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PETERS TOWNSHIP PUBLIC HEARING

MAY 31, 2011, 7:30 P.M.

COUNCIL MEMBERS:

- Chairman Robert Atkison - At Large
- Vice Chairman Monica R. Merrell - District B
- David M. Ball - District A
- Frank Arcuri - District C
- Robert Lewis - At Large
- Gary J. Stiegel, Jr. - At Large

ALSO PRESENT

- Mr. Silvestri
- Mr. Zuk
- Mr. Johnson

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Bethel Park, Pa 15102  
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Page 2

1 Representing the Petitioners:  
 2 Tammy Ribar, Esquire  
 3 Houston Harbaugh  
 4 Three Gateway Center  
 5 401 Liberty Avenue  
 6 22nd Floor  
 7 Pittsburgh, PA 15222 1234:  
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1 solicitor, to coordinate the order of testimony to  
 2 ensure efficiency and the proper order of the compliance  
 3 with the proper legal proceedings.  
 4 It is the desire of Council to complete the  
 5 hearing this evening and we ask all participants and  
 6 attorneys to keep that in mind.  
 7 Mr. Silvestri, do you have any additional  
 8 items to place into the record?  
 9 MR. SILVESTRI: Yes, sir, there are three  
 10 additional letters that came in. One from Dale Thomas  
 11 undated in opposition to the proposed ordinance.  
 12 Another one dated May 31st from David and Holly Wall of  
 13 Molly Drive also in opposition. And one this evening  
 14 from Peggy and Thomas Roe also in opposition from  
 15 Sherborne Drive.  
 16 CHAIRMAN ATKISON: Okay. Anyone planning to  
 17 give testimony this evening stand to be sworn as one  
 18 group here.  
 19 (All witnesses sworn)  
 20 CHAIRMAN ATKISON: Again, I want to  
 21 reiterate Mr. Johnson is going to conduct this hearing  
 22 so we don't make any missteps legally. But our desire  
 23 is to finish this thing tonight. If we can't wrap it up  
 24 in an hour or two shame on us because we have had two

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1 7:30 p.m.  
 2 (Roll Call)  
 3 (Pledge of Allegiance)  
 4 CHAIRMAN ATKISON: This hearing is a second  
 5 continuation of a hearing initially heard on March 21,  
 6 2011 and then heard on May 2, 2011. The purpose of this  
 7 hearing is to accept additional comments on the proposed  
 8 curative amendment challenging the validity of the  
 9 Peters Township zoning ordinance relating to funeral  
 10 homes and crematories. The challenge has been filed by  
 11 the Audia Investment Group, LLC.  
 12 This hearing was advertised in the Observer  
 13 Reporter on May 17th and 24th, also on the township  
 14 bulletin boards, cable television and the township  
 15 website.  
 16 Council will not be taking action on the  
 17 proposed ordinance this evening. If the hearing is  
 18 closed this evening, action will be taken at either the  
 19 June 13th or June 27th Council meetings. I would like  
 20 to note that this is a continued hearing and for  
 21 purposes of efficiency, if you have testified before, we  
 22 do have your comments and they need not be repeated  
 23 again.  
 24 I will be asking Mr. Johnson, township

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1 three-hour sessions that is six hours, that is a lot.  
 2 By all standards that is a lot. The desire is to finish  
 3 it tonight. We will shoot for that, I guarantee it.  
 4 Mr. Johnson.  
 5 MR. JOHNSON: Thank you, Mr. Atkison, we  
 6 will proceed with party litigants however we will give  
 7 the audience an opportunity parties to comment. It is  
 8 our intent to conclude these hearings this evening.  
 9 With that, Mr. Ribar, anything else you want  
 10 to present in your case in chief.  
 11 MS. RIBAR: Yes, thank you, Tammy Ribar for  
 12 the applicant, R-I-B-A-R.  
 13 It is our desire also to wrap this up  
 14 tonight. It has been a long process. In that respect I  
 15 wanted to bring to Council's attention to a letter that  
 16 Mrs. Belusko received at her home. It is a bit  
 17 disturbing to all of us involved from an unnamed Peters  
 18 Township resident characterizes her as an adult bully,  
 19 states that her three young children may suffer  
 20 emotional harm due to the way they may be treated if she  
 21 resides in Peters Township. It is generally derogatory  
 22 to Mrs. Belusko and her family. We do want you to have  
 23 a copy of this. We don't understand why somebody would  
 24 send this to her home or why they would not put their

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1 name on it. Be that as it may, it is what it is.  
 2 We also would like to present additional  
 3 testimony from Brian Kelly who was the appraiser who  
 4 appeared at the last hearing. There was some criticism  
 5 of him for not preparing an analysis of specific  
 6 properties called a matched pair analysis which would  
 7 compare homes that were sold prior to and after a  
 8 specific crematory was installed. We has done that and  
 9 we have very brief testimony to that effect.  
 10 Due to the fact that the Thomases are also  
 11 intervening in this proceeding, this is more  
 12 anticipatory on our part we don't know who or what  
 13 testimony is going to be elicited from those people.  
 14 We do have e-mails from Jeff Ross of Howard  
 15 Hanna and Patty Thomas from Wellington Real Estate  
 16 Services which established that they had considered  
 17 selling their property to the Belusko's for the  
 18 crematory and funeral home.  
 19 These are marked as Exhibits 48, 49 and 50  
 20 on behalf of the applicants and I have copies for  
 21 everybody here.  
 22 MR. JOHNSON: We will make those part of the  
 23 record. Do you have some testimony?  
 24 MS. MITINGER: Mr. Johnson, without seeing

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1 the exhibits, sorry, my name is Alice Mitinger on behalf  
 2 of the Thomas. And before you can assume they can be  
 3 admitted into the record, I would like the opportunity.  
 4 MR. JOHNSON: I am going to assume they will  
 5 be admitted into the record, may be over objection and  
 6 may be on review they are not relevant or material.  
 7 MS. MITINGER: I just wanted to note my  
 8 objection.  
 9 MR. JOHNSON: For the purpose of proceeding  
 10 we will take the exhibits and make them available to you  
 11 for your comments at the conclusion of the hearing.  
 12 What I anticipate is that after the conclusion of the  
 13 public hearing we will give you a brief period in which  
 14 to make a written comment, proposed findings to Council.  
 15 MS. MITINGER: Thank you.  
 16 MR. ARCURI: If you would like to see these  
 17 exhibits, you can have my copy, just make sure I get it  
 18 back.  
 19 MS. MITINGER: I will.  
 20 MS. RIBAR: I will ask Mr. Kelly to testify.  
 21 BRIAN KELLEY  
 22 Testified as follows:  
 23 BY MS. RIBAR:  
 24 Q. State your name.

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1 A. Brian Kelly.  
 2 Q. Mr. Kelly, you testified at the last proceeding,  
 3 correct?  
 4 A. I did.  
 5 Q. Since that last proceeding, what additional work  
 6 have you done with regard to property, with regard to  
 7 the impact of a crematory on property values?  
 8 A. I conducted an analysis of properties. The most  
 9 recent, one of the most recent crematories installed  
 10 into the Allegheny County was in Blawnox, the Smith  
 11 Funeral Home in Blawnox located at 930 Centre Avenue,  
 12 Blawnox 15238. In order to conduct the analysis, I  
 13 provided a matched pair scenario with 14 sales.  
 14 Q. What year was the Smith crematory installed in  
 15 Blawnox?  
 16 A. The Smith crematory was installed in 1996.  
 17 Q. Can you explain what a matched pair analysis is,  
 18 please?  
 19 A. In this analysis what I did is I provided sales  
 20 that occurred before and after the crematory was  
 21 installed which was 1996. And I went five years before  
 22 and five years beyond so sales that occurred five years  
 23 prior to the installation of the crematory and five  
 24 years after. Resales of the same property.

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1 My analysis provided it indicated that there is  
 2 no change in value attributed to the installation of a  
 3 crematory. For instance, in 1990, between 1990 and  
 4 2001, the average rate of change of property values in  
 5 Blawnox based on Real Stats public records was 4.64  
 6 percent. Based on my analysis taking matched pairs that  
 7 occurred between 1990 and 2001, the analysis provided an  
 8 average of, average increase of 13.01 percent.  
 9 What I did is I took out the top three and the  
 10 bottom three because there are several up around 50  
 11 percent increase, 50, 47.5 and 45.52. There were three  
 12 at 1.24, 1.02 and 1.58. So I excluded those I came out  
 13 with an average increase per year, an average increase  
 14 per year 4.41 percent.  
 15 Q. Those are all homes in Blawnox?  
 16 A. For all homes in Blawnox matched pairs. So that  
 17 would be a property that sold prior to 1996 and that  
 18 same exact property selling after 1996. So that  
 19 analysis provided an average of 4.41 percent whereas the  
 20 average increase in Blawnox which I established earlier  
 21 was 4.64 percent.  
 22 I went further to grab six sales that were  
 23 located within a three block radius of the crematory.  
 24 The six sales produced a range from 1.02 percent to

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1 45.52 percent increase average over the period.  
 2 Excluding again the highest sale and the lowest sale  
 3 provided an average increase of 4.03 percent which was  
 4 in line with the prior two analyses.  
 5 So, therefore, in this particular case there is  
 6 no increase or no change in value attributed to the  
 7 crematory.  
 8 Now, as I testified the day, you know, last  
 9 month, I still do not think there is any impact, you  
 10 know, pertaining to the crematory of this property due  
 11 to the crematory mostly the impact is due to the retail  
 12 location on Route 19.  
 13 MS. RIBAR: Any questions?  
 14 MS. MERRELL: Of course, I have a question.  
 15 You indicate based on your statement that you don't  
 16 believe that this shows that the crematory had any  
 17 negative impact on the sale because all of them were  
 18 increased.  
 19 A. Sure.  
 20 MS. MERRELL: Do you have any other criteria  
 21 to identify why they would have increased, for example,  
 22 the improvements that were made? Could it have  
 23 increased more if there wasn't a crematory there?  
 24 A. The data is pretty closely rated and I think

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1 includes the set of data is large enough that it takes  
 2 all of that into account. There are several properties  
 3 that may have been improved more than others in between,  
 4 but when you have this amount of data, then you can  
 5 pretty much narrow it down which this is very reliable  
 6 on the number.  
 7 MS. MERRELL: Thank you.  
 8 MR. STIEGEL: How many home sales did you  
 9 say there were?  
 10 A. Well, there was, I used 14 resales of properties  
 11 between 1990 and 2001.  
 12 BY MS. RIBAR:  
 13 **Q. What was the proximity to the funeral home?**  
 14 A. These were all located within Blawnox.  
 15 MS. MERRELL: These are all the resales?  
 16 A. These were all the resales between 1990 and 2001.  
 17 BY MS. RIBAR:  
 18 **Q. Correct me if I'm wrong, but you did a different**  
 19 **analysis for homes that were close to the crematory.**  
 20 **The 14 you cited to were ones within --**  
 21 A. They were in Blawnox. They narrowed it down to a  
 22 three block radius.  
 23 **Q. The 14 homes you listed here are within the three**  
 24 **block radius?**

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1 A. No, the 14 homes here are within Blawnox. These  
 2 are sales and resales within ten-year period from 2000,  
 3 from 1990 to 2001.  
 4 So the original analysis if you look at the  
 5 bottom of the exhibit, residential resales between 1990  
 6 and 2001, it shows an average increase of 13.01 for  
 7 those sales. Now some of those may have been improved  
 8 which indicates you can see the 50 percent increase per  
 9 year was most likely the sales that may have been  
 10 renovated or significant improvements to it.  
 11 So what I did in order to narrow it down, I felt  
 12 that those were aberrations, those sales themselves. So  
 13 I took the three highest and three lowest out and  
 14 excluding those, balanced it to a 14.41 percent.  
 15 **Q. You mean 4.41?**  
 16 A. 4.41 average increase. Then narrowing it down  
 17 one more time to sales within a three block radius, we  
 18 indicated an average increase of 4.03 percent.  
 19 MR. BALL: Do you believe that you can  
 20 extrapolate homes that sell in the \$80,000 range in an  
 21 industrial town to homes that sell in 400,000 range in a  
 22 suburban town?  
 23 A. I didn't provide that analysis, but this analysis  
 24 was based on properties surrounding a crematory.

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1 MR. BALL: You didn't answer the question.  
 2 A. I said I did not provide that analysis.  
 3 BY MS. RIBAR:  
 4 **Q. Are you aware of any homes in a situation similar**  
 5 **to Peters Township where a crematory was installed you**  
 6 **could have done that analysis?**  
 7 A. Not within Allegheny County or south of the  
 8 county. So I pretty much pulled everything that I could  
 9 find. This is pretty, the newest of crematories  
 10 installed within the past 15 years.  
 11 There was only one other installed post 1990,  
 12 that was the one installed in, I think it was Boston  
 13 down in Elizabeth, that was Thomas, I believe, or  
 14 Gilbert.  
 15 MS. RIBAR: That was actually another unit  
 16 for Gilbert, that is why we didn't do that analysis,  
 17 they already had a unit, they just added another unit.  
 18 A. They added another unit, similar price range in  
 19 the neighborhood there as well.  
 20 MR. JOHNSON: In the order we went before,  
 21 Mr. Kamin, were you first?  
 22 MR. KAMIN: I believe that I was.  
 23 MR. JOHNSON: Do you have questions?  
 24 BY MR. KAMIN:

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1 **Q. Jonathan Kamin for the Genslers and Bellicinis.**  
 2 **So I was a little confused, so I want to make sure that**  
 3 **I got your testimony correct.**  
 4 A. Okay.  
 5 **Q. So, you did a study in Blawnox and the**  
 6 **crematorium was installed in 1996, correct?**  
 7 A. Yes.  
 8 **Q. We did five years before and five years after?**  
 9 A. I did.  
 10 **Q. And within Blawnox there was a total of 14 sales?**  
 11 A. Resales.  
 12 **Q. Resales.**  
 13 A. Yes.  
 14 **Q. But that was the whole town of Blawnox?**  
 15 A. Yes.  
 16 **Q. Do you know how big Blawnox is?**  
 17 A. Not exactly.  
 18 **Q. If I told you it was one square mile, does that**  
 19 **sound about right?**  
 20 A. About right.  
 21 **Q. If I told you the average home price in Blawnox**  
 22 **was about \$84,000, would that be right?**  
 23 A. I would say as of today, probably low.  
 24 **Q. Okay, my estimate is low?**

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1 A. Your estimate is low.  
 2 **Q. Now, as part of being one square mile within**  
 3 **Blawnox, let's just assume that is close to correct, is**  
 4 **there an industrial district located on the other side**  
 5 **of Main Street?**  
 6 A. Along the river, yes.  
 7 **Q. And if I were to hit a golf ball from let's say**  
 8 **the Blaw-Knox Company which is how they got its name?**  
 9 A. Sure.  
 10 **Q. B-L-A-W hyphen K-N-O-X, how far would it be for**  
 11 **me to hit the crematory?**  
 12 A. It is eight or nine blocks.  
 13 **Q. From the --**  
 14 A. From the crematory, so it is across Freeport Road  
 15 down the hill.  
 16 **Q. But?**  
 17 A. Along the river.  
 18 **Q. That is where the Blaw-Knox Company is, as I come**  
 19 **up the road up the hill, a little more towards Main**  
 20 **Street?**  
 21 A. Yes.  
 22 **Q. How close am I to the crematorium?**  
 23 A. You are within two blocks.  
 24 **Q. Within two blocks.**

