

COUNTY OF HUDSON
STATE OF NEW JERSEY

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

Applicant.

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October 23, 2012
7:09 p.m.

B E F O R E:

THE NORTH BERGEN PLANNING BOARD

PRESENT:

HARRY MAYO, III, Chairman
GEORGE AHTO, JR., Vice Chairman
ROBERT BASELICE, Member
RICHARD LOCRIKCHIO, Member
SEBASTIAN ARNONE, Member
MANUEL FERNANDEZ, Alternate Member
REHAB AWADALLAH, Alternate Member

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

Geraldine Baker, Board Clerk
Grace Lynch, P.P., Board Planner
Derek McGrath, P.E., Board Engineer

Reported by:

CELESTE A. GALBO, CCR, RPR, RMR

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EXHIBITS

<u>TRANSCO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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Exhibit 9	letter dated October 18, 2012		14
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<u>PLANNING BOARD</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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Exhibit 8	response of Derek McGrath, P.E. dated October 22, 2012		14
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<u>RABIN OBJECTOR</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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Exhibit 1	photograph 1		45
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1 THE CHAIRMAN: Meeting is called to
2 order. Pursuant to the Open Public Meetings Act,
3 please be advised that notice of this meeting was
4 faxed to the *Journal Dispatch* and *Bergen Record*
5 on October 3, 2012 advising that the North Bergen
6 Planning Board will hold a special meeting on
7 October 23, 2012 at 7 p.m. in the chambers of the
8 municipal building located at 4233 Kennedy
9 Boulevard, North Bergen, New Jersey 07047.

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

15 Gentleman re, please call the roll.

16 (Whereupon roll call is taken and
17 Members Patricia Bartoli and Steven Somick are
18 absent.)

19 THE CHAIRMAN: Okay, continuation of
20 Case No. 4-10, Appleview, LLC.

21 Counselor.

22 MR. MUHLSTOCK: Mr. Chairman, just
23 before Mr. Alampi starts I just want to note for
24 the record that Mr. Locricchio has signed his
25 certifications that he read the July 12 and the

1 September 20 transcripts. So at this point all
2 of the members who are present tonight have
3 either been here or have fully read all of the
4 transcripts. Ms. Bartoli who indicated that she
5 had read the transcript of July 12 on the record
6 she's not here, obviously she can't sign the
7 certification but she indicated that on the
8 record. She's not here. Mr. Somick had missed
9 two or three meetings and obviously he's not here
10 to do a vote. And if it gets carried for a
11 reason and we don't move on this I will have him
12 sign his certification. But other than that
13 everyone here is fully qualified to act on this
14 if we get to that point.

15 THE CHAIRMAN: All right. Thank
16 you. Now, counsellor.

17 MR. ALAMPI: Thank you, Chairman.
18 Again, for the record, Carmine Alampi for the
19 applicant -- that's A-L-A-M-P-I, Celeste -- for
20 the applicant, Appleview.

21 I think tonight the board had
22 directed that all testimony was concluded, the
23 hearing has come to a conclusion and I think the
24 board had opportunity to question witnesses but
25 you're going to reopen for public comments?

1 THE CHAIRMAN: Yes.

2 MR. ALAMPI: And I guess review the
3 evidence. We'll do summation. I think Mr. Lamb
4 goes first, I'll go right behind him. I intend
5 to be crisp and not regurgitate the seven
6 hearings verbatim. And I think, Chairman, we
7 would anticipate the board could caucus and we
8 possibly vote on this tonight. Thank you.

9 MR. MUHLSTOCK: Mr. Alampi, have you
10 looked at the remand hearing exhibits list that
11 Mr. Lamb prepared?

12 MR. ALAMPI: I didn't see one.

13 MR. MUHLSTOCK: Okay.

14 MR. ALAMPI: Thank you, John.

15 MR. MUHLSTOCK: I went through it
16 before the meeting tonight, and it looks correct
17 to me, although I only looked at it for about ten
18 minutes and went through my notes.

19 MR. ALAMPI: The only then I would
20 say is I do recall that we had broken down the
21 exhibits by T for Transco, the applicant, board
22 and --

23 MR. MUHLSTOCK: And he did that.

24 MR. ALAMPI: -- and Galaxy which he
25 did. And I believe maybe two items that were

1 marked for identification only, I see one, G-39
2 and I don't know -- I'm sorry, there are several.

3 MR. MUHLSTOCK: There were several.

4 MR. ALAMPI: Yes, I think knowing
5 Mr. Lamb I'm sure these are accurate. So I don't
6 have any reason to question the exhibits list.
7 I'm actually I want to thank him because it does
8 make it a lot easier for all of us to have this
9 list.

10 MR. MUHLSTOCK: Okay. Well, this
11 itself won't be an exhibit.

12 MR. ALAMPI: No, no.

13 MR. MUHLSTOCK: But, Celeste, if you
14 would take a copy of this, you can certainly
15 check this list as against the transcripts. I
16 think that will prove out to be the same.

17 THE CHAIRMAN: Okay. With that,
18 Mr. Lamb.

19 MR. LAMB: Yes, just very briefly.
20 We just literally did this at the end of the day
21 and I didn't get a chance to check it but I gave
22 it to Mr. Muhlstock before the hearing. On the
23 August 28th hearing you'll see a number of items
24 that were marked, we just put ID. I don't think
25 I formally moved them into evidence. Mr. Alampi

1 is correct there were two exhibits that we marked
2 for identification but did not move into evidence
3 because of the board's ruling. I believe it was
4 the appraisal report and the proposed questions
5 to Richard Miller and his testimony. So at this
6 point I would move everything into evidence that
7 has been presented to the board, acknowledging
8 that the board has ruled against me on those two
9 items and they should not be ruled into evidence
10 but only marked for identification.

11 MR. ALAMPI: John, that will be
12 G-32B and G-37.

13 MR. LAMB: Correct.

14 MR. ALAMPI: I believe based on the
15 ruling they would remain only identified for the
16 case record. I have no objection to all --

17 MR. MUHLSTOCK: Well, let me ask
18 this. Assuming that the case goes back to Judge
19 Farrington or some other judge, is what you're
20 saying is that even though the documents are not
21 moved into evidence and merely marked for
22 identification and identified as such, they could
23 be presented to Judge Farrington for whatever --

24 MR. ALAMPI: I'm sure there's going
25 to be --

1 MR. MUHLSTOCK: -- whatever worth it
2 is?

3 MR. ALAMPI: I'm you sure there's
4 going to be briefing on the point. Those two
5 items that deal with the purchase, et cetera we
6 have strenuously not only objected have felt that
7 the judge already ruled on it dispositively.
8 Mr. Lamb argues that's not so, so he's preserved
9 these by identification. I'm sure it's going to
10 be re-presented and it's going to be argued.

11 MR. MUHLSTOCK: Did you understand
12 my question better than Mr. Alampi?

13 MR. LAMB: Yes.

14 MR. MUHLSTOCK: And do you agree
15 that the documents even if they're marked for
16 identification would be preserved as part of the
17 record that could be --

18 MR. LAMB: Yes. Yes.

19 MR. MUHLSTOCK: -- considered by the
20 court?

21 MR. LAMB: They're not evidence and
22 you've made a ruling that you don't believe
23 they're relevant.

24 MR. MUHLSTOCK: Yes.

25 MR. LAMB: And if the court

1 disagrees with that, that's the record she can
2 see whether they've relevant or not.

3 MR. MUHLSTOCK: Okay. Good.

4 MR. LAMB: That's assuming there's a
5 continuation.

6 MR. MUHLSTOCK: So we're all in
7 agreement on that.

8 MR. ALAMPI: Yeah, I think we three
9 attorneys, four attorneys, Ms. Gesualdi is here,
10 I believe we understand what we understand from
11 the earlier proceedings and such. So everyone is
12 just holding firm on that.

13 MR. MUHLSTOCK: Okay. So there is
14 no problem with that. So all of the other
15 exhibits which were previously marked only for
16 identification are now in evidence.

17 THE CHAIRMAN: Except those two.

18 MR. LAMB: Except for those two.

19 MR. ALAMPI: I don't recall what
20 those letters each stated but I believe --

21 MR. MUHLSTOCK: Well, they state --

22 MR. ALAMPI: I would say this, they
23 probably were arguing over the point of whether
24 those exhibits were --

25 MR. MUHLSTOCK: That is correct.

1 MR. ALAMPI: -- relevant. So I
2 would suggest if the content of those letters was
3 likewise the legal argument to support those
4 exhibits, they should not be included as
5 evidence. They should just be preserved, I have
6 no reason other than to say I don't want it to be
7 deemed that I've acquiesced to that argument with
8 regard to the correspondence. So I think the
9 correspondence if it relates to that same issue
10 should all be bunched together as identification
11 and the judge is obviously going to have to take
12 this up because Mr. Lamb will take it up.

13 MR. MUHLSTOCK: Mr. Lamb.

14 MR. LAMB: I think we specifically
15 marked various exhibits and there was a ruling at
16 the time. I don't recall exactly what ruling but
17 my recollection is we -- the board made the
18 ruling on those two which can't be in evidence
19 but everything else was marked, there was
20 argument and the board admitted into evidence. I
21 have no problem with Mr. Alampi's requested
22 stipulation that he does not agree to the extent
23 that the letters have legal arguments he doesn't
24 have to agree with that, that is fine. I
25 understand that. Everybody has made their points

1 and an argument on these issues.

2 MR. MUHLSTOCK: Fine. Okay.

3 MR. ALAMPI: I'm satisfied with
4 that.

5 MR. MUHLSTOCK: Good.

6 MR. ALAMPI: Thank you.

7 GRACE LYNCH, having been duly sworn by the Notary
8 Public, was examined and testified as follows:

9 DEREK McGRATH, having been duly sworn by the
10 Notary Public, was examined and testified as
11 follows:

12 MR. LAMB: Mr. Chairman, the last
13 issue which I'd like address, there was a letter
14 from Transco dated October 18, 2012 that was
15 attached, actually I received it but I first
16 received it attached to Mr. McGrath's letter of I
17 believe the same date. I left it on my desk so I
18 apologize.

19 MS. GESUALDI: I've got it.

20 MR. LAMB: Mr. McGrath's letter is
21 October 18.

22 MR. MUHLSTOCK: It's October 18,
23 2012 respecting the --

24 MS. GESUALDI: Access.

25 MR. MUHLSTOCK: -- easement access

1 agreement.

2 MR. LAMB: So because that is Mr.
3 McGrath's letter attached to Transco's letter, I
4 think that should be marked as PB-8.

5 MR. MUHLSTOCK: Well, I think that
6 we should probably -- why don't we mark
7 Mr. Tucker's letter of October 18 as T-9.

8 MR. LAMB: Okay, that's fine.

9 MR. MUHLSTOCK: Separately. And
10 we'll give Celeste a copy in a second. And then
11 we'll mark Mr. McGrath's response of October 22,
12 2012 as PB-8.

13 (Transco Exhibit 9, letter dated
14 October 18, 2012, was received in
15 evidence.)

16 (Planning Board Exhibit 8, response
17 of Derek McGrath, P.E. dated October 22,
18 2012 was received in evidence.)

19 MR. ALAMPI: Mr. Chairman, if I may,
20 I believe what we just marked as T-9 is a letter
21 from the counsel for Transco that was dated on
22 Friday past and then a letter from Mr. McGrath
23 that was dated yesterday. I did see these
24 briefly, I don't object, I think they're
25 pertinent. I would just add that consistent with

1 our position all along, we've represented to the
2 board and to the objector's attorney and to all
3 objectors and interested parties that we will
4 come to the construction and the scripting of
5 such an easement agreement if and when a final
6 approval is granted on this application, and that
7 the terms and conditions of these construction
8 protocol and safety measures that have been
9 brought out by Mr. McGrath and many comment
10 letters and by Transco will be incorporated.

11 At an earlier time and in the legal
12 proceedings in Superior Court there were
13 questions raised as to why the agreement didn't
14 already exist and if it did the draft didn't
15 include all that protocol. So since these are
16 being marked into evidence I just wanted to
17 reiterate at the appropriate time all those
18 safety measures and construction protocol issues
19 that have been raised by all parties that
20 participate, that's Transco, the board engineer
21 and ourselves we'll fold them into the ultimate
22 document.

23 THE CHAIRMAN: All right. Just so
24 we're clear because T-9 and PB-8 recommend two
25 different things, which one are you agreeing to?

1 MR. ALAMPI: T-9 is the discussion
2 about an easement, but of course there's an issue
3 of exclusivity versus non-exclusivity.

4 THE CHAIRMAN: Correct.

5 MR. ALAMPI: We take no position one
6 way or the other except to say that the applicant
7 has presented its concern that that area if it
8 goes to an easement has a construction protocol
9 and all the safety standards. As far as
10 exclusivity, we have a neutral position, that is
11 to say, whatever the board feels is appropriate
12 after reviewing it by all parties is what it will
13 be. So we're not advocating but we're not
14 resistant to whatever result comes out. Our real
15 focus is what protocol will be folded into the
16 language of the document.

17 THE CHAIRMAN: All right. Thank
18 you. Mr. Lamb.

19 MR. LAMB: And I just -- you want
20 to.

21 MS. GESUALDI: Yes, I just want to
22 speak on behalf of the town Marie Gesualdi. With
23 regard to the Guttenberg sewer easement we are
24 pleased that the board recognizes that the sewer
25 easement has to be preserved and naturally we

1 need access only for that purpose with regard to
2 the maintenance of the sewer easement. And the
3 position that Transco takes is contrary to the
4 preservation of the sewer easement and the
5 maintenance of the same.

6 THE CHAIRMAN: Duly noted.

7 MR. LAMB: I would also just like to
8 add that for the record I went back and I don't
9 know whether I had Mr. McGrath's earlier letter
10 but his letter dated May 20, 2010 on page 7,
11 paragraph 36 he indicated that the proposed
12 maintenance agreement should include the owner,
13 Williams Gas, the Township of Guttenberg, the
14 North Bergen MUA and the Township of North
15 Bergen. And as Mr. McGrath said, I've maintained
16 this position since the beginning, it may have
17 been even before that but that's the first letter
18 that I found and that's always been understood.

19 MR. MUHLSTOCK: And his letter dated
20 yesterday reiterates that?

21 MR. LAMB: Correct.

22 THE CHAIRMAN: Thank you, Mr. Lamb.

23 MR. LAMB: You're welcome.

24 THE CHAIRMAN: Okay.

25 MR. MUHLSTOCK: All right.

1 MR. LAMB: Mr. Chairman, I'm sorry,
2 instead of saying it for my summation, as a
3 preliminary matter I should have also said our
4 position -- I want to make sure by me not saying
5 anything, I've already made this position, I
6 don't want to repeat it but I've always said that
7 the easement needs to be finished and every
8 condition and term and provision in it has to be
9 finished and that's always been our position.
10 Whether or not it's signed pending it but to
11 leave that document up for additional provisions
12 and negotiations and things is something that
13 we've always objected to. So I just don't want
14 the board to think that I've waived that
15 argument. I've said that all along.

16 MR. ALAMPI: We think that if we
17 cannot work it out in the immediate future, but I
18 would think that the board will take it all into
19 consideration and embrace this issue in its
20 deliberations.

21 MR. MUHLSTOCK: Well, I would think
22 that if the board deems it appropriate to approve
23 the application, it's going to make a condition
24 that Mr. McGrath's recommendations are adhered to
25 with everything that you've indicated

1 incorporating all of the construction and the
2 precautions, the type of construction, the type
3 of drilling.

4 MR. ALAMPI: Yeah, I think that's --
5 I don't think there's any dispute by anybody in
6 the room with that. It's the exclusivity concept
7 that seems to have separated the parties. But I
8 don't know, I can't force the hand of anybody, so
9 that's why we say we remain neutral on the issue
10 and follow the direction of the board. But as
11 far as the protocol safety standards and such, I
12 don't think anyone in this room disagrees --

13 THE CHAIRMAN: I don't think there's
14 anyone in the room that disagrees with Mr.
15 McGrath's position either.

16 MR. ALAMPI: Right.

17 THE CHAIRMAN: Okay, let's open it
18 to the public. Again, let's keep it short.
19 Let's not be repetitive. I'm going to allow
20 three minutes per individual.

21 Yes, ma'am, please come forward,
22 state your name and address for the record and be
23 sworn in.

1 KATHY FRIEDMAN, residing at 8550 Boulevard East,
2 North Bergen, New Jersey, having been duly sworn
3 by the Notary Public, was examined and testified
4 as follows:

5 MS. FRIEDMAN: I am actually here
6 representing Peggy Wong who could not be here
7 tonight because of a conflict of interest, so I
8 am going to read her comments to you and they
9 start off like this.

10 MR. ALAMPI: May I just say
11 something? Conflict of interest or scheduling?

12 THE WITNESS: Scheduling, sorry.
13 Conflict in my schedule, sorry, yeah. Thank you,
14 sorry.

15 MR. ALAMPI: I just wanted to note
16 an objection to someone else speaking on behalf
17 of a party I can't question.

18 MR. MUHLSTOCK: I think, Mr. Alampi,
19 Ms. Wong has appeared as a --

20 MR. ALAMPI: Interested party.

21 MR. MUHLSTOCK: -- an interested
22 party throughout these proceedings. She's
23 actually, so you know because you're delivering
24 her speech, she's placed her position on the
25 record all over the transcript which I'm sure the

1 attorneys reviewed, so I mean you can certainly
2 go ahead and read. I can't imagine that's it's
3 going to be much different than what she's
4 already indicated during her commentary --

5 MS. FRIEDMAN: I think this is her
6 summation because she wasn't able to be here this
7 evening and she wanted to make sure that her
8 opinion, her summations was heard, so that's
9 really with I'm here.

10 THE CHAIRMAN: Okay.

11 MS. FRIEDMAN: "Due to a conflict in
12 my schedule I am unable to attend tonight's
13 meeting. I have asked and authorized Kathy
14 Friedman to read the following on my behalf.

15 "You know that hearings have gone on
16 too long when a planning board member openly
17 dozes off during testimony by the only certified
18 geologist, Robert Cunniff, on either side of this
19 case at the last hearing on September 20th, 2012.
20 Unfortunately not only did many members of the
21 public see this but it occurred during Mr.
22 Cunniff's testimony about the dangers of rock
23 slides of the cliffs and he cited several
24 examples as reasons for his concerns. These
25 concerns are also expressed in the Hudson County

1 Planning Board's commissioning of a study on the
2 stability of the Palisades cliffs by the PMK
3 Group dated September 2008 and revised on
4 February 3rd, 2009. The Palisades cliffs have
5 been with us for all of our lifetimes and beyond.
6 They are at least 200 million years old and like
7 anything else, the cliffs occasionally collapse
8 or parts of it break off. After all, the cliffs
9 were originally over one thousand feet high and
10 are now noticeably less.

11 At the Applevue site the testimony
12 of Bertin Engineering is that the cliffs are 140
13 feet high if I recall correctly. There was a
14 major collapse of the Palisades cliffs in Alpine
15 New Jersey on May 12, 2012 where large chunks of
16 the cliffs came down. Another collapse closer to
17 North Bergen occurred on Route 5 in Edgewater on
18 May 7th, 2010. Both were covered in the local
19 media. We also know that the Applevue site is
20 less than two miles from a major earthquake fault
21 line on Gorge Road in Edgewater. Landslides in
22 Hudson County are also noted in the PMK study.
23 It would seem that the planning board and
24 township should pause and consider their primary
25 responsibilities, i.e. the safety of their

1 residents and not be preoccupied with a chase for
2 tax rateables with the Appleview development.
3 Safety of residents trumps anything else.

4 Many of the public have wondered why
5 this site was zoned for residential use when a
6 pipeline is virtually in the living room of the
7 development but given the benefit of doubt to
8 when that zoning was approved, perhaps the
9 dangers of a pipeline were not as well-known as
10 they are today. However, what was hard to miss
11 was the pungent odor from the North Bergen
12 Sewerage Treatment Plant adjacent to the pipeline
13 that has caused even some residents in the
14 Versailles Condos a quarter mile south from
15 Appleview site to move away. Although the
16 Versailles is not our concern, what is a concern
17 are those responsible North Bergen officials who
18 thought this site's zoning for residential use
19 was smart planning. One would hope those are not
20 the same officials who will make this potential
21 life and death decision on whether the Appleview
22 development should be approved and built. The
23 risk of an explosion due to the pipeline is real
24 and the lives of those in the blast radius should
25 not be used as chips in some gamble for tax

1 rateables. As a tax paying resident of North
2 Bergen I urge you to not approve this
3 development.

4 "Respectfully Peggy Wong, President,
5 Coalition to Preserve the Palisades Cliffs, 8550
6 Boulevard East, North Bergen New Jersey."

7 THE CHAIRMAN: Thank you.

8 Anyone else?

9 Yes, ma'am.

10 HEATHER CARIOU, residing at 7004 Boulevard East,
11 Guttenberg, New Jersey, having been duly sworn by
12 the Notary Public, was examined and testified as
13 follows:

14 THE CHAIRMAN: Yes, ma'am.

15 MS. CARIOU: Ladies and gentlemen,
16 it is my understanding that the variance for
17 which Mr. Spoletti and company have applied is
18 called a hardship variance. I've attended many
19 of the meetings over the past year and I have yet
20 to hear or see any proof that Mr. Spoletti and
21 Appleview will suffer any particular hardship by
22 adhering to the ordinances as originally set by
23 this board. So I think a more appropriate name
24 for his position would be to call it a greed
25 variance. He'll make more money with more units

1 and so will Hudson County. And that's all
2 anybody cares about, public safety be damned.
3 I've listened to the expert testimony on both
4 sides and I really have tried to keep an open
5 mind. But I am far from convinced that my life
6 is safe in Mr. Spoletti's hands. Going back to
7 the word hardship, if there is an accident and
8 that pipeline does explode it will definitely be
9 a hardship for me and for members of my family
10 and literally thousands of others. While such an
11 accident may be unlikely, the only way to
12 guarantee that it won't happen, the only way to
13 make absolutely certain that my life and others
14 are not in danger is just to say no.

15 I wish to add that as a published
16 writer and professional actor of some 30 years it
17 is my job to observe and note behavior. During
18 these months of hearings I've witnessed Transco
19 and Appleview enjoy a significant collegiality
20 with each other, suggesting an appearance of
21 being, as my dear old grand dad would have put
22 it, in cahoots. It is certainly to their mutual
23 benefit to support each others claims and in that
24 context Transco's testimony becomes suspect.
25 Frankly I have also found the attitude of some

1 members of this board with their smirking,
2 eyeball rolling and generally demeaning tone with
3 regard to the public and their representatives to
4 be very demoralizing. We are not a bunch of
5 idiots and carzies. We are well educated
6 thinking people who are taxpayers. We are those
7 who must live our every day with the consequences
8 of your decision. We're here fighting for our
9 lives, make no mistake about that, and we're
10 depending on you for our safety and security.
11 And the only reason there aren't hundreds of us
12 here is because those people cannot believe that
13 you would make this kind of decision. If the
14 Appleview project literally blows up in your
15 faces, ladies and gentlemen, the bloods of
16 thousands will be on your hands. And if you are
17 willing to gamble with our lives, then God have
18 mercy on you.

