

BEFORE THE EASTON
PLANNING COMMISSION BOARD

IN RE:

EASTON WOOD AVE PROPCO, LLC

PUBLIC HEARING

Taken pursuant to the Easton
Planning Commission in the City Council Chambers,
123 South Third Street, Easton, Pennsylvania, on
Wednesday, October 15, 2025, commencing at 6:30
p.m., by Gina L. Clements, Registered Professional
Reporter.

BEFORE:

DR. KEN GREENE, Chairman
RON SHIPMAN, Member
WILLIAM HEILMAN, Member
FRANK GRAZIANO, Member
HUBERT ETCHISON, Member
KIM WAGNER, Member
JOEL SCHEER, ESQ., Solicitor
DWAYNE TILLMAN, Zoning officer
CARL MANGES, Planning Administrator

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APPEARANCES:

KAPLIN, STEWART, MELOFF, REITER
& STEIN, P.C.

By: MARC KAPLIN, ESQ.
910 Harvest Drive, 2nd floor
Blue Bell, PA 19422-1962
(610) 260-6000
MKaplin@kaplaw.com
-- For the Applicant

HARDING LAW

By: CODY J. HARDING, ESQ.
-- For T. Haas and
Stop the Wood Warehouse Coalition

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1 CHAIRMAN DR. GREENE: Mr. Scheer.

2 MR. SCHEER: Thank you.

3 When we last -- well, I'll let
4 Mr. Kaplin get situated.

5 Now that that's been given out,
6 when we last left off, Donald Haas was the witness
7 for the applicant. Mr. Haas had been questioned by
8 commission members.

9 And the next step would have been
10 an opportunity for anyone opposing to ask questions
11 specifically directed to his testimony only. And
12 the ground rule was to be that if there was those
13 questions, it would be directed to the commission.
14 And depending on the relevance, et cetera, we would
15 ask Mr. Haas to respond.

16 So that's where we left off
17 procedurally.

18 And, Mr. Kaplin, did you have any
19 submissions or other comments?

20 MR. KAPLIN: I do. I thought we
21 were done with Carl, but --

22 MR. SCHEER: It's my recollection,
23 and the commission could --

24 MR. KAPLIN: I have the transcript.

25 MR. SCHEER: Yes, I don't believe

1 that the people in the audience were given an
2 opportunity to ask any questions.

3 CHAIRMAN DR. GREENE: That's
4 correct. We ended by making sure that we finished
5 with the commission's questions. That is where we
6 left off.

7 MR. KAPLIN: Okay. Well, I'm ready
8 to proceed.

9 MR. SCHEER: Go ahead.

10 MR. KAPLIN: As you know, my name
11 is Marc Kaplin. I represent Easton Wood Avenue
12 PropCo, LLC in connection with this application.

13 Before we begin this hearing, I
14 would like to inform the full commission that this
15 morning we filed a motion to recuse Commission
16 Member Kimberly Wagner from further participation
17 in this matter. I filed that with Solicitor Scheer,
18 Mr. Tillman and Mr. Manges earlier today.

19 We have given you copies of four or
20 five additional exhibits, and we have marked that
21 motion as Exhibit A-26.

22 As detailed in the motion,
23 Ms. Wagner has expressed a clear disposition against
24 my client's application.

25 The final straw that compelled us

1 to file the motion was that she appeared at the
2 zoning hearing board to oppose my client's special
3 exception application to the city zoning hearing
4 board.

5 As such, she is legally required
6 to the recuse herself from this matter and she
7 clearly cannot consider this application with --
8 she cannot create an appearance of impartiality or
9 objectivity.

10 Because we want to proceed with our
11 application tonight and not get bogged down with the
12 motion, I now ask Ms. Wagner to recuse herself.

13 MR. SCHEER: And I will ask with
14 the chairman's consent that we go into a brief
15 executive session so that I can share with the
16 members what you had filed, review what's involved
17 there and discuss how to proceed in that regard.

18 MR. KAPLIN: I have just one more
19 sentence.

20 I want to make it clear if
21 Ms. Wagner does not intend to recuse herself, I do
22 not want to argue this motion tonight. I want to
23 move on and get my witnesses on, and the commission
24 will be able to adjudicate that petition at a
25 separate time.

1 MR. SCHEER: Okay. Thank you.
 2 Executive session?
 3 CHAIRMAN DR. GREENE: Yes.
 4 Motion for executive session?
 5 MR. SHIPMAN: Motion.
 6 CHAIRMAN DR. GREENE: Second?
 7 MR. ETCHISON: Motion.
 8 CHAIRMAN DR. GREENE: All in favor?
 9 MR. ETCHISON: Aye.
 10 MR. GRAZIANO: Aye.
 11 MR. HEILMAN: Aye.
 12 MR. SHIPMAN: Aye.
 13 MS. WAGNER: Aye.
 14 CHAIRMAN DR. GREENE: We shall
 15 return shortly.
 16 (Whereupon there was an executive
 17 session.)
 18 MR. SCHEER: Going back to order
 19 on the record.
 20 I reviewed the nature of the
 21 request to discuss this without having a record
 22 established. Discussed this with the commission
 23 members and Ms. Wagner.
 24 Ms. Wagner is not inclined to
 25 recuse herself based on the fact that she said she

1 had not made up her mind as to how she's even
2 voting.

3 She has just simply been raising
4 questions that she has and, you know, that's -- she
5 feels is her role, but she has not made any final
6 determination even if she has concerns about how
7 certain things -- what things were looked into.

8 The members of the commission
9 themselves do not feel they would require recusal
10 at this time, and I will otherwise, with the
11 understanding that you said that you want to
12 continue to proceed, I will keep this under
13 advisement.

14 And if there's any other
15 determination or decision that I would be
16 recommending, I'll let you know.

17 But for now the commission is
18 prepared to proceed with Ms. Wagner as a
19 participating member.

20 MR. KAPLIN: Okay. I thank you
21 for doing that expeditiously.

22 I'd like to introduce a small
23 number of documents that we received. We handed
24 them out.

25 At Exhibit A-5Q is an updated

1 confirmation of no effects letter issued by the
2 Pennsylvania Historical and Museum Commission on
3 September 25th. We had obtained such a letter
4 before.

5 Now, there's an e-mail that's
6 attached to that as exhibit -- as applicant's A-5Q-1
7 stating that the Pennsylvania Historic Museum
8 Commission reissued the letter because their office
9 was contacted by a member of the planning
10 commission. We don't know who that is, but somebody
11 on the planning commission questioned the existing
12 determination. So that's A-5Q and A-5Q-1.

13 At A-5R is the preliminary
14 jurisdictional determination --

15 CHAIRMAN DR. GREENE: I'm sorry,
16 Mr. Kaplin, R?

17 MR. KAPLIN: R, I believe.

18 CHAIRMAN DR. GREENE: This one says
19 R?

20 MR. GRAZIANO: Yes, attached.

21 CHAIRMAN DR. GREENE: Yes.

22 MR. GRAZIANO: Okay. Got you.

23 MR. ETCHISON: It took me a second
24 to find the e-mail.

25 What are you saying this e-mail is?

1 MR. KAPLIN: It's a previous
2 exhibit.

3 MR. ETCHISON: Exhibit --

4 MR. KAPLIN: Q-1.

5 MR. ETCHISON: Q-1?

6 MR. KAPLIN: Yes. It's an e-mail
7 stating that the Pennsylvania Museum and Historic
8 Commission was asked to relook at the determination
9 that had been made before and that that request was
10 made by a member of this planning commission.

11 MR. ETCHISON: Okay.

12 MR. KAPLIN: Unidentified, but
13 that's what it says.

14 A-5R is the preliminary
15 jurisdictional determination issued by the Army
16 Corps of Engineers.

17 Very quick background, you may
18 remember that we received the approval of the DEP
19 for our water obstruction permit. It's a request
20 for what's otherwise called the joint permit,
21 Pennsylvania joint permit.

22 We had the approval of the DEP,
23 and we were waiting on the Army Corps to act. So
24 the Army Corps did two things.

25 In A-5R it issued a -- technically

1 a preliminary jurisdictional determination
2 confirming the limits of the wetlands.

3 In A-5S is the letter from the Army
4 Corps of Engineers saying that it is issuing what it
5 calls a verification in connection with what we
6 generally call the wetlands joint permit.

7 That's the Pennsylvania state
8 programmatic general permit number 6, which is a
9 joint permit -- joint general permit issued by the
10 Army Corps of Engineers and DEP with regard to
11 intrusions into wetlands. And this letter is issued
12 by the Army Corps on September 26th and says that
13 the intrusion into the wetlands is covered by
14 general permit number 6 and, therefore, we are free
15 to make the improvements in the floodplain that
16 involves wetlands in accordance with the approved
17 plans.

18 Those are the --

19 CHAIRMAN DR. GREENE: Do I recall
20 that at our last meeting that Mr. Haas mentioned
21 that this was the only one that's sort of out there,
22 you have to do the work and then you finally get the
23 approval after --

24 MR. KAPLIN: No, no. That's the
25 low mark. That's the --

1 CHAIRMAN DR. GREENE: Okay. That's
2 different.

3 MR. KAPLIN: But what you --
4 when you go into wetlands, when you go in the
5 floodplains, you get involved in what's called the
6 joint permit. It's the 106, 105 -- Section 105.

7 And for years now the Army Corps,
8 which has jurisdiction over wetlands and DEP, have
9 created a joint permit. This is joint permit number
10 6. That's probably about right there every five
11 years, and it's probably 30 years that this has been
12 going on.

13 CHAIRMAN DR. GREENE: Okay. Thank
14 you.

15 MR. KAPLIN: So this completes the
16 NPDES permit.

17 So these additional documents
18 together with the testimony and the exhibits that
19 were previously introduced and that will be
20 introduced into the record this evening, we believe,
21 sir, to further prove that there is no factual
22 or legally valid basis on which this planning
23 commission could properly deny my client's
24 application.

25 And as we said before, as

1 Mr. Scheer said, we concluded the previous hearing
2 with testimony of the project manager for this,
3 Donald Haas.

4 Curiously we completed that
5 testimony on page 56 of the transcript. And in my
6 mind we were prevented from calling the second
7 witness because the next 80, I said the next 80
8 pages of the transcript were consumed with what we
9 believed to be irrelevant questions and diversions
10 to keep us from moving forward.

11 Okay. Okay.

12 MR. SCHEER: Mr. Kaplin, just
13 because you're referencing a transcript that the
14 members would not have, would you be amenable to --

15 I'm assuming you have an electronic
16 copy of the transcript?

17 MR. KAPLIN: I think we did.

18 Jess, when did we get it? We just
19 got it?

20 MS. WELCH: We just got it. And we
21 do have it in electronic form.

22 MR. SCHEER: So could you share
23 that with the --

24 MR. KAPLIN: Sure.

25 MR. SCHEER: -- staff so we have it

1 as part of our record?

2 MR. KAPLIN: Sure.

3 MR. SCHEER: Okay. Thank you.

4 And this way if any commission
5 members want to look at it, they could check with
6 the staff and take a look before they vote on those
7 issues.

8 MR. KAPLIN: You want us to put it
9 in the portal or you want to --

10 MS. WAGNER: Yes, that's fine.

11 MR. KAPLIN: All right. Okay.
12 Yes, we'll figure that out.

13 MR. SCHEER: Okay. I appreciate
14 that.

15 Then the next step would be if
16 there is any specific questions, again, directed
17 specifically to what Mr. Haas would have testified
18 to, you may present it to the -- one at a time, you
19 know, if there's anyone here that has any, I'm not
20 begging anyone to come up, but please make yourself
21 known.

22 I don't see anyone.

23 MR. KAPLIN: I'd like to move on
24 and call my next witness then.

25 MR. ETCHISON: Before we do that, I

1 apologize, I was kind of seeing how our flow was
2 going to go here.

3 I seem to recall a question being
4 raised about the joint permit two meetings ago and
5 being told that there was no such thing as a joint
6 permit. And now today you're telling us this is the
7 second part of the joint permit.

8 Am I remembering you correctly?

9 MR. KAPLIN: No, you're not
10 remembering it correctly. There's always been a
11 joint permit.

12 I keep forgetting which Section,
13 102 or 105. It's the NPDES permit, right -- no.

14 Oh, it's the water obstruction.
15 It's the water obstruction permit, and we were
16 issued a water obstruction permit by DEP.

17 And what Donald testified to was
18 that the Army Corps had reviewed everything, and
19 they said, okay, we'll issue the permit, but you
20 got to put up \$200,000 to guarantee that you'll do
21 the improvements, right. And my client said, I
22 don't yet own the property, so I don't want to put
23 up 200.

24 So Don spoke to the Army Corps a
25 number of times. We got a very nice e-mail from the

1 Army Corps saying we apologize and we're issuing
2 both the jurisdictional determination and the
3 approval.

4 MR. ETCHISON: Okay. Thank you.
5 That's it. I apologize.

6 MR. KAPLIN: Thank you. I'd like
7 to call Jeff Smith.

8 JEFFREY SMITH, having been duly
9 sworn, was examined and testified as follows:

10 * * *

11 EXAMINATION

12 BY MR. KAPLIN:

13 Q. Please state your name and business
14 address for the record.

15 A. My name is Jeffrey Smith. I work for
16 Langan Engineering, LLC, located at 1818 Market
17 Street in Philadelphia, PA.

18 Q. And you are a professional geologist?

19 A. I am.

20 Q. Jessica has put your curriculum vitae up
21 on the board and we've marked it as Exhibit A-14.

22 Can you confirm that that is your
23 curriculum vitae.

24 A. It is.

25 Q. And I think you said this, but by whom

1 are you employed and in what capacity?

2 A. Langan Engineering, LLC. I'm an
3 environmental practice leader in the Philadelphia
4 office, senior associate with the firm and get
5 involved in technical matters, regulatory matters
6 and business matters across the firm.

7 Q. So please describe your professional
8 experience and job duties with Langan.

9 A. Yes --

10 Q. I think you answered part of that.

11 A. Pretty diverse, but, essentially, I'm
12 involved in directing projects, developing business,
13 overseeing regulatory determinations and processes
14 on projects with clients and managing staff and
15 training staff and providing a level of quality
16 assurance on project work.

17 Q. And have you ever testified as a witness
18 in something similar to this, municipal bodies,
19 before?

20 A. Ironically, in this setting once only in
21 a planning commission setting early in my career at
22 Langan. It was over a residential development where
23 there was a water supply system being developed to
24 support the development of that residential
25 community, and I had to testify for the commission

1 on the viability of that system.

2 Q. And are you generally familiar with
3 the property that is the subject of tonight's
4 application?

5 A. I am.

6 Q. What were you engaged to do in
7 connection with this project that is the subject of
8 tonight's hearing?

9 A. So we were retained by the developer
10 to -- initially, to do some due diligence,
11 environmental due diligence to assess the history
12 of the land use of the property, the potential for
13 environmental concerns and potential for
14 contamination on the property, which led to
15 additional work that we had done on their behalf
16 to fully characterize the site conditions, enter
17 into the state voluntary cleanup program in
18 Pennsylvania and proceed forward to develop and
19 eventually get approval for a cleanup plan for the
20 site.

21 Q. Before we get into the technical stuff,
22 please explain for the people what the Pennsylvania
23 land recycling program and Environmental Standards
24 Act, what's it all about?

25 Give us some --

1 A. Yes --

2 Q. -- background information.

3 A. I refer to it as Act 2. That's how it's
4 commonly known. But it is the Pennsylvania Land
5 Recycling and Remediation Standards Act. It was
6 established in 1995 and, at the time, was recognized
7 across the country as a national model as far as the
8 state cleanup program was perceived.

9 For the first time in any state
10 really provided both incentives for people to
11 proceed with clean up on contaminated site, but also
12 provided some flexibility in the sense that you can
13 apply risk based strategies and approaches to
14 demonstrate that the site conditions as they were
15 at the time they were characterized don't pose a
16 risk. And part of that consideration is what the
17 eventual land use is in light of the nature of the
18 contaminants on the property.

19 One of the other incentives is if
20 you go through the process to the satisfaction of
21 the administrative and technical requirements under
22 the program, you're then afforded a legal liability
23 defense which basically says for the contamination
24 that you've characterized and cleaned up, you're not
25 liable under state law and can't be sued under state

1 law.

2 Q. And that was a very big factor in the
3 adoption of the Act.

4 Before the adoption of the Act, if
5 you were in the chain of title of a contaminated
6 property, you were legally responsible even though
7 you did not participate in the content -- in the --

8 A. The clause, yes.

9 Q. And so just so everybody understands,
10 so before this Act, which we have all in eastern
11 Pennsylvania, where all of these old contaminated
12 ground field sites were, no one was willing to go in
13 and buy them and remediate them or use them because
14 they couldn't get a release of liability; is that
15 correct?

16 A. Yes, I mean if cost wasn't a
17 consideration, and practicality wasn't a
18 consideration, people could try to find ways to
19 clean it up.

20 Part of the problem was not only
21 were you responsible then, but there was no defined
22 end point as to how clean it needed to be.

23 This program provided a platform
24 for evaluating how clean it needs to be for the
25 nature of the contamination and what the end use of

1 the property is.

2 Q. I think it's a little off of where we're
3 going to go, but I think it would be helpful if you
4 would explain these different levels of attainment,
5 residential, commercial --

6 A. Sure.

7 Q. -- residential, nonresidential and the
8 site specific.

9 A. Yes, without getting too far into
10 technical details, there's three standards under
11 the cleanup program that you can try to obtain.
12 You can obtain them individually or in combination,
13 however you want to approach it for the nature of
14 the site.

15 The first level is what we call
16 the statewide health standards. They are standard
17 lookup tables with values, concentrations for the
18 dominance of concern that you're looking to
19 characterize.

20 And they have been established by
21 the state as the remediation standard called the
22 statewide health standard that is risk based. So if
23 you can achieve those standards and clean your site
24 up to those numbers, you have no risk. That's one
25 level.

1 The second level is called the
2 background standard. There are some cases where
3 there is contaminants of concern on the property,
4 but there's actually contamination around the
5 property whether it's from natural background or
6 other sources of contamination from other parties.
7 You can go through a process to demonstrate that.
8 And if you achieve what is defined as the background
9 standard, that's acceptable.

10 The third is called site specific.
11 Site specific is where you take in the multitude of
12 factors, both scientific factors, toxicological
13 factors and end use of the property factors and
14 apply that to develop what is a reasonable approach,
15 risk based approach, for the end use of the
16 property.

17 Q. A little bit on risk based approach.

18 Okay.

19 A. There's multiple ways you can do it.

20 You can go through a pretty
21 rigorous process that is basically EPA's process
22 that Pennsylvania follows to go through and evaluate
23 things like concentrations, types of nature of
24 contaminants, nature of potential health concerns
25 and things called exposure and concentration.

1 And you look at them on a
2 case-by-case basis for each site, generate new
3 numeric values that establish the cleanup level that
4 you then have to achieve.

5 Or you can do what's called site
6 specific pathway elimination where you can
7 demonstrate that if you leave contamination behind,
8 it's in such a manner that it's not representing
9 risk or posing a risk or there's no pathway for that
10 risk to be complete.

11 Q. I hope that gives everybody a little bit
12 of background of what Act 2 is all about before Jeff
13 goes forward.

14 Now, I think as part of your
15 recitation of what you were hired to do, I think
16 you mentioned that you did investigation,
17 characterization, and you came up with what type of
18 plan or what would you call -- what's it called?

19 A. Officially under the Act 2 program it's
20 a remedial investigation report. In this case it
21 was a combined report. You can do these in
22 individual reports.

23 We decided to combine them into
24 one. It was a remedial investigation report/risk
25 assessment report/cleanup plan.

1 Q. Break that up for us.

2 A. The remedial investigation is you take
3 into consideration all the information that's
4 available through records review, documents,
5 regulatory searches, database, all kinds of
6 information that's at our disposal. And you
7 basically retell the history of use of the property,
8 what was done there, what were the potential
9 contaminants of concern, what was the areas of
10 concern based on what they did there, the potential
11 for spills or releases to occur. Some were
12 reported, some not.

13 And then things like underground
14 storage tanks, typical things that you would look at
15 that pose a potential environmental concern.

16 Then you characterize those under
17 level of priority.

18 Then you do investigations. You
19 actually take a look at the history of the record of
20 investigations of remediation that may have occurred
21 before.

22 Compile all that information, come
23 up with an approach that's prioritized to
24 investigate what remains as a concern. And even to
25 go back to places that were cleaned up years ago and

1 verify that the cleanup still is maintained.

2 So it's a pretty comprehensive view
3 of history, of response actions in investigation,
4 and then a prioritized investigation of current
5 conditions.

6 After that --

7 Q. That's the remedial investigation?

8 A. It's remedial investigation that
9 establishes your baseline of data and information
10 that represents the risk or potential risk that then
11 you carry into a risk assessment to evaluate what
12 are the risks based on the information that you
13 gathered, what media, what contaminants, and for
14 what types of users of the property, trespassers,
15 construction workers, industrial workers or
16 whatever. And you evaluate them through that
17 process.

18 You come out of that with residual
19 remaining risk that can't otherwise be addressed.
20 And the cleanup plan then is written to address the
21 risks that aren't addressed by other means, such as
22 redevelopment is one way, where you can address risk
23 with a redevelopment plan, or you have to do some
24 surgical removal or excavation of material in one
25 case or some other remedy to clean up the site.

1 Q. And then the final part is the actual
2 cleanup plan, what you're going to do?

3 A. Yes, so that cleanup plan establishes
4 what you're going to do, clean it up. And then it
5 even establishes, in some cases, what are you going
6 to do after you clean it up.

7 After you clean up the site there
8 are some obligations. Post remediation care is what
9 it's called, obligations, including things like deed
10 restrictions on the property, on how it can be used
11 or can't be used, restrictions on the use of
12 groundwater, if that's relevant. Things of that
13 nature that actually get written into the deed for
14 the property.

15 Q. That's the background.

16 And I take it that you did that
17 type of investigation for this property?

18 A. Correct.

19 Q. And you created a combined remedial
20 investigation risk assessment and cleanup plan?

21 A. Yes.

22 Q. And document A-15 is that plan; is it
23 not?

24 Let me get it for you.

25 A. So --

1 Q. You know, before we go to A-15 or A-16,
2 you have a slide presentation. It really explains
3 this.

4 I would like you to give the
5 background, your description using this very graphic
6 program.

7 A. Yes, I will do that.

8 What I'm about to walk through here
9 is in 2024 of March 2024 we filed what is called a
10 notice of intent to remediate for the site.

11 That is a document that gets
12 prepared and submitted, first of all, in this case,
13 got published in the local newspaper in the legal
14 section to provide proper public notice that our
15 client was going to enter the Act 2 cleanup program.
16 That's called a notice of intent to remediate. That
17 was in March, 2024.

18 What I'm going to walk through here
19 is a presentation that we put together. This is
20 common practice for us. Not everybody will do this.

21 Before we're ready to submit a
22 report, the RIRAR, cleanup plan report, we have a
23 meeting typically with stakeholders in the agencies
24 involved. In this case, Pennsylvania DEP and EPA
25 are involved. And we presented the information that

1 we were about to submit to them in a report to give
2 them an opportunity to look at it in advance, deal
3 with any questions they may have at the time. Makes
4 the whole process of the report submittal and review
5 go more smoothly.

6 So I'm going to walk through this
7 really quickly.

8 Q. So this whole series is A-15. Okay. So
9 Jess will move through the sheets of this as you
10 direct her.

11 MR. HEILMAN: Do we have this?

12 A. Yes.

13 MR. SCHEER: Yes, it's in the --

14 A. The original binder.

15 MR. SCHEER: Yes, it's in the
16 original binder.

17 A. It's a presentation. I think you have
18 cover the page in your hand.

19 MR. HEILMAN: Okay. Thanks.

20 A. Okay.

21 MR. ETCHISON: This presentation is
22 Exhibit A-15?

23 A. Yep.

24 MR. ETCHISON: Okay.

25 MR. KAPLIN: It's in the book.

1 A. Are we good?

2 MR. KAPLIN: Yes.

3 CHAIRMAN DR. GREENE: Yes. Thank
4 you.

5 A. I'm not going to read everything here,
6 but this just -- you know, we present site
7 background and history.

8 It's important to know now that in
9 1876 that's when operations commenced here. This
10 was essentially a pigments factory manufacturer.
11 They did both natural and synthetic -- pretty much
12 iron oxide based pigments for color.

13 There was also one aspect at one
14 point in time where they actually produced films
15 for coatings on magnetic tape in addition to the
16 pigments plant process that they went through.

17 There was different owners through
18 time, but this has been operating since 1876.

19 I mentioned EPA's involvement. So
20 in Pennsylvania --

21 Q. You're on the second page now of this
22 A-15?

23 A. Correct.

24 Q. Thank you.

25 A. Thank you.

1 Q. Okay.

2 A. So EPA in Pennsylvania has sometimes an
3 involvement in the actual cleanup program because,
4 in this case, in this particular site, in 1976 EPA
5 passed what's known as RCRA, which is the Resource
6 Conservation Recovery Act.

7 It's regulations that EPA adopted
8 for managing and handling waste on facilities.
9 And this facility was one that was regulated under
10 RCRA.

11 So because we were going through
12 the cleanup program in Pennsylvania, Pennsylvania
13 and EPA in this region have what's called a
14 memorandum of agreement. It's called the one
15 cleanup program.

16 If you proceed with a cleanup
17 under the Pennsylvania Act 2 program, EPA is
18 simultaneously a participant in that process. And
19 you can achieve and accomplish the same obligations
20 you would have under RCRA with EPA by following the
21 Pennsylvania cleanup program.

22 You don't always achieve all the
23 obligations, but you can substantially achieve the
24 obligations. And, in this case, we were presenting
25 the EPA and DEP, and we submitted the documents to

1 the EPA and DEP simultaneously.

2 Q. Go on to the next page now entitled
3 environmental history documents.

4 A. As I said, we look at all the available
5 information that we can find. This is just one
6 summary of documents. We look at database, we look
7 at records, we looked at state and federal
8 inspection reports, notices of violation. We looked
9 at a variety of things.

10 But this is just a summary at high
11 level, starting as far back as 1989, reports that
12 were generated for investigations and work that was
13 done at this property, both from an investigation
14 standpoint, compliance standpoint, a cleanup
15 standpoint.

16 There were storage tanks on this
17 property that had to get properly closed and
18 removed. So there's a record of things going from
19 1989 through 2005 that we looked at, tore apart,
20 dove into, got the details of what happened before
21 we got involved in the process.

22 This might be hard to see, but this
23 is page five. What this is is our compilation of
24 the information that we reviewed on a individual map
25 form. We identified what remained after all of our

1 detailed review and analysis. There were 15 areas
2 of concern that we identified, that we felt
3 warranted further investigation.

4 Those, for sake of argument, are
5 shaded in green on this figure, so it's easy for you
6 to the see hopefully. It's going to be hard to see
7 all the details.

8 Where would you like me to zoom?

9 So you can see the areas in green
10 have different identifications. There's settling
11 beds, there's a removed UST.

12 (Reporter clarification.)

13 A. Removed USTs.

14 MR. KAPLIN: Underground storage
15 tank.

16 A. There's a place up in the northwestern
17 side, green shaded area that's referred to as the
18 bone yard. That was an area where waste was handled
19 traditionally. One area of waste was handled.

20 There's an empty drum storage area,
21 there's hydraulic elevator shafts, there is
22 aboveground storage tanks and below-ground storage
23 tanks.

24 And up here to the north there's a
25 wastewater treatment plant at one point.

1 So this is our compilation of all
2 the information that says here's 15 areas of concern
3 that warrant further investigation that previous
4 work hadn't fully addressed or that we felt needed
5 to be further characterized.

6 MR. ETCHISON: So just so I'm
7 clear, all of these bone yards are basically dumping
8 areas?

9 A. There's only one bone yard. It's not
10 necessarily a dumping area. It's an area where
11 waste materials that they no longer needed or
12 couldn't be used were staged. But there's only one
13 of them. It's the one area that's in green up to
14 the northwestern corner.

15 All these green areas represent
16 different areas.

17 MR. ETCHISON: Are we looking at
18 the same map?

19 I see a bone yard at AOC-3 on the
20 left-hand side of the page that's large. I see a
21 small bone yard AOC-3 on the right side of the page.

22 That's at least two. I thought I
23 saw another one.

24 A. There may be two.

25 MR. ETCHISON: Okay.

1 A. My point was that bone yard is one type
2 of AOC and there's 15 of them. Maybe there's two
3 bone yards, but the rest are USTs, various other
4 features that are not bone yards.

