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Transcript of Hearing

Date: December 11, 2025
Case: Torcato Romano (CU25-06)

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Transcript of Hearing
Conducted on December 11, 2025

1 (1 to 4)

1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS 2 FOR MONTGOMERY COUNTY 3 -----x 4 IN THE MATTER OF : 5 TORCATO ROMANO, : Case No.: CU25-06 6 Other. : 7 -----x 8 9 HEARING 10 BEFORE THE HONORABLE ANDREA LEWINTER 11 Rockville, Maryland 12 Thursday, December 11, 2025 13 9:30 a.m. 14 15 16 17 18 19 20 21 22 23 Job No.: 611547 24 Pages: 1 - 92 25 Transcribed by: Natasia Rana	1 2 3 ON BEHALF OF THE OTHER: 4 MICHELE ROSENFELD, ESQUIRE 5 THE LAW OFFICE OF MICHELE ROSENFELD LLC 6 1 Research Court 7 Suite 450 8 Rockville, Maryland 20850 9 (301) 204-0913 10 michele@marylandpropertylaw.com 11 12 ALSO PRESENT: 13 ANDREA LEWINTER, Hearing Examiner 14 ANTHONY ROMANO, Agent for Applicant 15 DOUG TILLEY, Witness 16 MIKE NORTON, Witness, via videoconference 17 NICK DRIBAN, Witness, via videoconference 18 ANDREW ROUFF, Technician 19 20 21 22 23 24 25	3
1	Hearing, held at the location of: 2 3 MONTGOMERY COUNTY 4 OFFICE OF ZONING AND ADMINISTRATIVE 5 HEARINGS 6 100 Maryland Avenue 7 Rockville, Maryland 20850 8 9 10 Pursuant to agreement, before Lee 11 Utterback-Pair, Notary Public in and for the State 12 of Maryland. 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	4

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2 (5 to 8)

EXHIBITS CONTINUED			5	PROCEEDINGS			7
HEARING EXHIBIT	DESCRIPTION	PAGE		HEARING EXAMINER:	This is a public hearing in the matter of OZAH, Case No. CU 2025-06, the application of Torcato Romano, landscape contractor, to permit the conditional use of landscape contractor at 1430 Comus Road, Clarksburg, Maryland in the Agricultural Reserve or AR zone. My name is Andrea LeWinter, and I am serving as the hearing examiner today. It is my role to listen, take evidence, and write a decision regarding this case.		
3 Exhibit 34	Revised Transportation Adequacy Form	49		12	Ms. Rosenfeld, if you could identify yourself?		
5 Exhibit 35	Revised Existing Conditions Plan	59		14	MS. ROSENFELD: Certainly. Michele Rosenfeld with the law office of Michele Rosenfeld LLC, and I'm here on behalf of the applicant.		
7 Exhibit 38	Revised Proposed Conditions Plan	16		17	HEARING EXAMINER: Okay. I don't see anyone who's not with you in the room. Am I incorrect in any way?		
9 Exhibit 39	Revised Preliminary Forest Conservation Plans	32		20	MS. ROSENFELD: You are correct. With me is the applicant representative, Anthony Romano; our civil engineer, Doug Tilley. And I believe, on the line, we have Nick Driban, who is our transportation engineer, and if he's not -- it's Mr. Norton?		
11 Exhibit 39A	L1.1	34		25	TECHNICIAN: He just joined.		
12 Exhibit 39B	L1.2	33					
13 Exhibit 39C	L1.3	33		1	MS. ROSENFELD: Okay. And Mr. Norton is our forest conservation expert.		8
14 Exhibit 39D	L1.4	33		3	HEARING EXAMINER: Okay. So seeing no one in opposition, I will continue on. I saw the affidavit of posting in the record. I believe it is Exhibit 27.		
15 Exhibit 39E	L1.5	33		7	(Exhibit 27, previously marked, was retained by the court.)		
16 Exhibit 40	Revised Equipment Storage Exhibit	61		9	MS. ROSENFELD: And I have the hard copy here.		
18 Exhibit 41	Revised Site Distance Evaluation	60		11	HEARING EXAMINER: Okay. Great.		
20 Exhibit 42	Revised Circulation Plan	65		12	MS. ROSENFELD: Do you want me to submit that?		
21				14	HEARING EXAMINER: Yeah. I'll give it to our office when we're done. Thank you.		
22				16	Okay. Now, I appreciate, Ms. Rosenfeld, that you are aware of all this. But just for the record, I'm going to just go through our little spiel.		
23				20	These proceedings are informal with certain formalities. Not that you guys will, because there shouldn't be anybody in opposition, but please do not interrupt while someone is speaking unless you have an objection.		
24				25	This is because the court reporter has		
25 (continued on next page)							

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3 (9 to 12)

1 difficulty understanding when people -- what people
2 are saying when there is crosstalk. This is
3 particularly important in the hybrid format we will
4 use today where some people will be physically
5 present, and some witnesses will be online.

6 This session is being transcribed and
7 recording -- recorded. The recording is used only
8 as a backup for the stenographer. What you say will
9 be under oath and recorded. You may be asked
10 questions about your testimony, if not by
11 Ms. Rosenfeld, then by me.

12 The proceedings will move in the following
13 order. I will address any preliminary motions
14 first.

15 Then, if you would like to make an opening
16 statement, Ms. Rosenfeld, you may. Then I will
17 allow you to present your case in chief. And if
18 anybody does appear before you conclude that, they
19 would have the opportunity to cross-examine your
20 witnesses.

21 Then again, if anybody does appear in
22 opposition, then they would have an opportunity to
23 present their case in chief. If there's any
24 presentation by any interested parties who may
25 appear, they would then go. And then, if you need a

1 rebuttal, it would be your opportunity for that.
2 And then we would have closing statements.

3 Approval of the petition is ultimately
4 based on the planning -- on the criteria set forth
5 in the zoning ordinance, which is included in the
6 planning staff report. And please address all
7 testimony to that criteria.

8 Is there -- are there any preliminary
9 motions or issues that we need to address?

10 MS. ROSENFELD: None.

11 HEARING EXAMINER: Okay. Given that, did

12 you want to make any kind of opening statement?

13 MS. ROSENFELD: Very briefly, just to let
14 you know that this application has been filed. We
15 have submitted all of the necessary documentary
16 information in support of the application. The
17 planning board has reviewed and recommended approval
18 of this application, as did planning staff. And we
19 think that all of the evidence in the record is
20 unrefuted.

21 There has been no opposition to date to
22 the evidence that we've entered into the record.
23 And for purposes of today, I would like to actually
24 just -- we believe that the application is ready
25 for approval. With that, what I'd like to suggest

9
1 is that I'd like to take our witnesses a little bit
2 out of order from the usual order.
3 I would like to bring Mr. Tilley, the
4 civil engineer, up just to generally orient you to
5 the site, then have Mr. Romano testify as to the
6 operations and the proposed conditions of approval.
7 Then have Mr. Norton talk about the forest
8 conservation plan, which has been approved by the
9 planning board, and Mr. Driban talk about the
10 transportation adequacy.

11 And then bring Mr. Tilley back up to go
12 through the zoning ordinance standards, just the
13 general development standards and the standards
14 governing the conditional use, only because his
15 testimony will be somewhat more lengthy. And we can
16 let the other witnesses be released.

17 HEARING EXAMINER: That makes sense to me,
18 and thank you for the roadmap to that. It's your
19 case to present, so I don't have any problem with
20 that.

21 I did want to say, for the benefit of the
22 witnesses -- I don't think Mr. Norton or Mr. Driban
23 can actually see, but I'm going to be taking notes.
24 I know we have a stenographer, but it really helps
25 to orient me.

10
12
1 So if I do stop you in your testimony just
2 so I can catch up, I appreciate the occasional
3 minute here or there. And if anybody needs any kind
4 of comfort break, just let us know. Let me know,
5 and we can certainly go off the record for a minute
6 or two.

7 Allright. Given that, Ms. Rosenfeld, if
8 you wanted to call Mr. Tilley up.

9 MS. ROSENFELD: Yes. Mr. Tilley?

10 And I would like to start with Exhibit 16,
11 the neighborhood map, please.

12 (Exhibit 16, previously marked, was
13 retained by the court.)

14 MS. ROSENFELD: Right here's fine.

15 HEARING EXAMINER: Yeah. And just make
16 sure, when you're speaking, you turn your microphone
17 on. You can just hit the little button when you're
18 ready.

19 (The witness was sworn.)

20 MS. ROSENFELD: Yes. Mr. Tilley, I'd like
21 to -- Mr. Tilley --

22 HEARING EXAMINER: I'm so sorry. Did you
23 need to qualify him as an expert?

24 MS. ROSENFELD: Yes, I do. And Mr. --

25 HEARING EXAMINER: Unless -- have you

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4 (13 to 16)

	13	15
1 appeared before this board before?		1 (Exhibit 38, previously marked, was
2 MR. TILLEY: Yes, I have.		2 retained by the court.)
3 HEARING EXAMINER: Okay. And have you		3 A Yes, I am.
4 been qualified as an expert before?		4 Q And did you prepare this exhibit?
5 MR. TILLEY: Yes, I have.		5 A Yes, I did.
6 MS. ROSENFELD: And Mr. Tilley's CV is in		6 Q And does it generally show the overall
7 the record as well.		7 layout of the proposed conditional use once
8 HEARING EXAMINER: I saw that.		8 constructed?
9 MS. ROSENFELD: Yes.		9 A It does.
10 HEARING EXAMINER: So given that		10 Q And could you just give the hearing
11 Mr. Tilley has been previously qualified as an		11 examiner a general overview of what the site layout
12 expert by OZAH, and we have his resume -- I reviewed		12 includes?
13 his resume, he seems extremely qualified to give		13 A Certainly. So the proposed site layout
14 this type of testimony. Then we can move forward.		14 has three separate individual buildings: a
15 DOUG TILLEY,		15 warehouse building, a garage building, and an office
16 having first been duly sworn, testified as follows:		16 building that are sort of placed in a semi-
17 EXAMINATION		17 triangular shape. They surround a proposed parking
18 BY MS. ROSENFELD:		18 area, an asphalt -- a proposed asphalt parking area
19 Q Mr. Tilley, I first would like to draw		19 with a small asphalt protrusion to page left, which
20 your attention to what's listed as Exhibit 16 in the		20 would be to the west, heading towards the office
21 record. Are you familiar with this exhibit?		21 building.
22 A Yes, I am.		22 To the northwest of the parking area,
23 Q And did you prepare this exhibit?		23 there is a lighter shade that is the proposed septic
24 A Yes, I did.		24 reserve area with -- for the new structures
25 Q Would you please just give a brief		25 themselves. There is a proposed stormwater
	14	16
1 overview of what this exhibit represents?		1 management facility to the immediate, I would say,
2 A So this exhibit represents a neighborhood		2 northeast of the parking area between the garage and
3 map of the project site that we are dealing with		3 the warehouse building.
4 today. You can see the site is outlined in blue.		4 And the circular shape that you see on
5 It's a roughly triangular-shaped piece of		5 page right, which would be to the east of the main
6 property, generally at the intersection of Comus		6 parking area, is the proposed well location. The
7 Road and I-270 in the Clarksburg area. The areas		7 circle is a 100-foot well radius.
8 outlined in red is the limits of the surrounding		8 Adjacent to that, there -- if you look
9 neighborhood as delineated, which identifies the		9 page south or -- which would also be south, you can
10 additional properties that would be -- we have		10 see sort of a curvilinear, darkened hatch that sort
11 identified as the surrounding neighborhood to the		11 of heads down towards where Comus Road is located.
12 subject property at hand.		12 That is the main site entrance -- proposed site
13 Q And could you just generally describe the		13 entrance to the facility, which is immediately
14 road network surrounding the property?		14 across the street from the existing site entrance to
15 A The property is -- abuts two separate		15 the facility to the south.
16 individual roads. The first is I-270. The property		16 MS. ROSENFELD: Ms. Hearing Examiner,
17 does not have immediate access to I-270. It simply		17 would it be helpful if this exhibit were enlarged,
18 abuts it.		18 and are there any elements that you would like
19 The property access is from Comus Road,		19 Mr. Tilley to show you on the screen? Would it be
20 which is a Montgomery County-maintained road. There		20 helpful for him to walk through any of those?
21 is immediate access from Comus Road. Comus Road		21 HEARING EXAMINER: No, I don't think so
22 actually flies I-270, so it goes over top of it.		22 necessarily.
23 Q Thank you. And I would like to draw your		23 But you're proposing a new entrance area
24 attention to Exhibit 38 in the record, please. Are		24 too. Is that what you're saying?
25 you familiar with Exhibit 38?		25 MR. TILLEY: That is correct. There's no