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

23 MS. RABIN: During the testimony of
24 the geologist, Mr. Cunniff, I attempted to enter
25 into the record a set of photographs that were

1 taken from around the Applevue property from
2 2005 to the present. I was not allowed at that
3 time to present these into the record and
4 therefore Mr. Cunniff was not able to comment on
5 them from the perspective of a geologist. I
6 would however like as the board said I could to
7 enter these in now on my own time. So...

8 THE CHAIRMAN: All right, these are
9 pictures that you took?

10 MS. RABIN: Most of them are.
11 There's one in here that I believe was taken by
12 Mr. Bertin and they document the conditions over
13 a period of years on the site.

14 MR. MUHLSTOCK: I don't have a
15 problem. Show them to Mr. Alampi so that he has
16 an opportunity to review it.

17 MS. RABIN: Yes, I intended to do
18 that.

19 MR. ALAMPI: Well, you see,
20 immediately -- I would like to address this
21 before it's disseminated to the board.

22 MR. MUHLSTOCK: Well, it's not in
23 evidence and we're not accepting it, go ahead.

24 MR. ALAMPI: Well, immediately
25 there's editorialization on these photographs,

1 it's not just a photograph. You then have state
2 of vegetation on steep slopes. Who could and how
3 could Mr. Rabin be making these -- how could he
4 qualify these pictures in such a way? So it's
5 inappropriate to editorialize and mark up and
6 give opinion as you label the photograph. If you
7 say this is photograph of this date from this
8 vantage point, it's one thing. But then to
9 comment on it with certain things, certain
10 statements and each one of them has the same
11 objection. So I do object of course to these
12 documents because they have been editorialized.
13 And, again, I don't know what probative value
14 they would have. Again --

15 MR. MUHLSTOCK: What if the photos
16 were to be taken without the commentary, without
17 the editorialization?

18 MR. ALAMPI: Well, let's take the
19 last one, for example. Okay. There is no
20 measurement as to the location. You see that
21 piece of equipment there, that was there because
22 the board needed and asked for test pits and
23 things like that. You're not going to dig it by
24 hands, you have equipment for that purpose.

25 MR. MUHLSTOCK: Right.

1 MR. ALAMPI: So you have issues
2 taken out of context. You need to do test
3 pits --

4 MR. MUHLSTOCK: Mr. Lamb, have you
5 seen these?

6 MR. LAMB: I just saw them, yes. I
7 think -- I understand Mr. Alampi's point but I
8 think anybody who takes a picture and submits it
9 to the board basically does editorialize, they
10 say this is a picture of this. And it's free for
11 the board to say, well, that's vegetation on a
12 steep slope because that's what he's identifying
13 the picture with --

14 MR. MUHLSTOCK: Yeah, but he's more
15 than that. There's more than that, Mr. Lamb.
16 You can describe a photo --

17 MR. LAMB: I believe he should --

18 MR. MUHLSTOCK: -- this is a photo
19 of trees.

20 MR. LAMB: I think he should
21 describe this photo. If you want to take the
22 language off and let him describe what he thinks
23 it is. I don't have any objection to it.

24 MR. ALAMPI: We don't care what Mr.
25 Rabin thinks. What you have are photographs.

1 A VOICE: Excuse me?

2 MR. ALAMPI: You heard me.

3 A VOICE: Wow.

4 MR. MUHLSTOCK: Don't interrupt.

5 MR. ALAMPI: You have photographs
6 that I'm objecting to and more so because of the
7 editorializing and then the statement that it's
8 in the proximity of -- without any accurate
9 measurement, except obviously a backhoe there's a
10 piece of equipment on the site to perform a
11 certain task and now it's, you know, being
12 distorted as to that issue. So, again, we -- I
13 just can't see how this could be entered under
14 these circumstances.

15 MS. RABIN: Could I address these
16 concerns?

17 MR. MUHLSTOCK: Yeah, go right
18 ahead.

19 MS. RABIN: As a witness to what was
20 happening on the property, my intention was to
21 put down on the record of this document my
22 observations and to the best of ability to be
23 accurate. I'm here under oath, I have said that
24 I will speak the truth, there's nothing that I've
25 put on that document which contradicts that. I

1 stand by that document. Certainly if somebody
2 wanted to go in there with a tape measure and
3 figure out exactly how far that backhoe was
4 digging from the pipeline, they could figure that
5 out. To date nobody has done that which I found
6 surprising because this was alerted to the board
7 a long time ago. That backhoe was photographed
8 the same day that the One Call Violation took
9 place. So this was, you know, a well documented
10 event.

11 I think this document makes sense in
12 the form that it is. It's certainly possible for
13 Mr. Alampi or for Appleview to provide a document
14 with their editorializing on it. What I think
15 would have been most valuable would have been to
16 hear the testimony of an expert geologist,
17 particularly since major part of his testimony
18 was about erosion and the dangers of erosion on
19 this property and the possibility that erosion
20 has gotten much worse since Appleview began
21 cutting into that slope and removing trees.

22 You can see a progression of tree
23 falls in those photographs, and I can tell you
24 that during the time that I was there the trees
25 were very stable before that cutting. And since

1 that time we see more and more trees falling over
2 and we've seen the same thing taking place on the
3 Avak property where trees began falling over on
4 that property. So I would think that there's
5 probably something similar going on with erosion
6 not being properly handle on both properties that
7 are adjacent to each other. And I would have
8 like to know what the geologist thought of those
9 issues and I would have thought the board would
10 have wanted know also. I was very disappointed
11 that the board didn't think it was worth finding
12 out what the geologist thought on that --

13 MR. MUHLSTOCK: Well, no one
14 precluded you from sharing this with either
15 Mr. Lamb or the geologist directly. I mean --

16 MS. RABIN: I came up and I
17 presented it --

18 MR. MUHLSTOCK: I'm saying, I'm
19 saying no one precluded you from sharing these
20 with Mr. Lamb or his geologist. Instead of
21 moving it forward to the board during
22 cross-examination of witnesses --

23 MS. RABIN: Well, I'm trying as a
24 member of the public to provide a document that
25 was relevant to a witness that was testifying,

1 you know. I mean, I could have, I guess found
2 where his home was and waited outside there and
3 tried to give it to him so --

4 MR. MUHLSTOCK: No, no, don't be
5 sarcastic. I think what would have been
6 reasonable would have been for you to discuss
7 this with Mr. Lamb and furnish these to him and
8 let him pass these on to his witness or that. I
9 think that would have been reasonable. So --

10 MS. RABIN: I will concede that that
11 would have been better but considering that this
12 was the manner in which it was done it would have
13 been possible to grant a few minutes for Mr.
14 Cunniff to have addressed them and I wish that
15 had been done.

16 MR. MUHLSTOCK: Okay.

17 MS. RABIN: Maybe we could all rest
18 easier with his answers or maybe we'd have some
19 serious concerns presented.

20 MR. MUHLSTOCK: All right. Here is
21 what I'm going to suggest to the board, I'm going
22 to suggest --

23 MR. ALAMPI: Mr. Muhlstock.

24 MR. MUHLSTOCK: You want to go on?

25 MR. ALAMPI: Well, you see Item

1 No. 8, sheet No. 8 that's not even the subject
2 property. It's Avak property.

3 MR. MUHLSTOCK: Well, here's what I
4 think is reasonable at this point. I think the
5 documents -- the photographs should be marked for
6 identification and I think you should
7 cross-examine Mr. Rabin on these photos, just as
8 if he was the presenting any other evidence
9 because to this point he hasn't had an
10 opportunity to present his case. We've been on
11 cross-examination of witnesses, he's not had his
12 opportunity which is true. Now is his
13 opportunity. He's presenting these, albeit what
14 might be some editorialization but I'm sure that
15 you can cross-examine him and ask him questions
16 about the items that you're now suggesting should
17 be probed a little more deeply.

18 MR. ALAMPI: I'm going to note an
19 exception to your ruling.

20 MR. MUHLSTOCK: Okay.

21 MR. ALAMPI: I can cross-examine
22 quickly. I don't think I want to get into a
23 lengthy cross-examination.

24 MR. MUHLSTOCK: Okay.

25 MR. ALAMPI: I object to these

1 documents, to the editorializing. The damage is
2 already done by distributing them. I'm not going
3 to sit here and go one by one and pursue this
4 with Mr. Rabin.

5 MR. MUHLSTOCK: You don't have to.
6 Why don't we --

7 MR. ALAMPI: Now you position me to
8 be in a position now I'm waiving that
9 opportunity.

10 MR. MUHLSTOCK: No, no --

11 MR. ALAMPI: This is totally --

12 MR. MUHLSTOCK: -- I said you could.
13 But how is this witness different than any of the
14 other witnesses or the experts or --

15 MR. ALAMPI: You mean to tell me --

16 MR. MUHLSTOCK: -- any of the fact
17 witnesses that came forward? How is that
18 different?

19 MR. ALAMPI: You mean to tell me
20 you're going to allow me to cross-examine each
21 member of the public that had comment?

22 MR. MUHLSTOCK: If you wanted to you
23 could. You have that opportunity if they present
24 evidence, testimonial evidence, documentary
25 evidence such as this.

1 MR. ALAMPI: Mr. Muhlstock, every
2 witness has testimonial --

3 MR. MUHLSTOCK: No, a lot of
4 witnesses stand there and give opinions.

5 MR. ALAMPI: Of course.

6 MR. MUHLSTOCK: That you're not
7 going to cross-examine because that's mere
8 opinion. That's what they think. But here a
9 witness is offering up documentary evidence. I
10 think it would be fair, you know, if you believe,
11 for instance, you indicated that one of the
12 photos doesn't even indicate this property, I
13 think that would be fair to point out or ask --

14 MR. ALAMPI: It's labeled to say
15 it's not the property. It says it's the Avak
16 property.

17 MR. MUHLSTOCK: Okay. The --

18 MR. ALAMPI: That should be
19 excluded.

20 MR. MUHLSTOCK: Well, let's go
21 through them, then.

22 MR. ALAMPI: Well, Item No. 8.

23 MR. MUHLSTOCK: Well, let's start
24 with Item No. 1. You have another copy? All
25 right. Photograph No. 1.

1 MS. RABIN: Could I ask if I'm going
2 to be cross-examined, could I give some testimony
3 on this? Obviously there's some written
4 testimony but that was deliberately kept brief.

5 MR. MUHLSTOCK: Well, you handed out
6 the documents.

7 MS. RABIN: Yes.

8 MR. MUHLSTOCK: So --

9 THE CHAIRMAN: Now, you need to
10 identify them.

11 MR. MUHLSTOCK: Now we need to get a
12 little more in the detail so that Mr. Alampi has
13 the opportunity to question the veracity. So
14 let's go through them since you offered them.

15 Photo No. 1 which says -- is a photo
16 from 2005. Is there any objection to that?

17 MR. ALAMPI: Certainly. I object to
18 every photograph at every point.

19 MR. MUHLSTOCK: Okay.

20 MR. ALAMPI: I believe I explained
21 firstly the labeling and the editorializing.

22 MR. MUHLSTOCK: Okay. Well, we're
23 going to have to go through it because this says
24 "Appleview site 2005 stable vegetation on steep
25 slope."

1 MR. ALAMPI: Let's stop there. The
2 first word is stable.

3 So, Mr. Rabin, had you physically
4 walked the Applevue site on a daily basis before
5 2007?

6 MS. RABIN: The -- the -- as a
7 resident of the Galaxy, we were leasing that
8 property, it was available to us and --

9 MR. MUHLSTOCK: Well, wait a second,
10 that's a yes or no. He said did you walk the
11 site. Now let's not go off on to tangents.

12 MS. RABIN: He asked if I walked it
13 on a daily basis.

14 MR. MUHLSTOCK: Yes, that's the
15 question.

16 MS. RABIN: So if I walked it on
17 every second day I would have to say no.

18 MR. MUHLSTOCK: Okay. Okay, that's
19 the answer to the question.

20 MS. RABIN: This is one of the
21 reasons I was asking if I might be allowed to
22 give some testimony since I'm being
23 cross-examined without --

24 MR. MUHLSTOCK: You can give some
25 testimony after the cross-examination.

1 MR. RABIN: Okay. That's unusual
2 but okay.

3 MR. MUHLSTOCK: You've asked, you've
4 asked the board to take these documents into
5 evidence.

6 MS. RABIN: I did, yes.

7 MR. MUHLSTOCK: So now we have to
8 probe each one of them.

9 THE CHAIRMAN: When did the lease
10 end?

11 MR. RABIN: 2005.

12 MR. ALAMPI: 2004.

13 MR. RABIN: I thought it was '05.
14 It's documented we can...

15 THE CHAIRMAN: And where was this
16 picture taken from?

17 MS. RABIN: This was taken from a
18 balcony in the tower, Tower 3.

19 MR. ALAMPI: Can you identify the
20 unit that it was taken from?

21 MS. RABIN: It happens to be my
22 balcony.

23 MR. ALAMPI: Can you identify the
24 unit for us? What's the unit number? What
25 floor?

1 MS. RABIN: Is it necessary?

2 MR. ALAMPI: Well, here we go. See.
3 I can't do this.

4 MR. MUHLSTOCK: Hold on. Hold on.
5 Let me ask it this way: Is that a fair
6 representation of what the property looked like
7 from this vantage point in 2005?

8 MS. RABIN: I believe so, yes.

9 MR. MUHLSTOCK: Okay. The fact that
10 the witness testifies as to stable vegetation, I
11 think that's an opinion and I think that the
12 record should note that that's his opinion and
13 that the document should come in for depiction of
14 the property as of that time.

15 MR. ALAMPI: Mr. Muhlstock, I didn't
16 even get started. I mean, when was this
17 photograph taken, the first one?

18 MS. RABIN: I believe --

19 MR. ALAMPI: Do you know the date it
20 was taken?

21 MS. RABIN: The precise date could
22 be provided to you. I do not have that listed
23 here. This photograph was taken in the 2007.

24 MR. ALAMPI: So then how could it
25 depict the conditions earlier than 2007?

1 MS. RABIN: Because I'm testifying
2 as a resident and the discussion with many other
3 residents also their observations that to the
4 best of my knowledge the trees were not falling
5 over, the soil was not washing down the slope to
6 our observations. And those conditions have
7 changed since then and that would be my
8 definition of stable.

9 Obviously you could define stable as,
10 you know, a leave falling off was instability but
11 within I think a reasonable sense of it, trees
12 falling down is unstable, soil washing away is
13 unstable, rocks washing away. This was not
14 observed happening by --

15 MR. ALAMPI: You see now it's a
16 simple question and Mr. Rabin has gone on for a
17 minute. I can't respond to his editorializing in
18 his testimony. I only want to know the date it
19 was taken.

20 MR. MUHLSTOCK: Mr. Rabin, you have
21 to answer the questions. If you're a witness --

22 MR. RABIN: Yes, I did though.

23 MR. MUHLSTOCK: No, you didn't. You
24 went on.

25 MS. RABIN: He asked me how I would

1 know that this was stable, if I remember the
2 question correctly --

3 MR. ALAMPI: I never used the word
4 stable in the question.

5 MS. RABIN: Well, I'm paraphrasing.

6 MR. ALAMPI: There you go.

7 So, in any event, this was taken from
8 your balcony?

9 MS. RABIN: Yes.

10 MR. ALAMPI: Do you know what season
11 it was when this was taken?

12 MS. RABIN: It was taken during the
13 summer.

14 THE CHAIRMAN: And did you say it
15 was taken 2007?

16 MS. RABIN: Yes.

17 THE CHAIRMAN: 2005 is inaccurate?

18 MS. RABIN: No, the testimony that's
19 being given is that this is a photograph
20 consistent with the appearance of the slope
21 during that time.

22 MR. MUHLSTOCK: Okay. Okay. All
23 right. We'll take the testimony for what it's
24 worth. You heard the testimony. I would suggest
25 to the board that this reflects what the

1 condition was in 2007.

2 THE CHAIRMAN: All right.

3 MR. RABIN: I have no objection to
4 that. Unless there's some evidence that there
5 was something significantly different --

6 MR. MUHLSTOCK: All right. Mr.
7 Alampi, if this photo is merely showing what was
8 there, as you see, it's from afar, it shows trees
9 of course during the summer on the property.
10 That's what it depicts. And that's what this --
11 I believe that's what the board should consider
12 this photo as depicting.

13 MR. ALAMPI: So what would you do
14 with the wording on it, would you just strike it?
15 What are you going to do with it?

16 MR. LAMB: The witness has a right
17 to say -- and I agree you have to -- when did you
18 take it, I took it summer of 2007, this is what
19 you saw and that it's your testimony that in your
20 opinion -- we've had lots of opinion testimony --
21 this was stable vegetation when I took the
22 picture. He can say and I've lived there for ten
23 years and it was --

24 MR. MUHLSTOCK: Certainly.

25 MR. LAMB: -- two years ago was the

1 same or five years or whatever.

2 MR. MUHLSTOCK: He certainly can.
3 If -- Mr. Alampi, if he didn't have the photos,
4 let's say Mr. Rabin came up, he had no photos and
5 he's testifying because this is his time to
6 testify, I've lived next to this property my
7 whole life and in my opinion the property has
8 become less stable, could you -- without photos,
9 could you object to that? That's his
10 observation.

11 MR. ALAMPI: He may not be qualified
12 to make that opinion. Of course I object to it.

13 MR. MUHLSTOCK: We understand he's
14 not, he's not a geologist, he's not an expert --

15 MR. ALAMPI: I'll ask a few
16 questions.

17 Mr. Rabin, do you have any education
18 in the field of tree plantings? Are you an
19 arborist? Do you have any botany background,
20 anything of that nature?

21 MS. RABIN: I am aware that when a
22 tree --

23 MR. MUHLSTOCK: No, no, stay
24 towards -- stay exact to his questioned.

25 MS. RABIN: He wants to know if I'm

1 a botanist?

2 MR. MUHLSTOCK: He wants to know if
3 you have any certifications or special training
4 in land --

5 MS. RABIN: I do not have any
6 special training.

7 MR. MUHLSTOCK: Okay. Next
8 question.

9 MR. ALAMPI: That's the only
10 question on number one.

11 MR. MUHLSTOCK: Okay, I would
12 suggest to the board that we accept given the
13 testimony which talks about the language on the
14 photograph, I would suggest this come into
15 evidence.

16 THE CHAIRMAN: Okay.

17 MR. MUHLSTOCK: How we going to list
18 this RO, Rabin Objector, 1. RO-1.

19 (Rabin Objector Exhibit 1, photograph
20 1, was received in evidence.)

21 MR. MUHLSTOCK: Okay, next one. Mr.
22 Rabin, you took this photo on page 2?

23 MR. RABIN: Yes, I did.

24 MR. MUHLSTOCK: You took this photo
25 obviously from the subject property.

1 MS. RABIN: Yes, in this case I did.

2 MR. MUHLSTOCK: Do you know the date
3 you took it?

4 MS. RABIN: This was taken the same
5 day as the One Call Violation, the date is on the
6 record in the transcripts. I don't have it on me
7 at this moment.

8 MR. MUHLSTOCK: Was it 2007?

9 MS. RABIN: Yes, it was 2007.

10 MR. MUHLSTOCK: Do you remember what
11 time of the year it was?

12 MR. RABIN: It was in the fall, I
13 believe. It was April.

14 MR. MUHLSTOCK: How do you know in
15 the language that you've indicated "Many trees on
16 the Palisades destroyed by backhoe creating test
17 pits and soil borings," you saw that yourself?

18 MS. RABIN: Yes, I observed it. I
19 was one of the residents who reported it. And
20 because once we determined it was not a One Call,
21 it became a serious concern to us. You can see
22 many trees lying sideways --

23 MR. MUHLSTOCK: The board can see
24 what the photo --

25 MR. RABIN: So that's how I'm --

Rabin

1 MR. MUHLSTOCK: Okay.

2 Mr. Alampi, you have any questions on
3 this one?

4 MR. ALAMPI: Mr. Rabin, this was not
5 for the application that's presently before the
6 board, was it, this reference to 2007?

7 MS. RABIN: This was the Appleview
8 digging test pits at the request of the board,
9 but I believe after this point the -- a new
10 application was presented.

11 MR. ALAMPI: Are you aware that
12 additional test pits and soil borings were asked
13 for by this planning board?

14 MS. RABIN: Yes.

15 MR. ALAMPI: And were those test
16 pits and soil borings conducted by the applicant?

17 MS. RABIN: Yes, they were observed
18 being conducted.

19 MR. ALAMPI: And were they also
20 conducted by using a piece of equipment depicted
21 in this photograph?

22 MS. RABIN: They were and they also
23 got the One Call done properly and they weren't
24 fined for those cuttings.

25 MR. ALAMPI: Yeah, I'm going to

1 object to this issue the One Call. That's been
2 on a different application process and it's --
3 has nothing to do with the use of the equipment
4 itself. It's not relevant to these proceedings.

5 MR. LAMB: I --

6 MR. ALAMPI: He's continually
7 referencing it --

8 MR. MUHLSTOCK: Well, does the
9 photograph depict, the question is does
10 photograph depict what the witness saw at that
11 time.

12 MR. ALAMPI: Well, I'll ask him.
13 Does the photograph depict the actual test pit
14 excavation being conducted?

15 MS. RABIN: This was done prior to
16 the test pits. This was to clear a path to allow
17 the test borings to be done. And that testimony
18 was given by Applevue witnesses that this was
19 the first stage of that process.

20 MR. ALAMPI: You think there's any
21 other way to do the tests pits, to perform that
22 excavation?

23 MS. RABIN: I'm sure there would be
24 ways for humans to construct rigs and it would be
25 much slower and harder to do. There were, for

1 instance, testimony at the Avak site of a rig
2 that was put on the top of a slope --

3 THE CHAIRMAN: Well --

4 MS. RABIN: I was asked a question
5 whether it would be possible. I'm giving my
6 knowledge from Applevue and Avak witnesses which
7 happened to be the same witnesses for both cases.
8 This was, I believe, Ms. Greco who had testified
9 at Avak about putting a drill rig on top of the
10 slope and this obviously could not be accessed by
11 a backhoe, so they were able to do it in another
12 manner. And that was the rig that became
13 destabilized when a sudden rain happened. And I
14 asked her about this at this hearing.

15 MR. FERNANDEZ: Let me ask you, the
16 only reason they got fined was because they
17 didn't follow proper procedures. If they would
18 have followed proper procedures, the One Call
19 would have not happened.

20 MS. RABIN: I think because One Call
21 is considered the most fundamental safety
22 regulation for digging on a property with a major
23 gas pipeline -- I would view it slightly
24 differently. I would view violating something
25 like that as similar to, you know, speeding

1 through a school zone or something like that.

2 MR. FERNANDEZ: Correct.

3 MS. RABIN: It's a serious
4 violation.

5 MR. FERNANDEZ: Because they were
6 allowed to continue after they went and filed the
7 proper procedure. They still dug holes with the
8 same backhoe.

