

3-3-11 Apple View

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1 COUNTY OF HUDSON  
2 STATE OF NEW JERSEY  
-----X

3 In Re: APPLE VIEW  
4 7009-7101 RIVER ROAD  
5 NORTH BERGEN, NEW JERSEY 07047  
6 CASE NO. 4-10

Applicant.

7 -----X

8 March 3, 2011  
9 7:00 p.m.

10 B E F O R E:

11 THE NORTH BERGEN PLANNING BOARD

12 PRESENT:

13 HARRY D. MAYO, III, Chairman  
14 STEVEN SOMICK, Member  
15 RICHARD LOCICCHIO, Member  
16 SEBASTIAN ARNONE, Member  
17 MANUEL FERNANDEZ, Alternate Member  
18 REHAB AWADALLAH, Alternate Member

19 GITTLEMAN, MUHLSTOCK & CHEWCASKIE, ESQS.  
20 Attorneys for the Planning Board  
21 BY: Steven Muhlstock, Esq.

22 Geraldine Baker, Board Clerk  
23 Jill Hartmann, Board Planner  
24 Elliot Sachs, Board Engineer

25 Reported by:  
26 CELESTE A. GALBO, CCR, RPR, RMR

Celeste A. Galbo, CSR, RMR

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4 Act, please be advised that notice of this  
5 meeting was faxed to the "Journal Dispatch" and  
6 "Bergen Record" on February 8, 2011 advising that  
7 the North Bergen Planning Board will hold a  
8 special meeting on March 3, 2011 at 7 p.m. in the  
9 chambers of the municipal building located at  
10 4233 Kennedy Boulevard, North Bergen, New Jersey  
11 07047.

12 Board members, attorneys and  
13 applicants were mailed notices on that day, and a  
14 copy of this notice was posted on the bulletin  
15 board in the lobby of the municipal building for  
16 public inspection.

17 Gerry, please call the roll.

18 (Whereupon roll call is taken and  
19 Vice Chairman George Ahto, Jr. and Members Robert  
20 Basalice, and Patricia Bartoli are absent.)

21 THE CHAIRMAN: All right. This is a  
22 continuation of Case 4-10, 7009 to 7101 River  
23 Road.

24 Mr. Alampi, we had two witnesses  
25 that were to be cross-examined by the public.

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1 MR. ALAMPI: Yes, Chairman, we had  
2 concluded formal cross-examination by counsel but  
3 I did recall Mr. DeNiscia, planner.

4 THE CHAIRMAN: Yes.

5 MR. ALAMPI: And Calisto Bertin, the

6                               3-3-11 Apple View  
professional engineer.

7                               THE CHAIRMAN: Good.

8                               MR. MUHLSTOCK: Okay. Let me note  
9 for the record that Mr. Fernandez and Mr. Somick  
10 both of whom missed the January 20 meeting have  
11 certified to the board that they read the  
12 transcript, and so at this point up through today  
13 all of the members of the board, every member of  
14 the board has either been present or read  
15 transcripts through today's meeting.

16                              THE CHAIRMAN: Okay, thank you,  
17 counselor.

18                              okay. Ground rules, we're going to  
19 have each of the two witnesses for 15 minutes the  
20 public will be allowed to cross-examine. Those  
21 who want to speak, please raise your hand. When  
22 I recognize you, come forward, state your name  
23 and address for the record and ask your question.  
24 Again, please limit your questions to the  
25 testimony of those two individuals.

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1 JILL HARTMANN, having been duly sworn by the  
2 Notary Public, was examined and testified as  
3 follows:

4 ELLIOT SACHS, having been duly sworn by the  
5 Notary Public, was examined and testified as  
6 follows:

7                              THE CHAIRMAN: You want to start  
8 with Mr. Bertin?

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9 MR. ALAMPI: Mr. DeNiscia.

10 ROGER DeNISCIA, having been duly sworn by the  
11 Notary Public, was examined and testified as  
12 follows:

13 THE CHAIRMAN: Mr. DeNiscia.

14 MR. ALAMPI: Roger, why don't you  
15 stand near the mike.

16 THE CHAIRMAN: Just to remind the  
17 public, Mr. DeNiscia, I believe you testified on  
18 the traffic?

19 THE WITNESS: No, planning.

20 THE CHAIRMAN: I'm sorry, planning.  
21 okay. Anyone have any questions?

22 Yes, Mr. Kronick, come forward,  
23 state your name and address for the record and be  
24 sworn in.

25 DAVID KRONICK, residing at 7855 Boulevard East,

Celeste A. Galbo, CCR, RMR

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Kronick

1 North Bergen, New Jersey, having been duly sworn  
2 by the Notary Public, was examined and testified  
3 as follows:

4 THE WITNESS: Mr. DeNiscia, at the  
5 last meeting I wanted to follow up with a few  
6 questions. You had made a statement about the  
7 need for housing, if I'm correct. And my  
8 question to you is, in view of the economic  
9 situation with the glut of housing, rental condo,  
10 co-op, speak to any broker, look in the

11 newspaper, why do you feel that there is a need  
12 for more housing?

13 MR. DeNISCIA: I didn't necessarily  
14 say there's a need for more housing, although  
15 undoubtedly there is. It's the type of housing,  
16 it's the housing that would be suitable for  
17 smaller households. So, let's say you had 100  
18 housing units. Just because you have 100 houses  
19 or housing units doesn't mean it fits for what  
20 the need is. The need as it has evolved over the  
21 last 10 or 20 years as a result of the way the  
22 population has progressed, there's a need for  
23 smaller housing units. That means primarily the  
24 older population is increasing. Those people in  
25 the older groups that don't have families, and

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Kronick

1 there are still people in the younger groups  
2 before they have families or when they're  
3 starting out they have smaller housing units. So  
4 that's the kind of need. I didn't try to mention  
5 numerically how much housing is needed or not,  
6 it's the type of housing.

7 THE WITNESS: I would agree with  
8 you, that's true. But empty nesters, people are  
9 downsizing, a studio, a one bedroom, a two  
10 bedroom, there's an abundance. Whichever way you  
11 want to look at it, we have that. What is unique  
12 about this that makes it needed?

13 MR. DeNISCIA: It didn't have to be

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14 unique, it's permitted. This is a permitted use.  
15 So...

16 THE WITNESS: Let me ask you this:  
17 During the process of figuring out what would be  
18 most appropriate in this -- on this property, did  
19 you think of other types of construction,  
20 vis-a-vis commercial, office building, medical  
21 building, perhaps restaurant, health spa where  
22 then you would not need any variances, you could  
23 fit without changing anything?

24 MR. DENISCIA: Well, it won't be  
25 necessarily true that no variances would be

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Kronick

1 needed primarily because of the extreme  
2 topographic conditions that exist on the site  
3 makes it very difficult. But there is no need to  
4 explore other uses; this use is permitted. Your  
5 question is very good if the applicant was  
6 requesting a use variance, a use that's not  
7 permitted and you can ask, well, what about a  
8 permitted use or other use. Here the use is  
9 specifically permitted and that's what the  
10 applicant intends. Another applicant might want  
11 to provide another kind of a use, I don't know.

12 THE WITNESS: You spoke I recall of  
13 the beauty of this development. And I would just  
14 ask you a beautiful property and building as you  
15 propose, how does this compare with the beauty of

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16 the majesty of the Palisades that dates back 200  
17 million years when we had trees that gave us  
18 seasonal colors, where we had small mammals,  
19 birds, lush vegetation? That's beauty.

20 MR. DeNISCIA: Well, it certainly  
21 is. And the problem is you're comparing  
22 undeveloped land in its natural state with a  
23 proposed man-made development, again, which is  
24 permitted. So if your point is well, should that  
25 be left in its natural state and enhanced in some

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Kronick

1 way, I think that would be fine but someone has  
2 to do it. It has to be a public park or some  
3 other kind of landscaped type development.

4 But we do have a situation where this  
5 use is permitted. But what the applicant has  
6 done is very interesting; his architect and  
7 engineer have devised a plan that really  
8 preserves much of the natural area except  
9 obviously that area towards the road which now  
10 has trees and the old tennis court. But much of  
11 the area to the rear, to the west is being  
12 preserved and undisturbed for the most part. So  
13 to the maximum extent, the beauty of the  
14 Palisades will be preserved.

15 THE WITNESS: What percentage of the  
16 property will be kept in a natural state?

17 MR. DeNISCIA: I can't give you that  
18 percentage. You can ask the engineer later but I



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19 don't know what percentage.

20 THE WITNESS: Thank you.

21 THE CHAIRMAN: All right. Thank  
22 you. Anyone else?

23 Yes, sir.

24 JEREMY RABIN, residing at 7004 Boulevard East,  
25 Guttenberg, New Jersey, having been duly sworn by

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1 the Notary Public, was examined and testified as  
2 follows:

3 THE WITNESS: Okay. This area is  
4 the P-2 area and it's stated in the zoning  
5 ordinance that "The purpose is to allow maximum  
6 potential development against the Palisades while  
7 preserving the view of and from the cliff from  
8 within as well as outside the waterfront area  
9 through height and lot coverage restrictions, to  
10 allow flexibility in site design by acknowledging  
11 the topographical limitations inherent in  
12 potential sites."

13 Now, the first part of that where it  
14 says "while preserving the view of and from the  
15 cliff within as well as outside the waterfront  
16 area through height and lot coverage  
17 restrictions," when I look at this site walking  
18 by in front of the site, walking on the sidewalk,  
19 driving by the site, how does this building meet  
20 that requirement?

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21 MR. DeNISCIA: You have to read  
22 further. You can't stop there. That sort of a  
23 preamble -- I don't need to read that section.  
24 So what that is saying, what the intent of the  
25 ensuing standards are. The standards that come

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1 after that are a response to that intent.  
2 So what are the standards? Well,  
3 there are certain coverage, certain height  
4 restrictions, size restrictions and as so on.  
5 Well, the most critical of those in preserving  
6 the view to the Palisades would be the height of  
7 the building; that would be the most critical.  
8 In other words, if you had just a one-story  
9 building, that has a different impact on the view  
10 than a 50-story building.

11 THE WITNESS: You'd be able to see  
12 much more of the Palisades if it was a one-story  
13 building.

14 MR. DeNISCIA: What the ordinance is  
15 saying, the height of that building should be no  
16 more than --

17 THE WITNESS: 75 feet.

18 MR. DeNISCIA: -- 75 feet. What I  
19 was doing was the addition. It goes up from  
20 elevation 84 from the center line of River Road.  
21 That is the way it's measured.

22 THE WITNESS: Right.

23 MR. DeNISCIA: So this proposed  
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24 building is 58 feet or up to elevation -- it's  
25 lower than elevation 84, I believe. It's a

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1 little lower than the maximum. So it is designed  
2 to be lower than what the ordinance considers a  
3 sufficient height to preserve the view.

4 THE WITNESS: When you say 75 feet,  
5 that would be measured from River Road?

6 MR. DeNISCIA: I believe the  
7 ordinance says 75 feet from the elevation or 75  
8 feet from the level or grade at the center line  
9 of River Road.

10 THE WITNESS: So the maximum height  
11 without a variance that you could build to would  
12 be 75 feet from River Road, not 86 feet?

13 MR. DeNISCIA: It would be elevation  
14 84.

15 THE WITNESS: 84.

16 MR. DeNISCIA: If it's nine feet.  
17 I'm not sure exactly.

18 THE WITNESS: But that's from sea  
19 level, I believe.

20 MR. DeNISCIA: I believe River Road  
21 is about nine feet, so add 75 to nine. So you  
22 could build up to elevation 84.

23 THE WITNESS: So given that the  
24 current building is approximately 60 feet, it  
25 would be more with any kind of parapet or any

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1 other structures on top, it would be likely that  
2 perhaps one more floor could have been added.  
3 Given that the parking -- the plan actually had  
4 to be amended to meet the parking requirements, I  
5 would imagine it would be difficult to add  
6 another floor since that would involve additional  
7 parking constraints, but admittedly it could be  
8 one floor higher.

9 Now, it also says coverage. How is  
10 coverage attempted to meet the P-2 requirement?

11 MR. DENISCIA: I'd have to look and  
12 see what the coverage requirement is but I  
13 think --

14 THE WITNESS: It says clearly to  
15 provide use from the Palisades -- of the cliff.  
16 And we know that the cliff is defined as a 30  
17 percent slope in this area. So how is the 30  
18 percent slope observable with this building?

19 MR. DENISCIA: Well, I don't think  
20 it's the 30 percent slope that's intended to be  
21 observable. If we take this standard, the  
22 standards of the P-2 in conjunction with the  
23 Figure 14 that is attached to it, it's very  
24 clear. I have I think it's Exhibit O-8. It's a  
25 reprint of the ordinance. It shows Figure 14.

Rabin

1 THE WITNESS: I might have made that  
2 xerox because I submitted it to --

3 MR. DENISCIA: It's very clear that  
4 the 30 percent slope is a minimal measurement,  
5 but the diagram is very clear that it shows a  
6 vertical area from which the cliff face is  
7 measured.

8 It doesn't mean to me that wherever  
9 there is a 30 percent slope that has to be the  
10 setback. I think in my direct testimony I  
11 explained that it's very difficult to find where  
12 that 30 percent slope starts. And the definition  
13 is very clear or the standard indicating that the  
14 setback should be measured from the cliff face.  
15 As long as that setback from the cliff face is  
16 maintained, then I think it fulfills the intent  
17 of the ordinance.

18 THE WITNESS: Well, this goes into a  
19 side issue which is the issue of the rear yard  
20 setback which I wasn't planning to ask about yet,  
21 but --

22 THE CHAIRMAN: Be careful because  
23 you're running out of time. So you're going to  
24 off on a side issue, you're going to lose your  
25 main issue.

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1 THE WITNESS: I've asked questions

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2 of many other witnesses and I've often been told  
3 you're going to have to save that for the  
4 planner. So all the questioning I've done up  
5 until now is leading for an opportunity to ask  
6 the main person.

7 THE CHAIRMAN: Stick to your main  
8 issue. Don't go off on a side issue.

9 THE WITNESS: I would appreciate a  
10 little latitude on the time since you have told  
11 me in the past I should wait for the planner for  
12 all those questions.

13 MR. MUHLSTOCK: And while that's  
14 true, Mr. Lamb cross-examined this witness for  
15 hours and asked virtually, virtually, not exactly  
16 the same words, but virtually the same questions  
17 you're asking. So it is repetitious.