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1 A. So, Blawnox is six blocks below Main Street and  
 2 the crematory was two blocks above Main Street.  
 3 **Q. Now, are there commercial uses directly across**  
 4 **from this funeral home?**  
 5 A. No.  
 6 **Q. There are not commercial uses?**  
 7 A. No, it is residential surrounding the property.  
 8 **Q. On each side of the funeral, crematory?**  
 9 A. Yes, and then down on the block of Freeport Road  
 10 there is within a block is the main street which is  
 11 Freeport Road which is mostly commercial.  
 12 **Q. Now, to do a match pair analysis, that is a term**  
 13 **of art, right, appraisal term of art?**  
 14 A. Analysis as a sales comparison approach.  
 15 **Q. Right. To do a statistically significant match**  
 16 **pair analysis, do you need more than one particular**  
 17 **event?**  
 18 A. It would help your cause.  
 19 **Q. To -- when you do an appraisal, do you usually**  
 20 **have more than one comparable sale on the appraisal?**  
 21 A. I do.  
 22 **Q. Now, we talked about again the values in Blawnox,**  
 23 **but what your six sales show is an increase of 4.03**  
 24 **percent, is that correct?**

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1 A. Yes.  
 2 **Q. And the Blawnox increase was 4.41 percent, right?**  
 3 A. Yes.  
 4 **Q. So we are about ten percent less?**  
 5 A. Yes.  
 6 **Q. Now, did you go ahead and speak to the town of**  
 7 **Blawnox, I believe Borough of Blawnox to find out if any**  
 8 **building permits were taken out on these properties?**  
 9 A. I did not.  
 10 **Q. Did you go ahead and physically inspect any of**  
 11 **these properties?**  
 12 A. I did not.  
 13 **Q. Does the testimony you are giving today qualify**  
 14 **under use path as a report?**  
 15 A. It does.  
 16 **Q. And is this what we would call an oral report?**  
 17 A. It is an oral report.  
 18 **Q. Now, as part of being an oral report, is there**  
 19 **other information in your files other than the two**  
 20 **sheets you have there that you have this evening to**  
 21 **testify to?**  
 22 A. Just the data that I used to compile the  
 23 information.  
 24 **Q. And what that data would show is a total of six**

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1 sales within this radius and that the increase in those  
 2 properties was about ten percent less than the overall  
 3 increase?  
 4 A. Yes.  
 5 **Q. Do we know if on any of those sales the fact that**  
 6 **a crematorium was in existence was disclosed to any of**  
 7 **those potential buyers?**  
 8 A. I do not.  
 9 **Q. Did you go ahead and contact any of the real**  
 10 **estate agents or anybody involved in those six sale**  
 11 **transactions to determine whether or not it was**  
 12 **disclosed to the buyers of the crematorium?**  
 13 A. I did not.  
 14 **Q. Do you know on the standard agreement of sale**  
 15 **whether or not the sellers disclosed that there was a**  
 16 **crematorium located nearby?**  
 17 A. It wasn't necessary.  
 18 **Q. It wasn't necessary to disclose or you don't know**  
 19 **if it was disclosed?**  
 20 A. I don't know if it was disclosed.  
 21 **Q. Are you familiar with the real estate disclosure**  
 22 **law in the statement all residential sellers have to**  
 23 **sign?**  
 24 A. Yes.

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1 **Q. Do you know if the crematorium was disclosed, do**  
 2 **you know if the crematorium is required to be disclosed**  
 3 **on any of those forms?**  
 4 A. I don't know.  
 5 **Q. So, what you presented is basically a sampling**  
 6 **this evening of matched pair sales but we don't know if**  
 7 **any of these people knew that there was a crematorium**  
 8 **located near the property they were buying, is that**  
 9 **correct?**  
 10 A. Correct.  
 11 **Q. Nothing further.**  
 12 **CHAIRMAN ATKISON: Mr. McDevitt.**  
 13 MR. McDEVITT: I have no questions.  
 14 MR. JOHNSON: Ms. Mitinger.  
 15 MS. MITINGER: I have no questions.  
 16 MS. MERRELL: Can I ask a clarifying  
 17 question? Mr. Kamin touched on something that raised  
 18 another thought. Of the houses that you looked at here,  
 19 do you know how they compare in increased sales or  
 20 increased value compared to the rest of any sales in  
 21 Blawnox?  
 22 A. Within Peters Township?  
 23 MS. MERRELL: No, in Blawnox you are saying  
 24 the average increase 4.64 percent.

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1 A. Yes, that was based on general data between 1990  
 2 and 2000.  
 3 MS. MERRELL: Okay. So you are saying it is  
 4 comparable to the rest of the population.  
 5 A. Very similar.  
 6 MR. JOHNSON: Anything else?  
 7 BY MS. RIBAR:  
 8 **Q. Ten percent was thrown out, Mr. Kelly, I'm now a**  
 9 **little confused, where is the 10 percent differential?**  
 10 A. If you compare, it is minuscule, 4.41 versus 4.03  
 11 percent.  
 12 **Q. That would be less than?**  
 13 A. Less than, point --  
 14 **Q. Three-tenths?**  
 15 A. .36 percent which would be less than ten percent.  
 16 But again, this isn't an exact science, this is --  
 17 **Q. .36?**  
 18 A. .36.  
 19 **Q. .36 percent, not 10 percent?**  
 20 A. It would be, if you are taking ten percent of the  
 21 4.41 percent, it would using that calculation the  
 22 difference of .36 percent would be maybe nine percent of  
 23 the 4.1 percent.  
 24 **Q. Got it, got it, okay, you are looking at the**

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1 **difference between the two saying that the difference is**  
 2 **10 percent?**  
 3 A. What I believe he was asking the question.  
 4 **Q. Got it, understood. Thank you. Nothing further.**  
 5 MR. JOHNSON: Anything else?  
 6 MS. RIBAR: Not from Mr. Kelly.  
 7 MR. STIEGEL: Other witnesses?  
 8 MS. RIBAR: We do not have any witness, we  
 9 would like the chance for rebuttal for any new witnesses  
 10 presented by the objectors.  
 11 MR. JOHNSON: Mr. McDevitt indicated to me  
 12 he had brief testimony from two witnesses, one who had  
 13 another engagement. Do you want to proceed at this  
 14 point, Mr. McDevitt? I think you are done.  
 15 MR. McDEVITT: If I could at this time I  
 16 would like to put a few minutes of testimony on from  
 17 Mr. Henney and save the rest for whatever the normal  
 18 procedure is involved. Mr. Henney.  
 19 Mr. Johnson, with your permission, I have  
 20 put together a group of exhibits that I want to offer in  
 21 the record. I made a courtesy copy for every member of  
 22 Council so you can follow if I can have permission to  
 23 hand the binders to everybody.  
 24 MR. JOHNSON: Yes, as we did with Ms. Ribar,

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1 we will take them weed out what is relevant and  
 2 material.  
 3 MR. McDEVITT: It will be helpful to follow  
 4 some of the testimony if you have documents in front of  
 5 you. With this witness we will discuss a couple  
 6 exhibits and then cover the rest later.  
 7 BY MR. McDEVITT:  
 8 **Q. Mr. Henney, while he is finishing up passing out**  
 9 **the binders, can I ask you are a funeral director,**  
 10 **correct?**  
 11 A. Yes.  
 12 **Q. You have previously testified?**  
 13 A. I have.  
 14 **Q. I would just like to take some brief testimony on**  
 15 **modern cremation procedures, specifically on this point.**  
 16 **When families or people choose to be cremated now days,**  
 17 **do they ever have a viewing first?**  
 18 A. Yes.  
 19 **Q. And when a person is going to be viewed, they**  
 20 **have to be embalmed, is that correct?**  
 21 A. Yes, if the body is held for 24 hours or more,  
 22 yes.  
 23 **Q. Is it normal and customary now days that many**  
 24 **people choose to be viewed, embalmed, and then**

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1 **ultimately cremated?**  
 2 A. Yes. That segment is growing.  
 3 **Q. Roughly what percentage of cremations occur in**  
 4 **which an embalmed body is cremated?**  
 5 A. I would say 40 to 50 percent.  
 6 **Q. All right, sir, and are you familiar, sir --**  
 7 **strike that. When those kind of cremations occur, is it**  
 8 **often the case where people are cremated in caskets?**  
 9 A. Sometimes, yes, sometimes no, yes. Rental  
 10 caskets and sometimes they incinerate the actual casket.  
 11 There are caskets made strictly for cremation and they  
 12 incinerate them.  
 13 **Q. Are you familiar with the term, sir, called the**  
 14 **material safety data sheet?**  
 15 A. Yes.  
 16 **Q. Can you explain to the Council what that is?**  
 17 A. We call it MSDS, it is a form that the OSHA  
 18 requires us that describes any chemical we have in the  
 19 embalming room we have to describe it on MSDS sheet in  
 20 detail, everything that is contained inside the  
 21 chemicals.  
 22 **Q. For example, tab 10 of the binders that you have.**  
 23 **If I can show that to you, sir, is that a material**  
 24 **safety data sheet for embalming fluid?**

Page 24

1 A. Yes, it is.  
 2 **Q. And that is of a particular manufacturer?**  
 3 A. Pardon me?  
 4 **Q. And that is of a particular manufacturer called**  
 5 **the Bio Corporation?**  
 6 A. Right.  
 7 **Q. And just in terms of Council understanding what**  
 8 **information is imparted on this form, it lists under**  
 9 **section 1 the product name is embalming fluid, correct?**  
 10 A. Right.  
 11 **Q. And then section 2 of the form, the manufacturer**  
 12 **has to list the hazardous ingredients, correct?**  
 13 A. Yes.  
 14 **Q. And they are all listed here?**  
 15 A. Correct.  
 16 **Q. And it gives the chemical properties section 3,**  
 17 **fire and explosion hazards in section 4, correct?**  
 18 A. Yes.  
 19 **Q. And are you aware, sir, there has been testimony**  
 20 **give be in this proceeding that on the estimate of CEC**  
 21 **that at 13 percent capacity this crematory will turn out**  
 22 **196 pounds of hydrochloric acid a year?**  
 23 A. Am I aware of that? No.  
 24 **Q. I'm sure Council will remember. Will you turn to**

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1 **section 5 of this form Exhibit 10 under the reactivity**  
 2 **information. Am I correct, sir, reactivity means how**  
 3 **the embalming fluid will react with other chemicals,**  
 4 **correct?**  
 5 A. Correct.  
 6 **Q. And do you see the section called**  
 7 **incompatibility?**  
 8 A. Yes.  
 9 **Q. And do you see the, in fact it is the first**  
 10 **language on this form in very bold print, correct?**  
 11 A. Uh-huh.  
 12 **Q. What does it say?**  
 13 A. Avoid any contact with hydrochloric acid.  
 14 **Q. What does the next sentence say?**  
 15 A. Resultant product may contain Bis(chloromethyl)  
 16 ether, an OSHA regulated carcinogen.  
 17 **Q. If you would, sir, just to confirm for me, would**  
 18 **you look quickly at tab 11. Are these also material**  
 19 **safety data sheets from different types of embalming**  
 20 **fluids?**  
 21 A. Different company.  
 22 **Q. Take just for example the first one, do you have**  
 23 **the one marked Powertone special?**  
 24 A. Uh-huh.

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1 **Q. And again if we can go down to reactivity data,**  
 2 **the bottom of the page?**  
 3 A. Yes.  
 4 **Q. Do you see where it says conditions to avoid?**  
 5 A. Yes.  
 6 **Q. Would you read those into the record, please?**  
 7 A. Do not allow the inadvertent mixing of  
 8 formaldehyde with hydraulic chloric acid since such  
 9 mixtures may produce Bis(chloromethyl) ether.  
 10 **Q. It is actually Bis(chloromethyl) ether.**  
 11 A. Bis(chloromethyl) ether.  
 12 **Q. Can we have a protocol, we will call it BSME?**  
 13 A. BSME, a non-carcinogen.  
 14 **Q. And are you aware, sir, of any test ever been**  
 15 **done on the stack of a crematorium to determine how much**  
 16 **of that comes out of the stack?**  
 17 A. No, I'm not.  
 18 MR. McDEVITT: I have nothing further, thank  
 19 you. I have the other exhibits I do want to talk about  
 20 in summary fashion at whatever appropriate time I have.  
 21 Thank you.  
 22 CHAIRMAN ATKISON: All right.  
 23 MR. McDEVITT: Thank you.  
 24 MR. JOHNSON: Any questions for the witness

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1 Ms. Ribar?  
 2 EXAMINATION  
 3 BY MS. RIBAR:  
 4 **Q. Mr. Henney, I don't have a copy of that, is that**  
 5 **something that you have seen before? Do you know where**  
 6 **it came from, who prepared it?**  
 7 A. This particular exhibit right here?  
 8 **Q. Yes. I don't know what it even says, I don't**  
 9 **have it.**  
 10 A. Some of the sheets I did actually submit, some of  
 11 these MSDS sheets.  
 12 **Q. You prepared it?**  
 13 A. Did not prepare it.  
 14 **Q. What is the source of it, sir?**  
 15 A. The source Pierce Chemicals Royal Bond.  
 16 **Q. Say again?**  
 17 A. Pierce Chemicals Royal Bond.  
 18 **Q. A supplier for you?**  
 19 A. Yes, it is.  
 20 **Q. Are you during your embalming, do you ever mix**  
 21 **these chemicals together?**  
 22 A. These chemicals?  
 23 **Q. Yes.**  
 24 A. Yes.

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1 **Q. Do you take precautions when you mix those**  
 2 **chemicals together?**  
 3 A. As best we can what we know of, yes.  
 4 **Q. Is there a requirement by DEP or some other**  
 5 **oversight body that requires you handle these chemicals**  
 6 **specifically?**  
 7 A. No, there isn't.  
 8 **Q. Nothing further, thank you.**  
 9 MR. JOHNSON: Mr. Kamin.  
 10 MR. KAMIN: No questions.  
 11 MR. JOHNSON: Ms. Mitinger?  
 12 MS. MITINGER: No questions.  
 13 MR. JOHNSON: As an aside, Mr. Henney, I  
 14 know you gave testimony previously, do you know how many  
 15 funeral homes are in Allegheny?  
 16 A. I would say roughly 225.  
 17 **Q. How about Washington County?**  
 18 A. That I don't know. About 200,000 deaths in  
 19 Washington County and about a million-two in Allegheny  
 20 County.  
 21 MR. LEWIS: Is that an annual figure?  
 22 A. I'm sorry, I'm sorry, that's the population.  
 23 Strike that.  
 24 MR. JOHNSON: Glad to hear that.