5 MR. ETCHISON: I can appreciate
6 those. Make sure I understood what you're talking
7 about.

8 A. Okay.

9 MR. ETCHISON: Thank you.

10 A. Yes. What this figure represents is --

11 Q. What page are you on?

12 A. This is page six.

13 Q. Okay.

14 A. This figure represents the
15 investigations that we had done like after
16 identifying the 15 areas of concern. There's other
17 features on here like wetland streams. There's an
18 outline, rectangular outline here that was, at that
19 time, conceptual outline of a building that was
20 being considered to be built. So you can see that
21 relative to some of the features.

22 And then the various colored
23 symbols are investigation points. Some are Langan
24 points. For instance, the blue squares are
25 overburdened modules that we installed.

1 And if you go down the list of
2 things on the side, it's really a compilation of
3 all the historical points and locations and types
4 of samples that we considered that were reflected
5 by others before us that helped inform the
6 investigation that we did.

7 So we took the compilation of all
8 that information and data, environmental
9 investigation and remediation, plus the work we did
10 to supplement that.

11 Now we have a picture of the
12 characterization of the site, soil, groundwater
13 primarily.

14 We also did surface water sediment
15 sampling in portions of Springbrook and also
16 Bushkill Creek to evaluate potential impacts there.

17 Q. What page are you on?

18 A. I'm now at page seven.

19 Q. Thank you.

20 A. What this represents is, again, the
21 building outline, roughly, in rectangular feature
22 there in the figure.

23 The different color shading
24 represents what we were provided by the engineering
25 team on the project, represents areas of cut

1 material that's going to be cut out for the
2 development. That's shown in the orange and the red
3 tinted colors and yellow. And then the green areas,
4 which are the fill areas.

5 So if you look to the extreme north
6 and northwest, that's a big, large line of materials
7 being cut out to allow for grades to be such to
8 construct the building.

9 That's getting moved down into the
10 area shown in green. And that's all going to be
11 fill. And it's going to be, in many cases, tens, in
12 case some cases hundreds of feet of fill thick.

13 MR. TILLMAN: Can you just talk
14 into the mic, please. Like a little bit closer.

15 Thank you.

16 A. Sure.

17 So this is the concept of the
18 redevelopment plan. And in this case, it's a major
19 earth work project where, fortunately, the material
20 that needs to be cut is essentially going to be
21 substantially bedrock that's going to be removed
22 from that area, processed onsite, and placed as
23 fill.

24 Q. Cleaned?

25 Cleaned?

1 A. Cleaned. Obviously, we didn't sample
2 the bedrock, no reason to. We did plug samples
3 in areas that we thought warranted further
4 investigation in that area. The soil thickness in
5 that area is probably five feet or less. After five
6 feet you're hitting bedrock.

7 So we did do some sampling up there
8 in the areas that we prioritized. Thought it was
9 necessary. We didn't find any concern.

10 The rest is going to be, basically,
11 bedrock. It's cut, removed, processed and placed.

12 The area in green where,
13 coincidentally, is where most of our investigation
14 was done because that's where most of the areas of
15 concern and the operations were that we wanted to
16 characterize and felt we needed to characterize. It
17 is where all that fill is going to be placed.

18 And at the end of the day, the data
19 that we gathered, there's no organics contaminants
20 like volatile organics or semi-volatile organics,
21 which --

22 Q. What are organics, a little bit --

23 A. So in the world of contaminants, there's
24 semi-volatiles, there's volatile organics, there's
25 metals, and then there's other things like PCBs and

1 other things, which we didn't have here.

2 There were no semi-volatile
3 organics of concern. There were no volatile
4 organics of concern. They tend to be more
5 problematic from a cleanup standpoint because they
6 can represent multiple concerns. They can leech to
7 groundwater, they can cause vapors that can intrude
8 into buildings. So there's more potential concerns
9 generally with those types of chemicals than things
10 like metals.

11 You don't have lead concerns here.
12 Lead would be one metal that has typically higher
13 level of concern.

14 What we had here -- mostly what we
15 found in the soil that exceeded any cleanup standard
16 are things like iron, arsenic occasionally, cobalt,
17 manganese. So we didn't have major contaminants of
18 concern that represent a high risk for the site.

19 But where we did have that is in
20 that area in the sort of lower central part of the
21 site where the dark green fill is highlighted here.

22 So that's good because we can take
23 care of the risk that any of those contaminants
24 might pose for either coming in contact with it,
25 breathing the dust, or its potential leech to the

1 groundwater, which is pretty minimal here. And
2 we'll talk about that in a minute.

3 And this fill of ten or more feet
4 thick that's going to be placed there provides a
5 barrier and a cover that prevents contact to that
6 material.

7 So this site development plan is
8 suited as a remedy and cleanup for dealing with the
9 known contamination to the soil.

10 Q. Just so I understand, so you boiled this
11 down to metals inside. And metals do not leak into
12 the groundwater?

13 A. Wouldn't say that. They can. And we do
14 have in-ground water. Some of the same metals we
15 have in soil is in groundwater. So I would say they
16 probably are leeching to some degree. But at the
17 end of the day, what's in the groundwater, we
18 characterized it, we installed seven monitoring
19 wells, both in the overburden and in the bedrock.

20 We sampled it four times, orderly,
21 over the course of the year, and what we found is we
22 have, occasionally, exceedances of drinking water
23 standards for certain metals. Some of which are the
24 same metals that are in the soil, but their extent
25 is limited. And we don't have the characteristics

1 or the potential to migrate far.

2 And we did a research of potential
3 drinking water use, potable, private well drinking
4 water use in the area. There is none within 1,000
5 feet downgrade of this facility.

6 So, collectively, that information
7 allows us to say there is no pathway. So even
8 though it's in the soil, any direct contact or dust
9 inhalation that might occur is going to be covered
10 in more than ten feet of soil once the redevelopment
11 is complete.

12 The groundwater onsite is going to
13 be restricted by deed to say you can't use it on the
14 site. That's a protective action that's going to be
15 written into the deed.

16 It's very common in Pennsylvania.
17 It's a common element of cleanup in Pennsylvania.
18 And that's bolstered by the fact that there's no
19 drinking water use, private drinking water use or
20 potable drinking water use within 1,000 feet
21 downgrade. So that's not a concern either.

22 So, collectively, there's no risk
23 here if this site of the redevelopment plan is
24 implemented the way that it's shown here, and the
25 fill is placed, site's regraded, the contaminants

1 are, essentially, not a risk.

2 Q. And that remediation plan is implemented
3 as part of the construction process?

4 A. Very much. They're tied together.

5 Q. Want to go on?

6 A. Sure.

7 MR. ETCHISON: Actually I have a
8 question.

9 A. Sure.

10 MR. ETCHISON: Trying to think
11 through this without the alphabet soup of items
12 you've identified.

13 You had mentioned in terms of the
14 redevelopment plan and the highlighting of the
15 different areas on what is cut and what is fill.

16 About five feet of soil and the
17 rest being bedrock; is that correct?

18 A. The bedrock will be generated as fill.
19 It's going to be cut.

20 MR. TILLMAN: Jeff, you need to
21 speak into the mic.

22 FEMALE AUDIENCE MEMBER: We can't
23 hear you.

24 A. Sorry.

25 MR. ETCHISON: Yes, yes. You're

1 tall. Lift it up.

2 A. I'm trying. I'm trying. It's all the
3 way down there.

4 MR. ETCHISON: Yes.

5 A. So the bedrock is going to be cut out of
6 that hillside to -- I don't have --

7 MR. ETCHISON: Yes, that's not the
8 question I'm asking. Let me rephrase it.

9 All right. So recognizing that
10 there is bedrock and there's soil, obviously, you
11 take the soil, set it aside.

12 Yes, I looked at the excavation
13 plans and the plans that you guys were kind enough
14 to furnish to us to see how exactly you guys are
15 going to do that. So I'm in touch with that piece,
16 but dirt is dirt, move it around, ba-boom, right.

17 Then we get to the bedrock, and you
18 say that the bedrock is going to be excavated
19 somehow, I'm assuming blasting or whatever, right,
20 processed, and then used on the site?

21 Do I have that correct?

22 A. Right.

23 MR. ETCHISON: Okay. And the order
24 of -- I'm thinking about this sort of like a
25 loricate, which is probably an oversimplification,

1 but may not be completely inaccurate.

2 A. Actually, probably not.

3 MR. ETCHISON: Right?

4 A. Yes.

5 MR. ETCHISON: So you would be
6 putting the recycled bedrock down first and then the
7 soil on top of that or would it be the soil and then
8 the bedrock recycled or is it some combination of
9 the two based upon some festive --

10 A. Yes, you're getting outside of my area
11 of expertise on the project because I'm not involved
12 with the means and methods of construction.

13 I'm just involved with what needs
14 to occur to eliminate the risk consistent with the
15 cleanup plan. But I'll try to answer your question.

16 I think what's going to define how
17 that fill gets placed and in what order and level
18 of compaction and then how -- you know, how many
19 foot lifts it gets placed is a geotechnical plan
20 that I'm not privy to right now. I don't know that
21 that's been fully developed.

22 That's like geotechnical design
23 combined with construction means and methods which
24 is not my area of expertise, so --

25 MR. ETCHISON: I see.

1 A. But I want to explore your question from
2 an environmental standpoint. Whether it's the soil
3 first or the rock first, it's clean material that's
4 going to be tense. In some cases, hundreds of feet
5 thick. So the order that it gets placed really
6 doesn't matter from an environmental standpoint.

7 MR. ETCHISON: And you're calling
8 it clean based upon the bedrock being the
9 predominant factor in that?

10 A. Bedrock and the northern part of the
11 site where we do have some test results, but there
12 weren't any operations that would pose a concern up
13 there, although the operations were down in the
14 lower part of the site.

15 MR. ETCHISON: Oh, I see.

16 So based upon where like the
17 various bone yards --

18 A. Yes, they did most of their work and
19 where the oil tanks were and where there were known
20 releases, historically, some that were previously
21 cleaned up, it's down in the area in the dark green
22 where the fill is going to be placed.

23 And that's, logically, where most
24 of our samples were taken because that was the
25 highest area of concern, yes.

1 MR. ETCHISON: Okay. And then was
2 a core sample done down to the depth of the bedrock
3 that is going to be blasted out?

4 A. Again, the environmental samples that we
5 collected were down in the northern part. They were
6 down the top of that bedrock.

7 MR. ETCHISON: It's roughly five
8 feet?

9 A. Down in the lower areas we drilled
10 through the full thickness of soil and, in some
11 cases, drilled into the bedrock to complete
12 monitoring analysis part of that program. So we did
13 both in the lower ends.

14 MR. ETCHISON: Okay. So I guess
15 the question here -- I've been trying to ask this
16 question a couple times, but I want to make sure I'm
17 asking the right person.

18 So, you know, Mr. Kaplin, maybe you
19 can help me in terms of this. I still do not have
20 an understanding of the northern wall that's going
21 to be excavated, how that has been tested to know
22 that it is solid rock from the insertion point down
23 to the base of where it's going to be.

24 Does he have an understanding of
25 that or is there another witness that's going to

1 have an understanding of that or --

2 A. I mean I would say I'm a geologist, so I
3 have some understanding. I know how it's mapped,
4 and I know what we saw in the locations that we
5 drilled.

6 Granted, we didn't provide enough
7 drill points to cover the entire hillside, but
8 what's up in that hillside is a metamorphic rock,
9 nice.

10 What's down in the valley is more
11 limestone, and it's pretty dense. Actually, good
12 quality material up in the hillside.

13 I would imagine if it hasn't been
14 done already, the geotechnical engineer would need
15 to know a little bit about the properties of that
16 material and the depth to that rock up in that area.
17 I haven't seen that information.

18 MR. ETCHISON: How about from a
19 I'll call it cleanliness point of view, which is --

20 A. I mean it's natural, so there were --

21 MR. ETCHISON: There are two pieces
22 to the question.

23 One is, you know, we're talking
24 about clean fill, and I'm trying to find that
25 argument. Okay.

1 But then the other question I have
2 comes down to EPA requirements in terms of blasting
3 out rock. You have to have a core sample down to
4 the base. It's on the EPA website.

5 Now, within the Act 2 aspects of
6 this, there seems to be some latitude on some
7 elements of this. But based upon the research that
8 I've done, I still haven't gotten an answer to that
9 question.

10 Where are the core samples that go
11 down 140 feet to the base of where that site is
12 supposed to happen?

13 MR. KAPLIN: Well, that's an
14 assumption.

15 You really interrupted his
16 testimony, but all right. But that's an assumption
17 that you have made about what kind of core samples
18 need to be done.

19 MR. ETCHISON: No, it's not an
20 assumption. It's on the EPA website.

21 A. Hold on. If I could --

22 MR. ETCHISON: Yes.

23 A. It's not a cleanup issue. That's what
24 I'm testifying to, the environmental conditions in
25 the cleanup.

1 MR. ETCHISON: I see.

2 A. That requirement has nothing to do with
3 what I'm here to testify.

4 MR. ETCHISON: I see what you're
5 saying.

6 I appreciate that. Thank you.

7 A. Yes.

8 MR. ETCHISON: Mr. Kaplin, I was
9 not informed that we couldn't ask questions as the
10 folks were going along.

11 Is that an additional condition of
12 this hearing at this point?

13 MR. KAPLIN: I'm really not going
14 to get into that fight.

15 MR. SCHEER: Yes, from a procedural
16 perspective it can often be helpful to be able to
17 ask the question as a witness -- you know, as a
18 witness has it up on the screen.

19 If you were in court, you would not
20 be doing that. You'd be waiting for the completion
21 of all the testimony. You'd be making notes and
22 then you would be referring back just to allow the
23 continuity in the direct presentation of the
24 evidence.

25 So that's sort of the answer.

1 We've never had to be this formal,
2 and it's always been sort of natural to just ask the
3 questions when it's there.

4 But if the applicant wants to make
5 the presentation directly through their --

6 It seemed to me that you had asked
7 permission to ask the question and it was granted.

8 So we'll just be cognizant of
9 trying to, if we can, just make the notes and we'll
10 go back to it when the time comes.

11 MR. KAPLIN: I have no objection to
12 you asking the question, but I --

13 MR. ETCHISON: You accused me of
14 interrupting the gentleman, and I --

15 MR. KAPLIN: Pardon me?

16 MR. ETCHISON: You accused me of
17 interrupting the gentleman and all I did was ask a
18 question.

19 MR. KAPLIN: I didn't accuse you of
20 anything.

21 MR. ETCHISON: Okay. We're all
22 good.

23 MR. KAPLIN: All right.

24 MR. ETCHISON: Let's move on.

25 MR. SCHEER: People in the audience

1 cannot ask questions in the middle of -- at this
2 point in the proceeding.

3 FEMALE AUDIENCE MEMBER: It's not a
4 question. It's a request.

5 Could they not use abbreviations so
6 that people in the audience can follow along?

7 MR. SCHEER: Okay.

8 FEMALE AUDIENCE MEMBER: To make
9 the presentation intelligible to the --

10 MR. SCHEER: As a point of
11 information, I think that's good.

12 Mr. Kaplin, you helped out before
13 when the stenographer had an issue. Where there are
14 things that would make it much more understandable,
15 not only for the people who may be watching or are
16 here, but for the commission, including myself. I'm
17 not necessarily familiar with all this.

18 MR. KAPLIN: And that's usually the
19 reason that I interrupt.

20 MR. SCHEER: Right. So we'll be
21 cognizant of that issue.

22 FEMALE AUDIENCE MEMBER: Thank you.

23 A. And I'll apologize because environmental
24 world is full of all kinds of abbreviations and
25 acronyms, so --

1 MR. SCHEER: I'm not even sure --

2 A. -- I'm all for you interrupting and
3 telling me to please spell it.

4 MR. SCHEER: I'm not even sure
5 what LOL is.

6 MR. KAPLIN: Laugh out loud.

7 A. I can continue going through these.

8 BY MR. KAPLIN:

9 Q. Please.

10 A. This is really just a summary of things
11 that I probably have already said. So pardon me if
12 I did get ahead of myself.

13 Q. What are you on, page eight?

14 A. This is page eight.

15 Again, this is a summary of the
16 soil investigation that was done. You can see there
17 listed on the side what we found that was present in
18 the soil above different Pennsylvania Act 2 cleanup
19 standards.

20 Again, we looked at this from a
21 use of the property, the intended use being
22 non-residential.

23 So under the cleanup program in
24 Pennsylvania, there's residential criteria and
25 standards that you can compare to, and there's

1 nonresidential criteria and standards you can
2 compare to.

3 Obviously, because this cleanup is
4 oriented toward the end use being nonresidential, we
5 looked at the nonresidential standards.

6 Essentially, the first bullet
7 represents list of metals that were found to exceed
8 what's known as the soil to groundwater values.
9 What that means is those metals were found in the
10 soil at the site at a concentration that potentially
11 could leech to the groundwater. That's what that
12 means.

13 The next is direct contact. So
14 just coming in contact with soil represents
15 potential risk. Iron is the one metal that was
16 found to exceed the nonresidential direct contact
17 standards. So there's one metal on the site that
18 there is a risk under current conditions for direct
19 contact.

20 The last thing is these terms,
21 PFOA, PFOS and PFBS. Those are three specific
22 contaminants in the group of contaminants that you
23 probably all are familiar with, which is PFAS.

24 PFAS are in the news. They're
25 known as forever chemicals. Pennsylvania regulates

1 three of them in the state of Pennsylvania. Those
2 are the three.

3 And you don't need me to tell you
4 the long names of what those letters represent,
5 but PFOA, PFOS and PFBS are the three chemicals of
6 concern that are PFAS that Pennsylvania regulates.

7 There happened to be a fire on this
8 site at one time historically. And we found that as
9 part of our historical research and our records
10 search.

11 So we identified the area, the
12 building where it occurred. Low and behold, we
13 found an article in the newspaper that showed in a
14 photo that foam, firefighting foam, was used to put
15 out this fire.

16 Firefighting foam is one of the
17 more common sources of these PFAS chemicals. So we
18 needed to do an investigation where that foam was
19 applied to investigate the soil for the potential
20 presence of those contaminants.

21 Good news here is we didn't find
22 it, so that's a plus. And we did, basically, an
23 area defined by settled borings in the footprint of
24 where the building once was where the fire was. We
25 didn't detect them.

1 I mentioned groundwater before.

2 The thing I didn't mention is, in all cases, soil,
3 groundwater, sediment, surface water, we analyze for
4 a very broad list of contaminants.

5 You do have the opportunity in the
6 cleanup program to narrow the list of contaminants
7 that you're looking for based on lots of
8 information.

9 We decided let's look for the full
10 list, VOCs, SVOCs. I said before volatile organics
11 are VOCs. Semi-volatile organics are SVOCs.

12 PCBs are polychlorinated biphenyls.
13 They can be found in different types of oils or
14 transformer oil sometimes. And then metals.

15 So we weren't skimping on what we
16 looked for here. We tried to look for the common
17 list of the range of types of chemicals that you can
18 find here.

19 And, again, I said metals was what
20 we found in groundwater. Manganese, iron, aluminum,
21 beryllium, cobalt and nickel happened to be found
22 above residential and nonresidential groundwater
23 stable health standards, but none of the other
24 things. No PCBs, no VOCs, no SVOCs.

25 This is just a summary of the risk

1 assessment. I think I mentioned this to you all
2 before. We looked at trespassers as one potential
3 receptor. We looked at site industrial workers,
4 people who might be working on the site at some
5 point. And then we looked at the construction
6 worker.

7 We also did an ecological health
8 evaluation based on the surface water data that we
9 collected, sediment data we collected. And we
10 actually, in a couple instances, collected what's
11 known as pore water samples, which is, basically,
12 the water from the pores in the sediment between
13 surface water and the bottom of the channel.

14 The end result was we had revealed
15 there was a potential limited risk to the
16 construction worker, but it could be readily handled
17 by them just basically applying certain health and
18 safety measures during construction, like wear dust
19 masks, monitor for dust, use dust control so that
20 you're not generating a lot of dust and you're not
21 potentially inhaling it.

22 That was really the risk to the
23 construction workers, but we can manage that as
24 part of the construction. And that's actually a
25 requirement in the cleanup plan that construction

1 workers must do that.

2 MR. SCHEER: Excuse me, Mr. Smith.

3 Is there a problem hearing or --

4 MS. O'NEAL: I have a question. I
5 don't understand about the process.

6 Would this be a rebuttal to what
7 was presented or is this new information?

8 MR. SCHEER: The presentation by
9 the applicant is all a part of their rebuttal of
10 the information and testimony given late in May.
11 That's what the objective was to be. And this
12 was --

13 We're going to be more liberal in
14 the allowance of the information which will give
15 anybody objecting the right to surrebuttal of
16 anything that's presented in the course of these
17 hours.

18 So I apologize for interrupting,
19 Mr. Smith. I just want to make sure we're all on
20 the same page and we understand how this process
21 will work.

22 But it's a point well taken, but,
23 frankly, it was so much testimony that with no
24 record that late that evening in May that I cannot
25 tell you that this wasn't within the scope of what

1 was being questioned that night.

2 MS. O'NEAL: I --

3 MR. KAPLIN: Just to --

4 I'm sorry.

5 In the hearing two weeks ago or
6 four weeks ago we were told by Ms. Wagner that we
7 did not have an Act 2 clearance.

8 So at a minimum this is in rebuttal
9 to those comments that were made.

10 MR. SCHEER: It's clarification of
11 an issue that was raised so that -- and I do believe
12 in a land development application the applicant
13 has to be given a great deal of leeway to correct
14 deficiencies during the course of the process prior
15 to the vote.

16 And, therefore, in the interest of
17 protecting the due process and rights, we're going
18 to be lenient there.

19 But anybody in opposition, here's
20 the testimony, the door is going to be open for
21 surrebuttal within that scope.

22 I mean we're basically re-doing the
23 hearing. You know, May was a nice night, but for
24 those who wanted -- nice night and early morning,
25 but I think we're now, you know, covering this in

1 a clearer fashion to understand what your record is
2 and then the opposition will have an opportunity
3 within that scope so that -- you know, you haven't
4 introduced anything about alliance. They're not
5 going to be able to introduce questions about
6 alliances. It's that simple.

7 MS. O'NEAL: Thank you so much.

8 MR. SCHEER: You're welcome.

9 THE COURT REPORTER: I'm sorry,
10 could I just have your name?

11 Can I have your name? I don't know
12 your name.

13 MS. O'NEAL: My name is Colleen
14 O'Neal.

15 THE COURT REPORTER: Okay.

16 MS. O'NEAL: And we'll have access
17 to these documents on the portal, I guess?

18 MR. SCHEER: The question was about
19 access to the documents. And we already have heard
20 earlier that in the portal will be the transcripts.

21 I don't know what we do with
22 these -- does staff get a full set of these books,
23 too?

24 MR. TILLMAN: Yes, but they also
25 supplied electronic copies.

1 MR. SCHEER: So everything here
2 will be in the portal available for public view.

3 MR. TILLMAN: It's on the website
4 as well.

5 I had Dustin make a warehouse page
6 with all attachments.

7 MS. O'NEAL: I thought that was
8 just zoning stuff.

9 Thank you for clarifying.

10 MR. SCHEER: Okay. So we're good.
11 And, hopefully, now I give you back
12 Mr. Smith.

13 I'm sorry for the interruption,
14 but, hopefully, we clarified and now we could just
15 move along.

16 A. Well, the good news is I'm on my last
17 slide, slide 11.

18 Again, I won't read all this. I
19 did talk about these things.

20 Post-remediation care plan being
21 part of the cleanup. It's going to have specific
22 obligations after the site is filled, after the
23 cleanup is finished and approved. There's still
24 obligations that exist for certain things that have
25 to be done.

1 For instance, anybody doing
2 construction on the site or a disturbance have to
3 apply these health and safety measures to make sure
4 they're working and protected, those kind of things.

5 There's going to be an
6 environmental covenant. So legal instrument that
7 enforces certain activity and use limitations on the
8 property.

9 For instance, this site will be
10 designated as not residential as one example.
11 Groundwater restrictions, I mentioned that. It's
12 another example. There won't be any permitted use
13 of groundwater on the property. So things of those
14 nature.

15 One other thing I want to mention
16 is this thing called a materials management plan,
17 which is part of the post-remediation care
18 obligations, but it's also part of the cleanup.

19 So once this site is built and
20 everything is done, there is a document called the
21 materials management plan that's been prepared in
22 draft form. It will be final once the final report
23 gets approved that, basically, we can characterize
24 this site to a reasonable degree of scientific
25 certainty. And that's what we've done.

1 You can never eliminate or
2 characterize everything, right, it's just not
3 possible. So the intent of a materials management
4 plan is it establishes protocols and procedures for
5 encountering things that you didn't expect or that
6 you didn't previously know about.

7 And it provides a list of
8 procedures about what to do about that, when do you
9 need to notify, who do you need to notify and how do
10 you manage those conditions.

11 There's a variety of sort of tiered
12 approaches to things like that that are written into
13 this materials management plan. And it's a part
14 of the cleanup. So it's just another level of
15 assurance that we may or may not have gotten
16 everything characterized at this site.

17 But if we didn't and we encounter
18 it, there's a plan that's written to deal with that
19 situation.

20 So I just wanted to make that
21 clear.

22 Q. Let me go back to asking you some
23 questions to sort of finish this up.

24 I believe that you've said early
25 on that the first step was that you filed a notice

1 of intent to remediate and then you tell us what you
2 then did.

3 I think you then submitted the risk
4 assessment and you submitted these plans?

5 A. So the order was the notice of intent
6 to remediate in March, 2024. This presentation to
7 both agencies in June, 2024 or some form of this
8 presentation.

9 Then the report was submitted in
10 September, 2024. And by report, that's the remedial
11 investigation report/risk assessment report/cleanup
12 plan, went to EPA and DEP in September, 2024. And
13 then in December, 2024 DEP issued approval letter
14 for that cleanup plan.

15 Q. So could we look at Exhibit 16 and 17.

16 Tell us what 16 is, please.

17 A. This exhibit is the March 22, 2024
18 receipt of notice of intent to remediate letter
19 issued by Pennsylvania DEP to our client.

20 Q. And it contains all the advertising and
21 all the formalities of the notice of intent to
22 remediate; does it not?

23 A. Yes, it's an acknowledgement that
24 everything was submitted and it's administratively
25 complete and it's been received by the department.

1 Q. Tell us what Exhibit A-17 is, please.

2 A. So this is the September 26, 2024
3 receipt of report acknowledgement letter from
4 Pennsylvania DEP.

5 This acknowledges their receipt
6 of our submittal of the remedial investigation
7 report/risk assessment/cleanup plan, which was
8 submitted on September 25, 2024.

9 Q. And following that on Number 18, is
10 that -- well, you tell us what it is.

11 A. This is the actual report that was
12 submitted in September, 2024 to DEP and EPA.

13 Q. Okay. I think I want to go back now
14 to -- I would like to go back to Exhibit A-5G and
15 ask you has DEP approved the Act 2 combined remedial
16 investigation, risk assessment and cleanup plan?

17 A. Yes, in this letter dated December 17,
18 2024 is that approval letter from Pennsylvania DEP
19 for that report submittal.

20 Q. Okay. Go to Exhibit A-19.

21 So you've touched on the fact that
22 we have -- we need some level of the EPA approval.

23 So could you tell us about that and
24 relate it, I believe, to Exhibit 19 and 20.

25 A. As I said early on, this is a joint

1 review process in this case for EPA and Pennsylvania
2 DEP to review this report collaboratively,
3 simultaneously.

4 Doing so, Pennsylvania DEP approved
5 the cleanup plan, so, in part, some of the record
6 obligations that EPA has jurisdiction over have
7 been met, but not all of them because there are
8 certain areas where EPA and DEP sort of have a
9 departure on how they view things. Groundwater
10 is one of them.

11 So there's going to be more
12 demonstration for EPA that everything we said is
13 further substantiated by more monitoring, some
14 statistical demonstration that plume conditions
15 aren't getting worse.

16 So there's more that's going to be
17 required in terms of just data gathering by EPA.
18 There's also a process under RCRA that's formally
19 a process that they still have to go through
20 administratively that isn't directly related to
21 the process that DEP goes through.

22 So there's things like called a
23 statement of basis, which is essentially once
24 they're on the same page with everything and they're
25 okay with what we said and what we demonstrated data

1 about groundwater, they write a statement of basis,
2 which is this is the basis for the cleanup, and they
3 agree with that.

