

BOROUGH OF MORRIS PLAINS
PLANNING BOARD

IN THE MATTER OF: : TRANSCRIPT OF:
MORRIS PLAINS PLANNING : PROCEEDINGS
BOARD :

TUESDAY, JANUARY 20, 2025
Community Center
51 Jim Fear Drive
Morris Plains, New Jersey
Commencing at 7:01 p.m.

BOARD MEMBERS:

MICHAEL GARAVAGLIA, Chairman
JOHN BEZOLD, Vice Chairman
JASON C. KARR, Mayor
BILL HOUSTON, Council Liaison
RON KELLY, Board Member
MARIANNE STECKERT, Board Member
SUZANNE McCLUSKEY MICHAEL, Board Member
H. STEVE AUGENBLICK, Board Member
ANDREW BREWER, ESQ. Board Attorney
WILLIAM RYDEN, P.E., Board Engineer
ELIZABETH LEHENY, P.P., Board Planner
KAREN COFFEY, Board Secretary

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1 CHAIRWOMAN McCLUSKEY: Please stand for
2 the Pledge of Allegiance.

3 (The Pledge of Allegiance is recited.)

4 CHAIRWOMAN McCLUSKEY: I hereby
5 announce that this meeting is being held in
6 accordance with Chapter 231 of the Open Public
7 Meeting Act. Proper notice of meeting dates has been
8 given to the Morris News Bee and the Morris County
9 Daily Record and posted on the bulletin board in
10 Borough Hall. This meeting is a judicial proceeding.
11 Any questions or comments must be limited to issues
12 that are relevant to what the Board may legally
13 consider in reaching a decision and decorum
14 appropriate to a judicial hearing must be maintained
15 at all times.

16 Good evening and Happy New Year. This
17 is the planning board meeting of January 20th, 2025
18 and it's our reorganization meeting.

19 I'm sure you'll notice there are some
20 new faces here.

21 Councilman Bill Houston and Andrew
22 Wolff, welcome.

23 (Applause.)

24 CHAIRWOMAN McCLUSKEY: And there are
25 some faces that are sadly missing. One would be

1 former Councilwoman Cathie Kelly and the other our
2 former Mayor Frank Druetzler.

3 The new governing body chose not to
4 reappoint Frank to the -- reappoint Frank to the
5 planning board.

6 Frank was first appointed to the
7 planning board for a three-year term before he ran
8 for council. He served on the council for six years
9 and when he was elected mayor in 1987, he served on
10 the planning board for 32 years as mayor and an
11 additional six years since he retired from being
12 mayor. That's 41 years as a member of the planning
13 board, quite a record.

14 He will be sorely missed. You see,
15 Frank knows where all the easements are and why
16 they're there. He knows every street and he knows
17 where most of you live; where there is dedicated open
18 space or green acres property and how and when it was
19 acquired. He knows every stream. He knows every
20 storm drain and where it empties; every parking
21 space; most of which he created when he was mayor.
22 He knows all the shade trees and he knows every
23 utility pole and who owns it; how all the sewers flow
24 and where the wetlands are. He knows the history and
25 the origins of most of all the properties and

1 developments, all the businesses.

2 In fact, he made this Borough the
3 reason all of you live here. He has that
4 institutional knowledge that even our professionals
5 rely on.

6 But he has more than that, he has
7 something that's in very short supply these days, he
8 has wisdom. And for almost 50 years he shared that
9 wisdom with us to make Morris Plains the community
10 that it is.

11 Frank, you will be deeply missed and
12 this board will not be the same without your
13 knowledge, and especially without your wisdom.

14 Thank you for your dedication.

15 Roll call, please.

16 MS. COFFEY: Mr. Augenblick?

17 MR. AUGENBLICK: Present.

18 MS. COFFEY: Mr. Garavaglia?

19 MR. GARAVAGLIA: Present.

20 MS. COFFEY: Ms. Steckert?

21 MS. STECKERT: Present.

22 MS. COFFEY: Ms. McCluskey?

23 CHAIRWOMAN McCLUSKEY: Present.

24 MS. COFFEY: Mr. Kelly?

25 VICE CHAIRMAN KELLY: Present.

1 MS. COFFEY: Mr. Bezold?

2 MR. BEZOLD: Here.

3 MS. COFFEY: Mayor Karr?

4 MAYOR KARR: Present.

5 MS. COFFEY: Mr. Wolff?

6 MR. WOLFF: Here.

7 MS. COFFEY: And, Mr. Houston?

8 COUNCILMAN HOUSTON: Present.

9 CHAIRWOMAN McCLUSKEY: Okay. I'm going
10 to turn this over to the mayor.

11 MAYOR KARR: Thank you, Chairwoman.
12 And good evening, everybody. This is the Morris
13 Plains Planning Board reorganization meeting of
14 January 20th, 2025.

15 The first order of business is the
16 reorganization of the Morris Plains Planning Board
17 for 2025.

18 Mr. H. Steve Augenblick was reappointed
19 as Class IV member. And Mr. Andrew Wolff was
20 appointed as Class IV member. Mr. Bill Houston was
21 appointed as Class III member and representing the
22 governing body. And myself was reappointed as
23 Class I member.

24 At this time I'd like to take the
25 opportunity to welcome Mr. Wolff, congratulations,

1 and Councilman Houston to the planning board.

2 Good luck and best of luck to you, the
3 both of you.

4 Thank you.

5 COUNCILMAN HOUSTON: Thank you.

6 MAYOR KARR: The next order of business
7 is the nomination of a board chair to serve in 2025.

8 May I have nominations for a
9 chairperson?

10 MS. STECKERT: I nominate Sue
11 McCluskey.

12 MR. BEZOLD: I would like to nominate
13 Michael Garavaglia.

14 MAYOR KARR: Are there any additional
15 nominations?

16 (No Response.)

17 MAYOR KARR: Being no further
18 nominations, I declare the nominations closed and ask
19 for a roll call on the nomination of Sue as chair.

20 MS. COFFEY: Okay.

21 Mr. Augenblick?

22 (No Response.)

23 MS. COFFEY: Mr. Augenblick for Sue
24 McCluskey for chair.

25 MR. AUGENBLICK: No.

1 MS. COFFEY: Mr. Garavaglia?

2 MR. GARAVAGLIA: No.

3 MS. COFFEY: Ms. Steckert?

4 MS. STECKERT: Yes.

5 MS. COFFEY: Okay. Ms. McCluskey, you
6 abstain?

7 CHAIRWOMAN McCLUSKEY: No, I didn't
8 abstain.

9 I'll vote yes.

10 MS. COFFEY: Oh, good.

11 Mr. Kelly?

12 VICE CHAIRMAN KELLY: No.

13 MS. COFFEY: Mr. Bezold?

14 MR. BEZOLD: No.

15 MS. COFFEY: Mayor Karr?

16 MAYOR KARR: Yes.

17 MS. COFFEY: Mr. Wolff?

18 MR. WOLFF: No.

19 MS. COFFEY: Mr. Houston?

20 COUNCILMAN HOUSTON: No.

21 MS. COFFEY: Okay.

22 Now can I have a motion for
23 Mr. Garavaglia as chairman.

24 Mr. Augenblick?

25 MR. AUGENBLICK: Yes.

1 MS. COFFEY: Okay.
2 Mr. Garavaglia?
3 MR. GARAVAGLIA: Yes.
4 MS. COFFEY: Ms. Steckert?
5 MS. STECKERT: No.
6 MS. COFFEY: Ms. McCluskey?
7 CHAIRWOMAN McCLUSKEY: No.
8 MS. COFFEY: Mr. Kelly?
9 VICE CHAIRMAN KELLY: Yes.
10 MS. COFFEY: Mr. Bezold?
11 MR. BEZOLD: Yes.
12 MS. COFFEY: Mayor Karr?
13 MAYOR KARR: No.
14 MS. COFFEY: Mr. Wolff?
15 MR. WOLFF: Yes.
16 MS. COFFEY: And, Mr. Houston?
17 COUNCILMAN HOUSTON: Yes.
18 MS. COFFEY: Okay.
19 So on that, I have a first -- can I
20 have a -- Mr. Bezold was the first for
21 Mr. Garavaglia.
22 Can I have a second on that vote,
23 please?
24 MR. AUGENBLICK: I'll second it.
25 MS. COFFEY: Okay.

1 Thank you. All right.

2 MAYOR KARR: Nominations for board vice
3 chair.

4 May I have a nomination for a vice
5 chair?

6 MR. GARAVAGLIA: I nominate Mr. Bezold.

7 MS. COFFEY: Is there --

8 MAYOR KARR: Are there any other
9 nominations?

10 (No Response.)

11 MAYOR KARR: Seeing none, I close the
12 nominations.

13 MS. COFFEY: Can I have a second?

14 MAYOR KARR: Ask for a roll call on the
15 --

16 MS. COFFEY: We need a second, though.
17 Can someone second Mr. Bezold's
18 nomination?

19 MR. WOLFF: Second.

20 MS. COFFEY: Mr. Augenblick?

21 MR. AUGENBLICK: Yes.

22 MS. COFFEY: Mr. Garavaglia?

23 MR. GARAVAGLIA: Yes.

24 MS. COFFEY: Ms. Steckert?

25 MS. STECKERT: Yes.

1 MS. COFFEY: Ms. McCluskey?

2 CHAIRWOMAN McCLUSKEY: Abstain.

3 MS. COFFEY: Mr. Kelly?

4 VICE CHAIRMAN KELLY: Yes.

5 MS. COFFEY: Mr. Bezold?

6 MR. BEZOLD: If I can vote yes, I'll
7 vote yes.

8 MS. COFFEY: Mayor Karr?

9 MAYOR KARR: Yes.

10 MS. COFFEY: Mr. Wolff?

11 MR. WOLFF: Yes.

12 MS. COFFEY: And, Bill Houston,
13 Mr. Houston?

14 COUNCILMAN HOUSTON: Yes.

15 MS. COFFEY: Okay.

16 MAYOR KARR: At this time I would like
17 to congratulate Mike Garavaglia and Mr. John Bezold
18 on their elections of chairman and vice chairman of
19 the planning board.

20 (Applause.)

21 MAYOR KARR: At this time I would like
22 to especially thank all the board members for their
23 time and service. And I'm looking forward to working
24 with the planning board members on all matters that
25 come before us.

1 I also would like to thank Member Frank
2 Druetzler and Cathie Kelly for their prior roles on
3 the planning board and everybody up here for their
4 time and their dedication spent away from their
5 family, long evenings, looking over plans for hours.
6 It takes a lot of dedication and I thank each and
7 every one of you for the time.

8 And I'd like to thank Ms. McCluskey for
9 her time as chairwoman of the board.

10 And thank you everybody. I look
11 forward to working with you.

12 I turn the meeting over to Mike
13 Garavaglia.

14 CHAIRMAN GARAVAGLIA: So first of all,
15 I want to thank the board for their vote of
16 confidence in electing me as chair for 2025 for the
17 planning board.

18 I vow to make the most of the
19 opportunity and work for the Borough of Morris Plains
20 to do the best job I possibly can.

21 So, again, thank you very much.

22 MS. COFFEY: Mr. Garavaglia, do you
23 have this sheet?

24 CHAIRMAN GARAVAGLIA: I do have that
25 sheet.

1 So if I go to the agenda, the next
2 order of business is to adopt the resolution to
3 approve the meeting dates for 2025 and I will read
4 that resolution.

5 Planning Board Resolution No. 25-01,
6 Notice of the Meetings.

7 Be is resolved by the Planning Board of
8 the Borough of Morris Plains in the County of Morris
9 and State of New Jersey on this 20th day of January
10 2025 as follows:

11 WHEREAS, Chapter 231 of the public laws
12 of the State of New Jersey for 1975 known as and
13 herein after designated as the Open Public Meetings
14 Act requires notification of meetings of public
15 bodies as therein defined in the manner therein set
16 forth.

17 Now, therefore, for purposes of
18 compliance with the Open Public Meetings Act
19 aforesaid, the Planning Board of the Borough of
20 Morris Plains hereby makes the following
21 designations.

22 And there are five destinations:

23 1. The Morris Daily Record and the
24 Morris NewsBee or as an alternate to the Morris
25 NewsBee, The Star-Ledger are hereby designated as the

1 two newspapers to receive notice of meetings as
2 required by and any and all sections of the Open
3 Public Meetings Act. It appearing that said
4 newspapers are most likely to inform the local public
5 of such meetings.

6 2. The location of the posting of the
7 notice of meetings shall be the bulletin board of the
8 Borough Hall.

9 3. The sum of \$5.00 is hereby fixed as
10 the amount to be paid by any persons requesting
11 individual notice of meetings as provided in
12 Section 14 of the Open Public Meetings Act.

13 4. The regular meetings of the
14 planning board for the year 2025 shall be: February
15 10th, March 17th, April 21st, May 12th, June 16th,
16 July 21st, August 18th, September 15th, October 20th,
17 November 17th, December 8th and January 19, 2026 at
18 7:30 p.m.

19 5. All meetings of the planning board
20 shall be open to the public.

21 Can I have a motion to approve the
22 resolution for the meeting dates for 2025?

23 MR. AUGENBLICK: May I ask a question
24 on number three?

25 CHAIRMAN GARAVAGLIA: Sure.

1 MR. AUGENBLICK: Per applicant, per
2 application or per -- per the year, what's the \$5.00?
3 What's the window request?

4 MS. COFFEY: It's \$5.00 to request
5 this.

6 MR. AUGENBLICK: For each meeting?

7 MS. COFFEY: No, it's every meeting is
8 on these.

9 MR. AUGENBLICK: But -- okay.

10 MR. BREWER: One document --

11 MR. AUGENBLICK: Oh, okay.

12 MR. BREWER: You get all of them so...

13 MR. AUGENBLICK: Okay.

14 CHAIRMAN GARAVAGLIA: You good, Steve?

15 MR. AUGENBLICK: Yes.

16 CHAIRMAN GARAVAGLIA: Okay. Can I have
17 a motion to approve the resolution for the meeting
18 dates for 2025.

19 MR. AUGENBLICK: I approve.

20 VICE CHAIRMAN BEZOLD: I'll move it.

21 CHAIRMAN GARAVAGLIA: Can I have a
22 second?

23 MR. AUGENBLICK: Whose name was taken
24 on the first one?

25 MS. COFFEY: Okay. Mr. Augenblick, you

1 moved and now I need a second.

2 VICE CHAIRMAN BEZOLD: I'll second.

3 MS. COFFEY: Thank you.

4 CHAIRMAN GARAVAGLIA: Karen, roll call.

5 MS. COFFEY: Okay.

6 Mr. Augenblick?

7 MR. AUGENBLICK: Yes.

8 MS. COFFEY: Mr. Garavaglia?

9 CHAIRMAN GARAVAGLIA: Yes.

10 MS. COFFEY: Ms. Steckert?

11 MS. STECKERT: Yes.

12 MS. COFFEY: Ms. McCluskey?

13 MS. McCLUSKEY: Yes.

14 MS. COFFEY: Mr. Kelly?

15 MR. KELLY: Yes.

16 MS. COFFEY: Mr. Bezold?

17 VICE CHAIRMAN BEZOLD: Yes.

18 MS. COFFEY: Mayor Karr?

19 MAYOR KARR: Yes.

20 MS. COFFEY: Mr. Wolff?

21 MR. WOLFF: Yes.

22 MS. COFFEY: And, Mr. Houston?

23 COUNCILMAN HOUSTON: Yes.

24 CHAIRMAN GARAVAGLIA: Okay.

25 The next order of business is to adopt

1 the resolution of professional services for the year
2 2025.

3 I will also read that resolution.

4 Planning Board Resolution No. 25-02,
5 legal notice, Borough of Morris Plains, Morris
6 County, New Jersey, Planning Board Professional
7 Services.

8 WHEREAS, the Planning Board of the
9 Borough of Morris Plains desires to retain the
10 services of planning consultants, an engineer and an
11 attorney to perform professional services as required
12 for the year 2025.

13 And, WHEREAS, the foregoing services
14 are professional services as in N.J.S.A. 40A:11-2(6),
15 which are permitted to be contracted without public
16 bidding as set forth in N.J.S.A. 40A:11-5(A) -- or
17 I'm sorry -- 5(1)(A) and as a non-fair and open
18 contract pursuant to the provision of
19 N.J.S.A. 19:A-20.5.

20 And, WHEREAS, the board has determined
21 that the value of each of the professional services
22 will exceed \$17,500.00.

23 And, WHEREAS, each of the professional
24 consultants named below have completed and submitted
25 business entity disclosure certification, which

1 certifies that each firm has not made any reportable
2 contributions to a political or candidate committee
3 represented by a board member in the previous one
4 year, and that the contract will prohibit the below
5 listed firms from making any reportable contribution
6 through the term of the contract.

7 And, WHEREAS, the board has determined
8 after due consideration that the following named
9 individuals shall be appointed to fill the positions
10 hereafter designated.

11 NOW, THEREFORE, BE IT RESOLVED by the
12 Planning Board of the Borough of Morris Plains as
13 follows:

14 1. The board retains the services of
15 the following to be compensated pursuant to the sums
16 appropriated for the purpose in the duly adopted
17 municipal budget for the year 2025:

18 A. Planning consultants: Paul A.
19 Phillips and Liz Leheny of Phillips, Preiss, Grygiel,
20 Leheny, Hughes, LLC.

21 B. Engineer: William Ryden of
22 Anderson and Denzler Associates, Inc.

23 C. Board attorney, Andrew M. Brewer,
24 Esq., of Maraziti Falcon, LLP.

25 2. The business disclosure entity

1 certification and the determination of value be
2 placed on file with this resolution. And,

3 3. The board secretary shall cause a
4 copy of this resolution to be published in accordance
5 with N.J.S.A. 40A:11-5(1)(A)(i).

6 4. This resolution shall take effect as
7 provided by law.

8 Can I have a motion to approve the
9 resolution adopting the professional services for
10 2025?

11 COUNCILMAN HOUSTON: Mr. Garavaglia?

12 CHAIRMAN GARAVAGLIA: Yes.

13 COUNCILMAN HOUSTON: I do have a
14 question.

15 Again, newbie question, the value of
16 each professional services will exceed \$17,500.00,
17 where does that value come from? Is anybody aware?

18 MR. BREWER: That's a threshold.

19 The 17,500 threshold is for awarding
20 certain contracts with or without public bidding.
21 You know if you were going to buy bricks, it's like a
22 -- it's the type of thing that goes out to bid
23 because anybody can provide bricks that are generally
24 uniform. I know I'm treading too deep into this.
25 Professional services sometimes professional

1 services, they go out, out bidding, so they don't go
2 out to public, they go to -- you know, if they're
3 known to have experience and it's comfortable, but
4 you can only -- the entity, usually you have a
5 qualified purchasing agent, I believe it does, but
6 that's a threshold that is if it is estimated that
7 the -- you know, because of the history of billing
8 it's going to be more than that, that's a -- you
9 would put it down that it's going to be excessive of
10 that number.

11 COUNCILMAN HOUSTON: Okay. So --

12 MR. BREWER: It's not that they -- we
13 gave the detail estimate of what's been paid,
14 typically we have a history of it.

15 COUNCILMAN HOUSTON: Okay. So because
16 it's estimated to exceed 17,500, that means that it
17 does not have to go to bid?

18 MR. BREWER: It means that a qualified
19 purchasing agent is going to be reviewing it and
20 eventually -- and you can approve -- the ultimate
21 approval is done by the qualified purchasing agent.

22 COUNCILMAN HOUSTON: Okay.

23 Thank you.

24 CHAIRMAN GARAVAGLIA: So, again, can I
25 have a motion to approve the resolution adopting the

1 professional services for 2025?

2 MAYOR KARR: So moved.

3 MS. COFFEY: Okay.

4 Was that Mr. Wolff?

5 CHAIRMAN GARAVAGLIA: Can I have a
6 second?

7 MR. WOLFF: No.

8 MS. COFFEY: Oh.

9 CHAIRMAN GARAVAGLIA: Second?

10 MS. COFFEY: Second?

11 MR. KELLY: I second.

12 MS. COFFEY: Okay.

13 CHAIRMAN GARAVAGLIA: Roll call, Karen.

14 MS. COFFEY: All right.

15 Mr. Augenblick?

16 MR. AUGENBLICK: Yes.

17 MS. COFFEY: Mr. Garavaglia?

18 CHAIRMAN GARAVAGLIA: Yes.

19 MS. COFFEY: Ms. Steckert?

20 MS. STECKERT: Yes.

21 MS. COFFEY: Ms. McCluskey?

22 MS. McCLUSKEY: Yes.

23 MS. COFFEY: Mr. Kelly?

24 MR. KELLY: Yes.

25 MS. COFFEY: Mr. Bezold?

1 VICE CHAIRMAN BEZOLD: Yes.

2 MS. COFFEY: Mayor Karr?

3 MAYOR KARR: Yes.

4 MS. COFFEY: Mr. Wolff?

5 MR. WOLFF: Yes.

6 MS. COFFEY: And Mr. Houston?

7 COUNCILMAN HOUSTON: Yes.

8 CHAIRMAN GARAVAGLIA: Okay.

9 The next two resolutions are for the
10 committee appointments.

11 And Mr. Brewer, I have a question for
12 you.

13 MR. BREWER: Okay.

14 CHAIRMAN GARAVAGLIA: Is it okay to
15 table this until our next meeting so that I can
16 decide and review the members, since I was just
17 elected chair?

18 MR. BREWER: Yes.

19 I don't believe that's an issue.
20 There's nothing pressing that would have to and
21 there's nothing that would require those appointments
22 to be made at this meeting.

23 CHAIRMAN GARAVAGLIA: Okay.

24 So -- so for Planning Board Resolution
25 No. 25-03, which is the Minor Site Plan Committee,

1 can I have a motion that the resolution adopting the
2 Minor Site Plan Committee for the year 2025 be moved
3 to the February 10, 2025 meeting?

4 MR. AUGENBLICK: I'll motion.

5 CHAIRMAN GARAVAGLIA: Can I have a
6 second?

7 VICE CHAIRMAN BEZOLD: I'll second it.

8 CHAIRMAN GARAVAGLIA: Roll call, Karen.

9 MS. COFFEY: Okay.

10 Mr. Augenblick?

11 MR. AUGENBLICK: Yes.

12 MS. COFFEY: Mr. Garavaglia?

13 CHAIRMAN GARAVAGLIA: Yes.

14 MS. COFFEY: Ms. Steckert?

15 MS. STECKERT: Yes.

16 MS. COFFEY: Excuse me?

17 MS. STECKERT: Yes.

18 MS. COFFEY: Okay.

19 Ms. McCluskey?

20 MS. McCLUSKEY: Yes.

21 MS. COFFEY: Mr. Kelly?

22 MR. KELLY: Yes.

23 MS. COFFEY: Mr. Bezold?

24 VICE CHAIRMAN BEZOLD: Yes.

25 MS. COFFEY: Mayor Karr?

1 MAYOR KARR: Yes.

2 MS. COFFEY: Mr. Wolff?

3 MR. WOLFF: Yes.

4 MS. COFFEY: And Mr. Houston?

5 COUNCILMAN HOUSTON: Yes.

6 CHAIRMAN GARAVAGLIA: Okay. Planning
7 Board Resolution No. 25-04, which is the Master Plan
8 Review Committee, again, can I have a motion that the
9 resolution adopting the Master Plan Review Committee
10 for the year 2025 be moved to the February 10, 2025
11 meeting?

12 MR. WOLFF: So moved.

13 MR. AUGENBLICK: And I'll second.

14 MS. COFFEY: Okay. So --

15 MAYOR KARR: Andrew and then Steve.

16 CHAIRMAN GARAVAGLIA: Roll call, Karen?

17 MS. COFFEY: Mr. Augenblick?

18 MR. AUGENBLICK: Yes.

19 MS. COFFEY: Mr. Garavaglia?

20 MR. GARAVAGLIA: Yes.

21 MS. COFFEY: Ms. Steckert?

22 MS. STECKERT: Yes.

23 MS. COFFEY: Ms. McCluskey?

24 MS. McCLUSKEY: Yes.

25 MS. COFFEY: Mr. Kelly?

1 MR. KELLY: Yes.

2 MS. COFFEY: Mr. Bezold?

3 VICE CHAIRMAN BEZOLD: Yes.

4 MS. COFFEY: Mayor Karr?

5 MAYOR KARR: Yes.

6 MS. COFFEY: Mr. Wolff?

7 MR. WOLFF: Yes.

8 MS. COFFEY: And, Mr. Houston?

9 COUNCILMAN HOUSTON: Yes.

10 CHAIRMAN GARAVAGLIA: Okay. The next
11 item on the agenda is correspondences and bills.
12 Karen, do we have any this evening?

