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Transcript of Administrative Hearing

Date: August 3, 2018
Case: Goshen Enterprise, Inc.

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Transcript of Administrative Hearing
Conducted on August 3, 2018

1 (1 to 4)

1	3
1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 CONTENTS
2 FOR MONTGOMERY COUNTY, MARYLAND	2 EXAMINATION OF MR. BOHRER PAGE
3 -----x	3 BY MR. KLINE 33
4 In Re: :	4 EXAMINATION OF MR. LENHART
5 GOSHEN ENTERPRISES, : Case No.	5 BY MR. KLINE 57
6 INC. : 18-06	6 EXAMINATION OF MR. NORTON
7 -----x	7 BY MR. KLINE 73
8	8
9 HEARING	9
10 Before Hearing Examiner Martin Grossman	10
11 Rockville, Maryland	11
12 Friday, August 3, 2018	12
13 9:37 a.m.	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23 Job No.: 201938	23
24 Pages: 1 - 114	24
25 Transcribed By: Erin Ramsey	25
2	4
1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF THE APPLICANT, GOSHEN ENTERPRISES,	2 MR. GROSSMAN: I'll call the case. This is a public
3 INC.:	3 hearing in the matter of Goshen Enterprise, Inc., CU 18-06,
4 JODY KLINE, ESQUIRE	4 an application for a landscape contract and conditional use
5 MILLER, MILLER & CANBY	5 and disowning ordinance section 59.3.5.5. The applicant
6 200B Monroe Street	6 seeks a conditional use to permit operation of a
7 Rockville, Maryland 20850	7 landscaping business on a 5.74 acre site located at 21201
8 (301) 762-5212	8 Zion Road in Brookeville known in the agricultural reserve
9	9 zone, AR zone. The conditional use is part of a larger
10 ON BEHALF OF THE MONTGOMERY COUNTY OFFICE OF	10 tract which is 30.49 acres of unplotted land identified as
11 ZONING AND ADMINISTRATIVE HEARINGS:	11 parcel P490 on tax map HV31. Addition to Brooke Grove.
12 MARTIN GROSSMAN	12 The property is owned by M & M Realty, LLC, and
13 100 Maryland Avenue	13 currently used as a tree farm operated by Ace Tree Movers
14 Room 200	14 and Ace Nurseries which will continue its tree farm
15 Rockville, MD 20850	15 operation on the remaining 24.75 acres of land if the
16 (240) 777-6660	16 conditional use is provided.
17	17 My name is Martin Grossman, I'm the hearing examiner
18	18 which means I will write a report and decision in this
19	19 case. Are you ready to proceed, sir.
20	20 MR. KLINE: Yes, sir.
21	21 MR. GROSSMAN: All right. Will you state your name
22	22 for the record, please.
23	23 MR. KLINE: Good morning, Mr. Grossman. For the
24	24 record my name is Jody Kline, K-l-i-n-e. I'm an attorney
25	25 with the law firm of Miller, Miller & Canby here in

Transcript of Administrative Hearing
Conducted on August 3, 2018

2 (5 to 8)

<p style="text-align: right;">5</p> <p>1 Rockville at 200B Monroe Street, and we represent the 2 applicant in this case, Goshen Enterprises, Inc. I 3 anticipate calling three witnesses today. If you need 4 those names, I'll be glad to give them to you now. 5 MR. GROSSMAN: Is that Kevin Bohrer, Michael Norton, 6 and Michael Lenhart? 7 MR. KLINE: That is correct. 8 MR. GROSSMAN: Okay. 9 MR. KLINE: And you -- I know you normally like to 10 ask is there anybody in the room who's not here with the 11 call of the applicant, Ms. Pat Smith who's representative 12 for M & M Realty, the owner of the properties, is here to 13 observe. And there is another gentleman who tells us he's 14 here just to observe to see how the process works who 15 wasn't contemplating testifying. 16 MR. GROSSMAN: All right. 17 MR. KLINE: So you're getting an audience. 18 MR. GROSSMAN: Is there anybody else in the room who 19 wishes to be -- who wishes to testify, to be heard today? 20 I see no hands so let the record reflect that. And I 21 understand there's another gentleman here who just wishes 22 to observe. Is that -- sir, are you a neighbor or -- 23 MR. SOUSA: No. I'm actually in another conditional 24 use hearing in about ten days and I'm going to see how this 25 whole thing works.</p>	<p style="text-align: right;">7</p> <p>1 corrections on the staff report, Exhibit 32, that were 2 noted by the planning board in its letter of July 17, 2018, 3 that's Exhibit 34. And so what I did -- was into the 4 Exhibit 32 that was already in the file. 5 MR. KLINE: That's fine. That's a good idea. 6 MR. GROSSMAN: Although I noticed at preparing for 7 this hearing that they neglected to make a change in one 8 area that was required by their other changes. But in any 9 event, we'll get back to that. A motion to amend the 10 plans was filed and noticed on July 24, 2018, we received 11 no opposition to the amendment and so it is granted as 12 indicated in the notice that went out. We will proceed 13 under the plans you updated earlier with the planning 14 department but on July 24th with us. Next question, does 15 the applicant wish to adopt the findings and analysis of 16 the technical staff and agree to all the conditions that 17 the staff proposed in its report as corrected? 18 MR. KLINE: Yes, sir. And we also adopt their 19 definition of the zoning neighborhood for 20 the purposes of the analysis. 21 MR. GROSSMAN: Okay. The technical staff report 22 raised a question about the septic system and proposed a 23 condition that the number of proposed employees not be 24 allowed above -- I think it was 38 until -- unless and 25 until the department of permitting services approved the</p>
<p style="text-align: right;">6</p> <p>1 MR. GROSSMAN: All right. Thank you. Let me 2 explain a little bit about the nature of the proceedings. 3 This is a combination of formality and informality and that 4 operates pretty much in the formal way the courtroom does. 5 All witnesses are sworn in, they're subject to cross- 6 examination, a court reporter takes everything down, there 7 will be a transcript which usually takes a week to ten days 8 to get to us, we then put it on our website. The usual 9 formalities of questioning are observed, are a little bit 10 more relaxed than a courtroom on some of the rules of 11 evidence. 12 All right. Let me explain a little bit about a 13 conditional use. A conditional use which is what is sought 14 here is not a variance, it is a use that is permitted under 15 the zoning ordinance if certain specified conditions are 16 met. And there are conditions specified in the zoning 17 ordinance for this type of conditional use and there are 18 also general conditions specified in the zoning ordinance 19 for conditional uses in general and the hearing examiner is 20 required to make findings regarding those requirements. 21 Let me turn now to a few preliminary matters. If 22 there are any new exhibits they have to be accompanied by 23 electronic copies. Microsoft Word for text documents or 24 text searchable PDF, at the very least, and in PDF format 25 for non-text documents. Please note that I made</p>	<p style="text-align: right;">8</p> <p>1 septic system for that number up to 50. Has that occurred? 2 Has it been any such approval by the Department of 3 Permitting Services? 4 MR. KLINE: No, sir. Because we haven't determined 5 which of the two options given to us we're going to pursue 6 and that's not an immediate need because of the population 7 on the property won't grow to above 38 for a while. 8 MR. GROSSMAN: Okay. And as I think that my staff 9 notified you in the last two days we've gotten letters of 10 opposition from two neighbors. Emmet Tydings wrote in 11 Exhibit 38 which he then supplemented today or maybe last 12 night with Exhibit 40. And Walter Romans in Exhibit 39, 13 essentially raising questions about adequacy of notice, 14 potential noise, lights, and property value, effect on the 15 property values. Obviously, it was too late to change the 16 hearing date. 17 They both indicated in their letters that they would 18 not be able to attend today because of vacation schedule. 19 Mr. Romans left a telephone number in his letter and my 20 staff contacted him to see if there was another date if we 21 could have potentially have a second hearing date so they 22 would be able to participate. And he agreed to Friday, 23 September 7, 2018, if that's an agreeable date with you, 24 Mr. Kline. And I'll ask you how do you want to handle that 25 situation.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 MR. KLINE: Well, I was going to ask you how you 2 wanted to handle it. 3 MR. GROSSMAN: I asked you first. 4 MR. KLINE: That's right. Well, I'll start by 5 saying first of all, thank Ms. Johnson, your officer, 6 getting those letters to me because I checked in the office 7 the other day and didn't see anything so I never would have 8 known they were there if they hadn't forwarded them to me 9 so I appreciate that very much. When I read them I wasn't 10 quite sure if they were asking for postponement as you 11 noticed them -- when you saw Mr. Romans' letter he verified 12 all the signs have been posted, in fact, you have affidavit 13 posting that I'm going to talk about that in a second, so 14 all the signs are posted. 15 Mr. Romans had said he never received a notice, I 16 checked Exhibit 12, we did turn his name in so he should 17 have received a notice when it got filed of the hearing 18 date. And I will also say that I got -- I can show you 19 here when we tried to write him about the stormwater 20 management concept because it was a down flow property 21 owner and we tried four times to send him a copy of the 22 plan and he declined to accept the registered notice. So 23 the parties advertising and notice were adequately taken 24 care of so I don't think this was a surprise at all. 25 I would rather -- I wouldn't mind leaving the record</p>	<p style="text-align: right;">11</p> <p>1 main structure to main structure in the second one is 2 almost 1,600 linear feet distance. 3 MR. GROSSMAN: Right. It is clear to me that Mr. 4 Tydings was not close enough to qualify and certainly he's 5 on the other side of Zion Road so he's not an abutting 6 property. So the only question is, is he confronting? And 7 he's not confronting under the definition from a 8 perpendicular definition. In the zoning ordinance of 9 confronting, so he would not logically -- and I think my 10 staff informed him that he would not have logically have 11 gotten specific direct notice of it in the mailings. 12 However, I think that Mr. Romans is in a somewhat different 13 position. Do you have somewhat -- 14 MR. KLINE: Well, in Mr. Romans' case he's directly 15 across probably given -- the looking at the diagrams I just 16 gave you, Mr. Romans' property would be the property just 17 south of the yellow dash line. 18 MR. GROSSMAN: Called Fox Hill, yeah -- 19 (indiscernible) -- 20 MR. KLINE: At the time we did that I didn't know he 21 was going to be writing a letter in, he just happened to be 22 identified. Could we make those exhibits in the record? 23 MR. GROSSMAN: Certainly. 24 MR. KLINE: Tell me what the numbers are. And 25 actually -- did you give a number yet for the affidavit</p>
<p style="text-align: right;">10</p> <p>1 open to have -- let them submit more material -- because 2 you're going to leave the record open for a little bit 3 anyway. But to schedule a whole separate day for somebody 4 who just didn't take advantage of the signs that were 5 posted on the property, the notices that they claimed they 6 didn't receive, I just think that's unnecessary. 7 MR. GROSSMAN: Okay. I wasn't aware of your having 8 made an effort to contact Mr. Romans, and you have copies 9 of this registered mail? I think that should be submitted 10 into the record. Yeah, I have concerns because of Mr. 11 Romans attached photos of the signs that are partially 12 obscured by the shrubberies around and certainly admittedly 13 they were posted. The question of whether they were 14 sufficiently visible, I guess, is a fair question. So -- 15 and I am concerned that he said he is -- he's not exactly 16 directly across the street but from the map -- I did a 17 little Goggle map search -- or actually a Bing map search - 18 - 19 MR. KLINE: I sort of maybe -- (indiscernible) 20 mention -- when I received the first letter from Mr. 21 Tydings we went out and just determined the location of his 22 property and so I got two (indiscernible) photographs in 23 which the Tydings property is outlined in red and the 24 dimensions of corner property to corner property are 25 identified on that, I think it's like 360 feet and then</p>	<p style="text-align: right;">12</p> <p>1 posting? 2 MR. GROSSMAN: Not yet. 3 MR. KLINE: So I have Mr. Tydings' letter at 38, Mr. 4 Romans' letter at 39, and then another letter from Mr. 5 Tydings which -- 6 MR. GROSSMAN: The additional letter from Mr. 7 Tydings is 40A, his e-mail is 40 and his second -- A is the 8 admitted letter of opposition. Also, 39A are the pictures 9 that Mr. Romans attached. And we'll say the affidavit of 10 posting -- this is by, the way this is Mary Johnson's first 11 exercise of her notary. 12 MR. KLINE: I made a facetious comment and realized 13 we -- we complimented her that she was no longer a virgin 14 in matters of her notary. But Mr. Bohrer was quite happy 15 to be her first customer. 16 MR. GROSSMAN: We thought that would be convenience 17 people appearing at our hearing staff. 18 MR. KLINE: No question about it, I mean, right now 19 only one in the board of appeals so it's good to have 20 another one. 21 MR. GROSSMAN: All right. So Exhibit 41 for the 22 affidavit of posting. 23 MR. KLINE: So let me -- as I said this is material 24 delivered to me by Mr. Norton. Basically, copies of a 25 letter that he sent to the joining property owners so it</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

4 (13 to 16)

<p>13</p> <p>1 would be downstream from the -- (indiscernible) -- the 2 letter he sent -- three attempts to deliver and returned 3 from the postal service saying, Do not accept service. 4 MR. GROSSMAN: Okay. And this will be -- 5 MR. KLINE: And it was three times? 6 MR. NORTON: And it has all three dates on there as 7 well. On the letter from the -- 8 MR. GROSSMAN: So Exhibit 42 -- I don't see a date 9 on the letter itself. Am I missing that somewhere, 10 counsel? 11 MR. NORTON: I would have to go back and review. 12 Should be a date. 13 MR. KLINE: We can go check the file and find out 14 the actual mailing date. 15 MR. NORTON: I provided the certified -- 16 (Simultaneous speakers) 17 MR. KLINE: We'll get you the date it is mailed. 18 (Simultaneous speakers) 19 MR. NORTON: I didn't do a PDF of that, I printed 20 out the word document yesterday so I'd have to go back and 21 look. It should have been dated. 22 MR. KLINE: November 17, 2017. And I did not 23 include a copy of the site plan that was part of that 24 package as well. 25 MR. GROSSMAN: Okay. And we'll say 42A are copies</p>	<p>15</p> <p>1 MR. NORTON: We're higher. 2 MR. GROSSMAN: Good. Good. All right. So you were 3 going to explain -- 4 MR. NORTON: Yes. As part of the stormwater concept 5 we send out downstream notification letters that include a 6 copy of the stormwater concept as it is filed. We happen 7 to have the letters when I went back and received 8 notification yesterday that Mr. Romans was not positioned, 9 I went back through my file just to see -- just out of 10 curiosity and we had the letter back from a postal service 11 and I believe it has on the envelope three dates in which 12 they try to deliver the letter all in November. Believe 13 it's on the top right corner of the envelope. 14 MR. GROSSMAN: Actually, it's in the left corner. 15 It does have dates stamped on there, number of attempts, 16 11/20, 11/25 and 12/5. 17 MR. NORTON: Yes. I also went yesterday and checked 18 that the address matched to the letter of which Mr. Romans 19 sent to us and everything appears to be correct on our 20 file. I did not reach out to Mr. Romans following the 21 letter. There's nothing that I'm aware of that says that we 22 have to follow up other than the certified letters to the 23 downstream neighbors. 24 MR. GROSSMAN: We send out formal notice. 25 MR. NORTON: Right.</p>
<p>14</p> <p>1 of certified mail receipts and B is copy of envelope 2 stamped return to sender unclaimed. 3 Mr. Kline, you indicated that the Romans had refused 4 the letter, rejected it, was there any kind of verbal 5 exchange? 6 MR. KLINE: We have Mr. Norton, just introduce 7 himself and explain the fact -- 8 MR. GROSSMAN: Mr. Norton, come forward, please, and 9 I'll swear you in. 10 MR. NORTON: Yes. 11 MR. GROSSMAN: Would you state your full name 12 please. 13 MR. NORTON: Michael Norton. 14 MR. GROSSMAN: All right. Would you raise your 15 right hand. You swear or affirm to tell the truth, the 16 whole truth, and nothing but the truth under penalty of 17 perjury? 18 MR. NORTON: I do. 19 MR. GROSSMAN: All right. You may be seated. Can 20 you state your business address. 21 MR. NORTON: For the record, Michael Norton, Norton 22 Land Design, 5146 Dorsey Hall Drive, second floor, Ellicott 23 City, Maryland 21042. 24 MR. GROSSMAN: Okay. Hope you weren't flooded out 25 in the --</p>	<p>16</p> <p>1 MR. GROSSMAN: Mr. Romans was included in the list 2 of getting those formal notice. We didn't get a return but 3 we don't send those out certified mail. 4 MR. NORTON: Right. 5 MR. GROSSMAN: And so he should have gotten notice 6 directly. But in any event, you have not had a 7 conversation with -- 8 MR. NORTON: I have not heard from anyone regarding 9 the project. 10 MR. KLINE: I probably should have -- I should not 11 have said refused delivery, I should just say delivery 12 could not be made for whatever reason. 13 MR. GROSSMAN: Okay. All right. So two other 14 things. Let me mark these also, these aerial photographs 15 showing the locations. So this will be -- okay. This will 16 be Exhibit 43. Exhibit 43 is aerial photograph depicting 17 the locations of subject site relative to the Tydings 18 property and the Romans property. Okay. I mean I think 19 this is just a duplicate of that one. And this one shows 20 the distance from house to house Tydings and I'll make that 21 43A, aerial photo showing -- it's not really a house it's a 22 building centrally located on the subject site showing 23 distance to Tydings home. 24 Okay. All right. And just to make sure that the 25 record is clear, you've mentioned that the property labeled</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

5 (17 to 20)

