

17 operating is 350 PSIG determined by 49CFR
18 192.619, subparagraph A3 of the Pipeline Safety
19 Regulations. The pipeline MAOP is also limited
20 by the downstream customer piping to 350 PSIG."

21 And my point here is that particular
22 clause is the same one that PG&E is exercising in
23 the San Bruno 30-inch in which certain pipelines
24 were allowed to determine MAOP by grandfathering
25 for the previous five-year operation prior to

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 1970. Okay.

2 Now, I hope this pipeline operator
3 hasn't gone the next step that PG&E did
4 apparently according to the front page of the
5 various "San Francisco Chronicle" and "The San
6 Jose Mercury News" that they had some reasonable
7 pressure spike in order to validate their MAOP
8 which everybody is trying to wonder what the hell
9 that is all.

10 So my point is, that you have a
11 grandfathered pipeline here with an MAOP
12 determination, I would ask additional questions
13 of the operator that they need to demonstrate,
14 but that's an example.

15 THE CHAIRMAN: Given that answer,
16 now one of the things you said in your report is
17 the board ought to ask these questions. Okay, we
18 got an answer. I heard a lot of words but I

19 didn't hear --

20 THE WITNESS: Let me slow them down.
21 It's engineering speak and I apologize.

22 They answered the MAOP, but then they
23 raised in the nature of answering that question,
24 which I think they honestly were stating fact,
25 there was a check and balance in the series of

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 questions asked here. And one of them is the
2 series of integrity management questions I've
3 asked that would help identify some possible --
4 there may not be any anomalies of any concern,
5 but there may be. So there's leading questions
6 that are checks and balances.

7 They answered the specific question
8 related to MAOP; they raised another issue in
9 answering that question, and those other issues
10 are needed to be answered in further detail and
11 they're not answered in these questions.

12 MR. MUHLSTOCK: So what are they --
13 go ahead. So what are the further questions?

14 THE WITNESS: The further questions
15 then are related go to K.

16 MR. MUHLSTOCK: Okay.

17 THE WITNESS: "The Integrity
18 Management (IM) assessment methods utilized on
19 this segment and whether any repairs under IM
20 where required by type of threat, by repair time,
21 whether it's corrosion or third party,

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22 construction - by requirements from scheduling
23 remediation - third party damage, construction,
24 by requirements for scheduling remediation in the
25 regulations they classify them as immediate, one

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 year and conditional."

2 MR. LAMB: I'm -- I didn't
3 understand any of that. I don't know whether the
4 board did.

5 MR. ALAMPI: Let me do it.

6 THE CHAIRMAN: That's my point.

7 MR. ALAMPI: It's my turn. It's my
8 turn.

9 Q. Mr. Kuprewicz, you were just reading
10 from your report on page 13 of 14. Do us a
11 favor, please, that's called Objector's 14 and
12 the three-page letter with purported response is
13 A-14. So when you said K, I was reading A-14 and
14 I didn't follow you. So we'll do it again.

15 A. Let me just take a stab at this or
16 you want to ask another question?

17 MR. LAMB: Let him, let him --

18 Q. This is my opportunity.

19 A. Thank you.

20 Q. But I'll go slowly because quite
21 honestly, I don't quite understand your
22 responses, not because of anything other than I'm
23 not an engineer. So I'm having a hard time.

24 3-10-11 Appleview
But you started to respond to the
25 attorney's question or the chairman's question,

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 if this first answer is incomplete because it
2 leads you to more questions than answers, you
3 went to K on the Objector's 14. Explain to us
4 what K is about in layman's terms.

5 A. In the regulations, pipeline
6 requirement for certain high consequence areas,
7 which I believe this is --

8 Q. Go slow. Go slow.

9 A. -- high consequence areas or in
10 regulations defined, Transco is required to do
11 certain types of inspections. And in the nature
12 of the questions or the answers provided by
13 PHMSA, they provided some information. It may or
14 may not be complete. And it looks like their
15 answers are related to some sort of smart pig
16 that was done that was related to corrosion,
17 certain types of corrosion. So they've made an
18 attempt to answer some of the question apparently
19 but have not answered the entire question as I
20 posed it. Does that make sense?

21 MR. SOMICK: Yes, it makes sense but
22 if it was corrosion, wouldn't you sort of know if
23 the damage, third-party damage or construction or
24 anything like that in the anomaly or during that
25 whole pig study whatever it is? Wouldn't you

3-10-11 Appleview
Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 notice any other -- or is it just that the
2 answers isn't too specific enough that it's
3 saying okay, we found no anomalies that were
4 identified in the further investigation section;
5 it should have said there was no corrosion, there
6 was no third party damage, no construction that
7 would have --

8 THE WITNESS: Both of your questions
9 are very valid, and let me make an attempt to be
10 straightforward and short. Is they haven't said
11 we didn't find no anomalies. The question is
12 list the anomalies you found so that someone
13 could then say -- because you could have
14 corrosion and it's not a problem or you can have
15 corrosion and it is a problem. And so the nature
16 of the question I've laid out here is if they
17 found no anomalies that are a problem, they can
18 say we found no anomalies. No anomalies means
19 one thing. Not reporting anomalies because you
20 don't think there is a problem is a different
21 answer.

22 MR. SOMICK: So you disagree with
23 the way it was answered?

24 THE WITNESS: I don't think it's
25 complete from PHMSA. I'm not criticizing PHMSA.

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Kuprewicz - Cross

1 MR. FERNANDEZ: It's their pipeline.

2 THE WITNESS: No, this is PHMSA's
3 answer. And they necessarily have answered a
4 question that from my perspective is not
5 necessarily complete.

6 MR. FERNANDEZ: Okay.

7 THE WITNESS: I'm not trying to be
8 argumentative. I'm just telling you what I see.

9 Q. Well, let's go back to A-14, the
10 three-page exhibit. You say this is PHMSA's
11 answers, but if you read the second paragraph it
12 indicates or it states that "We requested
13 Williams Gas Pipeline - Transco assist us in
14 addressing your questions." So aren't these
15 answers emanating from their interview or
16 questioning of Transco?

17 A. I think it's -- first of all, it
18 isn't Transco's name on it. That's a difference.
19 And PHMSA has to -- they're reporting what
20 they're being told. There's a difference between
21 -- and I'm not trying to be argumentative with
22 PHMSA -- there's a difference between PHMSA
23 answering for the operator and the operator
24 answering; it's called liability.

25 Q. Well --

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Kuprewicz - Cross

1 A. At least from --

2 Q. -- this report was written by Byron
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3 Coy?

4 A. Byron Coy.

5 Q. And you indicated that you do know
6 him, correct?

7 A. Yes.

8 Q. You've dealt with him
9 professionally?

10 A. Yes.

11 Q. Do you think he knows what he's
12 doing?

13 A. I think he does. And his function
14 is to operate as an agent of PHMSA. He's not the
15 pipeline operator and he knows that I know that.

16 Q. And because he knows you and knows
17 his job, he's looking for accurate responses,
18 isn't he?

19 A. I can't speak to that. I've already
20 told -- wait a minute --

21 Q. Don't you think he's looking for
22 accurate answers?

23 A. I think he's looking to have the
24 question answered, and I think he's looking for
25 accurate responses, but he may not be getting

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Kuprewicz - Cross

1 complete responses; there's a difference.

2 Q. Do you think he's experienced enough
3 to know that?

4 A. I don't know. From this perspective

5 here I've already told you one situation. I
6 don't think he's trying to be deceptive or
7 whatever. He may be -- I've asked this question
8 to comply with a FOIA request. I'm not Byron, so
9 I'm not criticizing him. I'm just saying I look
10 at this question; I look at the answer. I look
11 at my questions and they're not answered.

12 MR. MUHLSTOCK: You know Mr. Coy.
13 You said you do know him?

14 THE WITNESS: Yes, I interacted with
15 him.

16 MR. MUHLSTOCK: And you had this
17 document before tonight?

18 THE WITNESS: Yes.

19 MR. MUHLSTOCK: And you knew that
20 you were going to come and testify on this?

21 THE WITNESS: Yes.

22 MR. MUHLSTOCK: Did you call him?

23 THE WITNESS: No.

24 MR. MUHLSTOCK: Why?

25 THE WITNESS: Who do I represent

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 here?

2 MR. MUHLSTOCK: You represent the
3 Galaxy Board of Directors. They --

4 THE WITNESS: No, wait a minute. I
5 am not the federal agency and the regulatory.
6 I've asked specific questions here and I expect a
7 specific answer. And I've gone into the record

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8 under oath that there is some questions that have
9 been answered and others that have not been.

10 MR. MUHLSTOCK: You know Mr. Coy?

11 THE WITNESS: Yes.

12 MR. MUHLSTOCK: You've -- he'll pick
13 up the phone and talk to you?

14 THE WITNESS: I don't know.

15 MR. MUHLSTOCK: He knows you well
16 enough, he knows you?

17 THE WITNESS: Maybe.

18 MR. LAMB: If somebody wants to
19 produce Mr. McCoy, that's fine.

20 THE WITNESS: Coy.

21 MR. MUHLSTOCK: Mr. Lamb, it's
22 cross-examination.

23 THE WITNESS: Wait a minute. Wait a
24 minute. I think there's a point of distinction
25 here. You're trying to act as if he represents

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Kuprewicz - Cross

1 the operator and he does not.

2 MR. MUHLSTOCK: No, I just asked you
3 why didn't you call him and get some of these
4 answers that you're concerned with.

5 MR. LAMB: Mr. Muhlstock, I want to
6 make something very clear. The developer has an
7 obligation and the burden of proof before this
8 board. The Galaxy is not doing the developer's
9 job.

10 MR. MUHLSTOCK: It's your expert.
11 We're only cross-examining your expert. No one
12 is shifting any burdens here.

13 MR. LAMB: That's fine. That's
14 fine.

15 MR. MUHLSTOCK: You're making a
16 legal argument that has no relevance to this.
17 He's cross-examining. We're only interested in
18 getting information. I want to know why he
19 didn't call him.

20 THE WITNESS: Well, I can tell you
21 this, I have no problem picking up the phone and
22 calling Byron, and giving him a call and say,
23 "Hey, Byron, what's this answer mean?" That's
24 not a problem. Now, you know, they're a little
25 busy.

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Kuprewicz - Cross

1 Let me point out an example here --
2 MR. LAMB: There is no question to
3 you.

4 MR. ALAMPI: This is the one thing
5 three lawyers in the room agree upon -- four,
6 there was no question pending.

7 THE WITNESS: Thank you, lawyers.

8 MR. ALAMPI: And that's because your
9 witness brought us together. It's a Kumbaya
10 moment.

11 Q. So here is the issue -- and I know
12 that you're trying to articulate a response and

13 not be positioned by these documents; I
14 understand that -- but it just seems that this
15 A-14 document was in your possession. It
16 answered the questions or answered them at least
17 to a degree that even you are satisfied to a
18 degree, if not fully, and we seem to be
19 satisfied, why wouldn't you have incorporated
20 this in your report?

21 A. Let me just since I'm under oath and
22 on the record here, I want to be real clear here.
23 I have not answered that they've answered the
24 questions. I don't agree with that statement. I
25 agree with some of them. I don't agree with it

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 all. I've been very clear in my report why and
2 you need to read it. And let me give an example
3 of why.

4 I recently was commissioned by the
5 City of Salt Lake City, okay, to do an
6 independent investigation after two pipeline
7 failures in their city. In the independent
8 investigation I was called upon to do certain
9 investigations that were given me very
10 confidential information. I couldn't even share
11 it with PHMSA. I'm often brought in as the
12 independent neutral party where I cannot get
13 certain information unless I can independently
14 verify it. And in this case I like Byron Coy,

15 and he's made some statements here that let's sit
 16 across the room and try to figure out what he's
 17 trying to say here; but I don't think he's
 18 answered all the questions I've raised in all
 19 their entirety. Has he answered the issue of
 20 MAOP; he has. But he's also raised and
 21 additional questions as a result of the answer,
 22 and I respect him for that. Shall I pick up the
 23 phone and call him every time? PHMSA is a little
 24 spread out, folks. They're dealing with a lot of
 25 pipeline failures right now. Sorry. Next

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 question, please.

2 Q. No, you're doing a good job.

3 A. Thank you.

4 Q. With regard to PHMSA, this is called
 5 a Pipeline and Hazardous Material Safety
 6 Administration. Is PHMSA a government entity or
 7 a subsidiary of a government entity?

8 A. It's under the Department of
 9 Transportation. To answer your question, it's a
 10 regulatory agency, yes, under the federal
 11 government.

12 Q. So it's not an industry advisory
 13 group?

14 A. No.

15 Q. It's not a trade group, so to speak?

16 A. No, it's a government. They're
 17 government employees.

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18 Q. And do they have jurisdiction over
19 the pipeline safety issues?

20 A. They have jurisdiction to assure
21 compliance, that they comply with pipeline safety
22 regulation. There's a difference.

23 Q. Yes. And the federal regulations
24 more or less we have the Code of Federal
25 Regulations, the CFRs, correct?

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 A. Correct.

2 Q. And in Title 14, I believe that's
3 the section that deals with regulating gas
4 pipeline, natural gas pipeline?

5 A. I don't remember the specific title
6 but that sounds about right. Yes, the Code of
7 Federal Regulations.

8 Q. But when you go to pipeline safety,
9 they're codified in this Section 49CFR, correct?

10 A. Correct.

11 Q. And this pipeline, there's a law
12 called The Pipeline Safety Improvement Act of
13 2002?

14 A. Yes, that's one pipeline regulation.

15 Q. And there are many, of course,
16 right?

17 A. There's a series of them. They get
18 reauthorized every few years.

19 Q. They could fill this room with laws,

3-10-11 Appleview
20 statutes, regulations?
21 A. Well, no. PHMSA is right now not in
22 the sense of not funded for regulation, they're
23 in limbo right now. They will continue to
24 operate. And so every five or six years they're
25 open to reauthorization. And the Pipeline Safety

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 Improvement Act of 2002 was one where Congress
2 gave them additional funds but added additional
3 regulations. The more recent one is Pipes 2006.
4 And they're now up for reauthorization but
5 everybody is on hold until we figure out what's
6 going on with some of the gaps in the federal
7 safety regulations. Does this make sense?