4 And the next stage is the final
5 decision document, ultimately. And that final
6 decision document goes out for public review. And
7 it's the last step of the EPA's record process to
8 meeting all the record obligations and having
9 everything approved.

10 So technically not everything is
11 approved by EPA at this point, but they did issue
12 another document to us.

13 So I don't know what exhibit that
14 is.

15 Q. I think 18 is your submittal to RCRA, to
16 DEPA?

17 A. 19 was -- there's a period of comments
18 that came after DEP approved the report that EPA
19 issued in stages.

20 That letter was our formal response
21 to the comments that EPA had provided.

22 Q. And 20 is what?

23 A. So 20 is a letter dated August 15, 2025,
24 which came after our response to EPA's comments.
25 And it's a letter that, traditionally, we used to

1 refer to them as comfort letters from EPA. It's
2 basically a letter that they prepared that explains
3 to the best of their ability without things --
4 things aren't yet finally approved by them, but it's
5 a letter that provides certain level of assurances
6 and comfort that, in this case -- and if you read
7 some of the wording -- if you'd like, I can try to
8 expand --

9 You want to enlarge that for me?

10 Basically, they said anything we're
11 doing on the site consistent with the redevelopment
12 plan for soils, they are in agreement with and they
13 don't foresee any issue with that.

14 But because there's certain other
15 things that need to still be reviewed and gathered
16 in terms of data for groundwater, and they still
17 have to follow the regulatory processes they have to
18 follow, it's not yet finally approved is what this
19 letter says.

20 Q. So let me ask you, I think the ultimate
21 question.

22 So taking all of this information
23 into account, what conclusions can you make or what
24 opinion can you issue to the best of scientific
25 certainty with regard to whether there will be

1 adverse environmental impacts that may result as a
2 result of the remediation and ultimate redevelopment
3 of this plan?

4 A. That's a big question.

5 Q. I can say it in a different way. Is it
6 going to be clean? But --

7 A. I believe that, you know, obviously, I'm
8 a professional geologist, I have to sign and seal
9 these documents.

10 You know, my professional practice
11 is to be able to assert that what we said is
12 appropriate cleanup for this site for the reasons
13 that we said it and for the information that we
14 developed and collected is the right approach.

15 And it will clean up the site, and
16 it will reduce and eliminate the risk that currently
17 exists on the property.

18 MR. KAPLIN: I have no further
19 questions.

20 Thank you.

21 MR. SCHEER: If I may, I know it's
22 time for the commission, but I just can't help from
23 a legal perspective, when you say about signing and
24 sealing, is there a plan that has been finalized,
25 that's been signed and sealed, or is there still a

1 process that's ongoing based on the last paragraph
2 in that letter in Exhibit 20 that still has to get
3 resolved with some open meetings yet from the public
4 or input from the public?

5 A. So if you look at the exhibit of our
6 report submittal, my seal and my signature is on
7 that report.

8 MR. SCHEER: On that. Okay. On
9 the report.

10 MR. KAPLIN: Carl, let me take it.
11 I know where you're going.

12 Let me give you --

13 MR. SCHEER: Sure.

14 MR. TILLMAN: Joel.

15 MR. KAPLIN: Pardon?

16 Joel, I'm sorry.

17 MR. SCHEER: Just don't call me
18 late for the meeting.

19 MR. KAPLIN: So there is one more
20 step in this process that we have not talked about.

21 Thank you for asking the question.

22 Please tell us what happens next or
23 finally.

24 A. Yes. It used to be that if we were at
25 this stage where we had an approved cleanup plan and

1 an approved land development plan that the
2 department would issue a final approval. They no
3 longer do that.

4 They decided to change their
5 mind because they said they've gotten burned,
6 quote/unquote.

7 So now if we get an approved land
8 development plan and the cleanup plan has already
9 been approved, we can't get a final report until the
10 project is done.

11 MALE AUDIENCE MEMBER: Until what?

12 MALE AUDIENCE MEMBER 2: The
13 project is done?

14 A. So we have an approved cleanup plan. We
15 know how it's going to work, but we can't get a
16 final approval until you actually do the work.

17 MR. SCHEER: I get you, so --

18 BY MR. KAPLIN:

19 Q. Let me go one step further.

20 You have a role in that. After the
21 plan -- the development plan and the cleanup plan
22 have been taken care of by the contractors, it's
23 on you to do what and to give what kind of
24 certification --

25 A. Well, I would say it's on us and my

1 client because I need to be a participant in the
2 construction and the redevelopment of the project in
3 order for me to do what I have to do, which is where
4 your question is leading.

5 Q. Sure.

6 A. Which is, once it's done, I have to
7 write a report that I have to sign and seal that
8 says, we did the cleanup plan, we implemented the
9 cleanup plan and everything we said in the cleanup
10 plan has been met and there is no residual risk as a
11 result of the construction and redevelopment of the
12 site.

13 Q. And DEP reviews that, what I used to
14 call a closure report, whatever it's called?

15 A. It's just called the Act 2 final report.
16 That's what it's called.

17 Q. And DEP reviews that and what did they
18 do if they agree?

19 A. They will issue a formal approval
20 letter. And in that formal approval letter will be
21 statements to assert that they afford a release of
22 liability to those who participated in their
23 remediation.

24 Q. And that release of liability carries
25 forward to future owners of the property?

1 A. Correct.

2 MR. SCHEER: Thank you.

3 So now this is the opportunity for
4 the commission members to ask any questions of this
5 particular witness.

6 I'll turn it over to the Chair to
7 lead your group here.

8 CHAIRMAN DR. GREENE: All right. I
9 don't usually start, but I'll start, and then we'll
10 go wherever somebody's comfortable.

11 I don't know if everybody has
12 questions necessarily.

13 Mr. Smith, you stated earlier
14 that there is a difference in process between a
15 residential versus a nonresidential project?

16 A. Yes. I wouldn't say it's the process
17 is different. It's the criteria you compare your
18 results to that's different.

19 CHAIRMAN DR. GREENE: Okay. The
20 criteria.

21 Since we're talking about a
22 nonresidential, are there any further gradations
23 that would be depending on the proposed use of the
24 property.

25 In other words, if the proposed use

1 were another pigment facility versus a warehouse,
2 those are both nonresidential, is there any
3 difference in the approach or the criteria?

4 A. None.

5 CHAIRMAN DR. GREENE: It's just
6 simply because it's nonresidential, this is what we
7 utilize?

8 A. Correct.

9 CHAIRMAN DR. GREENE: Okay. Thank
10 you.

11 I guess sort of a similar question
12 about the post-remedial care, and you mentioned the
13 materials management plan.

14 Again, would any of that have any
15 difference based -- any different approach based on
16 the proposed use?

17 A. As long as it's consistently
18 nonresidential?

19 CHAIRMAN DR. GREENE: Correct.
20 Correct.

21 A. There would be nothing about that.

22 CHAIRMAN DR. GREENE: Okay. If
23 this were, I don't know, this were an operation that
24 required digging of the ground as part of their
25 ongoing work, would that change?

1 A. Part of the activity use limitations
2 that will get written into this remedy are potential
3 exposure and risk concerns to construction workers.

4 And there will be guidelines for
5 appropriate health and safety measures that they
6 would need to employ to eliminate that risk.

7 So regardless of who or what is
8 being done here, as long as it's nonresidential, the
9 same guidelines for health and safety for workers
10 would apply.

11 CHAIRMAN DR. GREENE: Would apply
12 either way?

13 A. Yes.

14 CHAIRMAN DR. GREENE: And very
15 clear that the work that was presented here tonight
16 all has to do with, you know, remedial investigation
17 of risk assessment, you went through those, the
18 cleanup plan, all based on what was here before.

19 None of this -- and I should ask
20 the question.

21 Was any of your work based on any
22 future operations of a use?

23 A. No.

24 CHAIRMAN DR. GREENE: Nothing at
25 all?

1 A. It's all based on the physical process
2 of the construction and what will be there at this
3 part of the future, nonresidential use.

4 CHAIRMAN DR. GREENE: All right.
5 Thank you.

6 A. Yes.

7 CHAIRMAN DR. GREENE: Anybody else
8 have questions?

9 MR. SHIPMAN: Yes.
10 Are there any of the objectors who
11 are represented by counsel, is counsel present in
12 the room?

13 MR. HARDING: Yes.

14 MR. SHIPMAN: I think we have to
15 make an opportunity for counsel.

16 MR. SCHEER: What I will propose to
17 do is that at the completion of the questions by the
18 commission members, because that's what we generally
19 do --

20 MR. SHIPMAN: All right.

21 MR. SCHEER: -- we will then ask
22 whether there is anybody who wishes to make an
23 appearance.

24 Mr. Harding has already now
25 indicated, and that he can formally make that,

1 explain who he represents.

2 And then when we get to that
3 opportunity where the members of the audience would
4 have the ability to ask questions through me, I
5 will be much happier letting Mr. Harding ask those
6 questions subject to Mr. Kaplin's ability to ask
7 for objections. And then I'd raise objections and
8 we'd rule on it.

9 So I would trust that the questions
10 will be pertinent and directed as appropriate if he
11 has any questions to this witness. But that would
12 be the process.

13 MR. SHIPMAN: All right. I have a
14 few questions, but I'd rather if counsel, because I
15 can't represent any of these parties. I'm not --

16 MR. SCHEER: No, no, you're -- we
17 know about the motion, how it's filed. You're --
18 everybody's --

19 MR. SHIPMAN: All right.

20 MR. SCHEER: -- position on this
21 commission is that there is no decision whatsoever
22 until everyone rests, you guys deliberate, and you
23 vote.

24 So at this point you could have
25 questions, but not from an adversarial point of

1 view, from an educational point of view.

2 MR. SHIPMAN: What is this man's
3 name?

4 MR. SCHEER: It's Mr. Smith.

5 MR. SHIPMAN: Mr. Smith --

6 MR. SCHEER: If you think that's
7 his real name -- no.

8 A. You can call me Jones if you want, but
9 it's fine.

10 MR. SHIPMAN: I would be correct,
11 would I not, that in this investigation, which
12 you've explained at some length, that you did not
13 make any investigation into any lawsuits or actions
14 against the former owner of the factory, the
15 business that was there that had anything to do with
16 water pollution, air pollution or soil pollution; is
17 that correct?

18 A. I mean I'll just answer your question.
19 There would be no reason for me to do that. That's
20 not what I do.

21 MR. SHIPMAN: All right. Do you
22 know if, in fact, there were lawsuits in this county
23 by people in this city and by surrounding persons
24 who filed a number of lawsuits concerning air
25 pollution?

1 A. It's not relevant to my cleanup plan.

2 MR. SHIPMAN: All right. Did you
3 do any work that covered water pollution by this --
4 at this site?

5 A. Water pollution is a subjective term.
6 I think I've said what I did. I've sampled
7 groundwater and I sampled surface water.

8 MR. SHIPMAN: All right. The
9 sewage disposal that takes place in this city was
10 engaged in litigation with this unit for a long
11 time.

12 Did you explore any of that?

13 A. I'm not a lawyer. I'm not hired to
14 explore litigation and court records and lawsuits.
15 That's not what I'm hired to do.

16 MR. SHIPMAN: Well, the litigation
17 was technical from a lawyer standpoint. It was
18 whether there were pollutants coming from that land
19 either by air or by water that were harmful.

20 A. If there was an agency, Pennsylvania
21 DEP, EPA filed a notice of violation or something
22 that related to a potential pollution incident, I
23 reviewed it.

24 If there were lawsuits and things
25 going on that were private parties or other

1 community representative or whatever, it's not in my
2 scope to consider those things.

3 MR. SHIPMAN: Well, what I want to
4 know is did you investigate whether there were
5 poisonous, dangerous subjects, land or dangerous
6 chemical combinations coming from that land over a
7 long period of time that contaminated air, water and
8 soil?

9 Did you make any of those
10 investigations?

11 A. I reviewed the record of the
12 investigations that were available, and I
13 prioritized what I thought needed further
14 investigation, and I investigated it. That's what
15 I did.

16 MR. SHIPMAN: If making an
17 investigation of that sort, would it have been
18 helpful if you had gone back into the records of
19 those lawsuits and determined whether --

20 Please, let me finish my question.

21 A. But it's not the scope of my practice.
22 It's not what I do. And it's not what clients hire
23 me to do under the regulations that they're being
24 held to.

25 MR. SHIPMAN: Mr. Smith --

1 A. It's not part of the --

2 MR. SHIPMAN: -- let me finish my
3 question, please.

4 Assume that there were lawsuits on
5 record, this county, and appellant records from the
6 state or in the state, that can take expert
7 testimony from people in water, soil and air in
8 those lawsuits.

9 Would it have been helpful for you
10 to know what those experts found at those times?

11 MR. KAPLIN: I'm going to object.

12 MR. SHIPMAN: Just a question
13 that --

14 MR. KAPLIN: This calls for total
15 speculation of what he would have found if he had
16 gone and looked at some other record.

17 MR. SCHEER: Mr. Smith, among other
18 things, testified as a geologist as to what he
19 investigated. It speaks for itself, you know, and
20 I think he's already answered Mr. Shipman's
21 question, but I hate to limit --

22 I'm not quite sure where the
23 questioning is going beyond the point that --

24 MR. KAPLIN: I think he's answered
25 it.

1 MR. SCHEER: Yes, that's what I
2 thought.

3 MR. SHIPMAN: So you wouldn't have
4 any knowledge of whether there were such persons or
5 documents out there that found the water was
6 polluted in the stream, the air was polluted that
7 went up over the farm lands?

8 A. I think I've answered it.

9 MR. SHIPMAN: All right.

10 A. I have the knowledge that I shared with
11 everybody today, and it's in the context of the
12 regulations and the program and the practice that
13 I'm operating.

14 MR. SHIPMAN: All right. I have
15 another question that perhaps you do have an
16 interest.

17 You're aware that there's efforts,
18 legal efforts, by the developer here to do certain
19 work on the stream that flows through there.

20 Are you aware of that?

21 A. I was present at the zoning hearing on
22 that subject.

23 MR. SHIPMAN: All right. I didn't
24 know that.

25 All right. Are you aware that

1 there has been litigation over that stream being
2 contaminated --

3 A. No.

4 MR. SHIPMAN: -- by this site?

5 A. Not aware.

6 MR. SHIPMAN: Would it be helpful
7 if you had those records?

8 A. No.

9 MR. SHIPMAN: Wouldn't change what
10 you've said here today?

11 A. No. I don't see how it's relevant to
12 what my role is on this project.

13 MR. SHIPMAN: Well, I'm not going
14 to argue facts or opinions with you, but if you're
15 giving an opinion that everything that the developer
16 has done is simply awaiting a final decree from the
17 government --

18 A. I --

19 MR. SHIPMAN: -- everything is okay
20 to go forward --

21 A. I have issue with the word opinion. I
22 don't have an opinion. It's a fact because it's
23 been approved by the agencies that are involved in
24 reviewing the work we did. It's not my opinion.

25 MR. SHIPMAN: Well, if that's your

1 answer to my question, then they can go forward if
2 they get that final letter, or you supply the letter
3 and they give the credit.

4 Would that be right? It's ready to
5 go forward, everything?

6 A. Well, I think that's partly why we're
7 here, to decide whether it's ready to go through.

8 MR. SCHEER: Well --

9 A. From an environmental cleanup
10 standpoint, it's ready to go forward.

11 MR. SHIPMAN: What?

12 A. From an environmental cleanup
13 standpoint, in the eyes of Pennsylvania DEP and EPA,
14 it's ready to go forward.

15 MR. SHIPMAN: What about the water
16 quality in the stream?

17 A. It's not a problem. You can read our
18 report. We sampled surface water and sediment.
19 There's no risk.

20 MR. SHIPMAN: All right. So you
21 have no concerns about that?

22 A. I stick to what was said in my report.

23 MR. SHIPMAN: Well, if you found
24 something, you would have made it known; would that
25 be correct?

1 A. Are you insinuating something?

2 MR. SHIPMAN: No.

3 A. Of course I would.

4 MR. SHIPMAN: I understand that
5 this stream is going to be sunlighted, and then it's
6 going to be moved. And if there's any contamination
7 in there, that would be important.

8 And you didn't find --

9 A. When you say stream, are we talking
10 about the stream that's under a culvert and
11 underground?

12 MR. SHIPMAN: The Bushkill Creek.

13 A. The Bushkill Creek is not that stream.

14 MR. SHIPMAN: Well, are you sure
15 about that?

16 A. I know what Bushkill Creek is and I know
17 what the onsite --

18 MR. SHIPMAN: Do you know whether
19 the water that's going to be changed -- flow is
20 going to be changed as part of the Bushkill Creek?

21 A. Yes, it will be.

22 MR. SHIPMAN: It will be?

23 A. The new channel?

24 MR. SHIPMAN: Yes.

25 A. Yes.

1 MR. SHIPMAN: Do you know if that's
2 in any way been affected by this pollution over all
3 these years?

4 A. What?

5 MR. SHIPMAN: The water in that
6 stream or the soil adjoining it?

7 A. Which stream?

8 MR. SHIPMAN: The stream that flows
9 into the Bushkill Creek that's being moved.

10 A. It's being moved, so if there is
11 contaminated, it's no longer going to flow --

12 MR. SHIPMAN: All right.

13 A. -- to Bushkill Creek, which is why I
14 think moving it would probably be the best thing to
15 do.

16 MR. KAPLIN: Jeff, could you -- a
17 little bit more into the microphone.

18 A. Sorry.

19 MR. KAPLIN: Yes, just --

20 A. Sorry.

21 CHAIRMAN DR. GREENE: Hold on.
22 Hold on. Hold on. Hold on. Hold on.

23 Do you have further questions?

24 MR. SHIPMAN: Maybe one more.

25 CHAIRMAN DR. GREENE: Thank you.

1 Okay. Got it.

2 MR. SHIPMAN: Were you aware at any
3 time when you were evaluating this project whether
4 there were any other experts investigating this
5 land?

6 A. You'd have to be more specific.

7 MR. SHIPMAN: Well, I don't have
8 any more specifics.

9 Anybody doing what you were
10 doing --

11 A. Yes --

12 MR. SHIPMAN: -- for somebody else?

13 A. -- I read a lot of reports that were
14 prepared by others who did work before I did, yes.

15 MR. SHIPMAN: Ah. And do you know
16 who had purchased or asked that those reports be
17 done, do you know the name of the party?

18 MR. KAPLIN: Objection. This is
19 far, far afield.

20 MR. SCHEER: I think in the report
21 that was --

22 MR. SHIPMAN: I didn't ask him for
23 the name. I asked if he knows the name.

24 MR. KAPLIN: And that's why I said
25 it's so far afield.

1 MR. SCHEER: Wasn't that in the
2 report that was given where there's a history or
3 record of all the prior reports that were given that
4 you investigated?

5 A. That's --

6 MR. SCHEER: I thought that's what
7 I read in the exhibit --

8 A. Correct.

9 MR. SCHEER: -- you identified
10 previous investigations. That was part of your
11 investigative background --

12 A. Correct.

13 MR. SCHEER: -- before you test for
14 concurrent conditions?

15 A. Correct.

16 I think your question, though, is
17 am I aware of who that work was done for?

18 If I am, it's in the report that I
19 submitted. And if I'm not, it's because I didn't
20 have any reason.

21 It doesn't matter who they did the
22 work for. I was more concerned about the work that
23 was done, not who it was done for.

24 MR. SHIPMAN: All right. That's
25 all I have.

1 A. Thanks.

2 CHAIRMAN DR. GREENE: Any
3 questions, Mr. Etchison?

4 MR. ETCHISON: I have a couple.

5 But first -- well, let's see, how
6 do I want to do this?

7 The daylight, I think you guys are
8 calling it an unnamed tributary, right. Now, my
9 comment is different.

10 One of the things you talked about
11 was sort of the safety mitigation for the
12 construction workers.

13 A. (Witness nods head.)

14 MR. ETCHISON: And the things that
15 are necessary there.

16 The concern that I -- I have many
17 concerns, but the one concern that would come up out
18 of that need would be sort of the obvious, airborne
19 particulates and whatnot during construction wafting
20 their way up to College Hill and causing -- wreaking
21 havoc.

22 Okay. That's an exaggeration, but
23 you understand what I'm saying is that if you're
24 going through the process of -- and we haven't even
25 talked about the blasting yet, which we know is a

1 concern of mine -- and that's not your area, so
2 that's cool -- if there is a concern, though, in
3 terms of contaminants on a worker level, should we
4 or should we not be concerned about contaminants
5 during construction directly adjacent to the site?

6 Said differently, let's say I lived
7 at the silk mill and I had a small child.

8 Do I need to worry about Janie
9 going out and being exposed to airborne particulates
10 that could be harmful?

11 A. So what those activities are going to
12 be, specifically during construction, it's going to
13 be worker protection, maybe wear dust masks, have
14 dust monitors on themselves. There may be
15 perimeter -- dust monitoring around the work as
16 it's occurring.

17 You can monitor for dust different
18 distances. You can even take the monitoring to the
19 edge of the property if need be. There's also
20 watering down the area to control the dust.

21 So there's a variety of things you
22 can do to mitigate that concern. And I'm not trying
23 to downplay that concern.

24 We do that type of perimeter
25 monitoring on projects like this all the time. And

1 sometimes not just for dust. It's for vapors. It's
2 for other things.

3 MR. ETCHISON: Is that built into
4 the current plan or are you saying that as a for
5 instance?

6 A. It's a possibility. It's not -- the
7 plan is not describing that need to that level of
8 specificity.

9 But if you're in the midst of
10 construction and you see that fugitive dust
11 emissions is a concern, then you have to --

12 MR. ETCHISON: So it can be done.
13 It's the kind of thing you have done and when
14 it's --

15 A. Yes.

16 MR. ETCHISON: -- required type
17 thing, but it's not currently part of the current
18 site --

19 A. It's not part of the initial protection
20 measures.

21 MR. ETCHISON: I can appreciate
22 that.

23 All right. So my next question
24 then would be so you reviewed all the reports and
25 data previous to when you came to the site. Then

1 you ran around and did your borings and things where
2 there were clear indications of possibilities for
3 contaminants. Then you write your report, make your
4 recommendations in terms of mitigating harm to the
5 construction workers.

6 Is there any element of your
7 report -- no, I don't want to say it like that.

8 Does your report take into
9 account -- actually, you know what, you've answered
10 that. It doesn't at this point, but it can.

11 I guess the concern I would have
12 is particularly when we're talking about daylighting
13 the stream and protecting workers that somehow
14 magically daylighting the stream doesn't have to
15 worry about the particulants in the air going into
16 the stream and being carried into the Bushkill.

17 Am I thinking about this too
18 simply? I don't think so.

19 You know, I'm a pretty pragmatic
20 guy, and my parents call me son, but, you know, how
21 hard can it be to -- is that a consideration?

22 A. So it's a matter of -- and, again, I
23 want to step back. My role in the relocated stream
24 was pretty high level and not that detailed.

25 It was basically as a concept this

1 is what we're doing, right. And it's more the
2 engineers and civil design people who were telling
3 me what they were doing.

4 And the way I viewed it was the
5 existing stream, call it Springbrook tributary,
6 whatever it is, has a big portion of it that's
7 underground that has sediments that we haven't
8 accessed or sampled that could have contamination
9 and water is flowing through it.

10 MR. ETCHISON: I thought you had
11 sampled -- I'm sorry, I --

12 A. I didn't sample underneath where the
13 piped portion of it is. I sampled at either ends of
14 it where we could get to it.

15 We didn't sample a portion of
16 Springbrook that's piped underground.

17 MR. ETCHISON: Oh, I see.

18 A. So I'm just bringing that up as an
19 example.

20 The way I viewed the stream
21 relocation is if we can remove potential
22 contamination that's associated with, potentially
23 associated with the historical Springbrook including
24 the portion that's piped and get rid of that
25 material, dispose of it, do whatever we need to do

1 with it, and then we're going to create a new stream
2 in a clean space on the property. That has to be an
3 improvement to me.

4 That's the highest level I got to
5 on that subject. I wasn't involved in the design.
6 I wasn't involved in any other aspect of it, but it
7 made sense.

8 MR. KAPLIN: Jeff, you tested the
9 water there, didn't you?

10 A. Not in the piped portion of the brook.
11 But on both ends, yes.

12 MR. KAPLIN: But on both ends,
13 right?

14 A. And Bushkill Creek.

15 MR. KAPLIN: And what did you find?

16 A. Essentially, that if there's any risk,
17 it's de minimis. And it actually looks like it
18 could be stuff flowing from upstream into Bushkill
19 Creek.

20 But that is of greater concern
21 than what's actually in the creek adjacent to the
22 site.

23 MR. ETCHISON: What is this? And
24 I've read it a couple times and I can't quite get my
25 head around it.

1 So I'm looking at Exhibit 20, I
2 guess. The letter, I think you called it a comfort
3 letter.

4 A. Yeah. Yes, that's the one I'm on.

5 MR. ETCHISON: Right. Goes down --
6 I'm in paragraph one, two, three, four. Paragraph
7 four of this that talks about blasting, right.

8 Can you explain --

9 CHAIRMAN DR. GREENE: It's at the
10 bottom of the first page of that letter?

11 MR. ETCHISON: Bottom of the first
12 page, yes.

13 Can you explain what that paragraph
14 means.

15 A. The one that starts with -- on June
16 13th?

17 MR. ETCHISON: Yes.

18 A. Sir, are you asking me, specifically,
19 the sentence that says the material management plan,
20 MMP, provides that the pre-construction grading plan
21 includes extensive blasting of bedrock; is that the
22 portion?

23 MR. ETCHISON: Well, what I'm
24 trying to understand is -- I think now I've read it
25 a fifth time, I think I'm maybe understanding it.

1 In addition, areas were sampled --

2 THE COURT REPORTER: Wait, wait,
3 wait. You can't read like that.

4 MR. ETCHISON: I'm sorry.

5 In the middle of the paragraph it
6 reads, in addition, areas where sampled data shows
7 soil contamination over EPA regional screening
8 levels will be capped with a minimum of two feet of
9 processed bedrock fill.

10 So --

11 A. So said another way, the fill that's
12 going to be derived from the bedrock material that's
13 removed and processed --

14 MR. ETCHISON: That's a --

15 A. -- will be placed in areas where
16 contamination currently exists above EPA RSLs.

17 And it's going to be capped in at
18 least two feet of that clean bedrock material. Most
19 cases, it's more than ten feet.

20 MR. ETCHISON: Thank you.

21 A. Okay.

22 MR. ETCHISON: That's exactly what
23 I wanted to understand.

24 I don't have any other questions.

25 CHAIRMAN DR. GREENE: Okay. Anyone

1 else?

2 MS. WAGNER: I have some questions.

3 CHAIRMAN DR. GREENE: Ms. Wagner.

4 MS. WAGNER: In the papers that
5 we got today it says stuff was -- a report was
6 completed in 2021. And it lists like a bunch more
7 wetland areas.

8 MR. SCHEER: Let's just
9 specifically identify what you're -- which of
10 the ones you're referring to.

11 This would be under tab R.

12 I'm trying to help out so that the
13 questions are specifically directed.

14 So in R and what's called the
15 preliminary jurisdictional determination form.

16 And your question?

17 MS. WAGNER: Is this for this
18 project here, like who is --

19 A. That letter doesn't pertain to me.

20 MS. WAGNER: Northpoint?

21 Okay.

22 A. Doesn't pertain to my --

23 MS. WAGNER: What is this for?

24 A. -- scope.

25 MR. KAPLIN: This is a

1 jurisdictional determination by the Army Corps of
2 engineers with regard to the boundaries of the
3 wetlands on the property.

4 MS. WAGNER: Like I was under the
5 impression there was like only one area of wetlands.

6 This is saying that there are three
7 areas.

8 MR. KAPLIN: This is what the Army
9 Corps determined.

10 MS. WAGNER: Who is Northpoint
11 Development? Is that --

12 MR. KAPLIN: I have no idea. I
13 mean I know who Northpoint Development is, but I
14 don't know how it's relevant to this.

15 MS. WAGNER: Because it says it on
16 this paper, so I'm just trying to figure out how it
17 belongs.

18 If maybe this is the wrong
19 paperwork, that's all I want to know.

20 MR. KAPLIN: It's the paperwork
21 that we were -- and that's just the jurisdictional
22 determination which confirms our determination of
23 the boundaries.

24 The more important document is the
25 next one which confirms that the work that we

1 intend to do in the wetlands is permitted by the
2 Pennsylvania general permit number 6.