<p>17</p> <p>1 Fair Hill is the Romans property, Do you have a witness who 2 can testify to that fact? I just wasn't sure when I -- it 3 looks -- like I said I did a map search online and it looks 4 like it's that same location but I just want to make sure. 5 MR. KLINE: Several of our exhibits and this is the 6 existing conditions plan which is Exhibit -- I'll get that 7 number for you. 8 MR. GROSSMAN: It's 37B. 9 MR. KLINE: It basically shows the Romans property 10 identified on Exhibit 37. 11 MR. GROSSMAN: Okay. Great. Okay. 12 MR. KLINE: And going back to your other comment, I 13 had asked Mr. Bohrer to go and verify that all those signs 14 were in place posting today, there were four signs because 15 we had signs out there and I had the same reaction with Mr. 16 Romans pictures because it did look like -- (indiscernible) 17 -- whether it was a year ago -- (indiscernible) -- it 18 wasn't as green as it was now. But he did -- Mr. Bohrer 19 did go out there and took a picture himself last night and 20 this is the sign that's posted at the corner of Zion Road 21 and Riggs Road and it would be basically the northwest 22 corner of the property so and that's -- 23 MR. GROSSMAN: Okay. Actually, this is taken by Mr. 24 Norton? 25 MR. KLINE: By Mr. Bohrer.</p>	<p>19</p> <p>1 -- 2 MR. KLINE: He's got a little bit better excuse, I 3 don't disagree with that. 4 MR. GROSSMAN: And I would say that the evidence 5 that you presented tends to show what you just said. My 6 concern is that we really don't want to have a notice issue 7 in the case and we also would like to make sure that the 8 neighbors don't feel rightfully or wrongfully that they 9 were excluded from the process. So I'm trying to think of 10 a way that will at least give them the opportunity to be 11 heard without inconveniencing you, your client, and your 12 witnesses. 13 And it's hard to do -- unfortunately since we didn't 14 get the amendment -- apparently was triggered mostly by the 15 amendment notice, if that had gotten out earlier we would 16 have noted, maybe they would have come forward earlier and 17 it would have been able to include them, but in any event. 18 So I'm not sure what the best answer is, we certainly keep 19 the record open but then they don't get an opportunity to 20 cross-examine your experts, your witnesses. And I would 21 like to be able to provide them with that opportunity. 22 Is there any great prejudice to you, to your client, 23 if we did have a second hearing date of September 7? And 24 I'm sure I would be able to shorten my comments, you know, 25 and get my reports and decision out very quickly. I could</p>
<p>18</p> <p>1 MR. GROSSMAN: Okay. We'll have him -- 2 MR. KLINE: Last night. 3 MR. GROSSMAN: When he testifies have him identify - 4 - 5 MR. KLINE: Sure. 6 MR. GROSSMAN: -- this sign because that certainly 7 does -- (indiscernible) -- photo of it. 8 MR. KLINE: And the reason that this second photo 9 there is because this shows a little bit more distance and 10 that's approximately -- I don't want to say approximately - 11 - but it's very close to the front entrance into the 12 Romans' property so it's back up the road a little bit. So 13 that when Mr. Romans came out of his driveway and looked to 14 his right he should have been able to see the sign and as 15 you can see in that photograph it is not particularly 16 obscured by vegetation. 17 Mr. Bohrer will tell you they actually fixed it -- 18 (indiscernible) -- there so it was up actually I was a bit 19 surprised hearing that there were still four of them out 20 there because, you know, they don't last an awful long 21 time. So because of that, it's hard for me to feel that is 22 a surprise that warrants another hearing date for somebody 23 who would appear to me to ignore the signage and the 24 letters that they received about the proceedings. 25 MR. GROSSMAN: Yeah, I don't know about Mr. Tydings</p>	<p>20</p> <p>1 even have an abbreviated transcript made of a September 7 2 hearing so I'd have the transcript in a couple of days and 3 probably within a week out I'd be able to get a report. 4 MR. KLINE: Well, thanks for having a dialogue. I 5 mean, the way you seem to be suggesting we go means we 6 would have to prepare a total second hearing. So part of 7 me my first reaction is let's just go home today and come 8 back on September 7, but that doesn't make sense to me 9 either because I kind of wonder if you're going to get both 10 of them here. I understand Mr. Romans, I guess, said he'll 11 be here on the 7th. My alternative would have been to 12 allow the transcript to be published, let them come in and 13 review the transcript, submit anything they want to in 14 writing, give us a chance to rebut it, and then close the 15 record sometime in late August and go from there rather 16 than have another hearing, but I don't think I can go any 17 further than that without talking to my client first. 18 MR. GROSSMAN: Let me write a possible third 19 alternative. To set a tentative hearing date, publish the 20 transcript from this proceeding, and get a reaction, maybe, 21 from Mr. Romans and Mr. Tydings as to whether or not -- 22 assuming you to address their concerns at this proceeding 23 whether they really need to have another hearing or just 24 wish to submit in writing. Would that -- 25 MR. KLINE: That's -- that's a good compromise and</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

6 (21 to 24)

<p style="text-align: right;">21</p> <p>1 the reason I say is because some of the things we will 2 address today will answer their questions. For instance, 3 there's a question about the draw down on the aquifer. We 4 will not be using the well for the use of the property so 5 that's -- that's a non issue. And maybe when they saw that 6 would make them feel better. Don't think it would probably 7 make everything go away, but maybe we can -- if they 8 diligently read the transcript maybe they conclude that, I 9 guess, it's not as bad as I thought it was going to be. 10 MR. GROSSMAN: Right. I mean, obviously, even from 11 the standpoint of your client I'm sure you'd like to have 12 good relations with the neighbors, in any event. And as I 13 know you always make a effort to do that in your cases. So 14 maybe that can be done in the interim. I don't know how 15 long their vacations are. But that can be resolved in a 16 way that will eliminate the need for having the second 17 hearing. 18 And I agree with you if I had to weigh and 19 absolutely make a decision that whether or not the evidence 20 before me right now supports another hearing date or 21 requires another hearing date I would agree with you that 22 it doesn't require another hearing date. We certainly 23 followed the statutory requirements for notice, the signs 24 were posted, if some of them were overgrown a bit there are 25 others as you said and we followed the mailing requirements</p>	<p style="text-align: right;">23</p> <p>1 the issues where it's more focussed. And then secondly, at 2 the conclusion of the hearing today if you feel that we 3 have adequately addressed the issues raised in the letter 4 sort of make, I'll say a summary judgment decision that we 5 don't need another hearing that all the issues have been 6 raised or have been addressed adequately in the 7 presentation, and I'll just leave that up to you if you 8 feel that -- I intend to address all those issues I'll let 9 you decide if that's more than enough to give them their 10 sort of their day in court. 11 MR. GROSSMAN: Okay. 12 MR. KLINE: And you said if we were to do this it 13 would be September the 7th? 14 MR. GROSSMAN: 7th, yes. I mean, it seems to me 15 that we have addresses for them so ordinarily the general 16 rule is that a citizen does not have to say in advance -- a 17 citizen, I mean, somebody who wishes to be heard in this 18 proceeding, does not have to say in advance unless they're 19 a group what they intend to raise. I think under the 20 circumstances here it's fair to ask, if we're going to have 21 a second hearing, whether or not a traffic expert has to be 22 brought back, I think that's a fair -- 23 MR. KLINE: That would be helpful to us. 24 MR. GROSSMAN: -- question. But so -- 25 MR. KLINE: And frankly you may very well -- you</p>
<p style="text-align: right;">22</p> <p>1 and the statutes. So, yes, technically you're correct, but 2 we might want to proceed at an abundance of concern. 3 MR. KLINE: May I ask for a 5 minutes recess so I 4 can talk to my client and see if there are some other ideas 5 that you and I haven't thought about? 6 MR. GROSSMAN: Sure. Let me know when you are 7 ready. We will recess until. 8 MR. KLINE: Okay. Fine. 9 (A recess was taken.) 10 MR. GROSSMAN: We are back on the record. What's 11 your pleasure, Mr. Kline. 12 MR. KLINE: Thanks for the break. I'm glad I 13 checked with my client because it has been brought to my 14 attention that if we were to have a hearing in September it 15 would require us to modify the contract between parties. 16 That's not a fatal requirement, but it is sort of a 17 mechanical requirement we would have to do in order to push 18 things out. I like what I was talking about sort of doing 19 it in writing but let me modify that proposal. We're okay 20 if we need to have another hearing in September with 21 obviously two modifiers. 22 One, could the opposition who's coming give us 23 forewarning about what it is that they want to talk about 24 where it is that I don't have to bring Mr. Lenhart in for 25 the hearing, something like that, something to narrow down</p>	<p style="text-align: right;">24</p> <p>1 normally start out by saying, Hey, Mr. Kline, I looked at 2 your stuff, I'd like to hear you -- you very well may say, 3 Based on evidence I heard I'd like to understand why you 4 feel the following, something like that. 5 MR. GROSSMAN: Well, I don't want to go too far 6 afield than that because I don't want to make free-finding 7 findings. 8 MR. KLINE: I understand. 9 MR. GROSSMAN: Okay. Well, let's proceed. And, you 10 know, I will proceed on the assumption that we'll set up -- 11 we'll set up a second hearing date and then we'll see 12 what's necessary. It may be that they will feel that it's 13 adequately addressed and I could set a deadline for them to 14 let us know by the end of August, let's say, whether or not 15 it is necessary to have this second hearing and if so, what 16 the -- what the issues are. And do it that way. And as I 17 said, I would expedite my report and decision so as to 18 minimize the inconvenience to your client. 19 MR. KLINE: Thank you. 20 MR. GROSSMAN: Okay. Also while I was at it I did 21 do a print out of the tax ID information for this site 22 which I didn't see in the record at this point so I'd like 23 to make that an exhibit. 24 MR. KLINE: Is this the STA form. 25 MR. GROSSMAN: Yes, exactly. And that would be</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 Exhibit 44, form for septic site.</p> <p>2 MR. KLINE: Mr. Grossman, for future references is</p> <p>3 that something you would like included in the application?</p> <p>4 MR. GROSSMAN: I do. I think it's the easiest way</p> <p>5 to show ownership.</p> <p>6 MR. KLINE: I'm glad to do it.</p> <p>7 MR. GROSSMAN: All right. Any other preliminary</p> <p>8 matters? I think --</p> <p>9 MR. KLINE: Longer than usual. No, but I would --</p> <p>10 when you're ready I would actually make an opening --</p> <p>11 MR. GROSSMAN: Absolutely.</p> <p>12 MR. KLINE: -- comments. But it's more anecdotal</p> <p>13 than it is an opening statement. And when someone like Mr.</p> <p>14 Bohrer walks in the door and says here's what I'd like to</p> <p>15 do and here's a property I'm interested in, you know, I've</p> <p>16 been doing it now for 40 plus years and I think I have a</p> <p>17 pretty good gut reaction but you never know. And so you</p> <p>18 take the potential client down to the Park and Planning</p> <p>19 Commission and you sit down at the table with all of their</p> <p>20 disciplines and you basically say here's what I'd like to</p> <p>21 do and you think.</p> <p>22 And what I want to tell you is when we did that in</p> <p>23 this case and we finished our presentation and Mr. Weaver</p> <p>24 said to us, now let me make sure I understand this, You got</p> <p>25 a 30-plus acre tree farm with trees on it and you want to</p>	<p style="text-align: right;">27</p> <p>1 go back to 1978 when this was happening.</p> <p>2 And what they did is they divvied it up between</p> <p>3 three of them and Mr. Hunt took the subject property, the</p> <p>4 Staggers took the middle parcel and the third party took</p> <p>5 the other parcel. Staggers intended to put tree stock to</p> <p>6 support their nursery down in Waynesville. And what Mr.</p> <p>7 Hunt did was he basically planted trees and instantly</p> <p>8 started operating a tree farm but he had a landscape</p> <p>9 contracting business going on in the property, and all that</p> <p>10 is by background.</p> <p>11 See I spent the first probably four to six months</p> <p>12 working on this matter trying to convince the department of</p> <p>13 permitting services that they were a grandfathered non</p> <p>14 conforming use because they had begun initiating</p> <p>15 landscaping contracting activity -- (indiscernible) -- and</p> <p>16 unfortunately -- (indiscernible) -- we were not able to</p> <p>17 find any sales records or anything -- (indiscernible) --</p> <p>18 aerial photographs going back to the 1940s you can see all</p> <p>19 the stock on it but we just didn't have the transactional</p> <p>20 background.</p> <p>21 So eventually the department said we just can't</p> <p>22 grant you the nonconforming use status and that kept us</p> <p>23 from having to go through the conditional use application.</p> <p>24 And that's what brings us here today. But that takes me</p> <p>25 back to that first visit to parks and planning where they</p>
<p style="text-align: right;">26</p> <p>1 take 5 acres in the middle and put a landscape architect</p> <p>2 and keep the tree farm and landscape the hill around it,</p> <p>3 why would we have a problem with that? So since day one</p> <p>4 we've always felt we had really a good proposal in front of</p> <p>5 you and that's why we've been -- that's what I wanted to</p> <p>6 basically say to you.</p> <p>7 MR. GROSSMAN: You certainly have a lot of screening</p> <p>8 around that already exists. And that was an observation.</p> <p>9 MR. KLINE: And the second thing I wanted to mention</p> <p>10 to you is and I put it on the board here a copy of Exhibit</p> <p>11 12, which is the zoning and city map. And the subject</p> <p>12 property itself is outlined with a dark bold outline at</p> <p>13 approximately the center of the drawing.</p> <p>14 MR. GROSSMAN: That's the full property?</p> <p>15 MR. KLINE: This is the M & M property which is the</p> <p>16 subject of this commission use application. And the point</p> <p>17 I want to make to you is a little bit of the history</p> <p>18 background property because at one time the parcel that is</p> <p>19 the subject of this conditional use plus the two additional</p> <p>20 30-acre parcel of land were all purchased at the same time</p> <p>21 by three different people all involved in the landscape</p> <p>22 contracting business. Gentleman by the name of Ned Hunt,</p> <p>23 the Stagger family which own Stagger Nurseries in</p> <p>24 Waynesville, and a third entity that I don't remember the</p> <p>25 name now. And they bought 90 acres of property farm that</p>	<p style="text-align: right;">28</p> <p>1 said we think this is a real good use for the property so</p> <p>2 let's go forward.</p> <p>3 MR. GROSSMAN: Let me ask you, you referred to the</p> <p>4 entire large property that is the full 30 acres or so as</p> <p>5 the subject site. I always thought of the subject site as</p> <p>6 being the 5.74 portion of it on which the landscape</p> <p>7 contractor operation --</p> <p>8 MR. KLINE: You are correct, and if I use that</p> <p>9 terminology -- you have the numbers exactly right on the</p> <p>10 existing conditions plan which I am looking for the number</p> <p>11 -- so this Exhibit 13 and -- yeah, the 30 acres is the sort</p> <p>12 of rhomboid shaped property and then the 5 point some acres</p> <p>13 of -- is actually what is before you today. And as you</p> <p>14 point out in your opening statement the remainder of the</p> <p>15 property will remain a tree farm, if permitted use,</p> <p>16 agricultural zone.</p> <p>17 MR. GROSSMAN: Right. Okay. I just wanted to make</p> <p>18 sure we were using the same terminology.</p> <p>19 MR. KLINE: I'll make sure in the future when I use</p> <p>20 subject property it means the 5 acres plus. So with that</p> <p>21 I'd like to call Mr. Bohrer and have him --</p> <p>22 MR. GROSSMAN: All right, Mr. Bohrer. You don't</p> <p>23 have a microphone -- can he sit in that seat? Mr. Bohrer,</p> <p>24 would you raise your right hand, please. Do you swear or</p> <p>25 affirm to tell the truth, the whole truth, and nothing but</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

8 (29 to 32)

