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# Transcript of Hearing

**Date:** May 2, 2024

**Case:** American Lawn and Landscaping (CU 24-10)

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Transcript of Hearing  
Conducted on May 2, 2024

<p style="text-align: center;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 MONTGOMERY COUNTY, MARYLAND</p> <p>3</p> <p>4 Application from American Lawn and Landscape, Inc,</p> <p>5 requesting a conditional use for a landscape contractor.</p> <p>6 The subject property is 6412 Damascus Road,</p> <p>7 Gaithersburg, Maryland 20852, also known as Lot 2,</p> <p>8 Block A in the Etchison Acres subdivision in the</p> <p>9 AR Zone (Tax Account 01-03045790).</p> <p>10</p> <p>11 Before Hearing Examiner Kathleen Byrne</p> <p>12</p> <p>13 Date of Hearing: Thursday, May 2, 2024</p> <p>14 Time of Hearing 9:36 a.m.</p> <p>15</p> <p>16</p> <p>17 Location: 100 Maryland Avenue</p> <p>18 County Office Building, Room 200</p> <p>19 Rockville, MD 20850</p> <p>20 Phone: 240.777.6660</p> <p>21</p> <p>22</p>	<p style="text-align: center;">3</p> <p>1 TABLE OF CONTENTS</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">2 DESCRIPTION</th> <th style="width: 20%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>3 OPENING STATEMENT OF PETITIONER</td> <td style="text-align: right;">9</td> </tr> <tr> <td>4 OPENING STATEMENT OF OPPOSITION</td> <td style="text-align: right;">18</td> </tr> <tr> <td>5</td> <td></td> </tr> <tr> <td>6 WITNESSES</td> <td style="text-align: center;">DIRECT CROSS REDIRECT RECROSS</td> </tr> <tr> <td>7 Jeffrey Juneau</td> <td style="text-align: center;">22 62 71</td> </tr> <tr> <td>8 Nicholas Driban</td> <td style="text-align: center;">73 89 93</td> </tr> <tr> <td>9 James Witmer</td> <td style="text-align: center;">98 166 193</td> </tr> <tr> <td>10 Oscar Lyles</td> <td style="text-align: center;">206 239 247</td> </tr> <tr> <td>11 Tracy Horn</td> <td style="text-align: center;">251 -- --</td> </tr> <tr> <td>12 Jeffrey Juneau</td> <td style="text-align: center;">256 260</td> </tr> <tr> <td>13 James Witmer</td> <td style="text-align: center;">261 263</td> </tr> <tr> <td>14 Yarid (Tony) Lopez</td> <td style="text-align: center;">271</td> </tr> <tr> <td>15 CLOSING STATEMENT OF PETITIONER</td> <td style="text-align: right;">279</td> </tr> <tr> <td>16 CLOSING STATEMENT OF OPPOSITION</td> <td style="text-align: right;">283</td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> </tbody> </table>	2 DESCRIPTION	PAGE	3 OPENING STATEMENT OF PETITIONER	9	4 OPENING STATEMENT OF OPPOSITION	18	5		6 WITNESSES	DIRECT CROSS REDIRECT RECROSS	7 Jeffrey Juneau	22 62 71	8 Nicholas Driban	73 89 93	9 James Witmer	98 166 193	10 Oscar Lyles	206 239 247	11 Tracy Horn	251 -- --	12 Jeffrey Juneau	256 260	13 James Witmer	261 263	14 Yarid (Tony) Lopez	271	15 CLOSING STATEMENT OF PETITIONER	279	16 CLOSING STATEMENT OF OPPOSITION	283	17		18		19		20		21		22	
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<p style="text-align: center;">2</p> <p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2</p> <p>3</p> <p>4 LERCH EARLY BREWER</p> <p>5 By: Christopher Ruhlen, Esquire</p> <p>6 7600 Wisconsin Avenue</p> <p>7 Suite 700</p> <p>8 Bethesda, MD 20814</p> <p>9 (301) 986-1300</p> <p>10 cmruhlen@lerchearly.com</p> <p>11</p> <p>12</p> <p>13 SELZER GURVITCH RABIN WERTHEIMER &amp; POLOTT, P.C.</p> <p>14 By: Elizabeth J. McInturff, Esquire</p> <p>15 4416 East West Highway</p> <p>16 Fourth Floor</p> <p>17 Bethesda, MD 20814-4568</p> <p>18 (301) 634-3116</p> <p>19 emcinturff@sgrwlaw.com</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: center;">4</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER: Good morning,</p> <p>3 everyone. Thank you for joining me. My name is</p> <p>4 Katie Byrne. I am the Hearing Examiner assigned</p> <p>5 to hear this matter today.</p> <p>6 This is a public hearing on</p> <p>7 Conditional Use and Variance Applications for</p> <p>8 the Operation of a Landscape Contractor Business</p> <p>9 in an AR Zone under the U standards set forth in</p> <p>10 Article 59 Section 3.5.5.</p> <p>11 The Applicant is American Lawn &amp;</p> <p>12 Landscape, Inc. The Conditional Use Number</p> <p>13 assigned to it by our office is CU 24-13.</p> <p>14 As the Hearing/Examiner, what that</p> <p>15 means is that I will listen to evidence. I will</p> <p>16 listen to testimony, review evidence, and render</p> <p>17 an opinion pursuant to the criteria set forth</p> <p>18 for conditional uses in Article 59 Section 73.1,</p> <p>19 and for variances pursuant to the criteria in</p> <p>20 Article 59 Section 7.3.2. So conditional use is</p> <p>21 7.3.1. Variance is 7.3.2.</p> <p>22 If you disagree with my decision, you</p>																																										