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1 A. That would have been nice. 200,000 deaths, nine  
 2 deaths per thousand, so whatever that is.  
 3 MR. JOHNSON: Do you know how many  
 4 crematories are in Allegheny County?  
 5 A. No, I would be guessing 10, 12, maybe.  
 6 MR. JOHNSON: Washington?  
 7 A. Washington, four, three, four, five.  
 8 MR. JOHNSON: Thank you. Mr. McDevitt, do  
 9 you want to put the rest of your testimony in?  
 10 MR. McDEVITT: I can certainly do that.  
 11 First of all I would like to say to Council I certainly  
 12 understand the comments about wanting to be done  
 13 tonight. I have been to four of these, I can certainly  
 14 understand why. I do have put together some  
 15 information. I'm trying not to be repetitive. I am  
 16 here in support of the ordinance as written that would  
 17 prohibit these crematories from being put in C-2  
 18 district. I put together some information I hope it is  
 19 new to you that will be helpful to you in your decision.  
 20 If I can sort of walk you through what I put  
 21 together in the binder, I don't intend to talk about  
 22 them at great length. There are a few points I would  
 23 like to make about some of these. The first three are  
 24 simply photographs.

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1 MR. LEWIS: Can opposing counsel have  
2 copies?

3 MR. McDEVITT: Sure, I'm sorry, do you have  
4 another copy?

5 MR. ARCURI: I'm trying to give this stuff  
6 away, it keeps coming back. I can share.

7 MR. McDEVITT: The first two are just  
8 obviously pictures to make part of the record to show  
9 the site. The first document I think is important I  
10 would like to review one that is Exhibit 4. And just by  
11 way of background, this Council heard testimony on March  
12 21st, 2001, I may mispronounce his last name, from  
13 Mr. Ernie Czirok of Matthews was asked the question,  
14 quote, this particular unit contemplated the Power-Pak  
15 II. Is that the best available technology available  
16 today? Answer: Yes, it is.

17 MR. LEWIS: You correct the date of that,  
18 please, you said 2001.

19 MR. JOHNSON: Yes, you said 2001, obviously  
20 you mean '11.

21 MR. McDEVITT: 2011. Exhibit 4 if you can  
22 turn to Exhibit 4, this is pages that were pulled off a  
23 website. And I have accumulated the website pages. It  
24 might surprise you to learn that Matthews itself doesn't

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1 say this is the best available technology but instead  
2 touts this technology, so-called green bio cremation  
3 technology is superior technology.

4 On the cover sheet of this page one, you  
5 will see in the beginning of it where it says consider  
6 the environment first. It talks about the advantages of  
7 this bio cremation technology over traditional  
8 incineration technology.

9 Point number 2 is there are no vaporized  
10 mercury emissions, and no filtration or abatement  
11 systems required. Mercury from dental amalgam is  
12 contained and recycled, not vaporized. Caskets are not  
13 burned. Protects our natural resources. Produces less  
14 co2. Low carbon footprint. By-product affluent is  
15 safe. Embalming fluid is neutralized and toxic drugs  
16 are destroyed in the process.

17 If you look at the white paper listed there  
18 as the resource for this it is called Cremation of Human  
19 Remains Comparison of Alkaline Hydrolysis versus  
20 Combustion.

21 The next couple of pages are the pages off  
22 of the website and if I can explain if you go to the  
23 website, this little thing I have circled here where it  
24 says, Matthews, a partner actually changes if you look

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1 at the live website and shows the rest of the partners  
2 in this. It includes not only Matthews but CANA, the  
3 trade association for cremations and others. And the  
4 white paper that they rely upon to put this forward as  
5 the best available technology you find later in the tab  
6 under documents called Cremation of Human Remains. I  
7 won't read it all to you, but I think what is  
8 significant is on page two of that document. You will  
9 see it talks about emissions and carbon footprint and  
10 after it goes through the various differences between  
11 traditional incineration and cremation technology in the  
12 biochemistry involved in this, it summarizes it in terms  
13 that are very apt to this proceeding in the last two  
14 paragraphs on page 2 under emissions and carbon  
15 footprint.

16 And it says as follows: As for the bio  
17 cremation process, it operates at significantly lower  
18 temperatures than traditional cremation which prevents  
19 the mercury from vaporizing. Instead the amalgam is  
20 separated from the bone fragments in solid form at the  
21 end of the process.

22 The last paragraph says, as a result of the  
23 factors mentioned above the bio cremation technology has  
24 the potential to be installed in built-up commercial

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1 and/or residential areas without creating a nuisance or  
2 hazard to surrounding population, something which would  
3 be strictly forbidden with traditional cremation due to  
4 strict zoning regulations.

5 That is Matthews endorsing that statement.

6 Again, I put this together for you to read  
7 entirely if you want to. The next document I want to  
8 sort of point out to you is Exhibit 5. Exhibit 5 you  
9 may have heard some testimony during this proceeding  
10 about Professor Agee's study about the diminution in  
11 value associated with locating a crematory near  
12 residences. And one of the footnotes in that report was  
13 about an actual test that was done on the site in  
14 Wyoming.

15 Dr. Penkala testified a little bit about the  
16 last time he hadn't read the report, this is the report.  
17 And what it shows is essentially they did very  
18 sophisticated testing where they modeled the source and  
19 they put quadrant testing all around the site of the  
20 crematorium and did various testing using different  
21 modeling than was used here but actual testing. The  
22 significance of this I think to this proceeding is on  
23 page two in the summary, in the fourth paragraph down.  
24 It concludes by pointing out that at the

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1 boundary of the crematorium the measured annual cadmium  
 2 concentrated exceeded the PRG which is the shorthand  
 3 term for remediation goal by 200 percent, and the  
 4 dioxins and furans exceeded the goals by 2,200 percent.  
 5 Those are the standards where you are a Superfund site,  
 6 that is what you aim to clean up and they exceeded it by  
 7 that amount at the crematorium boundary nine months  
 8 after it began operation. This is actual test data.  
 9 The next thing I would like to show you if I  
 10 could, there has been a lot of talk about mercury and  
 11 what it does. I have a short video, a DVD about four  
 12 minutes long. It is from the University of Calgary  
 13 Medical School, a cellular biologist up there who have  
 14 been at the advent, if you will, of what mercury does.  
 15 And it shows in very graphic terms I think, very  
 16 understandable terms the impact of low level mercury  
 17 exposure on a human being at the cell level of life.  
 18 And with your permission I would like to play it. And  
 19 then I have some short follow up testimony for that, if  
 20 I could.  
 21 MS. RIBAR: Mr. Johnson, we would like to  
 22 object on the record to the video. I would like to note  
 23 for Council that the issue of mercury was addressed by  
 24 Dr. Penkala. If this is concerning methyl mercury, that

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1 is something that has been established on the record at  
 2 not being emitted from crematories. As Dr. Penkala had  
 3 already stated that the testing on the, that the stack  
 4 testing in the CEC reports also addressed mercury and  
 5 the limits that were results of those tests were within  
 6 EPA limits and, therefore, was not a concern to him.  
 7 MR. JOHNSON: Well, we haven't seen the  
 8 video yet so let's see it, it may be relevant or not.  
 9 MS. RIBAR: Just noting my objection for the  
 10 record.  
 11 MR. ARCURI: Is the ethyl mercury is that  
 12 what is in fillings?  
 13 MS. RIBAR: No, it is not.  
 14 MR. ARCURI: Then this obviously doesn't  
 15 pertain to that because I think there is an e-mail right  
 16 after from the doctor that prepared that --  
 17 MR. McDEVITT: Yes there is.  
 18 MR. ARCURI: From the guy that prepared the  
 19 CD and so, he is talking about mercury release thereof.  
 20 So, he is talking about fillings.  
 21 MR. McDEVITT: Right.  
 22 MR. ARCURI: So I would assume that if ethyl  
 23 mercury isn't in fillings, then your objection while  
 24 noted really is not relevant to this video. But that is

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1 okay. I just wanted to make that statement.  
 2 MR. JOHNSON: Well, you protected the  
 3 record.  
 4 MS. RIBAR: Thank you.  
 5 MR. McDEVITT: I hope this boots up okay,  
 6 sometimes it works, sometimes it doesn't. We don't seem  
 7 to be able to get that working.  
 8 MR. JOHNSON: We can proceed.  
 9 MR. McDEVITT: What I can do if it works, I  
 10 have it on my iPad. I can show you what it shows. And  
 11 for reference purposes, if one goes to find the video  
 12 that I'm talking about, if you go on Google and you type  
 13 in the search terms University of Calgary Medical School  
 14 Mercury, it is the first drop down on Google.  
 15 MR. LEWIS: Put it on the center square.  
 16 MR. McDEVITT: I'm not sure how it works.  
 17 (Video played)  
 18 MR. McDEVITT: As Mr. Arcuri noted, when you  
 19 listen to that when you heard them talk about low level  
 20 mercury exposure. So one of the things we were curious  
 21 about is what they mean by that. If you turn to tab 7,  
 22 I can proffer this or I can put the testimony on  
 23 whichever you wish. Mr. Alex Pilorusso who is my  
 24 fiancee's son in the interest of disclosure and a new

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1 law student has been helping me.  
 2 He actually wrote to the professor of cell  
 3 biology that did the study. The e-mails are attached as  
 4 is the answer of Dr. Syed, the professor of cell biology  
 5 and anatomy. You can see both Mr. Pilorusso's e-mail  
 6 dated May 16th and Dr. Syed's response.  
 7 Dr. Syed's response says, regarding the  
 8 question we used very low concentrations of mercury, I  
 9 will be happy to send a paper as well. What it would  
 10 amount to be if someone were to have seven to eight  
 11 fillings, and the mercury that they would excrete in the  
 12 morning would be equivalent to this amount.  
 13 Then it goes on to talk about the need to  
 14 know how many would be cremated, whatnot. He ends up  
 15 with the conclusion, there is no doubt that it would be  
 16 toxic for the people living in the surroundings. That  
 17 is a professor of cell biology anatomy at one of the  
 18 leading universities doing research on the subject.  
 19 The next thing if I could while we are on  
 20 the subject of mercury is talk about Exhibit Number 8  
 21 which was I gather introduced at a prior point in this  
 22 proceeding. I could not understand why there would be a  
 23 test for mercury vapor done at West Penn Plastic Company  
 24 would be submitted here so I asked Ms. Ribar some

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1 questions about that. And those answers and whatnot are  
 2 also attached there. Ms. Ribar indicated that is an  
 3 error, that test was actually done at the Boston funeral  
 4 home that has been the subject of some testimony which I  
 5 went back and looked at. And I have to say I find that  
 6 testimony to be frankly a little bit illuminating. It  
 7 was also given on 3/21/2001 and --  
 8 MR. JOHNSON: '11.  
 9 MR. McDEVITT: I'm sorry, 2011. The  
 10 gentleman asked the owner of the Boston home, or Boston  
 11 crematory, question: If you are not being paid to be  
 12 here, why are you here?  
 13 Answer: When I saw things happening about  
 14 the negative about crematories, I thought none of this  
 15 is true. This mercury stuff and all this, the majority  
 16 of the people that I'm cremating are elderly and do not  
 17 even have teeth.  
 18 Well, if you don't have teeth, you don't  
 19 have mercury in your teeth, and you don't have any  
 20 cremation of mercury. So, I don't think that test is  
 21 particularly revealing of anything if you cremate just  
 22 bodies with no teeth and no mercury. Surprise, you will  
 23 not get any mercury emissions.  
 24 Exhibit 9. You may recall I wanted you to

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1 have this in the record. CEC relied upon in one of the  
 2 supplemental reports that I questioned Dr. Penkala  
 3 about, a summary of references on mercury emissions from  
 4 crematory by Mr. Rendell. This is the full report of  
 5 that. Again, just to skim over it, if you may recall I  
 6 asked some questions the last time I was here about the  
 7 history of environmental testing and regulatory testing  
 8 at the one particular site in 1999.  
 9 Pages 9 through 12 of this document give you  
 10 a pretty good summary of how that particular site was  
 11 selected contrary to the testimony that was given here  
 12 on page nine at the bottom of page nine. It says,  
 13 however, the actual study, US EPA 1999 shows somewhat  
 14 different data for background the crematorium has four  
 15 cremation units that feed into a common chimney which  
 16 includes a wet scrubber according to Rahill who  
 17 testified here the last time. This is the only  
 18 crematorium in the US that is known to have a wet  
 19 scrubber and was specifically selected for this test to  
 20 determine if effectiveness of a scrubber to remove  
 21 materials from the exhaust gas.  
 22 And then goes on the next page to talk about  
 23 the other issues that exist with respect to that  
 24 particular test.

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1 There is one point I ignored to make with  
 2 respect to the Matthews' document where they admit that  
 3 bio cremation is a better technology than traditional  
 4 one. Again, if we could go back to tab 4, the last page  
 5 of that document where it summarizes the cost which I  
 6 think are very interesting. It says as far as cost  
 7 goes, in North America the capital cost of a bio  
 8 cremation unit can be significantly greater than that of  
 9 a traditional crematory.  
 10 In Europe where mercury filtration is  
 11 mandatory, the cost of bio cremation is typically less  
 12 than that of a traditional crematory plus filtration  
 13 equipment. So it is not the best, it is just the  
 14 cheapest in America because unlike some places, we don't  
 15 restrict mercury from crematoriums.  
 16 As far as the rest of the information I have  
 17 accumulated there, beginning in tab 12, what I have done  
 18 there is I have printed out from the Agency for Toxic  
 19 Substances and Disease Registry which is adjunct of the  
 20 CDC the various information about various chemicals you  
 21 heard a lot of information about that is written in I  
 22 think fairly plain English and is pretty helpful to  
 23 understand not just low level inhalation exposure routes  
 24 which were analyzed by CEC, but something that went

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1 completely unanalyzed which is dermal exposure which is  
 2 a distinctly different kind path of exposure.  
 3 Just if I could to high point them number 12  
 4 is for BCME, bis(chloromethyl) ether a substance that  
 5 forms when you combine embalming fluid with hydrochloric  
 6 acid that will come out of the stack. It is a  
 7 non-carcinogen and it includes dermal effects which are  
 8 listed there.  
 9 Tab 13 is for cadmium. Cadmium is a known  
 10 carcinogen.  
 11 Tab 14 is for mercury. There was some  
 12 testimony if you recall the last time we were here where  
 13 Mr. Rahill professed not to know whether the mercury  
 14 that comes out of the chimney is odorless or colorless.  
 15 You will see on Tox FAQ sheet for mercury by the CDC  
 16 says what is mercury. It says if heated it is a  
 17 colorless, odorless gas.  
 18 So, if you are analyzing the risk of mercury  
 19 on the record before you, there is no regulation on the  
 20 amount of mercury that can be emitted in the State of  
 21 Pennsylvania. It is colorless, it is odorless and the  
 22 residents will have no idea it is even happening. They  
 23 can't smell it, they can't take shelter, they can't do  
 24 anything but breathe it.

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1 On 15 is hydrochloric acid, another  
 2 substance that will come out. I would just simply point  
 3 out to highlight that for hydrochloric acid on page one  
 4 where it indicates its affect and where it says, what is  
 5 hydrogen chloride. In the next to last sentence and the  
 6 last sentence it says, hydrochloric acid can be formed  
 7 during the burning of many plastics. Upon contact with  
 8 water it forms hydrochloric acid. Both hydrogen  
 9 chloride and hydrochloric acid are corrosive.

