

1 LEET TOWNSHIP
2 ZONING HEARING BOARD
3 194 Ambridge Avenue
4 Fair Oaks, PA 15003-1248
5

6 Tuesday, August 30, 2022
7 7:00 p.m.
8
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11 VARIANCE APPLICATION
12 of
13 ROBERT L. & MARILYN A. WERNICKI
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22 Reported by:
23 CAVALIERE COURT REPORTING
24 Leaette Cavaliere, Court Reporter
25 162 Cobblestone Drive
Pittsburgh, PA 15237
(412-508-0035)

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A P P E A R A N C E S

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4 LEET TOWNSHIP ZONING HEARING BOARD:

5

Terry Soster, Chairman

6

Chuck Soman

7

David Kovacs

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Daphne Homer(alternate)

9 ON BEHALF OF ZONING HEARING BOARD:

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VINCENT RESTAURI, ESQUIRE

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Cranberry Township, PA 16066

13 ON BEHALF OF APPELLANT ROBERT L. & MARILYN A.
WERNICKI:

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MAUREEN SWEENEY, ESQUIRE

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Steptoe & Johnson

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500 Grant Street, Suite 4940

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Pittsburgh, PA 15219

18 ON BEHALF OF LEET TOWNSHIP:

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STEPHEN A. CHESNEY, ESQUIRE

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Amato, Start & Associates

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Sewickley, PA 15143

22 ON BEHALF OF CITIZEN OBJECTOR KATIE MELODINI:

23

ANNA JEWART, ESQUIRE

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Babst Calland

Two Gateway Center

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Pittsburgh, PA 15222

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P R O C E E D I N G S

MR. SOSTER: It's seven o'clock
and we are going to convene the township
Zoning Hearing Board. Would you please rise
for the pledge of allegiance.

(Pledge of Allegiance)

MR. SOSTER: This is our board.
This is Dave, Chuck, our solicitor,
Mr. Restauri, our alternate, Daphne, and our
stenographer. This is a court hearing. The
purpose of tonight's meeting, the sole purpose
is to consider the application of Mr. Robert
Wernicki, and I'm going to ask our solicitor
if he could coordinate clarifying what we're
acting on this evening.

The application that I have is
dated November 8th, 2020, and it was from a
variance regarding a setback regarding a
floodplain ordinance matter. I believe that
was the only two considerations that I saw in
the application. I know since the time of the
application to this evening there has been a
history of actions that have taken place and

1 maybe, if you could clarify for us,
2 Mr. Solicitor, what we're acting on tonight.

3 MR. RESTAURI: Originally, there
4 were two applications, as the Chair has said.
5 It is my understanding that the township has
6 determined that there is in fact no
7 dimensional or setback violation. As a
8 result, it is my understanding that the
9 application for the setback variance had been
10 withdrawn.

11 There is still pending then the
12 matter of the application for variance on the
13 floodplain ordinance. That is what we will be
14 considering tonight.

15 MR. SOSTER: What I'm asking,
16 Mr. Solicitor, is what we should be listening
17 for tonight.

18 MR. RESTAURI: Sure. So there are
19 issues tonight dealing with the floodplain
20 variance ordinance. Those issues in general
21 terms have to do with whether or not and to
22 what extent there is a real impact from the
23 admitted violation of the ordinance and
24 depending on whether or not there is an impact
25 and what it is, there are some other issues,

1 for example, whether or not there is an
2 unnecessary hardship created by the land and
3 the ordinance that is inherent in the land
4 situation rather than the personal choice of
5 the owner.

6 But counsel will get into all of
7 those things when they present evidence and
8 argue the case. Those are the kind of issues
9 that you should be looking for and counsel
10 will be directing their questioning of the
11 witnesses to the issues that they think under
12 the ordinance and under the municipality's
13 planning code, are important.

14 Let me give you briefly a quick
15 overview of how we do this. There will be a
16 swearing in en mass of all the people who
17 believe they are going to testify. Miss
18 Cavaliere, our court reporter, will swear
19 everyone in who thinks they may testify.

20 By testifying, you are
21 representing to us that you have taken the
22 oath. If you decide later that you want to
23 testify but you weren't sworn in when
24 everybody else was sworn in in the group, just
25 let us know and Miss Cavaliere will administer

1 the oath separately to you.

2 In order to preserve your rights
3 to appeal any decision that the board may
4 make, you need to actively participate in the
5 hearing. It's not enough to just sign in and
6 it may not even be enough to ask questions.
7 It may be necessary for you to testify. I
8 just tell you that so that you know. Simply
9 listening may not perfect your right to file
10 an appeal to the Court of Common Pleas down
11 the road if you are unhappy with the board's
12 decision.

13 One of the things that we do here
14 is we try to be fair in making a decision but
15 also this is an opportunity for the community
16 to ask questions and get answers under oath
17 and maybe dispel rumors and hear the full
18 story. One of the things we learned from the
19 school district case is that when we do things
20 that way, what can start out as being a very
21 divisive issue can turn into one in which the
22 community generally comes to agreement.

23 We have a little way to go yet in
24 the school district case. We are pursuing
25 settlement discussions. But we came a long

1 way from a time when people were here and out
2 in the parking lot and very, very divided. We
3 now have a sense really of consensus in the
4 community that the school needs to be done,
5 the school needs to be built and the location
6 is okay, as long as there are certain
7 protections put into place.

8 That's what we're going to try to
9 do tonight. So we will allow people to
10 testify if they have something to say. We ask
11 that you not redundantly testify because this
12 isn't based on a democracy in the sense that
13 if more people want it than don't want it,
14 that will be the way it goes. We do this
15 based on the law and the number of people who
16 want it versus the number of people who don't
17 want a particular result is not the basis for
18 our decision. So if you want to testify, you
19 may.

20 The lawyers will call witnesses
21 first and then we will go to the public to
22 testify, call witnesses if you want and act
23 like you are lawyers even though you are not.
24 We do the lawyers first because they're
25 trained to do this, and we find very often

1 that they are able to accomplish the result
2 much more efficiently than people who are not
3 trained as lawyers. That's understandable.

4 After the lawyers go, then I go,
5 as solicitor of the Zoning Hearing Board goes
6 and the questioning, then it goes to the
7 public and then the process keeps repeating
8 until we run out of witnesses and questions.

9 We will start tonight with the
10 opportunity for the lawyers or anyone else to
11 present pre-hearing briefs. We will allow the
12 lawyers and anyone else who wishes to to
13 present opening statements and then we will
14 get into the actual testimony. Evidence that
15 we can consider is what's said under oath and
16 what is admitted as exhibits. Side
17 conversations, things of that sort are not
18 evidence.

19 So if you want something to be
20 considered, you must tell us under oath.
21 Sending me a letter, much as I appreciate the
22 courtesy, isn't evidence. If you want to ask
23 a question, you can communicate with me and
24 I'm happy to answer it. You can do that at a
25 break, you can do it after the hearing via

1 e-mail, but that's not evidence.

2 You're going to hear about
3 stipulations perhaps. Stipulations are the
4 things lawyers have agreed on that are not
5 disputed. Because the lawyers agree to them
6 doesn't mean the public has agreed to them.
7 So even if there are stipulations made by the
8 lawyers, members of the public will be given
9 an opportunity to say, no, I don't agree with
10 that and we will take that into account.

11 When you testify, please make sure
12 that you answer the questions orally. Miss
13 Cavaliere is a very experienced court
14 reporter, but she still cannot take down
15 gestures and head nods. I know that's hard.
16 I am more guilty of it than anybody cause I'm
17 Italian and that's how I talk. But let's all
18 try, out of respect for Miss Cavaliere, to
19 give her real vocal answers.

20 If this case takes longer than one
21 night, and it might, you may see one of the
22 members of the Zoning Hearing Board in the
23 Giant Eagle. Do not be offended if they do
24 not talk to you about the case or if you ask
25 them a question and they say, "I cannot

1 answer." They are not permitted to have those
2 kind of conversations while the case is
3 pending. As a matter of fact, while the case
4 is pending, they don't talk to each other
5 about the case. We talk about the case only
6 through me. I talk to each of them
7 individually, and I don't tell them what each
8 other says or thinks because we have Sunshine
9 Law issues that we have to be concerned with.

10 The alternate fully participates
11 in the activity of the board in these
12 hearings. She may ask questions. She is
13 involved in the deliberations. The only thing
14 she doesn't do is vote, assuming the other
15 three regular members of the board do vote.

16 We're going to start in a minute
17 or so. There will be a ten minute break every
18 hour. We do that for the convenience of you
19 and because Miss Cavaliere needs a break.
20 That is customary.

21 I don't foresee necessarily that
22 we will be done tonight. If we are, that's
23 great. But given what I expect to be the
24 number of witnesses and given what experience
25 teaches about how long it takes from a witness

1 to be questioned, especially when there are
2 this many people in the audience and assuming
3 some of you have questions for the witnesses,
4 I believe we will carry over till tomorrow.
5 We already have a date scheduled for tomorrow.

6 It is possible, but unlikely, that
7 the board will publicly deliberate and decide
8 the case on the same day as the hearing
9 evidence concludes. In part, that's because
10 we need time to think about it and in part
11 it's because the lawyers may wish or members
12 of the public may wish to submit briefs. And
13 those take time to do.

14 So, Mr. Chairman, with that, I
15 have nothing further to add.

16 MR. SOSTER: Board members?

17 MR. SOMAN: Let's go. Do it.

18 MR. SOSTER: Are there any briefs
19 that any counsel wish to submit at this time
20 for the record?

21 MS. JEWART: Yes, I have a
22 pre-hearing brief to submit on behalf of the
23 objectors, Miss Katie Melodini, who is present
24 tonight.

25 MR. RESTAURI: Would all counsel

1 identify yourselves for Miss Cavaliere,
2 please?

3 MS. JEWART: My name is Anna
4 Jewart. I am with the firm of Babst, Calland
5 and Clements and, as stated, I represent the
6 objecting landowner who is a neighbor on the
7 property at 129 Neely, Miss Katie Melodini,
8 who is present in the front row over there.

9 MR. SOSTER: Miss Sweeney, I see
10 you standing. Do you have something for us?

11 MS. SWEENEY: I do not have a
12 brief. I reserve the right to submit post
13 hearing briefs depending on the testimony as
14 presented.

15 MR. RESTAURI: Yes, thank you.
16 Before we get to opening statements, would
17 everyone who plans to testify please be sworn.

18 (WITNESSES JOINTLY SWORN)

19 MR. RESTAURI: Thank you. All
20 right, opening statements? Miss Sweeney, we
21 will start with the applicant.

22 MS. SWEENEY: Do you prefer I
23 address from the podium?

24 MR. RESTAURI: Yes, if you are
25 comfortable with that, that's fine. If not,

1 it's not critical.

2 MS. SWEENEY: So good evening.

3 Maureen Sweeney from Steptoe and Johnson on
4 behalf of the appellant here, Robert Wernicki.
5 This case concerns an accessory structure on
6 property located at 133 Neely Street here in
7 the eighth zoning district.

8 As you'll hear this evening,
9 during the early months of the Covid pandemic
10 in 2020 Mr. Wernicki, who owns and resides at
11 133 Neely, attempted to reach out to the
12 township numerous times to ask what he needed
13 for permits to construct an accessory
14 structure. He was unable to reach anyone.
15 These were extraordinary times. And
16 ultimately the structure was erected by a crew
17 of Amish who showed up suddenly one day after
18 he had been delaying the construction for
19 several months.

20 After a complaint by a neighbor,
21 Mr. Wernicki was directed to file for a
22 building permit application after the fact.
23 He attempted to do so, but the township
24 manager refused to accept the application.

25 There were also some building code

1 violations that were issued at the time.
2 Those were appealed but have been subsequently
3 rescinded, and there are no other violation
4 notices outstanding at this time.

5 On November 8th, 2020,
6 Mr. Wernicki submitted an application for a
7 variance under the floodplain variance --
8 under the floodplain ordinance, excuse me,
9 based on the building size of the accessory
10 structure. As part of that application, the
11 survey seemed to indicate that it also
12 slightly encroached into the side setback. As
13 a result, Mr. Wernicki had submitted a
14 di minimus zoning variance application for
15 that with regards to the side setback and then
16 on December 21st he filed for an application
17 under the floodplain ordinance as well.

18 That application is in limbo at
19 this point pending the results of this
20 variance request with regards to the size. As
21 Mr. Restauri noted, there has been
22 clarification in fact that the survey that had
23 been previously submitted had a drafting error
24 with regards to a layer. The pins were
25 accurate but there was a drafting error and

1 that was corrected and in fact a third survey
2 from another company was acquired and paid for
3 by Mr. Wernicki to clarify and demonstrate to
4 the township that there in fact was no
5 encroachment of the side setback. And as I
6 understand it, the township has no objection
7 in that regard and so we have withdrawn that
8 application request with regards to the zoning
9 side setback.

10 At this point, the sole issue in
11 front of you right now is a request for a
12 variance, the size limitation in the
13 floodplain ordinance. We submit that this
14 should be granted. We have an engineering
15 study analysis of the impact that shows a
16 minor negligible increase in the base flood
17 elevation which is not consequential here and
18 indeed any structure, you will hear from the
19 testimony tonight, put in the floodplain will
20 result in a similar type of increase here.

21 We believe this is consistent with
22 the intent of the ordinance and in light of
23 the testimony and the facts we present to you
24 here, we would submit that a variance would be
25 appropriate here. These are extraordinary

1 times that Mr. Wernicki went through and he
2 has done a lot, spent a lot of money and time
3 to try to come to terms and to correct errors
4 and make sure he's in compliance, and he's not
5 here to point fingers or accuse anybody of not
6 doing their job.

7 His issue here is that it was an
8 extraordinary time, these were extraordinary
9 situations, and he has corrected everything
10 that he thought that was in error here and
11 we're trying to come into compliance here.
12 And so we are asking that in light of the
13 elements and the procedures under the
14 floodplain ordinance that we meet the
15 requirements and that you would grant the
16 requested variance.

17 I understand you're going to allow
18 openings by others. Or should I put on my
19 first witness?

20 MR. RESTAURI: We are going to go
21 through all of the opening statements first.

22 MS. JEWART: Thank you.

23 MR. RESTAURI: You are welcome.
24 Thank you. Which of remaining counsel wish to
25 go next?

1 MS. JEWART: Thank you all again.
2 My name is Anna Jewart. I am representing
3 Miss Melodini, who is here.

4 At the outset, I respectfully need
5 to make a very brief clarification on my
6 understanding of the law as it stands tonight.
7 As your solicitor has correctly guided you,
8 you have a singular issue tonight which is
9 involving a floodplain variance request.

10 There was one statement made that
11 I believe the case law distinguishes and that
12 is that if there is an impact, then you
13 consider if there is a hardship. In my
14 opinion, you have that a little bit backwards.
15 If there is a hardship, you can then continue
16 to move forward and go through the remaining
17 of the variance criteria, one of which will be
18 the impact on the community such as all these
19 folks out here.

20 This matter might seem
21 complicated. As we already all noted, there
22 have been a number of moving parts, there have
23 been applications submitted and withdrawn,
24 there have been numerous discussions,
25 negotiations, status conferences, changes in

1 surveys, changes throughout this entire thing.

2 I would put forth that while all
3 of these items may make this issue seem
4 complicated, what we have before us is just a
5 simple variance application. It's something
6 you have all dealt with before and you have to
7 follow the very strict strictures of the law
8 when considering it.

9 I presented to you a hearing
10 memorandum which will outline more of these
11 legal arguments, but I wanted to remind
12 everybody and for the people here who are not
13 as familiar with the variance, let them know a
14 little bit of what we're looking for.
15 Apologies if I'm getting warm. I'm half
16 Italian, but I also have Irish in me so I'm
17 like woo.

18 All right, as I stated, this might
19 seem complicated and there were many moving
20 parts but the majority of the facts that are
21 actually at issue tonight, possibly tomorrow,
22 are essentially uncontested. We have a
23 structure that was built without a building
24 permit, without a zoning permit, without a
25 floodplain permit. That structure is located

1 in the floodplain.

2 The regulated floodplain, per FEMA
3 and per the zoning ordinance, and that
4 structure should be limited to 200 feet.
5 Instead, it is about 670 square feet. It's
6 over three times the size of what it should
7 be. These are not contested issues.

8 What needs to be shown tonight --
9 and again the burden will be on Mr. Wernicki
10 to prove that he needs these elements -- is
11 that he meets the variance requirement, both
12 those outlined in the MPC, in your zoning
13 ordinance, in addition to the variance
14 requirements from FEMA which are incorporated
15 and exceeded by your floodplain ordinance and
16 the ordinance requirements that are
17 incorporated into the zoning ordinance as they
18 relate to the floodplain. Those are
19 secondary.

20 The preliminary issue here is does
21 he deserve a variance? You are all familiar
22 with that. But again, to go over it a little
23 bit more simply, here is what you need to
24 establish a variance. First, there needs to
25 be unique physical circumstances or conditions

1 peculiar to that property which cause an
2 unnecessary hardship. These physical
3 conditions have to be unique to the property
4 and Pennsylvania courts have made it
5 completely clear that the location of a parcel
6 within a floodplain district is not a unique
7 physical circumstance because it's shared by
8 all the other parcels in that district.

9 I'm sure there are a number of
10 other people here who have homes located in
11 the floodplain. Many people in Leet and many
12 people in the surrounding areas do. It's not
13 a unique condition.

14 Second, because of these physical
15 characteristics, there has to be either no
16 possibility that the property can be developed
17 in strict conformity with the provisions of
18 the chapter, the zoning ordinance and
19 floodplain ordinance, or that they could only
20 conform to those requirements due to a
21 prohibitive expense. Where parcels like this
22 have been suitably developed as a single
23 family residence, as this parcel is and in
24 fact has several other accessory structures on
25 the property, courts have been clear. It does

1 not deserve a variance. That is not a
2 hardship.

3 In fact, courts have made it clear
4 -- and I have provided a case with very
5 similar facts to this -- that the desire to
6 enlarge a garage in the floodplain for a
7 single family residence does not deserve a
8 variance. There is no hardship. A desire to
9 want more space to put your cars or whatnot
10 doesn't impact the property. That impacts
11 your desire.

12 Third, the applicant needs to
13 prove that any unnecessary hardship was not
14 created by the applicant him or herself. This
15 generally applies when, as here, the applicant
16 goes in, builds something in violation and
17 comes back and asks for forgiveness rather
18 than provision. There is a strong public
19 policy acknowledged by the courts that says
20 that variances should not be granted in that
21 exact scenario because any hardship imposed on
22 the applicant that cost to tear it down would
23 not have occurred if he had just come in and
24 figured out what the zoning requirements were.

25 In fact, the law is clear that

1 mere ignorance of the zoning requirements does
2 not deserve a hardship because every single
3 person who lives in this township has an
4 obligation, an affirmative obligation to make
5 sure they know what requirements apply to
6 their properties.

7 Fourth, if a variance is
8 authorized, the applicant needs to show that
9 it does not alter the essential characteristic
10 of the neighborhood, permanently impair the
11 appropriate use or development of the adjacent
12 property, or be detrimental to the public
13 welfare. My client here is here because it
14 has negatively impacted her property. It has
15 put her at risk of increased flooding, it has
16 ruined her views, has changed the nature of
17 the neighborhood.

18 In addition, the courts have found
19 that a failure to comply with specific
20 requirements designed to prevent or minimize
21 harmful effects of flooding justifies a
22 finding of an adverse effect on public
23 welfare.

24 Finally, any variance requested
25 must be the minimum variance to afford relief.

1 This means that the applicant has to show not
2 only that he deserves this variance but that a
3 lesser variance could not help him.

4 He needs to show that it would be
5 impossible to construct a structure in a less
6 violative way. In plain terms, if you want to
7 go from 200 square feet to 600 square feet,
8 you need to prove that you cannot get any
9 relief by building a 500 square foot, 400
10 square foot, 220 square foot structure.

11 It is my opinion that these are
12 the requirements that apply, in supplement to
13 that are the floodplain requirements. You
14 might be aware that FEMA regulations what may
15 be granted in a floodplain.

16 In addition, the township, as it
17 has, is able to supplement those and go
18 further than those. In this instance, they
19 have said, and it's established in the
20 ordinance, that a variance cannot be granted
21 for the floodplain if there is any increase in
22 BFE, base flood elevation, any. Not so long
23 as there is not much, not if there is just a
24 little bit you can do it. You cannot grant a
25 variance if there is any increase in the BFE.

1 Those are the exact terms of the ordinance and
2 they must be followed.

3 It is my opinion that based on the
4 case law and based on what I anticipate to be
5 presented tonight, the applicant will not be
6 able to meet any of these criteria. And
7 again, he must meet every single one.

8 I am so happy to be here with you
9 tonight. Sorry I'm so toasty, although I'm
10 sure you all are as well, but thank you for
11 your time and I look forward to the rest of
12 these proceedings.

13 MR. RESTAURI: Thank you.
14 Mr. Chesney?

15 MR. CHESNEY: Good evening. My
16 name is Steven Chesney, solicitor for the
17 Township of Leet. And I'm not going to
18 reiterate everything everyone else said, but
19 what I will do is make a distinction.

20 You know, we're here to talk about
21 a variance and we're not talking about a
22 normal variance. Normally, if this were in
23 any other district, we would be talking about
24 area violence, increase in the size of the
25 structure. But right now we are talking about

1 a floodplain variance and it's important to
2 remember that a floodplain variance is there
3 for a reason. It's there to restrict.

4 The floodplain ordinance is there
5 to restrict any type of development in the
6 floodplain, and it's there because it's part
7 of a program, the national floodplain
8 insurance program. And at the time that the
9 township adopted these variances, they had an
10 opportunity to adopt something that meets the
11 standards of the federal regulations or exceed
12 it, and they chose to exceed it. And the
13 reason why they did that is to prevent the
14 development in a floodplain to keep everyone's
15 costs down and to protect the community.

16 And it's important to remember
17 that not only do they have to meet the
18 variance requirements for any normal
19 residential or any other type of district, but
20 they also must meet the requirements for a
21 floodplain variance. And our ordinance is
22 pretty clear about what those standards are.
23 You know, I'm not going to go over them right
24 now because I'm sure we are going to go over
25 them in all the testimony, and I know it's hot

1 and I don't want to waste anyone's time.

2 But I want to make everyone
3 understand that we have a duty to make sure
4 that we try to restrict the development in
5 that floodplain. It's why the township
6 adopted the more strict standard at the time
7 to not allow anything go beyond that 200 feet,
8 square foot area.

9 So I'm sure some of this is going
10 to be interesting to everyone tonight, and I
11 hope that it's not too hot for people in here
12 tonight. But thank you.

13 MR. RESTAURI: Thank you. Does
14 any member of the public wish to make an
15 opening statement? Seeing no one who wishes
16 to --

17 (AUDIENCE MEMBER SPEAKING)

18 MR. RESTAURI: You are
19 representing her and you made the opening
20 statement so we generally limit it to one.
21 But certainly she may testify.

22 Yes, ma'am?

23 MS. BIRKS: I'll make a statement.

24 MR. RESTAURI: Please come
25 forward.

1 MS. BIRKS: Shelby Birks, 120
2 Short Street.

3 MR. RESTAURI: Spell your last
4 name.

5 MS. BIRKS: B-i-r-k-s.

6 MR. RESTAURI: Thank you.

7 MS. BIRKS: Sorry I'm late. I
8 actually just had this put in our mailbox.

9 MR. RESTAURI: You are not late.

10 MS. BIRKS: All I really wanted to
11 say is one complete view out of our home and a
12 reason that we moved to the neighborhood was a
13 beautiful view of the creek. We used to be
14 able to see my daughter at the beach out of
15 our window just as a safety measure, to be
16 able to look out there and view that.

17 We woke up one morning, heard some
18 noise, few hours later there is complete
19 building that's up. And I don't know if we're
20 past this part already, but I don't even see
21 how there is a variance issue here because a
22 permit was never even pulled for this building
23 and we would have had the opportunity at that
24 time to stop this altogether.

25 So it just seems very black and

1 white, the rules that need to be followed.
2 But it definitely affects our property value,
3 taking away complete view of the creek.

4 MR. RESTAURI: Anyone else with an
5 opening statement? Seeing no one, Miss
6 Sweeney, please call your first witness.

7 MS. SWEENEY: Thank you. I call
8 Gary Sheffler. And I do have binders for the
9 board.

10 MR. RESTAURI: Thank you.

11 - - -

12 GARY SHEFFLER,
13 having been first duly sworn, was examined and
14 deposed as follows:

15 - - -

16 DIRECT EXAMINATION

17 BY MS. SWEENEY:

18 Q. Mr. Sheffler, could you state your name for
19 the record, please?

20 A. Gary A. Sheffler.

21 Q. And are you affiliated with any company?

22 A. Yes, I'm an employee of Sheffler and Company,
23 Inc., engineers and surveyors.

24 Q. And could you just briefly summarize your
25 professional background and experience for the

1 board.

2 A. Well, I'm a registered surveyor in
3 Pennsylvania and Ohio. I've been registered
4 since 1966 in Pennsylvania and the last ten
5 years in the State of Ohio.

6 MS. SWEENEY: Mr. Sheffler's CV is
7 attached as Exhibit 9 in your binders.

8 MR. RESTAURI: Are you going to
9 qualify him as an expert?

10 MS. SWEENEY: Yes.

11 MR. RESTAURI: Is there any
12 objection to Mr. Sheffler as an expert?

13 MS. JEWART: No objection.

14 MR. CHESNEY: No objection.

15 MR. RESTAURI: Mr. Sheffler will
16 be able to testify and as an expert his
17 testimony will be accepted as such.

18 BY MS. SWEENEY:

19 Q. So turning to tab 1-A in the binder, can you
20 just briefly identify what this document is
21 and what it depicts?

22 A. Yes. It's a copy of the GIS tax map for
23 Allegheny County and has outlined
24 Mr. Wernicki's property in red.

25 Q. Just for orientation of the board. Then in

1 turning to tab 1-B, are these photographs of
2 133 Neely, Mr. Wernicki's property?

3 A. Yes.

4 Q. So just turning through them, these are
5 different views of the property and that's
6 located at the end of Neely Street, correct?

7 A. That's correct.

8 Q. And I believe the third photograph here shows,
9 in the middle, the structure that's at issue
10 here tonight?

11 A. That is correct.

12 Q. Okay. And then there is another structure
13 that was pre-existing?

14 A. Yes, that's correct.

15 Q. Turn for a moment to Exhibit 5, if you would.
16 I'm going to jump around. I apologize.

17 MR. RESTAURI: No worries. That's
18 fine.

19 THE WITNESS: Was that tab five?

20 BY MS. SWEENEY:

21 Q. Tab five, yes, sorry. Is this an appeal of
22 the building code violations that I had
23 mentioned in my opening statement that you had
24 filed on behalf of Mr. Wernicki?

25 A. Yes.

1 Q. And were those building code violations
2 subsequently withdrawn?

3 A. Yes.

4 Q. Turning to tab -- excuse me -- is it your
5 understanding that Mr. Wernicki filed for a
6 building permit application as well for this
7 property?

8 A. Yes.

9 Q. Turn to tab three, if you would. Is that the
10 building permit application as you understand
11 it?

12 A. Yes.

13 Q. And is it your understanding that that was not
14 accepted by the township?

15 A. Yes.

16 Q. So after that, were you engaged by
17 Mr. Wernicki to assist him with filing a
18 permit and such to address the situation?

19 A. Yes.

20 Q. And what did you do?

21 A. Well, we prepared a survey plot plan to submit
22 to the township showing the new structure that
23 was constructed on the property and helped
24 Mr. Wernicki fill out the building permit
25 application.

1 Q. So turn to tab six, if you will, and the
2 second page of tab six. Is that the variance
3 under the floodplain ordinance that you're
4 referring to, that you helped him prepare?

5 A. The request for the variance?

6 Q. Yes.

7 A. Yes.

8 Q. And could you just briefly summarize what
9 specifically was being requested here?

10 A. Well, to summarize it generally, the Leet
11 Township floodplain ordinance restricts
12 building in the floodplain up to 200 square
13 feet.

14 Q. For an accessory structure.

15 A. For an accessory structure, yes.

16 Q. So this was a variance under the floodplain
17 ordinance, not a variance under the zoning
18 ordinance.

19 A. Correct.

20 Q. And it's specifically Section 8-502E that we
21 were dealing with here, correct?

22 A. That is correct.

23 Q. And the floor area shall not exceed 200 square
24 feet. Is that what we're seeking a variance
25 on?

1 A. Correct.

2 Q. Now there are other requirements under 502 of
3 the floodplain ordinance with regards to
4 accessory structures being built. Does this
5 structure otherwise comply with those
6 requirements?

7 A. Yes.

8 Q. So roughly what is the size of the structure
9 here?

10 A. 20 by 30, 600 square feet.

11 Q. Roughly.

12 A. Roughly.

13 Q. And there was a survey that was attached to
14 this?

15 A. That is correct.

16 Q. And that is also behind tab six. Can you just
17 briefly describe some of the things that are
18 depicted?

19 A. Yes, this is a plat of survey that we prepared
20 after a physical, on the ground survey
21 locating the structures that were existing at
22 the time, locating Neely Street and the
23 property markers, property boundaries.

24 Q. So a portion of Mr. Wernicki's property is in
25 the floodway and a portion is in the

1 floodplain; is that correct?

2 A. That is correct.

3 Q. Can you just briefly describe what the
4 difference is between those two terms?

5 A. Well, the floodway itself is totally
6 restrictive, absolutely no activity can take
7 place in the floodplain -- floodway. However,
8 there are exceptions to buildings that can be
9 built in the floodplain.

10 Q. And with regards to this particular survey,
11 did you discover that there was a drafting
12 error relative to this survey?

13 A. That is correct, yes.

14 Q. Can you briefly describe what that was?

15 A. Well, the draftsman had inadvertently moved
16 the property off of the existing iron pin
17 monumentation.

18 Q. In your computer system.

19 A. During his CAD work in his system and,
20 unfortunately, I did not catch it.

21 Q. But the locations didn't change, it was just
22 an overlay; is that correct?

23 A. Yes.

24 Q. And a corrected survey was submitted to the
25 township; is that correct?

- 1 A. Yes.
- 2 Q. And I will direct your attention to tab 14.
- 3 Is that the corrected survey that you
- 4 submitted?
- 5 A. Yes, it is.
- 6 Q. And you have sealed this and you attest this
- 7 is an accurate survey of the conditions?
- 8 A. Yes.
- 9 Q. So the hatched lines show the floodway; is
- 10 that correct?
- 11 A. That is correct.
- 12 Q. And it looks like that there is actually a
- 13 structure on an adjacent property that's in
- 14 the floodway; is that correct?
- 15 A. Behind Mr. Wernicki's property, yes.
- 16 Q. Not on Mr. Wernicki's property.
- 17 A. Right.
- 18 Q. And in fact there was a subsequent third party
- 19 survey that was also prepared and submitted.
- 20 Are you familiar with that?
- 21 A. Yes.
- 22 Q. And did you have an opportunity to review
- 23 that?
- 24 A. I did.
- 25 Q. I'll direct your attention to tab 16. Is that

1 the third party survey?

2 A. Yes, it is.

3 Q. And was that consistent with your corrected
4 survey?

5 A. I believe it is, yes.

6 Q. Getting back to the floodplain variance
7 application, was there also a report prepared
8 and submitted with regards to -- let me
9 rephrase that.

10 This particular property is a
11 nonconforming lot; is that correct?

12 A. Yes.

13 Q. And the structure is also a nonconforming
14 structure; is that correct?

15 A. Yes.

16 Q. Can you explain that by looking at tab 14 in
17 your corrected survey? Tab 14. It's not
18 illustrated there. I misspoke.

19 In the process of all this, there are
20 two lots that comprise Mr. Wernicki's
21 property; is that correct?

22 A. That is correct.

23 Q. And did you submit a consolidation plan with
24 regards to this?

25 A. I did.

1 Q. And was that submitted to the township for its
2 approval?

3 A. Yes, it was.

4 Q. And was it in fact approved by the township?

5 A. No.

6 Q. The consolidation plan?

7 A. It's still pending.

8 Q. Hasn't been recorded yet but it's been
9 approved.

10 A. Right.

11 Q. So looking at tab 17, is that the
12 consolidation plan?

13 A. Yes, it is.

14 Q. And does that help you -- let me rephrase.

15 Does this help you explain a little bit
16 better the nonconformities relative to
17 Mr. Wernicki's property?

18 A. Yes.

19 Q. Can you briefly describe that for the board?

20 A. Well, the consolidation plan was prepared
21 using the current zoning ordinance with the
22 setbacks that are required under that
23 particular zoning district. And the plan
24 shows that basically there is a 50 foot
25 setback from the road and a 50 foot setback

1 from the rear which essentially renders the
2 property un-buildable for any future expansion
3 of Mr. Wernicki's existing home.

4 Q. And his structure, primary structure, is a
5 nonconforming structure; isn't that correct?

6 A. That's correct.

7 Q. So he can't expand upon that either.

8 A. No.

9 Q. Now getting back to the floodplain application
10 that you submitted, was there an additional
11 report submitted in support about the impacts
12 of this structure in the floodplain?

13 A. Yes.

14 Q. And could you briefly describe what that
15 report said?

16 A. Well, an independent engineer prepared a
17 report for Mr. Wernicki detailing what the
18 effect would be of the structure in the
19 floodplain as to any change in the base flood
20 elevation as a result of that recent study
21 that was submitted. Anything you put in the
22 floodway cross-section would show an increase
23 because it's obviously an impediment, but the
24 recent study that we have submitted in fact
25 shows an increase in the base flood elevation

1 of about a half an inch.

2 Q. So if you would turn to tab 15, before we get
3 into that recent study, this is a document
4 that's amended June 15, 2021, that was
5 submitted by Scheffler and Company by an
6 engineer in your firm; is that correct?

7 MR. RESTAURI: Fifteen, Maureen?

8 MS. SWEENEY: Tab 15.

9 MR. RESTAURI: I'm showing under
10 my tab 15, unless I have the wrong tab, a
11 December 21, 2020.

12 MS. SWEENEY: The next line is
13 amended June 15, 2021.

14 THE WITNESS: Yes, that's correct.

15 BY MS. SWEENEY:

16 Q. And that document was sealed by a professional
17 engineer certifying the accumulative effect of
18 the accessory structure would not cause any
19 increase in the base flood elevation. Do you
20 see that?

21 A. That was his opinion, yes.

22 Q. That was his opinion at that time.

23 A. Yes.

24 Q. And that was submitted to the township for
25 review?

- 1 A. Yes.
- 2 Q. And subsequent to that, you engaged -- or
- 3 Mr. Wernicki engaged a third party engineer to
- 4 submit a supplemental report as well along
- 5 those lines; is that correct?
- 6 A. That's correct.
- 7 Q. Now you noted that the new report shows what
- 8 is called a negligible increase of .04 feet
- 9 increase in the base flood elevation. Can you
- 10 describe and tell the board what that means?
- 11 A. Well, it probably would be better if our
- 12 engineer explained it.
- 13 Q. Okay.
- 14 A. It's a negligible increase based on formulas
- 15 created to do a HEC-RAS analysis which is a
- 16 hydraulic analysis of the entire watershed.
- 17 Q. And I'll ask him more details about that.
- 18 A. Please.
- 19 Q. Very good. So with regards to the submittals
- 20 here, as part of your services you reviewed
- 21 the township's floodplain ordinances; is that
- 22 correct?
- 23 A. That is correct.
- 24 Q. Other than the size of the accessory structure
- 25 under the floodplain ordinance, does it meet

1 the requirements of the township ordinances?

2 A. Yes.

3 Q. So Section 8-802 of the township's floodplain
4 ordinance sets the standards and procedures
5 for variances under the floodplain ordinance
6 which is not the same as the zoning ordinance.
7 Did you take a look at that as well?

8 A. I did.

9 Q. So with regards to this document, did your
10 firm's report conclude that there was no
11 measurable increase in base flood elevations?
12 Mr. Beechey's report.

13 A. It concluded that the increases were
14 negligible.

15 Q. And the other elements of Section 802, were
16 there any prohibited activities contemplated
17 for this particular property?

18 A. No.

19 Q. In your professional opinion, would the
20 requested size variance of this structure
21 endanger human life?

22 A. No.

23 Q. In your professional opinion, would the
24 floodplain variance here be the least
25 modification necessary to provide relief for

1 Mr. Wernicki?

2 A. Yes.

3 Q. In your opinion, is there good and sufficient
4 cause to grant the variance here?

5 A. I believe there is, yes.

6 Q. With regards to the failure of granting a size
7 variance, would that result in an exceptional
8 hardship to Mr. Wernicki?

9 A. Try that again.

10 Q. Would the failure to grant a size variance
11 here under the floodplain ordinance result in
12 an exceptional hardship to Mr. Wernicki?

13 A. Yes.

14 Q. He has a very small principal structure; is
15 that correct?

16 A. That is correct.

17 Q. About 800 square feet?

18 A. Yes.

19 Q. On a nonconforming lot, nonconforming
20 structure?

21 A. And unable to expand it.

22 Q. And unable to expand it. Would the granting
23 of this variance result in an unacceptable or
24 prohibited increase in flood heights,
25 additional threats to the public safety or

1 extraordinary public expense?

2 A. No.

3 Q. Will the granting of a variance for a size
4 building structure under the floodplain
5 ordinance create a nuisance, cause fraud on or
6 victimize the public or conflict with any
7 other applicable state or local ordinances or
8 regulations?

9 A. No.

10 Q. And are you sure of your opinions here within
11 a reasonable degree of certainty?

12 A. Yes.

13 Q. And with that, I would also note that the
14 variance here is under the floodplain
15 ordinance, it's not under the zoning
16 ordinance. I just wanted to clarify that.

17 MS. SWEENEY: Are you going to
18 offer him for cross?

19 MR. RESTAURI: Yes, yes. I wanted
20 to make sure you had nothing further for him.

21 MS. SWEENEY: Not for
22 Mr. Sheffler, at this time.

23 MR. SOSTER: Who wants to go first
24 on cross?

25 MR. CHESNEY: Ladies first.

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CROSS-EXAMINATION

- - -

BY MS. JEWART:

Q. Mr. Sheffler, thank you for being here. I have a few apologies for my now multiple binders. Let's see if I can keep everything in order. I have a few follow-up questions for you.

First of all, the property in question, partially within a floodway, partially within a floodplain. You explained the difference between those two. The structure here, would you qualify that as a garage? Or I have heard it called shed or garage.

A. Shed.

Q. A shed. Are you aware of what the intent to use the structure is?

A. Yes.

Q. Could you clarify that for me?

A. I believe to house lawn maintenance equipment and lawn care facilities.

Q. So, to your knowledge, not for vehicles?

A. Not to my knowledge, no.

Q. You stated that this structure, this new

1 structure, shed, is 600 square feet. I'd like
2 to just clarify, if I could. My apologies,
3 I'm going to move these so they don't fall on
4 us. I'm not sure which exhibits were entered
5 or which were just referenced here so if I
6 may, I'm going to clarify that we're looking
7 at the same thing.

8 MR. RESTAURI: Let me make a
9 clarification for everybody. Ordinarily, what
10 I've done is if there is some objection from
11 counsel, every document that was testified
12 about is admitted, at least as to -- admitted,
13 subject to weight. If there is some objection
14 to that on a specific document, please let me
15 know. And then at the end, if you want to
16 offer booklets and so on as a group, we can do
17 that for the sake of convenience.

18 MS. JEWART: Thank you. I
19 appreciate that.

20 MR. RESTAURI: Yes.

21 MS. JEWART: We discussed two
22 surveys. Again, I can't reference -- I'm not
23 sure what the exhibit number is so, if you
24 don't mind, I have copies I'd like to show
25 you.

1 MR. RESTAURI: Sure. No worries.

2 BY MS. JEWART:

3 Q. Can we clarify that this was one of the
4 surveys drafted by your firm July 23rd, 2021?

5 A. Yes.

6 Q. So I would just like to clarify, there is the
7 structure we're talking about tonight,
8 correct?

9 A. Correct.

10 Q. And based on those -- you were close to it but
11 based on those calculations, 22.2 feet wide by
12 30.2 feet long, I believe that comes out to
13 670 feet.

14 A. I agree with you.

15 Q. Thank you. I'm not sure if I need to resubmit
16 this, but I'm happy to provide them just for
17 reference.

18 MR. RESTAURI: Sure.

19 MS. JEWART: If it needs to be
20 marked, this could be Objector Exhibit 1.

21 MR. RESTAURI: This is already in
22 the book.

23 MS. JEWART: It is.

24 MS. SWEENEY: This is Objector 1?

25 MS. JEWART: I believe this is

1 already submitted by you, but if we need to
2 clarify, it can be Objector's Exhibit 1.

3 BY MS. JEWART:

4 Q. So you talked a little bit about the property
5 being nonconforming. Can you explain a little
6 bit of what that means?

7 A. Well, the current zoning ordinance established
8 building setback lines and the building
9 setback lines actually fall within the
10 existing structure.

11 Q. Okay.

12 A. Therefore, it's nonconforming zoning wise.

13 Q. So looking at what is nonconforming, you
14 talked a bit about the lot itself and the
15 primary structure which, if we're looking back
16 at this exhibit, we're talking about this part
17 right here (indicating).

18 A. That's correct.

19 Q. I believe that's saying somewhere -- can you
20 give us an estimate of what the size of that
21 primary structure was?

22 A. 36 by 16.

23 Q. I'm going to show you an additional exhibit
24 here. This was not submitted so I believe
25 this would be Objector 2.

1 MR. RESTAURI: Objector 2.

2 BY MS. JEWART:

3 Q. This is a printout today from the county
4 property assessments office, depicts the main
5 building. Would you just take a look at this
6 and in your opinion clarify what we're looking
7 at in this drawn?

8 MS. SWEENEY: I am going to object
9 because this is not something he created and
10 nor is he competent to testify as to the
11 accuracy of what's on this county tax return.

12 MS. JEWART: That is
13 understandable. I would state I would just be
14 asking for your opinion in reading the diagram
15 presented and assuming that what is presented
16 is accurate to you, your understanding of the
17 property which you've reviewed and you've
18 provided a survey for and assuming the
19 accuracy, I did print this myself today and
20 can attest it is authentic.

21 MR. RESTAURI: We will admit it
22 subject to the objection as to its weight.

23 BY MS. JEWART:

24 Q. So there are four items indicated on this
25 drawing. I believe they are all also

1 indicated on the survey you provided.

2 There is one identified as main building
3 and there is A-1, A-2, A44. It's my
4 understanding, reading this, that those mean
5 accessory. Can you clarify that?

6 MS. SWEENEY: Again, I object to
7 the extent he did not create these A-1, A-2,
8 A-4.

9 MS. JEWART: Certainly.

10 BY MS. JEWART:

11 Q. Mr. Sheffler, are you familiar with the
12 property of assessments and the variance
13 assessment drawings provided to the county for
14 tax assessment purposes?

15 A. Yes.

16 Q. Have you seen drawings like this before?

17 A. Yes.

18 Q. In your basic understanding, what's your
19 assumption here?

20 A. The tax map generally matches my survey.

21 Q. Okay, thank you. So when you say that the
22 main structure is nonconforming, do you mean
23 main building, 476, or do you mean A-2, A-1
24 and A-4 which are identified on your survey as
25 covered deck, covered porch? I think we might

1 be missing one here, another addition
2 someplace here.

3 MS. HOMER: No, not if you add the
4 28 and 8 together.

5 MS. JEWART: Thank you very much.

6 BY MS. JEWART:

7 Q. I just want to get an idea of what pieces of
8 this property -- there are a number of
9 structures on the property, additions on the
10 property, what is lawfully nonconforming in
11 your opinion and what you are not including in
12 that calculation.

13 A. I believe it would be the main structure.

14 Q. Thank you. There is also another item located
15 to the rear of the property if you are facing
16 Neely Street that's identified on the survey
17 as existing shed. In your opinion, is that a
18 nonconforming structure? I'll clarify that.

19 Do you have any knowledge, based on your
20 familiarity of the property, of when that was
21 erected?

22 A. No.

23 Q. It was there, though, when you went to do your
24 survey that predates this construction?

25 A. Yes.

1 Q. Can you just look at the calculations provided
2 on your survey, 11 by 7 by 16.2, I believe?

3 A. Yes.

4 Q. Would you say that comes out to greater than
5 200 square feet?

6 A. Yeah.

7 Q. To your knowledge -- and again this might be a
8 better question for Mr. Wernicki if he intends
9 to testify -- to your knowledge, was a permit
10 or variance ever obtained for that accessory
11 structure?

12 A. I have no idea.

13 Q. Based on your survey, is that accessory
14 structure also in the floodplain?

15 A. Yes.

16 MR. RESTAURI: Excuse me, is that
17 accessory structure the one that we're dealing
18 with on the variance?

19 MS. JEWART: It is not, but I
20 believe that it goes to the cumulative effect
21 on the impact on property as well as the
22 nature of any hardship self-imposed by the
23 applicant.

24 MR. RESTAURI: Okay. So there are
25 two sheds, both of which, if I'm understanding

1 correctly, are in the floodplain.

2 MS. JEWART: Yes.

3 MR. RESTAURI: The variance
4 application is for one of them.

5 MS. JEWART: Yes.

6 MR. RESTAURI: And that's the
7 newer of the two.

8 MS. JEWART: Yes.

9 MR. RESTAURI: Is there anything
10 with respect to the other one, the earlier
11 one, that is before the board?

12 MS. SWEENEY: No.

13 MR. RESTAURI: Thank you.

14 BY MS. JEWART:

15 Q. You've already seen, I believe, the tax map
16 presented by your counsel. If you could just
17 clarify that this is the same map, same
18 parcel. I believe I might have zoomed out a
19 little further than you were. I'm happy to
20 resubmit this as Objector 3.

21 Again, this was the same map pulled from
22 county of property assessments that was
23 presented by your counsel. Can you just
24 identify, briefly, the property at issue here?

25 A. Yes, the property is identified as tax map

1 parcel 934-F-180.

2 Q. And can you just point for me on here where
3 the structure would be if it had been there
4 when that photo was taken?

5 A. Which structure?

6 Q. The new shed.

7 A. Sure (indicating).

8 Q. That green space in between, okay. I am going
9 to show you an updated map from the county.
10 Again, this is from the same GIS county
11 system. They update a little more frequently
12 than the tax assessment office does.

13 Can you show for me where the property
14 is and where the structure at issue is?

15 A. Yes, the additional structure, new structure
16 is located directly behind Mr. Wernicki's
17 existing home, between the home and the
18 original shed that was on the property.

19 Q. So in your opinion, there is a fairly
20 significant decrease along that property line
21 of pervious surface such as grass? I
22 apologize for the use of significant. That
23 can be a little bit misleading.

24 Looking at the two maps I provided, you
25 can see on one there is a gap in between this

1 other shed and what we're calling the main
2 building. When you look at the second map,
3 the aerial view, it takes up essentially all
4 of that grass area, correct?

5 MS. SWEENEY: Object to form.

6 BY MS. JEWART:

7 Q. Can you confirm that the structure as
8 indicated by these two maps, aerial maps which
9 you've identified the property and the
10 structure, that looking along this property
11 line there is now less impervious surface,
12 more pervious surface?

13 A. Less pervious.

14 Q. Correct. I flip around. I am not an
15 engineer. Thank you.

16 MR. RESTAURI: Miss Jewart, my
17 understanding is that there is no dispute that
18 there is some increase in the BFE. There may
19 be a dispute that it's negligible or something
20 more than negligible. Is that where your
21 questions are headed, that it's more than
22 negligible?

23 MS. JEWART: My questions are
24 headed to the fact that what we have here is
25 an increase in a change in the composition of

1 this property that has an impact on the
2 neighbors. Where there once was grass and a
3 view to the creek, there now is a block shed.

4 MR. RESTAURI: I see. So you are
5 not probing here on the impact on the BFE, you
6 are probing on the amount of grass.

7 MS. JEWART: Correct.

8 MR. RESTAURI: Fine. I
9 understand. Thank you.

10 MS. JEWART: Although as a return,
11 since I was reminded, you indicated -- and I
12 apologize, I cannot recall which tab it was on
13 here. I'm happy to pull my copy but it may be
14 easier to just -- 22.

15 BY MS. JEWART:

16 Q. So you stated you were familiar with the
17 hundred year floodplain water analysis report
18 prepared for Mr. Wernicki by Mr. Graham Ferry;
19 is that correct?

20 A. Yes.

21 Q. You stated that the report indicated that
22 there would be a .04 increase in base flood
23 elevation.

24 A. Yes.

25 Q. And you stated that you are familiar with the

1 township ordinance?

2 A. The what?

3 Q. The township ordinances.

4 A. Yes.

5 Q. Including the floodplain ordinance.

6 A. Yes.

7 Q. Does the floodplain ordinance state there can
8 be any increase in BFE to obtain a variance?

9 A. I think it does give some leeway in part of
10 the language in the ordinance.

11 MS. JEWART: Apologies. I would
12 ask that the board take notice of the
13 ordinances in whole. I did not print
14 everything.