8 Q. Yes. And but PHMSA is then the
9 regulatory agency under the federal Department of
10 Transportation?

11 A. For interstate pipelines, yes, and
12 setting minimum requirements for other pipelines,
13 certain pipelines.

14 Q. Do you respect this agency?

15 A. Yes, I do, though I've tangled with
16 them on many occasion.

17 Q. And going back now to A-14, this
18 three-page exhibit, number -- on the first page
19 D, the pipeline diameter, and it appears the
20 answer is 36 inches. Do you have any reason to
21 doubt that this a 36-inch diameter?

22 A. No, but I'd like to hear it from
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23 Transco.

24 Q. "E. The wall thickness of the
25 pipeline. Answer: "0.500 inches."

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 I assume that's a half inch?

2 A. That's a half inch, yes.

3 Q. Do you have any reason to doubt that
4 it's a half inch pipe?

5 A. No, but I want to make sure it's
6 this segment.

7 Q. What is the -- do you know what is a
8 typical thickness, the wall thickness of a
9 pipeline of this size?

10 A. No, it will vary for various
11 reasons.

12 Q. I'm sorry?

13 A. It will vary for various reasons.

14 Q. In the Transco system is there a
15 uniform pipe thickness for this size transmission
16 line?

17 A. Don't know. Could be, could be not.
18 Again, there's various reasons why it would vary
19 but it could vary.

20 Q. Can you tell us how much they vary?
21 For example, are there such a things as
22 three-inch thickness of transmission pipe?

23 A. I doubt if that's in the United
24 states but I don't know. I couldn't answer that;

25 3-10-11 Appleview
that's a pipeline operator answer, a question

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 they have to answer because they know their pipe.

2 Q. Do you know whether or not there are
3 a quarter inch thick transmission pipelines?

4 A. I would suspect there are.

5 Q. In the category of half inch thick
6 pipeline, how would you categorize that as being
7 adequate or inadequate for this size pipe with
8 the MAOP that it's operating under?

9 A. To answer your question, I can't
10 characterize, there are too many variables.
11 That's why the pipeline operator has to come in
12 and clarify that for you.

13 Q. "C. When was the pipeline of this
14 location installed? Answer: 1959."

15 Does that sound correct to you?

16 A. I have no idea. Again, you know, it
17 could be right, it could not be right. That's --
18 there is no way for me to know that.

19 Q. Given the national system of
20 pipelines running from Texas and wherever, is a
21 1959 gas pipeline, gas transmission pipeline, is
22 a 60 year old line very old?

23 A. An 60 year old pipeline is old but
24 age for a steel pipeline is really rather
25 irrelevant.

Kuprewicz - Cross

1 Q. Okay.

2 A. If you know other factors related to
3 the pipeline.

4 Q. Did you have an opportunity to read
5 at the bottom of the first page of Exhibit
6 A-14 -- I'll just give you an opportunity to read
7 it.

8 A. Which one? I'm sorry, exhibit?

9 Q. A-14. It starts with "I want to
10 assure you."

11 A. Yes, I've read it.

12 Q. And can you tell who the author of
13 that statement is from this exhibit?

14 A. Apparently Byron Coy.

15 Q. And he wants to assure whom that the
16 gas -- Williams Gas Pipeline -Transco is aware of
17 this building project?

18 A. He's got a whole bunch of people.

19 Q. He's got about six or seven people
20 from PHMSA and the person who asked for the
21 information?

22 A. Yeah, but that doesn't carry any
23 weight with me. I'm a neutral independent party
24 here.

25 MR. ALAMPI: I don't have any

Celeste A. Galbo, CCR, RMR

Kuprewicz - Redirect

1 further questions.

2 MR. LAMB: I have a couple redirect.

3 REDIRECT EXAMINATION

4 BY MR. LAMB:

5 Q. You testified before about the
6 importance of having Transco provide this
7 information?

8 A. Yes.

9 Q. Okay. Is it fair to say that
10 Mr. Coy does not work for Transco as an employee
11 of Transco?

12 A. That's correct.

13 Q. Okay. There were some questions
14 asked about the federal standards. Are those --
15 if there is a compliance with those federal
16 standards, does that satisfy the risks and mean
17 that there is no safety problem?

18 A. No, it shows compliance with the
19 federal standards, but it's only as adequate as
20 the particular location and the pipeline
21 operator's interpretation of those. And there's
22 a wide variation of how it's interpreted.

23 Q. You had a question at the beginning
24 that you wanted to explain the MAOP and Mr.
25 Alampi wanted -- had a right to continue to ask

Celeste A. Galbo, CCR, RMR

♀

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Kuprewicz - Redirect

1 questions. Is there anything you want to add
2 with respect to your response to the MAOP?

3 A. Well, I guess the next question,
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4 it's not in my report, I'd ask them, you guys
5 aren't like another pipeline operator doing
6 something totally stupid and doing pressure
7 spiking to validate your pressures every five
8 years, because that's the way you get an anomaly
9 in your pipeline to go from stable to unstable.

10 Q. So basically is it fair to say that
11 if Transco was here, a technical person, that
12 they could answer all these questions directly
13 under oath not through a third party?

14 A. That's correct.

15 Q. That would be important to you in
16 connection with your desire and objective to make
17 sure that the information is accurate and that
18 this is a safe project?

19 A. That's correct. And I would hope
20 they would be able to answer those questions and
21 we wouldn't have to come back for another
22 meeting.

23 MR. MUHLSTOCK: Who would ask those
24 questions, Mr. Lamb? If Transco was standing
25 there at the next meeting, let's just say, who

Celeste A. Galbo, CCR, RMR

Kuprewicz - Redirect

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1 would ask the questions?

2 MR. LAMB: Well --

3 MR. MUHLSTOCK: You?

4 MR. LAMB: I think the developer
5 needs to --

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6 MR. MUHLSTOCK: Mr. Alampi?

7 MR. LAMB: Mr. Alampi --

8 MR. MUHLSTOCK: Would ask technical
9 questions as to safety that only this witness
10 really knows what questions to ask? Isn't that
11 true, Mr. Kuprewicz? You're the only one
12 standing in this room who really would know what
13 questions to ask Transco, no?

14 THE WITNESS: No, there are other
15 people. I've given you enough guidance here in
16 the report to get --

17 MR. MUHLSTOCK: Who? who would be
18 able --

19 THE WITNESS: Read them the report.

20 MR. SOMICK: They got the report and
21 they answered it --

22 THE WITNESS: No, no, no. They
23 answered some of them.

24 MR. SOMICK: -- right?

25 THE WITNESS: And they didn't answer

Celeste A. Galbo, CCR, RMR

♀

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Kuprewicz - Redirect

1 them completely.

2 I'm sorry. Go ahead, I didn't mean
3 to interrupt you.

4 MR. MUHLSTOCK: If they were here at
5 the next meeting, let's just say, who would be
6 asking them the follow-up questions that you
7 think are important?

8 THE WITNESS: There's lot of people
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9 that could ask them.

10 MR. MUHLSTOCK: Who?

11 THE WITNESS: But let me put it this
12 way --

13 MR. MUHLSTOCK: Who?

14 THE WITNESS: You for one.

15 MR. MUHLSTOCK: Me, the board
16 attorney would know sufficiently the details --

17 THE WITNESS: No, no. Let's be
18 fair.

19 MR. LAMB: Can I just say one thing,
20 the board can also hire its own expert.

21 MR. MUHLSTOCK: That's where I
22 wanted you to say that. That's where -- I knew
23 you were going to --

24 MR. LAMB: Did we actually agree on
25 something?

Celeste A. Galbo, CCR, RMR

♀

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Kuprewicz - Redirect

1 MR. MUHLSTOCK: I knew you were
2 going to say that eventually because I certainly
3 couldn't ask the question.

4 THE WITNESS: Let me also help you
5 out here.

6 MR. LAMB: That's just like, Mr.
7 Muhlstock, to be honest, I couldn't ask the
8 questions until I saw this report and tried to
9 understand what was involved.

10 THE WITNESS: The other side of

11 this, of your question to complete the questions
 12 you asked is, I would hope Transco would
 13 understand the seriousness of this issue and
 14 they'd bring somebody in here like me from the
 15 company who wouldn't give you a spin answer; they
 16 would answer the questions, understand the intent
 17 and be prepared to give you that. And I've run
 18 across companies and maybe Transco is one of
 19 those. I can't judge that.

20 MR. FERNANDEZ: Let me ask you
 21 something. This is very fast. Transco is
 22 standing in your position. I have both
 23 documents, yours and the applicant. I ask
 24 Transco, can you answer A. He tells me exactly
 25 what's on A on the applicant's document and he

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Kuprewicz - Redirect

1 does that for all your answers. I say okay,
 2 you're the owner of the pipeline, your answers
 3 are fine, and is he right or --

4 THE WITNESS: He's going to be under
 5 oath, so if he's not right, okay, there's a
 6 problem here. But I would think they'd answer
 7 them --

8 MR. FERNANDEZ: He says all these
 9 questions are correct.

10 THE WITNESS: Let me also be sure,
 11 you're missing two points here. The first point
 12 is, these are a series of questions to understand
 13 about the condition of the pipe. There's also a

14 series of questions in the body of letter, of the
15 report that say these are issues that need to be
16 addressed as well. I would expect them to come
17 prepared to answer both those types. Is that
18 fair?

19 MR. FERNANDEZ: I'm asking the
20 representative from the pipe company, the
21 pipeline operator, he answers your question
22 identical to these; is that okay?

23 THE WITNESS: Well, if the questions
24 are not identical but there are some that are --

25 MR. FERNANDEZ: But he answers just

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Kuprewicz - Redirect

1 like this.

2 THE WITNESS: That would help you in
3 understanding the condition of pipe. And if the
4 answers were straight, you'll figure it out. If
5 they've answered the question straightly, yes,
6 that would tell you about the condition of the
7 pipe for that segment.

8 MR. FERNANDEZ: He is. He's
9 saying --

10 THE WITNESS: No, he isn't.

11 MR. FERNANDEZ: The representative
12 from Transco is saying A is correct; B is
13 correct; C is correct; D is correct.

14 THE WITNESS: No, you ask him the
15 question, confirm this and confirm that. And

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16 some he'll just say the same answer and others
17 he's going to say, well, this is answer ---
18 here's the question he's asked and here is my
19 answer. And that would tell you about the
20 condition of the pipe. And if he's doing that
21 under oath, you know, you're not going to need a
22 super exotic engineer --

23 MR. FERNANDEZ: That's what I want
24 to know.

25 THE WITNESS: That's on the

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Kuprewicz - Redirect

1 condition of the pipe. Then there is the issue
2 of abnormal loading and variant others.

3 I don't want to confuse with a lot of
4 technical gobbledegook here, but there are to
5 main baskets. This is what we did in Salt Lake
6 City and you know what, the operator was
7 indicated in public record, I can stand up in
8 front of the city council and say they've done
9 all the right things, they're doing the right
10 things. As an independent investigator, I'm not
11 tied to PHMSA. You know, we communicate from
12 time to time but I'm independent, I'm not looking
13 at regulations.

14 Q. Mr. Kuprewicz, we have spent a lot
15 of time on these questions on page 13, these
16 factual questions. Does the answer of any of
17 those questions affect your 12 recommendations on
18 page 1 and 2 of your report as to what needs to

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19 be done?

20 A. No.

21 Q. Now, one thing that I don't
22 understand the grandfathering of the MAOP. Is
23 there -- is the low MAOP compared to the average
24 MAOP on this pipeline still a potential problem
25 if you assume the answer in that A-14 question

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1 one is correct?

2 MR. ALAMPI: I'll object because I
3 don't understand your question. I don't
4 understand it.

5 MR. LAMB: And I probably don't --

6 THE WITNESS: Do we need more
7 engineers in the room?

8 Q. If question A on A-14 about the MAOP
9 is correct, is it -- I'm trying to understand
10 what the grandfathering of the MAOP is, relevancy
11 is as far as risk and safety.

12 A. It means it probable hasn't
13 undergone a hydro test in its history. The NTSB
14 recently as a result of the San Bruno
15 investigation releasing certain public documents
16 indicated that they had issued to PHMSA an urgent
17 safety recommendation, a series of them. One of
18 them was if you didn't have adequate records to
19 ascertain how you determined the MAOP, even if
20 you did it historically, if you haven't done

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21 adequate records, including if you haven't done
22 maybe a hydro test, then we're going to recommend
23 that you do a hydro test on those lines. That's
24 big deal.

25 MR. MUHLSTOCK: Okay. Okay. They

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Kuprewicz - Redirect

1 come in, they say, you know what, you're right.
2 I ask the question, someone else asks the
3 question; they haven't done a hydro test, okay.

4 Do you think -- that's a legal
5 question; forget about it.

6 If they say that, I don't think this
7 board has the authority to say to Transco go do a
8 hydro test. This board doesn't.

9 THE WITNESS: I'm not saying -- it's
10 not even required to do that right now, not
11 even -- the industry is trying to act like the
12 NTSB ordered that; they didn't. They said, if
13 you have other documents, you don't have to
14 necessarily do this.

