

1 FAIR LAWN ZONING BOARD OF ADJUSTMENT
Municipal Building
2 8-01 Fair Lawn Avenue
Fair Lawn, New Jersey
3 _____

4 In the Matter of:

5 McDONALD'S RESTAURANT
37-01 Broadway,
6 Block 2320, Lots 10, 11 & 12
7 _____

7

8 April 23, 2007

9 B E F O R E:

10 SCOTT LEVY, Chairperson
DOUG CHARIPPER, (absent)
11 JOSEPH MEER, Secretary
TODD NEWMAN, (arrived @ 7:45 pm)
12 JOHN NAKASHIAN, Member
SY KARAS, Member (recused)
13 JANE SPINDEL, Member (recused)
BENNY SALERNO, Alt #1
14 GARY SACCHINELLI, Alt #2
MARVIN DINER, Alt #3
15 BRIAN BLECHER, Alt #4
MARK KATARYNIAK, P.E.
16 ANN PECK, ASST. ZONING OFFICER
CAROL LoPICCOLO, Board Clerk
17 BRUCE ROSENBERG, Board Attorney

18

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20 _____

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KAREN GAGLIARDOTTO KOCSIS

Certified Court Reporter

24

8 Stevens Avenue

Kinnelon, New Jersey 07405

25

Phone (973) 283-2587 Fax (973) 283-2680

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1 A P P E A R A N C E S:

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LOWENSEIN SANDLER, PC

BY: JOSEPH STEINBERG, ESQ.,

3

65 Livingston Avenue

Roseland, New Jersey 07068

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For the Applicant

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1 INDEX

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 KENNETH FEARS, P.E.

4 BY: MR. STEINBERG 18

5

6

EXHIBITS

7

8 NUMBER DESCRIPTION PAGE

9 A-4 Site plan (Sheet 2 of 3) 22

10 A-5 Site plan details 25

11

12

13

14

15

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1 THE CHAIRMAN: Karas recused himself and,

2 therefore, is not present.

3 MR. MEER: Mr. Nakashian.

4 MR. NAKASHIAN: Here.

5 MR. MEER: Mr. Newman is absent.

6 Jane Spindel has recused herself,

7 and, therefore, is not present.

8 Mr. Chariper, is absent.

9 Mr. Salerno.

10 MR. SALERNO: Here.

11 MR. MEER: Mr. Sacchinelli.

12 MR. SACCHINELLI: Here.

13 MR. MEER: Mr. Diner.

14 MR. DINER: Here.

15 MR. MEER: Mr. Blecher.

16 MR. BLECHER: Here.

17 MR. MEER: Mr. Meer, here.

18 And Mr. Levy.

19 THE CHAIRMAN: Present.

20 MR. MEER: We have a quorum. All four

21 alternates will be voting.

22 THE CHAIRMAN: Let me state this first: The

23 two alternates, Mr. Blecher and Mr. Diner, were not

24 here last year; right? So you'll become familiar

25 with the process and with the application tonight.

5

1 In order to carry on, you will have

2 to read the transcripts to find out what happened

3 last year. We have seven members now, for voting.

4 The only thing is, I want -- Brian,

5 you were here. Marvin was not here.

6 Did you read the transcripts?

7 MR. DINER: I read the transcripts.

8 THE CHAIRMAN: You have. And you went
9 through it?

10 MR. DINER: Yes.

11 THE CHAIRMAN: You need to sign an affidavit
12 that you did.

13 Also before we start, I have
14 submittals of estimates of board professionals upon
15 tonight's meeting and for review of any items that
16 come in for the applicant. We have Azzolina and
17 Fuery up to \$1,000. Taylor Design Group, up to
18 \$1,700. Birdsell Engineering \$1,400.

19 I need a motion to accept these
20 estimates.

21 MR. DINER: Motion.

22 MR. BLECHER: Second.

23 THE CHAIRMAN: All in favor?

24 ALL: Aye.

25 THE CHAIRMAN: Done.

1 Before we begin, also -- because I

2 want to get to housecleaning and we're not going to
3 get to the housecleaning tonight --

4 (Off the record.)

5 THE CHAIRMAN: Now that the housecleaning is
6 done.

7 I'm going to set some guidelines
8 here. The first thing is, I want everybody to turn
9 off their cell phones, their beepers, their ipods
10 and whatever they have. Either shut them off or put
11 them on vibrate.

12 I will not tolerate any outbursts.
13 Those of you who feel the need to scream and yell, I
14 will ask you to leave the meeting room. If not,
15 then I will have you escorted out. So any outbursts
16 will not be tolerated.

17 I will have the applicant present
18 their case. I will have them present their
19 professionals first, and then I will have our
20 professionals describe or have any comments from
21 their point of view. And then I will have from each
22 professional the applicants puts on, I will have the
23 objectors, we call it, ask questions, cross-examine
24 the professionals after each one of them presents.

25 Now, that's all done and taken care

7

1 of.

2 Counsel.

3 MR. STEINBERG: Thank you, Mr. Chairman and
4 members of the Board. My name is Joseph Steinberg.
5 The firm is Lowenstein Sandler in Roseland. I'd
6 like to take a moment for some preliminary remarks.

7 This case has long legs. Those of
8 you who have been part of it since the beginning,
9 you know that it's been around a long time. The
10 matter was presented to this Board in the year --
11 and these remarks are meant in part to bring people
12 in the audience that may not be familiar with the
13 history of the case. And I know there are a couple
14 of new Board members.

15 This case was first brought in the
16 year 2000, I believe '3, and the original
17 application was to permit the applicant to put in a
18 driveway through. That matter was heard over an
19 extended period of time, by this Board, which in its
20 wisdom, denied the application.

21 The matter was then appealed to the
22 courts, and in -- I believe it was 2005, the
23 Appellate Division not only reversed this Board, but
24 it took a very unusual step in one that I don't
25 think I have ever seen in the 47 years I've been

8

1 practicing law in this field. It directed that the
2 site plan, which had been presented to this Board,
3 be approved by the Board. It did not remand the
4 matter to the Board. It directed that the site plan
5 be approved.

6 The site plan was then implemented by
7 the applicant who began shortly after the
8 construction was completed to offer to the public a
9 drive-through facility, and that has continued to
10 this date.

11 (Todd Newman arrived at the meeting.)

12 MR. STEINBERG: I believe it was early 2006
13 an application was made to this Board to amend the
14 site plan that had been approved by the public.
15 Most of the changes that are sought by the applicant
16 are, to put it mildly, minor in nature, with one

17 exception, which we will deal with in the course of
18 the testimony.

19 The Board's attorney will direct the
20 Board with respect to legal issues, but I want the
21 record to be clear -- and it is kind of ironic, but
22 I teach this subject at Seton Hall Law School, and
23 the next-to-last meeting of the year is Wednesday of
24 this week. And we are dealing on Wednesday with
25 site plans, in the seminar.

9

1 And the case that I want to mention
2 here, which I believe there is pretty much unanimity
3 of practitioners around the state that governors
4 what will happen here tonight, there's a case called
5 Pizomantin Group versus Randolph Township, which was
6 decided by the Appellate Division of the Superior
7 Court in 1993 and was affirmed by the New Jersey
8 Supreme Court in 1994.

9 And in a word, what that case holds,
10 and it is good law today, unchallenged in the 13
11 years since it was decided by the Supreme Court,
12 that a Board, planning board or board of adjustment,

13 has no discretion to reject a site plan or a
14 subdivision if the site plan or subdivision complies
15 in all respects to the site, ordinance, and the
16 zoning ordinance. That's the holding of the highest
17 court of this state.

18 This application tonight is a fully
19 conforming application. We seek not one single
20 balance. We will have one witness and one witness
21 only. That witness will not, and I will stress it
22 again, not discuss any legal issues, but will talk
23 only about engineering issues. He is the same
24 witness who appeared before this Board last year.
25 And just so you can follow along very easily, what I

10

1 propose to do with this witness is simply to have
2 him figuratively go around the site, starting with
3 the westerly entrance to the site on Route 4, and
4 literally circle the site and point out to the Board
5 members every change that we see.

6 We will not, because we think it is
7 simply confusing, talk distinguished between what's
8 there today and what we are seeking. I think what's

9 there today is irrelevant.

10 THE CHAIRMAN: Counsel, are you going to
11 explain and describe what is part of the original
12 site plan approval and what is there today?

13 MR. STEINBERG: No. Because I think what is
14 there today -- I'll repeat myself: Is not relevant.

15 What was approved is relevant and what we seek to
16 change. What we want approved is relevant.

17 Whatever is there that is not part of what we're
18 asking for, we will remove. Very simple.

19 THE CHAIRMAN: Will you concede that items
20 that are there today were added after the site plan
21 has been approved?

22 MR. STEINBERG: Some. Yes. Sure. And some
23 that were added, we seek this Board to approve.

24 Just because we've had a 14-month,
25 roughly, gap here, a 13-month gap, I think it makes

11

1 sense for us to proceed -- excuse me -- from the
2 beginning, that is to say, we will go around the
3 site, we will show you -- we have, by the way,
4 submitted as part of our package, a -- one of the

5 drawings that does show what's there today. But
6 again, I don't think that's relevant.

7 What's relevant is, "What are we
8 asking." That's what the Board should be focused
9 on. What are we asking.

10 Now, I think the one and only thing
11 that I will skip, unless the Chairman would like me,
12 for the benefit of the two Board members who are new
13 to this Board, what I propose not to do again is to
14 qualify the witness.

15 This witness appeared back in 2003.
16 He was qualified again as a traffic engineer, as a
17 licensed professional engineer, specializing in
18 traffic. And if you want me to go through, again,
19 his background, his education and all the rest,
20 we're prepared to do that. But in the interest of
21 keeping this moving and keeping it simple, unless
22 you see a reason to do that, I don't --

23 THE CHAIRMAN: Counsel, for the record, this
24 is a ongoing application. This is a continuation.
25 He's been qualified. He's been accepted as a

1 witness. He's testified before the zoning board
2 before. Just an introduction of who he is and just
3 his overall experience.

4 MR. STEINBERG: That's fine.

5 MR. SOUKAS: Mr. Chairman, if I may.

6 MR. STEINBERG: Yes. Please, Counselor.

7 MR. SOUKAS: Counsel, this matter has been
8 interrupted for a number of months now as a result
9 of a litigation that was filed before the Bergen
10 Superior Court.

11 I'd like to ask you how -- or if you
12 intend to address the decision of Judge Doyne in
13 connection with that action?

14 MR. STEINBERG: I want to be very frank with
15 you, Counsel. I believe that Judge Doyne was
16 incorrect in his opinion. We did not attempt to
17 take an appeal, because it was clear, at least in my
18 mind, that it was not a final decision, so we didn't
19 bother going to the Appellate Division.

20 Judge Doyne made a point in his
21 Opinion in which he says, that the fact that we
22 applied for amended site plan approval gave --
23 submitted us to the jurisdiction of this Board

24 insofar as a legal determination was concerned as to
25 the rights of the parties and to the applicant's

13

1 parking. That just can't be right.

2 The jurisdiction of this Board is
3 fixed by state law. The Municipal Land Use Law is
4 very clear what this Board may do and what this
5 Board may not do.

6 And so it is my intention to keep
7 this a clean hearing and to keep it focused, to the
8 extent that I can, on land use issues and on land
9 use issues only.

10 MR. SOUKAS: Counsel, did you anticipate any
11 testimony on behalf of the applicant relating to
12 prior resolutions, prior site plans along the latter
13 half of Judge Doyne's rules relating to the Board's
14 authorities to review its own resolutions and
15 doctrines?

16 MR. STEINBERG: The answer is not by way of
17 testimony. I heard the Chairman indicate tonight
18 that there are going to be -- now two of the members
19 sitting here are going to -- at least one of them --

20 has yet to listen to the tapes, so I assume there's
21 to be no decision.

22 We will address, by way of a letter
23 or brief to the Board, our position with respect to
24 prior decisions by this Board. Suffice to say
25 the -- and by the way, I did note that by -- if I

14

1 can just have a moment.

2 I looked at the Birdsall Engineering
3 report, again, with respect to April 3, 2006. And
4 on Page 2 of that report, the author of the report
5 refers to a, quote, "cross access was illustrated on
6 a December 6, 1982 site plan," end of quote.

7 We have inquired on more than one
8 occasion of the municipal government and the
9 secretary of this Board seeking all site plans in
10 the file. We have never been provided with one
11 dated December 6, 1982. And if there is such a site
12 plan, and apparently Mr. Kataryniak believes that
13 there is one, I'd like to see it. Because we've
14 asked for it on several occasions. We've asked for
15 all site plans.

16 I would say very clearly, that the
17 site plans we have seen, including the September
18 1982 site plan, shows this access with arrows going
19 from the east to the west, period.

20 THE CHAIRMAN: Which site plan?

21 MR. STEINBERG: September 6, 1982.

22 I will tell you that there is a
23 letter in the file, in your file, from the attorney
24 for the applicant in 1982. The letter was actually
25 dated January 3, 1983 in which that attorney

15

1 representing the applicant says, quote, "This to
2 confirm a representation." A representation that
3 was made at the hearing on the site plan. And he
4 says, "This will confirm the representation that so
5 long as McDonald's Corporation is a tenant of Lots
6 11 and 12" -- that's the property that is the
7 subject matter of this hearing -- "and is in a
8 position to control that access, the tenant is
9 committed to permitting the access to Lot 12 -- that
10 is the McDonald's lot by traffic exiting from Lot 3
11 through the common boundary line at the northeast

12 corner where the exit has been utilized for some
13 years past."

14 So there apparently was no -- and I
15 have a copy, by the way, of that letter right here,
16 for those of you, Counsel, if you don't have a copy,
17 we have a copy here.

18 THE CHAIRMAN: Thank you.

19 MR. STEINBERG: So, there was no confusion in
20 1982 and there was no confusion in 2003 that a
21 driveway was supposed to be an exit, period.

22 And in fact, it was widened in 2003
23 to provide a better site line in connection with
24 some work that was done immediately to the north.

25 THE CHAIRMAN: Counsel, the 2003 letter

16

1 describes what plan?

2 MR. STEINBERG: The letter I read from was he
3 letter of December 15, 1982, the original site
4 plan --

5 THE CHAIRMAN: Okay.

6 MR. STEINBERG: -- for this property, signed
7 by Alfred S. Nugent to this Board, to the Zoning

8 Board of Adjustment confirming what his client had
9 agreed to at the meeting. And he so states.

10 THE CHAIRMAN: And then there was also a plan
11 of 2001, March 2001, and I guess revised in July of
12 2001, that indicates a 20-foot wide opening.

13 Was there any comment or discussion
14 on the use of that area from the 2001 plan?

15 MR. STEINBERG: Where?

16 THE CHAIRMAN: Between Lot 2 and your Lot.

17 MR. STEINBERG: When you say is there any
18 discussion, between who and for?

19 THE CHAIRMAN: Any Board meetings.

20 MR. STEINBERG: The site plan that was
21 approved by the Appellate Division did not show how
22 it was going to be -- there was no change.

23 THE CHAIRMAN: But the 2001 site plan doesn't
24 show any hours.

25 MR. STEINBERG: That's what I said.

17

1 THE CHAIRMAN: I'm sorry.

2 MR. STEINBERG: Okay. I think that by the
3 kind of -- the situation is I think pretty clear to

4 me. The Board has a site plan that I would consider
5 a fairly minor site plan amendment application in
6 front of it. It's conforming. No variances. And
7 the Board has to make a decision if you're going to
8 approve it or you're not going to approve it based
9 on the testimony. Keeping in mind the Pizomantin
10 case that I described.

11 By the way, although I'm sure that it
12 might not be of any great interest to any of you,
13 the Pizomantin case changed the law in New Jersey.
14 Pretty much understood prior to that time that
15 general reviews of the public good and all the rest
16 as set forth in Section 3 of the Municipal Land Use
17 Law could be relied on by the Board to deny
18 conforming application, but Pizomantin changed all
19 that.

20 We're ready to proceed.

21 THE CHAIRMAN: Counsel just reminded me about
22 the letter that you want to submit.

23 MR. SOUKAS: The brief.

24 THE CHAIRMAN: The brief. If you can submit
25 that to the Board.

1 MR. STEINBERG: We will. As I said, I'm
2 making an assumption based on your comments,
3 Mr. Chairman, that there be no vote tonight, and we
4 will submit a written memorandum that deals with
5 that issue.

6 If you like, I'll proceed with my --

7 THE CHAIRMAN: Just give me one minute.

8 MR. STEINBERG: Are you going work from here?

9 MR. FEARS: Yes.

10 MR. STEINBERG: Fine. Just for the record,
11 the witness is Mr. Kenneth Fears.

12 Mr. Fears, you understand that you
13 have been --

14 THE WITNESS: Yes.

15 K E N N E T H F E A R S, P.E., as previously sworn
16 testifies as follows:

17 MR. STEINBERG: Mr. Fears, you want to sit
18 here?

19 THE WITNESS: Yeah.

20 MR. STEINBERG: Mr. Fears, you have been
21 previously sworn in this case and have previously
22 testified. I want to remind you that you are still

23 under oath.

24 THE WITNESS: Yes.

25 DIRECT EXAMINATION BY MR. STEINBERG:

19

1 Q And just for the record, you remain a
2 licensed engineer in the State of New Jersey?

3 A Yes. And certified by the Institute
4 of Transportation Engineers as a professional
5 traffic operations engineer. At this point, 36
6 years of experience in the field.

7 Q And your engineering license and your
8 certification are both in good standing?

9 A Yes, they are.

10 Q Mr. Fears, I'm not going to lead you
11 through tedious questioning here.

12 You are fully familiar with the
13 drawings that have been submitted to the Board?

14 A Yes, I am.

15 Q You are the witness who testified in
16 the original application by this particular
17 application before this Board, approximately four or
18 five years ago; is that correct?