15 MR. RESTAURI: We have them.

16 BY MS. JEWART:

17 Q. I am going to direct you to Section 802. If
18 you can read for me 8-802-1-A.

19 A. "No variance shall be granted within any
20 identified floodplain area that would cause
21 any increase in BFE. In an area district,
22 BFEs are determined using the methodology in
23 Section 8402, Subsection C."

24 Q. Thank you. And so to state again your opinion
25 accepting the report prepared by your, not

1 colleague, but your brother in engineering, is
2 that there will be an increase in BFE,
3 although you would qualify it as negligible.

4 A. Correct.

5 Q. In general, I assume you have experience with
6 more floodplain variances and other hearings
7 such as this; is that correct?

8 A. Yes.

9 Q. Have you encountered other floodplain variance
10 criteria outside of what's in Leet Township?

11 A. Well, generally, we follow FEMA guidelines in
12 floodplain management, developments in
13 floodplains, and that sort of engineering
14 activity, and typically FEMA guidelines
15 require that if you're going to develop
16 anything in a floodplain, you cannot do
17 development that would increase the BFE by
18 more than one foot, typically.

19 Q. And in your experience, can municipalities
20 exceed those FEMA guidelines, those FEMA
21 regulations?

22 A. Yes.

23 Q. In this instance, the township has chosen to
24 do so.

25 A. Yes.

1 Q. When you have done other floodplain variance
2 hearings, what body have you gone before? Is
3 it municipality or is it the Zoning Hearing
4 Board? To your recollection.

5 A. I really can't recall specifically.

6 Q. That's fine. Thank you very much. That's
7 all. Thank you so much.

8 MR. RESTAURI: We will take a ten
9 minute break. Everyone, please be back at
10 8:25, please.

11 (RECESS TAKEN)

12 MR. RESTAURI: Miss Jewart, are
13 you completed with the witness?

14 MS. JEWART: Yes, I am. Thank
15 you.

16 MR. RESTAURI: Mr. Chesney,
17 questions for the witness?

18 MR. CHESNEY: Yes, just a couple.

19 - - -

20 CROSS-EXAMINATION

21 - - -

22 BY MR. CHESNEY:

23 Q. Hi, Mr. Sheffler.

24 A. Hello.

25 Q. You had testified that you have been an

1 engineer for a long time, correct?

2 A. Surveyor.

3 Q. And you're familiar with these ordinances on a
4 regular -- you deal with them on a regular
5 basis.

6 A. Unfortunately.

7 Q. You deal with floodplain issues.

8 A. Oh, yeah.

9 Q. And you'll agree with me that the reason for
10 floodplain ordinances are to restrict building
11 in floodplains, correct?

12 A. Sure.

13 Q. And you also agree that if there is a variance
14 required in a floodplain and a variance
15 required under a normal section of a zone and
16 the floodplain ordinance is more strict, then
17 that variance is the one that should apply,
18 correct? Like you'd have to meet the more
19 strict standard, correct? Let me rephrase it.

20 So if you need a variance for a
21 floodplain and that's more strict than what
22 you would normally need under any other type
23 of variance, the floodplain variance would be
24 the one that you would have to meet if it had
25 a higher standard, correct?

- 1 A. Well, if you're in the floodplain zone,
2 certainly, yes.
- 3 Q. And the variance that's being sought here,
4 it's for the fact that the floodplain variance
5 only allows a structure that's 200 square
6 feet, correct?
- 7 A. Correct.
- 8 Q. And this exceeds that, correct?
- 9 A. Correct.
- 10 Q. And by how many feet?
- 11 A. 400 plus.
- 12 Q. 400 plus feet. Okay, and you would need a
13 variance because it exceeds the area under the
14 floodplain that's allowed, correct?
- 15 A. Yes.
- 16 Q. And under the floodplain ordinance, it also
17 restricts if a structure would increase the
18 base floodplain elevation, correct?
- 19 A. Yes.
- 20 Q. In fact, it says that there shall be no
21 elevation, correct?
- 22 A. It does.
- 23 Q. So you would need a variance if it would
24 increase the elevation, correct?
- 25 A. Yes.

1 Q. And in this situation, does the structure
2 increase the base floodplain elevation?

3 A. A di minimus amount, yes.

4 Q. But the ordinance says zero increase, correct?

5 A. Correct.

6 Q. But this does increase it, correct?

7 A. Yes.

8 Q. I have no further questions.

9 - - -

10 EXAMINATION

11 - - -

12 BY MR. RESTAURI:

13 Q. Sir, the shed we're talking about, the
14 structure, your understanding is it's to house
15 lawn equipment, not vehicles, correct?

16 A. That's my understanding, yes.

17 Q. Are you familiar with the sizes of sheds that
18 are used to house lawn equipment?

19 A. Yeah, sure.

20 Q. Is this the only size shed that you have ever
21 seen that is used for this purpose, for the
22 lawn equipment housing purpose?

23 A. No, I wouldn't say so, no.

24 Q. Sheds can be bigger, sheds can be smaller.

25 A. Sure.

- 1 Q. How much grass and shrubbery is on this
2 property?
- 3 A. Well, the total size of the lot is a quarter
4 of an acre.
- 5 Q. And the buildings have footprints totaling how
6 much on that quarter of an acre?
- 7 A. Maybe 1100 square feet.
- 8 Q. So how much in square footage is left to the
9 best of your knowledge that actually has grass
10 and shrubbery on it?
- 11 A. Well, let me do a little calc in my mind here.
- 12 Q. Sure.
- 13 A. 18,000 square feet, if my math is correct.
- 14 Q. So in layman's terms, is the amount of
15 landscaping that needs to be tended to, would
16 you call that a big yard, a small yard, a
17 medium size yard? Would you call it something
18 else?
- 19 A. Well, I don't think that we can put it in
20 terms of just housing lawn equipment.
21 Mr. Wernicki has a very small basement and if
22 he has a lot of stuff like I do, I would have
23 that shed full of tools and other items, home
24 maintenance items.
- 25 Q. So your testimony is that it's not necessarily

1 only for lawn equipment, it could be for the
2 other items --

3 A. Sure.

4 Q. That's good. I'm glad we clarified that. One
5 other question. When you say there is a
6 negligible BFE increase, your testimony was
7 that there is also in the ordinance a
8 particular calculation formula that one uses
9 to determine compliance or lack of compliance.
10 Did I understand that correctly?

11 A. Yes.

12 Q. Is the use of that calculation formula what
13 generated the negligible increase
14 characterization on your part?

15 A. I can't answer that.

16 MS. SWEENEY: I just have a little
17 redirect.

18 MR. RESTAURI: We are going to go
19 around the room first. I have nothing
20 further. Mr. Chairman?

21 MR. SOSTER: I have a few.

22 - - -

23 EXAMINATION

24 - - -

25 BY MR. SOSTER:

1 Q. Mr. Sheffler, you are not a professional
2 engineer?

3 A. I am not.

4 Q. You are not an architect?

5 A. No.

6 Q. Do you know, is a DEP permit required for
7 constructing a structure in the floodplain?

8 A. Generally?

9 Q. No, is a DEP permit required constructing a
10 structure in a floodplain? For example, I
11 read the HEC-2 analysis. Does that have to be
12 submitted to DEP? Do they determine? Do they
13 make the determination as to the effect that
14 structure has?

15 A. I would say no.

16 Q. But you don't know?

17 A. No, I don't know that specific.

18 Q. Did you design the building?

19 A. No.

20 Q. Do you know if the building is structurally
21 tied down, in the event of a flood, that it
22 won't move?

23 A. From the information I was given, I believe
24 Mr. Wernicki's contractor or person that
25 constructed the building used ties for the

1 floor plate slab for the building walls.

2 That's what I understand he did.

3 Q. But you don't know that as a fact.

4 A. I don't know that for a fact.

5 Q. Are you familiar with the township ordinances
6 that govern what we're talking about tonight?

7 A. Somewhat.

8 Q. I am not. I have not read them. But one
9 thing I did see, and this may not be verbatim,
10 but my understanding is that the variance, if
11 we authorize, it's not to alter the essential
12 character of the neighborhood or the district.

13 I know you are not an architect or
14 artist but you did do Diamond Run, correct?

15 A. I did.

16 Q. Did the course there?

17 A. Yes, I did.

18 Q. Man, that's tough. So you have some idea of
19 what you think looks good and looks bad. Do
20 you think this shed has altered the character
21 -- altered the essential character of the
22 neighborhood?

23 A. No, not at all.

24 Q. That's all I have right now.

25 MR. RESTAURI: Mr. Soman?

1

- - -

2

EXAMINATION

3

- - -

4

BY MR. SOMAN:

5

Q. One question, sir. You've said that you
helped Mr. Wernicki with his applications
after the fact.

8

A. Correct.

9

Q. Is there any reason why you didn't help him
with them before the fact?

10

11

A. Didn't even know him then.

12

Q. Thank you.

13

MR. SOSTER: Mr. Kovacs?

14

MR. KOVACS: No, I don't have

15

anything for him. Thank you.

16

MS. HOMER: Nothing from me.

17

MR. RESTAURI: Anyone from the

18

audience have any questions on cross for the

19

witness? Seeing no one, Miss Sweeney,

20

redirect.

21

MS. SWEENEY: Great, thank you.

22

- - -

23

REDIRECT EXAMINATION

24

- - -

25

BY MS. SWEENEY:

- 1 Q. Mr. Sheffler, in your testimony under
2 cross-examination by Ms. Jewart you indicated
3 you thought there was leeway under the
4 floodplain ordinance relative to the BFE.
- 5 A. Yes, and I was unable to retrieve the
6 paragraph when I made the statement.
- 7 Q. Isn't it true that any structure that is
8 erected in the floodplain is going to have
9 some impact on the base flood elevation?
- 10 A. Yes.
- 11 Q. So even if it was 200 square feet, it's going
12 to have an impact on the base flood elevation.
- 13 A. Based on the strict interpretation of the
14 floodplain ordinance, yes.
- 15 Q. I'm going to show you an excerpt from the
16 floodplain ordinance that Miss Jewart showed
17 you, 802.1. She had you read A. Take a look
18 at B, if you would, and could you read that?
- 19 A. "Except for a possible modification of the
20 regulatory flood elevation requirement
21 involved, no variance shall be granted of any
22 other requirements pertaining specifically to
23 the development which may endanger human
24 life."
- 25 Q. Does that help refresh your recollection as to

1 what you perceived to be leeway under the
2 floodplain ordinance relative to what is
3 required?

4 A. Yes, that was my thought, yes.

5 Q. So it's your opinion that there isn't a flat
6 ban on any change to the base flood elevation?

7 A. Based on that paragraph, I believe there is
8 leeway.

9 Q. As well as the fact that any structure in the
10 floodplain itself would create an increase in
11 the base flood elevation; is that right?

12 A. Yes.

13 Q. And in fact -- let me rephrase that. So with
14 regards to other questions that were posed to
15 you regarding the view being blocked by virtue
16 of this structure, a view would be blocked by
17 a structure that was 200 square feet; isn't
18 that correct?

19 A. Yes.

20 Q. And there aren't any restrictions on height in
21 the floodplain ordinance, is there?

22 A. Not in the floodplain ordinance.

23 Q. That's all I have.

24 MR. SOSTER: Could you reread the
25 first part of your question again where you

1 asked Mr. Sheffler to read a part of the
2 ordinance?

3 MS. SWEENEY: You want him to
4 reread that section?

5 MR. SOSTER: Yes.

6 THE WITNESS: "Except for a
7 possible modification of the regulatory flood
8 elevation requirement involved, no variance
9 shall be granted for any other requirement
10 pertaining specifically to development which
11 may endanger human life."

12 BY MS. SWEENEY:

13 Q. And you testified previously you don't see
14 this as endangering human life, this
15 structure.

16 A. Correct.

17 Q. That's all I have for Mr. Sheffler.

18 MR. RESTAURI: Miss Jewart, cross?

19 MS. JEWART: Very briefly.

20 - - -

21 CROSS-EXAMINATION

22 - - -

23 BY MS. JEWART:

24 Q. I want to return to the provision we were
25 speaking about, Section 8-802. So again, this

1 is entitled "variance procedures and
2 conditions that applies to requests for
3 variances within the floodplain," correct?

4 A. Correct.

5 Q. Here we have had a request for one variance in
6 a floodplain; is that correct?

7 A. Yes.

8 Q. And that variance is for an increase from the
9 limitation that an accessory structure can be
10 200 feet up to the existing structure which is
11 600 square feet; is that correct?

12 A. Yes.

13 Q. Has there been any variance request for a
14 leeway, as I believe you put it, from the
15 provision of the ordinance in Section 8021-A
16 that no variance be granted within --

17 A. I think that's a legal question.

18 Q. Okay, I'll pose it in a more factual way. We
19 agree that there is one variance request on
20 tonight and that is for an increase in size
21 from 200 square feet to 600 square feet.

22 A. Correct.

23 Q. You are saying, if I interpret your statement
24 correctly, that you see there being leeway in
25 the ordinance that would allow a modification

1 or, to put it back into zoning terms, a
2 variance from the modification of the
3 regulatory flood elevation requirement. Have
4 we had any request to your knowledge tonight
5 that there be such a modification?

6 MS. SWEENEY: Object, asking for a
7 legal conclusion.

8 BY MS. JEWART:

9 Q. Factually, do we have any application
10 requesting an increase in BFE under the
11 ordinance or do we solely have before us an
12 application for a variance requesting an
13 increase in the size of the structure?

14 MS. SWEENEY: I object to the
15 extent this is part of the testimony of the
16 overall variance request and that is part and
17 parcel of the variance request.

18 MR. RESTAURI: Objection noted.

19 MS. HOMER: Can I ask a question?

20 MR. RESTAURI: Sure.

21 MS. HOMER: So does the ordinance
22 -- does the ordinance say there is no BFEs or
23 does the direction on whether or not we grant
24 a variance say no BFEs? Does anyone know?

25 MR. RESTAURI: We don't know yet.

1 At least I don't know yet.

2 MS. HOMER: The part we are
3 talking through seems to be how we decide on
4 the variance, but I don't know what the actual
5 ordinance --

6 MR. RESTAURI: We are going to try
7 to figure that out. Thank you.

8 MS. JEWART: One more clarifying
9 question, if I may.

10 BY MS. JEWART:

11 Q. You read that Section 1-B. In your experience
12 with these ordinances, does that apply to all
13 variances or for variances granted that
14 pertain specifically to the development which
15 may endanger human life --

16 MS. SWEENEY: Object to the extent
17 it asks a legal conclusion. This is unique to
18 this particular ordinance. I don't know how
19 he could --

20 MR. RESTAURI: Noted.

21 MS. JEWART: Nothing further.

22 MR. RESTAURI: Mr. Chesney,
23 recross?

24 - - -

25

RECROSS - EXAMINATION

— — —

BY MR. CHESNEY:

Q. Okay, I'm just going to ask one brief question. You had said that the variance procedures under 1-B is the section that you said that you thought would give some type of allowance to increase the BFEs, correct?

A. That's correct.

Q. Can you reread that again?

A. Sure. "Except for a possible modification of the regulatory flood elevation requirement involved, no variance shall be granted for any other requirements pertaining specifically to development which may endanger human life."

Q. Which is Section 8-504 specifically, correct?

A. Correct.

Q. So then that particular sentence would apply to Section 514 cause it's specifically in the language in that statute, correct?

MS. SWEENEY: I'm going to object to the extent it asks for any legal conclusion.

MR. RESTAURI: Noted. Answer the question, please, if you can, sir.

1 THE WITNESS: Well, it refers to
2 Section 8-504, yes.

3 BY MR. CHESNEY:

4 Q. So in your experience, when you are
5 interpreting the statutes, if it refers to a
6 section, it applies to that section, correct?

7 A. I think it refers to the section for guidance
8 in evaluating the statement.

9 Q. Which is any development which may endanger
10 human life.

11 A. Yes.

12 Q. Which is Section 514.

13 A. Yes.

14 Q. No more questions.

15 - - -

16 EXAMINATION

17 - - -

18 BY MR. SOSTER:

19 Q. Do you know, Mr. Sheffler, has there been a
20 building permit issued for this structure?

21 A. Not to my knowledge.

22 Q. Thank you.

23 - - -

24 EXAMINATION

25 - - -

1 BY MR. RESTAURI:

2 Q. Mr. Sheffler, the language of the ordinance
3 that you said you feel supports your idea that
4 there is some leeway is except for a change in
5 elevation in the ordinance; is that correct?
6 Is that what it says? Am I reading that
7 correctly? Read it again for me, please. I'm
8 sorry to ask you to do it again.

9 A. "Except for a possible modification of the
10 regulatory flood elevation requirement
11 involved."

12 Q. So the flood elevation, when you say that that
13 provision makes you think there is leeway, I
14 have two questions. What is the regulatory
15 flood elevation? And it talks about a change.
16 Is it your idea that the Zoning Hearing Board
17 has authority to make a change in that
18 elevation? Or would that be, as you
19 understand it, in saying it gives leeway?

20 A. I don't think it's the Zoning Hearing Board's
21 option to change a flood elevation.

22 Q. Whose is it?

23 A. Well, the regulatory floodway.

24 Q. I'm sorry, I'm not following. Is there
25 somebody who needs to change --

- 1 A. FEMA.
- 2 Q. So FEMA would have to change it.
- 3 A. Well, FEMA or the board that's enacted the
4 floodplain ordinance.
- 5 Q. So that would be the township commissioners in
6 this case.
- 7 A. Correct.
- 8 Q. The change in elevation, except for whatever
9 it was, the language that you read about
10 elevation --
- 11 A. Possible modification.
- 12 Q. Possible modification. It says possible
13 modification. Is it the word "possible" what
14 makes you think it means leeway?
- 15 A. Yes.
- 16 Q. And the change in elevation, what does the
17 elevation refer to?
- 18 A. The base flood elevation established by FEMA.
- 19 Q. So if FEMA changed the base flood elevation
20 from let's say here to here, if FEMA did that,
21 then you're saying that that could be the
22 basis for a variance. Am I understanding
23 correctly? Because that establishes leeway,
24 there could be some negligible amount of
25 increase in the BFE?

1 A. I believe you're on the right track, yes.

2 Q. I'm sorry I'm cumbersome with this, but I'm
3 just trying to grapple with it. So when you
4 say there is leeway, we agree, don't we, that
5 FEMA hasn't changed it?

6 A. Well, we agree that FEMA has already employed
7 a device in the floodplain calculations to
8 allow for development in a floodplain for up
9 to a foot change in the base flood elevation.

10 Q. But the township has said we want to be
11 stricter than that.

12 A. Yes.

13 Q. I guess what I'm struggling with is FEMA
14 hasn't changed anything so how does this
15 provision that you're relying on, in saying
16 there is leeway, how does this apply? How
17 does that provision equal leeway, in layman's
18 terms, if you can?

19 A. I wish I could answer that. I really don't
20 know.

21 Q. No, that's fair enough. I'm just trying to
22 come to the same terms as you are. It's
23 troublesome to me.

24 A. Because I believe there is leeway because the
25 strict interpretation of the calculations that

1 are involved to establish the BFE -- how do I
2 put this? It's information that's estimated
3 from the beginning, in the process of doing
4 the calculations for the base flood elevation.
5 There is no hard, fast rule that says if that
6 waterway has 3.25 CFS and you have to use a
7 calculation based on that. Watersheds are all
8 different and are always changing. So they
9 have leeway in the FEMA ordinance of one foot
10 to allow for development in a floodplain. And
11 I think that's what --

12 Q. But if the township says, no, not good enough
13 for us --

14 A. I think we have to ask the township what they
15 mean by what that says.

16 Q. Sir, I appreciate your candor very much. I'm
17 with you. I'm troubled by it. Thank you.
18 Thank you.

19 - - -

20 EXAMINATION

21 - - -

22 BY MR. SOMAN:

23 Q. We keep talking about that extra foot. Could
24 that go the other way?

25 A. Yeah, sure.

1 Q. Thank you.

2 MR. SOSTER: Mr. Kovacs?

3 - - -

4 EXAMINATION

5 - - -

6 BY MR. KOVACS:

7 Q. I'm trying to piece some things. How familiar
8 are you on the building itself?

9 A. Not very much.

10 Q. I will have to wait for that.

11 MR. RESTAURI: HOMER?

12 - - -

13 EXAMINATION

14 - - -

15 BY MS. HOMER:

16 Q. Kind of along the lines of where you were
17 going, is there something he can do in the
18 remainder of his property to reduce that BFE,
19 to offset it? We learned a lot about
20 retaining things and such and impervious.

21 A. Well, he hasn't increased the impervious area
22 of the property beyond what the requirements
23 of the township are.

24 - - -

25

EXAMINATION

— — —

BY MR. RESTAURI:

Q. So you are saying that he's in compliance with any ordinances that you are aware of for the township that deal with imperviousness.

A. Yes.

MS. HOMER: I thought that's what drove the BFE. Isn't it a component of it or only a component? Like the equations are there somewhere.

THE WITNESS: I answered your question in an offhanded way. Is there anything else that he could do that would alleviate any other --

MS. HOMER: Concerns people have with this .04. Is there something that, you know, he could do that would make people feel better about this?

MR. SOSTER: Let me ask this question. We're dealing with cross-sectional area of the floodplain and the shed that's there now. Is it behind the existing shed or is it --

MR. SOMAN: It's on the picture.

1 MS. HOMER: This was the original
2 and that's the new (indicating). And to your
3 point --

4 THE WITNESS: They are all kind of
5 in a line.

6 MS. HOMER: This is the house, the
7 new shed, the old shed.

8 - - -

9 EXAMINATION

10 - - -

11 BY MR. SOSTER:

12 Q. This is looking down the road but so we have
13 all the information in front of us, if the
14 existing shed was removed, does it take out
15 cross-sectional area that's being blocked
16 right now by this shed? What I'm saying is
17 the existing shed has a cross-sectional area
18 in the floodplain. The existing shed has a
19 cross-sectional area in the floodplain. Is
20 the existing shed behind that cross-sectional
21 area or is it adjacent to the cross-sectional
22 area where, if you took the existing shed out,
23 you would actually be freeing up the floodway?
24 Do you follow what I'm saying?

25 A. It's not in the floodway.

1 Q. The existing shed is not in the floodway?

2 A. No.

3 MS. HOMER: The neighbor's is.

4 MS. SWEENEY: The Howard property
5 has a shed on the floodway, another piece of
6 property.

7 MR. KOVACS: It's in the
8 floodplain.

9 THE WITNESS: What?

10 MS. HOMER: All of it. Even the
11 house is in the floodplain, right?

12 THE WITNESS: Wernicki's? Yeah.

13 BY MR. SOSTER:

14 Q. So the question is, nothing that Mr. Wernicki
15 owns on his property can be removed to lessen
16 the cross-sectional area that this structure
17 takes up.

18 A. Theoretically, we're basing everything on
19 theoretical calculations that are based on
20 estimated numbers. So no matter how you
21 calculate it, it still comes out di minimus.
22 It's such a small amount --

23 Q. However, we have had testimony that says any.
24 The ordinance says any. It does not say
25 di minimus or whatever the word is.

1 A. Any.

2 Q. It says any. And my question is, you used a
3 method that was defined to calculate the back
4 water caused by this structure and it resulted
5 in an increase -- even though small, it
6 resulted in an increase.

7 My question is, looking down the road,
8 if this is an issue that we deliberate on, is
9 there something that can be removed that if
10 you recalculated it, it would bring the water
11 level back down to where it's at?

12 A. Probably not.

13 MR. SOMAN: Tear the house down.

14 BY MR. SOSTER:

15 Q. Mr. Sheffler, I'm still confused, and I
16 apologize. You testified that you're familiar
17 with the ordinance and so based on that
18 familiarity, what is it that could violate
19 this floodplain ordinance that would require a
20 variance?

21 Let me tell you where I'm headed with
22 this so I put it in context. You can't do
23 anything that would increase the BFE, not at
24 all, the ordinance says.

25 A. That's what it says.

1 Q. But if you have the right to have a variance,
2 if you can prove certain things, what could
3 you need a variance for? Why would you need
4 it if you weren't going to increase the BFE by
5 some amount? I feel like I'm chasing my tail.

6 There is a list of things that you have
7 to show in order to get a variance. Why would
8 you want to get a variance in the floodplain?
9 Because I've increased the BFE above the
10 allowable limit, okay. All right, so we know
11 that. So now you come in and say, I want a
12 variance, the homeowner says, because I
13 increased the BFE. But the ordinance says if
14 you increase the BFE, you can't get a
15 variance. What am I missing?

16 MS. HOMER: I think the ordinance
17 --

18 MS. SWEENEY: I think that's
19 exactly the problem.

20 MS. HOMER: 200 square feet is
21 allowed. So if this was less than 200, he
22 wouldn't need a variance. Even though
23 arguably that 200 has to increase the BFEs,
24 regardless cause it's a structure, but if it's
25 less than 200 --

1 MR. RESTAURI: But then he
2 wouldn't need the variance.

3 MS. HOMER: Exactly.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. RESTAURI:

8 Q. So again, if you need the variance, it must be
9 because you're over 200 square feet and you've
10 increased the BFE by some amount. But the
11 precise language of the ordinance says you
12 can't get a variance if you increase it at
13 all.

14 A. Exactly.

15 Q. I'm missing something or else the --

16 A. The ordinance is flawed.

17 Q. I'm not ready to say that.

18 A. Let me explain what I mean. It says no
19 increase.

20 Q. Yes.

21 A. Later on in the ordinance it says you can
22 build 200 square feet in the floodplain.

23 Q. Yes.

24 A. Those statements aren't together in the
25 ordinance.

1 Q. But if you take them -- if you read them
2 together, I agree at least tentatively with
3 Miss Homer. It's saying if you build 200
4 square feet or less in the floodplain, you're
5 good. If you build more than 200 square feet
6 in the floodplain, you have got to get a
7 variance.

8 A. Correct.

9 Q. If you need a variance, you cannot increase
10 the BFE. How can you build in the floodplain
11 and not increase the BFE at all?

12 A. Technically, you can't.

13 Q. I don't know that but your testimony, sir, is
14 technically you can't. I'm sorry to run you
15 around this mulberry bush, but I think we are
16 getting somewhere at least tentatively. Any
17 other questions by the board?

18 MR. SOMAN: I'm good.

19 MR. RESTAURI: Any members of the
20 public have any questions? Miss Sweeney?

21 MS. SWEENEY: I'm done with
22 Mr. Sheffler.

23 MS. JEWART: One follow-up
24 question. Thank you.

25 - - -

RECROSS-EXAMINATION

- - -

BY MS. JEWART:

Q. I'm going to have you look at Section 8-503, construction standards. Okay, we have got design and construction standards. Taking a look at this, we are in chapter eight has the floodplain ordinance, correct? Feel free to flip back to the front of it.

A. Yes, I'm in the floodplain ordinance.

Q. So this is labeled "design and construction standards," correct?

A. Correct.

Q. Okay, so we have 1-A through N and these are all design and construction standards contained in the floodplain ordinance for structures built in the floodplain, correct?

A. Yes.

Q. So, for example, let's pick one. We talked a little bit about anchoring. Let's look at Section 5031-H, anchoring. Can you just read H-1 for me?

A. Sure. "All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent floatation,

1 collapse or lateral movement."

2 Q. And, for example, if you wanted to build a
3 structure, you didn't want to anchor it, do
4 you have a sense, based on your review of this
5 ordinance, what type of procedure you would go
6 through to avoid compliance with that section?

7 A. I don't know of anybody that would build a
8 structure without anchoring.

9 Q. I think we might get to that a little bit
10 later. For example, we can pick another one
11 if you prefer. Paints and adhesives, J here.
12 Read J-1 for me, please.

13 A. "Paint and other finishes used at or below the
14 regulatory flood elevation shall be of marine
15 or water resistant quality."

16 Q. So, for example, if you wanted to use a
17 different type of paint on a structure
18 otherwise allowed in the floodplain ordinance,
19 based on your reading of this ordinance and
20 your understanding of the regulations, what
21 would be the procedure you would go through to
22 avoid complying with that condition? Would it
23 be reasonable to say you would request a
24 variance?

25 MS. SWEENEY: This is

1 argumentative and asking for legal conclusion.

2 MS. JEWART: I'll accept that.

3 BY MS. JEWART:

4 Q. In your opinion, does the type of paint used
5 on a structure in the flood which is a design
6 and construction requirement of the ordinance,
7 would that have any increase in BFE?

8 MS. SWEENEY: I'm going to object.
9 This is outside the scope of direct, cross. I
10 mean --

11 MS. JEWART: We were discussing
12 there was a possibility that you could have a
13 structure, that you are requesting a variance
14 for in the floodplain, that there is a
15 requirement of the floodplain ordinance, that
16 you require a variance for that does not
17 increase BFE.

18 MR. RESTAURI: The objection is
19 noted. If you can answer, sir, please answer.

20 THE WITNESS: I'm not a paint
21 engineer. I don't know.

22 MR. RESTAURI: Fair enough. Any
23 other questions? Mr. Chesney?

24 - - -

25

RECROSS - EXAMINATION

— — —

BY MR. CHESNEY:

Q. I just want to ask a couple questions I think to clear things up where we were talking about in Section 802 where you had said paragraph 1-B, it refers to except for possible modification of a regulatory flood elevation requirement and regulatory flood elevation requirement is different than a BFE, correct?

If you don't know the answer, I can direct you back to the definitions in the back. I think this will clarify everything for everyone else, too.

Section 8902, specific definitions. Do you have that section available?

A. I'm sorry, what was it?

Q. Section 8902.

MS. SWEENEY: If that's an excerpt, he doesn't have the full --

BY MR. CHESNEY:

Q. I have it right here so you can read it. BFE, base flood elevation, can you read that?

A. The elevation shown on the flood insurance map for zones A-E, A-H, A1-30 that indicates the

1 water surface elevation resulting from a flood
2 that has a one percent or greater chance of
3 being equaled or exceeded in any given year.

4 Q. And can you turn to regulatory flood elevation
5 right there? Can you read that?

6 A. The base flood elevation, BFE, or estimated
7 flood height as determined using simplified
8 methods plus a free board safety factor of one
9 and one-half feet.

10 Q. So the regulatory flood elevation is
11 different, actually one and a half feet higher
12 than the BFE, correct?

13 MS. SWEENEY: Objection. That's
14 not what it says. It says the base flood
15 elevation or. So you are asking him to make a
16 conclusion on interpretation of a definition.

17 MR. RESTAURI: Are you familiar
18 with these terms, Mr. Sheffler?

19 THE WITNESS: I'm not that well
20 versed in those terms, no.

21 MR. RESTAURI: So do you feel
22 comfortable testifying as an expert about
23 those terms?

24 THE WITNESS: No.

25 MR. RESTAURI: With that,

1 Mr. Chesney, I think we will have other
2 experts.

3 MR. CHESNEY: Just one question.

4 MR. RESTAURI: You have in the
5 record those provisions.

6 BY MR. CHESNEY:

7 Q. So simply put, the regulatory flood elevation
8 is at least a foot higher or give or take,
9 depending on if you are using the other
10 standard in there, the estimated flood height.

11 MS. SWEENEY: I am going to
12 object. That's not what the definition
13 states, and he also stated he doesn't know.

14 MR. RESTAURI: He doesn't know.
15 So we have in the record that there are two
16 definitions that have some relationship but
17 are different.

18 MR. CHESNEY: They are different.
19 I mean there are two different --

20 THE WITNESS: I can't answer the
21 question.

22 MR. RESTAURI: So we'll try to get
23 -- I assume counsel will try to get a witness
24 or two that can answer those questions. Any
25 questions from the audience? Any other

1 questions by anybody of Mr. Sheffler? Hearing
2 none, Mr. Sheffler, you are excused with the
3 thanks of the board.

4 THE WITNESS: Thank you.

5 MR. RESTAURI: I think we need
6 another break. Counsel, who is your next
7 witness?

8 MS. SWEENEY: Graham Ferry.

9 MR. RESTAURI: How long will this
10 take?

11 MS. SWEENEY: All those technical
12 issues I hope to be addressed.

13 MR. RESTAURI: So it's going to
14 take longer than say 45 minutes, 40 minutes.

15 MS. SWEENEY: Possibly.

16 MR. RESTAURI: Because
17 Mr. Sheffler took -- what I want to do is, is
18 there any other witness who would be shorter
19 that we can put on, out of order? If you
20 don't want to do that --

21 MS. SWEENEY: I'd rather not go
22 out of order.

23 MR. RESTAURI: If you want to put
24 Mr. Ferry on after the break and have him
25 presumably come back tomorrow --

1 MS. SWEENEY: I'd rather take
2 advantage of the time we have and try to
3 proceed. I want to keep going forward.

4 MR. RESTAURI: As you will see, I
5 try to give counsel all these options because
6 of scheduling issues and so on. We will take
7 a five minute break, please.

8 (RECESS TAKEN)

9 MS. SWEENEY: I'm going to call
10 Graham Ferry.

11 - - -

12 GRAHAM FERRY, P.E.,
13 having been first duly sworn, was examined and
14 deposed as follows:

15 - - -

16 DIRECT EXAMINATION

17 BY MS. SWEENEY:

18 Q. Mr. Ferry, are you affiliated with any
19 companies?

20 A. Yes, I am, senior civil engineer for Wallace
21 Pancher.

22 Q. Are you a registered professional engineer in
23 the State of Pennsylvania?

24 A. Yes, I am.

25 Q. Can you briefly summarize your background and

1 experience for the board?

2 A. I have approximately 27 years of experience in
3 civil engineering, mostly in matters such as
4 this, related to hydraulics, things like that.

5 MS. SWEENEY: Mr. Ferry's CV is
6 behind tab 21 of the board's binder, and I'd
7 offer him as an expert in engineering.

8 MR. RESTAURI: Any objection?

9 MR. CHESNEY: No.

10 MR. RESTAURI: The witness will be
11 accepted as an expert in engineering.

12 BY MS. SWEENEY:

13 Q. Mr. Ferry, were you provided with materials
14 that have been previously prepared by Sheffler
15 and Company relative to the floodplain
16 variance?

17 A. Yes, I have.

18 Q. In particular, were you given copies of
19 floodplain analyses that were prepared by
20 Sheffler and Company's engineer at the time,
21 Allan Beechey, dated December 20, 2020, and
22 then amended June 15, 2021?

23 A. Yes, I was.

24 Q. So you reviewed that as part of your
25 preparation for this matter?

1 A. Yes.

2 Q. And did you prepare a report with regards to
3 the floodplain water surface elevation in this
4 matter?

5 A. I did.

6 Q. So at tab 22 of your binder, is that the
7 report that you prepared?

8 A. Yes, it is.

9 Q. Can you explain what this report is and your
10 analysis inasmuch as you can in layman's
11 terms?

12 A. Yes. It's a hydrologic and hydraulics
13 analysis report which is, for what I do, is a
14 common type of report we would prepare.
15 Essentially what it does is it looks at the
16 flood elevation of a particular area within a
17 particular area of a watershed in the existing
18 conditions and establishes what the water
19 surface elevations would be and then with
20 whatever development is to occur or proposed
21 developments are to occur, what the impact of
22 that development will then be on said water
23 surface elevation. And that's essentially
24 what the report entails.

25 Q. And is it your opinion in this report that the

1 accessory structure at issue tonight would
2 have no positive or negative impact to the
3 floodplain area?

4 A. That's correct.

5 Q. But your study does show a slight increase in
6 the base flood elevation?

7 A. That's correct.

8 Q. Can you explain that a little bit more?

9 A. Essentially, the way these are calculated,
10 it's done using a widely accepted program
11 entitled HEC-RAS which you have heard here
12 tonight that was created by the Army Corps of
13 Engineers. And essentially what it does is it
14 looks at cross-sectional areas cut
15 perpendicular to the center of a stream, a
16 stream valley, and then takes into account a
17 number of factors and assumptions such as the
18 roughness criteria of the ground, whether it's
19 vegetated, how heavily it's vegetated, the
20 obstructions. And an obstruction can be
21 anything.

22 In this particular case, most of the
23 obstructions are residential structures,
24 commercial buildings, things like that,
25 anything that can restrict the cross-sectional

1 flow of water through the floodplain. And
2 essentially what we do is we look at that
3 cross-section in the existing conditions and
4 we push a fixed amount of water through that
5 which is equivalent to the 100 year storm
6 event for that particular point in the water
7 shed and then we do the exact same thing about
8 the proposed conditions, with any changes made
9 to the cross-section, in this case would be
10 the addition of the obstruction.

11 If you essentially are holding
12 everything constant, the only variable in a
13 model such as this is the single obstruction
14 which would represent the shed in this case.
15 If you keep everything constant and vary that,
16 the only thing that can change is the water
17 surface elevation and in this case there is a
18 slight rise as a result of a minor constricted
19 area due to the addition of the additional
20 obstruction.

21 Q. But basically if you put any obstruction or
22 any structure there, you're going to see a
23 mathematical change in the base flood
24 elevation?

25 A. That would be correct.

1 Q. So even a structure that is 200 square feet
2 will create a rise in the base flood
3 elevation?

4 A. Mathematically, yes.

5 Q. And is there a material difference between the
6 size at issue here, 200 square foot structure
7 versus 670 square foot structure?

8 A. I mean there is a mathematical difference. I
9 mean as far as the impacts of the difference,
10 it's essentially negligible. It's within the
11 margins of error of the calculable ability of
12 the software itself.

13 Q. So in your opinion, is this rise attributed to
14 this particular structure meaningful with
15 regard to impacts to the floodplain?

16 A. No.

17 Q. In your professional opinion, would the
18 requested variance in terms of building size
19 here endanger human life?

20 A. No.

21 Q. Is the variance here the least modification
22 necessary to provide relief?

23 A. Yes.

24 Q. Would the granting of the variance here result
25 in an unacceptable or prohibited increase in

1 flood heights, additional threats to public
2 safety or extraordinary public expense?

3 A. No, I don't believe it would.

4 Q. Would the granting of the variance here create
5 a nuisance, cause fraud on or victimize the
6 public or conflict with any state, local
7 regulations?

8 A. Not that I'm aware of.

9 Q. Would this structure cause any increase in
10 flood levels during the one hundred year
11 flood?

12 A. No.

13 Q. And are you sure of your opinions here within
14 a reasonable degree of certainty?

15 A. Yes.

16 Q. So I will offer him up for questioning.

17 MR. RESTAURI: Thank you. Miss
18 Jewart?

19 - - -

20 CROSS-EXAMINATION

21 - - -

22 BY MS. JEWART:

23 Q. Good evening.

24 A. Good evening.

25 Q. Thank you for holding out so long.

- 1 A. Oh, that's fine.
- 2 Q. I believe you may be the correct person for us
3 to clarify a few of the questions we had
4 earlier.
- 5 A. Okay.
- 6 Q. You've reviewed the ordinance, correct?
- 7 A. I'm familiar with it. I can't say that I'm an
8 expert in every component of the ordinance.
- 9 Q. So you are familiar or you have heard tonight
10 that there is a restriction on accessory
11 structures, they cannot be greater than 200
12 square feet. If they want to be greater than
13 200 square feet, you must obtain a variance
14 and in order to obtain a variance there can be
15 no increase in base flood elevation.
- 16 A. That's what I've heard, yes.
- 17 Q. We talk about the cross-section of the
18 floodway and again I am not an engineer so
19 could you explain, just in lay person's terms,
20 what that means? If we are looking at -- feel
21 free to use any of the exhibits in front of
22 you. Is it a physical cross-section that we
23 can identify or is it more of a computational
24 idea? Can you give us a sense?
- 25 A. I mean it's physical in the idea that it's

1 physical because I drew it there and it's
2 representative of what the topography of the
3 ground and surrounding features are at that
4 particular point. If you were to shift
5 arbitrarily a section in any one direction, it
6 will change slightly.

7 Q. So you can look at a map and draw for me what
8 you consider the cross-section?

9 A. Yes, and that's in the report, yes.

10 Q. So if I'm getting this correctly, and please
11 interrupt if I'm wrong, we're looking at the
12 lay of the creek --

13 A. Yes.

14 Q. And moving out, not completely perpendicular,
15 but out where the floodway would go, kind of
16 following the lines of the creek, moving out
17 into the inbound land.

18 A. Essentially, yes.

19 Q. In terms of impact on base flood elevation,
20 does the location of the structure matter
21 within that cross-section?

22 A. In terms of the base flood elevation?

23 Q. Yes.

24 A. No, not really. As long as it's within the
25 floodplain -- I mean there are variables

1 because there are a number of variables that
2 differ due to proximity to the center of the
3 stream as a result of velocities and things
4 like that but for all intents and purposes,
5 based on the very minute amount of increase,
6 if you were to move it, you wouldn't see a
7 very discernible type of difference.

8 Q. Taking aside this specific structure just from
9 a hypothetical standpoint, if you have -- I'm
10 going to draw because that's the way my brain
11 is working. If you have the creek here and
12 you have a structure that instead of being
13 whatever this is -- I forget the dimensions, I
14 apologize. I had them memorized at some
15 point. If you have a structure, kind of a
16 square like this that was placed -- and this
17 is cross-section, correct?

18 A. It's perpendicular, yes.

19 Q. So if you had placed it, for example, closer
20 to the stream than the house, would that make
21 a difference in the impact on base flood
22 elevation?

23 A. It very likely would not, not in this case,
24 no.

25 Q. But in a hypothetical scenario where you have

1 a structure of one square footage that's a
2 square as opposed to a structure that's the
3 same square footage that's in a different
4 location that's kind of within the same
5 perpendicular area of another obstruction,
6 does that impact the base flood elevation?

7 A. Yes, it will impact it, yes.

8 Q. So the location of a structure such as this
9 which was placed where before there was just
10 pervious area, grass, etc., could have more of
11 an impact --

12 A. The fact that it's pervious isn't really
13 relevant.

14 Q. Could have more of an impact as opposed to
15 whether it was placed sort of in front of or
16 along in front of an existing obstruction.
17 And apologies if I am being confusing because
18 again I am not an engineer.

19 A. Okay. I want to make sure I'm answering --

20 Q. I will try to make this as lay person as
21 possible.

22 A. Okay.

23 Q. Instead of placing -- even if it's negligible,
24 instead of placing this structure right here,
25 if you placed it there, would there be any

1 difference (indicating)?

2 MS. SWEENEY: I object because I
3 don't know if it will be clear for the record.
4 Are you saying instead of placing the
5 structure behind the principal structure and
6 placing it alongside the structure?

7 BY MS. JEWART:

8 Q. Alongside, for example.

9 A. Your question is difficult to answer the way
10 it's posed because you're introducing a new
11 variable that isn't present in different
12 scenarios. If you move the structure to a
13 certain position along the section, if there
14 is already an existing obstruction there,
15 there really won't be any discernible impact.

16 If you are moving it to an area where
17 the cross-sectional area is open and there is
18 no -- because we don't look at specifically
19 that fixed line, that delineates the
20 cross-section. There are structures on either
21 side of that so you have an overlapping sort
22 of row of obstructions. So it depends on
23 whether you move it into an area that is
24 already obstructed or into an area that is not
25 obstructed.

1 Q. And there could be areas that are already
2 obstructed in the floodplain.

3 A. Yes. In the floodway or the floodplain?

4 Q. Plain.

5 A. Because there is a very important difference
6 between the two.

7 Q. Yes, please explain that.

8 A. Okay. And these two terms are used -- and I
9 am guilty of it myself at times -- they are
10 used interchangeably and often incorrectly.
11 The floodplain is the entire area upon which
12 the one hundred year flood essentially flows.
13 It is the spread, the entire area.

14 The area that everyone usually is
15 concerned about is the floodway, the
16 regulatory floodway. The regulatory floodway
17 essentially is defined by FEMA as the area of
18 the floodplain that I can constrict so that
19 the base flood elevation rises, it's typically
20 a distance of one foot.

21 FEMA defines it as -- I don't want to
22 quote their definition specifically -- but
23 it's an allowable distance. It's some
24 variation of that term that they use. But you
25 will see other places where they say it's one

1 foot.

2 The floodway is the area that is
3 reserved in land around the center of the
4 stream that can still carry the one hundred
5 year flood without causing an increase from
6 the base flood elevation of more than one
7 foot. So if you compress the -- which is the
8 outside of the floodway is actually referred
9 to as the floodway fringe. If you compress
10 the fringe inward, the base flood elevation
11 which is just the one hundred year surface
12 elevation of the floodplain, if you compress
13 those, the floodway is representative of that
14 area that I can constrict to so that the water
15 rises no more than one foot. So that anything
16 that I obstruct with in that floodway --
17 floodplain fringe will not increase the
18 regulatory floodway elevation.

19 Q. I think I'm on board with you. I agree with
20 you. In this instance, we are talking about
21 the floodplain.

22 A. That's correct.

23 Q. So in the floodplain, as opposed to the
24 floodway as you just described, can the
25 location of a structure, hypothetical

- 1 structure, within the floodplain, where there
2 is already an obstruction in place --
- 3 A. Yes.
- 4 Q. Can you build a structure where there will be
5 no base flood elevation increase,
6 hypothetically?
- 7 A. It's possible. I cannot say definitively yes
8 or no because it does depend on a number of
9 variables.
- 10 Q. Would location be one of those variables?
- 11 A. Yes.
- 12 Q. Would the proximity of other obstructions in
13 relation to the floodway be one of those
14 variables?
- 15 A. Not with their proximity to the floodway, no.
- 16 Q. Can you explain? You seem to have a question
17 about that. Can you explain what you mean?
- 18 A. Because you are asking if I move an
19 obstruction closer to the floodway --
- 20 Q. I suppose what I'm asking is, if you are in an
21 area where there is an existing obstruction
22 and you place a new obstruction, a new
23 structure within that area --
- 24 A. Yes.
- 25 Q. -- that could have an impact on the amount of

1 base flood elevation possibly to the point
2 that there could be none.

3 A. That's possible, yes, to the base flood
4 elevation, correct.

5 Q. One other very, very quick question for you.
6 There were a number of other structures on
7 this property that are also in the floodplain,
8 not the floodway.

9 A. Correct, yes.

10 Q. Based our understanding of the FEMA
11 permitting, of your review of the township
12 ordinances, would other structures have
13 required this type of analysis as well if they
14 exceed the ordinance criteria, for example,
15 another shed that is in excess of 200 square
16 feet?

17 A. It depends by what standard you are comparing
18 it to because again the regulatory floodway,
19 as determined by FEMA, is based upon the area
20 that can be entirely restricted within the
21 floodway fringe. So if there is -- to amplify
22 on that, if there is an open area in that
23 floodway fringe on a stream that has a studied
24 and determined regulatory floodway by FEMA, I
25 can build anything I want within that floodway

1 fringe and it will have no impact in violating
2 the rise in the base flood elevation to the
3 regulatory floodway. That's per FEMA's
4 requirement. Municipal standards, municipal
5 ordinances, you know, they coincide with one
6 another but they can conflict with one another
7 as well.

8 Q. In terms of conflict, the township ordinance
9 permissibly exceeds what FEMA requires?

10 MS. SWEENEY: Objection, asks for
11 a legal conclusion.

12 MS. JEWART: I will withdraw it.

13 BY MS. JEWART:

14 Q. Just to return, cause I think I stated one
15 question a little bit poorly. Person A wants
16 to build a structure in the floodplain, not
17 way, plain.

18 A. Yes.

19 Q. They would typically, based on your review of
20 this ordinance and your understanding of FEMA
21 regulations, require a floodplain permit; is
22 that correct?

23 A. Based on my limited understanding and review
24 of this township's ordinance, yes, I believe
25 something would be required.

1 Q. Is this the type of analysis you would
2 typically require in assisting somebody with a
3 floodplain permit?

4 A. Yes, I would think so, a similar type report,
5 yes.

6 Q. I have nothing further.

7 MR. RESTAURI: Mr. Chesney?

8 - - -

9 CROSS-EXAMINATION

10 - - -

11 BY MR. CHESNEY:

12 Q. So you heard the discussion before, we were
13 talking about BFEs and regulatory flood
14 elevation.

15 A. Yes.

16 Q. They are two different things, correct?

17 A. That's correct.

18 Q. And can you explain what regulatory flood
19 elevation is?

20 A. Regulatory flood elevation is the elevation
21 that FEMA establishes above the base flood
22 elevation based upon, you know, as I said
23 previously, the constriction or contraction of
24 the floodplain fringe. The way an analysis
25 would be done is you have a cross-sectional

1 area and then when I have that cross-section
2 area, I can determine the base flood elevation
3 from that. That's essentially what elevation
4 the water would rise to within that sectional
5 area. Then the regulatory floodway is the
6 area where I can constrict inwards towards the
7 stream that causes the base flood elevation to
8 rise, typically a foot, which would then
9 establish the regulatory floodway.

10 Q. So if an ordinance establishes that there
11 shall be no variance for any rise in the BFE
12 but it could allow for a variance in a
13 difference with what's called for in a
14 regulatory flood elevation, correct? So if a
15 regulatory flood elevation is a foot and a
16 half over the BFEs, then you could get a
17 variance that would allow it to be a foot.