15 Now, let me help you out. In the
16 other questions I ask in my report, there's a
17 check and balance in here, and the answer to
18 those questions will provide sufficient
19 information to move this issue on. Transco
20 should be able to demonstrate to you that they
21 know what their pipe is in that section, its
22 condition, and whether or not they're dealing
23 with the various risks that are identified in the

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24 report. That's all there is. I think they can
25 do that for you.

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1 MR. MUHLSTOCK: okay.

2 MR. LAMB: I have nothing further,
3 Mr. Chairman.

4 THE CHAIRMAN: Do you have anything
5 further?

6 MR. ALAMPI: Well, I can always have
7 a little recross, but I'll leave it. I'll leave
8 it because, Chairman, it's quarter to 10 and I
9 think we have two more witnesses and the public.

10 THE CHAIRMAN: Let's go to the next
11 witness.

12 MR. LAMB: Mr. Chairman, can we
13 finish the public with Mr. Kuprewicz?

14 MR. ALAMPI: Are they going to ask
15 their own witness questions?

16 Let me get a ruling. Members of
17 public who are -- I guess I'll just put this on
18 the record because I've had to litigate this in
19 an unrelated case in Jersey City, but we have
20 members of the public. I believe, maybe I'm
21 wrong, the majority of them live at the Galaxy,
22 and the board of directors of this condominium
23 association which by law is the only recognized
24 body to represent the condominium is represented
25 by most able counsel.

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Rabin

1 MR. MUHLSTOCK: We've already ruled
2 throughout the entire proceeding, Mr. Alampi,
3 that individual members are not necessarily the
4 board. We've ruled that, so we've allowed it.
5 So why don't we have the public and limit the
6 time and let's take a couple of questions.

7 THE CHAIRMAN: I am going to limit
8 it. We're going to cut the public portion at 10.

9 MR. LAMB: I'd just like to note for
10 the record, if the public could be brief because
11 Mr. Kuprewicz does not intend to return and,
12 therefore, if you can be precise and try not to
13 be repetitive on any of the numerous questions
14 that have been asked.

15 THE CHAIRMAN: Thank you.

16 JEREMY RABIN, residing at 7004 Boulevard East,
17 Guttenberg, New Jersey, having been duly sworn by
18 the Notary Public, was examined and testified as
19 follows:

20 THE WITNESS: To the best of your
21 ability having looked over the transcripts of the
22 hearings, the testimony of the Apple View
23 witnesses, the engineer, the geotech, the
24 architect, do you feel that at present it has
25 been demonstrated that Apple View would be safe

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1 regarding the gas pipeline with the heavy
2 vibration equipment, the pile driving, all the
3 different things? Have they demonstrated that it
4 is safe currently as it is right now?

5 MR. ALAMPI: Let me note my
6 objection. The question is too vague.

7 MR. MUHLSTOCK: Can you answer that?

8 MR. KUPREWICZ: Yes, I can, and it's
9 not going to be a yes or no answer.

10 I've addressed many of these issues
11 in the report and it clearly -- and I've done
12 this in other litigation issues where we have to
13 identify where a failure was going to occur.
14 There is a consistent inconsistency in
15 this evidence to date that's placed the board in
16 a very bad position. In that you have an
17 obligation and charter to do certain things and
18 right now the inconsistency shows a lack of
19 respect for this gas transmission pipeline, and
20 somebody needs to give you that information so
21 that you can make an informed decision.

22 THE CHAIRMAN: So is your answer no?

23 MR. MUHLSTOCK: No, the answer is
24 that he doesn't have sufficient information to --

25 MR. KUPREWICZ: To rule either way,

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1 but I'm going to tell you the inconsistencies in

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2 the answer is going to indicate the answer is no.

3 THE WITNESS: Thank you. I'd also
4 like to note that the Galaxy at considerable
5 expense has been providing a lawyer to these
6 hearings for five years and has also many members
7 of the public who have made requests for
8 information from Transco and others. There's
9 been a lot of effort to find out what's safe here
10 and what isn't. There's a lot of concern about
11 safety and I think it sounded to me like --

12 THE CHAIRMAN: Is there a question
13 in there somewhere?

14 MR. MUHLSTOCK: Ask a question.

15 THE WITNESS: Okay. I had the
16 feeling that we were being scolded for not having
17 more information from Transco. Is it possible
18 for the public to call up Transco and force them
19 to give the answers that you've been asking?

20 MR. KUPREWICZ: In most cases no,
21 they'll intend to shield -- I'm not saying they'd
22 do this -- the pipeline companies when they've
23 tried to do this have tended to shield under
24 national security or sensitive information
25 Critical Information Infrastructure Act. Even

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1 under -- now I've had cases with the Department
2 of Justice where they've had to use their
3 subpoena power to get the information.

4 I'm not saying Transco would do this
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5 but it's difficult sometimes. The public, it's
6 very difficult.

7 THE WITNESS: I'm sorry that
8 question was a long one.

9 At the end of the previous hearing I
10 told you there was some questions that I had for
11 Mr. Bertin that I wasn't -- we didn't have a
12 chance to ask because he wasn't really presented
13 to the public.

14 MR. ALAMPI: I'll object.

15 MR. MUHLSTOCK: That's not true.

16 MR. ALAMPI: The chairman asked if
17 anyone had a question of Mr. Bertin, nobody
18 stepped forward and he was excused. And he's
19 here again this evening.

20 THE CHAIRMAN: That is accurate.
21 That is accurate.

22 THE WITNESS: He was in front of the
23 podium for five seconds.

24 MR. MUHLSTOCK: Mr. Raben, do you
25 have a question of this witness, please?

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1 THE WITNESS: Yes. On April 2007,
2 April 20th, there was digging on the Apple View
3 property with a backhoe. And a number of members
4 of the public were concerned about this and they
5 called and we were informed that One Call System
6 had not been contacted.

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7 MR. MUHLSTOCK: Is this a question?

8 Is this a hypothetical? Are you reciting facts?

9 THE WITNESS: I would like his
10 response.

11 MR. MUHLSTOCK: To the witness, do
12 you know of any such incident? Have you ever
13 heard of any such incident?

14 MR. KUPREWICZ: I was made aware of
15 one yesterday.

16 MR. MUHLSTOCK: And who made you
17 aware of it?

18 MR. KUPREWICZ: Him.

19 MR. MUHLSTOCK: Mr. Raben.

20 THE WITNESS: Through, I think,
21 Mr. Lamb.

22 MR. MUHLSTOCK: Is that the first
23 time you were aware of any incident?

24 MR. KUPREWICZ: Yes.

25 MR. MUHLSTOCK: Because it's not in

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1 your report.

2 MR. KUPREWICZ: That's correct.

3 THE WITNESS: And at the end of the
4 previous hearing last week I informed both of you
5 that this was the nature of one of the questions
6 that I had wanted to ask Mr. Bertin. The failure
7 to do One Call resulted in a thousand dollar fine
8 from the Public Board of Utilities. I'd like
9 your comment on the failure to use One Call.

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10 MR. ALAMPI: Let me just note an
11 objection. There is no foundation for any of
12 this.

13 MR. MUHLSTOCK: No.

14 THE WITNESS: Okay. Well, if I'm
15 moving on. You talked about the --

16 THE CHAIRMAN: Mr. Raben, I do want
17 to give other people an opportunity.

18 THE WITNESS: I understand. One
19 more question.

20 You talked about hot spots and warm
21 spots which is in your language. Within a hot
22 spot could you define what the effect would be on
23 this neighborhood which has thousands of
24 residents, 30 hi-rise buildings within that --
25 the area of effect? Because I know you said

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1 within the warm spot that there would be maybe a
2 minute to get out of there.

3 MR. KUPREWICZ: I think your
4 question is what's the survivability in a hot
5 zone. And, again, that's citing the previous
6 report, not my determination, you've got seconds
7 and usually your survivability is very low. The
8 warm zone survivability is also very low just not
9 as low.

10 THE WITNESS: And how large an area?

11 MR. KUPREWICZ: It could be very

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12 large. I think in the report I mentioned 200 --
13 2,000 -- excuse me, 2,000 feet, somewhere in that
14 number. After so many feet, it's just not exact,
15 folks.

16 THE CHAIRMAN: Okay.

17 MR. KUPREWICZ: Next question.

18 THE CHAIRMAN: The lady in the back,
19 yes.

20 JODI JAMIESON, residing at 8600 Boulevard East,
21 North Bergen, New Jersey, having been duly sworn
22 by the Notary Public, was examined and testified
23 as follows:

24 THE WITNESS: When you were
25 testifying you were talking about the possibility

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1 of vibrations and things having an effect on the
2 pipeline. Forty years ago the main road down
3 there, River Road, probably had about, I don't
4 know, I'm going to take a guess, maybe five cars
5 a day traveling up and down it. Now there's
6 going to be thousands going by it. Do you think
7 that this could have an effect on the pipeline
8 since it runs under the road?

9 MR. KUPREWICZ: Well, to get to your
10 question and yes or no answer, the answer is it
11 could have an effect, however, let me just be in
12 fairness to Transco, they ought to be able to
13 tell you look, this is the -- here is the
14 calculation and if the safety fact is super

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15 large, this is not an issue. So they ought to be
16 able to answer your question, not dismissively,
17 but to say here is the facts and the load
18 calculations you have a safety factor of, you
19 know, 1,000 percent. So it's an answerable
20 question. It's a valid question.

21 THE WITNESS: So usually these
22 pipelines are built so that they can take a heavy
23 load?

24 MR. KUPREWICZ: And they add a
25 considerable safety margin. It's well over a 100

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Cassin

1 percent.

2 THE WITNESS: Okay.

3 APRIL CASSIN, residing at 7400 River Road, North
4 Bergen, New Jersey, having been duly sworn by the
5 Notary Public, was examined and testified as
6 follows:

7 THE WITNESS: My question is also
8 about the hot zone, warm zone. My question is
9 like make it more easy to understand where is the
10 hot zone, where is the warm zone, how big the
11 impact is. If each of the board member here give
12 you their address, can you tell us is a hot zone
13 or warm zone?

14 MR. MUHLSTOCK: That's not a proper
15 question.

16 THE WITNESS: I'd like to know.

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17 MR. MUHLSTOCK: Another question.

18 Do you have any other questions?

19 THE WITNESS: I want to know if
20 there is a safe zone. Are we only in the hot
21 zone? Is there a safe zone? Do you care?

22 MR. MUHLSTOCK: Do you have a
23 question --

24 THE WITNESS: That's my question.
25 Can he tell me by the address if it's a hot zone

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1 or warm zone or safe zone.

2 MR. KUPREWICZ: Let me take a stab
3 at that real quick. Hot zone and the warm zones
4 are very large. The important thing here is for
5 everybody to know what they're doing and operator
6 to prove it's under control. One, the first rule
7 of gas pipeline operations; don't rupture.

8 THE CHAIRMAN: Just to expand on
9 that, I think in your testimony you were saying
10 the definition of the hot zone depends on a
11 number of factors; is that correct?

12 MR. KUPREWICZ: That's correct but
13 it's just a big number.

14 THE CHAIRMAN: So it's not this
15 address would be in and that one would be out.

16 MR. KUPREWICZ: That's right.

17 THE CHAIRMAN: Okay. Thank you.

18 Yes, ma'am.

19 SIAT NG, residing at 7004 Boulevard East,
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20 Guttenberg, New Jersey, having been duly sworn by
21 the Notary Public, was examined and testified as
22 follows:

23 THE WITNESS: May I hand these out
24 because the questions are relating?

25 MR. MUHLSTOCK: I'm sorry, what's

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1 your last name? Ng. So let's call this O-N1.

2 MR. ALAMPI: If I might, Chairman, I
3 object to even handing out these -- and no pun
4 intended -- inflammatory photographs. I think
5 they're highly prejudicial, they're not
6 probative, and my objection is even viewing these
7 is wrong.

8 MR. MUHLSTOCK: I'll rule on that.

9 MR. ALAMPI: Mr. Chairman, just note
10 my objection. I ask for a ruling.

11 (Objector's Exhibit N-1, packet of
12 photos, was received in evidence.)

13 MR. MUHLSTOCK: Well, we're not in
14 court and there are certain liberality given in
15 the board hearings with regard to evidence. I
16 will note that the photos just handed out, they
17 may be more site specific, but they're not a lot
18 different than what's on the cover of Mr.
19 Kuprewicz's appendix report.

20 MR. ALAMPI: Appendix B.

21 MR. MUHLSTOCK: Frankly --

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22 MR. ALAMPI: Are you talking about
23 Appendix B?

24 THE WITNESS: There are two parts of
25 to this document, though. In the interest of

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1 time I wasn't going to go through all of the
2 pictures. But the common theme here though is
3 that these are examples of high pressure --

4 MR. MUHLSTOCK: What's the question
5 to the witness?

6 THE WITNESS: Okay. So, Mr.
7 Kuprewicz, are you familiar with Edison and
8 Texas, Johnson County explosions and I'm sure
9 you're familiar with San Bruno which is
10 represented here in the pictures, right?

11 MR. KUPREWICZ: I'm familiar -- yes,
12 I'm familiar with them and for some reasons I
13 can't disclose why on certain ones.

14 THE WITNESS: Okay. Do you agree
15 that there's a common theme among all of these
16 which is that they're high pressure 36 inch,
17 maybe San Bruno even 30 inch you said, and would
18 you agree that the common theme is that the
19 impact is very big, is huge in these instances
20 which involve maybe at least half a mile of
21 impact zone, maybe fireballs up to 300 feet,
22 consistent burning hundreds of feet; would you
23 agree to that?