10 On the next page where it talks about how  
 11 hydrogen chloride can affect your health. It even talks  
 12 about hydrogen chloride being irritating and corrosive  
 13 to any tissue it contacts. Brief exposure to low levels  
 14 causes throat irritation. And it goes on to talk about  
 15 longer term exposure can cause respiratory problems, eye  
 16 and skin irritation, discoloration of the teeth.

17 Lastly I have, I shouldn't say lastly, the  
 18 next one tab 16 is the same thing for sulfur dioxide  
 19 that explains its health impact.

20 And then I have another one tab 17 for  
 21 nitrogen oxide. And then after that I have some other  
 22 publications from ATSDR that will I think will help to  
 23 enlighten you. To the extent that the science I think  
 24 this comes from a reliable, accurate source tasked by

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1 our government with putting out accurate information  
 2 about these things.

3 If I could close briefly simply by saying, I  
 4 am a citizen but I am also a lawyer.

5 I think I would be remiss if I didn't say to  
 6 you my understanding of the powers of this Council are  
 7 that they are extremely broad in dealing with a  
 8 situation like this. I think you have as broad of  
 9 powers as imaginable.

10 As I read the operative legal standard is if  
 11 you can make a good faith conclusion on the basis of the  
 12 record before you that there is the obvious potential,  
 13 nothing more, obvious potential that the air will be  
 14 poisoned by this, you have the complete ability to  
 15 prohibit it anywhere in the township which certainly  
 16 makes it reasonable to have the restrictions that you  
 17 have in place that keep it from being put in C-2 all  
 18 along Route 19 corridor, and in connection with all  
 19 these houses that are nearby.

20 I think that ordinance is reasonable, I  
 21 think it is valid. I think there is great risk to the  
 22 community if you change it.

23 In terms of their admission on the obvious  
 24 potential standard, page 8 of the CEC report itself says

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1 hazardous air pollutants have the potential, their  
 2 words, not mine, have the potential to create health  
 3 risks at very low emission rates. That is a fatal  
 4 admission. That is one that gives you all the power you  
 5 need to regulate these, to do whatever you want to do  
 6 basically as long as the science justifies it, and I  
 7 think it does. You could ban them, you can put best  
 8 available technology requirements in. You can put  
 9 restrictions in.

10 And I would point out one last thing, I  
 11 think you already have. I think Section 600 of  
 12 municipal ordinances that deal with -- give me one  
 13 second here -- you have a section on operating  
 14 performance standards already part of the law of Peters  
 15 Township which as I read it would govern this completely  
 16 and adopts essentially the obvious potential standard by  
 17 saying it can cause harm, it is not permitted. Thank  
 18 you for patience and time, I appreciate it.

19 CHAIRMAN ATKISON: Thank you.

20 MR. JOHNSON: Thank you.

21 CHAIRMAN ATKISON: This isn't Dancing with  
 22 the Stars.

23 MS. RIBAR: There was a lot of information.

24 MR. JOHNSON: If you want an opportunity to

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1 digest it and provide written comments.

2 MS. RIBAR: We can do that, but I think for  
 3 the record there is blatant mischaracterizations that  
 4 need to be corrected.

5 First of all, there are references at  
 6 several points.

7 MR. KAMIN: I just wanted to be clear, John  
 8 Kamin again. Just from a procedural --

9 MR. ATKISON: You will get your chance.

10 MR. KAMIN: Is she going to cross  
 11 Mr. McDevitt or is she testifying?

12 MR. JOHNSON: I think this is in response to  
 13 Mr. McDevitt's presentation.

14 MS. RIBAR: This is clarification of the  
 15 record for several mischaracterizations Mr. McDevitt  
 16 made.

17 MR. JOHNSON: We will give you an  
 18 opportunity to comment.

19 MS. RIBAR: There was a reference to  
 20 Matthews' literature in I believe Exhibit 12 or 4.  
 21 Mr. McDevitt read from a lengthy piece of paper in  
 22 Exhibit 4 regarding a bio cremation that is offered. We  
 23 can certainly have Ernie Czirok from Matthews testify in  
 24 rebuttal. What I wanted to correct on the record is

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1 what he read from behind the Matthews literature is  
 2 entitled Cremation of Human Remains a Comparison of  
 3 Alkaline Hydrolysis versus Combustion by Craig Sinclair,  
 4 an engineering manager for Resomation, Ltd. That is not  
 5 Matthews. Those statements that he read into the record  
 6 were not made by Matthews.

7 MR. ARCURI: I know it is referenced on the  
 8 first page of the exhibit under white papers, that  
 9 article is listed, I think that is where that came from.  
 10 Whether there is a link on Matthews' website to that  
 11 article by Craig Sinclair, I don't know that.

12 It is listed right there on the first page  
 13 of this exhibit, Cremation of Human Remains Comparison  
 14 of Alkaline Hydrolysis versus Combustion by Craig  
 15 Sinclair.

16 MS. RIBAR: I understand. It seemed to me  
 17 Mr. McDevitt was indicating that this was a paper  
 18 someone from Matthews authored.

19 MR. ARCURI: I didn't get that impression.  
 20 I would think that they didn't author it, it was  
 21 authored by Craig Sinclair from Resomation Ltd. They  
 22 may have tacitly approved it maybe because there is a  
 23 link from their website to the article, I don't know.

24 MS. RIBAR: I apologize, I misunderstood

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1 that testimony.

2 MR. ARCURI: Okay.

3 MS. RIBAR: How do you want to proceed with  
 4 rebuttal? We want to have Kris Macoskey testify and  
 5 Ernie Czirok from Matthews to testify with regard to the  
 6 informational statements that Mr. McDevitt just made.

7 MR. ARCURI: I think we should let the other  
 8 attorney put on his case and then she can have rebuttal  
 9 when we are done.

10 MR. JOHNSON: I understand you have an  
 11 opportunity to rebuttal at an opportune time. I don't  
 12 know whether Mr. Kamin or Ms. Mitinger's testimony or  
 13 cases have anything to do with the presentation made by  
 14 Mr. McDevitt, do they?

15 MS. MITINGER: No.

16 MR. KAMIN: No, they do not.

17 MS. RIBAR: You want us to proceed with  
 18 rebuttal now?

19 MR. JOHNSON: Yes, briefly.

20 EXAMINATION

21 BY MS. RIBAR:

22 **Q. Kris Macoskey from CEC who testified before and**  
 23 **who authored the studies that Mr. McDevitt had cited to.**  
 24 **Kris, there is reference to MSDS and some chemicals on**

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1 **the MSDS. Can you explain what quantity of chemicals**  
 2 **those would entail?**

3 A. Well, yes, the material safety data sheet does  
 4 describe the characteristics of the chemical. In this  
 5 case, embalming fluid, and the hazards associated with  
 6 mixing various chemicals.

7 So, if one were to be working in the workplace  
 8 which is the attempt of an MSDS to protect workers. If  
 9 you are working with chemicals the precaution is to not  
 10 mix hydrochloric acid with embalming fluid because it  
 11 can generate this other material whether it is gas or  
 12 something.

13 Maybe if you are going to be working with this  
 14 those perhaps a caution to use them in a hood so that  
 15 the exhaust gas of this form can be evacuated from the  
 16 room.

17 The implication or the assumption that the  
 18 embalming fluids after being used to preserve a human  
 19 body and then after cremation would remain in the state  
 20 that is the same as the raw material as purchased, and  
 21 then could somehow be mixed with hydrochloric acid as  
 22 formed in the exhaust stack and then still cause some  
 23 sort of reaction with a hazardous concentration of a  
 24 chemical I think is drawing an incorrect conclusion.

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1 **Q. The Rendell report that has been cited several**  
 2 **times during these proceedings and the scrubber issue,**  
 3 **could you explain to Council what your reliance was on**  
 4 **this report and how you dealt with the scrubber issue**  
 5 **for the EPA test?**

6 A. Right, exactly. Yes, our original report from  
 7 September I think it has been referred to by Dr. Penkala  
 8 CEC-1 for September 2nd, 2010, table 1, included a  
 9 summary of the different source test reports that we  
 10 obtained from Matthews, one of which was this 1999 US  
 11 EPA report which is in the first column. And it is  
 12 important to note that under the row entitled test notes  
 13 we clearly described there that we evaluated the inlet  
 14 concentration to the scrubber, not the exhaust  
 15 concentration coming out of the scrubber.

16 We were aware that there was a scrubber on this  
 17 device. We wanted to be comparing apples to apples.  
 18 All of our other devices did not have scrubbers so we  
 19 evaluated the concentration as reported going to the  
 20 scrubber, which made it a comparison appropriate for the  
 21 other, the emission characterization comparable to all  
 22 the other sources.

23 **Q. And I believe the last part of Mr. McDevitt's**  
 24 **testimony he said on page eight of your report you made**

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1 **a fatal admission with regard to hazardous pollutants.**  
 2 **Is that, is that mischaracterizing your report?**  
 3 MR. JOHNSON: Referring to the first report  
 4 or the second?  
 5 A. CEC-1, page 8. That is an opinion, that point  
 6 being that hazardous air pollutants have the potential  
 7 to cause health effects at low emission rates. That is  
 8 why they are called hazardous air pollutants, that is  
 9 why we evaluate them and that is why we are doing human  
 10 health risk evaluations for them.  
 11 The other pollutants that we talked about a  
 12 little bit, nitrogen oxide was mentioned by  
 13 Mr. McDevitt, sulfur dioxide, these are the US EPA calls  
 14 them criteria air pollutants. That means the health  
 15 agencies the US EPA have evaluated the health effects of  
 16 these and have established national ambient air quality  
 17 standards for those specific pollutants in addition to  
 18 carbon monoxide and so on.  
 19 The things emitted in large quantities and that  
 20 our nation is trying to protect our air quality from.  
 21 The hazardous air pollutants are looked at more on a  
 22 case-by-case basis for the individual health effects of  
 23 the minute concentrations as the focus of those  
 24 evaluations.

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1 **Q. Is there anything else you would like to address?**  
 2 A. Well, the You Tube video of the microbiological  
 3 effects of mercury on neuron formation, I'm certain that  
 4 was all biologically correct and accurate. I have no  
 5 doubt that the concentrations, whatever they happened to  
 6 be. Unfortunately the document doesn't describe the  
 7 concentrations other than a reference to 10 to the minus  
 8 8 M. Those concentrations, that is not a unit I'm  
 9 familiar with, so I couldn't comment relative to  
 10 exposures we evaluated for this study.  
 11 But, the other comment about the mercury fillings  
 12 there was reference to seven to eight fillings per  
 13 person and mercury excreted in urine, and that  
 14 equivalent amount would cause a health effect.  
 15 So, it seems to be some disconnect as to the  
 16 pathway of exposure between the Calgary study and the  
 17 type of evaluation that we are considering with ambient  
 18 air exposures from the cremation process.  
 19 I guess ultimately the take away point there is  
 20 that there is no disputing that mercury is a neurotoxin.  
 21 That is why it is a hazardous pollutant. That is why we  
 22 evaluated in this study and took the very conservative  
 23 approach of using a human health risk evaluation to  
 24 characterize it and look at the potential exposures to

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1 it.  
 2 **Q. Your ultimate conclusion with regard to mercury**  
 3 **was what?**  
 4 A. Well, after responding to Dr. Penkala's comments,  
 5 we increased the likely dose of mercury in a single  
 6 cremation and assumed that that tenfold increase of the  
 7 average would occur constantly. That is with every  
 8 cremation and still found that there was no excess human  
 9 health cancer risk, that is beyond the what EPA defines  
 10 as an acceptable health risk for carcinogenic exposure.  
 11 Just one other observation relative to the, there  
 12 was, it seemed to be a suggestion that the Power-Pak II  
 13 device wasn't really best available technology. Best  
 14 available technology is an air quality term of art, that  
 15 means that the regulatory agencies have determined that  
 16 is the best technology for that application, in this  
 17 case a crematorium.  
 18 I think what was being compared was, if I'm not  
 19 mistaken, alkaline hydrolysis which is not a crematory  
 20 process. It is a digestion-type process, a chemical  
 21 digestion.  
 22 So there is a difference in technology there,  
 23 completely different, not comparable.  
 24 MR. JOHNSON: Anything else?

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1 MS. RIBAR: Any questions for Kris?  
 2 MR. McDEVITT: I have a few brief ones. Are  
 3 you done?  
 4 MS. RIBAR: When they are finished with  
 5 Kris's cross-examination, I would like to have Ernie  
 6 Czirok from Matthews testify as to the bio cremation  
 7 evidence submitted to you.  
 8 BY MR. McDEVITT:  
 9 **Q. Just to clear up the point I think Ms. Ribar**  
 10 **began with again going back to the bio cremation**  
 11 **exhibit, what I tried to capture there is what you will**  
 12 **see if you go to the website right on the bottom of the**  
 13 **page, Matthews has several, list right in the second**  
 14 **page you can see our partners.**  
 15 **If you look at the screen, that changes. It goes**  
 16 **to Matthews, then it goes the next page, Resonation**  
 17 **Partners, then it goes to the Cremation Society, KANA.**  
 18 MR. JOHNSON: Mr. McDevitt, frankly I don't  
 19 think the issue is whether this is best available  
 20 practice, it is a question whether it is a practice that  
 21 as proposed creates a danger to the community.  
 22 MR. McDEVITT: I think their own document  
 23 establishes this eliminates the danger to the community  
 24 of traditional cremation. In fact, they even say it in

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1 the a paper they endorse and sponsor. In any event, I  
 2 wanted to make that point clear.  
 3 BY MR. McDEVITT:  
 4 **Q. Sir, can you tell me in all the reports you did**  
 5 **and all the studies you did, are you aware of a single**  
 6 **test ever done to determine what emissions came out of a**  
 7 **crematorium when embalmed bodies were burned?**  
 8 A. I don't recall there being information about the  
 9 pre cremation treatment of any of the bodies, no.  
 10 **Q. Would it be fair to say that of all the evidence**  
 11 **that is before this tribunal, there is month no evidence**  
 12 **whatsoever reflecting what the emissions are if you**  
 13 **cremate and embalmed body with these embalming fluids in**  
 14 **it?**  
 15 A. I don't think that is necessarily true because  
 16 organic chemicals --  
 17 **Q. Just tell me what test.**  
 18 A. -- created at 1800 degrees Fahrenheit, any  
 19 chemical of that nature and the MSDS I believe will  
 20 indicate what temperature it will be completely  
 21 destroyed. That is the idea behind the best available  
 22 technology and the very high temperatures that are used  
 23 so all the organic molecules are destroyed.  
 24 **Q. Can you tell me of a single test ever done on**