18 A. You mean you could get a variance to create an
19 obstruction that would raise the base flood
20 elevation no more than a foot and a half?
21 That's what you are asking?

22 Q. No, I am saying if an ordinance says no
23 variance for an BFE, would that also mean no
24 variance for a regulatory --

25 A. I misunderstood. Yes, because one is based

1 off the other.

2 Q. So floodplain and floodway are also two
3 different things, correct?

4 A. Yes, but no. The floodplain includes the
5 floodway. The floodplain is all encompassing.
6 The floodplain is the absolute -- not absolute
7 -- but the very center, essentially, of the
8 floodplain. Again, it's that area that's
9 required to carry the same amount of water as
10 the entire floodplain without rising above a
11 foot or foot and a half which we can debate,
12 above the base flood elevation.

13 Q. But there are two different districts within
14 the ordinance. You said you are familiar with
15 the ordinance, correct?

16 A. I said I had limited familiarity.

17 Q. So if there is a floodway district that would
18 be more restrictive than a floodplain district
19 which is separate from the floodway district
20 --

21 A. Yes. That's possible, yes.

22 Q. And you are familiar with FEMA's national
23 flood insurance program?

24 A. To some extent.

25 Q. Do you know the purpose of the national flood

1 insurance program?

2 A. Yeah, I believe so.

3 Q. In your opinion, what's the purpose of it?

4 A. It's essentially to protect, you know,
5 property from the impacts of flooding from off
6 site sources.

7 Q. And how does it do that? Does it do that by
8 creating minimum standards you have to follow?

9 A. Yes, I would agree with that.

10 Q. And you'll agree with me it's a minimum
11 standard.

12 A. Yes, it is a minimum standard.

13 Q. So if a municipality wanted to exceed that
14 minimum standard, they could, correct?

15 MS. SWEENEY: Objection. Calls
16 for a legal conclusion.

17 MR. RESTAURI: Answer the question
18 if you can. We will note the objection.

19 THE WITNESS: I believe a
20 municipality does have the right to be more
21 stringent in their ordinance, yes.

22 BY MR. CHESNEY:

23 Q. And this ordinance is more stringent than the
24 national --

25 A. Than what -- yes. I think that it is, yes. I

1 think there are some areas of interpretation,
2 again with flexibility and leeway, that are a
3 little bit vague. But I will state for the
4 record that it makes the effort to be more
5 stringent.

6 Q. So then if a variance -- if an ordinance is
7 more strict, then it's perfectly within the
8 municipality's purview to create that more
9 strict standard to accomplish the purpose of
10 preventing any building within a floodplain,
11 correct?

12 A. I'm not an attorney, but I believe that to be
13 true, yes.

14 Q. You said the purpose was to --

15 A. I believe that.

16 Q. So if variances were granted for one citizen
17 that would allow them to build in a floodplain
18 and you continue to allow the same type of
19 variance for every citizen along the
20 floodplain, would allowing those structures to
21 be built have a cumulative effect that would
22 have a negative impact that could affect --

23 MS. SWEENEY: I object to purely
24 speculation. Are you saying building one on
25 every single piece of property?

1 MR. CHESNEY: Yeah. You allow
2 variance for one person to build, you have to
3 allow it for another person.

4 MS. SWEENEY: I object to the
5 extent you are asking for a legal conclusion,
6 that just because one person gets a variance
7 that someone else is automatically --

8 MR. CHESNEY: Let me rephrase.

9 MR. RESTAURI: You are asking the
10 witness, who is an expert, for a hypothetical,
11 and I believe that's possible to do if he
12 knows.

13 BY MR. CHESNEY:

14 Q. In your opinion, if multiple structures were
15 allowed to be built along the floodplain,
16 would the cumulative effect be detrimental to
17 or possibly dangerous to the residents within
18 that floodplain?

19 A. In this specific instance, no, because the
20 regulatory floodway already accounts for that.
21 The floodplain can be completely restricted so
22 that the base flood elevation does not rise
23 above one foot above the -- the base flood
24 elevation will not rise more than a foot or
25 foot and a half. That's what the established

1 regulatory floodway represents.

2 So every individual in your township
3 could build within the floodplain and it would
4 not have a detrimental impact if you assume
5 that one foot in rise of base flood elevation
6 is detrimental. That's what the regulatory
7 floodway is established for.

8 Q. So you are saying that anything that would
9 increase any type of base flood elevation, it
10 could have a cumulative effect --

11 A. That's not what I said. I didn't say it
12 wouldn't have a cumulative effect. In fact, I
13 said the opposite. I didn't directly say this
14 but I inferred it because FEMA has already
15 accounted for the cumulative effect by the
16 establishment of the regulatory floodway rise
17 above the base flood elevation.

18 Q. So then what's the purpose of having a
19 national floodplain and insurance program?

20 A. You will have to talk to FEMA about that.

21 Q. But they establish minimums, correct?

22 A. Yes, and that's their minimum.

23 Q. And the minimum also allows for an ordinance
24 to exceed that minimum, correct?

25 A. You're saying that. I'm not saying that. I'm

1 just saying what FEMA has created.

2 Q. So the ordinance in question says there shall
3 be no rise in the base flood elevation.

4 A. I'm not saying that it doesn't say that or
5 that you are not permitted to do that.

6 Q. So the ordinance says there shall be no
7 variance granted for any structure that
8 increases the base flood elevation, correct?

9 A. I believe that is what it says, yes.

10 Q. So again you said an ordinance can be more
11 strict.

12 A. That's my understanding, yes.

13 Q. And there is a difference between a floodway
14 and a floodplain, correct?

15 A. Yes.

16 Q. And floodplains are regulated for a reason,
17 correct?

18 A. Yes.

19 Q. I have no more questions.

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. RESTAURI:

24 Q. Sir, when you did the calculations --

25 A. Yes, sir.

1 Q. -- did you look at the methodology that the
2 ordinance prescribes for how it's done? I'm
3 looking at the ordinance and it says: No
4 variance shall be granted in any identified
5 floodplain area that would cause any increase
6 in BFE.

7 A. Okay.

8 Q. In A area/district, BFEs are determined using
9 the methodology in Section 8.402, Subsection
10 1-C. Do you know what that is?

11 A. I would have to review it again to be
12 familiar.

13 Q. Do you have any reason to think that the
14 calculation that you used did not comply?

15 A. No. I mean the methodology that I used is the
16 agreed upon -- not agreed upon -- but is the
17 generally accepted engineering standard for
18 this, yes.

19 Q. Did I understand your testimony correctly that
20 it is theoretically possible -- and I'll get
21 to practically possible -- but theoretically
22 possible to build in a floodplain a building
23 that's over 200 square feet that would have no
24 increase in BFE?

25 A. Again, that's theoretical --

1 Q. Yes.

2 A. Again, it depends on a number of factors as to
3 where the obstruction that you construct is
4 located within that area. If there are
5 directly upstream or downstream of where you
6 build already obstructions there, what you
7 build could not really have a significant or
8 much of an impact at all.

9 Q. We're talking about something close but not
10 exactly the same, I think. Because the
11 ordinance says area would not cause any
12 increase in BFE, not di minimus or negligible
13 but any increase, is it theoretically possible
14 for that to be complied with, that you could
15 build a building over 200 square feet in a
16 floodplain that would not cause any increase
17 in a BFE?

18 A. I would find it very difficult to have a
19 scenario where you would have no, zero impact.
20 Is it theoretically possible? Yes.

21 Q. Why would it be difficult for it to happen?

22 A. Because what you're asking is the result of a
23 number of calculations that are based on
24 assumptions and generally agreed upon averages
25 and things like that. And while those are

1 somewhat fixed, the proximity of everything
2 within this area, moving it around and things
3 like that, don't necessarily just change water
4 surface elevations, they can affect velocity
5 and things like that which can also affect
6 water surface elevations and things like that.
7 So it's a difficult question to answer because
8 it's the type of thing that you can only
9 really arrive at a genuine, comfortable
10 solution by doing it, by calculating it.

11 Would it be my opinion that you could
12 end up with a situation where nothing -- where
13 there is no increase? It's possible. I think
14 it's highly unlikely. I think it's much more
15 likely that you would see a very, very, very
16 insignificant increase, much smaller than what
17 we already have here.

18 Q. Are you aware -- I think you testified in your
19 20 odd years of engineering --

20 A. Yes.

21 Q. Let me ask this question first. In all those
22 years of engineering, how many of those years
23 have you been doing this kind of work?

24 A. For generally the same amount of time, 20 plus
25 years.

1 Q. In all those years, have you ever in real life
2 come across a situation where there was no
3 increase in the BFE?

4 A. No, I have not.

5 Q. Have you always seen at least a negligible
6 increase in the BFE?

7 A. Yes, usually, yes.

8 Q. And your testimony is that it would take a
9 highly unusual constellation of factors for a
10 building of over 200 square feet to be
11 constructed in a floodway that did not --

12 MR. SOMAN: Floodplain.

13 BY MR. RESTAURI:

14 Q. Floodplain. At least a di minimus increase in
15 BFE?

16 A. I think that would be difficult to arrive at,
17 yes.

18 Q. You testified, as I recall, on direct that
19 there was nothing that came to your attention
20 that would constitute, with regard to the
21 floodplain, an endangerment to human life.

22 A. That's correct, yes.

23 Q. What kind of situations or things would you
24 describe as creating an endangerment to human
25 life?

1 A. To answer that in a general sort of way, I
2 think it would be exceed the generally
3 accepted standard established by FEMA and that
4 would be anything that results in a rise over
5 the established regulatory floodway elevation.

6 Q. So that answer implicates something other than
7 the ordinance, and I'm not being critical
8 about that. I'm just trying to be clear.

9 When it comes to endangering human life,
10 I believe you testified, but please correct me
11 if I'm wrong, that regardless what the
12 township ordinance says, the standard you
13 would employ is the FEMA standard which is 1.5
14 above?

15 A. Yes.

16 Q. Did I understand that correctly?

17 A. Do you mean in reference to a negative impact
18 on the endangerment of human life?

19 Q. Yes.

20 A. Yes.

21 Q. So if it went above 1.5, are you saying that
22 now we're getting into endangering human life
23 potentially?

24 A. I think with every incremental increase over
25 that, the potential for loss of life would

1 increase.

2 Q. And in this case, according to your
3 calculation, are we using the standard you
4 just testified to getting into, the
5 endangering of human life area?

6 A. No, nowhere near that.

7 Q. Nowhere near that?

8 A. Nowhere near that.

9 Q. And so the language "except for a possible
10 modification of the regulatory flood elevation
11 involved, no variance shall be granted for any
12 of the other requirements pertaining
13 specifically to development which may endanger
14 human life," that provision does not have
15 relevance here in its application in your
16 opinion. Is that what you're testifying to?

17 A. Well, I guess it depends how you phrase the
18 question. It has relevance in the fact that
19 you are not impacting the regulatory floodway
20 because you are not -- what is being done is
21 not resulting in a rise or an increase to the
22 regulatory floodway elevation.

23 Q. So except for a possible modification of the
24 regulatory flood elevation requirement
25 involved, does that have any bearing on your

1 analysis here with respect to endangering
2 human life?

3 A. It does in that -- I'm struggling with how to
4 answer this or phrase it properly.

5 Q. That's okay, I'm struggling with how to ask
6 the question.

7 A. We can struggle together. Again, it matters
8 from my perspective in that -- I mean what
9 that is is a statement -- that's more of a
10 legal statement in my opinion. That gives you
11 folks the ability to do things with your
12 ordinance or allow things or disallow things.

13 The question I'm being asked is, do I
14 feel that there is a threat or endangerment to
15 human life or property as a result of what's
16 being done here? And, no, I don't. And I
17 don't feel that what is being done here and
18 the result of it -- what you're saying is it's
19 not applicable or asking me if it's not
20 applicable. Technically, it's not applicable
21 because we are not in excess of the standard
22 established by the state.

23 Q. Already in place.

24 A. Yes.

25 Q. So except for a possible modification, is it

1 necessary for you to determine that there is
2 no endangerment of human life?

3 A. It's not necessary, no. Yes, phrased that
4 way, yes, I agree.

5 Q. Thank you. I have no further questions of
6 Mr. Ferry.

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. SOSTER:

11 Q. Does the construction of this facility,
12 construction of this structure violate the
13 township's ordinances?

14 A. In the literal sense, if you compare it to the
15 statement that no base flood elevation
16 increase is permissible, then, yes, I would
17 say that it does.

18 Q. You work for other municipalities?

19 A. I have worked in other municipalities, yes.

20 Q. Have you ever seen an ordinance written this
21 strict?

22 A. This strict? Once before, yes.

23 Q. One other question. Do they need to obtain a
24 DEP permit?

25 A. No, because they are not obstructing the

1 floodway. All of this is done within the
2 floodplain but not the regulatory floodway.

3 MR. RESTAURI: Mr. Soman?

4 MR. SOMAN: I'm good.

5 MR. KOVACS: Nothing right now.

6 MS. HOMER: No.

7 MR. RESTAURI: Any members of the
8 public? Miss Sweeney?

9 MS. SWEENEY: No.

10 MR. RESTAURI: Ms. Jewart?

11 - - -

12 RECROSS-EXAMINATION

13 - - -

14 BY MS. JEWART:

15 Q. If I recall correctly, you answered the
16 question from Miss Sweeney that stated that --
17 let me go back to get this correct because I
18 believe it was taken straight from the
19 ordinance -- that, if granted, variance shall
20 involve only the least modification necessary
21 to provide relief. Do you recall --

22 A. I recall that question.

23 Q. Could you clarify, relief from what?

24 A. It would be my interpretation that -- and this
25 is my interpretation and my opinion -- that

1 the ordinance as written is somewhat
2 conflicting with other parts of the ordinance,
3 including what we just discussed with the
4 modification and things like that. I feel
5 that it is somewhat unduly restrictive and
6 possibly -- again, I'm not a lawyer, but I
7 would consider it somewhat illegal.

8 You can't establish your own standards,
9 but I think you also conflict with the
10 standard you've placed in the ordinance by
11 saying you can't cause a base flood increase
12 or base flood elevation increase but you can
13 still build a structure under 200 square feet.
14 It's a very difficult standard to achieve.

15 Q. Sure. Thank you. So we are talking here
16 about two separate sets of requirements,
17 right? The general requirements and then what
18 you need to prove to get relief from those
19 requirements in the form of a variance. Is
20 that your understanding?

21 A. Yes.

22 Q. And so the requirement that there is no
23 increase in BFE is one of the variance
24 requirements, not a general requirement for
25 the remainder of the ordinance, correct? I'll

1 restate that.

2 A. Please do.

3 Q. The requirement that there be no increase in
4 base flood elevation as contained in Section
5 8-802 which you've reviewed --

6 A. Yes, correct.

7 Q. That portion is entitled "variance procedures
8 and conditions."

9 A. Okay.

10 Q. In contrast, there are several other
11 provisions, for example, Section 8-502, which
12 I'm happy to show you, that is elevation --
13 8-503 structure requirements, 8-506, federal
14 requirements for manufactured homes, all of
15 those would apply generally to any use that is
16 not requesting a variance, correct?

17 A. I believe so, yes.

18 Q. So it is not a contradiction to allow a
19 structure up to 200 feet with this other
20 provision that says there can be no increase
21 in base flood elevation if you want to exceed
22 200 feet. Is that correct?

23 A. I'm not an attorney. I can't interpret to
24 that degree.

25 Q. So going back to this question about what

1 relief from what, I believe Miss Sweeney used
2 the term "hardship" which goes back to our
3 hardship criteria. What sort of hardship did
4 you mean when you said provide sufficient
5 relief?

6 A. Because again there are conflicting standards
7 both within your ordinance and when compared
8 to the FEMA standards that a general member of
9 the public should still be able to construct
10 something on their property within the
11 floodplain.

12 Q. Do they need to construct one that's greater
13 than 200 feet?

14 A. That's not for me to say.

15 Q. But you said there is some hardship that it's
16 providing relief from.

17 MS. SWEENEY: Objection. I don't
18 think he said that.

19 BY MS. JEWART:

20 Q. We're saying that there is some reason that he
21 must have a structure greater than 200 feet
22 and that this variance we're granting tonight
23 is providing relief. You stated that. What
24 relief?

25 A. Does he require relief from the established

1 200 to what he has already constructed? That,
2 I can't say definitively one way or the other.

3 Q. But you stated he did.

4 A. I believe that he should be due relief, yes.

5 Q. But you did answer that, when asked if grant
6 of the variance shall involve the least
7 modification necessary to provide relief, you
8 answered yes.

9 A. I did, yes.

10 Q. But you are not aware of what type of relief
11 would be granted.

12 MS. SWEENEY: Objection. He has
13 answered. Asked and answered.

14 BY MS. JEWART:

15 Q. One further question. And again, I understand
16 that you may have only looked at the
17 ordinances just to get prepared for this, you
18 are not an expert in what the township
19 ordinances say. I am going to direct you to
20 part 11 of the township zoning ordinance.

21 MS. SWEENEY: I don't think he
22 testified that he looked at that.

23 MS. JEWART: I am just going to
24 point to the general provisions. I won't go
25 into detail.

1 MS. SWEENEY: Okay.

2 BY MS. JEWART:

3 Q. I am just going to point you to this section,
4 27-1101, Section 2. Can you read that for me?
5 It's entitled "applicability."

6 A. "These provisions shall apply to all lands
7 within the jurisdiction, the Township of Leet,
8 and shown as being located within the
9 boundaries of the designated floodplain
10 districts which are considered as a part of
11 the official zoning map."

12 Q. And so based on your reading of that, your
13 general familiarity with floodplain
14 ordinances, does this apply to buildings
15 within the floodplain you've been talking
16 about?

17 MS. SWEENEY: Objection. It calls
18 for a legal conclusion, and you didn't show
19 him the applicability section of the
20 floodplain ordinance which says it supercedes
21 it so --

22 MS. JEWART: I believe that I can
23 assist in that. But I can provide it in
24 briefs.

25 MS. SWEENEY: I think this is a

1 matter for briefs.

2 MR. RESTAURI: I tend to agree.
3 He's familiar with what he's familiar with and
4 he's not familiar with certain other things
5 and that's understandable. So let's try to
6 focus on what he is testifying to that he
7 feels comfortable as an expert in.

8 MS. JEWART: I would like to
9 clarify so I understand the bounds of my
10 questioning.

11 MR. RESTAURI: Sure.

12 BY MS. JEWART:

13 Q. We have been told you did review the
14 applicable zoning ordinances in advance of the
15 hearing.

16 A. I said I was familiar.

17 Q. But you have not reviewed Section 11 of the
18 township ordinances which is entitled
19 "floodplains"? You are not familiar with
20 that?

21 A. I don't think so, no.

22 Q. Nothing further. Thank you.

23 MR. RESTAURI: Mr. Chesney?

24 - - -

25

CROSS-EXAMINATION

- - -

BY MR. CHESNEY:

Q. I want to follow up on one thing you said before. You had said that this was unreasonable because it requires a variance for a structure over 200 feet, correct? Or you said that it was different or it was exceeding what FEMA --

A. Yes, I mean it's unreasonable when compared to what the generally accepted FEMA standard would be, yes, which would allow for construction in the floodplain.

Q. And this allows for construction in a floodplain, doesn't it?

A. Well, I think that's up for debate.

Q. It allows you to build a structure 200 square feet, correct?

A. Yes, but it is also says you can't raise the base flood elevation.

Q. No, it says you can't raise the base flood elevation if you need a variance. It says when granting a variance, then the base flood elevation shall not be raised or should not be raised or a variance should not be granted if

1 the variance would increase the base flood
2 elevation.

3 It doesn't say -- you could build a 200
4 square foot area structure. It's assumed that
5 it's going to raise the BFE.

6 A. Yes.

7 Q. What the ordinance says, that if you are going
8 to exceed that, then in order to exceed that
9 -- in order to get a variance to exceed that,
10 you cannot raise the BFE.

11 A. But if you require a variance to construct a
12 structure --

13 Q. But you don't need a variance to construct a
14 200 square feet structure. I think that's
15 where --

16 A. Possibly, yes.

17 Q. That's what the ordinance says.

18 A. Okay.

19 Q. It says if you need a variance to go above
20 that 200 square foot area then --

21 MS. SWEENEY: Objection. It
22 doesn't say that.

23 BY MR. CHESNEY:

24 Q. Okay, let's go back to the application. The
25 reason why this variance is being sought is

1 because the area of the structure exceeds 200
2 square feet.

3 A. Yes.

4 Q. So that aside, as the ordinance says, that you
5 can build a structure without a variance that
6 fits within those parameters.

7 A. So you are saying that the ordinance states
8 you can build a structure under 200 square
9 feet.

10 Q. That's the whole reason why we are here is
11 cause he wants to go above 200 feet.

12 A. But I am asking --

13 Q. That's the reason why I am asking you
14 questions.

15 A. Well, I'm not here to do a legal
16 interpretation of the ordinance.

17 Q. You said that it was unreasonable because it
18 doesn't allow you to build.

19 A. It's my opinion that it's unreasonable.

20 MS. SWEENEY: Objection.

21 MR. RESTAURI: Ladies and
22 gentlemen, let's take a breath.

23 - - -

24 EXAMINATION

25 - - -

1 BY MR. RESTAURI:

2 Q. Sir, let me ask you this, if I may, and we are
3 going to close it for the night. If a
4 building is 200 square feet --

5 A. Yes.

6 Q. -- it is going to have a BFE impact, correct?

7 A. Yes, I think I've testified to the fact that
8 in almost all likelihood it would, yes.

9 Q. If a building is more than 200 square feet, is
10 it possible that the additional amount can
11 have no additional impact?

12 A. I think the answer would be identical to the
13 answer I gave previously in that it would be
14 very unlikely.

15 Q. Okay, so for every -- put it this way -- the
16 idea that there will always be an impact on
17 the BFE, according to your testimony, is true
18 except in a very strange situation.

19 A. Yes.

20 Q. So this is not about whether there will be an
21 impact. There will be, whether it's 200
22 square feet or 400 square feet or 600 square
23 feet, correct?

24 A. Correct.

25 Q. The question is, if it goes above 200 square

1 feet, can it be done above 200 square feet
2 without an additional BFE impact?

3 A. I would say not, no.

4 Q. Because you've said it's hypothetically
5 possible but not in the real world.

6 A. The likelihood is very small in my opinion,
7 yes.

8 Q. So we agree that even with a 200 square foot
9 one, there will be the impact.

10 A. Yes.

11 Q. And with an additional, a bigger building,
12 there will be an additional impact.

13 A. Most likely, yes.

14 Q. Thank you.

15 MR. RESTAURI: Because of the
16 time, we're going to call it an evening. Does
17 anybody feel an urgent need to have the
18 witness come back? Hearing nothing, the
19 witness is excused with our thanks.

20 Ladies and gentlemen, we are
21 adjourned until tomorrow night at seven
22 o'clock.

23

24 (Whereupon, at 10:15 a.m. the
25 record was closed.)

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C E R T I F I C A T E

I hereby certify that the
transcript of the proceedings and evidence
contained herein are a true and accurate
transcription of my stenographic notes taken
by me at the time and place of the within
cause; that the transcription was reduced to
printing by me; and that this is a true and
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1 LEET TOWNSHIP
2 ZONING HEARING BOARD
3 194 Ambridge Avenue
4 Fair Oaks, PA 15003-1248

5
6 Wednesday, August 31, 2022
7 7:00 p.m.

8
9 - - -

10
11 VARIANCE APPLICATION
12 of
13 ROBERT L. & MARILYN A. WERNICKI

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15 - - -

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22 Reported by:

23 CAVALIERE COURT REPORTING
24 Leaette Cavaliere, Court Reporter
25 162 Cobblestone Drive
Pittsburgh, PA 15237
(412-508-0035)

1

2

A P P E A R A N C E S

3

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Terry Soster, Chairman

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Chuck Soman

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David Kovacs

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P R O C E E D I N G S

MR. SOSTER: We are going to call the Zoning Hearing Board, Leet Township, to order and please stand for the pledge of allegiance.

(PLEDGE OF ALLEGIANCE)

MR. SOSTER: This evening is a continuance of the hearing of August 30th where the board is taking under consideration the variance being requested by Mr. Robert Wernicki and, Solicitor Restauri, where we left off at.

MR. RESTAURI: Thank you. Any witnesses who were sworn yesterday to testify are still under oath. Is there anyone in the audience today who was not sworn yesterday who wishes to testify?

(WITNESS SWORN)

MR. RESTAURI: If you testify tonight, we will assume that you have been sworn. If you change your mind and decide to testify and have not been sworn, just let us know and Miss Cavaliere will administer the

1 oath to you separately.

2 I believe we left off with Miss
3 Sweeney's concluding her second witness.

4 MS. SWEENEY: Yes.

5 MR. RESTAURI: Do you have another
6 witness?

7 MS. SWEENEY: I do. I call Robert
8 Wernicki to testify for the board.
9 Mr. Wernicki, can you take a seat, please.

10 - - -

11 ROBERT WERNICKI,
12 having been first duly sworn, was examined and
13 deposed as follows:

14 - - -

15 DIRECT EXAMINATION

16 BY MS. SWEENEY:

17 Q. Could you state your name for the record,
18 please?

19 A. Robert Wernicki.

20 Q. And where do you live?

21 A. 133 Neely Street.

22 Q. And how long have you resided there?

23 A. 2004.

24 Q. And what is your profession?

25 A. I work for Allegheny County. I'm a nursing

1 home administrator. I oversee the Kane
2 McKeesport facility in McKeesport, Kane Ross
3 in Ross Township, Glen Hazel in Hazelwood, and
4 now I'm at the Scott facility in Carnegie.
5 The nursing home has about 311 beds, about 350
6 employees. I have been a nursing home
7 administrator since 1992.

8 Q. So you had your hands full during the Covid
9 pandemic.

10 A. It was very traumatic in 2020. Residents were
11 getting sick, residents were dying. Nobody
12 knew what to do. We had to put residents
13 together that had Covid. We had to separate
14 residents that didn't have Covid. We had to
15 deal with families. We had to deal with the
16 Department of Health, the Allegheny
17 Department of Health. It was very, very
18 difficult. We had about 35 residents that
19 passed away and we had one employee pass away.

20 Q. During this time -- we're here because of an
21 accessory structure on your property. Did you
22 attempt to reach out to the township before an
23 accessory structure was erected on your
24 property?

25 A. Yes.

1 Q. Why did you do that?

2 A. Well, I wanted to put up an accessory building
3 and so I started to call the township to see
4 what was necessary to do so and after multiple
5 calls, you know, I couldn't get ahold of
6 anybody because all I wanted to do was look
7 for direction.

8 Q. And what time period was this, approximately?

9 A. Started in April of 2020. And after I
10 contracted with Gary Scheffler, he suggested I
11 keep a calendar of when I would call the
12 township and so that's what I did. You know,
13 during Covid I would call the township from my
14 cell phone or my desk phone and I would try to
15 reach somebody and when I couldn't reach
16 somebody, I would circle the day in April,
17 May, June and July.

18 Q. I direct your attention to tab two in the
19 binder in front of you.

20 A. Yeah, that's my calendar.

21 Q. And that's your handwriting there?

22 A. Yeah, I kept it at my desk and every time I
23 would call I would circle the date. And
24 you'll notice I even called 9-1-1 and got
25 ahold of Leet Township police. Not saying

1 they thought I was crazy, but they thought I
2 understood that no one was at the offices.
3 Because in Allegheny County everything was
4 shut down during Covid. You had to work from
5 home. I'm on the state board of nursing home
6 administrators and even the state was shut
7 down. Everyone was directed to work from
8 home.

9 Q. Did you reach an answering machine at all when
10 you called?

11 A. No, there was no answering machine that was
12 hooked up.

13 Q. Did you happen to see or talk to any
14 employees, township employees during this time
15 period?

16 A. It was very scarce during that time but when I
17 would see the township employee in the parking
18 lot, I would stop and ask him what's going on
19 and they said, "Bob, you know, there is nobody
20 in the offices."

21 Q. You didn't have a personal number or cell
22 phone information for the township manager by
23 any chance?

24 A. Nope.

25 Q. Did you know of anybody else who had a similar

1 problem reaching someone at the township
2 during this time period?

3 A. Uh-huh. Everybody walks their dogs down Neely
4 Street and neighbor Mike, Mike Faddoul, I told
5 Mike my situation, that I was trying to get
6 ahold of somebody, and Mike said that he tried
7 to reach out to someone at the township
8 because he was putting up a fence.

9 MS. JEWART: Object as to hearsay.
10 Note it on the record. Thank you.

11 MS. SWEENEY: I believe
12 Mr. Faddoul will be here to testify.

13 MR. RESTAURI: Noted.

14 MR. WERNICKI: A neighbor was
15 walking their DOG and I said, hey, Mike -- you
16 know, he knew I was putting a garage up and so
17 I said, Mike, "I can't get ahold of anybody at
18 the township" and he said, "Bob, I'm having
19 the same problem."

20 MS. JEWART: Second objection.

21 MR. RESTAURI: It is hearsay, but
22 we allow hearsay in these hearings. And it
23 may not be hearsay if the gentleman is here to
24 testify. So we understand. Please continue.

25 MR. WERNICKI: Okay, so he also

1 said he had difficulties in reaching someone
2 so eventually, though, he said he got the
3 paperwork but the building inspector, he never
4 got a response from, who was supposed to come
5 out and kind of show him where he could put
6 the fence on the property line. But he never
7 showed up so Mike was conservative and put it
8 in further on his property.

9 MS. JEWART: Please note it to the
10 preceding statement, if this individual is
11 going to testify to the same, I'd like to hear
12 it from him.

13 MR. WERNICKI: Mike is going to be
14 here a little bit later.

15 BY MS. SWEENEY:

16 Q. Mr. Wernicki, so you started calling in April
17 of 2020 and according to your notes were
18 continuing to call through July of 2020; is
19 that correct?

20 A. Right.

21 Q. So then what happened after that?

22 A. Well, you know, like I said, Covid really kind
23 of consumed me. I didn't know really which
24 day it was. I worked seven days a week and
25 trying to make sure the residents wouldn't get

1 Covid. And then all of a sudden it was 6:30
2 in the morning on September 11th, I had the
3 Amish people showed up and put up the
4 accessory building.

5 Q. So would you turn to tab 1-B, and there are a
6 series of photographs there.

7 A. Yeah.

8 Q. Is that your house at 133 Neely?

9 A. Yeah, and I want to point out, you know, I'm
10 proud of this house. I put a lot of work in
11 this house. This house was a dump when I
12 first bought it. And you can tell, if any of
13 the board members went down to 133 Neely
14 Street, there was a lot of work that's put in,
15 a lot of craftsmanship put into this house.

16 Q. So if you could turn to a couple of the photos
17 on there. There is a series of photos here.
18 And this is showing landscaping that you put
19 in.

20 A. Right.

21 Q. And then there is a fence with a line of
22 trees. That's all still your property?

23 A. Right.

24 Q. And so then turn to the next page. Is that
25 the structure? Maybe one more page.

1 A. Right.

2 Q. So the reason why we are here this evening is
3 the structure that's in the middle of that
4 photograph there.

5 A. Okay.

6 Q. What is this structure intended to be?

7 A. Storage.

8 Q. And why did you need it?

9 A. Well, I mean I don't have a basement and I
10 needed a place -- half of my basement is my
11 bedroom and the other half of the basement or
12 the other half of the room -- it's kind of
13 like a raised ranch. The other half of the
14 downstairs is my furnace room and my washer
15 and drier.

16 Q. How big is your house, approximately?

17 A. It's about 800 square feet.

18 MR. RESTAURI: Miss Sweeney, let
19 me ask for clarification, please. In the
20 photograph that we're looking at, is the
21 structure that we are talking about the one in
22 the center or the one to the far right?

23 MS. SWEENEY: The center.

24 MR. RESTAURI: Appears to be
25 slightly lower and longer.

1 MS. SWEENEY: Yes.

2 MR. RESTAURI: Okay, thank you.

3 BY MS. SWEENEY:

4 Q. So is there any electrical power to this
5 structure?

6 A. No.

7 Q. Is there any bathroom or running water to this
8 facility?

9 A. No.

10 Q. Is it anchored?

11 A. Yes.

12 Q. The wood that was used, is it water resistant?

13 A. Yes.

14 Q. How about the paint? Is the paint resistant
15 as well?

16 A. Yes.

17 Q. So it's not a structure that anyone would stay
18 in.

19 A. No.

20 Q. So it's not intended for sleeping or along
21 those lines?

22 A. No. Fits perfectly in there.

23 Q. Again, what was your intent to use it for?
24 Storage?

25 A. Correct, because, you know, other people have

1 a basement, they have a garage, they have an
2 attic, you know, but I don't.

3 Q. And you can't add onto your particular
4 property?

5 A. No. I'd like that option, but I can't.

6 Q. So I want to show you something that's not in
7 your binder. It's a document that Miss Jewart
8 had brought out yesterday at the hearing which
9 is a printout she did from the county tax
10 records purporting to depict your house. Do
11 you see that there?

12 A. Right.

13 Q. So the pink area, is that the porch area?

14 A. Yeah, it's a patio. I call it a patio. It's
15 right off the downstairs. I have a bedroom,
16 sun room, you go out the sun room and there is
17 a little patio that's cement.

18 Q. That's the light pink area. I meant the
19 darker pink area.

20 A. No, this is the front of the house and this is
21 the back of the house.

22 Q. Right. And the white area --

23 A. That's the patio.

24 Q. So that's not a structure in the rear?

25 A. No, no, no. That's a patio. I got those from

1 the Valley Concrete and they're blocks, two by
2 four and two by two's.

3 Q. Thank you. So you said on September 11th the
4 Amish knocked on your door and they started
5 putting up this structure. What happened that
6 day?

7 A. Well, right after that -- I made notes here.
8 Let me make sure. It's been a long time ago.

9 Q. Did anyone from the township show up at your
10 house?

11 A. Like everybody. I had the police chief there,
12 I had the building inspector there, I had the
13 non-resident, the mother of my neighbor,
14 there. It was kind of hectic because the
15 building was up and, you know, the person was
16 saying -- I didn't pay attention to what she
17 was saying but Bill Wanto, the chief of
18 police, and Joe Motznik, the building
19 inspector, said, "Bob, just go up to the
20 township building and fill out an application
21 and give them the money and process the
22 permit." So he gave me the application.

23 Q. And did you do that?

24 A. Yeah, he said go up there right now. So I
25 took it right up there.

1 Q. Turn to tab three of the binder, if you would.

2 A. Yeah, that's it. I went up here, sat at a
3 table and filled out the application and wrote
4 out the check. I forget what they told me to
5 write it out for. No one wanted to help me.

6 Q. Did you speak to anybody here?

7 A. No, they refused to speak with me. I wanted
8 to see the township manager. There was a
9 secretary at the front desk and I had no help.

10 Q. So they refused to take your building
11 application?

12 A. So I left.

13 Q. And then what did you do? Did you hire
14 Mr. Scheffler at that point?

15 A. I didn't know what to do. I just -- it was
16 just really different. So I thought of
17 getting a surveyor. I thought that would be a
18 starting point. So luckily I got ahold of
19 Gary. He is right on Mt. Nebo Road, close to
20 Sewickley. So, yeah, he was a godsend, and he
21 was my agent and he worked with the township
22 to get whatever I needed to get to get this
23 approved and here we are almost two years
24 later. It's been a lot of money. You know,
25 every month I wrote a check out.

1 Q. Did you talk to any of your neighbors about
2 this situation?

3 A. Yeah, I went around the neighborhood.

4 Q. I will point you to tab 18 which are a series
5 of letters. Are those people that you had
6 talked to?

7 A. Yeah.

8 Q. In your neighborhood?

9 A. Right.

10 Q. Did the people that you talked to express any
11 opposition to what you had done with your
12 request for a variance and at the time it was
13 also requesting a side yard setback but now
14 just the size?

15 MS. JEWART: I'd like to object to
16 -- if these are written public comments, but I
17 object to these being hearsay statements so
18 far as they are offered for the truth of --

19 MR. RESTAURI: We'll admit them
20 subject to the objection and weight.

21 MR. WERNICKI: Yeah, but these --

22 MR. RESTAURI: They are admitted,
23 sir.

24 BY MS. SWEENEY:

25 Q. My question was, did these individuals express

1 support for you?

2 A. Oh, yeah, they were surprised. They all knew
3 where I lived and they all knew what I did to
4 the house over the years and they thought the
5 accessory structure fit very well, thought it
6 was cute and functional.

7 Q. And as you look in the photographs, the
8 structure is not immediately visible to the
9 street; is that correct?

10 A. Yeah, you can't see it. The only people that
11 can see the structure is my neighbor, neighbor
12 Dave right across the street, neighbor Pete,
13 and of course my next door neighbor. Yeah,
14 you can see the building. Those are the only
15 three people that can see the building. But
16 nobody else can see it in the neighborhood.

17 Q. And you don't have items throughout your yard,
18 you want to try to maintain a tidy and
19 presentable property; isn't that correct?

20 A. Yeah, my property is very, very presentable
21 and very nice.

22 Q. So there was a question by the solicitor here
23 about the picture, commenting there was
24 another structure that's depicted. That's an
25 older accessory structure, Mr. Wernicki?

- 1 A. Correct.
- 2 Q. Did you get a permit for that?
- 3 A. Yes, I believe I got a permit for that
4 structure. That was a long time ago.
- 5 Q. And you can't find a copy of it right now?
- 6 A. No, the only copy of a permit that I have -- I
7 got a permit for the bank rehabilitation. You
8 know, I live right on the creek. So through
9 Allegheny County Conservation District, the
10 state, I got a permit to redo that whole bank
11 along my property. So that's the only permit
12 I have.
- 13 Q. So through this process you are seeking a
14 variance to try to get everything into
15 compliance with the township; isn't that
16 correct?
- 17 A. Yeah. Yes.
- 18 Q. And did you intend to create a situation where
19 you are willfully defying the ordinances of
20 the township?
- 21 A. No, I would never jeopardize my position as,
22 you know, an Allegheny County employee. I
23 would never do that. I'm always compliant
24 with all the rules and regulations.
- 25 Q. But this was a situation where things went

1 sideways because of the Pandemic.

2 A. Well, more than sideways. I mean it not only
3 affected Leet Township but Allegheny County,
4 State of Pennsylvania, the country. Covid has
5 changed everything, the way we live. And
6 during that time, like I said, I had no time
7 to do anything.

8 Q. And had you been able to reach someone at the
9 township, you would have sat down with them to
10 go through the necessary processes?

11 A. Well, of course, but I couldn't get any help.

12 Q. Thank you. That's all I have for direct.

13 MR. RESTAURI: Miss Jewart?

14 - - -

15 CROSS-EXAMINATION

16 - - -

17 BY MS. JEWART:

18 Q. Thank you. I am going to try to keep this
19 brief and direct so we don't all swelter again
20 today. Thank you for being here and thank you
21 for testifying. It's always very helpful to
22 have the property owner here to explain what
23 was going on.

24 Sorry, are you paying attention?

25 A. I'm sorry, what?

1 Q. So you were explaining that you, in April of
2 2020, began to contact the township about
3 obtaining a building permit to erect this
4 structure on your property. When did you
5 first come up with the idea of putting a
6 structure in that location?

7 A. Well, you always want to have -- you know, I'm
8 not outgrowing my house but over the years you
9 accumulate a lot of things and, you know,
10 since my mom stayed with me for a little bit
11 at the house before I had to put her in a
12 nursing home so I had some of her stuff. I
13 really have no room. So I decided to look at
14 that possibility.

15 Q. And about when was that?

16 A. I don't remember.

17 Q. When was the first time that you took any
18 steps to begin placing the structure on the
19 property?

20 A. I didn't take any steps.

21 Q. Not until what date?

22 A. September 11th, when they showed up.

23 Q. There was nothing done to your property to
24 prepare it for the structure before September
25 11, 2000?

- 1 A. There was a cement pad that I put up to extend
2 my patio. And then I have a 6 by 12 trailer,
3 6 by 18 trailer, I have an open trailer, and I
4 was going to put those on my pad and decided
5 not to. And then the pad just was left
6 vacant, it was there.
- 7 Q. What size is the pad.
- 8 A. Well, it's 20 by 30.
- 9 Q. So the same size as this structure.
- 10 A. Correct. When I decided to put the structure
11 up, I decided to put it up the size of the pad
12 rather than half the pad or three-quarters of
13 the pad because the pad doesn't match the
14 patio. The patio is two by four and two by
15 two blocks.
- 16 Q. So why did you make that design choice? You
17 said you have been very meticulous about how
18 you designed your property. Why not make it
19 match?
- 20 A. It just fell into place.
- 21 Q. So you are saying you had no intent, when you
22 placed this pad, to erect a structure on it?
- 23 A. Correct.
- 24 Q. Again, do you recall the date that you placed
25 this pad down?

- 1 A. No, nuh-uh.
- 2 Q. Is there anything different about the pad that
3 you could explain that makes it more like a
4 patio than a foundation for a shed or a
5 garage?
- 6 A. No, just a pad. There is nothing extra
7 structurally. It's just a pad.
- 8 Q. Is there any drainage on it?
- 9 A. There was a runoff, but I eliminated the
10 runoff cause my neighbors, you know -- I don't
11 know how they -- but the pipe is completely
12 removed, the runoff is completely removed.
- 13 Q. Can you explain a little bit what you mean by
14 the runoff on the pad? Where is it located?
15 What was the purpose of putting it in?
- 16 A. My buddy, the cement guy said, "Bob, you
17 should put a runoff to make sure there is no
18 water that would accumulate on the pad." I
19 said, "Okay, fine," so he put it in.
- 20 Q. And where does it drain to?
- 21 A. Well, it drained into the creek, on the side
22 of the bank.
- 23 Q. Did you get any permits in order to erect that
24 pad or to place the drain running into the
25 creek?

1 A. Not for the pad, no.

2 Q. How about for the drainage into the creek?

3 A. No, I did not.

4 Q. Did you consider what the environmental
5 effects of that drain could have been?

6 A. No, it's just rain water. What environmental
7 effects would it have?

8 Q. I'm not sure. I'm not entirely sure what you
9 do on your property, but could you explain a
10 little bit more about that?

11 MS. SWEENEY: I object to the
12 relevance of the structure that is at issue,
13 inquiry into a pipe that doesn't exist
14 anymore.

15 MS. JEWART: We are establishing
16 that at the time prior to either April of 2020
17 or September 11th of 2021 -- I might be mixed
18 up on the dates but you can correct me -- that
19 there was some sort of structural development
20 on the property that happens to be in the
21 exact same shape and location as this shed or
22 garage that was potentially anticipating such
23 a structure being erected well in advance of
24 the Pandemic and well in advance of any intent
25 or attempt to get a permit. I believe it is

1 directly relevant to Mr. Wernicki's intent
2 here and directly relevant to his credibility.

3 MS. SWEENEY: I don't think that
4 there is any evidence in support of that
5 allegation. He said he didn't remember when.
6 You're characterizing it well in advance and
7 characterizing intent, etc., that is not
8 supported by the testimony.

9 MS. JEWART: I am happy to put in
10 evidence later.

11 MR. RESTAURI: We will allow it
12 for a while, with the understanding that there
13 will be evidence that will show when this was
14 done.

15 MS. JEWART: Correct.

16 MR. RESTAURI: Otherwise, it's
17 irrelevant. You may go on for a little bit.

18 MS. JEWART: Thank you.

19 MR. WERNICKI: I just want to make
20 sure. My house is only so wide. So when I
21 put the patio up, you know, it's the width of
22 the house. So when I put the barn up and got
23 the permit, everybody puts their barn in the
24 back of the property. So I put it in the back
25 of the property and it was the same width as

1 the patio. I wanted everything to be
2 symmetrical.

3 BY MS. JEWART:

4 Q. And is that why you laid the pad in that same
5 shape and location?

6 A. Yeah, it follows the design of the house. I
7 wanted to extend my patio.

8 MR. RESTAURI: Mr. Wernicki,
9 excuse me, this barn that you refer to, what's
10 the barn?

11 MR. WERNICKI: It's the shed.

12 MR. RESTAURI: It's the same
13 building we are talking about?

14 MR. WERNICKI: No, there is
15 accessory building we are looking to get
16 permit and the barn is behind the accessory
17 building.

18 BY MS. JEWART:

19 Q. Can you clarify when the structure you call
20 the barn, do you recall when you put that up?

21 A. Could have been 2012. I'm not sure. But it
22 was way long time ago, you know.

23 Q. And what do you store in there?

24 A. Well, I'm kind of a handy kind of a guy. You
25 know, I had a trailer and I have a lot of

1 tools so a lot of carpenter tools, painting
2 tools, a lot of plastering tools, a lot of
3 electrical tools. Couple reindeer,
4 wheelchair, port-a-potty that my mom used.
5 You know, some other stuff that I couldn't
6 keep in the house.

7 Q. So on top of that, can you estimate -- I
8 believe we have it on the survey, but could
9 you estimate the size of that structure for
10 me?

11 A. Twelve by sixteen.

12 Q. So you needed additional storage for the type
13 of items one would normally keep in a shed
14 like that and/or a basement?

15 A. Yeah, cause like I said, I'm very handy,
16 different kind of a guy. I have a lot of, a
17 lot of guy things, yeah, I do.

18 Q. Have you ever anticipated putting any vehicles
19 in the structure?

20 A. No, but it's not out of the realm. I wouldn't
21 say vehicles. Cause I'm an old car guy. But
22 if I put a vintage vehicle in there, I might
23 want to do that, yes.

24 Q. Have you done that?

25 A. I wouldn't say it's a car or a vehicle.

1 Q. So a vintage vehicle is not a vehicle?

2 A. No, no, a vintage vehicle is something you
3 drive once a week in the month of June, July,
4 August. It's not an everyday vehicle. There
5 is a difference between a vehicle that you use
6 every day and a vehicle that somebody else
7 would have. They cost too much money and it's
8 just nice to look at.

9 Q. So you anticipated putting an antique or
10 non-everyday vehicle on the property?

11 A. No.

12 Q. No, you have not anticipated that?

13 A. No, I didn't say I anticipated it, but it
14 could be a possibility. There is a
15 difference.

16 Q. Have you placed one on the property so far?

17 A. There is one in there, yes.

18 Q. There is one in there now?

19 A. Yes.

20 Q. Do you have an occupancy permit?

21 A. No, I don't.

22 Q. But you're occupying the structure with this
23 vehicle?

24 A. Yeah, cause my mother passed away in October
25 of '19 and it was in her garage and I stored

1 it somewhere else and I had to put it
2 somewhere. This has been two years.

3 Q. So you are anticipating -- but there is one on
4 the property within this garage without an
5 occupancy permit. I am making sure I am
6 getting this correct.

7 A. Yes.

8 Q. But this isn't a garage.

9 A. No, everyone keeps on referring to it as a
10 garage. A garage is attached to your house or
11 right next to your house and you use it every
12 day to put your car in. This is an accessory
13 structure and it's used for, you know, items
14 like my John Deere tractor, my pressure
15 washer, a couple lawn mowers, you know, some
16 old furniture that I may want to refinish
17 someday and halloween decorations, Christmas
18 decorations, my treadmill. I have an
19 elliptical.

20 Q. So we heard yesterday from Mr. Scheffler that
21 the intent was to put sort of yard work
22 materials. It sounds like you do have that
23 intent, for some purposes a John Deere, a few
24 lawn mowers. Again, how large is your
25 property?

1 A. My property? I mean I don't know. What do
2 you mean, how large is my property?

3 Q. Are you aware of the acreage of your home?
4 You lived there since 2004 and you actually
5 just applied for a lot consolidation so you
6 should be fairly familiar to the size.

7 MS. SWEENEY: Objection to the
8 form. His engineer submitted it.

9 MR. WERNICKI: I am not aware of
10 the size of my property. I use my tractor but
11 I have no time because Covid is back again and
12 I have 25 residents that have Covid and five
13 employees that have Covid. I use my John
14 Deere tractor because my knees are bad and I
15 can't push my lawn mower. So I use the
16 tractor to cut the grass, but I have no time
17 so I got somebody to cut my grass.

18 BY MS. JEWART:

19 Q. So there is a tractor in the structure now?

20 A. No, it's underneath my deck.

21 Q. Is there a, to use your term, an antique
22 vehicle in the structure now?

23 A. Well, it's not antique, it's a vintage car,
24 yes.

25 Q. I'd like to approach. This will be Objector's

1 Exhibit 4. I am happy to provide
2 authentication of this later. I believe I can
3 do it right now. Is this the structure we are
4 talking about?

5 A. Yes.

6 Q. Is that the vehicle you are talking about?

7 A. Yes.

8 Q. Do you recall getting in that vehicle and
9 driving it into that structure?

10 A. Yes.

11 Q. Is it still in there now?

12 A. Yes.

13 Q. So just to clarify, we began with a discussion
14 yesterday about this being utilized for the
15 purposes with yard work materials, then we
16 discussed it being used as a supplement to
17 your basement because your basement is too
18 small, you live down there.

