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1 I N D E X

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3 WITNESS PAGE

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8 ALEX ZEPPONI

9 By Mr. D'Armi ni o 71

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16 Maj esti c Home Devel opers,

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21 (Exhi bi ts retai ned by counsel .)

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24

25

1 THE CHAIRMAN: I believe we were in
2 the public portion of the meeting when we left off
3 the last time and you had a witness that you
4 wanted to present.

5 MR. FORSHNER: We have a witness we
6 wanted to present. I've discussed this with
7 Mr. Barbarula, and as well as Mr. D'Arminio, who I
8 notice is not in the room -- perhaps as a courtesy
9 to him, we could let him know that we're ready to
10 start.

11 THE CHAIRMAN: We have to swear in a
12 member.

13 (Whereupon Glenn Venza is sworn in
14 as a Member of the Board.)

15 MR. BARBARULA: Did you have an
16 opportunity to listen to the recordings of the
17 prior proceedings in reference to this
18 application?

19 MR. VENZA: No, I did not. I read
20 the transcript.

21 MR. BARBARULA: You read both
22 transcripts?

23 MR. VENZA: Yes.

24 MR. BARBARULA: Have you certified
25 for Linda that they were given to you and you did

1 a complete reading of those transcripts?

2 MR. VENZA: Yes.

3 MR. BARBARULA: Gentlemen, do you
4 have any questions of Member Venza? He has read
5 the transcripts. Any objection?

6 MR. FORSHNER: None.

7 MR. D'ARMINIO: None.

8 MR. FORSHNER: Just procedurally, we
9 did have a witness to present, and I note, for
10 public comment purposes, it hasn't been opened to
11 the public, but in the respect of expediency,
12 while I'm not representing the individual
13 residents that live there but rather representing
14 the association, perhaps what I could do is have
15 the folks stand up. If they have something more
16 to add that we haven't covered, and we covered a
17 lot of territory, I certainly don't want to
18 preclude their right to speak but what I'd like to
19 do is simply ask them their position on the
20 application and if they have nothing else to add,
21 perhaps emphasize their position without coming
22 forward and taking additional time of the board.

23 That's what I would propose to do.
24 But again I'm not speaking on behalf of the
25 individual residents that are there, and I'll

1 leave it up to the board and to those residents if
2 should they choose to nonetheless speak. But
3 wanted to offer that just to expedite those
4 particular matters.

5 THE CHAIRMAN: Did you have a
6 problem with that, John?

7 MR. BARBARULA: No. I have an
8 issue, we have discussed it with counsel, that
9 there are a number of cases that say if you
10 represent the association, you represent the
11 individuals, some as churches, condominium
12 association.

13 I can tell you the short version.
14 His version that he represents the association,
15 that individuals have a right of free speech, they
16 have the right to protest, they have the right to
17 make presentations to the board, and I can tell
18 you his position is that if he represents the
19 entity, that precludes anybody from the
20 organization speaking. It would be up to the
21 board, but if we can limit it to a time frame and
22 if they just want to voice that they object, I
23 think that we can get along and make it
24 manageable.

25 THE CHAIRMAN: Is it fair to let the

1 members of the association make a final comment,
2 without asking a question, and ask that any
3 questions of the association be handled through
4 there?

5 MR. BARBARULA: I think that that
6 would probably be an expeditious way. That way
7 they can make their comment as to their feelings
8 on the application, but if they have specific
9 questions, they should have given it to counsel
10 all along I think.

11 MR. FORSHNER: Just keep in mind, I
12 have not communicated directly with individual
13 residents. That is again, because I don't
14 represent individual residents, but rather have
15 only spoken with the board on behalf of the
16 association.

17 But to the extent that we can handle
18 it that way, I don't mind doing so for the
19 purposes of expediting it. Again I don't want to
20 speak on behalf of the individual resident that
21 may have a different perspective or different
22 objective. But if everything is in agreement, I'm
23 more than happy to handle it in that expeditious
24 fashion.

25 MR. D'ARMINIO: Mr. Chairman,

1 without waiving my rights, let's see how this
2 goes. I don't like to preclude anybody from
3 making a comment.

4 THE CHAIRMAN: I know we were pretty
5 close to finishing last time, I think we were
6 moments away from finishing.

7 COUNCILMAN FALKOSKI: Can I ask a
8 question and perhaps the attorney can straighten
9 it out for me? Gentleman says he represents the
10 association. Doesn't the association represent
11 the tenants and the people that are there? What's
12 the difference?

13 MR. BARBARULA: That's my position,
14 that when you represent a church or association
15 and that association hires an attorney, that that
16 speaks for everybody of that association.

17 Now, that was my position. Counsel
18 has a different position in that he feels that he
19 represents the association, individuals have
20 different opinions.

21 Rather than have an issue later on,
22 I believe that the presentation should be done by
23 the attorney. I think that giving individual
24 residents an opportunity to make a statement at
25 the end, I think covers all bases and makes it

1 tight so that there is nobody could object that
2 their due process rights were waived.

3 But my general position is if
4 there's an attorney represents an association,
5 that precludes everybody else from speaking.
6 However, in the nature of the fact that we have a
7 full room here, the fact that the applicant's
8 attorney is not saying he wants to preclude
9 anybody, I think the best way to do it is the
10 attorney handles questions and people could come
11 up at the end to make comments and therefore they
12 will be able to voice their concerns.

13 MR. FORSHNER: And perhaps one other
14 observation that was just brought to my attention.
15 There's also apparently some folks here that don't
16 live in Rock Creek Crossing so that clearly I
17 don't represent. I don't know what their position
18 is.

19 MR. BARBARULA: That's different.
20 We know that.

21 THE CHAIRMAN: That's different.

22 MR. FORSHNER: Just to put a finer
23 point on that one discussion, but again I'm going
24 to try and handle this as expeditiously as
25 possible with the board's courtesy. In that

1 regard, my position is that these residents live
2 there, property rights are directly impacted not
3 just simply as association. But notwithstanding
4 that, I will, with the board's indulgence, try to
5 handle this as expeditiously as possible.

6 THE CHAIRMAN: We appreciate that.

7 MR. FORSHNER: With that I would
8 like to introduce Joe Fischer, our professional
9 engineer. I don't believe Joe was sworn in, but
10 in any event, maybe we can have him sworn in to be
11 certain.

12 MR. BARBARULA: I'll do that anyhow.

13

14 J O S E P H A. F I S C H E R, sworn.

15

16 You want to qualify him?

17 MR. FORSHNER: Sure.

18

19 MR. FORSHNER:

20 Q. Joe, if you would, please, describe
21 your educational and professional background?

22 A. Okay. I have a BS, in civil
23 engineering, from Cooper Union, in New York.
24 Taken advanced courses at University of California
25 Los Angeles; CEI, New York; Massachusetts

1 Institute of Technology; University of Southern
2 California. I've taught graduate courses at City
3 College, Cornell, University of Washington, and I
4 think it's the University of Florida, whichever
5 one is at Gainesville.

6 I was with -- and I have a license
7 in New Jersey, as well as New York, Pennsylvania,
8 Florida, although I think that one lapsed too,
9 Connecticut, Massachusetts.

10 I'm president of GeoScience
11 Services. We have been in business since 1979.
12 And I guess our projects to date have included
13 provision and consulting services to the
14 governments in the United States, Peoples Republic
15 of China, US Virgin Islands, New York State, State
16 of New Jersey, Maryland; Somerset County, New
17 Jersey; Florida; City of West Palm Beach, Florida;
18 City of Des Moines, Iowa; Bethlehem Township, New
19 Jersey; Clinton Township, New Jersey; Washington
20 Township, New Jersey; Chester Township, New
21 Jersey; Borough of Peapack-Gladstone, New Jersey;
22 Borough of Glen Garden in New Jersey; West Vincent
23 Township, PA; Buckingham Township, PA; and Hampton
24 Township; and Allamuchy.

25 Q. And you're a professional engineer,

1 you said, licensed in a number of different
2 states?

3 A. Right.

4 Q. And specifically within that
5 context, the focus of your practice is what?

6 A. Geotechnical engineering.
7 Engineering geology.

8 Q. Specifically with regard to
9 geotechnical engineering, the focus of your
10 practice is rocks and soils?

11 A. Yes.

12 Q. The very issues that are the subject
13 of this application?

14 A. Rocks, soil, and water.

15 Q. Have you written any publications?

16 A. Yes. Over 150, I've been the author
17 or co-author of.

18 Q. Those have been on the various
19 topics that we have been discussing?

20 A. Yes. It's been on a variety of
21 topics, obviously, if there's 150, but . . .

22 MR. FORSHNER: I would hope so. If
23 they are all the same topic, we'd get bored pretty
24 quickly.

25 With that, I'd ask that he be

1 qualified as not only a professional engineer but
2 as a geotechnical expert with expertise in rocks,
3 water, and soils.

4 MR. D'ARMINIO: My only question; is
5 the New Jersey license active, professionally?

6 THE WITNESS: Yes.

7 MR. D'ARMINIO: I have no objection.

8 THE CHAIRMAN: We'll accept.

9 MR. FORSHNER:

10 Q. Joe, you've had an opportunity to
11 review the plans that are subject of this
12 application here this evening?

13 A. That's correct.

14 Q. You have heard the testimony that
15 has been presented to the board over the various
16 hearings?

17 A. That's correct.

18 Q. You've had an opportunity to analyze
19 the various issues that have been presented and
20 the concerns that have been raised?

21 A. I haven't performed a real analysis
22 to get answers, I performed an analysis or
23 evaluation of what has been done.

24 Q. As to what has been presented in the
25 plans that have been presented. In addition, you

1 have also independently studied the stability and
2 the security of the existing rock walls in and
3 adjacent to the Rock Creek Crossing development?

4 A. Yes, we have been working on that
5 for approximately three or four years now and we
6 also did the evaluation of the entrance road to
7 the Enclave.

8 Q. And in that context, what
9 observations have you made and what conclusions
10 have you reached?

11 A. Well, we have a whole series of
12 existing concerns on all the rock, but
13 particularly, I guess in relationship to this
14 hearing, buildings -- the parking lot slope
15 between Buildings 2 and 3 have marginal factors of
16 safety and the slope behind Building "C" also has
17 a marginal factor of safety.

18 Q. To be clear, the association has
19 already spent significant amounts of money to
20 address some of those very concerns that exist?

21 A. That's right. We did sort of a
22 triage and picked what we thought were the worst
23 opportunities or the best opportunity, whichever
24 way you want to look at it, that were slopes that
25 could damage buildings and injure people.

1 Q. And there's additional work to be
2 done that you've recommended to be done over time
3 as the matter proceeds?

4 A. That's correct.

5 Q. And there's significant costs
6 associated with those endeavors to the
7 association?

8 A. Yes.

9 Q. Some of the walls that you've
10 identified, that have some of the structural
11 integrity, and by walls I mean the existing rock
12 walls -- first of all, those are walls that have
13 been disturbed at one time or another in many
14 cases?

15 A. Well, all these -- the walls that
16 are of concern have all been cut during the
17 construction of Rock Creek Crossing.

18 Q. And some of those walls are on the
19 adjacent property that are the subject of the very
20 application here this evening?

21 A. Actually, I believe that -- yes, in
22 back of Building 2 and 3 and the parking lot
23 between them, that property, Castle Rock property,
24 comes up right to almost the boundary of the
25 parking lot.

1 Q. And the concerns that you've
2 identified are not just hypothetical, in fact,
3 there has been at least one very serious incidence
4 with regard to the stability of those walls, is
5 there not?

6 A. Well, there has been a number of
7 incidents and one major rockfall on Timber Ridge
8 Road. However, in the parking area and behind
9 Building "C", there have been numerous smaller
10 rockfalls, some raveling kind of things, some
11 wedge failures, some plane failures because of the
12 nature of the rock. Before we started to work on
13 it and in the time that we have been evaluating
14 it.

15 Q. And the one in particular, if I
16 recall correctly, I think it was something like a
17 36-ton rock fell on the road in question?

18 MR. D'ARMINIO: Objection. This has
19 nothing to do with our area.

20 MR. FORSHNER: It most definitely
21 does because we're talking about the same types of
22 structures that exist on and around the very
23 property in question and these are examples of the
24 very concerns and situations that exist. These
25 are not hypotheticals, these are the very rock

1 structures in question.

2 MR. D' ARMINIO: There is no basis
3 for that. It's away from our site.

4 MR. BARBARULA: There is no proffer,
5 at this time, before the board that this has to do
6 with the site. I mean there is no foundation. If
7 he's going to have this expert testify that these
8 failures around the site are related to this site,
9 in some way, I think that has -- the proffer has
10 to be made on that first.

11 I think the objection, that the
12 applicant's attorney is making, is correct.
13 Because, number one, there's assumption of facts
14 which we don't have before us. I mean, first of
15 all, I think someone would have to testify that on
16 such and such a date, this fell, and that thinking
17 was a result of, you know, X, Y and Z, and that X,
18 Y and Z relate to the subject property.

19 So I think that the objection is
20 well taken.

21 THE CHAIRMAN: I agree.

22 MR. FORSHNER:

23 Q. What is the correlation between what
24 you've identified as issues and the very rock
25 structures that exist on the subject property?

1 A. All the rocks at Rock Creek Crossing
2 are of a similar type and the discontinuities are
3 all similar.

4 Q. So, in other words, the very
5 circumstances that exist, that led to a 36-ton
6 rock structure falling and collapsing --

7 MR. D'ARMINIO: I'd like to have --
8 I'd rather have Mr. --

9 MR. FORSHNER: I'm asking a question
10 if I could.

11 MR. D'ARMINIO: It's actually
12 testifying I believe.

13 MR. FORSHNER: No, I don't believe I
14 have. He's already testified the fact that the
15 rock fell.

16 MR. FORSHNER:

17 Q. So the very circumstances that
18 relate to the rock that fell, are those the same
19 circumstances, as you said discontinuities and
20 some of the other terminology that you used, that
21 exist on the rock walls that are the subject of
22 this application?

23 A. Yes, they exist on both sides of the
24 Castle Rock site and they exist on all -- all over
25 the Rock Creek Crossing site it's the same kind of

1 rocks. They have similar orientation of
2 discontinuities, similar kinds of failures.

3 Q. So you have the same concern for the
4 actual structures that failed as you do on the
5 site that's the subject of this application?

6 A. Yes.

7 MR. FORSHNER: I trust that that
8 addresses the concern about the foundation.

9 Q. You were stating about your findings
10 and conclusions?

11 A. Well, to step back a little bit,
12 rock is not perfect, rock slopes stability and the
13 performance of rock is predicated upon the
14 discontinuities, not upon the solid rock. And we
15 have several different kinds of slope stability
16 concerns at the slopes of interest.

17 One, if you go to the soils on top,
18 which is a till, there's boulders, cobbles, and
19 soil falling off the top. That's a raveling kind
20 of failure.

21 MR. BARBARULA: Are we talking about
22 the subject property?

23 THE WITNESS: Yes.

24 MR. BARBARULA: I want to make sure
25 because --

1 THE WITNESS: Yeah, there's rock
2 walls and on top of the rock is glacial till.
3 Till is composed of everything from clay,
4 silt-size particles up to small boulders. Maybe
5 large boulders, we haven't seen them yet. A
6 number of those boulders have come down, basically
7 is an erosion raveling kind of failure. The
8 discontinuities have intersections, you get sort
9 of a wedge kind of failure where something will
10 pop out and it's pushed out by basically
11 frost/freeze cycles and water pressures.

