

**MANALAPAN ZONING BOARD OF ADJUSTMENT  
MINUTES OF THE REGULAR MEETING  
Thursday, October 15, 2020  
TOWNSHIP OF MANALAPAN  
Manalapan, NJ 07726**

**PUBLIC MEETING~ HD OFFICE SUITES**

**DUE COVID-19, IN ACCORDANCE WITH GOVERNOR MURPHY’S EXECUTIVE  
ORDER NO. 107, THE PUBLIC WAS PERMITTED TO PARTICIPATE IN THIS  
MEETING VIA HD OFFICE SUITES BY ACCESSING THE LINK AND MEETING ID**

<https://meeting.windstream.com/j/1119834768?pwd=NldTVTBLNlp1d2dkOS93cUt6bVcrdz09>

**HD-Office Suites Meeting Number:            Password: OCT152020**

Open Public Meetings Act:            Stephen Leviton

Roll Call:                                    Janice Moench

In attendance at the meeting:        Mollie Kamen, Terry Rosenthal, Eliot Lilien  
Adam Weiss, Larry Cooper, Robert Gregowicz,  
David Schertz, Robert DiTota, Basil Mantagas  
Stephen Leviton

Absent from the meeting:            None

Also, present                                Ronald Cucchiaro, Zoning Board Attorney  
Brian Boccanfuso, Zoning Board Engineer  
Jennifer Beahm, Zoning Board Planner  
Nancy DeFalco, Zoning Officer  
Janice Moench, Recording Secretary

**MINUTES:**

A Motion was made by Mr. Lilien, Seconded by Mr. Cooper, to approve the Minutes of **July 16, 2020** as written.

Yes:    Kamen, Rosenthal, Cooper, Gregowicz, Lilien, Schertz, DiTota,  
Mantagas, Leviton

No:    None

Abstain:                                    None

Absent:                                      None

Not Eligible: Weiss

A Motion was made by Mr. Schertz, Seconded by Mr. Cooper to approve the Minutes of **October 1, 2020** as written.

Yes: Kamen, Weiss, Cooper, Gregowicz, Schertz, Leviton  
No: None  
Abstain: None  
Absent: None  
Not Eligible: Rosenthal, Lilien, DiTota, Mantagas

**RESOLUTIONS:**

A Motion was made by Mr. Cooper, Seconded by Mr. Gregowicz to approve the Resolution of memorialization for **Application ZBE2028 Librizzi**

Yes: Kamen, Weiss, Cooper, Gregowicz, Schertz, Leviton  
No: None  
Abstain: None  
Absent: None  
Not Eligible: Rosenthal, Lilien, DiTota, Mantagas

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A Motion was made by Mr. Schertz and Seconded by Mr. Gregowicz to approve the Resolution of memorialization for **Application ZBE2032 Todd Brown**

Yes: Weiss, Gregowicz, Schertz, Leviton  
No: None  
Abstain: None  
Absent: Rosenthal, Lilien, DiTota, Mantagas, Cooper  
Not Eligible: Kamen

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**PUBLIC HEARINGS:**

**Application No. ZBE2011 (carried to 12.17.20)**

Applicant: Yum & Chill TB Holdings LLC  
Proposal: Demo service station/Proposed Taco Bell Restaurant  
Request: Preliminary & Final Major Site Plan w/Use Variance & FAR  
Location: 199 Highway Route 9 South  
Block/Lot: 18.01/1.03  
Zone: OP3

Chair Leviton announced the Yum & Chill TB Holdings LLC application would not be heard. The applicant asked to be adjourned to the December 17, 2020 Zoning Board meeting. It was explained there would be no further written notice to the public. The virtual meeting information for the December 17, 2020 Zoning Board meeting would be available ten days prior on the Manalapan Township website at [www.mmtnj.org](http://www.mmtnj.org)

**Application No. ZBE2040**

Applicant: David Kleyn  
Request: Interpretation of Zoning Ordinance  
Location: 203 State Highway 33

Block/Lot: 78/12.02  
Zone: SED-20/W

**\*\*\*Please see the attached transcript provided by Court Reporter Mary Ann Fiscor**

Chair Leviton opened the meeting to the public for questions or comments on this application. There were no members of the public expressing an interest in this application. Chair Leviton closed public

A Motion to interpret the zoning ordinance for Application ZBE2040 was made by Mr. Weiss and Seconded by Ms. Kamen

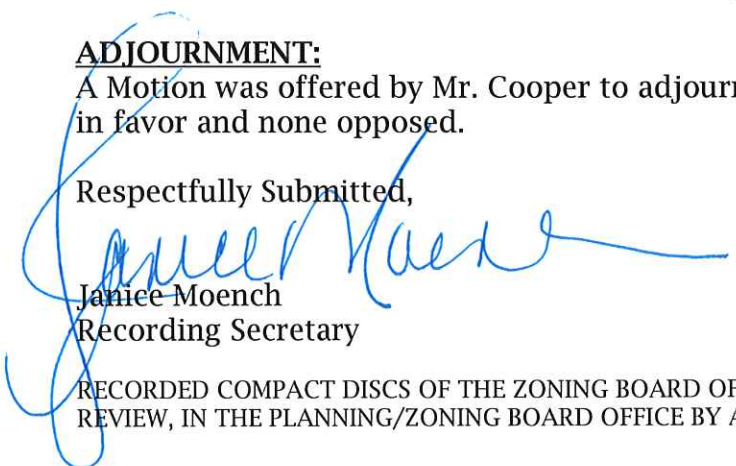
Yes: Kamen, Rosenthal, Weiss, Cooper, Gregowicz, Lilien,  
No: Leviton  
Abstain: None  
Absent: None  
Not Eligible: Schertz, DiTota, Mantagas

Chair Leviton opened the meeting to the public for any non-agenda items. Being there were no comments Chair Leviton closed public.

**ADJOURNMENT:**

A Motion was offered by Mr. Cooper to adjourn the meeting at 10:40 PM. All were in favor and none opposed.

Respectfully Submitted,

  
Janice Moench  
Recording Secretary

RECORDED COMPACT DISCS OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.

TOWNSHIP ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF MANALAPAN  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY

In the Matter of:

TRANSCRIPT OF  
PROCEEDINGS

The Application of:  
ZBE2040 - Interpretation  
of Zoning Ordinance

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Wednesday, October 15, 2020  
Municipal Building  
120 Route 522  
Manalapan, New Jersey

ZONING BOARD OF ADJUSTMENT COMMITTEE:

- STEPHEN LEVITON, Chairman
- JANICE MOENCH, Recording Secretary
- MILLIE KAMEN
- TERRY ROSENTHAL
- ADAM WEISS
- LARRY COOPER
- ROBERT GREGOWICZ
- ELIOT LILIEN
- DAVID SCHERTZ
- ROB DiTOTA
- BASIL MANTAGAS

REPORTED BY: Mary Ann Ficsor, CCR

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

(2)

GASIOROWSKI & HOLOBINKO, ESQS.  
54 Broad Street, #302  
Red Bank, New Jersey 07701  
BY: RONALD GASIOROWSKI, ESQS.

(3)

(4)

(5)

RONALD CUCCHIARO, Attorney for the Board

(6)

(7)

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

(8)

BRIAN BOCCANFUSO, BE  
JENNIFER BEAHM, BP  
NANCY DeFALCO  
LISA NOSSEIR

(9)

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(1) (Commencing at 7:35 p.m.)

(2) CHAIRMAN LEVITON: This is Executive  
(3) Orders 103 and 107, the Department of Community  
(4) Affairs operational guidance for the land use public  
(5) meetings issued April 2, 2020.

(6) Notice of this virtual meeting has been  
(7) advertised in the Asbury Park Press. A copy of that  
(8) notice was posted on the bulletin board where public  
(9) notices are displayed and on the township's website.

(10) In addition, a copy of that notice is  
(11) on file in the office of the municipal clerk.  
(12) Accordingly this meeting is deemed to gain compliance  
(13) with the Open Public Meetings Act, Governor Murphy's  
(14) Executive Orders 103 and 107 and the New Jersey  
(15) Department of Community Affairs operational guidance  
(16) for land use public meetings issued April 2nd, 2020.

(17) Roll call, please.

(18) MR. CUCCHIARO: Mr. Chair, just before  
(19) we do that, if I could just supplement that for one  
(20) moment.

(21) The DCA has now adopted, as of last  
(22) week, new emergency regulations. Those regulations  
(23) will be introduced in the New Jersey register next  
(24) month, but we now operate under the emergency  
(25) regulations for holding remote public meetings. And

(1) the notice that we had sent out does comply with the  
(2) new regulations which are in the New Jersey  
(3) administrative code as well.

(4) CHAIRMAN LEVITON: Thank you.

(5) (Roll call is taken.)

(6) CHAIRMAN LEVITON: Okay. And I'm  
(7) going to state up front, if you're here tonight for  
(8) Application No. ZBE2011, Yum and Chill TN Holdings,  
(9) LLC, that has been carried until when, Janice,  
(10) November 12th?

(11) MS. MOENCH: I'm sorry. December 17th.

(12) CHAIRMAN LEVITON: December 17th, okay.

(13) There will be no further notice for that. This is  
(14) your notice. You received notification that that  
(15) meeting was tonight, and now you understand that it's  
(16) going to be on December 17th. Okay.

(17) Tonight's first order of --

(18) MR. CUCCHIARO: Mr. Chair, just on that  
(19) also, that meeting also begins at 7:30. And to the  
(20) extent there's any difference in the login  
(21) information to do it remotely, that will be made  
(22) available at least ten days prior on the township's  
(23) website.

(24) CHAIRMAN LEVITON: Thank you,

(25) Counselor.

- (1) Our first order of business this  
(2) evening is to accept the minutes from July 16th.  
(3) Will someone make the motion, please?  
(4) MR. CUCCHIARO: So moved.  
(5) MR. COOPER: Seconded by Larry.  
(6) CHAIRMAN LEVITON: Thank you, Larry.  
(7) MS. MOENCH: I'm sorry. I need  
(8) another -- (indiscernible.)  
(9) (Simultaneous voices.)  
(10) MR. COOPER: I apologize.  
(11) MS. MOENCH: And who was the second?  
(12) MR. COOPER: Larry.  
(13) MS. MOENCH: Okay. Ms. Kamen?  
(14) MS. KAMEN: Yes.  
(15) MS. MOENCH: Mr. Rosenthal?  
(16) MR. ROSENTHAL: Yes.  
(17) MS. MOENCH: Mr. Cooper?  
(18) MR. COOPER: Yes.  
(19) MS. MOENCH: Mr. Gregowicz?  
(20) MR. GREGOWICZ: Yes.  
(21) MS. MOENCH: Mr. Lilien?  
(22) MR. LILIEN: Yes.  
(23) MS. MOENCH: Mr. Schertz?  
(24) MR. SCHERTZ: Yes.  
(25) MS. MOENCH: Mr. Ditola?



(1) MR. DITOLA: Yes.

(2) MS. MOENCH: Mr. Mantagas?

(3) MR. MANTAGAS: Yes.

(4) MS. MOENCH: Chair Leviton?

(5) CHAIRMAN LEVITON: Yes.

(6) We also need to accept the minutes from  
(7) October 1st, 2020.

(8) Will someone make that motion and will  
(9) someone second that.

(10) (Indiscernible.)

(11) CHAIRMAN LEVITON: Thank you,  
(12) gentlemen.

(13) MS. MOENCH: Okay. Ms. Kamen?

(14) MS. KAMEN: Yes.

(15) MS. MOENCH: Mr. Weiss?

(16) MR. WEISS: Yes.

(17) MS. MOENCH: I'm sorry. Mr. Rosenthal?

(18) MR. ROSENTHAL: Yes.

(19) MS. MOENCH: Mr. Weiss?.

(20) MR. WEISS: Still yes.

(21) MS. MOENCH: Mr. Cooper?

(22) MR. COOPER: Yes.

(23) MS. MOENCH: Mr. Gregowicz?

(24) MR. GREGOWICZ: Yes.

(25) MS. MOENCH: Mr. Schertz?

(1) MR. SCHERTZ: Yes.

(2) MS. MOENCH: Chair Leviton?

(3) CHAIRMAN LEVITON: Yes. The first  
(4) order of business is to memorialize two resolutions.  
(5) The first one is Application No. ZBE2028.

(6) Mr. Cucchiaro, are you familiar with  
(7) that case?

(8) MR. CUCCHIARO: Yes, Mr. Chairman.

(9) CHAIRMAN LEVITON: I usually go to  
(10) John at this time and ask him.

(11) MR. CUCCHIARO: Mr. Chairman,  
(12) essentially the applicant was seeking both variance  
(13) relief for residential improvements. The Board voted  
(14) unanimously to approve the application. The  
(15) resolution just memorializes the Board's unanimous  
(16) approval of that matter.

(17) So if there are any questions or  
(18) comments, you know, I will -- certainly I can answer  
(19) them, but essentially, you know, it grants the --  
(20) both residential bulk variance relief that had been  
(21) requested.

(22) CHAIRMAN LEVITON: Thank you, sir.

(23) Will someone make a motion and will  
(24) someone second it.

(25) MR. WEISS: Motion.

- (1) MS. KAMEN: So moved, Larry.
- (2) CHAIRMAN LEVITON: Thank you, Larry and  
(3) Elliott.
- (4) MS. MOENCH: I'm sorry. Elliott wasn't  
(5) present.
- (6) CHAIRMAN LEVITON: Will someone else  
(7) second that?
- (8) MR. MANTAGAS: I'll second it. I'll  
(9) second.
- (10) Basil Mantagas is second.
- (11) CHAIRMAN LEVITON: Thank you, Basil.
- (12) MS. MOENCH: I'm sorry. Basil  
(13) wasn't --
- (14) MR. GREGOWICZ: I wasn't -- I'll  
(15) second, Bob.
- (16) CHAIRMAN LEVITON: Thank you, Bob.
- (17) MS. MOENCH: Ms. Kamen?
- (18) MS. KAMEN: Yes.
- (19) MS. MOENCH: Mr. Weiss?
- (20) MR. WEISS: Yes.
- (21) MS. MOENCH: Mr. Cooper?
- (22) MR. COOPER: Yes.
- (23) MS. MOENCH: Mr. Gregowicz?
- (24) MR. GREGOWICZ: Yes.
- (25) MS. MOENCH: Mr. Schertz?

(1) MR. SCHERTZ: Yes.

(2) MS. MOENCH: Chair Leviton?

(3) CHAIRMAN LEVITON: Yes.

(4) And the last resolution to be  
(5) memorialized is No. ZBE2029.

(6) MR. CUCCHIARO: And, Mr. Chairman, this  
(7) was also a residential bulk variance resolution of  
(8) the Board voted unanimously to grant. The resolution  
(9) reflects the Board's reasoning. And the eligible  
(10) members are Kamen, Weiss, Cooper, Gregowicz, Schertz  
(11) and Leviton.

(12) CHAIRMAN LEVITON: Thank you, sir.

(13) Will someone make that motion, and will  
(14) someone second it?

(15) MR. COOPER: I'll make a motion. This  
(16) is Larry.

(17) MR. WEISS: Adam Weiss for the second.

(18) CHAIRMAN LEVITON: Thank you,  
(19) gentleman.

(20) MS. MOENCH: Ms. Kamen?

(21) MS. KAMEN: Yes.

(22) MS. MOENCH: Mr. Weiss?

(23) MR. WEISS: Yes.

(24) MS. MOENCH: Mr. Cooper?

(25) MR. COOPER: Yes.

(1) MS. MOENCH: Mr. Gregowicz?

(2) MR. GREGOWICZ: Yes.

(3) MS. MOENCH: Mr. Schertz?

(4) MR. SCHERTZ: Yes.

(5) MS. MOENCH: Chair Leviton?

(6) CHAIRMAN LEVITON: Yes.

(7) Okay. Our only public hearing this  
(8) evening is Application No. ZBE2040, Mr. David Klein.  
(9) I hope I'm pronouncing that right, sir. Forgive me  
(10) if I butchered it. And on behalf of you, I call  
(11) Mr. Gasiorowski.

(12) MR. CUCCHIARO: Okay. Mr. Chairman,  
(13) just before Mr. Gasiorowski and other counsel enter  
(14) their appearance, I just want to briefly talk to the  
(15) Board a little bit about what we're going to be doing  
(16) tonight because this is an -- an atypical application  
(17) for the Board. I don't know that you've actually  
(18) done one of these before.

(19) So under the municipal land use law the  
(20) zoning board has several functions that it possesses  
(21) exclusive jurisdiction over. And one of the  
(22) exclusive powers of the zoning board is to interpret  
(23) the land use ordinances of the township. Nobody  
(24) else, not even the governing body, has the power to  
(25) interpret it. That's exclusively within the

(1) jurisdiction of the zoning board.

(2) So what happened with this particular  
(3) matter is there's an application that's currently  
(4) pending before the planning board. And an issue came  
(5) up as to whether that proposed piece, you will hear  
(6) about it tonight, was permitted or not permitted  
(7) under the ordinance.

(8) So under the municipal land use law,  
(9) the planning board actually doesn't get to make that  
(10) decision for itself because it involves --

(11) (Phones ringing.)

(12) MR. CUCCHIARO: -- and it's required  
(13) that --

(14) MS. MOENCH: Will everybody please mute  
(15) themselves when someone else is speaking.

(16) CHAIRMAN LEVITON: Continue, Ron.

(17) MR. CUCCHIARO: So under the municipal  
(18) land use law, the planning board can't make that  
(19) determination for itself. So there's a case, it's  
(20) called DePetro v. Wayne Township. And in that case  
(21) it says that whoever believes that the zoning  
(22) ordinance does not permit the use, they are required  
(23) to make an application to the zoning board for an  
(24) interpretation. So that's what Mr. Gasiorowski has  
(25) done pursuant to the requirements of the law. He has

(1) made an application. He has properly made it to the  
(2) zoning board to make a determination as to what the  
(3) ordinance needs. And again, we'll go into, you know,  
(4) the arguments. There are other attorneys here who  
(5) represent the applicant at the planning board.

(6) But I also want to be very clear that  
(7) interpreting the ordinance is the only thing we're  
(8) doing tonight. What the words mean is the only thing  
(9) that this Board is tasked or has jurisdiction to  
(10) consider. It is not about the merits of the  
(11) application before the planning board. It's not  
(12) whether you like it, or dislike it, or what you think  
(13) of it.

(14) Further, no matter what you determine,  
(15) it's not an approval or a denial of that application.  
(16) The practical significance of it is if you find that  
(17) the use is permitted in the zone, the planning board  
(18) will continue to adjudicate the matter. If you find  
(19) that the use is not permitted, what would likely  
(20) happen is that the applicant will either withdraw the  
(21) application before the planning board or the planning  
(22) board will deny it, and that application may have to  
(23) come here to the zoning board for a use variance.

(24) But we're not talking about the merits  
(25) of the application. I want to be very clear. We're

(1) talking only about what the ordinance means and  
(2) whether the proposed use is permitted or not  
(3) permitted.

(4) With regard to how to interpret the  
(5) ordinance, the New Jersey case law says that, you  
(6) know, we are supposed to derive the intent of the  
(7) ordinance, but that's not a wide-ranging task for us.  
(8) It's really we have direction that the intent of the  
(9) ordinance can be found in its plain language.

(10) So what we're looking for is do the  
(11) words that are in this ordinance have a plain  
(12) meaning, and if they have a plain meaning then that's  
(13) the meaning you're required to give it.

(14) If there's ambiguity in what the words  
(15) mean, then, you know, we can take other types of  
(16) evidence into account. The other things we're  
(17) looking for are, you know, how are these words or  
(18) terms used in other parts of the ordinance. You  
(19) don't want to take an interpretation that puts our  
(20) interpretation at odds with how the word is used  
(21) elsewhere in the ordinance. We also don't want to  
(22) have an interpretation that results in absurd  
(23) results.