3 MR. SCHEER: So since this
4 particular area of documentation is not what
5 Mr. Smith has testified to, we should probably
6 reserve any questions for either a later date or
7 even to ask staff to clarify outside the course of
8 tonight's hearing.

9 MR. KAPLIN: This is a document
10 issued by the federal government. I think it's an
11 admissible document.

12 MR. SCHEER: I'm not questioning
13 that. Ms. Wagner asked a question. I'm trying to
14 remove that question from this particular line of
15 questioning of this witness while indicating that
16 any document that we just saw tonight -- you know,
17 the commission members can review and there will be
18 time to ask for clarification either through you or
19 through staff.

20 Whatever it is, the main point is
21 Mr. Smith isn't going to be able to answer the
22 question about the wetlands.

23 MR. KAPLIN: But, Ms. Wagner, if
24 you go to S, the document is from the Department of
25 Army. It's addressed to Easton Wood.

1 The first sentence, this letter
2 concerns your application to discharge film material
3 into the waters of the United States to construct an
4 industrial building and intended infrastructure
5 within an approximate 61-acre site.

6 And then it goes on to more fully
7 identify it and then it says, based on the
8 application, this office has determined that the
9 proposed work is authorized by the Department of
10 Army, Pennsylvania State programmatic general permit
11 number 6.

12 This is the document that you said
13 that we did not have. So now we got that document.
14 This is it.

15 And you'll agree with me that this
16 completes the package for the NPDES permit and the
17 water obstruction permit.

18 MS. WAGNER: This is my --

19 MR. SCHEER: No, Ms. Wagner is
20 not --

21 MS. WAGNER: This is my question,
22 if the previous page says that there's like three
23 sets of wetlands that needs to be mitigated, this
24 one here that we're talking about right now only
25 refers to one.

1 And it says that it's based on the
2 impact location plan. And when you go to the impact
3 location plan, it's just this without any --

4 MR. SCHEER: If I may, only
5 because I don't -- I'd like this not to go off
6 course of where we are as far as witnesses and cross
7 examination.

8 MS. WAGNER: Right.

9 MR. SCHEER: The bottom line I
10 think with respect to that document is that, if I'm
11 reading it correct, it was issued September 25,
12 2025, in all fairness to any questions that were
13 later raised, it means it wasn't addressed prior to
14 tonight's meeting.

15 It's a new document, which means
16 there was a hole in the presentation until your --
17 until you presented this.

18 And with this presentation,
19 Ms. Wagner has some further questions of whether
20 it's complete or not, but I don't think we need to
21 resolve that tonight.

22 That can be investigated a little
23 bit further and ask the staff for some help to make
24 sure that the three sites that are apparently
25 identified are all covered by the Department of

1 Army's clearance.

2 But I really do have to make the
3 note that in reading a lot of these documents, they
4 postdate the May hearing.

5 Just in all fairness to commission
6 members that had questions, this, obviously, is an
7 ongoing process by the applicant, which is fine.

8 It's just that I hate to see any
9 commission members criticized for questioning
10 whether things were missing when they were missing.

11 MR. KAPLIN: Who's the one that
12 said we were missing it, and --

13 CHAIRMAN DR. GREENE: I object. I
14 would -- I would like to finish with this witness.

15 MR. KAPLIN: I would like to --

16 CHAIRMAN DR. GREENE: I don't want
17 to hear anymore about this. Let's finish with the
18 witness --

19 MR. KAPLIN: Thank you.

20 CHAIRMAN DR. GREENE: -- and then
21 move forward.

22 MR. KAPLIN: Thank you.

23 CHAIRMAN DR. GREENE: Well, you
24 keep going on, so I'm just trying to get us back on
25 track.

1 MR. KAPLIN: Thank you.

2 CHAIRMAN DR. GREENE: Mr. Scheer.

3 MR. KAPLIN: Thank you.

4 MS. WAGNER: Just to finish up
5 because it felt kind of like followthrough.

6 There's no contours on here.
7 There's -- you know, the riparian buffer area isn't
8 on here.

9 CHAIRMAN DR. GREENE: I object.
10 I'd like a question here to this
11 witness about his testimony, not what's there.

12 MS. WAGNER: So what happens
13 when -- to the bone yard when you blast, like
14 what -- you know, I think you had showed us of
15 like --

16 A. There's nothing that showed up as a
17 concern, so there's not a concern.

18 MS. WAGNER: I don't understand.
19 Like if there's --

20 A. Just because it's a bone yard and they
21 stored materials there doesn't mean that the
22 materials caused an environmental impact.

23 We sampled there, there was no
24 environmental impact, so there's no concern.

25 MS. WAGNER: There's nothing in

1 there, so when it is blasted, it's okay for
2 everything that's there just go over to there?

3 A. We sampled there. We didn't detect
4 anything that was a concern.

5 MS. WAGNER: I thought you just
6 said that there was stuff that was like forever
7 chemicals and stuff like that.

8 MR. KAPLIN: Objection, asked and
9 answered.

10 MR. SCHEER: Well, now wait. I
11 can't follow whether that was asked or answered.
12 You could just ask the question -- ask the question
13 very specifically if Mr. Smith had indicated
14 something that seems to be inconsistent.

15 MS. WAGNER: Well, it's not what I
16 recall. So I can ask if blasting doesn't affect
17 anything, then that answers my questions.

18 So the drawing that you showed up
19 there, is that -- so it doesn't even affect that
20 it's like what was approved versus what -- your
21 presentation up there shows it from -- it's not
22 the most current.

23 Is your approval based on that
24 layout or does it need to be updated for --

25 A. Can you refer to a specific figure so I

1 know what that layout is that you're referring to
2 and what you're deeming isn't current?

3 I'm not sure what you mean by that.

4 MS. WAGNER: Well, the --

5 MR. ETCHISON: I think her question
6 regards in the cut and fill area that you -- map
7 that you had shown, you referenced the rectangle
8 that was there.

9 And the question is is that
10 rectangle relatively current to the current plan?

11 A. It's relatively current. I can't swear
12 today that it's exactly the footprint of the current
13 plan. It might be slightly rotated.

14 But I can tell you that has no
15 consequence to the approach to the cleanup, so it
16 really doesn't matter.

17 MR. SCHEER: Okay?

18 MS. WAGNER: Uh-huh.

19 MR. SCHEER: Any other questions
20 from the commission members?

21 MS. WAGNER: I just have one more
22 question.

23 Like what if like the deed
24 restrictions that you were talking about requires
25 changes that are different than what are shown on

1 the plans right now?

2 MR. KAPLIN: I'm going to object to
3 that question because I don't understand it.

4 MR. SCHEER: If I understand the
5 process correctly, what will happen is as part of
6 the approval process, there are restrictions through
7 covenants, usually, that you would have to put on
8 record in order to be compliant and get your final
9 permit.

10 MR. KAPLIN: There's a Pennsylvania
11 Environmental Covenants Act that requires that the
12 institutional controls --

13 A. But I can try to answer your question
14 because I think I know where you're going.

15 MR. SCHEER: Okay.

16 A. So let's say we have a cleanup plan
17 that says what those restrictions should be. And
18 we build the site with something, I'm totally
19 speculating, can't even imagine today what that
20 could be, some condition reveals itself that
21 requires additional deed restrictions.

22 Is that what you're asking?

23 MS. WAGNER: Not necessarily. I
24 mean just if something came up with like being able
25 to put gas mains underground or anything like that

1 that would require --

2 A. I don't foresee any of that being a
3 problem because we're going to have, in some places,
4 in excess of a hundred feet of new fill placed on
5 the site.

6 So I don't really see what -- I
7 can't foresee what a relevant additional deed
8 restriction could be or might be required for that,
9 utilities for instance.

10 MR. SCHEER: When we use the term
11 deed restrictions, it's not so much where the seller
12 puts restrictions in the deed. It's covenants that
13 you record. It's an independent document.

14 A. A deed restriction is part of a
15 covenant.

16 MR. SCHEER: Okay. Well, I
17 usually would just call it covenant and restrictions
18 being recorded as a separate indenture. Maybe I
19 have to pull out that old term.

20 MR. KAPLIN: Joel, there's a
21 Pennsylvania Act that specifically deals with this
22 and requires -- tells you what you have to report.
23 And we will have to comply with that.

24 MS. O'NEAL: We can't hear you.

25 FEMALE AUDIENCE MEMBER: Yeah, talk

1 into the mic.

2 MR. TILLMAN: You can speak into
3 the mic.

4 MR. SCHEER: Yes, the comment was
5 just made that the applicant will have to comply
6 with the laws that require these covenants to be
7 recorded.

8 CHAIRMAN DR. GREENE: Anything
9 further?

10 MS. WAGNER: That's all. Thanks.

11 CHAIRMAN DR. GREENE: Okay. Any
12 questions down here, members?

13 MR. SCHEER: So if we complete
14 that, now the opportunity -- unless you want to take
15 a break -- would be for the objectors, if they have
16 any questions.

17 We didn't have any for Mr. Haas,
18 but if there are any for Mr. Smith, I would ask in
19 a twofold way, A, is there anyone who does want to
20 enter an appearance formally and ask those questions
21 in the group and so that --

22 Will be A. And you don't have to
23 take an oath or anything.

24 By the way, this is a point, I
25 don't know if you call it personal privilege, but I

1 really do want to thank, before I forget because I
2 get too tired, I want to thank Chief Carl Scalzo for
3 coming out tonight and providing a level of public
4 safety that I was -- that I'm always concerned about
5 because it is a really voluntary act, I think.

6 So I really do want to thank you,
7 Chief Scalzo, because I feel a lot more comfortable
8 being in this room with you here. Not that I'm
9 worried about any of you people here going after
10 me, it's just, you know, how things are today.

11 MR. SHIPMAN: You're worried about
12 the people up here, right?

13 MR. SCHEER: Yes, I'm worried --
14 that's right. I'm worried about Mr. Shipman.

15 But with that, will you come up?

16 You know, it's going to be a little
17 tricky here.

18 And let me ask the Chair, do you
19 want to have a break after -- we could introduce him
20 if you want to take a five-minute break.

21 CHAIRMAN DR. GREENE: Let's take a
22 five-minute break.

23 MR. SCHEER: Okay. So we'll do it
24 right afterwards. But what I'm going to suggest,
25 Carl, if you don't mind, so that if you're going to

1 ask questions, and we have a microphone there, it
2 may be best if you sit back, we'll let Mr. Harding
3 take that seat.

4 But for now we're going to recess
5 until 5 after 9?

6 MR. SHIPMAN: Sure.

7 (Short recess taken.)

8 MR. SCHEER: Thank you.

9 Formally introduce yourself with
10 your name and the address you prefer to use. And
11 just indicate whether you're an attorney practicing
12 in Pennsylvania, licensed in Pennsylvania. That's
13 sufficient. And who your clients are.

14 MR. HARDING: Hello, everyone. My
15 name is Cody Harding. I live at 410 North 10th
16 Street, Easton, Pennsylvania. I represent two
17 parties. One is a resident with an address 14
18 Bushkill Drive. Their name is Tim Haas.

19 The other is the Stop Wood Avenue
20 Warehouse Coalition. Official name is Stone Route,
21 LLC. The rest is d/b/a.

22 I am licensed in New York and
23 Pennsylvania. I'm trying to remember the other
24 questions you just asked.

25 MR. SCHEER: Well, you actually --

1 the only thing that probably could use some
2 clarification, I don't know if Mr. Kaplin cares
3 about it, but just so to be clear about standing,
4 who is the Stonewood --

5 MR. HARDING: It's the official LLC
6 of the Stop Wood Warehouse Coalition.

7 MR. SCHEER: That's Stop Wood
8 Warehouse.

9 MR. HARDING: Yes.

10 MR. SCHEER: But what does that
11 consist of, what is that?

12 MR. HARDING: It consists of a
13 community organization of -- I think at this point
14 more than -- I couldn't tell you the exact number,
15 but we're in the hundreds.

16 MR. SCHEER: Of members? And the
17 membership as far as the --

18 MR. HARDING: Easton and Wilson
19 residents opposed to this project.

20 MR. SCHEER: Okay.

21 MR. HARDING: Yes, sir.

22 MR. KAPLIN: I have a different
23 question. Your client individually named, where do
24 they live in relationship to this property?

25 MR. HARDING: They are the closest

1 residential boundary on the north side of the site.

2 Their property is directly adjacent, yeah.

3 I mean some of this was addressed
4 at the zoning meeting, so I'm a little confused, but
5 I'm trying to go --

6 MR. SCHEER: Well, Mr. Harding,
7 this is totally separate. Whatever is going on
8 before the zoning hearing board actually has nothing
9 to do with this proceeding, except for the ultimate
10 issue of whether everything has been met, including
11 the special exception.

12 MR. KAPLIN: Can I just say I'm not
13 objecting to Mr. Harding on a standing basis.

14 MR. SCHEER: Okay. Very good.

15 MR. KAPLIN: -- get going.

16 MR. SCHEER: Then we can proceed
17 with the questions.

18 And, again, I will just caution the
19 questions should be focused on the actual testimony
20 by Mr. Smith.

21 MR. HARDING: Okay. I will ask
22 those questions, but before that I feel that
23 there's one or two formalities I would just like
24 to present --

25 MR. SCHEER: Okay.

1 MR. HARDING: -- since this has now
2 evolved into a formal hearing.

3 MR. KAPLIN: I'm going to object.
4 This is cross examination.

5 MR. SCHEER: I'd like to hear what
6 it is because Mr. Smith has just introduced himself
7 and I think it's appropriate to make sure that we
8 understand whatever it is that you're presenting
9 to us.

10 THE COURT REPORTER: His name is
11 Mr. Harding.

12 MR. HARDING: Harding.

13 MR. SCHEER: Harding. Mr. Harding.
14 I'm sorry. We made up that last name anyway, so --

15 And if this is totally out of
16 bounds, I'll respond accordingly, but I want to hear
17 what the request is.

18 MR. HARDING: I simply wanted to
19 make the planning commission, the public, the
20 applicant aware that there are at least two other
21 attorneys who have entered their appearance for
22 individuals.

23 It was only a lack of notice that
24 this had become a formal hearing that they had to
25 appear in standing --

1 MR. SCHEER: Yes, I'm telling you
2 I can't accept that because this hearing was
3 scheduled -- back in September we knew it was going
4 to be October 15th.

5 And anyone could have written to me
6 and said I just want you to know that I'm going to
7 be representing ABC.

8 But the point is that if they want
9 to come to the next hearing and they want to
10 introduce themselves, I'm not going to shut them
11 out.

12 MR. HARDING: I mean this idea that
13 we can cross examine the witnesses and that this has
14 taken on a formal hearing in the form of the zoning
15 hearing is a bit of a surprise.

16 And I would say an evolution at
17 best from this initial May 7th meeting.

18 So do what you want it with it. I
19 would take issue that the other attorneys did not
20 have the other opportunity to be here because they
21 didn't understand that this was now a formal
22 hearing.

23 MR. SCHEER: Well, I don't know how
24 that possibly could be after September, with all due
25 respect, because I was almost begging that if you're

1 going to have -- that you have the opportunity for
2 legal counsel.

3 But that aside, it doesn't make --
4 you're here --

5 MR. HARDING: Okay.

6 MR. SCHEER: -- and there are other
7 attorneys -- if they're in appearance for the zoning
8 hearing, but it's fine, but no one, but no one else
9 has contacted me.

10 And until this afternoon, I did not
11 know that you were formally going to take that extra
12 step to say that I am here representing A and B.

13 So do you have any other --

14 MR. HARDING: Yes. The other
15 is that under the Easton city code or 595-40,
16 subsection H, stay of proceedings, this whole
17 proceeding should be stayed pending resolution of
18 the special exception application currently before
19 zoning.

20 It's clear as day to me if you read
21 the text of the subsection, yet here we are. And
22 simply now that this has a formality to it, it's
23 important to be under the record.

24 And I would appreciate if you don't
25 make comments under your breath. I sat through 12

1 hours of listening to you talk.

2 MR. SCHEER: You know what, I tell
3 you --

4 MR. KAPLIN: We don't need your
5 rudeness.

6 MR. SCHEER: Excuse me. This is
7 the last thing we need. I thought we were doing
8 really well for two hours.

9 And I didn't necessarily appreciate
10 some of the things that happened at the last
11 hearing. So far things have been actually pretty
12 tame. And we don't need to have a show between
13 attorneys.

14 For the commission members that
15 want to hear your questions, see what answers --

16 MR. HARDING: Right.

17 MR. SCHEER: -- are solicited from
18 that so the record could continue to be made, and
19 the commissioners can, at some point or other vote,
20 I will take your comment about 595-40-H under
21 advisement because, you know, this is the
22 applicant's procedure.

23 And if the commission could vote to
24 deny this because of special exception had not been
25 granted, that's at their risk.

1 MR. KAPLIN: Wait a minute. Wait a
2 minute.

3 I asked you that specific question
4 weeks ago, and you said to me that this commission
5 acts on subdivision or land development applications
6 subject to getting zoning approved.

7 MR. SCHEER: I never said that. I
8 never would have said that.

9 It's -- the commission will have a
10 choice of whether to act with conditions or without
11 conditions. I would never have said anything like
12 that.

13 Our review is of all the standards
14 on the SALDO, one of which is that you have proper
15 zoning. And I understand it's not for the
16 commission to make that decision. It's going to
17 be for the zoning hearing board to make that
18 decision.

19 And if you wanted to -- if you
20 wanted to stay until that --

21 MR. KAPLIN: No. What I would
22 really like is for Mr. Harding to get on with his
23 questions.

24 MR. HARDING: All right. I'm
25 prepared to proceed.

1 MR. SCHEER: Please do.

2 * * *

3 EXAMINATION

4 BY MR. HARDING:

5 Q. Mr. Smith, are you aware of the Franklin
6 Formation, I mean is that a term you've heard of?

7 A. Yes.

8 Q. Could you explain to us what the
9 Franklin Formation is.

10 A. The Franklin Formation is one of the
11 geologic formations that underlies the site.

12 Q. Okay. So it is part of the site? I
13 just want to clarify.

14 A. Yes.

15 Q. And do you know which portion of the
16 site it encompasses?

17 A. Mostly the southern portion of the site.
18 The upper steep slope hillside is more of a
19 gneissic, G-N-E-I-S-S-I-C, formation.

20 Q. And when did you create this map here,
21 this model, do you know the date or approximate?

22 A. I didn't create the model. The model,
23 if you want to call it that, the colored shading,
24 which was cut and fill analysis, was provided to us
25 by Bogia Engineering.

1 There's been a couple different
2 versions of this because there's been a couple
3 different building layouts.

4 I don't have the specific date of
5 this drawing at my fingertips. I just don't know
6 off the top of my head this drawing is --

7 Q. So is it safe to say the plan has
8 changed since this was created?

9 A. I didn't say that.

10 Q. Has the plan changed since this was
11 created?

12 A. I didn't say that. I said I don't know.

13 Q. Does this accurately represent the
14 location and footprint of the warehouse as presented
15 to planning for their vote?

16 A. I think somebody asked me that question
17 earlier, and I answered it. And I think you asked
18 me the question at the zoning hearing, and I
19 answered it, so I'll answer it again.

20 I don't know if this rectangular
21 shape is the exact current location of the building.
22 It may have slightly shifted, but for what I'm here
23 to testify on, this is the cleanup --

24 Q. Well, then I think we should get --

25 MR. KAPLIN: Yo.

1 A. It doesn't matter is what I think.

2 MR. HARDING: I think we should
3 get the answer, so I ask the applicant to present
4 the maps submitted, the formal maps submitted, to
5 the planning commission so we can compare.

6 MR. KAPLIN: This is cross
7 examination. Don't ask me to do something.

8 MR. HARDING: Okay. Then I would
9 ask --

10 MR. KAPLIN: Cross examine the
11 witness.

12 MR. HARDING: I would ask the
13 planning commission to look at the maps --

14 MR. KAPLIN: You're out of order.
15 Could you direct Mr. Harding to
16 limit himself to cross examination.

17 MR. SCHEER: Well, the cross
18 examination has to be within the area of testimony
19 of Mr. Smith.

20 I would imagine that if his
21 testimony is inconsistent with whatever the map is
22 on record for the plan, the best thing would be to
23 present that in your case and show that there's an
24 inconsistency here.

25 MR. HARDING: As we will.

1 MR. SCHEER: Okay.

2 MR. HARDING: Just wanted to
3 confirm that the expert cannot confirm that this
4 is an accurate location or representation of the
5 current footprint.

6 MR. KAPLIN: Objection to the
7 speechmaking.

8 MR. SCHEER: All right.

9 MR. HARDING: I'll move on. I'll
10 leave the speechmaking to you.

11 MR. SCHEER: And, again, I'm going
12 to ask you, please, let's just ask the questions,
13 get the answers and try to keep this process going
14 until we -- until the Chair tells me --

15 MR. HARDING: I have --

16 MR. SCHEER: -- I'm okay to go to
17 sleep.

18 MR. HARDING: -- just a few more
19 questions.

20 MR. SCHEER: Thank you.

21 BY MR. HARDING:

22 Q. Mr. Smith, are you aware of any
23 naturally occurring uranium or asbestiform minerals
24 on the site?

25 A. No.

1 Q. I think you answered this, so I
2 apologize for the redundancy, I just want to
3 clarify, have you done any sampling of the bedrock
4 on the site?

5 A. No.

6 Q. If there was any uranium or asbestiform
7 onsite, is it possible that it would be in the
8 bedrock?

9 A. It's possible, but it's not an
10 environmental condition that would be subject to
11 what I'm hear to testify about. It's a natural
12 condition.

13 MR. HARDING: All right. No
14 further questions.

15 Thank you.

16 MR. SCHEER: Okay. That, I
17 believe, unless there was anything that was brought
18 up in the cross examination that the commission
19 would have something to ask about, then -- and I
20 don't think there was very much there, then you can
21 be excused.

22 CHAIRMAN DR. GREENE: Hold on, hold
23 on.

24 MR. SCHEER: Oh, hold on?

25 MALE AUDIENCE MEMBER: We have

1 some --

2 MR. SCHEER: Oh, I'm sorry. I'm
3 sorry.

4 And to the extent that someone is
5 not part of the coalition, because Mr. Harding has
6 represented that he represents the coalition, so
7 if there is anybody else here who wants to ask a
8 question of me to determine whether it's appropriate
9 to pass onto Mr. Smith, please let me know.

10 MS. INMAN: I'm sorry, Joel, please
11 say that again.

12 MR. SCHEER: I'm saying if you're
13 a member of the coalition, because Counsel is
14 representing you, it wouldn't be appropriate for
15 the client to ask their own questions.

16 MS. INMAN: Really, I was going to
17 ask questions as an individual trying really hard to
18 understand what's going on.

19 I have some clarifying questions
20 that I think would be highly relevant to the
21 residents about this presentation.

22 I just -- you know, and it is going
23 to involve going over some area, and I'm asking for
24 some leeway. I am not represented by counsel. I am
25 a person --

1 MR. SCHEER: Okay. Then let's do
2 this in the interest -- is there anybody else here
3 who is going to be raising their hand?

4 This way we'll know where we are.
5 And you're also in independent
6 and --

7 MALE AUDIENCE MEMBER: My counsel
8 is not present this evening.

9 MR. SCHEER: Okay. That's fine.
10 If your counsel is not present, then you're not
11 represented tonight and there's no one else of
12 record before the planning commission.

13 So please come forward and, you
14 know, unfortunately, because we're making a record,
15 and we don't have, you know, sufficient microphones
16 everywhere, I think it will be easier if you just
17 joined Mr. Smith where his microphone is, ask the
18 question of me.

19 You get nice and close.

20 CHAIRMAN DR. GREENE: I would ask
21 that the person go have a seat.

22 MR. SCHEER: Also sit down at the
23 seat. Okay.

24 Could you please come and sit down
25 here. Don't run away.

1 CHAIRMAN DR. GREENE: Wait a
2 second, Mr. Scheer.

3 To the questions that I think
4 you're going to ask, if you're not asking questions
5 of Mr. Smith and they are more general, we have a
6 period at the end where you can ask those questions.
7 We need to proceed with the part of the hearing
8 right now.

9 Yes, that's part of our normal
10 procedure, at the end of the evening.

11 MR. SCHEER: Did you have questions
12 for Mr. Smith?

13 MS. INMAN: Yes.

14 CHAIRMAN DR. GREENE: That's not
15 what I heard. Sorry, that's not what I heard you
16 say.

17 MS. INMAN: You assumed you knew
18 what I was going to say.

19 CHAIRMAN DR. GREENE: Yes, no, I
20 was listening to what you said and I hear
21 Mr. Smith's name, so please --

22 MR. SCHEER: Please take the seat
23 and we'll try to address that.

24 So first we have to identify -- we
25 have to ask your name --

1 MS. INMAN: Carol Inman.

2 THE COURT REPORTER: Carol Inman?

3 MS. INMAN: Right.

4 (Discussion held off the record.)

5 MR. SCHEER: She's not testifying.
6 She's only asking questions.

7 Carol, you can ask me what you
8 wanted to ask.

9 MS. INMAN: Joel, this is very
10 intimidating.

11 MR. SCHEER: Okay. I understand.

12 MS. INMAN: Okay. And I'm going to
13 say that I think that it's really unfair to ask a
14 resident to follow this along. Okay.

15 So let me say that I've been here
16 for three hours, and it's late for me. I was not
17 provided with a copy of the new material that
18 Mr. Kaplin brought to the meeting. So it's very
19 hard for a resident, right, to follow along. Okay.

20 And the idea this is an
21 environmental protection issue, right, and, of
22 course, the residents are very concerned about
23 that. You know, I mean there's a whole list of
24 environmental concerns.

25 MR. KAPLIN: Objection.

1 MS. INMAN: Of course.

2 MR. KAPLIN: This is a cross
3 examination.

4 MS. INMAN: No, it's not. No, it's
5 not.

6 MR. SCHEER: Excuse me. Just as
7 far as -- I don't know exactly what we can do beyond
8 the fact that at least the applicant's -- this is
9 the first meeting, several meetings ago where we
10 didn't have presentations. Everything is being
11 presented. This is the best we're going to do.

12 MS. INMAN: Could I have a copy of
13 one of the books, please?

14 MR. SCHEER: The books are all
15 going to be placed online.

16 MS. INMAN: No, could I have a copy
17 of the book in front of me now while I'm asking
18 questions?

19 MR. SCHEER: And you have specific
20 questions?

21 MS. INMAN: Yes.

22 MR. SCHEER: You can have my book.

23 MS. INMAN: Thank you.

24 Can I go into my purse and get my
25 glasses, please?

1 I need to know the page of the
2 maps.

3 Okay. So I'm going to object that
4 the residents are not being provided with sufficient
5 information to keep up with the arguments as you go
6 along. Okay.

7 And if we could rectify that in
8 some way in the future, I think that would be
9 helpful to having the residents feel less concerned.

10 MR. SCHEER: See, this is where
11 when there is legal counsel involved, this is a
12 problem you have anywhere you go in any township,
13 any time you're having a hearing like this residents
14 can listen, but unless they have the time to be a
15 party to it, the applicant can't go ahead of time
16 and give every resident what may be presented
17 because they have a right to decide what's going to
18 be presented.

19 To the extent it can be presented
20 early like the plans and everything that's uploaded
21 online, then there's opportunity to review. But
22 there's no way to do this perfectly.

23 Now that Mr. Harding has entered
24 an appearance, he can communicate directly to
25 Mr. Kaplin. He can ask Mr. Kaplin to provide copies

1 of exhibits. And that's the way things generally do
2 work.

3 MR. KAPLIN: At the end of last
4 meeting we were asked to put everything online.

5 MR. SCHEER: And you did.

6 MR. KAPLIN: That whole book
7 online.

8 MR. SCHEER: Is this dealing with
9 the new stuff or are you dealing with the old stuff?

10 MS. INMAN: How am I supposed to
11 know that?

12 MR. SCHEER: Well, I don't know.
13 You'd have to go online to look at the old material.
14 I can't tell you anything else.

15 MS. INMAN: Yes, I'm just --

16 MR. ETCHISON: Can I try and help
17 out here a little bit?

18 MR. SCHEER: Yes.

19 MS. INMAN: Yeah.

20 MR. ETCHISON: Carol, you're asking
21 about the maps that were --

22 MS. INMAN: Yes, I'm asking about
23 the maps -- I e-mail --

24 MR. KAPLIN: They're online.

25 MS. INMAN: Excuse me, Mr. Kaplin,

1 if you could --

2 MR. KAPLIN: You're just here
3 doing --

4 MS. INMAN: -- just a little bit
5 room to talk because all we do is listen to you.

6 MR. KAPLIN: Yeah, and all you're
7 here doing is filibustering and trying to --

8 (Whereupon there is cross-talking.)

