



JERLENE H. WORTHY, CLERK
BOARD OF COUNTY COMMISSIONERS

COUNTY OF MERCER
McDADE ADMINISTRATION BUILDING
640 SOUTH BROAD STREET
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LISA M. VENA
DEPUTY CLERK

MERCER COUNTY BOARD OF COMMISSIONERS

FORMAL MEETING OF JULY 15, 2021

MINUTES

Chair Frisby called the Formal Meeting to order at 6:03 P.M. on July 15, 2021 in Room 211 of the Joyce L. McDade Administration Building, 640 South Broad Street, Trenton, New Jersey.

ROLL CALL

The following members of the Board answered the Roll Call of the Clerk to the Board:

Present – Commissioners Cannon, Koontz, Walter and Frisby
Absent – Commissioner Cimino, Colavita and Melker

The Clerk to the Board read the Invocation.

Chair Frisby led the Pledge of Allegiance and Salute to the Flag.

The Clerk to the Board announced that in accordance with the provisions of the New Jersey Open Public Meetings Law, notice of this Formal Meeting had been mailed to The Trenton Times, The Trentonian and The Princeton Packet newspapers as well as having been posted in both the County Administration Building and Courthouse at least forty-eight (48) hours in advance of the meeting.

MOMENT OF SILENCE

Lillian L. Nazzaro, Esq., County Administrator, asked to have a moment of silence for Gene Pucci, Director of Public Works.

PUBLIC HEARINGS

GREEN ACRES STEWARDSHIP GRANT APPLICATION

At this time, Chair Frisby announced the opening of the Public Hearing for anyone in the public who would like to speak. Hearing no response, Chair Frisby welcomed Leslie Floyd, Planning Director, to discuss the purpose of the Public Hearing.

Ms. Floyd stated that the County was requesting a grant to develop a living shoreline at Roebing Park. She added that the goal of the grant application was to reduce the cost to the County by \$150,000.00 for the project. Jennifer Rogers, Park Commission Representative, gave a brief overview of the project.

The Clerk to the Board called for a motion to close the public hearing.

Commissioner Koontz moved, "To Close the Public Hearing", seconded by Commissioner Walter.

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

APPEAL FROM THE MERCER COUNTY PLANNING BOARD BY OTR/EAST WINDSOR OF CONDITION OF APPROVAL FOR SITE PLAN APPLICATION FOR WINDSOR POINTE DEVELOPMENT (See Schedule A, attached hereto, and made a part hereof)

Chair Frisby announced the opening of the Public Hearing for anyone in the public who would like to speak. There was no response.

The Clerk to the Board called for a motion to close the public hearing.

Commissioner Koontz moved, "To Close the Public Hearing", seconded by Commissioner Cannon.

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

PUBLIC SECTION

At this time, Chair Frisby invited the members of the public to comment on any item listed on the agenda.

There was no comment.

APPROVAL OF MINUTES

On the motion of Commissioner Cannon, seconded by Commissioner Koontz, the Minutes of the following meetings were approved:

Formal Meeting of April 8, 2021

Formal Meeting of April 22, 2021

Special Formal Meeting of April 30, 2021

Formal Meeting of May 13, 2021

Formal Meeting of May 27, 2021

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

COMMUNICATIONS

A communication was received from Isamar Maldonado, Purchasing Agent, dated June 25, 2021. RE: Minutes and Bid/RFP Results for the Week of June 21, 2021.

A communication was received from Suzannah Givone, Clerk Pro Tem, Sussex County Commissioner Board, dated June 24, 2021. RE: Resolution endorsing the "Election Integrity" Bill Package pending in the Legislature in support of free and fair elections untainted by fraud.

A communication was received from Debra L. Lynch, Clerk of the Board, Morris County Board of County Commissioners, dated June 23, 2021. RE: RES-2021-539 and RES-2021-540.

A communication was received from Brian M. Hughes, County Executive, dated June 28, 2021. RE: Appointments Requiring Commissioners Advise and Consent.

A communication was received from Lillian L. Nazzaro, Esq., County Administrator, dated July 13, 2021. RE: Commissioner Questions for July 13, 2021.

A communication was received from Mayor Janice S. Mironov, Township of East Windsor, dated July 13, 2021. RE: Appeal of Mercer County Planning Board Decision, Windsor Pointe, Block 3, Lots 3 & 3.02 Old Trenton Road (CR #535) East Windsor Township, Mercer County File No. #19-806.

A communication was received from Lillian L. Nazzaro, Esq., County Administrator, dated July 15, 2021. RE: Commissioner Questions for July 15, 2021.

Commissioner Walter thanked the Administration for the answers to her questions regarding the Amendment No. 2 to the Professional Services Agreement with Van Cleef Engineering Associates. She commented that she did not believe the County should be paying additional money.

Commissioner Koontz thanked the Administration for their response regarding the heat emergency plan for the Office of Emergency Management. He recommended that they take a closer look at their plan's response to heat emergencies to see if they could augment it based on more recent experiences.

Commissioner Walter announced that there was a presentation from the Census Bureau on emergency planning based on Census information.

Chair Frisby asked if there were any Grants that the County could partner with to assist urban municipalities with issues involving Heating, Ventilation and Air Condition (HVAC).

A communication was received from Mayor Hemant Marathe, West Windsor Township, dated July 15, 2021. RE: Appeal of Mercer County Planning Board Decision, Windsor Pointe, Block 3, Lots 3 & 3.02 Old Trenton Road (CR #535) East Windsor Township, Mercer County File No. #19-806.

RESOLUTIONS

The Clerk to the Board called for a Motion to Vote in Block the following Resolutions listed on the Agenda:

Commissioner Walter moved, seconded by Commissioner Cannon, that:

RESOLUTIONS NO'S 1 THROUGH 30 ON THE AGENDA "BE VOTED ON IN BLOCK"

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

Commissioner Cannon offered the following Resolutions, seconded by Commissioner Walter:

NO. 2021-399 SPECIAL ITEM OF REVENUE – NEW JERSEY TRANSIT PROVIDES FUNDS TO COUNTY OF MERCER FOR TRANSPORTATION SERVICES TO ENHANCE MOBILITY FOR LOCAL PROGRAMS AND MINIBUS SUPPORT SENIOR CITIZEN AND DISABLED RESIDENT TRANSPORTATION ASSISTANCE PROGRAM (SCDR TAP). PERIOD JANUARY 1, 2021 THROUGH DECEMBER 31, 2021. TOTAL AMOUNT \$734,825.00.

NO. 2021-400 SPECIAL ITEM OF REVENUE – NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS AMENDMENT AWARDS THE COUNTY OF MERCER LIHEAP ASSISTANCE GRANT AN INCREASE OF AN ADDITION \$25,000.00 IN NEW FUNDS TO ASSIST THE ELDERLY, HANDICAPPED AND LOW-INCOME PERSONS WITH HEATING COST THROUGHOUT MERCER COUNTY. PERIOD: OCTOBER 1, 2020 THROUGH SEPTEMBER 30, 2021. TOTAL AWARD AMOUNT \$448,695.00 (FEDERAL FUNDS – NO COUNTY FUNDS)

NO. 2021-401 SPECIAL ITEM OF REVENUE - STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AWARDS THE COUNTY OF MERCER FOR THE FISCAL YEAR 2021 COUNTY ENVIRONMENTAL HEALTH ACT (CEHA) PROGRAM. PERIOD: JULY 1, 2020 TO JUNE 30, 2021. AMOUNT: \$348,411.00 (\$188,321.00 [STATE FUNDS]); (\$160,090.00 [45.95% COUNTY MATCH FUNDS])

NO. 2021-402 SPECIAL ITEM OF REVENUE - STATE OF NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, WORKFORCE DEVELOPMENT AND ECONOMIC OPPORTUNITY AWARDS COUNTY OF MERCER, FUNDS FOR FISCAL YEAR 2021 SUMMER YOUTH EMPLOYMENT PROGRAM (SYEP). NOTICE OF AWARD PAYABLE THROUGH THE WORKFORCE INNOVATION AND OPPORTUNITY SET-ASIDE, PROGRAM DURATION MAY 1, 2021 THROUGH OCTOBER 30, 2021 REQUIRING ALL FUNDS TO BE FULLY EXPENDED BY OCTOBER 30, 2021 TOTAL AMOUNT: \$275,000.00

NO. 2021-403 SPECIAL ITEM OF REVENUE – STATE OF NEW JERSEY, OFFICE HUMAN SERVICES, DIVISION OF AGING SERVICES AUTHORIZES THE COUNTY OF MERCER TO AMEND RESOLUTION NO. 2021-370, ADOPTED JUNE 24, 2021 TO EXECUTE AMENDMENT NO. 2 TO THE 2021 INITIAL AREA PLAN CONTRACT GRANT AWARD RESOLUTION TO INCLUDE ADDITIONAL FUNDS IN THE AMOUNT OF \$261,163.00 (\$178,276.00 [CONSOLIDATED APPROPRIATIONS ACT (CAA) TITLE IIC2 FUNDS]; AND \$82,887.00 [CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT (CRRSA) FOR THE ADULT PROTECTIVE SERVICES FUNDS] PERIOD: APRIL 1, 2021 THROUGH SEPTEMBER 30, 2022. THIS PERIOD APPLIES THE CAA AND CRRSA GRANT FUNDING ONLY (NO COUNTY FUNDS)

NO. 2021-404 SPECIAL ITEM OF REVENUE – STATE OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, OFFICE OF THE INSURANCE FRAUD REIMBURSEMENT PROGRAM FOR THE PERIOD JANUARY 1, 2021 THROUGH DECEMBER 31, 2021. AMOUNT: \$250,000.00

- NO. 2021-405** SPECIAL ITEM OF REVENUE – STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, DIVISION OF CRIMINAL JUSTICE AWARDS SUBSEQUENT SUB-GRANT TO THE COUNTY OF MERCER, FOR THE PARTICIPATION IN THE SFY 2020 GOVERNOR PHIL MURPHY BUDGET – OPERATION HELPING HAND GRANT PROGRAM FOR THE PERIOD SEPTEMBER 1, 2020 THROUGH AUGUST 31, 2021 TOTAL AMOUNT: \$47,619.00 (STATE: \$47,619.00; COUNTY MATCH: \$0.00). GRANT SUBAWARD NO. OHH-11-2020
- NO. 2021-406** SPECIAL ITEM OF REVENUE – NEW JERSEY HISTORIC TRUST COMMISSION, FOR THE HOWELL LIVING HISTORY FARM HISTORIC STRUCTURES REPORT GRANT TOTAL GRANT AMOUNT: \$46,937.00
- NO. 2021-407** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXECUTE A CONTRACT BETWEEN TEAMSTERS 469 (PUBLIC SAFETY PROFESSIONAL UNIT) AND THE COUNTY OF MERCER. PERIOD: JANUARY 1, 2020 TO DECEMBER 31, 2022
- NO. 2021-408** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH ADVANCING OPPORTUNITIES, INC., FOR THE PROVISION OF “RESPITE/FAMILY SUPPORT SERVICES PROGRAM FOR MERCER COUNTY RESIDENTS WITH DISABILITIES.” PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$76,491.00 (COUNTY FUNDS)

- NO. 2021-409** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH THE ARC MERCER, INC. FOR THE PROVISION OF "OCCUPATIONAL TRAINING AND VOCATIONAL EDUCATION SERVICES FOR MERCER COUNTY YOUNG ADULTS AND ADULTS WITH DEVELOPMENTAL DISABILITIES." PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$66,659.00 (\$35,000.00 - PEER GROUPING FUNDS; (\$31,659.00 - COUNTY FUNDS)
- NO. 2021-410** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH THE ARC MERCER, INC., FOR THE PROVISION OF "THE INSTITUTE FOR THE ARTS PROGRAM FOR MERCER COUNTY CHILDREN, TEENAGERS, AND YOUNG ADULTS WITH DISABILITIES." PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$28,702.00 (COUNTY FUNDS)
- NO. 2021-411** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH HAMILTON AREA YMCA, FOR THE PROVISION OF "THE DIVERSE ABILITIES SPORTS PROGRAM (FORMERLY S.K.O.R.) FOR RESIDENTS OF MERCER COUNTY WITH DISABILITIES." PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$11,166.00 (COUNTY FUNDS)

NO. 2021-412 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH GOODWILL INDUSTRIES OF SOUTHERN NEW JERSEY AND PHILADELPHIA – GOODWILL HOME MEDICAL FOR THE PROVISION OF “A DURABLE MEDICAL EQUIPMENT RECYCLING AND DISTRIBUTION PROGRAM FOR MERCER COUNTY OLDER ADULTS AND PEOPLE WITH DISABILITIES.” PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$14,033.00 (COUNTY FUNDS)

NO. 2021-413 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH PROJECT FREEDOM INC., FOR THE PROVISION OF “DAY PROGRAM SERVICES FOR MERCER COUNTY ADULTS WITH DISABILITIES.” PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$6,918.00 (COUNTY DIRECT FUNDS)

NO. 2021-414 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A COMPETITIVE CONTRACT WITH PROGRESSIVE CENTER FOR INDEPENDENT LIVING, INC. (PCIL) FOR THE PROVISION OF “RECREATIONAL OPPORTUNITIES AND SUMMER CAMP PROGRAMS FOR MERCER COUNTY RESIDENTS WITH DISABILITIES.” PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$27,691.00 (COUNTY FUNDS)”

NO. 2021-415 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A SHARED SERVICES AGREEMENT WITH MERCER COUNTY SPECIAL SERVICES SCHOOL DISTRICT (MCSSSD) FOR THE PROVISION OF "SPECIAL CHILD HEALTH CASE MANAGEMENT SERVICES FOR MERCER COUNTY CHILDREN WITH DISABILITIES". PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$104,345.00 (COUNTY FUNDS)

NO. 2021-416 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A SHARED SERVICES AGREEMENT WITH MERCER COUNTY SPECIAL SERVICES SCHOOL DISTRICT (MCSSSD) FOR THE PROVISION OF "PROJECT ADULTS TRANSITION SERVICES FOR YOUNG ADULTS WITH DISABILITIES IN MERCER COUNTY". PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$100,000.00 (PEER GROUPING FUNDS)

NO. 2021-417 COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXERCISE THE OPTION TO EXTEND A SHARED SERVICES AGREEMENT WITH MERCER COUNTY SPECIAL SERVICES SCHOOL DISTRICT (MCSSSD) FOR THE PROVISION OF "THE PROJECT CHILD CLINIC PROGRAM FOR NON-CLASSIFIED PRESCHOOL CHILDREN IN MERCER COUNTY". PERIOD: JULY 1, 2021 THROUGH JUNE 30, 2022. AMOUNT: \$19,329.00 (COUNTY FUNDS)

- NO. 2021-418** COUNTY EXECUTIVE AND CLERK TO THE BOARD TO AUTHORIZED TO ACCEPT FUNDING AND EXECUTE SUBSEQUENT SUB-GRANT AWARD DOCUMENTS WITH THE STATE OF NEW JERSEY FOR THE MERCER COUNTY PROSECUTOR'S OFFICE TO PARTICIPATE IN THE COUNTY SEXUAL ASSAULT RESPONSE TEAM/FORENSIC NURSE EXAMINER (SART/FNE) PROGRAM THROUGH THE VICTIMS OF CRIME ACT VICTIM ASSISTANCE GRANT PROGRAM ADMINISTERED BY THE DIVISION OF CRIMINAL JUSTICE, DEPARTMENT OF LAW AND PUBLIC SAFETY. TOTAL GRANT AMOUNT: \$121,407.00 (FEDERAL \$88,920.00; COUNTY MATCH \$32,487.00). PERIOD: OCTOBER 1, 2020 TO SEPTEMBER 30, 2021. GRANT NO: VS-32-19
- NO. 2021-419** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXECUTE AN AGREEMENT (AWARDED THROUGH A NON-FAIR AND OPEN PROCESS) WITH VISUAL SYSTEMS GROUP, INC. FOR THE PURCHASE OF AUDIO VISUAL EQUIPMENT FOR USE BY THE MERCER COUNTY SHERIFF'S OFFICE. TOTAL AMOUNT NOT TO EXCEED: \$33,088.80
- NO. 2021-420** COUNTY EXECUTIVE AUTHORIZED TO SUBMIT A STEWARDSHIP GRANT APPLICATION TO GREEN ACRES, STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, TO DEVELOP A LIVING SHORELINE AT ROEBLING PARK. GRANT AMOUNT: \$150,000.00
- NO. 2021-421** COUNTY EXECUTIVE AND THE MERCER COUNTY BOARD OF COUNTY COMMISSIONERS HEREBY REQUEST THE COUNTY CLERK TO PLACE THE COUNTY OPEN SPACE RECREATION AND FARMLAND AND HISTORIC PRESERVATION TRUST FUND REFERENDUM ON THE NOVEMBER 2, 2021 BALLOT

- NO. 2021-422** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT (AWARDED THROUGH A NON-FAIR AND OPEN PROCESS) WITH MARTIN APPRAISAL ASSOCIATES, INC., TO PROVIDE RESTRICTED USE APPRAISAL SERVICES FOR THE COUNTY ROUTE 571 ROAD WIDENING PROJECT, WEST WINDSOR TOWNSHIP, COUNTY OF MERCER. TERM: UNTIL COMPLETION OF SERVICES AMOUNT NOT TO EXCEED \$36,600.00
- NO. 2021-423** AMEND RESOLUTION NO. 2017-586, ADOPTED DECEMBER 7, 2017 AND AUTHORIZE COUNTY EXECUTIVE AND CLERK TO THE BOARD TO EXECUTE AN AMENDMENT (AMENDMENT NO. 2) TO THE PROFESSIONAL SERVICES AGREEMENT WITH VAN CLEEF ENGINEERING ASSOCIATES TO PROVIDE ENGINEERING SERVICES RELATED TO THE CONCEPTUAL DESIGN, CONSTRUCTION ADMINISTRATION, CONSTRUCTION OBSERVATION, AND INSPECTION OF A REMOTE PARKING LOT AT THE TRENTON-MERCER AIRPORT. "AMEND RESOLUTION TO INCREASE CONTRACT AMOUNT BY AN ADDITIONAL \$57,133.00" (19.0%). REVISED TOTAL CONTRACT AMOUNT NOT TO EXCEED: \$357,833.00
- NO. 2021-424** COUNTY EXECUTIVE AND CLERK TO THE BOARD AUTHORIZED TO "EXERCISE AN OPTION TO EXTEND" THE AWARD OF BID CONTRACT WITH CORRECTIONAL DENTAL ASSOCIATES FOR ON-SITE DENTAL SERVICES FOR THE MERCER COUNTY CORRECTION CENTER. PERIOD: AUGUST 17, 2021 TO AUGUST 17, 2022. TOTAL AMOUNT: \$101,275.20 (AB2019-29)

NO. 2021-425 AWARD OF BID RECEIVED ON MAY 20, 2021 TO ACCESS COMPUTER FLOORS, LLC FOR THE PURCHASE AND INSTALLATION OF ACCESS FLOORING AT THE DEMPSTER FIRE TRAINING CENTER. TOTAL AMOUNT NOT TO EXCEED: \$72,625.00. PERIOD: 180 CALENDAR DAYS FROM NOTICE TO PROCEED **(AB2021-22)**

NO. 2021-426 AWARD OF BID RECEIVED JUNE 10, 2021 TO MULTIPLE VENDORS FOR TEMPORARY NURSING SERVICES AT THE MERCER COUNTY CORRECTION CENTER. PERIOD: JULY 24, 2021 THROUGH JULY 23, 2023. AMOUNT NOT TO EXCEED: \$1,890,000.00 (\$945,000.00 YEAR ONE AND \$945,000.00 YEAR TWO) **(AB2021-24)**

NO. 2021-427 REAPPOINTMENT OF JACQUES LEBEL TO SERVE AS A MEMBER OF THE MERCER COUNTY COUNCIL ON AGING

NO. 2021-428 COUNTY EXECUTIVE AND BOARD OF COMMISSIONERS RECOGNIZES JUNE 8, 2022 AS ATHING MU DAY IN MERCER COUNTY

ADOPTED:

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

ORDINANCE – INTRODUCTION AND FIRST READINGS

Commissioner Koontz offered the following Ordinance Introduction, seconded by Commissioner Cannon:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MERCER, NEW JERSEY, AUTHORIZING THE GUARANTY BY THE COUNTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE MERCER COUNTY IMPROVEMENT AUTHORITY'S COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE REFUNDING BONDS, SERIES 2021A (FEDERALLY TAXABLE) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,500,000 FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY FOR THE PAYMENT OF SAID BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A COUNTY GUARANTY AGREEMENT; AND DETERMINING CERTAIN MATTERS IN CONNECTION THEREWITH

VOTE ON ORDINANCE

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

ORDINANCE – SECOND READING AND ADOPTION

AN ORDINANCE ESTABLISHING THE 2020 AND 2021 SALARY FOR THE COUNTY EXECUTIVE, COUNTY ADMINISTRATOR, DEPUTY COUNTY ADMINISTRATOR, WARDEN, HUMAN SERVICES DIRECTOR, PLANNING DIRECTOR, PERSONNEL DIRECTOR, ECONOMIC DEVELOPMENT AND SUSTAINABILITY DIRECTOR, MERCER COUNTY CLERK, MERCER COUNTY SURROGATE, MERCER COUNTY SHERIFF, MERCER COUNTY COMMISSIONER CHAIR, AND MERCER COUNTY BOARD OF COMMISSIONERS

The Clerk to the Board acknowledged receipt of a memorandum from County Executive Brian M. Hughes, dated July 14, 2021, whereby he indicated that he had reviewed the above named Ordinance and found no negative overriding implications, and therefore, he recommended adoption of the Ordinance.

The Clerk to the Board announced that said Ordinance had been properly advertised in accordance with the State Statute, and all requirements had been complied with.

Chair Frisby announced the opening of the Public Hearing on said Ordinance.

Hearing no comments or questions, he called for a motion to close the public hearing.

Commissioner Cannon moved, **“To Close The Public Hearing”**, seconded by Commissioner Koontz.

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

Commissioner Cannon moved the following Ordinance, seconded by Commissioner Koontz:

ORDINANCE NO. 2021-2

AN ORDINANCE ESTABLISHING THE 2020 AND 2021 SALARY FOR THE COUNTY EXECUTIVE, COUNTY ADMINISTRATOR, DEPUTY COUNTY ADMINISTRATOR, WARDEN, HUMAN SERVICES DIRECTOR, PLANNING DIRECTOR, PERSONNEL DIRECTOR, ECONOMIC DEVELOPMENT AND SUSTAINABILITY DIRECTOR, MERCER COUNTY CLERK, MERCER COUNTY SURROGATE, MERCER COUNTY SHERIFF, MERCER COUNTY COMMISSIONER CHAIR, AND MERCER COUNTY BOARD OF COMMISSIONERS

VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

NEW BUSINESS

Commissioner Cannon announced that the Mercer County Community College graduation would occur in early August 2021.

PUBLIC SECTION

At this time, Chair Frisby invited the members of the public to comment on any item listed on and off the agenda.

There was no comment.

ADJOURNMENT

A motion to adjourn the Formal Meeting was offered by Commissioner Koontz and seconded by Commissioner Cannon, which was adopted by the unanimous vote of the members of the Mercer County Board of Commissioners.

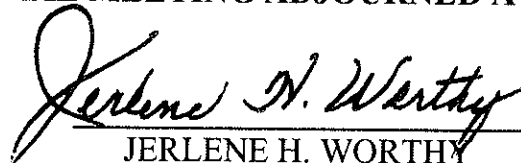
VOTE ON MOTION

Ayes - 4. Nays - 0. Abstain - 0. Absent - 3.