(24) But really what we're looking for is,  
(25) is there a plain meaning, and if there is a plain



(1) meaning, that's what you give it, and that's  
(2) considered to be the legislative intent.

(3) So with that said, Mr. Chairman, if we  
(4) could just have all the attorneys who are here  
(5) tonight enter their appearances.

(6) Okay. Mr. Gasiorowski, are you still  
(7) here? .

(8) MR. GASIOROWSKI: Yes, I am. Hello?  
(9) Can you hear me?

(10) MR. CUCCHIARO: Faintly, but we can  
(11) hear you.

(12) MR. GASIOROWSKI: Can you hear me  
(13) better now or...

(14) MR. CUCCHIARO: Yeah. A little better  
(15) now, yes.

(16)  
(17) MR. GASIOROWSKI: Loud enough for me to  
(18) proceed forward?

(19) MR. CUCCHIARO: Yes. You can go,  
(20) Mr. Gasiorowski. We can hear you now.

(21) MR. GASIOROWSKI: Do you want Mr.  
(22) Alfieri to --

(23) MR. CUCCHIARO: Yeah. So just enter  
(24) your appearance first, Mr. Gasiorowski, and then  
(25) we'll have Mr. Alfieri and anyone else, and then you

(1) can get going.

(2) MR. GASIOROWSKI: My name is Ron  
(3) Gasiorowski. I'm an attorney, state of New Jersey.  
(4) I represent David Klein.

(5) MR. CUCCHIARO: Okay. Mr. Alfieri.

(6) MR. ALFIERI: Good evening,  
(7) Mr. Chairman, members of the board, Salvatore  
(8) Alfieri, Cleary, Giacobbe, Alfieri & Jacobs, on  
(9) behalf of the planning board applicant, but we're not  
(10) a party, if you will, to this application just yet.

(11) MR. CUCCHIARO: Well, you're not the  
(12) applicant, but you are an interested party?

(13) MR. ALFIERI: We're an interested  
(14) party.

(15) MR. CUCCHIARO: Okay. Are there any  
(16) other attorneys that are here tonight that would like  
(17) to enter an appearance?

(18) Okay. I see none.

(19) Okay. Mr. Gasiorowski, you have the  
(20) floor.

(21) MR. GASIOROWSKI: Thank you very much.  
(22) I listened to the comments of Mr. Cucchiaro, and I  
(23) would agree that this is an atypical case. I've been  
(24) doing this for a long time, and perhaps have filed on  
(25) previous occasions a half a dozen or so applications

(1) concerning the interpretation, but this one has a --  
(2) kind of a different twist to it. In your zoning  
(3) ordinance when listing the permitted uses in this  
(4) particular zone, the written word says, "warehouse"  
(5) and then there's a slash, and then there's the word  
(6) "distribution center".

(7) And a lot of what we're going to be  
(8) discussing this evening has to do with what is known  
(9) as or called the slash. And when one looks at it,  
(10) you really, initially, I think, don't pay much  
(11) attention to what that slash means. Is it simply  
(12) separating the uses in question or does it have a  
(13) particular or a special significance?

(14) And after attempting to track these  
(15) down, I did come up with, what I believe to be, a  
(16) plausible explanation as to what it means. The slash  
(17) is known as a virgule, V-I-R-G-U-L-E. That's how  
(18) it's described in Webster's dictionary. And while it  
(19) at first may appear to be ambiguous, it's pretty  
(20) straightforward.

(21) Legally when we would submit that a  
(22) common sense interpretation of the utilization of the  
(23) slash in this means that a warehouse is a permitted  
(24) use and a distribution separate and apart from a  
(25) warehouse -- separate and apart from the warehouse

(1) is, in fact, a approved use. So our position with  
(2) regard to this ordinance is that in this particular  
(3) zone you can have one of two uses: You can have a  
(4) warehouse or, or, you can have a distribution center.

(5) Now, significantly, in the ordinance  
(6) itself there is no description of what is known as a  
(7) distribution center, and there are no standards  
(8) established in the zone with regard to what a  
(9) distribution center is and how you would apply it to  
(10) the property.

(11) I'll get into this perhaps in greater  
(12) detail later on, but for those of us who were not  
(13) present at the planning board hearing -- I know that  
(14) Mr. Cucchiaro was, Ms. Beahm was, I was there,  
(15) Mr. Alfieri was there, and I believe Mr. -- my  
(16) traffic consultant.

(17) MR. CUCCHIARO: Well, Mr. Gasiorowski,  
(18) just so we're clear, this is a zone hearing. So  
(19) anything that you want to be on the record, get it in  
(20) here. We can't rely upon anyone's knowledge of the  
(21) planning board.

(22) MR. GASIOROWSKI: I did submit prior to  
(23) the hearing a number of documents, which I would like  
(24) to refer to, that were part of the planning board  
(25) hearing. For example, our -- the engineering report

(1) of the engineer, the report of Ms. Beahm. I've sent  
(2) in copies of the transcript of the last hearing, also  
(3) the minutes of the planning board hearings that I  
(4) think that are properly before the court, and I can  
(5) refer to them.

(6) So what is your position with regard to  
(7) that?

(8) MR. CUCCHIARO: As long as they are in  
(9) the record, but I'm just saying, anything that you  
(10) want to state has got to be in the record here. So  
(11) if it's in what you have previously presented, that's  
(12) fine. But just, also, you know, keep in mind the  
(13) planning board did not interpret anything.

(14) So to the extent that those documents  
(15) are relevant, you know, we have to keep on the sole  
(16) focus of interpreting what the words mean.

(17) MR. GASIOROWSKI: I understand. I  
(18) understand that completely. I acknowledge that the  
(19) planning board did not interpret anything, and I  
(20) would submit that that was never an issue. That was  
(21) clearly presented to the planning board, and that's  
(22) why I filed for this interpretation.

(23) But I think that some of the documents  
(24) that are in the planning board records, which I sent  
(25) to this board, are significant. And, for example, I

(1) would like to start with a letter of July the 3rd of  
(2) 2019, which was sent to -- if you'll bear with me for  
(3) one second.

(4) MR. CUCCHIARO: And Janice, although  
(5) this is in the record because it was submitted, let's  
(6) mark this as A-1. And Mr. Gasiorowski, can you just  
(7) give me the date of that letter again?

(8) MR. GASIOROWSKI: Yes, I shall. The  
(9) date of the letter is in July 2019. It's a letter  
(10) from Brian Boccanfuso, B-O-C-C-A-N-F-U-S-O,  
(11) professional engineer, who was the board engineer for  
(12) the planning board.

(13) MS. MOENCH: Can we just hold on one  
(14) minute?

(15) CHAIRMAN LEVITON: I have also looked  
(16) through what was including, and I didn't see that  
(17) either.

(18) MS. MOENCH: No. The only report that  
(19) you submitted was from June 26th with the planner's  
(20) report.

(21) MR. GASIOROWSKI: You do not have the  
(22) report of --

(23) MS. MOENCH: No. No.

(24) MS. BEAHM: Janice, I think that's what  
(25) South submitted.

(1) MS. MOENCH: Yeah. That's what south  
(2) submitted, but I don't have a letter from  
(3) Mr. Gasiorowski for -- not July -- I don't see...

(4) MR. GASIOROWSKI: I believe it was  
(5) e-mailed. Those are orders that were submitted by  
(6) Mr. Alfieri.

(7) MS. BEAHM: What is the date again?

(8) MS. MOENCH: I believe it said  
(9) July 18th.

(10) MR. LILIEN: I believe he said  
(11) July 3rd.

(12) MR. GASIOROWSKI: What I'm referring to  
(13) is a letter sent by the board engineer, and it's  
(14) dated July the 3rd of 2019 to the Manalapan Township  
(15) planning board, and it's a part of the record before  
(16) the planning board. And I believe I e-mailed it to  
(17) this Board, but if I didn't, then I'll stand  
(18) corrected.

(19) MS. MOENCH: Yeah. I don't have it,  
(20) so...

(21) MR. CUCCHIARO: So, Mr. Gasiorowski,  
(22) what is it in that report that you believe is  
(23) relevant to the interpretation of the ordinance?

(24) MR. GASIOROWSKI: Okay. What is  
(25) relevant in the interpretation, and I would refer

(1) just for the record, to Page 2 of that report where  
(2) the ordinance says that the applicant, taking aside  
(3) developers, is seeking preliminary and final major  
(4) site plan approvals to construct two warehouse  
(5) buildings.

(6) So in review by the board engineer, he  
(7) refers to the application for two warehouse  
(8) buildings, nothing else. That is item -- Paragraph 1  
(9) on Page 2. Then on --

(10) MR. CUCCHIARO: Well, what does that  
(11) have to do with what the ordinance means, though?

(12) MR. GASIOROWSKI: What it has to do  
(13) with what the ordinance means is that -- our position  
(14) is that with regard to the ordinance, the ordinance  
(15) says warehouse/distribution center. When the -- when  
(16) the -- when an applicant gave testimony, and as  
(17) reflected in the minutes, his position was that he  
(18) wanted the ability to do whatever he wanted to do, in  
(19) other words, of all --

(20) MR. CUCCHIARO: Yeah. But that -- but  
(21) we have to interpret the ordinance, Mr. Gasiorowski.  
(22) So if you have an argument, you know, as to what --  
(23) your initial argument that it's the -- virgule means  
(24) or, that's very relevant to what we need to discuss.

(25) So, I mean, what we're here to decide



(1) tonight is: What does warehouse mean? What does  
(2) distribution center mean? What does the slash mark  
(3) mean in that? And then, you know, whatever that  
(4) definition is will determine whether the use is  
(5) permitted or not.

(6) Mr. Boccanfuso's report as to what he  
(7) believes they were applying for doesn't speak to how  
(8) they interpret the ordinance. So I would just  
(9) recommend that if you have an argument or a witness  
(10) that is going to speak to what does warehouse mean?  
(11) What does this slash mark mean? What does  
(12) distribution center mean? I think that's what we're  
(13) here for tonight.

(14) MR. GASIOROWSKI: I agree that that is  
(15) what you're here for tonight, but I also would submit  
(16) to you is that how it was reviewed by the engineer as  
(17) well as the planner is relevant as to what, in fact,  
(18) that word "warehouse/distribution center" means.

(19) Now, in looking at the review letter of  
(20) Mr. Boccanfuso, he clearly found that what it meant  
(21) was simply a warehouse.

(22) MR. CUCCHIARO: I -- well, if that's  
(23) your argument, that's fine.

(24) MR. GASIOROWSKI: So are you saying I'm  
(25) precluded from going further through his letter?

(1) MR. CUCCHIARO: Well, I mean, what I'm  
(2) saying is, is that the Board under the municipal land  
(3) use law has to take into account evidence that is  
(4) relevant. Mr. Boccanfuso's engineering report, which  
(5) was not submitted to this Board to begin with, you  
(6) know, is there somewhere in that report where  
(7) Mr. Boccanfuso says, here's how I interpret the  
(8) ordinance?

(9) MR. GASIOROWSKI: There is not.

(10) MR. CUCCHIARO: So, I guess, you know,  
(11) for this Board -- for the benefit of this Board, what  
(12) is it that you want this Board to take from that  
(13) report that supports your argument concerning how you  
(14) would like the ordinance to be interpreted?

(15) MR. GASIOROWSKI: Well, on Page 4 of  
(16) his report under operations he says: The applicant  
(17) should indicate whether either warehouse, and he  
(18) identifies them as warehouses, that it potentially be  
(19) used as a fulfillment center.

(20) So that's the question which he is  
(21) posing, and that's the question which I think this  
(22) Board will be answering.

(23) MR. CUCCHIARO: Okay. Is there  
(24) anything else from that report that you want the  
(25) Board to be aware of?

(1) MR. GASIOROWSKI: Yes. On Page 6 of  
(2) the report under Subparagraph C it states that either  
(3) of the proposed warehouses -- and again identifies  
(4) them as a warehouse -- are intended to be utilized as  
(5) a fulfillment center, and updated traffic and impact  
(6) analysis should be provided using trip generation  
(7) estimates to determine based upon traffic studies.

(8) So the purpose, once again, with regard  
(9) to this ordinance, can a distribution center and  
(10) warehouse be used interchangeably, or does the  
(11) ordinance require that it be identified as either;  
(12) number one, a warehouse; or number two, a  
(13) distribution center?

(14) MR. CUCCHIARO: But I think, also,  
(15) Mr. Gasiorowski, the statement that you read in that  
(16) report is really for a third use, which is a  
(17) fulfillment center. You didn't state distribution  
(18) center.

(19) So I think that is relevant. That's  
(20) something we will go into tonight as to whether a  
(21) fulfillment center falls under either warehouse or  
(22) distribution center, but I, you know, I think that's  
(23) a valid issue for the Board to consider.

(24) MR. GASIOROWSKI: Thank you. I agree  
(25) with that. Let me then go on, if I may, then I would

(1) refer to I know these were -- I believe these were  
(2) sent to the Board, and then I appreciate  
(3) Mr. Cucchiaro, you know, providing me with some  
(4) leeway with regard to that letter from the interview.

(5) There are also two letters from  
(6) Jennifer Beahm who was the board planner. One is  
(7) dated June the 26th of 2019. The second is dated  
(8) February the 25th of 2020.

(9) MR. CUCCHIARO: Just one second,  
(10) Mr. Gasiorowski.

(11) Janice, we do have one of those letters  
(12) because Mr. Alfieri submitted it, right?

(13) MS. MOENCH: Correct, yes.

(14) MR. CUCCHIARO: All right. Let's mark  
(15) that one then as A-1.

(16) MS. MOENCH: So that's the June 26th,  
(17) 2019 -- Ms. Beahm's order?

(18) MR. CUCCHIARO: Correct.

(19) MS. MOENCH: I'm sorry. We're marking  
(20) that what?

(21) MR. CUCCHIARO: A-1.

(22) Go ahead, Mr. Gasiorowski.

(23) MR. GASIOROWSKI: How about the second  
(24) letter, though?

(25) MR. CUCCHIARO: We don't have it.

(1) MR. GASIOROWSKI: Okay. And when I  
(2) e-mailed them over, I believe we e-mailed them to  
(3) Ms. Moench, but if you haven't received them, I  
(4) believe you. It's you don't --

(5) MR. CUCCHIARO: She has stated she  
(6) doesn't have them. We can't mark what we don't have.

(7) MS. GASIOROWSKI: Let's go to the  
(8) letter, which was dated June the 26th, which was sent  
(9) by Mr. Reyes, our consulting engineers. And the part  
(10) that I would like to draw the Board's attention to is  
(11) the last paragraph of that letter after all of the  
(12) comments that Ms. Beahm made on that particular day.

(13) Ms. Beahm also states that: "Please be  
(14) advised that additional comments may follow upon  
(15) completion of testimony and/or submission of further  
(16) revisions by the applicant.

(17) "Should you have any questions  
(18) regarding the matter, please do not hesitate to  
(19) contact this office."

(20) So with regard to that particular  
(21) letter that was not a final letter, and Ms. Beahm has  
(22) reserved the right, whether it be at the conclusion  
(23) of the planning board hearing, to comment with regard  
(24) to the issue of whether or not what was being applied  
(25) for it comports with what is in the ordinance. That

(1) will be the purpose of my comment in regard to that.

(2) Now, I take it the Board does have a  
(3) copy of the plans for this project, does it not or it  
(4) does not have that?

(5) MR. CUCCHIARO: Mr. Gasiorowski, this  
(6) board has what you submitted. You're the applicant.  
(7) So if you didn't submit it, it doesn't have it. And  
(8) I would say that the plans for the -- that the  
(9) planning board has, has nothing to do with what the  
(10) plain meaning of the ordinance is.

(11) MR. GASIOROWSKI: Okay. What I'd like  
(12) to do, then, is proceed and call my first witness.

(13) MR. CUCCHIARO: Is that Mr. Steck.

(14) MR. GASIOROWSKI: No. I'll tell you  
(15) what, I will call Mr. Steck first. And then I  
(16) will call my traffic consultant, who is Bahman  
(17) Izadmehr.

(18) And then, with the ability to recall  
(19) Mr. Steck if he wants to supplement what was said.  
(20) by --

(21) MR. CUCCHIARO: Well, I don't care what  
(22) order you go in. I just -- I didn't know.

(23) So if you want to call your traffic  
(24) engineer first, that's fine.

(25) MR. GASIOROWSKI: I want to call

(1) Mr. Steck first.

(2) MR. CUCCHIARO: All right. Mr. Steck,  
(3) do you swear or affirm the testimony you're about to  
(4) give this Board's the truth, the whole truth, and  
(5) nothing but the truth?

(6) MR. STECK: I do.

(7)  
(8) P E T E R G. S T E C K,  
(9) having been duly sworn,  
(10) testified under oath as follows:

(11)  
(12) MR. CUCCHIARO: Okay. State your name  
(13) for the record.

(14) MR. STECK: My name is Peter G. Steck,  
(15) S-T-E-C-K, 80 Maplewood Avenue, Maplewood,  
(16) New Jersey.

(17) MR. CUCCHIARO: Okay. Mr. Gasiorowski,  
(18) if you can qualify Mr. Steck.

(19) MR. GASLOROWSKI: I did -- in fact, I  
(20) believe I e-mailed to the Board a copy of the  
(21) transcript of the hearing of the planning board  
(22) wherein Mr. Steck testified.

(23) Did you receive that?

(24) MR. LEVITON: Yes, we have that.

(25) MS. MOENCH: Yes.

(1) MR. GASIOROWSKI: I also e-mailed a  
(2) copy of the minutes from the meeting for the minutes  
(3) of September the 10th, 2020 meeting.

(4) Did you receive that, Ms. Moench?

(5) MR. LEVITON: We don't have that.

(6) MS. MOENCH: No.

(7) MR. CUCCHIARO: Just before we move on,  
(8) and let's mark the transcript as A-2.

(9) MS. MOENCH: Thank you.

(10) MR. CUCCHIARO: Okay. Mr. Gasiorowski,  
(11) I would recommend -- I mean, there are members of the  
(12) public who are here, members of the Board who may or  
(13) may not have read the transcript.

(14) To the extent, you know, Mr. Steck has  
(15) some important arguments with regard on how to  
(16) interpret the ordinance, I would recommend he just  
(17) restate them here.

(18)

(19) DIRECT EXAMINATION BY MR. GASIOROWSKI:

(20) Q. Mr. Steck, would you please identify  
(21) yourself for the Board.

(22) A. Yes. I'm a -- in terms of qualifications, by  
(23) way of education, I have a Bachelor's Degree in Civil  
(24) Engineering and a Master's in City and Regional  
(25) Planning.



(1) I was first licensed as a planner in  
 (2) New Jersey in 1976 and still hold that license. In  
 (3) terms of experience, I was an associate with two  
 (4) different consulting firms in New Jersey. I was the  
 (5) planning director and the zoning administrative  
 (6) officer for the Township of Montclair for  
 (7) approximately nine-and-a-half years.

(8) For the past 20 some-odd years I've  
 (9) been self-employed as the community planning  
 (10) consultant appearing in approximately 180  
 (11) municipalities in New Jersey as well as in Superior  
 (12) Court and tax court. I am also a member of the  
 (13) league of municipalities land use law drafting  
 (14) committee.

(15) CHAIRMAN LEVITON: Thank you,  
 (16) Mr. Steck. This Board accepts your credentials.

(17) BY MR. GASIOROWSKI:

(18) Q. Now, Mr. Steck, I didn't --  
 (19) (indiscernible) to exempt -- (indiscernible) had I  
 (20) not?

(21) A. Yes.

(22) Q. And I believe you testified at the last  
 (23) hearing before the planning board prior to the zoning  
 (24) board of adjustment board?

(25) A. That's correct.

(1) Q. At that time, I represented to the  
(2) Board that you were unable to appear this evening  
(3) because you had two prior scheduled hearings,  
(4) correct?