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5 (17 to 20)

1 existing curb cut or driveway entrance to the site
2 as it stands right now.
3 HEARING EXAMINER: So how would somebody
4 access it right now?
5 MR. TILLEY: You basically have to pull
6 off to the side of the road and walk in that way.
7 HEARING EXAMINER: I got you. Okay.
8 MS. ROSENFELD: And this might help
9 clarify.
10 Q Mr. Taylor, are there any improvements
11 currently on the property?
12 A **There are not.**
13 MS. ROSENFELD: Okay. That -- Mr. Tilley,
14 those are all the questions that I have for you at
15 the moment.
16 I would like to call Mr. Romano, please.
17 HEARING EXAMINER: And you're not
18 anticipating -- Mr. Romano is here in his capacity
19 as the owner and the operator, not as an expert,
20 correct?
21 MS. ROSENFELD: Correct.
22 ANTHONY ROMANO,
23 having first been duly sworn, testified as follows:
24 EXAMINATION
25 BY MS. ROSENFELD:

18

1 Q Mr. Romano, you understand that the
2 application pending right now is for landscape
3 contractor conditional use; is that correct?
4 A **That is correct.**
5 Q Okay. And I'm going to read into the
6 record what the definition of a landscape contractor
7 conditional use is. It's the business of designing,
8 installing, planting, or maintaining lawns, gardens,
9 hardscapes, water features, outdoor structures,
10 decorative features, stormwater and drainage
11 features, or other activities intended to enhance
12 the appearance or usefulness of outdoor areas.
13 Landscape contractor also means providing
14 snow removal services with vehicles, equipment, and
15 supplies that are stored, parked, serviced, or
16 loaded at the business location. Landscape
17 contractor includes tree installation, maintenance,
18 or removal. Landscape contractor does not include
19 lawn maintenance service.
20 Would you please explain to the hearing
21 examiner what activities you intend to carry out in
22 connection with the proposed use?
23 A **We intend to carry out landscaping**
24 **operations, snow removal, tree maintenance, and**
25 **removal activities as described under the landscape**

19

1 **contractor use. We do not -- it will not include**
2 **lawn maintenance services.**
3 Q Thank you. And would you please explain
4 the proposed hours of operation at the property?
5 A **The hours of the property would be about**
6 **5:30 a.m. to 9:00 p.m., Monday through Saturday.**
7 **Generally, they -- we start about an hour before**
8 **sunrise and end an hour after dusk. It changes**
9 **seasonally. Most of the activity is in the morning.**
10 **And then again, in the afternoon, where**
11 **they're loading trucks, employees arrive in the**
12 **morning, load landscaping equipment supplies like**
13 **mulch onto the trucks. Then they go to the**
14 **worksites. They work all day. They come back in**
15 **the afternoon, unload, and load again for the next**
16 **day.**
17 **There'll be very few trips back from the**
18 **operation side of things. They just leave in the**
19 **morning and come back in the end of the day.**
20 Q And when you said that the hours of
21 operation would adjust seasonally, does that mean,
22 for example, that your hours might be longer in the
23 summer and shorter in the winter?
24 A **Typically, it's longer in the summer,**
25 **shorter in the winter, except for snow removal,**

20

1 **where it could be sporadic.**
2 Q And for the typical hours of operation,
3 even in the summer, would the hours of operation be
4 limited between the 5:30 a.m. and 9:00 p.m. hours
5 identified?
6 A **Yes.**
7 Q Okay. How many employees will work at the
8 property?
9 A **There will be a maximum of 25 employees.**
10 **The makeup is going to be three office staff, a**
11 **mechanic, and up to six landscape crews where three**
12 **or four people are on each crew. Four employees**
13 **would be on-site all the time. They will be, you**
14 **know, carrying out management duties, scheduling,**
15 **other administrative work. There'll be an on-site**
16 **mechanic where he's going to be repairing and**
17 **maintaining the crew equipment.**
18 Q And will there be a maximum of 21
19 landscapers?
20 A **Yes, there will be a maximum of 21**
21 **landscapers. Correct.**
22 Q Okay. And would you please just describe
23 generally the full employee work schedule?
24 A **The crews arrive about 5:30 to the**
25 **property. They typically arrive in their own**

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6 (21 to 24)

1 individual vehicles. Then they get into the company
2 vehicles, one for -- one vehicle for each three or
3 four people. Then the crews arrive back about 2:30
4 or so in the company vehicles. Then they depart --
5 you know, they unload the stuff, and they depart
6 about 3:30.

7 The mechanic arrives about 8:00 a.m., and
8 then they depart about 5:00 p.m. And then the
9 office staff usually arrives at 9:00 a.m., and they
10 depart about 5:00 p.m.

11 Q And you had mentioned that there also
12 would be snow removal operations in connection with
13 this use. Would those operations occur outside of
14 the hours that you just described?

15 A Yes. Snow removal typically occurs
16 unexpectedly, so the hours will be extended in the
17 nighttime. They'll arrive to the site, get the snow
18 removal trucks, and then they leave the property to
19 carry out the -- it's very unpredictable because
20 it's weather driven. But it's typically -- it's
21 only during the winter months that the -- our hours
22 of operation will kind of vary dramatically.

23 Q And would that only include the employees
24 who are directly handling the snow removal
25 equipment?

1 A Yes.

2 Q Okay. So there wouldn't be the
3 administrative staff or the maintenance crew at that
4 time.

5 A There won't be -- no. There won't be --
6 that's not necessary, but they just need access to
7 the vehicles.

8 Q If they're outside of the regular hours.

9 A Yes.

10 Q Okay. And could you generally describe
11 the kinds of equipment and vehicles that will be on-
12 site and where they will be stored?

13 A Vehicles will be stored outside, outdoors
14 in the garages. And the equipment will typically be
15 landscaper-type equipment, which includes several
16 dump trucks, four medium-sized trucks, utility and
17 carry-out -- carry-on trailers, Bobcats, wood
18 chippers. It will also include equipment, including
19 lawn mowers, tractors, snow removal equipment, which
20 will typically be stored outdoors.

21 Q Thank you.

22 MS. ROSENFIELD: And, Ms. Hearing Examiner,
23 I just would like to note for the record that these
24 operational parameters are generally described in
25 Exhibit 32, which is an amended statement of

21

1 justification and statement of operations dated July
2 7.
3 (Exhibit 32, previously marked, was
4 retained by the court.)

5 Q Mr. Romano, in that Exhibit 32 --
6 MS. ROSENFIELD: If we could pull that up,
7 please.

8 Q On Page 9 of that exhibit under Section 3,
9 there is a section called, Proposed Conditions of
10 Approval. Are you familiar with those proposed
11 conditions?

12 A Yes.

13 Q And are you -- do you accept those
14 proposed conditions of approval as governing the
15 operations of this use? Should it be approved?

16 A Yes, we do.

17 Q Thank you.

18 MS. ROSENFIELD: Ms. Hearing Examiner, I
19 have no more questions for this witness. You may.

20 HEARING EXAMINER: Yeah, just a few. You
21 described -- I'm sorry. Sorry. I just have a few
22 questions.

23 You described -- sorry, let me just back
24 up -- that the crews are usually of three to four
25 people, but the maximum that you're going to have is

23

22

1 21. But there may be up to six crews. So could you
2 potentially have up to 24 if you had four crews of
3 six, or is it just 21 kind of configured in
4 different ways?

5 MR. ROMANO: Twenty-one, kind of
6 configured in different ways. The crews vary
7 between three and four people, but it'll be a
8 maximum of 21.

9 HEARING EXAMINER: Okay. And you feel
10 comfortable with that?

11 MR. ROMANO: Yes.

12 HEARING EXAMINER: Okay. You talked -- I
13 know your hours are going to fluctuate, and I'm
14 presuming you were providing me with kind of the
15 typical schedule. But you did want operations until
16 9:00 p.m.

17 If -- like in the summer, would they
18 potentially have a second shift if they're coming
19 back at 2:30? Like it seemed like everybody was
20 leaving well before 9:00, so I didn't know if that
21 was just to cover winter or snow stuff or if there
22 is a different setup in the summer.

23 MR. ROMANO: No. They typically work in
24 the morning from 5:30 to 2:30. There are situations
25 where equipment breaks down, and the mechanic needs

24

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7 (25 to 28)

1 to stay late to repair it. So that's why we wanted
2 the 9:00 p.m. to kind of cover any kind of unknown
3 kind of variables that will happen. You know,
4 they'll stay, and they'll sharpen the blades and
5 stuff like that.

6 HEARING EXAMINER: Okay. But on a typical
7 day, most people will be gone by 5:00; the majority
8 will be gone by 3:30.

9 MR. ROMANO: Yes.

10 HEARING EXAMINER: Okay. And in terms of
11 snow removal, again, unpredictable. Are there times
12 that trucks are loading up in the early hours of the
13 morning to be out on the roads right at, you know,
14 5:00, before rush hour?

15 MR. ROMANO: Yes. In my experience, it's
16 always at night; it's always on the weekend; it's
17 always horrible timing. It's very much variable.
18 You never know. You typically have to work -- when
19 you do snow removal, you have to do it before people
20 arrive at 7:00 o'clock. So it tends to be at night
21 and very, very early.