Ayes – Commissioners Cannon, Koontz, Walter and Frisby

Absent – Commissioners Cimino, Colavita and Melker

FORMAL MEETING ADJOURNED AT 8:24 PM



**JERLENE H. WORTHY
CLERK TO THE BOARD**



JERLENE H. WORTHY, CLERK
BOARD OF COUNTY COMMISSIONERS

COUNTY OF MERCER
McDADE ADMINISTRATION BUILDING
640 SOUTH BROAD STREET
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LISA M. VENA
DEPUTY CLERK

MERCER COUNTY BOARD OF COMMISSIONERS

INFORMAL MEETING OF JULY 13, 2021

MINUTES

Chair Frisby called the Agenda Meeting to order at 6:03 P.M. on July 13, 2021 in Room 211 of the Joyce L. McDade Administration Building, 640 South Broad Street, Trenton, New Jersey.

ROLL CALL

The following members of the Board answered the Roll Call of the Clerk to the Board:

Present – Commissioners Cannon, Cimino, Koontz, Walter and Frisby
Absent – Commissioners Colavita and Melker

Chair Frisby led the Pledge of Allegiance and Salute to the Flag.

SUNSHINE LAW

The Clerk to the Board announced that in accordance with the provisions of the New Jersey Open Public Meetings Law, notice of this Informal Meeting had been mailed to The Trenton Times, The Trentonian and The Princeton Packet newspapers as well as having been posted in both the County Administration Building and Courthouse at least forty-eight (48) hours in advance of the meeting.

MOMENT OF SILENCE

Lillian L. Nazzaro, Esq., County Administrator, asked to have a moment of silence for Gene Pucci, Director of Public Works.

MINUTES

1. Formal Meeting of April 8, 2021
 2. Formal Meeting of April 22, 2021
 3. Special Formal Meeting of April 30, 2021
 4. Formal Meeting of May 13, 2021
 5. Formal Meeting of May 27, 2021
-

COMMUNICATIONS

Six (6) communications were discussed and approved for placement on the Agenda for the Formal Meeting of July 15, 2021.

Commissioner Walter made reference to the Communication regarding the Appointments requiring Commissioners Advise and Consent. She asked if it were possible to recognize Mercer County Board Members that served for a long period of time.

Commissioner Walter inquired about the Mercer County Special Services School District (MCSSSD) minutes from the previous four months. Jerlene H. Worthy, Clerk to the Board, stated that the minutes for the MCSSSD were available online.

Commissioner Cimino made reference to the Communication regarding Resolutions 2021-539 and 2021-540 from Morris County Board of County Commissioners. He suggested the Board should consider drafting a similar Resolution.

RESOLUTIONS

Thirty (30) proposed Resolutions were discussed and approved for placement on the agenda for the Formal Meeting of July 15, 2021.

Commissioner Walter made reference to the proposed Resolution requesting the County Clerk to place the County Open Space Recreation and Farmland and Historic Preservation Trust Fund Referendum on the November 2, 2021 Ballot. She inquired about the modified language in the Interpretive Statement of the aforementioned Resolution.

Commissioner Walter made reference to the proposed Resolution authorizing to execute an Amendment No. 2 to the Professional Services Agreement with Van Cleef Engineering Associates to provide engineering services related to the conceptual design, construction administration, construction observation, and inspection of a remote parking lot at the Trenton-Mercer Airport. She expressed her concerns regarding the increased contract amount and the project delays. She concluded that it seemed that the project was not properly planned out. Ms. Nazzaro mentioned that she would get additional information on the matter.

Chair Frisby asked who decided to make changes to the parking lot that caused the delay. Ms. Nazzaro stated that the Airport Manager and County Engineer requested the change. He asked if the modification of the parking lot was in the original bid specifications. Ms. Nazzaro explained that the modification was after it was bid and awarded.

Chair Frisby mentioned that he asked Robert Davis, Director of Research & Special Projects, to draft a Resolution in recognition of Athing Mu Day for Thursday's Commissioner Meeting. He explained that Athing Mu was from the City of Trenton. He highlighted that she qualified 1st place for the U.S. Olympic Team and ran the third fastest time in the World for the 800m. He added that she was favored to win the 800m in the Olympics.

Commissioner Walter commented that Mercer County regularly produces nationally recognized runners therefore it needed an indoor track. Commissioner Cimino mentioned that in addition to the indoor track, the County should look into a multipurpose indoor athletic facility.

ORDINANCE INTRODUCTION

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MERCER, NEW JERSEY, AUTHORIZING THE GUARANTY BY THE COUNTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE MERCER COUNTY IMPROVEMENT AUTHORITY'S COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE REFUNDING BONDS, SERIES 2021A (FEDERALLY TAXABLE) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,500,000 FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY FOR THE PAYMENT OF SAID BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A COUNTY GUARANTY AGREEMENT; AND DETERMINING CERTAIN MATTERS IN CONNECTION THEREWITH

ORDINANCE ADOPTION

AN ORDINANCE ESTABLISHING THE 2020 AND 2021 SALARY FOR THE COUNTY EXECUTIVE, COUNTY ADMINISTRATOR, DEPUTY COUNTY ADMINISTRATOR, WARDEN, HUMAN SERVICES DIRECTOR, PLANNING DIRECTOR, PERSONNEL DIRECTOR, ECONOMIC DEVELOPMENT AND SUSTAINABILITY DIRECTOR, MERCER COUNTY CLERK, MERCER COUNTY SURROGATE, MERCER COUNTY SHERIFF, MERCER COUNTY COMMISSIONER CHAIR, AND MERCER COUNTY BOARD OF COMMISSIONERS

OLD BUSINESS

Commissioner Koontz questioned if the Mercer County Emergency Management Office had any plans in place for extreme heat emergencies such as the ones taken place in the Pacific Northwest.

ON-GOING BUSINESS


Ms. Nazzaro acknowledged that she spoke with Ankit Gandhi, Chief of Information Technology, about the potentially having hybrid meetings. The Commissioner Board discussed the benefits and concerns of conducting hybrid meetings.

PUBLIC SECTION

At this time, Chair Frisby invited the members of the public to comment on any item listed on and off the agenda.

There were no comments.

AGENDA MEETING ADJOURNED AT 7:22 PM


JERLENE H. WORTHY
CLERK TO THE BOARD

"Schedule A"

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MERCER COUNTY BOARD OF COMMISSIONERS
FORMAL MEETING OF JULY 15, 2021
APPEAL FROM THE MERCER COUNTY
PLANNING BOARD BY OTR/EAST WINDSOR

HELD AT: JOYCE L. MCDADE ADMINISTRATION BUILDING
640 South Broad Street, Room 211
Trenton, New Jersey
Date: Thursday, July 15, 2021
Commencing at 6:00 P.M.

TRANSCRIBED BY: DONNA BRUNCK, CCR

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1 B E F O R E:

2 COMMISSIONER SAMUEL T. FRISBY, SR., Chair

3 COMMISSIONER LUCYLLE R.S. WALTER

4 COMMISSIONER ANN M. CANNON

5 COMMISSIONER ANDREW KOONTZ

6 MICHAEL W. HERBERT, Board counsel

7 JERLENE H. WORTHY, County clerk

8

9

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

11 HILL WALLACK LLP

12 BY: THOMAS F. CARROLL, III, ESQ.

13 21 Roszel Road

14 Princeton, New Jersey 08543

15 Tel: (609) 743-6378

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17 Attorneys for OTR/East Windsor

18

19 LENOX LAW FIRM

20 BY: ROBERT F. CASEY, ESQ.

21 136 Franklin Corner Road, Unit B2

22 Lawrenceville, New Jersey 08648

23 Tel: (609) 896-2000

24 E-mail: rfcasey@Lenoxlaw.com

25 Attorneys for Planning Board

1 COMMISSIONER FRISBY: Yes. Now we
2 want to open the public hearing for the appeal from
3 the Mercer County Planning Board by OTR/East Windsor
4 of condition of approval for site plan application
5 for Windsor Pointe Development.

6 MR. HERBERT: Before we begin, I
7 wanted to lay down some groundwork here and just set
8 forth the rules of this appeal. This is a first for
9 the Mercer County Commissioners and previously the
10 Mercer County Freeholders. We are hearing the
11 appeal of a matter that was in front of the Mercer
12 County Planning Board, and pursuant to N.J.S.A.
13 40:27-69, an appeal can be taken from the planning
14 board and the proper place for the appeal to go is
15 the county commissioners. Normally it's 45 days
16 after that decision is made.

17 So just going back, the -- on
18 December 18, 2019, the Mercer County Land
19 Development Committee granted approval with the
20 conditions that are being decided here tonight.
21 December 27, 2019, an appeal was filed with Mercer
22 County Planning Board, and on June 10, 2020 the
23 Mercer County Planning Board denied the appeal filed
24 by the applicant so that appeal is now before us.

25 The reason for the delay was the

1 applicant asked for more time. They wanted to then
2 proceed in front of the township, and it was the
3 applicant's choice to proceed in front of the County
4 Planning Board first, which is the applicant's
5 right. And then to proceed in front of the East
6 Windsor Township Planning Board, and that planning
7 board hearing occurred, approval was given, but that
8 is separate and apart from what we are hearing
9 tonight. The only thing we are focused on tonight
10 is the record that is before us.

11 Now just a couple housekeeping
12 issues. The board should find jurisdiction here,
13 because proper notice was granted, was given
14 actually for our previous December hearing and now
15 for this hearing. Mr. Carroll represents the
16 applicant, did a good job of putting together the
17 notice and notice has been properly laid.

18 There are -- the record below, I'm
19 going to just read it in, and if Mr. Carroll or Mr.
20 Casey, who represents the planning board, has
21 anything further that he wants to add to the record,
22 I'll ask them to just put that on the record when
23 they appear, but my understanding of the record is
24 this: We have 12 documents. We have the December
25 27, 2019 appeal letter from Hill Wallack to the

1 Mercer County Planning Board and the Board of Chosen
2 Commissioners. We have the May 13, 2020 public
3 hearing transcript from the planning board hearing.
4 We have the Mercer County land development standards
5 appeal procedure excerpt. We have the OTR/East
6 Windsor superior court complaint. We have the
7 Windsor Pointe site plan. We have the OTR aerial
8 exhibit which has the site plan overlay and we have
9 it up on the TV for everyone to see. It's a little
10 tough to see, but it's the yellow line overlay that
11 you will be looking at, and just for everyone's
12 reference, that is Old Trenton Road that bisects the
13 exhibit on towards the bottom of it. The
14 intersection at question is the -- is sort of a
15 little left of center area. If you could just point
16 to where the intersection would be, Rob, it would be
17 Old Trenton Road and Windsor Center Drive, if you
18 can see that on there, Rob. Right, yeah, right on
19 in, that's better. Go to your right.

20 That is the intersection in question,
21 and the question that will be heard tonight, amongst
22 other things, is whether or not an access easement
23 can be given to the development on the left to be
24 able to use the development on the right to be able
25 to use that intersection which will be a lighted

1 intersection as part of these developments, and both
2 developments are contributing to, contributing
3 monetarily to the construction of that lighted
4 intersection.

5 The development to the left also has
6 an intersection. You'll see the green arrows which
7 show a right turn only as far as leaving the site
8 and a right and left turn in as far as accessing
9 that site, and so that will be one of the main
10 questions tonight, and again the attorneys can
11 elaborate further, but I'm just trying to lay the
12 groundwork for it. So we have that document.

13 No. 7 we have the county master plan
14 mobility element excerpt, and that's the excerpt
15 that is cited in the record below as to county
16 planning board's ability to require these types of
17 access easements, and that's part of their argument.
18 We have the New Jersey County Planning Act excerpt
19 from 40:27-6.2 and 6.6. We have the May 19, 2020
20 county comments on Heritage at West Windsor. We
21 have the West Windsor OTR aerial. It's a separate
22 aerial that can be shown later if we need to. The
23 December 2016 East Windsor Mount Laurel court
24 document showing the status of their Mount Laurel
25 housing litigation, and the January 23, 2020 minutes

1 of the meeting between the county and OTR/East
2 Windsor.

3 So that's the record I have it as I
4 understand it. It is this wonderful stack of
5 documents right here if anyone needs to look at
6 them. They are all right there. They are -- also
7 electronically all county commissioners have been
8 given these documents. They were given them back in
9 January of this year, and it was submitted to them
10 three separate times after that, because we had
11 start and stop on these hearings, so everyone has
12 reviewed these documents, and just for the record,
13 we have four county commissioners here hearing this
14 appeal. The other three commissioners either have
15 conflicts or are out for health reasons.

16 Now, we were down to three
17 commissioners because one commissioner was the
18 commissioner who sat on the Mercer County Planning
19 Board, and under the law of necessity, and I'm
20 citing the Guntner and the Allen cases, we are
21 allowed to bring back commissioners who do have
22 conflicts, as long as those commissioners can state
23 for the record that they can be unbiased in their
24 hearing of this appeal tonight.

25 So I'm going to ask each commissioner

1 to just state for the record that they can be
2 unbiased tonight starting with Commissioner Chair
3 Frisby.

4 COMMISSIONER FRISBY: No question
5 about it, I can be totally unbiased in this
6 situation.

7 MR. HERBERT: Commissioner Walter?

8 COMMISSIONER WALTER: Commissioner
9 Lucille Walter, no bias.

10 MR. HERBERT: Commissioner Cannon?

11 COMMISSIONER CANNON: Commissioner
12 Cannon, no bias.

13 MR. HERBERT: Commissioner Koontz?

14 COMMISSIONER KOONTZ: Commissioner
15 Koontz, no bias.

16 MR. HERBERT: So that is -- those are
17 the documents that are part of the record tonight.
18 Now, the challenge conditions are three, and those
19 conditions are known as conditions two through four.
20 The conditions are No. 2, to create and show on the
21 plan a cross access and maintenance easement between
22 project site Block 3, Lot 3 and Lot 3.02 in East
23 Windsor Township, and adjacent property on Block 28,
24 Lot 15 in West Windsor Township.

25 The third condition, No. 2 here, but

1 the third condition is to provide an additional 28
2 feet from center of line right-of-way along Old
3 Trenton Road. That's the county road, Old Trenton
4 Road. That's why we have jurisdiction here. Rob,
5 if you can put that back up.

6 No. 4, and it's No. 3 here, is to
7 provide and show on the plan a curb and sidewalk
8 along the entire frontage of Old Trenton Road.
9 Those are the three conditions of approval that are
10 on appeal here tonight.

11 Both developments in question here
12 are inclusionary developments, meaning that the
13 towns have settled with fair share housing and other
14 developers in court to provide affordable housing as
15 part of their township overall land use plan, and
16 these projects are part of those plans and have been
17 approved by the court, so the OTR plans in front of
18 you was approved by Judge Jacobson as part of the in
19 re East Windsor litigation that is part of your
20 packet tonight.

21 Affordable housing projects do have
22 certain requirements, and you'll hear argument
23 tonight about not causing undue expense and also
24 requiring that there be adequate access for people
25 for those types of projects to make sure that, you

1 know, affordable housing projects aren't placed in a
2 part of the township which has very limited access.
3 You know, you've seen problems in the past where
4 some townships will go ahead and do like a flag lot
5 and they have to run it through a long driveway or
6 something like that. There's requirements by the
7 court that you have full and complete access.

8 Again, this matter was originally
9 scheduled back in September of 2020, and it's now
10 before us now. You are going to hear argument on
11 both sides. Tonight we have on behalf of the
12 applicant OTR Thomas Carroll. He is from the law
13 firm of Hill Wallack. Mr. Carroll, as you can see,
14 has presented a lot of documents to you along with
15 his brief of argument.

16 Mr. Carroll will be making two
17 arguments. Number one, that the county does not
18 have jurisdiction, and he can correct me on all
19 this, but the county did not have jurisdiction to
20 require this easement because it was not on a county
21 road, and he'll elaborate on that. And No. 2, that
22 the access easement would cause his client's site to
23 be unsafe and also have, he'd have issues marketing
24 it. Again, I'm sure he's got some other arguments
25 he has to make as well. I wanted to lay that out

1 for you.

2 The county position is that the
3 county does have jurisdiction in this matter
4 pursuant to the mobility plan that's part of the
5 master plan, and, you know, the right to affect
6 projects that are affected by county roads, and that
7 the county has a right to dictate those conditions
8 that are directly tied to those roads, and the
9 county will argue and you'll hear from Mr. Casey
10 tonight.

11 Again, Mr. Casey will be making
12 further arguments than I am, and he'll argue that
13 look, we are going to be building a lighted
14 intersection at the Windsor Center Drive current
15 intersection, and that lighted intersection is
16 completely accessible by the OTR development but not
17 accessible, directly accessible by the West Windsor
18 Heritage development, so in order to grant the West
19 Windsor development access for left turns going
20 north, they need to have the cross access easement
21 so cars can then access the lighted intersection
22 instead of going out onto Old Trenton Road and
23 making what would be an illegal left turn as
24 currently approved for the West Windsor Heritage
25 development.

1 So those are the arguments. That
2 argument is going to be from the county. You'll
3 hear back and forth. Now, we are not having any
4 witnesses testify or members of the public, and the
5 reason being is that, again, this is on the record
6 below. We have two very accomplished attorneys here
7 tonight. Mr. Carroll and I, I think, have been
8 doing land use for at least 30 years. He's been
9 doing it a little longer. We are similar age, but
10 he's been doing it a little longer and Mr. Casey is
11 an accomplished litigator and has represented many
12 public bodies in the past and is, again, an
13 accomplished attorney.

14 They are going to be presenting to
15 you the arguments from both sides. They have
16 consulted with their clients. Some of their clients
17 are here tonight, so if they need to make further
18 consultation, they can ask their clients off the
19 record questions and then communicate that on the
20 record, but, again, we are not having any witness
21 testimony and we are not trying to expand the record
22 in any way. We are looking at what the record was
23 before the county planning board below. Nothing
24 further. Yes?

25 COMMISSIONER WALTER: Really two

1 questions. One, when you say we are not looking to
2 expand the record, we are legally not allowed to
3 expand the record?

4 MR. HERBERT: Correct.

5 COMMISSIONER WALTER: Okay.

6 MR. HERBERT: We are not legally
7 allowed. I appreciate that question and that
8 clarifies the record.

9 COMMISSIONER WALTER: Secondly, we do
10 have letters that were sent to the commissioner
11 board from both mayors.

12 MR. HERBERT: Correct.

13 COMMISSIONER WALTER: It is your
14 opinion and I will ask the attorneys that those
15 letters should not be part of this record.

16 MR. HERBERT: It is my opinion they
17 should not be part of this record, because I believe
18 from my standpoint in doing this kind of thing for a
19 long time that they would expand the record. The
20 argument, they are saying well, it's just argument,
21 but that argument is with regard to the township's
22 positions with regard to this matter, and when this
23 record was below before the county planning board,
24 the townships, while the townships were mentioned by
25 the applicant, the townships were not involved.

1 They are not parties to this matter, so that is
2 something, now, that is something really for another
3 day. They are welcome, if this matter is -- if
4 there's a decision to affirm this record, this
5 decision and this matter goes before the superior
6 court, and right now it is before the superior
7 court, but they don't have jurisdiction. We do, but
8 as soon as we take action here, jurisdiction then
9 moves to the court. They are welcome to try to
10 petition the court to join in whatever action it is
11 that is pending before the court. We don't have
12 that ability to join them at this point. I don't
13 know that the court does or does not, but that's a
14 decision that's up to the court and they're welcome
15 to petition the court to let them know, the court
16 know, what their arguments are with regard to this
17 application.

18 COMMISSIONER WALTER: I would just
19 ask if both attorneys could give us that opinion for
20 the record, you know, whether they feel those should
21 be included or not.

22 MR. HERBERT: Sure.

23 COMMISSIONER WALTER: Just so we have
24 it as part of our record.

25 MR. HERBERT: When the one letter

1 came in, I did put it before both attorneys. They
2 gave arguments. The attorney for the applicant
3 thought -- had no problem with letting it into the
4 record. The attorney for the county planning board
5 objected to it, because he felt it expanded the
6 record, so after consultation with you all, it was
7 decided that these letters would be placed as
8 communications before the normal county commissioner
9 meeting but not be part of this record.

10 COMMISSIONER FRISBY: Just for
11 clarity, our decision here today is about whether or
12 not our planning board, Mercer County Planning
13 Board, had legal right and jurisdiction to add the
14 conditions that they added.

15 MR. HERBERT: Correct, based upon
16 your review not of -- you are not judging their
17 opinion.

18 COMMISSIONER FRISBY: Correct.

19 MR. HERBERT: You're making your
20 decision based upon the record below.

21 COMMISSIONER FRISBY: That's correct.
22 I just wanted to be clear about that.

23 MR. HERBERT: That is it, yep. Any
24 other questions before we continue?

25 COMMISSIONER FRISBY: Commissioner

1 Cannon?

2 COMMISSIONER CANNON: Today on the
3 table here we have from the two mayors apparently we
4 got --

5 MR. HERBERT: Those are not part of
6 the record.

7 COMMISSIONER CANNON: I didn't read
8 them, so they're not -- but they are part of our
9 regular meeting?

10 MR. HERBERT: Yes, you can read them
11 as a communication, but you can't consider them as
12 part of your decision.

13 COMMISSIONER CANNON: Okay, I
14 understand. Thank you.

15 MR. HERBERT: Any other questions? I
16 believe I have placed everything on the record as
17 far as introduction goes. The attorneys can correct
18 me as we all do to each other.

19 So I would first ask that if Mr.
20 Carroll could approach the podium and make his
21 arguments and I believe Mr. Carroll is comfortable
22 with that, the commissioners can ask questions as he
23 makes his presentation.

24 Mr. Carroll, good evening.

25 MR. CARROLL: Good evening,

1 Mr. Herbert. Thomas Carroll of the law firm of Hill
2 Wallack on behalf of the applicant appellant
3 OTR/East Windsor Investors, LLC, which I will simply
4 refer to as OTR if you don't mind. It's a lot
5 shorter.

6 MR. HERBERT: Works for all of us.

7 MR. CARROLL: I do have the original
8 of the affidavit of proof of service that was
9 previously emailed to you. So if you don't mind,
10 I'd like to add that in and that could be made part
11 of the record.

12 Just a couple of comments before I
13 forget on things Mr. Herbert said, so I don't -- I
14 may otherwise forget. One thing he said was that, I
15 think he said that we applied, OTR applied, to this
16 board before applying to the township. That's not
17 really accurate. If you look at page 49 of the
18 transcript of the county planning board proceedings,
19 the applications were filed simultaneously. I'm not
20 sure it matters --

21 MR. HERBERT: That's correct. Mr.
22 Carroll's correction is correct. I guess what I
23 meant to -- or I should have said was that the
24 matter was presented to the county planning board
25 prior to being presented to the township.

1 MR. CARROLL: Of course we don't
2 control dockets or boards. We appear when directed
3 to. In any event, the second thing he said I'd like
4 to comment on. I'm not sure I heard him correctly,
5 but I think he said that both OTR and the
6 neighboring developer in West Windsor, let's call it
7 Heritage, were both contributing to the cost of the
8 traffic signal, and it's not my understanding, but I
9 can't say I know one way or the other. I know
10 there's nothing in the record on that. So I don't
11 think it's typically legally relevant.

12 MR. HERBERT: That is correct. It's
13 not part of the record, but I believe that there
14 have been subsequent matters before the county
15 planning board. My understanding from the county
16 planning board is that was part of their subsequent
17 meetings. It's really part of the Heritage
18 application and not the OTR application.