<p style="text-align: right;">5</p> <p>1 may appeal it to the Board of Appeals within ten 2 days after the decision is issued. 3 At this point, I would like to check 4 in and identify the parties. I will start here 5 on my left. 6 MR. RUHLEN: Christopher Ruhlen with 7 the law firm of Lerch Early &amp; Brewer and we 8 represent the petitioner in this application. 9 MR. JUNEAU: Jeff Juneau, the 10 petitioner. 11 MR. LYLES: Oscar Lyles. 12 MS. McINTURFF: Good morning, 13 Elizabeth McInturff on behalf of Mr. Lyles. 14 HEARING EXAMINER: Thank you. This is 15 a hybrid hearing. I am going to do a little 16 Zoom housekeeping. 17 I believe we have one person on Zoom. 18 Can we check in with that person, get their name 19 to make sure that we can see and hear them? 20 I believe this is Mr. Harris. 21 MR. RUHLEN: That would be my partner. 22 HEARING EXAMINER: Is Mr. Harris going</p>	<p style="text-align: right;">7</p> <p>1 present a factual case. Do we have anybody else 2 here. 3 MS. McINTURFF: There's a neighbor. 4 HEARING EXAMINER: After the 5 appellant, and after the opposing party, I will 6 ask if anybody else wishes to speak at the end 7 of that, and it will be at that point or anybody 8 else here in the audience if they wish to speak. 9 There is rebuttal. The applicant will 10 have the last word to provide rebuttal 11 testimony, then any objections to the exhibits 12 and then closing statements by both parties. 13 Both parties have had an opportunity 14 to look at the list of exhibits. Are there any 15 specific objections to anything that is on this 16 particular list? 17 (No response.) 18 For housekeeping purposes, I am going 19 to say that all 42 of these documents are going 20 to be deemed admitted and they will be 21 considered as evidence. 22 This morning we received the</p>
<p style="text-align: right;">6</p> <p>1 to participate at all or is he going to observe? 2 MR. RUHLEN: I assume he is observing 3 is what I anticipate. 4 HEARING EXAMINER: Mr. Harris, we 5 don't need to hear from him. We can mute him. 6 We can turn this camera off. Do anticipate 7 anybody joining us through Zoom today? 8 MR. RUHLEN: No. 9 HEARING EXAMINER: I will skip through 10 all of the Zoom instructions. The nature of 11 these proceedings is that they are informal, but 12 we do have formalities. What you say and how 13 you testify will be under oath and we will 14 follow this particular order. 15 Both parties may make opening 16 statements. The appellant will go first with 17 the presentation of their factual case. 18 The opposing party can then proceed 19 with their factual case after completion of 20 appellant's case. Opposing party will have the 21 opportunity for cross-examination. 22 Any other interested persons may then</p>	<p style="text-align: right;">8</p> <p>1 petitioner's affidavit of posting, so that the 2 property was posted. It has been notarized. I 3 am going to identify that as Exhibit 43 and it 4 will be part of the record as well. 5 Cross-examination is your opportunity 6 to ask questions of witnesses. We want to make 7 sure that all testimony addresses Section 59 8 7.3.1 which is the conditional use standard and 9 59 7.3.2, which is the variance standard. 10 Does anyone have any questions before 11 we begin? 12 (No Response.) 13 Just so you know, and I have explained 14 this to Cody, I am really bad at turning my 15 microphone on and off. Hopefully, it won't be 16 as big a deal because we only have one person 17 observing on Zoom and they will not necessarily 18 participate. 19 I try to turn my microphone off so 20 that there no feedback because once your 21 microphones come on sometimes that can create 22 feedback on the Zoom side of things.</p>

<p style="text-align: right;">9</p> <p>1 Without any further ado, we can start 2 with opening statements and we will start with 3 the appellant. 4 OPENING STATEMENT OF PETITIONER 5 MR. RUHLEN: Thank you very much. 6 Chris Ruhlen with the law firm of Lerch Early &amp; 7 Brewer. With me today as the petitioner, Mr. 8 Juneau, who is the owner of American Lawn &amp; 9 Landscape Incorporated. 10 Our civil engineer as we said is en 11 route. He will be James Witmer with JNM 12 Engineering. Hopefully we will have him 13 momentarily. We also have Nick Driban with 14 Lenhart Traffic Consulting. 15 Both Mr. Witmer and Mr. Driban 16 assisted in preparing the application. 17 We are pleased to have the opportunity 18 to discuss the proposed conditional use for the 19 landscape contractor use of petitioner's 20 property. The location is 6412 Damascus Road in 21 Gaithersburg which is also the petitioner's 22 personal residence.</p>	<p style="text-align: right;">11</p> <p>1 of American Lawn &amp; Landscape and the resident of 2 the subject property will testify with regard to 3 the history of business and the related 4 improvements, the general objectives of the 5 conditional use and the operational aspects of 6 his business. 7 We would then call Mr. Driban who will 8 testify about trip generation associated with 9 the use and vehicular traffic. 10 Finally, we would call Mr. Witmer who 11 will provide testimony on the application 12 materials in the record including the existing 13 condition plan, the forest conservation 14 exemption, the hydrology and drainage area 15 analysis and the proposed stormwater management 16 facilities as well as the petitioner's variance 17 request to accommodate the proposed conditional 18 use activities within the existing buildings. 19 Mr. Witmer will also testify as to the 20 compliance of the conditional use with the 21 standards and requirements of the zoning rights. 22 Before we begin, though, a couple of</p>
<p style="text-align: right;">10</p> <p>1 As we will explain, the petitioner 2 proposes to utilize the existing conditions and 3 improvements on the site to continue operating 4 the landscape contractor use on the property 5 which consists of about 4.62 acres in the AR 6 Zone. 7 Importantly, no new buildings are 8 proposed with this application. Instead, it 9 proposes to utilize existing conditions and 10 improvements on the property which American Lawn 11 &amp; Landscape has used for more than 20 years. 12 The planning board has reviewed the 13 proposal and recommended that the conditional 14 use, the approval of conditions, and that 15 followed many months of review and analysis by 16 the Planning Department's staff. 17 As we will discuss, the petitioner 18 agrees with the recommended conditions and 19 proposes additional refinements to ensure 20 compatibility. 21 With regard to our testimony, we will 22 plan to first call Mr. Juneau who as the owner</p>	<p style="text-align: right;">12</p> <p>1 comments that I think will be helpful with 2 respect to some of the questions that were 3 raised by the Hearing Examiner in the email from 4 last Thursday starting with the issue of 5 stormwater management. 6 Mr. Lyles, the opposition present 7 today has testified at the Planning Board about 8 his concerns with standing water and flooding. 9 His property is located to the south 10 and downhill from the subject property as we 11 will hear. There is a prehearing statement in 12 the record that states those issues and claims. 13 We have taken those concerns seriously 14 and in an effort to address the stormwater 15 issues, and related to the landscape contractor 16 use, we have a commissioned hydraulic study of 17 drainage patterns on the property and the 18 surrounding area. 19 This is the hydrology and drainage 20 area analysis in the record at Exhibit 34A. 21 Through the testimony today we will 22 demonstrate how the property comprises just one</p>

