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Transcript of Administrative Hearing

Date: September 7, 2018

Case: Goshen Enterprises, Inc.

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Transcript of Administrative Hearing
Conducted on September 7, 2018

1 (1 to 4)

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|----|--|----|--|
| 1 | OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS | 1 | 3 |
| 2 | FOR MONTGOMERY COUNTY, MARYLAND | 2 | PAGE |
| 3 | -----x | 3 | OPENING STATEMENT 4 |
| 4 | In Re: : | 4 | TESTIMONY OF MICHAEL NORTON 11 |
| 5 | GOSHEN ENTERPRISES, INC. : Case No. CU18-06 | 5 | TESTIMONY OF KEVIN BOHRER 62 |
| 6 | -----x | 6 | TESTIMONY OF EMMET TYDINGS 85 |
| 7 | | 7 | TESTIMONY OF DIANA TYDINGS 93 |
| 8 | | 8 | TESTIMONY OF WALTER ROMANS 100 |
| 9 | HEARING | 9 | CLOSING STATEMENT 117 |
| 10 | Before Hearing Examiner | 10 | |
| 11 | Martin Grossman | 11 | |
| 12 | Rockville, Maryland | 12 | |
| 13 | Friday, September 7, 2018 | 13 | |
| 14 | 9:32 a.m. | 14 | |
| 15 | | 15 | |
| 16 | | 16 | |
| 17 | | 17 | |
| 18 | | 18 | |
| 19 | | 19 | |
| 20 | | 20 | |
| 21 | | 21 | |
| 22 | | 22 | |
| 23 | Job: 207216 | 23 | |
| 24 | Pages: 1 - 119 | 24 | |
| 25 | Transcribed by: Molly Bugher | 25 | |
| 1 | APPEARANCES | 1 | PROCEEDINGS |
| 2 | HEARING EXAMINER | 2 | HEARING EXAMINER GROSSMAN: All right. And is Mr. |
| 3 | MARTIN GROSSMAN | 3 | Tydings here? |
| 4 | FOR THE APPLICANT: | 4 | MR. KLINE: Yes. |
| 5 | JODY KLINE, ESQ. | 5 | HEARING EXAMINER GROSSMAN: All right. And Mr. |
| 6 | Miller, Miller & Canby | 6 | Romans? |
| 7 | 200 B Monroe Street | 7 | MR. KLINE: Yes, sir. He's present right here. |
| 8 | Rockville, MD | 8 | HEARING EXAMINER GROSSMAN: Okay. Good. Then, court |
| 9 | | 9 | reporter ready? Then I will call the case. This a -- this |
| 10 | MICHAEL NORTON, Site Designer | 10 | is the resumption of a public hearing in the matter of |
| 11 | | 11 | Goshen Enterprises Inc., CU 1806, an application for |
| 12 | IN OPPOSITION: | 12 | landscape contractor or conditional use under zoning |
| 13 | EMMETT TYDINGS | 13 | ordinances section 59.3.5.5. The applicant seeks the |
| 14 | DIANA TYDINGS | 14 | conditional use to permit operation of a landscaping |
| 15 | 21310 Zion Road | 15 | business on a 5.74 acre site located at 21201 Zion Road in |
| 16 | Brookville, Maryland 20833 | 16 | Brookville, Maryland in the AR zone. The conditional use |
| 17 | | 17 | as part of a larger tract, 30.49 acres of un-plotted land |
| 18 | WALTER ROMANS | 18 | identified as parcel P490 on tax map HV31, addition to |
| 19 | HARTIS MACKRE | 19 | Brooke Road. The property is owned by M&M Realty LLC and |
| 20 | 21304 Zion Road | 20 | currently used as a tree farm operated by Ace Tree Movers |
| 21 | Brookville, Maryland 20833 | 21 | and Ace Nurseries, which will continue as a tree farm |
| 22 | | 22 | operation on the remaining 24.75 acres of land after the |
| 23 | | 23 | applicant purchases the entire tract. The hearing was |
| 24 | | 24 | begun on August 3, 2018, and was adjourned until today, |
| 25 | | 25 | September 7, 2018, to give two neighbors, Mr. Tydings and |

Transcript of Administrative Hearing
Conducted on September 7, 2018

2 (5 to 8)

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| <p>5</p> <p>1 Mr. Romans an opportunity to be heard. My name is Martin 2 Grossman; I'm the Hearing Examiner, which means I will 3 write a report and decision in the case. Will the parties 4 identify themselves for the record please? 5 MR. KLINE: Good morning. For the record, my name is 6 Jody Kline. I'm an attorney with the law firm of Miller, 7 Miller & Canby, with offices at 200 B Monroe Street here in 8 Rockville. And I represent the applicant in this case, 9 Goshen Enterprises. 10 HEARING EXAMINER GROSSMAN: All right. And Mr. Klein, 11 have you brought Michael Norton with you here today? 12 MR. KLINE: At your request, Mr. Norton is available 13 to testify and be cross-examined. 14 HEARING EXAMINER GROSSMAN: All right. Sir, for the 15 record, Mr. Tydings, would you identify yourself, please? 16 Name and address? 17 MR. TYDINGS: Emmet Tydings. I'm here with my wife 18 Diana Tydings, who I would like to be able to have to 19 interject when she so sees fit. We are -- 20 HEARING EXAMINER GROSSMAN: That's a wife's 21 prerogative, by the way. 22 MR. TYDINGS: Yeah, often. And we reside at 21310 Zion 23 Road, Brookville, Maryland 20833, in addition to Brooke 24 Road, also known as Clover Hill. 25 HEARING EXAMINER GROSSMAN: All right. Mr. Romans.</p> | <p>7</p> <p>1 matters. Any exhibits, any new exhibits, if there are 2 such, have to be up in hard copy and electronic copy. 3 Please note that I made some corrections at the last 4 hearing, which you should have seen in the transcript 5 regarding some errors in the Technical Staff report, which 6 were pointed out by the Planning Board. And the applicant 7 has completed its case here, but with the consent of the 8 applicant, we've set this date to hear the testimony from 9 Mr. Tydings and Mr. Romans, who raised concerns in letters, 10 Exhibits 38, 39, and 40, about the hearing notice, about 11 possible noise, light impacts, use of well water, and 12 possible effects on property values. Are there any other 13 preliminary matters? Mr. Klein: 14 MR. KLINE: No, sir. Not from the applicant's point 15 of view. 16 HEARING EXAMINER GROSSMAN: Okay, Mr. Romans? 17 MR. ROMANS: No, sir. 18 HEARING EXAMINER GROSSMAN: Mr. Tydings? Okay. So 19 let's start out that I think the proper order of things; 20 Mr. Norton testified and is subject to cross-examination. 21 We will have him take the stand here if you have questions 22 of Mr. Norton. Do you have questions of Mr. Norton? 23 MR. ROMANS: We do have one other question. 24 HEARING EXAMINER GROSSMAN: Okay. All right. Mr. 25 Norton.</p> |
| <p>6</p> <p>1 MR. ROMANS: My name is Walter Romans, also known as 2 Drew. I live at 21304 Zion Road. This is my fiancé, 3 Hartis Mackre (phonetic) behind me, who also resides at 4 that residence. 5 HEARING EXAMINER GROSSMAN: All right. Okay. Let me 6 explain a little bit about the nature of these proceedings; 7 a combination of formality and informality. It operates 8 very much the way a courtroom operates. All witnesses are 9 sworn in. They are subject to cross-examination. A court 10 reporter is here and takes everything down. There will be 11 a transcript of these proceedings posted on our website as 12 there was for the earlier -- the first session in August. 13 And pretty much the rules of evidence are similar, a little 14 bit more relaxed than in a formal court proceeding. Let me 15 explain what a conditional use is. A conditional use, 16 which used to be called a special exception, but that's a 17 bit of a misnomer and it misled people to think it was a 18 variance. The conditional use is not a variance. It 19 doesn't vary from what the zoning ordinance allows. It is, 20 in fact, a use that is permitted by the zoning ordinance if 21 specified conditions are met. And those conditions in the 22 zoning ordinance or both specific as to this type of 23 conditional use, a landscape contractor, and their general 24 findings that must be made for every conditional use 25 application. All right. Let me turn to some preliminary</p> | <p>8</p> <p>1 MR. ROMANS: No, not one for you, sir. Is Kevin 2 Bohrer available to testify today? 3 HEARING EXAMINER GROSSMAN: He was not one of the 4 witnesses requested. 5 MR. ROMANS: He -- 6 HEARING EXAMINER GROSSMAN: So I don't know if -- 7 MR. ROMANS: Sir, he is the owner of the property. 8 This is a very important issue. 9 HEARING EXAMINER GROSSMAN: Well, I, more than once, 10 asked you gentlemen in (inaudible) to specify any of the 11 applicant's witnesses that you wanted to have here for 12 cross-examination purposes. The only one who was specified 13 was Mr. Norton. So if you wanted to have Mr. Bohrer, why 14 didn't you specify that? 15 MR. TYDINGS: Well, I can interject on that. I can 16 weigh in on that. I happened to know that Kevin was going 17 to be here. I didn't know that it was a formality that he 18 be requested to speak as he was going to physically be here 19 (inaudible). 20 HEARING EXAMINER GROSSMAN: Well, he would only be -- 21 he would only -- I don't know. Is Mr. Bohrer here? 22 MR. KLINE: Yes, sir. 23 HEARING EXAMINER GROSSMAN: Oh, he is here? 24 MR. KLINE: Yes, sir. 25 HEARING EXAMINER GROSSMAN: Okay. Well, if he is</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

3 (9 to 12)

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| <p>9</p> <p>1 here, then I have no problem with him being subject to 2 cross-examination. I just wasn't aware of that. 3 MR. KLINE: Well, let me -- 4 HEARING EXAMINER GROSSMAN: Yeah. 5 MR. KLINE: I don't disagree. I guess I would like to 6 have a sense of the scope because we -- the record -- if 7 there are questions that come out of the transcript, then I 8 can understand. But Mr. Bohrer has offered to meet with 9 Mr. Tydings and Mr. Romans, and he did meet with Mr. 10 Tydings. There was an opportunity for Mr. Romans to talk 11 directly to Mr. Bohrer outside of this hearing, and he 12 declined to do so. So I have some apprehensions about 13 where this is going to go. 14 HEARING EXAMINER GROSSMAN: Right. Well, he -- yes, 15 sir, Mr. Romans. 16 MR. ROMANS: Mr. Grossman. 17 HEARING EXAMINER GROSSMAN: Yes. 18 MR. ROMANS: I was not invited to that meeting. Mr. 19 Tydings, is that correct? 20 MR. TYDINGS: I don't recall, actually. 21 MR. ROMANS: Thank you. 22 HEARING EXAMINER GROSSMAN: Well, that meeting would 23 have been something outside of the scope of this hearing. 24 MR. ROMANS: Correct. 25 HEARING EXAMINER GROSSMAN: So it's not really an</p> | <p>11</p> <p>1 Mr. Norton? 2 MR. ROMANS: Do you have any Emmet? 3 MR. TYDINGS: Well, yeah. I'm not -- 4 HEARING EXAMINER GROSSMAN: Mr. Tydings? 5 MR. TYDINGS: Exactly sure who were going to ask some 6 of these questions because I kind of cross-referenced 100 7 and some odd pages of everything. 8 MR. ROMANS: Okay. 9 MR. TYDINGS: But we'll -- yeah. 10 MR. ROMANS: All right. So -- 11 MR. NORTON: Could I just state -- so I've got my 12 phone out not because I'm texting but all my notes from my 13 phone. 14 HEARING EXAMINER GROSSMAN: All right. We don't want 15 them ringing in the middle of a hearing. So it is 16 preferable if those are turned off. But it is -- and 17 certainly you can use it for you notes. 18 MR. ROMANS: Okay. I'm ready. Okay. So Mr. Norton, 19 am I to understand that you are noncompliant with the 20 Forest Conservation Plan on the site? 21 MR. NORTON: (Inaudible). I do not believe that's 22 correct. Can you -- 23 HEARING EXAMINER GROSSMAN: Yes, it's in the notes. I 24 believe it's in the transcript. 25 MR. ROMANS: And apparently you --</p> |
| <p>10</p> <p>1 issue for me. The only question is a procedural one. That 2 is, that this second hearing date was set up specifically 3 to accommodate your request and Mr. Tydings request. And I 4 did ask you specifically, a number of times, that you 5 specify who you wanted here for purposes of cross- 6 examination. I don't want to unduly stain on formalities. 7 If in fact, Mr. Bohrer is here, it seems to me we -- it 8 makes sense for you to be able to cross-examine him, but 9 only within the scope of his direct examination as listed 10 in the transcript, which is the usual restriction for 11 cross-examination. 12 MR. ROMANS: That's okay. 13 HEARING EXAMINER GROSSMAN: So why do we proceed with 14 that aspect first. If Mr. Bohrer would come forward, 15 please. Is that agreeable Mr. Kline? 16 MR. KLINE: Well, why don't we go ahead and dispose of 17 Mr. Norton? Because he was the one we all anticipated 18 being -- testifying (inaudible). 19 HEARING EXAMINER GROSSMAN: I think we can do that 20 too, if you wish. Let's do that then, first. Mr. Norton, 21 you were sworn in at the August 3 hearing. You are still 22 under oath. 23 MR. NORTON: Understood. 24 HEARING EXAMINER GROSSMAN: Okay. Let's start them 25 with Mr. Romans. You have cross-examination questions for</p> | <p>12</p> <p>1 HEARING EXAMINER GROSSMAN: What page of the 2 transcript are you referring to? 3 MR. NORTON: I don't have a transcript with me. 4 MR. ROMANS: Okay. Well, it's going to take some time 5 to -- but I can certainly pull this out. 6 MR. NORTON: (Inaudible) read a section of it. I'm 7 not sure I understand your question. 8 HEARING EXAMINER GROSSMAN: I don't recall that being 9 testified to. 10 MR. ROMANS: It's in here. Absolutely. 11 HEARING EXAMINER GROSSMAN: So you tell me when -- 12 where. 13 MR. ROMANS: Okay. Give me a second. Let me start 14 here. Okay. All right. I will find it. Give me a 15 second, sir. 16 HEARING EXAMINER GROSSMAN: All right. 17 MR. KLINE: Mr. Grossman, I did not bring with me my 18 exhibit list from the last hearing. Could I borrow your -- 19 HEARING EXAMINER GROSSMAN: Sure. 20 MR. KLINE: Record for a second, please? 21 HEARING EXAMINER GROSSMAN: Here's the file. 22 MR. KLINE: And we should have a letter from the 23 Planning Board approving the Forest Conservation Plan in 24 the record, and I just want to (inaudible). 25 HEARING EXAMINER GROSSMAN: Right. There's the file.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

4 (13 to 16)

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| <p>13</p> <p>1 MR. TYDINGS: Is that the first letter in the Forest 2 Conservation Plan recommendation, Attachment B? 3 MR. ROMANS: No, it was addressed in the transcript, 4 actually. 5 HEARING EXAMINER GROSSMAN: Look for the Planning 6 Board letter. It may be in the Planning Board letter. 7 MR. KLINE: Okay. I was. Yeah, and actually, I 8 didn't find that one there. So it's Exhibit 35, Mr. 9 Grossman. 10 HEARING EXAMINER GROSSMAN: Okay. Planning Board 11 resolution. Exhibit 35, which is the resolution of July 12 17, 2018, Mr. Romans, from the Planning Board, saying that 13 the Planning Board finds the application satisfies all the 14 applicable requirements of the Forest Conservation law, 15 Montgomery County code, section 22A, and ensures the 16 protection of environmentally sensitive features. That's 17 the specific, express finding of the Planning Board on July 18 17, 2018; Exhibit 35 in the file. 19 MR. ROMANS: Well, I'm trying to find the part in the 20 transcript that says that they became compliant with some 21 off-site maneuver, not on-site. And that they took a 22 double penalty. 23 MR. NORTON: I can -- 24 MR. KLINE: Yeah, okay. 25 MR. NORTON: I can explain (inaudible).</p> | <p>15</p> <p>1 MR. ROMANS: Okay. So what is your opinion on why the 2 existing road across from Riggs Road is not going to be the 3 one that's going to be used as a main entrance? 4 HEARING EXAMINER GROSSMAN: What existing road are you 5 talking about? (Inaudible). 6 MR. ROMANS: You can come straight out of Riggs Road 7 and you can walk straight. You go straight across the 8 street; there is an existing road right there. 9 HEARING EXAMINER GROSSMAN: (Inaudible) access to the 10 site. 11 MR. ROMANS: It's more greatly improved than what they 12 are using now. 13 MR. NORTON: Can -- 14 HEARING EXAMINER GROSSMAN: Well, hold on one second, 15 just so I understand what road you're talking about. 16 You're talking about the access to the site? The road off 17 of -- 18 MR. ROMANS: Straight across from Riggs Road. 19 MR. TYDINGS: I'm sorry. You might just want to point 20 this out. It is Riggs. It's Riggs. 21 MR. ROMANS: So it's Riggs? 22 MR. TYDINGS: Riggs is -- the gravel part is Riggs. 23 HEARING EXAMINER GROSSMAN: All right. Mr. Norton? 24 MR. ROMANS: Do you understand the question? 25 MR. NORTON: I'm not quite sure I understand</p> |
| <p>14</p> <p>1 MR. KLINE: Wait a minute. We understand what the 2 question is. 3 (Crosstalk) 4 MR. ROMANS: (Inaudible) saying that. Is that 5 correct? 6 (Crosstalk) 7 MR. NORTON: I understand. 8 MR. KLINE: We understand what you're asking. 9 MR. ROMANS: Okay. Let's address that. Okay, Mr. 10 Norton. 11 MR. NORTON: The current property, when you look at 12 conditional use within the property, does not have forest 13 on it. When you do not have forest, to comply with the 14 Forest Conservation Law, you have to plant forest. That is 15 what we are talking about. We are actually planting forest 16 on the property that is also owned by -- well, will be 17 owned by the applicant. Because the total property is not 18 part of the conditional use, we actually had to treat it as 19 off-site, even though it's under the same ownership. 20 Therefore, he is being penalized at two to one for planting 21 on his own property. 22 MR. ROMANS: And what is that penalty? 23 MR. NORTON: Two to one planting (inaudible). 24 MR. ROMANS: In planting, planting ratio. 25 MR. NORTON: In planting, yes, sir. Yes, sir.</p> | <p>16</p> <p>1 (inaudible). 2 MR. ROMANS: Well, to the right side. The very right 3 side of your site is a gravel road. 4 HEARING EXAMINER GROSSMAN: Can you go up and point to 5 what you're talking about? 6 MR. ROMANS: Okay. So, where is -- I don't see that 7 road on this map. Sorry. 8 MR. KLINE: Mr. Norton, could you help -- 9 MR. NORTON: Oh, sure. 10 MR. KLINE: Mr. Romans just identify where -- 11 MR. NORTON: Oh sure. 12 MR. KLINE: I think you know -- we think we know what 13 you're talking about. 14 HEARING EXAMINER GROSSMAN: Sir, are you talking about 15 the side entrance on Riggs Road and the gravel road? 16 MR. ROMANS: Mm-hm (affirmative). 17 HEARING EXAMINER GROSSMAN: Yeah, it would be on the 18 right-hand side (inaudible). 19 MR. ROMANS: This right here. Riggs Road, (inaudible) 20 Road. Is that what you're saying is more it's that one was 21 more okay. There is an exit right now that leads directly 22 to this. 23 HEARING EXAMINER GROSSMAN: All right. Are you 24 talking about to the east of the site? 25 MR. ROMANS: That would be south. If I'm looking at</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