9 MS. RABIN: Yeah, it gives Transco
10 an opportunity to evaluate what they're planning
11 to do and say, yes, we think in this case it's
12 safe. And it is possible that everything they
13 did on that day was safe but they didn't find out
14 from Transco and at certain points they were
15 digging quite close to the pipeline.

16 MR. ALAMPI: Do you know whether any
17 unsafe condition actually occurred, any finding
18 of safety?

19 MS. RABIN: A finding?

20 MR. ALAMPI: Yeah.

21 MS. RABIN: Well, the people who
22 could do a finding I haven't really investigated
23 --

24 MR. MUHLSTOCK: He asked you do you
25 know. So the question to that is either I do

1 know --

2 MS. RABIN: I think if you go to
3 page --

4 MR. MUHLSTOCK: Mr. Rabin --

5 MR. RABIN: Yes?

6 MR. MUHLSTOCK: -- the answer to
7 that has to be either yes, I do know or no, I
8 don't know.

9 MS. RABIN: I, I believe if you look
10 at page 3 there is evidence of an unsafe
11 condition. Page 3 shows --

12 MR. MUHLSTOCK: Well, that's not
13 what was asked.

14 MS. RABIN: Well, but I can in a
15 very succinct way explain why. You can see the
16 cutting that went up into the slope where the
17 backhoe entered. And if you look all the way on
18 the right-hand side through the fence, you can
19 see the yellow, you can see the yellow gas
20 markers. So you can see where the pipeline was
21 by that yellow marker that you can see through
22 the fence. And if anyone is having trouble
23 spotting it, I'm pointing to it right now
24 (indicating). And that's how close they were
25 digging into the slope near the pipeline. So

1 that -- I mean, it inherently safe --

2 MR. ALAMPI: I'm trying not to
3 interrupt. It's supposed to be -- this is
4 supposed to resemble a cross-examination, but --

5 MR. MUHLSTOCK: Do you --

6 MR. ALAMPI: No.

7 MR. MUHLSTOCK: So ask another
8 question if you want.

9 MR. ALAMPI: Now from Figure 2 to
10 Figure 3, et cetera it's a simple question.

11 MS. RABIN: I have --

12 MR. MUHLSTOCK: Mr. Rabin, there is
13 no question.

14 MR. RABIN: I can answer --

15 MR. MUHLSTOCK: There is no
16 question. There is no question.

17 MS. RABIN: Sure.

18 MR. MUHLSTOCK: Mr. Alampi, do you
19 have any other question on this one?

20 MR. ALAMPI: I have nothing further
21 on Item No. 2.

22 MR. MUHLSTOCK: All right. This is
23 going to be RO-2 in evidence.

24 (Rabin Objector Exhibit 2, photograph
25 2, was received in evidence.)

1 MR. MUHLSTOCK: No. 3 is a
2 photograph of the subject, says "2007 excavation,
3 deep cut into the Palisades."

4 MR. ALAMPI: Of course, the
5 objection is editorializing.

6 MR. MUHLSTOCK: The words "deep
7 cut", right?

8 MR. ALAMPI: Yes.

9 MR. MUHLSTOCK: Okay.

10 MR. BASELICE: Can we assume that
11 this is also April 2007?

12 MS. RABIN: Yes, this was done on,
13 taken the same day.

14 MR. MUHLSTOCK: All right. With
15 your concern noted for the record that the word
16 deep cut is a matter of opinion, that will be
17 RO-3. In evidence.

18 (Rabin Objector Exhibit 3, photograph
19 3, was received in evidence.)

20 MR. MUHLSTOCK: All right.

21 MR. FERNANDEZ: Now, those deep
22 cuts, before or after they got approval?

23 MS. RABIN: This was before the One
24 Call.

25 MR. FERNANDEZ: Before the One Call?

1 MS. RABIN: Yes.

2 MR. MUHLSTOCK: Next photograph
3 says -- purports to be the path cut into the
4 slope by the backhoe. It says "Applevue site
5 3/14/10."

6 THE CHAIRMAN: Is that the date this
7 was taken?

8 MS. RABIN: Yes.

9 THE CHAIRMAN: And this is taken
10 from where?

11 MS. RABIN: This was taken from my
12 living room window.

13 MR. MUHLSTOCK: What's the objection
14 --

15 MR. ALAMPI: This photograph was
16 taken March of 2010?

17 MR. RABIN: Yes, you can see it's --

18 MR. ALAMPI: That's the question,
19 was it March 2010.

20 MS. RABIN: Yes.

21 MR. ALAMPI: And in the background
22 is that the MUA plant in the photograph?

23 MS. RABIN: Yes, it is.

24 MR. ALAMPI: I have no objection to
25 the photo. Of course I would excise the

1 editorializing.

2 MR. MUHLSTOCK: What portion, what
3 portion of the language on that fourth photo do
4 you find objectionable?

5 MR. ALAMPI: "Path cut into slope by
6 backhoe."

7 MR. MUHLSTOCK: Okay.

8 MR. ALAMPI: Nobody acknowledges or
9 agrees to that.

10 MR. MUHLSTOCK: Okay. Well, that's
11 what the witness thinks it is and we understand,
12 your --

13 MR. ALAMPI: We had testimony that
14 the path already existed and was there for quite
15 many years and that stone and gravel was laid
16 down. So we had testimony by several witnesses
17 that it was pre-existing, pre-existing the
18 ownership of Applevue LLC. So I object of
19 course to --

20 MR. MUHLSTOCK: Go ahead. Why don't
21 you just respond to that statement.

22 MR. RABIN: Yes, that specifically.
23 The area was referred to as path as road as
24 asphalt driveway by Mr. Bertin and Ms. Greco. I
25 used the term path because that was one of the

1 terms they used for it. The photograph on page 2
2 shows the trees that were removed here from this
3 exact spot. And I think it's pretty clear that
4 if you have an asphalt driveway with trees some
5 of which are several feet, several feet in
6 thickness, it would be rather hard for those to
7 be growing out of a driveway. Those were growing
8 out of soil. I would also point out that page 3
9 that shows the beginning of this cut where it was
10 at its shallowest because it's right at the
11 beginning of the slope, you can see along the
12 left-hand side the thickness of the soil that has
13 been cut into and it's two to three feet
14 depending on which spot you're looking at of soil
15 that has been cut into. You can see the dark
16 band of soil that's been cut through. So even if
17 there was some asphalt or something at the bottom
18 of that -- which was uncovered actually I think a
19 couple of years later if I remember the testimony
20 correctly -- clearly there was enough soil there
21 to support trees and there's enough soil there to
22 be visible in this photograph.

23 MR. MUHLSTOCK: Okay. And you, you
24 also indicated on this fourth photo that "since
25 2007 increasing levels of soil erosion have been

1 observed." That's your observation, correct?

2 MR. RABIN: Yes, that is an
3 observation that I made.

4 MR. MUHLSTOCK: Okay.

5 MR. ALAMPI: Well, the photograph
6 didn't depict that. How could that be attached
7 to the photograph?

8 MR. MUHLSTOCK: That's his
9 testimony. That's his observation.

10 MR. ALAMPI: He can give it as his
11 testimony but I think it should be excised from
12 the photo. The photo doesn't bear that the out.

13 MR. RABIN: Well, this photograph
14 was mostly to establish the area that had been
15 cleared of trees and that had been referred to as
16 the path, the area of the borings.

17 Photograph No. 5 --

18 MR. MUHLSTOCK: Whoa, whoa, don't go
19 to five. Photo 4 with Mr. Alampi's concern which
20 I happen to agree, it doesn't bear out the fact
21 that increasing levels of soil erosion have been
22 observed.

23 MS. RABIN: Okay.

24 MR. MUHLSTOCK: That's your
25 testimony.

1 MS. RABIN: That is my testimony,
2 absolutely.

3 MR. MUHLSTOCK: -- but that's not
4 what this photo says. So having excised that,
5 this will be marked RO-4 for evidence.

6 (Rabin Objector Exhibit 4, photograph
7 4, was received in evidence.)

8 MR. MUHLSTOCK: Next is No. 5 which
9 indicates a photo purportedly taken on March 14,
10 2010.

11 MS. RABIN: Yes, it's the same date.
12 And you can also check this photograph against
13 the previous one. This is essentially a close-up
14 of that same area. And it shows what I consider
15 to be significant erosion.

16 Now, I would have liked to have known
17 what the geologist thought. But you can see
18 rocks the size that, you know, would fill your
19 hand that have been washed down. You can see
20 muddy water running through there and you can see
21 a gully that has been cut into that slope by the
22 rush of the water. Those are to my observations
23 signs of erosion. Those are observable in this
24 photograph and much smaller in the previous
25 photograph.

1 MR. MUHLSTOCK: Okay. Mr. Alampi.

2 MR. ALAMPI: Several objections.

3 Firstly, this is redundant of RO-4. It certainly
4 is not necessary to have both RO-4 and RO-5 if
5 it's the same area being photographed.

6 MR. MUHLSTOCK: Yeah, but this is a
7 close -- he testified they're close-ups. So this
8 will be --

9 MR. ALAMPI: Well, I'm not finished.

10 MR. MUHLSTOCK: Go ahead.

11 MR. ALAMPI: I have objections.

12 Mr. Rabin, you indicated that there
13 were rocks the size of your hand or handful?
14 What was your -- how did you describe it?

15 MS. RABIN: A rock that would fill
16 your hand.

17 MR. ALAMPI: Did you observe this
18 backhoe that you depict in these photographs
19 depositing those rocks in that area?

20 MR. RABIN: No, this is a separate
21 time. These rocks were observed on the path
22 which had not been there, you know --

23 MR. ALAMPI: Well --

24 MR. RABIN: -- prior to the heavy
25 rain.

1 MR. ALAMPI: The question was did
2 you observe the -- this backhoe equipment
3 depositing those rocks in that pathway.

4 MS. RABIN: These were not deposited
5 to the best of my knowledge by any equipment.
6 These were part of the slope --

7 MR. MUHLSTOCK: So the answer is no.

8 MS. RABIN: Yes.

9 MR. MUHLSTOCK: I mean, just answer
10 the question.

11 MR. ALAMPI: Do you know how long
12 those rocks were there in that location?

13 MS. RABIN: On the path where they
14 --

15 MR. ALAMPI: It's your photograph.
16 Do you know how long they were there?

17 MS. RABIN: I didn't know whether
18 you meant on the Appleview site or on the slope.

19 MR. ALAMPI: I'm dealing with your
20 photograph.

21 MS. RABIN: Okay. These had not
22 been observed in that location until this heavy
23 rain. And that was the purpose of this
24 photograph and others that were taken which are
25 not here. I tried to keep it brief, but there

1 are other areas also showing areas that had been
2 washed down by heavy rain. I believe this was
3 two days of rain on and off that had taken place.

4 MR. ALAMPI: Isn't it a fact that
5 these rocks are similar to in size and type to
6 the rocks that are behind the Galaxy apartment
7 above the concrete retaining walls?

8 MR. RABIN: That would be what Mr.
9 Bertin called riprap?

10 MR. ALAMPI: Yes.

11 MS. RABIN: There is certainly a
12 possibility that these rocks would have been part
13 of that or they could have been from the diabase
14 rock from the Palisades. But they were part of
15 the slope prior to the rain and they should have
16 stayed there if they had been stabilized in my
17 opinion. And I believe the geologist had
18 testified that in his opinion --

19 MR. ALAMPI: This is going beyond.

20 MR. MUHLSTOCK: All right. You're
21 going beyond. You answered that.

22 MS. RABIN: I apologize.

23 MR. BASELICE: I have a question.

24 Mr. Rabin.

25 MS. RABIN: Yes.

1 MR. BASELICE: In the picture on
2 page 5 at the bottom left-hand corner of that
3 circle, is that the wall, the rock wall that they
4 speak of?

5 MS. RABIN: Well, there are several
6 retaining walls. And there is a bit of a wall at
7 the bottom left side that is, you know, one of
8 the stabilizing -- I don't think anybody was
9 quite sure when exactly those were put in.

10 MR. BASELICE: Is that the one
11 furthest back?

12 MS. RABIN: Let's see. If I go to
13 the page 4, you can see that that wall curves in
14 kind of a like a quarter moon like kind of curve,
15 and it actually is I guess you could say it's
16 curving towards Tower 3 of the Galaxy. And you
17 can see at the bottom edge of that picture riprap
18 on that wall. You can see it also that the
19 riprap looks almost completely different from the
20 Appleview site which is covered with vegetation.
21 It's a very different property in the soil and
22 it's a living environment with animals and trees.

23 THE CHAIRMAN: Is it the furthest
24 one back?

25 MS. RABIN: I believe on the Galaxy

1 property, I believe that there is also a wall
2 right at the base where the slope becomes part of
3 a driveway and --

4 THE CHAIRMAN: That is further back?

5 MR. RABIN: -- which is lower down
6 but that's not really I think part of the slope.
7 But there is another stabilizing wall there.

8 MR. BASELICE: Going to where they
9 spoke to the berm and having to shore up the
10 wall. I'll defer to our engineer. We had
11 testimony that there would only have to be
12 shoring up of a wall. Is that the wall we're
13 talking about?

14 MS. RABIN: Do we have the map of
15 the property? Because it probably would be much
16 easier to just point to the spot on the map if we
17 could do that. Is it over here?

18 MR. ALAMPI: Probably.

19 MS. RABIN: Is it okay if I --

20 MR. ALAMPI: Yeah, sure. There's a
21 wall over here and --

22 MR. MUHLSTOCK: What document are
23 you referring to for the record?

24 MR. ALAMPI: Just a second. RA-10.

25 MR. MUHLSTOCK: Okay.

1 MR. ALAMPI: That was marked at July
2 12, 2012.

3 MR. MUHLSTOCK: Okay.

4 MR. BASELICE: And the wall that I'm
5 questioning, is that the wall more easterly or
6 westerly on the property?

7 MS. RABIN: This is the wall down
8 there would be an easterly wall and this is --
9 the site has been changed by the --

10 MR. BASELICE: Understood.

11 MS. RABIN: -- building being placed
12 here. But this could be the path that we've
13 talked about is cut I believe along here, and the
14 wall in question is here (indicating) to the best
15 of my ability.

16 THE CHAIRMAN: So you're pointing to
17 the southeast corner of what is depicted -- I'm
18 sorry, the southwest corner of what is depicted
19 as the building?

20 MR. RABIN: Yeah, that wall you're
21 asking about is really to the side of the
22 Appleview property. And the much steeper slopes
23 here I think are the ones, the primary walls that
24 were discussed were the concern of the geologist
25 I believe.

1 MR. BASELICE: Thank you. Thank
2 you.

3 MR. MUHLSTOCK: Anything further on
4 that photo, at page 5?

5 MR. ALAMPI: Just, again the issue
6 of the riprap stone and such, that you did not
7 see that this was placed at the time you were
8 taking 2007 photograph of the excavator
9 equipment; is that a fair statement?

10 MS. RABIN: It had not been observed
11 by me in -- after the clearing of the path in
12 2007 and also re-clearing of the path I believe
13 in 2009 --

14 MR. ALAMPI: I just want --

15 MR. RABIN: -- I did not observe
16 those rocks there at those times.

17 MR. MUHLSTOCK: All right. That
18 will be RO-5 in evidence.

19 (Rabin Objector Exhibit 5, photograph
20 5, was received in evidence.)

21 MR. MUHLSTOCK: All right. The next
22 photo was taken from the subject, looks like a
23 photo taken by Mr. Bertin.

24 MS. RABIN: Yes.

25 MR. MUHLSTOCK: In June 2012; is

1 that correct?

2 MS. RABIN: This --

3 MR. MUHLSTOCK: From his soil
4 stability report.

5 MR. RABIN: Yeah, the tree itself
6 was observed to have fallen over --

7 MR. MUHLSTOCK: Okay.

8 MR. RABIN: -- on the date listed.
9 I cannot testify to the precise date that Mr.
10 Bertin took this photograph. I would note --

11 MR. ALAMPI: Excuse me, Mr.
12 Muhlstock. If this is the photograph contained
13 in the Bertin report by Bertin, I certainly can't
14 object to the photograph, it's already in
15 evidence. I just object to the verbiage and the
16 opinions expressed. But if that's the
17 photograph, then that's it.

18 MR. MUHLSTOCK: Well, let's look at
19 those as to whether opinions or whether Mr. Rabin
20 believes they're fact.

21 THE CHAIRMAN: If I may, the picture
22 seems to have a legend on it saying it was taken,
23 I believe taken June of 2012.

24 MR. LAMB: In the middle of the
25 picture. It's faint.

1 MR. MUHLSTOCK: Yes, we see that
2 the.

3 THE CHAIRMAN: Now, on top it says
4 "Appleview site 3/13/11" which would not seem to
5 be consistent with what's on the picture itself.

6 MR. ALAMPI: You can see that on the
7 photograph?

8 MS. RABIN: Yeah, it is actually.

9 MR. BASELICE: 2012.

10 MS. RABIN: It's right through the
11 center.

12 MR. ALAMPI: Okay.

13 MS. RABIN: Yeah.

14 MR. LAMB: It's on page 5 of the
15 Johnson Soils report dated June 1, 2012 as
16 Section 2, dirt pathway.

17 THE CHAIRMAN: Mr. Baselice has
18 pointed out it does say "Photo taken by Mr.
19 Bertin."

20 MR. BASELICE: June 2012.

21 THE CHAIRMAN: "In June 2012."

22 MR. BASELICE: Soil stability --

23 MS. RABIN: Yes, and the comment I
24 made about that was that the reference was that
25 this tree was observed falling over at the date

1 listed during a heavy rainfall. It was due to
2 the angle that I am at in the Galaxy it's hard
3 for me to get a good picture of that tree because
4 there are other trees in the way. And I could
5 have shown you a blurry picture of a trunk,
6 however, Mr. Bertin I know the took a very, very
7 clear picture that shows both of the trees that
8 came over. There is a smaller tree behind this
9 tree that can only also be observed.

10 MR. MUHLSTOCK: So --

11 MS. RABIN: So we used his
12 photograph.

13 MR. MUHLSTOCK: So your designation
14 that this represents the Applevue site on March
15 13, 2011, that may not be correct?

16 MS. RABIN: The testimony about it
17 is the observations. The illustration of this
18 event was taken at a later date by Mr. Bertin.
19 I'm sorry if that was unclear. It wasn't my
20 intention but I'm seeing I could have written
21 this better to make it clearer, but I felt that
22 Mr. Bertin's photograph could be well documented
23 so there wasn't any effort to sneak something in
24 here or anything like that. This portion of the
25 site had remained relatively unchanged during

1 that period.

2 THE CHAIRMAN: Okay, so the best we
3 can say is this is the site as it was on June
4 20th of 2012, correct?

5 MS. RABIN: I mean that was the --
6 Mr. Bertin's writing. I actually looking,
7 though, I'm wondering if in fact that photograph
8 was taken on the date or if that perhaps might be
9 the date of Mr. Bertin's report that's printed on
10 there. Because actually in thinking about it,
11 the next photograph, the next photograph on page
12 7 documenting 2011 shows considerably more trees
13 to have fallen. So I think it actually probably
14 the date on that photograph may be the date of
15 his report.

16 MR. ARNONE: It has to be March,
17 there is no leaves on the trees.

18 MR. MUHLSTOCK: That's what I'm
19 saying. This photo probably subject to what's in
20 the record, it's in Mr. Bertin's soil stability
21 report dated June of 2012. This photograph --

22 THE CHAIRMAN: Could have been taken
23 at any time before that.

24 MR. MUHLSTOCK: Right, had to be
25 taken before that. Okay.

1 MS. RABIN: Thank you.

2 MR. MUHLSTOCK: Thank you. Anything
3 else on this one, Mr. Alampi?

4 MR. ALAMPI: I'm confused. Yes, the
5 issue of the wording the "path cleared by
6 backhoe." Did you see the backhoe actually
7 excavating the path itself?

8 MS. RABIN: Yes, it was using the
9 arm to knock trees over and it was cutting and
10 digging in --

11 MR. ALAMPI: At this point where
12 you're showing this photograph RO-7, at this
13 point did you see the excavator clearing the
14 panel and excavating soil?

15 MS. RABIN: You mean at this date?

16 MR. ALAMPI: At this point where
17 this is shown.

18 MS. RABIN: Not from this angle but,
19 yes, I was observing that area being dug.

20 MR. ALAMPI: Did you testify you did
21 not see the excavator depositing any rocks or
22 stone or riprap?

23 MS. RABIN: I'm saying that the
24 rocks which were observed in that particular spot
25 had not been observed there a few days earlier,

1 therefore I'm saying they weren't deposited on
2 the path. They may have been deposited up slope.

3 MR. ALAMPI: I'm asking you if you
4 saw whether or not the excavator was actually
5 depositing the riprap stone at that time that you
6 observed it.

7 MR. RABIN: I saw the arm pushing
8 soil up the slope, pushing some soil down the
9 slope and clearing an area. I'm sure riprap was
10 pushed around --

11 MR. ALAMPI: It's a very simple
12 question.

13 MS. RABIN: -- natural stone was
14 pushed around.

15 MR. ALAMPI: Did you see the
16 excavator taking scoops of riprap rock and
17 bringing it and depositing it at this point on
18 the property at that time?

19 MS. RABIN: I did not see it
20 depositing scoops of soil --

21 MR. ALAMPI: I'm asking about scoops
22 of riprap rock.

23 MR. RABIN: I never observed it with
24 a scoop of riprap rock. There may have been some
25 pieces of diabase rock or riprap mixed in with

1 soil --

2 MR. ALAMPI: Let's not speculate. I
3 asked you what you saw or didn't see.

4 MS. RABIN: I never saw -- I said I
5 never saw the backhoe with a scoop of riprap.

6 MR. MUHLSTOCK: Okay. So subject to
7 that, Mr. Alampi --

8 MR. ALAMPI: Right.

9 MR. MUHLSTOCK: -- we'll put --

10 THE CHAIRMAN: And let's note that
11 it's RO-6 not 7.

12 MR. ALAMPI: I'm up to -- that was
13 RO-7 on mine --

14 THE CHAIRMAN: No, it's not.

15 MR. ALAMPI: Then I must have lost
16 count.

17 MR. MUHLSTOCK: RO-6.

18 (Rabin Objector Exhibit 6, photograph
19 6, was received in evidence.)

20 MR. MUHLSTOCK: Okay. Let's go on
21 to the next photo which is obviously --

22 MR. RABIN: 7.

23 MR. MUHLSTOCK: Page 7 obviously is
24 taken in the winter, there's snow on the ground,
25 correct, Mr. Rabin?

1 MS. RABIN: Yes.

2 MR. MUHLSTOCK: It says "Appleview
3 site 2011 after heavy rainfall." Now --

4 MR. RABIN: Now, these trees had
5 fallen prior to the snowfall. The reason this
6 photograph was chosen was that the snow helped
7 highlight the contrast which during the earlier
8 months it was very hard to see through the
9 foliage that the trees had -- how many trees had
10 fallen but once the snow fell it was very clear
11 so I took these photographs --

12 MR. MUHLSTOCK: All right. So you
13 believe, it's your testimony that this photograph
14 adequately depicts fallen trees which have
15 occurred since March 13 of 2011?

