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CITY OF HACKENSACK
ZONING BOARD OF ADJUSTMENT
THURSDAY, DECEMBER 8, 2011
COMMENCING AT 7:00 P.M.

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

B E F O R E:

CITY OF HACKENSACK ZONING BOARD
THERE BEING PRESENT:

- MICHAEL GUERRA, CHAIRMAN
- GEORGE DIANA, MEMBER
- JOHN CARROLL, MEMBER
- HUMBERTO GOEZ, MEMBER
- FRANK RODRIGUEZ, MEMBER (7:30 ARRIVAL)

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GREGORY POLYNIAK, P.P., P.E., NEGLIA ENGINEERING

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FRANK MISKOVICH, P.E., BIRDSALL ENGINEERING

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVID.</u>
(NO EXHIBITS MARKED.)			

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

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

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

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

15 Roll call?

16 MR. BORRELLI: Mr. Carroll?

17 MR. CARROLL: Here.

18 MR. BORRELLI: Mr. Diana?

19 MR. DIANA: Here.

20 MR. BORRELLI: Mr. Goetz?

21 MR. GOEZ: Here.

22 MR. BORRELLI: Chairman Guerra?

23 CHAIRMAN GUERRA: Here.

24 MR. MALAGIERE: Mr. Basralian?

25 MR. BASRALIAN: Good evening.

1 CHAIRMAN GUERRA: Approval of the
2 minutes from our meeting of October 26th.

3 Can I have a motion?

4 MR. DIANA: I make a motion.

5 CHAIRMAN GUERRA: Do I hear a second?

6 MR. CARROLL: I'll second.

7 MR. BORRELLI: Mr. Carroll?

8 MR. CARROLL: Aye.

9 MR. BORRELLI: Mr. Diana?

10 MR. DIANA: Aye.

11 MR. BORRELLI: Mr. Goez?

12 MR. GOEZ: Aye.

13 MR. BORRELLI: Chairman Guerra?

14 CHAIRMAN GUERRA: Aye.

15 Okay. The Application V#23-08,
16 SP#21-08, Address 320 Summit Avenue - 329 Prospect
17 Avenue, Hackensack, New Jersey, Bergen Passaic Long
18 Term Acute Care Hospital, LLC.

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

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

24 Two, insufficient lot area, required
25 30,000 square feet, proposed 20,000 square feet.

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

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

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

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

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

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

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

18 Ten, no paving in side-yard.

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

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

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

25 Fourteen, any other variance or waivers

1 that may be required.

2 Counsellor?

3 MR. BASRALIAN: Good evening, Joseph
4 Basralian for the Applicant.

5 This is a continuation hearing from the
6 October meeting. We had just started with our
7 rebuttal witness, Mr. Burgis, who I would like to
8 recall at this point.

9 MR. MALAGIERE: Mr. Burgis, how are
10 you, sir? I'm going to swear you in, sir.

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. BURGIS: I do.

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

16 25 Westwood Avenue, Westwood, New Jersey,

17 having been duly sworn, testifies as follows:

18 MR. BASRALIAN: Mr. Burgis, to my
19 recollection, has been previously qualified.

20 Mr. Diktas, would you like to make your
21 appearance, please?

22 MR. DIKTAS: Just make appearance.

23 MR. MALAGIERE: Sure.

24 MR. DIKTAS: Just for the record, to be
25 consistent.

1 Good evening, Members of the Board,
2 Christos Diktas, Diktas, Schandler & Gillen on behalf
3 of Anastasia Burllyuk.

4 MR. MALAGIERE: Mr. Moskowitz, good
5 evening.

6 MR. MOSKOWITZ: Good evening, Theodore
7 Moskowitz, McCarter & English, on behalf of Prospect
8 Avenue Coalition.

9 CHAIRMAN GUERRA: Mr. Burgis, if you
10 could just identify yourself for the record and
11 indicate the capacity in which you will continue your
12 testimony?

13 MR. BURGIS: Certainly.

14 Joseph Burgis --

15 MR. MALAGIERE: We're going to need to
16 get you a mike.

17 MR. BURGIS: Yes.

18 Joseph Burgis, B-u-r-g-i-s, of Burgis
19 Associates, testifying as a Professional Planner.

20 MR. MALAGIERE: For the record, Mr.
21 Burgis is you're rebuttal witness, right, Mr.
22 Basralian?

23 MR. BASRALIAN: Right.

24 MR. MALAGIERE: Thank you.

25 MR. BASRALIAN: I think I had gotten

1 into one question, when the meeting ended on
2 October 26th.

3 REBUTTAL DIRECT EXAMINATION

4 BY MR. BASRALIAN:

5 Q. Mr. Burgis, what is the definition of
6 "inherently beneficial use" under our statutes?

7 A. The Municipal Land Use Law was amended
8 about two-and-half years ago to specifically include,
9 for the first time, a definition of inherently
10 beneficial use. And it reads as follows:

11 "A use which is universally considered
12 a value to the community, because it
13 fundamentally serves the public good and
14 promotes the general welfare.

15 "Such uses include, but is not limited
16 to a hospital, school, child care center,
17 group home or wind, solar or photovoltaic
18 energy facility or structure".

19 Q. Now, is a certificate of need required
20 as a condition for a use to be inherently beneficial?

21 A. No.

22 Q. Well, what are some of the uses for
23 which a certificate of need may be required and some
24 of the uses for which a certificate of need is not
25 required?

1 A. I think the most obvious example --

2 Q. Where it is not required, what are some
3 of the -- let me, rephrase that question.

4 What are some of the inherently
5 beneficial uses which have a certificate of need
6 versus inherently beneficial uses for which a
7 certificate of need is not a necessity?

8 MR. MALAGIERE: Mr. Basralian, would
9 you please speak into the microphone, the -- thank
10 you.

11 A. The most obvious examples for those
12 that do not require any certificate is an Appellate
13 Division case involving a storage and maintenance of
14 school buses.

15 Obviously, there's no certificate of
16 need. There's no certification or any other
17 requirement regarding maintenance of school bus
18 facilities.

19 Child care centers is identified as an
20 example, in the Municipal Land Use Law, of an
21 inherently beneficial use, but there is a licensing
22 procedure by the state. There's no certification in
23 context of a certificate of need, that is required.

24 Another example is affordable housing.

25 MR. MALAGIERE: I'm sorry.

1 A. (Continuing) another example is
2 affordable housing, no certifications are necessary.
3 In fact there's case law that indicates even where a
4 municipality has a planned certified at the time by
5 Council on Affordable Housing or DCA, even where
6 municipality has such a certification from a state
7 agency, that alone doesn't preclude one from getting
8 additional affordable housing built under a builders'
9 remedy lawsuit in the municipality.

10 So there's a whole host of uses.
11 Another one, for example, is houses of worship. Also
12 identified as an inherently beneficial use, no
13 certifications are required.

14 So, consequently, I think it's pretty
15 simple and clear that -- to drive home the point with
16 respect to this particular use, a certificate of need
17 is not necessary. It still is considered an
18 inherently beneficial use.

19 Q. Thank you.

20 In the precedence since the Applicant
21 testified that the certificate of need that is in
22 full force for the application is in effect for 72
23 beds, all of which were required in Hackensack
24 University Medical Center and Saint Mary's Hospital
25 Passaic.

1 Mr. Pineles further testified that on
2 approval of the application before this Board, it
3 would acquire an additional 52 bed certificate of
4 need, to take it to 120, if the math is right.
5 There's 120 beds from other hospitals because there
6 are 900 LTACH beds required in the State of New
7 Jersey by the Department of Health.

8 He also testified that there is a need
9 for 900 beds in New Jersey and approximately 300 have
10 been constructed.

11 In your opinion, is the LTACH
12 application for 120 beds still inherently beneficial,
13 even though the certificate of need has been only
14 acquired for a portion of the beds?

15 A. Yes, it is. For the reasons I had just
16 mentioned in terms of the definition set forth in
17 Municipal Land Use Law, the State statute does not
18 necessitate a certificate of need to justify --
19 excuse me -- to define a use as an inherently
20 beneficial use.

21 Q. Mr. Burgis, were you present at the
22 hearing in which Stanley Lacz, the planner, engineer,
23 architect for one of the Objectors testified with
24 respect to planning and architectural, et cetera?

25 A. Yes.

1 Q. And as a planner for the Applicant are
2 you fully familiar with all of the planning aspects
3 of this application with respect to the many exhibits
4 which were prepared on behalf of the Applicant and
5 submitted to the Board in conjunction with the
6 application?

7 A. Yes.

8 Q. Now, Mr. Lacz during his testimony
9 talked about the underground parking structure and
10 opined that the calculation of ground coverage must
11 include the underground parking structure as if it
12 were a grade level building and, thus, include what
13 was within the coverage definition of the City of
14 Hackensack. Do you have a response to those
15 statement by Mr. Lacz.

16 And if you disagree, why?

17 A. I have a response. I do disagree. And
18 the reason is fairly simple and straightforward.
19 Building coverage, as a concept in planning, is
20 designed to ensure light, air and open space on a
21 property, not underneath a property.

22 Historically, it has not been concerned
23 with underground facilities.

24 I would point to our own experience
25 before this Board representing a number of gas

1 stations over the years. No one has ever opined that
2 an underground gasoline storage tank should be
3 counted as part of a coverage.

4 There are other uses, any other type of
5 storage tank, septic system and the like, nobody has
6 ever suggested, whether it be the Board, whether it
7 be the Board's professionals, whether it be the
8 Applicant's professionals, that that kind of
9 calculation is to be imposed.

10 In point of fact, in my years of
11 experience not only here, but throughout the State of
12 New Jersey, I have never seen that approach given.

13 Q. In another part of his testimony, Mr.
14 Lacz stated that the height of the building should be
15 measured from the lowest floor, that is the bottom of
16 the garage in this instance, which in his opinion if
17 so measured, would require a height variance.

18 Do you have a response to that
19 statement by Mr. Lacz?

20 A. Again, having been before the Board on
21 numerous occasions I have never seen this Board or
22 the Planning Board impose a measurement such as Mr.
23 Lacz suggested. In fact, in looking at your own
24 Zoning Ordinance, the Zoning Ordinance states that
25 height is measured and I'll quote:

1 "From the average elevation of finished
2 grade measured 6-feet from the foundation of
3 the structure".

4 Now, your ordinance does not define
5 "finished grade". However in a standard planning
6 text, and I think everybody utilizes the Harvey
7 Moskowitz definition of planning terms, he defines
8 "finished grade" in that handbook. And it's defined
9 as:

10 "The final elevation of the average
11 ground level adjoining a building at all
12 exterior walls after development".

13 It's precisely the way this
14 municipality and every other municipality that I'm
15 familiar with has defined finished grade in terms of
16 measuring this issue.

17 Q. Based upon the definition in the
18 handbook to which you refer of Mr. Moskowitz, as well
19 as the ordinance of the City of Hackensack, does this
20 building require a height variance?

21 A. No, it does not.

22 Q. Mr. Lacz also testified or stated that
23 the underground parking structure effected light, air
24 and space.

25 Do you have an opinion as to whether

1 such an assertion by Mr. Lacz is accurate?

2 A. No, I believe, it's incorrect.

3 I think, it's important first to go
4 through Mr. Lacz' testimony on this particular issue.

5 I will be looking at the transcript
6 dated July 26th, 2011. And if we turn to page 50 --
7 hold on one second.

8 MR. DIKTAS: Do you have copies for us,
9 Mr. Basralian?

10 MR. BASRALIAN: The transcripts are
11 public record.

12 MR. DIKTAS: Do you have copies for us
13 to look at now, Mr. Basralian?

14 MR. BASRALIAN: He's referring to a
15 transcript which is part of the record and is
16 available to anyone who wanted a copy.

17 MR. DIKTAS: That's not my question, as
18 a courtesy for the adversary --

19 MR. BASRALIAN: I don't have copy for
20 you, no.

21 MR. DIKTAS: Thank you.

22 THE WITNESS: There is some discussion
23 about the issue of light, air and open space between
24 Mr. Basralian and Mr. Lacz.

25 And then beginning on page 56, after

1 Mr. Malagiere directed the planner to answer Mr.
2 Basralian's questions. The following discussion took
3 place beginning on line 13, on page 56.

4 "ANSWER: Buildings are also composed
5 of space. So space underground also involves
6 space, light and air.

7 QUESTION: On the surface?

8 "ANSWER: Underground is -- you have
9 space. It's underground space; space, light
10 and air. So it affects that, that there is a
11 space underground.

12 "QUESTION: Isn't the concept of
13 planning, which doesn't include structures
14 themselves and design, really talk about
15 light, air and open space on the surface when
16 you put a building on the surface which may
17 impact adjacent properties?

18 "ANSWER: No, it doesn't say so in the
19 -- in the Land Use Law. It talks about space
20 and space could be above ground or below
21 ground."

22 "ANSWER: The elements of planning
23 include the dimensions in space which are
24 three, besides time and use".

25 Now, all that is well and good, and I

1 don't understand how he got into the space/time
2 continuum at the end there, but the reality is the
3 Municipal Land Use Law does not talk about light, air
4 and space. It specifically talks about light, air
5 and open space.

6 And if you look in the Section 40:55D-2
7 of the statute which enumerates all fifteen of the
8 purposes of the Municipal Land Use Law, it
9 specifically references light, air and open space.

10 When you look at the definition in the
11 Municipal Land Use Law of "open space" it talks about
12 natural land and at grade facilities, not
13 underground.

14 So, consequently, I think Mr. Lacz was
15 way off base in his suggestion that we calculate
16 space underground, because: A, the statute don't
17 even talk but that; and, B, it was inconsistent with
18 the manner in which the Municipal Land Use Law
19 defines that purpose of the act, which he seemed to
20 be alluding to.

21 Q. Thank you.

22 MR. BASRALIAN: For the record I did
23 have a copy of the transcript which I provided to Mr.
24 Diktas, for this evening.

25 Q. As you know, Mr. Burgis, the property

1 fronts on Prospect Avenue and Summit Avenue, and thus
2 is a pass through lot requiring two front yards.

3 Mr. Lacz testified that a rear yard
4 variance is required even tough there is a pass
5 through lot with two front yards.

6 Have you reviewed the ordinance and are
7 you able the render an opinion as to whether or not
8 Mr. Lacz's interpretation is correct or incorrect?

9 A. I have reviewed the ordinance, I
10 believe his interpretation is, in fact, incorrect.

11 I'm going to have to go through a
12 number of definitions in your own ordinance to prove
13 that point.

14 In your -- excuse me -- in your
15 ordinance in Section 175-5.1C, you talk about through
16 lot regulations and it says:

17 "A through lot shall be considered as
18 having two street fronts, both of which shall
19 be the subject of front requirements, not per
20 the zoning schedule".

21 Then we have to look at how we define
22 different yard dimensions and lot lines. I don't
23 believe a variance is required since, by code, there
24 is no rear yard on this property. And that's by
25 definition.

1 So, let's start with the definition of
2 "rear yard" that's on page 42 of your ordinance, a
3 rear yard is defined as follows:

4 "A yard extending across the full width
5 of the lot and lying between the rear lot line
6 of the lot and the nearest line of the
7 principal building".

8 The definition of rear lot line becomes
9 important here. That's on page 24, a rear lot line
10 is defined as:

11 "The lot line opposite and most distant
12 from the front lot line".

13 The definition of front lot line also
14 on page 24 is:

15 "The lot line separating the lot from
16 the street right-of-way".

17 It's also referred to as a "street
18 line".

19 Well, here on both sides of the lot in
20 the Summit Avenue side and Prospect Avenue side, we
21 have a front lot line. Opposite either of those
22 front lines is the other front line per the
23 definitions I've just read.

24 So, consequently, there is no rear lot
25 line on this property. Therefore, there is no rear

1 yard on this property, pursuant to the code, and the
2 definition in the code.

3 Q. Thank you.

4 As you know the Municipal Land Use Law
5 permits an applicant, in this case the Applicant, to
6 apply for consolidation of the four lots which
7 constitute the 50,000 square feet lot which is the
8 subject of the application.

9 Mr. Lacz, however, testified that each
10 of the four lots that are the subject of the
11 application had to be considered separately with
12 respect to lot coverage, instead of the consolidated
13 lot.

14 What is the proper way to determine lot
15 coverage and what is lot coverage as defined in the
16 Hackensack ordinances for this application.

