

FROM THE BOROUGH CLERK'S OFFICE - BOROUGH OF OLD TAPPAN

To: Mayor and Council
Borough Attorney
Borough Administrator

Mayor and Council
Monday, May 8, 2023 –6:30 PM
Borough Hall Council Chambers
Special Meeting

1894

OLD TAPPAN'S 129TH YEAR OF INCORPORATION

2023

• Open Public Meetings Act Statement •

In Compliance with the Open Public Meetings Law, Notification of this Meeting Has Been Sent to Our Official Newspapers and Other Publications Circulated in the Borough of Old Tappan, And, Notice Posted on the Bulletin Board at Borough Hall.

• Fire Exits •

Please Note Fire Exits Located at the Main and Side Entrances of the Borough Hall.

• A G E N D A •

SPECIAL MEETING

- 1) Meeting Called to Order: 6:30 PM
- 2) Roll Call
- 3) Salute to the Flag
- 4) Public's Opportunity to Speak (Each individual will only be entitled to 3 minutes)
- 5) Appeal Hearing
 - CSH Old Tappan, LLC Application
- 6) Adjournment

AGENDA SUBJECT TO ADDITIONS AND/OR DELETIONS

Jean M. Donch, RMC
Borough Clerk

**BOROUGH OF OLD TAPPAN
MAYOR AND COUNCIL SPECIAL MEETING
May 8, 2023**

In compliance with the Open Public Meeting Law, notice of this meeting has been sent to our official newspapers and other publications circulated in the Borough of Old Tappan, and notice posted on the bulletin board at Borough Hall.

Please note fire exits located at the main entrance to the Council Chambers and in the rear of the Council Chambers.

REGULAR MEETING

MEETING CALLED TO ORDER: 6:30 p.m.

ROLL CALL:	Mayor John Kramer	Present
	Councilman Ronald Binaghi, Jr.	Present
	Councilman William Boyce	Present
	Councilman Guy Carnazza	Present
	Councilman Thomas Gallagher	Present
	Councilman Cort Gwon	Present
	Councilman Jin Yhu	Present

Also Present:	Borough Clerk Jean M. Donch
	Borough Attorney Brian Giblin

APPEAL HEARING

CSH Old Tappan, LLC Application

See official transcript of meeting attached

Respectfully submitted,

Jean M. Donch, RMC
Borough Clerk

Reviewed & Approved: June 5, 2023

BOROUGH OF OLD TAPPAN
MAYOR AND COUNCIL
SPECIAL MEETING
MONDAY, MAY 8, 2023
COMMENCING AT 6:31 P.M.

.....
IN THE MATTER OF: : TRANSCRIPT
: OF
Appeal Hearing : PROCEEDING
CSH Old Tappan, LLC Application :
.....

B E F O R E:

BOROUGH OF OLD TAPPAN MAYOR AND COUNCIL
THERE BEING PRESENT:

JOHN KRAMER, MAYOR

THOMAS GALLAGHER, COUNCIL PRESIDENT

RONALD BINAGHI, JR., COUNCILMAN

CORT GWON, COUNCILMAN

JIN YHU, COUNCILMAN

GUY CARNAZZA, COUNCILMAN

WILLIAM BOYCE, COUNCILMAN

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JEAN M. DONCH, BOROUGH CLERK

CHERIE FONOROW, APPELLANT

PATRICK GAMBUTI, APPELLANT

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Public's Opportunity to Speak (Each individual
Will only be entitled to 3 minutes)

ROBERT ZACCONE 159
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PETER ARDITO 160
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Harrington Park

MICHAEL TAMA 160
119 Willow Drive

CHERIE FONOROW 161
256 Old Tappan Road

PATRICK GAMBUTI, JR. 165
16 Autumn Lane

JOHAN BAGER 166
6 Klein Court

Adjournment

1 MAYOR KRAMER: Good evening, everyone.
2 In accordance with the Open Public Meetings Law,
3 notification of this meeting has been sent to our
4 official newspapers and other publications circulated
5 within the Borough and notice posted on the bulletin
6 board at Borough Hall.

7 Please note the fire exits, which are
8 to the entrance of the council chamber and to the
9 rear.

10 Roll call, please.

11 BOROUGH CLERK DONCH: Mayor Kramer?

12 MAYOR KRAMER: Here.

13 BOROUGH CLERK DONCH: Councilman

14 Binaghi?

15 COUNCILMAN BINAGHI: Here.

16 BOROUGH CLERK DONCH: Councilman Boyce?

17 COUNCILMAN BOYCE: Here.

18 BOROUGH CLERK DONCH: Councilman

19 Carnazza?

20 COUNCILMAN CARNAZZA: Here.

21 BOROUGH CLERK DONCH: Councilman

22 Gallagher?

23 COUNCILMAN GALLAGHER: Here.

24 BOROUGH CLERK DONCH: Councilman Gwon?

25 COUNCILMAN GWON: Here.

1 BOROUGH CLERK DONCH: Councilman Yhu?

2 COUNCILMAN YHU: Here.

3 MAYOR KRAMER: Would you all please
4 rise and join me to salute the flag.

5 (Whereupon, all rise for a Recitation
6 of the Pledge of Allegiance.)

7 MAYOR KRAMER: Before we move on, I
8 understand that Mr. Regan, the counsel for the
9 planning board, would like to bring up a point.

10 MR. REGAN: Thank you, Mayor and
11 Members of the Council.

12 Good evening.

13 Robert Regan, attorney for the Old
14 Tappan Planning Board, as most of you know.

15 I've been advised that the governing
16 body intends to open tonight's proceeding for
17 comments by members of the public.

18 With all due respect, I think that's
19 improper. It's inappropriate under the statute,
20 which is Section 17 of the Municipal Land Use Law.

21 I'll just read what New Jersey Zoning
22 and Land Use Administration says about that, it
23 should -- on an appeal.

24 "It should be emphasized that the
25 statute provides that the appeal to the

1 governing body shall be decided only," only
2 "upon the record established before the board
3 of adjustment."

4 In other words, the governing body on
5 appeal cannot reach out and obtain new and
6 undisclosed evidence which was not before the board.

7 So, I think to take statements and
8 comments from -- from members of the public, while it
9 may be a good intention on the governing body's part,
10 I think it's illegal. And I think it jeopardizes any
11 decision you make, one way or the other, in
12 connection with the appeal.

13 MAYOR KRAMER: Thank you.

14 MR. REGAN: Thank you. I'm happy to
15 answer any questions.

16 You have a very capable attorney who
17 knows the process.

18 MR. GIBLIN: Mayor, I would advise the
19 governing body that it is clearly up to the governing
20 body as a whole to decide whether or not they want to
21 accept comments.

22 Mr. Regan is, of course, correct and I
23 think that was in my letter to the governing body
24 that the only thing that the governing body can
25 consider is evidence that was educed during the

1 hearing before the planning board.

2 So, to the extent that people would
3 come up and make comments, if it was considered
4 evidential, it would be improper for you to hear it.
5 So...

6 COUNCILMAN BINAGHI: Brian, can I just
7 --

8 MR. GIBLIN: Sure.

9 COUNCILMAN BINAGHI: -- so -- and it
10 could taint the process going forward if it does go
11 forward.

12 MR. GIBLIN: Yes.

13 The only thing I would suggest is if
14 you were going to accept comments from the public,
15 that you do it after you've made a decision, that
16 would not be inappropriate.

17 (Audience Outburst.)

18 MS. PRICE: Mr. Giblin, could I just
19 put something on the record as well?

20 MR. GIBLIN: Do you want to
21 recognize --

22 MAYOR KRAMER: Yes.

23 MR. GIBLIN: The Counsel for applicant?

24 MAYOR KRAMER: Yes, please.

25 MS. PRICE: Gail Price from the firm of

1 Price, Meese, Shulman & D'Arminio on behalf of the
2 applicant below before your planning board Capitol
3 Senior Housing.

4 I want to join with Mr. Regan, having
5 spent the better part of, I guess it was a little bit
6 more than, a year here with your board and with all
7 of your residents who have come out in connection
8 with the application.

9 It is certainly contrary to the
10 Municipal Land Use Law to accept any -- anything
11 outside the record and I join with Mr. Regan.

12 But I also want to go a step further
13 and indicate that I am very much concerned about
14 correspondence, that I received a copy of, that was
15 circulated not only to the residents, but suggested
16 that additional correspondence be sent to each of you
17 in connection with this application.

18 So, to the extent that you've received
19 telephone calls, letters, e-mails, anything, which
20 also would be discoverable in a subsequent action, no
21 matter which way that this goes, I have significant
22 legal concern with that.

23 I also have a significant legal issue
24 with the manner in which the appellants have gone
25 forward in bringing extra stuff into the record, and

1 we can address that during argument-sake, but I want
2 to, at the outset, just raise those because I
3 haven't -- in 40-plus years of practice have not come
4 up against having the volume of these things outside
5 the record being brought up before a governing body
6 appeal. And I think it's in everyone's best
7 interest, your interest as the governing body,
8 everyone who's here this evening's interest,
9 certainly my client and your planning board who spent
10 all the time hearing the case.

11 So thank you.

12 MR. GIBLIN: Ms. Price, just so you're
13 aware, the Mayor and Council have told me that they
14 received correspondence, e-mails, et cetera. And I
15 have advised them in the past that they cannot
16 consider it in making their decision tonight.

17 I'm confident that they will not.

18 MS. PRICE: Thank you.

19 I appreciate that.

20 COUNCILMAN GALLAGHER: Yes, if I can
21 just -- one other thing.

22 Ms. Price, you can imagine that whether
23 it's a parking issue or lights on a field or
24 something like that, we get thousands of e-mails on
25 all sorts of subjects.

1 So to our attorney's -- to Brian's
2 recommendation there, they came into our inbox and
3 they left our inbox.

4 So we understand the sensitivity of
5 those. And I think I can speak for the rest of the
6 Council is that, yeah, they're not under
7 consideration --

8 MS. PRICE: I get it.

9 COUNCILMAN GALLAGHER: -- but residents
10 are always going to send e-mails.

11 MS. PRICE: I get it.

12 I was planning board attorney in
13 Ridgewood for 16 years and I've been --

14 MALE AUDIENCE MEMBER: No one cares
15 about your history, please.

16 MS. PRICE: -- I've been the attorney in
17 Harrington Park for 30.

18 So --

19 MALE AUDIENCE MEMBER: That's
20 irrelevant.

21 Thank you.

22 MS. PRICE: I'm also going to ask for a
23 ruling, Mr. Giblin, at some point in time that we all
24 keep our respect levels going, that we're all looking
25 for the right thing to be done in a very respectful

1 manner.

2 MAYOR KRAMER: Thank you.

3 Thank you, Ms. Price.

4 Well, from my point of view, early on
5 with regard to this, I started to receive e-mails
6 myself, so --

7 FEMALE AUDIENCE MEMBER: Can you speak
8 a little louder please?

9 FEMALE AUDIENCE MEMBER: Louder.

10 FEMALE AUDIENCE MEMBER: We can't
11 hear --

12 AUDIENCE MEMBERS: We can't hear you.

13 COUNCILWOMAN HAVERILLA: Sure.

14 FEMALE AUDIENCE MEMBER: We can't hear.

15 COUNCILWOMAN HAVERILLA: Sure.

16 MAYOR KRAMER: With that, I got two of
17 them now.

18 FEMALE AUDIENCE MEMBER: Thank you.

19 MAYOR KRAMER: To make it louder, this
20 records it.

21 COUNCILWOMAN HAVERILLA: If I can give
22 you this one too.

23 MAYOR KRAMER: Okay.

24 So, I -- yeah, over the course of the
25 past year I've received numerous e-mails as well, as

1 Councilman Gallagher has pointed out.

2 Have I read them? Sure, I've read
3 them. It's a -- it's just natural course to read
4 them.

5 I don't know what else the public could
6 -- could -- could add to what -- what has already
7 been filtered into our heads at this point in time.

8 And I, too, recognize the fact that
9 this hearing is to be based on the record of the
10 planning board and nothing else and that's what my
11 plan is, that's what I will base my decision on
12 tonight.

13 So I'll listen to the rest of the
14 Council as to whether or not they would have feelings
15 to the contrary to -- and allow it to be open to the
16 public, but I pass that onto the council.

17 COUNCILMAN YHU: My comment would be,
18 I'm just wondering when would have been the public
19 opportunity to comment on this, if not tonight?

20 MR. GIBLIN: During the planning board
21 hearings.

22 COUNCILMAN YHU: So they had no reason
23 to come to the Mayor and Council to -- to talk about
24 this issue?

25 MR. GIBLIN: When --

1 COUNCILMAN YHU: Either way?

2 MR. GIBLIN: When the application was
3 filed with the planning board, the planning board had
4 exclusive jurisdiction over the application the
5 entire time until it made a decision, that would have
6 been the place for anyone to -- to bring comments or
7 -- or evidence.

8 COUNCILMAN YHU: But now it's under the
9 Mayor and Council's...

10 MR. GIBLIN: But with no additional
11 evidence permitted brought.

12 MALE AUDIENCE MEMBER: He planning
13 board's unelected.

14 MR. GIBLIN: You're going to have to
15 tell people they can't comment.

16 MAYOR KRAMER: Yeah.

17 Yeah, I'd -- I'd appreciate it if you
18 would withhold your comments, please.

19 COUNCILMAN YHU: I, for one, would like
20 to hear from the residents.

21 (Applause.)

22 MAYOR KRAMER: All right. Okay.

23 Would you -- would you care to put that
24 into a motion?

25 COUNCILMAN YHU: I will make a motion

1 that we open up the meeting to the public before the
2 testimony that we're going to hear tonight.

3 MAYOR KRAMER: Do I hear a second.

4 COUNCILMAN GALLAGHER: I will second
5 that asking our residents just, it is a three-minute
6 timer, I do, again, ask for respect from both sides
7 and state what you'd like to say and then leave it to
8 next person to make some comments.

9 And then we'll get into the testimony
10 so it...

11 COUNCILMAN GWON: I want to make a
12 comment that it is our job only to use testimony and
13 the evidence that was shown through the planning
14 board process, et cetera.

15 I think we would be responsible enough
16 to make sure that we're not -- if there's any new
17 evidence, we don't use that in our decision making
18 today.

19 So I am open to the public speaking.
20 Just make sure that there's no new evidence.

21 We cannot consider that in this
22 process.

23 MAYOR KRAMER: Okay. We have a motion
24 and a second.

25 Could I have a roll call, please?

1 BOROUGH CLERK DONCH: Councilman
2 Binaghi?
3 COUNCILMAN BINAGHI: No.
4 BOROUGH CLERK DONCH: Councilman Boyce?
5 COUNCILMAN BOYCE: No.
6 BOROUGH CLERK DONCH: Councilman
7 Carnazza?
8 COUNCILMAN CARNAZZA: No.
9 BOROUGH CLERK DONCH: Councilman
10 Gallagher?
11 COUNCILMAN GALLAGHER: Yes.
12 BOROUGH CLERK DONCH: Councilman Gwon?
13 COUNCILMAN GWON: Yes.
14 BOROUGH CLERK DONCH: Councilman Yhu?
15 COUNCILMAN YHU: Yes.
16 BOROUGH CLERK DONCH: So it's a tie.
17 So the Mayor --
18 COUNCILMAN GALLAGHER: You're on the
19 hot seat, Mayor.
20 BOROUGH CLERK DONCH: So the Mayor
21 can...
22 MAYOR KRAMER: Okay.
23 I'm a -- I'm a law-abiding guy, that's
24 been my career. I take the law as it's printed.
25 And I'm going to err on the side of

1 caution as presented by our board's -- planning
2 board's attorney.

3 FEMALE AUDIENCE MEMBER: What?

4 FEMALE AUDIENCE MEMBER: We can't hear
5 you?

6 MAYOR KRAMER: So the -- the comments
7 will be -- the comments will be heard after --

8 MALE AUDIENCE MEMBER: Oh.

9 MAYOR KRAMER: -- the decision.

10 MALE AUDIENCE MEMBER: He's not getting
11 re-elected.

12 FEMALE AUDIENCE MEMBER: So your vote
13 is no?

14 MAYOR KRAMER: So I will call upon --

15 MR. GIBLIN: Mayor, if I can just put
16 something on the record.

17 MAYOR KRAMER: Sure.

18 MR. GIBLIN: In accordance with the
19 scheduling that we -- that the Mayor and Council set
20 forth for this, last Wednesday was the date for
21 submission of written position papers. We received
22 one from the applicant's attorney. We did not
23 receive one on Wednesday, but we did receive one
24 tonight from the appellants.

25 Then both sides are also permitted to

1 argue what they believe the evidence at the planning
2 board showed.

3 So the appellants get to go first, if
4 they want to make an oral presentation.

5 I'm not sure.

6 MS. FONOROW: Hi, do we need to swear
7 in or anything like that?

8 MAYOR KRAMER: You don't need to be
9 sworn, but just put your name and address on the
10 record.

11 MS. FONOROW: Sure.

12 It's Cherie Fonorow, 256 Old Tappan
13 Road.

14 MR. GAMBUTI: First, I'd like to say
15 that what we handed you guys is our oral
16 presentation.

17 It's --

18 MAYOR KRAMER: Your name and address.

19 MR. GAMBUTI: Oh, I'm sorry, Patrick
20 Gambuti, Jr., 16 Autumn Lane, Old Tappan.

21 So, if you wanted to follow along with
22 our oral presentation, it is not any different than
23 what we're saying.

24 MR. GIBLIN: Well, we marked it into --

25 MR. GAMBUTI: So --

1 MR. GIBLIN: -- the clerk has marked it
2 in, so it's a public document.

3 MR. GAMBUTI: Okay. We -- we thought
4 that would be appropriate to do.

5 MS. FONOROW: We just did it as a
6 courtesy --

7 MR. GAMBUTI: Yeah.

8 MS. FONOROW: To make -- we thought it
9 made sense.

10 MR. GAMBUTI: You first.

11 MS. FONOROW: Yes.

12 Good evening, Mayor and Council.

13 As you know, we're gathered tonight to
14 review the reasons for the appeal that we filed
15 asking for the Council to overturn the planning board
16 approval of the applicant's request to develop
17 244 Old Tappan Road.

18 We've learned -- we've learned a lot
19 this year-and-a-half. We've learned it's not
20 uncommon for zoning boards of adjustment and planning
21 boards to routinely be asked to grant use variances
22 for what are commonly referred to as inherently
23 beneficial uses.

24 I'm sure you're aware as a legal
25 term-of-art inherently beneficial uses represent a

1 class of uses that are so beneficial to society that
2 they are deemed to automatically satisfy the positive
3 criteria.

4 There is some applicants' attorneys
5 that will tell you, as a board, that their
6 application must be approved merely because their
7 client falls into the inherently beneficial use
8 category, but courts have recognized this is an
9 erroneous position.

10 The term "inherently beneficial" is
11 often used by the applicant as a tool to distract the
12 board from the negative effects of an approval.

13 In this case, we feel it was used as a
14 means to create confusion and instill fear to
15 influence planning board members to approve the
16 applicant's request or face a lawsuit. If you don't
17 approve this, it may be worse.

18 To quote one member, the lesser of all
19 evils warnings were brought up during the
20 discussions, prior to the vote, by both the Borough's
21 planner and the planning board attorney.

22 The Supreme Court of New Jersey in the
23 case of Sica versus Township of Wall Zoning Board of
24 Adjustment considered the standard of review to be
25 applied to inherently beneficial uses and crafted

1 what has become known as the Sica Balancing Test.

2 The court said that the board must
3 consider the negative impact of any on surrounding
4 property owners, even for inherently beneficial uses,
5 and that a board can, in fact, deny an inherently
6 beneficial use application when the negative impact
7 outweighs the positive.