(5) A. That's correct.

(6) Q. Okay. And I just want to make sure my  
(7) representations were understood. Did you have two  
(8) hearings scheduled this evening in other  
(9) municipalities?

(10) A. Up until about eight hours ago, that's  
(11) correct. I already completed my first hearing that  
(12) started at 6 o'clock, but my second hearing got  
(13) carried, I believe, because of a notice defect. So  
(14) I'm now available.

(15) Q. And you're aware of the fact that I had  
(16) retained your services as another planner, but I  
(17) prefer to use you since you gave the original  
(18) testimony?

(19) A. That's my understanding of your preference.

(20) Q. Okay. Now, can you tell us -- and  
(21) having listened to the comments of Cucchiaro with  
(22) regard to the jurisdictional question of what the  
(23) zoning board of adjustment has to do, could you just  
(24) relay to the Board that section of the municipal land  
(25) use law that covers that, and what is your

(1) understanding of what this Board has the jurisdiction  
(2) to decide this evening?

(3) A. Yes. As the board of adjustment members are  
(4) aware, you operate under the provisions of the  
(5) municipal land use law, and typically you see a  
(6) development application that may have C variances or  
(7) D variances. Well, that paragraph in the municipal  
(8) land use law also has Paragraphs A and b, and they  
(9) are exclusively the jurisdiction of the board of  
(10) adjustment. A talks about challenging and opinion of  
(11) the zoning administrative officer -- and I'll read B  
(12) into the record because that's why we're here this  
(13) evening.

(14) So this is 4055 D/70 (b). Here -- and  
(15) this is, again, the powers of the board of  
(16) adjustment -- herein decide requests for  
(17) interpretation of the zoning map or ordinance or for  
(18) decision upon other special questions upon which such  
(19) board is authorized to pass by any zoning or official  
(20) map ordinance in accordance with this act.

(21) So we're asking for -- it's not a  
(22) variance release. It's an interpretation of an issue  
(23) that happens to be relevant to an application  
(24) currently before the planning board.

(25) Q. Now, Mr. Steck, did I retain your

(1) services at the very beginning of the planning board  
(2) hearing?

(3) A. Yes, you did.

(4) Q. And were you present at most, if not  
(5) all, of those hearings before the planning board?

(6) A. I was either present at the hearings or as of  
(7) late in attendance virtually.

(8) Q. Okay. Now, you're aware of the fact,  
(9) are you not, that in the zoning ordinance what is  
(10) listed as a use that is permitted, and I utilize the  
(11) words "warehouse/distribution center," correct?

(12) A. Yes.

(13) Q. Now, in the zoning ordinance of the  
(14) Township of Manalapan, is, in fact, the warehouse  
(15) use, is there a definition for it and is it  
(16) described?

(17) A. Um, yes. In the definition section of your  
(18) ordinance, one of the definitions listed is  
(19) specifically the word "warehouse." This is Section  
(20) 95-2.4, which is defined as follows: Any structure  
(21) designed for or utilized primarily for the storage of  
(22) goods and materials. The term shall include  
(23) self-storage, mini or other form of commercial  
(24) warehouse activities.

(25) Q. Is it your opinion that if, in fact,

(1) the applicant were to come before this Board solely  
(2) for a request to construct and utilize a warehouse at  
(3) this site, it would, in fact, be a permitted use?

(4) A. That is my opinion. That's correct.

(5) Q. How about with regard to distribution  
(6) center? Putting aside for the sake of argument right  
(7) now the issue with the description of the  
(8) distribution center, would that also be standing  
(9) alone be a permitted use?

(10) A. Um, as we'll eventually get to when I discuss  
(11) the interpretation, in my opinion, if there was just  
(12) a distribution center that would be a permitted use.

(13) Q. Okay. Now, in your experience as a  
(14) planner, have you ever previously appeared before  
(15) boards dealing with the issue of an interpretation?

(16) A. Yes.

(17) Q. What is your understanding of what is  
(18) before this Board today and why is it here?

(19) A. Well, the Board's attorney gave some  
(20) background, but just to give some context, there is  
(21) an application for development before the planning  
(22) board with two large buildings. And together -- what  
(23) I mean by "large" is they total over 600,000 square  
(24) feet of floor area. And the submissions are somewhat  
(25) muddled in my opinion.

(1) The title of the plans talk about a  
(2) logistic center. The buildings are labeled as  
(3) warehouses. The -- there is the word "distribution"  
(4) that is in the application. And so, it -- it was --  
(5) in my opinion, somewhat hazy what was being proposed  
(6) before the planning board.

(7) At the September 10th meeting of the  
(8) planning board a question was asked of a  
(9) representative of the applicant, and the applicant --  
(10) and I was there watching the meeting virtually -- and  
(11) in my opinion, the applicant essentially said that he  
(12) believed he was proposing a permitted use, and he  
(13) explained it as -- and I'm going to phrase this in a  
(14) firsthand basis -- I want to do warehousing, or a  
(15) distribution center, or any combination of them. I  
(16) want the freedom to use these buildings as warehouse  
(17) 100 percent, distribution center 100 percent or any  
(18) mixture of the two because he believed that it was  
(19) irrelevant whether you mixed or matched.

(20) Q. Okay. Now, why in your opinion is that  
(21) significant?

(22) A. It's significant because, in my opinion, they  
(23) are different uses. First of all, I just read the  
(24) definition of a warehouse, and the key aspects of  
(25) that are that it's primarily used for storage. There

(1) is no definition in Manalapan's ordinance of what a  
(2) distribution center is, but because it's a different  
(3) word than warehouse, it's a different entity. And,  
(4) indeed, if one looks at published sources, such as  
(5) the Institute of Traffic Engineers trip generation  
(6) map manual, there are a number of entities of the  
(7) classic warehouse is, labeled as Classification 150,  
(8) and that doubles with your local definition. It  
(9) says, primarily for the storage of goods.

(10) There are other definitions in that  
(11) publication, such as a high-cube warehouse, which is  
(12) basically a building over 200,000 square feet with a  
(13) height more than 24 feet where obviously it  
(14) accommodates vertical storage. That has dramatically  
(15) different characteristics than a warehouse in terms  
(16) of peak hour traffic or total average traffic during  
(17) the day. And there's also a definition, for example,  
(18) of a fulfillment center.

(19) The point that I'm raising is that the  
(20) ordinance considers a distribution center, in my  
(21) opinion, different than a warehouse. And there is  
(22) logic to that because a distribution center produces  
(23) multiple times the traffic of a warehouse according  
(24) to the Institute of Traffic Engineers, and there are  
(25) other ramifications, such as the number of, you know,

(1) loading docks that might typically be associated with  
(2) a warehouse versus a distribution center. The noise  
(3) that may be -- that may emanate from the different  
(4) uses, potentially hours of operation may be  
(5) different, so that the ordinance treats them  
(6) differently by name.

(7) And to repeat, there is a basis for  
(8) doing that because distribution warehouses have  
(9) different land use impacts that I would generally  
(10) consider much more intensive of a warehouse use.

(11) Q. Let's just talk about the -- the  
(12) language in the ordinance itself, which is focusing  
(13) on two words. Two words and a symbol, okay. The  
(14) first word being "warehouse," the second word being  
(15) "distribution center," and the intervening "slash" in  
(16) between those two.

(17) Now, did you perform any independent  
(18) research to what you believe to be the correct  
(19) interpretation of that definition -- or the symbol  
(20) and the two words?

(21) A. I did.

(22) Q. Tell us what it is.

(23) A. You know, I looked at dictionary definitions.  
(24) I looked at research that your office had done in  
(25) terms of cases, and I read the ordinance, scanned the



(1) word "distribution" to find out how it was used in  
(2) the ordinance. I also looked at the prior master  
(3) plan and master plan amendment to try to define what  
(4) the intent was.

(5) Q. Okay. Now, in listening as you're  
(6) reciting the testimony of Mr. Terry --  
(7) (indiscernible) whatever his last name is -- I  
(8) believe he indicated that he wanted to utilize one of  
(9) several or three different components. In other  
(10) words, he would either have a site which is composed  
(11) entirely of warehousing, or number two, a site which  
(12) is composed entirely of distribution center or be  
(13) able to basically mix and match. Have a portion of  
(14) it be warehousing and a portion of it be distribution  
(15) center, correct?

(16) A. That's my understanding of how he testified.

(17) Q. And that would mean that -- that would  
(18) mean that it would be an interpretation of that slash  
(19) to mean warehousing -- warehouse and distribution  
(20) center, in other words, two different types of  
(21) entities or uses on one site?

(22) A. That's one interpretation of that.

(23) The issue that's -- there are -- we  
(24) know -- we all -- well, the ordinance knows what a  
(25) warehouse is, and the Institute of Traffic Engineers

(1) knows what a warehouse is. The ordinance does not  
(2) define a distribution center, but we know at least  
(3) from the ordinance that it's different from a  
(4) warehouse, and secondary information, such as surveys  
(5) of such operations, show that it's the different type  
(6) of use that the -- the -- the focus is not the goods  
(7) that are sitting there stored in the warehouse. The  
(8) focus of a distribution center, as the name implies,  
(9) is the activity of bringing in goods of potentially  
(10) repackaging them and sending them out.

(11) So it's a different entity. The -- so  
(12) it's a little bit of a mystery in terms of the  
(13) ordinance because it doesn't define a distribution  
(14) center, but the general literature, I think, confirms  
(15) that it's different from a warehouse.

(16) The focus of ambiguity here is on the  
(17) slash. Now, the slash is not your computer forward  
(18) slash that you may put into your browser. It's a  
(19) term in the -- it's a symbol used in the English  
(20) language. It's also called a virgule, as  
(21) Mr. Gasiorowski said, and it's known to be ambiguous.

(22) It's -- it can either mean a  
(23) conjunctive relationship or a disjunctive  
(24) relationship. So let me simplify it that if an  
(25) ordinance permits A/B, if it's conjunctive, it means

(1) that you have to have both A and B present at the  
(2) same time to fit into that category.

(3) So one way to interpret the slash is  
(4) that an applicant before the -- before a board has to  
(5) have both warehousing and distribution as a composite  
(6) use on a property in order to fit within that  
(7) category.

(8) An alternate view of the slash is  
(9) disjunctive, that is, you can have either A or B, but  
(10) you can't have both at the same time.

(11) Q. Let me ask you one question, Mr. Steck,  
(12) before you go forward. Would it not be so that  
(13) whether we consider the conjunctive or the  
(14) disjunctive interpretation that with regard to the  
(15) distribution center, you would have to have an  
(16) independent analysis of the trip generation from that  
(17) use, for example, if we went with the conjunctive and  
(18) it were 90 percent distribution center and 10 percent  
(19) warehouse, the traffic would be predicated upon  
(20) 90 percent of the site being a distribution center.

(21) MR. ALFIERI: Mr. Cucchiaro, before  
(22) the -- I'm not sure how that's relevant to the  
(23) interpretation issue. It may be an intensity issue,  
(24) but it's not an interpretation of the meaning of the  
(25) words in the ordinance.

(1) MR. CUCCHIARO: And, Mr. Gasiorowski,  
(2) just in terms of the -- whatever answers Mr. Steck is  
(3) going to give that they be focused on not what needs  
(4) to be evaluated but what the words mean.

(5) How should this Board interpret the  
(6) words?

(7) So, I mean, what we've heard so far is  
(8) that Mr. Steck believes that perhaps there may be two  
(9) ways to interpret the virgule and, you know, what  
(10) we're going to need to determine at the end of the  
(11) day, though, is, which -- what is it -- which one  
(12) does Mr. Steck think the Board should adopt, and also  
(13) while, you know, I think it's accurate to say the use  
(14) of the virgule, or the slash, whatever you may to  
(15) call it, you know, may create a distinction between  
(16) warehouse and distribution center, you know, how you  
(17) wish us to define distribution center in the absence  
(18) of a definition in the ordinance. You know, that's  
(19) something we need to hear as well.

(20) My recommendation would be that that's  
(21) really what the Board is interested in, in being of  
(22) assistance in determining what these words mean.

(23) MR. GASIOROWSKI: Well, having said  
(24) that, it would be helpful certainly if in the  
(25) ordinance there was a definition of distribution

(1) center.

(2) MR. CUCCHIARO: Okay. But there's not,  
(3) so you have to tell us why you think -- what you  
(4) think the definition is and why you think that  
(5) definition is what the Board should adopt.

(6) BY MR. GASIOROWSKI:

(7) Q. Mr. Steck, following that question, we  
(8) are aware of the fact that in the ordinance the word  
(9) "distribution center" is utilized, and as a planner,  
(10) what is your understanding of the difference between  
(11) a distribution center, and a warehouse, and why as a  
(12) planner do you feel that the disjunctive rather than  
(13) the conjunctive application here should be utilized?

(14) A. Well, as I started out saying, in terms of the  
(15) language of the ordinance itself, if a distribution  
(16) center were the same as a warehouse, there would be  
(17) no reason to insert that word in the list of -- in  
(18) the table of permitted uses.

(19) So it is clear, in my opinion, just  
(20) from the plain wording of the ordinance that it's  
(21) something different from a warehouse.

(22) Um, secondly, part of the way to define  
(23) a distribution center being different from a  
(24) warehouse is that it is a use where, unlike a  
(25) warehouse -- again, the warehouse is the -- the

(1) primary activity is the storage of goods or materials  
(2) or supplies.

(3) A distribution center, its primary use  
(4) is the -- and I'm going to use the word, the  
(5) distribution of items that are trucked in, trucked  
(6) out, and oftentimes they are repackaged on different  
(7) pallets. They may be stored there for shorter  
(8) periods of time, but the whole purpose of the  
(9) facility is not to hold items for periods of time.  
(10) The primary purpose is to distribute the items to  
(11) either different retailers or different middle men.

(12) But the focus of the distribution  
(13) center really arises from the English language. Its  
(14) activity is to move goods around rather than to  
(15) statically keep them stored. And --

(16) MR. CUCCHIARO: Mr. Gasiorowski,  
(17) Mr. Steck, Mr. Gasiorowski had referenced also in  
(18) Mr. Boccanfuso's report reference to a fulfillment  
(19) center, and I think that that is also relevant for  
(20) the Board to consider tonight.

(21) I guess my question to you would be  
(22) having to do with the difference between a  
(23) fulfillment center, and a distribution center, and  
(24) would you agree or disagree that that difference is  
(25) that a distribution center largely deals with

(1) distribution of product to wholesalers or, as you  
(2) said, middle men and the fulfillment center is more  
(3) focused on individual endusers, you know, bringing it  
(4) to somebody's house or something like that?

(5) THE WITNESS: I don't think that  
(6) distinction is relevant. I would consider a  
(7) fulfillment center to be a type of distribution  
(8) center. It's clearly not the classic warehouse. It  
(9) has a land use impact that is akin to a distribution  
(10) center, in my opinion. Now, I will grant you that,  
(11) you know, the latest variety ala Amazon of -- would  
(12) be distribution to potentially the ultimate consumer,  
(13) but I'm not sure -- but that's not necessarily the  
(14) functional definition.

(15) The definitions in the Institute of  
(16) Traffic Engineers, they have several definitions. I  
(17) think it's 154, 156, 157. There's a common term  
(18) called the high-cube warehouse, which means at least  
(19) 200,000 square feet and more than 20 feet -- 24 feet  
(20) tall. The building that's proposed, by the way, is  
(21) 50 feet tall.

(22) So that while one could, in subdividing  
(23) categories, saying that a fulfillment center is  
(24) different than a high-cube warehouse, a fulfillment  
(25) center, in my opinion, is a type of distribution

(1) center, it is not a classic warehouse.

(2) Now, I know that in the course of the  
(3) application before the planning board the applicant's  
(4) attorney said, we're not going to do a fulfillment  
(5) center. That doesn't really answer the question  
(6) because that's only one type of distribution center.  
(7) And again, the -- the issue -- to kind of circle  
(8) back -- is that the use of the slash is recognized as  
(9) being ambiguous. So, essentially, before I get to my  
(10) opinion, we are asking the Board to examine the  
(11) meaning of that slash and to report back to the  
(12) planning board so that it can continue its review of  
(13) the application in light of that definition of the --  
(14) again, the record before the planning board, in my  
(15) opinion, is kind of all over the place in terms of  
(16) using different words.

(17) I can tell you -- and -- that the  
(18) applicant's traffic engineer before the planning  
(19) board in conversations with the State -- because  
(20) this -- that property is on a state highway -- has  
(21) used only the traffic definition of a warehouse. The  
(22) applicant has not considered -- not evaluated that  
(23) use as a distribution center or as a fulfillment  
(24) center.

(25) So that's the relevance of this that so



(1) far the applicant's traffic engineer says, I'm going  
(2) to predict the traffic based on warehousing; however,  
(3) the representative of the applicant said, well, I  
(4) don't want to limit it to warehousing. I want to  
(5) have a distribution center, and I want to mix and  
(6) match at will, depending upon who's interested in my  
(7) buildings.

(8) BY MR. GASIOROWSKI:

(9) Q. Let me ask you this question. Is it  
(10) your opinion as a planner is the language utilized  
(11) conjunctive or disjunctive?

(12) A. In my opinion, it's disjunctive, which means  
(13) that you can -- in this zone, the SED-20W zone, you  
(14) could have a warehouse use where the primary activity  
(15) is the storage -- it's the storage of goods and  
(16) materials or you can have a distribution center,  
(17) which would also include a fulfillment center, in my  
(18) opinion, where the primary activity is the  
(19) redistribution of goods and materials that come in  
(20) and leave.

(21) So it is a different type of operation  
(22) in its primary activities. In my opinion, the proper  
(23) reading of the ordinance is that you can have A or B  
(24) but not both.

(25) So if that's your opinion -- if you

(1) agree with this opinion -- and this goes back to the  
(2) planning board -- the applicant, in light of that,  
(3) has to decide what they are applying for. And this  
(4) also makes sense because while we're talking about  
(5) the SED-20/W zone as permitting  
(6) warehouse/distribution centers, the "LI", light  
(7) industrial zone, also permits that same category.

(8) So when you interpret this for the  
(9) subject property, which is in the SED-20/W zone, it's  
(10) also going to apply to the light industrial zone.

(11) Now, I don't think anyone here would  
(12) doubt the fact that the -- a classic light industrial  
(13) zone would allow warehousing. But again, the  
(14) ordinance was modified over time to allow this  
(15) undefined distribution center. And the -- looking at  
(16) the way the table is structured, looking at the land  
(17) use differences, in my opinion, the logical and  
(18) proper interpretation of that phrase is that you  
(19) could do all warehousing, you could do all  
(20) distribution, but you can't do both.

(21) Q. Now, this is the significance of this  
(22) hearing predicated on the fact that the applicant  
(23) said he wants to have the ability to do both on the  
(24) site?

(25) A. That's correct. That's the representation of

(1) the representative of the applicant.

(2) Q. And if your -- and if your  
(3) interpretation -- if your position is correct that  
(4) you could have all warehouse or have all distribution  
(5) center separately, then if the applicant wanted to  
(6) mix and match, they would have to get a use variance,  
(7) would they not?

(8) A. That's my opinion. If the applicant modifies  
(9) its application and say, okay, I'll only do  
(10) warehousing, then there's no question. The planning  
(11) board would continue. But if the applicant says, I  
(12) want the ability to mix and match, in my opinion,  
(13) that is not a permitted use in the zone, and that  
(14) application can only be heard by the board of  
(15) adjustment.

(16) Q. So what this gets down to at the end of  
(17) day, and we've gone through the testimony, the  
(18) ordinances, the letters and whatnot, this isn't a  
(19) question of whether or not the applicant can utilize  
(20) the property. We all acknowledge that he can, in  
(21) fact, utilize the property, correct?

(22) A. Yes.

(23) Q. But if the slash means that he has to  
(24) have one or the other, he can choose to do that, but  
(25) he can't mix and match and have different percentiles

(1) of different uses on the same site?