5 (17 to 20)

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| <p>17</p> <p>1 the --</p> <p>2 (Crosstalk)</p> <p>3 MR. KLINE: All right. If you don't mind, I think we</p> <p>4 understand the question. Mr. Romans, if you don't mind,</p> <p>5 maybe Mr. -- go up there and just (inaudible) see this.</p> <p>6 Would you show him where the other Rural Rustic Road is</p> <p>7 that does provide access to the property (inaudible)?</p> <p>8 MR. ROMANS: Yeah, I don't think -- that looks too far</p> <p>9 away. I mean, am I looking on the wrong scale?</p> <p>10 MR. KLINE: Mr. Norton is going to go up and basically</p> <p>11 give you the (inaudible).</p> <p>12 MR. NORTON: The intersection --</p> <p>13 (Crosstalk)</p> <p>14 HEARING EXAMINER GROSSMAN: If you could move to the</p> <p>15 side so I could see also.</p> <p>16 MR. ROMANS: (Inaudible).</p> <p>17 MR. KLINE: He does like to know what we're doing.</p> <p>18 MR. NORTON: The intersection of the property, this is</p> <p>19 Zion Road and Riggs Road.</p> <p>20 MR. ROMANS: Oh, I see. This right here.</p> <p>21 (Crosstalk)</p> <p>22 MR. KLINE: And gentlemen, for both of you, when you</p> <p>23 point to the drawing, please identify because the</p> <p>24 transcript doesn't understand what's --</p> <p>25 MR. NORTON: Yes.</p> | <p>19</p> <p>1 which we --</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. So I think Mr.</p> <p>3 Romans' question is why you're not going to be using that.</p> <p>4 Was that your question Mr. Romans?</p> <p>5 MR. ROMANS: Yeah, absolutely.</p> <p>6 HEARING EXAMINER GROSSMAN: (Inaudible).</p> <p>7 MR. ROMANS: And including the fact that it's much</p> <p>8 more improved than what they're using right now.</p> <p>9 HEARING EXAMINER GROSSMAN: Well, you can't testify</p> <p>10 now. All you do is ask a question. You're going to be</p> <p>11 given the opportunity to testify.</p> <p>12 MR. ROMANS: (Inaudible).</p> <p>13 HEARING EXAMINER GROSSMAN: But in any event, Mr.</p> <p>14 Norton, you can answer the question.</p> <p>15 MR. NORTON: Riggs Road is an unimproved gravel,</p> <p>16 public road. It's 12 feet wide I believe, right now; 10 to</p> <p>17 12 feet wide as written in the rural rustic guidelines as</p> <p>18 well. Zion Road is a paved road out. It does currently</p> <p>19 serve the property right now. This -- the road to the</p> <p>20 south is, the existing driveway that we have, is gated off,</p> <p>21 used for emergency access only.</p> <p>22 HEARING EXAMINER GROSSMAN: And why is that? I think</p> <p>23 it's question is; why is that?</p> <p>24 MR. NORTON: The road is not wide enough and it is</p> <p>25 gravel. It's an unimproved gravel road.</p> |
| <p>18</p> <p>1 MR. KLINE: So just say, looking over on the left</p> <p>2 side.</p> <p>3 MR. NORTON: Well, in the southwest corner of the</p> <p>4 property (inaudible).</p> <p>5 HEARING EXAMINER GROSSMAN: Of the overall property.</p> <p>6 Not of the subject site.</p> <p>7 MR. NORTON: Of the overall property. I just want to</p> <p>8 be clear that this is the overall property. I believe what</p> <p>9 you are referring to is there is an existing gravel drive</p> <p>10 on the south property on Riggs Road. Riggs Road is the</p> <p>11 unimproved gravel road; I believe 10 to 12 feet wide. We</p> <p>12 are not using Riggs Road.</p> <p>13 MR. KLINE: Okay. Show where on this (inaudible) we</p> <p>14 are referring to with exhibit --</p> <p>15 MR. NORTON: We are referring to the landscape plan is</p> <p>16 what we're looking at right now.</p> <p>17 HEARING EXAMINER GROSSMAN: And what you're pointing</p> <p>18 to is at the very southern edge of it, due south of the</p> <p>19 subject site on --</p> <p>20 MR. NORTON: On Riggs Road.</p> <p>21 HEARING EXAMINER GROSSMAN: On Riggs Road.</p> <p>22 MR. NORTON: On Riggs Road.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay. And is it -- there</p> <p>24 is an existing gravel entry point there.</p> <p>25 MR. NORTON: There is an existing gravel entry road,</p> | <p>20</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MR. KLINE: And would you relate to the Hearing</p> <p>3 Examiner --</p> <p>4 HEARING EXAMINER GROSSMAN: Well, I'm going to let you</p> <p>5 redirect in a minute.</p> <p>6 MR. KLINE: Sorry. Thank you. Sure.</p> <p>7 HEARING EXAMINER GROSSMAN: (Inaudible).</p> <p>8 MR. KLINE: Sure.</p> <p>9 HEARING EXAMINER GROSSMAN: Are there any other</p> <p>10 questions?</p> <p>11 MR. ROMANS: Yes, sir. I contend that that gravel</p> <p>12 road is a much more --</p> <p>13 HEARING EXAMINER GROSSMAN: You can't contend anything</p> <p>14 at this point.</p> <p>15 MR. ROMANS: Okay.</p> <p>16 HEARING EXAMINER GROSSMAN: I'm going to swear you in</p> <p>17 after you finish your cross-examination.</p> <p>18 MR. ROMANS: Yes, sir.</p> <p>19 HEARING EXAMINER GROSSMAN: And you can testify as to</p> <p>20 anything that's relevant to the case at that point.</p> <p>21 MR. ROMANS: Yes, sir.</p> <p>22 HEARING EXAMINER GROSSMAN: Will do. Thank you.</p> <p>23 MR. ROMANS: Sure.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay.</p> <p>25 MR. ROMANS: So once again, the question was, what is</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

6 (21 to 24)

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| <p>21</p> <p>1 your opinion on why the existing Riggs Road gravel road is 2 not the one being used for the main entrance? 3 HEARING EXAMINER GROSSMAN: I think he's asked and 4 answered. He's just answered that question. 5 MR. ROMANS: Well, okay. And he also stated that 6 there was a gated entrance to the Riggs Road Annex. And I 7 drove back there yesterday and there is not. Okay. Let's 8 talk about -- 9 HEARING EXAMINER GROSSMAN: Once again, I'm going to 10 strike that comment because you cannot testify until you 11 are under oath. 12 MR. ROMANS: Got it. 13 HEARING EXAMINER GROSSMAN: And you're not under oath 14 at this point. When you finish cross-examination, I will 15 swear you in and I will swear in -- 16 MR. ROMANS: Got it. 17 HEARING EXAMINER GROSSMAN: Anybody else who is 18 testifying, and they will -- we will hear from them. 19 MR. ROMANS: Yes, sir. Okay. Let's talk about 20 affected land values and neighboring properties. 21 MR. KLINE: Let me just register an objection. That 22 was not the scope of Mr. Norton's testimony. So it would 23 be beyond the scope of cross-examination at this time. 24 HEARING EXAMINER GROSSMAN: He did talk about question 25 of -- effect on property values. Any testified, and my</p> | <p>23</p> <p>1 terms of the -- 2 MR. KLINE: Can we get a page reference for you? It 3 looks like you've got (inaudible). 4 MR. NORTON: (Inaudible). 5 HEARING EXAMINER GROSSMAN: I'm sorry. I couldn't 6 hear you Mr. Norton. 7 MR. KLINE: Well, I was hoping that you could give us 8 a page reference so he could see what he said so he could 9 answer his question. 10 HEARING EXAMINER GROSSMAN: Yes, that the -- that's 11 usually the practice when you ask him about a statement. 12 MR. ROMANS: My first time here, sorry. And I can 13 take the time to find it if you like me to. 14 HEARING EXAMINER GROSSMAN: Okay. Well, why don't you 15 ask your question and then let's -- okay. 16 MR. ROMANS: Okay. Okay. So like I said, you said 17 you do not believe there's going to be a negative impact on 18 property values. Is that correct? 19 MR. NORTON: I can speak to -- 20 HEARING EXAMINER GROSSMAN: Well, just is that 21 correct. Did you say that? 22 MR. ROMANS: Yes. 23 MR. NORTON: I believe that's the case. I don't have 24 a page number to review. 25 HEARING EXAMINER GROSSMAN: Okay. Okay. He believes</p> |
| <p>22</p> <p>1 recollection, that would not, in his opinion, be visible 2 from the road and would not be (inaudible). 3 MR. KLINE: That's okay. (Inaudible) that direction, 4 okay. 5 HEARING EXAMINER GROSSMAN: Testimony. 6 MR. KLINE: (Inaudible) numbers. 7 HEARING EXAMINER GROSSMAN: But so I'm going to 8 overrule your objection at this point. 9 MR. KLINE: I withdrew -- I withdraw the objection. 10 HEARING EXAMINER GROSSMAN: He hasn't posed a question 11 to you. 12 MR. KLINE: I understand. 13 HEARING EXAMINER GROSSMAN: All right. Mr. Romans. 14 MR. ROMANS: And once again, that is in the transcript 15 when I asked this question. So you stated, in your 16 professional opinion, you do not believe there's going to 17 be a negative impact on property values. Is that correct? 18 MR. NORTON: I believe that is the statement. I don't 19 have the transcript with me. 20 HEARING EXAMINER GROSSMAN: Do you have a copy of the 21 transcript for Mr. Norton, Mr. Kline? 22 MR. KLINE: I did not order one. 23 HEARING EXAMINER GROSSMAN: All right. Well, let me 24 give you a copy so you can both be on the same page here. 25 And if you need it -- I'm not sure that you will need it in</p> | <p>24</p> <p>1 that's his recollection, yes. 2 MR. ROMANS: Okay. Great. Great. I really don't 3 believe anyone in the hearing room actually believes 4 that -- 5 HEARING EXAMINER GROSSMAN: Well, no. No. Once 6 again, you cannot make a statement here. 7 MR. ROMANS: No, it's going to end in a question. 8 HEARING EXAMINER GROSSMAN: Pardon? 9 MR. ROMANS: I can end that in a question, sir. 10 HEARING EXAMINER GROSSMAN: Well, let's start it out 11 with a question. Don't make a -- 12 MR. ROMANS: Okay. 13 HEARING EXAMINER GROSSMAN: Don't make a prologue to 14 it. Just ask your question. 15 MR. ROMANS: Okay. 16 HEARING EXAMINER GROSSMAN: When you say, I really 17 don't believe, that is making an assertion. You can't do 18 that until your sworn in. Then you are going to be free to 19 make your statements on any relevant issue. 20 MR. TYDINGS: Could we alternate? 21 HEARING EXAMINER GROSSMAN: This is cross-examination. 22 MR. TYDINGS: Can we alternate here? Or do we have to 23 go in order? 24 HEARING EXAMINER GROSSMAN: Let's -- at this point, 25 because I don't want it to get too confusing, let's go in</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

7 (25 to 28)

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| <p>25</p> <p>1 order.</p> <p>2 MR. ROMANS: Okay. There is a document referenced</p> <p>3 here in Mr. Grossman's reply email, Exhibit 32 and 34 where</p> <p>4 prior to that hearing that this -- the effects on property</p> <p>5 values.</p> <p>6 MR. TYDINGS: Okay. Well, we will use that in</p> <p>7 testimony (inaudible) because it's not a question, but it</p> <p>8 is stated in (inaudible).</p> <p>9 MR. ROMANS: Exhibit 32 and 34. I had a hard time</p> <p>10 referencing exhibits so -- because of the way that they are</p> <p>11 done. But this was in Mr. Grossman's email to us. Yeah on</p> <p>12 August 28th. Okay. So (inaudible).</p> <p>13 HEARING EXAMINER GROSSMAN: What I sent you in the</p> <p>14 email was a summary of what I thought was the testimony,</p> <p>15 but I asked you to look at the transcript. As I said in</p> <p>16 that email, those are not findings by me. Findings will</p> <p>17 take place when I write my final report and decision. But</p> <p>18 I did want to give you an idea of what was testified to</p> <p>19 since you were here at the first hearing, and tell you to</p> <p>20 look at the transcripts so that you would have the full</p> <p>21 concept of what was stated. But in any event, go ahead and</p> <p>22 ask your question Mr. Romans.</p> <p>23 MR. ROMANS: Okay, great. So Mr. Norton, you are</p> <p>24 compensated by Goshen Enterprises, correct?</p> <p>25 MR. NORTON: That's incorrect.</p> | <p>27</p> <p>1 adversely affected by the runoff.</p> <p>2 HEARING EXAMINER GROSSMAN: When you say you've been</p> <p>3 identified --</p> <p>4 MR. ROMANS: Yes.</p> <p>5 HEARING EXAMINER GROSSMAN: Where were you identified?</p> <p>6 MR. ROMANS: In the transcript, sir.</p> <p>7 HEARING EXAMINER GROSSMAN: You are identified as</p> <p>8 being adversely affected by (inaudible).</p> <p>9 MR. ROMANS: Correct. Directly affected by storm</p> <p>10 runoff.</p> <p>11 HEARING EXAMINER GROSSMAN: And what page of the</p> <p>12 transcript was that?</p> <p>13 MR. ROMANS: Do you want me to go to --</p> <p>14 HEARING EXAMINER GROSSMAN: Well, if you don't have</p> <p>15 that, you can write down the reference to what you're</p> <p>16 saying.</p> <p>17 MR. ROMANS: Sorry, as I said, is my first time ever</p> <p>18 doing this and I certainly would have.</p> <p>19 HEARING EXAMINER GROSSMAN: All right. So what's --</p> <p>20 state your question again. Okay.</p> <p>21 MR. ROMANS: Okay. I said, would you please describe</p> <p>22 the storm water retention plan, since I've been identified</p> <p>23 as adversely affected by the runoff.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay. Mr. Norton?</p> <p>25 MR. NORTON: Yes, I will describe the storm water</p> |
| <p>26</p> <p>1 MR. ROMANS: That is not -- that's incorrect?</p> <p>2 MR. NORTON: Yes.</p> <p>3 MR. ROMANS: Who are you compensated by?</p> <p>4 HEARING EXAMINER GROSSMAN: You can answer.</p> <p>5 MR. KLINE: (Inaudible).</p> <p>6 MR. NORTON: The current property owner.</p> <p>7 MR. ROMANS: The current property owner?</p> <p>8 MR. NORTON: Yes.</p> <p>9 MR. ROMANS: Well, why would you draw up a site plan</p> <p>10 then for Goshen Enterprises?</p> <p>11 HEARING EXAMINER GROSSMAN: You can answer. Unless</p> <p>12 there's an objection ruled on. You can answer the</p> <p>13 question.</p> <p>14 MR. NORTON: Sure. I thank you. We were hired by the</p> <p>15 current property owner to take the plans through the</p> <p>16 conditional use process for a landscape contractor.</p> <p>17 MR. ROMANS: Was that part of the real estate</p> <p>18 contract?</p> <p>19 MR. NORTON: I'm sorry?</p> <p>20 MR. ROMANS: Was that part of the real estate</p> <p>21 contract?</p> <p>22 MR. NORTON: I don't know.</p> <p>23 MR. ROMANS: (Inaudible). Okay. I'm pretty sure it</p> <p>24 was, but okay. So, okay. I would like you to describe the</p> <p>25 storm water retention plan. Since I've been identified as</p> | <p>28</p> <p>1 management. And I believe I have a drawing, if you'd like</p> <p>2 me to --</p> <p>3 HEARING EXAMINER GROSSMAN: Okay.</p> <p>4 MR. NORTON: For I don't have the storm water exhibits</p> <p>5 up here in front of us, but I do have the landscape plan,</p> <p>6 which does show the storm water itself. The storm water</p> <p>7 will be treated through micro-bio retention or landscape</p> <p>8 infiltration facilities on the property. They are to the</p> <p>9 north of the existing, and the proposed parking and gravel</p> <p>10 areas. The runoff from those, from the gravel and from the</p> <p>11 buildings, will sheet flow to the -- to the -- I'm sorry --</p> <p>12 proposed, to storm water management facilities, at which it</p> <p>13 will drain, infiltrate into the ground from there.</p> <p>14 HEARING EXAMINER GROSSMAN: And I'm confused about</p> <p>15 something.</p> <p>16 MR. NORTON: Yes.</p> <p>17 HEARING EXAMINER GROSSMAN: Mr. Roman says that there</p> <p>18 was testimony that he was going to be affected by runoff.</p> <p>19 My understanding of his property is across Zion Road. Is</p> <p>20 it your testimony that his property would be or has been</p> <p>21 affected by runoff from the subject site?</p> <p>22 MR. NORTON: Again, I -- that's not the case. Mr. --</p> <p>23 I'm sorry, Mr. Tydings, not Mr. -- Mr. Tydings -- Mr.</p> <p>24 Romans. What we have to do when we start these projects is</p> <p>25 that we notify any downstream neighbors of the storm water</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

8 (29 to 32)

