

TOWNSHIP OF OCEAN ZONING BOARD OF ADJUSTMENT
Ocean Township High School Gymnasium
Tuesday, April 5, 2016
Commencing 7:00 p.m.

IN THE MATTER OF:

TRANSCRIPT OF
PROCEEDINGS

YESHIVA GEDOLA NA'OS YAAKOV, INC.
Block 216, Lot 19
1515 Logan Road, Wanamassa
Zone R-4

B E F O R E:

WARREN GOODE, Chairman
JANE GRABELLE
RUSSELL MALTA
JOHN FULLER
ERIC MENELL
JAMES WORRELL
JOHN NAPOLITANI, Alternate II
PETER SIANO, Alternate III
RACHEL MONTEMARANO, Board Secretary
MARIANNE WILENSKY, P.P., Planning Administrator
JAMES HIGGINS, P.P., Board Planner
WILLIAM FITZGERALD, P.E., Board Engineer
MARK A. STEINBERG, ESQ., Board Attorney

A P P E A R A N C E S:

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By: DONNA M. JENNINGS, ESQ.
Attorneys for the Applicant

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By: JOHN N. POULOS, ESQ.
JOSEPH LoPICCOLO, ESQ.
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1 CHAIRMAN GOODE: The special meeting of
2 the Ocean Township Board of Adjustment April 5, 2016
3 will please come to order. Please call the roll.

4 MS. MONTEMARANO: Ms. Grabelle?

5 MS. GRABELLE: Here.

6 MS. MONTEMARANO: Mr. Malta?

7 MR. MALTA: Here.

8 MS. MONTEMARANO: Mr. Menell?

9 MR. MENELL: Here.

10 MS. MONTEMARANO: Mr. Napolitani?

11 MR. NAPOLITANI: Here.

12 MS. MONTEMARANO: Mr. Schepiga? Mr.
13 Siano?

14 MR. SIANO: Here.

15 MS. MONTEMARANO: Mr. VanWagner? Mr.
16 Worrell?

17 MR. WORRELL: Here.

18 MS. MONTEMARANO: And Chairman Goode?

19 CHAIRMAN GOODE: Here. Please stand for
20 the salute to the flag.

21 (Whereupon the Pledge of Allegiance was
22 recited.)

23 CHAIRMAN GOODE: The notice requirements
24 of the Open Public Meeting law for this meeting have
25 been satisfied, a copy of the notice having been sent

1 to the Asbury Park Press and the Coaster and filed in
2 the office of the Township Clerk on March 18, 2016.

3 Emergency notice: There are emergency
4 exits through one door located in the front of the
5 room and two exits to the rear of the room. Please
6 note the no smoking laws are in effect here tonight.
7 Also note if you have a cell phone, we ask that you
8 please turn it off during the meeting. If you need
9 to make a call, please leave the room.

10 Tonight's agenda consists of a continued
11 case, Yeshiva Gedola Na'os Yaakov, Inc., Block 216,
12 Lot 19, 1515 Logan Road, Wanamassa in the R-4 Zone.
13 This is an application for a D variance for an
14 advanced Talmudic academy and for minor site plan
15 approval. This matter has been remanded back to the
16 Board for continued hearings in accordance with the
17 Order of Honorable Freda L. Wolfson, United States
18 District Court for the District of New Jersey.
19 Attorney for the applicant, Donna M. Jennings,
20 Esquire.

21 Before we begin, I believe Mr. Steinberg
22 has a statement that he's going to read into the
23 record.

24 MR. STEINBERG: It's basically an
25 explanation to everyone here as to how this case was

1 remanded back here and the ground rules that have
2 been set by the Court for this continued hearing.
3 The applicant filed an action against both Ocean
4 Township and the Zoning Board of Adjustment in the
5 United States District Court alleging Civil Rights
6 violations under the United States Constitution, as
7 well as violations of the Religious Land Use and
8 Institutionalized Persons Act of 2000, which is known
9 as RLUIPA, also the Fair Housing Act and the New
10 Jersey Law Against Discrimination.

11 Counsel for Ocean and the Zoning Board of
12 Adjustment filed a Motion to Dismiss that case,
13 alleging that the action was not right since the
14 applicant did not permit the objectors to present
15 their case to the Board and give the Board sufficient
16 information to make a reasoned decision. The matter
17 is being handled in the Federal Court on behalf of
18 the Township and Board by Howard B. Mankoff, Esquire
19 of the firm of Marshall, Dennehey, Warner, Coleman &
20 Goggin, and the Township engaged the services of an
21 attorney who is a Constitutional expert and professor
22 at Yeshiva University Law School, which is Cardozo,
23 and Penn State University Law School, Marci Hamilton,
24 Esquire.

25 Unfortunately, this matter has become

1 more than a zoning matter. And the applicant is
2 seeking a substantial damage award under RLUIPA as
3 well as attorneys fees and costs which will also be
4 substantial if the applicant is successful in Federal
5 Court. RLUIPA does not have a presumption of
6 correctness given to a board in a prerogative writ
7 action which is the appeal process in the State
8 Superior Court. So in general, if this Board denied
9 an application, the applicant would then have to
10 prove to the Court that this Board was wrong, and the
11 presumption is the board is always right.

12 However, RLUIPA sort of changes that and
13 comes from a different point of view. The federal
14 legislation supersedes the Municipal Land Use Law
15 where the applicant has the burden to prove the
16 inherently beneficial use and that the benefits
17 outweigh any detriments, and it basically reverses
18 that burden on this Board so that it must find
19 reasons why the detriments outweigh the religious
20 freedom rights inherent in the proposed operation of
21 a school with dormitories as proposed.

22 This is contrary to what the Board is
23 usually charged with, and makes a substantial
24 difference in the way the Board members must weigh
25 the testimony and make a decision.

1 This matter is before the Honorable Freda
2 L. Wolfson, United States District Judge who is
3 allowing the objectors to present their case so that
4 the Board can make a decision based upon the evidence
5 presented, provided this is done within a 45-day
6 period with limitations on testimony. Ocean Township
7 provided Judge Wolfson with available dates for this
8 venue and the Board members' and the professionals'
9 availability and as a result of that she issued an
10 Order dated March 16, 2016 which sets forth the
11 parameters of continuing the case to a conclusion.

12 So Judge Wolfson was quite concerned that
13 the delays and timing of the matter which by law is
14 to be concluded within 120 days of the application
15 being deemed complete. She chose the dates and
16 crafted an Order which allows the attorneys
17 representing named objectors to present a maximum of
18 three expert witnesses, and the case must be
19 concluded no later than 12 midnight on the second
20 scheduled hearing date of April 25, 2016.

21 It is my understanding that Mr. Poulos
22 and Mr. LoPiccolo will only present a Professional
23 Planner and do not intend to call other witnesses.
24 At the conclusion of the professional testimony
25 presented by that law firm, there will be

1 cross-examination of the planner by the applicant's
2 attorney and Board members, but Judge Wolfson was
3 specific in her Order that no cross-examination will
4 be permitted by the unrepresented objectors, as the
5 witnesses' position would be the same as theirs.

6 Once the attorneys for the named
7 objectors conclude their case, the public will be
8 given two hours to present their case, with a maximum
9 of five minutes per objector. Now, those within
10 200 feet will have the first opportunity to address
11 the Board. Those within the Township of Ocean will
12 be the next group that can address the Board, and
13 thirdly anyone else.

14 Now, if you take the math and five
15 minutes into two hours is 24 people can speak to the
16 Board. Obviously if someone takes two minutes, that
17 leaves three more minutes, and if -- the shorter the
18 time, the more people that can be heard. We have a
19 timer and we will have to cut anyone off after five
20 minutes. We also have the list of 200 feet and the
21 Township residents, so we can judge that.

22 Unfortunately, Judge Wolfson did not give
23 the Board any leeway to extend the two hours, even if
24 the objectors conclude early and we have time left
25 over, there is -- and they won't take the six hours.

1 Judge Wolfson indicated that the general public needs
2 to discuss the issues amongst themselves and those
3 parties with the most interest or best testimony be
4 offered to the Board.

5 So I think what we'll do, Mr. Chairman,
6 is at the conclusion of the objectors' case, counsel
7 objectors, and any cross-examination and questions by
8 the Board and Ms. Jennings, I think maybe we'll take
9 five or ten minutes and those parties not represented
10 by attorneys can decide in what manner and what order
11 you would like to come up and present your testimony
12 to the Board.

13 There is one exception that has come up
14 and that just came up today. There is an adjacent
15 property owner, the owner of Wanamassa Gardens, which
16 is an apartment complex I believe to the west of the
17 subject premises. They have counsel, and it's a
18 corporate or LLC entity, and there is somebody who is
19 going to testify with an attorney. There is no
20 experts being presented by that applicant. And Judge
21 Wolfson made an exception to her Order 3:30,
22 four o'clock this afternoon by telephone conference
23 wherein she gave that objector 15 minutes to present
24 his or her testimony which will not go into the two
25 hours already allotted, so it will be an extra

1 15 minutes other than the two hours.

2 Once that has been concluded and all the
3 testimony presented, the usual course of action would
4 be that the objectors would sum up first and then the
5 applicant's attorney would sum up second, then the
6 Board would deliberate.

7 Since it was our understanding tonight
8 that we would only have six eligible voters, and the
9 Board's comprised of seven regular members and three
10 or four alternates -- what do we have now -- four
11 alternates, we would only have six members who could
12 vote tonight and the applicant is entitled to seven.

13 So when we discussed this again with
14 Judge Wolfson, she had indicated that it would be
15 best to conclude all testimony tonight, and after
16 speaking with the counsel for both the objectors and
17 for the applicant, that the meeting will be carried,
18 and we'll announce this later on, to the meeting of
19 April 25, 2016, same place, same time, at which time
20 each of the parties, that would be Mr. Poulos' law
21 firm and Ms. Jennings, will have 15 minutes each to
22 sum up their case, and then the Board will then
23 deliberate in public, review the testimony, discuss
24 the legal issues with me, discuss the planning issues
25 with our planner, and we will have a vote.

1 So assuming that we will conclude all
2 testimony tonight in the pattern that she has given
3 us, then all will be left for the 25th will be the
4 summations, deliberation, discussion and vote. If
5 for some reason we don't conclude all of the
6 objectors' testimony and cross-examination and all of
7 the lay objectors, which I call those not represented
8 by attorneys, within the two-hour time frame and it
9 should go past 12 tonight, we would continue that on
10 the 25th, but it looks as if we'll probably hopefully
11 be finished earlier than 12 tonight.

12 And I did prepare this. I apologize on
13 behalf of the Board as to the strict procedure which
14 must be followed, but we're under a Court Order and
15 the direction of Judge Wolfson, who I indicated was
16 consulted as late as 3:30 this afternoon, and both
17 the Order and her directions today, we must follow
18 them completely. And we will do so and anybody past
19 the five minutes or beyond the two hours will just
20 have to be cut off.

21 I hope everyone gets the ability either
22 through themselves or through their neighbors or
23 through someone else to express their opinion to the
24 Board and the Board will hear everyone and take all
25 into consideration during the deliberation which

1 will, again, be on April 25, 2016.

2 So, Mr. Chairman, I think we can proceed.
3 If anybody has any questions, we can proceed right to
4 Mr. LoPiccolo's --

5 CHAIRMAN GOODE: Well, we have --

6 MR. STEINBERG: We have our Board stuff,
7 our package.

8 CHAIRMAN GOODE: -- an additional report.
9 Marianne, could we mark it I believe B-9?

10 MS. WILENSKY: That would be correct,
11 B-9.

12 CHAIRMAN GOODE: With tonight's date.
13 Would you like to read the fire marshall's report and
14 then we'll let the planner and engineer report their
15 own reports?

16 MS. WILENSKY: The fire marshall's report
17 is dated March 31, 2016 and he has no comments to
18 advise of.

19 CHAIRMAN GOODE: Okay. That brings us to
20 Mr. Higgins' report.

21 MR. HIGGINS: Yes, it's dated April 1,
22 2016. The applicant has submitted engineering and
23 architectural plans for minor site plan limited to
24 the installation of three ADA accessible ramps for
25 the proposed yeshiva building consistent with the

1 discussions of the case management conference of
2 March 15, 2016 and the Order of the Court filed on
3 March 16, 2016. The plans reflect only those changes
4 to the site and building that relate to the
5 construction of the ADA accessible ramps and do not
6 reflect any other changes to the site or building
7 that have previously been discussed or submitted with
8 regard to the proposed use variance for the yeshiva.

9 The proposed plans do not create any new
10 variances or waivers; consequently they are
11 acceptable for the limited purpose of the ADA
12 accessible ramps. It should be noted that the new
13 plans are not intended to replace the prior submitted
14 engineering and architectural plans last revised
15 2/24/15 and 11/24/14 respectively as reviewed by my
16 report of May 13, 2015 and testified to at prior
17 hearings regarding the use variance.

18 Consequently, in order to avoid confusion
19 in the future, approval by the Board of the use
20 variance aspect of this application should be
21 conditioned upon the submission of the site plan as
22 indicated in the May 16, 2016 Order, as well as a
23 condition that the plans submitted with the site plan
24 application be consistent with the engineering and
25 architectural plans last revised 2/24/15 and 11/24/14

1 respectively.

2 CHAIRMAN GOODE: Thank you, Mr. Higgins.
3 Mr. Fitzgerald?

4 MR. FITZGERALD: Mr. Chairman, I have a
5 report dated today. It's very brief as to substance.
6 I have no engineering concern with the proposal to
7 make three entrances barrier-free. I think that the
8 plans need a little bit of work before they can be
9 signed and construction permits issued.

10 CHAIRMAN GOODE: That's it, Mr.
11 Fitzgerald? Okay. Mr. Poulos, Mr. LoPiccolo, the
12 floor is yours.

13 MS. JENNINGS: If I can actually just
14 enter my appearance.

15 CHAIRMAN GOODE: Yes. I'm sorry.

16 MS. JENNINGS: Donna Jennings on behalf
17 of the Plaintiff, the yeshiva. Thank you.

18 CHAIRMAN GOODE: Yes, ma'am. Thank you.

19 MR. POULOS: I will introduce our
20 Professional Planner, Mr. Paul Ricci.

21 MR. STEINBERG: Well, why don't you enter
22 your appearance.

23 MR. POULOS: John Poulos, Poulos
24 LoPiccolo. Joseph LoPiccolo here on behalf of the
25 objectors. This is Mr. Ricci; he's our Professional

1 Planner. He's here today to give testimony regarding
2 his expert opinion of the application before the
3 Board for a use variance for the purpose of allowing
4 a Talmudic academy to house 96 men at the subject
5 property. Does Mr. Ricci need to be sworn in?

6 CHAIRMAN GOODE: Would you raise your
7 right hand, please?

8 P A U L R I C C I, P. P., having been duly sworn,
9 testified under his oath as follows:

10 CHAIRMAN GOODE: Would you spell your
11 name for the record, please?

12 MR. RICCI: It's Paul Ricci, R-i-c-c-i.

13 VOIR DIRE EXAMINATION BY MR. POULOS:

14 Q. Mr. Ricci, I'm going to ask you certain
15 questions so I can try and qualify you as an expert.

16 MS. WILENSKY: Mr. Poulos, maybe you can
17 move the microphone just a little bit closer.

18 Q. I'm going to ask you about your
19 qualifications and your background. Can you please
20 tell me about your occupation?

21 A. Sure. I'm a licensed Professional Planner in
22 the State of New Jersey. I've been licensed since
23 the year 2000. I'm a member of the American
24 Institute of Certified Planners since the year 1999.
25 I have a Master's degree in City and Regional

Voir dire - P. Ricci, P.P. - Poulos

1 Planning from Rutgers University, which I received
2 in 1997.

3 I'm currently a principal in Ricci Planning.
4 I'm a sole proprietor Professional Planner. I've
5 been operating in this capacity close to six years.
6 I currently provide consulting planning services to
7 the Borough of Lincoln Park, the City of Linden, the
8 Borough of Middlesex, the Township of Nutley and the
9 Borough of Prospect Park.

10 I rarely do objection type cases. I've
11 testified as an advocate for development
12 applications throughout the State of New Jersey in
13 20 of the 21 counties including Monmouth County.

14 Just some other basic information is I've
15 been qualified in the Bergen County Superior Court
16 as an expert. I teach the New Jersey planning
17 officials class for new and advanced planning and
18 zoning board members. I've also published through
19 them guidelines that planners use to prepare Master
20 Plans that they provide to other planners that they
21 utilize as the basis for preparing Master Plans.
22 Essentially, I've been practicing as a community
23 planning consultant since 1999 in the State of New
24 Jersey.

25 Q. Now, do you have any experience preparing

Voir dire - P. Ricci, P.P. - Poulos

1 Master Plans for any municipalities?

2 A. Yes, I do.

3 Q. And do you -- can you name a few?

4 A. I mean, I -- I know I list them on my website.
5 I probably have -- I've prepared Master Plans in
6 approximately 20 or so different communities.

7 MR. POULOS: We would submit Mr. Ricci as
8 an expert in the field of planning.

9 CHAIRMAN GOODE: Ms. Jennings, do you
10 have any questions?

11 MS. JENNINGS: No. Thank you.

12 CHAIRMAN GOODE: Any objections?

13 MS. JENNINGS: No objection.

14 CHAIRMAN GOODE: Okay. We will accept
15 Mr. Ricci as an expert.

16 DIRECT EXAMINATION BY MR. POULOS:

17 Q. Mr. Ricci, in preparation for this
18 hearing, what have you done, if anything, to
19 familiarize yourself with the zoning ordinance, the
20 Master Plan and the application as well as the
21 subject property?

22 A. Well, first and foremost, I visited the site on
23 several occasions. I did review the pertinent
24 sections of your zoning ordinance, your Master Plans
25 which I received from the Township. I reviewed -- I

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1 attended -- I just want to look at the dates here --
2 the 10/7 and 12/1 hearings and I previously reviewed
3 the meeting minutes for the 5/8/15 hearing, so --
4 most notably I reviewed the testimony of the planner
5 that was given previously.