19 A. Correct.

20 Q. But, in fact, it's being used to store a
21 tractor and car. Were you planning to
22 disclose this?

23 A. There is no tractor in there. This is kind of
24 like a storage place. This is where the car
25 will be stored. Just like if I rented a

1 place, it would be stored in the storage unit,
2 that's all.

3 Q. But you are storing it in there without an
4 occupancy permit.

5 A. Correct.

6 Q. And it's not a garage.

7 A. It's not a garage.

8 MR. RESTAURI: I think the point
9 has been made. May we move on, please?

10 MS. JEWART: Sure.

11 BY MS. JEWART:

12 Q. We talked a little bit about how difficult it
13 was -- thank you for your job during the
14 Pandemic. It had to have been insanely
15 stressful.

16 You mentioned that all of Allegheny
17 County was shut down, nobody was in the
18 offices. Is that correct?

19 A. In Allegheny County, yeah, the county
20 executive, except the health care people,
21 weren't encouraged to come to work but
22 everyone else was encouraged to stay at home.
23 But depending if it was payroll. I can't
24 speak for the whole Allegheny County. All I
25 can do is speak for my facility. The business

1 office worked from home, medical records
2 worked from home, HR worked from home. That's
3 who worked from home.

4 Q. So would you say that your alleged experience
5 with attempting to get a building permit,
6 coming in and nobody is in the office, was
7 that unique to Leet? I believe you said it
8 wasn't.

9 A. I don't understand the question.

10 Q. You stated that across the county, to your
11 knowledge, people were not in the office
12 during the time you requested these permits.

13 A. Yeah, after I tried to call, call, call.

14 Q. When you came in and you requested a permit,
15 nobody was there, is it your understanding --
16 and again I'm just stating this because you
17 stated all of Allegheny County was outside the
18 office -- do you think other people
19 experienced the same thing?

20 A. I can't speak for them. I mean I don't know.

21 Q. That's fine. So around April, 2020, you began
22 making phone calls, you started to try to see
23 if you could get a permit, what was needed.
24 You lived here since 2004.

25 A. Uh-huh.

- 1 Q. You've built other structures on your property
2 which you allege have had permits.
- 3 A. (Indicates yes.)
- 4 Q. That front deck extension, did you get a
5 permit for that?
- 6 A. What extension?
- 7 Q. I believe that you pointed to --
- 8 A. Oh, the deck. Yes, back whenever I got a
9 permit.
- 10 Q. So at that time you'd have to consider the
11 zoning ordinance, you'd have to consider what
12 building permits were needed. You have become
13 familiar with that process.
- 14 A. Not really. You want to put up a barn, you go
15 get a permit. You want to put on an
16 extension, a deck, you go get a permit. You
17 know, I mean --
- 18 Q. So you work in nursing home administration,
19 you must deal with regulations all the time.
- 20 A. All the time.
- 21 Q. So if you are going to go into someplace and
22 do work, you would tend to check those
23 regulations, right?
- 24 A. I don't understand that question.
- 25 Q. That's fine. Just going back to the time line

1 quickly, so we all have a good sense of it,
2 and you start looking for a permit, September
3 11th the Amish come knocking at your door and
4 put a structure.

5 A. They just showed up. They didn't knock at the
6 door. They showed up and started putting it
7 up.

8 Q. When did you contact them?

9 A. Well, I was holding them off because they were
10 running out of room and they needed to get rid
11 of -- you know, to move my facility or put it
12 up and I said, "I can't get a permit." And
13 they said, well, they said, they didn't see
14 any reason not to just put it up and then get
15 the permit. You know, maybe it's my fault. I
16 mean I don't know, but they showed up and they
17 put it up. That's all I can say.

18 Q. So they showed up, they put it up. You
19 allowed them on the property that day. They
20 didn't just do it without your permission.

21 A. What do you mean, allowed them on my property?

22 Q. You are saying they just put it up and did the
23 work and you sat back --

24 A. Yeah, because it was paid for, yes.

25 Q. When did you pay for it?

1 A. Over installments.

2 Q. When did they start?

3 A. I don't remember. You know, I gave them five
4 thousand. It was always cash. The Amish deal
5 in cash.

6 Q. You didn't get receipts?

7 A. You don't get a receipt from the Amish.

8 Q. When did you choose the size?

9 A. Well, it was logical because there was an area
10 between the barn and my patio.

11 Q. That's interesting, but when did you choose
12 the size?

13 A. Oh, I don't know.

14 Q. Before April, 2020?

15 A. Probably, yes, yes, I wanted to do that, yes.

16 Q. Was it likely sometime around when you poured
17 that slab?

18 A. Yeah, because, yes, that's how the slab got
19 placed up.

20 Q. Okay, thank you. When you chose that size
21 which you just said you poured the slab,
22 that's how it got put up was for the purpose
23 of this.

24 MS. SWEENEY: Objection. I think
25 he stated he poured the slab to --

1 MR. WERNICKI: Extend the patio.

2 MS. JEWART: He did state that
3 earlier but just how he stated that was how
4 the slab got there, if I'm correct.

5 MS. SWEENEY: Mr. Wernicki,
6 clarify your statement. She is
7 mischaracterizing it.

8 MR. WERNICKI: The patio is as
9 wide as the house and so I wanted to extend
10 the patio and I made it the same width as the
11 existing patio, make it a lot bigger. So
12 that's how that got determined. You can make
13 an accessory building any size you want. You
14 can make it 15 and a half by 22 and
15 three-quarters. You can make it whatever
16 dimensions you want to fit whatever part of
17 your property you want to put it on.

18 BY MS. JEWART:

19 Q. But that's not true and that's why we are here
20 tonight, right?

21 A. What do you mean, it's not true?

22 Q. There are limitations on how you build an
23 accessory structure. That's why we are here
24 this evening.

25 A. Not that I'm aware of.

1 Q. Why are you requesting a variance?

2 MS. SWEENEY: Objection to the
3 extent you are asking him for a legal
4 conclusion.

5 MS. JEWART: I am asking his
6 intent to submit the application that we are
7 discussing tonight.

8 MR. WERNICKI: Because everyone
9 came down to my house and said I have to get
10 the permit and I went down and I told them I
11 couldn't get the permit. So that's how that
12 happened. We're missing something.

13 BY MS. JEWART:

14 Q. So you thought there might be a limit on how
15 big a structure could be on your property?

16 A. No.

17 Q. You saw an area and you said there is a
18 structure here, there is a structure here, I'm
19 going to fill that in?

20 A. Correct, because if you go to any Amish shed
21 or barn place, they have all different kind
22 and all different sizes and you can pick
23 whatever one you want to put on your property,
24 depending how much storage you need or where
25 you want to put it on your property.

1 Q. But you have gotten zoning permits before.

2 A. I tried to get this one.

3 Q. Not this one, prior. You said that you
4 obtained a zoning permit for the other shed so
5 you are aware there are zoning regulations in
6 this district.

7 A. No, just that you needed a permit. I am not
8 aware of any regulations. Nobody is aware of
9 any regulations to put something up. You have
10 to get a permit. That's pretty much it.

11 Q. Can I just ask, as to your knowledge, this is
12 somebody who said they are in nursing home
13 administration, very familiar with
14 regulations. Why would you need a permit if
15 there is no rule to follow?

16 MS. SWEENEY: I object to the
17 extent you are asking for a legal conclusion.
18 And if he knows --

19 BY MS. JEWART:

20 Q. As a lay person, I'm interested.

21 A. What was your question again?

22 Q. Somebody again in your experience as nursing
23 home administrator who admittedly deals with
24 regulations all the time, I assume deals with
25 permitting all the time, why would you think

1 -- or again, in your lay opinion, why would
2 you think you would require a permit if there
3 aren't certain rules that need to be followed?
4 What reason would there be?

5 A. You are talking I think apples and oranges
6 because the nursing home industry, you know,
7 deals with people and it's a very highly
8 regulated industry. I'm just talking about --
9 all I know as a resident is that if you want
10 to put up a barn or a shed, you need a permit.
11 I'm not aware of any other regulations
12 whatsoever.

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. RESTAURI:

17 Q. Let me ask a question. Mr. Wernicki, just so
18 there is not a due process problem here, do
19 you understand that the allegation here is
20 that that shed violates the ordinance of the
21 township with regard to floodplains? Or are
22 you saying you don't know, all you know is you
23 didn't get a building permit and that's the
24 problem?

25 A. I didn't know that there was anything in

1 regards to regulations regarding floodplains.

2 Q. Do you know that now?

3 A. My checkbook does.

4 Q. So as you are answering questions from
5 counsel, both your own counsel and Miss
6 Jewart, you understand that this is about
7 ordinances in this township regulating what
8 can be built in a floodplain or in a floodway,
9 and the allegations is that your newest shed
10 violates those ordinances and you're here
11 asking this board for a variance to allow or
12 to bless that violation. Do you understand
13 that?

14 A. Yeah, I do.

15 Q. And you understand that there is no dispute
16 that that shed is in violation of the
17 dimensional limitations for the floodplain and
18 floodway ordinance. You understand that?

19 A. Uh-huh.

20 Q. I want to be clear that you understand what's
21 happening here, okay. I'm not suggesting that
22 Miss Sweeney didn't tell you but sometimes
23 clients, in the heat of giving testimony,
24 forget.

25 A. I didn't realize that until I got Gary

1 Scheffler and got the engineer. I didn't
2 realize all that. But I realize the reason
3 I'm here, I do. I'm very sorry for all the
4 confusion, but the last two years I've tried
5 to do whatever the township wanted me to do.

6 You know, they wanted me to do this,
7 they wanted me to do that. I did this, got
8 another survey, got this. You know, I did
9 everything that I needed to do for the last
10 two years on trying to satisfy whatever
11 requirements I needed to satisfy.

12 Q. I am trying to move this along. So to the
13 extent it is relevant -- and I'm not saying it
14 is or isn't -- but to the extent that your
15 intention is relevant, your counsel has asked
16 you questions, Miss Jewart has asked you
17 questions, and they may continue to do that.

18 You understand there is another part of
19 this, though. It's not just about what you
20 intended. It's that right now that shed
21 arguably -- not arguably -- that shed is in
22 dimensional violation of the ordinance. So
23 the question before the board, a big question,
24 is given it's in violation, can we grant the
25 variance, should we grant the variance, and

1 under what conditions should we grant the
2 variance, if we do.

3 So while I appreciate and very much
4 respect, as I think we all do, the work that
5 you did at Kane and during the Pandemic and my
6 mom passed during Pandemic, too, in a nursing
7 home, so I understand. Let's not focus only
8 on that.

9 A. No, no, I understand.

10 Q. I am not saying you are doing it. We have a
11 number of issues to deal with. I'm sorry.

12 MS. JEWART: I have only a few
13 brief questions.

14 - - -

15 RECROSS-EXAMINATION

16 - - -

17 BY MS. JEWART:

18 Q. Do you pay flood insurance?

19 A. No.

20 Q. You do not pay any flood insurance?

21 A. Nuh-uh.

22 Q. You are not aware of the size of your
23 property?

24 A. No, I have two parcels. I'm not aware the
25 size of my property. It's a very odd,

1 irregular size. Even the house is a very odd
2 kind of raised ranch. I don't have the size
3 of my property. That's why I got Gary.

4 Q. You are familiar with the rest of the houses
5 in your neighborhood?

6 A. Yeah, they're all unique and all different.
7 Even on Ambridge Avenue there are accessory
8 buildings and up and down Big Sewickley Creek.
9 Yeah, every house has their unique
10 characteristics. It's a little steel town.

11 Q. So you are generally familiar with the size of
12 other people's properties. Walking down the
13 street, you see the houses, you get a sense of
14 how big properties are around here generally.

15 A. Yeah, I do, yes.

16 Q. You say yours is on the bigger end or smaller
17 end?

18 A. Mine is on the smaller end, I would think.

19 Q. Do you think it's smaller or larger -- would
20 you say it is larger or smaller than the
21 property to his rear up Neely Street, my
22 client's property, Miss Melodini?

23 A. Is it smaller or --

24 Q. Larger.

25 MS. SWEENEY: Object to the form.

1 Are you asking his house or the property?

2 MS. JEWART: The property. To the
3 best that he -- I understand he may not have
4 reviewed surveys, etc.

5 MR. WERNICKI: It's similar. The
6 only difference is I go up to the creek.

7 BY MS. JEWART:

8 Q. Are you aware of where your property boundary
9 is up to the creek? Do you go into the water
10 or is there some other parcel there?

11 A. That's for Gary to answer, not me.

12 Q. Okay.

13 A. A lot of controversy to that, who owns what.

14 Q. I have nothing further. Thank you for being
15 here.

16 MR. RESTAURI: Thank you.

17 Mr. Chesney?

18 - - -

19 CROSS-EXAMINATION

20 - - -

21 BY MR. CHESNEY:

22 Q. Hi, Mr. Scheffler. I want to thank you for
23 being here tonight. It's a little warm in
24 here.

25 You stated back in April you made

1 several attempts to try to get ahold of
2 somebody in the township. What attempts,
3 other than phone calls, have you made?

4 A. Well, it's the only thing I had time to do
5 and, like I said, when I'd come home,
6 depending on when I got home, when I was in
7 the parking lot I would ask the township
8 employees on three or four different occasions
9 what's going on.

10 Q. Do you have a computer?

11 A. Yeah, I have a computer.

12 Q. Do you have access to e-mail?

13 A. Yes, I have access to e-mail.

14 Q. Did you go on the computer to look at a
15 township website to see if there are any
16 notifications or notices telling you the
17 township was closed down?

18 A. Never thought of doing that.

19 Q. Never thought of going on the township's
20 website?

21 A. Nope.

22 Q. Never thought of looking to see if there was
23 an e-mail address that you can e-mail someone?

24 A. No. Nothing against Leet Township, but it's a
25 small township. I never thought that, tell

1 you the truth.

2 Q. And you said that you also got a building
3 permit on a previous -- the barn, as you call
4 it, correct?

5 A. Uh-huh.

6 Q. When you got that permit, did you have to --
7 did you look into anything to see if there was
8 a certain size or anything that you could make
9 that structure?

10 A. No.

11 Q. You said you got it in 2012?

12 A. Thereabouts.

13 Q. And you said that you work at a nursing home
14 as an administrator, correct?

15 A. (Indicates yes.)

16 Q. And you know there are a lot of regulations
17 and you said they are there to protect people
18 and protect the lives of people, correct?

19 A. (Indicates yes.)

20 Q. And that regulations that protect people and
21 lives, you would agree that's an important
22 function, correct?

23 A. Uh-huh.

24 Q. And when you put in the cement pad, you said
25 that there was a drain pipe there, correct,

1 there was some type of pipe connected to the
2 slab?

3 A. Uh-huh.

4 Q. And where did that go to?

5 A. It went to the side of the creek.

6 Q. So it went into the creek.

7 A. No, it didn't go into the creek, it went to
8 the side of the creek.

9 Q. So the water would have discharged to where?

10 A. The rain water from the pad would have went
11 into the creek.

12 Q. And that's now been removed?

13 A. Yes, it's been totally removed.

14 Q. And what about the drain hole that would have
15 been on the pad?

16 A. It's plugged.

17 Q. What did you plug it with?

18 A. A four inch plug, you know, drain plug.

19 Q. So you can just pull that out?

20 A. I didn't want to pour cement down there. I
21 could have done that to eliminate but just
22 eliminate that whole thing, just pour cement
23 down it.

24 Q. Has anyone ever came onto your property and
25 inspected the new structure?

1 A. No.

2 Q. Have you ever asked any of the building code
3 inspectors or anyone to come or did you ever
4 let them come on and look at the structure?

5 A. Nobody had interest in doing that. That's
6 kind of interesting you brought that up, but I
7 have been working for two years -- well, not
8 me -- Gary and my attorney has been working
9 with everyone here, but I wish somebody would
10 have extended and said, hey, Bob, you know,
11 we're sorry about the confusion, I am going to
12 send so-and-so out to look at the building,
13 let's help with the application. I had no
14 direction whatsoever for the last two years.
15 I worked through my attorney and through my
16 surveyor.

17 Q. But you knew you had to get a building permit.
18 I mean you called to try to get one. So you
19 knew there was some type of regulation you had
20 to follow.

21 A. Yeah, I came here the day they showed up and
22 filled out the application for a building
23 permit.

24 Q. But you knew you had to get a building permit
25 back in April, though, correct?

1 A. I tried, yes.

2 Q. So you knew there was some type of process
3 that you had to follow in order to build a
4 structure on your property.

5 A. Well, the process -- I'm not trying to
6 simplify it, but all I'm saying is if you put
7 up a barn or accessory building, you have to
8 get a permit. So the process, that's the
9 limit -- that's how I know what the process
10 is.

11 Q. So you know it's required then. And you knew
12 that in April when you couldn't get ahold of
13 anyone.

14 A. Correct.

15 Q. You knew that back when you built the shed.

16 A. Right.

17 Q. I have no more questions.

18 - - -

19 EXAMINATION

20 - - -

21 BY MR. RESTAURI:

22 Q. Mr. Wernicki, when you started your attempts
23 to contact the township, did you have some
24 idea there was a floodplain ordinance that
25 would have to be adhered to?

1 A. Not at all. Not at all.

2 Q. Would that explain why you contacted
3 Mr. Scheffler who is not, by his own
4 admission, a floodplain expert?

5 A. I was directed -- and maybe Gary could shed
6 some light on this -- but I was directed by
7 someone, either the township manager or the
8 building inspector, to get a surveyor and
9 that's how I contacted Gary. That was about
10 four or five days after the building went up.
11 I came up here to fill out the application, no
12 one would talk to me. I didn't know what to
13 do so I called Gary.

14 Q. At the time you started these inquiries to the
15 township, did you have a drawing of your land
16 and the position of the newer shed and its
17 size available?

18 A. Well, I'm not embarrassed to say no.

19 Q. And so you were trying to contact the township
20 for a permit but you didn't have a drawing
21 that laid out exactly where this shed was
22 going to go and exactly how big it was going
23 to be?

24 A. Correct.

25 Q. You testified that the shed is anchored.

- 1 A. Yes.
- 2 Q. Do you know how it's anchored?
- 3 A. Well, I'm not an expert but the Amish, you
- 4 know, they anchored it with big anchors. I'm
- 5 not sure how they did it, but they drilled a
- 6 two by four into the cement and put these big
- 7 anchors in all along. There are 16 at center
- 8 so they put them all around the building. You
- 9 know, they are familiar with what they do and
- 10 it's anchored.
- 11 Q. But there are no receipts. I'm just laughing
- 12 because --
- 13 A. Yeah, there are no receipts. I hate to say
- 14 that.
- 15 Q. I have not heard it put quite that way before.
- 16 How long did it take for the Amish to do the
- 17 work?
- 18 A. I didn't believe it. They came at 6:30 in the
- 19 morning and I'm going to guess, 12:30.
- 20 Q. In the afternoon?
- 21 A. Yep.
- 22 Q. So six hours, six and a half hours, something
- 23 like that?
- 24 A. Uh-huh. During that time, nobody came. There
- 25 was a lot of noise. Nobody came to check on

- 1 what I was doing.
- 2 Q. Now is the barn also a storage shed?
- 3 A. Well, I wouldn't call it a storage shed. It
- 4 keeps all my tools. I don't go in and out of
- 5 it, but I'm going to probably give some of the
- 6 tools to my son. But originally it was just
- 7 for my tractor, but the darn tractor is too
- 8 big. I couldn't fit the tractor into the
- 9 storage shed.
- 10 Q. So between the barn and the newer shed, what's
- 11 the total amount of space of those two
- 12 buildings in square feet, approximately?
- 13 A. Well, I'm not a mathematician, but the barn is
- 14 12 by 16 and the accessory building is 20 by
- 15 30.
- 16 Q. So when we talk about the accessory building
- 17 being 600 square feet --
- 18 A. Yeah.
- 19 Q. That's footprint.
- 20 A. Yeah.
- 21 Q. Right?
- 22 A. What does that mean?
- 23 Q. That means the amount of space it takes up on
- 24 the ground.
- 25 A. Oh, right, right.

- 1 Q. There is also vertical space, is there not?
- 2 A. Correct.
- 3 Q. So you could stack stuff on top of stuff on
- 4 top of stuff, correct?
- 5 A. That's what you don't want to do.
- 6 Q. But you could do that. And some things are
- 7 not hurt by stacking, are they?
- 8 A. I would say if you wanted something, no.
- 9 Again, with all due respect, I'm going to
- 10 disagree. You can't stack stuff on top of
- 11 stuff.
- 12 Q. Then if you can't stack it, why do you have
- 13 the heights of the buildings at certain --
- 14 A. Oh, because you needed that height for the
- 15 garage door.
- 16 Q. I see. So you decide the building height
- 17 based on the size of the door.
- 18 A. Not me. The Amish did.
- 19 Q. The Amish did.
- 20 A. Cause I'd have to get a special door if it was
- 21 lower, it was cheaper, put a regular door in.
- 22 Q. So if you wanted to store things in the shed
- 23 in boxes, the way storage companies do, the
- 24 problem with that is it would be inconvenient.
- 25 A. Yeah, but I don't store things in boxes. I

- 1 know what you are saying, yes.
- 2 Q. So you have 600 square foot footprint. How
- 3 tall is the shed?
- 4 A. I'm going to say nine foot.
- 5 Q. So you have got nine feet in height across,
- 6 more or less across a 600 square feet
- 7 footprint.
- 8 A. Correct.
- 9 Q. The roof is peaked so it's not exactly that,
- 10 but plus or minus.
- 11 A. Right.
- 12 Q. And you can use the same calculation for the
- 13 barn, can't you?
- 14 A. Uh-huh.
- 15 Q. Now the barn, how high is it, approximately?
- 16 Roughly the same height?
- 17 A. No, it's shorter. It's not the same height, I
- 18 don't think. I think it's eight foot.
- 19 Q. So we do the same calculation and we come up
- 20 with that number. Have you ever been flooded?
- 21 A. Back in Ivan, the whole neighborhood,
- 22 depending on the house, had some water come
- 23 in. I'm not sure when that was.
- 24 Q. And was that before the barn was built?
- 25 A. Yes.

- 1 Q. Since the time of the barn, and of course
2 therefore since the time of the shed, there
3 has been no flooding?
- 4 A. No. I'm not familiar, Gary would be more apt
5 to speak to that, but I don't think there has
6 been -- I don't know, I can't -- I don't know.
- 7 Q. I didn't ask that question very well. I'm not
8 asking you if you are aware of any flooding in
9 the area. I'm asking if you know whether your
10 buildings have been flooded.
- 11 A. No, not at all.
- 12 Q. Is this 20 by 30 shed the smallest Amish shed
13 that was available?
- 14 A. No. They would build whatever size, you know,
15 you would want, you know.
- 16 Q. And what was the urgency of having this done,
17 contacting the township, paying the Amish,
18 having the newer shed built during the
19 Pandemic?
- 20 A. It just happened that way. There was no set
21 -- you know, it just happened that way.
22 Nobody knew the Pandemic was coming. If the
23 Pandemic wasn't here, it would be a totally
24 different situation.
- 25 Q. So did you have in your mind the option to

1 call the Amish when you were having no success
2 in reaching the township during the Pandemic
3 and saying, hey, we have to put this on hold,
4 everything is shut down, the world is shut
5 down, I can't be putting up a shed without a
6 building permit when the world is shut down?

7 A. Well, what they told me is that they couldn't
8 hold it any longer, the world was opening up
9 and people were putting up sheds.

10 Q. And did you say to them, "I want my money back
11 because my world hasn't opened up? I got
12 people dying in my nursing home, I got
13 employees with Covid, I can't get to my
14 township, I want my money back, I'll come back
15 to you when my world opens up"?

16 A. No, I never thought of that because the walls
17 were already built and everything. I never
18 thought -- it's prefab walls. So everything
19 was built and they were just holding it. I
20 was trying to get a permit.

21 Q. Did they say to you, "Mr. Wernicki, if you
22 don't let us put this up in the next week or
23 two weeks or three weeks, we're taking your
24 money and we're not going to hold these walls,
25 you're done, you've lost your money"? Did

1 they say that to you?

2 A. No, the Amish don't operate that way. These
3 are friends of mine. They don't do that kind
4 of stuff.

5 Q. So you could have gone to them, couldn't you,
6 and said, "Guys, can't do it, can't do it, I'm
7 sorry, can't do it. We have to figure this
8 out later, you are friends of mine, you have
9 my deposit, I'll get to the township when it
10 opens up, let's do this by the numbers"?

11 A. No, nuh-uh, didn't think of that. I'm sorry,
12 but I have to tell you the truth.

13 Q. Mr. Wernicki, I realize sometimes the truth is
14 hard to tell.

15 A. It's embarrassing.

16 Q. It makes all of us sometimes feel like I
17 should have --

18 A. Yeah.

19 Q. But it is one reason and I appreciate you are
20 facing it that way. I have no further
21 questions.

22 MR. RESTAURI: Mr. Soster?

23 - - -

24

25

EXAMINATION

1

- - -

2

BY MR. SOSTER:

3

Q. Do you have a contract with the Amish for the construction of this shed?

4

5

A. No, they don't -- it's a handshake.

6

Q. So you have no way to show us what date you agreed to build this shed?

7

8

A. No, not at all.

9

Q. Is it a shed or is it a garage?

10

A. Everyone keeps saying that. It's accessory building. People have accessory buildings on their property. It's not a garage. Everyone says it's a garage because it has garage doors.

14

15

Q. You keep using the word "accessory building." Where do you get the word "accessory" from?

16

17

A. All my friends have accessory buildings on their property.

18

19

Q. Call it accessory. What's an accessory building?

20

21

A. Just a building that you would use for whatever you want to use it for. Some people have an accessory building for a she cave, a man cave, to store, to make beer. I mean I don't know, but I just needed a building to

25

1 put stuff in.

2 Q. Cause the use of the word "accessory building"
3 is something very unique to the ordinance.

4 A. Uh-huh.

5 Q. Do you know whether this accessory building is
6 permissible under the ordinance?

7 A. No. I didn't know that. As I stated before,
8 I didn't know that.

9 Q. Do you have any record, other than your own
10 handwritten record, of the dates called, of
11 your contact with the township?

12 A. No.

13 Q. Did you ever think about sending a certified
14 letter?

15 A. No, I didn't want to escalate it to that. I
16 never thought of escalating it to that extent,
17 to be honest.

18 Q. You have a car parked in the building or did
19 have a car parked in the building.

20 A. Well, there is a photograph here that I'm just
21 surprised -- yes, there is car in there.

22 Q. Do you have access to a public street from
23 this section of the building?

24 A. No. People have cars -- right across the
25 street there are cars.

1 Q. So how do you get the car into the building
2 from a public street?

3 A. Just drive it down my driveway and onto my
4 lawn. I park my truck on my lawn all the
5 time. Across the street there are cars parked
6 on lawns. Cars are parked in front on their
7 sidewalk in front of their houses. I didn't
8 know there was an ordinance against not
9 parking vehicles on your property.

10 Q. In that regard, you built the pad that you say
11 you built to store your trailers and what have
12 you on the back.

13 A. I mean I didn't have a specific list of items.
14 I just wanted a place because, you know, half
15 of my downstairs -- I wanted to get my
16 treadmill out of there, my elliptical out of
17 there. I have a root cellar underneath the
18 front porch. To get my Christmas tree out of
19 there, to get everything out of there.

20 Q. But you didn't intend to put those items on
21 the pad that you built.

22 A. I was thinking of getting a carport like the
23 guy across the street and getting the sides,
24 but I didn't think that would look good so --
25 but that was a thought, you know, because I

1 did have my trailer on my patio for a long
2 time.

3 Q. And you are allowed to store a trailer? And I
4 don't know the answer to the question. You
5 store trailers in your backyard?

6 A. Well, you look around the whole Leet Township
7 and there are cars and trailers in backyards.
8 But I don't know, I can't answer that.

9 Q. You have no signed contract with the Amish
10 that tells us the date?

11 A. No.

12 Q. You were putting the structure in. That
13 adjacent structure that's on the photograph,
14 that is your structure?

15 A. Where?

16 Q. The little shed.

17 A. Yes.

18 Q. Do you have FEMA flood insurance?

19 A. No, I don't have flood insurance.

20 Q. As an administrator in a nursing home for the
21 county, if you knowingly or unknowingly were
22 aware of an issue that was contrary to the
23 regulations, would you change it?

24 A. Yeah, we do all the time. I mean you would
25 object with the Department of Health, you do

1 what's in the best interest of the resident,
2 yes.

3 Q. That's all I have.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. SOMAN:

8 Q. Originally, you told us that you poured that
9 slab cause you wanted to extend your patio.

10 A. Uh-huh.

11 Q. And you wanted it to look nice and you have a
12 two by two and two by four squares and now you
13 got one big slab. How far is the slab from
14 the patio?

15 A. It's right up to the patio. I was going to
16 put more of the two by two and two-by-fours,
17 but I am getting older and I can't do that so
18 I had a buddy that was slow and he offered to
19 pour the slab.

20 Q. So that was put in as part of the patio?

21 A. Correct.

22 Q. And just --

23 A. If you look at my driveway now, I have my open
24 trailer in there. You know, I mean I don't
25 have any place to put things.

1 Q. Just for clarification, the barn is taller
2 than the garage.

3 A. Well, it may appear that way because --

4 Q. It's on a skid.

5 A. It's on a skid.

6 Q. Right. It's not on concrete. So it's the
7 same thing. It's either on skid or concrete.

8 A. Correct.

9 Q. So the barn is taller than the shed.

10 A. I wasn't aware of that.

11 Q. That's it for right now.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. SOSTER:

16 Q. I have one further question. When you filed
17 the building permit with the township, they
18 received a permit?

19 A. I never did.

20 Q. You said you came down here and you filled out
21 a permit.

22 A. Nobody would take it, take my permit or my
23 check.

24 Q. So a permit was never filed with the township.

25 A. I can ask Gary. Gary took over after that.

1 Q. So you don't know whether a permit was filed
2 or not filed. Did you write a check out to
3 the township?

4 A. Yeah, they wouldn't take the check either so I
5 walked out with my check.

6 - - -

7 EXAMINATION

8 - - -

9 BY MR. RESTAURI:

10 Q. Mr. Wernicki, when you say they wouldn't take
11 it, are you saying there was nobody here to
12 receive it or that you offered it and somebody
13 said, "No, we're not taking it"?

14 A. Yeah, there was a girl sitting at that desk
15 and I offered to give it to her and she said
16 no.

17 Q. Did she tell you why?

18 A. No, nobody would talk to me. I said, "Can I
19 talk to Betsy?" Cause I think her office was
20 over there. That's where the non-resident
21 neighbor was over there. You know, I couldn't
22 get to anybody. So I had to leave.

23 Q. Then you went to Mr. Scheffler?

24 A. No, I didn't know what to do so days after,
25 like four or five days after, I called Gary.

1 MR. RESTAURI: Mr. Kovacs?

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. KOVACS:

6 Q. So we are playing the word game with accessory
7 building and garage.

8 A. Call it what you want.

9 Q. I will call it a garage. I'm sure the main
10 fact that I am looking at two garage doors.

11 A. I didn't want one.

12 Q. If it's not a garage, you don't have a garage
13 door, you can have man doors.

14 A. Not really. If you are going to store things
15 -- you know, you look at storage places here,
16 the storage places here, they have garage
17 doors. You know, there is a trend of going
18 with garage doors over doors. There is
19 restaurants, eateries that it's easier to put
20 a garage door to open it up.

21 I didn't want to have to struggle and
22 carry things in and out through doors and so
23 it was cheaper, matter of fact, just to put a
24 garage door up. And the reason -- I would
25 have put three. I would have put one off the

1 patio.

2 Q. When was the concrete poured?

3 A. 2016. I'm not sure, but thereabouts.

4 Q. 2016. So back in 2016 you had started to
5 develop this plan.

6 A. There was no plan. It was just to extend the
7 patio.

8 Q. Well, it doesn't really extend the patio.
9 It's totally different type of concrete
10 between pavers and concrete, and it's not the
11 same width as the patio.

12 A. It's the same width as the patio. Well, it
13 could be short maybe by a foot or six inches
14 or eight inches.

15 Q. In the picture that I am shown --

16 A. But it's in contrast with the barn. I mean if
17 it's six inches or eight inches, I mean I
18 don't know.

19 Q. And what type of pad is this? Foundation pad?
20 Just a flat pad?

21 A. Just a flat pad.

22 Q. So it has no anchoring points, just a piece of
23 concrete laid flat, reinforced?

24 A. Yeah, there is what do you call it, you know,
25 that fencing that they put in.

- 1 Q. So it has wiring reinforcement?
- 2 A. Yes.
- 3 Q. But it has no footings?
- 4 A. No, there is no footings. I'm not a
- 5 construction guy, person.
- 6 Q. So in this floodplain area that we're
- 7 referring to, one of the situations that can
- 8 happen is water can get in underneath this pad
- 9 and if it's not anchored properly, it is now
- 10 on somebody else's property.
- 11 A. I'm not an expert. That's where Gary would
- 12 come in. It's anchored. That's like everyone
- 13 else's driveway. So everyone that has a
- 14 driveway -- all their driveways would be in
- 15 somebody else's yard. I know what you're
- 16 saying. You know, that's a possibility.
- 17 Q. And you say that you moved in in 2004?
- 18 A. Correct.
- 19 Q. What month did you move in?
- 20 A. I don't recall. I was fixing the house up.
- 21 Q. So you were there during the flood in 2004.
- 22 A. I just, yeah, was just there. Yeah, I was
- 23 just there. I was fixing my place up.
- 24 Q. And did you have flood insurance then?
- 25 A. No, I didn't want flood insurance. I didn't

1 think I needed it.

2 Q. You were flooded but you didn't think you
3 needed flood insurance?

4 A. Correct. But who would think you would get a
5 flood from Big Sewickley Creek or any creek?
6 I mean anyone that lives near a creek doesn't
7 mean that you have to have flood insurance. I
8 mean that's a whole other -- you are bringing
9 up a whole other concept of whether or not to
10 have flood insurance or not, the benefits, the
11 disadvantages, and there is no requirement.
12 If there was a requirement I needed flood
13 insurance, I would get it.

14 MR. SOMAN: If somebody bought
15 your house, it would be a requirement for
16 them.

17 MR. WERNICKI: I didn't know that.

18 BY MR. KOVACS:

19 Q. Thirty-five years ago I was looking at houses
20 on Sewickley Creek and do you want to know why
21 I didn't buy them?

22 A. Why?

23 Q. Because I saw the potential for flooding.
24 That's just a little side --

25 A. Yeah, I mean anything could happen. I mean

1 you're right, I mean, correct.

2 Q. That's all I have.

3 MR. RESTAURI: Thank you.

4 - - -

5 EXAMINATION

6 - - -

7 BY MS. HOMER:

8 Q. So you said you put the slab down in like
9 2016. What did you store on there between
10 2016 and -- did you put your trailers on
11 there?

12 A. Yeah, but not like for an extended period of
13 time.

14 Q. But you did use it?

15 A. Yeah, my car, whatever, yeah.

16 Q. And you mentioned in 2004 it flooded, but I
17 think you also said it didn't flood any other
18 time since then. You haven't had water
19 issues?

20 A. No, and maybe Gary can add that.

21 Q. No, just you.

22 A. I am not concerned with any flood issues with
23 Big Sewickley Creek, you know, cause if it
24 happens, it happens, and you just have to deal
25 with it.

1 Q. But in the time you have been there, it's only
2 happened once?

3 A. Correct. I have never had any flooding in my
4 house at all, and I'm right on the creek.

5 Q. That's all I have.

6 MR. SOSTER: We are going to take
7 a break for about ten minutes. We will be
8 back at 25 minutes to nine, please.

9 (RECESS TAKEN)

10 MR. SOSTER: We can continue now.
11 Mr. Solicitor?

12 MR. RESTAURI: Mr. Wernicki, would
13 you resume the stand, please? Cause we have
14 some questions from the public maybe and then
15 we're going to do redirect from your counsel
16 and recross.

17 Are there any members of the
18 public who wish to ask Mr. Wernicki any
19 questions? Seeing none, Mr. Wernicki --

20 MS. SWEENEY: I'm done.

21 MR. RESTAURI: You are done. Any
22 counsel have questions for Mr. Wernicki?

23 MS. JEWART: I just have one.

24 MR. RESTAURI: Did I see a hand up
25 in the audience?

1 MS. OPRISK0: I'd like to ask a
2 question.

3 MR. RESTAURI: Mr. Wernicki, would
4 you come back to the stand, please? Yes,
5 ma'am. Would you identify yourself?

6 MS. OPRISK0: Agnes Oprisko, and I
7 live straight across from his house on Valley
8 Road, 904 Valley Road. O-p-r-i-s-k-o.

9 - - -

10 EXAMINATION

11 - - -

12 BY MS. OPRISK0:

13 Q. I'd like to know when you took the pipe out of
14 the ground that goes into the creek because I
15 saw it there just lately.

16 A. Well, you can go there now or go there
17 tomorrow morning. I would say about a couple
18 months ago.

19 Q. Well, you didn't dig up your yard because your
20 yard has not been dug up. The pipes must
21 still be there.

22 A. What I did is I cut right down through it and
23 pulled it out. That's the way we took it out.

24 Q. I don't know, I saw it there not long ago.

25 A. You can take a look. It's not there.

1 Q. Okay.

2 MR. RESTAURI: Any other questions
3 from the audience? Yes, sir? Your name?

4 MR. OPRISK0: Sam Oprisko, 904
5 Valley Road. You have a bucket full of water,
6 you put a brick in it, the water runs out.
7 The people on Neely Street that are on the
8 edge of the floodplain will now be in the
9 floodplain because of his buildings and his
10 concrete slabs, and he poured concrete on the
11 creek bank.

12 He has a big stump on that bank
13 and everybody should go down to the end of
14 Neely Street. It used to be a dead-end, and
15 see these big chunks of concrete in the spring
16 that he had men come and it took two and three
17 men to put these pieces of concrete up on the
18 bank of his yard along the creek.

19 MR. RESTAURI: Sir, do you have a
20 question? After saying that, is there a
21 question based on that you wish to ask
22 Mr. Wernicki?

23 MR. OPRISK0: I want to know why
24 he put the concrete there.

25 MR. RESTAURI: Do you understand

1 the question?

2 MR. WERNICKI: I have a permit. I
3 can do that.

4 MR. RESTAURI: So your answer is
5 you have a permit to do that and you did it
6 pursuant to the permit?

7 MR. WERNICKI: Correct.

8 MS. OPRISK0: I thought you were
9 not allowed to do anything that would change
10 the plane of the creek. That's already
11 changed the plane of the creek bed. My banks
12 are being eroded because that water is being
13 forced more to my side of the creek.

14 MR. WERNICKI: I don't know what
15 to say to that.

16 MR. RESTAURI: Your question,
17 ma'am, is --

18 MS. OPRISK0: How did he get the
19 permit to do that whenever it changed the way
20 the water flows in the creek? It forced it
21 all to come to our side instead of being a
22 level disbursement.

23 MR. RESTAURI: Mr. Wernicki, do
24 you recall getting the permit to do that
25 clearly?

1 MR. WERNICKI: Yeah.

2 MR. RESTAURI: Do you have a copy
3 of the permit?

4 MR. WERNICKI: I don't have it
5 now.

6 MR. RESTAURI: So if we needed it,
7 we could ask you for a copy? And I assume it
8 came from us?

9 MR. WERNICKI: No, it came from
10 the Allegheny County Conservation District,
11 through the state and everything.

12 MR. RESTAURI: So we might not
13 have a copy of it here at Leet.

14 MR. WERNICKI: No, I didn't give a
15 copy to Leet.

16 MS. OPRISKO: They don't have to
17 do it through you?

18 MR. RESTAURI: That's not
19 something that we at the Zoning Hearing Board
20 do.

21 MR. WERNICKI: I can answer that.
22 No.

23 MR. RESTAURI: Any other questions
24 from the audience? Miss Jewart, you had a
25 question or two. Miss Sweeney, do you have

1 any follow-up in light of the questions from
2 the audience?

3 MS. SWEENEY: No, it's not
4 relevant to the issue at hand.

5 MR. RESTAURI: Miss Jewart?

6 - - -

7 RECROSS-EXAMINATION

8 - - -

9 BY MS. JEWART:

10 Q. You got a permit from Allegheny County
11 Conservation District in order to do what?

12 A. To do some bank rehabilitation. But that has
13 nothing to do with why I'm here today.

14 Q. How did you know you needed a permit?

15 A. Well, because over the years I just knew that
16 because I worked for Allegheny County, I was
17 talking to people and wanted to take care of
18 the bank and they said contact this person.
19 That's how I got the permit.

20 Q. So you were trying to improve the bank by
21 putting concrete on it?

22 A. No, I didn't put concrete on it. I'm allowed
23 to put crushed rock and concrete. The permit
24 allows for that. But why are we talking about
25 that? I have a permit for that. And I'll

1 supply the board with a copy of that permit.

2 Q. I want to know, if you look at one of the maps
3 that shows your property -- I can provide one,
4 same one submitted earlier. Can you just show
5 me where we are talking about? Assuming this
6 is the GIS map from yesterday.

7 MS. SWEENEY: This has nothing to
8 do with the matters before the board.

9 MR. RESTAURI: We will be done
10 with it quickly.

11 BY MS. JEWART:

12 Q. I would like to know what the area is we are
13 talking about, if you could point.

14 A. I don't have the permit, but it's the whole
15 creek bank along my property.

16 Q. So where did you place concrete and crushed
17 stone?

18 A. On the creek bank.

19 Q. Can you point?

20 A. I'm not sure.

21 MS. SWEENEY: If you are not sure,
22 don't do it. We are going to stop right now.
23 If you don't know, don't do it.

24 MS. JEWART: He just said it's
25 right there, you pointed to an area and now

1 you don't know.

2 MR. WERNICKI: I don't know.

3 MR. RESTAURI: Would the Allegheny
4 County document show it?

5 MR. WERNICKI: Show what?

6 MR. RESTAURI: This location we
7 are talking about.

8 MR. WERNICKI: Yeah, it's the
9 whole length of my creek bed.

10 MR. RESTAURI: Please proceed.

11 MS. JEWART: I would like to
12 indicate -- this is Objector's Exhibit 2. The
13 area he indicated prior to counsel's objection
14 is located within parcel 93-4-F-146-1 which I
15 believe --

16 MS. SWEENEY: I object to that.
17 You are testifying.

18 MR. WERNICKI: The township spread
19 the rock, the crushed rock that she's
20 referring to.

21 MR. RESTAURI: Let's move on. I
22 think the point has been made.

23 MS. JEWART: Thank you.

24 MR. RESTAURI: Thank you.

25 Mr. Chesney, anything?

1 MR. CHESNEY: Just a couple minor
2 questions.

3 MR. WERNICKI: Minor.

4 - - -

5 RECROSS-EXAMINATION

6 - - -

7 BY MR. CHESNEY:

8 Q. Mr. Wernicki, when you bought your house in
9 2004, did you have to finance it or did you
10 buy it outright?

11 A. Paid cash.

12 Q. You paid cash. Did you have a home inspection
13 or anything like that?

14 A. No. I waived that. The seller didn't want
15 it.

16 Q. So you didn't get a mortgage or anything, you
17 just bought it outright?

18 A. Right.

19 Q. No building inspection or anything like that.
20 Did you have the building inspector inspect
21 your property to get an occupancy permit?

22 A. For what reason?

23 Q. I'm just asking a question. It's a yes or no.
24 Did you get the building inspector --

25 A. I don't understand the question.

1 Q. It's yes or no.

2 MR. RESTAURI: He'd like you to
3 rephrase the question.

4 BY MR. CHESNEY:

5 Q. So when you purchased the home, did you have
6 to have the building inspector view the
7 property in order to get an occupancy permit
8 at the time?

9 A. Where was that at? Who would do that?

10 MS. SWEENEY: I think the answer
11 is no.

12 MS. JEWART: Then that's it.

13 MR. WERNICKI: There was no
14 requirement that I had to have a building
15 inspector from Leet Township come and look at
16 the building.

17 BY MR. CHESNEY:

18 Q. At that time you didn't, okay. One more
19 question, though. You said you did have a
20 permit for the other work along the bank.
21 Were there restrictions along with that
22 permit?

23 A. (Indicates no.)

24 MS. SWEENEY: Again, objection.
25 It has nothing to do with --

1 MR. RESTAURI: Objection is noted,
2 but the witness has answered no. Is that
3 right?

4 MR. WERNICKI: No.

5 MR. CHESNEY: No further
6 questions.

7 MR. RESTAURI: Any other questions
8 from the audience? Hearing none, the witness
9 is excused. Thank you, Mr. Wernicki.

10 Miss Sweeney, your next witness?

11 MS. SWEENEY: Just to follow up on
12 some of the letters of the Complaint that were
13 attached, I would just ask Julie Flynn to
14 stand up and just authenticate her signature
15 on one of these letters. I believe it is tab
16 18. Forgive me.

17 MS. FLYNN: Yes, that is my
18 signature.

19 - - -

20 JULIE FLYNN,
21 having been first duly sworn, was examined and
22 deposed as follows:

23 - - -

24 DIRECT EXAMINATION

25 BY MS. SWEENEY:

1 Q. And could you state for the board what your
2 residence is in the township?

3 A. 138 Neely Street. I'm directly across the
4 street from Bob's home.

5 Q. So behind tab 18 of the binder there are a
6 series of letters, one of which is a letter.
7 Is that your signature?

8 A. Yes, it is.

9 Q. Could you briefly read that for the board's
10 benefit?

11 A. "To whom it may concern: Our names are David
12 and Julie Flynn. We reside at 138 Neely
13 Street which is in the immediate vicinity of
14 133 Neely Street owned by Robert Wernicki. We
15 are aware of Mr. Wernicki's pending variance
16 request for a storage shed located in the
17 floodplain in terms of size, 470 square feet,
18 and also his request for a minor ten inch
19 variance from the side yard setback. We have
20 no objections to these requested variances or
21 the location of the shed."

22 Q. Thank you.

23 MS. SWEENEY: I have nothing
24 further for her.

25

- - -

1 EXAMINATION

2 - - -

3 BY MR. RESTAURI:

4 Q. Ma'am, this was back in the springtime, wasn't
5 it? Is this still your view?

6 A. It is still my view.

7 Q. Thank you.

8 MS. SWEENEY: I have nothing else.

9 MS. JEWART: Nothing from me.

10 MS. SWEENEY: Thank you. And
11 along those lines, I would call Mike Faddoul,
12 please.

13 MR. RESTAURI: Do we have a number
14 of residents like this?

15 MS. SWEENEY: It's just two.
16 Believe me, I'm not belaboring.

17 MR. RESTAURI: That's good.

18 - - -

19 MIKE FADDOUL,
20 having been first duly sworn, was examined and
21 deposed as follows:

22 - - -

23 DIRECT EXAMINATION

24 By MS. SWEENEY:

25 Q. Could you state your name for the court

1 reporter?

2 A. Mike Faddoul, F-a-d-d-o-u-l.

3 Q. And where do you reside, sir?

4 A. I'm at 144 Neely, on the corner of Neely
5 Street.

6 Q. Can I show you a document that was behind tab
7 18 of our exhibit binders? Can you read that
8 for the board, please?

9 A. Sure. "Our names are Jennifer and Michael
10 Faddoul. We side at 144 Neely Street which is
11 in the immediate vicinity of 133 Neely Street
12 owned by Robert Wernicki. We are aware of
13 Mr. Wernicki's pending variance request for a
14 storage shed located in the floodplain in
15 terms of size, 470 square feet, and also his
16 request for a minor ten inch variance from the
17 side yard setback. We have no objections to
18 these requested variances or to the location
19 of the shed."

20 Q. Now that is dated what?

21 A. February 28th, 2021.

22 Q. Does that reflect your opinions and your
23 position today as well?

24 A. Yes, it does.

25 Q. Now you were, unfortunately, not here earlier

1 this evening when Mr. Wernicki was testifying
2 as to some of his frustrations during the
3 beginning stages of the Covid pandemic.

4 A. Right.

5 Q. And his inability, according to his testimony,
6 to get ahold of anybody with the township.

7 A. Correct.

8 Q. He also indicated in his testimony that he had
9 spoken with you and you had similar
10 difficulties in getting ahold of people with
11 the township. Could you briefly explain to
12 the board what your particular situation was
13 and what you went through in terms of seeking
14 permits?

15 A. Yeah, absolutely. So my wife and I have been
16 trying to build a fence in our backyard. We
17 have two dogs, three kids, just want to get a
18 fence back there. So this happened to be the
19 Pandemic at the moment. We contacted the
20 borough. Betsy, the town manager, very
21 communicative, got back to me quickly. The
22 problem was, we tried to contact the code
23 enforcer or the other guy's name, I don't know
24 what the term is, to come by, understand where
25 the fence is going to go. We just did not

1 hear back from him for a really long time and
2 we tried several times, e-mails, didn't get a
3 response.

4 Q. Now you stated you were able to get ahold of
5 the township manager.

6 A. Yeah. I am on the planning commission so I
7 know Betsy really well, Betsy is great.

8 Q. And you had her cell phone number?

9 A. I have her number to contact her, e-mails.
10 So, yeah, we know each other.

11 Q. But even though you were able to get ahold of
12 her, you were still running into problems in
13 terms of getting permits during this time
14 period?

