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TOWNSHIP OF LOPATCONG
PLANNING BOARD SPECIAL MEETING
PUBLIC LAND USE HEARING
TUESDAY MAY 17, 2022

* * * * *

PROPERTY: 188 STRYKER ROAD - BLOCK 99,
LOTS 3.01 AND 6

HELD BEFORE: MAYOR JAMES MENGUCCI,
CHAIRMAN GARY VAN VLIET,
JAMES BRYCE, ESQ.
GEORGE A. RITTER, PLANNER
ANDREW HOLT,
JAMES PALITTO,
ROBERT SAMSON,
BRIAN WEEKS,
MICHAEL SAZONOV,
SUSAN DILEO, and
ANN COYLE

HELD AT: THE LOPATCONG TOWNSHIP MUNICIPAL BUILDING
232 SOUTH THIRD STREET
PHILLIPSBURG, NEW JERSEY 08865

ALSO PRESENT: MARK PECK, ESQ.
DONALD SCHOLL, ESQ.

REPORTED BY: NICOLE NAGLE, COURT REPORTER

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* * * * *

P-R-O-C-E-E-D-I-N-G-S

* * * * *

CHAIRMAN VAN VLIET: Good evening for

Planning Board special meeting for the NFI

application.

The date is May 17th, 2022, at this

time I'd like to invite you to join us in a

silent moment of prayer followed by the oath

of allegiance to the flag of our country.

* * * * *

OATH OF ALLEGIANCE

* * * * *

At this time, I'm required to state

that adequate notice of this meeting has been

provided indicating the time and place of the

meeting in accordance with Chapter 231 of the

Public Laws of 1975, by advertising the notice

in the Star Ledger and the Express-Times and

by posting a copy on the bulletin Board in the

Municipal Building. May I have a roll call,

please.

MS. SEGEDA: Member Clymer?

Member Coyler?

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1 MS. COYLE: Here.

2 MS. SEGEDA: Member DiLeo?

3 MS. DILEO: Here.

4 MS. SEGEDA: Member Palitto?

5 MR. PALITTO: Here.

6 MS. SEGEDA: Member Sazonov?

7 MR. SAZONOV: Here.

8 MS. SEGEDA: Member Weeks?

9 MR. WEEKS: Here.

10 MS. SEGEDA: Mayor Mengucci?

11 MAYOR MENGUCCI: Here.

12 MS. SEGEDA: Vice Chairman Samson?

13 VICE CHAIR SAMSON: Here.

14 MS. SEGEDA: Chairman Van Vliet?

15 CHAIRMAN VAN VLIET: Here.

16 We'll move right onto the old business
17 of the union and then see NFI Real Estate LLC.

18 They're here for a preliminary major
19 site plan application with whole variance
20 relief for 188 Strykers Road, Block 99, Lots
21 3.01 and 6.

22 This is a continuation of the hearing
23 from last September, I believe.

24 MR. PECK: A couple -- yeah. So thank

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1 you Mr. Chairman and thank you to the Board

2 for hosting this special meeting and for

3 coming out on your birthday.

4 But for the record, my name is Mark

5 Peck. I am an attorney with the Florio

6 Perrucci law firm on behalf of the applicant

7 NFI Real Estate LLC and, as the Chairman

8 indicated, we're here to continue our hearing,

9 which began actually on May 26th of last year,

10 was continued to September 22 and now we're

11 here this evening.

12 I believe that this hearing has been

13 properly noticed and we're free to proceed

14 and, as the Chairman also indicated, I do want

15 to note that we have amended our application.

16 We're now only seeking preliminary

17 major site plan approval with some bulk

18 variance relief and I'll also note that

19 pursuant to NJSA40:55D-46A plaintiff's and

20 others documents for preliminary site plan

21 application only need to be a tentative form.

22 Everything then gets finalized during

23 the final approval process and the appellate

24 division actually confirmed that in the case

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1 Toll Brothers versus Your Neighbor Greenwich
2 Township back in 1990.

3 But regarding this application, the
4 Board and the public raised some site
5 questions at the earlier hearings primarily
6 relating to sewer and buffers and some of that
7 was relating to the then-pending bridge
8 application next door, which has since been
9 approved.

10 But to best address these questions and
11 concerns and to offer the best possible plan
12 to the Board, the adjacent lot 2, the Berry
13 Plastics site, has been incorporated into the
14 site plan to accommodate access to and from
15 the site and also to provide sewer capacity.

16 And the testimony you're going to hear
17 tonight will also show how the applicant has
18 enhanced the buffering on the overlook-facing
19 side of the property as well.

20 And as some time has elapsed since
21 we've last been here, to refresh NFI is
22 seeking to construct a 592,800-square-foot
23 warehouse, which would include 17,500 square
24 feet of office space along with associated

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1 improvements at lots two and 3.01 and block

2 99, which is also known as 188 Strykers Road.

3 That's a landlocked lot, 3.01, is a

4 land lot 46.75-acre parcel in the RON zone

5 district, where it is a permitted use.

6 We originally proposed access to this

7 land lot site via a 50-foot-wide easement

8 across lot 6, which is the bridge site but

9 we've now amended the plan.

10 And you're going to hear plenty of

11 testimony about that so that access will now

12 run through the lot 2 Berry Plastics site and

13 largely as a consequence of the lot's

14 landlocked status, we're seeking several

15 variances.

16 The first is from section 243-63D,

17 which requires lot frontage to be on a public

18 street. Lot 3.01 lacks that.

19 And likewise section 243-75E requires a

20 minimum of 300 feet of street frontage and,

21 again, this land lot parcel doesn't have any

22 street frontage.

23 So those variances would be needed for

24 any attempt to develop that property because

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1 otherwise the lot would be just zoned in
2 utility.

3 We're also seeking a variance pursuant
4 to section 243-75D2, which has to do with the
5 landscape buffers on -- street lot lines we do
6 have some gaps and encroachments.

7 We're seeking several design waivers as
8 well. From section 243-46C1B, which requires
9 a driveway apron to have a maximum width of 40
10 feet. Ours is proposed to be 143 feet 7
11 inches.

12 From section 243-48B5, which would
13 require sidewalks internally to the site. And
14 from section 243-48B6A and B, which has to do
15 with the fire aisles, the width, 30 feet
16 required we're proposing 24 feet and some
17 parking proposed adjacent to the front facade
18 of the building.

19 And finally, a waiver from 243-48B7A
20 where the driveway is because of the maximum 6
21 percent grade and only 4 percent within 100
22 feet of an intersecting street.

23 We exceed that only at the apron slope
24 and near Strykers Road.

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1 Anyway at our earlier hearing, our site

2 engineer, Kyle McKenna, our traffic engineer,

3 John Wicher, and our planner, Andrew Janne

4 (ph) testified. Kyle and John are here

5 tonight as is Mr. Janne's colleague Barbara

6 Ellen (ph).

7 Michael Landsburg of NFI also testified

8 and he'll be our first witness tonight. Now

9 we plan to have him testify first as to what

10 NFI has done as a consequence of the prior

11 hearings and the comments that we've heard and

12 the efforts that they've made to address some

13 of these comments.

14 Then Kyle McKenna will testify give,

15 you know, again an overview of the site, which

16 we've given a lot of testimony on already, but

17 he'll really focus on the changes obviously

18 that we've made since we were last here and

19 also, you know, the tweaks to address the

20 comments.

21 John Wicher will, of course, give

22 updated traffic testimony primarily related to

23 access in and out of the site because of the

24 driveway.

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1 Much of the other information will be
2 the same and then Barbara Eilen (ph) again
3 will review the proofs of the variances, put
4 testimony on about the variances.

5 The last time we've lost a few
6 variances since the last time we were here but
7 there have been some changes to the plans. So
8 she'll review the proofs for that.

9 So without any further ado, I'd like to
10 call our first witness, Mr. Landsburg.

11 MR. BRYCE: Mr. Peck, and Mr. Chairman,
12 if I may, before we do that a few housekeeping
13 items from the Board side of things.

14 Notice was provided by the Board. The
15 notice is deemed sufficient for this meeting.
16 Number two there are some different faces that
17 you see on the Board then were here I think in
18 September of last year.

19 All of the members have listened to the
20 tape, reviewed the transcripts, they have
21 submitted certifications as to same.

22 MR. PECK: Great.

23 MR. BRYCE: And I don't know if you
24 require it, Counsel, you can certainly confirm

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1 it on the record. But I think that with the

2 certifications with the due diligence should

3 be sufficient?

4 MR. PECK: Yes, I agree.

5 MR. BRYCE: And then finally just so

6 counsel's aware, according to my notes, I

7 think that the last Exhibit that was

8 introduced at the hearing was 889, which was a

9 proposed buffer screening exhibit. I think

10 that -- I just want to make sure --

11 MR. PECK: I think that sounds correct.

12 MR. BRYCE: Okay. That's all I have,

13 counsel. Thank you.

14 MR. PECK: Great. Well, Mr. Landsburg,

15 he was previously sworn I don't know if you

16 would --

17 MR. BRYCE: We're gonna re-swear him.

18 MR. PECK: Yeah, its been some time.

19 * * * * *

20 MICHAEL LANDSBURG, having been duly

21 sworn, testified as follows:

22 * * * * *

23 MR. BRYCE: Please state your name and

24 spell your last for the record.

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1 THE WITNESS: Sure, it's Michael
2 Landsburg, last name is L-A-N-D-S-B-U-R-G.

3 MR. BRYCE: Thank you, Mr. Landsburg.

4 * * * * *

5 DIRECT EXAMINATION

6 * * * * *

7 BY MR. PECK:

8 Q. Mr. Landsburg, do you work for NFI?

9 A. I do, yes. I'm the chief development
10 officer for NFI. I've been with the company for 17
11 years and, as Mark mentioned, he gave a brief summary
12 of some updates from about a year ago when we first
13 came in front of this Board.

14 And I thought just given the time that
15 has passed, I would explain a little about why we
16 made some of the changes. We're gonna get into the
17 details with -- as Mark mentioned with our
18 professionals but from the contract purchasers
19 perspective, I would just give that background and in
20 light of the crowd that maybe hasn't been at some of
21 the prior meetings as well.

22 So NFI -- for background, we're the
23 largest privately held family-owned supply chain
24 company in North America. We operate throughout the

1 US and Canada about 70 million feet, have about

2 15,000 employees and develop these buildings all over

3 the country.

4 We are, as I mentioned, privately held

5 and long-term owners so as we go into communities, we

6 are not a development firm that comes in, builds a

7 building, sells it, leaves, moves on.

8 Many times we operate within our

9 buildings ourselves as the tenant, sometimes we lease

10 them out to unrelated companies, third-party tenants

11 names that, you know, Fortune 1,000 companies.

12 And we took into account a lot of the

13 feedback that we received through these meetings,

14 both from the Board, its professionals, and the

15 public.

16 And we've made some modifications. As

17 Mark mentioned, we're coming in just for preliminary

18 tonight and with some of these modifications, we are

19 hopeful that they will be received favorably in order

20 to move forward with the project.

21 I'll be here to answer questions in

22 more detail as we go but given, you know, some new

23 faces on this Board, Mr. Bryce, as you mentioned, and

24 the public, I thought important to give a little bit

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1 of background from our perspective.

2 And I mentioned we're the contract
3 purchaser, the Deschler Dicker family has owned this
4 parcel for many, many years, generations I believe.

5 There are some representatives from the
6 family in the audience and we are hopeful that should
7 this project go forward we would be able to move
8 forward with the purchase of the land and construct
9 the project.

10 We did acquire the adjacent Berry
11 Plastics property in order to pursue and solve some
12 of the questions that had been raised in terms of
13 access and sewer.

14 Q. Okay. Does anybody have any questions
15 for Mr. Landsburg?

16 CHAIRMAN VAN VLIET: Yes,
17 Mr. Landsburg, you say you work for NFI and
18 the original property that you proposed to
19 purchase, the original 46 acres and now I
20 understand that someone's also purchased the
21 old, what we refer to as Berry Plastics but it
22 actually was the Stagins (ph) and then our --
23 was owned the property. Who owns it now?

24 A. An NFI entity acquired it.

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1 Q. It is a different corporation?

2 A. Same. So we have different real estate

3 entities that will acquire these properties but the

4 same group that has the original 46 acres is the same

5 owners of the, what we call the Berry Plastics

6 Building.

7 It's a company the family is --

8 unfortunately it's not my family but I've been there

9 a long time and they treat me all right. It is three

10 brothers that own the company and those three

11 brothers -- it's the same ownership group that

12 acquired Berry Plastics and that has the Deschler

13 Farm under agreement.

14 MR. PECK: Are they a separate like LLC

15 entity or --

16 THE WITNESS: Separate LLCs, yes,

17 correct. It will ultimately be one LLC, but

18 we haven't acquired the Deschler Farm yet.

19 That's not our property at this point. We are

20 the contract purchaser.

21 CHAIRMAN VAN VLIET: Okay, thank you.

22 THE WITNESS: Yeah, and happy birthday.

23 CHAIRMAN VAN VLIET: Thank you very

24 much. It wasn't supposed to be a point of --

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1 THE WITNESS: We're having a big party
2 for you.

3 CHAIRMAN VAN VLIET: Thank you very
4 much. I just wanted to clarify that because
5 it may make a difference on some of our
6 questions we will have. Thank you.

7 THE WITNESS: Sure.

8 CHAIRMAN VAN VLIET: Anyone from the
9 public have questions of this gentleman?

10 PUBLIC: Do you want me to come up?

11 CHAIRMAN VAN VLIET: Yes.

12 MS. SNYDER: Donna Snyder, 26
13 Meadowview Drive. I just have a question. So
14 you now own Berry Plastics or STAG as it's
15 called, correct?

16 THE WITNESS: Correct. So we bought it
17 from STAG.

18 MS. SNYDER: You bought it from STAG,
19 okay. And you're asking for a preliminary
20 major site plan change with the purchase of a
21 whole new property and a whole new building.
22 Is that what you're asking for this evening?

23 THE WITNESS: That is.

24 MS. SNYDER: Okay, that's all I wanted

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1 to know. Thank you.

2 CHAIRMAN VAN VLIET: Anyone else?

3 Seeing none, public portions closed for

4 that witness.

5 MR. PECK: Thank you, Mr. Chairman.

6 I'd like to next call Mr. Kyle McKenna. Kyle,

7 you're gonna need to be sworn in again.

8 * * * * *

9 KYLE MCKENNA, having been duly sworn,

10 testified as follows:

11 * * * * *

12 MR. BRYCE: Please state your name and

13 spell your last for the record.

14 THE WITNESS: Sure, Kyle McKenna,

15 M-C-K-E-N-N-A.

16 * * * * *

17 DIRECT EXAMINATION

18 * * * * *

19 BY MR. PECK:

20 Q. Kyle, can you briefly -- even though

21 you've already been accepted as an expert in the

22 field of civil engineering by the Board, could you

23 just, you know, give a quick overview of who you are

24 you and what it is that you do?

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1 A. Sure, my name is again Kyle McKenna. I
2 represent Bohler Engineering. Our address is 30
3 Independence Boulevard in Warren, New Jersey.

4 I have a bachelor's of science degree
5 in civil engineering from Rutgers University. I'm a
6 licensed professional engineer in the State of New
7 Jersey and have been accepted by several
8 municipalities throughout the state to provide
9 professional testimony and my license is current and
10 good standing.

11 Q. And you've been involved with the plans
12 for NEI for this particular site from the beginning,
13 correct?

14 A. Correct.

15 Q. And all the various iterations in the
16 plan and all that?

17 A. Yes.

18 Q. Okay, great.

19 MR. SCHOLL: Excuse me. I don't mean
20 to interrupt but if I may. I'm just attending for
21 the first time this evening. My name is Don Scholl.
22 I'm an attorney in Flemington, New Jersey appearing
23 for Overlook, a condominium development.

24 May I have just a brief voir dire?

1 This is the first meeting I've attended. I became
 2 aware of this project literally last Monday. And I
 3 just wanted to clarify with regard to some sound
 4 issues very brief and targeted?
 5 CHAIRMAN VAN VLIET: Okay.
 6 MR. SCHOLT: Thank you, Mr. Chairman.
 7 * * * * *
 8 CROSS EXAMINATION
 9 * * * * *
 10 BY MR. SCHOLT:
 11 Q. Mr. McKenna, have you been accepted as
 12 an expert in the field of acoustical engineering
 13 before any municipal Board?
 14 A. No.
 15 Q. And it's the same question in terms of
 16 your appearance before any municipal Board previously
 17 and you're acceptance as an expert to give testimony.
 18 Noise technology?
 19 A. Not specifically, no.
 20 Q. Sound or vibration control?
 21 A. No.
 22 Q. Any environmental acoustic area
 23 accepted as an expert?
 24 A. No.

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1 MR. SCHOLL: Thank you.

2 MR. PECK: If I may --

3 CHAIRMAN VAN VLIET: I'm sorry. Go
4 ahead.

5 * * * * *

6 RE-DIRECT EXAMINATION

7 * * * * *

8 BY MR. PECK:

9 Q. Yeah, Mr. McKenna, all those items that
10 Mr. Scholl just recited -- are those features of most
11 commercial or industrial developments?

12 A. Yes.

13 Q. Are those features that you encounter
14 in the course of your daily planning of these types
15 of developments?

16 A. Yes.

17 Q. These are something that are -- these
18 are all features that are commonly encountered and
19 dealt with by civil engineers in preparing site
20 plans?

21 A. Yes.

22 MR. PECK: Thank you.

23 CHAIRMAN VAN VLIET: I was just
24 wondering you are actually representing the

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1 Overlook Development?

2 MR. SCHOLL: That's correct.

3 CHAIRMAN VAN VLIET: Are you going to

4 be asking any pointed questions of any of the

5 other witnesses or does the general population

6 from overlook intend to do that also?

7 MR. SCHOLL: Yeah, the intention is for

8 myself to ask those questions. Ultimately,

9 with respect to comment, I think generally

10 case law permits any resident to comment at

11 the end of the application.

12 CHAIRMAN VAN VLIET: At the end of the

13 application, not per witness. Okay, thank

14 you. Just wanted to clarify that.

15 MR. PECK: No, thank you. That's

16 always good to do.

17 BY MR. PECK:

18 Q. So anyway Mr. McKenna, what is proposed

19 for the site?

20 MR. BRYCE: Are you gonna accept him as

21 the professional engineer and civil engineer?

22 CHAIRMAN VAN VLIET: Yes, I think we

23 have done that before. Just to reiterate it

24 he is acceptable for his profession.

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1 THE WITNESS: Sure. So I'm gonna start
2 by just running through existing conditions.
3 We've already touched on that previously but I
4 know there's some new Board members and the
5 site limits have changed a bit.