18 THE WITNESS: Well, I'll try to be  
19 unique in my questioning if I can.

20 The planner for the board ruled that  
21 the correct measurement of the rear yard setback  
22 was from the first habitable floor to the cliff  
23 face. And the cliff face is defined on Figure 14  
24 which shows a 30 percent slope. And the  
25 conclusion was that this 30 percent slope which

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1 is certainly on the property is defined in the  
2 ordinance as a cliff face. And I think if  
3 there's a disagreement about that, that should be  
4 between you and the board. But given that, the  
Page 14

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5 P-2 defines views of the cliff, and cliff face is  
6 defined in Figure 14, the illustration, a 30  
7 percent slope. So I think for now I would like  
8 to go on the assumption that we're talking about  
9 views of the 30 percent slope unless you want --  
10 not on my time -- to take that up with the  
11 planner who made that ruling.

12 MR. DENISCIA: Do you want me to  
13 answer the question?

14 THE WITNESS: Yes.

15 MR. DENISCIA: Neither the diagram  
16 in the ordinance or the wording in the P2  
17 District, neither of those say anything about the  
18 30 percent slope being a measurement. The 30  
19 percent slope is simply to qualify the site as  
20 having to comply with the setback. It's very  
21 clear to me in no uncertain terms that the  
22 setback is to be measured from the cliff face.  
23 The cliff face, as I testified previously using  
24 the dictionary definition is the vertical or near  
25 vertical portion of the topographic element or

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1 the Palisades, not any of the other slope. The  
2 30 percent is simply to qualify the site.

3 THE WITNESS: A lot of this was gone  
4 over with the geotech testimony and there was a  
5 ruling at that time. I would like to move on  
6 from this since this isn't the area I wish to be

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7 questioning, but I would appreciate if the board  
8 would address that issue on their own time since  
9 there was a ruling that was made during the  
10 geotech testimony about the nature of cliff face  
11 and 30 percent slope.

12 MR. MUHLSTOCK: Go ahead, ask  
13 whatever questions you want. There's been no  
14 ruling.

15 THE WITNESS: Based on the fact that  
16 this is a P2 District, Palisades District, it  
17 says the cliff, the cliff is visually portrayed  
18 as a 30 percent slope. I'm trying to find out  
19 how that cliff, that 30 degree slope is  
20 observable with this building there.

21 Now, since I've not seen presented  
22 any kind of a visual three-dimensional  
23 illustration of your project from the perspective  
24 of a person on the sidewalk or on the street  
25 looking up this building to see is it possible to

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1 see the Palisades cliff or the Palisades steep  
2 slope with this building there, it seems to me  
3 that would have been a valuable thing to do since  
4 the P2 specifically says you're supposed to  
5 preserve views of that.

6 Given that there was no such thing  
7 presented to us, we put together a visual  
8 presentation. It's a simple PowerPoint -- not  
9 Power Point, photoshop image, two sets of images



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10 showing the area from the perspective of a person  
11 standing in front of it. And then using a  
12 neighborhood building, a five-story building from  
13 the same distance and the same angle that was  
14 superimposed to show what this building, Apple  
15 view, would look like in terms of how it would  
16 affect the views of the Palisades.

17 Now, before I hand this out I would  
18 say this is not supposed to represent what Apple  
19 view looks like; it has different architecture.  
20 There are minor design details that are obviously  
21 different. But as far as a nearly 60-foot  
22 building in a U-shaped configuration, this is a  
23 fairly accurate portrayal. If anything, the  
24 building that was used is actually slightly  
25 shorter than the Apple View building. So --

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1 MR. MUHLSTOCK: Let me ask a  
2 question. Are you representing any particular  
3 group, Mr. Rabin?

4 THE WITNESS: No.

5 MR. MUHLSTOCK: Just yourself?

6 THE WITNESS: Representing citizens  
7 who are concerned about Apple View.

8 MR. MUHLSTOCK: We're going to call  
9 this document --

10 MR. ALAMPI: Wait, wait one second.

11 MR. LAMB: Let's mark it --

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12 MR. ALAMPI: Before you mark  
13 anything, his response when you asked him if he  
14 was representing any group, he said no, I'm  
15 representing concerned citizens. What does that  
16 mean? Does he represent himself?

17 MR. MUHLSTOCK: Do you represent  
18 yourself?

19 THE WITNESS: I really represent  
20 myself, yes.

21 MR. MUHLSTOCK: So we're going to  
22 call this OR, Objector R-1. Pass it out.

23 THE WITNESS: Okay. Thank you very  
24 much.

25 MR. ALAMPI: Well, I do have an

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1 objection to this.

2 MR. MUHLSTOCK: Well, let's mark  
3 it --

4 MR. ALAMPI: whatever it is because  
5 I've never seen it. I have no idea what it could  
6 be --

7 MR. MUHLSTOCK: This is  
8 cross-examination.

9 THE WITNESS: I intend to ask the  
10 planner --

11 MR. MUHLSTOCK: Hand out -- let the  
12 court stenographer mark 1, OR-1. Give Mr. Alampi  
13 a copy.

14 MR. ALAMPI: Well, Mr. Chairman, let  
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15 me just please just provide me with a little  
16 latitude because --

17 MR. MUHLSTOCK: Wait a second.

18 MR. ALAMPI: Can I speak?

19 MR. MUHLSTOCK: All right, go ahead.

20 MR. ALAMPI: Provide me with some  
21 reasonable opportunity to respond. This is like  
22 trial by ambush. You develop a set of plans, you  
23 don't give anybody advance notice, then it's  
24 distributed for your eyes. You're all looking at  
25 it. I don't even know what it is. It seems to

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1 be a computer image, I don't know.

2 THE WITNESS: I said it was a  
3 photoshop image, yes.

4 MR. ALAMPI: So my objection for the  
5 record is whether this is probative, highly  
6 prejudicial and should be excluded, the  
7 authenticity and the accuracy of it is in  
8 question.

9 MR. MUHLSTOCK: That's fine. He's  
10 already conceded that it's not exact, it's not --  
11 it's just computer generated. But I'm sure the  
12 witness can be asked --

13 THE WITNESS: If I could just  
14 address --

15 MR. MUHLSTOCK: Just ask --

16 THE WITNESS: Very, very quickly, I

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17 just want to point out that the images of the  
18 site itself have not been altered in any way,  
19 and, for instance, the telephone poles that are  
20 visible in those images are considerably shorter  
21 than Apple View would be. So in terms of  
22 assessing whether this accurate, you can simply  
23 ask yourself could I see over those telephone  
24 poles to see the Palisades behind. And if you  
25 don't think you could, on that alone I could rest

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1 my case.

2 MR. ALAMPI: But why would they show  
3 a windowless warehouse, an industrial plant?

4 THE WITNESS: Because Apple View  
5 does not provide a representation. If they want  
6 to present an attractive representation, they  
7 could.

8 MR. MUHLSTOCK: Let's not get into a  
9 side issue on this, Mr. Alampi. Why -- mark it.

10 (Objector's Exhibit R-1, two  
11 photoshop images, was received in  
12 evidence.)

13 MR. MUHLSTOCK: You've shown it to  
14 the witness. Ask him your questions.

15 THE WITNESS: All right. Well, as I  
16 just stated, the first illustration, page 1,  
17 shows an undoctored photograph of the site.  
18 Nothing has been altered in any way. This was  
19 taken not only from the sidewalk opposite River

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20 Road, this was actually in order to show this  
21 much of the site it actually had to be quite a  
22 bit further back from the sidewalk. If we were  
23 closer, the height of those telephone poles would  
24 appear even larger than they appear in this  
25 picture.

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1 MR. MUHLSTOCK: What's the question?  
2 Does this first photo depict what exists today,  
3 Mr. DeNiscia?

4 THE WITNESS: Okay, thank you. Does  
5 this depict what currently, the site currently  
6 would appear standing across the street in that  
7 area?

8 MR. DeNISCIA: It appears to, yes.

9 MR. MUHLSTOCK: Okay. Go to number  
10 two.

11 THE WITNESS: Number two, this is  
12 the minimal area of the building where it's the  
13 furthest back from the road. And even in that  
14 situation I think you can see that it blocks all  
15 but the tops of the trees. I would ask you in  
16 light of no better evidence presented by Apple  
17 View, how does this comply with providing views  
18 of the Palisades which is a specific requirement  
19 of the P2 District?

20 MR. DeNISCIA: The photo that you  
21 showed extends, the view extends up to just the

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22 very close to the ridge, but there is no way to  
23 determine whether or not it's an accurate  
24 placement of the building. It's simply  
25 superimposed. If this is your building in that

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1 position and the picture is taken from River  
2 Road, actually a building of one or two stories  
3 would block the view because you're very close to  
4 the building. So a building if this were true in  
5 this area, would --

6 MR. MUHLSTOCK: Mr. DeNiscia, let's  
7 cut to the chase.

8 MR. DENISCIA: Good.

9 MR. MUHLSTOCK: The closer you are  
10 to the building, any building, the less view  
11 you're going to have of any portion, any portion  
12 of the slope or the cliff or any portion of the  
13 rise in the land, correct?

14 MR. DENISCIA: You're correct, yes.

15 MR. MUHLSTOCK: The further back you  
16 go --

17 MR. DENISCIA: The more you'll see.

18 MR. MUHLSTOCK: -- the more you'll  
19 see.

20 MR. DENISCIA: Right.

21 MR. MUHLSTOCK: Any building, no  
22 matter whether it's one story, two story, three  
23 story is going to have some blocking of the view  
24 depending upon where you're looking from?

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3 development, whether it's a single-family house  
4 or any structure to some extent, to some extent  
5 whether it's one percent, five percent, 10, have  
6 an impact on some view, whether it's front, side,  
7 of the Palisades on this particular property?

8 THE WITNESS: This ordinance says to  
9 allow development. It is obvious there's  
10 supposed to be development allowed, but --

11 MR. MUHLSTOCK: So it's your  
12 position --

13 THE WITNESS: -- flexibility and  
14 effort has to be made to take into account the  
15 necessity of views of the cliff of the P2 area.

16 MR. MUHLSTOCK: So this is a case of  
17 degree. Your position is that this is too big.  
18 That's what you're saying.

19 THE WITNESS: And that it is not in  
20 any way complaint with that ordinance.

21 MR. MUHLSTOCK: Okay. Okay.

22 THE CHAIRMAN: Thank you. We'll  
23 take that under consideration.

24 MR. MUHLSTOCK: Thank you. I  
25 understand.

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Rabin

1 THE CHAIRMAN: That's it.

2 THE WITNESS: That's it.

3 THE CHAIRMAN: Your next witness,  
4 Mr. Alampi. Mr. Bertin.

5 MR. ALAMPI: Mr. Bertin.  
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6 MR. LAMB: At the end I have a  
7 couple follow-up questions.

8 MR. ALAMPI: Nope. Nope. I'm not  
9 putting in any redirect.

10 MR. MUHLSTOCK: It was specifically  
11 in the record to be cross by the public. Period.

12 MR. LAMB: I understand that but  
13 when a witness now testifies additionally and  
14 makes statements --

15 MR. MUHLSTOCK: You can make  
16 argument or you can bring it up through your  
17 planner. Let's call Mr. Bertin.

18 MR. LAMB: Just for the record, the  
19 ruling of the board --

20 MR. MUHLSTOCK: You've had your  
21 opportunity.

22 MR. LAMB: -- is that I can't ask  
23 any other questions --

24 MR. MUHLSTOCK: That's correct.

25 MR. LAMB: -- based upon the new

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Bertin

1 testimony?

2 MR. MUHLSTOCK: That's correct.

3 MR. LAMB: Thank you.

4 CALISTO BERTIN, having been duly sworn by the  
5 Notary Public, was examined and testified as  
6 follows:

7 THE CHAIRMAN: This time we are



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25

MR. DeNISCIA: Yes.

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8

Rabin

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1

MR. MUHLSTOCK: Correct?

2

MR. DeNISCIA: Yes.

3

MR. MUHLSTOCK: Okay.

4

THE WITNESS: Now, Figure 3 shows a  
5 view from a southerly view looking slightly north  
6 across the lot. The sewerage treatment plant can  
7 be seen and the edge of the Apple View lot is  
8 just behind the small shed that can be seen on  
9 the left side of the photo. Figure 4 shows the  
10 building as it would look to the best of our  
11 ability to present it. And one can see that not  
12 only is there blockage as we saw from the front,  
13 but in fact this is a massive wall that extends  
14 out when seen from street level.

15

Would you agree that even -- that  
16 this rendering portrays that?

17

MR. DeNISCIA: What you show  
18 portrays that, yeah.

19

THE WITNESS: Well, and I would say  
20 I'm up here under oath and I'm saying to the best  
21 of our ability this is accurate provided that you  
22 understand we used a model --

23

MR. MUHLSTOCK: We have asked --  
24 you've asked your question. It's been answered.  
25 okay.

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1 variance.

2 THE WITNESS: But I'm asking does it  
3 meet the P2 requirement to provide some --

4 MR. DeNISCIA: Yes, it does.

5 THE WITNESS: In just providing the  
6 minimum side yard requirements, the one had to be  
7 averaged and is therefore less than the full side  
8 yard in some areas.

9 THE CHAIRMAN: It meets the  
10 requirements of the ordinance.

11 THE WITNESS: Yes. Okay.

12 I would suggest that it doesn't meet  
13 the P2 requirements and that a variance from  
14 those P2 requirements should be asked for.

15 MR. MUHLSTOCK: A variance for what?

16 THE WITNESS: The requiring -- the  
17 P2 requirement that this building provide -- be  
18 done in such a way that it provides views of the  
19 Palisades or of the cliff in the P2 District.  
20 That's a clear requirement in the zoning  
21 ordinance. It's stated as plainly as anything  
22 could be stated at the beginning of the  
23 definition of P2. And there's reference to some  
24 kind of other information that's buried somewhere  
25 in here that nothing was cited. I don't see

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Rabin

1 anything that overrules that statement.

2 MR. MUHLSTOCK: Wouldn't any

Rabin

1 THE WITNESS: If I could just to  
2 wrap this up, the views from almost any  
3 conceivable angle are blocked of the Palisades.  
4 One way that this could have been avoided would  
5 have been to have substantial side yards because  
6 side yard would have been compliant with allowing  
7 views of the Palisades around the building,  
8 assuming that a tall building is going to clearly  
9 block what's behind it.

10 Apple View has provided only the  
11 minimum side yards that are required of it, and  
12 in fact on the southern side the side yard is not  
13 even consistent. It goes down to 10 feet in  
14 width and at the point of the sidewalk the side  
15 yard is actually about five feet wide. So in  
16 terms of complying with the P2 District not only  
17 do the side yards not even comply consistently  
18 with the side yard, they have to be averaged on  
19 the southern side so it's less as a viewing  
20 corridor. But you clearly haven't tried anything  
21 extra in side yard to try to meet the P2 District  
22 requirement for visibility around the building,  
23 have you?