24 MR. KUPREWICZ: Yeah, those are
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25 characteristic of what I'd call an exotic gas

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1 pipeline rupture. They're not the smaller
2 diameter pipeline ruptures, not that those are
3 good but they're a lot smaller. When I use the
4 word exotic, and PHMSA also knows that I don't
5 agree with the federal regulation regarding the
6 impact zone with the CFR equation, the federal
7 regulations used to screen -- and I won't get
8 into all the detail here -- that people could
9 misconstrue that the equations in the federal
10 regulation are actually used to determine the
11 impact zones; they're not. They're used just as
12 a screen for integrity management and they're
13 well aware of my position legally and in public
14 record on many occasions.

15 MR. ALAMPI: You think anybody in
16 this room understood what you just said?

17 MR. KUPREWICZ: No, but I had to
18 enter it into the record so everybody understands
19 it later.

20 MR. ALAMPI: Why don't you explain
21 your answer.

22 MR. KUPREWICZ: Basically in
23 developing the integrity role management
24 regulations that said we're going to do more
25 things for pipeline to avoid rupture, myself and

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1 many others in the industry as well as the
2 regulators and other members of the public said
3 with need to start doing something better after
4 the Carlsbad tragedy; 12 people killed, five
5 children. They were caught in the zone. And
6 basically we developed a regulation to start
7 doing better inspections on pipelines.

8 And the original position by industry
9 was like only one percent of a pipeline mile. We
10 said use something that's better. They came up
11 with a CFR correlation. And in that correlation
12 it establishes that certain pipelines under this
13 impact zone would have greater inspection. Okay.
14 And it was just to start the process.

15 A lot of people have now taken that
16 and cited that as that is how we calculate the
17 impact zone, and that is not true, especially for
18 the exotics.

19 Sorry for all the doublespeak. Main
20 thing is it's a bigger zone than everybody wants
21 to admit.

22 THE WITNESS: So there is some
23 predictability if there is a rupture of this kind
24 of a pipeline which happened and some people may
25 call this speculative, but the rest of us will

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1 call this possibility. So if it does happen in
2 our community, we could expect similar kind of
3 behavior; wide impact zone, tall flames way
4 beyond the Palisades not going to shield anybody
5 on Boulevard East.

6 So my question is, if you can please
7 look at page 6, and this sort of ties into Miss
8 Cassin's question, did you say that you had done
9 the site inspection twice I think you said?

10 MR. KUPREWICZ: Yes.

11 THE WITNESS: Okay. Were you able
12 to locate the Galaxy, Summit House, the circle
13 one, Hudson Pointe, Palisades Hospital, Bulls
14 Ferry? Would you say that they're fairly close
15 to this site?

16 MR. KUPREWICZ: Yes, they'll be in
17 the potential impact zone which would be very
18 large here, so all the more reason for Transco to
19 demonstrate why there will be adequate
20 precautions here to prevent this pipeline from
21 rupturing. This is a very high consequence area.

22 THE WITNESS: Okay. So this is a
23 Google map, right. So if you turn to the next
24 page on 7, the previous page was a three
25 dimensional. So on page 7 what we did is we

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1 remapped out a quarter mile and a half mile
2 radius. Can you locate the pipe on this, the

3 pipeline on this? 3-10-11 Appleview
4 MR. ALAMPI: Before he answers, let
5 me just pose, again, I could object to each
6 question repeatedly. I just want to put on the
7 record I object --
8 MR. MUHLSTOCK: We understand.
9 MR. ALAMPI: -- and in particular
10 item seven, there seems to be certain writings
11 and certain references. There is no
12 understanding of where they come from, the basis,
13 if they're under some regulatory --
14 THE CHAIRMAN: Or their accuracy.
15 THE WITNESS: It's okay.
16 MR. MUHLSTOCK: The board
17 understands.
18 THE WITNESS: So that's fair. I
19 could be off 50 feet or so, but the general idea
20 is that we all live in this area, so we can
21 validate.
22 MR. MUHLSTOCK: We understand the
23 purpose of the document.
24 THE WITNESS: Okay. So the question
25 is, within the quarter mile, which is what, about

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1 a study over 1,000 feet, would you say that these
2 buildings that are identified, on top of that we
3 have the Guttenberg Town Hall which really is the
4 first responders home where the fire department
5 is, the sewerage plants, two sewerage plants,

6 Woodcliff, as well as the West New York sewerage
7 plant, would you agree that this is sort of the
8 hot zone in the Appendix B that you refer to?

9 MR. KUPREWICZ: Yes.

10 THE WITNESS: Okay. And in the half
11 mile radius -- and these are just names of
12 buildings that actually we were able to locate,
13 you know, with a proper name. There are many
14 other buildings that do not have nice names like
15 The Galaxy and Melrose and City View but they are
16 hi-rise, mid-rise buildings. In a half mile
17 radius there are hundreds of low rise buildings
18 and many, many other tall buildings. Would you
19 agree that that's sort of the warm zone?

20 MR. KUPREWICZ: Yes, I cited in the
21 report that that would be a characteristic.
22 Again, we are not exact in terms of after a while
23 you're off a couple hundred feet, what's the
24 difference, so...

25 THE WITNESS: Okay. So I don't

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1 really want to say that, you know, look for your
2 address here, but to April's point, some of us
3 could identify with her. And a lot of the
4 residents here are trying to express our fears
5 and our concerns. And we wanted to express it
6 through our dressing bright red implying that we
7 are in the red zone. Okay.

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8 MR. MUHLSTOCK: Is that a question?

9 THE WITNESS: No, no, I'm just
10 explaining our dress code in case you're
11 wondering. And black is the chart zone which is
12 the warm zone.

13 Next question, really, and this will
14 be my last one. On page A, to put these
15 buildings in numbers real quickly, and I promise
16 I have a question at the end of this. I want to
17 point out that there are over 30 mid- to hi-rise
18 buildings and hundreds of low rise buildings and
19 offices within a half mile radius. Approximately
20 2,000 apartments within 1,000 feet of the
21 pipeline. Okay. And most of them are here. And
22 Palisades Hospital and the two sewerage treatment
23 plants.

24 Now, given this profile, and you've
25 seen a lot of them, right, given this profile

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1 would you say that rescue efforts would be really
2 complicated because the hi-rise and mid-rise and
3 hospitals and nursing homes are involved?

4 MR. KUPREWICZ: Yes, I'd just say
5 the triage would be complicated and the
6 survivability will drop for many of those.

7 Again, I don't want to scare people,
8 frighten them. The reality is, you know, I've
9 worked with a lot of planning boards and city
10 governments and local governments. You have a

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11 tough job here. You need to get to the facts to
12 make a decision.

13 THE CHAIRMAN: I have a question.
14 If Transco were to --

15 THE WITNESS: Thank you.

16 A VOICE: why don't you use your
17 microphone, sir. We can't hear you.

18 THE CHAIRMAN: If Transco was to say
19 that this was a safe project to build, would you
20 still say it should not be built?

21 MR. KUPREWICZ: Well, I'll answer in
22 two parts if you bear with me. One, I don't want
23 to hear that it's safe; I want them to
24 demonstrate it's safe. And it doesn't have to be
25 necessarily to all my questions or standards, but

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1 they should be able to demonstrate that. And
2 I've outlined the basic questions and the
3 concepts. I believe if they're a responsible,
4 prudent operator, they should be able to deal you
5 in. It will be straightforward. It shouldn't be
6 somebody that gives you doublespeak. I have been
7 in a case where millions of dollars are at risk
8 here, so I understand the doublespeak. Just
9 answer the question.

10 THE CHAIRMAN: And if they did
11 answer it to your satisfaction, would you say --

12 MR. KUPREWICZ: Or to someone's

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13 independent evaluation.
14 THE CHAIRMAN: -- would you say the
15 project could be built?
16 MR. KUPREWICZ: It could be built.
17 There are ways that this could be built. I can't
18 come to that conclusion because I don't have one
19 of the risks is front of me. Yes, I'm not trying
20 to deny them. That's a fair question.
21 THE CHAIRMAN: Folks, it's now 10
22 after 10, actually it's 12 after. Go to the next
23 one.
24 MR. SHAW: I want to be heard,
25 Harry.

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 MR. FERNANDEZ: We heard you.
2 THE CHAIRMAN: No, not at this
3 point.
4 MR. SHAW: No, you didn't.
5 MS. GESUALDI: Chairman, I just have
6 a couple of questions on behalf of the town.
7 THE CHAIRMAN: The Town of
8 Guttenberg?
9 MR. SHAW: Let her speak too.
10 MS. GESUALDI: I'm going to be brief
11 Harry -- I mean Herb.
12 MR. SHAW: You get paid for this,
13 Harry.
14 RICHARD KUPREWICZ, having been previously duly
15 sworn by the Notary Public, was examined and
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16 testified as follows:

17 CROSS-EXAMINATION

18 BY MS. GESUALDI:

19 MS. GESUALDI: For the record, Maria
20 Gesualdi, G-E-S-U-A-L-D-I, on behalf of the Town
21 of Guttenberg.

22 Q. I just have a few follow-up
23 questions for you, Mr. Kuprewicz.

24 Your testimony is not that there
25 isn't anything that can be built on this site,

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 correct?

2 A. That's correct.

3 Q. And following along with Chairman,
4 with what the Chairman was saying, if the gas
5 line company reviews the project and says that
6 it's to their satisfaction, then the project
7 should be able to be built, correct?

8 A. No, that's not correct. No. No,
9 you said to their satisfaction. I said you need
10 to ask certain specific questions and get answers
11 to those questions.

12 Q. Let me ask you this: Would you
13 agree that Transco as an independent entity apart
14 from this project that didn't have any interest
15 in this project would want to insure the safety
16 of its pipeline?

17 A. I would think that of all pipeline

3-10-11 Appleview
18 companies. Unfortunately I have been on two many
19 investigations --

20 Q. Could you please answer the
21 question?

22 A. I'm sorry, ask the question one more
23 time.

24 Q. Would you not agree that Transco
25 would be in the best position to want to insure

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 that nothing would happen to their pipeline?

2 A. To answer that truthfully, I can't
3 speak for Transco. I can't speak for other
4 pipelines companies that are under investigation
5 right now.

6 Q. Would you agree that Transco would
7 know all of the pertinent information to best
8 make a decision whether or not this pipeline
9 could be safe vis-a-vis the construction of this
10 project?

11 A. Quite frankly, right now given the
12 information I've seen to date, the answer is
13 there may be information that they don't have.

14 Q. Well, provided that all of the
15 information they require would be given to them.

16 A. Given to who?

17 Q. To Transco. All of the information
18 that Transco would require in order to come to an
19 intelligent decision as to whether or not this
20 project can be built safely and insure the safety

21 of the pipeline, if Transco said it can be
22 built --

23 A. No, I think we're missing a point
24 here. They should be able -- it's not a yes or
25 no. It is they need to be sure and demonstrate

Celeste A. Galbo, CCR, RMR

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Kuprewicz - Cross

1 because I have been in too many investigations
2 where well meaning people as a group did
3 incredibly stupid things.

4 Q. Are you suggesting that there needs
5 to be an independent person review this?

6 A. No, I'm not suggesting that.
7 Someone who can get the facts and then either
8 call upon as an independent, they can call
9 whatever expert they want to verify it.

10 Q. Are you suggesting that Transco's
11 approval of the project isn't enough?

12 A. That's correct, I believe that is
13 not enough. I've said that in more than one
14 place. I find it very odd that they're not here
15 testifying under oath. It's very strange.

16 THE CHAIRMAN: Okay.

17 MS. GESUALDI: All right. That's
18 all I have.

19 THE CHAIRMAN: Mr. Lamb, you want to
20 call your next witness?

21 MR. LAMB: Are we done with Mr.
22 Kuprewicz?

23 3-10-11 Appleview
THE CHAIRMAN: I would ask him to
24 stay.
25 MR. LAMB: Mr. Chairman, can I

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Secaras

1 finish Mr. Kuprewicz with -- I mean, I don't
2 intend to bring him back. So I'm not -- I've
3 asked everybody try to not ask him questions --

4 THE CHAIRMAN: All right. One
5 question from each person. One question.
6 STEPHEN SECARAS, residing at 7400 River Road,
7 North Bergen, having been duly sworn by the
8 Notary Public, was examined and testified as
9 follows:

10 THE WITNESS: My question is if this
11 project were to proceed without doing any of the
12 things that you suggested in your report as to
13 answering the questions, would you consider that
14 to be irresponsible or negligent?

15 MR. KUPREWICZ: You're asking me to
16 make a legal decision. I'm not a lawyer, but I
17 do advise lawyers even in criminal cases on
18 limited liability.

19 MR. MUHLSTOCK: Well, you've already
20 answered a hundred times that you think it
21 wouldn't be proper.

22 MR. KUPREWICZ: That's correct.

23 THE WITNESS: Who do you think is in
24 the best position to gather the information
25 that's necessary?

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Secaras

1 MR. KUPREWICZ: It's Transco. They
2 had --

3 THE CHAIRMAN: And he's been asked
4 and answered that. And that's it. Sir?

5 THE WITNESS: This is very pertinent
6 because it was said earlier today it was
7 suggested that perhaps the residents in the area
8 should be responsible for the due diligence of
9 determining whether this project is safe. And I
10 want to know --

11 MR. MUHLSTOCK: No one suggested
12 that.

13 THE WITNESS: -- if he has ever in
14 his experience seen a situation where the
15 residents actually had to determine whether the
16 project was safe.