<p style="text-align: right;">13</p> <p>1 part of a larger drainage area and how the 2 overall drainage patterns in the surrounding 3 area relate to Mr. Lyles' property as well as 4 how our improvements that exists today affect 5 the drainage. 6 Understanding that the subject site is 7 just one part of the drainage area in whole, the 8 petitioner nevertheless commissioned this study 9 to understand potential mitigation that could be 10 provided to remedy impacts that would be 11 proportional to his use and his property within 12 the overall drainage area situation. 13 To that end while addressing offsite 14 water flows for the entire area would be beyond 15 the scope of this application. The expert 16 testimony related to drainage and hydrology 17 today will address possible mitigation 18 strategies that could be implemented should the 19 conditional use application be approved. 20 We have submitted more specifically a 21 stormwater management plan that also shows how 22 these issues can be addressed and to achieve</p>	<p style="text-align: right;">15</p> <p>1 Mr. Lyles' prehearing statement. 2 We share an interest in privacy for 3 the site, and as you will hear from our 4 witnesses, the petitioner intends to install 5 six-foot privacy fence along portions of the 6 rear and the western lot line to help achieve 7 privacy and address the screening. 8 To the extent that the fencing would 9 be subject to permitting, it has not been shown 10 on the plans, but we would be amenable also to a 11 condition requiring the fencing. 12 The hearing specifically asked about 13 compliance with the screening requirements in 14 Section 6.5.3 of the Zoning Ordinance and that 15 section also provides a standard cross-section 16 for screening, plantings, and fences, that the 17 proposal for the six-foot fence differs from the 18 cross-section, obviously, but we observed that 19 there was a recent text amendment, ZTA 2311, 20 that became effective on March 4, 2024. 21 One of the changes in that text 22 amendment was a revision to Section 7.3.1.E.1.B</p>
<p style="text-align: right;">14</p> <p>1 compliance with the Planning Board's recommended 2 condition for providing stormwater management 3 and that stormwater management plan is Exhibit 4 34B. 5 As we explained in the response that 6 is in the record as Exhibit 39, this is a 7 voluntary plan that we submitted to show how 8 effective facilities could be accommodated on 9 site to address the Planning Board's concern. 10 A formal stormwater management plan is 11 not required for the conditional use under 12 Chapter 19, nor was it required at the time of 13 issuance of permits for existing buildings, but 14 if the conditional use is approved, the intent 15 would be to implement those facilities subject 16 to any necessary permits. 17 We are amenable also to a condition 18 being part of the conditional use that would 19 require the same. 20 Next, the Hearing Examiner asked about 21 screening for the conditional use and we are 22 also aware that those concerns would come up in</p>	<p style="text-align: right;">16</p> <p>1 of the zoning ordinance to make it clear that 2 the Hearing Examiner has the flexibility to 3 approve deviations from Division 6 including the 4 general development standards for screening. 5 As our witnesses will testify, given 6 the sloping grade of the property, the existing 7 mature trees that surround it, and the tree 8 canopy shade, we do believe that higher fencing 9 at six feet would provide better screening than 10 what the zoning ordinance section would provide 11 and also would be more viable given the 12 conditions. 13 We will get into that. 14 HEARING EXAMINER: You will have 15 testimony on all of this? 16 MR. RUHLEN: Yes. 17 HEARING EXAMINER: Thank you. 18 MR. RUHLEN: We would be amenable to a 19 condition on the fencing, but I just wanted to 20 give context for that answer. 21 Finally, there were questions from the 22 Hearing Examiner about building floor area</p>

<p style="text-align: right;">17</p> <p>1 building coverage. We will also provide that 2 information in our testimony, but we would note 3 that the existing buildings on the property all 4 have permits and they were all subject to zoning 5 review at the time of permit review and 6 issuance. 7 To the extent that the permit for the 8 central outbuilding was issued retroactively, we 9 presumed that DPS reviewed it under the 10 standards of the 2004 ordinance for the RDT Zone 11 which would have been in effect at the time of 12 its construction. 13 Basically they don't say accessory 14 building coverage is limited to 50% of the 15 primary building footprint as the standards for 16 the AR Zone do now in Footnote C that you 17 referenced, but the RDT standards instead said 18 that no more than 10% of a property's net lot 19 area may be covered by all buildings, principal 20 and accessory. 21 As we will explain, the coverage of 22 the outbuildings in the primary building are</p>	<p style="text-align: right;">19</p> <p>1 conditional use and variance request submitted 2 by Mr. Juneau. 3 Mr. Lyles will testify today as well 4 as his partner, Tracy Horn, as well as a 5 neighbor here today who is going to offer a 6 testimony at the end in opposition to the 7 conditional use and to the variances. 8 Mr. Lyles is going to offer testimony 9 today regarding the use of the property and how 10 it is affecting his property currently. 11 Mr. Lyles' testimony is going to 12 center around the fact that his property abuts 13 and shares a boundary with Mr. Juneau's 14 property. 15 Over the last 25 years, Mr. Juneau has 16 constructed a number of buildings and as you 17 heard largely without permits, stormwater 18 management, or sediment control to those 19 buildings. 20 That that has taken what was ground 21 cover and made it really impervious cover 22 resulting in a number of issues affecting Mr.</p>
<p style="text-align: right;">18</p> <p>1 well below that 10% number. 2 With respect to the question about 3 gross floor area, as I said, we will also get 4 into that. We would also just note that there 5 is no floor area limitation in the RDT or the AR 6 Zone. It is one unit per 25-acre standard. 7 We have the information and we can 8 provide it, but we just wanted to make sure that 9 we noted what the relevance was for this number. 10 There are additional questions in the 11 email, and all of those, I think, we will hit as 12 we move through our testimony, so I won't take 13 any more time, but I thought those remarks may 14 be helpful for context. 15 HEARING EXAMINER: Thank you. 16 MR. RUHLEN: That is the end of our 17 opening statement and we look forward to the 18 opportunity to present our testimony. 19 OPENING STATEMENT OF OPPOSITION 20 MS. McINTURFF: Thank you. Good 21 morning. As noted, I represent Mr. Lyles in 22 connection with his opposition to the</p>	<p style="text-align: right;">20</p> <p>1 Lyles' property. 2 The stormwater runoff is really the 3 primary concern as we sit here today as we have 4 shown in the record already through the videos 5 that Mr. Lyles has submitted. 6 There is almost a waterfall effect 7 coming from Mr. Juneau's property in times of 8 storms. This is deeply affecting Mr. Juneau's 9 property that is causing standing water. It is 10 causing drainage issues to the point where Mr. 11 Lyles is concerned about even residing there. 12 There are a number of issues that Mr. 13 Lyles also has real concerns with the use of Mr. 14 Juneau's property as it is. The structures are 15 not only just abutting his property within the 16 50-foot line of his property and is at times 17 right on that line as well. 18 He is, of course, very concerned about 19 that and the harm that this is causing his 20 property. Also it is important to note is that 21 the Planning Board recognized based on a 22 proposed use of Mr. Juneau's property there is</p>