12 Another thing that can do it is just
13 pure loads. And the rock is deteriorating over
14 time.

15 Another concern, obviously is
16 blasting, increased groundwater pressures increase
17 the stresses within the rock.

18 The thing, any kind of construction
19 that's performed on top of a slope, you have to
20 worry about the water running across the top of
21 the slope, you have to worry about water coming
22 out of the slope. And there's a lot of evidence
23 of water going through these discontinuities. I
24 have lots of pictures if anybody wants to see
25 them. They are local people who live there, I've

1 seen water coming out. So if you put a load on,
2 to increase the flow of water over the top of the
3 slope or through the slope, you're going to
4 have -- you have the potential for problems and
5 decreasing the factors of safety which are already
6 low.

7 And in doing some of the work, I
8 know the applicant used -- to try to figure out
9 the structural concerns he used some formulas
10 which really are an estimate of the effect of
11 vertical loads underneath. There's a lot of basic
12 formulas you can use to come up with the lateral
13 stresses, the vertical stresses and the shearing
14 stresses. And they have been around for a long
15 time, one of which was derived by Boussinesq in
16 1885. So that data is available.

17 Q. And this is you're referring to a
18 document, if you would just be clear and identify
19 that?

20 A. Okay. What it is, is the assumption
21 of a line load along an elastic air space and you
22 can come up and calculate what the stresses are.
23 That is a far more legitimate way to do it than
24 this 45-degree line that was in the reports.

25 Q. And this has not been done, these

1 cal cul a ti ons?

2 A. Not to my knowl edge.

3 MR. FORSHNER: How would you like me
4 to mark it, as 0-1?

5 MR. BARBARULA: 0-1.

6 (Exhi bi t 0-1 marked.)

7 MR. FORSHNER: I'll give you a
8 chance to take a look at that while we continue,
9 but I want to make sure that gets submit ted for
10 the record.

11 If you would conti nue.

12 THE WITNESS: Yes. I guess asi de
13 from the structure concerns, we have talked about
14 water management. And there again there are the
15 two probl ems; overl and flow whi ch can move the
16 till soils downhill, and subsurface flow whi ch
17 i ncreases the pressure tending to pop these
18 di scontinui ties apart.

19 So basi cally you reduce the strength
20 of the di scontinui ties by water pressure. In
21 addi ti on, the longer that water goes through
22 there, the more weathering that you get and the
23 weaker the fillings of the di scontinui ties are.

24 One of the things that's been stated
25 and shown in the appli cant's documents was some

1 presumed measurements of these discontinuities.
2 We have measured three sets of discontinuities,
3 foliation, oriented north 60 degrees east, north
4 70 degrees east, dipping 65 degrees to the south,
5 roughly parallel to the slopes, jointing, which is
6 another discontinuity, oriented north 70 degrees,
7 east, dipping 45 degrees to the north into the
8 slope face. Fractures of various causes, another
9 discontinuity, which is oriented north, 65 east to
10 north, 70 degrees east dipping into the face of
11 the slope.

12 So what you have from this then is
13 the failure, tills running down the slope --

14 MR. FORSHNER: Joe, if I could
15 interrupt you, on these issues and probably most
16 issues, you're much smarter than I am. I expect
17 there are some other people who don't understand a
18 lot of the technical terminology that you're
19 using. If I could ask you to break it down in a
20 way that I could understand it and hopefully and
21 presumably everyone else can understand it?

22 THE WITNESS: I'm sorry to use all
23 these geologic terms --

24 MR. BARBARULA: I know you want to
25 give the board 0-1, but 0-1 is a series of

1 formulas based upon the theories that were
2 established in 1885. And they have various
3 symbols.

4 Is this just the formula that you
5 want to give us or did you actually do this
6 formulation on the subject property and that's
7 what you're testifying to now?

8 THE WITNESS: It can be done on the
9 property. It hasn't been done. Work that's been
10 done to date is incorrect.

11 MR. BARBARULA: Because, quite
12 frankly, this is -- what you're handing in, for
13 the board to consider, I don't know if any --
14 there are a couple of people who have engineering
15 backgrounds and exposure, but I don't know if
16 anybody can actually make -- that this is
17 something that can be used by members with a
18 common understanding.

19 I mean I'm more than happy, you've
20 marked it, but I thought you were handing up
21 something that showed that was calculation on the
22 subject property. What you have given us is a
23 model.

24 THE WITNESS: A way to do the
25 calculation.

1 MR. BARBARULA: Right. Did you do
2 the calculation?

3 THE WITNESS: No, I don't know what
4 the loads are up on top of the slope.

5 MR. BARBARULA: All this is, is to
6 say that there's another methodology other than
7 what the --

8 MR. FORSHNER: Let's be clear. It's
9 not just another methodology. Your assertion that
10 they haven't performed the calculations necessary
11 to satisfy the concerns as to whether there is a
12 potential impact on the property in question?

13 THE WITNESS: Yeah. And that is one
14 of the ways to do it. The way that they've done
15 it is not correct.

16 MR. D'ARMINIO: There has been no
17 calculations, that have been done by Mr. Fischer,
18 that were being proved right now. At least at
19 this point?

20 MR. BARBARULA: That's what I'm
21 asking.

22 THE WITNESS: That's correct.

23 MR. BARBARULA: These are
24 theoretical --

25 MR. FORSHNER: It's not just

1 theoretical. We don't have the burden of proof,
2 the applicant has the burden of proof. If they
3 haven't come up with the calculation and done the
4 investigation necessary to make the determination,
5 we have a right to make that observation, submit
6 to you a source for those very calculations and
7 say, where is the proof?

8 MR. BARBARULA: Well --

9 THE CHAIRMAN: I don't know, I'm
10 going to ask a question. I don't know. Are you
11 taking fault with the applicant's or the borough's
12 calculations?

13 MR. FORSHNER: We're most certainly
14 taking issue --

15 THE CHAIRMAN: In what regard are
16 you taking issue with the calculations,
17 specifically?

18 THE WITNESS: Basically the first
19 one is on the analysis that was used to come up
20 with the stresses on the slopes. And what I'm
21 saying is what they used is not applicable to what
22 the proper way of doing it. Those are typical
23 form.

24 THE CHAIRMAN: So you're saying the
25 calculations, that were performed, are out of the

1 bound of accepted engineering practice?

2 THE WITNESS: Yes.

3 THE CHAIRMAN: Is that your opinion,
4 Paul?

5 MR. DARMOFALSKI: No. I'll let him
6 continue.

7 THE CHAIRMAN: Okay.

8 THE WITNESS: I used the word,
9 foliation, before. What that is, is the rocks
10 there are usually sedimentary rocks that have been
11 folded, faulted and put under pressure in doing
12 that, there are weaker zones and zones that
13 weather more easily because they are filled
14 with different materials than some of the other
15 zones. And in this case the foliation is a
16 material that weather quickly.

17 Jointing is just a crack in the rock
18 and fractures is just cracks in the rock. And
19 they are oriented in a number of different ways,
20 not just the simple way that the applicant used.
21 They're straight lines running down. They
22 intersect, some of them are relatively straight
23 and planar; others, failures are caused by
24 intersecting wedge kind of failures. Those are
25 the things that can be the most dangerous, the

1 wedge failures.

2 And we calculated factors of safety
3 in the parking lot area, about 1.3, which is
4 marginal and that's without any dynamic loading.

5 And in back of Building "C", factors
6 of safety, about 1.0.

7 Q. Is that a satisfactory safety
8 factor?

9 A. No.

10 Q. And indeed, you've made
11 recommendations and the association has in some
12 cases taken some remedial action based upon those
13 recommendations?

14 A. Yes. A safety factor of 1.0, in a
15 manner that we were forced to calculate these
16 things, is at best marginal. It means it's ready
17 to fail.

18 Q. How did it compare to the safety
19 factor that existed where the actual failure
20 existed, of that large boulder?

21 A. Well, we calculated a factor of
22 safety in that, originally of probably about 1.1
23 or 1.2 or something. And then, when we had the
24 failure, we were able to back calculate the
25 numbers and show that it failed, basically, and we

1 now have new parameters for some of the
2 discontinuities.

3 Q. And to be clear, those exist on the
4 site in question?

5 A. Yes.

6 Q. Were there any other findings or
7 conclusions that you've reached with regard to
8 this? I didn't want to cut you off.

9 A. Well, I guess a number of things
10 have been proposed by the applicant concerning
11 loading and the slope. Fine, moving structures as
12 far as possible from the slope is certainly the
13 right way to go and I guess we're just saying it
14 would be good to make the calculation and see what
15 the effect is.

16 Recognizing the fact that the slope
17 above the parking lot is critical as well. There
18 have been falls there, that slope comes right up
19 to the edge of the parking lot and you have people
20 down there and vehicles. And I think they should
21 use the appropriate formulas to determine the
22 stress distribution below a loaded area such as
23 buildings, retaining walls and fills, all of which
24 are proposed for the site.

25 Q. Now, Joe, the rock, I think it's

1 behind Building "C", that rock wall is closest to
2 one of the buildings here in Rock Creek Crossing?

3 A. Well, Building "C" is the closest
4 structure.

5 Q. And about how close is that rock
6 wall to the buildings and structures on that site?

7 A. It varies --

8 Q. On the Rock Creek Crossing site,
9 about how close to the Rock Creek Crossing?

10 A. At parking lot area the slope comes
11 right up -- the property and the slope come right
12 up to the edge of the parking lot, five feet plus
13 or minus. It probably varies from, say, 20 feet
14 to 40 feet or something like that. Probably
15 30 feet in back of Building "C".

16 Q. So if there's a failure of those
17 rock structures adjacent to Rock Creek Crossing,
18 there is a significant chance that someone or
19 something is going to be severely injured or --

20 MR. D'ARMINIO: Objection. I've
21 been patient but he's testifying. I mean you got
22 to ask questions, this is direct examination and
23 counsel has been testifying. I've been pretty
24 patient with it.

25 MR. BARBARULA: I think that,

1 Mr. Chairman, that counsel is assuming facts not
2 in the record. Nor substantiated. So I do think
3 that --

4 MR. FORSHNER: If I could, because I
5 think we can -- if there's something we have
6 missed and haven't set the foundation for, let us
7 know, we'll be glad to do so.

8 THE CHAIRMAN: The applicant -- the
9 witness has been offered as an engineering expert.

10 MR. FORSHNER: Correct.

11 THE CHAIRMAN: He's offering
12 opinions on what happens to the rock if it hits a
13 person. Think we all know what happens there. I
14 don't think we -- you need engineering
15 questions --

16 MR. FORSHNER: I want to be clear in
17 terms of the proximity of the rock wall that's on
18 their property that's adjacent to the Rock Creek
19 Crossing property.

20 MR. D'ARMINIO: Objection to saying
21 it's on the property. There has been no
22 establishment to show it's on their property. As
23 a matter of fact, there is a survey that shows
24 that it's on their property. Do you have a survey
25 that indicates it's on our property? Have you

1 looked at the survey to see actually where they
2 are?

3 THE WITNESS: Yes, the survey that
4 was shown on the ENTEC drawings would indicate the
5 slope comes right up to the parking lot area and
6 how far away it is in various locations in
7 Building "C".

8 MR. BARBARULA: No, that's not the
9 question. Is the face of the rock owned by the
10 association or by the applicant?

11 THE WITNESS: We think, from the
12 data that's been provided by the applicant, that
13 most of it is owned by the applicant.

14 MR. D'ARMINIO: Do you have -- does
15 your survey indicate where that is?

16 THE WITNESS: No, your survey does.

17 MR. D'ARMINIO: No, it just shows a
18 slope I think. We'll see.

19 MR. FORSHNER: Can we get a copy of
20 that survey and maybe show where that is, Joe?

21 MAYOR BUDESHEIM: Is this the rock
22 wall that was just stabilized?

23 MR. FORSHNER: We stabilized a
24 portion of the rock wall. I'll ask Joe to answer.

25 THE WITNESS: Probably Drawing #6 of

1 7 shows Building "C", and the property line, and
2 the slope comes down over the property line.

3 Another one of the drawings from the
4 parking lot area. And Drawing 3 of 7 shows the
5 slope in back of Building "C", the parking area.
6 And in back of the parking -- well, there's two
7 parking areas. The parking area to the east of
8 Building "C" and the parking area between
9 Buildings "B" and "C".

10 Here's another one without contours,
11 which is Sheet 2 of 7. And the property line
12 appears to be within eight feet of the parking
13 lot. And probably between 30 and 50 or in some
14 places 10?

15 MR. FORSHNER: That's behind --

16 THE WITNESS: Right, behind Building
17 "C".

18 MR. FORSHNER:

19 Q. I gather some people are taking a
20 look at that. Was there anything more that you
21 needed to add to your testimony?

22 A. No, not to my knowledge.

23 Q. Actually I do have something
24 further. There is a property maintenance code
25 here in the municipality. Is that impacted at all

1 by the existence of those rock walls?

2 A. Well, I'm giving engineering, not a
3 legal opinion.

4 Q. Fair enough.

5 A. Apparently there's parts of that
6 code that indicate that slopes and walls should be
7 maintained to not be a danger to people nearby.

8 Q. And in your professional opinion, do
9 the slopes and walls, that exist on the adjacent
10 property, satisfy those requirements?

11 MR. D'ARMINIO: Again objection as
12 to the characteristics of adjacent property. And
13 what this has to do with our variance, I'm not
14 sure, but he's opening the door and so I'm going
15 to question him.

16 MR. FORSHNER: The simple answer --
17 he can cross-examine our witness. The simple
18 answer is, there's a very significant, existing
19 problem on the adjacent property. That is a
20 danger to life and limb and to property it would
21 be irresponsible to ignore. You have a property
22 maintenance ordinance that addresses this very
23 issue. It hasn't been addressed with regard to
24 this application.

25 They have proposed further

1 disturbance of steep slopes. I submit that it
2 would be irresponsible for a board to approve an
3 application like this. Not every property, not
4 every property is appropriate for development. If
5 there were wetlands on this property, it clearly
6 would not be appropriate for development. Perhaps
7 this property is one that is simply not
8 appropriate for development. Certainly, unless it
9 can be done without these very significant
10 situations and concerns for life and safety have
11 been addressed. As of yet it's our position that
12 they have not been addressed.

13 MR. D'ARMINIO: If he is summing up,
14 I guess I can too.

15 MAYOR BUDESHEIM: Let me ask a
16 question. Doesn't our property maintenance
17 ordinance exclude undeveloped property?

18 MR. FORSHNER: It specifically
19 includes vacant land.

20 MAYOR BUDESHEIM: Not undeveloped
21 property?

22 MR. FORSHNER: Vacant.

23 MAYOR BUDESHEIM: It does not
24 address this type of a property, I'm sorry.

25 THE CHAIRMAN: You want to question

1 the witness?

2 MR. D' ARMINIO: I definitely do.

3

4 MR. D' ARMINIO:

5 Q. Let's first start out with this
6 issue. You said that it shows the walls on, what,
7 2 -- not 2 of 7 but 3 of 7?

8 A. There's a number of them.

9 Q. 3 of 7, you said, and I think you
10 said 5 of 7. I'm looking at this and it shows
11 contour lines, correct?

12 A. Yeah.

13 Q. But there may be additional contour
14 lines off the property that may be the actual
15 wall, correct?

16 A. Well, if you have a contour line and
17 you have looked out there, in back of the parking
18 lot is relatively flat and there's a flat area in
19 back of the buildings. So there were the slopes,
20 the only place there are slopes are where there's
21 a cliff.

22 Q. But you haven't identified where the
23 other contour lines are to establish a cliff.
24 Those contour lines could continue at the same
25 rate and then drop down. Isn't that a fact? I

1 mean, indeed these cliffs and these maintenance
2 problems are basically on your property.