19 A Yes.

20 Q And have you, in connection with
21 preparation for your testimony this evening and your
22 input into the plan, which is Sheet No. 2 dated
23 3/2/06, from Dynamic Engineering Consultants, PC,
24 have you visited the site to familiarize yourself
25 with the current conditions on the site?

20

1 A Yes.

2 Q All right. Why don't you just take
3 the Board members through the site, beginning at the
4 entrance to the site, which is the westerly driveway
5 on drawing No. 2 and go around to the site, taking
6 care to indicate, if you would, which of the various
7 signage and/or installations that appear on
8 drawing -- Sheet No. 2, are new, and which we are
9 asking for approval?

10 MR. SOUKAS: Counselor, I'm sorry. Has this
11 document been previously marked?

12 MR. STEINBERG: It's the same as -- has been
13 submitted, but if you want us to mark it, we will.

14 THE CHAIRMAN: The original one was marked, I

15 believe, A-2, 3/7/07; is that correct?

16 MR. STEINBERG: Say that again.

17 THE CHAIRMAN: I have a plan that was marked
18 A-2, 3/7, it's from Dynamic Engineering site plan,
19 one of two.

20 MR. STEINBERG: No. That's not what we have
21 submitted for this hearing.

22 THE CHAIRMAN: You have a new one. That's
23 overall site plan.

24 MS. LoPICCOLO: Scott, the one March 2nd of
25 '06 was marked A-2.

21

1 THE CHAIRMAN: Sorry.

2 MR. STEINBERG: You want me to mark it with
3 tonight's date?

4 THE CHAIRMAN: Please.

5 MR. STEINBERG: And it's Exhibit --

6 THE CHAIRMAN: I think we had four exhibits
7 last time.

8 MS. LoPICCOLO: No. I'm saying it's already
9 marked, though, as Exhibit A-2.

10 THE CHAIRMAN: This overall site plan.

11 MS. LoPICCOLO: Which one, though?

12 THE CHAIRMAN: This new one?

13 THE WITNESS: Let's make sure the record is
14 clear.

15 The one that's up on the board was
16 filed with the Board about two weeks ago. It is
17 dated 3/2/06. And this is Sheet No. 2 of 3. That's
18 what is up on the board.

19 THE CHAIRMAN: And revision date 4/3/07.

20 THE WITNESS: That's correct.

21 THE CHAIRMAN: You want me to mark that with
22 today's date as a what?

23 MS. LoPICCOLO: A-3.

24 THE CHAIRMAN: A-3

25 MR. SOUKAS: We had A-3 last time.

22

1 THE CHAIRMAN: Counsel, mark this as A-4.

2 (Site Plan (Sheet 2 of 3) received
3 and marked as A-4 for identification.)

4 BY MR. STEINBERG:

5 Q Okay. Mr. Fears, do you want to take
6 us around the site?

7 A Certainly. To orient the Board, if
8 you refer to Exhibit A-4, it shows 37th Street on
9 the left-hand side of the paper. It shows Route 4
10 on the bottom of the paper. And centrally located
11 on the site is the McDonald's building. The
12 entrance to the site is to the lower left of the
13 McDonald's building.

14 The drive-through circulates in a
15 clockwise direction around the rear of the building.
16 The exit from the site is lower right relative to
17 the rest stop. And the adjoining property, IHOP,
18 would be further to the right (indicating.)

19 The intent of this plan is to
20 establish the signing that's proposed for this
21 facility. When you enter the site from Route 4, the
22 first few signs that you see is one to the left of
23 the driveway and one to the right of the driveway.
24 They are labeled on this plan as signs P and O.

25 And if you look in the upper

23

1 right-hand corner, you will see that that is the
2 legend that explains what these signs are. Sign P

3 says "No IHOP Entrance" and it's posted. Sign O
4 says "No through traffic to IHOP," that's also
5 posted on it (indicating.)

6 The intent of these two signs is for
7 an entering motorist, whether their eyes are
8 oriented for the left or toward the right of the
9 driveway, they will have the sign that is visible or
10 perceivable by them as they enter the site.

11 The remaining signs that are there,
12 V, W, and U. The sign U is the McDonald's entrance.
13 Sign, V and W are traffic within the site, to make
14 it clear that they are not to exit to Route 4 from
15 this location. Sign V, "No exit" sign. Sign W. Is
16 "Wrong Way" sign.

17 As you move into the site, further to
18 your left and right, bordering the site are two sets
19 of signs, the ones on the left are post-mounted
20 signs labeled A-1. The ones on the right are
21 labeled A. These are not traffic controlled or
22 movement control signs. They are there to notify
23 people that the parking spaces are for McDonald's
24 customers only and they are labeled in the upper
25 right hand corner.

1 As you move into the site and
2 approach the driveway through area, motorists reach
3 the first point where decision needs to be made in
4 the site and as they move through the driveway
5 through lane itself, we have proposed two signs.
6 Sign N on the left and sign D on the right and sign
7 N states drive-through keep left. Sign D states
8 parking and exit keep right.

9 As you continue into the site, there
10 is island that divides the drive-through from the
11 parking and we have utilized a sign on that island,
12 sign G, to clarify that movement at that point. It
13 states drive-through with an arrow to the left and
14 parking and exit with an arrow to the right and if
15 you look at lower board, you probably need to mark
16 that.

17 MR. STEINBERG: Finish your sentence.

18 A Sheet three within your plans is a
19 site detail that shows us for, mounting, size,
20 legend and so forth for the various signs. And it's
21 titled "Sign details by Dynamic Engineering," with a

22 revision date of 4/3/07.

23 MR. STEINBERG: I'm going to mark that as,
24 Mr. Chairman, I guess that will be A-5 with today's
25 date.

25

1 (Sign details received and marked as

2 A-5 for identification.)

3 THE CHAIRMAN: Yes.

4 A In the center A-5, is a detail that
5 shows the arrows that I've testified to. The intent
6 of that sign is to minimize the amount of signing
7 while conveying the essential message to the
8 motorist to clarify where they are to move and how
9 they are to proceed through the site.

10 Continuing through the drive-through
11 portion of the site, the next signing that you reach
12 are two stop signs bracketing each side of the
13 drive-through adjacent to the point where you place
14 your order.

15 As you move pass that point, there is
16 a clarification sign on the point that separates the
17 drive-through from the through traffic and that is

18 labeled sign J states: drive-through only and exit
19 each with arrows. The drive-through only to the
20 right exit to the left.

21 To clarify for anybody moving from
22 the parking Lot or from the drive-through, for both
23 of those customers where they are to go.

24 As you move into the drive-through,
25 there is a sign that there is a typo on the plan.

26

1 There is presently a stop sign on the right hand
2 side of the drive-through as you leave the
3 drive-through to enter the principal north/south
4 aisle.

5 That sign was noted to be removed and
6 it should be noted to remain. I apologize for that
7 typo. It's the only one that I've been able to find
8 on the plan.

9 THE CHAIRMAN: Where? Point that out again.

10 THE WITNESS: Sure. It is to the right of
11 the drive-through where the drive-through meets the
12 aisle. That site is currently on the site. I
13 propose that it should be remain on the site.

14 MR. STEINBERG: Mr. Chairman, may I make a
15 suggestion, just so we have the exit complete. Is
16 that we bring it over here and I think you would
17 actually draw it in.

18 THE WITNESS: I will mark it up there so
19 everybody can see.

20 THE CHAIRMAN: I'll mark it on there. Mark
21 on there and initial that with today's date.

22 To go on, the clarification to my own
23 understanding, there was an drawing submitted 3/7/06
24 and marked as an A-1 exhibit. Site plan signage one
25 of one. Would that be noted as letter M?

27

1 THE WITNESS: Yes.

2 THE CHAIRMAN: On that plan?

3 THE WITNESS: Yes.

4 THE CHAIRMAN: And that will say stop sign
5 post-mounted and sharp right turn?

6 THE WITNESS: Drive-through exit is a second
7 sign.

8 THE CHAIRMAN: I'm referring to the stop
9 sign.

10 THE WITNESS: Yes.

11 THE CHAIRMAN: The end of the stop sign?

12 THE WITNESS: Yes.

13 BY MR. STEINBERG:

14 Q Just so the record is clear, you've

15 drawn it on A-4; is that correct?

16 A Yes, I have.

17 Q You put your initials next to it?

18 A I put the date next to it. I didn't

19 put my initials next to it, just my initials.

20 Q Again, Mr. Fears, just so the record

21 is clear, that is existing stop sign on the site and

22 you propose to leave on it site?

23 A That's correct.

24 Q Continue please.

25 A As you're leaving the drive-through

28

1 to your left is sign "I" and that says no left turn.

2 It's a symbol sign. And the intent, again to

3 clarify vehicle movement.

4 The priority goes to the stop sign so

5 it is to the driver's right. If they are

6 considering turning left, going left, they should be
7 looking at the no-left turn sign. So they get
8 notice of that.

9 The motorist then is going to be
10 either the motorist whose is parking or the person
11 who is leaving the drive-through that moves through
12 towards the exit of the site.

13 As they do this, they will be
14 presented with two signs that bracket the driveway
15 coming from IHOP to McDonald's. They are signs F
16 and they say "Do not enter." A very simple separate
17 forward road sign.

18 Further to the right is sign E. And
19 that states "Exit" with an arrow again for
20 clarification of message.

21 As you move through the exit aisle to
22 your -- at the end of the parking spaces, are
23 additional signs A-1, post-mounted indicating that
24 the parking is for McDonald's use only. We also
25 have two handicapped signs there in conformance with

2 As you reach the end of the driveway,
3 you have signed "T" that indicates McDonald's exit
4 and we are proposing signs "I" and "S" and sign "S"
5 is a one way arrow sign. And sign "I" is a no left
6 turn symbol sign.

7 And the only remaining signage that
8 we are proposing, as part of this package, is if you
9 are leaving IHOP property to the left the driveway
10 is sign R that says left turn only to direct
11 motorists leaving IHOP to go out of the driveway
12 toward Route 4.

13 That is the signing package that is
14 proposed. That is every sign that we believe should
15 be on the signs. Excuse me. I missed one.

16 On the lower left side of the
17 building is a handicapped sign in accordance with
18 state law. And that addresses the signing that we
19 are proposing for this.

20 The other traffic control that we are
21 proposing is an actuated gate that would control
22 movements between the McDonald's and IHOP sites.
23 The gate would be actuated from IHOP to McDonald's.
24 The gate will raise and left a vehicle go through

25 efficiently.

30

1 The gate will have a key system on
2 it, depending upon the preference of your emergency
3 services, so that if they needed access to IHOP from
4 the McDonald's site, they will be able to raise that
5 gate.

6 If someone tries to move from the
7 McDonald's Lot into the IHOP site, the gate does not
8 raise. There is no activation on that site. So
9 that is intended to take the place of the plastic
10 barricades that you see out there now that
11 channelize the flow from the IHOP towards the left
12 and then restrict the movement of from McDonald's
13 into the IHOP.

14 THE CHAIRMAN: Mr. Fears, those barriers were
15 not apart of the original approved site plan?

16 THE WITNESS: Not as far as I know.

17 MR. STEINBERG: Right.

18 THE CHAIRMAN: And they were placed there
19 afterwards without any approval?

20 MR. STEINBERG: They were placed there after

21 the applicant started the use of the drive-through.

22 After the drive-through was completed.

23 THE CHAIRMAN: Right. After it was

24 completed, but it was not approved for that site

25 plan.

31

1 MR. STEINBERG: That's correct.

2 THE CHAIRMAN: Okay.

3 MR. NAKASHIAN: You discussed it right now

4 just was the traffic. I stopped there yesterday and

5 I --

6 THE CHAIRMAN: Hold it.

7 MR. NAKASHIAN: I saw many signs. It was

8 like 4 feet high.

9 THE WITNESS: The many signs for

10 drive-through is, as part of the order system, that

11 is to remain. These are traffic control signs.

12 These are not the signing package for -- how do I

13 say it -- for McDonald's products. That is strictly

14 traffic control either in the form of vehicle

15 movements or in the form of parking.

16 And I apologize I missed one other.

17 Adjacent to the 37th Street driveway, sign B, which
18 is the symbol sign indicating no right turn.

19 THE CHAIRMAN: So the signs you just
20 enumerated were placed after the original site plan
21 approval.

22 THE WITNESS: Many of these signs are not
23 there at this time. Some of them are. The signs
24 that I have enumerated are the signs that I believe
25 are appropriate for the appropriate traffic control

32

1 and direction and guidance of motorists of this
2 site.

3 THE CHAIRMAN: I understand that. But are
4 they there now?

5 THE WITNESS: Some are. Some are not. At
6 the last time that I testified, I tried to walk the
7 board through what was there and being removed.
8 What was that there and staying. What was not there
9 and was going to be added and frankly, I think I
10 lost the Board. It became too confusing.

11 It was our intent tonight rather than
12 talk about things that would be removed, identify

13 the signs that we are proposing so that the Board
14 has a clear understanding of the sign package that
15 will be there upon approval if this Board so acts.

16 THE CHAIRMAN: Okay. Counsel, I will be a
17 little bit remiss if I didn't ask this question.

18 Items that were on-site now that were not part of
19 the original site plan approval, would they be
20 approved?

21 MR. STEINBERG: Yes. I mean this is the
22 package.

23 THE CHAIRMAN: This is the package.

24 MR. STEINBERG: What this witness has
25 testified to is the whole package. Nothing but the

33

1 package. All the package, nothing else. This is
2 it.

3 THE CHAIRMAN: I understand.

4 MR. STEINBERG: Everything on site that is
5 not shown on here with that one addition that he put
6 in, hand drew, everything will be removed other than
7 this.

8 THE CHAIRMAN: Those barriers. But should

9 the Board feel that certain of these signs are
10 required, depending upon the testimony, if that
11 should be the case; correct?

12 MR. STEINBERG: Well, I think the only thing
13 I can say with absolute certainty with this is, if
14 the application is approved by the Board, or if
15 there is a little tweeking of it, that is acceptable
16 to the applicant, then everything that is on the
17 site in the way of signage and traffic control will
18 be removed.

19 THE CHAIRMAN: You don't have those barriers
20 on this plan.

21 MR. STEINBERG: Correct. And there are other
22 signs on-site that we don't have on this plan. We
23 just wanted to present a clean application to the
24 Board. This is what we're seeking.

25 THE CHAIRMAN: I understand that. But things

34

1 are on that site were placed there without approval.

2 MR. STEINBERG: No question.

3 THE CHAIRMAN: And those will be removed?

4 MR. STEINBERG: If this plan is approved,

5 those will be removed.

6 THE CHAIRMAN: And the fence? Isn't there a
7 fence in the front?

8 MR. STEINBERG: That's a 3-foot fence that is
9 supposed to be 2 feet or something.

10 MS. PECK: It's 4 feet.

11 THE CHAIRMAN: It was never approved on the
12 original site plan.

13 MR. STEINBERG: I think for the purpose of
14 putting it in front of the Board, let us make a
15 verbal amendment to the site plan and say we're
16 seeking approval of that fence as it exists today.

17 THE CHAIRMAN: Again, it was put up without
18 approval.

19 MR. STEINBERG: Yes.

20 THE CHAIRMAN: You want to say something.

21 MS. PECK: On that fence, we're going to need
22 some testimony as to it not being on the site. The
23 triangle ordinance doesn't allow anything over
24 40 inches on the site, because of the driveways.

25 MR. STEINBERG: If it's approved and it's

1 over 30 inches, it will be reduced to 30 inches.

2 THE CHAIRMAN: I want to know why it was put
3 on site without an approval.

4 MR. STEINBERG: I can't answer that.

5 THE CHAIRMAN: Okay. Let's continue.

6 MR. STEINBERG: I have no further testimony
7 of this witness. So if the Board has questions, we
8 can move to that.

9 THE CHAIRMAN: Yes. Thank you.

10 Mr. Fears, you seem to have an over
11 abundance of signs at the entrance there. You
12 indicated that the signs are there if someone is
13 looking right or left. In your professional
14 opinion, what is the speed into that exit or that
15 entrance?

16 THE WITNESS: As you approach it, I don't
17 recall what the posted speed is, I observed, if the
18 light is green, you're looking at speeds on the
19 order of 40 miles an hour.

20 THE CHAIRMAN: Coming into the site?

21 THE WITNESS: No. The on roadways into the
22 site. When you make a turn into the site your
23 turning speed is approximately 15 miles per hour.

24 THE CHAIRMAN: Can you explain the traffic
25 patterns in that area?

36

1 THE WITNESS: Yes. There is a jug handle
2 across the rode with a green signal.

3 THE CHAIRMAN: You can move from the jug
4 handle into the site?

5 THE WITNESS: A right turn into the site.

6 THE CHAIRMAN: There is a traffic signal
7 there?

8 THE WITNESS: There is.

9 THE CHAIRMAN: And the speed coming into that
10 is at least 15 miles per hour?

11 THE WITNESS: Yes.

12 THE CHAIRMAN: Coming into that?

13 THE WITNESS: Yes.

14 THE CHAIRMAN: 15 miles her hour, what's the
15 view shed on that?

16 THE WITNESS: The letters on the two signs O
17 and P are fairly small. I think it's primarily
18 intended to be more a notice so we don't get repeat
19 traffic and repeat customers.

20 I think realistically if somebody was
21 thinking about entering the IHOP, if they are on
22 Route 4, they are going to turn into the IHOP
23 driveway, not the McDonald's driveway.