6 I reviewed the past history of the property
7 and how it was utilized. I reviewed the submitted
8 plan, the architectural plans, the Board
9 professional review letters. I've reviewed, as I
10 said, your Master Plan, which is pretty voluminous
11 as well.

12 I also prepared a graphic, which I would like
13 to share with the Board. It's really to show the
14 existing conditions of the area. It's something
15 that I can go through in a fairly quick pace. I
16 have larger copies here, if I may pass these down.

17 MR. STEINBERG: First of all, why don't
18 you show them to Ms. Jennings. That's one exhibit
19 that you have? Board members don't get it yet.
20 Okay? Any objections? Do you want to know what
21 these were from, who made them?

22 MS. JENNINGS: Yeah, if you could just
23 clarify who took the photos and who made the exhibit.

24 MR. RICCI: I prepared the exhibit. It
25 was dated October of 2015. It consists of three

Direct - P. Ricci, P.P. - Poulos

1 sheets. The first sheet -- it's entitled Exhibit 1,
2 1515 Logan Road, Ocean, New Jersey. The first sheet
3 consists of an aerial photograph which I retrieved
4 from New Jersey Geographic Information Network.
5 These are the most recent aerial photographs that are
6 georeferenced or have positional accuracy where I
7 could overlay tax maps and NJDEP information that's
8 all available online.

9 MS. JENNINGS: Okay, but you're only
10 testifying as a planner, not as an engineer, correct?

11 MR. RICCI: As a planner, yes.

12 MS. JENNINGS: Okay, thank you.

13 MR. STEINBERG: So you wouldn't have any
14 objection if these were offered into Evidence as O-1?

15 MS. JENNINGS: That's fine.

16 MR. RICCI: And the following two sheets
17 are eight pictures. It really shows the picture of
18 the site and some of the surrounding properties.
19 It's really pretty much a vanilla exhibit.

20 MR. STEINBERG: She has no objections.
21 We'll accept it as evidence, O-1.

22 MR. RICCI: We have a couple extra
23 copies, if anybody wants.

24 MR. STEINBERG: If anybody in the public
25 wants, they can come up and get it from the table.

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1 MR. POULOS: May I proceed?

2 CHAIRMAN GOODE: Any objection?

3 MS. JENNINGS: No.

4 CHAIRMAN GOODE: Proceed.

5 BY MR. POULOS:

6 Q. So can you explain to the Board your
7 characterization of the property based on your visits
8 and what Exhibit 1 depicts?

9 A. The site is in your R-4 Zone, largely
10 single-family zone but conditionally permits
11 boarding houses, public schools and religious
12 facilities. The site's approximately two point
13 (sic) acres in area.

14 What this exhibit does show is -- this is
15 not, first of all, a delineated field accurate
16 representation of wetlands, but it does depict on
17 here in green what the New Jersey Department of
18 Environmental Protection --

19 MS. JENNINGS: I'm going to object to any
20 reference to the DEP. He said he's a planner, not a
21 site engineer. So I'm going to object to any
22 testimony with respect to DEP issues. You're not
23 qualified.

24 MR. STEINBERG: Yeah.

25 MR. RICCI: If I may continue.

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1 MR. STEINBERG: Tell me why.

2 MR. RICCI: This is online mapping that's
3 available that shows what DEP provides as the
4 approximate location of wetlands. As a planner, I
5 prepare conservation plan Master Plan elements and
6 the like and I use this information as a planner on a
7 daily basis to determine when I review developmental
8 applications potentially if there's a presence or a
9 lack of wetlands.

10 And as a planner, I would say, as a
11 review planner for the board, that that would be
12 indication to me that maybe this needs to be looked
13 at a little bit more closely in terms of whether
14 there are wetlands present or not in this proximity.

15 MS. JENNINGS: Well, again, my objection
16 remains. He is not a site engineer. He's not
17 qualified to discuss wetlands. And actually the
18 Board has no jurisdiction over wetland issues.
19 That's a separate and distinct State entity. So I
20 really do not want us to digress into wetlands
21 issues.

22 MR. RICCI: I think a wetlands scientist
23 determines wetlands, not an engineer, first of all.

24 MS. JENNINGS: Okay, thank you for the
25 correction, but not a planner, correct?

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1 MR. POULOS: I don't think he's going to
2 be testifying as to the wetlands. I think he's going
3 to be testifying as to the subject property as a
4 planner and the impact of the land.

5 MR. STEINBERG: But there's been no
6 foundation laid as to wetlands by any expert. We're
7 aware that there are some wetlands. I think our
8 engineer indicated that's going to be a problem with
9 the preliminary and final site plan. But I don't
10 know if this is accurate. Ms. Jennings?

11 MR. RICCI: I'm not claiming it's
12 accurate. I'm claiming it's what the State says --
13 what the State provides in terms of the New Jersey
14 Department of Environmental Protection, their mapping
15 of the approximate location of wetlands in this area
16 is what this provides.

17 MR. STEINBERG: But I don't believe your
18 qualifications gives you the right to tell us and
19 interpret what's mapped because you're only a
20 planner; you're not an engineer or a wetlands expert.

21 MR. RICCI: I would tend to disagree with
22 that. As a planner I've prepared conservation plan
23 elements. I've been asked to provide environmental
24 resource inventory in a community, and this is the
25 type of information that would be proposed on a

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1 holistic long-range planning and is the basis --

2 MR. STEINBERG: I'll advise the Board to
3 accept the exhibit on a limited basis, okay? The way
4 you printed it is the way you got it off line from
5 the DEP, or you made this up? That's what I'm
6 missing here.

7 MR. RICCI: This information was -- it's
8 a geographic information system. It's information
9 that the State provides that has real coordinates
10 located within it.

11 MR. STEINBERG: But who plotted this?

12 MR. RICCI: I plotted it myself in a
13 geographic information system.

14 MR. STEINBERG: Yeah, but I don't know --

15 MR. RICCI: I don't plot it. The file
16 itself plots itself.

17 MR. STEINBERG: Look, we're going to
18 accept the exhibit. We know that there's wetlands.
19 The Board can look at the exhibit for the limited
20 purposes of the location of the property. If you
21 want to talk about some impact of wetlands, I think
22 that our engineer has already stated, is that right,
23 Bill, that there's some wetlands issues with this
24 property?

25 MR. FITZGERALD: Correct.

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1 MR. STEINBERG: And there's going to be
2 some DEP requirements with preliminary and final site
3 plan. We'll get the exhibit and give it its due
4 weight.

5 MR. RICCI: And I was trained in the use
6 of that software by --

7 MR. STEINBERG: For that purpose, but
8 anything having to do with maybe this green line
9 should be two inches the other way, it's -- we know
10 that there are some wetlands issues dealt with the
11 property.

12 CHAIRMAN GOODE: Why don't we move off of
13 this topic, off the wetlands, and continue the
14 planning testimony.

15 BY MR. POULOS:

16 Q. Could you comment on --

17 MR. POULOS: Is he allowed to comment on
18 the impact in the planning purposes of wetlands as a
19 planning perspective?

20 MS. JENNINGS: Well, that's presuming
21 there is wetlands and someone's laid a foundation for
22 the wetlands. Again, it goes back to whether or not
23 he's qualified to talk about wetlands. He's not
24 qualified to talk about wetlands. I think we should
25 move off this issue.

Direct - P. Ricci, P.P. - Poulos

1 MR. RICCI: May I make a point and you
2 can tell me if my point is valid or not on why it's
3 shown here?

4 MR. STEINBERG: What's your point?

5 MR. RICCI: The issue is if -- as part of
6 this application, my understanding is that it's a
7 bifurcated application.

8 MS. JENNINGS: It's no longer bifurcated,
9 just so you understand. We reinstated a minor site
10 plan to allow the handicapped access, so it's a use
11 variance for a minor site plan. We're leaving the
12 site as is. That's what's before the Board this
13 evening. Within six months under the judge's Order
14 we'll come back in for preliminary and major site
15 plan, but if the Board denies preliminary and final
16 major site plan, we will not be doing any of the
17 improvements that have been discussed prior.

18 So right now what's before you is minor
19 site plan, and under the NJDEP regulations they don't
20 even come into play when you're not changing the
21 actual site. We're only adding handicapped access
22 ramps as required by the building code.

23 MR. RICCI: Well, the issue at hand here
24 is very simple. In my review of the Board Planner's
25 memorandum, and I'm not sure how the Board sees this

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1 issue, but he's recommending and indicating that a
2 variance for off-street parking is required, and
3 anywhere from what's being provided to apparently a
4 hundred parking spaces is what's mentioned in his
5 letter. And the question raised is that if this
6 application is approved by the Board or the Court,
7 can you ever build those parking spaces because
8 you'll be potentially impacting State wetlands.

9 MS. JENNINGS: Again, we're talking about
10 wetlands and the impact on wetlands and you're not a
11 site engineer. And this is not the application
12 that's technically before the Board. It's only the
13 minor site plan with a use variance. We're in
14 Federal Court. We get extreme relief from regular
15 zoning.

16 So what is before the Board is minor site
17 plan with the three handicapped accessible ramps. We
18 are not impacting the site in any manner. The
19 wetlands issue does not become an issue with a minor
20 site plan.

21 MR. RICCI: So you don't know if you can
22 build additional off-street parking spaces on this
23 property?

24 MS. JENNINGS: I am not a site engineer;
25 I do not know that. My site engineers told me that

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1 we should have no problem getting a permit, but
2 that's not an issue right now and that's not before
3 the Board right now.

4 MR. RICCI: Well, you're saying that
5 you're seeking site plan approval so how --

6 MS. JENNINGS: Minor site plan approval
7 to do the handicapped accessible ramps only. There
8 are no other modifications to the site as of now. It
9 was amended when we were before Judge Wolfson and
10 that's what we're doing right now.

11 MR. RICCI: So in your opinion then
12 you're saying that --

13 MS. JENNINGS: I'm not a witness. I'm
14 not a witness.

15 MR. POULOS: You can't question her. You
16 shouldn't be talking to her.

17 MR. RICCI: So I differ because if
18 environmental constraints are going to be impacted or
19 potentially impacted as part of this development,
20 that does have a basis for a negative criteria
21 implication associated with --

22 MR. STEINBERG: I think you need to get
23 to the use because, as you said, you indicated you
24 were at two previous hearings and you read the
25 minutes and some of the testimony from prior

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1 hearings; if the use is approved it's going to be
2 restrictions as to the need for parking, so then
3 we're just backing into that.

4 MR. RICCI: I'll move on.

5 MR. STEINBERG: Why don't you move on to
6 the use, which is what the Board really has to decide
7 tonight. And, of course, if there is an approval of
8 the use at any time, all of those restrictions would
9 come into play so that another user could not come
10 and say, I need a hundred parking spaces because
11 they'd have to come back to a Board.

12 MR. RICCI: The only thing else I wanted
13 to say on the exhibit, on sheet one, it's clear that
14 to the north, to the east essentially the site is
15 surrounded by single-family residential properties.
16 To the southeast you have a park, to the south you
17 have residential properties, and then to the
18 southwest you see commercial properties, and then an
19 apartment building that is located in the westerly
20 direction.

21 One thing that I did want to point out
22 and I thought was important from a zoning perspective
23 is that your R-4 Zone conditionally permits both
24 boarding schools and religious uses, and I noted
25 based upon Mr. Higgins' letter and also --

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1 MS. JENNINGS: Can you reference the date
2 of Mr. Higgins' letter, because he has several
3 letters, so we know what you're talking about?

4 MR. RICCI: Yes. I'm referring to his --
5 I'm referring to a December 9, 2014 letter.

6 MS. JENNINGS: Okay, but that's not the
7 current one.

8 MR. RICCI: I know. But that's one of
9 his letters that he wrote on this issue. I
10 believe --

11 MR. STEINBERG: Why don't we let him
12 continue the testimony, okay? And you'll have your
13 chance for cross-examination.

14 MS. JENNINGS: Sure.

15 MR. RICCI: Okay.

16 A. In that letter, and if we're going to get into
17 the particulars, it talks about how there is a
18 variance for a side yard setback as determined by
19 the Zoning Officer. And it indicates that that
20 variance is for a 40-foot requirement.

21 And I just want to note that despite the
22 fact that there are different requirements in the
23 Township zoning for boarding schools, schools and
24 religious uses, that as part of the Township's review
25 and the Zoning Officer's review of this application,

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1 it applied the less stringent standard of a 40-foot
2 setback for a school compared to a religious use,
3 which in this context would have a setback
4 requirement of 25 percent of the lot width or
5 approximately 83-and-a-half feet.

6 So in my opinion, the Township treated
7 the religious aspects of this application very fairly
8 is what I'm saying and it did not -- it treated -- it
9 used the lesser standard for institutional-type use.

10 And then moving forward, I just have --
11 you know, picture one on page two is just a picture
12 of the school. And these following pictures are just
13 some pictures of, two, three and four, of some
14 single-family houses immediately proximate to the
15 school showing the character, and then following just
16 on page three, we just have some pictures of the
17 existing facility.

18 I'm sure everyone's been out there.
19 Everyone knows about the existing courts in the back,
20 the play courts in the areas, and I think those are
21 issues that are being evaluated as part of this
22 review process and the like.

23 Q. So the applicant here is seeking a use
24 variance?

25 A. That's correct.

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1 Q. And in order to obtain a use variance
2 here, what does the applicant have to show or
3 demonstrate?

4 A. Well, there's different criteria. It's my
5 understanding that the Court has determined that
6 this application is an inherently beneficial use,
7 and I'm going to just point some points out in that
8 I hope it's something that potentially this Board
9 and potentially the Court looks at moving forward in
10 that regard because I don't think you can just
11 randomly automatically apply inherently beneficial
12 use criteria for each and every use without going
13 through sets of standards.

14 But largely at a minimum, a portion of this
15 use is in my opinion inherently beneficial, and when
16 a use is inherently beneficial; I think this
17 testimony has been provided, but there's the
18 presumption that the positive criteria of the
19 Municipal Land Use Law, the positive criteria, the
20 special reasons are met. And typically in an
21 inherently beneficial use application, you're not
22 required to meet the *Medici* or the enhanced burden
23 of proof where you have to reconcile the admission
24 of the use from the municipal Master Plan in that
25 you rely upon the *Sica* four-part balancing test

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1 which their planner has provided testimony to.

2 A couple of things that I just want to point
3 out is that from a planning perspective, I think the
4 applicant's position is that the religious learning
5 associated with this facility is tied to the need to
6 board, but from the strict planning perspective it's
7 not clear to me how the boarding aspects are clearly
8 inherently beneficial in this context. In no way
9 does that prohibit the ability to have religious
10 worship at this facility, for someone to learn their
11 religious trade.

12 And if I use the wrong terminology in
13 that regard, I apologize for that. But the boarding
14 aspect to me is not a hundred percent clear why that
15 should be a hundred percent inherently beneficial.

16 I know in the *Smart* case, which I know
17 very well because I've testified, that's a cell tower
18 case, which I've testified approximately 60 to 80
19 wireless telecommunications facilities over the
20 years, it does indicate the suggested criteria for
21 determining whether a use is inherently beneficial is
22 considerations of bulk, there's the setbacks, as well
23 as whether the proposed facility will be used for
24 strictly commercial purposes, whether they're a
25 limited number within a single municipality and

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1 whether they are exempt from regulation from State
2 government. So at least in terms of inherently
3 beneficial criteria that I'm aware of under the *Smart*
4 case, this use does not apply to each and every -- in
5 each and every one of those requirements.

6 Here we have bulk setbacks that aren't
7 being met. There is a -- my understanding, this is a
8 for-profit operation. There are profit implications
9 being contemplated here. My understanding is this is
10 the only one, or proposed to be, in Ocean, but my
11 understanding is also that this would be -- there
12 would be a closing of an existing facility that has
13 approximately 75 individuals and approximately an
14 additional 21 individuals would be associated with
15 this land use, and it's my understanding that there
16 is no State government restrictions on this use.

17 So I'm raising -- I mean, these are --
18 I'm raising issues as a planner in my knowledge that
19 it's not entirely clear whether the entire use being
20 proposed is inherently beneficial.

21 My understanding of the variance relief
22 is that a D-1 use variance is required. It's been
23 determined that this is not a boarding school, this
24 is not a strict religious facility. This is a
25 Talmudic Jewish facility that's serving individuals

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1 from 18 to 22 years of age, and that doesn't neatly
2 fit anywhere in the Township zoning ordinance and
3 accordingly a D-1 use variance is required.

4 The minimum side yard setback variance of
5 22 feet is proposed as an existing condition as well
6 where the building is located where 40 feet is
7 required, and it's my understanding that there are
8 some other bulk variances. I believe they're of less
9 consequence, with the exception of off-street
10 parking. For example, I believe, unless this has
11 been amended, that there's a variance for side of
12 109 square feet where 60 feet is permitted, landscape
13 islands ten feet wide where eight feet is proposed,
14 fence height of four feet in the front yard where
15 three feet is permitted, and then off-street parking,
16 it's my understanding that, based on at least my
17 review of the previous mentioned letter from Mr.
18 Higgins that I referenced, that he's suggesting that
19 a parking requirement of a hundred spaces is required
20 where, and correct me where I'm wrong, somewhere
21 around 27, 25 spaces are proposed. There's been some
22 changes that I haven't been able to fully reconcile.

23 And I know at some time there was also a
24 discussion that I recall reading in the record of
25 potentially banking some spaces that could be

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1 potentially built if needed as well.

2 Q. Now, based on the various variances
3 needed here, in your opinion has the applicant filed
4 all the information necessary for this Board to make
5 an informed decision?

6 A. I don't believe so. At least in terms of the
7 need for off-street parking, I believe there should
8 be greater consideration to environmental
9 constraints by people that are qualified to actually
10 go out and to evaluate the extent of wetlands and
11 whether off-street parking can be built on this
12 facility. I believe that the generalized
13 information that I provided warrants the need for
14 further investigation as part of this process.

15 And just a couple things. At least in my
16 review of the site plan, I think it's important for
17 information that's submitted to boards to be
18 accurate and be complete. In my review of the
19 Nelson Engineering Associates' plan, you know, it
20 lists in there bulk tables, and this is a little bit
21 nit-picky, but requirements for single-family
22 properties. It doesn't actually reflect the
23 requirements for the zone for, you know, the
24 conditional uses.