17 A. I think first we have to look at the
18 definition of "lot" quite frankly, because the
19 definition of "lot" in your ordinance is consistent
20 with the definition in the Municipal Land Use Law.
21 And it talks about a property being developed or
22 built upon as a unit.

23 The Municipal Land Use Law within the
24 context of that definition and elsewhere specifically
25 indicates that you are allowed to consolidate

1 individual properties.

2 And because you're building -- the
3 Applicant is building upon these four lots as a unit,
4 they're being consolidated. And the proper approach
5 to measure dimensions, to measure coverage factors
6 and the like, is to look upon this lot as a single
7 unit.

8 It's been done since I've been a
9 planner. I've had cases with your expert sitting
10 here where we had the exact same situation. We've
11 always measured multiple lots which are proposed as a
12 single unit, they always measured the properties as a
13 single unit. And, consequently, I think that is the
14 proper way and Mr. Lacz is incorrect.

15 Q. He also mentioned and testified during
16 the time he was up here that since the underground
17 parking spaces were located in the side yard that
18 each of the 20, approximately parking spaces I think
19 he identified, were in the side yard, that each
20 individual parking space required a variance.

21 Was his opinion or interpretation of
22 the application for such variances correct or do you
23 have a different opinion?

24 A. I have a different opinion.

25 I guess that comes as no surprise to

1 anybody in the room.

2 MR. MALAGIERE: I was waiting for that.

3 THE WITNESS: It was really surprising.

4 MR. MALAGIERE: You have a sense of
5 humor.

6 A. The ordinance permits an underground
7 parking deck to be within 5-feet of a side yard.
8 These parking spaces are within -- excuse me --
9 beyond that 5-foot dimension.

10 So, consequently, we comply to the
11 code. So, therefore, we do not need this relief that
12 he is suggesting that we need.

13 Q. Well, perhaps, he was referring to the
14 parking in the side yard for surface parking, but
15 would you need a separate variance if that surface
16 parking -- would you need a separate variance for
17 each parking spaces or would you apply for them as an
18 entirety?

19 A. Yes, as a general proposition one
20 applies for parking relief for a parking
21 nonconformity intruding into a required yard space.

22 You don't identify, you know, there are
23 nine or fifteen or in this case, I think, 20 spaces
24 and that is the relief.

25 The argument pertains to, you know --

1 the relief relates to the idea that you are not
2 compliant with the code, but in this instance we are
3 compliant to code.

4 Q. Now, as a planner, do you deal with
5 traffic impact from a planning perspective?

6 A. From the planning perspective, yes.

7 Q. And from a planning perspective how is
8 traffic impact measured?

9 A. The conventional way is to look at peak
10 hour traffic volumes, make a determination as to how
11 your perspective traffic volumes affects that peak
12 hour flow and the reason traffic is measured that way
13 is because at peak hour that is the worse case
14 scenario. And that's what you want to examine to see
15 if it's been exacerbated or not.

16 Q. Thank you.

17 Mr. Polyniak testified that there was a
18 difference between traffic generated during off-peak
19 hours by a conforming use versus nonconforming use,
20 even if hypothetical the volumes were the same with
21 respect to the traffic impact on the site's
22 surrounding roadways.

23 Is there such a determination?

24 A. Yeah, I like Greg. But I got to say
25 that that's the first time I've ever heard that

1 approach utilized.

2 First of all, one cannot know, driving
3 down the street, unless you actually see the traffic
4 -- cars coming from a particular lot; one doesn't
5 know where the vehicles are coming from or have come
6 from.

7 MR. MALAGIERE: This is a little far
8 afield --

9 A. (Continuing) the issue --

10 MR. MALAGIERE: Pardon me. This is a
11 little far afield of planning testimony, he can
12 testify clearly and give opinions as to how the
13 traffic testimony feeds into his opinion plus or
14 minus, but I don't believe it's credible or useful to
15 have him critique a traffic conclusion.

16 MR. BASRALIAN: Well, except that Mr.
17 Polyniak is not a traffic engineer. He's testified
18 as an engineer's knowledge of traffic, but he also
19 testified as a planner.

20 MR. MALAGIERE: But that's true.

21 And you may have reason to argue that
22 his testimony should not be weighed so heavily
23 because of that. But, clearly, Mr. Burgis is a
24 planner, and not an engineer and that's it.

25 MR. BASRALIAN: And I asked the

1 question from his perspective as a planner.

2 MR. MALAGIERE: I don't want to say
3 just a planner, Joe.

4 THE WITNESS: All right. Thank you.

5 MR. BASRALIAN: I though just a planner
6 isn't so bad.

7 Versus an architect, engineer and
8 planner.

9 MR. MALAGIERE: Just --

10 MR. BASRALIAN: I asked the question, I
11 prefaced the question by asking from a traffic
12 perspective --

13 MR. MALAGIERE: Why don't you try --

14 MR. BASRALIAN: -- from the planning
15 perspective, and I asked him specifically in that
16 regard not as a traffic expert.

17 MR. MALAGIERE: I just -- why don't you
18 see if you could ask him something that just gets
19 away from him critiquing from a traffic conclusion in
20 substance because it seems like it's just not going
21 to be useful on the record.

22 BY MR. BASRALIAN:

23 Q. Well, from a planning perspective when
24 you determine traffic impact, do you differentiate
25 the traffic on the roadway from a conforming use to a

1 nonconforming use, to measure that impact outside of
2 the peak period?

3 A. No.

4 As a planner, we prepare circulation
5 plan elements to master plans and within that context
6 we are looking at volumes of traffic.

7 And we examine the total volume on the
8 roadway, and the focus always is when peak hour.

9 The presumption is from a planning
10 perspective that if the road network can handle the
11 traffic volume at peak hour, which is the worse case
12 scenario, other volumes throughout the rest of the
13 day can readily be accommodated, and that's the area
14 of concern from a planning perspective that one has.

15 Q. Mr. Polyniak also testified that the
16 proposed park on Summit Avenue side does not exist
17 anywhere on Summit Avenue, which is correct. And
18 that it is inconsistent with the area.

19 Does it follow then that from a
20 planner's perspective that just because a park
21 doesn't currently exist on Summit Avenue that it
22 should be rejected?

23 A. Not at all.

24 Especially, in more urban environments,
25 we are always, when we're preparing master plans, for

1 example, seeking to find sites where we can provide
2 some green space in a community.

3 The concept of fast pocket parks which
4 started in New York City with Paley Park many, many
5 years ago, is a prime example of that.

6 So, you know, we see that in more
7 suburban type communities as well as communities
8 like, you know, the City of Hackensack.

9 You know there's always as desire to
10 achieve more green space, whether it be passive park
11 space or active park space. If it's suggested
12 because some park area doesn't exist in a
13 neighborhood today, therefore, they should not have
14 that amenity in the future, my perspective that runs
15 in -- flies in the face of, you know, good planning.

16 Q. How did the Court in Sica direct
17 planners to evaluate the question of what constitutes
18 "substantial"?

19 A. Well, as you recall the Sica test is a
20 the four part test. The fourth prong of Sica --

21 (Mr. Basralian steps out of the room.)

22 THE WITNESS: Is it something I said.

23 MR. BASRALIAN: I just forgot my bottle
24 of water.

25 A. (Continuing) the fourth prong of the

1 Sica test defines what Mr. Basralian had just asked,
2 because it says that if you weigh the positive and
3 negative criteria and determine whether, on balance,
4 the grant of the variance would cause a substantial
5 detriment or not.

6 And that's how you weigh that analysis
7 or prepare that analysis.

8 If you recall from my testimony, there
9 are a number of elements that I had offered as a
10 weighing advice. And in terms of the impact of this
11 project, you know, we are weighing the traffic and
12 the parking and the truck circulation issues because
13 I think those were probably the most significant, or
14 amongst the most significant comments that were
15 raised.

16 And I think you should be balancing
17 that against the societal need for the LTACH, as it
18 was identified in the certificate of need, and as an
19 element of an inherently beneficial use.

20 Indeed for the dialysis, as identified
21 by the aging of the population, and projected
22 increase in diabetes, which has been testified to
23 previously. The need for adult daycare.

24 (Whereupon, Mr. Rodriguez is now
25 present at 7:30 p.m.)

1 A. (Continuing) and if you recall, I
2 talked about some statistics had been indicated the
3 need for additional adult daycare in Bergen County.

4 And you balance that against, and, I
5 know, this is never a popular thing to say with the
6 audience, but the slight increase in traffic at the
7 intersections.

8 (Audience outburst.)

9 A. (Continuing) I think -- well, it's
10 consistent. We always get the same reaction.

11 But the reality is that Mr. Keller on
12 behalf of the Applicant, and Mr. Miskovich on behalf
13 of the municipality, has testified that the increase
14 at lighted intersections at peak hour is only going
15 to be two or three vehicles.

16 FEMALE AUDIENCE MEMBER: Not true.

17 FEMALE AUDIENCE MEMBER: Come on.

18 MALE AUDIENCE MEMBER: Come on.

19 A. (Continuing) people may be in
20 disagreement with that statement of mine.

21 FEMALE AUDIENCE MEMBER: Yes.

22 A. (Continuing) It is true that was the
23 testimony.

24 So, in addition to that, the testimony
25 of those traffic consultants.

1 (Audience outburst.)

2 CHAIRMAN GUERRA: Please?

3 Thank you.

4 MR. BASRALIAN: Let me interject, let
5 the record show that Mr. Rodriguez came to the
6 meeting at 7:30.

7 MR. RODRIGUEZ: Thank you.

8 My apologies for being late.

9 MR. BASRALIAN: No problem.

10 MR. RODRIGUEZ: I hit traffic getting
11 back here from South Jersey.

12 (Audience outburst.)

13 FEMALE AUDIENCE MEMBER: Traffic.

14 THE WITNESS: Your timing couldn't have
15 been better.

16 CHAIRMAN GUERRA: From Prospect Avenue?

17 MR. RODRIGUEZ: That's right.

18 A. (Continuing) The testimony had also
19 been about the modest number of truck back out
20 movements coming from the site. And when you look at
21 those issues, and I don't know -- I neglected to
22 point out the parking issue because while there is a
23 variance for parking, the testimony clearly from both
24 traffic consultants, had been that 82 to 84 percent
25 of the parking garage will be filled at peak hour of

1 the garage.

2 So, when you weigh those elements, and
3 pursuant to the Sica balancing test, you determine
4 what is the balance here between the negatives versus
5 the positives, I think the balance weighs in favor of
6 the beneficial use, that was my testimony when I
7 testified just about a year ago, I believe.

8 And it's how we address that point.

9 Q. So, it's your conclusion that when
10 applying the Sica balancing test that the Applicant
11 meets the test?

12 A. Yes, that was my conclusion.

13 Q. Thank you.

14 MR. BASRALIAN: I have no further
15 questions of this witness, at this point, Mr.
16 Chairman.

17 MR. MALAGIERE: Does anyone wish to
18 cross examine?

19 With your permission, Mr. Chair.

20 CHAIRMAN GUERRA: Yes.

21 MR. MALAGIERE: Mr. Diktas?

22 MR. DIKTAS: I just have a couple.

23 Thank you.
24
25

1 CROSS EXAMINATION

2 BY MR. DIKTAS:

3 Q. Good evening, Mr. Burgis.

4 A. Good evening.

5 Q. You raised a few issues as to your
6 opinion --

7 MALE AUDIENCE MEMBER: Can't hear.

8 Q. You raised a few issues this evening
9 versus your opinion -- in your opinion versus Mr.
10 Lacz's opinion; is that correct?

11 A. Yes.

12 Q. Can we list them please, from your
13 notes?

14 A. Let's see. One of the issues that I
15 talked about was lot coverage --

16 Q. Right.

17 A. -- for underground garage.

18 Q. Okay. Parking in the side yards?

19 A. Parking in the side yard in the
20 underground garage.

21 The issue of light, air and space
22 underground.

23 And the issue of whether or not we have
24 a rear yard.

25 And then, finally, the issue of

1 consolidation.

2 Before I say finally --

3 MR. MALAGIERE: Of the lots.

4 THE WITNESS: Huh?

5 MR. MALAGIERE: Of lots.

6 THE WITNESS: Of lots, yes.

7 Those were the four or five issues.

8 Q. Okay. And you reviewed Mr. Lacz's
9 testimony, correct?

10 A. Yes.

11 Q. Do you remember how many variances that
12 Mr. Lacz indicated on the record there were, in his
13 opinion?

14 A. My recollection was it was in the 50s?

15 Q. I direct your attention to page 141,
16 line 13. Take a minute to look at that?

17 It's Mr. Basralian's question stating
18 for the record that -- to Mr. Lacz that there were 53
19 variances.

20 MR. MALAGIERE: What's the date of the
21 transcript, July?

22 MR. DIKTAS: I'm sorry.

23 THE WITNESS: That's the July 26th,
24 2011.

25 MR. DIKTAS: July 26th.

1 MR. MALAGIERE: Thank you.

2 MR. BASRALIAN: That is the reference
3 to the number of variances that Mr. Lacz --

4 THE WITNESS: Yes.

5 MR. BASRALIAN: -- thought existed?

6 THE WITNESS: Yes.

7 BY MR. DIKTAS:

8 Q. Does that refresh your recollection?

9 A. Yes, I said in was in the 50s.

10 Q. So, Mr. Lacz indicated 53 variances.

11 And you challenge one, two, three,
12 four, five of the 53?

13 A. I'd say --

14 Q. That leaves us with 48?

15 A. I didn't bother to add them all because
16 in many instances he determined his variances list
17 based on the fact that the four current tax lots are
18 not being consolidated.

19 Q. So, you don't know how many you
20 challenge right now of the 53?

21 A. No, I think it's irrelevant.

22 Q. But to answer my question, you don't
23 know, yes or no?

24 A. Yes, I said I don't know because I
25 didn't look at it, because I think it's irrelevant.

1 Q. And that's your opinion again, correct?

2 A. Yes.

3 MR. DIKTAS: No further questions.

4 MR. MALAGIERE: Mr. Moskowitz?

5 MR. MOSKOWITZ: I just have one or two
6 very quick questions.

7 CROSS EXAMINATION

8 BY MR. MOSKOWITZ:

9 Q. Mr. Burgis, you spoke several times of
10 the traffic and parking reports, Mr. Keller's
11 reports.

12 Did you read them?

13 A. I have, yes.

14 Q. Did you read them when you were making
15 your analysis, your balancing, with societal need
16 balancing test?

17 A. I did, to the extent that I was
18 focusing, from a planning perspective, on the
19 increase at intersections.

20 Q. No one is parking at intersections.

21 A. And the -- that is correct.

22 Q. If you looked at the parking report,
23 does not anything to do with intersections?

24 A. I looked at the parking analysis to
25 determine the excess number of parking spaces at peak

1 hours.

2 Q. Do you remember how many assumptions
3 were listed in the parking report?

4 A. No, I don't.

5 Q. I'm telling you 21 or 22, does that
6 sound right?

7 A. Yes, it's probably correct.

8 Q. In your study of those reports, did you
9 ever check the source of those assumptions at all?

10 A. No.

11 Q. Did you ever ask anybody where the data
12 came from for the assumptions?

13 A. No, I relied on his expertise.

14 Q. In other words, you never did anything
15 to see if his data was correct or not, did you?

16 A. No, I am not a traffic consultant --
17 traffic expert, I did not.

18 Q. So you read the report, you bought it
19 lock, stock and barrel and integrated it into your
20 testimony tonight, correct?

21 A. Well, you always read these reports
22 with a certain quizzical view, but then when I find
23 that the City's traffic consultant concurred. Mr.
24 Keller said 82 percent of the parking garage would be
25 filled at peak hour and --

1 Q. Well --

2 A. Well, let me finish.

3 And Mr. Miskovich said 84 percent.

4 So recognizing that both of those
5 consultants had near mirror conclusions, I felt that
6 was sufficient for my purposes.

7 Q. In other words, you didn't check the
8 sources of Mr. Keller's assumptions at all, correct?

9 A. No. Nor Mr. Miskovich's, no.

10 Q. Well, that may be your question. I am
11 asking the question now.

12 A. I didn't ask --

13 Q. Isn't it true that you didn't --

14 A. I didn't ask a question just then.

15 Q. Isn't it true you never checked any of
16 the assumptions or charts listed in Mr. Keller's
17 reports?

18 A. That is correct.

19 MR. MOSKOWITZ: I have no other
20 questions.

21 MR. MALAGIERE: Mr. Burgis, you
22 testified that you always read these reports with a
23 quizzical view, is that limited to traffic reports?

