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WEST AMWELL TOWNSHIP  
ZONING BOARD OF ADJUSTMENT

JANUARY 5, 2017  
7:00 P.M.

HELD AT: WEST AMWELL TOWNSHIP MUNICIPAL BUILDING  
150 Rock town-Lambertville Road  
Lambertville, New Jersey 08530

TRANSCRIBED BY: DONNA BRUNCK, CCR

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12 ROBERT MARTUCCI, Engineer

13 JAMES KYLE, Planner

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1                   MR. FULPER: We are going to call the  
2 board of adjustments meeting back to order. I'm  
3 going to move on to our next item, which is the  
4 completeness of public hearing for Vernor/Lubchansky  
5 A-Z Venue Management, LLC, Block 11, Lot 28.

6                   So where we left off last month,  
7 township's hired attorney was cross-examining your  
8 planner.

9                   MR. LANZA: I believe that according  
10 to the transcript, we left off with the testimony of  
11 Mr. Lydon. We started with him.

12                   MR. FULPER: Okay.

13                   MR. LANZA: By the way, Mr. Chairman,  
14 members of the board, my name is John Lanza. I have  
15 the privilege of representing West Amwell Township  
16 in opposition to this application. My associate,  
17 Mr. Trofimov, was here last time because I was  
18 unable to attend. I read the transcripts and I read  
19 up to the point of the adjournment because of the  
20 time, and I understand that my witness, my expert  
21 has been qualified and had just started his  
22 testimony when we had to adjourn, so I at this point  
23 have Mr. Lydon here and we can continue.

24                   MR. FULPER: Maybe just give your  
25 name and who you are just so the board can just

1 refresh where we are at.

2 MR. LYDON: I'm Steve Lydon,  
3 professional planner, employed at Burgis Associates  
4 for about the last 15 or so years.

5 MR. FULPER: Okay.

6 MR. LANZA: Before we start, Mr.  
7 Chairman, I have one housekeeping matter. The last  
8 time we submitted a report dated October 25, 2016  
9 and it was unsigned, and the board requested the  
10 signed report, which I have. The old report was  
11 labeled O-1, for Objector 1, and this is the signed  
12 report, so I guess we can label it.

13 MR. FULPER: This is the Burgis  
14 report?

15 MR. LANZA: This is the Burgis report  
16 for Mr. Lydon. The only changes that may have been  
17 made would be typographical errors or spelling.

18 MR. FULPER: Okay.

19 MS. HALL: It was 01?

20 MR. LANZA: 1.1 maybe.

21 MS. HALL: Okay, 1.1.

22 MR. LANZA: The second thing I'd like  
23 to mark --

24 MR. PALILONIS: Excuse me, it's an  
25 addendum, 1.1.

1                   MR. LANZA: The second thing I'd like  
2 to mark for identification is a map that was  
3 prepared at the Burgis office under the supervision  
4 of Mr. Lydon and which delineates buildable areas  
5 with the exclusion of slopes that would disqualify  
6 it for buildable area. He will testify to this, but  
7 I'd like to at least mark it for identification at  
8 this point which would be 0-3, and I have numerous  
9 copies to pass around to the board.

10                   MR. FULPER: Who's the author of  
11 that?

12                   MR. LANZA: It's the Burgis office  
13 prepared by under the supervision of Mr. Lydon. We  
14 have a similar map that was marked into evidence  
15 last time. This is just updated to actually  
16 delineate some of the areas that would disqualify  
17 for buildable area because of slopes. There will be  
18 testimony to that effect.

19                   MR. FULPER: Just remember during  
20 your speaking and your testimony, speak loud so we  
21 can catch you on the tape. Sometimes the tape has a  
22 hard time picking up voices.

23                   MR. LANZA: Yes, sir. With that I'll  
24 start with the testimony.

25                   MR. FULPER: Okay.

1 EXAMINATION BY MR. LANZA:

2 Q. Just to catch up, sir, could you  
3 identify yourself for the board and your profession?

4 A. Sure, Steven Lydon, L-y-d-o-n. I'm a  
5 professional planner and member of the American  
6 Institute of Certified Planners.

7 Q. Are you a licensed planner in the  
8 State of New Jersey?

9 A. Yes, I am, for 25 years or so.

10 Q. During that time have you reviewed  
11 and made applications for purposes of variances,  
12 specifically conditional variances?

13 A. Yes, I have.

14 Q. Approximately how many times?

15 A. I haven't counted them. It's been a  
16 long career. I don't count how many times I've  
17 appeared before boards or how many nights I'm out.  
18 I just don't know.

19 Q. Have you continuously practiced as a  
20 professional planner in the State of New Jersey over  
21 your 25 years?

22 A. Yes, I have.

23 Q. And during that time, have you  
24 reviewed maps?

25 A. Yes.

1 Q. Have you reviewed surveys?

2 A. Yes, I have.

3 Q. And you've reviewed topographical  
4 maps?

5 A. Certainly, yes.

6 Q. This is in conjunction with your  
7 career as a planner?

8 A. Yes.

9 Q. And, sir, I retained you or the  
10 township retained you this evening so that you could  
11 give testimony regarding this application?

12 A. That is correct.

13 MR. LANZA: At this time, I know it  
14 was done before, but I would move Mr. Lydon as a  
15 professional planner licensed in the State of New  
16 Jersey and qualified to give opinions in that  
17 regard.

18 MR. FULPER: He was accepted.

19 THE WITNESS: Thank you.

20 Q. Mr. Lydon, could you just generally  
21 explain the nature of the application that you  
22 reviewed?

23 A. Sure. First, the property, which is  
24 about 13.8 acres or so, is in the Rural Residential  
25 5 zone. An application has been filed with the



1 board to operate an assembly use on that 13.8 acre  
2 parcel. Assembly uses are conditional use in the  
3 RR-5 zone. The applicant acknowledges that certain  
4 conditions attach to the zone are not complied with  
5 with this particular application, so the applicant  
6 is therefore seeking a, what's called a D-3  
7 conditional use variance from this board.

8           The specific conditions which the  
9 application does not comply with is the failure to  
10 have four contiguous buildable areas on the property  
11 and then multiple structures, including the pool  
12 terrace area, the gazebo, and a barn encroach into  
13 the required setback areas.

14           Q.           Now, sir, what is the nature of the  
15 specific use to which the applicant is making this  
16 application for a conditional use and a conditional  
17 use variance?

18           A.           He's seeking to hold event functions  
19 at the site which are -- have been characterized as  
20 drawing large crowds, and there's been talk about a  
21 bridal suite, photos at the gazebo, a tent being  
22 installed on the property, some portable toilets  
23 being installed on the property, and there's also  
24 been testimony that there is a lack of parking on  
25 the property.

1 Q. Sir, in preparation for your review  
2 of this matter, your report and your testimony, did  
3 you review certain documents?

4 A. Yes. We reviewed a number of  
5 documents, and I'm going to have to rely on my  
6 October 5th report.

7 Q. Is that October 25?

8 A. Excuse me, October 25th, yes. I  
9 reviewed the West Amwell 2008 Natural Resource  
10 Inventory, which was an then updated in 2012 and  
11 2015. I reviewed the West Amwell Township  
12 Comprehensive Master Plan of 2012. I also reviewed  
13 the relevant portions of the land development  
14 ordinance that the West Amwell governing body has  
15 adopted. I've reviewed the application form for  
16 variance/appeal signed by James Vernor. I don't  
17 have a date of that, however. I reviewed the  
18 topographic survey of Brookmill Farm's Tax Lot 28,  
19 Block 11, West Amwell Township, New Jersey revised  
20 March 21, 2016, and that was prepared by Hopewell  
21 Valley Engineering. I reviewed a buildable area  
22 plan of Brookmill Farm's same tax and lot data also  
23 prepared by Hopewell Valley Engineering, a variance  
24 and plot plan for the same property prepared by the  
25 same engineering firm. I also reviewed an

1 application review memo dated August 19, 2016  
2 prepared by your zoning planner, K.P. Kyle Planning  
3 and Design.

4 Q. When you reviewed the zoning  
5 ordinance for West Amwell Township, did you review  
6 the conditional uses for the RR-5 zone?

7 A. Yes, I did.

8 Q. And among those conditional uses, is  
9 the assembly use a conditional use?

10 A. Yes, it is.

11 Q. And is that the area in which the  
12 applicant is seeking relief from this board?

13 A. Yes, it is.

14 Q. Did you review the definition of  
15 assembly in the ordinance?

16 A. I did.

17 Q. In your 25 years of experience and  
18 your review of these documents, did you form an  
19 opinion as to whether or not this is a proper  
20 application of the conditional assembly use in this  
21 zone?

22 A. Yeah, I've concluded that it's not.  
23 The applicant in my estimation, in my professional  
24 opinion is not an assembly use, because he doesn't  
25 qualify under the terms of the definition for

1 assembly use, and rather than filing a D-3  
2 application with this board, I believe the applicant  
3 should have filed a D-1 application, which is, as  
4 you all know, the traditional use variance  
5 application.

6 Q. As you are aware from the testimony  
7 last time that any application for D-1 variance has  
8 been withdrawn and it's not being made before this  
9 board, correct?

10 A. I wasn't sure if it had been  
11 withdrawn, but I do acknowledge that the applicant  
12 has filed an application seeking D-3 relief, yes.

13 Q. Now, the assembly use is defined at  
14 the West Amwell code 109-12 page, correct?

15 A. Yes.

16 Q. And the assembly use, and I will read  
17 it for purposes of the board and which they know  
18 this already, but the public and your testimony. It  
19 says, "Assembly, a use which is a permanent  
20 facility, building, structure or installation which  
21 is providing for civic, educational, political,  
22 religious or social assemblage purposes. This term  
23 shall include non-profit or for profit facilities  
24 and shall include but may not be limited to houses  
25 of worship, banquet facilities, lodges, fraternal

1 organizations, civic organizations and funeral  
2 homes."

3 Did I read that correctly, sir?

4 A. Yes, you did.

5 Q. Now, in this assembly use, there's a  
6 word permanent that defines facility and other uses?

7 A. Correct.

8 Q. Is permanency a requirement for the  
9 assembly use?

10 A. Yes, it is.

11 Q. Now, in that definition of assembly  
12 that I've read to you, is there any mention of the  
13 word temporary?

14 A. No, there is not.

15 Q. Is there any mention of a temporary  
16 facility such as a tent or similar temporary  
17 structure?

18 A. No, not at all.

19 Q. Why is it important that for an  
20 assembly use that the facility be a permanent  
21 building or structure or installation?

22 A. The event functions such as those  
23 described under the assembly definition are  
24 generally fairly intense or high intense operations.  
25 They are often held but not necessarily at nighttime

1 hours. There's often amplified music. There are  
2 lights. There are usually large crowds. In order  
3 to provide for safe and efficient operation of the  
4 site and to minimize externalities to the  
5 surrounding areas, event functions are typically  
6 installed or occur in permanent structures and have  
7 things like permanent bathrooms, permanent lighting,  
8 permanent sound systems, permanent buildings and  
9 permanent on-site parking facilities.

10 Q. If structures are temporary, is there  
11 any real way to control where they are or a site  
12 plan that is fixed and established?