17 THE CHAIRMAN: No one has suggested
18 that.

19 MR. MUHLSTOCK: No one suggested
20 that.

21 THE CHAIRMAN: Sir, you're next.

22 MR. KUPREWICZ: The answer is no.

23 THE WITNESS: Thank you.

24 BIJAN MARJAN, residing at 8100 River Road, North
25 Bergen, having been duly sworn by the Notary

Celeste A. Galbo, CCR, RMR

Marjan

1 Public, was examined and testified as follows:

2 THE WITNESS: Just one question. In
3 the, God forbid, scenario where after the
4 building is actually constructed should a fire
5 break out in the proximity -- in the building
6 itself, you know, could be a resident, one of the
7 residents walking and maybe a cigarette butt or
8 something and causing a fire closer to the
9 pipeline, could the heat dissipation from the
10 building cause any type of variation in the
11 pipeline, any sort of impact to the gas pipeline?

12 MR. KUPREWICZ: I think your
13 question is, is there like an external fire of a
14 building, could it threaten the pipeline?

15 THE WITNESS: Yes, from the
16 building.

17 MR. KUPREWICZ: In some unusual
18 cases it can, but I doubt if it's the case in
19 this situation, but, again, that's an issue that
20 Transco can -- if it's deep enough.

21 THE CHAIRMAN: All right. Herb, one
22 question.

23 HERBERT SHAW, residing at 4402 Liberty Avenue,
24 North Bergen, New Jersey, having been duly sworn
25 by the Notary Public, was examined and testified

Celeste A. Galbo, CCR, RMR

Shaw

1 as follows:

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2 THE WITNESS: Concerning 49 CFR and
3 Title 14 CFR, are you, sir, aware that this
4 pipeline surfaces on the shoreline in North
5 Bergen within 50 feet of the property line of
6 Hudson Pointe, also the Hudson River Walkway to
7 which the public is invited and also that Herb
8 Shaw in 1993 --

9 MR. MUHLSTOCK: Well, just answer
10 those questions.

11 MR. KUPREWICZ: Ask the question.

12 MR. MUHLSTOCK: Yes, are you
13 aware --

14 MR. KUPREWICZ: Yes, I don't know
15 the exact locations, but if it's across the
16 street, yes.

17 THE WITNESS: Okay, that's my one
18 question. I object to being rationed; free
19 speech, but I have a copy of the letter I sent to
20 -- I hand delivered to the North Bergen
21 Commissioners and to the U.S. Attorney in 1993
22 concerning terrorism. I even explained how to
23 blow it up.

24 THE CHAIRMAN: Thank you, Herb.

25 MR. LAMB: So, Mr. Chairman, Mr.

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Miller - Direct

1 Kuprewicz is done and he will not be called back?

2 MR. MUHLSTOCK: Done. Thank you,
3 Mr. Kuprewicz.

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4 MR. LAMB: Mr. Chairman, it's close
5 to the hour, should we really start with another
6 witness?

7 MR. MUHLSTOCK: Yes.

8 THE CHAIRMAN: Yes.

9 MR. LAMB: I'd like to call Richard
10 Miller.

11 MR. RABEN: You didn't do that with
12 the Apple View witnesses.

13 RICHARD MILLER, residing at 7004 Boulevard East,
14 Guttenberg, New Jersey, having been duly sworn by
15 the Notary Public, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. LAMB:

19 Q. Mr. Miller, can you state your name
20 and address, please?

21 A. Richard Miller, 7004 Boulevard East.

22 Q. And what building do you reside in?

23 A. Tower three.

24 Q. Of what complex?

25 A. Galaxy Towers Condominium.

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Miller - Direct

1 Q. And what is your connection with the
2 board of directors of the Galaxy Towers
3 Condominium Association?

4 A. I'm a member of the board for three
5 years and I've been vice president for one year.
6 And I've been a resident at the Galaxy for 27

3-10-11 Appleview

7 years.

8 Q. Have you ever been the president of
9 the Galaxy?

10 A. I was the acting president for about
11 six months.

12 Q. Okay. Are you familiar with the
13 application of Apple View that's pending before
14 the board?

15 A. Yes.

16 Q. Have you reviewed those application
17 documents?

18 A. Yes.

19 Q. And in particular have you reviewed
20 the statements in the documents concerning
21 whether there's property in the Galaxy that is
22 available for sale to the developer?

23 A. Yes.

24 Q. And you're aware the developer
25 stated that there is no property on the Galaxy

Celeste A. Galbo, CCR, RMR

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Miller - Direct

1 available for sale to the southerly portion?

2 A. Correct.

3 Q. Okay. Can you advise the board what
4 your opinion is with respect to the availability
5 of property to convey to the developer?

6 A. Could you repeat the question?

7 Q. Yes. Can you convey to the board
8 the position of the Galaxy as to whether it's

3-10-11 Appview

9 able to convey any portion of its land to make
10 the subject lot of about 2.3 acres larger or
11 closer to the five acre minimum?

12 A. There is no land available.

13 Q. Okay. Has the developer ever
14 offered to sell any part of the property to the
15 Galaxy to the best of your knowledge?

16 A. To the best of my knowledge, no.

17 Q. Okay. This application was filed in
18 about April of 2010. During the pendency of this
19 application was there any offer by the developer
20 to sell all or a part of its 2.305 acres?

21 A. Never. No.

22 Q. Forget about the pending
23 application, prior to that. Was there any offer
24 to the best of your knowledge to the Galaxy to
25 sell the property?

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Miller - Direct

1 A. To the best of my knowledge there
2 was never an offer made.

3 Q. Now, is it true that the Galaxy at
4 one point in time leased this property?

5 A. Yes, that's true.

6 Q. Do you know when that lease ended
7 approximately?

8 A. Yes, in 2004.

9 Q. Okay.

10 MR. LAMB: I'm going to mark with
11 Mr. Muhlstock's permission O-17. Mr. Muhlstock?

3-10-11 Appleview

12 MR. MUHLSTOCK: Yes.

13 Q. I'm going to show you what's been
14 marked O-17 dated March 10, 2011.

15 MR. MUHLSTOCK: Identify it for the
16 reporter.

17 MR. LAMB: I'm sorry. It's a letter
18 from Nashel & Nashel dated May 12, 2004, the
19 attorneys for the landlord of the subject
20 property when the Galaxy was leasing it.

21 (Objector's Exhibit 17, letter dated
22 May 12, 2004, was received in evidence.)

23 Q. You reviewed the files of the Galaxy
24 with respect to all their records regarding the
25 lease and the termination of the lease?

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Miller - Direct

1 A. Yes.

2 Q. Okay. Is this the only document you
3 were able to find that indicated a termination of
4 the lease?

5 A. Yes, it is.

6 Q. And when you reviewed the files, was
7 there any offer by the landlord at the time,
8 Belfer Development Company, to sell the property
9 or part of the property to the Galaxy?

10 A. Never an offer that I could find.

11 Q. At the current time would the Galaxy
12 be interested in purchasing all or a part of the
13 property at its fair market value?

3-10-11 Applevue
14 A. Well, the Galaxy operates through a
15 board, and on behalf of the board we would
16 certainly consider any offer to sell to the
17 Galaxy.
18 Q. Okay. Would the Galaxy in
19 considering that --
20 A. Of course we'd have to know the
21 price.
22 Q. And there's been no offer so you --
23 A. No offer, right.
24 Q. Have you independently researched
25 what the fair market value is, or do you know

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Miller - Direct

1 what the fair market value is of the property?
2 MR. MUHLSTOCK: I don't really no
3 that that's terribly relevant given the issue
4 that you're raising.
5 MR. LAMB: It's going to be a very
6 short answer, I think. And it's my last
7 question. So...
8 MR. ALAMPI: I'll just object. I
9 don't believe the witness is qualified.
10 MR. MUHLSTOCK: He may not be.
11 Do you know what the fair market
12 value is?
13 THE WITNESS: No, I don't.
14 MR. MUHLSTOCK: Okay.
15 THE WITNESS: But if we were offered
16 it at the fair market value, the board would

17 certainly consider it.

18 MR. LAMB: I have nothing further of
19 this witness.

20 THE CHAIRMAN: Okay. Mr. Alampi.

21 MR. ALAMPI: No questions.

22 THE CHAIRMAN: All right. Next
23 witness.

24 MR. LAMB: I'd like to call
25 Mr. Steck. You really want to start an expert

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Steck - Direct

1 witness at -- I don't know what time it is.

2 A VOICE: 10:30.

3 MR. MUHLSTOCK: Get it going. We're
4 going to see how far we go and then we'll
5 determine at what meeting we set going forward.

6 THE CHAIRMAN: I don't want to spend
7 another five years, Mr. Lamb.

8 MR. LAMB: For the record, I have
9 been trying to sum in that case for the last six
10 months.

11 THE CHAIRMAN: Okay.

12 PETER STECK, having been duly sworn by the Notary
13 Public, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. LAMB:

16 Q. Mr. Steck --

17 MR. LAMB: Mr. Muhlstock, we're on
18 O-18.

19 MR. MUHLSTOCK: For the record, what
20 is O-18?

21 MR. LAMB: O-18 is the background
22 experience and curriculum vitae of Mr. Steck.
23 Mr. Steck has previously been qualified as an
24 expert planner of the board.

25 Q. But, Mr. Steck, can you identify

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Steck - Direct

1 that?

2 A. That's my current resume.

3 MR. LAMB: I don't have one to pass
4 out to everyone.

5 (Objector's Exhibit 18, curriculum
6 vitae of Peter Steck, was received in
7 evidence.)

8 THE CHAIRMAN: We have accepted him
9 in the past and we will again.

10 MR. LAMB: Thank you Mr. Chairman.
11 Mr. Alampi.

12 MR. ALAMPI: Mr. Chairman, I was
13 just organizing my papers with regard to this. I
14 must say that I know Mr. Steck, I've used his
15 services in the past. And Mr. Lamb has raised
16 some issues when different witnesses have had
17 consulting relationships with different parties.
18 I do have to disclose that Mr. Steck has been
19 employed by my offices on several occasions. I
20 don't have any objection --

21 MR. MUHLSTOCK: Well, he hasn't been
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22 employed by your office. He's been employed by
23 clients of yours.

24 MR. ALAMPI: I'll stand corrected.

25 MR. MUHLSTOCK: Okay. As he has

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Steck - Direct

1 clients of ours.

2 MR. ALAMPI: So I just need to
3 clarify that, and I guess you'll do the same
4 thing, that Mr. Steck has been employed by
5 clients of my firm on many applications. And to
6 that degree I'm making a disclosure.

7 I also certainly respect his resume,
8 otherwise my clients wouldn't have hired him and
9 I wouldn't work with him. So I don't have an
10 objection to his being qualified as a
11 professional planner.

12 THE CHAIRMAN: Thank you.

13 MR. LAMB: I would request again
14 that the board --

15 MR. ALAMPI: I didn't know that you
16 walked for Malcolm Castle two years ago.

17 THE WITNESS: I did for two years.

18 MR. ALAMPI: That might change my
19 opinion.

20 THE CHAIRMAN: Yes, we will still
21 accept him as an expert.

22 MR. LAMB: Thank you.

23 BY MR. LAMB:

3-10-11 Appleview
24 Q. Mr. Steck, could you describe the
25 subject property?

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Steck - Direct

1 A. Yes. I know the board is familiar
2 with this, but I will try to lay some foundation
3 for my opinions. This is an interior lot,
4 slightly over 2.3 acres. There are four tax map
5 lots that I believe are in common ownership by
6 the applicant. They're essentially -- you don't
7 see any divisions as you look at the property, so
8 it essentially appears as one piece of property.
9 It is typical of the Palisades, as you are at the
10 front of the properties it's relatively flat, and
11 as you go toward the Palisades there is rubble
12 and then there is a sheer part of the rock --

13 MR. MUHLSTOCK: How far back to the
14 rubble from River Road?

15 THE WITNESS: Excuse me?

16 MR. MUHLSTOCK: How far back in feet
17 from River Road to the rubble?

18 THE WITNESS: From the right-of-way
19 I would estimate it to be about a little over 170
20 feet.

21 MR. MUHLSTOCK: Thank you.

22 A. While it might be unusual around
23 different parts of the state to have this kind of
24 topography, it is not unusual to this part of the
25 county and to these municipalities. As I -- just

3-10-11 Appleview
Celeste A. Galbo, CCR, RMR

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Steck - Direct

1 to recast the application, this is four floors of
2 residential over a concrete parking deck, 59
3 units, one, two bedroom units. It is -- we see a
4 lot of this type of construction in New Jersey
5 now because if you go another floor, you can't
6 use stick built construction. It's a different
7 form of construction. It is more expensive. And
8 when -- the reason I'm saying that is the
9 applicant is making a lot of effort to emphasis
10 that it is below the maximum height. One of the
11 reasons is simply that if the applicant put on
12 another story which he would be able to do under
13 the zoning ordinance, it would put it in a
14 different classification of construction. It
15 would be --

16 MR. ALAMPI: I'll object to this
17 witness' qualifications for this type of
18 testimony. He's testifying as a planning
19 consultant, as a licensed planner, or as a
20 code -- a construction code specialist?

21 MR. MUHLSTOCK: Okay. Mr. Steck,
22 what's the purpose of telling the board that
23 they're building lower so they can use a
24 different type of construction; is there a point?

25 THE WITNESS: Yes.

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Steck - Direct

1 MR. MUHLSTOCK: What's the point?

2 THE WITNESS: The point is that the
3 applicant is saying that one of the benefits that
4 it is offering to the municipality is that this
5 building is 20 feet lower than what the code
6 allows. And what I want to suggest is that there
7 are other motivations than a public benefit.