19 COMMISSIONER FRISBY: We shouldn't be
20 considering it.

21 MR. CARROLL: I don't know that
22 that's of true legal relevance tonight.

23 MR. HERBERT: It is not.

24 MR. CARROLL: As Mr. Herbert said,
25 I'm going to provide some background. The property

1 or the OTR property is Block 3, Lots 3 and 3.02 in
2 East Windsor located, of course, on Old Trenton
3 Road, which is a county road. It is an inclusionary
4 development. It would provide 38 affordable units
5 toward East Windsor's fair share plan. That fair
6 share plan resulted from court orders that are part
7 of the record, I think exhibits A and B, if I
8 remember. Might have been one and two.

9 MR. HERBERT: One and two.

10 MR. CARROLL: That were filed with
11 the county planning board. Those orders providing
12 that the site is part of the town's court approved
13 fair share plan. So this afternoon --

14 MR. HERBERT: Just for the record,
15 the order extending temporary immunity is A-1 and
16 that's December 22, 2016, and January 30th is the
17 other document, A-1.

18 MR. CARROLL: Okay. May I proceed?

19 MR. HERBERT: Sure, I apologize.

20 MR. CARROLL: So this application was
21 filed with the county planning board November 18,
22 2019, seems so long ago, but it was an application
23 for site plan approval, county site plan approval.

24 As Mr. Herbert mentioned, on December
25 18, 2019, your land development committee issued its

1 decision that provided for conditions, three of
2 which were challenged by us on an appeal. Our
3 appeal was filed pursuant to our December 27, 2019
4 letter. That appeal was actually to the county
5 planning board and the freeholders because there's a
6 little bit of fuzziness in the law as to who you
7 should appeal a land development decision to, so
8 being a cautious attorney, I appealed to both, and,
9 of course, we appeared before the county planning
10 board first and here we are on an appeal to your
11 board tonight.

12 So there were four conditions of
13 approval in the county, in the land development
14 committee's December 18, 2019 letter, first one of
15 which we had no problem with. That was a condition
16 requiring the traffic light on Old Trenton Road and
17 we agreed. We are fine with that and did not appeal
18 it.

19 Conditions two, three and four are
20 the conditions under appeal. The most significant
21 of which condition No. 2, is the condition requiring
22 that OTR grant this cross access easement to the
23 developer of the Heritage property next door in West
24 Windsor as a condition of Mercer County Planning
25 Board approval. And for all the reasons we've set

1 forth before the county planning board within our
2 various letters, it's our position that the county
3 planning board simply had no jurisdiction to require
4 an interior easement from a property owner, number
5 one, but even if they did, to require such an
6 easement under these facts would be unconstitutional
7 under both state and federal cases, all of which
8 have been outlined in our paperwork, and I'll come
9 back to them shortly.

10 But anyway, as a result of this
11 required cut through, if you will, the traffic from
12 the Heritage development would be funneled through
13 the property of OTR, and as we testified before the
14 county planning board, that raises a whole array of
15 safety issues, practical issues and legal issues, as
16 I said, so the bottom line of our position is and
17 was that it's a very poor idea to require all this
18 traffic from a 250-unit development get funneled
19 through the OTR property, but even if somebody
20 thought --

21 MR. HERBERT: Mr. Carroll, I don't
22 think all the traffic. The traffic that will be
23 going north on Old Trenton Road; is that correct?

24 MR. CARROLL: Can you take notes and
25 correct me if you think I'm wrong?

1 MR. HERBERT: Sure, but you are not
2 saying all the traffic is going to go through all
3 your property; is that correct?

4 MR. CARROLL: It's a 250-unit
5 development next door. If you are asking me for the
6 number of cars --

7 MR. HERBERT: I'm not asking you for
8 the number. I'm just saying, not all the traffic is
9 going to go through the OTR -- OTR's property; is
10 that correct?

11 MR. CARROLL: Traffic turning left on
12 Old Trenton Road?

13 MR. HERBERT: That's what I'm asking.

14 MR. CARROLL: Sure, which is an awful
15 lot of cars. I don't want to quibble about how
16 many.

17 MR. HERBERT: I'm not trying to
18 quibble. You just said all traffic. I was trying
19 to find out.

20 MR. CARROLL: No, I said the 250-unit
21 development and all traffic from that development.
22 Anyway, where was I?

23 So we provided testimony at some
24 considerable length at the county planning board
25 hearing of March 11, 2020 that resulted in the

1 county planning board decision Mr. Herbert told you
2 about earlier, which affirmed the decision of the
3 county land development committee. Upon which,
4 after the county planning board rejected our appeal,
5 we filed a court case Mr. Herbert referenced
6 earlier, which has basically been on hold all this
7 time because of the -- this appeal that we filed,
8 and hopefully upon this appeal, this Board of
9 Commissioners will vote to reverse the county
10 planning board decision. If not, the matter's going
11 to have to go back to court, and the court is going
12 to have to make the call as to whether or not the
13 county has jurisdiction to impose this interior
14 easement requirement, and if so, whether it's
15 constitutional.

16 So just a couple other things. In an
17 April 28, 2020 letter I sent to the county planning
18 board and its attorney, I set out all the law
19 governing this issue. I'm not going to bore you
20 chapter and verse with that law. I'm going to touch
21 upon it a bit, but if I can come back to the March
22 11, 2020 county planning board hearing, at that time
23 we put on the testimony of two engineers, a traffic
24 engineer and a civil engineer for the project, and
25 also Jeff Garfinkel, who is with Sterling

1 Properties. As I said, the two orders were marked
2 as Exhibits A-1 and A-2. The aerial exhibit was
3 marked as Exhibit A-3. That may be helpful to look
4 at if it's available. I don't know if that could be
5 put on the screen. I don't know that it's
6 necessary, but it could be helpful.

7 So anyway, the testimony, if I could
8 just summarize it, because it's a long transcript,
9 it's 72 pages. It's in color. Is that A-3?

10 MR. HERBERT: Which document are we
11 talking about?

12 MR. CARROLL: Exhibit A-3, the aerial
13 exhibit.

14 MR. HERBERT: From OTR?

15 MR. CARROLL: It's colored, I know
16 that much.

17 MR. HERBERT: The OTR survey.

18 COMMISSIONER WALTER: OTR aerial
19 exhibit.

20 COMMISSIONER KOONTZ: It has a red
21 border.

22 COMMISSIONER WALTER: Yes.

23 MR. CARROLL: Is it possible to put
24 that one up?

25 MR. HERBERT: He's working on it.

1 COMMISSIONER WALTER: We all have it
2 up, if that helps you, Mr. Carroll. The
3 commissioners all can see it.

4 COMMISSIONER KOONTZ: We have it
5 right here.

6 MR. CARROLL: I'm sure you are
7 familiar with the area in any event. So let me just
8 briefly summarize some of the key testimony points
9 when we were before the county planning board. One,
10 it was made clear to the county planning board that
11 the Township of East Windsor did not want to see
12 this pass through. That's at page 12 and 51 of the
13 transcript, and the mayor's letter recently, you
14 know, certainly makes that clear, and I'll come back
15 to that letter.

16 MR. HERBERT: Again --

17 MR. CASEY: I object. I don't know
18 if I can object. But --

19 MR. HERBERT: That is not part of the
20 record.

21 MR. CARROLL: I'm going to come back
22 to that letter and we can have the objections then.
23 Anyway, that was one area of testimony we provided
24 testimony on. We certainly agreed and this is
25 before the county planning board, this is in the

1 transcript.

2 MR. HERBERT: That's fine. We just
3 can't put in the mayor's letter, that's all.

4 MR. CARROLL: Okay. I'll get back to
5 that. We certainly agreed that the cross
6 connection, this internal cut through, if you will,
7 was a very poor idea. We laid out all the reasons
8 for that, all the safety reasons. This would be a
9 cut through that would be in front of the clubhouse
10 of the development, with kids coming and going and
11 other pedestrians, and all this is in the record.
12 This is at pages 12, 18, 21, 26 to 27 and 32 of the
13 transcript. There was testimony at great length
14 about the safety issues that this created for the
15 OTR development if this cut through were to be
16 required.

17 Also a traffic engineer, Michelle
18 Brieheoff, this is at page 23 of the transcript, she
19 noted that she had analyzed the impact of the light
20 and how adjacent properties would be served and how
21 safety would be preserved without a cut through, and
22 she had submitted a traffic report in that regard to
23 this board.

24 At great length our engineers put on
25 testimony advising the county planning board that

1 the Heritage property next door in West Windsor has
2 access to two different county roads, not one, but
3 two, Old Trenton Road and Princeton Hightstown Road,
4 and that's at pages 29, 32 to 34, 35 and 62 of the
5 transcript. And within those same pages and both of
6 our engineers testified that this internal cut
7 through easement, if you will, provided no benefit
8 to OTR at all in any way, and, in fact, provided
9 considerable detriments, so that evidence was put
10 in. I think it's unquestioned, and it's relevant to
11 the constitutional issues that are going to return
12 to -- that I'm going to return to in a moment.

13 There was considerable testimony
14 about how ordinance and marketing issues prevented
15 us from just redoing the whole site plan in
16 accordance with the wishes of some. This is at
17 pages 39, 41 to 44 of the transcript. The ordinance
18 issues and the question were outlined at pages 45 to
19 47 of the transcript. There were all these reasons
20 that we provided to the county planning board,
21 again, uncontroverted as to why everything couldn't
22 just be shifted around to make some happy that this
23 pass through was put in internal to my client's
24 property. And where it was proposed was certainly
25 very hazardous, so all that evidence was provided

1 and, again, it was uncontroverted.

2 Just a few comments about the legal
3 standards governing the review of this matter. As I
4 said, the county planning board, I'm sure you know
5 this, the County Planning Act provides county
6 planning boards with very limited jurisdiction, and
7 it's spelled out in the statutory provisions. You
8 can't -- county planning boards can't just do what
9 they want. They can't just do things because they
10 think it's a good idea. We think this is a terrible
11 idea. But even if it was a good idea, the County
12 Planning Act statutory provisions don't give the
13 county planning board the right to demand this
14 internal access easement from my client. If you
15 read the County Planning Act, in particular N.J.S.A.
16 40:27-6.6C, it specifically talks about county
17 planning board jurisdiction to regulate land that is
18 on county roads, on county roads, and that's all
19 we've ever seen, and that's probably all you've ever
20 seen in all the years you've been doing this and all
21 the years your county planning board has been
22 dealing with things.

23 The county planning boards deal with
24 issues on county roads. Maybe the county road has
25 to be widened. Maybe there's a sidewalk. Those are

1 other issues with this application, and I certainly
2 don't say the county planning board had no
3 jurisdiction to deal with those issues, because
4 there is county planning board jurisdiction over
5 things that are on county roads.

6 This easement that was demanded to
7 provide for this cut through is well interior to the
8 OTR site. It's not along a county road. It's not
9 on a county road. The county planning board simply
10 had no jurisdiction under the County Planning Act to
11 require it.

12 I would like to make a few comments
13 about the constitutional restrictions, again, if you
14 assumed for the sake of argument that the county
15 planning board can require a property owner to grant
16 it easement interior to its property, assume that
17 for the sake of argument, there are still
18 constitutional prohibitions to the county planning
19 board doing what it did in this case, and we'll get
20 to the standards in a moment, but in essence, and
21 the courts have, you know, refined the standards
22 over the decades, it's a matter of fairness.

23 This is a developer. Sometimes I
24 think there's a temptation to think that because
25 it's a developer, they're going to make money

1 hopefully, do what you like to them, but I would
2 like you to think about it in a slightly different
3 way for a moment. I would like you to imagine that
4 you had to go to a municipality to get a permit for
5 a driveway for your house and the municipality said
6 sure. You can have that driveway. You can have
7 that curb cut. However, at the end of your
8 driveway, you have to provide for a cut through to
9 your neighbor's property. I think you'd be
10 outraged. I think we all would, and that's what we
11 have here. That's what we have here. That's the
12 analogy. You know, so I ask you to think of it in
13 those terms, because none of us would think that was
14 a legitimate exercise of government. You had
15 nothing to do with your neighbor needing a driveway.
16 And that certainly doesn't help you. It hurts you.
17 You have all that traffic from the neighbor's house
18 going in and out. You don't want it, and under this
19 hypothetical scenario, the town says to you well,
20 that's just too bad. You have to have that. If you
21 want that driveway curb cut, you have to do that. I
22 ask you to think about that. Okay?

23 And that's really what we have when
24 we look at the standards governing the state cases
25 and statutes, governing exactions, and the federal

1 United States Supreme Court cases governing
2 exactions, they are similar, so I'm going to speak
3 to them together, and basically those standards and
4 the New Jersey cases, and I cite these all in my
5 letters that are submitted to the county planning
6 board and this board, Bataglia, the 181 Incorporated
7 decision, the Van Builders, state court cases or
8 Legion, I cite them all or at least a lot of them,
9 in the legal memo I submitted.

10 The U.S. Supreme Court cases, they
11 are famous. It's a trilogy. It's Nolan, Dolan and
12 Koontz, and they all basically say the same thing.
13 Government can only impose an exaction on a private
14 property owner if that private property owner
15 creates a need through their application that can be
16 addressed through the exaction, and even in that
17 case, there has to be a benefit to the property
18 owner against whom the exaction is proposed, right?
19 That's basically the legal framework. It's a matter
20 of fairness.

21 As I said before, our testimony from
22 our engineers before the county planning board was
23 clear. It was comprehensive. It was
24 uncontroverted. This interior cut through that the
25 county planning board wants to impose on OTR's

1 property would do nothing for OTR. It would help
2 OTR not in the slightest. To the contrary. It
3 would hurt OTR with respect to the safety issues and
4 the other things I talked about earlier. So there's
5 no benefit and preliminarily, the OTR application
6 does not create the need for that access easement.
7 That access easement, that cut through, is to
8 benefit the property next door, not OTR. OTR
9 doesn't want it, and OTR's development doesn't
10 create the need for it. Those are the legal
11 standards. So even if you assumed county
12 jurisdiction and there is none, those are the legal
13 standards that govern this exaction, and when you
14 apply those standards in any fair way, I submit to
15 you, you have to conclude that this exaction for
16 this interior access easement is illegal, it's
17 unconstitutional, just as it would be if a town said
18 to you, you want a driveway? You want a curb cut?
19 Fine. Provide access to your neighbor's property.
20 You say I don't want to do that. They say that's
21 just too bad. You have to do it. Doesn't help you.
22 You didn't create the need for it.

23 It would be illegal if a town did
24 that with a driveway for your house, and this is
25 just, this is no less illegal. It's obviously

1 different. It's completely analogous, so I ask you
2 to consider all those things.

3 One other thing I'd like to note
4 that's in the record, this is at page 56 of the
5 transcript, Mr. Fallat --

6 MR. HERBERT: Fallat.

7 MR. CARROLL: -- testified that
8 Heritage had been to the county planning board and
9 was told that there would be no lefts out of their
10 property. This is what the record is. Now, I
11 submitted the letters that demonstrate that that's
12 just not true. County planning board granted
13 Heritage complete access left, right, every which
14 way, both on Old Trenton Road and Princeton
15 Hightstown Road, so this goes to the issue, one
16 issue is there even a need for this access easement
17 through OTR's property? Obviously not. If OTR
18 never came along, Heritage would have access to not
19 one but two county roads. There was certainly no
20 need to impose this on OTR.

21 I know some people think it's a good
22 idea. They do. Some people think that's a good
23 idea. And maybe they thought it was a good idea
24 even more before Heritage was granted the access it
25 was granted. Maybe there was an assumption that

1 Heritage would not have such access to make lefts,
2 for example. It was said on the record with
3 Mr. Fallat. Well it turned out through a chain of
4 circumstances that's not true. We know that. We
5 know the county planning board provided Heritage in
6 and out left and right on two different county
7 roads, so certainly there's no need for this
8 imposition on OTR.

9 Just a couple other comments. I
10 promise to wrap it up. I filed two different
11 submissions with your board January 14 of this year,
12 July 1 of this year, both of which, of course, were
13 done well after the hearing closed before the county
14 planning board in this matter. I think it was May
15 2020 or was it March? March. The evidentiary
16 hearing closed with respect to testimony on the OTR
17 hearing. So I advised this board through those
18 letters of things that have happened since the OTR
19 application was heard, including the county planning
20 board approvals issued to Heritage that I just
21 alluded to. I don't know if there's a dispute as to
22 whether or not those are properly in the record?
23 You know, certainly things issued long after our
24 hearing closed could not have been submitted when
25 our hearing was ongoing, and they're not testimonial

1 in any event. They are decisions made by your
2 county planning board, just as decisions of a court
3 would, can always be considered by a court, I would
4 submit to you that those decisions by your county
5 planning board can always be considered by you, you
6 know, especially when it turns out that they correct
7 a misimpression that existed during the hearing on
8 the OTR application, which I alluded to a moment
9 ago. It was thought that Heritage would not be able
10 to do lefts. Well Heritage can do lefts on two
11 different county roads. Your county planning board
12 said so. Certainly I think those are things this
13 board should consider.

14 I guess the last thing I'll address
15 is the letters submitted by Mayor Mironov. I know
16 there's an objection to that, and I don't know why.
17 We had to provide notice to various municipalities,
18 including East Windsor Township, of course, because
19 the property's in their town, and also West Windsor
20 and a number of other governmental entities. Your
21 appeal procedures through your county code requires
22 that. We did that. That's what the affidavit was
23 about I submitted earlier. One of those notices
24 went to East Windsor Township.

25 Now why would you have provisions

1 requiring notice to different towns? I submit to
2 you it's because you want to hear their comments if
3 they have any, right? Why else would one do it? So
4 I did it. I sent out that notice to East Windsor
5 Township and others, and Mayor Mironov commented in
6 response to that notice, and now you're saying
7 that's not part of the record, in air quotes? Can't
8 be considered? I ask you to consider whether that
9 makes sense, you know.

10 The proposition was made earlier that
11 you cannot consider that. It's outside the record.
12 Well, I submit to you the opposite is true. You
13 must consider it. It's comments of the affected
14 municipality, and they've been provided to you
15 pursuant to your provisions requiring notice. Why
16 would you not consider them? Think about that. I
17 would submit to you it just doesn't make any sense.

18 In any event, I appreciate all your
19 time. I've taken a good chunk of it tonight. This
20 is an important application, not just for this
21 property, not just for this town, not just for this
22 county. Overall, it's an important application.
23 This issue, this demand for an interior cut through
24 easement, is big. It's big, not only in this
25 matter, could be big elsewhere, you know, and you

1 have to draw a line. I'm asking you to draw the
2 line. The line is that government can't do
3 something like that just like government couldn't
4 demand you to give access to your neighbors if you
5 applied for a driveway, right? We know they
6 couldn't do that. You know that would be grossly
7 unfair. You would draw that line. This line should
8 also be drawn. You know, I know you're not in a
9 business of reversing your county planning board.
10 You know, you like to defer to them. You like to
11 defer to their people. I understand that. But this
12 is different. This appeal is different. It raises
13 issues the likes of which you've probably never seen
14 before, but are important issues and they go
15 directly to the heart of property rights, so for all
16 those reasons, I ask that you reverse the county
17 planning board condition requiring this cut through
18 easement on the OTR property that would serve the
19 Heritage site. Thank you.

20 COMMISSIONER FRISBY: There's time
21 for questions? Ms. Walter.

22 COMMISSIONER WALTER: Mr. Carroll,
23 are you going to address the center line
24 right-of-way and the curb and sidewalk?

25 MR. CARROLL: I'm sorry?

1 COMMISSIONER WALTER: The center line
2 right-of-way and the curb and sidewalk, are you
3 going to address those?

4 MR. CARROLL: Am I going to address
5 those?

6 MR. HERBERT: They were the other two
7 conditions.

8 MR. CARROLL: I understand, I
9 understand. They are obviously far less significant
10 to us than the cut through issue, but, as I said, I
11 think the county planning board has jurisdiction to
12 deal with things like right of ways along a county
13 road and sidewalks along a county road. I have
14 proposed in the past and propose now that if you
15 want a right-of-way that wide to keep us from having
16 ordinance issues, that part of it be an easement or
17 else it shrinks our tract below the minimum tract
18 size. It causes us an ordinance issue with East
19 Windsor Township. The width of the right-of-way
20 that the land development committee requested there
21 is not an issue, the form of it is, and I think if I
22 recall what would work is roughly half right-of-way
23 and half easement, you know, so I don't think that's
24 a problem. The sidewalk is clearly not a problem.
25 I know there's that deli on Old Trenton Road, I

1 don't know if you're familiar with it. It's very
2 close.

3 MR. HERBERT: East Windsor Deli.

4 MR. CARROLL: Right. I know all the
5 kids at West Windsor Plainsboro High School are
6 familiar with it, they've been going there for many
7 years and a great deli it is. In any event, that
8 building is very close to Old Trenton Road, so I
9 guess the answer is, if a sidewalk could fit there,
10 you know, we can do it. I'm not sure that it can.
11 I would say to you the following: If we can get
12 over this hump of this interior easement, those
13 other two conditions are certainly soluble along the
14 lines I've outlined. I can't withdraw our appeal as
15 to them, because we still have the major issue with
16 the interior cut through easement, but hopefully
17 I've answered your question. I know I've answered
18 it as best I can.

19 COMMISSIONER FRISBY: Commissioner
20 Koontz?

21 COMMISSIONER KOONTZ: I had a similar
22 question as to that conditions three and four were
23 contested, but there was no supporting information
24 in the testimony. I think your response there has
25 satisfied me to the reason why there's not much

1 supporting information in the testimony that we are
2 actually looking at as to those two conditions
3 contests.

4 It also appears from the testimony
5 that you're not challenging that access roads of the
6 type contemplated here are specifically addressed by
7 your master plan language.

8 MR. CARROLL: I'm sorry?

9 COMMISSIONER KOONTZ: There was no
10 information within the testimony where you contested
11 or the appellant contested that the interpretation
12 of our master plan language does contemplate access
13 roads of this type; is that accurate?

14 MR. CARROLL: I thought my
15 recollection is I did disagree with that during the
16 hearing, but I would say this preliminarily. With
17 all due respect, it's completely irrelevant to the
18 County Planning Act and constitutional issues,
19 regardless of what it says. You know, a master plan
20 can't trump the County Planning Act or the cases of
21 state and federal cases, so I'm not sure what
22 language you are referring to.

23 MR. HERBERT: I believe he's
24 referring to the mobility plan.

25 COMMISSIONER KOONTZ: The mobility

1 plan within the master plan.

2 MR. CARROLL: My recollection was
3 that dealt with applications that were before you
4 municipalities that were unitary and would require
5 things like shared parking and ways to go back and
6 forth within a site utilizing shared parking
7 principles as opposed to two different applications
8 from two different towns brought to your county
9 planning board.

10 COMMISSIONER WALTER: Actually --

11 COMMISSIONER KOONTZ: I have a
12 follow-up question.

13 COMMISSIONER WALTER: It specifically
14 does mention, where size or configures a site or
15 subdivision under review precludes compliance with
16 driveway spacing standards as a developer may be
17 required to install access and site circulation that
18 anticipate shared or cross access by neighboring
19 properties when they develop.

20 MR. HERBERT: I believe in the
21 testimony by Mr. Fallat below in the record below it
22 says that, reciting that, it says any developer may
23 be required to install access and site circulation
24 facilities that anticipate shared or cross access by
25 neighboring properties when they are developed.

1 That was his testimony.

2 COMMISSIONER KOONTZ: I wasn't -- I
3 was just asking whether the appellant had addressed
4 it in his testimony. There wasn't much there. I
5 think that the answer by Mr. Carroll I think
6 satisfies my question.

7 MR. CARROLL: My recollection it's
8 along the lines I outlined, but I think most
9 importantly, it's just not legally relevant. You
10 can't expand jurisdiction under the County Planning
11 Act which says you have to have -- you can only
12 regulate on county roads with master plan language
13 like that and you can't evade the constitutional
14 limitations in the state and federal cases with
15 master plan language.