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1 **that, sir?**  
 2 A. I have not performed any test on that.  
 3 **Q. Will you turn to page, tab 10 of the materials**  
 4 **safety data sheet we were talking about?**  
 5 A. I don't have a copy.  
 6 **Q. You can get a copy from your counsel.**  
 7 MR. JOHNSON: Did you offer any testimony as  
 8 to tab 10?  
 9 MR. McDEVITT: I think he did, well, the  
 10 material safety data sheet.  
 11 **Q. Just a quick point, sir, if you would, turn to**  
 12 **page three of tab 10 under storage and handling.**  
 13 A. Sorry, section 3?  
 14 **Q. Tab 10, section 3. Let me help you.**  
 15 A. Section 3 physical properties. Section 8,  
 16 special protection.  
 17 **Q. Are you on tab 10, sir?**  
 18 A. Section 9, regulatory information? Precautions,  
 19 section 7, is that what you are referring to?  
 20 **Q. Storage and handling?**  
 21 A. Okay, top of the last page.  
 22 **Q. Am I correct under storage and handling it says**  
 23 **store away from heat or ignition sources. Do not heat**  
 24 **above 140 degrees Fahrenheit?**

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1 A. That is what it says.  
 2 **Q. What is the temperature that it will burn at in**  
 3 **crematories?**  
 4 A. 1800 degrees Fahrenheit.  
 5 **Q. So that would appear to be doing something at**  
 6 **odds with what the material safety data sheet says?**  
 7 A. Well, the point is that if you were intending to  
 8 use this material for its intended purpose, that is  
 9 embalming a human body, you would not want that material  
 10 to be 1800 degrees. You wouldn't want it to be over 140  
 11 degrees or wouldn't function properly and might emit  
 12 some hazardous chemicals. That's the point.  
 13 This is intended to protect the workers when  
 14 using the chemicals. This is not intended to  
 15 characterize what occurs when the materials are  
 16 incinerated.  
 17 **Q. How much time before you came in tonight did you**  
 18 **spend studying the issue whether crematories burning**  
 19 **embalmed bodies produce Bis(chloromethyl) ether, any?**  
 20 A. Can you point to the information about formation  
 21 of Bis(chloromethyl) ether, that was the chemical that  
 22 is formed during in combination --  
 23 **Q. My question sir, is simple. Did you spend any**  
 24 **time before you came in here tonight studying the issue**

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1 **of whether cremating embalmed bodies produces**  
 2 **Bis(chloromethyl) ether, yes or no?**  
 3 A. That is a no.  
 4 **Q. Thank you. Nothing else.**  
 5 MR. JOHNSON: Thank you. Mr. Macoskey, just  
 6 a minute.  
 7 EXAMINATION  
 8 BY MR. KAMIN:  
 9 **Q. Very briefly, Mr. Johnson. Mr. Macoskey, by the**  
 10 **way, were you sworn tonight?**  
 11 A. Yes.  
 12 **Q. So, is it your testimony that this is an**  
 13 **enterprise that is capable of operating in such a manner**  
 14 **as to control the external effects such as smoke, noise,**  
 15 **soot, dirt, traffic, vibration, an odor on surrounding**  
 16 **land uses?**  
 17 A. Absolutely.  
 18 **Q. Do you believe that any of the emissions that are**  
 19 **generated from this enterprise if permitted would in any**  
 20 **way endanger or disturb the neighboring properties, and**  
 21 **I'm referring to both residential and commercial**  
 22 **properties?**  
 23 A. No.  
 24 **Q. No, you don't believe that it will or it will not**

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1 **disturb?**  
 2 A. I answered your question specifically. Would you  
 3 like to rephrase your question.  
 4 **Q. Sure, my question for you is you are saying no it**  
 5 **will not disturb or endanger the adjoining properties,**  
 6 **is that correct?**  
 7 A. That is correct.  
 8 **Q. Nothing further.**  
 9 MS. RIBAR: Very briefly, Ernie Czirok from  
 10 Matthews with regard to the biohazard technology.  
 11 EXAMINATION  
 12 BY MS. RIBAR:  
 13 **Q. Mr. Czirok, where is this approved in the United**  
 14 **States?**  
 15 A. They are approved in the State of Florida,  
 16 Minnesota and California.  
 17 **Q. Not in Pennsylvania?**  
 18 A. Correct.  
 19 MS. MERRELL: Could you embellish on why  
 20 they are not, if anyone asked.  
 21 A. Absolutely, there is legislation that has to be  
 22 passed for this to be approved and it has not gone  
 23 through.  
 24 MR. ARCURI: Do those states ban the type of

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1 unit that we are talking about here?  
 2 A. No.  
 3 MR. ARCURI: Do they regulate it.  
 4 A. Absolutely.  
 5 MR. ARCURI: Those units.  
 6 A. As all 50 states do.  
 7 MR. ARCURI: I take it that these units are  
 8 used in Europe?  
 9 A. The bio units --  
 10 MR. ARCURI: Yes.  
 11 A. -- you are referring to, yes.  
 12 MR. ARCURI: I take it from some points made  
 13 earlier that I guess some European countries don't  
 14 permit a combustion-type unit?  
 15 A. That is not true, no.  
 16 MR. JOHNSON: Mr. McDevitt, any questions?  
 17 MR. McDEVITT: A couple quick ones.  
 18 EXAMINATION  
 19 BY MR. McDEVITT:  
 20 **Q. Are you from Pittsburgh, sir, by any chance?**  
 21 A. No.  
 22 **Q. Are you familiar with an article that was**  
 23 **published in the Post Gazette called -- are you familiar**  
 24 **with an article published in the Post Gazette in**

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1 **December of 2009 called the Bees Dying to be Green about**  
 2 **Matthews?**  
 3 A. In the Post Gazette, no. Maybe you can refresh  
 4 my memory on that.  
 5 **Q. Has Matthews been making an effort to promote and**  
 6 **sell these bio cremation units?**  
 7 A. We have been making an effort to promote an  
 8 alternative use if that is something individuals are  
 9 looking for. Just like any company that would be trying  
 10 to look at alternatives if somebody is asking for them.  
 11 **Q. And would it be a correct statement of Matthews**  
 12 **to say that quote, the target audience are those people**  
 13 **who buy organic salmon rather than farm salmon. Those**  
 14 **that buy a hybrid rather than a regular car?**  
 15 A. It is a different targeted audience.  
 16 **Q. Is that a fair statement of Matthews' position**  
 17 **about this?**  
 18 A. Correct.  
 19 **Q. You have announced the world's first commercial**  
 20 **launch of this new technique -- am I correct Matthews**  
 21 **announced in 2009 the first commercial launch of a human**  
 22 **alkaline hydrolysis unit in Florida?**  
 23 A. That has not been installed yet.  
 24 **Q. But they are planning that?**

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1 A. That is correct.  
 2 **Q. They are trying to do that?**  
 3 A. That is correct.  
 4 **Q. And they are trying to promote it various places**  
 5 **throughout the country?**  
 6 A. That is correct.  
 7 MR. McDEVITT: Thank you.  
 8 MR. JOHNSON: Mr. Kamin?  
 9 MR. KAMIN: No questions, Mr. Johnson.  
 10 MS. MITINGER: No questions, thank you.  
 11 MR. KAMIN: Mr. Johnson, we discussed an  
 12 order of procedure we will let Ms. Mitinger go with her  
 13 presentation first.  
 14 MR. JOHNSON: Would you refresh us whom you  
 15 represent?  
 16 MS. MITINGER: Sure, my name is Alice  
 17 Mitinger and I'm here tonight on behalf of Thomas Homes  
 18 Inc. and Jeff Thomas who lives on Sussex Drive.  
 19 MR. JOHNSON: Have you provided written  
 20 entry of appearance?  
 21 MS. MITINGER: I have not but will following  
 22 this proceeding. On behalf of Mr. Thomas and Thomas  
 23 Homes, Inc., I would like to just present one witness  
 24 and we have a prepared report which I will provide to

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1 the Board.  
 2 MR. JOHNSON: Do you want to give us the  
 3 report and summarize, that is fine.  
 4 MS. MITINGER: She is right here, I will  
 5 introduce her in a moment.  
 6 EXAMINATION  
 7 BY MS. MITINGER:  
 8 **Q. As I'm passing out the report I will ask**  
 9 **Ms. Sarraf to introduce herself to the board and**  
 10 **describe briefly her education and professional**  
 11 **background.**  
 12 A. My name is Roberta Sarraf, I'm a self-employed  
 13 planning consultant. I have a masters degree in urban  
 14 and regional planning from the University of Pittsburgh  
 15 Graduate School of Public International Affairs.  
 16 I'm a member of the American Institute of  
 17 Certified Planners. I established a consulting practice  
 18 in 1982 and since that time have assisted over 75  
 19 municipalities in Southwestern Pennsylvania with  
 20 comprehensive plans, zoning ordinances and subdivision  
 21 and land development regulations.  
 22 Prior to going into business for myself I was  
 23 zoning officer and director of community development for  
 24 the township Of Upper St. Clair.

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1 **Q. Ms. Sarraf, if you could explain briefly your**  
 2 **understanding of the basis of this action this evening?**  
 3 A. It is my understanding that the applicant has  
 4 filed a curative amendment with the municipality  
 5 claiming an exclusion of a crematory under the zoning  
 6 ordinance definition of funeral home which specifically  
 7 states but not including cremation.  
 8 **Q. And it is your understanding that the challenges**  
 9 **that simply the basis of that ordinance definition of**  
 10 **funeral home that the crematory use is excluded**  
 11 **throughout the municipality?**  
 12 A. Correct.  
 13 **Q. Have you had an opportunity to review where**  
 14 **funeral homes are permitted under the zoning ordinance?**  
 15 A. Yes, I have. Funeral homes are authorized as a  
 16 permitted use in the C-1 neighborhood commercial, C-2  
 17 general commercial, and the VNC, Venetia Neighborhood  
 18 Commercial Districts.  
 19 **Q. And what is your understanding of the proposed**  
 20 **curative amendment?**  
 21 A. The proposed curative amendment would add a  
 22 crematory as an accessory use to the funeral home  
 23 wherever it is authorized in the township zoning  
 24 ordinance. That would include C-1, C-2 and VNC.

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1 **Q. So, it is your understanding that essentially the**  
 2 **purpose of the proposed curative amendment would be to**  
 3 **rewrite the definition of funeral home to remove the**  
 4 **exclusion of crematory services?**  
 5 A. That's correct.  
 6 **Q. Based on your experience with planning and the**  
 7 **development of zoning ordinances, could you describe**  
 8 **ordinance provisions which a municipality could use to**  
 9 **accommodate uses which are not specifically identified**  
 10 **in a zoning ordinance?**  
 11 A. Many ordinances include a provision for something  
 12 called comparable uses or similar uses not specifically  
 13 listed. This is a way that a municipality can avoid  
 14 exclusionary challenges when they have failed to foresee  
 15 new types of technology or new types of uses that emerge  
 16 on the horizon as their zoning ordinance proceeds  
 17 through time. At the time of drafting a specific use  
 18 may not be defined and listed in an ordinance but could  
 19 be authorized either as a conditional use or a use by  
 20 special exception under this concept of a similar use or  
 21 comparable use not specifically listed.  
 22 **Q. And I should have asked you previously, in the**  
 23 **course of preparing for this hearing you have had an**  
 24 **opportunity to review the Peters Township zoning**

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1 **ordinance?**  
 2 A. I have.  
 3 **Q. And have you identified provisions in the Peters**  
 4 **Township zoning ordinance which would serve the purpose**  
 5 **of accommodating uses which are not specifically**  
 6 **identified, the type of device you have just been**  
 7 **describing?**  
 8 A. Yes, there are actually two provisions in the  
 9 Peters Township zoning ordinance. One is a category of  
 10 uses not provided for and this is a technique where an  
 11 application could be made by the property owner to the  
 12 zoning officer and the zoning officer would then refer  
 13 the application to the Zoning Hearing Board to consider  
 14 whether or not the use is comparable to other uses in a  
 15 specific zoning district.  
 16 And Section 1302B(1)(b) provides the criterion  
 17 for considering uses not provided for. I'm quoting from  
 18 the ordinance. When a use is neither specifically  
 19 permitted or denied in this chapter and an application  
 20 is made by the landowner and/or developer to the zoning  
 21 officer for such use, the zoning officer shall refer the  
 22 application to the Township Zoning Hearing Board that  
 23 shall have the authority to permit or deny the use.  
 24 The use may be permitted if it is similar to and

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1 compatible with permitted uses in the district, meets  
 2 the standards and criteria set forth below -- and they  
 3 are referring to the general standards for uses by  
 4 special exception -- and in no way is in conflict with  
 5 the general purpose and intent of this chapter.  
 6 **Q. Now, I would like to explore that a little bit  
 7 more with you, but I think you indicated that there are  
 8 two types of provisions in the Peters Township Zoning  
 9 Ordinance which are designed to accommodate uses not  
 10 specifically identified. Could you just briefly note  
 11 what that is and we will come back to that as well?**  
 12 A. Yes, there is also an authorization in the use  
 13 table for a category called "all other uses." And all  
 14 other uses are authorized as a use by special exception  
 15 in the townships LI, light industrial district.  
 16 **Q. Thank you. And let's go back to the uses not  
 17 provided for which are the uses that the zoning officer  
 18 would refer to the Zoning Hearing Board as a special  
 19 exception for consideration under the special exception  
 20 criteria. Could you describe briefly, and this will  
 21 refer to your report at page three, the uses that are  
 22 permitted by right in the C-2 district. I don't think  
 23 we need to read through all of the provisions in the  
 24 interest of time, but could you describe them generally**

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1 **and the purpose of that zoning district?**  
 2 A. The uses authorized in the C-2 district are  
 3 generally retail and service uses. Shopping center  
 4 types of uses and personal services. A funeral home is  
 5 included under the definition which excludes the  
 6 crematory. There are things such as gas stations,  
 7 hospitals, motels, offices, restaurants and retail uses.  
 8 **Q. But in your opinion, is the current definition of  
 9 funeral home which excludes the crematory services  
 10 consistent with the stated purpose of the C-2 districts?**  
 11 A. I believe that the current definition of funeral  
 12 home which excludes crematory is consistent with the  
 13 stated purpose of the C-2 district which is to provide  
 14 merchandizing and services that are compatible with the  
 15 surrounding property, specifically residential  
 16 neighborhoods.  
 17 **Q. Now, are any of the uses that are permitted,  
 18 excuse me -- do any of the uses permitted in the C-2  
 19 districts have characteristics that are typically  
 20 associated with cremation services as we have been  
 21 discussing here?**  
 22 A. It is my opinion that they do not.  
 23 **Q. Can you explain that?**  
 24 A. Cremation involves incineration albeit on a small

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1 scale. From a land use perspective incineration is a  
 2 process that is industrial in nature. There are  
 3 emissions and the processes are subject to air quality  
 4 regulations. That is typical of other industrial uses.  
 5 There are high temperatures involved, refractory linings  
 6 and emissions which again are more typical of an  
 7 industrial character of use, and not consistent similar  
 8 or compatible with the other types of uses in the C-2  
 9 district.  
 10 **Q. So, would it be your opinion that under the uses  
 11 not provided for provision which would be allowed if  
 12 consistent with the uses in that particular zoning  
 13 district that that would not be appropriate in this  
 14 case?**  
 15 A. Yes, it is my opinion that since the Zoning  
 16 Hearing Board has to make a determination that the use  
 17 not provided for is similar to and compatible with the  
 18 other uses in the C-2 district that that would not be an  
 19 appropriate way to authorize the crematory.  
 20 **Q. Now, let's turn for a minute to the all other  
 21 uses provision of the ordinance. Where in the ordinance  
 22 can that be found?**  
 23 A. The all other uses is listed in table 2, the  
 24 non-residential permitted use chart in section 303-C of

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1 the ordinance. And the specific criteria for the all  
 2 other use category are found in subsection 817 that  
 3 reads as follows: Any other additional standards that  
 4 are needed to protect the public health, safety and  
 5 welfare or to address unique characteristics of a  
 6 particular lot defined by the township Zoning Hearing  
 7 Board shall be complied with by the landowner and/or  
 8 developer.  
 9 And then the general standards applicable to all  
 10 uses by special exception would also apply in their  
 11 determination.  
 12 **Q. Now, in the course of preparing your report, did  
 13 you have an opportunity to review the light industrial  
 14 districts in Peters Township and to review properties  
 15 that are, that exist within those districts?**  
 16 A. Yes, I did.  
 17 **Q. And if I could turn your attention to Exhibit C  
 18 within your report. Well actually let's start with  
 19 Exhibit B. Could you identify Exhibit B as attached to  
 20 your report?**  
 21 A. That's the township zoning district map.  
 22 **Q. Could you identify what color the light  
 23 industrial districts are depicted in?**  
 24 A. It is a brown, I believe.