13 MS. COFFEY: We have bills, I believe
14 Mr. Kelly has them or Mrs. McCluskey has them.

15 MR. KELLY: I have Purchase Order
16 No. 2024-241 for Michelle Quick for transcript
17 proceedings for \$112.00.

18 I have Purchase Order No. 2024-2413 for
19 Phillips, Preiss and Grygiel for planning general for
20 \$3,098.75.

21 Purchase Order No. 2025-0021 for
22 Michelle Quick for transcripts, \$49.00.

23 And Purchase Order No. 2025-0109 for
24 Michelle Quick for transcripts for \$49.00.

25 If there's no questions, I make a

1 motion to approve the invoices.

2 MS. COFFEY: Second?

3 MAYOR KARR: Second.

4 CHAIRMAN GARAVAGLIA: Roll call, Karen.

5 MS. COFFEY: Mr. Augenblick?

6 MR. AUGENBLICK: Yes.

7 MS. COFFEY: Mr. Garavaglia?

8 CHAIRMAN GARAVAGLIA: Yes.

9 MS. COFFEY: Ms. Steckert?

10 MS. STECKERT: Yes.

11 MS. COFFEY: Ms. McCluskey?

12 MS. McCLUSKEY: Yes.

13 MS. COFFEY: Mr. Kelly?

14 MR. KELLY: Yes.

15 MS. COFFEY: Mr. Bezold?

16 VICE CHAIRMAN BEZOLD: Yes.

17 MS. COFFEY: Mayor Karr?

18 MAYOR KARR: Yes.

19 MS. COFFEY: Mr. Wolff?

20 MR. WOLFF: Yes.

21 MS. COFFEY: And, Mr. Houston?

22 COUNCILMAN HOUSTON: Yes.

23 CHAIRMAN GARAVAGLIA: Okay.

24 Next on the agenda are comments from
25 the public. And this is limited to items not on the

1 agenda.

2 So state your first and last name,
3 spell your last name and state your address.

4 MS. MIRABELLE: Nancy Mirabelle,
5 M-I-R-A-B-E-L-L-E, 3 Cornine Lane in Morris Plains.

6 My first question is: Since we have
7 some new people up here, could we possibly give
8 consideration to members of the board refraining from
9 using or having their cellphones out during the
10 meeting?

11 CHAIRMAN GARAVAGLIA: I personally
12 don't have a problem with that.

13 I know I -- I turn mine off. Mine is
14 sitting here, but...

15 MAYOR KARR: So I don't have a problem
16 with that either.

17 We do say that at our council meetings
18 that members of the board should not use their
19 cellphones during meetings when -- if it isn't, you
20 know, not for town business.

21 MS. MIRABELLE: Okay.

22 Thank you.

23 The three people who voted yes to grant
24 variances for the McDonald's application, could you
25 please explain the benefits or how those variances

1 benefit the community?

2 MR. BREWER: This is comments. This is
3 not a give and take, it's comment.

4 Members don't have to speak. This is
5 comment. This is coming up shortly as a resolution
6 that gets voted on. I understand your desire, but
7 it's -- you don't have precedent where you -- they're
8 going to require give and take.

9 MAYOR KARR: Andy, you got to move the
10 microphone closer to you.

11 AUDIENCE MEMBERS: Yeah we can't hear.
12 We can't hear you.

13 MS. COFFEY: Yeah, we can't hear.

14 MR. BREWER: Certainly.

15 My -- my advice and the chair, nor the
16 board has to take it, but my advice is this: Is that
17 this is a public comment period where the public can
18 say whatever it chooses. It is -- it is not a
19 mandatory give and take where the board members have
20 to ask specific questions and the -- and it's going
21 to be precedent setting if the chair -- and the chair
22 can't require people to speak, they can if they
23 choose. You can -- you can hand it off to them
24 obviously.

25 And the actual reasons are set forth in

1 a resolution. There are -- again, I'll go far field,
2 there are a significant number of court cases that
3 say that the comments of an individual member on
4 reasons for a thing are irrelevant as what gets
5 adopted in the resolution.

6 With that being said, it is a judgement
7 call, but...

8 CHAIRMAN GARAVAGLIA: So I would tend
9 to agree with that, but the piece that I agree with
10 most is that it's irrelevant, I think, at this point.

11 So I would -- I would side with my
12 legal advice and say no.

13 MS. MIRABELLE: Okay.

14 Now, I'm not sure if this is a question
15 for the planning board or for the town council, but
16 would there be any plans to do an air quality study
17 in the area of the McDonald's site before the
18 operation starts, just so that if a question does
19 come up in the future, we have something to compare
20 it with?

21 MR. BREWER: What are you -- what are
22 you --

23 (Simultaneous Speaking.)

24 MR. AUGENBLICK: I'm sorry. I'm just
25 trying to get some depth in this question, where is

1 -- what are you --

2 MS. MIRABELLE: I feel this is --

3 MR. AUGENBLICK: -- specifically
4 looking for?

5 MS. MIRABELLE: I don't know if this is
6 a question for the planning board or for the town
7 council, but are there plans in the future to do an
8 air quality study before everything starts out?

9 MR. AUGENBLICK: Understood, but I was
10 -- why?

11 AUDIENCE MEMBERS: They are.

12 MS. MIRABELLE: Because if we need to
13 compare something, we have -- we have it before the
14 operation starts.

15 MR. BREWER: I'll answer briefly.

16 There -- one of the requirements, one
17 of the conditions of approval is that they have --
18 the applicant's going to have to demonstrate that
19 they comply with all the performance standards.

20 I don't think that there is an air
21 quality one. There is noise. There's odors.
22 There's some other things that will have to be
23 undertaken.

24 But -- I know it's a general -- you'd
25 have to go to the ordinance for performance

1 standards, those things will have to be demonstrated
2 at some point.

3 I don't think you mean this -- the
4 planning board has no power to go do things. We
5 can't require them to do all.

6 And I have no indication that the
7 governing body is going to be doing that, but they --
8 nobody up here speaks for the governing body.

9 MS. MIRABELLE: Okay.

10 Thank you.

11 (Applause.)

12 CHAIRMAN GARAVAGLIA: So state your
13 first and last name, spell your last and state your
14 address.

15 MS. DAVIES: Yes. Cherylan Davies,
16 D-A-V-I-E-S, at 23 Kathleen Place.

17 I was about to say in Morris Plains.
18 I'm just so used to saying that.

19 So I don't know if this is for the
20 planning board or the council. It's been many years
21 since I've been in front of either the council or the
22 planning board, I can't remember. But in this week's
23 -- about this topic, in this week's weekly e-mail was
24 the notification of another version of the draft
25 flood map.

1 Sorry, Jason, you can...

2 MAYOR KARR: That's okay. I have your
3 number on my bulletin board.

4 MS. DAVIES: I know you do.

5 So I just -- again, I don't know if
6 this is the right place to ask.

7 It's -- like, I said, it's been about
8 10 or 11 years. I have a copy of the draft
9 floodplain map from 2015 in my house. That's how
10 long ago I was working on this with some neighbors as
11 well.

12 So I just want to understand what is
13 the next process? What has Morris Plains been doing
14 about it in the last 10 years?

15 I'm happy to take this offline. I
16 don't know who to take it offline with any longer.

17 MAYOR KARR: I will just answer that
18 for you.

19 I have a meeting scheduled tomorrow
20 with Bill Ryden, our engineer, who's at a -- I'll say
21 a seminar, that may not be the right word for it, but
22 was at -- for an explanation of the new flood maps.

23 So he's going to go over with -- that
24 with us tomorrow.

25 I intend to put some not -- some sort

1 of notification out to the residents that are
2 affected, but I have to get a better understanding of
3 who is affected? Who else is affected? Who may be
4 taken out of that -- out of those zones.

5 So there'll be more to come on that,
6 but --

7 MS. DAVIES: Got it.

8 MAYOR KARR: -- tomorrow is the
9 schedule for that.

10 MS. DAVIES: Can any member -- can
11 members of the public or myself be involved in these
12 meetings just to understand or --

13 MAYOR KARR: So I will have -- once I
14 get a better understanding of what's going on, I will
15 have either myself or Bill contact you, that's my
16 intension --

17 MS. DAVIES: Okay.

18 MAYOR KARR: -- along with your
19 neighbor.

20 MS. DAVIES: Yes.

21 MAYOR KARR: I know -- yeah.

22 MS. DAVIES: Yes.

23 MAYOR KARR: So I got an e-mail from
24 her as well, so we'll be in touch.

25 MS. DAVIES: Okay. Perfect.

1 Thank you very much.

2 MAYOR KARR: You're welcome.

3 CHAIRMAN GARAVAGLIA: State your first
4 and last name, spell your last and state your
5 address.

6 MR. BATTAGLIESE: Tom Battagliese,
7 B-A-T-T-A-G-L-I-E-S-E, 2 Cutler Road.

8 I just wanted to follow up on the air
9 pollution question just to get some better clarity
10 around that.

11 So will the testing for the different
12 performance standards, which does include odors at a
13 minimum and noise and some other things, will that be
14 done before the lights go on so to speak, as well as
15 after the lights go on to show, you know, that
16 they're meeting the conditions during normal
17 operations?

18 MR. BREWER: I can give a general one.

19 I don't know about the specifics.

20 The general one is the -- what this
21 board can enforce is that -- and one of the
22 conditions is that they have to demonstrate that they
23 will meet the performance standards.

24 After that, it's not up to the board,
25 you know, two years, five years, 50 years down the

1 road, if something else changes, I'm not sure.

2 Typically, it is what is required, what
3 is -- you know, I know it was bit of an issue on
4 performance standards whether they have to
5 demonstrate it as a part of the application or to be
6 a condition of approval. That's how the board
7 members who voted chose to do it.

8 So prior to them getting a CO or turn
9 on the lights, as you say, they would have to
10 demonstrate that the operations would comply with the
11 performance standards.

12 I don't know if there will be
13 continuing testing by the Borough after that.

14 MR. BATTAGLIESE: Okay. So, so far, as
15 an example, they said they will comply with the noise
16 standards based on a report that was submitted with
17 insufficient data that was not submitted by a noise
18 expert.

19 So I think you guys need to get some
20 more clarity on what would be expected, because I
21 think just saying they will meet it is, I think,
22 quite insufficient in my mind to prove that they are
23 actually meeting it and this is what the -- the whole
24 reason why I was trying to raise these points
25 beforehand, because before you approve an

1 application, you should have the wherewithal to
2 understand are they actually going to be able to meet
3 it.

4 So I don't know who's accountable for
5 that, but I have a -- this seems very grey and open
6 ended at the moment.

7 MR. BREWER: Bill, I'm not sure if this
8 is -- I don't know if you have anything to add other
9 than what I said, addressing, you know, demonstrating
10 performance standards before, I'm not sure if you
11 have anything to add?

12 MR. RYDEN: Yeah.

13 No, I don't have anything else to add.
14 Just to reenforce that, we will conduct those tests.
15 We will oversee them.

16 And if the standards are met, then the
17 certificate of occupancy will be issued.

18 And ongoing compliance would be a
19 zoning enforcement.

20 MR. BATTAGLIESE: And there will be
21 written reports then that will be available through
22 the annex like there was with the application or how
23 will the public have access to that information?

24 MR. RYDEN: There will be written
25 reports. I'm not sure what the protocol is for

1 disseminating. They will be part of the record.

2 MR. BATTAGLIESE: Okay. All right.

3 I don't -- I don't really know how to
4 get better clarity on this, but it seems rather --
5 rather open ended, maybe -- I don't know, to the
6 Chair, if there's some way to get, you know, better
7 granularity on what this all means, but it seems
8 really, you know, open ended at the moment.

9 CHAIRMAN GARAVAGLIA: Karen, can you do
10 me a favor?

11 MS. COFFEY: Yes.

12 CHAIRMAN GARAVAGLIA: At this point,
13 can you just make a note of this and then I'll come
14 back to you and I'll -- I'll try to get more
15 information.

16 MR. BATTAGLIESE: Okay.

17 CHAIRMAN GARAVAGLIA: I'll leave it at
18 that.

19 MR. BATTAGLIESE: Okay. Thanks very
20 much.

21 CHAIRMAN GARAVAGLIA: You're welcome.

22 (Applause.)

23 CHAIRMAN GARAVAGLIA: State your first
24 name, your last name and spell your last name and
25 state your address.

1 MS. SCHROEDER: Sure. Lisa Schroeder,
2 97 Maple Avenue.

3 So first of all, I wanted to commend to
4 the board for voting in Mr. Garavaglia as the new
5 chair.

6 He's --

7 (Applause.)

8 MS. SCHROEDER: Thank you all for
9 demonstrating to the town that we deserve someone in
10 that seat that will treat residents with the respect
11 that they all deserve.

12 To the newest members, thank you and
13 thank you for your service. I know that it will not
14 always be easy to be up there. And I understand that
15 your votes are dictated by legal standards and not
16 just public opinion.

17 I know that each of you are going to
18 find yourselves in borderline positions where
19 reasonable minds can truly differ.

20 I can only ask that you treat members
21 of the public with respect, transparency and empathy.

22 Give the public the explanation and the
23 attention that these matters deserve. Naps and nasty
24 comments to concerned members of the public have no
25 place here.

1 Mr. Brewer, going forward we need you
2 to be the lawyer that this town needs.

3 Surely you know that an attorney who
4 has been paid by their client with crowd funded funds
5 does not represent all donors to the crowd fund.

6 Morris Plains uses crowd funding called
7 taxes to pay you. Does that mean that you and I have
8 an attorney/client relationship? Of course not. Of
9 everything that went down last year during the
10 hearings for McDonald's, the decision to allow that
11 absurd assertion to stand was the most egregious.

12 The exclusion of the Bayonne evidence
13 was a close second. I know you had a very aggressive
14 chairperson breathing down your neck, but you have an
15 obligation to the town and to the residents to
16 deliver accurate legal advice. And I know it's hard
17 sitting up there and I don't envy the position that
18 you are in, but you have chosen to be up there, so
19 please be the lawyer that we need.

20 Ms. Leheny, we need you to be more
21 engaged, thoughtful and strategic. It was asserted
22 during the McDonald's hearings last year that once a
23 town approves a use, it's essentially also concluded
24 that the town can handle the additional traffic
25 volumes that come with that use.

1 If this is, indeed, true, then why in
2 the world did you not advise the board about every
3 single new use that was added in Ordinance 14-2023?

4 I have read your report to the planning
5 board dated September 14, 2023 and it was nothing
6 more than a rubber stamp.

7 Where was the analysis? Where was the
8 expert guidance that you owe this town? Why did you
9 not perform a use-by-use analysis of whether this
10 town could actually withstand every single new use
11 for each zone? Why did you not call it to the
12 board's attention how easy it is for two neighboring
13 lots to be merged and suggest that this should,
14 perhaps, be accounted for in the rezoning ordinance?

15 You're paid to advise the board on all
16 potential issues and outcomes that might not
17 otherwise be on the board's radar. You are the
18 expert. I have no doubt that certain members of the
19 board were applying pressure to you for a certain
20 result, but we were all so disappointed by the lack
21 of diligence here, because the passage of that deeply
22 flawed ordinance was the original sin and this entire
23 McDonald's circus could have been prevented with more
24 thoughtful and strategic guidance.

25 Ms. Steckert, many of us watched the

1 footage from October 19th, 2023, the council meeting
2 where you chastised the council members who voted no
3 for the rezoning ordinance.

4 It's truly ironic that the profoundly
5 special character of this town that you so
6 passionately spoke about will be destroyed by your
7 vote.

8 You commented that their no vote in the
9 ordinance indicated a lack of trust in the process,
10 but your bare yes vote without any explanation or
11 commentary is but one example of why no one trusts
12 the process.

13 The ordinance was barely analyzed and
14 there were open questions and, yet, you think it's
15 okay to vote yes on something that's not even half
16 baked. If that's how you think diligent
17 well-informed decision making looks, then I don't
18 think a council run should be in your future.

19 Finally, a huge thank you to Mr. Kelly,
20 Mr. Augenblick, Mr. Bezold, and Mr. Garavaglia for
21 having the common sense to vote based on the record
22 and not based on political forces behind the scenes.

23 I hope the new board members take note
24 of this excellent example of competent and
25 outstanding public service.

1 (Applause.)

2 MS. SCHROEDER: Plant better trees.

3 MR. CLOLERY: Hi, my name is Paul
4 Clolery, C-L-O-L-E-R-Y, 18 Hillview Avenue, Morris
5 Plains.

6 I was wondering if the board had seen
7 this letter that's been put in the mailboxes of
8 everybody in and around the McDonald's site.

9 It's seven or eight streets, everybody
10 -- and Realtors are saying sell now, because of the
11 -- the damage that's going to be done by this
12 construction by this change in the -- in the zoning
13 and the building of that process.

14 There's going to be Zoom calls.
15 There's going to be discussions, Realtors who have 20
16 to 25 years of experience telling us that this is
17 going to be damaging to our homes. This is
18 irreparable damage to the investments of the people
19 in this community.

20 Had my wife and I known that this was
21 coming down the pike, we would not have invested
22 \$110,000.00 extra in our house for a new roof, new
23 Hardie board siding and other fixes. There is no way
24 we would have spent six figures had we known this was
25 coming down the pike.

1 And now we've got experts putting
2 things in mailboxes and irreparable harm to our
3 investments.

4 A home is the largest investment most
5 people will ever make in their lives. And the
6 council passing the zoning law and this board
7 approving the license to McDonald's is damaging to
8 the investments of the people of this community.

9 (Applause.)

10 CHAIRMAN GARAVAGLIA: Anyone else?

11 MS. BENNETT: I just love the
12 microphone, so I'll get up here.

13 Carolyn Bennett, B-E-N-N-E-T-T,
14 19 Dayton Road.

15 I guess my first question is just about
16 process, because this is new to me being only 29 and
17 dealing with all of this.

18 Can somebody on the board explain to me
19 what exactly the approval of resolution means and
20 what's going to happen in a few minutes?

21 CHAIRMAN GARAVAGLIA: Are you talking
22 about the McDonald's resolution?

23 MS. BENNETT: Yes, but I mean in
24 general, I'm assuming the process is the same for any
25 application that moves to this stage.

1 MR. BREWER: Sure.

2 The vote to approve was done last
3 month. The courts have recognized that just the
4 votes saying yes or no needs to be put -- the reasons
5 behind the justification and the analysis has to be
6 put into writing in a form that people that agree --
7 that disagree could challenge it and then a court, if
8 need be, would have something to review.

9 So the standard way to do -- vote on an
10 application is to vote at one meeting and we -- and
11 have a resolution that embodies things.

12 So there's a draft, people look at it,
13 make sure things are correct.

14 That's what's going to go forward on
15 McDonald's. It is -- it is the logic of having voted
16 for a resolution, the only people that would be -- I
17 mean, I'm sorry, voting for -- voting in favor of the
18 application, the only people that will be qualified
19 to vote for, explaining why it was an approval, would
20 be the people that voted.

21 So the people that voted in favor are
22 qualified to vote on this resolution.

23 What that does is it sets the reasons
24 for it, but also that will be published in the
25 newspaper in two, three or four days.

1 And then the law provides for 45 days
2 from the date of that publication, which -- by which
3 somebody has to challenge it. That's really the --
4 it's a formality that -- that sets the reasons for a
5 vote so another body, a court, if need be, can see --
6 actually, does a few things. One, it sets their
7 reasons for it. Two, it sets forth all the
8 conditions so there's something in writing what the
9 applicant will have to do as part of their approval.

10 Does that answer it? I hope.

11 MS. BENNETT: Kind of, yes.

12 MR. BREWER: Okay.

13 MS. BENNETT: So who is -- who on the
14 board tonight is officially voting on that?

15 MR. BREWER: There are three people, I
16 believe, that were -- that are still on the board
17 that voted for it, Ms. Steckert, the Mayor and
18 Ms. McCluskey, I believe, are the three members that
19 are still on the board. That's all you can -- only
20 members that voted in favor are qualified to vote.

21 It would be kind of illogical to have a
22 person who said no and then setting the reasons for a
23 yes, that's -- that's why. Only people who voted for
24 it. So there are three.

25 MS. BENNETT: Legally, could they

1 change their minds or is it essentially they will say
2 yes because they voted yes.

3 MR. BREWER: No, the -- the courts have
4 said the operative thing that happened is the yes
5 vote.

6 That -- that sets the -- the rights,
7 then there's things that -- then there's times, one
8 of the things we talked about it before, timing
9 things to pass a resolution.

10 If not, the applicant can go to court
11 and force the resolution to be adopted and the
12 municipality has to pay the cost. So there's no
13 changing their minds. There's just setting --
14 setting the reasons for and the conditions.

15 MS. BENNETT: Tonight will we hear the
16 reasons of those three people voting yes or no?

17 MR. BREWER: I'm going to read a very
18 -- if the standard is as usual, I'm going to read a
19 very long resolution, which is why I have water.
20 Yes, you'll -- it is the -- it is the practice of
21 this board to read -- for the attorney to read the
22 resolution out loud.

23 MS. BENNETT: And that will include the
24 reasoning of people who voted yes who are no longer
25 in this room?

1 MR. BREWER: It's not the reasoning of
2 people, it's the reasoning of the board.

3 I know that's a fine line, but it's
4 what the board has decided are the reasons. Sorry to
5 jump in.

6 MS. BENNETT: And then I guess so
7 moving forward, if things come up -- and excuse my
8 verbiage here, because, again, this is, like, a new
9 territory for me, so let's say there becomes an issue
10 with this application moving forward or whatnot and
11 it has to come back to the planning board, does it --
12 like, is it this board now that's invested in the
13 future of the application or is it only the three
14 people who had voted yes last year.

15 I'm struggling with the fact that if
16 the vote went out today, I think it would be a
17 different outcome.

18 So is it just a timing thing?

19 MR. BREWER: I'm not sure what you mean
20 by come back to the board.

21 MS. BENNETT: My understanding is that
22 let's say there is an issue six months -- well, I
23 don't actually know the timing of these things, so
24 down the line we have to do a test at the McDonald's
25 property and it fails. And I know that's super

1 generic, but I hope that kind of makes sense. And
2 then they need to do something again with -- like
3 they have to come back and talk to the planning board
4 for whatever reason, does that ever happen?

5 Does McDonald's counsel ever have to
6 come back and speak with this board?

7 MR. BREWER: Typically the --
8 demonstrate the examples you gave. Performance
9 standards on whether they're going to comply with the
10 condition, that is one of the board professionals or
11 the Borough professionals to make sure they look at
12 the -- the noise, decibel level, they have a noise
13 meter at the property line to measure it, you know,
14 one of their sound boards, doesn't matter, you know,
15 doesn't reach --

16 MS. BENNETT: Actually -- and I'm sorry
17 to interrupt. I have a more practical example that I
18 think will help me.

19 So the application laid out, which I
20 know we're all aware of, that the crosswalk is going
21 to be moved, but I know that that is contingent on
22 things with the DOT.

23 So let's say, whatever the timing is,
24 the DOT is like, nope, you guys actually never talked
25 to us or, no, we found this, whatever and the

1 crosswalk does not get moved.

2 So that would change the application as
3 I understand it.

4 So can we use that example like if the
5 DOT changes their mind on this crosswalk moving?

6 MR. BREWER: If -- well, if anything,
7 and I'm going to say if --

8 MS. BENNETT: I'm sorry, I'm hearing
9 talking, so it's hard for me to focus.

10 MR. BREWER: If -- if anything has to
11 come before this board, and that's the best way to do
12 a catch all, and I don't know there's a million
13 different -- there's some reasons why things may have
14 to come back to the board.