9 MS. INMAN: I don't even know
10 what -- I'm just a resident.

11 MR. SCHEER: Okay.

12 MS. INMAN: He's got some
13 scientific background.

14 MR. KAPLIN: Well, ask your
15 question already.

16 MS. INMAN: I was getting there.

17 MR. SCHEER: Excuse me, excuse me.
18 We're not cross examining.

19 MS. INMAN: He's provocative.

20 MR. SCHEER: We -- we --

21 MS. INMAN: And it's 9:30.

22 MR. SCHEER: I appreciate your
23 desire to speak to him. There was counsel here, and
24 I really wish you would have somehow worked with
25 him.

1 But if you have a question, please
2 ask it directly. If you don't have a question,
3 you're not prepared --

4 MS. INMAN: Okay.

5 MR. SCHEER: I'm sorry that the
6 procedure is the way it is, that it's not as good as
7 it could be, but it's the only practical way we can
8 proceed.

9 MS. INMAN: Okay. My purpose,
10 before I was interrupted, in stating what my
11 problems with the preparation to residents in terms
12 of speaking was so that I really don't have all the
13 information that I need for a list of questions.
14 However, I do have some preliminary ones.

15 MR. SCHEER: Okay. If you have
16 some preliminary ones. I want you to know that
17 every lawyer who has a case in court, if they
18 haven't done a lot of discovery ahead of time on
19 the same vote, they take notes and they do the best
20 they can, but they're trained for that. So I
21 understand --

22 MS. INMAN: Right, they're trained
23 and they're paid.

24 MR. SCHEER: Yes.

25 MS. INMAN: Okay. I'm a volunteer.

1 MR. SCHEER: If I may, please,
2 present the questions to the board and we will see.

3 MS. INMAN: All right. And what
4 I'm asking for you is a little help in dealing with
5 Mr. Kaplin, because he tends to --

6 MR. SCHEER: Excuse me, please,
7 let's not even use the name Mr. Kaplin right now.

8 This is your world now. Mr. Kaplin
9 doesn't even exist, unless it's an objection.

10 MS. INMAN: Okay. All right.

11 MR. SCHEER: And let's hear the
12 questions so that I can ask Mr. Smith.

13 MS. INMAN: Okay. After three
14 hours --

15 MR. SCHEER: Yes.

16 MS. INMAN: -- without being given
17 the opportunity to review the materials in depth,
18 all right, I have these preliminary questions.

19 This is an environmental protection
20 investigation, correct?

21 MR. SCHEER: I can't answer.
22 Mr. Smith is an environmental protection
23 investigation because this is not. Mr. Smith
24 testified that he conducted an environmental
25 protection investigation.

1 MS. INMAN: That's what I meant,
2 yes.

3 MR. SCHEER: So what's the question
4 concerning his investigation --

5 MS. INMAN: Okay.

6 MR. SCHEER: -- that you would have
7 of him?

8 MS. INMAN: Okay. Is it possible
9 for me to move to table this procedure from moving
10 forward until I've had an opportunity to A, rest,
11 and, B, review the materials in the depth that I
12 would like to?

13 MR. SCHEER: Well, I would suggest
14 this, you will have an opportunity, as will any
15 objector within the confines of the presentation of
16 the applicant, to make your own presentation.

17 So to the extent that you don't
18 need to cross examine Mr. Smith because you have
19 evidence or information that would be pertinent
20 to the commission, you will have that opportunity
21 to do so at the next -- whenever we reconvene
22 because --

23 MS. INMAN: Okay.

24 MR. SCHEER: -- we are going to
25 be -- I mean who knows, maybe we can get it finished

1 with your direct case and then be able to move on in
2 November.

3 So that means you'll have time to
4 look at this material because it will be posted.

5 MS. INMAN: Okay. All right. I
6 would like to ask my questions now.

7 The questions that I have so far --

8 MR. SCHEER: Okay.

9 MS. INMAN: -- I would like to ask
10 them.

11 MR. SCHEER: Okay.

12 MS. INMAN: Okay. So and I am
13 asking you for some indulgence. Don't like hold me
14 to the letter of the law because I am not a
15 professional.

16 MR. SCHEER: I understand. You go
17 ahead. The rules here are not as formal as the
18 other proceedings.

19 MS. INMAN: Okay.

20 MR. SCHEER: So please.

21 MS. INMAN: So what I was doing was
22 trying to say the study that you conducted -- don't
23 look at him. I'm sorry -- was an environmental
24 protection investigation.

25 And the target, and this is what I

1 want to get to, the target, this is one of the
2 points, the target -- who are we protecting?

3 MR. SCHEER: See, that's not --

4 MS. INMAN: No, it is.

5 MR. SCHEER: I'm going to rule that
6 that is a comment. It's not a question by who are
7 you protecting. That's basically an argument.

8 Here is a question.

9 MS. INMAN: Okay. Can I clarify,
10 Joel?

11 MR. SCHEER: This investigation was
12 done on whose behalf?

13 MS. INMAN: Theirs.

14 MR. KAPLIN: The client.

15 MR. SCHEER: The client. The
16 client is the applicant developer.

17 MS. INMAN: Right.

18 MR. SCHEER: And the investigation
19 is eventually reporting to regulatory agencies.

20 MS. INMAN: Okay.

21 MR. SCHEER: Okay.

22 MS. INMAN: And based on your
23 presentation, your testimony, your main concern is
24 to protect the construction worker, correct?

25 A. No, that's not correct.

1 MR. SCHEER: Okay. You heard the
2 question, you can answer it.

3 MR. KAPLIN: He answered it.

4 MR. SCHEER: Yes.

5 MR. KAPLIN: He said, no, it's not
6 correct.

7 MR. SCHEER: That's right.

8 MS. INMAN: Okay. Is it the
9 residents who surround, immediately surround the
10 area, like are you thinking about them?

11 A. The fundamental duty that I have is to
12 protect human health and the environment --

13 MS. INMAN: Uh-huh.

14 A. -- period. Period. Whether you're a
15 worker, a resident, whatever, protect --

16 MS. INMAN: Okay. So when you
17 were talking about, like who are we, you know, going
18 to make a recommendation so when the construction
19 actually happens, we're going to ask our
20 construction workers to wear a mask, right, you said
21 that. Okay. But you didn't talk about protecting
22 anybody else around it.

23 MR. SCHEER: Well, that's not a
24 question again.

25 If there's something deficient in

1 the study that was done, and there's evidence to
2 show that that will be part of your -- can be part
3 of your presentation --

4 MS. INMAN: My presentation -- the
5 planning commission is -- your job is not just to
6 protect the construction worker.

7 MR. SCHEER: Wait.

8 MS. INMAN: Your job is to protect
9 the school children.

10 MR. SCHEER: With all due respect,
11 you're making an argument now, and that's not how
12 this procedure is working.

13 The presentation made shows you
14 the scope of the environmental work performed by
15 this particular expert, period. It speaks for
16 itself.

17 The conclusions that would be
18 reached by the commission members, they're all
19 intelligent enough to understand where it is, what
20 the scope is and what exactly Mr. Smith testified
21 to.

22 So if it was not broad enough for
23 some reason and it could be shown that there's
24 something wrong with this because the study should
25 have gone further, that's going to be something that

1 you have to present on your side of the case.

2 There's nothing else for Mr. Smith
3 to answer there. And I'm just trying to move this
4 along.

5 MS. INMAN: Is there supposed to be
6 a pedestrian trail that runs through this property
7 that connects the Cassatt trail?

8 MR. SCHEER: I'll ask a question
9 then.

10 Mr. Smith, in doing your study were
11 you aware that there are going to be amenities for
12 civilians to be walking through there such as a
13 pedestrian trail?

14 A. Not specifically. It may have been
15 mentioned once, but, no.

16 MS. INMAN: So it was not --

17 MR. SCHEER: Has your study
18 extended to any pedestrians who would be walking
19 in that vicinity in general, what the environmental
20 impact is?

21 A. I can answer that now.

22 MR. SCHEER: Yes.

23 A. So if you're going to take all of this
24 cut and fill, this material that you're going to cut
25 that's clean, you're going to place it in an area

1 that's not clean, and it's going to be at least ten
2 feet, some places 100 feet thick of clean material,
3 and you put a trail across that clean material, it's
4 isolated from any impacts of contamination that
5 exist beneath it. And it's not a risk to anybody
6 using that trail.

7 MS. INMAN: Okay. So are you aware
8 that people swim in the Bushkill Creek immediately
9 adjacent to the property?

10 MR. SCHEER: Well, the question
11 would be is there going to be any impact, any
12 adverse environmental impact by people who would be
13 swimming in the Bushkill Creek --

14 MS. INMAN: Right. I like the --

15 MR. SCHEER: -- if the entire plan
16 presented is followed through with?

17 A. I testified tonight and our report goes
18 into it in great detail and it was reviewed and
19 approved by EPA and Pennsylvania DEP.

20 MS. INMAN: That's not the
21 question.

22 MR. SCHEER: He's answering the
23 question. Now you get the answer.

24 A. The answer is there is no risk to human
25 health or ecological environment related to Bushkill

1 Creek.

2 MS. INMAN: Okay. So how many
3 cores -- can we go back to the map where you did the
4 cores.

5 Is that what this is, the sampling
6 cores, where you took samples like of the water and
7 of the soil and the bedrock and that kind of thing,
8 can we see that map again?

9 MR. KAPLIN: What's the question?

10 MS. INMAN: I'm getting there.
11 Give me a break.

12 MR. SCHEER: Wait. Wait. She
13 asked for a map. It's stage one of the question,
14 so --

15 MS. INMAN: Okay. All right. So
16 all these green areas are areas of concern, that's
17 what I heard you say.

18 A. Yes.

19 MS. INMAN: So I'm just trying to
20 keep up. So you sampled -- I'm seeing one sampling
21 core per green area; is that correct?

22 A. I wouldn't say it's consistently, but in
23 many cases that's the case.

24 MS. INMAN: Okay. So like that
25 bone yard, which is the biggest one, and the way

1 that you characterized, I heard you say, now I
2 just want to check to make sure that I heard you
3 correctly, okay, that's where they threw stuff away,
4 storage of weird stuff?

5 A. Yes, but by stuff --

6 MS. INMAN: Well, that's --

7 A. -- it doesn't mean chemicals and waste
8 products. It could mean scrap metal, machinery, old
9 parts.

10 MS. INMAN: Do you know for sure
11 what's in there?

12 A. I haven't lived since 1876, so, no, I
13 don't know 100 percent.

14 MS. INMAN: Right. And you
15 conducted one sample in that bone yard area?

16 A. Because we look at historical area
17 photos. We look at a lot of information to come
18 up with what we think is appropriate.

19 MS. INMAN: Okay.

20 A. It's not just a dot on a green circle
21 on a map. There's a lot of information that goes
22 behind that.

23 MS. INMAN: Okay. I would say that
24 that's insufficient.

25 MR. SCHEER: See, you're making a

1 conclusion now.

2 MS. INMAN: Okay.

3 MR. SCHEER: That's an argument to
4 be --

5 MS. INMAN: But you know that when
6 a resident --

7 MR. SCHEER: Okay. I don't know
8 if it's -- when you talk about insufficient, I don't
9 know that anybody here knows it's insufficient.

10 We have regulatory bodies who
11 ultimately make those determinations, so we can't
12 just say, well, that we throw that information out.

13 You can set the foundation, which
14 you did by asking the question about how many
15 borings.

16 When it comes time for your
17 presentation, if you have an expert who says that's
18 not sufficient, that's evidence that the commission
19 can listen to.

20 If the applicant says, well,
21 that's not -- what the DEP says is what should be
22 predominant, that's going to be part of their
23 argument.

24 They're all going to be part of
25 their considerations we have at the end, but I would

1 ask unless you have something specific to put into
2 the record, comments and conclusions are not
3 appropriate at this moment in time.

4 And, you know, out of respect for
5 everybody else's time and the fact that, I, too,
6 want to go to bed one time, I'd like to -- you
7 know, there's one other person waves their hand
8 and if there's something -- specific question
9 that we ask, I'd like to give that person the
10 opportunity --

11 MS. INMAN: Okay. So I'd like to
12 understand your procedure.

13 So the point at which --

14 MR. KAPLIN: Objection. This is
15 not a time to get educated on the procedure. This
16 is the time for --

17 MR. SCHEER: Okay. You know what,
18 it's going to be faster for me to say the procedure.

19 The procedure is that -- and I've
20 gone through this at the beginning of the last
21 meeting. I'll do it again. The procedure is the
22 applicant was given permission to make a rebuttal,
23 which we now know is a little broader maybe than a
24 rebuttal only because we can't really define what
25 happened in May for all those hours when we didn't

1 have a record -- I mean when we didn't have a
2 transcribed record.

3 So that the -- and this is true
4 by the way that the opposition just sort of dumped
5 and never formally produced -- so that the applicant
6 is going through their entire presentation.

7 They've presented these books to
8 go through steps A, B and C, whatever the dates were
9 that they checked off all the boxes, they have to do
10 for an application.

11 They have witnesses, were given the
12 opportunity for cross examination, of course, for
13 the commission members to ask questions. And then
14 when that's done, the people who are opponents,
15 preferably if there's an attorney who could present
16 this case, and you could talk to them and you could
17 give them all the information, we'll do it in a
18 legally relevant fashion for the commission to be
19 educated and to be aware of whether there are
20 deficiencies.

21 And then the commission will
22 deliberate and they will vote on the application.

23 MS. INMAN: I am unaware that a
24 resident needs legal representation, nor an expert
25 by their side to ensure that the planning commission

1 is protecting --

2 MR. SCHEER: Okay. You know
3 what --

4 MS. INMAN: -- the health and the
5 safety.

6 MR. SCHEER: -- everybody had an
7 opportunity to speak in May. We technically closed
8 the hearing at that time.

9 So now that we're back here you
10 have an opportunity to speak and present your case
11 after this case is done within the confines of
12 what's been presented.

13 MS. INMAN: What do you mean, after
14 the case is done? I'm sorry --

15 MR. SCHEER: After the applicant
16 finishes their rebuttal, the opponents will have an
17 opportunity to present evidence within the
18 confines -- We're not starting over again.

19 MS. INMAN: Okay.

20 MR. SCHEER: -- within the confines
21 of what's been introduced since September. It's
22 not -- that's it.

23 This is an evidentiary hearing to
24 get a record here that they're going to vote on.

25 And at this point in time --

1 MS. INMAN: Okay.

2 MR. SCHEER: -- I'm going to
3 ask to -- that your comments are concluded, the
4 questions you have are there.

5 And the gentleman in the white --
6 I can't even tell what color shirt it is, do you
7 want to come up and take the seat and ask your
8 questions?

9 MS. INMAN: I'd like to summarize
10 my conclusions.

11 MR. SCHEER: You cannot summarize.
12 This is not the opportunity to do that. I'm sorry.

13 I'm sorry, because you know what,
14 you'd summarize your conclusions, everybody else
15 here come up, and that's not fair to the applicant.
16 It's not fair to the commission members.

17 MS. INMAN: So why can't we do
18 that? I'm just asking you.

19 MR. SCHEER: You have a right to
20 do that at a later time when the applicants are
21 finished, but that should be in the form of comments
22 dealing directly and limited to what has been
23 presented by the members. Nothing new. Just things
24 that are within the confines of --

25 MS. INMAN: I thought that's what I

1 was doing.

2 MR. SCHEER: Well, not tonight
3 then. No, it's not tonight.

4 MS. INMAN: After 11 or --

5 MR. SCHEER: They have other
6 witnesses here that we'd like to get in on the
7 record so we can keep moving on.

8 MS. INMAN: Okay. I'm disappointed
9 in your response.

10 MR. SCHEER: Well --

11 MS. INMAN: Which is fine, Joel. I
12 still like you. Okay. You know.

13 MR. KAPLIN: Can we have her
14 removed, please?

15 MR. SCHEER: You can't say removed.
16 I asked her to be over. And I'm just asking her to
17 be over.

18 Don't be disappointed. I'm sorry
19 if you're disappointed.

20 MS. INMAN: Is it okay if I call
21 you and ask --

22 MR. SCHEER: No.

23 MS. INMAN: No?

24 MR. SCHEER: No. I want you to
25 understand I advise the commission members.

1 MS. INMAN: Okay.

2 MR. SCHEER: That's my role.

3 Commission members sit here as an independent
4 unbiased members of our community who listens to
5 this evidence and listens to what everybody has to
6 say in the process.

7 And that's all I'm trying to do
8 here. I'm not trying to be difficult with you. I'm
9 trying to keep us on track.

10 MS. INMAN: I understand, but what
11 I'm saying is that, you know, the process is the
12 applicant comes forward and we have a session. And
13 then the residents get to come forward and say
14 things.

15 MR. SCHEER: That's right. And you
16 did that in May. And then --

17 MS. INMAN: I did not do that.

18 MR. SCHEER: Well, if you didn't do
19 that, it's not anyone's fault. That's when it was
20 on the agenda and the applicant, because there was
21 postponements because there was time when things
22 needed to get resolved, but the applicant asked
23 for an opportunity to rebut the many hours of
24 information.

25 And by due process they had every

1 right to do so. And that's why we're here tonight.

2 And with that, with all due
3 respect, I had asked you to return to the peanut
4 gallery and let the other individual have an
5 opportunity to --

6 MS. INMAN: You know, I don't feel
7 respected.

8 MR. SCHEER: I respect you
9 tremendously, but I respect the process and this is
10 the process.

11 MS. INMAN: Well, I'm trying to
12 understand when is --

13 MR. KAPLIN: This is such a game.
14 This is such a game.

15 FEMALE AUDIENCE MEMBER: Let the
16 solicitor take care of it. Come on.

17 MR. KAPLIN: What?

18 FEMALE AUDIENCE MEMBER: Let the
19 solicitor take care of it. He's --

20 MR. KAPLIN: Well, she won't get up
21 after he tells her ten times.

22 MR. SCHEER: Please --

23 MS. INMAN: -- what do you want?

24 MR. SCHEER: Please stop this cross
25 conversation. The poor chief had to get out of his

1 chair, and that's not right.

2 MS. INMAN: Okay. In deference to
3 you --

4 MR. SCHEER: Thank you.

5 MS. INMAN: -- the chief --

6 MR. SCHEER: I really think the
7 commission members want to hear the other witnesses
8 that are here tonight.

9 MS. INMAN: Okay. All right. Got
10 you.

11 MR. SCHEER: Did you have something
12 specific?

13 MR. PAX: Yes, very specific.

14 MR. SCHEER: Thank you.

15 And I just ask you to please
16 identify your name and address.

17 MR. PAX: My name is Charles Pax,
18 P-A-X. I live at 672 Wolf Avenue.

19 MR. SCHEER: I'm glad you didn't
20 say Paxinosa Avenue, but --

21 MR. PAX: No, no, no, no, but I --
22 yes, that's the next step.

23 So could you go to where you have
24 the colored cut/fill diagram, please.

25 Yes, any of them I think would be

1 fine.

2 So anywhere that it's like a red,
3 orange, yellow color, that's where material is being
4 cut from?

5 A. Correct.

6 MR. PAX: Okay. So within that
7 area, has there been any evidence of any
8 contamination?

9 A. Potentially up in the upper right
10 northeastern corner, I think there was a sample
11 there that had an exceedance that is probably just
12 going to be a couple excavation digs, cut and remove
13 it and dispose of it, but otherwise, no.

14 MR. PAX: Okay. So other than
15 that, there's no indication of --

16 A. Yes.

17 MR. PAX: -- contamination?

18 And how many sample sites are in
19 that overall area, ballpark?

20 A. The entire map?

21 MR. PAX: Oh, no. In the material
22 that would be cut.

23 A. In the cut areas, a handful. I mean
24 there wasn't --

25 MR. PAX: Okay.

1 A. Again, telling the story of how we got
2 here, we looked at historical record for a lot of
3 the information.

4 That is the basis for where we did
5 look and where we didn't look.

6 MR. PAX: Great. Okay.

7 And I think was it the only area
8 of concern in that area was the -- where you're
9 calling the bone yard?

10 A. No. There was some historical storage
11 tanks in some of those areas that were previously
12 investigated and closed by others. There were other
13 features.

14 MR. PAX: Okay.

15 A. Not just bone yard.

16 MR. PAX: And those are areas that
17 you tested for contamination?

18 A. We or others before us.

19 MR. PAX: Okay. All right. That's
20 it. That's all my questions.

21 Thank you.

22 MR. SCHEER: Thank you.

23 I'd asked before, I took two
24 people, and we're going to move on with all due
25 respect.

1 There is time to -- the most
2 effective way is when you have an opportunity to
3 present the case with actual evidence.

4 And I would note, Carol, that even
5 at the next session when it is the opportunity for
6 the opponents, it's not going to be for conclusions.
7 It's going to be for introduction of evidence that
8 would be material where the commission would
9 consider, A, was there something in the SALDO that
10 wasn't checked off properly.

11 And that's what the commission
12 members are going to be most interested in hearing
13 from or any inconsistencies in the evidence that
14 was presented to us that we should be -- that the
15 commission should be giving consideration to. So
16 that's where we're going to go from there.

17 Mr. Kaplin, I know you were going
18 to have your sound emissions expert.

19 Is he here tonight?

20 MR. KAPLIN: He is here.

21 MR. SCHEER: And did you have any
22 other experts?

23 MR. ETCHISON: I have a follow-up
24 question I wanted to ask Mr. Smith.

25 MR. SCHEER: Okay. Well, anything

1 you want.

2 MR. KAPLIN: I'd like to put my
3 witness on.

4 MR. SCHEER: Yes. Just one
5 follow-up question. I think we can give the
6 commission member that courtesy.

7 MR. ETCHISON: I forget who asked
8 it, there was a question about asbestos or uranium
9 contaminants in the bedrock. And you said that if
10 there were, it would not be an issue.

11 A. They're not contaminants. If they are
12 there, they're naturally occurring deposits,
13 minerals.

14 MR. ETCHISON: I guess where I'm
15 trying to understand is if there are naturally
16 occurring elements in the bedrock that are
17 hazardous, would that preclude us calling that fill
18 clean?

19 A. First of all, we're speculating about
20 them even being present, which is total speculation.

21 But if you want to speculate about
22 them being present and they were found and they
23 would be --

24 MR. ETCHISON: I'm asking on an
25 informational basis. I'm not speculating there's

1 any --

2 (Whereupon there is cross-talking.)

3 A. -- they would be exposed to create a
4 risk to the environment because we exposed them and
5 have to be dealt with, but --

6 MR. ETCHISON: And that's one of
7 the things you talked about as a -- I forget the
8 term you used.

9 A. I never contemplated the speculation of
10 uranium and asbestos being part of that because, as
11 I said, if they are, they're natural conditions.
12 They're not environmental cleanup issues, which is
13 what I'm here testifying on.

14 MR. ETCHISON: And I appreciate
15 that, but I was just trying to get my head around --
16 and this -- actually, I think you mentioned this
17 when you talked about there could be some elements
18 during construction that would need to have
19 attention paid to them, at which point then you
20 would be called in to help figure that out.

21 Am I correct on that?

22 A. Yes. But I would say natural
23 mineralogical deposits of uranium and/or
24 asbestos-containing materials is a different animal
25 because it's natural. It's not an environmental

1 contaminant condition that was the result of a
2 release or things that went on at a property.

3 So I'm not saying that they
4 wouldn't necessarily have to be dealt with. They
5 wouldn't be dealt with necessarily in the context of
6 an environmental cleanup.

7 MR. ETCHISON: How would they be
8 dealt with then?

9 A. Because there's laws and regulations
10 related to asbestos and uranium, it's a different
11 agency, different forum, different regulations.

12 MR. ETCHISON: Thank you.

13 MR. SCHEER: I thank you.

14 You can be dismissed or you'll hang
15 around anyway, I'm sure.

16 But your next witness.

17 MR. KAPLIN: Yes, Ben Muller.

18 BENJAMIN MULLER, having been duly
19 sworn, was examined and testified as follows:

20 * * *

21 EXAMINATION

22 BY MR. KAPLIN:

23 Q. Tell us your business address.

24 A. Sure. I'm principal at Ostergaard
25 Acoustical Associates. And our business address

1 is 1460 Route 9 North, Woodbridge, New Jersey.

2 MR. SCHEER: Excuse me, do you
3 have one extra copy of this that we can give
4 Mr. Harding?

5 MR. KAPLIN: One extra copy?

6 MR. SCHEER: Of Mr. Muller's
7 report.

8 A. I do.

9 MR. KAPLIN: You guys may have one.

10 MR. SCHEER: Okay. Because in
11 recognition of a fair comment, if we have a copy,
12 you could at least follow along in addition to what
13 I'm sure will be up on the screen for everybody
14 else.

15 And eventually this will all go on
16 that warehouse reading list.

17 MR. KAPLIN: I believe it's already
18 there, but --

19 MR. SCHEER: You think so?

20 Oh, it could be because it's
21 a submission to the staff or would have been the
22 submission.

23 MR. KAPLIN: It was submitted.
24 We'll get into -- there's a little bit adjusted
25 addition that's submitted tonight.

1 MR. SCHEER: Okay, Mr. Muller.

2 I'm sorry, Mr. Kaplin.

3 MR. KAPLIN: Yes, give us Exhibit

4 A-23, will you, Jess.

5 BY MR. KAPLIN:

6 Q. Mr. Muller, is Exhibit A-23 a copy of
7 your CV?

8 A. Yes, it is.

9 Q. And is your CV an accurate
10 representation of your educational and professional
11 background?

12 A. It is.

13 Q. Please describe your educational --
14 let's start with your educational background.

15 A. Sure. I have a bachelors in mechanical
16 engineering from Villanova University. Then I went
17 to proceed to a masters in mechanical engineering
18 with a concentration in noise and vibration control
19 from the Stevens Institute of Technology in Hoboken,
20 New Jersey.

21 Q. And tell us about your professional
22 background, your licensing.

23 A. Sure. Well, I'm a member of several
24 professional societies, but I guess of most interest
25 is I'm a licensed professional engineer in the state

1 of Oregon and New Jersey.

2 Q. Well, that's unusual.

3 Tell us about why Oregon.

4 A. Sure. The bicoastal is deliberate.

5 Oregon is the only state in the country that offered
6 a specific discipline path for acoustical
7 engineering.

8 That has since been paused due to
9 funding, but that is how I went about getting my
10 professional licensure.

11 Q. So your professional licensure in Oregon
12 is as an acoustical engineer?

13 A. Correct.

14 Q. That's the only state in the country
15 where you could do that?

16 A. Well, it was, yes.

17 Q. Okay. Tell us a little more about
18 Ostergaard Acoustical Associates and the business
19 in which you are engaged.

20 A. Sure. So we're a noise control
21 consultant. What we do is work in the field of
22 applied acoustics. And we help a number of parties
23 from residences to developers to other agencies
24 evaluate environmental noise, which is primarily
25 what we're here to talk about tonight.

1 And the other element would be to
2 do interior acoustics, sound isolation, a conference
3 room such as this we would heavily be involved in
4 designing the performance to make sure sound doesn't
5 come in or out and that it is pleasant room
6 acoustics.

7 Q. So as part of your employment, do you
8 regularly verify the noise compliance of warehouses
9 and distribution facilities, et cetera with local or
10 state regulations?

11 A. Absolutely, yes.

12 Q. How often have you done that for a
13 warehouse?

14 A. So I've been working in this field for
15 26 years. I've been with Ostergaard for 23, but it
16 should be of no surprise to anyone in this room
17 that warehouses have become a big hot point for
18 environmental noise.

19 So that's been the majority of a
20 lot of our environmental efforts for the past decade
21 at least.

22 Q. Have you ever testified before a
23 municipal body or a court such as this?

24 A. Yes, I've been accepted as an expert
25 in acoustics and noise control in Pennsylvania, in

1 New Jersey, New York, Massachusetts, Connecticut.

2 Basically tri-state area.

3 MR. KAPLIN: I'd offer Mr. --

4 MR. SCHEER: He's fine.

5 MR. KAPLIN: Pardon me?

6 MR. SCHEER: He's fine as the
7 person he represents himself to be.

8 MR. KAPLIN: Okay. So you're going
9 to take him as an expert?

10 MR. SCHEER: I take -- you know
11 what, every time somebody qualifies as an expert to
12 me, it's all a matter of, yes, we'll take him, but
13 it's all a matter of weight, you know, if he sounds
14 smart. He'll have to earn this, you know.