(2) A. That's my opinion. And it has, again, land  
(3) use relevance in that -- and let's go to the ends of  
(4) the spectrum -- if the applicant is -- if the  
(5) applicant is going to continue with warehousing, it's  
(6) properly being analyzed at least in terms of traffic.

(7) If the applicant is going to --

(8) MR. ALFIERI: I'm going to object  
(9) again. That has no relevance to how the analysis of  
(10) the planning board is being done.

(11) MR. CUCCHIARO: Mr. Chairman, I would  
(12) agree with that. I mean, I think, you know, what  
(13) Mr. Steck is saying is that his interpretation of the  
(14) ordinance is that warehouses are permitted,  
(15) distribution centers are permitted, but they are only  
(16) permitted as their own principal uses. You cannot  
(17) have both of them on the site.

(18) And that's how the Board should  
(19) interpret the ordinance as permitting only one but  
(20) not both. And to the extent that, you know, the  
(21) application before the planning board may involve  
(22) both, then it would, as he said, require a use  
(23) variance.

(24) So really, you know, the testimony with  
(25) regard to traffic with the need be -- from the DOT is

(1) not really relevant to what we're looking at. But  
(2) what Mr. Steck's testimony was as to the use of being  
(3) permitted but not being permitted at the same time on  
(4) the property, that's the crux of what we're looking  
(5) at here tonight.

(6) BY MR. GASIOROWSKI:

(7) Q. Mr. Steck, let's look at the thought  
(8) process and the logic -- the logic of the wording of  
(9) the statute. Would you agree with me that the  
(10) interpretation of this ordinance in its disjunctive  
(11) is really the only logical explanation as to why that  
(12) language was utilized in the way that it was?

(13) A. Um, in my opinion, looking at the structure of  
(14) the ordinance and the fact that it is also permitted  
(15) in the light industrial zone, that's the only logical  
(16) way to read the ordinance.

(17) Q. Would you agree with me that the reason  
(18) why you would not interpret it in the conjunctive is  
(19) that it would pose a multitude of problems with  
(20) regards to determining trip generation, traffic,  
(21) lighting, noise and the like?

(22) A. It would be substantially different from what  
(23) is being presented to the planning board. It would  
(24) be difficult to determine, um, the nature of the use,  
(25) especially if it allowed a mixture, that would

(1) suggest that the applicant would change the mix over  
(2) time. You approve a composite use, and let's say it  
(3) starts out to be 10 percent warehousing, and then it  
(4) switches over time to 90 percent just, you know --  
(5) well, let's say it starts out 10 percent  
(6) distribution, and you're approving that composite  
(7) use, and then over time it changes to 90 percent  
(8) distribution, that's a dramatically different impact.

(9) So in terms of reviewing the  
(10) application, the way it's used in the ordinance, and  
(11) especially because the ordinance recognizes that a  
(12) distribution center is something different than a  
(13) warehouse, that -- my opinion it can only be read as  
(14) in the disjunctive.

(15) Q. Now, isn't that really a matter of  
(16) common sense?

(17) A. Well, I think it is, but I -- again, I think  
(18) you look at it in context of how it's used in the  
(19) zoning ordinance, and I think with an eye toward the  
(20) land use impacts. There's a legitimate reason to  
(21) read it in the disjunctive.

(22) MR. GASIOROWSKI: I have no further  
(23) questions.

(24) MR. CUCCHIARO: Are there any other  
(25) witnesses that you are going to poll tonight,

(1) Mr. Gasiorowski?

(2) MR. GASIOROWSKI: Yes.

(3) MR. CUCCHIARO: Well, then, why don't  
(4) you call your next witness and then I'm going to let  
(5) the public question your experts.

(6) MR. GASIOROWSKI: I'd love to. Not to  
(7) overstep my bounds, but is there any  
(8) cross-examination by the --

(9) THE REPORTER: Can we take a break?

(10) MR. CUCCHIARO: Yeah. That's fine.

(11) Mr. Gasiorowski, I'm going to hold the  
(12) Board from cross-examining until after we've heard  
(13) from Mr. Alfieri. We're going to allow the public to  
(14) question, and we're going to take a five-minute break  
(15) at the request of the court reporter.

(16) (Break was taken at 8:43 p.m.)

(17) (Hearing recommenced at 8:49 p.m.)

(18) MR. GASIOROWSKI: My examination of  
(19) Mr. Steck has concluded, and I would call as my next  
(20) witness my traffic consultant, Bahman Izadmehr.

(21) MR. CUCCHIARO: Is he on camera?

(22) MR. GASIOROWSKI: No. I know he's on.  
(23) I spoke to him.

(24) MR. CUCCHIARO: Well, he's required,  
(25) under the new regulations, anyone who's giving sworn

(1) testimony is required to be on camera. That's not  
(2) me, that's the new emergency regulations that have  
(3) been adopted by the DCA.

(4) CHAIRMAN LEVITON: Mr. Izadmehr, do you  
(5) have the capacity to show yourself?

(6) MR. IZADMEHR: Yes.

(7) MR. CUCCHIARO: Okay. Good.

(8) Okay.

(9) (Witness sworn.)

(10) MR. IZADMEHR: Yes, I do.

(11) MR. CUCCHIARO: Okay. Please state and  
(12) spell your name for us.

(13) MR. IZADMEHR: Sure. Bahman Izadmehr.  
(14) The first name is B-A-H-M-A-N, and the last name is  
(15) I-Z-A-D-M-E-H-R. And I'm with Development  
(16) Engineering at 155 Polifly Road, Hackensack, New  
(17) Jersey.

(18) MR. CUCCHIARO: Okay. Mr. Gasiorowski,  
(19) can you please qualify your witness?

(20) MR. GASIOROWSKI: Sure.

(21) DIRECT EXAMINATION

(22) BY MR. GASIOROWSKI:

(23) Q. Would you mind if I call you Bahman? I  
(24) don't want to, you know, not pronounce your name  
(25) correctly.



(1) A. Sure. That's fine.

(2) Q. Thank you for that courtesy.

(3) If you would for the benefit of the  
(4) Board, just give them your background as well as your  
(5) professional credentials.

(6) A. Sure. I have three degrees in civil  
(7) engineering: A Bachelor of Science, a Master of  
(8) Science, as well as a Doctorate degree.

(9) Q. Where did you receive those degrees  
(10) from?

(11) A. From University of Texas at Austin. I have  
(12) been a licensed professional engineer in the State of  
(13) New Jersey since 1990. And my last one is current.  
(14) I have appeared before almost every --

(15) THE REPORTER: Sir, I need you to slow  
(16) down. I can't understand what you're saying.

(17) BY MR. GASIOROWSKI:

(18) Q. Okay. Sure. Let's pick up from you  
(19) having graduated the University of Texas and become a  
(20) licensed professional engineer in the State of New  
(21) Jersey, and let's go from there, okay?

(22) A. Sure. Since 1990, I have appeared before  
(23) planning and zoning board, as well as Superior Court  
(24) of the State of New Jersey on many applications. I'm  
(25) not sure if I have been before this particular board

(1) in the past. And also I have been a graduate  
(2) school professor at New Jersey of Technology as well  
(3) as Rutgers, the school of civil engineer, and I have  
(4) practiced the professional civil engineering  
(5) transportation traffic, structural engineering for  
(6) the last 35 years.

(7) CHAIRMAN LEVITON: We accept Mr.  
(8) Izadmehr's credentials.

(9) THE WITNESS: Thank you.

(10) BY MR. GASIOROWSKI:

(11) Q. Mr. Izadmehr, you were retained by me  
(12) to present testimony with regard to this matter, were  
(13) you not?

(14) A. Yes.

(15) Q. And prior to our retaining you, which  
(16) was just recently, you were, in fact, also retained  
(17) by another party in this matter?

(18) A. That's correct, on the planning board  
(19) application.

(20) Q. Now, as a result of that did you have  
(21) occasion to be present at most, if not all, of the  
(22) planning board hearings?

(23) A. Yes, I have.

(24) Q. Did you listen to Mr. Steck's  
(25) recitation, if you will, of his recollection of what

(1) was stated before the planning board?

(2) A. Um, yes.

(3) Q. Can you comment as to whether or not  
(4) you were also present at those meetings and whether  
(5) or not his comments reflect your recollection of what  
(6) transpired?

(7) A. Yes. I was in that meeting, and that's  
(8) basically my recollections of what he presented  
(9) there.

(10) Q. Okay. And you were there when the  
(11) developer of the project presented testimony?

(12) A. Yes, I was.

(13) Q. Okay. Now, would you agree with me  
(14) that sort of the gist of Mr. Steck's testimony had to  
(15) with whether there were distinctions between  
(16) warehouses and distribution centers?

(17) A. That is correct.

(18) MR. CUCCHIARO: Mr. Gasiorowski,  
(19) Mr. Steck has testified tonight. We don't need a  
(20) separate witness to help us understand what Mr. Steck  
(21) just said. I mean, if this witness has something to  
(22) say about what he thinks the ordinance means, we'll  
(23) listen to it, but anything other than that is not  
(24) relevant to what the Board is considering tonight.

(25) MR. GASIOROWSKI: Well, I'm going to

(1) proceed to another question, and I'll get right into  
(2) that.

(3) BY MR. GASIOROWSKI:

(4) Q. Now, Mr. Bahman, did you review the  
(5) ordinance which is before the Board this evening for  
(6) interpretation?

(7) A. Yes, I did.

(8) Q. And what is the importance in your  
(9) mind --

(10) (Brief interruption.)

(11) MR. CUCCHIARO: Marco, that was Marco.

(12) MR. GASIOROWSKI: I'm sorry. I  
(13) didn't --

(14) MR. CUCCHIARO: It's okay. Continue  
(15) on. Ask your question.

(16) MS. MOENCH: I think he signed off.

(17) BY MR. GASIOROWSKI:

(18) Q. Okay. Did you have occasion to review  
(19) the ordinance in question?

(20) A. Yes, I did.

(21) Q. And as a traffic consultant, what  
(22) significance, if any, did you give to the matter in  
(23) which it was drafted?

(24) A. Well, I basically confirmed what I -- what we  
(25) have heard tonight from Mr. Steck, and the ordinance

(1) basically uses the warehousing/distribution centers.

(2) But --

(3) MR. ALFIERI: I'm going to object to  
(4) the testimony. He's a traffic expert, and the  
(5) planner has already said that his position, after a  
(6) half hour of testimony, was if -- you could either be  
(7) a warehouse or a distribution center; you can't be  
(8) both.

(9) So the traffic testimony is -- his  
(10) opinion from a traffic expert is completely  
(11) irrelevant to that point.

(12) MR. GASIOROWSKI: But it is relevant as  
(13) to the question of the applicant saying he wanted the  
(14) ability to mix and match, in other words, to have  
(15) part warehouse, part distribution center --

(16) MR. CUCCHIARO: Well, I don't -- but,  
(17) Mr. Gasiorowski, I'm not understanding how a traffic  
(18) expert helps the Board to interpret an ordinance, and  
(19) if all he has to say is that he agrees with  
(20) Mr. Steck, let him say that because it seems to be  
(21) that's what his testimony is. But there's no  
(22) traffic, you know, issue for the Board. It's what  
(23) does -- what does this -- what do these words mean?

(24) Mr. Steck has testified to what he  
(25) believes the words mean. So, I mean, does this

(1) expert have something to add as to why warehouses are  
(2) permitted, distribution centers are permitted, but  
(3) they are not both permitted at the same time?

(4) MR. GASIOROWSKI: Well, the relevance  
(5) of that is, you're looking to the intent of what the  
(6) ordinance says, and what was in the minds of this  
(7) governing body, and that's ten years ago as to why  
(8) they worded it as they did. And if, in fact, you  
(9) follow the interpretation of the applicant saying he  
(10) can have both distribution centers as well as  
(11) warehouses, the issue of the traffic being generated  
(12) by perhaps a 90 percent --

(13) MR. CUCCHIARO: Yeah. But that's  
(14) not -- that doesn't go towards the interpretation,  
(15) Mr. Gasiorowski. So if this witness has something to  
(16) say as to what he thinks warehouse means, and what he  
(17) thinks distribution center means, and what he thinks  
(18) the significance of the slash means, we will  
(19) certainly hear it, but if he doesn't have anything to  
(20) say that addresses that, my recommendation is that  
(21) his testimony is irrelevant.

(22) BY MR. GASIOROWSKI:

(23) Q. Do you have an understanding of what a  
(24) distribution center means in the existing ordinances  
(25) of the Township of Marlboro?

(1) MR. CUCCHIARO: Manalapan.

(2) MR. GASIOROWSKI: I'm sorry.

(3) Manalapan?

(4) THE WITNESS: Yes. I mean, the title  
(5) of the ordinance it says, basically  
(6) warehousing/distribution center, but there's really  
(7) no formal definition of the distribution center. So  
(8) even though I agree with what we have heard from  
(9) Mr. Steck, I will go further. I have my reservation  
(10) that we can really have not the immediate use of  
(11) either distribution or warehousing. I think the  
(12) ordinance was meant basically for warehouse rather  
(13) than a distribution center.

(14) MR. CUCCHIARO: I'm sorry. Let me just  
(15) stop you there. Mr. Gasiorowski, I want to be very  
(16) clear as to what I think I just heard. Is this  
(17) witness saying that distribution centers are not  
(18) permitted by themselves at all?

(19) MR. GASIOROWSKI: I don't think he's  
(20) saying that.

(21) THE WITNESS: No. I did not say that.  
(22) What I'm saying is that there is no formal definition  
(23) of a distribution center in your ordinance.

(24) MR. CUCCHIARO: Okay.

(25) THE WITNESS: But in the title it says

(1) basically distribution center --  
(2) warehousing/distribution center. So from the -- from  
(3) reading the title of the ordinance, either  
(4) distribution centers or warehousing is permitted.  
(5) But it is -- but there is no formal definition of  
(6) distribution center in your ordinance.

(7) MR. CUCCHIARO: All right.

(8) Mr. Gasiorowski, does he have anything to add as to  
(9) what a distribution center is or anything to say that  
(10) Mr. Steck didn't?

(11) MR. GASIOROWSKI: Well, I would once  
(12) again say that I think that if you were going to be  
(13) talking about the significance of the conjunctive  
(14) interpretation of the ordinance, the traffic being  
(15) generated by a distribution center in a mixed use is  
(16) relevant.

(17) You may not think so, but that is my --

(18) MR. CUCCHIARO: It's not whether I  
(19) think so, Mr. Gasiorowski. It's that isn't a site  
(20) plan issue. It's not an interpretation issue. What  
(21) we are here to determine is what does warehouse mean,  
(22) what does distribution center mean, what does the  
(23) slash mean, and what is a permitted use, not levels  
(24) of traffic and how you assess levels of traffic.  
(25) Those are site plan issues.



(1) So if your witness has something to say  
(2) that assists the Board in determining what these  
(3) words mean, and he's already testified that he agrees  
(4) with Mr. Steck, we will hear it, but I'm not hearing  
(5) anything other than he agrees with Mr. Steck, and I  
(6) certainly, you know, a traffic engineer is very  
(7) relevant to what the planning board is doing, but a  
(8) traffic engineer is not -- doesn't bring any  
(9) expertise to the table on what words mean.

(10) MR. GASIOROWSKI: Levels of traffic is  
(11) relevant from the issue of what the governing body  
(12) meant when they put down "warehousing/distribution  
(13) center."

(14) If they meant that you can have both on  
(15) one site, I'm saying that is not logical, and it's  
(16) not logical because of the great demands of the  
(17) mixing and matching of traffic, which leads to why  
(18) they made them separate and distinct uses.

(19) That's the relevance of traffic.

(20) MR. CUCCHIARO: Can I ask a question?

(21) MR. GASIOROWSKI: Sure.

(22) MR. CUCCHIARO: Is it -- does a  
(23) distribution center have greater traffic associated  
(24) with it than a warehouse?

(25) THE WITNESS: Yes. I was going to lead

(1) to that.

(2) MR. CUCCHIARO: Well, let me just ask  
(3) you: If you had 100 percent distribution center,  
(4) would that be more traffic than a distribution center  
(5) with some combination of warehouse?

(6) THE WITNESS: Yes. Five times more.

(7) MR. CUCCHIARO: So the testimony is  
(8) that you could have just a distribution center and  
(9) that would be five times more than a combination, so  
(10) I'm not understanding how that helps us, you know, in  
(11) understanding what the permitted uses are.

(12) THE WITNESS: I would not say a  
(13) combination.

(14) Let me say this: A traffic report or  
(15) traffic study, it's one of the checklist items in the  
(16) planning board.

(17) So we really need to know what the  
(18) specific proposed use of this project is.

(19) MR. CUCCHIARO: No. No. No. We need  
(20) to know what the permitted uses are not what the  
(21) specific use is. So if you have something to tell us  
(22) as to what you think the permitted uses are, and I  
(23) think you've already testified that the permitted  
(24) uses are either a warehouse or a distribution center  
(25) but not both.

(1) THE WITNESS: Well, I would not  
(2) really -- I don't feel comfortable to say that  
(3) because if that was the case, then the ordinance  
(4) would have said, warehousing and distribution.

(5) Why do they use --

(6) MR. CUCCHIARO: No. That's what I just  
(7) said, sir. Your testimony is you can either have a  
(8) warehouse or you can have a distribution center, but  
(9) you cannot have both.

(10) MR. GASIOROWSKI: That's not what he's  
(11) saying. I mean, and that's not Steck said. Steck  
(12) did not say that. Steck said that you've got to read  
(13) this ordinance in its disjunctive. You can have all  
(14) of one or all of the other.

(15) MR. CUCCHIARO: That's what I just  
(16) said, Mr. Gasiorowski. You can have 100 percent  
(17) warehouse, you can have 100 percent distribution  
(18) center, but you cannot have a combination of the two.

(19) MR. GASIOROWSKI: That's correct.

(20) THE WITNESS: I agree.

(21) MR. CUCCHIARO: All right. So that's  
(22) your testimony?

(23) THE WITNESS: Yes. But then we need to  
(24) determine what the permitted use for this particular  
(25) site is so we can do our approval --

(1) MR. CUCCHIARO: Well, you just -- you  
(2) just stated what the -- well, you just stated, sir,  
(3) what the permitted use is. It's either 100 percent  
(4) warehouse or 100 percent distribution center. Those  
(5) are the permitted uses.

(6) THE WITNESS: That's correct. But then  
(7) once we answer that question, then we can do our  
(8) traffic impact study --

(9) MR. CUCCHIARO: No. We're not doing  
(10) traffic impact here. That's a site plan issue before  
(11) the planning board. So that's something that when  
(12) you would testify before the planning board you can  
(13) bring up.

(14) The traffic that you have stated that  
(15) the permitted uses are 100 percent warehouse or 100  
(16) percent distribution center.

(17) THE WITNESS: That's correct.

(18) MR. CUCCHIARO: The rest of that it has  
(19) to do with whether, you know, you're in agreement  
(20) with the testimony of the planning board regarding  
(21) the impact, and that is a site plan issue. That's  
(22) not an interpretation issue.

(23) THE WITNESS: That's correct. So that  
(24) is what I'm saying. That -- it brings us back to  
(25) determining the resolution of the zone in terms of

(1) the permitted use. It has ramification of the site  
(2) plan elements, including traffic.

(3) MR. CUCCHIARO: We agree with that.  
(4) But that ramification gets played out at the planning  
(5) board not here.

(6) MR. GASIOROWSKI: Mr. Cucchiaro, may I  
(7) address that question, please?

(8) MR. CUCCHIARO: Go ahead.

(9) MR. GASIOROWSKI: And I had to wrestle  
(10) with this as well, but we're here tonight, as I  
(11) understand it, for an interpretation as to whether or  
(12) not if the applicant wished to mix his uses under the  
(13) zoning ordinance, he would be permitted to do so,  
(14) correct?