8 In this day and age, to be cognizant of
9 global warming and the impact of having -- it's
10 having on communities everywhere, I see no benefit on
11 the removal of over 300 to 400 trees in the area that
12 used to be known as "Little Mountains" and consider
13 this a major negative impact on the community.

14 While stormwater issues appear to be
15 addressed, trees as dense as old as these in the most
16 trafficked area of town combat air, light and noise
17 pollution, as well as provide a home to wildlife and
18 birds of all kinds for their sanctuary and migration
19 paths.

20 I realize not everyone is into nature
21 or an animal lover, but they are all part of our
22 ecosystem and quality of life in our town.

23 This area has been zoned for
24 residential use since the town was established.

25 At what point does the town say no to

1 zoning changes to accommodate what will be a
2 commercial project that should have been built on
3 currently commercially-zoned land.

4 244 is the first residential home on
5 West Old Tappan Road. Fears that other developers,
6 too, will look at Enclave, Central Avenue Townhomes
7 and Washington Old Tappan development and say we can
8 easily get our project approved there to and site
9 statutes that can't be denied.

10 With the proximity to the schools and
11 increase in traffic, residents and shoppers that are
12 coming, this is all a negative impact to the
13 surrounding neighborhood.

14 Finally, as we've learned, I don't
15 think if anyone knew the Gerrit Haring House was
16 historic and on the federal and state registry or
17 that American history was made here and fought here,
18 which thankfully resulted in our nation being formed.

19 The public has also learned the most
20 recent 2016 Master Plan called specifically for this
21 particular plot of land to be preserved due to its
22 historical importance and its environmental value.
23 We don't know why it wasn't purchased by the Borough
24 when the opportunity arose.

25 As stated, there aren't many locations

1 in the center of our community designated for the
2 inherent benefit of the residents of the Borough.

3 One of the basis of appeal is that
4 adhering to the Master Plan's recommendation for this
5 property, preserving the historic house, preserving
6 watershed area and nature, saving over 200 to 400
7 trees, and creating a large heat island of impervious
8 coverage meets the criteria of what is in the best
9 interest of Old Tappan, its residents and, in fact,
10 the more significant inherent beneficial use for this
11 piece of property.

12 Mr. Gambuti and I have filed this
13 appeal with the support of over 2,000 to date via
14 petition online, to ask you to overturn the planning
15 board's decision to approve this application.

16 I'd like to thank you for your time,
17 your consideration and your continued vision to
18 maintain and improve the quality of life and the
19 character of Old Tappan.

20 Thank you.

21 (Applause.)

22 MR. GAMBUTI: Good evening, Mr. Mayor
23 and Members of Council. Thank you for the
24 opportunity to present our appeal this evening.

25 Let me start by saying this appeal has

1 little or nothing to do with what the applicant did
2 or did not do.

3 This appeal is about the Planning Board
4 of Old Tappan and errors, mistakes and omissions that
5 were made by them. We feel that they did not adhere
6 to the preponderance of goals in the Master Plan
7 about the environment and open space, nor did they
8 pursue the Phase I, Phase II environmental survey or
9 the historical survey during the hearings or in the
10 conditions.

11 We are not lawyers, so you won't be
12 hearing us mention case law, that we might mention
13 one or two of the cases stated in the testimony.

14 In response to something Ms. Price
15 said, and she said it again earlier -- before in her
16 brief, we will not be introducing any new evidence,
17 because as the rules of this hearing dictate, we are
18 to talk about what is in the transcripts from the
19 planning board hearings and any of the information
20 provided in the exhibits.

21 Though here again, we won't be going
22 into too much of that, because this appeal is about
23 the actions, words and vote under inappropriate
24 influence and recommendations from the planning board
25 lawyer and borough planner, as we see it, of the

1 planning board.

2 We will be reading sections from the
3 actual transcripts to support our points, and at
4 times we will extrapolate a little bit to support our
5 points.

6 If there's anything that is deemed as
7 new evidence, Mr. Giblin, please make us aware of
8 that.

9 Personally, I'm a storyteller by trade.
10 Cherie and I would like to tell you the story of the
11 missteps by the planning board in the way that we see
12 it.

13 So here we go. So we're going to
14 basically break this down by each of our appeal
15 points and then discuss that appeal point.

16 So we're going to read, for the benefit
17 of the public, what the actual appeal point itself
18 was first, and then we'll -- we'll get into
19 discussing about it.

20 MS. FONOROW: Let me just get my water.

21 MR. GAMBUTI: Sure.

22 During the hearings -- this is
23 number one, which is floor area ratio variance.

24 During the hearings, one of the major
25 concerns raised was the R-40 zoning rule that limits

1 the floor area ratio to a maximum of 8400 square
2 feet.

3 However, the developer plans to build a
4 structure that will be 81,000 square feet, almost ten
5 times what is allowed by the statute.

6 The developer did not demonstrate that
7 its building was consistent with the character, with
8 the neighborhood and does not -- and does not offend
9 the purposes of the limitation.

10 Not only did the applicant's planner
11 not present -- present this information, but in fact,
12 the applicant's planner agreed on the record that the
13 proposal was out of character with everything in the
14 R-40 zone.

15 The applicant's planner also agreed
16 that the purpose of the law is to limit the size of
17 structures, which CHS -- CSH, excuse me, is not
18 complying with.

19 We believe a legal issue arises because
20 since the application also needed a use variance, the
21 board's decision attempted to roll the floor area
22 ratio variance into the land use variance, even
23 though it is a separate D variance.

24 The 244 Old Tappan Road property is
25 zoned for only residential use, and that issue was

1 never considered alone on its merit. The two issues
2 are independent of each other and should have been
3 considered separately.

4 So that was our first appeal point that
5 we had sent in.

6 And so here we go. During the initial
7 hearing on February 9, 2022, Mr. Shenal, the
8 applicant's civil engineer stated the floor area
9 ratio variance request.

10 Dan Shenal: "The zone itself permits
11 8400 square feet of minimum floor area,
12 essentially, for -- for a dwelling. With this
13 lot containing our 30,000-square-foot
14 footprint times three stories, we get up to
15 just over 81,000 square feet versus the 8400
16 that's permitted."

17 Jumping ahead to the January 11, '23
18 hearing, Dan Steinhagen in questioning Mr. Williams
19 confirmed that the RA-40 requirements and how this
20 use was out of character for the neighborhood.

21 And during these, because some of these
22 are a little bit long, Cherie and I might go back and
23 forth on them just so you know that.

24 MS. FONOROW: We're going to kind of do
25 role play --

1 MR. GAMBUTI: Yeah.

2 MS. FONOROW: -- to save everybody some
3 time.

4 MR. GAMBUTI: Yeah, this way they don't
5 have to hear my voice drone on forever.

6 Question from Mr. Steinhagen:

7 "So... it's your opinion that the
8 Borough's Zoning Ordinance permits an
9 81,000-square-foot building in the R-40
10 zone?"

11 MS. FONOROW: "No."

12 MR. GAMBUTI: "Why not?"

13 MS. FONOROW: "Because that's not what
14 the code requires."

15 MR. GAMBUTI: "Is there a floor area
16 ratio limit in the R-40 zone?"

17 MS. FONOROW: "Yes."

18 MR. GAMBUTI: "Okay."

19 "Do you exceed the floor area ratio
20 limit in the R-40 zone."

21 MS. FONOROW: "We do."

22 MR. GAMBUTI: "So" do "you need a D-4
23 variance --"

24 MS. FONOROW: "Okay."

25 MR. GAMBUTI: -- "is that a fair"

1 statement [sic].

2 MS. FONOROW: "That is."

3 MR. GAMBUTI: "Okay."

4 "Are there any other buildings in the
5 R-40 zone that are in the range of 81,000
6 square feet?"

7 MS. FONOROW: "Not that I'm aware of."

8 MR. GAMBUTI: "So it's not consistent
9 with the neighborhood."

10 There was no response at this point.

11 "Yes?"

12 MS. FONOROW: "The FAR..."

13 Or the floor area ratio variance, we'll
14 call it the FAR.

15 "... is not consistent, that's
16 true."

17 MR. GAMBUTI: "Okay."

18 "Do you know what the purpose of the
19 FAR variance is?"

20 MS. FONOROW: "Yes."

21 MR. GAMBUTI: "What is it?"

22 MS. FONOROW: "It's to limit or control
23 --"

24 MR. GAMBUTI: "Wait, excuse me, let me
25 back up. The purpose of the FAR restrictions,

1 not the FAR --"

2 MS. FONOROW: "I understand [sic]."

3 MR. GAMBUTI: "-- yeah, I just want to
4 make sure that the transcript is --"

5 MS. FONOROW: "It's to control
6 intensity of development."

7 MR. GAMBUTI: And further on in this
8 exchange, Dan Steinhagen again, questions:

9 "Okay." Now "with respect to density,
10 do you know what the permissible density in
11 the R-40 zone is?"

12 MS. FONOROW: "I'll [sic] have to
13 double check my records."

14 MR. GAMBUTI: "Okay. So --"

15 MS. FONOROW: "That's part of my
16 original testimony, but I'd have to --"

17 MR. GAMBUTI: "Would you agree with me
18 that..." "the R-40 zone, because it says the
19 minimum lot area is 40,000 square feet, it
20 requires one dwelling on at least 40,000
21 square feet."

22 MS. FONOROW: "Yes."

23 MR. GAMBUTI: "That's the minimum."

24 MS. FONOROW: "Yes."

25 MR. GAMBUTI: "And are you aware that

1 there's case law that says... a municipality
2 can regulate density not just by saying in the
3 bulk chart, the maximum [sic] -- the minimum
4 -- the maximum density is one unit per acre,
5 three units per acre," he corrects himself a
6 lot. "They... do it by way of making a
7 minimum lot area requirement?"

8 MS. FONOROW: "I am aware.

9 "I forgot the name of the case, but,
10 yes.

11 MR. GAMBUTI: "Okay. Would a density
12 -- a permissible density -- if I told you the
13 permissible density based on a
14 40,000-square-foot area, minimum lot area,
15 1.09 units per acre, would that sound about
16 right."

17 MS. FONOROW: "Sure."

18 MR. GAMBUTI: "It's a little bit less
19 than --"

20 MS. FONOROW: "Yeah."

21 MR. GAMBUTI: "-- 40,000 is a little
22 bit less than 43,560 --"

23 MS. FONOROW: "Right."

24 MR. GAMBUTI: "-- correct."

25 MS. FONOROW: "Right."

1 MR. GAMBUTI: "And how many units per
2 acre are being proposed here?"

3 MS. FONOROW: "So the DUs or dwelling
4 units per acre were -- were testified both in
5 my direct testimony and the site engineer.
6 The reason we're before this board is because
7 we exceed that."

8 MR. GAMBUTI: "I understand.
9 "What's -- what's the number?"

10 MS. FONOROW: "I have to look that up."

11 MR. GAMBUTI: "You're doing 100 and
12 it's about 5-and-a-half acres?"

13 MS. FONOROW: "Correct."

14 MR. GAMBUTI: "So it's a little bit
15 less than 20."

16 MS. FONOROW: "Yes."

17 MR. GAMBUTI: "Are there any zones
18 anywhere in the Borough of Old Tappan that
19 permit a density of about 18 units an acre
20 that you're aware of."

21 MS. FONOROW: "No, not that I'm aware
22 of."

23 MR. GAMBUTI: "And are there any
24 developments, whether permitted by zoning,
25 preexisting or otherwise, are there any

1 projects, any conditions anywhere in the
2 Borough where they allow -- where there is, in
3 fact, 18 dwelling units per acre?

4 MS. FONOROW: "Allowed, no. Permitted
5 -- approved, that I don't know."

6 MR. GAMBUTI: "So you have no idea
7 whether or not this, with 18 units an acre,
8 and I get that it's a different type of use
9 than a traditional single-family --"

10 MS. FONOROW: "Correct."

11 MR. GAMBUTI: "-- or even a multifamily,
12 there is nothing in the Borough that comes
13 anywhere close to this density, is there?"

14 MS. FONOROW: "Not that I'm aware of."

15 MR. GAMBUTI: "Okay."

16 "And what's the purpose of a density
17 restriction?"

18 MS. FONOROW: "Also to -- well, there
19 are a couple of reasons [sic]" a couple of,
20 "purposes."

21 "One is to control intensity of
22 development. And the other is for impact on
23 the surrounding community."

24 MR. GAMBUTI: "Okay."

25 "Did you look at the 1994 Master Plan?"

1 MS. FONOROW: "Again, I did, yes."

2 MR. GAMBUTI: "Okay. So you're
3 familiar with the statement on the page 76
4 that says:

5 'The goal of the Master Plan is
6 directed to maintain the low-density
7 residential atmosphere in Old Tappan.'

8 "You're aware of that, right?"

9 MS. FONOROW: "I am."

10 MR. GAMBUTI: "Okay."

11 "And 18 units an acre, in this
12 community, is not necessarily low density, is
13 it?"

14 MS. FONOROW: "No, it's not."

15 MR. GAMBUTI: During the December 14,
16 '22 hearing, a resident brought up the case Sunrise
17 Development, Incorporated versus The Princeton Zoning
18 Board of Adjustment.

19 This is significant in that it mirrors
20 this case and should have been reviewed by the board
21 after it was brought to their attention.

22 You'll learn more about this later in
23 the presentation.

24 MS. FONOROW: Appeal Point 2 is
25 unlawful quid pro quo.

1 The Borough, as a result of the appeal
2 [sic], will be receiving the Gerrit Haring House for
3 free, as well as movement of the house across the
4 street and a new foundation, all paid for by the
5 applicant.

6 This, as the CSH, Capitol Senior
7 Housing planner testified, is legally considered
8 something of value.

9 In essence, part of the basis for
10 approval offered by the developer was that it was
11 donating a valuable property to the Borough.

12 This is illegal and the planning board
13 violated the law by approving the application.

14 The only way an applicant can convey
15 something of value to the municipality is if it is
16 authorized by statute and ordinance, and the donation
17 of a historic structure, in exchange for a use
18 variance, is authorized by neither.

19 The legal benefit -- for those that
20 don't know, the legal definition of quid pro quo is
21 the specific intent to give or receive a thing of
22 value in exchange for some future action that the
23 public official will take, and may already have
24 determined to take, or for a past act that he has
25 already taken.

1 During the September 14, '22 hearing
2 Ms. Price addressed the gift of the Gerrit Haring
3 House being given to the town.

4 Ms. Price -- I'm being her at the
5 moment.

6 "I had advised the Board of last month,
7 that we will be moving the historic home
8 across the street as, basically, a gift to the
9 Borough, at our client's cost, so situated, in
10 a [sic], "location picked by the Borough and
11 putting down a foundation, also at our
12 client's cost, to provide future housing for
13 that structure."

14 And Dan Steinhagen brought up a point
15 that the planning board should have acted on --
16 because these -- there are serious implications of
17 this gift between the Borough and the applicant.

18 That's my -- those are my words, that
19 line. It's not in the thing, but there were
20 definitely serious implications of this gift between
21 the Borough and the applicant.

22 Now, Dan Steinhagen said:

23 "We're now hearing about a gift to the
24 municipality. I have really strong concerns
25 about that."

1 Then we move onto the December 14, '22
2 hearing.

3 Mr. Tim Adriance, a recognized
4 historical expert, confirmed the fact that the Gerrit
5 Haring House has value.

6 The following is the exchange between
7 Mr. Steinhagen and Mr. Adriance.

8 MR. GAMBUTI: "Tim, you're aware that
9 the applicant here has proposed not to
10 demolish the structure, but instead as part of
11 its application has indicated to the board
12 that it intends to relocate it, relocate the
13 historic structure at the [sic] expense..."
14 on their expense "onto municipally-owned
15 property and donate it to the borough?"

16 MS. FONOROW: "Yes."

17 MR. GAMBUTI: "And is the donation of
18 the structure a valuable thing that the
19 municipality -- that the Borough of Old Tappan
20 is going to be getting?"

21 MS. FONOROW: "Yes."

22 MR. GAMBUTI: "That's all I have."

23 MS. FONOROW: Finally, from January 11,
24 '23 Mr. Steinhagen in questioning Mr. Williams
25 received confirmation of the quid pro quo.

1 MR. GAMBUTI: "And I guess you're
2 saying at the same time the Borough is getting
3 something valuable in exchange for what's
4 going on --"

5 MS. FONOROW: "That is correct."

6 MR. GAMBUTI: "For this variance --"

7 MS. FONOROW: This is Mr. Williams who
8 is the planner answering, so:

9 "That is correct."

10 MR. GAMBUTI: "For this variance --"

11 MS. FONOROW: "That is correct."

12 MR. GAMBUTI: "-- and the approval?

13 Okay."

14 MS. FONOROW: Then in essence -- this
15 in essence proves that the quid quo pro is confirmed
16 by the applicant's expert.

17 MR. GAMBUTI: This will be our Appeal
18 Point No. 3.

19 The approval -- conflict of interest.
20 The approval must be reversed because it is -- I'm
21 sorry -- the approval must be reversed because it is
22 infected by a conflict of interest.

23 The Borough Administrator, although
24 lawfully a member of the board, is not permitted to
25 consider an application where her employer, in this

1 case the Borough, is receiving a valuable property in
2 exchange for the approval.

3 Once the applicant had offered to give
4 the Borough something of value in moving the Gerrit
5 Haring House as noted above, she should have recused
6 herself. Her failure to do so, and instead cast,
7 what amounted to be the deciding vote, tainted the
8 entire hearing and requires it to start over, from
9 scratch, with an unconflicted board.

10 As citizens of Old Tappan, we believe
11 this raises a serious legal issue, yet another reason
12 for the Mayor and Council to reverse the planning
13 board's approval of the 244 application.

14 According to the New Jersey Local
15 Government Ethics Law, municipal employees are
16 expected to act in the best interests of their
17 municipality and avoid any situation that could
18 create a conflict of interest.

19 It's under this law that the Borough
20 Administrator of the Borough of Old Tappan and
21 appointed planning board member, and appears to be in
22 violation to vote on this application due to this
23 conflict of interest.

24 As per 40A:12-22.3 definitions, in
25 Section G:

1 A 'Local government officer' means any
2 person, whether compensated or not, whether
3 part-time or full-time:" (1) "elected to any
4 office of a local government agency;" (2)
5 "serving on a local government agency which
6 has the authority to enact ordinances, approve
7 development applications or grant zoning
8 requests [sic]."

9 As per 40A --

10 MS. FONOROW: Grant zoning variances.

11 MR. GAMBUTI: I'm sorry. Zoning
12 variances, I apologize.

13 As per 40A:9-22.5, Section C:

14 "No local government officer or
15 employee shall use or attempt to use his
16 official position to secure unwarranted
17 privileges or advantages for himself or
18 others;"

19 In this case, the municipality of Old
20 Tappan is the employer and as quoted and confirmed by
21 Tim Adriance on 12/14/22, the historic
22 pre-revolutionary war Dutch built sandstone house has
23 value.

24 Therefore, it has been determined that
25 the Gerrit Haring House is an in-kind contribution to

1 the Borough, in exchange for approval on a variety of
2 variances including, but not limited to, the
3 important land use rezoning. It's under this statute
4 that the Borough Administrator should have recused
5 herself.

6 While members of the planning board may
7 not have been aware of this law, the attorneys
8 president -- present should have recognized that now
9 there was a conflict of interest and determined the
10 appropriate action. We see this as an error that
11 puts the approval in question.

12 I'll do this one, okay.

13 With -- Number 4 was the Borough
14 Engineer Concerns, which we're not going to address
15 tonight, because there was an agreement that was
16 made. So we're just going to skip over that because
17 it's not relevant at this point.