13 A. I believe it's much more difficult  
14 and it also provides for opportunities for honest  
15 mistakes and miscommunication. If this board were  
16 to approve a building that gets built where it was  
17 approved for, there would be no question about where  
18 the building is. If there's a tent structure or  
19 some other non-fixed and a portable structure such  
20 as a tent, there is opportunity for mischief,  
21 whether intentional or unintentional. Properties  
22 change. Things change. Location of a non-permanent  
23 structure can also change.

24 Q. Is the permanent structure that's  
25 referred to in the assembly definition, how does

1 that relate to the structure itself and the way that  
2 it would be used?

3           A.           Well, it defines it. Another thing  
4 with temporary structures, they can be enlarged.  
5 All of a sudden there's a need for a larger tent  
6 structure for any number of reasons, and so what the  
7 board thinks they approved is one thing and what it  
8 evolves into when it's not a temporary structure  
9 attached to the ground can be very different. When  
10 a building is approved and constructed according to  
11 the approval, that kind of evolution is very  
12 difficult to have occur unless there's another  
13 appearance before a board.

14           Q.           In your experience and in your  
15 opinion, sir, when we talk about a permanent  
16 structure, is that referring to the principal use?

17           A.           I like the term core elements.

18           Q.           What do you mean by core elements,  
19 sir?

20           A.           Well, usually with a use there are  
21 certain facets of it which are very integral to that  
22 particular use. There are other elements which may  
23 not be integral to the particular use and may be  
24 seen only rarely at an event function type facility.  
25 For instance, to bring it back to this one, there's

1 been testimony that there's something called a  
2 bridal suite. I'm not saying there's anything wrong  
3 with having a bridal suite as part of a banquet  
4 facility or an event function, but it's not typical.  
5 More event function sites don't have bridle  
6 facilities than do, so I would consider that to be a  
7 non-core element of the use. I would think in a  
8 site or a property rather that hosts nonresidential  
9 activities and functions, a hall is a core element.  
10 I would think that in my experience lighting, music,  
11 I would go so far as to say a bar and dancing area  
12 are core elements of a hall. They may not be used  
13 for every event, but they are still what you would  
14 anticipate and expect to find.

15                   I would include in that core element  
16 typical and customary sanitary facilities. I would  
17 also include as a core element off street parking  
18 facilities, because most ordinances, including West  
19 Amwell's require that a place that, a location that  
20 hosts events provide off-street parking in  
21 relationship to the anticipated intensity of the  
22 use, so because it's a requirement of a governmental  
23 entity, I think something like off-street parking,  
24 even though it may be an accessory use in a typical  
25 zoning parlance, still is a core element of a event



1 function site.

2           Q.           What would be the core element to a  
3 use that anticipates up to 250 guests plus caterers  
4 and other service people, what would be the core  
5 elements that you would anticipate for this type of  
6 use in a site such as this?

7           A.           Well, you would start by entering in  
8 through a paved driveway and entering a paved  
9 parking field, and that parking field would need to  
10 have the typical uses and features that your own  
11 parking lot has. It would need to have sidewalk,  
12 would need to have lane striping and arrows. It  
13 would need to have, if it's large enough,  
14 directional signage. It would be paved, signed. It  
15 would have to have lighting, storm water management  
16 controls. It would need to be a fully designed and  
17 engineered in my estimation parking area, because  
18 it's, again, required by ordinance.

19                       Then I think in a facility that has  
20 the capacity of 250 people or thereabouts, I believe  
21 you need to have an appropriately designed and  
22 constructed permanent building where the noise, the  
23 lights, the bathroom facilities, are provided in an  
24 enclosed built-to-code fire safe structure.

25           Q.           Now in the assembly use as set forth

1 in the West Amwell zoning code, that refers to a  
2 permanent facility, building structure or  
3 installation, correct?

4 A. Yes.

5 Q. Is that permanent facility, building,  
6 structure or installation part of this application?

7 A. It's not part of this application,  
8 no.

9 Q. What about bathroom facilities are  
10 permanent bathroom facilities part of this  
11 application?

12 A. No.

13 Q. Would you anticipate too that any  
14 bathroom facilities would also have to be accessed  
15 by the disabled?

16 A. Absolutely.

17 Q. ADA requirements?

18 A. ADA and New Jersey barrier free  
19 design compliance.

20 Q. Have you seen anything in this  
21 application that establishes any type of permanent  
22 facility bathroom facilities for people and even the  
23 disabled people?

24 A. No, I have not.

25 Q. Now, getting back to the standards

1 that are required by the ordinance, and these are  
2 standards that come under the conditional use part  
3 of the ordinance, first of all, what are the uses in  
4 the RR-5 zone? Do you recall?

5           A.           They are primarily residential, and  
6 as I look through your schedule, which is entitled  
7 Schedule 3, Schedule 3 uses, the RR-5 has been  
8 updated to allow for a low and moderate income  
9 housing such as accessory apartments for affordable  
10 housing, accessory dwellings, so that tells me it's  
11 a current ordinance.

12                   The other permitted uses are cluster  
13 residential development. Those are typically, those  
14 ordinances are typically adopted to minimize inner  
15 structure extensions and to preserve environmental  
16 features of a site. They also allow for community  
17 residence, which again is a recent addition to many  
18 ordinances because of case law.

19                   Family daycare and farms are all  
20 listed as permitted uses in the RR-5 as are home  
21 occupations, municipal uses, park and open space,  
22 single family residences and that's the -- those are  
23 the list of principal permitted uses.

24           Q.           I'd like to refer you to West Amwell  
25 Land Development Ordinance Section 109-104 that

1 refers specifically to places of assembly. What  
2 restrictions or what conditions are placed upon  
3 places of assembly pursuant to the ordinance?

4           A.           The overall size must be 5 acres for  
5 the particular property, and four of those have to  
6 be contiguous buildable areas. Let me say that  
7 again. Of those 5 acres, there needs to be four  
8 contiguous buildable areas within the site. There  
9 is a requirement that buildings, whether they be  
10 principal or accessory, be no less than 75 feet from  
11 property lines, unless the underlying zone requires  
12 a greater setback, and then the maximum lot coverage  
13 is limited at 35 percent of the lot area.

14           Q.           Now, sir, I want to direct your  
15 attention to the issue of buildable area.

16           A.           Yes.

17           Q.           And specifically I'm going to refer  
18 you to what I'm going to mark for identification as  
19 O-3.

20                               (Exhibit O-3, Map dated 1/4/17, is  
21 received and marked for identification.)

22           Q.           Can you identify O-3?

23           A.           Yes. O-3 is an exhibit that our  
24 office prepared and it's dated by the way of January  
25 4, 2017 based on a map and exhibit submitted by

1 Hopewell Valley Engineering.

2 Q. How did you use the map submitted by  
3 Hopewell Valley Engineering?

4 A. We scanned it into the computer and  
5 then we did an analysis of the steep slopes that are  
6 on the site, and according to Hopewell engineering,  
7 there are three discreet areas of -- that contain  
8 buildable areas. The first two areas, area one and  
9 two, we had a slight difference of opinion, if you  
10 will, on the overall size of the buildable area.

11 Q. Now, is O-3 a true and accurate  
12 depiction of your efforts to determine buildable  
13 areas on this particular site?

14 A. Based on the West Amwell code, yes,  
15 it is.

16 Q. How did you do that?

17 A. As I said, we scanned it into the  
18 computer, produced this and then analyzed it using  
19 CAD data, the CAD programming, to identify and  
20 isolate those areas of the identified buildable  
21 areas that exceeded 25 percent slope for at least  
22 ten feet.

23 Q. Can you describe the colored areas of  
24 the map and what they represent?

25 A. Yes. Hopewell Valley Engineering

1 used a gray tint to identify and delineate the areas  
2 they believed fell within the definition of  
3 buildable area.

4 Q. Is the overall map a true and  
5 accurate replica or reproduction of the Hopewell  
6 Valley map?

7 A. Yes, it is, under normal industry  
8 standards. When you scan in a map, there might be a  
9 slight distortion, but it is for planning purposes,  
10 it's certainly accurate and sufficient.

11 Q. Now, I notice there's some areas  
12 marked in red. What do they represent?

13 A. Yeah, those areas on this Exhibit O-3  
14 are the areas that our office determined include  
15 slopes of 25 percent or greater based on the  
16 provisions in the ordinance for how you measure  
17 steep slopes, the ten-foot.

18 Q. Were those slopes depicted on the  
19 applicant's maps?

20 A. As being buildable, yes.

21 Q. Was there a topographical map that  
22 you referred to to determine the slopes?

23 A. Well, this map shows the topography  
24 on the map, so we use this map with the topography  
25 provided by Hopewell Valley Engineering.

1 Q. So the topography and slopes on 0-3  
2 are the same or duplicative of what the applicant's  
3 engineer provided?

4 A. That is correct.

5 Q. Did you determine the largest  
6 buildable area on -- at the site?

7 A. Yes. And what we found was Hopewell  
8 Valley Engineering determined that there's a  
9 buildable area of three. We found in fact --

10 Q. Wasn't it 3.7?

11 A. Buildable area, three. And that we  
12 found, in fact, that was really two areas. They  
13 identified buildable area three as including 3.7  
14 acres. We found a number of discreet areas which  
15 exceeded 25 percent slope, and we marked those in  
16 red, and, in fact, this exhibit tells you how large  
17 those discreet areas are, and it also divided  
18 buildable area three into two parts, so we've called  
19 a smaller part towards the western section of it as  
20 buildable area four. Once you -- once we subtracted  
21 the square foot represented by the red delineation  
22 and buildable area four, we found that what had been  
23 called buildable area three is not 3.7 acres.  
24 Rather, it's 3.18 acres.

25 Q. So what is the largest buildable area

1 that's contiguous at the site?

2           A.           It is 3.18 acres, which is below the  
3 required 4 acres for an assembly use in this  
4 particular zone.

5           Q.           Now, did you do -- first of all, what  
6 is the criteria, the statutory criteria, for a D-3  
7 or conditional use variance?

8           A.           It's a little bit relaxed, if you  
9 will, from what the traditional D-1 requires. And  
10 it still has a positive and negative criteria, but  
11 the positive criteria is somewhat relaxed, I think  
12 that's a good word, and really the question to be  
13 answered is does the site continue to be an  
14 appropriate location for the proposed use,  
15 irrespective of the fact that the property does not  
16 comply with either one or more of the ordinance  
17 imposed conditions.

18          Q.           We have -- it didn't comply, you  
19 testified, with the buildable area?

20          A.           Well, they testified to that too, if  
21 I might interrupt.

22          Q.           Yes.

23          A.           They testified to that as well. We  
24 are just furthering the testimony and, in fact,  
25 reduce the amount of buildable area. There's an



1 agreement that this site does not contain the 4  
2 acres of buildable area that the ordinance requires.

3 Q. There is also testimony or an issue  
4 with the requirement that there be a 75-foot  
5 sideline setback?

6 A. Yet, for a number of structures on  
7 the property, yes.

8 Q. Are any of these structures located  
9 in the largest buildable area?

10 A. No, they are not. By the way, I  
11 might mention that the largest buildable area is  
12 separated from Mill Road by the creek, which, if I  
13 pronounce it right, you'll all laugh, but it's  
14 Alexauken Creek? I'm sure I butchered that. So the  
15 largest buildable area is separate from the road by  
16 a New Jersey ranked category one stream.

