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COUNTY OF BERGEN  
BOROUGH OF WOODCLIFF LAKE

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188 BROADWAY, LP; 188 BROADWAY  
BLOCK: 2701 LOT: 3 R-15 & S-O  
ZONES,

APPLICANT,

-before-

THE ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF WOODCLIFF LAKE

-----X

DATE: July 20th, 2021

TIME: 7:30 P.M.

1       A P P E A R A N C E S:

2  
3       SALVATORE R. PRINCIOTTO, ESQ.  
4       Counsel for the Zoning  
5       Board of Adjustment

6       EVAN JACOBS, Borough Engineer

7       KAUFMAN, SEMERARO & LEIBMAN, LLP  
8       BY: PAUL C. KAUFMAN, ESQ. And  
9       DANIELLE M. FEDERICO, ESQ.  
10      Counsel for the Applicant

11      ALSO PRESENT:  
12      ROBIN MALLEY, Chairwoman

13      SANJEEV DHAWAN, Vice Chairman

14      DIANNA CEREJIO

15      EMILIA FENDIAN

16      CHRISTINA HEMBREE

17      MICHAEL KAUFMAN

18      LYNDA PICINIC

19      BARBARA BUSHELL (Absent)

20      PHILLIP MANISCALCO

21      MEG SMITH, Board Secretary

22  
23  
24  
25

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MR. PRINCIOTTO 102

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INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS PAGE

(None)

QUESTIONS MARKED FOR RULINGS

PAGE LINE QUESTION

(None)

\* \* \*

## OPENING STATEMENTS

1 CHAIRWOMAN MALLEY: Okay.  
2 Onto 188 Broadway. The revised  
3 application. Lot 27-01, Lot 3 and then R-15 and then  
4 S-0 Zone Use variance, to add 53 apartment units,  
5 multi-family residential use in the S-0 Zone, a  
6 variance of a front yard setback of 34.1 feet, where  
7 35 is required, a variance for rear yard setback of  
8 39 feet, where 50 feet is required, a variance for  
9 building setback from the street, center line of --  
10 a variance for deficient parking area, landscaping  
11 for a 185 square feet is proposed, and 1,320 feet is  
12 required, was received on 3/12/21, deemed complete  
13 by Board Engineer 4521. Time for decision was  
14 extended to 8/3/21.

15 Sal, do you have something to add to  
16 that?

17 MR. PRINCIOTTO: No, that is fine.

18 I think we are ready to jump into the  
19 first witness, I know we have discussed having  
20 Richard Preiss appear at this special meeting, so,  
21 he will be the first witness this evening.

22 MR. KAUFMAN: Respectfully, I don't  
23 think we finished our case. I wanted to call in  
24 Brian Intentola as part of my case.

25 MR. PRINCIOTTO: Well, this is not a

## OPENING STATEMENTS

1 normal case.

2                   You have already filed an application  
3 and it was denied, and it is on appeal, and the  
4 initial issue is the issue of Res Judicata, so, it's  
5 -- it's not like a regular case.

6                   MR. KAUFMAN: It is a regular case. It  
7 is a regular case, it's been treated as a regular  
8 case and we are proceeding as a regular case.

9                   MR. PRINCIOTTO: I disagree with you.

10                   The Board made it very clear, at the  
11 beginning, that they would here your application to  
12 determine whether Res Judicata applied and we had to  
13 hear enough about your application from your  
14 witnesses, and to determine whether or not Res  
15 Judicata would apply, and, now, the Board witnesses.  
16 And, as you know, you wanted Richard Preiss to  
17 testify and, in fact, certain rulings with regard to  
18 his testimony by Chairwoman Malley, and he's here  
19 tonight for that reason. And agreed upon schedule,  
20 so, I think we should get going.

21                   MR. KAUFMAN: Okay.

22                   For the record, I am objecting to your  
23 entire procedure.

24                   You're denying me the right to call  
25 witnesses. You have -- you're not permitting me to

## OPENING STATEMENTS

1 question people who have submitted reports. Yes, I  
2 did mention Richard Preiss as a potential witness.  
3 But, you're not letting me call him either, you're  
4 calling him.

5 So, for the record, we object and,  
6 obviously, I can't tell you what to do, or the Board  
7 what to do, but, I want to put it on the record that  
8 we object to the entire process that you are using.

9 MR. PRINCIOTTO: You're entitled to  
10 object.

11 MR. KAUFMAN: I questions of Joe  
12 Burgess.

13 I had some redirect of him.

14 CHAIRWOMAN MALLEY: I thought we were  
15 done.

16 MR. KAUFMAN: No.

17 What we did was, at the last meeting,  
18 you had members of the public question him and then  
19 we ended. There was no statement as to what, I will  
20 -- I am going to reserve my right to recall Mr.  
21 Burgess. If you want to proceed in a different  
22 direction, but, I want to put on the record that I  
23 object to the procedure that is being utilized.

24 MR. PRINCIOTTO: At no time was there an  
25 indication that you wanted to recall Mr. Burgess.

## OPENING STATEMENTS

1 MR. KAUFMAN: The meeting ended.

2 MR. PRINCIOTTO: You never said that you  
3 had any additional questions for Mr. Burgess. He  
4 finished his testimony, he was cross examined, and  
5 we opened to the public. If you any redirect, that  
6 should have been done before you opened to the  
7 public. So, I think you're precluded from doing  
8 that.

9 MR. KAUFMAN: No.

10 Because his testimony might have been  
11 in response to what the public had questioned. But,  
12 you're going in your own direction, so, I don't want  
13 to waste the transcript by getting into a lengthy  
14 colloquy with you, and I am just placing my  
15 objection to the procedure on the record.

16 I have also said from Day 1, I wanted  
17 to call Brian Intentola, Evan Jacobs, among others  
18 as witnesses, and you haven't let me. I am placing  
19 my objection on the record. Let's use tonight  
20 efficiently and let's move on.

21 MR. PRINCIOTTO: Okay.

22 We are going to call, as we had  
23 indicated, Richard Preiss as a witness.

24 MR. PREISS: Good evening.

25 MR. PRINCIOTTO: Good evening.



DIRECT ~ RICHARD PREISS

1 MR. KAUFMAN: Good evening.

2 MR. PRINCIOTTO: Can you raise your  
3 right hand?

4 (Witness complies.)

5 R I C H A R D P R E I S S, called as a witness,  
6 having been first duly sworn by a Notary Public of  
7 the State of New Jersey, was examined and testified  
8 as follows:

9 DIRECT EXAMINATION BY

10 MR. PRINCIOTTO:

11 MR. PRINCIOTTO: Okay.

12 You may see some new faces here, we do  
13 have some new Board members, and we had some  
14 resignations.

15 Q. But, as in every case, if you can give  
16 us the benefit of your qualifications and  
17 involvement with the Borough of Woodcliff Lake.

18 A. Yes.

19 I am a licensed professional planner in  
20 the state of New Jersey. I still retain a very small  
21 percentage of ownership in the firm of Phillips,  
22 Preiss, Grygiel, Leheny, Hughes and I am in the  
23 process of retiring, and, as such, I turned over all  
24 of my municipal clients and my private sector  
25 clients to my partners, with the exception of a few

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1 cases that have not settled.

2 In this particular application, just to  
3 make it clear, because of my knowledge of the first  
4 application, when the application was made for,  
5 essentially, the exact same application during the  
6 transition period between myself and Ms. Leheny who  
7 is now officially the Borough Planner, it seemed  
8 efficient for me to respond to the issue regarding  
9 Res Judicata and I set forth that opinion in a  
10 letter that I wrote to Chair Malley and the members  
11 of the Board on February 18th this year.

12 I will say this: I have not reviewed  
13 this application, I have not reviewed the plans, I  
14 have not reviewed any of the professionals letters,  
15 I have not reviewed transcripts, I have not reviewed  
16 any of the review letters.

17 Ms. Leheny is the partner in charge.  
18 She's the person responsible for advising the Board  
19 on this application. She is not present this evening  
20 but she'll available to the extent, as necessary, at  
21 the next hearing, and she has participated in the  
22 other hearings, and, as such, she is the person to  
23 ask about the current application.

24 I had indicated this when Mr. Kaufman  
25 requested that I appear. I indicated that I am no

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1 longer involved. He made a request through the Chair  
2 that I participate and Miss -- Chairwoman Malley  
3 indicated that I should appear, so, I am here this  
4 evening. So, in regard to my testimony, I just want  
5 to make clear that since I have not reviewed the  
6 application at all, I am not prepared to testify, or  
7 give any opinion, about this particular application.  
8 In regard to the prior application, Mr. Kaufman's  
9 attorney, at that particular time, was given the  
10 opportunity to cross examine me which they did, and  
11 that is part of the record that is in front of Judge  
12 Partavano.

13 So, the only questions or testimony I  
14 will provide is in regard to the letter that I wrote  
15 on February the 18th, in regard to the Res Judicata  
16 issue, and I am happy to take it from there if  
17 either the Board or Mr. Kaufman have any questions  
18 with regard to that. I am happy to answer it. If  
19 there are any questions outside the scope of that,  
20 like any other witness, you know, I can't opine on  
21 that.

22 Thank you very much.

23 MR. KAUFMAN: Excuse me, just on a  
24 personal note, before we proceed, I just want to  
25 wish you the best of luck, Mr. Preiss.

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1 THE WITNESS: Thank you very much.

2 MR. KAUFMAN: Mr. Princiotto, the letter  
3 of February 18, 2021 speaks for itself.

4 Mr. Preiss has indicated he hasn't  
5 reviewed the application, hasn't reviewed the plan,  
6 hasn't reviewed anything. He really has no  
7 knowledge, so, there is really not much he can  
8 testify and the questions that I have for him can no  
9 longer be on the pending applications.

10 So, I am not going to waste anybody's  
11 time asking him about an application that he has not  
12 reviewed. I don't think he can testify as to raise  
13 Res Judicata either because he hasn't reviewed the  
14 present application.

15 And so, respectfully I would like to  
16 ask him a few questions about the ordinance which he  
17 has knowledge of the --

18 MR. PRINCIOTTO: Wait. Wait.

19 MR. KAUFMAN: He has --

20 MR. PRINCIOTTO: I think you're off  
21 track with regard to the procedure here.

22 The Board is calling Mr. Preiss with  
23 regard to his letter of February 18, 2021 and we  
24 have Members of the Board that would like to hear  
25 from Mr. Preiss, and we have members of the public

DIRECT ~ RICHARD PREISS

1 that would, likewise, like to hear from Mr. Preiss,  
2 and we are putting his testimony on the record.

3 MR. KAUFMAN: Well --

4 MR. PRINCIOTTO: You can ask him  
5 questions when I am done.

6 MR. KAUFMAN: Mr. Preiss has just given  
7 a statement, under oath, that he has hasn't reviewed  
8 the pending application, hasn't reviewed the plans.

9 The February 18, 2021 letter was on a  
10 previous iteration of the application, so, what is  
11 the point?

12 There is really no point in it.

13 MR. PRINCIOTTO: Well there's a big  
14 point in it.

15 MR. KAUFMAN: No.

16 MR. PRINCIOTTO: I don't want to waste  
17 time talking about it.

18 MR. KAUFMAN: He's going to give an  
19 opinion, which he gave in his letter, that it's Res  
20 Judicata. But, it's on an application that no  
21 longer exists.

22 I don't understand the point of what  
23 you're trying to do other than to taint the  
24 proceeding.

25 CHAIRWOMAN MALLEY: Mr. Kaufman, can Mr.

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1 Princiotto finish his statement?

2 MR. PRINCIOTTO: I will make my  
3 statements.

4 Chairwoman Malley, I would like to  
5 proceed with the testimony of Mr. Preiss. He is an  
6 expert witness. Unless Mr. Kaufman wants to raise  
7 any objections to his qualifications, I would like  
8 to begin and have him for the benefit of the Board,  
9 and the public, explain the doctrine of Res  
10 Judicata, and go over his report of February 18,  
11 2021 which we are marking for the record and be part  
12 of the record, WCL 5.

13 CHAIRWOMAN MALLEY: Thank you.

14 I requested him to be here, so, I would  
15 like to hear what he has to say.

16 MR. PRINCIOTTO: Okay.

17 Thank you.

18 MR. KAUFMAN: Just for the record, I  
19 object.

20 MR. PRINCIOTTO: Do you have any  
21 objection as to the qualifications of Mr. Preiss?

22 MR. KAUFMAN: No.

23 I have the utmost regard for Mr.  
24 Preiss, for Ms. Leheny, for Paul Phillips, for Paul  
25 Grygiel, I can't say the same for Mr. Hughes because

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1 I don't know him. But, if he's with their firm I  
2 would have the utmost regard for him, as well.

3 I sincerely don't question any of their  
4 qualifications at all.

5 CHAIRWOMAN MALLEY: Then let's proceed.

6 MR. PRINCIOTTO: Okay.

7 Sorry for the delay, Mr. Preiss.

8 Q. I would like you to go through your  
9 letter of February 18, 2021 and explain to the Board  
10 the jurisdictional issue of Res Judicata.

11 A. Sure.

12 Let me just clarify one thing.

13 I just want to make the record clear  
14 that that letter was written in response to the  
15 prior application, and as Mr. Kaufman indicated, I  
16 have not reviewed the current application, which I  
17 believe is for fewer units, so I am not going to  
18 opine on whether I believe the current application  
19 into meets the criteria of Res Judicata. But, I am  
20 prepared to testify as to what are the criteria and  
21 will leave it to the Board to determine, on the  
22 basis of the information that had been provided  
23 through Mr. Kaufman's witnesses, whether Res  
24 Judicata would apply.

25 Q. Just before you begin, according to the

DIRECT ~ RICHARD PREISS

1 case law, the decision with regard to Res Judicata  
2 is a Board decision; is that correct?

3 A. That is correct.

4 Q. And the principles of Res Judicata are  
5 the same and would apply to any application based  
6 upon the facts that they give an application; is  
7 that correct?

8 A. Correct.

9 You're right.

10 So, notwithstanding that, that I don't  
11 have a law degree and I am not an attorney, planners  
12 like myself and Mr. Burgess are involved in matters  
13 where our interpretation, or our understanding of  
14 the facts, gives the opportunity to advise the Board  
15 on certain matters and that is the case here. So, I  
16 am not going to say that I'm a legal expert and that  
17 I understand all of the legal merits and/or  
18 principles related to Res Judicata.

19 However, as I set forth in that letter,  
20 basically, there are five criteria that have to be  
21 met in the situation where an application makes a --  
22 where an applicant makes an application which is  
23 either identical or substantially similar to a prior  
24 application that has been adjudicated.

25 When I saw Mr. Kaufman, as an



## DIRECT ~ RICHARD PREISS

1 applicant, basically re-filed the same application  
2 with a few minor adjustments, with the same number  
3 of units, I did write the letter, and I set forth  
4 those five principles, and I opined on that  
5 particular application.

6 And what I will do this evening,  
7 without applying it to the new application, is just  
8 go through the same criteria and leave it up to the  
9 Board, with respect to this application.

10 So, the first criteria, and the most  
11 important one, is whether the second application is  
12 substantially similar to the first. Not having the  
13 read the application in detail, I can't make that  
14 decision.

15 The one thing that I did advise Mr.  
16 Princiotto when we talked about it, and -- my  
17 recommendation was that rather than the Board make  
18 the decision, about Res Judicata up front, it was my  
19 opinion, and I've done this, where I am either the  
20 planner on the Applicant's side or I am the planner  
21 on the Municipal's side, is to give the Applicants  
22 the opportunity to explain, in detail, what the  
23 application is, so, the board has a sufficient  
24 information to make the determination whether it's  
25 substantially similar or substantially different. If

## DIRECT ~ RICHARD PREISS

1 it's substantially similar than the first criteria  
2 has been met.

3 The second criteria is that the same  
4 parties or their privies are involved. And in this  
5 particular situation, it's the same applicant and  
6 the same Board, so, that particular criteria  
7 obviously has been met.

8 The third one is that there must be no  
9 substantial change in the application itself or the  
10 condition surrounding the property. And in this  
11 particular case, there, I believe there's a change  
12 in the application, there is a reduction in the  
13 number of units. Once again, the Board is going to  
14 have to make a determination whether the reduction  
15 in the number of units, but with essentially the  
16 same plan, constitute a substantial change. And  
17 with regard to the second one, the condition  
18 surrounding the property. I can't say that I have  
19 reviewed it subsequently, but, when I reviewed the  
20 application in February, my review of the  
21 surrounding properties indicated that there has been  
22 no substantial change between the first application  
23 and the second, but, once again, maybe there's  
24 something that happened in the interim between  
25 February and now that has changed that, and it's up

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1 to Mr. Kaufman, through his witnesses, to point that  
2 out, and then the Board has to deliberate and take  
3 that into consideration.