18 MS. FONOROW: But it's still in the
19 appeal.

20 Number 5, the number of affordable
21 housing units is improper.

22 The Borough requires a 15-percent
23 affordable housing set-aside based upon its
24 affordable housing settlement, but the project is
25 only doing a 10 percent set-aside and did not get a

1 variance.

2 If this application is approved in some
3 form, we believe that the Borough should at least get
4 the amount of affordable housing units required by
5 law, otherwise the Borough runs the risk of not
6 getting credit for any of the affordable housing
7 units on the property.

8 Being that COAH credits are so
9 important, we feel that the planning board should
10 have further pressed the applicant for more COAH
11 credits, because the Borough Ordinance requires a
12 minimum of 15 percent.

13 During the February 9th hearing, Mr. --
14 I'm not sure I'm saying his name right -- Mamary,
15 Marmory --

16 MR. GAMBUTI: That's right.

17 MS. FONOROW: -- asked Mr. McElwee to
18 add more COAH units and he said no.

19 Mr. Mamary.

20 MR. GAMBUTI: "I just whispered
21 something to our -- with my board attorney and
22 I asked him if we were able to increase the
23 amount of COAH units that they were going to
24 be proposing from more than 10 and" --

25 MS. FONOROW: Mr. Regan said:

1 "The Maximum is 10."

2 MR. GAMBUTI: "The maximum is 10 that
3 we could squeeze out of it, right? So I would
4 like 20."

5 MS. FONOROW: Mr. Regan replied:

6 "That's the number that's required.
7 Could he volunteer 20?."

8 MR. GAMBUTI: Mr. McElwee --

9 Sorry, Mr. McElwee -- answered:

10 "You know what, if I was an independent
11 living community, yes, but there's so much
12 care involved in this model that that would be
13 impossible to do."

14 MS. FONOROW: And that was the end of
15 the discussion.

16 The board should have pressed further
17 and required the applicant to provide more COAH
18 units.

19 In response to a question by a
20 resident, Mr. Szabo explains why the 10 percent.

21 "MR. SZABO: If it's for sale, 20" --
22 I'm sorry. You were going to...

23 MR. GAMBUTI: Okay.

24 "If it's for sale, 20 percent, whatever
25 is being proposed, a condo or a townhouse or a

1 development that's for sale is 20 percent; if
2 it's residential, 15 percent.

3 "This is treated differently under the
4 law because it is an assisted living facility,
5 it's 10 percent of the beds and each bed
6 actually qualifies as a unit towards our
7 obligation."

8 MS. FONOROW: Mr. Regan replied:

9 "And there will be -- "there'll be
10 Medicaid beds."

11 Then Ms. King said:

12 "Is there an obligation in COAH for
13 Medicaid beds."

14 MR. GAMBUTI: And that's that resident
15 that was questioning this.

16 Mr. Regan then said:

17 "Has an obligation in this type of
18 development."

19 MS. FONOROW: And Mr. Szabo said:

20 "It's 10 percent and we get credits for
21 that."

22 Later in the January 11, '23 hearing
23 Mr. Mamary asked about the 15 percent Borough
24 mandated set-aside. The applicant said they were
25 complying with the regulation because they are

1 Medicaid units, but the town's regulation says
2 rental. This assisted living facility is charging a
3 monthly fee and, therefore, is a rental facility
4 which then triggers the Borough's regulation.

5 Vice Chairman Mamary.

6 MR. GAMBUTI: "I would be interested in
7 knowing why Mr. Steinhagen was mentioning the
8 15 as opposed to the 10, because that's
9 something that it wasn't made clear to us."

10 MS. FONOROW: Mr. Regan replied:

11 "Well, the 10 percent -- the 10 percent
12 is a Medicaid regulation."

13 MR. GAMBUTI: Ms. Price then recites-
14 replies:

15 "Medicaid, right."

16 MS. FONOROW: Mr. Regan said: "Right."

17 MR. GAMBUTI: "MS. PRICE: It's a
18 Medicaid regulation."

19 MS. FONOROW: Mr. Regan said:

20 "What he's talking about, in the
21 Borough's settlement with Fair Share Housing
22 Center, any new developments have a 15 percent
23 set-aside, any new developments of more than
24 five units, there's a 15 percent set-aside if
25 you have rental.

"That's -- that's a boilerplate

"Is that applicable here?."

"I don't believe it is --"

"No."

"-- because this is a Medicaid

MR. GAMBUTI: Ms. Price replied:

"Right. The Medicaid regulation that

"That's why I wanted to be clear that

MS. FONOROW: Vice Chairman Mamary

"Well, that was my -- my point. I'm

"Right.

"That's why I wanted to make sure by my

1 redirect that it's clear we're not asking for
2 any relief. And we're not violating any
3 regulations. We're compliant with the
4 regulations."

5 MS. FONOROW: But they are not being
6 compliant with municipal ordinance.

7 Further discovery should have been
8 pursued by the planning board regarding Medicaid
9 versus municipal ordinances that, we feel, is an
10 important oversight.

11 Then later still in the January 11, '23
12 hearing during Dan Steinhagen's summation, he refutes
13 the applicant's position on the 15 percent.

14 MR. GAMBUTI: "MR. STEINHAGEN: "...I'm
15 going to start with the question that was
16 just," posted, "about affordable housing. I
17 represented a party in the Borough's
18 affordable housing declaratory judgement
19 action. I'm going to check my -- check the
20 citation, if you don't mind. It's
21 Section 255-122 of the Borough's Zoning
22 Ordinance, which is entitled, "Affordable
23 Housing Mandatory Set-Aside."

24 "And it refers to any residential
25 dwelling at a density of six units or more per

1 acre whether permitted by a zoning amendment,
2 a use variance granted by the board, Borough's
3 planning board acting as a board of adjustment
4 or the adoption of a redevelopment plan.
5 That's what it applies to.

6 "The fact that the department of health
7 says, you know, as a condition," for "your
8 licensure for a certificate of need, you need
9 to provide us, the DOH, with 10 percent of the
10 beds for Medicaid has nothing to do with your
11 affordable housing set-aside, mandatory
12 set-aside ordinance.

13 "There's no," exception, "because a
14 party is agreeing with some other entity to do
15 something that they get a pass from your
16 ordinance.

17 "Your ordinance does not allow a
18 10 percent set-aside."

19 MS. FONOROW: "MR. REGAN: Have you
20 ever seen an assisted living or nursing home
21 development with a set-aside of greater than
22 10 percent?"

23 MR. GAMBUTI: "MR. STEINHAGEN: Yes."

24 MS. FONOROW: Mr. Regan replied:

25 "And where was that?"

1 MR. GAMBUTI: "In the Borough -- in
2 the Township of Mahwah right now.

3 "My firm is representing a developer
4 where a substantially higher than 10 percent
5 set-aside is required."

6 MS. FONOROW: "And what was the
7 Medicaid regulation applicable."

8 MR. GAMBUTI: Mr. Steinhagen replies:

9 "It's -- the project is currently in
10 the," developmental "process, but Fair Share
11 Housing Center demanded a higher
12 set-aside."

13 MS. FONOROW: "MR. REGAN: "Okay. They
14 haven't demanded anything in" --

15 MR. GAMBUTI: "They haven't -- they
16 have not -- I can't speak to what they've
17 demanded. I can tell you that your ordinance
18 says, any application for a residential
19 building with more than six units per acre
20 that requires a use variance, which is what
21 we're here for tonight -- we heard that this
22 is 18 units an acre and it's a use variance --
23 requires a minimum set-aside of 15 percent."

24 MS. FONOROW: Then he continues.

25 MR. GAMBUTI: "I think that the

1 applicant's position is wrong. I think that
2 there is a chance that this project does not
3 get affordable housing credit.

4 "They'll get credit for Medicaid units
5 under their certificate of need, but you may
6 not get any affordable housing credits and
7 Fair Share Housing Center may come after you."

8 MS. FONOROW: Mr. Regan responded:

9 "But you've had the opportunity to
10 speak to Fair Share, I assume, about that
11 issue."

12 MR. GAMBUTI: "MR. STEINHAGEN: I've
13 talked to them about this issue in connection
14 with another project in Closter. "

15 MS. FONOROW: "Not in connection with
16 this project."

17 MR. GAMBUTI: "No, not in connection
18 with this project, but a project in Closter
19 that's currently in front of the board of
20 adjustment and they want a -- well, I -- I can
21 assure you that Mr. Bowers wants more than
22 10 percent."

23 MS. FONOROW: "Well, I've had other
24 issues with Mr. Bowers on assisted-living
25 facilities where he accepted the

1 10 percent."

2 MR. GAMBUTI: "MR. STEINHAGEN: "Okay.

3 "This is an inherently beneficial use
4 case. The applicant, while it says it did
5 demographic studies, did not demonstrate the
6 extent of the need. And that's a problem for
7 the board, because on one hand you have the
8 special reasons that are assumed to be
9 satisfied versus the negative impacts.

10 "We don't know how -- how heavy that
11 side of the scale is.

12 "We don't know how many beds there are
13 in the community. When I say 'the community,'
14 I don't mean Old Tappan, because there is
15 another community -- there is another --"

16 MS. FONOROW: "MR. REGAN: "You're
17 talking about regional surplus."

18 MR. GAMBUTI: "Correct." I don't know

19 --

20 "I don't -- we don't know that."

21 MS. FONOROW: "Do you have any evidence
22 of any --"

23 MR. GAMBUTI: "MR. STEINHAGEN: No, no,
24 no. I don't have -- Mr. Regan, I'm sorry,
25 I'm giving a summation.

1 "I don't have the burden --"

2 MS. FONOROW: "I'm just asking you the
3 question."

4 MR. GAMBUTI: "No."

5 MS. FONOROW: "If you don't want to
6 answer the question --"

7 MR. GAMBUTI: "No, no. I don't have
8 the burden of demonstrating the extent of the
9 need. That's the applicant's burden. The
10 applicant hasn't done it."

11 MS. FONOROW: We've heard time and
12 again how vital the COAH units are to the town, so we
13 were asking the Council to determine why the planning
14 board settled for only 10 when they allowed the
15 deviation from the Borough Ordinance. We consider
16 this another instance of a planning board error.

17 MR. GAMBUTI: All right.

18 Now we're up to Number 6 of 8, Master
19 Plan issues.

20 The Borough's Master Plan and the
21 reexamination reports, as approved of by the planning
22 board, raised specific points regarding the property
23 located at 244 Old Tappan Road and its associated
24 Gerrit Haring House structure.

25 We believe, in its resolution, the

1 planning board did not properly address the
2 recommendations in the most recent Master Plan with
3 regard to the historic structure. The house should
4 be left intact in its current location and the
5 applicant should be required to design its
6 development around it. We believe that the planning
7 board did not properly consider the Master Plan
8 recommendations.

9 That's our appeal.

10 The specific language of the 2016
11 Master Plan was discussed during several planning
12 board meetings. There were many conflicts of
13 opinions on the interpretation, or more important, on
14 which benefit to the town has the greater value.

15 If you ask OT residents, it's obvious
16 they feel open space takes priority.

17 If you ask the applicant, senior
18 centered assisted living takes priority.

19 We recognize this is a highly unusual
20 case, especially when you have to task to --
21 especially when you have the task to evaluate whose
22 interpretation should take precedence.

23 Does the financial gain for this
24 developer take precedence over the intention of the
25 Master Plan regarding this particular piece of

1 property?

2 In the testimony regarding the need for
3 assisted living housing, and the "silver tsunami", as
4 Mr. McElwee put it, there is not one reference to the
5 fact that Old Tappan, with the population of under
6 6,000 and the median age of 47.5 years already has an
7 assisted living facility, Sunrise Assisted Living.
8 As well as there are over a dozen plus within a
9 5-mile radius.

10 We aren't suggesting that assisted
11 living isn't essential, it's just not essential for a
12 second one in our town, on this site.

13 Nor did the applicant prove that the
14 need for more assisted living in Old Tappan or
15 present numbers to justify their claims.

16 They do have the Certificate of Need
17 from the state, but the document specifically states:

18 "The Department, in approving this
19 application, has relied solely on the facts
20 and information presented."

21 The Department has not undertaken an
22 independent -- I'm sorry.

23 "The Department has not undertaken an
24 independent investigation of such information.
25 If the material facts have not been disclosed

7 During the November 9, '22 hearing,
8 Mr. Williams was questioned by Peter Ardito. Peter
9 is Co-Chairman of our downstream neighbor, Harrington
10 Park, Chairman of the their environmental committee
11 and board member of Bergen SWAN, which stands for
12 Save the Watershed Alliance [sic] Network.

18 MS. FONOROW: "MR. ARDITO: -- you can
19 --

21 MS. FONOROW: "You said you have walked
22 the property, that's correct?"

25 "Yes, well, actually I said I and my

1 staff have visited the site, but, yes, we have
2 walked."

3 MS. FONOROW: "Okay.

4 "And you've also stated that you read
5 the Master Plan as has been furnished by the
6 planning board."

7 MR. GAMBUTI: "Correct."

8 MS. FONOROW: "The Master Plan goes
9 onto to say specifically about this piece of
10 property, that if it was to become available,
11 it should be preserved as is especially
12 because of its location in town.

13 "So when you speak of inherent benefits
14 and you say that you don't see any negative
15 benefits to the development of this..."

16 "property, I would ask you by reading the
17 Master Plan that you said you have and reading
18 those specifics and it specifically states
19 about 244, that would it not be equally
20 beneficial for the community for this property
21 to, in fact, adhere to the request in the
22 Master Plan to keep it preserved and make it
23 into a park in the central area of town, also
24 preserving the historic house because of the
25 value that that is, because you said there was

1 no inherent value at all. One might argue --
2 I'm asking if you would -- could argue that
3 maybe that is an inherent value."

4 MR. GAMBUTI: "What's the inherent
5 value."

6 MS. FONOROW: "Of keeping the property
7 for public use and keeping the historic house
8 where it is."

9 MR. GAMBUTI: Mr. Williams responds:

10 "So just for the record, I did not say
11 that there would be no inherent value to keep
12 it the way it is."

13 MS. FONOROW: "Okay. I believe you did
14 say there was no inherent value."

15 MR. GAMBUTI: Mr. Williams replied:

16 "I definitely didn't say that."

17 MS. FONOROW: "I apologize."

18 MR. GAMBUTI: "But in terms of the
19 Master Plan -- so one option is obviously to
20 leave it as it is.

21 "The application before this board,
22 however, is to develop it for the purposes
23 that I've described as an assisted-living
24 development and the board has to review each
25 application on their own merit and they will

1 base their decisions on the Municipal Land Use
2 Law, on the preponderance of evidence as
3 submitted by our team and/or other experts and
4 they'll have to weigh and vote it up or down,
5 right.

6 "In terms of the Master Plan, I
7 provided page numbers in my testimony. I'm
8 not sure where you read that in the Master
9 Plan."

10 MS. FONOROW: "I have the information.
11 I will be happy to furnish it to you."

12 MR. GAMBUTI: "I would just -- I would
13 just submit that when I look at a Master Plan
14 notwithstanding your point about the specific
15 reference, which I did not see by the way."

16 MS. FONOROW: "I can give you a page
17 number and paragraph."

18 MR. GAMBUTI: "I can trust -- I'm just
19 saying, I didn't catch it. That I look at the
20 plan in its totality. That's why I shared the
21 goals and objectives I did."

22 During the same hearing, a resident of
23 town questioned Mr. Williams on their proposed use of
24 the property and which use takes precedence.

25 MS. FONOROW: Mrs. -- Ms. Magarro

1 spoke.

2 "I do have the wording from the Master
3 Plan for you."

4 MR. GAMBUTI: "MR. WILLIAMS: Which
5 one?"

6 MS. FONOROW: "The one that references
7 this property."

8 MR. GAMBUTI: "Which year?"

9 MS. FONOROW: "2016. I don't have the
10 page number.

11 "Since most of the Borough's recreation
12 lands are not centrally located, explore and
13 pursue any opportunities that arise to obtain
14 properties suitable for recreation near the
15 Borough's central zone.

16 "One example of a recent success story
17 is the Oaks property on Central Avenue north
18 of Haring Drive.

19 "One other such pursued property that
20 has not as yet been successful is the historic
21 Gerrit Haring House property adjacent to the
22 west side of the Korean Presbyterian Church of
23 the Palisades, which is a different church now
24 on Old Tappan Road west across from Russell
25 Avenue, which this property."

1 Excuse me.

2 "So, as a planner, when you're
3 discussing inherently beneficial uses, in this
4 case would be mutually exclusive, your
5 beneficial use of the assisted living is a
6 generalized one and can be placed in other
7 locations. This is a unique piece of land
8 that is specifically named in the Master Plan.

9 "So, as a planner, how would you
10 prioritize a specifically named use of a
11 specifically named property versus a
12 generalized community beneficial use."

13 MR. GAMBUTI: Mr. Williams replied:

14 "It's an excellent question.

15 "This is, perhaps, a super particular
16 instance because in my opinion they're not
17 mutually exclusive. Why? Because you have a
18 situation where the Borough has identified an
19 alternate site for that historic structure and
20 an applicant who has agreed to at significant
21 expense to relocate that historic structure,
22 which was in a state of disrepair to a site
23 which may actually be more suitable given its
24 access and visibility, et cetera, and the care
25 of that property. So --"

1 MS. FONOROW: "MS. MAGARRO: They
2 mentioned the historic house, but they're
3 referring to this property as a recreational
4 property, not as a museum.

5 "So once it becomes an assisted living,
6 it will no longer be a recreational property.
7 They are mutually exclusive."

8 MR. GAMBUTI: "MR. WILLIAMS: I don't
9 agree with that, but I hear what you're
10 saying."

11 MS. FONOROW: "MS. MAGARRO: Well, how
12 could it be a recreational property centrally
13 located at this specific location if it
14 becomes an assisted living?"

15 MR. GAMBUTI: "Again, and I tried to
16 address this in my earlier comment about the
17 Master Plan. I still can't find the citation.

18 "I'm looking at the Master Plan, but
19 you read it verbatim, so I will go on faith
20 that that's what is in the 2016 Master Plan,
21 but as a planner, I'm looking at the Master
22 Plan in it's totality and that's why I read
23 the goals and objectives that I read and I
24 would stand by my opinion that the application
25 before this board is for the development for

1 the purposes that it was stated and submitted
2 and that the tradeoff or compromise in this
3 case is the relocation of that structure, yet
4 it won't be used as recreational space, but
5 I'm not sure it is now, which salvages the
6 historic significance of that site or this
7 structure and allows for a development of this
8 site in a way that has been quite challenging,
9 but successfully done."

10 MS. FONOROW: "MS. MAGARRO: No, I'm
11 not asking about that historic building as a
12 historic building.

13 "That's used as a reference point to
14 dictate which piece of property is being
15 discussed in the Master Plan.

16 "So, I'm not asking about using that
17 building as a historic building. I'm asking
18 about using that acreage as recreational space
19 in the center of town. That's what's -- and
20 it doesn't say that it's being used as that.
21 It's saying that it should be acquired if at
22 all possible.

23 "So given a specific use of a specific
24 piece of land versus a generalized beneficial
25 use, how can one prioritize those?"

1 MR. GAMBUTI: Mr. Williams responds:

2 "Again, if you look at the totality of
3 the Master Plan and the number of goals and
4 objectives and weigh them against the citation
5 you're providing, my testimony will still be
6 that the application before this board and its
7 community is a good application, it does
8 advance the goals and objectives of the Master
9 Plan for all the reasons I've stated."

10 MS. FONOROW: "Okay.

11 "I disagree."

12 MR. GAMBUTI: During this same hearing,
13 Mr. Williams was questioned on his testimony by
14 another resident of town.