(15) MR. CUCCHIARO: Well, we're here to  
(16) determine what the ordinance means.

(17) MR. GASIOROWSKI: Well, the ordinance  
(18) means one of two things; number one, it means that  
(19) the applicant can choose --

(20) MR. CUCCHIARO: No. No. You're saying  
(21) the ordinance only means one thing. That the  
(22) ordinance means you can have 100 percent warehouse or  
(23) you can have 100 percent distribution center, but if  
(24) you want to do both, you need a use variance. That's  
(25) your position, right?

(1) MR. GASIOROWSKI: The testimony before  
(2) the Board of the applicant was he wanted who have the  
(3) ability to --

(4) MR. CUCCHIARO: Mr. Gasiorowski, we're  
(5) here to determine what the ordinance means. Is it  
(6) incorrect -- your two witnesses just testified that  
(7) the ordinance means that you can either have 100  
(8) percent warehouse or you can have 100 percent  
(9) distribution, but if you seek to combine them, you  
(10) are not a permitted use, and you need a use variance.

(11) MR. GASIOROWSKI: But I have to have  
(12) the ability -- I have to have the ability to go -- to  
(13) explain why and give testimony why it's idealogical  
(14) to interpret the ordinance by saying you could have a  
(15) mixture of two.

(16) MR. CUCCHIARO: But Mr. Steck already  
(17) provided that testimony. You're not providing any  
(18) testimony. You're providing legal arguments, which  
(19) you can do, but Mr. Steck provided that testimony.  
(20) Your traffic engineer has agreed with it and has  
(21) raised issues that have to do with traffic impact  
(22) that are properly before the planning board.

(23) MR. GASIOROWSKI: Traffic issues will  
(24) be raised before the planning board. I agree with  
(25) that. But the issue before this Board is can this

(1) Board come up with an interpretation that says you  
(2) can have a mixture of both. And the issue of traffic  
(3) is relevant because it's illogical to say you're  
(4) going to have a mixture throughout the history of  
(5) this property of mixing warehousing with distribution  
(6) centers and/or the like.

(7) So at the end of the day, if we walk  
(8) out of here, this Board can say, look, you can have a  
(9) mixture of both, you can have all of one or all of  
(10) two, and then it goes to the planning board to make a  
(11) determination as to whether or not it's a site plan  
(12) issue. But having said that, this issue of traffic  
(13) goes to what was the governing body thinking when  
(14) they were passing this ordinance?

(15) Were they thinking that you could have  
(16) one of warehouse and one of distribution or were they  
(17) thinking that you can combine them? The traffic is a  
(18) relevant part of that equation no matter how you  
(19) slice it.

(20) MR. CUCCHIARO: Well, we haven't heard  
(21) that from your witness. What is --

(22) MR. GASIOROWSKI: Well, you didn't give  
(23) him the opportunity to tell you.

(24) MR. CUCCHIARO: -- for your witness --  
(25) and it has nothing to do necessarily with the

(1) planning application. It has to do with any use.

(2) Are you saying, then, that there's  
(3) going to be greater traffic associated with a mixed  
(4) use and the governing body wouldn't have wanted that?

(5) THE WITNESS: That's correct.

(6) MR. GASIOROWSKI: What I'm saying is  
(7) the government body would not have intended that  
(8) because it would have made it impossible --

(9) MR. CUCCHIARO: Mr. Gasiorowski, if you  
(10) want to make the legal argument, that's fine. And I  
(11) say let's move on from your witness.

(12) MR. GASIOROWSKI: I don't understand.  
(13) Let me get one thing straight. You're saying to me  
(14) that the only reason why the governing body would  
(15) have permitted -- or not have permitted a mixed use,  
(16) that's what you're saying, correct?

(17) MR. CUCCHIARO: You're saying that I've  
(18) now come to a conclusion. What I'm trying to  
(19) understand is what your conclusions are,  
(20) Mr. Gasiorowski. And I've asked your witness and  
(21) he's agreed that, number one, he agrees with  
(22) Mr. Steck that you can have 100 percent of warehouse  
(23) or 100 percent of distribution center, but you cannot  
(24) have a mix. And he next stated that in support of  
(25) that conclusion is because the traffic generation



(1) would be increased with a mixed use project.

(2) MR. GASIOROWSKI: But he also as a part  
(3) of that, when you're going to the DOT or you're going  
(4) before the Board, what standard do you utilize for  
(5) the trip generation?

(6) MR. CUCCHIARO: Well, but they are not  
(7) bound by our zoning ordinance. So why don't you  
(8) stick with what the words mean in our zoning  
(9) ordinance?

(10) MR. GASIOROWSKI: Now, listen to the  
(11) give and take between myself and the board engineer.

(12) What is your interpretation --

(13) MR. CUCCHIARO: You gave me a  
(14) compliment. I have no engineering degree.

(15) MR. GASIOROWSKI: Well, what does it  
(16) have to do with the questions I'm going to ask him?

(17) MR. CUCCHIARO: You just called me an  
(18) engineer.

(19) MR. GASIOROWSKI: If I did that, I  
(20) apologize.

(21) MR. CUCCHIARO: I'm saying you gave me  
(22) a compliment.

(23) MR. GASIOROWSKI: Okay. Let's go  
(24) beyond that.

(25) BY MR. GASIOROWSKI:

(1) Q. Have you formed an opinion as to what  
(2) the logical interpretation of what the zoning  
(3) ordinance in question means given the language they  
(4) utilized?

(5) A. Um, yes.

(6) Q. What is your --

(7) A. My understanding of the ordinance is that  
(8) distribution is permitted, distribution is permitted  
(9) by itself or warehouse but not combination of both.  
(10) And then that has to be clearly determined so that we  
(11) can do a traffic impact study and also do a proper  
(12) New Jersey -- do the access permit application as  
(13) well as do a proper parking demand study and so many  
(14) other things that comes with the site plan review.

(15) Q. Would you agree -- would you agree that  
(16) the trip generation of a distribution center is far  
(17) greater than that of a warehouse?

(18) A. That's correct. It's about 4.7 times on a  
(19) daily basis.

(20) MR. ALFIERI: Mr. Chair, I'm going to  
(21) have to object again. I mean, we've spent now 9:11  
(22) and we've heard nothing tonight except that a slash  
(23) means one -- you could do one or the other. All of  
(24) the other testimony has been completely irrelevant.

(25) CHAIRMAN LEVITON: Yes. Mr.

(1) Gasiorowski, I'm going to sustain the objection. The  
(2) intent of the ordinance is what's at stake here, and  
(3) this Board is going to be determining is what's being  
(4) proposed consistent with the ordinance exclusively.

(5) Please direct your witness to answer  
(6) questions related to that.

(7) MR. GASIOROWSKI: I'm not sure that --  
(8) I'm not sure that what is being proposed before the  
(9) planning board is really the focus of this  
(10) interpretation. You're here, as Mr. Cucchiaro has  
(11) pointed out, solely to determine what does the  
(12) ordinance mean, so we --

(13) CHAIRMAN LEVITON: That's correct.  
(14) That is correct. Does Mr. Izadmehr have anything  
(15) further related to the intent of the ordinance?

(16) BY MR. GASIOROWSKI:

(17) Q. Mr. Izadmehr, why have you formed your  
(18) opinion as to -- what your opinion is as to the  
(19) intent of the ordinance? What do you base that upon?

(20) A. I base that upon my reading of the ordinance  
(21) and similar readings of other ordinances across the  
(22) country, as well as my review and involvement with  
(23) transportation engineers. And the illusion of  
(24) warehousing.

(25) (Brief interruption.)

(1) CHAIRMAN LEVITON: I don't see him  
(2) anymore. Mr. Gasiorowski, if you'll ask your witness  
(3) to summate, please.

(4) BY MR. GASIOROWSKI:

(5) Q. Yes. Pick up from where you left off  
(6) and just give us your concluding remarks?

(7) A. Yes. I was saying that basically this type of  
(8) category of warehouse and distribution center has  
(9) evolved throughout the years.

(10) For example, in the last edition of the  
(11) ITE generation handbook, there were only three  
(12) categories for warehouses: Mini warehouses,  
(13) warehouses and distribution center. But in the  
(14) newest edition of ITE, they have added three or four  
(15) more categories.

(16) So that's why it's really very critical  
(17) in terms of traffic, parking, noise and all the other  
(18) impacts to have a solid definition of what is  
(19) permitted in this zone and what is not permitted so  
(20) that we can do a true traffic impact study, parking,  
(21) as well as an access permit application for this  
(22) particular site for New Jersey to be submitted to the  
(23) New Jersey Department of Transportation.

(24) CHAIRMAN LEVITON: Thank you, sir.

(25) Mr. Gasiorowski, do you have anything

(1) else to put on your affirmative case?

(2) MR. GASIOROWSKI: I do not.

(3) CHAIRMAN LEVITON: Would you like to  
(4) sum it up then?

(5) MR. GASIOROWSKI: I think before I sum  
(6) up, is there going to be cross-examination or --

(7) MR. CUCCHIARO: Mr. Chair, I would  
(8) suggest Mr. Gasiorowski sum up after Mr. Alfieri puts  
(9) his case on.

(10) CHAIRMAN LEVITON: All right. Then let  
(11) me go out to the public and invite the public to  
(12) cross-examine or ask questions of either Mr. Izadmehr  
(13) or Mr. Steck. If you'd like to do that, please press  
(14) 9.

(15) Is that correct, Janice, they press 9?  
(16) How do we queue them up?

(17) MS. MOENCH: What if they just raise  
(18) their hand?

(19) CHAIRMAN LEVITON: Okay. Just raise  
(20) your hand if you want to speak.

(21) Okay. Ms. Volped, -- you need to  
(22) unmute yourself, ma'am.

(23) MS. VOLPED: Okay. How about now?

(24) CHAIRMAN LEVITON: Yeah. Just state  
(25) your name and address, please.

(1) MS. VOLPED: Eileen Volped, at 34  
(2) Crawford Road.

(3) So in -- someone -- when I go to  
(4) this -- and I believe it was the first witness, when  
(5) he spoke about the zoning issues, one of the things  
(6) that I heard, and I was wondering if I can get an  
(7) interpretation, was light industrial.

(8) When it was -- when they were  
(9) discussing warehouse, et cetera, there was a --  
(10) pardon me?

(11) CHAIRMAN LEVITON: Yes. I'm  
(12) understanding your question.

(13) MS. VOLPED: So what would light  
(14) warehouse mean? Could it mean hundreds and hundreds  
(15) and hundreds of tractor trailers --

(16) MR. CUCCHIARO: Well, Mr. Chairman,  
(17) light warehouse isn't the term.

(18) MS. VOLPED: Was it light industrial  
(19) then?

(20) MR. CUCCHIARO: Well, we're not here to  
(21) talk about light industrial either. Whether it's  
(22) light industrial for any zone, we're here to  
(23) determine what warehouse means and what distribution  
(24) center means. Those are what we're seeking to  
(25) define.

(1) MS. VOLPED: I'm sorry. I thought when  
(2) one of the witnesses was speaking the delineation of  
(3) the word "warehouse" in whatever zoning board was  
(4) said light industrial --

(5) MR. CUCCHIARO: Well, he said that our  
(6) interpretation would apply no matter what zone it was  
(7) in. So if there is a warehouse or distribution  
(8) center in the light industrial, what we do here  
(9) tonight would apply there as well.

(10) MS. VOLPED: Maybe that's slightly over  
(11) my head, then.

(12) MR. CUCCHIARO: Well, and Ms. -- to  
(13) boil it down, what he said was, whatever we define it  
(14) as, it's not defined that way just for the site  
(15) that's the subject of the planning board application.  
(16) It would be defined that way for every lot in the  
(17) entire town.

(18) MS. VOLPED: I see. Can I ask, also,  
(19) when was the last time the law was updated?

(20) MR. CUCCHIARO: Meaning the ordinance?

(21) MS. VOLPED: The ordinance.

(22) MR. CUCCHIARO: I don't know.

(23) MS. VOLPED: Okay. Because it would  
(24) seem to me if it was a long time ago, then you can  
(25) assume that warehouse means one thing, and if it was

(1) fairly recently, then you can assume it might mean  
(2) something else.

(3) MR. CUCCHIARO: Well, this is for  
(4) questions. So if you have questions of the  
(5) witnesses, you will have a chance to testify at the  
(6) end. But if you have a question as to their  
(7) testimony, like you had at the beginning, you can ask  
(8) that now.

(9) MS. VOLPED: I just -- I'll hold off  
(10) until later.

(11) CHAIRMAN LEVITON: Is there anyone else  
(12) from the public who wishes to be heard?

(13) Okay. Seeing none, I'm going to close  
(14) the public and invite Mr. Alfieri to speak on behalf  
(15) of the client --

(16) MR. ALFIERI: Well, I'd like to  
(17) cross-examine Mr. Steck if I can, please.

(18) CHAIRMAN LEVITON: Sure.

(19) MR. ALFIERI: Mr. Steck, are you on?

(20) MR. STECK: Yes.

(21) MR. CUCCHIARO: Just -- I can't see  
(22) you. You're on the screen, also?

(23) MR. STECK: I thought I was. Let me --

(24) MR. CUCCHIARO: Oh, no. You're not  
(25) yet. I'll give you a second. Okay. There you go.



(1) Mr. Alfieri, go ahead.

(2) CROSS-EXAMINATION

(3) BY MR. ALFIERI:

(4) Q. Mr. Steck, you indicated that during  
(5) the course of the application the testimony was  
(6) muddled and all over the place as it relates to the  
(7) proposed use, and -- but you did testify that the  
(8) application, the written application, had a specific  
(9) designation of what use was proposed.

(10) Do you recall what that was?

(11) A. Well, there was -- there are different terms  
(12) on different documents because I understand --

(13) Q. No. I'm talking about the written  
(14) application itself first.

(15) A. Well, I think that used the word -- well, if I  
(16) recall correctly, I think it used the word "warehouse  
(17) distribution" without a slash.

(18) Q. Right. So the application said two  
(19) warehouse distribution buildings? .

(20) A. The application form -- that part of the  
(21) application said that, yes.

(22) Q. Okay. And your testimony is pretty  
(23) clear that if this were a -- purely a distribution  
(24) center, it would be a permitted use; is that correct?

(25) A. Yes.

(1) Q. All right. And your whole -- all the  
(2) testimony you offered was essentially that the slash  
(3) means you could have one or the other but not both?

(4) A. That's correct.

(5) Q. Now, have you looked at the ordinance  
(6) to see if there were any other areas or definitions  
(7) where a slash was used?

(8) A. Um, at the time -- yes, I did.

(9) Q. And can you give me an example of one?

(10) A. Well, on the title to the table, it has the  
(11) title, "industrial/transportation/communication."  
(12) Now, that would mean you don't have to have -- you  
(13) can't have all of them at one time. That's a --  
(14) that, in my opinion, reinforces my observation that  
(15) you can have one or the other but not both.

(16) Q. So in the SED-20/W zone, they use that  
(17) listed as a permitted use as fitness/health clubs.

(18) Does that mean that you could either  
(19) have a fitness center or a health club but not both?

(20) A. I didn't -- I didn't look at that. They may  
(21) be all defined terms in the ordinance, but in the  
(22) context of -- under the heading of industrial  
(23) transportation and communication issues -- uses, in  
(24) my opinion, the slash means one or the other and not  
(25) both.

(1) Q. But the health -- the fitness/health  
(2) clubs, if you take your -- if you take your reasoning  
(3) to an absurd conclusion, that would mean you could  
(4) either have a fitness center -- I don't know what it  
(5) means. It says, fitness or a health club, but you  
(6) can't have both?

(7) A. Well, I think you have to go to the second  
(8) level, and to say, if they are the same types of  
(9) uses, then the slash is kind of immaterial.

(10) In this case, we have uses that  
(11) dramatically differ in my opinion, and I think that  
(12) influences the interpretation.

(13) Q. So it's a question of degree, then, as  
(14) to whether --

(15) A. It's a question of --

(16) Q. Let me finish the question.

(17) It's a question of degree as to what  
(18) the slash means?

(19) A. It's a question of context.

(20) Q. And the context would be that if the  
(21) uses are so dissimilar, then it's one or the other,  
(22) but if they're similar, you can have either or?

(23) A. If a zone permitted a single family/one-family  
(24) house, in my opinion, that's essentially saying the  
(25) same thing. In this case, there are dramatically

(1) different uses. And in the context, in my opinion,  
(2) this is disjunctive.

(3) Q. The -- I asked you this at the planning  
(4) board, but I guess I'm going to ask you again, what  
(5) is a distribution center, then, in your opinion --  
(6) can you give me a definition?

(7) A. I would go to the definition -- well, my  
(8) definition, for the purposes of this interpretation,  
(9) is it's a use where the primary activity is not the  
(10) storage, the static storage, of materials or  
(11) products. The primary activity is the distribution,  
(12) the unpacking, the repacking, delivery from one truck  
(13) to another truck. That's the primary nature of the  
(14) use. And I would rely on -- for the lack -- because  
(15) the ordinance doesn't define it, I would rely on the  
(16) definitions in the ITE manual that talk about a  
(17) high-cube center.

(18) Q. Okay. So if we look at the ITE manual,  
(19) you used Land Use Code 155 at the planning board  
(20) level, did you not?

(21) A. Yes.

(22) Q. And can you describe what that means?  
(23) Can you summarize what the 155 is?

(24) A. Let me find it.

(25) Q. Sure.

(1) A. I may have to -- I may have to look at it on  
(2) minuter because I'm not sure I have a hardcopy here.  
(3) Oh, 155. Okay. That's a high-cube fulfillment  
(4) center warehouse.

(5) Q. All right. And can you look at that  
(6) definition a little more carefully, and I'm going to  
(7) refer you to the section that says: A high-cube  
(8) fulfillment center warehouse includes warehouses  
(9) characterized by a significant storage function and  
(10) direct distribution of E-commerce products to  
(11) endusers.

(12) It's towards the middle of the  
(13) definition.

(14) A. Would you -- I have a copy in front of me, and  
(15) I'm not following your words at the moment.

(16) Q. There's a -- under -- is this under the  
(17) heading, "description"?

(18) A. Yes.

(19) Q. Six lines down..

(20) A. Okay. That starts out --

(21) Q. High-cube fulfillment center.

(22) A. Yes. High-cube fulfillment center warehouses  
(23) include warehouses characterized by a significant  
(24) storage function and direct distribution of  
(25) E-commerce products to endusers.

(1) Q. Right. So what does endusers mean to  
(2) you?

(3) A. It's the ultimate consumer of the product.

(4) Q. Right. And the title of 155 says,  
(5) cube -- high-cube fulfillment center, does it not?

(6) A. Yes, it does.

(7) Q. Have you -- and the applicant has  
(8) testified, number one, that it's not a fulfillment  
(9) center. And this says that the endusers are really  
(10) the consumers, the 155. So that's not really a  
(11) distribution center, that's a fulfillment center?

(12) A. It is, in my opinion, it is -- because it is  
(13) different from a warehouse, which is primarily the  
(14) storage, in my opinion, this is a type of  
(15) distribution center.

(16) Q. 155 is?

(17) A. Yes. It's a type of distribution center.

(18) Q. Did you look at 154?

(19) A. I did, and I -- when I find it, I will look at  
(20) it again.

(21) I have 154 in front of me.

(22) Q. So the one, two, three, four, five, six  
(23) seventh line down says, these facilities have a  
(24) primary function of consolidation and distribution of  
(25) pallet loads or larger for manufacturers, wholesalers

(1) or retailers.

(2) So in that level, they are not going to  
(3) consumers. They are going to manufacturers or  
(4) warehouses or wholesalers, right?

(5) A. Well, it talks about the primary function.

(6) Q. Does it say anywhere in there that they  
(7) can act as a fulfillment center and go directly to  
(8) consumers?

(9) A. It doesn't say that in that definition.