4 The fourth one is there must have been  
5 an adjudication on the merits in the first case and  
6 that certainly was what happened, is the Board voted  
7 to deny the application, so there was an  
8 adjudication on the merits, as the Board knows that  
9 has been appealed and is in front of Judge  
10 Paratvano.

11 And then the fifth criteria, both  
12 applications must involve the same course of action,  
13 and that certainly is the case here. Essentially,  
14 Applicant is in front of the Planning Board  
15 requesting a D variance and a number of C variances.

16 So, that essentially, the five  
17 criterion the Board has to, in their deliberation,  
18 and I would say that if the Board deliberates and  
19 makes their recommendation, rather than simply vote  
20 on the application to say that it does or does not  
21 meet it, I would think it would be necessary to go  
22 down the list of the five criteria, and for the  
23 members to indicate whether they believe all of  
24 those criteria have been met or not. If all of those  
25 criteria have been met, then the Board need not hear

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1 or make a determination on the merits. However, if  
2 the -- in the judgment of the Board, it is  
3 substantially different, and it doesn't meet Res  
4 Judicata, then they can proceed with the second  
5 vote.

6 That is, essentially, what I set forth  
7 in the prior letter, and I applied it to the prior  
8 application which was for, essentially, the same  
9 application. This was one is, as I understand it,  
10 different and I've indicated that based on the  
11 witnesses that Mr. Kaufman has provided.

12 I think the Board now, at this  
13 particular point has probably, and I have not read  
14 the transcript, is probably in a position to make a  
15 determination whether Res Judicata would apply.

16 I am happy to answer any questions that  
17 the Board has or if Mr. Kaufman has any questions.

18 Q. Before we do that, and thank you for  
19 your testimony, you do mention, in your review  
20 letter, the onset of the COVID-19 pandemic?

21 A. Yes.

22 Q. And I would like you to comment on that  
23 in terms of or change circumstances.

24 A. Yeah.

25 So, you know, there had been an

DIRECT ~ RICHARD PREISS

1       indication in the initial application that the --  
2       one of the things -- this is before the application  
3       was heard, obviously, that either in the rider or in  
4       some in introductory cover letter, there was an  
5       indication that the Applicant would be arguing that  
6       due to COVID-19, the onset of the pandemic, that  
7       that was a sufficient change in circumstances to  
8       find that Res Judicata did not apply.

9                       And what I wanted to indicate, is based  
10       on my understanding of the case law and directly  
11       from one of the cases relating to Res Judicata, is  
12       that substantial change has to be to the conditions  
13       surrounding the property and, obviously, COVID-19  
14       effects all properties, not just in Woodcliff Lake,  
15       but, around the world, so, if everybody were to make  
16       the claim that COVID-19 changed their circumstances,  
17       anybody who had filed a prior application would be  
18       permitted to refile it and claim Res Judicata and  
19       that is not my understanding as to whether Res  
20       Judicata should apply.

21                      I didn't believe it then and I don't  
22       believe now, that that is a sufficient basis for the  
23       Board to find that Res Judicata does not apply. It  
24       has to be something about the conditions surrounding  
25       the property, or the master plan, or the zoning, or

CROSS ~ RICHARD PREISS

1 some other properties having been developed. Some of  
2 those conditions would have to have changed for the  
3 Board to find that there's a substantial change in  
4 the application, itself, or in the condition  
5 surrounding the property.

6 So, that -- that was my opinion  
7 relating to the claim on COVID-19 being changed --  
8 the changed circumstances, I don't believe that is a  
9 proper basis to find Res Judicata does not apply.

10 Q. Okay.

11 MR. PRINCIOTTO: Mr. Kaufman.

12 I don't have any further questions.

13 MR. KAUFMAN: Okay.

14 Thank you.

15 CROSS EXAMINATION BY

16 MR. KAUFMAN:

17 Q. Mr. Preiss, if a different entity filed  
18 the application, the 60 units, 3 stories, height  
19 variance, would that then not be Res Judicata?

20 MR. PRINCIOTTO: I object.

21 This has nothing to do with the case.

22 MR. KAUFMAN: Yes, it does.

23 MR. PRINCIOTTO: My objection stands.

24 MR. KAUFMAN: Okay.

25 Fine.

## CROSS ~ RICHARD PREISS

1           Q.     Do you understand my question, Mr.  
2     Preiss?

3           A.     It is not sufficiently clear.

4           Q.     Let me --

5           A.     I will --

6           Q.     Let me rephrase.

7                     Let me rephrase it.

8                     The same parties, or their privies, are  
9     involved in the second application.

10                    If a different entity with, say,  
11     substantially different principles filed the  
12     application for the 60 units, 3 story building  
13     requiring a height variance, would Res Judicata then  
14     not apply or would it still?

15           A.     I -- I -- I -- I -- I can't -- I can't  
16     -- answer that question in the absence of knowing  
17     what the relationship is between the prior entity  
18     and the current entity if it was somebody completely  
19     different than, perhaps, that would be a basis of  
20     having met that criteria.  But, if it's,  
21     essentially, the same application, I believe Res  
22     Judicata would apply.

23           Q.     It's exactly the same application, but,  
24     a different entity that filed the application, then  
25     that did not have privity with 188 Broadway?

CROSS ~ RICHARD PREISS

1 MR. PRINCIOTTO: I object.

2 There's no relevance here.

3 MR. KAUFMAN: There is relevance, but,  
4 that is okay.

5 A. I would say if the application is  
6 substantially the same than Res Judicata would  
7 apply, even if it were another entity.

8 What one could do is: One entity could  
9 step aside and give it over to another entity, same  
10 application. It's the same merits, it's already  
11 been adjudicated, so, I would say Res Judicata would  
12 still apply.

13 Q. Would you agree then that there are  
14 only four criteria and not five?

15 MR. PRINCIOTTO: I object.

16 It's argumentative.

17 He answered the question.

18 A. I am just indicating, you asked me a  
19 question and I gave an answer.

20 Q. Okay.

21 A. It happens to be all five.

22 Let me just clarify.

23 They have to meet all five. So, if you  
24 just met one of those, in other words, for Res  
25 Judicata to not apply, you would have to meet all



1 five.

2 So, if you meet Number 2, but, you  
3 don't meet Number 1 and Number 5, Res Judicata still  
4 applies.

5 So, it can be another entity but if  
6 it's substantially similar applications, than Res  
7 Judicata applies. It doesn't mean because one of the  
8 criteria has been met that Res Judicata does not  
9 apply, you have to meet all five.

10 Q. I'm saying the opposite.

11 If you meet four out of the five, Res  
12 Judicata does not apply; is that a fair statement?

13 A. You have to meet all five.

14 MR. PRINCIOTTO: I will check my  
15 objection to the Chair.

16 It's argumentative in nature. It has  
17 nothing to do with this application.

18 A. You have to meet all five is my  
19 testimony.

20 Q. Okay.

21 Thank you.

22 A. You have to be able to prove that this  
23 application meets all five.

24 Q. Okay.

25 Do you agree with this definition of

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1 Res Judicata: The common law doctrine meant to  
2 prevent relitigation of cases, or of applications  
3 for variances, between the same parties, regarding  
4 the same issues, and to preserve the binding nature  
5 to the court of causation, judicial body's decision?

6 A. Where are you reading that from?

7 Q. I am asking you if you agree or  
8 disagree with that definition.

9 A. You know, I don't know what your  
10 quoting, whether it's out of context, but,  
11 generally, yes.

12 The doctrine is, basically, not to  
13 allow applicants a second bite of the apple. If you  
14 make an application and the Board makes a  
15 determination. You can't wait six months or two  
16 years and come back with the same application and  
17 that applies, in this particular situation, to the  
18 variance application.

19 But, yes, generally, I believe what you  
20 have indicated would apply.

21 Yes.

22 Q. And that included the phrase: Regarding  
23 the same issues?

24 A. I heard that, yes.

25 Q. Okay.

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1                   And you agree with that, as well?

2                   A.       As I have said, I haven't parsed it  
3                   down to its individual criteria, I am relying upon  
4                   what I set forth in my letter, and I have just gone  
5                   through it, and I said it's up to the Board to  
6                   determine whether all of the five criteria have been  
7                   met, and if they have -- if -- if one of the  
8                   criterion has not been met then Res Judicata  
9                   applies.

10                  Q.       The definition that I read to you  
11                  included the phrase: Regarding the same issues.

12                             MR. PRINCIOTTO: This is repetitive.

13                             I object and I address my objection to  
14                   the Chair.

15                             He keeps asking the same question.

16                             CHAIRWOMAN MALLEY: We need to move on,  
17                   Mr. Kaufman.

18                             We are trying to get through your case  
19                   tonight and if we keep going back and forth on this  
20                   issue --

21                             MR. KAUFMAN: Madam Chairperson, this is  
22                   a critical issue and I have a right to examine this  
23                   witness who's given testimony on this issue.

24                             CHAIRWOMAN MALLEY: I think you have  
25                   been questioning him.

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1 MR. KAUFMAN: I haven't been allowed to  
2 ask him questions that I want to ask him regarding  
3 the application and now you're going to cut me off.

4 MR. PRINCIOTTO: How many times are you  
5 going to ask the same question?

6 MR. KAUFMAN: I guess until there is an  
7 acknowledgement that: "Regarding the same issues"  
8 is part of the criteria.

9 CHAIRWOMAN MALLEY: And I have to defer  
10 our Board attorney on this.

11 MR. KAUFMAN: If you want my source, I  
12 am happy to give you the source of the definition.

13 CHAIRWOMAN MALLEY: What is the  
14 question?

15 A. Let me see --

16 MR. KAUFMAN: Go ahead, Richard.

17 A. Just to summarize, I have provided -- I  
18 have set forth my opinion, in my letter, and I have  
19 indicated that unless the applicant can show that  
20 they have met all of the five criteria then Res  
21 Judicata would apply.

22 You can read other excerpts from case  
23 law, which I have not read, and I have indicated  
24 that I, generally, agree that the doctrine is meant  
25 to prevent applicants to have a second bite of the

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1 apple with the same application.

2 That is my opinion. I am not prepared  
3 to go through the quote with every single separate  
4 criteria and opine on that. I set forth what I  
5 believe the criteria are and it's up to the Board to  
6 make a determination whether all five have been met  
7 or not.

8 Q. Okay.

9 What's the definition of substantial,  
10 in your mind?

11 A. Um, I think in this case, it's a --  
12 it's a question of opinion, and the Board is asked  
13 in many situations, even in the case of negative  
14 criteria, you know, the negative criteria says there  
15 must be substantial detriment to the public good  
16 because all applications may have some negative  
17 impact. So, it's a question of degree. I can't say  
18 exactly what substantial is, but, it's -- it's  
19 something that where the Board has to make a  
20 determination that the application is very different  
21 from -- this application is very different than the  
22 prior application. And so, if you said -- if you  
23 reduced it by 50 percent, would that be substantial?  
24 Yes. If you reduce it by 10 percent, is that  
25 substantial? I am not sure that it is.

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1                   But, that is really up to the Board,  
2                   with article and advice of counsel, to make a  
3                   determination whether that is substantially  
4                   different.

5                   And it's not just the number of units.  
6                   It would be with regard to the type of use, the  
7                   layout of the site plan, the set backs, the amount  
8                   of parking, the amount of traffic, the height. All  
9                   of those would be have to be taken into  
10                  consideration as to whether this application is  
11                  substantially different than the prior application.

12                 Q.        So, is it fair to say then, that to sum  
13                  up, substantial is fairly subjective?

14                 A.        It's not subjective because the Board  
15                  is charged under the miscellaneous law with  
16                  exercising their discretion. And so, they have to  
17                  make a determination as to what they believe  
18                  substantial is. There's no bright line and no  
19                  objective standard in the case law hasn't said 50  
20                  percent is substantial and 10 percent is not  
21                  substantial, and I believe the Board having heard  
22                  the full application can make that determination,  
23                  and they should indicate, on the record, when they  
24                  make that decision, as to why, either, they do  
25                  believe it's substantial and that Res Judicata would

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1 not apply or why it's not substantial.

2 I can't provide any further guidance on  
3 that.

4 Q. So, essentially there's no criteria on  
5 what substantial means?

6 A. There's no bright line.

7 It's not black and white, there's a  
8 gray area. It's discretion and the Board exercises  
9 this every time they make a decision on any variance  
10 application, and they are charged with doing that in  
11 this particular application.

12 Since I have not reviewed this  
13 application and compared it, I can't tell the Board  
14 whether I believe it is or is not substantial. But,  
15 I believe with, having the heard the testimony of  
16 all of your witnesses, they would be in a position  
17 to make a fair and reasonable decision.

18 Q. However, there's no basis.

19 There's no criteria for them to make  
20 that decision and we do have the standard of  
21 arbitrary, capricious, and unreasonable, which means  
22 that the Board's judgment is not unfettered and  
23 without limitations.

24 A. Let me say this.

25 It isn't that there's no criteria.

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1 There is no black and white, there's no bright line.

2 It's not like taking out a scale and  
3 saying, you know, where you have a variance where,  
4 basically, the setback is 10 feet and you're 9 feet,  
5 therefore, there are a variance required. It's not  
6 that kind of a standard where it is measurable.

7 But, it's is not entirely subjective. The Board is  
8 asked to use their discretion to determine whether  
9 they think it is or is not substantial. And your  
10 witnesses, obviously have weighed in. I don't know.  
11 I hope your witnesses have weighed in to indicate  
12 why they think it's substantial or not, and then the  
13 Board can -- perhaps, the other Board experts have  
14 weighed in, as well, and then the Board can listen  
15 to the experts and make a determination whether it's  
16 substantial or not.

17 They are not making an objective  
18 decision without, advisement without some parameters  
19 and, obviously, yes, I do understand that if the  
20 Board just made a decision, without explaining it,  
21 that they may be subject to having made a decision  
22 that is arbitrary.

23 But, if the reasons are set forth, on  
24 the record, then they are entitled to --

25 MR. KAUFMAN: I think you froze.



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1                   Okay.

2                   Q.       If the issues are not the same is the  
3 case, in the applications, are they not -- if the  
4 issues are not the same, are the applications then  
5 different?

6                   A.       Again, you're asking a question --

7                   Q.       Am I --

8                   A.       Without any kind of parameters --

9                   Q.       Hypothetical.

10                   I am not asking you about this specific  
11 case. I am asking you in your professional  
12 opinion --

13                   MR. PRINCIOTTO: I object about this.  
14 These are hypothetical questions about two different  
15 applications.

16                   This has absolutely nothing to do with  
17 this application.

18                   MR. KAUFMAN: His testimony has nothing  
19 to do with the application because he never reviewed  
20 it.

21                   So, all he is talking about is  
22 hypothetical.

23                   He stated at the outset that he --

24                   THE WITNESS: It's not a hypothetical.

25                   All I said is: These are the criteria

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1 and the Board has to decide.

2 Q. I am talking about --

3 A. If I can finish my answer.

4 What I would tell you with regards to  
5 the issues, if the issues are substantially the  
6 same, Res Judicata would apply. If the issues are  
7 substantially different because the conditions  
8 surrounding the property are substantially  
9 different, or the application, itself, is  
10 substantially different than Res Judicata would not  
11 apply because the application is essentially the  
12 same, and the conditions surrounding the property  
13 are substantially the same, than I would say Res  
14 Judicata would apply.

15 MR. KAUFMAN: Just for the record, so  
16 that it's complete.

17 The definition of Res Judicata that I  
18 read to you was --

19 MR. PRINCIOTTO: I object.

20 This is not a question.

21 If you want to make summation,  
22 statement, I am addressing the Chair.

23 MR. KAUFMAN: You're interrupting me.

24 What is your role here?

25 MR. PRINCIOTTO: You know what my role

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1 is.

2 You're not asking the question of this  
3 witness.

4 CHAIRWOMAN MALLEY: Hold on.

5 MR. KAUFMAN: You're interfering with my  
6 right to --

7 MR. PRINCIOTTO: No, I am not.

8 In a minute I am going to ask you to be  
9 muted because you're talking over me and you're not  
10 committing to make an objection.