15 MS. FONOROW: "MS. SONG: So, how does
16 the location of this development best support
17 other goals referenced in the 2016 Master Plan
18 specifically Goal 8, which states that Old
19 Tappan seeks to pursue opportunities to
20 achieve a greater balance of nonresidential to
21 residential land use in appropriate locations
22 and appropriate intensity."

23 Excuse me.

24 "So, my question is: How do you
25 justify this lot as the most optimal space for

MR. GAMBUTI: Mr. Williams responded:

"It sounds like there are a couple of
ons, right?

"The other is, how does the proposed
oment comport with the Master Plan and
was a third, I think."

MR. GAMBUTI: "Two, okay.

MS. FONOROW: "So, you're saying Goal 8

1 doesn't have to do with this?"

2 MR. GAMBUTI: "No, that's not what I'm
3 saying. I'm saying that in terms of -- and I
4 should make sure which goal -- do you know
5 what page you're looking at for Goal 8?"

6 Here some confusion ensued as to the
7 particular page, but an audience member came up with
8 the specific page to reference.

9 MS. FONOROW: "Page 47."

10 MR. GAMBUTI: "Forty-seven.

11 'Old Tappan seeks to pursue
12 opportunities to achieve greater balance of
13 nonresidential to residential land use in
14 appropriate locations at appropriate
15 intensities but within existing commercial
16 areas.'

17 "Yeah, so I think I would go back to my
18 original statement that while Goal -- there
19 are a number of goals and objectives in the
20 Master Plan. I cited the goals and objectives
21 that I think would be advanced by approval of
22 this application."

23 During the December 14, '22 hearing,
24 Mary Walsh, who is Chair of the Sierra Club Chapter
25 of Bergen County brings up the fact that any changes

1 to the plan need to be presented to Bergen County
2 Planning Board under 40:27-4.

3 "I quote from Goal 2:

4 'The Borough seeks to encourage
5 development that preserves Old Tappan's
6 sensitive environmental features, including
7 floodway and floodplains, groundwater recharge
8 areas, wetlands and their associated buffers,
9 wellhead protection areas, steep slopes and
10 environments supporting rare, threatened or
11 endangered species.'

12 "And you do have threatened species
13 there.

14 I'm going to speed up to Goal 2,
15 because I think I won't have enough time.

16 'Goal 6: To preserve the historic
17 features of the Borough.

18 'Policy Statement, Old Tappan
19 recognizes its historic features continue to
20 be an integral part of the community's unique
21 character. Old Tappan seeks to maintain and
22 protect its historically significant
23 structures and sites from adverse impacts
24 created by development proposals, whether
25 they be public or private.

1 'Goal 9: To discourage the creation of
2 flag lots or subdivisions of property that
3 create new or disruptive developmental
4 patterns contrary and to the detriment of
5 existing residential development patterns in
6 the Borough."

7 "You may be wondering why I'm reading
8 this -- these, because according to New Jersey
9 statutes annotated 40:27-4:

10 'In order to maximize the degree of
11 coordination between municipal and county
12 plans and official maps, the county planning
13 board shall be notified in regard to the
14 adoption or amendment of any municipal Master
15 Plan, official map or ordinance under the
16 Municipal Planned Unit Development.'

17 "A copy of any such proposed plan, map
18 or amendment shall be forwarded to the county
19 planning board for review and report at least
20 20 days prior to the date of public hearing
21 therein.

22 "So by approving this development, you
23 are changing the Master Plan, so you must hold
24 a public meeting, a public hearing and submit
25 the amended plan to the county at least 20

1 days before that hearing."

2 We question why this is not a part of
3 the resolution drawn up after the approval by the
4 planning board. This is an omission that needs to be
5 rectified.

6 Peter Ardito in his statement that was
7 allowed after the applicant's case was finished said
8 the following:

9 MS. FONOROW: "Mr. Chairman and
10 Planning Board Members, I have been a member
11 of the Harrington Park Planning Board for more
12 than 10 years and Vice Chair for the last four
13 years.

14 "I understand firsthand the complexity
15 of the decision you have before you concerning
16 this application, the 244 Old Tappan Road.

17 "I also -- I have in the past worked
18 with Ms. Price and have great respect for her,
19 but I am here to explain to you why you should
20 vote no on this application.

21 "The planning board needs to answer the
22 overriding question, would this applicant's
23 project be of inherent benefit to the
24 community more so than following the
25 recommendations of your current Master Plan,

1 which are: Preserve open space in the central
2 district; do not rezone residential to
3 commercial; consider stormwater management
4 concerns and steep slopes of over 15 percent;
5 protect the habitat of threatened species;
6 preserve the historic house.

7 "On every count the answer is no, this
8 application is not of inherent benefit for the
9 town.

10 "When it comes to the historic house,
11 your last three Master Plans specifically have
12 said if the opportunity came about to save it
13 and preserve it and make that into a park, you
14 should do that.

15 MR. GAMBUTI: He continues.

16 MS. FONOROW: "All New Jersey residents
17 should have easy access to open space. Open
18 space and parks are essential to quality of
19 life in New Jersey. Open space preservation
20 protects water resources, cultivates
21 biodiversity and fulfills the recreational
22 needs of the local residents."

23 "Preserving 244 simply follows the
24 Borough's Master Plan. The Master Plan
25 reviewed and submitted to the Mayor and

1 Council by you, the planning board of Old
2 Tappan, in three consecutive Master Plans, 244
3 was specifically noted the preservation for
4 the good of the town, its citizens and the
5 environment.

6 "If you approve this application, you
7 are saying that your Master Plan is not
8 meaningful and that its recommendations carry
9 little weight."

10 MR. GAMBUTI: In Cherie Fonorow's
11 statement, she brought up an interesting point that
12 was worthy of consideration by the board:

13 MS. FONOROW: "In fact" --

14 I'll speak for myself.

15 (Laughter.)

16 MS. FONOROW: I do my voice better than
17 he does.

18 (Laughter.)

19 MS. FONOROW: "In fact, Old Tappan has
20 the beneficial distinction having one of a few
21 historic stone houses in New Jersey listed on
22 the federal and state registry.

23 "The site is a unique combination of
24 wetlands and history environmentally important
25 to our ecosystem and also Old Tappan and

1 American history.

2 "In fact, last week Governor Murphy
3 issued a mandate for \$25 million investment to
4 preserve Revolutionary War sites, not destroy
5 them.

6 "This has to do with the,"
7 quintessential, "that's coming up."

8 MR. GAMBUTI: Quincentennial.

9 MS. FONOROW: Quincentennial. Sorry.

10 This "...doesn't align with the Master
11 Plan and it fails in its inherent claim of
12 inherent beneficial use."

13 "The number one objection in all this
14 is the wrong project at the wrong location.
15 It's the wrong project in the wrong location."

16 MR. GAMBUTI: Lori Charkey, head of
17 Bergen SWAN, who has been responsible for saving
18 countless numbers of acres in watershed property in
19 Bergen County municipalities made it clear to the
20 board that money is available to make an offer to the
21 owner of the property to keep it from development.

22 MS. FONOROW: "I'm urging you to
23 partner with Bergen County Open Space Trust
24 Fund, with Green Acres, with my organization,
25 with Tenafly Nature Association, with the

1 Sierra Club.

2 "There's money.

3 "We've had a 2009 settlement with the
4 water company. It's earning interest ever
5 since then. It's over a million dollars.

6 "There are other entities that are
7 willing to also supplement that, private
8 people.

9 "You've heard the most passionate
10 discussions tonight arguing in favor of
11 keeping this place. It is a gem. It's
12 gorgeous.

13 It's just 5.5 acres, but it's so much
14 more significant than that."

15 MR. GAMBUTI: We're asking the council
16 to determine why the planning board disregarded all
17 of these important points about the Master Plan.

18 We submit that certain members of the
19 board erred in favor of the applicant because they
20 were led to believe if they denied this application,
21 they would have been sued by the applicant and feared
22 losing in superior court, but more on that later.

23 MS. FONOROW: So, we only have two more
24 appeals left, so thank you for your patience.

25 Number 7 is transparency.

1 At the start of the hearings, the
2 applicant's representative offered to preserve a
3 section of the 5.4-acre property, including the
4 historic house and vernal pool, to be preserved.

5 At a subsequent hearing, the chairman
6 of the planning board made an initial comment, on the
7 record, that the Old Tappan Mayor and Council had
8 instructed him to inform the public that offer from
9 the applicant was rejected.

10 There is no proof that the Mayor and
11 Council ever considered this proposal or relayed
12 their negative decision to the chairman.

13 At a later hearing, the planning board
14 chairman admitted that what he had claimed was, in
15 fact, not true.

16 The false statement by the chairman and
17 applicant's withdrawal of the offer to leave the
18 historic house intact and deed land to the town is a
19 serious issue not yet explained. It raises potential
20 legal questions that need to be addressed
21 immediately.

22 Until all the facts are known, again,
23 we believe the planning board's approval should be
24 vetoed.

25 In the original design plans, Capitol

1 Senior Housing included the 2.1-acre subdivision to
2 be sold for \$1.00 to the town to be used as a park or
3 how you saw fit, which was a significant part of the
4 original application.

5 Our appeal refers to the lack of
6 disclosure by Chairman Buddy Weidmann, without
7 council approval or authority, on why he rejected
8 this offer.

9 This was a surprise announcement to the
10 board, to the public, and to Ms. Price. This
11 statement significantly changed the path of the
12 application and the impact on the land, the wetlands,
13 the vernal pool and the Gerrit Haring House.

14 To this date, no reason or explanation
15 on this statement has been made.

16 During the February 9, 2022 hearing,
17 Dan Shenal, who's the --

18 MR. GAMBUTI: He's the civic [sic]
19 engineer.

20 MS. FONOROW: Civic [sic] engineer.

21 MR. GAMBUTI: Said:

22 "So I wanted to mention that we'll also
23 have a -- for that proposed subdivided lot,
24 we're relocating the historic house, we're
25 also providing a small driveway and a parking

1 area for the community to utilize if there is
2 a use for that building so that -- that small
3 driveway is only about 18 feet in width,
4 adequate to get a car in and out. There will
5 be two parking spaces, one accessible, so an
6 ADA parking space and then a standard parking
7 space, and then we'll provide a nice little
8 sidewalk back to the entrance of the house,
9 again, just to provide a parking area and a
10 use for that house."

11 MS. FONOROW: We move onto the meeting
12 from May 11, '22.

13 Mr. Weidmann: "I have one announcement
14 before you start. The announcement is after
15 speaking with the Mayor and Council from the
16 Borough of Old Tappan, they are not interested
17 -- they are not interested in the house you
18 want to move.

19 "So unless you can get, you know,
20 people who are interested in doing it, as far
21 as the Mayor and Council is concerned, you can
22 knock it down, the house and the barn."

23 MR. GAMBUTI: Ms. Price responded:
24 "Okay."

25 MS. FONOROW:

1 "CHAIRMAN WEIDMANN: "Okay. So I don't
2 know how that sits with you, but that's the
3 conclusion of, you know, the board also on
4 this matter, Madam."

5 Then on June 8, '22, prior to the start
6 of the planning board meeting, Mr. Gallagher stated.

7 MR. GAMBUTI: You want me to do that?

8 "COUNCILMAN GALLAGHER: My other point
9 from a council standpoint is my understanding
10 is the Chairman, perhaps, at the beginning of
11 the application will be making a comment about
12 a comment that he made last -- last meeting
13 about the house and the Mayor and Council have
14 no -- no interest in preserving the house or
15 the wetlands or anything else on the property.

16 "And all I can say is that from a Mayor
17 and Council standpoint, there has been zero
18 discussion regarding that piece of property,
19 because it sits in front of the planning board
20 tonight and probably for several months.

21 "So the Mayor and Council has had no
22 discussions on any aspect of this application.
23 So I just wanted to make that clear and the
24 Chairman might have something before the
25 application starts tonight."

1 MS. FONOROW: So the meeting begins
2 with Mr. Weidmann's next statement.

3 "CHAIRMAN WEIDMANN: "Okay. Just
4 regarding this application, I had made a
5 statement that the Mayor and Council were not
6 interested in the old farmhouse on that
7 property. I probably misspoke.

8 "I spoke to some people on the Mayor
9 and Council and if anyone is from the public
10 here or anyone from the town is interested in
11 preserving that building, my recommendation is
12 you attend the Mayor and Council meeting on
13 either -- what is it, June --"

14 MR. GAMBUTI: Ms. Frohlich responded:
15 "June 20th."

16 MS. FONOROW: "June 20th or July 18th
17 and speak with the Mayor and Council regarding
18 it. Okay? So that's still up in the air."

19 I did go to the meeting on the 20th and
20 spoke with the gentleman.

21 The repercussions of Mr. Weidmann's
22 statement was to remove the subdivision variances,
23 the offer of the 2.1 acres, the house being kept on
24 its original property, and we also lost the offer of
25 a driveway and parking spaces.

1 Next the meeting continued with Capitol
2 Senior Housing site civil engineer stating those
3 repercussions.

4 MR. GAMBUTI: "Good evening, again,
5 Chairman, Members of the Board. Again, Daniel
6 Sehnal with Dynamic Engineering, site civil
7 engineer on behalf of the applicant."

8 "So since the last hearing we did make
9 some adjustments to the plan. As we discussed
10 at the last hearing, we are no longer
11 proposing to essentially subdivide this
12 property and by moving the historic house for
13 that piece of property and subdividing off the
14 piece of the wetlands.

15 "So since the last," meeting, "we have
16 since removed that subdivision. We are now
17 proposing a single lot as it exists and then
18 we also decided to demolish the existing barn,
19 which was determined to not to be historic,
20 but if you recall from our previous testimony,
21 we planned on relocating the existing historic
22 house. That existing historic house was
23 fronting on Old Tappan Road and it violated
24 the setback requirement per the zoning of this
25 zone.

1 "So since the last hearing we've
2 removed that subdivision, we've removed the
3 barn and as a result we were able to take that
4 home that we still propose to relocate and
5 save, but now we pushed it back further off of
6 Old Tappan Road to a compliant setback.

7 "That house will now be set back
8 55 feet, whereas the requirement is..." "So
9 we removed that request of a variance and then
10 also by removing the subdivision, we've also
11 removed the need for a building coverage
12 variance."

13 And this is our last point.

14 MS. FONOROW: At that time, I just want
15 to add, there was discussion, it's not here in this
16 document, this is just on a side note. There was
17 discussion about Capitol Senior Housing, because they
18 didn't have to subdivide the land anymore, was be
19 making -- it's in the test -- the transcripts, you
20 can look it up.

21 They were going to be making a
22 significant contri -- you know, they were going to be
23 saving money.

24 So there was some conversation about,
25 well, maybe they can do something for the town.

1 MR. GAMBUTI: And that was coming from
2 one of the planning board members.

3 This is Number 8, our final point,
4 inherent benefit argument.

5 The concept of -- the concept of
6 inherent benefit was used repeatedly by the applicant
7 as justification as why the 244 Old Tappan Road
8 application should be approved, despite the need of
9 numerous major variances, including allowing a
10 commercial use structure to be constructed in a
11 residential zone.

12 Although the need for senior housing is
13 important, the need for additional senior housing at
14 this location does not meet the inherent benefit
15 requirement.

16 The Borough of Old Tappan already has a
17 commercial senior housing development less than half
18 a mile from 244 Old Tappan Road.

19 In addition, there is substantial
20 availability of established and new senior housing
21 units, covering a full range of pricing, within two
22 to five miles of the 244 location.

23 Among the local towns with current
24 senior housing units are Northvale, Norwood,
25 Harrington Park, Emerson, and River Vale.

1 There is also a commercially-zoned
2 location in Old Tappan on Central Ave. that was
3 previously approved by the planning board for senior
4 housing development and did not go forward.

5 We know that that since has been moved
6 --

7 MS. FONOROW: Off the table.

8 MR. GAMBUTI: Off the table and sold to
9 PSE&G.

10 Considering the exceedingly diverse
11 range of currently available senior housing, and the
12 availability of a much more suitable location for
13 this project on Central Ave, there's no convincing
14 inherent benefit to the Borough in approving of this
15 project.

16 The removal of over 200 trees sitting
17 on 3.5 acres in a residential zone, the extremely
18 negative impact on the sensitive wetlands and vernal
19 pool, and the likely destruction of a historic house
20 dating back to the 1700s, clearly make this proposal
21 -- proposed development not of inherent benefit to
22 the Borough, but rather extraordinarily detrimental
23 to its residents, visitors, and ecosystem.

24 MS. FONOROW: Are you okay?

25 MR. GAMBUTI: Okay.

No, it's okay. I got it.

With that said, the question to the planning board was is this an inherently beneficial use for this project on this piece of property.

As just stated in the recitation of our appeal point, there was a good amount of discussion over the hearings of inherent beneficial use, but we would like to focus here on the specific points on the last hearing with statements by Mr. Szabo and Mr. Regan and statements made by the planning board members before they voted.

In her closing -- closing statement,

Ms. Price said:

"The area is going to rest with the

1 Borough. We won't have any rights to do
2 anything with that acreage, because it will be
3 the Borough's."

4 "DEP in their Letter of Interpretation
5 said we were intermediate value, so 50 feet."
6 As a buffer. "And DEP did a site visit. It
7 wasn't just based upon an application that was
8 mailed in. They came out to the site and did
9 a walk-through.

10 "And they said, yes, in fact, that
11 there is a vernal habitat, but the only time
12 that that was relevant would be if we were
13 applying for any permits, which we're not."

14 During questioning of Mr. Shenal, the
15 applicant's civil engineer, I brought about the DEP
16 setback requirements for a vernal habitat.

17 "These type of wetlands provide
18 essential habitat for certain species of
19 wildlife that can breed" --

20 MS. FONOROW: That can breed.

21 MR. GAMBUTI: -- "that can breed only in
22 these wetlands.

23 "According to the DEP's website, the
24 species are also required an adjacent area of
25 vegetated uplands between 500 and 1,000 feet

1 to successfully complete their lifecycles."

2 "Given that the property provides the
3 majority of this type of critical habitat
4 adjacent to the wetlands, how does the
5 development propose to maintain the integrity
6 of the ecological system?"

7 Mr. Shenal.

8 MS. FONOROW: "THE WITNESS:"

9 I'll be Mr. Shenal.

10 "By completely staying outside of the
11 wetlands transition area outlined in the
12 Letter of Interpretation provided by the DEP,
13 who is the lead agency over the wetlands of
14 this application."

15 MR. GAMBUTI: "So, but it's not -- it
16 -- there's not 500 to 1,000 feet for these
17 creatures that require that kind of vegetation
18 and property to be able to complete their
19 lifecycles?"

20 MS. FONOROW: "We're complying with
21 what is required by the DEP, who is the lead
22 agency for this application."

23 MR. GAMBUTI: "And is that as a vernal
24 pool or just a wetland, because they are
25 different?"

1 MS. FONOROW: "Under the Letter of
2 Interpretation, which is a legal document
3 prepared by the DEP, regarding this
4 application, we are staying completely outside
5 of that transition area and they have
6 certified is what is required for that value
7 of the wetland, we're complying with it and
8 not disturbing it."

9 MR. GAMBUTI: "Okay.

10 "So -- but then there's nothing that's
11 going to deal with the integrity of the system
12 for the animals that would habitat in that
13 vernal pool?"

14 MS. FONOROW: "That's what the
15 transition area is for."

16 MR. GAMBUTI: "And that's 500 to 1,000
17 feet."

18 MS. FONOROW: "Fifty."

19 MR. GAMBUTI: The Letter of
20 Interpretation says there is a 50-foot buffer
21 requirement, but it also states that it is a vernal
22 habitat.

23 So there is a dichotomy here that could
24 have been followed up by the board, but instead a
25 board member went on to talk about property

1 elevation.