24 You will notice from the angle of the
25 signs that are primarily pointed across the street.

37

1 So they are intended to be read from a car that
2 would be stopped across the street waiting for a
3 green light.

4 THE CHAIRMAN: So someone stopped would be
5 able to see the sign, primarily, because the
6 driver's side on the left; correct?

7 THE WITNESS: Yes.

8 THE CHAIRMAN: So the intention is always to
9 the left-hand side of where you're driving; correct?

10 THE WITNESS: For regulatory signing,
11 New Jersey motorist -- well, anyone in the
12 United States. Their primary orientation for
13 signing is to the right.

14 However, in consideration of the
15 roadway alignment and driveway position. Secondary

16 sign to the left is appropriate.

17 THE CHAIRMAN: But this is a right angle

18 entrance; correct?

19 THE WITNESS: Very slight jog.

20 THE CHAIRMAN: It's not perceivable. For all

21 intents and purposes, it's a right angle.

22 THE WITNESS: Good.

23 THE CHAIRMAN: Primarily the view to the

24 right. You don't need the sign on the left.

25 THE WITNESS: I would agree that it's not

38

1 essential. I think it has value and that's why it

2 was proposed.

3 THE CHAIRMAN: It's necessary to tell people

4 they cannot come into this area.

5 THE WITNESS: I think it's not necessary for

6 safety reasons; is that correct?

7 THE CHAIRMAN: Thank you.

8 THE WITNESS: I suspect that it would be

9 difficult for motorist to pick up the sign on the

10 right and notice that they can't come in. But, we

11 can go with one of the two located to the right. If

12 two I would recommend sign P. It's a simpler
13 message.

14 So if the Board were to require us to
15 limit the entrance signs to one rather than two that
16 are there, I would want it to be sign P and I would
17 want to relocate it to the right hand sign.

18 THE CHAIRMAN: It is an full lot of signage
19 here. I'm wondering if there's any of the signage
20 that can be consolidated.

21 MR. NEWMAN: Can I ask a question or should I
22 wait until you open it up to question Mr. Fears?

23 THE CHAIRMAN: I just want to get my answer.

24 THE WITNESS: From any one point in the site,
25 you're only looking typically at two signs. So if

39

1 you look at it from an airplane view, which is what
2 we're doing, there is a lot of signs there. But, if
3 you view it from a motorist's viewpoint, you are
4 really only looking at two signs. And I think the
5 sole exception would be -- I'm sorry -- the two
6 exceptions would be as your almost at the
7 drive-through, you'll have the signs to the left and

8 to the right and you'll also will be able to see the
9 one in front of you, sign G.

10 As you're coming to the stop, for the
11 drive-through, you'll have two stop signs and you'll
12 also be able to see sign J. I don't believe that is
13 over signed.

14 THE CHAIRMAN: You don't think it's too much
15 for someone to look at left and right instead of
16 consolidating signs?

17 THE WITNESS: We could consolidate. We did.
18 Sign G. But if we try and consolidate signs N and
19 D, we would have to pick one side or the other to
20 place that sign and if we combined those on one
21 plate, we start to loose the message. The physical
22 placement coupled with a very simple message is what
23 we're striving for there.

24 THE CHAIRMAN: You don't think this is too
25 much information, at one time, for people's

40

1 direction and people's awareness is not taken away?

2 THE WITNESS: It has been very carefully
3 designed to not exceed their ability to process the

4 information. That is why I say there's a very
5 limited number of signs visible to the motorist at
6 any one point in terms of their directional signage.

7 As you are moving northerly in the
8 aisle to the west of the building you see two signs.
9 That's all. Signs N and D.

10 As you make the turn moving passing
11 the drive-through exit, you loose visibility of
12 signs N and D. But you pick up visibility of sign G.

13 If you're moving to the parking area,
14 you see no more signs in the parking area until
15 you're approaching at point where the driveway from
16 IHOP comes out and at that point you see initially,
17 (indicating) moving in an easterly direction, you
18 see sign F.

19 On the left hand side where the gate
20 would be anchored as you begin the turn in front of
21 you, you pick up sign F an E.

22 As you move further around, you will
23 pick up sign F and J, but you lost the first the F
24 and second F would now be to you left instead of in
25 front of you.

1 THE CHAIRMAN: Again --

2 THE WITNESS: So you keep getting messages in
3 front you that say this is where you should be as
4 the message disappears behind you.

5 THE CHAIRMAN: What's the speed through this?

6 THE WITNESS: Ten to 15 miles an hours.

7 THE CHAIRMAN: At 10 to 15 miles an hour --
8 the queue of ten to 15 miles an hour is what
9 distance? And I'm assuming there is traffic in this
10 area.

11 THE WITNESS: The perception and reaction
12 time for these signs, since these are standard
13 highway signs for low speed roads for the most part,
14 they are 24-inch by 24-inch or thereabouts. Those
15 signs would be visible from beyond the perimeter of
16 the site. That's not the key to me.

17 If the Board wanted, we could reduce
18 the scale of some of these signs. For instance, a
19 no right turn sign such as the one at 37th. That is
20 currently 24 by 24. That could be made 18 by 18 and
21 remain visible.

22 However, the manual on uniform

23 traffic control devices stipulates that the minium
24 size for that sign is 24 by 24. So to comply with
25 the manual, we need to have that size, but within

42

1 the site, in terms of visibility, we could go
2 smaller.

3 THE CHAIRMAN: Does the manual state how many
4 signs are supposed to be there?

5 THE WITNESS: No.

6 THE CHAIRMAN: Okay. You can, because of the
7 circulation, the speed 10 to 15 miles an hour seems
8 a little excessive, but the speed and the other
9 circulation in there, don't you think it's over
10 signing? Especially with the queue and the speed.

11 THE WITNESS: Once again, and I recall us
12 having this discussion last time around, no, I don't
13 and for the same reason I stated last time.

14 The signs that are visible to the
15 driver. You are not seeing five and six or seven
16 signs. That are on the site. But the driver at one
17 point, looking ahead on his travel path sees one,
18 two or in a couple places may see three signs. That

19 is not over signed.

20 THE CHAIRMAN: Two signs, F, do not enter.

21 We have a small little area here. Coming from that

22 parking area, we're directed towards Route 4 as it

23 is. Because the distance between the two signs is

24 what?

25 MR. STEINBERG: I didn't understand that

43

1 question.

2 THE CHAIRMAN: The distance between the two

3 signs there, the F signs there.

4 THE WITNESS: Somewhere around 25 feet. I

5 don't have scale with me to measure it at that

6 point.

7 THE CHAIRMAN: How you described it to me,

8 you're coming through that parking lot your first

9 line of sight is the F. As you are making that

10 right hand turn, you see the second F sign, the do

11 not enter sign; correct?

12 THE WITNESS: Yes.

13 THE CHAIRMAN: My question is, and this is

14 where I feel it's over signed, you're looking

15 through this at ten miles per hour, why do you need
16 to be queued up with two signs when it's only
17 20 feet difference and you're only going 10 miles an
18 hour and you're already forced into that area?

19 THE WITNESS: At that particular instance it
20 is because the manual calls for one on each side of
21 the road to regulate traffic. If you're approaching
22 a one way, you're supposed to have a sign on both
23 sides.

24 THE CHAIRMAN: But this is an interior road.

25 THE WITNESS: I understand that. But the

44

1 signing principals should still be followed. If the
2 Board wants to removed one of those, we can. I
3 don't recommend it. This is the sign package that I
4 recommend. Every time there is duplication, there
5 is a reason for that duplication.

6 THE CHAIRMAN: Also, because of the speed
7 that's in there, duplication is not a necessary
8 thing.

9 THE WITNESS: Well, it also depends upon what
10 you're looking it's at. For instance, if you're

11 looking just at the northerly sign F, do you, as the
12 motorist, know whether that pertains to the
13 drive-through or does it pertain to the exit from
14 IHOP (indicating.) You don't know.

15 If you're looking at just the
16 southerly sign F, do you as the motorist know if
17 that pertains to the IHOP or does it pertain to this
18 aisle here, if you don't know the site (indicating.)
19 You don't know. The purpose for the two signs is to
20 frame the roadway that is being controlled or
21 restricted so that it's clear to the motorist.

22 THE CHAIRMAN: But if you're also going into
23 that circular pattern with your vehicle, it's nice
24 to have one that directs you to the most obvious?

25 THE WITNESS: I'm telling you why there are

45

1 two on the plans.

2 THE CHAIRMAN: I understand.

3 THE WITNESS: With a gate there, I would feel
4 relatively comfortable either taking one of those
5 signs and putting that on the gate, if that can be
6 done. I have to check with the manufacturer. I

7 think it probably can be done.

8 In which case, we don't need the
9 second sign because the one would be right in the
10 center of what its control is. Or in the
11 alternative, the one to the right.

12 THE CHAIRMAN: You just answered one of my
13 other questions whether or not that could be done.

14 There's something else, but I can't
15 think of it right now.

16 Mr. Newman.

17 MR. NEWMAN: Two separate questions. The
18 parking immediately to the right of the entrance
19 that is not signed. Sorry. Left. My other right.

20 THE WITNESS: There is no physical divider
21 there. And there is no place we could put a sign
22 safely in that area.

23 MR. NEWMAN: So legally someone could park
24 there who is not a McDonald's customer.

25 MR. STEINBERG: I direct the witness not to

46

1 answer the question.

2 MR. NEWMAN: He can't answer that question?

3 MR. STEINBERG: No, he's not going to answer
4 it.

5 THE CHAIRMAN: I'm sorry. What was the
6 question?

7 MR. NEWMAN: I asked if someone would legally
8 parked in the unsigned parking and not be towed.

9 MR. STEINBERG: He's not an expert in law.
10 He's an expert in engineering.

11 MR. NEWMAN: And I can't ask you that
12 question, why?

13 MR. STEINBERG: Because I'm not the witness.

14 MR. NEWMAN: I guess we can may be come back
15 to that.

16 But Mr. Fears, you stated that the
17 primary function of signs P and O are to avoid
18 repeat entries. Because obviously somebody coming
19 in at 40 miles an hour slowing down to 15 isn't
20 going to be able to make a decision, at that point,
21 to stop, change their course and get back on to
22 Route 4.

23 So did you state that if they see it
24 coming in, they should know the next time around
25 that they should not have done that; correct?

1 THE WITNESS: I think that is probably what I
2 said. Let me try it again.

3 If you are on Route 4 and you are
4 headed westerly, if you're an IHOP customer and you
5 see the IHOP driveway right in front of the IHOP,
6 that is where you turn. You have no reason to
7 expect that you could get to the IHOP from the
8 McDonald's driveway.

9 The purpose of those signs is for the
10 customer that is coming around the jug handle,
11 coming across Route 4 and into the site. And the
12 intent there, we can't make the sign big enough so
13 that if somebody is making the turn and turning,
14 steering going through, the light is green, we can't
15 make the sign big enough that that person can
16 process it.

17 But, if they are stopped, if they are
18 the first person in line, the front line, what I
19 don't want them to do is pull forward and then stop
20 there and say, oh. I wanted to go IHOP. What do I
21 now? I don't want them to stop there. So I want to

22 give them the visibility, if they are the first or
23 even the second car to be able to perceive that's
24 not an IHOP entrance. It's just for McDonald's.

25 MR. NEWMAN: That's based upon the assumption

48

1 that somebody is going to look across the highway at
2 the signage while they are sitting at light and
3 yelling at their kids in the back seat.

4 THE WITNESS: I believe that's sign O and P
5 have limited effectiveness, but I think they are
6 important for my client so that he can provide
7 notice to people that they are not supposed to do
8 this.

9 MR. NEWMAN: Isn't it more effective for
10 someone to enter, try to get into IHOP and realize
11 that they are gated off in terms of not gating.

12 THE WITNESS: No. Because what they do then
13 is they park in the McDonald's lot and they walk to
14 IHOP.

15 MR. NEWMAN: That is not withstanding if they
16 can't read the towing signs. That's a separate
17 issue. I don't think the goal here is to

18 necessarily to save people from being towed, I think
19 the "customers will be towed" signs is disabled from
20 being towed.

21 I'm just wondering if you said they
22 are not really necessary, it's also said that we
23 could remove a few things here, maybe O and P are
24 the first ones that should be considered
25 non-essential.

49

1 THE WITNESS: I can't speak to legal rights
2 or obligations. I think it is appropriate to
3 provide notice is someone is note supposed to do
4 something. That is what this is for.

5 MR. NEWMAN: I understand. There is no
6 safety reason for the signs. We've established that
7 they are probably limited if any use to most people
8 entering the site. And we certainly can establish
9 that no one can get into the IHOP parking lot into
10 the site with the proposed plans.

11 So taking all that into
12 consideration, these signs can be removed from the
13 site plan.

14 THE WITNESS: I have already indicated that I
15 believe one of them can reasonably be removed. The
16 one that I would remove is the one that's on the
17 left. But, what I would do, instead of losing sign
18 P, it has the simpler and clearer message I would
19 move sign P to the right.

20 MR. NEWMAN: Thank you.

21 THE CHAIRMAN: To add on to that. Let me ask
22 this question first.

23 Ann, Carol, they have signs there
24 parking for McDonald's customers only all others
25 will be towed at owner's expense, Ordinance R6-306.

50

1 Is that an ordinance?

2 MS. PECK: That is an old ordinance number.

3 THE CHAIRMAN: Old ordinance number.

4 MS. PECK: But it is a valid ordinance. It's
5 just the wrong number. But you can trace it back to
6 the number.

7 THE CHAIRMAN: Okay. Is there any special
8 requirements for them to post this kind of sign?

9 MS. PECK: It's been a while since I read it.

10 They can place it on their property with no
11 approvals for signage. Isn't that how part of that
12 ordinance goes?

13 THE CHAIRMAN: I don't know the answer.

14 MS. PECK: To be, honest, Scott, I don't
15 know.

16 THE CHAIRMAN: Find that out.

17 MS. BERGAILO: Mr. Chairman, I have a copy of
18 Ordinance 223-21.

19 MS. PECK: Is that the new one?

20 MS. BERGAILO: Yes. I may as well jump in
21 because it's an issue.

22 THE CHAIRMAN: Before you do that, introduce
23 yourself.

24 MS. BERGAILO: I'm Cheryl Bergailo. The
25 Board's consulting planner.

1 One of my questions was, how was the
2 number and the location of the no parking signs
3 formulated?

4 THE WITNESS: The no parking signs were not
5 designed or specified by myself. That was something

6 that arose from a discussion with my client. And he
7 was indicating that he was having a problem with
8 non-McDonald's customers parking on the site. And
9 he was towing people. And the essential discussion
10 was, and I don't remember who said what, but the
11 essential discussion was, if you're going to tow,
12 you need to notify them of that.

13 And my comment was that they should
14 be periodically spaced at the end of the parking
15 spaces so that somebody pulling in and parking is
16 going to see one of those signs.

17 MS. BERGAILO: Okay. Because I looked
18 through Borough's ordinance today and it looks like
19 two apply to towing and trespass.

20 Ordinance 223-21. It just appears to
21 me that the number of signs is excessive. Section B
22 (1) reads "That no vehicle shall be booted or towed
23 from a private parking lot for designated parking
24 violations unless a sign is conspicuously posted and
25 clearly posted from all entrances to the property."

2 parking signs.

3 MR. STEINBERG: Mr. Chairman, if this witness
4 is going to testify, I've got lots of
5 cross-examination just based on what she said so
6 far. I am wondering, to keep this thing going, if
7 we can hold off, so that you can hear our whole
8 presentation.

9 THE CHAIRMAN: Please do that. Hold off on
10 all questions until we are done with questions for
11 this witness and the Board. Then we will open it to
12 our professionals and then the objectors.

13 Getting back to Mr. Newman's
14 comments, because there are parking for McDonald's
15 customers only, why the need for no IHOP entrance or
16 no through traffic for IHOP. Especially if we're
17 going to wind up with a gate that might be placed
18 there and why just have no IHOP entrance. If
19 someone is not supposed to be parking there and the
20 sign says for McDonald's customers only, why the
21 need or sign up there?

22 You understand where I'm going with
23 this. It's sign clutter. So is there a need for
24 this? There is a redundancy all over the place

25 especially parking for McDonald's customers only and

53

1 no IHOP parking.

2 THE WITNESS: Traffic engineering, as I
3 understand it, means that you try and provide
4 control with whatever extension you can before a
5 vehicle goes into the wrong place.

6 What you don't want to do is, once a
7 vehicle is in the wrong place, is try to regulate at
8 that point, because you get poor compliance, and I
9 think that can be seen on the site, because with
10 people pulling into the McDonald's lot and parking
11 and then walking to IHOP, which we all know has
12 happened to a considerable extent, that's
13 non-compliance. That's a vehicle for IHOP --

14 THE CHAIRMAN: That was a self-created
15 situation when things that were not initially
16 approved for a site plan were placed on there. And
17 I'm not going to get into back and forth on that
18 because it's been agreed to by the attorney that
19 that's what happened.

20 MR. STEINBERG: Excuse me. Excuse me.

21 THE CHAIRMAN: I will stand corrected. Don't
22 yell. I stand corrected. You want to correct me?
23 I know I misspoke just now.
24 MR. STEINBERG: Yes, you did.
25 The only thing I said was there was

54

1 some signs and traffic controls mounted on that
2 property --

3 THE CHAIRMAN: Right.

4 MR. STEINBERG: -- placed on that property
5 that were not on the site plan. Period.

6 THE CHAIRMAN: I stand corrected.

7 MR. STEINBERG: I never said -- and in my
8 judgment, and you can ask that question directly to
9 the witness, as to whether anything we did, that is
10 anything the applicant did, led to the problem that
11 arose, which is what Stu said. But why don't you
12 ask the witness.