15 MS. BENNETT: Uh-huh.

16 MR. BREWER: If something had to come
17 back to the board, it's the whole board that hears
18 it, it's not just the three, because they're coming
19 now for new relief from the board.

20 MS. BENNETT: Okay.

21 MR. BREWER: It's not why the old
22 decision was made, it's new relief, but that's --
23 that's an if and I don't know, there's lots of
24 hypotheticals. I don't want to say what would have
25 to come back, but if a change had to be made and if

1 they needed relief from the board --

2 MS. BENNETT: Uh-huh.

3 MR. BREWER: -- everybody is --
4 everybody votes.

5 MS. BENNETT: I see.

6 MR. BREWER: Everybody that's qualified
7 to vote can vote.

8 MS. BENNETT: Okay.

9 I guess in the spirit of new board
10 members, and I am agreeing with the no phone rule. I
11 don't know if it has to be written down, but I think
12 it's crazy that somebody was able to sleep during a
13 lot of the testimony and then vote.

14 Can that be a rule too that if you're
15 not at X amount of hours alert and conscious, maybe
16 you -- like paying attention that you can't pass a
17 vote on something like that?

18 (Applause.)

19 CHAIRMAN GARAVAGLIA: I mean, I had
20 heard rumors of what you're talking about, but --

21 AUDIENCE MEMBERS: We saw it. Look st
22 the video. We saw it.

23 CHAIRMAN GARAVAGLIA: No, no, hang on,
24 hang on. Hang on.

25 So I've heard rumors. I didn't see it

1 first hand. I was sitting down there.

2 MS. BENNETT: Uh-huh.

3 CHAIRMAN GARAVAGLIA: I'm not on
4 Facebook.

5 So I would say as a board member if,
6 for instance, my buddy Andrew fell asleep, I would
7 make sure he was up.

8 MS. BENNETT: Okay.

9 CHAIRMAN GARAVAGLIA: So I would -- I
10 would do my best to make sure that that doesn't
11 happen, but I don't know what else to tell you as far
12 as that goes.

13 I mean, I --

14 MS. BENNETT: Okay.

15 CHAIRMAN GARAVAGLIA: Is there anything
16 legally that...

17 MR. BREWER: No, no.

18 CHAIRMAN GARAVAGLIA: So --

19 VICE CHAIRMAN BEZOLD: Is that -- is
20 that true that nothing can be done?

21 THE COURT REPORTER: I'm sorry, I can't
22 hear you, Vice Chairman.

23 AUDIENCE MEMBERS: Use the microphone.

24 THE COURT REPORTER: I can't hear you.

25 VICE CHAIRMAN BEZOLD: Is that true

1 that nothing can be done legally if a board member is
2 sleeping at given times during testimony?

3 MR. BREWER: It's the first time I've
4 ever heard of it, but I'll give you an example, the
5 -- why you're treading into water that's very
6 difficult.

7 Occasionally the issue comes up on
8 whether an individual board member has a conflict, so
9 if they -- if the Provident Bank was moving in and
10 there was an officer at Provident Bank on this board,
11 neither I nor the board has the ability to prohibit
12 them from voting. Only a member can do it. They can
13 go against the advice and good judgement, but this
14 has been a -- we've all have heard the league of
15 municipalities down at Atlantic City every year, this
16 has been a topic of discussion that boards don't have
17 the power to sanction or prohibit one of their own
18 from voting, because of a conflict.

19 If that's the case, you're not going to
20 -- you're not going to have the power -- and I don't
21 want to give credence to it, but anyway for what is
22 perceived to be not paying attention to meetings.

23 People can not be at meetings, read the
24 transcript and still vote.

25 So if there's an accusation of

1 non-attention, that is in no way something that a
2 board could prohibit one of its members from voting
3 because of that allegation.

4 You're treading into really bad water
5 there.

6 MR. WOLFF: Could the board, though,
7 ask them to listen to the transcript or read the
8 transcripts as if they were not here?

9 MR. BREWER: The board can't require
10 it. They can only require if a person is physically
11 absent from a meeting, that's the only -- that's the
12 Municipal Land Use Law applies.

13 Actually, the board doesn't require.
14 That is if the person is during roll call marked
15 absent and does not attend a meeting at which
16 testimony is given, that's the one situation. Their
17 name would not get called for the vote at the time
18 unless they have signed the certification that they
19 have read it.

20 But there's no extra grounds for a
21 board to be requiring people to read transcripts.

22 MR. KELLY: I have another question.

23 I had two cases before two different
24 towns and the town wasn't able to approve the
25 application without the DOT approval.

1 Are we allowed to approve this site
2 without them actually having an approval from the
3 DOT?

4 MR. BREWER: It is -- it is subject to
5 DOT approval. I think one of the things we talked
6 about is oftentimes an application will require
7 approval from the planning board, as well as the
8 health department, as well as DOT, as well as other
9 entities. There are lots of regulatory entities.
10 That approval process has to start someplace.

11 So an entity, you can -- it's often the
12 case you approve an application subject to getting
13 your other approvals. So a health -- health clinic
14 has to get approval from the New Jersey Health
15 Department and Health and Human Services or whoever,
16 but it starts someplace and then you don't get that
17 approval, they don't get the final CO unless and
18 until the DOT or the other living approving agencies
19 also approve it.

20 It has to start someplace, because --
21 and you say they have to go to the NJDOT, well, the
22 NJDOT says you also have to have your site plan
23 approval. Somebody has to go first. And that's not
24 -- that's not -- it's not a strange event where an
25 application needs approval of several different

1 entities. So it often happens.

2 Most of my resolutions in most towns
3 have a provision that it also requires approval by
4 all the other agencies with jurisdiction over that
5 action.

6 That's not uncommon.

7 MR. KELLY: It seems like we're putting
8 the cart before the horse.

9 I mean, it's a lot like easier and
10 minor to get DOT approval than it is the town
11 approval.

12 So if for some reason the DOT was to
13 turn this down and now we've already approved it,
14 they can't go ahead with it.

15 MR. BREWER: That's correct. They need
16 DOT -- that's a condition that they need the highway
17 access, that is one of the conditions that's in this
18 resolution.

19 MR. KELLY: Wouldn't it have made sense
20 to make it? I mean, the other towns make it sound
21 like -- I didn't have a choice. I had to have DOT
22 approval before they would -- before they would even
23 hear it or before they would vote on it.

24 MR. BREWER: That's -- that's -- I
25 think my experience, that's -- that's the reverse of

1 what it usually is, but that's -- you know, it has to
2 -- as I said, it has to start someplace. One entity
3 has to give it when two, three or four entities have
4 jurisdiction over a matter.

5 VICE CHAIRMAN BEZOLD: Can I ask, since
6 we're on DOT, do you mind if I ask more questions?

7 MS. BENNETT: No, because I actually
8 have a DOT question, so by all means.

9 VICE CHAIRMAN BEZOLD: Okay, cool.

10 So I was at the council meeting on the
11 7th. And I'm going to get his name wrong, so if you
12 guys know his name, you can correct me, I'm going to
13 say it was Kamil Woronowicz.

14 Maybe I'm pronouncing his name wrong
15 and you guys don't even know who he is.

16 AUDIENCE MEMBERS: No.

17 VICE CHAIRMAN BEZOLD: He spoke at the
18 council meeting and he said that he called the DOT
19 and there was no record of anybody from McDonald's or
20 the group contacting DOT.

21 Now, I know I can call the DOT and
22 probably get no information as well.

23 I just think we need some clarification
24 on that, because it was even put in your resolution I
25 read, I have it written down where it's at, that

1 there was some kind of meeting with the DOT and the
2 engineer applicant had a pre-meeting with the New
3 Jersey DOT.

4 So I would really like clarification.
5 And I don't know how we can get that clarification
6 that the DOT has been informed.

7 MR. BREWER: Sure.

8 As a general matter, you really -- and
9 I'll answer the second question, and you'll be
10 satisfied, I think.

11 As a general matter, if you believe
12 that there was testimony that was dishonest or
13 whatever, that would be a reason for going back in.
14 I've seen the e-mail -- I've seen the e-mail from the
15 NJDOT with eight other NJDOT people on it and people
16 at McDonald's setting up a Zoom call to discuss the
17 pre-application. I mean it's there.

18 VICE CHAIRMAN BEZOLD: Perfect.

19 MR. BREWER: I will -- I'll represent
20 that exists. So this issue is a -- it's out there,
21 but it's a non-issue.

22 VICE CHAIRMAN BEZOLD: Okay. And I
23 appreciate that, because, again, I know I can call
24 tomorrow and they're going to tell me they have no
25 record.

1 MR. BREWER: Whoever you talked to may
2 have had no record.

3 VICE CHAIRMAN BEZOLD: Exactly.

4 MR. BREWER: The record exists.

5 VICE CHAIRMAN BEZOLD: Thank you.

6 MAYOR KARR: John, just for your
7 clarification, that happened at the reorg meeting.

8 FEMALE AUDIENCE MEMBER: Can't hear
9 you.

10 MAYOR KARR: Just for your
11 clarification, that happened at a reorg -- at the
12 reorg meeting.

13 The next day I got that information
14 from the person that spoke that night, I got his
15 information and his OPRA request that he sent to the
16 DOT.

17 The next day I had the paperwork that
18 the meeting was -- and he has that paperwork and all
19 the e-mails. The e-mail thread and all the -- I
20 think the minutes for the meeting and everything
21 else.

22 VICE CHAIRMAN BEZOLD: Thank you.

23 MS. BENNETT: That was, kind of, my
24 next question. So in applications like this, because
25 I'm sure we're going to see others, unfortunately, is

1 there a central DOT contact that like -- like, does
2 Morris Plains Planning Board have a DOT contact or is
3 every situation different and, like, the applicants
4 go to their own DOT contact and it could change each
5 application.

6 MR. BREWER: I don't know of any
7 standard DOT contact. People come and go through the
8 place and whoever gets it.

9 So there's not a standard name.
10 There's not, like, one name that people are told to
11 go to. It could be other people.

12 MS. BENNETT: Okay. That's helpful.

13 If I have concerns about stuff in the
14 application, is now the forum to share them or at a
15 different time and place?

16 CHAIRMAN GARAVAGLIA: Say that again.

17 MS. BENNETT: If I have concerns that I
18 don't feel were accurately addressed in all of the
19 hours we spent together last year, is now the time to
20 air those or is it a different time or place?

21 MALE AUDIENCE MEMBER: Go for it.

22 MR. BREWER: The application is closed.
23 That's a -- that's such a general question, I don't
24 know.

25 MS. BENNETT: Okay.

1 I mean, I'm happy to continue asking my
2 questions then if you're not going to tell me to be
3 quiet, I guess.

4 So I already said my name, but I hope
5 that a name that you guys know just like any of the
6 other residents on Dayton, because I would assume
7 that once a decision was made, prior to that you guys
8 actually went out and met the families that this was
9 going to be accurately -- or directly affecting.

10 But, regardless, I was also hoping that
11 you guys know how many expecting moms; young kids;
12 which ones are riding tricycles versus which ones are
13 learning to ride their two-wheelers; how many dogs
14 are being walked every night; how many kids are
15 riding their electric scooters.

16 All of these things would have been
17 important to understand in order to sit there and
18 accurately say the benefit -- the benefits outweigh
19 the detriments.

20 I don't see how that decision could be
21 made without actually getting to know the residents
22 on that street.

23 So I'm a little bit confused about
24 that.

25 And while I have concerns about pretty

1 much everything on the entire application, I think
2 that the egress onto the residential street, Dayton,
3 is so unnecessary. And I don't think anything good
4 is going to come of it.

5 So, unfortunately, I'm trying to, like,
6 proactively plan for the worst case scenario. I know
7 that we were talking about how the public didn't have
8 models. I don't want to bring in a model of a kid
9 that can't walk anymore or a model of a broken bike.

10 So, hopefully, we don't need a model of
11 that.

12 But these are things that run through
13 my head knowing that this is in the pipeline and,
14 like, this is what's going to be my -- my family's
15 future.

16 If there is any way, again, I don't
17 know the process, but, like, during this whole thing,
18 if there is any way to block that egress off and let
19 McDonald's do their thing without coming onto Dayton,
20 maybe I'll have less concerns. But I think it's a
21 huge issue that this town needs to be prepared for.
22 I'm not even getting into the sound, the pollution,
23 crossing on Speedwell, like, we are going to see
24 drive-through traffic and delivery trucks on a
25 residential street. And I don't think that we're

1 actually wrapping our head around what that means.

2 Again, I don't want to harp on my age
3 not even being 30 yet, but I know DoorDashers, I know
4 Ubers. Like this is my generation.

5 We are not going away. We are going to
6 continue ordering food for delivery. We're going to
7 continue going at the Green, which I know people in
8 this room are familiar with and not being able to
9 drive home. We're going to need to get in Ubers to
10 come home.

11 These types of services, they need to
12 be glued to this phone while they're driving.
13 They're not going to their family's house. They're
14 not going somewhere that they know. They are
15 literally picking up food and bringing it somewhere
16 that they don't know. So they need to be looking at
17 their maps. Uber drivers, same thing. Who wants
18 McDonald's? I don't know, many people, but maybe
19 they have been drinking all day, so they can't drive.
20 They're in an Uber. When the Uber is dropping them
21 off at McDonald's and getting in a car to go pick up
22 their next passenger, they're looking at their phone.
23 And I just -- I'm not saying that the problem would
24 be solved if they just exit onto Speedwell, but if I
25 am imaging somebody on their phone leaving onto

1 Dayton, they're not going to care that there's a kid
2 riding their bike.

3 And I think it's just something that I
4 was never allowed to talk about because the experts
5 never brought it up, so I'm just airing that here to
6 the room and I really hope you guys can consider
7 that, because I just -- I'm imaging the worst and
8 it's not great.

9 Yeah, glued to our phones. The
10 semi-truck thing, I felt very dismissed by the
11 traffic expert. And I can go and look at the
12 recording and read the transcript, share it with you
13 guys.

14 But I -- it's me paraphrasing, it was
15 kind of like I said it was going to be dangerous,
16 semi-trucks have bigger blind spots and then I was
17 told there are no blind spots or it's not a concern.
18 It is. It's a semi-truck. We drive by them. How
19 many of you guys have had to honk because they're
20 going to hit you on 287 or 80 when they're moving
21 over? Imagine that happening on your street with a
22 kid, like you -- they don't see things in that
23 certain area, which is why it's called a blind spot
24 and I just -- I'm also fearing the worst.

25 The other thing I wanted to just

1 quickly chat about was, I don't see how the
2 application effectively proved that the police
3 efforts -- police efforts were going to have to go
4 through the roof.

5 Again, people come to McDonald's, they
6 hang around. It's going to be all these different
7 types of people.

8 Like I know that I would be calling and
9 complaining about some suspicious people or people
10 that aren't usually hanging out on my street, but if
11 they are, because there's a fast-food restaurant,
12 like I -- I don't know, I just -- I think that's an
13 issue.

14 I also didn't notice, like, any police
15 officers involved in this process, which I'm a little
16 confused about. I didn't see them ever in this room.

17 Unfortunately, Mr. Mayor, I know you're
18 aware, they didn't come in this building until I went
19 to Mr. Mayor on December 17th crying, telling him
20 that some of the public felt intimidated by some of
21 the people that were presenting the case for
22 McDonald's.

23 And I don't mean to paraphrase our
24 conversations, so you can interrupt me, but you
25 shared with me that you've had police presence at

1 every meeting.

2 And I said, yes, I've seen the car
3 outside by the pickleball court or behind the
4 building in their car. They weren't hearing comments
5 being made to the public outside the door. They
6 weren't hearing what was going on outside in the
7 parking lot. So multiple people, I don't want to
8 think this is just a me thing, multiple people did
9 not like that, they felt uncomfortable. So I went to
10 the Mayor and I asked him, can you please have police
11 presence here. I think it was quoted that the police
12 escorts were here for the McDonald's counsel, which I
13 just want to make sure, that is not true. We asked
14 for it, because we didn't feel safe leaving here no
15 matter how the vote was going to go.

16 So I guess my ask here is if there's
17 going to be another application with such an interest
18 from the public, if that could be considered maybe a
19 baseline to have police officers near the entrance
20 and exit without having somebody having to experience
21 something that made them feel uncomfortable, that
22 would be great.

23 But I'm also hoping we don't have an
24 application that we'll need to feel that way again or
25 do business with people that would make somebody feel

1 that way again.

2 My handwriting got messy because my kid
3 was like: Mom, are you going to hang out with me
4 tonight. And I said: No, not tonight, somewhere
5 else to be.

6 All right. I think -- oh, the
7 crosswalk. I don't know if this is a question for
8 this board or town council. You guys know I go to
9 town council, so I can ask it there again.

10 But I'm very confused about this
11 crosswalk situation. We were told a few months ago
12 before public hearings for McDonald's that Morris
13 Plains got a grant -- again, I'm paraphrasing, so if
14 I'm on the record, this is my -- these are my words
15 -- that Morris Plains was awarded a grant. We were
16 one of the handful of towns and it was great that we
17 got a grant to enhance the crosswalk that's currently
18 by Hillview and it's across Speedwell.

19 I don't understand how that moves
20 forward if this application moves forward too. We're
21 not going to have two crosswalks. Cars can't even
22 stop at whatever.

23 So what happens to that money? Is it
24 now McDonald's money that's paying for the crosswalk
25 enhancements if they meet with the DOT or were we

1 waiting for McDonald's to pass and let them fund it
2 so we can do something else with the grant money?
3 Like I'm not wrapping my head around that situation.

4 CHAIRMAN GARAVAGLIA: Do you -- Jason,
5 do you know about the grant?

6 MAYOR KARR: So we are working with DOT
7 to see what we're going to do with those funds. Any
8 improvements will be on the back of McDonald's.
9 There are two crosswalks there already.

10 So maybe we'll -- I know the one set of
11 blinking lights was for this -- for the McDonald's
12 crosswalk, I'll say.

13 The other one is going to be for the
14 one that's over by Provident, by the old Provident
15 Bank right there.

16 So -- but we'll find some other use if
17 the DOT allows us to use those -- that money and that
18 fund somewhere else.

19 MS. BENNETT: Okay. So this
20 application did not change the purpose of those
21 funds?

22 MAYOR KARR: No.

23 MS. BENNETT: Okay. And as I'm
24 planning for the worst case scenarios, because that's
25 what I need to do, I just want to also talk to

1 everyone and let you all know I'm a good driver. I
2 don't want to jinx anything, but if you look at my
3 record, I'm a good driver.

4 So if I'm turning left out of Dayton --
5 and I'm doing this because the traffic expert
6 dismissed me, he was making jokes about McNuggets or
7 whatever, I don't want to get into it, but if I'm
8 making a left out of Dayton, I already have such an
9 issue looking left, looking right, looking left,
10 looking right. I need the Academy light to turn red,
11 then I need to hope the intersection with East
12 Hanover and Speedwell also turns red. I have just
13 enough time -- it's not three seconds or seven
14 seconds, whatever -- I need to make sure there's no
15 pedestrians walking across Dayton going to the train.
16 I'm one of them, so I know that people do that or the
17 that USPS Postal -- the USPS workers that also park
18 their car elsewhere and walk to the post office. So
19 I'm always checking for those pedestrians.

20 But now I'm going to see the gap, I'm
21 going to go and then I'm going to have to somehow
22 instantly stop if somebody exits McDonald's on foot
23 and tries to cross Speedwell.

24 I don't want to run anyone over, but
25 logistically, like, I'm not understanding how as a

1 mom with screaming kids in the car, I don't even use
2 music in my car, like these are things that will
3 happen. And I would hate to put someone in danger,
4 but I don't see how moving a crosswalk is safe for
5 people leaving Dayton.

6 So I don't know, maybe the egress not
7 being on Dayton will help solve -- no, it won't solve
8 that to be honest with you.

9 Like do we just close Dayton and nobody
10 can come in and out of it? I don't know.

11 But I'm really nervous having to drive
12 my kids to daycare. I don't want to disclose where,
13 because I just don't, but I have to make a left onto
14 Dayton multiple times a day -- sorry -- a left onto
15 Speedwell from Dayton and it's too much that I'm
16 going to have to look at. Left, right cars,
17 pedestrians already crossing and now the crosswalk
18 that's 40 feet or whatever is closer to me.

19 I'm just saying that again, I'm nervous
20 for it. And I know there's others on my street too,
21 because there's multiple people that feel the same
22 way.

23 My last thing I'll leave you with,
24 thank you for entertaining me so long, is I just want
25 to know from someone on the planning board what I can

1 tell my son who I brought to town council the other
2 night, when he's not allowed to go outside during
3 demolition. You guys saw him with his inhaler that
4 he takes multiple times a day after his stunt in the
5 PICU for a few months. He needs it to breathe with
6 good air quality.

7 So what am I telling him when he wants
8 to go outside with his twin sister and older brother
9 and I say: Hey, you can't. There's a big demolition
10 happening, you won't be able to breathe.

11 What should I tell him? Can someone
12 give me an answer? Because I certainly can't think
13 of one.

14 MAYOR KARR: There will be a
15 pre-construction meeting before any demolition.
16 There will be dust control. There will be monitors.
17 More than likely, I don't want to speak before the
18 pre-construction meeting, there'll be -- everything
19 will be wet down so that there is not dust and it
20 will be monitored by our -- by our engineers and
21 zoning officials.

22 MS. BENNETT: And if there's an issue
23 with that, I come to this board?

24 MAYOR KARR: If there's an issue with
25 that, you -- you call the zoning. You can call the

1 police if you have dust issues. There's many people
2 that could resolve the issue more than --
3 immediately, rather than coming to a meeting.

4 MS. BENNETT: Okay.

5 Well, with that, thanks for listening
6 to me.

7 Sorry I was rambling, but I needed to
8 say what I said.

9 (Applause.)

10 COUNCILMAN HOUSTON: Ms. Bennett?

11 Ms. Bennett, so first of all, I want to
12 commend you for coming up here in front of the
13 planning board, coming up in front of the council.

14 It's a very tough thing to do and to
15 watch you pour your heart out to the council and to
16 the planning board, I used to live in that area, so I
17 have a personal connection to it as well.

18 Nothing I can do can change the vote,
19 but as a council liaison, I hear you. And I will do
20 my best to listen to the residents and try to
21 represent you on the planning board and the council
22 moving forward.

23 So I hope -- I know that's not a lot,
24 but I hope that's some consolation, I do hear you.

25 MS. BENNETT: Thank you.

1 (Applause.)

2 MR. HUNT: Hi, my name is Jim Hunt at
3 44 Jaqui Avenue here in town.

4 I just wanted to pick up on the process
5 question for a minute to understand a little more.

6 I think all of us have gotten
7 tremendous education about how these things work.

8 And the question is this: The
9 resolution that was passed at the last meeting was
10 very, very general. It was basically we approve and
11 whatever variances that were requested, we approve.

12 And if you read the resolution, I think
13 if it's in verbatim, you can see how general it was.

14 So my question is: Who came up with
15 the reasons for granting this when you drafted the
16 resolution, which is going to be very lengthy, as I
17 understand it?

18 Who came up with those reasons? Were
19 they affirmative voters responsible for the reasons
20 that are applied? Is the applicant providing the
21 reasons for the benefits for the approval?

22 Who wrote the resolution? And who came
23 up with the details for the resolution?

24 MR. BREWER: I wrote the resolution.
25 It is up to the members to approve this. It is --

1 you know, we can go find, but, you know, the standard
2 way that resolutions are done is board members,
3 members that vote on any application for the last 50
4 years, they don't -- because they don't all jointly
5 at the time that their voting set down the reasons by
6 which the board would agree.

7 So I've written lots of resolutions.
8 I've listened to the evidence. I know what would fit
9 to justify. I don't vote, though.

10 I put together what evidence goes
11 toward what standards have to get met. The -- the
12 votes on the resolution, that's the determination,
13 yes, that's right or no, that's wrong.

14 MR. HUNT: So when the resolution is
15 reviewed tonight, there's an opportunity to say that
16 doesn't sound quite right and we need to modify the
17 resolution? Is that --

18 MR. BREWER: No, the board members vote
19 yes, no or they can change it. That's -- that's what
20 happens. They -- that can always happen.

