

CITY OF UNION CITY
HUDSON COUNTY, NEW JERSEY
PLANNING BOARD

SPECIAL MEETING : TRANSCRIPT OF RECORDED
: PROCEEDINGS
:
:

City Hall
3715 Palisade Avenue
Union City, New Jersey

Tuesday, June 4, 2019
Commencing at 6:00 p.m.

M E M B E R S P R E S E N T:

YDALIA GENAO, Mayor's Designee
ALICIA MOREJON
CAROLINA FERNANDEZ
RUDY RIVERO
FRANKLIN MEDINA
JOSE GUARENO, Alternate No. 2
JEANNE KOEHLER, Vice Chairperson

M E M B E R S A B S E N T:

BRIAN P. STACK, Mayor
CELIN VALDIVIA, Commissioner
ALEJANDRO VELAZQUEZ, Alternate No. 1
DIANE CAPIZZI, Chairperson

A L S O P R E S E N T:

WILFREDO J. ORTIZ, II, ESQ., Attorney for the Board

DAVID SPATZ, Consultant
Community Housing & Planning Associates, Inc.

HEYER, GRUEL & ASSOCIATES
BY: M. MCKINLEY MERTZ, PP, AICP

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1 MS. DILLON: On the record.

2 MR. ORTIZ: Please take notice that on
3 Tuesday, June 4, 2019, at six p.m., a Special
4 Meeting is scheduled for the City of Union City
5 Planning Board, to be held at the Municipal
6 Chambers, City Hall, 3-- 3715 Palisade Avenue,
7 Union City, New Jersey.

8 This is a meeting called to order in
9 compliance with Chapter 231, Public Law 1975, of
10 the Open Public Meetings Act.

11 Adequate notice of this meeting has been
12 provided as follows:

13 Notice of this meeting is set forth the
14 time, date, location, and agenda, to the extent
15 known, was forwarded to The Jersey Journal, The
16 Record, The Hudson Reporter, and has been posted
17 on the bulletin board in the City Hall, and has
18 been made available to the public in the Office
19 of the Municipal Cl-- Clerk, excuse me.

20 Before we take roll call, will everybody
21 kindly stand up; Pledge of Allegiance?

22

23 (Whereupon, the Pledge of Allegiance was
24 said by all.)

25

1 **ROLL CALL:**

2

3 MR. ORTIZ: Roll call for tonight's
4 meeting.

5 Jeanne Koehler?

6 VICE CHAIRPERSON KOEHLER: Here.

7 MR. ORTIZ: Ydalia Genao?

8 MS. GENAO: Yes.

9 MR. RIVERO: Hello.

10 Hi.

11 MR. ORTIZ: Carolina Fernandez?

12 MS. FERNANDEZ: Yes.

13 MR. ORTIZ: Rudy Rivero?

14 MR. RIVERO: Yes.

15 MR. ORTIZ: Franklin Medina?

16 MR. MEDINA: Yes.

17 MR. ORTIZ: Alicia Morejon?

18 MS. MOREJON: Yes.

19 MR. ORTIZ: Alejandro --

20 And Jose Guareno?

21 MR. GUARENO: Yes.

22 MR. ORTIZ: Okay.

23 Let the record indicate there are six (sic)
24 people present.

25 So we have a Board made of -- of six (sic)

1 members, which constitutes a full quorum to
2 establish any decisions.

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1 **Public Hearing and Adoption of Resolution:**

2 **Pursuant to N.J.S.A. 40:55D-64, a Proposed Zoning**
3 **Ordinance Must be Referred by the Governing Body**
4 **to the Planning Board for Determination of**
5 **Whether the Proposed Ordinance is Consistent with**
6 **the Land Use and Housing Plan Element of the**
7 **Municipal Master Plan. The Planning Board Shall**
8 **Review the Proposed Ordinance and Prepare a**
9 **Report Regarding Consistency with the Master Plan**
10 **or Lack Thereof and Any Recommendations**
11 **Concerning Inconsistencies. Resolution Adopted**
12 **by the Board of Commissioners of the City of**
13 **Union City, at the Meeting Held on May 28, 2019:**

14
15 MR. ORTIZ: First matter to be called --
16 and only matter, is a Hearing Pursuant to
17 N.J.S.A. 40:55D-64, a Proposed Zoning Ordinance
18 that Must be Referred by the Governing Body to
19 the Planning Board for Determination of Whether
20 the Proposed Ordinance is Consistent with the
21 Land Use and Housing Plan Element of the
22 Municipal Master Plan. The Planning Board Shall
23 Review the Proposed Ordinance and Prepare a
24 Report Regarding the Consistency with the Master
25 Plan or Lack Thereof and Any Recommendations

1 Concerning Consisten-- Inconsistencies.
2 Resolution Adopted by the Board of the
3 Commissioners of Union City, at the Meeting Held
4 on May 28th, 2019.

5 Show's yours.

6 MS. MERTZ: Do you want to mic me?

7 MS. DILLON: Ah, yes.

8 That's fine.

9 Thank you.

10 MS. MERTZ: Okay, great. Thanks.

11 All right.

12 MS. DILLON: She should be sworn, Mr.

13 Ortiz?

14 MS. ORTIZ: Yes, ma'am.

15 MS. DILLON: Please raise your right hand.

16 Do you affirm the testimony you're about to
17 give this Board is the whole truth?

18 MS. MERTZ: I do.

19 MS. DILLON: Please state your name and
20 spell it for the record.

21 MS. MERTZ: McKinley Mertz, M-E-R-T-Z.

22 MS. DILLON: Thank you.

23 MS. MERTZ: Hi, everyone.

24 As you remember, my name is McKinley Mertz
25 with Heyer, Gruel and Associates.

1 I've been before you several times now for
2 the Master Plan and now I'm here for the new
3 Zoning Ordinance.

4 As was previously stated, the Zoning
5 Ordinance was introduced at the Board of
6 Commissioners recently and it's now your job to
7 review the Ordinance for consistence with the
8 Master Plan that you adopted in January. And, if
9 you remember, there was a previous Master Plan
10 Reexam adopted in March. And those two work
11 together.

12 So, very briefly, I'm going to give you a
13 summary of the Ordinance.

14 It is an adoption -- an adoption of the
15 entire Chapter 223. And the reason for that is
16 that there were so many little pieces to make
17 sure that we had gotten everything in there, it
18 made the most sense just to readopt the entire
19 Chapter.

20 So that's also why I did not bring copies
21 tonight, because it's a hundred and twenty pages
22 long.

23 So, really quickly, I will go over what is
24 new and changed within this Ordinance.

25 Predominantly, it's an establishment of new

1 zoning boundaries. And that's due to the fact
2 that several of your zones are being eliminated.

3 The zones that are proposed for elimination
4 are the C-C: Center City Core Zone; the
5 C-G: Gateway Commercial Zone; the R-M: Medium
6 Density Residential Zone.

7 And then two overlays are proposed for
8 removal. Those are the JFK Overlay and the UTOD,
9 Uptown Transit Oriented District Overlay.

10 And I want to be clear that the Palisades
11 Overlay and the Historic District Overlay are
12 remaining; we are not removing those.

13 Just the other two will be eliminated.

14 So with the elimination of those zones, the
15 boundaries of the districts that remain, which
16 are the C-N District and the R: Residential
17 District, will be redrawn to incorporate the
18 lands that were within the districts that are now
19 removed.

20 The majority of the commercial districts
21 that were previously in the C-C and C-- C-C and
22 C-G Zone, are now within the C-N Zone -- C-N
23 Zone. And same with the R-M: Medium Density.
24 Those have almost completely been incorporated
25 into the R: Low Density Residential.

1 Now some of the boundaries have also been
2 realigned to ensure that the property that's
3 within the district is representative of that
4 land use.

5 So we wanted to make sure that residential
6 neighborhoods that might have -- over the years
7 maybe they were zoned commercial but they
8 developed residential, we want those to now be in
9 the proper residential zones, so that they're in
10 conformance with the standards.

11 The M-U: Multiple Use District, that
12 remains with, again, the boundary slightly
13 redrawn to make sure that what's within the zone
14 is representative of the development that is seen
15 on the ground and what the City would like to see
16 moving forward.

17 Additionally, the Bulk Standards chart has
18 been amended.

19 And this is, again, predominantly to
20 include -- well to exclude the zones that have
21 been eliminated and then to amend the remaining
22 ones, again, to make sure that all of the
23 leftover districts are included.

24 One of the major changes to that is in the
25 residential zone and the commercial -- the

1 C-N: Commercial Zone, there's a residential
2 density requirement that has been added that was
3 not previously a part of the zones. And that is
4 a maximum of three residential units per
5 building.

6 And that's to play into the large majority
7 of people that -- that said to us that was the --
8 during our public outreach process over the last
9 couple years, that that's the building type that
10 they would like to see for the residential
11 development.

12 So that density putting in there -- putting
13 in that density ensures that it will streamline
14 that type of development moving forward.

15 The Multiple Use District's bulk standards
16 have been amended.

17 This is the only district where dwellings
18 above three stories -- above four stories are
19 permitted.

20 So that has been amended to make sure that
21 those buildings that are slightly taller also
22 have standards associated with them.

23 The Public District has been amended to
24 include standards for the age-restricted
25 affordable housing.

1 And those are -- those are to accommodate
2 existing affordable housing developments that are
3 already on the ground, making sure that they have
4 standards, so that they're now conforming and
5 they're not -- they're not non-conforming uses
6 and standards.

7 And additionally, as I said, the JFK and
8 the Uptown Transit Overlay have been removed.

9 There are, of course, very detailed changes
10 within that but since we're just here to review
11 for consistency, I'm not going to get into the
12 details of those.

13 So onto -- again, that's a general
14 overview. There is obviously a lot of details in
15 there that I'll be going into a lot more detail
16 during the Commissioner's meeting in a few weeks.
17 But, for now, I'm going to move on to the
18 consistency argument.

19 So, as was stated, we -- you -- it's your
20 job to determine whether or not this Ordinance is
21 consistent with the Master Plan Reexamination
22 Reports that were passed recently that were
23 adopted by you.

24 So I'm going to read into record the --
25 one, two, three, four, five, six -- the seven

1 goals and objectives from the recent Master Plan
2 that are supported by this development change.

3 And those are:

4 To preserve the established residential
5 character of Union City, while simultaneously
6 taking into consideration mechanisms that promote
7 economic growth and development;

8 To advocate for smart growth and planning
9 principles that maintain the established
10 neighborhood scale, without exacerbating burdens
11 on infrastructure;

12 To encourage infield development and
13 compact design that efficiently utilize the
14 City's land;

15 To promote and provide for housing
16 opportunities that support the needs of the
17 residential districts, specifically the demand
18 for three bedroom dwelling units;

19 To provide housing options for a variety of
20 income levels, including low and moderate income
21 households;

22 To preserve and enhance the existing
23 business districts of the City, maintaining
24 sufficient retail and commercial uses to meet the
25 needs of the City's residents;

1 To provide for upper floor residential
2 along the City's commercial corridors.

3 And, again, the bulk of the changes within
4 this Ordinance have to do with ensuring that
5 those three family, three bedroom developments
6 are encouraged and streamlined, as well as making
7 sure that the resi-- or, I'm sorry -- the
8 commercial districts have appropriate standards
9 associated with them.

10 And as you'll see in the maps that I gave
11 to you, the first one is your existing zoning
12 boundaries; the second one is what's part of the
13 proposed Ordinance.