24 MR. DeNISCIA: The application meets  
25 the side yard requirement. There is no side yard

3-3-11 Apple View  
8 going to hold it for 15 minutes and I'm going to  
9 cut off testimony at that point.  
10 Does anyone wish to ask anything of  
11 this witness?  
12 (No response.)  
13 THE CHAIRMAN: Okay. Mr. Alampi --  
14 you wanted to speak?  
15 A VOICE: I have a question.  
16 THE CHAIRMAN: Of this witness?  
17 A VOICE: Actually of the planner.  
18 THE CHAIRMAN: That's closed.  
19 Mr. Alampi, your next witness?  
20 MR. ALAMPI: Well, there are no next  
21 witnesses. We have concluded.  
22 THE CHAIRMAN: Yes. Okay.  
23 MR. ALAMPI: This brings us to, I  
24 guess, Mr. Lamb wrote to the board and myself of  
25 course, and he's always extended the courtesy

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Bertin

1 whenever possible, that the planning consultant,  
2 Peter Steck, will not be here tonight. Of course  
3 we were prepared for his testimony and  
4 cross-examination and now he's not available. We  
5 do of course have a special meeting next week.  
6 THE CHAIRMAN: Yes.  
7 MR. ALAMPI: And accommodating this  
8 gentleman who must fly from across the country  
9 and the discussion was Peter Steck tonight and  
10 consultant from State of Washington next week.

3-3-11 Apple View

11 And by the way, we received an extensive report  
12 from that witness. I hope the board also has it.

13 MR. MUHLSTOCK: Yes.

14 MR. ALAMPI: Thank you. So I'm  
15 concerned about this issue of Mr. Steck not  
16 appearing. I did discuss it briefly with  
17 Mr. Lamb. He explained it was out of his  
18 control, but nonetheless, I want to try to bring  
19 our matter to conclusion by the March 10th  
20 meeting. With that, I think I'll it turn over to  
21 Mr. Lamb.

22 MR. LAMB: Thank you. And I've  
23 advised the board as soon as I found out about  
24 12:30 yesterday that Mr. Steck was not available  
25 and had not finished reviewing all the documents

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Bertin

1 and the transcripts. He had three hearings  
2 tonight. I did discuss it with Mr. Alampi. I  
3 sent an e-mail immediately to Mr. Alampi and Mr.  
4 Muhlstock and that's all I can say.

5 Having said that, what I worked  
6 feverishly --

7 MR. MUHLSTOCK: The board certainly  
8 doesn't want to prejudice your case. So if Mr.  
9 Alampi has indicated that there may be one  
10 additional meeting after your safety expert next  
11 week for Mr. Steck --

12 MR. ALAMPI: No, I didn't indicate

3-3-11 Apple View

13 that.

14 MR. MUHLSTOCK: You didn't indicate  
15 that?

16 MR. ALAMPI: I indicated there's a  
17 special meeting --

18 MR. MUHLSTOCK: Next week.

19 MR. ALAMPI: Each of these meetings  
20 is a great expense to our client, but we do  
21 appreciate the accommodation to have the special  
22 meeting. So we had two meetings in a row tonight  
23 and next week. I certainly didn't agree to  
24 extend beyond that, but perhaps Mr. Steck will  
25 get here next week and but we'll all be here.

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Bertin

1 MR. LAMB: For purposes of  
2 scheduling let me ask because Mr. Steck has  
3 advised me that he is able to come next week.  
4 THE CHAIRMAN: He is able to come.  
5 MR. LAMB: And the question is, and  
6 I'll ask Mr. Alampi, we didn't discuss this, what  
7 his length of cross-examination is. Because if  
8 we have the expert coming in from the State of  
9 Washington, I expected that we probably would  
10 devote the entire meeting to him.

11 MR. MUHLSTOCK: Well, I think we  
12 should try and do both.

13 MR. LAMB: I'm fine with that.

14 THE CHAIRMAN: Let's do both for  
15 next week.

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16 MR. LAMB: That's fine. What I did  
17 when we found out the unavailability of  
18 Mr. Steck, what I did was rearrange the entire  
19 order of the presentation, and the Coalition for  
20 the Palisades Cliff had a geologist that they had  
21 retained. And Ms. Wong as the president of that  
22 organization had submitted, I think, his resume  
23 and CV to the board previously. What we decided  
24 is to have the Galaxy and the Coalition for the  
25 Palisades offer him as a joint witness, and what

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1 we then did is instead of him coming after,  
2 sometime after the next hearing on March 10th, I  
3 put him in this spot so that we could keep on  
4 going and fill up the spot. I have him this  
5 evening and I also have one other witness which,  
6 again, was going to come at a later date, but  
7 I've moved them into this so that we could use as  
8 much of the meeting as possible.

9 MR. ALAMPI: The second witness is a  
10 mystery witness?

11 MR. LAMB: The second witness is a  
12 board member from the Galaxy.

13 MR. MUHLSTOCK: Okay. Let's go.

14 THE CHAIRMAN: Proceed.

15 MR. LAMB: Now, having said that,  
16 Mr. Alampi has rested his case?

17 MR. ALAMPI: I tried to.

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18 MR. LAMB: What I would request is  
19 the board dismiss the application without  
20 prejudice. The reason why I'm making the request  
21 is I have sent a letter to the board previously,  
22 and I asked Mr. Alampi and the board whether the  
23 rear yard setback was going to be calculated in  
24 accordance with the zoning ordinance so that the  
25 40 foot setback would be calculated from the edge

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1 of the cliff or the exterior portion of the  
2 cliff.  
3 We had the board's planner make a  
4 comment. We had some discussion. We indicated  
5 that it was our position that if a substantial  
6 rear yard setback was necessary, that Mr. Alampi  
7 should modify the notice, apply for the variance  
8 and submit an amended plan. Mr. Muhlstock ruled  
9 that he didn't have to specifically provide the  
10 notice because it was encompassed within the  
11 catchall provision of the notice, but the board  
12 never addressed does the applicant have to show  
13 on the plan the 30 foot slope area and submit an  
14 amended site plan. And that's why I submitted --  
15 MR. MUHLSTOCK: Okay, you're making  
16 a motion to dismiss. Mr. Alampi?  
17 MR. ALAMPI: Simply put, the notice  
18 was comprehensive. I think it anticipated all  
19 issues. Clearly after several public hearings  
20 with several witnesses there was one thing that  
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21 is abundantly clear, that the ordinance is very  
22 unclear. So we know that. And we know that it's  
23 perplexing to everyone.

24 This applicant shouldn't suffer for  
25 the lack of clarity in the ordinance. We

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Bertin

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1 addressed the issue. We have taken the position  
2 that the cliff face as defined in the common  
3 glossary, the Webster's Dictionary and such and  
4 such and even the report that we're about to hear  
5 this evening from the next witness indicates the  
6 confusion and lack of clarity.

7 MR. MUHLSTOCK: What about the  
8 issue --

9 MR. ALAMPI: And so the issue  
10 becomes that we have agreed that since the  
11 ordinance is worded in such a way where Figure 14  
12 shows an 80 degree drop in slope, the narrative  
13 of the ordinance talks in terms of 30 degrees,  
14 and the cliff face is undefined, that we would  
15 accept the variance was implicated as a position  
16 of safety because of the confusion and then we  
17 developed the proofs for it. We're not going to  
18 go through this process again. This is the  
19 fourth time it's been raised --

20 MR. MUHLSTOCK: What about the  
21 argument by Mr. Lamb that it's not shown on the  
22 plans? Do you have a position on that?

23 3-3-11 Apple View  
MR. ALAMPI: Yes. We're not going  
24 to show it on the plans because we don't really  
25 know where to show it from. Again, this cliff

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1 face issue and we'll see from the next witness,  
2 there is no certainty to this.

3 MR. MUHLSTOCK: I would suggest to  
4 the board that the motion to dismiss be denied.  
5 We should go forward and that you can afford any  
6 weight when you make your decision either way.  
7 That's what I would suggest.

8 MR. LAMB: Mr. Muhlstock.

9 MR. MUHLSTOCK: Yes, Mr. Lamb.

10 MR. LAMB: First of all, Mr. Alampi  
11 when he argued this did not acknowledge that a  
12 rear yard setback was required. He objected to  
13 it when it was raised two meetings ago, and the  
14 last meeting he provided his planning testimony  
15 that it wasn't necessary.

16 MR. MUHLSTOCK: He conceded as a  
17 backup position that if the board felt that it  
18 was implicated, a rear yard setback under the  
19 ordinance, that he was making that request and  
20 his client was making that request.

21 THE CHAIRMAN: And he did say that.

22 MR. ALAMPI: We did.

23 MR. MUHLSTOCK: He did say that. So  
24 he did request a variance.

25 MR. LAMB: What I don't understand  
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Cunniff - Voir Dire

1 why when the plan, the site plan submitted  
2 clearly shows the steep slope area of above 20  
3 percent and below 20 percent, why the applicant  
4 could not have provide instead of the 20 percent  
5 figure, a 30 percent figure.

6 MR. MUHLSTOCK: A point that I'm  
7 sure you'll make through your planning expert.  
8 I'm positive you will. So let's --

9 MR. LAMB: I think you are correct,  
10 Mr. Muhlstock.

11 MR. MUHLSTOCK: Let's move on.  
12 Let's move on. Motion to dismiss I'm going to  
13 recommend be denied. Let's go on to their case.

14 THE CHAIRMAN: Any board member  
15 object?

16 (No response.)

17 THE CHAIRMAN: Then the motion is  
18 denied.

19 MR. LAMB: I'd like to call Robert  
20 Cunniff.

21 ROBERT CUNNIFF, having been duly sworn by the  
22 Notary Public, was examined and testified as  
23 follows:

24 MR. LAMB: Mr. Chairman, Miss Wong  
25 had previously submitted his CV. Do you want to

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1 mark it as an exhibit? I'm going to ask him  
2 several questions about it.

3 MR. MUHLSTOCK: Well, he has  
4 submitted his report to the board dated --

5 MR. LAMB: But his report didn't  
6 have it attached.

7 MR. MUHLSTOCK: Excuse me?

8 MR. LAMB: His report didn't have  
9 his background and CV attached.

10 MR. MUHLSTOCK: You can mark it  
11 separately.

12 MR. LAMB: That would be O-11, I  
13 believe.

14 MR. MUHLSTOCK: That is correct.

15 (Objector's Exhibit 11, CV of Robert  
16 T. Cunniff, was received in evidence.)

17 THE CHAIRMAN: Mr. Lamb, just for  
18 the public's convenience, would you just briefly  
19 qualify the witness?

20 MR. LAMB: Yes.

21 VOIR DIRE EXAMINATION

22 BY MR. LAMB:

23 Q. Mr. Cunniff, describe your  
24 background and experience for the board, please.

25 A. I'm a geologist by education and

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Cunniff - Voir Dire

1 experience. I work for Hatch Mott MacDonald  
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2 which is an engineering firm that is  
3 headquartered in Millburn, New Jersey, and have a  
4 number of offices around the country throughout  
5 North America. I'm a profession geologist.  
6 There is no certification for that in this state,  
7 so therefore I utilize Pennsylvania PG  
8 certification as well as a national accreditation  
9 board for the American Institute of Professional  
10 Geologists. I have been doing geology and  
11 environmental consulting for 22 years.

12 Q. How many professionals are in the  
13 engineering firm at which you're employed  
14 approximately?

15 A. 2,000. There's about 3 or 400 in  
16 the Millburn headquarters.

17 Q. Okay. And --

18 THE CHAIRMAN: We'll accept him,  
19 Mr. Lamb.

20 MR. LAMB: Just for the record, just  
21 a couple examples.

22 Q. And I know you have a resume, I'm  
23 not going to go through it, but can you describe  
24 your connection to the Palisades tunnel  
25 construction in Hoboken, the ARC project?

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Cunniff - Voir Dire

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1 A. Yes. Hatch Mott MacDonald was part  
2 of a design build team that had won that segment  
3 of the ARC tunnel, also known as THE Trans-Hudson

3-3-11 Apple View  
4 Express Tunnel. And I was working on that. It  
5 was going to be the New Jersey Transit tunnel  
6 connecting New Jersey Transit services in New  
7 Jersey to a new train station near Penn Station  
8 in Manhattan. And I was working on that project  
9 for a while until it was cancelled by --  
10 Q. Until it was no project?  
11 A. Until it was canceled by the  
12 governor.  
13 Q. And the rest of your resume is  
14 correct and true to the best of your knowledge?  
15 A. Yes.  
16 Q. In the capacity as a geologist, you  
17 review soil types, cliffs, rock formations, that  
18 type of information in making your evaluations?  
19 A. Well, soil and rock. There isn't  
20 usually much call for an evaluation of  
21 topographic features for a geologist, but it does  
22 enter into -- you know, you have different digs  
23 on different sites.  
24 Q. And in that capacity have you  
25 reviewed or prepared slope percentages, and

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Cunniff - Voir Dire

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1 reviewed the steepness of slopes and made those  
2 types of calculations?  
3 A. Yes, not usually from a zoning  
4 perspective but from a safety perspective and  
5 from an investigation because we use drill rigs  
6 that have to be able to drill on certain percent

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7 slopes. Yes, I'm very familiar with contour  
8 maps.

9 MR. LAMB: Okay, I would move him as  
10 qualified in the area of geology unless Mr.  
11 Alampi has --

12 MR. MUHLSTOCK: Mr. Alampi, do you  
13 have any voir dire?

14 MR. ALAMPI: I do.

15 VOIR DIRE EXAMINATION

16 BY MR. ALAMPI:

17 Q. Mr. Cunniff, the ARC project, your  
18 involvement was, you say, a field geologist in  
19 charge of four rig drilling teams?

20 A. Yes, there were at one point there  
21 were four drill rigs mobilized to the site.

22 Q. With that work in particular, could  
23 you describe what your function was in  
24 conjunction with the drill team -- the rig  
25 drilling team?

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Cunniff - Voir Dire

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1 A. The drill rigs are run by a  
2 subcontractor whose job it is to operate the  
3 drill rig and collect the samples. My company  
4 had an inspector --

5 Q. No, I'm asking what you did.

6 A. Right. There was one inspector on  
7 each of those drill rigs, and I was supervising  
8 those inspectors during the training process and

3-3-11 Apple View  
9 during the initiation of the field work to make  
10 sure that they were logging the cores correctly  
11 and being safe in their operation.  
12 Q. Now, these rig drilling or rig  
13 drills, are they on Cats and they drill into the  
14 ground?  
15 A. The ones we use were truck mounted,  
16 larger than a pickup truck.  
17 Q. Right. You had one of those trucks  
18 that you see when you're doing well testing or  
19 something like that and in the back of it there's  
20 some kind of a drill or something --  
21 A. Yes.  
22 Q. -- that goes into the ground as a  
23 core, right?  
24 A. Yes.  
25 Q. And the trucks are maybe a 25- or

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Cunniff - Voir Dire

1 30-foot truck?  
2 A. Yes.  
3 Q. So your concern when you talk about  
4 steep slopes is whether --  
5 MR. MUHLSTOCK: Mr. Alampi, does  
6 this really go to voir dire?  
7 MR. ALAMPI: Absolutely.  
8 MR. MUHLSTOCK: How?  
9 MR. ALAMPI: Steep slope. The steep  
10 slope expertise.  
11 MR. MUHLSTOCK: No, he's a



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12 geologist. I mean, I really think that this is  
13 part of your cross-examination.