25 For example, there's clearly distinctions in

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1 the requirements for a single-family land use that's
2 shown on the site plan and then for institutional
3 land use such as this. And these are a little bit
4 of, you know, pet peeve issues, but I believe it's
5 important for this information to be accurately
6 displayed so the Board is not being misled when it
7 reviews an application.

8 I did review your Master Plan and I will say
9 the Township likes to update and to amend its Master
10 Plan as part of Master Plan Re-Examination Reports
11 and as --

12 Q. Excuse me. Can you discuss the goals of
13 the Master Plan and whether or not what the applicant
14 is seeking is consistent with these goals?

15 A. Well, when I look at your 1990 plan, that
16 really is the one that focused on true goals and not
17 looking at specific properties and potentially
18 making small zoning changes, there's many goals in
19 the Master Plan that in my planning opinion that
20 this application is inconsistent with.

21 To maintain the character -- this is 1990
22 plan. To maintain the character and value of
23 existing residential neighborhoods. I believe this
24 application would result in dramatically changing the
25 character and intensity of the use. To maintain the

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1 desirable existing characteristics of developed
2 neighborhoods within the Township; to ensure that
3 future development of the Township incorporates
4 desirable aspects of existing neighborhoods while
5 reducing the adverse impacts of undesirable aspects;
6 to ensure that future development in the Township
7 does not conflict with existing land uses; to ensure
8 that the future development of the Township provides
9 for the protection of environmentally sensitive land
10 as identified in the conservation element of the
11 plan. Again, bringing in implications of
12 environmental constraints.

13 Q. Now, are there any zoning considerations?

14 A. And I partially mentioned this, but when I
15 looked at your zone plan, and as this application is
16 largely being regulated as a boarding facility from
17 a zoning perspective, at least in how your Zoning
18 Officer characterized the setback requirements for
19 the zone, and it's the use that I believe the
20 applicant has demonstrated that -- it's really a
21 hybrid use, but it most accurately resembles.

22 And a couple things for consideration.
23 Under the current ordinance, a ten-acre lot size
24 would be required to board approximately 100
25 individuals overnight no matter the age. And that's

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1 in your R-1, R-1T, R-3/PRD, AR-3/PRD, and R-7 Zones,
2 which place no restrictions on the number of persons
3 that can be boarded overnight.

4 I notice that a certain number of
5 students on a larger lot -- as you get over a certain
6 number of students you require a larger lot size, but
7 there's no restrictions on the overnight boarding.
8 Also, a 50 to a hundred foot buffer is required in
9 those zones. In the R-2 Zone you permit up to 80
10 individuals to board on seven acres or greater, and
11 then in your R-4 Zone, where we are located or the --
12 this application is located, the subject property is
13 located, it permits up to 50 individuals on two acres
14 or greater.

15 So the planning finding at this point is
16 that the magnitude of the deviation being requested,
17 essentially close to double the number of people that
18 are permitted in this zone, is substantial from a
19 zoning perspective.

20 Q. And what are the criteria for granting of
21 a use variance?

22 A. And I partially went through this, and at this
23 point I'm really going to focus on the *Sica*
24 four-part balancing test.

25 Q. The *Sica*.

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1 A. The *Sica*. But a couple things that I just want
2 to point out, in my review of the Municipal Land Use
3 Law. And I believe that often as planners, and we
4 testify for a use variance which is a case called
5 the *Puleio* case, that we say that where there is a
6 use variance, bulk variances can't not exist and the
7 use variance to be looked at comprehensively and
8 those bulk aspects should be subsumed into the use
9 variance.

10 But I just want to point out that section
11 40:55D-72 states that, and I quote, this is from the
12 Municipal Land Use Law, "The fact that a proposed
13 use is an inherently beneficial use shall not be
14 dispositive of a decision on a variance under this
15 subsection and provided that no variance from those
16 departures enumerated in section D," as in a D
17 variance, "of this section shall be granted under
18 this subsection."

19 So it's -- what the law is saying in this
20 regard, that even in an inherently beneficial use
21 application, you need to demonstrate that there's a
22 benefit and there's negative implications -- and
23 there's not negative implications associated with
24 typical bulk-type variances.

25 And it goes on; in section 40:55D-70D states

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1 that "No variance relief may be granted under the
2 terms of this section including a variance or other
3 relief involving an inherently beneficial use
4 without a showing that such variance or other relief
5 can be granted without substantial detriment to the
6 public good and without a substantial impairing of
7 the intent and purpose of the zoning ordinance."

8 So while you're balancing the benefits versus
9 the detriments of an application that essentially
10 the *Sica* case provides for, there still has to be --
11 it doesn't mean that because you are an inherently
12 beneficial use that there is complete disregard for
13 community zoning ordinance.

14 I believe it's clear that you have the
15 planner in the room that was involved with the
16 crafting of the ordinances that are being
17 contemplated, at least based on my review of the
18 previously mentioned planning letter, in that there
19 was clear legislative intent not to allow adults or
20 individuals over 18 on site for many reasons
21 expressed in his letter. The concerns were largely
22 related to the inability to control legal adults in
23 a residential neighborhood.

24 As a planner, it's very clear to me that this
25 proposal, as a result of its intensity and age of

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1 the student population, is a hundred percent
2 inconsistent with the legislative intent and purpose
3 of the zone plan.

4 Regarding the *Sica* four-part balancing test,
5 four parts. The first part is determine the public
6 interest at stake; determine the potential harmful
7 impacts of the grant of a variance; determine if
8 there are conditions which can be imposed to
9 ameliorate or limit those harmful impacts. Are
10 there changes that the Board can make that would
11 make this use acceptable in this particular setting.
12 And finally, to weigh the positives of the public
13 interest at stake versus the harmful impacts
14 associated with the application and do those
15 benefits outweigh the detriments. If they do not,
16 you do not meet the *Sica* four-part balancing test
17 and accordingly, should vote to deny an application.

18 In *Sica*, the Court said that some uses are
19 more inherently beneficial than others; such as a
20 group home or a community residence is very high on
21 the list. If a Talmudic academy is considered
22 inherently beneficial, where in the scale of an
23 inherently beneficial use does it rank as a land
24 use? And where in the context of the community of
25 Ocean does this particular use rank on the scale of

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1 inherently beneficial uses?

2 The interest at hand is the future education
3 of private clients to develop Jewish scholars and by
4 implication I believe as part of that religious
5 freedoms associated with that. It's my
6 understanding today that such a facility exists for
7 this purpose and the applicant is looking to
8 relocate it here from Lakewood.

9 According to the State Office of Higher
10 Education website, it identifies 15 yeshivas, Jewish
11 schools or Talmudic academies in the State. The
12 listing also identifies seven higher education
13 schools in Monmouth County. Out of these seven,
14 four of them are for higher education of Jewish
15 learning. So to some extent, higher education
16 Jewish learning is being provided in the community
17 nearby.

18 It's also my understanding that there will
19 only be a minor increase in the students from the
20 existing to the proposed facility, so there would
21 only be a small benefit to the region as a whole.
22 Since this service is already being offered nearby,
23 in my opinion it doesn't rank very high as an
24 inherently beneficial use in this context and that
25 you're merely talking about a small increase in the

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1 number of individuals.

2 It's also my understanding the facility is
3 for profit, similar to a commercial venture, so it
4 appears that the expansion is at least partially
5 based upon the commercial venture where profit
6 maximization is an issue. Again, I note that
7 inherently beneficial uses are typically
8 noncommercial in nature, although they can be
9 commercial in certain instances.

10 The second part of the test is to identify
11 the potential harmful impacts associated with the
12 grant of the variances. Facilities that have -- the
13 issues identified to date and issues that I found
14 from a planning perspective are as follows: The
15 existing facility is surrounded by existing
16 established low-density residential community; the
17 inclusion of a facility of a population density that
18 nearly doubles what is anticipated for the zone.
19 Again, so in reviewing the magnitude of the
20 requested variance, it is very high.

21 To be clear, purpose E of the Municipal
22 Land Use Law is to promote the establishment of
23 appropriate population densities in concentrations
24 that will contribute to the well-being of persons,
25 neighborhoods, communities in reasons and

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1 preservation of the environment.

2 Here we have an applicant that proposes
3 to double the maximum number of persons anticipated
4 for this area of the Township. Your R-4 Zone
5 anticipates single-family homes on 10,000-square-foot
6 lots. This equates to 4.3 units per acre. The 2010
7 census indicated that the average household size is
8 2.57 persons per acre in Ocean. So for the R-4 Zone,
9 we can anticipate approximately 11 persons per acre.

10 The zoning is generous from a population
11 perspective for boarding houses as it allows up to 50
12 persons in the R-4 Zone. In this case the 97
13 individuals on site would equate to a population
14 density of 33.13 persons per acre. This is three
15 times the density anticipated for single-family homes
16 and double the boarding population anticipated for
17 the zone.

18 As previously stated, the R-2 Zone
19 permits up to 80 individuals on seven acres or
20 greater. Here close to a hundred individuals are
21 proposed on approximately three acres. We do note
22 that the 97 individuals will be permitted in the R-1,
23 R-1T, R-3/PRD, AR-3/PRD, and R-7 Zones on ten acres,
24 but would have to have less -- but those individuals
25 would have to be less than 18 years of age.

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1 Also, the applicant proposes to house the
2 97 individuals in a building that previously
3 accommodated 50. This results in four occupants in
4 rooms that are as small as 200 square feet or so, or
5 close to 50 square foot a person. These are the
6 tiniest living accommodations that I have witnessed
7 as a planner.

8 The use also does not meet the required
9 side yard setback for the zone, so the population
10 intensity is heavily felt by a neighboring property.
11 From a planning perspective, when additional
12 intensity is requested, at a minimum increased
13 setbacks are warranted to further buffer the use from
14 uncontrollable impacts associated with so many
15 individuals living so close together.

16 Again, the setbacks required for a
17 50 person daytime boarding school is 40 feet. The
18 setbacks for a religious facility would be 83.5 feet
19 for the property where 22 feet is proposed -- is
20 provided. Six-foot-tall trees, landscaping and
21 deciduous trees don't do a good job of buffering
22 two-story buildings. Increased setbacks do.

23 In this case the side yard at a minimum
24 is almost half the size required and intensity is
25 double than what is permitted. So it's clear that

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1 the proposed use is a substantial departure from the
2 municipal Master Plan and zoning regulations.

3 Again, the applicant has not provided
4 information pertaining to environmental constraints
5 for the property, so we don't understand those
6 impacts. This is especially important since
7 additional parking is needed as referenced in your
8 planner's letter.

9 I think as part of the bifurcated
10 application, which is not really truly bifurcated
11 anymore, I think the Board has the right to
12 understand the extent of environmental constraints on
13 the property. While a final determination by NJDEP
14 could be associated with any site plan approval
15 process, this is needed to understand potential
16 negative impacts of the property and its ability to
17 accommodate the use.

18 Also this information is important to
19 understand if the necessary parking for this facility
20 could be developed. And that's somewhat repetitive.

21 The potential need to provide a marginal
22 increase in the number of religious education
23 students in this area has no relevance on the ability
24 of the community to employ reasonable standards to
25 ensure that substantial negative impacts to the

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1 neighborhood and the quality of life of its residents
2 are not negatively impacted. And because of the
3 presence of environmental constraints to the rear of
4 the property and the lack of their delineation, it is
5 impossible to determine whether there is sufficient
6 space, again, to provide the parking.

7 If sufficient space is not provided for
8 the parking -- and I note one of the things as
9 reviewing the negative impacts as part of this
10 application is that all of the conditions being
11 proposed by the applicant, no cars on site,
12 individuals don't go outside, individuals don't do
13 this, don't do that, and all the individual -- all
14 the testimony provided by the applicant, it all has
15 to be enforced essentially by the applicant.

16 And if you are going to have conditions,
17 there has to be some reasonableness in the ability of
18 the community to actually enforce those. I mean, I
19 don't think the police can stop cars on the road and
20 say, where are you parking in this area and the like
21 because you're not allowed to park at the recently
22 approved religious slash boarding facility.

23 So I'm not suggesting that a hundred
24 parking spaces are needed for this facility as I
25 think officially required as part of the ordinance,

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1 but I do think and as a planner it's unreasonable to
2 believe that there will not be any type of ceremonies
3 or any need for additional parking associated with a
4 use such as this. What happens if this facility is
5 sold to another user?

6 Q. So what happens?

7 A. Well, I mean, I think this is a very specific
8 use and I think in most situations the town would
9 require a new site plan application and potentially
10 would require a new parking variance for a different
11 use per se, but it's an important element to
12 understand whether really this facility can truly
13 accommodate the use.

14 Your zone plan acknowledges that for
15 institutional uses, such as educational facilities
16 or schools, they require a larger lot size as well
17 as greater lot setbacks than for single-family homes
18 in a residential zone. It also acknowledges that
19 the use needs more parking and likely coverage than
20 single-family homes.

21 Again, as indicated by your planner in his
22 planning report, there was a rationale behind the
23 age requirement in the zoning ordinance.

24 Individuals over the age of 18 are adults by law and
25 can do as they please without parent oversight.

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1 There is less control of the student body in such an
2 environment.

3 Requirements for this zone are reasonable to
4 allow for institutional uses as it essentially
5 allows for a population density increase of
6 approximately twofold of what is permitted for
7 single-family homes.

8 Despite the increase in population density,
9 the applicant seeks to more than double what is
10 permitted at a location that is too close to
11 surrounding properties without sufficient parking
12 based upon zoning requirements and there is no
13 understanding of where environmental constraints
14 exist.

15 The proposed facility has not been classified
16 as a place of worship. I note that in discussion of
17 the *Macedonian Church* case, that it was clear that
18 municipalities may not directly regulate religious
19 worship but it can exercise reasonable authority
20 over negative impacts such as noise, litter,
21 intensity of use, traffic congestion, et cetera.

22 So even for a hundred percent religious
23 worship activities, the Courts have shown that there
24 are limitations on the extent of development. The
25 point being just because your development

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1 contemplates religious implications does not mean
2 that you can develop a site any way that you want.
3 There are limitations.

4 Again, I think I have shown that the
5 proposed size and the intensity of the proposed use
6 will have a substantial negative impact on the
7 neighborhood.

8 And what is most troubling about this
9 application is that the enforcement of all conditions
10 largely lie on the user. What I mean is that it will
11 be extremely difficult for the town to enforce the
12 stipulations about the use that were indicated by the
13 applicant; the ability to prevent cars on site,
14 ceremonies, residents parking on the streets, et
15 cetera.

16 Under the Municipal Land Use Law, under
17 the power to zone, the State directs the
18 municipalities that zoning be drawn with reasonable
19 consideration of the character of each district.
20 Also, the regulations in the zoning ordinance shall
21 be uniform throughout each district for each class or
22 kind of building or structures or uses of land.
23 N.J.S.A. 40:55D-62, in establishing zoning standards
24 for the R-4 district, I believe that the Township's
25 ordinances have been most generous in terms of

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1 population anticipated per acre for institutional
2 uses, so institutional uses have been given greater
3 liberality already than single-family homes which are
4 the primary principal use for the zone.

5 In terms of step three, the imposition of
6 standards to ameliorate the negative impacts
7 associated with the grant of the variances, yes, I
8 believe that this application can be changed
9 dramatically to more closely meet the intent of the
10 zoning ordinance, when we permit population of the
11 number anticipated for the zone, 50 maximum and the
12 ages specified by the ordinance, remodel the building
13 to at least meet the required setback for the zone.
14 If the student population is not increased, given the
15 intensity of the use, the side yard setback should be
16 commensurately increased to 60 to 80 feet. Removal
17 of the outdoor court areas from the plans, I believe
18 the applicant has agreed to this. According to the
19 testimony, they do not appear to be needed as the
20 students largely study and sleep based on the
21 testimony. Show all environmental features in the
22 site plan and locate all facilities outside of it.
23 Provide off-street parking at a minimum in accordance
24 with the Board Planner's recommendation. Create
25 means of eliminating lighting from windows that are

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1 close to residential uses. Further restrict the
2 hours of operation, especially with the use of a
3 study hall which is located close to residential
4 properties. If permitted by building code, require
5 the windows on the northerly property line to
6 effectively not open. Also limit the use of any
7 remaining doors on the northerly property line for
8 emergency egress only. Agree to no internal
9 illumination of the sign, adding trees to comply with
10 the tree ordinances, and establish a real mature
11 buffer on the most impacted residential property
12 lines with 10 to 12-foot trees at the time of
13 planting.

14 Q. Now step forward to the balancing test
15 under *Sica*. Do the positive outweigh the negatives?

16 A. First of all, it appears that the Court has
17 largely based this use on an inherently beneficial
18 use, but if it did indicate or it was found that the
19 boarding implications are not inherently beneficial,
20 I think that testimony is warranted to show that why
21 this facility is particularly well-suited for the
22 boarding aspects, and I don't think that has been
23 demonstrated.

24 Again, it's completely recognized for a new
25 land use, when you have a change of use, just

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1 because a building is existing, when you have a
2 change of a land use, you're required to meet zoning
3 requirements for the site, and there's no change for
4 an application such as this because the building is
5 constructed. Buildings are remodeled and changed
6 all the time.

7 I do not believe that this application meets
8 the burden of proof because I believe there's -- the
9 substantial detriments to the community as a whole
10 and the surrounding residential community are
11 substantial, and they're clearly inconsistent with
12 the intent and purpose of your zoning plan. They're
13 a hundred percent inconsistent with the legislative
14 intent, for the age of individuals and the number of
15 individuals. That has no implications of religion,
16 nationality, creed or the like. That's an issue of
17 an intensity on property lines.

18 I note that when we talk about bulk
19 implications, and at least the Municipal Land Use
20 Law, in its intent for inherently beneficial use
21 applications, was for bulk variances or the bulk
22 aspects should be treated separately and distinct.
23 And I note in a leading case regarding C-2 bulk
24 variances, the *Kaufman/Planning Board of Warren*
25 *Township*, made it clear that no variance should be

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1 granted when merely the purposes of the owner will
2 be advanced, that the grant of the approval must
3 actually benefit the community as it represents a
4 better zoning alternative. That's clearly not the
5 case as part of this application since the side yard
6 setback is too close; it's half the size of what
7 it's supposed to be, and for a population intensity
8 that's close to double what's permitted by
9 ordinance.