17 Q. Is it significant to this application  
18 that the creek traverses the property?

19 A. I think it does, absolutely.

20 Q. Is that creek depicted on your  
21 duplicate map from the applicant's engineer?

22 A. Yes. It pretty much bisects the  
23 property, traveling or flowing from the south to the  
24 north.

25 Q. How does that impact the application

1 in your opinion, sir?

2           A.           Well, I think it makes it very  
3 difficult to provide an integrated comprehensive  
4 event function on this site. You have steep slopes  
5 along many of the outside property lines and then  
6 you have a C-1 stream which is the highest category  
7 of streams in New Jersey, by the way, traversing  
8 through the property nearly bisecting it, and the  
9 steep slopes in many instances run right down to or  
10 near the stream top of bank, and that's an important  
11 consideration, because your own ordinance regulates  
12 deep slope development, and the State of New Jersey  
13 regulates development along category one streams and  
14 typical the often applied buffer is 300 feet outward  
15 from the top of bank along both sides of the stream,  
16 so you are talking about an extensive area that  
17 comes under state regulation, and I think that  
18 disturbs and disrupts efforts to create an  
19 integrated development on this particular property.

20           Q.           In, on O-3 there is an area depicted  
21 in just above the larger area, area three. I think  
22 you said you named it area four?

23           A.           Yes, for the purposes of O-3 we  
24 identified that as buildable area four, because it's  
25 now separated from buildable area three.

1 Q. Now, there is some structure on that  
2 property in that area, correct, the tennis court?

3 A. That's what it's labeled here, yes.

4 Q. And that tennis court is on  
5 approximately how many acres, buildable acres? That  
6 would be in buildable area four?

7 A. Buildable area four is describe as  
8 including .026 acres or 11,255 square feet in two  
9 locations, the north and the south end. The tennis  
10 court extends beyond the limits of the buildable  
11 area No. 4.

12 Q. And the proposal or the buildable  
13 areas depicted on O-3 in the largest buildable area,  
14 the 3.1 acres there presently is no permanent  
15 structure, correct?

16 A. There's a slight encroachment by an  
17 existing barn on the far northern end, and then  
18 there are, there's at least one pathway which  
19 traverses it at the far northern end. Other than  
20 that, there are no structures on the buildable  
21 areas, yes.

22 Q. Does the application contain any  
23 plans or specifications for the construction of a  
24 permanent facility in the buildable area three?

25 A. No, it does not.

1 Q. Now I'd like to address an issue of  
2 parking for up to maybe 250 guests. Is parking a  
3 requirement for this type of use at this location  
4 and site?

5 A. Yes, it is. Absolutely.

6 Q. And how important is that to an event  
7 with 250 people max?

8 A. I think it's critical. You need a  
9 way to move people onto the site. I'm sorry.

10 Q. And the parking, are you aware of any  
11 permanent parking facilities that have ever been  
12 proposed for this particular use at this site?

13 A. No, I'm not aware of any.

14 Q. Now, as far as off-site parking, off  
15 this site, are you aware of any off-site parking  
16 that's been provided for -- by the applicant in this  
17 application?

18 A. Yeah, there was testimony concerning  
19 it. There were no plans provided to describe or  
20 locate it or even indicate how many stalls were  
21 being utilized.

22 Q. Has there ever to your knowledge in  
23 this application been any type of traffic study?

24 A. There has not been a traffic study.

25 Q. Any study to implicate or reflect to

1 give the board information regarding how traffic  
2 would be affected in the neighborhood if they  
3 granted this conditional use variance?

4           A.           No, there's been no study presented  
5 to the board that would describe and identify and  
6 quantify the impacts of traffic to this, if this  
7 application were approved.

8           Q.           And assume that the applicant has  
9 testified that the site itself is, does -- is not  
10 conducive to any parking of this magnitude. Would  
11 you agree with that?

12          A.           Yes, I would.

13          Q.           Now, if there were -- is parking for  
14 this use for between 150 and 250 people, is it part  
15 and parcel and just very important for an  
16 application such as this for which they seek  
17 approval?

18          A.           Yes. It's so important that the  
19 township requires that parking either on-site or  
20 close proximity be provided. It's an absolute  
21 requirement of the ordinance, yes.

22          Q.           Now if off-site parking were provided  
23 in the plan of the application, what would be the  
24 impact of that as far as the neighbors are concerned  
25 and notice to those neighbors?

1           A.           I'm not sure I understand the  
2 question.

3           Q.           Would the people living within two  
4 hundred feet of a proposed off-site parking area  
5 have to be noticed for an application such as this?

6           A.           Yes, they would. And there might be  
7 a need for -- parking can be a permitted use. It  
8 can be a principal use or accessory use. Often,  
9 most often deal with parking as an accessory use  
10 like the parking lot for this building, because the  
11 parking lot here services the building, so it's  
12 accessible to the use. If an office building or  
13 something allows parking for a different use that's  
14 not that site, that parking then becomes a principal  
15 use, and I don't know if parking in the zone where  
16 there was off-street parking is a permitted use or  
17 not, so there may have been a need for use variance  
18 approval for that.

19          Q.           Are you aware -- I'd like to direct  
20 your attention to the site itself and the  
21 surrounding areas. Can you generally describe the  
22 residential or agricultural or other uses in close  
23 proximity to the site in question?

24          A.           Yeah, there's something like 13 or 14  
25 dwellings bordering on the property, especially to

1 the north and the west. Some of those dwellings or  
2 at least one of them are shown on this Exhibit O-3.  
3 There are some additional dwellings along on the  
4 opposite side of Mill Road, and there is additional  
5 dwelling to the south of the property, so it's, it  
6 borders a number, a fairly high number of  
7 residential properties that are developed with  
8 single-family dwellings.

9 Q. Sir, are you aware of any effort by  
10 the applicant to interview any of the neighbors and  
11 determine what impact this would have upon them or  
12 what it has had upon them in the past?

13 A. No, I'm not aware of any interviewing  
14 by the applicant of the surrounding property owners.

15 Q. Would that have been an important  
16 consideration as far as determining whether or not  
17 this would have -- this application would have a  
18 negative impact upon the neighborhood?

19 A. I think that would be part of it. I  
20 think doing the traffic report you mentioned  
21 earlier, and I think preparing a noise report would  
22 have also been a way to try to quantify some of the  
23 externalities that this application or this use  
24 might generate.

25 Q. Have you seen any report from a

1 qualified professional as to the volume of noise  
2 created by one of these large wedding events?

3 A. No, there's been nothing like that  
4 filed with this application.

5 Q. Would that be an important  
6 consideration for this board?

7 A. Yes.

8 Q. Is negative criteria, is that an  
9 important consideration for conditional use and  
10 conditional use variance?

11 A. Yes, because even if an applicant can  
12 demonstrate compliance with the positive criteria,  
13 if the negative criteria are not satisfied and met  
14 to the satisfaction of the board, the application  
15 could be denied.

16 Q. What would be the issues, what's the  
17 two-prong test for negative criteria in an  
18 application such as this?

19 A. Well, the first one is can the  
20 variance be granted without substantial detriment to  
21 the public good. That usually is interpreted to  
22 mean surrounding land uses, and the second prong is  
23 can the variance be granted without substantial  
24 impairment to your master plan in the zoning  
25 ordinance.



1 Q. In your opinion, sir, can the  
2 conditional variance or the variance be granted  
3 without substantial detriment to the public good?

4 A. No, it cannot.

5 Q. Does the board even have enough  
6 information to make that determination?

7 A. I don't think they do, because of the  
8 lack of traffic and noise reports.

9 Q. And can you further elaborate or  
10 describe why this application cannot be granted  
11 because of a substantial detriment to the public  
12 good?

13 A. Well, there has been allegations, I  
14 don't think there's been testimony to them yet, that  
15 the police have been called numerous times to the  
16 site primarily for noise complaints, and I believe  
17 there has been participation by the public and I  
18 assume that it's surrounding property owners about  
19 noise issues and how it's disrupted the peace and  
20 quiet enjoyment of their single-family dwellings.

21 Q. Have there been any studies, traffic  
22 studies, that you are aware of regarding the impact  
23 of this use on the surrounding properties and others  
24 using Mill Road?

25 A. No. And I might point out that Mill

1 Road is described in your master plan and it's  
2 talked about a curvy, hilly, narrow road, and it's  
3 actually defined as a local rural -- let me get the  
4 term right, I think I gave you all my reports. It's  
5 in my report, I believe. Yes, Mill Road is defined  
6 in the West Amwell master plan as narrow, curving  
7 and has a steep country roadway and has been  
8 classified by your planning board as a rural local  
9 road, and that suggests to me that it's not an  
10 appropriate roadway for -- to have a high intensity  
11 event function sighted along it.

12 Q. What is the -- is there anything else  
13 regarding the impact or any detriment to the public  
14 good associated with this application?

15 A. Yeah, I think the fact that there's  
16 not a permanent hall-type facility has substantial  
17 impact because of the, primarily the noise that we  
18 talked about earlier, the fact that there's not  
19 suitable parking on-site affects the public welfare,  
20 and I think the lack of customary incidental  
21 sanitary sewer facilities on a high intensity use is  
22 a problem from the surrounding property owners.

23 Q. What is the second prong of the  
24 negative criteria standard or test applied to a  
25 conditional use variance?

1           A.           That's can the variances be granted  
2 without a substantial impairment to the master plan  
3 and zoning ordinance.

4           Q.           What is your opinion, sir?

5           A.           And I think this application fails on  
6 that category because there's no parking provided  
7 on-site and parking is a requirement for this type  
8 of use. So I think although the number of stalls  
9 has been quantified by the applicant, it's a sizable  
10 number, and by not providing that parking, I think  
11 that is a substantial impairment to the zoning  
12 ordinance, and I would suggest also the substantial  
13 impairment to the master plan is that the master  
14 plan calls for this area, the I'll call it the RR-5  
15 land use area, for low intensity uses, and this is  
16 not a low intensity use.

17          Q.           In your opinion, can this variance be  
18 granted without substantial impairment to the master  
19 plan and the zoning ordinance?

20          A.           No.

21          Q.           Now, did you further do, there's a  
22 standard of review that you used when you did your  
23 analysis of this application?

24          A.           Yes.

25          Q.           What was that standard?

1           A.           Well, first we analyzed it as the  
2 application is being presented to the board, and  
3 that is as a D-3 variance. Our conclusion after  
4 looking at numerous factors was that the proofs  
5 could not be met to grant a D-3 variance based on  
6 the testimony and the materials submitted. But we  
7 felt we needed to go beyond that because we believed  
8 that the application was misfiled and it should have  
9 been filed as if it was a traditional D-1 use  
10 variance, so then we examined it and analyzed it  
11 based on those factors.

12           Q.           And are the factors for a D-1  
13 variance more stringent or less stringent than D-3  
14 application?

15           A.           They are more stringent. With a D-3  
16 variance, you just need to show, even though there's  
17 some conditions which aren't being satisfied, the  
18 site still functions. That's a lower burden,  
19 because on a D-1 variance, you need to show that  
20 the, again, this particular case in this particular  
21 use on this particular property, that the use is  
22 suitable. It's a higher burden. You also need to  
23 show that it carries out a purpose of municipal land  
24 use law, which is usually defined as two in the  
25 MLUL, and you also need to show there's a need in

1 the community for that particular use. So it's a  
2 more comprehensive analysis.