16 MS. RABIN: Yes.

17 MR. MUHLSTOCK: Okay. Go ahead, Mr.
18 Alampi.

19 MR. ALAMPI: When was this
20 photograph taken, this RO-7?

21 MS. RABIN: I don't have the precise
22 date.

23 MR. BASELICE: October 30, 2011.

24 MR. ALAMPI: Was it taken in 2012?

25 MS. RABIN: It was taken after that

1 date.

2 MR. ALAMPI: Is that because of that
3 October snowstorm that we had?

4 MR. BASELICE: Yes, I had fallen ill
5 that day, so I remember it will. October 30,
6 2011 was the only snowstorm we did have, it was a
7 very heavy snow, it was ice and snow in which
8 trees had fallen all over.

9 MR. ALAMPI: I know that I had no
10 electricity for five days because that was that
11 freak storm in October.

12 MS. RABIN: Well, as I said, though,
13 these trees had fallen prior to the snowstorm.
14 That's my testimony.

15 MR. ALAMPI: Is it your further
16 testimony --

17 MR. RABIN: Yes.

18 MR. ALAMPI: I'll try it again. So
19 based upon the commissioner's recollection, would
20 you adopt the fact that this photo was taken in
21 October of 2011?

22 MR. RABIN: The time stamp for when
23 this photograph was taken I -- that's probably
24 when it was. I don't have the time stamp. Yes,
25 that sound right.

1 MR. ALAMPI: I have no objection.

2 MR. MUHLSTOCK: RO-7.

3 MR. ALAMPI: It's after the
4 snowstorm.

5 (Rabin Objector Exhibit 7, photograph
6 7, was received in evidence.)

7 MR. MUHLSTOCK: Now, the next --

8 MR. ALAMPI: I go back to my
9 original objection. This is the Avak property.
10 I don't see any correlation and it's immaterial.
11 On the basis of materiality, I don't see how this
12 can be admitted, this sheet No. 8.

13 MR. MUHLSTOCK: I agree on this one.

14 MS. RABIN: If I could say I believe
15 --

16 MR. MUHLSTOCK: Mr. Rabin, what
17 would your -- on that --

18 MR. RABIN: Yes.

19 MR. MUHLSTOCK: Do you understand
20 the objection?

21 MR. RABIN: Yes, I believe so.

22 MR. MUHLSTOCK: Okay.

23 MS. RABIN: I believe the relevance
24 of this is that this was an area adjacent to the
25 Applevue property, there's a gas or a car wash

1 in between, so it's basically adjacent to the
2 Appleview property. It was a site designed by
3 Mr. Bertin and I believe Johnson Soils was
4 involved in that. It was a finished area of the
5 property opened to the public. It had
6 landscaping, little Christmas trees had been
7 planted along the side and a walk path. And, yet
8 within very short period after it had opened to
9 the public, a heavy rainfall took place and this
10 tree fell down into the driveway. It could have
11 hit somebody if somebody had been there. And
12 within a few months of that there was another
13 heavy rainfall, two more trees fell down and the
14 remaining trees had to be cut off.

15 I think you can look at that slope
16 and see the signs and I think a geologist
17 certainly would have been able to see the signs
18 of significant erosion on to the side of that
19 tree, a tree that has clearly has leaves on it is
20 probably a healthy tree. I didn't do, you know,
21 core samples of the tree to determine its health
22 but it would appear to be healthy, and one can
23 see the exposed roots of the other trees where
24 the -- in the second photograph. And when I
25 observed that I said to a number of people, "The

1 next time there's a heavy rainfall, those two
2 trees are many coming down" and they did.

3 MR. MUHLSTOCK: All right. All
4 right --

5 MR. ALAMPI: I can't keep up with
6 that --

7 MR. MUHLSTOCK: It's double hearsay.
8 But this one --

9 MR. RABIN: Under oath hearsay.

10 MR. Muhlstock: This photograph, Mr.
11 Chairman, I'm going to suggest that this not be
12 admitted. It is not of the subject, plus there
13 is opinion testimony from Mr. Rabin who is not an
14 expert here and I don't think anyone who is not
15 qualified, even though he thinks that those are
16 the reasons why the trees may have fallen, I
17 don't think he's qualified to say that. So this
18 one I would suggest this photograph will not be
19 admitted. This is out.

20 MS. RABIN: How about if we removed
21 the opinion which is that Palisades destabilized
22 to the point --

23 THE CHAIRMAN: It's still not the
24 subject property.

25 MR. RABIN: Well, no, there were two

1 objections. One that you made was that there's
2 opinion here. And I'm saying that if we remove
3 the opinion, the remaining part of this is that
4 this tree did fall down, after heavy rain two
5 more trees fell later.

6 MR. MUHLSTOCK: It's not of this
7 property.

8 MS. RABIN: That's the other
9 objection.

10 MR. MUHLSTOCK: I would suggest to
11 the board that this photograph not be admitted.
12 Okay, let's move on.

13 MS. RABIN: It could be viewed as a
14 test sample of what could happen.

15 MR. MUHLSTOCK: That's my ruling for
16 the board, okay.

17 THE CHAIRMAN: That is the ruling.

18 MS. RABIN: Okay.

19 MR. MUHLSTOCK: Okay. All right.
20 We're on to No. 9 "Applevue's illegal excavation
21 in April 2007." Let me ask you this, Mr.
22 Rabin.

23 MS. RABIN: Yes.

24 MR. MUHLSTOCK: We've had testimony
25 regarding this incident, okay. What does this

1 add to this case showing this? What does this
2 add?

3 MS. RABIN: Well --

4 MR. MUHLSTOCK: Other than the fact
5 that we know there was an incident where --

6 THE CHAIRMAN: There was the One
7 Call violation.

8 MR. MUHLSTOCK: -- there was a One
9 Call violation.

10 MS. RABIN: Yes.

11 MR. MUHLSTOCK: What does the photo
12 add to that? We know that.

13 MS. RABIN: Yes. This photograph
14 along with photograph No. 3 which I already
15 talked about together both document the closeness
16 of this backhoe to the pipeline itself because
17 you can see the yellow markers in both
18 photographs. And the backhoe here is directly
19 lined up with the cut, the rear of this backhoe
20 is lined up with a cut that can be observed in
21 photograph three. And you can see a yellow
22 marker in that one also.

23 MR. MUHLSTOCK: We know --

24 MS. RABIN: It simply documents that
25 the cutting was not done at the other end of the

1 property, wasn't done 300 feet from the pipeline
2 easement. It was done 15 to 20 feet from the
3 easement. And as any pipeline expert can tell
4 you, if you haven't determined the exact
5 placement of the pipe, you don't even know for
6 sure that that pipe is in the easement. So it's
7 a serious --

8 MR. MUHLSTOCK: Are you going to
9 have an objection to this one?

10 MR. ALAMPI: Many.

11 MR. MUHLSTOCK: Okay.

12 MR. ALAMPI: First off, it's highly
13 prejudicial. It shows the backhoe at rest but
14 one could think that it's being shown to show
15 that it was actually excavating at that spot
16 which of course is not true because there is no
17 sign of excavation there.

18 THE CHAIRMAN: There's nobody in the
19 cab.

20 MS. RABIN: There is no driver, yes.

21 MR. ALAMPI: Well, just depicting
22 it. And the photograph is duplicative of others
23 that already showed that excavator on site.

24 MR. MUHLSTOCK: This one,
25 Mr. Chairman, I would tend to agree with Mr.

1 Alampi only because we are aware of the fact that
2 there was a One Call. This doesn't add anything
3 whatsoever to the fact that there was a One Call
4 and there apparently was some violation. So I
5 would suggest to the board that this is basically
6 irrelevant. This is basically irrelevant.

7 MS. RABIN: But it does, it does
8 document the closeness to the pipeline.

9 MR. MUHLSTOCK: That's what I'm
10 suggesting.

11 MR. RABIN: Which in light of the
12 violation I think is a significant issue and I
13 think by removing that from the record you're
14 preventing some useful information from being on
15 the record.

16 MR. MUHLSTOCK: And I'm suggesting
17 that it not be admitted. So now we have
18 documents --

19 THE CHAIRMAN: 1 through 7.

20 MR. ALAMPI: RO-1 through 7.

21 MR. MUHLSTOCK: -- RO-1 through 7 in
22 evidence over objection of counsel.

23 MS. RABIN: Thank you.

24 THE CHAIRMAN: There's a question.

25 MR. BASELICE: Can we have Mr.

1 Bertin come up for a minute? I want to ask him
2 something.

3 MR. MUHLSTOCK: Mr. Bertin.

4 MR. BASELICE: Will you enlighten us
5 as to when this picture was taken?

6 MR. MUHLSTOCK: Have him come up and
7 get sworn.

8 MR. BASELICE: If you remember.
9 Sorry.

10 MR. ALAMPI: You're calling my
11 witness?

12 MR. MUHLSTOCK: Mr. Baselice is
13 calling. I'm not calling him.

14 CALISTO BERTIN, having been duly sworn by the
15 Notary Public, was examined and testified as
16 follows:

17 MR. MUHLSTOCK: Could you direct
18 yourself to RO-6, please. RO-6.

19 MR. BERTIN: Yes.

20 MR. MUHLSTOCK: Do you know when
21 that photo -- well, go ahead, Mr. Baselice.

22 MR. BASELICE: Do you know when that
23 photo was taken? Do you recall?

24 MR. BERTIN: It was in the winter of
25 this year. So January or February and I remember

1 I think I testified to that. 2012, okay.

2 MR. BERTIN: I was in a suit and I
3 was -- I'll leave it at that.

4 THE CHAIRMAN: Okay, Mr. Rabin.

5 JEREMY RABIN, having been previously duly sworn
6 by the Notary Public, was examined and testified
7 as follows:

8 MR. BASELICE: Mr. Rabin, a couple
9 of questions.

10 MS. RABIN: Sure.

11 MR. BASELICE: Understanding you
12 took the pictures, this is right outside your
13 window. I tried to put the pictures in order
14 based on dates.

15 MS. RABIN: Yes.

16 MR. BASELICE: And how I come up
17 with it is that for purposes of the first picture
18 that should be page No. 2 which is Appleview's
19 2007 excavation. I then put assuming they're
20 both the same day page No. 3 is the 2007
21 excavation deep cut into the Palisades. I took
22 out --

23 MS. RABIN: Yes, yes, 2, 3 and the
24 final picture, yes, were all taken on the same
25 date.

1 MR. BASELICE: 9.

2 MR. MUHLSTOCK: 9 is not evidence.

3 MR. BASELICE: I understand. Page 1
4 would then come into the summer of 2007.

5 MS. RABIN: Yes.

6 MR. BASELICE: You would then have
7 March --

8 MS. RABIN: My wife is saying that
9 it was taken in 2005. I have to admit that some
10 of our records were actually destroyed on our
11 computer, we had a computer failure so the time
12 stamps I can't -- I may be able to find evidence of
13 when it was taken.

14 MR. BASELICE: Let's say it was
15 summer of 2005. Then I look at the next picture,
16 picture no. 4, and that says March 14th, 2010
17 which would be the next one in sequence.

18 MS. RABIN: Yes.

19 MR. BASELICE: And then I look at
20 the summer picture and I look at the winter
21 picture and I try to compare, it's hard because
22 the leaves are not on the trees.

23 MR. RABIN: Yes, right.

24 MR. BASELICE: I tried to compare if
25 the leaves were on the trees what would I be

1 looking at on page 4. And then I go to page
2 3/14/10 which shows the tree that's leaning over
3 the area that you said had some erosion.

4 MS. RABIN: Right, yes.

5 MR. BASELICE: We didn't take the
6 other one in and that's 3/14/10 also. October
7 3rd is when we had the snowstorm and you
8 testified -- and I'm not going to dispute your
9 testimony that the trees came down from sometime
10 in March 14th to October 30th these trees had all
11 fallen.

12 MS. RABIN: Yes.

13 MR. BASELICE: You said during heavy
14 rain storms, some of might have come from the
15 rainfall, some might have come from that
16 snowstorm but they came down in that time period.
17 And then we have Mr. Bertin's picture which is
18 the last picture which again shows it's a
19 different angle so I don't know if that's one of
20 the same trees that we're seeing there, I just
21 want to make sure that that was the order for
22 purposes of --

23 MS. RABIN: I believe based on the
24 appearance of the site I believe that Mr.
25 Bertin's picture was taken prior to the picture

1 of the snowfall. But I had, as I said, a lot of
2 my records sadly were destroyed with the
3 computer. So I can't time stamp all of it. I
4 have a lot of other photographs that I could
5 provide. I was trying to limit it and I'm sure
6 we could hash this out better if I had a much
7 longer document.

8 MR. BASELICE: I just wanted to make
9 sure that that was the chronological order.

10 MR. RABIN: Yes.

11 MR. BASELICE: But they were in
12 numbered order, problems with me, I'm a visual
13 person, I like to see this. But I wanted to make
14 sure that the order I have them in the right now
15 is the order that you took them.

16 MS. RABIN: That's as close as I
17 think we could come.

18 MR. BASELICE: Thank you.

19 MS. RABIN: Okay. Thank you.

20 I wasn't going to give any additional
21 testimony about this, I ended up giving a lot
22 more than I expected to through the cross. My
23 main point besides getting this on the record was
24 that we did have a geologist and it would have I
25 think educational for us all to see if he had any

1 thoughts about these photographs or not. He may
2 not have, we won't know. But it was I think a
3 missed opportunity.

4 I wanted to just as a closing
5 comment having been through all these hearings, I
6 want to say that I think that there had been a
7 lot of other missed opportunities here and there
8 were opportunities for the board to ask some very
9 powerful probing questions of Transco. There
10 were opportunities for this board to ask
11 questions of the Appleview witnesses and also to
12 ask questions of the geologist and almost
13 exclusively the only questions I really heard
14 were usually questions along the lines of, well,
15 what about the Galaxy that was built there too,
16 that sort of questioning which was sort of like a
17 pushback. But I would have hoped that the
18 board's concern for their responsibility to
19 protect the public and to get to the bottom of
20 the various issues that you would have made a
21 stronger effort to find out the depth of
22 information from these witnesses. It was
23 disappointing that that wasn't done.

24 I also likewise would point out that
25 in regard to the many variances which Appleview

1 is requesting -- variances are inherently in
2 violation of the public good. And since the
3 zoning ordinance was written to be in the public
4 good and usually it is required that if a
5 variance is being requested, some good be
6 presented to explain why the detriment is not
7 going to be a detriment or ends up being a net
8 plus. And another significant concern for many
9 here is that the only defense of your own zoning
10 ordinances seems to come from the public and from
11 the Galaxy's attorney. And I through the years
12 of hearings I have waited and waited to hear one
13 of you say to Applevue why do you need this
14 variance.

15 MR. AHTO: Can I interrupt you a
16 minute? I thought we're here, it was remanded
17 back from the courts for the safety of the
18 pipeline during and after construction. We're
19 not rehearing this case. They're not here for
20 variances or anything. It was just for the
21 pipeline, safety of the pipeline. Why are we
22 introducing variances? It has nothing to do with
23 this hearing.

24 MS. RABIN: Well, I think and you
25 can correct me if I'm not right on this, that in

1 a matter of a case where variances are being
2 requested, that one of the things that you do is
3 you weigh the benefits and detriment.

4 MR. AHTO: But wait a minute. I
5 have to stop you again. I have to stop you
6 again. They're not requesting any variances.
7 They did. That case is over, that's over with.

8 MR. LAMB: I want to correct the
9 record to make sure that we filed a summary
10 judgment motion on two points; one point was
11 pipeline safety -- three points. One point was
12 the appraisal and we've dealt with that. The
13 other point was pipeline safety which we're here.
14 But the third point was whether the burden of
15 proof for the variances and relief were provided.
16 And the judge said that there was not sufficient
17 proof and we had argued that as a matter of law
18 that it was not proven that the benefits
19 outweighed the detriments.

20 So I understand what you are saying,
21 it's a large part is pipeline safety but the
22 other part is whether that burden of proof on the
23 variances has been satisfied.

24 MR. AHTO: Okay.

25 MR. MUHLSTOCK: Mr. Alampi, respond

1 just to that.

2 MR. ALAMPI: I am going to respond.
3 The Court issued a ruling. It was maybe a
4 23-page ruling. The Court went into many issues
5 and discussed whether the board had adequate
6 information and such. The thrust of the remand
7 and the opinion of the judge was firstly that the
8 main issue is the safety of construction within a
9 certain proximity of a natural pipeline.

10 THE CHAIRMAN: Right.

11 MR. ALAMPI: The second issue was
12 that the board did not use its subpoena power and
13 the applicant was objecting to bringing
14 representatives of Transco into the presentation
15 and the judge was adamant that the Transco would
16 have the most knowledge and experience and that
17 Transco should have been in the presentation. So
18 the judge had found that the burden of proof was
19 not supported because of the absence of the
20 proper testimony or the full testimony that would
21 have been necessary before the board.

22 So Mr. Lamb does state correctly the
23 board felt the burden of proof, the judge felt
24 the burden of proof wasn't presented, but it
25 wasn't because the burden of proof itself was

1 totally absent, it was because of the absence of
2 Transco.

3 And then to address Mr. Ahto, yes,
4 the scope of the remand was very specific. We
5 had several causes of action in the pleadings.
6 We had summary judgment motions. We had all
7 sorts of things. The judge worked her way
8 through these issues but the thrust of it again
9 was the fact that there was no competent
10 testimony presented by both the applicant, by
11 Transco and the board did not receive that
12 testimony other than the testimony of one witness
13 this fellow Kuprewicz that was brought by the
14 objector.

15 So the scope of the remand is the
16 safety issue of construction in proximity to the
17 gas line during construction and of course the
18 effect of the construction in close proximity.
19 That's it in a nutshell.

20 We are not on a remand to relitigate
21 the entire 11 or 12 public meetings hearings that
22 we had in 2010 to 2011. This case no matter what
23 happens is going to go back to the judge for
24 further deliberation.

25 MR. MUHLSTOCK: We just -- the board

1 wants to get it right with respect to what its
2 burden is, what its consideration should be.

3 As I understand Judge Farrington's
4 opinion of December 22, 2011. And I'm reading,
5 "The board's mandate to consider safety both
6 during and after construction with regard to
7 access and maintenance of the pipeline." It may
8 bear on variances and I'm sure Mr. Lamb will
9 bring that up during his summation. The judge
10 indicated that "Letters from third parties,
11 pamphlets and other generic instructions from
12 Transco are not sufficient to address the safety
13 issues. Without direct testimony from qualified
14 Transco personnel, the Court is unable to find
15 that the safety considerations required by the
16 Municipal Land Use Law have or has been met."
17 Okay. "The matter is remanded to the planning
18 board for findings on those issues."

19 So, we will consider here tonight,
20 and you'll hear from the attorneys, I'M sure
21 they'll comment on your burden and what you
22 should be considering, board members, whether or
23 not the construction and/or the maintenance of a
24 five-story building on this site has a
25 deleterious safety effect on the Transco

1 pipeline. That's how I understand Judge
2 Farrington's remand.

3 Why don't you finish up, Mr. Rabin.

4 MS. RABIN: Yeah. The main point of
5 what I was saying was that I felt that there were
6 opportunities for this board to look more deeply
7 into this case at various points through the
8 previous hearings, through these hearings and
9 that in the long view that I've been disappointed
10 at the lack of interest in all these areas. And
11 I remember during these hearings there was one
12 point where Mr. Lamb had sent a letter to the
13 board and several board members scolded Mr. Lamb
14 for suggesting that the board was not taking
15 pipeline safety seriously. And I'm paraphrasing,
16 I don't remember the exact wording of his
17 statement. And I'm sure that the members of the
18 board who made those objections were sincere in
19 their objections. But I would also ask that
20 those same members of the board consider that a
21 judge did find you as having not addressed safety
22 concerns properly as your obligation to do so in
23 the previous hearings. And during these hearings
24 that questions by Mr. Lamb and by the public
25 about various safe issues, particularly of

1 Transco but also the Appleview witnesses were
2 frequently stopped. And of particular concern to
3 me and many others were questions of Transco
4 regarding their safety record. And that is
5 because they made statements on the record that
6 certain things were safe, that they were going to
7 follow certain procedures, certain protocols and
8 that the certain types of construction were safe
9 and they would just give a statement that it's
10 safe. And the only real way to impeach a
11 statement like that is to show on the record on
12 such and such a date following the same
13 protocols, your pipeline blew up on this property
14 on this date, it blew up on this on the property
15 on this other date, under construction that you
16 approved of that you said was safe a pipe was
17 ruptured on this date. And in the particular a
18 case in Appomattox was being discussed by a
19 member of the public with Transco, and the
20 witness was told you cannot talk about anything
21 that's not on the Appleview site. And, I know,
22 imagine if you're all concerned about safety, if
23 you had -- just and I'm about to be done here
24 because I want to let other people speak. But
25 imagine for instance if you were interviewing a

1 bus driver and they said I will keep your kids
2 safe, wouldn't you want to say, well, what about
3 three weeks ago when you ran somebody over with
4 your bus or you were fined for speeding or
5 something, well, that wasn't on this route, that
6 was a different route, you'd say that's
7 ridiculous, it's your record and it's the same
8 circumstances, how can it not be relevant. And
9 yet here you have made those rulings and you have
10 prevented those questions of Transco.

11 So, again, if your real concern is
12 safety, and, you know, there are many other
13 safety issues with this property, landslides and
14 other things that can damage the building, but
15 the pipeline is a monstrous danger if it were to
16 explode and I don't think to this date that you
17 have addressed the safety. Even though you've
18 had long hearings but the kind of safety that
19 should have been addressed I still don't think
20 has been. I appreciate the time the board hats
21 spent on it but I think after the testimony of
22 the geologist about the threats of landslide and
23 the lack of comparable testimony by Transco and
24 Appleview, I think you should not be approving
25 this and if necessary continue with some more

1 pertinent investigation into this. Thank you for
2 the time.

3 MR. LAMB: I have some questions of
4 Mr. Rabin. I'll be short, though. Sorry Mr.
5 Rabin.

6 MS. RABIN: Okay.

7 EXAMINATION BY

8 MR. LAMB:

9 Q. Mr. Rabin, how long have you lived
10 at the Galaxy?

11 A. Since 2004.

12 Q. And have you lived there full-time?

13 A. Yes.

14 Q. Are you there all the time other
15 than vacations --

16 A. Short vacation trips.

17 Q. You said your unit has a view of the
18 Appleview property?

19 A. Yes.

20 Q. During that period of time
21 approximately eight years, have you observed
22 numerous times the Appleview property?

23 A. Yes. I mean almost every day I will
24 look out at it not only because I enjoy looking
25 at the Palisades, but since this project has

1 started, I'm often worried because when I look on
2 the property and I see digging or something, I
3 think oh, I wonder if this is legal or not and I
4 have to or somebody else has to find out.