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| <p style="text-align: right;">29</p> <p>1 management. We sent a letter to Mr. Romans, because we 2 identified him as a potential downstream neighbor. That's 3 the extent of what it is. It's required when you file a 4 storm water concept plan. 5 HEARING EXAMINER GROSSMAN: But your testimony that he 6 is -- would be affected by the storm water runoff from the 7 subject site. 8 MR. NORTON: I do not believe that was the case. 9 HEARING EXAMINER GROSSMAN: Okay. 10 MR. NORTON: I would really like to read where this 11 was written. 12 HEARING EXAMINER GROSSMAN: All right. And as I 13 recall, you had introduced a couple of letters that you had 14 sent to Mr. Romans. 15 MR. NORTON: Yes. 16 HEARING EXAMINER GROSSMAN: But were -- and you 17 introduced certificates indicating that they were returned 18 as unaccepted or not -- 19 MR. NORTON: Unaccepted three times by the post office 20 and certified mail. 21 HEARING EXAMINER GROSSMAN: Okay. All right. Mr. 22 Romans. I will tell you, I don't recall any evidence that 23 your property is going to be adversely affected by storm 24 water runoff from the subject site. You can -- if you have 25 something different in your recollection, you can tell me.</p> | <p style="text-align: right;">31</p> <p>1 the property. 2 MR. ROMANS: Well, shouldn't that be done before 3 approval? 4 MR. NORTON: No, sir, because we are looking at the 5 maximum employees much further out than immediate. Right 6 now we are looking at the -- what Mr. Bohrer would be 7 potentially -- one for employees. So right now the septic 8 field handles what he has. I forget what the number of 9 employees is. 10 HEARING EXAMINER GROSSMAN: Well, the number of 11 employees that is proposed as a limit in proposed 12 conditioned by the Technical Staff, the Planning 13 Department, is a maximum of 38 under the current septic 14 system. And for -- and it cannot be increased to the 15 desired level of 50 until you have certification of an 16 adequate septic field or system. 17 MR. NORTON: That's correct. And I apologize. I 18 thought I was here to testify about lighting. I was not 19 going -- 20 HEARING EXAMINER GROSSMAN: Okay. 21 MR. ROMANS: So that's quite confusing to me because 22 it sounds like it's not compliant right now, but you're 23 going to do something about it if this conditional use may 24 be granted (inaudible). 25 HEARING EXAMINER GROSSMAN: I don't think that's what</p> |
| <p style="text-align: right;">30</p> <p>1 But they did send letters, as Mr. Norton just testified, 2 indicating that there was going to be a storm water review, 3 as he said, but not that you are going to be affected 4 adversely. 5 MR. ROMANS: Okay. You stated that the current septic 6 system was identified as inadequate versus what the County 7 has on file. Could you explain that? 8 MR. NORTON: Yes, sir. The current septic field I 9 don't recall the numbers. I believe it was 300 linear 10 feet. When we first looked at the property when we met 11 with Montgomery County Health Department, it was originally 12 believed, and I'm going to use some rough numbers here -- 13 that the septic field installed was 330 feet, which would 14 be adequate for the full, maximum employees that Mr. Bohrer 15 is looking for. 16 MR. ROMANS: (Inaudible). 17 MR. NORTON: After filing the plans with the health 18 department, the Health Department did find an as built 19 drawing that I believe delineated 300 linear feet. I 20 forgive that number is, but I believe we were 30 feet 21 short. So the -- at the Planning Board, the number of 22 employees that Mr. Bohrer could have was reduced to 23 compensate for that until the septic field is either 24 expanded for the 30 feet or reproduce water usage 25 documentation that the septic field can handle the use of</p> | <p style="text-align: right;">32</p> <p>1 the testimony -- I think you've just mischaracterized the 2 testimony. I think what the witness testified to in August 3 and now, is that it is adequate for the planned number 4 initially of the maximum of 38 employees. It is not 5 sufficient for the 50 that they wished. And so there is a 6 proposed conditioned by the Planning Department that would 7 limit it to 38 employees unless and until they comply with 8 sufficient septic access to allow up to 50 employees. 9 MR. ROMANS: Okay. What does Mr. Bohrer's ultimate 10 use of 400 gallons mean? It's in the transcript. 11 MR. NORTON: Four hundred gallons would be the -- 12 we're talking about the flow to the septic field is what we 13 would be looking at. It's computed by the number of 14 employees; the whether the employees are on site, whether 15 the employees come in in the morning and leave for the day. 16 From that, you calculate how many theoretical gallons that 17 the property would use for -- from septic. We are not 18 talking about the water usage from the well. 19 MR. ROMANS: Is that 400 gallons -- what is that? 20 Hourly? Daily? 21 MR. NORTON: Four hundred gallons would be the daily. 22 MR. ROMANS: Daily, okay. That's ultimate use, okay. 23 Why is it stated in the transcript that the employees might 24 be using the septic system when it was supposed to be only 25 for Ace Operations?</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

9 (33 to 36)

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| <p>33</p> <p>1 MR. NORTON: No, sir. I think that we are getting 2 that mixed up with the water of the property. 3 MR. ROMANS: So they will not be using the septic 4 (inaudible). 5 MR. NORTON: No, they will be using it. 6 MR. ROMANS: They will be? 7 MR. NORTON: They have no choice but to use septic. 8 HEARING EXAMINER GROSSMAN: The testimony I think 9 you're probably referring to is they are not going to use 10 the well water on the subject site. 11 MR. NORTON: Yes (inaudible). 12 HEARING EXAMINER GROSSMAN: That is the landscape 13 contractor. They have a water, a public water connection. 14 MR. ROMANS: Okay. I -- once again, I just have 15 comments, but they are not questions. 16 HEARING EXAMINER GROSSMAN: Okay. 17 MR. ROMANS: (Inaudible). 18 HEARING EXAMINER GROSSMAN: All right. Mr. Tydings? 19 MR. TYDINGS: Yeah. Actually, so I've added a question 20 on my list, which just comes up on this runoff issue. So 21 in (inaudible) it circumspect the notice issue, because I 22 can see that I wasn't due notice because (inaudible) 23 Homeowners' Association. I'm not immediately adjacent. 24 But we are downhill and all manner -- so we have streams 25 that run through our property from two sides of property</p> | <p>35</p> <p>1 confronting, but he is -- 2 MR. NORTON: Yeah. 3 HEARING EXAMINER GROSSMAN: He says he is downstream. 4 That's what his question is. 5 MR. NORTON: Technically, you could ask why weren't 6 five houses -- why wasn't everyone on that stream channel 7 notified. We typically put together the letters. We send 8 it in. It goes, as reviewed, with Montgomery County storm 9 water concept. We have to actually send in the letters of 10 who we identified and the certification letters. I can't 11 really -- there is -- 12 MR. TYDINGS: Okay. So I will testify something when 13 it comes time to testify. 14 HEARING EXAMINER GROSSMAN: Right. I can tell you 15 that I can tell you, it's technically not part of this 16 process. This is -- this process looks at the question of 17 what will be the impact of storm water runoff on the 18 surrounding properties. The evidence we have from the 19 Technical Staff and from Mr. Norton, is that there will not 20 be an adverse effect in terms of water runoff on the 21 surrounding properties from the subject site. They're 22 going to use environmental design facilities to control 23 water runoff. So that's his testimony. 24 MR. TYDINGS: Understood. Actually, that will relate 25 directly to some of my questions here.</p> |
| <p>34</p> <p>1 that run off of both the Stafford's property and the 2 current Ace Nursery. And we get significant runoff that 3 comes actually down -- 4 HEARING EXAMINER GROSSMAN: Well, you're really 5 testifying now. 6 MR. TYDINGS: Okay. 7 HEARING EXAMINER GROSSMAN: So just ask a question. 8 MR. TYDINGS: Okay. So the question is; why weren't we 9 notified then of downstream runoff? Because there is a lot 10 of runoff. A lot. 11 MR. NORTON: What you are -- what we do is we provide 12 a letter to the neighbors that we look at. We say, okay. 13 This property has -- it kind of has a drainage divide right 14 between it. So we look at the neighbors surrounding, okay, 15 and we notify them. We write them letters and say that we 16 are filing a storm water concept just because you're 17 downstream. That's what the requirement is. You could 18 be -- if you are on a 500 acre farm or something, and we 19 are in the middle of that farm, we would have to notify you 20 just because you are adjacent, you're downstream. Even if 21 there is no impact, we have to notify you per county code. 22 MR. TYDINGS: So my question is, why weren't we 23 notified (inaudible)? 24 HEARING EXAMINER GROSSMAN: So he is saying, why 25 wasn't he notified. His property is not abutting or</p> | <p>36</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MR. TYDINGS: So let me go to that then. Will the 3 parking area -- and this is -- so I have, as Mr. Bohrer 4 knows, I read -- I got to 80 -- page 81. Evidently, there 5 is four more pages in the hearing transcript. So I didn't 6 get to it. And I haven't gone back to read those last four 7 pages. But is the parking area going to be permeable? 8 Impermeable? A mix of the two? Because that's relevant to 9 the runoff. 10 MR. NORTON: What we're using right now, and this kind 11 of -- that's an interesting question that you asked. It's 12 something that we run into a lot in Montgomery County. 13 Right now we are not changing what the parking is. We 14 actually have -- 15 MR. TYDINGS: The surface. 16 MR. NORTON: The surface; the graves, the millings, 17 that is not changing. It's going to stay like that. 18 MR. TYDINGS: Mr. Norton, can I ask; right now, is this 19 based on the conditional use requirements? That's what you 20 mean by right now? For the conditional use requirements, 21 you don't need to change now is what you're saying. 22 MR. NORTON: That's right. There's no reason for us 23 to go to asphalt, if that's what you are asking 24 (inaudible). 25 MR. TYDINGS: Well, I just want to know what is going</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

10 (37 to 40)

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| <p>37</p> <p>1 to be. That's all.</p> <p>2 MR. NORTON: Yeah, it's going to stay what it is.</p> <p>3 HEARING EXAMINER GROSSMAN: Which is what?</p> <p>4 MR. NORTON: Which is the gravel, asphalt, millings.</p> <p>5 HEARING EXAMINER GROSSMAN: Is that permeable?</p> <p>6 Impermeable or --</p> <p>7 MR. NORTON: Well, that's what I was getting ready to</p> <p>8 say.</p> <p>9 HEARING EXAMINER GROSSMAN: That the --</p> <p>10 MR. NORTON: That's where you get into some -- that's</p> <p>11 where we are getting into the nuts and bolts of storm water</p> <p>12 management. Water permeates through that surface, okay,</p> <p>13 through the ground. We all know that. When we look at</p> <p>14 gravel road, water goes through that surface. When you are</p> <p>15 treating it from a storm water perspective, the State of</p> <p>16 Maryland, Montgomery County says any surface has to be</p> <p>17 treated as if it is impervious. That's how we have to</p> <p>18 quantify information for the storm water management. And</p> <p>19 Montgomery County DPS once told me, Mike, you can build it</p> <p>20 out of sponges if you want. We are going to treat it as</p> <p>21 impervious for the design requirements.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay. I think that</p> <p>23 (inaudible).</p> <p>24 MR. NORTON: That's probably the best way I can</p> <p>25 explain that.</p> | <p>39</p> <p>1 MR. TYDINGS: But more skyward, but relative to the</p> <p>2 note said that the light will not, (indiscernible) will be</p> <p>3 barely visible I think is the words that were in here. Can</p> <p>4 you explain how that will be accomplished on light parallel</p> <p>5 to the ground coming towards our properties with respect to</p> <p>6 this tree screening? And winter months where foliage is --</p> <p>7 MR. NORTON: Yes. Actually I have the landscape plan</p> <p>8 up right now is one of the exhibits. Around the</p> <p>9 conditional use area to the west, to the south, to the</p> <p>10 east, to the north, around the entire conditional use area</p> <p>11 what we have is we have canopy trees which are at the --</p> <p>12 they do drop their leaves. But we do have, I believe it's</p> <p>13 90 evergreen trees that are going in on the site. They are</p> <p>14 the American Holly and they are the cedars so they will be</p> <p>15 green 100 percent of the year. So that's how we've</p> <p>16 addressed that. The Holly trees, they are a true tree.</p> <p>17 They will grow to 40 feet, 50 feet whatever. What it</p> <p>18 allows them. They are not shrubs that were looking at on</p> <p>19 this area around the perimeter.</p> <p>20 MR. TYDINGS: So in that lighting study and the chart</p> <p>21 that Mr. Bohrer gave me an opportunity to look at, this, I</p> <p>22 think it's a lumens, is lumens in the --</p> <p>23 MR. NORTON: Foot-candles.</p> <p>24 MR. TYDINGS: Foot-candles. Okay foot-candles.</p> <p>25 That's all based -- those are based on the hollies and the</p> |
| <p>38</p> <p>1 MR. TYDINGS: Well, you answered my question basically.</p> <p>2 MR. NORTON: Yeah.</p> <p>3 MR. TYDINGS: So we've got -- addressing some of the --</p> <p>4 so what does shield and shielded -- it's a quote from --</p> <p>5 what do shielded mean on the lighting?</p> <p>6 MR. NORTON: On the lighting plan, what that means is</p> <p>7 that there will not be any light from the sides or the top</p> <p>8 of the fixture. The light will be focused downward from</p> <p>9 the fixture itself.</p> <p>10 MR. TYDINGS: Okay. And Mr. Bohrer gave me an</p> <p>11 opportunity to look at the lighting plan. Not that I</p> <p>12 completely grasped all the technicalities of it.</p> <p>13 MR. NORTON: Right.</p> <p>14 MR. TYDINGS: But the focus and the notes from the</p> <p>15 hearing were that, parallel to the ground, we would not be</p> <p>16 impacted. So I've got two questions to that. One</p> <p>17 regarding the tree shielding, which I just did read in the</p> <p>18 notes this morning, that the tree shield, talking about the</p> <p>19 additional tree shielding required --</p> <p>20 MR. NORTON: The screening.</p> <p>21 MR. TYDINGS: The screening, excuse me; will be hollies</p> <p>22 and cedars of some sort. So that is so my question is</p> <p>23 twofold. One, I'm concerned about light emitted skyward</p> <p>24 and light emitted parallel to the ground.</p> <p>25 MR. NORTON: Sure.</p> | <p>40</p> <p>1 cedars being in place?</p> <p>2 MR. NORTON: No sir. We do not take landscape into</p> <p>3 consideration when we do lighting, and when we do</p> <p>4 spillover. We take it as if the property is denuded of any</p> <p>5 landscape. What does the -- what would the foot-candles</p> <p>6 hit on the ground, if there was no landscape there is what</p> <p>7 the photometric -- I don't have that up right now. It's</p> <p>8 what the photometric shows.</p> <p>9 MR. TYDINGS: All right so the foot-candles</p> <p>10 actually -- so for ground lighting purposes. Okay.</p> <p>11 MR. NORTON: Yes. It -- and what we did was we went</p> <p>12 far and above the landscape requirements and by doing the</p> <p>13 evergreen trees as a perimeter within this -- at the</p> <p>14 conditional use perimeter.</p> <p>15 MR. TYDINGS: So what would, and again, not knowing</p> <p>16 what the reflective properties are of gravel and dirt and</p> <p>17 grass, so light-emitting downwards, these foot-candles are</p> <p>18 based on the ground light. Will that light be reflected</p> <p>19 upward at all, or has that been measured?</p> <p>20 MR. NORTON: We -- it's not a requirement to measure</p> <p>21 reflectivity like you would on a building or something in</p> <p>22 an urban condition. What we are required to do is measure</p> <p>23 what the light is when it hits the surface.</p> <p>24 MR. TYDINGS: Okay.</p> <p>25 MR. NORTON: Of gravel and of what we have here.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

11 (41 to 44)

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| <p>41</p> <p>1 HEARING EXAMINER GROSSMAN: Mr. Norton, are the lights 2 going to be on after work hours? 3 MR. NORTON: No. We have talked with the owner and I 4 believe -- I'm sorry. Not the owner. The applicant and 5 the applicant did testify to a timer and a switch. 6 HEARING EXAMINER GROSSMAN: Okay. So that the work 7 hours are 6:00 a.m. to 6:30 p.m. Monday through Saturday 8 and the lights will be off after that except for some 9 motion sensors for safety? 10 MR. NORTON: Yeah, that's correct. That's what I 11 believe Mr. Bohrer testified to. 12 MR. TYDINGS: Okay. Just for context, not testimony, 13 more of a comment, lived in the area all my life -- 14 HEARING EXAMINER GROSSMAN: No, no, no. (Crosstalk) 15 MR. TYDINGS: It's the lighting, the lighting is a 16 concern. So we won't know about sky light pollution if you 17 will. 18 UNIDENTIFIED SPEAKER: No. I don't -- 19 MR. NORTON: Dark sky technology is what you're 20 talking about. The lights are covered on the top. There 21 will not be light shining up from the fixture. 22 MR. TYDINGS: So the shielding, I just get -- okay. 23 So back to the shielding of the lights. What would I have 24 like a shield -- so -- 25 MR. NORTON: Like a shroud.</p> | <p>43</p> <p>1 That particular one, or can it be substituted with one that 2 has shielding that would reduce the parallel ground 3 lighting? 4 HEARING EXAMINER GROSSMAN: Nothing can be substituted 5 from what's on the plans without getting permission for an 6 amendment. 7 MR. NORTON: Right. 8 MR. TYDINGS: Oh. Okay. 9 HEARING EXAMINER GROSSMAN: Once the conditional use 10 is approved, if it's approved. 11 MR. TYDINGS: Oh, okay. Do -- chime in any time. 12 MS. TYDINGS: (indiscernible) 13 MR. TYDINGS: Okay. All right. Well we -- I think a 14 comment would be better suited for testimony. 15 HEARING EXAMINER GROSSMAN: Okay. Are you completed 16 with your questions? 17 MR. TYDINGS: Oh no, no. Just give me a moment to 18 make a note. 19 HEARING EXAMINER GROSSMAN: All right. 20 MR. TYDINGS: Okay. So can Goshen Enterprise -- or I 21 guess it's Goshen -- 22 MR. NORTON: I'm sorry. Can I get a cup of water? 23 (Crosstalk). 24 MR. KLINE: He's got a little emergency. 25 HEARING EXAMINER GROSSMAN: You want to go to the</p> |
| <p>42</p> <p>1 MR. TYDINGS: A shield -- a shroud around the light 2 that will force it downward and -- 3 MR. NORTON: (indiscernible) you're welcome to come up 4 I guess. 5 MR. TYDINGS: No I -- 6 MR. NORTON: Sure and we have the -- 7 MR. KLINE: First of all it's (indiscernible). 8 MR. NORTON: I have the photometric drawing that I'm 9 holding up. It actually has the proposed fixtures on the 10 drawing at the bottom. 11 MR. TYDINGS: Oh that's cool. Oh let me look at that 12 then. Because -- 13 MR. NORTON: These are the fixtures that will be 14 installed. I'm not sure I can -- 15 HEARING EXAMINER GROSSMAN: Let me see, the exhibit 16 number for the -- 17 MR. NORTON: I don't have the exact that number. 18 So -- 19 HEARING EXAMINER GROSSMAN: 37 -- 20 MR. TYDINGS: So you see the inner side actually. 21 HEARING EXAMINER GROSSMAN: 37J is the photometric, on 22 sheet L4.2, is that -- 23 MR. TYDINGS: That is correct, yes sir. 24 HEARING EXAMINER GROSSMAN: Okay. 25 MR. TYDINGS: So is that a required light fixture?</p> | <p>44</p> <p>1 men's room and get some paper towels? 2 MR. NORTON: I apologize. 3 MR. TYDINGS: Actually, we don't need Mr. Norton for 4 this one. 5 HEARING EXAMINER GROSSMAN: Well, you're asking him 6 questions so you really need him. If you're asking 7 questions of him, he's important. 8 MR. TYDINGS: I'm not for these next two -- 9 HEARING EXAMINER GROSSMAN: Oh well, that's -- 10 MR. TYDINGS: Well, for the next one. 11 HEARING EXAMINER GROSSMAN: Well, but he's the witness 12 whose up. Who's up there now? 13 MR. TYDINGS: Okay. 14 HEARING EXAMINER GROSSMAN: So if you have any 15 questions, this will be your chance. If you have any 16 questions of Mr. Norton you should ask them while he's up 17 there. 18 MR. TYDINGS: Okay. 19 HEARING EXAMINER GROSSMAN: And then I will give the 20 applicants counsel an opportunity to redirect him and then 21 if there's any questions asked on redirect I'll give you 22 the opportunity to recross him on any of those redirect 23 question answers. 24 MR. TYDINGS: Okay. 25 HEARING EXAMINER GROSSMAN: But that's the procedure.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

12 (45 to 48)

