Again, that could affect the headroom
2 with respect to the driveway and could require
3 substantial design changes with respect to the
4 sloping of the parking garage.

5 We would also want to see the creation
6 of that acceleration or flat spot along the top of
7 the driveway when attempting to enter and exit the
8 traffic flow on Prospect Avenue. Being that you will
9 have single-unit or smaller truck vehicles accessing
10 the driveway, having a truck exit the driveway
11 underneath, on a slope over the 12 and-a-half
12 percent, would create significant issues for a
13 vehicle or truck exiting the driveway and entering
14 the traffic flow pattern on Prospect Avenue.

15 Again, vertical curves should also be
16 required on these driveways to eliminate any
17 bottoming out of roadways -- of vehicles on these
18 roadway systems and driveways.

19 Again, no access drives restricting
20 traffic should be provided without sufficient
21 notification. And that relates to the Summit Avenue
22 access drive where we have high bars that would
23 create situations where we could have stacking or
24 queuing and no turnaround areas available for
25 vehicles exiting and entering back onto Summit Avenue

1 should they not be able to enter the driveway in this
2 location. If this safe turnaround area isn't
3 provided, again, we could have vehicles backing out
4 onto Summit Avenue, which entirely is an unsafe
5 condition.

6 In the end, as I mentioned prior, all
7 these unsafe traffic movements must be accommodated
8 through a site redesign and all these issues actually
9 are created as part, again, of an overdevelopment of
10 the site.

11 With respect to the quality-of-life
12 issues concerning the development, it's my opinion
13 that the building height and size and scope should be
14 reduced to address the light and air issues with
15 respect to open space and the violations of the
16 height ratio and setback violations.

17 The parking spaces, in my opinion,
18 should be increased to address offsite impacts with
19 respect to parking onsite.

20 Again, the testimony has been provided
21 that the leasing of parking spaces, of approximately
22 30, is occurring at the synagogue offsite.

23 Assumptions, with respect to surveys,
24 when designing and analyzing the parking needs of the
25 Prospect Heights facility, created this deficiency

1 with respect to that facility. And the same
2 assumptions, with respect to the design and
3 development, have also been applied to the Bergen
4 LTACH facility. And when you look at it with respect
5 to the need to at least these parking spaces, it
6 illustrates erroneous assumptions and surveys which
7 potentially could create additional offsite parking
8 issues with respect to the LTACH facility. This
9 additional parking, that potentially could be needed
10 for the Bergen LTACH, would further tax the
11 neighborhood with respect to offsite parking and the
12 potential, again, need for leasing of parking spaces
13 for this facility at other locations.

14 When looking at the parking demands of
15 this facility, the Applicant should either look at
16 and utilize the parking analysis with respect to the
17 Hackensack Zoning Ordinance and/or the ITE rates
18 which are very similar to those uses which are being
19 applied for as part of this application.

20 When you look at the hospital use
21 within the Bergen LTACH facility, and you look at the
22 Hackensack Zoning Ordinance, 3.9 spaces are required
23 per bed. With 120 beds being proposed, that's 468
24 parking spaces. When you look at the ITE rates for a
25 hospital, at the 85th percentile, the ITE rates per

1 parking generation require 4.92 parking spaces per
2 bed. So, in actuality, when you look at the
3 Hackensack Zoning Ordinance compared to the ITE rates
4 for hospital use, they're more restrictive and
5 actually Hackensack is a little more liberal with
6 respect to the parking spaces of a hospital onsite,
7 which, again, is a very similar use when you look at
8 the LTACH facility.

9 When you look at the Hackensack Zoning
10 Ordinance with respect to the dialysis, there's
11 nothing that compares to it, so what we have looked
12 at is we have looked at it as an office use and in
13 comparing it we have also looked at ITE rates with
14 respect to a medical/dental office use for the
15 dialysis center.

16 In looking at that, a parking ratio of
17 four spaces per 1,000 gross floor area square footage
18 would create a need, for the square footage within
19 the building, of 100 parking spaces.

20 When you look at ITE rates, again that
21 medical/dental use, 4.27 parking spaces is required
22 for the 85th percentile.

23 When you look at the medical daycare
24 facility that's proposed or adult daycare facility
25 that's proposed on the subject property, again

1 there's no use that specifically is characterized
2 within the Hackensack Zoning Ordinance.

3 What has been applied and what we feel
4 is a similar use, with respect to the medical adult
5 daycare facility, relates to a community center. And
6 when applying that use, you look at the need for an
7 additional 40 parking spaces.

8 In comparing the two, looking at it,
9 the total parking spaces that would be calculated
10 would be 800 -- I mean 608 parking spaces being
11 required when only 413 parking spaces are provided.

12 Using this analysis, potentially would
13 eliminate any possibility for an on-street parking
14 deficiency and onsite parking deficiency and the need
15 for satisfying that deficiency somewhere else within
16 the City.