16 COMMISSIONER KOONTZ: But assuring --
17 I had a question though. Also I don't believe that
18 you're disputing that the county planning board does
19 have the responsibility as making travel on county
20 roads as safe as possible?

21 MR. CARROLL: Within the limitations
22 of the County Planning Act and the cases? I suppose
23 the answer is yes. Does that mean --

24 COMMISSIONER KOONTZ: You are
25 disputing that? You are saying that it's not within

1 their jurisdiction to maintain safety on a county
2 road?

3 MR. CARROLL: I'm saying two
4 different things that have to be said together.
5 County planning boards are limited in what they can
6 do by the County Planning Act and the case standards
7 governing its actions state and federal. Those are
8 limits without exception. Now, should county
9 planning boards try to achieve safe conditions? Of
10 course. But both those things can coexist
11 side-by-side, especially in this case, where, again,
12 there's just no need whatsoever for this cut through
13 easement through OTR, because the neighboring
14 property has full access to two different county
15 roads.

16 COMMISSIONER KOONTZ: I know that
17 your testimony in the record below you do state very
18 thoroughly that you believe that the access road
19 through the OTR property will create an unsafe
20 condition. But I don't believe I read anywhere
21 where you offered any testimony about whether or not
22 having -- I'm trying to state this as specifically
23 as possible, that the solution that the county
24 planning board is suggesting here is that residents
25 from the West Windsor property seeking to make a

1 left turn, right, seeking to make a left turn onto
2 Old Trenton Road, you're not disputing that it's a
3 safer condition for them to make the left turn from
4 a lighted intersection from the East Windsor
5 property. You're saying that there's an unsafe
6 condition created within your East Windsor property,
7 but it's not an unsafe condition at that light? I
8 didn't read any testimony saying that you were
9 saying that it's less safe at the light to have the
10 left turners.

11 MR. CARROLL: Well, I'm not quite
12 sure what your question is, and I'm not a traffic
13 engineer. I will say this: You can't evade the
14 County Planning Act and the case standards by saying
15 what you want is slightly more safe than what the
16 law allows, you know? It's just not -- that's
17 just -- it collides with itself.

18 COMMISSIONER FRISBY: On one
19 particular point, so you're saying that when you
20 said all, that would mean 250 cars coming through
21 OTR's property. If it was to be that case, would it
22 be safer for 250 cars to try and get out of an
23 unlighted access area to make a left turn as opposed
24 to doing it from a lighted, you know, a traffic
25 lighted turn? I think that's part and parcel to the

1 argument here.

2 MR. CARROLL: I don't think you can
3 make absolute statements like that, especially, I'm
4 not a traffic engineer, sir, I don't know if you
5 are, however --

6 COMMISSIONER FRISBY: I'm not.

7 MR. CARROLL: -- lights get
8 overloaded, you know? They create their own
9 hazards, and I suppose one could do some traffic
10 engineering analysis examining the two scenarios you
11 laid out and come to some conclusion, but what I'm
12 saying is, that's not the legal question, right?
13 You can't expand the jurisdiction of the County
14 Planning Act or evade the standards applicable under
15 the exactions law by saying things like that.

16 COMMISSIONER FRISBY: Can I get your
17 thought on this, because New Jersey statute
18 40:27-6.2 it does talk about in your review and
19 approval of all subdivisions of land procedures,
20 engineering and planning standards, Section C
21 whereas a proposed subdivision abuts a county road
22 or where additional rights-of-way and physical
23 improvements are required by the county planning
24 board, such improvements shall be subject to
25 recommendations of the county engineer relating to

1 safety and convenience of the traveling public and
2 may include additional paved width margin all of
3 those things.

4 Doesn't that statute basically say
5 that the planning board does have that jurisdiction?

6 MR. CARROLL: Excuse me, you're
7 talking about 6.6C?

8 MR. HERBERT: 40:27-6.2C.

9 MR. CARROLL: 6.2C, okay.

10 MR. HERBERT: I can read it again if
11 you'd like.

12 MR. CARROLL: Is that what you were
13 just referring to, Chairman?

14 COMMISSIONER FRISBY: That is
15 correct. Then you can also look at 40:27-6.6C as
16 well, which also supports the argument that the
17 planning board does have that jurisdiction in order
18 to create safe passageways on county roads in any
19 subdivisions that abut a county road.

20 MR. CARROLL: Yeah, I mean, you are
21 referring to general language in the statute
22 covering general things. The provision governing
23 roads, county roads is 6.6, right? And 6.6C, right?
24 So there's no mistake says --

25 MR. HERBERT: I think they want you

1 to address 6.2C first if you could.

2 MR. CARROLL: I think I'd rather
3 address the statute that applies.

4 MR. HERBERT: They are asking you to
5 address 6.2C if you could, please.

6 MR. CARROLL: As I just said, 6.2C
7 and the other provisions of the County Planning Act
8 that are general in nature are trumped, if you will,
9 by the provision that governs county roads
10 specifically, which is 6.6. You can't disregard
11 that by referring to provisions that govern other
12 things, right? 6.6C specifically talks about county
13 jurisdiction for improvements on county roads.

14 MR. HERBERT: So under 6.6, you're
15 saying that the county commissioner should disregard
16 6.2.

17 MR. CARROLL: No, I think you should
18 follow 6.6C studiously.

19 MR. HERBERT: 6.6C requires you to
20 disregard if it's a county road, disregard 6.2C. Is
21 that what you are saying.

22 MR. CARROLL: Doesn't require to
23 disregard it.

24 MR. HERBERT: I think that's what you
25 said.

1 MR. CARROLL: If I can answer your
2 question. You should let me answer.

3 MR. HERBERT: That's the question
4 pending.

5 MR. CARROLL: I'm trying to answer
6 it.

7 COMMISSIONER KOONTZ: I think we are
8 ready to move on. Thank you. I just wanted to
9 point out that from my perspective as a
10 commissioner, we -- you did have a lot of testimony
11 in terms of how the access road within your property
12 would be very hazardous, but what is not supplied in
13 the record below is any preliminary or any idea of
14 what the design or where that access road would go,
15 making it difficult for me to evaluate the potential
16 hazards claims that you're making in your testimony.

17 MR. CARROLL: There was considerable
18 testimony on that.

19 COMMISSIONER KOONTZ: I know there
20 was testimony on it, but there's no actual design to
21 look at.

22 MR. CARROLL: That wasn't part of our
23 application.

24 COMMISSIONER KOONTZ: I understand.

25 MR. CARROLL: We are not proposing

1 it. Why would we show it in a design, you know?

2 COMMISSIONER KOONTZ: Okay.

3 MR. CARROLL: It's a desire of others
4 to have that access road come in in front of our
5 clubhouse building there, as the testimony
6 elucidated.

7 COMMISSIONER KOONTZ: Now the
8 testimony also seems to suggest that you're
9 suggesting that traffic counts and other data
10 supplied by -- to the folks who had testified
11 suggest that the access road isn't necessary, but at
12 no point did those experts testify that the
13 actual -- the access road at Old Trenton Road would
14 create an unsafe condition at Old Trenton Road.

15 MR. CARROLL: Sorry, on which
16 property are you talking about?

17 COMMISSIONER KOONTZ: I'm talking
18 about the traffic light at Old Trenton Road.

19 MR. CARROLL: The question is about
20 that traffic light.

21 COMMISSIONER KOONTZ: I'm saying
22 there is no testimony in the record below reflecting
23 that from any of your experts that, you know, you're
24 basically saying that the access road isn't
25 necessary, not that it creates an unsafe condition

1 at Old Trenton Road.

2 MR. CARROLL: Well, it was
3 considerable testimony and a traffic report as to
4 how that light would operate, given the project we
5 put before your board, right? So that's the
6 testimony and the traffic report analysis we had.

7 COMMISSIONER KOONTZ: Okay. Thank
8 you very much. Just one final point, if I may. We
9 were discussing the, I guess, the alarming idea that
10 one would be required to provide a driveway for
11 one's neighbor. As I live in a neighborhood in
12 Princeton where there are a lot of what we refer to
13 as flag lots, where you are required to allow your
14 back neighbor access to their property by
15 maintaining the driveway through to their property,
16 so it's not something that's -- it may be unusual
17 for much of the country, but for my particular
18 neighborhood, it's a very common condition.

19 MR. CARROLL: That's something
20 governed by recorded documents typically, right, a
21 shared driveway on a flag?

22 COMMISSIONER KOONTZ: It is
23 interesting that current zoning law in Princeton
24 does not allow for flag lots, but the old flag lots
25 are grandfathered in, so you must maintain the

1 driveway so that you can allow your neighbor to get
2 through.

3 MR. CARROLL: If they are recorded
4 instruments and ordinances, grandfathered ordinance
5 requires that, you know what you're getting into
6 when you buy the property. That was not my
7 scenario. My scenario was you have a house, you
8 want a driveway, you could have the driveway. You
9 also have to provide access to your neighbor's
10 property, which is offensive, I think.

11 COMMISSIONER FRISBY: Commissioner
12 Walter?

13 COMMISSIONER WALTER: Yes. You said
14 there is no drawing showing where this access road
15 would be, because it wasn't your plan; am I correct?

16 MR. CARROLL: Not from us I don't
17 think. Elaina, is that true?

18 ELAINA: Not as far as obligation.

19 COMMISSIONER WALTER: So if there is
20 no plan showing where the road would be, how do we
21 know that it would create a dangerous situation for
22 your clubhouse?

23 MR. CARROLL: We only know where it
24 was proposed by others. We didn't propose it. We
25 didn't draw it. We didn't show it.

1 COMMISSIONER WALTER: Others have
2 proposed where they would want it?

3 MR. CARROLL: Yes.

4 COMMISSIONER WALTER: Have we seen
5 that?

6 COMMISSIONER KOONTZ: I don't think
7 it's there.

8 COMMISSIONER WALTER: I don't believe
9 we've seen it.

10 MR. CARROLL: We didn't draw it, so I
11 don't know that there's a drawing to be seen. We
12 had a lot of testimony of where it was proposed,
13 which was shooting across right in front of our
14 clubhouse.

15 COMMISSIONER WALTER: Thank you.

16 MR. CARROLL: That's all we knew.

17 COMMISSIONER CANNON: I have a
18 question. On your diagram, not the recent one that
19 I just saw, there was a pool on your property. Is
20 there a pool or no pool?

21 MR. CARROLL: There's a proposed pool
22 at the clubhouse.

23 COMMISSIONER CANNON: By the
24 clubhouse, yes, so there is.

25 MR. CARROLL: Yes.

1 COMMISSIONER CANNON: Where on that
2 property was that? I saw a diagram today that
3 showed the easement, but it would have been right
4 through where you would have put a pool. I don't
5 know.

6 MR. HERBERT: No, I think it's below
7 that. If you look at --

8 COMMISSIONER CANNON: Below that?
9 It's hard to see.

10 MR. HERBERT: It is.

11 COMMISSIONER FRISBY: I think it's in
12 front of the clubhouse.

13 COMMISSIONER CANNON: I have a
14 question about the property. I live in East
15 Windsor. I go by -- today I've been by the
16 property, that road twice actually. And I'm trying
17 to be very -- there's a farmhouse. Is that on your
18 property or is that Heritage? Where is that old
19 farmhouse? They knocked the house down. There's a
20 barn, a very old barn. It's still standing, and I'm
21 wondering if -- it looks like it's going to fall
22 down, but they knocked the farmhouse down that's
23 next to it, the property. What's the future, are
24 you going to knock -- is that historical in any kind
25 of way? I mean, I haven't seen any -- I know this

1 isn't even the issue tonight, but because you're
2 standing here --

3 MR. HERBERT: We have to stay with
4 the record that's before us, so we are going a
5 little far afield.

6 COMMISSIONER CANNON: You know how to
7 find me. I just want to know what's going to
8 happen.

9 MR. HERBERT: I will find out for you
10 and get back to you.

11 COMMISSIONER CANNON: Okay. It's a
12 very interesting old farmhouse barn, and it's just
13 sitting there amid a field, so...

14 MR. CARROLL: If I could go back to
15 your question and the point you made about the
16 clubhouse and the pool and all that stuff. Bear in
17 mind, if you affirm the county planning board
18 condition for this cut through, that basically
19 torpedos the site plan approval we got from the East
20 Windsor Township Planning Board, which doesn't have
21 any such cut through and it's bitterly opposed by
22 East Windsor Township and us, so that's what would
23 be created here. I ask you to ask yourself for
24 what? For what? Do all that damage so that the
25 property next door, Heritage, can cut through our

1 property when it currently has full access to two
2 different county roads? It's just not equitable in
3 addition to being beyond the county's jurisdiction.
4 So any other questions?

5 COMMISSIONER FRISBY: Any other
6 questions, commissioners? Thank you, Mr. Carroll.

7 MR. HERBERT: Thank you, Mr. Carroll.

8 COMMISSIONER KOONTZ: Thank you.

9 MR. HERBERT: Okay, next we have
10 Robert Casey, Jr. from Lenox, Socey on behalf of the
11 Mercer County Planning Board.

12 MR. CASEY: Good evening. My name is
13 Bob Casey. I'm here on behalf of the Mercer County
14 Planning Board. Commissioner, thank you for your
15 time this evening. I'll try to keep it nice and
16 quick.

17 I wanted to clean up a couple items
18 raised by Mr. Herbert or by Mr. Carroll. And by
19 you, Commissioner Walter, about the de novo review
20 and the importance of that, right? So we play by
21 rules in the court of law, right? And they are very
22 important, right, because especially with de novo
23 review, because Mr. Carroll doesn't have the benefit
24 of cross-examining that evidence. I don't have the
25 benefit of cross-examining that evidence. I don't

1 know the context of that evidence, why they came to
2 that decision, what, you know, what the context was.
3 It really makes it very difficult, so we've all
4 agreed, right, Tom and I and Mr. Herbert and the law
5 in the State of New Jersey when we have these types
6 of appeals is that it's de novo. Even letters that
7 are outside the scope of the record should not be
8 seen. They should not be relied upon. They should
9 not be read. It's just the rules that we play by.
10 I understand Mr. Carroll's position, I do, but it
11 really is black and white frankly.

12 As for the -- just a couple quick
13 things and I'll get into a little bit of the meat of
14 this. The analogy that Mr. Carroll raised about the
15 neighborhood and a residential property being told
16 that they have to give part of their land to someone
17 else to allow access, it happens. It does. I mean,
18 people aren't always happy about it, but it's not
19 unconstitutional, because we have, and I'll talk
20 about it, we have a balancing act in our state and
21 in our federal government that allows the government
22 to do certain things that might not make private
23 citizens happy. And this is the exact analysis
24 that's happening here with some distinguishing
25 factors that I'll touch on.

1 Again, de novo review, your
2 professionals, your planning board heard this
3 application before and they unanimously agreed that
4 these conditions should be set in. So what Mr.
5 Carroll is asking is that you replace their judgment
6 with your own judgment, and that's the standard, the
7 de novo standard, but I would submit that we are
8 here for the first time ever for a reason, right,
9 because you've got really good professionals and
10 you've got a really good board that knows what
11 they're doing.

12 So when we talk about the standard
13 here and the law, Mr. Carroll is focusing primarily
14 on a constitutional challenge, right, and that's a
15 heavy load, right, because he's right. If the
16 constitutional challenge is successful, then
17 arguably the Mercer County master plan, the element,
18 it all sort of is trumped by the constitution.
19 However, the plain meaning of our statute in this
20 State of New Jersey that allows us to do and my
21 board to do what they did is N.J.S.A. 40:27-6.6, and
22 it says the governing body of any county having a
23 county planning board may provide for the review of
24 site plans, for land development along county roads
25 or affecting county drainage facilities as provided

1 in subsection (e) of this section and for the
2 approval of such development as hereinafter set
3 forth and limited for the purpose of assuring a safe
4 and efficient county road system. That's the
5 standard. And there's an important distinction
6 within that language where Mr. Carroll relies solely
7 on the word road, right? He relies on the word road
8 that's set forth in subsection (c), but it's more
9 than just a road, as I just articulated in the plain
10 meaning of the statute. It is the development to
11 the road. It is their obligation to ensure that the
12 citizens within Mercer County make their way to that
13 road in a safe manner.

14 Again, that very language arguably,
15 Mr. Carroll points out, he reads Section C of that
16 same statute, but he doesn't read the whole thing.
17 It's important to read the entire subsection. The
18 requirement of physical improvements subject to
19 recommendation of the county engineer relating to
20 the safety and convenience of the traveling public,
21 including drainage facilities or other highway and
22 traffic design features as may be deemed necessary
23 on such county road or roads in accordance with the
24 engineering and planning standards established in
25 the site plan review and approval resolution or

1 ordinance of the governing body.

2 So we have a Mercer County master
3 plan that you read these all together, right, and it
4 gives us direction. Sure. Is it always right? No.
5 It's not, right, because we rely upon the facts and
6 we put the facts against what we have in the law and
7 that's how we make a decision, right? In Mercer
8 County, where we are, the Mercer County master plan
9 mobility elements speaks directly to this issue.
10 It's not unique.

11 This challenge tonight is unique.
12 There are easements, cross access easements,
13 throughout Mercer County, right? This one may be
14 unique in the sense that it deals with two different
15 towns, and that's really why we are here tonight.
16 We are not here -- if this was the same
17 municipality, we wouldn't be here tonight. I'm
18 pretty confident in that, because I think that the
19 county board, whether it was West Windsor or East
20 Windsor, would probably say, you know what? Not
21 only does this make sense, our law provides for it.

22 So that's really the crux here is
23 that we are here tonight because we are in two
24 different towns, and to do something different than
25 have a cross access easement simply doesn't make

1 sense. Okay? So that is a non-legal argument, but
2 if you were to look at the layout of what we are
3 dealing with here and I trust you've all been there
4 to see the site, right, so if you're on Old Trenton
5 Road and you are going to leave Old Trenton Road at
6 the light and you look to your right 450 feet, you
7 see someone else coming out there from a
8 neighborhood that's actually bigger than the one
9 that's going to flood to the light, isn't it just
10 common sense to have an internal cross access
11 easement that takes you to that light? They are all
12 over. You can't go anywhere in Florida without
13 seeing them, you know, because that's just how they
14 are structured. New Jersey, who also has plenty of
15 communities like this, but it is -- and you go down
16 the road, you go down Old Trenton Road, and you can
17 see it in -- I forget the -- there's a retirement
18 community, George Fallat reference.

19 MR. HERBERT: The Village Grande.

20 MR. CASEY: Exactly. It makes sense,
21 it's a pinch point to have some safety, and it's the
22 responsibility of the Mercer County professionals,
23 right, to make sure the roads are safe and that they
24 are efficient, and that's exactly -- this is good
25 planning. This is what's taking place, but, again,

1 we are here because we are in different towns.

2 As far as the law, I talked to you
3 about that a little bit. We are on a county road,
4 directly impacts safety and efficiency. I think
5 that Mr. Fallat said it perfectly in his testimony
6 before the Mercer County Planning Board, and he said
7 we are not talking about access within the
8 development. This really goes to, I think,
9 Mr. Koontz, what you were driving at, is that OTR is
10 concerned with how it impacts them and that's it.
11 So we have to develop a nexus between how it impacts
12 them and then how it impacts Mercer County, how it
13 impacts Heritage, how it impacts someone from
14 Pennsylvania driving on Old Trenton Road, how it
15 impacts the world around them, not just them. So of
16 course no one would want a cross access easement if
17 they could avoid it, but there are laws that permit
18 it to happen because it makes it safer, right?

19 They had testimony, their own traffic
20 engineer when asked if there was anything about this
21 access easement that would make it safer said no. I
22 mean, come on. If we want to talk about credibility
23 issues, at least she could have said, you know what?
24 In some circumstances it certainly does. It doesn't
25 here because of X, Y and Z. No, no, the concern

1 then was the pool and the clubhouse and its location
2 up front for better marketing, which I totally
3 appreciate and get, but when it comes to the
4 obligation of the Mercer County Planning Board, it's
5 to make the roads safe and efficient.

6 So George Fallat said, and he's no
7 longer here, but thank you, George, he said we're
8 not talking about access within the development. We
9 are talking about access to the county road. That's
10 what we are charged with, making sure it was safe as
11 possible. And really to have a separate access to
12 an adjacent development 450 feet away or 400 feet
13 away having them turn left as opposed to going
14 through here and using a traffic signal, I don't see
15 where that's safer. I'm speaking about the county
16 road, about Old Trenton Road specifically, so you
17 know, it truly is the safest and most logical.
18 Engineering aside, you know, George talks about if
19 someone lived in the county and you drove and lived
20 in those neighborhoods, you go, what's the county
21 thinking? Like to have these two neighborhoods get
22 built at the same time almost and don't have
23 coordinating light. It just doesn't make much
24 sense.

25 So, again, talking about the nexus,

1 and the nexus is what ties us to this not being
2 unconstitutional, right, and this being about
3 safety, public safety, is that not only does it
4 protect OTR residents and make it safer for OTR
5 residents to have a light there, not just within
6 their own community, but when they leave the
7 community, right, and they are putting more cars on
8 the road there arguably, so there's another nexus
9 that they'll dump more cars on Old Trenton Road
10 because of their development. There's a nexus,
11 there obviously is. It's not just about how it
12 impacts them, but it's about how it impacts
13 everybody.

14 Again, just one more from George,
15 because I think it really nails it. And it just --
16 it's in the record as well. It's his testimony
17 before the Mercer County Planning Board before, and
18 he said in my opinion, the cross access easement is
19 a much safer option. It minimizes the conflict.
20 The turning traffic left potentially directly out of
21 West Windsor site in direction to a signalized
22 intersection, a traffic signal, which the county
23 will maintain, and also provides a direct access to
24 Windsor Center Drive, so really in terms of traffic
25 safety and just common sense, we really believe that

1 this is the right thing to do. I think it makes
2 sense from a regional planning perspective and I
3 think it makes sense from a traffic safety
4 perspective, and frankly, if you are a resident,
5 this was what I was just talking about, if I was a
6 resident buying this, I would say to myself, what
7 was the county thinking? So, again, safety,
8 efficiency, that's what the board -- the
9 professionals within your county are tasked with,
10 and that's exactly what they are providing here.

11 As to the case law, again, I won't go
12 through all of the distinguishing factors of all the
13 Supreme Court cases that are listed, but I will say
14 they are all easily distinguishable and they are
15 distinguishable for one main reason is the nexus
16 that I talked about and how important it is for the
17 safety, not only of OTR that Mr. Carroll is stuck
18 on, but for the safety of Mercer County residents
19 and those who travel around there. That's the
20 focus.

21 Also, some of the cases talk about
22 rights-of-way. We are talking about an easement
23 here. An easement is a strong property interest no
24 doubt. It's not a right-of-way dedication, right?
25 It is -- OTR still owns the property, right? Or in

1 this case Heritage still owns the property, but an
2 easement goes on top of it, so when you talk about
3 takings, takings traditionally and exactions
4 traditionally talk about fee simple taking of land
5 from people.

6 So in this case, it's distinguishable
7 in that regard is that it's an easement. Easements
8 are powerful. I can already think what Mr.
9 Carroll's thinking about my argument right now, but,
10 again, they are different than Dolan, different than
11 Nolan, different than Koontz, and 181, Inc., which
12 is a 133 New Jersey Super case that Mr. Carroll
13 talked about.

14 Again, I thank you for your time.
15 I'm happy to answer any questions you might have. I
16 would ask that you all vote to affirm the decision
17 of the Mercer County Planning Board, because it's
18 the right decision ultimately.

19 MR. HERBERT: Mr. Casey, just to
20 that, did you want to address the other two
21 conditions that are on appeal as well, the
22 right-of-way and the requirement of sidewalks?