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| <p>45</p> <p>1 I'm glad you didn't ask any questions on OHZA's water 2 control spillage system. 3 (Crosstalk) 4 HEARING EXAMINER GROSSMAN: Oh yes, this impervious 5 surface. 6 (Crosstalk) 7 MR. NORTON: I apologize. Next time I'll have Mr. 8 Kline pour the water for me. (Indiscernible) enough 9 napkins. 10 HEARING EXAMINER GROSSMAN: All right. 11 MR. NORTON: I apologize for that. 12 HEARING EXAMINER GROSSMAN: All right. No problem. 13 It happens to all of us occasionally. All right. Mr. 14 Tydings? 15 MR. TYDINGS: Okay. So just prefacing, I'm not sure 16 who this question should be asked of so I'm just going to 17 ask it. And if it's not Mr. Norton then maybe Mr. Kline or 18 Mr. Grossman -- 19 HEARING EXAMINER GROSSMAN: Okay. 20 MR. TYDINGS: Can Goshen Enterprises conceivably later 21 returned to request additional zoning changes for expanded 22 user activities? 23 HEARING EXAMINER GROSSMAN: Well, I'll answer that 24 question. They can. And there is a process for a request 25 for a minor amendment, which would be done</p> | <p>47</p> <p>1 HEARING EXAMINER GROSSMAN: No. It's a -- you can 2 read the language. It's in the zoning ordinance. It's in 3 59-7.3.1. I don't remember the exact section. But maybe 4 it's K; where it defines what a minor amendment is and what 5 a major amendment is. Do you have a copy of the code? 6 MR. KLINE: Yea. 7 MR. TYDINGS: Well, let me see if I can ask in 8 layman's terms and get a layman's answer. 9 HEARING EXAMINER GROSSMAN: Mr. Kline can answer. 10 MR. KLINE: It is correct. 11 HEARING EXAMINER GROSSMAN: All right. Just read the 12 section, Mr. Kline, please? 13 MR. KLINE: Well, it's broken down into major 14 amendments and minor amendments. And you did a good job of 15 summarizing the two. But it's 59-7.3.1.K; 1 for major, 2 16 for minor. 17 MR. ROMANS: I have an associated question, please. 18 HEARING EXAMINER GROSSMAN: Well, let's Mr. -- give 19 Mr. Tydings his opportunity. 20 MR. ROMANS: Well. 21 HEARING EXAMINER GROSSMAN: Okay. 22 MR. TYDINGS: So minor and other labels aside, I think 23 you see where I'm going with this question. Can Goshen 24 Enterprises come back -- Goshen Enterprises, are they 25 restricted from, how do I ask this? I'm just trying to get</p> |
| <p>46</p> <p>1 administratively. They would send a letter to OHZA asking 2 to modify something. If they say it would not have any 3 dramatic effects, we would then determine whether or not it 4 would be such a significant change as to affect, adversely 5 affect, the neighbors. If we felt that it would not be a 6 significant change and then it would be approved, but then 7 it would be published to the neighbors and they would have 8 the opportunity to respond and request a hearing on it. If 9 when they filed a request to change some of the conditions 10 they requested something that we thought was a major 11 amendment that is, it would ultimately require -- it would 12 ultimately impact the neighbors adversely, potentially, 13 then they would have to go through an entire process 14 similar to a conditional use process. They would have to 15 file it, have it reviewed by the Planning Department before 16 it would ever even get up and then there would be a hearing 17 process also. So in either case if it's a -- if the -- if 18 there is a change then it would have to be approved and it 19 would be potentially a hearing in a minor amendment case, 20 if a neighbor objected, or it would be automatically a 21 hearing if it would have -- if we determine it might have 22 serious adverse impact. 23 MR. TYDINGS: Can -- is there any way you can define, 24 or give a percentage or a measurement about significant or 25 serious? Is it a plus or minus 10 percent or something?</p> | <p>48</p> <p>1 a feel for the measure of what's significant and what's not 2 significant that requires them to come back. 3 HEARING EXAMINER GROSSMAN: Well, let me -- I think 4 maybe the best thing. Mr. Kline, would you read that 5 section of the code as to what's a major amendment and 6 what's a minor amendment? 7 MR. KLINE: Section 59.7.3.1.K.1: A major amendment 8 to a conditional use is one that changes the nature, 9 character, or intensity of the conditional use to an extent 10 that substantial adverse effects on the surrounding 11 property could reasonably be expected when considered in 12 conjunction with the underlying conditional use. 13 HEARING EXAMINER GROSSMAN: And now read the minor 14 amendment. 15 MR. KLINE: An application -- excuse me. An 16 application for a minor amendment to a conditional use must 17 be filed by -- excuse me. A minor amendment is one that 18 does not change the nature, character, or intensity of the 19 conditional use to an extent that substantial adverse 20 effects on the surrounding property could reasonably be 21 expected when considered in combination with the underlying 22 conditional use. 23 HEARING EXAMINER GROSSMAN: But once again. Once -- 24 even if that -- even if our office were administratively 25 determined that it was a minor amendment read the rest of</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

13 (49 to 52)

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| <p>49</p> <p>1 the process that occurs after we issue an order saying 2 that's a minor amendment is allowed. 3 MR. KLINE: Sure. It's a fairly lengthy but if you 4 can bear with me. 5 HEARING EXAMINER GROSSMAN: I understand. 6 MR. KLINE: The resolution. In other words Mr. 7 Grossman explained if he heard -- he didn't think it was 8 adverse effect he could go ahead and issue a resolution 9 granting the minor amendment. The resolution or decision 10 as applicable must state that any party may request a 11 public hearing on the hearing examiner's action within 15 12 days after the resolution is issued. Basically the request 13 has to explain what the objection is. If the request for 14 hearing is received the hearing examiner must suspend its 15 administrative amendment and conducted public hearing to 16 consider whether the amendment substantially changes the 17 nature, character, or intensity of that use. So that's the 18 most you're going to get for a definition. 19 HEARING EXAMINER GROSSMAN: All right. So the point 20 is that even with a minor request -- I'm request for a 21 minor amendment, if we decided it would not have those 22 serious impacts the neighbors would have the opportunity, 23 the parties would have the opportunity. And since you're a 24 party now, by testifying here, you're automatically a party 25 of record here.</p> | <p>51</p> <p>1 and the sign that they proposed initially would be for 2 this -- a total of 40 square feet. And the Staff 3 recommended that that be limited to half of that size and 4 the applicant agreed to that. And there's a picture of the 5 proposed sign on page 21 of the Staff Report. 6 MR. TYDINGS: I think I've seen it. 7 HEARING EXAMINER GROSSMAN: So if you have a basis for 8 saying that you don't think there should be a sign, they 9 would be required to get a sign permit in any event for a 10 sign. But if you have a basis for saying you don't think 11 there should be any sign, then you can state it here when 12 you testify. Okay? 13 MR. TYDINGS: All right. Then unless my wife has 14 questions, my final question then will be for Mr. Kline. 15 Will any conversation or discussion that we may have 16 independent of this hearing with Mr. Bohrer or his 17 appointed consultants have any influence on this hearing? 18 In other words -- is that not clear? 19 HEARING EXAMINER GROSSMAN: I can answer that. The 20 only thing that can influence me and the hearing is matters 21 that are on the record here. And I am only permitted to 22 consider what's in the record of the case. So whatever you 23 say off the record, that does not come into the record, is 24 not before me, and I may not consider it. 25 MR. TYDINGS: Okay.</p> |
| <p>50</p> <p>1 MR. TYDINGS: Okay. 2 HEARING EXAMINER GROSSMAN: So you would be notified 3 if there was a proposed change and we approved it. And you 4 have the opportunity to request a hearing. And by statute 5 it would have -- we would have to suspend the approval and 6 hold a hearing. 7 MR. TYDINGS: Okay. Good answer. Is Goshen -- will 8 Goshen Enterprises be required to erect an entrance sign or 9 is that a elective thing and could we request that they 10 don't? I asked that improperly. 11 MR. NORTON: It is not a requirement that they 12 install, or that they construct a sign out in front of 13 their property. 14 MR. TYDINGS: Can you comment on the second question? 15 HEARING EXAMINER GROSSMAN: When you say can you 16 request that they don't, the sign approval is part of this 17 process. If you have a reason why -- and the Technical 18 Staff, if I recall, suggested reducing the size of the 19 proposed sign in half of what -- in the AG zone there is -- 20 well you are permitted to have a pretty large sign. And 21 Staff felt that it should be half the size that was 22 proposed, if I'm not confusing this with another case. 23 Let's see if I can find that. Yes. I'm checking. On page 24 20 to 21 of the Staff Report, which is Exhibit 32 in the 25 record it discusses signage. And it says what's permitted</p> | <p>52</p> <p>1 HEARING EXAMINER GROSSMAN: Which protects all sites. 2 MR. TYDINGS: Mm-hm. Okay. Good. 3 MS. TYDINGS: If I may, I would like to ask -- 4 HEARING EXAMINER GROSSMAN: Well, wait a minute. You 5 have to identify yourself for the record. And you can come 6 forward where (crosstalk) 7 MR. TYDINGS: Trade places. 8 MR. ROMANS: I can slide around. 9 MS. TYDINGS: I just have one question. 10 HEARING EXAMINER GROSSMAN: Identify yourself for the 11 record. 12 MS. TYDINGS: Okay. Diana Tydings. 13 HEARING EXAMINER GROSSMAN: Okay. 14 MS. TYDINGS: 21310 Zion Road. Anything else you 15 need? 16 HEARING EXAMINER GROSSMAN: No. You may ask the 17 question. 18 MS. TYDINGS: Okay. Mr. Norton, I just want to know 19 what the basis is for your comment regarding that you 20 didn't believe the -- that there was going to be any 21 property value impact. 22 MR. NORTON: Sure. Sure. I am a land planner, a 23 designer. That's what the extent of our work is. When I 24 look at this property, I look at the size of the property, 25 it is approximately 30 acres.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

14 (53 to 56)

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| <p>53</p> <p>1 HEARING EXAMINER GROSSMAN: That's the overall 2 property, not the subject site. 3 MR. ROMANS: That's the overall property. 4 HEARING EXAMINER GROSSMAN: Right. 5 MR. NORTON: Correct. The conditional usage is over 6 five acres within the middle of the property. It is 7 heavily landscaped. Over 90 Evergreen screening trees will 8 be installed. The road is staying -- the drive is staying 9 in the same material it is right now. The nursery is 10 staying as it is right now with the nursery around the 11 property. When I look at that, that's my statement from a 12 site design perspective. But that's the extent of my -- 13 MS. TYDINGS: Okay. Well, I'll have testimony 14 regarding that later. 15 HEARING EXAMINER GROSSMAN: Okay. All right. Any 16 redirect? Oh did you have -- you asked your question 17 already. Mr. Romans? 18 MR. ROMANS: I did not, but I'd like to follow up on 19 this one. 20 HEARING EXAMINER GROSSMAN: Okay. 21 MR. ROMANS: So your statement was that isn't it true 22 that your statement was I do not believe it will have any 23 effect on land values; is that correct? 24 MR. NORTON: I -- I think -- 25 MR. ROMANS: Yes or no.</p> | <p>55</p> <p>1 you put it in a nonleading form? 2 MR. KLINE: Would you explain why you feel that the 3 landscaping on the sides of the property and the intensity 4 of the use would not have an adverse effect on 5 surrounding -- the value of surrounding properties? 6 MR. NORTON: I believe it's the intensity of the plan 7 teams, the landscape. The fact that it's being a nursery 8 right now; there is plant material out there. It's 20 9 feet, 30 feet high. We are looking at evergreen screening 10 on all four sides of the conditional use, and it will be 11 screened all winter, all spring, all summer. 12 HEARING EXAMINER GROSSMAN: So if a visibility -- 13 MR. NORTON: It's a visibility. That's correct. 14 Thank you for doing that better than me. It's a 15 visibility. We also looked at adding additional screening 16 based on conversations with the park and planning 17 commission where we added screening around the northwest 18 corner so when you're driving up the driveway that you 19 would see the evergreen trees. We also put on the design, 20 Mr. Grossman said I and reduce him to a new word. And that 21 was a chicane and he -- in the drive. So there's a turn in 22 it so that you would not be looking straight back in and 23 seeing these buildings. We're trying to tuck this in and 24 just nest it right into the middle of that site. 25 HEARING EXAMINER GROSSMAN: Okay. Any other redirect</p> |
| <p>54</p> <p>1 MR. NORTON: I think that's the case. I don't have a 2 reference in the testimony. 3 MR. ROMANS: Okay. Would you state clearly today for 4 us, please, that it will not have any effect on land 5 values? 6 MR. NORTON: I cannot state that. I'm not an 7 assessor. I'm not an appraiser. 8 MR. ROMANS: Okay. Well -- 9 MR. NORTON: I only speak to -- 10 (Crosstalk) 11 MR. ROMANS: I heard what you said. I heard what you 12 said. 13 HEARING EXAMINER GROSSMAN: All right. Any redirect? 14 MR. KLINE: Well, I guess I'd like you to make it 15 clear what you just try to wrap up. Your testimony covered 16 site design issues. 17 HEARING EXAMINER GROSSMAN: Well, now let's not have a 18 preamble either. Just ask the question, if you have a 19 redirect question, Mr. Kline. 20 MR. KLINE: Is it the scope of the design of the 21 building that leads you to conclude that property -- 22 surrounding property values would not be adversely 23 affected? 24 HEARING EXAMINER GROSSMAN: That's on the edge of a 25 leading question, which you really shouldn't be. Why don't</p> | <p>56</p> <p>1 questions? 2 MR. KLINE: No, sir. Thank you. 3 HEARING EXAMINER GROSSMAN: Do you have any recross on 4 just based on that one question and answer, Mr. Tydings? 5 MR. TYDINGS: I do. So and this comes from your 6 letter, Mr. Grossman, which you had -- and I'm sorry. I 7 don't have the date on that one because it's too far down 8 in this email. But item number three, impacts on property 9 values was the header. And it reads, there was no evidence 10 produced that this use would adversely affect neighboring 11 property values. Both the Technical Staff of the Planning 12 Department and the Planning Board -- Technical Staff of the 13 Planning Department Exhibit 32, and Planning Board Exhibit 14 34, found that the neighborhood would not be adversely 15 affected. So I had a problem. Could you reconcile for me, 16 please, someone, Mr. Kline, or Mr. Norton, or Mr. Grossman; 17 when it says neighborhood would not be adversely affected, 18 how does that that sync up with not adversely affect 19 property values. And honestly, I can't remember -- do we 20 have those documents here? 32 and 34? 21 HEARING EXAMINER GROSSMAN: Yes, absolutely. 22 MR. TYDINGS: Excellent. Could you just give us a 23 quick recap on those? 24 HEARING EXAMINER GROSSMAN: Well, I -- 25 MR. TYDINGS: Or is that possible?</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

15 (57 to 60)

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| <p>57</p> <p>1 HEARING EXAMINER GROSSMAN: This is 32. So I don't 2 think I can give you a quick recap of a document that's the 3 size. That's the Technical Staff report analyzing this. 4 And there is a, probably a summary at the end in which -- 5 let's see. 6 MR. TYDINGS: Yeah, I read that. I couldn't find 7 that. 8 HEARING EXAMINER GROSSMAN: Conclusion. Let's see, 9 that doesn't address that question. I mean but one of the 10 findings that we have to make is regarding any adverse -- 11 MR. KLINE: It's on pages 29 and 30. 12 HEARING EXAMINER GROSSMAN: Okay. And 29. Yes and 13 actually on page 30 the following paragraph: Staff finds 14 that the proposed use, and there's a preamble that they 15 state why in paragraphs. But Staff finds that the proposed 16 use will not cause undue harm to the neighborhood because 17 of non-inherent adverse effects along, or in combination of 18 inherent and non-inherent adverse effects listed above. 19 And then they say -- they recommend conditions to ensure 20 protection of the neighborhood, which we've -- which are 21 listed in the report. And generally speaking, conditions 22 recommended in some form by the Technical Staff are 23 incorporated into conditional use decision if the 24 conditional use is approved. If we find that it doesn't 25 meet the standards of the zoning ordinance than it would</p> | <p>59</p> <p>1 of conditional use. And those non-inherent effects may be, 2 for example, site conditions. If a site is exposed on one 3 side particularly to the neighborhood there may be a 4 condition where that will be beyond what would normally be 5 expected for that particular type of use. That's 6 considered a non-inherent effect. What the zoning 7 ordinance says is that we have to look at number one, if 8 there are no non-inherent effects that's not a basis for 9 denying the conditional use application. If there are some 10 non-inherent effects, or a combination of non-inherent, and 11 inherent effects would have adverse effects in a specific 12 listed group of effects then we can deny the conditional 13 use application. So is a fairly technical definition in 14 the zoning ordinance. And there are a list of findings 15 that we have to make, whether we approve or disapprove the 16 conditional use application. Which you will ultimately see 17 in my report and decision whether or not I approve or 18 disapprove I will engage in those findings. 19 MR. TYDINGS: So do property values in nearby or 20 adjoining properties ever fall within the definition? I 21 mean how do you decide? 22 HEARING EXAMINER GROSSMAN: Well, the design -- 23 MR. TYDINGS: I understood what you said. 24 HEARING EXAMINER GROSSMAN: Yes. 25 MR. TYDINGS: But it didn't address property values</p> |
| <p>58</p> <p>1 not be approved. But even if it is approved usually there 2 are conditions imposed. I could say 100 percent of the 3 time there are conditions imposed which ensure that to the 4 extent the zoning ordinance requires, there will not be any 5 adverse effects on the surrounding area. The zoning 6 ordinance has a fairly complex definition of adverse 7 effects. There are two aspects to it, inherent adverse 8 effects and non-inherent adverse effects. The Council when 9 it passes -- when it creates a conditional use within a 10 zone, that is it creates the general proposition of a 11 conditional use within a zone understands that there may be 12 some adverse effects to the neighborhood from -- that are 13 inherent in the use itself. But it determines that it is 14 within the -- it is a public policy matter that some 15 conditional uses be allowed in a particular zone because 16 they have inherent value to the community. Whether it's a 17 landscape contractor or childcare facility or any other one 18 it's covered. So they recognize that there may be 19 something inherent in the particular kind of use that might 20 have some adverse consequences, such as in a child care 21 facility there may be some noise from children playing 22 outside. But yet they feel that it should be allowed if 23 other conditions are met. There are also a possibility of 24 a non-inherent adverse effects. Those that go beyond the 25 kinds of effects that are inherent in their particular type</p> | <p>60</p> <p>1 per se. 2 HEARING EXAMINER GROSSMAN: Okay. This is what it 3 says about property values. 4 MR. KLINE: It's on 29. 5 HEARING EXAMINER GROSSMAN: All right. I'm going to 6 read you from the Technical Staff's quote of the zoning 7 ordinance on this point. This is, I guess it's seven -- at 8 59.7.3.1.F, or maybe G. I can't remember the exact 9 section. The way they number them these days -- 10 MR. KLINE: The findings are Section E. 11 HEARING EXAMINER GROSSMAN: Yes. But G, E, that's 12 capital E and then ultimately it gets to a sub G. And 13 then -- what I'm reading is sub G now. Will not cause 14 undue harm -- undue harm to the neighborhood as a result of 15 a non-inherent adverse effect alone, or a combination of an 16 inherent and non-inherent adverse effect in any of the 17 following categories. One, the use, peaceful enjoyment, 18 economic value, or development potential of abutting and 19 confronting properties of the general neighborhood. Two, 20 traffic, noise, odors, dust, illumination, or lack of 21 parking. Or three, the health, safety, or welfare of 22 neighboring residents, visitors, or employees. So we first 23 look at the question of whether or not any of the potential 24 adverse effects are inherent in this type of use, or non- 25 inherent. Because that's the first filter that we have to</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