6 So I have a few exhibits. I'll start
7 with A-9 I believe we're on so...

8 BY MR. PECK:

9 Q. Kyle, can you explain what A-9 depicts?

10 A. Sure so this is a aerial exhibit of the
11 site and surrounding area. It's labeled Aerial
12 Exhibit Exhibit-A-9. Again for the record dated
13 April 27th, 2022. The project area is delineated in
14 yellow. The project encompasses lot 3.01 and a small
15 portion approximately 24,000 square feet of lot 6
16 just the northern corner here near the tower.

17 Additionally, as we previously
18 mentioned, the application has been amended to
19 incorporate a portion of lot 2 just along the
20 southeast boundary of lot 2 for purposes of access to
21 the subject site and lot 3.01.

22 I'd also like to just touch on the
23 topography of this site. Near the rear of the site,
24 there's an elevation of approximately 370. Near the

1 front of the site along Strykers Road its elevation
2 is approximately 340.
3 So the site does drop approximately 30
4 feet from the rear to the front along Strykers Road.
5 Again, as was mentioned before, there is no frontage
6 on Strykers Road from lot 3.01. It's a land locked
7 lot so we are requesting two variances.

8 One for the lack of frontage all
9 together and then one for frontage being less than
10 300 feet. And just to get our bearings, north to the
11 top of the page. The property is bordering to the
12 north by existing railroad line, to the east by a
13 residential known as the Overlook, to the south by an
14 existing solar field -- also the subject of the
15 bridge application, which was mentioned earlier, and
16 to the west by Strykers Road going the north south
17 direction.

18 If there's no further questions on the
19 existing conditions, I'll jump into the proposed
20 improvements. Really just run through the changes
21 that have occurred since really the last time this
22 application was presented.

23 We're gonna introduce Exhibit-A-10.
24 Okay, again, this is Exhibit-A-10. For reference,

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1 north is to the top left of the page. This is
2 essentially a rendered version of the site plan --
3 the overall site layout plan with an aerial in the
4 background to just help for illustrated purposes.

5 This is a little bit different than the
6 site layout plan that was submitted with the
7 application and other material in February earlier
8 this year.

9 We have made some changes to reflect
10 feedback that we have received in review letters from
11 the Board professionals. We did distribute a reduced
12 sized version of this plan to the Board members and
13 the town along with the response letter that
14 summarizes our responses to the review letters that
15 we received.

16 The only difference that you notice
17 between this Exhibit and the review size that was
18 circulated last week on May 11th is this plan
19 actually has a zoning table on it as well so I think
20 we'll need to mark those that were distributed
21 separately A-11 perhaps.

22 I don't know, Mark, it's a little bit
23 different than the one we sent last week.

24 MR. PECK: I'll defer to Mr. Bryce on

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1

that.

2

MR. BRYCE: Have the Board members

3

received that?

4

MS. DILIO: I did not, yeah.

5

MR. SAZONOV: What he mentions is the

6

table -- is not on this. There's this entire

7

--

8

THE WITNESS: Yeah, the land is exactly

9

the same. The only thing that changes -- the

10

table was added to this full-size copy. Other

11

than that it's the same exact drawing.

12

MR. SAZONOV: In other words, its

13

harder to distinguish what all this means

14

because it's very fine print.

15

So theres no table

16

describing (inaudible).

17

MR. BRYCE: We'll mark that as A-11

18

then.

19

* * * * *

20

(Whereupon, Exhibit-A-11 was marked for

21

identification.)

22

* * * * *

23

24

THE WITNESS: Okay, thank you. So the

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1 first change -- probably one of the more
2 notable changes is the realignment of the
3 driveway.

4 On the previous application, the
5 driveway actually -- the site was accessed
6 from lot 6 through a 50-foot-wide easement
7 along the northwest portion of the lot 6
8 property.

9 We've shifted the driveway and access
10 point north along Strykers Road to the
11 existing southern-most access point for the
12 Berry Plastics -- or formally known as the
13 Berry Plastics or lot 2.

14 We did this to address several comments
15 we received from the Board and the Board
16 professionals including potential conflicts
17 with the proposed driveway that's on lot 6 as
18 part of the bridge application.

19 Also with just proximity to adjacent
20 driveways across the street, it's a more flat
21 area of Strykers Road as well so it's a little
22 bit better suited and it's an existing
23 driveway as well.

24 We've made a few modifications to the

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1 driveway to just help facilitate truck access.

2 The driveway is used by trucks today. It's an

3 existing warehouse and industrial facility.

4 However, we increase the radius of the

5 driveway to help facilitate access. So a

6 WB-67 truck can access the driveway right in

7 and left out without any conflict.

8 We are requesting, as Mr. Peck noted

9 previously, a waiver for the maximum width of

10 the apron. Where 40 feet maximum is proposed,

11 we're requesting a width of 143.7 feet --

12 again we feel this is appropriate because of

13 the nature of the use, it's a permitted use.

14 We need to be able to provide adequate

15 truck access and this allows us to do that.

16 The revised driveway location should --

17 will eliminate also the request for the waiver

18 for driveway slope. It's a much flatter

19 portion of the Strykers Road frontage, like I

20 had mentioned, so that will eliminate that

21 waiver as well which is a (inaudible).

22 As you enter the site, the circulation

23 is very similar. So you're going to enter the

24 site through the existing southern-most

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1 access, the formerly Berry Plastics site.

2 You're gonna traverse north into the
3 development and from there it's very similar
4 with the exception of an additional ring road
5 that was actually added, again, at the request
6 of the Board professionals.

7 So you'll notice that we added this
8 ring road along the northern property line
9 adjacent to that existing rail line.

10 So the purpose of this is to help
11 separate truck traffic from standard vehicular
12 traffic. So when vehicles enter -- non-truck
13 vehicles enter the site, there will be signage
14 to help guide them around the ring road if
15 they were to utilize the eastern most parking
16 lot in the rear.

17 Q. Kyle, the building size has been
18 reduced, correct?

19 A. It has, yep. So with the change in the
20 ring road and also some of the other layout changes,
21 which I'll get into briefly, there have been some
22 impacts that have been mostly beneficial to the bulk
23 requirements for the site.

24 So the building decreased to 563,950

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1 square feet from 592,800 square feet so that's a
2 reduction of just over 28,000 square feet, which
3 brings the FAR down.
4 It was previously compliant with the
5 FAR 30 percent permitted. We were at 29.11 percent.
6 Now we're proposing a 27.69 percent FAR.
7 So just for reference -- with an FAR of
8 30 percent, you could permit a warehouse over 600,000
9 square feet. Here, again, we're reducing it down to
10 563,950 square feet.
11 There's also a slight reduction in lot
12 coverage -- 0.3 percent. So we're now down to 60.4
13 percent proposed for lot coverage whereas 65 percent
14 is permitted.
15 One of the other more significant
16 changes -- again this is based upon the feedback that
17 we received from the Board professionals and the
18 Board as well and comments from the public is we've
19 actually chamfered the northern most corner of the
20 building to allow us to expand the buffer that's
21 proposed along the northeastern portion of the
22 project adjacent to the residential overlook and it's
23 now a minimum of 110 feet across the entire boundary
24 between the two properties. So we've enhanced the

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1 buffer maintaining a minimum of 110 feet.

2 We've also reviewed the berm and we are
3 going to increase the height of the berm by about 5
4 feet on average across. So we're gonna make it as
5 high as we can while still allowing proper slopes for
6 stability and for plants to be placed along the berm.

7 So we're gonna have a mix of deciduous
8 and evergreen shrubs and trees along with ornamental
9 grasses which will provide a multi-level year-round
10 buffer for the use -- again minimum 110 feet on the
11 buffer note, though, we are still requesting a waiver
12 for buffer along the northern property line adjacent
13 to the railroad with the changes I just ran through
14 with the circulation road and the increase in the
15 buffer along the northeastern property line, we are
16 requesting that that buffer be really be granted for
17 encroaching up to 10 feet along that buffer there
18 whereas 25 feet is required.

19 Q. And Kyle, the berm is going to be
20 situated at a higher elevation than the rest of the
21 property as well, correct?

22 A. Correct, yep. So I can just clarify on
23 that. The berm -- so the topography of the site
24 actually there's a high point right around the

1 midpoint of the rear property line and so the berm
 2 will change.
 3 It'll be a little bit lower on the
 4 northern-most side and then it will increase near the
 5 center property line and then it'll basically be
 6 maintained from there.
 7 So it'll provide approximately 10 feet
 8 of extra buffer from the adjacent residences. So if
 9 you walk out of the door of the adjacent residence,
 10 it'll be at least 10 feet higher than that plus the
 11 plantings that are proposed on top of the berm which
 12 again are a mix of evergreens and deciduous trees
 13 that'll provide a nice screen year round.
 14 The proposed planting higher than the
 15 trees is 10 feet is what we're proposing. The growth
 16 rate varies with the different species but most of
 17 the evergreens are growing at a rate of one to two
 18 feet per year for the maximum full mature -- range
 19 between 40 to 50 feet.
 20 Some of the cedars can actually go a
 21 little higher than 50 feet. So that's what being
 22 proposed for the berm.
 23 We also are proposing a landscaping
 24 along the northern property line as well to help try

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1 and meet the intent of that buffer along the rail
2 line. However, we feel that the benefits of
3 providing the buffer and the ring road would outweigh
4 the detriments of requesting the waiver for the
5 buffer along the rail line.

6 CHAIRMAN VAN VLIET: Let me ask a
7 question here a minute.

8 THE WITNESS: Sure.

9 CHAIRMAN VAN VLIET: This proposal that
10 you have here that you're showing a revision
11 of a set of plans that this Board has not seen
12 yet.

13 We've never heard testimony on that. I
14 know you had the -- our professionals review
15 their questioning but it was never brought
16 before this Board for their comment on it and
17 now we're coming into another revision of the
18 revision that we didn't see.

19 THE WITNESS: So the only two changes
20 that were made between the submission that was
21 filed in February --

22 CHAIRMAN VAN VLIET: I don't care about
23 the number of them. What I'm asking is we
24 never saw the -- on this revision that's based

1 on a revision that we didn't get to see or act
2 on.

3 You said that was based on something
4 that they presented back in January. We

5 haven't had a meeting or a hearing on this
6 situation since last September.

7 THE WITNESS: Correct. So the changes
8 that I'm running through right now are what

9 have occurred since last September. In

10 February, an amended site plan --

11 CHAIRMAN VAN VLIET: I realize that but

12 this is a sketch. This is not a set of plans

13 that shows us -- I know you mentioned the

14 topography coming down and then all the water

15 down slopes towards the Berry building, you

16 know, I'm getting confused here.

17 We had a set of plans that were

18 presented to us that never came before the

19 Board.

20 MR. PECK: Well, we didn't get a

21 chance. We submitted amended --

22 CHAIRMAN VAN VLIET: I understand that.

23 MR. PECK: Just so we're clear, we

24 submitted amended plans earlier this year,

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1 which is why we're here. And I think there's
2 just been since those plans, which you
3 reviewed, there's been -- based on further
4 review a few additional tweaks but there's
5 been no action.

6 CHAIRMAN VAN VLIET: No action of the
7 Board on those?

8 MR. PECK: Well, no. That's why we --

9 CHAIRMAN VAN VLIET: That's what I'm
10 saying. We're picking up here at a point of
11 time way beyond where we started at.

12 MR. PECK: Well, and we can provide as
13 much testimony as you'd like.

14 THE WITNESS: I can -- I even have the
15 old plan if you'd like I can present the old
16 plan for reference. I can put them side by
17 side and do it that way.

18 CHAIRMAN VAN VLIET: The point is that
19 the Board did not get to review that.

20 THE WITNESS: Review what? The plan
21 being presented today?

22 CHAIRMAN VAN VLIET: So the plans that
23 you submit to our professionals for comment.
24 We never got to review those comments. We're

1 now going on a set of comments that we have in
2 this docket.

3 THE WITNESS: We filed an amended

4 application in February of this year. With
5 the exception of the berm and the ring road,
6 all of these changes were incorporated into
7 that site plan package.

8 CHAIRMAN VAN VLIET: Well, I think

9 that's a significant portion that you're doing
10 with the ring road there. My question would
11 come back to you is why do you need so many
12 variances when you could have reduced the size
13 of the building and you apparently did reduce
14 the size of building but not enough.

15 MR. PECK: There is only one variance
16 that we're seeking. Actually the other two
17 variances have to do with -- they'd be

18 applicable whether we wanted to put a 10-foot
19 building there or something.

20 The fact that it's a landlocked parcel.
21 We don't have direct street frontage and we

22 don't have 300 feet of street frontage.

23 The only other variance we're looking

24 for is the buffering variance on the north

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1 side of the property and that was a trade off
2 saying we could give more buffer on the east
3 side so we're having the variance for the
4 north side.

5 CHAIRMAN VAN VLIET: Well, my question
6 comes down to, again, because when you talk
7 about it, we reviewed our professionals back
8 in January or was it February that you
9 presented that last time?

10 THE WITNESS: There were review letters
11 issued in April of 2022 by your professionals.

12 CHAIRMAN VAN VLIET: Which ones?

13 THE WITNESS: By Suburban and Mr.
14 Ritter.

15 CHAIRMAN VAN VLIET: Who did the
16 original one for the submission before that?

17 THE WITNESS: I believe it was Colliers
18 and Mr. --

19 CHAIRMAN VAN VLIET: Colliers, yes. We
20 determined that they had a conflict of
21 interest here.

22 MR. PECK: Correct. So then based upon
23 the review letter that we got from Suburban in
24 April, plus Mr. Ritter's updated letter, you

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1 know, based on our amended site plan, that's

2 where they said okay, well, we'll do something

3 with the berm and we'll do this ring road to

4 address the comments that were made in these

5 April 22 letters.

6 CHAIRMAN VAN VLIET: I can understand

7 that. I'm sure that's the way that we're

8 going but I mean I would have liked to have

9 the Board see the original presentation come

10 to us to make comment on it before they went

11 and made changes on that post comments, etc.

12 My statement, you know, where does that

13 leave the Board?

14 MR. PECK: With our amended site plan

15 application.

16 CHAIRMAN VAN VLIET: Okay, I'd like to

17 just (inaudible) our professionals here.

18 MR. HOLT: Our April 19th review letter

19 is the latest technical review that's been

20 performed and it was based on the plans and

21 procedures in January and February.

22 As a result of these comments, a

23 revision to the amended plan was prepared but

24 it wasn't going to be ready in time for any

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1 further technical review.

2 It would be presented here tonight in
3 any case so I think what they're presenting is
4 -- while there are changes -- the ring road is
5 a change, the change in the buffering was made
6 to I'll say further improve the plan in my
7 opinion so that they have proper buffer, the
8 area of the property that matters most I think
9 was the --

10 CHAIRMAN VAN VLIET: Mr. Ritter?

11 MR. RITTER: Well, I don't know if I
12 can add much. My review letter is also in
13 response to their submission and that was the
14 letter was issued on April 18th.

15 The plans that you have before you here
16 this evening I think is essentially their
17 response to the questions raised in our review
18 letter. It's not -- what's here tonight is
19 not the technical submission that was
20 submitted that we reviewed in our letter.

21 It's in response to comments we made in
22 our letter.

23 MR. HOLT: There could certainly be
24 technical comments that come from a review of

1 the revised plan -- the grading, the
2 circulation, things like that still will have
3 to be reviewed and commented on.
4 CHAIRMAN VAN VLIET: That's what I'm
5 saying the Board hasn't -- looking at this
6 synopsis of what we are to.
7 At this point, we didn't get a chance
8 to see the steps leading up to this so that's
9 my only comment on that. Mr. Bryce, do you
10 have anything?
11 MR. BRYCE: Oh, I have no comment.
12 CHAIRMAN VAN VLIET: I'm sorry.
13 Continue your presentation.
14 THE WITNESS: Okay. So again just to
15 reiterate. So the comments that have changed
16 since our -- the plans that were submitted and
17 are subject of the April review letters are
18 limited to the addition of the ring road,
19 which again was a comment to address -- or was
20 a change to address comments and feedback
21 received from the Board professionals.
22 It was pretty prevalent that that was
23 an important aspect to improve the project so
24 we went ahead made the change the results is

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1 again a net decrease in the impervious storm
2 water.

3 I can touch on that but a lot of the
4 other technical aspects of the project are
5 only improved by this change. So similar to
6 the buffer, it's adding green space its
7 reducing impervious cover, it's reducing the
8 intensity of the building.

9 Other than that, the function and just
10 general circulation of the project remain the
11 same or at least the same relative to the
12 plans and reports that were filed in
13 completion in February of this year and were
14 reviewed by the Board professionals as well.

15 BY MR. PECK:

16 Q. And how about lighting for the site,
17 Kyle?

18 A. Just so -- lighting again it's the
19 same, very similar, to what was done before. It's
20 compliant, the only comment that we had received and
21 discussed with the review of professionals was
22 related to the lighting along the eastern facade of
23 the building.

24 There was a request to reduce the

1 Lighting towards the wall and really try and lower
2 the lights if we can and lower the light intensity of
3 that wall considering it's adjacent to a residential
4 use.
5 And we agreed to review that and
6 basically point all the lights away from the
7 residential use adjacent to that wall and also reduce
8 the height of the lights and the intensity of the
9 wall on the eastern facade. Other than that, the
10 lighting generally remains unchanged compared to the
11 other previous application.
12 There is also a comment about dimming
13 of lights near the eastern most parking lot to
14 minimum levels appropriate for security during
15 nighttime hours and operation. The applicant agrees
16 to comply with that so on that a minimum light level
17 is maintained for security.
18 Just remaining technical items -- so
19 the storm water, again, this is ultimately a net
20 decrease in impervious cover.
21 The amended application material that
22 was submitted back in February also addressed some
23 previous comments provided by both colliers and
24 Suburban as well about redirecting water away from

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1 the informally known as Berry Plastics site or lot 2
2 we've gone ahead we've actually redirected an entire
3 portion of the basin discharge, the basin near the
4 southern corner site to the existing storm water
5 infrastructure within Strykers Road, which was asked
6 of us to do, so essentially we redirected storm water
7 while also meeting our criteria for the DEP as well.

8 So it's basically an over detention of
9 storm water on the site to help mitigate some
10 existing off site storm water issues that were noted.

11 Another item that was discussed
12 previously and is impacted by the inclusion of lot 2
13 into the application is the sanitary sewer conveyance
14 and capacity as well.

15 Previously as part of the project,
16 there was a gravity sewer main proposed along
17 Strykers Road in the southbound direction to tie into
18 an offsite pump station that exists on what is
19 commonly referred to as Pertucci Project, just down
20 the south along Strykers Road.