3 Have you done -- let me ask you,
4 have you done an independent survey as to exactly
5 where those rock walls are?

6 A. No.

7 Q. That's my answer. That's the answer
8 for the board too.

9 I might say this, in terms of
10 maintenance, if the property -- if it was on your
11 property, then the association should have been
12 doing all that maintenance all that time, correct?

13 A. If it was, yeah.

14 Q. And indeed, if you were doing any
15 work on property and you went onto other people's
16 property to remove rock and to make repairs,
17 wouldn't you have to get somebody's permission to
18 do that?

19 A. Yes, if we knew it.

20 Q. You provided several reports and
21 memorandum to us along the way as we were talking
22 about trying to deal with some of these issues,
23 right, Mr. Fischer?

24 A. That's correct.

25 Q. One was dated May 4th, 2007?

1 A. I'd have to check.
2 (Pause.)
3 Q. I could actually show you if that
4 would save time. I'm showing you the one that's
5 May 4th, 2007.
6 A. Okay. Well, that was a memorandum.
7 Q. That was a memorandum, yeah. I'm
8 just showing you Page 2 and it says, structural
9 considerations, okay?
10 A. Yes.
11 Q. It says GS; that's you, right?
12 A. Yes.
13 Q. You had previously indicated that
14 structural considerations are not likely a concern
15 to the RCC slopes. That was your statement?
16 A. Yes, I said that tonight.
17 Q. What we're talking about are
18 basically theoretical constructs that are not
19 likely concerns but there are factors. And one
20 factor would be stresses and that's what you're
21 saying, right?
22 A. That's correct.
23 Q. An issue with regard to stress, one
24 of the factors has to be distance, isn't it?
25 A. That's correct.

1 Q. If I put a house right on the edge
2 of the cliff, that's one factor. If I put a house
3 200 feet away, that's another issue, isn't it?

4 A. That's -- it reduces the concerns.

5 Q. And so we have a situation here that
6 you've indicated it's not likely a concern and
7 then we're putting a house 200 feet away. That's
8 basically -- that's what's happened here, isn't
9 that a fact?

10 A. That's correct.

11 Q. Now, let's look, you talked about
12 this 45 in the calculations. When you have a
13 house and you put it on top of a hill or a
14 mountain, there is a certain stress with that,
15 correct?

16 A. Yes.

17 Q. And that stress, for the most part,
18 is a vertical stress, would that be fair to say?

19 A. No, no.

20 Q. If the stress is not vertical,
21 there's some angle to the stress, correct?

22 A. Wrong. It goes in all directions,
23 it's a spherical/elliptical situation.

24 Q. You're saying it's spherical or it's
25 elliptical. We had discussed, at one point, this

1 45-degree analysis, correct; we were at a meeting
2 and we discussed that, correct?

3 A. No, it was mentioned at the meeting.
4 That it's a quick way of looking at something.

5 Q. So it is a quick way, it's a way to
6 do it, correct?

7 A. No, it's not a way to do it, it's a
8 quick way to come up with approximation of
9 vertical stress.

10 Q. Fine. It does come up with an
11 approximation of vertical stress?

12 A. Right.

13 Q. Now, other ways -- and the house now
14 again is almost 200 feet away, okay? Other ways
15 of doing it, I guess would be to do soil borings,
16 analysis, cuts, these things as well, to find out
17 about the stone underneath?

18 A. No, we said one of the ways to do
19 it -- we talked about that at the meeting, that
20 there are many formulas that can give you an idea
21 of what's going on.

22 Q. Now, you said that --

23 A. One of which the Boussinesq approach
24 that I brought in tonight.

25 Q. Another issue you said had to do

1 with water movement, correct, in terms of
2 structural concerns? I'm sorry, I'll move on.

3 A. I don't think so.

4 Q. Now, Mr. Darmofalski did a report,
5 dated May 23rd, 2007, did he not?

6 A. I'll take your word for the date.

7 Q. I'll show you, I'm sorry. It was
8 May 23rd, 2007?

9 A. Okay, yeah.

10 MR. D'ARMINI O: In that he has a
11 section on -- this is a part of the record, is it
12 not? Do I need to mark this? The report that was
13 given to the borough? May 23rd letter?

14 MR. BARBARULA: No, that's part of
15 the application.

16 MR. D'ARMINI O: You don't need to
17 mark it.

18 MR. D'ARMINI O:

19 Q. In that, he says: Mr. Zepponi has
20 provided cross-sections and profiles to indicate
21 that the proposed dwellings will not influence the
22 existing wall behind Rock Creek Crossing Building
23 "C". It says: We agree with his conclusions.

24 You recognize that, correct?

25 A. That's his opinion, yes. I beg to

1 differ with him.

2 Q. And he reviewed basically the same
3 information that you reviewed in this, correct?

4 A. Yes, I believe so. But you should
5 ask him that.

6 Q. Now, we have asked you for data with
7 regard to the wall, the various statements that
8 you're making, correct? We have asked you for
9 that information -- well, actually through
10 counsel, so perhaps you don't know. I'll withdraw
11 that.

12 In terms of the data, have you done
13 any independent investigation as to the stresses,
14 and the walls in back of the Rock Creek Crossing?
15 With the data.

16 A. Could you refine that question a
17 bit? I don't --

18 Q. You indicated that you've never done
19 any stress analysis with regard to location of
20 these homes and the variances, the area where the
21 variances are, correct?

22 A. That's correct.

23 Q. Let me give you a hypothetical,
24 okay? Let's say that the top of the mountain
25 was -- let's say that there were no slopes that

1 were disturbed -- disturbed, no more than
2 25 percent slopes. It's only like 1.6 percent of
3 the whole lot anyway that is being disturbed.
4 Let's say it was zero being disturbed. You'd
5 still have concerns about where the houses were
6 placed and the impacts that it would have on that
7 wall, correct?

8 A. What impacts are you asking about?
9 Structural impact?

10 Q. Structural impacts.

11 A. I said before, I don't think the
12 structural impacts are significant, but that
13 should be brought out in an analysis that says
14 what the loads are and using an accepted formula.

15 Q. You talked a little bit about water
16 is another issue in terms of your concerns, you
17 talked about the fissures and the fractures and
18 those sorts of aspects and water getting into
19 that, correct?

20 A. That's correct, that's the most
21 important thing.

22 Q. Let's assume that you had a design
23 that actually took water away from the wall area
24 which you have a concern, and actually takes --
25 even existing water and takes it into the other

1 direction. Would that be a good thing?

2 A. That would help the Rock Creek
3 slopes if it was done.

4 Q. So, if you're actually improving the
5 natural conditions, that would be a positive,
6 correct?

7 A. If you reduce surface water flow
8 over it, if you reduce the subsurface flow, yes,
9 both. Both have different effects.

10 Q. Now, you did another report on May
11 24th, right, of 2007?

12 A. Yes.

13 MR. D'ARMINIO: I'll show you the
14 report.

15 MR. FORSHNER: Can we make sure that
16 those reports are part of the record, as well, if
17 they are not already? They have been referred
18 to --

19 MR. D'ARMINIO: I think you
20 submitted them to the board.

21 MR. FORSHNER: If we can perhaps
22 make sure that the record indicates that those are
23 incorporated into the record, I'd be okay with
24 that.

25 MR. D'ARMINIO: I believe they were

1 presented at the last hearing back in May, am I
2 correct?

3 THE WITNESS: No, I sent the May --

4 MR. FORSHNER: Certainly the
5 professionals have seen it, Mr. Darmofalski and
6 his team have seen it. I don't know if it was
7 formally made a part of the record. I'd like to
8 make it clear that it's part of the record.

9 MR. D'ARMINIO: I'm not putting it
10 in. I'm just using it for cross-examination
11 purposes.

12 MR. BARBARULA: I don't think you
13 ever submitted it. You just sworn him in this
14 time. You may have given it for review by the
15 engineer, but that didn't go before the board.

16 MR. FORSHNER: We'll take care of
17 that shortly. I wanted to get those on the
18 record.

19 MR. D'ARMINIO:

20 Q. Again, in this, on Page 3, you
21 indicated once more that the structural load was
22 not a major concern.

23 A. Yeah, both are essentially the same.

24 Q. And I believe you even said that the
25 impact on that wall of home #3 would be minor,

1 would be minor as well, correct, where it is
2 located?

3 A. That's what we're talking about, the
4 structures.

5 Q. And that was an examination based on
6 that home being closer to the wall than on the
7 alternate that was being proposed, correct?

8 A. Right. Without any significant
9 calculations.

10 Q. And if we move the home even further
11 away from the rock wall, then the minor concern
12 would be lessened, correct?

13 A. Yeah, we just agreed because it says
14 the same thing in both the memo and the letter.

15 THE CHAIRMAN: For the record, the
16 May 24th letter from GeoScience Services is part
17 of the record.

18 MR. BARBARULA: It was submitted.

19 THE SECRETARY: Yes, it was.

20 MR. BARBARULA: That shouldn't have
21 been sent directly because it had to be
22 introduced. It's not our -- the attorney for the
23 association should put it in because that is not a
24 report from our engineer to the board.

25 THE SECRETARY: Actually it was sent

1 to Paul and Paul submitted it to us.

2 MR. BARBARULA: With his report?

3 THE SECRETARY: Yes. It was part of
4 his.

5 MR. BARBARULA: Okay.

6 MR. D'ARMINIO: I have no problem.
7 It was actually mentioned in the last hearing.

8 MR. BARBARULA: If it's annexed to
9 our expert's report, then it's part of the record.

10 THE CHAIRMAN: It's in.

11 MR. D'ARMINIO:

12 Q. You talked about the top of the
13 wall, Mr. Fischer, you talked about the top of the
14 wall and that there is soil on top of the wall,
15 correct?

16 A. Yes.

17 Q. If that soil is -- that soil
18 actually kind of holds some water, doesn't it,
19 when it rains it would hold water?

20 A. To some extent, yeah.

21 Q. One of the things that you could
22 potentially do would be to remove some of the soil
23 and thus have the water flow off, right, more
24 easily?

25 A. Well, if you cut the soil back, you

1 would have a greater factor of safety. In other
2 words, there's a flatter slope, greater factor of
3 safety.

4 Q. So there are things -- and that
5 could be done irrespective of whether we put one
6 house up there, two houses up there, three houses
7 up there, correct?

8 A. Absolutely.

9 Q. So that has nothing to do with the
10 variance requests that we're having here tonight,
11 it has to do with the construction of any homes up
12 on that hill, correct?

13 A. Well --

14 Q. Actually it has nothing -- if there
15 was no construction -- withdrawn.

16 If there is no construction, it
17 still could be done, correct?

18 A. You mean take away the soil? Yeah.

19 Q. Remove the soil.

20 A. Sure.

21 Q. In terms of some of the distances,
22 we're talking about distances from the Lot 2,
23 200 feet or so, have you taken a look at that?

24 A. Lot 2?

25 Q. Which is the one that's on top of

1 the hill.

2 A. The biggest one? No, I haven't
3 looked at that because there are others closer.
4 From a structural standpoint.

5 Q. From a structural standpoint, okay.
6 If you looked at it from -- from a drainage
7 standpoint, if that house was constructed on the
8 other side of the ridge and the water and all
9 drainage infiltration was directed towards the
10 other side, on the other side of the ridge towards
11 what is it, Overlook, that would be advantageous
12 in terms of keeping the water away from Rock
13 Creek, correct?

14 A. If that could be done, but you'd
15 need some information on what the subsurface flow
16 is, not only surface flow.

17 Q. Mr. Zeponi did some analysis where
18 he kind of tried to do -- let me withdraw that.

19 Let's assume that you could actually
20 see certain cuts and you could see the wall is
21 exposed on either side of a mountain, you could
22 actually see the fissures, okay, assuming that.
23 Isn't that helpful in terms of determining, you
24 know, the nature of the rock and how the rock is
25 fractured?

1 A. If you measure inclination and types
2 of discontinuities, yes.

3 Q. And indeed, in this situation, you
4 have a large vertical cut on both sides of the
5 wall, correct?

6 A. Right, we have worked on both sides.

7 MAYOR BUDESHEIM: Mr. Chairman, can
8 I ask a question? Are we getting answers or are
9 we getting theories here? I mean I don't know
10 where this is going and it's --

11 MR. D'ARMINIO: That's kind of our
12 point.

13 THE CHAIRMAN: In the interest of
14 due process, I don't know how we're allowed to --

15 MAYOR BUDESHEIM: This is just
16 dragging. I don't know what we're proving here.
17 You're beyond me.

18 MR. D'ARMINIO: Tell you the truth,
19 that was my point, that's what I'm trying to bring
20 out is that there's theories about this, the
21 possibility of this or that. No actual study was
22 done by this witness and indeed the points that
23 were made, we have indicated that we're actually
24 making the situation better by doing the
25 engineering work. That's a fair statement.

1 MR. FORSHNER: In fairness, that's
2 exactly our point, which is to say that they have
3 told us theoretically they can address these
4 various issues but they haven't documented the
5 fact that they can address it. Burden of proof is
6 not ours. We don't have the engineering
7 information for their project. We can't engineer
8 their site, we need to rely upon them to do so.
9 They haven't fully done so, our witness has voiced
10 those concerns.

11 Mr. D'Arminio can point out that he
12 doesn't think that our engineer has engineered
13 their site but I don't believe that he is
14 obligated to do so.

15 MR. D'ARMINIO: We have, I mean we
16 have met the requirements of the municipal code in
17 terms of doing the engineering, we have met the
18 requirements of your engineer in terms of doing
19 the engineering. So we feel that indeed we
20 certainly have.

21 MR. D'ARMINIO:

22 Q. Just a couple more questions then.
23 Mr. Fischer, you talked a little bit about the
24 groundwater issues and that was discussed at
25 various meetings that we had. There has been a

1 suggestion that the home be moved towards -- the
2 home on Lot #3 be moved towards Skyview, and that
3 the various filtration systems, actually to retain
4 the water, be placed on the property of Lot 3 and
5 thus limiting the amount of water that comes down
6 the mountain from Lot 3 and from the homes,
7 correct?

8 A. That has been an indication but
9 without any design to my knowledge.

10 Q. But assuming that design could be
11 done, which we have indicated we're willing to do,
12 that would certainly be a benefit in terms of
13 keeping water away from the rock wall, correct?

14 A. Definitely.

15 Q. And indeed I think the testimony was
16 that that would actually lessen from what is being
17 done in the natural situation right now?

18 A. Well, if you took water that is
19 going toward the slope now and sent it in the
20 other direction, yes, that would help the slopes
21 on Rock Creek.

22 THE CHAIRMAN: Folks, please.

23 Q. You talked about, I believe in your
24 testimony talked about other rock walls and other
25 failures with other rock walls. I think you

1 talked about Timber Ridge, there was a rock that
2 fell on Timber Ridge Road?

3 A. Timber Ridge Road.

4 Q. Did you do a calculation of the
5 total runoff area for where that rock fell and
6 that failure?

7 A. No, what we used to come up with the
8 calculations was the assumptions, an evaluation of
9 the fillings in the discontinuities and the height
10 of water that would be above that. The height of
11 water. You don't need a lot of water, you need
12 one molecule of water.

13 Q. And did you notice where the
14 structures were there, did you do an analysis of
15 where the structures were adjacent to that wall?

16 A. Yeah, there are structures on top of
17 it.

18 Q. Did you do any comparison between
19 that and this location, any analysis or any
20 comparison?

21 A. Yeah.

22 Q. In terms of the distance and the
23 height?

24 A. Well, we'll go back to the same
25 statement before. That that's one of the reasons

1 that I do not believe that the structural load is
2 going to be that significant. The biggest
3 concerns are water. They are the same rock types.