2 Why did they not ask for this
3 clarification on this matter from the DEP instead of,
4 in our opinion, just going along with the applicant?

5 Why weren't they questioned here about
6 why they were not going for any permits considering
7 it is a vernal habitat.

8 Moving on to the Gerrit housing [sic]
9 Haring House.

10 During the February 9, '22 hearing,
11 Ms. Price stated there would be an historic expert
12 giving testimony.

13 MS. FONOROW: Ms. Price went on to say:
14 "So I'm going to ask you just to listen
15 to all the experts, ask your questions. We
16 have a civil engineer, an architect, a traffic
17 engineer, a professional planner, landscape
18 architect, a historic expert."

19 MR. GAMBUTI: No historic expert ever
20 testified for the applicant as to what they saw, did
21 or their opinion on whether the house would survive
22 the move.

23 While we certainly appreciate the offer
24 to move the historic house made by the applicant, we
25 also have shown in our quid pro quo appeal point that

1 this seems to have been done to obtain the variance
2 requests.

3 During this same hearing, Mr. McElwee
4 brought up a historic survey.

5 MS. FONOROW: Mr. Keil, David Keil who
6 is our chairman of our environmental committee, said:

7 "I'm more interested in the Phase I
8 than the geotech. I would like to see that."

9 MR. GAMBUTI: "MR. McELWEE: In
10 addition to the Phase I, there's probably a
11 Phase II. It's a historic survey on the
12 particular property as well."

13 MS. FONOROW: Mr. Keil responds:

14 "Whatever you got."

15 MR. GAMBUTI: A historic survey is not
16 part of the resolution conditions, though Mr. McElwee
17 stated that one will be done.

18 This was also stated by Mr. Adriance, a
19 historic expert presented by Mr. Steinhagen, who
20 testified that it was imperative that a historic
21 survey be done.

22 Nor is there a Phase I environmental
23 survey part of the resolution conditions, even though
24 it was requested by Chairman of the Environmental
25 Commission and Board Member Mr. Keil.

1 Why was neither of these part of the
2 resolution conditions written up by the planning
3 board attorney?

4 We feel this is an obvious omission.

5 During the August 10, '22 hearing,
6 Mr. Bedian, a planning board member, asked a question
7 regarding the house.

8 "MR. BEDIAN: I have a question about
9 --"

10 MS. FONOROW: Ms. Price responded:

11 "Oh, sure."

12 MR. GAMBUTI: "-- you know, I think we
13 sidetracked with the drainage, which is
14 important -- about moving the property."

15 MS. FONOROW: "Moving the house?"

16 MR. GAMBUTI: "The historic portion of
17 the house.

18 "Is that going to be engineered, the
19 whole like -- the movement."

20 MS. FONOROW: "Oh, yeah, we'll have to
21 -- every -- you know, every square inch has to
22 be --"

23 MR. GAMBUTI: "Yeah, I've seen my --
24 I've seen property, you know, they -- during
25 the movement, you know, they were damaged and,

1 you know, crumbled, you know all that."

2 MS. FONOROW: "It's not an expensive
3 [sic] task to undertake --

4 MR. GAMBUTI: Inexpensive.

5 MS. FONOROW: "It's not an inexpensive
6 task to undertake and we have two different
7 historic consultants on board so --"

8 MR. GAMBUTI: "MR. BEDIAN: Okay."

9 MS. FONOROW: "-- and that would need
10 coordination, as I said, probably with Tom,"
11 Skrable the town engineer, "the police
12 department and I don't know whoever else you
13 need to get involved, but it would be an all
14 hands on deck kind of..."

15 MR. GAMBUTI: Then Mr. Eller, another
16 planning board member, chimes in:

17 "What do the consultants --

18 "What do the consultants do in terms of
19 documenting and -- I mean, documenting every
20 aspect of the house.

21 "You know, God forbid something happens
22 and the thing collapses, what's left after...
23 when you guys --"

24 MS. FONOROW: "After you guys."

25 MR. GAMBUTI: "-- if there's something--

1 "...after that when you guys -- if
2 something like that were to happen and the
3 house came down while you were moving it, it
4 crumbled, what do you guys plan to do to
5 document it to..."

6 MS. FONOROW: Ms. Price responds:

7 "I'm not sure I follow you. We have
8 pictures of inside and outside --"

9 MR. GAMBUTI: "MR. ELLER: Okay."

10 MS. PRICE: "-- already. No one had a
11 key, so our historic consultant climbed in one
12 of the windows and took pictures.

13 "So we have -- we have a whole set of
14 photographs at our disposal.

15 "So, but, you know, just -- I think
16 what happens is that, like in any -- any
17 project, that if it -- if it doesn't stand up,
18 it comes -- it comes down.

19 "But every -- we'll exercise what's
20 required under proper professional
21 guidelines."

22 MR. GAMBUTI: In his closing statement
23 before the vote, Mr. Bedian brought this up among
24 other salient points:

25 "MR. BEDIAN: I don't want to sound

1 repetitive.

2 "Most of you know, my colleagues here,
3 the board members covered, you know, pretty
4 much everything I had in mind to say.

5 "I'm still conflicted. I didn't buy
6 the beneficial use argument that much.

7 "In my opinion the historic house will
8 not survive moving it from current location
9 couple hundred feet to the parking lot here.

10 "I am a civil engineer registered in
11 the State of New Jersey. I work for a
12 construction company.

13 "One of my projects, I wasn't the
14 project manager for that particular, you know,
15 contract, Thank God, was an old firehouse in
16 Peekskill, New York. You can Google it and
17 you can see it, was to move the firehouse a
18 couple hundred feet because it was in the way
19 of building a highway. It did not survive.
20 It was 200-year-old house like the one we have
21 here. It's -- it's -- it's very, very
22 difficult to move very old building."

23 Here we'd like to reference the
24 Municipal Land Use Law.

25 "This structure is identified as

1 historic on the Master Plan, the Municipal
2 Land Use Law allows for the preservation of
3 historic structures that have been identified
4 on the Master Plan as such to be the basis for
5 imposing at the council level a hold on the
6 approval in appeals such as this, for up to a
7 year. This gives the community the
8 opportunity to make sure that the structure
9 can be preserved in the move and" -- it cannot
10 -- "if it cannot, then the pretext for the
11 planning board's approval no longer exists and
12 the matter must be remanded to the planning
13 board for further review and vote with the
14 historic piece removed."

15 Mr. Bedian continues:

16 "I know that I know the COAH..."

17 That's the Council on Affordable
18 Housing for those that don't know.

19 "-- you know, it's bearing on
20 everybody's mind, but we're only getting ten
21 credits. It is something, it's better than
22 zero, but it's not -- it shouldn't be the
23 major or -- or the factor to, you know, vote
24 on this application."

25 Because his expert opinion about the

1 house not surviving the move, there is an interesting
2 point to consider here. Had Ms. Haverilla recused
3 herself, would Mr. Bedian have then been able to vote
4 and would he have potentially voted no to the
5 approval of this application?

6 Moving onto Mr. Szabo's closing
7 statement and warnings to the planning board members.
8 First there was an important made -- point he made
9 about procedure.

10 Do you want to read that one for me?

11 MS. FONOROW: "So there's a procedure.

12 And the importance of that is because if you
13 don't follow proper procedures, if you don't
14 follow the structure of the law in this kind
15 of application, you run the risk of being
16 overturned just on a procedural ground by
17 disenfranchising someone, for example, or
18 because you didn't follow some regulatory
19 requirement."

20 MR. GAMBUTI: We are not lawyers,
21 obviously.

22 MS. FONOROW: We are not.

23 MR. GAMBUTI: But we certainly feel the
24 public was disenfranchised.

25 During the December 14, 22nd [sic] --

1 '22 meeting, there was a back and forth between
2 Mr. Eller and Ms. Price. It had to do with the fact
3 that the board thought that there was going to be a
4 chance for the public to ask questions of the
5 applicant's experts, but that offer was denied by
6 Ms. Price.

7 We've since learned it is not the
8 practice in other towns in New Jersey.

9 In fact, the public was constrained
10 many times to one or two questions instead of fully
11 being able to get our questions heard.

12 The public was only allowed to make
13 five-minute statements, none of which were in favor.

14 But the point here is that we never got
15 a chance to ask the applicant's experts questions
16 that were denied during the hearings because they
17 were not part of that day's testimony.

18 And some of these people were not here
19 on those particular days of testimony and they did
20 have questions for these experts that we would have
21 liked to have seen the board allow.

22 Then his point of regulatory -- I'm
23 sorry -- then his point of regulatory requirement,
24 again not a lawyer, but would Ms. Haverilla's choice
25 not to recuse herself fall under that?

1 Ms. Szabo continues:

2 "I think the bottom line for me in my
3 experience with these, and I've handled, and
4 I've seen many applications like this, is that
5 it's very difficult -- and it's not just
6 assisted living, but any inherently beneficial
7 use, it's very difficult to deny these things
8 under circumstances where a lot of the issues
9 are being addressed."

10 "I have a recent case just couple of
11 weeks ago in another jurisdiction I represent,
12 where the board of adjustment..." divide --
13 I'm sorry.

14 "Where the board of adjustment denied a
15 use variance for this use. And the judge took
16 two minutes to overturn the decision, remanded
17 it back to the board for conditions only and
18 specifically told the board you cannot touch
19 the density.

20 "So... I'm not saying it's impossible.
21 There could be issues that are raised, but you
22 have to satisfy the negative criteria. That's
23 the one thing you can hang your hat on.

24 "And that's where the board needs to
25 reconcile everything that they've heard

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1 property cannot accommodate the mass and scale of the
2 proposed building.

3 The board also found that there would
4 be a negative impact on the existing landscape and
5 particularly on the existing mature trees on the
6 property.

7 In that case, Sunrise proposed to build
8 three-story building consisting of over 82,000 square
9 feet and 89 units holding 100 beds on a
10 four-and-a-half-acre lot.

11 Sound familiar?

12 That board denied the application based
13 on this and several other factors and in the
14 mentioned lawsuit the board won.

15 Then the issue of the next round of
16 affordable housing requirements was brought up and
17 Mr. Szabo and Mr. Regan speculated about what would
18 happen.

19 MS. FONOROW: "MR. REGAN: My -- my
20 concern is you expressed July 1, 2025 is just
21 right around the corner.

22 "Any vacant land within the Borough
23 will be looked at, in my opinion, by Fair
24 Share Housing Center.

25 "The Borough had an unmet need of

1 approximately 240 units under its approved
2 plan with the court and Fair Share Housing
3 Center.

4 "I believe 40 of those units have
5 satisfied out of Pearson, which would leave an
6 unmet need of about 200, somewhere in that
7 area, but it may be a little bit less because
8 there may be some bonus credits at Pearson.
9 But at least it's in the 180 range for an
10 unmet need.

11 "What exposure would the municipality
12 have on July 1, 2025, if this land is vacant?"

13 MR. GAMBUTI: And just for the people
14 that don't know in the audience, July 1st, 2025 is
15 when the next round of COAH requirements come through
16 -- start to happen.

17 MS. FONOROW: And just to say, COAH has
18 to do with their -- because of the way the laws are
19 especially in New Jersey, there's a certain amount of
20 low-income housing that's really for some of the
21 towns --

22 MR. GAMBUTI: Required.

23 MS. FONOROW: -- you know, not
24 necessarily the towns want them, this is the -- these
25 are the laws we have to follow.

1 MR. GAMBUTI: And so it puts these guys
2 in a difficult position.

3 "MR. SZABO: It would be twofold. One,
4 I don't know what the regulations in the
5 future will be, but --"

6 MS. FONOROW: "MR. REGAN: No one
7 knows, right?"

8 MR. GAMBUTI: "No one does.

9 "I mean, if we go on the tract, based
10 on past history for the third round, what
11 would happen is that the unmet need, and I
12 fear this, but it's coming, will become prior
13 round obligations.

14 MS. FONOROW: "MR. REGAN: That's an
15 add-on."

16 MR. GAMBUTI: "It's an add-on."

17 MS. FONOROW: "Added on to the fourth
18 round."

19 MR. GAMBUTI: "MR. SZABO: That's what
20 happened in the third round."

21 MS. FONOROW: "Right."

22 MR. GAMBUTI: "MR. SZABO: And then I
23 think because the community has sewer capacity
24 and there's sewer available, you're looking at
25 densities of maybe in excess of 12, probably

1 now Fair Share is looking at 15, 20."

2 MS. FONOROW: "You're talking about
3 exposure of maybe between 60 and 90 units?"

4 MR. GAMBUTI: "MR. SZABO: Possibly.
5 I mean, it's speculative, Mr. Regan."

6 MS. FONOROW: "I know."

7 MR. GAMBUTI: Speculation about the
8 future needs is certainly within the purview to
9 present, but the planning board is tasked with
10 looking at this application for this property at this
11 time.

12 In a court of law, as these hearings
13 were supposed to be run, the judge would say
14 "disregard that statement."

15 It is possible that speculation
16 influenced the vote of some members.

17 Mr. Eller speculated, himself, about
18 what would happen.

19 MS. FONOROW: "Is -- do either you..."

20 He is referencing Mr. Regan here.

21 "...or John, do you know..." Mr. Szabo.

22 "... do you know any -- do you have any
23 examples to demonstrate what the substantial
24 reasons for a denial would be.

25 "Like how -- what is -- have you ever

1 this developed, but by the same token I don't
2 think there is any other even remotely better
3 situation or better outcome that can happen...
4 because of the COAH -- because of the COAH
5 situation and how this is going to go."

6 MR. GAMBUTI: Then he later continues
7 that thought.

8 MS. FONOROW: "I just don't think that
9 there is any realistic better option for this.
10 And it's truly unfortunate and the problem is
11 it's a political problem. It is not a -- it
12 is not something that we have really any
13 control over."

14 MR. GAMBUTI: They are the planning
15 board and they do have control over this application
16 for this piece of property.

17 We feel all the reasons we have stated
18 and the transcript sections we have presented show
19 that the board made some questionable decisions,
20 acted improperly and, perhaps, against the law in
21 others and in the end, let speculation about what
22 could happen sway at least a couple of the votes in
23 the direction of approval.

24 All that was needed was one more vote
25 to deny, that did not come to be, and our

1 presentation tonight hopefully shows that the outcome
2 should have been different.

3 This approval is -- this approval is
4 imperfect and, furthermore, the planning board is
5 putting it in the hands of a developer.

6 For example, the Gerrit Haring House
7 has not been confirmed that it would survive a move.
8 That was the basis for both the Master Plan analysis
9 and the planning board action to preserve the
10 structure.

11 In the absence of that, and in other
12 reasons we've stated the decision by the planning
13 board was imperfect. This is the council's
14 opportunity, on appeal, for the board to deal with
15 it.

16 If after everything -- and I'll finish
17 here.

18 If after everything we've said doesn't
19 convince you, then we want to remind you, you can
20 approve the project, but subject to the condition it
21 preserves the historic structure, to the extent it
22 can be preserved in the move, but insert a condition
23 where a third party with expertise can evaluate that
24 it will survive or recommend what steps can be taken
25 to preserve it, and it's not the developer that

1 should be making that decision.

2 We respectfully request that the Mayor
3 and Council seriously consider our overall appeal and
4 vote to overturn the planning board's decision.

5 Thank you for your time.

6 MS. FONOROW: Thank you so much.

7 (Applause.)

8 MAYOR KRAMER: Do you need a break?

9 THE COURT REPORTER: Yes.

10 MAYOR KRAMER: Okay.

11 We'll take a five-minute break.

12 (Whereupon, a brief recess is taken.)

13 MAYOR KRAMER: Okay.

14 On behalf of the applicant, Ms. Price?

15 MS. PRICE: If it's okay, I'll sit as
16 well; is that all right with everyone?

17 MAYOR KRAMER: That's fine.

18 MS. PRICE: Okay.

19 Again, for purposes of the record, Gail
20 Price from the firm of Price, Meese, Shulman &
21 D'Arminio on behalf of Capitol Senior Housing, the
22 applicant before the Old Tappan Planning board.

23 Thank you for your attention in
24 connection with this matter.

25 I filed a legal memorandum last

1 Wednesday, so you should have that in connection with
2 the appeals that were filed.

3 You also will note for the record that
4 Lakeview, although they had filed an appeal, that
5 appeal was withdrawn.

6 So the only appeal that is pending
7 before you is that of Ms. Fonorow and Mr. Gambuti.

8 I'd like to take -- I know Mr. Regan
9 will take certain arguments on behalf of the board,
10 but I'd like to address some of the issues that the
11 appellants raised as they relate to our client and
12 our experience over the year plus before the board.

13 And I want to say that our client was
14 incredibly respectful of the residents and contrary
15 to what you heard earlier, we brought back experts
16 for multiple meetings and the board allowed questions
17 to happen. You know, there was a 10:30 ending of the
18 meetings, which we had no control of, but, and we had
19 no control on the amount of time, actually, for
20 speaking, but we brought back our experts on repeated
21 occasion for questioning and I'm sure that you saw
22 from the transcripts when you reviewed them that the
23 plan changed multiple times over the course of the
24 time before the board and that was as a result of
25 issues that the board heard from the public, that the

1 board heard from their professionals and requests
2 that were also made by people from Lakeview.

3 So we've changed our drainage plan, we
4 had at one point the home on our property.

5 At another point we had the house off
6 of our property.

7 At one point we had a subdivision
8 proposed.

9 Critically the
10 environmentally-sensitive property -- let me start
11 with this.

12 This is private property. It's not
13 public land. It's five-and-a-half acres of private
14 property. And I understand everyone says that this
15 is a very key piece of property in Old Tappan that
16 they want to have preserved.

17 It's someone's property that they have
18 a right to develop. Our client happens to have a
19 contract --

20 (Audience Outburst.)

21 (Whereupon, Mayor Kramer strikes the
22 gavel.)

23 MAYOR KRAMER: Please.

24 MS. PRICE: They have a right to
25 develop it.

1 Whether they get the approvals to
2 develop it is a different statement, but they have a
3 right just as everyone else in this room has a right
4 for his or her property. It's not property owned by
5 the Borough. It's not property owned by the county.

6 So when you hear about what the
7 citizens and the residents of Old Tappan are entitled
8 to observe on the property and continue to observe
9 into the future, we're not talking about that kind of
10 a case here, but the two-plus acres of land never
11 were envisioned or proposed to be utilized for
12 anything other than to remain environmentally
13 sensitive and constrained.

14 We have our letter from DEP with the
15 wetlands configuration, the 50-foot buffer. We went
16 10 feet beyond the 50-foot buffer. We enlarged the
17 buffer to make sure that we weren't just relying upon
18 that 50-foot.

19 So, that -- whether it was a dedication
20 to the Borough or a conservation easement to the
21 Borough, we're not going to use that property.

22 So, the construction and the
23 utilization is aside from that constrained property.

24 So, the concerns about the wetlands,
25 the DEP ruled and we have a valid permit on that.

1 Also important, this is not -- we're
2 not talking about single-family homes here in terms
3 of density or size and assisted living development is
4 configured by beds. You don't have, you know, full
5 apartments, 100 beds, 83 actually for this one.

6 So, it's not like having density of 100
7 families on this piece of property, which is
8 critical, because a lot of the code sections are done
9 for single-family properties.

10 Specifically, that leads me into FAR,
11 and I want just to take note of Table B in your code.
12 Excuse me.

13 In the R-40 zone for properties that
14 exceed 80,000 square feet, there is no FAR
15 requirement.

16 Our property -- our property is over
17 237 square feet, what there is, is a floor area
18 requirement, which at best is a C variance, not a
19 D variance, not an additional D.