24 (Audience outburst.)

25 THE WITNESS: No, I looked at Mr.

1 Polyniak's report too with a quizzical view.

2 MR. MALAGIERE: No, but I guess my
3 question is, your statement was you always read these
4 reports with a quizzical view. That is kind of a
5 generic statement, what reports are you referring to?

6 THE WITNESS: Specifically where you
7 have two competing -- I shouldn't use the word
8 "competing" but two traffic consultants coming from
9 different perspectives. So I'm curious to see, did
10 they come to similar conclusions or diametrically
11 opposite conclusions.

12 For example, Mr. Polyniak and I, as the
13 two planners here, obviously -- and Mr. Lacz, have
14 come to a number of very different conclusions.

15 So when I looked at the traffic
16 information, the end result, and their analysis was
17 very similar, so that's...

18 MR. MALAGIERE: And the fact that their
19 reports reached, in your reading of them, similar
20 conclusions, does that lend some sort of credibility
21 to their findings in your mind?

22 THE WITNESS: It does.

23 And it allows me to be a little more
24 comfortable, not being a traffic consultant, a
25 traffic expert, but one who is still obligated within

1 the context of evaluating the Sica test, to come to
2 certain conclusions.

3 And recognizing that planners rely upon
4 other experts to make certain conclusions regarding
5 the positive and the negative criteria.

6 MR. MALAGIERE: Feeds into your
7 opinion?

8 THE WITNESS: Yes.

9 MR. MALAGIERE: When you refer to peak
10 hours, what general time frames are you referring to,
11 generally?

12 THE WITNESS: Generally speaking it's a
13 one hour -- a 60 minute period, typically anywhere
14 between 7:30 and 9:30.

15 MR. MALAGIERE: In the morning?

16 THE WITNESS: In the morning.

17 The same two-hour period in the
18 afternoon peak hour.

19 MR. MALAGIERE: And is the
20 identification of peak hours, there's two of them, is
21 that a function of the use that you're particularly
22 analyzing? Could it change?

23 THE WITNESS: The use could change,
24 but --

25 MR. MALAGIERE: That's not my question.

1 My question is, is when you look at the
2 peak hours, could the peak hours shift one way or
3 another, by a certain application?

4 THE WITNESS: Well, it theoretically
5 could.

6 I mean you're really looking at the 60
7 minute period of the existing road network. It would
8 be interesting, of course, to determine that based on
9 the traffic volume coming out of a particular use,
10 that the peak hour may change slightly.

11 Say, for example, the analysis
12 initially shows the existing road network had the
13 peak hour from 5:00 to 6:00.

14 And based on the particulars of some
15 use, that with their traffic volume, and their
16 anticipated occupancy, that the peak hour may
17 actually shift from quarter to five to quarter to
18 six.

19 MR. MALAGIERE: Because it's the
20 function of the specific use you're analyzing?

21 THE WITNESS: Yes.

22 MR. MALAGIERE: So, there's three
23 discreet different uses proposed on this property,
24 right?

25 THE WITNESS: Yes.

1 MR. MALAGIERE: What are those three
2 uses?

3 THE WITNESS: There's the LTACH,
4 itself -- the hospital, itself. There is the adult
5 daycare and there is the dialysis.

6 MR. MALAGIERE: It's not a hospital,
7 right.

8 It's a long term acute care facility.

9 THE WITNESS: Long term acute care
10 hospital.

11 MR. BASRALIAN: It's defined, under the
12 statute of New Jersey, as a long term acute care
13 hospital.

14 MR. MALAGIERE: I'm just asking him the
15 question.

16 MR. BASRALIAN: Yes, but you defined it
17 as it's not a hospital.

18 MR. MALAGIERE: The record stands. The
19 record stands. What I said doesn't matter --

20 MR. BASRALIAN: It's a hospital.

21 MR. MALAGIERE: -- I'm not testifying.

22 So, there's three --

23 MR. BASRALIAN: I prefer you ask the
24 questions --

25 MR. MALAGIERE: I'll do the best I can.

1 So there's three discrete business
2 units on the one site?

3 FEMALE AUDIENCE MEMBER: Right.

4 MR. MALAGIERE: Correct?

5 THE WITNESS: In terms of your
6 question, yes.

7 MR. MALAGIERE: Well, what other terms
8 could there be?

9 THE WITNESS: Well, you're talking in
10 terms of traffic, I thought.

11 MR. MALAGIERE: Well, I'm asking a
12 generic a question to follow up. There's three
13 discreet business units proposed, right?

14 THE WITNESS: Yes.

15 MR. MALAGIERE: Do each of them have,
16 as a function of their specific use, different peak
17 times for purposes the traffic analysis?

18 THE WITNESS: I believe that the record
19 indicates that.

20 MR. MALAGIERE: Okay.

21 So, when you're analyzing this use for
22 purposes of figuring out how it is going to impact
23 for the traffic person who is doing that, they have
24 to kind of analysis it one use at a time and then
25 kind of overlay it, is that your understanding?

1 THE WITNESS: Well, yes, to a degree.
2 But the real focus is on the peak hour
3 of the road network as I said initially.

4 MR. MALAGIERE: Okay.

5 THE WITNESS: And --

6 MR. MALAGIERE: Which doesn't change?

7 THE WITNESS: No, it would not change.

8 MR. MALAGIERE: Right.

9 THE WITNESS: And that's the key, and
10 particularly in this area where the peak hour,
11 whether it be morning or the afternoon peak hour, is
12 so much greater than, you know, other times of the
13 day.

14 It is very clear, I think the data
15 reflected this fact, that the peak hour is within a
16 certain specific 60 minute period.

17 MR. MALAGIERE: Do you have --

18 THE WITNESS: So the fact that there is
19 a shift change at 3:00 from three to 3:30 --

20 MR. MALAGIERE: Right.

21 THE WITNESS: -- and then later in the
22 evening at 11 to 11:30 is immaterial in terms of the
23 traffic analysis.

24 MR. MALAGIERE: So, it's of more
25 consequence if the peak hour of the proposed

1 application coincides with the peak hour of the road
2 system?

3 THE WITNESS: I'm sorry. Can you say
4 that again?

5 MR. MALAGIERE: It is a greater
6 consequence, it is a greater impact, traffic-wise, if
7 the peak hour of the proposed --

8 THE WITNESS: Yes.

9 MR. MALAGIERE: -- application -- let
10 me just get it out --

11 THE WITNESS: Yes.

12 MR. MALAGIERE: -- so we have a clear
13 record.

14 Coincides with the peak hour of the
15 road system?

16 THE WITNESS: Yes.

17 MR. MALAGIERE: In your review of the
18 traffic reports here, in any of these business units,
19 does the peak hour of the road system coincide with
20 the peak hour of the proposed use?

21 THE WITNESS: I believe so, but I'm not
22 a hundred percent certain on that one any more.

23 MR. MALAGIERE: But prior to your
24 giving your opinion you had --

25 THE WITNESS: I had looked at that.

1 MR. MALAGIERE: You had figured that
2 out?

3 THE WITNESS: Yes.

4 MR. MALAGIERE: And would you consider
5 to that to be a relatively important thing to focus
6 on in giving your opinion?

7 THE WITNESS: Yes.

8 MR. MALAGIERE: With regard to that
9 negative impact?

10 THE WITNESS: Yes, in terms of the
11 negative criteria, yes.

12 MR. MALAGIERE: As you're testifying
13 now you don't recall.

14 THE WITNESS: I don't remember the
15 numbers.

16 MR. MALAGIERE: I'm not asking you for
17 the numbers.

18 I'm just asking if you recall if any of
19 the three business units peak time traffic-wise
20 coincided with the peak times of the road system?

21 MALE AUDIENCE MEMBER: No.

22 THE WITNESS: As I am standing here, I
23 just don't recall.

24 MR. MALAGIERE: Okay. Thank you.

25 Mr. Basralian?

1 MR. BASRALIAN: I don't have any
2 further questions.

3 MR. MALAGIERE: Mr Chairman, I think,
4 of course with your permission, it would be useful to
5 open Mr. Burgis to the public just on this limited
6 amount of testimony before, at your discretion, we
7 open to the public generally. So it's just limited.

8 CHAIRMAN GUERRA: Okay.

9 MR. MALAGIERE: Thank you, Mr.
10 Chairman.

11 May I?

12 CHAIRMAN GUERRA: Yes, fine.

13 MR. MALAGIERE: Anyone from the public
14 wish to ask any questions of Mr. Burgis?

15 The Chairman's going open the meeting
16 to the public generally for comments, but right now
17 just for purposes of asking questions of this witness
18 with regard to the testimony that he just gave.

19 Would anyone like to ask him any
20 questions?

21 How are you? I'm going to I swear you
22 in.

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

1 DR. JOHNSON: I do.

2 M A R K J O H N S O N,

3 339 Summit Avenue, Hackensack, New Jersey, having

4 been duly sworn, testifies as follows:

5 MR. MALAGIERE: Thank you.

6 Could you please identify yourself for

7 the record and provide us with your home address?

8 DR. JOHNSON: Mark Johnson, 339 Summit

9 Avenue.

10 MR. MALAGIERE: Thank you, welcome.

11 DR. JOHNSON: Thank you.

12 Mr. Burgis, you said that consolidating

13 these pieces of property means there's two front

14 yards on Prospect and one on Summit?

15 THE WITNESS: Correct.

16 DR. JOHNSON: Is the property that

17 we're talking about a square?

18 FEMALE AUDIENCE MEMBER: Uh-uh.

19 THE WITNESS: I'll let the woman behind

20 me answer.

21 THE WITNESS: It's rectangular for most

22 part, a little odd shaped.

23 DR. JOHNSON: But there is a section of

24 the property that does not go all the way through?

25 THE WITNESS: That is correct. That's

1 why I said for the most part.

2 DR. JOHNSON: So, what is -- what is
3 the size then that doesn't actually have a -- sort of
4 a clear pass through because then that's --

5 THE WITNESS: They're all considered
6 the "side" by definition. You have to go through the
7 other definitions in the code, but it explains it in
8 a lot such as this, with these particular dimensions
9 to it, all other lot lines are side lot lines.

10 DR. JOHNSON: So, there is a section of
11 this then that does have a rear --

12 THE WITNESS: No, no. They're all, by
13 definition in the ordinance, considered side yards,
14 side lots -- excuse me -- side lines.

15 DR. JOHNSON: Okay.

16 You also said, I guess at some point
17 you appeared before the Board and talked about gas
18 tanks in terms of their effect on light, air and
19 space. And I -- I was wondering how you compared
20 that kind of thing to parking garage that's seven
21 stories or five stories beneath the ground that would
22 have cars and then people going to their cars. It
23 seems to me that they're much different things.

24 THE WITNESS: In terms of the manner in
25 which the ordinance regulates this activity, they are

1 not.

2 The issue that I had raised, actually,
3 I took issue with Mr. Lacz's contention that the
4 Municipal Land Use Law, and this ordinance talks
5 about light, air and space, it does not. It talks
6 about light, air in open space.

7 And when you go through the definitions
8 in the ordinance and the Municipal Land Use Law and
9 the Planners' Handbook on definitions, it's clear
10 from my perspective, and I assume by others because
11 this issue hadn't been raised before, that garages
12 don't count as open space when they're below grade.

13 DR. JOHNSON: But you aren't comparing,
14 you know, a garage to a septic tank? Other than --

15 THE WITNESS: No, I was not comparing
16 it, so it's certainly indicating that if you use Mr.
17 Lacz's rationale, you would be -- this municipality
18 and other municipalities would be measuring
19 underground tanks, a gas station and septic systems
20 and pipes and whatever else you have underground, and
21 calculating all of that material as part of lot
22 coverage.

23 And it's just not done.

24 DR. JOHNSON: Okay.

25 Just one more question, a certificate

1 of use is --

2 MR. MALAGIERE: Certificate of need.

3 THE WITNESS: Of need.

4 DR. JOHNSON: A certificate of need
5 that's usually for a specific area like for a
6 county -- it's not -- it's not specifically to one
7 city or to one town, is it?

8 THE WITNESS: No. Actually, it's
9 statewide.

10 DR. JOHNSON: So it's --

11 THE WITNESS: So, there is a
12 determination that we need 900 beds.

13 DR. JOHNSON: Okay.

14 THE WITNESS: Three-hundred, I believe,
15 have been constructed, so we're short 600.

16 DR. JOHNSON: But they can be --

17 THE WITNESS: And it's is not atypical
18 that these certificates get moved around.

19 DR. JOHNSON: So, it could be anywhere?

20 FEMALE AUDIENCE MEMBER: Uh-huh.

21 THE WITNESS: I'm not the --

22 DR. JOHNSON: It's not specific then?

23 THE WITNESS: Yeah, I'm not the expert
24 on that, Mr. Pineles had testified at length on that
25 issue.

1 DR. JOHNSON: Thank you, Mr. Burgis.

2 MR. MALAGIERE: Hi, I'm going to swear
3 you in.

4 MS. PALINKAS: Okay. Hi, Alexis
5 Palinkas, 235 Prospect Avenue.

6 MR. MALAGIERE: I am just going to
7 swear you in while you're here, even though you're
8 just asking questions.

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

12 MS. PALINKAS: I do.

13 A L E X I S P A L I N K A S,
14 235 Prospect Avenue, Hackensack, New Jersey,
15 having been duly sworn, testifies as follows:

16 MR. MALAGIERE: Thank you. Welcome.

17 MS. PALINKAS: I came in a little bit
18 late, I hope these questions are appropriate.

19 The first thing I did here when you
20 were talking about a shift change at 3:00 and that
21 would increase traffic on the street; is that
22 correct?

23 THE WITNESS: I had said that there
24 will be a shift change between 3:00 and 3:30.

25 MS. PALINKAS: Right, which just

1 happens to coincide with when the school let's out
2 and also when the hospital is very, very, very busy.

3 That would seem to be pretty negative
4 to have increased traffic at those two times -- at
5 that time.

6 THE WITNESS: Mr. Keller addressed that
7 point in his testimony.

8 MS. PALINKAS: Okay. I don't buy it.

9 Okay. Now recently there's been -- and
10 it seems since these studies were done a tremendous
11 increase of bottlenecks at Summit and Passaic and
12 Prospect and Passaic, even though there is now a left
13 turn light on Summit where this facility is --

14 MR. MALAGIERE: Go ahead keep going.
15 Mr. Basralian is moving in.

16 MS. PALINKAS: Yeah, talk about
17 encroaching --

18 MR. BASRALIAN: I'm not --

19 MS. PALINKAS: Talk about encroaching
20 --

21 MR. MALAGIERE: Pay him no mind. You
22 just finish with your questions.

23 MS. PALINKAS: Okay. So, that's the
24 traffic situation even though there's now a left turn
25 signal, it's -- it's really gotten awful.

1 FEMALE AUDIENCE MEMBER: Right.

2 MS. PALINKAS: And it will certainly
3 get worse if this facility -- let's call it a
4 "hospital" because that's what it is, will go in.

5 Also did you discuss at all the -- oh,
6 Mr. Basralian, I'm glad you're here.

7 At one point early on we discussed how
8 people are going north on Summit and there's all this
9 traffic and you said people aren't going to get out
10 the line of traffic and go down to the Esplanade.
11 Yeah, they do. They do.

12 MR. BASRALIAN: That's a statement you
13 can make at the end, but I think the purpose is to
14 ask Mr. Burgis questions on his testimony tonight,
15 which did not involve traffic on the Esplanade or
16 anything else.

17 MR. MALAGIERE: Well, it involved
18 traffic --

19 MS. PALINKAS: Well...

20 MR. MALAGIERE: -- to the extent it set
21 into his planning opinion, I think if you could ask
22 him a question about his planning opinion and the
23 facts which militated towards his conclusions, that
24 would be, probably, what we want to try and get to
25 now.

1 MS. PALINKAS: Right. Well, so, did
2 you take into that account and do you not feel that
3 people will, in fact, be cutting out of the Summit
4 Avenue line and, therefore, impacting the streets
5 that go down into the Esplanade? I mean there's
6 certain times --

7 MR. MALAGIERE: Let me just say this.

8 MS. PALINKAS: Yeah.

9 MR. MALAGIERE: Let me just see if I
10 can help you.

11 If that were to happen, assuming you're
12 being asked a hypothetical, traffic backs up, people
13 take these secondary routes, would that impact your
14 opinion that that is not a substantial negative
15 impact which would militate an opinion that this is
16 not -- this is not qualified under the Sica analysis.