14 And they're much cleaner and incorporates
15 really the appropriate parts of the City that
16 should be within each district that, again, over
17 the years were developed differently than their
18 district had --

19 MR. ORTIZ: For the --

20 MS. MERTZ: -- had advised.

21 MR. ORTIZ: -- for the record, --

22 I -- I don't mean to interrupt.

23 -- but I'm going to have this marked, the
24 maps, A-1.

25 I'll mark it A-1, that -- that's fine.

1 MS. DILLON: Okay.

2 MR. ORTIZ: But do you want a copy of the
3 map as well? Or you don't need it?

4 MS. DILLON: I -- I have a copy.

5 MR. ORTIZ: Okay.

6 MS. DILLON: If you're marking that, just
7 make sure that --

8 MR. ORTIZ: Well, let -- let me clarify.
9 Not A-1. I guess it would be P-1, Planner --

10 MS. MERTZ: Sure. Yeah.

11 MR. ORTIZ: -- 1.

12 MS. DILLON: Okay.

13 You're marking both maps together?

14 MR. ORTIZ: Yeah, collectively.

15 MS. DILLON: Okay.

16

17 (Whereupon, Zoning Maps dated 11/2018 and
18 1/2019 were received and marked as Exhibit P-1.)

19

20 MS. MERTZ: And, again, the -- the second
21 map that's in there that just is called Zoning,
22 that is the map that the Board of Commissioners
23 will be voting on adoption in a few weeks, to
24 become the new zoning map for the City.

25 The -- the first one will be come obsolete

1 after that should it be adopted.

2 Okay?

3 So next I'm going to run through the
4 recommendations from the City's Master Plan that
5 are supported by this Amended Zoning Ordinance.
6 And, again, these are -- these are land use
7 recommendations that -- that were put forth
8 within that plan.

9 The first is to consolidate the lower
10 density residential zones into a single
11 residential zone that permits one, two and three
12 family structures, which is exactly what the --
13 the new R district does.

14 Merge the several commercial zones into a
15 single zone to promote small scale commercial
16 development.

17 You now have one commercial zone that,
18 again, encourages the small scale development
19 through that residential density requirement.

20 The third is revise the boundaries between
21 the residential and commercial districts to
22 better represent the uses that are seen on the
23 ground.

24 As I discussed, we worked really hard
25 analyzing the town's existing land use patterns

1 to make sure that that was happening.

2 Realign the boundaries of the multiple use
3 zone to better represent the uses that are seen
4 on the ground.

5 Again, same thing, we -- we looked at what
6 was developed there and where the City wants it
7 to go to make sure the zone boundaries match
8 that.

9 Revise parking standards for non-
10 residential uses in the commercial zone, to
11 eliminate barriers to small-scale development.

12 There's a portion of the commercial
13 neighborhood zone that already does not have --
14 does not have a parking requirement for non-
15 residential. So we made sure that was maintained
16 in order to spawn the commercial development
17 there.

18 And then the required off-street parking
19 standards for residential uses, including
20 implementing a requirement of two spaces per --
21 per unit.

22 That isn't here now. That will -- two
23 spaces per unit is required for all three family
24 homes. That will park all cars on-site and
25 will --

1 I -- I believe most applications now for
2 that type of development have to come in for a
3 variance for a parking space. So with this they
4 will now not need a variance and it'll -- it'll
5 streamline the process for them and encourage the
6 development.

7 Next is amend the residential district to
8 prohibit habitable ground floor space and -- and
9 require the parking requirement be met through
10 ground floor garage parking.

11 That's exactly what's in here; that
12 statement almost verbatim.

13 Amend the bulk standards of the residential
14 district, the commercial district and the M-U
15 district to meet the recommendations above.

16 And as I explained to you, all of those
17 district standards -- the bulk standards have
18 been amended to ensure that what's proposed in
19 this can be built and to put more of the
20 properties that are existing into conformance.

21 And with that it's our recommendation that
22 the Ordinance be deemed consistent with the
23 Master Plan.

24 VICE CHAIRPERSON KOEHLER: Thank you.

25 MS. MOREJON: Thank you.

1 VICE CHAIRPERSON KOEHLER: Any questions
2 from the Board?

3 MS. MOREJON: No.

4 MR. ORTIZ: Or comments?

5 VICE CHAIRPERSON KOEHLER: And the public?
6 Any questions from the public?

7 MR. PRICE: Yes.

8 MR. ORTIZ: Can we put him under oath,
9 please?

10 MS. DILLON: Yes, I will.

11 You need to go to that mic, Mr. Price.

12 Please raise your right hand.

13 Do you affirm the testimony you're about to
14 give this Board is the whole truth?

15 MR. PRICE: I do.

16 MS. DILLON: Name and address for the
17 record please.

18 MR. PRICE: Larry Price, 1006 Palisade
19 Avenue.

20 Your comments were not detailed but my
21 questions will be.

22 MS. MERTZ: Okay.

23 MR. PRICE: Okay.

24 Do you have a copy of the -- of the
25 proposed Ordinance?

1 MS. MERTZ: I do, yes.

2 MR. PRICE: Okay. Fine.

3 Could we turn to page 5?

4 MS. MERTZ: Could you be specific about the
5 section because I'm worried my pages might be
6 different than yours.

7 MR. PRICE: Why would yours be different
8 from what I have?

9 MS. MERTZ: Because this is a Word
10 document. And depending on the version of Word
11 documents, sometimes older ones have different
12 margins and it shifts the formatting when it's
13 sent between --

14 MR. PRICE: Would the content of your
15 report be any different from mine?

16 MS. MERTZ: No. It would not.

17 MR. PRICE: It would not.

18 MS. MERTZ: It was simply the difference
19 between printing it at your printer versus
20 printing it at my printer.

21 MR. PRICE: Okay. I'm in the definitions
22 section --

23 MS. MERTZ: Um-hum.

24 MR. PRICE: -- under abandonment.

25 MS. MERTZ: Okay.

1 MR. PRICE: Okay.

2 Which is defined as the relinquishment of
3 property or a cessation of use of property by the
4 owner or lessee for a period of 12 or more
5 consecutive months.

6 MS. MERTZ: It is.

7 And I just want to point out though that
8 this definition was not changed by this current
9 amendment. This is what is in the Ordinance
10 already.

11 MR. PRICE: Okay. I still have a problem.

12 That conflicts with case law in this State,
13 which states that --

14 I will come back to abandonment if you
15 want. Later it says, regardless of intent, the
16 case law regarding abandonment of uses in this
17 State says, you know, intent is paramount.

18 So this definition and that timeframe are
19 totally contrary to establish case law.

20 MS. MERTZ: And I'm, at this point, not at
21 the liberty to say whether yes or no I agree,
22 because I haven't looked into it. But I would
23 point out that that really is not relevant to
24 determining if this is consistent with the Master
25 Plan, since that wasn't a component of this

1 amendment.

2 MR. PRICE: Wait a minute.

3 This is a -- forget -- this is a proposed
4 zoning ordinance, which is contrary to
5 established case law.

6 That's the point I'm making here.

7 You --

8 MS. MERTZ: All right.

9 MR. PRICE: -- you carry this forward,
10 you're proposing an ordinance which is improper.

11 And your response is you don't care?

12 MR. ORTIZ: Mr. Price, --

13 MS. MERTZ: I did not say that.

14 MR. ORTIZ: Mr. Price, that we're not going
15 to have, respectfully.

16 If we're going to have a discussion, you
17 have every right to ask questions about the
18 Ordinance. No argument. But the sarcasm and
19 trying to put words in --

20 MR. PRICE: No, no, --

21 MR. ORTIZ: -- her mouth, that's --

22 MR. PRICE: -- that wasn't sarcasm. There
23 was a question in there, Mr. Ortiz.

24 I don't understand her response.

25 MS. MERTZ: My response is that that is a

1 | legal question that I am not qualified to answer
2 | and that it is not relevant to the consistency of
3 | this with the Master Plan.

4 | I know it's consis-- I know it's a legal
5 | thing with the law and there may -- but I am not
6 | a lawyer who is familiar with that case law to
7 | answer your question.

8 | MR. PRICE: But a -- an ordinance is a
9 | legal document.

10 | MS. MERTZ: Yes, but it's a legal --

11 | You're talking about case law that I'm not
12 | familiar with and at this point cannot answer
13 | your question.

14 | MR. PRICE: Okay. You -- you look at --
15 | you --

16 | MR. ORTIZ: That's her answer.

17 | MR. PRICE: Okay.

18 | Page 13 by my standards. This is the
19 | definition of eating and drinking establishments.

20 | MS. MERTZ: Um-hum.

21 | MR. PRICE: Okay, retail establishments
22 | serving prepared food, whatever --

23 | So fine.

24 | -- including --

25 | Okay.

1 -- which have a customer service area
2 limited to eight seats or space for no more than
3 eight customers.

4 Every restaurant in Union City is now going
5 to be confined to eight seats? I -- I don't
6 understand.

7 I'm on page 13 by my version. Eating and
8 drinking --

9 MS. MERTZ: Right.

10 MR. PRICE: -- establishment.

11 MS. MERTZ: So if we go what -- my page 24,
12 there's a definition for restaurant, that talks
13 about -- it says an establishment where food and
14 drink are prepared, served and consumed within an
15 enclosed building, --

16 MR. PRICE: Oh, I'm sorry.

17 Please, allow me to --

18 MS. MERTZ: Okay.

19 MR. PRICE: It's a --

20 MS. MERTZ: So, sorry. Page --

21 MR. PRICE: -- definition of restaurant?

22 MS. MERTZ: There's a definition of
23 restaurant.

24 There's several different definition within
25 this definition section for different types of

1 | restaurants and eating facilities.

2 | So that one is just specifically talking
3 | about smaller pizza parlors, ice cream
4 | restaurants, et cetera.

5 | The definition for restaurant would
6 | encompass the larger sit-down --

7 | MR. PRICE: Well, but according to this,
8 | prepared -- on the premises.

9 | But the only other seem to be eating -- and
10 | the other categories are eating and drinking
11 | establishments, drive-in restaurants, and drive-
12 | through restaurants.

13 | MS. MERTZ: Right.

14 | So there are, according to this, four
15 | different categories of food consumption uses.

16 | Some of them are going to limit the seats
17 | because they're talking about something small,
18 | like an ice cream parlor.

19 | You might not want a -- a huge restaurant
20 | that's open until midnight in the same place that
21 | you would want an ice cream parlor. So by
22 | differentiating the types of uses it helps
23 | control.

24 | MR. PRICE: Wait a minute. Try that one
25 | again.

1 I'm -- I'm sorry.

2 How are you differentiate an eating and
3 drinking establishment, which is limited to eight
4 customers? And how are you --

5 Why is that not a restaur--

6 Or how you -- how are you differentiating
7 that with a restaurant?

8 I'm --

9 MS. MERTZ: It's simply just differenti--
10 there is -- a restaurant --

11 An eating and drinking establishment and a
12 restaurant -- there's a whole lot of different
13 types of uses that you could eat or consume food
14 within. So the def-- the Ordinance is simply
15 just breaking them down into different categories
16 so that you -- the applicants or whomever can be
17 specific --

18 MR. PRICE: What is the --

19 MS. MERTZ: -- with what they're proposing.

20 MR. PRICE: -- general category?
21 Restaurant?

22 MS. MERTZ: They're each their own
23 category. It depend-- they're each their own
24 category. I mean I don't know what --

25 MR. ORTIZ: Can I -- can I ask one

1 question, which may clarify it for you Miss
2 Mertz?

3 Each zone -- each clause in this Ordinance,
4 as when I briefly reviewed it, basically has a
5 specific term in it; i.e., eating establishment;
6 i.e., restaurant.