17 It's our opinion that one of the
18 conditions is that the Applicant should be required
19 to reduce the overall size of the facility, to
20 address the parking constraints as presented.

21 Again, the site provides a new,
22 below-grade garage with access points on Summit
23 Avenue, with none existing along Summit Avenue.
24 Garage access points shall be eliminated as they're a
25 quality-of-life issue and again the safety

1 conditions. The loop driveway should be eliminated
2 and, again, the significant traffic impacts that
3 occur, with respect to the subject property, should
4 be reduced through the size and scale of the
5 building.

6 To address these reasonable conditions,
7 it's my opinion that the application presented would
8 have to be dramatically revised and that there's the
9 possibility that the facility could not be
10 accommodated on the subject property without
11 significant program revisions and without substantial
12 reduction in the program entirely.

13 And it should be noted that all the
14 safety and quality-of-life issues that are created
15 are entirely due to the scope, scale, and intensity
16 of the development. And that it's my opinion
17 entirely, that the site is too small to accommodate
18 all of these safety/quality-of-life issues and
19 parking issues for this development.

20 (Applause.)

21 AUDIENCE MEMBER: Excellent report.

22 MR. MALAGIERE: Mr. Chairman, you've
23 indicated that you're going to stop here and let Mr.
24 Basralian carry for cross examination.

25 MR. BASRALIAN: I would like to have a

1 basis -- since there are a lot of conclusions that
2 Mr. Polyniak set forth in his statement, he relied on
3 various aspects of ITE standards and others, none of
4 which have been entered into testimony before. I'd
5 like to have all of the background and the specific
6 charts and references he was using in his reports.

7 MR. MALAGIERE: Mr. Polyniak, can you
8 provide it to me?

9 MR. POLYNIK: I most definitely could.

10 MR. MALAGIERE: Mr. Basralian, of
11 course, I'll provide it to you.

12 MR. BASRALIAN: If it's a written
13 report, I'd like to have the written report as well.

14 MR. MALAGIERE: He read it into the
15 record, it's his notes.

16 MR. BASRALIAN: Are there any others
17 besides that?

18 MR. MALAGIERE: That's totally
19 different. This is the notes of his comments.

20 We need dates. We need one more
21 meeting. October, what do you got?

22 MR. DIKTAS: October 19th and 20th --

23 CHAIRMAN GUERRA: Mr. Borrelli, what's
24 open in October?

25 MR. BORRELLI: The 26th or 27th.

1 MR. MALAGIERE: Mr. Chairman.

2 CHAIRMAN GUERRA: I'm good on any of
3 those days.

4 What's the Thursday?

5 MR. BORRELLI: Thursday is the 27th,
6 Chairman.

7 CHAIRMAN GUERRA: You can't do the
8 27th? That's no good?

9 MR. BORRELLI: The 26th is a Wednesday.

10 CHAIRMAN GUERRA: Joe, 25th, 26th,
11 27th?

12 MR. BASRALIAN: The 25th is a Tuesday.

13 MR. MALAGIERE: The 26th is a
14 Wednesday, 26th is fine.

15 CHAIRMAN GUERRA: When is our regular
16 meeting?

17 MR. BORRELLI: The 20th.

18 CHAIRMAN GUERRA: The week before.

19 MR. BORRELLI: Right.

20 MR. MALAGIERE: The 26th so far, any
21 takers?

22 CHAIRMAN GUERRA: The 26th is good for
23 me.

24 MR. MALAGIERE: Mr. Basralian.

25 CHAIRMAN GUERRA: Joe, 26th?

1 MR. BASRALIAN: The 26th is okay.

2 MR. MALAGIERE: Seven o'clock.

3 CHAIRMAN GUERRA: Yeah.

4 MR. MALAGIERE: This application is
5 carried, without further notice, to October 26th,
6 7:00 p.m., these Chambers.

7 Mr. Basralian, is the time in which the
8 Board may act extended to that date?

9 MR. BASRALIAN: Yes.

10 MR. MALAGIERE: Mr. Chairman.

11 CHAIRMAN GUERRA: That's it.

12 Do I hear a motion to adjourn?

13 MR. CARROLL: I make that motion.

14 MR. MALAGIERE: All in favor?

15 (Whereupon, all present members respond
16 in the affirmative.)

17 MR. MALAGIERE: Any opposed?

18 (No response.)

19 (Whereupon, this matter will be
20 continuing at a future date. Time noted 10:42
21 p.m.)

22

23

24

25

C E R T I F I C A T E

I, JOANNE M. OPPERMANN, a Certified
Court Reporter and Notary Public of the State of New
Jersey, do hereby state that the foregoing is a true
and accurate transcript of my stenographic notes of
the within proceedings, to the best of my ability.

JOANNE M. OPPERMANN, C.C.R.
License No. XI01435