5 It's been legal since that first
6 time. I'm not suggesting that it's been illegal
7 but when the public has to be the watchdog, I
8 mean we even had Transco testify that we -- they
9 expect that the Galaxy is going to be watching to
10 see if anyone strays over the fence. It
11 shouldn't really be our job to have to be
12 worried --

13 Q. Let me --

14 MR. MUHLSTOCK: Mr. Lamb --

15 MR. LAMB: Yes, I'm --

16 MR. MUHLSTOCK: -- you should --

17 Q. Okay. So you've had a chance to
18 look at the property in all four seasons?

19 A. Yes.

20 Q. Okay. And I'm not going to get into
21 the pictures, but in general back when you first
22 moved there in 2004, 2005, you observed the trees
23 in a certain condition whether it was in winter
24 or summer, you've observed the condition of the
25 property?

1 A. Yes.

2 Q. And then there are various points in
3 time where you've testified in March 10, 2011,
4 various time periods you've observed the
5 condition of the property?

6 A. Yes.

7 Q. You've observed activity on the
8 property?

9 A. Yes.

10 Q. Okay. Is it fair to say -- what is
11 your opinion concerning the stabilization of the
12 property over this eight-year period of time?

13 A. To the best of my knowledge --

14 MR. MUHLSTOCK: Wait a second. Wait
15 a second. Hold on.

16 MR. ALAMPI: Let me object.

17 MR. MUHLSTOCK: Mr. Lamb, Mr. Rabin
18 is not qualified as a --

19 MR. LAMB: I'll rephrase the
20 question.

21 MR. MUHLSTOCK: Why don't you
22 rephrase it, has the grade -- has he seen changes
23 in the grade, what has he seen.

24 MR. LAMB: I'm going to not use the
25 word stabilization. I'm going to use the word --

1 Q. What has been your observations of
2 the trees on the subject property?

3 A. I observed what to my limited
4 expertise was a stable forested area --

5 Q. Don't use the word stable.

6 A. Okay.

7 Q. What --

8 A. Trees that were not falling down,
9 soil that was not running. And I observed this
10 on the adjacent slopes as well. However, I did
11 see a noticeable change on this property once the
12 cutting was done which I did not see on the other
13 property.

14 Q. And just round time period, when did
15 the cutting start?

16 A. The cutting began --

17 Q. That you observed.

18 A. Yeah, 2007, 2009 and I think 2010
19 there were separating cuttings. But the main one
20 was the 2007 that cleared all those trees.

21 Q. Okay. Any problem with trees
22 falling between 2004 and 2007, that time period?

23 A. I did not observe any trees falling.

24 Q. Okay. In 2007 is it that the tests
25 were being made by Bertin Engineering or that the

1 machine, the backhoe was going through the
2 property, is that what happened in that 2007?

3 A. Yes, those cuttings and the borings
4 then were done in 2007.

5 Q. Okay. And after that period of time
6 what happened to the trees?

7 A. Initially the trees appeared to me
8 to be stable. I'm not supposed to use that word.
9 The trees did not fall down. I began to observe
10 them tilting to toward the path, tilting downhill
11 toward the path. And then after rainfalls I
12 began to observe them. It took about two years
13 to see the really serious signs of the trees
14 tilting.

15 Q. Did you see -- and I know you were
16 focusing on trees -- did you see mudslides or
17 gushes of water or any other natural conditions
18 that were unusual after this 2007 work?

19 A. I wouldn't characterize them as
20 mudslides but I did observe that water containing
21 a lot of soil because the water was a rich brown
22 color was pouring down through gaps and cutting
23 gaps in the upper slope, and I would observe then
24 also rocks and things coming down.

25 Q. Okay. Now before 2007, before this

1 incident did you observe that muddy water or
2 colored water or anything coming down before
3 2007?

4 A. No. And we had some very, very
5 heavy rainfalls. Manholes covers were blown off
6 the bolts from some of the heavy rainfalls but
7 the slope to my observation the trees were not
8 affected or the soil.

9 Q. And you observed that machinery -- I
10 know it's not introduced into evidence, but you
11 observed the backhoe on the subject property
12 yourself?

13 A. Yes.

14 Q. You observed that backhoe in the
15 proximity of the gas pipeline on the northerly
16 portion of the Appleview property?

17 A. Yes.

18 Q. You took those, you took -- you
19 observed the backhoe moving or stable?

20 A. I observed it in the act of cutting,
21 in the act of knocking trees over. And I have
22 photographs taken from the windows and from the
23 street showing that. And I also have those
24 photographs of it stable afterwards.

25 Q. Did you also observe anyone on the

1 Appleview property removing the tree limbs or the
2 branches that had that fallen over?

3 A. The trees, there weren't people
4 actively moving the trees but the backhoe itself
5 it was stacking them to the lower below the area
6 of the path that was cut.

7 MR. LAMB: I have no further
8 questions, Mr. Chairman.

9 THE CHAIRMAN: All right. Thank
10 you, Mr. Lamb and thank you, Mr. Rabin.

11 Anyone else?

12 Give us a minute we're going to take
13 a break.

14 (Recess taken.)

15 THE CHAIRMAN: All right, meeting is
16 called back to order. Let the record reflect
17 that all the board members -- all of the board
18 members who were present before the break are
19 again present. And Mr. Kronick, I think you're
20 up. Please be sworn in.

21 DAVID KRONICK, residing at 7855 Boulevard East,
22 North Bergen, New Jersey, having been duly sworn
23 by the Notary Public, was examined and testified
24 as follows:

25 THE CHAIRMAN: Yes, sir.

1 MR. KRONICK: If there's one thing
2 we can all agree to is that it's been a long,
3 protracted journey to get to this final meeting.
4 What I find disturbing is that the number of
5 hearings, the time and cost to get to this point
6 could have been avoided if only the developer
7 adhered to the township planning regulations.
8 The project more than likely would have been
9 completed. Of course as we know, there are
10 special and unusual conditions and circumstances
11 that justify a reasonable variance of say 10, 20
12 percent but approving a project that requires a
13 variance of over 100 percent for the lot size,
14 not to mention the other variances such as
15 setback I find incredible. Why have variances?
16 Why waste the time? What's the purpose?

17 The overriding concern with this
18 project is the public safety issue since the
19 population density with this project is probably
20 about 12,000 people per square mile. Another
21 significant fact is that there is a hospital and
22 two nursing homes within 1,000 feet of the
23 development, not to mention that we're talking
24 about a 36 inch high pressure natural gas
25 pipeline that's over 60 years old. In the

1 unthinkable event that would occur the main road
2 and our only road, River Road, could not even be
3 used.

4 It's important to note that the
5 construction work such as the drilling of the
6 cliff and the heavy equipment that will be moving
7 around in an area only 25 feet away from the
8 pipeline. There is clearly not much room for
9 error and considerable risk involved. I think
10 any risk analysis will support this assessment.
11 We have heard factual testimony by a highly
12 regarded certified geologist, Robert Cunniff, the
13 danger of rocket slide and his different
14 assessment of the soil analysis compared to the
15 developer's geotechnical engineer. There has
16 also been actual occurrences of mud and rock
17 slides both in nearby Edgewater and North Bergen
18 in the past few years that have been documented.
19 I therefore ask how can a reasonable person
20 conclude that this development as presented is
21 worth the risk in lives and dollars to go
22 forward.

23 It's interesting to note that just
24 last week Senator Lautenberg's office announced
25 that a million dollars was allocated for pipeline

1 inspection in northern New Jersey in light of
2 environmental and safety issues in this populous
3 area. Unfortunately this applies to the new
4 proposed pipeline north of us and mind you the
5 population density pales compared to what we have
6 in the Applevew area. And interesting to note,
7 also expressing concern and support for the
8 legislation was Jeff Till of the Sierra Club.
9 It's important not to overlook the fact that this
10 project will result in more desecration of our
11 200 million year old natural and national
12 treasure, the Palisades cliffs. The cliffs that
13 affords residents and visitors alike foliage with
14 a magnificent panoply of color, needed open
15 space, a habitat for small mammals, a variety of
16 more than 40 species of birds, not to mention the
17 trees that help mitigate the poor air quality
18 from auto emissions that envelopes the area.

19 Interesting enough some 30 years ago
20 when there was a real -- when that was no real
21 intensive development taking place a proposed
22 hi-rise was not approved for several reasons,
23 such as density and the impact -- and the adverse
24 impact that this building would have on the
25 majestic Palisades cliffs and that's when Judge

1 Dorothea Wefing said the cliffs should be seen
2 from above and below. Here was a judge with
3 vision and appreciation of the natural treasure
4 that we have. I feel that such a gift as we have
5 should be cherished and preserved for all to
6 enjoy today, tomorrow and forever. I urge the
7 board to stand tall, do the right thing and not
8 to approve this development.

9 CONSTANCE FTERA, residing at 7312 Boulevard East,
10 North Bergen, New Jersey, having been duly sworn
11 by the Notary Public, was examined and testified
12 as follows:

13 MS. FTERA: Mine is a little
14 simpler. I moved here before Summit and the
15 Versailles or the Galaxy were built and I've
16 seen, you know, the changes here, and all this
17 time I never knew there was a gas line near me.
18 I'm between 73rd and 74th street on the east side
19 of Boulevard East. After coming to a few of
20 these hearings I began noticing the yellow posts
21 and I began getting mailings from Transco like
22 what to do if you smell gas and, you know,
23 various other things like that. And, quite
24 frankly, it has -- I was really surprised to find
25 out how old the pipeline is, how small the

1 easement is, especially in light of the recent
2 explosions or whatever you want to call them,
3 accidents with pipelines of approximately the
4 same age and they were in not heavily or densely
5 populated areas.

6 One of -- I did not have a chance in
7 some of the earlier meetings but one of the
8 things I wanted to ask is when I found out that
9 this pipeline is only examined or tested once in
10 five or seven years with a smart pig, and I also
11 wanted to ask, well, that's the inside of the
12 pipeline but the outside of the pipeline must be
13 damaged by the soil and water and all the other
14 things that are disruptive. And, you know, it
15 leaves you feeling very vulnerable. And I agree
16 that this should not be built in this way. Maybe
17 something small there or something, leave it
18 alone because the pipeline is there. I'd like it
19 examined more often. And I'd like the easement
20 made a lot larger. I think what is it, one of
21 the ones that blew out recently, I think they
22 were asking for a 75 foot or 100 foot easement
23 which of course would take up all the property.
24 But I'm just begging you to think about the
25 people living here and safety is the most

1 important thing in this case. Thank you.

2 THE CHAIRMAN: Thank you.

3 WILLIAM McCLELLAND, residing at 101 74th Street,
4 North Bergen, New Jersey, having been duly sworn
5 by the Notary Public, was examined and testified
6 as follows:

7 THE CHAIRMAN: Yes, sir.

8 MR. McCLELLAND: At the meeting on
9 February 2nd Mr. Rodriguez stated, and I quote,
10 "Transco meets with all the emergency responders,
11 local emergency responders." At the July meeting
12 I asked him if he could tell me any specific
13 emergency responders Transco had met with. He
14 said he could not. I then read a list of the
15 emergency responders that we had spoken to
16 including the North Hudson Firefighters
17 Association, the Hudson Regional Fire Department,
18 the Edgewater fire department, the Edgewater
19 Office of Emergency Management and the Hudson
20 County Office of Emergency Management who told us
21 categorically that they have never met with
22 Transco regarding this pipeline. We met with the
23 Edgewater Fire Chief Bob Christianson who said
24 that he had never met with anyone from Transco
25 about this pipeline. He said he was aware that

1 it was there but did not know anything about
2 Applevue. We spoke with Jake Burns, the
3 coordinator of the Hudson County Office of
4 Emergency Management who said "No one from
5 Transco has spoken to us. This is the first I'm
6 hearing about it." Mr. Burns also stated that
7 the he was "shocked that the North Bergen and
8 Hudson County Planning Boards would have gone
9 ahead and approved this project without first
10 insisting that Transco appear and testify as to
11 the safety of the pipeline." I would like to
12 remind the board that Mr. Rodriguez said at the
13 February 2nd meeting that the Collin Wisser and
14 Transco "meet with all emergency responders." We
15 asked the North Bergen Planning Board at the July
16 meeting, I asked you please, call Mr. Wisser to
17 testify. Can you tell me why you never did that?
18 He was the one that Mr. Rodriguez said was
19 responsible for meeting with emergency
20 responders. He was the one you needed to ask.
21 You didn't call him. Nothing? Instead of
22 Mr. Wisser Dan Schwitzer testified and was asked
23 by Mr. Tucker, Transco lawyer, if Transco had any
24 public awareness programs. He testified that
25 Transco does "an annual mass mailing by zip code

1 that tells residents -- that tells residents who
2 we are, what our business is, some of the
3 properties of natural gas and some emergency
4 procedures." I have lived in the Apple -- in an
5 area near Appleview for over 30 years. I
6 remember seeing one brochure from Transco.

7 Now, Mr. Mayo, I believe you live at
8 the Parker Imperial. This is a building very
9 close to the site. And I would like to ask you
10 if you have ever received -- if you have received
11 an annual -- he said annual -- brochure from
12 Transco.

13 MR. MUHLSTOCK: You can't ask the
14 board members questions. Sorry.

15 MR. MCCLELLAND: I won't, okay.
16 Sorry. But I would like you to know if you
17 haven't, I would like to you know -- I would ask
18 you why as chairman and as a resident who's own
19 life and family will be threatened by this
20 pipeline if it ever exploded why you personally
21 would not insist or even asking about this
22 annual, so-called annual brochure.

23 Also at the July meeting Mr. Lamb
24 asked Mr. Schwitzer if Transco has contacted "any
25 particular fire department official, first

1 responder, police department, anybody who was
2 involved with safety in North Bergen or any of
3 the surrounding towns" about this project. Mr.
4 Schwitzer responded "I would say no, our own
5 personnel don't discuss property by property."
6 Whatever that means. He then said that they
7 invite first responders to an annual seminar.
8 Mr. Schwitzer said the seminar had "very low
9 attendance and admitted that it was not even in
10 Hudson County, that it's apparently in East
11 Orange. But despite this unbelievably lax
12 approach to educating the public and first
13 responders to the devastation that can occur if
14 this pipeline ever exploded, the North Bergen
15 Planning Board said absolutely nothing about
16 this. You didn't demand as any board concerned
17 about the safety of its citizens it was
18 responsible for did Transco meet with the
19 emergency responders or do anything further to
20 educate the public. You didn't ask to see the
21 brochures they supposedly send out. Like
22 everything else regarding Transco in this
23 project, you gave them a free ride.

24 I would also just like to say that I
25 have watched this board deal with the Applevew

1 case for a long time. And I am truly
2 disappointed at the manner in which you have
3 treated the members of the public, the people you
4 were sworn to protect. I trust that Judge
5 Farrington will carefully read the transcripts of
6 the hearings from this past year and if she does,
7 it will be obvious to her that this board has not
8 taken seriously the dangers posed by this
9 pipeline to the residents of North Bergen,
10 Guttenberg and West New York.

11 Some of you have really treated those
12 of us who are concerned about the safety of our
13 lives with genuine contempt. I'm afraid
14 particularly the board's attorney. I believe
15 your attitude and behavior is egregious. I am
16 confident that it will be clear to Judge
17 Farrington that you have not even come close to
18 doing what she asked regarding insuring the
19 safety of this project, and I trust you will once
20 again find your approval of Applevue since you
21 are obviously going to approve it on "arbitrary,
22 capricious and unreasonable" and that you have
23 once again "delegated the safety issue which is
24 the board's responsibility to the developer which
25 interests may conflict with the board's mandate

1 to consider both safety during and after
2 construction."

3 Finally I'd just like to say that
4 anyone on this board who votes to approve
5 Applevew should be ashamed of yourself. If you
6 do approve it and it is upheld and the
7 construction begins, you better go to sleep every
8 night praying that nothing happens because if
9 there is an explosion and people are hurt or
10 killed it will be because you failed to do your
11 jobs.

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

16 MR. BLANK: Between 1988 and 2008
17 there were 62 incidents over nine of the 12
18 states that Transco's pipelines go through and I
19 just want to discuss the last of them that
20 occurred in 2008, September 2008 that was in
21 Appomattox -- do you want me to spell that --
22 A-P-P-O-M-A-T-T-O-X, Virginia. Now, this was a
23 30-inch diameter pipeline dating from 1955 that
24 had ruptured. The glass ripped a 32 foot section
25 of pipe from the ground and scorched more than

1 1100 feet of surrounding ground. Prior to the
2 explosion the inspection process using a
3 computerized tool commonly called a pig. The
4 lady who spoke before did mention the smart pig,
5 I guess they call it a smart pig as well, it goes
6 into the lines I guess everybody knows that, and
7 two months before the explosion the process, the
8 pig process took place and it hadn't been
9 analyzed, the data hadn't been analyzed prior to
10 the explosion. So there was actually a two-month
11 period. An official of Transco, I believe it was
12 the vice president, stated that it could take up
13 to four months to analyze the data. So I really
14 don't understand that but eventually Transco was
15 fined almost \$1 million for corrosion control
16 lapse that led to the accident. This was by the
17 United States Department of Transportation
18 Pipeline and Hazardous Material Safety
19 Administration. So my concern now is how do we
20 know that this pipeline is safe. Is this pig,
21 this smart pig operation, is it reliable? How
22 reliable is it? They're supposed to do it I
23 believe every seven years, and I know there was
24 some testimony by I believe his name was Gonzalez
25 the engineer for Transco, am I right? Rodriguez?

1 Rodriguez, I'm sorry. I believe he did testify
2 about this pig but I don't know if he really went
3 into detail or if anybody really understands this
4 because I guess the most fear that we have is
5 that we don't know what's happening under the
6 ground. Nobody can see the pipeline. Like one
7 lady testified she's been living here for 20
8 years and she never knew that there was a
9 pipeline under the ground. I've been here for
10 well since '81 when the Galaxy became a
11 condominium and I just found out about the
12 pipeline with this Applevue project. So we
13 really -- that's my biggest fear, that I can't
14 see, I don't know what's going on and with this
15 incident and Appromattox, Virginia with the
16 corrosion of the pipeline and the pig, it was
17 tested with the pig and they didn't detect the
18 corrosion. Two months went by they couldn't,
19 they couldn't analyze the data. They didn't have
20 time to analyze the data or maybe they did have
21 time and maybe they couldn't understand the data,
22 maybe they didn't analyze it correctly. Well,
23 that's all I have to say. Thank you for
24 listening to me.

25 THE CHAIRMAN: All right. Thank

1 you.

2 JUDITH COURTNEY, residing at 7004 Boulevard East,
3 Guttenberg, New Jersey, having been duly sworn by
4 the Notary Public, was examined and testified as
5 follows:

6 MS. COURTNEY: I'm here with three
7 hats tonight, I'm a concerned citizen, I am a
8 Galatian and I'm also the chair of the local
9 Hudson Meadowlands Sierra Club. I redid my notes
10 so I didn't -- so I'm not going to talk about
11 everything that everyone else has talked about
12 which were in my notes.

13 But -- and I want to thank
14 especially Dave Kronick for making the Sierra
15 Club's position on a lot of things especially the
16 Palisades very well-known. Thank you, Dave. And
17 Mr. McClelland for bringing up the issues about
18 the concerns we have and gross misrepresentations
19 of Transco.

20 And so there are two things I'm going
21 to focus on and they're pretty specific. The
22 Sierra Club is very concerned that many of the
23 safety issues such as easements that are going to
24 be negotiated with Transco are going to be
25 negotiated after -- are going to be I think the

1 phrase that Mr. Alampi used are going to be
2 "taken care of", and please note the hashmarks,
3 outside of public view if I'm correct on that,
4 and after approval of the process by the board.
5 Think about it. If the public, especially in the
6 form of the objector, the Galaxy, and all the
7 rest of us who have had input had not brought up
8 so many important issues before this board, a
9 larger and much more intrusive and dangerous
10 project would have passed and many years ago. It
11 would have sailed through approval many years ago
12 and although it's smaller now, it's still
13 dangerous. Transco without the public,
14 especially in the form of the Galaxy, would not
15 have testified and the holes and
16 misrepresentations would not have been in front
17 of this board, in front of the judge and part of
18 this record. I think that's an absolute need to
19 have anything that happens with Transco go before
20 the approval process and go before the public,
21 have the public involved.

22 The Sierra Club also sites this as a
23 very good example of development by variance and
24 the Sierra Club has been monitoring -- this may
25 seem a bit away from safety issues and I don't --

1 this is not a way from the safety issue which you
2 saw before, I will tie it all together very
3 nicely. This is a development by variance and
4 this is not just the North Bergen Planning Board,
5 this is something that's happening up and down
6 the gold coast or I should say now either the
7 copper or the brass coast because it's getting
8 very tarnished.

9 The planning board spent years
10 setting up their zoning regulations, and
11 developers are finding that it's very easy to get
12 around that. All they do is they list the
13 variances that they want and they go before the
14 planning board and if there are no objectors,
15 they get it. It's development by variance. And
16 the mayor of Hoboken even went on record in the
17 local newspaper saying that she's against it. So
18 if you don't like your code, if you think it
19 needs updating, then update it and update it in
20 the public view. Let the voters see what you
21 want to change and let them have commentary on it
22 and then let that be a matter of public record.
23 But don't do this project by project which is
24 almost a way of doing it secretly. Let it be out
25 in the open and change your code or adhere to it.

1 That code is there for the public good.

2 Now, in this particular case -- one
3 other thing, Mr. Spoletti is asking for a
4 hardship here. Now, okay, maybe if he were a
5 junior developer and this was his first project
6 out of the bag you could say okay, he bought a
7 2.3 lot and he didn't realize how limited he
8 would be, let's give the guy a break. He is a
9 very experienced developer. He knew what he
10 could build on 2.3 and it's not what he can build
11 on five. This is not a hardship for him. Caveat
12 emptor. You know, we get a Lemon Law break on
13 cars because we don't know when a car is decrepit
14 when it's brand new off the line. But
15 Mr. Spoletti does know what 2.3 can have on it.
16 It's a big difference.

17 So, let him build a 2.3. The reason
18 why he can't, he should not be allowed to build a
19 five, a five acre building on a 2.3 site is
20 because he's building to the outer limits of that
21 site. He's building very close to a pipeline.
22 There's going to be construction even further
23 beyond that building footprint, closer to that
24 pipeline and that makes it dangerous.

25 Now, I know you guys somewhere are

1 thinking there's -- there are laws of probability
2 and maybe Transco or Mr. Alampi or someone said
3 for every construction project that's built near
4 a high pressure pipeline, there's only one in a
5 thousand that the blow up. So 999 don't blow up,
6 so we'll play the odds. But it's my life. And
7 Mr. Mayo, if you live where you live, it could be
8 your life and it's all those people in the
9 hospital. I don't think those odds are really
10 worth it. And then there is Transco who came
11 here and misrepresented or lied and said that
12 they had contacted first responders in the area.
13 When Mr. McClelland and Heather Cariou had gone
14 from first responder to first responder who said
15 no one from Transco has ever talked to me, no one
16 from Transco has ever talked to me, no one from
17 Transco has ever talked to me.