7 Am I correct when I say that?

8 MS. MERTZ: Yes.

9 MR. ORTIZ: Okay.

10 I -- I don't know if that clears it up for
11 you, Mr. Price.

12 MR. PRICE: No. What's --

13 MR. ORTIZ: There is no -- I don't think
14 she's saying there's a general term.

15 MR. PRICE: A restaurant is an eating
16 establishment.

17 MR. ORTIZ: I think they're differentiating
18 in the Ordinance. I think that's what's
19 happening.

20 MS. MERTZ: From a Planning perspective we
21 use different types of definitions to
22 differentiate the different types of eating
23 establishments.

24 MR. ORTIZ: For example, Mr. Price, I'll
25 give you an example that just comes to mind and

1 | it may not be the best example, but somewhat of
2 | an example.

3 | Is a gas station doesn't necessarily also
4 | have a mechanic shop; it could just be a gas
5 | station.

6 | MR. PRICE: Okay.

7 | MR. ORTIZ: Just like a restaurant is, in
8 | this Ordinance, differentiated between an eating
9 | establishment. That's why the definitions are
10 | there.

11 | I mean --

12 | MR. PRICE: I don't --

13 | MR. ORTIZ: -- I'm not -- I'm -- I'm not
14 | saying you like it Mr. Price, and you're more
15 | than welcome to continue to ask questions about
16 | it. But the point is that that is the best
17 | comparison I can give you.

18 | Not every gas station has a mechanic shop
19 | in it.

20 | MR. PRICE: Okay.

21 | Why the -- well, let me -- just for an
22 | eating and drinking --

23 | Why are they limited to eight custom-- or
24 | eight seats?

25 | MS. MERTZ: It was a number that was

1 deter-- it could have been six, it could have
2 been ten. It's usually a number less than ten.
3 It -- so it -- there was a discussion that eight
4 was appropriate.

5 MR. PRICE: Why have any limit?

6 MS. MERTZ: Because an ice cream parlor
7 isn't going to seat 35 people, nor do you really
8 want it to necessarily.

9 So, again, it's just establishing the
10 different type of use.

11 If an ice cream parlor comes in with 40
12 seats, they would classify as a restaurant.

13 MR. PRICE: I understand. Okay.

14 At most -- the def-- the difference in
15 definition largely has to do with the size.

16 Okay. Okay.

17 Page 15. Fine.

18 Front of a structure.

19 MS. MERTZ: Okay.

20 MR. PRICE: Okay.

21 When erected on a plot abutting on two or
22 more streets, --

23 In other words a corner lot.

24 -- that abutting side, which is so
25 designated on the plot plan by the owner.

1 MS. MERTZ: Yes.

2 MR. PRICE: The owner -- I'll just note
3 this, the owner gets to choose what the front is.

4 MS. MERTZ: What the front -- where the
5 front of the structure is facing. Correct. Yes.

6 The -- what -- what façade is the front of
7 the structure.

8 MR. PRICE: But if you have -- the standard
9 lot in Union City is 25 by a hundred.

10 MS. MERTZ: Yes.

11 MR. PRICE: Sort of by definition the --
12 the front is on the 25 foot wide side. Not --

13 MS. MERTZ: Probably.

14 MR. PRICE: It's not a case of choice by
15 the owner. It's determined, basically, by the
16 lot.

17 MS. MERTZ: That's correct for the case of
18 a 25 by a hundred foot lot, yeah.

19 MR. PRICE: But it -- you could have a 25
20 by a hundred lot on a corner.

21 MS. MERTZ: Correct.

22 MR. PRICE: And you're saying the owner
23 gets to choose what's the front side. But the
24 front side is really determined by the -- the
25 nature of the lot.

1 MR. ORTIZ: Not necessarily.

2 MR. PRICE: What?

3 MR. ORTIZ: Not necessarily.

4 MS. MERTZ: Hmm.

5 MR. ORTIZ: A lot can be a hundred wide and
6 25 deep.

7 MS. MERTZ: If -- if it's a larger -- yeah,
8 this -- I mean this is clearly not written for a
9 100 by 25 foot lot. It's -- it's intended for
10 the larger lots.

11 Obviously a developer is not going to come
12 in on a 25 by a hundred foot lot and put the face
13 of their house on the hundred foot side.

14 MR. PRICE: Yeah, they would have -- actu--
15 yeah, they would have major --

16 MS. MERTZ: Issues.

17 MR. PRICE: -- major problem. They would
18 -- it would -- you -- they couldn't do it that
19 way if --

20 MS. MERTZ: Right, they would not.

21 MR. PRICE: Okay. But -- okay.

22 Okay. I'll -- I'll come back to that --
23 okay.

24 On my page 18, I'll -- I'll skip that one.
25 I don't understand my own --

1 Page 24.

2 There's a definition of reference level.
3 The level an established curb at the center of
4 the street frontage of the building where the
5 average curb level is highest. When no curb
6 level is -- whatever.

7 This comes up all of the time in Union City
8 because we have lots of ups and downs.

9 MS. MERTZ: Yes.

10 MR. PRICE: Okay.

11 Let's take the first one. An up. The curb
12 is here; the lot slopes upward. What is the
13 reference level?

14 MS. MERTZ: So I'm going to preference this
15 by saying this definition was edited with the
16 help of the building instructor (sic). And since
17 I am not an engineer, I am not necessarily
18 qualified to determine this.

19 So, let me see if I can --

20 So your question is if the street is lower
21 than the building, what's the reference level?

22 MR. PRICE: Well, it could be -- but you --
23 you make reference, whenever the grade elevation
24 of that portion of the parcel is higher than the
25 curb level, such grade elevation shall be

1 considered to be the reference level.

2 Okay?

3 But a typical example, the curb is here,
4 the lot's a hundred feet long, and the back of
5 the lot is a hundred feet high -- is, sorry, ten
6 feet higher than the front of the lot.

7 What's -- what's the reference level?

8 MS. MERTZ: I'm not going to be able to
9 answer that right now, Mr. Price. I do not know.

10 I'm sorry.

11 MR. PRICE: How --

12 Okay.

13 I don't mean to press you but a couple of
14 weeks we're going to have a Board of Commissioner
15 meeting where this will be adopted. And we
16 should be asking the questions before we adopt
17 the Ordinance, rather than afterwards.

18 So when will we, in this process, you know,
19 answer questions like that?

20 MS. MERTZ: The Commissioners meeting is
21 the time to ask questions like that.

22 This meeting is really about consistency
23 with the Master Plan.

24 At that point, at the Commissioners
25 meeting, there will be a lot more detail given by

1 myself and other experts, such as the building
2 instructor (sic). I do not know if he's --

3 MR. ORTIZ: Inspector. Build--
4 construction code official.

5 MS. MERTZ: Construction code official.
6 I apologize.

7 MR. ORTIZ: No, I'm just -- I want the
8 record to be clear.

9 MS. MERTZ: Yes.

10 Thank you.

11 Construction code official. I can
12 certainly request that he is there. I think he
13 was intending on coming, although I'll make sure
14 he does to help -- and the attorney, to help
15 answer questions such as these are not planning
16 related that I cannot speak to.

17 MR. PRICE: Okay.

18 I mean you can't speak for the Board of
19 Commissioners but oftentimes, you know, those
20 turn -- turn out to be rushed affairs, you know,
21 you got three minutes to speak. That -- that's
22 not going to work here.

23 So this was the place where -- I mean,
24 granted, --

25 MR. ORTIZ: Mr. Price, the purpose -- the

1 purpose of tonight is as been said, it's just to
2 make sure that this Board feels that the
3 Ordinance, is it consistent with the Master Plan
4 that they've already referred to the -- the
5 Commissioners?

6 MR. PRICE: Mr. Ortiz, if you read Section
7 62, it's a little broader than that.

8 I mean the role of the Planning Board, on
9 an ordinance or an amendment to the zoning
10 ordinance is to advise the Board of
11 Commissioners. The expertise is supposed to
12 reside here.

13 The Board of Commissioners --

14 MR. ORTIZ: Right.

15 MR. PRICE: -- are not going to be experts
16 on zoning.

17 MR. ORTIZ: Well, --

18 MR. PRICE: So it's much broader than
19 consistency with the --

20 MR. ORTIZ: I --

21 MR. PRICE: -- Master Plan.

22 MR. ORTIZ: -- I don't necessarily agree
23 with you, respectfully, Mr. Price.

24 Mr. Price, the -- the whole purpose here is
25 to make -- it's consistent. That was -- that's

1 -- was announced as such. That's what it is
2 here.

3 The Commissioners, ultimately, are the ones
4 that make the decision whether this Ordinance is
5 adopted. Therefore, there's going to be a lot
6 more professionals there to advise the
7 Commission.

8 It's not any more rushed in the
9 Commissioners. I doubt very highly, the
10 Commissioners -- knowing this Board of
11 Commissioners and the City of Union City, rush
12 through anything as important as this.

13 So I -- I mean I don't think that's a fair
14 statement, respectfully.

15 And this Board is evaluating its
16 consistency with the Master Plan and that's what
17 we're here to do.

18 MR. PRICE: But I'm saying you're all --
19 check Section 62 of the MLUL. And it -- you
20 know, your role is broader than just, you know,
21 seeing if this is consistent with the Master
22 Plan.

23 MR. ORTIZ: Well that's the primary purpose
24 of tonight.

25 Mr. Price, I'm -- I just -- I'm just -- I

1 think her answer was fair.

2 She said she -- there's other professionals
3 that participated in -- in this Ordinance and
4 she's, quite frankly, being honest with you and
5 saying that, well, we consulted with the
6 construction code official on that last --
7 particular last question.

8 That's a fair answer.

9 VICE CHAIRPERSON KOEHLER: And also when
10 you -- if you read it it says that it's a
11 reference level. That second sentence -- the
12 second sentence of the definition. It says where
13 no curb level is established, the portion of the
14 parcel that is higher than the curb, that
15 elevation is considered the reference level.

16 MR. PRICE: Okay.

17 VICE CHAIRPERSON KOEHLER: So it -- it
18 would just be a reference level. So that when
19 you're reading it there you can say, okay, well
20 this is what we're referencing. Obviously,
21 there's below and there's higher.

22 MR. PRICE: Yeah. That's what is ref--
23 what is talked about here is when it's higher.

24 But what -- what happens when it goes down?
25 Because we have a lot of those around, too.

1 Let's say the -- the lot's 25 by a hundred
2 and it's ten feet lower, where's the reference
3 level there?

4 VICE CHAIRPERSON KOEHLER: For those
5 parcels, probably there's a -- a -- a frontage
6 that is established. But it's saying where no
7 curb level has been established.

8 MR. ORTIZ: It's, generally, -- Mr. Price,
9 it probably would be on the --

10 And correct me if I'm wrong because I'm not
11 an expert in this.

12 But that -- the purpose of this was, I'm
13 going to assume, was where the larger particular
14 commercial properties could fall in?

15 MS. MERTZ: That was my understanding
16 from --

17 MR. ORTIZ: And I'm guessing --

18 MS. MERTZ: -- the Code.

19 MR. ORTIZ: -- at that, Mr. Price. But I'm
20 guess--

21 MS. MERTZ: It's --

22 MR. ORTIZ: -- from reading the Ordinance.

23 MR. PRICE: But --

24 MS. MERTZ: And it -- it's all in reference
25 to how you measure building height. That's where

1 | that -- that point is --

2 | MR. ORTIZ: And -- and that's for the
3 | construction code official, Mr. Price.