22 HEARING EXAMINER: So the hours of
23 operations would -- the snow removal portion would
24 be exempted from that 9:00 p.m. deadline you would
25 want people. I just want to be clear about that.

1 MR. ROMANO: Yes, it would be -- yes.
2 HEARING EXAMINER: So that -- it would be
3 rare, but it could be kind of a 24/7 type of thing.
4 MR. ROMANO: Correct, yes.
5 HEARING EXAMINER: Okay. And did you have
6 a total number of vehicles on-site? You might have
7 given it to me, and I missed it.

8 MS. ROSENFIELD: Ms. Hearing Examiner,
9 there are very specific -- there's very specific
10 information about the types of vehicles and how they
11 will be parked, and Mr. Tilley will cover that.
12 HEARING EXAMINER: Okay. Great. Trying
13 to think if I had any more questions. I just wanted
14 to make sure to get everything in the record. I do
15 appreciate that the conditions described in this
16 state of operations was pretty thorough.

17 I think that's it. Thank you.

18 MS. ROSENFIELD: Thank you.

19 MR. ROMANO: Thank you.

20 MS. ROSENFIELD: I next would like to call
21 Mr. Mike Norton.

22 HEARING EXAMINER: Hi. Mr. Norton, can
23 you hear us all right?

24 MR. NORTON: We're good.

25 HEARING EXAMINER: Oh, we have a citizen

25

1 -- hold on just one second, Mr. Norton.
2 TECHNICIAN: It can take a minute.
3 HEARING EXAMINER: Okay. Sorry,
4 Mr. Norton. It looks like somebody joined our Zoom.
5 We're just trying to figure out who it is.

6 MR. NORTON: Will's iPhone.

7 HEARING EXAMINER: And what is -- because
8 we had -- who is Will's iPhone? That just --
9 besides the citizen one? Do we know? Do you know?
10 No?

11 Whoever's on Will's iPhone, could you
12 unmute?

13 MR. NORTON: Profile comes up saying that
14 participant's profile card -- because this person is
15 either not logged in or not in our organization.
16 But --

17 HEARING EXAMINER: Because we also have
18 somebody supposedly joining.

19 TECHNICIAN: They're taking forever.

20 HEARING EXAMINER: Yeah, they're really
21 taking forever. Oh, now Will's iPhone is gone.

22 Okay.

23 TECHNICIAN: Now it's just us.

24 HEARING EXAMINER: Now it's just us.

25 Okay. I don't know. All right.

26

1 Sorry for that, Mr. Norton. Apparently,
2 you can hear us okay.
3 MR. NORTON: I'm good.

4 HEARING EXAMINER: Mr. Norton, can I just
5 swear you in?

6 MR. NORTON: Yes.

7 HEARING EXAMINER: I'm just looking for my
8 little script because I always mess up the words.

9 (The witness was sworn.)

10 HEARING EXAMINER: Ms. Rosenfeld, did you
11 also want to qualify Mr. Norton as an expert?

12 MS. ROSENFIELD: Yes, I would, please. And
13 Mr. Norton's CV is at Exhibit 48C.

14 (Exhibit 48C, previously marked, was
15 retained by the court.)

16 MS. ROSENFIELD: And, Mr. Norton, have you
17 qualified as an expert previously before OZAH or the
18 board of appeals?

19 MR. NORTON: Yes.

20 HEARING EXAMINER: Okay. Given that
21 Mr. Norton has previously been qualified by OZAH as
22 an expert, and I have also reviewed his resume, I'm
23 going to qualify him as an expert.

24 And you can proceed with questioning him,
25 Ms. Rosenfeld.

27

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8 (29 to 32)

	29	31
1	MS. ROSENFELD: Thank you very much.	
2	I would like to first start by bringing up	
3	Exhibit 39, please.	
4	(Exhibit 39, previously marked, was	
5	retained by the court.)	
6	TECHNICIAN: 39?	
7	MS. ROSENFELD: Yes, please.	
8	HEARING EXAMINER: First page, probably,	
9	right?	
10	TECHNICIAN: Which one? A, B, C?	
11	MS. ROSENFELD: Let's start with the first	
12	page.	
13	MR. NORTON: Sheet 1's probably the best.	
14	MIKE NORTON,	
15	having first been duly sworn, testified as follows:	
16	EXAMINATION	
17	BY MS. ROSENFELD:	
18	Q Mr. Norton, are you familiar with Sheet 1	
19	of Exhibit 39?	
20	A Yes.	
21	Q And would you please -- did you prepare	
22	this exhibit?	
23	A Yes.	
24	Q And would you please explain to the	
25	hearing examiner what this represents?	
	30	32
1	A This is the overall site forest	
2	conservation plan.	
3	Q Okay. And there are three other sheets	
4	associated with this plan, Exhibits 39 -- B, C, D,	
5	and E, actually, four others. Are they also	
6	associated with the forest conservation plan?	
7	(Exhibits 39, B, C, D, E, previously	
8	marked, was retained by the court.)	
9	A Correct.	
10	Q And what is the current status of the	
11	forest conservation plan?	
12	A Well, it was approved by the planning	
13	board a few weeks ago.	
14	Q Okay. And if there were to be any	
15	revisions to the forest conservation plan, would we	
16	need to return to the board for review and approval?	
17	A I believe we would do it as a final forest	
18	conservation plan or as certified.	
19	Q Okay. And I also would like to draw your	
20	attention to the planning board staff report, which	
21	is Exhibit 49. Did the planning board staff	
22	recommend approval of this preliminary forest	
23	conservation plan?	
24	(Exhibit 49, previously marked, was	
25	retained by the court.)	

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9 (33 to 36)

	33	35
1	MS. ROSENFELD: Okay. Ms. Hearing 2 Examiner, I have no further questions for this 3 witness.	1 have -- just to switch topics. Do you have any 2 concerns about the level of impervious surface being 3 put in with the proposed parking lot and the three 4 buildings?
4	HEARING EXAMINER: Mr. Norton, are there 5 any specimen trees or any other features that, in 6 particular, need to be protected on this site?	5 MR. NORTON: No, not -- I do not. We also 6 prepared the landscape plan, which shows the canopy 7 injury or green space and the canopy coverage over 8 the parking lot, that we comply with that as well.
7	MR. NORTON: There's several. All the 8 trees are shown on the plan are either significant 9 or specimen that we're looking at on the exhibit 10 right now. There are specimen trees that we are 11 removing. That variance was approved, and we're 12 showing mitigation trees on the forest conservation 13 plan as well.	9 HEARING EXAMINER: I have no other 10 questions.
14	HEARING EXAMINER: And if you can just 15 detail for me how many you're removing and then what 16 the mitigation plan is.	11 Did you have any follow up, Ms. Rosenfeld?
17	MR. NORTON: Oh, boy.	12 MS. ROSENFELD: Just to go briefly to the 13 landscape plan. If we could just pull that up, I'd 14 like to have you verify that you prepared that plan.
18	HEARING EXAMINER: A rough estimate is 19 fine. It does look like there's a lot.	15 MR. NORTON: Yes.
20	MR. NORTON: No. If we -- oh, shoot. Oh, 21 yeah. That might take me a second. I wasn't 22 expecting that question. One second here. Let me 23 think for a second. It might be on here. I've got 24 my exhibits. I can probably look on here a little 25 bit quicker. Sorry about that. Give me one second.	16 MS. ROSENFELD: And that it's consistent 17 with the zoning standards for tree coverage and for 18 the lighting requirements.
	34	19 MR. NORTON: Yes.
1	Sheet -- Exhibit 39 -- I think 39E would 2 probably be the best to have that on there. We do 3 have a table that shows it. Right in the middle, 4 where we have the proposed specimen tree mitigation 5 plant schedule, we have -- we are removing 274 6 inches of trees, and we are putting back all of the 7 mitigation. That will be -- 23 3-inch caliper trees 8 will be planted to mitigate for that.	20 HEARING EXAMINER: And is that Exhibit 19? 21 (Exhibit 19, previously marked, was 22 retained by the court.)
9	I don't know -- I can possibly look real 10 quick. I don't know if I have a total count off the 11 top of my head of how many specimen trees we are 12 removing on here.	23 MS. ROSENFELD: That's Exhibit 19, which I 24 believe has -- also has three sheets.
13	MS. ROSENFELD: Your Honor, may I ask a 14 follow-up question that might help clarify?	25 MR. NORTON: Yeah. It's all combined and
15	On that 39E sheet, the proposed specimen 16 tree mitigation plan schedule, below that table, it 17 says, Specimen tree removals No. 7, No. 10, No. 12.	36
18	MR. NORTON: There you go.	1 not set for some reason. Sheet 1 is the overall -- 2 Sheet 2, the one that we just panned out for you. 3 If you scroll down, that is the plan that shows the 4 landscape requirements in the upper right corner of 5 the drawing. 6 Interior green space requires 5%; we have 7 7%. Canopy coverage is 25% within the parking area, 8 and we do meet the 25% as well. Sheet 3 is the 9 lighting coverage, and it shows 0.0s at the lot 10 lines.
19	BY MS. ROSENFELD:	11 MS. ROSENFELD: I have no further 12 questions for this witness.
20	Q Would those numbers correlate with the 21 tree numbers that are shown on the overall plan?	13 HEARING EXAMINER: Okay. Thank you, 14 Mr. Norton. You may be excused.
22	A Correct, yes.	15 MR. NORTON: Thank you.
23	Q And it looks like there are seven?	16 MS. ROSENFELD: Okay. And I would like to 17 call my next witness, Mr. Driban. 18 (The witness was sworn.)
24	A Two, three -- correct, yes. Large trees.	19 HEARING EXAMINER: Thank you. Your 20 witness, Ms. Rosenfeld.
25	HEARING EXAMINER: And, Mr. Norton, do you	21 MS. ROSENFELD: Thank you. Mr. Driban's 22 CV is in the record at Exhibit 48B. 23 (Exhibit 48B, previously marked, was 24 retained by the court.)
		25 NICK DRIBAN,

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10 (37 to 40)

1 having first been duly sworn, testified as follows:
2 EXAMINATION

3 BY MS. ROSENFELD:

4 Q Mr. Driban, have you qualified as an
5 expert witness in cases before OZAH or the board of
6 appeals in the past?

7 A **Good morning. Yes, I have, on numerous
8 occasions.**

9 Q Okay. Can you give one or two examples?
10 Case names and numbers?

11 A Of course, yes. The most recent cases
12 were -- let me see if I can pull this up here. Most
13 recently, I testified as an expert in CU 23-10,
14 Community Housing Initiative. That case was August
15 6, 2025. Prior to that, LMA H-156, 7501 Standish
16 Place, February of 2025. There are other cases in
17 2024 prior I could name, but those are the two most
18 recent.

19 HEARING EXAMINER: That's fine. And I've
20 reviewed Mr. Driban's CV. I cannot talk today. My
21 apologies. Given that he's been qualified as an
22 expert before by OZAH and having reviewed his
23 resume, I will qualify him as an expert. And you
24 may proceed with your questioning.