3 Q. Now, it is true though, sir, that  
4 West Amwell Township enacted their zoning code and  
5 did say that this assembly use was an approved  
6 conditional use for this zone, correct?

7 A. Well, if you meet the term, if you  
8 meet the criteria of an assembly use, but our  
9 analysis indicates that because of the lack of  
10 permanent facilities, this is not an assembly use.  
11 This is something other than an assembly use, and in  
12 fact, it's a use which is not permitted under the  
13 West Amwell zoning ordinance.

14 MR. LANZA: Thank you, sir. That's  
15 all I have.

16 MR. FULPER: Does anyone want to --  
17 does the applicant, do you want to cross-examine on  
18 any of the testimony at this point?

19 MR. SINGER: Yes, Mr. Chairman. For  
20 the record, Jonas Singer, appearing on behalf of the  
21 applicant along with Arnold Lakind who was here last  
22 meeting. I have a few questions of the witness.

23 EXAMINATION BY MR. SINGER:

24 Q. Mr. Lydon, can you describe the items  
25 that, materials that you reviewed in preparing your

1 report and you recited them this evening, correct,  
2 and you took them off of your letter dated October  
3 25, correct?

4 A. That's correct.

5 Q. Did you review the applicant's  
6 exhibits that were submitted by the applicant at the  
7 September 27th meeting?

8 A. I reviewed the drawing which included  
9 the buildable areas map, yes.

10 Q. Did you review any other exhibits  
11 that were submitted, I believe marked as B-2 that  
12 evening?

13 A. I knew they had marked new exhibits.  
14 I don't think I studied them, no.

15 Q. Did you see them?

16 A. Yes, they were on the easel.

17 Q. Let me show you what has been  
18 previously marked as B-2 as a list of exhibits that  
19 were marked that evening. Did you ever see that  
20 before?

21 A. No, I did not.

22 Q. So you didn't use that in preparing  
23 your report, correct?

24 A. No, my report predated that -- excuse  
25 me, my report predated my involvement with the

1 application, yes.

2 Q. Your report is dated October 25th,  
3 correct?

4 A. Yes, I apologize. You said September  
5 27th meeting?

6 Q. September 27th meeting.

7 A. I did not attend that meeting. I was  
8 thinking of the November meeting, so I apologize.

9 Q. So September 27th is before October  
10 25th, correct?

11 A. That's correct.

12 Q. Did you review the exhibits submitted  
13 by the applicant as B-2 at the September meeting?

14 A. I don't believe so.

15 Q. Did you review any letters that were  
16 submitted by James Miller, my planner, as part of  
17 your report?

18 A. No.

19 Q. Did you review the statement of  
20 operations submitted by the applicant describing the  
21 proposed use at the site?

22 A. No.

23 Q. When did you visit the property?

24 A. I have not, not in person.

25 Q. You've never visited the property?

1           A.           That's correct. I didn't want to  
2 trespass.

3           Q.           So you are testifying before this  
4 board -- you could have gotten permission. Did you  
5 ask to visit the property?

6           A.           No, I did not.

7           Q.           You are rendering an opinion as to  
8 the use and that the property is not suitable for  
9 its intended use and you've never been there?

10          A.           That's correct. I'm basing my  
11 opinion on the documents I reviewed and testimony I  
12 heard.

13          Q.           And you concluded that because the  
14 tent is not a permanent structure, that site itself  
15 is not conducive as a wedding -- as a banquet  
16 facility; is that correct?

17          A.           That was part of the conclusion, yes.

18          Q.           I think your report relies on that,  
19 states, doesn't it come down to because it's not a  
20 permanent structure, that the tent is the reason why  
21 the application shouldn't be approved?

22          A.           Well, it's the tent. It's the lack  
23 of on-site parking, and it's the lack of sanitary  
24 customary incidental sanitary facilities. It's a  
25 combination of those factors.



1 Q. Now, since you haven't been to the  
2 site, do you know how the tent is constructed?

3 A. It was described as a cloth tent.

4 Q. So you don't know how it's -- where  
5 it's located. Do you know where it's located?

6 A. It was testified to that it was  
7 installed on the former tennis court.

8 Q. Would you consider the tennis court  
9 to be a permanent structure?

10 A. I would consider the tennis court to  
11 be a permanent structure.

12 Q. Would you consider a tent that's  
13 permanently affixed to that permanent structure to  
14 be a permanent structure?

15 A. No.

16 Q. Why?

17 A. The nature of the tent.

18 Q. Because it's cloth?

19 A. It's cloth. It's subject to a lot of  
20 environmental factors. Life expectancy of a tent is  
21 a lot less than a typical traditional building. And  
22 then the features of a tent. It doesn't have  
23 lighting. It doesn't have HVAC facilities. Doesn't  
24 have plumbing.

25 Q. Doesn't have lighting?

1           A.           It doesn't have lighting as a  
2 traditional house. There may be ancillary lighting  
3 brought in, but it's not like -- it's not a  
4 permanent lighting situation, because what it's  
5 attached to is not permanent.

6           Q.           But the cloth of the tent, the tent  
7 itself can be replaced, correct, repaired, replaced.  
8 It wears out, you replace it, just like a building.  
9 When a roof wears out on a roof, you replace it?

10          A.           The tent in my estimation is a  
11 temporary structure.

12          Q.           But it is, as you stated, constructed  
13 on a permanent structure, correct?

14          A.           It's an on-grade permanent structure.  
15 I don't know if it has footings, but a tent itself  
16 is not a permanent structure.

17          Q.           But what it is affixed to is a  
18 permanent structure, the tennis court, correct?

19          A.           I think a tennis court would be a  
20 permanent structure, although there are some  
21 exemptions in the West Amwell ordinance. They don't  
22 specifically mention tennis court by name. They  
23 mention things like patio and other features, and  
24 this tennis court could be akin to those.

25          Q.           Well, but a patio and other features

1 are in the front yard of your home, correct?

2 A. Doesn't need to be, sir.

3 Q. Okay. Well, could a tennis court be  
4 in the front yard of your home?

5 A. I haven't looked at the West Amwell  
6 Township ordinance enough.

7 Q. But it's a permanent structure it  
8 couldn't be?

9 A. Might be able to. But it does  
10 exhibit certain features as being defined as  
11 structures.

12 Q. Have you seen photographs of the  
13 site?

14 A. Yes.

15 Q. You are aware that there's a covered  
16 bridge and associated landscaping throughout the  
17 site?

18 A. Yes.

19 Q. Would you consider that to be a  
20 permanent structure?

21 A. Well, one of the structures was  
22 knocked down by a storm.

23 Q. So just answer my question?

24 A. I'm trying to.

25 Q. No, you are not.

1           A.           I'm trying to analyze it.

2           Q.           I'm not asking you to analyze it.

3 I'm asking you to answer the question.

4                        Is the bridge and the landscaping  
5 considered a permanent structure?

6           A.           It was intended to be a permanent  
7 structure, yes. In one case it was knocked over so  
8 it had to be replaced. But it is -- I would  
9 consider that to be a permanent structure. Even  
10 though it didn't last permanently.

11          Q.           Not everything lasts permanently,  
12 correct?

13          A.           No, it doesn't.

14          Q.           Are you aware of extensive gardens,  
15 pools and pathways throughout the property?

16          A.           Well, I believe there is a pool.

17          Q.           Right, there's a pool?

18          A.           There are a number of pathways, and  
19 there are certain areas of the site that are  
20 landscaped, yes.

21          Q.           Are those considered permanent  
22 structures?

23          A.           Umm, I wouldn't consider landscaping  
24 to be a permanent structure.

25          Q.           Would you consider the pool to be a

1 permanent structure?

2 A. The in-ground pool, yes. Aboveground  
3 pool, no.

4 Q. What's on this site?

5 A. An in-ground pool. I was just trying  
6 to be, you know, trying to give you a clear, honest  
7 answer.

8 Q. Are there any buildings on-site?

9 A. Yes.

10 Q. Are they considered permanent  
11 structures?

12 A. I would think the buildings on-site  
13 would be considered permanent structures.

14 Q. So other than the tent that is  
15 erected on a permanent structure, there are  
16 permanent structures on the site, aren't there?

17 A. There are some permanent structures  
18 on the site, yes.

19 Q. That are used in the banquet  
20 facilities that are operated at this site, correct?

21 A. I would answer yes. They are not  
22 core elements of it, but they are used as part of  
23 the way some banquet facilities on this property are  
24 used, yes.

25 Q. Are you aware, did you listen to the

1 testimony of Mr. Lubchansky?

2 A. Yes.

3 Q. And so you were aware that one of the  
4 unique features of this site is to allow weddings to  
5 occur outdoors, correct?

6 A. Yes, in the tent.

7 Q. No, no. The wedding ceremony, do you  
8 know where the wedding ceremony is conducted?

9 A. No.

10 Q. If I told you that if you cross over  
11 the bridge and there's an area, a grass area along  
12 the creek that's set up with, for a wedding  
13 ceremony?

14 A. Well, there's two bridges. I don't  
15 need to be --

16 Q. The bridge closest to the barn.

17 A. That would be the northernmost  
18 bridge.

19 Q. Yes. Are you aware of an area across  
20 the bridge where weddings were conducted outside?

21 A. I was not aware of that, no.

22 Q. And are you aware of the area near  
23 the stone building that I believe is labeled, near  
24 the pool, that that area itself is also used during  
25 the wedding ceremony or banquet facility or banquet?

1           A.           You are referring to the bridal suite  
2 area?

3           Q.           No, I'm referring to another outdoor  
4 area that is used for like the cocktail reception  
5 area?

6           A.           There was talk about that at the pump  
7 house, yes.

8           Q.           So there's areas of the property that  
9 are just not -- that are not just under tent; is  
10 that correct?

11          A.           Yes.

12          Q.           So the entire property itself is  
13 being used as a banquet facility?

14          A.           That was the testimony, yes.

15          Q.           Do you have any testimony to state --  
16 to say otherwise?

17          A.           No, but I don't think that's the  
18 issue. The issue it has to be a permanent.

19          Q.           I'm not asking you what the issue is.  
20 I'm just asking you --

21          A.           No.

22          Q.           So you are aware that the entire  
23 property itself is being used as a facility for  
24 banquets, correct?

25          A.           Yes.

1 Q. All of which maintain permanent  
2 structures?

3 A. Well, I want to amend my answer if I  
4 might. There's a wetland area on-site. There's  
5 been no testimony that that's used during the  
6 wedding session. There are various sections of the  
7 property, there's no testimony that they are used.

8 Q. The property is approximately 13.8  
9 acres?

10 A. Yes.

11 Q. But the areas that are, I guess, to  
12 the north of the creek, I guess?

13 A. Here's the north -- north is down  
14 here.

15 Q. Well, to the top of your Exhibit O-3,  
16 that, in white, is the area that is being utilized  
17 for the wedding and banquet area, correct?

18 A. Yes.

19 Q. The homes where the driveway leads to  
20 the houses, the bridges, the gazebo?

21 A. Gazebo.

22 Q. All of the, the walkways, the  
23 cocktail area, and where the tent area is  
24 constructed, correct?

25 A. I don't know if I'd say tent area is



1 constructed. I would say the tent area is  
2 installed.