8 MR. MUHLSTOCK: Whatever the
9 motivation --

10 MR. ALAMPI: Now I'll really object.
11 What difference does it make if there is a
12 benefit?

13 MR. LAMB: I think he's responding,
14 Mr. Muhlstock --

15 MR. ALAMPI: I don't think this is
16 appropriate testimony.

17 MR. MUHLSTOCK: He testified. The
18 board will give it the weight that they feel.

19 MR. ALAMPI: This isn't going to go
20 smoothly. This is inappropriate testimony
21 wholly. And it's what time now?

22 A VOICE: 10:34.

23 MR. ALAMPI: And I won't be put down
24 when this type of testimony comes out. It's
25 improper testimony.

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Steck - Direct

1 MR. MUHLSTOCK: I disagree.

2 MR. LAMB: Mr. DeNiscia specifically
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3 testified that about this benefit by lowering it,
4 and we're merely suggesting that because of the
5 construction that that may not be accurate.

6 MR. MUHLSTOCK: He just gave his
7 opinion. That's all. Go ahead.

8 THE CHAIRMAN: We understand the
9 point.

10 MR. MUHLSTOCK: We understand.

11 A. This building, as you know, is
12 proposed to have handicapped person
13 accessibility, an elevator, storm water controls.
14 Those are all required. Whether this is nine
15 units or 59 units on two stories or multiple
16 stories, those are all required elements of this.
17 Part of the property, as you know, does have a
18 gas pipeline adjacent to it, and what is being
19 proposed which is new is an easement and some
20 kind of staging area.

21 As part of my analysis I looked at
22 the surrounding area and, as you know, this is
23 between the Galaxy and an adjacent municipality,
24 Guttenberg, and a sewerage treatment plant. At
25 the upper level there is a road and then a small

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Steck - Direct

1 park in Guttenberg. Across the street is vacant
2 land at the moment, but generally many of the
3 uses except for the sewerage treatment plant are
4 residential uses.

3-10-11 Appleview
5 Perhaps my exhibit might be helpful.
6 MR. LAMB: O-19, Mr. Muhlstock, is
7 an outline of planning testimony with several
8 diagrams. There is P-1, P-2, P-3, P-4 and P-5.
9 I put them all together so we wouldn't have to
10 separately mark them. So we'll mark them all
11 O-19 with your permission.
12 MR. MUHLSTOCK: That's his report?
13 MR. LAMB: It's an outline and it
14 has specific diagrams.
15 MR. MUHLSTOCK: Okay.
16 (Objector's Exhibit 19, outline of
17 planning testimony with diagrams, was
18 received in evidence.)
19 MR. LAMB: Give a copy to Mr. Alampi
20 and Ms. Gesualdi.
21 THE WITNESS: Just to identify this,
22 it was prepared by me, it is dated March 10,
23 2011. There is a correction that needs to be
24 made, and I just want to get that there so we
25 don't have to stop when I'm going through it. On

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Steck - Direct

1 page P-3 in the upper right-hand corner is a
2 reduced copy of one of the applicant's plans
3 showing topography. And on that diagram you'll
4 see a green line that says "required rear
5 setback." I miss scaled that line and that green
6 line should actual go over the upper end of the
7 word -- excuse me, the letter R in rear setback,
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8 below that. So actually it's 20 feet closer to
9 River Road than appears.

10 Q. Mr. Steck, would you draw that line
11 with the help of my legal pad on the exhibit? We
12 don't have to do it for everybody but if we could
13 do it for one.

14 A. There is no significance to the
15 legal pad, just a straight edge.

16 Q. Just the straight edge.

17 (Witness complies.)

18 A. I've drawn it and put an arrow in
19 blue ink and labeled it 40 feet, and then I put
20 one line through the green 40 feet.

21 MR. LAMB: Just so everyone can see
22 it, the green line basically went down about half
23 an inch closer to River Road.

24 THE WITNESS: The surrounding area,
25 the immediate area is depicted on the last page,

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Steck - Direct

1 P-5, the upper section, where I've taken an
2 aerial from Google Earth. And I've approximated
3 the out boundaries of the subject property in
4 yellow. I've superimposed the footprint of the
5 building in red, and then at the north end I have
6 approximated the easement that's being proposed
7 to service the gas pipeline.

8 As part of my review I looked at the
9 master plan and the last two reexamination

3-10-11 Appleview
10 reports. The master plan is dated April 1994.
11 MR. LAMB: Excuse me for one second.
12 I have four or five copies over here.
13 THE WITNESS: On page 1.2 of the
14 Master Plan it talked about a longstanding goal
15 and policy assumption that survived from the
16 prior plan 1987, and that talked about the
17 importance of providing visual as well as
18 physical access to the waterfront and to the
19 Palisades. Subsequent to that report there were
20 two reexamination reports. There was a 2003
21 reexamination report that recommended a
22 continuation of the existing P2 Zone; although at
23 that time the recommendation was that the height
24 limits be reduced from 85 feet to 75 feet, but
25 otherwise the nature of the P2 Zone remained as

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Steck - Direct
1 recommended in the prior master plan.
2 The most recent reexamination report
3 was adopted October 22, 2009 on page 21. That
4 talked about the public goal of preserving the
5 cliffs or the Palisades.
6 Q. And can we -- I'm going to show you
7 O-20, Mr. Steck.
8 (Objector's Exhibit 20, pages 21 and
9 22 of the 2009 Reexamination Report, was
10 received in evidence.)
11 THE WITNESS: While it's being
12 passed out, O-20 has pages 21 and 22 of the 2009
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13 Reexamination Report. At the bottom of page 29
14 is goal seven, "To insure that any prospective
15 development and/or redevelopment is responsive to
16 North Bergen's environmental features,
17 particularly the cliffs of the Palisades." And
18 then on the following page there is a policy
19 statement that says, "The Township seeks to
20 encourage development which is sensitive to the
21 community's particular physical characteristics
22 and environmental elements including steep
23 slopes, wet lands, flood plains, and other areas
24 prone to flooding and retains vegetation. The
25 Township also seeks to protect the natural cliff

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Steck - Direct

1 face of the Palisades."
2 So that is the statement of public
3 policy at least as adopted by the planning board.
4 That recommendation of a P2 designation, as the
5 board is aware, is implemented in the zoning
6 ordinance. This is in a P2 Zone which is called
7 a Waterfront Edge Cliff Zone. It is a zone that
8 is only used along the very eastern section of
9 North Bergen between Guttenberg and Bulls Ferry
10 Road below Kennedy Boulevard east. And
11 essentially the whole zone, not only does the
12 name reference edge cliff, but it is physically
13 along the Palisades and includes characteristics
14 just like the subject property; there's a flat

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15 area as you move west from River Road, you come
16 to the base of the Palisades and then it climbs
17 up.

18 Since the zone was established, as
19 the board is aware, there have been properties
20 that have been removed from that and put in a P3
21 Zone and an RRC Zone, although the subject
22 property has remained in that P2 Zone.

23 Of significance is that the purpose
24 of the zone is not only coached by the master
25 plan and the reexamination report but it's

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1 contained in the body of the zoning ordinance.
2 And if you'll look at page P-2, at the upper end
3 of it I have reproduced Section 3.10(b) that
4 defines what the purpose of the P2 Zone is. And
5 that means "To allow maximum potential
6 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 topographic limitations inherent in potential
12 sites."

13 That purpose is not a regulation but
14 it is typical for many zoning ordinances to
15 describe the intent, and that intent is
16 reaffirmed and I think emphasized further on the
17 last page of the current zoning ordinance which

18 is dated June 1999. And that contains a
19 resolution from the governing body dated May
20 28th, 2008 and I believe -- I don't know that
21 that was marked in evidence.

22 MR. MUHLSTOCK: Yes, it was marked.

23 THE WITNESS: And I just want to
24 emphasize that it talks about the long-standing
25 concern to study the Palisades cliff, the intent

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Steck - Direct

1 to protect the cliff area with a goal of
2 preservation of the Palisades. And, again, it
3 talks about not to visually impair the Palisades
4 and, again, that is echoed by the policies that
5 what is important visually is not only the view
6 from the Palisades but the view of the Palisades.

7 As I review the zoning ordinance
8 there are variances which I believe the applicant
9 has not acknowledged. Let me just tell you what
10 I think the variances are, some of which the
11 applicant has acknowledged. The lot is
12 substandard in size. You're supposed to have
13 five acres --

14 MR. MUHLSTOCK: Excuse me. Excuse
15 me. On that resolution, go back to that
16 resolution.

17 MR. ALAMPI: What was the date of
18 that resolution?

19 THE WITNESS: The date on the bottom

3-10-11 Appleview
20 says May 28, 2008.

21 MR. MUHLSTOCK: Where does it say
22 that it is prohibited or that the council -- I'm
23 sorry, the governing body of the township says
24 that you shouldn't impair? You used the words
25 shouldn't impair.

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Steck - Direct

1 THE WITNESS: Well, the resolve
2 number two, "Therefore be it resolved the Board
3 of Commissioners of the Township of North
4 Bergen," so this is the governing body speaking.

5 MR. MUHLSTOCK: Yes.

6 THE WITNESS: And number two says
7 "The land use board should require specific
8 testimony in order to determine any impact on the
9 Palisades area and remedial efforts to be
10 undertaken with respect to any proposed
11 development in order to assure that the Palisades
12 is adequately protected and not visually
13 impaired."

14 MR. MUHLSTOCK: So do you read that
15 to mean that the Board of Commissioners of the
16 Township didn't want any type of development of
17 this property?

18 THE WITNESS: No.

19 MR. MUHLSTOCK: Okay. Wouldn't any
20 type of development, any type -- we asked this at
21 the last meeting -- necessarily impair to some
22 extent the view of the Palisades?

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23 THE WITNESS: Yes.

24 MR. MUHLSTOCK: Okay. So there's
25 something that could be built there?

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Steck - Direct

1 THE WITNESS: Yes.

2 MR. MUHLSTOCK: Just not Apple View
3 or as the applicant proposes?

4 THE WITNESS: Well, we'll get to
5 that part.

6 MR. MUHLSTOCK: I know you will.

7 THE WITNESS: As I look at the
8 relief, first of all, the applicant needs site
9 plan approval. So aside from whether there are
10 variances or not, there may be issues about the
11 design of the building and its placement that the
12 board should examine and potentially modify.

13 But as I looked at it, first of all,
14 we have a lot size that's under the minimum,
15 significantly. This zone requires five acres for
16 multi-family and four acres for offices. And the
17 site is only 2.3 and a fraction. The building
18 has a footprint of about 25 percent larger than
19 permitted. It has a lot coverage of 31.6 percent
20 of the area, whereas a maximum of 25 percent is
21 permitted. That's an area in square footage
22 about 6,629 square feet over what would normally
23 be allowed.

24 There is an issue of the front yard

3-10-11 Appleview
25 setback. The ordinance requires, and I've -- on

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Steck - Direct

1 page P-2 in the middle section I've reproduced a
2 portion of the zoning ordinance that says "In the
3 P2 Zone no front yard will be required other than
4 that necessary to comply with the standard cited
5 in that section and to provide a 15-foot setback
6 for a paved sidewalk to be installed by the
7 developer."

8 If you look at what the definition of
9 setback is, they are always measured from the
10 street right-of-way of a property line. So this
11 would suggest, literal reading, that the building
12 should be back 15 feet to accommodate a sidewalk.

13 There is also the issue of the
14 pipeline because that is part and parcel of this
15 application in that an easement is being --
16 appearing for the first time on these plans, and
17 behind that is a staging area. So that's a use.
18 So the question is -- and we just don't have any
19 details on this -- what is going on there; is
20 equipment going to be stored there? Is material
21 going to be stored there? That's a use that may
22 not be permitted on the lot or it could be a
23 second principal use and we just don't know
24 what's going on based at least as my review of
25 the record so far.

Steck - Direct

1 The final item I'd like to talk
 2 about where there's been a lot of discussion is
 3 the rear yard setback and how you measure that.
 4 And this zone is different from other zones.
 5 Other zones you measure it from the rear property
 6 line; this is different.
 7 And so on page P-2 I've reproduced
 8 section 11.3 C-1 rear yards and Figure 14 which
 9 both go together. And it says, "In lots having a
 10 slope of 30 percent or more, the rear yard shall
 11 be measured horizontally from the first habitable
 12 floor of the cliff face. See Figure 14."
 13 And just to explain my interpretation
 14 and then I'll go to the graphics, clearly this is
 15 a lot that has some slopes of 30 percent or more.
 16 You measure the rear yard horizontally. That
 17 means like parallel to the water surface. You
 18 don't measure it up or down. And you measure it
 19 to the first habitable floor. So, for example,
 20 if the basement stopped at a certain point and
 21 the residential units cantilevered over, you
 22 measure to the cantilevered section, not to the
 23 basement. And then it says see Figure 14 which
 24 is below that.
 25 Now, Figure 14 has a diagram that

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1 says "slope 30 percent V over H," which is
2 vertical over horizontal, and you'll note that
3 none of that diagram shows a cross-section that
4 is totally vertical. All of that is sloped to a
5 certain degree.

6 Now, it's not a mystery to decide
7 where an area is steeply sloped. In fact, in the
8 applicant's plans there is a slope plan which
9 shows 20 percent or more, he shaded an area. And
10 I used exactly the same conventional techniques.
11 Where a two foot topographic line is closer than
12 6.66 feet, automatically that area now is 30
13 percent or more in slope.

14 So now let's go to page P-3. I've
15 used the applicant's topographic map which is
16 plan C-2.5 revised 2/8/10, and I've outlined what
17 I consider the area of 30 percent or more slope
18 with a dark black line, and I put in diagonal
19 orange lines. And in my opinion that is the
20 conventional way you determine where steep slopes
21 are.

22 In my judgment the issue about rear
23 yard setback -- and that's evident from Figure 14
24 -- is that you measure it where the slope starts
25 hitting 30 percent. So you don't have to -- in

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Steck - Direct

1 terms of the ordinance, in my opinion, you don't
2 have to dig core samples or with a backhoe or you
3 don't have to find where the bedrock is

4 underneath. The ordinance defines it very
5 easily. It says when you're moving and all of a
6 sudden you start going up 30 percent, that's the
7 base of the Palisades and that's the starting
8 point from where you measure the rear setback.