<p style="text-align: right;">21</p> <p>1 in fact a new non-inherent impact due to the 2 existing development especially with depressed 3 views, and that is the water runoff coming from 4 his property. 5 Most of this is going to come out in 6 testimony from Mr. Lyles and from Ms. Horn. He 7 does appreciate the fact that Mr. Juneau has 8 prepared a stormwater management proposal, but 9 this is because the Board required him to do so 10 during the last hearing to seek the conditional 11 use. 12 However, as my client is going to 13 explain today, it simply does not go far enough 14 to alleviate or even abate the issues that are 15 being caused by Mr. Juneau's current use of the 16 property. 17 There are, of course, a number of 18 other concerns regarding Mr. Juneau's commercial 19 use of the property that are causing harm as a 20 result of the inherent and non-inherent effects 21 of the use including as to the use of the 22 property, the peaceful enjoyment, value to</p>	<p style="text-align: right;">23</p> <p>1 use of the property? 2 <b>A I started American Lawn -- well,</b> 3 <b>actually, it was not American Lawn &amp; Landscape,</b> 4 <b>but I started as a kid cutting grass.</b> 5 <b>It escalated into high school having a</b> 6 <b>friend's help. Then into college having some of</b> 7 <b>the dorm guys go out and meet me at different</b> 8 <b>sites to help out and once I got married to my</b> 9 <b>wife, Stephanie, I became full time in the</b> 10 <b>landscape business.</b> 11 <b>It wasn't until 1996 that we found</b> 12 <b>that property out at 6412 Damascus Road being an</b> 13 <b>act preserve and it was currently used as a tree</b> 14 <b>farm.</b> 15 <b>I continued and renamed my company</b> 16 <b>American Lawn &amp; Landscape at that time and I</b> 17 <b>have been there ever since.</b> 18 Q American Lawn &amp; Landscape is 19 headquartered at 6412 Damascus Road? 20 <b>A That's correct.</b> 21 Q It is the one location? 22 <b>A Yes, it is.</b></p>
<p style="text-align: right;">22</p> <p>1 neighboring properties, and in addition to the 2 increased traffic, noise, odors, dust, health 3 and safety concerns all of which Mr. Lyles and 4 his witness will testify today. 5 Thank you very much. 6 HEARING EXAMINER: We can go ahead and 7 start with your first witness. 8 MR. RUHLEN: We would call Mr. Juneau. 9 (Whereupon Jeffrey Juneau, sworn.) 10 DIRECT EXAMINATION 11 BY MR. RUHLEN: 12 Q Can you please state your full name 13 and address? 14 <b>A Jeffrey Juneau. I live at 6412</b> 15 <b>Damascus Road, Gaithersburg, Maryland.</b> 16 Q Are you familiar with conditional use 17 2024-10 and variance 868.53 which are the 18 subject of today's hearing? 19 <b>A Yes. I am the petitioner for American</b> 20 <b>Lawn &amp; Landscape.</b> 21 Q Can you describe your role with 22 American Lawn &amp; Landscape including the existing</p>	<p style="text-align: right;">24</p> <p>1 Q You are the owner of that? 2 <b>A I am the owner.</b> 3 Q You have been there continuously since 4 when? How long have you been there? That was 5 1996? 6 <b>A 1996 is when we bought the house and I</b> 7 <b>believe we had moved in, in December 1996.</b> 8 Q Do you know most of your neighbors in 9 the area? 10 <b>A I do.</b> 11 Q Are you aware of any concerns other 12 than the ones that have emerged in the context 13 of this case with the use? 14 <b>A I have not had anything brought up by</b> 15 <b>any of my neighbors except for Mr. Lyles about</b> 16 <b>13 months ago.</b> 17 MR. RUHLEN: I don't know if we are 18 using screen exhibits? 19 HEARING EXAMINER: Yes. I should have 20 noted that at the very beginning. Our Zoom 21 operator over here will pull up the website and 22 every single exhibit that we have is there.</p>

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1 Both parties, anything that you want a  
2 reference to, he will go ahead and pull it up,  
3 and you will be able to see it on both screens.  
4 MR. RUHLEN: It would be helpful if we  
5 could go to Exhibit 36. I am going to try to  
6 not bounce around, but there will be a little  
7 bit of bouncing around. So I apologize for that.  
8 Q Mr. Juneau, this is an aerial photo of  
9 6412. This is your property that is bounded in  
10 yellow?  
11 A Yes, it is.  
12 Q Can you briefly describe the petition  
13 for the conditional use that you are seeking?  
14 A The primary reason for the petition of  
15 this conditional use is to correct any of the  
16 existing zoning violations on this property and  
17 to continue operating my business at 6412  
18 Damascus Road.  
19 Q When you purchased the property, was  
20 it your understanding that a conditional use was  
21 required?  
22 A When I purchased the property, I was

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1 very excited because it was in the Act Preserve  
2 and there were other similar businesses around.  
3 I was under the impression that I did  
4 not need to have any type of conforming use or  
5 special exceptions on this property.  
6 Q When did you become aware of the need  
7 for that?  
8 A Once I received letters from the  
9 county from just about every agency, then I  
10 started taking corrective actions to mitigate  
11 and to come in compliance.  
12 Q Was that in 2022 or 2023?  
13 A It had to the fall of 2022.  
14 Q Did before you applied for the  
15 conditional use, did you also look into  
16 obtaining a non-conforming use certificate?  
17 A I did. One of the inspectors or a  
18 county agency came out and said "This is the  
19 process that you would need to take." I was  
20 trying to bring everything up to snuff.  
21 Q Circle back to something you said.  
22 Would it be accurate to say that until these