13 THE CHAIRMAN: You want to answer that?

14 THE WITNESS: Yes. From my perception, once
15 the drive-through was in place so that we reduce the
16 number of cars in the parking lot to a more

17 manageable number, it then became very obvious, that
18 there were a number of people who were parking and
19 walking to IHOP.

20 Prior to that, it was not as obvious
21 because the lot was essentially full. And we were
22 not seeing the same kind of thing.

23 THE CHAIRMAN: Mr. Fears, did you do parking
24 counts on this Lot?

25 THE WITNESS: Before the drive-through, yes.

55

1 THE CHAIRMAN: And you have that available.

2 THE WITNESS: That was part of the record as
3 part of the original drive-through. I provided the
4 traffic report including the drive-through.

5 THE CHAIRMAN: For the original site plan
6 approval?

7 THE WITNESS: Yes.

8 THE CHAIRMAN: You just made a statement that
9 you put these signs based on any of people that were
10 parking in McDonald's and going to IHOP. You have
11 those counts now?

12 THE WITNESS: At the last hearing I had

13 testified that I had sat and observed and recorded
14 volumes, and I was observing traffic of ten to 15
15 vehicles an hour that were parking in McDonald's and
16 walking to IHOP based on my observations.

17 THE CHAIRMAN: If I recall, you did not have
18 the dates you did that for.

19 THE WITNESS: That's correct.

20 THE CHAIRMAN: Do you have that data
21 available?

22 THE WITNESS: I do not.

23 THE CHAIRMAN: Could you make that available?

24 THE WITNESS: Once again, to refresh your
25 testimony --

56

1 THE CHAIRMAN: Your testimony.

2 THE WITNESS: My recollection is that I
3 testified that I had not recorded the numbers.

4 THE CHAIRMAN: Right.

5 THE WITNESS: I had made a study consistent
6 of sitting and watching over several 15 minutes
7 intervals at several different occasions. I was
8 observing what was happening and in those 15-minute

9 intervals, I was seeing anywhere from two to four
10 vehicles in a 15-minute interval that would park,
11 and that's the flow rate. Something on the order of
12 ten to 15 vehicles an hour. And I testified that I
13 observed this on several occasions. I believe I
14 testified to three or four site visits to over this.
15 And that was the basis of my testimony.

16 The Board, I believe, asked me to
17 provide the dates. I indicated that I could. And
18 since the matter did not return before the Board, I
19 did know pursue that and I did not look that up.

20 MR. STEINBERG: Mr. Chairman, I think it is
21 time for me to make a statement now.

22 We're talking, apparently now, about
23 the number of signs that say you will be towed in
24 one form or another, or do not park here if you're a
25 customer of somebody else; right? That's apparently

57

1 what we're talking about.

2 And my point is, and I am going to go
3 back to the Pizomantin case. I want you to hear
4 this over and over again. My client doesn't have to

5 justify and this witness does not --

6 THE CHAIRMAN: Go ahead.

7 MR. STEINBERG: Please let me finish.

8 Does not have to justify the control

9 of his own lot. No one else has rights on this Lot.

10 If they do, let's go to court and prove it.

11 My client's position here is that

12 there is nothing in that ordinance that says that

13 says that he can't post the "no trespassing,"

14 "no parking" here, you will be towed signs.

15 THE CHAIRMAN: I'm not bringing up that he

16 doesn't have the right to do that. I'm bringing up

17 that redundancy of the signage and do we need all of

18 these signs to do that.

19 MR. STEINBERG: I want to stick with for a

20 moment with the no parking signs.

21 THE CHAIRMAN: Don't make a mention or make a

22 comment if he has no right to do this.

23 MR. STEINBERG: I appreciate that.

24 THE CHAIRMAN: Okay.

25 MR. STEINBERG: I'm just looking at the no

1 parking signs.

2 THE CHAIRMAN: Right.

3 MR. STEINBERG: I have heard the expert is
4 apparently going to testify about this read from the
5 ordinance. That doesn't say we can't have more than
6 the signs entering -- as a matter of fact, I never
7 heard anyone suggest from the point of view of
8 warning the public, more is bad. From the point of
9 view of warning the public that more is good not
10 bad.

11 So I think that as a long as we're
12 not violating any ordinance of this community or any
13 design standard is that number is at the discretion
14 of the applicant.

15 Now we are here presenting it to the
16 Board, but I'm going to say the words again,
17 Pizomantin says, if we're not violating municipal
18 ordinances, then the Board must approve.

19 THE CHAIRMAN: Aesthetics play a part in site
20 plan?

21 MR. STEINBERG: I'm not sure I understand
22 your question.

23 THE CHAIRMAN: I'm not saying that --

24 MR. STEINBERG: Yes. It's part of our site
25 plan. Yes.

59

1 THE CHAIRMAN: But we're not saying he
2 doesn't have the right to put this.

3 MR. STEINBERG: I understand.

4 THE CHAIRMAN: And the redundancy --

5 MR. STEINBERG: I understand.

6 THE CHAIRMAN: -- in a lot that someone is
7 going 10-miles an hour and there's indication of no
8 parking or you will be punished situation.

9 MR. STEINBERG: I just wanted to draw a
10 distinction here between the no-parking signs and
11 all the other signs. There is a big distinction to
12 be meant. The no parking signs are governed by
13 municipal ordinance. If we're not in violation of
14 the municipal ordinance, it's at the discretion of
15 the ordinance.

16 Now, as far as the signs that we've
17 been discussing with this witness, again, the issue
18 here is what ordinance or what design standard have
19 we violated.

20 Someone may say and very clearly the
21 chairman feels that way too. That there are too
22 many directional signs. The witness says this is
23 standard practice and standard engineering and he
24 suggested on one or two instances that the applicant
25 might be willing to reduce one or two signs. And I

60

1 don't have a problem with that, but again, I have to
2 say it again.

3 THE CHAIRMAN: Right. But what I was getting
4 at, the witness indicated why all the signs were
5 done.

6 MR. STEINBERG: Right.

7 THE CHAIRMAN: I don't recall the numbers in
8 your last testimony, that's what I was looking for
9 at the last testimony. So that's what I was getting
10 at that.

11 MR. STEINBERG: I would like to make a point
12 with a ridiculous kind of example.

13 Let's assume, that the applicant --
14 not this applicant, in another case is paranoid.

15 THE CHAIRMAN: Paranoid.

16 MR. STEINBERG: There is nobody parking in
17 that witness' lot. No one except his own customers.
18 But he wakes up one morning and goes to the
19 psychiatrist and he says...The psychiatrist says,
20 you know, you're paranoid. He says I don't care if
21 I'm paranoid or not. Every single one of my parking
22 spaces is going to have a sign that says ordinance
23 number blah, blah, blah. Park here and if you're
24 not customer of mine, you're going to be towed. He
25 can do that. He can do that unless he's violating

61

1 the ordinance.

2 THE CHAIRMAN: Understood. But it's common
3 sense.

4 MR. STEINBERG: Common sense doesn't play a
5 role here. It's Pizomantin. That's what plays a
6 role here.

7 THE CHAIRMAN: It's been discussed that
8 should the Board feel there's too many signs,
9 there's an option to reduce it.

10 MR. STEINBERG: That's true.

11 THE CHAIRMAN: All I was getting at, he

12 mentioned what led to the number of signs. The
13 proof wasn't submitted that's what he said he saw.
14 When he said he didn't see it, that's why the
15 discussion was brought up. And I think we're
16 belaboring this.

17 MR. STEINBERG: Yes, we are.

18 THE CHAIRMAN: We're agreed on this.

19 MR. BLECHER: I have a question about the
20 entrance on 37th Street. Is that just an entrance
21 or exit?

22 THE WITNESS: That is an entrance and exit,
23 but the exit is restricted, no right turn.

24 MR. BLECHER: I see where it says existing
25 chain, is that going to be removed so people can

62

1 come out that way?

2 MR. STEINBERG: Well, let's be clear about
3 this. The municipality has closed that entrance and
4 exit. There is a lawsuit pending in the Superior
5 Court by the applicant challenging the closing of
6 that entrance and exit. At the moment it's closed
7 it's not used.

8 MR. BLECHER: Okay.

9 MR. NEWMAN: But the site plan approval would
10 be done, I'm assuming that that would be opened.

11 MR. STEINBERG: That's correct. Yes. That's
12 correct. It's shown on here as being open. But we
13 have faith in our lawsuit.

14 MR. NEWMAN: So Mr. Blecher's concerns should
15 be addressed as if it were opened.

16 MR. STEINBERG: Yes. Fair enough.

17 MR. BLECHER: Right. So back to my question.
18 Will that be an entrance or exit or both?

19 THE WITNESS: My recommendation and what
20 these plans indicate, to the best of my knowledge,
21 is both.

22 MR. BLECHER: Okay. The way the arrows show
23 it's just an entrance I was just looking for
24 clarification.

25 THE WITNESS: If you enter the site, there is

1 an arrow that directs you in a southerly direction.

2 If you are seeking to exit the site either from the

3 parking area or drive-through or to go to out this

4 way, there is a sign that says no right turn.

5 MR. BLECHER: Our hope is for that to become
6 open again as an entrance and exit.

7 THE WITNESS: That would be certainly be my
8 recommendation.

9 THE CHAIRMAN: The traffic concern is in and
10 out of that neighborhood in that area. And
11 directing the traffic more to Route 4 instead of
12 going through that area.

13 I mean the council deemed it closed
14 for a purpose and the discussion is based on the
15 specific circulation inside the lot not with what
16 may happen. That's been closed. That's been
17 closed, because the council determined it was a
18 safety issue.

19 MR. BLECHER: The signage that he's
20 proposing, is that being opened or closed, because
21 if it's going to be closed, we don't need sign B,
22 that says no right turn because they can't go that
23 way. If there is an entrance or exit, that doesn't
24 exist anymore. That's my point.

25 THE CHAIRMAN: Correct. Correct. Anyone

1 else?

2 MR. MEER: I just want to state for the
3 record that Mr. Newman arrived at 7:45 p.m.

4 THE CHAIRMAN: Thank you. Anyone else have
5 questions or comments?

6 MR. SOUKAS: I have one.

7 In terms of the nine or so parking
8 spaces to the left of the entrance, was there any
9 discussion with application relating to the
10 non-placement of warning signs in that particular
11 location?

12 THE WITNESS: I did not have any.

13 MR. SOUKAS: Did the applicant express to you
14 why he did not want any of those signs in that area
15 of parking?

16 THE WITNESS: I did not have any discussion
17 in that regard.

18 MR. SOUKAS: You mentioned before that, my
19 recollection is that you mentioned before that the
20 decision was made not to put signs there for safety
21 reasons; is that correct?

22 THE WITNESS: I believe my testimony was, we

23 don't have a physical space that would let us put

24 signs there. I'll amplify on the testimony.

25 Signs can generally be placed at

65

1 least 2 feet back from the traveled way so that

2 vehicles aren't bumping into posts and that sort of

3 thing. We don't have the physical space at those

4 parking spaces to put a sign and to comply with that

5 guide line.

6 MR. SOUKAS: With respect to the gate at the

7 access drive between IHOP and McDonald's, can you

8 please describe the traffic flow in the event that

9 car attempted to enter into the IHOP site from

10 McDonald's on the gate was there.

11 THE WITNESS: They would have a gate in front

12 of them. The gate would not raise.

13 MR. SOUKAS: Would there be any stacking of

14 vehicles at that point in time.

15 THE WITNESS: It's conceivable that somebody

16 could sit there, but we've put the gate as far onto

17 the McDonald's site as we could, and still have

18 positive control over the driveway.

19 MR. SOUKAS: Do you know approximately how
20 many feet the arm of that gate is from the property
21 line of IHOP?

22 THE WITNESS: I believe it's 18 or a 20-foot
23 arm.

24 MR. SOUKAS: The arm runs parallel with a
25 property line. What's the difference between the

66

1 two?

2 THE WITNESS: Again, I don't have a scale
3 with me, but that looks like, that would be about
4 seven or 8 feet.

5 MR. SOUKAS: Is it fair to say that if a car
6 attempted to enter into the IHOP property and was
7 met with the gate, that car would have to reverse in
8 order to exit the McDonald's property?

9 THE WITNESS: Yes.

10 MR. SOUKAS: I have no further questions at
11 this point, Mr. Chairman.

12 MR. NEWMAN: Mr. Chairman, could I ask a
13 question about that?

14 THE CHAIRMAN: Yes.

15 MR. NEWMAN: Is there a maximum length for an
16 arm of that type?

17 THE WITNESS: Generally these are used at
18 parking garages. Generally the aisle leading out of
19 the parking garage is on the order of 12 to 16 feet
20 in width. The gate is normally used to occlude
21 that.

22 In this case, when we designed the
23 left turn from the IHOP to the McDonald's exit, we
24 tried to design it so that it would comfortably
25 accommodate a delivery truck or a garbage truck so

67

1 we opened that up a bit.

2 The consequence of that is we do have
3 a great distance to span. And once you start going
4 too far above 16 feet, you can run into failure
5 concerns. If we were to use the heavier kind of
6 material used in railroad gates, we could go up to
7 30-foot span. That's not what we're proposing, but
8 it could be done.

9 MR. NEWMAN: Obviously, I'm asking the
10 question, because if you did have a longer arm, you

11 could move it further onto the McDonald's site up to
12 that corner in front of sign F and not have any
13 issues with backing up or with somebody being able
14 to circumvent around the arm.

15 THE WITNESS: If we assume for the moment
16 that we're able to place a sign F on the arm and
17 eliminate the two signs F on either side of the
18 driveway. I think the presence of the arm, coupled
19 with the sign, provides a very strong notification.

20 I don't think there is a likelihood
21 of people trying to enter the IHOP with that
22 intensity of control on that one movement. If we
23 hang the sign on the arm, I still think we need a
24 sign on each side. So that there is no confusion as
25 to where the control applies.

68

1 But moving it closer to McDonald's,
2 (indicating) it looks like from the nose from the
3 drive-through back to the gate that, looks like it's
4 about 10 feet and if that is what it is, an average
5 vehicle is 14 feet long. So I don't see the
6 likelihood of somebody getting far into that.

7 What's more likely if someone were to
8 pull in and stop, if there were traffic behind them
9 at that point, they might back out to leave, but I
10 think the more likely thing, if they wanted to enter
11 the IHOP, begin the turn, see the gate, see the
12 signs and then by turning to the right (indicating,
13 I don't think they would have to back up. But it
14 would all depend upon where they stopped and where
15 they made their decision that they really understood
16 that they can't enter IHOP from McDonald's.

17 MR. NEWMAN: It is possible moving it forward
18 would help alleviate any traffic.

19 THE WITNESS: We can talk to the manufacturer
20 and if there is a longer arm that would let us close
21 that off and let us move that forward, I don't see a
22 problem with doing that. I don't know if this
23 particular kind of equipment could handle a longer
24 arm.

25 MR. NEWMAN: If not, there is equipment that

69

1 can.

2 THE WITNESS: Well, I don't think we want to

3 go to the very heavy duty kind of thing --

4 THE CHAIRMAN: Before we get into that. It's
5 getting into the operation of structure. There's
6 something more important here is whether that works
7 for that distance.

8 The question is, this is limiting
9 traffic back and forth from one site to the next.
10 The question I have with this is why is there a
11 limitation from Morlot to IHOP the lot and putting
12 this up.

13 Before all these barriers were put in
14 place, wasn't there a cross access in and out of
15 there?

16 THE WITNESS: I can't answer that.

17 MR. STEINBERG: This witness is not going to
18 get into the issue of the legal rights of the
19 parties as to cross easements.

20 THE CHAIRMAN: The cross access.

21 MR. STEINBERG: It's the same thing. And the
22 answer is, I said initially in my remarks, as far as
23 this Board is concerned, it is our position that it
24 has consistently approved site plans on this lot
25 that are exit only from the lot next-door.

1 THE CHAIRMAN: You said those would be
2 forthcoming, but was there traffic flowing back and
3 forth between the two lots, ingress and egress.

4 MR. STEINBERG: Oh. There clearly has been
5 traffic that has moved from this lot into the lot
6 next-door. That is why those barriers are up.

7 THE CHAIRMAN: And the reason these are being
8 put up, this applicant doesn't want this to occur
9 any longer.

10 MR. STEINBERG: Absolutely.

11 THE CHAIRMAN: And that doesn't occur. And
12 this is being eliminated so it doesn't create more
13 conflicts.

14 MR. STEINBERG: Does eliminating the
15 possibility of somebody entering into IHOP from
16 McDonald's, does eliminating that create more of a
17 conflict? That is certainly an engineering question
18 he can answer.

19 THE WITNESS: I believe my testimony at the
20 last hearing also spoke about observing, I believe
21 it was three vehicles that had entered the IHOP site

22 and backed out the IHOP site and backed into the
23 McDonald's site. Either because they couldn't turn
24 around or there weren't parking space or whatever.
25 But during my site visits, I observed three vehicles

71

1 that backed out of IHOP into McDonald's.

2 If the traffic flow is followed, IHOP
3 has angled spaces on it's site that direct all of
4 it's traffic in a counter clockwise direction.

5 Therefore, if a vehicle were to enter
6 IHOP from McDonald's, if they follow the circulation
7 plan on IHOP, they would have to return through the
8 McDonald's site this doubling the movements. So no,
9 it does not increase the conflicts. It's intended
10 to reduce the conflicts. It is intended to manage
11 the conflicts in conformance with a one way flow
12 from IHOP to McDonald's. Allowing that movement to
13 occur smoothly without impediment but not allowing
14 the reverse movement to occur.

15 THE CHAIRMAN: Mr. Fears, again, you're going
16 to produce these numbers and when this happened and
17 the date.

18 THE WITNESS: I testified this was my
19 observation. I have testified that I don't have it
20 written down on paper. So my producing it is my
21 testimony here this evening.