(10) Q. Okay. So do you agree that that's the  
(11) primary difference between 154 and 155?

(12) A. It is one of the differences, yes.

(13) Q. All right. And the applicant -- and  
(14) it's our position that 154 definition is what a  
(15) distribution center is not 155?

(16) A. Well, that's your position. In my opinion,  
(17) these are subcategories of a distribution center from  
(18) a land use point of view.

(19) Q. And they are also subcategories of a  
(20) warehouse, are they not?

(21) A. In my opinion, no, because warehouse is  
(22) primarily the storage of goods. And none of these  
(23) talk about having a purpose of primary -- primarily  
(24) storage.

(25) Q. Now, the other argument that the --

(1) that I think both you and the traffic engineer  
(2) testified to is that it's not logical to have a  
(3) combination of uses because one would not be able to  
(4) determine the impact of traffic and maybe other  
(5) things.

(6) But as Mr. -- but as Cucchiaro pointed  
(7) out, if you allow the 100 percent distribution  
(8) center, wouldn't that be the most intense of the uses  
(9) that could be permitted and that therefore a  
(10) combination would not be more intense, it would be  
(11) less intense?

(12) A. That's correct.

(13) MR. ALFIERI: I don't think I have any  
(14) other questions.

(15) CHAIRMAN LEVITON: Thank you,  
(16) Mr. Alfieri.

(17) Ron, what do you recommend now? Should  
(18) we go out to the public again or should we --

(19) MR. CUCCHIARO: No. The public's had  
(20) their opportunity, so I think we now leave it to  
(21) Mr. Gasiorowski to put his witness up.

(22) CHAIRMAN LEVITON: Okay.  
(23) Mr. Gasiorowski.

(24) MR. ALFIERI: No, you mean me, right,  
(25) Ron?



(1) MR. CUCCHIARO: Right. I'm sorry.

(2) Yes. All you attorneys look the same to me.

(3) Yes. Mr. Alfieri.

(4) MR. ALFIERI: I was going to say one of  
(5) the great benefits in this whole process is we all  
(6) learned a new word "virgule" because none of us heard  
(7) it before.

(8) We have one witness. We have a planner  
(9) who we'd like to call.

(10) CHAIRMAN LEVITON: Please do.

(11) MR. ALFIERI: Tran, are you up there  
(12) somewhere?

(13) MR. CUCCHIARO: Okay.

(14) (Witness sworn.)

(15) MR. CUCCHIARO: Please state and spell  
(16) your name for the record.

(17) MR. RAHENKAMP: Good evening. It's  
(18) Craig, C-R-A-I-G, Rahenkamp, R-A-H-E-N-K-A-M-P, P.O.  
(19) Box 222, Riverton, New Jersey.

(20) DIRECT EXAMINATION

(21) BY MR. ALFIERI:

(22) Q. Craig, would you place your planning  
(23) credentials on the record, please?

(24) A. Sure. I'll give you a short version. I've  
(25) been in the field for 39 years. Licensed as a

(1) professional planner in New Jersey for 25. Actually  
(2) served as a field expert in the development for  
(3) questions for that exam. I've qualified in the trial  
(4) courts in over 150 trials and hearings. I'd served  
(5) as a court-appointed counselor, lecturer at Rowan,  
(6) testified before state agencies and appeared  
(7) regularly before planning and zoning boards  
(8) throughout the state.

(9) CHAIRMAN LEVITON: Thank you,  
(10) Mr. Rahenkamp. This Board accepts your credentials.

(11) BY MR. ALFIERI:

(12) Q. And, Mr. Rahenkamp, you've had the  
(13) opportunity to review the Manalapan Township  
(14) ordinance not just the SED-W -- 20/W section and the  
(15) list of permitted uses, but the entirety of the  
(16) zoning ordinance, have you not?

(17) A. I have, yes.

(18) Q. And can you give the Board your --  
(19) initially, your opinion as to whether the SED-20/W  
(20) zone allows -- and we'll just go with either for  
(21) now -- warehouses and/or distribution -- warehouses  
(22) or distribution centers?

(23) A. Let me start with -- because we're trying to  
(24) compare a defined use and an undefined use, and I  
(25) think we have to go back to square one on this one.

(1) The functions of warehousing have four  
(2) activities that occur within the building and then  
(3) two accessories. You receive goods, you store them  
(4) to repackage and reorder them, and then you ship  
(5) them. Those are the four activities that have  
(6) occurred in warehouses forever.

(7) And then there are two accessories that  
(8) go with that. Typically there's some office space  
(9) that there's some administrative function in  
(10) overseeing the people and technology that's moving  
(11) the goods, and there's usually some sales for  
(12) activity, a display area for some of the goods, the  
(13) ability to accept returns, some additional  
(14) sales-related activity that occurs as part of  
(15) warehousing.

(16) And then there are the things that you  
(17) store. Dry, cold and liquid are the typical  
(18) divisions of the types of goods. There are the modes  
(19) of transportation: Airport, train, truck, and then  
(20) there's from whom you're getting the goods and to  
(21) whom they go.

(22) And how you vary all of these things,  
(23) you can come up with lots of different names that are  
(24) used in the industry for various concepts and in  
(25) different ways. I think as a starting point, what's

(1) important is that while an ordinance can  
(2) theoretically differentiate amongst lots of things,  
(3) yours doesn't. Yours has the headline category  
(4) warehouse, which is like the headline category of  
(5) office or retail in which a myriad, variety of things  
(6) can occur under those top headings and add simply as  
(7) a qualifier of the additional distribution.

(8) I'm not saying an ordinance couldn't,  
(9) for example, say, we don't want cold storage in our  
(10) community or we don't want trains unloading in our  
(11) community or, you know, the from whom to whom kinds  
(12) of issues that you couldn't write an ordinance that  
(13) does that. But your ordinance doesn't do that.

(14) It simply permits the warehouse  
(15) function, which includes, generically, all of those  
(16) things. So starting from that perspective its  
(17) foundation of how we describe the use.

(18) The second thing I want to say is this  
(19) dash that everyone seems to be so focused on isn't  
(20) actually in the ordinance. It's in the table. If  
(21) you go to Section 95-5.2, the description of  
(22) districts, under the heading, New Jersey State  
(23) Highway 33 quarter development zoning, you have the  
(24) SED-20/W. And next to it is warehouse space  
(25) distribution. There's no slash in the actual text of

(1) the ordinance. The slash shows up in Table 99-5 and,  
(2) frankly, that table is slash happy.

(3) They are trying to fit a lot of text in  
(4) a little box in basically an Excel spreadsheet. So  
(5) you have slashes, for example, artisan/craft. They  
(6) are not trying to make a distinction between two  
(7) different kinds of things that people need. It's  
(8) simply two words to try and convey that overall  
(9) outset, public/quasi public, public utilities/local  
(10) utilities. The table gets slash happy, but these are  
(11) not slashes that are actually in the text of the  
(12) ordinance. So I think we're putting way too much  
(13) emphasis on the importance of that slash.

(14) So the next thing I want to touch on is  
(15) the use of the ITE as some sort of substitute or  
(16) guide to try and tell us what the defined uses are.  
(17) And to try and keep this brief, I will simply say  
(18) that those of us in the -- on the applicant side of  
(19) planning, design have to come up with tools and  
(20) techniques to assess the impact of a development.  
(21) And there are lots of tools that we use to do that  
(22) that don't tie back necessarily to permitted uses.

(23) So, for example, I did a lot of work  
(24) for Commerce Bank, now TD bank, and they refer to  
(25) their banking institution as stores, and they

(1) generate a lot of traffic. Bank of America have well  
(2) management centers, which are also banks. Still the  
(3) same permitted use but have wildly different impacts  
(4) in terms of traffic.

(5) MR. GASIOROWSKI: I'm going to object  
(6) to the relevance of this testimony because the  
(7) purpose is supposedly what this particular ordinance  
(8) in your municipality means. It's not about Commerce  
(9) Bank or some other place.

(10) MR. ALFIERI: But he's trying -- he's  
(11) testifying how one would interpret language within an  
(12) ordinance not what the other ordinance is saying how  
(13) the interpretation --

(14) MR. GASIOROWSKI: It's not allowed to  
(15) give testimony as to how it should be interpreted  
(16) predicated upon traffic counts or the like. Here  
(17) we're going -- roaming all over the state to stores,  
(18) to banks and the like.

(19) MR. CUCCHIARO: Mr. Chairman, I would  
(20) recommend Mr. Rahenkamp continue. But Mr. Rahenkamp  
(21) if you could, you know, sort of bring it into what  
(22) you believe these words mean. I mean, you've  
(23) testified, you know, clearly on what you believe the  
(24) relevance and significance of the slash is.

(25) If you can maybe just help to hone it

(1) in on how the Board should define the words.

(2) THE WITNESS: I will. I'll simply  
(3) conclude my testimony about the ITE, saying it's no  
(4) different than the multipliers we use for physical  
(5) impact, and we use -- and value of units to figure  
(6) out how many school children come to the unit none of  
(7) which are allowed to be zoning categories.

(8) So the fact that there are books that  
(9) we use in the industry to talk about generation of  
(10) traffic, or people, or school children, or anything  
(11) else has nothing to do with how we classify uses.

(12) BY MR. ALFIERI:

(13) Q. Okay. I just want to focus you back  
(14) just because it hasn't come up tonight at all, but in  
(15) referencing your Section 95-5.2, what is the  
(16) significance of that section of the ordinance, which  
(17) is entitled Description of Districts?

(18) A. It's naming the districts in the community.  
(19) It's the only place actually in the text of the  
(20) ordinance that the district is saying. You then go  
(21) to the table to find permitted uses, but the slash  
(22) does not exist in the creation of the district  
(23) because warehouse is space distribution.

(24) Q. So based upon that alone, forgetting  
(25) about how it's worded in the text of the -- of the --

(1) of the schedule, what is your opinion as to what is  
(2) permitted in the zone as it relates to warehouse's  
(3) distribution?

(4) A. I am going to struggle because I can't do it  
(5) on that alone. My point is that I'm about to make is  
(6) that they really are not two different things. So  
(7) you can't be one or the other because they are both  
(8) elements of the same thing.

(9) Q. Okay. And -- continue. I'm sorry.

(10) A. So one of the places that we planners look to  
(11) for definitions in land use is a book by Moskowitz &  
(12) Limdbloom. It's been in publication now for several  
(13) decades. And it's the illustrated fact list for a  
(14) lot of definitions. In a warehouse in 1993 -- this  
(15) is from an older version of the book. "Warehouses  
(16) may be for long-term or short-term storage.  
(17) Short-term storage facilities for a specific  
(18) commercial establishment are called distribution  
(19) centers."

(20) So we are simply talking about a  
(21) distribution center as a warehouse that has one user,  
(22) a resident, rather than multiple users in the  
(23) building, and has a shorter storage time. Still does  
(24) storage, but does it over a shorter period of time.

(25) That book has been amended multiple



(1) times. 2015 is the most recent one that I am aware  
(2) of. It now has four columns about how municipalities  
(3) can differentiate amongst kinds of warehouses, design  
(4) things that you can do to make them look better,  
(5) landscaping and that sort of thing.

(6) It's the core definition of the use --  
(7) I'm sorry. Were you objecting, sir?

(8) MR. GASIOROWSKI: If he wants to  
(9) produce the book that we have before us, and it can  
(10) be cross-examined with regards to it, that would be  
(11) fine. This is just really basically hearsay.

(12) MR. ALFIERI: Except that your  
(13) witnesses testified to the ITE standards, and they  
(14) weren't submitted.

(15) MR. CUCCHIARO: Mr. Gasiorowski, one, I  
(16) would agree with Mr. Alfieri that we provided you  
(17) very wide latitude to refer to things that we never  
(18) received.

(19) . Secondly, the latest illustrative book  
(20) of development definitions by Harvey Moskowitz and  
(21) Carl Lindbloom is not a random text. It's a text  
(22) that's been recognized as a legitimate source by the  
(23) New Jersey courts.

(24) So I think the Board can take judicial  
(25) notice of a text that the courts have determined to

(1) be in authority. Similar to, you know, if someone  
(2) were to quote something out of the Oxford Dictionary,  
(3) you know, or something like that.

(4) My only caution would be that my  
(5) recollection is that in the Moskowitz book, he does  
(6) have a section early on where he basically says, "Be  
(7) aware, I am not a lawyer", and these are, you know,  
(8) definitions the way I'm proposing them that would  
(9) look good in an ordinance and, you know, sort of  
(10) pours a little bit of water on how heavily we rely  
(11) upon them.

(12) MR. GASIOROWSKI: Why doesn't  
(13) Mr. Alfieri call Mr. Moskowitz, then we could  
(14) cross-examine him?

(15) MR. CUCCHIARO: Mr. Chairman, I  
(16) recommend that Mr. Gasiorowski's objection be  
(17) overruled.

(18) This is a text that's been accepted by  
(19) the New Jersey courts, and he is not adopting it. He  
(20) is saying that it's a source he looked at to help him  
(21) form his opinion.

(22) CHAIRMAN LEVITON: Thank you,  
(23) Mr. Cucchiaro.

(24) Continue, Mr. Rahenkamp.

(25) THE WITNESS: Thank you, sir. The

(1) court quotes in the 2015 version, and I accept  
(2) Mr. Cucchiaro's comment that this is authored by  
(3) planners not lawyers.

(4) In addition to the storage of goods and  
(5) materials modern warehouses function as distribution  
(6) centers. Products are received, broken down into  
(7) smaller quantities, often assembled, and then  
(8) shipped. In the modern warehouse the holding time is  
(9) generally short.

(10) Again, the -- the planning reference  
(11) that a planner would turn to is essentially saying a  
(12) distribution center is essentially a warehouse in a  
(13) more modern context with more rapid turnover of the  
(14) goods that are being stored, but the storage is still  
(15) a function of a distribution center.

(16) So in the context of the idea that  
(17) you're either a warehouse or a distribution center,  
(18) you can't realistically be a distribution center if  
(19) you're not also undertaking the storage function at  
(20) the same time. You may be doing less of it. You may  
(21) be doing it for a shorter period of time, but you're  
(22) still doing storage.

(23) And the last thing I would leave you  
(24) with is that as a person who's involved in the  
(25) industry, we've been talking about warehouse

(1) distribution, fulfillment has sort of come in from  
(2) left field as an idea, but I'll tell you that there  
(3) are words like transshipment, intermodal terminal,  
(4) last mile facility, forward distribution, pack and  
(5) ship, merchant support facility. There are an array  
(6) of words that go in the industry used differently by  
(7) different actors within the industry, different  
(8) companies will use different language.

(9) So just because they're -- if we have  
(10) these words, and they are not defined in an  
(11) ordinance, I don't think we can freely make them up  
(12) and sort of give meaning to them because there's so  
(13) many and they are so varied. I think, as I said in  
(14) the very beginning, the toughest job, I think, for  
(15) the Board, is going to be determining what functions  
(16) are not permitted in a warehouse in this district.  
(17) For a zoning administrator, that's the issue. What  
(18) is it that they can't do there. Clearly we can  
(19) receive goods, clearly we'd be able to store goods,  
(20) repackage them and ship them. So I'm not sure what  
(21) the interpretation before you is asking for you to  
(22) reject, and nothing beyond a normal function of a  
(23) warehouse are part of the application that's before  
(24) the planning board.

(25) And that's all I have, sir.

(1) BY MR. ALFIERI:

(2) Q. Just one follow-up question about the  
(3) slash.

(4) A. Yes, sir.

(5) Q. Do you -- if we focus simply on that  
(6) and exclude everything else that you've testified to,  
(7) do you have an opinion as to how the slash should be  
(8) interpreted under these circumstances?

(9) A. Um, slashes are often used in the writing of  
(10) ordinances to incorporate sort of different flavors  
(11) of the same word. And that is why I highlighted the  
(12) artisan/craft as a parallel to this. They're not  
(13) creating a distinction between artisanal goods and  
(14) crafted goods, there are saying, there's this  
(15) universe of things these words can both apply, and  
(16) we're throwing them together with a slash to indicate  
(17) the broader universe.

(18) I think the governing body putting the  
(19) word "distribution" here was essentially trying to  
(20) protect future applicants from the idea that you  
(21) could only do a standard, long-term dry good  
(22) warehouse that distribution was part of the  
(23) activities that were permitted in this district.

(24) MR. ALFIERI: That's all we have,  
(25) Mr. Chairman.

(1) CHAIRMAN LEVITON: Okay. Then at this  
(2) time, let's go out to the public and ask if there's  
(3) anyone who wants to ask Mr. Rahenkamp questions about  
(4) what he's entered into testimony this evening.

(5) I'm looking for you to raise your hand.  
(6) Okay. Seeing none, then, I will close  
(7) public.

(8) Mr. Alfieri, do you want to close?

(9) MR. GASIOROWSKI: I have some  
(10) cross-examination, if I may?

(11) CHAIRMAN LEVITON: Oh, please.

(12) MR. ALFIERI: And we have -- Mr. Chair,  
(13) we have no other witnesses.

(14) CHAIRMAN LEVITON: Okay.

(15) Mr. Gasiorowski.

(16) MR. GASIOROWSKI: Thank you.

(17) CROSS-EXAMINATION

(18) BY MR. GASIOROWSKI:

(19) Q. Okay. I'd like to go back to this.  
(20) issue with regard to you referring to -- I thought  
(21) you used the term "slash happy" in your testimony?

(22) A. I did, sir.

(23) Q. Okay. Is it your testimony that a  
(24) warehouse use is kind of a generic term that can  
(25) cover the entire spectrum of warehouse-distribution

(1) centers-fulfillment centers and the like, that all of  
(2) these are kind of subsidiary by the term "warehouse"?  
(3) A. I have two answers for that. First, since the  
(4) mid 1920s, Standard Enabling Act model created by the  
(5) chamber and others, warehouse has been one of the top  
(6) five: Residential, industrial, warehouse, retail and  
(7) one more that I forget.

(8) So, yes, my testimony is the start of  
(9) the position that warehouse is the top-line category  
(10) in which everything else is a subset. That kind of  
(11) approach is taken not only in the original zoning  
(12) ordinances, but it's also reflected in the standard  
(13) industrial classifications and North American  
(14) Industrial Classification System, warehouse is the  
(15) top --

(16) Q. You focus on --

(17) A. -- my second part of that answer is that  
(18) municipalities are certainly free in creating a  
(19) zoning ordinance to create distinctions. I am not  
(20) saying they're bound by that, but the starting  
(21) position for those words is that warehouse is the  
(22) top-line category.

(23) Q. Let's talk about this ordinance. This  
(24) ordinance says, warehouse/distribution center. It  
(25) has two definitive separate names, doesn't it?

(1) A. Sir, we disagree about that. The ordinance  
(2) itself, the actual text of the ordinance has no  
(3) slash. Table 95-5 has a slash.

(4) Q. Okay. Now, let me ask you a question  
(5) with regards to distribution centers. I think you  
(6) said in your testimony that there is sort of a whole  
(7) spectrum of distribution centers. Now, would you  
(8) argue, is it your position, that with regard to a  
(9) distribution center, any and all of those categories  
(10) in the ITE, subjects 154, 155 and 156 are  
(11) distribution centers?

(12) A. There is nothing in this ordinance with which  
(13) distinguishes to whom goods were sent that would lead  
(14) to a distinction. So, yes, under this ordinance I  
(15) don't think that these subcategories exist.

(16) Q. Okay. Would you agree with me then  
(17) that if there was a Category 156, that the trip  
(18) generation being created by that is far greater than  
(19) the 150 category of a warehouse?

(20) A. Sure. And in retail I can find something that  
(21) generates more traffic than a furniture store, sure.  
(22) There are lots of things that have different  
(23) generation rates.

(24) Q. Having said that, does that not then  
(25) mean that if an applicant were to come before the



(1) Board and say that it's a distribution center, that  
(2) the Board could say, we are going to give -- we want  
(3) greater testimony with regard to the trip generations  
(4) of this particular use?