17 THE WITNESS: That is correct.

18 The issue is that under Sica and under
19 the Municipal Land Use Law in terms of the negative
20 criteria, the question is is there a substantial
21 detriment to the public good. And the traffic
22 testimony concluded that it was not. I am not a
23 traffic expert.

24 MS. PALINKAS: Right, right.

25 THE WITNESS: So, I did not do my own

1 independent analysis. I relied on some of the
2 expertise of others to form my conclusion that the
3 Sica test has been met.

4 MS. PALINKAS: Sometime you can't see
5 the forest for the trees, I mean, you know, really...
6 I mean I --

7 THE WITNESS: No, I see the forest.

8 MS. PALINKAS: You see the forest. I
9 --

10 MR. MALAGIERE: I don't think -- excuse
11 me, if I may, I don't think that the traffic analysis
12 of either the Board's traffic engineer or the
13 Applicant's traffic engineer concluded that it was
14 not a substantial impact to the traffic. I think
15 they made quantitative conclusions, isn't not
16 accurate?

17 THE WITNESS: I think they made
18 conclusions that there is an impact.

19 I specifically recall Mr. Keller
20 distinguishing an impact from a substantial impact.

21 MR. MALAGIERE: So, you relied -- you
22 didn't do, you didn't make a determination as a
23 planner that there was a -- under the traffic score
24 that there was a substantial impact.

25 You relied upon the opinion given by

1 the professionals?

2 THE WITNESS: Yes.

3 MR. MALAGIERE: But isn't it typically
4 your discretion to make that, don't you look at
5 quantitative analysis and then ultimately feed into
6 your planning opinion?

7 THE WITNESS: To a certain degree
8 that's correct, but in looking at the information,
9 the end result and the critical aspect of their --
10 both of their testimonies related to the impact at
11 the lights, and they both indicated that everything
12 else seemed to be secondary, that was their main
13 focus.

14 MR. MALAGIERE: Was the functionality
15 of the lights.

16 THE WITNESS: And the conclusion was
17 that at worst locations, there was not a substantial
18 impact, adverse impact.

19 MR. MALAGIERE: A substantial impact
20 when using that grading system that they used with
21 regard to intersections?

22 THE WITNESS: Correct.

23 MR. MALAGIERE: Okay.

24 MS. PALINKAS: All right. We'll just
25 go back one minute to that cutting off of Summit to

1 go down the side streets.

2 Of course, there is a school, a very
3 large elementary school down there and was that taken
4 into account, the fact of the parents waiting to pick
5 up the children, the children who are crossing the
6 streets down there, was that part of the study? Did
7 you --

8 THE WITNESS: My recollection is
9 they -- - that Mr. Keller addressed that point. He
10 certainly did in testimony. I believe it was also in
11 his report. And the conclusion was as I stated
12 earlier.

13 MS. PALINKAS: All right.

14 And one other thing is, the traffic
15 coming out of the garage, is that going to be allowed
16 to turn left onto Prospect?

17 When they're coming out of the garage,
18 they would -- to go -- they would be turning west
19 heading north onto Prospect is that permissible? I
20 mean is that part of the plan?

21 THE WITNESS: I'm trying to recall, I
22 think it is. I believe it is.

23 MS. PALINKAS: All right. Well -- and
24 -- and has anyone looked at how impossible that is,
25 just by studying the people coming out of the VA

1 building --

2 MR. MALAGIERE: Well, that's really a
3 comment --

4 MS. PALINKAS: But -- okay --

5 MR. MALAGIERE: -- and it's not a
6 question.

7 MS. PALINKAS: Okay.

8 MR. MALAGIERE: I don't know that the
9 planner is really going to get -- that's more of a
10 traffic issue.

11 MS. PALINKAS: Oh, oh, sorry.

12 MR. MALAGIERE: That's okay. You don't
13 need to be concerned about it. Just it seems, we
14 want to limit the questions to planning questions for
15 this witness.

16 MS. PALINKAS: Oh, okay.

17 Could you change that plan?

18 Thank you.

19 MR. MALAGIERE: Anyone else?

20 (NO RESPONSE.)

21 MR. MALAGIERE: Seeing no one, Mr.
22 Chairman.

23 CHAIRMAN GUERRA: Right.

24 MR. MALAGIERE: Okay. This witness is
25 concluded to the public.

1 And it strikes me now, Mr. Chairman,
2 that all of the testimony has concluded for this
3 hearing.

4 Mr. Basralian, is that your
5 understanding.

6 MR. BASRALIAN: Yes, that's correct.

7 MR. MALAGIERE: Counselor, you wish to
8 be heard on that point?

9 MR. DIKTAS: No, sir.

10 MR. MALAGIERE: So the testimony is
11 finished.

12 CHAIRMAN GUERRA: Okay.

13 MR. MALAGIERE: Okay?

14 Mr. Chairman, is it your desire to open
15 the meeting for general comments from the public?

16 CHAIRMAN GUERRA: Yes, we're going open
17 up the public for comments about the whole
18 application.

19 If possible, I'd like to limit it to
20 three minutes a person, if possible.

21 MR. MALAGIERE: That's at your
22 discretion, Mr. Chairman.

23 MR. BORRELLI: Do you want me to keep
24 time?

25 CHAIRMAN GUERRA: Yes, if you could.

1 So let's do that, anyone who wants to
2 speak from the public --

3 MR. MALAGIERE: Please come forward.

4 CHAIRMAN GUERRA: -- step up, line up
5 and we'll hear you.

6 MR. MALAGIERE: We're going swear you
7 in, ma'am?

8 MS. DUFFY: Oh.

9 MR. MALAGIERE: Please raise your right
10 hand to be sworn in please.

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 MS. DUFFY: I do.

15 A L I C E D U F F Y,

16 280 Prospect Avenue, Hackensack, New Jersey,
17 having been duly sworn, testifies as follows:

18 MR. MALAGIERE: Could you please
19 identify yourself for the record and give us a home
20 address?

21 MS. DUFFY: I am Alice M. Duffy,
22 residing at 280 Prospect Avenue, which is the
23 Whitehall.

24 MR. MALAGIERE: Welcome.

25 MS. DUFFY: I have lived in -- and only

1 in Hackensack for 50 years, the huge size of the
2 proposal commercial structure on a small plot of land
3 in the neighborhood of single family and residential
4 apartments would have a tremendous degrading effect
5 on the quality of living for the residents.

6 Summit and Prospect Avenues are
7 arterial streets, already subject to traffic
8 congestion, which would be particularly aggravated by
9 in and out traffic congestion which would -- excuse
10 me -- of supply trucks with minuscule on-site parking
11 area. Bus service would be disrupted. Construction,
12 which would extend for many months or multiple years,
13 where there would be no on-site provision for the
14 large construction equipment and machinery or storage
15 of building materials would severely impact the
16 surrounding area.

17 Witness the recent activities that went
18 along with the rebuilding of the collapsed
19 underground structures at 300 Prospect. The
20 excavation required for the proposed five levels
21 underground parking would require hundreds of
22 truckloads of soil to be removed to some unspecified
23 off-site location.

24 And this disruption would extend for
25 months. Street parking in the area is very limited.

1 And the expected increase of transient traffic would
2 worsen the existing conditions.

3 Approval of this application would be
4 the first step in Applicant's future efforts to
5 expand its footprint to its existing Prospect Heights
6 facility.

7 I severely, on this, ask you please
8 refuse this.

9 Thank you.

10 MR. MALAGIERE: Thank you, Ms. Duffy.

11 (Applause).

12 MR. MALAGIERE: Do you swear the
13 testimony you are about to give before this Board to
14 be the truth, the whole truth and nothing but the
15 truth, so help you God?

16 MR. WEBER: I do.

17 J E R R Y W E B E R,

18 225 Prospect Avenue, Hackensack, New Jersey,
19 having been duly sworn, testifies as follows:

20 MR. MALAGIERE: Would you please
21 identify yourself for the record.

22 MR. WEBER: Jerry Weber, I live at 225
23 Prospect Avenue, Hackensack.

24 MR. MALAGIERE: Welcome, sir.

25 MR. WEBER: Thank you.

1 I just wanted to say that I often have
2 to go to work at 7:30. And to do that I have to
3 cross from the west side of Prospect Avenue, crossing
4 traffic. And it is terrifically impossible,
5 particularly when there's a line of sight problem.
6 The cars don't wait for you to come through. You
7 take your life in your hands when you cross the
8 traffic.

9 Also, you know, with 53 variances it
10 makes a mockery of zoning laws altogether. You
11 wonder why we have zoning laws, if it's even being
12 considered. It just doesn't sound right.

13 And beneficial use has been mentioned.
14 You know, nobody has questioned it may be a
15 beneficial use, but that doesn't necessarily mean
16 that this site has to be placed for the LTACH. So,
17 you know, I don't know why beneficial use is even
18 brought up.

19 The Board, the Council, has hired an
20 expert. And he has given us a lot of reasons why
21 this building shouldn't be built. It seems to me
22 that we should trust more the impartial opinion of
23 this expert, rather than the paid expert who has
24 other reasons to put the building up.

25 FEMALE AUDIENCE MEMBER: That's right.

1 MR. WEBER: It also will set a
2 precedent, I think a dangerous precedent, if this
3 building goes in. It will change the nature of both
4 avenues, Prospect and Summit. And I urge the Council
5 not to approve it.

6 (Applause.)

7 MR. MALAGIERE: Can I swear you in,
8 sir?

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

12 MR. SCHROEDER: I do.

13 W I L L I A M S C H R O E D E R,
14 245 Prospect Avenue, Hackensack, New Jersey,
15 having been duly sworn, testifies as follows:

16 MR. MALAGIERE: Please identify
17 yourself, sir.

18 MR. SCHROEDER: William Schroeder, 245
19 Prospect Avenue.

20 MR. MALAGIERE: Thank you, welcome.

21 THE COURT REPORTER: Spell your last
22 name please?

23 MR. SCHROEDER: Pardon me?

24 THE COURT REPORTER: Spell your last
25 name please?

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MR. SCHROEDER: S-c-h-r-o-e-d-e-r.

THE COURT REPORTER: Thank you.

MR. SCHROEDER: How long do I have?

MR. MALAGIERE: Three minutes.

MR. SCHROEDER: Three minutes.

If I stood here for three months, I could not think of a more inappropriate location for the proposed coverage.

(Applause.)

MR. SCHROEDER: It is absurd to think a private purpose, for profit project, proposed project thank God, would even be thought of for this location.

It straddles two of the busiest residential north/south thoroughfares in the City of Hackensack. I repeat, residential.

One lane of traffic in each direction, Summit and Prospect. Two of the finest residential streets in the City of Hackensack.

(Applause.)

MR. SCHROEDER: This location benefits one group only, the developer, and his posse (indicating). I don't know if any of the posse live in Hackensack.

It has redeeming social value, no doubt

1 about it, but not in this location.

2 Now, thanks to the benefit of stimulus
3 money, perhaps, we all notice coming into the City of
4 Hackensack it was established in 1693. And we've
5 seen that the last year or so, these beautiful signs.
6 For 318 years, 318 years, there's been no commercial
7 development on Summit Avenue, 318 years. Boards like
8 yourself have turned it down. Maybe the first Board
9 were Indians, who knows.

10 Anyway, why would this Board make an
11 exception for this project in this location?

12 The City of Hackensack is approximately
13 four square miles. This area, Prospect Heights and a
14 facility of yours, I refer to the developer, on
15 Polifly, the area is saturated with this type of
16 facility. There are areas in the City of Hackensack
17 to the south and to the east that beg, they beg for
18 commercial development.

19 FEMALE AUDIENCE MEMBER: Right.

20 MR. SCHROEDER: They beg for it. We
21 don't need it on Summit Avenue. There's been none,
22 as I just said, for 318 years why disturb Summit
23 Avenue?

24 FEMALE AUDIENCE MEMBERS: Money.

25 Money.

1 MALE AUDIENCE MEMBER: Money.

2 MR. SCHROEDER: This Board does not
3 need as it's legacy, that we spoiled Summit Avenue
4 for a for-profit project, For a developer.

5 If it's approved, God forbid. There
6 will be a rush to the exits.

7 FEMALE AUDIENCE MEMBER: That's right.

8 MR. SCHROEDER: People that live on
9 Summit Avenue, they'll be running to sell their
10 property and the predator/vultures will move in.

11 Once they get a foothold on Summit
12 Avenue, it will fall like dominoes. First from
13 Passaic to Essex Street, and then from Passaic to
14 Route 4.

15 Every application, I guess, I don't
16 know the law, deserves a hearing. But I think,
17 personally, this application should have been dead on
18 arrival because of the inappropriate location.

19 Only appropriate for one person, the
20 developer. They find this property, wow, I bought
21 the best property.

22 And I might add -- excuse me -- I live
23 in the neighborhood, within 100 yards or so. I pass
24 the proposed property two or three times a day more
25 than anyone -- as much as anybody in this room.

1 This developer has already left his fingerprint on
2 the neighborhood.

3 Any of you pass there lately? The
4 fingerprint is filthy. The properties are overgrown,
5 paint is peeling, windows broken. It shows you how
6 much regard these developers, people of this type,
7 have for the City of Hackensack and the citizens of
8 Hackensack. They have no regard, period, end of
9 story. They care about one thing, the profit motive.

10 (Applause.)

11 MR. SCHROEDER: I -- I suggest they
12 come back when they have a more appropriate location
13 for this project. It has redeeming social value. I
14 can get a lot of commercial real estate agents
15 that'll run and they will help you find a location.

16 Your location on Polifly Road is
17 perfect, four lanes of traffic, 80 percent commercial
18 developed, four lanes of traffic. And it backs onto
19 Newman Street, which is 100 percent commercial. It
20 doesn't straddle Summit Avenue and Prospect Avenue.
21 This is absurd.

22 Anyway, three minutes, I can take three
23 years. I appreciate the time. And I -- on behalf --
24 I respectfully ask the Board on behalf of the City of
25 Hackensack and the citizens of Hackensack, to reject

1 the application please.

2 (Applause.)

3 MR. MALAGIERE: Hi, how are you?

4 I'm going to swear you in, ma'am.

5 MS. BURNETT: How can I say --

6 MR. MALAGIERE: No, I'm sorry. I have
7 to swear you in.

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

11 MS. BURNETT: I do.

12 C A R O L B U R N E T T,

13 245 Prospect Avenue, Hackensack, New Jersey,

14 having been duly sworn, testifies as follows:

15 MR. MALAGIERE: Could you please
16 identify yourself for the record, spell your last
17 name and give us your address please, ma'am.

18 MS. BURNETT: Burnett, B-u-r-n-e-t-t,
19 address 245 Prospect Avenue.

20 THE COURT REPORTER: What's the first
21 name.

22 MS. BURNETT: Carol.

23 THE COURT REPORTER: Carol?

24 MS. BURNETT: Uh-huh.

25 MR. MALAGIERE: Thank you, welcome,

1 ma'am.

2 MS. BURNETT: I'd like to state many of
3 the -- many things that will cause more traffic.
4 They will activate garbage disposal of trucks
5 delivering to this facility. They will have linens
6 delivered, also they'll have to have disposal of the
7 linens. They will have to have oxygen tanks
8 delivered, and also have to be disposed of. And
9 certainly they will have to have food deliveries.

10 Then there's the medical supplies
11 delivery. And then there's the medical disposable
12 waste that has to be taken care of. And, of course,
13 the stationary.

14 And now the buses also will be here
15 delivering patients. And the buses will be here to
16 pick up the patients. Visitors will be coming and
17 visitors will be going. Nurses and doctors will be
18 coming and going. The traffic will be horrendous.

19 As it is, we've had to call up the City
20 to fix the potholes on Prospect Avenue.

21 With the population as it is for the
22 hospital, Hackensack Hospital, Prospect Avenue will
23 be inundated with traffic. As it is, you say the
24 peak hours, all are peak hours on Prospect Avenue.

25 (Applause.)

1 MR. MALAGIERE: Thank you.

2 Hi, I'm going to swear you in, ma'am.
3 Do you swear the testimony you're about to give
4 before this Board to be the truth, the whole truth
5 and nothing but the truth, so help you God?