20 So, I'd ask you to take a look at that
21 Table B in your zoning code, where it specifically
22 says for R-40 zone, properties over 80,000 square
23 feet in size, floor area ratio, N/A.

24 So, we did not need an additional
25 D variance. Our D was based open the assisted

1 living, which is an inherently beneficial use by law
2 in the State of New Jersey. And, critically, it is
3 not an inherently beneficial use as the appellants
4 suggest that is defined by location. It is an
5 inherently beneficial use by the use, itself, whether
6 it's a hospital or a school or assisted living, it's
7 the use that makes it inherently beneficial.

8 Then you go to the four steps of the
9 Sica test, which I'll touch upon briefly, but I'm
10 sure that Mr. Regan will get into it, because he
11 detailed everything in the resolution, but it doesn't
12 -- the location of a particular project doesn't make
13 it inherently beneficial or not. And I think that's
14 very important, because I think that there's a
15 misunderstanding on that element.

16 So, our use of an assisted living is
17 clearly defined for decades as inherently beneficial.

18 So, we -- we're proposing -- we had
19 Department of Health signoff and approval for 183
20 beds and the ten affordable units and those are
21 Medicaid, which is what you heard a lot of, you know,
22 going back and forth, that's a federal issue.

23 And the critical component there is,
24 again, which is where I started off, you're not
25 talking about a home, a rental home or a sale of a

1 house. You're talking about a bed, which is why it's
2 configured as a credit and not pursuant to a standard
3 definition, and Fair Share Housing readily accepts it
4 throughout New Jersey.

5 The reference to the Mahwah project,
6 more than 50 percent of the Mahwah project is
7 independent living with your standard homes.

8 So that's why the affordable housing
9 numbers are higher. They're not limited to the
10 10 percent, because then it's either a 15 percent on
11 a rental or 20 percent on a sale, because you have a
12 full blown house, and that's what the calculation is.
13 You don't just have a bed calculation.

14 So, I hope I separated that out.

15 There certainly was no quid pro quo
16 here. We talked about the house. The property owner
17 could and can still take action on the house.

18 Before we started on the application
19 before the zoning board, the property owner could
20 have just demolished that house.

21 A lot of people would have been very,
22 very upset. And we recognize that. And we've made
23 every effort to ensure that that doesn't happen.

24 And the mechanism for ensuring that it
25 doesn't happen, when the appeal process is concluded,

1 is via a developer's agreement, which is the standard
2 contractual provision that governs construction of a
3 project after approvals and bonding that's put into
4 place, to ensure the financial components are
5 covered.

6 And all of those elements that were
7 referred to in the citations to the transcript are,
8 in fact, honored, and in connection with whatever
9 Borough representative needs to be in place.
10 Absolutely the Borough engineer would be a
11 representative.

12 But there was no quid pro quo. We
13 talked about the house and said we'll move it, you
14 tell us where you want it, but it wasn't -- you know,
15 there's a case Nunziato versus Edgewater Township
16 where there was an illegal exaction and the court
17 said, no, no, no, you can't -- you can't say, you
18 know, give me this and I'll give you a variance.
19 That's not what this was. And that's clear from all
20 of those transcripts that you read.

21 This was painstakingly, painstakingly a
22 reviewed process before your board with all of my
23 experts. And there wasn't other evidence put in,
24 with the exception of Dan Steinhagen called a
25 drainage engineer who only testified on one other

1 occasion and got the file -- I don't remember if he
2 got the file the day before or the day of the
3 hearing, and he hadn't had an opportunity to do any
4 analysis.

5 So, he -- and he was never called back
6 again.

7 So, there was a lot of fact testimony
8 put in, but not expert testimony to contradict the
9 testimony from our civil engineer, our traffic
10 engineer, our architect, our licensed landscape
11 architect and our planner.

12 Solid case, all professionals,
13 unrefuted expert testimony, that your board then
14 voted on in accordance with the statute and adopted a
15 77-page resolution, not a 7-page resolution, 77
16 pages.

17 The next one was the claim for conflict
18 of interest by your Borough Administrator, because
19 there would be something of value to the Borough.

20 Isn't every application potentially
21 something of value to the Borough? Shouldn't there
22 be.

23 It's pretty hard-pressed if you say
24 things are negative to the Borough, because then
25 certainly you shouldn't have anything approved.

1 And there was no quid pro quo, as I
2 said. And no one raised any -- any claim that your
3 Borough Administrator should not have been
4 participating at any time during the proceedings.

5 This is an argument that is just being
6 raised at this point in time and it has no merit.
7 Similar to sheer speculation not supported by the
8 record on how a deciding vote may have gone, you
9 can't speculate on that. As you know, and we spent
10 some time before we started tonight, on objections.
11 It has to be in the record. You can't speculate. A
12 court of law couldn't speculate.

13 We talked about the affordable units.

14 Next is the Master Plan. It's very
15 curious that the appellants point you to certain
16 sections in the Master Plan, but leave out certain
17 other sections. Specifically, they leave out Goal 3,
18 which talks about the need to encourage
19 age-restricted housing with varying levels of care.
20 That's on page 14 and 15 of your Master Plan and our
21 planner talked about that.

22 They left out Goal 4 on page 46, which
23 talks about the need to provide a variety of housing
24 types and densities to ensure a balanced housing
25 supply. Old Tappan Borough recognizes the particular

1 housing needs of its citizens with special needs.
2 This goal should be interpreted broadly to
3 specifically include encouraging the delivery of
4 special needs affordable housing within the Borough.
5 We have a memory care component in the project.

6 Goal 5 on page 46, says:

7 "Create opportunities to encourage the
8 creation of both market-rate and affordable
9 senior housing."

10 The policy statement associated with
11 Goal 5 is particularly important. It states:

12 "The baby boom generation continues to
13 age. Old Tappan has witnessed an aging of its
14 population. There is a general lack of
15 housing design to service the unique housing
16 needs of older residents. While senior
17 housing has been developed in the Borough to
18 meet this need, Old Tappan should continue to
19 encourage developers or the public sector to
20 provide such housing, especially to meet the
21 needs of older Old Tappan residents who seek
22 housing design specifically for their needs."

23 None of that was referenced by the
24 appellants, and all of which was very relevant to the
25 board's findings and the adoption of its resolution.

1 I talked about the preservation of the
2 property and the inherently beneficial use.

3 The Artis site is on Central Avenue as
4 was referred to as no longer in play, so that should
5 not be considered.

6 With the Sica test, it's an inherently
7 beneficial use is automatically considered to have
8 the positive criteria satisfied and then there's the
9 -- there's three other steps to determine whether a
10 variance should be granted.

11 I only want to talk about one of them,
12 which is the imposition of reasonable conditions,
13 because that's where Mr. McElwee and our client CSH
14 never said no to every request made by your planning
15 board and whether it was -- whether it was for
16 proposed private contract with the ambulance service,
17 so your EMS would not be overburdened, yes, right
18 away.

19 They agreed to do significant work on
20 Old Tappan Road to specifically re-pitch the crown,
21 which would alleviate flooding concern and an ongoing
22 problem for a resident at the end of Holbrook, and to
23 widen a portion of Old Tappan Road as you come from
24 the front of the church. Neither of which is
25 required by the application, but CSH agreed to

1 address both of those issues in conjunction with this
2 application and as part of its county planning board
3 application.

4 It agreed to a specific-type generator
5 that the fire department requested. It made
6 significant plan changes and other requests for
7 equipment on-site that the fire department asked for.
8 It agreed to modify it's traditional shifts for
9 employees so there would not be any negative impact
10 with the school and historic time for school and the
11 end time with its employees.

12 Same thing with regard to construction
13 time, that the construction workers would not in any
14 way be involved with the beginning of school or
15 dismissal.

16 In accordance with the provision that I
17 read you from your Master Plan with specific older
18 senior citizens here in Old Tappan, it agreed to
19 provide a discounted rate to senior citizens here in
20 Old Tappan and that's a specific condition and agreed
21 to a variety of noise-related issues and largely it
22 agreed -- we had our engineer go down and meet with
23 Bergen County Soil Conversation District, which you,
24 I'm sure, are aware of when you have a project that
25 requires a certain amount of soil to be moved, you

1 need Bergen County Soil Conversation District
2 approval. And there are typically certain things
3 that you need to do to ensure compliance with a
4 project, but we asked in light of the concerns about
5 the tree removal and construction, what could we do
6 to go above and beyond the normal requirements and
7 they gave us a list of things that we can do and we
8 said, okay, fine.

9 And I had our civil engineer put that
10 on the record at one of the hearings and stipulated
11 that we would take care of that as a condition.

12 And we agreed to put in the wiring for
13 future additional EV parking spaces, which you know
14 is a requirement now adopted by the legislature, but
15 we went above and beyond our required numbers and
16 agreed to do conduit for future spaces and our
17 landscaping plan that we would meet with not only the
18 planner but with the environmental commission to
19 revise and that -- oh, and also, we agreed -- there
20 was a request to make sure that the elevator be able
21 to accommodate a certain number of people and a
22 certain size of stretcher.

23 And there are more conditions, but I
24 just wanted you to, you know, understand that this is
25 not a client or a project that took this site,

1 whether it was from an environmental perspective or
2 an operational perspective or an interaction with
3 your Borough and Borough residents in any way in a
4 flippant or disrespectful or financially oriented
5 only way. That's not what happened here.

6 So, I ask you on behalf of CSH to
7 affirm what your planning board spent nine or ten
8 hearings on and what they then adopted as a very
9 detailed findings of fact and conclusions of law in
10 their 77-page resolution and allow our client to
11 proceed with what, I'm going to tell you, having
12 worked with CSH on other projects, will make you very
13 proud to have them as a --

14 FEMALE AUDIENCE MEMBER: No.

15 MS. PRICE: -- as a resident here in
16 town.

17 Thank you.

18 MAYOR KRAMER: Thank you so much.

19 Mr. Regan?

20 MR. REGAN: Good evening, again, Mayor
21 and Members of the Council. I promise not to be too
22 long, since we're talking about a 77-page resolution,
23 which is certainly long enough.

24 The board really wrestled with this
25 application over a period of about a year. I think

1 it was nine or ten public hearings. They really
2 diligently reviewed every aspect, every component of
3 the application. Their conclusions are in the
4 resolution beginning at page 59. And there are a
5 total of 36 conditions, several of which Ms. Price
6 alluded to, which begin on page 68.

7 But the board really focused first and
8 foremost on the D-1 use variance. I can tell you,
9 I've represented planning boards, and I think I've
10 been board attorney here since around 2000, but I
11 represented planning boards continuously since 1985,
12 sometimes you have an idea as to how an application
13 will go during the course of the public hearing and I
14 can honestly tell you I had no idea what their
15 decision would be until the actual the vote took
16 place. I mean that sincerely.

17 As you're aware, the property is in an
18 RA-40 district. A nursing home or assisted living
19 facility, as you know, is not a permitted use in the
20 zone. Consequently, a D-1 use variance was required.
21 And that's what the board focused on first and
22 foremost, although they considered every variance as
23 outlined in the resolution.

24 Both the applicant's planner and
25 Borough planner John Szabo agreed that the proposed

1 use constitutes an inherently beneficial use, which
2 alone satisfies the positive criteria for the
3 granting of the use variance.

4 As you know, for a variance, there's
5 the positive criteria, then you have to deal with the
6 negative criteria after you deal with the positive
7 criteria.

8 Not a single objector disputed the
9 applicability of the inherently beneficial character
10 of the proposed use.

11 But this application went beyond that,
12 even aside from the inherently beneficial nature.
13 Other provisions of your 2016 Master Plan
14 Reexamination support a finding of satisfaction of
15 the positive criteria. I would refer you to Goal 4,
16 which talks about the Borough recognizing the
17 particular housing needs of its citizens with special
18 needs, obviously senior citizens and people with
19 Alzheimer's are special needs individuals that need
20 housing.

21 Goal 5, encouraging -- creating
22 opportunity to encourage the creation of both
23 market-rate and affordable senior housing.

24 And, lastly, Goal 6, to preserve the
25 historic features of the Borough, the historic

1 structure, which will be preserved.

2 And by the way, the only thing standing
3 between the demolition of that home is approval that
4 was done by the planning board, that's it.

5 Ms. Price and no one has disputed the
6 fact that that house could have been demolished at
7 any time. It's not -- it cannot be demolished now
8 because of the action of the planning board.

9 If that's a concern, the planning board
10 acted appropriately and considered Goal 6 of the
11 reexamination.

12 Now, in addition to the positive
13 criteria, an applicant must also show satisfaction of
14 the negative criteria that the variance -- we're
15 talking about the use variance first -- may be
16 granted without substantial detriment to the public
17 good and without substantially impairing the intent
18 and purpose of the zone plan or zoning ordinance.

19 And the case of Sica versus Board of
20 Adjustment of Wall Township, the 1992 state supreme
21 court decision has been discussed by both the
22 appellant and Ms. Price.

23 There's a four-prong test under the
24 Sica decision. First, you have to identify what is
25 the public interest at stake. Now, substantial

1 testimony was provided related to what that public
2 interest is, the public interest of the housing needs
3 of senior citizens.

4 It was noted during the hearing that
5 the fastest growing segment of the population is
6 persons over the age of 85.

7 Do you know what the second fastest is?
8 Persons over the age of 75. The fastest growing
9 segment of the population.

10 There's also significant testimony
11 about the demographics and the number of cases of
12 persons with Alzheimer's disease. Obviously one of
13 the worst diseases a person could encounter in their
14 lifetime. That's the substantial testimony
15 identifying the public interest.

16 Okay. The proposed interest [sic] will
17 advance -- the proposed nursing home will advance the
18 public interest concerns, also with providing a
19 Medicaid bed in a development which will constitute
20 an affordable housing credit. It's a federal
21 regulation. You can't ask for more than 10 percent.
22 That's my understanding. And no one has shown me any
23 federal regulation that could allow you to ask for
24 something more than 10 percent.

25 The second prong of the Sica test is

1 the board has to consider the detrimental effect in
2 the granting of the D-1 use variance. The
3 uncontradicted testimony demonstrated that the
4 nursing home will generate less traffic than a
5 permitted single-family development or a childcare
6 center. There was no contradiction of that traffic
7 testimony.

8 The third prong is to consider any
9 detrimental effect and impose reasonable conditions,
10 which the board did, as I alluded to earlier, a total
11 of 36 conditions in a memorializing resolution.

12 The first and foremost, the biggest
13 concern that the board had in terms of public
14 services was ambulance service. Condition No. 1 on
15 page 68, the very first condition in the resolution
16 requires that the applicant provide a contract for
17 private ambulance service. Absent that contract
18 being provided, no permit will be issued for the
19 construction of this facility.

20 There are also other conditions
21 addressing possible or to mitigate any possible
22 negative impact. Shift changes are required to not
23 interfere with beginning and ending times at local
24 schools.

25 There is also a requirement for the

1 preservation of historic structure on the property,
2 that's Condition 12 on page 71.

3 And the board also required a bond. I
4 know there's been concerns raised this evening that
5 the house may become damaged during the moving
6 process. A bond will be required and the Borough
7 engineer will determine what that bond amount will
8 be.

9 There was also requirement for tree
10 replacement. There's substantial provisions in the
11 resolution in the conditions about restoring the
12 number of trees and contributing to the Borough's
13 tree replacement fund as required by ordinance. The
14 board didn't make up this. It's required by your own
15 ordinance.

16 After reviewing all of these
17 circumstances and analysis under the Sica test, the
18 board on balance determined that the granting of the
19 D-1 use variance would cause no substantial -- no
20 substantial detriment to the public good.

21 The board also looked at the FAR
22 variance. I just want to give you some examples of
23 this particular property.

24 In an analysis of a FAR variance, you
25 have to show that the site can accommodate any

1 problems as a result of the increased floor area
2 ratio.

3 In connection with the FAR, this site
4 is 5.46 acres. The zoning requirement is 40,000
5 square feet. The site has a width of 495 feet. The
6 ordinance only required 150. The site's depth is 265
7 feet -- 465 feet. The requirement for the lot depth
8 is 200 feet. The front yard setback requirement is
9 50 feet. The proposed front yard setback is
10 74.5 feet. The rear yard requirement is 50 feet.
11 This site has a rear yard under the proposal of
12 175 feet. The combined side yard only has to be
13 50 feet. The combined side yard here is 290 feet.
14 Obviously providing a lot of buffer between adjoining
15 properties. And a minimum side yard requirement is
16 20 feet, this development provides a minimum side
17 yard three times greater or 66.7 feet.

18 The board also looked at the additional
19 variance relief and it should be noted that not only
20 are goals objectives of the 2016 Master Plan
21 Reexamination met, but numerous goals of the
22 Municipal Land Use Law, such as general welfare. A
23 housing development for special needs and senior
24 citizens is considered to promote the general
25 welfare. It will provide sufficient space for a

1 variety of uses, a senior type and assisted living
2 development.

3 It preserves the historic structure and
4 it also provides for senior housing construction.
5 Those are all purposes of the MLUL.

6 Now, the appellants allege a legal
7 conduct in the form of a quid pro quo and a conflict
8 of interest.

9 I submit to you that those allegations
10 are not without merit, well, were totally without
11 merit. The approval results in the preservation of a
12 historic home to be relocated on the Borough
13 property. This is consistent with Goal 6 of the 2016
14 Reexamination, which references the preservation of
15 the historic features of the Borough. The policy
16 statement notes that the Borough's historic features
17 are an integral part of the community's unique
18 character and that the Borough seeks to maintain and
19 protect its historic significant structures and
20 sites. That was done here by the board approval.

21 The board did not approve this
22 application with the condition that that structure be
23 moved consistent with what was discussed during the
24 hearing with a bond to ensure to the extent possible
25 that the structure will remain in its current

1 condition, that absent that, the structure could --
2 it's undisputed, the structure could have been
3 removed even before the application was filed.

4 But it can't be removed today because
5 of this approval. Absent approval of this
6 application, that structure could, in fact, be
7 demolished.

8 I think there is no basis for the
9 unfortunate unfounded allegation relating to the
10 Borough Administrator. I think it's sad that that
11 allegation was made against someone I admire and
12 consider a very effective administrator and effective
13 planning board member and a really good person.

14 Neither she nor the Borough incurred
15 any financial benefit by the preservation of this
16 historic structure. All the board did and all that
17 Mrs. Haverilla did, in voting to approve this
18 application, was to ensure the preservation of the
19 historic home and to promote the goal, Goal 6 of the
20 Master Plan. That's all -- that's all there was.
21 There's no financial benefit to anybody. There's a
22 benefit to the Borough to meet the goal, Goal 6 of
23 the 2016 Master Plan Reexamination.

24 Now I'm going to bring up an issue that
25 the appellants raised and it's probably the elephant

1 in the room, but I've been dealing with affordable
2 housing litigation since the 1980s and you saw the
3 reference in the transcript. I believe it was the
4 January -- January 11th transcript, the colloquy
5 between myself and Mr. Szabo about the Borough's
6 unmet need in terms of affordable housing.

7 The settlement agreement you had with
8 Fair Share Housing Center in 2017 provided that your
9 unmet need was 240 units. Seems like a lot of units,
10 okay? But I have represented towns where it's double
11 that, okay?

12 There was a reduction in the unmet need
13 as a result of the Pearson development. There's 40
14 affordable units on Pearson.

15 So that brings the unmet need to
16 somewhere around 200, maybe a little lower, because I
17 think there may be some bonus credits toward the 40
18 units at Pearson, but at least within a 175 or 180
19 number. Okay?

20 This site if it's vacant on July 1,
21 2025, will be a target of Fair Share Housing Center.
22 I've dealt with them hundreds of times. They're
23 insatiable when it comes to affordable housing. It's
24 never enough. No matter what you do, it will not be
25 enough. Okay.