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1 notices of violation and the recent complaints  
2 you have not received complaints about your use  
3 and activities on the property?  
4 A I have not had any formal complaints  
5 or non-formal complaints.  
6 Q Using the screen showing your  
7 property, why don't you orient us to it and  
8 explain how it is utilized and which part is  
9 your residence and which part that you have been  
10 using for the landscape contracting business?  
11 A May I walk up to the screen?  
12 HEARING EXAMINER: Absolutely. Can we  
13 make it bigger?  
14 MR. RUHLEN: Perfect.  
15 A For the last 25 years, we have been  
16 utilizing the entrance trailer which is on my  
17 property. It is an easement for the other two  
18 property owners.  
19 This was the first building built back  
20 in 1998. It housed my company back then.  
21 Throughout the 25 years, I built the center  
22 section of this building. It was around my 40th

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1 birthday to house some of my personal stuff.  
2 I bought a Camaro and so I wanted to  
3 house it. Didn't have enough room.  
4 We put that furniture and other stuff  
5 in the center section for our personal use.  
6 It wasn't until between 2012 and 2015  
7 that I added the second edition to this area  
8 which is now my workshop and an office that is  
9 rarely used.  
10 My business is the guys will come in,  
11 in the morning, park along the parking hedge  
12 here. Get the machines going. Come over to  
13 fill them up with fuel. Sharpen the blades  
14 inside. Load up the trucks and leave by  
15 approximately 7:30 in the morning. They are  
16 offsite doing their work during the day.  
17 This is the section that I use for the  
18 work. This is the section that I have for  
19 personal.  
20 Q Just to clarify. The primary  
21 residence is where?  
22 A In the center.



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1 Q The first outbuilding that was  
2 constructed is down in the corner and that was  
3 approximately in 1998?  
4 A **Correct.**  
5 Q The second outbuilding was initially  
6 constructed later, but somewhere in 2008 to  
7 2012?  
8 A **Yes. Then this was approximately 2012**  
9 **to 2015, the additional.**  
10 Q When you did the addition. Since that  
11 addition, has there been any construction in  
12 that period since?  
13 A **No.**  
14 Q So that was the last?  
15 A **Correct.**  
16 HEARING EXAMINER: A quick question  
17 about the driveway. You said that it is a shared  
18 driveway. Who else shares that driveway?  
19 A **My two neighbors.**  
20 MR. RUHLEN: We have an exhibit. If  
21 we want to bounce ahead, actually.  
22 HEARING EXAMINER: If you are going to

30

1 get there, that's fine.  
2 MR. RUHLEN: We have an exhibit that  
3 will really explain that.  
4 HEARING EXAMINER: That's fine.  
5 MR. RUHLEN: The answer is the two  
6 neighbors, as he just said, but we can put  
7 something on the screen.  
8 HEARING EXAMINER: Thank you.  
9 Q You just explained some of your  
10 operations, but let's ask some more questions to  
11 understand that. What are the hours of  
12 operation that you use?  
13 A **The guys usually start arriving around**  
14 **6:45 to 7:10. We try to leave the shop by 7:30**  
15 **in the morning. Most of the work is done off**  
16 **site. We are a commercial landscape contractor**  
17 **for maintenance basically. So condos and HOAs.**  
18 Q When the employees are arriving at the  
19 site, what kind of vehicles are traveling to and  
20 from? Are they all driving their own cars?  
21 A **What have one company van that brings**  
22 **approximately nine guys and the rest are**

31

1 **personal vehicles.**  
2 Q Are you proposing any new buildings in  
3 connection with the conditional use application?  
4 A **I am not. We are going to use the**  
5 **existing buildings for American Lawn and**  
6 **Landscape.**  
7 HEARING EXAMINER: You said the people  
8 arrive at 6:30?  
9 A **6:45.**  
10 Q On the plan, are you familiar with the  
11 area that is shown that would be the conditional  
12 use area? Is it the whole property?  
13 A **No. It is just the portion of the**  
14 **buildings and the drive down, what is it, the**  
15 **west corner of the property.**  
16 Q I want to pause here. I want to ask  
17 about some of the materials that have been  
18 submitted to the record by Mr. Lyles. You have  
19 read over those materials and are you familiar  
20 with his concerns?  
21 A **I am, and we are trying to address**  
22 **that through this process.**

32

1 Q Were you at the Planning Board Hearing  
2 where some of those concerns were also raised?  
3 A **I was.**  
4 Q You have reviewed the opposition's  
5 prehearing statement?  
6 A **I have.**  
7 Q Can you summarize the primary concerns  
8 from those that you are aware of and how you  
9 would respond to them?  
10 A **Basically, I think the part of the**  
11 **issue, or most of the issue, is the water**  
12 **runoff, but he had some concerns about the**  
13 **trucks idling, the porta-potty or when one of my**  
14 **employees urinated outside of the porta-potty**  
15 **and I think there was oil drums as well that he**  
16 **was concerned about and we are trying to rectify**  
17 **this and I have taken steps to do that.**  
18 Q We will get to the stormwater plan  
19 more specifically.  
20 MR. RUHLEN: I see Mr. Witmer has  
21 joined us. We will be ready for that.  
22 Q Why don't we start with a couple of

33

1 those issues. The concerns about the trucks  
2 idling, can you describe your approach to how  
3 you intend with the conditional use to operate  
4 to address that?

5 **A All of my trucks are diesel trucks.**  
6 **All of them have, and I don't know if you are**  
7 **familiar with EGR? It is a regenerative**  
8 **exhaust. You have to add depth to the trucks,**  
9 **and so the emittances are minimal and they are**  
10 **with compliance with the standards in the United**  
11 **States and Maryland.**

12 **We have taken corrective action**  
13 **especially during the summer months where we are**  
14 **not going to start them up before we are ready**  
15 **to leave.**

16 **In the winter months the guys were**  
17 **starting them up just to help defrost some of**  
18 **the windows and to warm the trucks up because**  
19 **you cannot start them and then take off in a**  
20 **diesel truck because it has to lubricate the**  
21 **engine and so forth.**

22 **I have spoken with my men about the**

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1 **urination outside of the porta-jon. We have**  
2 **moved all of the oil barrels that were empty**  
3 **beside the shop offsite.**

4 **I just collect them. Had somebody**  
5 **come in and get them and that is why I collect**  
6 **several oil barrels at a time and wait for one**  
7 **collection.**

8 HEARING EXAMINER: A question about  
9 the oil barrels. What are they used for?

10 **A Just for the lawnmowers.**

11 HEARING EXAMINER: That is for when  
12 you change the oil in the lawn mowers and put  
13 them in the barrels?

14 **A Yes.**

15 HEARING EXAMINER: How many at a time  
16 do you need to have on the site?

17 **A I have them in the shop to use. I**  
18 **just have empty oil barrels that are collecting**  
19 **and depth barrels for the diesel trucks that we**  
20 **have collected and I just had them inside the**  
21 **shop and wait until the collection to come pick**  
22 **them up. I don't want to just keep paying for**

35

1 **them to come out every single month.**

2 HEARING EXAMINER: So I understand the  
3 process. You have to change the oil in various  
4 machines and or trucks X number of times?

