

From: [Sokoni, Khandikile Mvunga](#)
To: amy@trustedestatepartners.com
Cc: [Leslie Powell](#); [Harris, Robert](#); [Johnson, Nana](#); [Aurora Munyan](#); [Jack O'Hara](#); [Ed Steere](#); [Kate Kubit](#); [Kevin A. Foster ASLA, AICP](#); david.samba@kimley-horn.com; [kbennett](#); [ARK.LIMITED](#); [Ishan Patel](#)
Subject: RE: OZAH Case No. CU 25-02 - March 6th Hearing
Date: Tuesday, March 4, 2025 12:35:00 PM
Attachments: [image002.png](#)
[image003.png](#)

Ms. Presely,

The testimony you have described will be allowed. To reiterate what I stated in my email yesterday after the Applicant completes presenting its case "...the Opposition will present its case (subject to cross examination)". You can testify to anything within your knowledge that is relevant to your case.

Regards,
Khandikile

From: Amy Presley <amy@trustedestatepartners.com>
Sent: Tuesday, March 4, 2025 11:48 AM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>
Cc: Leslie Powell <lpowell@powell-llc.com>; Harris, Robert <rrharris@lerchearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; Kate Kubit <kkubit@elmstreetdev.com>; Kevin A. Foster ASLA, AICP <kfoster@glwpa.com>; david.samba@kimley-horn.com; kbennett@glwpa.com; [ARK.LIMITED](#) <ARK.LIMITED@OUTLOOK.COM>; ishanpatel@arkvc.net
Subject: RE: OZAH Case No. CU 25-02 - March 6th Hearing

[EXTERNAL EMAIL]

Hello Ms. Sokoni.

Thank you for your clarification. Based on your decision and justification, I want to advise that my testimony will include specific information relative to commitments/covenants/requirements contained in the Settlement Agreement (Mediated and Arbitrated under Judge Barbara Kerr How) resulting in the Compliance Program. Ms. Kubit maintains that Weiss must have a gas station, and I maintain that the Settlement Agreement prohibits a gas station in the area the applicant has proposed. As with Ms. Kubit being a party to the Contract with Weiss, I am a party to the Settlement Agreement. While I am prohibited from submitting the entire Settlement Agreement, based on terms contained within the Agreement itself, I can testify to certain issues that are relevant to this case.

Please confirm that my testimony on this matter will be allowed.

Kind regards,

Amy

Amy Presley, REALTOR®
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---- On Tue, 04 Mar 2025 10:20:23 -0500 **Sokoni, Khandikile Mvunga**
<Khandikile.Sokoni@montgomerycountymd.gov> wrote ---

Good Morning Ms. Powell,

Your comments are noted and appreciated.

1. It is relevant information to know why a developer is proposing the project they are proposing (for instance why a grocery store needs a gas station). As I mentioned at the hearing that is consistent with OZAH practice. In excluding Ms. Kubit's testimony on this I expressed concern about it being hearsay. However, as noted in my email yesterday upon reviewing OZAH Rules of Procedure, the Hearing Examiner has discretion to allow even hearsay testimony and give it the appropriate weight (if any).
2. In conference on 2/18/2025 in reviewing the subpoena request, Mr. Harris explained (and I recited in the 2/19/25 Order) that there is no need to produce contractual documents that contain

privileged business information when he has a witness who will testify under oath as to why developer's project needs a gas station.

Under these circumstances if Applicant opts to present the testimony it will be allowed. What weight, if any, will be attached to the testimony, will be addressed at a later stage (in the Decision).

Sincerely,



Khandikile Mvunga Sokoni
Hearing Examiner
Office of Zoning & Administrative Hearings
Phone: 240-777-6664
100 Maryland Ave, Rockville MD 20850

From: Leslie Powell <lpowell@powell-llc.com>
Sent: Tuesday, March 4, 2025 10:00 AM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; amy@trustedestatepartners.com
Cc: Harris, Robert <rrharris@lercheearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; Kate Kubit <kkubit@elmstreetdev.com>; Kevin A. Foster ASLA, AICP <kfoster@glwpa.com>; david.samba@kimley-horn.com; kbennett <kbennett@glwpa.com>; ARK.LIMITED <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>; Aurora Munyan <amunyan@powell-llc.com>
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[EXTERNAL EMAIL]

Thank you, Ms. Sokoni.

I am aware. I do, however, believe that objections with respect to relevance are appropriate with respect to the issues at hand. I appreciate your willingness to thoroughly consider this matter.