6 MS. MONOPOLI: I do.

7 D O R O T H Y M O N O P O L I,

8 307 Prospect Avenue, Hackensack, New Jersey,
9 having been duly sworn, testifies as follows:

10 MR. MALAGIERE: Please identify
11 yourself for the record.

12 MS. MONOPOLI: Dorothy Monopoli, I
13 live at 307 Prospect Avenue. It's the Barrage House.
14 I'm also a real estate agent.

15 MR. MALAGIERE: Thank you, welcome.

16 MS. MONOPOLI: Thank you.

17 THE COURT REPORTER: Can you spell your
18 last name please.

19 MR. MALAGIERE: Spell your last name,
20 ma'am?

21 MS. MONOPOLI: M-o-n-o-p-o-l-i.

22 Three quick points to make. Take a
23 look at the people in the audience, all of them pay
24 taxes. I'm paying almost 7,000 a year for a two
25 bedroom, two bath condo on Prospect Avenue. You have

1 a great many tax payers, individual taxpayers living
2 on this street. We have, unfortunately, been through
3 real estate slump lately, that has caused our
4 property values to go down quite a bit as everyone's
5 already has, this is common knowledge.

6 So, I ask you to think about your
7 loyalty to the current citizens of Hackensack versus
8 your loyalty to a commercial venture, even though
9 there is somewhat of a need. It does have a
10 beneficial need, I'm not disputing that.

11 But think about the taxpayers on Summit
12 Avenue and Prospect Avenue, The two premiere
13 neighborhoods in Hackensack. When they go, there's
14 not going to be another. It's all downhill from that
15 point on.

16 Secondly, I want you to think about
17 Edgewater and River Road in Edgewater, and how people
18 can't get out of their driveways there.

19 I already can't get out of my driveway
20 on Prospect Avenue very easily.

21 No matter what these traffic reports
22 say, no matter what the statistics are, we already
23 have a bad traffic problem to begin with, and
24 anything else is going to just take more drops of
25 water over the edge of the cup, until we're just

1 driving around and around and around without ever
2 being able to reach our destination.

3 It's not viable. It just isn't viable.
4 I urge this Board to think about their loyalty to the
5 current citizens of Hackensack, instead of to a
6 commercial venture, that really belongs elsewhere.
7 And it can be elsewhere in Hackensack in a
8 commercially zoned area.

9 I would be very happy to hear an
10 application for a commercial area. I don't think
11 there's anything wrong with the use. And I have been
12 to most of the meetings. I've listened to all of the
13 testimony. I've tried to have an open mind, but what
14 it really comes down to is there really is a traffic
15 problem to begin with and it's only going to get
16 worse if you approve this.

17 And I think you really do, as elected
18 officials, appointed officials, owe the current
19 residents of Hackensack prime consideration.

20 Thank you very much.

21 (Applause.)

22 MR. MALAGIERE: Let me swear you in,
23 sir.

24 Do you swear the testimony you're about
25 to give before this Board to be the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 MR. MULLARKEY: I do.

3 J E F F M U L L A R K E Y,

4 245 Prospect Avenue, Hackensack, New Jersey,

5 having been duly sworn, testifies as follows:

6 MR. MALAGIERE: Would you please

7 identify yourself for the record.

8 MR. MULLARKEY: Jeff Mullarkey, 245

9 Prospect Avenue.

10 MR. MALAGIERE: Spell your last name

11 please?

12 MR. MULLARKEY: M-u-l-l-a-r-k-e-y.

13 MR. MALAGIERE: Thank you, sir.

14 Welcome.

15 MR. MULLARKEY: Thank you.

16 First, I'd like to thank the Board,

17 Council, expert witnesses for their patience. I've

18 been to a number of meetings here.

19 And this commercial venture, of course,

20 has elicited a lot of concern and consternation, not

21 only from surrounding residents, but it has awakened

22 the town of Hackensack people as well.

23 The definition of this or the

24 definition of the Hackensack Zoning Ordinance, under

25 this definition, the facility falls under the

1 definition of a hospital, which the City Ordinance
2 permits in only HCS, health care service zoned
3 districts.

4 As Hackensack City residents, as the
5 woman before me had mentioned, taxpayers, voters,
6 we're outraged at the proposed circumvention of the
7 town variances that are being proposed, where this is
8 being proposed to be constructed.

9 These variances are ignoring city
10 requirements for lot coverage, misplacement of a
11 hospital in a residentially zoned area, and
12 insufficient parking.

13 The developer for this for-profit,
14 acute care facility, used this only as a site of
15 convenience for the project. And this project, of
16 course, will pose, as has been mentioned, major
17 inconvenience to the lifestyle and disrupt the people
18 who make this their home in a residentially zoned
19 area on both the Prospect and the Summit roads or
20 avenues.

21 And this is tantamount to trying to put
22 a commercially square peg in a serenely manicured
23 residentially round hole. It just won't work.

24 Now, Hackensack has specifically zoned
25 commercial areas for such projects. And these zoned

1 areas were allocated by the City Planners and Zoning
2 Board to control exactly this type of commercial
3 encroachment, for-profit type projects, that the
4 developer is requesting to be constructed.

5 The integrity of the town and its
6 residents and the officials who took the time to lay
7 out the Zoning Ordinances, must be maintained and
8 adhered to, relative to the zoning codes that are
9 already in place.

10 We must not allow commercial variances
11 to supersede or compromise those zoning regulations
12 that have been meticulously and, again, appropriately
13 detailed and laid out for lasting residential appeal.

14 It's very interesting that in the back
15 corner you still have a plaque that says (indicating)
16 "thinking of moving to Hackensack"? Well, I think
17 ventures of this nature, if they're allowed to
18 proceed, will give people a heck of a lot of thought
19 and re-think to what they did and what they might do
20 or tell people to do relative to this town.

21 If we fail to preserve the integrity of
22 our existing residential communities, we destroy and
23 irreparably alter, and potentially begin, a
24 continuous commercial assault against some of the
25 best residential locations that Hackensack has to

1 offer.

2 I ask that appropriateness versus
3 inappropriateness rule the day, and hope that the
4 Board rejects the proposal.

5 (Applause.)

6 MR. MALAGIERE: Welcome back, ma'am,
7 you're already sworn in, just identify yourself for
8 the record.

9 MS. PALINKAS: Alexis Palinkas, 235
10 Prospect Avenue.

11 Okay, most people are talking about
12 traffic. I think one of the big things is also to
13 emphasize the residential aspect of this area. This
14 is a commercial building that is, according to
15 testimony, not going to be on Summit. It's going to
16 be on Prospect.

17 And on Summit there's going to be this
18 beautiful park. But the park is the roof of the
19 garage. So if, in fact, that happens, what would --
20 what would -- why's the word -- why wouldn't another
21 developer come in and be able to also start putting
22 things underground on Summit Avenue --

23 FEMALE AUDIENCE MEMBER: Right.

24 MS. PALINKAS: -- thereby destroying
25 that whole area.

1 Back in 2009, before the horror of this
2 whole project even came to light, I had taken around
3 petitions and got more than 700 signatures, just in
4 two weeks. And those petitions were presented to the
5 Mayor and Council that -- that oppose this project.
6 And that's before people even know just how grand a
7 project it was and the fact that it actually was a
8 hospital.

9 I also would like to say that Prospect
10 and Summit are relatively quiet on weekends because
11 they are residential streets. Even though there are
12 high-rises on Prospect, residential area.

13 If this facility is there, it's
14 absolutely going to impact traffic on weekends
15 because it's operating on Saturdays and Sundays.

16 And -- oh, and Ridgewood shot down
17 Valley's expansion, please keep us in mind. We don't
18 need it.

19 MR. MALAGIERE: Hi, I'm going to swear
20 you in, ma'am.

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

24 MS. KLEINMAN: Yes.

25

1 B E A K L E I N M A N ,

2 245 Prospect Avenue, Hackensack, New Jersey,

3 having been duly sworn, testifies as follows:

4 MR. MALAGIERE: Thank you.

5 MS. KLEINMAN: I'm Bea Kleinman from

6 245 Prospect Avenue, Hackensack.

7 MR. MALAGIERE: Thank you.

8 MS. KLEINMAN: Proud to be a resident

9 here.

10 MR. MALAGIERE: Thank you. Me too.

11 Can you spell your last name for us

12 please?

13 MS. KLEINMAN: K-l-e-i-n-m-a-n,

14 Kleinman.

15 MR. MALAGIERE: Thank you, welcome.

16 MS. KLEINMAN: Okay. I'm more recent.

17 I'm in Hackensack less than three years. I could

18 have moved anywhere I wanted to, and when I thought

19 about it I said, I'm going to go to Hackensack

20 because it has the most to offer to someone like me.

21 I have been very happy living in Hackensack.

22 But I'm beginning to see a change that

23 makes me unhappy. When I go out of Prospect, down

24 Prospect, I no longer go down to Passaic Street

25 because to wait for that light there takes two or

1 three lights. I cut over, down Central, and go down
2 Summit, for that arrow that gives me the turn. That
3 changes in lifestyle that you begin to see more and
4 more of these happening.

5 I wasn't planning to speak tonight, but
6 I just want you to know I appreciate so very much if
7 you would consider turning this application down.

8 I think it's detrimental to all of us.
9 And I want other people to welcome Hackensack like I
10 did.

11 And I thank you very much for turning
12 this down.

13 MR. MALAGIERE: Thank you.

14 (Applause.)

15 MR. MALAGIERE: Hi, how are you, going
16 to swear you in please.

17 MS. KUNZANMAL: I'll affirm.

18 MR. MALAGIERE: Okay. Do you affirm
19 that the testimony you're about to give before this
20 Board to be the truth, the whole truth and nothing
21 but the truth, so help you God?

22 MS. KUNZANMAL: Yes.

23 N I T A K U N Z A N M A L,

24 277 Prospect Avenue, Hackensack, New Jersey,
25 having been duly sworn, testifies as follows:

1 MR. MALAGIERE: Could you please
2 identify yourself for the record?

3 MS. KUNZANMAL: Nita Kunzanmal, 277
4 Prospect Avenue.

5 THE COURT REPORTER: Can you spell your
6 name please?

7 MS. KUNZANMAL: K-u-n-z-a-n-m-a-l first
8 name Nita, N-i-t-a.

9 MR. MALAGIERE: Thank you, welcome.

10 MS. KUNZANMAL: Good evening, Board.
11 Good evening, Chair.

12 MR. MALAGIERE: Good evening.

13 MS. KUNZANMAL: I want to say first
14 that on the prior three or four occasions, there were
15 numerous residents here present wanting to voice
16 their objection to this application. However on
17 those occasions the meeting was not open to the
18 public and they went away without being able to be
19 heard.

20 So, on their behalf, at least 50
21 residents, I would like to voice their objection on
22 the record, firstly.

23 Secondly, I would turn to the rest of
24 the room here and say to anybody who has already
25 decided to speak, please come up and say you object

1 to the application. It is very important.

2 Now, on the August 25th meeting, a
3 gentleman named Dave Lobell was present because the
4 public was supposed to speak that day. But as we
5 know we are only speaking today. Public is only
6 being allowed to speak today.

7 Dave lived in Hackensack with his
8 father Robert Lobell, but has since moved to South
9 Jersey and is unable to be here today and wanted me
10 to share his story with the Zoning Board and the
11 community.

12 In July of 2011, Robert was undergoing
13 rehab for a broken hip at Prospect Heights. This is
14 Mr. Pineles' site, the facility across the street
15 from the application involved here.

16 At the end of July the beginning of
17 August, he had spent -- Robert has spent about 30
18 days at Prospect Heights. And was just beginning to
19 walk. Tragically, however, being a diabetic, at some
20 point he went into a diabetic coma, his systems began
21 failing. And Prospect Heights was unable to handle
22 Mr. Robert's (sic) condition. And he was rushed to
23 the hospital up the street, however, he died within
24 moments of getting there.

25 Dave learned of his father's death from

1 Hackensack Hospital, not from Prospect Heights, even
2 though his father had been there for 30 days. They
3 had cell phone numbers and all the contact numbers
4 for all the family.

5 I now question the very quality of care
6 that Prospect Heights affords, given that they did
7 not and could not timely address Robert's fading
8 condition.

9 I do not know how many other similar
10 cases like this have happened or may happen in the
11 future.

12 I submit to the Board that not only is
13 the present location unsuitable for the LTACH
14 facility, which would ruin the prevailing character
15 of the neighborhood as others before me have pointed
16 out. There's no beneficial use if the facility
17 offers poor medical treatment and an application by
18 this developer for any facility anywhere by anyone
19 should not be granted.

20 Thank you.

21 MR. MALAGIERE: Thank you.

22 I'm going to swear you in, sir.

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

1 MR. GARTNER: Yes.
2 R O B E R T G A R T N E R,
3 309 Summit Avenue, Hackensack, New Jersey, having
4 been duly sworn, testifies as follows:

5 MR. MALAGIERE: Could you please
6 identify yourself for the record and spell your last
7 name?

8 MR. GARTNER: My name is Robert
9 Gartner, G-a-r-t-n-e-r. I live at 309 Summit Avenue.

10 MR. MALAGIERE: Thank you. Welcome.

11 MR. GARTNER: I welcome development
12 in Hackensack, but it needs to be done responsibly.

13 Make no mistake, the Applicant will
14 play games with addresses, but this is two distinct
15 development zones here.

16 From Thompson Street, which is just
17 above Essex Street, up through Staib Park, Summit
18 Avenue has the look and feel of a residential street.

19 From Thompson to the site, it's about
20 three-quarters of a mile and contains about 80
21 properties, many residential, some professional
22 offices which still look like houses, no office
23 buildings and, perhaps, a church or two.

24 There are no parking garages, 19 story
25 towers. The tallest building is probably about three

1 stories.

2 Let's be clear on what the Applicant is
3 actually planning on building there. He's not
4 building a park on Summit Avenue. He's building a
5 parking deck.

6 From the site north to Staib Park, is
7 1.4 miles and it has 140 properties, mostly
8 residential, some professional, and another church or
9 two.

10 Again, there are no office buildings,
11 no parking garages, no 19-story towers.

12 Permitting this development would
13 effectively end zoning on Summit Avenue. By
14 combining these four properties into one, there will
15 be commercial properties fronting on Summit Avenue,
16 which we don't have right now for that entire two
17 plus mile stretch.

18 How could the City possibly reject any
19 -- the next applicant for commercial development on
20 Summit Avenue after this happens?

21 Indeed, the next commercial development
22 could be coming from Mr. Pineles again as he buys up
23 a property next to the one that he has and the
24 argument is going to be very simple, I have my
25 property next to a parking garage, it's already

1 commercial, how can you reject mine. It's going to
2 be a very easy case for people to make.

3 The three Summit Avenue properties
4 should not be permitted to be rezoned commercial at
5 all.

6 If Mr. Pineles would like to rehab the
7 houses on Summit Avenue, convert them into
8 owner/occupied professional offices consistent with
9 the other properties on Summit Avenue, I have no
10 problem with that at all.

11 On the Prospect property, Mr. Pineles
12 should develop the property in a way which is
13 consistent with the amount of property that he owns.
14 If he wants to build a bigger building on Prospect
15 than he property currently supports, then I suggest
16 that he buy more property on Prospect Avenue.

17 FEMALE AUDIENCE MEMBER: Oh.

18 FEMALE AUDIENCE MEMBER: Oh, thanks.

19 MR. GARTNER: Mr. Pineles has not made
20 any compelling case or any case at all for that
21 matter, for putting three distinct businesses in one
22 location.

23 I believe his response on the issue
24 was, "they are what they are". There's no reason for
25 the three of these to be in one location, other than

1 a small need for dialysis for his LTACH patients.
2 However, that does not require as large a dialysis
3 facility as he has proposed.

4 The beneficial needs for an LTACH can
5 be met with a vastly smaller development on this
6 property.

7 The other businesses, I think the City
8 of Hackensack should work with Mr. Pineles to find
9 suitable locations elsewhere in the City.

10 Particularly in this economy there is
11 no shortage of available properties. In fact, there
12 are properties available in the Hackensack Hospital
13 zone.

14 This is not what Mr. Pineles would have
15 you believe and "not in my backyard" question.
16 Hackensack is very accommodating to the many
17 healthcare facilities in town.

18 I have no objection to any of Mr.
19 Pineles' businesses being located here. In fact, I
20 welcome them even on Prospect Avenue property.
21 However this development -- or any development, needs
22 to be done responsibly.