5 **A All the trucks go to an offsite**  
6 **mechanic, to General Automotive, in**  
7 **Gaithersburg. All the maintenance is done on**  
8 **the trucks. All the oil changes, filters, and**  
9 **everything, are done offsite. This is for the**  
10 **machines, the lawnmowers.**

11 HEARING EXAMINER: How often would you  
12 fill up a barrel?

13 **A A 50-gallon barrel will go through**  
14 **three to four oil changes. Maybe five.**

15 HEARING EXAMINER: How often do you  
16 have to change the oil in the machines?

17 **A Once a month.**

18 HEARING EXAMINER: Then those barrels  
19 would be sitting around for four to five months  
20 at a time?

21 **A But they are inside.**

22 HEARING EXAMINER: But they are

36

1 inside?

2 **A Right, but I did collect empty barrels**  
3 **and set them beside the shop.**

4 HEARING EXAMINER: It would be empty  
5 barrels that you had outside the shop?

6 **A Correct.**

7 **BY MR. RUHLEN:**

8 Q This is probably a good point, Mr.  
9 Juneau, to ask you about fuel storage. I know  
10 that there are also a couple of fuel tanks  
11 there. Do you want to speak to your operations  
12 with respect to those?

13 **A Yes. Mr. Lyles was complaining about**  
14 **having fuel tanks on site and I took the liberty**  
15 **actually this past week to get them inspected**  
16 **again to alleviate any concerns.**

17 **So we had Miller Environmental come**  
18 **and inspect the tanks and give a report.**  
19 **Everything was fine. There is no leakage. They**  
20 **are double walled fuel tanks, and as Mr. Miller**  
21 **said, there are housekeeping issues.**

22 **Basically, there is some drip from the**

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**1 diesel tank, but very, very minimal, and the**  
**2 tests will show that.**  
3 MR. RUHLEN: The fuel tanks, I think  
4 we have a photo if we want to show them later,  
5 or we can show them now if you want to switch  
6 exhibits.  
7 Q Are they affixed to the ground  
8 permanently?  
**9 A No, they are not fixed to the ground.**  
**10 They are not a permanent structure.**  
11 MR. RUHLEN: 41. I saw the mouse to  
12 go right in the right place. If you go to the  
13 last or second to last or last slide here, just  
14 while we are on that question. I think they got  
15 to scanned to the file sideways. There we go.  
16 Q Are those pallets under?  
**17 A Yes. We just had two pallets put back**  
**18 underneath.**  
19 HEARING EXAMINER: Is that to the  
20 machine?  
21 MR. RUHLEN: Yes.  
22 Q Those are not permanently affixed to

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1 the ground. Are you planning to keep them  
2 there?  
**3 A No. I am planning to move them to the**  
**4 center area where the mulch pile is proposed**  
**5 behind the block wall.**  
6 Q Have you reviewed the conditions of  
7 approval recommended by the Planning Board?  
**8 A I have.**  
9 Q Were those conditions acceptable?  
**10 A They are, yes.**  
11 Q If approved with the conditions  
12 recommended by the Planning Board, you will  
13 ensure that use operates in accordance with  
14 those conditions?  
**15 A Yes. If approved, we will go by the**  
**16 Board's recommendation.**  
17 Q While we have been talking about Mr.  
18 Lyles' concerns, have you discussed the  
19 application with other neighbors?  
**20 A I have, yes.**  
21 Q Do any of those neighbors that you  
22 have spoken with support your application?

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**1 A They have, yes.**  
2 Q Are there letters of support that are  
3 in the record?  
**4 A I believe there are, yes.**  
5 Q Is that Exhibit 30, the letters of  
6 support, Nelson Nunez, Flip Johnson, Kristin  
7 Middleton, are those your neighbors?  
**8 A Yes, they are.**  
9 Q I would like to ask some questions.  
10 We can keep on Exhibit 41. Start at the  
11 beginning. We will be able to address the bulk  
12 of the remaining questions that were in the  
13 Hearing Examiner's email from last week.  
14 Start with the issue of screening.  
15 Was there a landscape plan included with your  
16 application?  
**17 A I believe there was.**  
18 Q A landscape plan?  
**19 A Oh, not a landscape plan. No, I'm**  
**20 sorry. There has not been a landscape plan.**  
21 Q Was one requested when you were  
22 working with the Planning Department on the

40

1 application?  
**2 A No.**  
3 Q We could look at these photographs on  
4 the screen. Are these photographs representative  
5 of the existing conditions in the rear of the  
6 property where the conditional use area is?  
**7 A Yes. Exhibit 2 is between my property**  
**8 and Mr. Lyles' property.**  
9 Q On Number 2 in the center?  
**10 A Right there. Correct. The screening**  
**11 was put up probably 18 years ago back in 2002?**  
**12 2004? At the request of Johnny Lyles.**  
13 Q If you go back, it is also extending  
14 them sort of what looks like some other vantage  
15 points too from down the driveway.  
**16 A This is at the top of the driveway**  
**17 from the shared driveway looking down towards my**  
**18 shop and facility.**  
**19 I have used some viburnum to screen**  
**20 and some Leyland Cypress as well between mine**  
**21 and Mr. Lopez's property. As you can see to**  
**22 Item 3 is where the vehicles park leaving some**