21 MR. HUNT: So there will be a
22 discussion of the resolution.

23 MR. BREWER: I'm not saying -- you
24 presume something will happen. There -- there is the
25 -- the resolution can be voted on by the three

1 members that voted.

2 MR. HUNT: Yes.

3 MR. BREWER: They can -- once the
4 resolution has been read, they can vote on it. They
5 can vote yes, it's great Andrew. Can they can vote
6 no, at which time, there would be a lawsuit, but --
7 or things can get changed. There's occasions where
8 there are -- occasionally there are some --

9 (Simultaneous Speaking.)

10 MR. HUNT: But only by those three
11 members.

12 MR. BREWER: That is correct. That is
13 correct.

14 MR. HUNT: So you --

15 MR. BREWER: The logic of that again is
16 that the members that voted yes, this resolution
17 defines why they voted yes.

18 It would be illogical for a person that
19 said no to define the reasons why they voted yes. It
20 doesn't -- it doesn't work that way.

21 MR. HUNT: That would make sense.

22 Do you -- so I'm understanding you, in
23 effect, use boilerplate, what you usually do you put
24 in each resolution.

25 MR. BREWER: No, I would not say that

1 --

2 MR. HUNT: Did you then pick from the
3 record that was provided by the applicant?

4 Did you -- what -- how did you choose
5 what you put in the resolution? Were you influenced
6 by the members who voted yes?

7 MR. BREWER: The transcripts and the
8 notes.

9 The transcripts and the notes.

10 MR. HUNT: Were you influenced by the
11 members who voted yes when you drafted the
12 resolution?

13 MR. BREWER: I don't think I'm
14 influenced. I'm influenced by the record.

15 MR. HUNT: Well, did you have
16 discussion with any of the yes votes that what went
17 into the resolution?

18 MR. BREWER: I have not discussed
19 what's in that other than people see it on -- they'll
20 see drafts. And they'll make changes that you forgot
21 this. That's lost in history, but, yeah, that's --
22 you have to. They would be blind-sided if they saw
23 something not -- the drafts, often drafts happen.

24 MR. HUNT: So the fact that it was very
25 general is not unusual and --

1 MR. BREWER: I'm --

2 MR. HUNT: -- and adding what you've
3 added is not unusual to be added for a resolution?

4 MR. BREWER: I would have to disagree
5 when you say things are general.

6 So that's -- that's your subjective
7 description of what happened.

8 MR. HUNT: Well, if you read the
9 resolution that was passed, it sounded general at
10 least to many of us, so thank you for the
11 explanation.

12 I do want to mention one other thing as
13 -- the DOT discussion has been very active tonight
14 and I want to tell everyone here that the DOT is now
15 in the direction of the state government to take a
16 very strong hand in safety for all users on roads
17 like Speedwell Avenue. They have just tightened
18 their Complete Streets Policy and in effect, what
19 they're going to do now is tie most requests for
20 state funding to the ability of the town to -- to
21 show them that they've determined it's safe for what
22 they're doing.

23 So I want you to know that there's a
24 potential here with what happened with this safety
25 issue that we know lies outside the property and

1 which the applicant has declared as the town's
2 problem and not their's, that we have every
3 possibility of some of our requests for funding to be
4 looked at with less than a positive eye in the
5 future, another unfortunate outcome of this passage.

6 Thank you.

7 (Applause.)

8 MR. RING: Special service.

9 Thank you.

10 MR. HUNT: I lower it too sometimes.

11 (Laughter.)

12 MR. RING: Hey, guys, Carl Ring,
13 R-I-N-G, 22 Dayton Road.

14 I wanted to build on one thing that
15 Carolyn mentioned earlier just for general awareness.

16 When you're coming out of Dayton, it is
17 impossible to see in either direction without
18 encroaching on, if not coming completely on the
19 crosswalk across Dayton because of blind spots on
20 both sides.

21 So that in and of itself to me is a
22 general safety concern outside of the whole
23 McDonald's application, but I think the board should
24 consider and the town should consider and should look
25 into.

1 Unfortunately, I think some of the
2 blind spot issues are telephone poles. One of them
3 is also I think the Citizens Bank building.

4 So I don't know how you're going to
5 solve it.

6 But my point is, it's already an unsafe
7 intersection to begin with, so I'm just calling that
8 into attention.

9 I also want to follow up on something
10 that I think Carolyn mentioned maybe just
11 offhandedly, but, you know, in addition to the
12 possibility of revisiting whether or not there needs
13 to be an exit onto Dayton, which I also would
14 encourage the board to reconsider in whatever
15 possibility that can happen at this stage in the
16 game, but also I know that at the end of Canfield was
17 -- was dead-ended at some point several years ago,
18 several decades ago possibly at this point.

19 Is that something that if this
20 continues to pose a safety problem, we would be able
21 to bring back to -- and is it to the council, is it
22 to the planning board, to request that Dayton
23 similarly potentially be dead-ended just south of the
24 Citizens Bank and -- and part of McDonald's
25 eventually possibly, hopefully not, property such

1 that no traffic, even though I know the angled lane
2 is somehow magically going to keep anyone from
3 turning right, but if -- if that becomes a problem,
4 how do we go about petitioning the board, the council
5 or anyone to say, you know what, let's just not let
6 any traffic come down Dayton, like similar to
7 Canfield, let's dead-end it and everyone has to go
8 out.

9 CHAIRMAN GARAVAGLIA: Mr. Karr, is that
10 something that would go back to the council?

11 MAYOR KARR: Yes, I mean, that's
12 something that we could always look at with the
13 public safety, fire department or police department
14 and with the council.

15 So if it turns out to be a problem,
16 it's something we can certainly look at.

17 MR. RING: Okay. Is there any formal
18 process or request by which that happens or...

19 MAYOR KARR: You know, I think by just
20 somebody sending in a letter or come to speak to
21 somebody if there's an issue up there, I think that
22 would be enough to start a process.

23 MR. RING: Okay. Well, I'm just going
24 to leave it with all of you to actually think about
25 that without someone having to come back and do that,

1 because it sounds like the outcome of all of this is
2 that the -- as I said in my closing statement last
3 year, the responsibility and the onus is now on us as
4 citizens to police this town, these businesses. What
5 do you all do for work?

6 (Applause.)

7 MR. RING: And that's it.

8 MR. WORONOWICZ: Kamil Woronowicz,
9 3 Crestview Court West.

10 THE COURT REPORTER: What's your name
11 again, sir?

12 MR. WORONOWICZ: Kamil.

13 THE COURT REPORTER: Can you spell it,
14 please.

15 MR. WORONOWICZ: K-A-M-I-L.

16 THE COURT REPORTER: Last name?

17 MR. WORONOWICZ: Woronowicz,
18 W-O-R-O-N-O-W-I-C-Z.

19 THE COURT REPORTER: Thank you.
20 Your address?

21 MR. WORONOWICZ: 3 Crestview Court
22 West.

23 THE COURT REPORTER: Thank you.

24 MR. WORONOWICZ: So thank you all for
25 your -- I apologize for being late.

1 I did get an e-mail thread from
2 Mr. Mayor, which I was very thankful for.

3 Again, it came from the applicant. So
4 it's not an independent verification, but if -- most
5 likely a meeting happened.

6 I just have two more comments. Those
7 verification meetings, I believe, require opening
8 date or plan for staging the development, including
9 build-out year. That wasn't part of the minutes
10 provided by the mayor. So there was some information
11 that was missing.

12 Another piece of information that was
13 missing was, I think it was mentioned earlier about
14 the plans that would affect the applicant or
15 application, which was, again, talking about the
16 crosswalk.

17 So I'm not sure why two things would be
18 or some things would be missing from the minutes.

19 Again, maybe I missed them, because the
20 Mayor, Mr. Mayor seems like the information was
21 there, maybe I missed them.

22 But I will -- again, would like to have
23 independent verification.

24 And then, right, if that meeting
25 happened, it would have been nice to see both truly

1 discussed if this information was missing, maybe
2 something else was missing or was misrepresented and
3 not in exactly the way that maybe our residents would
4 like it to be presented to the DOT.

5 Thank you.

6 (Applause.)

7 MR. BATTAGLIESE: Sorry, if I can just
8 add -- Tom Battagliese, B-A-T-T-A-G-L-I-E-S-E,
9 2 Cutler Road.

10 I just wanted to add a clarifying
11 process question to the comments or one of the issues
12 that Carolyn Bennett raised.

13 So the vote that was taken last time,
14 did that include -- there was no variance for the
15 Dayton Road egress, right? Wasn't -- isn't -- isn't
16 that part of the town code that Dayton Road is not
17 permitted to have delivery trucks driving on?

18 And if so, I don't believe the
19 application ever had an official variance made for
20 that.

21 So the vote that was taken last time
22 seems premature, if I'm understanding this whole
23 thing correctly.

24 CHAIRMAN GARAVAGLIA: Mr. Ryden, do you
25 remember that?

1 MR. RYDEN: I don't. I have no
2 comment.

3 MR. BREWER: I think I'll address it
4 briefly, that the issue -- and I don't have the
5 language in front of me -- essentially is, no trucks
6 over certain weight on the road, but it doesn't
7 prevent deliveries along these roads.

8 And so it's an interpretation,
9 deliveries be positioned -- and if it's wrong,
10 obviously people are free to challenge it, but I -- I
11 agree with it, is that this property is along, I
12 think -- I'm blanking on the name of the road.

13 AUDIENCE MEMBERS: Dayton Road.

14 MR. BREWER: Dayton Road, it's along
15 Dayton Road.

16 MR. BATTAGLIESE: It's a Speedwell
17 address, though, right?

18 MR. BREWER: But it -- but the --

19 FEMALE AUDIENCE MEMBER: Speedwell
20 Avenue address.

21 MR. BREWER: But the ordinance does not
22 say, making a delivery to a property with a address
23 on Dayton. It says properties along Dayton. So on
24 the roads. It doesn't say with a property address on
25 it.

1 So -- and I think members of the
2 public, whoever, if you disagree, I understand that.
3 But that's -- that's how it's worded.

4 The operative language isn't addresses
5 on a --on a specific road, it's deliveries along a
6 road. So...

7 MR. BATTAGLIESE: So you're saying the
8 trucks cannot travel there over a certain weight.
9 These trucks will be above that weight, right?

10 MR. BREWER: I'm saying the ordinance
11 and the -- the reason why it wouldn't be an
12 impediment to this application is that it allows for
13 all including -- all encompassing catch all, it
14 doesn't prevent deliveries along those -- properties
15 along those roads.

16 And so Dayton, the properties on Dayton
17 or is along Dayton, this most definitely touches
18 Dayton. That's the whole point, it does. That's the
19 issue. And a delivery -- the testimony is there
20 would be delivery to the property that is -- that is
21 adjacent to or on Dayton. It doesn't have a Dayton
22 address, but that's not how the ordinance is written.
23 The ordinance is written along that street, that's
24 the issue.

25 MR. BATTAGLIESE: So you're saying it

1 doesn't need a variance or should it have a variance
2 in the application and then if this is approved as a
3 part of that --

4 MR. BREWER: Well, it wouldn't be -- it
5 wouldn't be -- I don't think it would be -- two
6 things, it wouldn't be a variance, because it's not
7 the zoning code that regulates what you're talking
8 about. That's something separate.

9 But even more than that, I think the
10 bigger questions is would a delivery to this property
11 that also uses Dayton be prohibited by that specific
12 provision. And it's my interpretation and I believe
13 -- I don't think it's disputed by the professionals
14 that looked at it, and Mr. Steck did not, Mr. Steck
15 said it's a policy, but it's no provision. There's
16 lots of other issues with Mr. Steck, but it just
17 didn't. It's -- that's my interpretation, because it
18 doesn't say address is on Dayton Road, it says
19 properties along. It doesn't prevent deliveries to
20 properties along Dayton Road.

21 And, again, I'm paraphrasing, I don't
22 have it in front of me, but the operative language
23 was not addresses on.

24 MR. BATTAGLIESE: Okay. My gut feeling
25 is this sounds like it needs further discussion from

1 the rest of the board, but I'm not -- I'm not an
2 expert here. It just seems, you know, on this topic,
3 how to interpret the code, it just seems like there
4 should have been a variance submitted in my opinion.

5 I don't know what you do in this case,
6 but it seems like there should be, you know, wider
7 discussion beyond your interpretation, because it
8 does sound like it's not black and white as you're
9 describing it. Right or...

10 MR. BREWER: Oh, no, I think it is.

11 And I think that the professionals have
12 looked at it. I understand your point of view, but
13 the people that did look at it, that's the
14 determination that they came to. It's a different
15 determination than what your arguing.

16 MR. BATTAGLIESE: Who are the
17 professionals that you looked at? He just said he
18 had no comment. Mr. Ryden said he had no comment.

19 (Laughter.)

20 MR. BATTAGLIESE: -- so what
21 professionals actually looked at this aspect?

22 (Applause.)

23 MR. BREWER: All the professionals
24 looked at it. The professionals looked at it.

25 (Applause.)

1 MR. BREWER: Your question is looked
2 at, heard the testimony, it's the professionals here.

3 And it's the traffic, our traffic
4 consultant, Mr. Maltz and I -- I don't -- you know, I
5 understand and there was lots of testimony trying to
6 get in, what's the address? What's the address?
7 What's the address? But that's not how the ordinance
8 is written.

9 The ordinance allows for deliveries
10 along that property -- along that road and those
11 properties most definitely are along Dayton. They're
12 along two different streets. You know, it borders
13 two roads.

14 MR. BATTAGLIESE: All right. I don't
15 know what else to add.

16 (Applause.)

17 MR. AUGENBLICK: Who assigns this as a
18 4-ton limit?

19 THE COURT REPORTER: I'm sorry, please
20 speak up.

21 MR. AUGENBLICK: Who assigns --
22 microphone is not working.

23 Who assigns this as a 4-ton limit for
24 Dayton?

25 MR. BREWER: I think the reference to

1 the ordinance provision that -- that addressed
2 several roads in town.

3 MR. AUGENBLICK: Yes, I've seen the
4 signs.

5 But does that come from the DOT? Does
6 that come from Morris Plains?

7 MR. BREWER: It's a local ordinance.
8 It's a local ordinance.

9 THE COURT REPORTER: I'm sorry, I
10 didn't hear you, Mr. Brewer.

11 MR. BREWER: It is a local ordinance.

12 MR. WORONOWICZ: Hi.

13 So, yeah, just to piggy back on the
14 last discussion, another interpretation of that, I'm
15 sure residents of Dayton would take that along Dayton
16 Road, meaning any addresses along Dayton Road, maybe
17 around Academy or whatever that other street is
18 that's only accessible through Dayton or near the
19 post office, but not necessarily if you have already
20 have a driveway from another road, main road, like
21 Speedwell, to then require variance to go to Dayton,
22 because it's not making deliveries along Dayton,
23 that's the only way to get there along Dayton Road,
24 right?

25 So, again, it's probably just an

1 interpretation, but it's not the only interpretation.

2 Thank you.

3 (Applause.)

4 MS. WILLIAMS: Hi, good evening.

5 Jessica Williams, 22 Stony Brook Road.

6 So you indicated that the Speedwell
7 Avenue ingress, egress for delivery trucks was open
8 to interpretation.

9 MR. BREWER: I'm sorry. Excuse me?

10 MS. WILLIAMS: That -- that he -- that
11 it was open to interpretation, correct.

12 Oh, I'm sorry, I'm short.

13 Thank you.

14 That the Dayton Avenue ordinance was
15 open to interpretation, correct?

16 MR. BREWER: I gave you what my
17 understanding and I gave the board my understanding
18 of whether or not the specific ordinance would
19 prohibit the presence of trucks that had delivered to
20 McDonald's to be on Dayton.

21 And I'm not being facetious. People
22 can say I interpret it a different way. So if you
23 say open to interpretation, I don't -- you know,
24 people can say lots of things.

25 At some point you have to give an

1 interpretation when somebody says this action is
2 barred by this ordinance.

3 By reading the ordinance and making a
4 judgement, yes, it is or it is not, I am necessarily
5 giving an interpretation.

6 I don't believe the other
7 interpretations are correct, but that's why there's
8 courts. I believe that that's a correct read of
9 that, because it doesn't say street address. It says
10 -- and, again, I don't have it in front of me. I
11 believe it says along that -- along those roads.

12 So anyway, so listening to your
13 question here.

14 MS. WILLIAMS: So my point is: That
15 was put in place to protect the residents, correct?

16 MR. BREWER: I have -- I don't know. I
17 don't know. I wasn't there. I didn't -- I don't
18 want to pretend --

19 MS. WILLIAMS: Okay. But --

20 (Simultaneous Speaking.)

21 MR. BREWER: And this --

22 MS. WILLIAMS: But we have to assume
23 that that was put in place to protect the residents?

24 And yet, if it is open to
25 interpretation, our members of our community are

1 interpreting that on the side of the applicant and
2 not on the side of the residents, which it was
3 intended to protect.

4 (Applause.)

5 MS. WILLIAMS: Thank you.

6 (Applause.)

7 CHAIRMAN GARAVAGLIA: So we're going to
8 take a break. And we're going to take a break for 12
9 or whatever, 13 minutes until 20 after.

10 Is that okay? Is that good?

11 Okay.

12 (Whereupon, a brief recess is held.)

13 CHAIRMAN GARAVAGLIA: Okay. Are we
14 ready?

15 MS. COFFEY: Yes.

16 CHAIRMAN GARAVAGLIA: Okay.

17 State your name, last name.

18 MR. BATTAGLIESE: Okay. Yes.

19 Tom Battagliese, B-A-T-T-A-G-L-I-E-S-E,
20 2 Cutler Road, C-U-T-L-E-R.

21 So, Mr. Brewer, I just wanted to --
22 since we didn't have the language before, I just
23 wanted to read the ordinance that I was referring to.

24 So it specifically states trucks over
25 four tons gross weight are hereby excluded from the

1 following designated streets or portions of streets.
2 And there's multiple streets listed including Dayton
3 Road, which states the entire length of that
4 location.

5 And so I'm wondering what -- you know,
6 how -- how does that not require a variance then when
7 it's pretty straightforward then.

8 MR. BREWER: A variance you can only
9 get from the zoning ordinance. That's not in the
10 zoning ordinance. So that's a technical reason you
11 couldn't require a variance because this board only
12 has the ability to give a variance from something in
13 the zoning ordinance, that's the general police
14 power.

15 It's different, so they wouldn't have
16 the ability to.

17 So really I think the question you're
18 asking, phrasing it another way is how can you
19 approve a site plan that -- and this is your -- this
20 is your reading of that, how do you approve a site
21 plan that allows traffic that is not supposed to be
22 on a certain road?

23 That's not a variance question, it's a
24 different -- different question about the site plan.

25 But I think the biggest part is the

1 part that you didn't read about, the deliveries.
2 That's a catch all that says this doesn't -- and I
3 don't know what it is, you have to read it, that's --
4 that's the reason.

5 It's not -- not the initial portion
6 that says it doesn't apply or that this won't
7 prohibit deliveries along those streets. You'd have
8 to -- I don't have it in front of me so if you read
9 that part, that's really where it comes from.

10 MR. BATTAGLIESE: Okay.

11 But it says, okay:

12 "Nothing within this section shall be
13 construed as preventing such trucks from
14 making deliveries of merchandise or other
15 property along streets from which such trucks
16 are excluded or any streets reached thereby or
17 as excluding from any street in the Borough,
18 any trucks used by public utility companies in
19 connection with the construction,
20 installation, operation or maintenance of
21 public utility facilities or from or to any
22 premises within the Borough on said streets or
23 any streets reached thereby upon which an
24 authorized operation or activity is being
25 permitted in accordance with ordinances and

1 regulations of the Borough."

2 That's the part you're referring to, I
3 guess?

4 MR. BREWER: I think the first clause,
5 not that -- all the other stuff, the first clause.

6 MR. BATTAGLIESE: Okay. And -- and so
7 you were saying that that was your interpretation,
8 which you were saying that the ordinance is a bit
9 ambiguous.

10 MR. BREWER: I don't think it is
11 ambiguous. I think it's a catch all phrase. It
12 says, it doesn't prevent deliveries on the roads.

13 So I don't think it is ambiguous at
14 all.

15 And there's another tweak that --
16 again, sometimes I get too far, something that
17 prohibits, it would be the police power code that it
18 would result in a fine or something along those
19 lines. We'd say that's a -- something along the, you
20 know, prohibition of the criminal statute or
21 something along those lines. It has to be utterly
22 clear that it is. That's -- that's kind of a
23 protection to somebody that is a defendant that is
24 getting punished by -- by the state or the
25 municipality.

1 That -- that provision that says
2 nothing prevents deliveries along those roads is a
3 catch all, so that's accepted.

4 If you're delivering, that doesn't
5 apply, is essentially what it says. I don't think it
6 is vague. I don't think it is open for
7 interpretation. That's the catch all.

8 If you're delivering along those roads,
9 it doesn't apply.

10 MR. BATTAGLIESE: Was -- was the
11 purpose -- I mean, these are residential streets.

12 I think if I'm looking down here, every
13 one of these that's on the list is purely
14 residential.

15 So do you think that that exclusion
16 about deliveries was intended for commercial,
17 full-time commercial activities or for -- to protect
18 the residential nature of those streets?

19 MR. BREWER: So what was the question?

20 MR. BATTAGLIESE: So the streets that
21 are listed in this ordinance are not commercial, it's
22 not commercial-zoned streets. Right?

23 So Dayton Road is a residential street.
24 Would it be then correct to assume that the reason
25 for this ordinance was to protect the residences as

1 opposed to commercial activity?

2 And I guess was Friendly's allowed to
3 make -- I don't know, I don't live there, so was
4 Friendly's allowed to make deliveries or utilize
5 Dayton Road for truck access?

6 MR. BREWER: A whole bunch of things in
7 your question here.

8 MR. BATTAGLIESE: Yeah.

9 MR. BREWER: Taking up too much of the
10 board's time, but stop me, bring me in if I am.

11 No matter what the potential purpose
12 was, there was apparently a huge recognition, it
13 doesn't apply to deliveries on those streets, which
14 would indicate -- and it doesn't really matter what
15 the intension was because you have to apply what the
16 words are, that's all that this board or the police
17 that issue tickets or anybody else can do.

18 It doesn't apply to deliveries.

19 So if you want to look at the
20 intention, yeah, generally they don't want big
21 trucks, but if you're delivering you get an
22 exception, you do. That's just how they made that
23 understanding. So, you know, people are going to
24 need deliveries. And so sometimes it's going to
25 apply to trucks -- and it would only be important and

1 only necessary to give that catch all exception, it
2 doesn't apply to deliveries, if they understood
3 that's going to be deliveries over four tons, because
4 under four tons isn't regulated. So they were saying
5 there's going to be really big trucks that can make
6 deliveries, this doesn't apply.

7 That's what they wrote.

8 So going behind, yeah, there's some
9 ideas about it, but there was an overriding exception
10 if it's a delivery, it's not prohibited. And that's
11 how they -- that's how they chose to wrote [sic] it
12 -- write it, sorry about my grammar.

13 MR. BATTAGLIESE: Okay.

14 So it seems ambiguous and as I
15 understand when a law is ambiguous, you're supposed
16 to look at the legislative history to better
17 understand the intent of the law.

18 Did you -- as you're making your
19 interpretation here, did you do that?

20 MR. BREWER: No, because I don't think
21 it's ambiguous. I don't.

22 I think deliveries are allowed, end of
23 story. That's what -- you know, they said you can't
24 do -- deliveries you can do it. That's -- that's how
25 it's written.

1 MR. BATTAGLIESE: So if this is not a
2 zoning ordinance, then who is -- are you the one to
3 determine this? Or is the town attorney? Who is in
4 charge of that ordinance?