4 Q. I don't understand, you said that
5 the drainage areas are not the same, the heights
6 are different, the buildings are different, so in
7 terms of the impact on the area, it's not going to
8 be identical.

9 A. Let me try to explain it to you if I
10 can. The concern you have with the slopes is what
11 the materials are in the discontinuity, okay?
12 Those are essentially the same. The other major
13 concern is what the height of water is above your
14 discontinuity. That creates pressure tending to
15 pop apart the discontinuities.

16 So it is not the amount of water
17 that may fall over the top of the slope, that's
18 the primary concern for the rock, it's the height
19 of the waterhead above your area of concern.

20 Q. You've indicated you've done no
21 calculations on our property with regard to that,
22 correct?

23 A. We have done calculations along the
24 wall which we now understand the wall behind
25 parking lot and Building "C" -- which we now

1 understand is on your property.

2 MR. D' ARMINI O: Again that's a
3 matter of some dispute.

4 THE WITNESS: Okay.

5 MR. D' ARMINI O: I have the
6 opportunity to call a rebuttal witness, correct?

7 MR. FORSHNER: I have, if I could, a
8 couple of quick questions for Joe just in response
9 to that, if I could.

10 MR. FORSHNER:

11 Q. Joe, they talked about the
12 theoretical possibility of taking water away.
13 Have they documented that and shown that that can
14 be accomplished at this point?

15 A. Not that I've seen.

16 Q. And they referenced your report
17 that's been submitted for the record, dated
18 May 24th, 2007, and you've indicated in that
19 report, areas that you didn't think were likely
20 concerns?

21 A. Right.

22 Q. You've also indicated various
23 concerns that exist, in that report, and those
24 concerns remain?

25 A. Correct.

1 MR. FORSHNER: If I could, just for
2 the record, get a copy of your resume, I just want
3 to submit that for the record. Actually I think
4 you took it back. I believe you did.

5 (Pause.)

6 MR. BARBARULA: Let's not take time,
7 you can submit it.

8 MR. DARMOFALSKI: Submitted. We'll
9 move on. You'll make that your next exhibit,
10 Mr. Forshner. B-2?

11 MR. BARBARULA: If he wants to
12 submit the Sunday news too, he can do that, it's
13 his witness. We'll mark it as 0-2 and we'll get
14 it, it's not an issue.

15 MR. D'ARMINIO: No objection.

16 (Exhibit 0-2 marked.)

17 MR. FORSHNER: That's all I have of
18 Mr. Fischer at this time.

19 THE CHAIRMAN: Paul, do you have a
20 couple questions?

21 MR. DARMOFALSKI: When we had our
22 meeting, on May 7th, I think we had all agreed
23 that the 45-degree angle was the start of
24 calculations, and I believe that's the notes that
25 I had when everyone was sitting around the table

1 in my office.

2 THE WITNESS: Yes, that was the
3 quick-and-dirty thing, right.

4 MR. DARMOFALSKI: Just by way of
5 record, I had my geotechnical engineer do the
6 calculations that no one has done here, and the
7 reason that I reached the conclusion that we did
8 is, I just want to put on-record and ask you your
9 opinion, we took the famous formula from the
10 1800s, pulled it out of a book, and just to
11 explain it in layman's terms, when you put stress
12 from a footing or something on soil or rock, it
13 creates a bulb of pressure and as you go further
14 down the pressure gets less and less, and the guy
15 in 1885, he did a great job and when you graph it
16 all out it creates a bulb that looks just like a
17 bulb.

18 I was going to give this to the
19 board so you could you understand it, but when you
20 go out a distance and down a distance, you are
21 able to measure what the pressure is going to be
22 at any one point.

23 What we did was we plodded, to the
24 best of our knowledge, where the rock face was on
25 your property or the Rock Creek property, not your

1 property, and where the closest house was. We
2 assumed a load of 50 pounds a square foot --
3 excuse me, 200 pounds a square foot, which is
4 pretty excessive for a house load but we tried to
5 make that conservative in nature.

6 And the calculation that we arrived
7 at a hundred fifty feet away, which is about where
8 the rock face is to the closest home, was a
9 vertical of 1.4 pounds per square foot and a
10 horizontal of half-a-foot, point five PSF. Those
11 are to me, very, very small numbers and
12 insignificant into the problem that is being faced
13 by Rock Creek on their rock face. And therefore
14 that's the conclusion that I reached.

15 The only reason that I'm bringing
16 this up under your testimony is because we did the
17 calculations, they were waiting for the
18 calculations and the applicant did not do the
19 calculations.

20 So no one did the calculations in
21 order to expedite this. I felt it was proper to
22 do the calculations. I had my guy do it.

23 Now, that doesn't take anything into
24 effect and I totally agree with Mr. Fischer, that
25 the rock face has some problems behind the parking

1 lot in Buildings "B" and "C". There's no debate
2 on that whatsoever. I want to go on-record that
3 that's the case.

4 As far as my recommendation on
5 groundwater, I think that he's already given
6 testimony that if in fact we can take some of the
7 groundwater and move it away to a different area,
8 it's not going to compound the problem that exists
9 right now.

10 I was the one who suggested, from a
11 groundwater control end of it, that instead of
12 sending the infiltration to the rock face for Rock
13 Creek, they would consider infiltrating it so that
14 it was going to go over the side. Doesn't mean
15 that's going to present any drainage problems to
16 anyone on Overlook or Skyview Drive, I'm saying we
17 would rather have the recharge toward that end of
18 property, the 12 acres, than the other part of it.
19 Because you have a clear break, because we're on
20 the peak end of the mountain here, of which way
21 the water is going to go. I can't tell where the
22 water is going to go when it hits, I lost my x-ray
23 vision a long time, but bottom line is my
24 conclusion, I think I agree with both the
25 applicant and Mr. Fischer, that we do need some

1 cal cul a ti ons.

2 I t' s not our job as the borough to
3 provi de those cal cul a ti ons, but I wanted everyone
4 to understand that the cal cul a ti ons should be
5 submi tted and I think they are going to agree wi th
6 what our concl usi on was, that i t' s going to be a
7 mi ni mal amount of i nflu ence on the rock slopes for
8 Rock Creek. Where we are, ri ght.

9 I just want everyone to hear that
10 because he di sa gree s wi th my i nterpre ta ti on of
11 whether the loads are going to present a problem,
12 we' re going by the same formul a that he prefers to
13 use, as opposed to using the 45-degree angle, and
14 we' re coming up wi th what I consider very small
15 loads.

16 Mr. Fi scher, I guess the only
17 ques ti on that I have, I know that in your
18 expe ri ence you' ve al ready concl uded i t' s proba bly
19 not going to present a problem but you want to
20 re vi ew the cal cul a ti ons, am I correct?

21 THE WITNESS: That i t i s, yeah.

22 MR. D' ARMI NI O: That' s my ques ti on.
23 Can the appli cant provi de the cal cul a ti ons, we' ll
24 re vi ew them, Mr. Fi scher wi ll re vi ew them, and I
25 have a funny suspi ci on, when we' re all done, we' re

1 going to come up with something like this.

2 MR. MAGENNIS: Based on your
3 experience and the study that you did here and I'm
4 not sure, in 1845, a fellow came up with some
5 threshold values that would be considered an
6 excessive load from a rock foundation. You say
7 it's going to be a pound, pound and a half per
8 square foot. At what point would you be
9 concerned, at 50 pounds, a hundred pounds --

10 THE WITNESS: Certainly with those
11 values, yes. I mean --

12 MR. MAGENNIS: Is there something
13 that is stated empirically that once you reach
14 this amount, we now have to be concerned?

15 MR. DARMOFALSKI: Because of the
16 distance and the loads, I'm not concerned with
17 these loads in this particular situation. There
18 are still situations with all of the things that
19 Mr. Fischer has brought forth for the rock face at
20 Rock Creek, that has the problems and has to be
21 addressed.

22 MR. MAGENNIS: I understand that,
23 but there is nothing that is stated that says --

24 MR. D'ARMINIO: No, there's no
25 maximum/minimum numbers that I'm familiar with.

1 THE WITNESS: I'd like to make clear
2 that there's certainly no concern about vertical
3 load, it's about the horizontal load and the --
4 the numbers, I guess that you have calculated,
5 Paul, consider horizontal load, right? Vertical
6 load, against that rock, nothing.

7 MR. DARMOFALSKI: No.

8 THE WITNESS: That's not the
9 problem. If you put ten tons against the wall,
10 it's going to fail.

11 THE CHAIRMAN: Any other board
12 questions for Mr. Fischer?

13 MR. BARBARULA: I have one to be
14 clear. Mr. Fischer, if nothing is done here,
15 because there was a question by your attorney
16 about the safety of life, limb, etcetera, I want
17 to be very clear, if there's one shovel, one
18 stick, does that rock face still have the same
19 problems regardless?

20 THE WITNESS: The rock face right
21 now, we had calculated -- in the area that we're
22 talking about --

23 MR. BARBARULA: Right.

24 THE WITNESS: -- has safety factors
25 on the order of one to 1.3.

1 MR. BARBARULA: When you mentioned
2 that, those are high risk safety failures?

3 THE WITNESS: Unless we went out and
4 spent a million dollars on testing, we couldn't
5 come up with precise numbers, okay? So you have
6 to use numbers out of the book.

7 MR. BARBARULA: Based on your
8 engineering expertise.

9 THE WITNESS: Right. When we went
10 back and calculated the failure, we have the
11 real-world, falls down, we had dimensions. We
12 modified our numbers a little bit to make it fair,
13 but we were very close, we were like ten percent
14 in our assumptions.

15 MR. BARBARULA: I wanted to be clear
16 because it was a little bit numbing back and forth
17 with the technical aspect.

18 THE WITNESS: Yeah.

19 MR. BARBARULA: You're saying that
20 as of now, with nothing being built on top, that
21 it is at that safety issue?

22 THE WITNESS: Yeah, there is
23 failures right now.

24 MR. FORSHNER: But you want to be
25 certain that there is nothing that exacerbates

1 that condition further?

2 THE WITNESS: Yep. We know right
3 now that we have seen failures in back of both of
4 those places.

5 MR. BARBARULA: I wanted to be clear
6 because I got kind of lost with doing the
7 geometric and mathematical and geometry and
8 everything. I would have been a doctor, not a
9 lawyer, if I could have done all that.

10 MR. FORSHNER: I wanted to clarify
11 one item. Read from your property maintenance
12 ordinance. It says: Vacant lots, land and
13 premises are also to comply with the provisions of
14 this chapter.

15 MR. D'ARMINIO: We'd like to see
16 Rock Creek supply it.

17 THE CHAIRMAN: Are there any board
18 questions for Mr. Fischer?

19 MR. MAGENNIS: I'm not sure I should
20 even ask this question, but based on the testimony
21 that I heard from you today, I imagine the people
22 at Rock Creek wouldn't have a home if you were
23 here 20 years ago?

24 THE WITNESS: No, you could make the
25 slopes stable. When they were made --

1 MR. MAGENNIS: I thought you
2 testified that the site should not have been
3 developed.

4 THE WITNESS: As the way it is, yes.
5 But we could make the slopes work by cutting them
6 back or bolting them. In other words, some of the
7 remediation work we did, we think is going to
8 work. We've got bolts in some, we have got a
9 special kind of Gunitite, reinforced Gunitite. We've
10 got drains in back of, where water comes out, so
11 we're getting the water out and we basically
12 strengthen.

13 MR. FORSHNER: At that time in
14 certain specific areas that were most at risk, it
15 doesn't address all of it?

16 THE WITNESS: No.

17 MR. FORSHNER: You're talking about
18 a seven-figure remediation here, are you not?

19 THE WITNESS: You could get up
20 there, yeah. The guys who did it, really I think
21 worked at a very low price. Maybe they can do it
22 cheaper than the Eskimos.

23 MR. FORSHNER: We did submit the
24 resume and your secretary has that. We gave
25 Mr. Darmofalski an opportunity to take a look at

1 it as well.

2 MR. D'ARMINIO: I received a copy of
3 that as well.

4 THE CHAIRMAN: Before we open to the
5 public, and Mr. Fischer, we have another
6 application that's been waiting all night that
7 we're going to ask to be carried until next week.

8 (Whereupon, a discussion is held off
9 the record.)

10 Now I'd like to open to the public,
11 questions for Mr. Fischer. If anybody from the
12 public wishes to come forward and ask Mr. Fischer
13 a question on his testimony, raise your hand and
14 I'll recognize you.

15 Seeing no one wishing to be
16 recognized, I'll ask the public portion be closed.

17 MR. BARBARULA: As to that witness.

18 THE CHAIRMAN: As to that witness.
19 Do you have any additional witnesses,
20 Mr. Forshner?

21 MR. FORSHNER: I have none, thank
22 you.

23 THE CHAIRMAN: I'm getting, you
24 know . . . There was somebody.

25 PUBLIC: I live at Rock Creek

1 Crossing and I just want to --

2 MR. BARBARULA: You want to ask

3 questions of Mr. Fischer?

4 PUBLIC: I want to make a statement.

5 MR. BARBARULA: Didn't get to that

6 part yet.

7 PUBLIC: I'd like to ask a question.

8 Mike Mansoor; from 19 Overlook Drive.

9 Mr. Fischer, you had mentioned

10 before that the greatest risk is not the

11 structural stress, is that correct?

12 THE WITNESS: Correct.

13 PUBLIC: It's the water?

14 THE WITNESS: Yes.

15 PUBLIC: Thank you very much.

16 THE CHAIRMAN: Anybody else?

17 Rebuttal witness?

18 MR. D'ARMINIO: You want that

19 witness now? We'll do that.

20 MR. BARBARULA: Rather procedurally

21 you do your rebuttal, they can do their closing

22 and then you do your closing and then we can

23 hopefully get to a deliberation.

24 MAYOR BUDESHEIM: Brought up

25 questions that were never answered.

1 MS. HOLMQVIST: There was one issue
2 that I recall --

3 MAYOR BUDESHEIM: That had to do
4 with the slope easement along the roadway and who
5 owns that. That was, according to my notes, an
6 open question.

7 I've been looking into it to find
8 out if you in fact have road frontage. I see a
9 25-foot easement between your property and the --
10 will become a borough right of way which means you
11 don't have road frontage on Overlook. According
12 to the survey that you submitted here, there's a
13 25 foot wide slope easement from Rock Creek --

14 MR. D'ARMINIO: To me that's an
15 easement. That doesn't mean we gave up a fee
16 right to it.

17 MAYOR BUDESHEIM: Does that give you
18 road frontage --

19 MR. D'ARMINIO: It does, of course
20 it does.

21 MR. BARBARULA: The fee is
22 ownership. The total ownership of land is all of
23 the rights of ownership. I can give the right to
24 someone else to come over the top.

25 MAYOR BUDESHEIM: I understand that.

1 But an easement, aren't you prohibited from
2 covering an easement or doing work on there which
3 would prohibit somebody from using their easement
4 rights? I'm asking the attorney a question.

5 MR. BARBARULA: A slope easement,
6 granting of a slope easement doesn't take away the
7 fact that you have road frontage. I don't quite
8 understand your question. I think --

9 MAYOR BUDESHEIM: What is road and
10 frontage, do you have a definition? I want to ask
11 our planner, she's the one who brought it up.

12 MS. HOLMQUIST: I'm also referring
13 to my notes from the last meeting, and
14 specifically, the board asked the question of who
15 owns the rock wall along Overlook. And that was
16 supposed to be looked into.