<p style="text-align: right;">41</p> <p><b>1 big trees to provide shade and some form of</b> <b>2 screening.</b> 3 Q These are the existing conditions 4 there. <b>5 A That is correct.</b> 6 Q You would be proposing a fence in 7 connection with the conditional use application 8 for additional screening? <b>9 A That's correct.</b> 10 Q What are your plans with respect to 11 height and where it would run? <b>12 A It would be a six-foot privacy fence</b> <b>13 and if I may walk back up here again?</b> 14 Q Yes. <b>15 A Can you bring back the picture of my</b> <b>16 lot?</b> 17 THE OPERATOR: You can use the one on 18 the left side? <b>19 A Behind the building here on the</b> <b>20 property line is my corner post right there too,</b> <b>21 and I bring the privacy fence up to about this</b> <b>22 point, right here, which would be about 50 feet</b></p>	<p style="text-align: right;">43</p> <p>1 application, did you get a chance to look at the 2 zoning ordinance section with the cross-section 3 for landscape screening that references Section 4 6.5.3? <b>5 A I have looked at that.</b> 6 Q Do you think the zoning ordinance 7 cross-section would actually be viable in these 8 conditions? <b>9 A It is going to be tight on this</b> <b>10 western side to do those types of conditions and</b> <b>11 then on the backside of the property Mr. Lyles</b> <b>12 has constructed a berm here. So to put</b> <b>13 screening behind the fence would be tough to do.</b> 14 Q Are the sunlight conditions back there 15 adequate? <b>16 A Yes. That is another big factor. In</b> <b>17 my professional opinion as a landscaper, we</b> <b>18 don't have enough sunlight to provide screening</b> <b>19 on the lower west side for evergreens.</b> 20 Q The zoning ordinance cross-section 21 calls for a four-foot fence, but you are 22 proposing a six-foot fence?</p>
<p style="text-align: right;">42</p> <p><b>1 past this building, and it would be way past the</b> <b>2 property line of Mr. Lyles which only joins just</b> <b>3 a small piece back here.</b> 4 Then I would bring it up to right <b>5 before the parking area, right here, the</b> <b>6 six-foot privacy fence.</b> 7 HEARING EXAMINER: The parking area 8 would be outside the privacy fence or inside the 9 privacy fence? <b>10 A My recommendation, or my thoughts were</b> <b>11 to bring it just to here and then just use</b> <b>12 screening where the cars park, but I could</b> <b>13 always bring it all the way up.</b> 14 HEARING EXAMINER: It would be on the 15 inside. Right now it is going to come up to the 16 trees, and the trees, then you are proposing to 17 serve as the screening for the parking? <b>18 A Correct. The trees are actually on my</b> <b>19 property. So I could actually bring the fence</b> <b>20 to the inside and then just leave the trees on</b> <b>21 the outside.</b> 22 Q In connection with preparing the</p>	<p style="text-align: right;">44</p> <p><b>1 A That's correct.</b> 2 Q Is there an advantage to that height? 3 I believe the property all slopes there? <b>4 A Actually, yes, it will help with the</b> <b>5 screening. They may be able to see the top of</b> <b>6 the roof, but they won't be able to see anything</b> <b>7 else.</b> 8 MR. RUHLEN: Why don't we go to the 9 next slide and let's talk about lights. 10 Q There was a question by the Hearing 11 Examiner about lighting in the back. What does 12 this photograph show? <b>13 A We have a main light on the main</b> <b>14 building and then three small lights over on the</b> <b>15 second building. I just took a picture of my</b> <b>16 neighbor, Tony, who actually put up these lights</b> <b>17 for me and he says that these are about 3,000</b> <b>18 lumens each. This one is about 4,000 lumens.</b> 19 Q They are limited to these three 20 locations? <b>21 A That's it, yes.</b> 22 Q As shown. I'm sorry. Is it three or</p>

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1 is it four locations?  
2 **A Four, correct. You see Mr. Lyles'**  
3 **house is in the background. So the lights shine**  
4 **here.**  
5 Q There is one on the southernmost  
6 building in the center, and then three on the  
7 central building?  
8 **A Correct.**  
9 Q Are there any standing pole lights or  
10 anything like that In the back?  
11 **A No.**  
12 Q How do you operate these lights?  
13 **A They are all solar, but I can turn the**  
14 **switch off on any one them.**  
15 Q They are able to be turned off?  
16 **A Correct.**  
17 Q Was there a photometric plan to your  
18 knowledge in the application that was submitted  
19 or was one required by the Department staff  
20 somewhere?  
21 **A Not to my knowledge.**  
22 Q Have you received any complaints from

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1 anyone about the lights?  
2 **A No.**  
3 Q You are not proposing to add any  
4 additional lighting?  
5 **A That is correct.**  
6 MR. RUHLEN: Unless there are any  
7 questions about that, why don't we go to the  
8 next slide.  
9 Q This goes to the question about the  
10 shared driveway. That is the recorded plat for  
11 your property.  
12 **A Right.**  
13 Q Can you show on the plat where the  
14 shared driveway is located?  
15 **A It is highlighted in yellow.**  
16 Q That is within your property?  
17 **A Correct. My property goes on the**  
18 **other side of this shared driveway.**  
19 Q Which neighbors utilize the driveway?  
20 **A The Lopezs and the Nunezs.**  
21 Q There are three residences that  
22 utilize the shared driveway?

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1 **A That's correct.**  
2 Q Are there any usage restrictions on  
3 the use of this?  
4 **A No.**  
5 MR. RUHLEN: If we could go to the  
6 next slide.  
7 Q Do you recognize this document?  
8 **A I do.**  
9 Q Is this the agreement that goes along  
10 with the shared driveway usage?  
11 **A Yes. When we purchased the property**  
12 **and home, this is what came with it.**  
13 Q You have reviewed this agreement?  
14 **A I have.**  
15 Q It doesn't have any restrictions on  
16 use?  
17 **A No.**  
18 Q That is recorded in land records, too,  
19 as well?  
20 **A That's correct.**  
21 MR. RUHLEN: That may be it for the  
22 exhibits. Can we forward so I can see. This will

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1 be helpful, if we can stop here.  
2 Q For the questions about the building  
3 areas, this is going to be a little complex, but  
4 I would like to walk through the existing  
5 building floor areas with you.  
6 This slide is a copy of the Maryland  
7 Department of Assessments and Taxation which is  
8 a real property search data sheet for your  
9 property.  
10 It shows an existing above grade  
11 living area of 4,350 square feet. My question  
12 to you is, is that approximately what you  
13 understand to be the gross floor area of your  
14 house?  
15 **A Yes, that's correct.**  
16 Q That is for the residence itself?  
17 **A Yes.**  
18 Q Do you know the approximate floor area  
19 of the two outbuildings?  
20 **A I provided that for you. It should be**  
21 **in the calculations.**  
22 Q You know that from your permits, is

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1 that correct?