23 This project, if approved, would enrich
24 one person immensely at a huge cost to many others.

25 The Board should object this

1 application.

2 Thank you very much.

3 MR. MALAGIERE: Thank you.

4 (Applause.)

5 MR. MALAGIERE: I'm going to swear you
6 in. Hi, how are you?

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

10 MS. JANKOWSKI: I do.

11 A N N E T T E J A N K O W S K I,

12 344 Prospect Avenue, Hackensack, New Jersey,

13 having been duly sworn, testifies as follows:

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

17 MS. JANKOWSKI: Annette Jankowski, 344
18 Prospect Avenue.

19 MR. MALAGIERE: Could you please spell
20 your last name, ma'am.

21 MS. JANKOWSKI: J-a-n-k-o-w-s-k-i.

22 MR. MALAGIERE: Thank you, welcome.

23 MS. JANKOWSKI: I'm here to simply
24 state my objection to this project also.

25 It's not just a quality of life issue,

1 it's -- it's an issue of it doesn't belong on our
2 street.

3 And I shudder to think what would be
4 the economic repercussions as far as who's going to
5 -- the garbage pick up, the sewers, all of that sort
6 of thing. I don't even know if this building is
7 going to pay taxes.

8 But I just strongly -- this is a
9 neighborhood, it's a residential neighborhood, it
10 should remain that way. Mr. Pineles should take his
11 project somewhere else.

12 (Applause.)

13 MR. MALAGIERE: Swear you in please,
14 ma'am.

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

18 MS. HULL: Yes, I do.

19 K A R E N H U L L,

20 245 Prospect Avenue, Hackensack, New Jersey,

21 having been duly sworn, testifies as follows:

22 MR. MALAGIERE: Thank you. Would you
23 please identify yourself for the record please.

24 MS. HULL: Karen Hull, 245 Prospect
25 Avenue.

1 THE COURT REPORTER: Can you spell your
2 last name.

3 MS. HULL: H-u-l-l.

4 THE COURT REPORTER: Thank you.

5 MR. MALAGIERE: Thank you, welcome.

6 MS. HULL: Hi.

7 MR. MALAGIERE: Have you get closer to
8 the microphone, it won't buzz.

9 Thank you.

10 MS. HULL: After college, I moved to
11 Queens. I really loved the community. If you like
12 being on top of each other. And my friends actually
13 didn't like it because they couldn't find any street
14 parking so they stopped visiting me.

15 So, in order to have friends, I moved
16 back to Bergen County. And I rented out on Prospect
17 Avenue for about nine years, while I considered what
18 my living arrangements might be.

19 So after real hard consideration, I
20 moved to the Camelot. And I've lived there for about
21 15 years.

22 And the reason why I moved there after
23 looking at all of the areas in Bergen County, was
24 because I loved the charming, you know, residential
25 atmosphere. And if we decide to, you know, allow

1 this hospital to be built, I really will reconsider
2 what my living arrangements will be.

3 So, if you like people like me and us
4 (indicating) to be living in your residential
5 community, I would consider saying no to this
6 application, which I think a lot of people will
7 rethink their living arrangements.

8 Thank you.

9 (Applause.)

10 MR. MALAGIERE: Need a break?

11 CHAIRMAN GUERRA: Yes.

12 MR. MALAGIERE: The Chairman has
13 indicated that the Board is going to take a short
14 break so we'll adjourn for ten minutes and then come
15 back.

16 Thank you.

17 (Whereupon, a brief recess is taken.)

18 CHAIRMAN GUERRA: Let's get back on the
19 record please.

20 Thank you.

21 MR. MALAGIERE: Everyone please, we're
22 going to resume with public comments now.

23 CHAIRMAN GUERRA: Please, please,
24 please, please.

25 MR. MALAGIERE: Do you swear the

1 testimony you're about to give before this Board to
2 be the truth, the whole truth and nothing but the
3 truth, so help you God?

4 DR. BOULUKOS: Yes, I do.

5 P E T E R B O U L U K O S,

6 321 Prospect Street, Hackensack, New Jersey,

7 having been duly sworn, testifies as follows:

8 MR. MALAGIERE: Could you please
9 identify yourself for the record, spell your last
10 name and provide us with an address?

11 DR. BOULUKOS: Okay. I'm Doctor Peter
12 Boulukos. I'm also a clergyman.

13 MALE AUDIENCE MEMBER: Can't hear.

14 FEMALE AUDIENCE MEMBER: Can't hear.

15 MALE AUDIENCE MEMBER: Use the
16 microphone.

17 MR. MALAGIERE: Just get closer to
18 the microphone, sir.

19 DR. BOULUKOS: Spelling of last name is
20 Boulukos, B-o-u-l-u-k-o-s.

21 FEMALE AUDIENCE MEMBER: Still can't
22 hear you.

23 THE COURT REPORTER: And, sir, can you
24 state your address please?

25 DR. BOULUKOS: I will, it's 321

1 Prospect Avenue.

2 THE COURT REPORTER: Thank you.

3 MR. MALAGIERE: Welcome, Doctor, thank
4 you. Just state your name again, sir.

5 DR. BOULUKOS: I'm Dr. Peter Boulukos,
6 also Father Peter Boulukos, I live at 321 Prospect
7 Avenue, right next to the property that the LTACH is
8 going to be building.

9 I've been living there since 1974. And
10 I've watched how Prospect Avenue evolved.

11 And after about two or three years
12 living there, I was looking around where to move if I
13 was going to move, and I decided this was the best
14 place.

15 Now, I spoke to several tenants in our
16 building because it's a rental building. And they
17 said if the building goes up, they will vacate. They
18 will not -- they will move out because they don't
19 want to deal with that.

20 The other thing is, someone brought up
21 earlier about the care at the Prospect Heights. As a
22 clergyman, I went visiting a couple of people from
23 our parish there. And one of them, when I left my
24 building and walked across the street to Prospect
25 Heights, went to see someone, he -- I walked -- got

1 off the elevator on the floor and I hear him
2 screaming. And he was being ignored. And he said
3 they won't change the beds. I cannot get out of bed.
4 They wet the bed. The care was not there. He was
5 like that for 45 minutes he said.

6 And I went to the main desk there and
7 going there I said why are you ignoring him and not
8 taking care of him? Well, we're busy.

9 Well, I looked around I walked that
10 whole floor, only half of the floor was occupied by
11 patients. So, that's one of the reasons why I
12 question the care that Mr. Pineles' organization has.

13 But I enjoy living on Prospect Avenue.
14 I always -- that's why I'm still there. And a few
15 friends of mine have moved here from other areas.
16 They have sold their homes and moved there.

17 So I oppose them. Thank you.

18 MR. MALAGIERE: Thank you.

19 (Applause.)

20 MR. MALAGIERE: Hi, how are you, going
21 to swear you in please.

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

25 MS. JOHNSON: I do.

1 J U D Y J O H N S O N,
2 339 Summit Avenue, Hackensack, New Jersey, having
3 been duly sworn, testifies as follows:

4 MR. MALAGIERE: Can you please identify
5 yourself for the record.

6 MS. JOHNSON: Judy Johnson, 339 Summit
7 Avenue.

8 MR. MALAGIERE: Welcome, Ms. Johnson.

9 MS. JOHNSON: Thank you.

10 I'd like to speak about three items
11 right now. One of them is the inherent benefit
12 that's been talked about quite frequently throughout
13 the, I guess, three years.

14 MR. MALAGIERE: It rolls off the tongue
15 pretty quick, doesn't it?

16 MS. JOHNSON: I absolutely believe that
17 there is a benefit to having this facility.

18 I believe that benefit is based on the
19 service provided by that facility. I don't believe
20 it's based on the location, the physical address of
21 that location.

22 I believe the certificate of need is
23 for the state. I don't think there's anything there
24 that couldn't be provided with the same benefit a
25 mile down the road in the designated hospital zone.

1 And that's what I actually think is
2 appropriate and I would support this wholeheartedly
3 if it was actually built in the site where it was
4 supposed to be.

5 Second thing, the quality of life. I'm
6 not an architect, an engineer, a planner, nor a
7 traffic expert. But I've lived on Summit Avenue --
8 I've lived in Hackensack for 18 years. I've lived on
9 Summit Avenue for eight-and-a-half. And I can tell
10 you first hand how many cars come in and out of
11 driveways, what the traffic looks like, what the busy
12 times are.

13 I can tell you that there is, according
14 to the analysis, no substantial increase in traffic.
15 That's because you can't get worse than an "F" and
16 that's what the rating is for some of those items.
17 During peak hours, it's bad. I take my children to
18 school at 7:30. It takes me 10 minutes to go
19 three-quarters of a mile to the high school. It
20 takes me 15 minutes to get a mile to the middle
21 school. Okay? Traffic is bad.

22 Third part, oh, I still have a problem
23 with the fact that there is a huge, huge structure
24 sitting underground, five stories underground, and
25 because we don't see it, we don't talk about it.

1 It's not included in anything. And it's not part of
2 the structure. It's not a park going in on Summit,
3 it's a parking garage.

4 Thank you.

5 I am totally opposed to this. I would
6 back it if it was in the hospital zone.

7 Thank you.

8 (Applause.)

9 MR. MALAGIERE: Thank you.

10 Didn't I swear you in before?

11 DR. JOHNSON: Yes, you did.

12 MR. MALAGIERE: You're still under
13 oath, sir.

14 Please identify yourself for the
15 record.

16 Thank you.

17 DR. JOHNSON: I am Mark Johnson. I'm
18 Mrs. Johnson's husband.

19 (Audience outburst.)

20 MR. MALAGIERE: Couldn't ask for any
21 more than that.

22 DR. JOHNSON: Our family lives within
23 200 feet of the proposed building.

24 We implore the Board to reject this
25 proposal as being inappropriate and the reasons have

1 been stated by many of the people who were here.

2 I wanted to thank the Board for their
3 patience and for coming to all of these meetings.
4 I've attended 95 percent, I think I missed one
5 meeting in two-and-a-half years. I used to have much
6 darker hair. I have grey hair thanks to Mr.
7 Basralian, who my wife says if I ever get in trouble
8 for anything, I should definitely hire.

9 I think that this -- I think that this
10 has a place. I think this is beneficial. I do not
11 think it should be placed where the Applicant has
12 proposed.

13 It should be placed in the hospital
14 zone or in the commercial zone in the City of
15 Hackensack. It's, you know, a square peg in a round
16 hole, I think, is very apt way to put it.

17 I wanted to bring up that it will take
18 approximately, from what I understand, two years to
19 build this structure. For that time, the traffic,
20 the quality of life, the noise, the amount of people
21 coming into the City will make whatever we're talking
22 about in the way of how this will affect life in
23 Hackensack, far worse.

24 So, whether it's 2015, 2016, whatever
25 it -- for the time between now and then, life here

1 will be far, far worse.

2 I'm -- you know, I was very impressed
3 with the architect's drawings and with what was
4 proposed.

5 But, again, it's a silk purse and a
6 sow's ear. Okay? This is not the right place for
7 this.

8 You know, Lowe's went up in Paramus.
9 And it's a beautiful location. It would have been a
10 beautiful location for Mr. Pineles had he sought or
11 expressed interest or tried to get other places to
12 build this.

13 I'm a psychologist. I work with older
14 adults in my practice in Manhattan and Queens. I
15 understand about the importance of this facility. I
16 think that we set a dangerous precedent by allowing
17 this to be built where it is.

18 I wanted to thank the hundreds of
19 people who have come here over the course of the
20 two-and-a-half years. Not all of them could come
21 here tonight. We couldn't have fit all the people
22 who have been here over the two-and-a-half years to
23 come speak before this Board.

24 You know this is not a school. This is
25 not a church. This is a for-profit business.

1 Summit Avenue does not have a park.
2 This is not going to be a park. As my wife says,
3 this is a garage with a driveway. Okay. It's as
4 simple as that.

5 I have some advice for Mr. Pineles.

6 Mr. Pineles, there have been times in
7 my life where I have done something, decided
8 something, started something. And it's become sort
9 of a life -- taken on a life of its own. And its
10 grown bigger and bigger and bigger and I spent more
11 money and more money. And eventually I had to get to
12 the point where I said, I've done enough, I have to
13 back down, take a step back and reconsider my
14 options.

15 My advice to Mr. Pineles is reconsider
16 your options.

17 My thanks to you for listening.

18 (Applause.)

19 MR. MALAGIERE: Do you swear the
20 testimony you're about to give before this Board to
21 be the truth, the whole truth and nothing but the
22 truth, so help you God?

23 MS. WARSHAW: Yes.

24

25

1 R E N E W A R S H A W ,

2 280 Prospect Avenue, Hackensack, New Jersey,

3 having been duly sworn, testifies as follows:

4 MR. MALAGIERE: Would you please
5 identify yourself?

6 MS. WARSHAW: Rene Warshaw. Can you
7 hear me?

8 MR. MALAGIERE: You can pull that down.

9 MS. WARSHAW: Rene Warshaw.

10 MR. MALAGIERE: Thank you. Can you
11 spell your last name please.

12 MS. WARSHAW: W-a-r-s-h-a-w.

13 MR. MALAGIERE: Please give us an
14 address.

15 MS. WARSHAW: 280 Prospect Avenue.

16 MR. MALAGIERE: Thank you. Welcome.

17 THE COURT REPORTER: Can you spell your
18 first name too.

19 MS. WARSHAW: Rene, R-e-n-e.

20 THE COURT REPORTER: Thank you.

21 MS. WARSHAW: Okay.

22 I just moved here about a year ago for
23 certain circumstances. So I really have been
24 beginning to learn about Hackensack and the area.

25 And I started to hear about this

1 building getting built not too far from our building.

2 And it just turned out that the day we
3 moved -- came into Hackensack one day, the parking
4 garage fell down. And it was like, oh my God, this
5 was right next door to us. And it created a lot of
6 havoc for a long time. Okay?

7 We have had to deal with being able to
8 get around, to drive into -- we couldn't cross the
9 street. We couldn't drive down the block.

10 Okay, that's one thing. The other
11 thing is that I called the City of Hackensack. And I
12 asked them about adult care centers and are there
13 any, what's happening.

14 And she said you know what, they were
15 asking to have one -- I think it was on Main Street,
16 and we decided not to do it. They didn't get the
17 variance or they didn't get the zoning. It was too
18 much. Too much. This is a commercial area and it's
19 too much for them, but it's okay for us that we have
20 to live like this? And, you know, have people coming
21 and going all day long. And the cars coming by. And
22 you can't get -- I cannot get out of my parking spot
23 now. I can't cross the street because cars are
24 coming constantly back and forth. So, that's now.
25 What about in the next -- whenever he builds this

1 thing? What are we supposed to do then?

2 And then the other thing is, what about
3 the pollution? What about the vibrations of the
4 machinery building and banging and -- what happens to
5 everybody around there?

6 And then the real estate lady who said
7 people are going to leave. They're going to leave
8 with nothing.

9 Now, I value my apartment. And I value
10 the fact that it's important to me that if I ever
11 want to leave, I can leave with the money that was
12 paid to buy this apartment. I don't think that's
13 going to happen if this gets built.

14 So, I am saying right now, I oppose it
15 with all my heart and all my mind. Please don't let
16 this happen.

17 (Applause.)

18 MR. MALAGIERE: I'm going to swear you
19 in, ma'am.

20 MS. KLEINMAN: Sure.

21 MR. MALAGIERE: Do you swear the
22 testimony you're about to give before this Board to
23 be the truth, the whole truth and nothing but the
24 truth, so help you God?

25 MS. KLEINMAN: I do.

1 K A R E N K L E I N M A N,
2 277 Prospect Avenue, Hackensack, New Jersey,
3 having been duly sworn, testifies as follows:

4 MR. MALAGIERE: Can you please identify
5 yourself for the record, give us an address and spell
6 your last name.

7 MS. KLEINMAN: Sure. Karen Kleinman
8 277 Prospect Avenue. That's K-l-e-i-n-m-a-n.

9 MR. MALAGIERE: Thank you, welcome.

10 MS. KLEINMAN: Thanks.

11 I am actually also a real estate agent
12 with Sotheby's and I know that the condo market has
13 dropped drastically in Hackensack. I mean we're
14 selling -- there are sales in the houses away from
15 the zone.