1 So, I think the colloquy that Mr. Szabo
2 and I had on January 11th beginning on page 89 and
3 continuing on page 93 is very appropriate, it's part
4 of the record.

5 And my opinion, if the site is
6 undeveloped in 2025, there is a real possibility, as
7 Mr. Szabo indicated, that there would be a density --
8 if you're lucky it will be 12 units per acre, it will
9 be 15 to 20 more likely. And it could well result in
10 65 or 100 units of housing on that site.

11 Which is a more intensive development,
12 65 to 100 units with the impact on schools and
13 traffic and everything else or a nursing home with no
14 impact on schools and little impact on traffic
15 circulation.

16 So, for those reasons, I would
17 respectfully request that the Mayor and Council
18 affirm the decision of the board based on its
19 findings and conclusions in the record.

20 And I thank you for hearing me.

21 Thank you.

22 MAYOR KRAMER: Thank you, Mr. Regan.

23 FEMALE AUDIENCE MEMBER: It's not open
24 to the public.

25 MALE AUDIENCE MEMBER: It's not open to

1 the public.

2 MALE AUDIENCE MEMBER: I'm just sitting
3 here.

4 FEMALE AUDIENCE MEMBER: He's just
5 sitting there.

6 MAYOR KRAMER: Okay.

7 So, throughout the past four to six
8 weeks I've spent considerable time reviewing the
9 transcripts of all the planning board meetings
10 regarding the Capitol Senior Housing application.

11 Additionally I've read the briefs --

12 FEMALE AUDIENCE MEMBER: Can't hear.

13 MALE AUDIENCE MEMBER: Can't hear you.

14 FEMALE AUDIENCE MEMBERS: Speak louder.

15 MS. HAVERILLA: This might help.

16 MAYOR KRAMER: Thank you.

17 There you go. Testing one, two, three.

18 (Applause.)

19 MAYOR KRAMER: Okay. So throughout the
20 past four to six weeks, I've spent considerable time
21 reviewing the transcripts of all the planning board
22 meetings regarding this Capitol Senior Housing
23 application.

24 Additionally, I've read the brief filed
25 last week on behalf of the applicant. And, finally,

1 tonight we've heard all of the summation of the
2 appellants and the applicant.

3 So, some of this is going to be
4 repetitive, because it's already been mentioned, but
5 I took particular notes with regard to all of those
6 hearings that I read through. So, I noted some of
7 the actions of the planning board and some of the
8 concessions that were granted.

9 The Certificate of Need, the applicant
10 supplied the necessary study to obtain a Certificate
11 of Need as issued by the New Jersey Department of
12 Health.

13 The inherently beneficial use, the
14 applicant offered testimony attesting to the facility
15 being considered as such.

16 The wetlands, first and foremost, the
17 vernal pool and the wetlands will not in any way be
18 disturbed. The Department of Environmental
19 Protection conducted an on-site study and established
20 the 50-foot buffer zone only to be supplemented by an
21 additional 10 feet by the developer, now a total of
22 60 feet acts as the buffer.

23 Drainage, there was much discussion
24 regarding drainage from the site. Discussions with
25 the neighboring Syrian church were not productive nor

1 the discussions with the attorney representing
2 Lakeview.

3 A revised plan making use of an on-site
4 rain garden and detention basin solved the problem,
5 thereby causing Lakeview to withdraw their formal
6 notice of appeal.

7 As far as safety is concerned, the fire
8 department took issue such as truck access around the
9 perimeter of the building and the external standpipe
10 location. All of those were addressed.

11 First Aid Corps matters including an
12 expanded size of the elevator, private ambulance
13 transportations were resolved as well.

14 Employee arrival and departure times to
15 be designed so as to not to interfere with school
16 traffic.

17 Widening of Old Tappan Road was
18 afforded to increase safety regarding ingress and
19 egress.

20 As far as trees are concerned, the plan
21 calls for a total of 203 trees to remove, 11 -- of
22 which 11 are dead and 27 in poor condition. The
23 developer assessed -- has assessed a total of 304
24 replacement trees, 166 will be planted on-site and a
25 \$90,000.00 contribution will be made to the town's

1 tree replacement as noted by Mr. Regan and it's a
2 requirement of our ordinance.

3 With regard to the Gerrit Haring house,
4 the developer has agreed to preserve the historic
5 house by moving it to an on-site or off-site location
6 at their expense.

7 So that's with a thumbnail -- thumbnail
8 sketch of the amount of work and effort that the
9 planning board has put into this application.

10 I realize that there are other issues
11 that people have talked about, but these are the --
12 these are the takeaways that I have taken from strict
13 regard to the proceedings of the planning board.

14 And I commend the planning board for
15 their -- for their work efforts in moving this plan
16 through the process.

17 I invite other council members to
18 comment as well.

19 COUNCILMAN GALLAGHER: Thank you,
20 Mr. Mayor.

21 I don't mind starting.

22 I have some comments.

23 Can you hear me without that?

24 FEMALE AUDIENCE MEMBER: Yes.

25 COUNCILMAN GALLAGHER: All right.

1 I have some comments and over the past
2 three-and-a-half hours, two-and-a-half hours I have
3 some scribble all over the place, so -- so bear with
4 me, please.

5 Ladies and gentlemen, over the past
6 year plus as Mayor Kramer's Planning Board
7 Representative, I personally attended all planning
8 board meetings and listened to testimony regarding
9 the 244 Old Tappan Road application. Councilman
10 Boyce and Councilman Yhu attended most meetings as
11 well.

12 Many social media posts saying that the
13 Council did not take the time to attend, which is not
14 true.

15 I heard Old Tappan residents and the
16 interested parties talk about stormwater management,
17 environmental impacts, residential zoning, traffic,
18 strain on our volunteered EMS and fire, removal of
19 hundreds of trees, disturbing the wetlands on the
20 property and the historic house that sits on this
21 private property. Many legitimate concerns.

22 Although, social media on on fire, I
23 was surprised that more residents were not in
24 attendance at these meetings.

25 Although, a member of the planning

1 board, I was not able to take part in the discussion
2 as a member of Old Tappan's governing body.

3 Tonight this Council having heard all
4 the testimony, all the planning board testimony,
5 expert witnesses, comments from both sides of the
6 aisle and resident concerns, need to make a decision
7 on whether to affirm, overturn or adjust the recent
8 planning board decision.

9 This group of dedicated men and women
10 also listened to 11 months of testimony volunteering
11 their own time and basing their decision on the
12 testimony along with our professional planner,
13 Borough engineer and board attorney comments.

14 I thank our board members and our
15 Borough professionals for their time and effort on
16 this application.

17 As I stated earlier, there are many
18 concerns with this application. Not the physical
19 building with a need for assisted living facilities,
20 rather its location on this particular piece of
21 property. Unfortunately, I think some our board
22 members also took into consideration: If not this,
23 potentially what?

24 We heard the phrase "inherently
25 beneficial use" thrown around and the threat of

1 additional multifamily development due to the
2 unreasonable and unrealistic demands New Jersey is
3 putting on small communities like Old Tappan.

4 In my opinion, some board members
5 looked beyond the building, its location and
6 sensitivity of the piece of property and got caught
7 up again, if not this, then what? And the threat of
8 litigation against the Borough.

9 Very admirable, but I believe beyond
10 their scope of duty.

11 I think at times you need to stand up
12 to the schoolyard bully. This bully -- this being
13 the bullies in Trenton making unrealistic demands on
14 small communities like Old Tappan. Affordable
15 housing and assisted living facilities are extremely
16 important for generations to come.

17 If this application is overruled, the
18 fate of this parcel of land is still uncertain.

19 I'm quite familiar with our Master Plan
20 and the statements that this would be an ideal parcel
21 for the Borough to have if it became available.

22 To my knowledge, no such offer was made
23 to the Borough.

24 Based on all the testimony I've heard
25 and the concerns of many of our residents, I am going

1 to suggest to my fellow Council Members that we
2 overturn the recent planning board decision leaving
3 this parcel zoned for residential-use only.

4 (Applause.)

5 COUNCILMAN GALLAGHER: Thank you, but
6 the fight is not over.

7 So there's a -- there's a long road
8 ahead and it's not as easy and cut and dry as just
9 saying no to this or something, so that's my feeling.

10 MALE AUDIENCE MEMBER: Thank you.

11 AUDIENCE MEMBERS: Thank you.

12 (Applause.)

13 COUNCILMAN YHU: Who's going to go
14 after that?

15 COUNCILMAN BINAGHI: I'll go.

16 (Laughter.)

17 COUNCILMAN BINAGHI: I'll go.

18 Thank you.

19 I've been on this Council for 24 years.

20 I was on this Council when we purchased Oaks
21 property. I was here when we purchased Bonnabel
22 property. I was here when we purchased the Community
23 Garden, which is -- we purchase from a private
24 homeowner that is right by our senior center now.

25 Some things you need to know that these

1 properties were available and the town and Green
2 Acres had the money.

3 Current property was sold, it was not
4 available to the town.

5 And if it was available, I don't think
6 we have the money. Although, others might disagree.

7 I listened to both sides and I'm sure
8 both sides have their specific personal reasons for
9 why they want what they want.

10 I'm fifth generation to live here in
11 Old Tappan. I'm fifth generation to live in the
12 house I live in. And I'm thankful for that and I
13 know open space is disappearing, but while Trenton
14 has a gun to your head and says your signature or
15 your brains will be on this contract, makes me crazy.

16 So really your fight is with Trenton
17 and you need to go to the booth and vote -- I'm not
18 telling you who to vote for. I'm just telling you,
19 vote for people who are not in favor of COAH.
20 Happens in my mind, I know who those specific people
21 are. You should have to do your own research,
22 because I don't want to turn this into a political
23 discussion, which it isn't.

24 The -- one of my main concerns is
25 strain on EMS and fire. I know this was addressed

1 briefly just now.

2 Sunrise has an agreement with a private
3 ambulance service. That doesn't mean in the middle
4 of the night someone that falls out of bed, that they
5 don't call our ambulance, because they do.

6 Now, if they're being transported
7 somewhere or going for dialysis or going -- that's a
8 contract, but our ambulance -- by the way, there's
9 two ambulance corps members on this board. My dad
10 was an ambulance member for 47 years. I get it.
11 They're strained and they're only going to get worse.
12 It's only going to continue to get worse.

13 As far as fire, I'm also a fireman.
14 I've been a fireman for a long time, 47 years. And I
15 have -- I just know, sure, the standpipes will be
16 right, the -- we're going around the back is going to
17 be better, because they made it wider, but the
18 constraints on our fire service is getting bad also.

19 For instance, I've been a driver for
20 probably 35 years. I just took myself off the
21 driving list and there's not many people that drive
22 our ladder truck. I used to be one of them. I'm
23 not, because of the new -- the new schooling that we
24 need to do and new things that we need to keep up on
25 and I can't because of my work, I can't keep up on

1 all the training. I'm not anti-training, don't get
2 me wrong, but I can't keep up with that. And that's
3 only getting worse every year, they're making
4 training more and more, especially for EMS, but now
5 for fire.

6 So I'm concerned with fire calls there.
7 In the daytime we have a tough time to get a crew to
8 go anywhere. At 3:00 in the morning, it's worse.
9 I'm one of those guilty. At 3:00 in the morning, I'm
10 going to work in an hour, so I'm not rolling out of
11 bed and going to the firehouse. I used to, can't
12 anymore.

13 So I'm really concerned about that
14 portion of our community being stretched. It's not
15 this -- you know what we have, we have an influx of
16 18 to, let's say, 16- to 21-year-old men and women
17 that join the fire service and sometimes EMS.
18 They're gung-ho. They got adrenaline popping out of
19 their ears. They're great to see, because I used to
20 be them and I love to see it. And without them, we
21 don't operate; am I correct? We don't operate.
22 They're -- they know where -- they're highly trained,
23 they're so into it, but they can't afford to live in
24 Old Tappan. So when they become out of college, they
25 can't afford to live here. So we're victims of our

1 success in a way.

2 I would love to have a portion of land
3 that was just for them and they can only live there
4 for four years and they got to go or some -- but that
5 ain't going to happen. That's just pie-in-the-sky
6 idea.

7 So, people also mentioned we're going
8 to get a lot of -- we're going to get some COAH units
9 out of this. Not enough for my money, not enough
10 COAH units.

11 We're also going to get taxes. We're
12 going to get taxes and no kids in school.

13 As a -- as a Council, we're not
14 anti-kids, but when you have a facility that gives
15 you taxes, but no kids in the school, that's a home
16 run for tax -- for tax base.

17 Our taxes over the last 24 years that
18 I've been here, the average assessed home goes up
19 about, at a municipal portion between \$75.00 and
20 \$125.00 about. 2020 it went up zero. So -- and the
21 Enclave is going to give us millions of taxes. Not
22 that there won't be services that are required.

23 We just settled our police contract, so
24 we're hiring more police. But we're only going to
25 have to hire more police when the Enclave gets fully

1 developed. By the way, it's sold out. So, it will
2 be -- once it's fully developed, there will be calls
3 for whatever, whatever is going on that day.

4 I don't think we need another facility
5 like this in town. And I'm sure that there's case
6 law and there's tests that are satisfied and a lot of
7 other things that are satisfied, but in my heart I'm
8 not satisfied, so I'm voting no.

9 (Applause.)

10 MAYOR KRAMER: Councilman Gwon?

11 COUNCILMAN GWON: All right.

12 So, you've been on the Council for 24
13 years. I've been on the Council for four months.

14 (Laughter.)

15 COUNCILMAN BINAGHI: And he's doing
16 good.

17 COUNCILMAN GWON: I better do a lot of
18 -- I better do a lot of catching up.

19 About a year ago I actually was sitting
20 in the audience as a resident, I still am a resident,
21 listening to the testimony. I think I was there for
22 most of the, kind of, second half really trying to
23 get up to speed and listening and honestly sitting
24 there was very frustrating, right? You only get
25 three minutes to speak, you get interrupted. I know

1 the exact feeling that everyone is in currently,
2 right.

3 And now up here, I still only get three
4 minutes, right? But I'll give you my best of three
5 minutes.

6 There are a few things here that I want
7 to talk about. So one is infrastructure, right? So
8 I leave it to you guys to talk about infrastructure,
9 EMS, but police too. It's not just fire, it's not
10 just EMS, 911, police go there too, right? So it's
11 our whole infrastructure that would be stressed on
12 911 calls, et cetera, right?

13 So I agree with you there.

14 To me also, as you know, there are a
15 lot -- there's going to be more residents in this
16 town, right?

17 And we do have open space, but what I
18 would like to see is the ratio of open space per
19 resident keep the same, right?

20 And so as a resident -- and, look, we
21 can't help it, Enclave is there, the place across the
22 high school is there, right?

23 And I wish as we get more population
24 that we would increase our open space. So I would
25 hope, right, that we could get some more open space

1 either this or elsewhere, right, two.

2 But the third, and last thing that I do
3 want to bring up here, and I don't think anyone has
4 mentioned this over the last year-and-a-half, right?
5 So, my background, I don't know if you know, I have
6 two degrees in finance, right, undergrad, graduate
7 degree from Ivy League Schools, et cetera. So for
8 two minutes I'm going to be the financial expert
9 here.

10 When this project -- right, it's a very
11 simple project for anyone that has a finance degree
12 to model this up. Two years ago -- right, so we
13 started this whole process a year ago, but that means
14 in the offices of CSH, there were financial guys
15 going through and saying, okay, is this a profitable
16 project, right?

17 Do you remember two years ago what was
18 happening in the markets in finance, interest rates,
19 et cetera, right? We were all buying Amazon stock at
20 crazy price. We were all buying Game Stock. The
21 stock market was going crazy. Interest rates were,
22 what, about zero.

23 Fast forward to where we are today.
24 Well, okay, so projects like this get financed two
25 ways, and I've noticed in the application you have

1 two of the largest private equity factors in the
2 U.S., smart, smart, smart people. You go to Harvard,
3 you probably go to those private equity firms, right?

4 Those private equity firms require a
5 30 percent rate of return on any project invested,
6 minimal. Two years ago, maybe viable. We all
7 thought we could make 30 percent in everything,
8 right? With zero interest or maybe 2, 3 percent
9 interest rates, you could use leverage. You could
10 borrow and you could get that 30 percent return.

11 Fast forward to today, okay? Take that
12 same project today, interest rates for that kind of
13 project are 8 to 10 percent. You will never, ever
14 get a 30 percent return on a project like this
15 currently.

16 I'm assuming they have not gotten the
17 financing yet, because it hasn't been approved,
18 right, so that's one.

19 Two, the other place to get financing
20 is where? Banks.

21 Do you know what just happened to banks
22 in the last two months? Banks went bankrupt. There
23 is no bank that is going to lend in this environment
24 right now.

25 What are they trying to do? They're

1 trying to hold onto their deposits, right? Banks get
2 deposits and they lend. They're trying to hold their
3 deposits so they can survive.

4 So financing of this project is going
5 to be almost nothing.

6 And so my fear, if we do approve it,
7 they won't start that project yet. They could hold
8 onto the land for a period of time or my biggest
9 fear, they start it, steel beams go up, interest
10 rates go up more, then what happens? They stop. And
11 then we're going to be staring at a half-built
12 facility with -- and we can't do anything after
13 that's done, right?

14 So -- and they're letting it sit for a
15 very long time and it's been a year or whatever, but
16 that's my professional, financial take of the whole
17 situation.

18 Environmental, I'm not the expert.
19 Construction, I'm not the expert.

20 But in finance, there is no project
21 this year that is going to start in this environment
22 and, yes, there will be worry about it.

23 So, you know, with all of this and
24 obviously you know which way I'm going to vote, I'm
25 going to vote no.

1 (Applause.)

2 MAYOR KRAMER: Councilman Yhu?

3 COUNCILMAN YHU: Thank you, Mr. Mayor.

4 I'd like to thank the members of the
5 public for coming out tonight and all of us up here
6 recognize that as your will that we're up here.

7 I want to thank the members of the
8 planning board for their service to our Borough, all
9 of who made difficult decisions faithfully,
10 impartially and justly.

11 Most of them, like us, have been in
12 town most of our lives and have witnessed firsthand
13 how our community has changed over the years.

14 These days it's difficult to go through
15 a paper or a news website and not read about concerns
16 about overdevelopment, lack of open space, local
17 flooding, et cetera and strains on local resources.
18 It seems as if every single municipality in New
19 Jersey, especially in northern New Jersey, is facing
20 the same challenge and Old Tappan is not immune.

21 And, unfortunately, I read all too
22 often the local rulings to deny an application for
23 development become overturned in state superior
24 court.

25 Just remember, just because you don't

1 want it in your town, doesn't mean New Jersey doesn't
2 want it in their state.

3 I believe that fact and fear for what
4 else could be developed on the property are amongst
5 driving factors behind the planning board's decision
6 to approve the application.

7 Should those factors have influenced
8 the board's decision? Probably not.

9 But I believe the board most definitely
10 had the best interest of the residents in mind when
11 making that difficult decision.

12 The decision would have been made --
13 should have been made on the merits or deficiencies
14 on the proposal and the proposal alone.

15 I have a few concerns about the
16 proposal, but my most significant concern, which
17 wasn't really talked about a lot is the -- how it
18 affects the church property adjacent to it.

19 Sure, all of us know the history about
20 the property. They were both owned by the Korean
21 Presbyterian Church at one time and 244 Old Tappan
22 Road was never meant to be developed. It was to
23 remain a wooded sanctuary for the congregants to use.

24 There was an unfortunate set of events
25 that led up to the developer gaining ownership of the

1 entire parcel.

2 Early in 2021 the Syrian Orthodox
3 Church purchased the eastern lot where the building
4 is located to become the new home of the archbishop.