18 Transco says they have sent out
19 yearly reports to everyone in the area. I've
20 been living at the Galaxy for six years, I got
21 one this year. I know Mr. Mayo you only got one
22 this year. I mean, I'm not asking you. But I
23 know you haven't been getting them because no one
24 in the Galaxy has been getting them. You can't
25 trust people like that who come in and swear,

1 sworn testimony that they contacted first
2 responders and they didn't. Who swore that
3 they -- in sworn testimony that they contacted --
4 that they have been sending out annual reports
5 and they haven't. And to build close to their
6 pipeline, so close to their pipeline,
7 Mr. Spoletti should build a 2.3 acre building.
8 We would welcome him with open arms as a good
9 neighbor and we would thank you for being a good
10 government neighbor. And I hope that you all as
11 a board will vote to do that. Thank you.
12 SIAT NG, residing at 7004 Boulevard East,
13 Guttenberg, New Jersey, having been duly sworn by
14 the Notary Public, was examined and testified as
15 follows:

16 MS. NG: I just have a very quick
17 couple of points to further clarify the
18 Appromattox incident in 2008 that Mr. Myron
19 brought up and real quick. And the reason I'm
20 clarifying this is because it has to do a lot
21 with the credibility of Transco. So, Myron, the
22 results did many come out, okay, and they did
23 analyze the results. What happened was with that
24 explosion way that the pipeline was corroded. It
25 did detect the corrosion but it wasn't at the

1 level that would cause them to be concerned about
2 it. So their threshold was set so high that it
3 went below the radar. As a result a million
4 dollar fine was issued by PHMSA. It was issued
5 for negligence, okay, and that speaks a lot about
6 the safety record of this company that claims
7 that they're not aware of any major pipeline
8 incidents, you know, especially in New Jersey.
9 And right after that testimony by Mr. Rodriguez
10 we were going to pull up quite quickly from the
11 website six major incidents in New Jersey. So
12 you have this theme going throughout.

13 I think that's all I have to say. I
14 don't want to repeat everybody else's concerns.
15 As you know you see me here at everything
16 hearing. I think enough has been said by people
17 wiser than me, by people more articulate than me.
18 I hope the board would try to listen to what has
19 been said about and protect the public. Thank
20 you.

21 THE CHAIRMAN: Anyone else?

22 (No response.)

23 THE CHAIRMAN: All right. Then I'm
24 going to close the public portion. Mr. Lamb, do
25 you want to give a --

Summation - Mr. Lamb

1 MR. LAMB: Yes.

2 THE CHAIRMAN: -- closing argument?

3 MR. LAMB: I will not repeat the
4 arguments that have been made, and as I said
5 before, the record and the hearings I think Mr.
6 Alampi and I have pretty well put our positions
7 on various issues.

8 I first want to reiterate that the
9 decision not to bring Mr. Kuprewicz back as a
10 witness should not reflect any acknowledgment or
11 agreement that the Galaxy believes that Transco
12 has satisfied its burden of proof, has identified
13 all of the safety risks, has properly provided a
14 mitigation plan for each of those risks; we do
15 not.

16 I guess the good part of this
17 hearing is that finally it took a court order for
18 Transco to show up. And I understand the board
19 had a different position on whether Transco had
20 to show up but they are -- they were here for
21 part of the hearings and it's important to look
22 at their conduct because the lion's share of
23 testimony concerning safety issues was from
24 Transco. They're getting a piece of property and
25 I believe it's fair to say, the document isn't

1 finalized yet, the easement, but they're getting
2 it for free. They're getting an easement.
3 They're getting an interest in property. They
4 could have condemned this property under their
5 powers at any time and gotten it and paid fair
6 market value but they're a business, they're a
7 for profit corporation and they don't want to do
8 that.

9 And I think them being a business
10 and for profit corporation has more or less
11 guided their conduct through this hearings
12 because let's take a step back. If Transco had
13 to do this for every application it would cost
14 them a lot of money. They had two attorneys here
15 for the hearings that they appeared in front of.
16 They obviously prepped their witnesses, they
17 wrote five plus page letters objecting to the
18 subpoena, they treated this like this was before
19 the U.S. Supreme Court. They thwarted every
20 effort to try to get the information. And so we
21 understand that they don't want to do this for
22 every piece of property but it's not every piece
23 of property that, you know, I don't want to say
24 it's the perfect storm, but it's close to the
25 perfect storm. You've got a pipeline, it goes

1 straight up a steep cliff, it's highly populated
2 area in the surrounding portions and there's a
3 building going up very close proximity to that
4 pipeline. All in the context of taking the toe
5 of the slope of the Palisades and excavating and
6 digging it out. That's the -- that's the
7 circumstances. This is not a routine we're going
8 to go under the street where the pipe is already
9 there and make some repairs or I'm going to go
10 down a piece of farmland and put the pipe down
11 where the nearest farm is far away. That's not
12 this case. They have not ever wanted to be
13 co-applicant. They made it clear they're not the
14 co-applicant. They want to use this property but
15 they don't want to be the co-applicant. So they
16 don't want any obligation, they want the rights
17 but they don't want the obligations.

18 They started out at this hearing
19 they, their attorneys sent a letter we've got
20 four witnesses, these are our witnesses and this
21 is their area of expertise. I actually made a
22 chart of who was going to testify, one to four
23 with you're going to testify on this, this and
24 this, and somebody else is going to testify on A,
25 B, D, and E and not C. They had an chart. And

1 what happened? Two people showed up. I'm not
2 saying they had to definitely bring in the four
3 people but you got to look at all the
4 circumstances, two people showed up.

5 They brought in a pipeline civil
6 engineer and it's clear Mr. Rodriguez is a
7 pipeline civil engineer. It's also clear that
8 he's a civil engineer that does a good portion of
9 his work if not a substantial portion of his work
10 in pipeline engineering. That does not equate
11 with him being a pipeline safety expert. We
12 hired a pipeline safety expert, that's who we
13 chose to do it. We didn't get an engineer. We
14 wanted a guy that studied pipeline disasters,
15 looked at pipeline safety issues, knew the PHMSA
16 regulations off the top of his head, knew
17 everything about these regulations and studies
18 and what caused the Edison problem and what
19 caused the Appromattox, Virginia problem. That's
20 who we wanted. We wanted -- on this unusual
21 piece of property could you please have somebody
22 who is an expert and say what are the risks,
23 identify these risks and then once you identify
24 the risks, there are ways to address the risks,
25 that's what we wanted. And we didn't want it for

1 most of the risks. We didn't want it for 50
2 percent of the risks. We didn't want it for 80
3 percent of the risks. Frankly we don't want it
4 for 95 percent of the risks. We want every
5 conceivable risk identified.

6 Now, the good thing, and I'll say the
7 good thing that came out of this is there have
8 been a lot of changes to what was previously
9 proposed before this court action and remand.
10 There's a lot of other stuff that was
11 recommended. Miss Mahle-Greco, there's a list, I
12 recommend this inspection and this inspection and
13 this and I went through it. I'm not going to
14 repeat it. There is tons and tons of those
15 things in the record. And even Transco came back
16 and said well, you know, we want that on-site
17 inspector there at certain times and there was a
18 disagreement about the times but they came up
19 with things. So what came out of this is risks
20 and ways to improve this project that reduce the
21 safety risks. So we're not saying that happened.
22 But what we are saying is not all the risks came
23 out and not all the mitigation proposals for
24 those risks were identified. And we respectfully
25 when it comes to public safety, we want all of

1 them. We don't want to be close, we want 100
2 percent or as best at 100 percent as we can get.

3 Right off the cross-examination, the
4 very first question to Mr. Rodriguez, Mr.
5 Rodriguez, you know, on voir dire, you a pipeline
6 safety expert and you could tell the hesitation,
7 the hmm, not really. If you go back and read
8 that transcript, I sat there and I got to tell
9 you, I was shocked. Their number one player, the
10 guy who goes up to the plate is not a pipeline
11 safety expert. Pipeline civil engineer he was.

12 And then we find out in further
13 cross-examination later on, we first see if you
14 look at the transcript no, there is no pipeline
15 safety expert but when we really got into it
16 there is a pipeline safety expert, Transco has a
17 pipeline safety expert. There's a bunch of them.
18 Where are they? They're in Houston. So guess
19 what, we have a business motive, we have a
20 company that doesn't want to really be here and
21 spend any money. Do you think they're flying
22 their pipeline safety expert out from Houston for
23 a hearing in North Bergen? Not happening in this
24 lifetime unless a court orders it. And so, yes,
25 Galaxy flew their expert from Seattle, Washington

1 here, but we're not getting the pipeline safety
2 expert that's got that title from Houston.

3 Mr. Schwitzer comes in and I think
4 his testimony, his direct was maybe ten minutes,
5 it was very short, whatever it was. And then
6 Transco disappears the next hearing, their
7 interest is over. They put in their two people
8 and they're gone. And then the letter comes in,
9 well, you know, we might have missed a little bit
10 of testimony. We want to come back and clean it
11 up. Now normally we're through a hearing, you
12 don't get a second bite of the apple. You don't
13 like oh, if you forgot something and you come
14 back like two months later but this is public
15 safety. So I sit there and say look, you know, I
16 want this to be safe, bring him back, say what
17 you want to say. He goes on for over an hour.
18 As a matter of fact his testimony on the cleanup
19 was far more extensive than his testimony
20 initially. Somebody sat back and said I guess we
21 went from four experts or people to testify to
22 two and then I looked at it, I really didn't
23 address a lot of this stuff. So that was Mr.
24 Schwitzer.

25 And a further example, this is

1 actually what happened tonight, what happened
2 within the last week, ah, what happened, you
3 know, we don't want other people going over that
4 easement. Well, this has been in the hearing,
5 it's been in before the remand. It's been here
6 -- I didn't go back and check the transcript and
7 see exactly whether Transco's people were there
8 when we were talking about it, but this was
9 talked about at hearings too numerous to mention.
10 So now it's like, ah, you know, a second thought,
11 we better do that. And they cite well, you know,
12 it's kind of like a safety issue, we don't want a
13 bunch of people going over there. But people
14 need to go there. You know, and I agree with Mr.
15 McGrath and that's why I said it but I also don't
16 want a situation where now Transco doesn't think
17 it's safe but does Transco coming back and say,
18 well, we sent a letter and we want to tell you
19 why it shouldn't happen, Transco is gone again,
20 they disappear, the hearing is over.

21 The -- and I'm trying to go through
22 this as quick as I can. One of the things that
23 also came out because we recommended a risk
24 identification study and the judge said I'm not
25 going to tell you it has to be in writing but,

1 you know, do a risk identification review. Mr.
2 Bertin provided one. But Mr. Bertin was very
3 candid when he said I'm not a pipeline safety
4 expert. I asked him at a couple hearings. I
5 asked him the last time. I asked him before the
6 Hudson County Planning Board. He never said he's
7 a pipeline safety expert but guess what, that's
8 the document that's supposed to identify the
9 risks. But we want a pipeline safety expert to
10 identify the risks. We don't want a competent
11 civil engineer to do so. We believe that an
12 engineer, Mr. Rodriguez is a civil engineer, Mr.
13 Bertin -- certainly every engineer can identify
14 some safety issues from an engineering standpoint
15 on a project. But we want a pipeline safety
16 expert. That's what this is about. These
17 special conditions, this perfect storm, that's
18 who we wanted and we didn't get it.

19 Now, you remember that I held up --
20 and I don't have them, I don't know where they
21 are, but I blew up cross-sections A, B and C.
22 Cross-sections A -- and having distilled all of
23 this, right now, today, October 23rd, and my
24 wife's birthday which I said and I'm here and I'm
25 going to be in trouble in, you know, a half hour,

1 hour --

2 THE CHAIRMAN: That's all right, I
3 came here on my anniversary.

4 MR. LAMB: Misery loves company.
5 Tell me tomorrow how you made out.

6 The cross-sections we tried to
7 highlight the intrusion, excavation, digging in
8 the toe of the slope. And you'll see
9 cross-sections A, B and C it's slightly different
10 for each one. But what I've learned today is
11 that out of all the things that were addressed,
12 the thing that is clearly not addressed is that
13 excavation. The slope stability for the slope
14 has not been satisfactorily addressed. That's
15 where to me if I'm going to be honest and say
16 where is the biggest problem here, Mr. Lamb, if
17 you had your one choice, which one would you
18 pick? I'd pick the slope stability. I think our
19 geologist and one of the members of the public
20 said there was nobody else, no other geologist
21 came. We had a geologist that looked at this and
22 said first of all, Mr. Rodriguez, he was talking
23 about surficial slides. He didn't really read
24 how that was defined in the Palisades Slopes
25 Stability Study. Surficial slides go down six

1 feet. He wasn't talking about that. Mr.
2 Rodriguez testified well, there is no part of
3 the -- that the project is below the -- the
4 project is below the pipeline. And he didn't
5 understand that actually the pipeline is above
6 the project, so if you do affect the toe of the
7 slope, if you do do excavation because the
8 pipeline is above it, not below it, there could
9 be a problem.

10 He testified that there could be
11 surficial slides. He testified why he thought
12 there was a weak slope. And I know Mr. Rabin
13 went through a bunch of pictures and things and I
14 believe that is relevant, but I also have to say
15 that he in his own observation, he walked the
16 site, he looked at the numerous pictures in the
17 Johnson Soil report dated June 1st of 2012, he
18 saw also the condition of the properties and he
19 said this is not a stable slope. And he gave his
20 reasons why they're not stable. And he also
21 agreed with the Palisades Slope Stability Study.
22 He said, yeah, I looked at that study by the
23 county engineers and I agree with that, that
24 makes sense to me.

25 He said that there is no final

1 grading plan. This project, Miss Mahle-Greco
2 comes in and says, well, you know, you also
3 better excavate a little bit behind the building
4 and cut a little bit more out of the toe of the
5 slope; no plans for that.

6 In the end there is a substantial
7 risk of a landslide. And it's interesting
8 because the variance that this developer needs,
9 it's not like, well, there's a substantial risk
10 of a landslide but the variances they want is
11 some other issue. The variance that they want is
12 approval of a negative rear yard setback, a
13 violation of the Steep Slope Ordinance and excess
14 building coverage. All of those things impact on
15 excavation of the toe of the slope. If they
16 would pull this project out from the toe of the
17 slope so that they'd have a compliant rear
18 setback or even partially compliant, if they
19 didn't dig in the toe of the slope, I know that
20 decreases the size of their project, but they
21 could avoid those variances and avoid this safety
22 risk and avoid the detrimental affect on the
23 public that is potentially here.

24 We still wish that because of the
25 importance of this issue we have stormwater

1 management reports. We didn't -- I don't think
2 we had -- actually we did have in this case, we
3 have traffic reports. We have reports that study
4 these things. We had Johnson Soils engineers
5 gave reports, but on the most important thing we
6 don't have a risk identification report from a
7 pipeline safety expert.

8 In closing we ask that the board not
9 approve this project but I understand and I'm a
10 realist, I understand we've had hearings, it's a
11 remand. There's been safety issues discussed,
12 there's been testimony by a lot more witnesses.

13 Obviously if you do approve this
14 application, the record is replete with
15 additional conditions that have arose -- I was
16 going to say that have surfaced without the pun
17 -- but have arose during the course of this
18 remand proceeding that you have to include. We
19 still think that this, well, we're not going to
20 finalize that easement and finalize these
21 conditions until after we get a final
22 non-appealable approval, I think that's a bunch
23 of malarkey because I think we just found out in
24 the last week that we don't know what those
25 conditions are because that easement, they're

1 going to want to put that you shall not have
2 anybody going through that easement area. Now,
3 maybe they'll drop that, I don't know. But the
4 point is it's not finalized. The devil is in the
5 details. There's lots of details that have to be
6 in that easement agreement and nothing that I've
7 seen has shown me that the Transco is somebody
8 that I can trust. If you look at their course of
9 conduct through here, if you look at two
10 attorneys objecting to every question, this was
11 not a case where Transco came in and said, okay,
12 public, yeah, we're going to do this and we're
13 going to do that. Everything was rosy based upon
14 documents that I never saw and the board never
15 saw. But it was rosy, they saw, trust us. Well,
16 you've heard a lot of witnesses testify in
17 hearings before this board over the years around
18 I cannot recall in my experience other than the
19 valet parking expert in Riverview which I won't
20 get into, but other than that one, I cannot see a
21 party, a witness who has been -- really has done
22 nothing to help the public get the warm
23 comfortable feeling that, yeah, they're in charge
24 and they're going to take care of this. If
25 anything it's made the public more ostracized

1 from their positions. They didn't treat the
2 public well, they didn't answer the question,
3 they hid behind attorneys, they fought us at
4 every turn. And, again, when you asked their
5 witnesses -- I asked on the PHMSA, on the PHMSA
6 regulations and PHMSA bulletin of January 2011 I
7 think it was, I said could you explain to me in
8 general, could you explain the major safety
9 risks. Well, if you look at one of the exhibits
10 with that PHMSA bulletin and you see the nine
11 safety risks that are involved Mr. Rodriguez got
12 three and Mr. Schwitzer got either two or three,
13 maybe the same. But there's a list of nine. I
14 wanted the guy that could say yes, the PHMSA
15 regulations, these study pipeline safety issues,
16 here are the nine major risks. We've identified
17 the risks here, there may be other risks not even
18 identified there and this is how we're going to
19 address each risk and respectfully that was not
20 provided to you. Thank you.

21 THE CHAIRMAN: All right. Thank
22 you.

23 Mr. Alampi.

24 MR. ALAMPI: Thank you.

25 This application comes before you at

1 this stage of the proceedings on a remand from
2 the Superior Court. Today I spent another two
3 hours rereading Judge Farrington's 23 page
4 analysis and report and distilled as candidly and
5 honestly as I can relate to the board. And the
6 issue of primary concern was stated from the
7 judge in the near beginning of her analysis and
8 then the common thread went through some of her
9 review comments and she returned to that towards
10 the end.

11 The main issue here is safety of
12 construction in close proximity to the gas line.
13 That's how the judge segues into the issue.
14 She's very clear what the issue is. So the
15 remand to you is stated in such unequivocal
16 terms, the discussion of safety in proximity to
17 the gas pipeline.

18 The discussion by the court was and
19 how could the board have come to its conclusion
20 and this is why I'm remanding it back to the
21 board for further proceedings without the input
22 of Transco, the owner and operator of the gas
23 pipeline and those who are charged by federal law
24 to regulate and to control and to distribute the
25 natural gas product to the nation amongst other

1 gas line companies and who are regulated by the
2 Federal Department of Transportation and PHMSA
3 agency. And that's what she ordered, that it
4 come back here, that you dwell upon that issue,
5 that you analyze it and that you get the input.

6 I'm gratified that Mr. Lamb as always
7 is very candid and he concedes points that were
8 made in these proceedings and he clearly agrees
9 that many of the issues of safety were addressed
10 and discussed but not all. Okay. That's his
11 opinion that it's not all, but the question
12 becomes did the board receive enough information,
13 enough input in a clear conscience to revisit
14 this issue and to discuss the development.

15 No one is suggesting and even members
16 of the public as late as this evening have been
17 saying oh, we don't oppose development on the
18 site per se, we don't oppose the residential
19 development concept which after all the
20 residential multiple dwellings is permitted in
21 the zone. Some people say, well, you're getting
22 a variance for 100 percent. Of course that's a
23 total mischaracterization of the application.
24 The size of the property is a function of what
25 the natural boundaries of the property are and

1 the availability of any additional property.
2 Don't we all agree that we have the MUA complex
3 on one side, the Galaxy on the other, the cliffs
4 above, the highway in front and the river beyond
5 that? So I don't think there's any dispute about
6 the configuration of the site. And you all know
7 that the development as presented, the ratio of
8 the development or the density is one-third of
9 the density that your ordinance anticipates. You
10 allow for 75 units to the acre and this is
11 translating at 22 units to the acre. So members
12 of the public said, well, you know, don't give
13 him a five acre development on a 2.3. Well, he's
14 actually asking for roughly a one acre
15 development. In fact, it's even less, 75 units
16 to the acre and this is 59 units. That doesn't
17 mean that the applicant is entitled to the 75
18 units to the acre but we were talking about
19 precaution, we're talking about reasonableness,
20 we're talking about fairness, we're talking about
21 sensitivity to the height of the cliffs and the
22 view. We're talking about proximity to the gas
23 line and such.

24 We talked about many things in this
25 remand. This remand took over seven public

1 hearings and with the special meeting sessions I
2 venture to say more than 30 hours of presentation
3 and testimony. With that we identified a few
4 things. The judge said I think after looking at
5 the transcripts of the public hearings that were
6 presented to the planning board the first go
7 around that there should be an identification of
8 the risks, a risk identification and then in fact
9 Bertin Engineering, Calisto Bertin in particular,
10 a qualified, certified, licensed civil engineer
11 prepared a Risk Identification Report and
12 identified the areas of risk. Now, we're all
13 intelligent people. The board -- I certainly
14 respect the intellect of the residents, the
15 board, myself, others and professionals. We
16 understand the identification is the location of
17 the pipeline, the construction of the pipeline,
18 the depth of the pipeline, the alignment of the
19 pipeline, where it crosses the Applevue property
20 on the diagonal up on the ridge and then into the
21 MUA property, the placement of the building and
22 the terrain of the property. And of course we
23 had discussion that the building itself -- and
24 I'm referring to the RA-10 exhibit from July
25 12th, 2012, the building itself is largely, not

1 exclusively but largely on the flat area of the
2 property and in an area across from where the
3 pipeline is deepest in the ground and at a flat
4 elevation.

5 Now, there was a lot of discussion by
6 the engineer from Transco as to concern with
7 construction and the pipeline and the elevation.
8 Mr. Lamb I think is taking out of context just
9 like his witness at the last meeting, Mr. Cunniff
10 took out of context the issue of the elevation.
11 Of course we all know, our witnesses, our
12 clients, the board and the public, of course we
13 know that the elevation at River Road is 90 or
14 100 feet below the elevation of the rim of the
15 Palisades. And we know that that pipeline comes
16 from the west, comes through North Bergen,
17 straddles around Galaxy, goes along Boulevard
18 East and then comes down. We know that. We also
19 know that the pipeline is built underneath the
20 Summit House. That you have a pipeline that's
21 been in existence since 1959. You have the
22 Summit House which is built on top of the
23 pipeline and they have concrete piers and steel
24 beams and embankments holding up the garage on
25 top, not next to but on top of the pipeline.