4 | MS. MERTZ: Yeah.

5 | MR. ORTIZ: She -- she honestly said she --

6 | MR. PRICE: She didn't know. Okay. Just
7 | say I don't know --

8 | MR. ORTIZ: I think she did.

9 | VICE CHAIRPERSON KOEHLER: It's like a
10 | point on -- on a line.

11 | Right?

12 | You're going to say, all right, when I'm
13 | measuring, this will be my zero. Obviously,
14 | there's this portion below. But it's -- it's for
15 | reference.

16 | That's what it says. It's a reference
17 | level. It doesn't go --

18 | MR. PRICE: The -- but this comes up all
19 | the time in applications because the reference
20 | point -- we have -- we have limits on heights of
21 | buildings. Currently it -- in a residential zone
22 | it's 40 feet. Forty feet from the reference
23 | point.

24 | So it's important to define exactly where
25 | that reference point is. Because that 40 point

1 -- 40 feet go up from that point.

2 If it's a flat --

3 MR. ORTIZ: Mr. Price, I -- I understand
4 you and I'm not meaning to cut you off but, I
5 think, first of all, our Acting Chairwoman is
6 trying to give you the best answer she can as a
7 layperson. Understand that.

8 VICE CHAIRPERSON KOEHLER: Right.

9 MR. PRICE: Yeah.

10 MR. ORTIZ: You had an honest answer from
11 people that wrote -- wrote this Ordinance, in
12 cooperation with other professionals.

13 MR. PRICE: Okay. But the reason I make
14 that comment is --

15 MR. ORTIZ: I -- I don't want to make this
16 a debate.

17 MR. PRICE: -- in response to the comment
18 you made; that this only applies to larger
19 commercial --

20 MR. ORTIZ: I -- I --

21 MR. PRICE: No.

22 MR. ORTIZ: Listen, -- listen, --

23 MR. PRICE: A definition applies to
24 everything.

25 MR. ORTIZ: Mr. Price, it's depended where

1 | it's used in the Ordinance. And it wasn't meant
2 | to make it a debate. I'm just trying to just get
3 | to the point that she said she --

4 | MS. MERTZ: Yes.

5 | MR. ORTIZ: -- didn't have the answer to
6 | you -- for you. That's all.

7 | Really, that's the only point --

8 | MR. PRICE: Okay.

9 | MR. ORTIZ: -- I was trying to make.

10 | MR. PRICE: But -- but the --

11 | MS. MERTZ: We can make sure someone --

12 | MR. PRICE: -- point keeps being made that
13 | this only applies to large commercial sites.

14 | MS. MERTZ: We'll --

15 | MR. ORTIZ: Mr. Price, let's not get stuck
16 | on that.

17 | MS. MERTZ: Yeah.

18 | MR. ORTIZ: The -- really what I'm saying
19 | is she answered your question. To her -- best of
20 | her --

21 | MR. PRICE: She answered --

22 | MS. MERTZ: We will make sure someone has a
23 | very specific answer to that question on the 25th.
24 | Again, it was a --

25 | MR. ORTIZ: I --

1 MS. MERTZ: -- different professional --

2 MR. ORTIZ: -- I can guarantee you she's
3 making --

4 MS. MERTZ: -- who --

5 MR. ORTIZ: -- a note of this. I'm --

6 MS. MERTZ: Yes. I'll -- I'll get a pen.

7 It was a different professional who made
8 that definition and so I would rather him speak
9 to it than myself.

10 MR. PRICE: By the way, if you turn to --

11 Well, you don't -- you don't have a copy.

12 Page -- page -- on page 16, height of a
13 building.

14 Vertical distance measured from the
15 reference level to the level of the highest point
16 on the roof beam.

17 That's why -- that's why that reference
18 level --

19 MR. ORTIZ: Mr. Price, --

20 MR. PRICE: -- becomes important --

21 MR. ORTIZ: -- we -- we promise you, she
22 promises you, --

23 MS. MERTZ: We do, yes.

24 MR. ORTIZ: -- that she'll have the answers
25 that were part of other professionals' specialty

1 for you by the time the Commissioners meeting
2 comes about.

3 MR. PRICE: Okay.

4 Page 27.

5 Okay. Sign, Maintenance.

6 Includes replacement without substantial
7 change of any parts or support of any sign and
8 the painting without change of text, or size of
9 any sign, without removal of the sign from the
10 wall or structure.

11 MS. MERTZ: Um-hum.

12 MR. PRICE: Okay?

13 The -- the problem I have with this, again,
14 this is the case law and it says oftentimes signs
15 are prohibited by a change in --

16 The law is quite clear that sign is pre-
17 existing nonconforming use.

18 MS. MERTZ: Agreed.

19 MR. PRICE: Okay.

20 The message can change -- and you're
21 permitted to change the -- sign on the side of a
22 building and the building changes hands, the sign
23 stays; it's a pre-existing --

24 And the new owner can put, you know, it was
25 Joe Shmo's Butcher Shop and now it's John Smith's

1 Tailor Shop or whatever. He's allowed to make
2 that change. Law is quite clear on that.

3 Are we, in this, contradicting that?

4 MS. MERTZ: No, I do not believe we are. I
5 believe this definition is simply a clarifying
6 one for property owners or sign owners who --

7 If -- if anything I might say it's not even
8 -- it's not a land use definition. It simply is
9 a clarifying thing. It's for people who are
10 maintaining their signs. This is what sign
11 maintenance involves.

12 If you want to replace your sign or replace
13 components of the structure on which the sign is
14 attached to, that's clearly a much bigger
15 endeavor.

16 This is simply covering the basics of the
17 cosmetic, anything that needs to be fixed. It's
18 really just, I would say, just for the property
19 owner to --

20 MR. PRICE: What does with-- without change
21 of text mean in that context?

22 MS. MERTZ: Just that, without changing the
23 text.

24 I think this means if a -- you know, if a
25 light bulb goes out, or if the sign is chipping

1 and needs to be painting -- painted, I'm sorry.
2 It's -- it's just the very minimal amount of
3 repair to a sign is really what it's about.

4 MR. PRICE: Okay. Okay.

5 MS. MERTZ: It's not saying they can't do
6 something.

7 MR. PRICE: Okay.

8 Next page, page 28.

9 Okay. And the first part I'll -- this is -
10 - what I have on page 28 at the very top is a
11 continuation of Site Plan, Exempt.

12 MS. MERTZ: Uh-huh.

13 MR. PRICE: Okay?

14 And it's (1) and (2). And (1)(b) states,
15 the conversion, creation or legalization of units
16 within existing buildings -- whatever, provided
17 the total number of units -- whatever, would be
18 site plan exempt.

19 They would not need site plan approval.

20 Are you aware of the fact that there was
21 litigation on this very point and both the Law
22 Division and the Appellate Division said this is
23 unacceptable terminology?

24 MS. MERTZ: I would have to read that case
25 law in detail to respond.

1 MR. PRICE: You're not -- you're not aware
2 of it in other words?

3 MR. ORTIZ: Mr. Price, she just -- she gave
4 you her answer.

5 MR. PRICE: Wait a minute.

6 MR. ORTIZ: You got to --

7 MR. PRICE: She said she --

8 MR. ORTIZ: -- you got to accept her
9 answers, --

10 MR. PRICE: -- would have to read it.

11 MR. ORTIZ: -- Mr. Price.

12 In all fairness, she gives you an answer,
13 it might not be what you want to hear but --

14 MR. PRICE: Wait a minute, it's a non-
15 responsive --

16 MR. ORTIZ: -- she just said it.

17 MR. PRICE: -- answer.

18 I said --

19 MR. ORTIZ: She just said --

20 MR. PRICE: -- are you aware?

21 MR. ORTIZ: She just said --

22 MR. PRICE: And she said I would have to --

23 MR. ORTIZ: -- she'd have to review it.

24 MR. PRICE: -- read it.

25 MR. ORTIZ: That's okay. That's an

1 acceptable answer, Mr. Price. How is it not?

2 MR. PRICE: Well the question is, is she
3 aware of it?

4 MR. ORTIZ: Mr. Price, --

5 MR. PRICE: Are you aware?

6 MR. ORTIZ: -- she said she had to review
7 it. I think implicit in that is she has to
8 review it. And that's what she said.

9 Mr. Price, really, no one's trying to argue
10 with you. But she gave you an answer; we need to
11 accept her answer. You don't have to like it. I
12 get it. This Board doesn't have to like what
13 she's answering.

14 MR. PRICE: By the way, who originated
15 this?

16 MS. MERTZ: This definition?

17 MR. PRICE: Yes.

18 MS. MERTZ: This definition was not amended
19 by this amendment. So, I'm -- I am not familiar
20 with who wrote the original text for it.

21 MR. PRICE: But the --

22 Wait a minute, I'm sorry.

23 -- but the original text was litigated and
24 the Superior Court said it's null and void.

25 So you relied on a null and void text

1 apparently.

2 Right?

3 Well, I mean I don't --

4 MR. ORTIZ: Mr. Price, I think she -- she
5 said she has to review the case. It goes back to
6 the same answer that she -- she obviously is not
7 aware of it, --

8 MR. PRICE: Wait a minute.

9 MR. ORTIZ: -- Mr. Price.

10 MR. PRICE: Sorry. Sorry.

11 Stop. No. No.

12 What she said was --

13 MR. ORTIZ: Mr. Price, --

14 MR. PRICE: -- she used the original text.
15 That text was deleted --

16 MR. ORTIZ: Mr. Price, that's not what she
17 said.

18 MR. PRICE: -- by the Superior Court.

19 MR. ORTIZ: Mr. Price, I'll have --

20 MR. PRICE: There's nothing to rely on.

21 MR. ORTIZ: -- I'll -- I'll have the record
22 reread. She did not say that.

23 What she said, Mr. Price, is that she
24 doesn't know who was the originator of that text.
25 That -- in answer -- in response to your

1 question.

2 You need to listen to what she's saying,
3 Mr. Price.

4 MR. PRICE: No. The -- right before that
5 you said, correct, that this was the -- the
6 original text.

7 MS. MERTZ: I said this was not part of --

8 MR. PRICE: You don't know who --

9 MS. MERTZ: -- the amendment. I do not
10 know who drafted the original text. That -- this
11 text, (1) (b).

12 MR. PRICE: Okay.

13 My point is the original text couldn't be
14 relied on. Okay.

15 Okay. Next, same page.

16 We have definition of Story and the
17 definition of Half, Story. And I'm referring,
18 specifically, to the case of an attic.

19 An attic having, when within its space,
20 possible floor area with headroom of seven and a
21 half feet or greater over 75 percent of the story
22 immediately below.

23 So you have an attic; it probably has
24 sloped walls.

25 MS. MERTZ: Um-hum.

1 MR. PRICE: Okay.

2 You measure the -- the area that's more
3 than seven and a half feet tall. If it's greater
4 than 75 percent of the floor immediately below
5 it, it counts as a story.

6 MS. MERTZ: Correct.

7 MR. PRICE: Okay.

8 Okay. Then we go to a half story, which
9 says, any space partially within the roof --
10 whatever -- with five feet or more headroom,
11 which occupies less than 75 percent of the story
12 immediately below.

13 MS. MERTZ: Correct.

14 MR. PRICE: Okay?

15 Here's the problem with this. This has
16 also been litigated. Remember, there are two
17 differences in height.

18 What happens when you have an attic where
19 the height, seven and a half feet or more, is
20 less than 75 percent?

21 Wouldn't count as a story.

22 Right?

23 MS. MERTZ: Correct.

24 MR. PRICE: Okay.

25 But it's got more space out there, if you

1 measure everything down to five feet high, it's
2 80 percent.