15 A. Absolutely. It took a long time.

16 Q. And you in fact abandoned your attempt to
17 fence the outside.

18 A. So very recently, actually, the past few
19 months, actually, there is a new code enforcer
20 and he was communicative. He contacted us
21 finally so with him we were able to do it. Up
22 until a few months back, nothing.

23 Q. And where is your house in regards to
24 Mr. Wernicki? Are you right cross the street?

25 A. Right across the street. End of Neely.

1 Q. And do you view this structure has created a
2 danger to your property becoming flooded as a
3 result of it?

4 A. I do not, no.

5 Q. Do you view -- can you see the structure from
6 your property?

7 A. I can, yes.

8 Q. And do you find it to be a nuisance or
9 unattractive or in derogation of the community
10 standards?

11 A. No, not at all.

12 Q. Thank you.

13 A. Thank you.

14 MR. RESTAURI: Miss Jewart?

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MS. JEWART:

19 Q. Very quickly. To clarify, when you were
20 unable to get -- again, I'm going to accept
21 that you are a member of the planning
22 commission, you are probably very familiar
23 with the ordinances. When you were unable to
24 obtain a building permit, you did not go ahead
25 and build your fence, you waited until you

1 could get your permit.

2 A. Correct. Thank my wife for that, yes.

3 MRS. FADDOUL: That's not true.
4 We had to build a horrible chicken fence
5 because the township wasn't helping us. We
6 had it for two years. I reached out in the
7 township and got nobody back. Mike had to
8 reach out because he has that connection with
9 Betsy. But when I reached out, no one
10 answered.

11 MR. RESTAURI: Ma'am, could you
12 give your name?

13 MS. FADDOUL: Jennifer Faddoul. I
14 reside at 144 Neely Street.

15 MR. RESTAURI: Were you sworn in?

16 MS. FADDOUL: No.

17 MR. RESTAURI: Would you please,
18 Ms. Cavaliere, administer the oath.

19 (MS. FADDOUL SWORN)

20 MR. RESTAURI: Now you remember
21 what you just said?

22 MS. FADDOUL: Yes.

23 MR. RESTAURI: Is it true?

24 MS. FADDOUL: It is true.

25 MR. RESTAURI: All right.

1 MS. FADDIOL: And that's a wife
2 interrupting a husband because there was a
3 fence with chicken wire.

4 MR. RESTAURI: The famous special
5 dispensation for being the wife hasn't yet
6 raised itself to the level of law. Second,
7 let's just keep it one step at a time.

8 MS. JEWART: As a wife with fence
9 issues and dogs, I have no objection to it.
10 If you don't mind, I'm going to have one more
11 question for your husband and then I'm going
12 to quit. Thank you.

13 BY MS. JEWART:

14 Q. No permit structure until you got a permit; is
15 that correct?

16 A. Correct.

17 MR. RESTAURI: Mr. Chesney?

18 - - -

19 CROSS-EXAMINATION

20 - - -

21 BY MR. CHESNEY:

22 Q. Just a couple questions. So your house is
23 close to the creek, correct?

24 A. Yes.

25 Q. Do you have flood insurance?

1 A. Yes.

2 Q. And you would agree that you would want to
3 keep the flood insurance price at a reasonable
4 level, correct?

5 A. I have flood insurance only because I have to,
6 because I have a mortgage.

7 Q. You have to have it because you have a
8 mortgage.

9 A. I must.

10 Q. And you wouldn't want any steps to be taken
11 that would cause that flood insurance to go
12 up, would you?

13 A. Absolutely, I would not want any of my
14 insurance rates to go up.

15 MR. RESTAURI: Any questions of
16 the witness from anyone in the audience? Give
17 your name and address, please.

18 MS. GUYER: Danielle Guyer,
19 G-u-y-e-r. I just have one quick question.

20 MR. RESTAURI: Yeah.

21 MS. GUYER: I vaguely remember
22 when the structure went up. But did he come
23 to you about this before or after he put the
24 building up without a permit?

25 MR. FADDOUL: You mean did Bob

1 come to me to ask me about it?

2 MS. GUYER: Yeah, cause that's my
3 question. In my experience, he came to my
4 house knocking on my door after the structure
5 was already up. So did he get your approval
6 or did you know about this before or after the
7 structure was already put up?

8 MR. FADDOUL: I remember the
9 morning. I remember seeing it being built.

10 MS. GUYER: But correct me if I'm
11 wrong, because I can't see your letter, but
12 you said that you were aware and that you
13 agree with the structure being there. But did
14 he come to you and tell you, "I'm putting this
15 structure up," before or after it was built?

16 MR. FADDOUL: So two things, I
17 guess. My letter says I'm aware of a pending
18 variance request, not that I am aware of a
19 pending structure.

20 MS. GUYER: Okay, so what I'm
21 getting at is, you are aware of a pending
22 variance request. Was the building up
23 already?

24 MR. FADDOUL: I believe so.

25 MS. GUYER: That was my question

1 was that he knew the building was there, built
2 without a permit, and Bob was going around
3 asking for us to sign something for a variance
4 request after the fact. That's what I wanted.

5 MR. RESTAURI: Point has been
6 made. Thank you.

7 - - -

8 EXAMINATION of MR. FADDOUL

9 - - -

10 BY MR. SOSTER:

11 Q. I have a question. Are you aware of what the
12 variance application is for?

13 A. For today?

14 Q. Yes.

15 A. I believe, yeah.

16 Q. You're aware that the application is for the
17 fact that there is some issue where the
18 floodplain ordinance may be in violation?

19 A. Yes, I was here yesterday. I was in the
20 audience.

21 Q. You agree that you have no problems with the
22 floodplain ordinance if it's in violation?

23 A. Can you say the question again? I'm sorry.

24 Q. Your letter -- tell me specifically what your
25 letter is agreeing to. First, are you saying

1 that it's not a nuisance or a hindrance to
2 you? Are you saying that a setback is not an
3 issue to you? Or are you saying that the fact
4 that there is an increase in the floodway
5 potentially, we heard testify from a witness,
6 is not an issue to you?

7 A. Correct, none of those things are an issue --

8 Q. You are saying none of those things bother
9 you?

10 A. I was here yesterday during the testimony and
11 it said it was a .04 feet BFE which is half an
12 inch and to me half an inch is nothing. Like
13 if a flood is 12 feet and half inch, that is
14 literally nothing. So to me, no, point 04
15 feet means nothing.

16 Q. Okay, so your letter is in support of every
17 violation that we heard presented to us. You
18 heard a hydraulic expert that was
19 Mr. Wernicki's expert say it's a violation.

20 MS. SWEENEY: I am going to object
21 to that. With all due respect, I don't think
22 Mr. Ferry said --

23 MR. SOSTER: We can read it back.
24 I asked him directly, did he violate the
25 ordinance? And the answer was yes.

1 MS. SWEENEY: He actually
2 testified that he thought that the ordinance
3 was flawed and there were issues.

4 MR. SOSTER: He testified he
5 violated the ordinance. I remember it clearly
6 cause I went home and made a note.

7 MS. SWEENEY: I think this witness
8 --

9 BY MR. SOSTER:

10 Q. All I'm asking is, just so I understand what
11 you are supporting, there is a condition in
12 the ordinance about it being a nuisance or
13 destroying the character of the neighborhood
14 and then there was a setback issue which I
15 understand no longer is a setback problem.
16 And then there is the issue of the floodplain
17 which his expert said he violated the
18 ordinance. What your letter is agreeing to or
19 stating is that you have no problem with any
20 of those issues.

21 A. Correct. I am all for anyone in our
22 neighborhood, in our township, to improve
23 their home as far as there is no major safety
24 concerns. Anyone should be able to improve
25 their home.

1 Q. Do you agree -- and again, I'm not totally
2 familiar with the ordinances -- if it was to
3 be not exceed -- I forget the square footage
4 --

5 A. Two hundred square feet.

6 Q. That you have no problem with anybody in your
7 neighborhood building a structure of any size?

8 A. Again, unless there is a major, easily decided
9 upon safety problem, no, I think we should be
10 able to improve our homes in a manner that
11 makes sense. And if we are not able to
12 improve our homes and improve the
13 neighborhood, that just inhibits it and it
14 will lead to overall negative impact.

15 Q. You are a member of the planning commission?

16 A. I am, yes.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. RESTAURI:

21 Q. Let me follow up just a brief moment.

22 A. Sure.

23 Q. We are here, Mr. Wernicki has already built
24 the building.

25 A. Uh-huh.

1 Q. If it weren't already built -- let's take a
2 different case. We are just trying to figure
3 out how the ordinance fits with reality.

4 A. Sure.

5 Q. If someone were to come to us, say
6 Mr. Wernicki, and had not built the building
7 yet but came to us and said, look, I want to
8 build this building, I'm going to need a
9 variance and it's going to be 600 square feet
10 footprint and everything you have heard, would
11 you still be in support of it? Or are you in
12 support of it because you're looking at it and
13 saying, under all the circumstances, I don't
14 think it's right to do anything serious about
15 it now but, no, we shouldn't be interpreting
16 the ordinance to mean generally that if it
17 produces a .4 increase in the BFE, that that's
18 okay? What's your position on that, if you
19 have one?

20 A. I believe any ordinance or rules are
21 imperfect. We are imperfect beings in an
22 imperfect world. So any rule can be
23 challenged if it makes sense. I believe in
24 things making sense. I want things to make
25 sense.

1 To me, this ordinance doesn't make sense
2 because it's saying anything over 200 feet
3 cannot exist because it's going -- anything
4 over 200 square feet is going to adjust the
5 BFE, anything below is going to adjust the
6 BFE. So to me the ordinance is flawed in its
7 saying anything over 200 square feet cannot be
8 built no matter what, and I think that is a
9 flaw. I think it inhibits my ability to
10 improve my property. I can't build anything
11 on my property over 200 feet.

12 Q. We understand, before the objections started
13 to fly, that you are not an expert in the
14 ordinances. I asked you to understand what
15 you were saying, not because I think you are
16 an expert in the ordinance. You didn't hold
17 yourself out to be. We are just trying to get
18 some ideas here, so we appreciate it.

19 When you said you always try to have
20 things make sense, I must tell you your wife
21 nodded and she was ready to make some more
22 testimony. That's why I'm done. Anything
23 else of the witness?

24 MR. SOMAN: Just one question.

25 - - -

EXAMINATION

— — —

BY MR. SOMAN:

Q. Just one question. Do you think that you sitting here and saying that our ordinances are flawed, this especially, does that make anything right?

A. That's a good question. I'm not sure how to respond to it.

MR. RESTAURI: Fair enough. Fair enough.

MR. SOMAN: Thanks.

MR. FADDOUL: Thank you.

MR. RESTAURI: Thank you very much.

MS. SWEENEY: That's all I have
for direct witnesses.

MR. RESTAURI: Thank you. Nine o'clock. We have to quit exactly at ten so what is counsels' preference for how we proceed? Clearly, I'm gathering we're not going to get done tonight so we're going to need to have a third night of evidentiary hearings.

MS. JEWART: I am not trying to

1 speak for the township, but I have two brief
2 witnesses, fact witnesses to put on. It
3 should not take very long. But I believe we
4 have an engineer that might have some limited
5 ability.

6 MR. CHESNEY: Either way, I don't
7 think we can get through the engineer in an
8 hour. We can either take her witnesses now
9 and dismiss for the rest of the evening and
10 have him come back and that would give us more
11 time with him in one shot, or we can proceed
12 with Ned and have him come back and split up
13 his testimony.

14 MR. RESTAURI: That suggestion
15 makes little sense to me.

16 MR. CHESNEY: I agree.

17 MS. JEWART: Entirely up to the
18 preference of the witness.

19 MR. CHESNEY: So it's your call.
20 Would you rather leave now and come back in
21 one shot?

22 (DISCUSSION HELD OFF THE RECORD)

23 MS. JEWART: I'd like to call Miss
24 Katie Melodini, please.

25 MR. RESTAURI: Mr. Kovacs raised a

1 good question. Does the engineer need to know
2 the date before he leaves?

3 (DISCUSSION HELD OFF THE RECORD)

4 - - -

5 KATIE MELODINI,

6 having been first duly sworn, was examined and
7 deposed as follows:

8 - - -

9 DIRECT EXAMINATION

10 BY MS. JEWART:

11 Q. Katie, would you state and spell your name?

12 A. Katie Melodini, K-a-t-i-e, Melodini,
13 M-e-l-o-d-i-n-i.

14 Q. And where do you reside?

15 A. 129 Neely Street.

16 Q. Where is that in relation to the property we
17 are talking about today?

18 A. Right next door to Mr. Wernicki.

19 Q. So if we're looking at the exhibit I continue
20 to rely on again and again -- thank you to the
21 county for the GIS maps, they are very helpful
22 -- can you just point to where your property
23 is and where Mr. Wernicki's property is?

24 A. My property is right here and his is right
25 there (indicating).

1 Q. So he is close to the creek, you're just back
2 one lot?

3 A. Correct.

4 Q. Do you have a sense of how big your property
5 is?

6 A. 900.

7 MS. SWEENEY: I'm sorry, I didn't
8 hear that?

9 MS. MELODINI: 900. I could be
10 wrong, though.

11 BY MS. JEWART:

12 Q. 900 square feet?

13 A. Square feet, yes.

14 MR. RESTAURI: Are we talking
15 about the house or the entire parcel?

16 BY MS. JEWART:

17 Q. That's okay, if you don't know --

18 A. Small house.

19 Q. So generally you're familiar with the
20 neighborhood?

21 A. Yes.

22 Q. When did you move in?

23 A. 2019.

24 Q. And you're generally familiar with the other
25 lots in your neighborhood?

- 1 A. Yes.
- 2 Q. And generally, is yours bigger, smaller, about
3 the same size, the lot versus the house?
- 4 A. I think mine is smaller.
- 5 Q. Would you think it's a little bigger or
6 smaller than Mr. Wernicki's?
- 7 A. Smaller.
- 8 Q. Tell me just a little bit about why you're
9 here.
- 10 A. This property has been very special to me. I
11 love the creek views. I love just this serene
12 environment. This house has been in my family
13 pretty much my whole life. My mother grew up
14 there. My family is very, very connected to
15 the house, and I just feel like one of the
16 best things about it was looking over -- I
17 could sit on my porch and look over and see
18 the nice creek view and my grandparents loved
19 it and that's why I love it so much.
- 20 Q. Do you have any kids?
- 21 A. I have a daughter. She's 15 months old.
- 22 Q. Congrats. I got to see her on video chat the
23 other day and it was lovely.
- 24 A. Thanks.
- 25 Q. So the house has been in your family for a

- 1 long time?
- 2 A. Yes.
- 3 Q. And you moved in intending to keep it in the
- 4 family for a long time.
- 5 A. Yes, correct.
- 6 Q. You enjoy the creek views. Is there anything
- 7 that's difficult about living in that
- 8 neighborhood?
- 9 A. As of right now?
- 10 Q. Sure.
- 11 A. Right now, he built this humongous structure.
- 12 It's blocking my whole entire view and it's
- 13 ugly. We used to run through and play in the
- 14 creek and it's just not ideal for us, not
- 15 pretty at all.
- 16 Q. So you have had experience with this property
- 17 prior to when you purchased it?
- 18 A. Yes.
- 19 Q. For your entire life.
- 20 A. My whole entire life, yes.
- 21 Q. Do you remember it ever flooding?
- 22 A. Yes, many times. Many times.
- 23 Q. And what was that experience like for your
- 24 family?
- 25 A. Horrible. Dirty, nasty, disgusting.

1 Q. Do you worry about more flooding happening?

2 A. Yes, very much so.

3 Q. Can you tell me a little bit about your
4 experience in say the summer of 2019, living
5 on that property? This would be well before
6 Mr. Wernicki put up a structure. What was the
7 property like at that point?

8 A. It was beautiful. I mean I loved looking out.
9 We sat on our porch. We would look out and it
10 was calm, serenity, and nice environment.
11 We'd play in the yard and just see the banks.
12 It's really nice.

13 Q. I'm going to show you a photograph and try not
14 to throw the rest of them on the ground. And
15 apologies in advance because the resolution on
16 these are absolutely terrible so do not blame
17 me if you find it unflattering.

18 Can you tell me what we are looking at?

19 A. That was my aunt's birthday party and we had
20 everyone over and we were so excited. We
21 finally bought the house, got it back in the
22 family and it was a great day. It was
23 beautiful, summer, everyone was happy to be
24 there.

25 Q. And you recognize this photo. Do you remember

1 who took it?

2 A. I believe my mom.

3 Q. To your recollection, is this the correct date
4 at the top?

5 A. Yes.

6 MS. SWEENEY: Did you say you
7 added the date?

8 MR. RESTAURI: This is five?

9 MR. SOMAN: Five and six.

10 MS. JEWART: Yes, thank you so
11 much.

12 BY MS. JEWART:

13 Q. Flip to the next page, Katie. What are we
14 looking at on page six?

15 A. That would be my uncle and little niece and my
16 cousin, and I see the beautiful bank and
17 beautiful yard. Bob always had a great yard.
18 He kept it very nice. It was beautiful to
19 look at, nice greens. It was perfect the way
20 it was.

21 Q. Those are happy memories?

22 A. Very happy memories.

23 Q. So again, this is a photograph. Do you
24 remember who took it?

25 A. My mom probably.

1 Q. I added a date to the top.

2 A. Same day.

3 Q. Can we go back to the first photograph? And
4 again, thank you, these would be Objector's
5 Exhibits 5 and 6. There is a structure
6 located in the top middle there. Can you
7 identify that for me?

8 A. The shed? Yes, the shed.

9 Q. Do you remember, based on your experience on
10 the property, about when that went up?

11 A. I don't know the exact date, no. It was there
12 whenever I moved in.

13 MR. RESTAURI: This shed is the
14 shed we referred to as the barn.

15 MS. JEWART: The barn, yes.

16 BY MS. JEWART:

17 Q. In these photos, you see some green. We
18 talked about the green grass.

19 A. Right.

20 Q. So in June, 2019, was there any concrete pad
21 in that location?

22 A. I believe not.

23 Q. Can you kind of point, for the benefit of the
24 board, to where that pad would be?

25 A. It would be right there (indicating). Right

1 behind.

2 MS. HOMER: I think the other
3 picture is clearer.

4 MR. RESTAURI: The witness is
5 referring to --

6 MS. MELODINI: In the middle.

7 MR. RESTAURI: She is pointing to
8 a space between the shed and the edge of the
9 railing on the ground.

10 MS. MELODINI: Yes. Like right
11 there (indicating).

12 MS. JEWART: Thank you.

13 BY MS. JEWART:

14 Q. At the time this photo was taken, was there
15 already an existing patio on the property?

16 A. There was, I believe.

17 Q. Some pavers?

18 A. Yes, pavers, yes.

19 Q. I am once again going to show you some
20 completely tiny and not very helpful photos,
21 but I am going to rely on you to help me out
22 with that. Take a look at this one and the
23 one behind it, please.

24 A. This would be the concrete slab when it was
25 poured.

1 Q. I have added a date to the top. It just dates
2 fall of 2019. To your recollection --

3 MS. SWEENEY: I am going to have a
4 standing objection to the dates because they
5 are not made contemporaneously with the
6 photos. I think there is a lack of foundation
7 as to the accuracy.

8 MR. RESTAURI: Understood and
9 noted. If you can try to ask the witness to
10 give us a date and the foundation.

11 MS. JEWART: Certainly.

12 BY MS. JEWART:

13 Q. To your recollection, when did you witness a
14 concrete slab being placed on the property?

15 A. Well, I can't say that date. I can tell you
16 it was fall of that. This was also 2019 so
17 bear with me. I would say September,
18 October-ish.

19 Q. So we agree we don't have an exact date for
20 this.

21 A. Right.

22 Q. But is this an accurate representation of what
23 was on the property in approximately fall of
24 2019?

25 A. Yes.

1 Q. You knew for certain it was June of 2019. No
2 slab, June 2019.

3 A. Right.

4 Q. Some time fall, slab.

5 A. Right. So I bought the house in '19 and that
6 happened right after I bought the house that
7 fall.

8 Q. And who took this photograph?

9 A. I believe I did.

10 Q. Again, apologies, it's a small photo. We had
11 a little bit of a transmittal issue going back
12 and forth.

13 There is a darker portion in the very
14 middle. Can you explain, based on your memory
15 of the property at that time, what that was?

16 A. I'm not following.

17 Q. I'm indicating this portion here. You can see
18 -- there is a section in the middle. I
19 apologize, I don't have a better photograph.

20 MR. RESTAURI: So on Cheddar 7 we
21 are referring to, in roughly the center of the
22 picture, a slightly darker area?

23 MS. JEWART: Yes.

24 BY MS. JEWART:

25 Q. So tying things back together, this would be

1 what Mr. Wernicki referred to as the extension
2 of his patio.

3 A. Correct.

4 Q. Can you -- were you able to tell from your
5 property what type of material it was made of?

6 A. Cement.

7 Q. Do you remember it being laid?

8 A. I do.

9 Q. Do you want to tell me a little bit about
10 that?

11 A. I believe I just came home from work one day
12 and it was already laid. It was very fast.
13 And I believe I asked Mr. Wernicki, I said,
14 "Oh, I hope you are not building a garage
15 there." And he stated, "Oh, don't worry, I'm
16 not building a garage there."

17 Q. Can you tell me a little bit about the date of
18 September 11, 2020?

19 A. So it was early morning. I hear all kind of
20 racket, racket, and I go outside and there is
21 already a building up and I'm like shocked. I
22 said, you know, what the hell is going on
23 here? And it was already up. This was
24 probably around, I don't know, like eight
25 o'clock in the morning.

1 So I, you know, called my mom and said,
2 "There is a building up here." She said,
3 "Well, that's not great." So we decided to
4 call the borough and I believe the borough
5 sent some people down and it did take a little
6 bit of time but the workers kept working and
7 they continued to put up the building and had
8 no regards to any ordinance or building
9 permits. I'm pretty sure they told him to
10 stop and they didn't, but I could be wrong
11 about that.

12 Q. What's been the change in your experience
13 living on the property since before and after
14 the structure that was put up?

15 A. It's been a long headache. It's been just
16 really a nightmare. It's been a nuisance.
17 It's been time, effort for everybody. It's
18 just not a good experience at all. It's sad.
19 It's sad.

20 Q. Do you have any other grievances or issues
21 with Mr. Wernicki as a neighbor?

22 A. No.

23 Q. You stated he kept a very nice lawn, he stated
24 he kept his property in great order.

25 A. Right.

1 Q. Have you ever had any issues with junk being
2 placed on the property?

3 A. There was junk on the patio side, but I
4 believe we asked him to move it and he did,
5 respectfully moved it.

6 Q. When you purchased your home, purchased it
7 from your parents, a little bit less of a
8 formal process than it is sometimes.

9 A. Yes.

10 Q. Did you review what regulations applied to
11 your property or did you become familiar with
12 them in any way? It's okay if you don't know.

13 A. No.

14 Q. Even if you weren't specifically aware of the
15 regulations on the property, if you wanted to
16 build something, would you check and see if
17 you could?

18 A. Correct, yes.

19 Q. Before you built it?

20 A. Yes.

21 Q. You talked a little bit about flooding, you
22 have experienced it before. Do you worry
23 about it going forward?

24 A. Yes.

25 Q. Does it impact you?

1 A. Yes, very much so.

2 Q. Tell me how.

3 A. Flooding affects everybody. It's dangerous.
4 I have a daughter. I don't want to have her
5 get hurt or, you know, my family get hurt.
6 There are water issues, water damage, money
7 cleaning up. Like who wants to deal with
8 flooding? It's not the ideal thing to deal
9 with.

10 Q. Before you came up here today, we had a
11 conversation about how nervous you were.

12 A. Yes, very nervous.

13 Q. But pushed through.

14 A. Yes, I did.

15 Q. Tell us why.

16 A. Cause I know it's right. It's very important
17 to me doing this for the sake of, you know,
18 what's right is right. It should never have
19 been done in the first place. You have to do
20 what -- rules are rules. It's just very
21 important to my family to have what is right
22 to be done.

23 Q. I don't have anything further, Katie. Thank
24 you.

25 MR. RESTAURI: Mr. Chesney?

1 MS. SWEENEY: If I might?

2 MR. RESTAURI: You want to go
3 next?

4 MS. SWEENEY: I'd be happy to. If
5 you want to go, that's fine.

6 MR. CHESNEY: I'll go after.

7 MR. RESTAURI: Whatever counsel
8 wishes.

9 - - -

10 CROSS-EXAMINATION

11 - - -

12 BY MS. SWEENEY:

13 Q. Good evening.

14 A. Good evening.

15 Q. I'm sorry, is it Melodini?

16 A. Yes.

17 Q. Miss Melodini, you said you purchased the
18 property in 2019. Did you know it was in the
19 floodplain?

20 A. Yes.

21 Q. And you testified you knew about flooding in
22 the past, too.

23 A. Yes.

24 Q. So you knew that there is a risk of flooding
25 when you bought the property.

- 1 A. Correct.
- 2 Q. And that didn't concern you?
- 3 A. Like I said, it's very important house to me
4 and I want to be in the house. I mean that's
5 why they have insurance, for flooding issues,
6 too.
- 7 Q. But you chose to buy a piece of property in
8 the floodplain.
- 9 A. Yes.
- 10 Q. And are you aware of or have you ever reviewed
11 any of the township zoning ordinances?
- 12 A. I haven't had to put any structures up on my
13 property so I haven't done any zoning things
14 yet, no.
- 15 Q. So you are not familiar as to whether or not
16 accessory -- garage is an accessory building
17 permitted in this district?
- 18 A. No.
- 19 Q. Do you know what zoning district you are in?
- 20 A. No.
- 21 Q. Let me show you an excerpt from the township
22 zoning ordinance, Section 27415, and I will
23 represent to you this is from the zoning
24 ordinance and dealing with accessory
25 buildings. I want to direct you to section

1 three. It says: No detached accessory
2 building shall exceed 15 feet in height above
3 the average level of the ground.

4 Do you see that?

5 A. Yes.

6 Q. So do you understand what that means, that an
7 accessory building can be up to 15 feet in
8 height?

9 A. Yes.

10 Q. Then the next provision says: No accessory
11 building in a residential district shall be
12 located in any front yard.

13 Do you understand what that means?

14 A. Sure.

15 Q. So an accessory building can't be put in the
16 front yard of a property.

17 A. Okay.

18 Q. So Mr. Wernicki would not be able to put a
19 garage or an accessory structure in his front
20 yard.

21 A. Okay.

22 Q. Would you agree with that, based on what you
23 read?

24 A. Sure.

25 MS. JEWART: Objection to if you

1 are asking her anything further.

2 MS. SWEENEY: That's all I was
3 asking.

4 MR. RESTAURI: Noted.

5 BY MS. SWEENEY:

6 Q. You said you would sit on the porch and enjoy
7 the view but you would see the bank, you
8 wouldn't actually see the creek. The creek is
9 somewhat down, isn't that true?

10 A. No, I see the creek.

11 Q. You say you see the creek?

12 A. Yeah, I see the creek. I do.

13 MR. RESTAURI: Ma'am, do you want
14 that on the record, what you just said?

15 MS. MCGILL: Yes.

16 MR. RESTAURI: Did you swear in?
17 At the beginning, either today or the last
18 meeting, did you stand and raise your hand?

19 MS. MCGILL: I did not.

20 MR. RESTAURI: Address, please?

21 MS. MCGILL: Kimberly McGill,
22 M-c-G-i-l-l.

23 MR. RESTAURI: Address again,
24 please?

25 MS. MCGILL: 410 Camilloa Street,

1 C-a-m-i-o-l-a, Street, Baden.

2 MR. RESTAURI: And do you live in
3 the township?

4 MS. MCGILL: I don't.

5 MS. SWEENEY: Object to her
6 testimony. She is not a resident.

7 MS. MELODINI: She grew up in the
8 house.

9 MS. SWEENEY: Her testimony is not
10 relevant. I object to her. She doesn't have
11 standing. She's not an aggrieved person with
12 a substantial interest under the William Penn
13 Parking Standards. She doesn't have the
14 ability to testimony before this board as she
15 is not a resident of the township.

16 MS. JEWART: I would like to
17 briefly interject that, first of all, the
18 standing under a zoning hearing is the
19 applicant or objector -- the relevant
20 standards for standing in a zoning hearing are
21 not under William Penn but those established
22 by the FPC.

23 Second of all, you do not need to
24 have standing to be a witness or to give
25 testimony. If she would like to make

1 testimony and there is any objection, I'm
2 happy to call her.

3 MR. RESTAURI: I tend to agree
4 that if she's being called or is giving
5 testimony as a fact witness, where she lives
6 doesn't matter. She has facts. She hasn't
7 been called by anybody to testify so this was
8 a statement that she made without being called
9 so it's out of order.

10 So, yes, I would think what we
11 need to do is have her be called and then she
12 can testify. Your objection, however, is
13 noted.

14 MS. JEWART: May I have a moment
15 to confer, to establish whether that is the
16 stance we would want to take --

17 MR. RESTAURI: Let's let Miss
18 Sweeney go ahead with her questioning and then
19 we will take a little break.

20 MS. SWEENEY: I am done. We can
21 take a break.

22 MR. RESTAURI: Do you need just a
23 minute? Thank you, Miss Sweeney.

24 MS. SWEENEY: Sure.

25 MS. JEWART: We found there is no

1 need to call the witness, and I can establish
2 similar facts with my next witness.

3 MS. SWEENEY: I request that
4 statement be stricken from the record.

5 MR. RESTAURI: Yes, yes. So where
6 were we? Mr. Chesney?

7 - - -

8 CROSS-EXAMINATION

9 - - -

10 BY MR. CHESNEY:

11 Q. I will keep this quick. So you are aware that
12 you live in a floodplain, you testified.

13 A. Yes.

14 Q. And you are aware that there are ordinances
15 and they protect the citizens of the township,
16 correct?

17 A. Yeah.

18 Q. And you wouldn't want any actions taking place
19 or any development be allowed if it increased
20 anyone else's risk that lives in the same
21 floodplain?

22 A. Correct.

23 Q. So you wouldn't want any action taken that
24 could expand that floodplain?

25 A. Correct.

1 Q. And expose others to that same risk?

2 A. Correct.

3 Q. When was the last time you experienced any
4 type of flooding in that house?

5 A. So we had one just recently. The creeks got
6 very, very, very high. It was right up to my
7 doorstep. So I think that was -- wasn't too
8 long ago. Couple months ago, really.

9 Q. And if things would make that come even
10 further --

11 A. Right.

12 Q. To extend past that, you would agree that
13 could be a real danger to the structure, to
14 the citizens?

15 A. Yes.

16 Q. No further questions.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. RESTAURI:

21 Q. Ms. Melodini, if the newer shed, the one that
22 we're talking about, were substantially
23 shorter, would that make a difference in your
24 ability to view the creek that means so much
25 to you?

- 1 A. I think the length takes up the whole bank,
2 though. So the width -- I'm sorry, the width
3 takes up the whole bank so it takes up the
4 whole view side of that. And the height, yes.
- 5 Q. So let me put it to you this way. If there
6 were not a building per se but some structure
7 that were the same footprint, 20 by 30, in the
8 same location but were only two feet tall,
9 would that block your view?
- 10 A. Nuh-uh.
- 11 Q. At one point in height, does it start to block
12 your view? If you know.
- 13 A. I don't know.
- 14 Q. But there is some point, would you agree, some
15 points --
- 16 A. Yes.
- 17 Q. -- where it starts to block your view.
- 18 A. Right.
- 19 Q. So that's one issued you raised, the view of
20 the creek.
- 21 A. Right.
- 22 Q. The second issue you have raised is that there
23 is an additional risk of flooding.
- 24 A. Correct.
- 25 Q. That will affect you.

- 1 A. Right. That garage could be in my yard.
- 2 Q. Now you were here yesterday, I know.
- 3 A. Yes.
- 4 Q. And you heard several -- two engineers say
- 5 that that risk of additional flood impact is,
- 6 in their words, di minimus or negligible.
- 7 A. Uh-huh.
- 8 Q. That means it's really, really small, but it's
- 9 there.
- 10 A. Uh-huh.
- 11 Q. And I'm gathering, from your testimony, that
- 12 really, really small bothers you.
- 13 A. Yes, it does.
- 14 Q. And would you explain to us briefly why that
- 15 bothers you?
- 16 A. It's scary. It's dangerous.
- 17 Q. And so if the engineer said there is no
- 18 chance, that wouldn't bother you, but the fact
- 19 that there is some chance, even though it's
- 20 really, really small according to the
- 21 engineers, it's not a risk that you are
- 22 willing to accept?
- 23 A. Correct.
- 24 Q. Okay. So would it be fair to say that even if
- 25 the building didn't block your view of the

1 creek, you would still feel it is wrong for it
2 to be there because it does present a risk of
3 the flooding?

4 A. Correct.

5 Q. However minimal or negligible. And on the
6 other hand, if it were determined that he had
7 no additional impact on flooding, you would
8 object to it because it obstructs the view at
9 some point.

10 A. Yes.

11 Q. If it were lowered, there would be a point
12 where it wouldn't obstruct your view.

13 A. Right.

14 Q. But that's not the situation you are faced
15 with now.

16 A. Correct.

17 MR. RESTAURI: Mr. Soster?

18 - - -

19 EXAMINATION

20 - - -

21 BY MR. SOSTER:

22 Q. Do you have a basement in your home?

23 A. I do.

24 Q. Are there basement windows that you can look
25 out?

1 A. Yes.

2 Q. Do they have a seal on the window?

3 A. I believe so.

4 Q. If the water in a creek flooded and came up to
5 that seal and it went up another half inch,
6 would it enter your basement?

7 A. Yes.

8 Q. Is it your opinion that the structure has
9 altered the essential nature or uniqueness or
10 landscaping or charm or balance or allure of
11 the neighborhood?

12 A. Of course. In my opinion.

13 Q. Is the structure downstream of you or upstream
14 of you? As the creek flows and you look out.
15 My point being the impact that's been
16 testified to that the water level could raise
17 a half inch, you're behind that structure, you
18 would see that half inch increase?

19 A. Yes.

20 MR. RESTAURI: Mr. Soman?

21 MR. SOMAN: No, I'm good.

22 MR. RESTAURI: Mr. Kovacs?

23 MR. KOVACS: (Indicates no.)

24 MR. RESTAURI: Miss Daphne? Any
25 other questions from counsel?

1 MS. SWEENEY: I do have one
2 question.

3 - - -

4 CROSS-EXAMINATION

5 - - -

6 BY MS. SWEENEY:

7 Q. Ms. Melodini, isn't it true if a fence was put
8 up along the border between your house and
9 Mr. Wernicki's, that would impair the view?

10 A. Depends on how big the fence is.

11 Q. But a fence would block the view from your
12 property to the creek.

13 A. Not necessarily, cause I could maybe see over
14 it.

15 Q. But if you are standing in your backyard, that
16 would block the view.

17 A. Sure.

18 Q. And if there was an accessory structure that
19 was 200 square feet that was put in this place
20 in the location where the existing structure
21 is, you heard testimony yesterday that that
22 would cause an impact to the BFE. Remember
23 hearing that?

24 A. Yes.

25 Q. And you would be opposed to that, too?

1 A. I'm not understanding.

2 Q. Would you be opposed to a 200 foot accessory
3 building?

4 A. No.

5 Q. Even though it would change the BFE?

6 A. I don't really understand.

7 Q. Fair enough. Very good.

8 MR. RESTAURI: Any other questions
9 of the witness? There being no other
10 questions, the witness is excused with the
11 board's thanks. Next witness, Miss Jewart,
12 please.

13 MS. JEWART: Thank you, Katie.
14 All right, I would like to call Miss Cheddar
15 to the stand.

16 MS. SWEENEY: Could I have an
17 offer of proof?

18 MR. RESTAURI: Sure.

19 MS. JEWART: Certainly. Once
20 again, as we have stated numerous times
21 before, the Rules of Evidence do not apply in
22 the strict sense to zoning hearings but Miss
23 Cheddar here is an individual who has taken a
24 number of the photographs that I intend to
25 authenticate, as you have requested, and in

1 addition she lived on the property for decades
2 and then purchased it again to sell to her
3 daughter.

4 She has experience with the
5 history of the township, she has experience
6 with history of the neighborhood, and she was
7 the witness to a number of the events that we
8 have been talking about tonight because she is
9 frequently on the property assisting with her
10 new granddaughter.

11 MR. RESTAURI: Does she have
12 experience with the history of flooding on the
13 property?

14 MS. JEWART: Yes, she does.

15 MR. RESTAURI: The witness may
16 testify, but we will hear objections as we go,
17 Miss Sweeney.

18 MS. SWEENEY: Thank you.

19 MR. RESTAURI: Mr. Wernicki, I
20 think I forgot, when you were done testifying,
21 to thank you for testifying on behalf of the
22 board. If I failed to do so, it was
23 inadvertence. Thank you for testifying.

24 - - -

25 DEBORAH CHEDDAR,

1 having been first duly sworn, was examined and
2 deposed as follows:

3

- - -

4

EXAMINATION

5 BY MS. JEWART:

6 Q. Would you please state your name and spell it
7 for the record.

8 A. Yes, Deborah Cheddar, o-r-a-h, C-h-e-d-d-a-r.

9 Q. And what is your current address?

10 A. I live at 106 North Lane, Sewickley, PA,
11 15143.

12 Q. And what borough is that in?

13 A. Bell Acres.

14 Q. Prior to living in Bell Acres, where do you
15 reside?

16 A. Well, I lived in 129 Neely Street since I was
17 about two years old, lived there all my life
18 until I married Bill, my husband out there.
19 And then, you know, we married, we got our own
20 place, but my parents were still there. So we
21 were back and forth to my parents all the
22 time. So, yes, we left the property, didn't
23 actually live there, but frequented there very
24 often.

25 Q. So has the property 129 remained in your

1 family for approximately how long?

2 A. Yeah, so I think I did a calculation and it's
3 over 65 years.

4 Q. So it means a lot to you?

5 A. It means a great deal to me.

6 Q. How often are you there now?

7 A. Probably three to four times a week.

8 Q. A few weeks ago were you not in the
9 neighborhood and just happened to come in and
10 stop in this very building because you were
11 just nearby?

12 A. Yes.

13 Q. And saw me there?

14 A. Yes, that's right. Yeah, we are through the
15 neighborhood quite a lot.

16 Q. So you are familiar with how the neighborhood
17 has changed, how it's evolved and the general
18 character of it?

19 A. Yes.

20 Q. Can you tell me a bit what it was like growing
21 up here?

22 A. It was the best. It was the best place to
23 grow up. We were young, we were free, we ran
24 the neighborhood, we played in the creek, we
25 hiked in the woods. It was a different time.

1 You know, in the wintertime it was ice skating
2 on the creek and sledding up on the hills.
3 There was trick or treat. You know, just
4 everything about this place was a great place
5 to grow up.

6 Then as I grew up and then I had
7 children, my parents were still in the home so
8 my children got to enjoy so much of what I
9 enjoyed growing up because they were always
10 here in Fair Oaks at my parents' house. So my
11 children, my four, my sister's children, all
12 of my what would be my nieces and nephews have
13 enjoyed this Fair Oaks area.

14 Q. So I showed your daughter a few photos. These
15 were already entered and I am showing again.
16 Exhibits 5 and 6, I believe. Are you the one
17 that took these photographs?

18 A. Yes, I believe was the one who took the
19 photographs, yes.

20 Q. Can you explain to me where you were standing
21 when you took them?

22 A. Well, the back porch of my -- I call it my
23 dad's house, but Katie's house. So I was
24 standing on the back porch of Katie's porch
25 because at that point actually she had

1 purchased the home. So, yeah, I was standing
2 near the doorway and probably like about
3 midway on the porch looking out that
4 direction. Took a picture of my sister, took
5 a picture of my granddaughter and my
6 brother-in-law's grandson, yes, so it was me.

7 Q. And so is there a particular reason why you
8 remember that date in order to tell me to add
9 it to it?

10 A. Yes, because that was the time when you looked
11 out and you just saw the beauty of the
12 property and the area and just as a family we
13 were just all so happy to be there. Yeah,
14 it's quite beautiful.

15 Q. And why were you all gathered there, do you
16 remember?

17 A. Yeah, so Katie had just taken possession of
18 the home that weekend and my sister, who is in
19 the audience, it was her birthday, and we just
20 thought it would be so nice that we could all
21 get together. So it wasn't just my sister, it
22 was my other sister and all their children and
23 grandchildren and the whole works. There was
24 probably about 20 of us there.

25 Q. So was that something you did often on the

1 property, get the whole family together?

2 A. Through all the years that my parents lived
3 there, yes, we always had gatherings for
4 birthdays and celebrations for holidays in the
5 home. You know, it was always best when we
6 could be outside because actually there is so
7 much more room since it's a little house. So,
8 yes, all of our best memories were spent on
9 that porch.

10 Q. And when you are standing up on that porch,
11 can you see the creek bank? Can you see the
12 water? Not necessarily in that picture.

13 A. Do you know what, slightly, yes. Ever so
14 slightly. There was a bank so, yeah, you can
15 see it ever so slightly from different angles.

16 Q. When the water is real high?

17 A. Yes. When it dries up, maybe not, but yeah.

18 Q. So again we have established you have a long
19 history in the property, there was never a
20 time you weren't present there even if you
21 weren't the property owner.

22 A. Correct.

23 Q. At one time you were.

24 A. Yes, we were the property owners when my dad
25 passed away, then we purchased the home with

1 the idea that someday someone in our family,
2 you know, would want to reside there. So that
3 was the reason.

4 So we were actually landlords for like
5 13 or more years until Katie was ready. She
6 was the one that stepped up.

7 Q. So we heard a little bit about a drain.

8 A. Yes.

9 Q. At the time that you were on the property, you
10 directly experienced what was on the property,
11 did you witness a drain?

12 A. Yes, it doesn't show on the photograph but
13 it's clearly a drain. You know, it has the
14 perforations. It's about something like that
15 (indicating).

16 Q. Can you see it?

17 A. I remember when he poured the slab. Actually,
18 you could see that the yard was dug up like a
19 trench and, yes, you could see the pipe coming
20 out of the bank which would empty into Big
21 Sewickley Creek.

22 Q. I will show you a photograph. Again,
23 apologies because it is tiny. Please take a
24 look and tell me who took the photo.

25 A. Actually, I think my husband took that one.

1 MS. JEWART: If desired, I will
2 call a third witness. It will be up to
3 counsel here. But I would like to enter this
4 as Exhibit 9.

5 MR. RESTAURI: If you could ask
6 Miss Cheddar if she was there when he took it.

7 BY MS. JEWART:

8 Q. Were you present when the photograph was
9 taken?

10 A. I was present there, yes.

11 Q. Can you state for the record, again under
12 oath, that there is an accurate depiction of
13 the bank of the stream, indicating a pipe on
14 the date of August 25, 2021?

15 A. Yes.

16 Q. Why do you remember that date?

17 A. Do you know what? It might be August 26th.
18 It might be August 26th because I see that the
19 creek is already starting to lower. So that
20 might be before the creek was at the edge of
21 the bank.

22 Q. Okay, so at some date -- again, looking a year
23 back, this has gone on a while -- but August
24 25 or 26, and I'm happy to strike the date
25 from this document. August 25 or 26th, were

1 you on the property or near the property?

2 A. Yes, I was on the property, not this
3 particular property, but I was on my
4 daughter's property. That particular day,
5 that was just a little over a year ago, the
6 creek rose to a level that was very, very
7 threatening. It was just on the edge of
8 coming over. We got sandbags, we took
9 furniture up, we tried to put a wall up in the
10 back area to try to divert water because it
11 was that close to being a big deal flood.

12 Q. But it didn't come over?

13 A. It did not, thankfully not. Actually, can I
14 clarify that?

15 Q. Please.

16 A. It did not come up in Katie's yard.
17 Downstream -- his sisters live across the
18 street and his nieces live across the street
19 and they're on Ambridge Avenue just across the
20 street. The flood waters did come up probably
21 halfway into their yards, took down his
22 sister's fence. So it was still a big flood
23 event but it just didn't, at that particular
24 time, enter into Katie's yard or basement.

25 Q. And again, you're very familiar, having been

1 present, living on the property for several
2 decades.

3 A. Yes.

4 Q. You are very familiar with the type of water
5 events that can occur.

6 A. Right.

7 Q. And in your experience, you were concerned
8 about this one?

9 A. Very concerned. I actually have a video of
10 that event. It shows people -- a lot of
11 people just don't realize the impact and the
12 rage of waters. It's very scary.

13 MS. JEWART: We do have a video
14 present if the board is interested in viewing
15 it. We have it on a disc or a flash drive.

16 MR. RESTAURI: We will see. Thank
17 you for offering.

18 (DISCUSSION HELD OFF THE RECORD)

19 BY MS. JEWART:

20 Q. So again, you are familiar with the area,
21 familiar with the property, familiar with the
22 changes to the property. Even a small half
23 inch increase caused by one structure, does
24 that worry you?

25 A. Right. And when they were giving the -- yes,

1 definitely. And when they were giving the
2 information, if I understood it correctly, you
3 know, as the size increases, so does the BFE.
4 So, yes, yes, definitely.

5 Q. When you were the owner of the property, do
6 you remember there being any other accessory
7 structures on the property?

8 A. On Mr. Wernicki's property?

9 Q. Yes. I should have clarified that. Thank
10 you.

11 A. Yes. So, you know, sometimes dates and times
12 get a little foggy. I remember -- I guess
13 would his porch be considered an accessory?
14 No. His balcony deck that attaches to the
15 home, yeah, that was something, but I don't
16 remember when he did it. But it was sizeable
17 and had a roof and the whole works, yeah.

18 Q. So the overall footprint, since you were a
19 child growing up there, it's always been in
20 the floodplain.

21 A. Yes.

22 Q. The location hasn't changed.

23 A. Right.

24 Q. Proximity to the creek hasn't changed.

25 A. Right.

1 Q. But the number of structures and the size of
2 those structures has increased.

3 A. Yes, yes. Then shortly thereafter then there
4 was the 200 plus square feet barn shed, you
5 know, that was put in. I think it was more
6 recent than we recall. I think it was there
7 before 2019 but maybe not much more than, you
8 know, a year or two before that, I would
9 think.

10 Q. Do you recall -- we won't try to go back too,
11 too far. We will say since you owned the
12 property, not when you were living there as a
13 child but since you owned the property, do you
14 recall seeing building permits posted on the
15 property?

16 A. No, I never -- I mean on the property, no. On
17 the poles, no. No.

18 Q. I know I am asking you to look back far.

19 A. I never noticed them.

20 Q. When you saw -- were you on the property on
21 September 11th of 2020?

22 A. Yes, yes, in the morning.

23 Q. What brought you there?

24 A. My daughter called me and said there is a
25 garage and it's almost like going up, it's up.

1 She woke up, she saw the garage, she called
2 me, I came down. Yes, so that was that
3 morning of September 11th.

4 Q. Did you assist your daughter in gaining any
5 support from the neighborhood in opposition to
6 this variance request once you became aware of
7 it?

8 A. Yes. So we became involved when the garage
9 was finished and of course we were opposed --

10 MS. SWEENEY: I have a standing
11 objection to any opposition that this witness
12 testifies to because she doesn't have a
13 standing to discuss her opposition to the
14 property.

15 MR. RESTAURI: Noted. But you may
16 continue.

17 MS. CHEDDAR: I think the question
18 was, did I help my daughter?

19 BY MS. JEWART:

20 Q. Yes. To be a little bit more specific, did
21 you and Katie go out into the neighborhood and
22 ask people whether they were in favor or
23 opposed to the variance application?

24 A. We did. We went out into the neighborhood and
25 had a petition signed and, I don't know, I'm

1 not sure, I forgot to count them. There is
2 probably at least maybe 40 people --

3 MS. SWEENEY: Objection.

4 MS. JEWART: I will note that Miss
5 Sweeney has made the same objection I made to
6 her letters of support. I would ask that I be
7 given the same opportunity to enter my
8 petition.

9 MR. RESTAURI: Yes, on the same
10 basis.

11 MS. JEWART: On the same grounds.

12 Thank you.

13 BY MS. JEWART:

14 Q. Is this an accurate copy of the petition?

15 A. Yes.

16 MR. RESTAURI: Miss Jewart, do you
17 have any witnesses in support of any of them
18 either tonight or can you bring them next
19 time?

20 MS. JEWART: Is there anybody in
21 the audience who signed this petition that
22 would like to testify? I do note Miss Sweeney
23 has the same objection I did so I understand
24 it completely.

25 BY MS. JEWART:

1 Q. You just testified to your recollection you
2 assisted in getting these signatures. This is
3 an accurate representation based on your
4 standing here, sitting here, under oath, that
5 these are accurate, these are individuals that
6 you and your daughter approached?