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1 **Q. It is brown, showing up, you don't have this.**  
 2 **Could you, could you describe -- first, let's refer to**  
 3 **the first zoning district, I think you identified as the**  
 4 **Valleybrook Road --**  
 5 A. Yes.  
 6 **Q. -- zoning district. Light industrial district.**  
 7 **Can you describe that area generally?**  
 8 A. I'm designating the Valleybrook Road industrial  
 9 district that is linear along the road on the map that  
 10 is shown on the screen. It lies between the Peters  
 11 Township boundary with Cecil Township and U.S. Route 19.  
 12 The road is located in a valley with steep slopes on  
 13 either side and this industrially zoned land has direct  
 14 access to Valleybrook Road and lies between the road and  
 15 Montour Trail and traverses an old railroad  
 16 right-of-way. The trail lies at the foot of steep  
 17 slopes.  
 18 **Q. And could you just indicate for the Board under**  
 19 **Exhibit C are a series of photographs of the areas**  
 20 **within the Valleybrook Road light industrial district?**  
 21 A. Yes, that is correct.  
 22 **Q. And could you also describe approximately how**  
 23 **many acres are within that light industrial district?**  
 24 A. This particular light industrial district

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1 comprises approximately 95 acres. I didn't do a  
 2 specific analysis of parcel-by-parcel acreage but I  
 3 utilized the scale of the zoning district map to  
 4 approximate the area included in that LI district.  
 5 This district, the photographs show that this  
 6 district has several existing structures. There are  
 7 three self storage facilities, a contractor's warehouse  
 8 and a sewage treatment facility. However, much of the  
 9 land is not occupied by permanent structures but is used  
 10 for outdoor storage of vehicles and equipment on the  
 11 surface of the land.  
 12 **Q. Could we turn then to what you identified in your**  
 13 **report on page 9 as light industrial district 2 which is**  
 14 **the Hidden Valley Road area?**  
 15 A. Yes. And on this map that's this area here.  
 16 **Q. Again, could you describe generally that area?**  
 17 A. It is on the east side of Hidden Valley Road to  
 18 the north of its intersection with U.S. Route 19. The  
 19 properties have direct access to Hidden Valley Road.  
 20 The properties are generally in a higher elevation than  
 21 Hidden Valley Road. There are several flex buildings,  
 22 office warehouse and office light manufacturing and  
 23 Allegheny Power substation in this district. And I  
 24 provided photographs of that area as Exhibit D.

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1 **Q. And approximately how many acres are included in**  
 2 **that?**  
 3 A. My calculation is approximately 25 acres.  
 4 **Q. And if we could turn to industrial district**  
 5 **number 3 which is the Pittsburgh & Ohio Railroad on the**  
 6 **Cecil Township boundary?**  
 7 A. Yes, that is this area here I'm designating on  
 8 the screen. It is located along both sides of the  
 9 Pittsburgh & Ohio Railroad right-of-way adjacent to  
 10 Chartiers Creek. These properties have access to  
 11 Valleybrook Road by a Buckeye Street. The property is  
 12 used for a wholesale landscaping and excavating  
 13 business. There is a permanent building and several  
 14 trailers on the site. But the majority of the property  
 15 is used for storage of materials and equipment and  
 16 excavation of top soil. And those photographs are  
 17 included as Exhibit E.  
 18 **Q. And am I correct in noting that a portion of that**  
 19 **light industrial district is also adjacent to a**  
 20 **cemetery, is that correct? I think this one.**  
 21 MR. ARCURI: No.  
 22 **Q. Never mind. I apologize, I'm not correct. And**  
 23 **did you provide, could you estimate how many acres are**  
 24 **involved in that particular zoning district?**

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1 A. This third area zoned LI comprises approximately  
 2 37 acres.  
 3 **Q. Okay. And you provided the exhibits as Exhibit**  
 4 **E --**  
 5 A. Correct.  
 6 **Q. -- photographs of that district. Finally, can**  
 7 **you describe light industrial district which you**  
 8 **identified number 4, that would be the Churchill Road**  
 9 **near Bethel Park boundary?**  
 10 A. Yes, much smaller area here. Shown on the map.  
 11 It's along Churchill Road near the Bethel Park boundary.  
 12 And the properties do have direct access to Churchill  
 13 Road. They lie at the base of a steep slope and are  
 14 buffered from adjacent properties to the south. There  
 15 are two businesses located in this industrial zoned  
 16 area, a contractor's office and yard and a school bus  
 17 garage. The existing buildings do not occupy the entire  
 18 sites. There are significant outdoor storage of  
 19 vehicles and equipment on the surface of the land. And  
 20 my photographs are attached as Exhibit F.  
 21 **Q. Thank you very much. Could you, could you turn**  
 22 **back to pages 7 and 8 of your report and describe**  
 23 **briefly the types of other uses that are permitted in**  
 24 **light industrial districts either as a right or by**

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1 **special exception?**  
 2 A. The permitted uses by right in the light  
 3 industrial district are a combination of light  
 4 industrial uses and some, what I would consider heavier  
 5 commercial uses. The general merchandizing uses and  
 6 offices, medical offices which would draw customer  
 7 visits that are authorized in the C-2 district are not  
 8 authorized in the light industrial district.  
 9 However, some of the supporting uses for light  
 10 industry such as business services, commercial schools,  
 11 conference and training centers, gas stations, office  
 12 warehouse, post office, studios and academies,  
 13 veterinary services, those commercial uses are also  
 14 allowed in the light industrial district.  
 15 However, those uses that are in addition, the  
 16 light industry uses include a communications tower,  
 17 excavating and equipment storage, flex space, light  
 18 assembly, light industry, self storage facility,  
 19 wholesale landscaping service, warehouse and, of course,  
 20 the catchall category of all other uses.  
 21 **Q. And in reviewing the zoning districts as we have**  
 22 **just done, are you recommending any specific property**  
 23 **within those districts for the crematory use?**  
 24 A. Within the light industrial district, I'm not

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1 recommending a specific property. I'm simply pointing  
 2 out that there are ample opportunities within those  
 3 districts where all other uses are provided for for the  
 4 location of uses that are not specifically listed that  
 5 do not fit within the higher commercial classifications  
 6 within the township zoning scheme.  
 7 **Q. I believe you would characterize the light**  
 8 **industrial districts being the least restrictive zoning**  
 9 **district within the municipality?**  
 10 A. That is correct.  
 11 **Q. And if you add up the acreage of properties in**  
 12 **Peters Township that are zoned for light industrial,**  
 13 **would you agree it is about 150 acres?**  
 14 A. Based on my calculations using the scale of the  
 15 map it is approximately 161 acres and that represents  
 16 approximately 1.3 percent of the total land area of the  
 17 township is zoned LI, light industrial.  
 18 **Q. Now, is the all other use or uses not provided**  
 19 **for a provision that is fairly typical in zoning**  
 20 **ordinances?**  
 21 A. Yes, it is.  
 22 **Q. And when we, when the definition of funeral home**  
 23 **specifically refers to crematory services, does the**  
 24 **exclusion of crematory services from that definition**

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1 **alone result in an exclusion of the use in your opinion?**  
 2 A. No, it simply excludes it as part of the funeral  
 3 home establishment.  
 4 **Q. And we are talking about a combined use as**  
 5 **proposed, a crematory and a funeral home. And from your**  
 6 **planning perspective and experience, is it necessary to**  
 7 **provide for any combination of uses or is it sufficient**  
 8 **to allow for different types of uses in different areas**  
 9 **of the municipality?**  
 10 A. It's typical to provide for uses related to the  
 11 appropriateness of the zoning district in which they are  
 12 located and it is my opinion that it is not necessary to  
 13 provide for certain uses in conjunction with other uses  
 14 if the location is not appropriate for that combination.  
 15 **Q. So, if a municipality were to decide to allow**  
 16 **four gas stations in one category of zoning district and**  
 17 **car washes in a different category of zoning ordinances,**  
 18 **its failure to provide for car washes that also have gas**  
 19 **stations or gas stations that also have car washes does**  
 20 **not necessarily exclude the car wash/gas station use?**  
 21 A. That's correct.  
 22 **Q. Okay. In your professional opinion, does the**  
 23 **Peters Township ordinance allow for the crematory use?**  
 24 A. I believe that the Peters Township ordinance

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1 provides for all other uses in the light industrial  
 2 district and there could be a determination by the  
 3 Zoning Hearing Board that that is an appropriate use in  
 4 that zoning classification.  
 5 MS. MITINGER: Subject to questioning of  
 6 Ms. Sarraf, I would like to offer her report which  
 7 includes Exhibit A which is A description of her  
 8 background and experience, Exhibit B which is we  
 9 described the Peters Township zoning map, and Exhibits  
 10 C, D, E and F are photographs the various LI districts  
 11 as described in her report.  
 12 MR. JOHNSON: We will put that into the  
 13 record.  
 14 MS. MITINGER: Thank you very much.  
 15 MR. JOHNSON: Ms. Ribar, have you been  
 16 provided a copy of Ms. Sarraf's report?  
 17 MS. RIBAR: Just now, yes.  
 18 MR. JOHNSON: Ms. Ribar, go ahead.  
 19 EXAMINATION  
 20 BY MS. RIBAR:  
 21 **Q. My name is Tammy Ribar, I represent the applicant**  
 22 **here. You are giving your opinion with regard to the**  
 23 **exclusionary nature of the ordinance based on your**  
 24 **experience, that is not a legal opinion, correct? You**

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1 **are not a lawyer by training?**  
 2 A. No, I'm not.  
 3 **Q. You do recognize that crematories are excluded**  
 4 **from the definition of funeral homes in the township?**  
 5 A. I do recognize that.  
 6 **Q. You have stated your testimony basically says**  
 7 **that this applicant should take her funeral**  
 8 **home/crematory to a light industrial district?**  
 9 A. The crematory part of it, yes.  
 10 **Q. The crematory only, so you are advocating stand**  
 11 **alone crematories in the township?**  
 12 A. I think that that's what the definition of the  
 13 funeral home would envision for this residential,  
 14 primarily residential character of a municipality.  
 15 MR. JOHNSON: I don't think she is  
 16 advocating that, she is saying it is allowable.  
 17 **Q. It is your opinion that stand alone crematories**  
 18 **are allowed as a -- what did you call it?**  
 19 A. All other use.  
 20 **Q. All other use?**  
 21 A. Yes.  
 22 **Q. Because you do acknowledge that funeral homes are**  
 23 **not permitted in light industrial districts?**  
 24 A. That is correct.

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1 **Q. Therefore, if Ms. Belusko wanted to put her**  
 2 **crematory in the township, you are saying that the most**  
 3 **appropriate place for her to go would be as a stand**  
 4 **alone crematory in a light industrial?**  
 5 A. From a land planning standpoint, yes.  
 6 **Q. That is because you are saying cremation involves**  
 7 **incineration on a small scale?**  
 8 A. Correct.  
 9 **Q. Can you point to me any industrial districts in**  
 10 **Peters Township that are not adjacent to residential**  
 11 **districts?**  
 12 A. This is primarily a residential community, so  
 13 there are no industrial or commercial districts that are  
 14 not adjacent to residentially zoned property. They may  
 15 not be developed for residential use at this time.  
 16 **Q. So, if you are telling her to take her stand**  
 17 **alone crematory to an industrial district, you are**  
 18 **saying that that is okay even though it would be**  
 19 **adjacent to a residential district just like the C-2?**  
 20 A. The light industrial districts, the majority of  
 21 them are buffered by topography from the residential  
 22 properties or residentially zoned properties.  
 23 MR. JOHNSON: I think she also said it would  
 24 have to meet the special exception criteria in order to

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1 be placed there also.  
 2 **Q. I understand that. What I note with interest in**  
 3 **your report on page -- let me find it. On page 10 in**  
 4 **your first summary and conclusion?**  
 5 A. Yes.  
 6 **Q. You stated that the specific legislative intent**  
 7 **of Peters Township Council is to exclude cremation from**  
 8 **services provided by a funeral home. Did you do any**  
 9 **research or speak to anyone at the township to determine**  
 10 **what the legislative intent was when this ordinance was**  
 11 **enacted?**  
 12 A. No.  
 13 MR. JOHNSON: Is that a conclusion you drew  
 14 from your analysis of the ordinance?  
 15 A. Yes.  
 16 **Q. Are you aware of how other communities in the**  
 17 **immediate vicinity have zoned for funeral homes?**  
 18 A. Yes.  
 19 **Q. Are you aware that Upper St. Clair permits**  
 20 **funeral, permits crematories as accessory uses to**  
 21 **funeral homes in C-2 and C 3 districts?**  
 22 A. My review of the ordinance that is on-line did  
 23 not indicate that.  
 24 **Q. What was your review of the ordinance that was**

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1 **on-line?**  
 2 A. I understood from reviewing Upper St. Clair and  
 3 Mt. Lebanon that they both authorized funeral homes and  
 4 mortuaries as a permitted use in their general  
 5 commercial districts, however, the term is not defined  
 6 in either ordinance nor is crematory defined or  
 7 specifically listed.  
 8 **Q. Have you seen the report that Mr. Zuk prepared**  
 9 **dated March 16, 2001 addressed to M. A. Silvestri which**  
 10 **was tab 4 in the binder that was submitted from the**  
 11 **applicant?**  
 12 A. No.  
 13 **Q. You have not reviewed any of our materials?**  
 14 A. No.  
 15 **Q. So would you be surprised then that Mr. Zuk**  
 16 **indicated that crematories are permitted as accessory to**  
 17 **funeral homes in C-2 and C 3 districts? You are saying**  
 18 **that is not your interpretation?**  
 19 A. That is not my understanding, correct.  
 20 **Q. Did you review the North Strubane ordinance?**  
 21 A. Yes, I did.  
 22 **Q. And what is your interpretation of that**  
 23 **ordinance?**  
 24 A. Unless it has been recently amended, I assisted