11 We had an understanding, Mr. Kaufman.

12 CHAIRWOMAN MALLEY: Mr. Princiotto is  
13 the Board attorney and he is speaking on our behalf.

14 MR. PRINCIOTTO: Chairwoman Malley,  
15 objection. These are not questions.

16 MR. KAUFMAN: May I --

17 MR. PRINCIOTTO: Mr. Kaufman wants to  
18 make a summation statement.

19 MR. KAUFMAN: No, I don't.

20 The witness asked me --

21 CHAIRWOMAN MALLEY: Can you wait?

22 MR. KAUFMAN: The witness asked me where  
23 I got the definition from, I wanted to state where I  
24 got it from. I think that's important and that it's  
25 part of the record. I read in the definition that

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1 the Board --

2 (Mr. Kaufman was placed on mute.)

3 CHAIRWOMAN MALLEY: Thank you.

4 Can we do one at a time?

5 Mr. Princiotto was speaking.

6 MR. PRINCIOTTO: Thank you.

7 This is not the opportunity for Mr.

8 Kaufman to make a summation statement through legal  
9 ordinance. We have Mr. Preiss here, who is appearing  
10 as a witness, and should not be subjected to  
11 listening to Mr. Kaufman's opinions with regard to  
12 interpretations of the law.

13 This is time to ask questions of the  
14 witness, just like we will instruct everyone else  
15 that wants to make comments, and we have done that  
16 very often.

17 It is not the time to make comments or  
18 summations. It's the time to ask the witness  
19 questions. If there are no more questions then we  
20 will move on. But, I object to Mr. Kaufman making  
21 statements during the time when he should be asking  
22 questions and if he is finished with questions, then  
23 we should move on.

24 It is matter of procedure that we  
25 follow.

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1 CHAIRWOMAN MALLEY: Thank you.

2 MS. SMITH: Chairwoman Malley, can I  
3 un-mute Mr. Kaufman?

4 CHAIRWOMAN MALLEY: Yes, you can.

5 Okay.

6 MS. SMITH: Okay.

7 MR. KAUFMAN: I want to state for the  
8 record, that I object to the fact that I was muted  
9 and prevented from speaking.

10 The record should reflect that as well.

11 CHAIRWOMAN MALLEY: It does.

12 MR. KAUFMAN: Am I permitted to continue  
13 my questioning or am I being stopped?

14 CHAIRWOMAN MALLEY: You're permitted to  
15 ask a question, yes. But, not to badger our witness.

16 MR. KAUFMAN: I didn't badger him, but,  
17 thank you.

18 Q. Mr. Preiss, are you aware that the  
19 definition I read to you came from a book entitled  
20 The Complete Illustrated Book of Development  
21 Definitions, Fourth edition, written by Carl  
22 Lindbloom, David Listocken, Richard Preiss, and  
23 Blake Merriam?

24 A. I don't recall that, but, I am not  
25 surprised.

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1 Q. Thank you.

2 I have some questions for Mr. Preiss on  
3 the ordinances.

4 Am I going to be permitted to ask him?

5 CHAIRWOMAN MALLEY: I am going to defer  
6 that question to Sal.

7 MR. PRINCIOTTO: What ordinances are you  
8 talking about?

9 MR. KAUFMAN: Woodcliff Lake ordinances.

10 THE WITNESS: As it relates to Res  
11 Judicata?

12 That is the only reason why I am here.  
13 That is my only involvement in this application, is  
14 the February 18th letter. The ordinance as it  
15 relates to Res Judicata, I can answer the question,  
16 otherwise, it's not related to the application that  
17 I reviewed.

18 MR. PRINCIOTTO: We said from the  
19 outset, and it was placed on the record, that the  
20 Board was going to hear the application to determine  
21 whether or not if there was Res Judicata -- that is  
22 the issue. It's a preliminary issue. It's a  
23 jurisdictional question. You have to hear about the  
24 application, and what the application is all about,  
25 and how it is the same, and how it is different.

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1           You have different -- the applicant was  
2           given the opportunity to present whatever testimony  
3           or evidence it wanted with regard to its  
4           application. And the Board was very clear from the  
5           outset, by vote and by resolution, that it would  
6           hear the application and determine whether Res  
7           Judicata applies.

8           That is the issue. This is not an  
9           application like an ordinary application. If these  
10          questions are related to Res Judicata, you can ask  
11          the question.

12          If not, we should move on, Chairwoman  
13          Malley.

14                 CHAIRWOMAN MALLEY: I agree with you.

15                 And we discussed, from the beginning,  
16          that this was a Res Judicata question. Not a new  
17          application, start to finish.

18                 MR. KAUFMAN: May I reply?

19                 CHAIRWOMAN MALLEY: You may.

20                 MR. KAUFMAN: Thank you.

21                 The Board took testimony on the site  
22          plan, the Board took testimony, knowing it's exactly  
23          the same site plan, the Board took testimony on trip  
24          generations, traffic, on a lot of issues that had  
25          nothing to do with Res Judicata. They were all site

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1 plan issues.

2 CHAIRWOMAN MALLEY: I have to disagree  
3 with you.

4 Because we listened to that in order to  
5 understand whether it was or was not a different  
6 application -- or differences from the original  
7 application.

8 MR. PRINCIOTTO: That is correct.

9 MR. KAUFMAN: Fortunately, we have  
10 transcripts. So --

11 MR. PRINCIOTTO: We all know that.

12 MR. KAUFMAN: Just to move on, are you  
13 now telling me that I can't question Mr. Preiss  
14 about the ordinances?

15 THE WITNESS: Maybe I can clarify.

16 I have not reviewed the application, I  
17 only reviewed the Res Judicata issue.

18 So, if you're asking me my opinion  
19 about whether an ordinance would apply to the Res  
20 Judicata issue, I can answer it.

21 If not, my partner, Ms. Leheny is the  
22 witness, the planning ordinances on the witness, on  
23 the application and you can ask her those questions  
24 about the merits of the application. If it's about  
25 Res Judicata, as I said before, as I said from the



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1       outset that is my sole with this application.

2                   If it is with regard to Res Judicata, I  
3       can answer. It if it's about the master plan or the  
4       ordinances which have adopted, which have an impact  
5       on the application, itself, than I am not the  
6       witness to answer that question.

7           Q.       Let me ask you a fast question.

8                   Were you involved in representing  
9       Woodcliff Lake in the drafting of many of the zoning  
10      ordinances?

11           A.       Which ones?

12           Q.       Give me a second and I will answer you.

13                   MR. PRINCIOTTO: Can we have a proffer  
14      as to what this has to do with Res Judicata?

15                   MR. KAUFMAN: It has nothing to do with  
16      Res Judicata.

17                   CHAIRWOMAN MALLEY: This is not the  
18      forum for that.

19                   This is only for Res Judicata. I'm  
20      sorry.

21                   MR. KAUFMAN: Ordinance 19-07.

22                   THE WITNESS: I have no ordinances in  
23      front of me, so I don't know what you're referring  
24      to.

25                   MR. KAUFMAN: I don't want to delay

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1 here.

2 Q. It's obvious that, um, 380-41 permitted  
3 uses in the D-1 district?

4 A. Yes.

5 Q. That was adopted in 2019?

6 A. Yes, I -- I was involved in that.

7 However, as I said before, if you have  
8 a question about how that ordinance relates to Res  
9 Judicata, I can answer the question. If it's  
10 related to the application then Ms. Leheny would be  
11 the person you have to ask about that.

12 Q. Okay.

13 Obviously, I am not going to be  
14 permitted to proceed, so, I am not going to hold you  
15 any longer, Mr. Preiss.

16 MR. PRINCIOTTO: Is there is any  
17 questions of Mr. Preiss by Members of the Board?

18 CHAIRWOMAN MALLEY: No questions?

19 MR. PRINCIOTTO: Okay.

20 Well, we can open to the public,  
21 although, I am going to defer to Mr. Preiss and we  
22 could take another witness' testimony, and I am  
23 thinking Evan Jacobs, and then open to the public  
24 for both witnesses just to save some time and  
25 because of how we are proceeding.

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1                   But, if Mr. Preiss has some commitments  
2                   and he would like us to open now, we can do that as  
3                   well.

4                   Mr. Preiss, do you have any preference?

5                   THE WITNESS: I don't have other  
6                   commitments, but, perhaps while it's still fresh in  
7                   everybody's minds, perhaps they can -- I don't know  
8                   if there is going to be a lot of questions because  
9                   my testimony was very limited, but, I am happy to  
10                  answer any questions of members of the public have  
11                  now. I would prefer that, but, I will defer to the  
12                  Chair, if she wants me to wait until Mr. Jacobs has  
13                  testified. I can do that too.

14                  CHAIRWOMAN MALLEY: I would prefer to  
15                  wait because it takes that much longer, if you can.

16                  Thank you, Mr. Preiss.

17                  THE WITNESS: Yes.

18                  MR. KAUFMAN: May I ask a question?

19                  CHAIRWOMAN MALLEY: Yes.

20                  MR. KAUFMAN: Is Mr. Jacobs' testimony  
21                  limited to Res Judicata also?

22                  MR. PRINCIOTTO: It's going to relate to  
23                  the first application as compared to this  
24                  application, and the similarities, and the  
25                  differences.

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1                   That is what it's going to be primarily  
2                   about.

3                   MR. KAUFMAN: And that is it?

4                   MR. PRINCIOTTO: Well --

5                   CHAIRWOMAN MALLEY: That is all it was  
6                   planned to be.

7                   MR. PRINCIOTTO: We will see where it  
8                   goes, okay?

9                   But, you can hear the questions, and  
10                  hear the answers, and know the scope as it proceeds.

11                  MR. KAUFMAN: Am I going to be limited  
12                  in my questions to Mr. Jacobs?

13                  MR. PRINCIOTTO: If I have an objection  
14                  to one of your questions, I will state my objection  
15                  on the record.

16                  Not knowing in advance what those  
17                  questions are, I can't give you an answer.

18                  MR. KAUFMAN: Well, I want to know  
19                  whether I am going to be limited.

20                  MR. PRINCIOTTO: I just answered your  
21                  question.

22                  Okay.

23                  MR. KAUFMAN: I just want to know if my  
24                  questions will be limited to Mr. Jacobs.

25                  MR. PRINCIOTTO: If it's far field and

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1 beyond the direct examination, there could be an  
2 objection to the question.

3 I can't say I have no objections to  
4 your questions. I don't think any attorney would.

5 MR. KAUFMAN: I am not asking you that.

6 So, I am limited to your direct  
7 examination.

8 MR. PRINCIOTTO: I would like to call  
9 Mr. Jacobs, as a witness, Chairwoman.

10 CHAIRWOMAN MALLEY: Let's move forward.

11 MR. PRINCIOTTO: Okay.

12 Evan, where did you go? You moved over  
13 to the right.

14 Alright, I need to swear you in. Can  
15 you raise your right hand please?

16 (Witness complies.)

17 E V A N J A C O B S, called as a witness, having  
18 been first duly sworn by a Notary Public of the  
19 State of New Jersey, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION BY

22 MR. PRINCIOTTO:

23 MR. PRINCIOTTO: Okay.

24 And you know we have new Board Members,  
25 of course we would have to qualify you, even though

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1 I know that Mr. Kaufman knows your qualifications we  
2 should state them on the record.

3 Q. Why don't you give us background  
4 information on yourself, and your qualifications,  
5 and your position with the Borough?

6 A. Sure.

7 My name is Evan M. Jacobs, I'm a  
8 professionally licensed Engineer and planner, um,  
9 with the state of New Jersey. I'm also a Certified  
10 Plusline Manager. I'm employed, as a Project  
11 Manager, at Neglia Engineering. Um, my office is at  
12 Mountainside, but, our headquarters is in Lyndhurst.

13 I have a Bachelor's of Science and  
14 Civil Engineering, and a Master's of Science in  
15 Civil Engineering, both of which I obtained at NJIT.  
16 I have been practicing Engineering for the last 18  
17 years, 19 years, give or take.

18 I represent the Zoning Board, the  
19 Planning Board, and the Borough as their Engineer.

20 MR. PRINCIOTTO: Mr. Kaufman, do you  
21 have any questions about Mr. Jacobs qualifications?

22 MR. KAUFMAN: We certainly accept Mr.  
23 Jacobs as a qualified expert in Engineering.

24 Q. Evan, have you reviewed the first  
25 application that was filed in this matter?

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1 A. Two years ago?

2 Q. Yes.

3 A. First off?

4 Q. Yes.

5 A. Yes.

6 Q. And do you have the site plan that was  
7 submitted at the time of that application?

8 A. Um, I do.

9 Um, I can share my screen if I have the  
10 ability.

11 Q. Yes.

12 Yes.

13 A. Tell me if you can see that.

14 CHAIRWOMAN MALLEY: Yes.

15 A. I should just note, for the record, I  
16 have just highlighted a few things in red, as you  
17 can see there on the screen, otherwise this is, um,  
18 the plan submitted by MCB Engineering, originally  
19 dated May 2nd, 2018, last revised April 25th, 2019.

20 Q. Okay.

21 And just for the record, and I do want  
22 to make this site plan as part of this record, that  
23 was the site plan last revised in April of 2019; is  
24 that correct?

25 A. April 25, 2019.

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1 Q. Okay.

2 And that will be marked WCL 7 and

3 entered into --

4 MR. KAUFMAN: Just on a house keeping  
5 thing, I am looking at my notes, the last thing you  
6 marked was Richard Price's letter, you marked as WCL  
7 5.

8 What is WCL 6? And what is WCL 2, 3,  
9 and 4?

10 MR. PRINCIOTTO: Well, I will get to  
11 that.

12 I will get to that later.

13 But, if you want I will tell you now.

14 MR. KAUFMAN: Yeah I just want to  
15 clarify.

16 MR. PRINCIOTTO: WCL 1 is the technical  
17 review letter.

18 MR. KAUFMAN: Yeah.

19 MR. PRINCIOTTO: WCL 2 is my review  
20 letter dated February 18, 2021.

21 MR. KAUFMAN: Wait a second.

22 Whoa, whoa. I have to write it down.

23 Princiotto letter, what is the date?

24 MR. PRINCIOTTO: 2/18/21.

25 MR. KAUFMAN: Okay.



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1 MR. PRINCIOTTO: WCL 3 is my review  
2 letter dated May 24, 2021.

3 MR. KAUFMAN: Yes.

4 WCL 4?

5 MR. PRINCIOTTO: That is the Phillips  
6 Preiss review letter, dated May 24, 2021.

7 MR. KAUFMAN: Yeah.

8 W5 is Richard Price's February 18th  
9 letter and WCL 6 is what.

10 MR. PRINCIOTTO: Your submission letter  
11 of January 11, 2021.

12 MR. KAUFMAN: I don't recall that being  
13 marked.

14 MR. PRINCIOTTO: It hasn't yet, but, I  
15 do intent to enter it into the record.

16 MR. KAUFMAN: What was the date?

17 MR. PRINCIOTTO: January 11, 2021.

18 MR. KAUFMAN: Okay.

19 Thank you.

20 MR. PRINCIOTTO: Okay.

21 Q. Mr. Jacobs, now we have marked and  
22 entered into the record, WCL 7 is the site plan that  
23 was submitted in the prior application and could  
24 you, just very briefly, just go over what is on this  
25 site plan in terms of the plans, the parking, et

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1 cetera?

2 A. Sure.

3 I apologize if the image is not the  
4 clearest here.

5 The existing site -- this is a survey,  
6 it probably will be a little easier to show. This is  
7 the site plan, I should say I was referring to that  
8 particular sheet, but, this is the site plan  
9 submitted for this particular application. There was  
10 a separate document. I will stick with the site plan  
11 here. There was an existing building, that front on  
12 Broadway. It is set up from the road, some distance  
13 by a earth/grass slope, and there's a driveway, an  
14 access driveway, that goes up the right side.  
15 There's a garage under that building and then,  
16 there's a surface parking lot in the back. It takes  
17 up the rear half of the parking lot.

18 The initial application, the applicant  
19 filed, was to modify the parking lot in order to  
20 construct a 3 story parking lot, and to, basically,  
21 gut the existing office building and convert it to a  
22 multi-family residential development. The parking  
23 lot would be modified for residential use versus  
24 office use.

25 There are some minor drainage utility

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1 and permits for utilities and the infrastructure  
2 needs to be brought to the rear of the building. The  
3 site work was generally focused to the rear of the  
4 property -- I'm sorry, the rear of the parking, not  
5 the rear of the property.

6 The actual rear of the property is a  
7 little deceiving here. The upper half, if you see my  
8 mouse here, that is all -- that is a large  
9 vegetative slope. It goes up, I want to say about,  
10 40 or 50 feet, if not more, up to the next tree  
11 above the hill there. This rear half of the property  
12 is undisturbed. The applicant isn't providing any  
13 improvements here and it will remain untouched.