16 (61 to 64)

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| <p>61</p> <p>1 look through. If there are no non-inherent uses then that 2 sentence doesn't really apply in the same way because it 3 specifically says will not cause undue harm to the 4 neighborhood as a result of non-inherent affects alone or a 5 combination of non-inherent and inherent. So if there are 6 no non-inherent adverse effects it limits the application 7 of this paragraph. So that's what it says, in the code. 8 This has a long judicial history by the way attached to it. 9 So -- 10 MR. TYDINGS: The word economic was used in there so 11 I -- 12 HEARING EXAMINER GROSSMAN: Right. It's a legitimate 13 question to ask what you were posing about effects on 14 values and the testimony so far -- from the testimony in 15 the record so far is you have the testimony from Mr. Norton 16 that from a visibility standpoint that this will be largely 17 non-visible and you have the evidence from the Technical 18 Staff and the Planning Board saying it will not have an 19 adverse effect on the neighborhood. So that's what you 20 have in that category. Okay? 21 MR. TYDINGS: Okay. 22 HEARING EXAMINER GROSSMAN: All right. All right 23 thank you. I think we've exhausted the questions 24 (indiscernible) Mr. Norton, thank you very much. And you 25 said you had some questions for Mr. Bohrer? All right, Mr.</p> | <p>63</p> <p>1 HEARING EXAMINER GROSSMAN: Well, let me finish my 2 question. Are you asking whether it's an issue on the road 3 whether people are speeding from the north, or are you 4 asking whether it's an issue of his employees speeding on 5 there? I'm not sure what you're asking. 6 MR. ROMANS: Sir, I'll rephrase the question. 7 HEARING EXAMINER GROSSMAN: Okay. 8 MR. ROMANS: As a local resident, you are aware of the 9 speeds that are obtained on that Zion Road when commuters 10 come from the north. You stated in your testimony on the 11 transcript that the biggest danger to your employees is 12 from car and vehicle accidents. Don't you think by having 13 that entranceway just past my driveway, and I will testify 14 later about the speeds of these cars, is a danger? Is it a 15 danger to your employees? 16 MR. BOHRER: Well, I agree that driving is probably 17 one of our most dangerous tasks that we perform. As far as 18 the speeds of people on that road I -- I can't -- I can't 19 speak to where the speeds are. 20 MR. ROMANS: I certainly can. Okay. The registered 21 letter you sent me, you sent one registered letter; is that 22 correct? 23 HEARING EXAMINER GROSSMAN: Well, what are you talking 24 about? 25 MR. KLINE: Yeah. Okay. I --</p> |
| <p>62</p> <p>1 Bohrer. All right. 2 MR. BOHRER: Thank you. 3 HEARING EXAMINER GROSSMAN: You are welcome. All 4 right, Mr. Bohrer, I remind you that you testified on 5 August 3, 2018. You were sworn in at that time, and you 6 are still under oath. 7 MR. BOHRER: Yes, sir. 8 HEARING EXAMINER GROSSMAN: All right. Cross- 9 examination questions, Mr. Romans? 10 MR. ROMANS: Yes, I have some questions about safety 11 issues. 12 HEARING EXAMINER GROSSMAN: Okay. 13 MR. ROMANS: you have a substantial number of 14 employees working for you. Do you have background checks 15 on all of them? 16 MR. BOHRER: We do not. 17 MR. ROMANS: Hmm. Okay. Also, you are a local 18 resident, so you are aware of the speeds that commuters are 19 pacing that when they come around Zion Road and approached 20 the property from the north, which is quite substantial, at 21 50/60 miles an hour. Do you think that's an issue? 22 HEARING EXAMINER GROSSMAN: Let me ask -- understand 23 the question. Are you saying is it an issue that there are 24 people speeding on that road? An issue for -- 25 MR. ROMANS: They --</p> | <p>64</p> <p>1 MR. ROMANS: A registered letter of November -- 2 MR. KLINE: Mr. Bohrer did not send you registered 3 letters. So if he's referring to the one sent by Mr. 4 Norton's office, (indiscernible) storm water management, 5 maybe I need to get Mr. Norton back up here. 6 HEARING EXAMINER GROSSMAN: Well, no. Let's -- 7 let's -- 8 MR. KLINE: Okay. 9 HEARING EXAMINER GROSSMAN: Mr. Norton has completed 10 his testimony. And we're not going to -- 11 MR. ROMANS: Okay. So you're -- you're saying that -- 12 HEARING EXAMINER GROSSMAN: -- recall him. 13 MR. ROMANS: -- the notice of the hearing was sent by 14 Mr. Norton? 15 HEARING EXAMINER GROSSMAN: No. Notice of this 16 hearing -- you're saying it was a notice of this hearing? 17 MR. ROMANS: Yes, correct. 18 HEARING EXAMINER GROSSMAN: He's talking about 19 something different. 20 MR. ROMANS: Okay. 21 HEARING EXAMINER GROSSMAN: There was testimony at the 22 last hearing that they sent notices regarding storm water 23 management that were maybe a year before the notices of the 24 hearing, that were not deliverable for some reason. They 25 sent a number of them to your residence. We also, when</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

17 (65 to 68)

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| <p style="text-align: right;">65</p> <p>1 we -- when we conduct a hearing, in addition to the notice 2 signs that are posted on the property, and there were 3 multiple signs posted on this property that there would 4 be -- that this was being reviewed, and with the telephone 5 number of our office OHZA's office; we send out a formal 6 notice to a list of recipients that are listed in the 7 zoning ordinance. And that would have included you on this 8 list. And it formally notifies of the hearing date. And 9 we sent it out for the August 3 hearing. And then we 10 announced at the public -- at that hearing that we would 11 also hold -- because you indicated you had not gotten 12 notice, that we hold this additional session. I have to 13 say, with Mr. Kline's consent, I have to say that there was 14 ample evidence presented at the hearing on August 3 that 15 those notice signs were there. And we know from our own 16 records that we sent out the notice required by statute. 17 So all the statutory requirements for notice were fulfilled 18 here. But just to make sure that you got -- so that the 19 neighbors got the opportunity to be heard here, we held at 20 this additional session for you to be heard. So I'm not 21 sure what the notice issue that you're raising -- you've 22 been given the opportunity to cross-examine the witnesses, 23 and to testify. 24 MR. ROMANS: Well, this is my question. I never 25 received a registered letter so I know what context the</p> | <p style="text-align: right;">67</p> <p>1 Zion Road, Rockville, Maryland 20833. And here are copies 2 of the returns of the envelopes showing certified mail. 3 And then a stamp on them. So -- 4 MR. ROMANS: That's a storm water (indiscernible), and 5 I'm not so concerned about it. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MR. ROMANS: What -- well, let me -- what notices 8 would I have received about the hearing? 9 HEARING EXAMINER GROSSMAN: I think I just answered 10 that. He would have received, in the normal course of 11 things; you would have received a notice from our office. 12 We always, by statute, 30 days in was so covered advance of 13 the hearing we send out a formal notice. There is a list 14 in the zoning ordinance of who has to get it. And abutting 15 and confronting neighbors and you are a confronting 16 neighbor, although one could question that actually, based 17 on the definition of confronting in the zoning ordinance, 18 but we sent it out. You were on a list of those to whom 19 the letters were addressed and so that's the notice you 20 would have received in addition to the sign notice. Did 21 you see the signs posted on the land? 22 MR. ROMANS: Well, quite frankly, no. When I turned 23 out of my driveway the first one is directly on my left and 24 I'm going dead straight. And call it what you want, no, I 25 did not see it. The second one --</p> |
| <p style="text-align: right;">66</p> <p>1 registered letter was sent. 2 HEARING EXAMINER GROSSMAN: Well, they -- there on the 3 record here if you wish to take a look at the things. I'll 4 tell you what the exhibit numbers are and then you may look 5 at them directly. 6 MR. ROMANS: I mean was it for the hearing, or was it 7 for -- 8 HEARING EXAMINER GROSSMAN: No. We don't send out 9 registered letters for the hearing. 10 MR. ROMANS: Okay. 11 HEARING EXAMINER GROSSMAN: This was for the storm 12 water management issues that they were going to do the 13 study. Let me see if I can find the -- here it is; 42, and 14 then 42A and B. Okay. Mr. Romans, please feel free to 15 come forward and take a look. 16 MR. ROMANS: (indiscernible) said storm water 17 management. That's all I need to hear. 18 HEARING EXAMINER GROSSMAN: Okay. This is from Norton 19 Land Design, and the certified mail receipts are attached 20 from November of 2017 and -- which was addressed to Walter 21 A. Jr. and Susan K. Romans, 23304 Zion Road. 22 MR. ROMANS: 23? 23 HEARING EXAMINER GROSSMAN: 21304 -- 24 MR. ROMANS: Okay. 25 HEARING EXAMINER GROSSMAN: -- is what it says, the</p> | <p style="text-align: right;">68</p> <p>1 HEARING EXAMINER GROSSMAN: They had more than four 2 signs, I believe. 3 MR. ROMANS: The second one (indiscernible) 4 HEARING EXAMINER GROSSMAN: Hold on one second. Mr. 5 Bohrer, is that correct? You had four signs up there? 6 MR. BOHRER: Yes. 7 HEARING EXAMINER GROSSMAN: One of them, I know had 8 some vegetation in front of it, but there are clearly 9 signs. Introduced pictures of those signs -- introduced at 10 the hearing showing those signs were visible, and they have 11 our telephone number on them. 12 MR. ROMANS: Okay. One was the one I told you I 13 missed. 14 HEARING EXAMINER GROSSMAN: All right. 15 MR. ROMANS: All right, forget it, I missed it. The 16 second one was so covered by foliage it was on discernible. 17 The other two are on that asphalt road that they're talking 18 about not using, so -- 19 HEARING EXAMINER GROSSMAN: Right. There required to 20 post signs along the frontages of the -- for a zoning 21 application. 22 MR. ROMANS: All right. 23 HEARING EXAMINER GROSSMAN: But I don't understand. 24 What is your point about notice? You're being given the 25 opportunity now, even though the notice requirements of the</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

18 (69 to 72)

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| <p>69</p> <p>1 zoning ordinance were fulfilled both by our mailing the 2 formal notice letter and by the posting of the signs. I do 3 not -- and now you're being given the opportunity to cross- 4 examine the witnesses, and testify. Now, what is your 5 issue about notice now? I don't understand. 6 MR. ROMANS: Well, once again, that was regular mail 7 that the notice was sent, correct? Did Mr. Tydings also 8 get one? 9 HEARING EXAMINER GROSSMAN: He was in not within the 10 definition of either abutting or confronting. 11 MR. ROMANS: Okay. 12 HEARING EXAMINER GROSSMAN: You are tangentially 13 within that. You are diagonally across the road. 14 Technically you probably aren't considered a confronting, 15 or an abutting property, but we sent it anyway because it 16 was close enough. 17 MR. ROMANS: Understood. 18 HEARING EXAMINER GROSSMAN: Our interest is to make 19 sure that the neighbors are involved in these proceedings. 20 And we always appreciate the neighbors coming down to 21 testify in the proceedings because it improves our record. 22 We can then get a better idea of what the issues might be 23 and we can address them. Even if, on some occasions, where 24 a conditional use is granted and there's an opposition to 25 it, we can fashion conditions which would limit any adverse</p> | <p>71</p> <p>1 MR. BOHRER: Yes. 2 MR. ROMANS: Okay. Isn't there a lot of land over 3 that way? 4 MR. KLINE: Objection. 5 HEARING EXAMINER GROSSMAN: What's the -- what is the 6 relevance of whether or not there's land available some 7 other place? 8 MR. ROMANS: I'm just wondering why he couldn't expand 9 on his current property. 10 HEARING EXAMINER GROSSMAN: Well, number one, that's 11 beyond the scope of the direct examination. But number 12 two, it's not really relevant. There may be a million 13 other places any applicant could put a proposal. It's not 14 an issue. My issue is does the proposal that's been made 15 conform with the requirements of the zoning ordinance. 16 That's what I look to. 17 MR. ROMANS: Okay. You stated you have a guaranteed 18 contract from the Revenue Authority for snow removal at the 19 Air Park, and that your heavy equipment and plowing 20 equipment will be stored there. How long is that contract 21 guaranteed for? 22 MR. BOHRER: I actually don't recall that I said it 23 was guaranteed. But we do have a contract with the Revenue 24 Authority. 25 MR. ROMANS: Okay. So it's not guaranteed. So would</p> |
| <p>70</p> <p>1 effects on the neighbors. So we're always happy to have 2 the neighbors come, and that's why we held this additional 3 proceeding. 4 MR. ROMANS: Okay. Great. Okay, so Mr. Bohrer, you 5 requested a meeting with the Tydings? Why wasn't I invited 6 since I've been (indiscernible) property? 7 HEARING EXAMINER GROSSMAN: I'm going to say that's 8 beyond the scope of his direct examination. 9 MR. ROMANS: Okay. 10 HEARING EXAMINER GROSSMAN: And it has nothing to do 11 with what's before me. The only thing that's before me is 12 the record in the case. I think that it is a good practice 13 for any applicant to contact the neighbors and to explain 14 what they are proposals are. It's not a technical 15 requirement to the zoning ordinance. Okay? 16 MR. ROMANS: As stated, you live at 5300 Riggs Roads; 17 is that correct? 18 MR. BOHRER: No. 19 MR. ROMANS: I thought that was in the transcript. 20 What's 5300 Riggs Road? 21 MR. BOHRER: That's where the operation is now. 22 MR. ROMANS: Oh, that's where the operation is now. 23 MR. BOHRER: On Kenny Main's property. 24 MR. ROMANS: Got it. Got it. Okay. Fine. You do 25 not live there. Is that where your current operation is?</p> | <p>72</p> <p>1 that heavy equipment be moved to the new site if you had to 2 move off of the property? 3 MR. BOHRER: I'm not sure if we would actually move it 4 there, or we would secure another location to put it, since 5 it's not really transportable over the road. 6 HEARING EXAMINER GROSSMAN: I'll answer that question 7 this way. There is a requirement, or a condition proposed 8 by the Technical Staff that limits the number of vehicles 9 and types of vehicles and that's one of the things that 10 that lead to in landscape contractor cases. Let me see 11 what they say. The total number of trucks and trailers for 12 the proposed use must not exceed 37. And then they have a 13 listing elsewhere in there of what exactly they are. And 14 usually I specify with particularity what is permitted on a 15 site such as this. 16 MR. ROMANS: Exactly my concern. 17 HEARING EXAMINER GROSSMAN: Yeah, they can't violate 18 the condition. The department of permitting services, by 19 the way, conducts inspections of conditional uses and if 20 there are violations of the conditions they either have to 21 be corrected. A violation notice would be issued and if 22 they're not corrected the conditional use can be revoked. 23 MR. ROMANS: Okay. So incorporated in the plan is the 24 foliage and by Ace Nursery to basically cover the view of 25 your property. What's to prevent them from selling their</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

19 (73 to 76)

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| <p>73</p> <p>1 entire inventory?</p> <p>2 MR. BOHRER: So, I believe the actual landscape plan</p> <p>3 was not including the trees from Ace.</p> <p>4 HEARING EXAMINER GROSSMAN: Now, that's -- I think</p> <p>5 that's an accurate statement. The point -- he doesn't say</p> <p>6 that Ace is not going to be there. Ace is -- the</p> <p>7 indication is that Ace would continue around, as a tree</p> <p>8 farm around it, which does add to the insulation. But the</p> <p>9 actual landscape plan around the subject site, the 5 plus</p> <p>10 acres, the subject site, is independent of that, and in</p> <p>11 addition to anything that might be around the subject site.</p> <p>12 MR. ROMANS: What is going to happen to all the heavy</p> <p>13 equipment that is much heavier than yours -- that you say</p> <p>14 starts up like an automobile, you say all of your equipment</p> <p>15 and trucks, et cetera, et cetera, or that kind of noise</p> <p>16 pollution. Currently, Ace on the proposed site has a very,</p> <p>17 very heavy equipment and trucks. What's going to happen to</p> <p>18 those?</p> <p>19 MR. BOHRER: So, our application is for the</p> <p>20 conditional use within the 5.74 acres. The remaining</p> <p>21 portion will still remain a nursery.</p> <p>22 HEARING EXAMINER GROSSMAN: I have a -- his question</p> <p>23 went to the trucks on the surrounding Ace property. That's</p> <p>24 not within my purview. That property is not before me, and</p> <p>25 there's nothing I can issue regarding that surrounding</p> | <p>75</p> <p>1 MR. BOHRER: Yes.</p> <p>2 MR. ROMANS: That's very clear. Okay. So as you</p> <p>3 testified your -- all of your equipment starts up like an</p> <p>4 automobile. What guarantees you do not buy heavier</p> <p>5 equipment the day after approval is given?</p> <p>6 MR. BOHRER: Can you repeat that question?</p> <p>7 MR. ROMANS: Sure. You have stated in your testimony</p> <p>8 all of your equipment starts like -- up like an automobile.</p> <p>9 I guess you're associating that with noise pollution. The</p> <p>10 question is; what guarantees that you do not buy heavier</p> <p>11 equipment the day after a conditional use is granted?</p> <p>12 MR. BOHRER: So our equipment list we actually</p> <p>13 submitted with the conditional use. So I think we're bound</p> <p>14 by that conditional use as far as the equipment that we're</p> <p>15 allowed the use.</p> <p>16 MR. ROMANS: Sir, is there a time limit on that?</p> <p>17 HEARING EXAMINER GROSSMAN: No. As long as the</p> <p>18 conditional use is in effect those conditions will be in</p> <p>19 effect.</p> <p>20 MR. ROMANS: So the size of the vehicles are listed</p> <p>21 there?</p> <p>22 HEARING EXAMINER GROSSMAN: The -- let me see if I can</p> <p>23 find the table that he's referring to. And that's my</p> <p>24 recollection that it was pretty specific.</p> <p>25 MR. ROMANS: Can I be excused for a biology break?</p> |
| <p>74</p> <p>1 property. The only thing before me is this 5.7 acre</p> <p>2 subject site. I don't control Ace Nursery. If they're</p> <p>3 violating something then you can, you know, report that to</p> <p>4 the Department of Permitting Services or whatever. But</p> <p>5 it's not before me --</p> <p>6 MR. ROMANS: Okay.</p> <p>7 HEARING EXAMINER GROSSMAN: -- as a conditional use</p> <p>8 application.</p> <p>9 MR. BOHRER: Are those trucks now on the proposed</p> <p>10 site?</p> <p>11 HEARING EXAMINER GROSSMAN: Are they now on the</p> <p>12 proposed site?</p> <p>13 MR. ROMANS: That's my question.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. You mean Ace</p> <p>15 trucks?</p> <p>16 MR. ROMANS: Yes.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay.</p> <p>18 MR. BOHRER: On the proposed conditional use site,</p> <p>19 yes.</p> <p>20 MR. ROMANS: And when will they be removed?</p> <p>21 MR. BOHRER: I would think once we have a conditional</p> <p>22 use approval and were able to settle on the land that they</p> <p>23 would have to relocate.</p> <p>24 MR. ROMANS: Just -- it's just so unclear. Do you use</p> <p>25 any manure based fertilizer?</p> | <p>76</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Why don't we</p> <p>2 take a five-minute break here and we'll come back at five</p> <p>3 minutes after 11:00?</p> <p>4 (Off the record 11:00)</p> <p>5 (On the record 11:08)</p> <p>6 HEARING EXAMINER GROSSMAN: The question was posed</p> <p>7 about limits on vehicles. On page 7 of the Technical Staff</p> <p>8 report it lists 20 trucks, 3 skid steers, (indiscernible)</p> <p>9 body trucks, 1 large loader, 12 trailers, non dumping and 1</p> <p>10 tractor. That's the limited list for the subject site.</p> <p>11 And that would be in any conditions if the conditional use</p> <p>12 is granted.</p> <p>13 MR. TYDINGS: I want to thank you very much.</p> <p>14 MR. ROMANS: Okay. So given that list and since you</p> <p>15 testified that all your equipment starts up like an</p> <p>16 automobile, name one thing on that list that does?</p> <p>17 MR. BOHRER: The trucks.</p> <p>18 MR. ROMANS: Okay. We've got your testimony. You</p> <p>19 also testified that you store the same items on your site</p> <p>20 that a typical homeowner would. My question to you is,</p> <p>21 would you like to come over to my house and find one</p> <p>22 material storage van, a commercial vehicle, a manure</p> <p>23 storage van, or any other item associated with your with</p> <p>24 your business?</p> <p>25 MR. BOHRER: Well, I --</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