10 So I don't believe that this application
11 meets the burden of proof for the bulk variance
12 relief and I believe that the detriments to the
13 intensity of this land use are too great versus that
14 -- the benefits in comparison to the benefits being
15 proposed by the applicant.

16 Q. So in your professional opinion, do you
17 believe that this application should be approved?

18 A. I do not.

19 MR. POULOS: Finished.

20 CHAIRMAN GOODE: Ms. Jennings?

21 MS. JENNINGS: Sure. I just have a
22 couple of questions.

23 CROSS-EXAMINATION BY MS. JENNINGS:

24 Q. My first question is, do you believe that
25 the Township must prohibit all students 18 years of

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1 age or older, even one, in order to prevent
2 substantial negative impacts?

3 A. Well, I believe that there was a legislative
4 intent behind that. I believe it says that you
5 can't be 18 years of age from the time that you
6 enrolled, so potentially there could be a few
7 18-year-olds.

8 But based upon my understanding when I
9 researched the intent of the ordinance, it was to --
10 it was once a student is above 18, it creates a
11 whole different issue 'cause they cannot be
12 controlled by a parent, a board master; they can do
13 as they choose. So there is not the ability to
14 control those students is the problem.

15 Q. Thank you.

16 MS. JENNINGS: Just a couple quick
17 questions, and one point of clarification just for
18 the record. The applicant is a nonprofit
19 organization, so Mr. Ricci misspoke, so I hope the
20 Board members understand nonprofit.

21 Q. Were you or any of your representatives
22 present at the March 15, 2016 case management
23 conference before Judge Freda Wolfson?

24 A. I was not, no.

25 Q. Okay. And were you aware that Judge

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1 Freda Wolfson stated at this case management
2 conference that the use in her opinion is inherently
3 beneficial?

4 A. That is my understanding. I don't know what
5 was considered as part of that, but I know --

6 Q. She has all the facts in the briefs. And
7 are you aware that if the Board denies this
8 application, that Judge Wolfson has retained
9 jurisdiction, which means the application and appeal
10 goes back to her for full adjudication?

11 A. That I do understand.

12 MS. JENNINGS: Thank you. That's all I
13 have.

14 CHAIRMAN GOODE: Mr. Steinberg, did you
15 want to --

16 MR. STEINBERG: Yes, it's now the Board's
17 time.

18 CHAIRMAN GOODE: I just want to know, you
19 were giving a lot of, you know, general
20 considerations for general zoning and planning
21 issues, which would be the normal type of application
22 that we have, but are you aware of the judge's
23 directions to us and including the RLUIPA legislation
24 and what supercedes what and Mr. Steinberg's
25 memorandum? If you'd like, maybe he could read you

1 parts of it.

2 Because what you said was very
3 interesting and probably applicable in most cases and
4 it is what we would have considered before this went
5 to Federal Court, but my understanding is from our
6 attorneys is it's coming back to us under a whole new
7 ball game, that the MLUL is not applicable in this
8 case for the use variance and according to Mr.
9 Steinberg's memo and the judge's opinion, the Board
10 must find reasons why the detriments outweigh the
11 religious freedom rights inherent in the proposed
12 operation of the school.

13 This is contrary to what the Board is
14 usually charged with and makes a substantial
15 difference in the way Board members must weigh the
16 testimony to make a determination. So I'm looking
17 for if you've got something that we have that would
18 overturn the judge's suggestion, I haven't heard it.
19 It's mostly --

20 MR. RICCI: My understanding -- sorry.

21 CHAIRMAN GOODE: It sounded to me that
22 you were giving reasons in a normal Superior Court
23 type of appeal and my understanding is that doesn't
24 all apply. So if you're going to come up with
25 reasons that we should deny the use, I haven't heard

1 them.

2 MR. RICCI: If I may, and I partially
3 touched upon this and I think I could have been
4 clearer, my understanding and, you know, I don't
5 consider myself an expert in RLUIPA, but my
6 understanding is that you can't limit the rights of
7 government entities to impose substantial burdens on
8 religious institutions. You can't prohibit
9 government entities from totally excluding or
10 unreasonably limiting religious institutions within a
11 jurisdiction and from prohibiting government entities
12 from imposing land use regulations that treat
13 religious institutions on less than equal terms with
14 non-religious institutions.

15 Here the township that had to review this
16 application treated this facility in terms of the
17 zoning requirement as it would treat a boarding
18 facility and not a religious institution. So you're
19 treating the institutional land use as -- at the
20 lowest standard and you're not treating this land use
21 harsher than you would treat any other institutional
22 use in this zone.

23 And I don't understand how if an
24 individual sleeps at this facility or not, in any way
25 that limits their ability to worship and practice

1 their religion, and I raised that as an issue as well
2 previously.

3 And I also raised a case law in the
4 *Macedonian* case that just because there is a
5 religious facility being, you know, proposed, it
6 doesn't mean that, you know, the community has no
7 ability to regulate the intensity of that land use
8 and that it has to not result in substantial
9 detriments to the surrounding community as part of
10 this application.

11 And so I don't believe that this
12 application is about religion. I believe it's about
13 intensity and the age and the ability to control
14 individuals that could potentially turn into
15 essentially a college. If this was a college at this
16 facility and you had individuals that were 18 and 22,
17 I remember how I was in college. I wouldn't want --
18 I was uncontrollable. And I think that's not a great
19 way of positioning it, but those are the issues at
20 hand here, intensity and age of individuals in
21 proximity to residential. I don't believe this is --
22 well, while it's guised as a religious application,
23 my points are related to what I just mentioned.

24 CHAIRMAN GOODE: So you disagree with
25 Judge Wolfson's Order?

1 MR. RICCI: No, I don't say I'm
2 disagreeing with it, but I'm saying I don't believe
3 that the ability to practice religion is being
4 impacted by the ordinances in place that are being
5 regulated by this Township.

6 CHAIRMAN GOODE: I could agree with you
7 on one hand, but I think we're severely constrained
8 by this is now in a Federal Court, in fact, a Federal
9 case now, not just our normal type of planning and
10 zoning issue, and I think it's a different mold; it's
11 a whole different set of concerns that we have that
12 you just can't apply the normal proofs that we deal
13 with all the time, and I still haven't heard from you
14 why -- you know, what we should do with this Court
15 Order that we're under right now.

16 I mean, it's general planning, which is
17 fine, but that's not what we have here. And I just
18 haven't heard anything meaty enough to hang my hat on
19 to say, oh, yeah, we can turn this down or we can
20 approve it or whatever we're going to do with it with
21 any kind of impunity because the judge is just going
22 to take it over and chastise us because we didn't
23 have the proofs to show that the negatives
24 substantially outweigh the positives, as in Mr.
25 Steinberg's memo. So if you got more, don't hold it

1 back.

2 MR. RICCI: Well, I don't, and I provided
3 what I believe the negatives associated with this
4 application are. I pointed out that -- my
5 understanding of RLUIPA. I mean, the Court is the
6 Court, and the Court does as it chooses, as we all
7 know. But there's nothing that I reviewed as part of
8 this application that imposes on the ability to
9 someone to exercise their freedom of religion. And
10 at least in the case law that I reviewed in the
11 *Macedonian* case is that --

12 CHAIRMAN GOODE: Is that a Federal case
13 or was that a State case? I'm not familiar --

14 MR. RICCI: State case. State case.

15 CHAIRMAN GOODE: Hasn't this been
16 superseded by the judge's Order?

17 MR. RICCI: Well, I mean, I can't speak
18 to those legal aspects; I have to defer to the legal
19 team in that regard.

20 CHAIRMAN GOODE: Okay, maybe you're --
21 maybe they can respond.

22 MR. RICCI: Essentially what you're
23 suggesting to me is that, and if this is the case,
24 this is the case, but if there is a religious
25 institution, that you have no control or oversight

1 and that religious institution can essentially locate
2 itself in any manner that it deems fit and that you
3 have no oversight over that. Because that's what --
4 that's what you're suggesting otherwise.

5 CHAIRMAN GOODE: Well, it's not my
6 suggestion. It seems to be that's what the judge has
7 ordered.

8 MR. RICCI: And I disagree with that.
9 And I disagree with that.

10 CHAIRMAN GOODE: Well, then you got to
11 appeal her decision to a higher court. Okay. Any
12 other questions from Board members?

13 MR. HIGGINS: I just have one -- a couple
14 quick questions. Paul, you raise the issue of
15 enforcement. Correct?

16 MR. RICCI: Yes.

17 MR. HIGGINS: Would you agree that when
18 you have any application that has conditions of
19 approval, that there's always an issue of enforcement
20 of those conditions?

21 MR. RICCI: Yes, I think you have to have
22 a reasonable ability to calculate --

23 MR. HIGGINS: Okay, now, the next
24 question I have, would you also agree that the types
25 of conditions that are suggested with this

1 application, the not allowing students to have cars
2 either on or off the site, not allowing them to
3 smoke, not allowing them to have cell phones,
4 requiring that they stay in the building and on the
5 site, not be able to leave the site, would you agree
6 that those are somewhat unusual conditions that might
7 be difficult to enforce?

8 MR. RICCI: I do. I'm not sure how you
9 could enforce that. I wouldn't know -- if you look
10 at my aerial, you know, there's going to be a fence
11 in the rear yard, but there's a parking lot
12 associated with the adjoining apartment building
13 that's proximate to the property.

14 MR. HIGGINS: Things like that could
15 probably be controlled at site plan though, wouldn't
16 you agree, to a degree?

17 Where I'm going with this is, for
18 example, if you have a site plan approval with some
19 specific drainage structures that need routine
20 maintenance, there is a maintenance plan that's
21 developed by the applicant and submitted to the
22 municipality and they are supposed to follow the
23 instructions in that maintenance plan in order to
24 keep those drainage facilities operating. And
25 clearly that's something that's on the onus of the

1 property owner. The municipality may have some
2 oversight, but still, they have the right to review
3 the maintenance plan and to okay it and to say this
4 is something that's going to work over a period of
5 time.

6 Now, would you agree with me that if the
7 Board were to approve this application, it would be
8 appropriate for the applicant, since the applicant is
9 requiring their students to sign a contract every --
10 when they go to the facility, to sign a contract
11 saying these are the things we're going to do, that
12 it would be appropriate for the applicant to
13 submit -- they be required to submit that contract to
14 the municipality for review for consistency with the
15 conditions of approval on a periodic basis, whether
16 it be annual, semi-annual? Would you think that
17 would help in terms of enforcement?

18 MR. RICCI: I don't know, actually. To
19 be quite frank, I'm in communities that, you know,
20 oftentimes when things are in files and you're
21 required to do a yearly update, in certain instances
22 -- I think it's a very difficult issue to enforce. I
23 just ...

24 MR. HIGGINS: All right.

25 MR. FITZGERALD: Mr. Chairman, I have a

1 question or two.

2 CHAIRMAN GOODE: Yes, sir. Mr.
3 Fitzgerald.

4 MR. FITZGERALD: For what it's worth, I
5 just want to be sure I understand what you said
6 because I may not have the planning experience that
7 some other people have here, make sure I didn't
8 misunderstand.

9 Did I understand that the thrust of the
10 application in some sense was separation of the
11 boarding function from the religious practice? In
12 other words, did you say that religious practice
13 doesn't depend on boarding, and it's the boarding
14 that has the impact?

15 MR. RICCI: I believe the applicant
16 suggests that it is in that they're suggesting that
17 as part of what they're proposing here is that it's
18 important for the individuals to be part of the
19 facility overnight.

20 But my point is functionally speaking,
21 whether you sleep at a facility or not, how does that
22 impact your ability to have freedom of religion,
23 exercise your religion and the like? And that's
24 where I personally as a planner have a disconnect
25 associated with the benefits associated with that

1 boarding.

2 MR. FITZGERALD: And do I understand that
3 your analysis of the Township's zoning in other zones
4 as well as this zone looks at the impacts of the
5 intensity of the boarding proposed versus the
6 intensity of boarding in this zone and other zones
7 that's permitted?

8 MR. RICCI: Yes. I mean, 'cause I read
9 the purpose of the Municipal Land Use Law. When you
10 zone, you're supposed to -- you know, the intent is
11 to treat each zone equally, right? And when I
12 reviewed Mr. Higgins' letter, again the one that I
13 previously referenced, he partially talked about in
14 his letter the basis for the number of persons that
15 were established.

16 And I'm paraphrasing Mr. Higgins here,
17 but what he partially implied was that the Township
18 was trying to create a policy of almost to have like
19 an equal number of persons in the R-4 Zone. And what
20 I was demonstrating through my testimony, that I
21 believe that the Township was most generous in that
22 regard, in actuality is allowing institutional uses
23 to at least double what single-family homes could
24 essentially -- would provide on average per acre in
25 that same zone.

1 MR. FITZGERALD: Any institution? What's
2 an institutional use? I guess maybe that's --

3 MR. RICCI: Well, in this context I'm
4 keeping together everything from schools, churches
5 and the like, those type uses.

6 MR. FITZGERALD: But they weren't
7 strictly religious institutions; they're any type of
8 an institution is what he talks to?

9 MR. RICCI: I looked at this from an
10 institutional perspective because that's how the
11 Township looked at it. You have more stringent
12 requirements for setback perspectives for
13 institutional -- for religious land uses in your R-4
14 Zone and it requires a side yard setback of
15 25 percent of the lot width, which is 83-and-a-half
16 feet, and a front yard setback of 25 percent of the
17 lot depth of 90 feet, but those weren't applied by
18 your Zoning Officer as part of this application; they
19 applied the lesser standard for the institutional use
20 as a whole, the boarding facility.

21 And I believe that's an important
22 distinction in reviewing this application from an
23 RLUIPA perspective per se because you're not treating
24 one institutional use different than another. And I
25 believe that's an important distinction as part of

1 this application.

2 MR. FITZGERALD: Thank you.

3 MR. SIANO: Mr. Ricci?

4 CHAIRMAN GOODE: Any other questions from
5 the Board? Yes, sir.

6 MR. SIANO: You had mentioned earlier
7 that a D-4 variance has a maximum of 50 students?

8 MR. RICCI: Well, the zoning allows a
9 maximum of 50 individuals that are I guess largely
10 under the age of 18 in the R-4 Zone.

11 MR. SIANO: Thank you.

12 MR. NAPOLITANI: Can I follow up on that?

13 CHAIRMAN GOODE: Mr. Napolitani.

14 MR. NAPOLITANI: Because I was actually
15 just thinking the same thing. Maximum of 50 under
16 what the original Planning Board had agreed to that
17 we can house in that building. What is the detriment
18 between almost doubling the size of the amount of
19 people in there, going from ages let's say 13 to 18,
20 50 students, up to 18 and above?

21 MR. RICCI: I think it's a substantial
22 increase in intensity of population associated with
23 that, and as I think we heard from the noise experts
24 as well, like the un -- what's the verbiage that they
25 used? The unamplified human voice is not a regulated

1 noise.

2 MS. JENNINGS: You're not a noise expert,
3 right?

4 MR. RICCI: Yeah.

5 MS. JENNINGS: So don't go toward the
6 noise.

7 MR. RICCI: But, I mean -- I'll focus on
8 the intensity. It's -- there was a clear intent for
9 there to be a certain population density and
10 intensity in your R-4 Zone, and I said that for
11 boarding facilities your zoning essentially allows
12 for that to double what's for a single-family
13 residence, so I think it was very generous in terms
14 of population intensity, and they're looking to
15 double that. So I believe that the zoning is more
16 than reasonable as it is and it's most generous in
17 this regard in that the doubling of that is just too
18 intense in such a close proximity.

19 And typically from a land use planning
20 perspective, when there is an increase in intensity,
21 at a minimum that increased intensity should be
22 mitigated through increased setbacks. In this case
23 you have setbacks that are close to half of what's
24 required, not double.

25 So that's the primary reason why the

1 intensity is too great associated with this
2 application, dual-fold; its proximity and the fact
3 that it's double than what was anticipated by your
4 ordinance, which, as I stated, your ordinance was I
5 believe generous to begin with.

6 And stemming back to the point where as a
7 planner, the Municipal Land Use Law tells me when you
8 zone in districts, that district's supposed to be
9 zoned to be consistent throughout. And in here you
10 have -- you already have a doubling occurring, and
11 you have a doubling occurring on top of that. So
12 that's where there's the large impairment of the zone
13 plan and your zoning ordinance.

14 MR. NAPOLITANI: Okay, I have another
15 question. I'm almost positive you can't answer this.

16 MS. JENNINGS: I bet you he answers it
17 anyway.

18 MR. NAPOLITANI: But maybe one of the
19 attorneys can answer it for me. Why did the judge
20 tie our hands to 96 and not go back to the original
21 50? Can somebody answer that for me?

22 MS. JENNINGS: Our application is 96.

23 MR. STEINBERG: The application is for
24 96. The judge did not limit any numbers. That's the
25 application in front of the Board. That's -- the

1 Board will have to decide on that number.

2 MR. NAPOLITANI: So it's all or nothing
3 at this point?

4 MR. STEINBERG: That's the application.

5 MR. NAPOLITANI: Okay.

6 CHAIRMAN GOODE: Any other questions from
7 Board members? Ms. Jennings, do you have any other
8 questions?

9 MS. JENNINGS: No, I'm finished. Thank
10 you.

11 CHAIRMAN GOODE: Okay, I guess that
12 brings us to the portion of the meeting you've all
13 been waiting for.

14 MR. STEINBERG: Well, I don't know. Mr.
15 Hanlon, did you want to go first before the ...

16 MR. HANLON: Sure.

17 MR. STEINBERG: Mr. Hanlon represents the
18 adjacent property owner.

19 CHAIRMAN GOODE: I'm sorry, I didn't
20 realize that.

21 MR. STEINBERG: And he has 15 minutes.
22 And we'll say go.

23 MS. WILENSKY: Have this handy timer
24 right here.

25 MR. STEINBERG: And after this I would

1 suggest -- Mr. Chairman, after Mr. Hanlon's testimony
2 is concluded and there's cross-examination, then I
3 think maybe we should have the objectors meet amongst
4 themselves to decide in what manner they would like
5 to proceed. Okay? We'll take that break after this.