25 MS. ROSENFELD: Thank you.

37

1 And so when we look at trip generation, we
2 typically look at something called the Institute for
3 Transportation Engineers -- which is abbreviated ITE
4 -- trip generation manual. And that is a series of
5 empirical data for the vast majority of land uses,
6 which will correlate the number of employees or the
7 square footage of a given land use to the amount of
8 trips that will be generated by that land use.

9 In this case, for a landscaping
10 contractor, it's a bit unique in that it's not
11 covered well by the ITE trip generation manual. And
12 so if you would flip to, I believe, Page 4 of this
13 document, we actually looked at trip generation in
14 two different ways for this site. And this is
15 common for landscaping contractors, again, because
16 it's kind of unique with respect to the ITE trip
17 generation manual.

18 So the top half, this is our trip
19 generation exhibit. The top half of this exhibit
20 evaluates trip generation for the site based on
21 information directly provided by the owner-operator,
22 which is the best way to ascertain trip generation
23 when it's not covered in the ITE trip generation
24 manual.

25 As Mr. Romano discussed, you know, the

39

1 Could we start with Exhibit 33, please?
2 (Exhibit 33, previously marked, was
3 retained by the court.)

4 Q Mr. Driban, do you recognize what's being
5 shown as Exhibit 33?

6 A Yes, I do.

7 Q And did you prepare this document?

8 A Yes. That's a traffic statement that I
9 prepared.

10 Q Would you please give the hearing examiner
11 a summary overview of what -- of your findings in
12 the traffic statement?

13 A Yes. So the traffic statement is a review
14 of the site's traffic impacts relative to Montgomery
15 County's Adequate Public Facilities Ordinance, or
16 what's called their growth and infrastructure
17 policy. And when we look at that policy and the
18 accompanying Local Area Transportation Review --
19 which is the nuts and bolts of how the policy gets
20 implemented, LATR -- we look at something called
21 trip generation, which is the volume of traffic
22 entering and exiting a site.

23 So a trip would be either one vehicle
24 coming in or one vehicle going out. If you left and
25 came back, that is two trips: one in, one out.

38

1 vast majority of his employees that will be coming
2 from -- coming to the site are his landscaping
3 employees. There's 21 landscaping employees, three
4 office staff, and one mechanic. And you see those
5 categories listed in the table at the top.

6 And when we look at trip generation in
7 accordance with the county's guidance, we look at
8 what is defined as the peak hours for the adjacent
9 roadways, which is typically, under county
10 standards, 6:30 in the morning to 9:30 in the
11 morning. That would be the a.m. peak period. And
12 we're looking for the one busiest hour during that
13 period in terms of trips to and from the site.

14 And then same thing for the evening.
15 We're looking at 4:00 p.m. to 7:00 p.m., again,
16 counting defined hours of the peak period for the
17 adjacent roads. And the busiest hour of traffic to
18 and from the site is what we're looking for during
19 that period.

20 As you heard Mr. Romano testify, and as
21 documented in our traffic statement, the vast
22 majority of his staff will not be arriving or
23 departing the site during those hours.
24 Specifically, his landscaping crew will typically be
25 arriving around 5:30 in the morning, which falls

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11 (41 to 44)

1 outside of that a.m. peak, and then generally
2 departing the site around 3:30, which, again, falls
3 outside of the evening peak hours.
4 So when we're looking at trips from those
5 landscapers, really, what does fall within the
6 county's range that we're looking at is the
7 landscaping crews leaving together in their
8 individual vehicles in the morning, which would fall
9 between 6:30 and 9:30 on a typical day, as he
10 described, with typically crews of three to four
11 going out. And so that's about six vehicles that
12 would be leaving.

13 So if you look at the first set of three
14 columns under a.m. peak, we have a.m. peak trips in,
15 out, and then total. Again, the office staff and
16 mechanics, you know, are not generally during the
17 same hour as the -- as the landscapers. And really,
18 the only traffic that's coming to or leaving the
19 site during that 6:00 to 8:30 to 9:30 period is the
20 landscaping crews, which is the six vehicles leaving
21 the site for a total of six a.m. peak hour trips.

22 In the p.m., it's the same analysis.
23 Again, the landscaping crews have returned in their
24 crew vehicles and then left individually -- or in
25 carpooling or what have you -- prior to the 4:00 to

42 1 7:00 p.m. hours that the county evaluates. And so
2 what's left is the office staff and potentially the
3 mechanic leaving during the busiest one hour for the
4 site between 4:00 and 7:00. And so that's a total
5 of four trips out of the site.

6 And so our total trip generation, based on
7 the employer-provided information, is six trips out
8 during the a.m., six total trips during the a.m. --
9 excuse me. No, that's correct. And then four trips
10 out during the p.m. peak hour, again, for a total of
11 four p.m. peak hour trips. So six and four.

12 The county's threshold, under the LATR
13 guidelines and the growth and infrastructure policy,
14 for a full transportation impact study to be
15 required, is 30 trips. Anything less than 30 trips
16 is considered a de minimis impact. And again, when
17 I speak of trips, that 30-trip threshold, that's
18 during either the a.m. peak hour or the p.m. peak
19 hour.

20 So in this case, 6:00 a.m. peak hour
21 trips, 4:00 p.m. peak hour trips is well below the
22 county's 30-trip threshold. Nothing is required in
23 terms of a transportation impact study because this
24 volume of traffic is recognized as being de minimis
25 and not impactful in any meaningful way to the

43 1 surrounding roadway network.
2 If you -- if we go to the bottom half of
3 the table, this is sort of a secondary evaluation
4 related to, again, trip generation. This is looking
5 at sort of a related ITE trip generation manual of
6 use. Again, this is the ITE trip generation manual.
7 If this were a single-family housing development or
8 a hotel or a shopping center, you know, we would
9 just have ITE trip generation.

10 This nursery use is sort of a related use
11 in the IT trip generation manual, but it's not quite
12 the same as a specialty landscaping contractor in
13 terms of how it's defined. And so we kind of look
14 at this as a reality check for the employer-provided
15 data. In this case, the trip generation rates for
16 this nursery use from the ITE trip generation manual
17 are based on employees, so 25 employees to the site.
18 That's the three office staff, one mechanic, 21
19 landscapers.

20 And when we plug that into the ITE trip
21 generation equations -- which, again, are based on
22 empirical data collected at similar sites for a
23 nursery -- it comes out to eight total a.m. peak
24 hour trips and nine total p.m. peak hour trips. You
25 know, so slightly different numbers. I think I've

44 1 explained why and sort of the rationale for looking
2 at both, but in the same ballpark. And certainly
3 both well below that 30-trip threshold that the
4 county has for requiring full transportation impact
5 study versus a de minimis impact.

6 And so, whether you look at it based on
7 the employer information or the ITE trip generation
8 manual for a sort of related use, the results are
9 similar and very clear that this is a de minimis
10 impact on the surrounding railway network.

11 Q Thank you. And if I could ask for you to
12 take a look at what's been filed as Exhibit 34 in
13 the record, which is a document titled, A
14 Transportation Adequacy Form.

15 (Exhibit 34, previously marked, was
16 retained by the court.)

17 A Yes.

18 Q Mr. Driban, are you familiar with this
19 document?

20 A I am.

21 Q Did you complete this document?

22 A I did.

23 Q And could you explain to the hearing
24 examiner the significance of the information in this
25 exhibit?

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12 (45 to 48)

1 A Yeah. So this is really the county's
2 scoping form for transportation evaluation
3 pertaining to the Local Area Transportation Review
4 and the growth and infrastructure policy that I
5 referenced, which are, essentially, implementation
6 of the county's Adequate Public Facilities
7 Ordinance.

8 And really, what this form is is kind of
9 taking information that is in that traffic statement
10 that I just described in detail and putting it into
11 a format that's easily digestible for staff to
12 understand the amount of traffic that will be
13 generated by this site, and whether or not it's de
14 minimis versus requiring full traffic impacts --
15 transportation impact studies.

16 So if you scroll down just -- I think it's
17 -- I believe it's Page 3 of this form, there's some
18 kind of boilerplate information that goes in related
19 to access. And then this is really -- where it says
20 Part B, transportation adequacy screening, trip
21 generation estimates, you see that the proposed
22 motor vehicle trips -- 8:00 a.m. peak hour weekday
23 trips and 9:00 p.m. peak hour weekday trips -- match
24 the bottom half of that trip generation table that
25 we just went through in our traffic statement.

1 And this is where the county looks at the
2 information from our statement, from this forum to
3 confirm that this is de minimis as opposed to
4 needing a full transportation impact study. So this
5 is really just the summary of what's provided in the
6 trafficking -- excuse me, the traffic statement that
7 we prepared.

8 Q And do you know if staff accepted this
9 form?

10 A Yes, they did.

11 Q Okay. And then, finally, I also would
12 like to ask you about Exhibit 49, which is the staff
13 report prepared by planning staff. And I'd like to
14 direct your attention to Pages 16 and 17 of that
15 report. The top of Page 16 in this exhibit starts
16 with Local Area Transportation Review.

17 Do you understand this to be the staff
18 analysis prepared in connection with this case
19 evaluating transportation adequacy?

20 A Yes.

21 Q And can you explain whether their
22 conclusions are generally consistent with yours?

23 A Yes. Their conclusions are very -- are
24 completely consistent with ours. They've come to
25 the same conclusions regarding trip generation. And

45

1 in terms of the finding that this -- under LATR
2 transportation review guidelines, the site has a de
3 minimis impact and is not required to perform --
4 therefore not required to perform a full
5 transportation impact study.

6 Q Okay. And specifically, under the first
7 paragraph, Staff concludes that, as such, this
8 application falls under the 30 net new vehicle trips
9 threshold. And it is exempt from further
10 transportation adequacy analysis. Do you agree with
11 that?

12 A Yes, I do. That matches our conclusion.

13 Q And are you aware about whether this
14 application needs to go through preliminary plan
15 review?

16 A Yes, it will. It does.

17 Q And at the time of preliminary plan, will
18 there need to be a follow-up by adequacy --
19 transportation adequacy analysis?

20 A Yes. The formal finding of adequacy by
21 staff will occur at that time. It will be a very
22 similar methodology and requirements to what we're
23 discussing here, but that's when the formal finding
24 on their end happens.

25 Q Okay. So at that time, that final

47

48

1 determination will be made by the planning board; is
2 that correct?

3 A That's correct, yes.

4 Q In your professional opinion, given the
5 application as it stands today and the limitations
6 on the hours of operation and the number of
7 employees, is this application served by adequate
8 public transportation facilities?

9 A Yes, it is.

10 MS. ROSENFIELD: Ms. Hearing Examiner, I
11 have no further questions.

12 HEARING EXAMINER: Thank you.

13 Mr. Driban, I'm not sure if you're the
14 right person to ask or if Mr. Tilley will be. But I
15 know that landscaping vehicles, the ones that will
16 be owned by the employer and used by the crews, can
17 be quite heavy and have a lot of equipment. Do you
18 have any information about any impact on Comus Road
19 or other roads in the vicinity, if they're going to
20 be traveling those roads on a regular basis?