14 That is basically it from the initial  
15 application.

16 Q. Could you point out with your cursor  
17 Building Number One and Building Number 2?

18 A. Building Number One would be the  
19 existing building that's on Broadway, and Building  
20 Number 2 is the closed building in the back of the  
21 property. To give a breakdown, the existing Building  
22 Number One will be converted to provide 36  
23 residential units. Proposed Building 2 was proposed  
24 to have 24 units and that would have been a 3 story  
25 building.

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1 Q. Okay.

2 Now, you reviewed the site plan  
3 submitted by the applicant on this revised  
4 application; is that correct?

5 A. Yes, I did.

6 Q. Okay.

7 And you're familiar with that site plan  
8 as well?

9 A. Yes.

10 And I have actually just brought that  
11 up on the screen here. It looks identical on this  
12 view here, but, just for housekeeping purposes, this  
13 is the site prepared by MCB Engineering, initially  
14 dated May 2, 2018, last revision date is March 2nd  
15 2021.

16 Q. Okay.

17 And you said last revised March 2,  
18 2021?

19 A. Yes.

20 Q. Okay.

21 And that was marked at A4, as part of  
22 the Applicant's exhibit; correct?

23 A. Um, this was submitted to the town, I  
24 don't remember the exact exhibit number. This was  
25 the plans we reviewed for the town.

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1 MR. PRINCIOTTO: Just for the record it  
2 was marked as A4.

3 Q. So, now, from a bird's eye view,  
4 looking down at these two site plans, the A4 and the  
5 A7, are they identical?

6 A. From a bird's eye view?

7 Yes.

8 Q. And I just want to ask you some general  
9 questions and then I will go to your review letter.

10 Just tell me if it's the same or if  
11 it's different.

12 The number of buildings between the two  
13 site plans, A4 and A7, are they the same?

14 A. They are the same.

15 There are only two buildings on the  
16 site.

17 Q. Is the use the same?

18 A. Yes.

19 Q. And is the parking the same?

20 A. Yes.

21 Q. Is the ingress and egress the same?

22 A. Yes.

23 Q. Okay.

24 And is the landscaping the same?

25 A. Yes.

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1 Q. Is the lighting the same?

2 A. Yes.

3 Q. Turning to your revised review letter  
4 dated February 19, 2021. I would like to go over  
5 that with you, okay?

6 A. Um-hum.

7 Q. And in that review letter, you noted  
8 that there were 6 variances required; is that  
9 correct?

10 (Witness reviews document.)

11 A. Let me just -- um, yes.

12 Just to clarify: The variances that we  
13 have noted there, were noted on the plan. Our office  
14 -- as the Board Engineer did not perform an in-depth  
15 zoning review, or ordinance review, for variances we  
16 defer that to the Board planner.

17 I just want to note that for the  
18 record.

19 Q. Okay.

20 And the -- in your review letter, with  
21 you note the six variances and the ones that still  
22 apply and the ones -- and the one that was  
23 eliminated; is that correct?

24 A. Um, that is correct.

25 Um, the -- and just to clarify, with

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1 this current application, we received plans in  
2 January of 2021 which were the plans that we  
3 received for the previous application, and we  
4 received revised plans, the ones dated March of this  
5 year, and the letter that you are referring to is a  
6 revised letter of the statement of whether they  
7 apply or not refer to the revisions from January to  
8 March. Not between the two different applications,  
9 although, it's the same plan from the previous  
10 application.

11 Q. Okay.

12 So, with regard to what is now the  
13 current application, as compared to the previous  
14 application, which was the same as the original  
15 application, in other words, the changes, if any or  
16 to the extent that they were with regard to the  
17 variances, I would like you to just go over the  
18 variances that you noted that still apply, and I am  
19 on section 3.3.

20 A. Sure.

21 The construction of the non-conforming  
22 use, the multi-family residential is not approved in  
23 using the S-0 Zone. They mention the western half of  
24 the property is in the S-0 Zone, and the rear  
25 portion, that's in that slope, is in the R-15 Zone.

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1 But, where the new building will be constricted, or  
2 proposed to be constructed, is in the S-0 Zone where  
3 it's not in former use, therefore, a D-2 variance  
4 was required, initially, and still applies now. The  
5 front yard setback, um, this applies to Building  
6 Number One because the applicant is modifying the  
7 building. They are not modifying it into compliance.  
8 Right now, the same building is set back only 34.1  
9 feet from Broadway, where 35 feet is required. It's  
10 a minor deviation, but, they are modifying the  
11 building but they are not bringing it into  
12 compliance. Therefore, it's a continued variance,  
13 but, it is a new variance. The middle rear yard  
14 setback, um, the applicant proposed to construct a  
15 rear yard that was 39 feet from the boundary line  
16 between the S-0 and the R 15 Zone which is, if I  
17 zoom in here, this dash line here, if you can see it  
18 on my screen here, that goes across the back here,  
19 that is the boundary line there, and there is  
20 supposed be a setback of 50 feet from the building  
21 to the boundary line, and that is only 39 feet. So,  
22 that is a variance that does apply.

23 One of the variances that doesn't apply  
24 is the building height. Previously, the applicant,  
25 for Building Number 2, had a 3 story building. The



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1 revised application has a two story building which,  
2 now, is compliant with the maximum height of  
3 two-and-a-half stories, so, that variance is no  
4 longer applicable.

5 3.35, in my letter, refers to the  
6 minimum building setback from the center line and  
7 this has to do, again, with Building Number One.  
8 It's an existing non-conforming, but, they are  
9 modifying the structure and it's not going to be in  
10 conformance, so, that variance still applies.

11 There is a variance for interior  
12 parking lot landscaping, the ordinance requires  
13 that, basically, for a certain amount of parking  
14 spaces, you provide a certain amount of landscape  
15 area, to kind of offset the sea of pavement that  
16 gets created. And the applicant is required to  
17 install, approximately, 1,320 square feet of  
18 landscaping. That is required, but, they are only  
19 providing 185, that variance still applies.

20 The applicant -- and there is some  
21 design waivers.

22 Q. Yeah. Just to summarize.

23 You went over the six variances.

24 One was eliminated, that was the story  
25 areas, and that was because the building was reduced

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1 in the number of stories; correct?

2 A. That is correct.

3 Yeah, on my screen here is the second  
4 revised site plan, and it says, you can see here,  
5 proposed two story building, over here, and then the  
6 unit count was also revised to the second building,  
7 now only had 16 units, bringing the total unit count  
8 down to 53.

9 Q. Okay.

10 So, just to summarize, the use variance  
11 was still the same, the front yard setback was still  
12 the same, the rear yard setback was the same, the  
13 setback from the street variance was still the same,  
14 and interior parking lot variance was still the  
15 same; correct?

16 A. Correct.

17 Q. And the waivers that you listed in your  
18 review letter, I think there are 6 waivers?

19 A. I believe that is correct.

20 Q. Yeah.

21 And just by title, what were those  
22 waivers for?

23 A. Sure.

24 Parking stall dimension, minimum --  
25 main approach, maximum grade, has to do with

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1 sidewalk slopes, and minimum swell grade which  
2 really, um, is the apartment being land graded  
3 thing. Off street loading requirements, um, sidewalk  
4 lighting, they require buffer area, and that is it.

5 Q. Okay.

6 And from the prior application to the  
7 current application, there's no change in requested  
8 waivers?

9 A. No.

10 Q. Okay.

11 And they are all the same; is that  
12 correct?

13 A. Correct.

14 Q. Okay.

15 Now, you have the architectural plans  
16 and the elevation drawings for the first  
17 application?

18 A. Um, I do.

19 If you give me a second here to pull  
20 that up. Let me know when you can see that.

21 CHAIRWOMAN MALLEY: Yes.

22 A. These are a set of architectural plans  
23 prepared by Albert Dattoli. The plan date is April  
24 10, 2018.

25 Q. Actually, we don't have a marking for

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1 those.

2 This is different than the site plan;  
3 is that correct?

4 A. This is different than the site plan.  
5 That is correct.

6 Q. Let's give that an additional marking.  
7 Let me see what I am up to here. I have others that  
8 are marked.

9 That will be WCL 13 and can you give me  
10 the date of that again, Evan, I'm sorry.

11 A. April 10, 2018.

12 MR. KAUFMAN: What was that?

13 April 10?

14 THE WITNESS: Correct.

15 MR. KAUFMAN: What year?

16 THE WITNESS: 2018.

17 Q. That is police architectural plans?

18 A. Yes.

19 MR. KAUFMAN: Didn't we lose 8, 9, 010,  
20 11 and 12?

21 MR. PRINCIOTTO: I didn't get to those  
22 yet.

23 I premarked a lot of exhibits.

24 MR. KAUFMAN: Just for the record, we  
25 were never advised of the exhibits you premarked.

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1                   Please continue.

2                   MR. PRINCIOTTO: Actually, I supplied  
3                   you with all the documents, I just didn't give you  
4                   the marking numbers. But, I am happy to tell you  
5                   what they are, but, I would like to get through this  
6                   testimony. And we will get to the other markings,  
7                   but, you were provided with all of those documents.

8                   Q.        So, Evan, if you could just explain to  
9                   us, you know, which buildings are -- which buildings  
10                  or which depictions are the front building and which  
11                  are the rear buildings?

12                  A.        This is Number One, this is the front  
13                  building along Broadway. That has not changed from  
14                  the initial application from January to today.

15                  Q.        So, that is the same, the front  
16                  building is the same?

17                  A.        Correct.

18                  Q.        Okay.

19                  A.        This is Building Number 2.

20                            These are elevation views. Like the  
21                            vertical base of what the building will look like on  
22                            all sides.

23                            This is a 3 story structure.

24                  Q.        Okay.

25                            And can you compare that to the current

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1 application?

2 A. Sure.

3 Okay.

4 This is a set of plans prepared by

5 Albert Datolli, the original date was April 10,

6 2018, with a revision date of March 1, 2021.

7 Revision note stating: New unit mix, Building 2

8 reduced to 2 stories.

9 MR. PRINCIOTTO: I have to find where  
10 that was marked. There was an Applicant Exhibit.

11 I'm sorry.

12 Was that last revised March 1st, 2021?

13 A. Yes.

14 Q. That was marked A7 by the Applicant.

15 Can you explain to us which are the  
16 front building and which are the rear building?

17 A. Um, again, the front building has not  
18 changed.

19 Q. Okay.

20 A. And the existing structure, they are  
21 making architectural changes to it, but it's not  
22 changing its bulk, size, and shape. It's Building  
23 Number Two that changed from the original  
24 application plan set from April to the revised plans  
25 in March.

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1                   This is Building Number 2 which shows a  
2                   2 story structure.

3                   Q.        Okay.

4                   Could you just, if you can, I know I am  
5                   putting you through a lot, but, I'm sure you're much  
6                   better at this than I am. Flashback to: What the  
7                   original application was, so that last elevation?

8                   A.        Yes.

9                   Q.        Okay.

10                  Thank you.

11                  MR. PRINCIOTTO: I don't think I have  
12                  any further questions of Mr. Jacobs at this time.

13                  CHAIRWOMAN MALLEY: Mr. Kaufman, do you  
14                  have questions?

15                  MR. KAUFMAN: Yeah.

16                  EXAMINATION BY

17                  MR. KAUFMAN:

18                  Q.        Mr. Jacobs, you went through the litany  
19                  of the variances, preparing the ones that were in  
20                  the original site plan and the ones that would be  
21                  the present site plan.

22                  Could you just repeat the variances  
23                  that are there, as a result of the existing  
24                  building?

25                  A.        The variances: The minimum front yard

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1 setback was for Building Number One, the existing  
2 building, the -- well, the D variance, the  
3 non-conforming use, is also for Building Number One,  
4 the minimum building setback from the street center  
5 line is for Building Number One, and that is it.

6 Q. Okay.

7 And those can't be changed no matter  
8 what is proposed, without taking down Building  
9 Number One; correct?

10 A. Um, yeah, you would have to perform  
11 significant improvements of that building to take  
12 off about a foot to bring it to compliance.

13 Q. If you took off a foot, you would be  
14 taking off a wall; wouldn't you?

15 A. Yeah, it would be a very, very  
16 significant improvement to undertake.

17 Q. You basically have to demolish it, I  
18 would think. You can't take off a wall. And to move  
19 it, you would also have to trim the rest of it to  
20 move in a foot.

21 Is it fair to say those variances are  
22 there no matter what the use is for this building,  
23 so long as you keep that building?

24 A. Relatively speaking, yes.

25 Q. The variances that are not related, are



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1 related to the use, that's the non-conforming use,  
2 and the building height which no longer exists; is  
3 that correct?

4 A. Just to clarify, I believe the  
5 non-conforming use variance would apply to the front  
6 building as well, because it's converted to the use.

7 Q. No.

8 Right.

9 Absolutely.

10 Yeah.

11 A. Yes, Building Number 2 height variance  
12 disappears.

13 Q. Any use other than an office building  
14 would require -- would require a use variance;  
15 correct?

16 A. I don't have a list of all of the  
17 permitted uses, but, any none permitted use would  
18 require a use variance.

19 Q. There was testimony, I think, by  
20 Burgess about the sole use that is permitted in the  
21 zone is an office building?

22 MR. PRINCIOTTO: Sounds like summation.

23 MR. KAUFMAN: No, it's a question.

24 Q. Do you recall that testimony?

25 You know what, I will refer you Section

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1 380-52 of the Wyckoff Zoning Ordinance which  
2 provides professional business administrative office  
3 buildings.

4 That is the sole use; is that correct?

5 (Witness reviews document.)

6 A. Yes.

7 Q. So any other use, other than that,  
8 would require a use variance?

9 A. That is correct.

10 Q. The rest are all design related to the  
11 site, is that not correct?

12 A. That is correct.

13 Q. Okay.

14 So those would all be in effect and be  
15 required for any application on this property other  
16 than what exists?

17 MR. PRINCIOTTO: I object to that.

18 They are design waivers. I object.

19 MR. KAUFMAN: The design waivers would  
20 exist for any application or a use other than an  
21 office building use.

22 MR. PRINCIOTTO: That is not true.

23 MR. KAUFMAN: Thank you.

24 Q. Mr. Jacobs, you testified June 25, 2019  
25 at site plans that Mr. Clark addressed your comments

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1 in your letter, and that the site plan was  
2 acceptable subject to his comments, and the adoption  
3 of those comments; is that correct?

4 Do you recall that?

5 A. To my recollection, yes.

6 They had agreed to address any  
7 outstanding comments in our Engineering review  
8 letters.

9 Q. And that addressed your concerns. And  
10 similarly --

11 MR. KAUFMAN: I apologize. Too much  
12 paper in this application.

13 Q. Similarly, at the conclusion of Mr.  
14 Clark's testimony, you testified -- on June 16,  
15 2021, you stated: Yes, between the applicant  
16 agreeing to address our letter and that addressed my  
17 concerns at this time.

18 Do you recall that testimony?

19 A. Yes.

20 Q. So, essentially, the site plan wasn't a  
21 site plan that was acceptable to you and addressed  
22 your concerns?

23 MR. PRINCIOTTO: I object to the form of  
24 the question.

25 Q. Is that a fair statement?

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1           A.       Assuming that the conditions of our  
2 letter were met.

3           Q.       Yes.

4           A.       I had no exception to the site plan  
5 that they had supplied.

6           Q.       If you recall, if you don't that is  
7 fine, do you recall Richard Preiss' testimony on  
8 June 25, 2019 when he testified --

9                   MR. PRINCIOTTO: I -- I object to this.

10                   CHAIRWOMAN MALLEY: Mr. Kaufman, what  
11 does this have to do with this application and Res  
12 Judicata?

13                   Why are we hearing --

14                   MR. KAUFMAN: It will be tied up in a  
15 question or two.

16                   CHAIRWOMAN MALLEY: You're trying to  
17 prove that the application was the same and he  
18 agreed that everything was fine; is that correct?

19                   MR. PRINCIOTTO: This doesn't have to do  
20 with the direct testimony which was a comparison to  
21 the original plans.

22                   MR. KAUFMAN: Madam Chairperson.

23                   CHAIRWOMAN MALLEY: Yes?

24                   MR. KAUFMAN: I believe I am entitled to  
25 a little bit of leeway here, and I am being

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1 constricted, and I am being prevented from asking,  
2 what I believe, are fair, pertinent questions.