1 Now, yesterday I went to the MUA
2 property. I walked the perimeter of the MUA
3 property and where these tanks are located. And
4 of course this is all in the case record because
5 along with the site plan we established points of
6 references for the Galaxy building and for the
7 MUA, all of this is in the record in the site
8 plans and there's been testimony and photographs
9 showing it. So I walked the MUA property, saw
10 the superintendent who was there and asked for
11 permission to walk and he escorted me because you
12 can't just walk around on your own and what do we
13 have? We have concrete retaining walls built 30
14 or 40 feet further into the cliffs than what is
15 projected by the furthest point on the Applevue
16 proposal, 30 or 40 feet further in at a higher
17 elevation, solid concrete walls, and I can't even
18 imagine how thick they are, they were huge. And
19 they were installed after the pipeline, not
20 before. You have on the other side the
21 construction of the Galaxy. Again, Mr. Lamb says
22 well, this applicant is digging out the toe of
23 the slope. Well, we know that the Galaxy dug out
24 the toe of the slope. Two wrongs don't make a
25 right. I'm not advocating they did it, we should

1 do it. What I'm trying to emphasis, though, is
2 that if you go to the Galaxy property or if you
3 go to the back of the Applevue property on the
4 western edge to the south and you stand there,
5 you will see six or seven separate and distinct
6 high concrete walls on the Galaxy property in
7 which from the roadway above and along the ridge
8 from the roadway above all the way down is a
9 clear straight drop. That was not a natural
10 drop, that was dug out and reinforced with
11 concrete walls that were established and built
12 and there does not seem to be any concern about
13 the safety, there does not seem to be any
14 failure, there does not seem to be anything or
15 anybody commenting on that issue. Most
16 importantly the geologist who testified at the
17 recent hearing failed to take into consideration
18 and mention these other features.

19 So let's just talk very briefly
20 about the testimony that was presented. I'm not
21 going to regurgitate everyone's testimony. We
22 had a civil engineer from Transco, we had another
23 representative Dan Schweitzer from Transco. They
24 had other members and I guess they felt that the
25 testimony was going to be somewhat duplicative.

1 Now, Mr. Lamb says no gas behind pipe expert, no
2 safety -- gas line pipe safety expert was
3 presented. We learned that there is no such
4 thing. There is no licensing, there is no
5 certification, there is no recognition from the
6 Federal Department of Transportation as to
7 pipeline safety expert as far as a license or
8 certification. I don't mean to say that there
9 are not people who understand the concerns or who
10 can quantify the risks or who can evaluate the
11 safety; of course there are people that can do
12 that. But there is no such thing as a licensed
13 or certified gas line safety expert.

14 Now, we have the testimony as
15 presented. Mr. Rodriguez was here for three full
16 public meetings. I don't think that we could
17 have exhausted any further effort to draw from
18 him information that was necessary for you to
19 absorb in order to make an intelligent and proper
20 and reasoned decision on this application. But
21 I'd like to concentrate on the fact that the
22 objectors, the Galaxy, in its opposition, chose
23 to have a geologist give testimony but failed to
24 produce a civil engineer. They didn't produce a
25 civil engineer at the initial hearings, they

1 didn't produce a civil engineer at these remands,
2 they produced a geologist. That's their choice.
3 We questioned the geologist at length in his
4 testimony and we talked about what he said or
5 what he failed to say.

6 What did he -- what did he say
7 exactly? If you go to the transcript as I know
8 you did, and if you read the transcript carefully
9 as I know you did, and I know I did and I know
10 everybody in this room did, you'll find that when
11 he was asked specifically about his findings,
12 that I questioned whether or not his testimony
13 was largely speculation and that he was
14 identifying areas of concern, and he expressed to
15 me in five different ways he did not understand
16 what I meant by areas of concern. I asked him if
17 he drew certain conclusions or whether he could
18 distinguish what he was testifying to, which I
19 submit to you was speculation because it is not
20 backed by any physical test or by any inspection
21 of anything other than one physical site
22 inspection, one visual site inspection. So his
23 testimony is not backed by any science or
24 engineering. In fact he said he is not an
25 engineer, he's not qualified as an engineer and

1 he couldn't deal with issues of design when it
2 came to retaining walls and things of that
3 nature, he could just confine himself to geology.
4 And he was quick to go into the issues of
5 earthquake episodes, epicenters, fault lines and
6 things of that nature. And he was clear to say I
7 don't mean by any means to tell you that the
8 construction of this building will have an impact
9 or affect on earthquakes or vice versa. He was
10 clear to say that the construction doesn't tie
11 into the episodes of earthquakes. But he wanted
12 very quickly to drop the line of questioning on
13 the pad, the lower level, the flat area and talk
14 about the slope area and went into a long
15 discourse about surficial landslides. Taking the
16 definition from the county report that surficial
17 landslides could be anywhere from one to six
18 feet, he went on and on about surficial
19 landslides. He couldn't give any analysis of
20 whether or not there was a probability or a
21 percentage. He couldn't do anything like that.
22 All he could say is surficial landslides were
23 identified and there could be surficial
24 landslides. So then I asked him specifically
25 about whether or not he saw any surficial

1 landslides anywhere near six feet in depth
2 anywhere on the site and if he spotted it, if he
3 saw it or if he saw evidence of it and his answer
4 was no. He answered specifically that he did not
5 see or observe any surficial landslides on the
6 property.

7 Rather what he did is he wanted to
8 dwell, again we go to this RA-10 exhibit, he
9 wanted to dwell on the fact that when you walk
10 the site, it was somewhat wet and spongy and he
11 identified an area with ponding. And then when
12 we questioned him as to whether or not this area
13 that contains some ponding or some kind of a bowl
14 effect with water stagnating on it was an area
15 that was heavily dug with test pits and borings.
16 And then he acknowledged, yes, that would
17 correlate on the plan, that, yes, that's the
18 area. He went on to say that because of this
19 wetness and sponginess that the earth in this
20 property in particular, the earth composition was
21 very wet, that it lubricates the soil and
22 thereupon you'll have surficial landslides. That
23 is pure speculation, there was no hard evidence,
24 there was no evident testing, there was nothing
25 to support that other than seeing this one area

1 of ponding that he acknowledged was the area
2 where there was a concentration of test pits and
3 borings.

4 We could go on and on. We do know
5 that there was -- there were previously by the
6 Galaxy three tennis courts and a basketball court
7 that was erected on the site, and we know that
8 members of the Galaxy were permitted to recreate
9 and play in that area. There didn't seem to be
10 any concern about surficial landslides, rock
11 falling or anything like that. There seemed to
12 be no concern for the many years that they
13 recreated on the site, spent very good money to
14 build these facilities, erect light poles and
15 things of that nature.

16 But what did we notice? We noticed
17 that where the tennis courts were built we have a
18 fence right behind the old tennis court which is
19 perfectly intact. No damage, no evidence of
20 spillage, yet the geologist was saying you know
21 what my real concern is, my real concern is the
22 natural dropping or the natural failure and the
23 flow -- the outflow of soil on the site. Well,
24 they played tennis there for 15 years or longer,
25 never a problem. The fence that is certainly not

1 a support fence of any type but it's a fence so
2 that you don't lose the ball when you're playing
3 the game is perfectly intact and behind it we see
4 the so-called toe of the slope. And I submit to
5 you that a lot of that soil didn't come from the
6 top, that soil was deposited there with the
7 installation of the tennis facilities and others.
8 You can just tell by looking at it that it was
9 placed. There was no natural fall of that soil
10 in that area.

11 So what do we get to? We get to the
12 issue of the excavation in the area and whether
13 or not you receive a sufficient amount of
14 testimony from Transco, from our own witnesses,
15 from our geotechnical consultant, our civil
16 engineer as to whether or not there is a
17 dangerous condition should there be some
18 disturbance to that limited area 250 or so feet
19 away from the alignment of the pipe and in an
20 area that has not seen any active surficial land
21 fall or so-called landslides. In fact the county
22 report that the geologist is relying upon heavily
23 for its definition says, well, you know, whether
24 there's development or not on the Appleview,
25 property which was identified as property No. 6,

1 I believe, we think that you should excavate and
2 put a gabion wall in. You should excavate and
3 put the gabion wall in. Well, we will excavate
4 and we will use the building construction as part
5 of this wall feature. Then we have Ms.
6 Mahle-Greco who said, well, to the you the truth,
7 you're talking about a portion of one of the
8 walls being removed and then you're talking about
9 grading it. I would prefer instead of just
10 grading it that you replace that wall as an
11 additional measure of security.

12 And then what are we talking when
13 about when talk about the walls? We're talking
14 about rock walls not concrete walls. Rock walls
15 are constructed for the purpose of filtration.
16 They are meant to be constructed in a way with
17 gravel behind it so that the water runoff and
18 soil falls behind is filtered and it's screened
19 so that the water escapes and the dirt remains
20 behind. Otherwise you'll just have dirt flowing
21 all the time. These walls don't hold up the dirt
22 and the mountain, they just filter the water.
23 That testimony was presented early on by Mr.
24 Bertin generally and also in the report. These
25 are not walls that are holding up the talus, the

1 toe of the slope, the cliff itself. They are
2 merely filtering as they're designed to be
3 because if you think that a wall is going to hold
4 up that weight, then you'll be surprised to know
5 that even two to three feet of elevation will pop
6 a wall out. Because a wall is not designed, a
7 wall is not designed to hold back a mountain,
8 it's only designed to filter the water through
9 and to allow water to escape and the dirt to hold
10 back with gravel and other material to capture.
11 It's another design feature.

12 I promised not to go on and I've
13 gone on longer than I thought. What I want to
14 leave the board with simply is this: We
15 understand the concerns of the public, the
16 obligation and duty of the board and our
17 obligation as a competent builder and developer
18 and our duty to the public. We're going to be on
19 the site with family members. We understand that
20 there's a gas pipe and we have the highest degree
21 of respect for development and construction, with
22 caution and with adherence to all the safety
23 measures and protocols that have been enumerated
24 by your board engineer, by Transco, by our own
25 engineer's identification report and we will do

1 everything that is required of us to monitor the
2 situation.

3 One of the big things that we did
4 was, when we started the job and over the process
5 of time, was to take all the piling that would be
6 done and we would auger all the piling, not some
7 of the piling, but all the piling. And we were
8 told that the park across the street that's being
9 funded jointly by North Bergen and Guttenberg,
10 that they would adopt our methodology. And I
11 reviewed some paperwork from the agencies that
12 the engineers said that the protocol established
13 by Calisto Bertin's office with the augering of
14 the pile driving would be the proper thing to do
15 and yet they hammered in the steel pipe -- the
16 steel pilings across the street anyway.

17 I'm only saying that we are aware
18 that there are ways to mitigate construction,
19 there are ways to reduce vibration, there are
20 ways to protect the construction and the
21 excavation of the footings, not to go lower than
22 the pipe where it is at the MUA property where
23 the pipe is flat and the terrain is flat and that
24 was the concern. That's the area where the
25 geologist said to "Tell you the truth, I have

1 little concern whatsoever with the construction
2 on the flat part. My focus is really on the
3 higher elevation of the pipe." Thank you.

4 THE CHAIRMAN: All right. Thank
5 you.

6 With that let me turn to --

7 MS. GESUALDI: Wait, I have a
8 statement.

9 THE CHAIRMAN: Sorry. By all means.

10 MS. GESUALDI: I won't be as long as
11 Mr. Alampi.

12 THE CHAIRMAN: I hope not. I'm
13 trying to get home before any midnight.

14 MS. GESUALDI: On behalf of --

15 THE CHAIRMAN: I am sorry, Ms.
16 Gesualdi.

17 MS. GESUALDI: That's quite already,
18 Chairman.

19 On behalf of the Town of Guttenberg
20 we are here in the these hearings because
21 obviously safety of this project and to its
22 citizens is of paramount importance to everyone
23 and that's why we see everyone here meeting after
24 meeting and that's why this application has gone
25 on for months and months and year after year

1 before yourself. We understand the applicant's
2 desire to construct on the project and tantamount
3 to that is the town's citizens' safety vis-a-vis
4 most importantly the pipeline. The way I've read
5 Judge Farrington's opinion it's incumbent upon
6 yourselves as a board to make certain findings
7 with regard to safety and the pipeline right now
8 because the white elephant Transco finally came
9 into the room. And I believe that your jobs are
10 going to be to go through the record and go
11 through the transcripts and make specific
12 findings of fact with regard to whether or not
13 this project both during construction and after
14 construction will be safe vis-a-vis the pipeline.
15 I believe that's what we're talking about.

16 We all want to be safe. We all want
17 to be secure. We don't want anything to have to
18 happen to anybody. I don't believe anybody wants
19 that to happen. However, it is a difficult
20 process. And, honestly, I wouldn't want to be in
21 your position right now to have to make that call
22 because this is a very intricate application.
23 There are a lot of factors that are involved and
24 I know you're taking your job very seriously and
25 I think everybody -- I think everyone in this

1 room should appreciate the fact that this is not
2 an easy application by anyone's imagination. And
3 Judge Farrington also states, and I just want to
4 highlight this, she did state in her opinion that
5 we also need to address the easement and
6 licensing agreements with regard to your taking
7 any decisions. And now keep in mind that Transco
8 made it very clear with their October 18th letter
9 that they want the -- they want exclusivity with
10 regard to that easement. So I think we really
11 need to think about the agreement that needs to
12 be in place before we adopt anything. Because
13 this really could be a nay or could really put
14 the kabosh on everything vis-a-vis Transco and
15 the application because they seem to be very one
16 sided with regard to that issue.

17 I also want to remind the board that
18 we are also dealing with Homeland Security
19 vis-a-vis the project. And in fact the town
20 together with the applicant has already started
21 meetings with Homeland Security and we do have
22 another meeting with them coming up in November.
23 So I submit that to your consideration. Perhaps
24 the board might want to wait on any decisions or
25 any fact findings until such time as Homeland

1 gives out their recommendations vis-a-vis the
2 project. So that's the town's position. Thank
3 you.

4 THE CHAIRMAN: Okay. With that let
5 me open it up to board discussion. Let me first
6 state, I don't know how the rest of the board
7 feels, but personally I'd like further input in
8 terms of the safety. One thing that occurs to me
9 and some of the comments that were made tonight
10 is that PHMSA might be an appropriate source of
11 information as to safety. And if the board is in
12 agreement, what I'd like to do is approach them
13 with regard to their input, you know, with regard
14 to the safety of the project. It seems to me
15 that that makes perfect sense to take it another
16 step further. Does anybody object to that?

17 MR. AHTO: No objection here.

18 MR. ARNONE: I object.

19 THE CHAIRMAN: All right. Do you
20 want to elaborate?

21 MR. ARNONE: No, I object. I
22 thought we were going to vote tonight.

23 THE CHAIRMAN: Okay. Anyone else?
24 And let me state a little bit more. I think it
25 makes sense to go the extra step and to make

1 absolutely sure. Now, mechanically in order to
2 do that I guess we'd have to go through, what,
3 Rick?

4 MR. MUHLSTOCK: I'd have to,
5 honestly, Mr. Chairman, I haven't thought of it.

6 MR. McGRATH: You may have to go
7 through the pipeline company or you may have to
8 try to approach PHMSA and say --

9 THE CHAIRMAN: Independently?

10 MR. McGRATH: And say we're talking
11 with the pipeline company but we want your input
12 without them. And it's a new arena, I'm not
13 going to tell you that I'm familiar with it. You
14 may be stuck going through Transco because PHMSA
15 doesn't normally deal with the municipality or
16 the county or the state. They deal with the
17 pipeline contractors and the people who are
18 supplying the products. So maybe trying to reach
19 in from the outside.

20 THE CHAIRMAN: Can we explore that?

21 MR. MUHLSTOCK: I certainly will.

22 THE CHAIRMAN: All right. Given
23 that, is there any other comments from board
24 members?

25 MR. FERNANDEZ: I wanted to ask the

1 engineer one question on the type of piling that
2 they want to be using, Calisto.

3 THE CHAIRMAN: Oh, okay. Mr.
4 Bertin.

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

8 MR. FERNANDEZ: Can you explain to
9 me how this new -- these piles are going to be
10 driven into the ground?

11 MR. BERTIN: We agreed that they
12 would not be driven, it would be augered.

13 MR. FERNANDEZ: Augered.

14 MR. BERTIN: And then you insert the
15 pile and fill it with concrete. It's called a
16 pressure grouted pile. There would not be driven
17 as a typical pile.

18 MR. FERNANDEZ: Which would protect
19 the pipe.

20 MR. BERTIN: Absolutely.

21 MR. FERNANDEZ: As compared to as
22 Mr. Alampi had stated, they drove the piles for
23 the park on the North Bergen side, I don't know
24 about the Guttenberg side, I don't even know if
25 it's on the North Bergen side, the piles were

1 driven the traditionally, they didn't use your
2 design.

3 MR. BERTIN: Correct.

4 MR. FERNANDEZ: And the pipeline was
5 affected? You don't have no gas going out?

6 A VOICE: We don't know.

7 MR. FERNANDEZ: That size of a pipe
8 you would know.

9 MS. RABIN: It could blow up ten
10 years later. It's well documented; you never
11 know at the time for sure.

12 MR. FERNANDEZ: I had another
13 question for you. After your piles are in, all
14 your piers are in, you form out your footings,
15 you build the garage structure, the parking
16 garage, if you took all the three -- the two
17 buildings, the waste treatment plant to the
18 Authority and the Galaxy to the south and the
19 parking garage in the middle, if you were
20 building them today which would be more dangerous
21 to the gas line construction-wise?

22 MR. BERTIN: You mean the sewer
23 plant or the Galaxy?

24 MR. FERNANDEZ: Right or the parking
25 garage. Because once the parking garage is

1 finished, the rest of the construction is wood
2 frame construction.

3 MR. BERTIN: That's correct.

4 MR. FERNANDEZ: So there is no more
5 digging or --

6 MR. BERTIN: Correct, once the
7 foundation is in, it would all be wood frame
8 construction from above.

9 MR. FERNANDEZ: Four stories of wood
10 frame construction.

11 MR. BERTIN: Correct.

12 THE CHAIRMAN: So --

13 MR. BERTIN: I missed your question.

14 MR. FERNANDEZ: Okay. What I'm
15 trying to say is, I'm looking at this, they built
16 the Galaxy, three towers hi-rise; gas pipe wasn't
17 affected. They built the waste treatment plant,
18 the gas line hasn't affected -- hasn't shown any
19 effect in the last 62 years. That Applevue
20 project, all we're basically looking at is the
21 garage with all your excavation and piles are
22 going to be in. Once that garage is done and the
23 rest is all wood frame construction with no heavy
24 machinery.

25 MR. BERTIN: And most of the garage

1 is above ground.

2 MR. FERNANDEZ: It's above ground.

3 MR. BERTIN: It's just in the back
4 that it's below ground. And actually of those
5 three projects you mentioned, the water treatment
6 plant was significantly closer to the pipeline
7 and they drove piles and they excavated within 15
8 feet or 10 feet of the pipeline.

9 MR. FERNANDEZ: Okay. Thank you.

10 MR. AHTO: I have a question before
11 you sit down. The park across the street, do you
12 know how close the piles were driven to the gas
13 pipe?

14 MR. BERTIN: Yes, I measured about
15 35 feet.

16 MR. AHTO: 35 feet?

17 MR. BERTIN: I actually went out
18 there with a tape measure, and I recall it was 30
19 or 35 feet.

20 MR. AHTO: And that was they drove
21 them, they just pile drive them?

22 MR. BERTIN: They're wooden piles
23 that are just driven, right, there is no
24 pre-augering or anything like that.

25 MR. AHTO: And how close are these

1 piles going to be to the gas pipe?

2 MR. BERTIN: The closest pipe would
3 be 25 feet. The closest pile would be 25 feet.

4 MR. McGRATH: But they're not being
5 driven, they're being augered. There is no
6 vibration issue here.

7 MR. AHTO: I understand.

8 MR. McGRATH: There's completely no
9 vibration issue.

10 MR. BERTIN: And basically, yes, as
11 Mr. McGrath said, when you auger, there is no
12 vibration.

13 THE CHAIRMAN: All right. Anything
14 else from the board?

15 MR. AHTO: Well, Mr. McGrath --

16 MR. McGRATH: Yes, sir?

17 MR. AHTO: -- what concerns do you
18 have as far as the gas pipe safety? I read your
19 report and I agree that all the municipalities
20 should have access to this easement. I agree
21 with that. But now I'm talking about the safety
22 of the 36-inch gas pipe. And I think probably
23 safety is probably just during the pile aspect of
24 the construction or is it further?

25 MR. McGRATH: Any kind of excavation

1 is a concern, some more so than others.
2 Pre-augered piles as opposed to pile driven piles
3 very different, very much less of a safety issue.
4 The deeper you dig, the bigger the safety issue.
5 The closer you dig, the bigger the safety issue.

6 I know over the years with the North
7 Bergen and in Guttenberg we have dug in the
8 street next to the Transco pipeline below the
9 invert elevation of the Transco pipeline to
10 replace sanitary sewers, done it several times.
11 We've had backfill from their trenches exposed,
12 some cases some of it sloughed off against the
13 sheeting that the trench box that the contractor
14 was using. We've always had a Transco
15 representative there. We took whatever steps
16 were necessary to satisfy that representative
17 that the pipe was going to be maintained in a
18 safe condition, that the backfill was properly
19 restored, and that at the end of the day the
20 pipeline was intact. We did some of those
21 projects 20 years ago. There is no evidence of
22 any problems with the pipeline anywhere where we
23 did that work.

24 But to me if you're not going to do
25 any pile driving, your excavation is your biggest

1 issue. The bulk of the excavation, the deepest
2 excavation is to get the back of the garage in
3 place. That is also basically the furthest away
4 from the pipeline as anything is on the site.
5 Yes, the northern side of the building is closer
6 to the pipeline than the southern side of the
7 building. It's still some distance away from the
8 pipe, considerably more than we ever were with
9 these sewers, although in all honesty it's going
10 a little deeper than we did with the sewers.

11 The installation of the driveway,
12 it's very shallow, it's on the surface almost,
13 it's not a concern. The installation of the
14 riprap swale, again, it's I think one foot deep,
15 it's shallow. It's not a concern. The
16 installation of any drainage is only going to be
17 a couple feet deep. I don't think it's going to
18 get close to the top of the Transco pipeline. I
19 don't see that as a concern. The sanitary sewer
20 connection which is eventually going to run out
21 to the plant will in fact cross the Transco
22 pipeline. It has to; the pipeline goes east to
23 west and the sewer is going to go south to north.

24 We cross the Transco pipeline with
25 sewers on a regular basis. I have no doubt that

1 Transco will have representative out there from
2 the minute the contractor starts until the
3 pipeline is installed and that part of the site
4 has been properly restored. That is potentially
5 the most dangerous part of the entire excavation
6 and yet the sewer isn't going to be that deep,
7 the pipeline in that area is going to be watched
8 like a hawk while we're out there, and quite
9 frankly if you look in River Road, you've already
10 got gas mains in there, water mains in there,
11 storm sewers in there, sanitary sewers in there;
12 it's been done before, it's been done safely
13 before, I have no reason to believe it will not
14 be done safely again.

15 My experience with Transco is if
16 we're digging near they're pipe, you're going to
17 have a Transco representative in your back pocket
18 for the duration of that excavation. The
19 furthest he'll go is lunchtime for a sandwich
20 when we all break. Other than that he's there
21 8:00 in the morning. If we work until 6:00 at
22 night he's going to be there with us. He never
23 leaves the site. It's that simple. So your
24 biggest concern for my money is the sanitary
25 sewer crossing. I don't see that as a

1 significant concern.