21 MR. DRIBAN: That's not -- we didn't
22 specifically evaluate that as part of this site.

23 That's something that Mr. Tilley may be able to
24 testify to. I would say that, generally speaking,
25 you know, these roads are designed to handle, you

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13 (49 to 52)

1 know, whatever traffic is placed on them. And that
2 pavement design typically includes -- for any road,
3 typically includes some degree of heavy vehicles or,
4 you know, landscaping-type vehicles.

5 And so my -- you know, based on that, I
6 believe that this would be -- the roads surrounding
7 the site would be adequate to handle whatever
8 landscaping vehicles are on it. I know also that,
9 you know, specifically, landscaping contractors are
10 typically -- you know, a lot of them are in like
11 pickup-type trucks. They may have trailers and
12 things like that.

13 But, you know, we're, in general, not
14 talking about like giant construction dump trucks
15 and things like that. So Mr. Tilley may be able to
16 speak to that more fully, but I would believe that
17 the roads would be adequate to handle that type of
18 equipment.

19 HEARING EXAMINER: Okay. It sounds like
20 Mr. Tilley can address this, but you don't have any
21 indication that Comus Road or any of the other
22 nearby roads are somehow in poor repair or not up to
23 standard.

24 MR. DRIBAN: Not to my knowledge. Again,
25 we did not evaluate that specifically as part of

50 1 this case, but not to my knowledge.

2 HEARING EXAMINER: That was my only line
3 of inquiry.

4 Ms. Rosenfeld, do you have any other
5 questions for him?

6 MS. ROSENFELD: I do not. Mr. Tilley will
7 be able to further address the question that you
8 just raised. I do not.

9 And unless there are further questions, or
10 you think there's a reason for Mr. Driban or
11 Mr. Norton, either one to remain, I'd like to excuse
12 them both.

13 HEARING EXAMINER: Certainly. They can
14 both be excused.

15 MS. ROSENFELD: Thank you.

16 MR. DRIBAN: Thank you.

17 MS. ROSENFELD: Okay. At this point, I
18 would like to call Mr. Doug Tilley, please.

19 HEARING EXAMINER: And, Mr. Tilley, I'll
20 just remind you, you remain under oath.

21 MS. ROSENFELD: Mr. Tilley, just some very
22 preliminary types of review for this plan. If we
23 could pull up Exhibit 31, please.

24 (Exhibit 31, previously marked, was
25 retained by the court.)

49

51 1 RE-EXAMINATION
2 BY MS. ROSENFELD:
3 Q Mr. Tilley, are you familiar with Exhibit
4 31?

5 A I am.
6 Q And if we could go to the second page of
7 Exhibit 31. Would you please explain to the hearing
8 examiner what that is and if you prepared this
9 document?

10 A Certainly. This is a fire access plan
11 that identifies how emergency services apparatus
12 would access the site. How they would, first of
13 all, be able to get their equipment onto the site,
14 but also how individual personnel would be able to
15 access certain points on the site. It's designed in
16 accordance with the fire code and reviewed by the
17 fire marshal's office.

18 In particular, we typically show a few
19 things. We show turning radii and service paths for
20 fire equipment. How they would get onto the site
21 through a hardscape surface, where they would park,
22 where they would have an operational bay, and how
23 individual personnel can reach all points necessary,
24 typically around the outside faces of the buildings.

25 It also shows additional operational

52 1 elements that would be required on the site in this
2 case because there's no true water service out
3 there. There's well service, but no hydrants
4 available to them. This particular site would need
5 to draw on the services of underground tanks, which
6 are shown on this particular exhibit.

7 This document is prepared -- was prepared
8 by O'Connell & Lawrence under my supervision. So I
9 did prepare this document, and it is submitted to
10 the fire marshal's office for review and approval.

11 Q And if we could go to the first page of
12 this exhibit, which is a memorandum from Marie
13 LaBaw. Could you please tell the hearing examiner
14 who Marie LaBaw is and the significance of this memo
15 dated October 24, 2025?

16 A Dr. LaBaw is the fire marshal who
17 performs, I believe, pretty much every review of
18 fire access plans within Montgomery County. And the
19 significance of this document is that it's been
20 approved by Ms. LaBaw -- or Dr. LaBaw, excuse me.
21 But we have filed this with her, identified a few --
22 she identified a few corrections she wanted, which
23 were addressed. And then she has issued approval on
24 this document.

25 Q So in your professional opinion, is this

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14 (53 to 56)

1 property served by adequate fire rescue access and
2 facilities?

3 **A In my opinion, yes.**

4 Q Thank you. I'd like to take you to
5 Exhibit 35, please, which is the revised existing
6 conditions plan. Are you familiar with this
7 document?

8 (Exhibit 35, previously marked, was
9 retained by the court.)

10 **A Yes, I am.**

11 Q And did you prepare this?

12 **A I did.**

13 Q And we talked very briefly about the fact
14 that the property is unimproved. Does this reflect
15 the existing conditions of the site as it stands
16 today?

17 **A It does.**

18 Q Okay. Thank you. I'd like to turn your
19 attention to Exhibit 41, which is the site distance
20 evaluation. Could you please explain the
21 significance of this document? It appears you
22 prepared it, but could you please clarify?

23 (Exhibit 41, previously marked, was
24 retained by the court.)

25 **A So this is what's identified as a site**

1 **distance evaluation. Essentially, what this**
2 **document identifies is the ability of drivers**
3 **typically exiting and/or entering the site to be**
4 **able to see when they are stopped at a reasonable**
5 **location coming off of the site, so that there are**
6 **no issues with collisions for vehicles coming down**
7 **the road.**

8 It's prescribed -- the methodology is
9 prescribed by the county, and this document was
10 prepared in accordance with those methodologies and
11 signed and sealed by myself. So that's what this
12 document identifies, is the ability, the distance
13 that somebody can see on Comus Road, coming off of
14 this site. We didn't prepare anything for 270
15 because there's no proposed access to or from 270.

16 Q So in your opinion, is there a safe and
17 adequate ingress and egress to the site?

18 **A There is. There will need to potentially**
19 **be a small amount of clearing in the front, which is**
20 **expected as part of the overall design. And that's**
21 **identified in the comments on that site distance**
22 **evaluation, that a little bit of extra clearing will**
23 **help with one of the site distance's looks.**

24 Q Thank you. And now I would like to turn
25 your attention to Exhibit 40, which is titled

53

1 revised equipment storage. Are you familiar with
2 Exhibit 40?
3 (Exhibit 40, previously marked, was
4 retained by the court.)

5 **A I am.**

6 Q And did you prepare this exhibit?

7 **A Yes, I did.**

8 Q And could you walk the hearing examiner
9 through the types of equipment and vehicles that
10 will be stored on the property?

11 **A Certainly. So this particular exhibit**
12 **identifies specific types of vehicles based on**
13 **typical sizing associated with said vehicles. So we**
14 **identified a series of eight separate types of**
15 **vehicles that will be utilized by a typical**
16 **landscape contractor. The equipment types and sizes**
17 **are identified in the table that's on the upper**
18 **right portion of that page. We color-coded it so it**
19 **was a little bit easier to follow, of course.**

20 As Mr. Romano testified, a number of
21 vehicles will be stored outside, but a lot of
22 equipment will also be stored inside the facilities
23 -- excuse me, inside the buildings on-site. So
24 there are eight types of equipment: a dump truck,
25 bucket truck, a Bobcat, a skid steer, a zero-turn

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1 **lawn mower, a trencher, a mini-excavator, and then a**
2 **pickup truck with a trailer with typical equipment**
3 **dimensions for those individual types of equipments.**

4 We also identified an offset from those
5 individual equipments. They can't be immediately
6 next to each other to provide a little bit -- to
7 provide some additional room. And then we're able
8 to place these individual pieces of equipment within
9 the -- either in the parking lot, in the case of the
10 pickup trucks with the trailers, and/or within the
11 two buildings that are on-site, where the mechanic
12 will be servicing them, and/or they'll be stored for
13 specific types of their operations.

14 As you'll note, at the bottom -- or the
15 bottom is the wrong word. At the southern exit or
16 the southern portion of the warehouse structure,
17 there's a sort of an area of the facility that is
18 unidentified with any of these individual pieces of
19 equipment. But there is a note on the plan that
20 identifies that as a snow removal equipment storage
21 area for miscellaneous snow type removal, whether
22 it's plows, salt, or brine tanks, things of that
23 nature.

24 Q And you were here when the hearing
25 examiner asked earlier about the capacity of Comus

55

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15 (57 to 60)

1 Road to handle the nature and size of the vehicles
2 associated with this use. Did you hear that
3 question?
4 **A Yes, I did.**
5 Q And are you familiar with Comus Road?
6 **A I am.**
7 Q And do you have any opinion as to whether
8 or not Comus Road is adequate to handle the volume
9 and -- the volume of traffic and the size of the
10 equipment and vehicles that will be used on this
11 property?
12 **A I do. In my opinion, Comus Road is**
13 **certainly adequate, both from a structural and from**
14 **a sizing standpoint, to handle any specific type of**
15 **piece of equipment that would be road legal. So in**
16 **this case, any of these equipment pieces on here, on**
17 **a trailer or if they're self-driving, would be --**
18 **the road would be able to handle that.**
19 Q And looking at the dimensions here for the
20 dump truck and the bucket truck, do you see those?
21 **A I do.**
22 Q And what are those dimensions?
23 **A Both of them are 26 foot by 8 foot.**
24 Q And do you know how the size of these
25 vehicles compare with, for example, a semi-trailer?