23 MR. CASEY: Yeah. I think Mr.
24 Carroll and I talked about those, and I think that
25 we can agree to limit the description of the

1 right-of-way to share as being part easement, part
2 right-of-way to help him accomplish any issues he
3 might have in terms of setbacks and coverage and
4 those types of things.

5 And then the other one was sidewalk,
6 which we were fine with, which I think Mr. Carroll
7 agreed to comply with. I think on the record he
8 said except for maybe the deli to work with it. So,
9 again, like Mr. Carroll said, it's really about the
10 cross access easement obviously, and, you know, we
11 have the right. We have the jurisdiction. We have
12 the nexus. And it's a safer and more efficient
13 plan.

14 MR. HERBERT: Mr. Carroll also made
15 an argument about the Heritage site's access to
16 Princeton Hightstown Road alleviating some of the
17 interaction that would occur here. Does that, did
18 you want to address that?

19 MR. CASEY: I was thinking about
20 that. When you go out to the site and you actually
21 look at the distance between the entrances that
22 we're talking about and --

23 MR. CARROLL: I have to object to
24 this. There's no testimony on any of this issue.

25 MR. HERBERT: You made an argument.

1 I was trying to help you. You made an argument with
2 regard to --

3 MR. CARROLL: In that case, I
4 withdraw my objection.

5 MR. HERBERT: If you don't want me to
6 help you, I won't help you.

7 MR. CARROLL: I wasn't sure where
8 this was going. There is no testimony on any of
9 this.

10 MR. HERBERT: I was trying to help
11 you. You made the argument and wanted to see if Mr.
12 Casey wanted to address the argument.

13 MR. CASEY: Well, Cox provides that
14 you are allowed to in a de novo review have site
15 visits done. I'm allowed to talk about the site,
16 because I presume you went to see the site.

17 MR. CARROLL: I just suspect for the
18 record he's not going to help me. Just getting that
19 vibe, you know.

20 MR. CASEY: So my point was this real
21 quickly is that yes, there are two points for the
22 Heritage project, very far from each other. So
23 you're going to convince people who live down by Old
24 Trenton Road that if they want to take a left out of
25 there, they have to go up through the entire

1 neighborhood all the way up to Princeton Hightstown
2 Road to take a right and then take another right to
3 come down in front of their own home? It's just,
4 again, common sense, practical, doesn't make sense.

5 Happy to field any questions.

6 COMMISSIONER FRISBY: Commissioner
7 Walter?

8 COMMISSIONER WALTER: I have one
9 quick one. So if the easement's through and the
10 light is there, that will be the only point of
11 access for both developments on Old Trenton or will
12 the other one still be maintained?

13 MR. CASEY: So left turns certainly,
14 I don't believe that you'll be able to take right
15 turns out of the original Heritage one still.
16 Everything will come --

17 MR. HERBERT: You mean left turns.

18 MR. CASEY: Left turns, I'm sorry. I
19 know, I get spun around as well.

20 MR. HERBERT: Maybe if I could just
21 approach. If the green arrows here for what is
22 shown for -- this is on the Heritage application,
23 shows a right turn out going south, left turn in,
24 right turn in, but no right turn going north.
25 That --

1 MR. CASEY: Heritage would still be
2 able to make rights out onto Old Trenton Road. No
3 left turns.

4 COMMISSIONER FRISBY: No left turn,
5 for the record.

6 MR. CASEY: That's correct.

7 COMMISSIONER CANNON: I have a
8 question.

9 COMMISSIONER FRISBY: Commissioner?

10 COMMISSIONER CANNON: I don't know,
11 Mike may tell me this is not important, but I drive
12 on that road, and I turn left as I'm going from Twin
13 Rivers. I'm going west on 571 and I have to make a
14 left turn. This is how I come here. I've tried
15 many ways.

16 MR. HERBERT: You make a left turn
17 onto Old Trenton.

18 COMMISSIONER CANNON: At the light,
19 at the arrow, old issue, so I come down, everybody
20 slows down, it's one lane. There's a light down by
21 the -- from the senior center. I don't know the
22 name of that, Everglades, Evergreen, something. Now
23 you are going to put another light in there. How is
24 that going to affect, you know, the backup on 571
25 turning into, you know, these areas, you know, this

1 intersection.

2 MR. CASEY: I do.

3 COMMISSIONER CANNON: It's a,
4 traditionally a level F. Making that left turn, I
5 sit on the stripe part many times. Sometimes I have
6 to go around. I go down to the intersection, I go
7 north and then I make a U-turn, I come back and go
8 straight across. How many more people will be in
9 that turn lane?

10 MR. CASEY: I can't answer your
11 question, but --

12 COMMISSIONER CANNON: It's not
13 tonight, I understand, but I'm dreading the idea of
14 all those.

15 MR. HERBERT: I think there was
16 testimony in the record that the light is going to
17 be built, whether the cross access is there or not.

18 COMMISSIONER CANNON: There's going
19 to be an additional light there.

20 MR. HERBERT: The light will be
21 built.

22 COMMISSIONER CANNON: We need two
23 lines too.

24 MR. HERBERT: I don't know the design
25 of the light, but the light will be built. There

1 may be backup all the way back, you know. If it's
2 very busy, there may be backup all the way back up
3 towards 571, but the light will be built. That's
4 not the issue here.

5 COMMISSIONER CANNON: No, it's not
6 the issue here.

7 MR. HERBERT: I guess in -- I'm sure
8 that's a concern of OTR as well. Will their project
9 function well, and Mr. Carroll makes a legitimate
10 argument as to what about our project, will it
11 function well. But I think that there's testimony
12 on the other side that would say that the light is
13 there in order to provide gaps in the traffic so
14 that people can pull out and continue.

15 COMMISSIONER CANNON: It's a system,
16 and I have faith in you guys and I know -- I won't
17 be a freeholder next year. I won't be here next
18 year, so I'm leaving everyone to work together to
19 make sure things move smoothly, and that's my only
20 concern. Thank you.

21 COMMISSIONER KOONTZ: Just to follow
22 up on that, the lighted intersection at, what is it
23 now, the one on Windsor Drive, so that's not in
24 dispute by either party either.

25 MR. CASEY: That's correct. That's

1 what Mr. Herbert was just saying. There's going to
2 be a light there. Yep.

3 MR. HERBERT: One way or another, as
4 the song says.

5 COMMISSIONER FRISBY: Any other
6 questions?

7 COMMISSIONER KOONTZ: I'm looking. I
8 don't see anything.

9 MR. CASEY: Thank you all for your
10 time.

11 COMMISSIONER FRISBY: Thank you.

12 MR. CARROLL: Could I make a few
13 comments in rebuttal?

14 COMMISSIONER FRISBY: Mr. Carroll.

15 MR. CARROLL: Firstly, toward the end
16 of Mr. Casey's presentation, there was some
17 confusing colloquy about traffic coming out of
18 Heritage and whether they could make lefts. Under
19 the county planning board approval that I submitted
20 to you twice, people coming out of the Heritage
21 development can make lefts and rights on both Old
22 Trenton Road and Princeton Hightstown Road. I don't
23 think there's any disagreement about that, but the
24 colloquy seemed to be to the contrary.

25 MR. HERBERT: That may be my fault.

1 Just so everyone understands, the site goes up
2 towards Princeton Hightstown Road. You can't see it
3 here, but there's an access up further. I don't
4 know if you can scroll down at all, Rob. If you can
5 bring the plan down? You can see a green arrow at
6 the top. That's where Princeton Hightstown Road is,
7 and there is full movement, what Mr. Carroll is
8 saying, there's full movement on both ends of that
9 intersection there.

10 MR. CARROLL: So, I mean, I think
11 that's important, because, as I said before, to the
12 extent anybody argues that there's a need to funnel
13 the Heritage traffic through the OTR property,
14 that's clearly not true. Very few properties have
15 full access to two different county roads. The
16 Heritage development does. It already does, and it
17 does whether OTR is around or not, full access to
18 two different county roads.

19 COMMISSIONER FRISBY: I would say
20 though, Mr. Carroll, again, the, that is true, but
21 the common sense that someone would drive through a
22 whole community, make a right to make another right
23 to get back to the same road, I'm not sure that that
24 is --

25 MR. CARROLL: I can't envision

1 anybody would do that either. They can make lefts
2 or rights out of both county roads.

3 COMMISSIONER FRISBY: Doesn't really
4 give you the full access on Old Trenton Road. You
5 have to go up to a different road.

6 MR. CARROLL: No, no. Under the
7 county planning board approval, people coming out of
8 Heritage wanting to make a left on Old Trenton Road
9 can do so. Also on Princeton Hightstown Road all
10 rights, full access, left, right, in, out, on two
11 different county roads, so I want to make that
12 clear.

13 COMMISSIONER FRISBY: Okay.

14 MR. CARROLL: That is the approval
15 they have, so to the extent anybody ever suggested
16 there's a need to funnel all those traffic through
17 my client's property, that's clearly not true. Mr.
18 Casey referenced de novo review, which I don't know
19 how many of you are lawyers, you may not be familiar
20 with that Latin, but it's true that the lawyers
21 involved here agreed we would not present to you all
22 the testimony through the witnesses that was already
23 presented to the county planning board. You would
24 review what they did based on the transcript and the
25 exhibits, right? So you wouldn't have to sit

1 through all that again. The words on paper are
2 pretty much just as good.

3 What we did not agree on is that
4 thereafter, for things that happened after the
5 county planning board record closed, that I couldn't
6 write letters to you or that I couldn't submit to
7 you the county planning board approvals upon
8 Heritage which happened after our proceedings or
9 that mayors can't write to you, and that you can't
10 look at any of those things, you know? To me,
11 that's a bridge too far, you know. We shouldn't
12 pretend that the facts are different than the facts
13 as we know them to be, right? The law doesn't --
14 it's not quite that crazy, right? So anyway, that's
15 all I have to say on that.

16 This issue of nexus and needs and
17 benefits under the cases, New Jersey and federal
18 cases, the constitutional standards, Mr. Casey made
19 some type of argument along the lines well there's a
20 nexus because some other property benefits by having
21 all the traffic funnel through OTR. That's not the
22 nexus required by the case law as I described it.
23 The case law requires the nexus as follows: A
24 particular property must create the need for some
25 improvement. That property, it alone must create

1 the need for a certain improvement, and it must
2 benefit by that improvement. Neither of those two
3 things are true with respect to this internal cut
4 through access easement, right? Anyway, he also
5 argued --

6 COMMISSIONER FRISBY: Ms. Walters?

7 COMMISSIONER WALTER: Question on
8 that point. The access road that's proposed, the
9 cut through as you call it --

10 MR. HERBERT: Cross access.

11 COMMISSIONER WALTER: -- would work
12 both ways, no?

13 MR. CARROLL: We don't want it
14 working in either way, but I don't know who wants
15 what.

16 MR. HERBERT: It was proposed as a
17 one-way from Heritage over to OTR.

18 COMMISSIONER WALTER: It is one way,
19 okay, thank you.

20 MR. CARROLL: Again, our position is
21 it's no way, but I appreciate your question.

22 So Mr. Casey also said my primary
23 argument is the constitutional challenge. The
24 opposite is true. My primary argument is my
25 argument based upon the County Planning Act and the

1 very limited jurisdiction it provides the county
2 planning boards, and that's straightforward. It's
3 reading words on paper. Is this interior cut
4 through easement on a county road? Does it abut a
5 county road? The answer is no. When you apply that
6 statutory language, it is clear that the county
7 planning board had no jurisdiction. They can't
8 require an easement that they wanted to acquire in
9 this case. They can't acquire an easement a half
10 mile into somebody's property or a mile into
11 somebody's property. Think about it. The County
12 Planning Act says on a county road, not inside
13 somebody's property. Right? Words have meaning and
14 they have import.

15 Section 6.6C of the Planning Act, Mr.
16 Casey returned to that, read the whole thing, I'd
17 like to focus on pieces of it too. Subsection (c)
18 begins "the requirement of physical improvement."
19 I'm going to read the whole thing, even those these
20 words don't matter, just because I don't want to be
21 accused of not reading the whole thing, "The
22 requirement of physical improvement then subject to
23 recommendations of a county engineer relating to the
24 safety and convenience of the traveling public
25 including drainage facilities, other highway and

1 traffic design features as may be deemed necessary,"
2 number one, it has to be deemed necessary to have
3 this interior easement provided for the cut through.
4 Again, that argument just can't be made in good
5 faith. It's not necessary. The following words are
6 "on such county road or roads." This is not on a
7 county road. Again, it's interior, well interior.
8 "In accordance with the engineering and planning
9 standards established in the site plan review and
10 approval resolution or ordinance of the governing
11 body," right? And Mr. Casey's argument was look at
12 that master plan language, which I don't think
13 applies here factually, but let's assume it does, he
14 says that's the ordinance. That's not the
15 ordinance. That's the master plan.

16 I would like to read a little bit
17 from your actual ordinance.

18 COMMISSIONER FRISBY: Before you read
19 from that ordinance, can you just talk now, since
20 you are reading that and go to, the one that I asked
21 you about initially, which is 40:27-6.2C, and read
22 that through for us, because, I mean, I think that
23 those two are connected in a way with the first one
24 that you read.

25 MR. CARROLL: I have it right here.

1 I would ask you not to force me to dwell on
2 something that's just not legally significant.
3 Counsel may disagree with me, okay, for the reasons
4 I've already said, I don't think it's legally
5 significant. I think what's legally significant is
6 the statute that directly applies to request to do
7 improvements on county roads. I've just read it,
8 okay? Nothing in the County Planning Act elsewhere
9 changes that. People are free to disagree with me
10 for whatever reason, but I can't analyze something
11 that in my opinion doesn't apply. 6.6C applies.
12 Okay?

13 If I can return to where I was, 6.6C
14 refers to your ordinance standards, not the master
15 plan, the ordinance standards. Your land
16 development standards, section Roman numeral five,
17 approval of conditions, states that "a developer may
18 be required as a condition of approval to dedicate
19 additional right-of-way abutting an existing or
20 proposed county road." Dedicate additional
21 right-of-way, we don't quarrel with that. Abutting
22 a county road. Right? This interior easement is
23 neither. It's neither a right-of-way and doesn't
24 abut a county road, right? So it doesn't comply
25 with your own standards, your own development

1 standards, your ordinances, right?

2 The master plan language that was
3 alluded to before, again, I don't think it applies,
4 but if it did, that's not what's referred to in the
5 County Planning Act, Section 6.6, the development
6 standards of the county is what it actually refers
7 to.

8 There was the argument from Mr. Casey
9 that we have an obligation to make things safer. We
10 don't. Nobody does. No property owner has that
11 obligation, okay? Because of somebody else's
12 development activities to make things safer, that's
13 just not the law. The law is what it is. It's very
14 carefully spelled out in the County Planning Act and
15 in the cases that I've summarized. We don't think
16 this does make things safer. We think it creates a
17 peril on the OTR property for all the uncontroverted
18 reasons put before your county planning board, but
19 even if that wasn't true, and that it didn't make,
20 the access easement, the cut through doesn't make
21 things less safe, the county planning board still
22 can't do it to make things safer for others. It's
23 just not something the law allows. The government
24 just can't do whatever it wants. That's the bottom
25 line, you know. You can't do something just because

1 you think it's a good idea. We think it's a
2 terrible idea, but even if you thought it was a good
3 idea, you can't do it just because you think it's a
4 good idea. It has to comply with the law. For all
5 the reasons I've mentioned, it doesn't.

6 Lastly, you know, Mr. Casey made some
7 argument distinguishing between rights-of-way and
8 easements and whether the cases that I've cited in
9 my legal memoranda apply, because this is a request,
10 demand for this cut through access easement. In the
11 Nolan case, which is the U.S. Supreme Court case
12 most closely analogous to this one. What was at
13 issue there was the government demand for an
14 easement, not a right-of-way, an easement.

15 In that case, California and its
16 Coastal Commission required that a beachfront
17 property owner provide an easement along their
18 beachfront property, not even to the beachfront
19 property, along it, so people on either side of the
20 Nolans' property could walk across the Nolans'
21 property and do whatever they wanted to do. That
22 exaction was tossed out on federal constitutional
23 grounds, and it's for the same reasons that I've
24 advanced to you. There's no nexus. There's no
25 need. There's no benefit. There's a detriment, and

1 when those are the facts and that's uncontroverted,
2 an exaction like this simply is not constitutional.
3 Thank you.

4 COMMISSIONER FRISBY: Thank you, Mr.
5 Carroll.

6 MR. CARROLL: Any questions?

7 MR. CASEY: I have two quick points,
8 Mike, if that's all right?

9 COMMISSIONER FRISBY: Please, Mr.
10 Casey.

11 MR. CASEY: While it's on the tip of
12 my tongue, the Nolan case dealt with views of a
13 beach, not with safety and efficiency of roads.
14 That's why it's clearly distinguishable. It was an
15 easement, no question. Again, why de novo review is
16 so important, is that Mr. Carroll still relies upon
17 him sending you all directly a July 17, 2020
18 decision of the Mercer County Planning Board that
19 did postdate this decision, and the problem with
20 staying in the bounds of the rules is that he
21 doesn't explain the entire letter and that this is
22 temporary in nature. So this is allowing left turns
23 and right turns out of Old Trenton Road right now
24 from the Heritage property. Says that you can do
25 that until there's a light there, until this

1 easement, access easement is resolved. So that's
2 why it's important to have some context. Thank you
3 all.

4 COMMISSIONER FRISBY: Thank you.

5 MR. CARROLL: If I could, it's unless
6 and until there is ever such an easement. If not,
7 those lefts in out, rights in out on Heritage
8 property allowed by the county planning board are
9 perpetual, and you can read them yourself.

10 COMMISSIONER FRISBY: Thank you,
11 gentlemen.

12 MR. HERBERT: So that concludes the
13 argument. I wanted to express my appreciation of
14 the learned arguments of both counsel. I thought
15 they did a good job. At this point it is -- the
16 matter is open for discussion amongst the county
17 commissioners, if they so choose. If not, we can
18 move to a motion.

19 COMMISSIONER FRISBY: Is there any
20 discussion, commissioners?

21 COMMISSIONER CANNON: I think we
22 already asked some questions.

23 COMMISSIONER FRISBY: I believe so.
24 Can I get a motion?

25 COMMISSIONER KOONTZ: Well, let me

1 make sure I've covered everything. I think the
2 presentations by the two attorneys were very
3 complete. I don't have any further questions.

4 COMMISSIONER CANNON: Neither do I.
5 Great questions, great presentations.

6 COMMISSIONER FRISBY: Commissioner
7 Walter?

8 COMMISSIONER WALTER: I'm good.

9 COMMISSIONER FRISBY: I want to thank
10 both attorneys for their very well thought out and
11 put together arguments. Can I get a motion?

12 COMMISSIONER KOONTZ: I think at
13 least the first motion to try, I think, would be a
14 motion to affirm, and if that fails, then we can
15 figure out what steps we are going to take
16 afterwards.

17 MR. HERBERT: Just if I may on a
18 motion to affirm, I believe the other two matters
19 have been discussed and taken care of between the
20 parties, so I believe the only condition that we are
21 looking at now is No. 2.

22 COMMISSIONER FRISBY: No. 2.

23 MR. HERBERT: With regard to the
24 cross access easement.

25 COMMISSIONER KOONTZ: Okay.

1 COMMISSIONER FRISBY: Can I get a
2 motion to affirm?

3 COMMISSIONER KOONTZ: So moved.

4 COMMISSIONER CANNON: Second.

5 COMMISSIONER WALTER: Can we --
6 actually I'm more concerned about making sure that
7 we say specifically what the motion is.

8 MR. HERBERT: Sure. You and I were
9 thinking alike.

10 COMMISSIONER WALTER: I'm going to
11 pull that up real quick.

12 MR. HERBERT: Of course. If I may,
13 the motion --

14 COMMISSIONER KOONTZ: Here's the
15 question that I have. Why wouldn't we affirm the
16 decision of the planning board in toto?

17 MR. HERBERT: I think that's probably
18 advisable at this point.

19 COMMISSIONER CANNON: I think we
20 should, yes.

21 COMMISSIONER FRISBY: That's what's
22 before us.

23 MR. HERBERT: Right. But the reason
24 I put on the record it appears that there's no
25 longer a controversy on the other two conditions.

1 It would be advisable to place all three conditions
2 and again if -- to help out, Commissioner Walter,
3 the conditions are to --

4 COMMISSIONER WALTER: It's okay, I
5 have them. I think that's the clearest.

6 COMMISSIONER KOONTZ: You want me to
7 read it?

8 COMMISSIONER WALTER: I would say --

9 COMMISSIONER KOONTZ: I move that we
10 affirm the planning board decision.

11 COMMISSIONER WALTER: Conditions?

12 COMMISSIONER KOONTZ: We are
13 affirming their entire thing, right? I would
14 imagine, which would be conditions one through four.

15 COMMISSIONER FRISBY: That's correct.

16 COMMISSIONER CANNON: That's right.

17 COMMISSIONER KOONTZ: One of them not
18 listed here.

19 MR. HERBERT: No. 1 was to create a
20 lighted intersection.

21 COMMISSIONER KOONTZ: Create and show
22 on the plan a cross access and maintenance easement
23 between project site Block 3, Lot 3 and 3.02, East
24 Windsor Township and the adjacent property on Block
25 28, Lot 15, West Windsor Township.

1 Three, provide additional 28 feet
2 from the center line of right-of-way along Old
3 Trenton Road, County Road 535 and provide and show
4 on plan curb and sidewalk along the entire frontage
5 of Old Trenton Road.

6 COMMISSIONER CANNON: I can second
7 that, all that.

8 COMMISSIONER FRISBY: Okay, can we --

9 MR. HERBERT: Motion is on the table.
10 We need a second.

11 COMMISSIONER FRISBY: Commissioner
12 Cannon already seconded.

13 MS. WORTHY: Commissioner Cannon?

14 COMMISSIONER CANNON: Yes.

15 MS. WORTHY: Commissioner Koontz?

16 COMMISSIONER KOONTZ: Yes.

17 MS. WORTHY: Commissioner Cimino?

18 Commissioner Melker? Commissioner Colavita?

19 Commissioner Walter?

20 COMMISSIONER WALTER: Yes.

21 MS. WORTHY: Commissioner Frisby?

22 COMMISSIONER FRISBY: Yes, ma'am.

23 MR. HERBERT: County planning board
24 decision is affirmed.

25 Commissioners, I will be putting pen

1 to paper on this. I will be creating a resolution
2 of approval for our next meeting, which I will
3 circulate amongst counsel first and then submit to
4 you, if that's okay.

5 COMMISSIONER FRISBY: Thank you.

6 COMMISSIONER KOONTZ: Thank you.

7 MR. HERBERT: For this decision. I'm
8 just placing this decision in writing.

9 COMMISSIONER CANNON: Then you keep
10 us apprised of the next steps.

11 (Whereupon the proceedings were
12 concluded at 8:03 p.m.)

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C E R T I F I C A T E

I, DONNA BRUNCK, a Certified Court Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S.41:2-2, do hereby certify that the foregoing is a true and accurate transcript of the public meeting that was taken stenographically by and before me at the time, place and on the date herein before set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties or attorneys to this action, and that I am not financially interested in the action.

I DO FURTHER CERTIFY that the within transcript format complies with Rule NJ ADC 13:43-5.9.