14 MR. ALAMPI: This will be two  
15 minutes. This will be two minutes.

16 Q. So when you talk about the steep  
17 slopes, it's whether or not the trucks can safely  
18 be mounted and perform their function?

19 A. Well, that's one of the concerns in  
20 dealing with steep slopes, yes, but there are  
21 others.

22 Q. And with regard to the core samples,  
23 you would evaluate the material that would be  
24 extracted? Is that what you actually did?

25 A. I did it and so did the inspectors,

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Cunniff - Voir Dire

1 yes. I had to check their work.

2 Q. Did you do any field testing of the  
3 general subsurface conditions along the Palisades  
4 in conjunction with that work?

5 A. That's what the drill rigs are for.  
6 I'm not sure what you mean by general field  
7 testing.

8 Q. And the balance of your resume  
9 appears to be largely in the environmental field.  
10 would you say that's a fair statement --

11 A. Yes.

12 Q. -- that most of your experience is  
13 more in the environmental field than the rock

3-3-11 Apple View  
14 formation that you would have seen in your  
15 function while you were consulting on the ARC  
16 project?  
17 A. Well, the ARC project was just one  
18 project within the last year. I would say that  
19 although my -- that particular resume may not  
20 reflect it, I'm probably about 50/50 involved in  
21 environmental consulting and geotechnical  
22 consulting as a geologist on geotechnical jobs--  
23 Q. But that doesn't show from this  
24 resume, does it, 50/50?  
25 A. If you're weighing the volume of

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Cunniff - Direct

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1 words, no, but I spent a lot of time in the New  
2 York underground on the water tunnel which is on  
3 that resume. And I did that for over two years  
4 straight and that was a geotechnical job.

5 MR. ALAMPI: I have no objection to  
6 this witness.

7 THE CHAIRMAN: Oh, really? Never  
8 would have guessed. We'll accept him as an  
9 expert.

10 MR. LAMB: Thank you.

11 DIRECT EXAMINATION

12 BY MR. LAMB:

13 Q. Mr. Cunniff, you prepared a letter  
14 to the chairman which was dated March 2, 2011  
15 which was distributed?

16 A. Yes.

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17 MR. LAMB: Mr. Muhlstock, that would  
18 be 0-12?

19 MR. MUHLSTOCK: Yes, that would be  
20 0-12, the report of Mr. Cunniff.

21 (Objector's Exhibit 12, report of  
22 Robert T. Cunniff, was received in  
23 evidence.)

24 MR. ALAMPI: How many pages is that?

25 MR. LAMB: That is five pages.

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Cunniff - Direct

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1 MR. ALAMPI: Five pages.

2 Q. Now, can you advise the board what  
3 steps you took prior to the preparation of the  
4 report or during the preparation of report?

5 A. Yes. Initially I was asked by the  
6 coalition to aid them in defining the term cliff,  
7 which as we have seen tonight and other nights is  
8 not necessarily specifically defined in the  
9 zoning ordinance. And they wanted to get a since  
10 the cliff is held up by rock, they thought they  
11 should ask a geologist for that. So I began to  
12 do research into the definition or definitions,  
13 since there are multiple, of cliff.

14 Q. Okay. Can you describe -- what else  
15 did you do? Did you inspect the property?

16 A. I did inspect the property on the  
17 18th of February. I went out and observed the  
18 property from three sides; the River Road side,

3-3-11 Apple View  
19 the Galaxy access road, and then to the rear of  
20 the property from Ferry Road.

21 Q. Any other -- look at anything else?  
22 Look at the zoning ordinance or portions of the  
23 zoning ordinance?

24 A. I have looked at portions of the  
25 zoning ordinance. I've read a lot of the

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Cunniff - Direct

1 testimony that's been given here before, and then  
2 I did my own research through other means,  
3 through the Internet, going to the state  
4 geological survey, and numerous other sources.

5 Q. Did you review the geotechnical  
6 report submitted by the developer's expert?

7 A. Yes.

8 Q. There was an initial report and  
9 supplemental report, I believe?

10 A. Yes.

11 Q. You reviewed both of those?

12 A. Yes.

13 Q. As a result of your review of this  
14 matter and that background information, can you  
15 advise the board with respect to your opinion on  
16 the proper review for them to consider of cliffs  
17 in connection with this matter?

18 A. Well, I suppose that's -- what it  
19 all boils down to is cliff is not a geologic  
20 term. At best it's a geographic term. And I  
21 looked in a number of dictionaries. I looked in

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22 a number of technical references. I do a lot of  
23 my research on line. And the Miriam Webster's  
24 Dictionary online, which is obviously a different  
25 edition than was spoken about earlier this

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Cunniff - Direct

1 evening, says "cliff: A very steep, vertical or  
2 overhanging face of rock, earth or ice."  
3 That's not a technical definition,  
4 that's from a dictionary that anybody could look  
5 up online or go to a library and get. I did some  
6 more research. We have a library, an engineering  
7 library and a geological library at the company,  
8 and we have access to other online resources  
9 through a library loan program. I found a book  
10 specifically about cliffs. It's called "Cliff  
11 Ecology: Pattern and Process in Cliff  
12 Ecosystems". And in that book -- I won't bother  
13 reading the whole paragraph, but in that book  
14 they define the cliff as everything from the edge  
15 of the precipice down through and including the  
16 talus slope of eroding material that is generally  
17 less steep than the steeper part. And above it  
18 would be the plateau and below it, below the  
19 cliff would be the pediment to essentially flat  
20 zones. So their definition of the cliff includes  
21 exposed rock face and the talus slope.  
22 Q. And on your report on page 3, that's  
23 the last sentence that you've underscored?

24                   A.     3-3-11 Apple View  
25                   Q.     Without reading the whole thing.

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Cunniff - Direct

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1                   A.     And I'll read that underscored  
2                   section. It says, "cliffs in the broader sense  
3                   of the definition, i.e. cliff edge, free face and  
4                   talus slope as a single unit."  
5                   Q.     Okay. Now, have you also reviewed  
6                   the requirements of the New Jersey Water Quality  
7                   Management Planning Rules and how it relates to  
8                   this issue?  
9                   A.     Yes, specifically they talk about  
10                  steep slopes.  
11                  Q.     Okay. And can you give your -- why  
12                  that is relevant here for this board?  
13                  A.     Well, they cite several reasons for  
14                  protecting steep slopes in their rule as well as  
15                  within their model ordinance that they provide  
16                  for a steep slopes for municipalities to adopt if  
17                  they want. And those reasons include prevention  
18                  of an accelerated erosion process, they would  
19                  like to maintain natural topography and drainage  
20                  patterns, and they'd like to prevent further  
21                  fragmentation of forest and habitat areas, as  
22                  well as not compromise aesthetic values. So  
23                  that's their intent with their model, steep slope  
24                  ordinance.  
25                  Q.     And based upon your review of these

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Cunniff - Direct

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1 definitions, and you know that there's some other  
2 definitions that try to limit cliff, but in the  
3 context of the zoning ordinance have you formed  
4 an opinion as to what would be appropriate for  
5 the board to consider as far as the definition of  
6 cliff is concerned?

7 A. Yes. It's my opinion, and it's  
8 primarily based on Figure 14 in your zoning  
9 ordinance, that to me it seems that cliff face,  
10 which is the terminology used in the ordinance,  
11 in the language of the ordinance, should be  
12 anything that is greater than 30 percent grade  
13 should be considered a cliff face, regardless of  
14 the material that it is made out of or that  
15 underlies it. That would be earth, soil, rock.

16 Q. Was there anything in the zoning  
17 ordinance of the relevant figures attached to it  
18 that talks about just the rock portion of the  
19 cliff face or cliff area?

20 A. I don't actually recall rock, the  
21 word rock appearing in the ordinance. It may but  
22 I don't recall it. The language consistently  
23 seemed to be either referring to cliff or cliff  
24 face. I'm, being a geologist, I'm sort of  
25 careful about those terms and I would prefer to

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Cunniff - Direct

1 refer to something as an exposed rock face as  
2 opposed to using another term because there is no  
3 question about it, if it's rock, it's rock.

4 Q. Right.

5 A. But there seems to be a great  
6 difference of opinion as to what a cliff is.

7 Q. Have you had a chance to review  
8 Exhibit O-1 which is dated September 29, 2010?

9 A. Yes.

10 Q. And that -- I'll just hold this up  
11 for you. I'll hold it up over here. That's the  
12 exhibit where the rock portion of the subject  
13 property, the exposed rock portion is shown in  
14 yellow?

15 A. Yes.

16 Q. Does it make any sense to you having  
17 reviewed the definition of cliff, the zoning  
18 ordinance, that the cliff for purposes of  
19 protecting views as set forth in the ordinance  
20 would only be limited to that small yellow area  
21 on Exhibit O-1?

22 A. No, I don't think the interpretation  
23 should be limited to that small area. I think it  
24 should cover essentially everything from the toe  
25 of the slope to the top of that exposed rock

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Cunniff - Direct

1 area.

2 Q. In connection with your review, you  
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3 reviewed the site plan with all the various pages  
4 showing topography and the elevations?

5 A. Yes.

6 Q. Did you review the percentage of  
7 steep slope in excess of 30 percent on this  
8 particular site?

9 A. Yes.

10 Q. Okay. And what was your conclusion  
11 with respect to that determination?

12 A. That approximately 40 percent of the  
13 site in terms of horizontal area, acreage, is  
14 greater than a 30 percent slope.

15 Q. Okay. And are your conclusions with  
16 respect to the steepness of the slope set forth  
17 on the top of page 4 of your report?

18 A. Yes.

19 Q. Okay. Did you also take specific  
20 measurements at calculations at various portions  
21 of the subject property?

22 A. Yes.

23 Q. Okay. Can you describe with respect  
24 to the northerly part of the property the various  
25 calculations that you made?

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1 A. In general the northern portion of  
2 the property which is next -- closer to the  
3 sewerage treatment plant is slightly less steep  
4 than the southern portion which is closer to the

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5 Galaxy towers.

6 After going to the site and  
7 physically examining it, which was very, very  
8 helpful, when you're on the site and you're  
9 looking towards the Palisades, it looks to me  
10 like there's a natural break in slope at  
11 approximately the location where there are a  
12 couple old -- I don't know when they were  
13 built -- stone/masonry walls. They're identified  
14 on the Exhibit O-1 as stone/masonry walls. That  
15 the lowest -- the one that is lowest in elevation  
16 appears to be coincident with the toe of the  
17 slope, of the cliff right at the edge of the  
18 talus slope. And to me, that's where the steep  
19 slope begins, at the toe of the talus which is  
20 coincident with that low stonewall. There are a  
21 couple other stone walls that are higher up.

22 Q. Did you do a calculation of the  
23 steepness of the slope on the northerly portion  
24 of the site closest to the sewerage treatment  
25 plant?

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1 A. Yes.

2 Q. Can you describe to the board  
3 your -- the calculation and how you determined  
4 what the steepness of the slope was at that  
5 location?

6 A. Yes. In my report I reference from  
7 the Apple View plans I was looking at figure  
Page 50

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8 C-2.1. It's the demolition plan but it's  
9 probably the best map that shows existing  
10 conditions because the proposed building isn't  
11 there. So I used that. That map unfortunately  
12 didn't have elevations for the exposed rock, but  
13 your -- the O-1 exhibit has some -- several  
14 elevation shots at the edges of the exposed rock,  
15 both at the bottom and at the top.

16 So the lowest elevation which would  
17 be at the lowest elevation of the exposed rock on  
18 O-1 is 82 and a half feet above sea level. So  
19 starting at the toe of the slope where that  
20 retaining wall is or in that vicinity, I actually  
21 used the contour interval on the map, at the  
22 topographic line of equal elevation. I used the  
23 16 foot contour as the lowest point, and then I  
24 measured up the slope to the base of the exposed  
25 rock, in other words without including the

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1 vertical aspect of the exposed rock, and it was a  
2 distance horizontal of 170 feet but the grade,  
3 percent grade works out to be 39.1 percent grade.  
4 That's without including the vertical face of  
5 rock. If you used the top of the exposed rock,  
6 which is at an elevation of about 115, it's  
7 actually 115.91, but if you use 115, it's a  
8 greater distance but it's a much higher vertical  
9 relief. I get a 50.7 percent grade for the slope

3-3-11 Apple View  
10 just a few feet off the northern property.  
11 Q. Describe just for the board the  
12 details of that calculation, the elevations and  
13 the expanse to determine the percentage?  
14 A. Well, it's basically a rise over run  
15 calculation. It's shown in cross-section on  
16 Figure 14 of the zoning ordinance. It's the  
17 vertical -- it's a fraction of the vertical  
18 relief in feet divided by the horizontal  
19 measurement in feet separating those two vertical  
20 points.  
21 Q. And the high elevation was 115?  
22 A. Yes.  
23 Q. In that example. The low elevation  
24 was 16?  
25 A. Yes.

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Cunniff - Direct

1 Q. You subtracted those two?  
2 A. Yes.  
3 Q. And then you divided by 195?  
4 A. Yes.  
5 Q. Which is the distance?  
6 A. Yes.  
7 Q. And that's how you arrived at the  
8 50.7 percent?  
9 A. Yes.  
10 Q. Okay. With respect to the -- where  
11 you don't use the exposed rock, you use the  
12 highest elevation of exposed of 82 and a half

3-3-11 Apple View

13 percent?

14 A. Yes, 82 and a half feet.

15 Q. Excuse me, 82 and a half feet. You  
16 subtracted the low elevation again of 16?

17 A. Yes.

18 Q. And you divided that difference by  
19 the expanse of 170 feet?

20 A. Yes.

21 Q. That arrived at 39.1 percent?

22 A. Yes.

23 Q. Any other representative  
24 calculations that you made? Let's try one on the  
25 southerly side of the property. Did you make a

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1 calculation there on the steepness of the slope?

2 A. Yes. The southern edge of the  
3 property is quite a bit steeper. The slope, the  
4 talus slope comes out further, right to the  
5 nearly the edge of the tennis courts. And  
6 although the exposed rock is primarily on the  
7 northern portion of the property, but the slope  
8 even without the exposed rock along the southern  
9 property boundary is fairly steep. I used an  
10 upper elevation. They have a contour on there of  
11 96 feet. Again, using the toe of the slope at a  
12 16 foot elevation measuring up to 96, the math,  
13 it was about 130 feet horizontally. And that's a  
14 61 and a half percent grade for the slope near

15                               3-3-11 Apple View  
the southern boundary of the property.