6 CHAIRMAN GOODE: Mr. Hanlon, would you
7 enter your appearance, please?

8 MR. HANLON: Good evening, Mr. Chairman,
9 Board members. My name is Christopher Hanlon. I'm
10 with the law firm of Hanlon, Niemann & Wright. I'm
11 here tonight representing Wanamassa Garden
12 Apartments, LLC. You'll hear testimony from my
13 client, a representative, Christopher Knight. The
14 property is immediately adjacent to the property
15 which is the subject of this application. Who will
16 swear him in?

17 CHAIRMAN GOODE: I will. Raise your
18 right hand, please.

19 C H R I S T O P H E R K N I G H T, having been
20 duly sworn, testified under his oath as
21 follows:

22 CHAIRMAN GOODE: Please give us your name
23 and connection with the application.

24 MR. KNIGHT: Christopher Knight. I'm a
25 regional vice president with The Kamson Corporation

1 and we manage the Wanamassa Garden Apartments.

2 CHAIRMAN GOODE: Could you spell your
3 name for the record, please?

4 MR. KNIGHT: K-n-i-g-h-t.

5 MS. MONTEMARANO: I'm sorry. Your first
6 and last name.

7 MR. KNIGHT: First name is Christopher.
8 Last name is Knight, K-n-i-g-h-t.

9 MS. MONTEMARANO: Thank you.

10 DIRECT EXAMINATION BY MR. HANLON:

11 Q. All right, Chris, you're employed by The
12 Kamson Corporation?

13 A. That's correct.

14 Q. And it manages the Wanamassa Garden
15 Apartments, correct?

16 A. Correct.

17 Q. Wanamassa Garden Apartments is owned by
18 Wanamassa Garden Apartments, LLC, right?

19 A. That's correct.

20 Q. All right. How long have you been
21 involved with managing that property? I'm sorry,
22 what are your responsibilities as it relates to that
23 property?

24 A. I oversee budgeting, the physical plant,
25 maintenance staff, marketing. Just about anything

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1 having to do with the property I have something to
2 do with.

3 Q. And how long have you been involved with
4 this property?

5 A. Twelve years.

6 Q. And do you have responsibilities over any
7 other properties working for The Kamson Corporation?

8 A. Yes, I manage 11 other properties in New
9 Jersey.

10 Q. Garden apartments?

11 A. Correct.

12 Q. Okay. And the Wanamassa Garden
13 Apartments, does that have an age restriction?

14 A. No.

15 Q. So there are families living in that
16 property?

17 A. Correct.

18 Q. Okay, how many units are there?

19 A. 66.

20 Q. And so it's 66 families, as far as you
21 know?

22 A. Correct.

23 Q. All right. Where is your property,
24 Wanamassa Gardens, located as it relates to the
25 property which is the subject of this application?

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1 A. We abut it immediately to the west.

2 Q. Okay. And immediately on the other side
3 of the property line, what's located on your
4 property, in closest proximity to this project?

5 A. Parking.

6 Q. Okay. Approximately how many spaces, do
7 you know?

8 A. I'm just guessing, but I'd say there's probably
9 30 spots along that row.

10 Q. Okay. Now, you don't have any concerns
11 about the proposed religious use, correct?

12 A. Correct.

13 Q. You have concerns about the proposed
14 intensity of the use, right?

15 A. Correct.

16 Q. All right. As the manager of this
17 property, what are your specific concerns?

18 A. Certainly noise. The current use, when the
19 kids are being noisy, it's not a big deal. Most of
20 my residents are out at work or whatever, so it's
21 not a concern. If these folks are there 24/7, then
22 I'm going to have problems on weekends and evenings
23 and things like that.

24 I'm certainly concerned about the
25 parking. Since you're from town you probably

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1 recognize there is a problem with parking. That
2 whole row from Allen Avenue up to Route 35 where the
3 post office is, between the post office and all those
4 other businesses, there's not enough parking. I'm
5 continually chasing people -- not so much me, my
6 maintenance staff, chasing people off my property
7 that park on the property. So there's already a lack
8 of parking in the area.

9 Q. And are you concerned that given the
10 proposed population, 18- to 21-year-olds I guess,
11 that there's going to be cars there?

12 A. Absolutely.

13 Q. Now, you've attended some of the previous
14 meetings. Have you heard promises from the applicant
15 that this will not be a problem because they're going
16 to prohibit parking or any vehicles being brought to
17 the property?

18 A. Yes, I've heard the promises.

19 Q. Okay. And since you have great
20 experience in managing human beings and their
21 residences, what do you think of the likelihood of
22 the success of that program?

23 A. I think it's unlikely. I have a property up in
24 Keyport. People park on my property, walk up the
25 street to the Academy bus terminal and commute to

Direct - C. Knight - Hanlon

1 New York. I'm continually chasing them off my
2 property. I have a strip center in Red Bank where
3 they'll park on my property; they'll walk up to
4 either the train station or restaurants and shopping
5 in town continually. I have a property in Wall
6 Township; they'll park on my property, walk across
7 to the Silton Swim Club during the summers because
8 it gets so crowded they run out of parking. It's
9 just a common problem.

10 Q. And your parking lot is clearly visible
11 from the backyard of the property which is the
12 subject of this application?

13 A. Absolutely. Yes.

14 Q. Were those the extent of the concerns you
15 wanted me to bring to the Board's attention from your
16 perspective as a manager?

17 A. Basically the noise, the parking. I haven't
18 seen what the lighting and everything is going to be
19 to see if we're going to get any light pollution
20 from them or not.

21 Q. You can't tell without a site plan?

22 A. Correct.

23 Q. So you don't know if that's going to be a
24 detriment to your property?

25 A. Yeah, I don't know. And then also actually,

Direct - C. Knight - Hanlon

1 the water is a concern because currently we get
2 water --

3 Q. What water are you talking?

4 A. We get water that comes from Route 35, comes
5 all the way through the shopping center, comes onto
6 my property.

7 Q. This is stormwater runoff you're talking
8 about?

9 A. Correct.

10 Q. Okay.

11 A. And then there's a stream that runs all the way
12 along the property behind between us and this
13 development, so I don't know what the water --
14 what's going to happen with the water.

15 Q. So you're not a wetlands expert, but
16 you've seen the brook?

17 A. Correct.

18 Q. Okay. And does it flood?

19 A. Yes.

20 Q. Okay. So however intensely this project
21 is going to be used could have an impact on that
22 flooding, right?

23 A. Certainly.

24 Q. And until those plans are provided, you
25 don't know the answer to that?

Direct - C. Knight - Hanlon

1 A. I don't. Correct.

2 Q. And you don't think the Board does?

3 A. Not to my knowledge.

4 Q. And you don't want the Board to act until
5 they do?

6 A. That's correct.

7 Q. Okay. Do you have any other concerns?

8 A. No.

9 MR. HANLON: All right. Mr. Chairman, I
10 just have some comments on the burden of proof that's
11 been batted around. I've reviewed some of your
12 transcripts. I understand that this now project has
13 become a little unique analytically because of what
14 you've just alluded to after the planner testified
15 concerning the fact that the Federal Judge kind of
16 was turning the burden of proof on its head.

17 First, it's my understanding, cursory
18 I'll admit, that the judge has not ordered 96.
19 That's the application before you. So you'll vote
20 yes or no to that, or maybe do something else. I'll
21 get to that in a minute.

22 But going back to what you said where the
23 judge has said basically you have to identify the
24 reasons why this should be denied instead of the
25 opposite where the applicant has the burden of proof,

1 let me just -- I'm sorry I'm juggling these things,
2 but this occurred to me after your comments were made
3 to the planner.

4 If you want a list of reasons why this
5 project is a detriment given its intensity -- and
6 none of my comments are addressed to the religious
7 use. We don't question that at all. Okay? Under
8 the normal zoning rules, even if you identify it as a
9 special use, there's still the *Sica* balancing test
10 and you have to look at the detriment; you have to
11 look at the negative criteria under our statute. I
12 think you can still look at that under the Federal
13 law, but in reverse, as you suggest, and that is
14 identify the negatives first.

15 Well, if you want to identify the
16 negatives, look at their planner's testimony because
17 you'll recall when he was here in December he said
18 let me take you step by step through the *Sica*
19 analysis, and to do that let me list all of the
20 negative reasons that the intensity of this use
21 should be a concern to you and I'll explain to you
22 why it shouldn't be, and then he went through it.

23 He started with the need for adult
24 supervision. This is the transcript of the December
25 meeting. He then went to the number of vehicles

1 permitted on site. He then talked about traffic. He
2 talked about whether or not there is sufficient
3 interior space to accommodate the number of students.
4 He talked about whether or not they will be -- the
5 residents will be wandering or in the neighborhood.
6 He talked about the fact that there's no recreational
7 facilities and he said, well, we don't need any.

8 And for each of those things he said you
9 shouldn't find factually that those are problems.
10 Why? Because we're going to take care of them
11 ourselves. We're going to take care of all the
12 following. We're going to make sure there's no
13 cooking on site because meals are going to be brought
14 in; make it a condition. He said this is going to be
15 staffed by a resident faculty member; make it a
16 condition. He said students can't bring cars to the
17 premises; make it a condition. He said there will be
18 no driving to and from the premises; make it a
19 condition. He said there will be no pickup or
20 drop-off by parents or visitors; make it a condition.
21 He said they'll have no downtime. Our students will
22 study almost every waking hour. So there's no
23 recreational needs and there will be no behavioral
24 issues. Make it a condition.

25 I respectfully submit that something Ms.

1 Krimko said to you during that December meeting is
2 something that this Board should reject. She said
3 quote/unquote "You can't consider the lack of your
4 ability to enforce conditions in weighing the use
5 variance effect on a neighborhood."

6 And, again, if we're going to talk about
7 your burden of proof under the Federal standard, I
8 respectfully submit that if you take that list of
9 adverse zoning influences, that this intense use, 96,
10 will have on the property, there is your reason to
11 say our valid regulatory scheme can have some impact
12 on this proposed religious use. That's
13 justification.

14 The only way they're saying well, you
15 don't have to worry about it is because you can just
16 put conditions in it and we'll police it. Under our
17 traditional land use principles, a judge named
18 Serpentelli, who I think all the lawyers in the room
19 will recognize is an expert in the Municipal Land Use
20 Law, said this about conditions in a reported
21 opinion. And I apologize to the attorneys for not
22 getting them this in advance in writing as we
23 normally do, but I got hired Thursday and I thought I
24 was going to have another meeting at the end of the
25 month.

1 In *Orloski against the Planning Board* he
2 said "To be valid, conditions must, one, not offend
3 against any provision of the zoning ordinance; two,
4 not require illegal conduct on the part of the
5 permittee; three, be in the public interest; four,"
6 here's my point, "be reasonably calculated to achieve
7 some legitimate objective of the zoning ordinance."

8 That is entirely inconsistent with the
9 proposition that you cannot focus on whether or not a
10 condition is enforceable. Of course you can. The
11 only reason you'd put a condition in a Resolution is
12 because you had some reasonable belief that some
13 Zoning Officer or official could actually see facts
14 which would allow it to be enforceable or not.

15 I'm a municipal court -- I used to be a
16 municipal court judge. I'd hate to think about the
17 possibility of having to enforce some of these rules
18 that they are going to self-police. I don't even
19 know how you could get involved in them.

20 For example, with regard to your parking
21 issue, what are you going to instruct the police to
22 do, to control whether or not the students at the
23 yeshiva can have vehicles? Are you going to ask the
24 police to profile Jewish people? Obviously not. You
25 can't. My point is these are not enforceable;

1 they're not reasonable, ask Judge Serpentelli, and,
2 therefore, I think you can consider these things.

3 The Federal cases that I've read on this
4 subject matter indicate that what's against the law
5 is to enforce a regulation -- and that's what the
6 Zoning Board of Adjustment does every time you meet;
7 you're dealing with enforcement of regulations,
8 enforce a regulation which imposes a burden on
9 religious exercise which constitutes a substantial
10 burden. The burden has to be significant enough that
11 it's chilling. And the case I'm reading from, which
12 is *Westchester Day School against Village of*
13 *Mamaroneck*, Federal District Court case, there the
14 Court suggested well, if the board turns down an
15 application for a religious use, arguably that's
16 chilling.

17 However, there's alternatives here.
18 Again, my client's not objecting to the religious
19 use. We're objecting to the intensity. Less
20 intensity might be a good alternative for this site.
21 So I've been a board of adjustment attorney and I've
22 had boards vote no and I've had boards vote no and
23 telegraph to the applicant what a yes would be. And
24 maybe that telegraphing can be come back with
25 50 units and we'll approve your religious use. Less

1 intensity, zoning problems solved. I think that's
2 within your discretion, even under the scope of the
3 Federal monitoring that you're now under. Thank you
4 for your careful considerations.

5 (Applause)

6 CHAIRMAN GOODE: All right. We're going
7 to open it up for statements now. However, Mr.
8 Steinberg's suggestion was that we take like a
9 ten-minute recess and you can organize yourselves on
10 how you want to do it. However, the restrictions are
11 the first people who are going to get to make
12 statements are the ones that are living within
13 200 feet of the application, and we have a list of
14 those people, and then it will be general residents
15 and then it's open to anyone. So we're going to take
16 like 15 minutes and we'll resume at nine o'clock.

17 (Whereupon a recess was taken.)

18 CHAIRMAN GOODE: Okay, we're back on the
19 record now. As we stated, this is the time you've
20 all been waiting for. A maximum of five minutes per
21 person, and right now we're restricting it to people
22 living within 200 feet of the application, people
23 who've been noticed. So if you'd just line up in
24 front of the microphone and identify yourself and
25 your address; we'll check where you live.

1 You're on. Our first witness. You have
2 to be sworn in. So if you will please state your
3 name and address first.

4 MR. LARSEN: I'm Roy Larsen at 1517 Logan
5 Road.

6 CHAIRMAN GOODE: You're within 200 feet?

7 MR. LARSEN: I sure am.

8 CHAIRMAN GOODE: Raise your right hand,
9 please.

10 R O Y L A R S E N, sworn.

11 MR. LARSEN: I moved into Ocean Township,
12 1517 Logan Road over 30 years ago, largely because of
13 Ocean Township's reputation as a great community with
14 a great school district. We raised a family and now
15 my wife and I continue to live here for years to
16 come. We bought a house next to an elementary
17 school. It was not a concern to us because
18 elementary schools may be noisy during the day but
19 kids go home and it's quiet at night.

20 The proposed use of that property is for
21 96 grown men living there 24/7. This is completely
22 the opposite from what we bought, in terms of the
23 elementary school, not much noise in the day but
24 potential for a lot of noise at night.

25 Over the years I've paid hundreds of

1 thousands of dollars in taxes to Ocean Township,
2 money I feel has been well spent in return for a
3 well-run town blessed with a municipal government
4 that truly looks out for the best interests of the
5 community. One of the main underpinnings of this
6 success comes from the town's Master Plan regarding
7 use of land, of which the Board of Adjustment is the
8 watchdog for.

9 My objection has nothing to do with the
10 religion of the applicant. It has everything to do
11 with the proposed use of the property and it will
12 have a significant negative effect on the quality of
13 life.

14 I've lived next door for 30 years and I
15 know from firsthand experience the characteristics of
16 that property, the building and the land. It's loud
17 and it's in my face. You think about it. It's
18 22 feet from the property line to the building,
19 60 feet to my bedroom windows. It's not very far.

20 I'm also concerned about the exposure of
21 future occupants, as noted by Mr. Higgins in his
22 October 22nd letter last year where he states "While
23 the applicant will likely testify that his specific
24 operation has controls in place that will accommodate
25 concerns, I do not believe that the Board could limit

1 an approval to this specific institution. There is
2 always a concern that, at some time in the future, a
3 different organization with different operating
4 parameters will want to use the facility. The recent
5 past history of this site, with several uses over the
6 last ten years, gives credence to this concern."

7 I don't pretend to be a lawyer -- and I
8 think about is this inherently beneficial. I don't
9 pretend to be a lawyer. I can't engage in the
10 nuances of this topic. But I know a bad idea when I
11 hear one. Just because someone claims something is
12 inherently beneficial does not make it a good idea.

13 My concerns are for my quality of life,
14 the value of my property and my ability to sell it
15 when I want to. Would you buy a house next door to a
16 dormitory with 96 adult men running around who can do
17 legally anything they want? If the change of use is
18 such a good idea, why are thousands of Ocean Township
19 citizens so upset about it? There should be no
20 opposition. I have not heard one bit of testimony
21 explaining to me how this change would benefit Ocean
22 Township. Inherently beneficial, I think not.

23 There's a saying those who ignore history
24 are condemned to repeat it. Twice before over the
25 years the property has been used as an overnight

1 dormitory. Twice it has been a disaster for my
2 family. I can't tell you how many times we were
3 woken up at night by noise from the building at the
4 property. I can tell you between 2007 and 2010 we
5 logged 26 noise complaints with the Ocean Township
6 Police. There were many more.

7 We've heard a long list of rules that the
8 students must follow, but prior groups set similar
9 rules that were not followed. The prior group had
10 rules like no cars, no leaving the property, no cell
11 phones, respect for privacy in the local
12 neighborhood. They weren't followed.

13 The applicant claims to be different, but
14 certain facts remain, that the Rabbi has said
15 operations will go until after 11 o'clock at night,
16 11:15 I think was his testimony, students hanging out
17 until almost midnight. There will be no curfew and
18 no lights out. These rules aren't even legally
19 binding, but they certainly don't bode well for me
20 having dealt with that in the past.

21 So put yourself in my shoes. Would you
22 be willing to live next door to a dormitory with 96
23 men in this setting? Would you buy a house there?
24 How would you like it if after 30 years of paying
25 hundreds of thousands of dollars in taxes the use of

1 the property next door that you bought is under
2 assault by a change that will affect your quality of
3 life?

4 It's not what I signed up for. It's not
5 what I pay taxes for. I love Ocean Township and I'm
6 proud to live here and I'm asking the Board of
7 Adjustment to vote no for this variance.