3 MS. MERTZ: Let me just make sure I
4 understand what you're asking.

5 So you're saying if a floor is --

6 MR. PRICE: Well, please let me -- let me
7 give you a few rhetorical questions first.

8 MS. MERTZ: Okay.

9 MR. PRICE: Okay. So the space that is
10 five feet or more is 80 percent.

11 MS. MERTZ: The space that is five feet in
12 height or more.

13 MR. PRICE: Or more.

14 MS. MERTZ: Okay.

15 MR. PRICE: Is 80 percent.

16 That wouldn't qualify as -- as a half story
17 either.

18 MS. MERTZ: You're very good at these
19 tongue twisters.

20 I would -- I don't know how to answer these
21 questions. I'm sorry. This is -- this is not
22 what tonight is supposed to be about.

23 I just have to ask, are you going to ask
24 these questions again on the 25th?

25 MR. PRICE: Well, I -- hopefully -- well,

1 | if I can't get a --

2 | The point that I would make is, you know,
3 | very clever architects read this stuff. And
4 | about five years ago a very clever architect read
5 | this and said, ah-ha, I will construct an attic
6 | that is less than 75 percent, seven and a half
7 | feet in height, so it won't qualify as a story
8 | but we'll have room at the side so it's more than
9 | five feet. So it's -- and it's more than 75
10 | percent, so it won't qualify as a half story
11 | either. So I don't get any story -- whatever.

12 | MS. MERTZ: So it can't be a habitable
13 | space.

14 | MR. PRICE: What's that?

15 | MS. MERTZ: I said then maybe it can't be a
16 | habitable space.

17 | I would have to read this in a little more
18 | detail.

19 | MR. PRICE: Okay.

20 | MS. MERTZ: I did not --

21 | MR. PRICE: By the way --

22 | MS. MERTZ: -- prepare for these kind of
23 | questions --

24 | MR. PRICE: -- on this one I can tell
25 | you --

1 MS. MERTZ: -- tonight.

2 MR. PRICE: And this is why I'm asking
3 about your sources.

4 Okay?

5 After that litigation, we then changed the
6 -- there was an amendment to the Zoning
7 Ordinance, which made the -- the --

8 MS. MERTZ: To this Zoning Ordinance?

9 MR. PRICE: This -- the -- the old Zoning
10 Ordinance.

11 MS. MERTZ: I mean -- correct, yes, the old
12 Zoning Ordinance.

13 MR. PRICE: Yeah, old Zoning.

14 And it made both measurements the same.
15 Not seven and a half feet and five and made it --
16 I think they were both seven and a half feet.

17 So suddenly I see reproduced here wording
18 that was amended out of existence five years ago.
19 I don't understand where this came from.

20 MS. MERTZ: And I apologize because --

21 MR. ORTIZ: Mr. Price, --

22 MS. MERTZ: -- that was not --

23 MR. ORTIZ: -- if I -- if I can?

24 MS. MERTZ: -- part of this amendment.

25 MR. ORTIZ: Let's -- let's see if we could

1 | somehow get you the answers that you want but at
2 | the same time --

3 | And, please, take notes of any of the
4 | questions that he has.

5 | She'll get you the answers, Mr. Price.
6 | She's going to -- she's taking notes of these
7 | questions.

8 | At the Commissioners meeting, there'll be
9 | the other professionals that contributed to this.
10 | You could ask them the questions. And, in the
11 | meantime, she'll try to get the answers for you
12 | as well.

13 | But, Mr. Price, if she says she doesn't
14 | have the answer, she doesn't have the answer.

15 | MR. PRICE: But in this particular case --
16 | you know, she's relying on what was --

17 | MR. ORTIZ: Mr. Price, --

18 | MR. PRICE: -- our Zoning Ordinance.

19 | MR. ORTIZ: Mr. Price, there are plenty of
20 | times that I litigate cases that I -- I rely on
21 | other experts.

22 | I am not an expert in every discipline. I
23 | don't think anybody is. So with that being said,
24 | if her answer -- we -- we got to move forward
25 | with this and if her answer is she's got to get

1 back to you, that's her answer.

2 This forum is really not the place for what
3 you're doing. This forum is, essentially, for
4 this Board to evaluate what they are going to do
5 as a reference to the Commissioners. This is a
6 -- a breakdown of the Ordinance, word by word, is
7 not what tonight was for, Mr. Price,
8 respectfully.

9 MS. MERTZ: Can I --

10 MR. PRICE: She --

11 MS. MERTZ: -- make a suggestion?

12 MR. PRICE: Yeah.

13 MS. MERTZ: So, clearly, that you have
14 questions that I'm not prepared for because
15 that's just not what I prepared for in the light
16 of what tonight was about.

17 Could you maybe write these down and email
18 them --

19 MR. PRICE: No.

20 MS. MERTZ: -- so that I --

21 MR. PRICE: I won't do it.

22 MS. MERTZ: -- that I can be --

23 MR. PRICE: I will only do this in a public
24 forum.

25 MS. MERTZ: Well then I'm not --

1 MR. PRICE: I'm sorry.

2 MS. MERTZ: -- guaranteed that I can be
3 prepared to answer these que--

4 Like I need other -- not tonight at least.
5 I need other --

6 MR. PRICE: Well, --

7 MS. MERTZ: -- professionals with me --

8 MR. PRICE: -- but in general, --

9 MS. MERTZ: -- that can help.

10 MR. PRICE: -- how did you -- you're
11 relying --

12 MS. MERTZ: This text, specifically, was
13 not part of the amendment. I don't know what
14 happened between five years ago and right now.

15 This is what the City told me was the
16 current definition.

17 MR. PRICE: Okay. That's -- that's my
18 question to you is who provided you with what is
19 supposed to be the current Zoning Ordinance?

20 MS. MERTZ: This -- this was what is on
21 file with your Clerk. This is what is on your
22 eCode online. This is what, every indication to
23 me, was the current definition for Story and
24 Half, Story.

25 I did not change these as part of this

1 amendment.

2 MR. PRICE: Okay.

3 MS. MERTZ: So, --

4 MR. PRICE: Yeah.

5 MS. MERTZ: -- I don't know what happened.

6 MR. PRICE: I -- I -- so, yeah, you're
7 working with a document that was given to you.
8 That document, I'm telling you, is out of date.

9 And I was just, who provided you with the
10 document. That was my que--

11 MS. MERTZ: I will note that -- maybe
12 there's -- maybe there was a lost in translation
13 with that. I will see what happened.

14 MR. PRICE: Hmm.

15 MR. ORTIZ: Mr. Price, if you want to give
16 her -- if you want to do it in a public forum,
17 here, I have a suggestion for you.

18 Ask your questions; please move through
19 them. The ones that she doesn't have an answer
20 for, you could always get a copy of the
21 transcript, she can get a copy of the transcript
22 and have -- get an answer for you about -- that's
23 probably more acceptable to you and more
24 palatable.

25 MR. PRICE: How soon will we have the

1 transcript?

2 MS. DILLON: That will be up to Mr. Ortiz.
3 I'm thinking in a hurry.

4 MR. ORTIZ: And I'm agreeing with Debbie.
5 And so --

6 MR. PRICE: Okay.

7 MR. ORTIZ: In -- in all fairness, --

8 MR. PRICE: Well, that's --

9 MR. ORTIZ: In all fairness, Mr. Price, --

10 MR. PRICE: Yes. But this is the first cut
11 at this document. She is the author.

12 MR. ORTIZ: It's really not.

13 MR. PRICE: It's --

14 MR. ORTIZ: It's really not the first cut.

15 The first reading is the first cut.

16 The second cut is when it's up for adoption
17 before the Commissioners.

18 This Board is here to -- to connect the
19 consistencies with the Master Plan. It was very
20 clear in our advertisement. It's what I read
21 into the record earlier today.

22 Mr. Price, this is not the place to -- or
23 the time, --

24 If you want to talk about the consistency
25 between the Master Plan and the Ordinance and

1 | those nexuses, that's what I think we're here
2 | for.

3 | MR. PRICE: I'll rely on Section 62.

4 | So let's -- let's just go ahead. Okay?

5 | MR. ORTIZ: And I think you're talking
6 | about 64; not 62.

7 | MR. PRICE: Okay.

8 | Page 33.

9 | Prevailing setback. Okay.

10 | Have you -- have you got --

11 | MS. MERTZ: I'm -- I'm with you, yes.

12 | MR. PRICE: You want to read it --

13 | MS. MERTZ: Yeah, let me review it real
14 | quickly.

15 | MR. ORTIZ: Mr. Price, does this connect to
16 | the -- the --

17 | MR. PRICE: Page 33.

18 | MR. ORTIZ: Does this address --

19 | Page 34, sir?

20 | MR. PRICE: Thirty-three.

21 | MR. ORTIZ: Thirty-three.

22 | MR. PRICE: Prevailing setback.

23 | MR. ORTIZ: Is this -- is this question
24 | going to relate to the consistency with the
25 | Master Plan?

1 MR. PRICE: It's a question. Okay? You
2 want to cut me off, Mr. Ortiz, I'll make --

3 MR. ORTIZ: Mr. Price, --

4 MR. PRICE: -- that point one.

5 MR. ORTIZ: -- I'm --

6 MR. PRICE: Okay?

7 MR. ORTIZ: Mr. -- Mr. Price, I'm not
8 trying to cut you off.

9 MR. PRICE: Let --

10 MR. ORTIZ: I'm -- I'm asking --

11 MR. PRICE: Why don't we just --

12 None of -- all of us would like to get out
13 of here. Why don't we just ask the questions --

14 MR. ORTIZ: Mr. Price, --

15 MR. PRICE: -- and --

16 MR. ORTIZ: -- it's not a matter of wanting
17 to get out of here or not. I'm just trying to
18 keep this hearing where it should be. I --

19 Madam Chairwoman, is that okay with you?

20 VICE CHAIRPERSON KOEHLER: Yes.

21 MR. PRICE: Okay.

22 Prevailing setback.

23 In order to maintain the character of the
24 established building streetscape in residential
25 neighborhoods, the average of the front setback

1 of each existing building on the same side of the
2 same street within the same block within a
3 hundred feet shall be calculated.

4 MS. MERTZ: Um-hum.

5 MR. PRICE: And noted to require a
6 prevailing setback calculation within the zoning
7 schedule at the end of this chapter.

8 Which, by the way is, from what I can see
9 just about all of the zones have ten feet or
10 prevailing setback.

11 MS. MERTZ: Correct.

12 MR. PRICE: Okay.

13 The prevailing front setback shall be no
14 more than twice the front setback noted within
15 the zoning schedule for said district.

16 MS. MERTZ: Correct.

17 MR. PRICE: This sounds to me -- let's say
18 you ran homes and they've got 30 foot setbacks or
19 whatever. The -- the normal rule is ten feet or
20 prevailing setback and we usually use that where
21 the prevailing -- if the prevailing -- it's the
22 lesser of ten feet or the prevailing setback.

23 So if everything's built on the street,
24 then -- you want to build a new house, you build
25 the house on the street, too.

1 This sounds to me, on this, that you're
2 imposing a new requirement. If you have houses
3 that are with substantial front yards, you
4 measure them and it -- as, in essence, the new
5 requirement becomes ten feet or the prevailing
6 setback, whichever is greater.

7 MS. MERTZ: I would -- I would disagree
8 because that, number 1 there, Editor's Note, see
9 Schedule for -- attached to this chapter, it says
10 minimum yards ten feet or prevailing.