20 (77 to 80)

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| <p>77</p> <p>1 HEARING EXAMINER GROSSMAN: The question posed: would 2 you like to come over to his house and look for those? 3 MR. ROMANS: And could you find -- let's rephrase the 4 question. Could you find any of these things? 5 HEARING EXAMINER GROSSMAN: Well, I think that would 6 probably be speculative. 7 MR. ROMANS: Well, he's testified. 8 MR. BOHRER: So -- 9 MR. ROMANS: It was -- 10 HEARING EXAMINER GROSSMAN: Whether he could -- okay. 11 I'm going to allow the question. Go ahead. 12 MR. BOHRER: Okay. Yes. 13 MR. ROMANS: Well, come on by. So that would mean 14 that your -- and if you don't find any of those items the 15 testimony was false. Thank you. 16 HEARING EXAMINER GROSSMAN: I'm sorry. What was that? 17 I didn't hear that. 18 MR. ROMANS: Well, if he doesn't find any of these 19 items in his testimony was false. 20 HEARING EXAMINER GROSSMAN: All right. You make that 21 comment when you testify. 22 MR. ROMANS: All right. Let's -- for the record. You 23 had stated that all your vehicles will only take a left on 24 Zion Road when exiting your property; is that correct? 25 MR. BOHRER: I don't actually recall the exact words</p> | <p>79</p> <p>1 guys currently do carpool. 2 MR. ROMANS: Okay. So that -- is it correct that that 3 would limit the amount of vehicles on site and parking 4 spaces at this time? 5 MR. BOHRER: Yes, it would limit it. 6 MR. ROMANS: Is it also correct that that could change 7 tomorrow? 8 MR. BOHRER: Yes. 9 MR. ROMANS: Thank you. Is it in your application -- 10 this might have been said, but I did not hear it so I'm 11 going to ask this. Is this -- is it in your application to 12 pave the roads all the way back to your proposed 13 establishment or are you going to use crush (indiscernible) 14 or how is it going to work? 15 MR. BOHRER: I don't believe it's in our application. 16 At this point we do not have plans to pave the entry road, 17 or the parking. 18 MR. ROMANS: So what would be done about any dust or 19 mud effect from all those trucks coming off of the dirt 20 road? 21 MR. BOHRER: So the road that is currently there is 22 gravel. So we would maintain the gravel within that -- 23 within that roadway. 24 MR. ROMANS: So included in your application, is over 25 11,000 more square feet of space. Do you believe this</p> |
| <p>78</p> <p>1 that I used. However, as part of our conditional use our 2 exit strategy would be to have to make a left onto Zion 3 Road because going right would be in violation of our 4 conditional use. Specifically, there's a weighted bridge 5 that I believe the weight rating is 7,000. 6 MR. ROMANS: It's 10. 7 MR. BOHRER: So I wouldn't recommend that our trucks 8 go that way anyway. 9 HEARING EXAMINER GROSSMAN: There's a proposed 10 condition by the Technical Staff in Exhibit 32. Technical 11 Staff report, the proposed condition is all vehicles with 12 more than four wheels that are associated with the 13 applicant's business, including those belonging to 14 employees, must not travel north on Zion Road from the 15 property. All trucks must enter the property from the 16 south. So there's an express restriction recommended by 17 the Technical Staff. Then there was -- and the applicant 18 agreed to that condition so that's, once again, if the 19 conditional use is granted that would likely be imposed as 20 a specific condition on the conditional use. 21 MR. ROMANS: Okay. I just wanted on the record. 22 Thank you very much. Is it correct that you stated that 23 Goshen has carpooling policy? 24 MR. BOHRER: I don't recall if we have an actual -- if 25 I stated we have a policy, but more than 50 percent of our</p> | <p>80</p> <p>1 would not have -- this addition and growing exponentially 2 like this is, would not have an effect on property values 3 in the neighborhood? 4 HEARING EXAMINER GROSSMAN: I'm not sure it's -- 5 11,000 square feet of -- 6 MR. ROMANS: The proposed building. 7 (Crosstalk) 8 HEARING EXAMINER GROSSMAN: Okay. 9 MR. BOHRER: So what was the question? 10 MR. ROMANS: Yes. You -- in your application, you 11 have proposed two buildings totaling over 11,000 square 12 feet. Do you believe that the huge exponential expansion 13 of this business in my neighborhood would not cause an 14 adverse effect on my property values? 15 MR. BOHRER: I can't really speak to property values 16 per se since I have not -- I'm not a realtor or a property 17 appraiser. However, the employee count is regulated by the 18 conditional use. 19 MR. TYDINGS: I don't have a comment on that. 20 HEARING EXAMINER GROSSMAN: Do you have a question? 21 Did you say you have a question or -- 22 MR. TYDINGS: Oh he said (indiscernible) relative to 23 my particular one. 24 MR. ROMANS: No, I'm done. I've gone over five 25 minutes.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

21 (81 to 84)

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| <p>81</p> <p>1 MR. KLINE: Well, I think everybody just for comments 2 and testimony. Oh I announcing the one where he's drinking 3 my milkshake for all he's worth 4 HEARING EXAMINER GROSSMAN: Any redirect for this 5 witness? 6 MR. KLINE: No, sir. 7 HEARING EXAMINER GROSSMAN: All right. 8 MR. KLINE: Well, I take that back. 9 HEARING EXAMINER GROSSMAN: Okay. 10 MR. KLINE: I'll take that back. Because I -- if I 11 recall correctly, in your testimony you indicated that a 12 number of your employees don't have driver's license, so 13 that would probably naturally inhibit the number of 14 additional cars that might come to the site if people 15 decided not to carpool? 16 HEARING EXAMINER GROSSMAN: All right. That's -- once 17 again, that's called a leading question. Try to pose that 18 in a non-leading manner. 19 MR. KLINE: All right. Would -- is it correct that 20 some of your employees do not have driver's license and 21 that's why they carpool? 22 MR. BOHRER: That is correct. 23 HEARING EXAMINER GROSSMAN: That's really leading too, 24 but okay. I'll let you -- it's a little less so perhaps. 25 MR. KLINE: Are there any --</p> | <p>83</p> <p>1 MR. BOHRER: The only manure base fertilizer we use is 2 Holly Tone. 3 MR. KLINE: Okay. 4 MR. BOHRER: That's it. 5 MR. KLINE: Which is a bag product, or do you have 6 it -- 7 MR. BOHRER: It's sold by that bag, and it's applied 8 to azaleas and rhododendrons around customers' houses. 9 That's all. 10 HEARING EXAMINER GROSSMAN: Are you using it on site, 11 or is this just that you have bags of this fertilizer that 12 you're carrying to the site? 13 MR. BOHRER: We typically have a bag or two on site. 14 HEARING EXAMINER GROSSMAN: Okay. 15 MR. BOHRER: That we would then transport to the 16 customer's house. 17 HEARING EXAMINER GROSSMAN: Okay. 18 MR. KLINE: No further questions. 19 HEARING EXAMINER GROSSMAN: Thank you. Any recross 20 based just on those two questions? Mr. Tydings, any 21 recross? 22 MR. TYDINGS: No, sir. 23 HEARING EXAMINER GROSSMAN: Thank you Mr. Bohrer. I 24 appreciate it. All right. Now, let's turn to your direct 25 testimony. Mr. Romans, Mr. Tydings, would you raise your</p> |
| <p>82</p> <p>1 HEARING EXAMINER GROSSMAN: A non-leading version is 2 do your employees have driver's license? 3 MR. KLINE: Right. Yeah. Are there characteristics 4 of your employees driving licensure which would affect the 5 potential of having more cars coming to the site? 6 MR. BOHRER: The characteristics of our business 7 actually limit the type of employees that we hire. We 8 typically hire more entry-level, which typically starting 9 now (indiscernible) a mowing crew or something like that, 10 it's an entry-level position. So I would say a majority of 11 those that are starting in that field, they do not have 12 driver's licenses. 13 MR. KLINE: Okay. And you mentioned, I can't remember 14 if it was the question for your answer, in your based 15 fertilizers. I don't remember that testimony. Can you 16 clarify what that is on a -- (indiscernible) that is? 17 MR. BOHRER: Sure. The only in your base fertilizer 18 we use is Holly Tone. 19 HEARING EXAMINER GROSSMAN: Did you statement in your 20 are mineral based? I'm not -- 21 MR. KLINE: Manure. 22 HEARING EXAMINER GROSSMAN: Manure based. Okay. 23 MR. BOHRER: I was asked a question if we used manure 24 based fertilizer. 25 HEARING EXAMINER GROSSMAN: Right.</p> | <p>84</p> <p>1 right hands, please? Do you swear or affirm to tell the 2 truth, the whole truth and nothing but the truth under the 3 penalty of perjury? 4 MR. TYDINGS: I do. 5 MR. ROMANS: I do. 6 HEARING EXAMINER GROSSMAN: All right. Yes, Mr. 7 Kline? 8 MR. KLINE: Do you expect other -- do you expect your 9 wife will want to testify also? Might as well just do it 10 all at the same time. 11 HEARING EXAMINER GROSSMAN: Well, if she's going to 12 testify will swear her in. All right. So Mr. Romans' 13 questions you have? 14 MS. TYDINGS: No. 15 MR. TYDINGS: She was nodding yes. Oh, you included 16 here? Okay. 17 HEARING EXAMINER GROSSMAN: Well -- 18 MS. TYDINGS: No. If I have something he will do it 19 then. 20 MR. TYDINGS: Oh, okay. Sorry. 21 MR. ROMANS: Mine are going to be concluding 22 statements. Do you want to go first? 23 MR. TYDINGS: So this is testimony? 24 HEARING EXAMINER GROSSMAN: This is your testimony. 25 MR. TYDINGS: Okay. Yeah, okay.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

22 (85 to 88)

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| <p style="text-align: right;">85</p> <p>1 (Crosstalk)</p> <p>2 HEARING EXAMINER GROSSMAN: -- anything that's</p> <p>3 relevant.</p> <p>4 MR. TYDINGS: Right. Okay. I've got --</p> <p>5 HEARING EXAMINER GROSSMAN: If Mr. Kline disagrees</p> <p>6 with something that it's not within the ambit of the</p> <p>7 hearing then he'll object. But other than that you may</p> <p>8 state your piece.</p> <p>9 MR. TYDINGS: Great. Six items. So I contend that we</p> <p>10 are in the runoff area, directly in the runoff area. I</p> <p>11 know it for a fact. We are -- our home, as does Drew's</p> <p>12 sits on a geological feature called Ridgley's ridge which</p> <p>13 recedes to the streams and ultimately to the Hawlings River</p> <p>14 and Mr. Bohrer probably knows because he's actually very</p> <p>15 familiar with my property for reasons we don't need to get</p> <p>16 into here. But the water does run rapidly, particularly</p> <p>17 down Zion road in front of our property. We have a -- we</p> <p>18 actually have erosion problems the Counties try to abate.</p> <p>19 So two things about that. One, we should receive all</p> <p>20 notices by virtue of the fact that we're in a runoff area</p> <p>21 directly from that property. I can go into more detail; I</p> <p>22 just don't think I need to.</p> <p>23 HEARING EXAMINER GROSSMAN: Well, first of all, when</p> <p>24 you say it runs down Zion Road are you saying it runs south</p> <p>25 to north? Or North to --</p> | <p style="text-align: right;">87</p> <p>1 and which have to be posted within, I think it's five days,</p> <p>2 after the application is filed and maintained until the</p> <p>3 date of the hearing. So you would get notice from that as</p> <p>4 well. But I don't want you to think that because you're in</p> <p>5 a water runoff area that you think that somehow that</p> <p>6 automatically include you in getting an individual mailed</p> <p>7 notice regarding the hearing for a conditional use. It's</p> <p>8 specified who gets it in the zoning ordinance.</p> <p>9 MR. TYDINGS: Then I will -- so my first comment and</p> <p>10 testimony will be that we are in the water runoff area.</p> <p>11 HEARING EXAMINER GROSSMAN: I understand.</p> <p>12 MR. TYDINGS: Number two, I would like to request that</p> <p>13 substitute lighting be considered that was not the fixtures</p> <p>14 that are in the plan that Mr. Norton showed us down on the</p> <p>15 floor. And while I don't have any hard and fast</p> <p>16 specifications about lighting I -- but preferably it was</p> <p>17 something shielded to keep them from lateral -- parallel to</p> <p>18 the ground emitting light.</p> <p>19 HEARING EXAMINER GROSSMAN: I think that's already, as</p> <p>20 he testified, I think that in fact, is -- there shielded.</p> <p>21 That the light would not only be shielded on the top and on</p> <p>22 the sides so that light goes down.</p> <p>23 MR. TYDINGS: It's not. We looked at the draw -- we</p> <p>24 looked at the pictures.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay.</p> |
| <p style="text-align: right;">86</p> <p>1 MR. TYDINGS: It runs south to north, yes because the</p> <p>2 property recedes, goes to the Ace Nursery and the Statler's</p> <p>3 Nursery next door. We're all in a watershed and it all is</p> <p>4 coming down towards the street and the river is the bottom</p> <p>5 line.</p> <p>6 HEARING EXAMINER GROSSMAN: Right. And the road --</p> <p>7 MR. TYDINGS: And the road just exacerbates that a</p> <p>8 good bit from the two -- I think it is 100 acres across the</p> <p>9 street total if I'm not mistaken.</p> <p>10 HEARING EXAMINER GROSSMAN: All right. When you talk</p> <p>11 about notice, you have to distinguish between whatever the</p> <p>12 Department of Permitting Services requires for purposes of</p> <p>13 their analysis and water -- storm water management and</p> <p>14 someone from this hearing process. The hearing notice that</p> <p>15 we send out is specified in the Zoning Ordinance. We send</p> <p>16 it to all of the people who are specified in the zoning</p> <p>17 ordinance and that includes confronting and abutting</p> <p>18 property owners, as well as various other civic</p> <p>19 associations and so on.</p> <p>20 MR. TYDINGS: Yes, sir.</p> <p>21 HEARING EXAMINER GROSSMAN: So we follow with</p> <p>22 particularity what is required in the zoning ordinance and</p> <p>23 if you're not included in that list you wouldn't get a</p> <p>24 formal written notice, but you would have the signs that</p> <p>25 tell you what's coming up that are posted on the property</p> | <p style="text-align: right;">88</p> <p>1 MR. KLINE: I'll call Mr. Norton and have him explain</p> <p>2 it.</p> <p>3 MR. TYDINGS: Okay. All right. I'd like to request</p> <p>4 that the sign -- so there's -- I'm going to get to the</p> <p>5 sixth point and it will --</p> <p>6 HEARING EXAMINER GROSSMAN: Yeah, okay.</p> <p>7 MR. TYDINGS: -- kind of underscore some of this; that</p> <p>8 the design be minimized without getting more specific, at</p> <p>9 the entrance.</p> <p>10 HEARING EXAMINER GROSSMAN: You mean beyond that which</p> <p>11 was recommended by the --</p> <p>12 MR. TYDINGS: Yes, sir. Yes, sir.</p> <p>13 HEARING EXAMINER GROSSMAN: -- Technical Staff?</p> <p>14 MR. TYDINGS: Yes, sir.</p> <p>15 HEARING EXAMINER GROSSMAN: So what size sign in total</p> <p>16 square feet do you think is appropriate?</p> <p>17 MR. TYDINGS: Well, I think it would probably be none.</p> <p>18 But I think that would cause a hardship for Mr. Bohrer</p> <p>19 because people -- they need to know where the entrance is.</p> <p>20 HEARING EXAMINER GROSSMAN: Well, that's -- yeah.</p> <p>21 It's also a traffic issue. Mr. Romans is apparently going</p> <p>22 to testify regarding speeding on the road. We want people,</p> <p>23 if they want to know where the place is, to be able to see</p> <p>24 it without running off the road. So the size of the sign</p> <p>25 is something of an issue in that regard to.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

23 (89 to 92)