22 In terms of producing the dates, yes,
23 I can go back and check time sheets and present that
24 information to the Board. I'd be happy to do so. I
25 don't have an issue with that. I don't have piece

72

1 of paper where I have tick marks noted as to what I
2 observed.

3 THE CHAIRMAN: You're testifying as a traffic
4 engineer; correct at this moment?

5 THE WITNESS: Yes.

6 THE CHAIRMAN: Isn't it, as a engineer
7 traffic a standard in situations like this when
8 there are discussions about traffic or conflicts
9 that there are sheets with numbers and times of
10 days, possible conflicts. Maps and items that
11 indicate these items. Isn't that the standard of
12 practice?

13 THE WITNESS: We do have some information

14 measured on-site. I've testified as to my presence
15 on-site. I would have to check my files to see what
16 was measured whether it was just number of vehicles
17 parked or a number of parked or number walked or
18 what was recorded.

19 THE CHAIRMAN: So this is standard practice
20 to provide that information.

21 THE WITNESS: I'm sorry. I didn't answer
22 your question.

23 It is not a standard practice to
24 measure everything. It is a standard practice to
25 observe. If you have high numbers where capacity

73

1 can be become the issue, yes, it's standard practice
2 to quantify that.

3 I did quantify the on-site parking in
4 support of the request of the drive-through
5 application. That was standard practice in support
6 of such an application.

7 In support of vehicles parking on
8 this site and going elsewhere, I don't believe it's
9 my burden to quantify that. I believe simply

10 observing that it is happening is sufficient to
11 document that there is a problem and that is what I
12 did.

13 THE CHAIRMAN: Okay. But the time of day,
14 the day it occurred, the amount of occurrence it
15 happened is all in support of your argument, and
16 that you don't have. But you did mention you would
17 give us those dates.

18 THE WITNESS: I will give you the dates.

19 MR. SOUKAS: Mr. Fears, did you make any
20 observations relating to traffic coming out of IHOP
21 utilizing the McDonald's exit?

22 THE WITNESS: I have a recollection of some
23 numbers. I don't have them at my fingertips. I
24 didn't remember testifying to them previously. I
25 think I may have recorded or measured numbers of

74

1 that. I'll have to check. I am not certain

2 MR. SOUKAS: Would you be able to provide
3 testimony on traffic exiting from the IHOP property?

4 THE WITNESS: Oh. Sure. The gate has a very
5 short cycle time and the capacity of that gate would

6 be many times over the flow rate occurring on the
7 IHOP site.

8 MR. SOUKAS: Can you tell me what you mean by
9 second time?

10 THE WITNESS: Yes. The time for gate to be
11 acquainted for a vehicle leaving IHOP, raised to let
12 the vehicle pass and then come back down. That
13 really is very short cycle time.

14 And in fact, if you were to drive
15 slower, approximately on the order of four or five
16 miles and hour walking pace, you probably wouldn't
17 have to stop. The gate would come up as you were
18 approaching it, you could flow pass the gate and as
19 you cleared the gate, it would come down right
20 behind you. So there's more than ample capacity. I
21 don't have numbers. The capacity would be --
22 probably on the order of six per minute in terms of
23 the gate processing capacity.

24 MR. SOUKAS: Six per minute through the gate.

25 THE WITNESS: Yes.

1 MR. SOUKAS: But you don't have any specific

2 figures in terms of egress traffic from McDonald's.

3 THE WITNESS: Well, if there were a solid
4 stream of traffic coming out of IHOP, there would be
5 constant actuation on the gate it would just stay
6 up.

7 THE CHAIRMAN: Then why the gate?

8 THE WITNESS: To prevent traffic going from
9 McDonald's into IHOP.

10 THE CHAIRMAN: But you have do not enter
11 signs.

12 THE WITNESS: That's right. And they do not
13 pay attention.

14 THE CHAIRMAN: Again, to expand on counsel.

15 You can supply the traffic count in
16 and out of IHOP and in and out of McDonald's?

17 THE WITNESS: I believe I have numbers of
18 that sort, but again I'm not certainly. I have a
19 recollection that some of that data was gathered but
20 sitting here before this Board, I don't have a clear
21 recollection of exactly what data was collected,
22 when it was collected and so forth. I would have to
23 look at see if I can find that.

24 THE CHAIRMAN: Mr. Fears, there are do not

25 enter signs coming out of the highway. They are on

76

1 the highway, there are "do not enter" signs, for

2 people going the wrong way; correct?

3 THE WITNESS: Where?

4 THE CHAIRMAN: On any highway in the state,

5 there are "do not enter" signs for traffic

6 direction?

7 THE WITNESS: "Do not enter" is a fairly

8 standard sign. It's applicable under certain

9 circumstances, you know, it depends what the

10 circumstance is.

11 THE CHAIRMAN: On the highways there is no

12 gates to further limit people from doing that;

13 correct?

14 THE WITNESS: That's not correct.

15 THE CHAIRMAN: Not correct.

16 THE WITNESS: It's fairly common to have

17 gates controlling parking deck movements and if you

18 pull off of a highway to a parking lot or parking

19 deck, you may be presented with a gate that does not

20 rise for you because it's an exit. That is not

21 uncommon at all.

22 THE CHAIRMAN: Anyone else?

23 What I'll do for our professionals,

24 if they have any comments, questions right now for

25 the applicant.

77

1 If you could just introduce yourself

2 and explain how you serve the Board.

3 Cheryl. Since you started, I will

4 start with you.

5 By the way, did our professionals get

6 the plans on time?

7 MR. AZZOLINA: Mr. Chairman, if I may. Paul

8 Azzolina, the Board's engineer. I received the

9 drawings on April 18th, so I did not have adequate

10 time to prepare a written report. My intention was

11 to visit the site as I today. Observe the

12 proceedings tonight and provide the Board with a

13 written reporter if deemed necessary by the Board.

14 THE CHAIRMAN: Mr. Kataryniak.

15 MR. KATARYNIAK: Yes. Mark Kataryniak,

16 traffic consultant to the Board.

17 Mr. Chairman, I received the plans on
18 April 20th. I similarly did not have time to
19 prepare a written report, but have made observations
20 on the site as well and I listened to the testimony
21 tonight and I prepared some questions based on the
22 testimony I've heard and will prepare a written
23 report based on the testimony if the Board so
24 desired.

25 MS. BERGAILO: I got my plans on Friday. I

78

1 guess that was the 20th.

2 THE CHAIRMAN: My question then to all three
3 of you, do you have questions now for the applicant
4 that you feel you can ask now, then when there's a
5 report, you can look at it and come up with
6 additional information if you feel comfortable
7 questioning now.

8 I take that as a yes.

9 MR. AZZOLINA: I personally have no questions
10 tonight. I had prepared a report relative to the
11 prior -- the earlier application which did have some
12 questions therein.

13 THE CHAIRMAN: Okay. Cheryl.
14 MS. BERGAILO: I'll let Mark go first.
15 THE CHAIRMAN: Okay. Mark.
16 MR. KATARYNIAK: Okay. Are you aware of
17 Title 39 is applicable to this site?
18 THE WITNESS: I don't know.
19 THE CHAIRMAN: Title 39 is what?
20 MR. KATARYNIAK: Mr. Chairman, for the
21 board's edification, local enforcement on private
22 property by police. And I thinks that relevant to
23 the signage proposed on the site such that should a
24 site apply for Title 39 statutes in allowing
25 enforcement by local authorities of regulations on

79

1 the site, all of the signage must be in conformance
2 with the manual on uniform traffic control devices.

3 What you may see in private in
4 parking lots, you might decorative traffic control
5 signs that don't comply with manual in terms of the
6 size, method, symbols that would be on-site. That
7 goes for the placement of signs as well.

8 The signs as he proposed them are

9 placed in accordance with guidance from a UTCD in
10 terms of certain sign locations and I want to
11 explore a couple.

12 I think it's relevant to know what
13 rule we're adhering to here. If we adhering to
14 Title 39, I think it's important that all the
15 signage comply and that there be uniform
16 applications of signs.

17 MR. STEINBERG: It's not my understanding
18 that Title 39 applies to the site.

19 THE CHAIRMAN: Okay.

20 MR. STEINBERG: Let put it this way. I've
21 never heard that it does, and I can ask the client
22 specifically, but I'm 99 percent sure no application
23 has been made.

24 THE CHAIRMAN: Get that information for us.

25 MR. STEINBERG: Sure.

80

1 MR. KATARYNIAK: Starting with the gate area
2 because it's the discussion that has just taken
3 place, regarding the do not enter signs and the gate
4 controls the access.

5 Would you agree that the potential
6 for creating a back up situation does deter from
7 safety. If a car were to enter into the one way
8 exit it would have to back up because it's blocked
9 by the gate.

10 THE WITNESS: That is the condition that
11 we're trying to end, because as I testified, that
12 does occur now. However, right now, a car entering
13 the wrong way into IHOP, can get a lot farther into
14 that site, before they have to back out, so they are
15 doing a lot more backing out a lot further and this
16 is intended to prevent that from happening.

17 MR. KATARYNIAK: Can you describe the
18 lighting in that area of the site or whether the
19 control arm is reflectorized in any way?

20 THE WITNESS: I would propose to have the
21 control arm reflectorized. I cannot describe the
22 lighting.

23 MR. KATARYNIAK: Would it possible, and in
24 hearing the testimony and the Board's concerns, I'm
25 looking at the site plan shown A-3, I believe is the

1 exhibit you referred to?

2 MR. STEINBERG: A-4.

3 MR. KATARYNIAK: Excuse me. A-4.

4 Regarding the island or the
5 triangular-shaped island between the IHOP access
6 driveway north of the one way access driveway that
7 divides that drive aisle from the Q line, the memo
8 board.

9 Refer to the area where you have a
10 proposed sign F. A proposed sign M and you are
11 removing signs F1 and F2 near the structure for the
12 control.

13 THE WITNESS: We're talking about that area
14 there (indicating.)

15 MR. KATARYNIAK: Correct. In looking at that
16 island, in looking at the possible -- what I would
17 call legal movements, if you where exiting the IHOP
18 site traveling through the McDonald's site through
19 the actuated gate, the way I see it, there's only
20 one possible movement and that is to exit the site
21 via the McDonald's exit drive or make a left hand
22 turn to exit that site.

23 THE WITNESS: Is that what is intended? That

24 is what in intended. Before the plastic barriers
25 were put up, is that what was occurring? No. We

82

1 were having people who moved from the IHOP into the
2 McDonald's lot. Moved through the McDonald's Lot
3 and then out through 37th Street.

4 My recollection is that didn't happen
5 much. It did happen.

6 MR. KATARYNIAK: Let's assume the gate --
7 well, if the gate were actuated and a motorist could
8 drive through there and what signs are proposed or
9 what controls are proposed on the site to indicate
10 or regulate those movements from not happening?

11 I see no restrictive signage or no
12 traffic control signage to restrict those movements.

13 THE WITNESS: I agree we don't have anything
14 there. The closest thing we have to it would be
15 sign J, which does contain the exit with the arrow
16 indication pointing to the left, but it would be
17 nice if we could get something in that area that
18 would limit movements to a left turn, but we were
19 primarily focused on controlling movements within

20 the McDonald's lot. Frankly, I didn't think about
21 that.

22 MR. KATARYNIAK: Would it be possible or
23 maybe advisable to modify that curb at that corner
24 to orient vehicles to the intended left turn
25 movement only?

83

1 THE WITNESS: Yes.

2 MR. KATARYNIAK: I think that would
3 accomplish two things. I think it would force the
4 left turn movement by nature of the curvature of the
5 curve and I think it would minimize the potential
6 that Mr. Newman indicated regarding traffic within
7 the McDonald's parking field accidentally getting
8 too close to the gate.

9 THE WITNESS: So the Board understands the
10 dialog we are having. So Mr. Kataryniak is saying,
11 instead of having a straight piece of curbing there,
12 have that curbing curve to the left somewhat
13 parallel to the southerly radius to the traffic
14 coming out of the IHOP directed to the left. That
15 would also reduce the size of that opening and would

16 reduce the likelihood of someone trying to go in the
17 wrong a way. It would have benefits. I think that
18 is a good idea.

19 MR. KATARYNIAK: That may require a sketch,
20 Mr. Chairman, or some sort of detailed layout of the
21 area. But just in looking at plan, it appears to me
22 that there is a possible opportunity to construct a
23 curb in such a way that the motorists from IHOP
24 would be directed to the physical barrier of the
25 curb to the exit movement of the site and anybody of

84

1 the McDonald's parking lot unfamiliar with the
2 circulation, would be faced with an alignment of the
3 curb to direct them to the exit movement not
4 accidentally into the gate.

5 I'm concerned about any type of
6 intended construction be it a gate or a drive aisle
7 that increases the potential for vehicles to become
8 trapped and have to do an unnatural movement such as
9 a reverse movement or U-turn.

10 MR. NEWMAN: Mr. Chairman --

11 THE CHAIRMAN: Yes.

12 MR. NEWMAN: I think that's a great idea
13 because I brought it up a year ago but I think the
14 issue was emergency services issue.

15 MR. STEINBERG: Yes. That was considered.

16 MR. NEWMAN: The question is, was there
17 really an issue? Can emergency services vehicle hop
18 that curb if it needs to?

19 MR. KATARYNIAK: There is possibilities or
20 there's design options available.

21 THE WITNESS: There are several things that
22 could be done. We could get some curvature of
23 non-mountable curve coming down a little ways
24 without impeding the ability of emergency access.
25 As the curbing comes down further, if it were

85

1 extended down further to maximize directional
2 control. We would then have to make it mountable so
3 a fire truck could turn to enter the site.

4 MR. KATARYNIAK: Regarding the exit driveway
5 from the McDonald's site to Route 4 and the signage
6 as proposed, you're proposing as you were exit the
7 site, you're proposing on the left-hand side of the

8 driver's view -- you're proposing a one way arrow
9 sign. I am assuming one way right and a no left
10 turn symbol sign.

11 Do you feel there is need to propose
12 a stop sign at that location?

13 THE WITNESS: There's not one now.
14 Personally, I think it would be good thing. But
15 again, we didn't want to over saturate the site.
16 The visual appearance as you come down to that
17 point, you have the barricade on the highway in
18 front of you, so there is virtually no possibility
19 of a person coming down that aisle will be uncertain
20 of the fact that the aisle ends and the highway is
21 there. So I didn't see the stop as being as
22 critical as making it very clear that they are not
23 supposed to turn left.

24 MR. KATARYNIAK: I was thinking more towards
25 pedestrian safety to control that stop.

86

1 THE WITNESS: We're very comfortable to add a
2 stop sign that location. I don't have a problem
3 with that. It should go to the right of the aisle

4 if we put it in.

5 MR. KATARYNIAK: I agree.

6 THE CHAIRMAN: Where is this?

7 THE WITNESS: The right-hand corner of the
8 exit as it reaches Route 4.

9 MR. KATARYNIAK: Not to clutter the site with
10 signage, Mr. Chairman, but I think there are two key
11 exits missing from that driveway. I think one is a
12 stop sign as I mentioned and the other is a do not
13 enter sign for motorists on Route 4 intending to
14 turn into McDonald's site.

15 When I look at past site plans, it
16 was certainly an intention to provide one at one
17 time. I think it's appropriate to have a
18 directional or restrictive sign there indicating
19 it's a one way sign. I see no indication that the
20 signage provided to tell motorists that that is a
21 one way driveway only if you are on Route 4
22 traveling west.

23 THE WITNESS: We do have the McDonald's exit
24 sign there. That visible from Route 4. It is set
25 back away because that is not a standard highway

1 regulatory sign. I would be very comfortable with
2 do not enter or a no right turn, either way, of the
3 do not enter sign, I would suggest the appropriate
4 location would be on the far sign of the driveway
5 angled at about a 45-degree angle.

6 If you were to do a no right turn
7 sign, it would be slightly in advance of the
8 driveway facing at right angles to Route 4 in the
9 direction of traffic. Would you agree?

10 MR. KATARYNIAK: I would agree. I would
11 concur.

12 And in addition, at that same
13 location, the driveway is on a state highway and a
14 typical convention used by the DOT for signage on a
15 state highway, exit signage on a state highway on a
16 divided road, which this is, is the one way sign
17 preferred on the median barrier directly opposite
18 the driveway. Would you applicant consider
19 providing that signage on the barrier?

20 THE WITNESS: With the New Jersey DOT's
21 permission, absolutely.

22 THE CHAIRMAN: There is a traffic light there

23 too.

24 MR. KATARYNIAK: No, not at the exit.

25 THE CHAIRMAN: No. A little further up.

88

1 THE WITNESS: Yes.

2 THE CHAIRMAN: Now, does that play a part in
3 limiting traffic in this situation?

4 MR. KATARYNIAK: With respect to the exit
5 movement, it would potentially -- it really has no
6 direct bearing on traffic signal with respect to the
7 exit movement from the driveways with the exception
8 that should a motorist exit the site on a red phase
9 for westbound traffic, there is a possibility the
10 traffic could be queued at or near the driveway or
11 past of the driveway and would traffic exiting the
12 site would be entering into a queue traffic stream
13 rather than free-flow traffic steam.

14 THE CHAIRMAN: Okay. I'll wait until you
15 finish and ask questions.

16 MR. KATARYNIAK: With respect to the signs O
17 and P proposed at the signalized entrance of the
18 site, I share the Board's concerns and the

19 applicant's concerns that the effectiveness of those
20 signs, purely from a visibility standpoint is very
21 diminished.

22 I'm considered that any signage at
23 that location at that entrance would require or
24 result in a motorist to make an abrupt maneuver, an
25 unexpected maneuver, I think would deter from safety

89

1 of the intersection.