11 So I would argue that the minimum, the ten
12 feet, would be first or prevailing. And no more
13 than, in your case, 40 feet.

14 I'm sorry, let me rephrase that. That
15 wasn't clear.

16 MR. PRICE: Yeah.

17 MS. MERTZ: So, if -- for one thing I find
18 it hard to believe that many buildings in Union
19 City have a 30 foot setback -- residential
20 buildings at least.

21 But the other is I believe that you are
22 correct in that someone could choose the 20 foot
23 setback if that --

24 MR. PRICE: I'm -- I'm sorry; you're
25 talking --

1 MS. MERTZ: I'm sorry; I'm trying to read
2 the thing.

3 I believe you're correct that if there's a
4 20 foot setback, someone could do ten feet or the
5 20 feet. They're not being required to do one or
6 the other. I think the lot size and the bulk
7 dimensions in here are going to really establish
8 which one is more appropriate.

9 The 30 feet front setback might not be
10 appro-- there -- they might not be able to get a
11 whole building in there.

12 The lots in Union City are not very
13 large, --

14 MR. PRICE: But what --

15 MS. MERTZ: -- except in the commercial
16 district.

17 MR. PRICE: -- what does this say though?

18 I -- then -- this looks to me, when you say
19 you -- you calcu-- they tell you how to calculate
20 it, what the -- whatever, -- shall be --
21 whatever, --

22 MS. MERTZ: So if the prevailing setback's
23 30 feet, you're allowed to do 30 feet.

24 MR. PRICE: Well, wait a minute.

25 That -- the -- but this is a minimum

1 requirement. You just --

2 MS. MERTZ: Oh, I'm sorry.

3 It's -- it'd be twice the ten feet. So you
4 -- you would not -- you'd have to do 20 feet at -
5 - you could do 20 feet at the most.

6 If prevailing was 30 feet, but we have ten
7 feet here, then you would do --

8 MR. PRICE: Okay. That -- that's the twice
9 part.

10 MS. MERTZ: Correct.

11 MR. PRICE: The -- the prevailing will
12 never be more than twice the --

13 MS. MERTZ: Correct.

14 MR. PRICE: -- 10 --

15 Okay. But my question is, the guy wants to
16 build in that neighborhood, does -- what does his
17 setback have to be?

18 MS. MERTZ: Ten feet or prevailing. I'm
19 not sure --

20 MR. PRICE: Well, it's ten feet or -- what
21 -- well, which is it. It can't --

22 MS. MERTZ: It's an either/or. It is
23 absolutely an either/or.

24 He could build ten feet or he could build
25 the prevailing. It's an either/or.

1 MR. PRICE: Twenty feet.

2 MS. MERTZ: But he couldn't do --

3 MR. PRICE: Well, the --

4 MS. MERTZ: -- he couldn't do more than 20
5 feet.

6 Correct.

7 MR. PRICE: We're -- but we're talking
8 minimums here.

9 Look, if the guy owns the lot, he can build
10 50 feet in the front. That's his choice. That's
11 his right as a -- as an owner.

12 The question is, under these circumstances
13 prevailing is 30 feet, the requirement's -- the
14 -- is ten -- it's ten or prevailing; what is his
15 requirement? Minimum requirement?

16 MS. MERTZ: It's -- I'm not sure. It's
17 either/or the --

18 I don't know what -- what -- depends on
19 what -- is an either/or statement. So it's ten
20 feet or the prevailing.

21 MR. PRICE: Well, which is it?

22 MR. ORTIZ: It would probably be ten feet
23 under that.

24 MR. PRICE: Well that's the way we do it
25 now. But this --

1 MS. MERTZ: It hasn't changed.

2 MR. PRICE: -- this wording --

3 MS. MERTZ: It -- it's the same -- it's the
4 same. It has not changed as the way you do it
5 now. It's the same wording as the way you've
6 always done it.

7 MR. PRICE: By the way, I -- well, --

8 Okay. Well, I'll ask -- re-ask the
9 question.

10 Next page.

11 Corner lot.

12 MS. MERTZ: Okay.

13 MR. PRICE: First, side yard requirement of
14 a corner lot.

15 The side yard street setback line of any
16 corner lot shall not be less than the minimum
17 front yard required on any adjoining lot fronting
18 on a side street.

19 MS. MERTZ: Okay.

20 MR. PRICE: Okay.

21 Let's envision the problem.

22 There's a lot on the corner with, we'll
23 say, faces the -- it's 25 by a hundred, it faces
24 the main drag. It -- it's a side street. Would
25 -- and the side street, being in an R zone, would

1 have a ten foot front yard setback.

2 Correct?

3 MS. MERTZ: Sure.

4 MR. PRICE: Okay.

5 This says that the guy on the corner, his
6 side yard setback can't be less than ten feet.

7 MS. MERTZ: That's correct.

8 MR. PRICE: His lot's only 25 feet wide.
9 He's got to have two feet on the other side. So
10 his -- his building's going to be 13 feet wide.

11 MS. MERTZ: I -- he has an incredibly good
12 argument for a C variance at the Planning Board.
13 He has a hardship that he cannot get around --
14 his lot is too small to make that ten foot
15 setback and he can get his variance.

16 It's a common thing with corner lots. They
17 -- they usually have a similar setback on that
18 side street as other front-facing buildings on
19 that side street.

20 They typically -- I've seen it before, they
21 typically have to come in for variances.

22 MR. PRICE: C-1 variance?

23 MS. MERTZ: Correct.

24 VICE CHAIRPERSON KOEHLER: Mr. Price? Hi.
25 I'm sorry.

1 Can we -- so you've established that you
2 can -- you're -- you're going to ask her all of
3 these questions. But if we could just make --

4 The only reason she's here is so that we
5 can determine is this the revised plan consistent
6 with --

7 MR. PRICE: I respectfully --

8 VICE CHAIRPERSON KOEHLER: -- what was --

9 MR. PRICE: -- disagree with that
10 interpretation.

11 VICE CHAIRPERSON KOEHLER: Okay.

12 MR. PRICE: I would -- I have this -- but
13 you keep saying that.

14 VICE CHAIRPERSON KOEHLER: With what was
15 adopted --

16 MR. PRICE: We're wasting more time on that
17 issue --

18 VICE CHAIRPERSON KOEHLER: -- in two
19 thousand --

20 MR. PRICE: -- than allowing me to ask my
21 questions.

22 MR. ORTIZ: Mr. Price, but --

23 VICE CHAIRPERSON KOEHLER: I understand.
24 But you're going through page by page, and we're
25 only on 35, and you're only -- were -- what --

1 | it's 100 plus pages.

2 | MR. PRICE: It moves a little faster.

3 | VICE CHAIRPERSON KOEHLER: I want to know
4 | how much of -- how much longer do you anticipate
5 | doing this?

6 | Respectfully.

7 | We -- we welcome all of your questions.

8 | MR. PRICE: I would say --

9 | VICE CHAIRPERSON KOEHLER: They're
10 | important but --

11 | MR. PRICE: -- 20 to 30 minutes, probably
12 | more.

13 | Okay? Sorry. But that's --

14 | VICE CHAIRPERSON KOEHLER: And -- and do --
15 | so if you could then don't ask any questions that
16 | pre-existed the -- the Master Plan that was
17 | before.

18 | MS. MERTZ: And I can tell you --

19 | VICE CHAIRPERSON KOEHLER: Just -- only --
20 | like the changes.

21 | MS. MOREJON: There's no need for that.

22 | VICE CHAIRPERSON KOEHLER: It --

23 | MS. MERTZ: I -- I can -- there's very --
24 | yes, there's very --

25 | So, it's -- I can speak to these existing

1 standards to a point but if I was not the one to
2 draft them originally, I might not have the
3 answer you're looking for in terms of the intent.

4 MR. PRICE: That's fine.

5 MS. MERTZ: So, I will make that known if
6 I'm not. Because, again, this is -- this -- all
7 of these were not drafted by the -- by myself or
8 my office so far. We have not touched on
9 anything that we have amended yet, except for the
10 one about the reference level that we're going to
11 provide an answer to you for.

12 MR. ORTIZ: How about this going forward.

13 If -- if it's a question that is related to
14 the consistency of the Ordinance and the Master
15 Plan, obviously, Mr. Price deserves an answer.

16 MS. MERTZ: Absolutely. Yes.

17 MR. ORTIZ: If it is not, then we will move
18 forward --

19 MS. MERTZ: Okay. That's good with me.

20 MR. ORTIZ: -- to the next question.

21 I think that's the only fair way to do it.

22 MR. PRICE: Okay.

23 Page 35. Next question.

24 G(d).

25 On through lots, no accessory structure

1 erected in the rear yard shall be nearer to the
2 rear street line than the minimum front yard
3 setback for the zone in which the lot is located.

4 MS. MERTZ: This was not a component of
5 this. This was an existing standard. But I can
6 make a --

7 What's -- what is your question and I'll
8 make a note of it.

9 MR. PRICE: Okay.

10 It's a through lot. What happens when you
11 want to put a garage on -- in the back of your
12 through lot?

13 MS. MERTZ: You get a variance.

14 MR. PRICE: Maybe we should get a better
15 ordinance? Whatever. You -- you --

16 MS. MERTZ: It's -- it's a common --

17 MR. PRICE: -- you would have to have a ten
18 foot --

19 MS. MERTZ: This is a common -- these --
20 these standards for through lots are -- are
21 common standards that -- they have a -- they have
22 a -- a reasonable argument to request a C
23 variance.

24 Again, this was not a component. I cannot
25 speak to the background of this. I will earmark

1 | it and see if we can get a better answer for it.

2 | MR. PRICE: Okay.

3 | Page 48.

4 | Okay. I guess my -- maybe my question
5 | would also be directed to Mr. Spatz. This now
6 | talks about multifamily.

7 | The only multi-- permitted multifamilies,
8 | correct, are in the MU zone?

9 | MS. MERTZ: Correct.

10 | MR. PRICE: Okay. So that --

11 | Okay. And the -- the C-N stuff with the
12 | four -- the three families up -- that's all --

13 | MR. SPATZ: That -- that is -- the
14 | definition has been eliminated, so it doesn't
15 | refer to apartments anymore; it refers to units.
16 | So that nobody is forced to build more than three
17 | units if they don't want to.

18 | MR. PRICE: Right. Okay.

19 | Okay. Page 57.

20 | This is parking -- Dimensions of Parking
21 | Spaces.

22 | MS. MERTZ: Okay.

23 | MR. PRICE: For single --

24 | MS. MERTZ: I'm sorry; which point are you
25 | under?

1 MR. PRICE: Page 57.

2 MS. MERTZ: No, I know, but I'm already off
3 your pages from before.

4 So what -- what bullet?

5 What number are you on in terms of the
6 paragraph?

7 MR. PRICE: Beats me.

8 N. And it would be like two pages later,
9 subsection (4), Dimensions of Parking Spaces.

10 MS. MERTZ: Okay. Subsec-- I guess that --
11 that would be O, subsection (4).

12 With you. Okay, I'm with you.

13 MR. PRICE: Okay.

14 For single two and three family dwellings,
15 parking spaces shall measure eight and a half
16 feet in width by 16 feet in length.