<p>29</p> <p>1 the truth under penalty of perjury?</p> <p>2 MR. BOHRER: I do.</p> <p>3 MR. GROSSMAN: All right. Would you state your full</p> <p>4 name and address for the record.</p> <p>5 MR. BOHRER: Sure. Kevin Bohrer, B-o-h-r-e-r. I</p> <p>6 reside at 22516 Robin Court in Gaithersburg, Maryland.</p> <p>7 MR. GROSSMAN: All right. You may proceed, Mr.</p> <p>8 Kline.</p> <p>9 MR. KLINE: Mr. Bohrer, what's your title and your</p> <p>10 affiliation with Goshen Enterprises.</p> <p>11 MR. BOHRER: So I'm the owner of Goshen Enterprises.</p> <p>12 Company that I started when I was 12, so this is our 34th</p> <p>13 year.</p> <p>14 MR. GROSSMAN: That's an early start.</p> <p>15 MR. BOHRER: Yes.</p> <p>16 MR. GROSSMAN: I saw a piece on the news last night</p> <p>17 about a young man who's 10 years old who's name is Clark</p> <p>18 Kent and he had a last name also but they pointed that out</p> <p>19 because of the Superman thing. And he's a tremendous</p> <p>20 swimmer and he was winning a swimming tournament, breaking</p> <p>21 the record that was set by -- who's the gentleman of that</p> <p>22 800 --</p> <p>23 MR. BOHRER: Michael Phelps.</p> <p>24 MR. GROSSMAN: Michael Phelps, yes. When he was</p> <p>25 similar age, years ago, by swimming a butterfly -- not an</p>	<p>31</p> <p>1 MR. BOHRER: So throughout years maintenance has</p> <p>2 always been a mainstay of our business. And as we've grown</p> <p>3 we've kind of done a lot more in, like, landscape</p> <p>4 construction, meaning installation of trees, patios, and</p> <p>5 things like that. Our business is split relatively equally</p> <p>6 between those two types of operations, between maintenance</p> <p>7 of the landscape, which will be mowing grass and mulching</p> <p>8 and landscaping, which will be trees and patios, and then</p> <p>9 we do do some snow removal but it's a very small portion of</p> <p>10 our business because of the area that we live in.</p> <p>11 MR. KLINE: All right. And you're presently located</p> <p>12 whereabouts?</p> <p>13 MR. BOHRER: At 5300 Riggs Road.</p> <p>14 MR. KLINE: And why do you wish to move to this</p> <p>15 property?</p> <p>16 MR. BOHRER: This property to kind of grow our</p> <p>17 business and it's also a much better location as far as</p> <p>18 facility wise and just location overall.</p> <p>19 MR. GROSSMAN: By the way, you mentioned snow</p> <p>20 removal, the conditions suggested by the planning staff did</p> <p>21 not include allowance of round the clock snow removal. I</p> <p>22 would presume you'd like to have that, in fact, for, you</p> <p>23 know, emergency -- it's in your submission.</p> <p>24 MR. KLINE: Interesting answer to that.</p> <p>25 MR. BOHRER: All of our snow removal operations take</p>
<p>30</p> <p>1 easy stroke -- at the age of 10. But in any event, I</p> <p>2 digress.</p> <p>3 MR. KLINE: And Mr. Bohrer, if this conditional use</p> <p>4 is approved, are you prepared to implement all the</p> <p>5 conditions of -- that might be imposed -- in fact, are all</p> <p>6 the conditions acceptable to you?</p> <p>7 MR. BOHRER: Yes.</p> <p>8 MR. KLINE: Okay. And you have the ability to</p> <p>9 basically abide by all those conditions?</p> <p>10 MR. BOHRER: Yes.</p> <p>11 MR. GROSSMAN: We usually have a few additional</p> <p>12 conditions that we add. And I'm sure that Mr. Kline is</p> <p>13 familiar with them. One of them is a catch all that</p> <p>14 requires the obedience to all the applicable regulations</p> <p>15 and so on and payment of the fee to the Department of</p> <p>16 Permitting Services and so on. But I think most of them</p> <p>17 are captured by the conditions suggested by the technical</p> <p>18 staff here.</p> <p>19 MR. KLINE: I think Mr. Bohrer will tell you is he</p> <p>20 is learning the regulatory scheme from Montgomery County</p> <p>21 and that there's a lot of regulations beyond the</p> <p>22 conditional use he's got to deal with.</p> <p>23 You said you started at 13, so just basically tell</p> <p>24 us how the company's grown and what it is you do, your two</p> <p>25 major lines of work.</p>	<p>32</p> <p>1 place, kind of, from a hub system so we run all of our</p> <p>2 operations from the airport which is located in the Airpark</p> <p>3 here in Gaithersburg. So that way it's centrally located</p> <p>4 since we have the contract from the Revenue Authority for</p> <p>5 the airport we do that there and then we kind of radiate</p> <p>6 out from there. So we actually direct report to there</p> <p>7 because when we have significant storms it's really unable</p> <p>8 to kind of go from Laytonsville to Gaithersburg because of</p> <p>9 the road that I work.</p> <p>10 MR. GROSSMAN: So you're saying that you do not need</p> <p>11 a modification of the recommended condition on hours by the</p> <p>12 technical staff which just says hours of operation does not</p> <p>13 occur before 6:00 a.m. or after 6:30 p.m. Monday through</p> <p>14 Saturday which would not allow snow removal operations on</p> <p>15 Sunday or before or after those hours operating out of</p> <p>16 there.</p> <p>17 MR. BOHRER: So we do not operate from the site to</p> <p>18 do snow removal.</p> <p>19 MR. GROSSMAN: Okay. So that condition the way is</p> <p>20 written is okay with you? It does not need to be modified?</p> <p>21 MR. BOHRER: It is fine.</p> <p>22 MR. KLINE: Okay. So you may store during the</p> <p>23 summer season the snow removal equipment on this property</p> <p>24 but the operational aspects of it will all be conducted</p> <p>25 from the Airpark?</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

9 (33 to 36)

<p>33</p> <p>1 MR. BOHRER: Correct.</p> <p>2 MR. KLINE: And explain to the hearing examiner what</p> <p>3 you do with the seven or nine employees in the building on</p> <p>4 snow days.</p> <p>5 MR. BOHRER: So on snow days we follow Montgomery</p> <p>6 County school policy. Which is if they're two-hour</p> <p>7 delayed, we're two-hour delayed, if they're closed, we're</p> <p>8 closed. It just makes it easier so that we don't have to</p> <p>9 call office staff and they have to commute in in adverse</p> <p>10 weather conditions and most of them have children so it</p> <p>11 helps their schedule as well.</p> <p>12 MR. GROSSMAN: I made the same decision for our</p> <p>13 hearings for the same reasons and also the public</p> <p>14 attendants.</p> <p>15 MR. KLINE: Mr. Bohrer, I put up over here Exhibit -</p> <p>16 - well, Exhibit 13 which is the exiting conditions plan.</p> <p>17 So just tell the hearing examiner what's out there today --</p> <p>18 and if you need to go point to the exhibit feel free to do</p> <p>19 so. So how is the property used today?</p> <p>20 MR. BOHRER: So currently it's being used as a tree</p> <p>21 farm operation in which nursery stock has grown pretty much</p> <p>22 throughout the property. These gravel driveways exist now</p> <p>23 and the building exist now. So our -- that's how it's</p> <p>24 being used now.</p> <p>25 MR. KLINE: And so just give your overall game plan</p>	<p>35</p> <p>1 with the county regulations as far as DPS to bring the</p> <p>2 building and comply for use and occupancy for our use. And</p> <p>3 so this building would be kind of our like storage of</p> <p>4 machines and things like that and our office staff.</p> <p>5 MR. GROSSMAN: Perhaps you could bring up the</p> <p>6 detailed conditional use plan so Mr. Bohrer could actually</p> <p>7 point to that on the detailed plan.</p> <p>8 MR. KLINE: Let me just get you the number on this</p> <p>9 first. Mr. Grossman, everything -- well almost everything</p> <p>10 we're going to show you today is already on record and were</p> <p>11 basically the exhibits on which this report is based and</p> <p>12 we'll be marking those. There are two new exhibits that</p> <p>13 we'll mark. There were -- (indiscernible) -- record. I</p> <p>14 thought they were going to be in staff report because they</p> <p>15 were such pretty pictures but apparently didn't get it.</p> <p>16 They were part of the presentation but we'll be using those</p> <p>17 two, I'll need to mark up. So this is the detailed report</p> <p>18 and this is the exhibit. So looking at Exhibit 14, would</p> <p>19 you point to the existing building --</p> <p>20 MR. GROSSMAN: It wouldn't be 14, this is the</p> <p>21 revised one I presume.</p> <p>22 MR. KLINE: Oh, you're right.</p> <p>23 MR. GROSSMAN: So it would be 37D, right.</p> <p>24 MR. KLINE: Mr. Bohrer, using Exhibit 37D and just</p> <p>25 kind of point out, show the Hearing Examiner again, where</p>
<p>34</p> <p>1 about how you want to lay this all out.</p> <p>2 MR. BOHRER: So our game plan would be -- it's kind</p> <p>3 of having it in the center of the property because just in</p> <p>4 case other areas developed around it the thickness and the</p> <p>5 denseness of the landscaping that we've come up with and</p> <p>6 the plan that we've proposed, in addition to the nursery</p> <p>7 stock which could come and go, because that's the whole</p> <p>8 purpose of the nursery business is to sell it but to</p> <p>9 replant, would still get us the density around here that we</p> <p>10 would be not a hindrance to any of the neighbors or</p> <p>11 anything like that.</p> <p>12 So at the time it made sense to -- as they</p> <p>13 originally constructed the building in the middle of the</p> <p>14 property it was, you know, a great idea because at this</p> <p>15 point right now you can't even see it from the road. Our</p> <p>16 plan is to actually implement heavier landscaping around</p> <p>17 the building since the stock would be moved and relocated</p> <p>18 and replanted to keep that nursery designation for the rest</p> <p>19 of the property.</p> <p>20 MR. KLINE: So explain how you'll take the initial -</p> <p>21 - the existing building and convert it from, I guess,</p> <p>22 pretty much a warehouse or storage building and how you</p> <p>23 want to use it.</p> <p>24 MR. BOHRER: So it's already existing, has offices</p> <p>25 set up in there, so working with an architect to comply</p>	<p>36</p> <p>1 the existing building is located.</p> <p>2 MR. BOHRER: So this is the existing building here.</p> <p>3 This is kind of a scaled down version, so this only shows</p> <p>4 that 5.74 acres. So the existing building is here, which</p> <p>5 that would be kind of our hub --</p> <p>6 MR. KLINE: More or less centrally located in the --</p> <p>7 MR. BOHRER: The 30 acre --</p> <p>8 MR. GROSSMAN: What he's leading up to, Kevin, is on</p> <p>9 the other record that's being transcribed, when you point</p> <p>10 to it say the box on the lower left-hand corner of the 5-</p> <p>11 acre parcel or something like that.</p> <p>12 MR. KLINE: He was just trying to say to identify it</p> <p>13 for the record.</p> <p>14 MR. GROSSMAN: For the record so they know what you</p> <p>15 are pointing at.</p> <p>16 MR. BOHRER: I'm pointing to the existing building</p> <p>17 which is in the center of the --</p> <p>18 MR. KLINE: Right. And it's labeled existing</p> <p>19 building. And you foresee that will take care of your</p> <p>20 operations for how far into the future?</p> <p>21 MR. BOHRER: I would think, you know, depending on</p> <p>22 the economy, which is kind of our dictator, I think that</p> <p>23 existing building will serve us for probably five to ten</p> <p>24 years. I think after the five-year period if we can</p> <p>25 continue to grow we would like to do this proposed building</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

10 (37 to 40)

<p>37</p> <p>1 which is proposed building number one which is located --</p> <p>2 MR. KLINE: Immediately north.</p> <p>3 MR. BOHRER: -- north of the existing building which</p> <p>4 would just be for light mechanical and oil changes and</p> <p>5 things like that and our equipment instead of doing it</p> <p>6 inside of the existing building.</p> <p>7 MR. KLINE: And the square footage for that building</p> <p>8 is shown on there as being --</p> <p>9 MR. BOHRER: 2500 square feet.</p> <p>10 MR. KLINE: And that's just a -- gravel floor?</p> <p>11 MR. BOHRER: It would be a concrete floor.</p> <p>12 MR. KLINE: Keep going. So keep --</p> <p>13 MR. BOHRER: If we're fast forwarding now, perhaps,</p> <p>14 ten years we're thinking we would do a future building</p> <p>15 number two which is located, I guess, west --</p> <p>16 (Simultaneous speakers)</p> <p>17 MR. BOHRER: -- east of the existing building which</p> <p>18 that one is 8800 square feet, which would be just for</p> <p>19 storage of like (indiscernible) things like that and things</p> <p>20 that we would need on a much more seasonal basis, which is</p> <p>21 probably ten years further out. Then it's surrounded by</p> <p>22 the parking area along with -- we have material storage</p> <p>23 bins to the north of proposed building number one with</p> <p>24 truck and trailer parking.</p> <p>25 MR. KLINE: Those are the shaded areas in the upper</p>	<p>39</p> <p>1 MR. GROSSMAN: Okay. So they had photo of the</p> <p>2 existing building front to rear on page 25 of the staff</p> <p>3 report.</p> <p>4 MR. KLINE: We just thought that you would want to</p> <p>5 have a sense of what the new buildings would look like but</p> <p>6 as he said, we just don't have a manufacturer. We're going</p> <p>7 to work with an architect to design something.</p> <p>8 So I was just going to ask Mr. Bohrer to go through</p> <p>9 the operational aspects of the use we identified the</p> <p>10 physical -- so if you were to open up business on this</p> <p>11 property tomorrow, tell us how many people would you have</p> <p>12 there and what they do.</p> <p>13 MR. BOHRER: So we would be starting there with 28</p> <p>14 field crew and 7, including myself, individuals in the</p> <p>15 office, plus we have two people that, you know, would load</p> <p>16 trucks and kind of manage things there on site during the</p> <p>17 day.</p> <p>18 MR. KLINE: So you'd move in with a total of 37</p> <p>19 employees which I guess would probably be very seasonally,</p> <p>20 right?</p> <p>21 MR. BOHRER: Very seasonally, yes.</p> <p>22 MR. KLINE: And you're asking for ultimately for how</p> <p>23 many -- well, you're asking for, 50 employees ultimately so</p> <p>24 can you break them down into those three categories you</p> <p>25 mentioned?</p>
<p>38</p> <p>1 right-hand corner?</p> <p>2 MR. BOHRER: The shaded areas here in the northern</p> <p>3 side of the plan. And then the existing nursery parking</p> <p>4 would be here in the existing area that already is gravel</p> <p>5 that's outside of the use area.</p> <p>6 MR. KLINE: So Mr. Norton will go into a lot more</p> <p>7 detail, but I just want to get the overview of sort of the</p> <p>8 long range phasing plan.</p> <p>9 MR. BOHRER: Right.</p> <p>10 MR. KLINE: Actually, I should do this. Can you -- I</p> <p>11 ask you to pull out copies of buildings which are No. 9 and</p> <p>12 this is product literature and photographs you've gotten --</p> <p>13 these are representative of the kind of buildings you would</p> <p>14 like to build on this property eventually.</p> <p>15 MR. BOHRER: The existing buildings are metal type</p> <p>16 structure and the new ones would be very similar in color</p> <p>17 and materials as of that since they are five to ten years</p> <p>18 out I didn't really -- we didn't drill down into, like, a</p> <p>19 specific supplier or anything like that since that could,</p> <p>20 perhaps, change. But it would be representative of a</p> <p>21 building similar to this.</p> <p>22 MR. GROSSMAN: You said it would be similar to this?</p> <p>23 Are those photos in the record yet?</p> <p>24 MR. KLINE: Yes, they're Exhibit 9, example images</p> <p>25 of proposed buildings.</p>	<p>40</p> <p>1 MR. BOHRER: So we did a break down as far as the</p> <p>2 field and office so it would -- if we had 10 more</p> <p>3 individuals in the field it would probably indicate that we</p> <p>4 would need two more people in the office, and then it would</p> <p>5 be 10 additional into the field and it would also be an</p> <p>6 additional as far as support staff. Our numbers are</p> <p>7 typically based on hours worked so we kind of base staffing</p> <p>8 levels on production hours and then that kind of dictates</p> <p>9 the administrative help that we need so that way it kind of</p> <p>10 keeps our overhead in line so we're not upside down.</p> <p>11 MR. GROSSMAN: Okay. But you're satisfied with the</p> <p>12 -- on page 6 of the staff report it lists proposed crew,</p> <p>13 and as you said 28 field crew and 9 others, they broke that</p> <p>14 down to 7 owner and administration and 2 loading and on-</p> <p>15 site operation crew on page 6 for a total of 37 employees,</p> <p>16 and they proposed a limit of 38 until some clearance on</p> <p>17 septic system. You're satisfied with that restriction?</p> <p>18 MR. BOHRER: Yes.</p> <p>19 MR. GROSSMAN: Okay. All right. By the way, while</p> <p>20 we're at it, I did find a location on page 13 of the staff</p> <p>21 report, the last line of that table 2 erroneously lists</p> <p>22 minimum vehicle parking spaces as 80. There was a</p> <p>23 correction made by the planning department elsewhere for</p> <p>24 other tables but they neglected to mention that one which -</p> <p>25 - so in my report I picked that up as a --</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

11 (41 to 44)

<p>41</p> <p>1 MR. KLINE: And I missed that.</p> <p>2 In terms of what you do on the property, you kind of</p> <p>3 explained all that, but you don't have retail operation, am</p> <p>4 I correct on that?</p> <p>5 MR. BOHRER: No, we do not sell retail nor do we</p> <p>6 really invite clients to the site.</p> <p>7 MR. KLINE: So elaborate on that. I mean, people</p> <p>8 just don't need to come to you, you go to them for</p> <p>9 basically lay out their whatever it is they want, a new</p> <p>10 design.</p> <p>11 MR. BOHRER: Typical landscaping is a visual process</p> <p>12 for us so when we do sales we go to them and kind of talk</p> <p>13 with them how it would improve their property. Doing it</p> <p>14 off site really doesn't help us with closing ratios for us.</p> <p>15 So we go onto their property and explain, you know, what we</p> <p>16 could do to enhance their property. Maintenance is</p> <p>17 typically sold there at the client's site, we don't have</p> <p>18 clients come to the office.</p> <p>19 MR. KLINE: In the same way that Mr. Grossman asked</p> <p>20 questions about staff, talk about the vehicles. The staff</p> <p>21 has recommended 37 vehicles, you're okay with that?</p> <p>22 MR. BOHRER: That's fine with us too.</p> <p>23 MR. KLINE: Going to the letters that we received</p> <p>24 from Mr. Tydings and Mr. Romans, they're concerned about</p> <p>25 the background noise that 37 vehicles could create, can you</p>	<p>43</p> <p>1 gets that signage.</p> <p>2 MR. GROSSMAN: Okay.</p> <p>3 MR. KLINE: Mr. Lenhart's going to basically explain</p> <p>4 why he's recommended that you have shifts on the site and</p> <p>5 I'll leave that to him, but would you just explain to the</p> <p>6 hearing examiner how you're going to manage that? How</p> <p>7 you're going to be able to separate out your staff into two</p> <p>8 different shifts.</p> <p>9 MR. BOHRER: So since our business kind of is two --</p> <p>10 landscaping is typically larger projects that customers are</p> <p>11 excited for. So when you wake them early in the morning</p> <p>12 it's okay because they're getting some of our -- an end</p> <p>13 result, whereas maintenance just kind of happens every</p> <p>14 week. So we would have our landscape crews come in at</p> <p>15 6:30, 7:30 window and then they go out and then our</p> <p>16 maintenance guys would come in after that since maintenance</p> <p>17 is such on a reoccurring weekly basis. A lot of our</p> <p>18 clients have even asked us to start later so it behooves us</p> <p>19 to do that anyway, so splitting that shift and dividing up</p> <p>20 the personnel makes much more sense for us anyway and we</p> <p>21 already kind of employ that already.</p> <p>22 MR. GROSSMAN: Okay. So that alleviates the traffic</p> <p>23 concern. It brings you just under the numbers that require</p> <p>24 a report, the traffic report, as opposed to a traffic</p> <p>25 statement.</p>
<p>42</p> <p>1 explain to Mr. Grossman what's the nature of the vehicles</p> <p>2 and what has your experience been in terms of the volume of</p> <p>3 noise generated by the equipment you have on the site.</p> <p>4 MR. BOHRER: So the -- as far as like the start ups</p> <p>5 of trucks and things like that, we use all smaller type</p> <p>6 trucks because we're in -- 95 percent of our work is</p> <p>7 residential so we're in and out of residential</p> <p>8 neighborhoods. The start up of our trucks and vehicles</p> <p>9 will be equal to that of starting up an automobile. And so</p> <p>10 since, you know, we're in those residential neighborhoods</p> <p>11 it's best to have something that's quiet.</p> <p>12 MR. KLINE: Never had any complaints about noise at</p> <p>13 the present location?</p> <p>14 MR. BOHRER: No.</p> <p>15 MR. GROSSMAN: Do you have any problem in the</p> <p>16 recommended reduction in the sign size recommended by the</p> <p>17 technical staff?</p> <p>18 MR. BOHRER: No, because we don't really have retail</p> <p>19 operations so it wasn't -- the sign really wasn't a</p> <p>20 predator to purchase a property.</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 MR. KLINE: And Mr. Grossman, we did not have an</p> <p>23 opportunity to basically take the exhibits to the record</p> <p>24 and shrink it down to the dimensions what is acceptable,</p> <p>25 but we will deliver to you a copy of the permit when he</p>	<p>44</p> <p>1 MR. BOHRER: Well, it does. However, it really</p> <p>2 doesn't take into account that landscaping -- that entry</p> <p>3 level job is more of a labor and 50 percent of our laborers</p> <p>4 don't have a driver's license, so they carpool. So even</p> <p>5 though we're only allowed that amount of vehicle trips we</p> <p>6 have a 50 percent vehicle to employee ratio as it is, so</p> <p>7 we'll be well under that.</p> <p>8 MR. GROSSMAN: Okay. So, I mean, one of the</p> <p>9 concerns raised by the neighbors was a question of noise</p> <p>10 and operation of equipment and I guess that would be -- are</p> <p>11 you suggesting that the fact -- well, you mentioned one</p> <p>12 thing about noise that your vehicles are not as noisy, but</p> <p>13 also in terms of the operational characteristics, how would</p> <p>14 you characterize noise levels?</p> <p>15 MR. BOHRER: So one of the reasons we're not so</p> <p>16 convinced that we need the additional buildings is that</p> <p>17 we're kind of transitioning to enclosed trucks versus</p> <p>18 trucks and trailers since the majority of our drivers are</p> <p>19 first generation drivers. The trucks without a trailer is</p> <p>20 much easy and simpler to get in and out of neighborhoods.</p> <p>21 The reason I bring that up is because they keep the</p> <p>22 machines in them so there would be no starting of the</p> <p>23 machines in the morning so that way there is no -- there</p> <p>24 would be equipment noise from the maintenance machines</p> <p>25 getting started.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