3 Mr. Princiotto is constantly objecting  
4 and is not letting me develop my train of thought.

5 And I am almost done with Mr. Jacobs.

6 CHAIRWOMAN MALLEY: I am having the same  
7 problem he is.

8 MR. KAUFMAN: If you would please let me  
9 conclude, I think it would be evident.

10 CHAIRWOMAN MALLEY: Ask your last  
11 question.

12 MR. KAUFMAN: It will not be my last.

13 There's going to be one or two others.

14 Q. Do you recall Mr. Price's testimony:  
15 So from a purely site plan's point of view, if you  
16 assume the apartments were permitted use in this  
17 particular district, and you were converting the  
18 office, and adding the units, to me, the site plan  
19 does make sense.

20 Do you recall that?

21 A. No, I don't recall that.

22 Q. Well, please, for the purpose of my  
23 next question, assume that I directly quoted from  
24 Mr. Preiss.

25 A. Okay.

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1 Q. Because I did.

2 MR. PRINCIOTTO: I object to this.

3 This is back to our testimony. This  
4 has nothing to do with -- Madam Chairwoman, can I  
5 raise an objection without him interrupting?

6 CHAIRWOMAN MALLEY: Yes.

7 MR. PRINCIOTTO: This is not related to  
8 the site and his testimony, which is related to a  
9 comparison of the original application to this  
10 revised application, and that is what the material  
11 issue is here.

12 He is trying to backdoor things and  
13 trying to get into evidence, testimony in a prior --  
14 in the prior application and, here, the issue is Res  
15 Judicata and the comparison between the two  
16 applications to determine whether or not, and to  
17 what extent, there are differences and similarities  
18 between the two applications. So, this is -- this is  
19 far field.

20 I object.

21 CHAIRWOMAN MALLEY: I agree.

22 I agree, and I would like to move  
23 forward, and stop trying to go back to the original  
24 application.

25 MR. KAUFMAN: I believe that Mr.

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1 Princiotto has been putting in the prior application  
2 what this Board -- what you, Madam Chairperson and  
3 what Mr. Princiotto has done is changed the rules of  
4 the game, in the middle of this hearing, changed  
5 direction, and are intending to constrict and  
6 restrict me from asking pertinent questions, and  
7 from proving a case, and that includes: Addressing  
8 the Res Judicata, which I don't even stipulate is an  
9 issue, but, that is besides the point.

10 Q. The question that I have for Mr. Jacobs  
11 is: If a site plan makes sense and, both, you and  
12 the planner find that your concerns are met, and the  
13 planner finds that it's appropriate, why would it  
14 change?

15 Why would the fact that you use the  
16 same site plan, one that is acceptable to you, as a  
17 professional, be changed solely because of the Res  
18 Judicata issue?

19 CHAIRWOMAN MALLEY: I am going to ask  
20 him not to answer.

21 MR. KAUFMAN: What I am suggesting is  
22 the comparison of site plans, alone, is  
23 insufficient.

24 CHAIRWOMAN MALLEY: That is not a  
25 question for him, that is a question for the Board

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1 to vote on.

2 I'm sorry.

3 MR. PRINCIOTTO: Next question, please.

4 MR. KAUFMAN: No further questions, but,  
5 I would like to thank Mr. Jacobs.

6 THE WITNESS: Thank you.

7 MR. PRINCIOTTO: Okay.

8 Any Board Members have questions for  
9 Mr. Jacobs or do we want to open up to the public  
10 for Mr. Jacobs or Mr. Preiss?

11 CHAIRWOMAN MALLEY: No Board Members  
12 have questions?

13 Do we have a motion to open to the  
14 public?

15 MR. MICHAEL KAUFMAN: Motion to open to  
16 the public.

17 MS. DIANNA CEREJIO: I second.

18 CHAIRWOMAN MALLEY: Okay.

19 Meg, can you --

20 MS. SMITH: Yes.

21 For any members watching on TV, I am  
22 going to provide a phone number. (201)-391-4977,  
23 extension 203. We can take one call at a time,  
24 calling into this main room.

25 If you're watching on Zoom, you may



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1 raise your hand, and I will go to the list and call  
2 on any attendees that have questions with the raised  
3 hands.

4 CHAIRWOMAN MALLEY: This is for  
5 questions only.

6 We are going to limit it -- did we say  
7 for two minutes or so?

8 What are we going to do, Sal?

9 MR. PRINCIOTTO: Meg, how many attendees  
10 do we have or participants here?

11 MS. SMITH: Twenty-five.

12 MR. PRINCIOTTO: How many are hands  
13 raised?

14 MS. SMITH: One.

15 MR. PRINCIOTTO: Okay.

16 MS. SMITH: Two.

17 Two now.

18 CHAIRWOMAN MALLEY: And we are going to  
19 ask that people do not repeat what the person before  
20 them said or comment on the Board doing a good job  
21 or bad job.

22 It's just questions, please.

23 MS. SMITH: Relating to Mr. Preiss or  
24 Mr. Jacobs' testimony, specifically.

25 Okay, Ms. Appelle, you can un-mute and

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1 address the Board and the professionals.

2 Ms. Appelle, are you there? Oh, there  
3 she is.

4 MS. APPELLE: This question is for Mr.  
5 Jacobs, and I am not sure if this is the kind of  
6 question you would answer, but, you did say that you  
7 agree the site plan was acceptable to you and to Mr.  
8 Preiss, but, what I do -- what I would ask you is:  
9 Do you agree that the density rate at 188 Broadway,  
10 which is on 3.6 acres and is 14.9 units per acre, if  
11 this application is approved, it will allow density  
12 about three times higher than anywhere else in town.

13 Do you agree to that.

14 MR. JACOBS: My role as a Board Engineer  
15 is to review it from an engineering standpoint.  
16 Matters of density and residential unit planning I  
17 would defer to the Board Planner.

18 MS. APPELLE: Okay.

19 So --

20 MR. KAUFMAN: I have a question if you  
21 don't mind.

22 How come Mr. Princiotto didn't object  
23 to that question when it doesn't have to do with Res  
24 Judicata?

25 You don't have to answer it. I just

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1 want to put that on the record.

2 MR. PRINCIOTTO: It probably doesn't  
3 deserve a comment.

4 She was clarifying what he was talking  
5 about and he gave a perfectly acceptable answer. He  
6 is talking about only from an engineering  
7 standpoint, he's not talking about from a planning  
8 standpoint.

9 So, the question was appropriate and  
10 the answer was appropriate. So I disagree with you  
11 Mr. Kaufman.

12 MR. KAUFMAN: That is fine.

13 MR. PRINCIOTTO: Another question?

14 MS. SMITH: Ms. Appelle, is that your  
15 only question?

16 MS. APPELLE: Well, I guess I can't ask  
17 Mr. Preiss, I don't see him here.

18 MS. SMITH: He is here.

19 MS. APPELLE: Okay.

20 Mr. Preiss?

21 MR. PREISS: I am here.

22 MS. APPELLE: Did you hear my question?

23 MR. PREISS: Yes.

24 Unfortunately, I didn't review this  
25 application. I can only answer questions about Res

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1       Judicata.

2                       MS. APPELLE: Congratulations on your  
3       retirement.

4                       Thank you, Ms. Smith.

5                       MS. SMITH: Mr. Cuto, I will allow you  
6       to address the Board.

7                       MR. CUTO: Thank you very much.

8                       Can you hear me?

9                       MS. SMITH: Yes.

10                      MR. CUTO: This has to do with Mr.  
11       Preiss, with regard to Res Judicata. So, if I  
12       understand correctly, for this to be a different  
13       application, that Res Judicata doesn't apply, all  
14       five criteria has to be in the Board's judgment  
15       difference; am I correct?

16                      MR. PREISS: Yes.

17                      All five criteria apply to the question  
18       of Res Judicata.

19                      MR. CUTO: So, the Board will make that  
20       decision?

21                      MR. PREISS: Yes.

22                      So, in other words, if one of the  
23       criteria applies than Res Judicata applies.

24                      If the application is not substantially  
25       different, that is enough for the Board to say Res

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1       Judicata would apply.

2                       MR. CUTO: Thank you very much, Mr.

3       Preiss.

4                       Thank you very much everyone on the

5       Board.

6                       MR. PRINCIOTTO: Is there anyone else,

7       Meg?

8                       MS. SMITH: That was the two hands that

9       were raised.

10                      MR. PRINCIOTTO: Did you give the call

11       in information?

12                      MS. SMITH: Yes.

13                      I did.

14                      Do you want me to give it again?

15                      MR. PRINCIOTTO: We have no callers?

16                      MS. SMITH: No callers.

17                      MR. PRINCIOTTO: Then we need a motion

18       to motion to close to the public.

19                      MR. MICHAEL KAUFMAN: Motion to close to

20       the public.

21                      MS. PICINIC: Second.

22                      MS. SMITH: All in favor?

23                      ALL: Aye.

24                      MS. SMITH: Any opposed?

25                      We are closed to the public.

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1 CHAIRWOMAN MALLEY: Okay.  
2 Who do we have next, Sal?  
3 Thank you, Richard.  
4 MR. PREISS: You're welcome.  
5 MR. KAUFMAN: Thank you, Richard.  
6 CHAIRWOMAN MALLEY: Thank you, Evan.  
7 Sal, are you going to swear Paul in?  
8 MR. PRINCIOTTO: Before we do that, can  
9 we take a five minute break?  
10 CHAIRWOMAN MALLEY: Sure.  
11 MR. KAUFMAN: Can I ask you who he is?  
12 MR. PRINCIOTTO: We will go through  
13 that.  
14 CHAIRWOMAN MALLEY: We will be right  
15 back.  
16 MR. PRINCIOTTO: Thank you.  
17 (Whereupon, a short recess was taken.)  
18 MR. PRINCIOTTO: Next witness is Mr.  
19 Paul Bechtel. Mr. Bechtel, could you raise your  
20 right hand, please?  
21 MR. KAUFMAN: Excuse me.  
22 Before we begin, I need to put  
23 something on the record, I checked our records  
24 during the break, and Danielle checked her records  
25 too, we never got, from Mr. Princiotto, these

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1 exhibits that he intended to introduce like the  
2 architectural plan, the old site plan.

3 We did get other material from Mr.  
4 Princiotto, but, these were not them which is why it  
5 was a surprise by me, nor were we advised of the  
6 witnesses that he was going to call. We, of course,  
7 did advise him, just want to state it for the  
8 record, if I am mistaken about it, and if there is  
9 another e-mail that I did get, I will certainly  
10 apologize, on the record, but I could not find it.

11 MR. PRINCIOTTO: What exhibits are you  
12 talking about?

13 MR. KAUFMAN: You said the site plan,  
14 and the architectural plans, the WCL, the ones that  
15 you premarked.

16 CHAIRWOMAN MALLEY: No, the comment was  
17 that there was a list of what was marked and they  
18 came from you.

19 MR. KAUFMAN: Not from me.

20 Not from me.

21 MR. PRINCIOTTO: Well, look --

22 MR. KAUFMAN: He made a statement that  
23 he gave me the documents, neither Danielle nor I  
24 could find them.

25 If you did, I apologize, I could not

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1 find them, but, I just want it on the record that we  
2 couldn't find them.

3 MR. PRINCIOTTO: I don't want to waste  
4 the time talking about that on the record.

5 The site plan was your site plan that  
6 you sent me.

7 MR. KAUFMAN: I know what they are.  
8 That is not the point.

9 MR. PRINCIOTTO: That is the point.  
10 It's your document that you submitted  
11 with the application that you filed for this matter.

12 MR. KAUFMAN: The prior site plan.

13 MR. PRINCIOTTO: You sent the identical  
14 site plan for this application.

15 MR. KAUFMAN: You introduced the  
16 architectural plan from 2018.

17 MR. PRINCIOTTO: You resubmitted the  
18 exact same application.

19 MR. KAUFMAN: No, I did not.  
20 It is a different architectural plan.

21 MR. PRINCIOTTO: Okay.

22 MR. KAUFMAN: The facts are the facts.  
23 Let's move on.

24 MR. PRINCIOTTO: Mr. Bechtel, sorry for  
25 the delay. Can you raise your right hand, please?



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1 (Witness complies.)

2 P A U L B E C H T E L, called as a witness, having  
3 been first duly sworn by a Notary Public of the  
4 State of New Jersey, was examined and testified as  
5 follows:

6 EXAMINATION BY

7 MR. PRINCIOTTO:

8 Q. Can you state your position with the  
9 Borough of Woodcliff Lake?

10 A. I am the Plan Official of Woodcliff  
11 Lake for the past 17 years.

12 Q. And what do you do as part of your  
13 position?

14 A. I oversee four other inspectors, I  
15 inspect some of the buildings in town, and I do fire  
16 investigations.

17 Q. Have you inspected the building at 188  
18 Broadway?

19 A. I have.

20 Q. And, about, how many times, over what  
21 period of time?

22 A. Over the past 17 years, I have been  
23 there numerous times for various reasons.

24 When the alarms go off, and I have been  
25 there on numerous occasions, assisting some of my

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1 inspectors over the past 17 years.

2 Q. Does this building have an elevator?

3 A. Yes, it does.

4 Q. And how many floors?

5 A. Um, it goes from the basement, the  
6 parking area, to the first floor, up to the second  
7 floor.

8 Q. Now, based upon these inspections that  
9 you have done over the past 17 years, was this  
10 building ever used as a multi-tenant building?

11 A. Yes, it is.

12 Q. And can you tell us what the  
13 configuration was when it was used as a multi-tenant  
14 building?

15 MR. KAUFMAN: I am going to object.

16 I don't know what this has to do with  
17 Res Judicata.

18 MR. PRINCIOTTO: It has to do with  
19 something that you claimed in your letter, the  
20 submission letter of January 11, 2021, and maybe you  
21 will withdraw it.

22 I don't know.

23 You tell me.

24 MR. KAUFMAN: Oh, you can proceed.

25 It's just you're the one who said that

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1 the testimony was on Res Judicata. Now, you're  
2 asking him about other issues. I am okay with  
3 proceeding.

4 Let's proceed.

5 MR. PRINCIOTTO: Let me ask you the  
6 question.

7 It was covered by Mr. Preiss, as well,  
8 it has to do with issues related to the pandemic,  
9 and you claimed in your -- maybe you're withdrawing  
10 it. Your January 11, 2021 that: Due to COVID-19,  
11 it has changed how the world operates and reduced  
12 the demand and utility of office space. For years  
13 there has been a decline in the demand for office  
14 space.

15 MR. KAUFMAN: Proceed with the question.

16 MR. PRINCIOTTO: Excuse me.

17 MR. KAUFMAN: Proceed with your  
18 questioning of Mr. Bechtel.

19 MR. PRINCIOTTO: Are you withdrawing the  
20 --

21 MR. KAUFMAN: I am not your witness and  
22 I am not answering.

23 MR. PRINCIOTTO: I am asking you, as the  
24 attorney for the Applicant, are you withdrawing --

25 MR. KAUFMAN: I am not withdrawing

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1 anything.

2 Proceed with your testimony of Mr.

3 Bechtel.

4 MR. PRINCIOTTO: All right.

5 Q. When you witness the building, used as  
6 a multi-tenant building, how was it split up, how  
7 was it used?

8 A. Basically, it was used as the main  
9 tenant at 188, was Wallenius. Early in the use of  
10 the building, they used, probably, one half of the  
11 office space, and the rest was rented out to various  
12 tenants.

13 Q. Okay.

14 And when you say one half, was it one  
15 half on two levels or was it a top level versus a  
16 lower level?

17 A. They used one level and the tenants  
18 used both levels.

19 Q. And for over what period of time did  
20 you witness that type of multi-tenant use?

21 A. Over what period of time?

22 Q. Yes?

23 A. 17 years that I was the Fire Official  
24 that was the use of the building.

25 Q. Okay.

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1                   And can you give examples of tenants  
2                   that occupied that building other than Wallenius?

3                   A.           It was used for various businesses.

4                   At one point, they had a rehab in  
5                   there, at other points they had different companies,  
6                   and I forget exactly what they did, what their use  
7                   was, but, it was various corporations and companies.

8                   Q.           Are you familiar with the building at  
9                   172 Broadway?

10                  A.           Yes.

11                  Q.           And by the way, we are talking about  
12                  Woodcliff Lake just to clarify, for the record.

13                  A.           Yes.

14                                 172 Broadway and 188 Broadway.

15                  Q.           And where is 172 Broadway in relation  
16                  to 188 Broadway?

17                  A.           It's south of 188 Broadway.

18                  Q.           Okay.

19                                 Are they next to each other?

20                  A.           Yes.

21                  Q.           Okay.

22                                 And have you performed inspections at  
23                  172 Broadway over the years?

24                  A.           Yes, I have.

25                  Q.           And is there one building or two

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1 buildings?