5 MR. BREWER: Oh, that's a -- that's a
6 police power. That would be the police.

7 MR. BATTAGLIESE: To make the
8 determination.

9 MR. BREWER: If someone believes --

10 MR. BATTAGLIESE: The police.

11 MR. BREWER: -- that there is activity
12 on a road that is in violation of an ordinance, then
13 you can tell the police, that's -- but that's not
14 something -- this board can't give tickets for things
15 like that. If there's --

16 MR. BATTAGLIESE: Right, no, I mean, in
17 -- in determining the -- you know, the
18 black-and-white interpretation of this law, who is --
19 you just said that this is not a zoning ordinance.
20 So you're in charge of the planning board from a
21 legal perspective, right? So who -- who is the
22 defining --

23 MR. BREWER: Anything in the police
24 power, you don't go get -- nobody gives you advisory
25 opinions, hey, you can or you can't. Either the

1 police, you can -- you can call up the police
2 department and say I believe that this activity is
3 taking place in violation of one of the local
4 ordinances and the police can either enforce it and
5 they can say, yeah, that's prohibited or they can
6 choose not to enforce it and they say, no, that's
7 permitted, but that's -- it's an enforcement action.
8 The enforcement of your local police ordinances is
9 done by the police or, you know, that's activity on a
10 road, that would be -- that would be the police, if
11 they believe that that was a violation of their
12 ordinances.

13 COUNCILMAN HOUSTON: Mr. Battagliese,
14 is your question about who creates the ordinances and
15 the -- what's inside of them, is that your question?

16 MR. BATTAGLIESE: I think --

17 COUNCILMAN HOUSTON: Or is it about
18 enforcement of the ordinances?

19 MR. BATTAGLIESE: No, it's not about
20 enforcement. I think what I'm -- you know, the whole
21 point I was trying to raise after Carolyn spoke was
22 that it seemed to me that the vote in December on
23 this whole application was made maybe not completely
24 considering the ordinances that are on the books and
25 this is one of them that I thought would have needed

1 a variance or needed some kind of waiver to say, hey,
2 yeah, normally we don't allow delivery trucks on
3 Dayton over four tons, in this case we as a board
4 feel that this is fine. And I'm assuming that this
5 is not in the memorialization statement that's going
6 to be read, because it was not, you know, part of the
7 application in terms of specific variances or
8 specific -- you know -- I don't know what you would
9 it, if it's not a variance, something going outside
10 of the ordinance on the books.

11 So that's -- that's really what I'm
12 trying to question.

13 COUNCILMAN HOUSTON: Yeah, understood.

14 So just to clarify for you and
15 everybody else who might have a question.

16 The ordinances are created by the
17 council, right, voted on by the council.

18 So it's ultimately up to the council to
19 look at that.

20 Can I ask which -- which ordinance
21 number you have that you're referencing?

22 MR. BATTAGLIESE: It's Article 5
23 limiting the use of certain -- of streets to certain
24 vehicles and it's specifically 22-5 under Article 5.

25 COUNCILMAN HOUSTON: Okay.

1 Thank you.

2 MR. BATTAGLIESE: Okay. I don't have
3 anything else. I'm just -- you know, we're about to
4 hear you vote on the memorialization and to me, it
5 just seems premature.

6 I'm raising the flag so to speak. I
7 don't know, you know, what you do in this case in
8 terms of the board and, you know, how to move
9 forward.

10 Thank you.

11 (Applause.)

12 MR. WORONOWICZ: It's Kamil Woronowicz
13 again from 3 Crestview Court West.

14 It was definitely helpful having heard
15 the actual text and not just assuming anything,
16 because you're right, the first part does say
17 something about deliveries.

18 But the second part, I think is a very
19 important part that mentions it has to be reachable
20 or accessible by Dayton Road and we all know that
21 driveway on Dayton Road is one way out. It is not
22 reachable by Dayton Road. Is that correct? If
23 that's the case, if it's truly unequivocal, that
24 driveway cannot be accessed for deliveries. And
25 Dayton Road cannot be accessed for deliveries,

1 because that address is not -- the location is not
2 reachable by Dayton Road, one way out, correct?

3 (Applause.)

4 MR. WORONOWICZ: And therefore, there
5 needs to be some changes.

6 Thank you.

7 MS. BENNETT: Hi, Carolyn Bennett,
8 19 Dayton Road.

9 I forgot to ask one question, kind of
10 related to the process, so thank you for entertaining
11 me a second time.

12 What happens to the current tenants
13 that are not in the Friendly's lot, but in the lot
14 adjacent to them, if this passes? Do they get kicked
15 out of their leases? Do they get paid? Like what --
16 what happens to them?

17 MR. BREWER: That's not something the
18 board does.

19 MS. BENNETT: So you guys can approve
20 an application to rip down a building where there's
21 businesses being run out of?

22 I don't even know, I'm just like -- I
23 know Lush somehow got the inside scoop that this was
24 coming, so they moved downtown. I don't know what
25 happens to the businesses that are there.

1 MAYOR KARR: So I know Lush moved,
2 right?

3 MS. BENNETT: Yeah, I don't know what
4 triggered that.

5 MAYOR KARR: And then -- and then
6 another one, I know, moved to 520 Speedwell Avenue.

7 I'm not sure what's left in there as of
8 now.

9 So they've already found new spaces in
10 the Borough.

11 MS. BENNETT: All of them?

12 MAYOR KARR: I don't know what's left
13 in there now. I know two of them and I don't know
14 what's left, one or two so...

15 MS. BENNETT: So what happens to them
16 then?

17 MAYOR KARR: Hopefully they'll find new
18 spaces and hopefully the applicant is looking -- is
19 helping them find those -- those new spaces.

20 MS. BENNETT: That kind of concerns --
21 that concerns -- so is there a chance that there's
22 people just doing business out there that you guys
23 aren't aware of?

24 MAYOR KARR: Like?

25 MS. BENNETT: I don't know. Like I see

1 -- so I walk there all the time and I know that
2 there's businesses being done there. I don't know if
3 it's the Willow Tree or the limo service, like I
4 don't know what is actually still there, but I don't
5 know if I should be concerned that I'm seeing
6 businesses --

7 MR. BREWER: If I can answer quickly.
8 The board -- you know, the only thing the board is
9 about to do is the owner of the property said I want
10 -- I want to sign off and allow this application to
11 go forward.

12 Whether or not it can get built because
13 there are still tenants is -- is a contractual
14 obligation between the owner and tenants that may be
15 on there, but the board can't -- you know, lots of
16 applications come, whether existing tenants because
17 the owner wants to change the use, but the board
18 can't say, no, you get -- tenant, you have to get
19 them in here and give permission to do what you want
20 with your property.

21 What -- what an owner has allowed to be
22 on his property, it's a matter of the lease contracts
23 that are dealt with, but the board can't get every
24 single tenant in here and say, actually, you don't
25 have -- they don't have permission.

1 If an owner puts in an application, the
2 board has to hear it.

3 So it's not saying they're going to
4 kick them out or no one is going to get killed during
5 construction and thrown out of their office.

6 MS. BENNETT: Well, hopefully not.

7 MR. BREWER: Well, no, it's a
8 contractual issue.

9 The owner wants to change what's there.
10 So the owner can seek approval and then going
11 forward, you know, there's going to be -- I shouldn't
12 say, obviously, but there's going to be a
13 pre-construction meeting and you're not allowed to
14 tear down a building with a person in it or not --
15 that's just not allowed.

16 MS. BENNETT: No, I know that.

17 MR. BREWER: It's a contractual --

18 MS. BENNETT: I feel like a lot of
19 people have been calling them two vacant lots and
20 that's not the case.

21 So it's either, one, it's supposed to
22 be vacant and it's not and then you call the police
23 or, two, we need to talk about that it's actually not
24 vacant.

25 MR. BREWER: Oh, no, they were saying

1 that the Friendly's was vacant.

2 MS. BENNETT: Okay. So the owner -- is
3 the owner of that second lot legally allowed to
4 receive information that's -- like how do they know
5 that all of this is happening? That's legal for them
6 to know?

7 MR. BREWER: The owners --

8 MS. BENNETT: Like I guess, I don't
9 know, I'm just imaging there's got to be a lot of
10 behind the scenes conversations happening to
11 proactively plan this.

12 I'm not sure of my question, but you
13 answered my first one and my thoughts are going to
14 keep going, so stay tuned until next meeting.

15 (Applause.)

16 MR. MORAN: Hi, Craig Moran, M-O-R-A-N,
17 7 Hillview Avenue.

18 Clearly I'm one of the people that is
19 disappointed by the decision that was reached last
20 month.

21 One of the things that I'm just so
22 shocked and amazed by is that the four people that
23 shot down this application were so clear in that
24 there were questions and concerns that needed to be
25 addressed, they felt so strongly about it that they

1 could not -- they could not support this.

2 Yet, one of the deciding votes that was
3 -- that was cast to approve this prior to the vote
4 was so emphatically stated that -- and I'm
5 paraphrasing here -- I guess all the questions have
6 been answered and just yes and it was done. I don't
7 understand how that happens.

8 Thank you.

9 (Applause.)

10 CHAIRMAN GARAVAGLIA: Anyone else.

11 (No Response.)

12 CHAIRMAN GARAVAGLIA: Okay. So we'll
13 close the comments from the public.

14 Next on the agenda, approval of minutes
15 for December 9th, 16th, 18th of 2024.

16 Quick question: Can I do these all at
17 one time or do they have to be done separately?

18 MR. BREWER: As long as everybody was
19 here for all three of them, you can do it and they
20 can all vote and I believe everybody was -- only the
21 people that were here during the meetings can vote,
22 but, yes, you can do them all three.

23 But I believe that there may have to be
24 one amendment to one.

25 MS. COFFEY: Yes.

1 CHAIRMAN GARAVAGLIA: So do them -- do
2 them all together?

3 MR. BREWER: You can.

4 CHAIRMAN GARAVAGLIA: Okay.

5 And in addition, then Andrew Wolff and
6 Bill Houston will abstain.

7 MR. BREWER: That's correct.

8 CHAIRMAN GARAVAGLIA: Because they were
9 not here.

10 MR. BREWER: Yes, they can't approve
11 minutes if they weren't there.

12 CHAIRMAN GARAVAGLIA: Got it. Okay.

13 So approval of -- can I have a motion
14 to approve the minutes for December 9th,
15 December 16th --

16 MS. McCLUSKEY: Excuse me, Chairman.

17 CHAIRMAN GARAVAGLIA: Yes.

18 MS. McCLUSKEY: I have a -- I have a
19 change, a correction.

20 CHAIRMAN GARAVAGLIA: Okay.

21 To which -- which set?

22 MS. McCLUSKEY: December 9th.

23 CHAIRMAN GARAVAGLIA: Okay.

24 MS. McCLUSKEY: Page 14, down at the
25 bottom:

1 "MR. DRUETZLER: I make a motion to
2 deem the application complete."

3 That's incorrect. He made a motion to
4 deem the application incomplete.

5 MS. COFFEY: Excuse me, that's for
6 109 Mountain Way?

7 CHAIRMAN GARAVAGLIA: No, that's -- oh,
8 is that --

9 MS. COFFEY: What application are you
10 talking about, 109 Mountain Way or is it --

11 MS. McCLUSKEY: Yes, yes.

12 CHAIRMAN GARAVAGLIA: Karen, you have
13 that? You have that.

14 MS. COFFEY: I have it, yes, but it
15 will have to be corrected in the transcript.

16 CHAIRMAN GARAVAGLIA: Correct.

17 MS. COFFEY: Okay.

18 Is that it?

19 MS. McCLUSKEY: Pardon me?

20 MS. COFFEY: Is that it?

21 MS. McCLUSKEY: That's it for that
22 minutes -- - for those minutes.

23 MS. COFFEY: Any other corrections?

24 MS. STECKERT: December 18th, there's
25 no page numbers on here.

1 So all I can tell you is --

2 MS. McCLUSKEY: Wait, wait, it has to
3 be one at a time.

4 You have to approve them one at a time,
5 the minutes.

6 MS. COFFEY: Okay.

7 CHAIRMAN GARAVAGLIA: He said we can do
8 them all together.

9 MS. McCLUSKEY: Oh, okay.

10 Well, there's more, there's more
11 changes.

12 CHAIRMAN GARAVAGLIA: Okay.

13 So let's -- itemize, do them one at a
14 time. Just itemize. December 16, 18.

15 So December 9th, Sue, you have those
16 changes.

17 MS. McCLUSKEY: Correct.

18 CHAIRMAN GARAVAGLIA: Are there any
19 other changes for December 9th?

20 MS. McCLUSKEY: Ut-huh.

21 CHAIRMAN GARAVAGLIA: There are no
22 changes?

23 MS. McCLUSKEY: No.

24 Not for December 9th.

25 CHAIRMAN GARAVAGLIA: Okay. Are there

1 any other changes from the board on December 9th?

2 (No Response.)

3 MR. BREWER: Is there a motion to
4 approve? Do them one at a time.

5 CHAIRMAN GARAVAGLIA: So with that, can
6 I get a motion to approve the December 9th, 2024
7 meeting minutes as amended tonight?

8 MS. COFFEY: With the corrections.

9 MAYOR KARR: So moved.

10 MR. AUGENBLICK: I'll second it
11 assuming that page 14 gets adjusted.

12 CHAIRMAN GARAVAGLIA: Amended.
13 Correct.

14 MR. AUGENBLICK: Amended.

15 CHAIRMAN GARAVAGLIA: Roll call,
16 please.

17 MS. COFFEY: Mr. Augenblick?

18 MR. AUGENBLICK: Yes.

19 MS. COFFEY: Mr. Garavaglia?

20 CHAIRMAN GARAVAGLIA: Yes.

21 MS. COFFEY: Ms. Steckert?

22 MS. STECKERT: Yes.

23 MS. COFFEY: Ms. McCluskey?

24 MS. McCLUSKEY: Yes.

25 MS. COFFEY: Mr. Kelly?

1 MR. KELLY: Yes.

2 MS. COFFEY: Mr. Bezold?

3 VICE CHAIRMAN BEZOLD: Yes.

4 MS. COFFEY: Mayor Karr?

5 MAYOR KARR: Yes.

6 CHAIRMAN GARAVAGLIA: Okay.

7 The minutes for December 16th, are
8 there corrections to that?

9 MS. McCLUSKEY: Yes, I have corrections
10 to that.

11 The transcript incorrectly states that
12 it's -- the meeting was held on Tuesday,
13 December 16th, 2024. In fact, it was Monday,
14 December 16th, 2024. There are two transcripts.

15 The one is prior to the McDonald's
16 hearing, and the second one also it needs to be
17 corrected for the McDonald's transcript.

18 CHAIRMAN GARAVAGLIA: Karen, do you
19 have that?

20 MS. COFFEY: I got that.

21 CHAIRMAN GARAVAGLIA: Okay.

22 So can I have a motion to approve the
23 December 16th meeting minutes from 2024 as amended?

24 MAYOR KARR: So moved.

25 CHAIRMAN GARAVAGLIA: Can I get a

1 second?

2 VICE CHAIRMAN BEZOLD: I'll second it.

3 CHAIRMAN GARAVAGLIA: Roll call,
4 please.

5 MS. COFFEY: Mr. Augenblick?

6 MR. AUGENBLICK: Yes.

7 MS. COFFEY: Mr. Garavaglia?

8 CHAIRMAN GARAVAGLIA: Yes.

9 MS. COFFEY: Ms. Steckert?

10 MS. STECKERT: Yes.

11 MS. COFFEY: Ms. McCluskey?

12 MS. McCLUSKEY: Yes.

13 MS. COFFEY: Mr. Kelly?

14 MR. KELLY: Yes.

15 MS. COFFEY: Mr. Bezold?

16 VICE CHAIRMAN BEZOLD: Yes.

17 MS. COFFEY: Mayor Karr?

18 MAYOR KARR: Yes.

19 CHAIRMAN GARAVAGLIA: So for the
20 December 18th meeting minutes, Ms. Steckert.

21 MS. STECKERT: Yes, there's a
22 correction. There's no page numbers, so it is -- I
23 think it's the one, two -- fourth page from the end,
24 the vote was not captured correctly.

25 Let me just see if it's that -- it's

1 that page.

2 My vote was missed in the -- in the
3 transcribed transcription, so it has to be corrected.

4 MS. COFFEY: Okay.

5 Excuse me, I didn't hear what you said,
6 I apologize.

7 MS. STECKERT: The minutes, the
8 transcription is incorrect. It's missing my vote.

9 MS. COFFEY: For McDonald's?

10 MS. STECKERT: Yup, December 18.

11 MS. COFFEY: Okay.

12 CHAIRMAN GARAVAGLIA: Is that it?

13 MS. STECKERT: Yes.

14 CHAIRMAN GARAVAGLIA: Karen? Karen, do
15 you have that?

16 MS. COFFEY: I have that and I will,
17 you know, I have to tell Michelle to correct this.

18 CHAIRMAN GARAVAGLIA: Okay. So can I
19 get a motion to approve the December 18th --

20 MR. KELLY: I have a correction.

21 CHAIRMAN GARAVAGLIA: You have a
22 correction?

23 MR. KELLY: Yes.

24 Chairman McCluskey made a statement:

25 "I just want to correct the record,

1 Mr. Kelly, drive-through restaurants were
2 proposed for the B-2 zone on the very first
3 spreadsheet that the Master Plan Review
4 Committee received from the council Business
5 Development Committee for the B-2 zone."

6 Okay. That was back in November of
7 2021.

8 First of all, the master plan doesn't
9 propose anything. It only provides what is permitted
10 in the use.

11 So restaurants, drive-through
12 restaurants were permitted. And I have the worksheet
13 that was given to us on May 5th of 2023.

14 Originally it was stated it was just
15 restaurants, taverns and cafes. What was added was
16 restaurant -- restaurant, bar or tavern, restaurant
17 drive-in, restaurant drive-through. And the final
18 approval for the council, I believe, was done in
19 November of 2023, not 2021.

20 MS. McCLUSKEY: Well, it was 2022,
21 actually. And I misspoke, it was not 2021.

22 The first spreadsheet that we got that
23 came from the Business Development Committee had it
24 on it.

25 MR. KELLY: I have it right in front of

1 me, Sue, and you may want to speak to the planner --

2 MS. McCLUSKEY: What is it?

3 MR. KELLY: -- because she said it was
4 2023 it was approved. I don't know what you're
5 talking about.

6 MS. McCLUSKEY: I have the papers home.
7 I didn't bring them with me. That's -- it doesn't
8 matter, we're talking about the minutes.

9 MR. KELLY: Are you still stating that
10 the master plan proposes uses for the town?

11 MS. McCLUSKEY: Excuse me?

12 MR. KELLY: You stated that the master
13 plan proposes the uses. They're saying that we
14 propose that the use --

15 MS. McCLUSKEY: No, no, no, no. No,
16 no, I did not say that. I said that the Business
17 Development Committee proposed that use at the very
18 first meeting that we had that they had recommended
19 them. And Liz had given us that spreadsheet and it
20 had it on it.

21 MR. KELLY: I have it here, it's right
22 here. It shows the first time it was done is
23 May 5th --

24 MS. McCLUSKEY: No, first one was back
25 in November --

1 MR. KELLY: -- 2022.

2 MS. McCLUSKEY: -- I'm sorry, it was
3 back in November. I have it at home. If you want me
4 to prove it to you, Ron, I will.

5 But we're talking about the minutes
6 here tonight, not about this discussion that you and
7 I are having.

8 MR. KELLY: Have it your way, Sue.

9 MS. COFFEY: Excuse me, I will correct
10 the transcripts according to this. And all of these
11 corrections will be posted into the new transcript
12 that's coming out tonight.

13 Do you understand what I'm trying to
14 say?

15 Like I will correct my copy to state
16 this information, but all of the corrections will be
17 stated in the minutes tonight.

18 MR. BREWER: Yeah, but I just want to
19 pipe in a little bit. There's been a lot of
20 discussion. I don't know if specific language has
21 been recommended to be changed.

22 I would -- I would defer to the chair
23 on whether or not there was. There was a lot of
24 colloquy going back and forth.

25 CHAIRMAN GARAVAGLIA: So with Ron, the

1 references you made are in the meeting minutes from
2 the 18th?

3 MR. KELLY: (Shakes head.)

4 CHAIRMAN GARAVAGLIA: Okay. So --

5 MR. BREWER: What's there, what should
6 be changed?

7 CHAIRMAN GARAVAGLIA: Yes. Exactly.

8 So can you provide clarity on the
9 specifics of what needs to be changed.

10 MS. COFFEY: Okay. I'm talking about
11 the 12/19 --

12 CHAIRMAN GARAVAGLIA: No, no, no, no.
13 No, but I want to make sure Karen has that so that
14 they get accounted for, correct?

15 MS. COFFEY: All right. I'm just
16 talking about the minor changes, meaning like 12/09,
17 109 Mountain Way, incomplete rather than complete.

18 12/16, Monday, rather than Tuesday.

19 12/18, Ms. Steckert's vote was missed.

20 Okay?

21 So that's what I'm saying. This
22 situation here with the master plan, maybe we could
23 table that until next -- next meeting?

24 CHAIRMAN GARAVAGLIA: But the master
25 plan as part of the meeting notes from the meeting

1 minutes from the 18th.

2 MS. COFFEY: Right.

3 CHAIRMAN GARAVAGLIA: Yeah.

4 MS. COFFEY: Okay.

5 MAYOR KARR: So we can -- okay. Table
6 it.

7 CHAIRMAN GARAVAGLIA: So, again -- yes,
8 sir.

9 MR. VITOLO: This is -- this is part of
10 our record in the case, so it benefits everybody that
11 we have a good record and a good transcript. We
12 can't change the transcript. She said what she said.
13 You said what you said. Right? Is that accurate?
14 Yes, so the transcript remains -- whether or not
15 who's right or wrong, you guys got to decide that.

16 But the transcript has to stay the way
17 it is, right?

18 Mr. Kelly, are you asking that anything
19 be changed?

20 MR. KELLY: That's fine.

21 MR. VITOLO: Okay. All right. Thank
22 you.

23 (Audience Outburst.)

24 MR. BREWER: If it is incorrect as
25 Ms. Steckert -- the transcript says she did not vote,

1 that has to be --

2 MR. VITOLO: No, 100 percent agreed.
3 I'm just talking about this last colloquy about who
4 was right about the master plan notes and all this
5 other stuff.

6 The transcript says what it says and no
7 one here is saying that it should be corrected on
8 that point.

9 He just disagrees.

10 MR. BREWER: I think that's -- I think
11 that's --

12 MR. VITOLO: Yes.

13 MR. BREWER: -- being -- sit down.

14 I think that's being addressed where
15 the question was posed after the colloquy what was
16 stated and what do you believe should be changed.
17 And I don't believe anything is going to be changed
18 from that colloquy unless -- I'll defer back to the
19 chair.

20 I didn't hear specific language being
21 proposed to be changed about the colloquy.

22 CHAIRMAN GARAVAGLIA: And I agree with
23 that.

24 So -- so what I asked Mr. Kelly was to
25 make sure that Karen had his comments, not for

1 change, but to make sure the record was correct or
2 the transcript was correct.

3 MR. VITOLO: So, Mr. Kelly, are you
4 saying that you made comments during the meeting that
5 are not in the transcript?

6 MR. KELLY: What I'm saying is she
7 quoted 2021.

8 MR. VITOLO: No, I understand you think
9 she's wrong.

10 MR. KELLY: I think --

11 MR. VITOLO: But are you saying there
12 should be more information in the transcript than
13 there is now?

14 (Audience Outburst.)

15 MR. BREWER: Let's stop, let's stop.

16 MR. KELLY: I just think --

17 MR. BREWER: Let's stop.

18 MS. BENNETT: Are we allowed to come
19 back on the mic.

20 CHAIRMAN GARAVAGLIA: No, no.

21 MS. BENNETT: Oh, okay.

22 (Audience Outburst.)

23 MR. BREWER: I think nobody should
24 speak. Stop.

25 I think that we -- right now we have

1 for the December 18th one change that we know of
2 that's been proposed, hasn't been voted on yet.
3 Ms. Steckert actually voted.

4 Number two, Mr. Kelly has started to
5 talk, but I think leave it here, is there specific
6 language in the transcript that you believe should be
7 changed? And it's not on the merits of the
8 statements that were made, but the minutes are only
9 supposed to be what was said, not whether or not it
10 was right or wrong.