16 Last year when the building collapsed,
17 the garage collapsed, it created such havoc on the
18 street with apartments, you know, not even -- I was
19 coming home from vacation. And couldn't even get
20 home. I had to walk with my luggage the last two
21 blocks to get home because you couldn't get on the
22 street.

23 And it took God knows how -- almost a
24 year before it was fully operational with the
25 construction pretty much done and all that.

1 I really am totally against this
2 project. If it would be in another location, fine.
3 But to un-beautify the streets of Prospect and
4 especially Summit Avenue with a garage and this
5 building is just not the right thing to do.

6 I really am against it. And I hope
7 that he finds another location. I'm more than
8 willing to help. I can do commercial real estate.

9 Thank you.

10 (Applause.)

11 MR. MALAGIERE: Let me swear you in
12 please.

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

16 MS. HAGGBLAD: Absolutely.

17 R O S E M A R Y H A G G B L A D,

18 280 Prospect Avenue, Hackensack, New Jersey,
19 having been duly sworn, testifies as follows:

20 MR. MALAGIERE: Okay. Can you please
21 identify yourself for the record and give us an
22 address.

23 MS. HAGGBLAD: My name is Rosemary
24 Haggblad. H-a-g-g-b-l-a-d, at 280 Prospect Avenue.

25 THE COURT REPORTER: Can you spell

1 your first name I'm sorry.

2 MS. HAGGBLAD: Rosemary.

3 R-o-s-e-m-a-r-y.

4 THE COURT REPORTER: One word?

5 MS. HAGGBLAD: Yes.

6 THE COURT REPORTER: Thank you.

7 MS. HAGGBLAD: Thank you for asking.

8 I am not for this project. I walk my
9 grandchildren to the Nellie K. Parker School every
10 single morning. I see the traffic build up on the
11 Esplanade and the street before that and Central
12 Avenue. I see the horrific job that the crossing
13 guards have, to keep those children safe crossing
14 those streets.

15 People trying to make right hand turns
16 onto Prospect. And she having to run out there with
17 her sign, so that the children can pass safely. It's
18 already a mess.

19 FEMALE AUDIENCE MEMBER: Right.

20 MS. HAGGBLAD: It's already a problem.

21 Please do not add any more.

22 Thank you.

23 (Applause.)

24 MR. MALAGIERE: Thank you.

25 I'm going to swear you in please,

1 ma'am.

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

5 MS. GRASSIN: I do.

6 M A R L E N E G R A S S I N,

7 280 Prospect Avenue, Hackensack, New Jersey,

8 having been duly sworn, testifies as follows:

9 MR. MALAGIERE: Could you please
10 identify yourself for the record.

11 MS. GRASSIN: Marlene Grassin
12 G-r-a-s-s-i-n.

13 MR. MALAGIERE: What's your address,
14 ma'am?

15 MS. GRASSIN: 280 Prospect.

16 MR. MALAGIERE: Thank you, welcome.

17 MS. GRASSIN: Okay.

18 Soon you must make a decision that
19 would enable a businessman to construct a building
20 that would make him much money and as much as a
21 decision that sadly would destroy the value of our
22 homes on Prospect and Summit avenues, as well as on a
23 number of neighboring streets.

24 And as we all know, the value of our
25 homes has already gone down substantially because of

1 economic conditions beyond our control.

2 The traffic on Prospect and Summit is
3 already horrendous with backups most of the day. You
4 can't cross from Prospect South to Prospect North,
5 many times, even though the light is green for you to
6 do it because the line on Summit coming up the hill
7 is stretched across Prospect because folks don't care
8 where they stop their cars anymore. And it's several
9 lights before you can get through.

10 Property values will plummet even lower
11 than they are now and will not recover for many years
12 if this gets put through.

13 So I really exhort the Board to not
14 approve this application.

15 Thank you.

16 (Applause.)

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

21 MR. DREIWITZ: I do.

22 R I C H A R D D R E I W I T Z ,

23 360 Lookout Avenue, Hackensack, New Jersey,

24 having been duly sworn, testifies as follows:

25 MR. MALAGIERE: Can you please identify

1 yourself for the record?

2 MR. DREIWITZ: My name is Richard
3 Dreiwitz. 360 Lookout Avenue.

4 MR. MALAGIERE: Thank you. Welcome.

5 MR. DREIWITZ: I think most of the
6 people north of -- north of Prospect -- rather -

7 FEMALE AUDIENCE MEMBERS: Passaic.
8 Passaic.

9 MALE AUDIENCE MEMBER: Central.

10 MR. DREIWITZ: No, Passaic Street.
11 Passaic Street, are home tonight because it's such a
12 lovely neighborhood north of Prospect, north of
13 Passaic Street.

14 But I've been there for almost 42 years
15 now in my home, raised my children there. And it
16 seems to me all the arguments have been made so far.
17 I have nothing to add. They're all well taken, I
18 know. So it comes down to the Board and what occurs
19 to me is my career, which was in government service,
20 and as a civil servant, we deeply felt the
21 responsibility that we had to the public.

22 In addition to being paid by the
23 public, but it's a deep responsibility.

24 So, it comes down to the Board at this
25 point, I think. And you people have to make a

1 decision for us.

2 And I ask you to think of us when
3 you're making your decision. We don't want this
4 building in our neighborhood.

5 Thank you.

6 MR. MALAGIERE: Thank you, sir.

7 (Applause.)

8 MR. MALAGIERE: I'm going to swear you
9 in, ma'am.

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 MS. HORVATH: I do.

14 M A X I N E H O R V A T H,

15 160 Overlook Avenue, Hackensack New Jersey,

16 having been duly sworn, testifies as follows:

17 MR. MALAGIERE: Can you please
18 identify yourself for the record.

19 MS. HORVATH: Maxine Horvath
20 H-o-r-v-a-t-h 160 Overlook Avenue, Hackensack.

21 MR. MALAGIERE: Welcome. Thank you.

22 MS. HORVATH: I live -- testing,
23 testing.

24 MR. MALAGIERE: You're fine.

25 MS. HORVATH: I live several blocks

1 away from this project in the Devonshire
2 condominiums. But I, too, oppose this outrageous
3 project.

4 I have come to most of these meetings
5 with this button (indicating) --

6 (Applause).

7 MS. HORVATH: -- to support the
8 residents of this neighborhood.

9 I am already affected by the traffic on
10 Prospect Avenue when I travel in that area. There is
11 no doubt in my mind that this quality of life, as
12 well as the property values, will be adversely
13 affected.

14 I believe that if Mr. Pineles lived in
15 that neighborhood, he, too, would be speaking at this
16 podium objecting to this project.

17 (Applause.)

18 MS. HORVATH: Any proposal that
19 requires at least 14 variances in a residential
20 neighborhood, should be soundly rejected and I hope
21 you will consider that.

22 Thank you.

23 (Applause.)

24 MR. MALAGIERE: I'm going to swear you
25 in please.

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

4 MR. GORDON: I absolutely do.

5 P A U L G O R D O N,

6 245 Prospect Avenue, Hackensack, New Jersey,
7 having been duly sworn, testifies as follows:

8 MR. MALAGIERE: Can you please
9 identify yourself for the record.

10 MR. GORDON: My name is Paul Gordon.
11 G-o-r-d-o-n. I reside at 245 Prospect Avenue in
12 Hackensack.

13 MR. MALAGIERE: Thank you. Welcome.

14 MR. GORDON: Thank you.

15 Gentleman, the Board, people that are
16 here, I thank you for doing your duty and allowing
17 the Applicant this hearing.

18 Forty to 50 variances, wow, but
19 nevertheless you're doing your duty.

20 My feeling is that this building,
21 everybody talks about it for being a for-profit
22 building. Doesn't matter, if it was not-for-profit,
23 the building is inappropriate in that area.

24 (Applause.)

25 MR. GORDON: It doesn't belong there

1 period.

2 I come as a representative of the
3 Camelot. I am Vice President of the Board of
4 Directors. The Camelot unit owners have asked the
5 Board of Directors and me as a representative, to
6 tell you that they are absolutely against this
7 building.

8 We have been coming to these meetings
9 for a long time. People have come to these meetings.
10 I don't have to go over the various reasons we are
11 objecting to this building. You've heard them all.
12 And there's probably some we don't -- haven't even
13 heard yet.

14 But I will ask you to do your duty, as
15 well, to the citizens of this community by rejecting
16 this application.

17 Thank you.

18 (Applause.)

19 MR. MALAGIERE: Mr. Chairman, seeing no
20 one else from the audience, close public session?

21 CHAIRMAN GUERRA: Close it. Yes.

22 MR. MALAGIERE: Okay. The public
23 session on the application is closed pursuant to the
24 Chairman's direction.

25 Mr. Basralian?

1 MR. BASRALIAN: Well, procedurally
2 there are a couple of things that we could do.

3 I could do a summation or as Mr.
4 Malagiere and I have discussed, there are provisions
5 under the Sica case which really requires the Board
6 to do certain things. And in the course of its
7 consideration of an approval or an application for
8 inherent -- or use variance. I don't have --

9 MR. MALAGIERE: For an inherently
10 beneficial use.

11 MR. BASRALIAN: For inherently
12 beneficial uses.

13 MR. MALAGIERE: Right.

14 MR. BASRALIAN: And they're broadly
15 outlined in the Sica case and -- and there are a
16 number of things which I am sure Mr. Malagiere will
17 advise you on as to what should be considered by the
18 Board.

19 First the Board has to identify the
20 public interest --

21 MR. MALAGIERE: Well, before you do
22 that, if I may. Pardon me.

23 MR. BASRALIAN: I wasn't summing up. I
24 was going to the procedure --

25 MR. MALAGIERE: Yes, but just prior to

1 that.

2 Counsel, do you want to be heard on
3 what you want to do here with regard to closing
4 statements this evening or how you want to proceed?

5 MR. DIKTAS: I'll defer to the
6 Chairman's direction.

7 MR. MALAGIERE: Mr. Moskowitz?

8 MR. MOSKOWITZ: I would say that
9 closing statement should take place after we've had a
10 chance to properly -- and the Board properly digests
11 --

12 MR. MALAGIERE: Okay.

13 MR. MOSKOWITZ: -- digests the nature
14 of the proceedings tonight.

15 MR. MALAGIERE: Okay.

16 Mr. Basralian, I just want to orient,
17 if I may, the Board and the folks in the audience.

18 The Sica case identifies a requirement
19 the Board engage in a dialogue, and of course I'll
20 let Mr. Basralian put his take on this on the record
21 too, with an Applicant proposing an inherently
22 beneficial use. And I think I advise the Board that
23 this is an inherently beneficial use. I believe all
24 three uses, although all three are not specifically
25 identified in the statute which identifies inherently

1 beneficial uses, I think that if we were to -- if we
2 were to challenge that I think it would be deemed an
3 inherently beneficial use, the three business units
4 proposed here.

5 So when you're looking at an inherently
6 beneficial use, which this Board has had the benefit
7 of doing a number of times over the years since I've
8 had the pleasure of serving as Counsel, you have to
9 engage in a dialogue with the Applicant and I
10 identify the substantial detriments or the negatives
11 that the Board feels have been identified incident to
12 the inherently beneficial uses, in this matter. And
13 ask on the Applicant to consider stipulating to
14 conditions which would remove or ameliorate these
15 negatives. And that's my understanding of what the
16 case law directs the Board to do. That's my advice
17 to the Board. And of course I'll let Mr. Basralian
18 put his take on this, this calculus or metric we have
19 to engage in now on the record. But that is the next
20 thing that we were do with Mr. Basralian as a
21 representative of the Applicant, with the Chairman.

22 Mr. Basralian?

23 MR. BASRALIAN: Yeah.

24 Mr. Malagiere has laid out the Sica
25 case. It has four steps and it goes through what the

1 Board has to do in terms of identifying the public
2 interest.

3 It should identify what it deems to be
4 the detrimental effect that was ensue in the
5 variances is granted. And then it can seek to reduce
6 it through a dialogue as was indicated.

7 And then subsequently after that
8 dialogue and an opportunity for the Applicant to
9 respond, based upon whatever it is the Board is
10 saying is then to consider the negative and positive
11 criteria and you make your judgement based upon that
12 issue and whether or not it causes a substantial
13 detriment to the public good as defined not only by
14 Sica, but by other cases as well.

15 So that's really where the stage we're
16 at.

17 And in order to do that, then that
18 dialogue and that identification of the issues, which
19 the Board thinks have to be addressed by the
20 Applicant or should be addressed by the Applicant,
21 which it can or cannot do, depending. And an
22 opportunity for the Applicant to respond to see if
23 there is -- if that dialogue can achieve what both
24 sides seek to do here.

25 MR. MALAGIERE: Mr. Chairman, do you

1 have an identification of what you heard as the
2 substantial detriments that the Applicant would need
3 to address in some way?

4 CHAIRMAN GUERRA: Yeah. I've taken the
5 liberty of putting together just some points that
6 have been discussed multiple time, whether it be from
7 our professionals or people in the audience,
8 whatever, over the last, I don't know, 20 something
9 meetings we've had. And I'd just like to go over
10 them and put them on the record, if I might.

11 MR. MALAGIERE: Sure.

12 And, of course, Mr. Chairman, you can
13 proceed in the fashion. And also based on your own
14 experience you live on Summit Avenue, do you not?

15 CHAIRMAN GUERRA: Yes, I do.

16 MR. MALAGIERE: Okay.

17 CHAIRMAN GUERRA: Again --

18 MR. BASRALIAN: Excuse me. And also in
19 the context of the testimony that has been presented
20 through the 20 some odd hearings, so -- and the
21 reports of the various experts, whether it's the
22 experts presented by the Applicant or on behalf of
23 the municipality and the Board as well.

24 CHAIRMAN GUERRA: I thought I just said
25 that? No?

1 MR. BASRALIAN: Jump enumerating it.

2 CHAIRMAN GUERRA: Thank you, appreciate
3 it. Okay. I guess, what I have again, taken the
4 liberty of doing, just going back and trying to wrap
5 my arms around the last 20 something meetings and
6 just bringing up points and so forth.

7 And what I'm going to have, it's in no
8 particular order, just points I've come up with. And
9 I urge my fellow Board Members also to add what they
10 think. So here we go.

11 The application -- and, Mr. Basralian,
12 correct me if I am wrong, the application initially
13 proposed a 24 story building with 144 LTACH beds, 250
14 adult daycare, and 84 dialysis chairs.

15 Somewhere along the line, I forget how
16 many meetings in, this was reduced to where we are
17 right now, which is a 19 story building, 120 LTACH
18 beds, 180 adult daycare slots and 63 dialysis chairs.
19 Is that correct?

20 MR. BASRALIAN: That's correct.

21 CHAIRMAN GUERRA: That being said,
22 again we've all heard ad nauseam tonight about
23 inherently beneficial uses and so forth.

24 And, in fact, our Counsel just stated,
25 this is clearly, all three -- I'll call them business

1 units, within this LTACH are inherently beneficial.

2 The one thing, you heard -- the
3 audience has heard this Sica test and so forth, which
4 is very important when identifying -- when you're
5 dealing with an inherently beneficial use. And I
6 just want to be clear. I did this for myself, I want
7 to be clear to everyone exactly what we're talking
8 about here.

9 And if I may: "Where a proposed use is
10 determined to be inherently beneficial to
11 society the positive criteria and the negative
12 criteria requirements are less stringent.

13 "Specifically, the positive criteria is
14 presumptively satisfied and the negative
15 criteria is resolved by balancing the benefits
16 of the project against any detriment
17 considering whether any detrimental effect can
18 be reduced by imposing reasonable conditions
19 and then determine after weighing of the
20 positive and negative factors whether the
21 granting of this variance would cause a
22 substantial detriment to the public good".

23 So that being said, I made notes, what
24 I consider some of the important factors that I guess
25 I would ask the Applicant to consider with their

1 proposal for this LTACH.

2 I would ask the Applicant if he would
3 consent possibly to conditions as required by the
4 Sica test in order to mitigate what I consider, and
5 what a lot of other people consider, detriments of
6 this particular application.

7 And, again, these are in no particular
8 order: Reducing number of LTACH beds, dialysis units
9 and adult daycare clients; reducing the height of the
10 building; increasing the side and front yard
11 setbacks; to mitigate the safety concerns of the
12 proximity of the two proposed egresses, movements of
13 vehicles exiting the drop-off area and vehicles
14 exiting the driveway from the underground parking;
15 bar trucks from using the Prospect Avenue ramp
16 entrance which is clearly too narrow and causes all
17 sorts of problems on Prospect Avenue; provide
18 adequate maneuvering area for trucks in the garage
19 loading area; no vehicles should be permitted to back
20 in or back out of any loading area; redesign the
21 Summit Avenue driveway to eliminate conflicts; the
22 U-shape driveway features a right only exit, as I
23 recall.