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| <p>89</p> <p>1 MR. TYDINGS: Well, okay. Since we're in testimony 2 Mr. Kline can keep me straight on this then. So -- so 3 it's -- when I started to say I've lived in the area all my 4 life (indiscernible) I kind of got the shaking so the head. 5 Zion Road's a drag strip; has been since we were in high 6 school. And people still use it excessively so not just 7 cars that are speeding coming through for commute, but 8 people race motorcycles and cars on the road. And you can 9 see marks on the road right now. I mean it's -- so speed 10 is a huge issue and it's not just a 50 or 60 mile an hour. 11 Sometimes you get in excess of 100 miles an hour on Zion 12 Road. So I'll just -- 13 HEARING EXAMINER GROSSMAN: But not -- you know, none 14 of the applicant's trucks if this conditional use is 15 granted, will be in front of -- near your home because they 16 all are required to go south. 17 MR. TYDINGS: Right. Right. Right. 18 HEARING EXAMINER GROSSMAN: So -- 19 MR. TYDINGS: So the -- I believe that the property 20 values will be negatively impacted. And I'll leave that 21 statement at that. Number five, I'd like to request that 22 the removal, and I'll call it defunct equipment, because 23 there's just some really old -- there's -- Jeff Miskins 24 (phonetic) the Ace Nursery trucks, some of these trucks are 25 really old. Big trailers, trucks, and some heavy equipment</p> | <p>91</p> <p>1 MR. TYDINGS: -- then? 2 HEARING EXAMINER GROSSMAN: I understand your request, 3 but it's not -- it's beyond my jurisdiction, is the point. 4 MR. TYDINGS: Yeah. Okay. So that could be addressed 5 through some other venue and so on. Okay. I like that 6 reply. Number six, and I'm not sure how formal this 7 type -- so we would like an opportunity to meet, and I'll 8 call it clarify, with the whole conditional use with Mr. 9 Bohrer one more time before Mr. Grossman renders his 10 decision and we can put a time frame on that of a week or 11 two weeks or something. Two weeks? 12 HEARING EXAMINER GROSSMAN: I'm going to put a time 13 frame on that. I think it's great. I think it's a great 14 idea to meet with the neighbors, but I did promise, when I 15 in effect postponed the end of the closing of the record 16 here to allow this second hearing; I promised Mr. Kline 17 that I would do two things. One is, that I would ask for 18 an accelerated transcript, that is not going to wait the 19 usual 10 days are so it takes to get it. But rather get 20 the transcript within two working days. I also mentioned 21 that to the court reporter. And the second is that we 22 close the record more rapidly than we usually do. We 23 usually wait the 10 days to close the record, or, if there 24 are additional exhibits that are accepted we then give 25 additional time for reply and for opinions by the Technical</p> |
| <p>90</p> <p>1 be removed. This is a request; and not just laterally into 2 the -- off of the 5.7 acres on to the Ace property. That's 3 just a request in testimony. 4 HEARING EXAMINER GROSSMAN: I can't -- I cannot tell 5 Ace what to do on its property. And the only thing I can 6 do -- 7 MR. TYDINGS: Only for the ones on Goshen's -- only on 8 the 5.7 acres. 9 HEARING EXAMINER GROSSMAN: Right. 10 MR. TYDINGS: Because it was noted, I believe, that 11 some of the equipments on the 5.7. 12 HEARING EXAMINER GROSSMAN: Right. That, it will be 13 limited, if this is approved, it would be limited to what 14 is specified as permitted on their property. 15 MR. TYDINGS: Even inoperable equipment qualifies 16 as -- 17 HEARING EXAMINER GROSSMAN: That's right. They can't 18 have -- 19 MR. TYDINGS: -- as equipment? 20 HEARING EXAMINER GROSSMAN: Right. They can have 21 things on their property that are not permitted by the 22 conditional use. 23 MR. TYDINGS: Okay. So I can't say anything about the 24 Ace properties -- 25 HEARING EXAMINER GROSSMAN: You can --</p> | <p>92</p> <p>1 Staff; which is probably not the case here. So the record 2 would close on September 14, 2018, that's a week from 3 today. That would give time for the transcript to be in, 4 and it would also give you time to meet with Mr. Bohrer, if 5 you desire to do so, and he desires to meet with you. I 6 would, once again, I would encourage good neighbors to talk 7 to each other. 8 MR. TYDINGS: Okay. Mr. Kline are you good with -- 9 are you good with that? With a week? 10 MR. KLINE: I think that that would be a conversation 11 you'd have with Mr. Bohrer outside the hearing. All I care 12 about is getting the record closed and an opinion issued. 13 HEARING EXAMINER GROSSMAN: Then the time frame 14 thereafter, we have built into the statute, and it gives us 15 30 days to write our report and decision. I generally beat 16 that by quite a bit, and I will beat it by quite a bit in 17 this particular case as well, if I can. As I indicated to 18 Mr. Kline to ameliorate the fact that I extended the record 19 here for the additional month to have this follow-up 20 hearing. So I can't tell you exactly when I would be, you 21 know, writing the report but it would be sometime after the 22 record closes on September 14. 23 MR. TYDINGS: Okay. 24 HEARING EXAMINER GROSSMAN: By law within 30 days, 25 although I can extend that. But I almost never extend my</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

24 (93 to 96)

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| <p style="text-align: right;">93</p> <p>1 time.</p> <p>2 MR. TYDINGS: Okay. All right. And I'll, I guess,</p> <p>3 apologize to everyone that we couldn't be here on the 3rd.</p> <p>4 We went -- we had a rental at the beach for a vacation.</p> <p>5 HEARING EXAMINER GROSSMAN: Yeah, I --</p> <p>6 MR. TYDINGS: We came in the day before and spent a</p> <p>7 few hours in the room. My wife will need -- so you will</p> <p>8 need to include her because she has a question I'm not</p> <p>9 quite --</p> <p>10 MS. TYDINGS: No, I'm (indiscernible), if I may.</p> <p>11 HEARING EXAMINER GROSSMAN: You want to comment?</p> <p>12 MS. TYDINGS: Not a question, just a comment.</p> <p>13 HEARING EXAMINER GROSSMAN: Well, if you want to</p> <p>14 testify would you raise your right hand please? Do you</p> <p>15 swear or affirm to tell the truth, the whole truth, and</p> <p>16 nothing but the truth under penalty of perjury?</p> <p>17 MRS. TYDINGS: I do.</p> <p>18 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>19 proceed.</p> <p>20 MS. TYDINGS: My, and just for the record I want to --</p> <p>21 we have been through quite an ordeal with the landfill</p> <p>22 that's near our property. We've had well issues, we are on</p> <p>23 well water and septic. And we've had issues because of</p> <p>24 that. We do not have city water that the State or County</p> <p>25 decided that they didn't want to do that. And so we are</p> | <p style="text-align: right;">95</p> <p>1 city water, and that's a big concern. The -- I just lost</p> <p>2 my thought. I lost it.</p> <p>3 HEARING EXAMINER GROSSMAN: So we can come back to you</p> <p>4 if you think of it again.</p> <p>5 MS. TYDINGS: Okay. Thank you.</p> <p>6 HEARING EXAMINER GROSSMAN: It happens to me all the</p> <p>7 time.</p> <p>8 (Crosstalk)</p> <p>9 MR. TYDINGS: I'm going to close then with just a</p> <p>10 comment. It's not one of my six but -- and Mr. Grossman</p> <p>11 you kind of, how do I characterize it? You sent that</p> <p>12 letter to me saying hey, I think you misunderstand the</p> <p>13 proceedings here and the nature of the hearing. So just</p> <p>14 going on the record, we were actually; you know the County</p> <p>15 did produce a settlement. The woman who led the charge</p> <p>16 when the landfill was put in in Laytonville is a dear</p> <p>17 friend of ours. As a matter of a fact that's who we were</p> <p>18 on vacation with, her grown sons who are our best friends.</p> <p>19 And our three properties, Drew's, and ours and his former</p> <p>20 sister-in-law's beyond us were all included in that</p> <p>21 settlement. And Doug and I really bashed heads over that</p> <p>22 one because they decided to exclude our three properties</p> <p>23 from extending from that water main at the corner of Riggs</p> <p>24 Road. That was kind of our first blow, if you will, by the</p> <p>25 County that we were counting on. Because when we moved in,</p> |
| <p style="text-align: right;">94</p> <p>1 concerned about the management of the storm water -- of</p> <p>2 the -- of the whatever runoff is there. I'm not -- I have</p> <p>3 no idea how to put this in proper words. However, it is my</p> <p>4 understanding that there can be mitigation put into the</p> <p>5 parking lot, or the parking area that can diminish and</p> <p>6 that --</p> <p>7 HEARING EXAMINER GROSSMAN: They are doing so. That's</p> <p>8 what Mr. Norton testified to.</p> <p>9 MS. TYDINGS: To the maximum I hope.</p> <p>10 HEARING EXAMINER GROSSMAN: Yeah, their -- what they</p> <p>11 call environmental site design. I think there in full</p> <p>12 compliance. Is that correct Mr. Norton?</p> <p>13 MR. NORTON: Yes, that's right.</p> <p>14 HEARING EXAMINER GROSSMAN: You're in full compliance</p> <p>15 with state and county environmental --</p> <p>16 MR. NORTON: Per the (indiscernible).</p> <p>17 HEARING EXAMINER GROSSMAN: -- environmental site</p> <p>18 design requirements for water runoff, storm water runoff?</p> <p>19 MR. NORTON: Yes sir. Environmental site design, we</p> <p>20 have an approved storm water concept that complies with</p> <p>21 Maryland storm water guidelines.</p> <p>22 MS. TYDINGS: I just wanted to make sure of that.</p> <p>23 MR. NORTON: Yes.</p> <p>24 MS. TYDINGS: Just because we've already had so many</p> <p>25 issues for all these years. And like I said, we don't have</p> | <p style="text-align: right;">96</p> <p>1 you know, we did go to Silver Spring. We did go to</p> <p>2 planning, we checked out all the properties. We do the 25</p> <p>3 acre zoning at Rachel Carson Park. I knew there was the</p> <p>4 potential for a neighborhood to go in behind us, which</p> <p>5 subsequently did go in two years later. But we spent, and</p> <p>6 having lived in the area all our lives, two years looking</p> <p>7 for a property to locate on from what we called the fertile</p> <p>8 (indiscernible) from Ashton to Goshen, and we settled on</p> <p>9 this property for all it's wonderful characteristics and</p> <p>10 subsequently did not receive the water that we were</p> <p>11 promised, nor the perpetual delivery of free water in lieu</p> <p>12 of. There was a technical reason why our three properties</p> <p>13 were put in some kind of gray area category which they --</p> <p>14 you know, so we didn't get it. Then we were, and again, I</p> <p>15 know this is not your purview, just my final comment.</p> <p>16 HEARING EXAMINER GROSSMAN: I know I have no idea what</p> <p>17 you're talking about, to tell you the truth, Mr. Tydings.</p> <p>18 I don't know anything about any settlement, and it's not</p> <p>19 before me, and I don't know about what -- any promise that</p> <p>20 was made about your getting water or not getting water. I</p> <p>21 have no idea, nor do I think it's going to be -- what I</p> <p>22 have to decide. But I'm going to let you finish your</p> <p>23 statement. I just want you to understand that.</p> <p>24 MR. TYDINGS: Just in the context of things. I can't</p> <p>25 remember if I explained this to Mr. Bohrer or to his agent,</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

25 (97 to 100)

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| <p style="text-align: right;">97</p> <p>1 Fernando. But -- and then we were forced by Maryland 2 National Capital Park and Planning, on the historic 3 register which has cost us, and currently we're expending a 4 significant amount of money on maintaining features of the 5 property that we would otherwise not be doing. So we are 6 sensitive to this entire situation. 7 HEARING EXAMINER GROSSMAN: Well. 8 MR. TYDINGS: And that's just to put our sensitivity 9 and the protection of ourselves in context to this hearing. 10 HEARING EXAMINER GROSSMAN: Okay. I mean, you know, 11 once again it's my job to look and see if there are going 12 to be adverse consequences, undue adverse consequences, to 13 the neighborhood beyond that which is ordinarily expected 14 from this type of use that's permitted by the Council in 15 this zone. And so that's what we address. And when we 16 find eight -- for example, a landscape contractor that is 17 going to have undue adverse consequences on the 18 neighborhood the conditional use is denied. There's a very 19 well known case up to the Court of Appeals demonstrating 20 that. And whether it's in this case will depend on my 21 looking at the entire record of the case. But understand 22 that my evaluation is based on the statutory standards. 23 And that's what I will apply; and this record. Okay. Mr. 24 Kline, did you have any cross-examination questions? 25 MR. KLINE: Just one question.</p> | <p style="text-align: right;">99</p> <p>1 as it is in this case. If they have to go through a 2 preliminary plan of subdivision, and as I understand from 3 the Technical Staff report they will, on page 26 of Exhibit 4 32 of the Technical Staff report say, the application is 5 subject to approval of a preliminary plan because the 6 existing building that is being renovated requires a 7 building permit and the subject property is not a recorded 8 lot. So they will have to go through that process before 9 the Planning Board and under the zoning ordinance when 10 preliminary plan is required the adequacy of public 11 facilities is decided not by the hearing examiner, but by 12 the Planning Board. On the other hand, we have obligations 13 to look at traffic issues from the safety perspective based 14 on other provisions. But we don't technically make the 15 adequacy of public facility determination because under the 16 code that's the providence of the Planning Board when a 17 preliminary plan is required, as it is in this case. So 18 some of these issues regarding the traffic and so on will 19 be dealt with in terms of the ultimate decision of the 20 Planning Board on the preliminary plan. On the other hand, 21 as I said, we will address to some extent to the extent of 22 adverse consequences it is dealt with in the Staff Report, 23 the impacts of traffic in this case. The only expert 24 opinions we have thus far in terms of traffic and safety 25 are from the Technical Staff of the Planning Department and</p> |
| <p style="text-align: right;">98</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MR. KLINE: I've heard testimony about the bridge 3 north of the homes (indiscernible). Does the weight 4 restrictions on that bridge, or just its whatever size it 5 is, does that not have some inhibiting factor on speeding 6 on the road? The fact that it -- 7 MR. TYDINGS: No, because -- no, it does not because 8 the speeding really starts in front of our properties when 9 the road gets straight and there's another straightaway, 10 literally was painted off and marked on Zion further up the 11 road, just beyond Riggs, where there was a drag strip. I 12 mean literally in our high school days, you would get a 13 couple of hundred people out there. So no. None of it was 14 ever -- if I recall as a kid it was even gravel at that 15 point up by the bridge. So no. The bridge slows things 16 down north of us, absolutely but not -- by the time it gets 17 to our property and the road straightens out the speeding, 18 you can hear the revving of the cars, Just in morning 19 traffic (indiscernible) any, what is that south. 20 HEARING EXAMINER GROSSMAN: I read an (indiscernible) 21 here that there's also a question of the roadways are a 22 public facility and the zoning ordinance provides that the 23 question of the adequacy of public facilities is determined 24 by either the hearing examiner or the Planning Board 25 depending on whether or not a preliminary plan is required,</p> | <p style="text-align: right;">100</p> <p>1 an expert called by the applicant, both of whom 2 testified -- or both of whom indicated one in a report 3 that's in the record, and one in testimony that the 4 proposal will be safe and adequate in terms of traffic. So 5 just thought you ought to know that. 6 MR. TYDINGS: We read Mr. Lenard's report. 7 HEARING EXAMINER GROSSMAN: Okay. All right. That 8 was your only question on cross-exam? 9 MR. KLINE: Yes, sir. 10 HEARING EXAMINER GROSSMAN: Okay. All right. Any -- 11 you're entitled to a redirect after that question if you -- 12 MR. TYDINGS: I'm good. 13 HEARING EXAMINER GROSSMAN: Okay. All right. And Ms. 14 Tydings, have you thought of the rest of your question? 15 MS. TYDINGS: No. 16 HEARING EXAMINER GROSSMAN: Okay. 17 MS. TYDINGS: Sorry, it's gone. Thank you. 18 HEARING EXAMINER GROSSMAN: All right. All right, 19 then we'll turn to Mr. Romans. 20 MR. ROMANS: Well, I'll just continue on that line in 21 my testimony. 22 HEARING EXAMINER GROSSMAN: Okay. 23 MR. ROMANS: Once they passed Emmett's mailbox they 24 further accelerate towards mine. And I am testifying that 25 cars travel at 50 to 60 miles an hour passed my house. The</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

26 (101 to 104)

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| <p>101</p> <p>1 proposed entrance to the new facility is just past my 2 driveway by a matter of feet. This does not give slow 3 moving trucks the time to enter that roadway with the cars 4 proceeding at that pace. 5 HEARING EXAMINER GROSSMAN: Enter from which 6 direction? 7 MR. ROMANS: Coming -- and let's say it's the morning, 8 and they are leaving to go to work. 9 HEARING EXAMINER GROSSMAN: No, I mean you say it 10 doesn't give them time to -- 11 MR. ROMANS: To exit the property onto Zion Road -- 12 HEARING EXAMINER GROSSMAN: Okay. 13 MR. ROMANS: -- as these speeding cars are coming 14 around, coming up past my driveway. It's very close. 15 These are slow-moving vehicles and this is a hazard. 16 HEARING EXAMINER GROSSMAN: Okay. 17 MR. ROMANS: all also testified that they -- if this 18 conditional use is granted that entrance should be moved as 19 far down that property line as possible. And that's the 20 reason. There's a line of sight once they pass my mailbox 21 that starts to occur of about a quarter of a mile which 22 would give these -- and before my driveway they're coming 23 around turns, and they are flying. So past my mailbox that 24 line of sight increases to a quarter of a mile. This, if 25 the entrance to this property or exit is located at the far</p> | <p>103</p> <p>1 say to me again what you're requesting? 2 MR. ROMANS: There are two proposed buildings that are 3 included in this application. 4 HEARING EXAMINER GROSSMAN: Right. There's an 5 existing building, as you may understand, already on the 6 property. 7 MR. ROMANS: I do. 8 HEARING EXAMINER GROSSMAN: Which is going to be -- 9 okay. 10 MR. ROMANS: I do. 11 HEARING EXAMINER GROSSMAN: And you're saying that 12 buildings 1 and 2 that they -- 13 MR. ROMANS: There are two future buildings proposed 14 for the site -- 15 HEARING EXAMINER GROSSMAN: Right. 16 MR. ROMANS: As I understand it. 17 HEARING EXAMINER GROSSMAN: And what's your request 18 now, exactly? 19 MR. ROMANS: They -- as I understand it, and if I am 20 wrong please correct me. But these buildings are on to be 21 approved now to be built sometime in the future with no 22 actual time established. Is that correct? 23 HEARING EXAMINER GROSSMAN: Well, I think that's their 24 request that they be. 25 MR. ROMANS: Correct.</p> |
| <p>102</p> <p>1 end of the proposed business conditional use, these 2 speeding cars will have ample time to identify the trucks 3 getting onto the road and slow down. That's a matter of 4 safety. 5 HEARING EXAMINER GROSSMAN: So you're suggesting 6 that -- I mean they can't move it any further down than the 7 depth of their property. So you're suggesting that the 8 entryway should be moved south on the site -- I mean they 9 have some limit -- 10 MR. ROMANS: Correct. 11 HEARING EXAMINER GROSSMAN: -- based on the actual 12 size of the site as to how far they can move it. 13 MR. ROMANS: Correct. 14 HEARING EXAMINER GROSSMAN: Okay. 15 MR. ROMANS: Also in the conditional use application 16 several large buildings are included totaling over 11,000 17 square feet. I have two problems with that. One is, the 18 actual thought that the enterprise growing at this rapid 19 rate would not have material consequences of value to my 20 property. So my second thought about this is why aren't 21 these two properties excluded from this application and 22 when they are proposed in the future this could be 23 reconsidered and so could all elements involving that? I'm 24 requesting that today. 25 HEARING EXAMINER GROSSMAN: I'm not sure -- can you</p> | <p>104</p> <p>1 HEARING EXAMINER GROSSMAN: That -- 2 MR. ROMANS: But -- 3 HEARING EXAMINER GROSSMAN: When you say approved, I 4 mean we don't do permitting et cetera. They had have to 5 follow whatever the building code is and that have to get 6 it permitted that way. 7 MR. ROMANS: Okay. 8 HEARING EXAMINER GROSSMAN: This is just a land use 9 proceeding. 10 MR. ROMANS: right. Well my request is they have to 11 go through a conditional use and reapply again for both 12 these buildings because these are massive buildings. One 13 is 8800 square feet. 14 HEARING EXAMINER GROSSMAN: So you are suggesting that 15 we not approve the buildings that they proposed here 16 because they are large? The additional buildings? 17 MR. ROMANS: they are large. They are intrusive. 18 They are -- will have a material effect on the value of my 19 property and there are many reasons. 20 HEARING EXAMINER GROSSMAN: Okay. 21 MR. ROMANS: That's my request. 22 HEARING EXAMINER GROSSMAN: All right. 23 MR. ROMANS: My other concern is once conditional use 24 is granted, and I and my questioning of Mr. Bohrer, I 25 raised a lot of concerns. Who polices the establishment?</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