2 A. There are two buildings on that  
3 property.

4 Q. Okay.

5 And do those buildings have an  
6 elevator?

7 A. No, they do not.

8 Q. Okay.

9 You have a list of tenants that are  
10 currently occupied in buildings at 172 Broadway?

11 A. Yes, I do.

12 MR. PRINCIOTTO: And just for the  
13 record, that will be marked WCL 8 for identification  
14 and into the record.

15 Q. Can you tell us the names of the  
16 tenants that occupy the building at 172 Broadway?

17 (Witness reviews document.)

18 A. Currently, in the rear building, we  
19 have Bang Realty. That is the landlord. In the front  
20 building, we have Bayland Realty. That is the  
21 landlord. In the in the front building, which is  
22 Bayland, we have Celestino Construction. In the rear  
23 building, we have Charlanda Counselling Services.  
24 In the front, we have CMS Group. In the rear, we  
25 have Comprehensive Care. In the front, we have

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1 Daniel Design. In the rear, we have Derita Coin. In  
2 the front, we have Dr. John Tarpinian, in the front,  
3 we have Dr. Vero. In the rear, we have Elevated  
4 Structures. In the rear, we have Elite Driving  
5 Academy. In the rear, we have Cantelva Dicera, LLC.  
6 In the rear, we have Krober Sales Consultants. In  
7 the rear, we have Perfect Clicks, LLC. In the rear,  
8 we have Pine Hill Mortgage. In the rear, we have  
9 River Veil Educational Fund. In the rear, we have  
10 Sanperian Counselling. In the front, TKR Associates.  
11 In the front, Vieras Therapy.

12 Q. Okay.

13 Now, from the names of some of these.  
14 We can tell what they do but do you have the  
15 business categories for these tenants.

16 A. Yes.

17 Q. Some of them are the same, but, there  
18 may be more than one, but, can you just read off the  
19 different categories?

20 A. Sure.

21 We have general contractors, cost  
22 recovery services, case management, nutrition  
23 professionals, general contractors, law firms,  
24 website design, mortgage lender, IT counseling, IT  
25 services, relationship counseling.

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1 Q. Okay.

2 So, to your knowledge, is the building  
3 fully occupied?

4 A. Yes, it is.

5 MR. PRINCIOTTO: All right.

6 I don't have any other questions.

7 MR. KAUFMAN: Mr. Bechtel, good evening.

8 EXAMINATION BY

9 MR. KAUFMAN:

10 Q. Clarification: I may have misunderstood  
11 you, but, did you say Bang Realty and Bayland  
12 Realty? Two separate realties are both the landlord?

13 A. Yes.

14 They are the landlords. Bang Realty is  
15 the realty --

16 Q. They both own it?

17 A. Pardon me?

18 Q. I didn't ask you anything, I was  
19 listening?

20 A. Can you repeat that?

21 I didn't hear you.

22 Q. Yeah.

23 Yes.

24 I'm a little confused.

25 You have two buildings at 172 Broadway?



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- 1           A.       Correct.
- 2           Q.       Correct?
- 3           A.       Yes.
- 4           Q.       We have a rear building and a front  
5       building?
- 6           A.       Correct.
- 7           Q.       Do they have separate owners?
- 8           A.       I believe they do.
- 9           Q.       But they have the same address?
- 10          A.       Yes, they do.
- 11          Q.       They have a common driveway?
- 12          A.       Yes, they do.
- 13                    Common driveway.
- 14          Q.       And a common parking lot?
- 15          A.       Two separate lots.
- 16          Q.       Okay.
- 17          A.       One for the front, one for the rear.
- 18          Q.       Okay.
- 19                    Do you know the size of each building?
- 20       What is the size of the front building? What is the  
21       size of the rear building? What is the square feet?
- 22          A.       Both of these buildings are identical  
23       in footprint. They both have 2,700 square feet on  
24       each floor, for a total of 5,400 square feet.
- 25          Q.       How many floors?

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1 A. Two.

2 Q. They are 5400 square feet on two floors  
3 of both buildings, which, for a total of 10,800  
4 square feet?

5 A. Correct.

6 For the two buildings, correct.

7 Q. Okay.

8 Do you know how old the buildings are?

9 A. Um, no, I don't.

10 They were there when I started.

11 Q. So, this is 2021, you started 20 --  
12 2004?

13 A. Correct.

14 Q. Do you know the size of the premises  
15 that are occupied by each of the tenants?

16 A. Um, no, I don't know exactly because  
17 they get billed by size, and the sizes go in square  
18 footage, and they have different classes from A  
19 through J, and the smallest office building would be  
20 -- office space would be up to 1,499 square feet.

21 Q. Okay.

22 But you have -- I am counting this up  
23 in the front building of one, two, three, four,  
24 five, six, seven, eight tenants?

25 A. Correct.

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1 Q. Okay.

2 A. Correct.

3 Q. And it's 5,400 square feet.

4 So, to my calculation, that average is  
5 675 square feet per space, per premises?

6 A. That could be.

7 Q. Okay.

8 The rear of the building has one, two,  
9 three, four, five, six, seven, eight, nine, ten,  
10 eleven, twelve? And it's according to your list,  
11 which is an average of 450 square feet per tenant.

12 A. Correct.

13 Q. Have you been in all of the spaces, I'm  
14 assuming?

15 A. More or less, at different times, yes.

16 Q. Yeah.

17 A. I go in.

18 Q. You only go in when they change?

19 A. Well, also when they don't change. We  
20 do go in there yearly for the yearly inspection.

21 Q. Okay.

22 Do you know the rent that any of these  
23 tenants are paying?

24 A. I have no idea what they pay in rent.

25 Q. Okay.

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1 Do you know if these tenants go month  
2 by month or are leases?

3 A. I don't know what their lease states.

4 Q. So, you don't know when they of these  
5 tenants signed leases?

6 A. All we know is when they change, when  
7 they move out, the landlord notifies us that they  
8 had a change in tenants.

9 Q. And, then, you need a new CO for the  
10 new tenant, right?

11 A. What was that.

12 Q. They need a CO for the new tenant to be  
13 able to occupy the space?

14 A. If they apply; correct.

15 Q. Well, they are supposed to apply;  
16 aren't they?

17 A. They are.

18 They are.

19 Q. Do you know what zoning district 172  
20 Broadway is in?

21 A. Zoning?

22 Q. Yeah.

23 A. I imagine it's office space.

24 Do I know specifically? No, I do not.

25 Q. Okay.

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1                   And so, for all you know it can be in a  
2 zoning district that is different from 188 Broadway;  
3 isn't that true?

4           A.       Versus?

5           Q.       No.

6                   For all you know, 172 Broadway can be  
7 in a different zoning district than 188 Broadway.

8                   You don't know what district they are  
9 in. So, you don't know it?

10          A.       No.

11          Q.       So, I'm saying, for all you know, it  
12 could be different?

13          A.       Of course it could.

14          Q.       Yeah.

15          A.       And to be honest with you, I don't know  
16 either. So, it's not a trick question.

17                   I do know somebody is going to look it  
18 up, though.

19          Q.       Now, you said you have been in 188  
20 Broadway?

21          A.       Yes.

22          Q.       For over 17 years?

23          A.       Yes, sir.

24          Q.       2018, 2017 the -- wasn't the entire  
25 building occupied by Wallenius?

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- 1           A.     Entirely?
- 2                     I am not sure.
- 3           Q.     Yeah.
- 4                     What were the dates again, please? What
- 5 were the dates?
- 6                     2018, 2017.
- 7           A.     Hum, 2017? 2017.
- 8           Q.     Four years ago?
- 9           A.     I am not sure, sir.
- 10                    I don't know.
- 11          Q.     Okay.
- 12          A.     I don't recall.
- 13          Q.     Is it fair to say that you don't really
- 14 recall when it converted -- when Wallenius took back
- 15 more space from the multi-tenants --
- 16                    MR. KAUFMAN: Let me back up.
- 17          Q.     When you started, in 2004, you said it
- 18 was half occupied by Wallenius and half occupied by
- 19 other tenants?
- 20          A.     Correct.
- 21          Q.     Over the course of the next 17 years,
- 22 or 15 years, wasn't there an exodus of the
- 23 individual tenants with more space taken over by
- 24 Wallenius?
- 25          A.     No.

## CROSS ~ PAUL BECHTEL

1                   Some tenants left and some new ones did  
2           in.

3           Q.       Do you know when?

4                   Do you know what years?

5           A.       Offhand, no.

6                   I can look it up and give it to you at  
7           a future date, if you would like.

8           Q.       Yeah, we would.

9                   You did go through the trouble of  
10          making -- you made that list for 172 Broadway; is  
11          that correct?

12          A.       Correct.

13          Q.       And what prompted you to make list?

14          A.       It was asked, I guess, someone from the  
15          Zoning Board asked us to make a list.

16          Q.       Who?

17                   Because you didn't do it on your own.

18          A.       The list?

19                   Yeah.

20                   The list.

21          A.       The list was compiled --

22          Q.       Mr. Princiotto introduced a document,  
23          WCL 8, which is the list of the tenants of 172  
24          Broadway.

25          A.       Correct.

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1 Q. You put together that list.

2 A. It comes from the computer, sir.

3 Q. I understand that. But, you didn't do  
4 it on your own.

5 Somebody asked you to do it?

6 A. Right.

7 Otherwise I wouldn't have done it.

8 Q. Right. So, I am asking you who asked  
9 you to do it?

10 A. I don't remember who asked me to do it.

11 Q. Do you recall if it was oral, or was it  
12 by e-mail, or a memo, or any kind of written  
13 communication?

14 A. I assume it was oral.

15 Q. And you sent it to Mr. Princiotto?

16 A. Pardon me?

17 Q. And you sent the list to Mr.  
18 Princiotto?

19 A. Yes, my secretary did.

20 Q. Had you discussed the status of 188  
21 Broadway with anybody?

22 A. I was asked if I knew about it by Mr.  
23 Princiotto, yes.

24 Q. He asked you about the tenancy of 188?

25 A. Yes.



## CROSS ~ PAUL BECHTEL

1 Q. And did he ask you to go research --  
2 research the tenants, and how much space they  
3 occupy, and for how long?

4 A. He asked me for the names of the  
5 tenants.

6 Q. At 188 Broadway?

7 A. Yes.

8 CHAIRWOMAN MALLEY: Mr. Kaufman, where  
9 is this going?

10 Q. He asked you 188 Broadway?

11 A. Yes, he did.

12 MR. PRINCIOTTO: I don't think you  
13 should ignore Chairwoman Malley when she asks you a  
14 question.

15 MR. KAUFMAN: Where is this going?

16 CHAIRWOMAN MALLEY: Yes.

17 MR. KAUFMAN: This has to do with the  
18 testimony of his direct examination.

19 That is where it was going.

20 CHAIRWOMAN MALLEY: I was the one that  
21 asked for the information.

22 MR. KAUFMAN: Thank you.

23 MR. PRINCIOTTO: You got your answer  
24 now, Mr. Kaufman?

25 MR. KAUFMAN: I got my answer.

CROSS ~ PAUL BECHTEL

1 Thank you, Chairwoman.

2 MR. PRINCIOTTO: Thank you.

3 CHAIRWOMAN MALLEY: You're welcome.

4 MR. KAUFMAN: Nobody asked you for 188.

5 CHAIRWOMAN MALLEY: I was curious  
6 because you said the building was empty, and I knew  
7 at times that it was not empty, because I had an  
8 office in that building years ago.

9 MR. KAUFMAN: It became empty.

10 I didn't say it was empty all the time.  
11 It wasn't empty when it was purchased. It actually  
12 became vacant about nine years later.

13 MR. PRINCIOTTO: Okay.

14 MR. KAUFMAN: But to your offer, Mr.  
15 Bechtel, it would be interesting to see, during the  
16 15 years, what the tenancies were.

17 CHAIRWOMAN MALLEY: Let's move on.

18 MR. PRINCIOTTO: That is for another  
19 day.

20 MR. KAUFMAN: Am I allowed to finish?

21 I think it would be interesting to  
22 supplement the record.

23 I have no further questions of Mr.  
24 Bechtel. I thank you for attending this evening.

25 A. You're welcome.

## DIRECT ~ CHAIRWOMAN ROBIN MALLEY

1 MR. PRINCIOTTO: Robin, I think this  
2 would be a good time to give your brief testimony. I  
3 am going to ask Sanjeev to assume the role of the  
4 Chair. I am going to swear in Robin Malley, our  
5 Chairwoman.

6 So, Robin could you please raise your  
7 right hand?

8 (Witness complies.)

9 C H A I R W O M A N R O B I N M A L L E Y, called  
10 as a witness, having been first duly sworn by a  
11 Notary Public of the State of New Jersey, was  
12 examined and testified as follows:

13 EXAMINATION BY

14 MR. PRINCIOTTO:

15 MR. KAUFMAN: The Chairperson is going  
16 to testify?

17 MR. PRINCIOTTO: Yeah, she is going to  
18 testify.

19 Q. You did make a statement, but, now  
20 you're under oath. You asked for the list of the  
21 tenants at 172 Broadway; is that correct?

22 A. That is correct.

23 Q. And to your knowledge, is that in the  
24 S-O Zone, as well as 188 Broadway?

25 A. To my knowledge, it is.

DIRECT ~ CHAIRWOMAN ROBIN MALLEY

1 Q. Now, are you involved in real estate  
2 sales and leasing?

3 A. Yes, I am.

4 Q. And do you hold any real estate  
5 licenses?

6 A. I'm a Real Estate Broker Associate.

7 Q. Okay.

8 And 172 Broadway is right next to 188  
9 Broadway I think we established that; is that  
10 correct?

11 A. Yes.

12 Q. And did you make any inquiry to the  
13 occupancy status of 172 Broadway?

14 A. Yes.

15 I called Dina Bianco, who handles the  
16 leasing there, because it was assigned to see if  
17 there was any availability in that building.

18 Q. And, approximately, when did you make  
19 call?

20 A. Mid-June.

21 Q. Of this year, 2021?

22 A. 2021.

23 Q. And is that a customary practice of  
24 someone in your business?

25 A. Absolutely.

## CROSS ~ CHAIRWOMAN ROBIN MALLEY

1 Q. And what were you told with regard to  
2 the occupancy level at 172 Broadway?

3 A. Dina said it was full.

4 MR. PRINCIOTTO: I have no further  
5 questions.

6 MR. KAUFMAN: Can I ask her a couple of  
7 questions?

8 CHAIRWOMAN MALLEY: Sure.

9 MR. KAUFMAN: Thank you.

10 EXAMINATION BY

11 MR. KAUFMAN:

12 Q. You're in real estate brokerage, what  
13 do you specialize in?

14 A. I do residential and some commercial as  
15 well.

16 Q. What kind of commercial?

17 A. Small office and retail type stores.

18 Q. Do you think it's easier to fill up a  
19 10,000 square foot building as opposed to a 40,000  
20 square foot building?

21 A. It all depends on the tenants.

22 MR. KAUFMAN: It always does.

23 I am not going to go down this field.

24 I am not asking any more questions.

25 Thank you for clarifying where Mr. Bechtel got his

DIRECT ~ CRAIG MARSON

1 direction.

2 CHAIRWOMAN MALLEY: You're welcome.

3 MR. PRINCIOTTO: I think we have one  
4 more witness and, then, we can open up to the public  
5 on the last three witnesses.

6 Unless any Board Members have any  
7 questions of Mr. Bechtel or Chairwoman Malley.

8 I don't see any.

9 Okay.

10 Is Craig Marson here? Do you have to  
11 let him in?

12 MR. MARSON: I'm here.

13 MR. KAUFMAN: Is he your witness?

14 MR. PRINCIOTTO: Yes.

15 Can you raise your right hand?

16 (Witness complies.)

17 C R A I G M A R S O N, called as a witness, having  
18 been first duly sworn by a Notary Public of the  
19 State of New Jersey, was examined and testified as  
20 follows:

21 EXAMINATION BY

22 MR. PRINCIOTTO:

23 MR. KAUFMAN: Can we have his first name  
24 for the record?

25 THE WITNESS: Craig.

DIRECT ~ CRAIG MARSON

1 C-R-A-I-G.

2 MR. KAUFMAN: Thank you.

3 CHAIRWOMAN MALLEY: Do you want to spell  
4 your last name for the Court Reporter as well?

5 THE WITNESS: Sure.

6 M-A-R-S-O-N.

7 MR. PRINCIOTTO: Okay.

8 Thank you.

9 Q. And you reside in Woodcliff Lake?

10 A. Yes, sir on Cricket Lane.

11 Q. And we have marked a BBG appraisal  
12 dated February 27, 2018 as WCL 12.

13 Did you obtain a copy of the BBG  
14 Appraisal dated February 27?

15 A. Yes, I did.

16 Q. 2018?

17 A. Yes, sir.

18 Q. Was that obtained as a public document?

19 A. Yes, sir.

20 It was obtained through multiple open  
21 requests.

22 Q. Okay.

23 A. It happens accompanied by multiple open  
24 requests.

25 Q. And when was this?

DIRECT ~ CRAIG MARSON

1           A.       There's -- there was a request during  
2       July of 2019, and, actually, both of them. There  
3       were two separate open documents, that came to me,  
4       including appraisal report of July of 2019.