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1 **A Off the top of my head, I couldn't**
2 **explicitly state that, but my expectation is that**
3 **they would be probably a little bit less in size.**
4 Q Okay. Thank you. And in your
5 professional opinion, then, does the site adequately
6 accommodate parking for the vehicles that will be
7 associated with the landscaping and snow removal and
8 equipment -- snow removal operations?
9 **A In my professional opinion, yes.**
10 Q Okay. Thank you. And if we could also
11 take a look now at Exhibit 42, which is the revised
12 circulation plan. Did you prepare this document?
13 (Exhibit 42, previously marked, was
14 retained by the court.)
15 **A Yes, I did.**
16 Q And could you generally --
17 HEARING EXAMINER: Sorry. Mr. Tilley, is
18 your microphone going on and off sometimes?
19 MR. TILLEY: Sorry.
20 **A Yes, I did.**
21 Q And could you generally explain the
22 circulation pattern on-site?
23 **A Certainly.**
24 MR. TILLEY: Could we rotate the document?
25 **A So at a very high level, there's one**

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1 **access point proposed on the site as identified,**
2 **where it's tying into Comus Road. For the most**
3 **part, vehicles will come onto the site through the**
4 **circuitous driveway and can go wrap around the**
5 **parking area -- which is set in the middle of the**
6 **property -- in either direction.**
7 **The drive aisles are wide enough to**
8 **accommodate movements in either direction, and**
9 **they'll leave by the same sort of path right there.**
10 **There is the little offshoot of parking to the**
11 **office side of the property where individual -- you**
12 **know, the office -- the three office workers can --**
13 **would nominally likely be parking their cars in that**
14 **location. That's also the location of the ADA space**
15 **on-site.**
16 Q And on this exhibit, we see the double
17 tracks, and it looks like -- what looks like a sort
18 of a vehicle image. Does that show the turning
19 radii and the travel pattern for those vehicles?
20 **A Yes, it does. And this exhibit is**
21 **developed using AutoCAD software and the tracking**
22 **software associated with specific vehicle types. So**
23 **it clearly shows sort of the wheel-based motions**
24 **associated with that to make sure that these**
25 **individual types of vehicles will have adequate**
60
1 **access around the curvature, around areas of**
2 **landscaping, and/or around parked vehicles that may**
3 **be on-site.**
4 **The assumption is that every space of a**
5 **park -- every parking space is filled when you're**
6 **running these types of things, so you're not**
7 **overtopping those types of things.**
8 Q And would this include the largest
9 vehicles proposed for the site?
10 **A It would.**
11 MS. ROSENFIELD: Thank you. Okay. If we
12 could turn to Exhibit 45, please, the revised land
13 use and zoning report. And if we could start with
14 Page 2.
15 (Exhibit 45, previously marked, was
16 retained by the court.)
17 Q Mr. Tilley, I'd like to orient your
18 attention to Figure 1, the zoning map on Page 2 of
19 this exhibit. Would you please orient the hearing
20 examiner to both the location of the subject
21 property and the uses that currently exist
22 surrounding the property?
23 **A So on Figure 1, as shown on the report,**
24 **the subject property is identified with the red dot**
25 **that's centered in that particular exhibit. That's**

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16 (61 to 64)

1 the property we're dealing with here from a
2 additional use standpoint. The Garden of
3 Remembrance cemetery is immediately -- is in the
4 property that is immediately to the west of that.

5 So on the left-hand side of the image, you
6 can see 270, which has kind of a white backdrop
7 immediately to the east of the property. And then
8 there are certain properties on the opposite side of
9 270 -- generally, you know, sort of due east -- that
10 are zoned for industrial uses.

11 So there's a number of different types of
12 ongoing uses over there that serve the construction
13 industry, heavy industrial, that sort of thing.
14 There is a property immediately south of the subject
15 property that contains the Great American
16 landscaping company, so a similar type of use. And
17 there are some small residential properties to the
18 south as well.

19 And to the -- excuse me. And to the
20 southeast, Comus Road is direct south from the
21 property identified with the red dot, which is the
22 subject property of this case.

23 Q And the zoning of the properties to the
24 immediate south are what?

25 A They're also AR.

1 Q And what is the significance of the cross-
2 hatching across those properties, as well as the
3 ones across I-270?

4 A I believe that's an overlay district that
5 this property is not a part of.

6 Q Okay. And have you had -- do you have any
7 firsthand knowledge of what the type of operation
8 for the landscaping company immediately to the south
9 is like? Have you seen any of those vehicles or any
10 of that use?

11 A I have not seen the vehicles. I have
12 identified, you know, on their website that they do
13 a lot of the same type of tasks that a landscape
14 contractor would perform.

15 Q And the entrance to the subject property
16 is located directly across from the entrance to that
17 use?

18 A In the proposed condition, it will be
19 directly across. Yes.

20 Q I would like to draw your attention to
21 Figure 2, the neighborhood map. Could you just
22 delineate for the hearing examiner the boundaries of
23 the neighborhood map and the general uses contained
24 within that neighborhood?

25 A Certainly. So the neighborhood map

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1 boundaries are identified with the red, the thick
2 red line within Figure 2. The site is identified
3 with the thicker blue line identified in Figure 2.
4 From a use standpoint, we see, across 270, the
5 industrial uses as described, sort of in a gray kind
6 of hatch right there.

7 Immediately to the east -- excuse me.
8 Immediately to the west is the Garden of Remembrance
9 cemetery in the green area. That's -- it's a large
10 piece. I think it's about a 147-acre piece of
11 property, so that's a very large property.

12 And immediately to the south, you see the
13 uses of the Great American Landscapes, and there's
14 one particular residential unit over there. There
15 are certain residential units in the R200 area,
16 which is to the southwest -- southeast of the site
17 across 270 and across Comus Road.

18 Q Thank you.

19 HEARING EXAMINER: Can I just ask you real
20 quickly, Mr. Tilley, how is the cemetery site
21 accessed? Like where -- how do -- you know, if
22 somebody wanted to visit the cemetery, how do they
23 get there?

24 MR. TILLEY: The access point is to the
25 north of Comus Road. It's a little bit further

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1 beyond where the proposed access point of this
2 particular property will be.

3 HEARING EXAMINER: So it is on Comus,
4 though?

5 MR. TILLEY: It is on Comus. That's
6 correct.

7 Q Mr. Tilley, turning your attention to Page
8 5 of this exhibit. Making sure that's the actual
9 page, not the PDF page. To PDF Page 5 of the
10 report. There is a discussion here about master
11 plan conformance -- master plan recommendations of
12 conformance with local uses.

13 Would you please summarize this section
14 for the hearing examiner?

15 A Certainly. So we have reviewed this
16 property in depth in relation to the master plan
17 associated with this. It's located within the
18 bounds of the Clarksburg Master Plan and Hyattstown
19 Special Study Area, which was adopted in 1994 back
20 in June. The subject property was originally zoned
21 light industrial, but was rezoned in 1994 because
22 there were some -- basically, some facility-type
23 improvements that would have been required.

24 So it was rezoned to a -- more of a
25 agricultural use: no planned road access, no

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17 (65 to 68)

1 planned water and sewer service, no planned access
2 to I-270. And it's -- you know, this sort of
3 business is -- they had identified that this
4 particular property was not suitable for like a
5 high-tech-type office. And so it got rezoned at
6 that time.

7 As previously -- as I previously testified
8 to, there's no direct access proposed to I-270 and
9 really no impacts to I-270 beyond sort of potential
10 right-of-way discussion, which may come up at a
11 later time. But ultimately, the proposed use is in
12 harmony with the adjoining uses. It's immediately
13 adjacent to a -- or excuse me, immediately
14 confronting to an existing business that provides
15 the exact same services.

16 There are a number of other industrial
17 services within the general neighborhood. There's
18 an earthwork contractor, heavy equipment rental
19 supply company, towing businesses, moving storage
20 businesses, crane operator, hauling contractors that
21 operates out of some of the industrial services
22 facilities. And this particular, you know, business
23 is generally in harmony with that type of service,
24 in my opinion.

25 MS. ROSENFIELD: Ms. Hearing Examiner,

1 there are a number of pages of this report that go
2 through the very specific zoning standards
3 themselves. Not the conditional use findings, but,
4 you know, setbacks and lot coverage and all those
5 dimensional requirements. I'm happy to have
6 Mr. Tilley walk through them, if that would be
7 helpful to you.

8 Given that there's no opposition, you
9 know, they speak for themselves. I leave it to you.
10 If you would like, I'm happy to walk him through
11 those. If you think that the record is adequate and
12 you have enough to rely on for purposes of that
13 piece, then I will just rest on his report for those
14 dimensional elements.

15 HEARING EXAMINER: I think that would be
16 fine. I mean, the only thing I would ask is if --

17 Mr. Tilley, if there's anything
18 particularly unique about the site that you want to
19 make sure that I don't miss. And if we're accepting
20 your report as evidence, is there anything you would
21 particularly highlight in that report? You don't
22 have to if everything's pretty standard, but --

23 MS. ROSENFIELD: If he could have a moment
24 just to flip through the report and let you know.

25 HEARING EXAMINER: Of course.

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1 MR. TILLEY: I think there's two things
2 that I think I would like to bring up. The first
3 is, under typical circumstances, there is a minimum
4 site area within the AR zone of 25 acres.

5 HEARING EXAMINER: Mr. Tilley, just for a
6 moment, please, if I could interrupt you. If you
7 could orient the hearing examiner to what part of
8 your report you referenced.

9 MR. TILLEY: Sorry about that. It's going
10 to be on PDF Page 6, under the -- that section right
11 there, under site area. So, in particular, this
12 site is not 25 acres as it stands right now.
13 However, there are specific permissibilities within
14 the zoning ordinance, specifically Section
15 59.7.7.1.D.9, to determine whether a property would
16 qualify for an exemption from site area
17 requirements.

18 In this particular case, A lot or -- and
19 I'm going to read this from the bottom of my report,
20 that italicized section right there -- A lot or
21 parcel in the Agricultural Reserve AR zone, in
22 addition to other exemptions in this subsection, is
23 exempt from the minimum lot area requirements and
24 lot width requirements of the AR zone, but must
25 satisfy the requirements of the zone applicable to

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1 it before its classification to the AR zone if, A,
2 the latter parcel was created before January 6,
3 1981.

4 One of the things that we did as part of
5 this analysis was evaluate whether this particular
6 property was created before that date, and it was.
7 We have identified that this property was created by
8 deed on June 3rd of 1966. The attachment to our --
9 excuse me, the Exhibit A to our report is the
10 property deed tract that I personally -- that, you
11 know, I worked on and pulled that -- all the
12 information myself to kind of make that proof moving
13 forward.

14 So that's one thing I would like to
15 highlight is that, you know, this particular -- some
16 of the zoning analysis on this site was evaluated
17 based on the original RTD zone, which had a lot area
18 -- a minimum lot area of 40,000 square foot. So
19 that's how this particular site, from a site area
20 standpoint, meets the requirements of the zoning
21 code.

22 That's one thing I'd wanted to identify
23 because that's a little bit unique to this piece of
24 property. There's no issues with the lot width or
25 any of that kind of thing.