21 By incorporating lot 2 there's actually
22 an existing pump station on lot 2 with a forced main
23 that we plan to utilize to convey sewer flow from the
24 proposed building.

1 As was previously discussed we are
 2 still requesting a waste water management area
 3 amendment for the sewer to get this project into the
 4 sewer service area but by incorporating lot 2 we have
 5 existing infrastructure utilized to connect to the
 6 public sewer system.
 7 And we also would be actually
 8 mitigating the sewer demand for the township.
 9 And I'll elaborate on that. So the
 10 Berry Plastics facility has a treatment works
 11 approval for just over 14,000 gallons per day. So
 12 they're approved to discharge approximately 14,000
 13 gallons per day -- 11,000 gallons of that is actually
 14 allocated for processing and water flow down from the
 15 cooling towers.
 16 As part of this application, under the
 17 new ownership that process would actually be
 18 eliminated, which would take offline and pretty
 19 significant contributors for the sewer -- for sewer
 20 flow from lot 2.
 21 The resulting allocated demand for lot
 22 would be 2,500 gallons per day. When you combine
 23 that 2,500 gallons per day for the existing warehouse
 24 use with the proposed demand of 8,000 gallons per day

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1 from the proposed warehouse, you would end up with a
2 total demand for the project of 10,500 gallons per
3 day, which would actually be in that deficit relative
4 to what was permitted and allocated for the Berry
5 Plastics project per the TW way --

6 Q. You mean a reduction, right?

7 A. Correct. I'm sorry?

8 CHAIRMAN VAN VLIET: Are you authorized
9 in allocated sewer capacity?

10 THE WITNESS: Am I personally for this
11 project?

12 CHAIRMAN VAN VLIET: For this project,
13 yeah.

14 THE WITNESS: No this project is still
15 -- like I mentioned, it's still subject to an
16 amendment to the sewer service area so at the
17 moment, no, but under proposed conditions we
18 would ultimately be by way of this project
19 result in a net decrease.

20 CHAIRMAN VAN VLIET: I'm asking the
21 question for this Board is not responsible for
22 making the sewer allocations. I believe
23 that's the general -- Counsel that would be
24 part of the sewer engineer.

1 I mean you seem to be assuming that you
2 can do this but not with the authorization to
3 do it.
4 MR. PECK: We're actually assuming that
5 this would be a condition of approval as
6 another outside agency approval such as
7 getting a DEP or DOT permit, you know, if we
8 don't get the expansion of the sewer service
9 area then we'd be unable to satisfy that
10 condition and it would terminate, but, yeah,
11 that's -- so we're asking that this be treated
12 like --
13 THE WITNESS: Right. Again, we're not
14 requesting that allocation tonight. We're
15 just simply providing testimony on how the
16 infrastructure would work because we had
17 submitted a sanitary sewer memorandum that was
18 part of the application both initial and
19 amended back in February.
20 So I just wanted to provide some
21 clarification on that memorandum and what was
22 outlined.
23 MS. COYLE: May I say something? SCE
24 sent a report of different things that needed

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1 to be done, things that need to be
2 acknowledged. Some things that were completed
3 and you sent a report giving things that had
4 been done, things that still needed to be
5 done.

6 You're gonna acknowledge and give
7 testimony about different things and you have
8 everything numbered 2.01 on both sides.

9 To me, it would be very easy to follow
10 this whole thing tonight if we started with
11 2.01 on both papers and said this has been
12 done or has not been done like it's written on
13 here.

14 Don't you think that would be -- this
15 is very confusing. We're hopping from one
16 thing to another and it's just very confusing.

17 But if we followed these numbers like
18 are on both of those reports I think that
19 would be kind of easy.

20 THE WITNESS: Sure, I can certainly do
21 that. We'll do that.

22 MR. PECK: We'll do that.

23 MR. SAZONOV: We can touch on it later
24 but assuming that you would be reducing since

1 you now own or NFI now owns the Berry Plastics
 2 site, you would be reducing the use in that
 3 building to mitigate the total use that you
 4 would like to propose.
 5 But are you assuming that there would
 6 be a reduction then in the original proposed,
 7 let's say usage, of the Berry Plastics site
 8 that you are also reducing, let's say,
 9 employees per day or how are you -- I would
 10 just like to take that, you know, when it
 11 comes whenever we can kind of expand upon that
 12 later. But if you want to put a pin on that.
 13 THE WITNESS: Okay, yeah, that's fine.
 14 MR. SAZONOV: Thanks.
 15 MS. COYLE: Can't we go down to all
 16 these different things and say all right this
 17 has been taken care of, we need to do this
 18 still, this has been changed and that we can
 19 read in front of us as we go? Do you know
 20 what I'm saying?
 21 MR. PECK: Yep, so it's 2.01 would be
 22 the first.
 23 MR. HOLT: Okay, this is in reference
 24 to the April 19th technical review?

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1 MR. PECK: This is the Suburban April
2 19th, 2022, technical review.

3 MS. COYLE: Right and then their report
4 on May 11th, Bohler.

5 MR. PECK: Correct.

6 THE WITNESS: So there's a 2.01 and
7 we'll just do the waiver request for parking
8 in between -- parking adjacent to the
9 building. We have reviewed this layout with
10 the fire official and they are comfortable
11 with the layout as proposed.

12 I met via virtual meeting with the fire
13 official and we reviewed the layout. We
14 reviewed the truck circulation together so we
15 expect that they would accept the layout as
16 proposed and are still requesting that waiver.
17 It's been granted previously for similar
18 applications.

19 MR. HOLT: But the basis for that
20 request is what?

21 THE WITNESS: You know, the nature of
22 the use I think is really the unique thing
23 here I would be guessing I guess but, if you
24 know, really intended for more like a retail

1 development and here with the loading adjacent
 2 to the building and the way the parking's laid
 3 out, they thought that they were comfortable.
 4 It's also larger drive aisles, larger
 5 circulations to accommodate truck traffic.
 6 So when I showed them the truck
 7 circulation throughout the site and the way we
 8 had things laid out, they were comfortable
 9 with what we're proposing.
 10 2.02 is related to the Highlands
 11 consisting to determination specifically the
 12 proposed banked parking.
 13 MR. HOLT: You can probably talk about
 14 that a little more now.
 15 THE WITNESS: Sure. So similar to the
 16 previous application, we are proposing banked
 17 parking along the eastern corner of the
 18 property adjacent to the residential buffer.
 19 This was at request of -- I'll just
 20 highlight the area here -- this was at the
 21 request of the Highlands to provide in the
 22 event that the parking is not needed, there's
 23 no demand for it based on the ultimate tenant
 24 for the property, it would remain as a meadow

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1 planted area to just add green space to the
2 project and provide a benefit for the
3 environmental --

4 MR. SAZONOV: How big is that space
5 currently under this now?

6 THE WITNESS: It's a couple of acres.
7 I don't actually have the exact square footage
8 but it's the -- the total is it's equivalent
9 to the 167 -- I'm sorry 167 parking spaces so
10 it's approximately -- it ends up being a
11 couple of acres but I can double check and
12 provide that for you.

13 MR. SAZONOV: Okay, and that was in the
14 determination that they provided -- those are
15 the --

16 THE WITNESS: There was a request
17 within one of the conditions that requested
18 that we present to the Board banked parking in
19 lieu of surface parking on day one.

20 MR. PECK: Now it's one of the
21 conditions that the Highlands request.

22 THE WITNESS: Correct. The Highlands.

23 MR. SAZONOV: March 10th, 2021?

24 THE WITNESS: Correct.

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1 MR. SAZONOV: Were there any other

2 determinations -- that you all needed to?

3 THE WITNESS: There are other

4 conditions within their Highlands letter

5 related to water, the sewer, amendment for

6 sewer water treatment area as well but this

7 was really the only request that impacted the

8 layout that we wanted to present to the Board.

9 Some other storm water criteria for --

10 they wanted, they request that we provide

11 planting within the basins, the storm water

12 basins, which we agreed to so I would say this

13 is the only other condition that was flagged

14 by your review professionals for having -- for

15 requesting testimony basically.

16 MR. HOLT: In respect to the banked

17 parking, what would be the criteria that would

18 be used to determine if it was needed to be

19 constructed at a future date? Is there a

20 measurement or an indicator that the Board

21 would set as a condition and any kind of

22 action they take?

23 THE WITNESS: Yeah, I mean typically I

24 would expect that that would be in like the

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1 resolution of approval as a condition and what
2 the means would be whether it's at the
3 discretion of the owner or if the Board would
4 like to be notified but generally ideas were
5 approved for the parking, the infrastructures
6 in the place for the parking, and so if its
7 ultimately required the applicant would be
8 permitted to construct the parking if they see
9 fit.

10 Obviously they want to provide green
11 space. Otherwise they would just ask to have
12 it built right now.

13 They're actually going above and beyond
14 by putting an extra storm water infrastructure
15 and everything to accommodate this potentially
16 but also allowing it to just basically be
17 banked parking.

18 MR. HOLT: So is it your proposal that
19 this would be left to the owner operator of
20 the site to determine if and when they need
21 it?

22 THE WITNESS: Yeah, that's what we
23 would propose unless the Board had another
24 suggestion.

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1 MR. WEEKS: Then you'd have to come in

2 front and ask again?

3 THE WITNESS: No, because its already

4 approved. Parking, the infrastructure, storm

5 water, everything's designed for that parking.

6 Its really just trying to provide a benefit if

7 we don't need it then --

8 MR. PECK: But, yeah, what Kyle was

9 suggesting is if the Board wanted to put some

10 sort of triggering event in the approval

11 should we get it, you know, that's...

12 THE WITNESS: We come to -- 2.03 was in

13 regards to the truck access being proposed.

14 As I noted, we did run truck

15 circulation, we were expanding the radius

16 coming into the site of the driveway would be

17 limited to right turn in only and left turn

18 out only for trucks.

19 It would be signed appropriately which

20 is a similar condition to what we had

21 previously proposed when the driveway and

22 access point was on lot 6.

23 MR. HOLT: Can you restate that and

24 kind of show us where you're talking about?

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1 THE WITNESS: Sure, so the access
2 point, which is just near the existing
3 southern driveway on lot 2 is being widened to
4 facilitate truck movement.

5 We've run truck circulation modeling to
6 make sure that the truck can access the site.
7 So what we're proposing is that access to --
8 access and ingress and egress from the site
9 would be limited to a right turn and move in
10 only so trucks would travel in northbound
11 direction along Strykers Road, make a right
12 turn into the site and continue on into the
13 project.

14 Trucks leaving the site would stop and
15 make a left turn out only and it would be
16 signed appropriately to limit any right turn
17 movement out.

18 The goal of that is really just to --
19 that's the way the driveways designed to
20 function. That's the most convenient route
21 for your truck traffic. So that's what we're
22 proposing.

23 MR. WEEKS: So every one of those
24 trucks are gonna come out and come into up

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1 through our town coming out, you know, and

2 make a left turn.

3 THE WITNESS: We have a traffic

4 consultant talking about offsite circulating

5 and participated batters and numbers to trip

6 generation.

7 MR. HOLT: With respect to that access

8 the easement and form of easement that'll all

9 be submitted later?

10 THE WITNESS: Correct, yep. So the

11 easement there is an agreement in place. Like

12 you said, the applicant actually owns that lot

13 so they are going to provide the easement for

14 access and utility as well.

15 MR. HOLT: I guess they know the owner

16 so there won't be an issue.

17 THE WITNESS: To my understanding.

18 Also on that note there was some

19 recommendations that we provide curbing along

20 the driveway. We agree to that as well just

21 to improve the aesthetics and function of the

22 driveway. And that would be along the western

23 side of the driveway adjacent to the existing

24 Berry Plastics Building.

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1 MR. HOLT: Will that impact the storm
2 water management as of this modeled or
3 participated of the curb.

4 THE WITNESS: Install and installation
5 of the curb, no, it wouldn't have any
6 significant impact as far as conveyance and
7 then the driveway is already -- its
8 essentially a minimum of 30 feet wide, which
9 is appropriate, same as remainder of the site.
10 So we think its adequate without any
11 significant changes.

12 3.03B -- I previously touched on this.
13 The changes to the storm water system there
14 was a concern brought up in the initial review
15 letter and subsequently in the review letter
16 from April of this year regarding some offsite
17 drainage issues downstream from this project
18 across to the side of Strykers Road, I
19 believe, down near the asphalt plant.

20 So it was requested that when we do our
21 storm water design and I actually met with
22 Colliers, initially walked the site, put
23 together our storm water maps, and it was a
24 request at the inception of the project, that

1 we try to mitigate storm water run off to the
 2 existing formally known as Berry Plastics
 3 site.
 4 And we did that in the initial design.
 5 The request was to redirect even more storm
 6 water conveyance away from the Berry Plastics
 7 site so we've made another change that's
 8 reflected on the plans and reports that were
 9 filed in February of 2022.
 10 Again to redirect several acres
 11 additionally -- essentially the entire storm
 12 water basin that's along the southern corner
 13 of the property line now discharges to the
 14 Strykers Road right away.
 15 And again while still meeting the
 16 reductions and storm water quantities and
 17 qualities required by the DEP.
 18 MR. HOLT: Were you able to analyze the
 19 rerouting of basin 1B from basin 2?
 20 THE WITNESS: I believe basin 1B would
 21 push us over the edge of the reduction
 22 requirements. We will continue to look into
 23 that but I have not come up with a solution
 24 that will allow basin 1B to also discharge

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1 into that area. But, again, basin number 2,
2 which is down near the southern corner, also
3 used to discharge adjacent to lot 2.

4 So we've taken that entire storm water
5 basin offline from that point of analysis down
6 the stream.

7 MR. SAZONOV: When you say that it's
8 essentially alongside the driveway --

9 THE WITNESS: Correct, so majority of
10 the existing site, the storm water runs to the
11 eastern property line of what was the Berry
12 Plastics site and then through their system.

13 So when we analyzed it, we analyzed it
14 to reduce the storm water runoff to that area
15 in quantities as outlined by the DEP and
16 Township code.

17 It was requested that we actually
18 over-detain and redirect some storm water so
19 we've gone ahead and done that.

20 MR. SAZONOV: I'm sorry I was talking
21 about the one to the right on the map to the
22 right of the -- that little --

23 THE WITNESS: This one here?

24 MR. SAZONOV: Alongside the driveway in

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1 between the unpaved driveway. Yeah, that's

2 actually what?

3 THE WITNESS: That's an existing storm

4 water basin.

5 MR. SAZONOV: Right.

6 THE WITNESS: So we don't propose any

7 modifications to that -- that's for the

8 existing facility.

9 MR. SAZONOV: Would 2 or 1B if I'm not

10 -- please correct me if I'm wrong -- would

11 they feed -- does anything feed into the

12 current one?

13 THE WITNESS: Yes, a good portion of

14 the site is conveyed toward that basin and

15 actually the inlets -- that a portion of our

16 site discharged to does go through that basin.

17 MR. SAZONOV: And so I know, there

18 seems to be a reduction but there's actually

19 an increase in impervious surface around with

20 this ring road, as you call it. So what does

21 that convey to the original very skinny

22 alongside the unpaved lot 6 what is that

23 actually -- what will that convey in terms of

24 velocity or in terms of usage?

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1 I mean, I think it's gonna get some
2 extra usage, right.

3 THE WITNESS: So the way that the DEP
4 requires us to analyze the storm water is the
5 peak run off, so the peak flow. Those peak
6 flows are all being reduced.

7 The DEP outlined criteria based on
8 percentage, based on the intensity of the
9 storm. So we meet all those reductions and we
10 actually met those reductions initially when
11 basin 2 over here in the south corner also
12 went to that same point.

13 So we met it then and now we took that
14 and completely -- redirected it, adjusted some
15 of the characteristics of the basin, removed
16 it entirely.

17 So now we really reduce to this lot 2,
18 but we also need to meet the reductions on the
19 other side out to Strykers Road.

20 So there's only so much that we can
21 reallocate without robbing Peter to pay Paul
22 so I guess -- and I think that's what I'm
23 saying is -- is Suburban asked basically if we
24 could also reconvey the southern basin here

1 and I think we're at the point where if we do
 2 that, it would be extremely challenging to
 3 meet the overall reductions for the site.
 4 MR. SAZONOV: Okay.
 5 MR. HOLT: The peak grade reductions
 6 are the DEP requirement, but you also have an
 7 obligation to ensure that whatever happens
 8 downstream of that isn't being adversely
 9 affected.
 10 So as the Board indicated, is increased
 11 impervious of the volume of runoff the site --
 12 is greater tomorrow than it is today?
 13 THE WITNESS: Correct.
 14 MR. HOLT: It's just being controlled
 15 in what rate. So it's being held back and the
 16 existing basin along the easement entrance
 17 drive that's gonna see more volume tomorrow
 18 than it does today as a result of this
 19 development I think. Is that a fair
 20 statement?
 21 THE WITNESS: Overall, likely, yes.
 22 MR. HOLT: And then in your analysis
 23 though do you know that you modeled the
 24 existing basement along the easement to see if

5/17/2022

1 that additional volume would surpass its
2 storage capacity or least drain capacity (ph).

3 THE WITNESS: I believe that there was
4 a request in your letter as well for us to do
5 further analysis on that and in this response
6 letter it's item, I believe we agreed to
7 review that further and provide a more
8 in-depth model that incorporates the system
9 that's on lot 2 today.

10 MR. HOLT: Not gonna ask you today but
11 the agreement was you --

12 THE WITNESS: No, and we are required
13 -- also again there's an overlapping of agency
14 jurisdiction. We are required for the solar
15 conservation district to prove downstream
16 stability as well. So there is outlet
17 protection and calculations of the storm water
18 report and we do analyze downstream stability
19 but Suburban has asked us to do so further and
20 we've agreed to do that.

21 MR. WEEKS: And when you say
22 downstream, are you referring also downstream
23 all the way to the detention basin down by the
24 other plant or right down -- down right before

1 the bridge?

2 Is that gonna be metered and looked at

3 and channeled because of erosion coming out of

4 that the way it flows out?

5 THE WITNESS: Correct. That all gets

6 reviewed by the Board and the Solar

7 Conservation District and we'll need to

8 analyze.

9 MR. WEEKS: There's Vortex Systems in

10 there and everything else.

11 MS. COYLE: What number are we on?

12 MR. HOLT: Actually Kyle, if you could

13 clarify, I know you skipped over two items but

14 those are items that you're agreeing to our

15 comments on 3.02 --

16 THE WITNESS: Correct. Yeah, so for

17 3.02 there was just a request I believe the

18 request is that our programs as proposed meet

19 the ADA criteria but there was a request there

20 to reduce the maximum slopes and the design

21 criteria slightly below the threshold so we've

22 agreed to that as well.