16               Q.     Okay. With respect to the low  
17     elevation compared to the high elevation, at a 10  
18     feet elevation which goes out to River Road, did  
19     you make a calculation there?

20               A.     Yes. I using the 10 foot elevation  
21     which is much closer to River Road then the 16  
22     foot elevation. I calculated along the northern  
23     boundary the 10 foot measuring up the hill to the  
24     top of the exposed rock at 115 which is almost  
25     the entire depth of the property. It's a 10-foot

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1     elevation contour comes out very close to River  
2     Road there. That calculation works out to be  
3     exactly 30.0 percent.

4               Q.     And would you say that that last  
5     calculation when you even used -- is it fair to  
6     say the flat portion of the property?

7               A.     Yes.

8               Q.     That even if you used the flat  
9     portion of the property almost out to River Road  
10    and go to elevation 10, is it fair to say that  
11    that's the most conservative calculation that  
12    will lead to the lowest percentage of slope by  
13    using even the flat portion of the property?

14              A.     Yes, from a developer's perspective  
15    I would say that was a conservative estimate if  
16    you -- that's essentially an average grade along  
17    that line for the entire depth of the property.

3-3-11 Apple View

18 Q. Okay. And did you also review --  
19 what are the intervals based on, how many feet on  
20 the site plan submitted to the poured?

21 A. Well the contour interval on the  
22 plan is two feet, so they have even numbered  
23 contour lines.

24 Q. Okay. Did you review the steepness  
25 of the slope without taking this, the measurement

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Cunniff - Direct

1 of the vertical and horizontal distance, by just  
2 considering the contour lines and the two feet  
3 separation between them?

4 A. Yes.

5 Q. Okay. And what did you conclude as  
6 a result of that review as far as a percentage of  
7 steep slopes?

8 A. Well, in general when you look at a  
9 contour map, the closer the contour lines are  
10 together, the steeper the slope, the farther  
11 apart, the more gentle the slope. And in  
12 particular on the southern portion of the  
13 property behind the tennis courts, the contour  
14 intervals measure horizontally something like  
15 five feet between two foot contour intervals.  
16 That's a two-foot rise over a five-foot run.  
17 They're very steep. I mean, you can take  
18 different runs. If you measure different  
19 horizontal distances on a map, you can find a

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20 variety --

21 Q. Holds on. Hold on.

22 A. If you measure different horizontal  
23 differences on any map, you can find a wide  
24 variety of percent grades.

25 Q. Based upon your review of the

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Cunniff - Direct

1 steepness of the slope it's excess of 30 percent,  
2 did you determine in approximately based upon the  
3 the elevations shown in the site plan whether to  
4 comply with the rear setback it is appropriate to  
5 adjust the building?

6 A. Yes, I have an opinion on that.

7 Q. Yes. And what is your opinion?

8 A. That the building as I understand  
9 from --

10 MR. ALAMPI: Excuse me. Let me just  
11 note an objection. I think it's a planning  
12 conclusion. I don't think this witness is  
13 qualified to apply the ordinance. I just note  
14 the objection but he can answer.

15 THE CHAIRMAN: Thank you.

16 A. The -- from my review of the plans  
17 and review of the ordinance it seems to me to  
18 comply with the setback the building would have  
19 to be approximately 40 feet, the back of the  
20 building would have to be approximately 40 feet  
21 closer to River Road.

22 MR. LAMB: Now, Mr. Chairman, I  
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23 apologize, I forget whether we marked this. I'll  
24 mark it. It may be a duplicate. It is a portion  
25 of the cross section of the -- and profile plan

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Cunniff - Direct

1 as C4.1. And I just don't recall whether I asked  
2 questions on it.

3 MR. MUHLSTOCK: Well, let me take a  
4 look at the document, Mr. Lamb, and see if we  
5 marked it.

6 Just refer to it in the record as to  
7 what it is. I'll look through the prior  
8 transcripts. If we already marked it, fine. If  
9 not, we'll remark it.

10 MR. LAMB: Okay.

11 Q. I'm going to show you a portion of  
12 the elevation on plan C 4.1 prepared by Bertin  
13 Engineering which shows the elevations of the  
14 various floors and the grading and various test  
15 pits.

16 Are you familiar with that?

17 A. Yes.

18 Q. Okay. And where based upon your  
19 review of this and the 30 percent slopes, where  
20 does the determination of the ground floor of the  
21 first habitable floor intersect with the cliff  
22 based upon your opinion?

23 A. Well, that's showing an elevation of  
24 the first floor at 27 and a half feet above sea



Cunniff - Direct

1 Q. Is it fair to say that because that  
2 intersection is inside the building, that there  
3 actually would be a negative rear yard setback?

4 A. If the building were built as in  
5 this diagram, yes.

6 Q. I want you to assume that the  
7 building is built as shown in the diagram. Then  
8 in essence the building intrudes into the  
9 Palisades assuming that's considered cliff?  
10 That's the assumption here.

11 A. Yes, it would be -- I would call it  
12 a negative setback if it was built this way, yes.

13 MR. MUHLSTOCK: All right.  
14 Mr. Lamb, I can't find it previously marked. Why  
15 don't we remark it.

16 MR. ALAMPI: A-7 was the applicant's  
17 exhibit which is the profile on the site plan.  
18 So if you're looking for the engineering site  
19 plans of the applicant, that was marked as A-7 at  
20 the 7/29/10 meeting. Mr. Lamb, I think, then  
21 started marking it up with other witnesses, so I  
22 don't know if it's one of his O exhibits.

23 MR. LAMB: I only marked up the one.

24 MR. ALAMPI: I thought you marked up  
25 a lot more than that.

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Cunniff - Direct

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1 MR. LAMB: This is the one where you

2 made me rip up my site plans because --

3 MR. MUHLSTOCK: Remark it.

4 THE CHAIRMAN: Remark it.

5 MR. MUHLSTOCK: Identify it again.

6 MR. LAMB: O-13.

7 MR. MUHLSTOCK: O-13, it's the same

8 as a previously identified document. The record

9 will reflect that.

10 Specifically why don't you identify

11 it, Mr. Lamb.

12 MR. LAMB: O-13 is the portion of

13 the cross-section on the developer's site plan

14 drawing number C4.1 showing the elevations of the

15 various floors of the buildings, the proposed

16 elevations. And the it also shows the --

17 MR. MUHLSTOCK: All right, that's

18 good enough. We know what we're getting.

19 MR. LAMB: Okay. Since you've got

20 this twice, I think you've got it enough.

21 (Objector's Exhibit 13, portion of

22 the cross-section on the developer's site

23 plan drawing number C4.1, was received in

24 evidence.)

25 Q. With respect to part of your report

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Cunniff - Direct

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1 discusses the issue of land slides because of the

2 proximity to the Palisades and excavation. Can

3 you describe your opinion with respect to that?

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4           A.     Yes. I reviewed a number of  
5     databases that the state maintains and as well as  
6     information circulars. The land slide  
7     susceptibility map for Hudson County New Jersey  
8     shows this particular site as having a land slide  
9     class A-4 which is fairly high, mostly because  
10    there's a slope that they classify as being 30 to  
11    40 degrees on the site, as they do most of the  
12    property along the Palisades. The information  
13    circular entitled "New Jersey Land Slides" states  
14    that one of the most activity land slides areas  
15    is the Palisades located in northeastern New  
16    Jersey along the Hudson River.

17           Q.     And is it your opinion that this  
18    particular property is part of that, I guess,  
19    land slide class A Roman IV?

20           A.     Yes. Some of my research had  
21    indicated in particular on New Jersey's online  
22    mapping service that anybody can access, even  
23    without special software, there have been a  
24    number of land slides in the vicinity in North  
25    Bergen and surrounding towns both rock slides as

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Cunniff - Direct

1     well as debris flows associated with the  
2     Palisades escarpment.

3           Q.     And --

4           MR. MUHLSTOCK: Let me interpose  
5     just because everyone is looking in bewilderment.

3-3-11 Apple View  
6 When was the last land slide in North Bergen?

7 THE WITNESS: Unfortunately the  
8 database doesn't have dates on it so I can't  
9 answer that question.

10 THE CHAIRMAN: Are you aware of any?

11 THE WITNESS: I'm aware of some rock  
12 fall. I don't know if it was classified as a  
13 rock slide or a land slide by the State of New  
14 Jersey, somewhere north of the property on a  
15 recent development where a large boulder fell out  
16 into the protective netting that was erected  
17 behind the development. I would call that a rock  
18 fall. I would call that a land slide. There's  
19 big ones and there's small ones.

20 MR. SOMICK: I believe they were  
21 going into the Palisades, that development.

22 MR. ALAMPI: I think that was  
23 referred to as the Daibes phenomenon where a rock  
24 went into a house because they just didn't know  
25 what they were doing. It's called the Daibes

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Cunniff - Direct

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1 phenomenon.

2 Q. Do you know whether the developer's  
3 engineer or Mr. Bertin was the engineer on that  
4 project?

5 MR. ALAMPI: Daibes?

6 A. I do not know.

7 I will say since he made the comment  
8 that people were looking in bewilderment, that

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9 all of the softer material at the base of the  
10 exposed rock, the talus slope, talus is basically  
11 defined as the material that falls off or is  
12 eroded from or above the exposed rock. So all of  
13 the softer soil and loose rock that is piled that  
14 makes up the base of the cliff got there by  
15 erosion, by rock fall, by land slide or by debris  
16 flow historically, you know, sometime in the  
17 past.

18 MR. SOMICK: It could have been  
19 landfill as well, no, taken off from barges by  
20 the city and being dumped over the Palisades?

21 THE WITNESS: Anything could be  
22 true, but if I was going to do so that, I would  
23 dump it in the ocean if I was going to barge it  
24 rather than off load it on a barge, but that's  
25 just supposition.

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Cunniff - Direct

1 Q. You also provided some information  
2 to the board concerning the Transco gas pipeline  
3 and made that essentially a utility trench or  
4 area in which the 36-inch pipe is located?

5 A. Yes.

6 Q. Can you describe your opinion with  
7 respect to that?

8 A. Well, when I was onsite I saw the  
9 markers and I saw the right-of-way. It is fairly  
10 easy to see as it goes across from River Road and

11 then up the hill and it turns to the south a  
12 little bit and goes underneath the corner of the  
13 Summit House garage. And I'm fairly sure that's  
14 why the Summit House garage has sort of an odd  
15 appearance is because the corner was cut out of  
16 it to allow access to the gas pipeline easement.  
17 But it goes almost directly up some of the  
18 steepest part of the slope.

19 Q. From a geological standpoint what  
20 special problems does that present with respect  
21 to water?

22 A. Well, I don't know for sure how this  
23 was constructed, but they obviously had to  
24 construct a trench to lay the pipe in. That is  
25 sometimes done if it can be excavated by an

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Cunniff - Direct

1 excavator. They usually have to blast when  
2 they're going through rock.

3 MR. ALAMPI: I'll just note an  
4 objection if there is no personal observation to  
5 the supposition but he can continue with his  
6 answer.

7 Q. What is one of the risks or dangers  
8 with respect to water traversing a utility trench  
9 or area?

10 A. It's --

11 Q. That has been excavated whether it's  
12 blasting or just cutting or digging.

13 A. On my environmental jobs the state



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14 of New Jersey, the DEP, Department of  
15 Environmental Protection, has made it very clear.  
16 And there's regulations to follow that they view  
17 utility trenches because they are generally dug  
18 out and then filled with not just a utility but  
19 with a backfill material to keep the utility in  
20 place. And that's almost always sand or gravel  
21 and it tends to be more porous than the  
22 surrounding soil or rock that it goes through.  
23 So the State of New Jersey, the DEP in  
24 particular, use utility trenches as a  
25 preferential migration pathway for water, for

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Cunniff - Direct

1 vapors, for anything that will move through the  
2 porosity of the backfill.  
3 Q. Now, I'm going to ask a question and  
4 save Mr. Alampi one question. You haven't dug or  
5 determined what type of materials are adjacent to  
6 the gas pipeline in that gas pipeline easement  
7 area, have you?  
8 A. No, I haven't taken any samples, no.  
9 Q. Is it fair to say, though, that that  
10 could be a risk for water, I guess, collection  
11 and the water traversing in that area, that is a  
12 possibility even though you haven't dug it  
13 yourself?  
14 MR. ALAMPI: Even I wouldn't lead so  
15 grossly and I'm notorious. I'll object.

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16 A. Yes, it is. I deal with a lot -- I  
17 work on utility jobs frequently. Things that  
18 leak. And I work on a lot of underground storage  
19 tank jobs. All these excavations are filled with  
20 porous media, and that porous media usually acts  
21 as it's what we call the bathtub effect.  
22 Sometimes the water level in those excavations  
23 because of the porosity of the backfill is quite  
24 a bit higher than the surrounding soil medium.  
25 THE CHAIRMAN: So may I ask a

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1 question? If I understand what you're saying,  
2 whether or not this is built, water is a problem?  
3 THE WITNESS: It could be a problem.  
4 It's definitely there.

5 THE CHAIRMAN: There is no  
6 difference between whether he builds or doesn't  
7 build, though, correct?

8 THE WITNESS: Correct.

9 THE CHAIRMAN: Okay. Go ahead.

10 Q. If the developer excavates into the  
11 cliffs and changes the direction of the water,  
12 could that change the amount of water going  
13 through the utility?

14 MR. MUHLSTOCK: Well, that's  
15 objectionable because there is no foundation for  
16 that.

17 MR. ALAMPI: Objection, no  
18 foundation.

3-3-11 Apple View

19 MR. MUHLSTOCK: So that's sustained.

20 Q. Is the risk of water traversing down  
21 that utility an issue that should be investigated  
22 by the developer or the board to ensure that that  
23 does not happen?

24 A. I would say yes, primarily from a  
25 corrosion perspective where there is water and

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1 contact or near metal buried below the ground  
2 surface you have a heightened risk of corrosion.

3 MR. ALAMPI: I thought that was next  
4 week's expert opinion.

5 MR. LAMB: Next week's expert,  
6 you've got his report.

7 MR. ALAMPI: Let's go.

8 Q. Did you do an investigation with  
9 respect to the soil classes on the subject  
10 property?

11 A. Yes.

12 Q. And what was the results of your  
13 review?

14 A. There are some seismic soil class  
15 maps that have been published by or maintained by  
16 the State of New Jersey. The important aspect on  
17 the site is there's a contact between two  
18 dramatically different seismic soil classes.

19 The class of soil to the west  
20 towards the Palisades is class A, which is hard

21                                   3-3-11 Apple View  
21     rock. This is the language from the map, from  
22     the state match. Class A is hard rock with less  
23     than ten feet of soil cover. It has a high sheer  
24     way velocity. And to the east of the contact is  
25     soil class E, soft soil with a low sheer way

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Cunniff - Direct

1     velocity. That means that the two different soil  
2     types transmit energy at different rates.