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18 (69 to 72)

	69	
1	You know, flipping through the next 2 several pages on the report, there's nothing really 3 unique about the lot area, the density, the width, 4 or the coverage. There's nothing specifically 5 unique about the building or feature placement 6 beyond the fact that this particular conditional use 7 is a little more stringent than what's actually in 8 the setback requirements for the zoning ordinance.	71
9	And that gets talked about a little bit 10 later, in particular, on -- if you could go to Page 11 -- PDF Page 8 of the report. I think that's right. 12 Yep. There's a bolded section of the report that 13 identifies -- per the conditional use requirements 14 for a landscape contractor -- all on-site buildings 15 must be set back for a minimum of 50 foot from any 16 property line, which is more stringent than any of 17 the typical zoning requirements for this site.	
18	There's no issues with building -- there's 19 nothing unconventional about the building heights 20 proposed. We did -- there's nothing unconventional 21 about the parking, and we've already discussed the 22 on-site equipment elements associated with that.	
23	The applicant has requested alternative 24 compliance for certain sections of the parking lot, 25 landscape, and screening on this site. And that's	
	70	
1	identified on Page -- I think it's on PDF Page 9 in 2 Section 6 of this. And there is significant 3 discussion in this report about the rationale for 4 those individual requests hereon.	72
5	In particular, just a high-level 6 description of that. There are typically parking 7 lots, screening requirements associated with parking 8 areas greater than 10 foot for certain types of 9 conditional uses. In this case, the listed 10 specificity of the parking lot landscaping 11 requirements is dwarfed by what's out there and what 12 will be out there in perpetuity because of either 13 septic reserve area that will not be touched, 14 significant specimen trees that are proposed to be 15 remained, and/or forest conservation area that's 16 proposed on the site.	
17	So the parking lot will be screened in on 18 the 270 side and on the Garden of Remembrance side, 19 just by the nature of the overall site development. 20 And that was the specific -- that was why we 21 provided that request for alternative compliance.	
22	It's written -- there is significant 23 discussion about that in this report. If you start 24 -- if you go to PDF Page 10, there it is right 25 there. We discussed that in depth. I think we've	
1	taken up about a page and a quarter on that specific 2 request. I think those are the two kind of main 3 things I wanted to highlight as maybe perhaps a bit 4 unique about this individual property.	
5	HEARING EXAMINER: Thank you.	
6	BY MS. ROSENFELD:	
7	Q Thank you. Mr. Tilley, I'd like to draw 8 your attention to Page 11 of this exhibit, the 9 conditional use necessary findings. And I'd like to 10 go through those more specifically, starting with 11 the first, which provides that in this particular 12 zone, the minimum lot area is two acres. Do we meet 13 that standard?	
14	A We do.	
15	Q And you just touched on this briefly. The 16 minimum setback is 50 feet from any final lot line. 17 Do we meet that standard?	
18	A Yes, we do.	
19	Q Okay. The number of motor vehicles and 20 trailers for equipment and supplies operated in 21 connection with contracting business or parked on- 22 site must be limited by the hearing examiner to 23 avoid an adverse impact on abutting uses. Adequate 24 parking must be provided on-site for the total 25 number of vehicles and trailers permitted.	
	70	
1	We did go through the exhibit that shows 2 the parking on-site. In your opinion, is there 3 adequate parking for the total number of proposed 4 vehicles?	72
5	A In my opinion, there is.	
6	Q And does that exhibit limit the maximum 7 number of vehicles and types of equipment on the 8 property?	
9	A Yes, it does.	
10	Q And so, in your opinion, would there be 11 any adverse impact on abutting uses for this use as 12 proposed as it relates to motor vehicles and 13 trailers for equipment and supplies?	
14	A In my opinion, no. There would be no 15 adverse impact on the abutting uses.	
16	HEARING EXAMINER: If I could just 17 interrupt for one second, Mrs. Rosenfeld.	
18	One thing you didn't talk to -- and I was 19 just going to ask you on in a minute. But since 20 we're right on this is you talked about where the 21 four employees that will be outside all the time are 22 going to park.	
23	But, as was described in Mr. Romano's 24 testimony, that there's going to be 21 individuals 25 arriving and parking. Just so we have it really	

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19 (73 to 76)

1 clear on the record, where are those individuals
2 going to park their own use cars before they hop
3 into their landscape vehicles?
4 MR. TILLEY: So my expectation is there's
5 going to be some movement of vehicles when they get
6 there. So they're going to have to get there. And
7 since -- it's going to be kind of a little bit of a
8 rolling operation.

9 You know, people are going to park.
10 People are going to get out, have to move -- you
11 know, move the trailers and load up. Because
12 they're going to have to move trailers to get
13 equipment, get equipment for -- there are material
14 storage bins. So load up on material, that kind of
15 thing.

16 So there's going to be a little bit of get
17 there, kind of get yourself situated, get in the
18 trucks, move around a little bit if necessary.

19 HEARING EXAMINER: So if I can rephrase
20 that so I just make sure I understand. So if I
21 drive to work in my own vehicle, my expectation
22 would be that -- after I've gotten my work vehicle
23 and trailer set for the day, and that's kind of
24 moved around -- then I can put my personal vehicle
25 in that space, potentially?

1 MR. TILLEY: That is correct, yes. And
2 potentially also utilize the office spaces
3 temporarily while they get loaded up and then move
4 over so that the office folks who are coming a
5 little bit later will have a place to park when they
6 arrive.

7 HEARING EXAMINER: Do you anticipate any
8 problem if multiple teams are arriving at the same
9 time?

10 MR. TILLEY: So I do not because it's a --
11 the parking area itself is fairly open, and there
12 will be ability to kind of move in and around the
13 spaces. So it'll be a little bit of coordination
14 with the teams as needed. But since everybody
15 should be getting there right around the same time,
16 I don't anticipate that as being an issue. And I
17 further expect there will be some carpooling to this
18 site.

19 HEARING EXAMINER: Thank you.

20 BY MS. ROSENFELD:

21 Q And, Mr. Tilley, by using a sort of shared
22 parking approach as the operation gets underway
23 during the day, does that limit the amount of
24 impervious surface by reducing the amount of parking
25 needed on-site?

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1 A Absolutely.

2 Q And as per the zoning code standards, in
3 your opinion, does the parking as provided meet the
4 zoning ordinance requirements?

5 A It does.

6 Q No. 4: Sale of plant materials, garden
7 supplies, or equipment is prohibited unless the
8 contracting business is associated with a nursery
9 retail or nursery wholesale use. Is the applicant
10 proposing to sell plant materials, garden supplies,
11 or equipment?

12 A He is not.

13 Q No. 5: The hearing examiner may regulate
14 hours of operation and other on-site operations to
15 avoid adverse impact on abutting uses. Are you
16 familiar with the operational limitations with
17 respect to the hours of operation and the number of
18 employees and the type of equipment that's been
19 proffered with this application?

20 A Yes, I am familiar with that.

21 Q And in your -- if you would please walk
22 through the recommended finding that is put forward
23 under No. 5.

24 A Certainly. So Mr. Romano testified about
25 -- the operational association is that, you know,

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1 there are some changes seasonally, both within the
2 summer and the winter, and that the business is
3 expected to be busiest in the morning when employees
4 are arriving and forming the crews and then leaving
5 to their site. So, you know, as identified in the
6 statement of operations, that's been proffered
7 previously.

8 You know, the employees are expected to
9 arrive early in the morning and depart for their
10 various sites prior to sort of the typical traffic
11 periods on some of the local roads. The maintenance
12 staff and administrative staff will be on-site for
13 the entire day, but are expected to arrive a little
14 bit later. The crews will arrive back from their
15 sites in sort of the 2:30 to 3:00 p.m. window and
16 then, you know, go home.

17 And that's obviously, on a typical day, as
18 Mr. Romano testified. You know, there could be some
19 off-hours stuff in the event that equipment breaks
20 down. Or, you know, in the event that there is snow
21 inspection services going on, that there will be
22 some 24/7 -- potentially 24/7.

23 But then the hours are specifically --
24 have been, you know, well-described in the statement
25 of operations and that the applicant has not

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20 (77 to 80)

1 proposed or requested direct access to 270, and that
2 Comus Road -- all access shall be coming through
3 Comus Road.

4 As part of this analysis, we also sort of
5 evaluated how certain other properties in the
6 vicinity, particularly those that were immediately
7 adjacent to this property, would use Comus Road. We
8 identified from -- that the Garden of Remembrance
9 grounds typically open at 8:00 a.m., and the offices
10 open no earlier than 9:00 a.m. So the -- any sort
11 of rush to get to the cemetery will not coincide
12 with the typical busiest period in the morning when
13 the crews are coming, when the crews are loading up,
14 and when the crews are leaving.

15 So in OCL's opinion, in my opinion, that
16 proposed use with the Garden of Remembrance, the
17 proposed use assessed here with the landscape
18 contractor, you know, because of the way the timing
19 structure works, will not have any significant
20 impact on the Garden of Remembrance. We would also
21 anticipate that Great American Landscapes to the
22 south would operate sort of in a similar manner.

23 And, you know, neither use is going to
24 preclude the other one from operating effectively.
25 The expectation would be that they're doing the same

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1 of Remembrance, Jody Kline. And I have talked to
2 him several times over the years, both when this was
3 initially filed and subsequently. They are familiar
4 with this application. They have reviewed it, and
5 they have no concerns about it.

6 So I will let Mr. Tilley answer your
7 question, but I did want to assure you that they
8 have advised us that they don't have any concerns
9 about the application.

10 HEARING EXAMINER: I thank you for
11 confirming that. I mean, I certainly appreciate it.
12 They're not here. They were given notice, and they
13 didn't come. So I just --

14 MS. ROSENFELD: Correct.

15 HEARING EXAMINER: But if Mr. Tilley could
16 just alleviate any concern.

17 MR. TILLEY: In my opinion, no. The
18 timing is such that there will not be any impacts
19 between the two elements. And further, I mean, my
20 expect -- this timing was structured in that way. I
21 mean, I would expect funerals generally to be taking
22 place in the middle of the day when there should not
23 be -- there should be very, very little traffic, if
24 any, coming in and out of this site.

25 So -- and further, I mean, Comus is a

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1 type of thing.

2 HEARING EXAMINER: If I could interrupt
3 again.

4 And I apologize, Ms. Rosenfeld, if I'm
5 jumping.

6 MS. ROSENFELD: No, please.

7 HEARING EXAMINER: Because that is one
8 area of inquiry that I just want some more
9 information about is the coordination with the
10 cemetery. I appreciate what you're stating, that in
11 the morning, when most of the people are arriving,
12 the cemetery will be open.

13 But is there -- in your professional
14 opinion, does there need to be any kind of protocol
15 or procedure in place? Say, if a funeral is taking
16 place in the afternoon, and you're trying to get
17 cars into the cemetery while potentially large
18 landscaping vehicles are coming in, particularly if
19 there's another landscaping company across the
20 street that's also doing the same thing.

21 MS. ROSENFELD: Ms. Hearing Examiner, if I
22 might address that.

23 HEARING EXAMINER: Sure.

24 MS. ROSENFELD: I have been in
25 communication with the zoning counsel for the Garden

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1 standard-size road. And, you know, as Mr. Driban
2 testified, you know, the actual amount of traffic
3 coming in is a de minimis. So I have no concerns
4 about that at all.

5 BY MS. ROSENFELD:

6 Q Had you finished with your testimony in
7 connection with regulating the hours of operations,
8 No. 5 in your report?

9 A Yes, I believe I had, unless the zoning
10 hearing examiner has further questions.

11 Q Okay. With respect to adequate public
12 facilities, we've already had Mr. Driban testify
13 about roads. Do you have any opinions as to whether
14 or not fire and police are adequate?

15 A In my opinion, fire and police are
16 adequate. We have an approved fire access plan.
17 There is a fire station that is approximately 2.8
18 miles from the property. There's a police station
19 approximately 6.4 miles from the property, and
20 coverage is adequate.