17 MR. D'ARMINIO: We did. We looked
18 at it and we can talk about that if you like.

19 MAYOR BUDESHEIM: You have to
20 maintain that rock wall.

21 MR. D'ARMINIO: Along Overlook.
22 Again I don't know what the easement is. I think
23 if it's a slope easement, usually it talks about
24 not disturbing it.

25 MAYOR BUDESHEIM: You own right up

1 to the right of way. You have to maintain the
2 rock wall.

3 MR. D'ARMINIO: I can have
4 Mr. Zepponi testify. Mr. Zepponi has been
5 previously sworn. If that's the question, we have
6 got an exhibit and we can deal with it.

7
8 ALEX ZEPPO NI, previously sworn.

9 MR. D'ARMINIO:

10 Q. Mr. Zepponi, several issues. One,
11 there was a question with regard to Overlook
12 Drive. I'm going to mark this A-15.

13 (Exhibit A-15 marked.)

14 Did you cause this to be made?

15 A. Yes, I did.

16 Q. And what does it depict and what
17 does it depict in terms of the easement and the
18 frontage that we have directly onto Overlook
19 Drive?

20 A. Total roadway -- roadway dedication
21 to Majestic Home Developers, LLC, from Block 9,
22 Lot 11 exhibit. It's dated 7/25/07. And which
23 what it shows is what was the property initially,
24 Lot 9, Lot 11. To get the road up when Majestic
25 developed that piece of property, they needed a

1 dedication of property from Lot 9, Lot 11, that
2 went from this outer, I'm looking at the
3 upper-most on the drawing, northern-most line, up
4 to 38.8 feet from that line to get the geometry of
5 the road, Overlook Drive. And then beyond that,
6 rather than build the wall, they had asked for the
7 ability to construct slopes within the remainder
8 of the property.

9 So, what was granted to them was a
10 50-foot right of way, 38.8 feet beyond that, and
11 then 25 feet and this lower dark line represents
12 the current property line. Within that current
13 property line was the ability for them to, rather
14 than build walls, slope up to existing grade.
15 It's basically a favor to them. Rather than build
16 the walls they asked, can I build slopes on your
17 property. Unlike some other individuals, before
18 you work on other people's property, you generally
19 need to get an easement.

20 So as part of that deal, 640 feet of
21 Overlook Drive was extracted from the piece that
22 we're now looking to develop, to allow Majestic to
23 develop their entire development as well as the
24 favor of letting them grade on the remainder of
25 the property so they wouldn't have to build

1 vertical walls. It clearly does not take away any
2 rights because this is an easement and there's no
3 utility in it which usually has the potential to
4 preclude work within the easement because if it's
5 sanitary sewer or water line service in the town,
6 you want to make sure nobody is going to put
7 something on it and disturb it. It's merely the
8 ability for that person to come onto this person's
9 property and cut a slope.

10 The terms of the original agreement,
11 with regard to maintenance, are unknown to me, but
12 clearly, the frontage goes to a right of way line
13 and clearly this is only a slope easement to allow
14 them to shut the road without building the wall.
15 It's that simple.

16 MAYOR BUDESHEIM: You own that rock
17 face?

18 THE WITNESS: That rock wall is
19 within the property lines, yes.

20 MAYOR BUDESHEIM: So you own that?

21 THE WITNESS: The rock wall is
22 within the --

23 MR. BARBARULA: The simple answer
24 is, yes, they own it and the maintenance issue
25 would be probably in the recorded easement.

1 THE WITNESS: Right, right.

2 MR. BARBARULA: I think, before the
3 borough would want to take that road, Bob, he
4 would have a copy of the easement because he had
5 to approve it. So Mr. Osdyke (phn) would possibly
6 have a copy of that easement. Because more than
7 likely the homeowners association probably had to
8 do some kind of a maintenance agreement with the
9 predecessor of title on this property. But this
10 property owns up to that line.

11 MAYOR BUDESHEIM: Why would the
12 borough have that, wouldn't that be part of the
13 planning board site plan or subdivision
14 application when they came before here, who was
15 going to be responsible for maintaining --

16 MR. BARBARULA: We may also have it
17 but probably in the builder's agreement, that's
18 when everything gets recorded by that time. We
19 probably have what the proposal was, but the
20 actual recorded is probably with the builder's
21 agreement. Because once you get the approval,
22 then they file everything. So you may go back to
23 Majestic's file and find the proposed one but the
24 actual recorded one is probably with the builder's
25 agreement.

1 MAYOR BUDESHEIM: So if Majestic
2 doesn't maintain this wall, who does? Majestic
3 has the easement --

4 MR. BARBARULA: If the easement says
5 that Majestic must maintain it, and then the
6 successor to interest is the association for those
7 homes, they would have to. If that easement says
8 that the predecessor in title to Castle Rock has
9 to do it, then Castle Rock has to. I couldn't
10 tell you until I look at the easement. If it's
11 silent, then it's Castle Rock's problem.

12 MAYOR BUDESHEIM: Now, if I can ask
13 the planner a question. We're dealing a lot with
14 theory tonight. Can the board determine whether
15 this is a legitimate road frontage if it cannot be
16 accessed from the site to the road? Can that be
17 legitimately considered road and frontage if you
18 can't get to the road? If that's the case, if
19 that's road frontage, could we request that the
20 access to the site use that road? Because
21 otherwise you've got 15 foot road and frontage for
22 two houses, right?

23 MS. HOLMQUIST: The request is that
24 the access be on Overlook?

25 MAYOR BUDESHEIM: Right.

1 MR. D' ARMINIO: May I make --
2 insofar as that is asking a legal determination, I
3 think I have an objection to it. If it deals with
4 planning issues, then that's fine.

5 MAYOR BUDESHEIM: I asked her as a
6 planner.

7 MS. HOLMQUIST: I think the
8 situation is also similar to a situation where you
9 would have any other kind of easement that may run
10 across the front of the property. It's not
11 typical that a drainage easement or use easement
12 goes across the front of the property, usually
13 it's limited to the side. Theoretically I guess
14 it could happen. And then you would have to take
15 that into account when you're hearing the
16 application.

17 I don't think that in a situation
18 like that, you could completely discount the
19 frontage that they have on that road. That's why
20 we took the position in the memo, that they need
21 to meet the frontage requirement on all street
22 frontages that they have. Clearly they don't on
23 Skyview.

24 If I understood the testimony
25 offered by the applicant, it was that they do own

1 the property up to the right of way, inclusive of
2 this easement.

3 MAYOR BUDESHEIM: Just wondering if
4 your understanding of the Municipal Land Use Law
5 says road frontage. Does that have to satisfy a
6 practical application? If it's impossible to use
7 that as a road frontage. Because you have to have
8 road and frontage for various reasons. And if,
9 for practical purposes, it can't be used as what
10 you would normally use road and frontage for, can
11 the board then just discount that as road and
12 frontage?

13 MS. HOLMQUIST: I think that you
14 have to look at testimony that they have given,
15 particularly with regards to the unique
16 configuration of the site, that being that it does
17 have road frontage on Overlook but it's not
18 usable. And therefore, in order to not interfere
19 with the slope easement and the walls, and create
20 further disturbance, they are proposing what they
21 feel to be a better alternative and one that takes
22 into account the unique topographic conditions of
23 the site.

24 That's why, when we were discussing
25 it previously, a lot of the questions that I

1 offered, regarding the planning issues, dealt with
2 the aesthetics and how was this configuration
3 going to look from Skyview.

4 MR. BARBARULA: Mr. Mayor, 1683 is
5 our definitions for site plans, etcetera. Lot
6 frontage, we have never, since the passage of
7 this, put in there that lot frontage must be only
8 considered if there's true access. We have made
9 it a horizontal distance. Between side lot lines
10 measured along the street line.

11 We never put that in, we never put a
12 disclaimer other than that. And that's the
13 particular topographical aspects, your typical
14 variance aspects of what he has to prove.

15 MAYOR BUDESHEIM: Quite often,
16 especially when you read Cox there, there's so
17 many case laws that put interpretations on things.
18 I was just wondering, if you have the Palisades
19 Park one, you got a 500-foot cliff, is that
20 considered road and frontage? That was an extreme
21 example, but you have the similar situation here,
22 you have this 40-foot cliff abutting road right of
23 way that the town doesn't even own yet so it isn't
24 even a borough road. That's why I was wondering
25 if there has been any case law regarding such an

1 application.

2 COUNCILMAN FALKOSKI: I would ask
3 the planner if she's familiar with Harvey
4 Moskowitz's dictionary definitions of zoning and
5 all? Would you have a copy of that?

6 MS. HOLMQUIST: You know what, I was
7 just quickly looking up in the Municipal Land Use
8 Law to see if there was a definition of street
9 frontage. And there isn't. But street is
10 defined. Did you want me to read that, the
11 definition of street?

12 COUNCILMAN FALKOSKI: No, I was
13 wondering if you had a copy. Because I have one
14 at home.

15 MR. BARBARULA: We have that.
16 There's a case that says that you can't consider a
17 subdivision if the road is not accessible?
18 Honestly I would have to put that in the computer
19 and go to the hard copies to find it because I
20 don't know, it's not something that I've come
21 across in the 30 years that I've been doing this.
22 There might be, but without -- unfortunately, I
23 don't have my computer so I can't go on right now.
24 But all I could do is tell you if we don't finish
25 this, I could find out for next week. I don't

1 know the answer if there's a separate case on that
2 issue right now.

3 MS. HOLMQVIST: The only other
4 thing, if I might just add, there's a section of
5 the Land Use Law that talks about a building lot
6 has to abut a street. And frequently there are
7 applications that come before boards where
8 somebody is looking to subdivide or build a house
9 on property that is not on an improved roadway.
10 And normally, what the community requires is that
11 that roadway be improved up to borough or township
12 standards to provide access to that property.

13 MR. D'ARMINIO: May I speak? But
14 there is in this situation. You have Overlook and
15 it goes right up to Skyview. So that's not the
16 planning variance.

17 Also, Mr. Chairman, Mr. Mayor, we
18 have been relying on the ruling that we felt in
19 the beginning of the hearing, that there was no
20 variances other than slope variances in terms of
21 our proofs. And indeed, as was indicated by
22 Mr. Barbarula, the language of the ordinance does
23 indicate that we're -- we have the proper
24 frontage. I mean there are -- as was indicated by
25 Ms. Holmqvist, there would be good reasons for a

1 grant of a variance, it would be a (C)(1),
2 topographical aspect of a practical difficulty for
3 the applicant. It doesn't make sense to cut
4 through that rock to gain access to the other
5 properties because you'd be disturbing so much
6 land, you'd be violating other ordinances to do so
7 and it would seem that we have made the correct
8 choice in our point of access being in the level
9 area in an improved road already.

10 So, again, I could make those
11 proofs. Mr. Zepponi, you would agree with those
12 proofs as planner, correct?

13 THE WITNESS: Absolutely.

14 MR. D'ARMINIO: If those had to be
15 made. But our determination and our reliance has
16 been that there's no additional variance required.

17 MAYOR BUDESHEIM: So, Ms. Holmqvist,
18 you believe then that the lot frontage on Skyview
19 meets our ordinance or do you --

20 MS. HOLMQVIST: No, it does not meet
21 the ordinance requirements.

22 MAYOR BUDESHEIM: You do need a
23 variance?

24 MS. HOLMQVIST: My position has
25 always been that they do need the variances, yes.

1 MR. D' ARMINIO: Mr. Chairman, the
2 code allows you to make a choice of the frontage.
3 This is a little bit of a different situation. I
4 think it's in the context of a corner lot. But,
5 this is a corner. I mean, why is it frontage? It
6 could be a sideyard and it could be a corner.

7 I mean the lot is so oddly shaped
8 here and that's probably one of the issues. I
9 mean we have made the choice that that's our
10 frontage and I think that that can be done. It
11 doesn't require that there be two frontyards. I
12 mean some towns they do that, they require you
13 that if you are ever on a street, that's a
14 frontyard and you got to have the setbacks and
15 everything work that way. Ordinance doesn't do
16 that. That's my argument.

17 MAYOR BUDESHEIM: If this were a
18 corner lot, it would have two frontyards. You
19 have to meet the setbacks on both streets.

20 MR. D' ARMINIO: But in terms of I
21 think you can make a choice as to what the
22 frontage is.

23 MAYOR BUDESHEIM: You can, but you
24 still have to meet the setbacks on both streets.

25 MS. HOLMQUIST: Yeah, I always -- if

1 there's a question in my mind, I always look to
2 the local ordinance and what are the definitions
3 in the local ordinance. Because they do vary from
4 community to community. And when I looked at
5 Riverdale's ordinance for the definition of lot
6 frontage, it talked about the street line, street
7 lines.

8 Well, you have two street lines. So
9 to me as a planner, that means that you're
10 required to meet the minimum dimension on each
11 street line that you have. And you don't. So
12 that's why in the planning memo it called out the
13 variances -- I believe it was lot width and lot
14 frontage. That was the basis for that conclusion.

15 MR. FORSHNER: I don't want to
16 belabor this, but I think the more relevant issue
17 is, Overlook as I understand it is not yet a
18 public street so it's not even relevant for
19 consideration of frontage at this time.

20 MAYOR BUDESHEIM: That was the
21 point.

22 MR. D'ARMINIO: It's going to be
23 dedicated, it's been approved on a plan, as I
24 understand it, to be a public street and I believe
25 at the last meeting, Mr. Darmofalski indicated

1 that it was -- it got the top coat, it just has to
2 be accepted at this point.

3 MR. DARMOFALSKI: It's not accepted
4 yet.

5 MR. D'ARMINIO: Not accepted yet but
6 it will be. It's on the map, it's on the town's
7 map, so all this -- good point perhaps, but not
8 really a good point because it does -- it's on a
9 map. It's on a filed map and we front it. That's
10 good enough.

11 MAYOR BUDESHEIM: One of the reasons
12 why we were holding off taking ownership of it is,
13 who owned the rock wall and who is going to fix it
14 because it's unstable right now? And if you own
15 it, I guess you're going to have to fix that rock
16 wall.

17 MR. D'ARMINIO: We'll have to look
18 at the maintenance agreement. We must have a copy
19 of it somewhere. By the rock wall you mean the
20 Overlook wall, right, Mr. Mayor?

21 MAYOR BUDESHEIM: Yeah, the rock
22 face. Because you got runoff now, you have rock
23 slides and there's a question of who has to
24 maintain that before we take it over.

25 THE CHAIRMAN: Do you have anything

1 else, Donna?

2 MS. HOLMQUIST: No.

3 THE CHAIRMAN: So where were we?

4 MR. D'ARMINIO: It was that -- there
5 was also the issue with regard to the wall along
6 Rock Creek. Can you testify as to that?

7 THE WITNESS: Based upon my review
8 of those drawings that were submitted as part of
9 this plan, I would suggest that in my opinion that
10 there is no engineer that is a land use, land
11 development engineer, that would look at those
12 topo lines, and without being previously told that
13 there is a wall there, would conclusively tell you
14 there is a wall there.

15 Those topo lines continue in a
16 downward trend, but like everything else it's
17 order of magnitude when those topo lines get to a
18 wall, because the height of the wall and
19 verticalness of the wall, they will almost blend.
20 All the lines that are shown on that map, as they
21 get to the property line, their similarity in
22 terms of distance are similar to that which is
23 above, it's just a continuation of the downward
24 slope from the top of the mountain to the top of a
25 wall. There's nothing in any of those, that I've

1 just looked at, that would again, by any means, if
2 you show it to ten engineers and -- land
3 development engineers, and ask them, is there a
4 wall shown on this topographic map, would come to
5 a conclusion that there is a wall there, in my
6 opinion.