7 A. Yes. Yes, we approached them all personally.

8 Q. I have nothing further. Thank you very much.

9 A. Thank you.

10 MR. RESTAURI: Miss Sweeney?

11 MS. SWEENEY: Yes.

12 MR. RESTAURI: Counsel, since Miss
13 Cheddar has been here for all the hearings and
14 since we have to end at exactly ten o'clock,
15 unless Miss Jewart and Ms. Cheddar have some
16 objection, it may make sense to not rush
17 through this with her and come back the next
18 time.

19 MS. SWEENEY: Why don't we do
20 that?

21 MS. CHEDDAR: So we will
22 definitely have another session?

23 MR. RESTAURI: Yeah.

24 MS. CHEDDAR: That's fine. It can
25 take as many as it needs to take.

1 MR. RESTAURI: Thank you, counsel,
2 for your courtesies. Let us now move on to
3 selecting the next date.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. SOSTER:

8 Q. One question. You are familiar with these
9 people on this list?

10 A. Yes.

11 Q. You are familiar with the addresses?

12 A. Yes.

13 Q. Can you give me an idea of the distance these
14 people are from the property that's under
15 question? Are we talking a football field,
16 that distance away, or a quarter of a mile
17 away?

18 A. So the first I want to say six are Neely
19 Street. And then also right behind Neely
20 Street is a little short street called Short
21 Street.

22 Q. Are they within a football field of the site?

23 MR. SOMAN: Less than that.

24 MS. CHEDDAR: Yeah. And then from
25 there we went to Eckert Street because it's

1 the parallel street to Neely Street. And so
2 it's a little further but in the same --
3 Eckert Street actually gets the same flooding
4 as Neely Street.

5 BY MR. SOSTER:

6 Q. I am talking about distance. Are they within
7 a football field of this site?

8 A. Yes.

9 Q. Approximately?

10 A. Yes.

11 Q. They are not half a mile away.

12 A. No, no, no.

13 MR. RESTAURI: We should note for
14 the record that because the members of the
15 board have lived here for many, many years,
16 they are familiar generally, or in some cases
17 specifically, with the property. However,
18 they will not make a trip, the four of them,
19 to the property without notifying counsel and
20 everybody being available to be with them were
21 they to do that. So we can't have them
22 un-know what they know, but any additional
23 trips as a group will not be done. And I
24 generally advise the board members
25 individually not to make special trips, but

1 they may do that in their own discretion.

2 MS. SWEENEY: Can I just take a
3 minute? Mr. Scheffler had to leave, he is not
4 feeling well. I know he goes back to Florida.
5 In terms of scheduling, I would like him to be
6 present. So I wanted to try to reach him.

7 MR. RESTAURI: What are we looking
8 at? Are we looking at September or is that
9 already booked up for everybody?

10 (DISCUSSION HELD OFF THE RECORD)

11 MR. RESTAURI: Ladies and
12 gentlemen, the next hearing in this case will
13 take place on September 14th. Let's schedule
14 it for the 14th at 7:30. Does that work for
15 everybody? The 14th at 7:30. And if we have
16 to, if that doesn't work out, then the board
17 will convene and we will do another date like
18 we have done in the past. But for now, we are
19 on for the 14th of September, Wednesday the
20 14th at 7:30. Thank you, everyone.

21

22 (Whereupon, at 10:00 p.m. the
23 record was closed.)

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C E R T I F I C A T E

I hereby certify that the
transcript of the proceedings and evidence
contained herein are a true and accurate
transcription of my stenographic notes taken
by me at the time and place of the within
cause; that the transcription was reduced to
printing by me; and that this is a true and
correct transcription of the same.

Leaette Cavaliere
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(412)847-8256

1 LEET TOWNSHIP
2 ZONING HEARING BOARD
3 194 Ambridge Avenue
4 Fair Oaks, PA 15003-1248

5
6 Wednesday, September 14, 2022
7 7:00 p.m.

8
9 - - -

10
11 VARIANCE APPLICATION
12 of
13 ROBERT L. & MARILYN A. WERNICKI

14
15 - - -

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22 Reported by:

23 CAVALIERE COURT REPORTING
24 Leaette Cavaliere, Court Reporter
25 162 Cobblestone Drive
Pittsburgh, PA 15237
(412-508-0035)

1

2

A P P E A R A N C E S

3

4 LEET TOWNSHIP ZONING HEARING BOARD:

5

Terry Soster, Chairman

6

Chuck Soman

7

David Kovacs

8

Daphne Homer(alternate)

9 ON BEHALF OF ZONING HEARING BOARD:

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VINCENT RESTAURI, ESQUIRE

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STEPHEN A. CHESNEY, ESQUIRE

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22 ON BEHALF OF CITIZEN OBJECTOR KATIE MELODINI:

23

ANNA JEWART, ESQUIRE

24

Babst Calland

Two Gateway Center

25

603 Stanwix Street, Suite 9

Pittsburgh, PA 15222

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P R O C E E D I N G S

MR. SOSTER: Tonight's Zoning Board hearing is a continuance of our August 31st hearing where we are taking into consideration November 8th, 2020, variance application of Mr. Robert Wernicki and, Solicitor Restauri, I will let you take care of the proceedings.

MR. RESTAURI: Thank you. Would everyone who plans to testify this evening please raise your right hand and Ms. Cavaliere will swear you all in.

(WITNESSES JOINTLY SWORN)

MR. RESTAURI: If you change your mind and have not been sworn but decide you wish to testify, please let Miss Cavaliere know and she will swear you in separately. If you testify, we will assume that you have taken the oath.

Before we begin, do we have any stipulations from counsel that might shorten the proceedings? Seeing none, we will proceed.

1 When we were last here, I believe
2 -- let me say, Miss Cheddar, were you on the
3 stand? Do counsel have questions for Miss
4 Cheddar?

5 MS. JEWART: I believe I completed
6 my direct and it would be up to Miss Sweeney.

7 MR. RESTAURI: Miss Sweeney?

8 MS. SWEENEY: Yes.

9 MR. RESTAURI: Miss Cheddar, would
10 you take our version of the stand.

11 - - -

12 CROSS-EXAMINATION

13 - - -

14 BY MS. SWEENEY:

15 Q. Good evening, Miss Cheddar.

16 A. Hello.

17 Q. Just to be clear for the record, you don't
18 currently own any property in Leet Township?

19 A. Correct.

20 Q. And you don't live in the township?

21 A. Correct.

22 Q. I want to go to a document I had marked as
23 Objector's 9. I wanted to make sure that was
24 9. I wanted to show this to you.

25 A. Yes.

1 Q. You testified about this previously. You did
2 not take this picture, though?

3 A. My husband did.

4 Q. And I believe your testimony was you were
5 standing next to him?

6 A. Yes.

7 Q. And are you standing on Mr. Wernicki's
8 property?

9 A. No, we were -- from this angle, we were at the
10 end of Neely Street, right at the very end of
11 Neely Street.

12 Q. There aren't strawberries or fencing there?

13 A. No, we were right on the edge of Neely Street.

14 Q. Okay. And I think you testified that that was
15 subsequently added, the date?

16 A. So the front was August 25th, and I believe it
17 was actually the next day that we took that
18 picture, August 26.

19 MS. JEWART: I do believe we did
20 clarify that on the record at the last
21 hearing.

22 BY MS. SWEENEY:

23 Q. I wanted to make sure this was subsequently
24 added. Your camera didn't imprint the date on
25 it.

- 1 A. I don't think so, no. But we have a record of
2 it on the phone, you know.
- 3 Q. And the other photographs that you testified
4 to, was this a photograph that you took?
- 5 A. Yes.
- 6 Q. And that also had a date that was subsequently
7 added?
- 8 A. Yes.
- 9 Q. Both Objector 7 and 8.
- 10 A. Yes.
- 11 Q. Now you testified that your family owned the
12 property that your daughter currently owns for
13 some time; is that correct?
- 14 A. Yes. Yes.
- 15 Q. So in 2005 did you own the property?
- 16 A. Yes. Now wait, my dad passed away in 2005,
17 November. So, you know, from the point where
18 he passed away, that's when my family, myself
19 and my siblings owned the property.
- 20 Q. Did you visit the property in 2005?
- 21 A. Yes.
- 22 Q. So you were familiar with the conditions of it
23 at that point in time?
- 24 A. Yes.
- 25 Q. I'm going to show you a photograph here, and

- 1 we have a few copies of this. I apologize.
2 And, Mrs. Cheddar, I will represent to you
3 that this shows a view looking at the Wernicki
4 property in 2005. Do you recognize the
5 structure there to the side?
- 6 A. Oh, okay, yeah, all right. I kind of remember
7 that, yes.
- 8 Q. You remember there being a carport?
- 9 A. Yeah, there was a carport there, yes.
- 10 Q. And there were very large trees on the
11 property as well?
- 12 A. Yeah, maybe.
- 13 Q. Do you recall seeing that?
- 14 A. Well, I mean if there is a photograph and that
15 shows his house, then I assume that there were
16 trees there.
- 17 Q. So your daughter's house, just for
18 orientation, would be to the left.
- 19 A. Right. Correct.
- 20 Q. Of the structure depicted on the property.
- 21 A. Correct.
- 22 Q. And the creek would be more towards the right.
- 23 A. Yes.
- 24 Q. So those large trees and shrubberies would
25 block any so-called view from your family's

1 property; is that correct?

2 A. Well, it's the front of the property and, you
3 know, when we talk about view, we're talking
4 about the back of the property from the
5 backyard, so yes.

6 Q. Are they're not located in the backyard?

7 A. No, this is the front yard. See, there is the
8 front porch.

9 Q. That's the shrubbery, but what about the large
10 trees behind the shrubbery?

11 A. I don't recall. But if they are there, I
12 guess they were there. When was that photo
13 taken?

14 Q. 2005.

15 MR. RESTAURI: Are you offering
16 that?

17 MS. SWEENEY: I am going to offer
18 that and I apologize, I was just looking at my
19 notes, I think that would be our Exhibit 23.

20 MS. JEWART: I don't have any
21 objection as long as there will be some form
22 of authentication.

23 MS. SWEENEY: There will. I am
24 waiting for the neighbor. It was taken by
25 another neighbor, Mrs. Flynn, who I believe

1 will be here shortly.

2 MR. RESTAURI: Okay. Subject to
3 her authentication of the photographs, when
4 you are ready to offer it, we will admit it.

5 MS. SWEENEY: Sure.

6 BY MS. SWEENEY:

7 Q. So standing in your family's -- your
8 daughter's property, in your daughter's
9 backyard, isn't it true you cannot see the
10 creek water from that standpoint?

11 A. Well, it depends on the time of year. So in
12 the summer when it's down to a trickle, not
13 necessarily. However, you know, most of the
14 year you can see it if you are on the porch.

15 Q. But my question was, standing in the backyard.

16 A. Oh, standing in the backyard, I don't know for
17 sure, to tell you the truth. Seems like I
18 should be able to see it, but I don't know.

19 Q. So behind the property, your daughter's
20 property abuts the Howard property; is that
21 right?

22 A. Yes.

23 Q. And there is a garage back there?

24 A. Yes.

25 Q. And are you aware that that garage is actually

1 partially in the floodway itself?

2 MS. JEWART: Just raise an
3 objection. Please continue, but raise an
4 objection as to relevance. The existence of a
5 violation on a different property is
6 irrelevant to a violation on the property at
7 issue.

8 BY MS. SWEENEY:

9 Q. You can answer.

10 A. Should I answer? I'm aware of that garage
11 that's been there. That was -- that garage
12 was built long before this even floodplain
13 ordinances or any of those things.

14 Q. And you never complained about that garage?

15 A. No.

16 Q. And you were the one to complain about the
17 Wernicki accessory structure with the
18 township; isn't that right?

19 A. Yes.

20 Q. And you called the township manager?

21 A. Yes.

22 Q. And how often have you talked to the township
23 manager?

24 MS. JEWART: Objection, relevance.

25 MR. RESTAURI: Objection is noted.

1 Please answer the question.

2 MS. CHEDDAR: Well, I don't think
3 I could necessarily give you a number on it.

4 BY MS. SWEENEY:

5 Q. More than ten times?

6 A. This whole big deal incident has been going on
7 for two years now. It was September 11th,
8 2020, when the garage was erected. So, you
9 know, I couldn't put a number on it.

10 Q. More than ten times?

11 A. Not necessarily. I'd have to look it up, do
12 you know what I mean.

13 Q. So the day that it was erected in September of
14 2020, did you come to the township building?

15 A. Yes.

16 Q. And were you speaking with the township
17 manager at that time?

18 A. Yes.

19 Q. And since that time, did you speak to the
20 township manager about the status of your
21 complaint?

22 A. Yes.

23 Q. And what did you say to her?

24 A. On that particular --

25 Q. Yes.

1 A. On that particular day?

2 Q. Yes.

3 A. Well, you know, it was kind of an ongoing
4 thing because, you know, the year previously
5 he had poured the concrete slab and at that
6 time my daughter and I were concerned what's
7 he doing, what's the reason for this concrete
8 slab. So back then, a year previous to that,
9 we had contacted Betsy Rengers, you know,
10 about did he get a permit for that, did he get
11 a permit to pour the slab, is he planning to
12 put a garage?

13 Q. And what did she say?

14 A. He did not have a permit for that.

15 Q. And what did you do then?

16 A. I think I said, would you please, if there is
17 at any point in time, you know, a request for
18 a permit for a garage, can you kind of give a
19 heads up? And I never got a heads up.

20 Q. While you owned the property, did you have
21 flood insurance for the property?

22 A. Yes.

23 Q. I have nothing further for Mrs. Cheddar.

24 MR. RESTAURI: Thank you.

25 Mr. Chesney?

1 MR. CHESNEY: I have nothing for
2 Miss Cheddar.

3 - - -

4 EXAMINATION

5 - - -

6 BY MR. RESTAURI:

7 Q. Miss Cheddar, when did you learn for the first
8 time that the township had regulations in its
9 ordinances concerning the floodplain and
10 construction in the floodplain?

11 Approximately. Doesn't need to be the exact
12 day, but just approximately.

13 A. So I would say it was after -- I would say it
14 was after he built the garage. I may have had
15 some concerns when he poured the slab because
16 even at that particular time I thought, you
17 know, that's not a good thing because if you
18 pour a large slab, then you're interfering
19 with water absorption, that sort of thing, and
20 he already had another building there, you
21 know. So I was concerned about it, but I have
22 to say that I didn't know, you know, as much
23 as I know now.

24 Q. When did you learn there was an ordinance that
25 regulated development in the floodplain area?

1 A. After September 11th, when he built the
2 building, I began to research and I found so
3 much information, you know, on the Leet
4 Township website. They had their own Leet
5 Township ordinances and then they also have
6 their floodplain ordinances. And upon reading
7 all of that information, I became more and
8 more aware that what he did was not really
9 acceptable.

10 MS. SWEENEY: I'm going to object
11 to the form to the extent she's giving her
12 opinion.

13 MR. RESTAURI: So noted.

14 MS. SWEENEY: And again renew my
15 objection, she is not a resident here.

16 MR. RESTAURI: She's testifying as
17 a fact witness.

18 BY MR. RESTAURI:

19 Q. Miss Cheddar, I believe it is the case, but
20 correct me if I'm wrong, that your daughter's
21 testimony was that she became upset and called
22 you --

23 A. Yes.

24 Q. -- when the garage, which is the second
25 building in time --

- 1 A. Yes.
- 2 Q. The newer building. We will call the old one
3 the shed.
- 4 A. Right.
- 5 Q. So when the garage went up, she was upset
6 because of the aesthetics issue, the view
7 issue.
- 8 A. Right.
- 9 Q. At some point, the impact on the flood became
10 important to her and, through her, to you.
- 11 A. Yes.
- 12 Q. Do you remember when that happened with
13 respect to the flood issue?
- 14 A. Yeah, pretty early on. You know, pretty early
15 on with, you know, after September 11th and,
16 you know, at that point in time researching,
17 looking at the township ordinances and the
18 floodplain ordinances, I would say probably,
19 you know, in the coming month after that
20 happened.
- 21 Q. So within a month or two after the garage went
22 up is when you, and to the best of your
23 knowledge your daughter, became concerned that
24 there was a flood issue here.
- 25 A. Yes.

- 1 Q. You heard testimony from Mr. Wernicki's -- one
2 of Mr. Wernicki's experts that this building,
3 this garage, creates only a negligible
4 increase in the base flood elevation, the BFE.
- 5 A. Yes.
- 6 Q. Is there any increase in the BFE that would
7 be, based on your having lived in the
8 property, an increase that would not present a
9 risk to the property? Do you understand the
10 question or should I rephrase it?
- 11 A. Go ahead and rephrase it, just to make sure
12 that I answer correctly.
- 13 Q. Sure. You lived in the property for many
14 years.
- 15 A. Yes.
- 16 Q. Lots of things can create an increase in the
17 risk that your property would be flooded, lots
18 of things.
- 19 A. Yes.
- 20 Q. The engineer said -- Mr. Wernicki's engineer
21 said that the fact that this is 600 square
22 feet of building rather than 200, that 400
23 square feet difference has only a negligible
24 impact on the risk of flooding to your
25 property. Why is negligible impact important

1 to that property based on your years of living
2 there, if it is important?

3 A. I would say it's important.

4 Q. Why?

5 A. Well, first of all, you know, the ordinance
6 and the information that comes from FEMA and
7 PEMA, all that information never says the word
8 "negligible." It says, you know, that there
9 should be no increase in base flood level.

10 Q. But aside from what the government regulators
11 say, I want to know what Mrs. Cheddar knows.
12 Aside from what the government people say.
13 You lived in the property, right, and so one
14 morning -- let's assume that you still lived
15 in the property at the time the garage went
16 up. You woke up that morning and said there
17 is a garage there and you said, you know, this
18 could have an impact on my house.

19 A. Yes.

20 Q. Lots of things can have an impact on your
21 house and flooding. Where is the line where
22 you say, nope, this is too much of an impact,
23 can't live with this?

24 A. I think anything that would increase the
25 impact would be unacceptable. And, you know,

1 even with -- you know, we talk about the base
2 flood level but you are talking about an
3 obstruction, okay, so, you know, when water
4 comes up and comes up over the bank, okay, and
5 there is a large obstruction there, I think I
6 kind of remember this from high school, you
7 know, the obstruction is either going to come
8 down or the water is going to go around it,
9 right? So my first reaction was, this is
10 going to cause more water -- if it doesn't
11 come down, it's going to come -- cause more
12 water coming into my daughter's property and
13 those other adjacent properties.

14 Q. So would it be fair to say that there is no
15 amount, however small, of additional risk of
16 flooding that, when you were living there,
17 would have been acceptable?

18 A. So I'm not sure I understand your question.
19 Do you want to rephrase it?

20 Q. Suppose that morning you were still living in
21 the property, you woke up and saw the garage
22 and you called your engineer, a friend of
23 yours, an engineer, who came out, looked at it
24 and said, "Miss Cheddar, maybe one time in the
25 next 500 years will it rain hard enough that

1 that garage is going to present any additional
2 risk of flooding to your house." Or he said,
3 or she said, "Maybe one time in the next 50
4 years or the next hundred years." Is there
5 some line in your mind where the risk becomes
6 a risk you won't accept?

7 A. Well, the thing is, that property, our
8 property, my daughter's property, has been
9 flooded at least five times, causing damage
10 and water entering the basement. So it's not
11 a matter of if it's going to happen in 50
12 years or a hundred years, it's going to happen
13 again.

14 Q. But will -- let me rephrase this. Yes, it
15 will happen again.

16 A. Yes.

17 Q. That's not the question.

18 A. Okay.

19 Q. The question is, is the garage going to make
20 it worse or happen more frequently?

21 A. And in my opinion --

22 MS. SWEENEY: Again, I object.

23 MR. RESTAURI: Objection noted.

24 BY MR. RESTAURI:

25 Q. Go ahead, answer the question.

1 A. It's an obstruction and basic scientific
2 information would tell you that if there is an
3 obstruction, the water is either going to take
4 it down or it's going to divert around it.

5 Q. Now suppose that Mr. Wernicki were not to
6 receive the variance and suppose the township
7 then said, okay, Mr. Wernicki, you have to
8 come into compliance.

9 A. Yes.

10 Q. And Mr. Wernicki's engineer said, fine, we
11 will put this thing on stilts. It will be
12 higher but it will still not violate the
13 ordinance but it will not have any impact --

14 MS. JEWART: Objection. Just for
15 brief clarification, if it was the same size,
16 it would still be in violation cause we are
17 dealing with 660 square feet. It's only
18 permitted to be 200 square feet regardless --

19 MR. RESTAURI: You are right.

20 BY MR. RESTAURI:

21 Q. So the township said, okay, Mr. Wernicki, put
22 it on stilts, come back and ask for another
23 variance. Mr. Wernicki did that and this
24 time, because it's on stilts, let's just
25 speculate that all the engineer said has no

1 impact on the base flood elevation cause it's
2 on stilts. Now you've got a higher building
3 that doesn't create a flood issue. What's
4 your objection then? Assuming that fact
5 pattern could happen. And I'm not saying it
6 could.

7 A. So my objection to this is a straightforward
8 thing. Okay, Leet Township has ordinances,
9 FEMA has floodplain regulations. They're all
10 very, very detailed and very specific about
11 what you can do on your property if you're in
12 a floodplain. And whether or not it's on
13 stilts or whatever it is, I don't understand
14 how someone can completely disregard those
15 ordinances, what FEMA says, what PEMA says,
16 all of those things and do exactly as they
17 please without --

18 Q. I think that we understand your point and that
19 will be something that I'm sure your counsel
20 will argue to us at the appropriate time. I'm
21 trying to just get to a fact situation.

22 If it were possible for Mr. Wernicki,
23 through the use of stilts, for example, to
24 qualify for a variance because there was no
25 change in the BFE, then that wouldn't violate

1 the right of Mr. Wernicki to ask for a
2 variance and it wouldn't prohibit us, if we
3 were otherwise persuaded by the other criteria
4 and proof, of them to grant the variance.
5 It's theoretically possible he could comply by
6 moving the building up off the ground and that
7 makes it higher. Does that create a problem
8 for you?

9 A. Well, the only thing I can think of regarding
10 that is other than the floodplain issues and
11 flooding issues, you know, there is also
12 things in the ordinances where building
13 something does not alter the character of the
14 neighborhood.

15 Q. That's why we talked about the other criteria.

16 A. So there is other criteria there. You know,
17 there is a cement slab there. I'm just not
18 sure that he would be able to do that but that
19 would be --

20 Q. I am not saying he would. I'm just asking
21 hypothetically. And finally for me, you
22 mentioned that you believe Mr. Wernicki did
23 things wrong.

24 A. Yes.

25 Q. That's why he's here. Is it your position

1 that you and then your daughter, your
2 successor in ownership, have done nothing
3 wrong with regard to Mr. Wernicki's
4 construction of this building?

5 MS. JEWART: Apologies. I have to
6 object to that line of questioning,
7 Mr. Solicitor. It's just not relevant.

8 MR. RESTAURI: It may not be.
9 Answer the question, please.

10 MS. CHEDDAR: Can you rephrase it,
11 please?

12 BY MR. RESTAURI:

13 Q. Sure. Did you do anything wrong in all this
14 that in any way has created the problem that
15 you are now complaining about? Or has your
16 daughter to the best of your knowledge? Or
17 are you and your daughter entirely blameless?
18 Which may be the case. I am not suggesting
19 you are or are not. I'm just trying to figure
20 out where this responsibility actually lies.

21 A. I mean I think that the response from my
22 daughter and myself is based on his building
23 of the garage or accessory building without
24 going through the proper channels that any
25 other citizen in Leet Township would have to

1 go through.

2 Q. Did you, or to the best of your knowledge your
3 daughter, ever do anything, say anything or be
4 silent in a manner that in retrospect you
5 think might have led Mr. Wernicki to believe
6 that there would have been no problem from
7 your standpoint if he did this?

8 MS. JEWART: Just for the record,
9 I'm going to make an objection.

10 MR. RESTAURI: Objection noted.

11 BY MR. RESTAURI:

12 Q. Please answer the question.

13 A. Yeah, so we had a decent relationship with
14 Mr. Wernicki for as long as he's lived in the
15 property and, you know, as neighbors, you
16 know, this was something that was of concern
17 to us. At the time it wasn't my daughter, it
18 would have been myself, then I would voice my
19 concerns to him in an appropriate way, not a
20 threatening way, not a -- nothing even to, you
21 know, ruin our relationship.

22 You know, there were some times where,
23 you know, he had done a few things in the past
24 that I didn't think was quite right and, you
25 know, I approached him about those things and,

1 you know, just stated, could you please, you
2 know, consider what I'm asking of you? And,
3 you know, so, yeah --

4 Q. Did it work out, in those instances,
5 satisfactorily to you?

6 A. Yes. I once asked him verbally -- you know,
7 he had some accumulation of -- he likes to put
8 things in the back of his yard that's, you
9 know, in view of my daughter's and at the time
10 our tenant's porch. You know, you're looking
11 out, you're seeing rusty trailers, tires,
12 wheelbarrows, you know, assorted things there,
13 and I'd mention it to him once or twice, do
14 you think that maybe you could maybe kind of
15 clean that up a little bit so that our -- at
16 the time it was our tenants, you know -- don't
17 have to look at that?

18 Q. And did he do that?

19 A. He did not at that time. And then when my
20 daughter was getting ready to purchase the
21 property, you know, I thought, well, rather
22 than ask him again, I sent him a letter and
23 asked him nicely would he please consider
24 moving the things that he had accumulated in
25 the backyard, and he actually complied with

1 that which we were happy about that.

2 Q. Your testimony was that when you saw the
3 concrete pad go in that you came to the
4 township and lodged your concern about it.

5 A. Yes.

6 Q. Did the township, to your knowledge, do
7 anything with respect to notifying him about a
8 problem with the pad?

9 A. Yeah, I don't know.

10 Q. Did you talk to him about it?

11 A. I don't believe I did. I don't think so.
12 Wait, wait. Well, so I don't think I did, but
13 I think he knew I was concerned.

14 MS. SWEENEY: I'm going to object.

15 MR. RESTAURI: Objection is noted.

16 BY MR. RESTAURI:

17 Q. Did somebody tell you that he knew you were
18 concerned about it?

19 A. Yes, my neighbor.

20 Q. And who was that neighbor?

21 A. Mrs. Howard.

22 Q. Did Mr. Wernicki ever talk to you about it?

23 A. No, we never talked about the slab, as I
24 recall.

25 Q. And was the slab the same size as the slab is

1 now that the garage is sitting upon?

2 A. Yes.

3 Q. So you were able to tell at the time the size?

4 A. Yes.

5 Q. The footprint size of the building.

6 A. Yes.

7 MR. RESTAURI: I have nothing
8 further. Mr. Soster?

9 - - -

10 EXAMINATION

11 - - -

12 BY MR. SOSTER:

13 Q. Mrs. Cheddar, at any time have you been
14 notified formally through postings or via
15 e-mail that a variance was being requested?

16 A. Yes, so I'm not sure how I was notified, but
17 I'm aware that he was requesting a variance.

18 Q. Relating to the hearings that are being held
19 now?

20 A. Right.

21 Q. And prior to that you were not, you had no
22 notices?

23 A. I mean the hearings are being held now. The
24 hearings were actually, you know,
25 theoretically supposed to be -- we were

1 thinking maybe March of 2021.

2 Q. Let me clarify. Have you ever been formally
3 notified by the township, through a posting or
4 certified mail, prior to the building being
5 constructed, that a variance was being
6 requested?

7 A. Prior to the building --

8 Q. Being constructed. Prior to.

9 A. No.

10 Q. So the notice you got came after the building
11 was constructed?

12 A. Yes.

13 Q. Do you have flood insurance?

14 A. Yes.

15 Q. Did you apply for that each year?

16 A. I think it carries over from year to year.

17 Q. Do you have to fill an application out to
18 obtain that flood insurance?

19 A. I think my husband handles that. I think it
20 just rolls over. Do we have to -- am I
21 allowed to ask?

22 MR. RESTAURI: State your name and
23 address.

24 MR. CHEDDAR: William Cheddar.

25 MS. SWEENEY: I am going to

1 continue to object to testimony of a
2 nonresident.

3 MR. CHEDDAR: The way the flood
4 insurance works, when Katie purchased the
5 property --

6 MR. SOSTER: If I could just ask
7 the question, do you file an application to
8 get that flood insurance?

9 MR. CHEDDAR: I don't think we
10 file an application every year.

11 MR. SOSTER: Have you ever filed
12 -- did you file, in the beginning, an
13 application to get that flood insurance?

14 MR. CHEDDAR: No. The way it
15 worked was that since her father had the
16 property, through right they were able to have
17 her grandfathered in.

18 MR. SOSTER: So he had flood
19 insurance.

20 MR. CHEDDAR: Right.

21 MR. SOSTER: You don't know
22 whether he filed an application --

23 MR. CHEDDAR: He would have to
24 file an application to get it.

25 MR. SOSTER: Since you owned the

1 property, your daughter, have you had any
2 agent come to look at the property in order to
3 maintain the continuance of that insurance?

4 MR. CHEDDAR: Not to my knowledge.

5 MR. SOSTER: You state the
6 property has been flooded. To what extent?
7 Water in the basement?

8 MR. RESTAURI: We are talking to
9 Mrs. Cheddar now. Mr. Soster's question is to
10 Mrs. Cheddar.

11 MS. CHEDDAR: Yes.

12 MR. SOSTER: Relatively, first
13 floor, basement.

14 MS. CHEDDAR: Usually the
15 basement. In 2004 it was all the way up to
16 the rafters in the basement, but the damage
17 was localized into the basement. Loss of
18 everything that was in the basement.

19 MR. SOSTER: That's all I have.

20 MR. SOMAN: I have nothing, Vince.
21 You handled it.

22 MR. RESTAURI: Mr. Kovacs?

23 - - -

24 EXAMINATION of MS. CHEDDAR

25 - - -

1 BY MR. KOVACS:

2 Q. This picture we came up with, I am having a
3 hard time trying to figure out, where is this?

4 A. I think actually from across the street and,
5 you know, it may -- it's directly across the
6 street.

7 Q. So this is the street here (indicating)?

8 A. Yes.

9 MS. HOMER: So maybe here, from
10 like this alley?

11 MS. CHEDDAR: That's this man's
12 property here, and he owns this property right
13 there, too. So this property owns that extra
14 lot, and I think it was probably taken
15 directly across the street from that.

16 BY MR. KOVACS:

17 Q. So this was showing that carport. Is that the
18 whole idea was?

19 A. Yes.

20 Q. So I can get that in my mind, that's all.

21 MS. HOMER: I'm good.

22 - - -

23 EXAMINATION

24 - - -

25 BY MR. SOSTER:

1 Q. Mrs. Cheddar, did you sell your house to your
2 daughter?

3 A. Yes.

4 Q. There was a formal closing, sale of the house?

5 A. Yes.

6 Q. Inspection of the house?

7 A. Yes.

8 MR. RESTAURI: Any members of the
9 public have questions for Miss Cheddar?

10 MS. CHEDDAR: To clarify on that
11 question, we had inspections every year from
12 Leet Township because we were, you know,
13 renting the house. So we had to get an
14 occupancy permit every year with inspections
15 that go along with that.

16 MR. SOSTER: But my point is that
17 the house transferred ownership from you to
18 your daughter, as if you were selling the
19 house to some non-relative.

20 MS. CHEDDAR: Right.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. SOMAN:

25 Q. Did the inspection or inspector say anything

1 like, you know, about the flooding issues?

2 A. The inspector that I'm referring to was the
3 township -- would be like building code
4 inspector or something like that.

5 Q. Right.

6 A. Yeah, he never mentioned that.

7 Q. So she didn't get an inspection on the house
8 before she bought it?

9 A. Yeah, we had appraisals done, but I'm not sure
10 if we got the inspection.

11 - - -

12 EXAMINATION

13 - - -

14 BY MR. RESTAURI:

15 Q. Do you know if your daughter had a mortgage on
16 the house?

17 A. She has a mortgage. Yeah, she has a mortgage.

18 Q. So she had an inspection.

19 A. That's true.

20 MR. RESTAURI: Do counsel have any
21 additional questions for Ms. Cheddar?

22 MS. JEWART: I have two follow-up
23 questions.

24 MR. RESTAURI: Please.

25 - - -

REDIRECT-EXAMINATION

— — —

BY MS. JEWART:

Q. You were shown a photograph from 2005. We're looking at some trees. In this time, or currently if you were visiting the property as a former owner, as a mother of the occupant or just somebody stopping by --

A. Visiting my parents.

Q. In your opinion, as just a general person, what is more aesthetically pleasing to you, trees or the structure that's there currently?

A. Trees.

Q. If you were enjoying a family barbecue, which view would you prefer?

A. Trees.

Q. When you're talking about the view of the creek, are you just watching the water?

A. No, it's just the whole surrounding area.

Q. Why do you enjoy that?

A. Because it's scenic, it's serene, it's beautiful green, and there are times when you do see the water coming by. It's just, you know, you don't see it as well after he built up the bank but it's still there, so yes.

1 Q. Nothing further. Thank you.

2 MR. RESTAURI: Miss Sweeney?

3 MS. SWEENEY: No, nothing.

4 MR. RESTAURI: Mr. Chesney?

5 MR. CHESNEY: No.

6 MR. RESTAURI: Miss Cheddar, with
7 the board's thanks, you're excused.

8 MS. SWEENEY: I would just have an
9 opportunity -- Mrs. Flynn, who took the
10 photograph, is here.

11 MR. RESTAURI: Would you put her
12 on just briefly, please? Miss Flynn, you
13 weren't here when Miss Cavaliere swore
14 everybody in. Were you sworn last time?

15 MS. FLYNN: Last week.

16 MS. SWEENEY: Last time.

17 MR. RESTAURI: We can dispense
18 with doing it again. You are still under
19 oath.

20 MS. FLYNN: Okay.

21 - - -

22 JULIE FLYNN,

23 having been first duly sworn, was examined and
24 deposed as follows:

25 - - -

1 DIRECT EXAMINATION

2 BY MS. SWEENEY:

3 Q. Mrs. Flynn, I'm going to show you a document.
4 In fact, this is the document that I had asked
5 some questions of Mrs. Cheddar about. Did you
6 take this photograph?

7 A. I did.

8 Q. And do you recall approximately when that was
9 taken?

10 A. The latter part of 2004, I believe. And I'm
11 just going by the fact our pine trees are
12 still there and the wire fence --

13 Q. Pointing to the left of the picture?

14 A. Yes, this is our property here.

15 Q. So to the right, this white structure --

16 A. That's my house, my driveway.

17 Q. And on the left hand, what is that?

18 A. This is Bob's property. This is like a porch.

19 MR. RESTAURI: Bob, meaning
20 Mr. Wernicki?

21 MS. FLYNN: Mr. Wernicki. Porch,
22 lilacs. I know this because there were two
23 older gentlemen that used to fix the house
24 when we first moved in and it was a chaotic
25 yard is what it was and they were working on

1 it. So they had given me one of these lilacs
2 so I know exactly what these were. Very
3 bushy.

4 BY MS. SWEENEY:

5 Q. What else is depicted in this photograph?

6 A. There is a 40 foot pine tree in the backyard
7 that was in Bob's yard. I again know this
8 because when we did get flooded, our swimming
9 pool wrapped around the pine tree. So I know
10 for sure that that was there. There is a big
11 oak tree. I believe it was oak. It's not
12 pictured. But there were also larger maple
13 trees and brush on the creek side.

14 Q. And have those trees since been removed?

15 A. Yes, that's open now.

16 Q. And they were in the side yard, the backyard?
17 Are you familiar with his property?

18 A. Oh, yeah.

19 Q. And can you roughly -- let me show you a
20 document.

21 MS. JEWART: My only objection is
22 to timing.

23 MR. RESTAURI: I understand.

24 BY MS. SWEENEY:

25 Q. So this tab 14 is a survey showing

1 Mr. Wernicki's property. Do you know roughly
2 where those trees were located?

3 A. The pine tree was approximately on the right
4 edge, looking at the picture of the new
5 storage shed. So about here on the wall, I
6 would say 40 (indicating).

7 Q. You said that was --

8 A. Oh, yeah. It was as tall as ours was. The
9 maple or oak, or whatever it was, was about
10 here and then you had larger trees and brush
11 all along this entire edge.

12 MS. JEWART: I have no issue with
13 the stipulation at some point several, over
14 decade or two ago, there were trees on the
15 property. That's I don't believe relevant,
16 but we can move it along.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. RESTAURI:

21 Q. Let me just do it this way. Miss Flynn, in
22 2005 you took that photograph?

23 A. Yes.

24 Q. And does it accurately reflect the conditions
25 that appear in that photograph?

1 A. Yes, from what you can see in the photograph.
2 It doesn't obviously show the creek side edge,
3 but yes.

4 Q. And it is an accurate photograph of what it
5 contains to the best of your knowledge?

6 A. Oh, yeah.

7 MR. SOSTER: I have a question,
8 Vince. Am I allowed?

9 MR. RESTAURI: Of course.

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. SOSTER:

14 Q. Mrs. Flynn, your property is on the right as I
15 look at this picture?

16 A. Yes.

17 Q. You had a swimming pool in your backyard?

18 A. Like the blow up I guess kind, yes. Like a
19 pop up.

20 Q. In the flood it actually got blown away and
21 wrapped around this tree?

22 A. Uh-huh, wrapped around the stump of the tree.
23 At that point, it had been removed, uh-huh.
24 You had to go and get it.

25 MR. RESTAURI: Any questions for

1 the witness? Mr. Soman?

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. SOMAN:

6 Q. Just a simple question. Why, 17 years ago,
7 did you take that picture? And why would you
8 keep it?

9 A. If you were to see my photo collection, I come
10 from a big background of photographers. We
11 take a lot of pictures. The reason why I took
12 the picture was the gate. I have a metal
13 gate, and we were looking to replace the gate.

14 This wasn't safe for our kids. The
15 fencing, you can barely see, over here again,
16 broken wires, not safe. So I kind of just
17 took our first house, you know, kind of took
18 the gate and we are like we have to figure out
19 how we are going to make that safer.

20 MR. RESTAURI: Did you get a
21 different gate?

22 MS. FLYNN: I did. I have a
23 wooden --

24 MR. RESTAURI: Do you have a
25 picture of how it is now?

1 MS. FLYNN: Actually, I might, on
2 my phone, if that would be all right.

3 MR. RESTAURI: Yes.

4 MS. FLYNN: I have a lot of
5 pictures. It's a six foot privacy fence.

6 MR. RESTAURI: What I am
7 interested in is seeing the condition of what
8 was in that photo which is 2005. I'm
9 interested in seeing what it was like in 2017,
10 '18, '20. If you have photographs like that,
11 it would be helpful if you gave them to Miss
12 Sweeney and we can take a look at them at some
13 point in the future.

14 MS. SWEENEY: Behind tab 1-B are a
15 series of photographs that show what the
16 property currently looks like.

17 MR. RESTAURI: Did you take those
18 photographs?

19 MS. SWEENEY: Actually, I took
20 many of them.

21 MR. RESTAURI: Fine. Thank you.
22 Any other questions for Miss Flynn?

23 MS. SWEENEY: I don't.

24 MR. RESTAURI: Thank you, Miss
25 Flynn, very much.

1 All right, so I believe now we are
2 still in Miss Jewart's case. Do you have any
3 additional witnesses?

4 MS. JEWART: No. I would be happy
5 to move on to the township's case.

6 MR. RESTAURI: Mr. Chesney?

7 MR. CHESNEY: I'm ready to
8 proceed. I'd like to call the township
9 engineer, Ned Mitrovich.

10 MR. RESTAURI: Good evening, sir.

11 MR. MITROVICH: Good evening.

12 MR. RESTAURI: Thank you for
13 coming.

14 MR. CHESNEY: First, I want to
15 enter into evidence -- I don't know what you
16 want to me to mark these.

17 MR. RESTAURI: Miss Sweeney, do
18 you want to offer that photograph?

19 MS. SWEENEY: Yes, please.

20 MR. RESTAURI: We can ask Miss
21 Cavaliere to mark it.

22 MS. SWEENEY: I was going to do it
23 later.

24 MR. RESTAURI: So you want this to
25 be Township Exhibit 1?

1 MR. CHESNEY: One.

2 - - -

3 NED MITROVICH,

4 having been first duly sworn, was examined and
5 deposed as follows:

6 - - -

7 DIRECT EXAMINATION

8 BY MR. CHESNEY:

9 Q. Can you please state your name for the record?

10 A. Ned Mitrovich.

11 Q. And, Mr. Mitrovich, what do you do? What's
12 your job?

13 A. I am a managing principal for Lennon, Smith,
14 Souleret Engineering. We also represent the
15 township as a township engineer.

16 Q. And you are an engineer and what's your
17 educational background?

18 A. I have a Bachelor of Science in civil
19 engineering from Geneva College. I am
20 licensed in the Commonwealth of Pennsylvania,
21 West Virginia, Maryland and Ohio as a
22 professional engineer.

23 MR. RESTAURI: Is there any
24 objection to Mr. Mitrovich being qualified as
25 an engineer, testifying as an expert?

1 MS. SWEENEY: No.

2 MR. RESTAURI: Then he will be
3 accepted as an expert in the field of civil
4 engineering.

5 BY MR. CHESNEY:

6 Q. So, Mr. Mitrovich, can you explain some of
7 your experience you have had in engineering
8 with municipalities?

9 A. Well, we represent 50 to 60 municipalities and
10 personally I have ten municipal clients
11 myself. So in addition to doing hydraulics, I
12 also sit on this side of municipal reviews,
13 ordinance compliance and various other matters
14 like that.

15 Q. And you've dealt with floodplain issues a lot?

16 A. Yeah, in particular when they rolled these out
17 in 2013, I believe at that time we helped all
18 of our clients adopt those regulations.

19 Q. You have a lot of experience for when they
20 adopted these ordinances?

21 A. Absolutely, yes.

22 Q. And was there a particular ordinance that you
23 guys used to adopt or was there a model
24 ordinance?

25 A. There was a model prototype that was given out

1 by PEMA which came from the federal government
2 and that included the minimum standards for
3 compliance. It was not a model ordinance, so
4 to speak, because it would be much more
5 expensive. So this was the minimum that PEMA,
6 who was being pushed by FEMA actually to
7 adopt, have a uniform standard for all the
8 municipalities. Prior to this, they were very
9 hit or miss and highly nonregulated, so to
10 speak.

11 Q. Is this that document that you were given,
12 that you guys used back then? I'd like to
13 enter this in as T-2.

14 A. Yes.

15 MS. SWEENEY: May I have one?

16 MR. CHESNEY: Sorry.

17 MR. RESTAURI: This is Township 2.

18 BY MR. CHESNEY:

19 Q. So can you tell me a little bit about adopting
20 that ordinance?

21 A. Well, they were supplied -- they had a very
22 strict --

23 MS. SWEENEY: I object to the form
24 of the question. Is he talking about the
25 adoption of the Leet Township ordinance or

1 just in general?

2 MR. CHESNEY: In general. Do you
3 want me to rephrase?

4 MS. SWEENEY: Yeah, if you would.

5 BY MR. CHESNEY:

6 Q. Okay, can you tell your experience in adopting
7 in general the model ordinances for all the
8 municipalities you've worked with?

9 A. So at the time these were adopted we did not
10 represent Leet, I did not do any work on
11 Leet's ordinance. However, there was a very
12 strict time line given by agencies. They had
13 to be approved by PEMA and also had to be
14 approved by Allegheny County.

15 More often, month so, these were very
16 restrictive. You can see blanks and it's
17 operational. Everything else had to be
18 followed. So you could not take this entire
19 ordinance and just toss it. And one of the
20 stipulations with that, what they imposed very
21 strongly on all the municipalities was a lack
22 of compliance with this document could
23 jeopardize all flood insurance ratings for all
24 the residents.

25 And I remember the conversations very

1 succinctly because the time line was very
2 critical to adopt it. So there were a lot of
3 steps that had to occur to get the adoption
4 completed. So they took a lot of time.

5 We represented numerous municipalities
6 that we had to go through, advise them on the
7 various sections, go through the flood
8 insurance rate maps which were also reissued
9 in 2017. So this was a whole change in the
10 program, new rate maps, new flood insurance
11 studies and new flood insurance regulations.
12 And again, these were the minimum. If you
13 wanted to tack on more things, you could, but
14 these were the minimum. These were also tied
15 to the Uniform Construction Code which was
16 adopted in the Commonwealth about 15 or so
17 years ago, and they have been rolling that out
18 step by step to bring the two together.

19 Q. And what was the purpose of adopting these
20 ordinances?

21 A. Recurrent risk. Prior to this, you'd have a
22 home built, floodplain permit, the house would
23 get wiped out, they'd go to the Fed, they want
24 the house rebuilt, they would rebuild it
25 again, it gets wiped out again. It just keeps

1 reoccurring.

2 So with the new computational procedures
3 for modeling with the new ordinances, the
4 intent was to not have a recurrent loss just
5 continually to occur. And actually, if you
6 read the prelude to this model ordinance, it
7 even states that that was the intent.

8 Q. So it was specifically drafted to be strict in
9 floodplains areas?

10 A. Absolutely.

11 Q. Because the purpose was to be restrictive?

12 A. Not to increase the flooding, it's to reduce
13 the flooding. Or, at minimum, keep it at bay.
14 Because you get a cumulative effect as you
15 make changes within a floodplain. The
16 cumulative effect can have dire consequences.

17 It depends on the location. If you were
18 in a floodplain that's uninhabited, if you
19 encroach on this side or this side and it goes
20 up, it doesn't cause any damage. Normally, if
21 you make any changes, even prior to this
22 ordinance, you would evaluate what structures
23 or what things it may affect. But again, as
24 you start to perpetuate all these changes and
25 keep making additions, no one keeps track of

1 all those changes. So a tenth here, a quarter
2 here, four inches here, next thing you know
3 you have a one foot change in elevation from
4 the base flood.

5 Q. So the cumulative effect is something that
6 this ordinance was meant to prevent?

7 A. That's correct.

8 Q. In fact, you're familiar with our ordinance as
9 well, correct?

10 A. Yes.

11 Q. And our ordinance that we adopted could have
12 been more strict than what we have adopted
13 according to model ordinances, isn't it?

14 A. Yes. For example, in the accessory structure,
15 that was an option. It could have been
16 eliminated and all accessory structures could
17 have been prohibited. The language in the
18 ordinance is straight from the model, and I
19 don't like to call it a model cause again it's
20 really not a model, it was a guideline
21 ordinance. But in terms of guideline
22 ordinances, it was giving an option for
23 accessory structures, 200 square feet. Or you
24 could have taken it out and there would have
25 been no provision for an accessory structure.

1 Q. So it could have been restricted to where
2 there was no accessory structure built in a
3 floodplain at all.

4 A. Period.

5 Q. And when you permit accessory structure and
6 it's limited to a certain amount of square
7 footage like in our ordinance with the 200
8 square feet, could you tell us a little bit
9 about that?

10 A. I'm not certain as to the methodology, how
11 they came up with -- I think, frankly, it
12 could be 10 by 20 or so shed, customary shed,
13 which is relatively small. But there was
14 nothing ever defined in these guidelines to
15 say how they came up with that. Frankly, it
16 seemed like it was probably just a gift.

17 Q. And in an ordinance that did allow an
18 accessory structure, if it restricted that
19 structure to go beyond a certain size and it
20 didn't allow it to increase the base flood
21 elevation, can you tell me a little bit about
22 why that is?

23 A. Well, the ordinance has two provisions. The
24 first provision is it does not permit any
25 increase in base flood elevation. And there

1 were two options in the interim, you could
2 increase or not increase.

3 Again, one section says it's prohibited.
4 I can quote you the section if I can find it.
5 Then under the variance provision it also
6 states the same thing, there can be no
7 increase in the base flood elevation. It
8 doesn't give anything else.

9 Q. And again, that's meant to be restrictive.

10 A. Yes.

11 Q. And that's what the intent was when they
12 adopted this.

13 A. Yes.

14 Q. And you've reviewed our ordinance and does our
15 ordinance comply? Does Leet Township's
16 ordinance comply with FEMA and --

17 A. It complies with -- when I compared the two,
18 it complies with the FEMA guidelines that were
19 issued and the options that were available to
20 the adopters.

21 Q. And if a variance were granted that went
22 outside the guidelines of this ordinance,
23 what's the consequence of that?

24 MS. SWEENEY: I'm going to object
25 to the form. Which ordinance are we referring

1 to, Leet Township or the model?

2 MR. CHESNEY: Leet Township.

3 MR. RESTAURI: Thank you.

4 BY MR. CHESNEY:

5 Q. So the Leet Township ordinance, if we were to
6 grant variances that allowed a rise in base
7 flood elevation, what could be the
8 consequences?

9 A. Well, now when you apply for flood insurance
10 you have to get a base flood elevation survey
11 and you have to show the base flood elevation
12 in that area. If it's in an AE area, a
13 detailed study they have actually modeled, and
14 they use that information to determine whether
15 or not you're eligible for the flood
16 insurance.