3 Q. Erected?

4 A. Installed, yes.

5 Q. Now, what, in your opinion, is the  
6 reason why the ordinance excludes or disqualifies  
7 steep slopes in determining buildable area?

8 A. Because the framers of the ordinance  
9 knew that an event facility needed a large,  
10 contiguous, buildable area to provide for the  
11 typical core functions of an event facility such as  
12 parking, such as a banquet hall.

13 Q. Well, okay. But if I stated to you  
14 that there is no new construction being contemplated  
15 on this site, would the issue of steep slopes still  
16 be relevant?

17 A. Yes.

18 Q. Even though, I concede for the record  
19 that there is insufficient space on-site for  
20 parking.

21 A. Yes, okay, I understand that, yes.

22 Q. Okay, now other than parking, as the  
23 site exists presently, is the issue of steep slopes  
24 relevant?

25 A. Yes.

1 Q. Why?

2 A. I believe the reason a tent facility  
3 is used is because it would be very difficult from a  
4 regulatory perspective to build a traditional  
5 permanent building, so...

6 Q. Would be impossible, wouldn't it?

7 A. I don't like to use the word  
8 impossible, but if you want to say impossible, I'll  
9 agree with you.

10 Q. Because of, well, it's noted that  
11 there are environmental issues, stream corridor,  
12 there are other buffers that may be required, so the  
13 likelihood of a permanent hall as you describe is  
14 unlikely, correct?

15 A. I would agree with that, yes.

16 Q. But you have described the fact that  
17 the facility now operates and has operated in the  
18 past -- let me ask you, are you aware that weddings  
19 have occurred at the site?

20 A. There was testimony to that, yes.

21 Q. Were you aware that they, the  
22 testimony has been that the prior owner operated  
23 weddings for approximately five years and that Mr.  
24 Lubchansky operated them for two?

25 A. Yes. In fact, he was married there

1 as I understand in the testimony. I wasn't invited.  
2 The testimony said his own wedding was there.

3 Q. Fortunately, I was. And that  
4 probably during Mr. Lubchansky's management of the  
5 facility, approximately 30 weddings have taken  
6 place. Are you aware of that?

7 A. I knew there was what I describe a  
8 high number. I didn't know the exact number.

9 Q. So are you aware that there was  
10 off-site parking available to the site prior to the  
11 township's involvement?

12 A. There was testimony.

13 MR. LANZA: I object to the form of  
14 the question, because I don't think there's any  
15 testimony that as a result of the township's actions  
16 that that parking was eliminated. I know there was  
17 hearsay testimony and supposition but no direct  
18 testimony about that, so I object to the form of the  
19 question.

20 MR. SINGER: Okay.

21 Q. Other than my inference, are you  
22 aware that there was off-street parking?

23 A. There was testimony to that effect,  
24 yes. Not a number, but there was a number, I didn't  
25 write it down, but I was aware that there was

1 off-site parking some distance from the site.

2 Q. Well, are you aware that the  
3 applicant provided those numbers to the township  
4 engineer as part of his requirement that, part of  
5 his completeness requirement?

6 A. No.

7 Q. Were you aware of where that parking  
8 was?

9 A. It was at an office building owned by  
10 the Hunterdon County Educational Services, if I have  
11 the name right.

12 Q. And there were shuttles taken from  
13 going back and forth from that parking lot, correct?

14 A. That was the testimony, yes.

15 Q. Are you aware of any issues during  
16 the 30-plus weddings that had occurred as to whether  
17 there were any issues with respect to allowing  
18 off-site parking and bringing guests in and taking  
19 guests out after the wedding was concluded?

20 A. I don't know if there's any testimony  
21 concerning that.

22 Q. And you are not aware of any issues?

23 A. Not as I sit here, no.

24 Q. Sir, do you want to revisit the  
25 definition of an assembly use in your testimony that

1 there are permanent facilities on-site?

2 A. No. I'm very comfortable with my  
3 testimony. I believe it's accurate. I believe it  
4 is in keeping with the definition of accessory use.  
5 It talks about permanent facilities, and I interpret  
6 that to mean the core elements such as required  
7 parking, which is required for this kind of a use.

8 Q. But isn't that parking an issue for  
9 site plan and that this is for the use itself?

10 A. It's for the use, but I don't think  
11 you can separate them out, and that's why I use the  
12 term core element. It is an integral part of the  
13 use, and that's because -- excuse me, that's because  
14 the ordinance requires it, so the parking and the  
15 permanency of that parking certainly relate to  
16 whether or not this is an assembly use.

17 Q. You've been a planner for many years.  
18 You've appeared on behalf of applicants as well as  
19 townships; is that correct?

20 A. That's correct.

21 Q. Is it unusual to bifurcate an  
22 application asking for a variance subject to a site  
23 plan?

24 A. No, it's not.

25 Q. Is it unusual?

1           A.           I don't have any objection to a  
2 bifurcation.

3           Q.           So is it unusual to ask for approval  
4 of a variance, either a conditional variance or a  
5 use variance, subject to and conditioned upon the  
6 approval of a site plan?

7           A.           I believe that functions when the  
8 core elements are being met. When you have a  
9 particular use where there's a requirement for  
10 off-street parking or sanitary facilities, and the  
11 applicant's response and I'm going to say in this  
12 particular case the applicant's response is we are  
13 going to defer that to a future date and future  
14 hearing, I think that can be problematic when it's a  
15 core element.

16          Q.           But there's no mention of core  
17 elements within the ordinance?

18          A.           Talks about permanent facilities.

19          Q.           Correct, but there's no mention of  
20 core elements such as parking or such as bathroom  
21 facilities or things that you've mentioned in the  
22 past. This is your interpretation of it, correct?

23          A.           It's my interpretation and gets back  
24 to the definition of assembly and what permanent  
25 means.

1 Q. Okay, but, again, it's not unusual in  
2 land use to bifurcate applications?

3 A. To a degree, I agree with that.  
4 That's not unusual.

5 Q. If this board found that the parking  
6 arrangements were unsatisfactory, then the variance  
7 that we are applying for this evening, if approved,  
8 would not go into effect, correct, because it's  
9 conditioned upon site plan.

10 A. Well that's true or the board can say  
11 that since it is a core element and you haven't  
12 demonstrated how you are going to provide for  
13 parking that negative criteria has not been met or  
14 for that matter the positive criteria.

15 MR. FITTING: Do you have an  
16 intention to seek a variance for parking?

17 MR. SINGER: We have every intention  
18 of providing parking.

19 MR. FITTING: So then it's a moot  
20 point then.

21 MR. SINGER: As we indicated earlier  
22 in our application, when we started this  
23 application, we had parking, and during this  
24 application, we were advised that our parking  
25 facility was no longer available, and so we, you

1 know, throughout this application, we understood  
2 that parking would be an issue and subject to any  
3 approval you give us this evening would be subject  
4 to parking, to provide you with permanent parking.

5 MR. FITTING: So you wouldn't be  
6 seeking a variance for it?

7 MR. SINGER: No.

8 MR. FITTING: So then it's -- there's  
9 no reason to bifurcate or separate it out. If it's  
10 an issue that you are going to provide for, then  
11 it's something that can be addressed now.

12 MR. SINGER: Now?

13 MR. FITTING: I mean --

14 MR. SINGER: Our intent is to provide  
15 it to you in a site plan. That's part of the site  
16 plan application.

17 Q. Mr. Lydon, just so the record's  
18 clear, you testified as to the standards for  
19 granting a conditional use variance, correct?

20 A. Correct, I did.

21 Q. And you testified that the positive  
22 criteria was relaxed for a D-3 variance versus a D-1  
23 variance, correct?

24 A. That is correct.

25 Q. And were a positive criteria to be



1 satisfied for D-3 variance, what do you need to  
2 show?

3           A.           I believe you need to demonstrate  
4 that the site continues to be an appropriate  
5 location for the proposed use irrespective of the  
6 fact that one or more of the conditions imposed by  
7 the zoning ordinance are not complied with or  
8 satisfied.

9           Q.           Okay. So those items that the  
10 applicant can't satisfy, one is the setbacks of  
11 existing structures, correct?

12          A.           That's correct.

13          Q.           Now, does that deviation from the  
14 ordinance affect the property from being utilized as  
15 a banquet facility?

16          A.           I think it does. I didn't raise it  
17 in my direct testimony, because I heard the  
18 applicant said he would relocate those if requested  
19 by the board.

20          Q.           But these are preexisting structures,  
21 preexisting nonconforming structures?

22          A.           And their use is being changed, so  
23 even though they may be there, especially with  
24 relationship to the pool area and the gazebo, they  
25 are now being used for different structure,

1 different purpose, and I think the idea that a  
2 gazebo could be in a residential backyard versus an  
3 event site where 250 people or guests are invited  
4 onto the site, I think there's a significant  
5 magnitude there, level of magnitude, and I think it  
6 is inappropriate to have that gazebo that close to  
7 the property line.

8           In fact, the reference was to a  
9 residential property I haven't confirmed in West  
10 Amwell, but in many communities I work, a gazebo  
11 that close to a property line in a residential zone  
12 for a use by a single-family home would generate a  
13 variance application, and I think the same is true  
14 for the pool. A pool used by single-family house or  
15 at a single family dwelling used by the inhabitants  
16 is going to have a much less intense use than one  
17 that's being made available to 250 guests as far as  
18 noise, as far as lighting goes, so I think it is, I  
19 think both of those are problematic. I didn't focus  
20 those on my direct testimony because the applicant  
21 agreed to either relocate them or not use them. I  
22 kind of thought those were done issues.

23           Q.           So if the gazebo were removed and the  
24 pool isn't occupied by 250 wedding guests in the  
25 evening in either gowns or suits?

1           A.           I hope they are wear suits, bathing  
2 suits.

3           Q.           Would your opinion be that those  
4 deviations do not impact the site for the use as  
5 proposed?

6           A.           No, I heard the testimony that they  
7 were going to be either discontinued or relocated.

8           Q.           Correct. To either relocate it or  
9 discontinue, so --

10          A.           Discontinue the use, yes.

11          Q.           So then do those as a result do those  
12 deviations allow the site to be used and does it  
13 meet the positive criteria?

14          A.           Yes, because then it would no longer  
15 be a variance. Still have the four buildable acres  
16 as a variance.

17          Q.           Correct. We discussed the purpose of  
18 those four buildable acres versus what the practical  
19 side is of this application?

20          A.           I'm not sure what the practical side  
21 is.

22          Q.           There's no new construction?

23          A.           Right, and that's, in fact, one of  
24 the major flaws of this application. In my  
25 estimation.

1 Q. The other conditions that we can't  
2 satisfy, we do satisfy impervious coverage, correct?

3 A. Correct.

4 Q. And what is the other condition that  
5 we can't meet? That's it, isn't it?

6 A. It's the building and -- building  
7 setbacks, actually.

8 Q. Building setback is --

9 A. Structure setback. It includes the  
10 pool and the failure to have the four contiguous  
11 buildable acres.

12 Q. So without the four contiguous acres  
13 because we cannot billed something new, you, it's  
14 your opinion that the positive criteria can't be  
15 met; is that a fair summary?

16 A. Yes.

17 Q. As far as the negative criteria, you  
18 described it to the board as a D-1 negative  
19 criteria, not a D-3 negative criteria. Is a  
20 negative criteria under D-3 relaxed?