2 MR. AHTO: Who is going to draw up
3 the specs for the safety issues on the
4 requirements? Who is going to do that you, is
5 Transco going to do that?

6 MR. McGRATH: Transco has, and I
7 provided this to the board I think in the first
8 hearing, a standard set of I'll call them
9 guidelines for excavation in the vicinity of
10 their pipeline. You are expected to abide by
11 those guidelines as an absolute minimum. In this
12 particular case if Transco thought that something
13 we were going to do was out of the ordinary or
14 was potentially a bigger concern to their
15 pipeline, I would expect them to say to the
16 board, this contractor needs to take this step.
17 I haven't heard that yet. I don't think they see
18 anything out of the ordinary going on here. It's
19 all stuff that we've done before.

20 MR. AHTO: So, in other words,
21 you're going to review the requirements that
22 Transco is going to put in place and you will
23 review them and if any more recommendations had
24 to be made, it would be made by you?

25 MR. McGRATH: Be made by my office.

1 I would expect one of my guys to be out there,
2 particularly when they're doing the sewer
3 crossing or anything close to the site I expect
4 him to be there full-time. We're not going to
5 sit there all day every day. We're going to be
6 out there part of the time, all the time key
7 times, the Building Department will be out there
8 looking at certain things. We'll have
9 representatives out there. I have no doubt that
10 Johnson Soils will have their representative out
11 there watching the slopes as they dig to verify
12 that if in fact the soil conditions change, that
13 require some sort of modified excavation
14 procedures, whether it's sheeting shoring,
15 putting the slope a little flatter, whatever, I
16 have no doubt that Johnson will look into that.

17 I mean everybody has an interest in
18 seeing that this is done safely and without
19 hurting anybody. Forget the gas pipeline, I
20 don't want to see anybody get hurt period, that's
21 day-to-day every day. It's a dangerous business.
22 The gas pipeline notwithstanding, it's a
23 dangerous business. You put a guy down in a
24 hole, you dig a hole and put a guy down there,
25 it's dangerous. We don't want anybody hurt.

1 My guys are trained in safety. They
2 understand what slopes are, they understand what
3 excavation is because I'm the guy who trains
4 them. I'm an OSHA trainer. My guys are trained
5 in construction safety. They know what to look
6 for. They know how to look for it. They got
7 handbooks that help them look for and they got a
8 phone that they can call me up if they got a
9 problem. I'm not concerned about that. I think
10 it can be safely handled.

11 If the geology changes, if the soil
12 changes, I would expect somebody from Johnson
13 Soils to pick that up as quickly as my guy would
14 pick it up and say time out, we have something
15 different here. If all of a sudden we expose
16 silt where we expected dolomite, that's a changed
17 condition. You got to look at and evaluate what
18 its to do to your excavation. Quite frankly, I
19 think the guy who was digging the hole would say
20 something is wrong here, I got to change it but
21 he doesn't have to because there will be somebody
22 looking over his shoulder.

23 MR. AHTO: There was a lot of
24 conversation, I don't know if this is your area
25 or not, about rock slides, mudslides, erosion, if

1 you got a lot of rock slides. Maybe I should be
2 asking somebody else, I don't know. If there's
3 rock slides or mud slides would it make a
4 difference if the building is there or the
5 building is not there, in your opinion?

6 MR. McGRATH: If the building -- the
7 most dangerous time is when the building is being
8 constructed. If the building is there, it acts
9 as a support. Okay, it's down deep, it's set on
10 piled, they're anchored, the concrete wall comes
11 up out of the ground, it acts as a support for
12 that part of the structure. It has to be
13 designed to withstand that kind of load. That's
14 the only way to support the building will stand
15 up. So the most dangerous time is when you're
16 digging down and trying to build that wall.
17 Okay. And that's when you got to have eyes on
18 and you got to be paying attention to did the
19 soil change, is it looser, is it more gravel, is
20 it more sand, is it running sand, is water
21 pouring through it. If you start digging down
22 there and all of a sudden you find what one of
23 the geologist's biggest concern was running
24 water. If you get down there and start digging
25 and water just starts pouring out of that slope,

1 you better stop what you're doing and rethink
2 what you're doing down there. You're not
3 planning on seeing running water down there.

4 I don't think they're going to see
5 running water down there but that doesn't mean
6 they won't. You can get fissures in the geologic
7 movement over 250 million years where there's a
8 place in Fort Lee. Fort Lee sits on solid rock.
9 We're all familiar with it, it's the same rock we
10 got here. There's an area of Fort Lee where for
11 some reason millions of years ago the rock was
12 scraped out and it's full of sand and gravel. If
13 you go down and dig in there, you can dig in
14 there like there is no tomorrow; you got water,
15 you got good soil, it runs like crazy, it's an
16 easy dig. You go two feet off of that trench,
17 you're in solid rock and you can't get it out
18 with anything short of dynamite. There is no way
19 to predict that until you get there unless you
20 took soil borings every two feet. And if we took
21 soil borings every two feet we'd have to clear
22 the entire area to do it. So you take a number
23 of borings and you try to evaluate what you see
24 and you make your best educated guess as to what
25 the borings are telling you and that's how you

1 plan. If the circumstances change, the design
2 has to change. You won't know that until you
3 start digging.

4 MR. AHTO: It's all field
5 conditions.

6 MR. McGRATH: Essentially it's all
7 field conditions, yes. You have to go cognizant
8 of what you're dealing with and how it could
9 change. They've indicated on the drawings that
10 the slopes would be at a maximum one vertical on
11 one horizontal. That's a maximum. It might be
12 one and a half on one in certain areas if that's
13 what the conditions warrant. One and a half on
14 one most soil will stand on one and a half on
15 one. You don't know until you physically get
16 that and see what you're up against.

17 It's theoretically possible that
18 they'll get out there at some point and decide
19 that they need a real retaining wall in some
20 location, 10, 15, 20 feet long because the
21 conditions warrant. Okay, that's going to be an
22 change. They're going to have to put that wall
23 in, they're going to have to submit a design and
24 they're going to have to build it according to
25 that design and they're going to have to use the

1 wall to support that area. It could happen. Do
2 we anticipate it right now; no. But when you
3 start digging, situations change.

4 MR. MUHLSTOCK: And is that standard
5 operating procedure for field conditions for
6 items like that to change during construction?

7 MR. McGRATH: They can. Certainly
8 the differing soil conditions can happen
9 anywhere. It's a standard condition in almost
10 any contractor's contract when you bid a public
11 job if the soil conditions differ from what
12 anybody is led to believe, generally the
13 contractor is allowed to come back and ask for
14 extra money if it's going to cost him extra money
15 because you have to redesign so that you can deal
16 with it.

17 MR. MUHLSTOCK: Well, the Court has
18 asked the Board to consider safety. So, in what
19 document do we memorialize, if in fact the board
20 votes to approve, where do we put all of these
21 safety concerns? I think the public is entitled
22 to know. Is that -- do you contemplate that as
23 part of the access agreement?

24 MR. McGRATH: I think your safety
25 concerns can be expressed as conditions of any

1 approval if the board should give one. The
2 access agreement is -- recognize that the access
3 is primarily for when the job is done, okay.
4 We're not planning to go up there tomorrow and
5 dig on the gas pipeline or dig on Guttenberg
6 sewer or go in the back of treatment plant and do
7 something up there. The access agreement is to
8 allow the parties who might have to go in the
9 property to work on their facilities to able to
10 get there. As it stands now, Guttenberg wants to
11 work on their sewer which comes down from
12 Boulevard East, they really have to come over
13 Ferry Road and into the property. That's easier
14 said than done. If you can get access from the
15 bottom from River Road, you can go up the slope
16 with your equipment, with your materials, do your
17 work.

18 It's same thing Transcontinental will
19 have to do today. Transco because they're a
20 quasi public utility might have the option to go
21 back to Mr. Spoletti and say "Under such and such
22 a piece of federal law we're coming on your
23 property, you can't stop us." Guttenberg might
24 be able to do that too because they're a public
25 body but it takes time. If the access agreement

1 is in place and there's a break in the Guttenberg
2 sewer that has to be fixed, you can send a
3 contractor up there to fix it. Why? Because we
4 have the right to go on that property to do it.
5 Which is why I am adamantly opposed to giving
6 Transco a singular access to that area. I
7 understand what they want. There's too many
8 other people that might need to get in there.
9 And I think the board has to make that very clear
10 but these are things that you got to put in as
11 conditions of any approval that says we're going
12 to have an access agreement with everybody
13 allowed in it, and if you don't give us one of
14 those, we reserve the right to bring you back to
15 the board because your approval is null and void.
16 We're going to have certain safety issues being
17 met. If we don't see that they're being met,
18 then you're going to have to come back before the
19 board because your approval is null and void.

20 MR. MUHLSTOCK: Are all of those
21 safety concerns from what you have heard
22 throughout all the hearings here sufficiently in
23 the record or are there others? Because if we're
24 going to make conditions for safety, they have to
25 be specified. You can't just say we're going

1 to --

2 MR. McGRATH: You can't just say be
3 safe.

4 MR. MUHLSTOCK: Right, be safe,
5 that's not what everyone wants here. So is there
6 sufficient testimony and reports, evidence from
7 Transco in this record from what you have heard
8 that there are sufficient safety measures?

9 MR. McGRATH: I think they've
10 attempted to outline the safety measures. I
11 think they've outlined them fairly well. I think
12 the board could be a little more specific in the
13 certain areas with conditions as part of any
14 approval if they so want.

15 MR. MUHLSTOCK: How does the
16 board -- I'm sorry.

17 MR. McGRATH: Mr. Mayo's thought to
18 go back to PHMSA is a good idea. Anything you
19 can get from them is going to be a bonus and
20 there might be something in there that you can
21 incorporate into the approval process that says
22 by the way PHMSA recommends, this three page
23 report dated June 21st, 1972, we want this
24 incorporated into what you're going to do.

25 There's a lot of stuff in the

1 hearings, there's a lot of stuff in the
2 testimony, there are open areas where you have to
3 recognize that decisions are going to have to be
4 made on an ongoing basis.

5 Before the developer starts any
6 works, he's going to have a developer's agreement
7 with the township. That developer's agreement
8 gives the township and my office the right to say
9 this isn't working, change it, this isn't
10 working, stop working until you show me how it
11 can work. That authority is incorporated into
12 the developer's agreement. It's standard for
13 every project that goes through the township and
14 gets approved by this board. And that gives us a
15 lot of flexibility after the fact.

16 I think the board should in fact put
17 a stipulation in there or a condition that says
18 we want to see this access agreement. You can
19 finalize it all you want but if it doesn't meet
20 our needs, we're not accepting it, any approval
21 is null and void. Okay?

22 I don't know that you can necessarily
23 have all of those hearings in front of the public
24 to come to a negotiation. But I think you can
25 make it very clear that the board reserves the

1 right to review that and say we agree with it
2 before they proceed. I think that's critical.

3 MR. MUHLSTOCK: Like prior to any
4 memorialization as we always do?

5 MR. McGRATH: I think -- I don't
6 think it makes a difference. If a condition is
7 that the board has the right to review that
8 before work starts, you got them, he can't pull a
9 permit. It's plain and simple. If the board
10 doesn't like it, then they have to go back and
11 renegotiate it. When the board likes it okay,
12 you pass that hurdle, now let's talk about
13 permits. I mean the burden has to be on the
14 applicant to comply.

15 MR. MUHLSTOCK: Mr. Ahto just asked
16 a question which I was getting to which is who is
17 going to draw up all of the safety concerns here?
18 Now, frankly, if the board were to vote in favor,
19 I mean, I could go through the record and I could
20 go through all the reports that have been
21 furnished and the testimony. I wouldn't feel
22 comfortable. I could work with you but I would
23 like the input.

24 MR. McGRATH: I don't have a problem
25 giving you input on it.

1 MR. MUHLSTOCK: To get every single
2 possible, conceivable safety measure into any
3 resolution as a condition.

4 MS. LYNCH: They probably somewhere
5 exist as standards and to some sense as Rick was
6 just saying it's going to be the onus on the
7 applicant to demonstrate how they're going to
8 comply with all those standards.

9 THE CHAIRMAN: That's one of the
10 reasons I suggested PHMSA as well.

11 MS. LYNCH: Exactly.

12 MR. McGRATH: You want to see what
13 the standards are. I think you can incorporate
14 Transco's excavation standards which you have
15 already gotten as a matter of record in there.
16 So you got to comply with these and any updated
17 version if they come out with a new one tomorrow.

18 MR. MUHLSTOCK: That's only as a
19 minimum.

20 MR. McGRATH: That's a minimum,
21 absolutely.

22 MR. MUHLSTOCK: We would want to
23 bolster those --

24 MR. McGRATH: I understand that.

25 MR. MUHLSTOCK: -- in any possible

1 way we could.

2 MR. McGRATH: To the extent that the
3 board is considering going back to PHMSA, I would
4 suggest that you and I then have the opportunity
5 to discuss this and perhaps come up with a list
6 and review it with the board.

7 THE CHAIRMAN: That's sounds --

8 MR. McGRATH: If one of the board
9 members say hey, I got this, we can add it.

10 MR. AHTO: Can we get a report?
11 Where do we get a report from somebody on safety
12 requirements?

13 MR. McGRATH: I don't think you need
14 a report as much as you need a list that this is
15 what, this, this, this, this, spell it out and
16 make it part of the approval process if in fact
17 there is an approval.

18 MS. LYNCH: I was a little concerned
19 in the public comments tonight where they
20 basically said Transco had misrepresented their
21 discussions with local emergency management and
22 local emergency bodies. And that I think also
23 should be on the onus of the applicant to
24 represent in fact that they have consulted with
25 all of the pertinent agencies and bodies, whether

1 it's the fire department of the county emergency
2 management and all of those things. Because that
3 just -- that raised questions that were
4 purportedly --

5 THE CHAIRMAN: Troubling.

6 MS. LYNCH: -- troubling questions
7 which should be responded to.

8 MR. McGRATH: I will point out in
9 fairness to Transco there is a pipeline safety
10 seminar tonight. It's over. I was supposed to
11 go, I'm here. Okay. They run them throughout
12 the state. The one tonight I think was in
13 Kenilworth.

14 THE CHAIRMAN: Okay.

15 MR. McGRATH: They run them several
16 times a year. There's another one in Parsippany
17 in a month. They do invite -- I get invitations
18 as the municipal engineer, okay. The pipeline is
19 North Bergen, my office is the municipal
20 engineer, we get the invitation. So they do make
21 at least some information that I know of
22 available out there. And it isn't just Transco.
23 They bring in all the major pipeline guys
24 throughout the state and they bring them into
25 this meeting and they give out paper with guy's

1 names, emergency numbers, how to, whatnot to,
2 call the, you know, the 811 number, all that
3 stuff is given out. I never leave that meeting
4 without a bag full of stuff because they generate
5 a lot of information and I try to get it every
6 year because I want it kept current. I get eight
7 pipeline companies I have no interest in. There
8 are actually two pipeline companies in North
9 Bergen. No one knows who the second one is. I
10 guarantee nobody here knows who it is. Okay.
11 But there is a second one. It's a very small
12 section of pipeline. It doesn't bother anybody
13 because it's way over on the west side of town
14 over in the Meadowlands but it does exist. Okay.
15 I know that because I'm supposed to know that.
16 Okay. The average person has no clue what's
17 under the street.

18 MR. AHTO: Are you waiting for us to
19 ask you --

20 MR. McGRATH: You'll have to shoot
21 me first.

22 THE CHAIRMAN: Okay. I think where
23 we are because I do want you to pursue the PHMSA
24 question, let's --

25 MR. MUHLSTOCK: Also, Mr. Baselice

1 had indicated something that he might want to ask
2 the board members to take one last look at the
3 property --

4 THE CHAIRMAN: Oh, yes.

5 MR. MUHLSTOCK: -- see exactly
6 what's there. I don't know when the last time
7 everybody has been there or if they ever have.

8 MR. BASELICE: I'm visual. And
9 looking at it and looking at everything that's
10 been given to us, even some exhibit that was
11 given to us by Transco where the line runs, I
12 suggest that we take a look. I have been by
13 there a couple times. I can't get in. I have
14 walked the site, Mr. Alampi like you have, just
15 along the MUA site but I think from looking at it
16 from River Road, the slope that we keep talking
17 about the stability, et cetera, I believe being
18 there and people seeing that --

19 MR. ALAMPI: You need to.

20 MR. BASELICE: You need to.

21 MR. ALAMPI: We have recently
22 cleared out vegetation and such so it's easier to
23 see the terrain yourself. And we'll make it
24 available, just a couple of hours' notice and you
25 don't all have to go at the same time, we'll just

1 unlock the gate and allow you to be escorted.
2 And if you feel like you want to walk up the back
3 area, it's easily and readily doable. I did it
4 in a business suit yesterday.

5 THE CHAIRMAN: All right. Maybe if
6 you would give Gerry a contact number.

7 MR. ALAMPI: They know, just call me
8 and I'll make the arrangements through the
9 Spoletti family. We're actively working in the
10 immediate area in Cliffside, Fairview, so we can
11 give you access readily.

12 THE CHAIRMAN: Okay.

13 MR. ALAMPI: We gave the geologist
14 access over the summer. It really is not
15 difficult at all to walk the area at all. You
16 don't want to climb to the ridge but you can
17 visual -- you can see it, you'll be within 40
18 feet of the area.

19 MR. BASELICE: Other applicants
20 before us we can pretty much drive there, it's
21 somewhat on the street, it's a lot. In this case
22 it's something that there are a lot of --

23 MR. ALAMPI: Yesterday I was in the
24 Galaxy garage and the security man was a little
25 concerned that I was walking around there and I

1 was looking at the wall construction and all and
2 everything that Jeremy was showing in the
3 photographs. I wanted to see it myself. It's
4 readily available.

5 MR. AHTO: Can we get access like on
6 a weekends?

7 MR. ALAMPI: Yes.

8 MR. AHTO: Okay.

9 MR. ALAMPI: Except Sundays we
10 usually have spaghetti in the afternoon a little
11 too much wine, so Saturdays are easier.

12 MR. LAMB: I'd also like to know
13 when that's going to happen.

14 MR. ALAMPI: You can come, John.

15 MR. LAMB: I'll tag along with
16 somebody.

17 MR. ALAMPI: No, no, John can come.

18 MR. LAMB: Carmine, can come too.

19 MR. AHTO: Do you want to tag along
20 for the spaghetti dinner?

21 MR. LAMB: Absolutely.

22 MR. BASELICE: Do you want to be on
23 a cliff with any of us?

24 MR. ALAMPI: No, but Mr. Lamb and
25 such I think if you see it, you'll feel you can

1 pull all the testimony together.

2 THE CHAIRMAN: Okay. All right.

3 MR. BASELICE: That's being the
4 reason -- the reason is looking at your pictures,
5 I'm seeing something different than what I have
6 been visualizing from the plans. And I've been
7 there but I can't get close enough to see what
8 you have on your pictures. I'd like to take a
9 look at that.

10 THE CHAIRMAN: Okay. Next hearing
11 on this then will be -- wait a minute.

12 MR. MUHLSTOCK: Give me time.

13 MR. ALAMPI: Well, Chairman, I would
14 suggest the following: We thought we might
15 conclude tonight but you want to make that
16 contact with PHMSA and some follow up.

17 THE CHAIRMAN: Right.

18 MR. ALAMPI: So there's really no
19 reason to try to have a meeting in let's say the
20 next two, three weeks. We'll make the site
21 available, you can have on-site walking tour of
22 the property and make that contact. So if you
23 think late November is appropriate, we'll pick a
24 date.

25 THE CHAIRMAN: What I'm thinking of

1 is perhaps at least touching on it at the next --
2 at the December regular meeting.

3 MR. ALAMPI: Even then, even the
4 December regular meeting because you want a
5 little lead time for these correspondences and my
6 only suggestion --

7 THE CHAIRMAN: And we'll know where
8 we're going.

9 MR. ALAMPI: -- is the next week the
10 weather is supposed to be spectacular, so I
11 suggest you get out there.

12 MR. MUHLSTOCK: I'm also going to I
13 believe Mr. McClelland indicating a lot of people
14 said it on the failure to contact the first
15 responders, maybe it would be helpful for me to
16 contact on behalf of the board the first
17 responders, see if they have any --

18 THE CHAIRMAN: I think that would be
19 --

20 MR. MUHLSTOCK: -- input.

21 THE CHAIRMAN: Yeah.

22 MR. MUHLSTOCK: I'll also take Ms.
23 Gesualdi's suggestion. You said there's some
24 sort of Homeland Security hearings?

25 MS. GESUALDI: No, the applicant and

1 the town are meeting with them.

2 MR. ALAMPI: Homeland Security is
3 advisory. We voluntarily have agreed with the
4 Township of Guttenberg we've attended the meeting
5 and there's a second just to see if Homeland
6 Security, they're actually operating through the
7 Board of Public Utilities, so we did agree to
8 participate in that type of conference.

9 MR. MUHLSTOCK: Do you think
10 anything is going to come out of that conference
11 that would have direct application --

12 MR. ALAMPI: No, I think what
13 they're really concerned about is, for example,
14 you have a garage that's open to the public and
15 the residents, so they talk about things like
16 people that would bring an explosive onto the
17 site. But then again you could do that across
18 the street where the valves are. So we did agree
19 that we would consider if they had a
20 recommendation, that we would address it. So
21 we've been participating in those conferences.

22 MS. GESUALDI: That was part of the
23 original resolution and also part of the county
24 resolution.

25 MR. ALAMPI: Yes, yes. And so we

1 have been fulfilling the terms of your 2011
2 resolution. Some of those conditions, we've gone
3 ahead with those because we did agree and you did
4 order us to participate.

5 THE CHAIRMAN: Okay. Gerry,
6 December meeting?

7 THE CLERK: 4th.

8 THE CHAIRMAN: The 4th. Okay, so
9 the next hearing on this will be the regular
10 December 4th meeting, December 4th, 7 p.m. in
11 these chambers. Okay. And obviously at that
12 point we'll have more to say in terms of what we
13 found out.

14 With that, the Chair will entertain
15 a motion for adjustment.

16 MR. AHTO: Motion.

17 MR. BASELICE: Second.

18 THE CHAIRMAN: All right. Moved and
19 seconded, all in favor?

20 (Chorus of ayes.)

21 THE CHAIRMAN: Opposed?

22 (No response.)

23 THE CHAIRMAN: Meeting stands
24 adjourned.

(Time noted: 11:12 p.m.)

CERTIFICATE

I, CELESTE A. GALBO, a Certified Court Reporter and Notary Public within and for the State of New Jersey do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcription of the testimony as taken stenographically by and before me on the date, time and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative, employee, attorney, nor counsel to any parties involved; that I am neither related to nor employed by any such attorney or counsel; and that I am not financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this 9th day of November 2012.

CELESTE A. GALBO, CCR, RPR, RMR
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