9 So if you look at page P-4, the top
10 diagram -- and these are kind of approximately
11 dimensions -- let me explain what that is. First
12 of all, the tall thin lines to the left and right
13 are the front and rear property lines. And this
14 is a cross-section through the tennis courts
15 right through the nets. So if the nets were
16 still there, it's approximately the center line
17 of the property. It went right up through the
18 nets since no one was playing at the time. And
19 what I did was plotted the surface as exists
20 today, which is the dark black line. I
21 superimposed the building that they're proposing,
22 which is in orange. I showed you -- and it's
23 labeled start of 30 percent slope, so I've
24 indicated where the 30 percent slope starts. And
25 then I moved 40 feet toward River Road, and that

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Steck - Direct

1 is where the required rear setback is.

2 So in my judgment not only does
3 this -- well, in my judgment the best way to look
4 at this is the back approximately 72 feet of this
5 building violates the rear yard setback. One way

6 to look at it is like a minor setback because it
7 even goes into the area that is 30 percent or
8 more in slope, but a substantial portion of this
9 building does protrude in the rear yard in my
10 opinion. That's an area of about 17,544 square
11 feet of the footprint of that building which
12 violates the rear yard.

13 MR. MUHLSTOCK: Wait a second. Wait
14 a second. Show me the 17,000 -- I'm not
15 following you. Where is the 17,000 -- no, I'll
16 bring up my diagram. I just want you to show me
17 so I understand it.

18 THE WITNESS: If you go to P --

19 MR. MUHLSTOCK: Where is the 17,000
20 square feet?

21 THE WITNESS: The blue area is the
22 outline of the proposed building. It would be
23 where your dotted line is and the back rectangle.

24 MR. MUHLSTOCK: Anything behind what
25 you have amended to be the required rear setback

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Steck - Direct

1 to the end of the building footprint?

2 THE WITNESS: That's correct. And
3 that's illustrated in a cross-section on P-4 on
4 the top. Yeah, that line, yes. It's -- the line
5 is in the third tennis court back. It is a few
6 feet toward River Road from the center line of
7 that tennis court.

8 Now, in addition to the variances

3-10-11 Appleview

9 you shouldn't forget that there is site plan
10 approval, and so there are normal design things
11 you want to look at. And one of those is the
12 issue of access to the pipeline and safety;
13 that's something you can consider. There are
14 apparently now potentially two principle uses on
15 the property. We don't know what's going to
16 happen on the pipeline easement and staging area,
17 but that could be an area to store trucks,
18 equipment; we just don't know at the moment. The
19 front of the property doesn't really have any
20 stacking area for cars. If one of the cars near
21 the door is backing out, there's a stacking for
22 maybe one car off of River Road. And so if
23 someone is stopped there, the next car stands in
24 River Road trying to get in. So that's a site
25 plan issue that is there adequate stacking to get

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Steck - Direct

1 in the building.
2 I am concentrating on the variances
3 and let me continue.
4 MR. MUHLSTOCK: Can I ask you before
5 you leave diagram P-3 on your report, Mr. Steck,
6 in the orange cross-hatched area which is the 30
7 percent or more slope, how many square feet
8 approximately, if you can tell us, is within the
9 building envelope? Do you understand that
10 question? And I'll show you --

3-10-11 Appleview
11 THE WITNESS: Yes. How much of the
12 area, there's like almost a rectangle, it
13 approximates a rectangle.
14 MR. MUHLSTOCK: That's correct.
15 THE WITNESS: I'll estimate.
16 MR. MUHLSTOCK: Please.
17 THE WITNESS: This is at a scale of
18 approximately one inch is 50 feet, so that is
19 about 30 feet times 150 feet, so that would be
20 4,500 square feet.
21 MR. MUHLSTOCK: Okay. Thank you.
22 THE WITNESS: Now, as you know, it's
23 the burden of the applicant to demonstrate that
24 the variances are justified. And if the
25 applicant doesn't have good reasons, you don't

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Steck - Direct

1 need a planner like me to say anything because
2 that's the applicant's burden. Let me tell you
3 as I read the transcripts, just to bring it back
4 up to your minds, what Mr. DeNiscia has offered
5 as reasons for supporting the variances, although
6 he did not acknowledge, in my opinion, all the
7 variances that are needed.
8 These are the good things that will
9 happen. You'll prove this. The lots will be
10 consolidated. Well, actually they're all in, I
11 think, in the same ownership at the moment, but
12 he said that's a good thing. He's not going to
13 disturb the cliff face area, which is the sheer

3-10-11 Appleview

14 rock way up in the back. That has nothing to do
15 with 30 percent or more slope, although the rock
16 face is clearly 30 percent or more. He said
17 there's barrier free access and an elevator,
18 there's storm water controls. He said the site
19 is poorly maintained now. There's a need for one
20 and two bedroom units. He didn't talk about it
21 really is, in my opinion, a demand for some
22 housing but there is a need -- there's a
23 different issue of a need. New Jersey thinks
24 there's a need for low and moderate housing;
25 that's different from demand.

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Steck - Direct

1 He says it's a great benefit that the
2 height is less than the maximum. The building is
3 20 feet lower and he contends that that helps the
4 view of the cliff. He says the density is lower
5 than the maximum. He says they're not building
6 the 25- or 30-story building, and I'll grant you
7 that. He said that to compensate for the reduced
8 height the building got wider and so that
9 justifies the bigger footprint because there's 20
10 feet left that he could go higher. And he said
11 in -- and those were all kind of C-2 benefits
12 that he claims outweigh the detriments. He also
13 said that there's unique topography and that
14 justifies a C(1) variance.

15 Before I come to my conclusions, let

16 me offer my comments on Mr. DeNiscia's testimony.
17 Many of the so-called benefits are things that
18 the code requires; an elevator, handicapped
19 parking, storm water retention, adequate parking.
20 Any project, whether it's nine units or 59 units,
21 would require the same features. I do not
22 consider it as a benefit.

23 He said that the topography is
24 unique. It may be unique to the State of New
25 Jersey, but it's not unique to the P2 Zone. The

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Steck - Direct

1 very nature of the P2 Zone, the label of what the
2 zone is, the purpose of the zone, everybody in
3 their right mind that reads the P2 Zone and looks
4 on the map knows it was designed with the
5 Palisades in mind. So in my opinion it is
6 improper to conclude that that's unusual
7 topography.

8 If your zoning ordinance, as an
9 example, said we require 10,000 square foot lots
10 for interior lots and 15,000 for corner lots, an
11 applicant would be hard pressed to come in and
12 say look, I have a corner lot and it's only
13 10,000 square feet so it's a hardship. No. No,
14 the code addresses that issue. It's not unusual
15 in the context of the zone. So this P2 Zone was
16 specifically designed to balance development.
17 We're going to let you do a lot of stuff down low
18 but we want you to stay away from the Palisades

19 cliffs.

20 The applicant is claiming that it's
21 a great public benefit to lower the height by 20
22 feet. I don't think so and I draw your attention
23 to page P-4, the bottom half. What I did there
24 is did a cross-section of the property, again,
25 kind of up the net line of the tennis courts.

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Steck - Direct

1 And I went to the top of the rear property line
2 which is about 145 feet according to Mr. Bertin's
3 plans, and then I added five feet. So if someone
4 was standing there, let's say they were my height
5 or a little shorter, the five foot eye. Then I
6 drew two blue lines to show you the difference
7 between a building of conforming height up to the
8 maximum, 20 feet taller, or the height that's
9 proposed. And I would suggest to you that there
10 is very little difference from someone out on the
11 waterfront in terms of viewing the Palisades or
12 someone on top of the Palisades. That is
13 whatever, one or two degrees, it is not a
14 significant difference. Anyone -- and as you
15 know, once you go into Guttenberg there's a small
16 park up there which is probably maybe 30 feet
17 taller than the 150 foot mark which would make
18 these lines even come closer together. So what
19 I'm suggesting to you is that the benefits of
20 lowering the building 20 feet are inconsequential

21 3-10-11 Applevue
22 in terms of the goals of the master plan and of
23 the zoning ordinance.

24 Let me tell you what might be
25 beneficial. If someone were to say why don't I
26 provide side yards that are more than the

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Steck - Direct

1 minimum; what would that do for you? First of
2 all, it would probably pull you away from the
3 pipeline and maybe make you sleep a little easier
4 at night. It would also provide common sense
5 opportunities to view the Palisades from River
6 Road. And I point your attention to P-5 at the
7 bottom.

8 This is just a rough approximation
9 but what I did, I looked at Google street view,
10 and I showed the south and the north sides of the
11 property. And by using the fence height which is
12 about eight feet towards the Galaxy and about six
13 feet high towards the sewerage treatment plant, I
14 showed you the width of the corridors, the view
15 corridors that would remain if you approved this
16 project. So here we have in the middle 245 feet
17 of solid building where you won't see a thing and
18 won't see the Palisades, and then to the south we
19 have a 10-foot corridor. If you look along the
20 property line, you'll get the peak at the
21 Palisades. And at the other end, the north end,
22 you'll have a 20-foot wide corridor. That's not
23 much of a view of the Palisades.

3-10-11 Appleview

24 So what I'm suggesting is, number
25 one, the applicant lowering the height by 20 feet

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Steck - Direct

1 I would suggest that the motivation while --
2 there might be two motivations. It might well be
3 they're recognizing the fact and I recognize the
4 fact it's lower, but it means virtually nothing
5 or it's insubstantial in terms of opening up the
6 view of the Palisades.

7 If someone were to start tinkering
8 with the side yards, I think it would go a lot
9 further in terms of some kind of public interest.
10 But by leaving these two corridors, one 20 feet
11 and one 10 feet, the way it is, this essentially
12 is a solid wall. And if you're driving on River
13 Road, you'd have to slam on your brakes in the
14 middle of the road, look left or look right to
15 take advantage of this, or obviously if you're
16 walking you can stop and look at it. But the
17 Palisades will be virtually invisible the way
18 this project is designed.

19 So not only --

20 MR. MUHLSTOCK: But they comply with
21 the side yard, right?

22 THE WITNESS: They do.

23 MS. HARTMANN: And the height.

24 THE WITNESS: And the applicant
25 complies with the height. But my criticism is

Steck - Direct

1 saying isn't it great that I'm four stories of
2 residential instead of five. That's what the
3 applicant is saying. And they're using that to
4 justify a bigger footprint that happens to
5 protrude into the rear line. In my opinion the
6 lowering of the height is, frankly, done for
7 practical reasons. A lot of projects that I work
8 with are being recast to four stories
9 residential. why? Because the developers tell
10 me it's too expensive to go to five stories.

11 In this case they're bootstrapping
12 an argument isn't it great, but the answer is in
13 my opinion it isn't great, it doesn't accomplish
14 your public purpose. And by forcing the building
15 wider while it doesn't violate the side yards, it
16 does severely restrict the view of the Palisades.

17 MS. HARTMANN: But isn't it also 65
18 percent of the lot is permitted to be covered and
19 they're only covering 47.2 percent?

20 THE WITNESS: There is nothing in
21 the law that says you're entitled to go to the
22 maximum of any one indices.

23 MS. HARTMANN: Of course not, but
24 there's nothing in the law that says you can't.
25 I mean, I'm just saying that they're meeting the

Steck - Direct

1 setback. I work with a lot of Palisades. I'm
2 the planner in Weehawken and we have a tremendous
3 amount of Palisades. And I have to say that
4 there is no way -- and the ordinance --we write
5 the ordinance the same way there, but it's really
6 difficult to see the waterfront from the
7 Palisades and the Palisades from the waterfront
8 when you put a building up. And it's very
9 important from a view from the Palisades to
10 reduce the height of a building, to make sure
11 that when you're at the top and you're looking
12 down on the buildings that they're not so to
13 speak in your face which I think is one of the --
14 I'm not trying to put words in the applicant's
15 mouth, but one of the reasons behind lowering a
16 building, aside from the economic reasons, is
17 that the lower the building is from the
18 Palisades, the further away from in your face it
19 is when you look out from the park or from
20 Boulevard East.

21 THE WITNESS: I agree except that,
22 first of all, this is not Weehawken.

23 MS. HARTMANN: I understand that.

24 THE WITNESS: And number two is
25 there is already a public policy. The public

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Steck - Direct

1 policy was lower the height from 85 to 75 feet.

3-10-11 Appleview
MS. HARTMANN: And it's 62.

THE WITNESS: And that means that
the applicant is free to go from the center line
of River Road up to 75 feet and anywhere in that
doesn't harm the view from the Palisades. That's
what your ordinance standard is.

MS. HARTMANN: And the ordinance
standard also is 75 units an acre and it's at 26
units an acre. So, I mean, it's meeting several
of the ordinance -- many of the ordinance
requirements. And I'm not saying that you're not
correct in some of the things you're saying. I'm
just saying that there are aspects of the site
where they are meeting the density requirements.
They're far below the density that's permitted.
Far below -- they're more than 25 percent less
than lot coverage.

THE WITNESS: well, if the applicant
had a larger lot size, it might have more
flexibility. But my point is that the applicant
is saying the justification for the excessive
building footprint which is a percentage, it has
nothing to do with the size of the property or
the shape of the property, it says the reason I

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Steck - Direct

want to go 25 percent bigger on the footprint is
that it's so great that I'm down a story. And in
my opinion one doesn't relate to the other.

MR. MUHLSTOCK: If they move the
Page 188

5 building forward so as not to incur into the
6 slope and made it higher, they could do that,
7 right?