21 Q And will the proposed use have any impact
22 on schools?

23 A It will not.

24 Q And I believe you testified that this is
25 going to rely on public well and -- I'm sorry, on

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21 (81 to 84)

1 private well and septic; is that correct?
2 **A That is correct.**
3 Q So there's no impact on public water and
4 sewer facilities; is that correct?
5 **A That is correct.**
6 Q Are you familiar with Exhibit 49, which is
7 the planning department staff report in connection
8 with this case?
9 **A Yes, I am.**
10 Q Have you reviewed this report?
11 **A I have.**
12 Q And does it recommend approval of this
13 use?
14 **A It does.**
15 Q Is there any analysis or information in
16 this report that you dispute?
17 **A None.**
18 Q And are you familiar with Exhibit 50,
19 which is the planning board's letter recommending
20 approval?
21 (Exhibit 50, previously marked, was
22 retained by the court.)
23 **A I am familiar with that letter.**
24 Q And is there anything in this letter that
25 you would dispute?

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1 **A There is nothing in this letter that I**
2 **would dispute.**
3 MS. ROSENFELD: Ms. Hearing Examiner,
4 could I just take a couple of minutes off the record
5 to confer with Mr. Tilley?
6 HEARING EXAMINER: Of course.
7 MS. ROSENFELD: Thank you.
8 (Record suspended.)
9 HEARING EXAMINER: Thank you. All right.
10 Ms. Rosenfeld.
11 MS. ROSENFELD: Yes. Thank you.
12 To start with, I'd like to pull up Exhibit
13 19 again, please. And we would -- this would be
14 Sheet 1. Correct.
15 BY MS. ROSENFELD:
16 Q Mr. Tilley, are you familiar with Sheet 1
17 of Exhibit 19?
18 **A Yes, I am.**
19 Q And what is this document?
20 **A This is the first page of the landscape**
21 **and lighting plan that was prepared by Mr. Norton**
22 **and his firm.**
23 Q And he already described this document,
24 correct?
25 **A That is correct.**

1 Q And does the landscape and lighting plan
2 show a driveway entrance into the site?
3 **A It does.**
4 Q And it shows it on all three sheets; is
5 that correct?
6 MR. TILLEY: Could you scroll down through
7 all three sheets just to make sure? There's one,
8 two, and three.
9 **A Yes, it does.**
10 Q Okay. Then I would like to now turn your
11 attention to Exhibit 38, which is the revised site
12 plan. Mr. Tilley, looking at the driveway access on
13 Exhibit 38, is it consistent with what's shown on
14 the landscape and lighting plan?
15 **A No. They're in two separate locations.**
16 Q And which one governs for purposes of the
17 final plan layout?
18 **A The one that is on Exhibit 38 that we are**
19 **seeing right now.**
20 Q So the -- that layout supersedes what's
21 shown in Exhibit 19?
22 **A Yes, that is correct.**
23 Q And could you explain to the hearing
24 examiner why this change was made?
25 **A Certainly. The original entrance location**

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1 **was proposed, as was shown on the landscape and**
2 **lighting plan. And through some of the comments**
3 **received from planning staff, we altered that**
4 **location to be immediately, directly across from the**
5 **Great American Landscapes's entrance location. So**
6 **the entrance was changed to accommodate that**
7 **particular comment from planning staff.**
8 Q Thank you. And if we also could take a
9 quick look at Exhibit 9, the zoning map.
10 (Exhibit 9, previously marked, was
11 retained by the court.)
12 HEARING EXAMINER: Can I just ask why they
13 wanted that change, if you remember?
14 MR. TILLEY: In my recollection, they
15 didn't particularly give an exact reason. However,
16 it was a change we could accommodate. And we went
17 ahead and were able to make some revisions
18 associated with that because it didn't have any
19 overall significant impact on the site.
20 MS. ROSENFELD: And if I may indulge,
21 perhaps I can refresh Mr. Tilley's memory.
22 Q And correct me if I'm wrong. My memory is
23 that planning staff wanted the entrance to be
24 directly across from the entrance to the landscaping
25 company across the street. Would that be correct?

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22 (85 to 88)

1 **A That is correct. They just didn't really**
2 **explain exactly why. Yeah.**
3 HEARING EXAMINER: And he had stated that
4 they just -- like why they wanted them right across
5 from each other, I wasn't sure. But as long as
6 there's no significant impact, that's the important
7 part.
8 A From an engineering standpoint, it may
9 assist with site distance or with just making sure
10 that, you know, you're not pulling out into
11 somebody. So from a technical standpoint, that is a
12 reason why I think they could have done that. And
13 since there was no other significant technical
14 impact to the site, we went ahead and made those
15 changes accordingly.
16 Q And looking still at Exhibit 9, would you
17 -- if you could go to the screen. Would you be able
18 to show the hearing examiner the entrance to where
19 the location -- the entrance location for the
20 proposed use, the entrance to the Garden of
21 Remembrance, and the distance between the two drive
22 entrances?
23 A Certainly. So based on, you know, what we
24 just described, that the entrance is now proposed
25 immediately across the street from the Great

1 **American landscaping facility. And based on the**
2 **location here, the site entrance to the new**
3 **landscaping contractor facility is going to be**
4 **roughly at the same spot across -- on the north side**
5 **of Comus Road.**
6 And what you can see on Exhibit 9 is the
7 entrance to -- the main entrance to the cemetery
8 proper, to the Garden of Remembrance, which you can
9 see right there. It's a -- they have a separated
10 entrance. They have a sign in the middle of it
11 there.
12 There is a scale bar on the bottom of this
13 page, so if we could just go a little bit to page
14 bottom there. You can see the scale bar. That's
15 right there. This is a zoning map that was acquired
16 from staff.
17 And if you -- it's a little bit of a ratio
18 in the scaling purposes here, but we checked this.
19 And if you scale this out from that location, it's
20 approximately 750 feet between where the newly-
21 proposed entrance will be located and where the
22 Garden of Remembrance has their existing entrance.
23 Go up here?
24 Q We're good up there. Thank you.
25 Mr. Tilley, in your professional opinion,

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1 does the pending application meet all of the
2 development standards governing this -- the proposed
3 conditional use application?

4 A **In my opinion, yes, it does.**

5 Q And in your professional opinion, does it
6 meet all of the governing standards for this
7 particular conditional use, specifically as it
8 relates to a landscape contractor?

9 A **In my professional opinion, yes, it does.**

10 MS. ROSENFELD: Ms. Hearing Examiner, I
11 have no further questions.

12 HEARING EXAMINER: Thank you. I just -- I
13 was just curious, just not being that familiar with
14 the area. I appreciate you said that Comus Road is
15 a flyover over 270. Where would you get onto 270
16 relative to Comus Road? Like how far down do you
17 have to drive, if you know?

18 MR. TILLEY: Off the top of my head, I
19 can't tell you that information. I'm sorry.

20 MS. ROSENFELD: Mr. Romano can answer that
21 question.

22 MR. ROMANO: If you go south, you get on
23 121. And if you go north, you get on 109. And
24 south is two miles, and north is about two and a
25 half miles to get onto 270. I might have that

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1 backwards, but that's what it is. You have to go up
2 355 both ways.

3 HEARING EXAMINER: And, Mr. Romano -- and
4 I'm assuming that the stenographer can keep up with
5 us, but just to recall you for a second. Is -- so
6 it's about approximately two, two and a half miles
7 to get on north and south of 270.

8 Is there any reason, besides utilizing the
9 particular uses in this area, that someone would get
10 off 270? Like is there a particular -- you know,
11 sometimes there's like a truck stop or a truck area
12 where, you know, interstate traffic would
13 necessarily utilize the area for any particular
14 reason?

15 MR. ROMANO: Between the two and between
16 -- no.

17 HEARING EXAMINER: No. Okay.

18 MR. ROMANO: No. There's --

19 HEARING EXAMINER: That would accord with
20 how you've laid out the geography. I just wanted to
21 confirm. Okay. Thank you.

22 I think -- because I interrupted before;
23 Mr. Tilley answered my other questions during his
24 testimony -- I didn't have any additional questions.

25 MS. ROSENFELD: Okay. I would like to

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23 (89 to 92)

1 move admission of all of the exhibits that we've
2 presented. There are several that we have not
3 specifically discussed. I think they're really
4 minor in nature.

5 If you need me to authenticate any of
6 them, I can. But they're all either stamped or
7 signed by the expert or who prepared it or by
8 myself, if it's any of the documents that I filed.

9 HEARING EXAMINER: Thank you. Yeah. I
10 have looked through all the exhibits, and I didn't
11 see anything of note. Obviously, there were a
12 number of revisions and updates, which I appreciate.

13 That's, you know, pretty standard as you
14 move through a case. I didn't know if there was
15 anything in terms of something that was replaced or
16 -- and then a revision placed in, if there was
17 anything notable that you wanted to highlight for
18 me.

19 MS. ROSENFELD: I did go through the
20 exhibit list. And frankly, your staff did a
21 terrific job of sort of deleting the exhibits that
22 had been superseded by new ones. So I think that
23 the current list reflects the latest submissions.

24 So, for example, No. 8, which was the
25 statement of justification operations, has been

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1 So today is the 11th, so that would mean
2 the record should close on December 21. And then my
3 office has 30 days -- I have 30 days to issue a
4 decision.

5 MS. ROSENFELD: I think my only question
6 would be if you think it's necessary to update the
7 landscape and lighting plan. It's not provided for
8 purposes of access. Of course, it's provided for
9 purposes of the landscape and the lighting
10 standards. That's the only exhibit I can think of
11 that we might want to update, but I don't think it's
12 necessary unless you think it's important that we do
13 that.

14 HEARING EXAMINER: I don't think it's
15 necessary either. Again, that you have adequate --
16 certainly more than sufficient number of exhibits to
17 show the accurate ingress and egress. And like you
18 said, that exhibit is for landscape and lighting, so
19 I think we're fine.

20 MS. ROSENFELD: Thank you.

21 HEARING EXAMINER: And obviously, there's
22 still final site development that has to be gone
23 through, regardless.

24 MS. ROSENFELD: Right.

25 HEARING EXAMINER: So this is really about

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92

1 stricken and says, Replaced by Exhibit 32. So
2 Exhibit 32 is the current statement of
3 justification. So, based on my review, I think this
4 list is -- I don't think there are any superseded
5 documents except for the landscape driveway entrance
6 that we talked about.

7 HEARING EXAMINER: Thank you for pointing
8 that out. Okay. I have no issue in terms of
9 authenticity of the exhibits, so I will deem them
10 admitted at this point.

11 MS. ROSENFELD: Thank you. Okay. I think
12 that closes our case.

13 HEARING EXAMINER: Okay. Did you have any
14 desire to make any closing statement?

15 MS. ROSENFELD: We ask for your approval
16 with the conditions as proposed.

17 HEARING EXAMINER: All right. Thank you
18 very much. That will conclude this case. The --
19 sorry. The record will stay open for ten days to
20 allow for preparation of the transcript. And in the
21 off chance -- I'm going to close testimony for
22 today. But in the off chance there's some
23 documentary exhibit that you need to add, we can
24 typically make it -- accommodate that within those
25 ten days.

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24 (93 to 96)

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