5           Q.       Okay.

6                    An open request is an open public  
7       records act request?

8           A.       Yes, sir.

9                    Yes, sir.

10          Q.       And what government entity did you  
11       obtain that appraisal from?

12          A.       The first was through the Bergen County  
13       Tax Administrator for Mr. Layton. I had  
14       correspondence with him, as well as, through  
15       Woodcliff Lake's administrative portal that provided  
16       me the document as well.

17          Q.       Okay.

18                    And we have marked, for identification,  
19       another letter, WCL 11, and that is a letter from  
20       the Tax Board which has a reference of July 1, 2019.

21                    Was that your request?

22          A.       Yes, sir.

23          Q.       And that was the response that you got  
24       from Mr. Layton?

25          A.       There was a response, and I apologize



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1 if my dates are slightly off, there was some  
2 stamping, I believe it was around July 16th to July  
3 19th during the response. There was also another  
4 copy that I had showing the filing with the Bergen  
5 County Board of Taxation dated 4/16/2018 as included  
6 in the appraisal report, itself.

7 MR. PRINCIOTTO: We will submit that  
8 letter from the Tax Board and the appraisal into the  
9 record as Exhibits WCL 11 and WCL 12.

10 I have no further questions.

11 MR. KAUFMAN: For the record, I am  
12 objecting to it.

13 Who is going to testify with regard to  
14 the appraisal?

15 MR. PRINCIOTTO: Do you have any  
16 questions for Mr. Marson?

17 MR. KAUFMAN: Yes.

18 EXAMINATION BY

19 MR. KAUFMAN:

20 Q. Mr. Marson, did you review the  
21 appraisal?

22 A. I read through the appraisal.

23 Q. Mr. Marson, what business are you in?

24 A. By training, I'm a licensed attorney,  
25 and CPA, and Registered SEC Investment Advisor.

CROSS ~ CRAIG MARSON

1 Q. Are you also in the real estate  
2 business?

3 A. I happen to have my real estate  
4 license, but, I don't broker real estate  
5 transactions.

6 Q. Are you a purchaser of real estate?

7 A. I do analysis on behalf of clients.  
8 But, personally, I do not engage,  
9 currently, in any kind of residential or office type  
10 investment.

11 Q. You said currently.

12 Did you previously?

13 A. Not to my recollection.

14 Maybe certain REIT's or non-standard  
15 absents that I may have invested in, and IRA's.

16 But this is irrelevant to what we are  
17 asking.

18 Where are we going?

19 MR. PRINCIOTTO: I happen to agree.

20 He just testified as to a public  
21 document that he --

22 MR. KAUFMAN: You don't need him to  
23 testify to a public document.

24 Once you present him, as a witness, I  
25 have a right to question him.

CROSS ~ CRAIG MARSON

1 MR. PRINCIOTTO: It should relate to his  
2 testimony, you can't harass him.

3 MR. KAUFMAN: I'm not harassing him.  
4 I'm asking him about his background.

5 MR. PRINCIOTTO: What does that have to  
6 do with how he receives a public document?

7 MR. KAUFMAN: Mr. Marson testified that  
8 he reviewed the appraisal.

9 I am going to ask him a question about  
10 the appraisal or are you going to preclude me from  
11 asking him about that?

12 CHAIRWOMAN MALLEY: Go ahead and we will  
13 make a decision.

14 It was a document that he got and has  
15 presented here.

16 MR. KAUFMAN: Right.

17 He presented it.

18 Q. Mr. Marson, isn't it true that the --

19 MR. KAUFMAN: I want to make sure that I  
20 have the right document, frankly.

21 I want to go through it before I ask  
22 you a question.

23 MR. PRINCIOTTO: Hold on a second.

24 Q. Mr. Marson, you read the letter from  
25 BBG dated February 27, 2018?

CROSS ~ CRAIG MARSON

1 A. I read through it, yes, sir.

2 Q. I want to draw your attention to the  
3 third paragraph.

4 A. No, I am not here to offer any opinion  
5 or analysis.

6 Q. I'm not going to ask you your opinion.

7 A. I am not here to offer or follow a  
8 document.

9 I was -- I am merely stating how I  
10 obtained the document.

11 MR. KAUFMAN: I object to his testifying  
12 at all.

13 Now, he is now refusing to answer any  
14 questions. This is like a kangaroo court.

15 This is ridiculous.

16 You hit me with a document that is more  
17 than 3 and a half years old, I have nobody I can  
18 question on it, and I know what your argument is  
19 going to be, and I have nobody to question about it.

20 I object to the entire way this  
21 proceeding is being conducted.

22 He is sitting here refusing to answer  
23 on a document that he produced.

24 MR. PRINCIOTTO: He is here as a fact  
25 witness --

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1 MR. KAUFMAN: That is right.

2 I am going to ask him facts.

3 MR. PRINCIOTTO: -- that your client  
4 submitted.

5 If you're going to ask him about  
6 something that is in the letter, we have it in the  
7 record. You can refer to it in your summation. You  
8 don't have to ask him about it. He is just here to  
9 give factual testimony. Not opinions, how he obtains  
10 a public document, you're well versed in this  
11 document because you submitted it to governmental  
12 agencies, or your client did, and, presumably, you  
13 knew about it because you were listed as a contact,  
14 so, I think you're fully familiar with the document  
15 so it should be no surprise.

16 Are we done?

17 MR. KAUFMAN: I am not allowed to talk,  
18 so, I am being quiet.

19 I am not allowed to ask him questions.  
20 What do you want me to do? Ask him if he submitted  
21 the open request document? It's painfully obvious.  
22 You submitted a document with nobody for me to  
23 question on the document.

24 MR. PRINCIOTTO: When you submitted a  
25 letter, from the County of Bergen, with regard to

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1 approval who are we to ask questions to? It was a  
2 public document that you submitted. And as a matter  
3 of fact, you were well aware of this public  
4 document.

5 MR. KAUFMAN: You place an appraisal  
6 into evidence and I object to it without offering up  
7 anybody that I can question on the document.

8 MR. PRINCIOTTO: It speaks to for  
9 itself.

10 MR. KAUFMAN: Talk about being totally  
11 unfair.

12 I am not allowed to ask Mr. Marson.

13 THE WITNESS: I already told you where I  
14 received the appraisal.

15 MR. KAUFMAN: There's no question posed  
16 to you, Mr. Marson.

17 CHAIRWOMAN MALLEY: Are you telling us  
18 this document is fake?

19 MR. KAUFMAN: No.

20 I am telling you that this document  
21 should be inadmissible. It's irrelevant to the  
22 application.

23 MR. PRINCIOTTO: All right.

24 These are summation arguments.

25 MR. KAUFMAN: What?

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1 MR. PRINCIOTTO: These are summation  
2 arguments.

3 MR. KAUFMAN: This is not a summation  
4 argument. This is an "I gotcha" -- an attempted "I  
5 gotcha" moment. That is all this is.

6 MR. PRINCIOTTO: All right. All right.

7 MR. KAUFMAN: I am not allowed to any --  
8 you have presented nobody that I can ask about the  
9 appraisal, but, you want to put it into evidence,  
10 and I am being prevented from cross-examining  
11 anybody.

12 CHAIRWOMAN MALLEY: I am curious what  
13 you would ask Mr. Marson about the appraisal when he  
14 had nothing to do with the appraisal. I don't  
15 understand why you would question him about it.

16 MR. KAUFMAN: Let me ask you this, Madam  
17 Chairperson, who should I question?

18 CHAIRWOMAN MALLEY: Your appraiser.

19 MR. KAUFMAN: My appraiser was hired by  
20 a bank and I didn't offer this appraisal into  
21 evidence. The person who offered this into evidence  
22 should produce the witness that can be questioned on  
23 the document.

24 CHAIRWOMAN MALLEY: I am going to guess  
25 that you got a bank loan based on this appraisal.

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1                   So --

2                   MR. KAUFMAN: You can -- you can guess  
3 all you want, Madam Chairperson, all I know is that  
4 there is an attempt -- there has been put into  
5 evidence -- I objected to this when Mr. Princiotto  
6 questioned Mr. Burnell. I objected to it then, I  
7 object to it now. It's fundamentally unfair.

8                   MR. PRINCIOOTTO: I happen to disagree  
9 with you that this appraisal, and it's in the  
10 record, it indicates what the Applicant's intention  
11 was, okay, with regard to this property, which is  
12 very relevant, because of the claims you're making  
13 in this case. And the appraisal indicates that it  
14 was the buyer's intention, even though it was zoned  
15 for office use to convert it into apartments.

16                   It's very relevant, okay, with regard  
17 to this application, and what the applicants  
18 intentions were. You may not like that, but, those  
19 are the facts, and this is what occurred, and this  
20 is what was presented to the lender and to the  
21 appraiser, and that is an important factor in this  
22 application. How this building and why this building  
23 is vacant. That is an important issue in this case.

24                   You may not like that fact, but, it  
25 appears in this appraisal. It's a public document



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1 that the Applicant submitted to a governmental  
2 agency, for a legitimate purpose, and made it a  
3 public record. So, if you make it a public record,  
4 it becomes a public record.

5 MR. KAUFMAN: And you're testifying as  
6 to what the appraisal says and what the appraisal  
7 means, am I allowed to question you? You're giving  
8 an opinion. You just offered an opinion on this  
9 appraisal.

10 MR. PRINCIOTTO: No. I am stating a  
11 fact.

12 MR. KAUFMAN: No, it is not a fact.

13 MR. PRINCIOTTO: It states that in the  
14 appraisal, it's in the public document. I didn't  
15 state that, I am not testifying.

16 It's in the document. It's in the  
17 public document.

18 MR. KAUFMAN: I disagree with you.

19 MR. PRINCIOTTO: What the Applicant's  
20 intentions were when they bought the property, it  
21 explains why that property is vacant.

22 So, that's how it's relevant.

23 MR. KAUFMAN: And you're stating that  
24 that is what it says in the six pages that you  
25 handled.

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1 MR. PRINCIOTTO: Yes, it does.

2 MR. KAUFMAN: You're stating that that  
3 is what it says in the six pages.

4 MR. PRINCIOTTO: Do you want me to point  
5 it out to you?

6 MR. KAUFMAN: No, I want to move on.

7 MR. PRINCIOTTO: I would be happy to  
8 point it out to you, I just have to find it.

9 MR. KAUFMAN: And then you are going to  
10 testify.

11 MR. PRINCIOTTO: No, I won't. I'm going  
12 to tell you where it appears in the public document  
13 that you, currently, were aware of and had input.

14 MR. KAUFMAN: How do you know? How do  
15 you know I had input?

16 If you know anything about banking,  
17 it's improper to for a filer to have input on the  
18 appraisal.

19 That is an outrageous statement for you  
20 to make.

21 It's so wrong and totally outrageous.

22 MR. PRINCIOTTO: Perhaps, it's  
23 irrelevant, okay. I found it for you and it's on  
24 page --

25 MR. KAUFMAN: I didn't ask you to.

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1 MR. PRINCIOTTO: You did.

2 It's on Page 4.

3 MR. KAUFMAN: I know where it is. And I  
4 didn't write it. This is written by someone in an  
5 engagement letter.

6 MR. PRINCIOTTO: Where did they get this  
7 information from?

8 MR. KAUFMAN: You're going to testify  
9 now and I can't question you.

10 MR. PRINCIOTTO: No.

11 I am not -- let's move on.

12 Do we have any other questions?

13 CHAIRWOMAN MALLEY: Does anybody else  
14 have questions? Does anyone on the board have  
15 questions of Mr. Marson?

16 MR. PRINCIOTTO: Open it up to the  
17 public for the three witnesses that just testified.

18 CHAIRWOMAN MALLEY: Motion to open up to  
19 the public?

20 VICE CHAIRMAN DHAWAN: Second.

21 MS. SMITH: Any opposed?

22 CHAIRWOMAN MALLEY: Okay, Meg.

23 MS. SMITH: Anybody watching on TV that  
24 has a question for Mr. Bechtel, Mr. Marson, or Ms.  
25 Malley can call in on the phone line, (201)-391-

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1 4977, extension 203. We can take one call at a time.  
2 Anyone in the public who would like to ask a  
3 question can raise their hand and they will be  
4 called upon to address the Board with their  
5 question.

6 I have one person raising a hand right  
7 now, who is an attendee, and I have one panelist  
8 raising their hand.

9 Let me go to the panelist.

10 Chairwoman Malley, you have your hand  
11 raised?

12 CHAIRWOMAN MALLEY: I don't know why  
13 it's raised, sorry.

14 MS. SMITH: Mr. Cuto?

15 MR. CUTO: Thank you for taking my  
16 question. Is it public document, are we privy to it  
17 or does it stay private to the Board.

18 MR. PRINCIOTTO: It's public record.

19 MR. CUTO: Okay. It's something that we  
20 could go make a request and see it somewhere as  
21 well.

22 MR. PRINCIOTTO: Yes.

23 MR. CUTO: Thank you very much.

24 Appreciate it.

25 MS. SMITH: I have no one else right

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1 now raising their hand in the public and I have no  
2 phone calls.

3 MR. PRINCIOTTO: We need a motion to  
4 close to the public.

5 MR. MICHAEL KAUFMAN: Motion to close to  
6 the public.

7 MS. CEREIJO: Second.

8 MS. SMITH: Any opposed?

9 Okay.

10 Closed to the public.

11 MR. PRINCIOTTO: Okay.

12 I have two other matters which I'd like  
13 to address and one is WCL 10, which is an excerpt  
14 from Mr. Delia's testimony of January 22, 2019, and,  
15 actually, I want to make it clear that I am not  
16 adopting his statement. I am going to read what he  
17 said with regard to what the applicant was seeking,  
18 for the purpose of indicating what basis the prior  
19 -- the variances were made under. So, I am just  
20 going to read that into the record.

21 MR. KAUFMAN: Can we have the date,  
22 page, line --

23 MR. PRINCIOTTO: July 23, 2019. I  
24 believe I submitted this to you, but, it's Page 76.

25 MR. KAUFMAN: I don't recall receiving

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1 anything by Delia. I don't remember receiving  
2 anything in which Delia made any statements.

3 MR. PRINCIOTTO: Okay. I believe you  
4 received it.

5 MR. KAUFMAN: I believe I did not.

6 MR. PRINCIOTTO: I will read it.

7 It was part of the prior application  
8 and it was intended as the basis for the variance in  
9 the prior application, so, I am going to read it  
10 into the record.

11 MR. KAUFMAN: Of course.

12 MR. PRINCIOTTO: And this is his  
13 testimony from July 23, 2019, Page 76: I would also  
14 note, parenthetically, we believe a case can be made  
15 for the use variance based upon the hardship and  
16 special reasons. That is the office use is no longer  
17 suitable or viable. This would be based on the  
18 testimony of Mr. Opler, comments of the Chair, and  
19 Mr. Preiss. So, I am reading that statement of what  
20 the claim was and that an argument was made that  
21 there was a hardship from the prior application.

22 MR. KAUFMAN: While you were at it, why  
23 don't you read in Mr. Preiss' testimony which was  
24 under oath, Delia's was summation. Read in Richard  
25 Preiss' testimony that there was no hardship

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1 application made. You left that out.

2 MR. PRINCIOTTO: Mr. Kaufman, I am not  
3 here to argue with you.

4 MR. KAUFMAN: You are and that's what  
5 you've been doing from the inception. You have been  
6 arguing with me against the application, and you've  
7 been arguing with me, and you have been stopping me  
8 from talking, you have been objecting to my  
9 questioning witnesses --

10 CHAIRWOMAN MALLEY: Mr. Kaufman.

11 MR. KAUFMAN: -- and that is what the  
12 record will reflect.

13 MR. PRINCIOTTO: This is inappropriate.

14 MR. KAUFMAN: It's not inappropriate  
15 that you went out of context --

16 CHAIRWOMAN MALLEY: Mr. Kaufman.

17 MR. KAUFMAN: It's not argumentative  
18 that he read an attorney's portion of an attorney's  
19 summation out of context. If that is not  
20 argumentative, I don't know what is.