2 The traffic movements at a signal
3 when you come around the jug handle, the left turn
4 lane as I recall is stripped and signed for a left
5 turn movement only.

6 THE WITNESS: I believes that right.

7 MR. KATARYNIAK: My concern is that for a
8 vehicle traveling through, given this situation, it
9 is somewhat unique in that the through movement for
10 the traffic signal is intended for this site and
11 this site only. There is no through street opposite
12 the signal. I'm concerned that any signage for
13 anybody in that right-hand land traveling in a
14 through movement across Route 4, any signs that are

15 presented to the driver at the point that he's in
16 the intersection that tells him that he can't go
17 where he intended to go would require him to make an
18 abrupt left hand movement or stop and I think that
19 is a safety concern.

20 With that in mind, I think as an
21 alternate, we look at the on-site signage regarding
22 the parking situation and removing the signage at
23 the driveway entrance that would potentially cause
24 the unexpected maneuver by a motorist.

25 The signs are small. I see them on

90

1 the detail sheet those signs. Looking at sign P,
2 that's a 12-inch by 12-inch sign. The size of the
3 lettering is not on the plan. I assume those are no
4 more than 4-inch letters.

5 THE WITNESS: Those are the small letters.

6 MR. KATARYNIAK: I'm not sure that sign is
7 necessarily visible and it's presented at the last
8 minute and I don't know that it enhances safety.

9 THE CHAIRMAN: So it's best that someone
10 going into IHOP, it is best to let them go through

11 McDonald's and out to Route 4 in that area.

12 MR. KATARYNIAK: Or tell them when they have
13 time to react.

14 THE CHAIRMAN: That brings up a question to
15 me. There this site has always had cross back and
16 forth with IHOP, the traffic for those people using
17 to go into IHOP. The idea now is to limit that.
18 What this does is change that situation.

19 Bringing up your comment about
20 someone intending to go into IHOP or intending to
21 know that that's the pattern for all these years,
22 putting a sign up to eliminate that may cause or can
23 cause a detrimental situation.

24 So the question I have is why change
25 this and limit that, but again it goes back to

91

1 numbers. How many people are using this site to
2 create that situation or is it best to put a sign up
3 at that area and then let them come out Route 4 when
4 they go in there.

5 MR. STEINBERG: Mr. Chairman, again, I have
6 to make a statement.

7 You have said, on several occasions
8 now, all these years there's been two way traffic
9 back and forth. I haven't challenged that yet, but
10 I'm telling you that it is our position that there
11 is no legal right for anyone to move from the
12 McDonald's site into the site next-door and we are
13 not going to litigate that matter before this Board.
14 Period.

15 THE CHAIRMAN: But it has been discussed that
16 it had been done.

17 MR. STEINBERG: The witness testified that he
18 had seen people do it.

19 THE CHAIRMAN: Right. But again, that's why
20 I brought up the numbers of when.

21 MR. STEINBERG: We are not here to defend our
22 parking Lot. We are not here to legally enjoin
23 anyone from moving from our lot into the lot next
24 door. I position is no one has the right to do
25 that, period. We are applying to the Board for the

1 controls that will prohibit people from doing it.

2 THE CHAIRMAN: But there has been a

3 discussion about where signage is placed for a
4 safety issue.

5 MR. STEINBERG: I heard the testimony
6 about -- the witness, by the way, this gentleman has
7 not be sworn.

8 THE CHAIRMAN: You're absolutely right. I
9 should have done all three.

10 MR. STEINBERG: Fine. I won't use the word
11 testify -- state that he has a problem with those
12 two signs because people coming across the highway
13 may not be able to read them quickly enough to avoid
14 having to make an abrupt left-hand turn or stop when
15 he does read the sign. I heard that. And that's
16 all I heard from this witness.

17 THE CHAIRMAN: Thank you. Now what I'll do
18 is swear all of them in at this point.

19 MARK KATARYNIAK, P. E.,

20 CHERYL BERGAILO, P. P.,

21 PAUL AZZOLINA, P. E., having been duly
22 sworn, testifies

23 as follows:

24 THE CHAIRMAN: For the record, state your
25 name and profession and affiliation with the Board.

1 MR. KATARYNIAK: Mark Kataryniak, vice
2 president with Birdsall Engineering. I'm the
3 consultant to the zoning board for traffic matters.

4 THE CHAIRMAN: Mr. Kataryniak, you made
5 statements. You made comments and you asked
6 questions previously to being sworn in. Would you
7 stand by those questions and comments?

8 MR. KATARYNIAK: Yes, I would.

9 THE CHAIRMAN: And you would ask them under
10 oath again?

11 MR. KATARYNIAK: Yes.

12 MR. AZZOLINA: Paul Azzolina, Azzolina and
13 Fuery Engineering. I am the zoning the board's
14 engineer for the Borough of Fair Lawn.

15 MS. BERGAILO: Cheryl Bergailo. I'm employed
16 by Taylor Design Group and the Board's consulting
17 planner.

18 THE CHAIRMAN: Okay. Do you have anymore
19 questions?

20 MR. KATARYNIAK: Not at this moment,
21 Mr. Chairman.

22 THE CHAIRMAN: Karen, you need a break?
23 THE REPORTER: Yes.
24 THE CHAIRMAN: Five-minute break. It's five
25 to ten. Be back ten o'clock.

94

1 (Brief recess.)
2 THE CHAIRMAN: Roll call.
3 MR. MEER: Mr. Nakashian.
4 MR. NAKASHIAN: Here.
5 MR. MEER: Mr. Newman.
6 MR. NEWMAN: Here.
7 MR. MEER: Mr. Salerno.
8 MR. SALERNO: Here.
9 MR. MEER: Mr. Sacchinelli.
10 MR. SACCHINELLI: Here.
11 MR. MEER: Mr. Blecher.
12 MR. BLECHER: Here.
13 MR. MEER: Mr. Diner.
14 MR. DINER: Here.
15 MR. MEER: Mr. Meer, here.
16 Mr. Levy.
17 THE CHAIRMAN: Present.

18 Mr. Kataryniak, you want to continue?
19 MR. KATARYNIAK: Yes, Mr. Chairman, I'd just
20 like to state for the record, that in prior
21 submissions by the applicant for amended site plans,
22 I had done a review -- I had actually done two
23 reviews. The most recent was cited "Second review
24 Traffic, December 21, 2006." And I had a first
25 review dated April 3, 2006.

95

1 On both of those reports,
2 particularly the September 21 report, brings up
3 issues regarding the traffic flow patterns, what
4 happens to traffic intended for IHOP for traveling
5 east on Route 4. How were they notified that they
6 can no longer use the McDonald's properties to enter
7 IHOP.

8 There's several issues that I've
9 raised in this report, I could go through them point
10 by point hearing tonight's testimony and receiving
11 new plans. I could review this report and amend it
12 as necessary. But there are other issues that you
13 mentioned and I had raised those in my report, just

14 so the Board is aware.

15 THE CHAIRMAN: Mr. Fears, you're familiar
16 with this report?

17 THE WITNESS: I don't recall offhand. I do
18 recall seeing one report from him and I do recall
19 comments opining that there is now the ability or
20 the right, and I'm not sure how that was worded, to
21 move from McDonald's into IHOP. That's all I
22 recall.

23 MR. KATARYNIAK: Just to clarify that point,
24 Mr. Chairman, the intent of my letter and my report
25 indicates that in comparing it to the previously

96

1 approved site plan, it was written as there was an
2 ability to travel from the McDonald's site to the
3 IHOP's sites. And I asked in one of my comments for
4 clarification from the applicant on any agreements
5 between those two properties regarding that cross
6 access.

7 MR. STEINBERG: Mr. Chairman, again, I'm
8 going to have to respond to that.

9 I don't know what the expert witness

10 means when he says there is the ability to
11 transverse between the two lots, meaning going from
12 west to east. If he meant by that that physically
13 somebody could do it, then that's an observation I
14 could live with because that's a true statement.
15 Until those barriers went up, physically somebody
16 could do it.

17 As a matter of fact, the expert
18 witness for the applicant has already indicated that
19 he had seen people do it. If the suggestion,
20 however, by the expert witness for the Board is that
21 there was a legal right for someone to do it, then I
22 object to that, first of all, because it's not
23 within his purview as an expert witness to the term
24 of who has the legal rights to anything.

25 And secondly, because I've indicated

97

1 we're not going to litigate that before this Board.

2 THE CHAIRMAN: Right. Mr. Kataryniak, you
3 want to comment?

4 MR. KATARYNIAK: Yes. Just to clarify my
5 statement, .I'm not referring to any legal rights.

6 What I'm referring to and what my report refers to
7 is the previously approved site plan of which was
8 approved in 2003 of which I represented this Board
9 in the same capacity I do today regarding that site
10 plan. And the site plan that was reviewed in 2003
11 and approved by ,I believe it was the Appellate
12 Division, -ultimately approved by the Appellate
13 Division, that site plan referred to traffic control
14 signage and striping that existed on that access
15 roadway that was designed to provide two-way
16 traffic.

17 So in comparing the 2003 site plan to
18 the proposal by the applicant this evening, I was
19 comparing a driveway constructed, signed and striped
20 as a two-way road, to one that was intended for
21 one-way westbound movement only. I made no legal
22 representation.

23 MR. STEINBERG: I will save my
24 cross-examination on that.

25 It was never designed as a two-way

1 driveway, it was never striped as a two-way

2 driveway.

3 MR. KARAS: I'm going to object. Unless he's
4 going to be sworn as a witness to testify to that,
5 he's not qualified to give an opinion or testimony
6 before this Board --

7 THE CHAIRMAN: I was going to mention that to
8 state that is something that is a the legal matter,
9 I was going to ask counsel on that. But I know with
10 the back and forth that occurred between us before,
11 that that statement, in and of itself, was being
12 brought in as a testimony.

13 MR. KARAS: I'm not going to press the point.
14 I said before, I will wait for my cross-examination
15 of this witness.

16 THE CHAIRMAN: But at the same time, the
17 Board does have the standing to hear and interpret
18 things that have come before, the old resolutions to
19 any plans and testimony that have been brought
20 before.

21 This is the something that the Board
22 has a right to hear on this. And I know you can
23 object or agree and have counsel hear it, I might as
24 well state now that Mr. Karas is counsel for IHOP.

25 So he has the right to ask questions as well.

99

1 MR. SOUKAS: I would suggest to the Board
2 that a representative of the applicant to be sworn
3 in to give testimony rather than counsel.

4 THE CHAIRMAN: Okay. So you are not making a
5 legal representation to that. You're making an
6 observation from everything that you know from the
7 previous documents.

8 MR. KATARYNIAK: That's correct. My
9 September 21st report cites the documents that I
10 reviewed in preparation of my comments. It included
11 the prior site plans, resolutions of approval and
12 other materials that were provided to my office.

13 THE CHAIRMAN: And they are all comments on
14 that that need to be answered because the Board's
15 professional provided that any way that you see fit
16 that your client or your professional responds to
17 those items. He said he doesn't recall it. So I'm
18 sure that our professional can forward those
19 comments in addition to any other comments that he
20 might have.

21 Anything else, Mr. Kataryniak?

22 MR. KATARYNIAK: Not at this time.

23 THE CHAIRMAN: Mr. Azzolina.

24 MR. AZZOLINA: Mr. Levy, Board members, I

25 would just like to apprise you of certain findings

100

1 that I've had relative to my visits to the site as

2 recently as this afternoon.

3 The plans depict an existing chain in

4 the westerly parking nodule which is no longer in

5 existence. The bollard structures are in place, but

6 there is no chain across that opening.

7 Earlier there was a discussion as far

8 as the number of vehicles that would be exiting the

9 IHOP property through the McDonald's site. On every

10 occasion that I visited the site, I think the answer

11 to that question would be: all vehicles parked in

12 the IHOP property would be exiting through the

13 McDonald's site due to the fact that there was

14 approximately five vehicles parked in what is the

15 exit driveway from the IHOP property.

16 So that, in and of itself, I believe

17 forces the traffic through the McDonald's property.

18 MR. NAKASHIAN: I have a question. Does
19 anyone know how long that opening between the two
20 properties has been used and what year did it start:
21 5 years? 10 years? 15? 20? 21?

22 MR. SOUKAS: I believe that there is a
23 resolution of record from 1982 reflecting a removal
24 barrier into the two properties at that point in
25 time. I don't know if counsel has any other

101

1 information. In reviewing the packet, that's what I
2 noticed.

3 MR. NAKASHIAN: Do you know how long that's
4 been opened to the traffic going both ways?

5 THE CHAIRMAN: That's a fair question.
6 Someone will have to opine the answer for us.

7 MR. AZZOLINA: Following up on that, I had
8 prepared a report dated September 18, 2006 on Page 4
9 of 6 of that report under Item 2-A Roman numeral II.

10 Once again I cite, there's a
11 resolution of the Zoning Board of Adjustment of the
12 Borough of Fair Lawn dated January 3rd, 1983, stated

13 that applicant has provided a revised site plan
14 dated December 6, 1982, which shows the elimination
15 of the barrier between lot 3, International House of
16 Pancake's property, and the subject lots, 11 and 12.

17 So removal of this barrier will
18 provide the adjacent lot 3 with free access through
19 the rear portion and exit driveway of McDonald's
20 lots. That's a direct quotation from that
21 resolution.

22 The file did not contain that plan,
23 the only suggestion that I may offer is that if the
24 previous preparer of the plan, William Houthuysen,
25 and I'm not sure if I'm pronouncing his name

102

1 correctly, if he's still alive or if he's not or if
2 his files have been purchased by some other firm,
3 perhaps somebody could actually get ahold of that
4 original drawing and we may be able to draw more
5 conclusions from that drawing.

6 But as it stands today, I do not
7 believe that that drawing is in the Board's files,
8 just that strict reference contained in the

9 resolution of approval in 1982 or '83.

10 The applicant's engineer has
11 addressed some of the comments contained in my
12 September 18th letter to the Board. They were more
13 of a technical nature, just questioning certain
14 details that needed to be revised relative to the
15 sizes of the signs, the backgrounds and lettering of
16 the signs, some of which have been corrected; some
17 of which remain uncorrected, perhaps intentionally.
18 The primary one would be the use of the green
19 background on the sides, as Mr. Kataryniak
20 indicated, that's not a typical application for sign
21 backgrounds per the METCB, perhaps the applicant's
22 engineer could elaborate on the reasoning behind of
23 usage of that background.

24 THE WITNESS: On which sign?

25 MR. AZZOLINA: Signs identified as J, O and

103

1 P. I'm sorry. They have been corrected. Signs D,
2 G and N, still remain with a green background. I'm
3 not sure if that's an oversight at this point or if
4 is intended to have that green background.

5 THE WITNESS: D, I believe, should be black
6 letters on a white background. G, same answer. N,
7 same answer. I'm not sure how that green background
8 got on there. Green background is used for not
9 regulatory, and this is trying to regulate
10 movements, but green is normally for directional
11 signing. In other words, it would have the name of
12 a town and arrow. But I don't think that would be
13 appropriate within a site. I think these are more
14 regulatory than guide signing in nature. As such I
15 think they should be black on white rather than
16 white on green.

17 MR. AZZOLINA: Very good. I agree with that.

18 Likewise, another technical issue.
19 Dimensioning for sign F is not shown, so that should
20 be added to the plan as well.

21 An issue was raised relative to the
22 fencing that was constructed at the front of the
23 property. The height of the fence is approximately
24 4 feet 4 inches when measured from the ground to the
25 highest point of the fence. It is an open fence.

1 There are openings that I do not believe the line of
2 sight is obstructed.

3 Furthermore, the Borough's ordinance
4 may not strictly regulate the placement of a fence
5 in a commercial or business zone as it does in that
6 the section of the code typically cited is --

7 THE CHAIRMAN: I don't think that is the
8 concern of the Board. The concern of the Board is
9 that this item was placed without any approval
10 outside the approval of the original site plan
11 application.

12 MR. AZZOLINA: Okay.

13 MR. STEINBERG: But I indicated earlier,
14 we're amending our application to ask for it as part
15 of the site plan.

16 THE CHAIRMAN: Yes. Continue.

17 MR. AZZOLINA: That is the extent of my
18 comment relative to the new plan.

19 MR. STEINBERG: May I ask one question,
20 Mr. Azzolina, please.

21 I would ask you, Mr. Azzolina, if you
22 would again read slowly from that portion of the
23 resolution of January the 3rd, 1983, the last

24 sentence that you read starting with the words, "the
25 driveway," would you read that again slowly for the

105

1 Board members?

2 MR. AZZOLINA: I'm not seeing it.

3 MR. STEINBERG: You read it from your report
4 a minute ago.

5 MR. AZZOLINA: I don't see the wording "the
6 driveway."

7 MR. STEINBERG: I'm sorry. The words are
8 "the removal of this barrier," that's the sentence.

9 MR. AZZOLINA: Okay. I'll read that.

10 "The removal of this barrier will provide
11 the adjacent lot 3 with free access through the rear
12 portion and exit drive of the McDonald's lot."

13 MR. STEINBERG: Lot 3, in your understanding,
14 is the IHOP lot?

15 MR. AZZOLINA: Yes.

16 MR. STEINBERG: So this sentence says that
17 the removal of this barrier will provide -- and I'm
18 going to substitute the word "IHOP" for the words
19 "adjacent lot 3."

20 "The removal of this barrier will provide
21 IHOP with free access through the rear portion and
22 exit drive of McDonald's lot."

23 Is that correct?

24 MR. AZZOLINA: Yes.

25 MR. STEINBERG: I have no other questions of

106

1 the witness.

2 THE CHAIRMAN: Anything else?

3 MR. AZZOLINA: That is it relative to this
4 application. I will follow-up a written report with
5 any additional comments that may come to light
6 during the course of that review.