3             Q.     What is the concern from a  
4     geological perspective?

5             A.     That the pipeline is passing through  
6     both of those soil classes and any subsurface  
7     vibration will be impacting the two halves of the  
8     pipeline or the two ends of the pipeline in  
9     different ways. It puts a differential stress on  
10    the pipeline.

11            Q.     Now, have you been involved in --  
12    some of your projects on your CV dealt with  
13    excavation. Have you been involved with safety  
14    issues concerning projects that involve  
15    excavation?

16            A.     Yes.

17            Q.     Can you describe that briefly?

18            A.     I have been classified as a site  
19    safety representative by the New York City DEP to  
20    make sure that safety regulations are followed.  
21    Part of that training includes being --  
22    completing the OSHA competent person and  
23    excavation training, hazardous waste site

3-3-11 Apple View

24 operations, construction safety, certainly drill  
25 rig safety. I know a lot about drill rig safety

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1 and the minimum setback requirements, if you  
2 will, for drilling adjacent to utilities and  
3 overhead utilities as well as buried utilities.

4 Q. And do you have any recommendations  
5 with respect to if the board approves this  
6 project, the modified project, do you have any  
7 recommendations because of the soil types and  
8 your knowledge of what is proposed for the  
9 excavation construction?

10 A. Yeah, I would have recommendations.  
11 Yes. First and foremost would be to have an open  
12 dialogue with the construction details and  
13 whatever it is that Transco would expect anybody  
14 that's within a long ways from this pipeline  
15 because it's a major pipeline. I understand it's  
16 high pressure and it's 36 inches in diameter. I  
17 would think Transco would be very concerned about  
18 any work that goes on within sight of the  
19 right-of-way. And that can be done with  
20 vibration monitoring, you know, live monitoring  
21 with a geophone which is a seismic receptor  
22 device. You could stick that into the soil over  
23 the pipeline, the soil adjacent to the pipeline,  
24 and it can monitor vibrations during construction  
25 or whatever.

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1 Q. So from the board's standpoint it  
2 would be important to -- one of the possibilities  
3 is to monitor the vibrations to ensure that there  
4 is no adverse effect on the pipeline?

5 A. Yes.

6 Q. Basically to address that risk, that  
7 is one of the solutions that you would recommend?

8 A. I would start off by minimizing  
9 vibration and then I would certainly monitor it.

10 MR. MUHLSTOCK: Let me ask you a  
11 question, Mr. Lamb. Do you think this board has  
12 the authority, legal authority, the legal  
13 jurisdiction to tell Transco if this is approved  
14 what they should be doing to secure their own  
15 property? Do we have the jurisdiction? Maybe we  
16 can recommend. You think we have the authority  
17 over that them to tell them what to do?

18 MR. LAMB: That's a good point, Mr.  
19 Muhlstock. I think you absolutely have the  
20 authority.

21 MR. MUHLSTOCK: Okay.

22 MR. LAMB: Because the developer --  
23 it would be interesting and I'll give you the  
24 hypothetical. It would be interesting if the  
25 developer came in with a complying site plan

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1 totally, whether you had any control on that.  
2 That would be an interesting issue, I'd have to  
3 think through that which I haven't thought  
4 through. But when a developer comes in and asks  
5 for a number of variances, including a building  
6 coverage variance that exceeds the maximum by 25  
7 percent and the developer needs other variances  
8 and relief, then I believe that the board can  
9 make sure that that excavation into the cliffs,  
10 is what our position is, can be made safe --

11 MR. MUHLSTOCK: Isn't that a  
12 construction planning issue outside the purview  
13 of this board?

14 MR. LAMB: I think absolutely the  
15 board has an obligation under the MLUL, one of  
16 the purposes of zoning and planning is to make  
17 sure that projects are safe.

18 MR. MUHLSTOCK: The general safety  
19 section.

20 MR. LAMB: Yes, N.J.S.A. 40:55D --

21 MR. MUHLSTOCK: I know the statute,  
22 the general safety section. I know what you're  
23 referring to.

24 MR. LAMB: And in addition the  
25 Township of North Bergen Zoning Ordinance also

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Cunniff - Direct

1 requires and recommends that the projects be

2 safe.

3 MR. MUHLSTOCK: Okay. Okay. Go  
4 ahead.

5 Q. Your report that you submitted to  
6 the board that's been marked, is it true and  
7 accurate to the best of your knowledge --

8 A. Yes.

9 Q. -- as set forth? Is there anything  
10 else you want to add to the board with respect to  
11 your report that might help them in evaluating  
12 this application?

13 A. Well, we covered it fairly well, but  
14 in particular some of the land slides sections,  
15 if they do something on the site that could cause  
16 even a minor rock fall, that will act as its own  
17 seismic source. And this area in addition to  
18 being land slide susceptible has experienced  
19 historically recorded earthquakes. Some of  
20 them --

21 MR. ALAMPI: Did you say this site?  
22 Did you say this site?

23 THE WITNESS: I don't recall what I  
24 said but the area -- I can tell you some  
25 distances.

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Cunniff - Cross

1 MR. LAMB: Hold on for one second.  
2 Could you just read back what he said so he can  
3 refresh his...

4 (Record read.)  
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3-3-11 Apple View

5 MR. ALAMPI: I'm not sure area and  
6 site are synonymous.

7 MR. MUHLSTOCK: Cross-examine.

8 MR. ALAMPI: I'll wait.

9 MR. LAMB: I was giving him a shot  
10 in between.

11 MR. MUHLSTOCK: No.

12 MR. ALAMPI: I'm waiting.

13 MR. LAMB: I have nothing further,  
14 Mr. Chairman.

15 THE CHAIRMAN: Okay. Mr. Alampi.

16 MR. ALAMPI: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ALAMPI:

19 Q. Now, Mr. Cunniff, the attorney  
20 pointed your attention to an Exhibit O-8 which is  
21 what we call Figure 14 in the ordinance. Are you  
22 familiar with what was marked as O-8, Figure  
23 14 --

24 A. Yes.

25 Q. And are you able to look at the

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Cunniff - Cross

1 illustration that's the top illustration of the  
2 two illustrations on the Figure 14?

3 A. Yes.

4 Q. If you were to measure the degree of  
5 slope on Figure 14, regardless of the wording,  
6 what would you calculate the pitch or the degree

3-3-11 Apple View  
7 of slope on the figure?

8 A. Variable. It depends on what point  
9 on this you actually make --

10 Q. Well, let's go from the top of the  
11 point of the arrow to the bottom. I guess from  
12 the top to the bottom and from the top to the  
13 bottom, and I'm just asking what would be the  
14 degree of slope. Is it 30 degrees? Is it 60  
15 degrees? Is it 80 degrees?

16 A. It is greater than 30 percent.

17 Q. Percent. Is it 80 percent?

18 A. It does not say. It just is labeled  
19 as being greater than 30 percent and there is no  
20 scale, so there's actually no real way to  
21 calculate this from the diagram.

22 Q. I understand with your background  
23 and experience with scale or lack of scale it may  
24 be inaccurate. But visually could you just give  
25 us a general range whether it exceeds 75 or 80

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Cunniff - Cross

1 degrees or percent, visually?

2 MR. LAMB: I'll object to relevancy  
3 but --

4 MR. MUHLSTOCK: Cross-examination.

5 A. I'll say eyeballing it, it looks to  
6 be about 68 degrees.

7 Q. We're going to have fun.

8 So without a scale you come up to 68  
9 percent, not 70, not 72, not 75?

3-3-11 Apple View

10 MR. MUHLSTOCK: All right. Come on.

11 A. I had reasons for giving that  
12 number, but...

13 Q. Yes, your reasons are what you  
14 measured on the site with the testimony you gave  
15 about an hour ago from front to back on the  
16 northern side you came up with a degree of, what  
17 was it 69 or 60.1 percent?

18 A. On the northern portion?

19 Q. On the northern portion, the worse  
20 case with the top of the rock face, what did you  
21 come up with?

22 A. 50.7. 50.7.

23 Q. I thought you had -- that was to the  
24 bottom of the rock face unless --

25 A. No, that was to the top of the rock

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Cunniff - Cross

1 face. To the bottom of the rock face was 39.1.

2 MR. MUHLSTOCK: While you're  
3 looking, Mr. Alampi, is there any portion of the  
4 slope that is not at least 30 percent on any  
5 portion of the property going from River Road  
6 towards the west?

7 THE WITNESS: If you make your  
8 horizontal distance short enough, you can come up  
9 with almost any slope.

10 MR. MUHLSTOCK: Okay. Six inches we  
11 will come up with a different slope than if we

12 take six feet?

13 THE WITNESS: Yes.

14 MR. MUHLSTOCK: Okay. Over any 25  
15 foot length, is there any portion of this entire  
16 slope that's not 30 percent?

17 THE WITNESS: Without measuring it,  
18 I think that based on the shaded map that was  
19 referred to earlier which everything over 20 was  
20 shaded, there may be two or three segments that  
21 are flat spots up on the slope that if you're  
22 measuring over short enough distance, 20, 30  
23 feet, may be less than 30 percent, yes.

24 MR. MUHLSTOCK: So most, most --

25 THE WITNESS: But they're separated

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Cunniff - Cross

1 by a steeper portion --

2 MR. MUHLSTOCK: Most of the slope up  
3 from River Road to the top of this -- I don't  
4 want to use the word cliff -- up to the top of  
5 the property, most of it is over 30 percent  
6 slopes?

7 THE WITNESS: I'll say if you start  
8 at the toe of the slope or approximately 16 feet  
9 above sea level, yes.

10 MR. MUHLSTOCK: Okay.

11 THE WITNESS: Most of that slope  
12 from there on up is over 30 percent grade.

13 Q. Now, initially towards the beginning  
14 of your report and the beginning of your

3-3-11 Apple View

15 testimony you noted I think both tonight and in  
16 your report that the term cliff or cliff face is  
17 not defined, is not a well defined term. That's  
18 your exact words in your report, "not a well  
19 defined term"?

20 A. What page?

21 Q. I guess it's page 2 of your report,  
22 Terminology.

23 A. Oh, the first paragraph of  
24 Terminology. Yes.

25 Q. Do you mean generally in the

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Cunniff - Cross

1 vernacular, throughout the English language,  
2 throughout the world, what? What do you mean?

3 A. If you ask ten people on the street  
4 how to define cliff, you'll probably get 10  
5 different definitions.

6 Q. What if I ask 10 commissioners of  
7 the Township of North Bergen in 1999?

8 A. I can't answer that.

9 Q. What if I asked the master planner  
10 of the Town of North Bergen that question?

11 A. I would imagine that because it's  
12 not defined in the ordinance, he would not give a  
13 consistent answer with other board members.

14 Q. What if I asked the planning board  
15 members their definition, would I get the same  
16 definition from every person?

3-3-11 Apple View  
17 A. I don't know.  
18 Q. What do you think?  
19 MR. LAMB: If he -- he answered the  
20 question. If he doesn't know, he doesn't know.  
21 And it also calls for speculation.  
22 MR. MUHLSTOCK: You don't know what,  
23 you don't know if there would be 10 different  
24 answers or if they might be all the same?  
25 THE WITNESS: Correct. I don't

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Cunniff - Cross

1 know.  
2 Q. But you knew two minutes ago if you  
3 asked ten people, you'd get 10 answers but if you  
4 asked 10 planning boards members you don't know?  
5 A. I think I said I'd suspect I get 10  
6 different answers but...  
7 Q. We'll be here all night if we do  
8 this. Either you know --  
9 MR. MUHLSTOCK: No, no. No, no.  
10 A. I cannot know what other people  
11 think unless they say it or they define it in  
12 writing.  
13 MR. MUHLSTOCK: Don't go there.  
14 Q. Exactly. And with regard to the  
15 definitions of cliff, you did indicate that  
16 utilizing the Miriam Webster definition online  
17 the cliff is a very steep vertical overhanging  
18 face of rock; you do agree with that?  
19 A. No, you left off the last few words

3-3-11 Apple View

20 which makes a total difference.

21 Q. I'll say it again. "Cliff a very  
22 steep vertical or overhanging face of rock earth  
23 or ice."

24 A. Yes.

25 Q. Vertical is a word, isn't it?

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Cunniff - Cross

1 A. Vertical is in there.

2 Q. In your business is that an  
3 important word, vertical?

4 A. It's a well-defined word.

5 Q. And what is it?

6 A. Something that is perpendicular to  
7 the horizontal, 90 degrees.

8 Q. That's right. 90 degrees.

9 A. That's what vertical means.

10 Q. Thank you.

11 A. I'm not sure what very steep or  
12 overhanging would mean.

13 THE CHAIRMAN: Okay --

14 MR. MUHLSTOCK: Just answer the  
15 questions.

16 THE CHAIRMAN: Yes.

17 Q. In any event, you after exhaustive  
18 research found only one book on cliffs called  
19 "Cliff Ecology"?

20 A. I found only one book on cliffs,  
21 yes.

3-3-11 Apple View  
22 Q. How extensive is the library that  
23 you researched?  
24 A. Well, very large including online  
25 sources. That's not the only reference to cliffs

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Cunniff - Cross

1 that I found, though.  
2 Q. Is there any reason that you didn't  
3 use the other references that you found?  
4 A. Yes, because that particular  
5 reference seems to be in line with what most  
6 steep slope ordinances are going for when they  
7 talk about preservation or limiting development  
8 or protecting steep slopes during development.  
9 Q. So you made a judgment to qualify  
10 what publication you would utilize based upon  
11 your analysis of the purposes of steep slope  
12 regulations?  
13 A. Yes.  
14 Q. And with regard to this issue of a  
15 cliff and the definition of a cliff and such,  
16 you've also used certain terms such as the toe of  
17 the slope, I believe?  
18 A. Yes.  
19 Q. And you use terms such as a talus --  
20 A. Yes.  
21 Q. -- in your report? And then a talus  
22 slope?  
23 A. Yes.  
24 Q. Could you just give us a definition,



3-3-11 Apple View

25 a geological definition of talus slope?

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Cunniff - Cross

1 A. Talus slope is the wedge of  
2 sedimentary material and rock fragments that  
3 accumulates at the foot of an exposed rock face  
4 or precipice.

5 Q. Have you ever heard the term ancient  
6 sediment?

7 A. Not specifically, but sediment and  
8 sediment that was deposited a long time ago I  
9 guess would be considered ancient sediment.

10 Q. If you know. If you don't know, if  
11 you're not familiar with the term --

12 A. It's not a term that I've heard.

13 Q. Wouldn't this wedge, as you referred  
14 to it, be referred to as an ancient sediment, if  
15 you know? Have you ever heard that term used in  
16 that context?