21 A. Yes, in a sense you don't need to  
22 have the enhanced burden of proof that the Medici  
23 case imposes upon D-1 variance.

24 Q. Isn't it also true that the impact of  
25 the surrounding properties, the variance can be

1 granted without substantial detriment to the public  
2 good, that would be the impact on surrounding  
3 properties, correct?

4 A. Correct.

5 Q. Now, again, it's the items, the  
6 conditions that aren't being met that would have the  
7 impact, correct?

8 A. The 4 acres, the buildable acres,  
9 yes.

10 Q. Just answer my question. I'm just  
11 trying -- I don't want -- I'm just trying to go  
12 through this for the board and the members here.

13 A. Yes.

14 Q. It's the items that we cannot comply  
15 with under the conditions?

16 A. Correct.

17 Q. That is the impact that we are  
18 dealing with, correct?

19 A. Correct.

20 Q. And so again it's the lack of  
21 buildable area?

22 A. And the lack of core elements on the  
23 site; not having a banquet hall facility; not having  
24 on-site parking; not having the customary incidental  
25 sanitary facilities.

1 Q. You believe that a building on this  
2 site adjacent to these homes would have more or less  
3 impact than what exists today?

4 A. I can't honestly answer that, because  
5 I haven't reviewed a plan, and there are too many  
6 variables to try to opine that, an answer to that  
7 question sitting here tonight.

8 Q. But noise is not an issue for this  
9 board at this time, is it?

10 A. I disagree. I think it certainly is,  
11 because of the lack of permanent facilities.

12 Q. But you've already described the  
13 permanent facilities that are on the site for this  
14 assembly use. Your permanent facility is a building  
15 like this?

16 A. Is a building like this, is interior  
17 facilities and off-street parking facilities. The  
18 noise is the negative criteria established by this  
19 use by not having sufficient facilities, and  
20 sufficient facilities are precluded from being  
21 developed due to the lack of buildable area to  
22 construct those facilities.

23 Q. Now, noise, you mentioned, how did  
24 you determine that there were noise issues?

25 A. There have been -- there has been

1 testimony about the number of police calls as a  
2 result of operation of this site. There have been a  
3 number of interested parties who have attended these  
4 hearings, and I think just the most recent outburst  
5 tells me about the noise. Unfortunately, the  
6 applicant didn't provide a noise study.

7 Q. Does the township have a noise  
8 ordinance?

9 A. The State of New Jersey does, and if  
10 the township does have one, it needs to be  
11 consistent with the State of New Jersey's.

12 Q. And --

13 A. I believe -- I'm sorry, I believe the  
14 township does not have its own independent noise  
15 ordinance. Regardless, the standards are still  
16 applicable.

17 Q. Correct. Are you aware that all of  
18 the noise complaints that had been filed against  
19 this applicant have been dismissed?

20 A. No, I'm not aware of that. I'm not  
21 sure it changes my opinion though. I think it's a  
22 different standard, that substantial detriment to  
23 the public good. I think it's a much lower  
24 standard.

25 MR. LANZA: I object. I have an

1 objection to the question because that was a legal  
2 issue with dismissal because of a double jeopardy  
3 issue with regard to a presentation here or  
4 presentation before municipal court that could have  
5 an impact on this hearing based upon a double  
6 jeopardy argument. That's why they were dismissed,  
7 not because of any fact-finding or anything like  
8 that.

9 MR. PALILONIS: They were dismissed  
10 without prejudice or what?

11 MR. LANZA: They were dismissed.

12 MR. PALILONIS: By consent?

13 MR. LANZA: By my direction in order  
14 not to have a double jeopardy argument before this  
15 board.

16 Q. You testified that it's, quote,  
17 difficult to allow events on this site.

18 A. I believe it is.

19 Q. Despite the fact that for the last  
20 six or seven years, there have been events on this  
21 site with no issue?

22 A. I think this is a very challenging  
23 site, and I think it's very difficult to provide  
24 events in accordance with the requirements of the  
25 ordinance.



1                   MR. SINGER: I have no further  
2 questions. Excuse me one second. No further  
3 questions.

4                   MR. LANZA: I think Mr. Morgan?

5                   MR. MORGAN: You want me to go first?

6                   MR. FULPER: Hold on a second.

7 First, I have to ask some of the board members, do  
8 you have a question there?

9                   MR. ROMANO: Yes, I do. It goes back  
10 to last month's meeting with the definition of  
11 structure. I thought we resolved this or at least  
12 it was discussed last month.

13                   I believe the other attorney for the  
14 applicant made the statement that the former tennis  
15 court was a structure, and I asked was that at  
16 grade, and I believe the testimony was yes, it was  
17 at grade, and our ordinance has a definition of what  
18 structure is. If I could I'll read it. Maybe the  
19 other expert, I forgot your name?

20                   THE WITNESS: Steve.

21                   MR. ROMANO: Isn't aware anything  
22 constructed or erected which requires permanent or  
23 temporary attachment to something which is erected  
24 on the ground or designed or intended or arranged  
25 for the housing, shelter, enclosure and or

1 structural support of persons, animals or property  
2 of any kind, excluding unroofed patios at ground  
3 level, parking lots or driveways and fences, and in  
4 compliance with this chapter for the purpose of the  
5 determining compliance with yard requirements a  
6 structure shall include unroofed porches above  
7 finished grade, roof overhangs, awnings and extended  
8 position and any other permanent part of the  
9 structure. For the same purpose it shall not  
10 include structures such as fuel tanks, septic tanks,  
11 leaching pools, which are completely buried below  
12 finished grade, drainage systems, utility poles  
13 required and so on.

14                   So I guess my question to you or to  
15 our expert Steve, in your estimation, is this a  
16 structure, because I asked the same question of our  
17 other professionals last month. I can give you the  
18 answer, but I just want to get your opinion first?

19                   MR. LYDON: It offers a number of  
20 exceptions as we talked earlier about at grade  
21 structures which are not -- I shouldn't say at grade  
22 structures, at grade improvements such as parking  
23 lots, driveways, and patios as being exempted from  
24 the definition of structure. Unfortunately, it  
25 doesn't mention tennis courts, but a tennis court

1 certainly has similar features as a patio. It's  
2 placed in recreate, if you will. It's at or near  
3 grade level, and I don't necessarily believe that  
4 this ordinance was intended to exempt just those  
5 three items, driveways, patios and parking lots, and  
6 all other like structures would be included.

7                   Unfortunately, doesn't really say  
8 that. I don't know that the -- I don't know that  
9 the distinction of a tennis court, whether or not  
10 it's considered a structure or not, is all that  
11 germane to my understanding of the ordinance and  
12 what an assembly structure, what an assembly use  
13 requires and that is permanent structures, permanent  
14 buildings.

15                   MR. ROMANO: Right. There's  
16 testimony earlier, you know, back and forth, that  
17 what the definition of structure was and what your  
18 understanding was of it. And I think what you are  
19 saying is that it's not clear at best that this is  
20 or is not a structure.

21                   MR. SINGER: I think his testimony  
22 has been that it is a structure.

23                   MR. ROMANO: Well --

24                   MR. SINGER: Tennis court was a  
25 structure.

1 MR. FITTING: What makes it a tennis  
2 court?

3 MR. ROMANO: Are you playing tennis  
4 during the --

5 MR. FITTING: A tennis court has a  
6 net. If it no longer has a net, what is it?

7 MR. ROMANO: It's not a tennis court.

8 MR. CRONCE: Cut and dry, it's not a  
9 tennis court.

10 MR. LYDON: It's also described as a  
11 bituminous surface, which is the same thing as a  
12 driveway.

13 MR. ROMANO: Or patio.

14 MR. SINGER: Well, is a basketball  
15 court a structure?

16 MR. LYDON: I believe it's different.  
17 It has elements which are not at grade or near  
18 grade. We have backboards which are ten feet high,  
19 so I believe a basketball court is a different type  
20 of animal, quite frankly.

21 MR. SINGER: But the definition, we  
22 can discuss this, but doesn't a --

23 MR. ROMANO: You are trying to make a  
24 point that it's a structure?

25 MR. SINGER: Correct.

1 MR. ROMANO: I thought we resolved  
2 this last month. I'm trying to resolve it.

3 MR. SINGER: Okay.

4 MR. ROMANO: If you are anticipating  
5 that you think it is a structure, I'm okay with  
6 that, but I'm not seeing it right here, and I just  
7 want to understand are we at agreement.

8 MR. FULPER: We should probably stay  
9 focused on asking questions of the expert on the  
10 stand.

11 MR. LYDON: I would say it's unclear.  
12 Certainly has elements of the exemptions in the  
13 structure definition, but it's not actually listed  
14 there.

15 MR. ROMANO: Okay.

16 MR. LYDON: The board can deal with  
17 it as it chooses.

18 MR. ROMANO: Perfect, great.

19 MR. FULPER: Jim or anybody here on  
20 the board any professionals have questions of this  
21 testimony?

22 MR. KYLE: No.

23 MR. FULPER: Any of the board members  
24 have questions from the testimony of this expert  
25 witness? John, do you have any, John?

1 MR. CRONCE: No, not at this time.

2 MR. FULPER: So we'll start with the  
3 attorney, Mr. Morgan.

4 MR. MORGAN: Charles Morgan I'm  
5 representing the folks that are on the list that I  
6 gave you previously.

7 MR. FULPER: Same individuals?

8 MR. MORGAN: Same folks and a few  
9 others. I've got here Bob Whipple, Kevin and Cheryl  
10 Leslie. I think they are on the list. I think they  
11 are on the list already.

12 MR. FULPER: Speak up a little bit.

13 MS. HALL: They are not additional?

14 MR. MORGAN: Chris Morgan, Bob  
15 Whipple, Kevin Leslie and Cheryl Leslie. I think my  
16 questions are going to go to the questions he was  
17 just asked and hopefully bring some clarification.

18 EXAMINATION BY MR. MORGAN:

19 Q. Is it fair to say that a real  
20 contentious issue here is whether or not there's a  
21 permanent structure here?

22 A. Yes.

23 Q. Would you agree -- let me ask you to  
24 characterize, would you characterize a skating rink,  
25 an amphitheater, a bowling alley, a movie theater,

1 or a basketball court as a permanent structure, any  
2 of them?

3           A.           I would think a movie theater for  
4 certain would need to be a permanent structure.  
5 Quite frankly, many communities have temporary ice  
6 skating rinks during the winter, so it's hard to say  
7 it has to be a permanent facility. It could be.  
8 The other use is an amphitheater, I would say the  
9 great majority of amphitheaters are permanent  
10 structures, yes.

11           Q.           Are you aware of the entertainment  
12 and recreation use in the zoning ordinance?

13           A.           I believe it strictly limits the uses  
14 that are allowed in the township.

15           Q.           I think you are correct. Basically  
16 those uses, entertainment, recreation is prohibited  
17 in this district, and those include skating rings,  
18 amphitheaters, bowling alleys, movie theaters and  
19 amphitheaters, so can we agree that the assembly  
20 definition that refers to a permanent facility, a  
21 building, a structure, something of that nature, is  
22 a larger class of structures than the class  
23 mentioned in, the items, or the particular  
24 structures mentioned in the entertainment and  
25 recreation definitions?