7 THE CHAIRMAN: Okay. Thank you.

8 MR. AZZOLINA: Thank you.

9 THE CHAIRMAN: Cheryl, I understand that this
10 is the first time you're seeing this, so.

11 MS. BERGAILO: For the record, did the
12 applicant agree to seek NJDOT approval for placing
13 the one-way sign on the median on Route 4?

14 MR. STEINBERG: I'll answer that. If the
15 Board makes it a condition of the approval that we

16 seek that approval, we will seek that approval.

17 MS. BERGAILO: I have a concern with treating
18 the 37th Street ingress as if it's permitted. The
19 Borough passed an ordinance closing that entrance.
20 So I think the Board should act on that, look at
21 that as if it's closed. If it turns out that the
22 court case says otherwise, they can come back for
23 another amendment.

24 THE CHAIRMAN: I don't disagree with that.
25 That's why I mentioned to Mr. Nakashian when he

107

1 brought that up, that that was deemed by the Borough
2 as a closed access.

3 MR. STEINBERG: To make things simple,
4 Mr. Chairman, we agree.

5 THE CHAIRMAN: Okay.

6 MR. STEINBERG: We don't agree it should be
7 closed. We agree that for purposes of this hearing
8 it should be treated as closed, forget about the
9 fact that the drawing shows a chain there is not
10 relevant. For these purposes I agree with the
11 witness.

12 MS. BERGAILO: So will you provide a revised
13 drawing showing curbing, and new pavement striping,
14 and removal of bollards, and signage in that area?

15 MR. STEINBERG: We didn't put the bollards
16 in, the municipality did.

17 THE WITNESS: The bollards are the two posts,
18 not the plastic barriers.

19 MR. STEINBERG: We would not agree to remove
20 them. We agree that at the moment they are not
21 being used and let's see how that court case turns
22 out. Why should we rip them off and if we win, put
23 them back in again? Let's let them sit there until
24 the court case is done. If we lose, we will take
25 them out. It's not a problem.

108

1 MS. BERGAILO: I think there needs to be
2 something stronger to compel them.

3 THE CHAIRMAN: Okay. That would be part of
4 the approval. We can take that under advisement.

5 MS. BERGAILO: Mr. Fears, have you revisited
6 the site since 37th Street was closed?

7 THE WITNESS: Yes.

8 MS. BERGAILO: And what have you observed
9 with regard to any changes in the circulation
10 pattern? Have things changed at all?

11 THE WITNESS: There are two physical changes.
12 One are the barricades at 37th and one are the
13 barricades between the IHOP and the McDonald's. The
14 change that I've observed relates primarily to the
15 IHOP side of the site. I haven't observed any
16 significant change other than we no longer have
17 traffic entering the site from 37th. And they did
18 before. They would enter and move down through the
19 site before. That no longer happens.

20 The change at the other end of the
21 site, is we no longer have traffic coming through
22 McDonald's and entering the IHOP. At least they
23 haven't during my visit. I've been told anecdotally
24 that people have driven past the barriers, turned
25 around in the parking space and gone the wrong way

109

1 and gone in there. I haven't seen it. I can't
2 confirm that that's happening.

3 MS. BERGAILO: Have the volumes or the sales

4 at McDonald's, that you know, been affected by the
5 closure of 37th Street, is it less busy?

6 THE WITNESS: I have no information on that.

7 THE CHAIRMAN: That's all for now.

8 MS. BERGAILO: Yes.

9 THE CHAIRMAN: So we will wait for your
10 report.

11 MS. BERGAILO: Sure.

12 THE CHAIRMAN: What I'd like to do now,
13 Mr. Steinberg, is open up for Mr. Karas.

14 Mr. Karas, what I'm going to do, it's
15 10:30 now. I'd like to give you 20 minutes to start
16 right now and then continue, and then we all have to
17 pull out our calendars and pick dates.

18 MR. KARAS: Andrew Karas on behalf of IHOP,
19 the adjacent tenant for the property next door.

20 CROSS-EXAMINATION BY MR. KARAS:

21 Q Mr. Fears, you have testified, am I
22 correct, in the prior application where for the
23 drive-through; am I right?

24 A Yes.

25 Q You were the traffic expert, and it

1 was your testimony regarding traffic at that time;

2 am I correct?

3 A Yes.

4 Q That was around 2001, 2002?

5 A I don't recall the date. But quite

6 some time ago.

7 Q Well, you're here for an application

8 tonight. Do you think it's important that maybe you

9 should see when you provided that testimony on the

10 original application?

11 A The precise date, no, I don't think

12 that's important. I provided it as part of the

13 application for the drive-through.

14 Q Did you review your testimony from

15 the prior application?

16 A For the drive-through, no.

17 Q For the drive-through with regard to

18 tonight's testimony.

19 A No.

20 Q Now, do you recall that at the prior

21 application for drive-through you had testified that

22 the traffic pattern that you're proposing was safe?

23 A Yes.

24 Q And do you recall testifying that the
25 changes that were being made as reflected in the

111

1 site plan would enhance safety?

2 A Yes.

3 Q So and as you went through that
4 application process, there were changes that were
5 made to the site plan and the approved site plan, in
6 your opinion, enhance safety on the site. Am I
7 correct?

8 A Yes.

9 Q Now, when you reviewed traffic
10 patterns as you did in the drive-through
11 application, you looked at what is going to be the
12 on-site traffic; am I correct? You're looking at
13 the flow of the traffic in trying to determine the
14 best traffic to use in coming up with a plan. Am I
15 correct?

16 A Yes.

17 Q That's what you did in that prior
18 application; am I correct?

19 A I did look at the site, .I did look
20 at the traffic circulation that I anticipated would
21 be present with this plan, .that was the basis for
22 my testimony.

23 Q I'm talking about the prior plan.

24 A The provision of the drive-through,
25 yes.

112

1 Q Now, when you're going over traffic
2 plans, obviously what is on site is important, but
3 also what feeds onto that site is also an important
4 consideration. Am I correct? You got to take into
5 account traffic not only as far as circulation on
6 site that that traffic that is coming onto the site;
7 am I correct?

8 A To an extent. I did --

9 Q Well, you got to know the amount of
10 cars that come on the site; right?

11 A Yes.

12 Q And those are cars that are coming
13 off site to serve the site; am I correct?

14 A No.

15 Q Well, in order to get to the
16 McDonald's site, don't the cars have to come from
17 somewhere?

18 A Yes.

19 Q They're coming from Route 4 or
20 another place in the municipality; correct?

21 A Correct.

22 Q So you have to take into
23 consideration those cars that are coming onto the
24 site when you come up with your traffic plan;
25 correct?

113

1 A Yes.

2 Q Those cars are going to feed into the
3 traffic pattern on site; am I correct?

4 A Yes.

5 Q So you take into consideration any
6 type of car, any type of maneuver that's going to
7 affect the traffic patterns on site; am I correct?

8 A We take into consideration all
9 foreseeable and anticipated maneuvers.

10 Q And if there's a driveway that feeds

11 onto the site, then you're anticipating that
12 vehicles are going to be going over that driveway;
13 am I correct? Is fair a statement?

14 A It's not a fair statement the way you
15 worded it.

16 Q Well, if you have a driveway that
17 feeds onto a site from a highway, can it be fairly
18 assumed cars are going to go over that driveway onto
19 the site?

20 A Yes.

21 Q And if there's a driveway from the
22 adjacent property when you observe cars that travel
23 over that driveway, can it be assumed those cars are
24 going to be coming onto the site?

25 A Yes.

114

1 Q And any cars that come onto the site
2 that are going to affect how the traffic patterns
3 are on a particular site; am I correct?

4 A Coming onto the site from the
5 neighboring site, yes.

6 Q You're going to take that into

7 consideration; am I correct?

8 A Yes.

9 Q And you also take into consideration
10 the traffic patterns how vehicles are going to get
11 off the site; am I correct?

12 A Yes.

13 Q And part of that is the design of the
14 site that has to be taken into consideration to
15 ensure that traffic is going to be free-flowing
16 throughout the site; am I correct?

17 A Try that again.

18 Q You want to make sure cars can get
19 off the site and there's no impediment to those cars
20 getting off the site; am I correct?

21 A Yes.

22 Q And so when you design a site, you
23 look to see how cars are coming on and coming off to
24 make sure there is no impediment as far as cars
25 egressing from the site; I correct?

115

1 A Define "impediment."

2 Q Something that obstructs a car.

3 Doesn't allow the car to move freely. Isn't that an
4 impediment?

5 A A stop sign does not allow a car to
6 move freely. I don't consider --

7 Q I'm talking about --

8 A -- to be -- excuse me.

9 THE CHAIRMAN: Counsel, let him answer.

10 THE WITNESS: I don't consider a stop sign to
11 be an impediment. It's a regulatory device that
12 controls, directs, and to an extent, meters the way
13 traffic moves past a given point.

14 BY MR. KARAS:

15 Q What about a physical object, are you
16 going to take that into account; am I correct?

17 A Such as?

18 Q Such as other cars, traffic moving on
19 other roadways.

20 A I do take into account other cars on
21 site, yes.

22 Q And other cars off the site because
23 vehicles leaving a site are going to have to feed
24 into other traffic; am I correct?

25 A Certainly.

1 Q Now, when you review and design
2 traffic patterns, are there certain techniques that
3 you utilize to control the flow of traffic?

4 A Of course.

5 Q Am I correct that one of those
6 techniques is using signs; correct?

7 A Yes.

8 Q And that's what you're trying to do
9 here, a sign to put in a whole bunch of signs to
10 control the traffic on site; am I correct?

11 A Yes.

12 Q Another thing that you can utilize is
13 curbing; am I correct?

14 A Yes.

15 Q And such as you've done here, you've
16 changed the curbing on the McDonald's site to try to
17 direct the flow of traffic; am I correct?

18 A Yes.

19 Excuse me. As part of this
20 application?

21 Q Well, here, as part of this

22 application.

23 A Or as part of the proposal for the

24 drive-through?

25 Q Whatever. Part of this application

117

1 you're changing the curbing on the McDonald's site;

2 am I correct?

3 A No, you're not correct.

4 Q If you take a look at what the plan

5 is up there, and I believe that's A-4. What's the

6 plan that you have on the top there?

7 A A-4.

8 Q Take a look at it, turn around.

9 A I have it right here, I don't have to

10 turn around.

11 Q You have a gate that's between two

12 properties; am I correct?

13 A Yes.

14 Q This is a change from the prior plan

15 that we had; am I correct?

16 A Yes.

17 Q The prior plan, though, had curbing.

18 I'm sorry, I never got a copy of this, that's why I
19 didn't see the curbing.

20 The prior plan had changed the
21 curbing on the site; am I correct?

22 A If you go two iterations back to the
23 time that we applied for the drive-through, we
24 changed curbing in that area.

25 Q We're talking about this application

118

1 that we're here for today. Did the last plan that
2 was submitted change the curb?

3 A No.

4 Q Didn't at all?

5 A No.

6 Q My mistake. I thought it did.

7 However, curbing can be utilized to
8 control traffic on site; am I correct?

9 A That was Mr. Kataryniak's comment.
10 We agree. We think it can be done, yes.

11 Q In addition to curbing, the size of a
12 driveway can be used to control traffic; am I
13 correct?

14 A Not necessarily.

15 Q Well, if you want to limit -- if you
16 want to limit cars to go in one direction as opposed
17 to two directions, you can narrow the driveway to
18 provide for that. Am I correct?

19 A No.

20 Q If you narrow a driveway it only
21 allows one car to go through, doesn't it limit how
22 cars can travel across that driveway?

23 A The area to the rear of the IHOP has
24 a 16-foot width, and all you had to do was stand out
25 there before the plastic barricades went in and you

119

1 would see traffic moving both ways passed that area,
2 the answer is no. Simply narrowing a driveway does
3 not prevent wrong way use of that driveway. If
4 there's no cars coming in the other direction,
5 another car is free to use it in the wrong
6 direction. That's the entire reason for the gate.

7 Q Let me ask it again. Are driveways
8 utilized and the width of driveways, are they
9 utilized in any type of manner, any -- for traffic

10 flow as a means to control traffic?

11 A As part of a system of traffic

12 controls, yes.

13 Q As one element of a number of

14 controls a driveway in the width can be utilized to

15 control traffic; am I correct?

16 A Can be utilized to some extent to

17 control traffic. A driveway width does not provide

18 an effective control in and of itself.

19 Q But with other controls it can be

20 utilized; correct?

21 A It can be utilized, whether it's

22 effective or not depends upon a lot of other

23 circumstances.

24 Q Now, for two-way traffic, what is the

25 accepted width of a travel lane?

120

1 A By what criteria?

2 Q You tell me. Are there criteria that

3 applies that provides for an accepted width of a

4 travel lane?

5 A Of the residential site improvement

6 standards prescribe a two-way roadway. No parking.

7 Minimum 20-foot width.

8 Q What about one way?

9 A That's very variable. There are a

10 number of standards that you can look at.

11 Generally, if you want to assure that a stalled

12 vehicle will not obstruct traffic, you're looking at

13 minimum of 17-foot width.

14 However, in many circumstances I've

15 seen widths narrower within that. A good example is

16 on the IHOP site, where we do have 16 feet at the

17 back of the site.

18 Q But I'm talking about regular

19 standards for a car traveling down the driveway,

20 what is the accepted width of the lane?

21 A It depends on the classification of

22 the roadway, it depends upon the speed of the

23 roadway, it depends upon the volume of the roadway.

24 Q Route 4 --

25 A Your question is excessively broad.

121

1 Q And I'll limit it.

2 Route 4 Broadway, that type of
3 roadway, what is an accepted width for that roadway?

4 A At the time that it was designed or
5 under today's design standards?

6 Q Why don't you give me both.

7 A At the time that it was designed 10
8 and 11-foot lanes were fairly common. For state
9 highways, under current conditions, a right-hand
10 lane without a shoulder, DOT would want a 15-foot
11 width, and the second lane they might accept an
12 11-foot width, but their preference is 12 to
13 13 feet.

14 Q Now, you've been involved in
15 designing driveways onto commercial properties, both
16 one-way directional driveways and two-way driveways;
17 am I correct? -- as part of your profession?

18 A Yes.

19 Q As the ordinary -- or is there an
20 ordinary width that you normally recommend with
21 regard to a driveway that is going to have both
22 ingress and egress?

23 A No.

24 Q There's no width whatsoever that you

25 recommend?

122

1 A It depends on the site, it depends on
2 the road, it depends on the traffic that's going to
3 be using the driveway. There are a large number of
4 factors that go into selection of something like
5 that.

6 Q Well, are you going to use a 10-foot
7 width for two-way traffic on any type of commercial
8 property?

9 A Excuse me?

10 Q You said any number of controls can
11 be used, any number of factors. Let me ask you
12 this: Would you ever recommend a 10-foot driveway
13 whereby you're going to have both ingress and egress
14 coming over that driveway, or is that insufficient?

15 A It's conceivable that I would
16 recommend a 10-foot width under certain
17 circumstances.

18 Q For both ingress and egress?

19 A Yes.

20 Q And what circumstances would those

21 be?

22 A Well, that would be appropriate for a
23 single-family home.

24 Q I'm talking about a commercial site,
25 that was my question. What do you think?

123

1 A It depends upon the commercial use.

2 Q Retail commercial use. Try that.

3 A What kind of retail?

4 Q Restaurant, like McDonald's.

5 A Okay. I'm certainly not going to
6 recommend a 10-foot width for two-way exit.

7 Q What would you recommend?

8 A It depends on the site. I would have
9 to look at it. I've done sites that have as much as
10 40 feet for two-way traffic. It depends on what I'm
11 doing.

12 Q So you wouldn't recommend anything
13 less than 20 feet with regard to the driveway
14 providing ingress and egress; am I correct?

15 A No, sir, you're not correct.

16 Q Isn't that what you just testified

17 to?

18 A I testified as to what I have done.

19 I can foresee circumstances that I would go tighter

20 than 20 feet. There are a number of roads around

21 the state, public roads that are 16 and 18 feet in

22 width, particularly in northwestern part of the

23 state, Ohio is part of the state.

24 Q I'm talking about --

25 A Excuse me.

124

1 Q Will you listen to my question,

2 please. You're not responding to the question.

3 I'm talking about ingress and egress

4 onto commercial property. I'm not talking about

5 roadways or highways throughout the state.

6 A Let me make it very simple: I will

7 not answer with a specific width for a hypothetical

8 where all the variables have not been defined. I'm

9 not going to do it. If you want to define all the

10 variables and you ask me what width I might

11 recommend for that, I might do that.

12 THE CHAIRMAN: It's been asked and answered

13 five different times.

14 BY MR. KARAS:

15 Q Now, are you familiar with the site
16 plan that was originally submitted in March of 2001
17 with regard to the McDonald's driveway?

18 A Yes. Excuse me.

19 Q Do you have a copy of that?

20 A Excuse me. I'm not sure of the date,
21 but somewhere around that time, I did participate
22 with development of a site plan for the
23 implementation of the drive-through for this site.
24 If that is the plan that you're referring to, then
25 my answer is, yes.

125

1 THE CHAIRMAN: Counselor, that would be the
2 site plan dated 3/14/01, revision 7/12/01?

3 MR. KARAS: No. I have one that is dated
4 3/14/01. And I believe the revision date is for
5 April 2001.

6 THE CHAIRMAN: 4/2005.

7 MR. KARAS: Yeah, it's tough to see on this.

8 MR. STEINBERG: Yes. Why doesn't counsel let

9 the witness look at it and ask him if he's familiar
10 with it.