(5) A. Um, yeah. I don't see anything that limits a  
(6) planning board in terms of the questions it wants to  
(7) ask, although there's obviously a limit as to the  
(8) degree to which off-track traffic is relevant in a  
(9) site plan application.

(10) Q. I'm not talking about offsite traffic.  
(11) I'm talking about traffic on this site. The  
(12) testimony before the Court that this particular  
(13) application fit within the category under the ITE of  
(14) 150, which is warehouse.

(15) But unlike your position, the DOT and  
(16) the ITE has a various subset of other distribution  
(17) type centers which have far greater traffic impacts?

(18) A. Sure. I'm working on a distribution center in  
(19) another community that looks very different. It's  
(20) got only a dozen tractor trailer entry points. And  
(21) they are driving hundreds of vans through the  
(22) building, loading the vans in buildings and leaving.  
(23) It has very different traffic implication.

(24) Q. Well, with -- your testimony all of  
(25) that would be permitted in this particular use. Vans

(1) could drive into the building, drive out of the  
(2) building and the like; isn't that so?

(3) A. My testimony to this Board is that the  
(4) ordinance itself has no distinctions permitting or  
(5) not permitting subcategories within the warehouse.  
(6) The applicant before the planning board is not  
(7) proposing that. That's a different issue.

(8) Q. Let's just talk about this idea of the  
(9) conjunctive rather than the disjunctive. Would you  
(10) agree with Mr. Steck saying that if you interpret the  
(11) ordinance in the conjunctive, that you could have a  
(12) mix of uses being a warehouse and distribution center  
(13) linked together on one piece of property or is it  
(14) your testimony that there's really no distinction  
(15) between a warehouse and a distribution center?

(16) A. Um, I'm in the latter category. I understand  
(17) the linguistic gymnastics of saying it's A or B not  
(18) both, but since a distribution center has the  
(19) warehouse function, the storage function, inherently  
(20) part of that activity, I have no idea what you're  
(21) saying it is an applicant can't do.

(22) Q. Okay. Your basic testimony is, is that  
(23) the governing body in this particular municipality  
(24) did not seek to establish any guidelines for use but  
(25) simply said, by warehouse/distribution center you

(1) could put any of those uses of the ITE, whether it's  
(2) 150, 154, 155, 156 and use them together however you  
(3) want to do it.

(4) That's what you're saying, isn't it?

(5) A. I don't agree with way you've expressed it,  
(6) but the conclusion is correct.

(7) Q. Yeah. The conclusion is correct. But  
(8) you're saying that ten years ago or whenever the  
(9) governing body established this ordinance they gave  
(10) absolutely no consideration to controlling the use?

(11) A. Let's be clear, this is a use in a district  
(12) that also permits very high intensity office --

(13) Q. I don't care what --

(14) A. Sir, let me finish my answer, please.

(15) It also has very -- other high traffic  
(16) generated uses. And also this particular tract was  
(17) put into the zoning district three years ago.

(18) So we're not talking about ancient  
(19) history, we're talking about a governing body  
(20) designing a zone ordinance applied to this tract only  
(21) three years ago.

(22) Q. Is it your position as a planner that,  
(23) in fact, just because the applicant calls this a  
(24) warehouse, he's entitled to all the benefits of the  
(25) 150 -- rather than the higher -- of 156, which would

(1) generate more traffic?

(2) A. I don't know what those benefits are that you  
(3) think the applicant is claiming.

(4) Q. I just have a couple more questions.

(5) MR. GASIOROWSKI: I have no more  
(6) questions.

(7) MR. CUCCHIARO: Mr. Chair, just before  
(8) we go into closing arguments, we open it up to the  
(9) public for cross-examination. We should just open it  
(10) up if they have any direct testimony, and then we can  
(11) get the closing arguments from each counsel.

(12) CHAIRMAN LEVITON: Okay. Then at this  
(13) time, I will invite the public to address the Board  
(14) without cross-examination. If you want to offer an  
(15) opinion, now would be the time.

(16) Please raise your hand.

(17) Okay. Seeing none, then, we'll let you  
(18) close, Mr. Gasiorowski and then Mr. Alfieri.

(19) MR. CUCCHIARO: Well, actually,  
(20) Mr. Chair, since Mr. Gasiorowski is the applicant, I  
(21) would have Mr. Alfieri close first and then Mr.  
(22) Gasiorowski.

(23) CHAIRMAN LEVITON: Done.

(24) MR. ALFIERI: Thank you, Mr. Chairman,  
(25) members of the Board. We spent a lot of time on

(1) what's a relatively simple issue, and our planner has  
(2) been very succinct in making it clear what the  
(3) ordinance means.

(4) The 95-5.2, which is the description of  
(5) the district said what -- for this zone, SED-20/W,  
(6) warehouse distribution without a slash. The slash  
(7) comes up in the schedule of permitted uses. There is  
(8) a slash used elsewhere within the ordinance. It's  
(9) illogical to take -- to make the conclusion using the  
(10) health fitness center, for example, that you could  
(11) have one or the other but not both.

(12) And if you look at the intensity of the  
(13) use, which is where the applicant in this case was  
(14) trying to emphasize, it's also illogical to presume  
(15) that the governing body said you could have a  
(16) distribution center, which if we stipulate how they  
(17) portrayed it, is five times as much traffic. You can  
(18) have 100 percent of that or you can have a warehouse,  
(19) which is 20 percent of the traffic, but you can't  
(20) have both. Why would the governing body allow  
(21) 100 percent of an intent use versus a mixed use,  
(22) which would clearly be less intense.

(23) The other point as it relates to that  
(24) is if the governing body was concerned with the  
(25) mixture of uses, it would do what they do in other

(1) districts where they will say you can have a  
(2) warehouse, and you can have 20 percent office, but  
(3) you can't have more than 20 percent office because  
(4) the office generates more parking demand than a  
(5) warehouse.

(6) So if the governing body clear -- if  
(7) their intent was to limit the mixture, they could  
(8) have done that in some way by percentage. That was  
(9) not their intention. That really was the entire --  
(10) the entirety of this case was simply whether that  
(11) slash means disjunctive or conjunctive. We think  
(12) it's clear that you can have one or both, and there's  
(13) no limitation on that. Thank you.

(14) CHAIRMAN LEVITON: Thank you,  
(15) Mr. Alfieri.

(16) Mr. Gasiorowski.

(17) MR. GASIOROWSKI: When you look at the  
(18) definition of warehouse in the ordinance, it says  
(19) quite clearly, "Any structure designed for or  
(20) utilized primarily for the storage of goods and  
(21) materials. Terms shall include self storage, mini --  
(22) and commercial warehouse activity."

(23) Now, the witness or the expert for the  
(24) user is basically saying that there are no  
(25) distinctions of any of these uses. And if you look

(1) at the use of the slash in the schedule, it would say  
(2) that if the Board was just -- the governing body was  
(3) just slash happy, there is significance, too. There  
(4) is significance to the use of a slash. A slash is a  
(5) disjunctive and -- it's one or the other. And when  
(6) we ask what's the significance of that, the  
(7) significance is that if the -- if you go with just  
(8) a -- let's say a distribution center use, and the  
(9) intensity of the traffic is far greater, that has an  
(10) impact upon the use of the property. It has an  
(11) impact upon noise. It has an impact upon sound. It  
(12) has an impact of the noise coming off the tractor  
(13) trailers. None of that -- now, if they are going to  
(14) go back, those are the things they should have to  
(15) produce, and that's why it is so important to make a  
(16) distinction between what is a warehouse and what is a  
(17) distribution center; otherwise, the ordinance has no  
(18) significance at all. Thank you.

(19) CHAIRMAN LEVITON: You're welcome.  
(20) Thank you, sir. Okay. At this time we are now going  
(21) to go to the Board, and they are going to  
(22) cross-examine expert witnesses or ask the counselors  
(23) questions. And when the Board has finished, we will  
(24) then go to our professionals, and they can give us  
(25) some final thoughts before the Board takes action.

(1) We're going to take a five-minute  
(2) break.

(3) (Recess taken at 9:58 p.m.)

(4) (Commencing at 10:01 p.m.)

(5) CHAIRMAN LEVITON: Okay. Let's  
(6) reconvene. Terry, are you nearby?

(7) MR. ROSENTHAL: Okay.

(8) CHAIRMAN LEVITON: Terry, once again,  
(9) we're going to go to the Board, and then we're going  
(10) to go to the professionals, and then the Board will  
(11) take action.

(12) Terry?

(13) MR. ROSENTHAL: Yeah. I have a few  
(14) comments of -- sort of in agreement with  
(15) Mr. Rahenkamp talking about industry custom/usage.  
(16) One firm distributes products from their warehouse to  
(17) the stores, so my feeling is that all distribution  
(18) centers are warehouses, but not all warehouses are  
(19) distribution centers..

(20) So as far as the applicant, I would say  
(21) they have to ask for a distribution center not a  
(22) warehouse, unless it was strictly for storage.

(23) Does that make sense?

(24) CHAIRMAN LEVITON: It does, yes. Are  
(25) you posing a question or are you just --



(1) MR. ROSENTHAL: No, I'm not. I'm just  
(2) making comments. My opinion is that if they have to  
(3) ask for a distribution center, if they are going to  
(4) distribute products from that building.

(5) CHAIRMAN LEVITON: Thanks, Terry.

(6) MR. ROSENTHAL: I -- actually, that  
(7) answered my question, to be honest with you.

(8) CHAIRMAN LEVITON: Okay. Bob?

(9) MR. GREGOWICZ: No. My questions are  
(10) already answered.

(11) CHAIRMAN LEVITON: Okay. Mollie?

(12) MS. KARMEN: The semantics of the  
(13) logistics of the facility -- if this was 40 years  
(14) ago, you know, it would be clearly cut; however, in  
(15) light of the pandemic and the reality of the  
(16) E-commerce world that we live in today, regardless if  
(17) you're B to B or B to C, the flowboxity (phonetic) of  
(18) the people from the supply chain standard is -- they  
(19) bleed through to one another.. I don't think really  
(20) you can differentiate between a warehouse versus a  
(21) fulfillment center, a solution center, a distribution  
(22) center, et cetera. Just purely depends on who the  
(23) supply chain manager is because in theory Mr. Steck  
(24) would potentially be -- a warehouse would be more  
(25) stacked -- however in the E-commerce world that we

(1) live in today, you know, would be storing things, but  
(2) on a high season demand's time, you know, you may be  
(3) storing Christmas balls in February and March, but  
(4) between October and December, they will be flying out  
(5) of there, and you'll be having trucks coming in and  
(6) out constantly.

(7) .                   So I don't have to agree with me for --  
(8) that, but they all marry one another, but I have a  
(9) question actually for counsel for us, it's that: Us  
(10) trying to differentiate or establish the definition  
(11) as to what the zoning for this particular parcel is,  
(12) is this the -- is this just a general for  
(13) distribution or solution center or any type of  
(14) logistics facility umbrella, and whatever it peddles  
(15) out of this parcel will not have any clear  
(16) definition? Because regardless of what it is defined  
(17) as, my personal concern is if this becomes, for  
(18) example -- I'm just using as an example -- if this  
(19) becomes like a medical marijuana dispensary  
(20) distribution center, I would have a very hard time  
(21) if, you know, it technically would fall under the  
(22) definition of a distribution center --

(23)                   MR. CUCCHIARO: I think we can be  
(24) assured it does not, and that actually has its own  
(25) separate set of regulations that are associated with

(1) it, but I'll get into that in greater detail, you  
(2) know. I am going to give some final thoughts, but I  
(3) once -- and you can actually make that specifically a  
(4) part of what you say tonight if you wish, that you do  
(5) not believe that medical marijuana distribution is  
(6) one of the permitted uses under the definition.

(7) MS. MOENCH: Then I'm puzzled to say  
(8) exactly what part of the semantics, short of a  
(9) caricature that we're really being focused on, is  
(10) it --

(11) MR. CUCCHIARO: Being focused on what  
(12) does the word -- it's -- well, there's a definition  
(13) of warehouse, and they're asking you to define what  
(14) distribution center means, and also you have to make  
(15) a determination of what the slash mark means.

(16) MS. MOENCH: Okay.

(17) MS. BEAHM: And, Ron, if I could just  
(18) step in for half a second. It's not just for this  
(19) particular location -- it's not just for this  
(20) particular site, it's for, you know, what these words  
(21) mean overall in the -- in the overall zone, correct?

(22) MR. CUCCHIARO: Well, in any zone, not  
(23) the overall zone. Anywhere in the municipality.

(24) MS. BEAHM: So it's not specific to  
(25) just this one piece of property. I just want to make

(1) sure, I mean, we spent a lot of time talking about  
(2) this particular piece of property, but it's overall  
(3) what those words mean in our ordinance, period.

(4) MS. MOENCH: Thank you for clarifying.

(5) CHAIRMAN LEVITON: Thank you, Jennifer.

(6) Okay. David?

(7) MR. SCHERTZ: I have no questions at  
(8) this time, no comments either.

(9) CHAIRMAN LEVITON: Okay.

(10) Adam?

(11) MR. WEISS: Yeah. I have a couple for  
(12) Mr. Rahenkamp. You indicated that this particular  
(13) edition or amendment occurred about three years ago;  
(14) is that accurate?

(15) MR. RAHENKAMP: The placing of this  
(16) parcel into this zone happened about three years ago.  
(17) The zone itself was created longer ago than that.

(18) MR. WEISS: Okay. Well, thank you for  
(19) clarifying that. In your testimony you were somewhat  
(20) dismissive with regard to the slash mark, and, in  
(21) fact, you said something like they were slash happy.  
(22) And I thought you were rather dismissive of the slash  
(23) itself.

(24) My question to you is: Why, then,  
(25) instead of the slash, didn't they put an "ampersand"

(1) or an "and" sign if they meant it to be "and"?

(2) MR. RAHENKAMP: Let me clean up my  
(3) language since I seem to have offended with the slash  
(4) happy comment.

(5) MR. WEISS: You didn't offend me.

(6) MR. RAHENKAMP: But my broader point is  
(7) the ordinance itself at 95-5.2 doesn't have a slash.  
(8) And usually in an interpretation we look at text  
(9) first and tables are summaries. So the table has  
(10) lots of slashes. We're trying to compress  
(11) information into a small area, and they use the slash  
(12) to do that. I think we're all guilty of that when  
(13) we're compressing information. The actual text of  
(14) the ordinance doesn't have a slash.

(15) MR. WEISS: Okay. And you would agree  
(16) with me, though, that instead of a slash in order to  
(17) save real estate in the table, they could have put an  
(18) "ampersand" or an "and" sign if they want to make it  
(19) mean or make it more clear that it was actually an  
(20) "and"; is that correct?

(21) MR. RAHENKAMP: Yes. The governing  
(22) body could certainly have been clearer taking its  
(23) time and written longer paragraphs about what they  
(24) intended here rather than just using broad concepts.  
(25) Yeah. That could have been done. I can't argue with

(1) that.

(2) MR. WEISS: Thank you.

(3) MR. RAHENKAMP: And then perhaps that's  
(4) for your annual report to say we really do need more  
(5) detail in our warehouses and definition because we  
(6) don't want cold storage transshipment center, you  
(7) know, something completely different that nobody has  
(8) even imagined.

(9) So I think that's a reasonable thing  
(10) for this Board to do.

(11) MR. WEISS: Thank you.

(12) CHAIRMAN LEVITON: Larry?

(13) MR. COOPER: Well, at this time --

(14) CHAIRMAN LEVITON: Larry, you're still  
(15) muted.

(16) MR. COOPER: At this time, I don't have  
(17) any questions, but I agree with some of the comments  
(18) that have been made, and I look forward to voting on  
(19) this one way or the other.

(20) CHAIRMAN LEVITON: Okay.

(21) Rob?

(22) MR. DITOLA: Yeah. Mr. Chairman, I  
(23) have to say that I agree with Terry. I think there  
(24) is a definition between a warehouse, which is a place  
(25) where you store goods. And a distribution center to

(1) me is a place that you store goods, and then  
(2) immediately transport them out for distribution.

(3) So I think this is a clear definition.  
(4) I don't think there was meant to be two things at the  
(5) same time. I think it's one or the other. And  
(6) that's just my opinion. So I have no further  
(7) questions. I just wanted to state that opinion.

(8) CHAIRMAN LEVITON: Basil?

(9) Thank you, Rob.

(10) MR. MANTAGAS: I have no questions at  
(11) this time.

(12) CHAIRMAN LEVITON: Okay. Although this  
(13) seems to be a matter exclusively for Jennifer, I  
(14) don't want to hurt Brian's feelings, let's see if he  
(15) has anything to say.

(16) Mr. Boccanfuso?

(17) MR. BOCCANFUSO: Thank you,  
(18) Mr. Chairman. And I agree with that. I think that  
(19) Ron hit it on the head at the outset here that this  
(20) is a -- really just a matter of determining what the  
(21) ordinance intends. It has little to nothing to do  
(22) with engineering.

(23) In the event, I'll be available to  
(24) answer questions if you have any, but I would defer  
(25) to our planner and our attorney for the comment.

(1) CHAIRMAN LEVITON: Okay. So Jennifer,  
(2) and then Ron, and then we'll call for action.

(3) MS. BEAHM: Thank you, Mr. Chair. I  
(4) have listened to all the testimony this evening, but  
(5) in advance of the hearing, I myself looked into a  
(6) number of definitions for distribution center. I  
(7) don't frequently use the ITE as my go-to when I --  
(8) when the ordinance is silent on a definition.

(9) I also use the Moskowitz book that was  
(10) referred to earlier that generally has definitions  
(11) for just about everything -- category you can  
(12) imagine. And in looking at the definition of a  
(13) distribution center, it talks about an establishment  
(14) engaged in receipt, storage and distribution of  
(15) goods, cargo and materials, including transshipment  
(16) by boat, rail, air, or motor vehicles. And then  
(17) underneath it says, "see warehouse."

(18) You know, and then warehouse is just,  
(19) as our ordinance is -- states in the definition  
(20) section, it's a facility for the storage of goods.

(21) So I would interpret a distribution  
(22) center to be a subset of a warehouse, which I think  
(23) was testified earlier by Mr. Rahenkamp that, you  
(24) know, the warehouse is at the top, and then there are  
(25) a number of different subsets of that broader land



(1) use category that the -- that a distribution center  
(2) would fall under.

(3) I also do want to -- thinking along  
(4) those lines, I want to go back to what the definition  
(5) of warehouse is in our ordinance, and it talks about  
(6) any structure designed for or utilized primarily for  
(7) the storage of goods and materials. This term shall  
(8) include self-storage, mini or other form of  
(9) commercial warehouse activity.

(10) So I would also potentially argue that  
(11) a distribution center being a subset of the global  
(12) warehouse, this would fall under the category of  
(13) other form of commercial warehouse activity. So, in  
(14) fact -- well, it's not specifically called out as a  
(15) distribution center. Maybe it does contemplate other  
(16) types of warehousing in the global definition.

(17) So I don't -- I don't necessarily  
(18) agree, and I know that Ron has a lot of information  
(19) on what exactly this slash mark means, but I -- I  
(20) don't read our ordinance to exclusively say one or  
(21) the other. But again, it's ultimately your decision  
(22) at the end of the day as to how you want to go. And  
(23) I think from a legal perspective, Ron would have more  
(24) insight as to, you know, how that works.

(25) MR. CUCCHIARO: Okay. Mr. Chair,

(1) before I follow up on my legal analysis, and Jen has  
(2) now provided some testimony. She's subject to  
(3) cross-examination. I don't know if --  
(4) Mr. Gasiorowski, do you have any cross-examination  
(5) you want to give of -- or anything of Ms. Beahm?

(6) MR. GASIOROWSKI: I do have one  
(7) question.