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A			
A-1 19:15, 17 24:2	86:22 accessible 11:16, 17, 17	42:3 adequate 9:24	alarming 50:9
A-2 24:2	accessing 6:8	adjacent 8:23 26:20 62:12	alike 85:9
A-3 24:3, 9, 12	accomplish 66:2	86:24	Allen 7:20
ability 6:16 14:12	accomplished 12:6, 11, 13	administer 89:4	alleviating 66:16
able 5:24, 24 35:9 68:14 69:2	accurate 17:17 40:13 89:6	ADMINISTRA... 1:9	allow 50:13, 24 51:1 56:17
absolute 45:3	accused 77:21	advanced 81:24	allowed 7:21 13:2, 7 67:14 67:15 83:8
abut 46:19 77:4 79:24	achieve 43:9	advisable 85:18 86:1	allowing 82:22
abuts 45:21	acquire 77:8, 9	advised 34:17	allows 44:16 56:21 57:20 80:23
abutting 79:19 79:21	act 6:18 28:5 28:12, 15 29:10 40:18 40:20 42:11 42:22 43:6 44:14 45:14 47:7 56:20 76:25 77:12 77:15 79:8 80:5, 14	advising 26:25	alluded 34:21 35:8 80:3
access 5:22 6:17 8:21 9:24 10:2, 7 10:22 11:19 11:20, 21 20:22 27:2 28:14 32:6, 7 32:16, 19 33:13, 16, 18 33:24 34:1 37:4 40:5, 12 41:17, 18, 23 41:24 43:14 43:18 44:23 48:11, 14 49:4, 11, 13 49:24 50:14 51:9, 14 55:1 56:17 59:12 59:25 60:10 61:7, 16, 21 62:8, 9, 11 63:18, 23 66:10, 15 68:11 70:17 73:3, 15, 17 74:4, 10 76:4 76:8, 10 80:20 81:10 83:1 84:24	action 14:8, 10 89:12, 13	aerial 5:7 6:21, 22 24:2 24:12, 18	amid 54:13
	actions 43:7	affect 11:5 69:24	analogous 33:1 81:12
	activities 80:12	affidavit 17:8 35:22	analogy 30:12 56:14
	actual 48:20 49:13 78:17	affirm 14:4 54:17 65:16 84:14, 18 85:2, 15 86:10	analysis 45:10 50:6 56:23
	ADC 89:15	affirmed 23:2 87:24	analyze 79:10
	add 4:21 15:13 17:10	affirming 86:13	analyzed 26:19
	added 15:14	affordable 9:14, 21 10:1 19:4	ANDREW 2:5
	addition 55:3	afield 54:5	ANN 2:4
	additional 9:1 45:22 46:2 70:19 79:19 79:20 87:1	afternoon 19:13	answer 39:9 42:5, 23 48:1 48:2, 5 65:15 70:10 77:5
	address 35:14 37:23 38:3, 4 47:1, 3, 5 65:20 66:18 67:12	age 12:9	answered 39:17 39:17
	addressed 31:16 40:6	ago 19:22 35:9	anticipate 41:18, 24
		agree 65:25 75:3	anybody 73:12 74:1, 15
		agreed 20:17 25:24 26:5 56:4 57:3 66:7 74:21	anyway 21:10 22:22 24:7 25:23 75:14 76:4
		ahead 10:4	apart 4:8
		air 36:7	apologize 19:19
			apparently 16:3

appeal 1:3 3:2 3:8, 11, 13, 14 3:21, 23, 24 4:25 5:5 7:14, 24 9:10 20:2, 3, 4, 7 20:10, 17, 20 23:4, 7, 8 35:21 37:12 39:14 65:21	applying 17:16 appreciate 13:7 36:18 62:3 76:21 appreciation 83:13 apprised 88:10 approach 16:20 68:21 approval 3:4 3:19 4:7 9:9 19:23, 23 20:13, 25 45:19 54:19 58:2, 25 72:19 74:7 74:14 78:10 79:17, 18 88:2	arguments 10:17, 24 11:12 12:1 12:15 14:16 15:2 16:21 83:14 84:11 array 21:14 arrow 69:19 73:5 arrows 6:6 68:21 articulated 58:9 aside 62:18 asked 4:1 61:20 78:20 83:22 asking 22:5, 7 22:13 37:1 42:3 47:4 57:5 assume 29:16 78:13 assumed 29:14 32:11 assumption 33:25 assuring 42:16 58:3 attorney 12:13 15:2, 4 20:8 23:18 89:11 attorneys 2:17 2:25 6:10 12:6 13:14 14:19 15:1 16:17 84:2 84:10 89:12	B2 2:21 back 3:17 7:8 7:21 9:5 10:9 12:3 21:9 23:11 23:21 25:14 25:21 26:4 41:5 50:14 54:10, 14 70:7 71:1, 2 73:23 background 18:25 backup 69:24 71:1, 2 bad 30:20 32:21 balancing 56:20 barn 53:20, 20 54:12 based 15:15, 20 74:24 76:25 basically 23:6 31:3, 12, 19 46:4 49:24 54:18 Bataglia 31:6 beach 82:13 beachfront 81:16, 18, 18 Bear 54:16 begins 77:18 behalf 10:11 17:2 55:10 55:13 believe 13:17 16:16, 21 18:13 40:23 41:20 42:17 43:18, 20 52:8 63:25 68:14 83:23 84:18, 20 benefit 27:7 31:17 32:5, 8
applicant 3:24 4:1, 16 10:12 13:25 15:2 17:2 applicant's 4:3, 4 application 3:4 14:17 18:18, 18 19:20, 22 29:1 31:15 32:5 34:19 35:8 36:20 36:22 48:23 57:3 68:22 applications 17:19 41:3, 7 applied 17:15 17:15 37:5 applies 47:3 78:13 79:6 79:11 80:3 apply 32:14 77:5 79:11 81:9	approvals 34:20 75:7 approved 9:17 9:18 11:24 19:12 April 23:17 area 5:15 25:7 25:23 44:23 areas 69:25 arguably 57:17 58:14 63:8 argue 11:9, 12 argued 76:5 argues 73:12 argument 6:17 9:22 10:10 10:15 12:2 13:20, 20, 21 29:14, 17 45:1 46:16 60:1 65:9 66:15, 25 67:1, 11, 12 71:10 75:19 76:23, 24, 25 78:4, 11 80:8 81:7 83:13	authorized 89:4 available 24:4 avoid 61:17 awful 22:14 <hr/> B <hr/> B2 :1 19:7	

55:23,25	34:11,14,17	11:13 39:8	24:15,23
76:2 81:25	34:20 35:2,5	49:5	25:2,6,21
benefits 75:17	35:11,13	built 62:22	26:4 33:7
75:20	37:9,17	70:17,21,25	37:22,25
best 39:18	38:11 41:9	71:3	38:4,8 39:4
better 5:19	42:18 43:24	business 37:9	40:8,14 41:2
62:2	45:24 46:5	busy 71:2	42:5,7,21
beyond 55:3	46:17 50:5	buy 51:6	43:3 44:11
bias 8:9,12,15	54:17,20	buying 64:6	45:2,7 46:6
big 36:24,24	55:11,14		46:9,12,20
36:25	57:2,10,21	C	47:2,6,17,22
bigger 60:8	57:23 59:19	c 45:20 58:8	48:1,5,17,22
bisects 5:12	61:6 62:4	58:15 77:17	48:25 49:3
bit 20:6 23:21	63:17 64:8	89:1,1	49:15,19
56:13 61:3	65:17 72:19	California	50:2,19 51:3
78:16	74:7,23 75:5	81:15	51:16,23
bitterly 54:21	75:7 77:7	call 18:6	52:3,10,16
black 56:11	80:18,21	23:12 76:9	52:21,25
Block 8:22,23	82:18 83:8	Cannon 2:4	54:14 55:6,7
19:1 86:23	85:16 86:10	8:10,11,12	55:18,23
86:24	87:23	16:1,2,7,13	56:14 57:5
board 1:1,4	board's 6:16	52:17,23	57:13 58:6
2:6,25 3:3	boards 18:2	53:1,8,13	58:15 64:17
3:12,14,22	28:6,8,23	54:6,11 69:7	65:12,24
3:23 4:4,6,7	43:5,9 77:2	69:10,18	66:6,9,14,23
4:12,20 5:1	Bob 55:13	70:3,12,18	67:3,7,17
5:1,3 7:19	bodies 12:12	70:22 71:5	71:9 72:12
12:23 13:11	body 57:22	71:15 83:21	72:14,15
13:23 15:4	59:1 78:11	84:4 85:4,19	73:7,10,20
15:12,13	border 24:21	86:16 87:6	73:25 74:6
17:16,18,24	bore 23:19	87:12,13,14	74:14 76:13
18:15,16	bottom 5:13	88:9	76:20 78:25
19:11,21	21:16 80:24	care 84:19	82:5,6,16
20:5,10,11	bounds 82:20	carefully	83:5
20:25 21:1,3	bridge 75:11	80:14	Carroll's
21:14 22:24	brief 10:15	Carroll 2:12	17:22 56:10
23:1,4,8,10	briefly 25:8	4:15,19	65:9
23:18,22	Briehoff 26:18	10:12,13,16	cars 11:21
25:9,10,25	bring 7:21	12:7 16:20	22:6,15
26:23,25	73:5	16:21,24,25	44:20,22
27:20 28:4	Broad 1:10	17:1,7 18:1	63:7,9
28:13,17,21	brought 41:8	18:21,24	case 23:5
29:2,4,9,15	Brunck 1:15	19:10,18,20	29:19 31:17
29:19 31:6,6	89:3,19	21:21,24	43:6,11
31:22,25	Builders 31:7	22:4,11,14	44:14,21
33:8,12 34:5	building 1:9	22:20 24:12	64:11 65:1,6

65:12 67:3	33:19 34:7	clearly 38:24	comments 6:20
75:22,23	34:23 35:12	73:14 74:17	17:12 28:2
77:9 81:11	39:13 61:24	82:14	29:12 34:9
81:11,15	68:13	clerk 2:7	36:2,13
82:12	Certified 89:3	client 28:14	72:13
cases 7:20	certify 89:5	client's 10:22	Commission
21:7 30:24	89:10,14	27:23 74:17	81:16
31:1,4,7,10	chain 34:3	clients 12:16	commissioner
40:20,21	Chair 2:2 8:2	12:16,18	2:2,3,4,5
42:14,22	Chairman 46:13	close 39:2,8	3:1 7:17,18
64:13,21	challenge 8:18	closed 34:13	7:25 8:2,4,7
75:17,18	57:14,16	34:16,24	8:8,8,10,11
80:15 81:8	59:11 76:23	75:5	8:11,13,14
Casey 2:20	challenged	closely 81:12	8:14 12:25
4:20 11:9,11	20:2	clubhouse 26:9	13:5,9,10,13
12:10 25:17	challenging	49:5 51:22	14:18,23
55:10,12,13	40:5	52:14,22,24	15:8,10,18
60:20 65:19	changes 79:9	53:12 54:16	15:21,25,25
65:23 66:19	chapter 23:20	62:1	16:2,7,13
67:12,13,20	charged 62:10	Coastal 81:16	18:19 24:18
68:13,18	choice 4:3	code 35:21	24:20,22
69:1,6 70:2	choose 83:17	coexist 43:10	25:1,4 37:20
70:10 71:25	Chosen 5:1	Colavita 87:18	37:22 38:1
72:9 74:18	chunk 36:19	collides 44:17	39:19,19,21
75:18 76:22	Cimino 87:17	colloquy 72:17	40:9,25
77:16 80:8	circulate 88:3	72:24	41:10,11,13
81:6 82:7,10	circulation	color 24:9	42:2,16,24
82:11	41:17,23	colored 24:15	43:16 44:18
Casey's 72:16	circumstances	come 21:8	45:6,16
78:11	34:4 61:24	23:21 25:14	46:14 47:15
cause 10:22	cite 31:4,8	25:21 45:11	48:7,10,19
causes 38:18	cited 6:15	49:4 61:22	48:24 49:2,7
causing 9:23	81:8	68:3,16	49:17,21
cautious 20:8	citing 7:20	69:14,19	50:7,22
CCR 1:15 89:19	citizens 56:23	70:7	51:11,11,13
center 5:15,17	58:12	comes 62:3	51:19 52:1,4
9:2 11:14	civil 23:24	comfortable	52:6,8,15,17
37:23 38:1	claims 48:16	16:21	52:23 53:1,8
63:24 69:21	clarifies 13:8	coming 26:10	53:11,13
87:2	clarity 15:11	44:20 60:7	54:6,11 55:5
certain 9:22	clean 55:17	72:17,20	55:8,14,19
56:22 76:1	clear 15:22	74:7	68:6,6,8
certainly	25:10,14	Commencing	69:4,7,9,9
25:14,24	31:23 74:12	1:13	69:10,18
26:5 27:24	77:6	comment 18:4	70:3,12,18
29:1 30:16	clearest 86:5	commented 36:5	70:22 71:5

71:15,21	community	86:1,3,11,14	39:23 40:10
72:5,7,11,14	60:18 63:6,7	confident	40:11
73:19 74:3	73:22	59:18	contests 40:3
74:13 76:6,7	complaint 5:6	configures	context 56:1,2
76:11,18	complete 10:7	41:14	83:2
78:18 82:4,9	33:13 84:3	conflict 63:19	continue 15:24
83:4,10,19	completely	conflicts 7:15	71:14
83:21,23,25	11:16 33:1	7:22	contrary 32:2
84:4,6,6,8,9	40:17	confusing	72:24
84:12,22,25	compliance	72:17	contributing
85:1,3,4,5	41:15	connected	6:2,2 18:7
85:10,14,19	complies 89:15	78:23	control 18:2
85:21 86:2,4	comply 66:7	connection	controversy
86:6,8,9,11	79:24 81:4	26:6	85:25
86:12,15,16	comprehensive	consider 16:11	convenience
86:17,21	31:23	33:2 35:13	46:1 58:20
87:6,8,11,11	concern 61:25	36:8,11,13	77:24
87:13,14,15	71:8,20	36:16	convince 67:23
87:16,17,18	concerned	considerable	coordinating
87:18,19,20	61:10 85:6	22:24 27:9	62:23
87:21,22	conclude 32:15	27:13 48:17	Corner 2:21
88:5,6,9	concluded	50:3	correct 10:18
commissioners	88:12	considered	13:4,12
1:1 3:9,15	concludes	35:3,5 36:8	15:15,18,21
5:2 7:7,13	83:12	considering	16:17 17:21
7:14,17,21	conclusion	18:20	17:22 18:12
7:22 16:22	45:11	constitution	21:23,25
23:9 25:3	condition 3:4	57:18	22:3,10 35:6
55:6 83:17	8:25 9:1	constituti...	46:15 51:15
83:20 87:25	20:15,21,21	23:15 27:11	69:6 71:25
committee 3:19	20:24 37:17	29:13,18	86:15
19:25 23:3	43:20 44:3,6	40:18 42:13	correction
38:20	44:7 49:14	57:14,16	17:22
committee's	49:25 50:18	75:18 76:23	correctly 18:4
20:14	54:18 79:18	81:22 82:2	cost 18:7
common 50:18	84:20	construction	counsel 2:6
60:10 63:25	conditions	6:3	79:3 83:14
68:4 73:21	3:20 8:18,19	consultation	88:3 89:11
communicate	8:19,20 9:9	12:18 15:6	country 50:17
12:19	11:7 15:14	consulted	counts 49:9
communication	20:1,12,19	12:16	county 1:1,3
16:11	20:20 38:7	contemplate	2:7 3:3,9,10
communicat...	39:13,22	40:12	3:12,15,18
15:8	40:2 43:9	contemplated	3:22,23 4:3
communities	57:4 65:21	40:6	5:1,4 6:13
60:15	79:17 85:25	contested	6:15,18,20

7:1, 7, 13, 18	57:24, 25	covered 84:1	54:18, 21, 25
9:3 10:17, 19	58:4, 12, 19	covering 46:22	76:3, 9 77:3
10:20 11:2, 3	58:23 59:2, 8	Cox 67:13	78:3 80:20
11:6, 7, 9	59:8, 13, 19	crazy 75:14	81:10
12:2, 23	60:22 61:3, 6	create 8:20	
13:23 15:4, 8	61:12 62:4, 9	32:6, 10, 22	D
15:12 17:18	62:15, 19, 20	43:19 45:8	damage 54:24
17:24 18:14	63:17, 22	46:18 49:14	dangerous
18:15 19:3	64:7, 9, 18	51:21 75:24	51:21
19:11, 21, 23	65:17 72:19	75:25 86:19	data 49:9
20:4, 9, 13, 24	73:15, 18	86:21	date 1:12 89:8
21:1, 2, 14	74:2, 7, 11, 23	created 26:14	Dated 89:21
22:24 23:1, 3	75:5, 7 76:25	44:6 54:23	day 14:3
23:4, 9, 13, 17	77:1, 4, 5, 6	creates 31:15	days 3:15
23:22 25:9	77:11, 12, 23	49:25 80:16	de 55:19, 22
25:10, 25	78:6, 7 79:7	creating 88:1	56:6 57:1, 7
26:25 27:2	79:8, 20, 22	credibility	67:14 74:18
27:20 28:4, 5	79:24 80:5, 6	61:22	82:15
28:5, 8, 11, 13	80:14, 18, 21	cross 8:21	deal 28:23
28:15, 16, 18	82:18 83:8	11:20 20:22	29:3 38:12
28:18, 21, 23	83:16 87:3	26:5 41:18	dealing 28:22
28:24, 24	87:23	41:24 59:12	60:3
29:2, 4, 5, 8, 9	county's 55:3	59:25 60:10	deals 59:14
29:9, 10, 14	couple 4:11	61:16 63:18	dealt 41:3
29:18 31:5	17:12 23:16	66:10 70:17	82:12
31:22, 25	34:9 55:17	76:10 84:24	decades 29:22
32:11 33:8	56:12	86:22	December 3:18
33:12, 19	course 18:1	cross-exam...	3:21 4:14, 24
34:5, 6, 13, 19	19:2 20:9	55:24, 25	6:23 19:16
35:2, 4, 11, 11	34:12 35:18	crux 59:22	19:24 20:3
35:21 36:22	43:10 61:16	curb 9:7 30:7	20:14
37:9, 16	85:12	30:21 32:18	decided 3:20
38:11, 12, 13	court 1:21 5:6	37:24 38:2	15:7
40:18, 20	6:23 9:14, 17	87:4	decision 3:16
41:8 42:10	10:7 14:6, 7	current 11:14	14:4, 5, 14
42:12, 18, 19	14:9, 10, 11	50:23	15:11, 20
42:22 43:1, 5	14:13, 14, 15	currently	16:12 20:1, 7
43:6, 8, 14, 23	14:15 19:6	11:24 55:1	23:1, 2, 10
44:14 45:13	19:12 23:5	cut 21:11 26:6	31:7 56:2
45:21, 23, 25	23:11, 11	26:9, 15, 21	59:7 65:16
46:18, 19, 23	31:1, 7, 10	27:6 29:7	65:18 82:18
47:7, 9, 12, 13	35:2, 3 55:21	30:7, 8, 21	82:19 85:16
47:15, 20	64:13 81:11	31:24 32:7	86:10 87:24
54:17 55:2	89:3	32:18 36:23	88:7, 8
55:11, 13	courts 29:21	37:17 38:10	decisions 35:1
57:17, 22, 23	coverage 66:3	39:16 43:12	35:2, 4

dedicate 79:18 79:20	20:13 21:12 21:18 22:5	discussed 84:19	51:25 52:10
dedication 64:24	22:21,21 23:3 26:10	discussing 50:9	drawing 51:14 52:11
deemed 58:22 78:1,2	26:15 32:9 38:20 57:24	discussion 83:16,20	drawn 37:8
defer 37:10,11	58:2,10 61:8	dispute 34:21 71:24	dreading 70:13
delay 3:25	62:8,12	disputing 42:18,25 44:2	drive 5:17 11:14 63:24 69:11 71:23 73:21
deli 38:25 39:3,7 66:8	63:10 72:21 73:16 79:16	disregard 47:10,15,20 47:20,23	driveway 10:5 30:5,6,8,15 30:21 32:18 32:24 37:5 41:16 50:10 50:15,21 51:1,8,8
demand 28:13 36:23 37:4 81:10,13	79:25 80:5 80:12	distance 66:21	driving 61:9 61:14
demanded 29:6	developments 6:1,2 9:11 9:12 68:11	distinction 58:5	drove 62:19
demonstrate 33:11	diagram 52:18 53:2	distinguis... 64:14,15 65:6 82:14	due 40:17
denied 3:23	dictate 11:7	distinguis... 56:24 64:12 81:7	dump 63:9
described 75:22	different 27:2 30:2 33:1 34:6,10 35:11 36:1 37:12,12 41:7,8 43:4 43:14 55:2 59:14,24,24 61:1 65:10 65:10,11 73:15,18 74:5,11 75:12	dockets 18:2	dwell 79:1
description 65:25	document 6:12 6:24 19:17 24:10	documents 4:24 7:5,8,12 8:17 10:14 50:20	<hr/> E <hr/>
design 48:14 48:20 49:1 58:22 70:24 78:1	difficult 48:15 56:3	doing 12:8,9 12:10 13:18 28:20 29:19 44:24 57:11	e 2:1,1,10,10 58:1 89:1,1
desire 49:3	direct 63:23	Dolan 31:11 65:10	E-mail 2:16,24
detriment 81:25	directed 18:2	Donna 1:15 89:3,19	earlier 23:2,6 32:4 35:23 36:10
detriments 27:9	direction 59:4 63:21	door 20:23 22:5 27:1 32:8 54:25	ease 23:2,6 32:4 35:23 36:10
develop 41:19 61:11	direction 59:4 63:21	door 20:23 22:5 27:1 32:8 54:25	earlier 23:2,6 32:4 35:23 36:10
developed 41:25	directly 11:8 11:17 37:15 59:9 61:4 63:20 79:6 82:17	doing 12:8,9 12:10 13:18 28:20 29:19 44:24 57:11	earlier 23:2,6 32:4 35:23 36:10
developer 18:6 20:23 29:23 29:25 41:16 41:22 79:17	disagree 40:15 79:3,9	Dolan 31:11 65:10	earlier 23:2,6 32:4 35:23 36:10
developers 9:14	disagreement 72:23	Donna 1:15 89:3,19	earlier 23:2,6 32:4 35:23 36:10
development 3:5,19 5:4 5:23,24 6:5 11:16,18,19 11:25 19:4 19:25 20:7		door 20:23 22:5 27:1 32:8 54:25	earlier 23:2,6 32:4 35:23 36:10