23 That's what you're referring to?

24 MR. HOLT: Yes.

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1 THE WITNESS: Next, the comment that we
2 previously mentioned about downstream
3 stability and the existing storm water system
4 on Berry Plastics was 3.04 so I think we
5 addressed that.

6 MR. HOLT: 3.02B was the six foot
7 velocity design waiver?

8 THE WITNESS: Yeah, that's an item that
9 we are still requesting. That's something we
10 discussed both with Colliers and we've seen
11 granted as a waiver on the -- before just
12 given the size of the pipes and the size of
13 the overall development.

14 We don't think it's unusual to request
15 such a waiver and that's for submittal of pipe
16 velocity. The applicant's responsible for
17 being in -- of pipes in case there's any
18 debris or anything built up and there's also
19 comments about storm water operational and
20 maintenance manuals, which we obviously agreed
21 to as well.

22 MR. HOLT: That's item E on the top of
23 page seven. Item F discusses the potential
24 need for additional soils testing? Can you

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1 comment on that?

2 THE WITNESS: For which item was that

3 again?

4 MR. HOLT: Top of page 7, item F.

5 MR. PECK: 3.03F, we agree to that

6 right?

7 THE WITNESS: Yeah, we agree. For

8 comment 3.06, again, I think I touched on this

9 the sanitary sewer. The comment mentioned

10 potential septic. Again right now the plan is

11 to amend the waste water the sewer treatment

12 area, the sewer service area, we have an

13 application before the DEP.

14 We've filed this amended sanitary sewer

15 memorandum and basic application material to

16 them. They're reviewing it.

17 Again, we think that this is an

18 improvement by incorporating lot 2 because

19 we'll be utilizing existing sanitary sewer

20 service and we understand that any approval

21 would be based on the condition of the DEP,

22 the Highlands, and the Council.

23 But, again, the plan right now is to go

24 through that process. We just believe that

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1 this design change -- by incorporating lot 2
2 and having an existing sanitary sewer
3 conveyance system, an infrastructure available
4 for us, really facilitates that and helps
5 build the case for the amendments that we're
6 asking for. And again --

7 MR. HOLT: So the Chairman's point, the
8 action that you'd be taking was the more
9 quality management plan amendment -- the
10 treatment works approval application would be
11 combined with -- of both sites it would show a
12 reduction on the existing Berry Plastics site
13 and in addition of this site with a net
14 decrease?

15 THE WITNESS: Correct.

16 MR. HOLT: And that would require a
17 governing bodies action between the --

18 THE WITNESS: Yes, along with the DEP's
19 -- so the DEP's gonna go to analyze the
20 infrastructure, the capacity, it would have to
21 be signed off on by the town. So all of that
22 would be subject to this approval.

23 We're not requesting that approval
24 tonight to amend the sewer allocation for the

5/17/2022

1 project. We're just simply --

2 MR. HOLT: If for some reason, the

3 Council didn't agree with a reduction on the

4 Berry Plastics, what other options available?

5 Are you saying septic would be an option then

6 for this parcel?

7 THE WITNESS: We've preliminarily

8 explored potentially not being proposed at

9 this time.

10 MR. HOLT: But is there a place on the

11 site where it would go?

12 THE WITNESS: Not on the current site

13 plan. I mean, we have been analyzing to a

14 point where I could provide testimony on a

15 potential footprint for a septic.

16 Again the plan right now is to seek for

17 amendment for the sewer service area and

18 discharge to a public sewer. That's the

19 current plan and we understand that that would

20 be conditioned -- this approval would be

21 conditioned on all approvals associated with

22 that state and county.

23 MR. BRYCE: Mr. McKenna, I just have a

24 question as to that. I know that you

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1 testified earlier that you're looking at a net
2 reduction in the overall sewer and you're
3 looking to submit a treatment works approval
4 application for that but Berry Plastics site,
5 I think, is an approved manufacturing
6 primarily manufacturing with little bit of
7 warehouse -- that's it's approved use.

8 So what prevents in the future even
9 this applicant selling that property or
10 another manufacturer coming in there and
11 needing that type of sewage?

12 MR. PECK: Just point of clarification.
13 The Berry Plastics site is a manufacturing
14 warehousing equal -- it's not manufacturing
15 with a little bit of warehousing. It's
16 manufacturing and warehousing.

17 MR. BRYCE: Well, Mr. Peck, hold on for
18 a second. I'm not here to debate what's going
19 on with Berry Plastics. I think that they
20 have prior resolutions that describe the
21 approval for that plan and if the subsequent
22 ordinance that this governing -- or that the
23 governing body adopted as a pill that will
24 become a pre-existing form use and it will be

5/17/2022

1 limited in proportion to what the existing

2 warehousing versus manufacturing -- of that

3 site.

4 So my question to the witness is if

5 manufacturing is gonna be on that site and

6 manufacturing is going to need sewage, how

7 does this Board control for that and just kind

8 of ignore a permitted existing use with a

9 sewage demand at this point in time? I just

10 -- that's kind of striking me. Do you

11 understand what I'm saying? Am I clear?

12 THE WITNESS: So the demand is not

13 associated with the use per se. It's

14 associated with a specific process of a

15 cooling tower that's on site today and that

16 cooling tower was permitted with the DEP's

17 treatment works approval allocated 11,520

18 gallons per day specifically for flow down

19 from the cooling tower.

20 So it's not necessarily just for

21 manufacturing. That was a specific item

22 broken out in their request. I'm not -- when

23 I say allocations, I'm not saying literally

24 we're requesting that the Board grant us a

5/17/2022

1 reallocation tonight.

2 I'm just simply stating that right now
3 that facility, because of that specific
4 process that has occurred, they are permitted
5 to discharge by or standing up to 14,130
6 gallons per day right now under the current
7 approvals.

8 This provides the option to eliminate
9 that process -- the cooling tower with the
10 very high demand of over 11,000 gallons per
11 day, which exceeds what the demand would be
12 theoretically for the proposed warehouse.

13 MR. BRYCE: But what if a future user
14 of that Berry Plastics property requires the
15 cooling tower?

16 THE WITNESS: Then they would need to
17 get another TWA to permit that cooling tower.
18 Any increase -- it would be an increase at any
19 change to any change sewage conveyance
20 facility or treatment over a dozen gallons a
21 day requires a treatment works approval from
22 the DEP. So that would trigger a treatment
23 works approval.

24 CHAIRMAN VAN VLIET: Again I come back

5/17/2022

1 to the question that how are you authorized to

2 make that distribution of the sewer capacity?

3 THE WITNESS: I'm not. I'm just simply

4 stating what the flows are and how the flows

5 match up.

6 CHAIRMAN VAN VLIET: But that's what

7 you're saying your gonna do --

8 THE WITNESS: This is what we're

9 proposing --

10 CHAIRMAN VAN VLIET: -- that doesn't

11 mean that you're gonna get it.

12 THE WITNESS: No, this is what we're

13 proposing.

14 CHAIRMAN VAN VLIET: So how do we act

15 on something like that?

16 THE WITNESS: Well, the approval would

17 be subject here -- we're only seeking

18 preliminary approval.

19 MR. PECK: Yeah, I have two comments.

20 So for one, this was done actually kind of in

21 direct response to Board comments the last

22 time we were here when we were asked how are

23 we going to account for the sewer.

24 CHAIRMAN VAN VLIET: And that time, you

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1 were gonna connect up to the existing sewer
2 lining in Strykers Road as an independent
3 contributor to the sanitary sewer system we
4 had and apparently you couldn't do that.

5 THE WITNESS: Well, we feel that we
6 found a better alternative similar to the
7 driveway by incorporating lot 2 provides a
8 better, well, in our opinion, is a better
9 alternative and allows us to use a much closer
10 existing piece of infrastructure and also
11 provide at the end of the day from --

12 Again, I understand we're not
13 requesting this approval but it is ultimately
14 would be a net decrease in sewer demand on the
15 Township's system and, based on our
16 understanding, in review of the treatment
17 works approval.

18 MR. PECK: And I would also just once
19 again add we are only seeking preliminary so
20 some of these issues you know --

21 CHAIRMAN VAN VLIET: Sometimes we have
22 to get to the realistic --

23 MR. BRYCE: And Mr. Peck, this came up
24 in the bridge application and I know that you

1 were here and present for my diatribe as to

2 that.

3 We do have a new ordinance. We have an

4 ordinance that requires certain provisions and

5 preliminary approval --

6 MR. PECK: And we believe we've

7 satisfied that.

8 MR. BRYCE: And I think that this Board

9 has to be satisfied that the site plan is

10 providing a feasible alternative for all of

11 the necessary services that are going to be

12 required for a proposed site.

13 MR. PECK: Understood. And that's why

14 we're confident that the plan that we're

15 proposing more than adequately satisfies the

16 provision of all those necessary services.

17 MR. HOLT: So is this really a site

18 plan application including the Berry Plastics

19 site? Because you're bending -- you're

20 changing some of the elements of that site

21 plan like proposing and restriction and

22 reduction of processed units or uses in that

23 building.

24 MR. PECK: Well, the Berry Plastics

5/17/2022

1 site is part of the application in that lot 2.
2 It has been incorporated in the application.
3 It's been noticed as part of the application
4 and all of the plans account for it, for lot
5 2, so I think that that's already been
6 accounted for.

7 MR. SAZONOV: Not to this extent
8 however, right? Am I correct?

9 MR. BRYCE: Only included in so far as
10 it provides access. There's certainly
11 implications. I think the engineer, planner,
12 or maybe the Board members would agree that,
13 you know, you're impacting that pre-existing
14 site by virtue of this application.

15 MR. PECK: Well, it's going to be
16 reduced and the case law certainly supports
17 the fact that when you have a reduction in
18 activity or intensity of use on a site that
19 you don't have to come in for an amended site
20 plan approval.

21 MR. BRYCE: Well, I don't know if
22 that's correct because there's other elements
23 aside from -- we don't even know what's
24 proposed for Berry Plastics. That's the

5/17/2022

1 problem.

2 And I think that even in the initial

3 review you're looking at a consideration that

4 if any approval was granted by this Board,

5 Berry Plastics and implications that storm

6 water management and other types of

7 infrastructure may have including traffic on

8 the Berry circulation plan would have to be

9 analyzed as well.

10 And then I'm gonna tell you, Mr. Beck,

11 I'm also concerned that if you're really

12 taking the position that this is going to be

13 functioning as one unit this is a whole new

14 application.

15 MR. PECK: We're not suggesting it's

16 working as one unit. We're suggesting that we

17 can use some of that allocation because the

18 manufacturing use that's gonna require those

19 cooling towers --

20 MAYOR MENGUCCI: With a little bit of

21 respect I'm getting the impression that we're

22 robbing A to supplement B and then we'll worry

23 about A later.

24 CHAIRMAN VAN VLIET: Any further

5/17/2022

1 outbursts even applause, I'll have the room
2 cleared.

3 THE WITNESS: Just to revising
4 clarification, again it's not the use per se
5 that's demanding that allocation. It's a
6 specific piece of equipment within that
7 building that has been taken off -- that would
8 be taken off line.

9 It's not that a warehouse can't
10 function without a cooling tower. It's --

11 MR. BRYCE: But that's not part of this
12 application, correct?

13 MR. PECK: I can bring Mr. Landsburg up
14 and he can testify as to what's occurring at
15 Berry Plastics now and what's proposed in the
16 future on that site.

17 MR. BRYCE: I don't think that that's
18 appropriate as part of this application.

19 MR. PECK: It's only in response to
20 questions because we don't think that it is a
21 part of this application. We don't think
22 Berry is a part.

23 CHAIRMAN VAN VLIET: So it seems to be
24 that you're making it a part of it by

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1 incorporating their sewer capacity in your

2 sewer capacity, which you don't have because

3 you're not in the sewer service area.

4 MR. PECK: Well, and as was stated

5 before that would be a condition of approval.

6 CHAIRMAN VAN VLIET: You should have

7 come in with that application.

8 MR. PECK: Which application?

9 CHAIRMAN VAN VLIET: Well, the original

10 one. You testified at the completion hearing

11 that you had sewer allocation for that

12 property. And your sewer engineer certified

13 that he had it. He didn't have it he wasn't

14 in the sewer service area and he didn't have

15 allocation.

16 MR. PECK: But again, we believe that

17 we have the facilities there, the allocations

18 there, and that the uses on the site

19 accommodate this.

20 And at the end of the day, the Township

21 is going to see a reduction in the sewer use

22 coming out of that property.

23 CHAIRMAN VAN VLIET: If you're making

24 application that -- again this Board has

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1 nothing to do with that allocation. We would
2 like to know that you had it before even the
3 preliminary approval -- our practice -- that's
4 why in our requested interview, we require a
5 TWA.

6 MR. LANDSBURG: I think just to clarify
7 when we came in --

8 MR. BRYCE: Hold on a second. Maybe
9 let's finish with the witness. I'm trying to
10 keep the record somewhat clear here. I think
11 that we'd like to hear -- but we have one
12 witness that's currently being examined.

13 MR. PECK: And I certainly understand
14 that. But I'm wondering if now that this
15 questions been raised and it appears to be one
16 of great import to the Board that perhaps we
17 should just get that out of the way and
18 address it.

19 MR. BRYCE: Mr. Peck, I completely
20 agree with that. But maybe if you just hold
21 off on recalling the witness. After this
22 witness is done just so that the transcript is
23 clear instead of bouncing back and forth.

24 MR. PECK: And actually speaking of

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1 which, how are you doing? Do you need a

2 break?

3 THE COURT REPORTER: I'm okay. I can

4 keep going. Thank you.

5 MR. PECK: Okay, as you were. I

6 believe we were at --

7 THE WITNESS: -- 3.09 that's where my

8 notes --

9 MR. PECK: 3.08.

10 THE WITNESS: 3.08 was just a comment

11 about a label being added to the plans. We'll

12 address that and add the label 3.09 similarly

13 is related to another label for a test basin,

14 which we acknowledge, and we will address the

15 plants we'll include that label. Sheet 5.06

16 I'm sorry.

17 MR. PECK: This is comment 3.10.

18 THE WITNESS: Yep, there was a little

19 bit of an issue with some of the existing

20 topography. So we'll make sure that that

21 shows up on the plans moving forward. 3.11

22 and 3.12.

23 MR. PECK: No longer applicable.

24 THE WITNESS: Yeah, no longer

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1 applicable. We agreed for 3.16, which related
2 to the curvature of the proposed access drive.
3 We agreed to evaluate that and we would
4 increase the K-value as requested if we are
5 able to do so given the constraints of the
6 site.

7 MR. PECK: And, doubling back, I think
8 you missed a few -- 3.13 and 3.14? We can
9 comply with?

10 THE WITNESS: Correct, yep. Yeah, it's
11 3.17. It's similarly just addressing some
12 information on profile sheets.

13 3.18 is just again some supplemental
14 information for some grading and storm water
15 that we will provide on the sheets.

16 3.19 -- we already did touch on this a
17 bit in regards to the existing storm water
18 conveyance and detention systems on the lot 2,
19 which we will investigate further as
20 requested.

21 MR. HOLT: If the conclusion is that
22 there's inadequate capacity, you'll propose
23 design solutions and you'll have to come back?

24 THE WITNESS: Correct, yes. Well,

1 yeah, we would detail that in the plans of the
2 solution as needed. 4.01 just some comments
3 on one of the species of shrubs, which we will
4 replace with the native species, as requested.
5 4.02 has been addressed. 4.03 we have
6 addressed via the rendering that we presented
7 earlier Exhibit-A-10.
8 MR. PECK: So this is where it was
9 recommended that the landscape berm be
10 extended further to the north to add the
11 effectiveness of the screening design.
12 THE WITNESS: Correct.
13 MR. PECK: So then as a response to
14 that, this letter we received a month ago it's
15 in response to that -- you went ahead and did
16 this enhancement to what we submitted showing
17 the extension of the berm.
18 THE WITNESS: Correct. Rather than to
19 simply say we agree to it, we prepared a plan
20 and rendered it and illustrate how we would
21 respond to this plan.
22 MR. PECK: And just for the berm, Kyle,
23 what does the ordinance require?
24 THE WITNESS: 25 feet and we're

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1 proposing 110 not necessarily for berm but for
2 buffer so there's no berm required. It's
3 really just a buffer of 25 feet.

4 MR. HOLT: And the Exhibit-A-10 it
5 wasn't just an extension of the berm that's
6 then what triggered the chamfer of the
7 building and modification of the circulation
8 ring road?

9 THE WITNESS: Correct, yep. Which I
10 know it is in here as well for the ring road.
11 So it's a combination of the two comments --
12 the berm and buffer extension and the ring
13 road, which resulted in the chamfer to the
14 building and the decrease in the square
15 footage. And of the other reductions in
16 impervious cover that I mentioned.

17 MR. PECK: 4.04?

18 THE WITNESS: We've addressed this and
19 there was a comment and question about if the
20 Board would request fencing. If they require
21 it, we will be happy to comply with it. If
22 the Board would like to see fencing added
23 within the buffer areas, we will provide it.

24 MR. HOLT: With respect to that buffer,

1 you testified that the height of the berm
2 would be 10 feet above the grade along the
3 overlooked property?
4 THE WITNESS: Correct. So we
5 reevaluated with the expanded buffer and I was
6 just trying to provide some color as to how
7 high the berm would be. It varies in height
8 again from elevation. It will be
9 approximately from elevation 374 on the
10 northern side of the property up to 380 on the
11 southern side of the property. That's because
12 the existing grade changes there.
13 So that would give you a grade
14 differential approximately of 10 feet from the
15 areas outside of the existing residence
16 adjacent to the north and the top of berm and
17 then on top of that is trees and other
18 buffers.
19 MR. HOLT: With a 10-foot planted
20 height?
21 THE WITNESS: Correct, yes.
22 MR. SAMSON: So the top of the berm --
23 I'm sorry. The top of the berm is 380?
24 THE WITNESS: It ranges from 380 down

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1 to 374 just because we are confined by the
2 existing topography around it. So up near the
3 -- we'll call it the southeastern half of the
4 berm be around elevation 380 and it just
5 basically follows the existing topography down
6 to the northern side down to elevation 374.