Best regards,
Leslie

Leslie A. Powell
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From: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>
Sent: Tuesday, March 4, 2025 9:45 AM
To: amy@trustedestatepartners.com
Cc: Leslie Powell <lpowell@powell-llc.com>; Harris, Robert <rrharris@lerchearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; Kate Kubit <kkubit@elmstreetdev.com>; Kevin A. Foster ASLA, AICP <kfoster@glwpa.com>; david.samba@kimley-horn.com; kbennett <kbennett@glwpa.com>; ARK.LIMITED <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>
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Good Morning,

This is an administrative proceeding and the Hearing Examiner has discretion to (i.e. *may*) admit evidence. At the appropriate time when rendering a decision, the Hearing Examiner will decide what weight if any to attach to the evidence. Please note that strict adherence to the Maryland Rules of Evidence (unless specifically prescribed) do not govern administrative proceedings such as this one.

Regards,
Khandikile

From: Amy Presley <amy@trustedestatepartners.com>
Sent: Monday, March 3, 2025 4:47 PM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>
Cc: Leslie Powell <lpowell@powell-llc.com>; Harris, Robert <rrharris@lerchearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; Kate Kubit <kkubit@elmstreetdev.com>; Kevin A. Foster ASLA, AICP <kfoster@glwpa.com>; david.samba@kimley-horn.com; kbennett <kbennett@glwpa.com>; ARK.LIMITED <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>
Subject: Re: OZAH Case No. CU 25-02 - March 6th Hearing

[EXTERNAL EMAIL]

Hello Ms. Sokoni.

I decided I needed to respond with more than "legal ignorance" and, so, I did some research on Article IV. Relevance and Its Limits, Rule 401.

Can you please advise specifically how the reversal of your decision on the prior objection by Ms. Powell is in keeping with either or both (a) and (b) as the Rule states:

"ARTICLE IV. RELEVANCE AND ITS LIMITS Rule 401. Test for Relevant Evidence Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. (Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1931; Apr. 26, 2011, eff. Dec. 1, 2011.)"

Thank you very much,
Amy

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---- On Mon, 03 Mar 2025 16:36:19 -0500 **Amy Presley**
<amy@trustedestatepartners.com> wrote ---

Hello Ms. Sokoni.

I am confused by your reversal of the objection ruling. My understanding is that evidence may be heard as having "probative value" if:

- it makes a fact more or less likely to be true;
- it has enough weight to convince a decision maker;
- it is relevant to the case.

and, conversely, that evidence:

- may be excluded if its probative value is outweighed by the prejudice it may cause.

Not being an attorney, but as a party of record who will experience potential detrimental impact based on your decision, I would like clarification. Specifically, since you are evaluating a specific "Conditional Use" - a gas station - and have a definitive set of legal criteria against which you must evaluate the Conditional Use itself (and not its supporting or adjunct function to other uses), why would you allow testimony that is not relevant to the use? Certain testimony on this point has already been heard. I submit that allowing further testimony relative to a grocery store's "need"/desire for a gas station is indeed prejudicial. In fact, it plays straight into the narrative of the developer and the fear being instilled in an entire community that they "will not get a grocery store" without a gas station.

With all due respect, I would appreciate further clarification on your reversal decision with respect to "relevance."

Kind regards,
Amy

PS I had mentioned that I might call Mark Elrich as a witness. I have decided that it will not be necessary in view of all the other existing evidence as to the Compliance Program, etc.

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---- On Mon, 03 Mar 2025 15:47:59 -0500 **Sokoni, Khandikile Mvunga** <Khandikile.Sokoni@montgomerycountymd.gov> wrote ---

Good Afternoon,

Ahead of the hearing this Thursday please note the following:

1. **Order of Hearing:** The Applicant will be completing its case in chief (subject to cross examination), and then the Opposition will present its case (subject to cross examination). Let us please plan for a full day hearing, starting at 9:30 AM till 4:30 PM with a break for lunch from 12:00 – 1:00 PM.
2. **Testimony:** At the last hearing on February 20, 2025, I sustained an objection by Ms. Powell to keep out the testimony of Applicant's witness Ms. Kubit regarding why a gas station was an integral part of the shopping center development. In

reviewing the OZAH Rules of Procedure (Rule 4.4) and my Order dated February 19, 2025 (Exhibit 65), I wish to reverse the ruling on that objection. Ms. Kubit can return to the stand and testify on that issue if the Applicant wishes. Rule 4.4 states:

"4.4 Rules of Evidence.

*The Hearing Examiner may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, **including hearsay evidence that appears to be reliable in nature.** The Hearing Examiner must follow the rules of privilege recognized by law, and may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence."*

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-63841

Sincerely,



Khandikile Mvunga Sokoni
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For more helpful Cybersecurity Resources, visit:
<https://www.montgomerycountymd.gov/cybersecurity>

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