21 MR. PRINCIOTTO: I can understand why  
22 you don't like it but the argument for hardship was  
23 made in the prior application, and I think that this  
24 Board and the new members should know that. That  
25 argument was made previously. It's relevant to the

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1 Res Judicata issue.

2 MR. KAUFMAN: Thank you, Mr. Princiotto.

3 You have now made your role in this  
4 entire proceeding totally transparent.

5 MR. PRINCIOTTO: Can we put a stop to  
6 this, please?

7 This is a tirade. I am putting in a  
8 prior statement from the prior application relevant  
9 on the issue of Res Judicata. I don't want comments  
10 to be directed at me and Mr. Kaufman to try to make  
11 a claim of something happening other than me doing  
12 my job.

13 CHAIRWOMAN MALLEY: I agree.

14 And Mr. Kaufman, I am going to ask you  
15 to let Mr. Princiotto finish what he was saying. You  
16 can make your closing remarks afterwards.

17 MR. PRINCIOTTO: The only other item I  
18 want to put into the record is an excerpt from  
19 Opler's testimony, it's premarked WCL 9, and it's an  
20 excerpt from his testimony of January 22, 2019.

21 MR. KAUFMAN: Page, please.

22 MR. PRINCIOTTO: Again, it was  
23 submitted to you. It's Pages 82, 83, 84 to 88, and  
24 101 to 103.

25 And I think that is all I have. We have



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1 your submission letter of January 11, 2021, which we  
2 will work into the record as WCL 6, and I think that  
3 is about it.

4 Is there anything else?

5 CHAIRWOMAN MALLEY: Mr. Princiotto, do  
6 want to explain to the Board Members what Mr. Opler  
7 was talking about?

8 MR. PRINCIOTTO: Sure.

9 CHAIRWOMAN MALLEY: Just pull those  
10 couple of quotes that he mentioned without going  
11 through all of his qualifying agents.

12 MR. PRINCIOTTO: Yes.

13 Mr. Opler is, we said at the time, was  
14 a real estate broker for 38 years, and he testified  
15 for the Applicant. He is not an appraiser and the  
16 material part of his testimony was -- he was asked a  
17 question by Mr. Spieri: Do you believe, as an  
18 office building, that building is rentable? And his  
19 answer was: As an office building, is it rentable? I  
20 would guess everything is rentable. The question is  
21 at what price, you know? And what are tenants  
22 looking for these days? Commercial tenants, a lot  
23 of requirements have changed over the years, but,  
24 sure it's rentable.

25 And Mr. Spieri asked a question: Would

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1 it be an asset the fact that the office building is  
2 near the train station and people could commute to  
3 work using the train, as well as driving?

4 And the witness addressed: Could be.  
5 Certainly.

6 And Mr. Spieri then asked: If they came  
7 to you and said: Rent this building for us, find a  
8 commercial tenant, you could do it.

9 The witness: We can do it. It would be  
10 difficult, but, we could do it.

11 And we went on a little further. It is  
12 just commercial use, that has changed in a building  
13 like that, generally, are attracted to smaller  
14 tenants to be in professional areas, and just as you  
15 see, you're not in that much office development any  
16 more. But, sure. Anything is rentable. It's just a  
17 matter of does it financially fit for a client and  
18 that you can get them the price that they want.  
19 Which is why you see a lot of vacancy in retail.

20 That was his testimony that I  
21 submitted.

22 CHAIRWOMAN MALLEY: Thank you.

23 MR. KAUFMAN: Am I allowed to respond to  
24 any of these?

25 CHAIRWOMAN MALLEY: Yes.

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1                   You can.

2                   MR. PRINCIOTTO: At this juncture,  
3 perhaps, Mr. Kaufman wants to make any comments  
4 about the Res Judicata issue before the Board  
5 entertains it.

6                   MR. KAUFMAN: We are not finished.

7                   Ms. Leheny didn't testify. She is not  
8 here.

9                   MR. PRINCIOTTO: We have been through  
10 this, and around, and around. The Board heard your  
11 application to determine whether Res Judicata  
12 applies. If it applies, there is going to be no  
13 further testimony, and if it doesn't apply, there  
14 can be further testimony, including that of the  
15 planner and anyone else that would be deemed  
16 necessary.

17                   But, there is a jurisdictional issue  
18 and we've been saying this all along, if Res  
19 Judicata applies, it's a different procedure than if  
20 it doesn't. But, the Board has to make a  
21 determination as to whether Res Judicata applies or  
22 doesn't apply.

23                   If it doesn't apply, you will hear from  
24 Ms. Leheny. If it does apply, it's a jurisdictional  
25 question. The Board doesn't have any authority to go

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1 any further. That's an initial determination the  
2 Board has to make.

3 So, Mr. Kaufman, where we are at is:  
4 Do you want to make any comments on Res Judicata?

5 MR. KAUFMAN: I want to question Ms.  
6 Leheny, as per Richard Preiss' testimony, is the  
7 planner that reviewed the application. I would like  
8 to hear her testimony on this issue.

9 I am also objecting to the manner in  
10 which you placed portions of transcripts taken out  
11 of context, have distorted them in an effort to  
12 persuade this court to come to a conclusion that you  
13 want which is transparent. You left out --

14 MR. PRINCIOTTO: Well.

15 It is my function to submit --

16 MR. KAUFMAN: Here we go.

17 Do you want to continue to interrupt  
18 me? I didn't interrupt you and you just interrupted  
19 me.

20 MR. PRINCIOTTO: I'm sorry, I apologize.  
21 I thought you were done.

22 I was hoping you were done. Continue.

23 MR. KAUFMAN: I was in the middle of a  
24 sentence when you interrupted me. You know I wasn't  
25 done.

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1           What Mr. Preiss testified, and what you  
2           didn't bother to place into evidence, and I'll tell  
3           you when he did it, he testified to this on June 25,  
4           2019 at Page 73.

5           I would say, that, you know, given the  
6           property's location, the way you're proposing to  
7           convert it, if it was zoned for the use, it would be  
8           inappropriate plan, events.

9           The question was: To whether or not  
10          the office vacancy occurred by attrition. Whether it  
11          occurred deliberately, really doesn't really matter,  
12          does it.

13          His answer: I have indicated there's no  
14          evidence on the record. You haven't made the  
15          argument that this is a hardship case, and it's up  
16          to the Board to make that determination.

17          Well, Mr. Preiss indicated that the  
18          case was not a hardship. Mr. -- you took a sentence  
19          by Mr. Delia which was not under oath, and which was  
20          argument, and that you put in to try to claim it was  
21          a hardship.

22          I want to recall Joe Burgess to testify  
23          on Res Judicata, since you changed the rules on  
24          what's being heard tonight, when the prior two  
25          hearings were all on the site plan issues, and I

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1 want to recall him and I want to hear what Ms.  
2 Leheny has to say, as well. She was the planner who  
3 revealed the application and not Mr. Preiss.

4 CHAIRWOMAN MALLEY: One of the Board  
5 Members has a question.

6 MS. HEMBREE: I have a comment and it's  
7 the same comment from two meetings ago.

8 That it's after 10:00 and your  
9 argumentativeness gives me a stomachache. I'm tired  
10 of it. This has been the subject from the very  
11 beginning. It is very clear to me, I was there at  
12 the last application, as was Mrs. Malley, and we are  
13 the only two who actually had to go through this,  
14 the first time, and Mr. Kaufman did too.

15 MR. PRINCIOTTO: And Emelia.

16 CHAIRWOMAN MALLEY: And Sanjeev was  
17 there. There were five of us.

18 MS. HEMBREE: So, we've all been there.  
19 I am tired of hearing you argue this.

20 It's not relevant to the question as to  
21 whether this is a new application or a rehash of the  
22 old application, and I suggest we move forward, and  
23 get this over with. Unless, you would like to give  
24 us extra time because I will not be here next  
25 Tuesday. So, I can't be a member of this Board,

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1 next Tuesday. You choose.

2 I am ready to make the decision and I  
3 will make a motion, if you would like, Mrs. Malley,  
4 because it's very clear to to me that it's  
5 substantially similar to the original application.  
6 You have the same parties who are involved, other  
7 than the reduction of limits, it's the same site  
8 plan, other than going back to two-and-a-half  
9 stories from three, and seven apartments. That's it.

10 There's no substantial change in my  
11 mind.

12 CHAIRWOMAN MALLEY: I am okay with  
13 making a motion.

14 Mr. Princiotto, are we at the point  
15 where we can do that?

16 MR. PRINCIOTTO: Yes.

17 It's one or two motions. It can be, as  
18 suggested by Christina Hembre, it can be a motion  
19 to dismiss the application, based on the doctrine of  
20 Res Judicata, or a motion the other way, that Res  
21 Judicata doesn't apply and the application should  
22 continue. In which case, we would go further and  
23 hear testimony from Ms. Leheny.

24 The Board can entertain a motion.

25 MS. HEMMBRE: I make a motion that Res

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1       Judicata does apply.

2                       MR. PRINCIOTTO: This is a motion to  
3       dismiss the application based upon the doctrine of  
4       Res Judicata.

5                       MS. HEMBREE: Yes, sir.

6                       MR. PRINCIOTTO: Any discussion on this,  
7       on the Board Members?

8                       CHAIRWOMAN MALLEY: Anyone want to  
9       second it?

10                      VICE CHAIRMAN DHAWAN: I want to second  
11       it.

12                      CHAIRWOMAN MALLEY: Okay.

13                      Can we get a role call?

14                      MR. PRINCIOTTO: Is there any discussion  
15       about it? Do any Board Members have any comments  
16       about the similarities or differences of this  
17       application?

18                      MS. CEREIJO: Yes.

19                      I can make a comment. For me, I tend to  
20       agree with Ms. Hemmbre because the blue print is  
21       exactly the same. So, for that reason, I feel the  
22       criteria has been met for Res Judicata, and it's  
23       very substantially similar.

24                      CHAIRWOMAN MALLEY: I would have to  
25       agree.



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1 I believe all of the conditions are  
2 similar, the same applicants, same site plan,  
3 nothing has changed. I mean we -- it was lessened by  
4 the seven apartments. You brought it down one story,  
5 that is your change, and that is not a significant  
6 change to me.

7 MS. PICINIC: I would have to agree with  
8 the comments. It went from 60 down to 53, it went  
9 down a story, we went through, I think it was Mr.  
10 Jacobs' testimony, specifically, went through what  
11 was very similar, the parties are similar, and in my  
12 mind, it's substantially similar.

13 CHAIRWOMAN MALLEY: Anyone else want to  
14 add, comment, plus, minus? Are we ready to --

15 VICE CHAIRMAN DHAWAN: Role call.

16 CHAIRWOMAN MALLEY: Sanjeev, I missed  
17 it.

18 VICE CHAIRMAN DHAWAN: I think we're  
19 ready to vote.

20 CHAIRWOMAN MALLEY: Okay.

21 Meg?

22 MS. SMITH: Chairwoman Malley?

23 CHAIRWOMAN MALLEY: Yes.

24 MS. SMITH: Ms. Cereiyo?

25 MS. CEREIJO: Yes.

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1 MS. SMITH: Vice Chairman Dhawan?  
2 VICE CHAIRMAN DHAWAN: Yes.  
3 MS. SMITH: Ms. Fendian?  
4 MS. FENDIAN: Yes.  
5 MS. SMITH: Ms. Hembree?  
6 MS. HEMBREE: Yes.  
7 MS. SMITH: Mr. Kaufman?  
8 MR. MICHAEL KAUFMAN: Yes.  
9 MS. SMITH: Ms. Picinic?  
10 MS. PICINIC: Yes.  
11 MS. SMITH: That is all seven Regular  
12 Board Members voting: "Yes."  
13 MR. KAUFMAN: I'm sorry about your  
14 stomachache.  
15 MR. PRINCIOTTO: There is another --  
16 CHAIRWOMAN MALLEY: She accepts your  
17 apology.  
18 MR. PRINCIOTTO: There is another issue  
19 that should be considered, and I asked Mr. Kaufman  
20 if he was withdrawing, and Mr. Preiss testified  
21 about it that, you know, a pandemic is not a change  
22 of circumstances, or a changed circumstance, under  
23 Res Judicata.  
24 I think that that should be the subject  
25 of another motion, you know. It would be either a

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1 motion to dismiss the application based upon the  
2 claim of changed circumstances as a result of the  
3 pandemic, or a motion to consider the based upon  
4 changed circumstances due to the pandemic.

5 In order to compete, I believe we  
6 should have one of those two motions, even though  
7 Mr. Preiss' testimony was that COVID-19 pandemic  
8 would not be a changed circumstance that would  
9 warrant a, you know, a claim, or a change, or a  
10 different application.

11 Would someone like to make a motion on  
12 that --

13 CHAIRWOMAN MALLEY: Can you repeat the  
14 first one, the motion to dismiss?

15 MR. PRINCIOTTO: -- the first one would  
16 be a motion to dismiss the application based upon  
17 changed circumstances as a result of the COVID-19  
18 pandemic.

19 CHAIRWOMAN MALLEY: I will make the  
20 motion, but, having said that, that is fine.

21 MR. PRINCIOTTO: Okay.

22 CHAIRWOMAN MALLEY: Can I get a second  
23 on that?

24 MS. CEREIJO: Second.

25 CHAIRWOMAN MALLEY: Okay.

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1 Meg?  
2 MS. SMITH: Chairwoman Malley?  
3 CHAIRWOMAN MALLEY: Yes.  
4 MS. SMITH: Ms. Cereiyo?  
5 MS. CEREIJO: Yes.  
6 MS. SMITH: Vice Chairman Dhawan?  
7 VICE CHAIRMAN DHAWAN: Yes.  
8 MS. SMITH: Ms. Fendian?  
9 MS. FENDIAN: Yes.  
10 MS. SMITH: Ms. Hembree?  
11 MS. HEMBREE: Yes.  
12 MS. SMITH: Mr. Kaufman?  
13 MR. MICHAEL KAUFMAN: Yes.  
14 MS. SMITH: Ms. Picinic?  
15 MS. PICINIC: Yes.  
16 MS. SMITH: That is seven affirmative  
17 votes.  
18 MR. PRINCIOTTO: Okay.  
19 I think that concludes this matter.  
20 MR. KAUFMAN: For now.  
21 MR. PRINCIOTTO: Unless we need a motion  
22 to close the meeting.  
23 CHAIRWOMAN MALLEY: Do we have to say  
24 anything on our next meeting, who we are hearing  
25 next week?

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1 MS. SMITH: The next meeting is next --

2 CHAIRWOMAN MALLEY: Tuesday.

3 MS. SMITH: Tuesday.

4 That is the 27th at 7:30, and we are  
5 hearing the application for 15 West Hill, a  
6 residential application.

7 CHAIRWOMAN MALLEY: Piece of cake.

8 MR. PRINCIOTTO: Meg, do you have to  
9 advise them that it can be heard. Because we  
10 weren't certain if we were going to finish this  
11 application or not.

12 MS. SMITH: You told me to go ahead and  
13 have it published and in the event that they could  
14 go and, otherwise, we would carry it. I have to  
15 verify that it is all accurate. But they did go  
16 ahead and notice and publish.

17 MR. PRINCIOTTO: But, you did tell them  
18 we may have to carry it if we didn't finish this  
19 application.

20 MS. SMITH: Correct.

21 MR. PRINCIOTTO: Are you going to tell  
22 them that we are definitely on?

23 MS. SMITH: I will confirm, yes.

24 MR. PRINCIOTTO: What is the status of  
25 the other applications? Are they indicated the

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1 willingness to be scheduled?

2 MS. SMITH: There are two waiting to be  
3 scheduled and one is pending completeness review. 15  
4 Franklin Street and 54 Heather Hill are just waiting  
5 for a date.

6 MR. PRINCIOTTO: Alright.

7 We just need a motion close.

8 MS. HEMBREE: I so move.

9 VICE CHAIRMAN DHAWAN: Second.

10 CHAIRWOMAN MALLEY: All in favor?

11 ALL: Aye.

12 CHAIRWOMAN MALLEY: Any opposed?

13 Thank you.

14 (Whereupon, at 10:30 P.M., the  
15 Examination of this Witness was concluded.)

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## C E R T I F I C A T E

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I, KARYN CHIUSANO, a Notary Public and Professional Court Reporter do hereby certify that prior to the commencement of the examination the witness was duly sworn.

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I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

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15

I DO FURTHER CERTIFY that I am neither a relative nor employee, nor attorney or counsel to any of the involved; that I am neither related to nor employed by such attorney or counsel, and that I am not financially interested in the outcome of the action.

16

17

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of July 2021.

18

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KARYN CHIUSANO

21

ID: 50099353

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