7 MR. SAMSON: So what's the top of the
8 elevation of the warehouse roof?

9 THE WITNESS: The top is -- the finish
10 floor is 365.5. The top of the building would
11 be 410.5.

12 MR. SAMSON: 410.5 so you're 40 feet
13 above the top of the berm in that corner?

14 THE WITNESS: It's closer --

15 MR. SAMSON: With the 10-foot tree
16 should be 35 so they'll be -- you'll be at 35
17 feet above.

18 THE WITNESS: Correct. And we do have
19 some respective exhibits that we prepared as
20 well to help illustrate what the view would be
21 like from both the ground floor and the first-
22 or second-story window of the -- what we
23 consider the worst case scenario, which is
24 just in reference to the northern-most

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1 residence adjacent to the proposed building.

2 Certainly happy to introduce those

3 after we go through these letters.

4 MR. WEEKS: I have a question that goes

5 back to use of buildings. I mean I worked in

6 factories not quite this but a little bigger,

7 smaller type of stuff all right. 32 acres of

8 accrue on your roof.

9 Are you planning on putting windows up

10 high on that building that it's going to

11 affect the light coming out in any fashion

12 that's it gonna be above your tree line?

13 I mean, look at these back trees over

14 here you can see --

15 MR. PECK: We can have Mr. Landsburg

16 testify if that's okay with the Chairman?

17 CHAIRMAN VAN VLIET: That's fine.

18 MR. BRYCE: Let's let him testify and

19 we'll come back to him.

20 MR. PECK: So I believe we're at 4.05

21 -- oh, I'm sorry.

22 MS. COYLE: That's okay. I was just

23 gonna ask are the trees gonna block the view

24 for the people in overlook?

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1 THE WITNESS: So that's what some of
2 our -- we did prepare exhibits to try and
3 illustrate that. It depends on -- so on day
4 one -- well it depends on where you are
5 obviously.

6 If you're on the second floor on day
7 one with the initial planting of 10 feet it
8 depends on which building you're in.

9 But likely the answer is no, not 100
10 percent. You would be able to see the
11 building. Once you have mature growth, I mean
12 the trees would be 40, 50 feet tall in some
13 areas which would I believe it's somewhat
14 speculative but with likely very difficult to
15 see the building.

16 Does that answer your question?

17 MS. COYLE: I guess I just thought
18 maybe you'd be planting initially trees that
19 were taller in the beginning.

20 THE WITNESS: You really have to be
21 careful when you plant trees to go and put a
22 couple hundred 40 foot tall trees. I'm not
23 sure that would be feasible and also the
24 viability of a tree once you go down a certain

1 size they tend to not live so we really

2 wouldn't recommend going much taller than 10

3 feet.

4 We felt that was a pretty good middle

5 ground to provide an immediate buffer but also

6 give the tree a good chance and you can just

7 make it feasible.

8 MR. PECK: Yeah, these aren't saplings

9 that you're putting in?

10 THE WITNESS: A 10 foot tree is a

11 pretty large tree to be planting.

12 MR. PECK: 4.05 light fixture and pole

13 design.

14 THE WITNESS: Yeah, these have all been

15 addressed in further action I believe.

16 4.06 again, I believe, I just touched

17 on this as far as elevation of the neighboring

18 properties relative to improvements but if

19 there's any further questions again I would be

20 happy to --

21 MR. HOLT: The question that's out

22 there -- the dimming of the lights. Is there

23 a proposal on a method of control and how many

24 hours of the day or intensities they might dim

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1 to.

2 THE WITNESS: Like I said, the
3 applicant's willing to agree to that. But the
4 intensity would be -- that's something I'd
5 like to just discuss further.

6 MR. HOLT: On the other applications,
7 sometimes it's like 50 percent intensity.

8 THE WITNESS: Yeah, there's a minimum
9 value we want to maintain just to make them
10 safe for security purposes but they are open
11 to reducing the lights or any --

12 MR. BRYCE: What's the minimum value?

13 THE WITNESS: Typically, we do .5 to .1
14 would be the minimum foot candles for just
15 security lighting just to make sure it's
16 relatively safe.

17 MR. HOLT: What value?

18 THE WITNESS: Point five.

19 MR. PECK: Kyle, with regard to comment
20 4.06, did you have any exhibits or anything
21 that you wanted to show?

22 THE WITNESS: Yeah, I do have, like I
23 said, I have some additional perspective used
24 we could present.

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1 MR. PECK: I think it would be

2 appropriate.

3 THE WITNESS: So this would be

4 Exhibit-A-12. And so essentially what we did

5 was we -- this is -- sorry Exhibit-A-12. It's

6 called NRI facility existing with building and

7 it's dated today.

8 So what we're looking at here is

9 essentially a view rendered model if you were

10 at the -- there's a blow up in the bottom left

11 corner of the screen with the building near

12 the bottom left of that blow up and then the

13 property line adjacent to the existing

14 residence travels in the north, south

15 direction plan view.

16 And what we're looking at here is what

17 we -- I think it was actually mentioned

18 earlier that probably the worst -- you know

19 the most difficult to screen area would be for

20 the existing residence northernmost along the

21 property line.

22 So what we did was we prepared and

23 we're presenting this exhibit to show based on

24 the model of the topography that was prepared

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1 based on the survey documents what the
2 anticipated view would be based on existing
3 vegetation out there today.

4 So this is a picture of what it would
5 look like with no screening whatsoever,
6 essentially six feet off the ground at the
7 northernmost residence out there today.

8 The building you can see is visible in
9 the background. Again this is without the
10 proposed berm. Just to give a little bit of
11 perspective as to what you would see. So
12 existing screening just trees that are on the
13 residential property today.

14 MR. PECK: So that's existing
15 conditions with the building?

16 THE WITNESS: Existing conditions
17 viewed from a six foot height, which is
18 basically standing outside the northernmost
19 residence.

20 MR. HOLT: Is that a tree survey at
21 like accurate locations?

22 THE WITNESS: These are approximate. I
23 mean, it's really just for illustrative
24 purposes. Obviously it's a summertime view.

1 Those are mostly deciduous trees so I
 2 understand but you can essentially see that
 3 other than the existing vegetation there's
 4 nothing -- there's nothing, right that's what
 5 we're trying to show in this.
 6 CHAIRMAN VAN VLIET: But it still
 7 renders --
 8 THE WITNESS: Correct. So this is
 9 A-13, a similar exhibit the view from building
 10 one. For reference building one was the first
 11 building northernmost with initial planting
 12 height, approximately six feet high.
 13 So as you can see in the background
 14 again you still can see the building again
 15 this is where we -- the buildings, the closest
 16 to the residence.
 17 So we're trying to be fully transparent
 18 on we think would be worst-case scenario with
 19 the buffer. This is again planting high at
 20 approximately 10 feet.
 21 So this does help screen some of the
 22 building from view but obviously you still can
 23 see the building. So to the question earlier
 24 about whether you will be able to see the

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1 building the answer is yes.

2 In mature conditions, again, these
3 trees that are being planted here are a steady
4 line of trees again multi-level grasses,
5 shrubs, deciduous trees, evergreen trees with
6 heights ranging from 18 inches off the ground
7 up to mature heights of 50 plus feet.

8 Under mature conditions, you would not
9 see the building, I believe, but obviously
10 that's speculative. It's not out there today
11 so I can't say directly but we believe that
12 this will turn into a really nice buffer and
13 provide some benefit day one just illustrating
14 again worst-case scenario.

15 We also have an additional A-14. It's
16 a similar exhibit with the same name the only
17 exception is that this exhibit is modeled from
18 an elevation of 15 feet, which again is
19 intended to show the second story.

20 So if you're looking out a second-story
21 window, what you would see. So again it's --
22 we believe there is a benefit from the berm.
23 You can see some trees and this dark color is
24 intended to show the proposed grade elevation,

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1 which is increased from where the green line

2 is on the plans.

3 So again we're proposing 10 foot trees

4 with the mixture growth rate of approximately

5 two feet a year. Some of the species are one

6 to two feet but some of the evergreens grown

7 two plus per year.

8 MR. HOLT: This view just raises a

9 question. Is there any other components on

10 the roof like mechanical equipment or are they

11 on grade? Do you know?

12 THE WITNESS: I would defer to the

13 project architect. We did certainly close the

14 loop on that and Mr. Landsburg may be able to

15 answer that question as well.

16 I believe the answer is that they would

17 not be of view, either setback or hidden, but

18 I would defer to Mr. Landsburg or the

19 architect to confirm.

20 MR. PECK: I think we can skip section

21 five because that would be Mr. Wichner, but

22 moving on to section six.

23 THE WITNESS: So the section just to

24 point out -- or sorry comment 5.05 was the

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1 comment related to the ring road again just to
2 bring up.

3 Going to back to Exhibit-A-10, so 5.05,
4 again, we were simply trying to agree to this
5 comment regarding the addition of a ring road
6 but also providing illustration of what it
7 would look like and how it would work and
8 again the technical impacts are from these two
9 changes that were not in the previous
10 submission are a decrease in impervious,
11 decrease in FAR, and building coverage all
12 together.

13 So we feel like the previous technical
14 design would only be made more simple by these
15 changes as well.

16 MR. PECK: And, Kyle, this is in
17 response to the comment 5.05, which reads in
18 part, for a building of this size, it is
19 typical to provide a ring road or a service
20 road that bypasses the loading areas and
21 provides a safe route for automobiles to
22 travel around the building to access parking
23 areas.

24 It is strongly recommended the site

1 layout be modified to provide a service road
 2 along either the eastern or western side of
 3 the building to eliminate conflicts with
 4 automobiles and tractor trailers.
 5 So is that what you tried to accomplish
 6 as shown on the rendering?
 7 THE WITNESS: Yes, that's why made this
 8 change to address that comment. As I've
 9 previously noted, vehicles would be signed to
 10 continue straight for passenger vehicles if
 11 they were to be utilizing the rear parking
 12 lot. It's not that atypical in a warehouse
 13 development to have to direct folks by sign.
 14 And the 5.06 I also provided testimony
 15 on. We have run truck turning analysis for
 16 the project. The trucks turn into the site
 17 both directions with no conflicts and access
 18 the site right in and left out.
 19 MR. HOLT: And I guess that's a
 20 combination to change as a result of what
 21 you're presenting tonight --
 22 THE WITNESS: We've run -- yeah I've
 23 run circulation to this layout as well. So
 24 I'm testifying that it will work in both

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1 directions without conflicts and happy to
2 provide a truck turning plan if requested.

3 MR. HOLT: Yeah, we would request that.

4 THE WITNESS: Comment 5.07. I also
5 touched on this as well as far as providing
6 some curbing along the access drive and
7 ensuring that it's maintained at a minimum of
8 30 feet wide.

9 I believe the remainder of these
10 comments would be more suited for the traffic
11 consultant.

12 MR. HOLT: The question I have with
13 respect to this circulation. Will the traffic
14 entering the site and utilizing the ring road
15 to get to the rear parking, you know, will
16 those headlights be shining towards the
17 adjoining residential property or is the
18 buffer adequate to insulate from that?

19 THE WITNESS: For headlight screening,
20 I would say the buffer is more than adequate.
21 The building is more challenging obviously but
22 the headlights I think is certainly adequately
23 screened.

24 Section six is quite a bit of

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1 discussion about geological and geo-technical
2 investigation we agree --

3 MR. PECK: Do we agree to all that?

4 THE WITNESS: Correct, yes. We would

5 agree it's -- we're aware that it's part of

6 the site we've done -- the applicant's done

7 quite a bit of due diligence related to that

8 and we agree to the conditions outlined in

9 section six.

10 Unless there's something specifically

11 that someone had a question on, we can leave

12 it at that.

13 MR. SAZONOV: Yeah, just the terms of

14 the C, section 6.01, so you're agreeing to

15 additional field tests in reporting under

16 condition of approval?

17 I mean is this also inconsistent to

18 staying consistent with the specified

19 conditions from the Highlands? I feel like

20 we're sort of -- as it's being proposed, we're

21 sort of skimming over or perhaps not regarding

22 with as much import as I would feel that they

23 should be regarded.

24 It's quite reasonable to accept the

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1 specified conditions that they've set forth.
2 Is that in relation to the storm water -- that
3 I was bringing up before or is that
4 something --

5 THE WITNESS: The majority of this is
6 -- so I just want to clarify we've done, in my
7 opinion, very extensive testing on this site.
8 We've done dozens of borings, test bits, more
9 than I've -- for the storm water facilities.
10 We've also done scanning of the site to try
11 and identify potential karst conditions
12 because I think the majority of section six is
13 really into the karst condition in the area
14 just no one -- no one for this area.

15 So we've done the geological
16 investigation that was required as part of the
17 checklist and we've actually done some
18 additional testing that wasn't required in
19 that checklist just as part of the applicant's
20 due diligence process so I think we've done a
21 very thorough job of analyzing the soils.

22 We've addressed all the comments
23 regarding site soils and permeability rates
24 offered by the Highlands.

1 This is primarily associated with just
 2 construction practices and then processes for
 3 dealing with sites under construction and
 4 karst, an area, a region, known for karst
 5 topography and if you, Mr. Holt, if you want
 6 to clarify anything but I think that -- is
 7 that fair?
 8 MR. HOLT: Yeah, I think we felt it was
 9 important in this, in the last notice, to make
 10 sure this is on the plans so its enforceable.
 11 But again we'll be involved in that
 12 construction phase to oversee and make sure
 13 what they expose or encounter is mitigated in
 14 accordance to the standard of that.
 15 MR. SAZONOV: Okay, thanks.
 16 THE WITNESS: And then comment -- or
 17 section number seven, there are a few comments
 18 again regarding the FDA ramps primarily just
 19 notations on the plans and labels which we
 20 agreed to address.
 21 But again happy to go into more detail
 22 but its mostly details and notes on the plans.
 23 In section number eight, again, it is
 24 less technical in nature. Essentially just

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1 outlining approvals and fees that have to be
2 paid as a condition of approval and there was
3 some testimony requested on the banked parking
4 at the end, which I believe we hit on.

5 But I'm happy to answer any other
6 questions related to banked parking.

7 MR. PECK: And did you have the
8 opportunity to review Mr. Ritter's most recent
9 review letter? And did you have any comments
10 relating to that?

11 THE WITNESS: I did.

12 MR. SAZONOV: And in terms of the
13 banked parking before we drop that subject
14 this is perhaps what I was trying to --
15 materialize for me is what these conditions
16 are set forth by the Highlands coalition in
17 terms of an open space?

18 What was once almost 40 acres or is
19 that correct? I'm sorry.

20 THE WITNESS: Forty-six.

21 MR. SAZONOV: Forty-six acres is
22 essentially -- I don't know if the additional
23 -- if it's reasonable to say the additional
24 banked parking, which means unpaved at this

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1 point, but open for development as and

2 if-I-see-as- fit I don't know if that's

3 something that we can perhaps reduce now or

4 later.

5 But I think that taking Highlands, the

6 Council's sort of stipulations or consist --

7 you know, the conditions that they set forth,

8 I want to -- I think that we should be taking

9 a little bit more of attention to that in

10 terms of what was once is going to be

11 completely changed and what we can mitigate in

12 terms of runoff in terms of I mean in terms of

13 the fencing you're talking about a high

14 traffic area for a street -- for animals, for

15 other things. I mean, so I don't know if we

16 can reduce that or mix that or nip that in the

17 butt to be completely a layman about it.

18 MR. BECK: Are you suggesting just

19 eliminating some of the banked parking and

20 just taking it off the plan.

21 MR. SAZONOV: I think in terms of the

22 March 10th, yeah, I mean, I would like to see

23 a little bit more your efforts to address it,

24 you know, if by the letter of what they've

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1 said so maybe that's a whole other memo from
2 Bohler or something that you can -- if you
3 don't mind.

4 THE WITNESS: Yeah, the request in the
5 condition verbatim was that we seek banked
6 parking rather than -- because previously the
7 initial application that was actually all just
8 proposed parking was what was presented and
9 the applicant reviewed what they thought would
10 be really the minimum necessary based on their
11 experience.

12 This is a spec building, which means
13 there is no specific tenant locked in right
14 now. But based on Mr. Landsburg's
15 introduction, he's very experienced in this
16 field so we met with the Highlands many times.

17 We've been working with them on this
18 project, meeting with them for two-plus years
19 now and the comment was really that we request
20 that that be banked and only build if
21 necessary as deemed by the applicant because
22 they thought that they don't believe that they
23 will need that but they'd like to have the
24 option to build it if necessary.

1 So if the request is that we tear down
 2 the parking a little bit more, I would -- I
 3 can't answer that right now but I think the
 4 applicant would consider and evaluate if
 5 there's any more reduction that could be
 6 provided.
 7 MR. SAZONOV: Okay. Because if the
 8 banked were to become paved, how much of a --
 9 how many feet to the current berm would that
 10 increase or would that decrease how much --
 11 THE WITNESS: Well, it would range
 12 obviously it's like a triangular shape but the
 13 highlands also they're more adamant about
 14 providing meadowland and creating habitat
 15 they're actually pretty excited about all of
 16 the meadow grasses that we were planting
 17 because a corn field doesn't really actually
 18 provide much of a habitat.
 19 So they would actually rather see that
 20 instead of being buffered created, their
 21 request is to basically plant a meadow mix
 22 there and allow essentially habitat to form.
 23 MR. PECK: Kyle, does this depict full
 24 build out?

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1 THE WITNESS: This does. It's
2 difficult to see at the scale but there is a
3 hatch which delineates the banked parking
4 limit. It's basically if I kind of go around
5 it it's the first group of stalls to the east
6 but it is a bit difficult to see at the scale
7 that we're at.

8 MR. SAZONOV: Yeah, thanks.

9 THE WITNESS: So just to go on to
10 Mr. Ritter's letter. So the first comment was
11 just noting that we added lot 2 into the
12 application primarily for purposes of having a
13 shared driveway and access.

14 I believe we provided adequate
15 testimony on how that driveway will function.
16 Comment number two --

17 MR. RITTER: Before you go on from
18 that, I just want to state for the Board that
19 from my point of view it's true that this plan
20 is addressing many of the improvements that's
21 gonna take place on the Berry Plastics
22 property.

23 But from the standpoint of the
24 applications, I still think it's important

1 that the Berry Plastics property the
 2 re-amended site plan be submitted for that
 3 property.
 4 And the reason I feel that's important
 5 is that these two properties, I assume, will
 6 -- even though they may be owned by the same
 7 company will be separate realty improvements
 8 and so they can be sold one separated from the
 9 other but the owners can manage that way and
 10 there's substantial improvements that are
 11 going on the old Berry Plastics property that
 12 should be incorporated into the public record
 13 and be able to be carried forward.
 14 As well as some analysis that still
 15 hasn't been done, some of the benefits that
 16 are being offered for the plan in the rear is
 17 that they're redirecting storm water, and
 18 correct me if I'm wrong, because this is more
 19 an engineering question, but it appears that
 20 some of that waters going to be redirected
 21 through the Berry Plastics basin.
 22 And so I think the storm water
 23 calculations and the things that occur with
 24 that should be incorporated into that plan so

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1 they can be carried forward for any future
2 developments, change in plans or whatever for
3 Berry.