12 (45 to 48)

<p>45</p> <p>1 MR. GROSSMAN: Okay. I don't know what typically 2 creates the most noise at a landscaping contractor 3 operation, can you tell me that? 4 MR. BOHRER: I would think large trucks. 5 MR. GROSSMAN: Okay. 6 MR. BOHRER: But all of our trucks are smaller 7 because we do -- our job sizes in the range \$2,500 to 8 \$3,500, not huge glamorous projects that require large, 9 heavy trucks. So all of our trucks are rated under 26,000 10 so they don't require the CDL license and things like that 11 so they're typically four-cylinder engines versus larger, 12 you know, bigger commercial -- I mean, they're still 13 considered a commercial truck but it's called a light 14 commercial truck versus tandem axle large dump truck. 15 MR. GROSSMAN: What about wood chipping or other 16 noisy functions that might occur. 17 MR. BOHRER: So we don't do tree work so -- 18 MR. GROSSMAN: So there's no wood chipping? 19 MR. KLINE: We have told staff that we would -- we 20 don't have a mulching operation or a composting operation 21 on property. 22 MR. GROSSMAN: Okay. Anything else that might 23 impact on this noise issue raised by the neighbors? 24 MR. BOHRER: Not that I can think of. 25 MR. GROSSMAN: How about the lighting issue raised</p>	<p>47</p> <p>1 MR. BOHRER: Well, I think just for theft or 2 anything like that I think it's always good to have a 3 motion light or two I mean -- but wildlife set those off 4 and there's a lot of wildlife out there. But so that would 5 be the only reason lighting there past when people are 6 working. 7 MR. GROSSMAN: All right. 8 MR. KLINE: This is going to seem like a redundant 9 question after the question that Mr. Grossman just asked 10 you but, the zoning order ordinance asked us to demonstrate 11 how your use would be harmonious with the character 12 surrounding neighborhood, so can you take what you just 13 said and put it in that context, why do you think you can 14 operate this business in a place and not be bothersome and 15 harmonious to the surrounding area? 16 MR. BOHRER: So in the middle of tract I think helps 17 isolate it from neighboring properties. Our work really 18 occurs off site rather than on site so really they come in, 19 they load up, they're gone. More time they spend at the 20 shop is unbillable so we try to keep that to a minimum. 21 MR. KLINE: And again, the zoning ordinance talks 22 about the features of the operation, noise, light, smells, 23 odors, activity levels, do you feel there's anything 24 associated with how you operate your business that would 25 have -- basically be obnoxious to adjoining or confronting</p>
<p>46</p> <p>1 by them? I don't know if maybe Mr. Norton will address 2 that better. 3 MR. KLINE: Mr. Norton will address that. 4 MR. GROSSMAN: Okay. 5 MR. BOHRER: I can address that in one part. 6 MR. GROSSMAN: Sure. 7 MR. BOHRER: My goal would be if no one is there to 8 turn the lights out 'cause that would be much more -- 9 MR. KLINE: So why don't you elaborate on that? How 10 would you basically set up a system where the lights would 11 not be needed? 12 MR. BOHRER: I mean -- in my idea we would set it up 13 as a motion light so that if we're -- or on the property 14 and the light needs to come on it would come on as opposed 15 to just turning it on because sometimes everybody is not as 16 diligent as I am about turning the light switch off. So 17 that way there wouldn't be a light on during the day which 18 I don't think wouldn't hurt with light pollution but it 19 certainly hurts our bottom line. So since our hours of 20 operation are kind of set up -- they're kind of set forth 21 in our conditional use, so we would, you know, just have 22 the lights on when the people are there. 23 MR. GROSSMAN: Okay. So the lights would be on only 24 during operation. Is there some requirement for safety 25 that there be lights on at other times or is there not?</p>	<p>48</p> <p>1 properties? 2 MR. BOHRER: So anything that we have there on site 3 would be the same as what homeowners would have on theirs. 4 Products that we have as far as, like, mulch that would be 5 stored in the material bins would be the same mulch that 6 they would be putting on their yard so it would be equal. 7 MR. KLINE: Is there anything about the operation 8 that could be injurious to health, safety, and welfare of 9 your workers, residents, or people who come into the 10 property? I mean, is this an unsafe -- is there anything 11 about your business that's unsafe or unhealthy to 12 surrounding property owners? 13 MR. BOHRER: As far as employees and things like 14 that we have our own safety consultant that makes our site 15 visit every quarter and we follow his recommendations just 16 because it's not really part of my process to put somebody 17 at risk whether it be our employee, or our client, or even 18 a neighbor as to something that we did that would be 19 negligent on our part so we're pretty diligent as far as 20 keeping our risk and our safety at the lowest possible 21 level. We pride ourself -- we have safety meetings every 22 week, we talk about different safety issues, driving, 23 anything. You know landscaping is the tenth deadliest 24 occupation. 25 MR. KLINE: Really? You mean nationally?</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

13 (49 to 52)

<p>49</p> <p>1 MR. BOHRER: Nationally.</p> <p>2 MR. KLINE: What causes that risk factor?</p> <p>3 MR. BOHRER: I have no idea. But I read that in a</p> <p>4 magazine last week and that's what we talked about at our</p> <p>5 safety meeting. A lot of our risk comes from driving so</p> <p>6 that's why having, you know, smaller trucks, you know,</p> <p>7 trucks without trailers, you know, things like that.</p> <p>8 That's the most dangerous thing.</p> <p>9 MR. KLINE: So it's not flipping the mowers, getting</p> <p>10 hit by the Bobcats or anything like that? It's actually</p> <p>11 driving to the sites?</p> <p>12 MR. BOHRER: No. Automobile accidents are the most</p> <p>13 dangerous for us.</p> <p>14 MR. KLINE: I have no further questions, Mr.</p> <p>15 Grossman.</p> <p>16 MR. GROSSMAN: I don't either at this point. Thank</p> <p>17 you, Mr. Bohrer.</p> <p>18 MR. KLINE: Sorry for the sidebar. We'll explain</p> <p>19 what that was about.</p> <p>20 MR. GROSSMAN: Mr. Lenhart, would you state your</p> <p>21 full name, please.</p> <p>22 MR. LENHART: Mike Lenhart. Lenhart Traffic</p> <p>23 Consulting.</p> <p>24 MR. GROSSMAN: All right. Raise your right hand,</p> <p>25 please. Do you swear or affirm to tell the truth, the</p>	<p>51</p> <p>1 MR. KLINE: Do you happen to recall -- is Mr.</p> <p>2 Grossman --</p> <p>3 MR. LENHART: Several times, yes.</p> <p>4 MR. GROSSMAN: I don't think anybody has a similar</p> <p>5 body to mine.</p> <p>6 MR. KLINE: Well said.</p> <p>7 MR. GROSSMAN: In any event, yes, Mr. Lenhart has</p> <p>8 appeared before me a number of times. And given his</p> <p>9 background as indicated in his resumé and his past</p> <p>10 certification as an expert in transportation planning and</p> <p>11 traffic engineering, I accept him as an expert as such.</p> <p>12 Thank you.</p> <p>13 MR. KLINE: Mr. Lenhart, were you asked to prepare a</p> <p>14 traffic impact statement or actually, I guess -- yes,</p> <p>15 statement in this case and if so would you just explain</p> <p>16 your methodology and your findings and conclusions.</p> <p>17 MR. LENHART: Certainly. Yes, we were. We were</p> <p>18 brought in to take a look at the application and</p> <p>19 subdivision staging policy requires a traffic statement.</p> <p>20 The traffic statement requires us to look and determine if</p> <p>21 the project generates more than 50 person peak hour trips</p> <p>22 and if it's less than 50 then, I guess, it's a traffic</p> <p>23 statement discussing the project and the trip generation.</p> <p>24 If it's more than 50 person peak hour trips it requires a</p> <p>25 full traffic impact study to satisfy the LATR guidelines.</p>
<p>50</p> <p>1 whole, and nothing but the truth under penalty of perjury?</p> <p>2 MR. LENHART: I do.</p> <p>3 MR. GROSSMAN: You may proceed. Give your business</p> <p>4 address.</p> <p>5 MR. LENHART: 645 Baltimore Annapolis Boulevard,</p> <p>6 Severna Park, Maryland 21146, Suite 214.</p> <p>7 MR. GROSSMAN: We don't want anybody injured. We</p> <p>8 don't want to go up on the list under most --</p> <p>9 (indiscernible) -- testifying before the hearing.</p> <p>10 MR. LENHART: My guess is my knee is not the first</p> <p>11 one this -- (indiscernible) -- by this table.</p> <p>12 MR. GROSSMAN: Mr. Lenhart, your profession, please.</p> <p>13 MR. LENHART: Traffic engineer, transportation</p> <p>14 planner.</p> <p>15 MR. KLINE: Mr. Grossman, I'd like to offer a copy</p> <p>16 of a resumé for Mr. Lenhart.</p> <p>17 MR. GROSSMAN: All right.</p> <p>18 MR. KLINE: And make it an exhibit in the record.</p> <p>19 MR. GROSSMAN: We'll make this Exhibit 45. Okay.</p> <p>20 MR. KLINE: I'll skip through some of the normal</p> <p>21 questions I ask and try to jump to the one that matters.</p> <p>22 Have you ever qualified as an expert in a transportation</p> <p>23 planning or traffic engineering before the hearing examiner</p> <p>24 or a similar body?</p> <p>25 MR. LENHART: Yes, many times.</p>	<p>52</p> <p>1 In this case we have made that calculation and I</p> <p>2 would first start by discussing the old subdivision staging</p> <p>3 policy had a requirement to that if it was -- if the</p> <p>4 project generated more than 30 vehicular peak hour trips</p> <p>5 than a full impact study was required for LATR. When the</p> <p>6 new subdivision staging policy was adopted they change to</p> <p>7 person peak hour trips and they increased it to 50 person</p> <p>8 peak hour trips and then put out into how those person</p> <p>9 trips arrived, some by vehicle, some by walking, biking, or</p> <p>10 transit. And in most cases that serves the assessment of</p> <p>11 the impacts fairly well.</p> <p>12 In the case of landscape contractors kind of that 50</p> <p>13 person peak hour trips does a disservice the assessment of</p> <p>14 the traffic impacts because most landscape contractors have</p> <p>15 very, very high rate of carpooling. Three, four people per</p> <p>16 vehicle on average because they're younger drivers or just,</p> <p>17 you know, it's just set up that they commute together. And</p> <p>18 we've done traffic studies for other projects where we have</p> <p>19 -- under the old subdivision staging policy where we have</p> <p>20 confirmed that they have a very carpooling ratio.</p> <p>21 And so when we looked at this project based on the</p> <p>22 staffing, the existing staffing and there's currently no</p> <p>23 shift work it's just they start at a certain time, they end</p> <p>24 around a certain time. And when you look at that based</p> <p>25 upon the future projections it would exceed 50 person peak</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

14 (53 to 56)

<p>53</p> <p>1 hour trips. A much lower vehicular traffic impact, but the 2 guidelines and the policy are established that way. 3 MR. KLINE: What is the vehicular trip count? 4 MR. LENHART: It would be well below 30 if you look 5 at -- 6 MR. KLINE: For both morning and evening peak hours 7 trips? 8 MR. LENHART: Yes, yes. And if you look ITE, the 9 Institute for Transportation Engineers, trip generation 10 manual does have a land use code for contractors for this 11 type of use, landscape contractors and things, and if we -- 12 if we look at that it's much lower than 30 peak hour trips, 13 vehicular peak hour trips, forgive me but I don't have that 14 number handy, because the guidelines don't focus on that. 15 So we looked at just how many people were arriving 16 and since that exceeded 50 person peak hour trips we worked 17 with the applicant to identify staging of arrivals that 18 would work with their business and keep it below 50 person 19 peak hour trips so we could satisfy the guidelines and not 20 get into, you know, is there an impact or not, we just keep 21 it below the guidelines. 22 MR. KLINE: Okay. So on table 7 found on page 24 of 23 the staff report, does that accurately break down your 24 recommendations in terms of how to have the shifting or is 25 it -- that's basically the shifting program that the client</p>	<p>55</p> <p>1 correct? 2 MR. LENHART: Correct. The arrival times are 3 correct. 4 MR. GROSSMAN: Okay. But the dispatch time and the 5 second column -- well, I guess it's really the fourth 6 column. The column labeled dispatch time and the second 7 row with data in it it shouldn't -- instead of saying 6:30 8 to 6:45 a.m. dispatch time, it should say 7:45 to 8:00 a.m. 9 MR. LENHART: That's correct. 10 MR. GROSSMAN: Okay. I'm going to, with your 11 consent, I'm going to put a line through that incorrect one 12 and to lean to 7:45 to 8:00 a.m. with an arrow and my 13 initials. Does that sound okay to you, Mr. Kline? 14 MR. KLINE: It is acceptable to the applicant. 15 MR. GROSSMAN: So dispatch 7:45 to 8:00 a.m. Trick 16 is for me to remember to make that notation in my 17 electronic copy because I always work off of the electronic 18 copies. Okay. All right. That's been corrected. 19 MR. LENHART: Thank you. 20 MR. KLINE: So Mr. Lenhart, with the implementation 21 of the shifts that you've -- you find that the comings and 22 goings of the employees basically meet the requirements 23 for, I guess, the subdivision staging requirements? 24 MR. LENHART: That's correct. 25 MR. KLINE: Okay. And I don't have any other</p>
<p>54</p> <p>1 came up with based on your recommendation. 2 MR. LENHART: It is with one exception. 3 MR. KLINE: And this is a side bar conversation that 4 Mr. Lenhart had just brought to my attention, I'm going to 5 ask him to explain what he was just pointing out to me that 6 does not look right in this table. 7 MR. LENHART: Right. And I apologize for not 8 noticing until just this morning but I was going through 9 just confirming things and if you look under the -- let's 10 say the arrival time and the dispatch time. Field shift 1 11 arrives 6:35 to 6:45 and they leave 6:45 to 7:00. Field 12 shift 2 arrives 6:35 to 7:45 and it should read that they 13 dispatch between 7:45 and 8:00. It looks to me that this 14 is a typo or perhaps they just copied and pasted from one 15 of the other cells in this table. And if it read 7:45 to 16 8:00 under dispatch time for field shift 2 that would 17 accurately reflect what we recommended in our traffic 18 statement and I believe it would reflect what staff intends 19 here, which it's not possible to arrive at 7:30 and then 20 leave at 6:30 so I'm certain it's just difficult. 21 MR. GROSSMAN: Little difficult. But actually when 22 you read off arrival times you didn't read the field shift 23 2 arrival time correctly I don't think. So if I understand 24 it the arrival times listed on table 7 on page 24 of the 25 staff report are correct the way they're written; is that</p>	<p>56</p> <p>1 questions. 2 MR. GROSSMAN: Well, I take it from what you've said 3 that you think that the new procedures which count persons 4 arrival -- I guess persons trips rather than vehicle trips 5 is not as accurate predictor for this type of use. What 6 about across the board, just since I got you here, do you 7 think that this change is advantageous in some way or 8 disadvantageous in general? 9 MR. LENHART: Across the board I would say it's 10 advantageous because for more urban county and more forward 11 thinking process it does break down and looks at how many 12 person -- when you take a look at the person trips you 13 break it down into pedestrians walking to and from and if 14 you've got, you know, a use -- it's a high pedestrian use 15 near a transit station, are there adequate facilities for 16 them to walk back and forth, is there adequate transit to 17 get to and from. And so I think it does expand and help in 18 those type of scenarios. It just doesn't seem like it -- 19 landscape contractors were kind of not caught up in the 20 thought process on this and I think were reflected 21 accurately in the break down. 22 MR. GROSSMAN: Okay. You didn't mention in your 23 testimony, did you look at all on the impact of this 24 proposed use on nearby intersections? 25 MR. LENHART: We did not because it's less than 50</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