15 A. So far so good?

16 MR. SCHEER: Yes.

17 MR. KAPLIN: Okay.

18 MR. SCHEER: Okay.

19 BY MR. KAPLIN:

20 Q. Are you generally familiar with the
21 property that is the subject matter of this
22 evening's hearing?

23 A. I am, yes.

24 Q. And are you familiar with the
25 surrounding properties as well?

1 A. Yes.

2 Q. And are you also familiar with the
3 provisions of city of Easton noise ordinance?

4 I believe it's Chapter 376 of
5 Easton's code of ordinances.

6 A. Yes. And as we are before the city
7 tonight, that's primarily the focus of our
8 discussion, but I am familiar with it. We reviewed
9 it as part of our scope.

10 Q. But there are other municipalities close
11 by and part of our property.

12 Tell us what --

13 A. Sure.

14 Q. -- it has to do with regard to that.

15 A. This is a very interesting project.
16 We're almost at the crossroads, so receptors to the
17 north are in Forks. Receptors that are actually
18 just north of the apartment complex, as well as to
19 the south are within Wilson. To the east we have
20 Easton. And we have to the west is residences in
21 the township of Palmer. And each of those have
22 their respective noise ordinance.

23 Now, there's a varying degree of
24 detail there. And I don't want to go too far into
25 the weeds, but the city of Easton did have the most

1 robust and most stringent of limits. And so we've
2 applied them to all surrounding residential
3 receptors.

4 As far as the legal aspect of
5 those, once you cross over municipal boundaries,
6 usually that's when your county or state regulations
7 would come into play.

8 But Pennsylvania and the county
9 don't have any ordinances that are regulating of
10 sight/sound emissions.

11 So just as the conservative
12 approach here, we've applied the city of Easton's
13 nighttime code limits for residential receptors for
14 all parties in any direction.

15 Q. What were you asked to do in connection
16 with the development of the property that we're here
17 about tonight?

18 A. Sure. So to start off, we just start
19 touching upon the noise regulation so we find out
20 what our actual legal requirements are. But we have
21 to balance those in with what we feel is prudent for
22 protection of the health, safety and welfare of the
23 public.

24 And then what we go about is
25 carrying out an acoustical analysis, which involves

1 modeling and projection of sight/sound emissions to
2 the area.

3 So we do an evaluation to estimate
4 what the future sound emissions will be upon
5 approval of a project like this.

6 Q. So you're basically analyzing the onsite
7 noise that is radiated or generated from the project
8 to offsite property?

9 A. Correct.

10 Q. And in this case what two types of
11 sounds will be generated here?

12 A. Sure. So we kind of categorized it in
13 to two different compartments. One is going to be
14 the steady noise that a site like this contributes.
15 And that's primarily going to be generated by your
16 HVAC, you have rooftop equipment.

17 (Reporter clarification.)

18 A. Rooftop equipment, HVAC. So that's
19 your mechanical equipment, your rooftop units, your
20 exhaust fans.

21 Those are the noise sources that
22 will operate around the clock and are going to be
23 most present to establish the baseline for a
24 facility like this.

25 The other element, which is going

1 to be more of what everyone is interested in
2 discussing, which are the truck activity.

3 But those are intermittent. Trucks
4 come and go. They're mobile noise sources. And
5 they're also streamed with dynamics.

6 So we see as they traverse a site
7 there's highs and lows and in between. So they are
8 not a steady noise source. And so we have to look
9 at them in a different manner. But we basically
10 look at those two elements.

11 And then there is a collection of
12 those because noise is cumulative and so we look at
13 what the HVAC contributions are, as well as what
14 truck emissions will be.

15 MR. KAPLIN: So, Jess, would you
16 put up A-24A.

17 Q. Now, I want to make sure.

18 So this is the document entitled
19 Evaluation of Site Sound Emissions for Proposed
20 Distribution Facilities, Easton Commerce Park, the
21 address, prepared by your organization.

22 And this one is dated September 10,
23 2025?

24 A. Correct.

25 Q. I think you had a prior version of this

1 and that we submitted it.

2 I believe it was December 3rd that
3 we submitted.

4 A. It was September, not --

5 Q. Yes. I apologize.

6 So what's the difference between
7 the two?

8 A. Sure. So we were preparing to
9 potentially discuss my topic at the last hearing.
10 It didn't happen. I had misadjusted some traffic
11 counts.

12 So I was actually lower than what
13 it was actually. So this gave us the opportunity to
14 amend those. So this is even a more conservative
15 analysis because I've used higher traffic volume.

16 Other than that, the entirety is
17 the same as the conclusions.

18 Q. Can you confirm that you prepared this
19 study or oversaw it?

20 A. Yes, directly involved.

21 Q. And does this study summarize your
22 findings regarding the future ability of the
23 proposed development to comply with the requirements
24 of the city's noise ordinance?

25 A. Yes.

1 Q. Okay. So before we get into the details
2 of your study, can you take us through the
3 requirements of the noise ordinance as applied to
4 the proposed development pending.

5 A. Sure. So we're focusing on the city's
6 ordinance as I discussed before. Details are found
7 under Chapter 376 noise.

8 And the ordinance is written very
9 similar to a lot of ordinances that I'm familiar
10 with. There's a focus on preventing and
11 minimization of noise disturbance to protect health,
12 safety and wellbeing of the public.

13 In order to do so, they define
14 certain noises that are disruptive. They discuss
15 definitions, but of most interest from me coming
16 from the engineering side of things is there's a
17 section that defines applicable limits. And those
18 limits are based on hours of the day, as well as
19 types of receptors.

20 So specifically the daytime code
21 applies from 7 a.m. to 10 p.m. And then the
22 nighttime is the corresponding hours. But during
23 the daytime residential uses are -- have a limit of
24 57 dBA. DB being the abbreviation for decibels, and
25 A being a reference to that they're A weighted. The

1 A weighting is the most common metric use in
2 environmental noise analysis.

3 Just to give a side bar, so that
4 if there are questions on that, the sound is
5 measured both with a scientific meter with a sound
6 level meter in a linear fashion and so able to
7 measure sound pressures that we as humans don't
8 respond the same to.

9 And so the A weighted metric
10 provides a correction curve that softens the low
11 frequency amount and some of the high frequency to
12 more align with the human response.

13 So when we see the A weighted
14 level, we all know that that's just geared around
15 protecting the public safety.

16 So we have a daytime limit
17 residences of 57. During the nighttime hours that
18 drops to 52.

19 For commercial uses, as well as
20 parks and government uses the daytime limit is
21 67 and nighttime is 62. So it's a little more
22 permissive to adjust for the difference in
23 sensitivity. And then for industrial uses it's
24 even more permissive at 77 at all hours of the day.

25 Q. Just let me -- so those requirements

1 from 52 to 77 --

2 A. Uh-huh.

3 Q. -- that's, and I may be wrong, sound is
4 generated by this development and it's measured
5 over here where there's an industrial use and it
6 can be 77 and over here it's measured where it's
7 residential and at night it can only be 52?

8 A. Correct.

9 Q. That's the way that works?

10 A. Correct. And the numbers that we're
11 providing and discussing throughout our report and
12 tonight are just our responsibility, right.

13 So it doesn't -- the numbers are
14 assumed to have already been based on that there's
15 existing noise in the area, but these levels are
16 submitted to be protective of their respective
17 parties.

18 So the levels of 52 at night are
19 designed to minimize sleep disruptions to protect
20 a residential community, whereas when we look at
21 levels of 77 for industrial use, it's more
22 permissive.

23 Likely the industrial uses are
24 reciprocating that noise upon each other. And
25 you're not looking at protecting sleeping. You're

1 looking at OSHA compliance, for example.

2 Q. Now, loading and unloading operations
3 are -- have another limitation in this ordinance,
4 do they not?

5 A. Yes, so under the prohibited uses, it
6 does list that loading and unloading during the
7 nighttime hours is prohibited provided it resulted
8 in a noise disturbance.

9 Now, because the subsection of the
10 noise code provides these limits, it's logical and
11 we assumed in our report then that those limits were
12 compliant with those limits and would then also
13 result in not a noise disturbance.

14 And I find that to be a -- not only
15 is it logical, but that's where the basis of the
16 noise code is. It's producing levels under those
17 limits conclude -- allows us to conclude there
18 wouldn't be a disturbance as a result of that
19 operation.

20 Q. Okay. Thank you.

21 Now, how -- tell us how did you
22 go about predicting the noise levels that will be
23 generated by the proposed warehouse.

24 A. Sure. So we had some discussion tonight
25 with previous expert about the modeling. So we use

1 our own version of modeling.

2 It is a three-dimensional
3 representation of all the geometries between the
4 noise source and the receptors, and it allows us to
5 not only accurately look at how sound falls over
6 distance, but also look at ground absorption, look
7 at screening and shielding provided by either the
8 land -- the soil cut that we've been talking about
9 tonight, as well as if there's any intervening
10 building or structures that are in the way.

11 Q. Now, model, when you say model, you mean
12 in our vernacular a computer program that creates a
13 model of what we expect actually to have?

14 A. Correct. I do find that many times, and
15 we're all familiar with computers, but for whatever
16 reason, there's always a lot less support behind
17 models in the -- on professional side of things.

18 We do know that the same goes,
19 garbage in is garbage out. So your model is only
20 going to be as reliable as your input. But when we
21 develop the model, we're using that in the same
22 avenue as the civil engineers use to design the
23 layout with CAD or using it in the same vein as the
24 transportation -- the traffic engineers who use it
25 to project the increases in traffic.

1 So there are a lot of models around
2 all the elements of a development. And the idea
3 is or the goal is to have us -- have that be as
4 credible as possible in order to ensure that the
5 results are as projected.

6 Q. So can you tell us the acoustical
7 modeling software used in this analysis?

8 A. I'm familiar with two big entities.
9 There's the one that we use, which is CADNA,
10 C-A-D-N-A. And that's arguable software out of
11 Germany.

12 And then the other competitor is
13 SoundPlan, one word, but both of those are like
14 the two major providers of acoustical modeling
15 software.

16 Q. And you call them are 3-D modeling, as
17 you've described?

18 A. Yes, yes, we're looking at it not only
19 in a plan view, but also from a height deviation.
20 We know again from previous experts, but we're doing
21 a significant cut fill here. And the site itself is
22 substantially higher in elevation than a lot of the
23 surrounding receptors.

24 So that plays a big part in how
25 sound projects offsite, how it receives different

1 receptors. And so all of those are critical
2 components to an accurate sound model.

3 Q. And you've taken this cut and fill --

4 A. Yes.

5 Q. -- in consideration?

6 Okay. Going one step further on
7 the software, are there organizations that set the
8 protocols or the methodologies for how sound is
9 measured and how acoustical analysis are conducted?

10 A. Yes, absolutely. So we have not only
11 national societies, but also international
12 societies. And these entities were in place long
13 before we got very computer intense here.

14 So when you have two scientists
15 that are carrying out the same experiment, it's
16 prudent to have standards to follow so that in
17 different parts of the world we can come up with
18 the same results.

19 So we're following -- primarily
20 what we're talking about tonight is standards and
21 regulations for how outdoor sound promulgates and
22 how you look at attenuation over distance, screening
23 reflection, et cetera.

24 And the big standard organizations
25 could be ANSI, ANSI, which is the American National

1 Standards Institute, and then their counterpart
2 would be ISO, which is the International
3 Organization Standard. And there's an overlap.
4 So for an ANSI standard you would have a
5 corresponding ISO standard.

6 Just for the record then the
7 environmental noise propagation methodology is ANSI
8 S-12.62. And the equivalent for ISO would be 9613.

9 Q. Does the software that you used in your
10 acoustical analysis conform with the standards of
11 those two organizations?

12 A. Absolutely. And that's the critical
13 part of it's not just somebody's version of how
14 analyses are carried out.

15 It's following the same standards
16 that I would be doing if I was doing it with pen and
17 paper, how we used to do things.

18 Q. Okay. So turning back to the sound
19 site, please describe the information about the
20 sound generating characteristics of the building,
21 the proposed building that you had inputted into
22 your model.

23 A. Sure. So we talked about the steady
24 noise sources. That's the rooftop equipment. The
25 building is speculative.

1 And at this point in the process
2 there's no HVAC design that's established yet. We
3 want to flush that out more upon approval. So what
4 I do is I take a conservative approach, and I almost
5 blanket the entirety of it.

6 So for our analysis we look at the
7 rooftop equipment. And I distributed units across
8 the rooftop. We ended up with 50 -- let's see, I
9 don't want to misspeak here.

10 MR. KAPLIN: Jess, maybe it would
11 be good to put A-25 up.

12 I think that's what --

13 A. No, we used 55 25-ton rooftop units and
14 we distributed that evenly across the rooftop.

15 Q. So, Ben, identify the drawing that
16 Jessica has put up on the screen behind you.

17 A. Sure. So the -- we have to be careful
18 with horse and cart here, because I don't want you
19 to get wowed by my pretty color pictures, but I
20 want to talk first about what the individual inputs
21 were.

22 So across -- you see the white
23 building with the white rectangle in the middle of
24 the model here, that is the proposed building. And
25 the blue pluses that are sprinkled across the top

1 are the 55 25-ton rooftop units that we have put in
2 as an approximation, an over-approximation, mind
3 you, for what an HVAC arrangement would be for a
4 warehouse.

5 And the reasons why it is
6 conservative is because majority of warehouses are
7 not conditioned. It's mainly heat to make sure
8 things don't freeze. And then they leave it to
9 their own in the other seasons.

10 So what we've assumed here is that
11 the entirety of the building is conditioned. So
12 it's an over-estimation.

13 Talking about the other sources
14 that we've looked at, we have white pluses around
15 the building and pink pluses. All are various noise
16 sources.

17 The pink pluses, you'll see there's
18 four of them around the perimeter of the site.
19 Those are representative of driving truck
20 operations.

21 The white pluses is the third
22 component here. And those are going to be
23 representative of what we'll call dock events.
24 Dock event might be a backup alarm, might be a
25 coupling to coupling when trailers are connecting

1 or disconnecting. It also is representative of an
2 air brake release.

3 So what we do to put together in
4 the model is we try to put together a configuration
5 that's going to represent a busy period, a worst
6 case collection of activities.

7 The noise sources are specifically
8 placed in areas where they would be closest to
9 offsite receptors. So particularly placing them in
10 the north parts of the site, the west, south and
11 east so they would be closest to our offsite
12 receptors.

13 The last thing I want to talk about
14 before we get into model results then would be the
15 basis of that data.

16 So for rooftop equipment that
17 industry has been very forthcoming or more
18 forthcoming. There's a lot of industries where it's
19 hard to find sound data for specifics. But major
20 carriers like Trane and Carrier provide reliable
21 sound data for them that we've also been able to
22 verify in the field. So that's what I've used for
23 our input for the rooftop equipment.

24 And for the trucks, that's an
25 industry that isn't as forthcoming, especially given

1 how dynamic it is. So you can't just call Peterbilt
2 and ask for how loud their truck is because we've
3 already just discussed the dozens of things that
4 the truck might do, and some of which are maybe
5 not even responsible -- or as a result are
6 responsibility of Peterbilt, right, such as a
7 coupling to coupling. They would kind of throw
8 their hands up to that.

9 So over the course of our career
10 we have visited countless warehouses. I've
11 collected a pool of data. And what we've done is
12 distilled those entities down to be representative
13 of the maximum events.

14 We talked about how truck
15 operations are intermittent, are dynamic, they are
16 mobile.

17 Well, in order for me to kind
18 of cut to the chase in terms of compliance or
19 noncompliance, it is best for us to look at that
20 worst case.

21 And if that meets, then anything
22 else that these vehicles will do, such as idling,
23 for example, which we'll probably have questions on,
24 but that's not the focus of my analysis because an
25 idling truck is the quietest source onsite compared

1 to those other entities that we're talking about.

2 I guess since I just referenced
3 that, there are rules that regulate the duration of
4 idling that they have to follow.

5 Q. And Pennsylvania has an anti-idling
6 statute, doesn't it?

7 A. Yes, correct. So I -- I mean, sorry,
8 we're bouncing around a bit, but that's kind of how
9 my brain works.

10 Q. Sure.

11 A. Okay. So there's a combination in the
12 model of real work data, as well as manufacturer's
13 data, but we know that that's from trustworthy
14 sources, and it's been repeated in the field.

15 So that's our input data and we
16 find credible. So provided the geometry and all
17 the other elements of the model are done to the
18 same level of care, that's how we can confidently
19 look at what our future site sound emissions would
20 be.

21 All right. That was a bit
22 narrative. I --

23 Q. No, you got it all in.

24 A. Okay.

25 Q. But I think, Ben, we need the right

1 drawing from A-25.

2 MR. KAPLIN: Jess, get the right
3 one, please, the one that I believe shows the
4 results of the study.

5 A. Oh, zoom out a little bit. We're too
6 zoomed in here.

7 Yes, okay. So what -- I realize
8 that all these figures aren't as everyone wants to
9 look at with a magnifying glass, so we'll zoom
10 around as possible.

11 But let's talk about the big
12 picture here. So what we're seeing as a result of
13 our modeling effort there's a lot colors here. We
14 use the colors to represent different sound levels.

15 And so there are corresponding
16 colors in the bottom right corner legend. So you
17 see, for example, the gray contour is 50 DB. And
18 that's right around 52 Easton nighttime code limits.
19 So let's just focus on that for a second.

20 What we see then is that the sound
21 emissions are provided for an elevation receptor
22 five feet above grade. And so we can -- this is a
23 three-dimensional model, I can slice this any way I
24 want to, but a five foot elevation makes most sense
25 because in the future, I can go to any portion of

1 the site and stand there.

2 And this model is a representation
3 of what I would receive from that. So that brings
4 up some interesting highlights here. So we know
5 that the cut fill is occurring in like the
6 northwestern portion of the site. And so if you
7 look at how our sources are presenting or radiating
8 offsite for those two western trucks, we see that
9 the red contours, which is looking at levels in the
10 60s, approaching 70 is directly around the source.
11 But then as soon as you go across that cut, which
12 is going to end up being like a -- what's the right
13 word. It's essentially going to be a wall there
14 blocking that sound. So that is why that doesn't
15 project and continue on to the northwest.

16 Now, as much as that blocks that
17 sound, it also can reflect it back. So the model
18 also takes into account what might be reflected back
19 and forth.

20 So there's some reflection of that
21 nature occurring on the west side of the truck court
22 because it's bouncing between this cut rock wall and
23 the building. But the building acts as a noise
24 shield and screen for that projection to the other
25 side.

1 So when we look at truck sources
2 on the eastern side of the truck court, let's look
3 at the northeastern side across Bushkill Creek.

4 So you see the sound is red around
5 the truck court. And as we continue to the
6 northeast, there's a big patch of green there.

7 Well, the reason why it's green,
8 which means that the noise reduced down to 40 --
9 35, 40 is because that elevation drops down
10 significantly.

11 And so somebody who is standing
12 20 feet below a truck up in a truck court is going
13 to receive that screening, that attenuation that
14 we're providing in the model.

15 Now, as you go across Bushkill,
16 that topography starts to go up a little bit. And
17 so that's why we see then a representation of a 50,
18 51 DB contour over on the far side of the creek.

19 Q. That's the gray?

20 A. Correct. And as you continue northeast
21 in the diagram.

22 And so that's kind of what's
23 happening, right. The low lands that surround the
24 creek are just that, they're at a lower elevation
25 than where our supporting elevations are.

1 So the model takes all that into
2 consideration. And we see that by the time we get
3 to over there, that sound falls off with distance,
4 as well as with interacting with the other
5 geometries to be substantially low enough to
6 comply. There's also only industrial uses over to
7 that east side.

8 But continuing around, let's look
9 to the north, for example.

10 So location B is at an apartment
11 complex within Wilson. Again, that's right along
12 the creek, so that's at a lower elevation.

13 So what we see then is that sound
14 emissions from the site for this configuration
15 that's shown here result in maximum levels of 50.
16 And that's driven by that truck that's riding around
17 the Ring Road.

18 There are contributions from
19 rooftop equipment, as well as the other truck
20 activities that are shown there because it is
21 cumulative, but what drives it, the results in
22 offsite, are typically going to be due to one
23 source, whatever is dominating it.

24 Looking to the west here, location
25 G over in Palmer, essentially far away, also

1 receives the majority of the benefit of our cut
2 screen that occurs. So levels there are as low as
3 48.

4 And then to the south, which is the
5 city of Easton receptors some of them, right, we
6 have D, E, F, levels of 52 our approach there. And
7 that's primarily driven by that truck that's exiting
8 or entering the site there.

9 So the configuration that's placed
10 here, which I think is highly representative of the
11 busiest period of operation, and I can clarify that
12 in a second here, shows that we have all emissions
13 that are at or below the city of Easton's nighttime
14 code limit.

15 All of our receptors are at upper
16 story, which is where I'm most interested. The city
17 noise code states that these limits are to be met at
18 or within the property boundary of the receptor.

19 And that's legal language, but it's
20 appropriate, because what it's saying is that we're
21 going to look at the sound as it crosses the
22 property line of a receptor of interest, but that
23 we're going to also look at it at vantage points
24 within the property.

25 And we always find that the upper

1 story of a receptor is going to be that most
2 conservative approach. And it's usually looking
3 up at increased elevation, puts them at a vantage
4 point where they see things that a property line
5 might not. And so that's why we've looked at those.

6 I'm not concerned about us
7 approaching 52. Sometimes that question is we're
8 just at the limit, why are you doing that.

9 What we don't have included in the
10 model here is the contribution of Route 22. We know
11 that that's the major thoroughway in the area.

12 So what will happen is that our
13 vehicles as they leave site or as they approach from
14 elsewhere to come onto the site are going to be
15 blending in with that Route 22 existing traffic.

16 And then as they turn on our site,
17 my main focus is going to be on what's unique to
18 this site that isn't present elsewhere.

19 And vehicles traveling coming and
20 going are not the case. But a backup alarm, a
21 coupling to coupling, the activities that are going
22 to occur on a site that is currently not developed
23 to be used as such is what we're really here to
24 focus on.

25 I guess just to --

1 Q. I think you've hit it.

2 I just want to wrap it up --

3 A. Okay.

4 Q. -- with one question.

5 I take it from your last
6 explanation that this drawing that's up there
7 demonstrates that this building can meet the
8 requirements of the Easton noise control
9 ordinance --

10 A. Correct.

11 Q. -- whether in the daytime or the
12 nighttime?

13 A. Correct.

14 Q. And that's your opinion, is it not?

15 A. Yes.

16 Q. And that opinion is the best of -- to
17 the best of your scientific knowledge; is that
18 correct?

19 A. Correct, yes.

20 MR. KAPLIN: I have no further
21 questions.

22 MR. SCHEER: Commission members?

23 MR. SHIPMAN: I have none.

24 MR. HEILMAN: I don't have any.

25 MR. GRAZIANO: Yes, I have a

1 couple.

2 So on the map behind you right now,
3 the noise sources are coming from the four trucks
4 parked at the four opposite sides, correct?

5 A. As well as rooftop equipment, as well as
6 the four driving trucks that are around the outer
7 perimeter.

8 MR. GRAZIANO: So what would it
9 look like if you took those four trucks and put them
10 by each other?

11 A. Sure. So there would be different kinds
12 of collection of sound. That would potentially
13 change things.

14 I particularly choose this type of
15 layout for a few reasons.

16 And I'm glad you got into this line
17 of questioning because I didn't really cover that
18 well in direct.

19 But when we talked about all the
20 different noise sources, let's focus on the white
21 ones, first of all. That's your backup alarm,
22 coupling to coupling, air brake release.

23 Majority of those are categorized
24 as impulsive sounds, which usually they're one
25 second or less in duration.

1 When we have a coupling to
2 coupling, it's a clink and that's it. That's the
3 highest level of noise that occurs on sites like
4 this.

5 So when I'm trying to represent
6 them in a model for presentation to the board or
7 doing this for prospective compliance, all those
8 challenges, the one element that I lose in my
9 presentation is time.

10 And I have a very hard time, unless
11 I were to make a video, to show that those white
12 pluses are all one second in duration. And so if
13 we were to hit play on this, you would then see that
14 those would go away, we would have different things
15 occur elsewhere.

16 So it kind of happens as a
17 collection of activities that are occurring at
18 various times.

19 Now your question about why are --
20 what happens when we put them close together, if
21 that were to happen, they would add up and it would
22 result in some different offsite contribution for
23 that nearby receptor.

24 But what doesn't happen is that
25 when you have one second duration events, to get

1 them to overlap in a way that they would kind of
2 cumulatively change things becomes really hard to
3 do. It's almost an anomaly.

4 The other thing to point out is
5 that one of the reasons why we have the trucks kind
6 of disperse around a site like this, again, the
7 purpose of it was to put them closest to offsite
8 receptors.

9 But another factor, again,
10 with the time sequencing is that trucks have to
11 naturally navigate in a safe manner. And so that
12 means that a driving truck is going to stop, wait
13 for a truck to fully back out and do its truck
14 movement before he can proceed. And so you do see
15 this like stop/start motion of noise sources if,
16 again, we brought the time domain into it.

17 So I'm confident that this a
18 helpful representation of a worst case event. Could
19 you have events occurring back to back, absolutely,
20 but then they wouldn't result at the same time and
21 result in higher levels than what we're focusing
22 on.

23 MR. GRAZIANO: Right. And that's
24 fair enough.

25 But I only ask that because this is

1 a 24/7 operation.

2 A. Sure.

3 MR. GRAZIANO: So at nighttime
4 you're not going to have everything scattered
5 throughout the building. You'll have less
6 employees, so you have people more focusing on
7 one part of the building.

8 A. Sure. Let's dive into that because that
9 is extremely important. And I know that that is the
10 hardest thing for me to present here, right.

11 So we have an active site 24/7,
12 100 percent. That doesn't necessarily mean that we
13 have a truck every minute, right, under the --

14 I've reviewed the traffic study
15 and I use a lot of the same input that the traffic
16 study focuses on. So they look at the International
17 Transportation manual --

18 MR. GRAZIANO: The ITE.

19 A. Yes, ITE, Institute of Transportation
20 Engineer's manual. That provides the volume of
21 trucks. It also provides a distribution which shows
22 me that it's kind of bell curved.

23 The -- most trucks have come during
24 the daytime and less at night just by design, but
25 let's just look at the numbers. Okay.

1 So the traffic study showed that we
2 have 232 truck trips over the course of the day. It
3 sounds like a lot.

4 Truck trips from a traffic
5 standpoint is an in/out. Now, for my purposes
6 that's -- half of those are -- the half is the
7 number of trucks. So you have 116 trucks coming
8 and going.

9 So I'm looking at 116 different
10 positions onsite where we might have a cross of 24
11 hour period. Divide that equally across a 24 hour
12 period, that's only five trucks per hour. I've
13 modeled eight here.

14 So really trying to look at what
15 happens if there was a collection of activity that
16 all occurred at the same time. And even distilling
17 that further, let's say it's five trucks, let's say
18 I'm wrong and it's ten trucks, but ten trucks over
19 an hour period is only one truck every few minutes.
20 So, again, making it realistically challenging to
21 come up with a model or an actual event that's
22 similar to my model here where we have eight trucks
23 all producing their maximum level at exactly the
24 same time, which is what we're trying to highlight
25 here.

1 And it's by design that I'm trying
2 to put the kitchen sink forward here, because that's
3 the hardest thing for everyone to understand is
4 there's so many moving parts.

5 From an engineer's standpoint I
6 concur, it is extremely complicated. It's like
7 modeling an ant colony and how do I do that.

8 So what I do is a heavy dose
9 of conservatism. And I make sure that what we're
10 going to see here covers the boundaries of the
11 co-compliance or minimizing the impact, et cetera.

12 So we really have to put that
13 effort forth to promote a project at the end of
14 the day that's going to be compatible with the
15 surrounding area.

16 MR. GRAZIANO: Okay.

17 And I guess, also, we don't know
18 the end user on this project yet --

19 A. Correct.

20 MR. GRAZIANO: -- or anything other
21 than this is not going to be a truck terminal.

22 How do the different usages, how do
23 they affect your findings here?

24 A. Not too much, because essentially a
25 truck is a truck. And I know just to kind of steer

1 a little bit out of my lane here into the traffic
2 engineer, but you might be familiar and have seen
3 applications that have --

4 There are different kinds of
5 warehouses. There are -- there's land use 150,
6 which is a traditional warehouse, then we could have
7 a high cube warehouse, you could have -- it could be
8 a manufacturing facility.