17 MS. MERTZ: Correct.

18 MR. PRICE: Isn't that a direct
19 contradiction to the RSIS standards?

20 MS. MERTZ: It is different. It is
21 allowing for a smaller parking space for single
22 family houses. Or, I'm sorry, single family, --

23 MR. PRICE: But that --

24 MS. MERTZ: -- two family, and three family
25 dwellings.

1 MR. PRICE: Isn't that still a
2 contradiction?

3 MS. MERTZ: Municipalities are allowed to
4 create their own standards for --

5 MR. PRICE: If you're Hoboken --

6 MS. MERTZ: -- parking such as this.

7 MR. PRICE: -- but not if you're anybody
8 else that I'm aware of.

9 MS. MERTZ: They are allowed to create
10 smaller parking size standards.

11 Just the way we did with the new parking
12 requirement for units. They would have to get a
13 de minimis exception from RSIS standards but the
14 Borough -- or, I'm sorry, the City can grant the
15 -- can grant them the right to get a smaller --
16 have a smaller parking space.

17 MR. PRICE: Wait a minute.

18 By variance or by ordinance?

19 MS. MERTZ: The -- you're talking about
20 de minimis -- the -- you're talking about the
21 de minimis exception from RSIS?

22 MR. PRICE: Yes.

23 MS. MERTZ: It would be part of their site
24 plan application.

25 MR. PRICE: Okay. But then it would be by

1 variance?

2 MS. MERTZ: No they would not need a
3 variance because the Ordinance says that they are
4 allowed to create a space that is --

5 MR. PRICE: Well --

6 MS. MERTZ: -- eight and a half by --

7 MR. PRICE: -- that's --

8 MS. MERTZ: -- 16.

9 MR. PRICE: -- that problem.

10 The de minimis exception, the IRS (sic) is
11 -- the authority given to a planning board or
12 zoning board to get, in effect, a variance.

13 MS. MERTZ: So if they approve the site
14 plan for a single family house with an eight and
15 a half -- or three family dwelling with an eight
16 and a half foot by 16 foot length, they would
17 also approve the de minimis exception from RSIS
18 standards.

19 MR. PRICE: That's different from passing
20 an ordinance, which is an exception to the RSIS
21 standards.

22 MS. MERTZ: Okay.

23 MR. PRICE: You can't do that. Ordinances
24 can't conflict with State statutes. That has the
25 authority of a State statute. That's the point

1 I'm making.

2 MS. MERTZ: I'll defer to legal on this
3 one.

4 MR. ORTIZ: Mr. Price, again, you -- you
5 don't want to hear it but I will say it again and
6 again. Mr. Price, this hearing is not --

7 MR. PRICE: Okay. You've made your point.
8 Let's -- let's just move ahead. Okay?

9 I'm not -- I'm going to keep asking
10 questions until I get the --

11 MR. ORTIZ: Mr. Price, --

12 MR. PRICE: I'm trying --

13 MR. ORTIZ: -- but you're not going to ask
14 questions that are not for the purposes of this
15 hearing. It's not fair. Mr. Price, it's not
16 fair.

17 MR. PRICE: I think Section 62 of the MLUL
18 says it's fair.

19 Okay?

20 MR. ORTIZ: Mr. Price, but you think --

21 MR. PRICE: Look, we've had this argument
22 three times. Well, we're wasting time. Can we
23 -- can we move to the --

24 MR. ORTIZ: Well, Mr. Price, we're going to
25 -- we are going to move on. We're going to move

1 on and if it's not relevant to the consistency
2 between the Master Plan and this Ordinance, we're
3 going to move on. You're right.

4 MR. PRICE: You're going to cut me off?

5 MR. ORTIZ: Mr. Price, --

6 MR. PRICE: You're going to cut me off, --

7 MR. ORTIZ: I -- I said we're going to --

8 MR. PRICE: -- right?

9 MR. ORTIZ: -- I said we're going to move
10 on.

11 You said to move on.

12 MR. PRICE: You're going to cut me off.

13 MR. ORTIZ: Didn't -- didn't you say to
14 move on?

15 MR. PRICE: I'm a member of the public --
16 the only --

17 MR. ORTIZ: You absolutely are, --

18 MR. PRICE: -- member of the --

19 MR. ORTIZ: -- Mr. Price. And you said you
20 wanted to move on. So move on.

21 MR. PRICE: Okay. Let's -- okay.

22 Page 68. Okay.

23 Here we're in the historical preservation
24 district.

25 MS. MERTZ: Ah --

1 MR. PRICE: Overlay district.

2 MS. MERTZ: Which number?

3 MR. PRICE: I don't know; subsection (g).

4 MS. MERTZ: There is no (g) on my --

5 MR. PRICE: Zoning regulations, 42 --

6 42 (g) .

7 MR. ORTIZ: What page is that Mr. Price?

8 MR. PRICE: Page 68 in mine.

9 MS. MERTZ: That's -- I -- my 68 is under
10 Plat Design, Sub-standards and Subdivision.

11 MR. PRICE: What section do you have?

12 MS. MERTZ: Where my -- my page 68 is under
13 Plat Design Standards for Site Plans.

14 I would like to add while we're searching
15 though that we did not change the standards for
16 the Historic Preservation Overlay.

17 MR. PRICE: I'm -- I'm sorry, Miss Mertz,
18 but you're -- you're talking to --

19 MS. MERTZ: I'm sorry; I'm looking through
20 it.

21 We did not change the standards -- the
22 existing standards for the Historic Preservation
23 Overlay.

24 MR. PRICE: Okay.

25 Well my only question was it says permitted

1 principal uses; one family, two family, and
2 existing institutional uses.

3 And my question is what happened to three
4 families? They're a permitted use normally.

5 MS. MERTZ: Well -- well -- this is again,
6 this was an existing overlay district that was
7 not amended by this. So those are the principal
8 uses within that overlay that are remaining.

9 We did not -- that was not amended as part
10 of this Ordinance amendment.

11 MR. PRICE: You're using existing?

12 MS. MERTZ: Correct.

13 MR. PRICE: And so we don't -- okay.

14 VICE CHAIRPERSON KOEHLER: Before we go on,
15 I'd like to propose that we take a little recess.

16 MR. PRICE: Okay.

17 VICE CHAIRPERSON KOEHLER: I think it --
18 Any objections?

19 No? All good?

20 MS. DILLON: Off the record?

21 MR. ORTIZ: Yes, off the record.

22

23 (Whereupon, the Board recessed from 7:09
24 p.m. to 7:20 p.m.)

25

1 MR. ORTIZ: Just for the record, all of the
2 members that have been marked in as being present
3 are still present.

4 VICE CHAIRPERSON KOEHLER: Larry Price?

5 Has -

6 Can we start?

7 MS. DILLON: Yes, you're --

8 VICE CHAIRPERSON KOEHLER: Back?

9 MS. DILLON: -- on the record.

10 VICE CHAIRPERSON KOEHLER: May I ask a
11 favor? I have an obligation that I have to get
12 to in about a half an hour.

13 MR. PRICE: I'll be done in --

14 VICE CHAIRPERSON KOEHLER: Would you --
15 would --

16 MR. PRICE: -- 15 minutes max.

17 VICE CHAIRPERSON KOEHLER: Thank you so
18 much; 15 minutes. You're the best.

19 And we'll -- all of your questions will be
20 noted and --

21 MR. PRICE: Okay.

22 Page 70.

23 When did this -- we're talking the Steep
24 Slope Overlay District.

25 MS. MERTZ: Just for the record, that's

1 Section H, subsection (6).

2 MR. PRICE: Okay.

3 Limited disturbance of steep slope areas is
4 permitted under conditions is referenced herein
5 but only in the following degree and under said
6 conditions.

7 What is a disturbance?

8 MS. MERTZ: So I will say two things.

9 One, we did not change this. This is not
10 -- this is an existing standard.

11 And, two, I am not qualified to speak to
12 that. It is not relevant to consistency. But I
13 will make a note and make sure I have an
14 answer --

15 MR. PRICE: Okay.

16 MS. MERTZ: -- for you.

17 MR. PRICE: Very good.

18 Okay.

19 My page 78, which is probably about the
20 same seven or eight pages.

21 Talking about WT technology, which is
22 wireless telecom stuff.

23 MS. MERTZ: Um-hum. Yes.

24 MR. PRICE: And in Section F of that,
25 whatever, setback requirements, no WT technology

1 shall be located on any one to three family
2 residential property nor on any non-conforming
3 use.

4 MS. MERTZ: Okay.

5 MR. PRICE: Okay.

6 MS. MERTZ: That is F(4) for anybody who
7 has that.

8 MR. PRICE: Yes.

9 Okay, --

10 MR. ORTIZ: Page 78, Mr. Price, according
11 to yours?

12 MR. PRICE: What?

13 MR. ORTIZ: Page 78?

14 MS. MERTZ: I believe --

15 MR. PRICE: My page 78, yeah.

16 MS. MERTZ: Yeah.

17 MR. PRICE: Okay.

18 The -- the problem I have on this one is
19 the telecom companies come in and they want a
20 high site up there. And what are the highest
21 sites in most residential areas?

22 Answer is a tall apartment building, which
23 is probably a non-conforming use.

24 So we start with they're not -- it's not a
25 permitted use.

1 MS. MERTZ: So is your question whether or
2 not this is a viable standard?

3 MR. PRICE: Well, that's the question I
4 would have to you is, okay, it's not permitted.
5 Okay. What kind of -- if you -- if the telecom
6 company wants to locate it on a six story
7 building or across the street or whatever, what
8 kind of variance do they need?

9 A D-1 Use Variance?

10 MS. MERTZ: So, once again, I'm going to
11 make a note of this and get back to you, since
12 it's -- it's not relevant to the consistency and
13 we did not amend this as part of this amendment.

14 So I will make a note and make sure we have
15 a response.

16 MR. PRICE: Okay.

17 Page 87.

18 Talking about signs; temporary signs.

19 MS. MERTZ: Temporary signs.

20 Do you have a paragraph number with that,
21 Mr. Price?

22 MR. PRICE: Sub-paragraph (4). It's -- the
23 main paragraph is E, --

24 MS. MERTZ: Okay.

25 MR. PRICE: -- echo.

1 This is E(4).

2 MS. MERTZ: E(4). Okay. I'm there.

3 MR. PRICE: Okay.

4 Nothing contained herein shall be deemed to
5 permit the erection or installation of any
6 political signs upon any pole or tree located on
7 public property or within the public right-of-way
8 within the City and their erection or
9 installation is hereby specifically prohibited.

10 MS. MERTZ: Okay.

11 MR. PRICE: Doesn't that conflict with case
12 law, which basically says that's an exercise of a
13 political right?

14 MS. MERTZ: So, again, that's not new
15 language with this amendment. So I'll make a
16 note and make sure we get back on -- get back to
17 you with an answer of the intention of that
18 paragraph.

19 MR. PRICE: Okay. Okay.

20 Non-con-- I'm on Section H, Non-conforming
21 Signs, which is page 90.

22 MS. MERTZ: Okay.

23 MR. PRICE: Okay. And part of that
24 paragraph says, any non-conforming sign which is
25 associated with a change in occupancy or

1 ownership shall necessitate an application to the
2 appropriate approving authority and shall be
3 returned to conformity.

4 MS. MERTZ: So just for everyone's -- this
5 is H, paragraph (1), the second section of it.

6 MR. PRICE: I'm -- I'm sorry; you're
7 talking to your book.

8 MS. MERTZ: I was just for the record of
9 the Board, it's paragraph H, subparagraph (1).
10 You're talking about the second -- the second
11 half of that paragraph you're -- you're quoting,
12 just for the benefit --

13 MR. PRICE: Yeah.

14 MS. MERTZ: -- of the Board.

15 MR. PRICE: Okay.

16 A sign, which is non-conforming, is a
17 preexisting non-conforming use. You don't need
18 the permission of a Board to continue a non-
19 conform--

20 They're -- they're protected by Section 68
21 of the MLUL. This conflicts with the MLUL.

22 MS. MERTZ: Okay.

23 Again, not language that was changed as
24 part of this amendment. So we will -- I'm taking
25 note and we'll make sure to get back with an

1 answer.