8 THE WITNESS: They could go up
9 another story and still comply with the public
10 purpose --

11 MR. MUHLSTOCK: Move the building
12 forward toward River Road.

13 THE WITNESS: Well, they only got
14 5.7 feet to move towards River Road. They're
15 right --

16 MR. MUHLSTOCK: No, no, move the
17 rear.

18 THE WITNESS: You mean chop off the
19 rear of the building?

20 MR. MUHLSTOCK: A little. Well, if
21 you went up another story, you could have -- you
22 would have -- you could actually move it forward,
23 couldn't you, and have the same square footage or
24 similar square footage of the entire building?

25 THE WITNESS: Well, I don't know

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Steck - Direct

1 that it would be the similar square footage. I
2 frankly I suspect not because while you're
3 chopping off, first of all, the back 72 feet of
4 the building, and that goes over four stories of
5 residential plus a parking garage, so I'm not
6 sure that it could be accomplished. But it seems

7 to me that, first of all, the applicant doesn't
8 even acknowledge that they need a rear setback
9 variance.

10 MR. MUHLSTOCK: Well, they asked for
11 it.

12 THE WITNESS: But their planner
13 testified that he thought it's measured from a
14 small part of the rock face which --

15 MR. MUHLSTOCK: And he conceded that
16 if the board interprets it otherwise, they are
17 asking for the variance.

18 I have another question, Mr. Steck.
19 If, even if -- I mean, I'm looking at the two
20 photos at page 5, the bottom photos. What would
21 be -- practically what would be the difference if
22 you had another five to 10 feet on the side yards
23 in terms of the view? It wouldn't really add a
24 lot here in terms of the view because you're
25 going to have a building that's going to cover

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Steck - Direct

1 the major portion of the front of this property,
2 some building, any building.

3 THE WITNESS: In my opinion, five or
4 10 feet is not going to make a great visual
5 difference but probably doubling this distance
6 will and it's a matter of degree.

7 My point is the applicant is praising
8 itself for not going to a fifth story, and it is
9 using that as a reason to have a building

10 footprint that is 25 percent more than permitted.
11 And I don't see the relationship one to another
12 unless you say the applicant is guaranteed a
13 certain density or guaranteed 59 units. Then if
14 he said that, the answer is yeah, if you push
15 down in one area, you're going to pull out on the
16 sides; I understand that. But that's not how
17 zoning works. No one is guaranteed to adhere to
18 a certain standard. There are many zoning
19 ordinances that the pieces don't all fit together
20 and you can't go to the maximum on all of the
21 features.

22 THE CHAIRMAN: Okay.

23 THE WITNESS: I'm getting toward the
24 end or do you want --

25 THE CHAIRMAN: No, no, go ahead.

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Steck - Direct

1 THE WITNESS: So in summary fashion
2 as I listen to the applicant's -- read the
3 transcript of the applicant's testimony
4 justifying the variances, I don't think they met
5 their burden of proof.

6 The benefit of lowering the building
7 height is inconsequential in terms of exposing
8 the view from the Palisades or toward the
9 Palisades. And I think it's absurd to say that
10 you measure it from some kind of below grade
11 point. I think it was -- I've never seen that in

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12 my career that someone measures a rear setback by
13 having to drill down into the earth to find
14 bedrock.

15 Let me tell you my own conclusions.
16 The whole purpose of this zone is to create a
17 balance between development and preservation of
18 the Palisades. The master plan doesn't talk
19 about just the cliff space. The master plan
20 talks about the Palisades area. The way it does
21 it is by keeping buildings away from when the
22 slope starts to be 30 percent. This building is
23 72 feet closer to the Palisades than the
24 ordinance wanted. And that's the main feature,
25 that's what the name of this zone is, it's to

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Steck - Direct

1 protect the Palisades zone.
2 There is no justification for an
3 oversized footprint in my opinion and, in fact,
4 there could be public benefits by pulling in the
5 sides. And, again, you heard a lot of testimony
6 about the pipeline and the dangers associated
7 with it. And to a certain degree one would say
8 is the further you're away, there's a public
9 purpose that is advanced. It is safer. It is
10 more protective of the pipeline. If you increase
11 the side yard on the south side, the answer is
12 there would be a better chance than this narrow
13 10 feet.

14 The applicant cited in, I would say,
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15 kind of a cursory fashion, purposes of the
16 Municipal Land Use Law A, C, E, G, H, I, and
17 didn't go through each one. He talked about it
18 promoting the most appropriate use of land.
19 Well, the answer is it's zoned for residential on
20 larger lots. It could also be offices. Either
21 one would be appropriate. It protects light,
22 air, and open space. I would say that that's not
23 the case because there was supposed to be open
24 space behind the building toward the Palisades.
25 He talked about encouraging an appropriate

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Steck - Direct

1 population density, and that doesn't mean the
2 maximum density, but the applicant seems wedded
3 to the 59 units. Sufficient space in an
4 appropriate location, I would grant you that this
5 is zoned for multi-family and this is a
6 multi-family project. It talked about promoting
7 transportation, less congestion. I would suggest
8 to you that there is no stacking distance in
9 front of this building. And I think it's not
10 hard to envision cars stacking up into River Road
11 if this is not operated correctly. And he says
12 it promotes an appropriate visual environment.
13 And in my opinion it does the opposite of what
14 the master plan wanted which is the fundamental
15 purpose of this zone.

16 If this is approved as proposed in my

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17 opinion it would be substantially detrimental to
18 the zone plan and the zoning ordinance. It
19 clearly -- if you were to pick one reason for
20 having this zone, it is to protect the Palisades,
21 and this in my opinion blocks it much more than a
22 fully conforming property or building would be.
23 And as a consequence I do not think that the
24 justifications are present that would allow this
25 board to approve the application.

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Steck - Direct

1 THE CHAIRMAN: Thank you. Mr. Lamb,
2 I assume you have no more questions?

3 MR. LAMB: No, I do, Mr. Chairman,
4 but I think this is probably a good time to
5 break.

6 THE CHAIRMAN: Here's what I'd like
7 to do. Mr. Alampi, obviously we're not going to
8 get to your cross tonight nor the public. What I
9 want to do is move your cross and your additional
10 questions, whatever --

11 MR. LAMB: I don't have a lot more,
12 Mr. Chairman.

13 THE CHAIRMAN: Okay -- to our April
14 5th regular meeting. We have a light schedule
15 that night so we should be able to accommodate
16 the cross-examination on that night.

17 MR. ALAMPI: I think so.

18 THE CHAIRMAN: Also I would think on
19 that evening summation after Mr. Steck finishes.

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20 MR. LAMB: Mr. Steck is not
21 available on April 5th.

22 MR. MUHLSTOCK: Got to make him
23 available. Can't be run by -- we talked about
24 that. It can't be run by a planner's
25 availability.

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Steck - Direct

1 MR. LAMB: I understand that but the
2 planner has other obligations as well. And last
3 meeting he could not come but we filled it up
4 with an expert. And, respectfully, we've had a
5 history of never going past 10:00 and it's about
6 11:20.

7 MR. MUHLSTOCK: Right. We're trying
8 to finish this application. That's why we did
9 it.

10 MR. LAMB: I'd love to finish but if
11 he's not available, I can't help that.

12 MR. MUHLSTOCK: Well, he's got to
13 make himself available.

14 A VOICE: You want that on the
15 record?

16 MR. MUHLSTOCK: Yes, he's got to
17 make himself available to this board to complete
18 his testimony. This applicant has had seven or
19 eight -- I lost count -- seven or eight special
20 meetings which he has -- which the applicant has
21 paid for.

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22 MR. LAMB: That's his prerogative.
23 MR. MUHLSTOCK: That's his
24 prerogative. They're not going to pay for the
25 special. So he should come to this meeting.

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1 MR. LAMB: If he has another
2 commitment, Mr. Muhlstock, if that was your
3 application he was going on --
4 MR. MUHLSTOCK: He might have to put
5 that off to complete this one. He's a very busy
6 man. He testifies all the time.
7 MR. LAMB: I would respectfully
8 believe we can get a date that he would be able
9 to go to, attend, that's within a week or so of
10 that date.
11 MR. MUHLSTOCK: It's up to Mr.
12 Alampi as to whether he wants a special meeting.
13 We're suggesting that he not pay for one, that we
14 do this on the regular meeting.
15 MR. ALAMPI: This application is
16 coming on its first anniversary.
17 MR. LAMB: And again it's getting
18 late and I don't want to get angry, but it is the
19 applicant who decided that the Palisades cliff is
20 100 square foot of rock, and it's the applicant
21 that said you measure the setback from this 100
22 square foot of rock. And we have spent hours on
23 issues which are very clear and a stretch of the
24 zoning ordinance.

25 MR. MUHLSTOCK: It has nothing to do

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1 with this witness. It has nothing to do with
2 this witness. I suggest that we make Mr. Steck
3 available on the 5th.

4 MR. LAMB: Mr. Steck is not
5 available, Mr. Muhlstock.

6 MR. MUHLSTOCK: Then we'll have to
7 go with what we have.

8 MR. LAMB: I'm going to object and
9 you'll --

10 MR. MUHLSTOCK: You can object.

11 MR. LAMB: You schedule it, Mr.
12 Muhlstock.

13 MR. MUHLSTOCK: Mr. Alampi, it's up
14 to you.

15 MR. RABEN: This wasn't done to any
16 of the Apple View witnesses.

17 MR. MUHLSTOCK: Sit down. You are
18 out of order.

19 MR. ALAMPI: I'm bringing this to
20 conclusion on April 5th if that's your regular
21 meeting. I don't plan an extensive cross
22 examination. I respect Mr. Steck's dilemma but
23 when you're engaged by an applicant or objector
24 you have to go with the --

25 MR. LAMB: We have on every meeting

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Steck - Direct

1 scheduling, we have accommodated every witness
2 and all the attorneys' schedules.

3 MR. ALAMPI: That's it.

4 THE CHAIRMAN: Cross-examine him.

5 Okay, we'll finish him.

6 MR. MUHLSTOCK: Go ahead, Mr. Lamb.

7 BY MR. LAMB:

8 Q. Mr. Steck, you did review the site
9 plan, all the pages of the site plan, the
10 application and the transcripts that Mr. DeNiscia
11 testified to?

12 A. Yes.

13 Q. Okay. You did review the
14 geotechnical reports and the I guess TPs, the
15 test pits and the other tests that were taken
16 below surface to try to get the exposed rock?

17 A. Yes.

18 Q. Okay. You reviewed the zoning
19 ordinance, the master -- the original master
20 plan?

21 A. Yes.

22 Q. The Master Plan Reexamination Report
23 of 2003?

24 A. Yes, and the one of 2009.

25 Q. In any of those -- and the township

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1 2008 resolution?

2 A. Yes.

3 Q. Okay. In any of those documents
4 does it refer to any kind of measurement from the
5 rock, exposed rock on the Palisades?

6 A. No.

7 Q. Based upon your experience as a
8 planner, have you ever seen an applicant
9 calculate a rear yard setback in the way
10 suggested by the developer's planner?

11 A. No.

12 Q. Now, you've indicated Mr. Muhlstock
13 asked you approximately 4500 square feet is the
14 portion of the building in the rear setback?

15 A. No, that's the portion of the
16 building that is in the 30 percent slope area and
17 then you measure the rear setback 40 feet towards
18 River Road from that point.

19 Q. Okay, I'm sorry. And what is the
20 portion of the building --

21 MR. ALAMPI: Let me interrupt,
22 counsel. It's 11:30. Personally I'm fatigued
23 and I don't think I could give a proper
24 cross-examination, and I'm sure Mr. Lamb also is
25 somewhat. The April 5th date although critical

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1 to us, if there's another date close in time,
2 even at an additional cost, I think that given

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3 the hour and such and I'm more anxious than
 4 anyone else in this room to bring this to a
 5 conclusion. If there can be a date that's in
 6 close proximity but, again, Mr. Steck, I
 7 appreciate your schedule but I'll accommodate
 8 this effort and I know Mr. Lamb a long time and
 9 I'll do the best that I can, but we can't go
 10 beyond mid-April if it's possible.

11 MR. LAMB: Mr. Chairman, what about
 12 the Thursday, April 7th?

13 THE CLERK: No.
 14 (Discussion off the record.)

15 THE CHAIRMAN: Ladies and gentlemen,
 16 the next hearing on this matter will be on
 17 Wednesday, March 30th at 7 p.m. in these
 18 chambers. You will not receive new notice, so
 19 please make note of the date. Again, March 30th,
 20 7 p.m. in these chambers.

21 MR. LAMB: Thank you.
 22 (Time noted: 11:31 p.m.)
 23
 24
 25

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2	OBJECTOR'S	PAGE
3	Exhibit 14 report prepared by Richard B.	
4	Kuprewicz dated February 28,	13
	2011,	
5	Exhibit 15 letter from the U.S. Department	
6	of Transportation Pipeline and	
	Hazardous Material Safety	15
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7	Exhibit 16 Palisades Slope Stability Study	
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8	3-10-11 Appreview	
	of Hudson County, New Jersey dated	
9	September 3, 2008, revised February	21
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10	Exhibit 17 letter dated May 12, 2004	170
11	Exhibit 18 curriculum vitae of Peter Steck	173
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1 CERTIFICATE

2 STATE OF NEW JERSEY)

3) :ss

4 COUNTY OF BERGEN)

5 I, CELESTE A. GALBO, a Certified

6 Court Reporter and Notary Public within and for

7 the State of New Jersey do hereby certify:

8 That all the witnesses whose

9 testimony is hereinbefore set forth, was duly

10 sworn by me and that such is a true record of the

testimony given by such witnesses.

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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 21st day of March 2011.

17
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25

CELESTE A. GALBO
License No. 30X100098800

Celeste A. Galbo, CCR, RMR