17 A. I'd refer to it as a talus slope, a  
18 talus wedge or an alluvial deposition from a  
19 geological standpoint.

20 Q. See, I don't know what that means,  
21 so you have to explain it to me.

22 A. Well, talus slope, talus is the  
23 material that comes off of the exposed rock face  
24 or gets washed over the top and deposited at the  
25 bottom. And alluvial simply refers to sediment

Cunniff - Cross

1 that's deposited by moving water.

2 Q. Now, your report when referring to  
3 the term cliff or definition, I believe you say  
4 "cliff is not a geological term"?

5 A. I would not say cliff is a  
6 geological term.

7 Q. No, I'm saying in your report  
8 doesn't it say cliff is not a geological term? I  
9 read it somewhere.

10 MR. LAMB: Mr. Alampi, you're  
11 referring to the bottom of page 2.

12 MR. MUHLSTOCK: Page 2 of 5.

13 MR. ALAMPI: Am I?

14 MR. LAMB: Yes.

15 MR. ALAMPI: I'm asking you.

16 MR. LAMB: I'm trying to help you.  
17 Is that what you're referring to?

18 THE WITNESS: I said "it is not  
19 often used in geological texts."

20 MR. ALAMPI: Thanks, Jay.

21 MR. LAMB: You're welcome. That's  
22 two points.

23 MR. ALAMPI: I misspoke. I owe you.

24 Q. I misspoke. You say "it is not  
25 often used in geological texts."

3-3-11 Apple View

1 A. Yes.

2 Q. But you found a book called "Cliff  
3 Ecology: Pattern and Process in Cliff  
4 Ecosystems", and you are utilizing that book to  
5 anchor, no pun intended, your position or your  
6 opinion?

7 A. Yes.

8 Q. So the book "Cliff Ecology" is not a  
9 geological treatise?

10 A. Strictly geological, no, it's  
11 multi-disciplinary to college and biology,  
12 geology.

13 Q. Well, now you're saying geology. Is  
14 it geological or not? It doesn't have to be  
15 limited. Is it a geological test?

16 A. If you're not limiting it only to  
17 geology, yes, it would be a geological text then.

18 Q. But you say the term cliff is not  
19 used in geological texts?

20 A. No, I don't say that. I say it is  
21 not often used in geological texts. And I only  
22 found one book that had it in it.

23 Q. Is it me or am I being very funny to  
24 the audience?

25 MR. MUHLSTOCK: All right. Can we

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Cunniff - Cross

1 just let --

2 MR. ALAMPI: I'm trying to

3 concentrate.

4 MR. MUHLSTOCK: Let the witness  
5 answer the questions.

6 Q. In any regard, your entire testimony  
7 with regard to the rear yard setback questions is  
8 dependent upon whether or not the cliff is  
9 inclusive of the wedge or the talus wedge or  
10 excludes the talus wedge? Isn't that the heart  
11 of the issue?

12 A. I would rather say the criteria is  
13 the percent grade at slope, irregardless of the  
14 material, whether it be rock or sand or sediment.  
15 That would be my criteria.

16 Q. Some of the people are saying it's  
17 regardless not irregardless, but I'm going to  
18 ignore all that. I'm trying to concentrate.

19 The issue is truly whether or not  
20 the cliff is limited to the cliff face at the top  
21 and back of the property or whether it includes  
22 the entire sloping terrain; is that a fair  
23 statement?

24 A. That would make a large difference  
25 on the setback.

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Cunniff - Cross

1 Q. Do you know from your evaluation of  
2 the -- did you get a chance to review the  
3 engineer's multi-page site plan exhibits and  
4 such?

5 A. Yes.

3-3-11 Apple View

6 Q. Do you know how much construction of  
7 the building is planned for the area that has a  
8 slope that meets or exceeds a 30 degree point?

9 A. Approximately, yes.

10 Q. Can you define that?

11 A. Well, if you separate the building  
12 into the two wings, and then the part that goes  
13 across the back --

14 Q. Right.

15 A. -- my recollection would be  
16 two-thirds of the back rectangle is probably put  
17 on top of a 30 percent slope or greater.

18 Q. And with regard to the -- that's if  
19 the -- on the 30 percent grade, correct? How  
20 many square feet of terrain are we talking about?

21 A. I wouldn't hazard a guess.

22 Q. Now, you used the term in your  
23 report of geography as opposed to geology. Could  
24 you just express to us the difference? On the  
25 bottom of page 1 you say "Geographically the

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Cunniff - Cross

1 Palisades is often described as a ridge." what  
2 do you mean by geographically as opposed to  
3 saying geologically?"

4 A. Physical geography is the study of  
5 lands forms and formations frequently with a  
6 topographic exposure of some kind. Geology has  
7 to do with the underlying rock, soil and earth.

8 Q. Now, the attorney asked you several  
9 questions about the North Bergen ordinance, and  
10 you indicated that you had reviewed the ordinance  
11 and you're generally familiar with the ordinance  
12 as it applies to the issue of the cliff face and  
13 things of that nature?

14 A. I am generally familiar with it in  
15 that regard, yes.

16 Q. And nowhere in the ordinance does  
17 the word rock appear in the context of this --

18 A. I do not recall the word rock  
19 appearing in it. I recall the term cliff and  
20 cliff face being used a lot.

21 Q. And, again, the cliff face, does  
22 cliff face have a definition?

23 A. I'm sure it does. Depending on the  
24 source you can probably find a variety of  
25 definitions.

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Cunniff - Cross

1 Q. Did you research and search for the  
2 definition of cliff face?

3 A. While I was looking for the term  
4 cliff, yes.

5 Q. Did you find the definition?

6 A. I don't recall finding a definition  
7 of cliff face. Usually they'll take the shorter,  
8 you know, it's a two word compound word, so I  
9 found cliff definitions. I don't recall any  
10 cliff face definitions.

3-3-11 Apple View

11 Q. Does the word cliff face appear in  
12 the North Bergen code of ordinances?

13 A. It appears together as two words.  
14 There's a space between them, yes.

15 Q. Did you not -- did you note in your  
16 report that you didn't search for or you didn't  
17 find the definition of cliff face whether it's  
18 one word or hyphenated or two words?

19 A. I don't think I noted that.

20 Q. Is there a reason you didn't note  
21 it?

22 A. The question was, was there a reason  
23 for that?

24 Q. Right.

25 A. No.

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Cunniff - Cross

1 Q. It's just an omission on your part?

2 A. I wouldn't even classify it as an  
3 omission.

4 Q. Well, it's not in your report, is  
5 it?

6 A. No.

7 Q. You don't make any reference to it?

8 MR. LAMB: He does make a reference  
9 to cliff face, Mr. Alampi.

10 MR. ALAMPI: Well, maybe he can find  
11 it.

12 MR. LAMB: I don't want to help him

13 like I helped you.

14 MR. ALAMPI: I need your help but  
15 he's more qualified than I am.

16 A. Page 3 I make a reference to cliff  
17 face, the bottom paragraph.

18 Q. You can thank Mr. Lamb for that.  
19 And how do you refer to it?

20 A. I refer to it because that is the  
21 language used in the North Bergen Zoning  
22 Ordinance.

23 Q. Oh, sure, you made reference to the  
24 ordinance, but did you indicate in any way that  
25 you attempted to research it, to find it, to

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Cunniff - Cross

1 define it?

2 MR. LAMB: I think he's already  
3 answered that question.

4 THE CHAIRMAN: So do I.

5 Q. Do you consider the wording of cliff  
6 face to be important in any context with your  
7 research?

8 A. Since it's used in the ordinance,  
9 yes.

10 Q. Since it's used in the ordinance,  
11 okay.

12 With regard to your testimony, I  
13 believe, correct me if I'm wrong, you were  
14 characterizing that if you're looking directly at  
15 the site from across River Road looking from the



3-3-11 Apple View

16 east to the west, that the south slope -- the  
17 south portion of the property has a different  
18 degree of slope than the northern half of the  
19 property?

20 A. The northern half of the property  
21 has a flatter, less steep area that extends  
22 further towards the Palisades. So the toe of the  
23 slope on the south side comes out further towards  
24 River Road.

25 Q. And what about the degree of the

Celeste A. Galbo, CCR, RMR

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Cunniff - Cross

1 slope itself, from the toe of the slope to the  
2 top of the, I guess what we'll call it the cliff,  
3 to the top, is the degree or percentage of slope  
4 also more aggressive to use lack of a better word  
5 on the southern portion than the north portion?

6 A. Well, the southern portion doesn't  
7 have the exposed rock at the top. So it's  
8 missing that vertical, that truly vertical  
9 aspect. But the slope -- from the toe of the  
10 slope on the southern portion of the property on  
11 up the hill it's steeper than portions of the  
12 northern part of the property. Does that answer  
13 your question?

14 Q. (Witness nods.)

15 A. No. Can you rephrase the question  
16 then? I'm having a hard time visualizing what  
17 you're looking for.

18                   3-3-11 Apple View  
18           Q.    I'll withdraw the question. It  
19   seems to be confusing. I'll withdraw it.  
20                   Again, you talk about the word  
21   vertical, again turning to the definition clause  
22   at the bottom of page 2 "cliff: A very steep  
23   vertical or overhanging face of rock, earth or  
24   ice". And you seem to disregard the  
25   characterization of vertical which earlier you

Celeste A. Galbo, CCR, RMR

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Cunniff - Cross

1   said was perpendicular or 90 degrees when you  
2   defined cliff using that non-geological text that  
3   you used.  
4           A.    I would not say I disregarded the  
5   term vertical.  
6           Q.    Well, what would you say?  
7           A.    I don't know, really know what  
8   you're referring to.  
9                   MR. LAMB: I'm going to also say,  
10   Mr. Chairman, that that was answered, and if you  
11   recall specifically he said it's not only  
12   vertical that was used but very steep and the  
13   overhanging was also used in the sentence.  
14                   THE CHAIRMAN: Actually I must  
15   agree. We've been over this ad nauseam.  
16                   MR. ALAMPI: So you're probably  
17   tired of it but I've only been at this for 20  
18   minutes. But I'll move on.  
19           Q.    The latter portion of your report  
20   you deal with the potential of land slides.

3-3-11 Apple View

- 21 Did you actually test the soil  
22 composition on the Apple View site personally?  
23 A. No.  
24 Q. And you didn't have an opportunity  
25 to make personal observations and such other than

Celeste A. Galbo, CCR, RMR

‡

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Cunniff - Cross

- 1 visual observations from off site, correct?  
2 A. Correct.  
3 Q. And you used, I guess, other  
4 mappings and programs that are online in order to  
5 assist you to draw certain conclusions?  
6 A. Most of those sources are published  
7 by the New Jersey Geological Service, yes.  
8 Q. And one, there was a particular --an  
9 information circular "New Jersey Land Slides".  
10 Could you describe this informational circular?  
11 Is it a pamphlet of some type?  
12 A. It's two to four pages that you can  
13 go to the New Jersey Geological Service's website  
14 and check off. It's written for laymen as well  
15 as -- you know, so that the laymen could  
16 understand it. It's an informational circular  
17 meant for general public --  
18 Q. Consumption?  
19 A. -- use, yes.  
20 Q. And in that general publication  
21 there was a reference that the Palisades in  
22 northern New Jersey is susceptible to land

3-3-11 Apple View  
23 slides. What does that mean, susceptible to land  
24 slides? Could you quantify that?  
25 A. Well the quote is "It is one of the

Celeste A. Galbo, CCR, RMR

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Cunniff - Cross

1 most active land slide areas in the Palisades --  
2 is the Palisades."

3 Q. So let's talk about how active it  
4 is. Could you give us specifics of land slides  
5 that were recorded within a mile of the subject  
6 site over the last 30 years?

7 MR. LAMB: I'm going to --  
8 Mr. Chairman, I believe he was asked this  
9 specific question possibly by Mr. Muhlstock.

10 THE CHAIRMAN: No, I asked the  
11 question.

12 MR. LAMB: And he said he gave the  
13 one example. He talked about the Church Hill  
14 project.

15 MR. MUHLSTOCK: Do you have any data  
16 or is it just a blanket opinion?

17 THE WITNESS: No, I have some notes  
18 that would show distances --

19 MR. MUHLSTOCK: All right. Where  
20 are the notes?

21 THE WITNESS: In my bag.

22 MR. MUHLSTOCK: Why don't you get  
23 them out.

24 A. I think I have about five rock  
25 falls.

3-3-11 Apple View

Celeste A. Galbo, CCR, RMR

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Cunniff - Cross

1 Q. I'll break that down. We're talking  
2 about land slides. Is land slide a defined term?

3 A. Land slides can consist of rock  
4 falls or debris flow. Rock falls being rock, and  
5 debris flow being the sediment.

6 Q. I'm not going to argue with you.

7 A. Okay.

8 Q. Now, land slides, so it's a degree  
9 of severity or amount of debris or such. So like  
10 you say, rock falls can be a land slide, correct?

11 A. Yes.

12 Q. The flow of debris could constitute  
13 a land slide?

14 A. Correct. So could snow, not  
15 typically in New Jersey, though.

16 Q. Right, we don't have that kind of  
17 terrain. But land slides themselves, what is the  
18 worse category of land slide, if there is such a  
19 defined term? Like the collapse of a mountain or  
20 something of that nature?

21 A. I'm unaware of a rating system, but,  
22 yes, there have been literally mountainsides that  
23 have collapsed.

24 Q. Do you know of any in the immediate  
25 Hudson County area where that might have

Celeste A. Galbo, CCR, RMR

Cunniff - Cross

1 occurred?

2 A. Something on that scale?

3 Q. Yes.

4 A. No.

5 Q. With regard to, well, for example,  
6 we wouldn't expect any land slides in the  
7 Meadowlands, correct?

8 A. In the flat terrain, no.

9 Q. Right. So wherever we have some  
10 unusual change in grade and topography, that's  
11 where we would look for this type of activity or  
12 phenomenon?

13 A. Yes.

14 Q. But when we talk about land slides  
15 or the concern, you're not familiar with any  
16 wholesale collapse of any mountainside or cliff  
17 face or cliff or the Palisades themselves in the  
18 last 100,000 years, are you?

19 MR. LAMB: First of all -- just go  
20 ahead and answer the question.

21 MR. ALAMPI: He could study it.

22 MR. LAMB: How old are you?

23 MR. ALAMPI: Tonight he's 100,000  
24 years old. He feels it.

25 A. Well, if you really want to go back

Celeste A. Galbo, CCR, RMR

‡

Cunniff - Cross

1 that far, you're going back pre-glacial times,  
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3-3-11 Apple View

2 so, yes, there are massive land slides as a  
3 result of melting glaciers.

4 Q. My people were back stomping grapes  
5 back then.

6 With regard to the Transco pipeline,  
7 you had offered testimony regarding concerns  
8 about the trenching or the material in the trench  
9 that might support the pipeline or be in the  
10 underbelly of the pipeline that it would, what,  
11 gather storm water and such and funnel that water  
12 along?