15 (57 to 60)

<p>57</p> <p>1 person peak hour trips and therefore it' -- LATR analysis 2 is not required. 3 MR. GROSSMAN: Right. You didn't do it in a 4 technical way. Do you have an opinion as to whether or not 5 this proposed use would adversely impact the functioning of 6 any nearby intersections? 7 MR. LENHART: Yeah. I do not believe it would have 8 any adverse impact. Even if you would have not implemented 9 shifts because of the high carpool factor here I don't 10 believe it would have had any sort of negative impact. 11 MR. GROSSMAN: Okay. What about safety? Number one, 12 safety of movements on the site itself and the way the 13 traffic pattern is designed. 14 MR. LENHART: Again, I believe -- I believe it's 15 safe and adequate. The applicant's testimony regarding 16 reduced usage of trailers and more usage of trucks -- 17 covered trucks, I do believe are safer to drive for these 18 people. I don't know if they require commercial driver's 19 license for these types of trucks or if it's just a normal 20 driver's license that has a lesser degree of training, but 21 the fact that they're driving trucks without a trailer on 22 it I think is much easier to drive for anybody. I've 23 driven both and, in fact, as a younger person in high 24 school and college I even worked for one of these types of 25 facilities for five years and drove both type of vehicles</p>	<p>59</p> <p>1 MR. LENHART: Okay. Great. Thank you. 2 MR. GROSSMAN: Mr. Norton. All right. Mr. Norton, 3 we've already sworn you in. You're still under oath. 4 MR. NORTON: Thank you. 5 MR. GROSSMAN: Could you repeat your name for us and 6 give us your business address. 7 MR. NORTON: Michael Norton, Norton Land Design, 8 address is 5146 Dorsey Hall Drive, second floor, Ellicott 9 City, Maryland. 10 MR. GROSSMAN: And your profession, sir. 11 MR. NORTON: Registered Landscape Architect and Site 12 Planner. 13 MR. KLINE: Mr. Norton, well, first of all let me do 14 this. 15 Mr. Grossman, I'd like to give you a copy of Mr. 16 Norton's resumé -- 17 MR. GROSSMAN: All right. 18 MR. KLINE: -- and ask you to make it an exhibit in 19 the record. 20 MR. GROSSMAN: Exhibit 46, Norton resumé. By the 21 way, don't forget to give me an electronic copy of all the 22 extra exhibits that you submit. 23 MR. KLINE: For the resumé's as well? 24 MR. GROSSMAN: Yes. 25 MR. KLINE: Okay.</p>
<p>58</p> <p>1 and I know that the direction of the way things are going 2 without trailers is much easier and safer. 3 MR. GROSSMAN: Backing up in the trailer -- 4 MR. LENHART: Is not easy, yeah. 5 MR. GROSSMAN: So I take it you're saying that the 6 layout of the -- for traffic on the site is safe and 7 adequate? 8 MR. LENHART: Yes. 9 MR. GROSSMAN: What about site lines or any impact 10 on safety off the site? 11 MR. LENHART: Mr. Norton, his office did an 12 evaluation of site distance so I think it would be more 13 appropriate for him to discuss that. But from what I've 14 seen of it, it looks more than adequate to satisfy the 15 guideline. 16 MR. GROSSMAN: Okay. All right. Do you have 17 anything else you wanted to add? 18 MR. LENHART: Not unless you have any other 19 questions. 20 MR. GROSSMAN: Okay. I noticed that you have 21 produced your traffic statement which is Exhibit 11 in the 22 exhibits. There are no changes in that, I take it? 23 MR. LENHART: No, sir. 24 MR. GROSSMAN: All right. Thank you, sir. 25 MR. KLINE: You're excused.</p>	<p>60</p> <p>1 MR. GROSSMAN: And that's how I do everything now. 2 MR. KLINE: I anticipated that with the two rendered 3 exhibits, I hadn't thought about the resumé. And actually 4 I may have to borrow that one back because you have my only 5 copy. 6 MR. GROSSMAN: So I don't forget which I was about 7 to do, Mr. Norton, identify these additional photos of the 8 signs that he took. 9 MR. KLINE: Yeah. 10 MR. GROSSMAN: We should have Mr. Bohrer identify 11 them then. 12 MR. KLINE: I can call him if you would like him to 13 do that. 14 MR. GROSSMAN: Let's do that. 15 MR. KLINE: Mr. Bohrer, can you come up here for 16 just a second? And what exhibits did you 17 give those? 18 MR. GROSSMAN: I didn't give them exhibit numbers. 19 MR. KLINE: Mr. Bohrer, will you please describe for 20 us what the two exhibits you have in your hand. What they 21 are and what they represent in the field? 22 MR. BOHRER: Sure. My name is Kevin Bohrer, B-o-h- 23 r-e-r. And these two pictures are of the sign that's 24 located at the intersection of Riggs and Zion. Those are 25 actually the same sign.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

16 (61 to 64)

<p>61</p> <p>1 MR. GROSSMAN: Right. And Exhibit 47, let's say the 2 close up -- we'll say Exhibit 47 close up of notice sign at 3 intersection of Riggs and Zion Roads. Taken when, sir? 4 MR. BOHRER: Yesterday evening. 5 MR. GROSSMAN: So that would have been August 2nd, 6 '18. And the other one, Exhibit 48, is the same except not 7 a close up, right? A little but more distant view? 8 MR. BOHRER: Correct. 9 MR. KLINE: And Mr. Bohrer, I mentioned when I 10 handed these to the Hearing Examiner I thought that maybe 11 white car that's shown on the right-hand side is reasonably 12 close to the entrance driveway onto the Romans' property is 13 that -- 14 MR. BOHRER: That's not correct. 15 MR. KLINE: That's not correct. So correct me. 16 MR. BOHRER: Both of these are of the same sign. 17 Which is at the intersection of Riggs and Zion. I 18 installed four signs, two on Zion Road and two on Riggs 19 Road since those are the two roads that we were required to 20 put the posting. The one that's located on Zion Road that's 21 further down, I measured it last night it's a little over 22 200 feet from, I would say, the cleared portion of Mr. 23 Romans' property, which is the property corner of -- 24 MR. KLINE: I'm sorry, you didn't finish the 25 sentence.</p>	<p>63</p> <p>1 same time? 2 MR. BOHRER: Yes. 3 MR. GROSSMAN: Okay. Photo of another 200 feet from 4 Romans' property, taken 8/2/18. And did you clear any 5 brush away from these photographs or anything before you 6 took them? 7 MR. BOHRER: No. 8 MR. GROSSMAN: Okay. So these photos accurately 9 represent these signs and their visibility when you 10 encountered them? 11 MR. BOHRER: Yes. 12 MR. GROSSMAN: Okay. All right. 13 MR. BOHRER: I want to make it clear, those are just 14 the two signs on Zion, I did not take pictures of the ones 15 on Riggs. 16 MR. GROSSMAN: Right. I understand you put up four 17 signs. Because that's a requirement given the length of 18 the frontages on the sites. Okay. Thank you, sir. 19 MR. KLINE: Well, I'm going to let you just go. 20 Have you ever qualified as an expert in -- 21 have you ever qualified as an expert before the hearing 22 examiner in Montgomery County? 23 MR. NORTON: Yes, I have. 24 MR. KLINE: And tell us what was kind of case it was 25 and what were you qualified as.</p>
<p>62</p> <p>1 MR. BOHRER: Oh, which is this property corner 2 located at the -- 3 MR. GROSSMAN: Kind of diagonally across Zion Road. 4 MR. BOHRER: Yeah. Yeah, diagonally across Zion 5 Road at the north -- northwestern corner of the property. 6 MR. GROSSMAN: I'm not sure it actually meets the 7 technical definition of confronting which talks in terms of 8 perpendicular, I believe, but it's close enough that we 9 would want to make sure. I know that you made -- I know 10 that you folks have made that contact. 11 MR. KLINE: In my office we have a rule that is if I 12 can draw a straight line from my property to another 13 property then we consider that to be a confronting -- 14 MR. GROSSMAN: Fair enough. Okay. 15 MR. KLINE: Is that yours? 16 MR. BOHRER: I have an additional one which is the 17 sign that is located closer to his property. 18 MR. KLINE: Explain -- maybe show on Exhibit 13, I 19 think it is, existing where that sign would be located. 20 MR. BOHRER: So that second sign is located 21 approximately 200 feet from the edge of his property. 22 MR. GROSSMAN: Okay. So -- okay. So this will be 23 Exhibit 49. And this was also taken yesterday? 24 MR. BOHRER: Yesterday evening. 25 MR. GROSSMAN: Were all these photos taken at the</p>	<p>64</p> <p>1 MR. NORTON: Yes. It was a child development 2 center, academy child development center. And I was 3 qualified as an expert in site design and landscape 4 architecture. 5 MR. KLINE: And the hearing examiner at that time 6 was -- 7 MR. NORTON: I do not remember. I cannot recall. I 8 remember Mr. Klauber was the Montgomery County attorney. 9 MR. KLINE: People's Counsel. 10 MR. NORTON: People's Counsel, yes. At the time. 11 MR. KLINE: Based on his previous qualification with 12 the understanding it's a limitation as to site design 13 rather than land planner in the larger context, I ask that 14 he be made and accepted as an expert in site design. 15 MR. GROSSMAN: All right. And Mr. Norton, do you -- 16 is there any licensing? 17 MR. NORTON: There is. 18 MR. GROSSMAN: What is that? 19 MR. NORTON: Yes, I'm a registered landscape 20 architect which is site design and development. 21 MR. GROSSMAN: Okay. And -- 22 MR. NORTON: Licensed in Maryland and Virginia. 23 MR. GROSSMAN: Okay. And do you have a license 24 number for your Maryland -- 25 MR. NORTON: Maryland license, 3310.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

17 (65 to 68)