8 Mr. Chairman, I mentioned earlier my son,
9 who is here, who lives with us in the home had asked
10 if I would read his statement in.

11 CHAIRMAN GOODE: He's at the same address
12 as you are, right?

13 MR. LARSEN: Yes, he is. His name is
14 Christian.

15 CHAIRMAN GOODE: That's fine.

16 MR. LARSEN: All set?

17 CHAIRMAN GOODE: All set.

18 MR. STEINBERG: He's here?

19 MR. LARSEN: And he's here. I just want
20 to make a few quick points.

21 MR. STEINBERG: He wrote this?

22 CHRISTIAN LARSEN: Yes.

23 MR. LARSEN: Yes, he did.

24 MR. STEINBERG: So why isn't he telling
25 us?

1 CHRISTIAN LARSEN: I'm not a good public
2 speaker.

3 MR. LARSEN: He's not a good public
4 speaker. He doesn't feel well.

5 MR. STEINBERG: Okay, and it's written.
6 Any problem?

7 MS. JENNINGS: That's fine.

8 MR. STEINBERG: Go ahead.

9 MR. LARSEN: Thank you. I just want to
10 make a few quick points. I am aware that this
11 proposed school is not the same as the previous
12 overnight school, but comparing previous experience
13 with future prospects is how we make informed
14 decisions.

15 In the past when this building had people
16 stay overnight, my quality of life plummeted because
17 my bedroom is 60 feet from the building. I don't
18 care what the schools were talking about, but
19 students blow off steam after they work. One of the
20 reasons why colleges have campuses is so that they
21 have a buffer between their students and neighbors.
22 There is no campus here. There is barely 20 feet
23 from our property line.

24 The last time people stayed overnight I
25 was woken up at least three nights a week and usually

1 multiple times a night and that was for 30 and 40
2 students. Then in the morning I was often woken up
3 by an early delivery truck. And I know the team of
4 professionals working on this put a lot of effort and
5 energy into accommodating this concern and I respect
6 them for that, but I hear early in the morning
7 deliveries at the 7-Eleven and Sunset Farms and those
8 are a few blocks away. So what are a few more trees
9 and a fence really going to do?

10 I wish the Rabbi the best of luck with
11 his school, but not at the expense of my quality of
12 life. This location is not suited for this use,
13 hence the ordinance. I urge the Board to adhere to
14 the existing ordinance and to deny the variance
15 because its primary function is to make decisions
16 that impact the lives of the citizens better.

17 There is no inherent benefit to this
18 proposal. There is already a religious school at
19 this location, one that has zero impact on the
20 quality of life of its neighbors.

21 Please do not be swayed by this lawsuit.
22 Contrary to what it claims, there are no colleges,
23 because this is what they're proposing, in Ocean
24 Township, and for good reason, everyone agrees Ocean
25 is a compact community, nor is there or has there

1 ever been anti-Semitism in this town. In fact,
2 during the first meeting in the auditorium the Rabbi
3 himself said that this was one of the reasons he
4 wanted to come here. There are synagogues everywhere
5 and everyone gets along fine. There are no slurs or
6 disrespects towards Rabbis or his religion anywhere
7 in the record, and the fact that I don't want this
8 type of facility at this location has nothing to do
9 with his religion, his race or his creed. Thank you
10 very much.

11 CHAIRMAN GOODE: Anyone else within
12 200 feet would like to testify? Anyone else within
13 the Township would like to testify?

14 MR. CLARE: Good evening. My name is Don
15 Clare, C-l-a-r-e, 1111 Logan Road.

16 CHAIRMAN GOODE: Raise your right hand,
17 please.

18 MR. CLARE: Yes.

19 D O N C L A R E, sworn.

20 MR. CLARE: I'd like to start off with
21 one thing that I feel I was cheated out of this
22 evening, which was a full picture to be painted
23 through a professional, your planner, Mr. -- I'm
24 sorry -- Ricci?

25 MR. POULOS: Yes.

1 MR. RICCI: Ricci.

2 MR. CLARE: The applicant's attorney put
3 forth the statement that the planner shouldn't be
4 eligible to make comments on the DEP plan site. It's
5 a website; I happen to be familiar with it. And I
6 fully disagree with that position.

7 And the reason that I feel that way is
8 the New Jersey Administrative Code, which the planner
9 is licensed through; it's Title 13, Law and Public
10 Safety; it's Chapter 41, and it's the State Board of
11 Professional Planners, within his licensing, it's
12 very clear that the planner on a daily basis, and
13 probably the Board members might agree with me since
14 they probably run into planners regularly, that the
15 planner is commonly charged with the depiction of
16 existing conditions on plans. He takes and deciphers
17 other professionals' data, plans, comments and he
18 funnels them into a palatable presentation, many
19 times for the Board and I'm sure for other, you know,
20 uses as well. He's also an expert in viewing site
21 plans, minor, major, and many, many other things.

22 So I think that the biggest area that I
23 feel I was cheated in tonight was something that I
24 feel strongly about, which is that I know that the
25 site has a significant wetlands issue. Not only does

1 it have a wetlands issue, but it also has a flood
2 issue, which it's a -- you know, its very close end
3 also affected by a flood zone which is across the
4 street.

5 So the two coming together and the
6 changes of the site themselves, you know, with the
7 future modifications and things that will probably
8 take place over time I feel are a detriment to this
9 situation, to the application, and I think that I --
10 that it wasn't able to be fully disclosed tonight
11 and, again, I think I was cheated in that respect.

12 The next thing I wanted to talk about is
13 the actual impact from the change of use. The change
14 of use, the change of zoning use as well. We've had
15 different professionals make comments. One of them
16 recently on the applicant's behalf was a sound
17 engineer, who I felt did not really provide a
18 convincing argument that the sound was not going to
19 be a major issue, because if you think about it --
20 and part of my comments come from things that I've
21 researched since the application has started taking
22 place, about the actual on-goings of a type of school
23 that we're talking about with the type of
24 individuals, meaning age-wise and such.

25 And where I found my research was best,

1 you know, obtained was YouTube, oddly enough. And I
2 learned a lot. I've really learned a lot about the
3 type of application. And I also learned that the
4 individuals who are attending this type of school
5 and, you know, learning the -- the education that
6 they're obtaining, it's not just about them being
7 stuck inside of a building, which is really what
8 we're kind of being told. They're going to be living
9 inside this building; rarely will they come out, and,
10 you know, they're not going to have any impact on
11 anybody from a noise perspective at this point.

12 And what I found on YouTube is that's
13 really contrary -- that's contrary to really what
14 happens because it's a celebration actually. A big
15 part of their learning is celebrating. I can totally
16 understand it. I mean, they're reading all day long.
17 They're learning. They're, you know, constantly
18 debating I bet, you know, the different angles and
19 aspects of the religion that can be discussed forever
20 and ever and ever and on and on. And for their
21 breaks, singing, dancing, cheering. I mean, there's
22 just -- there were so many nice things that I saw.

23 But it goes against what we've been
24 really told, that it won't be noisy, that they're not
25 going to go outside. They are going to go outside.

1 There's no calisthenics; there's no break time
2 outside; there's no relaxing. I mean, that's just --
3 to me, I could never get on top of that. I'm over?

4 CHAIRMAN GOODE: Yes. Thank you very
5 much.

6 MR. CLARE: All right. Thank you very
7 much.

8 CHAIRMAN GOODE: Raise your right hand,
9 please.

10 P A U L M A Y E R O W I T Z, affirmed.

11 CHAIRMAN GOODE: What's your name and
12 address, please?

13 MR. MAYEROWITZ: Paul Mayerowitz, 117
14 Cedar Village Boulevard, Ocean, New Jersey. The
15 applicant owes this Board an apology for implying
16 that they are biased and will not render an
17 impartial, fair decision. A number of variances
18 granted to the multitude of Jewish institutions in
19 this Township, it is very hard to infer the Board as
20 anti-Semitic as they have.

21 The applicant has been characterized as
22 an inherently beneficial use, but it does not serve
23 the public good and general welfare of this
24 community. It is neither a school nor institution of
25 higher learning per state statutes or Township

1 ordinances. Boarding schools are regulated through
2 the local municipality and not the State. The
3 applicant is not even a registered institution with
4 the State Board of Education. The New Jersey Supreme
5 Court has held that institutions for higher or
6 specialized learning did not partake of the special
7 zoning protection afforded public and parochial
8 schools even if inherently beneficial.

9 Yeshiva Gedola's admission requirements
10 do not require demonstrating a basic secular high
11 school education. This is a detriment to society.
12 Consider the class action suit filed against New York
13 State Department of Education, the Board of Regents
14 and the Haredi-controlled East Ramapo School Board
15 which addresses this issue.

16 The imposition of an ordinance that
17 prohibits boarding students is not restricting
18 freedom of religion or worship. It's a quality of
19 life issue. Our ordinance does not impose a
20 significant burden on religious practice. There are
21 alternative locations reasonably available to the
22 applicant. Our ordinances were known prior to
23 exercising the purchase contract, as yet unseen. No
24 substantial burden was placed on the applicant. If
25 there was any burden it was self-induced.

1 Mr. Janiw testified that the applicant
2 has the support of the Jewish community. What Jewish
3 community is that? Not my synagogue or any that I am
4 aware of.

5 Courts have ruled when the use is
6 satisfied, a board may disregard its use and consider
7 that the regional need is met. Given the numerous
8 yeshivot, many of which are already AARTS accredited,
9 and the world renowned Beth Medrash Govoha, such a
10 need is met. The student body is not being drawn
11 from Ocean Township. When the regional need is
12 already satisfied, it is no longer necessary to
13 consider the use.

14 There is no public interest or benefit at
15 stake, and they have failed to identify any benefit
16 other than the dubious increased stature it will
17 bring Ocean Township. It is clear that a Board
18 rejection of this application will not treat the
19 applicant any less than equal terms with a
20 non-religious assembly or institution. Granting the
21 variance will substantially impair the intent and
22 purpose of our zoning plan and ordinance. The Board
23 cannot mitigate any previously discussed detrimental
24 effects by imposing reasonable conditions since these
25 stipulations would violate the students' rights under

1 the Constitution.

2 The applicant has the heavy burden of
3 proving that the evidence presented is so
4 overwhelmingly in favor of the applicant that the
5 Board's action can be said to be arbitrary,
6 capricious or unreasonable. This is because more is
7 to be feared in the way of breakdown in zoning plans
8 from grants rather than denials of variance. Any
9 approval designed to relieve a particular property
10 owner from applicable zoning restrictions for the
11 benefit of a particular property owner to the
12 detriment of other owners and the community as a
13 whole is spot zoning. This is the antithesis of
14 planned zoning.

15 Approve the yeshiva, deny the boarding.
16 Should this Board ignore all the objectors' testimony
17 and grant this variance, it should stipulate, in
18 addition to the other stipulations mentioned, that
19 the staff and Board of Directors of Yeshiva Gedola
20 repudiate the outdated and irrelevant concept of
21 mesirah. Such a stipulation should be drafted with
22 the assistance of the local Rabbinate and the Ocean
23 County Prosecutor who has experienced this issue
24 firsthand.

25 Quoting Stephen Szulecki, the applicant's

1 sound expert, "Americans don't expect their
2 government to be flawless. They only expect it to be
3 thoughtful and considerate of what is in the public
4 interest." This is not in the public interest of
5 Ocean Township. No dorms on Logan Road means exactly
6 what it says, no dorms on Logan Road. Thank you.

7 MR. STEINBERG: I just missed part of
8 what you said. You said something that you're
9 looking for a certain condition?

10 MR. MAYEROWITZ: Mesirah. I want them to
11 repudiate the concept of mesirah.

12 MR. STEINBERG: What is that? Spell it.

13 MR. MAYEROWITZ: M-e-i-s-i-r-a (sic).
14 Mesirah is a Jewish practice which originated in the
15 shtetls of Europe where Jews would not inform on a
16 fellow Jew because the governmental authorities would
17 treat the Jewish individual worse than they would
18 treat any other individual. This concept has been
19 brought forth today by some sects of Judaism not to
20 inform. Consider the case of Joseph Kolko in
21 Lakewood --

22 MR. STEINBERG: I don't need all that. I
23 don't need all that. But your suggestion is that
24 they repudiate that, being -- or meaning that they
25 would have to report their own students' violations?

1 MR. MAYEROWITZ: If the students violate
2 anything they would have to report it, and there's
3 reasons to do that simply because it's been shown in
4 the Lakewood community that mesirah is still active
5 today.

6 MR. STEINBERG: I got it. I got your
7 suggestion. Thank you.

8 MS. JENNINGS: Actually, I have a
9 question. May I ask a question?

10 CHAIRMAN GOODE: Certainly.

11 MS. JENNINGS: I just want to know for
12 the record, have you published comments on Facebook
13 concerning Hasidic Jews moving into Jackson?

14 MR. MAYEROWITZ: That's a true statement.

15 MS. JENNINGS: Thank you.

16 CHAIRMAN GOODE: Okay.

17 MR. MAYEROWITZ: No, I don't think it was
18 Hasidic.

19 MS. JENNINGS: No, I believe it was,
20 March 14, 2014.

21 MR. MAYEROWITZ: Could you give me a
22 read-back, please?

23 MS. JENNINGS: "Is this the future of
24 Jackson" with your picture on it.

25 MR. MAYEROWITZ: Could you give me a

1 read-back, please?

2 MS. JENNINGS: Give you what?

3 MR. MAYEROWITZ: A read-back. Could you
4 -- you're alleging I said something. I'd like to
5 know what you allege I said.

6 MS. JENNINGS: Have you published
7 comments on Facebook concerning Hasidic Jews moving
8 into Jackson?

9 MR. MAYEROWITZ: I'm sorry, I am not
10 hearing that clearly.

11 MS. JENNINGS: Did the court reporter get
12 that?

13 THE COURT REPORTER: Yes.

14 MR. MAYEROWITZ: Read it back. I'd like
15 to know what I'm alleged to have said.

16 MR. STEINBERG: They're not asking that.
17 They're asking if you've made comments concerning
18 Hasidic Jews moving into Jackson.

19 MR. MAYEROWITZ: I don't recall making
20 any such comment.

21 MR. STEINBERG: Thank you. That's your
22 answer.

23 MR. MAYEROWITZ: Okay, and I'm saying
24 that if I did, I'd like to understand the context in
25 which I said it.

1 CHAIRMAN GOODE: That's your answer.

2 MR. MAYEROWITZ: Which is a fair
3 question.

4 MR. STEINBERG: That's your answer.
5 Thank you.

6 CHAIRMAN GOODE: Thank you. Next
7 speaker. Would you raise your right hand, please.

8 D A V I D L I P T O N, sworn.

9 CHAIRMAN GOODE: Name and address,
10 please?

11 MR. LIPTON: David Lipton, 15 Conaskonk
12 Drive, Wayside. Okay. I don't know if I'm going to
13 be as articulate as the last gentleman.

14 A question the Board asked was how is the
15 judge's requirements, atypical requirements, being
16 met. I thought in part they were addressed by the
17 planner when he talked about the statistics on
18 existing yeshivas and the fact that a transfer from
19 Lakewood to here really wouldn't add that many more
20 people. So it's really the idea that bringing the
21 school here outweighs the zoning problems that we're
22 talking about. I don't think that -- I think that
23 answers the judge's question.

24 The fact that the property is currently
25 being used for the same -- to house the same

1 religious functions I think adds to the idea that the
2 boarding requirements are something divorced from
3 that. In other words, the Board would not be
4 exercising discrimination against a particular
5 religion, it would be exercising concerns about the
6 -- for instance, if they were to say we're going to
7 establish a radio station for religious purposes and
8 put an extra large radio tower on that property, it's
9 kind of analogous to that, and that could create all
10 sorts of problems.

11 So basically, you raised the question
12 that you have to meet a Federal Judge's requirements
13 why this is not discrimination. I don't remember the
14 specifics of what you said. And, again, I thought
15 the statistics that there are existing yeshivas, that
16 bringing it here is not going to add any numbers, the
17 current property is being used for religious purposes
18 satisfies those requirements. That's it.

19 CHAIRMAN GOODE: Thank you. Raise your
20 right hand, please.

21 D I A N E N A G Y, sworn.

22 CHAIRMAN GOODE: Name and address,
23 please?

24 MS. NAGY: Diane Nagy, N-a-g-y, 11
25 Mallard Lane, Ocean. I'm just going to read. As a

1 resident of Ocean, I would request that the Board
2 deny this variance of the application and do the
3 right thing for Ocean. The Master Plan of Ocean
4 Township was established to ensure the current and
5 future residents of our town the rightful use and
6 enjoyment of the town. If the variance is approved,
7 it could quite frankly bring other types of -- I'm
8 sorry. I'm sorry. One second. If the variance is
9 approved, it could impact the residents of Ocean
10 because other types of boarding facilities could be
11 built here, such as bed and breakfasts, rehab
12 centers, other dormitories by local colleges. That's
13 not what Ocean is about.

14 The dormitory should not be considered an
15 inherent benefit to the community since previous
16 testimony by the applicant indicates that this -- the
17 individuals who will be living there will never be
18 allowed outside of the premises. How is that a
19 benefit to Ocean? If the applicant wanted to
20 continue to use the building as a school, I highly
21 doubt the residents of Ocean would be voicing
22 concerns.

23 In addition, the application -- the
24 applicant's ensuing -- I'm sorry, insinuations that
25 the majority of the opposition is based on religious

1 bias is not only wrong but quite frankly extremely
2 insulting to the Ocean Township residents and to you,
3 the Board. So I ask that you do the right thing and
4 represent us. Thank you.

5 MS. MANSFIELD: Debbie Mansfield, 1106
6 Bendermere.

7 CHAIRMAN GOODE: Would you raise your
8 right hand, please.

9 D E B B I E M A N S F I E L D, sworn.

10 CHAIRMAN GOODE: Okay. Name and address,
11 please?

12 MS. MANSFIELD: 1106 Bendermere.

13 CHAIRMAN GOODE: What's your name?

14 MS. MANSFIELD: Debbie Mansfield.

15 CHAIRMAN GOODE: Thank you.

16 MS. MANSFIELD: I'm not as prepared as
17 everyone else because I have to get to this next
18 meeting. However, I just want to say that I grew up
19 here, my father grew up here, my daughter grew up
20 here, my grandchildren are the fifth generation in my
21 family to grow up in this town. And to see this
22 turned into a religious bias incident is beyond my
23 comprehension because it has always been a Hebrew
24 school. There have never been any trouble in our
25 town with it being a religious school, and there's

1 never been any religious bias.