13 A. Yes, act as a migration pathway for  
14 water, preferential migration pathway.

15 Q. Would you say that it was understood  
16 and known by the engineers who designed the  
17 pipeline on the Palisades that this would gather  
18 water and discharge the water down the cliff,  
19 that that would be known to happen?

20 A. They would be aware of that  
21 possibility, but I do not think they would count  
22 on that as -- and acting in that capacity they  
23 probably would have taken steps to avoid water  
24 going through it because water and buried metal  
25 don't mix well.

Celeste A. Galbo, CCR, RMR

♀

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Cunniff - Cross

1 Q. Do you know whether they took any  
2 such precautions?

3 A. I don't know the construction

4 details, no.

5 Q. So you were speculating on all that?

6 A. I'm speculating yes.

7 Q. Do you know when that pipeline was  
8 constructed?

9 A. To my understanding, approximately  
10 60 years ago.

11 Q. Do you have any expertise in  
12 pipeline construction and pipeline safety  
13 yourself?

14 A. Construction, no. Safety, yes.

15 Q. Your area of expertise with safety  
16 would be dealing with drilling rigs and apparatus  
17 in close proximity --

18 A. Construction in general, in  
19 proximity to pipelines, yes.

20 Q. But not in constructing the pipeline  
21 itself?

22 A. No.

23 Q. And so the concerns you offered more  
24 or less have to deal with activity in close  
25 proximity to the pipeline that could be

Celeste A. Galbo, CCR, RMR

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Cunniff - Cross

1 disruptive? Is that more or less what your  
2 concerns would be?

3 A. Yes.

4 Q. Returning to the North Bergen  
5 ordinance, have you had the opportunity to review  
6 this issue, definition of a cliff or cliff face



3-3-11 Apple View

7 in other ordinances?

8 A. I have looked at other  
9 municipalities' ordinances.

10 Q. Unrelated to this application, did  
11 you have experience and did you have occasion to  
12 deal with that issue?

13 A. I have looked at some other  
14 municipalities' steep slope zoning ordinances.

15 Q. And do you have any recollection of  
16 the terminology dealing with the cliff or cliff  
17 face?

18 A. No.

19 MR. ALAMPI: I have no further  
20 questions.

21 THE CHAIRMAN: Okay, then.

22 MR. FERNANDEZ: I have one question.  
23 What's approximately a safe distance to excavate  
24 next to that gas pipe, approximately?

25 THE WITNESS: Well, if -- it's hard

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Cunniff - Cross

1 to answer that question. I'll tell you if we  
2 were doing -- if we had a drill rig where we were  
3 installing a boring vertically, you must be five  
4 feet off the edge of the pipeline. And a drill  
5 rig putting drill rods below the surface is not  
6 as disturbing as excavating or driving piles.  
7 There's not as much energy being put into the  
8 earth.

3-3-11 Apple View

9 MR. FERNANDEZ: Is 25 feet away from  
10 the gas line or 24 feet away from the gas line  
11 safe to --

12 THE WITNESS: I prefer to let the  
13 gas pipeline expert answer that question.  
14 Personally, I would stay as far away as I could  
15 from the gas pipeline.

16 MR. FERNANDEZ: So five feet away  
17 from the pipeline if there was a backhoe digging  
18 a hole next to it, that would be unacceptable?

19 THE WITNESS: Yeah, I think that's  
20 pretty much exactly what happened in Edison a few  
21 years ago.

22 MR. FERNANDEZ: Thank you.

23 THE CHAIRMAN: All right. Does any  
24 member of the public which is not part of the  
25 coalition -- who is not part of the coalition

Celeste A. Galbo, CCR, RMR

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Marjan

1 wish to make or ask questions?

2 MR. ALAMPI: Excuse me, sir,  
3 Mr. Chairman, since the coalition and the Galaxy  
4 together have offered this as a joint witness, an  
5 expert and such, if this gentleman is not a  
6 member of either one, either the Galaxy or the  
7 coalition, and if it's going to be a  
8 cross-examination of a question or two, I'll  
9 withhold any objection. If it's going to be to  
10 support his testimony, then I think it's  
11 inappropriate. But we'll wait to hear it.

3-3-11 Apple View

12 MR. MUHLSTOCK: well, he's not a  
13 member of one of the two groups --

14 MR. ALAMPI: We didn't ask that  
15 question yet. Maybe we could ask that first.

16 THE CHAIRMAN: Are you a member of  
17 the Galaxy board?

18 THE WITNESS: I'm not a member of  
19 the Galaxy board.

20 BIJAN MARJAN, residing at 8100 River Road, North  
21 Bergen, New Jersey, having been duly sworn by the  
22 Notary Public, was examined and testified as  
23 follows:

24 THE WITNESS: I'm not a member of  
25 the Galaxy board.

Celeste A. Galbo, CCR, RMR

♀

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Marjan

1 MR. ALAMPI: Are you ruling that  
2 Mr. Lamb's representation is limited only to the  
3 board?

4 MR. MUHLSTOCK: Yes, that is  
5 correct. We've already ruled on that.

6 Are you a member of the coalition?

7 THE WITNESS: I'm not a member of  
8 any coalition. I'm sorry. Thank God.

9 THE CHAIRMAN: Ask your question.

10 THE WITNESS: No, my question  
11 actually has to do with -- I guess it's probably  
12 just a clarification, but do you have an opinion  
13 on -- you talked about basically the proximity to

3-3-11 Apple View  
14 the pipeline. Is there any possibility also of  
15 any sort of noxious fumes coming out of the area?  
16 Any issues with contaminants that can have any  
17 risk --

18 MR. MUHLSTOCK: Are you qualified to  
19 answer that, Mr. Cunniff, yes or no?

20 MR. CUNNIFF: Yes.

21 MR. MUHLSTOCK: That's within your  
22 expertise?

23 MR. CUNNIFF: If I understand his  
24 question correctly.

25 MR. MUHLSTOCK: Okay, go ahead.

Celeste A. Galbo, CCR, RMR

♀

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Marjan

1 THE WITNESS: That can potentially  
2 be damaging to the health of the inhabitants of  
3 this complex, and also potentially damaging over  
4 an extensive period of time as to the health of  
5 these residents.

6 MR. ALAMPI: Before he answers, my  
7 objection is that this question needs to be  
8 qualified. Is this after construction and  
9 ongoing during the life cycle? Is that the  
10 question?

11 MR. MUHLSTOCK: Is the question  
12 during construction?

13 THE WITNESS: No, this is actually  
14 after the construction is completed.

15 THE CHAIRMAN: Thank you.

16 MR. ALAMPI: And he's asking whether  
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17 this witness can opine as to any health hazards  
18 emanating from it?

19 MR. MUHLSTOCK: I asked him if he  
20 felt qualified to answer the question.

21 MR. ALAMPI: I'll object to it.

22 MR. MUHLSTOCK: That's why I asked  
23 it.

24 MR. ALAMPI: I don't think --

25 MR. MUHLSTOCK: You don't think he

Celeste A. Galbo, CCR, RMR

♀

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Marjan

1 is. I understand. He thinks he is. The board  
2 will weigh his testimony based on his expertise.  
3 MR. CUNIFF: Two things, the  
4 question started talking about noxious fumes and  
5 I assume he meant from the pipeline. If the  
6 pipeline leaks, yes, there's a health hazard of  
7 inhalation. There's a bigger health hazard if it  
8 happens to explode. But during construction it  
9 is my understanding, although I didn't do an  
10 environmental opinion paper, I have seen some  
11 results that show that there is some soil  
12 contamination on the site which is fairly typical  
13 of urban areas in New Jersey. And I deal with  
14 this a lot on my environmental aspect of my job,  
15 that is not healthy to breathe in the  
16 contaminants are primarily would be dust borne.  
17 so if the dust is suppressed and you don't --  
18 this sounds funny, but if you don't eat the soil,

3-3-11 Apple View  
19 generally the contaminants that I'm aware of on  
20 the site are only damaging if inhaled or  
21 ingested. They're not volatile contaminants like  
22 benzene, for instance, which is in gasoline. It  
23 doesn't -- it won't float off and be breathed, it  
24 has to be dust borne and inhale dust particles.  
25 So during construction, yes, there

Celeste A. Galbo, CCR, RMR

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Olsen

1 is a health risk if there's visible dust  
2 emissions. After construction it's no more  
3 dangerous than it is laying fallow currently.  
4 Does that answer your question?

5 MR. LAMB: Mr. Chairman, I have one  
6 question but I'll --

7 THE CHAIRMAN: Let me, okay.

8 RUTH OLSEN, residing at 7004 Boulevard East,  
9 North Bergen, New Jersey, having been duly sworn  
10 by the Notary Public, was examined and testified  
11 as follows:

12 THE WITNESS: What I was wondering  
13 was what were the effects with no setback as  
14 planned now, what would the effect of a land  
15 slide be on the people living in Apple View if  
16 it's constructed as it is now?

17 MR. CUNIFF: If there were a land  
18 slide and there was no flat or more gently  
19 sloping area behind the building to decelerate  
20 the rocks as they come down the slope, they would  
21 damage the building.

3-3-11 Apple View

22 THE WITNESS: Okay. And also you  
23 said you had some data on land slides? Could you  
24 tell me what that is?

25 MR. CUNNIFF: I have --

Celeste A. Galbo, CCR, RMR

♀

Olsen

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1 unfortunately the only data that I can get off of  
2 the website, New Jersey i-Map, is the location of  
3 the land slide. So I have some distances,  
4 horizontal distances from the site to several  
5 land slides.

6 It looks to me like the closest one  
7 is a little less than two miles away, 9,100 feet  
8 away. Then there were some others that were  
9 about 10,000 -- 9,100 feet south of the site was  
10 a debris flow. 10,000 feet south --

11 THE CHAIRMAN: And when was that?

12 MR. CUNNIFF: Unfortunately I don't  
13 have the date -- data. It's not part of the data  
14 that's available online.

15 So we have land slides, 9,000,  
16 10,000, 11,000 feet away. Most of the ones --  
17 unless you go very far north, most of those  
18 cluster to the south of the property.

19 THE WITNESS: Okay. But this  
20 something that the planning board could look into  
21 and find out in terms of when these occur?

22 MR. CUNNIFF: I think that the  
23 state, if you do maybe a manual file review or

24 3-3-11 Apple View  
something like that, yes, you could find out  
25 dates.

Celeste A. Galbo, CCR, RMR

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1 THE WITNESS: Thank you.  
2 MR. MUHLSTOCK: Mr. Lamb.  
3 MR. LAMB: I just have one question  
4 to clarify. I need a clean set of site plans.  
5 Mr. Alampi, could I use yours because it's only  
6 one question? I just need C-2.5 is Exhibit A-6  
7 dated July 29, 2010.  
8 ROGER CUNNIFF, having been previously duly sworn  
9 by the Notary Public, was examined and testified  
10 as follows:  
11 REDIRECT EXAMINATION  
12 BY MR. LAMB:  
13 Q. When I believe Mr. Muhlstock asked  
14 about the slopes and you talked about a gray  
15 area, and then there was by the retaining walls  
16 there was some white area. Is this Exhibit C-2.5  
17 what you're referring to?  
18 A. Yes.  
19 Q. And can you point out to the areas  
20 where you said might not have that 30 percent or  
21 more grade that you generally were talking about?  
22 A. Sure, they're the three unshaded  
23 irregular areas. Those three areas are not  
24 shaded indicating on this map, although I'm not  
25 exactly sure how the calculations were made, that



3-3-11 Apple View  
Celeste A. Galbo, CCR, RMR

♀

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Kronick

1 they are less than -- that's a 20 percent grade  
2 map.

3 Q. Right.

4 A. So the shaded areas are 20 percent  
5 or greater, the unshaded areas are less than 20  
6 percent.

7 Q. But when answering the question,  
8 this what the shaded and unshaded, this is what  
9 you're referring to?

10 A. That's what I was referring to, yes.

11 MR. LAMB: Thank you. No further  
12 questions.

13 THE CHAIRMAN: Last one. Mr.  
14 Kronick in back and then, folks, we're going to  
15 wrap up for the night.

16 DAVID KRONICK, residing at 7855 Kennedy  
17 Boulevard, North Bergen, New Jersey, having been  
18 previously duly sworn by the Notary Public, was  
19 examined and testified as follows:

20 THE WITNESS: Mr. Cunniff, what  
21 would be the environmental impact of not having  
22 adequate setback, environmental impact without  
23 having the proper setback?

24 THE CHAIRMAN: By that you mean the  
25 setback defined in the ordinance?

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♀

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1 THE WITNESS: Correct.

2 MR. CUNNIFF: Can I can interpret  
3 that to mean if it's built as shown on the map?

4 THE WITNESS: Correct.

5 MR. CUNNIFF: It would be going  
6 against some of the intent that I had referenced  
7 when referring to the New Jersey -- I'll give the  
8 you the specific citation. The NJ Water Quality  
9 Management Planning Rule, it would fragment an  
10 ecosystem. It would consume some of the steep  
11 slope which would lead to soil, expedited soil  
12 erosion, probably increase runoff. All the  
13 things that were referenced in the New Jersey  
14 rule which is the reasons they cite to protect  
15 steep slopes rather than develop on them.

16 THE WITNESS: Thank you. Thank you,  
17 Mr. Chairman.

18 THE CHAIRMAN: Thank you.

19 Ladies and gentlemen, that's it for  
20 the night. We are going to reconvene next week,  
21 7:00 in these premises.

22 MR. LAMB: Mr. Chairman at 7:00 I'm  
23 bringing two experts, the gas pipeline safety  
24 expert and Mr. Steck.

25 THE CHAIRMAN: Correct.

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1 MR. LAMB: Thank you. And

2 Mr. Chairman, Mr. Cuniff is excused, he will not  
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3-3-11 Apple View

3 be returning.

4 THE CHAIRMAN: That's correct.

5 MR. LAMB: Thank you.

6 (Time noted: 9:20 p.m.)

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Celeste A. Galbo, CCR, RMR

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25

Celeste A. Galbo, CCR, RMR

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1

CERTIFICATE

2

STATE OF NEW JERSEY )  
:ss

3

COUNTY OF BERGEN )

4

I, CELESTE A. GALBO, a Certified

5

Court Reporter and Notary Public within and for

6

the State of New Jersey do hereby certify:

7

That all the witnesses whose  
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8 testimony is hereinbefore set forth, was duly  
9 sworn by me and that such is a true record of the  
10 testimony given by such witnesses.

11 I further certify that I am not  
12 related to any of the parties to this action by  
13 blood or marriage and that I am in no way  
14 interested in the outcome of this matter.

15 In witness whereof, I have hereunto  
16 set my hand this 15th day of March  
17 2011.

18  
19  
20  
21  
22  
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25

CELESTE A. GALBO  
License No. 30X100098800

Celeste A. Galbo, CCR, RMR