11 So if there's specific language in the
12 transcript, you can read a sentence and say, no, what
13 was said was actually X, not Y. That's, I think,
14 fair game for amending the minutes.

15 Arguing about the merits of what was
16 said isn't. It's supposed to be just what was said,
17 not if you agree.

18 MR. KELLY: Okay.

19 Basically it's semantics. She said
20 drive-through restaurants were proposed for the B-2.
21 They're not proposed. They're saying they're
22 permitted.

23 MR. BREWER: But -- but I think the
24 question: Did she say proposed? If she said
25 proposed, then the minutes -- then the minutes should

1 not be --

2 MR. KELLY: I'm reading what's on the
3 transcript.

4 MR. BREWER: -- then the minutes
5 shouldn't be changed.

6 MR. KELLY: I'm reading it from the
7 transcript.

8 CHAIRMAN GARAVAGLIA: Right.

9 MR. KELLY: So all I'm saying is that
10 the date should be changed to the accurate date that
11 was actually approved by the council.

12 MR. BREWER: No, no.

13 CHAIRMAN GARAVAGLIA: The only thing is
14 that's not what was said.

15 MR. KELLY: Oh.

16 CHAIRMAN GARAVAGLIA: So even -- you
17 may be correct, but that's not what was said. So it
18 cannot be corrected in the minutes.

19 MR. KELLY: Okay. Sorry. Okay. Can't
20 be change, I got you.

21 THE COURT REPORTER: State your name,
22 sir.

23 MR. VITOLO: Counsel for the applicant.

24 THE COURT REPORTER: I just need your
25 name.

1 MR. VITOLO: Oh, Frank Vitolo.

2 THE COURT REPORTER: Thank you.

3 CHAIRMAN GARAVAGLIA: So that's clear
4 as mud.

5 So, Karen, you have everything?

6 MS. COFFEY: Yes.

7 MR. BREWER: One change.

8 CHAIRMAN GARAVAGLIA: Yes, one change.

9 MS. COFFEY: And these will also --
10 these will be included in Laura's -- I'm sorry -- I
11 forgot your name, we will have these corrections
12 within this transcript. Correct?

13 THE COURT REPORTER: Yes.

14 MS. COFFEY: Then I will correct my
15 copy in the office stating the same things.

16 CHAIRMAN GARAVAGLIA: Okay. So could I
17 have a motion to approve the meeting minutes from
18 December 18th, 2024 as amended this evening?

19 MS. STECKERT: Yes, so --

20 MAYOR KARR: So moved.

21 MS. STECKERT: Second.

22 CHAIRMAN GARAVAGLIA: Roll call, Karen.

23 MS. COFFEY: Mr. Augenblick?

24 MR. AUGENBLICK: Yes.

25 MS. COFFEY: Mr. Garavaglia?

1 CHAIRMAN GARAVAGLIA: Yes.

2 MS. COFFEY: Ms. Steckert?

3 MS. STECKERT: Yes.

4 MS. COFFEY: Ms. McCluskey?

5 MS. McCLUSKEY: Yes.

6 MS. COFFEY: Mr. Kelly?

7 MR. KELLY: Yes.

8 MS. COFFEY: Mr. Bezold?

9 VICE CHAIRMAN BEZOLD: Yes.

10 MS. COFFEY: Mayor Karr?

11 MAYOR KARR: Yes.

12 MS. COFFEY: Okay.

13 CHAIRMAN GARAVAGLIA: Okay.

14 Applications: The first application, PB-4-24, which
15 is R. Keller Construction, 109 Mountain Way --

16 VICE CHAIRMAN BEZOLD: Mr. Chair,
17 excuse myself.

18 CHAIRMAN GARAVAGLIA: Yes, I was going
19 to read this and then excuse you.

20 So Block 67, Lot 7.01.

21 Yes, Mr. Bezold.

22 MR. BREWER: Let the minutes reflect
23 that Mr. Bezold is stepping out of the room.

24 (Whereupon, Vice Chairman Bezold
25 recuses himself and steps off the dais.)

1 CHAIRMAN GARAVAGLIA: I don't think I
2 see anyone representing the applicant here tonight.
3 No.

4 So, Mr. Ryden, and, Liz, you guys, last
5 set of correspondence from the applicant you deemed
6 it incomplete.

7 MR. RYDEN: Correct.

8 CHAIRMAN GARAVAGLIA: Is that still the
9 case?

10 MR. RYDEN: So, Mr. Chairman -- is the
11 mic here on?

12 Mr. Chairman, this application was
13 previously deemed incomplete at the December 9th
14 meeting as you recall.

15 The applicant subsequently submitted
16 revised application and other information, which we
17 then reviewed.

18 And I made that report in my
19 December 30, 2024 letter.

20 In that letter I find that the
21 application is still incomplete, there's a number of
22 issues, which I will detail.

23 So there's two checklists involved for
24 these application. One is Checklist A for the
25 development and the other is Checklist F for

1 variances.

2 So under Checklist A, Item 1, which
3 requires a complete application form. The Item
4 No. 14 in the application form was not complete.
5 It's not addressed at all. So that's -- that's an
6 outstanding item. It's direct incomplete, it's not a
7 waiver issue.

8 The other two items are in Checklist F.
9 That's 23(A), they haven't provided a height of the
10 proposed building. And 24(E), which requires
11 elevations at the corners of the proposed buildings
12 and pavement, et cetera. Those are -- that
13 information has not been provided.

14 So on that basis alone the application
15 still stands to be incomplete.

16 Now, there are -- there are 17 waiver
17 requests that have been made by the applicant.

18 Of those 17, I find that we can agree
19 or I can recommend that the board accept those waiver
20 requests for 15 of those.

21 But two of them, I would recommend they
22 not accept those waiver requests. So if you'd like,
23 I can detail specific items here for -- for you or
24 you can just have my -- my letter as the record and
25 add it for the meeting, however you'd like to do

1 that.

2 CHAIRMAN GARAVAGLIA: So -- so I do
3 have some questions, but I -- I would like more
4 detail for sure.

5 MR. RYDEN: Okay.

6 CHAIRMAN GARAVAGLIA: However, since
7 the applicant is not here, can we deem this...

8 MR. BREWER: The applicant is not here.
9 There could be a motion to deem the application
10 incomplete for the reasons set forth in Mr. Ryden's
11 letter report.

12 CHAIRMAN GARAVAGLIA: Correct.

13 MR. BREWER: And requesting the
14 information -- you know, more information on the
15 waivers and the other information that was set forth
16 in Mr. Ryden's report.

17 CHAIRMAN GARAVAGLIA: Correct. So --
18 so that's what I would opt to want to do tonight,
19 because we are already 10:00 and we need to --

20 MR. RYDEN: Sure.

21 CHAIRMAN GARAVAGLIA: -- work through
22 the McDonald's. So...

23 MR. RYDEN: That's why I asked if you
24 would want me to go into detail.

25 CHAIRMAN GARAVAGLIA: Exactly.

1 I initially did, but I don't now.

2 So -- but I do -- I do want to go on
3 record saying that where there are waivers requested,
4 I would like to have some more information.

5 So we can talk about that another time
6 or...

7 MR. RYDEN: Well, so the ones that we
8 were recommending, I -- I don't believe we need any
9 further information, for the other two that -- those
10 two that are not recommended are Item 24(F) in
11 Checklist F for colored photographs within 200 feet
12 of the PQ, the property in question.

13 CHAIRMAN GARAVAGLIA: Right.

14 MR. RYDEN: I -- they requested a
15 waiver, I'm recommending that waiver not be granted,
16 and I believe Liz also is not recommending that be
17 granted.

18 CHAIRMAN GARAVAGLIA: Right.

19 MR. RYDEN: And then so on that basis,
20 if you don't grant that waiver, that's another area
21 for incomplete.

22 And then Item 24, which requires all
23 kinds of neighborhood information within 500 feet of
24 the PQ. They're requesting waivers for all the
25 items. The one, which is 24(G)(3), that has to do

1 with building coverage, I'm recommending that that
2 not be granted, because this application has a
3 variance for building coverage. So it will be
4 important to know what the area surrounding it, the
5 typical building coverage is in that area.

6 So we should have that information.

7 CHAIRMAN GARAVAGLIA: Okay. One, the
8 other thing, though, I guess what I'm getting to,
9 this is a very simplistic example, but within this
10 Checklist A, there's tree removal permit waiver
11 requested. I want to know why.

12 MR. RYDEN: For.

13 CHAIRMAN GARAVAGLIA: For -- if I look
14 at, it's 38(C), Item 38(C), tree removal permit
15 waiver requested, may seem very insignificant, but I
16 want to know why. Is there no tree there --

17 MR. RYDEN: Well, there's no
18 development --

19 CHAIRMAN GARAVAGLIA: -- and it's
20 not required or the lot is less than an acre so it's
21 not required or is there another reason? I'm sorry.

22 MR. RYDEN: This is not a development
23 application. It's a subdivision application to
24 create two lots out of one.

25 So those items, wetland disturbance,

1 soil disturbance, tree removal, stormwater
2 management, all those things are not relevant here
3 because there's nothing proposed in that regard.
4 They simply want to create two lots out of one.

5 CHAIRMAN GARAVAGLIA: So can we -- can
6 we say that? Can -- can you say that in your letter
7 so that it's identified as such? Because I'm not
8 sure everyone maybe realizes that.

9 MR. RYDEN: Well, I just said it for
10 the record.

11 CHAIRMAN GARAVAGLIA: Oh, okay. All
12 right. But I'm saying, though, in -- in a letter
13 that you provide us, is that something that you can
14 put in.

15 MR. RYDEN: You want that subsequent to
16 this letter here?

17 CHAIRMAN GARAVAGLIA: Sure.

18 MR. RYDEN: That's fine.

19 CHAIRMAN GARAVAGLIA: Sure.

20 I think it just adds clarity --

21 MR. RYDEN: Okay.

22 CHAIRMAN GARAVAGLIA: -- in my opinion.

23 MR. RYDEN: But that's the -- that's
24 the basis for the -- would be my recommendation for
25 the basis for those waivers, because they're not

1 relevant here. They're not part of the application.

2 CHAIRMAN GARAVAGLIA: So can we say
3 that? Can I say that they're not relevant?

4 MR. RYDEN: I understand. I'm saying
5 it now for the record.

6 CHAIRMAN GARAVAGLIA: Gotcha. Okay.
7 Anything else?

8 MR. RYDEN: If you'd like, I can make a
9 subsequent report that states that.

10 CHAIRMAN GARAVAGLIA: I think since the
11 applicant has to -- since the applicant is not here
12 and this is not complete, they have work to do, I
13 think on that next iteration of your letter to us,
14 you can do that.

15 MR. RYDEN: Okay.

16 CHAIRMAN GARAVAGLIA: If that makes
17 sense.

18 MR. RYDEN: Absolutely.

19 CHAIRMAN GARAVAGLIA: Does the board
20 have any other comments to that?

21 MAYOR KARR: A lot of times when they
22 go over the report when the applicant is here, that
23 will be covered when they go through those reports,
24 go through the checklist.

25 CHAIRMAN GARAVAGLIA: Okay. And I

1 guess that's -- that's okay too. I guess what I'm
2 trying to get at is limiting the questions that maybe
3 we would have that chew up the time. Right.

4 And maybe I'm wrong and I'm still not
5 seeing the bigger picture. But -- but in my view,
6 the more information that comes in ahead of time that
7 we can address, it's less time that we have to ask
8 him questions. And it's less time that maybe
9 eventually the public will ask questions.

10 I -- maybe I'm not seeing the whole
11 picture, but that's kind of my view.

12 Fair?

13 MR. RYDEN: Sure.

14 CHAIRMAN GARAVAGLIA: Does that sound
15 fair? Okay.

16 Liz, I guess I would ask the same thing
17 of you, not necessarily go through yours here because
18 of time, but I would say the same thing, that if
19 there are waivers requested, I would like to see a
20 little bit more information.

21 MS. LEHENY: Okay. That's fine.

22 I just want to make two points
23 regarding my letter.

24 With Checklist F, Item 13 requesting a
25 copy of the zoning officer's decision, my

1 understanding is there was no decision by the zoning
2 officer, so that can be the waiver request. And it
3 can be recommended.

4 The other item to note is 24(G)(3),
5 which is asking the applicant to provide building
6 coverage and approximate total principal building
7 floor area, all floors within 500 feet.

8 Something that we've done at the zoning
9 board level where we've dealt with these applications
10 more regularly is limited to the 500 feet from the
11 subject property to 200 feet, because it seemed to be
12 too onerous on the property owner to do 500 feet.

13 So that may be something that the board
14 would want to consider.

15 CHAIRMAN GARAVAGLIA: Okay.

16 Does the board have any questions,
17 additional questions or comments?

18 (No Response.)

19 CHAIRMAN GARAVAGLIA: No?

20 So then can I have a motion to deem
21 this application incomplete?

22 MR. BREWER: Yes, for the reasons set
23 forth in that report.

24 CHAIRMAN GARAVAGLIA: For the reasons
25 set forth in that report.

1 MR. AUGENBLICK: I'll motion.

2 CHAIRMAN GARAVAGLIA: Motion.

3 MR. WOLFF: Second.

4 MS. COFFEY: Second by?

5 MR. WOLFF: Me.

6 MS. COFFEY: Okay. But can I also
7 state, do you want to change it from 500 feet to 200,
8 which Liz stated?

9 CHAIRMAN GARAVAGLIA: I -- well,
10 what...

11 MS. COFFEY: That's what the board of
12 adjustment is doing now. It's instead of 500 feet
13 around, surrounding the property, they're going to
14 200.

15 Maybe Liz, you want to explain it a
16 little better?

17 MS. LEHENY: Sure.

18 First of all, it's a fairly onerous
19 task to put on a single-family homeowner.

20 And 500 feet is -- is even, you know,
21 more onerous and the zoning board has found that
22 200 feet provides the information that is necessary
23 and informative for the board.

24 It's up to you, though. The checklist
25 says 500.

1 MR. BREWER: Checklist -- you can --
2 you can grant waivers from it.

3 The requirements cannot be changed
4 except by ordinance, checklist except by ordinance.

5 You can give waivers, you cannot change
6 the terms of the checklist. The municipality has to
7 do that by ordinance.

8 MS. LEHENY: All right. So you can, I
9 think, grant a waiver from the 500 feet and give it
10 for 200.

11 MR. BREWER: Yes.

12 MS. LEHENY: It's up to the board.

13 CHAIRMAN GARAVAGLIA: So what does the
14 board think or what's -- Jason, you as the mayor, you
15 have experience here, what's your thought?

16 MAYOR KARR: I mean, I think in a
17 neighborhood like that, I think 200 feet is -- is
18 plenty in that area.

19 And I think 500 feet may be out of his
20 area a little bit, so I think 200 feet is adequate
21 there.

22 CHAIRMAN GARAVAGLIA: Okay.
23 Ms. McCluskey, you also have experience. What's your
24 take?

25 MS. McCLUSKEY: Pardon me?

1 CHAIRMAN GARAVAGLIA: You also have
2 experience on the board with this, what is your take
3 on 200, granting 200, what do you think?

4 MS. McCLUSKEY: 200 feet is sufficient.
5 This is a -- this is a minor subdivision.

6 CHAIRMAN GARAVAGLIA: I just want to
7 make sure.

8 MS. McCLUSKEY: Well, that's --
9 absolutely.

10 And I would always, always go along
11 with the recommendation of our planner, that's why we
12 hire her.

13 CHAIRMAN GARAVAGLIA: We -- we do. But
14 we've also heard a lot of comments on the lack of and
15 I'm not saying that there was, but part of the due --

16 MS. McCLUSKEY: In my experience, which
17 is many, many years of experience --

18 CHAIRMAN GARAVAGLIA: Correct.

19 MS. McCLUSKEY: -- we would definitely
20 defer to the planner on this very minor item.

21 MS. LEHENY: It doesn't -- let me
22 explain. This is a fairly onerous task to put on a
23 single-family homeowner in general.

24 CHAIRMAN GARAVAGLIA: Yes.

25 MS. LEHENY: We're asking within

1 500 feet, it's --it's a lot and oftentimes people
2 don't have attorneys representing them, they're doing
3 it themselves, and they're having to provide and do
4 calculations that are not their expertise. They're
5 often not correct. And it requires them to do an
6 OPRA request to get the tax records for all of the
7 properties within 500 feet.

8 So in deference to the board and to
9 give you all a sense of what the impervious coverage
10 is in the neighborhood so you can compare it to what
11 is being requested here, we're not saying to waive
12 the entire requirement, but we're saying try and make
13 it a little less onerous on -- on somebody who is a
14 single-family homeowner.

15 CHAIRMAN GARAVAGLIA: Okay. I can
16 agree with that.

17 I agree with that.

18 MR. RYDEN: So that would be the only
19 waiver you would be dealing with in this resolution.

20 CHAIRMAN GARAVAGLIA: Okay.

21 MR. RYDEN: I just want to be clear on
22 that.

23 CHAIRMAN GARAVAGLIA: Okay.

24 MR. RYDEN: We're not acting on any
25 other waiver request.

1 CHAIRMAN GARAVAGLIA: Okay.

2 MR. AUGENBLICK: And it's incomplete,
3 why is there all this discussion?

4 CHAIRMAN GARAVAGLIA: Yes.

5 Well, exactly okay.

6 So can I have a motion to deem the
7 application incomplete?

8 MR. AUGENBLICK: Yes.

9 MS. COFFEY: With the 200, rather than
10 the 500?

11 CHAIRMAN GARAVAGLIA: With the
12 amendments that have been discussed.

13 MS. COFFEY: Okay.

14 Second?

15 CHAIRMAN GARAVAGLIA: Second?

16 MR. WOLFF: Second.

17 CHAIRMAN GARAVAGLIA: Roll call, Karen.

18 MS. COFFEY: All right.

19 Mr. Augenblick?

20 MR. AUGENBLICK: Yes.

21 MS. COFFEY: Mr. Garavaglia?

22 CHAIRMAN GARAVAGLIA: Yes.

23 MS. COFFEY: Ms. Steckert?

24 MS. STECKERT: Yes.

25 MS. COFFEY: Ms. McCluskey?

1 MS. McCLUSKEY: Yes.

2 MS. COFFEY: Mr. Kelly?

3 MR. KELLY: Yes.

4 MS. COFFEY: Mayor Karr?

5 MAYOR KARR: Yes.

6 MS. COFFEY: Mr. Wolff?

7 MR. WOLFF: Yes.

8 MS. COFFEY: And Mr. Houston?

9 COUNCILMAN HOUSTON: Yes.

10 MS. COFFEY: Okay.

11 Now we have to go get Mr. Bezold back.

12 MAYOR KARR: Steve, can you go get

13 John.

14 MR. AUGENBLICK: Yeah.

15 (Whereupon, Vice Chairman Bezold

16 returns to the dais.)

17 CHAIRMAN GARAVAGLIA: Okay. The next
18 application is PB-1-24, McDonald's USA, LLC, 415 and
19 435 Speedwell Avenue, Block 23, Lots 4 and 5.

20 So just -- just to level set a little
21 bit, this is to certify McDonald's resolution.

22 Mr. Brewer will read the entire
23 document. Once complete, only the board members who
24 voted yes on the application will vote to approve.

25 Of the five members who voted yes,

1 three remain on the board for 2025. Marianne
2 Steckert, Suzanne McCluskey and Mayor Karr are those
3 members.

4 So with that...

5 MR. BREWER: Planning Board Resolution
6 No. 25-05, Resolution For Preliminary and Final Site
7 Plan Approval, Merger, Design Waiver, and Variance
8 Relief.

9 Planning Board Borough of Morris
10 Plains. Application No. PB-1-24. Applicant:
11 McDonald's USA, LLC. Premises: 415 & 435 Speedwell
12 Avenue, Block 23, Lots 4 and 5.

13 WHEREAS, McDonald's USA, LLC (the
14 "Applicant" or "Developer") made application to the
15 Planning Board of the Borough of Morris Plains (the
16 "Board") for preliminary and final site plan,
17 variance and waiver approval for its proposal to
18 merge two existing lots and construct a McDonald's
19 restaurant (the "Development") and various site
20 modifications on property designated as Block 23,
21 Lots 4 and 5 on the Tax Map of the Borough of Morris
22 Plains, commonly known as 415 and 435 Speedwell
23 Avenue (the "Property" or the "Site") where the
24 property is owned by Milelli Morris Plains, LLC and
25 Milelli Morris Plains II, LLC, and

1 WHEREAS, Applicant published a hearing
2 notice in an official newspaper of the Board and
3 provided notice of the Application to those required
4 to receive the same in accordance with the law and
5 filed proofs of publication and of service with the
6 Board Secretary; and

7 WHEREAS, the Board determined that
8 proper notice had been given to establish
9 jurisdiction to consider the Application and held
10 hearings on the Application on September 16th,
11 October 21st, November 12th, December 9th --
12 November 12th and November 18th -- and December 9th,
13 16th and 18th, 2024, reviewed reports filed by the
14 Applicant and reviewed the reports of the Board
15 Engineer, William Ryden, P.E., and the Board Planner,
16 Elizabeth C. Leheny, P.P. and Board Traffic
17 Consultant, Harold K. Maltz, P.E., P.P., (all reports
18 attached hereto), considered the questions and
19 comments of the public, and considered the testimony
20 and exhibits presented by the Applicant; and

21 WHEREAS, public hearings were held
22 during which Frank J. Vitolo, Esq., represented
23 Applicant.

24 WHEREAS, after carefully considering
25 the evidence presented by the Applicant, the Board

1 now makes the following factual findings and
2 conclusions:

3 i. As requested in its Application, the
4 Applicant seeks the following relief from the Board:

5 A. Variance from Section 13-5.7 to
6 permit 32 parking spaces (inclusive of the two-space
7 electric vehicle credit and two ADA spaces), where 41
8 parking spaces are required.

9 ii. Section 13-5.7B(1) to permit zero
10 loading spaces, where one loading space is required.

11 iii. Section 13-5.8C(1)(1.1)(g) to
12 permit approximately 46.8 total square feet of wall
13 signs on the south façade of the building, where the
14 total area of wall signs on a single wall shall not
15 exceed one foot -- one square foot of sign area for
16 each linear foot of store frontage, but not more than
17 40 square feet.

18 iv. From Section 13-5.8C(1)(1.1)(h) to
19 permit 3.5-foot tall McDonald's logos/wall signs
20 along Speedwell Avenue, the southern facing façade,
21 and the eastern building façade, where the height of
22 a wall sign is limited to 2 feet.

23 v. From Section 13-5.8C(1)(1.1)(a) to
24 permit one façade sign on the rear of the
25 building/eastern building façade that is 14 square

1 feet where no signs are permitted on the rear of the
2 building, which does not face on a street.

3 vi. From Section 13-5.8C(7) to permit
4 five freestanding signs in the drive-through area,
5 where one freestanding sign is permitted.

6 vii. From Section 13-5.8C(7)(7.2) to
7 permit freestanding signs in the drive-through area,
8 where freestanding signs are only permitted in the
9 front yard.

10 viii. From Section 13-5.8C(7)(7.3) to
11 permit freestanding signs totaling approximately
12 75.4 square feet, where a maximum of 20 square feet
13 is permitted.

14 ix. Section 13-5.8C(7)(7.7) to permit
15 freestanding signs comprised of aluminum material and
16 red or yellow in color, where freestanding signs are
17 required to be constructed of painted wood, wood-like
18 or wood appearing material and shall be painted in
19 dull or matte finish colors with contrasting colors
20 for lettering and other message elements.

21 x. Section 13-4.1C(2)(f) to permit no
22 or limited screening of the off site parking spaces
23 along the front yard facing Dayton Road, where all
24 off-street parking and loading areas are required to
25 be screened by a fence, wall or landscaping when

1 facing premises situated in any residential zones.