11 BY MR. KARAS:

12 Q Sir, I'm going to have you take a
13 look at the site plan. I am going to come up in
14 front of you.

15 I'm showing you a site plan that --
16 let me just identify it -- prepared by William
17 Houthuysen, the architect, McDonald's Restaurant,
18 Route 4, Fair Lawn, New Jersey, has the original
19 date of 3/14/01, that's a date that's tough to read
20 under it.

21 Have you ever seen this plan before?

22 A I've seen aspects of this plan that
23 are not familiar to me, so I'm not certain that I
24 have.

25 Q You were present during the original

126

1 application that was done by McDonald's with regard
2 to their driveway. Am I correct?

3 A Yes.

4 Q Were you involved throughout the

5 entire application process back when it was

6 initially presented?

7 A I don't know.

8 Q Were you involved in the process back

9 in 2001?

10 A I don't know the date. I appeared.

11 And I testified with regard to the drive-through.

12 I'm not sure of the dates.

13 THE CHAIRMAN: Okay.

14 BY MR. KARAS:

15 Q Let me follow-up. Do you recognize

16 then the initial plan or the plan as set forth on

17 that document that I just identified to you and the

18 driveway between the McDonald's site and the IHOP

19 site?

20 THE WITNESS: Mr. Chairman, since I just

21 testified that I see --

22 THE CHAIRMAN: Let me ask you this: Do you

23 have any documents that indicate that he's ever

24 testified to this?

25 MR. KARAS: No, I haven't.

1 I just want to know if he's familiar
2 with the design, not all the consistencies, but the
3 general design as between the McDonald's and IHOP
4 site as reflected in that plan.

5 THE WITNESS: That's where the
6 inconsistencies are: The area between McDonald's
7 and IHOP.

8 THE CHAIRMAN: The inconsistencies that
9 you're aware of from this site, that you're involved
10 at this point, the 2001 plan?

11 THE WITNESS: The plan that I was involved in
12 supported emergency vehicle movements from
13 McDonald's into IHOP. That was a part of the site
14 plan. This plan does not.

15 BY MR. KARAS:

16 Q How does that plan differ?

17 A It has a physical separation between
18 the McDonald's and the IHOP driveway that would
19 preclude such movement by emergency services.

20 Q Let's talk about that physical
21 separation that you see. What is the width of the
22 driveway?

23 A I don't know.

24 Q Can you take a look at it and see if
25 you see measurements?

128

1 A Well, which road are we talking
2 about?

3 Q I'm talking about the driveway
4 between the two properties.

5 A Would you come to the plan and point
6 it out, because I see a number of measurements.
7 You're asking very broad, very inconcise questions.

8 MR. SOUKAS: Counsel, why don't we mark this
9 for purposes of the record.

10 MR. KARAS: How do you want to mark it?

11 MR. SOUKAS: O-1.

12 (Plan received and marked as O-1 for
13 identification.)

14 BY MR. KARAS:

15 Q Mr. Fears, take a look at what's now
16 been marked as O-1. I'm pointing to what is a
17 curved -- what appears to be a curved driveway
18 between the McDonald's and the IHOP property, the
19 curvature as located on the McDonald's property.

20 Do you see what I'm talking about?

21 A Yes, I do.

22 THE CHAIRMAN: Counsel, just for me, because
23 I didn't hear this, can you ask that question again?

24 MR. KARAS: I sure can.

25

129

1 BY MR. KARAS:

2 Q I'm pointing on what's been marked as
3 O-1 for identification, an area between the
4 McDonald's and the IHOP site, what looks like a
5 curved driveway; am I correct?

6 A Yes.

7 Q And that driveway, am I correct,
8 appears to be located on the McDonald's site of the
9 two properties. Am I correct?

10 A Yes.

11 Q And can you tell me whether or not
12 you see a measurement as far as the width of that
13 particular driveway?

14 A There is none.

15 Q You don't see any measurement?

16 A There is none.

17 Q Now, is there a scale where you can
18 utilize that scale on the plans and attempt to
19 measure the width?

20 A There is a scale noted at the bottom,
21 1 inch equals 20 feet.

22 Q Looking at that scale, is there any
23 way that you can kind of approximate what the width
24 of that driveway is?

25 A Looks variable to me.

130

1 Q So, in other words, you don't have
2 the ability to approximate?

3 A Looks variable to me.

4 Q At the end of where the curbing is,
5 can you tell me what the width is there or is that
6 still variable?

7 A At the end of the curbing that's a
8 precise location. If I had a scale, that I can use.

9 THE CHAIRMAN: I was just going to ask. If
10 you have a scale, would you able to measure that at
11 all?

12 THE WITNESS: It appears to be -- depending
13 upon whether I take the center of the lines or the
14 edge of the lines, it could be 13 to 15 feet.

15 BY MR. KARAS:

16 Q Now, there's also curbing that curves
17 around; am I correct?

18 A Don't know, it's not labeled.

19 Q You can't tell whether or not that's
20 curbing or not?

21 THE CHAIRMAN: Let me do this.

22 Mr. Fears, you've been involved with
23 site plans for a long time. You know graphically
24 what items are and aren't on the plan.

25 THE WITNESS: Uh-huh.

131

1 THE CHAIRMAN: You, as an expert in the
2 field, you studied site plans, design site plans,
3 and markings that are I guess the two lines that are
4 close together, can you identify those as being
5 typically joint curbs?

6 THE WITNESS: I can't. This could be done
7 either with striping or with curbing what I'm

8 looking at here.

9 THE CHAIRMAN: May I see that plan?

10 THE WITNESS: Sure. Directing my attention
11 particularly to a little peninsula of area that
12 separates two paved areas, and I don't have any way
13 of telling whether that's intended to be striping or
14 curbing or what. There's no label there that tells
15 me that yet.

16 THE CHAIRMAN: Just for the record.

17 MS. PECK: We have the original.

18 THE CHAIRMAN: And I will point it out to
19 Mr. Fears. There is a sign and there is a label.

20 For the record, as Mr. Fears did
21 describe it, unless he did study the plan, the line
22 work on this copy is it cannot be told whether it's
23 curbed or not. But there is a label that does say
24 it's concrete curb.

25 MS. PECK: Mr. Chairman, I have those, it's a

132

1 sealed copy. I have the original of those if you
2 want those.

3 THE CHAIRMAN: Are those better?

4 MS. PECK: It's a sealed copy.

5 THE CHAIRMAN: Is that better for you?

6 MR. STEINBERG: I'd like to see it.

7 MS. PECK: Sure. We'll pass it down to you.

8 BY MR. KARAS:

9 Q If I can continue, I just have a
10 follow-up question.

11 Mr. Fears, the fact that's it's a
12 concrete curbing, does that now indicate to you that
13 it is in fact concrete curb?

14 A Yes.

15 Q So now that we have looked at that
16 curbed area, you would agree that it's a concrete
17 curb; am I correct?

18 A Yes.

19 Q And it's a concrete curb that curves
20 in a manner away from the IHOP and towards the exit
21 to the McDonald's property; am I correct?

22 A Yes.

23 Q Now you say you're not familiar with
24 this plan; am I correct?

25 A That's correct.

1 Q So you don't know if this was the
2 original plan or not that was submitted on behalf of
3 McDonald's; am I correct?

4 A Yes.

5 Q So you don't know if that is what
6 originally McDonald's was asking you for; am I
7 correct?

8 A That's correct.

9 Q But at some point, am I correct, the
10 plans changed?

11 A I presume so.

12 Q Well, the plan that you had testified
13 to and that was ultimately approved is different as
14 far as the area between McDonald's and IHOP; am I
15 correct?

16 A Yes.

17 Q In fact, the area that was
18 ultimately -- or their driveway between the two
19 properties that was ultimately approved was 20 feet;
20 am I correct? Twenty feet as far as the width; am I
21 correct?

22 A I don't know.

23 Q Well, are you familiar with the plans
24 that were approved for the drive-through?

25 A If you can show them to me, I'll be

134

1 happy to respond.

2 THE CHAIRMAN: Let record show that Mr. Karas
3 is showing a set of plans that were just given to
4 him by -- the approved plans.

5 MR. KARAS: I'm going to mark the approved
6 plans as O-2.

7 THE CHAIRMAN: A photocopy; correct?

8 MR. KARAS: I believe it is, yes. O-2.

9 (A photocopy of the approved plans
10 received and marked as O-2 for
11 identification.)

12 THE CHAIRMAN: Counsel, I let you go beyond
13 the time, it's five minutes to 11:00, so.

14 MR. KARAS: I'm going to finish up with this.

15 THE CHAIRMAN: Thank you. Fine.

16 MR. STEINBERG: I just have a question. How
17 do I know this is an approved plan? I don't see the
18 Board's chairman's signature on here anywhere.

19 MS. PECK: No. It's -- the stamped one, we
20 went through all the files.

21 MR. STEINBERG: It's not around?

22 MS. PECK: There's been so many people
23 through these files that we -- that's the only copy
24 we have.

25 MR. STEINBERG: Well, Mr. Chairman, I mean

135

1 it's late. I don't know that this is an approved
2 plan, so if counsel will stop calling it an approved
3 plan and just call it a plan with the latest
4 revision date, I can't even read that.

5 THE CHAIRMAN: Is it 7/12/01.

6 THE WITNESS: No, that's not correct.

7 MR. STEINBERG: This has got all kinds of --

8 THE WITNESS: There are a number of '02 dates
9 on this.

10 MR. STEINBERG: And the last one of which you
11 can't even read. It looks like '05, to be honest
12 with you.

13 THE WITNESS: It does.

14 MR. STEINBERG: I don't know what this is.

15 THE WITNESS: The last one that's fully

16 legible is 11/27 --

17 MR. STEINBERG: '02

18 THE WITNESS: -- '02.

19 MR. KARAS: '05 would have been approved

20 plan, but that's when the remand occurred.

21 THE CHAIRMAN: That's when the remand came

22 in. Okay.

23 Let's stipulate for the record that

24 those came out of the zoning board office file;

25 correct?

136

1 MS. LoPICCOLO: Yes.

2 BY MR. KARAS:

3 Q Looking at what's been marked as O-2

4 for identification, it depicts the area between the

5 McDonald's and the IHOP site, as well as the entire

6 site plan for the McDonald's site. Am I correct?

7 A It does.

8 Q And the if we look at the area -- the

9 driveway between the McDonald's and the IHOP site,

10 would you agree with me that up until the time that

11 McDonald's recently put up some barriers, that is
12 the design of the site; am I correct?

13 A Again, I don't know that this is the
14 final or approved may be. But in terms of the
15 curbing, it does reflect the geometry that is on
16 A-4.

17 Q So what is reflected in O-2, as far
18 as the driveway between the McDonald's and the IHOP
19 site, is consistent then with what was approved; am
20 I correct?

21 A I did not testify to that.

22 Q Consistent with what you had, as far
23 as the curbing on your A-4; am I correct?

24 A It appears to be consistent with the
25 curbing, yes.

137

1 Q And if we look at the driveway
2 between the McDonald's and the IHOP sites, am I
3 correct that driveway is 20 feet?

4 A It is shown -- it is dimensioned at
5 20 feet at a property line. But as the Board can
6 see, one of those edges is curbing, so it would be a

7 variable width after that.

8 Q The property line is 20 feet;
9 correct?

10 A That appears to be what this is
11 saying, yes.

12 Q And the curbing that we have on the
13 right side as it goes into McDonald's property is a
14 straight line for perpendicular to the boundary line
15 between the two parties. Am I correct?

16 A I don't know. It could be at a
17 slight angle. Visually it looks like it's pretty
18 good to perpendicular.

19 THE CHAIRMAN: Counsel, five more minutes.

20 MR. KARAS: I'm going finish up in about two
21 questions.

22 BY MR. KARAS:

23 Q And if we look at the lines that are
24 placed in O-2, at that area where you have that
25 perpendicular curbing, am I correct, there is a word

138

1 there that says "stop." Am I correct?

2 A Yes. I do see a word that says

3 "stop," yes.

4 Q And on top of that stop area, we see

5 a line; am I correct?

6 A Above the word "stop," yes.

7 Q Would you agree with me that's a stop

8 line?

9 A No.

10 Q You didn't prepare this?

11 A I did not prepare this.

12 Q Do you know who prepared it?

13 A It says William Houthuysen.

14 Q Did you have any conversations with

15 him with regard to this plan?

16 A I did.

17 Q Did you have any --

18 A Well, excuse me. I had conversations

19 with William Houthuysen. I can't testify that it

20 was regarding this plan.

21 Q Did you have any input with regard to

22 the final approval plan with regard to the

23 McDonald's driveway?

24 A I did testify before this Board

25 regarding the final approved plan. Again, excuse

1 me.

2 I did testify before this Board with
3 regard to the drive-through design and function. I
4 believe that the hearing went on after my testimony,
5 so I don't know that I am certain as to what the
6 final approved plan was.

7 Q Did you have any input as far as the
8 driveway between the McDonald's and the IHOP site,
9 with regard to that application of the
10 drive-through?

11 A I did.

12 Q Do you recall whether or not your
13 input involved putting this little "stop" lettering
14 on the area that comes out of the IHOP site?

15 A It did not.

16 Q Do you know whether or not your input
17 involved lining or lines, one perpendicular and one
18 parallel to the property line?

19 A It did not.

20 Q So what was -- or if that is the
21 approved plan, all right, assuming that it is, then

22 your testimony would be that you didn't have any
23 input with regard to what went into that final plan,
24 as far as any signage, any linings or any stop
25 lines?

140

1 A My involvement with the final plan,
2 to the best of my recollection, is I called for the
3 opening -- I called for the opening to be wide
4 enough so that emergency services could get a fire
5 truck from McDonald's into IHOP. And I know there
6 was discussion about bringing a long island of
7 curbing down in that area and I opposed that,
8 because that would have interfered with emergency
9 services movement.

10 I did call for a fairly large radius,
11 generous radius coming out of the IHOP on the left
12 to accommodate their delivery vehicles and garbage
13 trucks so that they could fairly freely leave that
14 site and get out through the McDonald's area.

15 Those are the changes that I remember
16 being involved in as to the connection between IHOP
17 and McDonald's.

18 Q One follow-up question then I'm done
19 for the day. What's the normal width of the fire
20 truck?

21 A 8 feet.

22 MR. KARAS: No further questions.

23 THE CHAIRMAN: Mr. Fears, I have a question.

24 What was the basis for Dynamic Engineering plans.

25 What was their plan based on?

141

1 THE WITNESS: I believe they took that from a
2 file plan that was provided to them either by my
3 client or by his attorney. I was not involved in
4 handing them that plan.

5 THE CHAIRMAN: Okay. It does reference it on
6 the plan. It references site plan prepared by
7 William Houthuysen, Clifton, New Jersey, dated
8 12/19/05. Last revised: 2/9/06. Okay. Thank you.

9 We need to pick dates. Mr. Karas, I
10 assume you're not finished with questioning?

11 MR. KARAS: No, I'm not.

12 THE CHAIRMAN: You have witnesses of your
13 own?

14 MR. KARAS: Yes, I do.
15 THE CHAIRMAN: Dates.
16 MS. LoPICCOLO: June 5th, which is a Tuesday.
17 MR. STEINBERG: No. I'm out of state from
18 June 4th to June 7th.
19 THE CHAIRMAN: How do you get so lucky?
20 MR. STEINBERG: At my age ,I'm entitled. I'm
21 out from the 4th to the 7th. And June 11th and 25th
22 are bad for me.
23 MS. LoPICCOLO: Okay. Well, there's Thursday
24 June 14th, 21st or 28th.
25 THE CHAIRMAN: 14th and 21st are good for me.

142

1 THE WITNESS: I have a problem with the
2 nights.
3 THE CHAIRMAN: 14th and 21st?
4 THE WITNESS: Yes.
5 THE CHAIRMAN: On the 28th.
6 THE WITNESS: Good.
7 MR. KARAS: 28th.
8 MS. LoPICCOLO: Wait a minute.
9 MS. PECK: June 28.

10 MS. LoPICCOLO: Make sure everyone
11 understands it's June 28th. Everyone can do June
12 28th?

13 MR. BLECHER: What night is that?

14 MS. LoPICCOLO: That's a Thursday.

15 THE CHAIRMAN: Everybody okay? June 28th.
16 Our professionals okay?

17 MR. KARAS: Yes.

18 MR. STEINBERG: June 28th then.

19 THE CHAIRMAN: No more questions,
20 Mr. Steinberg?

21 MR. STEINBERG: Yes. I waive.

22 THE CHAIRMAN: Thank you.

23 MS. LoPICCOLO: Wait. We need you to sign a
24 waiver.

25 THE CHAIRMAN: All right. So the public

143

1 knows, there will be no further notice. June 28th
2 the application will continue. The applicant agrees
3 to waive notice and to waive the time limitation.

4 MR. STEINBERG: We waive the time limitations
5 within the Board must act pursuant to state law.

6 THE CHAIRMAN: Okay.

7 (Matter adjourned at 11 o'clock p.m.)

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1 CERTIFICATE

2

3 I, KAREN GAGLIARDOTTO KOCSIS,
4 A Notary Public and Certified Court Reporter of the
5 State of New Jersey, do hereby certify that the witness
6 was duly sworn by me.

7 I FURTHER CERTIFY that the foregoing is a
8 true and accurate transcript of the testimony as taken
9 stenographically by and before me at the time, place,
10 and on the date hereinbefore set forth.

11 I FURTHER CERTIFY that I am
12 Neither a relative nor employee nor attorney nor
13 counsel of any of the parties to this action, and that
14 I am neither a relative nor employee of such attorney
15 or counsel, and that I am not financially interested in
16 the action.

17

Certified Court Reporter
License No. XI01560

19

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21 Notary Public of the State of New Jersey

22 My Commission expires: November 13, 2009

23

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25 Dated: August 3, 2007