7 MR. D'ARMINIO: So, in terms of the
8 location. You certainly couldn't figure that out
9 from these.

10 THE WITNESS: That's correct.

11 MR. D'ARMINIO: Also -- anything
12 further you want to say on that point?

13 THE WITNESS: Not with regard to
14 that.

15 MR. D'ARMINIO: Also there was a
16 question as to the 45 degrees and how that worked
17 out.

18 THE WITNESS: This is the most
19 frustrating parts of this entire application. We
20 have started from the first time we met with the
21 Rock Creek group, asked them for what
22 investigations do you want, what analysis do you
23 want. And it was vague, vague, vague. I know
24 you've heard me previously testify, because this
25 related to the first meeting, circuitous but I

1 don't want to shoot in the dark, give me an
2 analysis, give me a test.

3 What they came up with after the
4 first meeting was, rent a backhoe, an excavator,
5 you go up there, you dig holes and we'll send our
6 gentleman up from his firm, Mr. Fischer's firm,
7 and we'll all walk around together and decide
8 where, how many holes, how deep. We did that.
9 And then, as you know, we came in and we got the
10 same responses we got tonight; there wasn't enough
11 holes, it wasn't only holes, it was something
12 else.

13 Now, it was very clear at the end of
14 that first meeting that holes -- matter of fact,
15 the excavator was retained for the day, and I know
16 I've testified to this before too, at the end of
17 day we had asked his associate, are there any more
18 holes --

19 MR. D'ARMINIO: Mr. Zeponi, get to
20 the 45 degrees and then the additional numbers,
21 then we'll move to the next meeting which we had
22 in Paul's office.

23 THE WITNESS: It was clearly
24 understood by everybody who went to that meeting,
25 that it was agreed that the analysis that would be

1 performed was this 45-degree analysis. Because it
2 is overly conservative in most instances with
3 regard to rock-type structure. Matter of fact,
4 John, on Paul's staff, a geotechnical engineer, he
5 agreed that this thing would be more vertical than
6 could possibly be examined by the 45. So this was
7 an overly conservative. If we did that analysis
8 and we --

9 MR. FORSHNER: Excuse me, there's an
10 awful lot of hearsay being espoused here.

11 THE WITNESS: Hearsay of which four
12 people are here in the room --

13 MR. FORSHNER: We would disagree
14 with the characterization. I was at that meeting
15 that you're talking about. I would disagree with
16 that characterization. I don't want to speak for
17 Paul, but he did some calculations, based upon
18 your analysis, that was consistent with what we
19 recommended here this evening but I'll reserve
20 that.

21 THE WITNESS: Absolutely untrue. At
22 that meeting we thought 45 analysis would be done.
23 If it showed that there was potential for problem,
24 that being the 45-degree line broke through the
25 wall X amount of feet away, then we would look at

1 further analyses. So that was it. We wrote our
2 report, Paul agreed with the analysis in terms of
3 that we did, what we agreed to at that meeting.
4 Had that analysis failed, we would have done some
5 other calculation to be defined, described by
6 them.

7 MR. D'ARMINIO: Point, Mr. Zepponi,
8 that you didn't try to hide anything --

9 THE WITNESS: And we weren't -- no.

10 MR. D'ARMINIO: You did what you
11 understood you were supposed to do.

12 THE WITNESS: That's correct. We
13 read the subsequent memo, the memo said that we're
14 looking for this analysis. Our reaction was, we
15 did what they said, it's endless. We asked for
16 specificity, we thought we had it. There are
17 people here, as I said, that were also at that
18 meeting that will support exactly what I have
19 represented.

20 THE CHAIRMAN: Paul, was it
21 discussed at the meeting?

22 MR. DARMOFALSKI: Yes, it was.

23 MR. BARBARULA: I also have a prior
24 to your prior one, Mayor. Go ahead and ask the
25 question.

1 MAYOR BUDESHEIM: The legal status
2 of this Overlook not being a borough road, what if
3 it never becomes a borough road and this
4 subdivision is based on that road frontage? It
5 isn't a borough road now, what if it never becomes
6 one?

7 MR. BARBARULA: We got 31 homes that
8 will have a real problem because they bought these
9 with the assumption that the road was being
10 offered and dedicated.

11 MAYOR BUDESHEIM: Let me give you
12 another scenario, again we're dealing with theory
13 tonight, they have asked about making this a gated
14 community because they have had some problems up
15 there. What if they were to come back as an
16 association, file an amended site plan, and ask
17 for that to be a gated community, which would keep
18 that a private road, which I believe they would
19 have that right, and the board can consider it.
20 If the board does grant that, then this doesn't
21 have road and frontage. Since we haven't taken
22 over the road, they would have that ability,
23 wouldn't they?

24 MR. BARBARULA: Well, we would have
25 to -- this application would have to go before the

1 board of adjustment to build on a non-borough
2 street.

3 MR. D'ARMINIO: May I say to that,
4 then every one of the homes that they live on now
5 would have to get planning variances. That's not
6 the case. There was a decision that was made
7 on -- matter of fact, our predecessor in title has
8 an access easement as well. What do you think, we
9 gave the roadway and didn't get anything back for
10 it? We let them, without even them having to pay
11 us, go over our property? We can't use that road?
12 We don't have any access to the back of the
13 property through there?

14 These have all been done with access
15 easements and agreements. I'm not sure it needs
16 to be a public road, I think it just has to be --
17 whether it's a private or public road, there are
18 often private developments that there's not
19 dedication but it's still an improved street.

20 MR. BARBARULA: The difference is
21 that if it's not a public road, then we're in
22 front of the wrong board. The board of adjustment
23 approves subdivisions and building on unimproved
24 streets.

25 MR. D'ARMINIO: The thing, it's not

1 an unimproved street, the street is improved.

2 MR. BARBARULA: It's an improved but
3 it's not dedicated. Hold on one second.

4 There is and was submitted to the
5 board, back in October of 2006, probably why
6 nobody remembers it, a copy of the easement which
7 a copy was submitted to the board unsigned, which
8 has -- which hopefully someplace along the line,
9 and it should be at the builder's agreement that
10 this should have been signed, but regardless of
11 whether it's signed or not, if it isn't signed,
12 any action would require that it be signed before
13 you take the road. It says that the person
14 getting -- I'm not going to do grantee/grantor
15 because it doesn't matter. The house, Majestic,
16 they must maintain or cause to be maintained the
17 easement parcel in a safe and slightly condition.

18 MAYOR BUDESHEIM: That's Majestic?

19 MR. BARBARULA: Right. And the
20 parcel is the land of the slope where the cut in
21 the mountain is.

22 So, before the town -- regardless of
23 whether the town takes it or not takes it, but if
24 the town does decide to accept the dedication,
25 this better be signed.

1 MAYOR BUDESHEIM: Who submitted
2 that?

3 MR. BARBARULA: The applicant
4 submitted it because Paul put it down as one of
5 the deficiencies on a complete application and it
6 was submitted back, and I forgot about it, back in
7 October of '06.

8 And in addition, the applicant said
9 that the land owner is looking for the signed
10 copies but if they don't exist they can make it
11 part of condition of the application.

12 MAYOR BUDESHEIM: Of this
13 application.

14 MR. BARBARULA: Right. I don't care
15 about this application or any other application,
16 somebody better tell Mr. Osdyke (phn), don't sign
17 off until we find a signed copy of this.

18 MAYOR BUDESHEIM: What if Majestic
19 refuses to sign, where does that leave the town?

20 MR. BARBARULA: I think that the
21 representations in the application of Majestic was
22 that they had gotten this easement and they made
23 it part of the agreement. So I think you have an
24 enforcement there. But that's another
25 application. This applicant has said that if you

1 want to make it part of his conditions, that he
2 would do it. That's what has to do with this
3 applicant. He said that if they don't exist, you
4 can make it as a condition of final approval.

5 MAYOR BUDESHEIM: Make what a
6 condition?

7 MR. BARBARULA: Getting this signed.

8 MR. D'ARMINIO: Also, again, I think
9 there might be a little bit of a misunderstanding.
10 If you look at Section 35, it doesn't have to be a
11 dedicated street. There's private streets and
12 roads all over the place. Otherwise people come
13 in, you put the road in, they build their houses,
14 they live there and then where are they, they got
15 to go back for planning variances if the town
16 doesn't decide to accept the dedication? All
17 that's required is that it be on a plan -- on the
18 official map or it be on a plan approved by the
19 planning board.

20 I would assume this street was on a
21 plan approved by the planning board. It doesn't
22 have to be a dedicated -- it doesn't have to be a
23 dedicated street. Otherwise, boy, that would
24 throw a really political monkey wrench in it.
25 That's maybe more academic. Again it's on a plan

1 approved by the planning board and we have
2 frontage on that street. And we have access as
3 well.

4 THE CHAIRMAN: Does that conclude
5 Mr. Zepponi's testimony?

6 MR. BARBARULA: I don't know.

7 MAYOR BUDESHEIM: Can I just say
8 something? He's reading from something. I think
9 definition of a street is that you have to have
10 access to the building or structure.

11 MR. D'ARMINIO: It does, it has
12 access to the rear, it's on that street. Has
13 nothing to do with what's a front or what's a rear
14 yard. That's my position. Again I've had
15 Mr. Zepponi testify as to the variance.

16 MR. D'ARMINIO:

17 Q. You also testified, Mr. Zepponi, I
18 believe, that in terms of the visual look, in
19 terms of finishing the cul-de-sac?

20 A. Finishing the cul-de-sac.

21 Q. We moved the house forward --

22 A. That's correct.

23 Q. We finished the cul-de-sac and the
24 look of it?

25 A. That's correct.

1 Q. So, in terms of the dedication and
2 the access, visually it's fine too. There's no
3 substantial negative impact, right?

4 A. No. On the density, the separation
5 of the house is greater than what occurs on the
6 other side of the street. It's actually less
7 dense but same cadence in terms of the front of
8 the house.

9 So we believe it's finished, off the
10 cul-de-sac in a manner that's similar but less
11 dense than the way the rest of the cul-de-sac had
12 been developed to that point.

13 Q. And there are certainly benefits to
14 that as opposed to the detriments overall?

15 A. If you were to come in from the
16 other road and be boxed in with regard to the
17 disturbance of the steep slopes, absolutely.

18 MR. D'ARMINIO: Thank you.

19 THE CHAIRMAN: Does that conclude
20 his testimony?

21 MR. D'ARMINIO: Yes.

22 THE CHAIRMAN: There will be no
23 further new testimony. We're after 10:00. So you
24 guys know.

25 Board questions for Mr. Zepponi?

1 Anyone from the public wish to come
2 forward?

3 Sir.

4 PUBLIC: Mike Mansoor again. 19
5 Overlook Drive.

6 Mr. Zepponi, we heard from
7 Mr. Fischer that the greatest degree of risk is
8 not from the stress that the 19th Century
9 calculation determine, but from the water runoff.

10 So of course you've met with the
11 Rock Creek Crossing because of course they are
12 represented by counsel and your solution was to
13 divert the water elsewhere, is that correct?

14 THE WITNESS: That was a solution
15 that was suggested and we have agreed to do that
16 as a potential solution to this. You also heard
17 with regard to the Overlook, the Timber Ridge
18 failure, that in that case it was determined by
19 your engineer that the amount of water made no
20 difference, it was the height of the water.

21 Because you're saying the situations
22 were identical and we're making the point that the
23 conditions weren't identical, there is a different
24 amount of water going over that particular piece
25 than there is on the other. And his answer was

1 that the quantity of water made no difference, it
2 was the height of the water. Just as a point.

3 PUBLIC: Right. I'm not Rock Creek
4 so he's not representing me. Was an analysis done
5 as to the impact of the diverted water on the
6 Enclave at Riverdale?

7 THE WITNESS: On the Enclave at
8 Riverdale? No. Before that house can be built,
9 there needs to be a specific site plan and plot
10 plan. What there was, was an agreement that if
11 the water could be diverted without any impact to
12 the Enclave, that that could be done. But we
13 would need to provide, at the time a real house is
14 developed, that that would be one of the proofs
15 that we have to meet before a permit would be
16 issued for the construction of that house.

17 So we have agreed conceptually to do
18 that and we know we have to meet the standard to
19 assure that there won't be any, say, additional
20 peak flow in the storm sewer going down the
21 street.

22 I would also add that as part of the
23 agreement for this land transfer was the
24 anticipated connection of not three houses but an
25 entire street into your system. That was part of

1 the agreement. And actually that's part of the
2 agreement. That was the compensation of this
3 never occurred because there was a zoning change
4 with regard to steep slopes. There was a plan
5 done for an extension of your street into this,
6 about 1,200 feet, put six more houses, and as part
7 of the agreement for the gift of the land was that
8 you would take and provide -- you would provide
9 water service and you would take sanitary flow and
10 you would take storm flow. Obviously the road was
11 never constructed and the zoning will preclude
12 that road from being constructed. Now we're
13 talking about runoff from what amounts to a half
14 of a roof of one house as opposed to the road and
15 six houses that will go into -- potentially go
16 into the street. We have still agreed to meet the
17 proofs that there won't be any detriment to that
18 roadway.

19 PUBLIC: About how close to the wall
20 on Overlook is one of the houses?

21 THE WITNESS: On Overlook?

22 (Pause.)

23 The one house would be about
24 230 feet away, and the other house would be about
25 240 feet way.

1 PUBLIC: Was any analysis performed,
2 according to the meeting that you had with the
3 Rock Creek folks, and you referred to that several
4 times, as to the impact of any blasting or
5 building of the houses on that rock wall?

6 THE WITNESS: Well, we have
7 agreed -- in one of Mr. Fischer's reports it
8 addresses blasting and we have agreed to a
9 procedure with regard to using chippers, low
10 energy and all the rest of that before anything
11 else could even be considered.

12 PUBLIC: You did an analysis, you
13 did the calculations, the 45-degree angle
14 calculations to help satisfy the Rock Creek
15 Crossing.

16 THE WITNESS: That's correct.

17 PUBLIC: Demands that occurred in a
18 meeting?

19 THE WITNESS: That's correct.

20 PUBLIC: Was anything -- it appears
21 that you did that because of the demands of Rock
22 Creek Crossing and fact that they are represented
23 by counsel and quite a bit of financial
24 background. Was anything done to ensure there is
25 no danger to the Rock Creek wall?

1 THE WITNESS: It was visually
2 inspected by geotechnical as well as myself and it
3 didn't appear to be an issue at all. It was not
4 done. A 45-degree analysis was not done.

5 PUBLIC: You visually inspected that
6 wall?

7 THE WITNESS: I've walked and driven
8 as I go up the road, yes, and seen it.

9 PUBLIC: And did you notice erosion,
10 severe erosion on that wall, rocks that have
11 fallen?

12 THE WITNESS: Yes.

13 PUBLIC: And it's your opinion that
14 building houses on that top of that wall will not
15 cause any further erosion or rockfall?

16 MR. D'ARMINIO: Objection to
17 characterization of building a rock wall on top of
18 that wall, it's 230 feet away.

19 THE WITNESS: As a form of putting
20 things into perspective, the lots that are
21 developed currently within that development, are
22 on approximately three-acre lots. These are going
23 to be three-acre lots with a house of similar
24 size. There is a requirement that there's zero
25 increase in runoff, which calls that erosion and

1 we have agreed to adhere to that. We came in
2 adhering to that.