9 And all those have a different
10 version. Some have more cars, some have less
11 trucks. So some sort of collection of that.

12 By me trying to do, again, an
13 umbrella approach where I throw a lot of activity at
14 it, I can then be more comfortable that I'm not too
15 concerned about exactly what ends up occurring here
16 and be comfortable in that.

17 So we've placed a large degree of
18 truck volume occurring at the same time. I have
19 looked at motor vehicles, passenger vehicles. Those
20 are significantly quieter than trucks and don't
21 contribute to offsite emissions anywhere in the same
22 capacity.

23 But it makes me confident that
24 regardless of what it is that it will meet. And it
25 pulls that same confidence from the traffic study

1 that says we don't know whether it's a plumbing
2 supply or a pet food, but this is what these
3 collection of warehouses have promoted historically
4 as their volume.

5 And if the volume is plus or
6 minus 10, 20 percent, that doesn't change my model
7 because, again, I'm trying to lean toward
8 conservatism and put in a healthy dose.

9 If I added one more truck to this
10 model, it wouldn't change the results at all. And
11 that's just because of the way that the sound
12 sources add.

13 MR. GRAZIANO: And what usage is
14 this for, which warehouse model, 155, 1 --

15 A. I followed the same thing that the
16 traffic study did, which I think is 150, but --

17 MR. GRAZIANO: 155.

18 A. Oh, 155.

19 MR. GRAZIANO: 155.

20 A. Oh, 155.

21 MR. GRAZIANO: All right. That's
22 it.

23 CHAIRMAN DR. GREENE: I'd like to
24 just follow-up where that conversation was leading,
25 because we had this discussion back in May regarding

1 the traffic study that the numbers utilized and
2 generated, which you've used here, are really based
3 around a non-sortable facility.

4 Are you familiar?

5 A. I'm familiar with the term, yes.

6 CHAIRMAN DR. GREENE: Yes, yes. So
7 one which is larger packages, more mechanical
8 effort, fewer employees, fewer -- less activity.

9 A. Yes.

10 CHAIRMAN DR. GREENE: We asked the
11 applicant at the time since that was the basis of
12 the traffic study was that also going to be the
13 basis of the use.

14 And you were getting to the use.
15 And they would not agree to limit the use to that.

16 So that then, to me, calls into
17 question that this is only addressing one possible
18 use. And it's not addressing other possible uses
19 which would be potentially way more than a plus or
20 minus ten percent on this, a sortable facility.

21 Sortable facilities utilize one
22 and a half times the number of employees as
23 non-source and could theoretically have up to one
24 and half times as many trucks, because they could be
25 running, you know, much -- they just are able to be

1 much more active --

2 A. Sure.

3 CHAIRMAN DR. GREENE: -- because of
4 the amount of work that they're doing.

5 So would that change -- my question
6 is is if that were at a level of one and a half
7 times, would that then change your assessment of the
8 noise situation around this facility?

9 A. Sure. The answer is, no, it doesn't.

10 So to take break down a 155 versus
11 a 150, they're all under the 150 series, which are
12 all warehouses.

13 So, yes, you can have different
14 types of warehouses. There can be cross docks,
15 there could be distribution, there could be high
16 cube, there could be the standard, but they ultimate
17 all function about the same. The numbers differ.

18 And for a lot of the cases for
19 the traffic study, the 155 is prioritized for a
20 sortation facility because there are more employees.
21 That's more cars. That's greater traffic volume
22 during those peak hours that they focus on.

23 I'm primarily here to talk about
24 trucks. And the difference between a 150 and 155
25 truck volume are not very different.

1 The ITE manual focuses on the
2 square footage of the building in order to determine
3 the magnitude and volume of the end count. So it's
4 a million square footer, that works out to have
5 specific numbers associated with that count.

6 So I'm very confident that if it
7 was any use among the warehouse types, that will be
8 covered with this here.

9 And just to give you, I guess a
10 variation of things, I've done a million square foot
11 warehouse that ended up being occupied by Home Depot
12 for toilet bowl housing. And there are five people
13 that work there and there are ten trucks a month
14 that come there.

15 So there are extremes to the data.
16 We want to focus on, of course, capturing the
17 biggest picture, what's the busiest case use here.

18 And this by far represents what --
19 and this event could happen at 2 a.m. And we've
20 shown it complies with nighttime noise ordinance.

21 CHAIRMAN DR. GREENE: So I
22 understand what you said.

23 It does -- I just want to clarify
24 it. We were talking about one and half times the
25 truck volume.

1 A. Uh-huh.

2 CHAIRMAN DR. GREENE: That would
3 not materially change the noise performance around
4 this facility.

5 A. It wouldn't change the conclusions that
6 I find. Because, remember, let's back up because
7 I've already been conservative here.

8 So we're ultimately not trying to
9 double what I've modeled here, because I've already
10 goosed up from the presentation of our traffic count
11 we're expecting five trucks per hour. I have eight
12 here. So I've almost doubled it already.

13 I'm almost at that 1.5 times now
14 two that you were referencing. So let's say we
15 added another -- instead of it being 8 trucks, it
16 was 16 trucks. Well, 16 trucks would, again, be
17 distributed across an hour period.

18 And this model, quite frankly,
19 would be representative of a 15-minute period, not
20 cross a 60-minute period. But every 15-minute
21 period we could have another situation where there's
22 another new batch of four or five trucks that have
23 come in.

24 So, again, with time element
25 entered into the equation, I'm more than comfortable

1 that this is representative of the category that you
2 would foresee as being in this building regardless
3 of what the end user specifically was.

4 CHAIRMAN DR. GREENE: All right.
5 Thank you.

6 A. Uh-huh.

7 MR. ETCHISON: All right. You
8 answered the question in terms of your assumptions
9 on the traffic study.

10 So you had mentioned this A
11 weighted, the dBA aspect of this thing. And it
12 sounds as though it's a way of interpreting a
13 decibel level based upon some perception of human
14 hearing.

15 Am I encapsulating that?

16 A. Correct, yes.

17 MR. ETCHISON: Okay. Does the
18 ordinance as written speak to dBA?

19 A. Yes.

20 MR. ETCHISON: Okay. Then let me
21 ask this question.

22 What would the impact be of the
23 addition of a guardhouse causing trucks to have to
24 stop on the entrance?

25 A. Sure, that's definitely a viable

1 question.

2 Based on the layout that we have
3 before us, I would expect a guardhouse would be kind
4 of in the northeast corner right allowing the trucks
5 to queue along the main driveway.

6 So guardhouses will require trucks
7 to stop, check in. So we might get air brake
8 release there and a start and stop motion.

9 MR. ETCHISON: Okay.

10 A. Still driving category. So sometimes
11 then at a guardhouse location you see that stacking.
12 And so we would look at maybe some more of those
13 impulsive sounds occurring there.

14 I'm not too concerned here because
15 the east is all of our industrial receptors, which
16 has a much more permissive limit. So even though
17 we're applying that 52 at receptor C, that's all
18 industrial --

19 MR. ETCHISON: Well, I want us to
20 be careful about that.

21 A. Sure.

22 MR. ETCHISON: I can't see where
23 13th Street is on your model. And there are
24 residences on 13th Street.

25 Now, directly adjacent there is

1 currently an industrial use going on there, but what
2 if they sold, right.

3 Now we're not going to sit here and
4 say, well, they might sell so we need to really
5 think about that now. Okay. So I'm going to put
6 that aside.

7 But directly across the street from
8 13th Street is a silk mill, is a set of -- I'm not
9 sure if they're condominiums or rentals right next
10 to --

11 MR. TILLMAN: Hogtown?

12 MR. ETCHISON: On the southern side
13 of the creek.

14 A. Uh-huh.

15 MR. ETCHISON: Right. I don't know
16 about you, but if I'm asleep at night, an air brake
17 would last for one second isn't a comfort to me,
18 right.

19 So I'm not crazy about the idea of
20 saying, well, it's all industrial so it's not that
21 big a deal. I'd rather sleep.

22 A. Sure. So let's -- there's several
23 questions in there, so let me try to chop them up.

24 MR. ETCHISON: Please do.

25 A. I'm following the master use plan that

1 the town is promoting. So if an area is zoned
2 industrial, that's what I'm anticipating there to
3 be developed.

4 Often as part of my work we might
5 have a vast residential zone that's not developed
6 yet. We have to balance what we think about that.

7 And that makes it definitely more
8 challenging because if there's going to be a
9 three-story apartment building that's built 20 feet
10 from the property line or is it another quarter
11 mile, right.

12 All those things are challenging to
13 deal with, absolutely. I'm able to deal with what
14 we have currently before us. If there was another
15 application that you knew of in the pipeline that
16 we should consider, I've been in that situation as
17 well.

18 MR. ETCHISON: Wait. Let me be
19 clear.

20 A. Yes.

21 MR. ETCHISON: The silk mill used
22 to be an industrial complex, because it's now a
23 residential and retail. It currently exists.

24 A. Okay.

25 MR. ETCHISON: It's one of the

1 jewels of our town, right. It is on the eastern
2 side of this proposed --

3 A. Where is that specifically located?

4 I'm going to see if we have --

5 MR. ETCHISON: As I said before, I
6 can't quite tell based upon your map where --

7 A. Well, where is it for me then to put --

8 MR. ETCHISON: It is in the C area.

9 A. It is in the C, the vicinity of C maybe?

10 MR. ETCHISON: Yes.

11 (Reporter clarification.)

12 A. Receptor C in the model.

13 MR. ETCHISON: Yes. Okay. So --
14 and definitely the -- the lovely renovated -- the
15 four-story.

16 I was just over there this
17 afternoon because I was thinking about the site. I
18 should take a drive over there to say, all right,
19 what are we really looking at here. What is
20 directly adjacent to this.

21 I even went out on the backside of
22 the hill in order to see what that was about and
23 discover the World War II memorial I didn't know was
24 there, right.

25 So area C is not just industrial.

1 A. Okay.

2 MR. ETCHISON: Okay. There is a
3 combination of residential uses going on there right
4 now. And there is an industrial installation on one
5 side of the street.

6 Okay. So --

7 A. Okay.

8 MR. ETCHISON: -- I do get
9 concerned in terms of the gray aspect on this --

10 A. To your point, let's address that.

11 MR. ETCHISON: Please let me
12 finish. Please let me finish.

13 A. Okay.

14 MR. ETCHISON: So I do get
15 concerned in terms of the gray areas that are on
16 there.

17 But I also get even more concerned
18 at the possibility of a guardhouse happening and
19 having that be directly across from area C.

20 Now, what were you going to say?
21 Sorry.

22 A. Sure. Okay. So a guardhouse is not
23 something that's currently proposed. It's not
24 something that I've considered. We were able to
25 just discuss it hypothetically.

1 Should there be a need for it for
2 this -- an end user, we're seeking approval for the
3 configuration that's shown.

4 So while a guardhouse isn't off the
5 table in the future, it is off the table for what is
6 before you to be approved.

7 So should one be proposed in the
8 future, it would have to have additional
9 consideration. I would then look at more closely
10 if it warranted a screening wall, then we would put
11 one in.

12 But the noise code is in place of
13 perpetuity. So regardless of your future
14 development, if something were to happen, if zones
15 were to change, if things were to change over time,
16 that's in perpetuity. So that's something that this
17 use would always have to comply with.

18 Now there's a lot of those things
19 that can happen in the area, but those are all just
20 factors of how things go.

21 MR. ETCHISON: You know, I --

22 A. I feel comfortable with that. This is
23 how all development is done with that err of
24 unknown.

25 MR. ETCHISON: No, and I can

1 appreciate that.

2 The area E even is a residential
3 area of in and out for residential areas that are in
4 this gray zone.

5 A. Yes. Yes, so --

6 MR. ETCHISON: Let me come at this
7 a different way.

8 Did you say -- did I hear this
9 correctly that in the evaluation of the sensors it
10 ignores the noise from 22?

11 A. Absolutely.

12 MR. ETCHISON: Okay. This is an
13 incremental -- sorry.

14 Yes, it's an incremental study of
15 the noise from the installation?

16 A. Only from our site, correct.

17 MR. ETCHISON: Okay. It does
18 not take into account a cumulative effect of
19 installation with 22?

20 A. Correct.

21 MR. ETCHISON: Okay.

22 A. Correct, it's kind of inconsequential
23 because the code limit is the same for any
24 development.

25 So it takes the approach that it's

1 establishing that threshold for acceptability on a
2 per development basis.

3 And, yes, if every development
4 created a maximum there of 52, if they filled up
5 their entire share, that there would be a noise
6 created to a higher level.

7 MR. KAPLIN: Can I interject
8 something here --

9 A. Sure.

10 MR. KAPLIN: -- that might help?

11 The noise ordinance is a
12 performance ordinance. It's applied to the
13 buildings when the buildings are there. This is an
14 estimate of what will happen.

15 And if something changes, and I
16 think this is what you were saying, Ben, is some
17 receptor changes based on your ordinance, the user
18 would have to comply, would have to comply by
19 bringing Ben back and installing some noise
20 attenuating feature.

21 What I'm getting at is, I've had
22 this before, we can't look at this -- we can't look
23 at this noise study as something cast in stone.
24 This is the best case analysis that can be done at
25 this point in time to give a comfort level, so to

1 speak, that the facility will be able to comply.

2 But when the facility is there, it must comply.

3 So I just wanted --

4 MR. ETCHISON: No, I appreciate
5 that.

6 Thank you.

7 MR. KAPLIN: I just wanted to make
8 that distinction.

9 MR. ETCHISON: Yes. Now, just as
10 follow-up question, though, in terms of modeling
11 versus actual, right, ballpark, how many -- how am
12 I going to ask this?

13 How often are you required to go
14 back to a location where you have done modeling to
15 do a posted --

16 A. A post seven?

17 MR. ETCHISON: Yes.

18 A. Sure. It varies. It's usually the
19 exception. And the ones that we have done have more
20 than passed the bar.

21 Ones that require a little bit more
22 scrutiny are not ones that have such a dynamic
23 operation as this. We've had to do it for like a
24 substation or for an emergency generator or things
25 that are stationary noise sources that have a

1 greater focus.

2 You'll see in practice if you visit
3 a warehouse with the dynamics that occur on here,
4 trucks go and come, and it's really -- that becomes,
5 I don't want to say that eases things, but that just
6 blends in with other traffic flow in the area.

7 So it becomes parts -- it extends
8 itself to be part of the surrounding area that the
9 presence of Route 22, for example.

10 And that carries different weight
11 from the public perspective than an emergency
12 generator at a fixed location or a cooling tower
13 or something that a substantial substance of a
14 stationary nature.

15 MR. ETCHISON: Okay. Well, let me
16 ask this question.

17 You had spoken earlier about the
18 HVAC systems on the roof --

19 A. Uh-huh.

20 MR. ETCHISON: -- and how it was --
21 unfortunately it -- got a little experience, it is
22 unusual for a climate control environment to -- this
23 side of the warehouse in general.

24 A. It can happen.

25 MR. ETCHISON: It can happen, but

1 more often than not it doesn't.

2 A. And we're not proposing a refrigerated
3 warehouse here, which is a totally different animal.

4 MR. ETCHISON: No, no.

5 A. So, but, yes, I'm bridging it.

6 MR. ETCHISON: Yes.

7 A. Okay.

8 MR. ETCHISON: So let's assume
9 for the sake of discussion that it is not an air
10 conditioned million square foot unit or power
11 station, they're just screaming at me, and it's
12 a wonderful hot summer night and the doors are all
13 rolled up and all the activity inside is also
14 clanking away out into the night sky.

15 Is there any reason based upon your
16 model to think that a non-climate controlled million
17 square foot warehouse is not going to have an
18 additive effect on the acoustic dynamics of this
19 model?

20 A. So you're -- let me just try to rephrase
21 your question.

22 You're saying that if it's not
23 climate controlled, that means we have less air
24 conditioning units and so then that's going to
25 require or force people to want to open the doors;

1 is that what you're --

2 MR. ETCHISON: Yes.

3 A. If it's not climate controlled to the
4 degree that I'm showing here, there's going to be
5 a fraction of the rooftop limit. So that removes
6 that element, those noise sources from the model,
7 right.

8 So we know that would be a net
9 gain, correct?

10 MR. ETCHISON: Possibility.

11 A. Well, I'm just -- just logically.

12 MR. ETCHISON: I'm tracking.

13 A. So that the art of having doors open, I
14 mean while -- I won't say it never happens. It's
15 not something that is particularly a common
16 occurrence for warehouses.

17 The truck backs up to it, it seals
18 with a dock. That door opens, it loads and unloads.

19 MR. ETCHISON: I worked at a Fed Ex
20 for --

21 A. Understood.

22 MR. ETCHISON: -- six months and
23 they opened the doors all summer long.

24 A. I guess I don't -- there's not much of
25 a purpose of going down that potential because if

1 it became a problem, there's an administrative
2 solution, right, we close it, we don't do it.

3 And I don't see any situation where
4 the noise produced inside the facility is going to
5 come anywhere near the levels that I'm modeling
6 outside the facility.

7 MR. ETCHISON: Okay.

8 A. I'm modeling a backup alarm that's
9 almost 80 dB of 50 feet. There are substantial
10 noise sources here. Everything else is kind of
11 under that. You know, there might be a trash
12 compactor here.

13 Again, idle trucks, lower sources.
14 They're all subsumed in the model even though I
15 haven't particularly given attention to them.
16 That's how heavyweight they are.

17 MR. ETCHISON: Okay. I appreciate
18 that.

19 CHAIRMAN DR. GREENE: Yes.

20 MR. SHIPMAN: What about parking
21 lots?

22 A. Parking lots?

23 MR. SHIPMAN: Yes, there's a
24 parking lot.

25 A. Sure. So --

1 MR. SHIPMAN: Going to be right up
2 here next to the building.

3 A. Sure, I did briefly mention that I
4 didn't focus on personnel vehicles.

5 MR. SHIPMAN: No, no, no. For
6 trucks.

7 A. Oh, for trucks. So we have the loading
8 docks along both long sides of the building. And
9 then outboard of those loading docks are trailer
10 parking spots.

11 MR. SHIPMAN: What about the trucks
12 that come in and it's cold, but plug the engine in
13 and keep it idling while they go in and have a cup
14 of coffee?

15 A. Sure. So they have to follow --

16 MR. SHIPMAN: -- how many of those
17 are going to be around?

18 A. Sure, they have to follow all idling
19 rules, but there are provisions that allow for one
20 that's sub-temperatures that they can idle longer
21 than allowed or than the regular permission.

22 If they plug into the building
23 through a jack, that's usually quieter, because
24 that's not using the truck electricity -- or the
25 truck engine to power the heat inside the vehicle.

1 It's using electricity, so it's quieter there.

2 If there are opportunities to put
3 in stuff like that, that's great, but I also did try
4 to preface that I haven't looked at idling trucks
5 because, one, they're going to be self-regulated by
6 the allowable duration.

7 And, two, there's so much lower
8 level. An idling truck is roughly 60 at 50 feet.
9 And I'm modeling 74 to 79 at 50 feet. And there's
10 an order of magnitude there.

11 I know it sounds like I'm only 15
12 dB higher than that, but noise is all logarithmic
13 scale.

14 And so just to give you quick math,
15 if I had 50 -- two noise sources that are producing
16 50, 50 plus 50 doesn't equal 100, but rather 53.
17 And so when you have two noise sources and you go
18 up 3 dB, that's the effect of adding two together.

19 So when you have something that's
20 15 dB higher in level than idling trucks, I could
21 probably have 100 idling trucks that would then be
22 equivalent to what I'm modeling here.

23 MR. SHIPMAN: Tell me the answer to
24 this question. Supposing this whole place goes
25 forward, they build up their business, their parking

1 lots going --

2 (Whereupon there are side
3 conversations happening disrupting the court
4 reporter.)

5 MR. TILLMAN: Ron, can you speak
6 into the mike, please.

7 MR. SHIPMAN: Oh, I'm sorry.

8 So the parking lot is housing
9 automobiles for the people that work there. You
10 have trucks coming through there. You have trucks
11 at night idling. There's going to be a lot of noise
12 up there all the time.

13 A. Hopefully my presentation was thorough
14 enough to discuss how I've covered all of that.

15 There is a time domain that occurs
16 here. I'm looking at an extreme worst case, you
17 know, the storm of sorts of eight trucks
18 contributing their worst levels at the same time.

19 If we had five other trucks that
20 were idling in the same model, it wouldn't -- you
21 wouldn't even see it in --

22 MR. SHIPMAN: Tell me this,
23 what -- of these residents who are here and they're
24 living -- there are houses that are very close to
25 this --

1 A. Yes.

2 MR. SHIPMAN: -- where this --
3 where the parking lot is. They're close to a
4 highway.

5 A. Uh-huh.

6 MR. SHIPMAN: Hackett Park Road,
7 which they're close to. They're close to ball
8 fields in the warmer weather.

9 What's it like to have all of that
10 traffic, truck and car traffic together and when you
11 have modeled this and say it's going to maintain
12 under the ordinance, what if it doesn't, how will
13 they get ordinance enforced to bring it down?

14 A. Sure. You guys come back at me with
15 such long, multi-question things.

16 Let me work backwards.

17 So in terms of enforcement, I see
18 two main entities when enforcement occurs.

19 One is going to be during
20 applications either for let's say it comes back to
21 you for expansion and then the entire neighbor comes
22 out and says I don't -- we don't like what they've
23 been doing. That's a clear opportunity for you to
24 then provide enforcement.

25 The other one is -- noise

1 ordinances are primarily driven by complaints. So

2 there -- no one will ever say that -- let me

3 rephrase it this way.

4 MR. SHIPMAN: Well --

5 A. Without this -- well, let me -- you gave

6 a lot of stuff --

7 MR. SHIPMAN: You're going to have

8 complaints up there no matter what happens.

9 A. I don't know what you're -- I don't know
10 what you're basing that on because we're showing
11 that this fully complies with the nighttime noise
12 ordinance of the city, which is designed to minimize
13 the potential for complaints.

14 So I don't know what empirical data
15 you're basing that on, but everything I'm saying
16 shows otherwise.

17 MR. SHIPMAN: I'm basing it on this
18 entire application that we're wrestling with.

19 A. Well --

20 MR. SHIPMAN: You're going to
21 have --

22 A. I'm here to provide you with
23 quantitative information that allows you to see that
24 what you picture in your mind isn't the reality.

25 MR. SHIPMAN: I accept that --

1 A. Okay.

2 MR. SHIPMAN: -- but I'm telling
3 you --

4 A. That I'm wrong?

5 MR. SHIPMAN: -- this is going to
6 have problems if this place opens with truck traffic
7 and car --

8 A. No, from a noise aspect, I disagree with
9 you.

10 MR. SHIPMAN: What I want to
11 know -- you answered my questions.

12 A. Uh-huh.

13 MR. SHIPMAN: If you did, I didn't
14 understand.

15 What I want to know is when that
16 produces the complaint --

17 A. Yes.

18 MR. SHIPMAN: -- and --

19 A. Sure.

20 MR. SHIPMAN: -- the complaints,
21 who's going to go up and measure those complaints
22 and find that they're not meeting the --

23 A. Right. Well, you're asking me how your
24 town works, and I don't quite know the answer to
25 that, but historically there is a representative in

1 the town, so it's either --

2 THE COURT REPORTER: Wait, wait.

3 (Whereupon there are side
4 conversations happening disrupting the court
5 reporter.

6 CHAIRMAN DR. GREENE: You can't
7 have three conversations.

8 MR. SCHEER: We're going to be
9 winding up.

10 (Short recess taken.)

11 MR. SCHEER: Whenever you're good.

12 THE COURT REPORTER: I'm good.

13 MR. SHIPMAN: He was answering my
14 questions. I interrupted him. I'm sorry.

15 MR. SCHEER: Okay.

16 A. I don't remember the question. Sorry.

17 (Discussion held off the record.)

18 MR. SCHEER: We're going to move
19 on.

20 Anyone else have a question?

21 MS. WAGNER: What kind of noise is
22 that HVAC unit considered?

23 A. It's -- the characteristics of it it's
24 steady in nature. In other words, it will be on
25 around the clock. Units do cycle off.

1 They're not too different than
2 the -- you know, if you have a split system outside
3 of your residence.

4 MS. WAGNER: Is that considered as
5 a pure tone?

6 A. No, usually no tone is involved.

7 MS. WAGNER: The constant humming
8 isn't considered a pure tone?

9 A. Well, a hum is an indication of a lower
10 frequency content. Like a transformer hums. A
11 rooftop unit has more of a broadband component.

12 It sounds like an air conditioning
13 unit. Best for you to just imagine what your air
14 conditioning unit sounds like. But that's not
15 defined as a hum or a tone.

16 A tone is a --

17 MS. WAGNER: It's a constant?

18 A. It's a pitch.

19 MS. WAGNER: It's a constant sound
20 like an air conditioning that's 24/7. It's like --

21 A. Correct, yes.

22 MS. WAGNER: What is an impulsive
23 sound?

24 A. Impulsive sound is a sound that's less
25 than one second in duration. It's a --

1 (Whereupon Mr. Muller claps.)

2 MS. WAGNER: With a backup camera

3 and --

4 A. Backup alarm.

5 MS. WAGNER: Backup alarm.

6 A. Backup alarm is a series of impulsive
7 sounds technically, but because they're strung
8 together, it kind of becomes quasi, but I guess
9 we're -- what's your question?

10 MS. WAGNER: Our ordinance says
11 that you need to subtract a 5 decibel penalty in
12 order to comply that answers like everybody's
13 questions here of what's going on.

14 So I think that you would need to
15 meet 47 at nighttime if we had to subtract the 5
16 decibel penalty.

17 A. Let me -- I don't remember explicitly.

18 MR. SCHEER: If I may, and Dwayne
19 could correct this, 376-6 is the section in the
20 ordinance that would set forth the residential
21 College Hill --

22 MR. TILLMAN: Talking about C?

23 MR. SCHEER: 52 -- well, C is --

24 A sets up the levels that we're talking about 57
25 and 52. And then C talks about a correction for

1 character of sound for any source of sound which
2 emits a pure tone or impulsive sound for maximum
3 sound level limit set forth in subsection A above
4 shall be reduced by 5 decibels.

5 MR. TILLMAN: So section A where
6 the building is located is actually in A and R
7 district, not the College Hill?

8 MS. WAGNER: No. It's for all
9 of -- it doesn't matter what area it is.

10 MR. SCHEER: Well, no --

11 MR. TILLMAN: I know --

12 MR. SCHEER: -- but the point --

13 MR. TILLMAN: AR is 77 total.

14 MR. SCHEER: Yes, you're making the
15 point that 77, you take away 5 --

16 MR. TILLMAN: You're at 72.

17 MR. SCHEER: 72. But what do you
18 look at? Do you look at where it's going into?
19 Wouldn't you have to be looking at the receiving
20 land use, not the emitting land use?

21 It's going from an industrial
22 that's going into the residential area.

23 MR. TILLMAN: Okay. Yes, no, I get
24 you.

25 MR. SCHEER: So that's where we

1 would --

2 MR. TILLMAN: Yes, I get you.

3 MR. SCHEER: It's 52 minus 5 --

4 MR. TILLMAN: That's where he's got
5 his --

6 MR. SCHEER: And 57 and minus 5.

7 MR. TILLMAN: He has it calculated
8 in there at the 52. So if it's receiving 57, you
9 minus the 5, he's already at --

10 MR. SCHEER: Okay. But between 10
11 p.m. and 7 a.m. So that goes down to 47.

12 MS. WAGNER: Correct.

13 A. There's probably some legal discussions
14 that need to happen. And this is very complicated,
15 so I'm dealing with multiple municipalities and
16 which portion is within Easton and which is not.

17 MR. SCHEER: Well, I guess a
18 straight question is within the city of Easton
19 itself, what -- between 10 a.m. and 7 p.m. what
20 does your modeling showing within that area that
21 was identified as having some residential units
22 that --

23 A. Sure.

24 MR. ETCHISON: So E -- actually C,
25 E and F.

1 A. Let me --

2 MR. SCHEER: Where it's gray.

3 A. Correct. All right. So that's
4 dominated by that truck that's entering and exiting
5 the site.

6 MR. SCHEER: I don't know.

7 A. No, I'm telling you. That's what's
8 dominating them, so it's not impulsive noise.

9 But if you read the noise code in
10 its totality, there is a big gray area in terms of
11 motor vehicles. Those regulated elsewhere, they're
12 mentioned not only in the Pennsylvania noise code as
13 having your own regulations. We know they can go
14 can go on and offsite.