2 b. Wavier from:

3 Section 13-4.14C(2.2)(d)(i) of the
4 Revised Ordinances of the Borough of Morris Plains
5 ("Revised Ordinances"), which requires parking spaces
6 to be at least 200 square feet, at least
7 10-feet-by-20-feet. The Applicant requests a design
8 waiver to permit 9-foot-by-18-foot parking spaces;

9 ii. Section 13-4.14C(2)(f) of the
10 Revised Ordinances, which requires screening with a
11 fence no higher than 6 feet, whereas a fence of
12 8 feet in height is proposed;

13 iii. Section 13-4.14C(2.1) and
14 13-4.14B(3.6) which requires a rounded 25 foot radius
15 at street intersections, where none is provided.

16 c. The Applicant further requests that
17 the Board grant an other waivers, deviations and/or
18 variances, which it may deem necessary, desirable or
19 appropriate with regard to the aforesaid Application.

20 2. At the public hearings, documents
21 A-1 through A-10 and O-1 through O-6 were marked as
22 Exhibits and entered into evidence.

23 3. In addition to the marked Exhibits,
24 the Applicant submitted and the Board considered the
25 following documents, which were made part of the

1 Application:

2 a. Application for development and
3 associated Checklist E (preliminary and final site
4 plan).

5 b. Certified list of property owners
6 in the Borough of Morris Plains within 200 feet of
7 the property.

8 c. Certification that taxes are paid
9 on each of the two tax lots.

10 d. Draft notice of hearing to property
11 owners within 200 feet of the property.

12 e. Draft notice of hearing to
13 newspaper.

14 f. Plans entitled "Preliminary and
15 Final Site Plan for McDonald's Restaurant, Lots 4 and
16 5; Tax Map Sheet No. 2 - Latest Revision Date
17 02-2023, 415 and 435 Speedwell Avenue (U.S.
18 Route 202) Borough of Morris Plains, Morris County,
19 New Jersey," prepared by Dynamic Engineering
20 Consultants, P.C. (Tiago F. Duarte, PE) dated May 31,
21 2024, and consisting of 18 sheets.

22 g. Signed and sealed copies of the
23 traffic report titled "Traffic Impact Study for
24 Proposed McDonald's Restaurant with drive-through,"
25 prepared by Dynamic Traffic (Craig Peregoy, PE and

1 Connor Hughes, PE), dated May 28, 2024.

2 h. Resolutions of approval related to
3 the Property.

4 4. The Board considered the following
5 submittals from its consultants:

6 a. Report of William Ryden, P.E. of
7 Anderson and Denzler Associates, Board Engineer,
8 dated September 5, 2024.

9 b. Report of Elizabeth C. Leheny,
10 A.I.C.P., P.P. of Phillips, Preiss, Grygiel, Leheny,
11 Hughes, LLC, Board Planner, dated August 8, 2024; and

12 c. Reports of Harold K. Maltz, P.E.
13 and P.P. of Hamal Associates, Inc., Traffic
14 Consultant, dated June 21 and October 18, 2024; and

15 5. The Board carefully considered
16 public comments, as well as the following testimony
17 at the public hearings:

18 a. Applicant produced Tiago Duarte,
19 P.E., of Dynamic Engineering who testified as to his
20 credentials and was accepted as an expert in the
21 field of civil engineering.

22 b. Mr. Duarte testified as to
23 Exhibit A-1, an aerial map that outlines the subject
24 property. He testified as to the size and location
25 of the property, which is 42,486 square feet, as well

1 as the surrounding uses. The property is currently
2 developed with a vacant Friendly's restaurant and
3 multi-tenant commercial space. There are currently
4 two full-movement driveways on Speedwell and one full
5 full-movement driveway on Dayton Road.

6 He further testified that the
7 Application proposes to make the driveway on Dayton
8 Road egress only. The Application seeks to remove
9 all site improvements and to construct a 3,036 square
10 foot building for a McDonald's drive-through
11 restaurant with associated parking and related
12 improvements.

13 c. He further testified that the new
14 building will have a 52 foot front yard setback from
15 the road while the existing Friendly's building is 23
16 -- 22.3 feet, a nonconforming condition.

17 He testified as to Exhibit A-2, a
18 colorized site plan rendering, with superimposed
19 proposed landscaping. The requirement for setback of
20 a building to the residential zone is 35 feet. The
21 existing Friendly's is 34.5 feet, while the proposed
22 McDonald's will be setback 96.7 feet from the
23 residential line. Access to the property is proposed
24 to be a single full-movement driveway on Speedwell
25 and an egress-only driveway on Dayton Road. The

1 proposed exit onto Dayton will be shifted 13 feet
2 from the adjacent residential property and 13 feet
3 closer to Speedwell Avenue.

4 d. He further testified that in
5 response to comments from the Board professionals,
6 the access onto Dayton will be restricted to left
7 turn out only, towards Speedwell Avenue and away from
8 the residential properties. The plans will be
9 amended to include changing the angle of the driveway
10 and using curbing to prevent right turns onto Dayton.
11 He further testified that the Application proposes 30
12 parking spaces with EV credits, of two EV credits for
13 a total of 32 spaces, whereas 41 are required. There
14 will be 39 seats inside the restaurant, and there are
15 between 10-12 employees depending on the time of the
16 day. Depending on the number of seats, the Morris
17 Plains Code would require 16 parking spaces, while
18 based on the size of the building area, the Morris
19 Plains Code requires 41 spaces.

20 He testified that since COVID,
21 approximately two-thirds of the traffic entering
22 McDonald's uses the drive-through and do not dine in
23 the restaurant.

24 e. Mr. Duarte testified that the
25 Application does not propose a designated loading

1 space because the deliveries only take about 30-45
2 minutes, are scheduled during off-peak hours and are
3 typically done twice per week. Off-peak hours mean
4 between the morning and lunch rush and between the
5 lunch and dinner rush.

6 He further testified about site
7 circulation, parking and movement through the
8 proposed drive-through lanes.

9 In response to questions from the
10 Board, he testified as to where the delivery truck
11 would typically park during the unloading process.
12 He testified that the drive-aisle is wide enough to
13 accommodate the parked truck and the movement of
14 traffic through the parking lot.

15 f. Mr. Duarte testified as to
16 Exhibit A-3, a colorized version of Sheet C-18,
17 "Vehicle Circulation."

18 He testified that the proposed
19 circulation pattern and lack of a dedicated loading
20 space is how typical McDonald's are designed and he
21 is not personally aware of cars being blocked by the
22 truck during the unloading process at other
23 locations.

24 He further testified that McDonald's is
25 seeking a waiver as it is proposing parking spaces

1 9-foot-by-18-foot rather than the required 10-by-20.

2 He testified that the parking is along
3 the perimeter, allowing for an overhang so that 18
4 feet in length is sufficient.

5 g. Mr. Duarte testified that they will
6 install new LED fixtures. In response from comments
7 from the Board's professionals, the Applicant will
8 lower some light levels in the parking area.

9 He testified as to the proposed
10 landscaping on the perimeter of the subject property,
11 and that the combination of the landscaping and
12 proposed 8-foot-high vinyl fence would prevent car
13 lights from shining onto neighboring residences. The
14 Morris Plains Code limits the height of the fence to
15 6 feet, while the Applicant seeks a variance to allow
16 for 8 feet to prevent/lessen light impact on the
17 neighboring residences.

18 In response to questions from the
19 Board, the Applicant consented to a condition that
20 the site lighting would be on a timer to dim the
21 lights during times when the restaurant is not open.
22 He testified that the Applicant will reduce
23 impervious coverage by 2,533 square feet, improving
24 and reducing peak runoff, and improvement to the
25 existing stormwater conditions. The Applicant will

1 also use perforated pipe to further reduce stormwater
2 runoff.

3 h. He testified as to Exhibit A-4, a
4 colorized elevation of the proposed restaurant. The
5 proposed siding is a fiber cement material.
6 Mr. Duarte testified about the means by which the
7 Applicant would meet the required performance
8 standards as to odors, which will be equivalent to or
9 an improvement of the mechanism utilized in the
10 Morris Plains Chick-fil-A and Chipotle. They will
11 also meet all performance standards as to liquid and
12 solid waste, noise, vibration and glare, which is to
13 be reviewed and approved by the Board's professionals
14 prior to and as a condition of obtaining a
15 certificate of occupancy.

16 i. He testified that the original
17 plans proposed five building signs, but the Applicant
18 reduced it to four. The code allows one sign per
19 wall facing the public right of way, which the
20 Application as amended proposes -- which the
21 Application as amended proposes two, requiring a
22 variance. A variance for sign area is also required,
23 where 32.8 square feet is proposed and 30.4 square
24 feet is permitted. In response to questions from the
25 Board, the Applicant amended the Application to lower

1 the wall sign count to three, thereby removing the
2 need for that variance.

3 He further testified that there is an
4 additional variance for the number of freestanding
5 signs, because the menu boards in the drive-through
6 meet the definition of a freestanding sign.

7 j. He further testified that the
8 refuse area will have a brick veneer to match the
9 building. The Applicant consented to the condition
10 that the gate to the refuse area would have a timed
11 lock such that pickups could not take place overnight
12 or before 7:00 a.m. The Applicant agreed to provide
13 granite block curbs and hairpin striping, thereby
14 deleting the originally requested waivers for those
15 issues. The Applicant will also provide a sight
16 triangle easement, removing that requested waiver as
17 well. The Applicant consented to the condition that
18 deliveries will be during daylight hours, and never
19 overnight. Mr. Duarte further testified about
20 compliance with the report of the Board's Engineer.
21 The Applicant had a pre-application meeting with the
22 NJDOT and have incorporated the initial comments to
23 widen the crosswalk from 6-feet wide to 10-feet wide.
24 They have also incorporated the Borough's and the
25 NJDOT's request to install pedestrian actuated

1 flashing overhead beacons with pedestrian crossing
2 sign assemblies and to install "Do Not Block"
3 striping on Speedwell Avenue, all of which must be
4 approved by the NJDOT.

5 He testified that the Speedwell Avenue
6 access will require approval of a major access permit
7 from the NJDOT.

8 k. In response to questions by the
9 Board Planner, the Applicant agreed to revise the
10 plans to incorporate an on-site crosswalk to channel
11 foot traffic to the front door. The Applicant will
12 also obtain the review and approval of the Board's
13 Planner on the final façade appearance and material.
14 Applicant consented to add signs at the entrance to
15 Dayton Road prohibiting right turns, and to add the
16 installation of bicycle racks.

17 Mr. Duarte received questions from the
18 public related to concerns about safety on and near
19 Speedwell Avenue and Dayton Road. The hearing was
20 continued until October 21, 2024.

21 l. Mr. Duarte was questioned by the
22 public at the outset of the meeting on October 21,
23 2024 about traffic, site layout and safety, expected
24 number of transactions and customers and the use of
25 Dayton Road by delivery trucks.

1 m. Mr. Duarte testified about
2 revisions that had been made to the plans since the
3 previous meeting.

4 He testified as to Exhibit A-5, a
5 colorized rendition of the site plan, which depicts
6 the redesign of the Dayton Road driveway.

7 He testified that changes were made to
8 the angle at which cars approach and enter Dayton
9 Road to deter any right-hand turns onto Dayton Road.
10 The entrance point is also shifted further from the
11 residential properties. The driveway width was
12 reduced from 20 feet to 15 feet to further deter
13 right-hand turns, and signage related to
14 no-right-turn was also added.

15 n. He testified that the driveway on
16 Speedwell was shifted 3 feet to the north, onto the
17 subject property and also widened to improve
18 maneuverability.

19 He testified further about
20 modifications to the landscaping plan, including the
21 addition of a 3-foot high berm along the rear of the
22 property and additional plantings along Dayton Road
23 to screen headlights.

24 He testified about bike parking and the
25 inclusion of trash receptacles and revisions to the

1 lighting.

2 He agreed to comply with the comments
3 and suggestions of the Board's Traffic Engineer as to
4 signage and striping.

5 He further agreed that all sight
6 lighting, including menu boards, will be turned off
7 except those that are needed at nighttime for safety
8 and security. The Applicant agreed that the hours of
9 operation will be from 6:00 a.m. to 11:00 p.m.

10 o. Mr. Duarte testified as to
11 Exhibit A-6, a vehicle circulation exhibit, which
12 demonstrates the ability of delivery trucks to enter
13 the site from the northbound side of Speedwell
14 Avenue.

15 He further testified that the
16 deliveries can be made from trucks that have side
17 loading which will allow for deliveries to go through
18 the door at the rear of the store.

19 Dr. Duarte was questioned by the public
20 regarding the revisions to the plans and site access
21 and circulation.

22 During colloquy of Mr. Duarte's
23 testimony, a member of the public who lives on Dayton
24 Road indicated she would not be in favor of
25 deliveries in the early morning before the restaurant

1 opened or at night after it closed. The hearing was
2 continued to November 12, 2024.

3 p. Mr. Duarte was questioned by
4 members of the public at the beginning of the
5 November 12, 2024 hearing.

6 q. The Applicant presented testimony
7 of Craig Peregoy, P.E., who testified as to his
8 qualifications and was accepted as an expert in the
9 field of traffic engineering.

10 Mr. Peregoy testified as to the traffic
11 report that he prepared dated May 8, 2024 and revised
12 September 13, 2024. The report looked at off-site
13 traffic impacts and on-site circulation, parking and
14 the drive-through design.

15 He testified that they took traffic
16 counts on Speedwell Avenue at times determined to be
17 the busiest on the roadway, as well as the times that
18 the proposed restaurant will be at its busiest.

19 He further testified about how and when
20 the traffic counts were taken. The peak hours for
21 traffic were determined to be 7:30 a.m. to 8:30 a.m.
22 and 4:45 p.m. to 5:45 p.m. on weekdays and 11:00 a.m.
23 to noon on Saturdays. They also counted pedestrians
24 crossing the crosswalk at Speedwell Avenue, which was
25 one pedestrian in the morning, eight in the evening

1 and four on Saturday.

2 In addition to the traffic counts, the
3 report utilizes a 2 percent growth rate utilized by
4 the NJDOT to model future traffic. The report uses
5 expected trip generation from the Institute of
6 Transportation Engineer's ("ITE") published rates for
7 fast food and drive-throughs.

8 r. He testified about the peak hourly
9 rates and the projected peak hourly rates based on
10 ITE data.

11 He further testified that both the ITE
12 data and McDonald's project on a daily basis 710
13 trips in and out of the restaurant.

14 He testified that utilizing the traffic
15 counts and ITE analysis along with that recommended
16 by the Board's traffic engineer, it is projected that
17 the Speedwell driveway will operate at a Level of
18 Service E or better, which is acceptable to the
19 NJDOT, who has the ultimate control over the
20 driveway. The data and analysis also indicated
21 acceptable exit queuing.

22 s. He further testified that they
23 collected traffic data on September 12, 2024 on a day
24 when school was in session to undertake a gap study
25 to determine the ability to access onto Speedwell

1 Avenue. Based on published highway standards, there
2 are sufficient gaps in traffic to accommodate 138
3 hourly exiting vehicles in the morning peak hours,
4 104 in evening peak hours and 113 in weekend peak
5 hours.

6 He further testified that based on
7 projections of a high of 60 morning, 44 evening and
8 74 Saturday exiting vehicles, there are sufficient
9 gaps in traffic.

10 He further testified that based on the
11 relocation and widening of the Speedwell Avenue
12 crosswalk and, the installation of pedestrian
13 actuated beacons and sign assemblies at the crosswalk
14 and removing one of the driveways on Speedwell, there
15 will not be any increased safety concerns for
16 off-site traffic, entering or exiting.

17 t. He further testified regarding the
18 adequacy of parking on site. He testified that
19 Morris Plains requires the greater number of spaces
20 based on the number of seats or based on building
21 size. Based on the number of seats, 16 spaces would
22 be required, while based on the building size, 41
23 spaces would be required. Based on the ITE standards
24 of parking spaces per seat, the average peak demand
25 would be for 18 parking spaces.

1 He testified that of the over 30
2 McDonald's that he has been involved in, the most
3 cars he has ever seen parked in the lot was 30, and
4 that was at a much larger restaurant with 97 seats as
5 opposed to 39 proposed at this location. Based on
6 using ITE data and his experience with other sites,
7 he testified that in his opinion 30 parking spaces
8 was more than enough parking to accommodate the
9 proposed restaurant.

10 u. He further testified about
11 drive-through queuing. He testified that the
12 drive-through system has a total capacity of 16 cars.
13 Based on data from other New Jersey McDonald's
14 between 60-75 percent of their customers use the
15 drive-through lanes.

16 He undertook a queuing analysis using a
17 presumption of 75 percent using the drive-through
18 which resulted in less than one percent chance of
19 exceeding eight spaces in the queue and the
20 probability of exceeding 12 spaces and backing onto
21 Speedwell Avenue was 0.01 percent.

22 He further testified that data from
23 single lane drive-throughs and double lane
24 drive-throughs support the analysis. Based on his
25 review of the data and analysis, he provided his

1 opinion that there was more than adequate queuing
2 space on site to accommodate the restaurant and not
3 back onto Speedwell Avenue.

4 v. He proposed -- he testified as to
5 Exhibit A-7 which depicts the turning maneuver for
6 cars pulling into the driveway.

7 He testified as to Exhibit A-8 which is
8 a truck turning exhibit depicting the preferred
9 location for the parked truck. The depicted space
10 for parking and unloading of the truck is the
11 standard layout used for McDonald's which do not use
12 or have a dedicated loading area.

13 He further testified as to Exhibit A-9
14 which depicts the ability of a vehicle to drive past
15 the parked truck.

16 w. Harold Maltz, the Board Traffic
17 Consultant, testified that he concurred with the trip
18 generation calculations, and that Mr. Peregoy had
19 made changes that Mr. Maltz had recommended, and that
20 he was satisfied with the calculations done by
21 Mr. Peregoy.

22 Mr. Maltz explained why he had
23 requested the gap study and testified that he was
24 satisfied with the results and that Mr. Peregoy had
25 satisfactorily addressed the other comments in his

1 report.

2 Mr. Peregoy then responded to questions
3 from the board and public. The hearing was continued
4 to November 18, 2024.

5 At the November 18, 2024 meeting,
6 Mr. Peregoy continued to be questioned by members of
7 the public regarding his traffic testimony.

8 y. The Applicant presented Nicholas
9 Graviano, P.P., who was sworn in. The hearing was
10 continued to December 9, 2024.

11 z. At the outset of the December 9th
12 meeting, the Applicant's attorney read a portion of a
13 letter from Chris Shay, the Morris Plains Fire
14 Marshal.

15 In response to Mr. Shay's request, the
16 Applicant will amend their plans to show a fire lane
17 in front of the building.

18 aa. The Applicant presented Nicholas
19 Graviano, P.P., who testified as to his credentials
20 and was accepted as an expert in the field of
21 planning.

22 Mr. Graviano testified as to the
23 existing conditions and proposed development which is
24 the subject of the Application.

25 He provided testimony quoting the

1 Master Plan Re-Examination Report and the ordinance
2 which permitted drive-throughs in the zone.

3 He testified that the Application meets
4 all setback requirements. He testified about the
5 modifications made to the initial plans to improve
6 safety and circulation including crosswalk
7 improvements, the design of the driveway entering
8 Dayton Road, landscaping and the reduction of
9 building mounted signs.

10 He provided his opinion that nothing in
11 the Application constitutes a substantial detriment
12 to the zone plan or zoning ordinance.

13 bb. He testified as to the request for
14 a variance for no loading space,
15 Section 13-5.7(b)(1). He referenced the testimony
16 that there will be only two deliveries per week and
17 testimony that the loading and unloading could be
18 done safely without a loading space, and that this is
19 the standard design for McDonald's in Morris County.

20 cc. He testified as to the request for
21 a variance for the number of parking spaces, Section
22 13-5.7(a), Schedule E.

23 He testified that the ordinance section
24 has two standards - one based on the number of seats
25 (which the Applicant complies with) and one for

1 restaurant size, for which a variance is required.
2 He testified that the testimony established that 30
3 spaces would easily satisfy the ITE standards and
4 that 30 spaces was more than sufficient for the other
5 31 McDonald's in New Jersey which were referenced.

6 In his opinion, the additional spaces
7 would not be needed to satisfy the parking demand and
8 constructing the spaces would create additional
9 detrimental impervious coverage.

10 dd. He testified as to the variance to
11 allow an 8-foot fence whereas 6 feet is the maximum
12 height permitted in the zone. The higher fence
13 creates more screening for the residential neighbors
14 and the benefit outweighs any detriment.

15 He testified that as to the sign
16 variances from Section 13-5.8(c) and referenced
17 Exhibit A-10 a revised architectural elevation of the
18 building, depicting the building mounted signs.

19 He testified that the Applicant was
20 willing to work with the Board's professionals as to
21 the final façade design. On the front elevation,
22 with a proposed McDonald's arches a height variance
23 is needed, where 3.5 feet is proposed and 2 feet is
24 permitted. On the south facing façade, the Applicant
25 seeks a variance for proposed height and square

1 footage of the Golden Arches sign. On the Dayton
2 Avenue frontage, which has a McDonald's letting sign,
3 the Applicant needs a variance for letter height.

4 He further testified that the lettering
5 height was selected to promote visibility and is
6 similar in size to several banks on Speedwell Avenue.

7 He further testified about the variance
8 from Section 13-5.8(c)(1) for internal sign lighting
9 where internal lighting is not permitted.

10 ee. He testified as to the variance
11 for the number of freestanding signs caused by the
12 menu boards.

13 He testified this variance is mostly a
14 technicality because the ordinance does not provide
15 for menu boards.

16 He testified that one freestanding sign
17 is permitted and five are proposed. There is only
18 one freestanding sign, which meets the size limit, on
19 Speedwell. The other four signs and menu boards for
20 the drive-through. The mixed use commercial overlay
21 on Route 10 does provide for menu boards, and the
22 proposed boards in the Application would meet those
23 requirements. The total square footage of the
24 freestanding signs is 75.4 square feet, whereas a
25 maximum of 20 square feet is permitted, requiring

1 another variance.

2 There is an additional variance for
3 freestanding signs in the side yard, where they are
4 only permitted in the side yard, necessitated because
5 the menu boards are located in the side yard.

6 Another variance for sign material is
7 required, where wood or wood-like material is
8 required and aluminium is proposed.

9 Finally, a variance for internally lit
10 signs is requested, whereas only indirect lighting is
11 permitted.

12 He further testified that the vast
13 majority of commercial uses along Speedwell Avenue
14 had no loading area.

15 ff. He further testified as to the
16 design waivers for parking stall size - 9-by-18
17 whereas 10-by-20 are required and the screening to
18 permit an 8-foot fence whereas there is a maximum of
19 6 feet permitted.

20 He testified that all of the variances
21 and waivers can be granted under the C-2 criteria in
22 that the purpose of the Municipal Land Use Law would
23 be advanced by deviation from the zoning
24 requirements.

25 He testified that the variances would

1 advance Purposes A, G and I.

2 gg. He further testified that the
3 benefits substantially outweigh any detriments. All
4 of the variances do not create a substantial
5 detriment to the zone plan or zoning ordinance, nor
6 to public good and there are solid reasons for
7 granting all of the requested variances.

8 Mr. Graviano was questioned by the
9 Board's professionals, Board Members, and Heather
10 Kumer, Esq., on behalf of several Borough residents,
11 and finally, by members of the public. Mr. Graviano
12 testified that the Applicant would amend the
13 Application to include goose-neck lighting and not
14 internally-lit signs to remove the need for variances
15 for internally lit signs.

16 hh. Heather Kumer, Esq., called Peter
17 Steck, P.P. to testify, who testified as to his
18 credentials and was accepted as an expert in the
19 field of planning.

20 ii. Mr. Steck testified about Exhibit
21 O-1. He testified as to the existing conditions of
22 the subject property. Mr. Steck questioned whether
23 the Applicant had presented testimony as to the odor
24 filtering system to be used and the noise from the
25 speaker. He said that there is a house maybe 10 feet

1 from where the delivery truck will park and that
2 "clearly there is a noise issue." Mr. Steck provided
3 his opinion that Section 13-5.7(d) creates the need
4 for a variance for the parking in the front yard
5 setback along Dayton Road.

6 As to the possibility of headlights
7 shining on residential properties, he testified he
8 did not know the nature of the proposed 8-foot
9 fencing.