<p>65</p> <p>1 MR. GROSSMAN: Okay. Given Mr. Norton's licensure</p> <p>2 as a landscape architect, his experience, including his</p> <p>3 having testified as an expert in landscape architecture and</p> <p>4 site design, I accept him as an expert as such.</p> <p>5 MR. KLINE: Thank you.</p> <p>6 Mr. Norton, I had put up Exhibit -- a copy of</p> <p>7 Exhibit 12, a certified zoning map which is really probably</p> <p>8 the only thing we got that really talks about larger</p> <p>9 neighborhood, is there anything you want to say beyond what</p> <p>10 we've had discussions about going on surrounding properties</p> <p>11 that you want to basically reiterate at this point in time?</p> <p>12 MR. NORTON: At this point in time I can just add to</p> <p>13 you that this is primarily in the agricultural reserve in</p> <p>14 the southeast quadrant, if you will, of the larger</p> <p>15 property. The 30-acre property is a portion of RE-2 on the</p> <p>16 opposite side of Zion -- southeast corner of Zion, a small</p> <p>17 pocket of RE-2 zone that is residential, I believe that is</p> <p>18 in the yellow. Otherwise, this is a primarily ag-reserve</p> <p>19 and I can talk a little bit more in detail if you'd like.</p> <p>20 MR. KLINE: Well, let me take you to the existing</p> <p>21 conditions plan because I can see you got this circular</p> <p>22 dotted line over on the right-hand side. What does that</p> <p>23 designate -- what's the relevance of the application?</p> <p>24 MR. NORTON: We have on the --</p> <p>25 MR. GROSSMAN: Can you point to what you're talking</p>	<p>67</p> <p>1 management area on both east and the west side draining to</p> <p>2 the Hawlings River -- tributary to the Hawlings River. We</p> <p>3 have a small pocket of forest on the south towards the</p> <p>4 back, the east of the property, as well as the large tract</p> <p>5 again. And then the balance of the overall property itself</p> <p>6 is in nursery stock. I said almost hundred percent, if you</p> <p>7 will. Other than what you see is the existing asphalt</p> <p>8 millings gravel that's on the property right now one</p> <p>9 building, two out building then the septic field towards</p> <p>10 Zion Road.</p> <p>11 MR. KLINE: So which of that highlighted in gray,</p> <p>12 which I presume are road network, just explain how that's</p> <p>13 used by Ace Tree Movers today.</p> <p>14 MR. NORTON: Sure. The way it's used by Ace Tree</p> <p>15 Movers today is that you enter the property off of -- you</p> <p>16 would travel north off of Zion off -- at the intersection</p> <p>17 of Zion and Riggs Road. You travel north approximately two</p> <p>18 thirds of the way up the property to the north, you would</p> <p>19 enter onto the asphalt milling gravel drive. There is what</p> <p>20 I'll call just the main drive back is the northern most</p> <p>21 line on the existing conditions and it takes you back to a</p> <p>22 gravel area surrounding the existing building. There is an</p> <p>23 extension of that, we'll call the main drive, that goes</p> <p>24 back into the tree nursery and then it just disappears and</p> <p>25 become lawn and tree.</p>
<p>66</p> <p>1 about?</p> <p>2 MR. NORTON: I guess I'll just stand here and point.</p> <p>3 On the -- we'll just say on the plan east and plan west we</p> <p>4 have -- and we're talking again on the larger tract of land</p> <p>5 at the moment we have the Patuxent primary management area</p> <p>6 to the east and the Patuxent primary management area to the</p> <p>7 west of the property. The center of the property itself is</p> <p>8 not within the PMA.</p> <p>9 MR. KLINE: You're talking about -- once again,</p> <p>10 you're talking about the property that's the larger --</p> <p>11 MR. NORTON: Well, I'm talking about the --</p> <p>12 currently I'm talking about the existing overall 30-acre</p> <p>13 tract of land. Before we dial down into the conditional</p> <p>14 use area.</p> <p>15 MR. KLINE: Okay.</p> <p>16 MR. NORTON: AS part of this project when we started</p> <p>17 the exercise of design we filed a natural resource</p> <p>18 inventory of the entire 30-acre tract and this is what</p> <p>19 you're seeing a combination of that plus a 500 -- forget</p> <p>20 what the numbers -- I believe a 500 foot overlap beyond</p> <p>21 that required for the natural resource inventory. So we</p> <p>22 brought this drawing to be able to speak to little bit more</p> <p>23 dialed in but not quite to the conditional use area itself.</p> <p>24 MR. KLINE: Okay.</p> <p>25 MR. NORTON: So, again, this is the Patuxent primary</p>	<p>68</p> <p>1 There is one drive that does go between some of the</p> <p>2 nursery area to the south of what we'll call the main</p> <p>3 entrance, again, that does just circle through the nursery.</p> <p>4 So we've outlined what we believe to be the drive routes by</p> <p>5 Ace Tree Movers currently.</p> <p>6 MR. KLINE: So I'm going to suggest to you probably</p> <p>7 go to the conditional use plan next the large scale</p> <p>8 version. And this would be Exhibit 37C in the record. And</p> <p>9 what I'd like to start off with is just having a hearing</p> <p>10 examiner understand how you came up with the dimensions and</p> <p>11 the area that would be subject to the conditional use</p> <p>12 application, what was in play there these different things.</p> <p>13 MR. NORTON: Sure and I'll just stand up here. I'll</p> <p>14 continue to stand. What we have on this plan it's unique</p> <p>15 in the large size of it and where we started was with the</p> <p>16 existing building that's there and we kept the existing</p> <p>17 gravel asphalt milling and expanded from that direction out</p> <p>18 radiating out on I'll say all sides short of the west, if</p> <p>19 you will. So the existing building itself becomes the</p> <p>20 front of the property except for the turnaround for the</p> <p>21 storage bins. Otherwise everything is developed to the back</p> <p>22 of that property more or less on the plan. And again,</p> <p>23 trying to use what was already out there is the reason why</p> <p>24 we expanded. Is the reason why it is located in this area.</p> <p>25 It is centrally located right in the middle of the</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 30.49 acres. The conditional use itself is 5.74 acres as 2 delineated on the exhibit outlined in the fold dash line 3 outlined there. The contract purchaser originally 4 challenged us by trying to do this in 3 acres and just 5 minimizing and we just could not get there with what we 6 were looking at in vehicles and the ultimate build out when 7 we started talking about the future ideas of two buildings 8 on the property so we expanded and organized from there. 9 What you have is we are using the existing entrance 10 off of Zion Road, again, same location two-thirds of the 11 way up more or less on Zion Road. You drive back -- I'll 12 get into why it weaves and why it moves maybe a little bit 13 later as we get through the questions. But we come back 14 and what we are looking at is in -- if we talk about just - 15 - I'll flip to the detail drawing at this point. 16 MR. KLINE: So this would be Exhibit 37D we're 17 looking at now. 18 MR. NORTON: If you don't have any questions at this 19 point. 20 MR. KLINE: No. 21 MR. NORTON: I'll flip to the more detailed -- so 22 now we're dealing with what we call the site, the 5.74 23 acres. And what we tried to do was interesting and I 24 should take a step back for a minute, is this existing 25 building has the -- I don't want to say it's parking out</p>	<p style="text-align: right;">71</p> <p>1 existing well that's on the property right now. 2 At first we were not -- I didn't have that to be 3 retained and we'll talk with the contract purchaser about 4 keeping that for the nursery operation and continue to do 5 what it's doing. We had to slide the building down, we had 6 the building actually up closer. So we had to slide the 7 building down. If affected some of our parking that was in 8 the rear so we started moving things around and trying to 9 organize and keep the footprint and to keep the impervious 10 as little as we could. 11 MR. KLINE: I don't want to forget. So let's go 12 back to the well for the a second. 'Cause you saw Mr. 13 Romans' letter where they were concerned about the draw 14 down on the aquifer. Would you explain why the well's there 15 and what its future use would be relative to this proposal. 16 MR. NORTON: Sure. The well is currently used for 17 the nursery operation. I believe is what they're calling 18 it as an agricultural well only. The existing building is 19 served by public water currently and we do not see that 20 changing. 21 MR. KLINE: So well, basically, has a permit for 22 watering the tree farm. 23 MR. NORTON: The well has a permit for watering the 24 tree farm and is going to remain in that capacity. 25 MR. KLINE: And we will not be adding the demand on</p>
<p style="text-align: right;">70</p> <p>1 there right now but what's used as parking it's not -- 2 nothing's really delineated on the site other than gravel 3 and a building so we start trying to organize this a little 4 bit. Trying to use the parking that's out there existing 5 right now for this building thinking about the staff that 6 would be on the property all day. 7 From there what we did was, again, if you start 8 looking at this bigger pockets of the gravel out there we 9 begin to tuck in the proposed staff parking if you will. 10 And this will be your off site, your people that come in 11 and leave during the day. And we're keeping the trucks -- 12 I hesitate to use the word big trucks because they are like 13 the box trucks things are evolving, have them up to the 14 north side of the property so they would not be coming back 15 to this area so. South of -- or south of the proposed 16 building one would not have the bigger trucks running out 17 there around so they would circulate in this area right 18 here and then go out. 19 MR. KLINE: And when you say this area right here 20 just give us a description. 21 MR. NORTON: Northeast corner of the conditional use 22 area east of the proposed building one. And then as this 23 project evolved you'll see there are pieces of parking that 24 are, I guess you could say, a little disconnected from 25 other portions of this that evolved as well from an</p>	<p style="text-align: right;">72</p> <p>1 that well at all in this use? 2 MR. NORTON: No, no, no. The property is I would 3 say maxed out for tree farm and it cannot be -- 4 MR. KLINE: Will you need to increase the size of 5 the water line to the building? 6 MR. NORTON: We do not propose that at this point. 7 MR. GROSSMAN: Will you divisional decide if the 8 facilities are adequate. One of the things in the zoning 9 ordinance -- the Hearing Examiner may say determination of 10 adequacy of public facilities when there's not going to be 11 preliminary plan of subdivision, when there is the zoning 12 ordinance requires that the termination to be made by the 13 planning board not by the Hearing Examiner. So our 14 examination of adequacy of facilities is limited really in 15 this kind of a case where there will be subdivision 16 subsequently is limited to examining what impacts there 17 might be on the neighbors and from any inadequacy of public 18 services. So it is a much more limited evaluation. So I 19 presume that they will look into the question of whether 20 the water service is sufficient and sewer service and so 21 on. 22 MR. NORTON: As part of the preliminary plan. 23 MR. KLINE: To be specific to address Mr. Romans -- 24 so the proposed use will have no effect on the capacity of 25 the aquifer on the causing draw down on the aquifer.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 MR. NORTON: On the well, that's right. The well --</p> <p>2 the water that's allocated from the well will not change</p> <p>3 based on the use of this property, based on the landscape</p> <p>4 contractor. The well will continue as functioning for the</p> <p>5 tree nursery itself and not as part of the conditional use</p> <p>6 for the well.</p> <p>7 MR. GROSSMAN: And while we're talking about the</p> <p>8 neighbors concerns. Do you have an opinion on any impact</p> <p>9 on property values from this proposed use? Property values</p> <p>10 for surrounding properties?</p> <p>11 MR. NORTON: I believe in my professional opinion</p> <p>12 the way that the property is set -- the way that the</p> <p>13 conditional use is set back within the 30-and-a-half acres</p> <p>14 -- and I was going to get into the landscape plan a little</p> <p>15 bit later, but we went above and beyond that required</p> <p>16 necessarily from the -- from the zoning code from landscape</p> <p>17 when you look at the screening requirements. I do not</p> <p>18 believe it's going to have a negative impact based on that</p> <p>19 visual from the surrounding properties.</p> <p>20 MR. GROSSMAN: All right. You can address also the</p> <p>21 lighting.</p> <p>22 MR. KLINE: Let's go into this a little bit more</p> <p>23 first and then we'll go into the lighting.</p> <p>24 MR. NORTON: All right. I lost track of where I was</p> <p>25 on this now.</p>	<p style="text-align: right;">75</p> <p>1 would circulate through and out in that manner. The drives</p> <p>2 right now for the commercial we do have a little bit wider</p> <p>3 than what you would normally see. We have a 24-foot wide,</p> <p>4 we recognize that there are trailers currently that has --</p> <p>5 as he is transitioning to the box trucks. We've allowed</p> <p>6 for a little bit of leeway in the lay out circulation</p> <p>7 things like that, it helps for fire as well.</p> <p>8 MR. KLINE: Go back to the storage bins for a</p> <p>9 second. In prepping for -- I happen to read something that</p> <p>10 said there were three storage bins. I'm wondering the way</p> <p>11 that's drawn, is that the correct number?</p> <p>12 MR. NORTON: There's six storage bins right now.</p> <p>13 And the landscape contractors that I've worked with over</p> <p>14 the years and I believe the contract owner for this will</p> <p>15 likely be doing these as concrete masonry units just block</p> <p>16 that will be stacked and what we've done some is we've</p> <p>17 designated this space because in reality some of these --</p> <p>18 it shifts. In speaking with this owner and speaking with</p> <p>19 actual contractors we worked in this area as well depending</p> <p>20 on what time of year it is, the season as to what materials</p> <p>21 they may have in these bins they could be loaded.</p> <p>22 (Audio failure)</p> <p>23 MR. NORTON: -- fall and and some of the standard</p> <p>24 gravels and sands associated with the patios and those</p> <p>25 uses. So these bins could in effect they could slide a</p>
<p style="text-align: right;">74</p> <p>1 MR. KLINE: Let's just kind of identify the</p> <p>2 different features you've got here. So we've seen building</p> <p>3 one. I'm sorry, we've seen existing building, we've seen</p> <p>4 where buildings one and two will go.</p> <p>5 MR. NORTON: Right.</p> <p>6 MR. KLINE: You've talked about the parking. The</p> <p>7 shaded areas sort of on the northern</p> <p>8 end, what are those?</p> <p>9 MR. NORTON: What we're delineated on here and it's</p> <p>10 all part of our drawing process associated with the</p> <p>11 stormwater management and other aspects of this as well.</p> <p>12 That is -- what you have in the shaded is actually the area</p> <p>13 of additional gravel or asphalt millings that will be put</p> <p>14 down as part of this project. What's in the light gravel</p> <p>15 pattern is actually what is already existing right now. So</p> <p>16 we're trying to differentiate between what we were doing</p> <p>17 out there where you see the vehicle parking is primarily on</p> <p>18 existing and we added the commercial vehicles to the north</p> <p>19 within the corner of the drive, the northeast corner of the</p> <p>20 drive as well.</p> <p>21 Material bins are on the west side of the</p> <p>22 conditional use. We have an area even further of the west</p> <p>23 of that which would be an operational area where the</p> <p>24 loading equipment would go back and get out and load the</p> <p>25 equipment the equipment. Our ideas is that the vehicles</p>	<p style="text-align: right;">76</p> <p>1 little bit. The box itself would be outlined but you could</p> <p>2 almost move that a little bit to accommodate mulch,</p> <p>3 anything like that.</p> <p>4 MR. KLINE: But you'll load from both sides --</p> <p>5 MR. NORTON: Yeah.</p> <p>6 MR. KLINE: -- I think probably just missed that --</p> <p>7 (Simultaneous speakers)</p> <p>8 MR. NORTON: Our idea is that the trucks would be</p> <p>9 stacking along here, what have you, as they were loading.</p> <p>10 When I say here, to the north. The trucks would be stacking</p> <p>11 and the machine could come straight out and load right as</p> <p>12 they were leaving the site. So they circulate, load their</p> <p>13 equipment, and they go back out. So they would not be</p> <p>14 running around the site free will, there is a circulation</p> <p>15 that they would follow to keep them organized and, again,</p> <p>16 away from pedestrians, away from the other cars, and things</p> <p>17 like that.</p> <p>18 So that's the materials storage bins. I can talk</p> <p>19 about the proposed parking a little bit more for the</p> <p>20 trucks. We do have the parking what you would notice on</p> <p>21 there the dimension they are over sized, they are 30 feet</p> <p>22 long we are allowing for the --</p> <p>23 (Audio failure)</p> <p>24 MR. NORTON: -- and the equipment that the</p> <p>25 associated with them versus larger trucks. So we try to</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 accommodate a little bit bigger parking spaces to allow for 2 this equipment to function on the site as well not a 3 standard parking. 4 MR. KLINE: Do you want to go through the parking 5 calculations right now or just tell us how many are 6 require, how you got there, and how many are provided. 7 MR. NORTON: Yes. We have -- I'll -- the contract 8 purchaser gave us the amount of 40 vehicles, commercial 9 vehicle trailer and combinations that they would be looking 10 for on this site so we accommodated that at the rate of one 11 to one. And they are, again, all to the north. See 12 12 spaces, 10 spaces, 10 spaces, 8 spaces organized. We have 13 a -- I'm just going to talk about the office staff for a 14 minute. We have accommodated on the site for 9 -- a 15 ultimate use of 9 office staff including the owner. 16 We've allowed for 3 staff that were saying they are 17 landscape but they would be on site potentially all day, so 18 we've allowed for the 12 spaces for those combination of 9 19 and 3. And then we have accommodated for 38 recognizing, 20 of course, with the septic but we've accounted for 38 field 21 employees at a half of a rate so it would be 19 parking 22 spaces for field. And I understand from the owner that is 23 even -- that the commuter is even more 2 to 1 per car that 24 even some vehicles are coming in at 3 people per vehicle. 25 So it seems much smaller than that.</p>	<p style="text-align: right;">79</p> <p>1 around to form the eastern flank of the drawing. 2 MR. GROSSMAN: Of the large property. 3 MR. NORTON: Of the -- again, large property, yes. 4 MR. KLINE: So those are the two designated rustic 5 roads. 6 MR. NORTON: Right. 7 MR. KLINE: And they see a little indication or 8 maybe some connection from Riggs to southern end of the 9 property. Describe what that is and how we plan on using 10 it or not using it. 11 MR. NORTON: Yeah. There is an existing connection 12 from the gravel -- existing gravel within the conditional 13 use and within the property overall that is shown. It's 14 out there right now there is a gate out there and that gate 15 will be -- will be closed and used for emergency only. 16 There will be no access from the -- I want to be careful 17 how I say this because there will be no access to Riggs 18 Road -- the rustic Riggs Road on the southern property 19 line. They could get out Riggs Road on the opposite side 20 of Zion, but not out of on the small 12 foot wide gravel 21 Riggs Road, if you will. 22 MR. KLINE: Okay. And with regard to Zion Road, 23 would you explain to your Hearing Examiner why the rustic 24 road advisory committee was encouraging us not to have any 25 of our heavy equipment go north on Zion Road.</p>
<p style="text-align: right;">78</p> <p>1 MR. GROSSMAN: So if I understood from the chart 2 included on page 15 of the staff report as corrected, it 3 did say 80 put now it's 62 spaces including 3 van 4 accessible handicap spaces is required and you are going to 5 be providing 71 spaces including the 3 van accessible 6 handicap spaces. 7 MR. NORTON: 71 spaces, 40 for commercial and then 8 31 for the balance. 9 MR. KLINE: Mr. Norton, I'd like to ask you a 10 question about the rustic roads. I'm going to start off 11 with where our exhibit best shows where the rustic roads 12 are and then I think that's going to lead into your in your 13 changes to the plan address the comments of rustic roads. 14 So this is the conditional plan itself which is 37C. And 15 just to point out for us where the two rustic roads are. 16 MR. NORTON: Sure. Zion Road is to the -- again, 17 I'm just going to use east it's primarily to the east of 18 property line. 19 MR. KLINE: To the west you mean. 20 MR. NORTON: I'm sorry. To the west. I get my 21 stuff backward. To the west property line. Riggs Road is 22 to the south and to the east of this property. There is a 23 portion of Riggs Road -- I don't know -- little bit less of 24 50 percent of the southern property line where Riggs Road 25 does dip down off of the property and then comes back</p>	<p style="text-align: right;">80</p> <p>1 MR. NORTON: Zion Road is limited at the bridge for, 2 I believe, where it crosses the Hawlings River the Rachel 3 Carson Park, I believe, is limited -- commercial weight 4 limit on it so -- 5 MR. KLINE: Okay. Okay. And so they just don't 6 want -- 7 MR. NORTON: They do not want equipment going north 8 on Zion Road and the other does not have any intention of 9 travelling north on Zion Road. 10 MR. GROSSMAN: So the trucks coming out of the 11 driveway onto Zion Road would make a left turn on to Zion 12 Road? 13 MR. NORTON: They would make a left turn onto Zion 14 Road, yes. 15 MR. KLINE: So why did the driveway start to wiggle? 16 MR. GROSSMAN: If they make a left they would need a 17 site line along Zion Road, how are the site lines? 18 MR. NORTON: We had a site distance. I believe it 19 was in the -- in the exhibits. I don't remember I did not 20 bring it with me today. Make sure I have my numbers 21 correctly here. Our surveyor has 540 feet site distance to 22 the north and 845 feet to the south, minimum is 400. 23 MR. GROSSMAN: So from a site design standpoint is 24 that an adequate -- 25 MR. NORTON: It's adequate, yes.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

21 (81 to 84)