66:1,10 76:4 77:4,8,9 78:3 79:22 80:20 81:10 81:14,14,17 82:15 83:1,1 83:6 84:24 86:22	employee 89:11 ends 73:8 engineer 23:24 23:24 26:17 44:13 45:4 45:25 58:19 61:20 77:23 engineering 45:10,20 58:24 62:18 78:8 engineers 23:23 26:24 27:6 31:22 ensure 58:11 entire 9:8 58:17 67:25 82:21 86:13 87:4 entities 35:20 entrances 66:21 envision 73:25 equitable 55:2 especially 35:6 43:11 45:3 55:22 ESQ 2:12,20 essence 29:20 established 58:24 78:9 evade 42:13 44:13 45:14 evaluate 48:15 evening 16:24 16:25 55:12 55:15 event 18:3 25:7 35:1 36:18 39:7 Everglades 69:22 Evergreen 69:22 everybody 63:13 69:19	everyone's 5:11 evidence 27:9 27:25 55:24 55:25 56:1 evidentiary 34:15 exact 56:23 exaction 31:13 31:16,18 32:13,15 81:22 82:2 exactions 30:25 31:2 45:15 65:3 exactly 60:20 60:24 64:10 examining 45:10 example 34:2 exception 43:8 excerpt 5:5 6:14,14,18 Excuse 46:6 exercise 30:14 exhibit 5:8,13 24:2,3,12,13 24:19 exhibits 19:7 24:2 74:25 existed 35:7 existing 79:19 expand 12:21 13:2,3,19 42:10 45:13 expanded 15:5 expense 9:23 experts 49:12 49:23 explain 82:21 express 83:13 extending 19:15 extent 73:12 74:15	F F 2:1,12,20 70:4 89:1 facilities 41:24 57:25 58:21 77:25 fact 27:8 factors 56:25 64:12 facts 21:6 59:5,6 75:12 75:12 82:1 factually 78:13 fails 84:14 fair 9:13 19:5 19:5,13 32:14 fairness 29:22 31:20 faith 71:16 78:5 fall 53:21 Fallat 33:5,6 34:3 41:21 60:18 61:5 62:6 familiar 25:7 39:1,6 74:19 famous 31:11 far 6:7,8 16:17 38:9 51:18 54:5 61:2 67:22 75:11 farmhouse 53:17,19,22 54:12 fault 72:25 features 58:22 78:1 federal 21:7 30:25 40:21 42:14 43:7 56:21 75:17 81:22
---	--	---	--

fee 65:4	39:11 78:5	26:9 49:4	37:14 41:5
feel 14:20	follows 75:23	52:13 53:12	48:14 53:15
feet 9:2 60:6	force 79:1	62:2 68:3	54:14 60:12
62:12,12	foregoing 89:6	frontage 9:8	60:15,16
87:1	forget 17:13	87:4	62:20 64:11
felt 15:5	17:14 60:17	full 10:7	66:20 67:25
field 54:13	form 38:21	43:14 55:1	70:6,6,6,7
68:5	FORMAL 1:2	73:7,8,15,17	74:5 78:20
figure 84:15	format 89:15	74:4,10	goes 14:5
filed 3:21,23	forth 3:8 12:3	function 71:9	16:17 33:15
17:19 19:10	21:1 41:6	71:11	61:8 65:2
19:21 20:3	58:3,8 89:9	funnel 73:12	73:1
23:5,7 34:10	four 7:13 8:19	74:16 75:21	going 3:17
final 50:8	20:12,19	funneled 21:12	4:19 7:25
financially	39:22 86:14	21:18	10:10 11:13
89:13	framework	further 4:21	11:19,22
find 4:12	31:19	6:11 11:12	12:2,14
22:19 54:7,9	Franklin 2:21	12:17,24	18:25 21:23
fine 20:17	frankly 56:11	73:3 84:3	22:2,9 23:10
26:2 32:19	64:4	89:10,14	23:11,19,20
66:6	free 1:24 79:9	future 53:23	25:21 26:10
firm 2:19	freeholder	fuzziness 20:6	27:11,12
10:13 17:1	71:17		29:25 30:18
first 3:8 4:4	freeholders	G	31:2 37:23
16:19 20:10	3:10 20:5	gaps 71:13	38:3,4 39:6
20:14 47:1	Frisby 2:2 3:1	Garfinkel	53:21,24
57:8 78:23	8:3,4 15:10	23:25	54:4,7 60:5
84:13 88:3	15:18,21,25	general 46:21	60:9 62:13
Firstly 72:15	18:19 37:20	46:22 47:8	67:8,18,23
fit 39:9	39:19 44:18	gentlemen	68:23,24
five 79:16	45:6,16	83:11	69:12,13,23
flag 10:4	46:14 51:11	George 60:18	69:24 70:16
50:13,21,24	53:11 55:5	62:6,7,18	70:18 72:1
50:24	68:6 69:4,9	63:14	77:19 84:15
flood 60:9	72:5,11,14	getting 51:5	85:10
Florida 60:12	73:19 74:3	67:18	good 4:16
focus 64:20	74:13 76:6	give 14:19	16:24,25
77:17	78:18 82:4,9	28:12 37:4	28:10,11
focused 4:9	83:4,10,19	56:16 74:4	33:21,22,23
focusing 57:13	83:23 84:6,9	given 4:7,13	36:19 55:12
folks 49:10	84:22 85:1	5:23 7:8,8	57:9,10
follow 47:18	85:21 86:15	50:4	60:24 75:2
71:21	87:8,11,21	gives 59:4	78:4 81:1,2
follow-up	87:22 88:5	go 3:14 5:19	81:4 83:15
41:12	front 3:11 4:2	10:4 22:2,9	84:8
following	4:3,5 9:17	23:11 30:4	govern 32:13

47:11	75:4, 8	17:1, 6, 13, 21	73:13, 16
governed 50:20	happening	18:12, 23, 24	74:8 75:8
governing	56:24	19:9, 14, 19	76:17 82:24
23:19 28:3	happens 56:17	19:24 21:21	83:7
30:24, 25	happy 27:22	22:1, 7, 13, 17	High 39:5
31:1 43:7	56:18, 23	23:1, 5 24:10	Hightstown
46:22 57:22	65:15 68:5	24:14, 17, 25	27:3 33:15
59:1 78:10	hard 53:9	25:16, 19	66:16 68:1
government	hazardous	26:2 33:6	72:22 73:2, 6
30:14 31:13	27:25 48:12	38:6 39:3	74:9
37:2, 3 56:21	hazards 45:9	40:23 41:20	highway 1:22
56:21 80:23	48:16	46:8, 10, 25	58:21 77:25
81:13	he'll 10:21	47:4, 14, 19	Hill 2:11 4:25
governmental	11:12	47:24 48:3	10:13 17:1
35:20	health 7:15	53:6, 10 54:3	historical
governs 47:9	hear 9:22	54:9 55:7, 9	53:24
Grande 60:19	10:10 11:9	55:18 56:4	hold 23:6
grandfathered	12:3 36:2	60:19 65:19	home 68:3
50:25 51:4	heard 5:21	66:14, 25	hopefully 23:8
grant 11:18	18:4 34:19	67:5, 10	30:1 39:16
20:22 29:15	57:2	68:17, 20	house 30:5, 17
granted 3:19	hearing 3:2, 10	69:16 70:15	32:24 51:7
4:13 33:12	4:7, 8, 14, 15	70:20, 24	53:19
33:24, 25	5:3, 3 7:13	71:7 72:1, 3	housekeeping
great 26:13, 24	7:24 22:25	72:25 76:10	4:11
39:7 84:5, 5	23:22 34:13	76:16 83:12	housing 6:25
green 6:6	34:16, 17, 24	84:17, 23	9:13, 14, 21
68:21 73:5	34:25 35:7	85:8, 12, 17	10:1
grossly 37:6	40:16	85:23 86:19	hump 39:12
grounds 81:23	hearings 7:11	87:9, 23 88:7	hurt 32:3
groundwork 3:7	heart 37:15	hereinafter	hurts 30:16
6:12	heavy 57:15	58:2	hypothetical
guess 17:22	HELD 1:9	Heritage 6:20	30:19
35:14 39:9	help 30:16	11:18, 24	
50:9 71:7	32:1, 21 66:2	18:7, 17	I
Guntner 7:20	67:1, 6, 6, 10	20:23 21:12	idea 21:17
guys 71:16	67:18 86:2	27:1 33:8, 13	26:7 28:10
	helpful 24:3, 6	33:18, 24	28:11, 11
H	helps 25:2	34:1, 5, 20	33:22, 23, 23
H 2:7	Herbert 2:6	35:9, 10	48:13 50:9
half 38:22, 23	3:6 8:7, 10	37:19 53:18	70:13 81:1, 2
77:9	8:13, 16 13:4	54:25 61:13	81:3, 4
HAMILTON 1:23	13:6, 12, 16	65:1 66:15	III 2:12
happen 54:8	14:22, 25	67:22 68:15	illegal 11:23
61:18	15:15, 19, 23	68:22 69:1	32:16, 23, 25
happened 34:18	16:5, 10, 15	72:18, 20	imagine 30:3

86:14	install 41:17	75:16 81:13	28:17 29:3,4
immunity 19:15	41:23	issued 19:25	29:10 32:12
impact 26:19	instruments	34:20,23	38:11 42:10
impacts 61:4	51:4	issues 4:12	43:1 45:13
61:10,11,12	interaction	10:23 21:15	46:5,17
61:13,13,15	66:17	21:15,15	47:13 55:3
63:12,12	interest 64:23	26:14 27:11	66:11 77:1,7
import 77:14	interested	27:14,18	
importance	89:13	28:24 29:1,3	K
55:20	interesting	32:3 37:13	keep 38:15
important	50:23 54:12	37:14 38:16	55:15 88:9
36:20,22	interior 21:4	40:18 61:23	key 25:8
37:14 55:22	23:13 29:7	66:2	kids 26:10
58:5,17	29:16 31:24	items 55:17	39:5
64:16 69:11	32:16 36:23	J	kind 13:18
73:11 82:16	39:12,16	Jacobson 9:18	53:24
83:2	77:3 78:3,7	January 6:25	knew 52:16
importantly	78:7 79:22	7:9 19:16	knock 53:24
42:9	internal 26:6	34:11	knocked 53:19
impose 23:13	27:6,23	Jeff 23:25	53:22
31:13,25	28:14 60:10	JERLENE 2:7	know 10:1,3
33:20	76:3	Jersey 1:11,23	11:5 14:13
imposition	interpreta...	2:14,22 6:18	14:15,16,20
34:8	40:11	31:4 45:17	18:9,9,21
improvement	intersection	56:5 57:20	24:4,5,15
75:25 76:1,2	5:14,16,20	60:14 65:12	25:14,17
77:18,22	5:25 6:1,4,6	75:17 89:4	28:4 29:21
improvements	11:14,15,15	job 4:16 83:15	30:12 33:21
45:23,24	11:21 44:4	join 14:10,12	34:4,5,21,23
47:13 58:18	63:22 70:1,6	JOYCE 1:9	35:6,15,16
79:7	71:22 73:9	Jr 55:10	36:9,25 37:5
include 46:2	86:20	Judge 9:18	37:6,8,8,10
included 14:21	introduction	judging 15:16	38:23,25
including	16:17	judgment 57:5	39:1,4,10,17
34:19 35:18	Investors 17:3	57:6	40:19 43:16
58:21 77:25	involved 13:25	July 1:2,12	44:16,24
inclusionary	74:21	34:12 82:17	45:4,8 48:19
9:12 19:3	irrelevant	89:21	49:1,23 51:5
Incorporated	40:17	June 3:22	51:21,23
31:6	issue 23:19	jurisdiction	52:11 53:5
information	33:15,16	4:12 9:4	53:25 54:6,7
39:23 40:1	36:23 38:10	10:18,19	56:1,2 59:20
40:10	38:18,21	11:3 14:7,8	60:13 61:23
initially	39:15 54:1	15:13 21:3	62:17,18
78:21	59:9 66:24	23:13 28:6	66:10 67:19
inside 77:12	69:19 71:4,6		68:19 69:10

69:21,24,25	46:21 58:6	72:21 74:1	6:3 11:13,15
69:25 70:24	58:14 77:6	83:7	11:21 44:4
71:1,16 73:4	78:12 80:2	legal 1:20,21	44:24,25
74:18 75:10	Lastly 81:6	15:13 18:22	71:22 86:20
75:11,13	Latin 74:20	21:15 28:2	lights 45:7
76:14 80:25	Laurel 6:23,24	31:9,19	likes 37:13
81:6	law 2:19 7:19	32:10,12	limit 65:25
known 8:19	10:12 17:1	45:12 81:9	limitations
knows 57:10	20:6 23:18	legally 13:2,6	42:14,21
Koontz 2:5	23:20 44:16	18:11 42:9	limited 10:2
8:13,14,15	45:15 50:23	79:2,4,5	28:6 43:5
24:20 25:4	55:21 56:4	Legion 31:8	58:3 77:1
31:12 39:20	57:13 59:6	legitimate	limits 43:8
39:21 40:9	59:21 61:2	30:14 71:9	line 5:10 9:2
40:25 41:11	64:11 75:13	length 22:24	21:16 37:1,2
42:2,16,24	75:22,23	26:13,24	37:2,7,7,23
43:16 48:7	80:13,13,23	Lenox 2:19	38:1 80:25
48:19,24	81:4	55:10	87:2
49:2,7,17,21	Lawrenceville	let's 18:6	lines 39:14
50:7,22 52:6	2:22	78:13	42:8 70:23
55:8 61:9	laws 61:17	letter 4:25	75:19
65:11 71:21	lawyers 74:19	14:25 20:4	listed 64:13
72:7 83:25	74:20	20:14 23:17	86:18
84:12,25	lay 3:7 6:11	25:13,15,22	litigation
85:3,14 86:6	10:25	26:3 82:21	6:25 9:19
86:9,12,17	layout 60:2	letters 13:10	litigator
86:21 87:15	learned 83:14	13:15 15:7	12:11
87:16 88:6	leave 60:5	21:2 31:5	little 5:9,15
	63:6	33:11 34:18	12:9,10 20:6
	leaving 6:7	35:15 56:6	54:5 56:13
	71:18	75:6	61:3 78:16
	left 5:15,23	letting 15:3	live 50:11
	6:5,8 11:19	level 70:4	53:14 67:23
	11:23 22:11	License 89:20	lived 62:19,19
	33:13 34:6	light 20:16	LLC 17:3
	44:1,1,3,10	26:19 44:7,9	LLP 2:11
	44:23 62:13	49:18,20	load 57:15
	63:20 67:24	50:4 60:6,9	located 19:2
	68:13,17,18	60:11 62:23	location 62:1
	68:23 69:3,4	63:5 68:10	logical 62:17
	69:12,14,16	69:18,20,23	long 7:22 10:5
	70:4 74:8,10	70:16,19,20	13:19 19:22
	82:22	70:25,25	24:8 34:23
	lefts 33:9	71:3,12 72:2	longer 12:9,10
	34:1 35:10	82:25	62:7 85:25
	35:10 72:18	lighted 5:25	look 7:5 11:13
L			
L 1:9 2:10			
laid 4:17 26:7			
45:11			
land 3:18 5:4			
9:15 12:8			
19:25 20:7			
20:13 23:3			
28:17 38:20			
45:19 56:16			
57:24 65:4			
79:15			
lane 69:20			
70:9			
language 40:7			
40:12,22			
42:12,15			

17:17 24:3	marketing	mention 41:14	move 48:8
30:24 46:15	10:23 27:14	mentioned	71:19 83:18
48:21 53:7	62:2	13:24 19:24	86:9
60:2,6 66:21	master 6:13	81:5	moved 85:3
75:10 78:11	11:5 40:7,12	Mercer 1:1,3	movement 73:7
looking 5:11	40:19 41:1	3:3,9,10,11	73:8
12:22 13:1	42:12,15	3:18,21,23	moves 14:9
40:2 72:7	57:17 59:2,8	5:1,4 7:18	municipali...
84:21	78:12,15	15:12 20:24	35:17 41:4
looks 53:21	79:14 80:2	55:11,13	municipality
lot 8:22,22,24	matter 3:11	57:17 58:12	30:4,5 36:14
10:4,14 17:4	10:8 11:3	59:2,7,8,13	59:17
22:15 31:8	13:22 14:1,3	60:22 61:6	
48:10 50:12	14:5 17:24	61:12 62:4	N
52:12 86:23	28:3 29:22	63:17 64:18	N 2:10
86:25	31:19 34:14	65:17 82:18	N. J. S. A 3:12
lots 19:1	36:25 77:20	MICHAEL 2:6	28:15 57:21
50:13,24,24	83:16	Michelle 26:17	nails 63:15
Lucyille 2:3	matter's 23:10	Mike 69:11	name 55:12
8:9	matters 17:20	82:8	69:22
M	18:14 84:18	mile 77:10,10	nature 47:8
M 2:4	Mayor 35:15	mind 17:4,9	82:22
ma'am 87:22	36:5	54:17	necessary 24:6
main 6:9 64:15	mayor's 25:13	minimizes	49:11,25
maintain 43:1	26:3	63:19	58:22 78:1,2
50:25 63:23	mayors 13:11	minimum 38:17	78:5
maintained	16:3 75:9	minutes 6:25	necessity 7:19
68:12	MCDADE 1:9	Mironov 35:15	need 6:22
maintaining	mean 42:23	36:5	11:20 12:17
50:15	44:20 46:20	misimpression	31:15 32:6
maintenance	53:25 56:17	35:7	32:10,22
8:21 86:22	61:22 68:17	mistake 46:24	33:16,20
major 39:15	73:10 78:22	mobility 6:14	34:7 43:12
making 10:16	meaning 9:12	11:4 40:24	70:22 73:12
11:11,23	58:10 77:13	40:25 59:9	74:16 75:24
15:19 42:19	meant 17:23	moment 27:12	76:1 81:25
48:15,16	meat 56:13	29:20 30:3	87:10
62:10 70:4	meeting 1:2	35:8	needing 30:15
85:6	7:1 15:9	monetarily 6:3	needs 7:5
manner 58:13	16:9 57:19	money 29:25	75:16
March 22:25	88:2 89:7	motion 83:18	neighbor 30:15
23:21 34:15	meetings 18:17	83:24 84:11	50:11,14
34:15	Melker 87:18	84:13,14,18	51:1
margin 46:2	members 12:4	85:2,7,13	neighbor's
marked 24:1,3	memo 31:9	87:9	30:9,17
	memoranda 81:9	Mount 6:23,24	32:19 51:9

neighborhood 50:11,18 56:15 60:8 68:1	notices 35:23 November 19:21 novo 55:19,22 56:6 57:1,7 67:14 74:18 82:15	11:22 19:2 20:16 21:23 22:12 27:3 33:14 38:25 39:8 44:2 49:13,14,18 50:1,24 53:18,20 54:12 60:4,5 60:16 61:14 62:16 63:9 67:23 68:11 69:2,17,19 72:21 74:4,8 82:23 87:2,5	originally 10:8 OTR 5:7 6:21 9:17 10:12 11:16 17:4 17:15 18:5 18:18 19:1 20:22 21:13 21:19 22:9 24:14,17,18 26:15 27:8 29:8 32:1,2 32:3,5,8,8 33:17,20 34:8,16,18 35:8 37:18 43:13,19 61:9 63:4,4 64:17,25 71:8 73:13 73:17 75:21 76:17 80:17 OTR's 22:9 31:25 32:9 33:17 44:21 OTR/East 1:4 2:17 3:3 5:5 7:1 17:3 outlined 21:8 27:18 39:14 42:8 outraged 30:10 outside 36:11 56:7 overall 9:15 36:22 overlay 5:8,10 overloaded 45:8 owner 21:4 29:15 31:14 31:14,18 80:10 81:17 owns 64:25 65:1
neighborhoods 62:20,21	number 10:17 21:4 22:6,8 35:20 78:2	54:12 60:4,5 60:16 61:14 62:16 63:9 67:23 68:11 69:2,17,19 72:21 74:4,8 82:23 87:2,5	
neighboring 18:6 41:18 41:25 43:13	numeral 79:16	50:1,24 53:18,20 54:12 60:4,5 60:16 61:14 62:16 63:9 67:23 68:11 69:2,17,19 72:21 74:4,8 82:23 87:2,5	
neighbors 37:4		one's 50:11 one-way 76:17 ongoing 34:25 open 3:2 83:16 operate 50:4 opinion 13:14 13:16 14:19 15:17 63:18 79:11 opposed 41:7 44:23 54:21 62:13 opposite 36:12 76:24 option 63:19 order 11:18 19:15 46:17 71:13 orders 19:6,11 24:1 ordinance 27:14,17 38:16,18 51:4 59:1 78:10,14,15 78:17,19 79:14,15 ordinances 51:4 80:1 original 17:7 68:15	
neither 76:2 79:23,23 84:4 89:10	o		
never 33:18 37:13	O 2:1,10 oaths 89:5 object 25:17 25:18 66:23 objected 15:5 objection 35:16 67:4 objections 25:22 obligation 51:18 58:11 62:4 80:9,11 obviously 32:25 33:17 38:9 63:11 66:10 occur 66:17 occurred 4:7 offensive 51:10 offered 43:21 okay 13:5 16:13 19:18 26:4 30:22 46:9 49:2 50:7 54:11 55:9 60:1 74:13 76:19 79:3,8,12 80:11 84:25 86:4 87:8 88:4 old 5:12,17 9:2,3,8		
New 1:11,23 2:14,22 6:18 31:4 45:17 56:5 57:20 60:14 65:12 75:17 89:4			
nexus 61:11 62:25 63:1,8 63:10 64:15 66:12 75:16 75:20,22,23 81:24			
nice 55:15			
NJ 89:15			
Nolan 31:11 65:11 81:11 82:12			
Nolans' 81:20 81:20			
non-legal 60:1			
normal 15:8			
Normally 3:15			
north 11:20 21:23 68:24 70:7			
note 33:3			
noted 26:19			
notes 21:24			
notice 4:13,17 4:17 35:17 36:1,4,6,15			