15 And so I typically approach these
16 as the sources having -- in this gray area of
17 whether or not they comply with code.

18 I'm here to try to apply that code
19 to them to the extent that I can to show that they
20 comply.

21 So I don't know that going down an
22 avenue of whether a specific source is impulsive or
23 not impulsive and whether it applies to this one.

24 I am confident that there's no
25 negative impact created here as we get down to D,

1 E and F. That is in greater proximity to Route 22
2 than anything on the site.

3 So as the vehicles leave our site
4 and enter public roadways in which case they would
5 follow state and federal ordinances that say they
6 have to have a muffler. And Pennsylvania has
7 specific motor vehicle limits that are permissive.
8 That's just to help them not be at a repair, but
9 I'm not worried about the health, safety, welfare
10 of D, E and F. I'm not worried about it, not
11 personally, but empirically by the results of my
12 analysis.

13 So I believe that it meets the
14 intent of the code.

15 MR. SCHEER: So just with the
16 backup --

17 A. Uh-huh.

18 MR. SCHEER: -- where you're
19 anticipating there might be a backup --

20 A. Would be in the truck court area.

21 MR. SCHEER: And would that --
22 would that noise -- how would that noise carry over
23 to those residential areas?

24 A. I'd have to specifically look at that,
25 but I know that this is a cumulative model results

1 that we're showing 52. And so that means that
2 individually each one is below that.

3 So if we were to look at what
4 the contribution is at the truck court, which is
5 substantially further away from D, E and F, then
6 trucks can approach on the entrance road there that
7 I'm comfortable in saying tonight that they would
8 meet that more permissible limit if that's what you
9 had interpreted that noise code to apply to.

10 I'm crossing noise codes here
11 because I'm dealing with four of them floating in
12 my head, but most noise ordinances also exempt
13 emergency signals, which back alarms would fall
14 under.

15 So, yes, there's a lot of
16 discussion that can happen here. I'm trying to be
17 pragmatic, but with a conservative approach here,
18 so that I can be confident that this site is
19 appropriate and compatible with the area. That's
20 my direct.

21 MR. SCHEER: Do you have anything
22 else?

23 MS. WAGNER: No. I just think that
24 by your --

25 MR. SCHEER: Okay. That's okay.

1 That's for -- that's administrative, not a question.

2 Is there anything else from the
3 board?

4 CHAIRMAN DR. GREENE: Anything
5 else?

6 MR. SCHEER: No. The --

7 MS. WAGNER: I do have one more
8 question.

9 Why didn't you do any daytime
10 modeling, you don't think that this is going to
11 raise the daytime up 10 decibels?

12 A. The model as it's put here is already
13 conservative enough that it can apply to any hour
14 of the day. So I'm not anticipating there to be a
15 difference in daytime operations as there will be at
16 nighttime.

17 If anything, nighttime might be a
18 little bit quieter than what we're showing here.
19 And daytime might be a little bit higher in level,
20 but we haven't even talked about the more permissive
21 daytime limits.

22 Usually daytime is not a source
23 of a topic of our presentation because people are
24 less sensitive, there's more ambience, the limits
25 are more permissive. And that's not really a focus

1 of concern.

2 MS. WAGNER: I'm more worried about
3 our ordinance.

4 A. You're worried about what?

5 MS. WAGNER: Just our ordinance. I
6 don't know what --

7 A. Well, the ordinance is more permissive
8 during the daytime.

9 MR. KAPLIN: It's not a question.

10 A. Oh.

11 MR. KAPLIN: You weren't asked a
12 question.

13 MR. SCHEER: Okay. Last question.

14 MR. ETCHISON: I have a question.
15 You're treating 22 as if it's
16 ambient noise?

17 A. Well, I'm considering it as a factual
18 presence, so it's going to change -- people in the
19 proximity of 22 are going to hear 52 different than
20 those that are north of the creek because --

21 MR. ETCHISON: Do you have a
22 measurement of the noise off of 22?

23 A. No, I haven't done any ambient survey.

24 MR. ETCHISON: So these decibel
25 levels are all based upon the modeling, there was no

1 actual measurements being done?

2 A. No measurements of existing ambient. No
3 measurements of what's there today.

4 MR. ETCHISON: All through the
5 model and through the --

6 A. The modeling does have basis --
7 (Whereupon there is cross-talking.)

8 THE COURT REPORTER: One at a time.

9 A. Okay. Go ahead.

10 MR. ETCHISON: It's all done
11 through the modeling and the standards that you had
12 mentioned earlier?

13 A. Right.

14 MR. ETCHISON: Not based upon
15 actual measurements in the field?

16 A. Well --

17 MR. ETCHISON: How could you take
18 a measurement in the field if all you're worried
19 about is the trucks?

20 I answered my own question.

21 A. Just to make sure -- because we're
22 talking about a couple different things here, but --

23 MR. ETCHISON: No, no.

24 A. -- the input in the model is based on
25 measurements of trucks that then we just put into

1 this geometry of the proposed project.

2 MR. ETCHISON: Right, so we're
3 talking about measurement of the trucks.

4 A. Uh-huh.

5 MR. ETCHISON: We're not talking
6 about a measurement of cars. We're not talking
7 about measurement of 22.

8 Do I have it right?

9 A. Correct.

10 MR. ETCHISON: Okay. Thank you.

11 A. Uh-huh.

12 MS. WAGNER: I have one more
13 question.

14 Is a WB 50 louder than a 167?

15 A. I don't know what a 167 is, but you're
16 talking about different kinds of trucks and the
17 answer is no.

18 All over-the-road tractor
19 trailers are about the same. And it also folds
20 over to if there's a terminal tractor, yard hostler.
21 They go by many different names, but sometimes
22 there's a cab that lives onsite that moves trailers
23 around. They're all acoustically equivalent and the
24 worst case.

25 MR. SCHEER: Mr. Harding, you're

1 welcome to ask any questions.

2 MR. HARDING: Thank you.

3 I just brought -- our group has
4 retained an acoustics expert. So I've just asked
5 that he could sit next to me to help me with some of
6 the technical questions.

7 MR. SCHEER: Okay.

8 * * *

9 EXAMINATION

10 BY MR. HARDING:

11 Q. If you could just state your name again.
12 I just want to make sure I address you properly.

13 A. Ben Muller.

14 Q. Muller.

15 Mr. Muller, and I'm asking honestly
16 because I represent a client who lives at Site B.

17 A. Uh-huh.

18 Q. Is it safe to say that, if I understand
19 your testimony correct, that because the warehouse
20 is built high enough above the residences at Site B,
21 my client's home will not receive decibels in excess
22 of 52 or 57 depending on the time?

23 A. Correct.

24 Q. Okay. And it is the height of the
25 platform where the warehouse will be that shields

1 those residences?

2 A. If we were to look at this in a section,
3 the noise source is up here and the receptors are
4 down here. And so the majority of the noise is
5 going to go over the top of the receptors.

6 Now --

7 Q. Okay.

8 A. -- some of it radiates and was resulting
9 in the model results that we're seeing here.

10 Q. And I think you said that you used the
11 ITE code, was it 150 or 155?

12 A. 155 is what the project is based on.

13 Q. Are you aware of a June, 2024 memo from
14 PennDOT that would recommend a site of this size and
15 nature to use the ITE Code 154?

16 A. That would be a traffic engineer
17 question, but we did have a discussion tonight about
18 the differences of that and would it impact my
19 analysis or my results.

20 Q. But did you rely on the traffic report
21 as a basis for your analysis?

22 A. Yes.

23 Q. Do you have access to that report right
24 now?

25 I'd like to look at a specific part

1 of it.

2 A. Which report?

3 Q. I'd actually like to look at the -- what
4 I think is referred to as TIS-1?

5 A. Oh, the traffic report, no, I don't have
6 it.

7 Q. Can I present you part of it?

8 I would like to discuss it.

9 A. I guess so.

10 Q. You're welcome to review it to confirm
11 that it is.

12 MR. SCHEER: Do you know if we have
13 that in our book, TIS-1 or the traffic report?

14 MR. HARDING: This is dated June
15 24, 2024. The subject line is traffic engineering
16 review number one.

17 MR. SCHEER: Can I -- is that --
18 it's just easier for us, but that's the only reason
19 I ask.

20 MR. HARDING: Yes, this came from
21 right to know request, so --

22 MR. TILLMAN: It's probably in the
23 application on the SALDO.

24 MR. SCHEER: Okay. Not in this
25 packet, okay. That's fine.

1 BY MR. HARDING:

2 Q. So does that look like a report
3 prepared by the traffic engineering study or the
4 traffic engineers?

5 A. I'll take your word for it.

6 MR. KAPLIN: Oh, no. You either
7 know or you don't know.

8 A. I don't know.

9 Q. Is that a report prepared -- is the
10 letterhead there the letterhead of the traffic
11 engineer firm --

12 A. Yes.

13 Q. -- that you consulted with?

14 Okay. So and can you read the date
15 on that -- or it's on the first page.

16 A. June 24, 2024.

17 Q. Okay. So we have maybe what represents
18 a traffic report prepared by the traffic engineering
19 study.

20 Could you please read the
21 highlighted language on page two.

22 A. It says, and that all truck traffic is
23 anticipated to arrive/depart during non-peak hours
24 and has therefore been omitted from traffic
25 analyses.

1 Q. And what time are non-peak hours?

2 I'm sorry, let me ask a better
3 question.

4 What time are peak hours?

5 A. So we're cross-pollinating here, I'm
6 sure you realize, but in the traffic world peak
7 hours are the a.m. and the p.m. rush hour periods.

8 And in a noise analysis if I was
9 to look at what a peak hour would be, it would be
10 when are the most trucks expected onsite.

11 So hopefully that --

12 Q. Isn't it correct that you just said it
13 was potentially going to be quieter at night from
14 the site?

15 A. Compared to my model, yes.

16 Q. And why would it be quieter?

17 A. Because the lower volume of trucks
18 during the overnight hours.

19 Q. Because there would be less trucks?

20 A. Correct.

21 Q. But doesn't that traffic report directly
22 contradict that by saying it's likely more trucks,
23 in fact, the majority of trucks are to arrive
24 overnight?

25 MR. KAPLIN: I'm going to object.

1 He is absolutely mixing apples and oranges. This is
2 a peak hour analysis. It is not the numbers that
3 Ben used for trucks for the entire day.

4 MR. HARDING: I'm not disputing
5 the modeling of your expert. He, himself said
6 garbage in, garbage out. I'm simply trying to get
7 a better idea of the inputs.

8 A. Sure. Listen, I'm familiar enough with
9 traffic reports in past projects. This doesn't
10 appear to be any sort of a flag on my part.

11 The ITE provides a distribution.
12 I've provided testimony tonight of the total number
13 of trips, which is what the traffic study is based
14 on.

15 MR. KAPLIN: Per day, right?

16 A. Per day, correct.

17 MR. KAPLIN: Not per peak hour.

18 A. No, correct.

19 MR. KAPLIN: Those numbers are peak
20 hour numbers.

21 A. And it doesn't even go into that. I'm
22 not quite sure where this specific reference is
23 going to, but as a -- just as a rule of thumb for
24 the board, I decided to say let's take that number
25 and evenly distribute it across 24 hours, which will

1 result in five truck per hour just as a basis. It's
2 hard to get your head around 232 trips per day.

3 Now, the ITE does provide a
4 distribution graph for these uses. And it shows
5 that 89 percent of truck activities is distributed
6 amongst the daytime hours and that 13 percent is
7 distributed amongst the nighttime hours.

8 So I find that when I get asked to
9 drill down deeper and deeper than what I'm trying to
10 throw as a conservative catch-all, the results just
11 get better and better.

12 So does that help clear it up?

13 Q. No. I'm still confused how -- about
14 the timing of the trucks and the inputs into the
15 modeling, but we'll move on. We'll just --

16 A. It is very complex and I've tried to do
17 a broad brush kitchen sink approach to not have to
18 get into that nitty gritty.

19 Q. Well, let's move on.

20 A. Sure.

21 Q. Do you know the elevation difference
22 between the pink X on your model there, I guess what
23 I would call the entrance to the site, do you know
24 what elevation that is above sea level?

25 A. Not off the top of my head, but it's

1 substantially higher than receptor B.

2 Q. No, I'm not talking about the parking
3 area around the warehouse. I'm talking about the
4 entrance off of Wood Avenue.

5 A. What's the topographical elevation?

6 Q. Yes.

7 A. I don't know what that is off the top of
8 my head.

9 Q. For the sake of conversation,
10 approximately 220 feet.

11 Are you aware of the --

12 MR. KAPLIN: Objection.

13 MR. HARDING: It's on your models.

14 MR. KAPLIN: Then show it.

15 MR. SCHEER: The question could
16 simply be if we assume it's 220 feet, then the rest
17 of your question.

18 You're basing that assumption based
19 on information you have otherwise that's --

20 MR. HARDING: I'm basing that off
21 of the plans submitted to the planning commission.
22 They are probably before you right now.

23 MR. SCHEER: Well --

24 MR. HARDING: We'll move on.

25 Q. Do you know the elevation above sea

1 level of the parking lot area of the warehouse?

2 A. Of the truck court we're calling the
3 parking lot?

4 Q. Yes.

5 A. It's higher than that. There's an
6 uphill grading as you come from south to north.

7 Q. So if you --

8 A. -- a hypothetical.

9 Q. We can agree you're not aware of the
10 difference in elevation from the entrance on Wood
11 Avenue -- the proposed entrance on Wood Avenue and
12 the truck court, you don't know that?

13 A. I don't know the specific number.

14 Q. Okay. Let's say if it was approximately
15 80 to 100 feet, would a truck accelerating up that
16 drive --

17 A. Uh-huh.

18 Q. -- change your model in any way?

19 A. Oh, all right, now we've gotten to some
20 meat here.

21 In some cases, potentially. I'm
22 modeling a truck driving at 50 miles per hour, which
23 is the typical speed on a truck court.

24 On a steep elevation trucks have
25 to work a little harder, and so there could be some

1 additional content there, but not anything dramatic
2 that's going to break my model.

3 Q. What about if they're going downhill?

4 A. Downhill would probably be less in terms
5 of engine needs and more brakes. So I would say it
6 would be quieter.

7 Q. Would you consider acceleration to be an
8 impulsive sound or --

9 A. No.

10 Q. What about braking?

11 A. If you're talking about the squeak of
12 a brake, still no.

13 Air brake release would be. That's
14 when the truck stops and fully releases their
15 braking system, which is an air compression held.

16 Q. What about, and this is maybe my
17 inexperience with the topic, but Jake brakes is
18 what --

19 A. Sure.

20 Q. -- these air brakes.

21 A. Yep, Jake brakes.

22 Q. So you keep talking about the release of
23 them, but what about the use of them, engagement --

24 A. Well, Jake brakes is something totally
25 different. That's an engine compression brake

1 system. And that's, I guess everyone is familiar
2 with that on the highway. It's the thing that
3 sounds like Chewbacca, erghhh.

4 Q. I live above --

5 A. Okay.

6 Q. -- I'm very aware.

7 A. It will be interesting to see how she
8 writes that impression.

9 Yes, I'm familiar with that.

10 What about it?

11 Q. I guess I just wanted to distinguish
12 that that's a different type of braking than you're
13 talking about with the air brakes?

14 A. Absolutely. Yes, engine compression
15 braking is typically used by trucks at high speed
16 when they're going downgrade and they use their
17 transmission in place of their brake pads.

18 Q. Would 100 foot decline be considered
19 extreme, I think -- what was the word you said,
20 extreme elevation or something, elevation change, I
21 think?

22 A. Your question is you anticipate there
23 being Jake brakes used at the site. Oh, there we
24 go, we've completed the circle.

25 The -- my answer is no. You have

1 a downhill grade here, but you're onsite. Your
2 speed limit onsite is 15, 20 miles per hour.

3 That's not going to be at the
4 magnitude that would warrant use of Jake brakes.
5 You might want to raise that again with the traffic
6 engineer because he'll have a different take on
7 it from a safety standpoint, but based on my
8 experience, it's just not something that's going
9 to occur onsite.

10 Q. So then we can assume you did not factor
11 into the use of Jake brakes into your model?

12 A. I don't anticipate it to occur onsite.

13 Q. So you did not use them in your model?

14 MR. KAPLIN: Objection, asked and
15 answered.

16 Q. You're not answering the question.
17 You're saying you didn't anticipate them.

18 I would like to clarify if they
19 were used in the model?

20 A. They were not used in my model.

21 Q. Thank you.

22 Oh, did your model address in any
23 way any construction sounds anticipated onsite?

24 A. No, construction noise is a different
25 entity. Obviously something that can be brought

1 up.

2 There are town ordinances that
3 regulate the allowable hours of construction.
4 That's generally the best approach for regulating
5 construction noise as we know that construction can
6 be noisy.

7 So by administratively controlling
8 it to daytime hours, you are providing a best
9 practice for that.

10 We might also now again talk about
11 blasting, which is going to be a totally different
12 thing.

13 If you want me to talk on that?

14 Q. No.

15 A. Okay.

16 Q. I would like you to, though, just to
17 clarify that you did not study or analyze potential
18 blasting or construction noise?

19 A. No, not as part of this project.

20 Q. Okay. In your model did you take into
21 account the surface of the, you know, cut and fill,
22 the excavated area?

23 Right now it's vegetation. It
24 would potentially be clear cut.

25 Can you comment on that.

1 A. I think what you're asking is about the
2 reflective properties of the services in --

3 Q. I'll ask you a better question.

4 A. Okay.

5 Q. Does your model analyze the sound under
6 the assumption the surrounding area is covered in
7 vegetation?

8 A. No. We can look at either hard surfaces
9 or vegetative surfaces. And so as a broad brush
10 balance, we look at everything to be about the
11 middle.

12 The model doesn't include any
13 vegetation. And that's done to be conservative.
14 Obviously deciduous trees will lose their foliage.
15 And I'm not going to look at things like that on
16 only a part-time basis.

17 So we leave it up to then the
18 balance between keeping the model to be accurate
19 on a conservative level and then also not inundating
20 us to have to model specifically that every paved
21 area is hard and that every grassy area is not.

22 Q. But I would like to speak specifically
23 about that reflective hillside, potentially
24 reflective hillside behind the warehouse.

25 A. Okay.

1 Q. Did you take into account what that
2 surface was to be made aware of?

3 A. Made of?

4 Q. As in dirt, cement block.

5 A. It doesn't matter. It's all given the
6 same reflective characteristics. So it is included
7 in the model from a height vantage, so there is
8 sound reflecting incident on that.

9 And then what we're discussing
10 now is whether it's highly reflective or partially
11 reflective. And we've chosen a middle ground, which
12 I'm comfortable with being accurate.

13 Q. Okay. Just may have one more question.
14 Just hold on.

15 So far we've spoken about
16 quantitative decibel noises, numbers and decibels.

17 Did you find in the Easton code
18 any references to qualitative noise and limitations?

19 A. So we get into legal areas here. In
20 my opinion if we have subjective code and then
21 quantitative limits, that is what I go to from an
22 engineering basis.

23 If you're -- there are provisions
24 in there that talk about that you shall not create a
25 disturbance. So if someone were to complain about

1 something, the typical approach is that you would
2 evaluate it with respect to the code.

3 If it meets limits, then it would
4 be dismissed in some respect. And if it doesn't,
5 then it would be given traction and sought to find
6 a solution.

7 Q. So it's safe to say we just looked at
8 decibel levels as a quantitative number and how
9 that --

10 A. In absence of some other criteria, I
11 wouldn't have anything to base it off of.

12 Q. Okay.

13 MR. HARDING: No further questions.

14 MR. SCHEER: Okay. Thank you.

15 Does anybody else have a specific
16 question?

17 Okay. Mr. Pax.

18 MR. PAX: Yes.

19 MR. SCHEER: I somehow could
20 remember a peaceful name like that.

21 MR. PAX: Thank you.

22 So there was a moment earlier
23 where, I don't know, there was a bunch of things
24 being said. I didn't quite get it. And I don't --
25 I'm trying to think of how I could ask this without

1 putting words in your mouth, but there was --

2 You mentioned something backup

3 alarms --

4 A. Yes.

5 MR. PAX: -- on trucks. And I
6 think you said they count it as emergency signals.

7 And my takeaway was like, oh, they
8 count it as emergency signals and they're not
9 subject to ordinance or something. But that's me
10 putting words in your mouth.

11 A. No, that's correct.

12 MR. PAX: Can you clarify a little
13 bit.

14 A. That's correct, it says that there's a
15 section of events that are exempt from code. It
16 will say things like church bells. It will say
17 things like town events and then also safety
18 signals.

19 So despite them being exempt,
20 they're certainly real and certainly stuff that I'm
21 including in my model and that I am doing the best
22 of my ability to conform to regulations.

23 So the exemption or regulation
24 isn't really an important factor.

25 MR. PAX: All right. So with the

1 amount of backing up that might happen with all the
2 trucks that you would expect that the noise level
3 of all those backing up alarms would still be
4 under --

5 A. It's included.

6 MR. PAX: That's included in your
7 model?

8 A. Included in the model, yep.

9 MR. PAX: Okay. That's all my
10 questions.

11 A. Yep.

12 MR. PAX: Thank you.

13 MR. SCHEER: Thank you.

14 Are we then prepared to adjourn for
15 the night?

16 CHAIRMAN DR. GREENE: Well --

17 MR. SCHEER: Or continue, continue
18 this to the -- continue specifically to the November
19 meeting first Wednesday in November.

20 CHAIRMAN DR. GREENE: And just so
21 I have an understanding of -- yes.

22 And just so I have an
23 understanding, did you say you will not have any
24 other witnesses?

25 MR. KAPLIN: I will not have any

1 other witnesses.

2 MR. SCHEER: Okay.

3 So, Mr. Scheer, we would be
4 proceeding to public portion?

5 MR. SCHEER: We would be permitting
6 the objectors to present a case and then the
7 public -- again, it's not for comments. It's for
8 evidentiary. So that it would be the only -- the
9 only testimony and evidence should be whatever
10 way it's organized that you're bringing specific
11 information.

12 And I would note in all fairness
13 to everyone we had been given -- when I say we, the
14 planning commission members were given many, many
15 documents except they were not introduced in a
16 formal method.

17 To the extent that they should be
18 considered, I would recommend they be re-introduced
19 formally and so that they would be there for under
20 consideration. And so that's where we would be.
21 We would be picking up on that.

22 And then the question -- the
23 difficult question would be would the commission be
24 prepared to actually deliberate and vote that night
25 or would we -- is it really the most logical thing

1 to be able to take the transcripts that have been
2 produced and the evidence and actually vote after
3 a reasonable opportunity to review that?

4 And we -- guess we have some time
5 to think about it, but --

6 CHAIRMAN DR. GREENE: Well, the
7 next meeting would be November 5th and if it would
8 need to be continued to the following meeting would
9 be December 3rd to have this --

10 MR. SCHEER: And we had our -- I
11 just want to make sure we had an understanding that
12 we would try to complete it in November. We had --

13 There was no way I anticipate the
14 last meeting going so long. Tonight I think we made
15 some good progress, and I don't --

16 But I really do think it's the most
17 intelligent, fair way to do this to be able to have
18 a time to deliberate and review all the evidence.

19 Would there be any objections to
20 that process, so everyone knows that come to
21 December 3rd, there will be a vote?

22 MR. KAPLIN: I got to talk to my
23 client.

24 MR. SCHEER: Okay. Because
25 otherwise, I mean we could --

1 CHAIRMAN DR. GREENE: Otherwise
2 we're going to make a decision on November 5th.

3 MR. SCHEER: Yes, legally, I do
4 think that we have -- the board has a right to just
5 continue. It's continuation of a hearing. I just
6 don't want to get trapped, so I almost prefer at
7 that time to do a vote.

8 MR. KAPLIN: I forget, you asked me
9 to give you a letter. I gave you a letter.

10 MR. SCHEER: Yes, you did.

11 MR. KAPLIN: I --

12 MR. SCHEER: The letter was
13 anticipating that we would be able to get to a vote
14 in November, but we did not anticipate at all what
15 happened in September as far as timing goes.

16 And that's why in the order of
17 things you can consider it, let me know if we could
18 do that, because otherwise I'm going to ask the
19 commission members to be prepared to haphazardly
20 vote and put on the record that we'll --

21 I'll ask for an extension at that
22 point. If you don't give it, we'll make it clear
23 that one of the considerations is that we haven't
24 been given more time to consider what's been
25 presented.

1 MR. KAPLIN: But outside you want
2 to say that you would make the decision on December
3 the 3rd?

4 MR. SCHEER: There's absolutely no
5 reason why we wouldn't be able to deliberate and
6 vote -- go directly to a vote.

7 MR. KAPLIN: Joel, I'm asking
8 you --

9 MR. SCHEER: Yes.

10 MR. KAPLIN: I'm asking you a
11 direct question.

12 MR. SCHEER: Yes. And you agree?
13 I mean we --

14 MR. KAPLIN: Yes.

15 MR. SCHEER: There's no question
16 the commission would be able to vote.

17 MR. KAPLIN: I don't see why not.

18 MR. SCHEER: That's what I would
19 prefer to see them do.

20 MR. KAPLIN: It makes sense. I --

21 MR. SCHEER: Even though we have
22 that letter, and that's why I'm speaking to it, even
23 though we have the letter, we can just continue it,
24 I think as a matter of course.

25 But I don't want to get trapped

1 where we have that letter and we're told that, you
2 know, you --

3 MR. KAPLIN: No, I -- you know, I
4 don't really want the commission -- the planning
5 commission to make a haphazard decision -- or not
6 haphazard, but accelerated or whatever you want to
7 call it.

8 MR. SCHEER: Yes, I mean --

9 MR. KAPLIN: I rather -- I think
10 that I rather you have that month's deliberation and
11 consider everything, so, yes, that's --

12 MR. SCHEER: That's acceptable?

13 MR. KAPLIN: Yes.

14 MR. SCHEER: And that means that
15 the decision will be issued within 15 days -- I mean
16 a written decision will be issued within 15 days
17 thereafter.

18 MR. KAPLIN: But a --

19 MR. SCHEER: An actual vote will
20 be that night.

21 MR. KAPLIN: Right. So the record
22 would be closed.

23 MR. SCHEER: Record will be
24 closed --

25 MR. KAPLIN: November.

1 MR. SCHEER: In November, right.

2 MR. KAPLIN: All right. That makes

3 sense.

4 MR. SCHEER: Okay.

5 CHAIRMAN DR. GREENE: Okay.

6 All right. Given that, then I'll

7 ask for a motion to adjourn.

8 MR. GRAZIANO: So moved.

9 CHAIRMAN DR. GREENE: Second?

10 MR. ETCHISON: So moved.

11 CHAIRMAN DR. GREENE: All in favor?

12 MR. GRAZIANO: Aye.

13 MR. ETCHISON: Aye.

14 MS. WAGNER: Aye.

15 MR. HEILMAN: Aye.

16 MR. SHIPMAN: Aye.

17 CHAIRMAN DR. GREENE: Thank you,

18 everyone.

19 MR. SCHEER: Thanks for your

20 patience.

21 (Hearing concluded at 11:36 p.m.)

22

23

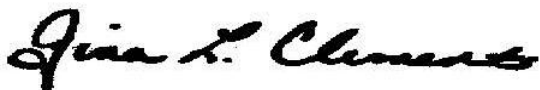
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CERTIFICATE

1
2
3 I do hereby certify that I am a Notary
4 Public in good standing, that the aforesaid
5 testimony was taken before me, pursuant to notice,
6 at the time and place indicated; that said deponent
7 was by me duly sworn to tell the truth, and nothing
8 but the truth; that the testimony of said deponent
9 was correctly recorded in machine shorthand by me
10 and thereafter transcribed under my supervision with
11 computer-aided transcription; that the deposition is
12 a true and correct record of the testimony given by
13 the witness; and that I am neither of counsel nor
14 kin to any party in said action, nor interested in
15 the outcome thereof.

16
17 WITNESS my hand and official seal this 28th
18 day of October, 2025.

19 
20

21 Notary Public
22
23
24
25

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21	20	16:16	200	189:10,	248:9,
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102	minute	139:12	31:19	232:16	4
15:13	196:19,	19	2021	234:25	40
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