3 So, we don't see any impact at all
4 that would worsen the existing condition.

5 PUBLIC: But no analysis was done?

6 THE WITNESS: The analysis was done
7 with regard to increase in runoff. There was no
8 analysis done with regard to stability of the
9 rock.

10 PUBLIC: No more questions, thank
11 you.

12 THE CHAIRMAN: Anyone else?

13 MAYOR BUDESHEIM: John, question.
14 This subdivision is going to be totally, you might
15 say, within the Enclave, they are using all the
16 roads. Do they have to become a member of the
17 Enclave homeowners association?

18 MR. BARBARULA: No, they were never
19 in part of the planned approval before the board.

20 MAYOR BUDESHEIM: They would get the
21 benefits of the association without having to join
22 it or assume the liabilities?

23 MR. BARBARULA: The easement says
24 that they reserve the right to access over their
25 roads.

1 So, yeah, they do get a benefit
2 cause I mean, first of all, the roads are going to
3 be improved and they are all finished and they are
4 done by the Enclave. And if they go private, they
5 will be maintained by the Enclave, including
6 plowing, etcetera.

7 So, yeah, they would get the
8 benefit. But it's a contractual benefit that they
9 didn't do it, it was done by -- who was it done
10 by? It was done by Mountainview, LLC and Majestic
11 Home Developers. It was their predecessors. It
12 was before Beazer and before them. But it was in
13 the contract.

14 THE WITNESS: If I could address
15 that one bit. One, that piece of road wouldn't
16 exist without the dedication. That's never been
17 fully compensated for and that's nothing more than
18 fact. They never came back to do what they needed
19 to do. It's not Enclave, but the predecessor.
20 But the predecessor in this property nor I have
21 ever been compensated for that gift, more the
22 predecessor than I.

23 In addition to that, I already
24 agreed verbally, in meeting with members of their
25 group, that we would as individually being willing

1 to contribute to the maintenance they have on the
2 front, like the flowers and everything they plant
3 because that is a benefit to people who live up
4 here. Rest is a public road and it's part of what
5 the price of admission to even be able to begin
6 developing that property, made available to them,
7 but still not compensate.

8 We have agreed to participate in the
9 beautification of the entry on a regular basis.
10 We would pay for it and make it a stipulation of
11 each one of the deeds that they have to contribute
12 on a prorated basis and we have already had that
13 verbal discussion with some members of the
14 Enclave.

15 MR. BARBARULA: I understand, but
16 it's just that if it wasn't for them you wouldn't
17 have access to your property either.

18 THE WITNESS: That's why it works,
19 that's why it works.

20 MR. BARBARULA: The benefit went
21 both ways.

22 THE WITNESS: Beyond that, if you
23 wanted to marry me now, marry me now while we're
24 arguing with Rock Creek. If we're going to be
25 pals, let's be pals but don't marry me after the

1 battle is done.

2 THE CHAIRMAN: Any further
3 questions?

4 PUBLIC: I have a question, sir.
5 Robert Dancu; 4 Skyview Terrace; D-a-n-c-u.

6 I missed a couple meetings. I'm
7 sure you addressed it regarding blasting and the
8 rock. You plan on using hammers and stuff like
9 that?

10 THE WITNESS: We have already agreed
11 to follow the outline prescribed by the Rock Creek
12 engineer.

13 PUBLIC: So there will be no
14 blasting whatsoever?

15 THE WITNESS: That's essentially
16 what's anticipated. We would agree directly that
17 that's -- we have agreed to agree to that. The
18 outline that is established by the Rock Creek
19 people is that there's an hierarchy, that we start
20 with chipping, low energy method, from there we go
21 to another method. If it comes down to the end of
22 the road and we can't manipulate certain things
23 and there's blasting, that can only happen with
24 the blessing of the town and/or the involvement of
25 Rock Creek or some other geotechnical engineer

1 that makes Rock Creek happen.

2 PUBLIC: As well as our group.

3 THE WITNESS: If you want to hire a
4 geotechnical and have them involved, that would be
5 okay too.

6 PUBLIC: We're the second house on
7 the right and we've got joint rocks. Our house
8 shakes. Any blasting there is really going to be
9 unacceptable.

10 THE WITNESS: There's a difference,
11 they do deep blasting and mass blasting. This is
12 smaller magnitude and there's less depth and
13 there's less vibration. One of testimony that you
14 have missed, New Jersey is one of the most
15 stringently managed blast in the state that there
16 is. It's much different, but again before we get
17 to that point, we got to go through a lot of steps
18 and we have agreed at the end of the day that
19 we'll not blast if there was anything else
20 possible.

21 THE CHAIRMAN: Anyone else?

22 At this time I'm going to close the
23 public portion of the application. I'll ask a
24 motion to close the public portion of the
25 application for questions --

1 MR. FORSHNER: Just as to questions.

2 THE CHAIRMAN: We're going to get to
3 summation -- we're going to do summations,
4 statements by the public, closing, board review
5 and motion.

6 All in favor? Opposed?

7 Three minutes.

8 (Whereupon, a recess was taken.)

9 Before John left he corrected me,
10 the order will be public comment first.

11 MR. BARBARULA: For the opposition
12 and then the applicant.

13 THE CHAIRMAN: At this time, if
14 anybody from the public would like to come forward
15 and make a statement on the application, a
16 statement on the application, raise your hand,
17 I'll recognize you and you'll come up and make a
18 statement.

19 MR. D'ARMINIO: Mr. Chairman, my
20 client has agreed that any analysis for the Rock
21 Creek, in terms of house #3, we'd obviously do it
22 for the other two houses. It can be a condition
23 of any approval and we have to do a site plan for
24 each house and we would do that analysis to
25 satisfy the engineer and of course our neighbors.

1 THE CHAIRMAN: Very well.

2 MR. BARBARULA: Do you swear or will
3 you affirm?

4 PUBLIC: I'll swear.

5

6 J. K-A-L-S-I, sworn:

7 I live on Skyview Terrace and my
8 house is the very next one to the house they are
9 building. And I know that area mountain there,
10 next to my house and they are going to blow up
11 that mountain to build that house and they are
12 going to affect my property. Especially when we
13 bought this house, we're landlocked, we were told,
14 nothing would get build there. We paid a premium
15 price for that lot, that nothing will be built
16 there, it's okay. Now we have this house is
17 getting built and we're paying the association
18 fees. I guess road has been paved and when they
19 start it is going to move the whole road and I see
20 that, there are small kids on the street. If that
21 development and within the construction will be
22 there, they are going to use that road. And it is
23 going to affect the kids that are living there.

24 So I strongly wish that this
25 construction should not go on.

1 Thank you.

2 THE CHAIRMAN: Anyone else?

3 Mr. Forshner.

4 Sorry, we've got another one.

5 PUBLIC: My name is Lisa Zevin;

6 Z-e-v-i-n.

7 (Sworn.)

8 I'm a resident of Building "B", unit
9 5, I'm on the first floor at Rock Creek. I'm an
10 original owner. I have witnessed the -- we have
11 dry wells that run across the back of our rocks to
12 absorb some of the water. They have been replaced
13 because the first ones didn't take the facade, it
14 was too thick and they had to redo them.

15 My concern, over the years I've
16 watched the amount of water that's fallen from
17 those rocks and hope and pray each time that it
18 doesn't come into my unit and I am opposed to this
19 for it to possibly cause any damage to my unit
20 with the overflow of water. I know he's offered
21 to route it another way, and if that be the case,
22 I want some sort of confirmation. I've never had
23 water in the nine years I'm living there and it
24 won't begin.

25 MR. D'ARMINIO: Can I ask a

1 question? You would be happy then if we can
2 reduce the runoff, correct?

3 PUBLIC: I just don't want it to
4 become worse. Right now it's never been -- it
5 holds. I just don't want it to become any worse.

6 THE CHAIRMAN: Anyone else?
7 Mr. Forshner.

8 MR. FORSHNER: Most of the folks
9 that are here, are here on behalf of the
10 association, and haven't spoken in light of the
11 comments that I've made. But as I suggested, just
12 to be clear, if you would, by a show of hands, who
13 here is in opposition to the application?

14 It has been indicated, perhaps I let
15 the record indicate, I've asked the folks unless
16 they had something new, in addition to what we
17 presented, perhaps not to take any unnecessary
18 time to the board as a courtesy to the board and
19 even the applicant.

20 THE CHAIRMAN: Nobody shows up
21 unless they are mad.

22 MR. FORSHNER: I want the record to
23 reflect that.

24 I'm not going to belabor this. I
25 think the board has heard extensively. You have a

1 steep slope ordinance that intended to deal with
2 issues such as erosion, such as stability of the
3 soils and the rocks. You have an area with a
4 major problem. It's been testified to at length,
5 there is no one disputes the fact there's a major
6 problem.

7 Mayor, understandably is concerned
8 about walls on the other side of the development,
9 whether the township will become responsible.
10 Needless to say, this is a very serious problem.
11 It's a problem for the borough. I guess the
12 borough as opposed to I think I said township,
13 forgive me, it's a problem to the borough, it's a
14 problem for the neighbors, it's potentially a
15 problem for anyone who purchases a property in the
16 proposed development. We'd implore you, don't
17 make it any worse, deny the application.

18 THE CHAIRMAN: Mr. D'Armino.

19 MR. D'ARMINIO: I'm sorry, I'll try
20 to be succinct. What we're talking about here is
21 11 acres, 11 acres. And out of the 500,000, you
22 know, square feet within those acres, we're
23 talking about 8,000 square feet of impact. That's
24 the variance here.

25 I've heard so much about the walls

1 and the line. And that's fine, we're actually
2 improving the conditions in various situations.
3 When you're talking about the variance, that's the
4 variance that we're talking about. It amounts to
5 1.6 percent of the entire site. In comparison, I
6 think if you looked at this entire room, what are
7 we talking about, what's one percent about, the
8 size of maybe a table? We had an exhibit, it was
9 Exhibit A-14, which showed what a small amount is
10 indicated with regard to this property being
11 impacted.

12 And there's no claim at any time
13 that the scattered slopes that we're impacting are
14 in any way unstable. We have talked about
15 instability of the various walls along the roadway
16 and along Rock Creek, but we're nowhere near that.
17 We're just nowhere, we're hundreds of feet away
18 from that.

19 We respected the ordinance and we
20 respect the property. We're leaving something
21 like 75 percent of this property untouched. We're
22 not trying to get five or six properties in, not
23 trying to put in a road, we're not trying to do
24 that sort of thing. It's only three houses, three
25 houses on 11 acres.

1 We have tried to position the house
2 so that it would be advantageous to people.
3 Instead of putting it on the top of the hill, we
4 put it slightly on the slope of the hill. People
5 in the surrounding areas that appreciate this hill
6 and this mountain, they are not going to see this
7 house. We could actually have had less variance
8 impact if we put it on the top but we put it
9 towards the back. Similarly, in order to finish
10 off this street and in order to get more distance
11 from the Rock Creek wall, we have offered and
12 we'll move the house up. That means more variance
13 relief. But it's trying to be respectful to the
14 ordinance and to the placement of the houses on
15 the property.

16 There has been much talk about the
17 impact on Rock Creek. But again, no one really
18 focuses on the variance issue. They talk about
19 the fact -- basically they talk about the fact
20 that it's an existing condition whether or not
21 we're here or not, and as I'll mention later, we
22 actually help the situation in various respects.

23 We have met with our neighbors, we
24 have met with also some of the neighbors on
25 Skyview, who have been here and stayed afterwards

1 to talk about it.

2 Your own engineer has indicated, on
3 the 5/23 report, that the proposed dwellings will
4 not influence the existing wall behind the Rock
5 Creek Crossing. With water drainage he's
6 indicated that the grading, in conjunction with
7 infiltration in the Skyview Terrace area, will
8 alleviate the concerns of Rock Creek since less
9 water will be used. Matter of fact, we only have
10 to meet that there's no more. I think we are
11 decreasing the runoff by something like three or
12 four percent. Thus, the concerns raised are truly
13 unfounded.

14 With regard to blasting, we have
15 decided on a protocol and we have agreed to that
16 and that could be a condition as well to the
17 approval.

18 With regard to the variances, we
19 indicate -- and we do not believe that there's any
20 frontage variance, and that the only variance is
21 for slope. But there's a perfect basis, as
22 testified to by Mr. Zepponi, as planner and as
23 alluded to by your own planner, that this is a
24 situation where you have a unique topographical
25 situation. And that we're meeting those concerns

1 by having the access off of the rear street. That
2 that is actually a better, a much better zoning
3 alternative than having to come through and
4 violate your other ordinances by coming from the
5 various other roadways.

6 And certainly, that's something that
7 I believe the neighbors would be more upset with
8 in terms of disturbing those lots.

9 Thus, we have a practical difficulty
10 and undue hardship based on topography and
11 certainly there is no negative impacts. Certainly
12 the benefits of what we're doing would outweigh
13 any detriments in having the access to the rear
14 and the width of the rear. That leads us to the
15 variance relief that were indicated for the slope.

16 Again, we have indicated that this
17 is only an issue of perspective. Indeed, there
18 have been two cases, though unreported; one is
19 Pirro (phn), which I mentioned, Pirro v. Hopatcong
20 (phn), and Finn v. Lebanon (phn), where the board
21 recognized that there's no perfect situation when
22 you're dealing with raw land. You're going to get
23 pockets, you're going to get raised levels and
24 lower levels. Your ordinance is a good ordinance
25 in the sense that it requires us to come to you

1 where there is over 25 percent slope and justify
2 it.

3 Also, with other slopes as well.
4 But we have to come and justify it.

5 What we're doing here, we're not
6 putting any house on any continuous slope. Some
7 ordinances actually require there to be a
8 continuous slope for a long way before you violate
9 a slope ordinance. What we're doing is we have to
10 go through ridges and bumps and the like in order
11 to have a reasonable use of the property.

12 Indeed, with regard to your other
13 slopes, we're well under, it's not like we're at
14 the very edge of those. I think, you know, one
15 where like only nine percent and the other one I
16 think were like 19 percent. We're half or less
17 than half of what the disturbance is actually
18 required by it.

19 Thus again some of the same
20 arguments due to topography. There's a practical
21 difficulty with regard to us meeting the
22 requirements.

23 And again there is no disturbance --
24 there is no testimony at all that the slope itself
25 is a problem, that any disturbance of the slope is

1 a problem. And some of the variance relief that
2 we're asking, actually has benefits in terms of
3 moving Lot 2, moving the house down, Lot 3, moving
4 the house forward, that outweigh any of the
5 detriments, such as that there's a zoning -- a
6 better zoning alternative.

7 Again no substantial detrimental
8 impact. We're only impacting scattered sites,
9 scattered areas throughout the property. We have
10 designed this to be as far away from the neighbors
11 as we can and we're leaving 75 percent of the
12 property undisturbed.

13 Now, there has been so much talk on
14 geotechnical aspects. Let's take a quick look at
15 that in terms of the potential "negative
16 criteria".

17 Mr. Otto has 50 years in experience
18 in technical matters, building bridges, tunnels,
19 and office buildings and licensed in eight states.
20 He's indicated that this should be no concern for
21 any of the adjacent properties; that in terms of
22 structural, there would be no issues; and in terms
23 of water recharge, there would be no issues and
24 low impact on blasting. Your own engineer,
25 Mr. Darmofalski, whose got 30 years-plus

1 experience, plus the geotechnical guy possibly had
2 about 50 years, indicated that there would be no
3 problem. You have a report that indicates that.