1           A.           Generally, yes, I would agree with  
2 that.

3           Q.           So can we agree that the issues not,  
4 maybe it is an issue, but you spoke to core  
5 elements?

6           A.           Yes.

7           Q.           Integral to the use?

8           A.           Correct.

9           Q.           So is it fair to say that the core  
10 elements integral to the use of this facility that's  
11 the subject of the application are coequal in  
12 importance to whether or not it's a permanent  
13 structure?

14          A.           Yes.

15          Q.           Now, in the -- and you have it there,  
16 the entertainment and recreation definition refers  
17 to a use for the public or private presentation  
18 and/or participation in performing arts; is that  
19 correct?

20          A.           Yes, it does.

21          Q.           Now, would you say that performing  
22 arts are a form of art in which artists use their  
23 voices to convey artistic expression?

24          A.           That's certainly one part of  
25 performing arts, yes.



1 Q. Would you say that artists who  
2 participate in performing arts in front of an  
3 audience are called performers?

4 A. I would.

5 Q. Would you think that examples of  
6 performers would be actors, comedians, dancers,  
7 magicians, musicians and singers?

8 A. Yes, I would.

9 Q. Do you think that performing arts may  
10 include music?

11 A. Yes.

12 Q. Now, can we agree that music is an  
13 art form which combines pitch, rhythm and dynamic in  
14 order to create sound?

15 A. Yes.

16 Q. So can we also agree that it can be  
17 performed using a variety of instruments and styles  
18 and divided into genres, and it's an art form where  
19 music can occur in live or recorded formats?

20 A. Sure.

21 Q. And it can be planned or improvised?

22 A. Yes.

23 Q. So the core elements, let's talk  
24 about the core elements that are integral to this  
25 use. Would you say that if a wedding ceremony is

1 held and it's the usual music going in, the music  
2 performed during the ceremony, and the music  
3 performed coming out, whether recorded or live, that  
4 fall within those definitions I've been reviewing in  
5 your view?

6 A. No, they would not.

7 Q. They would not.

8 A. Quite frankly, I think the music that  
9 you have during the religious ceremony when two  
10 people are getting married does not fall within the  
11 entertainment and recreation field. Quite honestly,  
12 I think it's sacred and at a different playing and  
13 different purpose.

14 Q. So that would fall within the  
15 religious part of your assembly use?

16 A. You asked specifically about the  
17 religious part, yes.

18 Q. What about during the reception,  
19 you've got a band and several musicians, maybe a  
20 singer, and you've got a lot of people listening, an  
21 audience. Would you say that they are performing  
22 artists?

23 A. I would say they are performing  
24 artists. However, I would disagree that that aspect  
25 is entertainment and record creation. I think what

1 is attempted to be defined here would not include  
2 the what I'll call the typical activities that you  
3 might see at a wedding banquet, at a wedding  
4 reception. I know they are being paid, and I know  
5 they are doing it for the guests -- for the  
6 entertainment of the guests, but I don't think it  
7 rises to the level of a separate use. I think it is  
8 at that point, although I'm maintaining a banquet  
9 facility is a core element, I don't think the --  
10 that the music that may go on at a reception is  
11 within the definition of entertainment and  
12 recreation.

13 Q. So you do not think those musicians  
14 are performers?

15 A. I do believe they are performers. I  
16 don't think this definition and the way that's  
17 regulated in the ordinance extends to the music at a  
18 wedding reception, just like I don't think it  
19 extends to the music performance at the holiday  
20 concert at the school. I just don't think it gets  
21 there. You may disagree with me, but that's my  
22 testimony.

23 Q. Do you -- have you found in going  
24 through these ordinances a definition of performing  
25 arts?

1           A.           I haven't looked for one, so I have  
2 not seen one, no.

3           Q.           Would you agree that it's -- it would  
4 be appropriate for this board to pass a motion  
5 defining performing arts to clarify the ordinance?

6           A.           Well, that would be the role of mayor  
7 and counsel to adopt a land use amendment to add to  
8 that term, and this board could certainly do it as  
9 an annual report which they are required to prepare  
10 and submit to the planning board and mayor and  
11 counsel.

12          Q.           Do you think it's within the province  
13 of this board to interpret the meaning of,  
14 notwithstanding your opinion or that of the planner  
15 or the applicant, to determine the meaning of  
16 entertainment, recreation and performing arts?

17          A.           I think that this board is a  
18 reviewing board. It's not a policy-making board,  
19 and I think if something along the lines of what I  
20 think you are suggesting should really be done at  
21 the planning board level perhaps, which is a  
22 policy-making board.

23          Q.           So you are saying that performing  
24 arts, musicians and music are not integral to a  
25 reception?

1           A.           No, I didn't say that. I said I  
2 don't think it -- I don't think the music at a  
3 wedding reception rises to the entertainment and  
4 recreation use that's defined in the ordinance.

5           Q.           That wasn't my question, because it's  
6 not defined, it's not defined in the ordinance.  
7 That's the problem. The problem is that performing  
8 arts are not defined there. So you admitted or you  
9 said yes to my questions whether or not performing  
10 arts are a form of art in which artists use their  
11 voices. You said yes to that?

12          A.           I did.

13          Q.           You answered all of my questions yes.  
14 Now you are saying no, this is not performing arts?

15          A.           I'm saying not as a use. I think  
16 that's a distinction. Not as the use.

17          Q.           Well, you said earlier in your  
18 testimony that core elements are integral to the  
19 use, so what is a core element?

20          A.           I think a core element in the context  
21 of this application would be a banquet facility hall  
22 or something similar termed. I think it would be  
23 customary incidental sanitary facilities, and I  
24 think it would be a place to park vehicles, parking  
25 facility. And I include the parking facility,

1 because the ordinance of this township requires the  
2 provision of on-site parking to support this type of  
3 activity, this type of activity being an assembly  
4 use, even though I don't believe they meet the  
5 definition of assembly use.

6 Q. And you don't consider music to be  
7 entertainment?

8 A. I do consider music to be  
9 entertainment. I don't consider in this context to  
10 be a use, just like when I cook at my house, I'm not  
11 a restaurant. My wife will support me on that.  
12 It's an activity, but it's not a use. And when I  
13 have guests over, yes, I'm feeding them on occasion,  
14 but I'm not a restaurant. I think there's a  
15 distinction to be made.

16 Q. The entertainment and recreation  
17 definition --

18 A. Yes, sir.

19 Q. -- says a use?

20 A. Correct.

21 Q. The public or private presentation or  
22 participation in performing arts. So a banquet  
23 facility with a stage and musicians is not a use for  
24 participation in performing arts?

25 A. I think it's a use as an event

1 facility or event function, but I don't believe it  
2 is, and I think that's the use and the performing  
3 and the music would be an ancillary activity but not  
4 a use, and the fact that entertainment and  
5 recreation uses are not a permitted use in this  
6 particular zone does mean you can never have singing  
7 in this particular zone.

8 Q. But we don't have a banquet facility  
9 per se, right? We have a building?

10 A. We don't have a building even.

11 Q. We might --

12 A. You have tents.

13 Q. Let's just say for the sake of  
14 argument, hypothetically that the board agrees that  
15 it is a building or it's a permanent structure. Now  
16 got -- then the question becomes well, what have you  
17 got? It's not really a banquet facility is it?  
18 It's sort of a music hall and banquet facility and  
19 place for public speaking, because people get up and  
20 make speeches, so it's neither a banquet hall nor an  
21 amphitheater nor a movie theater. It's not any of  
22 these.

23 MR. FULPER: You need to be asking  
24 questions. Excuse me, you need to be asking him  
25 questions of his testimony, not trying to lead him.

1 Just ask questions.

2 MR. MORGAN: I'm trying to get at the  
3 door of what he's trying to say this facility is.

4 MR. FULPER: Okay.

5 A. I think the best way I can answer it  
6 is activities. You know, stepping away from this  
7 particular application, a catering hall somewhere  
8 in, pick a town, Flemington, isn't necessarily a  
9 restaurant, even though they both serve and prepare  
10 meals to paying guests, so there are some  
11 distinctions that this board's allowed to make. I  
12 think that's because it's sort of the way people  
13 organize themselves and prepare activities. So just  
14 as a catering hall isn't necessarily a restaurant, I  
15 think an event facility can have music without being  
16 labeled an entertainment and recreation facility,  
17 just like I wouldn't describe it as a dance hall,  
18 even though dancing goes on in most functions. I  
19 wouldn't call it a dance hall.

20 MR. MORGAN: Okay, thank you.

21 MR. LYDON: Thank you. I hope that  
22 helped.

23 MR. FULPER: We are going to take a  
24 five-minute break for her to rest her fingers.

25 (A brief recess is taken.)



1                   MR. FULPER: I'm going to call the  
2 board of adjustments meeting back to order.

3                   So at this point I think we are at  
4 the point where anybody in the audience that wants  
5 to ask questions of the witness has the opportunity  
6 to do that now.

7                   MR. FITTING: That doesn't have  
8 representation.

9                   MR. FULPER: Yeah if you don't have  
10 representation. Last month the attorney didn't have  
11 a problem. But technically if you are not  
12 represented by the attorney, you have the  
13 opportunity to come up and ask questions of this  
14 witness's testimony.

15                   Do I have anybody interested at this  
16 point? Board members okay with the witness? Any  
17 other questions? All right. We are done.

18                   MR. LANZA: At this point I just have  
19 a few redirect, not a lot.

20 EXAMINATION BY MR. LANZA:

21           Q.           First of all, sir, you've been  
22 questioned regarding the permanent structures, the  
23 pool, gazebo, a bridge. First of all, is the  
24 swimming pool a sufficient permanent structure to  
25 serve up to 250 people at a wedding celebration?

1 A. No, not as a primary event site, no.

2 Q. And a gazebo is that a permanent  
3 structure to serve up to 250 people for a wedding  
4 celebration, feeding, dancing and shelter?

5 A. No, not at all.

6 Q. The same question for a bridge?

7 A. Same answer, it's not suitable for  
8 that use, no.

9 Q. In your opinion, the permanent  
10 structure referred to in the ordinance, does that  
11 refer to the principal use of the property?

12 A. Yes, sir. And the other mandatory  
13 requirements like parking, off-street parking.

14 Q. Can you eliminate parking as a  
15 critical element to this board's determination?

16 A. No, I don't believe you can, because  
17 the ordinance requires off-street parking be  
18 provided for what they've described as an assembly  
19 use so it's mandatory.

20 MR. LANZA: That's all I have, Mr.  
21 Chairman.

22 MR. FULPER: Okay. So you are done  
23 here with the witness?

24 MR. LANZA: Yes.

25 MR. FULPER: Do you have any other

1 witnesses?

2 MR. LANZA: No, sir.

3 MR. MORGAN: I have some witnesses  
4 from the community I'd like to call at your  
5 pleasure.

6 MR. FULPER: What's this in reference  
7 to?

8 MR. MORGAN: Reference to their  
9 experience in being neighbors of this facility.

10 MR. FULPER: You'll have an  
11 opportunity to do that. Everyone will have an  
12 opportunity to discuss their concerns.