24 MR. BASRALIAN: Excuse me, can you
25 repeat that, Chairman?

1 CHAIRMAN GUERRA: Redesign the Summit
2 Avenue driveway to eliminate conflicts; the U-shaped
3 driveway in the front features a right only exit as I
4 recall.

5 MR. MALAGIERE: That's correct.

6 CHAIRMAN GUERRA: Some vehicle may not
7 want to enter the garage after dropping off and they
8 will be forced to go around the block. The driver
9 may decide to turn around in a neighbor's driveway;
10 redesign to add a safe turnaround area so the
11 vehicles will not back out or onto Summit Avenue;
12 reduce the height and size and scope of the project;
13 and increase the proposed setback to address light,
14 air and open space issues. The proposed side yard
15 setback is 15-feet where 70-feet is required for a
16 building of this height requiring a variance of
17 minimum height ratio as well as height and setback;
18 provide a design diagram to show how the Prospect and
19 Passaic Street intersections will be modified to
20 mitigate impacts caused by increased traffic;
21 mitigate the impacts from excavation of 102-cubic
22 yards of material during the construction phase of
23 this project; ban tractor trailers from accessing the
24 sites 10-foot service drive and backing up and
25 stopping traffic on Prospect; reduce the size and/or

1 number of uses for this proposed application in order
2 to address the parking deficiencies where -- and I
3 hope I'm right on these numbers, 608 spaces are
4 required and 413 spaces are provided.

5 I believe Mr. Pineles testified that
6 the staff in the LTACH, and I'm quoting here, is much
7 higher than any other type of healthcare.

8 Those are just some of the concerns
9 that I have.

10 I'd like to add, addressing the
11 traffic, which obviously was a big concern tonight,
12 I've been in Hackensack for over 51 years. And with
13 all due respect to the experts who've testified and
14 have spoken about the traffic on Prospect and Summit
15 and did all their analyses and so forth, I truly
16 believe the reality of the situation is that traffic
17 is horrible now. And it's going to be worse when
18 this is --

19 (Applause.)

20 CHAIRMAN GUERRA: -- when this is
21 built.

22 (Applause.)

23 CHAIRMAN GUERRA: So, you know, that's
24 another issue we need to explore to mitigate the
25 significant traffic impact despite what's been said.

1 Another think I'd like looked at in the
2 way, again it's been addressed that there's three
3 real -- three businesses operating under this LTACH
4 umbrella, if you will. We have the -- I guess the
5 hospital part of it, for lack of a better word, the
6 adult daycare, as well as the dialysis.

7 Again, to me it's too much in that one
8 building. If we were to reduce it to the particular
9 business unit that has the least impact, the least
10 impact on the neighborhood, would be something I
11 would want looked at and explored as well.

12 That's basically it.

13 (Applause.)

14 MR. RODRIGUEZ: Okay. I would echo
15 what the -- what Chairman Guerra is saying, I think,
16 on every point.

17 I also just want to expand a little,
18 the parking I see as a big concern and it's also a
19 big concern in terms of the -- I agree with Mr.
20 Guerra, I'm not accepting the parking -- Mr. Keller's
21 testimony as to the parking requirements. The -- and
22 I think that we will hold to the 608 spots that was
23 calculated by our experts and by the City. And
24 there's a specific reason for that, which really
25 hasn't been touched upon because the extent that the

1 Applicant's willing to mitigate any of these issues,
2 this is hard to get around. The -- all the parking
3 estimates were based on numbers provided by Mr.
4 Pineles. Mr. Pineles is the owner of several nursing
5 and rehabilitation facilities. He is not presently
6 the owner of an LTACH, a dialysis facility or an
7 adult daycare center. I believe that was the
8 testimony.

9 Mr. Pineles, is an owner and investor,
10 but he doesn't have any actual medical training or
11 experience in running any of those three business
12 units.

13 Now if you look at the regulations for
14 those three entities, and there are regulations for
15 each of them. Although two of them may have minimum
16 staffing requirements, they all have staffing
17 requirements that are based on patient acuity, which
18 means how sick the patients are. The sicker they
19 are, the more needy they are, the more staffing
20 you're going to need. And the more staff you're
21 going to need the more parking you're going to need.

22 I mean to put it simply Mr. Pineles
23 isn't qualified to give that information. He doesn't
24 have, you know, medical degrees.

25 (Applause.)

1 MR. RODRIGUEZ: This is no disrespect
2 to him, the -- but at the same time, and we,
3 particularly, have to be concerned because we made
4 the mistake, as a Board, of accepting Mr. Pineles'
5 testimony with respect to Prospect Heights. And he
6 was wide of the mark. And it's particularly
7 concerning since it seems like he was wide of the
8 mark with a facility that's not even a full
9 occupancy.

10 So that has to be addressed to the
11 extent the Applicant is going to make some sort of
12 accommodation on how much of an intense use of these
13 three business uses they're going to have because the
14 -- you know, I can't see sitting here the --
15 accepting any other calculations other than what the
16 City has originally proposed on the parking
17 requirement, when you just -- I don't see that you
18 have a basis. I mean Mr. Keller is the -- certainly
19 -- certainly Mr. Keller and Mr. Burgis are very well
20 respected experts, but their testimony only rises as
21 high as what it's based on. And I can't accept just
22 the numbers that Mr. Pineles gives without any other
23 support or basis.

24 And really, you really need a medical
25 expert to provide that situation the -- I think we

1 would be gravely mistaken if we accepted less than
2 that.

3 So, you know, I put that caution out
4 there to the extent you're going to engage in this,
5 because otherwise we'll rework the calculations on
6 the parking based on the same methodology that the
7 City's already put forward to come up with 608
8 spaces. Okay. So I add that.

9 I also add I regularly drive down
10 Prospect and Summit Avenue. I drive down Prospect
11 whenever it's my turn to take our daughter to
12 preschool and, you know, I drive down Summit whenever
13 I have to go on 80 West or the Parkway South in the
14 mornings. And, you know, Prospect is not great and
15 Summit is the -- you know, we had testimony and a
16 very nice visual display by Mr. Miskovich showing
17 visually with that software -- which I'm blanking on
18 the name, and I apologize, of the software -- what
19 the traffic pattern may turn into if this application
20 were to go forward. And it just confirms visually,
21 you know, on the screen what you can see if you just
22 drive down Summit Avenue in the morning during the
23 peak hours as we described. And so you do have
24 back-ups that start to stretch down all the way to
25 Central Avenue, if you're going north on Summit

1 Avenue.

2 And even if you accepted Mr. Keller's
3 testimony that the peak hours -- that you're only
4 talking about two or three additional cars, I don't
5 -- I don't know that.

6 (Audience Outburst.)

7 MR. BASRALIAN: I don't think that was
8 the characterization of his testimony.

9 MR. RODRIGUEZ: I think it's been
10 characterized that way so I'm give you the extreme
11 characterization in terms of the minimallization of
12 the -- even if you accept that, the -- we're already
13 talking about the -- you know, a very bad traffic
14 situation and the additional cars -- my finding is
15 the additional cars would make a significant impact.
16 And I think most of the testimony of Mr. Keller was
17 couched on that, well, you already have -- you
18 already have your failed intersections, many of these
19 approaches -- many of the approaches on many of the
20 calculated intersections, and so, well, if it's an
21 "F" it's still going to be an "F" so what's the
22 difference?

23 Well let's give the -- the really
24 extreme example so that we can see what clearly we're
25 talking about.

1 Loo, the George Washington Bridge is a
2 failed intersection. It's a failed intersection at
3 any given time of the day or night except for maybe
4 3:00 a.m. you know it takes you -- it's going to take
5 you more than five minutes even to get through the
6 tolls even on a lucky day. That is a lucky day, most
7 certainly. And it takes you an hour.

8 But, you know, anyone who drives that
9 on a regular basis, as I do, knows the difference
10 that even though it's failed in either scenario, the
11 difference between the back up of just a few hundred
12 feet from the tolls versus a back up all the way to
13 Grand Avenue on Route 4, is a huge difference to
14 those people that are stuck on that road.

15 And, obviously, that's an extreme
16 example, we're not talking about that here but, you
17 know, if you're going in various directions
18 approaching the intersections that we have discussed
19 in the -- with this particular application, you are
20 talking about waiting several lights at peak hours to
21 clear the intersection.

22 And adding just a handful of cars to
23 that during those peak hours can make this situation
24 significantly worse. You know I would dispute that
25 we have to accept something like, well, it would have

1 to be 50 percent worse or double in order for it to
2 be significant.

3 Well, no, the -- you know if you just
4 -- I believe it's significant, even if it's just a
5 situation where you have to wait to -- even as little
6 as an additional light to clear the intersection or
7 even half of an extra light to clear the
8 intersection, that's significant to the people that
9 live there or the people that are trying to get to
10 jobs or to the major roadways and using these two
11 arteries to get there.

12 I also think, to the extent we're going
13 to discuss any sort of adjustment of the plan, I
14 don't think it's unreasonable given the situation and
15 given the kind of construction we're talking about
16 here that there'd be some sort of plan put forward as
17 to how the excavation and construction is going to
18 work to mitigate that if we were going to go forward
19 with that to the residents that live there.

20 But those are the problems I have.
21 They're very much, I mean, in agreement with what Mr.
22 Guerra's saying. I agree this is an inherently
23 beneficial use. And one that we should welcome to
24 this City.

25 But the -- even the convenience of

1 perhaps people from Mr. Pineles' facility across the
2 street being able to get over there for dialysis that
3 is a little bit more convenient than either having to
4 go the Hackensack Medical Center or over to Teaneck
5 for dialysis, but only minimally more convenient.
6 These people are still going to have to get into an
7 ambulance. You're not going -- I -- besides up at
8 Harvard, at the Harvard Hospital, I've never seen
9 patients being wheeled on the sidewalk from one
10 building to another and across the street. I did see
11 that up in Brigham and Women's Hospital on one
12 occasion, but I don't think, and the Applicant has
13 not proposed, that's what's going to happen here.

14 So they're still going to get into an
15 ambulance and get out of an ambulance to get over to
16 the dialysis facility presumably the -- - you know,
17 unless they're well enough, even through they're in a
18 nursing home or rehab facility they can just get on
19 to the jitney bus.

20 But I presume that at least a
21 significant number of them would have to be
22 transported over by something more than just a bus,
23 by an ambulance.

24 So what -- how -- you can't tell me
25 that that's a much greater convenience to be --

1 you're still going in the ambulance to go just across
2 the street as opposed to just down the street to the
3 hospital.

4 And that's what I have to say.

5 (Applause.)

6 CHAIRMAN GUERRA: Okay. Anyone else on
7 the board want to add to... no?

8 MR. DIANA: No, you said it all.

9 MR. BASRALIAN: I had a couple of
10 questions, I'm not quite sure I understand.

11 You said in a couple of places, Mr.
12 Guerra, I think that trucks shouldn't go into the
13 garage. I wasn't sure that you said trucks shouldn't
14 go in the garage at all or that trucks shouldn't back
15 up the Prospect Avenue driveway.

16 It was the fifth or sixth one down from
17 when you started your discussion. Is it no
18 backing --

19 CHAIRMAN GUERRA: I said bar trucks
20 from using Prospect Avenue ramp entrance which is too
21 narrow.

22 MR. BASRALIAN: I'm sorry Prospect
23 Avenue ramp entrance?

24 CHAIRMAN GUERRA: Bar trucks from using
25 Prospect Avenue ramp which is too narrow.

1 MR. BASRALIAN: You're talking about
2 the ramp going down into the garage?

3 CHAIRMAN GUERRA: Yes. Yeah, yeah,
4 yeah. That's what I meant.

5 And then I addressed the loading area
6 as well.

7 MR. BASRALIAN: Just to the north side
8 of the property, right.

9 CHAIRMAN GUERRA: North. Yes.

10 MR. BASRALIAN: Okay.

11 FEMALE AUDIENCE MEMBER: There was
12 something about that so...

13 CHAIRMAN GUERRA: Yeah, in the loading
14 area.

15 MR. BASRALIAN: I understood that part.
16 It was the -- the suggestion that no trucks -- it
17 wasn't a suggestion that no trucks should go in.
18 You're saying the opening is too narrow.

19 CHAIRMAN GUERRA: Too narrow, yeah.

20 MR. BASRALIAN: All right.

21 CHAIRMAN GUERRA: I mean this is
22 basically my review of the plans and so forth, coming
23 up with ideas.

24 MR. MALAGIERE: Mr. Basralian, would
25 you like some time to discuss what the Chairman has

1 identified with your client?

2 MR. BASRALIAN: Yes, I certainly do
3 need that. And I need to pull the transcript, by the
4 way, so that I -- my note taking is good, but not
5 that good to get all of that. I need the transcript
6 right away and I will do that.

7 And in fairness to our client, who has
8 filed the application November 2008, and some
9 25 hearings later with some 70 or 80 hours worth of
10 testimony that we have an opportunity to look at what
11 it is and discuss with his consultants the comments
12 that were made by Mr. Guerra and Mr. Rodriguez and
13 that's appropriate given the length and the
14 importance of the application.

15 CHAIRMAN GUERRA: Of course.

16 MR. MALAGIERE: Is it your thought that
17 we would carry the application for you to come back
18 and respond to these items that the Chairman has
19 raised and Mr. Rodriguez has raised and at that time
20 also have closing argument?

21 MR. BASRALIAN: Yes, I think that would
22 be an appropriate manner in which to handle that.

23 MR. MALAGIERE: The next regular
24 meeting we have in January is the --

25 MR. BORRELLI: January 19th --

1 MR. MALAGIERE: January 19th. Is
2 everyone who's on the Board right now, is everyone
3 available for that meeting?

4 MR. CARROLL: It's our regular meeting?

5 MR. MALAGIERE: It is our regular
6 meeting.

7 Mr. Borrelli indicated to me that at
8 our regular meeting next time we not as packed as we
9 have been over the last few years.

10 Mr. Basralian, is that okay for you and
11 your client?

12 MR. BASRALIAN: Yes. It's okay for my
13 client and myself.

14 On a procedural matter, though, and I
15 had mentioned this to Mr. Borrelli, not all the Board
16 Members were here for all of the hearings some times
17 we're down to four and I would like before that
18 meeting that we receive a certification that requires
19 that they read the transcripts --

20 MR. MALAGIERE: Mr. Borrelli, any issue
21 with that?

22 MR. BORRELLI: I have no issue with
23 that at all.

24 MR. MALAGIERE: Okay.

25 Mr. Diktas, are you okay with that too?

1 MR. DIANA: Yes, I just wanted to put
2 on the record.

3 CHAIRMAN GUERRA: Okay.

4 MR. MALAGIERE: Mr. Moskowitz, you're
5 okay with that?

6 MR. MOSKOWITZ: Yes, sure.

7 MR. MALAGIERE: Okay.

8 MR. BASRALIAN: Is it possible --

9 MR. MALAGIERE: Mr. Basralian, is that
10 your Blackberry?

11 MR. DIANA: Whiteberry.

12 MR. MALAGIERE: I'm sorry, Mr.
13 Basralian. Please. Please.

14 MR. BASRALIAN: Excuse me. I'm going
15 to need this transcript by Monday or Tuesday.

16 MR. MALAGIERE: Mr. Basralian, is there
17 anything further besides carrying the application,
18 sir.

19 MR. BASRALIAN: No, I had just told the
20 Stenographer I need the transcript sooner rather than
21 later.

22 MR. MALAGIERE: Mr. Chairman, with your
23 permission the application is carried without further
24 notice --

25 CHAIRMAN GUERRA: Do I head a motion to

1 adjourn?

2 MR. MALAGIERE: -- January 19th, 2012.

3 Thank you, Mr. Chairman.

4 MR. DIANA: Motion.

5 CHAIRMAN GUERRA: Second? Okay.

6 Third?

7 Thank you.

8 (Whereupon, this matter will be
9 continuing at a future date. Time noted 9:42
10 p.m.)

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C E R T I F I C A T E

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #15855, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any Court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Notary Public
of New Jersey #15855, Notary
Expiration Date March 1, 2014,

Dated: _____