4 And I would also think if, as part of
5 this, the permitting for the sewer allocations
6 eventually change I think that ought to become
7 an official part of the record that's carried
8 through all the properties rather than as a
9 general improvement for the overall rear of
10 the property.

11 So that again if there's changes in the
12 future, it's not a question of having a use in
13 the building that demands more gallonage than
14 is available but was never allocated for or
15 preserved.

16 So, you know, in other words, that we
17 don't have to deal with a non-conforming use
18 in the future. It'll simply be this is what
19 was approved. You're either going to be able
20 to occupy the building or you're gonna have to
21 abandon site.

22 I do think the issue of site plan
23 approval for the front still needs to be
24 addressed even though I know the applicant's

1 have covered a lot of that here I do think
 2 Berry should be at some point as a condition
 3 of this approval resubmitted and re-evaluated
 4 for site plan approval, as an amended site
 5 plan.
 6 MR. PECK: We would accept that as a
 7 condition of approval if the Board feels it's
 8 necessary that Berry has to come back and be
 9 re-evaluated that site that's certainly
 10 acceptable.
 11 MR. RITTER: Thank you.
 12 THE WITNESS: So comment number two
 13 deals with the buffer and berm, which again
 14 this is where the request for an increased
 15 buffer of 110 feet in width extending to the
 16 northern edge of the property it was also
 17 reiterated and it was one of the catalysts for
 18 us, the applicant, preparing this rendering
 19 Exhibit-A-10 and I believe that we do
 20 accommodate this request.
 21 We've provided the buffer as requested
 22 and also agreed to raise the elevation to the
 23 extent feasible and extend the plantings.
 24 MR. RITTER: And the revisions in terms

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1 of providing the additional height to the berm
2 and the plantings will be incorporated into
3 the landscaping plan coming up?

4 THE WITNESS: Grading and landscaping
5 correct but just do clarify, we would -- we're
6 still meeting the buffer planting requirement
7 as is this would just be an addition
8 supplement to --

9 MR. RITTER: Understood. But you're
10 going to fill the -- yes Drew and I are in
11 agreement, we're going to fill the gap that's
12 created by the new buffer, yes.

13 THE WITNESS: Exactly. Comment number
14 three this dealt primarily with the, what I
15 had mentioned earlier, the encroachment into
16 the buffer along the rail line to the north.

17 Again, with the changes that have
18 occurred, the realignment of the drive aisle
19 and the shift of the drive aisle to provide
20 the extra 110 foot buffer along the northeast
21 property line, we're actually requesting that
22 this encroachment be maintained along the rail
23 line with an encroachment up to 10 feet into
24 the buffer area.

1 MR. RITTER: I'm sorry, you said
 2 with -- you mean you're going to save 15 feet
 3 along the rail line? I'm not understanding.
 4 THE WITNESS: Sorry, so 10 feet. The
 5 maximum buffer would -- sorry the minimum
 6 buffer would be 10 feet. Maximum encroachment
 7 I guess that would be 15 feet into a 25-foot
 8 buffer with a minimum buffer with 10 feet.
 9 MR. RITTER: And will that 10 feet be
 10 encroached on for grading? I'm just wondering
 11 for going back in and filling any gaps or
 12 anything like that that might develop.
 13 THE WITNESS: There will be grading
 14 within that area but it's not something that
 15 wouldn't be able to be accommodated with a
 16 normal slope we're not proposing any retaining
 17 walls in that area, in the buffer area.
 18 MR. RITTER: So the slopes in there
 19 should be enough that if planting is required,
 20 we can supplement?
 21 THE WITNESS: Yes, it would be a
 22 planted area. Comment number four I would say
 23 is similar it's not really applicable fully
 24 because I mentioned the buffer adjacent to the

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1 trailer storage area along the northern
2 property line, which is now being separated by
3 the circulation road but again any fencing
4 would be beyond that 10 foot that I just
5 mentioned of buffer being provided.

6 And other improvements as well truck
7 trailer storage, curbing, etcetera.

8 MR. RITTER: I was just gonna say that
9 in essence the plan will still require a
10 variance for encroachment into the buffer
11 reducing it from 25 feet 10 foot in width,
12 that's what you're currently proposing?

13 THE WITNESS: That's what we're
14 requesting, yes. And then comment number five
15 dealt again with the access drive. There was
16 a request to provide curbing adjacent to the
17 building and defining the driveway.

18 We agree to this. In my response
19 letter, we advised that the applicant would
20 install curbing adjacent to the building on
21 lot 2 along the drive aisle and also provide
22 striping to help delineate and separate
23 between the existing loading area and for the
24 proposed access drive.

1 MR. SAZONOV: Sir, what is the current

2 width of the truck driveway? You're not

3 proposing to widen it are you?

4 THE WITNESS: There was a request to

5 widen it. Right now it is approximately 30

6 feet but it's amended pavement so what I wrote

7 in this response letter was that we would

8 agree to ensure that it's maintained at 30

9 feet if that means you would go another six

10 inches or so or a foot we would do so and then

11 the -- it's only curbing to help better define

12 that drive out but if it's not going to be on

13 this plan, you would not even notice the

14 changes. When you measure it on the surface,

15 it's about 30 feet.

16 MR. SAZONOV: But currently it's

17 essentially going to become a two way -- what

18 your plan is becoming a two way, I mean, some

19 truck isn't gonna be held up at that turn

20 towards what is past the Berry Plastics.

21 I mean it's not gonna become some kind

22 of single lane through way while one truck

23 waits another has to...

24 THE WITNESS: No, we've run a truck

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1 analysis for trucks moving and circulating
2 both directions ingress and egress and
3 throughout this access drive.

4 MR. SAZONOV: Okay, thanks.

5 THE WITNESS: To ensure that there's no
6 conflict into circulation.

7 Comment number seven was a request to
8 provide sidewalk along the access drive from
9 the proposed driveway improvements or existing
10 drive to the neighboring lot 6, which we would
11 agree to. That would include curb ramps and
12 cross walk as well. No objection to that.

13 There was also a request to provide
14 sidewalk from the Strykers Road roadway to the
15 proposed building for that. The applicant's
16 preference would be to not provide that just
17 because they don't feel that it would be very
18 well utilized.

19 And then we just -- again we have the
20 room on the impervious covers to add that
21 sidewalk but we would prefer not to just in
22 keeping with trying to minimize impervious
23 improvements to the extent feasible and just
24 feeling it be underutilized.

1 If the Board disagrees and they would
 2 like to see it as a condition of approval, the
 3 applicant would be willing to provide a
 4 sidewalk from Strykers Road right away to the
 5 building.
 6 MR. RITTER: The only thing that I'll
 7 add for the Board's benefit is as you'll
 8 recall, on the adjoining warehouse building is
 9 they agreed to put sidewalk along Strykers
 10 Road and they also agreed to connect the
 11 building in at one point from the building to
 12 the sidewalk on Strykers Road.
 13 And it's my feeling that if you're
 14 going to provide something along Strykers Road
 15 than you ought to leave the opportunity for
 16 people if they want to use it, use it.
 17 So I think connecting this again even
 18 though it may not have heavy usage would be
 19 appropriate.
 20 THE WITNESS: Comment number nine is
 21 just noting that we have -- the applicant has
 22 provided additional landscape islands to the
 23 plan in order to conform with the open space
 24 requirement. We acknowledge that and we no

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1 longer would require relief for open space.
2 We conform.

3 Comment number 10 is related to the
4 buffer again around the permanent property.
5 Other than the area I mentioned previously
6 adjacent to the rail line, we would conform
7 with the buffer and exceed it by more than
8 four times along the adjacent residential
9 property. We also agree to provide the seven
10 additional trees adjacent to basin 1B that
11 were requested.

12 Comment number 11 was related to the
13 onsite parking. Just to summarize, I think
14 Mr. Ritter is just noting that based on the
15 square footage of the building and breaking
16 the uses out, we would require a variance for
17 parking because 807 spaces would be required
18 whereas 534 are proposed. That includes the
19 banked parking.

20 But I think basically you're
21 summarizing that you agree that parking should
22 be sufficient based on ITE and would support
23 that variance but you can correct me if I'm
24 misrepresenting.

1 MR. RITTER: No I agree. I believe
 2 that what you're showing between the banked
 3 parking and what you're willing to do should
 4 be adequate for this site to do.
 5 THE WITNESS: Building operations we do
 6 have Mr. Landsburg here if there's more
 7 detailed questions but the request would be
 8 that the warehouse be permitted to operate or
 9 it would potentially be a 24-hour facility.
 10 Obviously we don't know the exact
 11 tenant being a spec building but any further
 12 operational questions I would likely direct to
 13 Mr. Landsburg.
 14 Noise control: Similarly spec building
 15 so we're not precisely sure of the use that
 16 would be in the building.
 17 However, as condition of approval, the
 18 applicant would agree to conform with all
 19 noise ordinances, both state and local and any
 20 applicable codes.
 21 Fire suppression: The sprinklers,
 22 there will be a sprinkler system proposed.
 23 Again, we've met with the fire official and
 24 reviewed both the circulation and there's

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1 onsite hydrants.

2 We'll address any comments they have
3 related to distribution of hydrants in the
4 water system but the building is a sprinkled
5 system.

6 Lighting: I had touched on this
7 earlier. Comment number 15 is just a request
8 to re-evaluate the lighting at the rear or
9 eastern facade of the building to try and
10 reduce the -- I guess I'll call it up lighting
11 or light up the wall of the building because
12 the way we have the lights mounted to the
13 building right now, Mr. Ritter was concerned
14 that it might actually light up the wall more
15 than is necessary.

16 So we've agreed to re-evaluate that and
17 try to mitigate that as much as possible by
18 putting some lower lights or directing the
19 lights from the parking lot for that area.

20 The signage: Comment number 17. We
21 would acknowledge the intent is to conform
22 with the signage criteria but without a known
23 tenant at this time, I don't think we can meet
24 this specific details of the signage but the

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1 intent is to conform with the signage

2 criteria.

3 MR. RITTER: Yeah, and as part of this

4 application, there is no signage package. I

5 guess that's all I was trying to say and when

6 you're ready and able you'll come into the

7 town with the sign.

8 THE WITNESS: Correct, comment number

9 19: Again I think we had provided testimony

10 on the access easements and both the easement

11 that's proposed for lot 6 near the southern --

12 or what would be the northern corner of lot 6

13 adjacent to the tower is still current and an

14 easement would be provided for the access

15 through lot 2.

16 And I think the final comment number 20

17 was just related to a note on how we detailed

18 the open space criteria, which we will address

19 as requested.

20 Comment number 21 was regarding the

21 electric vehicle charging, which we will

22 conform with. The applicant agrees it's a

23 state requirement and we will comply.

24 MR. SAZONOV: Mr. McKenna, for the fire

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1 suppression system on item 14, was this item
2 taken into consideration the addition of lot 2
3 and their chilled water system or what will be
4 the infrastructure you need for the extra
5 square footage involved in this 3.01 or is
6 that a question for --

7 THE WITNESS: It's probably a little
8 early on to run through the details of the
9 sprinkler system because it hasn't been
10 designed yet.

11 Typically that goes in with the -- is
12 filed with building permit. I've done a
13 department application but this will be
14 standard ESFR system and basically like a
15 rapid response system and, if needed, if
16 there's an inadequate pressure, there'd have
17 to be a pump so that's usually evaluated by a
18 specialist. Sprinklers are --

19 MR. PECK: And Kyle, the fire
20 suppression system would be self contained,
21 correct? It would not be linked in with lot 2
22 or would it?

23 THE WITNESS: Oh, correct, yeah. I'm
24 sorry that was the question. It would be a

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1 stand-alone. There's its own separate water

2 service from the main on Strykers Road. It's

3 not connected to lot 2.

4 MR. SAZONOV: It bypasses it

5 completely?

6 THE WITNESS: Correct, yeah. It has

7 its own -- that's part of the easement is for

8 utility services so yeah electric, gas, water,

9 and through lot 2 it being for inspections as

10 well our plans show a proposed water boat

11 location for the service connections to the

12 existing main within Strykers Road and also

13 hydrants and everything.

14 MR. SAZONOV: Off of Strykers?

15 THE WITNESS: Off of Strykers. Well on

16 the site it would be fed by its own main from

17 Strykers Road.

18 MR. SAZONOV: Okay, yeah so the chilled

19 water system, I'm trying to make sense of this

20 new facet to the amended application in terms

21 of site what is it 2 or this Berry Plastics

22 like what Mr. Beck was trying to elaborate on

23 in terms of usage from that building, the

24 sewage usage has nothing do with the need from

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1 a fire suppression?

2 THE WITNESS: No, totally separate. So
3 right now there's a discharge of water that
4 has to go into the sewer system from the Berry
5 Plastics or formally Berry Plastics site and
6 that's they were approved for 11,000 gallons
7 per day today so really our timelines just to
8 show that feasibly rather than using a
9 sanitary sewer pump station that's down the
10 road, we could connect to the pump station
11 that's on lot 2 and will need to do further
12 investigation to prove that it's all -- make
13 sure that the pump is sized correctly and any
14 floats if they need to be adjusted, we'll need
15 to do a deeper evaluation and obviously have
16 it permitted by all the different agencies
17 that have jurisdiction over that.

18 But we were simply trying to present
19 that is it is a viable option in our opinion
20 from a technical perspective.

21 MR. SAZONOV: And then the slope, I
22 think it's quite a change from the original
23 plan, right? The slope from 3.01 in terms of
24 the --

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1 THE WITNESS: For the sanitary sewer?

2 MR. SAZONOV: Yeah, was there

3 originally, like, an increase in terms of

4 elevation and the slope exiting towards

5 Strykers Road or the original sewer?

6 THE WITNESS: The slope still works in

7 our favor to connect to the existing force

8 main on lot 2 --

9 MR. SAZONOV: Without change to the

10 original?

11 THE WITNESS: In its current location

12 -- so the previous application proposed a

13 sewer line that ran down -- when the access

14 drive was over on lot 6 and then it actually

15 ran all the way down Strykers Road and there

16 would be actually a gravity sewer main

17 installed as part of the improvement.

18 Now, we're simply proposing to tie into

19 the existing pump station on lot 2, which is

20 located right here near the center of the

21 building fronting Strykers Road.

22 It just seemed more logical and like

23 the real benefit of incorporating lot 2 along

24 with the driveway.

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1 MR. SAZONOV: Okay, yeah, I suppose it
2 is too early to judge in terms of how much
3 water usage this -- whether the original -- I
4 don't know how far you all went in terms of
5 the original square footage of the building or
6 this current square footage.

7 I mean, I'm sure NFI has specs in real
8 time and as to square footage and usage in
9 terms of what the need may be from the -- or,
10 you know, from the existing infrastructure
11 from Strykers lets say. Perhaps that would be
12 something that we could see.

13 THE WITNESS: From this site or just
14 based on the their experience?

15 MR. SAZONOV: Yeah, I mean, I'm just
16 trying to -- I guess I'm trying to anticipate
17 any hypotheticals or knowledge that you may
18 not have in terms of the knowledge that they
19 may have from previous projects.

20 THE WITNESS: Okay, yeah, so the
21 warehouse demand is based on the employee
22 numbers. So the way we generate -- we
23 submitted in our sanitary sewer amendment, our
24 calculations of it brings out our anticipated

1 use and how we evaluated that.

2 So the warehouse use is based on an

3 employee count and the office use is broken

4 out based on square footage. So that's how we

5 came up with the numbers and NFI reviewed them

6 they are comfortable based on -- they operate

7 a lot of facilities and I'm sure pay a lot of

8 sewer bills so I think they know what a

9 facility needs and they're comfortable with

10 what we had requested, which was 8,000 gallons

11 per day.

12 But again, this is really just the

13 intent on this was just to convey technical

14 feasibility of incorporating the system. We

15 believe it's technically feasible.

16 MR. SAZONOV: Okay, thanks. I was just

17 trying to gauge how much of the current --

18 infrastructure will be used technically or

19 funneled into fire suppression systems or

20 other like subjects. So I appreciate it.

21 CHAIRMAN VAN VLIET: Does that complete

22 your review?

23 THE WITNESS: I believe so, yes. I

24 have nothing further unless Mark you need

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1 anything?

2 MR. PECK: No, just with regards to the
3 waivers you're requesting. You find that
4 those are all reasonable under the facts of
5 the application and the property conditions?

6 THE WITNESS: I do, yes.

7 MR. PECK: That would conclude our
8 direct presentation.

9 CHAIRMAN VAN VLIET: In that case, I'll
10 open this up to the public. Before we start
11 that, do you want to take a 10-minute break
12 for people? We'll reconvene at 25 after 9.

13 * * * * *

14 (Whereupon, a brief recess was taken.)

15 * * * * *

16 MAYOR MENGUCCI: Folks, we need to
17 reconvene.

18 CHAIRMAN VAN VLIET: Any more
19 questioning of your experts?

20 MR. PECK: Yeah, for questioning of Mr.
21 McKenna, but I did want to clarify one thing
22 with the sewer and our intent for doing that.

23 It's just at our prior hearings we had
24 testified that we thought that the Township

1 had, you know, a certain amount of gallonage
 2 available and we were asked well how are you
 3 gonna -- so all we wanted to do tonight was
 4 just show that we did have a technical
 5 solution recognizing that there's a whole and
 6 other process of the tax involved but we
 7 wanted to show that we do have a plan, you
 8 know, to build a better mouse trap when it
 9 comes to the sewers so that was that.
 10 But now we'll turn over Mr. McKenna for
 11 questioning.
 12 CHAIRMAN VAN VLIET: Okay, under the --
 13 do you have any questions of the expert?
 14 MR. SCHOLT: Yes, I do, Mr. Chairman.
 15 CHAIRMAN VAN VLIET: Okay.
 16 MR. SCHOLT: Mr. McKenna, good evening.
 17 My name is Don Scholl. I think you heard me
 18 before. I'm here on behalf of the overlook
 19 Condominium Association. Not a surprise
 20 concerns are sound and visual impact.
 21 * * * * *
 22 CROSS EXAMINATION
 23 * * * * *
 24 BY MR. SCHOLL:

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1 Q. Let's first deal with sound. There's
2 been testimony with regard to a fence. In the plans
3 it was a chain link fence that's proposed?

4 A. Correct, yeah.

5 Q. And is -- has there been any revision
6 to that? Is a chain link fence still what is being
7 proposed by the applicant?