<p>81</p> <p>1 MR. GROSSMAN: All right. That's along Zion Road?</p> <p>2 MR. NORTON: That's along Zion.</p> <p>3 MR. GROSSMAN: That driveway.</p> <p>4 MR. NORTON: That's correct there was no intention</p> <p>5 of using Riggs.</p> <p>6 MR. GROSSMAN: Okay. You want to return to the</p> <p>7 wiggling driveway question?</p> <p>8 MR. NORTON: What we were looking at on -- on what</p> <p>9 the wiggling driveway is -- we had the driveway a little</p> <p>10 bit straighter -- there were plans that we found when we</p> <p>11 first started this project that was showing some studies by</p> <p>12 the previous -- maybe the current owner or the owner prior</p> <p>13 to where they were looking at testing and they were some</p> <p>14 septic areas that were reserved up in that area for a</p> <p>15 potential residential house or something along those lines.</p> <p>16 And when we were planning out how we were going to do some</p> <p>17 of these ideas we didn't want to do anything that could</p> <p>18 potentially negatively effect them later -- let's say if</p> <p>19 they expanded or something like. We were trying to look at</p> <p>20 what had been previously done.</p> <p>21 And there was septic area in the -- say south of the</p> <p>22 proposed driveway as just a study point. So we were</p> <p>23 looking at that. What we were also looking at is coming in</p> <p>24 off of Zion Road what you currently do is -- I'm going to</p> <p>25 go back to the existing conditions drawing for one minute.</p>	<p>83</p> <p>1 The best example that I can think of is actually going</p> <p>2 through Brookeville where the road chicanes and that's what</p> <p>3 we use for that term. So it's a little bit more subtle on</p> <p>4 this. But we're looking at this and it's basically just so</p> <p>5 you would not look down that road potentially and see a</p> <p>6 straight drive within this rustic road setting.</p> <p>7 MR. GROSSMAN: How you spell that that word by the</p> <p>8 way?</p> <p>9 MR. NORTON: Oh my gosh.</p> <p>10 MR. KLINE: C-h-i-c-a-n, I believe. And you'll --</p> <p>11 if you watch the racing channels --</p> <p>12 (Simultaneous speakers)</p> <p>13 MR. NORTON: It's best way I can think to describe</p> <p>14 it. Sorry.</p> <p>15 So we did put a little of a turn in that which the</p> <p>16 rustic roads committee was happy to see. And we also -- I</p> <p>17 guess I'll jump back to the landscape but, again, for this</p> <p>18 is -- and actually I will just pull the exhibit for that</p> <p>19 one.</p> <p>20 MR. KLINE: Which sheet do you have, Mike?</p> <p>21 MR. NORTON: This is the overall landscape.</p> <p>22 MR. KLINE: So this is probably 37G. Sheet L 3.2.</p> <p>23 MR. NORTON: And again we're looking at the overall</p> <p>24 property just for context of the rustic roads. And what we</p> <p>25 have is we added more Evergreen trees. We're looking at</p>
<p>82</p> <p>1 And the reason why I'm going back to this is you can how</p> <p>2 the gravel is highlighted in this -- in this drawing. When</p> <p>3 you come off of Zion Road you almost make an immediate 90-</p> <p>4 degree turn. And then within 50 feet somewhere in that you</p> <p>5 make an immediate left hand 90-degree turn to come back to</p> <p>6 the property.</p> <p>7 So we start looking at that thinking down the road</p> <p>8 of fire code and thinking down the road of the box trucks.</p> <p>9 What we were doing is trying to figure out what if we could</p> <p>10 clean that line up just a little bit to allow the trucks to</p> <p>11 go back smoother. So that was some of what we were looking</p> <p>12 at on this.</p> <p>13 When we met with the rustic roads committee they</p> <p>14 were asking if we could put just a little bit of a -- I'll</p> <p>15 say a chicane, if you will, in the drive that will kind of</p> <p>16 just put a little bit so that there's a little bit of</p> <p>17 interest in there and that when you drive back you're not</p> <p>18 necessarily -- or when you're driving down Zion Road --</p> <p>19 their concern was looking straight down down the road and</p> <p>20 seeing a landscape contractor facility or just a long</p> <p>21 expanse of up driveway. So we added a little bit of turn</p> <p>22 in that area.</p> <p>23 MR. GROSSMAN: I'm not familiar with the term</p> <p>24 chicane. So what is a chicane?</p> <p>25 MR. NORTON: It's just basically a turn in a road.</p>	<p>84</p> <p>1 not your standard 6 foot that would be required for the</p> <p>2 landscape guidelines hedge. I mean we're actually looking</p> <p>3 at plant material that would be the American Hollies and</p> <p>4 the larger cedar trees that would go up to 30 feet, even</p> <p>5 potentially taller than that as they grow over time.</p> <p>6 Really robust landscape screening for this property</p> <p>7 recognizing the rustic roads around on primarily on three</p> <p>8 sides.</p> <p>9 Also, the canopy trees to keep the idea that this is</p> <p>10 really tucked back in with the nursery that you should</p> <p>11 really not see this facility operating back there. One</p> <p>12 other comment from the rustic roads is we are going back</p> <p>13 and forth on the fire marshal requirements and right now we</p> <p>14 do have what's shown on there is the underground fire</p> <p>15 suppression tank on this property. It's on the north side</p> <p>16 of the -- even the existing drive that we have right now.</p> <p>17 Going through sizing it, one of the conditions was</p> <p>18 that the fire marshal would approve the plan prior to</p> <p>19 building permit. We have been speaking with the fire</p> <p>20 marshal with sizing of the cistern based on the 6,100</p> <p>21 square foot building right now even with a hydrant.</p> <p>22 Hydrants are further down on the southeast -- southwest</p> <p>23 corner -- I'm sorry -- of the intersection Zion and Riggs</p> <p>24 Road.</p> <p>25 What's interesting about this property is that there</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 is a water line as I mentioned before that was actually 2 extended that -- north on Zion Road about -- I hesitate to 3 give -- 50 to 100 feet, somewhere in that capacity, as a -- 4 my understanding is it had to do with the contamination 5 from the landfill years back so water was pulled to some of 6 the surrounding areas so this property actually benefitted 7 from that and that's why it has public water pulled to it 8 for the building. So that addresses where we are on -- 9 that's where we are on the fire right now working with Ms. 10 LaVall (phonetic). 11 MR. KLINE: Let me go back to your landscape. With 12 this landscaping scheme, will anybody be able to see from 13 an off-site location the activity level going on inside 14 that perimeter landscaping? 15 MR. NORTON: In my opinion right now the use is so 16 far set back on the property and the nursery operation that 17 is out there right now has so much tree and landscaping it 18 is well hidden as the building exists right now. By us 19 reinforcing that landscape with the -- I believe what we 20 have on a landscape right now is 6 to 8 foot Evergreen 21 trees going in and then the 2-inch Caliper trees around the 22 parking and the buildings. I believe that if there were 23 views they'd be extremely limited. 24 MR. KLINE: Okay. Thank you. Since you talked 25 about landscaping, do you want to go the forest</p>	<p style="text-align: right;">87</p> <p>1 what kind they are and where they are located. 2 MR. NORTON: Yeah. We are showing standard wall 3 packs so they'd be the wall fixtures on the future 4 building, proposed building one and then the existing 5 building in the center of the site right now for safety. 6 Primarily associated with the parking areas itself. We do 7 have pole mounted fixtures that are on the -- that are 8 around the commercial vehicle parking area, if you will, 9 they are on 20-foot poles. They have full cut offs, there 10 will not be any light coming off vertically. We are shown 11 the 20 foot because of the trucks out there. We don't want 12 to go -- most cases you actually made a little bit higher. 13 We are trying to be respectful to the community with the 14 20. I don't believe that we'd want to go lower because of 15 the potential for a commercial vehicle or the loaders or 16 something to just hit a pole or hit the fixture itself. So 17 we try to strike the compromise for the fixtures 18 themselves. MR. KLINE: So both Mr. Tydings and Mr. 19 Romans wrote in and used the phrase or indicated concern 20 about evening light pollution and we are particularly -- 21 (indiscernible) -- to have a dark skies policy. Do you 22 feel that the lighting scheme you've come up with would 23 basically not create any evening light pollution? 24 MR. NORTON: Like I said, it's all full shield that 25 are being installed. The dark sky technology is, I</p>
<p style="text-align: right;">86</p> <p>1 conservation issue and, if so, are you going to use this 2 exhibit that I see on the floor over here? 3 MR. NORTON: I was thinking maybe we'd go to the 4 lighting if we wanted to talk about that so we're sitting 5 here with the landscape right now. Let me pull all of these 6 exhibits. 7 MR. KLINE: So you put up Exhibit 37J the lighting 8 plan photometrics. 9 MR. NORTON: That's correct. 10 MR. KLINE: Okay. And what is it telling us? 11 MR. NORTON: What we did was we ran the lighting 12 photometrics for the conditional use area, showed the zero 13 foot panels at the conditional use itself recognizing that 14 even the total property is well beyond even the conditional 15 use. 16 MR. GROSSMAN: So zero foot panels at the perimeter 17 of the conditional use site area? 18 MR. NORTON: Correct. 19 MR. GROSSMAN: And of course you have additional 20 surrounding beyond that. 21 MR. NORTON: That's correct. Almost twice the 22 distance to the property line itself -- current property 23 lines, that's right. 24 MR. KLINE: So just give us a feel for the nature of 25 the lighting fixtures that are on the property in terms</p>	<p style="text-align: right;">88</p> <p>1 believe, what everyone is trying to use in the county. I 2 do not believe there's no spill over from this, again, from 3 the conditional use area itself and really none from the 4 larger property overall. The landscape -- also what's 5 unique about this is the canopy and the Evergreen screening 6 that we're installing will actually be taller than what 7 these pole fixtures will be. The nursery itself -- a lot 8 of the nursery stock actually is at 20 feet or higher right 9 now, so you would not see those poles. 10 The screening trees that we are proposing is one of 11 the other reasons why we did this even before we had the 12 letter -- letters is that we looked at these Evergreen 13 trees that would be year round, green, screening, that 14 would go up to -- like I say holly is -- the cedars that 15 we're proposing, I think are 30 feet to even taller around 16 these areas. So a little bit background as to why we did 17 not use smaller Evergreen. 18 MR. KLINE: And would you then factor in Mr. 19 Bohrer's commitment to basically have motion activated 20 lights? 21 MR. NORTON: Right. Lights would be on almost -- 22 gosh, it seems like today's standard business hours a 23 little bit beyond 9:00 to 5:00 with the 6 o'clock 6:30. 24 But the lights would be shut off it would be dark out 25 there. I do want to mention also the wall packs are at 10</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

23 (89 to 92)

<p>89</p> <p>1 foot with the building fixtures are at 10 feet. So they'd 2 be much lower. So those would possibly stay on then that 3 would be much much lower screen. And again those are on 4 the buildings really tucked in. 5 MR. GROSSMAN: So in your opinion would there be any 6 glare or light spilled over into the surrounding 7 neighborhood? 8 MR. NORTON: There would not be any spillover or 9 glare. 10 MR. GROSSMAN: Okay. 11 MR. NORTON: We're far away from any neighbors. 12 MR. GROSSMAN: Okay. 13 MR. KLINE: Any more questions on the lighting? 14 MR. NORTON: Just have the put up on the existing 15 exhibit. I don't know if that -- 16 MR. KLINE: It would be 37K, preliminary Forest 17 Conservation Plan. 18 MR. GROSSMAN: If I understand it was approved by 19 the planning board and there is a copy of that resolution 20 approving it to you in the record as exhibit -- 21 MR. KLINE: Do you want an additional copy or are 22 you happy? 23 MR. NORTON: And for the record this is say 24 preliminary/final Forest Conservation Plan. 25 MR. GROSSMAN: I'm glad you added that. How approved</p>	<p>91</p> <p>1 approved after the resolution is posted then we upload to 2 the -- we upload back through e-plans process to have the 3 plans certified. I don't know if that works or not but 4 that's how I read it through my technical side of working 5 through the process before. That they're saying the plans 6 are approved to get them certified you have to add these 7 final. 8 MR. GROSSMAN: Okay. Now does anything else then 9 happen at preliminary plan regarding the 10 Forest Conservation Plan. 11 MR. NORTON: Well, unique is that at the time of 12 preliminary plan you would have an approved Forest 13 Conservation Plan. The only thing that you would do if 14 something were to change at the time of preliminary plan 15 you would have to provide what you would call at that point 16 an amended final Forest Conservation Plan. 17 MR. GROSSMAN: Okay. I mean from my perspective it 18 probably doesn't make any difference whether there approval 19 Conservation Plan or the final Conservation Plan because I 20 would -- if I approved the Conditional Use it would be 21 subject to compliance with the preliminary and any final 22 conservation. 23 MR. NORTON: Right. If I remember correct in 24 working with staff the reason why we call this a 25 preliminary and a final is I was going to get into some</p>
<p>90</p> <p>1 -- did the planning board approve the final Conservation -- 2 MR. NORTON: Yeah. It's a combined 3 preliminary/final Forest Conservation Plan approved at the 4 final board. 5 MR. GROSSMAN: Perhaps I should take a look at -- 6 MR. NORTON: I hope that's what it says. 7 MR. GROSSMAN: I just don't recall that. Here's the 8 resolution Exhibit 35. 9 MR. NORTON: It says it just approves a Forest 10 Conservation Plan on the first page. On prior to 11 certification of the final Forest Conservation Plan -- 12 issues on page 2 of the resolution. 13 MR. GROSSMAN: Will add a planning details all of 14 which must be acceptable to staff. Doesn't say that -- 15 let's see the final certification says -- resolution says - 16 - this resolution -- the application satisfies -- it 17 doesn't seem to make that clear. 18 MR. NORTON: It's actually interesting. I'm looking 19 at resolution number 1 on there and I'm -- the way -- 20 MR. GROSSMAN: You mean paragraph number 1 on page 21 2? 22 MR. NORTON: Yes. It says, Prior to certification 23 of the final Forest Conservation Plan, the reason why I say 24 that does do it is because the process now in Park and 25 Planning through the new e-plans is when the plans are</p>	<p>92</p> <p>1 detail on this, but there are no impacts to specimen trees. 2 There's no impacts actual forest on this property and even 3 if by some stroke of -- I'm not sure what sediment control 4 or something. It was to move those items still would not 5 trigger anything to be amended and I believe that's why we 6 went down the road of let's do this one time. That's just 7 my opinion of that. 8 Back to where we were. Again, we've gone over the 9 Patuxent primary management area, we are under the 10 impervious cap on this project. We looked at the 11 impervious from the conditional use itself on the plans 12 that would be the tract area of the 5.74 acres. We are at 13 a little over 7 percent of impervious -- I believe 7.7 or 14 somewhere in that neighborhood, under the 10 percent 15 impervious cap in the Patuxent, the PMA. And what's also 16 interesting about that is what we're looking is the 17 driveway in the access coming back to it is the area in the 18 PMA of the conditional use. 19 MR. GROSSMAN: I'm sorry. I didn't quite follow 20 that. 21 MR. NORTON: Yeah. What's unique about this is that 22 the 10 percent is actually only looking at the area that is 23 the driveway, the panhandle if you will, of the conditional 24 use. Because of where the Patuxent primary management area 25 falls on the plan we had to actually comply with under 10</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

24 (93 to 96)

<p>93</p> <p>1 percent of just this panhandle area.</p> <p>2 MR. GROSSMAN: I see. So you're saying that the</p> <p>3 portion to the west of the dotted line is the PMA and the</p> <p>4 10 percent is within that area --</p> <p>5 MR. NORTON: Right.</p> <p>6 MR. GROSSMAN: -- not the overall site.</p> <p>7 MR. NORTON: Right. Which, you know, is actually</p> <p>8 unique dealing with it because we had to go back ask forth</p> <p>9 on it because all we had is the driveway area so it</p> <p>10 actually made us move things around to make sure we were</p> <p>11 well under that area. What's also interesting about the</p> <p>12 Forest Conservation Plan is because the area that we are</p> <p>13 working on is the conditional use, the remainder of the</p> <p>14 property where we are providing the forest conservation</p> <p>15 which is the existing forest on the southern --</p> <p>16 (Audio failure)</p> <p>17 MR. NORTON: -- center off site and therefore we had</p> <p>18 to do it at a rate of 2 to 1 even though --</p> <p>19 MR. GROSSMAN: So this is the area in the lower</p> <p>20 right-hand corner that's cross hatched and identified?</p> <p>21 MR. NORTON: Yeah. We actually had to add forest to</p> <p>22 this property even though Mr. Bohrer will own the entire</p> <p>23 tract because we kept that in agriculture we were in some</p> <p>24 regard penalized as doing our forest conservation off site</p> <p>25 because we could not fit it within our conditional use</p>	<p>95</p> <p>1 Let's see. If I can find my exhibit list buried here</p> <p>2 somewhere. There it is.</p> <p>3 MR. NORTON: I did not bring a copy of the</p> <p>4 stormwater concept with me this morning. And my reasoning</p> <p>5 behind that is because it's in the exhibits, it was</p> <p>6 provided and also almost every plan shows the stormwater so</p> <p>7 I thought I would speak to one of the plans that we have.</p> <p>8 MR. GROSSMAN: Okay. Sure. Exhibit 50 is the</p> <p>9 letter of June 21, '18, from finding stormwater concept to</p> <p>10 be acceptable. Another item that will handled at</p> <p>11 preliminary plan.</p> <p>12 MR. NORTON: And it's approved -- and it is</p> <p>13 approved, the stormwater concept.</p> <p>14 MR. KLINE: And what's the program? Just kind of</p> <p>15 give us an overview of how you're going to handle that.</p> <p>16 Because I can see some areas on there that are probably</p> <p>17 marked for bioretention or something.</p> <p>18 MR. NORTON: Yeah. We are looking at this -- this</p> <p>19 is actually the stormwater management concept was put</p> <p>20 together in two phases for this project. What we're</p> <p>21 looking at is on the -- we'll call it the drive coming back</p> <p>22 to the site -- both stormwater facilities are on the north</p> <p>23 side of the drive and parking for the commercial vehicles.</p> <p>24 So what happens is they're on the low side and these are</p> <p>25 what we call landscape infiltration facilities so they will</p>
<p>94</p> <p>1 area. Just a little bit of sign for that. It was --</p> <p>2 MR. GROSSMAN: Off of the conditional use site?</p> <p>3 MR. NORTON: It's under ownership but it's outside</p> <p>4 and we got a two to one penalty for doing that. So that's</p> <p>5 -- there's not really the forest conservation is not too</p> <p>6 complicated on this project. All of these specimen trees</p> <p>7 are being retained, all the forest is met within the area</p> <p>8 as shown on the plan and that covers that plan. If there's</p> <p>9 any questions on the forest.</p> <p>10 MR. GROSSMAN: I have not.</p> <p>11 MR. NORTON: We have stormwater left to cover and --</p> <p>12 MR. KLINE: Just keep that up there and just</p> <p>13 describe just the general program of stormwater management.</p> <p>14 And if you need another copy of the letter we have that</p> <p>15 available also.</p> <p>16 MR. GROSSMAN: The letter I don't think is a</p> <p>17 specific exhibit in our file, I think it is just an</p> <p>18 attachment to the staff report.</p> <p>19 MR. KLINE: Probably so.</p> <p>20 MR. GROSSMAN: But yeah, we should have a copy of</p> <p>21 it.</p> <p>22 MR. KLINE: While Mr. Norton basically just kind of</p> <p>23 tells you what the concept is going to be I'll just give</p> <p>24 you a copy of this so you can --</p> <p>25 MR. GROSSMAN: This will be Exhibit something.</p>	<p>96</p> <p>1 be planted. If you're familiar with the rainguards or</p> <p>2 micro bioretention facilities they hold a lot of</p> <p>3 stormwater, they can accommodate up to 20,000 square feet</p> <p>4 of drainage area going to them.</p> <p>5 The infiltration rates given this property allowed</p> <p>6 us to not have to do a micro bioretention facility which is</p> <p>7 under drained. We're able to do infiltration not a drained</p> <p>8 facility so we don't have to have anything like that going</p> <p>9 out into the property. Eliminates that underdrained</p> <p>10 system. And we have two landscape infiltration facilities</p> <p>11 shown on the plan right now, again, to the north of the</p> <p>12 commercial area.</p> <p>13 And they are splitting the -- we will call the one</p> <p>14 on the the west side stormwater facility is picking up the</p> <p>15 -- is going basically all the way up to the existing</p> <p>16 building and draining sheet flow across and picking up the</p> <p>17 water that goes into the landscape infiltration. So all</p> <p>18 the new area on the site and the existing will drain to the</p> <p>19 western stormwater facility. The eastern stormwater</p> <p>20 facility is slightly bigger than the previous one we spoke</p> <p>21 about is picking up the stormwater from the new commercial</p> <p>22 parking area and that meets stormwater requirements for</p> <p>23 this property.</p> <p>24 MR. KLINE: In your opinion will the new use create</p> <p>25 any storm water runoff onto the surrounding neighborhood?</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 MR. NORTON: Not -- there should not be any runoff 2 into the surrounding neighborhood. The stormwater 3 facilities are setback from the conditional use somewhere 4 around 30 feet from the conditional use themselves. And 5 then beyond that you still have the over -- 6 MR. GROSSMAN: You said from the conditional use 7 themselves -- 8 MR. NORTON: The conditional use property. The 9 conditional use boundary. 10 MR. GROSSMAN: I thought it was within the 11 conditional use. 12 MR. NORTON: It is. It's 30 feet within the 13 conditional use -- it so far within the condition. I'm not 14 speaking -- 15 (Simultaneous speakers) 16 MR. NORTON: It's well within the conditional use 17 itself. They're set back 30 feet from that line itself 18 plus you still have the additional property owned by Mr. 19 Bohrer before you get anywhere. The infiltration rates 20 given the nursery are some of the best we have seen for 21 stormwater. We don't see this as being an issue. 22 MR. GROSSMAN: What about the fact that it seems 23 like in recent times we're getting hundred year or maybe 24 thousand year storms every year or two. What about that in 25 terms of environmental site design and all that?</p>	<p style="text-align: right;">99</p> <p>1 inhinging on -- without having conditions inhinge on the 2 neighbors? 3 MR. NORTON: What's interesting is about this 4 property is, again, is that we used the gravel asphalt 5 millings that had been out there since I don't know how 6 long were out there and all the times I had been on the 7 site -- driving by there all the time there are no signs of 8 erosion, there are no signs of degradation of the site from 9 the past couple of years, if you will -- forget how long 10 I've been working on this property, looking at it 18 months 11 from way, way back early on. So the existing site itself, 12 if you will, is stabilized. Okay. 13 What's interesting about this is the facilities that 14 are out there -- if you look at how they would drain the 15 water is all draining to the north. Actually, the two 16 proposed facilities are picking up the proposed additional 17 area of gravel. So I would say based on that you're not -- 18 we're not increasing the impervious to a point where it 19 would degrade further, there's actually existing more out 20 there right now than what I would proposing. We don't have 21 a 50 percent increase in impervious or anything like that, 22 we're trying to use what's out there, what we know is 23 stabilized. 24 MR. GROSSMAN: You're saying that you're not 25 increasing the imperviousness of --</p>
<p style="text-align: right;">98</p> <p>1 MR. NORTON: I forget what the number is that we're 2 treating. We hit targets for stormwater runoff but we are 3 required to do as stormwater concept and stormwater design 4 is to show that we are treating water runoff to bring the 5 site into a -- what we call a woods in good condition. So 6 the runoff from a property should be that of the woods as 7 if was all off all forested area, if you will. 8 This property beyond the conditional use itself has 9 so many trees and so much grasses and the sheet flow would 10 be slowed down so much if it was to go beyond the 11 facilities that it would be absorbed most likely before it 12 even got to the owners the owners 30 acre property line. 13 MR. GROSSMAN: But I'm not sure you directly 14 answered my question. Increases in these unusually large 15 storms, is that accounted for in the environmental site 16 design plans that exist now? 17 MR. NORTON: If you're -- if we're looking at 18 treating a hundred year storm or if we're treating a five- 19 hundred year storm up where I lived and that's not -- 20 that's not accommodated for anywhere in the State of 21 Maryland's laws, I think that -- trying to think of how to 22 answer that. 23 MR. GROSSMAN: Let's take after this property. 24 Question out but in terms of this property, will it be able 25 to handle the unusual increase in a stormwater without</p>	<p style="text-align: right;">100</p> <p>1 MR. NORTON: We are not -- we are not -- we are not 2 at a 50 percent. So what's out there is actually -- 3 MR. GROSSMAN: Not 50 percent of what? I'm not sure 4 I'm understanding. 5 MR. NORTON: What's existing right now. So if you 6 look at the existing gravel that's out there right now is 7 actually much more substantial than -- it's not -- trying 8 to think of how to word this. We're not increasing it two 9 fold anything like that of what's out there. So we have 10 the stormwater facilities that are picking up what we are 11 actually proposing net increase of the property. Not sure 12 if I'm really explaining that well. 13 MR. GROSSMAN: I think I understand. You're saying 14 that -- 15 MR. NORTON: I'm trying to say they are stabilized 16 right now. 17 MR. GROSSMAN: Very stable and to the extent you're 18 increasing the imperviousness it's all being managed by the 19 facilities that you're providing. 20 MR. NORTON: By the proposed facilities that are 21 there right now. 22 MR. GROSSMAN: All right. 23 MR. NORTON: And actually quite a bit of it will 24 actually filter through so -- 25 MR. KLINE: But we did get the fie-hundred year</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