4 And even Mr. Fischer recognizes that
5 there was no structural concerns and no blasting
6 concerns.

7 And with regard to his groundwater
8 concerns, he really had no answers. He says,
9 well, you could have done this study and you
10 should have done that study. But we did the
11 studies that we were asked to do, and indeed,
12 ultimately, when it comes right down to it, the
13 concern may be water, if there's any concern, and
14 our situation that we have designed this is to
15 make sure that the water, some of which would have
16 been coming onto the Rock Creek property, actually
17 goes in other directions. That doesn't mean that
18 it goes on other people's property, as a problem
19 for the other people; it gets collected, it gets
20 detained. We have to make sure that we satisfy
21 not only the requirements of the New Jersey state
22 Department of Environmental Protection, but
23 probably the tougher eyes and scrutiny of the
24 borough engineer.

25 So, no one should ever be concerned

1 with regard to their property being impacted by
2 our development.

3 Finally, you passed a steep slope
4 ordinance. We have worked with it and we have
5 respected it. We have a design -- I mean look at
6 this (indicating), eight to an acre, this is one
7 acre, I guess -- actually three to an acre. We
8 have done three homes on 11 acres and we have
9 tried to do it in such a way that the
10 configurations work that this home, Mr. Zepponi's
11 home, is actually hidden and tucked away.

12 We have tried to be respectful in
13 doing things in a way that the presentation is
14 proper. It's going to meet so many of the issues,
15 the purposes of the Municipal Land Use Law, a
16 visual environment, proper population densities,
17 proper use and efficient use of land.

18 Mr. Zepponi, as a condition of approval would even
19 be willing to have some open space easements with
20 regard to the other property. I mean again,
21 75 percent of this property is being left fallow
22 and in its natural state.

23 Again, as a condition we have agreed
24 that the best -- we believe alternate 1 is the
25 best approach and that Lot 3, we would place it

1 that way and we comply with all the borough
2 engineer's recommendations with regard to drainage
3 and with regard to supplying complete sets of
4 plans with complete calculations based on whatever
5 the suggested method is. We have done what we
6 were told to do, I want to emphasize that, and of
7 course we come with individual site plans to make
8 sure that whatever home is being actually built on
9 the site, you know, meets the town's requirements.

10 I thank you for your courtesies,
11 Mr. Chairman, thank you very much for your giving
12 us all the time that you have. It's taken some
13 time but it's taken time in pieces, it was really
14 very efficiently done, and I'd like to thank the
15 board and we would hope for and ask for and we
16 think we deserve your approval. Thank you.

17 THE CHAIRMAN: Motion to close the
18 application.

19 MR. HEIMALL: Motion.

20 MR. CLINTON: Second.

21 THE CHAIRMAN: All in favor?

22 Opposed?

23 I'll ask for motion to extend the
24 meeting for comments and motion.

25 MR. VENZA: So moved.

1 MR. HEIMALL: Second.

2 THE CHAIRMAN: All in favor?
3 Opposed?

4 You want to go first, John?

5 MR. BARBARULA: Well, the
6 application is for a subdivision of three lots.
7 There has been much debate on lot frontage, I read
8 you what the lot frontage says in our ordinance.

9 The planner has responded to the
10 mayor's questions, and I have too, in terms of
11 building lot to abut a street. Just to
12 double-check it, I looked again. Under New Jersey
13 Statutes 40:55D-35, a street is one that is --
14 (2), subsection (2), a street shown upon a plan
15 approved by the planning board.

16 So I think the issue about whether
17 or not, you know, we have access and the frontage.
18 And the other aspect is access, does it have
19 access to a street? Yes, it does.

20 So, taking into account Donna's
21 comments, that Lot 1 would have require a (C) (1)
22 variance, which would be lot frontage of 25 feet
23 and width of 20 feet, and Lot 2 would have a (C)
24 (1) variance of lot frontage of 15 feet and width
25 of 15 feet.

1 I think you've also heard her
2 comments about what the (C) (1) variance requires,
3 uniqueness, etcetera, and the board would have to
4 determine that.

5 Lot 3 complies, does comply on
6 Skyview. There is 150 some-odd feet, it's a
7 strange lot in that that lot also comes out onto
8 Mathews Avenue. And that also would have 152 feet
9 there.

10 What the board has to decide, did
11 they hear enough that this property is unique
12 enough, based upon its configuration, that it's
13 appropriate to come out to Skyview and to grant
14 the (C) (1) variances based upon their testimony,
15 based upon your input of your planner.

16 I think that the issue about whether
17 or not these structures are going to cause a
18 problem on the wall in the adjoining property
19 owners, you have your reports, you have our
20 engineer's report, and you have the conclusions
21 there. I don't have to tell you what they are,
22 you know what they are.

23 That would be the negative aspect.

24 You also know whether or not that
25 would have an effect if there was nothing built

1 there. You've heard that testimony.

2 You must decide the following
3 variances on each lot: Granting of exceeding a
4 25 percent slope on Lot 1. And I would, in
5 abundance of caution, to determine (C) (1)
6 variance of lot frontage and lot width of 25 and
7 20 feet. Lot 2, again there's portions exceeding
8 the 25 percent. And again, in abundance of
9 caution, since the applicant has asked for any and
10 all variances that may be required, it's
11 appropriately been before you, of lot frontage of
12 and width. Even though he has lot frontage on
13 Overlook. The third lot fully complies with any
14 lot frontage or width issues but there are
15 sections of the third lot that violate the
16 25 percent slope ordinance.

17 The engineer, our engineer, has
18 confirmed we have, and we have exhibits, that I
19 don't know have exact numbers of what per lot, but
20 overall it is about 8,000 square feet effected
21 into that slope variance requirement and I think
22 Paul can confirm the numbers that were indicated
23 of 8,000 square feet and 1.6 of the overall.

24 I think that is it. That's the
25 variances you have to specifically address. Why I

1 want to grant them, why I don't want to grant
2 them. And then granting the subdivision of three
3 lots.

4 COUNCILMAN FALKOSKI: Can I ask a
5 question? You stated that the applicant asked for
6 all variances that could be possible.

7 MR. BARBARULA: Right.

8 COUNCILMAN FALKOSKI: Is that a
9 normal thing to do?

10 MR. BARBARULA: Yes, it's done in
11 every application.

12 COUNCILMAN FALKOSKI: Without
13 specifying the particular variance that he's
14 applying for?

15 MR. BARBARULA: Yes.

16 COUNCILMAN FALKOSKI: How does that
17 affect someone -- for example, someone who lived
18 on Skyview Terrace, that wasn't aware that a
19 variance would be required for access to Lot 2,
20 would not come to this meeting?

21 MR. BARBARULA: Well, the case law
22 and the statutes indicate that you are allowed to
23 request variances. I am saying I think it should
24 be addressed because it has come up during the
25 process. The notice provisions say that that is

1 enough notice that they were within 200 feet, they
2 got noticed, that this was a developmental
3 application. The applicant's position is that
4 because our ordinance, and I read you that
5 section, doesn't say anything other than it's a
6 line, I'm saying I think you should consider it,
7 in an overabundance of caution, to be more
8 conservative, consider whether or not they have
9 met the (C) (1) criteria and case law and the
10 statute says that that's sufficient notice.

11 THE CHAIRMAN: Of everything I've
12 read, always states on the bottom, any other --
13 you know, the legal mumbo jumbo to the effect that
14 anything else that comes up during the application
15 can be granted and discussed.

16 MR. BARBARULA: All the applications
17 and all notices have it. And it basically is the
18 catchall. Because what happens is exactly this
19 type of thing. You go through an application and
20 you say, well, you know, this is one thing I think
21 you should do, but if we move -- for instance,
22 exactly the situation of if we say we wanted him
23 to move the house so that the water condition is
24 better for Rock Creek, and that created instead of
25 1.6 percent of the overall lot being in excess of

1 25 percent, that created a larger amount of
2 variances, we're telling him to do that, that
3 catchall gives us the power to grant that
4 variance.

5 COUNCILMAN FALKOSKI: That I can
6 understand. But if he comes in here with the
7 application that initially shows that there is a
8 variance that requires on that, which in my
9 opinion it does require one for the access in
10 Skyview Terrace, and doesn't make application to
11 that variance, I don't understand why that's just
12 a blanket application.

13 MR. BARBARULA: Only thing I can
14 tell you, that it's perfectly legal and
15 appropriate and it's done in every notice in every
16 application.

17 COUNCILMAN FALKOSKI: I'll go on
18 your advice then.

19 MR. BARBARULA: So you need to
20 specifically make a motion for a subdivision, that
21 being a motion for the variances. I suggest that
22 the variances go first because if you don't grant
23 the variances, we'll never get to the subdivision.

24 THE CHAIRMAN: I've got several
25 items, I've got four. One is the amount of the

1 slope disturbance greater than 25 percent disturbs
2 me. I know as a percentage of the large lot, it
3 seems small, but 8,000 square feet, to me is not
4 something just to be disregarded. And I think the
5 slope ordinance that we put in, just recently,
6 really needs to be thought about. 25 percent is a
7 pretty big slope.

8 Secondly, I'm concerned about the
9 potential of blasting and walls in Rock Creek. I
10 know it's the last resort, and I hope it would
11 never happen, but I don't think we can take that
12 chance in a case like this. I've been to those
13 walls several times. I went there again recently.
14 I've probably been on this property more than I've
15 been in my own in the last two weeks. And the
16 consequence of the blast is such an extent that I
17 feel is unsafe.

18 Third, the movement of stormwater
19 over the ridge onto Skyview Terrace also bothers
20 me. I don't think anybody can really calculate
21 what extra stormwater is going to do on Skyview
22 Terrace and I'm really opposed to moving water in
23 unnatural movement over the ridge. Mother Nature
24 put it that way, I think it should stay that way.
25 Not to say that any potential development up there

1 would just let that water run off that ridge, it
2 would have to be contained and held so it wouldn't
3 affect Rock Creek, but I think the potential to
4 move it unnaturally, in my opinion, to Skyview
5 Terrace, would be an error.

6 And last, I didn't really see
7 anything where the borough itself benefits by
8 granting such a large variance for the steep slope
9 ordinance. I really don't know what benefit we'd
10 get out of that.

11 And that's pretty much what I have.

12 Anybody else?

13 COUNCILMAN FALKOSKI: I have a few
14 things. I more or less agree with what the
15 chairman just said, that basically we're looking
16 at 8,044 square feet of disturbance of slopes over
17 25 percent. And we on the council level just
18 passed an ordinance, not too long ago, to protect
19 the steep slopes in this town because a lot of it
20 was getting developed and we wanted to try to
21 table that in the future. 8,044 square feet is a
22 lot. Even if you're looking at the size of this
23 particular lot as being over 11 acres, that's
24 still, in my mind, a building lot. And that's
25 quite a bit. And the fact that the access to

1 Lot 2, in my mind that is a variance condition.
2 I'm positive that it is a variance condition. It
3 creates two driveways that are just next to each
4 other and the appearance of a flag lot coming in
5 from Skyview Terrace.

6 And the fact of the matter is that
7 this whole particular property is so
8 environmentally sensitive and topography doesn't
9 lend itself I think to this kind of intense
10 development of that site. Even though the zoning
11 requires 30,000 square foot lots and this is
12 11 acres, I think the topography and the
13 environmental concerns preclude these variances
14 being granted.

15 MAYOR BUDESHEIM: As long as we're
16 going to state the reasons why we don't want it,
17 I'll put that in the form of a motion that the
18 application be denied. I'll state my reasons and
19 we could add the comments of the councilman and
20 the chairman just made.

21 Primarily it's the steep slope
22 ordinance; that was adopted for a reason. Rock
23 Creek was brought up earlier tonight, Rock Creek
24 and probably the Enclave would not have been built
25 if we had this slope ordinance. But the reason

1 why we did this slope ordinance is because we see
2 the effects that development in these
3 environmentally-sensitive areas have. When the
4 Enclave was being built, when the people moved in
5 they had severe water problems and that's a
6 relatively flat area and I was told by the
7 developer and by their engineer, that nobody could
8 predict where water is going to go. And there was
9 a lot of remediation had to be done because of
10 that, because nobody could forecast that. Our own
11 engineer said tonight, he can't look into the
12 future.

13 This is a higher elevation than all
14 the surrounding properties and everybody knows
15 water runs downhill and they would be the
16 recipients of it.

17 We're in the Highlands Planning
18 area, we're not in a preservation area and it's
19 been our policy that on the undeveloped lands we
20 treat it as if it were in the Highlands
21 preservation. We have little land left and part
22 of the ambience, the quality of life issues, is to
23 protect our open space. We're not denying the use
24 of this property to the applicant. He has one lot
25 now, he could build one house. Nobody is saying

1 he can't. And I don't think the residents would
2 be opposed to that.

3 The variances for the frontage, as
4 our planner had stated, those would require two
5 more variances. The lot width would require two
6 more variances, or a variance for two of the lots.

7 I think those were -- and again the
8 blasting. As the chairman stated, it is the means
9 of last resort, but we have been up there and they
10 weren't able to build these other buildings
11 without blasting and I'm afraid that that is going
12 to end up being the case here.

13 MR. MAGENNIS: I guess --

14 MR. BARBARULA: That's a motion.
15 Now we need a second.

16 MR. VENZA: I'll second it.

17 THE SECRETARY: Without comments?

18 MR. VENZA: For all the same
19 reasons. I agree with everything that the
20 chairman, the mayor, and the councilman said.

21 THE SECRETARY: William Budesheim.

22 MAYOR BUDESHEIM: Yes.

23 THE SECRETARY: Glenn Venza.

24 MR. VENZA: Yes.

25 THE SECRETARY: Councilman Joseph

1 Fal koski .
2 COUNCILMAN FALKOSKI: Yes is deni al ,
3 ri ght?
4 THE SECRETARY: Yes.
5 COUNCILMAN FALKOSKI: Yes.
6 THE SECRETARY: Do you have any
7 other comments?
8 COUNCILMAN FALKOSKI: No.
9 THE SECRETARY: Okay. Al Hei mall .
10 MR. HEIMALL: Yes. Onl y comment
11 that I have is we're not a polici ng board so there
12 is no way that we can testi fy to the fact that you
13 might have to blast. I mean it was too vague.
14 You say we'll try and everythi ng else. Tried and
15 everythi ng else works, but then you have to blast
16 anyhow, so. . .
17 THE SECRETARY: Bradley Clinton.
18 MR. CLINTON: Yes, mai nly because of
19 the steep slope vari ances.
20 THE SECRETARY: Mi chael Rei lly.
21 MR. REILLY: Yes, I'm agreei ng wi th
22 my fellow board members' comment.
23 THE SECRETARY: Vi ce Chai rman
24 Magenni s.
25 MR. MAGENNI S: Yes, and the reason

1 is the steep slope variance, I don't think that
2 would be a good idea to not enforce that with this
3 application. However, we heard a lot of
4 engineering testimony tonight about potentially
5 what could happen, certain things do occur. I
6 think this site has potential to develop. I'd
7 like to see perhaps come back without the
8 variances with regard to the steep slope. As far
9 as the other engineering issues, I don't think
10 that should be a reason not to consider pursuing
11 development.

12 THE SECRETARY: Chairman Steve
13 Loesner.

14 THE CHAIRMAN: Yes, for all the
15 reasons I've stated earlier.

16 THE SECRETARY: Motion is denied.

17 THE CHAIRMAN: Motion carries.
18 Application is denied.

19 THE SECRETARY: Right, application
20 is denied.

21 (Whereupon, the proceedings
22 concluded at 10:56 PM.)

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C E R T I F I C A T E

I, JOANNE M. OPPERMANN, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes of the within proceedings, to the best of my ability.

JOANNE M. OPPERMANN, C. C. R.
License No. XI 01435