27 (105 to 108)

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| <p>105</p> <p>1 Is it self policed?</p> <p>2 HEARING EXAMINER GROSSMAN: No, the department of</p> <p>3 permitting services, and they do an inspection pretty much</p> <p>4 annually now. But neighbors can file complaints if there</p> <p>5 are violations of the conditional use and they would</p> <p>6 usually file it with the Department of Permitting Services</p> <p>7 and the Department of Permitting Services will investigate.</p> <p>8 If they find there's a violation of a condition they'll</p> <p>9 issue a notice of violation. If it's not corrected they'll</p> <p>10 submit something to us asking to revoke the conditional</p> <p>11 use.</p> <p>12 MR. ROMANS: Mm-hm. Okay. Let's see. Okay. We had</p> <p>13 concerns about light pollution; Mr. Tydings already</p> <p>14 directed questions towards that. Okay. So just in</p> <p>15 conclusion, you know, first of all Mr. Grossman, thank you</p> <p>16 very much for letting us be here today. I appreciate that.</p> <p>17 HEARING EXAMINER GROSSMAN: Certainly.</p> <p>18 MR. TYDINGS: I second that.</p> <p>19 HEARING EXAMINER GROSSMAN: We always try to include</p> <p>20 the neighbors and we think it's very important. However</p> <p>21 these things turn out it's important that the neighbors be</p> <p>22 heard from, the they know they are listened to. Whether or</p> <p>23 not everything works out there way I want them to know that</p> <p>24 I am listening.</p> <p>25 MR. ROMANS: I also do know that it was last-minute</p> | <p>107</p> <p>1 meeting at Montgomery Country Club to explain his side of</p> <p>2 the story. I was not included and I'm the most affected</p> <p>3 property. So he, in his transcript, quoted his application</p> <p>4 as being neighborly, and I don't feel that's the case at</p> <p>5 all. As a matter of fact, I feel it's a dis-representation</p> <p>6 [sic] of actual disclosure.</p> <p>7 HEARING EXAMINER GROSSMAN: Well, maybe you're all</p> <p>8 here today and before you leave maybe you and Mr. Klein can</p> <p>9 set up some kind of a meeting which includes Mr. Bohrer,</p> <p>10 yourself and Mr. Tydings and Mrs. Tydings if she wishes to</p> <p>11 be part of it. And I think that those kinds of things are</p> <p>12 a good idea and maybe there can be some kind of an</p> <p>13 understanding that can be submitted.</p> <p>14 MR. ROMANS: Also, the safety issues that I had</p> <p>15 brought up earlier. I'm very uncomfortable without</p> <p>16 background checks for all these people. I live right</p> <p>17 across the street. I protect this beautiful woman right</p> <p>18 here, my family, and my neighbors. I'm very concerned</p> <p>19 about that. I think that should be addressed. And I've</p> <p>20 already spoken of the additional massive future buildings</p> <p>21 and being segmented from the application. And finally, and</p> <p>22 of course this is my terminology I would like to address</p> <p>23 the absolutely absurd, and quite frankly, intellectually</p> <p>24 insulting notion that the property values of the said</p> <p>25 properties mentioned here today, the Tydings and Romans,</p> |
| <p>106</p> <p>1 when Emmett and I found out about the hearings and I</p> <p>2 will -- if there is a Bible here, I will tell you I found</p> <p>3 out, like, the day before. So both rushed letters down, in</p> <p>4 person, here.</p> <p>5 HEARING EXAMINER GROSSMAN: Right.</p> <p>6 MR. ROMANS: So we appreciate being accommodated.</p> <p>7 HEARING EXAMINER GROSSMAN: Certainly.</p> <p>8 MR. ROMANS: anyway. I've given you a couple of</p> <p>9 resubmissions that I am recommending for this conditional</p> <p>10 use application.</p> <p>11 HEARING EXAMINER GROSSMAN: Are you talking about</p> <p>12 building recommendation?</p> <p>13 MR. ROMANS: Yeah, correct.</p> <p>14 HEARING EXAMINER GROSSMAN: And the moving the</p> <p>15 driveway?</p> <p>16 MR. ROMANS: And the movement of the driveway.</p> <p>17 HEARING EXAMINER GROSSMAN: Right.</p> <p>18 MR. ROMANS: I'm still very unclear by the findings on</p> <p>19 their consultants about storm water management, whether</p> <p>20 that's going to be affected. I really don't understand</p> <p>21 that terminology. So I don't know how to approach that.</p> <p>22 I've already approached the entrance and exit issues. I</p> <p>23 just don't feel I was, quite frankly, notified as well as I</p> <p>24 should've been. And that's clearly my opinion. I will</p> <p>25 also point out that Mr. Bohrer invited Mr. Tydings to a</p> | <p>108</p> <p>1 will not be affected by a commercial enterprise that is</p> <p>2 testified it will be growing and expanded -- expanding</p> <p>3 exponentially over the coming years. And (indiscernible)</p> <p>4 request of both the Tydings and the Romans families and on</p> <p>5 behalf of all affected neighbors in the area that my</p> <p>6 considerations be greatly considered and employed in your</p> <p>7 findings. Once again, Mr. Grossman, thank you very much</p> <p>8 for having us here today. We greatly appreciate it.</p> <p>9 HEARING EXAMINER GROSSMAN: Sir. Questions, Mr.</p> <p>10 Kline?</p> <p>11 MR. KLINE: Just one, Mr. Romans. Are you familiar</p> <p>12 with the equipment that's on the large subject property</p> <p>13 today? The Ace's equipment?</p> <p>14 MR. ROMANS: Yes. You want to see a picture? May I?</p> <p>15 I have a picture would you would like to see it.</p> <p>16 MR. KLINE: Yeah, no sure. Go ahead. Yeah. I mean</p> <p>17 because I would be curious to see what vehicles you've</p> <p>18 shown in your (indiscernible).</p> <p>19 MR. ROMANS: oh, you're going to love this.</p> <p>20 HEARING EXAMINER GROSSMAN: Well, it's problematic</p> <p>21 because it's not part of my record because I can't -- if</p> <p>22 they're not printed out so --</p> <p>23 MR. KLINE: Yeah, okay fine. Would you agree with me</p> <p>24 that there are any equipment that ACE uses that are larger</p> <p>25 than the equipment that Goshen proposes to use?</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

28 (109 to 112)

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| <p>109</p> <p>1 MR. ROMANS: substantially larger.</p> <p>2 MR. KLINE: Okay. And it's probably less maneuverable</p> <p>3 when it gets on the public road?</p> <p>4 MR. ROMANS: If they're even working at all.</p> <p>5 MR. KLINE: Pardon me?</p> <p>6 MR. ROMANS: if these vehicles are even working at</p> <p>7 all. I could not tell.</p> <p>8 UNIDENTIFIED SPEAKER: It doesn't look like any of</p> <p>9 them are operational.</p> <p>10 MR. KLINE: Ace has spade trucks on the property that</p> <p>11 they're taking to job sites, so obviously they have</p> <p>12 equipment that works.</p> <p>13 MR. ROMANS: They have, right.</p> <p>14 MR. KLINE: Okay. And isn't it true that well, let me</p> <p>15 put it this way. Have you observed any conflicts between</p> <p>16 vehicles on the road and the Ace trucks? Which are less</p> <p>17 maneuverable?</p> <p>18 MR. ROMANS: I haven't seen those trucks move in</p> <p>19 years. I haven't.</p> <p>20 MR. KLINE: I see a spade beyond that. That's -- I</p> <p>21 see a spade truck.</p> <p>22 MR. ROMANS: I have not seen those trucks move in</p> <p>23 years. It's almost like a resting graveyard.</p> <p>24 MR. KLINE: No further questions, Mr. Grossman.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay. Just one thing I</p> | <p>111</p> <p>1 would agree that Mr. Norton's testimony goes to the</p> <p>2 visibility question, which certainly is a question of</p> <p>3 impacts. And it would, if something were easily visible</p> <p>4 from your property that was being proposed here, then that</p> <p>5 would have more impact. If it's not easily, readily</p> <p>6 visible that would have less impact. It doesn't concern</p> <p>7 may be other properties -- other potential effects on</p> <p>8 property values such as having a commercial enterprise.</p> <p>9 But the Technical Staff report and the Planning Board,</p> <p>10 which is charged with this kind of review has made a</p> <p>11 determination it's not going to have undue adverse</p> <p>12 consequences. So that's my record that I have in addition</p> <p>13 to your opinion of that.</p> <p>14 MR. ROMANS: okay. And backing up my opinion, sir.</p> <p>15 HEARING EXAMINER GROSSMAN: Pardon me?</p> <p>16 MR. ROMANS: And just to back up my opinion; I own</p> <p>17 residential and commercial properties in three states. And</p> <p>18 as part of my business plan, I will not even consider a</p> <p>19 property with a commercial enterprise anywhere in the area.</p> <p>20 HEARING EXAMINER GROSSMAN: And do you have any</p> <p>21 technical expertise in this area other than --</p> <p>22 MR. ROMANS: I've made a lot of money. That's pretty</p> <p>23 technical.</p> <p>24 HEARING EXAMINER GROSSMAN: Do you have any degrees</p> <p>25 that qualify you in this area or other indicia that I could</p> |
| <p>110</p> <p>1 wanted to point out to you, Mr. Romans on the property</p> <p>2 value situation. I've got to base my findings on what</p> <p>3 evidence I have here. And I understand your point. On the</p> <p>4 other hand, the question is not the pure one as to whether</p> <p>5 or not property values will be affected. The question is</p> <p>6 will they be unduly, that's the word of the zoning</p> <p>7 ordinance, unduly affected by even non-inherent</p> <p>8 characteristics of the proposed conditional use or a</p> <p>9 combination of inherent and non-inherent. And so I can't</p> <p>10 purely look at the question of whether or not it may have</p> <p>11 some effect on property values. I have to look at whether</p> <p>12 there is something here that shows that non-inherent</p> <p>13 characteristics may have an undue -- undue affect on</p> <p>14 property values. So it's not a pure question. The</p> <p>15 Council, as I mentioned earlier, recognize that there may</p> <p>16 be some adverse effects from conditional uses. And they</p> <p>17 made -- they reached whatever balance they reached in</p> <p>18 permitting them in particular zones. And some zones allow</p> <p>19 them, and some zones do not. And so on. So that's all in</p> <p>20 that mix. I understand your concern, although, you know,</p> <p>21 you've given your personal opinion. But I don't know that</p> <p>22 you indicated in any way that you have any technical</p> <p>23 expertise in this area. Do you have anything that -- any</p> <p>24 expertise? Because one of the things I rely on is the</p> <p>25 Technical Staff report evaluation of this sort of thing. I</p> | <p>112</p> <p>1 use to --</p> <p>2 MR. ROMANS: I do not have a degree, no.</p> <p>3 HEARING EXAMINER GROSSMAN: I mean I just have to base</p> <p>4 my evaluation on the evidence I have. I just want you to</p> <p>5 understand that. I don't know, you know, I haven't</p> <p>6 considered this testimony today yet but you do have to</p> <p>7 understand that measured by the standards of the zoning</p> <p>8 ordinance. So we'll just go on from there. All right.</p> <p>9 Mr. Tydings?</p> <p>10 MR. TYDINGS: May I? So Mr. Kline, actually to maybe</p> <p>11 put a finer point on the answer to your question. So Ace</p> <p>12 was using the side entrance for -- or when Jeff Mishku</p> <p>13 (phonetic) had the nursery, I think they only used the side</p> <p>14 entrance.</p> <p>15 HEARING EXAMINER GROSSMAN: Which is the side entrance</p> <p>16 you're talking about?</p> <p>17 MR. TYDINGS: It's the gravel road, Rigg Road side.</p> <p>18 MS. TYDINGS: Rigg Road.</p> <p>19 MR. TYDINGS: It's been more recently, you know, if I</p> <p>20 say it was a year, maybe it's two, but it's been more</p> <p>21 recently that they've used the front entrance more than the</p> <p>22 side entrance. It used to be most of the side entrance,</p> <p>23 and there was a lot more activity on the property then.</p> <p>24 And there's been some changes, so we had a lot of -- I</p> <p>25 don't mind because I'm an avid -- there was a lot of gun</p> |


Transcript of Administrative Hearing
Conducted on September 7, 2018

29 (113 to 116)

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| <p>113</p> <p>1 use on the property. A lot of target practice going on 2 until, I guess, about two years ago somebody out there with 3 some large guns and the Montgomery County police came and 4 that stopped all of that. But so there's been of the 5 transition on that property. I think about then they 6 started using that gate less also. And I don't know who 7 was -- I don't know if that was the Ace people. That was 8 mainly on weekends all that target practice. And somebody 9 came out with some, you know, ARs or something really loud, 10 when the police showed up. Out of curiosity I drove over 11 there. So the front entrance hasn't been used as much as 12 it used to be. You know, and I think the trucks that 13 Drew -- well, I know there is a large amount of trucks and 14 the stuff that's inoperable there. But there is a tree 15 spade that comes in and out of there currently. 16 HEARING EXAMINER GROSSMAN: I mean there are 17 restrictions that are recommended by the Technical Staff 18 based on environmental concerns about which entrance is to 19 be used. So this issue was reviewed by the (indiscernible) 20 committee. What's it called? 21 UNIDENTIFIED SPEAKER: (indiscernible) and roads. 22 MR. KLINE: (indiscernible) roads advisory committee. 23 HEARING EXAMINER GROSSMAN: Right. And they had 24 recommendations about limiting the road use and there 25 are -- there's a condition that's recommended by the Staff</p> | <p>115</p> <p>1 MR. NORTON: Sure. It is a -- if you thought of the 2 cube, if you will, it would have the bottom of the cube, 3 and I'm trying to find something laying around here. If 4 you had this trashcan upside down and you would have this 5 opening come the light itself, the bulb would be inside of 6 this. And it would control how the light is shone down so 7 that it would not illuminate from the sides or from the 8 top. Those are the fixtures that we -- 9 MR. KLINE: So it would reduce the spill of light 10 beyond the -- 11 MR. NORTON: That's right. We control the spillover, 12 if you will, of the light. We are required to have -- the 13 spillover cannot exceed more than .1 foot-candles at the 14 conditional use. 15 MR. KLINE: So the light fixture that's been proposed 16 for this site, would you call that a shoebox fixture? 17 MR. NORTON: It's a shoebox style. 18 MR. KLINE: Would you just explain how the light is 19 relative to the lowest plane of whatever is on the sides? 20 The actual bulb. 21 MR. NORTON: Yeah. The bulb, if you -- this is an LED 22 fixture that you have, and you see how that this -- there's 23 a shield -- I (indiscernible) want to use shield, I guess, 24 if you will. There is glass or a protective product 25 underneath at the bottom of the light and the bulb itself</p> |
| <p>114</p> <p>1 which limits the entry as I recall. Yes, the conditional 2 use must not use Riggs Road for access except in 3 emergencies. 4 MR. TYDINGS: Right. 5 HEARING EXAMINER GROSSMAN: So they are recommending 6 that be limited in that fashion. 7 MR. TYDINGS: No, we understand the current -- I think 8 Drew wouldn't have seen because it's not -- you couldn't 9 see the trucks coming in and out on Riggs Road. We're 10 around a lot more than Drew is because he does have three 11 homes in three states. But the Riggs Road traffic wasn't 12 as obvious to you coming in and out of your driveway as the 13 new entrance, or the existing entrance is. 14 HEARING EXAMINER GROSSMAN: Okay. All right. 15 MR. KLINE: You may recall that Mr. Tydings asked a 16 question about lights. 17 HEARING EXAMINER GROSSMAN: Yes. 18 MR. KLINE: And I thought it would probably be worthy 19 of having a little clarification on that subject. 20 HEARING EXAMINER GROSSMAN: All right. Mr. Norton. 21 MR. KLINE: So I would like to call Mr. Norton back 22 up. And Mr. Norton just put up the photometric plan which 23 does have the light fixtures on it. So let me start with 24 this, Mr. Norton. Would you describe for the audience here 25 today what's called a shoebox lighting fixture?</p> | <p>116</p> <p>1 will be under that, or above that. So you would see the 2 light bulb under that. This is actually -- the drawing 3 that we're looking at, the photometrics drawing, the 4 fixture that we have is actually tilted a little bit so 5 that you can see underneath of it is what you're looking at 6 there, is how that is flush with the sides. So that light 7 would -- it would come down slightly on the sides, but 8 we're not talking about a broadcast of light. 9 MR. KLINE: So from the perimeter of the conditional 10 use area would you be able to look horizontally and see a 11 light bulb? 12 MR. NORTON: If you were to look horizontally on the 13 plane of the light fixture you could not. 14 MR. KLINE: Well, okay. So from the ground plane 15 looking up would you be able to see it? 16 MR. NORTON: You would if you were standing on the 17 ground you would look up and you would see a bulb. That's 18 correct. 19 MR. KLINE: So how far out from the stanchion itself, 20 the pole itself can you actually see the bulb? Do you have 21 a sense of that? 22 MR. NORTON: I don't. I don't think that I do. 23 MR. KLINE: Would you be able to see the bulb from the 24 perimeter of the conditional use area? 25 MR. NORTON: No.</p> |

Transcript of Administrative Hearing
Conducted on September 7, 2018

30 (117 to 120)

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| <p>117</p> <p>1 MR. KLINE: Okay. And therefore you wouldn't be able 2 to see it from the perimeter of the larger tract of land? 3 MR. NORTON: Correct. 4 MR. KLINE: And you would not be able to see it from 5 the (indiscernible) properties? 6 MR. NORTON: Correct. 7 MR. KLINE: No further questions. 8 HEARING EXAMINER GROSSMAN: Okay. Any cross- 9 examination on that? 10 MR. TYDINGS: Did he say you'd seen the lights before? 11 HEARING EXAMINER GROSSMAN: All right. And thank you. 12 I think that we have completed. There are no additional 13 exhibits. As I said the last time that the exhibits that 14 we've already introduced will be admitted. The transcript 15 should be available probably next Tuesday and the record 16 here will close on September 14, 2018 at the close of 17 business. There aren't really any further filings that 18 would be admitted. But unless all the parties agree. That 19 is if -- and I do recommend this that you and Mr. Bohrer 20 meet with Mr. Romans and Mr. Tydings and Mrs. Tydings and 21 see if there are some accommodations that can be made that 22 will alleviate some of their concerns. I always think 23 that's a great idea if it can be done. And then submit 24 them jointly prior -- on September 14 or before. If you 25 tell me that you need more time and you are going to work</p> | <p>119</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording and supporting 6 information; and that I am neither counsel for, related to, 7 nor employed by any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Molly Bugher 13 DATE: September 11, 2018 14 15 16 17 18 19 20 21 22 23 24 25</p> |
| <p>118</p> <p>1 this out, if you jointly requesting, I'll extend that time. 2 But other than that I think in fairness to the applicant 3 that will be the record closing date. Is that agreeable to 4 everybody? 5 MR. ROMANS: Yes. 6 MR. TYDINGS: Yes. 7 HEARING EXAMINER GROSSMAN: Okay. All right then. Is 8 there anything further? And then we are adjourned. Thank 9 you all. 10 MR. TYDINGS: Thank you. 11 (Off the record at 12:02) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | |