

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT

HUANG, et al.,

Plaintiffs,

v.

LEO BARTOLINI, JR., DAVID EAGLE,
AND PAUL DREPANOS, as members of the
TOWN OF SOUTHBOROUGH ZONING
BOARD OF APPEALS, and PARK
CENTRAL, LLC, and WILLIAM A.
DEPIETRI,

Defendants.

CIVIL ACTION NO. 16-01359-B

PLAINTIFFS’ PROPOSED FINDINGS OF FACT

The Plaintiffs incorporate herein by reference: (1) The Plaintiffs’ Submission of Evidence with Exhibits filed on March 31, 2021; (2) The parties’ stipulation filed April 7, 2021, and the clips filed with the Court on a thumb drive on or about April 1, 2021.

The Plaintiffs further propose that the Court enter the following as findings of fact based on the evidence submitted at trial:

STANDING

1. All traffic turning left from the proposed connector road onto Flagg must pass in front of Plaintiff Huang’s house. Tr. Day 8 at 86-87.
2. Mr. Huang’s property is located approximately two hundred feet north of the culvert on Flagg Road. *Id.* at 31.
3. The lot and driveway are steeply sloped toward Flagg Road and visibility from the driveway to the north is blocked by a large tree. *Id.* at 30-31.
4. Mr. Huang frequently drives and walks on Flagg and he walks with his children in strollers up Flagg to the playground at Neary School. *Id.* at 32-33.
5. Because there are no shoulders or sidewalks, Mr. Huang and his family must walk in the roadway. *Id.* at 35-36.
6. Mr. Huang is particularly concerned about the danger to him and his family that will

result from the increase in traffic in front of his house and at various “pinch points” on Flagg, where there will be many more instances of cars passing each other than currently exist if the project is built. *Id.* at 50-56.

7. Mr. Huang measured the width of the pavement at the culvert at less than thirteen feet after a snowstorm in early February. Ex. 110; Tr. Day 8 at 43-44.
8. Mr. Huang’s residence at 75 Flagg Road is located between the proposed John Boland Drive and Blackthorn Drive. Tr. Day 7 at 70 (Cram).
9. The portion of Flagg Road between John Boland Drive and Blackthorn Drive was identified by the Board’s peer review consultant as an area of particular concern. He testified that the local roadway system was not intended to serve notable amounts of traffic. Tr. Day 5 at 14 (DeGray). The increased traffic over this section of Flagg Road presents a significant safety concern that directly impacts Mr. Huang in a manner that is special and different than the rest of the community, and is, in and of itself, sufficient to establish standing for all Plaintiffs.
10. Plaintiff Ben Keyes has lived in Southborough for more than 35 years. Tr. Day 5 at 76.
11. Mr. Keyes is the co-director of the L’Abri Fellowship, a non-denominational Christian study center and community; he testified on behalf of L’Abri and for himself personally. *Id.* at 82-83.
12. L’Abri owns the property located at 43 Lovers Lane and 49 Lynbrook Road. *Id.* at 77.
13. In order to carry out its mission, L’Abri requires a calm atmosphere for students to reflect, pray, and study. *Id.* at 88-89.
14. There is a substantial amount of outdoor activity at L’Abri and interaction between the two properties on Lovers and Lynbrook. *Id.* at 89-90. Students make use of the roads for walking, jogging, conversations, and listening to lectures. *Id.* at 166.
15. Mr. Keyes often walks with his wife on Lovers Lane and Flagg and his children bike or jog on the roads. *Id.* at 90-91.
16. Mr. Keyes testified that Lovers and Lynbrook are often used as a cut-through to access Route 30 (*Id.* at 92), and he believed that a significant amount of increased traffic from the proposed project will turn left on Flagg and make use of Lovers and Lynbrook, endangering his family and the students of L’Abri. *Id.* at 165-169.
17. Mr. Keyes testified that he was particularly concerned by the fact that Lovers Lane and Lynbrook Road were not included in any traffic studies considered by the Board. Tr. Day 6 at 36.
18. Based on his observations and experience as a long-time neighborhood resident, Keyes testified that the increased traffic generated by the project would create very dangerous conditions. *Id.* at 33:18 to 36:20.
19. Plaintiff Linda Perkins testified that the proposed emergency access for the project through Blackthorn Drive runs right next to her home at 1 Tara Road. Tr. Day 6 at 113.
20. Ms. Perkins and her family use Blackthorn and Flagg many times a day for driving, walking, and cycling. *Id.* at 114, 132-133.

21. Ms. Perkins provided evidence that any increased traffic on Flagg would endanger the safety of students, like her son, who walk home from the bus stops on Flagg Road. *Id.* at 128-132 and Ex. 103.
22. She noted that there are more than 25 days in the school year that the late bus drops off students on Flagg Road after sunset. *Id.* at 131.
23. In addition to the harm she will suffer from increased traffic caused by the project, Ms. Perkins testified that she has multiple sclerosis and that she is “distracted” that the construction of the project in close proximity to her home will cause her to have a debilitating exacerbation of her condition. *Id.* at 139.
24. Plaintiff Attila Herczeg testified that he drives on Lovers Lane on a daily basis and that he and his wife walk frequently on Lovers, Lynbrook, and Flagg. Tr. Day 8 at 102-104.
25. Based on his observations living in Southborough for more than twenty-five years, he explained that people use Lovers Lane to Lynbrook to Route 30 whenever there is any backup of traffic on Flagg. *Id.* at 115. He testified that the threat of injury on Lovers will rise significantly due to increased traffic if the project is approved. *Id.* at 114.
26. Mr. Herczeg has experienced several dangerous traffic incidents on Lovers and Flagg and he testified that the increased traffic volume from the project will result in more dangerous conditions due to the blind turns and narrowness of the roads. *Id.* at 118-119.
27. Mr. Herczeg’s property is located in close proximity to the proposed location for the proposed water and sewage treatment plants; he is concerned about the down-wind effects of noxious fumes because no studies on the impacts were performed. *Id.* at 22.
28. The five Plaintiffs, Yan Huang (75 Flagg Road), Linda Perkins (1 Tara Road), Attila Herczeg (4 Jacobs Lane), Matthew Brownell (8 Jacobs Lane), and L’Abri Fellowship/Ben Keyes (43 Lovers Lane and 49 Lynbrook Road), are all direct abutters to the proposed project and enjoy a presumption of standing as aggrieved parties. The defendants did not rebut that presumption.

BACKGROUND FACTS

29. On August 24, 2016, the Board voted to approve the application of Defendant Park Central, LLC for a comprehensive permit under G.L. c. 40B by a vote of 3-0. Findings and Decision of Comprehensive Permit (“Decision”), attached as Ex. A to the Complaint. A copy of the Decision is provided as Trial Ex. 1.
30. The Board has adopted Comprehensive Permit Regulations and Guidelines to establish procedures for applications for comprehensive permits under G.L. c. 40B (“40B Regulations”).
31. The Board’s 40B Regulations provide that the public hearing for comprehensive permit applications will be conducted according to the Rules and Regulations of the Board. 40B Regulations at § 7.1.
32. Section III of the Board’s Rules and Regulations provides that the Board should conduct its hearings according to the requirements of the Town Code, the Town Zoning By-Law, and Massachusetts General Law. Rules and Regulations, § III, Ex. 49 at 1.

33. The Board consists of five members and two associate members, who may be designated by the Chairman to act when a member is absent or unable to participate. Southborough Zoning By-Law, Art. VI, § 174-25.A.
34. Section 249-3 of the Southborough Town Code provides that a quorum for public hearings before the Board shall consist of four members or their alternates. Town Code, § 249-3(B).
35. The only Board members in attendance at the August 24, 2016 Board meeting were Defendant Board members Bartolini, Drepanos, and Eagle. August 24, 2016 Meeting Minutes at 1.
36. The only Board members in attendance at the March 24, 2016 Board meeting at which the Board granted numerous waivers were Defendant Board members Bartolini, Drepanos, and Eagle. March 24, 2016 Meeting Minutes at 1.
37. In addition to the 338 residential units, Defendants Park Central, LLC and William Depietri (hereafter, “Defendant Depietri”) proposed to construct a hotel, an assisted living facility, and/or commercial office space as part of the project. Depietri; Application.
38. The 158 unit market rate component was permitted only by virtue of the Board’s 2015 grant of a use variance (“the Use Variance”) because residential uses were not allowed in the zoning district. Depietri; Bartolini; Application; Use Variance.

ACCESS AND ROADWAYS

39. As originally proposed, the project had access at Tara Road, Bantry Road, Blackthorn Drive, Flagg Road, and Park Central Drive. Application; Depietri.
40. The Defendant Depietri originally proposed and repeatedly represented that the access at Flagg would not permit vehicles to turn left. Depietri; Board Defendants; Shea.
41. Flagg Road feeds into several other neighborhood roads, including Lovers' Lane, Lynbrook Road, Deerfoot Road (“Neighborhood Roads”), all of which feed into State Route 30 and its connection to the Mass. Pike. Plans; Maps; Plaintiffs; Cram.
42. Defendants introduced a number of photographs that show the local roadways as narrow and lined with mature trees and stone walls that proved Plaintiffs’ concerns that the project will create and exacerbate unsafe conditions for the Plaintiffs on the subject roadways. *See, e.g.*, Exs. 92-99, 107, 112, 115.
43. Park Central proposes to direct commercial traffic and all residential traffic from the approved new 338 residential unit project onto the connector road because MassDOT will not allow that new traffic to exit from the only existing point of access, Park Central Drive. Tr. Day 8 at 198-199 (Depietri); Exs. 1, 3, 16, 39.
44. In a 2013 study, MassDOT explicitly recognized the problematic nature of the Site’s only access, Park Central Drive, due to its proximity to the 495 North on-ramp. As a result, MassDOT recommended a connector road to Flagg, but prohibited left turns from that proposed connector, thus directing all new traffic south on Flagg and back to Route 9. Tr. Day 8 at 193-195 (Depietri); Ex. 26; Ex. 2, pp. 95-96.

45. At the beginning of the Public Hearing, Depietri proposed that all traffic accessing Flagg be permitted to turn right only, acknowledging that allowing left turns would introduce too much traffic to Flagg. Tr. Day 8 at 188-192 (Depietri); Ex. 2, p. 89 of 193 “Proposed 180 Unit 40B Project.”
46. Following the Board’s Decision, the Southborough Board of Selectmen voted to disallow access from Park Central onto Flagg Road because such access clearly introduced safety hazards on Flagg. Ex. 36; Tr. Day 11 at 67.
47. On behalf of just six abutters, Attorney Hill negotiated an agreement with Defendant Depietri in which Depietri gave up proposed access on Tara, Bantry, and Blackthorn in exchange for certain concessions and the six abutters’ agreement not to appeal the Use Variance or 40B permit. Depietri and Park Central bargained away their other proposed access points, calculating that they could use their appeasement of just six abutters on Tara and Bantry to claim that they had satisfied the concerns of the neighborhood at large. Ex. 48; Tr. Day 8 at 161-163 (Depietri).
48. The Neighborhood Roads are narrow and lack sidewalks and shoulders. There are intermittent mature trees and stone walls which limit site distances at many points, especially from Spring through Fall when the trees have leaves. Plaintiffs; Cram; Photos.
49. The topography of the Neighborhood Roads also impacts visibility and in some places; there is a steep drop beyond the edge of the pavement, as well as blind curves. Plaintiffs; Cram; Photos.
50. There are places on the Neighborhood Roads where two cars traveling at the speed limit in opposite directions cannot safely pass. Plaintiffs, Cram
51. There are two schools in the Neighborhood, an elementary school and a middle school. The Neighborhood is served by school busses, which had almost 100 a.m. bus stops while the public hearing was underway. Plaintiffs; Cram; Maps; Board Defendants; Planning Board.
52. Due to the proximity of the two schools, many elementary and middle school students who live in the neighborhood bike or walk to school on the Neighborhood Roads. Perkins.
53. The Town of Southborough has designated the Neighborhood Roads as Scenic Roads under G.L. c. 40, § 15C, the Scenic Road Act. That designation affects the type of mitigation, if any, that can be implemented to address the safety issues that will be created by the Project. Cram; Plaintiffs; Planning Board; Board Defendants.
54. According to the Defendants’ traffic engineer, the Project will generate more than three thousand two hundred (3,200) new vehicular trips per day on Flagg Road, more than triple the daily trips at the time the traffic data was collected. Cram; Depietri; Dandrade.
55. The increased traffic volume generated by the proposed Project will create, and exacerbate, serious traffic issues on Flagg Road and the Neighborhood Roads which will imperil the safety of residents living along those roads as well as pedestrians, motorists, and children. Cram; Plaintiffs.
56. The significant increase in traffic volume generated by the Project will have a direct effect on all of the Plaintiffs in this case. Cram; Plaintiffs

57. As a result of the traffic safety impacts, Southborough residents, including many abutters and those in the impacted area, attended the public hearings and raised their concerns. Depietri; Board Defendants; Plaintiffs.
58. No resident of Flagg Road, Tara Road, Lovers Lane, or the other impacted roads signed the agreement. Attorney Hill did not represent any resident of Flagg Road, Tara Road, or Lovers Lane, and no resident of any of those roads--or the other area roads--signed the Six Abutter Agreement. *Depietri; Marchant; Settlement Agreement; Plaintiffs.*
59. Depietri; Marchant; Bartolini; Settlement Agreement; Plaintiffs.
60. As a result of the settlement agreement, Defendant Depietri moved the proposed location of the 40B to abut I-495, further away from the location of the six abutters' residences. Depietri; Marchant; Bartolini; Settlement Agreement.
61. Following the settlement agreement, Defendant Depietri changed the proposed access to direct all project traffic onto Flagg Road with the ability to take a left turn on Flagg, not just the right turn that he had originally proposed. Depietri; Plans; Decision.
62. A number of streets along Flagg Road and Deerfoot Road will be impacted by the Project, including Lovers Lane, Lynbrook Road and Deerfoot Road. These roadways provide alternate routes of travel to either Route 9 (Turnpike Road) or Route 30 (Main Street), which connects with the Mass Pike, but they were not included in the traffic studies presented to the Board. Cram; Plaintiffs; Board Defendants; Depietri; Dandrade; Degray.
63. Park Centrals October 16, 2013 letter to MassHousing refers to concerns about the development's impact on traffic safety and a revised plan with a modified the traffic pattern that eliminated the left turn on the Flagg road to respond to those concerns. Depietri Testimony, Ex. 40; *Ex. 2, p. 89 of 193 "Proposed 180 Unit 40B Project."*
64. At the beginning of the Public Hearing, Defendant Depietri proposed that all traffic entering Flagg would be permitted to turn right only, acknowledging that otherwise there would be too much traffic on Flagg. *Depietri; Board Defendants; BOS; Plaintiffs; Ex. 2, p. 89 of 193 "Proposed 180 Unit 40B Project."*
65. In a 2013 study, MassDOT recognized the problematic nature of Park Central Drives proximity to the 495 North on-ramp as recommended an access road connect the Site to Flagg, but with no left turn allowed. *Depietri; Ex. 26; Ex. 2, pp. 95-96*
66. Park Central intends to direct commercial traffic and all residential traffic from the project onto the connector road and not allow any such traffic to exit from Park Central Drive. *Depietri; Decision; Plans; 1988 Permit.*
67. No mitigation was proposed for Lovers Lane because it is too narrow. *Galligan; Exs. 74, 78, 81-84; 92-97, 102, 115.*

ARBITRARY, CAPRICIOUS, AND BAD FAITH CONDUCT

68. Defendant Depietri threatened Board member Edward Estella with litigation if he did not recuse himself from participating in the 40B proceedings. Mr. Estella recused himself. *Depietri.*
69. The Board acted in bad faith and in excess of its legal authority during the public hearing

process. *Plaintiffs; Board Defendants.*

70. Both Bartolini and Eagle had longstanding business relationships Depietri, a fellow Southborough resident and business owner. *Depietri; Bartolini; Eagle; Conflict forms.*
71. If a new five-member board was constituted, the hearing process would not have had to start over from the beginning. *Testimony of Marchant.*
72. Park Central requested a number of waivers in February and March of 2016. The Board granted the waivers against the advice of town counsel before the Planning Board and conservation commission had even had an opportunity to review and comment on the waiver requests. *Testimony of Morris, Shea, Possamoto.*
73. The Defendant Depietri originally proposed and repeatedly represented that the access at Flagg would not permit vehicles to turn left. Depietri Testimony, Ex. 40; Ex. 2, p. 89 of 193 “Proposed 180 Unit 40B Project.”
74. The Board was presented with and ignored multiple notifications from other town boards and officials that they had had insufficient time to review the revised plans submitted on August 15, 2016, that other Boards had insufficient time to meet and comment upon those plans, that the applicant had failed to submit various pieces of significant information, and that a vote on the application on August 24, 2016, was premature and inappropriate. *Plaintiffs; Possemato; Shea; Morris; Eagle.*
75. The Board’s 40B consultant, Edward Marchant, is an advocate of 40B developments. *Testimony of Marchant.*
76. In addition to the 338 residential units, Defendants Park Central, LLC and William Depietri (hereafter, “Defendant Depietri”) proposed to construct a hotel, an assisted living facility, and/or commercial office space as part of the project. *Depietri; Application.*
77. By letter dated December 2, 2014, the Planning Board requested that the ZBA deny the 40B application stating that the increased traffic would compromise safety, noting the narrowness and steep grades of Flagg and the neighborhood roads. *Morris; Ex. 121.*
78. The Use Variance Decision also required that the proposed affordable housing development be changed from a “for sale” condominiums to “rental” apartments. Under 40B and its regulations, municipalities can include all rental units in their subsidized housing inventory (“SHI”), even though only a quarter of the apartments were proposed to be “affordable.” Conversely, 40B allows municipalities to include in its SHI only the affordable units where the project is for sale. *Testimony of Marchant.*
79. No mitigation was proposed for Lovers Lane because it is too narrow. *Galligan; Exs. 74, 78, 81-84; 92-97, 102, 115.*

WAIVERS

80. The evidence demonstrated that after the Board granted Depietri a use variance to construct 158 market rate town homes, Depietri realized that there were still several provisions of Southborough’s code with which he could not comply without losing many of those lucrative residential units. *Testimony of Morris; Waiver Requests.*

81. Depietri also realized that review of many applicable regulations would not be conducted by Depietri's hand selected Zoning Board, but rather by the Planning Board, whose chair had raised several legitimate and serious questions about the Zoning Board's process, and the Conservation Commission. *Testimony of Morris; Waiver Requests.*
82. Thus, in February of 2016, more than two years into the public hearing process, Depietri filed a slew of requests for waivers with the Zoning Board at 2:40pm on February 24, 2016. *Testimony of Morris; Waiver Requests.*
83. Those waiver requests sought to obviate the need for both compliance with several Code provisions, and meaningful review of the market rate town house development by both the Planning Board and the Conservation Commission. *Morris Testimony, Tr. Day 10, p. 135 et seq.; Possomotto testimony, Tr. Day 11, p. 75-81.*
84. Like the rush to issue the final decision before Eagle's closing, the Board rushed to rubber stamp Depietri's waiver requests before they could generate scrutiny on the very day the requests were filed, even though the agenda failed to inform residents that requested waivers would be considered. *Morris, Tr. Day 10, p. 139.*
85. The Chair of the Planning Board found out that the waiver requests had been filed and attended the segment of the public hearing on February 24, 2016. *Id., p. 139-141.*
86. Although the Zoning Board members did not appear to understand exactly what reviews and regulations they were "waiving" for both the 40B project and the market rate town house development, they voted to allow the waivers. *Id., 141-42.*
87. The Planning Board and Conservation commission subsequently held a joint meeting to discuss the waivers and their lack of notification of the requests. *Id., p. 142-44.*
88. The Chairs of both the Planning Board and the Conservation Commission attended the next segment of the public hearing held on March 24, 2016. *Id. p. 145.*
89. Mr. Morris asserted that the Zoning Board lacked the authority to "waive" reviews of other Board's for the market rate town house development, but the ZBA granted all requested waivers. *Id., p. 147-152.*
90. Mr. Possomato testified that the Board granted waivers of the provisions of the Southborough stormwater management by law and the Southborough wetlands by law for the market rate townhouse development. *Trial Day 11, p. 76.*
91. The Code assigns the Conservation Commission as the SPGA for both of those reviews, and the Zoning Board allowed those waiver requests even before the applicant had submitted its application and formal plans to the Conservation. *Trial Day 11, p. 76.*
92. The ZBA waived review of the local wetlands and stormwater by laws by the Conservation Commission with respect to both the 40B and the market rate town house development before the Conservation Commission even received an application and plans from the applicant. *Tr. Day 11, p. 76.*
93. The Conservation Commission Chair testified that the February/March 2016 waiver requests were "very premature" as there was no way to understand at the time the Board granted the waivers what the environmental impacts of the project would be. *Id. p. 77-78.*

94. The Board granted the waiver requests before the ConCom even had time to review them and offer its comments. *Id.*, p. 77-78.
95. The fact that the ConCom is reviewing the proposal under the state law does not cure the ZBA's premature waiver of the two local by-laws under Conservation's purview with respect to the market rate town house development portion of the project because those by laws' requirements are now off the table. *Id.*, p. 80.
96. The Commission had insufficient time to provide the ZBA with comments on the revised plans submitted on August 15, 2016. *Id.*, p. 82.
97. Mr. Possomatto testified that this was concerning because of the size of the project, "and not understanding what the environmental impact is going to be with the proposed development activities up there, waiving the bylaws was felt to be very premature." *Id.* at 77.
98. The Conservation Commission asked the Board to reconsider the waiver requests, because the plans submitted were essentially only "sketches" lacking the detail necessary for the Commission to understand the impacts and had not had the opportunity to comment on the waiver requests. *Id.* at 78-79. But the Zoning Board refused to rescind the waivers, taking both the local stormwater and wetlands regulations completely off the table with respect to the market rate development. *Id.* 78-81.
99. The Zoning Board allowed the waivers against the advice of town counsel. *Tr. Day 12 p.* 26-27.
100. The Planning Board determined in its initial review of the revised plans submitted August 15, 2016, that those plans were incomplete and did not contain the level of engineering details that were required for review. *Tr. Day #10 at p.* 162-63, 166-67.
101. The Planning Board did manage to submit a few rushed comments when it realized the ZBA was plowing ahead with the vote but the ZBA did not take those comments into consideration. *Id.* p. 165.
102. There was no site plan review of the project prior to its approval. *Id.* 167. After its approval, the Planning Board unanimously rejected the site plan application as incomplete. *Ex.* 129.

PROCEDURAL IRREGULARITIES

103. Throughout the public hearing, the Planning Board Chair never saw the ZBA refer to the Town codes or by laws. *Tr. Day #10 at p.* 168.
104. Depietri walked out of final segment of the Planning Board's site plan review. *Id.* at 170, *Ex.* 129 p. 6-7.
105. The Planning Board had never objected to a 40B prior to Park Central, and had almost never rejected Site Plan. *Tr. Day 11, p.* 34-35. The Planning Board's concerns were about the process that resulted in the vote. *Id.*, p. 37.
106. The Planning Board had insufficient time to provide comments on revised plans submitted on August 15, 2016. *Id.* at p. 38.
107. Previous iterations of the plans depicted water flowing uphill. *Id.*, p. 40.

108. The Attorney General found that the ZBA committed several violations of the Open Meeting Law during the public hearing process in 2014. *Ex. C (marked for identification)*.
109. Andrew Dennington, a member of the ZBA, objected to voting on the Use Variance because the draft decision had just been submitted to the Board and there was insufficient time for review. *Tr. Day #12 p. 21-22*; Bartolini disagreed and held the vote to approve the use variance without having the decision (terms and conditions). *Id., p. 23-24*.
110. Bartolini and Eagle, two of the three Board members who voted to approve the project, had previously voted in favor of Depietri's request for relief to convert his Oregon Road development from a 40B to a market rate development. *Tr. Day 9, 201-02*.
111. Both Bartolini and Eagle had long standing business connections with Depietri. Eagle indicated to the Selectmen in 2005 when he first sought a seat on the Board that he would have to recuse himself from proceedings involving Depietri because Depietri was his "client." At trial, Eagle tried to claim that he was referring to Depietri's brother, but the evidence demonstrated that the applicant William Depietri had for many years rented Eagle trailers from Eagle Leasing. *See, e.g., Tr. 9 at 87* (Depietri testified that "we had purchased trailers and storage containers" in the late 1990's "from Eagle Leasing.") Depietri also did not deny that he was the "Depietri" identified as Eagle's "client" in the 2005 document. *Id., at 88*. Eagle's business is renting storage and mobile office trailers often used on construction sites, and the applicant had Eagle trailers on several of his job sites even during the Park Central proceedings, for which he gave dubious and conflicting explanations. *Depietri Testimony; Exh. 89*,
112. Bartolini executed several disclosures of his business relationships with the applicant, but failed to follow the required procedure of filing them with his appointing authority, the Board of Selectmen. *Exh. 132, p. 2, 3, 5, 6, 8 (appointed municipal officials should file with their appointing authority)*. Additionally, Bartolini's family owns a site work company that could benefit from the extensive site work that would be required if the project is constructed. *Depietri Testimony*.
113. The Developer had represented in early June of 2016 that revised plans would within a few weeks, but they were not filed with the Town until after August 15, 2016. *Eagle; Morris; Possemato; Ex. 3*
114. By letter dated August 23, 2016, the Planning Board advised the Board that it needed more time to conduct its review of the revised plans submitted on August 16, 2016, and to provide comments to the Board, and that the Project was not ready for a vote. *Eagle; Morris; Ex. 34*.
115. By letter dated August 23, 2016, a member of the Board of Selectmen advised the Board that a vote was premature because other town boards and commissions, including Planning and Conservation, needed additional time to review the revised plans that had just been filed and provide comments and meaningfully participate in the process. *Eagle; Shea; Ex. 33*
116. The Conservation Commission also sent the Board a letter advising the Board that there were still more than 200 outstanding items that required the Commission's further review. *Board Defendants; Possemato; Ex.30*.

117. Despite receiving these letters, the Board moved ahead with closing the public hearing and voted to approve the permit late in the evening of August 24, 2016. *Eagle; August 24, 2016 Minutes, Ex. 52; Decision.*
118. Before the August 24, 2016 Board meeting, Park Central had executed a written agreement to extend the proceedings until at least August 31, 2016. *Ex. 134.*
119. Eagle testified at trial that, as Chair Pro Tem, he could have scheduled an additional segment of the public hearing the following week. *Tr. Day 10 at 41:5-8.* He also admitted that he could have requested that the applicant agree to an extension *beyond* August 31. *Id. at 41:11-24.*
120. Instead of continuing the hearing or requesting an extension, however, Eagle stated during the hearing that he was concerned about Depietri's "due process rights," and that he believed Depietri was entitled to a "180-day review." *Id. at 43:5-11.*
121. At trial, Eagle conceded that he did not understand that the 180-day timeline for review of 40B applications that he cited as a reason in support of the applicant's desire to close the hearing presumes that the applicant has made timely submissions of materials requested by the Board. *Id. at 44:21 to 45:7.*
122. He also admitted that the Board had granted multiple extensions at the request of the Depietri. *Id. at 44:13-20.*
123. On August 24, 2016, at approximately 10:20 p.m., the Board voted, without discussion, to close the public hearing. See Exs. 52; 30, 33, 34; *Tr. Day 10 at 49-52.*
124. When the Board closed the hearing, there was a resident still standing at the podium and a queue of others waiting to provide comment. *Tr. Day 10 at 49-52.*
125. After taking a recess that lasted until 11:12 p.m., the Board then voted—with no deliberation—to approve the application and to sign the proposed written decision that had been submitted to the Board the same day and not made available to the public. *Id.; Exs. 1, 52.*
126. The Board was so eager to sign the Decision that it had to be prompted by the applicant's attorney, Catanzaro, to move to approve the permit application first. *Tr. Day 10 at 52.*
127. With Eagle acting as Chair, the Board chose not to avail itself of the 40-day window afforded to it to deliberate, signed the Decision that night, and filed it with the town clerk the very next day, August 25th. *Tr. Day 10 at 60-62.*
128. Eagle did not disclose to anyone that night that earlier on August 24, 2016 he had executed all documents necessary to relinquish his declaration of homestead and to sell his Southborough residence. *Ex. 119.*
129. At the Board's meeting on August 3, 2016, after Bartolini was removed as Chair by the Board of Selectmen, Eagle was asked whether he would serve as Chair for purposes of Park Central. Eagle responded: "I don't think I can." *Tr. Day 9 at 151-152.*
130. Eagle knew that his house was on the market at the time. *Tr. Day 10 at 64, 73:18 to 74:21; Exs. 119, 120.*
131. Eagle understood that he could not serve as a board member if he was not a

- Southborough resident. *Tr. Day 10 at 72:18-24.*
132. Eagle sent a letter of resignation less than a week after the Board's vote. *Tr. Day 10 at 73; Ex. 46.*
 133. Before closing the public hearing, the Board received letters from the Conservation Commission, the Planning Board, and a member of the Board of Selectmen urging the ZBA not to close the hearing because significant information was still outstanding and the application was not ready for a vote. *Exs. 30, 33, 34; see also Ex. 29.*
 134. Revised plans that were promised months earlier were not provided by Park Central until August 15. *Ex. 3; Tr. Day 10 at p. 160.*
 135. The evidence at trial demonstrated that Eagle was no longer a Southborough resident on the night of the 24th, which disqualified him from serving on the Board. *Tr. Day 10 at 67-73; Exs. 119-120; Ex. 46; see also, Tr. Day 11 at 10:9 to 12:14 (Yazdani testimony).*
 136. Southborough resident Dr. Magid Yazdani attended the Board of Selectmen's meeting on August 23, 2016 and handed each member of the Board a photograph of the large moving truck that had been in Eagle's driveway the previous weekend, asking the Board members whether Eagle's move out of Southborough was the real reason the Board was scheduling the vote for the following evening. *Tr. Day 11 at 11-13; 55.*
 137. Although he initially denied contacting Depietri or his representatives directly to recommend a mitigation amount; *Tr. Day 10 at 85:3-7*, Eagle admitted doing so after being confronted with his *ex parte* email communication (*Ex. 31; Tr. Day 10 at 85:14 thru 89:22*).
 138. Eagle admitted that he engaged in *ex parte* communications with the applicant at the last minute to insert various conditions into the proposed decision. *Ex. 31 (August 22, 2016, 9:10 p.m. email from David Eagle to Angelo Catanzaro, Esq.); Tr. Day 10 at 88-89.*
 139. Eagle testified that he understood that Catanzaro represented Depietri and Park Central during the application process; *Tr. Day 9 at 156:18-21; 157:4-6*; and that the Board was represented by its own counsel, Attorney Cipriano. *Tr. Day 9 at 158:1-10.*
 140. Eagle was aware of the requirements of the Massachusetts Open Meeting Law, but he still sent the email directly to Catanzaro outside of the public hearing. *Id. at 86:19 to 87:1; and 89:3-11.*
 141. Most of the conditions set forth in Eagle's *ex parte* communication—including the left-turn time restriction and the invitation for Depietri to set a "reasonable amount" for mitigation—were incorporated into the Board's Decision. *Ex. 31; Ex. 1 at 22.*
 142. The Board voted to approve the left turn time restriction despite being advised by the Chief of Police, Ken Paulhus, that he wanted to "emphatically state that the Police Department would be opposed" to this condition because it would be "unenforceable," and "would lead to much confusion and frustration along with a safety issue of expectations that cars would not be coming northerly at that time." *Testimony of Paulhus; Ex. 32.*
 143. Chief Paulhus testified that he was "very opposed" to the condition and stated that it would create an "extreme safety issue" on Flagg Road. *Tr. Day 5 at 137:6, 149:4-5.*

144. The Board provided no response to Chief Paulhus and included the condition in the Decision over his emphatic opposition. *Id.* at 138.
145. Depietri testified that he discussed those conditions after receipt of the email and that he approved them. *Tr. Day 9 at 49-50.*
146. At the beginning of the hearing process, Depietri proposed to provide \$540,000 in mitigation funding. He pulled the offer when the town invoked the safe harbor provision for c. 40B and stated that he would not give the town “one red cent.” *Tr. Day 9 at 57-58.*
147. Depietri admitted that the purpose of the 40B he planned to go forward with a 40B project as a loss-leader in order to secure the development of more lucrative phases of development on the site: “I’m talking -- The overall site is 100 acres. So that’s how we look at it. Sometimes you got to go in and lose money on one phase to get the infrastructure to make money on the next phase. They don’t all have to be profitable. If this was a standard 13-acre site and we had no other land around it, yes, we would want it to be profitable. This is one piece of a big puzzle. And we’re doing this to get the infrastructure in. Who cares if it loses money?” *Tr. Day 9 at 39:4-11.*
148. The Board opened the public hearing before 5pm on August 24, 2016, voted to close the public hearing at about 10:20 p.m., went into recess, and reconvened at 11:12 p.m. for a deliberative session. The Board did not engage in any deliberations after it reconvened before voting unanimously to approve the permit application. The applicant’s counsel had to remind the Board that before signing the decision, they had to move to approve it and take a vote. The Board then signed a written Decision and voted to adjourn the meeting at 11:20 p.m. *Eagle testimony; Ex. 52.*
149. After closing the public hearing, the Board had 40 days to render a decision. After rendering a decision, the Board had 14 days to file its decision with the town clerk. *Marchant; Eagle; Ex. 4, ¶ 7.4; 760 CMR 56.05(8).*
150. The Board filed its decision with the town clerk on August 25, 2016, less than twenty-four hours after it voted. *Eagle; Decision, Ex. 1.*
151. Mr. Yazdini attended the Board of Selectmen’s meeting on August 23, 2016, and handed each member of the Board a copy of the photograph he had taken the previous weekend of the large moving van in Eagle’s driveway and asked that the Selectmen intervene and stop the Board’s vote the next day. The Selectmen did not intervene. *Testimony of Yazdini.*
152. The next day Mr. Yazdini attended the last segment of the public hearing and asked Mr. Eagle if the Board was voting that evening because he had already moved out of Southborough. *Testimony of Yazdini.*
153. Before the Board closed the hearing on August 24, 2016, the Chair of Conservation Commission advised the Board that the Commission had had no meaningful opportunity to comment on the proposed project as recently revised. *Possemato; Eagle; Ex. 30.*
154. Before the Board closed the hearing on August 24, 2016, the Planning Board Chair advised the Board that the Planning Board had no meaningful opportunity to comment on the proposed project as recently revised. *Morris; Eagle; Ex. 34.*

155. Before the Board closed the hearing on August 24, 2016, at least one member of the Board of Selectmen advised the Board that there had been no meaningful opportunity to comment on the proposed project as revised. *Shea; Eagle; Ex. 33.*
156. On August 22, 2016, David Eagle, acting as Chairman pro tempore of the Board, engaged in *ex parte* communication with the Applicant's attorney, Angelo Catanzaro, Esq., outside of the public hearing process. *Eagle; Ex. 31.*
157. In his *ex parte* communication with the applicant, Mr. Eagle requested that the Applicant include six conditions in a draft decision for review on August 24, 2016. The conditions included a no-left turn prohibition from 7:00 a.m. to 9:00 a.m. and a possible offer to pay a "reasonable amount" into escrow to help the town pay for upgrades to mitigate traffic on Flagg Road. *Eagle; Depietri; Ex. 31.*
158. In response to the *ex parte* communication from Mr. Eagle, Park Central included the proposed conditions in its draft decision, including an offer to pay \$25,000 towards traffic mitigation on Flagg Road. *Eagle; Depietri; Ex. 31; Ex. 1.*
159. On August 24, 2016, the Southborough Zoning Board of Appeal (the "Board") voted to approve the application of Defendant Park Central, LLC for a comprehensive permit under G.L. c. 40B by a vote of 3-0. *Exhibit 1.*
160. The Selectmen put Depietri on notice by letter dated September 2016 that no traffic from the development accessing Flagg would be permitted to turn left. *Testimony of Depietri.*

TRAFFIC SAFETY

161. TEC prepared a traffic study dated May 19, 2014, in which it only considered the traffic from the proposed Chapter 40B development, and not traffic from the other proposed uses on the Site. Exhibit 9.
162. The May 19, 2014 traffic study from TEC presumed that vehicles using John Boland Drive would be restricted from taking a left-hand turn onto Flagg Road. Exhibit 9.
163. The December 4, 2015 traffic study was based on a fuller use of the development site, consisting of the 180-unit Chapter 40B development, a 140-unit market-rate ownership development (approved pursuant to the grant of a Use Variance), and 150 bed assisted living facility and a 125-unit hotel. Exhibit 14.
164. The December 4, 2015 traffic study includes information regarding the existing trip distribution from Blackthorn Drive, which shows that 80% of vehicles turn left towards Route 30 during the morning peak hour. Exhibit 14.
165. Despite this evidence, TEC included a trip distribution that presumes 85% of vehicles exiting John Boland Drive will turn right on Flagg Road towards Route 9, and only 15% of vehicles will turn left on Flagg Road towards Route 30. Exhibit 14.
166. The traffic counts used by TEC in their December 4, 2015 traffic study were more than two years old, exceeding the maximum allowable time under MassDOT standards. Exhibit 70; testimony of Cram.
167. The Board's peer review engineer Jason DeGray testified before the Board that he did not recommend full access to Flagg Road, and that he supported the access road at John Boland Drive to be right turn only. *Testimony of Jason DeGray, February 8, 2021.*

168. This recommendation was based upon DeGray's determination that the local roadway system (particularly Flagg Road) was not intended to serve notable amounts of traffic. Testimony of Jason DeGray, February 8, 2021, at 14.
169. Specifically, Mr. DeGray was concerned about the narrowness of these roadways, which he described as "very narrow with obstructions." Testimony of Jason DeGray, February 8, 2021 at 14-15.
170. Mr. DeGray identified a number of deficiencies with Flagg Road in his December 23, 2015 review letter, including narrow roadway width, limited sight distance in some locations, lack of pedestrian or bicycle facilities and limited roadside clear zones. Exhibit 70.
171. Mr. DeGray testified that the culvert presents a pinch point due to its narrowness, and that while traffic calming measures can help, "it needs to be more systemic than that." Testimony of Jason DeGray, February 8, 2021, at 24.
172. Mr. DeGray identified concerns with excessive speeds, cut-through traffic, presence of school-aged children and the lack of pedestrian accommodations as part of the Safety Study. Exhibit 17.
173. The Safety Study identified speed, roadway width, lack of sidewalks and lack of a roadside clear zone as existing deficiencies. Exhibit 17.
174. The Safety Study identified a section of Flagg Road north of John Boland Drive and south of Blackthorn Drive as exhibiting a crash pattern related to excessive speed. Exhibit 17.
175. Flagg Road is a road having a width varying from 15' wide to 22.5' wide. Exhibit 17.
176. Plaintiff Yan Huang resides at 75 Flagg Road, which is located within the section of Flagg Road between the proposed John Boland Drive and Blackthorn Drive that was identified in the Toole Safety Study as exhibiting a crash pattern related to excessive speed. Testimony of Kenneth Cram, February 25, 2021, at 70.
177. There are existing sight distance deficiencies at the intersection of Blackthorn Drive and Flagg Road. Exhibit 17.
178. The Board did not require any improvement to the Blackthorn Drive/Flagg Road intersection, ignoring both the Applicant's traffic engineer and the Toole Design Road Safety Study. Exhibit 1; Exhibit 12; Exhibit 17.
179. The Toole Design Road Safety Study recommended that striping be added over the entirety of the study area. Exhibit 17.
180. The Board did not require striping be added as part of its decision. Exhibit 1.
181. The Southborough Department of Public Works has included striping on Flagg Road, but did not add it throughout the entirety of the study area, because Flagg Road is too narrow in certain areas to allow for two marked lanes. DPW Director Galligan testimony.
182. The Toole Design Road Safety Study also recommended adding speed humps along Flagg Road south of Blackthorn Drive, in order to reduce speeds in this area of Flagg Road. Exhibit 17.

183. The Board did not require the installation of speed humps on Flagg Road as part of its decision. Exhibit 1.
184. Speed humps have not been installed along Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 80.
185. The Town has installed dynamic speed signs along Flagg Road in an attempt to reduce speeds, but no evidence was produced to indicate whether or not such signs have been effective in reducing speeds. Testimony of Kenneth Cram, February 25, 2021, at 85; Testimony of Jason DeGray, February 8 2021, at 44-45.
186. The Toole Design Road Safety Study recommended the installation of a sidewalk along both sides of Flagg Road at the Deerfoot Road intersection and at the west side of the Deerfoot Road southbound approach. Exhibit 17.
187. The Board's decision does not require the installation of sidewalks anywhere along Flagg Road. Exhibit 1.
188. The Town of Southborough has not installed sidewalks along Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 79.
189. The Toole Design Road Safety Study recommended the realignment of the existing crosswalk at the Flagg Road/Deerfoot Road intersection, and also recommended the installation of Rectangular Rapid Flashing Beacons at this intersection. Exhibit 17.
190. The Board's decision did not require the realignment of the Flagg Road/Deerfoot Road intersection, and did not require the installation of Rectangular Rapid Flashing Beacons. Exhibit 1.
191. The Toole Design Road Safety Study also recommends the installation of a sidewalk on Deerfoot Road. Exhibit 17.
192. The Board's decision did not require the installation of a sidewalk on Deerfoot Road. Exhibit 1.
193. The Town has not installed a sidewalk on Deerfoot Road. Testimony of Kenneth Cram, February 25, 2021, at 81.
194. The total cost of the roadway improvements recommended in the Toole Design Road Safety Study would be approximately \$1,500,000. Testimony of Jason DeGray, February 8, 2021, at 49.
195. The Board's decision in Special Condition 3 requires only \$25,000 in traffic mitigation payments. Exhibit 1.
196. The Plaintiff's witness Mr. DeGray acknowledged that he would not recommend designing a new roadway with similar characteristics as Flagg Road. Testimony of Jason DeGray, February 8 2021, at 50.
197. The December 4, 2015 traffic study from TEC indicates that there will be an additional 3,200 daily trips on Flagg Road as a result of the various uses proposed for the Site. Exhibit 14.
198. The TEC traffic study presumes that eighty-five percent (85%) of the vehicles exiting John Boland Drive will turn right onto Flagg Road to head towards Route 9. Exhibit 14.

199. The TEC traffic study presumes that fifteen percent (15%) of the vehicles exiting John Boland Drive will turn left onto Flagg Road to head towards Route 30. Exhibit 14.
200. Even if the TEC estimate is correct, this will result in an additional four hundred and eighty (480) new vehicle trips on the portions of Flagg Road identified in the Toole Design Road Safety Study. Exhibit 14; Exhibit 17.
201. Despite being presented with evidence that Lovers Lane and Lynbrook Road are frequently used as a cut-through when Route 9 backs up, TEC did not bother to engage in a study of the safety of these roadways. Testimony of Kevin Dandrade, February 1, 2021, at 61-63.
202. Lovers Lane varies in width between 12.5' at its narrowest point to 18' at its widest point. Testimony of Kevin Dandrade, February 1, 2021, at 63-64.
203. There are areas of Lovers Lane where it is impossible for two cars to safely pass each other. Testimony of Kevin Dandrade, at 27.
204. As acknowledged by the Applicant's traffic consultant, the width of Lovers Lane presents an existing safety concern. Testimony of Kevin Dandrade, February 1, 2021, at 64.
205. The Applicant's consultant did not consider the safety of Lovers Lane in his traffic report, nor did the Board require the Applicant to review the impacts of the Project on Lovers Lane. Testimony of Kevin Dandrade, February 1, 2021, at 64.
206. Lynbrook Road varies in pavement width from 16' to 23.3'. Testimony of Kevin Dandrade, February 1, 2021, at 65.
207. The Applicant's traffic consultant also did not review the safety impacts of the Project on Lynbrook Road, nor did the Board require a study of the traffic impacts on Lynbrook Road. Testimony of Kevin Dandrade, February 1, 2021, at 65.
208. There is an existing culvert on Flagg Road that is only 17.5' wide. Exhibit 17.
209. The Applicant's traffic consultant argued that the traffic light at the Route 9/Crystal Pond Road intersection would create gaps in the traffic on Route 9 that would help to mitigate the queuing on Flagg Road, but that opinion conflicts with the opinion provided by MassDOT, which stated that given the distance from the Route 9/Crystal Pond intersection to the Route 9/Flagg Road intersection "the predicted gaps discussed in the FDR would not be present to allow additional vehicles to entre traffic from Flagg Road[.]" Exhibit 68.
210. Under existing conditions, approximately eighty percent (80%) of the traffic exiting Blackthorn Drive onto Flagg Road (the closest intersection north of the proposed John Boland Drive) turns left towards Route 30. Exhibit 14; Testimony of Kevin Dandrade, February 1, 2021, at 87.
211. The Applicant's traffic consultant estimated that eighty-five percent (85%) of the traffic from the Project will turn right from the proposed John Boland Drive towards Route 9, and that only fifteen percent (15%) of the traffic will turn left on Flagg Road towards Route 30. Exhibit 14; Testimony of Kevin Dandrade, February 1, 2021, at 87.
212. The Applicant's engineer made this estimate despite the evidence that the majority of the vehicle trips exiting Blackthorn Drive turn left, and despite the fact that in the build

- condition, the peak queue on Flagg Road will increase from fifty-nine feet (59') to three hundred and forty-six feet (346'). Exhibit 14; Testimony of Kevin Dandrade, February 1, 2021, at 90-91.
213. The backup from the queue during the a.m. peak hour could extend all the way to the culvert on Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 103.
 214. Given the longer queue on Flagg Road, it is likely that greater than fifteen percent (15%) of the vehicles exiting the proposed John Boland Drive will turn left on Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 53-54.
 215. The times of the travel runs observed in the real-time GPS study were 4:45 p.m., 5:15 p.m., and 5:50 p.m. No travel runs were taken during the a.m. peak hour. Exhibit 65; Testimony of Kevin Dandrade, February 2, 2021, at 9-10.
 216. The real-time GPS study did not include information regarding the a.m. peak hour, despite the fact that projected queues on Flagg Road will be more than double in the a.m. peak hour (346') than in the p.m. peak hour (171'). Exhibit 65; Testimony of Kevin Dandrade, February 2, 2021 at 11-12.
 217. There is no evidence of any delays on Route 9 at the time the real-time GPS study was conducted. Testimony of Kevin Dandrade, February 2, 2021 at 12.
 218. The real-time GPS study was conducted on July 6, 2016. Exhibit 65; Testimony of Kenneth Cram, February 25, 2021, at 62.
 219. Typically, traffic consultants and engineers avoid doing traffic counts or observations on or around holidays, as they can cause fluctuations in traffic volumes. Testimony of Kenneth Cram, February 25, 2021, at 62-63.
 220. Even though there was no observed backup on Route 9 on July 6, 2016, the difference between using Flagg Road to Route 9 or Flagg Road to Route 30 was only about two minutes in drive time. Exhibit 65; Testimony of Kevin Dandrade, February 2, 2021 at 13.
 221. The two-minute difference in drive time between turning right onto Flagg Road towards Route 9 and turning left on Flagg Road towards Route 30 would be eliminated by waiting in the 346' queue on Flagg Road in the proposed build condition. Testimony of Kevin Dandrade, February 2, 2021, at 15-16.
 222. The real-time GPS study conducted by TEC also shows that the travel time proceeding south on Flagg Road towards Route 9 is approximately five minutes quicker than proceeding north on Flagg Road towards Lovers Lane and Lynbrook Road. Exhibit 65; Testimony of Kenneth Cram, February 25, 2021, at 63.
 223. When traffic is backed up on Route 9, a condition not measured in the TEC real-time GPS study, it is likely that the five minute difference in drive time between proceeding south on Flagg Road towards Route 9 and proceeding north on Flagg Road towards Lovers Lane and Lynbrook Road would be eliminated. Exhibit 65; Testimony of Kenneth Cram, February 25, 2021, at 63.

224. A more accurate trip distribution for the Project would be having twenty percent (20%) to twenty-five percent (25%) of the 3,222 daily trips turning left onto Flagg Road towards Route 30. Testimony of Kenneth Cram, February 25, 2021, at 66.
225. If twenty-five percent (25%) of the vehicle trips from the Project turn left onto Flagg Road, that would result in eight hundred and five (5) new vehicle trips across the narrow culvert on Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 66.
226. Even if the Applicant's figure of fifteen percent (15%) of vehicles turning left onto Flagg Road would result in 483 new vehicle trips crossing the narrow culvert on Flagg Road. Testimony of Kevin Dandrade, February 1, 2021, at 76.
227. The Applicant's original proposal featured a secondary means of access, across Tara Road and Bantry Road to Blackthorn Drive. The use of this secondary access point would have allowed vehicles exiting the Project to turn left onto Flagg Road without needing to cross the narrow culvert. Testimony of Kenneth Cram, February 25, 2021, at 67-68.
228. The Applicant's voluntary elimination of the secondary access over Tara Road and Bantry Road to Blackthorn Drive increases the traffic safety concerns with the Project. Testimony of Kenneth Cram, February 25, 2021, at 68-69; 92.
229. The Applicant's voluntary elimination of the secondary access road across Tara Road and Bantry Road to Blackthorn Drive particularly impacts Plaintiff Huang, whose home is located at 75 Flagg Road, which is between the proposed John Boland Drive and Blackthorn Drive. Testimony of Kenneth Cram, February 25, 2021, at 70.
230. Even using the trip generation figures proposed by the Applicant's consultant, there will be a significant increase in traffic in front of 75 Flagg Road. Testimony of Kenneth Cram, February 25, 2021, at 71.
231. As currently designed, the curb radii at John Boland Drive are not large enough for emergency vehicles to safely turn into or out of John Boland Drive without encroaching upon the center line. Testimony of Kenneth Cram, February 25, 2021, at 107-108.
232. Similarly, school buses are also unable to safely turn into or out of John Boland Drive without encroaching upon the center line. Testimony of Kenneth Cram, February 25, 2021, at 108.
233. If vehicles are queued on John Boland Drive, emergency vehicles and school buses would have to wait until the queue clears before turning onto John Boland Drive. Testimony of Kenneth Cram, February 25, 2021, at 109.

Respectfully submitted,

Plaintiffs,

YAN HUANG, et al.,

By their Attorneys,

/s/ Daniel J. Pasquarello

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Dated: June 4, 2021

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document upon counsel for the Defendants by e-mail on June 4, 2021.

/s/ Daniel J. Pasquarello