26 (101 to 104)

<p>101</p> <p>1 storm, did I understand the typography basically sloping 2 down or is it going north sloping down, so the sheet flow 3 would be to the north? 4 MR. NORTON: It would be to the north. 5 MR. KLINE: Are there any improvements on the tract 6 of land immediately north of us that would be affected by 7 that. 8 MR. NORTON: Not that would be affected by that, no. 9 MR. KLINE: How about explain to your examiner the 10 interesting history of the septic system. Because it's 11 unusual to see a condition like this when we can't expand 12 tell me -- get a chance to read the history of how we got 13 to this -- why this condition came up. Mr. Norton, start 14 with your initial visit to well and septic division of DPS 15 and what are our initial understanding was about how we 16 sized everything. 17 MR. NORTON: Yeah. I did not bring the nuts and 18 bolts numbers with me so I want to start by saying that the 19 -- 20 MR. KLINE: I'm yelling at you -- 21 MR. NORTON: I remember the lengths of the septic 22 field and everything. We went and met with Montgomery 23 County well and septic to go over the existing septic that 24 was out there right now because a lot of information was 25 scattered, couldn't be found, it was hand drawn, relatively</p>	<p>103</p> <p>1 water usage documentation that he has and it could be that 2 what they're doing right now is adequate for the 100 linear 3 feet and nothing further would have to be done to satisfy 4 well and septic for the ultimate amount of employees. 5 MR. KLINE: And the trigger to allow us to increase 6 to more employees in 137, whatever it is, is what? 7 MR. NORTON: What was that now? 8 MR. KLINE: What's going to be the permission for us 9 to go ahead and expand the number of employees? What's DPS 10 going to do for us? 11 MR. NORTON: Well, they're going to -- make sure I 12 understand -- they are going to make 13 us expand the septic drenches by 35 feet, the 135 feet, or 14 what have you, from 100. 15 MR. KLINE: We'll be able to add staff when we 16 demonstrate to DPS, well and septic, that we have addressed 17 that issue by one of the two solutions. 18 MR. NORTON: Yes, yes. One of the two that we've 19 already talked about. Water usage or expanding 20 MR. GROSSMAN: And in such an event if you wanted to 21 expand the capacity, if the conditional use is granted and 22 limited to 38 employees and you wanted to expand the 23 employee on site capacity you would then, armed with a 24 letter from DPS, write a request for an administrative 25 modification of the conditional use to change the number of</p>
<p>102</p> <p>1 old information out there. When we sat down with the well 2 and septic staff and we started looking through the number 3 and and we started looking through the numbers and we 4 started looking through the files, we found what looked 5 like was 135 linear feet of septic drench installed on the 6 property and when you look back through the numbers it 7 would actually support the ultimate use of what Mr. Bohrer 8 wants to do for the property which I believe is something 9 in the neighborhood of 400 gallons -- 10 MR. KLINE: Turned out to be a shorter drench. 11 MR. NORTON: Ended up after we provided the drawing 12 to them that documented all of this they said, Wait we 13 found this other drawing says they only installed 100 14 linear feet not the, I think, 135. Therefore we thought we 15 had ourselves covered and it came that we didn't. 16 MR. GROSSMAN: For the full 50. 17 MR. NORTON: For the full 50 and that's where that 18 came from. Everyone including DPS thought we had 19 everything and I guess when they looked at our formal 20 drawing they said, Wait a minute we found this other 21 drawing after our meeting, that's where that came. They 22 said that there's two ways we can remedy that, we can 23 actually file a maintenance and extend the septic field 35 24 feet or Mr. Bohrer could operate his use for a few months 25 or however long we talk with DPS and we can submit the</p>	<p>104</p> <p>1 permitted employees up to 50. Is that how you understand 2 it to be? 3 MR. KLINE: That would be one way to do it. I'd 4 probably prefer rather than go through the administered 5 modification just say you can increase to 50 when you 6 provide that to me and so it would be a condition to be 7 satisfied rather than go through a formal and modification 8 process. 9 (Audio failure) 10 MR. GROSSMAN: -- enforcement mechanism through the 11 department of permitting services would have to -- it would 12 conditional use would have to somehow allow it. I mean 13 maybe it could be done that way. 14 MR. KLINE: Well I'm assuming prepared to make sure 15 that the record reflects that we got it done. I just want 16 to kind of avoid having to go through an administrative 17 modification because I think we can ultimately get a letter 18 saying you are authorized now because you've either built 19 35 feet more or you've demonstrated our satisfaction that 20 your current operation is -- can be accommodated with what 21 you've got. 22 MR. GROSSMAN: I don't see why it couldn't be done 23 that way. 24 MR. KLINE: Okay. Mr. Bohrer doesn't want me to 25 come back here any sooner than he has to.</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

27 (105 to 108)

<p>105</p> <p>1 MR. GROSSMAN: I thought he was enjoying it.</p> <p>2 MR. KLINE: That's an interesting trip I've never</p> <p>3 had that happen before where we say you got to go get more</p> <p>4 septic field.</p> <p>5 I think what I'm going to do is try and get into</p> <p>6 some of the more technical stuff and do this. So on page</p> <p>7 13 there is a list of all the dimensional and developmental</p> <p>8 standards that are applicable of this use and this zone</p> <p>9 itself. Are all of the dimensional requirements and</p> <p>10 development standards satisfied by that are shown on this</p> <p>11 table 3 -- table 2, excuse me, on page 13 of this staff</p> <p>12 report.</p> <p>13 MR. NORTON: Yes.</p> <p>14 MR. GROSSMAN: With the exception presumably of what</p> <p>15 we talked about minimum.</p> <p>16 MR. KLINE: Yes. Thank you. That's right, yeah.</p> <p>17 MR. GROSSMAN: Which reads instead of 80 should read</p> <p>18 62, yeah.</p> <p>19 MR. KLINE: You did talk about landscaping and the</p> <p>20 staff report has three different criteria or standards</p> <p>21 related to landscaping canopy. Does the landscaping plan</p> <p>22 that you showed us satisfy all the requirements and the</p> <p>23 zoning ordinance within chapter 6 of the zoning ordinance?</p> <p>24 MR. NORTON: Yes. There was one comment in the</p> <p>25 staff report, I believe, it was ratio of ornamental trees</p>	<p>107</p> <p>1 MR. NORTON: Yes. I want to also note, we did put a</p> <p>2 bike rack on there. Forgot to bring that up. We do have</p> <p>3 to show a bike rack.</p> <p>4 MR. KLINE: I have to admit I forgot bikes were on</p> <p>5 this location, but go ahead. Explain where it is.</p> <p>6 MR. NORTON: Based on the square footage of the</p> <p>7 existing building, I believe the requirement is a half of a</p> <p>8 bike rack per 5,000 square feet. So one bike rack for this</p> <p>9 building and it is shown next to the ADA handicap space on</p> <p>10 the --</p> <p>11 MR. GROSSMAN: Okay.</p> <p>12 MR. NORTON: -- west side of the employee parking</p> <p>13 area, if you will. Meant to say that earlier.</p> <p>14 MR. GROSSMAN: One parking --</p> <p>15 MR. NORTON: Well, it's a rack. It says one in the</p> <p>16 staff report. It's an inverted use so you can actually put</p> <p>17 two bikes on it itself. But they called it out on the</p> <p>18 staff report for one bike.</p> <p>19 MR. GROSSMAN: I forget, does it have to be covered</p> <p>20 in some way?</p> <p>21 MR. NORTON: It does not.</p> <p>22 MR. KLINE: You need more bike for the interior</p> <p>23 storage and even staff recognize it in this location there</p> <p>24 won't be anybody really riding a bike to work.</p> <p>25 So Mr. Norton, going to the general standards for</p>
<p>106</p> <p>1 to canopy trees were required to have, I believe, it was</p> <p>2 two ornamental trees per every one canopy tree. I did not</p> <p>3 go back and recount our numbers. Staff said that that was</p> <p>4 -- they agreed with what we did because we provided so many</p> <p>5 of the Evergreen screening trees around the property</p> <p>6 itself. So I didn't go back and look at that to confirm or</p> <p>7 deny.</p> <p>8 MR. KLINE: With regard to the specific requirements</p> <p>9 for a landscape contractor, is the area exceed 2 acres in</p> <p>10 size?</p> <p>11 MR. NORTON: Yes.</p> <p>12 MR. KLINE: Are all buildings and parking areas set</p> <p>13 back 50 feet from the perimeter of the conditional use?</p> <p>14 MR. NORTON: Yes.</p> <p>15 MR. KLINE: Is the parking adequate to satisfy the</p> <p>16 ordinance requirements for the numbers employees and</p> <p>17 vehicles required?</p> <p>18 MR. NORTON: Yes, yes.</p> <p>19 MR. KLINE: Is there any retail sales, plant</p> <p>20 materials to be sold other than -- is there any retail</p> <p>21 operation?</p> <p>22 MR. NORTON: We did not provide -- to my knowledge.</p> <p>23 MR. KLINE: And will the property be served by</p> <p>24 public services, utility services? By that I mean water</p> <p>25 and septic?</p>	<p>108</p> <p>1 the grant and conditional use, based on your description of</p> <p>2 how this property is set up and the location, do you feel</p> <p>3 it can be operated and harmonious with the character of the</p> <p>4 surrounding neighborhood?</p> <p>5 MR. NORTON: I believe that it can. It's tucked</p> <p>6 back in the middle of a -- center, if you will, of the</p> <p>7 larger 30-and-a-half-acre tract. It is within a landscape</p> <p>8 nursery, it's adequately screened. I think if we back to</p> <p>9 what we talked about earlier with the staging of vehicles,</p> <p>10 if you look at how it operates, I believe it will be.</p> <p>11 MR. KLINE: You testified that you felt that public</p> <p>12 utility services will be adequate to accommodate the use of</p> <p>13 the property.</p> <p>14 MR. NORTON: Yes.</p> <p>15 MR. KLINE: Is the stormwater -- the Hearing</p> <p>16 Examiner kind of asked this, is the stormwater management</p> <p>17 system you described compatible with the principals and</p> <p>18 purposes of the PMA requirements?</p> <p>19 MR. NORTON: Yes. Technically it's not in the PMA</p> <p>20 but --</p> <p>21 MR. KLINE: And from your perspective as a site</p> <p>22 designer and understanding how this is all supposed to</p> <p>23 work, do you see anything about this that would have an</p> <p>24 adverse effect on safety, health, or welfare of residences,</p> <p>25 employees, or anybody visiting the site?</p>

Transcript of Administrative Hearing
Conducted on August 3, 2018

28 (109 to 112)

<p>109</p> <p>1 MR. NORTON: I do not believe that it would be a 2 safety issue for anyone. I believe that we tried to do the 3 best that we could in even use of some of our knowledge in 4 public design that we do with the separation of commercial 5 vehicles with the standard vehicles even from a safety 6 perspective. They come in and they're away from the 7 commercial everyday operation as well so -- 8 MR. KLINE: Mr. Grossman, with that last answer I 9 don't have anymore questions for Mr. Norton. 10 MR. GROSSMAN: I don't either. Thank you. So you 11 taught me a new word today. 12 MR. KLINE: You go look it up on Wikipedia probably. 13 No closing statement, I just go back to what I said in the 14 beginning, it's always just been kind of a perfect 15 symmetrical -- the nice thing about it is the working 16 relationship between -- what we're adding plus the people 17 who are there already, they can basically work with each 18 other to make this a very symbiotic relationship. With 19 that having been said, I guess we will just wait and see 20 what happens to our neighbors, what they want to do next. 21 MR. GROSSMAN: I presume we will want to admit the 22 Exhibits 1 through 50? 23 MR. KLINE: Please. 24 MR. GROSSMAN: And their subparts? 25 MR. KLINE: Yes, sir.</p>	<p>111</p> <p>1 are Mr. Emmet Tydings and Mr. Walter Romans. 2 Although I do believe that you have well documented 3 a response to the notice, concerns, but just an abundance 4 of caution and in an effort to make sure that the neighbors 5 are heard, we're going to leave that date there and we will 6 notify the neighbors, and of course a copy to you, of 7 whatever we send them. 8 But we've done so we have this date open but ask 9 them to review the transcript and to notify us no later 10 than the end of August whether or not they find it 11 necessary number one, to have this hearing or their letters 12 would suffice; number two, whether or not they will need to 13 have any of your witnesses here for cross examination 14 purposes or just need to make their statements in this 15 format. And then we'll proceed from there. If they 16 indicate that the need is limited or nonexistent then we 17 can eliminate the need for the second hearing. 18 The record will close, let's say, a week after that 19 date just so we have time to receive the transcript, I'll 20 order it -- if there is a second hearing it I'll order the 21 transcript so that will mean the record will close here on 22 September 14, 2018, absent any further developments. Does 23 that seem like a fair -- I think it's in everybody's 24 interest that the neighbors not feel like they have not 25 been excluded even though --</p>
<p>110</p> <p>1 MR. GROSSMAN: They are admitted. As well as any 2 additional exhibits that are filed -- 3 MR. KLINE: Okay. 4 MR. GROSSMAN: -- as a result. 5 MR. KLINE: And what I will do is I will provide you 6 with electronic copies of all the materials that have gone 7 into the records today. 8 MR. GROSSMAN: Okay. Did you want to say something. 9 MR. NORTON: I want to apologize. We brought the 10 renderings as exhibits. I don't think we introduced them. 11 I just want to make sure -- 12 MR. KLINE: Did you want pretty pictures -- 13 MR. GROSSMAN: Depends on how pretty they are. But 14 no, it's not necessary for me I think I have -- 15 MR. KLINE: We'll hold on to them. They may 16 actually be more impressive if we do have to have -- 17 MR. GROSSMAN: And so what I would plan to do, I'm 18 going to announce now so I won't have to issue a separate 19 notice, I'll announce at this public hearing that we're 20 going to schedule -- we're scheduling a follow-up hearing 21 for September 7, that's a Friday, September 7, 2018, at 22 9:30 a.m. and for the counsel office building and -- but it 23 will be a follow up for the two neighbors who notified us 24 just yesterday, essentially, and the day before that they 25 had some issues and raised some notice, concerns, and those</p>	<p>112</p> <p>1 MR. KLINE: Could we have one understanding and that 2 is that this would be to accommodate the expression the two 3 people who have called in and not anybody else. I'd rather 4 not get a letter -- 5 MR. GROSSMAN: Yes. 6 MR. KLINE: And I say that in this regard. I got a 7 phone call yesterday from a Jason, property owner, in 8 support of the application and I said don't write a letter 9 unless I think you need it. I really don't want to get 10 into that if we can avoid that. So if it's just the two 11 people, just leave it at that. 12 MR. GROSSMAN: Yes, I think that's fair. The 13 additional hearing date is really intended to accommodate 14 these two neighbors. There was -- the public notice 15 requirements have been met, we sent out the notice as 16 required by the statute, and we sent out the amendment 17 notice so mention this hearing date. So I think that's 18 been more than adequate notice to the community and if they 19 wish to appear -- anybody else wanted to say anything they 20 should have done so by today at this hearing or in advance 21 of it. So I feel that this added date is for these two 22 particular neighbors. 23 But being a lawyer I'll always add the caveat that I 24 can change my mind, but I'll let you know that you will not 25 be blindsided but that will be my feeling that's a</p>


Transcript of Administrative Hearing
Conducted on August 3, 2018

29 (113 to 116)

113

1 reasonable request.
2 MR. KLINE: Very good. Thank you, sir.
3 MR. GROSSMAN: Okay. Is there anything else that we
4 need to handle today? All right. Then we are adjourned.
5 (Off the record.)
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114

1 CERTIFICATE OF TRANSCRIBER
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10 outcome.
11
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15 ERIN RAMSEY
16 AUGUST 15, 2018
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