8 A. Yes.

9 Q. Does the chain link fence offer any
10 sound attenuation at all?

11 A. I don't know what kind of sound
12 attenuation that it's going to have. It's really
13 intended for security.

14 Q. So really not your area in terms of
15 acoustical study or testimony with regard to
16 acoustical engineering, correct?

17 A. Acoustical study of a chain-link fence
18 impacting sound would again not be area of my
19 expertise.

20 Q. Okay. Was there any consideration
21 given to a masonry wall?

22 A. Where?

23 Q. Along the berm as site attenuation as
24 well as sound attenuation?

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1 A. No, the comment from the Board

2 professionals was to provide landscaping and a berm

3 and that's exactly what we proposed.

4 Q. I just noted that in the ordinance

5 24362B in terms of screening there was a reference to

6 a solid fence of a naturally durable material so

7 would a masonry fence fall within that definition as

8 you understand it?

9 A. I'm not an expert on fences. If a

10 masonry fence versus a solid fence -- we meet and

11 exceed the buffer requirements.

12 Q. You reviewed the ordinance, right?

13 A. Yes.

14 Q. Okay, and you saw in the ordinance the

15 reference to a solid fence of a naturally durable

16 matter, you saw that reference?

17 A. Being required?

18 Q. In terms of screening, I'm showing you

19 the ordinance it's screening and referencing as far

20 as one solid fence of a naturally durable material.

21 MR. BRYCE: Which ordinance is this,

22 Counsel?

23 MR. SCHOLT: 243-62.

24 MR. PECK: Proceeding language of this,

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1 if the Board so approves.

2 MR. SCHOLL: Well, if it's in a
3 screening, correct, it's options under the
4 ordinance with respect to --

5 MR. PECK: We are willing to consider
6 alternatives to the chain link fence. I will
7 represent that.

8 MR. SCHOLL: I appreciate that. And
9 with regard to its location, would the
10 location, the height of the berm also be
11 considered? Again what we're looking at is
12 not only a visual buffer but sound attenuation
13 and it would appear that a masonry structure
14 would achieve much greater sound attenuation.
15 Would that be considered?

16 THE WITNESS: I don't know what sort of
17 masonry structure you're describing to
18 consider it but, yeah, we would consider a
19 fence.

20 MR. PECK: We can actually and I'm
21 sorry I don't mean to step on your question
22 but Mr. Landsburg can address fencing
23 questions and we plan on presenting him next
24 because there was some clean up that he needs

1 to do so if you do have some questioning about
2 fencing.

3 MR. SCHOLT: Sure. And I guess just

4 for continuity split block or something of
5 that nature for consideration and again it
6 being thought that a masonry fence would

7 provide much greater sound attenuation and

8 with regard to the traffic that's proposed in

9 the rear and it's proximity to the residential

10 units that's of significant concern.

11 If I may, I'm just gonna go up to the

12 plan. Actually, it might be easier right

13 here.

14 What I'm highlighting is the bays. The

15 trucks that access the bays they back in

16 right.

17 A. The trailers back in, yes.

18 Q. That's for the loading that's

19 completed, correct?

20 A. Correct.

21 Q. And once they back in, they can pull

22 back out, correct? Going in the direction that I'm

23 moving the mouse?

24 A. Yep, they can pull back out.

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1 Q. Is there any reason for trucks to have
2 to enter the area that I'm moving the mouse through
3 now?

4 A. To have to -- unless they have to, I
5 don't know. It's -- we're not looking at strict
6 circulation but I would say it would not be as
7 convenient as exiting the other way.

8 MR. BRYCE: Counsel, if you could just
9 for the benefit of the transcript, the court
10 reporter, excuse me, and the record that's
11 being recorded, we're looking at the blow up
12 of --

13 MR. SCHOLL: The amended site plan that
14 was just submitted May 11.

15 MR. PECK: It's Exhibit-A-10.

16 THE WITNESS: Exhibit-A-11 I thought
17 this was.

18 MR. BRYCE: Thank you.

19 BY MR. SCHOLL:

20 Q. And in particular the road to the east
21 of the site between the building and the Overlook
22 development. Perhaps in the context of the use of
23 the warehouse, the trailers that are being loaded or
24 unloaded could back into the bays entering and then

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1 alternatively leaving in the same direction

2 ultimately exiting onto Strykers Road and

3 alternatively with regard to that rear aisle it be

4 limited solely to cars thereby avoiding concerns of

5 residents with respect to passage of trucks, changing

6 gears, multiple trucks, again creating that sound and

7 also visual disturbance to residents who live in that

8 section of the development?

9 A. I would defer that question to the

10 applicant and there's no reason for the technical

11 site layout respective that trucks could circulate

12 that area may be beneficial if there's multiple

13 tenants in the area but I would defer whether or not

14 the applicant would be willing to restrict that to

15 the applicant.

16 Q. From an engineering standpoint, just

17 very briefly, the trucks can enter the bays load and

18 unload and then leave without going and accessing

19 that rear aisle; is that correct?

20 A. Is it physically possibly is that what

21 you're asking for a truck to access every loading

22 space there and leave without going in the rear?

23 Q. That's the question. That's correct.

24 A. I did not analyze every single loading

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1 space. I think it would be possible but I have not
2 done a truck circulation for every single loading
3 space.

4 Q. Are you familiar with collapsable
5 balance?

6 A. Collapsable balance?

7 Q. So in other words if there was signage
8 posted in the area that I'm moving the mouse on which
9 is the entrance to that rear lane that prohibited
10 trucks from entering that area that's one way to
11 enforce that determination if it was the subject of
12 either in position by the Board or agreement by the
13 applicant, correct?

14 A. I would defer to the applicant that
15 would be something they would consider.

16 Q. And another way again to enforce
17 perhaps would be to put objects there that would neck
18 the area or preclude trucks because of their width
19 from entering the area accomplishing the same
20 purpose?

21 A. The interconnection exists because we
22 want it to both facilitate truck circulation around
23 the building so that was our intent.

24 Q. Okay, when you evaluated the impervious

1 surface coverage for the site, did you base that upon
 2 the total required parking for the site?
 3 A. The impervious cover that's proposed
 4 and identified in the bulletin was based on the
 5 proposed number of parking spaces.
 6 Q. The total required number of spaces or
 7 the spaces that are noted as banked and also with
 8 respect to what you're requesting by variance relief.
 9 Because you're proposing less than the required
 10 number of spaces, true?
 11 A. Not necessarily true. There's two
 12 different ways to evaluate the parking requirement.
 13 It's outlined in Mr. Ritter's letter. It could be
 14 based upon employees or it could be based upon square
 15 footage.
 16 Q. You're not seeking a parking variance?
 17 A. We are presenting of seeking a parking
 18 variance --
 19 Q. So my question is -- I'm sorry go
 20 ahead.
 21 A. -- we analyzed the impervious cover
 22 based on the proposed number of parking spaces.
 23 Q. Not the required number of spaces?
 24 A. Not the required number of spaces that

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1 would be -- if you're referencing 807 spaces, we did
2 not calculate the impervious cover based on 807
3 spaces.

4 Q. Arguably -- and again I don't want to
5 miss enforce this too much but isn't that arguably
6 double counting with regard to the impervious surface
7 requirements? So essentially you're requesting a
8 variance. You're getting a variance for fewer number
9 that the required number of spaces, but with regard
10 to impervious surface coverage, you're also getting a
11 credit because you're looking at the total parking
12 count reduced from what's required?

13 A. No, I don't think that's -- we're
14 requesting a variance for the parking so that we're
15 not constrained by the number of employees
16 specifically for parking and we're not requesting
17 impervious cover variance because we are not
18 exceeding impervious covering.

19 Q. With regard to the lighting, and again
20 I appreciate the testimony and the consideration
21 given by the applicant with regard to the stanchions
22 what we're looking for is just a little clarification
23 and being a little more definitive with respect to
24 ultimately what might be considered.

1 Would there be consideration to reduce

2 the height from 25 feet for example to 15 feet?

3 Again the concern is the lighting and the arc of

4 illumination being visible by the residents that are

5 in the rear at Overlook. If that height is reduced,

6 it's reduces that arc of illumination, if that would

7 be considered?

8 Second with regard to the fixtures and

9 I think it was referenced in one of the

10 professional's reports that they be shielded so that

11 there is no actual light source that could be viewed

12 by a resident.

13 Are the proposed fixtures such and

14 apart from day glow that you can't see the actual

15 light source if you were reviewing then from any of

16 the condominium units in the Overlook community?

17 A. I guess there's two questions there.

18 I'm gonna answer the second one first which is that

19 all fixtures are -- that are adjacent to the

20 residence they have backlight control that answers

21 that one.

22 And then the first question was just to

23 reiterate are would we consider reducing all of the

24 light fixtures from 30 feet to 15 feet? Is that your

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1 question?

2 Q. I think it was 25 feet that's proposed
3 to 15 feet.

4 A. The proposal is 30 feet and that's
5 what's permitted, but my -- if you're asking about
6 all of the light fixtures, I would advise against
7 that because you're gonna just have significantly
8 more light fixtures it's going to be much less
9 efficient.

10 The code permits a 30 foot height.
11 That's what we designed to. You may be referring to
12 some of the building --

13 Q. Yeah -- I'm seeing paragraph 15 in the
14 report, 25 feet on the warehouse and on the pole is
15 30 feet?

16 A. Correct, so are you asking only the 25
17 foot be reduced?

18 Q. Well, what we're looking at is the
19 stanchions and if they can be reduced. So if you
20 could evaluate that?

21 A. Yeah, I provided testimony that we
22 considered reducing the height of the building
23 mounted light fixtures on the eastern facade to see
24 if we can minimize the glow based on your view of the

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1 question. We agreed to revise that.

2 Q. And would there be a certain height

3 then that those could be lowered to? Or is that

4 something you would have to get back to us on?

5 A. It's a iterative process. We would

6 actually have to model to make sure we are providing

7 all the lighting values as all the other criteria so

8 I can't tell you specifically exactly what height --

9 MR. PECK: And again we'd be happy to

10 work with the Board's professionals should the

11 opportunity arise, you know, on any reasonable

12 modifications to the lighting plan.

13 MR. SCHOLT: And if we can just be

14 given notice of that we appreciate it.

15 MR. PECK: That's certainly fine, yeah.

16 MR. SCHOLT: Thank you.

17 BY MR. SCHOLT:

18 Q. And in that same context in terms of

19 modeling was there any consideration to doing any

20 acoustical testing here because of the proximity of

21 the residential community to the proposed commercial

22 use and the fact that there would be truck traffic?

23 A. Not by me, no.

24 Q. To the extent, there's proposals to

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1 conform to regulatory requirements and I guess I look
2 at whether its storm water or landscaping one way to
3 approach those is to say that we'll comply with
4 whatever the ordinance requires but that's not the
5 customary practice.

6 Normally what occurs is storm water
7 measurement reports prepared or a landscaping plans
8 prepared similarly because of the proximity of the
9 residence. Would an acoustical study be beneficial
10 here in particular to better identifying the height
11 of the berm, the material of the fence, and things of
12 that nature would that help in the decision making
13 process of the Board?

14 A. I don't think that's an appropriate
15 question for me to answer. I did testify as to the
16 acoustical studies as part of my direct testimony.

17 Q. I saw that you had commented in
18 response to Mr. Ritter's report with regard to noise
19 control to indicate --

20 A. We will conform with state ordinance,
21 yes.

22 Q. With regard to the lights, is there an
23 ability to install timers on them to assist -- for
24 example on the weekends when perhaps there is not

1 intensive use on the site to again to provide better
 2 visual appearance for the overlook residents so that
 3 the light source is automatically either dimmed or
 4 eliminated at agreed times?
 5 A. Is it possible?
 6 Q. Correct.
 7 A. It is possible.
 8 Q. Was there consideration given to that
 9 at all?
 10 A. I believe I testified to that based on
 11 Mr. Ritter's comment the applicant would consider
 12 part-time reduced lighting guides for the eastern
 13 most lot.
 14 Q. To be put on timers?
 15 A. Again, I didn't specify which --
 16 whether it be night I think that would be somewhat --
 17 that would be the most logical way to do it sure
 18 because that's the means and methods but...
 19 Q. That's what I'm looking for -- I'm
 20 sorry go ahead.
 21 A. And reduce timing reduced lighting
 22 values of the specific period of time is something
 23 that we agree to review with the Board professionals.
 24 Q. I appreciate it and with the utmost

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1 respect when in response to the questions the answer
2 is we'll consider it, it's difficult for the
3 residents who are looking I think perhaps for
4 something a little more definite or definitive so to
5 the extent these considerations are ongoing if
6 there's a mechanism to put them in place it would be
7 appreciated. So in that instance if stanchion height
8 that's easy you just reduce the height of the pole.
9 With respect to the lights being extinguished or
10 dimmed if there's some feature that automatically
11 implements that it's beneficial.

12 And I apologize. I'm involved with
13 this matter of since Monday of this past week and it
14 appears there's been prior testimony with regard to
15 the site and I don't want to go outside your area
16 either of expertise or scope of your testimony, but
17 truck idling and backing, idling and backing where
18 the backing admits that very loud noise, the back up
19 signal, was there any consideration given in terms of
20 the design to somehow limiting that or limiting it's
21 exposure to the residence?

22 A. Limiting exposure of trucks to
23 residents?

24 Q. Idling and the back up?

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1 A. I would defer to the applicant and they

2 may not be able to answer all those questions because

3 again its a spec building there is -- with the tenant

4 is --

5 Q. Okay and as I understand it, there's no

6 intention to merge the Berry Plastics lot with the

7 proposed lot 3.01; is that correct?

8 A. I would defer to Mr. Peck or

9 Mr. Landsburg for that.

10 Q. With regard to the storm water design,

11 and I noted in response to Suburban's report of April

12 19, there was a recital on page six to NJ DEP

13 guidance for the recently adopted storm water

14 management rules. Are you familiar with the term

15 green BMPs?

16 A. Yes.

17 Q. Is that part of the new storm water

18 management rules that were adopted?

19 A. In March 2021, yes.

20 Q. With regard to this project, was it

21 engineered to conform to the green BMPs?

22 A. No.

23 Q. And was there a reason why that wasn't

24 done?

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1 A. Yes, and I think it's actually outlined
2 and acknowledged in the review letters that this
3 application was well before the effectiveness of
4 those regulations and it's also been acknowledged by
5 the DEP, the Highlands, so that's why.

6 Q. Is there something in writing by the
7 Highlands and the DEP that advises that the applicant
8 does not have to conform to the green BMPs, the new
9 storm water regulations?

10 A. I believe there is. I don't have the
11 consistency and determination in front of me but I
12 believe it does essentially verbatim say that.

13 Q. Okay, if that could be provided, I'd
14 appreciate it. And if there was a determination made
15 by the Board that because of some of the changes that
16 are proposed here that they are sufficient
17 materiality to require an amended application or a
18 new application, would that then result in this plan
19 having to be engineered in conformity with the
20 current?

21 A. I would defer to my attorney. I think
22 that would be speculative on my part. New
23 applications that are filed now after March 2021
24 require that you conform.

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1 Q. And do you know the date when this

2 application was deemed complete?

3 A. I would defer to Mr. Peck.

4 MR. BRYCE: There's a resolution as to

5 that, Counsel.

6 Q. And one item and please bear with me

7 for just a second. It was a lot of information to

8 digest in a short space of time.

9 With respect to what was submitted and

10 kind of taking photographs of some of the plans. It

11 appeared originally the berm elevation was 360 feet

12 to 374 feet. The berm width was 25 feet to 30 feet

13 and I understand and it's appreciated in terms of the

14 response to the planner's report to extend the length

15 of the berm, but theres a concern and if we could

16 bring up the photograph. What we attempted to do is

17 take a photograph to reflect from the upper floor of

18 the noted unit in the location identified and, Jim, I

19 don't know if we need to mark this or it's for

20 purposes of the testimony is before the witness I'll

21 defer to you.

22 MR. BRYCE: It will be marked. This is

23 going to be 01. There is no foundation for it

24 so I don't know if the witness has firsthand

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1 knowledge of it so the -- representation of
2 offer of proof I suppose.

3 MR. SCHOLL: I can lay it for the
4 witness but I think there is testimony in
5 terms of what was observed with respect to the
6 rear of the Overlook units in conjunction with
7 the exhibits that were presented showing
8 landscaping in relationship to the building I
9 mean...

10 MR. BRYCE: Show it to Counsel first.

11 MR. PECK: Same thing that's on the
12 screen?

13 MR. SCHOLL: Yes.

14 MR. BRYCE: Do you have an objection?

15 MR. PECK: No objection.

16 MR. BRYCE: Okay.

17 * * * * *

18 (Whereupon, Exhibit-01 was marked for
19 identification.)

20 * * * * *

21 BY MR. SCHOLL:

22 Q. What's identified as the association's
23 Exhibit-1 is an upper floor unit in a building
24 closest to the site and it's a view scape from the

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1 second floor out into the field.

2 Depicted is the existing vegetation.

3 Have you been to the site to view what's there the

4 existing vegetation and the layout?

5 A. Yes.

6 Q. Based upon your physical presence of

7 the site, does this photograph fairly and accurately

8 depict the area between the building unit and the

9 property line and the existing vegetation?

10 A. Yeah, I don't -- this is a real photo.

11 Q. And more particularly with respect to

12 what exists by way of landscaping?

13 A. Yeah, I will note that it's clearly

14 taken in either early spring or winter. It's

15 primarily like I testified to deciduous trees in that

16 area so it is a seasonal screen. I just wanted to

17 clarify that.

18 Q. So for probably November through April

19 that's essentially what the site looks like and that

20 would be the visual perspective of individuals in

21 those units, correct?

22 A. With no buffer or berm, I would agree

23 that showed and we actually had a very similar

24 exhibit that showed that. In my opinion, almost

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1 identical.

2 Q. Well, the exhibits show what they show.
3 So from that standpoint I just want to clarify the
4 berm elevation with the original plan 360 to 374
5 again looking at the line of site through the second
6 floor units and there's a number of those second
7 floor units.

8 The concern was if that was at 391 in
9 elevation that not withstanding the berm you'd have a
10 clear site line into the area of the warehouse as
11 well as that rear access aisle. That was the
12 concern.

13 And based upon what you're seeing, is
14 that a legitimate question or issue on the part of
15 the residents in terms of what they're seeing and
16 what they will see based upon what's proposed to be
17 developed on the site?

18 MR. PECK: Wait, I'm sorry to interrupt
19 but the elevation, is it 360 to 374 or is it
20 374 to 380?

21 THE WITNESS: The revised plan, the
22 berm will vary on the low side, which is
23 allegedly adjacent to where this photo was
24 taken from 374 to 380 that was my testimony

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1 this evening.