2 The children that went there, we played
3 at Park Boulevard with, we were in Brownies with, we
4 went to camp at Park Boulevard with. We hung
5 together at the park during the summer. It doesn't
6 matter what religion it is. We're not opposed to
7 this because of its religion. We're opposed to it
8 because you want to board 96 men across the street
9 from a park where my grandchildren play, where they
10 drive by on their bicycles to go up to the stores in
11 Wanamassa, where they walk around the neighborhood
12 with their friends. My grandsons will never, ever
13 have the opportunity and the freedom to do that as
14 children because I am sorry, you cannot control, you
15 cannot police 96 men housed in a small building on
16 small property. To say these men are not going to go
17 outside, they're not going to wander the
18 neighborhood, they're not going to go out at night,
19 they're not going to do this, they're men. They're
20 not saints. And I find that totally unbelievable.

21 And I just think that the Board should do
22 what's right for our town. Do what's right for the
23 generations of families that have grown up in this
24 town and not allow any kind of boarding facilities in
25 our town. It has nothing to do with religion. I

1 don't care if the Pope himself is sitting here and
2 wants to put a monastery, a convent or a seminary in
3 that building. It does not belong in our family
4 residential neighborhood. Thank you.

5 MR. CASSIDY: Harold Cassidy,
6 C-a-s-s-i-d-y. I live at 1 Surrey Lane, Ocean, New
7 Jersey. I didn't plan on coming here tonight. I
8 came --

9 CHAIRMAN GOODE: Raise your right hand,
10 please.

11 MR. CASSIDY: Sure.

12 H A R O L D C A S S I D Y, sworn.

13 MR. CASSIDY: I came by out of curiosity
14 and I want to tell you that I find this whole
15 discussion very uncomfortable. I don't think anybody
16 can argue that the use is a good one. The religious
17 training, religious observance is something that our
18 country, our state and our town needs more of, and
19 nobody can be opposed to that.

20 I don't have a position one way or the
21 other on this. I don't know enough of the facts.
22 But what I did hear was that there was a judge's
23 decision that sounded like our community should treat
24 the decision as if there is a presumption that --
25 there was a finding that the use is beneficial, and I

1 don't think there's any question that this use is
2 beneficial to those who are using it. It should be
3 encouraged. And the only question is is it in the
4 right place.

5 Now, I'm an attorney and I've seen a lot
6 of stupid decisions, court decisions. In fact, I'm
7 at that point where I'm writing and I plan on writing
8 a book, the ten stupidest decisions I ever saw. The
9 problem is it's hard to get the number down to ten.

10 I think that this community, the Board
11 has to determine for itself the issue of whether the
12 harm to the community outweighs the benefit. And the
13 community can make that judgment better than some
14 judge. And if the judge wanted to, whoever the judge
15 is, to override such a decision, that judge should
16 come here, look at the school, look at the
17 neighborhood and it would be great if she had the
18 benefit to hear from the people in the community like
19 you do.

20 So I don't know that the Board should be
21 intimidated by the concept that a judge is going to
22 review this. Do what's right. If it's right, it
23 will be upheld. And under no circumstances should
24 anything that anyone says should be viewed as a
25 disparagement of the use, which I think is a

1 wonderful use. I have nothing further to say.

2 CHAIRMAN GOODE: Raise your right hand,
3 please?

4 A U D R E Y C A S E, sworn.

5 CHAIRMAN GOODE: Give us your name,
6 please.

7 MS. CASE: Audrey Case.

8 CHAIRMAN GOODE: Can you spell it?

9 MS. CASE: Audrey Case.

10 CHAIRMAN GOODE: Spell it.

11 MS. CASE: C-a-s-e.

12 CHAIRMAN GOODE: Thank you. And your
13 address?

14 MS. CASE: 1304 Edgewood Avenue.

15 CHAIRMAN GOODE: Thank you.

16 MS. CASE: Recently an unauthorized
17 dormitory in Lakewood went up in flames. Reportedly,
18 the students of this unauthorized dormitory were
19 students of the applicant's yeshiva. And I would
20 like to know, what is to prevent the same thing from
21 happening here in Ocean Township with unauthorized,
22 you know, growing, thriving community? If their
23 community is growing, when they start to overflow,
24 what's the guarantee here for our community that that
25 won't happen?

1 CHAIRMAN GOODE: Thank you. Raise your
2 right hand, please.

3 B R U C E H O R N, sworn.

4 CHAIRMAN GOODE: Name and address,
5 please.

6 MR. HORN: Bruce Horn, H-o-r-n, 1903
7 Logan Road. I heard testimony very early on they had
8 very strict supervision. I hear 96 people are going
9 to be housed in this place, but it has the capability
10 of 120-plus students. Where are those other students
11 going to come from? How are they going to get there?

12 MR. STEINBERG: The approval is -- the
13 application is 96, period.

14 MR. HORN: 96 total? No more than 96
15 students, period?

16 MR. STEINBERG: Correct.

17 MR. HORN: I heard it was like --

18 MR. STEINBERG: That's the application.
19 That's all I can tell you.

20 MR. HORN: That's all it was?

21 MR. STEINBERG: That's the application.

22 MR. HORN: It's no more than that?

23 MR. STEINBERG: 96 students.

24 MR. HORN: Very good. That's all I have.

25 Thank you.

1 CHAIRMAN GOODE: Raise your right --

2 MR. HORN: Edward Horn, 1901 Logan Road.

3 CHAIRMAN GOODE: Raise your right hand,
4 please.

5 E D W A R D H O R N, sworn.

6 CHAIRMAN GOODE: Name and address,
7 please?

8 MR. HORN: Edward Horn, 1901 Logan Road,
9 Wanamassa. Numerous times during numerous
10 testimonies we've heard that smoking is prohibited by
11 the students of the school. We've also heard any
12 students that violate these rules will be immediately
13 expelled. So I ask, September -- I'm sorry, June of
14 2015, these men that were smoking, were they expelled
15 from school? Were they immediately expelled?

16 MR. STEINBERG: I don't know who they
17 are. I don't know where -- where did you take the
18 pictures?

19 MR. HORN: This is taken in front of 911
20 Somerset Avenue, Lakewood, New Jersey, current
21 facility of the dorm -- of the applicant.
22 September 2015, were these men smoking, that same
23 facility, immediately expelled as was stated by the
24 Rabbi in his sworn testimony when he put his right
25 hand in the air just like I did? So I ask, who's

1 policing what's going on here? Thank you.

2 CHAIRMAN GOODE: Anyone else care to be
3 heard? Raise your right hand, please.

4 C H R I S T O P H E R M O R I A R T Y, sworn.

5 CHAIRMAN GOODE: Your name and address,
6 please?

7 MR. MORIARTY: Christopher Moriarty, 1107
8 Bendermere Avenue. I'm just going to read something
9 from the UCLA Law Review on RLUIPA on reductive
10 equalization. I know you expressed concerns that
11 your hands are tied and you don't know what to do.
12 So I'm just going to read this. I'm not a lawyer.
13 You can have a copy after.

14 "Even if a religious institution can
15 successfully make the demanding showing of unequal
16 treatment that courts have required, RLUIPA imposes
17 no obligation on municipal executives or legislatures
18 to remedy the inequality of granting the religious
19 entity the permit, variance or any other land use
20 benefit it desires. Instead of correcting
21 inequalities by elevating religious land uses to the
22 same footing as secular ones, governments can and do
23 eliminate equal terms violations by rescinding
24 privileges granted to secular institutions. This
25 reductive equalization process can be" -- "has been

1 condoned, if not encouraged by the Courts."

2 So you have the choice to do something
3 other than just grant the approval. You can change
4 the variances to what you see fit because
5 collectively there are a bunch of brains up there
6 with more knowledge than all of us; we trust you.
7 Thank you.

8 CHAIRMAN GOODE: Anyone else care to
9 testify? The next thing on the --

10 MR. STEINBERG: If there's no one else to
11 testify -- Judge Wolfson has indicated that up to two
12 hours, but it has to be tonight. So that if there is
13 no other testimony, we cannot hear new testimony on
14 the 25th, so if you have anything to say, tonight's
15 the night.

16 S U S A N F U H R I N G, sworn.

17 CHAIRMAN GOODE: Your name and address,
18 please?

19 MS. FUHRING: Susan Fuhring,
20 F-u-h-r-i-n-g, 63 Park Boulevard. I've been in
21 Wanamassa for a long time and I've enjoyed the
22 neighborhood. We have a great town. However, I've
23 noticed some changes. And we have that lovely school
24 at the end of the street; we have some beautiful
25 children there who are learning and getting an

1 education, and I've enjoyed their laughter while I
2 walk the park, walk my dog, play with my children,
3 grandchildren at the park.

4 However, I have noticed a change. And
5 within the last year or two there have been some
6 students that have been residing in the area going to
7 this school, some living off premises renting homes,
8 that haven't been respectful to the community. And
9 it's a typical dorm situation, whether the dorm is on
10 Logan Road, the dorm is near Monmouth University or
11 some other -- a college or higher learning.

12 But I think what we have to notice is
13 that the amount of students that were going to this
14 school on Logan Road that were causing some
15 disruption, you want to double or quadruple that
16 amount of students, what are we going to be dealing
17 with?

18 Now, I had to go to the school several
19 times because there was a lot of litter left at the
20 park from the kids. I've returned a lot of personal
21 items to the school. And I've noticed the day after
22 I noticed -- I advised them of the garbage, there was
23 a town worker cleaning the mess up. It wasn't the
24 school.

25 I've seen students, when the older

1 students were attending at night or whether they
2 stayed overnight there, running down the street with
3 a case of beer. They are typical young men, and
4 they're going to do what young men do. I've noticed
5 that there's big buses parked at the park. I've seen
6 buses on -- a whole busload of children, students to
7 use the restrooms at the park. So I don't see this
8 going in a way that's going to be really good for our
9 community.

10 I mean, we really need to address but how
11 do we enforce this? How do you enforce all these
12 things that they're promising to do? It's a great
13 use there, but it's something that's not going to
14 work for us. So I hope you really search your souls
15 and do what's best for Ocean Township. Thank you.

16 CHAIRMAN GOODE: Raise your right hand.

17 R O X A N N E A N D R U S, sworn.

18 CHAIRMAN GOODE: Name and address,
19 please.

20 MS. ANDRUS: Roxanne Andrus, 604 Dinsmore
21 Place, Oakhurst.

22 CHAIRMAN GOODE: Okay.

23 MS. ANDRUS: Just one question. You
24 asked --

25 MR. STEINBERG: There's no questions,

1 just statements.

2 MS. ANDRUS: Oh, a statement. Is
3 everything we read on Facebook true? You asked Mr.
4 Mayerowitz -- I'm sorry if I'm pro --

5 MS. JENNINGS: I'm not answering
6 questions. I am not a witness.

7 MR. STEINBERG: This is not a period of
8 questions. Just give the Board your opinion.

9 MS. ANDRUS: It's a statement. I'm
10 concerned that -- I wonder whether there's proof
11 enough with an IP address of a computer as proof that
12 people are making certain statements on Facebook.

13 MS. JENNINGS: Well, it has his picture
14 on it. It looks just like him.

15 MS. ANDRUS: Oh, so it looks like him and
16 there's a picture of him, so we're supposed to
17 believe that.

18 MS. JENNINGS: With his name, so he can
19 come up and tell us it's not him.

20 MS. ANDRUS: Okay. Well, again, I wonder
21 if we're supposed to believe everything we read on
22 Facebook.

23 MR. STEINBERG: Okay.

24 MS. ANDRUS: That's my statement.

25 CHAIRMAN GOODE: Thank you.

1 Raise your right hand, please.

2 M A R Y G R A V E S, sworn.

3 MS. GRAVES: Mary Graves. 1318 Walnut
4 Avenue, Wanamassa, New Jersey. I've been living in
5 Wanamassa since I was five years old. I moved here
6 and I live on Walnut Avenue. That's where I grew up.
7 That's where I played. I attended Wanamassa school
8 all through growing up. I've walked around the park
9 and seen the yeshiva, or school, and so far there's
10 been no problem with it affecting my life. But an
11 influx of 96 students, I can see a problem occurring.
12 It's such a change in the number that it does have
13 the potential.

14 There are ways that the applicant has
15 said that it can be enforced, but what I'm concerned
16 about is how it's going to be enforced. I don't
17 oppose religious education at all, but these concerns
18 do come up and I urge you guys to vote no against the
19 dorm.

20 MR. STEINBERG: Thank you.

21 CHAIRMAN GOODE: Anybody else? Raise
22 your right hand, please.

23 L I S A B U R G O S, sworn.

24 CHAIRMAN GOODE: Name and address,
25 please.

1 MS. BURGOS: My name is Lisa Burgos. I
2 live at 926 Bendermere Avenue. All I'd like to say
3 is my husband and I came to Wanamassa to raise our
4 two small children here. We developed a family here,
5 and my biggest concern with this applicant is prior
6 testimony has shown that they will not get criminal
7 background checks on these 96 men who will be at this
8 school. With being in such close proximity to
9 Wanamassa Elementary School and the park where the
10 residents do use that for soccer and other sports,
11 that really needs to be something taken into account.

12 As a teacher myself, we always get
13 background checks on the residents in the area. If
14 they are considered true residents of this area, they
15 need to have criminal background checks.

16 B E N M U E L L E R, sworn.

17 CHAIRMAN GOODE: Name and address,
18 please.

19 MR. MUELLER: Ben Mueller, 200 Highwood
20 Road, Ocean, New Jersey. My main concern is -- I'm a
21 licensed Professional Engineer, so I have expertise
22 in what we're dealing with here and so I see it from
23 my side. I understand the position you're put in.

24 I'm very concerned at the amount of
25 promises at this stage. I know should this be

1 approved we have to go through a planning aspect, a
2 site plan approval portion of it, and the amount of
3 things on the checklist that we are asking be met or
4 that we are asking that they do in addition, it is
5 coming across more and more that this is way too much
6 to put on one application in order to satisfy all
7 parties involved.

8 And what happens is we have a situation
9 of a round peg in a square hole and these two things
10 just aren't fitting no matter how much money or other
11 stipulations and promises that we put on this. And
12 so at some point when are we going to say this just
13 really doesn't fit this site and maybe it needs to
14 find another home.

15 And I guess that's just from a
16 feasibility standpoint, from an engineer's point of
17 view, eventually there -- you reach a feasibility
18 limit, and this is not going to be able to fit here.
19 We're not seeing an applicant who is saying we're
20 looking to demolish an entire building and build a
21 new building that meets all the setbacks, that meets
22 all the requirements that would be for this use. If
23 I started seeing more things like that, that would
24 weigh on a decision, but we're not seeing that so
25 they're trying to basically take a square hole that's

1 already there and trying to fit a round peg in it,
2 and, again, I don't see those two ever really
3 fitting.

4 So even if we get through this stage and
5 we go on to the next stage where we start to say all
6 right, how are we really going to build this, how are
7 we going to make it work, the list of things that
8 need to be done to make this peg fit the hole is
9 really starting to be daunting and it's concerning to
10 me as a citizen here in Ocean Township.

11 And I guess I also have major concerns
12 over the noise testimony. It happens to be my forte.
13 And basically I heard a lot of stories that changed
14 depending on how our questions were asked, so that's
15 concerning. If we're being presented information as
16 the public, I would like that information to be a
17 hundred percent and to be complete and honest, and I
18 was feeling more like there was some hidden truths to
19 that or we were being presented with a glossy sheet
20 of paper and not necessarily with the reality of the
21 situation.

22 Because none of the applicant's
23 professionals are going to be living here with this.
24 It's going to be on us. And I would urge the town,
25 the Board members to think about all these when you

1 make your decision. Thank you.

2 MR. KHICHI: Good evening.

3 CHAIRMAN GOODE: Raise your right hand,
4 please.

5 N E E L K H I C H I, sworn.

6 CHAIRMAN GOODE: Name and address,
7 please.

8 MR. KHICHI: Neel, N-e-e-l, Khichi,
9 K-h-i-c-h-i, 5 Griffin Place, Wanamassa, New Jersey.
10 Just a follow-up to something that was stated
11 earlier, and just maybe at some point the Board can
12 seek a point of clarification regarding the March 3rd
13 fire at the single-family home in Lakewood. Chief --
14 Ocean County Chief Mastronardy stated there were
15 occupants ranging between 25 to 30 men above the ages
16 of 18 -- and, again, I don't have an official report;
17 I'm just going based on what I've read -- and that
18 following the fire, thankfully everyone was safe,
19 that students that were interviewed were -- stated
20 that they were part of the Yeshiva Gedola school.

21 And I guess my point or something to
22 consider going forward is was -- during the last two
23 years, year and a half of testimony, were the members
24 of the higher-ups of the yeshiva aware that a
25 dormitory housing their students was -- occurred

1 off-site in Lakewood and that if there is no respect
2 for the zoning in the township which the school is
3 currently in, how can we expect the same school to
4 respect the zoning in Ocean Township? Thank you.

5 CHAIRMAN GOODE: Raise your right hand.

6 J E F F R E Y H A R S H M A N, sworn.

7 CHAIRMAN GOODE: Name and address,
8 please.

9 MR. HARSHMAN: Jeffrey Harshman,
10 H-a-r-s-h-m-a-n, 5 Arbor Way, Wayside. As a long --
11 life-long resident of Ocean Township, I grew up on
12 Roseld Avenue, two blocks from Temple Beth Torah,
13 which at the time of my youth was a simple one- or
14 two-room building. It has grown over the years to a
15 lovely religious facility and by all accounts a great
16 neighbor and an asset to the neighborhood. At the
17 same time, Park Boulevard was my chosen place to
18 play, and I met many people from the Hillel school of
19 the day and I formed life-long relationships with
20 them. Some of them are my best friends today. I met
21 them in school and we went through school together,
22 after they completed their religious academics there.