17 So if the ordinance prohibited an
18 increase and you permit an increase, I don't
19 know if I could really say what the legal
20 ramifications are. Technically, it violates
21 the ordinance and violates the provisions
22 potentially of the policies surrounding it.

23 Q. Would that jeopardize the township's ability
24 to participate in a flood insurance program?

25 A. I don't know if it would jeopardize it. I

1 know their compliance is audited annually and
2 that's done by the floodplain administrator.
3 They want to see permits. So I would say if a
4 variance was granted, that variance would be
5 supplied to the FEMA administrator that
6 reviews that and collects the reports. Again,
7 I've never seen one out of compliance so I
8 would be speculating if I said what's going to
9 happen if you don't comply.

10 Q. So you have never seen where a variance was
11 granted that would make it outside of --

12 A. Not to base flood elevation.

13 Q. And the particular property we're talking
14 about, what zone is that in?

15 A. A.

16 Q. "A" zone?

17 A. Yes.

18 Q. This is T-3. This is just a copy of the
19 national flood hazard layer. It shows the
20 zones of the particular properties. And
21 again, you've never seen a variance granted
22 that rose the base flood elevation in an AE
23 zone?

24 A. No. Or I've never seen or participated in one
25 with my client base.

1 Q. Now you helped adopt a lot of ordinances such
2 as Leet Township's, correct?

3 A. Yes.

4 Q. Have you seen any that are less restrictive
5 than Leet Township's?

6 A. Yes.

7 Q. And have you seen some that are more
8 restrictive?

9 A. I've seen them equally restrictive, as
10 restrictive. I reviewed several ordinances of
11 clients we had before I attended this hearing.
12 It seemed that the accessory use was common.
13 The change in base flood elevation varied by
14 client. But I think I stress it depends on
15 your location and the body of water studied.

16 And if they are not -- if you have a
17 water course and there are not homes
18 constructed right next to it, then you could
19 be a little more tolerant to changes in water
20 surface elevation. When you have a dense area
21 and structures close to it, it brings along a
22 different set of problems.

23 Similarly, if one of your flood zones is
24 the Ohio River, you have a little more
25 flexibility because of the lock and dam

1 system. So again, it depends on each
2 municipality and also depends on the history
3 of flooding that they have seen. If you have
4 no history of flooding in a water shed, you
5 may be a little less restrictive on the
6 ordinance within the guidelines they gave to
7 you.

8 MR. RESTAURI: Mr. Chesney, may I
9 interrupt your questioning? I am confused
10 about something, and I think it would help us
11 all if we get it clarified.

12 Does or did the PEMA suggested
13 ordinance allow for that kind of additional
14 flexibility? I thought it was either. As I
15 looked at the exhibit, I thought it was either
16 no change, you could get a variance, but only
17 if there was no change in the BFE. Are you
18 now saying that it's possible to have said you
19 can get a variance if there is a change of X
20 if it's --

21 MR. MITROVICH: No, I am not
22 saying there is no possibility. I am saying
23 the metrics change. What I mean is you
24 wouldn't be seeking a variance, okay. What
25 the FEMA and FIS studies, what they all show

1 is -- so imagine this is a little stream
2 coming down. So you calculate the elevation
3 of the water. You can get that model to
4 squeeze in each side and create a one foot
5 increase in water surface elevation. That's
6 the maximum -- so that's the -- that comes up
7 with this floodway, this fringe. That's how
8 they do it. Now whether it slides left,
9 slides right, it all depends.

10 Now if it's an undeveloped area
11 and farm field on this side and this side and
12 there is no damage, people will accept that
13 one foot increase because it doesn't affect
14 anything, no structures.

15 MR. RESTAURI: But that's not a
16 variance. That's initially what's okay.

17 MR. MITROVICH: Yes, that is not a
18 variance. What I'm saying is the suggested
19 guidelines for the ordinance had other
20 provisions and some were more restrictive.
21 And again, we have clients that have different
22 levels of restriction, but it depends on the
23 risk. It depends what's at risk.

24 MR. RESTAURI: But once we are in
25 variance territory under the ordinance

1 adopted, is it correct that under the PEMA
2 proposed ordinance, let's call it, you cannot
3 grant a variance if there is any change, any
4 change in elevation of the BFE?

5 MR. MITROVICH: That's correct.

6 MR. RESTAURI: Doesn't matter if
7 it's Ohio River or wherever. Once you are in
8 variance territory, no change.

9 MR. MITROVICH: That's the first
10 bullet, that's correct.

11 MR. RESTAURI: I'm sorry,
12 Mr. Chesney. I was unclear.

13 MR. MITROVICH: I may have been
14 unclear. I apologize.

15 MR. RESTAURI: I appreciate the
16 clarification.

17 MR. MITROVICH: Talking too fast.

18 BY MR. CHESNEY:

19 Q. So let's talk about that a little more, about
20 the base flood elevation. When it says zero
21 rise in base flood elevation, that's just what
22 it is, zero.

23 A. Yes. So in these areas, AE area, so you have
24 AE and I believe Zone S, I'm not sure, or A.
25 One is approximated, kind of just drew an area

1 and said here is your floodway. With AE, they
2 did a detailed study. They actually
3 mathematically modeled it.

4 So they take the precipitation data
5 normal but come up with the elevations normal
6 but actually put the elevations on the
7 drawings so you know if you survey it you will
8 be talking apples normal but apples. So this
9 was an area of detailed study. So it's very
10 easy to come up to elevation normal but do the
11 modeling which was done as part of the report
12 and you can mathematically determine whether
13 or not it changes it.

14 Q. Now all this talk about variances, if there is
15 no increase in variances, then what other
16 reasons would you need a variance for?

17 A. Well, there is design criteria in here, like
18 you would see in other ordinances, too. For
19 example, it talks about the road can be no
20 lower than one foot, this grade should be
21 here, you should construct your pipe so you
22 have less damage, things like that.

23 So there are some things, as a variance
24 -- by the nature of variance, if you have a
25 hardship, you ask for a variance but you don't

1 create the hardship yourself. So if you come
2 in for a technical variance, for example, I
3 believe if you are in the floodway you have to
4 have so many square inches per square foot to
5 let it blow through. If you came up with a
6 different device or methodology, you would
7 seek a variance because you would be varying
8 from the zoning ordinance.

9 Variance section is very prescriptive.
10 The first bullet says you can't grant a
11 variance for base elevation rise. Then it
12 goes into the technical requirements. That
13 wasn't an option in the guideline ordinance.

14 Q. Required?

15 A. Yes.

16 Q. Talking about these variances normal but base
17 flood elevation, is there a way to build a
18 bigger structure than 200 square feet that
19 wouldn't affect the base flood elevation?

20 A. I think the solicitor gave one point. You can
21 put it on stilts. We have done that before.
22 A lot of our work, we work on streams normal
23 but have elevated structures. Sometimes you
24 can make enhancements to the channel to offset
25 what you are blocking in the floodway. There

1 is a lot that can be done. We have done that
2 type of work before. But again that's the
3 purpose of -- you have to do the work to
4 figure out what can be done. So, yes, it
5 could be accommodated.

6 Again, I am not minimizing it, but your
7 illustration with the stilts could satisfy
8 that. It would be out of the floodway.

9 MR. RESTAURI: Mr. Chesney, do you
10 have many more questions? Cause I'd like to
11 give the court reporter a break. If you have
12 a few more, we can wait.

13 MR. CHESNEY: Let's give her the
14 break.

15 MR. RESTAURI: We will be back in
16 ten minutes. I am looking at 20 minutes to
17 nine so let's be back at ten minutes to nine.

18 (RECESS TAKEN)

19 BY MR. CHESNEY:

20 Q. Mr. Mitrovich, can you look at the model
21 ordinance that I gave you. Turn to page 13.
22 There is a note on that page. Can you read
23 that for me?

24 A. Note: Grant of a municipal appeal will not
25 relieve a landowner or a municipality from the

1 obligation to comply with the minimum
2 requirements of the national flood insurance
3 program. Landowners normal but municipalities
4 that fail to meet the program's minimum
5 requirements notwithstanding any appellant
6 decision to the contrary are in violation of
7 the national flood insurance program normal
8 but remain subject to penalties.

9 Q. So that goes to your point that you said
10 before about part of the purpose of this act.
11 Can you explain that again?

12 A. The purpose of really what I would call a
13 guidance document, not a model, was to meet
14 the minimum requirements of the national flood
15 insurance program. So you can find ordinances
16 that are more robust than this but this is the
17 bear --

18 Q. Again, if you turn to page 21, Section E,
19 accessory structures.

20 A. Yeah, so under E, as you'll see, it has in the
21 italics text optional, meaning when you
22 develop this ordinance, this could have been
23 removed.

24 MR. SOMAN: But it wasn't in ours?

25 MR. MITROVICH: Apparently, your

1 town leaders believed that this would be
2 appropriate to keep in.

3 MS. SWEENEY: I am going to
4 object. He has no -- he has already testified
5 he has no involvement with the adoption of the
6 Leet Township ordinance so he cannot speculate
7 as to what was the intent at that point in
8 time.

9 MR. RESTAURI: If Mr. Mitrovich
10 will simply testify -- first of all, we'll
11 sustain the objection. But if Mr. Mitrovich
12 would just testify as to what happened rather
13 than what was intended.

14 MR. MITROVICH: This optional
15 provision was included in your ordinance when
16 it was adopted.

17 BY MR. CHESNEY:

18 Q. So is that more restrictive than the model or
19 is it less restrictive?

20 A. It's a less restrictive option. More
21 restrictive would say no accessory structures,
22 period.

23 Q. Have you seen municipalities that have no
24 accessory structures?

25 A. In the limited number I looked at prior to

1 here, they all included this provision.

2 Q. Normal but do they all have the same
3 requirements in the variance where there is no
4 increase in base flood elevation?

5 A. Under the variance section, yes.

6 Q. Normal but you have a copy of our ordinance,
7 correct?

8 A. Yes.

9 Q. Can you go to Section 8204?

10 A. I'm there.

11 Q. Can you just read paragraph one?

12 A. Paragraph one: The degree of flood protection
13 sought by the provisions of this part is
14 considered reasonable for regulatory purposes
15 normal but is based on accepted engineered
16 methods of study. Larger floods may occur on
17 rare occasions. Flood heights may be
18 increased by manmade or natural causes such as
19 ice jams normal but bridge openings restricted
20 by debris. This part does not imply that
21 areas outside of any identified floodplain
22 areas where land use is permitted in such
23 areas will be free from flooding or flood
24 damages.

25 Q. So again, is it unreasonable in your opinion

1 as an engineer to restrict any structure that
2 would raise the base flood elevation in a
3 floodplain?

4 A. It's not unreasonable, no.

5 Q. Normal but again, there are ways to build a
6 structure above that 200 square feet normal
7 but not raise the base flood elevation through
8 engineering?

9 A. That's correct.

10 Q. I will offer for cross.

11 MR. RESTAURI: Which counsel
12 wishes to cross first?

13 - - -

14 CROSS-EXAMINATION

15 - - -

16 BY MS. JEWART:

17 Q. Thank you for being here for night two. I
18 hope you will not be back for night three or
19 four.

20 So, once again, you are familiar not
21 only with the adoption with the rule out of
22 what you called sort of a minimum ordinance or
23 guidelines ordinance, you testified that not
24 only is the 200 square feet maximum normal
25 but, it is one of two mandatory options.

1 A. That's correct.

2 Q. And did I catch that, when you were going over
3 your CV, that your firm represents somewhere
4 between 50, 60 municipalities?

5 A. I don't have an accurate account but it's a
6 lot, 50 or 60.

7 Q. Are you familiar with a website called ECHO?

8 A. Yes.

9 Q. Can you just explain what it is a little bit?

10 A. ECHO is a clearinghouse where you can go and
11 find local ordinances. We use it a lot if we
12 are doing a land development project in some
13 place we don't represent just to get a quick
14 copy of whatever they have published.
15 Sometimes they are not current, but they are
16 available.

17 Q. So I am going to attempt to cut down what I
18 had, not to beat a dead horse. You are
19 familiar with ECHO, you visited the website
20 and it's used by municipalities to publish
21 their codes.

22 A. That's correct.

23 Q. And they are the official ordinances of the
24 municipality as of to date, as the website
25 states.

1 A. Yes.

2 Q. And in general, as an engineer or somebody
3 reviewing ordinances, you could use them to
4 determine what the regulations were for that
5 municipality.

6 A. Yes. Sometimes, depending where we are
7 working, we don't have them readily available
8 so we go to that website to obtain them if we
9 are doing a proposal or evaluating something.

10 Q. I brought about six of these, but I will keep
11 it as local as possible here. I am going to
12 show you -- again, anticipating the objection,
13 I did print these out and authenticate I did
14 print them out at the date stamped at the top.
15 And I will once again state that formal Rules
16 of Evidence do not apply. I believe we are at
17 number 10.

18 MR. RESTAURI: All right, we are
19 at 10.

20 BY MS. JEWART:

21 Q. Can you read the name of the municipality at
22 the top of that document, please?

23 A. Borough of Bell Acres, Pennsylvania.

24 Q. And in your experience with E code, would that
25 represent to you this is a copy of the

1 official ordinance of Bell Acres?

2 A. Yes.

3 Q. Are you familiar with where the Borough of
4 Bell Acres is located?

5 A. It's real close to here.

6 Q. I wouldn't want to testify, but I will say I
7 just drove from there in five minutes.

8 A. Uh-huh.

9 Q. Can I please point you to Section 61-27-E?

10 A. Yes.

11 Q. Can you read Section E and subsection two for
12 me.

13 A. Section E, accessory structures: Structures
14 accessory to a principal building need not be
15 elevated or flood proofed to remain dry but
16 shall comply, at a minimum, with the following
17 regulations. Subsection two, floor area shall
18 not exceed 200 square feet.

19 Q. And in your review of the, not model, but
20 guideline ordinance as well as the Leet
21 Township ordinance, does that provision exist?

22 A. Yes.

23 Q. We heard some testimony from the engineer for
24 the applicant that stated that this provision
25 was abnormal and too limited. Can you opine

1 on that?

2 A. I can say, with all of my clients that I
3 represent, this language is in the ordinance.

4 Q. And if it's restrictive, is that by design or
5 on accident?

6 A. It's by design.

7 MS. SWEENEY: Object.

8 BY MS. JEWART:

9 Q. In your experience, as somebody who has
10 reviewed a number of these ordinances, is
11 familiar with the FEMA rule out, the PEMA rule
12 out and I believe will be familiar with the
13 PEMA regulations as well, would this be
14 something as it was put in the ordinance that
15 was ruled out to other municipalities, was it
16 put there on purpose or do you believe that it
17 just happens to be in everybody's ordinance?

18 A. It was on purpose.

19 MR. RESTAURI: I'm going to note
20 your objection, Miss Sweeney. He's testified,
21 but we have the objection in the record.

22 MS. SWEENEY: Thank you.

23 BY MS. JEWART:

24 Q. Again, I brought about six of these, but I'm
25 going to put in two just to make the point. I

1 am going to show you one more, a printout from
2 E code with which you are familiar. Can you
3 read the name of the municipality at the top?

4 A. Borough of Leetsdale, PA.

5 Q. And in your experience with this website, I
6 will represent to you this is an official or
7 accurate record of the floodplain regulations
8 in Leetsdale.

9 A. Yes, it would.

10 Q. Apologies because my decision to skip a few of
11 these made my notes out of order. Okay, can I
12 please direct you to Section 1-61-36 of that
13 ordinance.

14 A. 1-61-36?

15 Q. Yes. Can you please read Section A-1?

16 A. "No variance shall be granted within any
17 identified floodplain area that would cause
18 any increase in BFE in a district -- in an
19 area/district. BFEs are determined using the
20 methodology in 1-61-18-C."

21 MS. SWEENEY: I'm going to
22 continue to object to these ordinances as
23 irrelevant to the matter before this board.

24 MS. JEWART: It's in direct
25 contradiction to testimony that was provided

1 by Miss Sweeney's engineer who stated these
2 provisions, this exact provision we are
3 looking at, is abnormal and unique, he had not
4 seen it before.

5 MR. RESTAURI: So you're offering
6 this evidence to go to credibility?

7 MS. JEWART: In part, yes, but
8 also in part it is relevant as to the history
9 of these ordinances, why they're put in place
10 and why in particular they're put in place in
11 areas such as this where common issues occur.

12 MR. RESTAURI: We will note the
13 objection.

14 MS. SWEENEY: I would just point
15 out that just because they repeat the same
16 internal flaw does not mean that they are
17 justified. So just because it appears that
18 another township's ordinance does not rectify
19 or mean that ergo it's accepted.

20 MS. JEWART: If Miss Sweeney
21 wishes to address the validity of the
22 ordinances, I'm happy to provide them, 191 in
23 Pennsylvania. I can enter them all if you
24 would like. I do not think that's necessary.
25 But if she wants to go to validity -- this is

1 a variance. We have the ordinance that we
2 have. Her engineer put on testimony that said
3 these were unique. This is not unique. This
4 is standard. This is uniform and in fact it
5 was required by the state.

6 MR. RESTAURI: I think on the
7 question of credibility, it's admissible. The
8 previous witness testified that, as your
9 recollection is of it, Miss Jewart, that this
10 was an unusual provision.

11 MS. JEWART: Yes.

12 MR. RESTAURI: This witness is now
13 saying these two are examples that show it is
14 not unusual. So it's a matter of it goes to
15 credibility.

16 With respect to whether it is or
17 isn't universally used, I think Mr. Mitrovich
18 is simply testifying that with respect to the
19 clients he is familiar with, it is standard.
20 You have offered two examples. You have not
21 asked Mr. Mitrovich and Mr. Mitrovich has not
22 testified that it is universal. He simply
23 said in his experience with his clients it is
24 standard and you've offered examples.

25 We will note the objection. If it

1 becomes an important issue, we will consider
2 the objection and note it in the decision and
3 opinion. But Mr. Mitrovich may answer.

4 MR. CHESNEY: By way of further
5 argument, I would say that it's direct
6 evidence to impeach the testimony of the other
7 witness.

8 MR. RESTAURI: Yes. You may
9 proceed, Miss Jewart.

10 MS. JEWART: Thank you.

11 BY MS. JEWART:

12 Q. Once again, you are familiar with roll out of
13 the original ordinance, you are familiar with
14 the state regulations that require that they
15 be pushed out.

16 A. Yes.

17 Q. Can you reiterate again, I believe you said
18 one of the purposes of them being pushed out
19 was to make sure municipalities reached
20 minimum appliance in correspondence with the
21 federal and state level?

22 A. That's correct.

23 Q. I'd like you to take a look at this.

24 MR. RESTAURI: This is Objector's
25 12?

1 MS. JEWART: Yes, it is. Thank
2 you. I am also anticipating the objection to
3 provide this in briefs but as we have an
4 individual here who is credible and able to
5 testify as to their contents, I would
6 appreciate being able to enter into the record
7 the Pennsylvania floodplain management
8 regulations contained in Title 32, Chapter
9 24-A of Pennsylvania statutes.

10 MR. RESTAURI: We will take
11 judicial notice of this.

12 MS. JEWART: Thank you. If it's
13 permitted by the board, I would like to draw
14 your attention to one single paragraph.

15 MR. RESTAURI: Fine. You may.

16 BY MS. JEWART:

17 Q. Can I draw your attention please to Section
18 32 PS, Section 679.203. It should be page 13.

19 A. 69.203?

20 Q. Yes, read the caps.

21 A. "Relationship of floodplain management
22 regulations to the Pennsylvania Municipal
23 Planning Code and other applicable enabling
24 legislation."

25 Q. And could you please read the text of that

1 section? Sorry to make you read out loud. I
2 hate doing it myself.

3 A. "The adoption and administration by
4 municipalities of floodplain management
5 regulations, or amendments thereto, which are
6 necessary to comply with the requirements of
7 the national flood insurance program shall be
8 governed by the provisions of the act of July
9 31st, 1968, PL 805, No. 247, known as the
10 Pennsylvania Municipalities Planning Code or
11 other applicable enabling legislation;
12 provided that a municipality may adopt
13 floodplain management regulations for the
14 floodplain without adopting ordinances, codes
15 or regulations for any other area of the
16 municipality notwithstanding any provision of
17 the Municipalities Planning Code or other
18 applicable enabling legislation.

19 Q. Thank you. Do you do other work outside of
20 floodplain review; is that correct?

21 A. Yes.

22 Q. Are you familiar with the Pennsylvania
23 Municipalities Planning Code?

24 A. Very much so.

25 Q. Very briefly, cause I don't want to get off

1 topic, can you give me the gist of what type
2 of regulations it provides?

3 A. The Municipalities Planning Code basically
4 outlines what you can set up in terms of land
5 development regulations. It also sets forth
6 how you do bonding, land development. Its
7 intent was to establish a uniform prescribed
8 methodology so the application of these
9 ordinances and regulations can be somewhat
10 uniform within the Commonwealth and also gives
11 an aggrieved party, a developer, someone like
12 that, a mechanism to seek a remedy if they
13 feel that they have been harmed, including a
14 landowner.

15 Q. What type of remedy, for example?

16 A. If you challenge the -- for example, like with
17 oil and gas work, for example, there are very
18 specific regulations. You just can't say, "I
19 don't want natural gas pipelines in my
20 community." Things of that nature. So they
21 are very prescriptive.

22 If you challenge the engineer review
23 fees by municipality, there is a mechanism by
24 which you can challenge those, bond amounts
25 and other provisions. It's intended to

1 provide, in my opinion, a level playing field
2 for both regulatory bodies, the municipalities
3 as well as the landowners, for fairness.

4 Q. And you are generally familiar with variance
5 procedures, I'm assuming you have testified to
6 them before?

7 A. I was chairman of my zoning hearing board for
8 six years.

9 Q. That's wonderful. And does the Municipalities
10 Planning Code provide any regulations
11 pertaining to how variances are considered?

12 A. Yes, very prescriptive and also very
13 prescriptive on how it needs to be included in
14 codified ordinances in the municipality.

15 MS. SWEENEY: I object to the
16 extent she's asking for a legal conclusion
17 from a lay witness.

18 MR. RESTAURI: Noted. Proceed.

19 BY MS. JEWART:

20 Q. One final question. The provision you just
21 read, can you just read once again for me --
22 I'm trying to keep this -- shorten this for
23 you. I apologize. I'm sorry, I'm going to
24 make you do it one more time. Or I can
25 reiterate, if the board is okay with me

1 stating it, and avoid Mr. Mitrovich having to
2 read through it again.

3 MR. RESTAURI: What are we talking
4 about?

5 MS. JEWART: I was going to make
6 him read this section again but I can read
7 it --

8 MR. RESTAURI: Which section?

9 MS. SWEENEY: 32 PS.

10 MR. RESTAURI: The relationship
11 section?

12 MS. JEWART: Yes.

13 MS. SWEENEY: I am going to
14 object. It's in the record. Why are we
15 wasting time --

16 MR. RESTAURI: We get it. Thank
17 you. There is no need. Any other questions?

18 MS. JEWART: Yes. Thank you.

19 BY MS. JEWART:

20 Q. Very briefly, you mentioned the question, lack
21 of compliance jeopardizing other properties if
22 floodplain regulations are violated. Can you
23 expound on that one more time?

24 A. As I said, particularly in the zone AE, they
25 look at the topographic features, basically

1 what exists, and they do this modeling. Once
2 the model is complete, concluded, there is a
3 base flood elevation established and
4 effectively remains that way. Unless you do
5 what's called an a clomor, c-l-o-m-o-r,
6 conditional letter of map revision.

7 If you change the flood elevation, you
8 have to assume a -- you have to submit -- you
9 must prepare and submit a conditional letter
10 of map revision. That would account for that
11 incremental change, if there was a change
12 granted. And it takes about two years to
13 process that and then they will reissue the
14 maps.

15 If you follow where I am going with this
16 is any change that you make, if it's not
17 tracked and not monitored and not remodeled,
18 the cumulative effect of all these changes can
19 have a dire effect on the flood elevation or
20 substantial change in the elevation. So the
21 regulations were intended to slow down or stop
22 this propagation of errors, so to speak.

23 You can imagine if you publish a map and
24 you do all that work and then in one year
25 changes are made to the floodway or made to

1 the area, the flood insurance rate map
2 effectively becomes ineffective. It's not
3 valid.

4 Q. You reviewed the application at issue tonight;
5 is that correct?

6 A. Yes.

7 Q. And you're familiar that the structures that
8 was built based on the application presented,
9 its location?

10 A. Yes.

11 Q. Size?

12 A. Yes.

13 Q. Relationship to the other properties?

14 A. Yes.

15 Q. In your opinion, as an engineer who is
16 familiar with these ordinances, familiar with
17 the floodplain, is there anything on that
18 property that would require that a structure
19 like that be built?

20 A. It's an accessory use. So accessory use is
21 subordinate to the principal use. A shed or a
22 garage is something that could be desired but
23 is not required or it would be a principal use
24 or structure. As it's defined. So necessary?
25 I don't know if I could say it was necessary

1 for the site.

2 Q. I have nothing further. Thank you very much.

3 MR. RESTAURI: Miss Sweeney?

4 MS. SWEENEY: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 - - -

8 BY MS. SWEENEY:

9 Q. Good evening.

10 A. Hello.

11 Q. So I am going to touch on a couple different
12 things. You talked about a clomor and
13 submitting that for a March revision to FEMA
14 relative to a lack of compliance jeopardizing
15 the communication, correct? But isn't it
16 correct that a clomor map revision is required
17 if there is an increase in greater than one
18 foot?

19 A. No.

20 Q. You think clomor is required for less than an
21 increase of one foot?

22 A. (Indicates yes.)

23 Q. All right. So with regards to your testimony
24 -- let me rephrase that. Have you prepared a
25 report in this regard?

1 A. This matter?

2 Q. Yes.

3 A. No.

4 Q. Did you prepare the review letter?

5 A. No.

6 Q. Did you prepare -- did you see any errors in
7 Mr. Ferry's report?

8 A. No. I would have approached it with a
9 different methodology, though.

10 Q. But you don't dispute the validity of his
11 methodology?

12 A. I've done clomors and I've modeled some pretty
13 extensive river basins and I haven't
14 approached it in the manner he did.

15 Q. And there was nothing in that comment letter
16 -- let me show your comment letter.

17 MS. JEWART: Just a brief
18 objection. I believe he was not the engineer
19 that prepared this comment letter, it has not
20 been offered, and he's been offered generally
21 as an expert in engineering as opposed to the
22 author of this report.

23 MR. RESTAURI: So noted.

24 MR. MITROVICH: I've read this
25 letter.

- 1 BY MS. SWEENEY:
- 2 Q. You have read this report?
- 3 A. This letter.
- 4 Q. And that was prepared by Mr. Bret and/or
- 5 Mr. Wingrove of your office?
- 6 A. Yes.
- 7 Q. And in reading this letter you, read
- 8 Mr. Ferry's underlying report, correct?
- 9 A. I did read his report, that's correct.
- 10 Q. Did your firm, Lennon, Smith, Souleret,
- 11 prepare any other plan or independent plan,
- 12 doing an analysis of this watershed area?
- 13 A. No.
- 14 Q. So it just simply reviewed the report?
- 15 A. Yes. As it states, report provided concludes
- 16 the base flood elevation will increase by
- 17 point zero feet.
- 18 Q. And in this report it does state, though, the
- 19 report also concludes the impact is negligible
- 20 in increases shown. Do you see that?
- 21 A. Yes.
- 22 Q. So you agree that the impact here is
- 23 negligible?
- 24 A. No, it says though the report also concludes
- 25 that the impact is negligible in increases

1 shown. It's a statement of fact. The report
2 says it's negligible.

3 Q. Did your firm prepare a report that said this
4 structure will have a significant impact to
5 the floodplain?

6 A. No.

7 Q. There is nothing else that has been prepared
8 by Lennon-Smith with regards to the other
9 conclusions of Mr. Ferry's report?

10 A. No.

11 Q. Is it your opinion -- well, let me rephrase
12 that. There is no opinion here that an
13 increase of this 400 square feet increase in
14 size would have a negative impact to the flow
15 capacity of the floodplain. You don't have a
16 report to that effect?

17 A. 400 square feet?

18 Q. Yes. Increase in the size structure.

19 MS. JEWART: It's 460 square feet
20 increase.

21 MR. MITROVICH: We did not
22 prepare anything like that nor did the other
23 -- the applicant. We weren't given one.

24 BY MS. SWEENEY:

25 Q. But the applicant in fact proffered that it

1 would not have a negative impact on the flow
2 capacity of the floodplain.

3 A. The applicant didn't model 200 square feet,
4 then model 660 square feet and see what the
5 difference was. So to answer your question,
6 no one did that.

7 Q. My question to you is, there is no evidence
8 that this particular structure with the
9 increase in size would have a negative impact
10 to the flow capacity of the floodplain.

11 A. I can't even answer that question.

12 Q. Okay.

13 A. That wasn't modeled. His evaluation didn't do
14 that work. They calculated the elevation of
15 the water. That was all they did.

16 Q. I will show you, Mr. Mitrovich, a binder I had
17 previously. So turning to tab 22, to the last
18 page of Mr. Ferry's report. So at the last
19 sentence, it would be our opinion that the
20 accessory structure contributes essentially no
21 positive or negative impact to the floodplain
22 and its presence can be treated as a
23 negligible entity, do you see that?

24 A. Yes, I do.

25 Q. And your firm has produced nothing to indicate

1 that's incorrect.

2 A. No.

3 Q. Now you had testified with regards to the
4 minimum requirements and model ordinance that
5 had been circulated by the Pennsylvania
6 Department of Community and Economic
7 Development and in particular I want to draw
8 your attention to page 34 of that document.

9 Do you still have that up there?

10 A. Give me one minute, please. What was the
11 section again?

12 Q. Page 34, Section 802.

13 A. Okay, yes.

14 Q. Now the Section 802-A starts off by saying
15 optional. Do you see that?

16 A. Yes.

17 Q. So no variance shall be granted within any
18 identified floodplain area that would cause an
19 increase in BFE.

20 A. Yes.

21 Q. So you testified that this was mandatory but
22 in fact this was an optional provision; isn't
23 that correct?

24 A. See B or C below.

25 Q. That if chosen, choose B or C below, but the

1 beginning part of that sentence says optional,
2 does it not?

3 A. Yes.

4 Q. Now you also testified that you thought this
5 would have impacts on the flood insurance
6 program for this area; is that correct?

7 A. Yes.

8 Q. But what firsthand information --

9 A. I am not an insurance salesman so I can't give
10 you specific details on flood insurance.

11 Q. So you have no idea how the impacts of the
12 variance would be on the flood insurance
13 program.

14 MS. JEWART: Objection,
15 argumentative.

16 MR. MITROVICH: I'm not a
17 salesman.

18 MR. RESTAURI: Your objection is
19 noted. Your objection is sustained. But we
20 have his answer on the record.

21 BY MS. SWEENEY:

22 Q. So you had testified you had a conversation or
23 recalled a conversation that a variance could
24 upset the flood insurance rates. Do you
25 remember that testimony?

- 1 A. Yes.
- 2 Q. What was the basis for that?
- 3 A. Reading that provision in the model.
- 4 Q. But you don't have any direct knowledge if
- 5 that really would happen.
- 6 A. I have not participated in any variance that
- 7 was granted for that, no.
- 8 Q. So under the FEMA standards, if you don't
- 9 change the flood elevation within one feet,
- 10 you would be in compliance with the FEMA
- 11 standards; is that correct?
- 12 A. Could you rephrase that for me, please?
- 13 Q. Sure. So if the township were to reject
- 14 paragraph A, optional, and go with the other
- 15 provisions that provided that a variance -- no
- 16 variance shall be granted which would increase
- 17 the BFE of more than one foot, for instance,
- 18 in Section C, that's in compliance with the
- 19 FEMA ordinance, right?
- 20 A. Yes, cause you have A, B or C.
- 21 Q. Right.
- 22 A. Yes.
- 23 Q. So if there is a change in the BFE, however
- 24 miniscule, less than one foot, that would not
- 25 have an impact with regards to FEMA standards,

1 would it?

2 A. It's not -- you have to ask me the question
3 again. I don't know the point you are driving
4 to.

5 Q. If there is a change in BFE, that would not --
6 that's less than one foot, that does not
7 violate FEMA standards.

8 A. If you had adopted that provision in here.

9 Q. But FEMA has its own standards.

10 A. No. What FEMA does is FEMA models the
11 floodway, FEMA encroaches on the floodway and
12 FEMA came up with one foot that sets the
13 boundary, whether you move right, if your
14 ordinance provides for that one foot base
15 elevation change, then you can do that.

16 For example, along the Ohio River, there
17 is encroachments made on the Ohio River at
18 times. If it doesn't change the base level
19 elevation within one foot and you demonstrate
20 that by mathematically modeling it and you
21 submit to have that map revised, then you are
22 in compliance.

23 Q. Is this warranting, in your opinion, a map
24 revision? Is that what you are saying?

25 A. No. I'm saying any change would warrant the

1 map revision. I'm not saying that here. So
2 under A, B and C, A was optional, or you had B
3 and C.

4 Q. So you have no testimony or evidence about how
5 the request for variance here could impact the
6 flood insurance rates?

7 A. No.

8 Q. Were you involved -- let me rephrase that.

9 When did your company start doing work
10 for Leet Township?

11 A. I believe we were engaged this year, so 2022.

12 Q. Earlier in the year, like in February or so?

13 A. January. Reappointment time.

14 Q. I am going to direct your attention to tab
15 nine of my binder, just briefly, and I'll
16 represent to you that's a document that had
17 come from the prior township engineer. In
18 particular, he opines that an accessory use of
19 a storage shed is not permitted in the A
20 residential district. Have you ever seen this
21 document before?

22 MS. JEWART: Objection as to
23 relevance. She's asking for an opinion on a
24 report made by an entirely different engineer
25 and I believe going to their credibility and

1 they are not on the stand.

2 MR. RESTAURI: Let me ask the
3 question. What is it you're trying to
4 establish here, Miss Sweeney?

5 MS. SWEENEY: I just want to see
6 how much of the prior engineer's information
7 he had reviewed at this point.

8 MR. RESTAURI: For what purpose?

9 MS. SWEENEY: I'm trying to see
10 what the township's position is with regards
11 to accessory use. Unless there is a
12 stipulation that that was an erroneous
13 conclusion by Mr. Slagel.

14 MR. CHESNEY: So we offered our
15 expert. I think our expert testified as to
16 what his opinion was on accessory uses within
17 this ordinance. At this point, if I wanted to
18 offer this letter into evidence, I would have
19 brought Mr. Slagel in and have him testify.

20 MR. RESTAURI: I am confused,
21 counsel. Is there some dispute that this is
22 an accessory use?

23 MS. SWEENEY: There was a prior
24 engineer who opined --

25 MR. RESTAURI: I understand that.

1 Right now, as we sit here, doesn't everybody
2 agree this is an accessory use?

3 MR. CHESNEY: I think where the
4 confusion comes from is prior to this we had
5 three different surveys that led to three
6 different conclusions that caused a lot of
7 confusion here as to whether there was a
8 setback issue, whether there wasn't a setback
9 issue. So the opinion in this letter was
10 based --

11 MR. RESTAURI: What does that have
12 to do with the floodplain?

13 MS. JEWART: If I could just
14 attempt to mediate between my sister and
15 brother here, I believe that there are
16 potential issues on both sides about certain
17 reports that were prepared by different
18 experts. I believe that there was a conscious
19 decision by myself, as well as Mr. Chesney,
20 not to bring in issues with credibility up to
21 -- as to one witness and that this issue
22 involves a separate, not present witness who
23 is no longer employed by the township and is
24 irrelevant to this.

25 MR. RESTAURI: I have this

1 problem.

2 MS. JEWART: I think it's
3 irrelevant.

4 MR. RESTAURI: Didn't Mr. Slagel
5 say that if the calculations could be
6 confirmed that Mr. Wernicki's engineer
7 proffered, that it was negligible, don't we
8 all agree it's an accessory use and that it
9 could be characterized as negligible?

10 MS. JEWART: Yes.

11 MR. RESTAURI: The question is, is
12 negligible okay to grant variance on? Or does
13 it have to be no change to grant a variance
14 on? The issue of whether or not in the
15 non-variance territory it's this, that or the
16 other thing, right, that's not -- everybody
17 agrees it says 200 square feet and if it's
18 more than 200 square feet you have to get a
19 variance. Everybody agrees, as far as I know,
20 that's the case. Now what we are left with is
21 the variance section says no increase in the
22 BFE.

23 MS. JEWART: Yes.

24 MR. RESTAURI: The engineers --
25 one engineer says it's negligible. This

1 engineer says could be negligible but that's
2 not what the ordinance says, right? So aren't
3 we left with deciding, is negligible -- does
4 negligible save the variance provision that
5 says no increase in the BFE? What am I
6 missing here?

7 MS. JEWART: You are correct. I
8 believe that's the only issue remaining and
9 the only issue we have been pointing at for --
10 I believe that is also a question of law that
11 can be considered on briefs.

12 MR. RESTAURI: I think it may be
13 certainly questionable in part. But I think
14 there is also a question of fact here because
15 I don't know how much negligible is
16 negligible. I don't know what the cumulative
17 effect of negligible is. I don't know how
18 anybody describes this calculation as
19 negligible. It could be point this, that,
20 whatever.

21 Who says that's negligible? Where
22 is negligible defined? What in the world does
23 it mean under the ordinance? I don't know any
24 of this. And those are fact questions at
25 least initially.

1 MS. JEWART: I agree.

2 MR. RESTAURI: So if we can move
3 this along. Now if I am missing anything, I
4 am not trying to foreclose anything. I am not
5 understanding.

6 MS. SWEENEY: I am trying to lead
7 into some issues relating to the ordinance and
8 some essentials that were cited here and in
9 particular I'm looking at -- and I'm glad
10 everyone agrees it's accessory use and it is
11 permitted because that has never been
12 stipulated to.

13 MR. CHESNEY: Again, I would
14 object. She is pointing to --

15 MS. SWEENEY: I am going to point
16 to an ordinance section that was attached.

17 MR. CHESNEY: To a letter based on
18 a previous -- it's irrelevant.

19 MS. SWEENEY: Actually, Miss
20 Jewart raised the question of whether or not
21 the structure could have been placed in the
22 front yard of this particular property and I
23 am going to --

24 MR. RESTAURI: Would it have made
25 it from a floodplain perspective?

1 MS. JEWART: I would just state
2 that the zoning ordinance is in the record.
3 Her pointing to sections that were copied by a
4 different engineer at a different time are
5 irrelevant and I believe at this point for the
6 purpose of continuing to delay this or
7 attempting to discredit an engineer who did
8 not write it -- I have explored this for
9 several months.

10 I ask we make -- this is a section
11 of law that can be handled on briefs. We have
12 clients spending money and time and effort and
13 money on this and it's distressing to them and
14 to us to continue to do this. I would ask
15 that we resolve questions of law as to briefs
16 and that we close the hearing at this point.

17 MS. SWEENEY: With all due
18 respect, we have given up a lot of leeway in
19 providing information not relevant to this. I
20 think I am entitled to cross this particular
21 witness with regards to this property and what
22 my client was able to do, and it goes directly
23 to the issue of a hardship here and I am not
24 being given an opportunity to ask the
25 questions --

1 MR. RESTAURI: You are saying that
2 as an engineer he has expertise in hardship.

3 MS. SWEENEY: No, I am going to
4 elicit his review of certain plans and
5 factually show where we could not put this
6 structure. We're going to a situation where
7 we have nonconforming structure here. We have
8 a consolidation plan here that shows a very
9 narrow area where things could be built. We
10 have a nonconforming structure that cannot be
11 expanded upon by the very terms of this zoning
12 ordinance. So we have no other opportunity
13 for this particular property owner to improve
14 upon his property because he has been
15 hamstrung by the very terms of the language of
16 both the zoning ordinance and the floodplain
17 ordinance.

18 MR. RESTAURI: Let us assume we
19 accept that for the sake of argument, right,
20 that this is the only place on the lot he
21 could have put a shed, a garage. Why does it
22 have to be more than 200 square feet?

23 MS. SWEENEY: The standard size of
24 a garage door, you can't be larger than 200
25 square feet.

1 MR. RESTAURI: Why is that
2 anybody's problem but his? Why is it that we
3 say he gets to do this over 200 square feet
4 because he has to buy a standard size garage
5 door? Isn't that the tail wagging the dog?

6 MS. SWEENEY: He is limited what
7 he can do with this particular property so he
8 is asking for a size variance with regards to
9 this property.

10 MR. RESTAURI: So your argument is
11 for relevance purposes, etc., to put an
12 accessory structure up, he has a right to do
13 it and because of the nature of the lot, he
14 has to put it here and it has to be more than
15 200 square feet. And if that causes a
16 violation of the ordinance, we have to grant a
17 variance cause he decided that's what he wants
18 to do.

19 MS. SWEENEY: I am not saying you
20 have to grant it. We are asking for the
21 approval of a variance in the circumstances
22 where we have an unusual piece of property in
23 a floodplain, he is restricted from doing any
24 type of expansion of his existing modest
25 structure so he cannot build upon or expand

1 his existing residence.

2 MR. RESTAURI: But you are asking
3 him to review someone else's work.

4 MS. SWEENEY: I am not asking him
5 to review someone else's work. It was just a
6 lead up to get to those particular sections --

7 MR. RESTAURI: I don't think we
8 need the lead up. Just ask him the questions,
9 please.

10 MS. SWEENEY: Very good.

11 BY MS. SWEENEY:

12 Q. Were you familiar with the consolidation plan
13 that was submitted earlier to the township?

14 A. I've seen a couple exhibits but no more than
15 that.

16 Q. You weren't involved with that approval
17 process?

18 A. No.

19 Q. But you are aware that the consolidation plan
20 was approved by the township?

21 A. Yes.

22 Q. Even with the consolidation of these lots, any
23 expansion of Mr. Wernicki's current
24 nonconforming principal structure would not be
25 permitted under the township's ordinances,

1 would it?

2 A. That's correct.

3 Q. Okay. Were you aware that Mr. Wernicki had
4 attempted to file a building permit
5 application with regards to the township?

6 A. Yes.

7 Q. Were you aware that the township did not take
8 it?

9 A. I was present --

10 Q. During that testimony?

11 A. His testimony.

12 Q. Were you aware that during the process of
13 filing for the consolidation plan the township
14 manager refused to give out the formal
15 application --

16 MS. JEWART: Objection.

17 MR. RESTAURI: I sustain the
18 objection on the basis that I don't know
19 that's been clearly established but, more
20 importantly, I'm not sure of the relevance of
21 it anymore. But go ahead.

22 BY MS. SWEENEY:

23 Q. So with regards to the phrase "hundred year
24 floodplain," there was some testimony about
25 that earlier this evening, that doesn't mean

1 that it's going to happen once every hundred
2 years, does it?

3 A. No, it means there is a one percent chance it
4 could happen every year.

5 Q. It could happen three times in one year or
6 never in a thousand years; isn't that right?

7 A. It's one percent --

8 Q. One percent probability.

9 A. It's 50 year storm has a two percent
10 probability of occurring.

11 Q. You don't have any evidence, as you sit here
12 today, that an increase of .04 feet attributed
13 to this structure would result in any harm to
14 public safety, do you?

15 A. No.

16 Q. And you don't have any evidence that this
17 accessory structure would cause any danger to
18 human life?

19 A. No.

20 Q. And you don't have any evidence that this
21 structure would in fact cause an increase in
22 flood levels during a hundred year flood.

23 A. I have a report prepared by an expert that
24 says it will increase -- actually, two
25 reports, one prior to that -- one-tenth of a

1 foot and later which was .048. I have read
2 those.

3 Q. But you yourself haven't conducted any
4 analysis.

5 A. We have not, that's correct.

6 Q. Just give me one second.

7 MR. RESTAURI: Sure.

8 MS. SWEENEY: I have nothing
9 further.

10 MR. RESTAURI: I'm going to go.
11 Unless you have something now that you want to
12 clarify?

13 MR. CHESNEY: I just had a couple
14 points I wanted to clarify.

15 MR. RESTAURI: Let's do that as we
16 go around the horn. I'm going to take it now.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. RESTAURI:

21 Q. Mr. Mitrovich, when you say you have no
22 evidence that the additional 400 square feet
23 as the garage currently is constructed will
24 not create a harm to anybody or to the health,
25 safety and welfare, do you have any evidence

1 that it will not?

2 A. No.

3 Q. It could but it could not.

4 A. That's correct.

5 Q. The risk is, if you are using the hundred year
6 flood standard, a one percent risk in any
7 given year.

8 A. That's correct.

9 Q. So there is a one percent chance if you use
10 the hundred year standard. If you use 50 year
11 standard, there is two percent risk.

12 A. Two percent. 500 year storm is .5 percent.

13 Q. And how is that created?

14 A. It's statistics based on a hundred years or so
15 of measured precipitation that they
16 mathematically modeled this and said this
17 would occur. Now I think you all can tell we
18 have had numerous hundred year storms in the
19 last 15 years, a lot of precipitation data.
20 Sometimes it's very localized. You can have
21 it just in a watershed, you can have it very
22 wide, basin wide. So again, it's mathematics,
23 statistics and probability.

24 Q. How often do they recalculate those? And who
25 does calculate them?

1 A. PennDOT has publications, NOA has
2 publications, and we have localized data here
3 generated for Alcosan. It's highly variable
4 data and it's empirical data. So what they
5 collected over a number of years, someone out
6 measuring the rain gauge and putting it down.

7 But a lot of things come into play. Is
8 the ground frozen? Is it not frozen? There
9 are a lot of variables. So it's not an
10 exact science. You can have 5.5 inches
11 over 24 hours which would be a hundred year
12 storm but if it fell in a day but it fell over
13 three hours, now you have a much greater storm
14 event.

15 Q. So would it be fair to say that as it sits
16 now, the garage does create some additional
17 risk?

18 A. Absolutely.

19 Q. To the adjacent property?

20 A. It creates an obstruction that was not
21 present.

22 Q. And does that obstruction create some
23 additional flood risk?

24 A. Sure.

25 Q. And that additional flood risk could

1 materialize tomorrow or in a thousand years.

2 A. That's correct.

3 Q. There is no way to tell, is there?

4 A. No, there is not.

5 Q. So the people who are subjected to that risk
6 are rolling the dice, are they not?

7 A. You have an indicator here that the water
8 surface elevation went up. Whether it was a
9 quarter inch, an inch, it's going to make a
10 change, it's going to increase it. The actual
11 net effect when that storm hits, what the
12 mathematics is telling you is something is
13 going to change and it's changing in a
14 negative manner cause you are raising the
15 elevation.

16 These mathematics aren't such that you
17 should be trying to go to two-tenths of a
18 thousandth on the measurements. There is not
19 that type of precision in precipitation model
20 or anything else. It tells you generally
21 what's going on.

22 Q. So there is a margin of error.

23 A. Absolutely. It would be difficult to
24 speculate. I gave you some examples on how
25 precipitation can vary, how a lot of things

1 can enumerate, what the mathematics did
2 conclude. They did a pre-evaluation and post
3 and said without this shed this is the water
4 elevation. When you structure this shed, the
5 water surface elevation is up.

6 Q. In your experience, is the measurement that is
7 typically used or the one that is called for,
8 if one is called for in the ordinance, the
9 hundred year storm, the 500 year storm?

10 A. The hundred year storm is commonly what FEMA
11 refers to. Five hundred years is a much more
12 elevated design standard. So the hundred is
13 common and it's customarily used. Now if you
14 are doing work for a dam, you do what's called
15 a PMP, probable maximum precipitation. It's a
16 mathematical way you come up with 18 inches of
17 water coming down in an hour. So it depends
18 on your threat level.

19 Q. So if there were a hundred year storm tomorrow
20 here, can you tell us with any degree of
21 certainty what the impact would be on the
22 former Cheddar house, the house we have been
23 talking about?

24 A. That area is within the floodplains so that
25 area would be inundated, and I believe the

1 mathematics in that area was about half a foot
2 of depth.

3 Q. It would be inundated. Now how much of that
4 inundation would be the direct result of the
5 additional 400 square feet of this building
6 over the 200 square feet allowable? You can't
7 say?

8 A. I'd be speculating. I mean I believe they
9 estimated it would raise the water surface
10 elevation a half inch.

11 Q. And that was based on the hundred year.

12 A. Yeah, that's a half inch over 80 or 90 feet of
13 floodway width, too. Keep that in mind.

14 Q. So the half inch would go down.

15 A. No, it goes up, increase.

16 Q. So are you saying if the hundred year storm
17 happened tomorrow --

18 A. It would be a half inch deeper according to
19 the models.

20 Q. At their house.

21 A. When they evaluated this section of the
22 stream, they basically took a knife and did a
23 section to show the contours. There is not
24 one every 10 feet or every 15 feet. So you
25 would be speculating. No mathematics were

1 done at the Cheddar house. So a half inch
2 here, you know, might propagate and carry its
3 way that way or ten feet upstream or
4 downstream. It's difficult to say without
5 really trying to -- the level of precision
6 that you are looking for doesn't exist.