P	people 9:24	87:4	80:5,14,18
P 2:10	33:21,22	planning 1:4	80:21 82:18
p.m 1:13 88:12	37:11 56:18	2:25 3:3,12	83:8 85:16
packet 9:20	65:5 67:23	3:13,22,23	86:10 87:23
page 17:17	70:8 71:14	4:4,6,6,20	plans 9:16,17
25:12 26:18	72:20 74:7	5:1,3 6:16	57:24
33:4	79:9 81:19	6:18 7:18	planting 18:16
pages 24:9	perfectly 61:5	12:23 13:23	play 55:20
26:12 27:4,5	peril 80:17	15:4,12,12	56:9
27:17,18	permit 30:4	17:18,24	please 47:5
paper 75:1	61:17	18:15 19:11	82:9
77:3 88:1	perpetual 83:9	19:21 20:5,9	plenty 60:14
paperwork 21:8	perspective	20:24 21:1,3	podium 16:20
parcel 44:25	48:9 64:2,4	21:14 22:24	point 5:15
parking 41:5,6	petition 14:10	23:1,4,10,17	14:12 44:19
part 6:1,17	14:15	23:22 25:9	48:9 49:12
8:17 9:15,16	physical 45:22	25:10,25	50:8 54:15
9:18,19 10:2	58:18 77:18	26:25 27:20	60:21 67:20
11:4 13:15	77:22	28:4,5,6,8	68:10 76:8
13:17 14:24	pieces 77:17	28:12,13,15	83:15 85:18
15:9 16:5,8	pinch 60:21	28:17,21,23	Pointe 3:5 5:7
16:12 17:10	place 3:14	29:2,4,9,10	points 25:8
18:13,16,17	60:25 86:1	29:15,18	58:15 67:21
19:6,12	89:8	31:5,22,25	82:7
25:19 36:7	placed 10:1	33:8,12 34:5	pool 52:19,20
38:16 44:25	15:7 16:16	34:14,19	52:20,21
48:22 56:16	placing 88:8	35:2,5,11	53:4 54:16
66:1,1 70:5	plain 57:19	37:9,17	62:1
particular	58:9	38:11 40:18	poor 21:17
28:15 44:19	Plainsboro	40:20 41:9	26:7
50:17 75:24	39:5	42:10,18,22	position 11:2
parties 14:1	plan 3:4 5:7,8	43:5,6,9,24	21:2,16
84:20 89:12	6:13 8:21	44:14 45:14	56:10 76:20
party 71:24	9:7,15 11:4	45:20,23	positions
pass 25:12	11:5 19:5,6	46:5,17 47:7	13:22
27:23	19:13,23,23	54:17,20	possible 24:23
passageways	27:15 40:7	55:11,14	42:20 43:23
46:18	40:12,19,24	57:2,23	62:11
paved 46:2	41:1,1 42:12	58:24 60:25	postdate 82:19
pedestrians	42:15 51:15	61:6 62:4	potential
26:11	51:20 54:19	63:17 64:2	48:15
pen 87:25	57:17 58:25	65:17 72:19	potentially
pending 14:11	59:3,8 66:13	74:7,23 75:5	63:20
48:4	73:5 78:9,12	75:7 76:25	powerful 65:8
Pennsylvania	78:15 79:15	77:2,7,12,15	practical
61:14	80:2 86:22	78:8 79:8	21:15 68:4

precludes 41:15	20:15 38:24 38:24 82:19	44:5, 6, 21 48:11 49:16	provides 28:5 59:21 63:23 67:13 77:1
preliminarily 32:5 40:16	problems 10:3	50:14, 15	providing 19:11 64:10
preliminary 48:13	procedure 5:5	51:6, 10	provision 46:22 47:9
present 74:21	procedures 35:21 45:19	52:19 53:2	provisions 28:7, 12 35:25 36:15 47:7, 11
presentation 16:23 72:16	proceed 4:2, 3 4:5 19:18	53:14, 16, 18 53:23 54:25	public 3:2 5:2 12:4, 12 46:1 58:20 63:3 77:24 89:7
presentations 84:2, 5	proceedings 17:18 75:8 88:11	55:1 56:15 64:23, 25 65:1 73:13 74:17 75:20 75:24, 25 77:10, 11, 13 80:10, 17 81:17, 18, 19 81:20, 21 82:24 83:8 86:24	pull 71:14 85:11
presented 10:14 17:24 17:25 74:23	professionals 57:2, 9 60:22 64:9	property's 35:19	purpose 58:3 pursuant 3:12 11:4 20:3 36:15 89:5
presenting 12:14	prohibitions 29:18	propose 38:14 51:24	put 4:22 9:5 15:1 23:23 24:5, 23 26:3 26:24 27:9 27:23 50:5 53:4 59:6 69:23 80:18 84:11 85:24
preserved 26:21	project 8:22 23:24 50:4 67:22 71:8 71:10 86:23	proposed 27:24 31:18 38:14 45:21 51:24 52:2, 12, 21 76:8, 16 79:20	putting 4:16 63:7 87:25
presume 67:16	projects 9:16 9:21, 25 10:1 11:6	proposing 48:25	
pretend 75:12	promise 34:10	proposition 36:10	<hr/> Q <hr/>
pretty 59:18 75:2	proof 17:8	protect 63:4	quarrel 79:21
prevented 27:14	proper 3:14 4:13	provide 9:1, 7 9:14 18:25 19:4 29:7 30:8 32:19 35:17 50:10 51:9 57:23 71:13 81:17 87:1, 3	question 5:14 5:20, 21 8:4 9:11 13:7 27:18 39:17 39:22 41:12 42:6, 17 44:12 45:12 48:2, 3 49:19 52:18 53:14 54:15 69:8 70:11 76:7 76:21 82:15
previous 4:14	properly 4:17 34:22	provided 20:1 22:23 25:23 27:7, 8, 20, 25 34:5 36:14 57:25 78:3	
previously 3:9 17:9	properties 24:1 26:20 41:19, 25 73:14		
primarily 57:13	property 8:23 18:25 19:1 20:23 21:4 21:13, 19 22:3, 9 27:1 27:24 29:15 29:16 30:9 31:14, 14, 17 32:1, 8, 19 33:10, 17 36:21 37:15 37:18 43:14 43:19, 25		
primary 76:22 76:24			
Princeton 2:14 27:3 33:14 50:12, 23 66:16 68:1 72:22 73:2, 6 74:9			
principles 41:7			
prior 17:25			
private 31:13 31:14 56:22			
probably 28:19 37:13 59:20 85:17			
problem 15:3			

resolution	46:23,23	29:8,9 33:14	55:10
58:25 78:10	47:12 50:5	33:15 38:13	Roman 79:16
88:1	50:20 52:13	38:13,25	Room 1:10
resolved 83:1	53:3 55:20	39:8 43:2,18	Roszel 2:13
RESOURCES 1:20	55:21,22	44:2 45:21	roughly 38:22
respect 32:3	56:4 57:8,14	46:19 47:20	Rule 89:15
34:16 40:17	57:15,15	48:11,14	rules 3:8
76:3	58:7 59:3,4	49:4,11,13	55:21 56:9
response 36:6	59:5,7,13	49:13,14,18	82:20
39:24	60:4,6,23	49:24 50:1	run 10:5
responsibi...	61:18 63:2,7	51:14,20	
42:19 60:22	64:1,24,25	53:16 58:4,7	S
restrictions	65:9,18	58:7,9,11,13	S 2:10,10
29:13	66:11 68:2,2	58:23 60:5,5	safe 42:20
result 21:10	68:14,23,24	60:16,16	43:9 44:9,15
resulted 19:6	68:24 73:22	61:3,14 62:9	46:18 58:3
22:25	73:22 74:10	62:16,16	58:13 60:23
retirement	74:25 75:13	63:8,9 66:16	62:5,10
60:17	75:14 76:4	67:24 68:2	80:21
return 27:11	77:13 78:11	69:2,12	safer 44:3,22
27:12 79:13	78:25 79:22	72:22,22	61:18,21
returned 77:16	79:24 80:1	73:2,6,23	62:15 63:4
reverse 23:9	82:8,23,23	74:4,5,8,9	63:19 66:12
37:16	85:23 86:13	76:8 77:4,5	80:9,12,16
reversing 37:9	86:16	77:12 78:6,7	80:22
review 15:16	right-of-way	79:20,22,24	safest 62:17
28:3 41:15	9:2 37:24	82:23 87:3,3	safety 21:15
45:18 55:19	38:2,15,19	87:5	26:8,14,21
55:23 57:1	38:22 64:24	roads 11:6,8	32:3 43:1
57:23 58:25	65:22 66:1,2	27:2 28:18	46:1 58:20
67:14 74:18	79:19,21,23	28:18,24	60:21 61:4
74:24 78:9	81:14 87:2	29:5 33:19	63:3,3,25
82:15	rights 37:15	34:7 35:11	64:3,7,17,18
reviewed 7:12	69:2 72:21	40:5,13	77:24 82:13
rfcasey@Le...	74:2,10 83:7	42:12,20	sake 29:14,17
2:24	rights-of-way	43:15 46:18	SAMUEL 2:2
right 4:5 5:18	45:22 64:22	46:23,23	sat 7:18
5:18,19,24	81:7	47:9,13 55:2	satisfied
6:7,8 7:5,6	Rivers 69:13	57:24 58:23	39:25
11:5,7 14:6	road 2:13,21	60:23 62:5	satisfies 42:6
15:13 25:5	5:12,17 9:3	73:15,18	saw 52:19 53:2
28:13 31:18	9:3,4,8	74:2,11 78:6	saying 13:20
33:13 34:6	10:21 11:22	79:7 82:13	22:2,8 36:6
36:3 37:5	19:3,3 20:16	Rob 5:16,18	42:25 43:3
38:12 39:4	21:23 22:12	9:4 73:4	44:5,8,9,14
44:1 45:12	27:3,3 28:24	Robert 2:20	44:19 45:12

45:15 47:15	60:1,10,20	sidewalk 9:7	smoothly 71:19
47:21 49:21	62:24 63:25	28:25 37:24	Socey 55:10
49:24 72:1	64:2,3 68:4	38:2,24 39:9	solely 58:6
73:8	68:4 73:21	66:5 87:4	soluble 39:13
says 30:19	sent 13:10	sidewalks	solution 43:23
40:19 41:22	23:17 36:4	38:13 65:22	somebody 21:19
41:22 42:11	separate 4:8	signal 18:8	80:11
46:24 57:22	6:21 7:10	62:14 63:22	somebody's
72:4 77:12	62:11	signalized	77:10,11,13
78:14 82:24	September 10:9	63:21	song 72:4
scenario 30:19	serve 37:18	significant	soon 14:8
51:7,7	served 26:20	20:20 38:9	sorry 37:25
scenarios	service 17:8	79:2,5,5	40:8 49:15
45:10	Services 1:21	similar 12:9	68:18
scheduled 10:9	set 3:7 20:25	31:2 39:21	sort 5:14
School 39:5	23:18 57:4	simple 65:4	57:18
scope 56:7	58:2,8 89:9	simply 17:3	south 1:10
screen 24:5	setbacks 66:3	21:3 29:9	68:23
scroll 73:4	settled 9:13	59:25 82:2	spacing 41:16
second 18:3	share 9:13	simultaneo...	speak 31:2
85:4 87:6,10	19:5,6,13	17:19	speaking 62:15
seconded 87:12	66:1	sir 45:4	speaks 59:9
Secondly 13:9	shared 41:5,6	sit 70:5 74:25	specifically
section 45:20	41:18,24	site 3:4 5:7,8	28:16 40:6
58:1,15	50:21	6:7,9 8:22	41:13 43:22
77:15 79:16	shifted 27:22	10:22 19:12	47:10,12
80:5	shooting 52:13	19:23,23	62:16 85:7
see 5:9,10,18	shorter 17:5	27:15 29:8	spelled 28:7
6:6 10:13	shortly 21:9	37:19 41:6	80:14
25:3,11 53:9	show 6:7 8:20	41:14,17,23	spun 68:19
60:4,7,17	9:7 49:1	54:19 57:24	SQUARE 1:23
62:14 67:11	51:25 86:21	58:25 60:4	SR 2:2
67:16 72:8	87:3	63:21 66:20	stack 7:4
73:2,5	showed 53:3	67:14,15,16	standard 57:6
seeing 60:13	showing 6:24	73:1 78:9	57:7,12 58:5
seeking 43:25	51:14,20	86:23	standards 5:4
44:1	shown 6:22	site's 66:15	28:3 29:20
seen 10:3	68:22	sitting 54:13	29:21 30:24
28:19,20	shows 68:23	situation 8:6	31:3 32:11
37:13 52:4,9	shrinks 38:17	51:21	32:13,14
52:11 53:25	side 71:12	size 38:18	41:16 43:6
56:8	81:19	41:14	44:14 45:14
sending 82:17	side-by-side	slightest 32:2	45:20 58:24
senior 69:21	43:11	slightly 30:2	75:18 78:9
sense 36:9,17	sides 10:11	44:15	79:14,15,16
59:14,21	12:15	slows 69:20	79:25 80:1,6

standing 53:20 54:2	subdivision 41:15 45:21	31:10 64:13 81:11	66:22
standpoint 13:18	subdivisions 45:19 46:19	sure 9:25 10:24 14:22	talks 28:16 47:12 62:18
start 7:11	subject 45:24 58:18 77:22	17:20 18:4 19:19 22:1	tasked 64:9
starting 8:2	submissions 34:11	22:14 25:6 28:4 30:6	tcarroll@h... 2:16
state 1:22 7:22 8:1 21:7 30:24 31:7 40:21 42:14 43:7 43:17,22 56:5,20 57:20 89:4	submit 32:14 35:4 36:1,12 36:17 57:7 75:6 88:3	39:10 40:21 44:12 59:4 60:23 62:10 67:7 71:7,19 73:23 84:1 85:6,8	Tel 1:24 2:15 2:23
statements 45:3	submitted 7:9 26:22 31:5,9 33:11 34:24 35:15,23 72:19	survey 24:17	tell 69:11
states 31:1 79:17	subsection 58:1,8,17 77:17	suspect 67:17	temporary 19:15 82:22
status 6:24	subsequent 18:14,16	system 58:4 71:15	temptation 29:24
statute 45:17 46:4,21 47:3 57:19 58:10 58:16 79:6	successful 57:16	<hr/> T <hr/>	terms 30:13 48:11 63:24 66:3
statutes 30:25	suggest 49:8 49:11	T 2:2,10 89:1 89:1	terrible 28:10 81:2
statutory 28:7 28:12 77:6	suggested 74:15	table 16:3 87:9	testified 21:13 27:6 33:7 49:10
stay 54:3	suggesting 43:24 49:9	take 14:8 21:24 67:24 68:2,2,14 84:15	testify 12:4 49:12
staying 82:20	SUITE 1:22	taken 3:13 36:19 84:19 89:7	testimonial 34:25
stenograph... 89:7	summarize 24:8 25:8	takes 60:11	testimony 12:21 22:23 23:23 24:7 25:8,23,24 26:13,25 27:13 31:21 34:16 39:24 40:1,4,10 41:21 42:1,4 43:17,21 44:8 48:10 48:16,18,20 49:5,8,22 50:3,6 52:12 61:5,19 63:16 66:24 67:8 70:16 71:11 74:22
steps 84:15 88:10	summarized 80:15	takings 65:3,3	
Sterling 23:25	Super 65:12	talk 45:18 56:19 57:12 61:22 64:21 65:2,4 67:15 78:19	
stop 7:11	superior 5:6 14:5,6	talked 32:4 61:2 64:16 65:13,24	
straight 70:8	supplied 48:12 49:10	talking 24:11 46:7 49:16 49:17 61:7 62:8,9,25 64:5,22	thank 16:14 37:19 48:8 50:7 52:15
straightfo... 77:2	supporting 39:23 40:1		
Street 1:10	supports 46:16		
stripe 70:5	suppose 42:22 45:9		
strong 64:23	Supreme 31:1		
structured 60:14			
stuck 64:17			
studiously 47:18			
stuff 54:16			

55:6,7,8,14	53:6,11	16:2 53:2,15	tract 38:17,17
62:7 65:14	59:18 61:4,8	told 23:1 33:9	traditionally
71:20 72:9	63:15 64:1,3	56:15	65:3,4 70:4
72:11 76:19	65:8,23,24	TOLL 1:24	traffic 18:8
82:3,4 83:2	66:6,7 70:15	Tom 56:4	20:16 21:11
83:4,10 84:9	71:11 72:23	tongue 82:12	21:18,22,22
88:5,6	73:10 77:11	tonight 3:20	22:2,8,11,18
thing 4:9	78:12,22	4:9,9 5:21	22:21 23:23
13:18 17:14	79:4,5 80:3	6:10 7:24	26:17,22
18:3 31:12	80:15,16	8:2,17 9:10	30:17 44:12
33:3 35:14	81:1,1,3	9:20,23	44:24 45:4,9
58:16 64:1	83:21 84:1	10:11 11:10	49:9,18,20
77:16,19,21	84:12,13	12:7,17	50:3,6 58:22
86:13	85:17,19	18:22 20:11	61:19 62:14
things 5:22	86:5	36:19 54:1	63:20,22,24
17:13 23:16	thinking 62:21	59:11,15,17	64:3 71:13
28:9,22 29:5	64:7 65:9	59:23 70:13	72:17 73:13
32:4 33:2	66:19 85:9	top 65:2 73:6	74:16 75:21
34:18,23	third 8:25 9:1	torpedos 54:19	78:1
35:12 38:12	Thomas 2:12	tossed 81:22	TRANSCRIBED
41:5 43:4,10	10:12 17:1	totally 8:5	1:15
45:15 46:3	thoroughly	62:2	transcript 5:3
46:22 47:12	43:18	toto 85:16	17:18 24:8
56:13,22	thought 15:3	touch 23:20	25:13 26:1
66:4 71:19	21:20 33:23	56:25	26:13,18
75:4,10 76:3	35:9 40:14	tough 5:10	27:5,17,19
80:9,12,16	45:17 81:2	town 30:19	33:5 74:24
80:21,22	83:14 84:10	32:17,23	89:6,15
think 12:7	three 7:10,14	35:19 36:21	travel 42:19
17:15 18:5	7:16 8:18	town's 19:12	64:19
18:11 19:7	9:9 20:1,19	towns 9:13	traveling 46:1
21:22,25	39:22 86:1	36:1 41:8	58:20 77:24
27:10 28:10	87:1	59:15,24	Trenton 1:11
28:10 29:24	Thursday 1:12	61:1	5:12,17 9:3
29:24 30:2,9	tied 11:8	township 4:2,6	9:3,8 11:22
30:10,12,13	ties 63:1	8:23,24 9:15	19:2 20:16
30:22 33:21	time 4:1 13:19	10:2 17:16	21:23 22:12
33:22 34:14	23:7,22	17:25 25:11	27:3 33:14
35:12 36:16	36:19 37:20	35:18,24	38:25 39:8
38:11,21,23	55:15 57:8	36:5 38:19	44:2 49:13
39:24 42:5,5	62:22 65:14	54:20,22	49:14,18
42:8 44:25	72:10 89:8	86:24,25	50:1 60:4,5
45:2 46:25	times 7:10	township's	60:16 61:14
47:2,17,24	70:5	13:21	62:16 63:9
48:7 51:10	tip 82:11	townships 10:4	67:24 68:11
51:17 52:6	today 15:11	13:24,24,25	69:2,17

72:22 74:4,8 82:23 87:3,5 tried 69:14 trilogy 31:11 true 18:22 33:12 34:4 36:12 51:17 73:14,20 74:17,20 76:3,24 80:19 89:6 truly 62:17 trump 40:20 trumped 47:8 57:18 trust 60:3 try 14:9 43:9 44:22 55:15 84:13 trying 6:11 12:21 22:17 22:18 43:22 48:5 53:16 67:1,10 turn 6:7,8 11:23 44:1,1 44:3,23,25 62:13 68:23 68:23,24,24 69:4,12,14 69:16 70:4,9 turned 34:3 turners 44:10 turning 22:11 63:20 69:25 turns 11:19 35:6 68:13 68:15,17,18 69:3 82:22 82:23 TV 5:9 twice 53:16 72:20 Twin 69:12 two 8:19 10:16 12:6,25 16:3	19:8,9 20:19 23:23 24:1 27:2,3 33:19 34:6,10 35:10 38:6 39:13 40:2 41:7,8 43:3 43:14 45:10 55:1 59:14 59:23 62:21 65:20 67:21 70:22 73:15 73:18 74:10 76:2 78:23 82:7 84:2,18 85:25 type 40:6,13 75:19 types 6:16 9:25 56:5 66:4 typically 18:11 50:20	4:23 18:8,15 understands 73:1 undue 9:23 unfair 37:7 unique 59:10 59:11,14 Unit 2:21 unitary 41:4 United 31:1 units 19:4 unlighted 44:23 unquestioned 27:10 unsafe 10:23 43:19 44:5,7 49:14,25 unusual 50:16 use 5:24,25 9:15 12:8 utilizing 41:6	14:18,23 24:18,22 25:1 37:21 37:22 38:1 41:10,13 51:12,13,19 52:1,4,8,15 55:19 68:7,8 76:7,11,18 84:7,8 85:5 85:10 86:2,4 86:8,11 87:19,20 Walters 76:6 want 3:2 22:15 25:11 28:9 30:18,21 32:9,18,18 32:20 36:2 38:15 44:15 46:25 51:8 52:2 54:7 61:16,22 65:20 66:18 67:5,24 74:11 76:13 77:20 84:9 86:6 wanted 3:7 4:1 10:25 15:22 48:8 55:17 67:11,12 77:8 81:21 83:13 wanting 74:8 wants 4:21 31:25 76:14 80:24 wasn't 42:2,4 48:22 51:15 67:7 80:19 way 12:22 18:9 27:8 30:3 32:14 33:14 53:25 58:12 68:1 71:1,2
	U		
	U-turn 70:7 U.S 31:10 81:11 ultimately 65:18 unanimously 57:3 unbiased 7:23 8:2,5 unconstitu... 21:6 32:17 56:19 63:2 uncontrove... 27:21 28:1 31:24 80:17 82:1 understand 7:4 16:14 37:11 38:8,9 48:24 56:10 70:13 understanding	Van 31:7 various 21:2 35:17 verse 23:20 vibe 67:19 Videography 1:21 views 82:12 Village 60:19 visits 67:15 vote 23:9 65:16	
		V	
		W	
		W 2:6 walk 81:20 Wallack 2:11 4:25 10:13 17:2 Walter 2:3 8:7 8:8,9 12:25 13:5,9,13	

72:3 76:14 76:18,21 78:23 ways 38:12 41:5 69:15 76:12 we'll 29:19 we're 62:7 66:22 we've 20:25 28:19 52:9 56:3 welcome 14:3,9 14:14 went 35:24 67:16 west 6:20,21 8:24 11:17 11:18,24 18:6 20:23 27:1 35:19 39:5 43:25 59:19 63:21 69:13 86:25 whatsoever 43:12 white 56:11 wide 38:15 widened 28:25 width 38:19 46:2 Windsor 1:4 2:17 3:3,5 4:6 5:6,7,17 6:20,21,23 7:2 8:23,24 9:19 11:14 11:17,19,24 17:3 18:6 19:2 20:24 25:11 27:1 35:18,19,24 36:4 38:19 39:3,5 43:25 44:4,6 53:15 54:20,22	59:19,20 63:21,24 71:23 86:24 86:25 Windsor's 19:5 wishes 27:16 withdraw 39:14 67:4 witness 12:20 witnesses 12:4 74:22 wonderful 7:4 wondering 53:21 word 58:7,7 words 75:1 77:3,13,20 78:5 work 38:22 66:8 71:18 76:11 working 24:25 76:14 Works 17:6 world 61:15 WORTHY 2:7 87:13,15,17 87:21 wouldn't 59:17 74:25 85:15 wrap 34:10 write 75:6,9 writing 88:8 wrong 21:25 www.RLReso... 1:25	71:18 years 12:8 28:20,21 39:7 yellow 5:10 yep 15:23 72:2	19:25 20:3 20:14 2020 3:22 5:2 6:19,25 10:9 22:25 23:17 23:22 34:15 82:17 2021 1:2,12 89:21 21 2:13 26:12 211 1:10 22 19:16 2277 1:22 23 6:25 26:18 250 44:20,22 250-unit 21:18 22:4,20 26 26:12 27 3:21 4:25 20:3 26:12 28 8:23 9:1 23:17 86:25 87:1 29 27:4
		Z	
		Z 61:25 zoning 50:23	
		0	
		08543 2:14 08648 2:22 08690 1:23	
		1	
		1 34:12 86:19 10 3:22 11 22:25 23:22 12 4:24 25:12 26:12 13 5:2 13:43-5.9 89:16 133 65:12 136 2:21 14 34:11 15 1:2,12 8:24 86:25 17 82:17 18 3:18 19:21 19:25 20:14 26:12 181 31:6 65:11 19 6:19	22 19:16 2277 1:22 23 6:25 26:18 250 44:20,22 250-unit 21:18 22:4,20 26 26:12 27 3:21 4:25 20:3 26:12 28 8:23 9:1 23:17 86:25 87:1 29 27:4
		2	3
		2 8:20,25 10:21 20:21 84:21,22 20 89:21 2016 6:23 19:16 2019 3:18,21 4:25 19:22	3 8:22,22 9:6 19:1,1 86:23 86:23 3.02 8:22 19:1 86:23 30 12:8 30th 19:16 30XI00148700 89:20 32 26:12 27:4 33 1:22 34 27:4 35 27:4 368-7652 1:24 38 19:4 39 27:17
			4
			4 9:6 40:27-6.2 6:19
	X		
	X 61:25		
	Y		
	Y 61:25 yeah 5:18 46:20 65:23 year 7:9 34:11 34:12 71:17		

45:18			
40:27-6.2C			
46:8 78:21			
40:27-6.6			
57:21			
40:27-6.6C			
28:16 46:15			
40:27-69			
3:13			
400			
62:12			
405368			
1:25			
41			
27:17			
410			
1:22			
44			
27:17			
45			
3:15 27:18			
450			
60:6 62:12			
47			
27:19			
49			
17:17			
<hr/>			
5			
<hr/>			
51			
25:12			
535			
87:3			
56			
33:4			
571			
69:13,24			
71:3			
<hr/>			
6			
<hr/>			
6.2			
47:16			
6.2C			
46:9 47:1			
47:5,6,20			
6.6			
6:19 46:23			
47:10,14			
80:5			
6.6C			
46:7,23			
47:12,18,19			
77:15 79:11			
79:13			
6:00			
1:13			
609			
1:24 2:15			
2:23			
62			
27:4			
640			
1:10			
<hr/>			
7			
<hr/>			
7			
6:13			
72			
24:9			
743-6378			
2:15			