23 I've seen the changes on Logan Road and
24 quite frankly I'm disturbed. My daughter worked in a
25 local business when the other school was there

1 running its nighttime dormitory and was constantly
2 bombarded by the young men who were supposed to be
3 under supervision. This made problems with her
4 business, where other patrons could not use computers
5 that these students were using because they did not
6 have computers available to them to check their
7 Facebook page or update it, and other concerns with
8 other local businessmen.

9 Safety is another concern. As we all
10 know, here in Ocean Township we have a preponderance
11 of temples. And they are beautiful and well-kept and
12 well-maintained and the people who operate them do so
13 in accordance with all the laws. However, the
14 parishioners tend to walk in the street. I can't
15 tell you how many times I've had to swerve on a
16 Friday night on Deal Road to miss someone who wasn't
17 using the sidewalk.

18 My fear here is that these young men, not
19 knowing the area and attempting maybe getting out to
20 go to the store to get a soda or whatever, will not
21 abide by the local traffic laws and could be injured
22 or dead. And where does that bring us? It brings us
23 to lawsuits. Who is responsible?

24 I don't feel that the land use variance
25 that is proposed before this Board is applicable to

1 this situation. I fear for the students. I fear for
2 the residents. I fear for their property values as
3 well.

4 As one man said, he's lived next door and
5 paid hundreds of thousands of dollars over the years
6 in taxes. I do commend the Township Council and its
7 directors for maintaining our tax base. We have a
8 lovely town here. But I do wish the Board would take
9 into consideration the wishes of the people who
10 ultimately you're responsible to. We are not
11 anti-Semitic. We simply want what is right. Thank
12 you.

13 MS. SYLVIA-CIOFFI: Sylvia Sylvia-Cioffi.

14 CHAIRMAN GOODE: Raise your right hand,
15 please.

16 CHAIRMAN GOODE: Name and address,
17 please.

18 MS. SYLVIA-CIOFFI: Sylvia Sylvia-Cioffi,
19 200 Lincoln Drive, Ocean. A bunch of meetings ago
20 the applicant said that their desire was to be good
21 neighbors, good friends, good residents of Ocean
22 Township. They also said that they won't be
23 interacting essentially with our community. Our
24 learned Board of Adjustment denied the application,
25 and then to prove their good intentions they turned

1 around and sued us. It seemed disingenuous to me,
2 the statements that they made before about wanting to
3 be good members of this community. I would ask that
4 you would deny this application.

5 CHAIRMAN GOODE: Raise your right hand.

6 R O B E R T S I L I A T O, sworn.

7 CHAIRMAN GOODE: Name and address,
8 please.

9 MR. SILIATO: My name is Robert Siliato,
10 1304 Franklin Avenue. That's in Wanamassa. So I
11 just want to teach you all about how to make a fake
12 Facebook account. Because I can get your picture,
13 your picture off your website, any of your pictures
14 off the website from the town. We can do that. I'm
15 an information security officer. We look for
16 spoofing and fake e-mails and fake accounts trying to
17 hack us every day. So I'm just going to read to you
18 how to do it. I have five minutes.

19 So, Facebook is just the number one way
20 for people to connect, share their lives, make new
21 friends, and sometimes get in touch with old friends.
22 Sometimes though you want to enjoy what's available
23 on Facebook without sharing your likes, comments or
24 posts, or, you know, yet you still want to look like
25 you're a real person.

1 For that you'll need an alt, a fake or
2 anonymous Facebook account with enough friends and
3 activities to look convincing. First you choose a
4 name. Anything you like. You can blend in with the
5 crowd with John Smith or take anyone's name you want.
6 Whatever you choose. There's no restriction on
7 duplicate names.

8 Number two, create an e-mail account or
9 use an e-mail account such as Yahoo, Gmail or Hotmail
10 to create an anonymous account. You'll need a Court
11 Order to learn the identify (sic) of the real person
12 of the fake name, but that doesn't apply in the real
13 world or the Internet. You can add photos to your
14 fake profile. You can use some possible
15 alternatives, such as from Match.com, Flickr's
16 another social media website, Facebook or MySpace.

17 I can take any of your pictures and make
18 an account under your name and there's nothing anyone
19 can do about it. You might be able to contact
20 Facebook and say here's a fake account, but then it
21 gets removed, but I've already done damage because
22 I've already posted it on a website, on Facebook,
23 I've already made comments under your name, I've
24 already made likes under your name. I've already
25 ruined it because your name and your face are already

1 on social media. That's how you create a fake
2 Facebook account. Thank you.

3 CHAIRMAN GOODE: It looks like no one
4 else cares to be -- I stand corrected.

5 R I C H M c N A L L Y, sworn.

6 CHAIRMAN GOODE: Your name and address,
7 please?

8 MR. McNALLY: Rich McNally, 36 Patterson
9 Avenue, Ocean, New Jersey. I think I've heard a lot
10 today about the fact that the applicant's burden is
11 simply to offer that there is an inherent benefit
12 that is not outweighed by the detriment. I don't
13 recall any testimony by the applicant that there was
14 any inherent benefit other than a statement that it
15 was. Much of their testimony surrounded around --
16 surrounded mitigating the negative detriment.

17 I think the voice of the Township has
18 been loud and clear over the past number of months.
19 People are here late at night. We have children that
20 we're not with this evening and the evenings of all
21 the prior meetings because we're here voicing our
22 concerns about the detriment.

23 I think this Board appears, by the body
24 language that we're getting, to be of the impression
25 that their hands are tied and the judge basically

1 said it's inherently beneficial and, you know, if you
2 guys vote against the application it's going to go
3 back to the judge where she'll just overturn your
4 decision; you're going to get wrapped up in a lengthy
5 legal battle that's going to be expensive. And I
6 would urge you to take into consideration the
7 testimony I think this gentleman who represented the
8 Wanamassa Garden Apartments did an excellent job of
9 outlining a lot of the detriment that is going to
10 come from this type of use, this type of property in
11 this location under the circumstances.

12 And, you know, I think for a judge in a
13 back room deal to say you're granted one more meeting
14 and limit the testimony to two hours, five minutes
15 per applicant, not giving the applicants (sic)
16 sufficient time to formulate and hire their own
17 expert witnesses and their own attorneys is really
18 actually an infringement on our First Amendment
19 rights to speech.

20 I think the audience here tonight is
21 chilled by the fact that you guys seem resolved to
22 granting the application because you're afraid of the
23 lawsuit and the costs that are attenuated with it.
24 And I would urge the people here tonight that if your
25 vote is in favor of granting the variances sought,

1 that we form our own lawsuit that you've effectively
2 taken property from us and not heard our concerns in
3 a way that is conducive to us gathering and
4 presenting our case with sufficiency to allow you to
5 make your decision, and that could be a lengthy and
6 expensive litigation as well.

7 So I would urge you to do what is right
8 for the tax-paying base of the community that has
9 made investments in this community and appreciate
10 their concerns and vote accordingly.

11 CHAIRMAN GOODE: Last call. Anybody
12 else? All right, I'd like to make a motion to close
13 the public hearing.

14 MR. NAPOLITANI: Hold on a second, Mr.
15 Chairman.

16 CHAIRMAN GOODE: Yes, sir, Mr.
17 Napolitani.

18 MR. NAPOLITANI: If you don't mind. It's
19 now 10 o'clock right on the nose. "Testimony shall
20 end no later than 10 o'clock on 4/25/16." Testimony
21 is over. Now, if the attorneys are ready to make
22 their closing statements, I see absolutely no reason
23 why we can't make a vote tonight than stretch this
24 out another couple of weeks.

25 MR. STEINBERG: All right. Well, first

1 of all --

2 MR. NAPOLITANI: And -- hold on. It's
3 going to cost the town more money to have this
4 meeting on the 25th. The professionals will be here
5 and all these people have to come out. I think we
6 owe it to these people right now to make a decision.
7 Now, if the judge --

8 (Applause)

9 MR. NAPOLITANI: -- or whoever said we
10 can't make a decision tonight, I'd like to see that
11 in writing. I want to see what the ramifications are
12 of our decision tonight.

13 MR. STEINBERG: What happened was that
14 the judge set the parameters for this hearing. It
15 was assumed originally that the testimony of the
16 objectors through Mr. Poulos' representation and
17 others would surpass the 12 o'clock hour and go into
18 the 25th.

19 MR. POULOS: That's not true. I didn't
20 make a representation that it would go beyond the
21 meeting.

22 MR. STEINBERG: We were under the
23 impression that you had three witnesses.

24 MR. POULOS: But you said I made a
25 representation. That's a little different than ...

1 MR. STEINBERG: We had assumed that you
2 had three witnesses; the judge worked it backwards.
3 The problem is that we were advised tonight that we
4 wouldn't have a full board.

5 MR. NAPOLITANI: Well, we have a full
6 board right now.

7 MR. STEINBERG: As a result of that, I
8 don't know if Ms. Jennings is prepared to proceed,
9 because she was told that we'd only have six people.

10 MS. JENNINGS: Right. Hey, if you guys
11 are ready to vote, I don't even have to close. I'll
12 rest on the record. You got two hours to debate.

13 MR. NAPOLITANI: I make a motion that we
14 --

15 MR. POULOS: We'll rest also.

16 MS. JENNINGS: Go ahead.

17 (Applause)

18 MR. NAPOLITANI: I make a motion that we
19 go into session, whatever session we have to go into
20 to deliberate --

21 MS. JENNINGS: You can't do it in private
22 session. You have to do it in --

23 MR. NAPOLITANI: Then we'll deliberate
24 right out here.

25 MS. JENNINGS: That's what you're

1 supposed to do.

2 MR. NAPOLITANI: So that we can make a
3 decision on this application tonight.

4 MS. JENNINGS: Yes.

5 MR. NAPOLITANI: There's no need to
6 stretch this out longer.

7 MS. JENNINGS: I don't want to stretch it
8 out.

9 CHAIRMAN GOODE: Well, except the notice
10 was given that there would not be a vote tonight.

11 MR. STEINBERG: Earlier tonight we --

12 CHAIRMAN GOODE: As a matter of fact,
13 during the break I had a couple of people come up to
14 me and ask me would there be a vote tonight and I
15 indicated no, because that was the original --

16 MR. POULOS: Mr. Chairman, we've waived
17 our closing statements.

18 MR. STEINBERG: But we told the public,
19 some people who may have left, that we would not be
20 making a decision tonight. We told the public, in
21 all fairness for the people who have left early, that
22 the meeting would continue on to the 25th, at which
23 time there would be summations; you can waive them
24 that night. And the Board would publicly deliberate.
25 Now, these people may have gone home. I don't know

1 that.

2 MR. MENELL: Mr. Napolitani, I'd like to
3 second your motion.

4 (Applause)

5 MR. NAPOLITANI: There is nowhere in that
6 Order that says that we can't take a vote tonight. I
7 read it thoroughly.

8 MS. JENNINGS: That's correct, you can
9 vote tonight.

10 MR. NAPOLITANI: I'd like to see what the
11 notice says. Does it clearly state in the notice
12 that we can't take action?

13 MR. STEINBERG: No, there's no notice to
14 that effect. But the Board told people earlier this
15 evening that --

16 MR. NAPOLITANI: Then we can take action
17 then.

18 MR. STEINBERG: -- that we would
19 continue. So in fairness to anybody who was here
20 earlier, we're now going back against our word and
21 we're indicating that they can't be present -- if I
22 may finish -- they cannot be present to hear the
23 determination of the Board if they so choose. This
24 is a public hearing. Okay? This is a public hearing
25 and we said at the beginning of the evening we would

1 not be taking a vote.

2 I think that -- the Board can vote what
3 it wants, but I would give the Board the advice that
4 we have already said something for the record and the
5 matter should be continued to the 25th for the
6 purposes of which we expressed at seven p.m. this
7 evening.

8 MR. LoPICCOLO: You just had a motion
9 that was seconded. You got to vote.

10 MR. POULOS: And counsel agreed. The
11 applicant agreed. It's the applicant's --

12 MR. STEINBERG: I'm advising the Board I
13 would suggest you withdraw your motion because this
14 is not what we promised the public. If we had said
15 earlier tonight that if we conclude we were going to
16 vote, that would be fine, but we didn't because it
17 was under -- it was our impression and we were under
18 the assumption that we would not get to a vote, and
19 we told these people this at seven p.m. Now you're
20 going to tell them that well, we decided, we changed
21 our mind; you should have waited around.

22 UNIDENTIFIED MEMBER OF PUBLIC: Vote.

23 MR. STEINBERG: That's what you're
24 telling them.

25 MR. NAPOLITANI: I'm not pulling back my

1 motion. I didn't promise the public I wouldn't vote.

2 UNIDENTIFIED MEMBER OF PUBLIC: I'm sorry
3 to interrupt you, but you're violating Robert's Rules
4 of Order. Second --

5 MR. STEINBERG: Sir, please sit down.
6 There's no public portion here. You're out of order.

7 UNIDENTIFIED MEMBER OF PUBLIC: I'm
8 telling you you're violating Robert's Rules or Order.
9 You have a motion; you have a second.

10 MR. STEINBERG: You're out of order.
11 Please sit down.

12 UNIDENTIFIED MEMBER OF PUBLIC:
13 Unbelievable.

14 MR. STEINBERG: If the Board wants to
15 take a vote on that they can, but I would advise them
16 that's not what we promised the public.

17 UNIDENTIFIED MEMBER OF PUBLIC: The
18 public is here. Take a vote.

19 UNIDENTIFIED MEMBER OF PUBLIC: We didn't
20 know you were voting last time and you voted.

21 UNIDENTIFIED MEMBER OF PUBLIC: It's
22 their choice that they left.

23 UNIDENTIFIED MEMBER OF PUBLIC: Yeah,
24 they can see it on video.

25 UNIDENTIFIED MEMBER OF PUBLIC: It's

1 their choice that they left. We can't stop them from
2 leaving.

3 UNIDENTIFIED MEMBER OF PUBLIC: Let's go.

4 MR. STEINBERG: Poll the question. Let
5 the Board vote and decide whether or not they want to
6 vote tonight.

7 CHAIRMAN GOODE: It's been moved and
8 seconded to take a vote on the application of this
9 evening. Call the roll.

10 MR. STEINBERG: No, you don't have to
11 close the public hearing. This is what the Board has
12 to decide, whether or not you want to proceed to
13 deliberation and vote tonight.

14 CHAIRMAN GOODE: The motion is to call
15 for a vote this evening as opposed to the notice
16 given that it would not be held until the 25th, made
17 by Mr. Napolitani and seconded by Mr. Menell. Call
18 the roll.

19 MS. MONTEMARANO: Ms. Grabelle?

20 MS. GRABELLE: I'm listening to the
21 Board's attorney. I'm voting no.

22 MS. MONTEMARANO: Mr. Malta?

23 MR. MALTA: No.

24 MS. MONTEMARANO: Mr. Menell?

25 MR. MENELL: Yes.

1 MS. MONTEMARANO: Mr. Napolitani?

2 MR. NAPOLITANI: Yes.

3 MS. MONTEMARANO: Mr. Siano?

4 MR. SIANO: Yes.

5 MS. MONTEMARANO: Mr. Worrell?

6 MR. WORRELL: No.

7 MS. MONTEMARANO: Chairman Goode?

8 CHAIRMAN GOODE: No.

9 MR. STEINBERG: It's four to three, so
10 the motion is denied. We're going to carry it to the
11 25th.

12 CHAIRMAN GOODE: Okay. Motion to close
13 the public hearing for this evening. I'll move it.
14 Is there a second?

15 MR. MALTA: I'll second it.

16 CHAIRMAN GOODE: Call the roll, please.

17 MS. MONTEMARANO: Mrs. Grabelle --

18 MR. STEINBERG: Before we do that, number
19 one, I don't know if you're going to reinstate your
20 ability to have summation.

21 MS. JENNINGS: Yes.

22 MR. STEINBERG: Now you want summation?

23 MS. JENNINGS: Yes, I will take my
24 summation.

25 MR. STEINBERG: Now you want summation.

1 On the 25th?

2 CHAIRMAN GOODE: The 25th.

3 MR. STEINBERG: Do you want summation,
4 or you're going to continue to waive it?

5 MR. LoPICCOLO: No, we're not going to
6 waive it.

7 MR. STEINBERG: Now you want it. Call
8 the roll, please.

9 MR. LoPICCOLO: We're reserving our right
10 to summation.

11 MR. STEINBERG: You're reserving your
12 right to summation; you're reserving your right to
13 summation. The meeting will be carried to
14 April 25th. What day of the week is that?

15 MS. WILENSKY: Monday.

16 MR. STEINBERG: Monday, seven p.m., no
17 further public notice. Any time extensions are
18 granted by the applicant because I think it's
19 inherent in the Order.

20 MS. JENNINGS: Correct.

21 MR. STEINBERG: And at that evening
22 summations only, deliberation and a vote.

23 CHAIRMAN GOODE: All right, we didn't
24 finish calling the roll. Rachel, finish calling the
25 roll.

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MS. MONTEMARANO: Ms. Grabelle?

MR. STEINBERG: Close the public hearing.

MS. GRABELLE: Yes.

MS. MONTEMARANO: Mr. Malta?

MR. MALTA: Yes.

MS. MONTEMARANO: Mr. Menell?

MR. MENELL: Yes.

MS. MONTEMARANO: Mr. Napolitani?

MR. NAPOLITANI: Yes.

MS. MONTEMARANO: Mr. Siano?

MR. SIANO: Yes.

MS. MONTEMARANO: Mr. Worrell?

MR. WORRELL: Yes.

MS. MONTEMARANO: And Chairman Goode?

CHAIRMAN GOODE: Yes. Meeting is

adjourned.

(Whereupon the proceedings were adjourned
at 10:09 p.m.)

C E R T I F I C A T E

I, BETSY CONDIOTTI ZVULUN, a Certified Court Reporter of the State of New Jersey and Registered Professional Reporter, certify that the foregoing is a true and accurate verbatim transcript of the proceedings as taken by and before me on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

BETSY CONDIOTTI ZVULUN, CCR, RPR
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