2 MR. PRICE: Okay.

3 Well, the answer means Board of
4 Commissioner meeting, whatever.

5 Okay.

6 Okay, I think this speaks for itself. I'm
7 on page 96.

8 No off-street parking spaces shall be
9 required for newly constructed non-residential
10 uses on lots with frontage on Bergenline Avenue
11 or Summit Avenue.

12 MS. MERTZ: I'm sorry; which paragraph are
13 you -- which --

14 MR. PRICE: I'm -- it's got to be (2)(e).

15 MS. MERTZ: Okay, yes, I'm there.

16 MR. PRICE: No off--

17 Okay?

18 MS. MERTZ: Okay.

19 MR. PRICE: Existing establishments or
20 changes of use must comply with the parking
21 schedules.

22 MS. MERTZ: Yes.

23 MR. PRICE: So, if I build a big --

24 By the way and this is -- right now we have
25 some things for Bergenline Avenue, north of 32nd

1 Street. This is the whole of Bergenline
2 Avenue --

3 MS. MERTZ: Right.

4 Sorry; let me just get my map.

5 MR. PRICE: -- from 2nd Street to 48th
6 Street.

7 MS. MERTZ: Correct.

8 MR. PRICE: Correct?

9 And the whole Summit Avenue from 5th Street
10 to 32nd Street?

11 MS. MERTZ: I -- I believe so, yes.

12 MR. SPATZ: No.

13 MS. MERTZ: Wait, no, I'm sorry.

14 MR. SPATZ: No.

15 MS. MERTZ: No, that's not correct.

16 MR. SPATZ: It -- it's Summit from 5th to
17 18th; --

18 MS. MERTZ: Yes.

19 MR. SPATZ: -- and it's Bergenline from 9th
20 to 48th or 49th.

21 MR. PRICE: That's the commercial district.

22 MR. SPATZ: Right.

23 MR. PRICE: But that's not what this says.

24 I guess -- shall --

25 If you got a D-1 Use Variance for Summit

1 Avenue at 20th Street, for example, this would
2 still apply.

3 Wouldn't it?

4 It's on Summit Avenue. It's a new
5 commercial space. It's not a commercial zone.
6 You'd -- you would need a D-1 Use Variance but
7 why wouldn't you qualify this?

8 MR. SPATZ: I didn't write it.

9 MR. PRICE: Okay.

10 MS. MERTZ: So my answer, Mr. Price, is
11 that the non-conforming --

12 So you're que-- you're saying that because
13 it doesn't specify the commercial district, they
14 could do this the whole way up the streets?

15 Correct?

16 Is that your question?

17 MR. PRICE: Well, it doesn't say --
18 commercial -- you know, within the commercial
19 district on Summit and Bergenline it says, you
20 know, if you're on, you know, Summit or
21 Bergenline period.

22 And south of 8th Street, for example, on
23 Bergenline, is a residential zone.

24 MS. MERTZ: Correct.

25 So the intent of this paragraph was just to

1 | be within the C-N Zone. So you are correct that
2 | it appears there was a slight oversight without
3 | -- without adding that clarification.

4 | However, I would add that if a
5 | non-conforming commercial zone was going to be
6 | coming into one of the residential districts,
7 | they're non-conforming, so they don't have a
8 | right to do anything --

9 | MR. PRICE: Correct.

10 | MS. MERTZ: -- necessarily. They would be
11 | a use variance.

12 | So the Board could absolutely control their
13 | parking standards and require them to build
14 | parking.

15 | MR. PRICE: You are correct.

16 | MS. MERTZ: Yes.

17 | MR. PRICE: Yes.

18 | Okay.

19 | Page --

20 | Oh, by the way, that provision even within
21 | the commercial zone, would only apply to sites
22 | larger than 2500 square feet.

23 | Wouldn't it?

24 | MS. MERTZ: The commercial zone allows for
25 | ground floor retail in commercial uses; with

1 upper floor either offices or residential.

2 So that would apply to those ground floor
3 retail uses. If it was a new -- again, if it was
4 new construction.

5 MR. PRICE: Well, but I mean -- but it
6 would have -- but if on page 93, you've got a
7 provision, okay, no off-street parking or loading
8 spaces need be provided for non-residential uses
9 located on lots that are 2500 square feet or
10 smaller.

11 MS. MERTZ: Correct.

12 MR. PRICE: So this only really applies to
13 lots that are more than 2500 square feet.

14 Correct?

15 MS. MERTZ: Except that this provision
16 specifically is discussing Bergenline and Summit
17 Avenue.

18 The other provision does not call out a
19 specific geographic location in the City.

20 MR. PRICE: Correct.

21 MS. MERTZ: Yes.

22 MR. PRICE: But if you -- if I were on
23 Summit Avenue and it was 2500 square feet, I
24 wouldn't need parking anyway for the non-
25 residential use.

1 MS. MERTZ: That's true.

2 MR. PRICE: Okay. So --

3 MS. MERTZ: Yes.

4 MR. PRICE: -- you don't -- this really
5 functionally only applies to lots larger than
6 2500 square feet?

7 MS. MERTZ: You're correct. Yes.

8 MR. PRICE: Okay.

9 What -- page 100. Okay.

10 This goes to our very first question. I'm
11 on page 100 and this says, 223, Section 47, --

12 MS. MERTZ: Okay.

13 MR. PRICE: -- Section C. And this is
14 talking about discontinuance of a non-conforming
15 use.

16 Whatever. It's a very long sentence.

17 It would -- the key point is, irrespective
18 of whether an intention to abandon the non-
19 conforming may exist; you've abandoned it. That
20 is -- again, there's very good case law that says
21 abandonment, you know, is intact. And when you
22 put this in there you're -- you're conflicting
23 with well-established case law.

24 MS. MERTZ: Okay. And I -- this is another
25 item that was not changed as part of this

1 amendment. So --

2 MR. PRICE: Oh.

3 MS. MERTZ: -- I'll confirm --

4 MR. PRICE: Okay.

5 MS. MERTZ: -- the answer to your question.

6 MR. PRICE: And -- and then I'll go to --

7 just to Section 48, which is a recap of the Site
8 Plan Exempt part that we had before.

9 MS. MERTZ: Okay.

10 MR. PRICE: And, as I say, this one -- it's
11 page 102, Section 48.

12 And --

13 VICE CHAIRPERSON KOEHLER: That's it?
14 That's your -- you're done?

15 MR. PRICE: I'm done.

16 VICE CHAIRPERSON KOEHLER: Oh, I thought
17 you had one more question.

18 MR. PRICE: I -- I --

19 VICE CHAIRPERSON KOEHLER: Oh. All right.

20 MR. PRICE: Miss Koehler, --

21 VICE CHAIRPERSON KOEHLER: Well, thank you.

22 MR. PRICE: -- I promised --

23 VICE CHAIRPERSON KOEHLER: You did and I --

24 MR. PRICE: -- you, you know, --

25 VICE CHAIRPERSON KOEHLER: -- thank you.

1 Thank you.

2 Thank you. Sure.

3 MR. PRICE: -- 15 minutes.

4 MR. ORTIZ: All right, based -- based
5 on, --

6 If you -- do you want me to take over, --

7 VICE CHAIRPERSON KOEHLER: Yeah.

8 MR. ORTIZ: -- Miss Koehler?

9 Based -- based on the discussion with Mr.
10 Price and our Planner, do the Board have any
11 comments or questions of the Planner?

12 Any comments?

13 No?

14 Okay.

15 With that being said, I would ask that a
16 motion to either recommend or not to recommend to
17 the Board of Commissioners -- Commissioners, as
18 to consistency.

19 And we will take a roll call on to that.

20 VICE CHAIRPERSON KOEHLER: I'd like --

21 MS. MOREJON: I make --

22 VICE CHAIRPERSON KOEHLER: -- to make a
23 motion.

24 MS. MOREJON: I second.

25 MR. ORTIZ: Okay. Who --

1 Just give me one second.

2 VICE CHAIRPERSON KOEHLER: (Indiscernible).

3 MR. ORTIZ: Yeah. There are two --

4 I will get you out of here as soon as I
5 can. Just, unfortunately, --

6 Okay.

7 By Miss Koehler.

8 Second by Miss Valdivia (sic).

9 Okay.

10 Motion was by Miss Koehler.

11 Seconded by Miss Valdivia (sic).

12 To recommend as to consistency --

13 MS. MOREJON: Second by who?

14 MR. ORTIZ: Miss --

15 MS. DILLON: Miss Morejon.

16 MS. MOREJON: By me.

17 MR. ORTIZ: Oh. I'm -- I'm --

18 Commissioner -- I'm sorry; I'm -- I'm
19 sorry.

20 MS. MOREJON: Well, you better wake up.

21 MR. ORTIZ: You know what I was thinking?

22 MS. MOREJON: Wake up.

23 MR. ORTIZ: I was thinking your family
24 history.

25 MS. MOREJON: Wake up.

1 MR. ORTIZ: I was --

2 I'm sorry about that.

3 MS. MOREJON: Okay.

4 MR. ORTIZ: Thank you for correcting me,
5 Miss Morejon.

6 On the motion to recommend this to the
7 Board of Commissioners.

8 Okay.

9 Miss Koehler?

10 VICE CHAIRPERSON KOEHLER: Yes.

11 MR. ORTIZ: Miss -- Miss Genao?

12 MS. GENAO: Yes.

13 MR. ORTIZ: Miss Fernandez?

14 MS. FERNANDEZ: Yes.

15 MR. ORTIZ: Mr. Medina?

16 MR. MEDINA: Yes.

17 MR. ORTIZ: Miss Morejon?

18 MS. MOREJON: Yes.

19 MR. ORTIZ: Mr. Rivero?

20 MR. RIVERO: Yes.

21 MR. ORTIZ: Motion pass.

22 MS. MOREJON: You got two more people.

23 MR. ORTIZ: Oh, I missed you, too?

24 For God's sake.

25 MR. GUARENO: Guareno.

1 MR. ORTIZ: Yes. Mr. Guareno?

2 MS. MOREJON: Guareno.

3 MR. GUARENO: Yes.

4 MR. ORTIZ: Okay

5 Thank you.

6 And I didn't mark you as present either.

7 This is not usually what I do as you know,

8 folks. I'm much more --

9 I'm not a great Clerk.

10 I apologize.

11 With that being said, the motion does pass.

12

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1 **ADJOURNMENT :**

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3 MR. ORTIZ: Do we have a motion to adjourn?

4 MS. MOREJON: Motion.

5 VICE CHAIRPERSON KOEHLER: Seconded.

6 MR. ORTIZ: All in favor?

7

8 (Whereupon, there was a chorus of ayes.)

9

10 (Whereupon, the proceedings were concluded
11 at 7:37 p.m.)

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1 STATE OF NEW JERSEY :

2 :

3 COUNTY OF ESSEX :

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6 I, KAREN A. MARINO, assigned transcriber,
7 do hereby affirm that the foregoing is a true and
8 accurate transcript in the matter of the SPECIAL
9 MEETING of the UNION CITY PLANNING BOARD heard on
10 Tuesday, June 4, 2019 and digitally recorded.

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25 Monitored and Proofread by: Deborah Dillon