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1 the township with drafting that ordinance and they have  
 2 a definition of funeral homes that is the same as the  
 3 Peters Township exclusion for cremation.  
 4 **Q. So a statement that crematories are permitted in**  
 5 **a C-1 district accessory to funeral home and as a**  
 6 **special exception in a cemetery in the A-1 zone is**  
 7 **incorrect?**  
 8 A. As I stated, unless it has been amended since I  
 9 was aware of what the ordinance stated.  
 10 **Q. When was the last time you reviewed that**  
 11 **ordinance?**  
 12 A. I think it was adopted two years ago.  
 13 **Q. Did you review it in connection with your**  
 14 **testimony tonight?**  
 15 A. I didn't review it on-line, I reviewed my copy of  
 16 the ordinance. So it may have been amended.  
 17 **Q. Did you review the Upper St. Clair ordinance in**  
 18 **connection with your testimony tonight?**  
 19 A. On-line, yes.  
 20 **Q. Did you review the Cranberry Township ordinance?**  
 21 A. No, I did not.  
 22 **Q. Are you aware that Cranberry Township allows**  
 23 **crematories --**  
 24 MR. LEWIS: We are in Peters Township. Can

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1 we locate and continue our discussion --  
 2 MS. RIBAR: She has testified that in her  
 3 opinion as a planning measure it is inappropriate for  
 4 this township, and I think she would probably testify  
 5 other townships to zone for crematories in other than  
 6 light industrial districts. I think it is important to  
 7 the basis of her testimony.  
 8 MR. ARCURI: You have to lay a foundation  
 9 for this witness as to what these other communities, how  
 10 they were structured, what kind of residential areas, I  
 11 mean I don't think she has any basis for that. I just  
 12 don't see the relevance.  
 13 MR. JOHNSON: I think at best it is  
 14 marginally relevant what other municipalities do. We  
 15 are all autonomous with respect to this.  
 16 BY MS. RIBAR:  
 17 **Q. Are you aware of any crematories located in**  
 18 **Allegheny County or Washington County that are in**  
 19 **industrial districts?**  
 20 A. I am not aware of where any crematories are  
 21 located.  
 22 **Q. You just gave an opinion as to where they should**  
 23 **be located, correct?**  
 24 A. Under a zoning scheme, yes.

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1 **Q. Have you ever met with Mr. and Mrs. Thomas in**  
 2 **connection with your engagement this evening?**  
 3 A. No.  
 4 **Q. So, is it also your testimony that funeral homes**  
 5 **are service industries but that cremations are not**  
 6 **service, not a service provided to residents?**  
 7 A. I'm not indicating that it is not a service  
 8 industry.  
 9 **Q. You said a funeral home is a service?**  
 10 A. Correct. Cremation services are related to that  
 11 service industry. But, their impacts from a land  
 12 planning standpoint do not characterize them as a  
 13 commercial or retail merchandising type of use that is  
 14 appropriate in a commercial district.  
 15 **Q. And in connection with your review of the light**  
 16 **industrial properties that were available, were any of**  
 17 **these for sale?**  
 18 A. I'm not certain that that is relevant in an  
 19 exclusionary challenge.  
 20 **Q. Will you please answer my question.**  
 21 MR. BALL: Frankly, I agree it is not  
 22 relevant.  
 23 **Q. Can she answer the question?**  
 24 MR. JOHNSON: Sure.

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1 A. I'm not aware of any properties that were for  
 2 sale.  
 3 MR. ARCURI: I am.  
 4 **Q. So to summarize your testimony then, you gave**  
 5 **Council the opinion that crematories should be allowed**  
 6 **as stand alone uses in light industrial districts in**  
 7 **Peters Township?**  
 8 A. I believe that the ordinance is valid in that a  
 9 crematory could be considered in the all other use  
 10 category provided for in the LI district.  
 11 **Q. That is not based on a legal opinion?**  
 12 A. Correct.  
 13 MS. RIBAR: Thank you.  
 14 CHAIRMAN ATKISON: Mr. Kamin.  
 15 MR. JOHNSON: Briefly, please.  
 16 EXAMINATION  
 17 BY MR. KAMIN:  
 18 **Q. Ms. Sarraf, nice to see you.**  
 19 A. Nice to see you.  
 20 **Q. Nice to be on the same side.**  
 21 A. For a change.  
 22 **Q. For a change. Just for the record, I spent many**  
 23 **hours cross-examining her on a different case a couple**  
 24 **months ago. I would like to do something novel to read**

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1 **the Peters Township ordinance.**  
 2 MR. LEWIS: Why do you want to read our  
 3 ordinance to us?  
 4 MR. KAMIN: I think it is relevant for her  
 5 discussion.  
 6 MR. LEWIS: I think that is our job to read  
 7 the ordinance.  
 8 MR. KAMIN: Mr. Lewis, with all due respect  
 9 I would like to question her on what your ordinance says  
 10 because I think it is relevant for the discussion.  
 11 MR. LEWIS: You were admonished at the  
 12 Planning Commission for taking entirely too much time, I  
 13 will do the same this time.  
 14 MR. KAMIN: I have taken at this point a  
 15 minute and about 20 seconds.  
 16 MR. LEWIS: To read our ordinance.  
 17 MR. KAMIN: I am going to read two  
 18 definitions of the ordinance.  
 19 MR. JOHNSON: It is appropriate.  
 20 MR. KAMIN: The first definition I would  
 21 like to read is found on page 27-22 Peters Township  
 22 ordinance, Section 200. That definition is industry,  
 23 light. Do you see where I'm talking about underlined?  
 24 A. I do.

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1 **Q. That's described as enterprises capable of**  
 2 **operating in such a manner as to control the external**  
 3 **effects such as smoke, noise, soot, dirt, traffic**  
 4 **vibration, odor, ect, on surrounding land uses. Did I**  
 5 **read that correctly?**  
 6 A. Yes.  
 7 **Q. Did you hear Mr. Macoskey testify earlier tonight**  
 8 **that he thought that is how their enterprise would**  
 9 **operate?**  
 10 A. Yes.  
 11 **Q. I would like to read the definition of, also from**  
 12 **the Peters Township ordinance. This is entitled "light**  
 13 **industry." It is on page 27-23. Do you have that?**  
 14 A. I do.  
 15 **Q. I believe I underlined a portion of that. Again**  
 16 **page 27-23. Light industry. A facility for the**  
 17 **processing and fabrication of certain materials and**  
 18 **products where no process involved produces noise,**  
 19 **vibration, air pollution, fire hazard or noxious**  
 20 **emissions which will disturb or endanger neighboring**  
 21 **properties.**  
 22 **Did I read that first sentence correctly?**  
 23 A. You did.  
 24 **Q. And did you hear Mr. Macoskey testify earlier**

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1 **this evening that he believed this facility would**  
 2 **operate that way?**  
 3 A. Yes.  
 4 **Q. Now, you have been a planner for many, many years**  
 5 **and I think you testified in business for yourself since**  
 6 **the early 80s?**  
 7 A. Yes, 1982.  
 8 **Q. And in your experience as a planner, is it**  
 9 **necessary to specifically enumerate every possible use**  
 10 **that could be within the township?**  
 11 A. It is not reasonable or practical to even try to  
 12 do that. But it is not necessary.  
 13 **Q. In writing zoning ordinances which you have done**  
 14 **for I think you said for 75 municipalities, you can't**  
 15 **possibly name every use?**  
 16 A. That is correct.  
 17 **Q. So you have categories of uses and that is how**  
 18 **you figure out where use belongs?**  
 19 A. Yes.  
 20 **Q. Is that ordinary and typical business practice**  
 21 **within drafting ordinances?**  
 22 A. Yes, it is.  
 23 **Q. Now, I think you testified briefly as well that**  
 24 **it is common for in the definition of a funeral home for**

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1 **there to be this exclusion that there is in Peters'**  
 2 **ordinance, correct?**  
 3 A. Yes.  
 4 **Q. That is because they are separate and distinct**  
 5 **uses?**  
 6 A. Correct.  
 7 **Q. That is from a planning perspective, right?**  
 8 A. Correct.  
 9 MR. KAMIN: Nothing further.  
 10 MR. JOHNSON: Thank you.  
 11 MS. MITINGER: I don't have any redirect.  
 12 EXAMINATION  
 13 BY MS. RIBAR:  
 14 **Q. Are you aware of any instances where other, you**  
 15 **testified that other municipalities had excluded the**  
 16 **crematories from the definition of funeral homes?**  
 17 A. Yes.  
 18 **Q. Are you aware of any instances where those**  
 19 **ordinances have been challenged?**  
 20 A. I'm not aware of that, no.  
 21 MS. RIBAR: Thank you.  
 22 MR. JOHNSON: Okay, thank you. Unless  
 23 Council has questions.  
 24 MR. LEWIS: Absolutely not.

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1 MR. KAMIN: I have brief testimony.  
 2 MS. MITINGER: That concludes our testimony.  
 3 MR. KAMIN: I call Mr. Ned Gensler, please.  
 4 EXAMINATION  
 5 BY MR. KAMIN:  
 6 **Q. Mr. Gensler, will you introduce yourself and**  
 7 **spell your name please for the reporter?**  
 8 A. I am Ned Gensler, G-E-N-S-L-E-R. I live on  
 9 Sussex.  
 10 **Q. And Mr. Gensler, how close do you live to the**  
 11 **proposed site?**  
 12 A. About 130 yards.  
 13 **Q. And 130 yards or 130 feet?**  
 14 A. It is more than I think it was, what did we  
 15 figure? About 175 yards.  
 16 **Q. And does your property sit above the proposed**  
 17 **site?**  
 18 A. Yes, it does.  
 19 **Q. And if the property, if a crematorium was**  
 20 **developed with a smoke stack, where would that smoke**  
 21 **stack come out in relation to your property?**  
 22 A. Probably even with my deck.  
 23 **Q. So, when you say even with your deck, you are**  
 24 **referring to the deck off the back of your home,**

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1 **correct?**  
 2 A. Right.  
 3 **Q. Do you believe that if that smoke stack were**  
 4 **erected and the materials as described came out of that**  
 5 **particular smoke stack that that would have a**  
 6 **detrimental effect on your property?**  
 7 A. It will blow right in my face.  
 8 **Q. And do you believe that it would also have a**  
 9 **detrimental effect on your property value?**  
 10 A. I would think so.  
 11 **Q. And as far as having -- let me back up. When you**  
 12 **purchased your property, were you aware that there was a**  
 13 **commercial district below you?**  
 14 A. Yes, absolutely.  
 15 **Q. Is part of that was your expectation there would**  
 16 **be commercial uses within the district?**  
 17 A. Yes, offices, stores, you know.  
 18 **Q. And do you believe that the uses proposed is**  
 19 **commercial, the crematorium use is commercial?**  
 20 A. No, it is industrial.  
 21 **Q. Nothing further for Mr. Gensler.**  
 22 MR. JOHNSON: Thank you.  
 23 MR. LEWIS: Was he sworn?  
 24 MR. KAMIN: Yes, he was. I call Dr.

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1 Bellicini to the stand, please.  
 2 EXAMINATION  
 3 BY MR. KAMIN:  
 4 A. My name is Nicholas Bellicini, 202 Sussex Way, is  
 5 spelled B-E-L-L-I-C-I-N-I.  
 6 **Q. Dr. Bellicini, do you live adjacent to the**  
 7 **Genslers?**  
 8 A. Yes, I do.  
 9 **Q. Are you actually closer to the proposed funeral**  
 10 **home crematorium than the Genslers?**  
 11 A. Yes.  
 12 **Q. Did you hear Mr. Gensler testify earlier this**  
 13 **evening?**  
 14 A. Yes, I did.  
 15 **Q. Would you agree with the testimony?**  
 16 A. Yes, I would.  
 17 **Q. As part of your experience on living on Sussex**  
 18 **Drive, are you familiar at all with the wind direction**  
 19 **or any wind that happens to blow up there?**  
 20 A. Yes, I am.  
 21 **Q. And do you believe that wind would go ahead and**  
 22 **blow materials and matters from the proposed crematorium**  
 23 **towards your house?**  
 24 A. Yes. The predominant wind direction is directly

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1 towards my deck.  
 2 **Q. And --**  
 3 A. And to Ned's deck.  
 4 **Q. As part of that, do you believe that that would**  
 5 **have a detrimental effect on your property value?**  
 6 A. Yes.  
 7 **Q. And were you aware when you -- when did you**  
 8 **purchase your property?**  
 9 A. Three and a half years ago.  
 10 **Q. Were you aware at the time you purchased it there**  
 11 **was a commercial district there?**  
 12 A. Yes.  
 13 **Q. At the time that you purchased it, did you think**  
 14 **that there would be industrial development or industrial**  
 15 **uses?**  
 16 A. No, it was not industrial.  
 17 **Q. I have nothing further for Dr. Bellicini.**  
 18 A. Thank you.  
 19 MR. JOHNSON: Ms. Ribar.  
 20 MS. RIBAR: Nothing, thank you.  
 21 MR. KAMIN: The only other item that I would  
 22 offer, I didn't see that the zoning ordinance was  
 23 offered as part of the record from the transcripts. I  
 24 imagine that all township documents are part of the

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1 record.  
 2 The last part of our presentation that we  
 3 would like to offer is just -- if I could approach.  
 4 MR. ARCURI: Is the ordinance part of the  
 5 record?  
 6 MR. JOHNSON: We will make it part of the  
 7 record.  
 8 MR. ARCURI: Make it on the record it is  
 9 part of the record.  
 10 MR. KAMIN: The only item I offer in  
 11 addition, you can pass these one way or another. I can  
 12 probably call Mr. Silvestri or Mr. Zuk to ask about  
 13 this, this is a declaration of restricted covenant  
 14 affecting what is the piece of property known as Forest  
 15 Lawn Gardens Realty in Peters Township, Pennsylvania.  
 16 This was adopted in July 18th of 1997 and  
 17 the only purpose for offering this document is to go  
 18 ahead and to show that as early as 1997 that Peters  
 19 Township recognized as part of being the beneficiary to  
 20 this covenant that crematorium and funeral home were not  
 21 accessory uses and not compatible uses.  
 22 We believe the zoning ordinance has been  
 23 amended multiple times since adoption and believe it is  
 24 appropriate to go ahead and offer that into the record

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1 to show the course of dealing how the township has  
 2 treated this.  
 3 MS. RIBAR: Mr. Johnson, I object to this  
 4 only because the township is not party to this. This is  
 5 not a township ordinance, this is a declaration by a  
 6 private property owner. It has no relevance on how the  
 7 township has treated crematories in the past.  
 8 MR. JOHNSON: The township is the intended  
 9 beneficiary of the covenant, is it not?  
 10 MR. KAMIN: If you want I can call, I  
 11 believe Mr. Silvestri was here back in '97, I can call  
 12 him for testimony. I don't know if Mr. Zuk was back  
 13 here in '97, were you here Ed? I made a proffer.  
 14 MR. JOHNSON: Any other comment with respect  
 15 to it?  
 16 MS. RIBAR: Other than the objection, there  
 17 is no basis for his statement. If he wants to call  
 18 Mr. Silvestri, that is fine, but otherwise we have no  
 19 background as to this other than it is being offered as  
 20 a restrictive covenant.  
 21 MR. KAMIN: Why don't I call Mr. Silvestri.  
 22 EXAMINATION  
 23 BY MR. KAMIN:  
 24 **Q. Mr. Silvestri, how long have you been township**

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1 **manager in Peters Township?**  
 2 A. 30 years.  
 3 **Q. I didn't realize it was that long. As part of**  
 4 **being here, do you recall, maybe I should, I don't know**  
 5 **if you have a copy of this?**  
 6 A. I'm familiar with it.  
 7 **Q. Do you recall the proceedings surrounding, I have**  
 8 **a couple extras here, did everybody on the board get**  
 9 **one?**  
 10 **CHAIRMAN ATKISON: We are shy up here.**  
 11 **Q. Mr. Silvestri, do you remember the application of**  
 12 **Forest Lawn Gardens, Inc. to Peters Township?**  
 13 A. Yes.  
 14 **Q. And I presented to you a declaration of**  
 15 **restrictive covenant that appears to be between Forest**  
 16 **Lawn Gardens that appears to bind the property and to**  
 17 **say that it will only be used as a funeral home and not**  
 18 **used as a crematory. Have I adequately described that**  
 19 **document?**  
 20 A. Basically, yes.  
 21 **Q. Can you just describe a little bit the rationale**  
 22 **behind the adoption of this back in 1997?**  
 23 A. Forest Lawn was asking to have a portion of their  
 24 property zoned commercial. The cemetery was zoned R-1.