10 During cross examination, Mr. Steck
11 testified that he did not attend any of the prior
12 meetings or review the transcripts of any of the
13 prior meetings. He stated that "Prior to this
14 evening, while I reviewed the application materials,
15 I did not attend any of the hearings or listen to the
16 prior testimony."

17 He was asked "And of course, if you had
18 reviewed the testimony you might have had a different
19 opinion in this case?"

20 He responded "I don't know."

21 kk. At the December 16, 2024 hearing,
22 Joseph Amorosa, P.E. provided his credentials and was
23 accepted as an expert in the field of traffic
24 engineering. Mr. Amorosa testified that in his
25 opinion the traffic study was flawed because he

1 believed there was flawed data collection.

2 On cross examination Mr. Amorosa
3 testified he had never prepared a traffic impact
4 study for a drive-through restaurant and could not
5 recall if he had ever critiqued a traffic study for a
6 drive-through restaurant.

7 11. Tom Battagliese provided his
8 credentials and was accepted as an expert in the
9 field of environmental issues. He testified about
10 issues related to environmental performance standards
11 for noise, odors and air pollution and provided
12 opinion that he believed the Applicant had not
13 demonstrated compliance with the performance
14 standards.

15 mm. The Board finds that the valid
16 concerns about the performance standards set forth in
17 the Morris Plains Code will be addressed by requiring
18 demonstration of compliance with all performance
19 standards as a condition of approval, as is provided
20 fro in the Code.

21 nn. At the conclusion of
22 Mr. Battagliese's testimony, a statement from Heather
23 Kumer, Esq., was read into the record and testimony
24 and comments were presented from members of the
25 public which included testimony about concerns

1 regarding noise, pollution, traffic and safety. At
2 approximately 11:00 the meeting was carried to
3 December 18, 2025 [sic]. At the December 18, 2020 --
4 I'm sorry -- December 18, 2024. At the December 18,
5 2024 hearing testimony was received from members of
6 the public related to concerns about noise,
7 pollution, traffic and safety.

8 6. With regard to the Property and the
9 Development, the Board finds the following:

10 a. The Property consists of two lots
11 located in the B-2 zone.

12 b. The Property consists of
13 approximately 0.976 acres.

14 c. The Applicant proposes to demolish
15 all existing structures and construct a 3,036 square
16 foot McDonald's Restaurant with a two-lane
17 drive-through, with 32 on-site parking spaces,
18 landscaping, lighting, paving and other related
19 improvements.

20 7. With regard to the Applicant's
21 request for design waiver relief, the Board finds the
22 following:

23 a. With respect to Sections:
24 13-4.14C(2.2)(d)(i), parking stall size, the Board
25 finds that enforcement of the current regulations

1 would be impracticable because the use of 10-by-20
2 foot parking stalls would further decrease the number
3 of parking stalls and will exact undue hardship
4 because of peculiar conditions pertaining to the
5 land, namely the size of the property which is being
6 developed with a permitted use.

7 b. Thus, the Board thus finds that
8 Applicant's requested design waiver from Sections:
9 13-4.14C(2.2)(d)(i) is reasonable and within the
10 general intent of the regulation.

11 c. With respect to Section
12 13-4.1C(2)(f), screening parking areas which faces
13 residential uses with a fence no higher than 6 feet
14 will be impracticable because an 8-foot high fence
15 would more effectively screen the property and would
16 exact an undue hardship because the alternative would
17 be an unreasonable amount of landscaping.

18 d. Thus, the Board finds that the
19 Applicant's requested design waiver from Section
20 13-4.1C(2)(f) is reasonable and within the general
21 intent of the regulations.

22 e. With respect to Section
23 13-4.14C(2.1) and 13-4.14B(3.6), which requires a
24 rounded 25-foot radius at street intersections, the
25 Applicant's testimony and exhibits demonstrate the

1 ability to safely maneuver into and from the
2 Property.

3 f. Thus, the Board finds that
4 Applicant's requested design waiver from Section
5 13-4.14C(2.1) and 13-4.14B(3.6) is reasonable and
6 within the general intent of the regulations.

7 8. With regard to Applicant's
8 requested variance relief, the Board makes the
9 following findings and conclusions:

10 a. Because the Property borders and
11 abuts a residential use, the maximum height of a
12 fence in the front yard is 4 feet and the side yard
13 is 6 feet, while the Application proposes a fence of
14 8 feet in height in order to effectively screen the
15 residential homes. A need was created for variance
16 relief pursuant to N.J.S.A. 40:55D-70(c)(2) from the
17 maximum fence height requirement.

18 b. The Board finds that such a
19 variance would create a more desirable visual
20 environment by effectively shielding the commercial
21 use and parking lot from the adjoining residential
22 uses. The Board finds that the benefit of deviating
23 from the requirement outweighs any detriment which
24 might arise from the height requirement because it
25 more effectively screens the residences with no

1 detriments.

2 c. Section 13-5.7A requires that a
3 restaurant building of 3,036 square feet would
4 require 41 parking spaces, while the Applicant
5 proposes a total of 32 spaces, 30 built and a
6 two-space EV credit, which results in a need for a
7 variance pursuant to 40:55D-70(c)(2).

8 d. The Board finds that the parking
9 variance would promote the public health, safety and
10 welfare by allowing the effective development of
11 property on which there is currently a vacant
12 restaurant and will promote a desirable visual
13 environment by allowing for the development of
14 property on which there is a vacant building, with a
15 use permitted in the zone.

16 The Board finds that the testimony of
17 the Applicant's experts, which was reviewed and
18 approved by the Board's consultants, established that
19 30 parking spaces are sufficient for the proposed use
20 due to the changing nature of fast food restaurants,
21 and will not have any detriment for that reason.

22 The Board gives less weight to the
23 testimony of Peter Steck, PP, because of his failure
24 to review the testimony of the Applicant's engineers
25 and his admission that his opinion might have been

1 different if he had read the testimony.

2 e. Section 13-5.7B(1) requires that
3 one loading space be provided, whereas the Applicant
4 seeks a variance for no loading spaces.

5 f. The Board finds that the variance
6 for no loading space would promote the public,
7 health, safety, welfare by allowing the effective
8 development of property on which there is currently a
9 vacant restaurant and will promote a desirable visual
10 environment by allowing for the development of
11 property on which there is a vacant building, with a
12 use permitted in the zone.

13 The Board finds that the testimony of
14 the Applicant's experts, which was reviewed and
15 approved by the Board's consultants, established that
16 a dedicated loading space is not necessary due to the
17 infrequent nature of deliveries and the ability to
18 safely take deliveries without a loading space and
19 will not have any detriment for that reason.

20 The Board gives less weight to the
21 testimony of Peter Steck, PP for the reasons set
22 forth above. The Board acknowledges that there was
23 testimony and concern about the potential noise from
24 delivery trucks, however that same concern would
25 arise wherever the delivery trucks were located

1 during deliveries and therefore granting of the
2 variance does not result in any greater noise issues
3 than requiring deliveries in a dedicated loading
4 space.

5 g. The Application seeks the following
6 variances for signage:

7 i. Section 13-5.8C(1)(1.1)(g) to
8 permit approximately 46.8 total square feet of wall
9 signs on the south façade of the building, where the
10 total of wall signs on a single wall shall not exceed
11 one square foot of sign area for each linear foot of
12 store frontage but not more than 40 square feet.

13 ii. From Section 13-5.8C(1)(1.1)(h) to
14 permit 3.5 foot tall McDonald's logos/wall signs
15 along Speedwell Avenue, the southern building façade,
16 and the eastern building façade, where the height of
17 a wall sign is limited to 2 feet.

18 iii. From Section 13-5.8C(1)(1.1)(a)
19 to permit one façade sign on the rear of the
20 building/eastern building façade that is 14 square
21 feet where no signs are permitted on the rear of the
22 building, which does not face on a street.

23 iv. From Section 13-5.8C(7) to permit
24 five freestanding signs in the drive-through, where
25 one freestanding sign is permitted.

1 v. From Section 13-5.8C(7)(7.2) to
2 permit freestanding signs in the drive-through area,
3 where freestanding signs are only permitted in the
4 front yard.

5 vi. From Section 13-5.8C(7)(7.3) to
6 permit freestanding signs totaling approximately 75.4
7 square feet, where a maximum of 20 square feet is
8 permitted.

9 vii. Section 13-5.8C(7)(7.7) to permit
10 freestanding signs comprised of aluminum material and
11 red or yellow in color, where freestanding signs are
12 required to be constructed of painted wood, wood-like
13 or wood appearing material and shall be painted in
14 dull or matte finish colors with contrasting colors
15 for lettering and other message elements.

16 h. The Board finds that the variances
17 set forth above related to signage would promote the
18 public health, safety and welfare by allowing the
19 effective development of property on which there is
20 currently a vacant restaurant and will promote a
21 desirable visual environment by allowing for the
22 development of property on which there is a vacant
23 building with a use permitted in the zone. They will
24 also provide sufficient visibility to passing
25 motorists.

1 The Board notes the intensity of
2 several of the signage variances was decreased by the
3 Applicant at the suggestion of the Board and its
4 professionals.

5 The Board finds that the testimony of
6 the Applicant's experts, which was reviewed and
7 approved by the Board's consultants, established that
8 the proposed signage is necessary for the effective
9 identification of the proposed restaurant and the
10 effective movement of vehicles on site and is similar
11 to the signage already existing in the vicinity on
12 Speedwell Avenue, and will not have any detriment for
13 that reason.

14 The Board gives less weight to the
15 testimony of Peter Steck for the reasons set forth
16 above.

17 i. Section 13-4.1C(2)(f) to permit no
18 or limited screening of off-street parking spaces
19 along the front yard facing Dayton Road, where all
20 off-street parking and loading areas are required to
21 be screened by a fence, wall or landscaping when
22 facing premises situated in any residential zones.

23 j. The Board finds that the variance
24 set forth above related to screening of off-street
25 parking spaces would promote the public health,

1 safety and welfare by allowing the effective
2 development of property on which there is currently a
3 vacant restaurant and will promote a desirable visual
4 environment by allowing for the development of
5 property on which there is a vacant building, with a
6 use permitted in the zone. The variance also
7 promotes the safe circulation and access because it
8 is required in part due to the re-alignment of the
9 egress driveway onto Dayton Road to prevent right
10 turns. Due to the extensive landscaping along other
11 portions of the Property facing Dayton Road, the
12 fencing and the movement of the existing driveway
13 exit point closer to Speedwell Avenue, the variance
14 will not have any detrimental impact.

15 a. As to all of the requested
16 variances, the Board finds that the benefits of
17 deviation would substantially outweigh any detriment;
18 variance relief can be granted without substantial
19 detriment to the public good and with no impairment
20 to the Borough's Zone Plan and Zoning Ordinance.

21 The Board finds that the Application as
22 presented does not require a front yard setback for
23 parking areas as set forth in Section 13-5.7D(1).
24 That section prohibits parking areas in the front
25 yard setback "unless specifically permitted in the

1 respective zone."

2 Another section of the Morris Plains
3 Code, Section 13-4.14(c), Schedule A is entitled
4 "Minimum Distance in Feet for Location of Parking and
5 Loading Areas" and for the B-2 zone, provides a
6 distance from the street right of way and from the
7 property lines, satisfying the exception of "unless
8 specifically permitted in the respective zone."

9 NOW, THEREFORE, BE IT RESOLVED by the
10 Planning Board of the Borough of Morris Plains in the
11 County of Morris and State of New Jersey on this 20th
12 day of January, 2025, as follows:

13 1. Preliminary and Final Site Plan
14 Approval, Lot Merger, Variances and Waivers as set
15 forth above are hereby granted as depicted on the
16 aforesaid plans as amended, subject to the conditions
17 hereinafter set forth.

18 2. Compliance with all fire and police
19 department comments and recommendations.

20 3. Applicant shall comply with and
21 revise the plans to address:

22 a. The June 21st and October 18, 2024
23 reports of the Board Traffic Consultant.

24 b. The August 8, 2024 report of the
25 Board Planner.

1 c. The September 5, 2024 report of the
2 Board Engineer.

3 4. Applicant shall submit revisions to
4 the façade and architectural plans to the board
5 planner and board engineer for review and approval
6 prior to signing of the final plans.

7 5. All deliveries shall be during
8 daylight hours during non-peak times and shall not
9 occur during overnight hours.

10 6. All sight lighting shall be on a
11 timer such that all lights except for those necessary
12 for safety and security, shall dim when the
13 restaurant is not open.

14 7. The trash/refuse enclosure shall
15 contain a timed lock that will be set to prevent any
16 trash/refuse pickup during overnight hours.

17 8. Applicant shall amend the plans to
18 provide for hairpin striping and the use of granite
19 block curbs.

20 9. Applicant to amend plans to include
21 the provision of "No Loitering" signs at locations to
22 be approved by the Board Engineer.

23 10. Applicant to comply with the
24 recommendations of the Board's Traffic Consultant
25 regarding the use of bollards to deter right-hand

1 turns onto Dayton Road.

2 11. Applicant shall comply with all
3 recommendations of the Board Traffic Engineer as to
4 signage and striping, including the outline of
5 pavement markings.

6 12. Hours of operation shall be
7 limited to 6:00 a.m. to 11:00 p.m.

8 13. Applicant shall amend the plans to
9 provide for fire lanes as recommended by the Borough
10 Fire Marshal.

11 14. Applicant to revise plans to
12 provide that all signs shall be lit with goose-neck
13 lighting and not internally lit.

14 15. Applicant shall amend the plans to
15 provide for greater landscaping in the northeastern
16 corner of the property between Dayton Road exit and
17 the eastern property line to shield residences on
18 Dayton Road from headlight glare.

19 16. Applicant shall amend the plans to
20 provide signage indicating that employee parking
21 shall be in spaces along the eastern property line
22 and shall require any employees to park in the
23 indicated spaces.

24 17. The Applicant shall execute a
25 Developer's Agreement with the Borough of Morris

1 Plains in a form satisfactory to the Borough Attorney
2 prior to the execution of the Site Plan, which shall
3 include, but is not limited to:

4 a. A requirement that the Applicant
5 post all necessary performance guarantees.

6 b. A requirement that the Applicant
7 post all necessary maintenance guarantees.

8 18. The Applicant shall be bound by
9 and comply with all the representations made by
10 Applicant and the Applicant's witnesses and
11 professionals before the Board at all public hearings
12 and the same are incorporated herein and are
13 representations upon which this Board has relied in
14 granting the approvals set forth herein and shall be
15 enforceable against the Applicant and any developer
16 of a particular section or parcel as if those
17 representations were made conditions of this
18 approval.

19 19. This Approval is additionally
20 expressly subject to the following conditions:

21 No trash or recycling shall be
22 scheduled for pickup prior to 7:00 a.m. or after
23 9 p.m.

24 b. Applicant shall perform noise
25 testing to ensure compliance with all noise standards

1 (65 dBA for daytime and 50 dBA for nighttime in
2 accordance with Ordinance 4-2019) prior to issuance
3 of a Certificate of Occupancy, in compliance with the
4 performance standard under the supervision of the
5 Construction Code Official.

6 In the event the Applicant fails the
7 said test, it shall install noise attenuation
8 measures to bring the site into compliance.

9 c. Applicant shall provide "No Idling"
10 signs at a location to be reviewed and approved by
11 the Board Engineer.

12 d. Prior to issuance of a Certificate
13 of Occupancy, Applicant shall demonstrate compliance
14 with all performance standards to be reviewed and
15 approved in writing by the Board Engineer and shall
16 comply at all times with the Borough Performance
17 Standards Ordinance.

18 Similarly, at the time of application
19 for Certificate of Occupancy, Applicant shall
20 demonstrate that the actual business to occupy the
21 tenant space, as finally constructed, conforms to the
22 Performance Standards Ordinance.

23 Continued compliance with Performance
24 Standard Ordinance shall be a requirement of
25 continued occupancy or operation of any process or

1 equipment.

2 e. All building facades shall be
3 constructed in accordance with the Architectural
4 Plans for the Site to be reviewed and approved by the
5 Board Planner.

6 f. Applicant to obtain all necessary
7 State, County and local approvals, including a major
8 access permit from the NJDOT in conformance with the
9 plans submitted and approved as part of this
10 Application.

11 20. Prior to the execution of Site
12 Plan:

13 a. Applicant shall obtain the written
14 approval of all plans, as finally revised, from the
15 Fire Department.

16 b. Applicant shall obtain approval of
17 the Morris County Soil Conservation District.

18 c. All plan revisions as required
19 elsewhere in this approval shall be submitted to the
20 Board Engineer, Board Planner and the Board Traffic
21 Consultant.

22 d. Applicant shall submit to the
23 Borough Engineer and Borough Attorney for review and
24 approval:

25 A Deed of Merger.

1 21. Prior to obtaining a construction
2 permit, the Commencement of Site
3 Construction/building permit, and/or land
4 disturbance, the following conditions shall be
5 satisfied, Applicant shall:

6 i. Pay all engineering inspection
7 fees.

8 ii. Schedule a pre-construction
9 meeting with the Borough Engineer and the fire sub
10 code official.

11 iii. Submit a construction cost
12 estimate to the Borough Engineer for determination of
13 inspection fee amount and payment of inspection fee.

14 iv. Install an orange construction
15 snow fence in order to protect trees and shrubs to be
16 retained.

17 v. Obtain a signed Site Plan.

18 22. Prior to the issuance of a
19 Certificate of Occupancy, the following conditions
20 shall be satisfied, Applicant shall:

21 i. Obtain the Fire Department's
22 written confirmation of installation of required fire
23 safety improvements, site familiarization and walk
24 through.

25 ii. Obtain Police Department's written

1 approval of traffic signs/markings and site
2 familiarization and walk through.

3 iii. Obtain the Borough Engineer's
4 written certification of satisfactory completion of
5 site improvements. Non-safety items such as
6 landscaping, trees, top course of pavement, etc., may
7 be deferred due to seasonal weather conditions.

8 iv. Post the two-year maintenance
9 guarantee for shade trees and landscaping.

10 v. Submit as-built plans showing
11 building setbacks and utility lines and profiles and
12 height of buildings.

13 vi. Obtain the Board Secretary's
14 written certification that adequate funds are in the
15 Board escrow account to cover all past, present and
16 future charges up to and including the issuance of
17 Certificates of Occupancy.

18 vii. All deed of easements shall be
19 recorded in the Morris County Clerk's office and
20 copies of same provided to the Board Secretary.

21 23. If any of the individual findings,
22 conclusions, or conditions as set forth in this
23 resolution are subsequently declared invalid, then
24 the remaining findings and conclusions shall be
25 deemed sufficient to support the decision of the

1 Board and the remaining conditions.

2 24. The Board Secretary shall provide
3 a copy of this Resolution to the Borough Attorney and
4 to the Construction Official within 20 days of the
5 date hereof.

6 25. This Resolution shall take effect
7 as provided by law.

8 MR. AUGENBLICK: Do you need a break?
9 That was good.

10 CHAIRMAN GARAVAGLIA: So can I have a
11 motion to approve this resolution.

12 MS. MCCLUSKEY: So moved.

13 CHAIRMAN GARAVAGLIA: Second?

14 MS. STECKERT: Second.

15 MS. COFFEY: I just have to -- was it
16 Ms. Steckert and then Ms. McCluskey or the opposite?

17 MS. STECKERT: Opposite.

18 CHAIRMAN GARAVAGLIA: Karen, roll call.

19 MS. COFFEY: Okay. Ms. Steckert?

20 MS. STECKERT: Yes.

21 MS. COFFEY: Ms. McCluskey?

22 MS. MCCLUSKEY: Yes.

23 MS. COFFEY: Mayor Karr?

24 MAYOR KARR: Yes.

25 CHAIRMAN GARAVAGLIA: Okay. Goodnight,

1 gentlemen.

2 MR. VITOLO: Goodnight.

3 CHAIRMAN GARAVAGLIA: Okay. The last
4 application on the agenda tonight is PB-3-24, 1625
5 Route 10, LLC, Block 171, Lot 45.02 and 225 Littleton
6 Road, LLC, Block 171, Lot 45.03.

7 MR. BREWER: I was contacted by the
8 applicant's attorney who understood with the weather
9 and the interest in other applications that they
10 asked to be carried.

11 So this -- the application PB-3-24 is
12 technically starting right now, but only for a
13 millisecond to carry it to the next meeting of this
14 board which is scheduled for February 10th, 2025,
15 correct.

16 MS. COFFEY: Correct.

17 MR. BREWER: So there will be no
18 further notice on that application.

19 FEMALE AUDIENCE MEMBER: Where will
20 that be?

21 MR. BREWER: I believe that is --

22 CHAIRMAN GARAVAGLIA: Back in our
23 normal spot, which is 531 Speedwell.

24 Good? Okay. Committee reports?

25 MS. COFFEY: I need a motion and a

1 second for that and we can do a voice vote to carry
2 it.

3 CHAIRMAN GARAVAGLIA: All right. So
4 can I get a motion to carry the Weichert to next
5 month's meeting.

6 MAYOR KARR: So moved.

7 MR. AUGENBLICK: Second.

8 MR. KELLY: Second.

9 CHAIRMAN GARAVAGLIA: Roll call, Karen.

10 MS. COFFEY: Mr. Augenblick.

11 MR. AUGENBLICK: Yes.

12 MS. COFFEY: Mr. Garavaglia.

13 CHAIRMAN GARAVAGLIA: Yes.

14 MS. COFFEY: Ms. Steckert.

15 MS. STECKERT: Yes.

16 MS. COFFEY: Ms. McCluskey.

17 MS. MCCLUSKEY: Yes.

18 MS. COFFEY: Mr. Kelly.

19 MR. KELLY: Yes.

20 MS. COFFEY: Mr. Bezold.

21 VICE CHAIRMAN BEZOLD: Abstain.

22 MS. COFFEY: Mayor Karr.

23 MAYOR KARR: Yes.

24 MS. COFFEY: Mr. Wolff.

25 MR. WOLFF: Yes.

1 MS. COFFEY: And Mr. Houston.

2 MR. HOUSTON: Yes.

3 CHAIRMAN GARAVAGLIA: Okay. Committee
4 reports, minor and master plan, any updates there.

5 MR. BREWER: No.

6 CHAIRMAN GARAVAGLIA: Old business.

7 (No Response.)

8 CHAIRMAN GARAVAGLIA: New business.

9 (No Response.)

10 CHAIRMAN GARAVAGLIA: Okay. Can I have
11 a motion to close tonight's meeting?

12 MAYOR KARR: So moved.

13 VICE CHAIRMAN BEZOLD: Second.

14 CHAIRMAN GARAVAGLIA: Roll call?

15 MS. COFFEY: Mr. Augenblick.

16 MR. AUGENBLICK: Yes.

17 MS. COFFEY: Mr. Garavaglia.

18 CHAIRMAN GARAVAGLIA: Yes.

19 MS. COFFEY: Ms. Steckert.

20 MS. STECKERT: Yes.

21 MS. COFFEY: Ms. McCluskey.

22 MS. MCCLUSKEY: Yes.

23 MS. COFFEY: Mayor Karr.

24 MAYOR KARR: Yes.

25 MS. COFFEY: Mr. Kelly.

1 MR. KELLY: Yes.

2 MS. COFFEY: Mr. Bezold.

3 VICE CHAIRMAN BEZOLD: Yes.

4 MS. COFFEY: Mr. Wolff.

5 MR. WOLFF: Yes.

6 MS. COFFEY: And Mr. Houston.

7 MR. HOUSTON: Yes.

8 CHAIRMAN GARAVAGLIA: Next scheduled

9 planning board meeting is February 10, council

10 chambers, 531 Speedwell Avenue.

11 Do we need a voice vote on that? No?

12 MAYOR KARR: Motion at adjourn.

13 CHAIRMAN GARAVAGLIA: Motion to

14 adjourn?

15 MS. STECKERT: Second.

16 MAYOR KARR: All in favor?

17 (Whereupon, all present members respond

18 in the affirmative.)

19 (Whereupon, this meeting is concluded.

20 Time noted: 11:06 p.m.)

21

22

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24

25

C E R T I F I C A T E

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Remote Online Notary Public, Notary ID. #1810618, 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 RON Notary
Public Notary ID. #1810618, Notary
Expiration Date May 27, 2028

Dated: _____