2 BY MR. SCHOLL:

3 Q. Right. And the height of the building

4 was 410?

5 A. 410.5.

6 Q. Would it be fair to say then that even

7 with the berm and even with landscaping when

8 initially planted that those residents are going to

9 have a clear view of the warehouse area?

10 A. Clear view is subjective. As I noted,

11 at initial planting with the berm height, you will be

12 able to see the warehouse from that location with

13 that location being what I identified as building

14 number 1 in my prior testimony.

15 But I would like to reiterate the

16 minimum buffer is 25 feet and we are proposing 110

17 feet of buffer and berm.

18 Q. No, and I understand and the ordinance

19 provides for a berm and what we're looking at is the

20 height of the berm and I appreciate what was

21 discussed as being an increase in the height.

22 What it would be requested that there

23 be consideration given perhaps in conjunction with

24 the masonry wall to potentially increasing that berm.

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1 There's a very wide area for that berm so you can
2 make it higher because of the available width in that
3 area and what we're looking at is that visual
4 attenuation as well as the sound baffling with
5 immediacy because this is going to be a huge change
6 if it's approved by the Board for these residents.

7 So that's what I'm highlighting if
8 there would be consideration given again to further
9 increasing the berm. There's a discussion about 10
10 foot minimum planting height with regard to evergreen
11 trees?

12 A. Sorry. Your question is would we
13 consider increasing the height of the berm?

14 Q. That's one item, correct.

15 A. So the heights that I testified to
16 tonight I can tell you are based on essentially
17 taking an existing grade that's at the property line
18 based on the survey that was submitted as part of the
19 application. And grading up at it's slope of
20 approximately four to one and providing berm height
21 -- and grading back down to four to one. I would not
22 be comfortable recommending anything more than that.

23 Especially if you want to plant the
24 berm so you would have a nice all-year-round buffer

1 so that's why we settled on the height that I
 2 provided testimony on.
 3 I think that's approximately plus or
 4 minus it's probably about as high as you could go and
 5 still provide a nice year-round screening that's not
 6 gonna just die.
 7 Q. So what you're saying is if the berm is
 8 increased then under two to five feet that whatever's
 9 planted there is automatically gonna die because of
 10 the increased height?
 11 A. I think you have increased risk of
 12 slope stability issues of and, yes, plants surviving.
 13 Anything more than four to one, I would defer.
 14 You're free to ask the opinion of
 15 Mr. Ritter if he would say otherwise I would consider
 16 it but I really don't think going more than four to
 17 one on slope on the berm like this would be
 18 appropriate.
 19 Q. Okay, understand what we're looking at
 20 is what residents are going to be seeing and if
 21 there's a growth rate of one foot a year how long it's
 22 going to take before that growth rate gets to a point
 23 where there's a visual buffer?
 24 A. Right and it's one to two feet a year

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1 some of them are two plus some of the species there
2 just to clarify.

3 Q. Understand. And one other item with
4 regard to replacement, I understand there's a bond
5 that the applicant would put up with regard to
6 maintenance but if there would be consideration
7 because in a number of sites vegetation dies but
8 replacement is not quick in forthcoming. If there
9 would be consideration to the extent that there is
10 landscaping that dies that there would be replacement
11 within the same season, again noting the proximity of
12 the residence, the warehouse use, and that area,
13 which is going to be highly visible to those
14 residents on the second floor?

15 Just another couple quick items.

16 MR. PECK: And I would note that's
17 acceptable to the applicant.

18 MR. SCHOLL: Thank you.

19 BY MR. SCHOLL:

20 Q. With regard to the roof line, and I
21 know you mentioned that the HVAC equipment might be
22 someone else better suited to testify but I wasn't
23 sure if there was a parapet wall or something similar
24 to that that was going to be considered along that

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1 eastern side again just to visually buffer and also

2 for sound attenuation of any of the HVAC equipment

3 that's on the roof?

4 A. Yeah, I would defer to the architect.

5 I don't think that's appropriate for me to comment

6 on.

7 Q. I understand and mentioning Mr. Beck's

8 kind enough to note that that would be also an item

9 for consideration. And then final item with regard

10 to the eastern side -- are there windows proposed?

11 I apologize, I haven't see an

12 architectural rendering or of anything of that nature

13 or is it a solid face for the warehouse?

14 A. That came up previously and

15 Mr. Landsburg provided some testimony on that.

16 Q. If it is a solid face if there would be

17 consideration perhaps the off setting block so that

18 it doesn't have that institutional look for purposes

19 of visual observation from residents.

20 And again, some additional testimony

21 and obviously if there are lights or otherwise there

22 all the discussion with respect to the site lighting

23 is rendered a little bit is diminished if those

24 window lights are there in terms of what residents

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1 can see?

2 And Mr. McKenna, just one moment. I
3 appreciate your time I just want to consult with a
4 couple of folks here.

5 My questions are done. I just wanted
6 to see if anybody else had anything?

7 A. Sure.

8 CHAIRMAN VAN VLIET: Is there any other
9 one else in the audience other than from
10 Overlook that has questions for this person?

11 Yes, sir. State your name and your
12 address please.

13 MR. BRUCE: Robert Bruce (ph), 11
14 Harwich Road, Lopatcong. You testified you're
15 coming here with a reduced building site plan?

16 The building is gonna be smaller based
17 on what you said tonight, right?

18 A. Correct.

19 Q. And you're coming here with a variance
20 request with a buffer of -- I believe on the railroad
21 side to go from 25 feet down to 10 feet?

22 A. That's correct.

23 Q. Did you calculate the size of the
24 building reduction if you don't get that variance?

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1 Do you have that number?

2 A. Offhand I don't have the size but it

3 would essentially --

4 Q. Was it considered?

5 A. -- decrease by 15 feet.

6 Q. Was it considered? And well, I'm

7 talking about square footage. Was it considered?

8 A. Not by me. In our opinion, the result

9 is that the increasing the buffer on the northern and

10 eastern side of the property is one of the resulting

11 points of requesting this variance.

12 MR. BRUCE: Thank you.

13 CHAIRMAN VAN VLIET: Anyone else? If

14 not we're gonna close the public portion on

15 the testimony of this expert witness.

16 MS. SNYDER: Wait, I thought you were

17 asking from overlook. That's why I didn't

18 raise my hand. You said from overlook.

19 CHAIRMAN VAN VLIET: Yes, you're not

20 from overlook?

21 MS. SNYDER: Yeah, no. I'm not from

22 overlook.

23 CHAIRMAN VAN VLIET: Okay, well

24 approach and ask.

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1 MS. SNYDER: Sorry. Donna Snyder, 26
2 Meadowview. Just a couple of questions on the
3 sewer.

4 So Mr. Peck had said that the original
5 sewer plan you specified -- your report said
6 that you did have sewer and then we come to
7 find out you actually didn't have sewer;
8 that's correct right?

9 THE WITNESS: I wouldn't say that's
10 correct. Our initial application advised that
11 since the beginning, we've acknowledged that
12 we're not within the sewer service area
13 however --

14 MS. SNYDER: Right.

15 THE WITNESS: -- we didn't say that we
16 had sewer -- there was a report issued by JMT,
17 which is the town's consultant that said that
18 there was potentially up to I believe it was
19 approximately 20,000 gallons per day available
20 some of which was in dispute. I think that's
21 what Mr. Peck was referring to.

22 MS. SNYDER: Okay. So there's a report
23 on that that you were given from JMT that was
24 given to you guys?

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1 THE WITNESS: It is a public report.

2 Yep April 22nd, 2021 prepared by JMT and it's

3 referenced in our sanitary sewer memorandum,

4 which was again was filled with this

5 application.

6 MS. SNYDER: Okay. So then you went on

7 to the next sewer treatment was going to be

8 force main, right? Going down east Strykers

9 force main -- to force main?

10 THE WITNESS: So both the prior

11 application and the current application would

12 ultimately -- the sewer flow would have been

13 conveyed by force main.

14 MS. SNYDER: Okay.

15 THE WITNESS: The previous application

16 proposed sewer flowing south on Strykers to

17 releasing to construct the warehouse where

18 there's a pump station recently installed. So

19 now the modifications rather than building a

20 gravity sewer line down Strykers to trying to

21 the pump station that's quite a bit a ways

22 from the site. With the inclusion of lot 2 as

23 part of the application, there's an available

24 pump station there that we would prefer to

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1 utilize.

2 MS. SNYDER: If you did not have the
3 pump station and Berry, were you going to --
4 was that going to be your next plan if you
5 didn't have sewer capacity? You were going to
6 go to this plan correct?

7 THE WITNESS: Well, we still need sewer
8 capacity altogether, like Mr. Peck said, we're
9 not here asking for sewer capacity.

10 We're just simply trying to provide
11 justification for why we believe this is
12 technically feasible to make this work out.

13 MS. SNYDER: Okay because on the force
14 main, you know, according to Phillipsburg
15 treatment operator they say force main has an
16 inaccurate meter and much more sewage coming
17 to the plant than permitted.

18 So I don't think that that would have
19 been approved either.

20 THE WITNESS: I'm not really sure what
21 that has to do with what I'm testifying to.

22 MS. SNYDER: I'm just trying to get
23 because the first sewer fell through then this
24 force main was going to fall through and now

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1 you have Berry Plastics that you now acquired

2 and now you're going to try and interconnect

3 with the treatment facility, correct?

4 THE WITNESS: Well, I would wouldn't

5 say anything fell through. What we consider a

6 better option became available.

7 MS. SNYDER: But you didn't have

8 anything stating that that would have been an

9 option for you?

10 THE WITNESS: I would defer to the

11 applicant as far as whether there was an

12 agreement between them and the owner of the

13 other sanitary sewer pump station that was

14 being considered.

15 MS. SNYDER: And for the Berry Plastics

16 one for the interconnect so that treatment

17 facility was designed for NFI -- I'm sorry for

18 Berry, when it was put in, right? It was

19 designed for Berry. So if there's not enough

20 raw sewage the plant will not operate properly

21 so there needs to be flow that will sustain

22 anaerobic bacteria to eat the waste. So is

23 that all going to -- do you have -- are you

24 going to get a report from the DEP? Is that

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1 what you are saying in order to get that?

2 THE WITNESS: Yeah, what we have to do
3 is should the Board grant preliminary approval
4 as part of the file, we would have to provide
5 a more in-depth analysis of that existing pump
6 station. It's not that unusual.

7 I've reviewed the treatment works
8 approval and just based on the fact that that
9 pump was designed to convey 14,000 gallons per
10 day, I believe just based on experience not
11 doing a full-blown investigation that it would
12 be viable to convey 11,000 gallons per day or
13 10,500 gallons per day typically you may need
14 to do some modification to the pump system,
15 the controls, the floats, just to achieve the
16 --

17 MS. SNYDER: So basically it seems that
18 though you would be pretty much debunking the
19 Berry Plastics building because theres no way
20 as what they were saying, it just doesn't seem
21 feasible that you can do both.

22 You can have both because now you're
23 putting Berry Plastics building into a
24 different category and then they're going to

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1 have try and scramble to find something.

2 So, you know, in your opinion you're

3 saying this is going to be feasible?

4 THE WITNESS: Technically I believe it

5 is going to be feasible. As far as market

6 ability I would defer to Mr. Landsburg.

7 I'm sure they know what they're doing

8 in that regard and I think you could -- with

9 that.

10 MS. SNYDER: And I just have, you know,

11 it just seems that all of what you have that

12 you've added acreage, you've added buildings,

13 you're adding a sewer facility, you're adding

14 a round -- what do you call it -- a ring road

15 you're changing the access road everything

16 from the original application seems to be --

17 this doesn't even look like the original

18 application and you're asking all of this to

19 be put on a C variance?

20 THE WITNESS: I don't think I'm the

21 appropriate person to ask that question. I

22 would defer to the applicant.

23 MR. PECK: Yeah, I mean, I'm just

24 saying we're entitled to amend our application

5/17/2022

1 and seek variances so.

2 MS. SNYDER: Okay, thank you.

3 CHAIRMAN VAN VLIET: Okay, sir.

4 MR. PETRISON: John Petrison (ph), 38
5 Jay Lane. Just a couple quick questions. You
6 were talking a lot about lot 6. What is the
7 relationship to the lot 6? It looks like
8 you're taking a piece of the corner of lot 6
9 for the driveway or something?

10 THE WITNESS: Yeah, so just given the
11 unique shape of the property and this has
12 always been going back to the initial
13 application it's always been part of the
14 application.

15 But theres a -- right near the northern
16 corner of lot 6, there's approximately 2,400
17 square feet that would be utilized for truck
18 court and then just so the area beyond the
19 truck court curbing and grass.

20 MR. PETRISON: Did you guys actually
21 have that easement or?

22 THE WITNESS: There was an I believe it
23 was titled an owner consent form essentially
24 that was filed with the application between

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1 the owners of lot 6 and the applicant.

2 MR. PETRISON: Okay, I was going to ask

3 what the -- so you were talking about if we

4 were to move that cooling tower flow then you

5 would have that capacity of I forget how many

6 thousands of gallons.

7 THE WITNESS: Eleven thousand.

8 MR. PETRISON: Eleven thousand gallons.

9 So I guess as part of this, you'll have to

10 re-permit the Berry property. That will be an

11 application to do that? Because right now

12 would be permitted to do so, right?

13 THE WITNESS: In order to -- again the

14 goal of the testimony -- is really just to

15 explain that this is in our opinion

16 technically feasible. We wanted to come up

17 with a plan.

18 We felt that the acquisition of lot 2

19 helped to provide a better solution for a

20 sanitary sewer. If the Board were to approve

21 this application, yes, it would be subject to

22 -- we would have to file a treatment works

23 application to the DEP it would also be

24 subject to the waste water management

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1 amendment, which is for the sewer service area
2 which that application goes through the
3 Highlands and the town and the treatment
4 facility so everyone would have to approve.

5 MR. PETRISON: Okay. How -- you were
6 talking about 8,000 gallons a day for the
7 sewer for the warehouse. How are we going to
8 limit that if we don't know what the usage of
9 that warehouse is going to be and we have this
10 banked parking out there, which if we needed
11 to, if you guys needed to use that banked
12 parking, wouldn't that indicate an increase in
13 the sewage usage?

14 THE WITNESS: Basically the short
15 answer is that the applicant would be limited
16 to a number of employees within the warehouse
17 operating on any given -- that is how the
18 criteria for warehouse is defined.

19 MR. PETRISON: So they would have to be
20 -- if somebody wanted to come in besides NFI
21 they would be limited to the number of
22 employees that would be able to work there.

23 THE WITNESS: That's correct on a
24 per-shift basis over for a 24-hour period.

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1 MR. PETRISON: Okay and we talked a lot

2 about overlook and it is very important. I

3 certainly wouldn't want to live with a

4 warehouse in my backyard but what about the

5 visibility of this warehouse from 57.

6 It is a scenic -- Warren County scenic

7 highway. How visible is this warehouse going

8 to be from 57? Lighting and everything else.

9 THE WITNESS: Honestly, I haven't done

10 detailed cross sections similar to what we've

11 done for overlook. That level of detail was

12 only done because of the concern expressed

13 over the aesthetics from the overlook.

14 I think similar it would be visible but

15 there is some existing screening there

16 depending on where you are on 57. There is

17 some existing commercial uses and there is a

18 railroad and some existing tree line but I

19 would say it could be visible.

20 MR. PETRISON: And I understand you

21 don't want to go above, like, a four to one

22 slope to build a berm and that but you were

23 talking about the headlights wouldn't be

24 visible from these trucks as, you know, it

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1 shouldn't be visible because of the height of
2 the berm but some of these trucks are lit up
3 with these LED marker lights all the way up to
4 the very top of the cabs (ph) that go up and
5 cover the trailer would they be visible from
6 Overlook, the residents Overlook?

7 THE WITNESS: I don't know -- lighting
8 to say is it 100 percent not visible? I
9 don't know that for certain. I think it would
10 be very well screened. I mean most trucks
11 have clearances of 13 and a half feet 10 foot
12 berm, planting on top, and on the other side
13 you're at elevation and at the loading docks
14 are actually down at 361 essentially.

15 So I think it is very unlikely we would
16 be able to see that.

17 MR. PETRISON: Okay, thank you.

18 CHAIRMAN VAN VLIET: Anyone else?
19 Seeing nothing we will close the public
20 portion of the questioning of the expert
21 witness.

22 Mr. Peck, as you well know we have
23 reached the magic hour of 10:00 and this
24 Board's policy is published that we don't want

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1 to extend past 10 o'clock so -- how long.

2 MR. PECK: Just given the special

3 nature of these proceedings, could we at least

4 get Mr. Landsburg on to give some of that

5 cleanup testimony about windows and things

6 that were asked?

7 MR. BRYCE: I'm reticent to suggest

8 that because the testimony could extend.

9 MR. PECK: I'm told two minutes. His

10 testimony will be two minutes. I can't

11 account for Q&A.

12 MR. BRYCE: Exactly. I can assure you

13 it won't be two minutes.

14 MR. PECK: Well we're gonna just leave

15 people hanging with anticipation --

16 CHAIRMAN VAN VLIET: How many more

17 witnesses do you have?

18 MR. PECK: We have, well, Mr. Landsburg

19 and Mr. Wicher and Ms. Eilen.

20 CHAIRMAN VAN VLIET: So you have quite

21 a few. That's a lot of time. Well, the one

22 question is going to lead into another

23 question of you and that can go on for a quite

24 a bit of time.

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1 So we're going to have to adjourn at
2 this point and reconvene.

3 MR. PECK: Understood. So I guess then
4 the big question is when we can reconvene?

5 CHAIRMAN VAN VLIET: Well, our regular
6 meeting is scheduled the 25th next week.

7 MR. PECK: Is there room on the agenda?

8 CHAIRMAN VAN VLIET: Yes the only
9 applicant that I know of coming into -- and
10 documents that were presented today indicate
11 that he has no variances for his property so
12 it should be a very --

13 MR. PECK: So it should be a very
14 smooth and quick hearing.

15 CHAIRMAN VAN VLIET: We also indicate
16 that you will request an extension of this
17 hearing --

18 MR. PECK: Yes, so we will consent to
19 extend the time for the Board to act to the
20 end of the meeting. Thank you very much,
21 Mr. Chairman, and, again, happy birthday.

22 * * * * *

23 (Whereupon the meeting concluded at 10:13 p.m.)

24 * * * * *

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C E R T I F I C A T I O N

1 I hereby certify that the proceedings and
 2 evidence noted are contained fully and accurately in
 3 the stenographic notes taken by me upon the foregoing
 4 matter, and that this is a correct transcript of the
 5 same.

Court Reporter-Notary Public

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