13 MR. MORGAN: I wanted to let you know  
14 I have some witnesses.

15 MR. FULPER: Are you prepared to come  
16 up now and discuss that?

17 MR. MORGAN: Yes. Let me first call  
18 Kevin Leslie.

19 - - - -

20 KEVIN LESLIE, having been first duly sworn,  
21 testified as follows:

22 - - - -

23 MR. PALILONIS: State your name and  
24 address for the record.

25 MR. LESLIE: Kevin Leslie. 5 Milk

1 House Lane in Lambertville.

2 MR. FULPER: Thank you.

3 MR. PALILONIS: Your last name?

4 THE WITNESS: Leslie, L-e-s-l-i-e.

5 EXAMINATION BY MR. MORGAN:

6 Q. Can you tell me when you first moved  
7 to that property?

8 A. Sure, we are residents. My wife and  
9 I moved in in June of 2006, so ten years ago this  
10 past June.

11 Q. Can you give us some sense of when  
12 you first started experiencing some of the noise  
13 from your neighbors that we've been hearing about  
14 during this application process?

15 A. Sure. So last, probably last fall,  
16 the fall of 2015, prior to this year, we began  
17 experiencing it late in the fall. That's when we  
18 first started to really notice it. But being time  
19 of year and, you know, the windows not being open as  
20 much or being outdoors as much, it wasn't something  
21 we noticed on a frequent basis. In the spring of  
22 2016 though it began to become much more persistent  
23 as we were outdoors and much more frequent.

24 Q. Can you tell us whether or not any  
25 representative of the applicant came to speak with

1 you about what they were doing and what they might  
2 do to accommodate any issues you had?

3           A.           I don't recall ever having a visit  
4 from the applicant about addressing the noise  
5 issues. We are, my wife and I are outdoors and  
6 spend a fair amount of time both gardening and  
7 entertaining outdoors, and the use this past summer  
8 was actually non-existent. We ended up not having  
9 any guests over, any family members over to  
10 entertain, and we never once saw Zach or the  
11 applicant to address any of our concerns.

12                       We ended up filing numerous  
13 complaints with the police, because the noise was  
14 persistent beyond the hours of 10:00 on Friday,  
15 Saturdays and Sundays on a very frequent basis.

16           Q.           Can you characterize the degree of  
17 disruption of your day-to-day activities when this  
18 was happening?

19           A.           Well, as I said, we like to have --  
20 we have a deck outside and it faces that property.  
21 And we like to have people out on the deck and have  
22 dinner and have discussion, and we couldn't have any  
23 of those kinds of activities.

24                       My father was here for Father's Day  
25 in June. We attempted to sit in the front yard and

1 have cocktails and just visit, and the noise was so  
2 disruptive that we had to move indoors. Moving it  
3 indoors at times even became an issue, because we  
4 could hear the noise within the house with windows  
5 closed.

6                   So it disrupted our daily lives from  
7 the standpoint of we didn't entertain in our house.  
8 We couldn't enjoy the outdoors on the weekends and  
9 the evenings. We couldn't have guests over for  
10 dinner. We couldn't live effectively, and it  
11 impacted even into the late evenings attempting to  
12 go to sleep at different times.

13           Q.           One last question, since the  
14 application process began or even before, did you  
15 ever hear from the applicant's planner?

16           A.           No, sir.

17                   MR. MORGAN: I'm done with my  
18 questions. Anyone on cross? Thank you.

19                   MR. PALILONIS: No cross examination?

20                   MR. FULPER: Anybody who would like  
21 to ask?

22                   MR. LANZA: One question. Where is  
23 your property relative to the subject property where  
24 the events are taking place and where all this  
25 noises coming from?

1 MR. LESLIE: With he adjoin the  
2 property, and we are --

3 MR. CRONCE: Could you turn that  
4 around so we can see that?

5 MR. PALILONIS: Referring to which  
6 exhibit?

7 MR. LANZA: This is B-4, which I  
8 think is the applicant's.

9 EXAMINATION BY MR. LANZA:

10 Q. Referring to B-4, could you just  
11 point out the general area where you live?

12 A. Generally in this area.

13 Q. That would be what part?

14 A. So this is, I believe it is east.

15 Q. Southeasterly part?

16 A. Yes. This is actually our house.  
17 It's Lot .523.

18 Q. Does your property border their  
19 property?

20 A. It does.

21 Q. How long have you lived there?

22 A. Ten years.

23 Q. When did you first experience these  
24 problems?

25 A. In 2015. We've lived there ten

1 years, and I can tell you in ten years, I don't know  
2 if I should be closer to the microphone, but in the  
3 ten years that we've lived there, we've had, I can  
4 count on my hand, probably four or five instances  
5 where we've heard noise. I wouldn't attribute it  
6 necessarily to that property. It could have been  
7 anywhere in the community that has been above normal  
8 or average conditions prior to 2015. 2015 the fall  
9 we began hearing it on a more regular basis. In the  
10 summer of 2016, it was virtually every weekend and  
11 it started sometimes on Fridays and would continue  
12 all the way through until Sunday, and the noise was  
13 deafening. It was loud enough that you could not  
14 sit out on your porch and have any kind of  
15 conversation. You had to move indoors.

16 Q. Did that noise include loud music?

17 A. It was loud music. It was hooting  
18 and hollering. Sometimes sounds like fireworks.  
19 All the above.

20 Q. Typical of a wedding celebration?

21 A. Sure. People -- they are definitely  
22 having a nice time.

23 MR. LANZA: Thank you, sir.

24 MR. MORGAN: Any other questions from  
25 anyone?



1 MR. SINGER: Mr. Leslie --

2 MR. FULPER: Identify yourself for  
3 the record.

4 MR. SINGER: Joe Singer for the  
5 applicant.

6 EXAMINATION BY MR. SINGER:

7 Q. Did you ever approach Zach regarding  
8 any of the issues that you've just described?

9 A. We have not.

10 MR. SINGER: Thank you.

11 MR. FULPER: Does the board have any  
12 questions? Anybody else have any questions? Okay.

13 MR. MORGAN: Thank you. Next I'd  
14 like to call Eric Brezina.

15 - - - -

16 ERIC BREZINA, having been first duly sworn,  
17 testified as follows:

18 - - - -

19 MR. PALILONIS: State your name and  
20 address for the record.

21 MR. BREZINA: Eric Brezina, 4 Milk  
22 House Lane.

23 MR. PALILONIS: Spell Brezina.

24 MR. BREZINA: B-r-e-z-i-n-a.

25 EXAMINATION BY MR. MORGAN:

1 Q. Can you tell us when you first moved  
2 into that property?

3 A. May of 2014.

4 Q. Can you tell us roughly when you  
5 first -- I mean, have you experienced this noise  
6 that you heard Mr. Leslie speak to, and can you tell  
7 us about when that started and describe the  
8 experience?

9 A. Started to become more aware of it  
10 the mid to late summer of 2015 through the fall, but  
11 this past season, from I'd say early May through the  
12 end of October, it was pretty much a weekend event  
13 to hear the noise.

14 Q. Can you describe approximately on  
15 that map where your house is located compared to the  
16 Leslies' house, which is right near the bottom  
17 there?

18 A. We are a good hundred yards further  
19 across the cul-de-sac.

20 Q. Can you get up and sort of --

21 A. So then we are across over here  
22 basically.

23 MR. FULPER: So you are referring to  
24 B-4, and you are across the road, across Mill Road.

25 THE WITNESS: Yes, about a hundred

1 yards from the Leslies' residence.

2 MR. ROMANO: That's not across from  
3 the road?

4 THE WITNESS: I'm off the map. This  
5 is Mill Road. I'm this way.

6 MR. FULPER: Are you going to  
7 continue questioning?

8 MR. MORGAN: Just one more.

9 Q. Did the applicant or his planner get  
10 in touch with you about any of this at any time?

11 A. They have not.

12 MR. MORGAN: That's all I have.

13 MR. FULPER: Any questions?

14 MR. SINGER: Yes. Mr. Brezina, did  
15 you ever speak to Mr. Lubchansky regarding the  
16 issues that you've just described.

17 MR. BREZINA: I have not.

18 MR. FULPER: Any other questions?

19 EXAMINATION BY MR. LANZA:

20 Q. Sir, the property described is your  
21 residential property?

22 A. That's correct.

23 Q. You live there with whom?

24 A. My wife and children.

25 Q. Have you described the nature of the

1 noise that's been interfering with the use of your  
2 property?

3           A.           Yes. So in front of my house faces  
4 the property, and the master bedroom, my wife and my  
5 bedroom, and our oldest daughter's bedroom face that  
6 direction. Past my daughters bedtime she's come in  
7 and complained about the noise to us. We have not  
8 been able to, you know, we have our TV on at a  
9 certain volume, it will block out the noise. As  
10 soon as we want to go to bed, the noise continues  
11 well past our bedtime on Friday and Saturday night.

12           Q.           Can you estimate how late in the  
13 evening the noise would continue?

14           A.           Umm, music has continued until close  
15 to midnight on certain nights, and then there's  
16 definitely the hooting and hollering that Mr. Leslie  
17 mentioned. That could be sometimes one, two in the  
18 morning, and it's disruptive enough to awaken us,  
19 only on a couple of occasions.

20           Q.           Has it interfered with any other  
21 activities at your house, your normal enjoyment of  
22 your residence?

23           A.           Again, outdoor --

24                       MR. FULPER: Try to speak a little  
25 louder.

1           A.           Outdoor activities, even on our back  
2 deck during the height of the entertainment, we hear  
3 it. It's probably not as disruptive to us, if I'm  
4 going to be honest, as the Leslies who face it, but  
5 it can be heard, and then it's actually more  
6 disruptive when we are actually in the house in the  
7 front of the house sleeping.

8                   MR. LANZA: Thank you, sir.

9                   MR. FULPER: Anybody else have any  
10 questions? Okay, thank you.

11                  MR. MORGAN: I'm going to have two  
12 more. First I'd like to start with Chris Morgan.

13           - - - -

14 CHRIS MORGAN, having been first duly sworn,  
15 testified as follows:

16           - - - -

17                  MR. PALILONIS: State your name and  
18 address for the record.

19                  MR. MORGAN: I'm Chris Morgan. I  
20 live at 3 Milk House Lane, Lambertville.

21 EXAMINATION BY MR. MORGAN:

22           Q.           Can you tell us about when you moved  
23 into the property?

24           A.           Yes, so we're first owners, so  
25 similar to the Leslies, we moved in in June of '06.

1 So we've been there ten years. You know, one of the  
2 reasons why we got there was because of the rural  
3 nature and the quiet and solitude that's there.

4 Q. Can you tell us when did you start  
5 experiencing any activity from the neighbors that  
6 we've been hearing about?

7 A. So we started hearing noises even  
8 prior to 2015 from that particular property. I'd  
9 characterize that noise as, you know, gatherings.  
10 There wasn't a ton of loud music. There was some  
11 music. It was more conversational, more gathering  
12 type things. Call it mid to late summer of '15,  
13 similar to what Kevin has said, we started  
14 experiencing very loud music. It was amplitudes  
15 above what we had ever experienced before. Now  
16 similar to, you know, what Kevin had said, we've had  
17 neighbors throw parties and have loud music, you  
18 know, to the point where we were disrupted. For me  
19 I think that the issue that I have had the most is  
20 that I understand that, right. I want to be able to  
21 throw an occasional party and to be able to have  
22 music and for my neighbors to understand. For me,  
23 the disruption here is the consistent nature with  
24 which this happens.

25 In 2014, summer of 2014, I made a