(8) CROSS-EXAMINATION

(9) BY MR. GASIOROWSKI:

(10) Q. Ms. Beahm, listening to your testimony,  
(11) can you give any explanation at all as to why the  
(12) slash was used in this instance?

(13) A. I cannot. The drafting of that ordinance  
(14) creates my involvement, so I really don't have any  
(15) information as to the intent associated with the  
(16) slash mark.

(17) Q. Well, do you have any idea or concept  
(18) as to the purpose of a slash being there?

(19) A. As I said, I was not the author of the  
(20) ordinance. I mean, I reviewed it as it could be  
(21) warehouse, it could be a distribution center. I  
(22) actually don't necessarily disagree with  
(23) Mr. Rahenkamp's testimony with respect to cramming in  
(24) all the information that needs to be put into a table  
(25) that has to be easily reproducible for members of the

(1) public, et cetera, in an eight and a half by 11  
(2) format that it's still legible at a font size that  
(3) you can read. There's many instances where words are  
(4) shortened, other things are done in those types of  
(5) tables to make the documentation legible, but as far  
(6) as like the intent associated with that introduction  
(7) of that slash mark, I don't have any information with  
(8) regard to that.

(9) Q. Well, if Mr. Rahenkamp's testimony is  
(10) correct, following up on the comment of one of the  
(11) other Board members, why didn't they just simply use  
(12) the word "A" rather than "D"?

(13) A. Well, I think a slash mark can be "and/or" it  
(14) doesn't have to be "and". So, you know, in going  
(15) back to something that was pointed out earlier by  
(16) your own witness, fitness/health center, you know, in  
(17) his testimony he discussed that that's the same use,  
(18) so it doesn't really matter. You know, here it's a  
(19) bit different. I don't necessarily think you can  
(20) cherry pick, you know, how you want to utilize those  
(21) kinds of things. It either is or it isn't, I guess.

(22) But at the end of the day, I don't -- I  
(23) would not -- if I were the author of that table and  
(24) were expected to provide all of the relevant  
(25) information, I would not have used an "ampersand", in

(1) my professional experience, I would not have done it.

(2) Q. But you were not the author of the  
(3) ordinances.

(4) A. As I said.

(5) MR. GASIOROWSKI: Pass the witness.

(6) MR. CUCCHIARO: Mr. Alfieri, do you  
(7) have anything?

(8) MR. ALFIERI: Nothing.

(9) MR. CUCCHIARO: Okay. Mr. Chair,  
(10) hearing all that --

(11) CHAIRMAN LEVITON: Ron, give me a  
(12) second. I want to ask Jen a question.

(13) Jen, you're saying distribution, which  
(14) is short-term, is a subset of warehouse, which is  
(15) long-term that it's not a different use, but it's  
(16) more questionable --

(17) MS. BEAHM: Well, I don't necessarily  
(18) think the term "warehouse" equals long-term. I think  
(19) it equals storage. And then, in my opinion, looking  
(20) at how these things are, you know, differentiated, I  
(21) think a distribution center is a subset of a global  
(22) use of warehouse, just like you have retail as a  
(23) global use, and then below retail you can have a  
(24) series of different types of uses that would qualify  
(25) under that category.

(1) So in my opinion, I think warehouse is  
(2) a -- kind of the upper level use, and a distribution  
(3) center is a subset of that. There are other types  
(4) of -- you could name it whatever you want; shipping  
(5) and receiving, fulfillment center, whatever you want  
(6) to say. There are all different types of ways to  
(7) store and transfer materials, all of which at some  
(8) point are stored.

(9) Like, to me, a distribution center, it  
(10) doesn't mean that they don't -- the materials don't  
(11) get to stay there. I mean, maybe they are there for  
(12) a month. That could be considered short-term, but  
(13) it's still being stored at some point before it's  
(14) moved.

(15) CHAIRMAN LEVITON: Let me be clear, do  
(16) you believe that the application before the planning  
(17) board is consistent with the ordinance?

(18) MS. BEAHM: I -- in my opinion, based  
(19) on my reading of the ordinance, the application  
(20) before the planning board is permitted.

(21) CHAIRMAN LEVITON: Okay.

(22) Mr. Cucchiaro?

(23) MR. CUCCHIARO: Okay. So one, I want  
(24) to talk about, you know, Mr. Rahenkamp's distinction  
(25) between the use of the virgule and the text of the

(1) ordinance versus the charts. And, you know, one of  
(2) the things I talked about early on is in the  
(3) ordinance interpretation, one of the goals is you  
(4) have to harmonize the various sections of the  
(5) ordinance, so that one doesn't render another  
(6) meaningless.

(7) So I think to say that because the text,  
(8) doesn't use the slash, you shouldn't interpret it as  
(9) meaning anything in the chart, makes the use of it in  
(10) the chart irrelevant. And I don't think you can do  
(11) that as a matter of ordinance interpretation. It was  
(12) used there. It has some significance.

(13) So with the -- the use of the virgule,  
(14) there's actually case law in New Jersey. It doesn't  
(15) have to do with land use. Most of the -- there's  
(16) about three cases. As you can imagine, the courts  
(17) are not wrestling with the slash marks that often,  
(18) but they have.

(19) So the courts actually don't find the  
(20) use of the virgule to be ambiguous, and they  
(21) specifically state that it is not ambiguous. And I'm  
(22) referring to a few cases. I'll just put them on the  
(23) record. One is Danco Incorporated v. Commerce Bank  
(24) Shore, New Jersey, and that is a 1996 case.

(25) Another one is Matson Intermodal

(1) System, Inc. v. Kubis Enterprises (phonetic), and  
(2) that is a 2005 case.

(3) And then the first case, which tackled  
(4) the issue is Kinzig, K-I-N-Z-I-G, v. First Fidelity  
(5) Bank, and that was a law division case. And that was  
(6) in -- if I can skip to the first page here -- and  
(7) that was in 1994.

(8) And a lot of these cases turned on  
(9) people who were trying to cash checks, actually. And  
(10) the checks would say, for instance, you know, "Joe  
(11) Smith/Jane Smith." And Joe would get the check and  
(12) decided he wants the money, and he would endorse it  
(13) and cash it, and then Jane would say, well, wait a  
(14) second. There's a slash mark there, we both have to  
(15) endorse it. And in every single one of these cases,  
(16) and they've also referenced cases in other  
(17) jurisdictions, they say that the virgule means "or"  
(18) or an alternative and that both were not required to  
(19) endorse the check. Only one was required to endorse  
(20) the check in order to cash it.

(21) I don't find that the -- that the  
(22) definition of virgule, when it's interpreted in the  
(23) context of the Uniform Commercial Code should really  
(24) be any different than being used here. It is a --  
(25) it's a character. It has a meaning. And it has a

(1) meaning that's been interpreted by our courts several  
(2) times. The unambiguous definition of that, at least  
(3) in terms of, you know, these check cashing cases by  
(4) our courts is that it means "or". It is an  
(5) alternative.

(6) And I would recommend that considering  
(7) there is case law to support it that that is how the  
(8) virgule be interpreted in this instance, that it is  
(9) warehouse or distribution center that's permitted.

(10) Now, I just wanted to say, though, that  
(11) in these cases, it also doesn't say that only one  
(12) person has to endorse the check. It just says that  
(13) one person is enough to endorse the check when the  
(14) virgule is used. If both of them had endorsed it,  
(15) there certainly would not have been a problem. It's  
(16) just that both would have endorsed it when only one  
(17) was required.

(18) So I don't read the virgule, however,  
(19) to also limit since -- the only one for the other,  
(20) you know, under the way that the case law has  
(21) reviewed it.

(22) So I think, you know, taking the case  
(23) law, the virgule means "or", but it's not a  
(24) limitation necessarily against one or more of them  
(25) from being there.



(1) Now, secondly, you know, the ordinance  
(2) does not define distribution center. There is a  
(3) definition for warehouse, and perhaps you can read  
(4) into that definition something greater -- there's  
(5) some language in there -- but, you know, the Board is  
(6) tasked with coming up with a definition, even though  
(7) it would be lovely if there was an explicit  
(8) definition in the ordinance, there is not.

(9) So in interpreting an ordinance, we go  
(10) to these other sources. Mr. Steck has told you what  
(11) he looked at. The traffic engineer has told you what  
(12) he has relied upon. Mr. Rahenkamp has given you his  
(13) sources of reliance. Jen Beahm has told you what she  
(14) looks at. I think all of those you take into  
(15) account, you know, and you give them the proper  
(16) weight. I would just add another that I looked at --  
(17) you know, a lot of just regular dictionaries do not  
(18) have a definition; however, the Cambridge Dictionary  
(19) actually does, and a distribution center in the  
(20) Cambridge Dictionary is defined as a warehouse, and  
(21) the business based there that stores a manufacturer's  
(22) goods temporarily before they are transported to  
(23) stores or customers for sale.

(24) That seems to incorporate a lot of what  
(25) has been testified to by the experts that the

(1) distribution center is a place where products are  
(2) stored, but they are ultimately distributed. And it  
(3) sounded -- you know, from Mr. Steck was different,  
(4) but from everyone else it sounded like it's a  
(5) wholesale. Mr. Steck didn't find any distinction  
(6) between a distribution center and a fulfillment  
(7) center.

(8) I would, however, recommend that there  
(9) is a difference, and, you know, you heard the  
(10) discussion that the fulfillment center is a place  
(11) where things are actually going to your house. And I  
(12) don't know that you can read that into just a general  
(13) distribution center rather than it being part of a,  
(14) you know, something that's being shipped, basically,  
(15) to wholesalers or similar types of users rather than  
(16) an operation that is repackaging and sending out  
(17) vehicles to your home.

(18) But I think, you know, there's three  
(19) things -- or several things you need to determine.  
(20) You need to determine one, what does the slash mean.  
(21) My recommendation is that pursuant to the case law,  
(22) the slash means "or", but that that case law also  
(23) does not prohibit, you know, both being there,  
(24) similar to both people are not prohibited from  
(25) endorsing the check.

(1) Secondly, you have to determine what  
(2) distribution center means. It can either mean  
(3) something as broad as what Mr. Steck says, which  
(4) includes fulfillment, or something more narrow that,  
(5) you know, there's products that are there for awhile,  
(6) some period of time, that are eventually shipped to  
(7) some wholesaler..

(8) That's it, really. I mean, that's what  
(9) the Board is tasked with tonight determining what  
(10) that phrase means. If you determine that the phrase  
(11) means that pursuant to what the applicant is  
(12) proposing that you can only have a distribution  
(13) center or a warehouse, you know, to the extent those  
(14) are different, then clearly it would mean that the  
(15) applicant would have to make one of two decisions.  
(16) One, that they are only seeking a warehouse, or only  
(17) seeking a distribution center, or if they wanted some  
(18) mix, they would have to file here at the zoning board  
(19) for a use variance. .

(20) If you determine that the warehouse and  
(21) the distribution center were both permitted, and  
(22) there is no real dispute as to whether individually  
(23) they are permitted, there's just an issue as to  
(24) whether they are permitted together, if you determine  
(25) they are permitted and permitted together, then the

(1) planning board would continue to hear the  
(2) application.

(3) So I'm hoping that I was clear enough.  
(4) I have to confess, I've spent much more time going  
(5) through the history of the virgule. I can actually  
(6) tell you that in medieval times, it was used more as  
(7) a comma. I have gone through the history of its use  
(8) that far. I wanted to call my high school English  
(9) teacher.

(10) Do you have any questions?

(11) CHAIRMAN LEVITON: Yeah. Proceed --  
(12) let's ask the Board, does anybody want to ask  
(13) Mr. Cucchiaro a question?

(14) Adam?

(15) MR. WEISS: Sure. Mr. Cucchiaro, the  
(16) case law, I think you said, was it Danco, I'm curious  
(17) to know which court, was it an appellate division  
(18) case, was it a --

(19) MR. CUCCHIARO: Give me one second.

(20) MR. WEISS: And was it published?

(21) MR. CUCCHIARO: They were all  
(22) published.

(23) MR. WEISS: Okay.

(24) MR. CUCCHIARO: And it was 200 NJ Super  
(25) 211, Superior Court -- let me just see -- it was the

(1) appellate division, and it was Judge Chevelle  
(2) (phonetic).

(3) MR. WEISS: And it's still good?

(4) MR. CUCCHIARO: Yes. Yeah.

(5) MR. WEISS: Thank you.

(6) CHAIRMAN LEVITON: Thank you, Adam.

(7) Any other Board members?

(8) MR. SCHERTZ: David Schertz here. You  
(9) can't see me, but I'm here.

(10) Ron, are these precedent?

(11) MR. CUCCHIARO: Yes. They are two  
(12) appellate division cases and one law division, but  
(13) the law division case is actually cited in the  
(14) appellate division cases, so they are all  
(15) precedential and binding. However, like I said, they  
(16) are in the context of interpreting the Uniform  
(17) Commercial Code, but I feel they are persuasive in  
(18) the context of interpreting the use of the slash mark  
(19) in any context.

(20) CHAIRMAN LEVITON: Anyone else?

(21) Rob, was that a hand? You can shake  
(22) your head no. Okay.

(23) All right. Then procedurally, Ron, how  
(24) do we call this question?

(25) MR. CUCCHIARO: So what we're looking

(1) for is the definition. So if somebody wants to offer  
(2) a definition and move that definition, they can. And  
(3) if I could maybe just throw out some different  
(4) options that I think are floating around, but they  
(5) are certainly not exclusive, you know, if someone  
(6) wanted to do something different, you know, Option A  
(7) would be, you know, what the applicant is asserting  
(8) that the slash mark means "or" and that the ordinance  
(9) should be interpreted that warehouses are permitted  
(10) or distribution centers are permitted, but they are  
(11) not both permitted under the ordinance, but that also  
(12) a distribution center is inclusive of a fulfillment  
(13) facility or you could make a motion that says that  
(14) warehousing is permitted. The slash means "or" and  
(15) distribution centers are permitted, however, the  
(16) slash does not mean that they are not both permitted  
(17) simultaneously, and that a distribution center is  
(18) also limited to distributing to wholesale or similar  
(19) endusers or you can make that same motion and say  
(20) that the distribution center is also inclusive of a  
(21) fulfillment center.

(22) I think that's generally the universe  
(23) we are talking about, but if someone has something  
(24) else, certainly you can make that motion.

(25) CHAIRMAN LEVITON: Okay. Mr. Weiss,

(1) you can make that motion.

(2) MR. WEISS: Okay. So I'll make a  
(3) motion to interpret the virgule as being "or", that  
(4) the zone that we're speaking about permits a  
(5) warehouse, also permits a distribution center but not  
(6) both at the same time. And also that the definition  
(7) of a distribution center be limited to a distribution  
(8) of items to wholesalers not the endusers, and that a  
(9) fulfillment center be different from a distribution  
(10) center in that a fulfillment center is distributing  
(11) items to the endusers.

(12) That's my first attempt.

(13) CHAIRMAN LEVITON: Mr. Cucchiaro, can  
(14) you break that down for the Board so that they know  
(15) what their vote means? What a yes vote means and  
(16) what a no vote means.

(17) MR. CUCCHIARO: Well, a yes vote means  
(18) that this is the way that the ordinance is being  
(19) interpreted. So that -- was Mr. Weiss'  
(20) interpretation. And what it ultimately means is that  
(21) an applicant can only propose a warehouse or a  
(22) distribution center on a lot but not both.

(23) If there's some mix, it would require a  
(24) D variance. So an applicant would have to make that  
(25) decision. And it further states that a distribution

(1) center is limited to distributing to wholesalers and  
(2) not what a fulfillment center would do in terms of  
(3) bringing it to an enduser at somebody's house or  
(4) office.

(5) CHAIRMAN LEVITON: Okay.

(6) MR. CUCCHIARO: But a yes vote is an  
(7) agreement with Mr. Weiss' interpretation.

(8) (Brief interruption.)

(9) MR. COOPER: I'd also like to include  
(10) the motion of what Mollie said earlier, and if Mollie  
(11) would go up and then --

(12) CHAIRMAN LEVITON: Well, Larry, hold  
(13) up. There's been a motion. That's what -- we need  
(14) to act on that motion not add to it.

(15) MR. WEISS: Mr. Chair, he can move to  
(16) amend the motion to include and add -- the definition  
(17) does not include a medical marijuana facility.

(18) Is that what you're doing?

(19) MR. COOPER: Yeah.

(20) MR. CUCCHIARO: I will amend it.

(21) On the motion to amend the motion, is  
(22) there a second for that?

(23) MR. WEISS: I second that amendment to  
(24) my motion.

(25) MR. ALFIERI: Mr. Chair, this is Sal



(1) Alfieri. Can I have one point of clarification  
(2) before they vote?

(3) MR. CUCCHIARO: Of course.

(4) MR. ALFIERI: The comment was that they  
(5) could be distributed to wholesalers, but the  
(6) definition is really wholesalers and retailers, so I  
(7) don't want to get into the middle of something where  
(8) we can only go to another warehouse and not do --  
(9) with K-Mart or something.

(10) MR. CUCCHIARO: I agree. That's the  
(11) way the Board interprets it, Mr. Alfieri. So I'll  
(12) ensure that that's what -- if there's a positive  
(13) vote, I will make sure that that's clear.

(14) MR. ALFIERI: Thank you.

(15) CHAIRMAN LEVITON: Okay. Someone needs  
(16) to second the original motion with its amendment.

(17) MR. ROSENTHAL: This is Terry --

(18) MS. MOENCH: Wait. Wait. Is the  
(19) fulfillment center that Adam has delineated serving  
(20) an external customer?

(21) MR. CUCCHIARO: I don't know what  
(22) external customer means, but it is --

(23) MS. MOENCH: If Amazon adds on as a  
(24) fulfillment center and they subcontract out to vans  
(25) and Joe Schmo drives up to the place, picks up 32

(1) packages for the Monmouth Heights residents, and, you  
(2) know --

(3) MR. CUCCHIARO: That would be  
(4) prohibited under the motion, yes.

(5) MS. MOENCH: Then I second Adam's --  
(6) well, I second Adam's initial proposal, Larry's  
(7) amended.

(8) MR. CUCCHIARO: Well, you're seconding  
(9) the amended proposal.

(10) MS. MOENCH: Then I'm seconding the  
(11) amended proposal.

(12) MR. CUCCHIARO: Okay. So we just need  
(13) a roll call, then.

(14) MS. MOENCH: Ms. Kamen?

(15) MS. KAMEN: Yes.

(16) MS. MOENCH: Mr. Rosenthal?

(17) MR. ROSENTHAL: Yes.

(18) MS. MOENCH: Mr. Weiss?

(19) MR. WEISS: Yes.

(20) MS. MOENCH: Mr. Cooper?

(21) MR. COOPER: Yes.

(22) MS. MOENCH: Mr. Gregowicz?

(23) MR. GREGOWICZ: Yes.

(24) MS. MOENCH: Mr. Lilien?

(25) MR. LILIEN: Yes.

(1) MS. MOENCH: Chair Leviton?

(2) CHAIRMAN LEVITON: No.

(3) MS. MOENCH: I'm sorry. Chairman  
(4) Leviton, I just want to confirm you said no?

(5) CHAIRMAN LEVITON: Correct.

(6) MS. MOENCH: Thanks.

(7) MR. ALFIERI: Thank you, everyone.

(8) Goodnight.

(9) CHAIRMAN LEVITON: Goodnight, Mr.

(10) Alfieri.

(11) Before I ask for a motion to adjourn, I  
(12) want to go out to the public and ask if there's  
(13) anyone who wants to address the Board on matters  
(14) other than agenda items, now would be the time.

(15) Seeing none, I will close public.

(16) Mr. Cucchiaro, anything else, sir?

(17) MR. CUCCHIARO: No, Mr. Chairman.

(18) CHAIRMAN LEVITON: Nancy, anything

(19) else?

(20) Board members, anything else?

(21) (Concluded at 10:37 p.m.)

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C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

---

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