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1 And they wanted to get a portion of the property zoned  
 2 commercial.  
 3 At the time they were specifically looking at a  
 4 funeral home to go into it. And as part of their offer  
 5 to make it more appealing to the township to rezone the  
 6 property they had offered to put in a restriction that  
 7 crematories would not be part of that use.  
 8 **Q. And is that because the township recognized that**  
 9 **that wouldn't necessarily be compatible in the**  
 10 **commercial district?**  
 11 A. Generally, yes.  
 12 MR. KAMIN: Nothing further.  
 13 CHAIRMAN ATKISON: I remind everyone too we  
 14 are into our ninth hour of this thing, okay? We are in  
 15 the ninth hour. We are rapidly approaching the end,  
 16 okay.  
 17 MR. KAMIN: Just to be clear, we rest.  
 18 CHAIRMAN ATKISON: Wonderful. We need more  
 19 rest, believe me.  
 20 MS. RIBAR: I have a question for  
 21 Mr. Silvestri.  
 22 EXAMINATION  
 23 BY MS. RIBAR:  
 24 **Q. Mr. Silvestri, do you recall a meeting that we**

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1 **had at the beginning of this process at the township**  
 2 **office myself, Mary Joe, Ms. Belusko and Mr. Johnson?**  
 3 A. Yes.  
 4 **Q. Do you recall we had questioned you as to what**  
 5 **the township's rationale was for excluding crematories**  
 6 **from the definition of funeral home?**  
 7 A. Yes, and my answer was I wasn't really sure what  
 8 rationale was at that time. I wasn't exactly sure when  
 9 that was put into the ordinance.  
 10 **Q. Do you know now when that was put into the**  
 11 **ordinance?**  
 12 A. I don't. I know that at one time crematories  
 13 were prohibited use. We have a list of prohibited uses.  
 14 Then when basically when court decisions had you had to  
 15 provide, we eliminated that. I'm assuming that is when  
 16 it was eliminated as part of the funeral home.  
 17 **Q. But you do admit that crematories are not**  
 18 **specifically allowed anywhere in the township?**  
 19 A. No, I don't agree with that. I think we have  
 20 provisions for a special exception for use not provided  
 21 for.  
 22 **Q. But crematories, specifically a crematory is not**  
 23 **a listed use?**  
 24 A. Right, it is not a listed use.

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1 MS. RIBAR: Thank you.  
 2 CHAIRMAN ATKISON: What I wanted to say was  
 3 that we have had a run of attorneys in this thing for  
 4 hours and hours. Now, there are a couple of people  
 5 tonight that wanted to offer additional testimony. I  
 6 want to give them the opportunity to do that. Is there  
 7 anyone out there that would like to say something that  
 8 will not be followed by 14 cross-examinations? Come on  
 9 up here, Judge, we will bring you first. You are a  
 10 short speaker.  
 11 JUDGE DiSALLE: I'm only 5-9, you are right.  
 12 My name is Richard DiSalle, and having listened to the  
 13 testimony of the learned planner from Upper St. Clair, I  
 14 just have a couple of observations to make. I won't be  
 15 more than two minutes, I promise.  
 16 I think I heard her say that the section of  
 17 the ordinance under which this application was made  
 18 provides that if a use is neither permitted nor denied,  
 19 then the application is appropriate under that section.  
 20 Am I saying that correctly, Frank?  
 21 MR. JOHNSON: She also appended to that had  
 22 to be comparable to other uses within the district. It  
 23 could be treated as a special exception.  
 24 JUDGE DiSALLE: Okay. I also have learned

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1 tonight, I apologize for not having been at the prior  
 2 meetings.  
 3 MR. LEWIS: You are excused.  
 4 JUDGE DiSALLE: Thank you. That crematories  
 5 are excluded under the ordinance. Crematories are  
 6 excluded. So, it seems to me that being excluded is the  
 7 same as being denied. And if they are proceeding, if  
 8 they are attempting to proceed under that part of the  
 9 ordinance, under that section which says, if a use is  
 10 neither permitted nor denied, that crematories are  
 11 denied because they are excluded, therefore, they have  
 12 no standing to make the application under that section.  
 13 In fact, they have no standing to put a  
 14 crematory anywhere in the township. And I respectfully  
 15 disagree with learned planner from Upper St. Clair when  
 16 she says that crematories are allowed in light  
 17 industrial districts in the township. Because as I read  
 18 that section, I haven't read it, but as I listened to it  
 19 having been read, I don't think that they have standing  
 20 to proceed with their application under that section of  
 21 the ordinance.  
 22 That concludes my remarks, thank you.  
 23 CHAIRMAN ATKISON: Let's refrain from that  
 24 time-consuming clapping. This is not Dancing with the

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1 Stars, I'm serious. This is a quasi judicial proceeding  
 2 here. We are trying to conduct it that way. If you  
 3 were in a courtroom, you wouldn't be doing what you are  
 4 doing. I please ask you, I ask you ever damn meeting to  
 5 act like adults. Okay? Let's get it over with and be  
 6 gentlemen about it.  
 7 JUDGE DiSALLE: I apologize if I look like  
 8 Heinz Ward.  
 9 CHAIRMAN ATKISON: Believe me, Judge, you  
 10 don't look like Heinz Ward. Who else would like to say  
 11 a few words?  
 12 MR. HAZO: My name is Samuel Hazo, I live at  
 13 304 Buffalo Ridge Road. H-A-Z-O.  
 14 CHAIRMAN ATKISON: I remind you, Sam, you  
 15 have given multiple comments before. So don't --  
 16 MR. HAZO: Actually, no, not in the public  
 17 hearing. I have not.  
 18 CHAIRMAN ATKISON: That was the Planning  
 19 Commission?  
 20 MR. HAZO: I spoke to the Planning  
 21 Commission and I came to one meeting in the proposed  
 22 ordinance.  
 23 CHAIRMAN ATKISON: I'm thinking the Planning  
 24 Commission, go ahead.

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1 MR. HAZO: You have seen me a lot. I will  
 2 be brief. I actually came here this evening armed to  
 3 the teeth with research and the vast majority of it is  
 4 going to remain unsaid. I have changed my entire  
 5 approach. I have changed my presentation. In fact, I  
 6 wrote the whole thing while I was sitting listening  
 7 because enough facts have been given to be digested.  
 8 I am, I'm a homeowner's president, so I will  
 9 speak only about home. When we all first learned about  
 10 a crematorium being proposed, our gut reaction was just  
 11 psychologically unpleasant. I'm sure that is understood  
 12 by all.  
 13 The very first thing and the very first  
 14 meeting when I saw Ms. Ribar come up, the first thing  
 15 she said was, and it was to the Planning Commission, I  
 16 believe, it was I understand that death and dying is an  
 17 unpleasant subject. And I appreciate your understanding  
 18 in hearing us out.  
 19 One of the first things I heard Mrs. Belusko  
 20 say was not many people in the world can do what I do,  
 21 meaning not many people have the stomach for it. And  
 22 that is true. What she does is an appreciated and  
 23 needed profession. This has nothing to do with being  
 24 anti cremation. Just the location of where it is being

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1 done.  
 2 So everyone in the room regardless of the  
 3 side understands how people feel about this  
 4 psychologically. And then as we started to learn about  
 5 it, learned some facts about it, that is why we are  
 6 here. We are here tonight in this public hearing  
 7 because this has the potential to add the most dangerous  
 8 toxins into Peters Township's air that we have.  
 9 To the best of my knowledge, the most  
 10 dangerous toxins now are methane which you get a lot of  
 11 from the Marcellus shale, something called hexagonal  
 12 chromium which you get in an auto body shop when you are  
 13 welding. Both of those are actually on the list of the  
 14 Agency for Toxic Substances and Disease Registry on  
 15 their most toxic. The methane is number 66. I said it  
 16 wrong, the hexagonal chromium is 18. But in this list  
 17 mercury is number three.  
 18 And from what I read from the Matthews  
 19 pamphlet, there is even some arsenic involved in the  
 20 crematory process which is number one.  
 21 One drop, one mercury thermometer drop of  
 22 mercury is enough to contaminate the food supply in a  
 23 small lake. One drop. I actually have an illustration  
 24 I brought of what one drop looks like, the amount it is

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1 speaking about.  
 2 It is not the quarter, it is not the pencil,  
 3 it is what is in between. It has also been said by  
 4 Professor Neal Donahue. Professor Donahue is professor  
 5 of chemistry and chemical engineering at our own  
 6 Carnegie Mellon University. In regard to crematory,  
 7 mercury that winds up as a, I'm sorry as a particle  
 8 outside a chimney stack will probably be rained out  
 9 nearby.  
 10 The process that I won't go into, I have a  
 11 little illustration, I won't bore you with it. It will  
 12 be rained out nearby. Now the one thing we have not  
 13 seen so far and now would be a good time to show it is  
 14 that. That is the proposed building and that is an area  
 15 of homes on Sussex Way.  
 16 There is no gage to gage distance except  
 17 that occasionally we humans tattoo the earth the rulers.  
 18 That will give you perspective. Those are two aerial  
 19 photos to the same scale. The distance from wall to the  
 20 corner of that house is exactly 50 yards which is 150  
 21 feet.  
 22 On a rainy day when a crematory is  
 23 dispersing out of the stack everything it does, if one  
 24 drop of mercury is enough to contaminate a small lake,

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1 what is it enough to do there, or there? Or on that  
 2 play set?  
 3 I don't want to talk about facts, I just  
 4 want to talk about home. We mentioned the dermal  
 5 effects. And I read this and perhaps I'm stupid,  
 6 perhaps I'm misunderstanding this. It says for this  
 7 evaluation the exposure pathway being evaluated is the  
 8 inhalation route. Although there is potential for  
 9 dermal or ingestion exposure to chemicals emitted from  
 10 the cremator that are deposited on the ground surface  
 11 over time. Soil sampling down wind of a cremator that  
 12 performed over, this is the sample, performed over  
 13 112,000 cremations over a 40-year period found no  
 14 contamination of mercury in the soil. This is from the  
 15 packet I think it was CEC-1 is what it was labeled.  
 16 112,000 cremations over 40 years.  
 17 It is a 1999 study. There were two things  
 18 that bothered me about it, first, 112,000 cremations in  
 19 40 years means 7.7 cremations a day, every day, seven  
 20 days a week since 1959.  
 21 The other thing that bothered me, again,  
 22 maybe I'm reading it wrong, you can't read it there, but  
 23 it is labeled as ANON 1999. When I see ANON, anonymous  
 24 is all I can think of. The sole dermal and ground

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1 exposure example in that packet, and maybe I'm wrong, is  
 2 an anonymous study with a number of cremations that  
 3 rival any crematory in the Nazi regime.  
 4 Finally, one thing I wanted to point out  
 5 just in listening, Mr. Kelly earlier stated and stated  
 6 in the last meeting that funeral, I'm sorry, that  
 7 property values didn't change and stated a mass  
 8 comparison this evening when the Smith Funeral Home put  
 9 in a crematory in 1996.  
 10 We are in uncharted territories. We have  
 11 the only place that I can in my entire research say  
 12 there was no death business there before. It was a  
 13 furniture store. And now there is a funeral  
 14 home/crematory proposed. That example has not existed  
 15 anywhere I can find in Pittsburgh in the surrounding  
 16 area. The Smith Funeral Home was founded in 1966, 30  
 17 years before they put the crematory in.  
 18 So people who moved next door to a funeral  
 19 home knew they were moving next to the death business.  
 20 Nobody on Sussex Way knew they were moving next door to  
 21 the death business or building a home next to the death  
 22 business.  
 23 So, if this whole thing goes through, we are  
 24 going to be the sole example of what happens when you

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1 have nothing and then you have a funeral home and a  
 2 crematory. Then people can study us to see what happens  
 3 to real estate values.  
 4 In closing. We use the term residential  
 5 properties. We use the term housing plans. I am a  
 6 homeowner association president. But those terms  
 7 regardless of their descriptive accuracy are empty  
 8 phrases. Where we live is our home. Where we sleep  
 9 tonight is our home. After our babies are born in the  
 10 hospital, we brought them home. The only place my  
 11 elderly parents feel safe is at home. Home encompasses  
 12 everything, not just our property or the bricks that  
 13 built it. Home is our family, our character, our  
 14 health, the symbol of everything for which we sacrificed  
 15 both material and out of love.  
 16 We are all here tonight because there are  
 17 many ways this can affect home. So, put yourself in our  
 18 shoes. If there is one thing we all share, it is that  
 19 after this meeting we are all going home. Thank you for  
 20 your time.  
 21 CHAIRMAN ATKISON: Thank you. Anyone else  
 22 have any comments? Who made the comment initially, we  
 23 should be allowed to clap? I could have guessed. Any  
 24 way. We will close this hearing and we will render a

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1 decision on this thing at the June 27th meeting which  
 2 will be the second meeting the month of June.  
 3 MR. KAMIN: Would it be possible for us to  
 4 submit findings of fact?  
 5 MR. JOHNSON: Yes, I recommend if any of you  
 6 wish to submit proposed findings and argument, whatever,  
 7 do so by June 20.  
 8 MR. KAMIN: Thank you.  
 9 CHAIRMAN ATKISON: This proceeding the is  
 10 adjourned. Thank you.  
 11 (Meeting adjourned at 10:02 p.m.)  
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1 \* \* \* \* \*  
 2  
 3 I hereby certify that the foregoing is a correct  
 4 transcript from the record of proceedings in the above  
 5 entitled matter.  
 6  
 7  
 8  
 9 William E. Weber, RDR, CRR  
 10 Court Reporter  
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