5 To this congregation, this property is
6 considered their most holy sacred ground.

7 To completely -- to not completely
8 address their buffer space issues, noise issues or
9 flooding concerns would be a great failure on our
10 part as the elected stewards of the community.

11 I realize that the applicant has made
12 efforts, but that still doesn't mean that those
13 issues haven't been -- those concerns go away.

14 So if this is to move forward, I would
15 encourage the applicant to work with the church
16 further, and you'll hear my vote when we have an
17 official vote.

18 MAYOR KRAMER: Thank you.

19 Councilman Carnazza?

20 COUNCILMAN CARNAZZA: I've been here
21 23 years and 10 months, and I know a lot about COAH.
22 When a guy named Christie became governor of this
23 state, he disbanded COAH, shut it down and fired
24 everybody.

25 When another gentleman names Murphy

1 came in, not only did he reinstate COAH, he started
2 the Fair Share Housing Authority. And he appointed
3 14 brainiacs from Harvard, Yale, Stanford, and all
4 these intelligent guys, and not only did he -- he
5 reinstated COAH and he made it retroactive, which
6 means he went back eight years and you're required to
7 give all those apartments back to each one of the
8 towns.

9 Fair Share Housing Authority went out
10 and did a survey, and they did it with drones on
11 every single town in the State of New Jersey. And
12 when they came to Old Tappan, they said we owe 296
13 low- and medium-income apartments. They said we had
14 136 acres of property in Old Tappan.

15 At the time, John wasn't the mayor,
16 there was another guy here, and he put me and two
17 other Council people in charge.

18 And I went to the Fair Share Housing
19 Authority and they did a PowerPoint presentation with
20 these drones. And the first thing they did, they
21 said you have 64 acres on Dewolf Road that Old Tappan
22 owns. I said could you show that to me? They showed
23 me the PowerPoint.

24 And it was funny, the camera was taking
25 pictures of all this property. And they had these

1 round things that had white in them.

2 So I said, could you stop it? And they
3 said, yeah. I said, what are all those round things
4 all over the acreage?

5 So the chairman of the Fair Share
6 Housing Authority, which was the Harvard appointee
7 said, I don't know, what is that, Councilman? I
8 said, well, that's a golf course that we own, it's
9 called the Old Tappan Golf Course.

10 His comment to me was, you own a golf
11 course?

12 I said, Chairman, not for nothing, but
13 really you should know all about this, because if
14 you're telling me you got to get 290 apartments, you
15 should know how much property we own.

16 So that 62 acres came off.

17 Stone Point Park, they said you own
18 38 acres behind Stone Point. Remember?

19 So I said, all right, show it to me.
20 So they did a PowerPoint and the drone is flying over
21 all the acreage. And the camera is reflecting off
22 the ground and coming back at the camera.

23 So I said could you hold that? They
24 said, yeah.

25 I said, why is the camera reflecting?

1 Could it possibly be that the sun is shining off the
2 water and the water is flying back at your camera?
3 Yeah, it could.

4 We own 38 acres, it's called wetlands.
5 The DEP delineated we can't use that.

6 To make the long story short --

7 COUNCILMAN BINAGHI: Please.

8 (Laughter.)

9 COUNCILMAN CARNAZZA: -- the Enclave --
10 who said "please"?

11 Who said "please"?

12 The four-month guy.

13 COUNCILMAN GWON: No, no, no, no, no.

14 COUNCILMAN CARNAZZA: To make a long
15 story short, the Enclave. Okay.

16 We were sued, and I want everybody to
17 hear this, the State of New Jersey sued us with the
18 developer and we gave them 41 low- and medium-income
19 apartments.

20 Mr. Regan, those 41, because they're
21 rentals, we get double. We have 82 credits.

22 Central Avenue, the guy who bought that
23 property, joined the lawsuit. And in the lawsuit we
24 gave him 20 townhouses and six rentals, we got 12
25 there. Those credits are good until 2025, but

1 recently -- am I allowed to tell them about the 2028?

2 MR. GALLAGHER: It's legislation that's

3 --

4 COUNCILMAN CARNAZZA: Legislation
5 that's on right now that's going to extend it to
6 2028.

7 MR. GALLAGHER: Hopefully.

8 MALE AUDIENCE MEMBER: Proposed.

9 COUNCILMAN CARNAZZA: Hopefully.

10 So, our requirement right now might be
11 30 or 60 or 70.

12 With all that being said, I read -- I
13 don't know why I did, because the Borough
14 Administrator sent all the minutes, I read all that.
15 I read Cherie and Mr. Gambuti and I also read the
16 appeal.

17 Mr. Regan, I know you for 24 years that
18 I've been here, I trust your opinion. I am one that
19 I am afraid of what might happen to this property and
20 at no time ever was this property ever offered for
21 sale to the Borough of Old Tappan, ever.

22 I am voting to uphold the planning
23 board's decision and voting to hold it up.

24 (Audience Outburst.)

25 COUNCILMAN CARNAZZA: Thank you.

1 MALE AUDIENCE MEMBER: Boo.

2 COUNCILMAN CARNAZZA: Thank you.

3 MAYOR KRAMER: Councilman Boyce?

4 COUNCILMAN BOYCE: Okay.

5 So, it's hard to top that amount of
6 enthusiasm --

7 (Laughter.)

8 COUNCILMAN BOYCE: -- everybody else on
9 the esteemed Council here.

10 MAYOR KRAMER: Speak up a little.

11 COUNCILMAN BOYCE: Yeah.

12 So, I would like to thank both the
13 appellants and the Counsel for the planning board,
14 I've worked with Mr. Regan for a number of years
15 beyond my capacity as a planning board member. And
16 I've always found him to be extremely thorough,
17 highly regarded and competent.

18 I also know that being a professional
19 in the design industry of landscape architecture, I
20 deal with plans all day long. And I coordinate plans
21 between architects and civil engineers and historians
22 and land use attorneys and we're always trying to
23 come up with the perfect plan for a site.

24 Now every site is unique. Our site is
25 unique. And all plans are imperfect, because they

1 require compromise. It's a balancing act between
2 thousands of factors to consider.

3 Our municipality produced some
4 incredible orators to come to the planning board and
5 have extremely long sessions of public testimony in
6 defense of preserving the property, preserving the
7 history, preserving the wetlands, preserving the
8 trees, preserving the views of the property, not
9 wanting the traffic.

10 I mean, the list goes on and on and all
11 of those factors had to be considered by the
12 applicant's civil engineer again and again and again.
13 And I understand why he got a little short, because
14 it's difficult to be in a public testimony position
15 when you have to answer those questions again and
16 again and again. It's very, very stressful. But
17 they were not questions without merit.

18 I do not feel as though this plan is
19 perfectly sensitive to the exact needs of this site.

20 I feel as, though, it overlooks a lot
21 of opportunities and it could be better.

22 I applaud the planning board of
23 approving the maintenance of the historic home, but
24 not necessarily moving it.

25 I would like to see it stay exactly

1 where it is. The barn, I wouldn't like to see that
2 destroyed.

3 Of course the wetland, I'd like a
4 500-foot buffer, but that would be impossible or it
5 would be in the middle of the Syrian Church's parking
6 lot, which is already a parking lot.

7 So, the perfect plan doesn't exist.
8 COAH, that's a whole another layer of thing for us to
9 consider as a Council. And it's not easy, it's a
10 giant monster that we have to face, you know, every
11 time we redo our Master Plan, but at the end of the
12 day, I feel as though it's difficult to justify
13 trading one beneficial use, which I believe is a
14 beneficial use, believe me, from personnel experience
15 it's important to have facilities like this very
16 close to home. But it's impossible to trade one
17 inherently beneficial use for another.

18 And I feel that the inherently
19 beneficial use that we have here right now is
20 extremely unique. It has wetlands that feed the
21 aquifer below. It has uplands that protect the
22 wetlands. There's a system there, it's only
23 five-and-a-half acres, but it's an important
24 five-and-a-half acres.

25 I think that the plan that you've been

1 provided by the applicant, they worked so hard on
2 that plan. They made a lot of concessions.

3 Our land use attorney had how many
4 conditions, 36, was it?

5 MR. REGAN: Thirty-six.

6 COUNCILMAN BOYCE: 36 conditions,
7 that's a lot of conditions. I've never been -- seen
8 a land use attorney create that many conditions of
9 approval.

10 But that being said, I don't think that
11 this current plan is right for this site.

12 And when I'm asked to vote officially,
13 I will.

14 Thank you.

15 (Applause.)

16 (Audience Outburst.)

17 COUNCILMAN BOYCE: There has not been
18 an official vote called yet, that's why I'm not
19 offering what my vote is.

20 MAYOR KRAMER: Okay.

21 Would someone care to make a motion?

22 COUNCILMAN GALLAGHER: I will make a
23 motion.

24 I'll make a motion that this Council
25 rejects -- that's a strong word -- but the planning

1 board's approval of the 244 site.

2 COUNCILMAN BINAGHI: Second.

3 MAYOR KRAMER: Is there any further
4 discussion?

5 (No response.)

6 MAYOR KRAMER: Hearing none, roll call,
7 please.

8 BOROUGH CLERK DONCH: Councilman
9 Binaghi?

10 COUNCILMAN BINAGHI: Yes.

11 BOROUGH CLERK DONCH: Councilman Boyce?

12 COUNCILMAN BINAGHI: We're voting yes
13 in favor of disapproval.

14 Thank you.

15 BOROUGH CLERK DONCH: Councilman Boyce?

16 COUNCILMAN BOYCE: Yes.

17 BOROUGH CLERK DONCH: Councilman
18 Carnazza?

19 COUNCILMAN CARNAZZA: No.

20 BOROUGH CLERK DONCH: Councilman
21 Gallagher?

22 COUNCILMAN GALLAGHER: Yes.

23 BOROUGH CLERK DONCH: Councilman Gwon?

24 COUNCILMAN GWON: Yes.

25 BOROUGH CLERK DONCH: Councilman Yhu?

1 COUNCILMAN YHU: Yes to overturn.

2 (Applause.)

3 MAYOR KRAMER: Okay.

4 I'll entertain a motion to open the
5 meeting to the public.

6 COUNCILMAN YHU: So moved.

7 COUNCILMAN BINAGHI: Second.

8 MAYOR KRAMER: All in favor?

9 (Whereupon, all present members respond
10 in the affirmative.)

11 MAYOR KRAMER: Would anyone from the
12 public care to be heard?

13 (Applause.)

14 COUNCILMAN GALLAGHER: Name for the
15 record?

16 MR. ZACCONE: My name isn't record.

17 It's Robert Zaccone, 212 White Avenue
18 in Old Tappan.

19 I just want to commend the Mayor and
20 Council for their vote. I think the testimony that
21 you've heard this evening gives you plenty of grounds
22 to vote the way you did this evening.

23 And I commend you for making the right
24 voice, most of you.

25 So I want to thank you very much for

1 the correct vote.

2 (Applause.)

3 MAYOR KRAMER: Thank you.

4 Is there anyone else that cares to be
5 heard?

6 Sir?

7 COUNCILMAN GALLAGHER: We're not
8 adjourned yet.

9 MAYOR KRAMER: Not adjourned yet.

10 MR. ARDITO: Good evening, I'm Peter
11 Ardito.

12 I live in Harrington Park --

13 MALE AUDIENCE MEMBER: We know.

14 MR. ARDITO: -- on the board of
15 directors of Bergen SWAN.

16 I do just want to remind all of you
17 that should you have the ability to acquire this
18 property, Bergen SWAN is offering \$1,000,000.00 to
19 assist you in acquisition of 244 Old Tappan Road.

20 (Applause.)

21 COUNCILMAN BOYCE: Anybody else?

22 Empty pockets?

23 (Laughter.)

24 COUNCILMAN GALLAGHER: GoFundMe.

25 MR. TAMA: Michael Tama, Old Tappan.

1 I ran in --

2 THE COURT REPORTER: Spell your last
3 name, please?

4 MR. TAMA: T-A-M-A.

5 Just want to thank you guys for doing
6 the right thing. I ran for Council for this project
7 basically alone.

8 And thank you guys for doing the right
9 thing.

10 That's it.

11 MAYOR KRAMER: Thank you.

12 (Applause.)

13 MAYOR KRAMER: Is there anyone else
14 that cares to be heard?

15 Yes.

16 MS. FONOROW: Cherie Fonorow, 256 Old
17 Tappan Road again.

18 I just want to say this has been -- you
19 used a perfect word Mr. -- Mayor Kramer when you
20 said -- described this as an arduous task just to
21 read the transcripts.

22 It has been an arduous task just to get
23 up every day. And I have the perspective,
24 unfortunate, I see this property for so many -- for
25 25 years since I moved here. I moved here because of

1 my property and to -- the thought of the destruction
2 of nature which we're seeing around us wherever we
3 go, and it's a problem nationally. It's certainly a
4 problem let's drill down Bergen County, New Jersey,
5 Bergen County and Old Tappan.

6 And Old Tappan, when I moved here, I
7 was told you get more for your money in Old Tappan.
8 You know, I bought probably the cheapest house in Old
9 Tappan at the time. People thought I was crazy. Old
10 house, falling apart, and -- but it had the property
11 and, you know, it's -- I just want to thank everybody
12 for having -- for having the foresight of thinking
13 about the future, because I know many of you grew up
14 playing on this property, playing all over town now
15 that you can't even walk and one of the things with
16 all the people that are going to be moving in with
17 Enclave, you know, and, you know, for me, I could
18 never move into something that -- I mean, it's
19 terrible, there's, like, three little spindly trees,
20 you know, where it used to be 20 acres. And I don't
21 know if anybody saw, there are wild flowers in the
22 back of that property, you know, it was raw land and,
23 you know, besides seeing the animals every day and
24 where are they going to go, well, they're going to go
25 eat all of anything on your house. That's why

1 everybody is putting fences up everywhere.

2 I mean, is that where we want to live?
3 You know, move back to the city. I mean, it's -- you
4 really -- you really are the stewards of future of
5 the town and of the lifestyle that we all get to
6 enjoy here.

7 So, like, why shoot ourselves in the
8 foot. And it has nothing to do whether there's not
9 inherent beneficial use of senior living, but I mean
10 what was bought up a lot was nobody even mentioned we
11 already have a senior living facility in town, and
12 it's not fully occupied. So that should be brought
13 to people's attention. You know, unfortunately with
14 senior living, people come and go and, you know, I
15 went through it with my mom, you know, we -- many of
16 us have been through this before.

17 But I just want to thank you because I
18 think what you're doing is going to say something
19 about -- it's going help other towns as well be able
20 to say, no, we don't want this or we want -- we don't
21 want suburban sprawl. We want controlled growth.

22 Yes, we recognize we have to change,
23 but in what direction? And who controls it? Is it
24 going to be the developer? Like the developer is
25 going to decide on the fate of the house and there's

1 been so much conversation about that, it was making
2 me crazy.

3 You know, we've brought experts that
4 people ignored and were belittled actually, I have to
5 say, by the planning board. And I'm sure -- not by
6 everybody on the board. Some people absolutely knew
7 their place and took it very seriously.

8 So I just want to say thank you so
9 much. Bergen SWAN has -- was the first people to get
10 involved when they heard about this and they do have
11 over a million plus in a fund that's been sitting
12 there 10 years and I've had conversations with DEP,
13 with Open Space, with Fish and Wildlife. I mean,
14 they know my name. You know, there's departments and
15 the historic people, they -- there is money. Okay,
16 all the bad things about this state, there's also a
17 lot of money available, because the mandate is to
18 preserve historic sites. The mandate is to preserve
19 open space. The mandate, like almost every town has
20 tree ordinances. You can't just go cut down trees
21 all over, because there's value and go to whoever --
22 go to the nursery and Stokes will know the value of
23 buying just a geranium now has gone up. What does it
24 cost? You know.

25 MALE AUDIENCE MEMBER: \$400.00.

1 MS. FONOROW: Oh, my God.

2 So, I just want to thank you all,
3 because I think it's really a tough decision.

4 This is not fly-by-night. And it's not
5 just personal.

6 And we moved here for -- for the same
7 reasons, I think and I would like future
8 generations -- you know, I would like my daughter to
9 be able to come up, back and raise a family here, God
10 willing.

11 So just thank you again.

12 MAYOR KRAMER: You're welcome.

13 (Applause.)

14 MAYOR KRAMER: Someone else?

15 MR. GAMBUTI: Give me, like, 10
16 seconds.

17 MAYOR KRAMER: Okay.

18 (Laughter.)

19 MR. GAMBUTI: I just wanted to come and
20 say thank you very much for recognizing the
21 importance of this piece of property and, hopefully,
22 we can all work together to try to make it happen --

23 FEMALE AUDIENCE MEMBER: Can't hear
24 you.

25 MR. GAMBUTI: I'm sorry.

1 And be able to do something with it.
2 Hopefully that will be a reality. I know it's --
3 it's a tough one. And it's a tough fight to continue
4 on and -- and I just want to say thank you, guys, for
5 -- for voting the way that you did.

6 Thank you very much.

7 MAYOR KRAMER: Thank you.

8 (Applause.)

9 MAYOR KRAMER: Yes, sir?

10 MR. BAGER: Hi, some of you recognize
11 me.

12 I just want to thank you all for having
13 made what I think is a --

14 THE COURT REPORTER: Your name?

15 MAYOR KRAMER: Name and address?

16 MR. BAGER: Johan Bager, 6 Klein Court.

17 THE COURT REPORTER: I'm sorry, your
18 name again?

19 MR. BAGER: Johan Bager.

20 (Laughter.)

21 MAYOR KRAMER: Okay.

22 MR. BAGER: I just want to thank you,
23 for doing what you did and say, of course, I'm very
24 happy. Some of you may recognize me from having been
25 around for the past, I don't know, almost a year.

1 However, next what we want to do is see
2 what can we do all of us to make the -- everything
3 much better there. And you say you have a historical
4 committee, do they ever meet?

5 Can we activate it?

6 COUNCILMAN BINAGHI: Yeah, I'm the
7 Council Liaison, but it's private property, so...

8 MR. BAGER: Well, that can change.

9 COUNCILMAN BINAGHI: We have no -- we
10 have no jurisdiction, except for advice.

11 MR. BAGER: Well, we can't -- we can't
12 even enter on it. No, I mean -- oh, I see what you
13 mean.

14 COUNCILMAN BINAGHI: We can only give
15 advice. It's private -- just like your house, we
16 can't tell you what to do.

17 MR. BAGER: Well, it depends if the
18 price is right.

19 (Laughter.)

20 MR. BAGER: Thank you so much.

21 MAYOR KRAMER: Thank you.

22 (Applause.)

23 MAYOR KRAMER: Anyone else care to be
24 heard.

25 (No response.)

1 COUNCILMAN BINAGHI: Motion to close.

2 MR. GALLAGHER: Second.

3 MAYOR KRAMER: All in favor?

4 (Whereupon, all present members respond
5 in the affirmative.)

6 MAYOR KRAMER: Motion to adjourn.

7 COUNCILMAN BINAGHI: Motion to adjourn.

8 COUNCILMAN GWON: Second.

9 MAYOR KRAMER: All in favor?

10 (Whereupon, all present members respond
11 in the affirmative.)

12 (Whereupon, this meeting is adjourned.

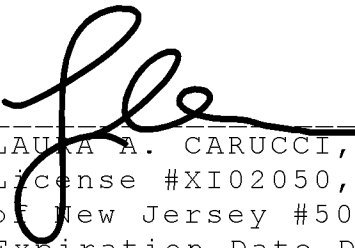
13 Time noted: 9:39 p.m.)
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C E R T I F I C A T E

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID.#50094914, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.



LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Notary Public
of New Jersey #50094914, Notary
Expiration Date December 3, 2023

Dated: May 21, 2023