7 Q. So when the ordinance says there shall be no
8 increase, you do not have and you have not
9 seen, have you, anything that says in a
10 hundred year storm, if it happened tomorrow,
11 there would be no negative impact on the
12 Cheddar house?

13 A. No.

14 Q. It could happen.

15 A. Sure.

16 Q. It might not happen.

17 A. That's correct.

18 Q. All right. In your experience working with
19 all these municipalities and having worked
20 with all these floodplain ordinances, have you
21 ever seen a municipality that said no increase
22 in the BFE means negligible increase?

23 A. No.

24 Q. If we said that, in your experience could that
25 create a cumulative effect that you talked

1 about that the next property owner would say,
2 well, mine is only 400 square feet, I get one,
3 next guy says mine is 800 square feet, it's
4 negligible, too, I get one, and pretty soon
5 one plus one plus one, the ones themselves
6 don't mean much but you add them all up and
7 pretty soon -- you are dealing with a billion
8 dollars, now we are talking real money, right?

9 A. That's correct.

10 Q. At some point the add on makes a difference,
11 is that what you are saying?

12 A. Yes.

13 Q. Is there any way to limit that once you opened
14 the door?

15 A. No.

16 Q. In your experience. I am not asking you as a
17 lawyer, I am asking you if you have ever seen
18 it limited.

19 A. Once you open the door?

20 Q. Yes, once a municipality would say -- you have
21 not seen a municipality say it.

22 A. I have not. But negligible doesn't have a
23 numerical value. Half inch is negligible?
24 Three inches is negligible? Five inch?
25 What's negligible?

1 Q. Negligible could mean it has no impact. And
2 you've testified that nobody could say that,
3 that it has no impact.

4 A. This model cannot predict that with the level
5 it's done to. It's done to a common standard.
6 You can't go that level.

7 Q. So because you've never seen a municipality
8 that's varied the language, that said no BFE
9 increase means a negligible one is okay, you
10 don't know what FEMA would or wouldn't do if
11 we said no change in the BFE means negligible
12 is okay.

13 A. I guess you can take your own risks. I don't
14 know.

15 Q. You don't know cause it never happened.

16 A. I've never participated. I've only
17 participated in changes that have been made to
18 water surface elevations that were submitted
19 and approved and modeled with a great extent
20 of detail because they were high risk
21 evaluations that were done that involved
22 insurance companies.

23 Q. It was your testimony, wasn't it -- but if
24 not, please correct me -- that PEMA didn't say
25 in 2013 here is a suggested ordinance, if you

1 want to adopt it, fine, if not, that's okay,
2 we'll still allow you in the flood insurance
3 program. On the contrary, they said if you
4 want to be in the flood insurance program,
5 thou shalt adopt this ordinance.

6 A. These minimum standards must be adopted. And
7 I say that because I participated in many long
8 municipal meetings with solicitors, with board
9 members, trying to understand why they had to
10 do this, what the consequences of them not
11 doing this were. Cause this was new and this
12 did affect a lot of properties.

13 It made some property invaluable cause
14 you could not build on it. And the
15 restrictions were such and so costly that some
16 property did not get developed. I've seen a
17 lot of property not developed in communities
18 because of this.

19 Q. Has anything happened since 2013 that tells
20 you that PEMA or FEMA has decided that while
21 it was mandatory that this be adopted as a
22 minimum, this meaning the guidelines, that
23 they have since changed their minds?

24 A. No. I've seen, from clients who have asked
25 for assistance to assist them with completing

1 a compliance form that documents all the
2 actions that have been taken and the regulated
3 flood plains and floodways.

4 Q. So is it fair to say in your experience, since
5 2013, it is still the case that unless those
6 minimum guidelines are contained in the
7 ordinance and are followed, PEMA or FEMA, both
8 of them, are saying flood insurance
9 eligibility is at risk?

10 A. Yes.

11 MS. SWEENEY: I am going to object
12 to that cause I think he testified he didn't
13 know one way or the other with regards to the
14 flood insurance.

15 MR. RESTAURI: I understand.

16 Objection is noted.

17 BY MR. RESTAURI:

18 Q. Do you know how much more it costs to put a
19 600 square feet garage on stilts versus not on
20 stilts?

21 A. It would be very, very much more expensive.

22 Q. So how much in order of magnitude to do?

23 A. Three or four times.

24 Q. And how about other alternatives to having
25 even a negligible impact on BFE? What about

1 the costs of those optional methods, whatever
2 they might be, if you could identify them and
3 give us cost estimates?

4 A. It's hard to speculate. For example, you can
5 build a two story shed with a footprint of 200
6 square feet, now you have 400 square feet.
7 That's one.

8 Q. And how much more does two story versus one
9 story?

10 A. It's like building a two story house. It's
11 like building a ranch home, they're more
12 expensive cause you spread them out. Again,
13 if you build a two story home, for example,
14 it's more economical than a one story home.
15 That's why they build them. But again, that's
16 one way.

17 Much more expensive, much more costly it
18 would have been to apply for permits and make
19 modifications to the channel to increase the
20 BFE area there, but now you are getting into
21 very extensive permitting with DEP which would
22 probably not even be approved to construct a
23 shed. So that's kind of a farfetched idea.

24 Q. Let's return for a minute to the one story,
25 two story. Could the one story, two story

1 analysis have been applied to this garage --
2 Mr. Kovacs said there is a 15 foot height
3 restriction on accessory building. So he
4 could have gone up 15 and it would have been
5 smaller than 600 square feet but it could have
6 been more than 200 square feet and still stay
7 within the parameters of the ordinance.

8 MR. SOMAN: You couldn't stand up
9 upstairs.

10 MR. RESTAURI: That's okay.

11 MR. MITROVICH: You are talking on
12 volume. You could increase the volume by
13 increasing the height.

14 BY MR. RESTAURI:

15 Q. And you could get a variance on height.

16 A. You could.

17 Q. And it would have been cheaper, if I'm
18 understanding your testimony correctly.

19 A. I don't want to say it would have been
20 cheaper. It may have been a push. I'm not
21 that familiar with the construction he had
22 there, the foundation and everything like
23 that. Maybe it would have been the same, it
24 would have been a challenge to go up some
25 steps or do something like that.

1 Q. Thank you.

2 MR. RESTAURI: Mr. Soster?

3 MR. SOSTER: All right.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. SOSTER:

8 Q. If you could answer me as succinctly as
9 possible yes or no, and I understand your
10 situation where you have been brought in as a
11 new consultant, but I have a lot of confusion
12 on these issues.

13 You have not reviewed the permit
14 variance application of Mr. Wernicki?

15 A. No, I have not.

16 Q. Do you expect to review it?

17 A. I was not asked. Again, I only reviewed what
18 I understood to be the matter at hand, the
19 ordinance compliance.

20 MR. SOSTER: As a matter of a
21 statement to all the attorneys, Vince, and the
22 work that's presented later, I would like to
23 know what's being requested on this variance.
24 I would like it spelled out, what each
25 variance is being requested. Just a matter of

1 information.

2 BY MR. SOSTER:

3 Q. Ned, relative to your work in other
4 communities, if someone applies for a variance
5 but does not disclose to you that there are
6 other variances needed, not contained in the
7 application, do you look for other areas of
8 violation where they should have variances or
9 do you just read the application as submitted?
10 The point being, and I'm not sure this is
11 relevant to our matter, but I did read the
12 last engineer's letter that says an accessory
13 structure is not allowed to be constructed
14 here.

15 Now as far as I know, that's not a
16 matter of what's before us but just for my
17 curiosity, when an application comes in with a
18 defined variance request, do you look outside
19 that to say there are other issues that have
20 to be --

21 A. Yes. So we do municipal reviews. Sometimes
22 when you notice things because you do them
23 repeatedly, you would add under a general
24 comment section or reference the ordinance.
25 Yes, we would go outside of that.

1 Q. In this case, though, can you state, based on
2 what you have done to date, that the floor
3 area of the building should not have exceeded
4 200 square feet?

5 A. It should not have.

6 Q. Do you know if the structure complied with the
7 percent of backyard use requirements of any
8 variance?

9 A. No, I didn't look at that.

10 Q. Do you know if the structure could have been
11 constructed elsewhere on the property without
12 violating any of the township's ordinances or
13 variances?

14 A. I did look at this exhibit that was presented
15 that showed the nonconformity, showed what was
16 available. When you say this structure, I
17 don't think you are going to put 660 square
18 feet on it, no.

19 Q. Can you say that there are violations of the
20 township's variances in this application?

21 A. I didn't see the application.

22 Q. Okay, that's been answered. You may have
23 addressed these, but I want to make it really
24 succinct.

25 Base flood elevations can change. What

1 I've heard you say is FEMA establishes through
2 an AE model this is the base flood elevation.
3 It is that base flood elevation until someone
4 changes it and then you have to go through
5 this whole procedure to have it raised.
6 Therefore, the guy behind him, when he does
7 something a year later, he has a new base
8 flood elevation.

9 A. Yes. And historically, because of the cost
10 associated with that work to make the
11 amendments, people didn't do it and the error
12 propagated. Or changed, I should say.

13 Q. And that may be because someone at FEMA is
14 smart enough to know that you could have these
15 cumulative effects.

16 A. Yes, cumulative was a word that is referenced
17 in the guidelines that were issued.

18 Q. In your review and your services to other
19 municipalities, there are words in ordinances
20 that talk about a structure victimizing the
21 public or being a nuisance to the public.
22 Have any of your reviews had to be
23 nonquantitative in terms of review and more
24 qualitative, saying that that's a nuisance to
25 the public?

1 A. No. I would say our reviews as a company is
2 what the ordinance says, we pick it out and we
3 ask them to comply. So if it said put Mickey
4 Mouse on the side of the house, I would have
5 to ask somebody to put it on the side of the
6 house. I'm just a reviewer, so to speak.

7 Q. So to that point, the ordinance would have to
8 say you can't have Mickey Mouse on the side of
9 your garage. When it uses words like
10 structure victimizing the public or the
11 structure altering the character of the
12 neighborhood, have you ever been involved in
13 any type of reviews where structures --
14 someone claims that alters the character of
15 the neighborhood?

16 A. I mean I have heard that comes up commonly
17 with non-conformities, when they come to
18 expand a nonconformity, come in and say it's
19 not changing the essential character or
20 quality of the neighborhood. So I have heard
21 it -- it's a nontechnical term so we don't
22 ordinarily provide comment to it.

23 Q. Based on the requirement that there can be no
24 -- there cannot be any increase in base flood
25 elevation, can any structure be built in the

1 floodplain without violating that?

2 A. Yes.

3 Q. And to do that, if I heard you right, you
4 would have to alter something else to
5 compensate for what you are putting in there?

6 A. It depends on, obviously, the size of the
7 cross-sectional area, the slope of the stream,
8 the velocity of the water, so there are a
9 number of variables that would go into that.
10 So some will have up to one decimal place of
11 no change. It depends on the water course as
12 well and the number of points of interest that
13 you model.

14 Q. From your perspective as a reviewer for a
15 municipality, that would be up to the
16 applicant to show that I've created no --
17 haven't created any back water effect.

18 A. That's correct.

19 Q. It wouldn't be as a reviewer to say --

20 A. No.

21 Q. You would say, there is a back water effect.

22 A. If I may offer something to you, all our
23 review letters contain this comment: The
24 plans have been reviewed for conformance to
25 township ordinance standards only. This

1 review is based on surveys and drawings
2 prepared by others and assumes this
3 information is correct and filed and
4 submitted. Independent confirmation of the
5 adequacy or applicability of the surveys,
6 design data and procedures have not been
7 provided.

8 So we don't serve as a peer review
9 engineer, so to speak. We take what someone
10 submits, we go to the ordinance, we see if it
11 complies with the ordinance, we generate a
12 level, we reference the sections that do or do
13 not comply.

14 Q. And I think it's been presented here,
15 evidence, that other municipalities have these
16 ordinances which to a layman may look like,
17 man, I can't do anything, but they do have
18 where they are very restrictive on how they
19 build in the floodplain.

20 A. Yes. And we've seen and I've heard other
21 opposition to them in the past because in some
22 cases they do take lands and make them
23 non-buildable at this point or non-expandable.

24 Q. But as an expert, or from your work, that
25 happens in places where people may, through

1 legislation, may -- for example, I can't build
2 a nuclear power plant in my backyard. I can
3 argue, hey, that's restrictive, but there are
4 regulations that are passed to prevent people
5 from doing things.

6 A. Many that are environmental regulations that
7 are passed are particularly restrictive.

8 Q. I believe that's all I have.

9 MR. RESTAURI: It's ten o'clock.

10 Mr. Soman, do you have questions?

11 MR. SOMAN: Yes.

12 MR. RESTAURI: Mr. Kovacs?

13 MR. KOVACS: No.

14 MR. RESTAURI: Miss Homer?

15 MS. HOMER: No.

16 MR. RESTAURI: I assume we will
17 have another round or so.

18 MS. JEWART: I am finished with
19 Mr. Mitrovich.

20 MR. RESTAURI: Mr. Chesney?

21 MR. CHESNEY: A couple follow-up.

22 MR. RESTAURI: Miss Sweeney?

23 MS. SWEENEY: It depends what the
24 follow-ups are. My preference would be to
25 finish it up tonight.

1 MS. JEWART: Me as well.

2 MR. RESTAURI: Mr. Soman?

3 MR. SOMAN: Yes.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. SOMAN:

8 Q. You said before we're either allowed to have
9 A, B or C.

10 A. Uh-huh.

11 Q. Which one do we have?

12 A. A.

13 Q. And that says --

14 A. Zero. No change.

15 Q. And another thing, being a guy that lives
16 here, if that garage was built on Neely Street
17 with a curb cut to get into your garage, we
18 wouldn't be here. And for it to be a hardship
19 that he had to build it in that one spot, if
20 he knew where he was allowed to build it, why
21 didn't he get his variance and his building
22 permit? And I don't buy the "couldn't get
23 ahold of Betsy" story. I don't buy it at all.

24 So that's what I say. If he would have
25 built it on Neely Street, I wouldn't have

1 cared if it got flooded every 15 minutes. But
2 we wouldn't be here from the neighbors. Cause
3 that's where a garage belongs.

4 MR. RESTAURI: Mr. Kovacs, you had
5 no questions?

6 MR. KOVACS: No.

7 MS. JEWART: Nothing from me.

8 MR. RESTAURI: Mr. Chesney, do you
9 want to go next or Miss Sweeney?

10 MR. CHESNEY: I just have a couple
11 real quick.

12 MR. RESTAURI: Please.

13 - - -

14 REDIRECT EXAMINATION

15 - - -

16 BY MR. CHESNEY:

17 Q. So I'm just going to hit a couple highlights
18 here and then we will call it a day. Again,
19 the minimal standard was to allow the
20 accessory structure of 200 square feet,
21 correct?

22 A. It was optional standard. It could have been
23 deleted from the ordinance as well.

24 Q. So it's safe to assume, when you put in that
25 200 square feet structure, everyone is talking

1 about this negligible impact on the base flood
2 elevation. Is it safe to assume that would
3 have been factored in by allowing that
4 accessory structure?

5 A. I really don't know what the magic of the 200
6 square feet was.

7 Q. But if you were going to go above that, there
8 is no rise, it's not minimal, it's not
9 miniscule, just a little bit of a change, it's
10 no change.

11 A. It's no change.

12 Q. And to do otherwise would put us in violation
13 of the national flood program, insurance
14 program.

15 A. It puts you in violation of the provisions of
16 that model or guidelines that were submitted
17 that this community adopted.

18 Q. And again, if you allowed it to happen, you
19 would just continue to have a cumulative
20 effect which could be even more significant
21 and cause potential harm?

22 A. The cumulative effect is the very challenging
23 aspect. It's referenced in documents and
24 intended to stop these cumulative effects from
25 occurring.

1 Q. On page 34 we were going over that optional
2 variance on A, on the model ordinance.

3 A. Okay.

4 Q. So even though A was optional, if you chose
5 not to have A, then you would have had B and
6 what does B say?

7 A. No variance shall be granted for any
8 construction, development, use or activity
9 within any floodway/district that would cause
10 any increase in the base flood elevation.

11 Q. Again, we chose to have A which would be no
12 increase in the base flood elevation.

13 A. Yes.

14 Q. And when you do have a cumulative effect, that
15 could increase the actual floodplain itself,
16 correct?

17 A. Yes.

18 Q. And that could potentially bring homes that
19 are not currently in the floodplain, it could
20 bring them within the floodplain, forcing
21 those people to have to get flood insurance or
22 face the risk of not having their damage
23 covered by insurance.

24 A. Yes, yes.

25 Q. Nothing further.

1 MR. RESTAURI: Miss Sweeney?

2 - - -

3 RECROSS-EXAMINATION

4 - - -

5 BY MS. SWEENEY:

6 Q. Just briefly, you commented your concern was
7 the cumulative effect; is that right?

8 A. That's correct.

9 Q. And that means other people coming in and
10 seeking variances; isn't that right?

11 A. Or any change, yes. I'm not talking about the
12 variances.

13 Q. The Zoning Hearing Board has the ability to
14 review each application. Just because one
15 person is granted a variance doesn't mean
16 another applicant is automatically guaranteed
17 a variance, right?

18 A. That's correct.

19 Q. So there is control to stop this so-called
20 cumulative effect you are concerned about.

21 A. Who would keep the record of it? This half
22 inch, how does that get documented to the base
23 flood elevation?

24 Q. Through the approval process.

25 A. No, it doesn't. When someone goes and gets

1 the next FEMA map, it will have the same
2 elevation. When they do the math, they will
3 use the same elevation. So this half inch,
4 three-quarter or three inch, whatever the math
5 shows, is going to be out there. The next
6 applicant coming in isn't going to add that.
7 They may not remember, they may not have it.
8 It's not going to be published anywhere.

9 Q. Isn't the granting of a variance kept as a
10 record with the township?

11 MS. JEWART: Objection.

12 BY MS. SWEENEY:

13 Q. Based upon your experience on the Zoning
14 Hearing Board.

15 A. Yes, they are kept as a record.

16 Q. Thank you.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. RESTAURI:

21 Q. Mr. Mitrovich, one question. In your
22 experience both as an engineer and as chairman
23 of a borough zoning hearing board, if the
24 Zoning Hearing Board says no increase in BFE
25 means a negligible increase is okay, is it

1 your understanding that we can in the next
2 instance say to a property owner, we changed
3 our minds, we are now interpreting the
4 ordinance differently?

5 A. You couldn't. There is no standard.

6 MR. RESTAURI: Mr. Kovacs, you had
7 a question.

8 MR. KOVACS: Yeah. We're dealing
9 with this 200 square feet anybody is allowed
10 to do without coming to see us or do anything.

11 MR. RESTAURI: Right.

12 MR. KOVACS: How many 200 square
13 feet are they allowed to build on their
14 property? That's my question.

15 MR. RESTAURI: Do you have any
16 information, within the scope of your
17 expertise, that would answer the question,
18 sir?

19 MR. MITROVICH: No.

20 MR. RESTAURI: The question,
21 Mr. Kovacs, is noted. This witness can't
22 answer, but it's out there and we urge counsel
23 to consider it as we go forward.

24 Now we are done with
25 Mr. Mitrovich. Sir, thank you very much. The

1 board appreciates your involvement. Before we
2 leave tonight --

3 MR. FADDOUL: Michael Faddoul, 144
4 Neely Street. In theory, if you, sir, owned a
5 town that you managed, you could do whatever
6 you want with it, you have your friends there,
7 own the town in a floodplain and you could
8 decide to be a B, what would your BFE limit
9 be?

10 MR. MITROVICH: Do you mean in
11 terms of a storm that reoccurs or as far as
12 change?

13 MR. FADDOUL: If you could make a
14 law that says you can build a structure and it
15 can't hit a certain BFE level, in your
16 expertise and knowledge, what would your BFE
17 be?

18 MR. MITROVICH: I will tell you
19 this as an engineer, but I will tell you
20 someone that lived in a house that got flooded
21 three times, it would not increase.

22 MR. FADDOUL: So yours would be
23 zero?

24 MR. MITROVICH: Or less.

25 MR. FADDOUL: Negative?

1 MR. MITROVICH: Less, like storm
2 water management. When you build something,
3 that what comes off your site, less comes off
4 your site and that propagates the problem.

5 MR. FADDOUL: So zero or negative.

6 MR. MITROVICH: Zero or negative,
7 yes.

8 MR. FADDOUL: Thank you.

9 MR. RESTAURI: Thank you. Ladies
10 and gentlemen, we are going to need another
11 night of evidentiary hearings. And before we
12 go, we'd like to set that date, please, so we
13 don't have to re-advertise.

14 MS. SWEENEY: I have no objection
15 to any extension of time to accommodate the
16 timing that we have just discussed, 45 days to
17 prepare a transcript and the parties' briefs
18 will be due 30 days after that and we would
19 waive any time limitations that are in the
20 MPC.

21 (DISCUSSION HELD OFF THE RECORD)

22 MS. SWEENEY: So it would be
23 another 45 days for you to write your
24 decision.

25 MR. RESTAURI: We have to

1 deliberate and decide. So I need a meeting
2 after briefs are in, I need minimum 15 days to
3 go over the briefs, then we have the meeting.
4 The way I do this is, the way we do it, I
5 don't discuss this with the board in private.
6 I discuss it with each member of the board
7 privately, then we come together and we
8 deliberate in public, the board makes its
9 decision in public. We don't do it in
10 executive session.

11 So I'm guessing that we're going
12 to be January before we can deliberate and
13 decide this. So how are your schedules,
14 ladies and gentlemen, in January?

15 MS. JEWART: At this time, I'm
16 fairly clear.

17 MS. SWEENEY: I would say pick a
18 date and we can --

19 MR. RESTAURI: Betsy, what days in
20 January are bad for you for the availability
21 of the room?

22 MS. RENGERS: It would be the
23 second Monday, the second Tuesday and the
24 fourth Thursday, fourth Monday.

25 MR. RESTAURI: Suppose we say

1 Wednesday, January the 11th?

2 MS. JEWART: As of today, that is
3 perfectly fine.

4 MR. RESTAURI: That works perfect.

5 MS. SWEENEY: That's fine.

6 MR. CHESNEY: Seven o'clock?

7 MR. RESTAURI: Yes. Then as soon
8 as Leaette gets the transcripts done, I'll
9 coordinate with all of you for a briefing
10 schedule. Assume 30 days from the time you
11 get the transcripts, PDFs.

12 (DISCUSSION HELD OFF THE RECORD)

13 MR. RESTAURI: We are on for the
14 11th. Miss Sweeney has moved for the
15 admission of all the exhibits. As I said
16 earlier, all the documents that were offered
17 or that were testified about are admitted
18 subject to weight, subject to objections.

19 MS. JEWART: It would be, not the
20 entire binder, but the pages that were
21 referenced by Miss Sweeney.

22 MR. RESTAURI: Yes. Maureen, if
23 you want to put them all in --

24 MS. SWEENEY: I do.

25 MR. RESTAURI: You may object.

1 You can at any time between now object.

2 MS. JEWART: I will review.

3 MR. RESTAURI: Miss Sweeney's
4 binder, all the documents are admitted subject
5 to weight and objections. Objections may be
6 filed to documents that were not testified to
7 by anyone between now and the time of the
8 final deliberation.

9 The deliberation hearing will take
10 place on Wednesday, January 11th, in this room
11 at 7 p.m. The board will deliberate and
12 decide the issue. Briefs will be due in
13 approximately 30 days after the transcripts
14 are available. I will work with counsel to
15 set a briefing schedule. There will be one
16 deadline date for all briefs. There will be
17 no reply briefs.

18 Thank you very much, ladies and
19 gentlemen.

20

21 (Whereupon, at 10:25 p.m. the
22 record was closed.)

23

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C E R T I F I C A T E

I hereby certify that the
transcript of the proceedings and evidence
contained herein are a true and accurate
transcription of my stenographic notes taken
by me at the time and place of the within
cause; that the transcription was reduced to
printing by me; and that this is a true and
correct transcription of the same.

Leaette Cavaliere
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Pittsburgh, PA 15237
(412)847-8256

Part 1
STATUTORY AUTHORIZATION

§ 8-101. Statutory Authorization. [Ord. 2014-02, 8/4/2014, Art. I]

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Board of Commissioners of the Township of Leet does hereby order as follows.

Part 2
GENERAL PROVISIONS

§ 8-201. Intent. [Ord. 2014-02, 8/4/2014, Art. II, § 2.01]

1. The intent of this chapter is to:
 - A. Promote the general health, welfare, and safety of the community.
 - B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
 - C. Minimize danger to public health by protecting water supply and natural drainage.
 - D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
 - E. Comply with federal and state floodplain management requirements.

§ 8-202. Applicability. [Ord. 2014-02, 8/4/2014, Art. II, § 2.02]

1. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Township of Leet unless a permit has been obtained from the Floodplain Administrator.
2. A permit shall not be required for minor repairs to existing buildings or structures.

§ 8-203. Abrogation and Greater Restrictions. [Ord. 2014-02, 8/4/2014, Art. II, § 2.03]

This chapter supersedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this chapter, the more restrictive shall apply.

§ 8-204. Warning and Disclaimer of Liability. [Ord. 2014-02, 8/4/2014, Art. II, § 2.05]

1. The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside any identified floodplain areas, or that land uses permitted within such areas will be free from flooding or flood damages.
2. This chapter shall not create liability on the part of the Township of Leet or any officer or employee thereof for any flood damages that result from reliance on this

chapter or any administrative decision lawfully made thereunder.

Part 3
ADMINISTRATION

§ 8-301. Designation of the Floodplain Administrator. [Ord. 2014-02, 8/4/2014, Art. III, § 3.01]

1. The Township Manager is hereby appointed to administer and enforce this chapter and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.
2. In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the Chairman of the Board of Commissioners.

§ 8-302. Permits Required. [Ord. 2014-02, 8/4/2014, Art. III, § 3.02]

A permit shall be required before any construction or development is undertaken within any area of the Township of Leet.

§ 8-303. Duties and Responsibilities of the Floodplain Administrator. [Ord. 2014-02, 8/4/2014, Art. III, § 3.03]

1. The Floodplain Administrator shall issue a permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
2. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, § 404, 33 U.S.C. § 1344. No permit shall be issued until this determination has been made.
3. In the case of existing structures, prior to the issuance of any development/permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any repetitive loss concerns can be addressed before the permit is issued.
4. During the construction period, the Floodplain Administrator or other authorized

official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.

5. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this chapter.
6. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the permit and report such fact to the Board of Commissioners for whatever action it considers necessary.
7. The Floodplain Administrator shall maintain in perpetuity all records associated with the requirements of this chapter including, but not limited to, finished construction elevation data, permitting, inspection and enforcement.
8. The Floodplain Administrator is the official responsible for submitting a biennial report to FEMA concerning community participation in the National Flood Insurance Program.
9. The responsibility, authority and means to implement the commitments of the Floodplain Administrator can be delegated from the person identified. However, the ultimate responsibility lies with the person identified in the floodplain ordinance as the floodplain administrator/manager.
10. The Floodplain Administrator shall consider the requirements of the 34 Pa. Code and the 2009 IBC and the 2009 IRC or latest revisions thereof.

§ 8-304. Application Procedures and Requirements. [Ord. 2014-02, 8/4/2014, Art. III, § 3.04]

1. Application for such a permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Township of Leet. Such application shall contain the following:
 - A. Name and address of applicant.
 - B. Name and address of owner of land on which proposed construction is to occur.
 - C. Name and address of contractor.
 - D. Site location including address.
 - E. Listing of other permits required.
 - F. Brief description of proposed work and estimated cost, including a breakout of

flood-related cost and the market value of the building before the flood damage occurred where appropriate.

- G. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
2. If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
- A. All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances.
 - B. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage.
 - C. Adequate drainage is provided so as to reduce exposure to flood hazards.
 - D. Structures will be anchored to prevent floatation, collapse, or lateral movement.
 - E. Building materials are flood-resistant.
 - F. Appropriate practices that minimize flood damage have been used.
 - G. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
3. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
- A. A completed permit application form.
 - B. A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
 - (1) North arrow, scale, and date.
 - (2) Topographic contour lines, if available.
 - (3) The location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development.
 - (4) The location of all existing streets, drives, and other access ways.
 - (5) The location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the

floodway, and the flow of water including direction and velocities.

- C. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
- (1) The proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988.
 - (2) The elevation of the base flood.
 - (3) Supplemental information as may be necessary under 34 Pa. Code, the 2009 IBC or the 2009 IRC.
- D. The following data and documentation:
- (1) Detailed information concerning any proposed floodproofing measures and corresponding elevations.
 - (2) Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within any identified floodplain area (see § 8-401) when combined with all other existing and anticipated development, will not cause any increase in the base flood elevation.
 - (3) A document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood.

Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.
 - (4) Detailed information needed to determine compliance with § 8-503, Subsection 1F, "Storage," and § 8-504, "Development Which May Endanger Human Life," including:
 - (a) The amount, location and purpose of any materials or substances referred to in §§ 8-503, Subsection 1F, and 8-504 which are intended to be used, produced, stored or otherwise maintained on site.
 - (b) A description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in § 8-504 during a base flood.
 - (5) The appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."
 - (6) Where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

4. Applications for permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the Floodplain Administrator.

§ 8-305. Review of Application by Others. [Ord. 2014-02, 8/4/2014, Art. III, § 3.05]

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g., planning commission, municipal engineer, etc.) for review and comment.

§ 8-306. Changes. [Ord. 2014-02, 8/4/2014, Art. III, § 3.06]

After the issuance of a permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

§ 8-307. Placards. [Ord. 2014-02, 8/4/2014, Art. III, § 3.07]

In addition to the permit, the Floodplain Administrator shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance, and be signed by the Floodplain Administrator.

§ 8-308. Start of Construction. [Ord. 2014-02, 8/4/2014, Art. III, § 3.08]

1. Work on the proposed construction or development shall begin within 180 days after the date of issuance of the development permit. Work shall also be completed within 12 months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The issuance of development permit does not refer to the zoning approval.
2. The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

3. Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original permit is compliant with the ordinance & FIRM/FIS in effect at the time the extension is granted.

§ 8-309. Enforcement. [Ord. 2014-02, 8/4/2014, Art. III, § 3.09; as amended by Ord. 2016-01, 3/14/2016]

1. Notices. Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
 - A. Be in writing.
 - B. Include a statement of the reasons for its issuance.
 - C. Allow a reasonable time not to exceed a period of 30 days for the performance of any act it requires.
 - D. Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this state.
 - E. Contain an outline of remedial actions which, if taken, will effect compliance with the provisions of this chapter.
2. Penalties. Any person who fails to comply with any or all of the requirements or provisions of this chapter or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the municipality shall be guilty of a summary offense and upon conviction shall pay a fine to the Township of Leet, of not less than \$25 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each section of this Part which shall be found to have been violated shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of, or noncompliance with this chapter shall not excuse the violation or noncompliance or permit it to continue. All such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared by the Board of Commissioners to be a public nuisance and abatable as such.

§ 8-310. Appeals. [Ord. 2014-02, 8/4/2014, Art. III, § 3.10]

1. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this chapter, may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within 30 days after the decision, determination or action of the Floodplain Administrator.
2. Upon receipt of such appeal the Zoning Hearing Board shall consider the appeal in accordance with the Municipal Planning Code and any other local ordinance.
3. Any person aggrieved by any decision of the Zoning Hearing Board of Allegheny County may seek relief therefrom by appeal to court, as provided by the laws of this state including the Pennsylvania Flood Plain Management Act.

Part 4
IDENTIFICATION OF FLOODPLAIN AREAS

§ 8-401. Identification. [Ord. 2014-02, 8/4/2014, Art. IV, § 4.01]

1. The identified floodplain area shall be:
 - A. Any areas of the Township of Leet, classified as special flood hazard areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated September 26, 2014, and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.
 - B. Any community identified flood hazard areas.
2. The above-referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by the Township of Leet and declared to be a part of this chapter.

§ 8-402. Description and Special Requirements of Identified Floodplain Areas. [Ord. 2014-02, 8/4/2014, Art. IV, § 4.02]

1. The identified floodplain area shall consist of the following specific areas:
 - A. The floodway area shall be those areas identified in the FIS and the FIRM as floodway and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those special flood hazard areas where no floodway has been identified in the FIS and FIRM.
 - (1) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (2) Within any floodway area, no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
 - B. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.
 - (1) The AE Area adjacent to the floodway shall be those areas identified as

an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided and a floodway has been delineated.

- C. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other federal, state, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.

- D. Community identified flood hazard areas shall be those areas where the Township of Leet has identified local flood hazard or ponding areas, as delineated and adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, soils or approximate study methodologies.

§ 8-403. Changes in Identification of Area. [Ord. 2014-02, 8/4/2014, Art. IV, § 4.03]

The identified floodplain area may be revised or modified by the Board of Commissioners where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the special flood hazard area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six months after the date such information becomes available, a community shall notify FEMA of the changes to the special flood hazard area by submitting technical or scientific data. See § 8-501, Subsection 2, for situations where FEMA notification is required.

§ 8-404. Boundary Disputes. [Ord. 2014-02, 8/4/2014, Art. IV, § 4.04]

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Township of Leet and any party aggrieved by this decision or determination may appeal to the Board of Commissioners the burden of proof shall be on the appellant.

§ 8-405. Jurisdictional Boundary Changes. [Ord. 2014-02, 8/4/2014, Art. IV, § 4.05]

Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The community shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in 44 CFR 60.3.

Part 5
TECHNICAL PROVISIONS

§ 8-501. General. [Ord. 2014-02, 8/4/2014, Art. V, § 5.01]

1. Alteration or Relocation of Watercourse.
 - A. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have first been obtained from the Department of Environmental Protection Regional Office.
 - B. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.
 - C. In addition, FEMA and the Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.
2. When a community proposes to permit the following encroachments:
 - A. Any development that causes a rise in the base flood elevations within the floodway.
 - B. Any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
 - C. Alteration or relocation of a stream (including, but not limited to, installing culverts and bridges.)
 - D. The applicant shall (as per 44 CFR Part 65.12):
 - (1) Apply to FEMA for conditional approval of such action prior to permitting the encroachments to occur.
 - (2) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to FEMA of the adoption of floodplain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.
 - (3) Upon completion of the proposed encroachments, a community shall provide as-built certifications. FEMA will initiate a final map revision upon receipt of such certifications in accordance with 44 CFR Part 67.
3. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this chapter and any other applicable codes, ordinances and

regulations.

4. Within any identified floodplain area, no new construction or development shall be located within the area measured 50 feet landward from the top-of-bank of any watercourse.

§ 8-502. Elevation and Floodproofing Requirements. [Ord. 2014-02, 8/4/2014, Art. V, § 5.02]

1. Within any identified floodplain area any new construction or substantial improvements shall be prohibited. If a variance is obtained for new construction or substantial improvements in the identified floodplain area in accordance with the criteria in Part 8, then the following provisions apply:

A. Residential Structures.

- (1) In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation.
- (2) In A Zones, where there are no base flood elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation determined in accordance with § 8-402, Subsection 1C, of this chapter.
- (3) The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 Pa. Code (Chapters 401 — 405 as amended) shall be utilized, where they are more restrictive.

B. Nonresidential Structures.

- (1) In AE, A1-30 and AH Zones, any new construction or substantial improvement of a nonresidential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
 - (a) Is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water.
 - (b) Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (2) In A Zones, where no base flood elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the regulatory flood elevation determined in accordance with

§ 8-402, Subsection 1C, of this chapter.

- (3) Any nonresidential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the W1 or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards.
- (4) The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 Pa. Code (Chapters 401 — 405 as amended) shall be utilized, where they are more restrictive.

C. Space below the Lowest Floor.

- (1) Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
- (2) Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a net total area of not less than one square inch for every square foot of enclosed space.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- D. Historic Structures. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this chapter, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the state Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

E. Accessory Structures. Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

- (1) The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
- (2) Floor area shall not exceed 200 square feet.
- (3) The structure will have a low damage potential.
- (4) The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
- (5) Power lines, wiring, and outlets will be elevated to the regulatory flood elevation.
- (6) Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc., are prohibited.
- (7) Sanitary facilities are prohibited.
- (8) The structure shall be adequately anchored to prevent flotation, collapse, and lateral movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a net total area of not less than one square inch for every square foot of enclosed space.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, etc., or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

§ 8-503. Design and Construction Standards. [Ord. 2014-02, 8/4/2014, Art. V, § 5.03]

1. The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:
 - A. Fill. Fill shall be prohibited. No variance shall be granted.
 - B. Drainage Facilities. Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from

buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

C. Water and Sanitary Sewer Facilities and Systems.

- (1) All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
- (2) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
- (3) No part of any on-site waste disposal system shall be located within any identified floodplain area except in strict compliance with all state and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.
- (4) The design and construction provisions of the UCC and FEMA #348, "Protecting Building Utilities From Flood Damages" and the "International Private Sewage Disposal Code" shall be utilized.

D. Other Utilities. All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

E. Streets. The finished elevation of all new streets shall be no more than one foot below the regulatory flood elevation.

F. Storage. All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in § 8-504, "Development Which May Endanger Human Life," shall be stored at or above the regulatory flood elevation or floodproofed to the maximum extent possible.

G. Placement of Buildings and Structures. All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

H. Anchoring.

- (1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
- (2) All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely anchored or affixed to prevent flotation.

I. Floors, Walls and Ceilings.

- (1) Wood flooring used at or below the regulatory flood elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
- (2) Plywood used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
- (3) Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
- (4) Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other "water-resistant" material.

J. Paints and Adhesives.

- (1) Paints and other finishes used at or below the regulatory flood elevation shall be of "marine" or "water-resistant" quality.
- (2) Adhesives used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
- (3) All wooden components (doors, trim, cabinets, etc.) used at or below the regulatory flood elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

K. Electrical Components.

- (1) Electrical distribution panels shall be at least three feet above the base flood elevation.
- (2) Separate electrical circuits shall serve lower levels and shall be dropped from above.

L. Equipment. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the regulatory flood elevation.

M. Fuel Supply Systems. All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

N. Uniform Construction Code Coordination. The standards and specifications contained 34 Pa. Code (Chapters 401 — 405), as amended, and not limited to the following provisions shall apply to the above and other sections and subsections of this chapter, to the extent that they are more restrictive and supplement the requirements of this chapter.

- (1) International Building Code (IBC) 2009 or the latest edition thereof:

§§ 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

- (2) International Residential Building Code (IRC) 2009 or the latest edition thereof: §§ R104, R105, R109, R322, Appendix E, and Appendix J.

§ 8-504. Development Which May Endanger Human Life. [Ord. 2014-02, 8/4/2014, Art. V, § 5.04]

1. Within any identified floodplain area, any structure of the kind described in Subsection 1A, below, shall be prohibited. If a variance is obtained in accordance with the criteria in Part 8, then the following provisions apply (Subsection 1B, C, and D):
 - A. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which:
 - (1) Will be used for the production or storage of any of the following dangerous materials or substances.
 - (2) Will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises.
 - (3) Will involve the production, storage, or use of any amount of radioactive substances.
 - (4) Shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:
 - (a) Acetone.
 - (b) Ammonia.
 - (c) Benzene.
 - (d) Calcium carbide.
 - (e) Carbon disulfide.
 - (f) Celluloid.
 - (g) Chlorine.
 - (h) Hydrochloric acid.
 - (i) Hydrocyanic acid.
 - (j) Magnesium.
 - (k) Nitric acid and oxides of nitrogen.

- (l) Petroleum products (gasoline, fuel oil, etc.)
 - (m) Phosphorus.
 - (n) Potassium.
 - (o) Sodium.
 - (p) Sulphur and sulphur products.
 - (q) Pesticides (including insecticides, fungicides, and rodenticides).
 - (r) Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any identified floodplain area, any new or substantially improved structure of the kind described in Subsection 1A, above, shall be prohibited within the area measured 50 feet landward from the top-of-bank of any watercourse.
- C. Within any floodway area, any structure of the kind described in Subsection 1A, above, shall be prohibited. Where permitted within any identified floodplain area, any new or substantially improved residential structure of the kind described in Subsection 1A, above, shall be elevated to remain completely dry up to at least 1 1/2 feet above base flood elevation and built in accordance with §§ 8-501, 8-502, and 8-503.
- D. Where permitted within any identified floodplain area, any new or substantially improved nonresidential structure of the kind described in Subsection 1A above, shall be built in accordance with §§ 8-501, 8-502 and 8-503 including:
- (1) Elevated, or designed and constructed to remain completely dry up to at least 1 1/2 feet above base flood elevation.
 - (2) Designed to prevent pollution from the structure or activity during the course of a base flood.

Any such structure, or part thereof, that will be built below the regulatory flood elevation shall be designed and constructed in accordance with the standards for completely dry floodproofing contained in the publication "Flood-Proofing Regulations (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

§ 8-505. Special Requirements for Subdivisions and Development. [Ord. 2014-02, 8/4/2014, Art. V, § 5.05]

All subdivision proposals and development proposals containing at least three lots or at least two acres, whichever is the lesser, in identified floodplain areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic

engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a conditional letter of map revision and letter of map revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

§ 8-506. Special Requirements for Manufactured Homes. [Ord. 2014-02, 8/4/2014, Art. V, § 5.06]

1. Within any floodway area/district, manufactured homes shall be prohibited. If a variance is obtained in accordance with the criteria in Part 8, then the following provisions apply:
2. Within any identified floodplain area manufactured homes shall be prohibited within the area measured 50 feet landward from the top-of-bank of any watercourse.
3. Where permitted within any identified floodplain area, all manufactured homes, and any improvements thereto, shall be:
 - A. Placed on a permanent foundation.
 - B. Elevated so that the lowest floor of the manufactured home is at least 1 1/2 feet above base flood elevation.
 - C. And anchored to resist flotation, collapse, or lateral movement.
 - D. And have all ductwork and utilities including HVAC/heat pump elevated to the regulatory flood elevation.
4. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2009 "International Residential Building Code" or the "U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing," 1984 Edition, draft or latest revision thereto and 34 Pa. Code Chapter 401-405 shall apply.
5. Consideration shall be given to the installation requirements of the 2009 IBC, and the 2009 IRC or the most recent revisions thereto and 34 Pa. Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the proposed unit(s) installation.

§ 8-507. Special Requirements for Recreational Vehicles. [Ord. 2014-02, 8/4/2014, Art. V, § 5.07]

1. Within any identified floodplain area recreational vehicles shall be prohibited. If a variance is obtained in accordance with the criteria in Part 8, then the following provisions apply:
 - A. Recreational vehicles in Zones A, A1-30, AH and AE must either:

- (1) Be on the site for fewer than 180 consecutive days.
- (2) Be fully licensed and ready for highway use.
- (3) Be removed from floodplain when flood and/or evacuation notices are issued.

Part 6
PROHIBITED ACTIVITIES

§ 8-601. General. [Ord. 2014-02, 8/4/2014, Art. VI, § 6.01]

1. In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any identified floodplain area:
 - A. The commencement of any of the following activities; or the construction, enlargement, or expansion of any structure used, or intended to be used, for any of the following activities:
 - (1) Hospitals.
 - (2) Nursing homes.
 - (3) Jails or prisons.
 - B. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

Part 7
EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

§ 8-701. Existing Structures. [Ord. 2014-02, 8/4/2014, Art. VII, § 7.01]

The provisions of this chapter do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of § 8-702 shall apply.

§ 8-702. Improvements. [Ord. 2014-02, 8/4/2014, Art. VII, § 7.02]

1. The following provisions shall apply whenever any improvement is made to an existing structure located within any identified floodplain area:
 - A. No expansion or enlargement of an existing structure shall be allowed within any floodway area/district that would cause any increase in BFE.
 - B. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure to an extent or amount of 50% or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this chapter.
 - C. The above activity shall also address the requirements of the 34 Pa. Code, as amended and the 2009 IBC and the 2009 IRC.
 - D. Within any floodway area/district (see § 8-402, Subsection 1A), no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
 - E. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than 50% of its market value, shall be elevated and/or floodproofed to the greatest extent possible.
 - F. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of "repetitive loss" shall be undertaken only in full compliance with the provisions of this chapter.

**Part 8
VARIANCES**

§ 8-801. General. [Ord. 2014-02, 8/4/2014, Art. VIII, § 8.01]

If compliance with any of the requirements of this chapter would result in an exceptional hardship to a prospective builder, developer or landowner, the Township of Leet may, upon request, grant relief from the strict application of the requirements.

§ 8-802. Variance Procedures and Conditions. [Ord. 2014-02, 8/4/2014, Art. VIII, § 8.02]

1. Requests for variances shall be considered by the Township of Leet in accordance with the procedures contained in § 8-310 and the following:
 - A. No variance shall be granted within any identified floodplain area that would cause any increase in BFE. In A Area/District, BFEs are determined using the methodology in § 8-402, Subsection 1C.
 - B. Except for a possible modification of the regulatory flood elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development which may endanger human life (§ 8-504).
 - C. No variance shall be granted for prohibited activities.
 - D. If granted, a variance shall involve only the least modification necessary to provide relief.
 - E. In granting any variance, the Township of Leet shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this chapter.
 - F. Whenever a variance is granted, the Township of Leet shall notify the applicant in writing that:
 - (1) The granting of the variance may result in increased premium rates for flood insurance.
 - (2) Such variances may increase the risks to life and property.
 - G. In reviewing any request for a variance, the Township of Leet shall consider, at a minimum, the following:
 - (1) That there is good and sufficient cause.
 - (2) That failure to grant the variance would result in exceptional hardship to the applicant.
 - (3) That the granting of the variance will:

- (a) Neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense.
 - (b) Nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.
- H. A complete record of all variance requests and related actions shall be maintained by the Township of Leet. In addition, a report of all variances granted during the year shall be included in the annual report to the FEMA.
- 2. Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent annual chance flood.

Part 9
DEFINITIONS

§ 8-901. General. [Ord. 2014-02, 8/4/2014, Art. IX, § 9.01]

Unless specifically defined below, words and phrases used in this chapter shall be interpreted so as to give this chapter its most reasonable application.

§ 8-902. Specific Definitions. [Ord. 2014-02, 8/4/2014, Art. IX, § 9.02]

ACCESSORY USE OR STRUCTURE — A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

BASE FLOOD — A flood which has a one-percent chance of being equaled or exceeded in any given year (also called the "one-hundred year flood" or one-percent annual chance flood).

BASE FLOOD DISCHARGE — The volume of water resulting from a base flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

BASE FLOOD ELEVATION (BFE) — The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a one-percent or greater chance of being equaled or exceeded in any given year.

BASEMENT — Any area of the building having its floor below ground level on all sides.

BUILDING — A combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including, but not limited to, the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.)

FLOOD — A temporary inundation of normally dry land areas.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) — The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

FLOODPLAIN AREA — A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

HISTORIC STRUCTURES — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- C. Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior.
- D. Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior.
 - (2) Directly by the Secretary of the Interior in states without approved programs.

IDENTIFIED FLOODPLAIN AREA — This term is an umbrella term that includes all of the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the special flood hazard area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the community. See §§ 8-401 and 8-402 for the specifics on what areas the community has included in the identified floodplain area.

LOWEST FLOOR — The lowest floor of the lowest fully enclosed area (including

basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MINOR REPAIR — The replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring, mechanical or other work affecting public health or general safety.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after September 26, 2014, and includes any subsequent improvements to such structures. Any construction started after September 14, 1979, and before September 26, 2014, is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

PERSON — An individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

POST-FIRM STRUCTURE — Is a structure for which construction or substantial improvement occurred after September 14, 1979. Such a structure is required to be compliant with the regulations of the National Flood Insurance Program.

PRE-FIRM STRUCTURE — Is a structure for which construction or substantial improvement occurred on or before September 14, 1979. Such a structure is required to be compliant with the regulations of the National Flood Insurance Program.

RECREATIONAL VEHICLE — A vehicle which is:

A. Built on a single chassis.

- B. Not more than 400 square feet, measured at the largest horizontal projections.
- C. Designed to be self-propelled or permanently towable by a light-duty truck.
- D. Not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOOD ELEVATION — The base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of 1 1/2 feet.

REPETITIVE LOSS — Flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25% of the market value of the structure before the damages occurred.

SPECIAL FLOOD HAZARD AREA (SFHA) — An area in the floodplain subject to a one-percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-30, AE, A99.

START OF CONSTRUCTION — Includes substantial improvement and other proposed new development and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of the permit and shall be completed within 12 months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBDIVISION — The division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

SUBSTANTIAL DAMAGE — Damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal

or exceed 50% or more of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" or "repetitive loss" regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

UNIFORM CONSTRUCTION CODE (UCC) — The statewide building code adopted by the Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, the Code adopted the International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the state floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.

VARIANCE — A grant of relief by a community from the terms of a floodplain management regulation.

VIOLATION — The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Part 10
ENACTMENT

§ 8-1001. Adoption. [Ord. 2014-02, 8/4/2014, Art. X, § 10.01]

This chapter shall be effective on September 26, 2014, and shall remain in force until modified, amended or rescinded by the Township of Leet, Allegheny County, Pennsylvania.