2 **A That is correct.**

3 Q Would you agree that the southern most

4 building based on your knowledge is 1,980 square

5 feet?

6 **A Correct.**

7 Q It is just one floor, so that would be

8 the floor area?

9 **A That's correct.**

10 Q The central outbuilding is 1,800

11 square feet approximately?

12 **A Roughly, yes.**

13 Q Just one single floor. That's also

14 the footprint? It's just one floor; right?

15 **A Yes.**

16 Q If you add together, for purposes of

17 total gross floor area, estimating gross floor

18 area on the property, 4,350 square feet for the

19 residence; 1,908 square feet for the

20 southernmost building; and approximately 1,800

21 square feet for the centrally located building,

22 yields a floor area of 8,058 square feet; would

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1 you agree with that number as the approximate

2 amount of floor area?

3 **A Yes.**

4 Q There are no other structures? No

5 other enclosed buildings?

6 **A There is not.**

7 Q That is floor area. But for building

8 coverage that would be germane to the

9 development standards for the RDT Zone, we would

10 look not at gross floor area, but also at

11 building footprints.

12 We have heard that the one-story

13 outbuildings, before it would be the same as the

14 footprint, that is 1,908 square feet and 1,800

15 square feet for each.

16 For your house, the footprint would

17 just be the ground floor. Have you looked at

18 how much floor area would be the coverage?

19 Do you have any materials in your

20 records to show you that, appraiser's materials,

21 or anything like that?

22 **A I did, yes.**

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1 Q Do those materials, based on the

2 calculations that we went through together in

3 going through some of those materials, would you

4 agree the coverage of the building excluding the

5 stories, is 2,314 square feet coverage?

6 **A I believe so, yes.**

7 Q Would you agree that that includes the

8 main floor area of the building plus the garage?

9 **A Correct.**

10 Q If you were to add the two

11 outbuildings, 1,908 square feet and 1,800 square

12 feet with the footprint of the residence, 2,314

13 square feet, I think you would also need to add

14 the lean to area that is behind the southernmost

15 outbuilding, have you approximated an area for

16 that?

17 **A I have.**

18 Q Did you come up with about 650 square

19 feet for the lean to? It doesn't have walls,

20 but it is under a roof?

21 **A It is a roof. It may be slightly**

22 **higher than that, but it is very close.**

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1 Q For sake of estimating this. Adding

2 approximately 2,314 square feet for the

3 residential footprint; 1,908 square feet for the

4 southernmost building; 1,800 square feet for the

5 centrally located building, and approximately

6 650 square feet for the lean to, that totals

7 approximately 6,672 square feet.

8 Does that sound correct?

9 **A Yes.**

10 Q That would be the coverage. Your lot

11 is approximately 4.62 acres in size. That is

12 21,247 square feet. The RDT Zone allows maximum

13 coverage of 10%. Would you agree that your

14 total existing building coverage of

15 approximately 6,725 is less than the 20,124

16 square feet that you would be permitted for

17 coverage?

18 **A Yes.**

19 Q So just to note, by my calculation,

20 the 6,725 square feet represents about 3.3% of

21 the coverage on the lot.

22 MR. RUHLEN: I know that was painful,

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1 but thank you for walking through that.  
2 Q There were questions about in the  
3 email about residential parking, so we can turn  
4 to that very quickly. The residence you said is  
5 not included in the proposed conditional use  
6 area. Does the residence have a garage?  
7 **A It does. Two car garage.**  
8 Q Two car garage and you utilize the  
9 garage for parking?  
10 **A From my wife's car, yes.**  
11 Q I believe that zoning standard for a  
12 single-family residence is two parking spaces  
13 per single-family dwelling unit. We can ask Mr.  
14 Witmer about that. That would be the  
15 residential parking.  
16 There was a question about removal of  
17 the retaining wall on the western lot line, and  
18 I don't know if we have any photos of that. I  
19 think it is shown on the plan.  
20 Can you describe that retaining wall?  
21 **A It was by the fuel tank picture, the**  
22 **block wall that contains the mulch.**

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1 Q The purpose of it is to serve as a  
2 mulch enclosure?  
3 **A That's correct.**  
4 Q Are you proposing to move the mulching  
5 enclosure with this application?  
6 **A I am.**  
7 Q Where would you be moving to?  
8 **A To the center of the circle of the**  
9 **landscape area there.**  
10 Q Once that moves, is there any reason  
11 to have that block wall?  
12 **A No. The block will come up through**  
13 **there or the fence, excuse me, will come there**  
14 **and the fuel tanks will be moved as well.**  
15 Q If there is any screening that that  
16 accomplishes, you would have the fence there and  
17 the fence would run through there and replace  
18 that function?  
19 **A Correct.**  
20 Q Is that on your property, do you know,  
21 the cinderblock wall?  
22 **A Some of it is on Tony's property, but**

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1 **my first neighbor was okay with it.**  
2 Q It gives you an opportunity?  
3 **A For 22 years.**  
4 Q That gives you an opportunity to clean  
5 it up?  
6 **A Yes.**  
7 MR. RUHLEN: I think that does it for  
8 Mr. Juneau. If there are still some questions  
9 from the email, Mr. Witmer will be able to  
10 answer that.  
11 HEARING EXAMINER: I do have a couple  
12 of questions for Mr. Juneau. You stated earlier  
13 when you bought the property it was in the AG  
14 Reserve, so you thought that the landscape  
15 business was something viable that you could do.  
16 When you applied for the building  
17 permits for the outbuildings, how did you  
18 describe those permit applications?  
19 **A When I applied for the building in**  
20 **1998, I actually had the builder go for the**  
21 **permit.**  
22 **I can't testify whether he mentioned**

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1 **that it was a landscape contractor or mentioned**  
2 **that it was just a small home business. To be**  
3 **honest, I don't recollect 25 years ago.**  
4 HEARING EXAMINER: I was curious as to  
5 how it was characterized in the permit  
6 applications. Did anybody ever mentioned to you  
7 about a home occupation or anything like that?  
8 **A No.**  
9 HEARING EXAMINER: When you went in  
10 for the non-conforming use, what were you told  
11 from DPS or Planning Staff?  
12 **A That it was denied.**  
13 HEARING EXAMINER: That is all they  
14 told you that it was denied?  
15 **A Yes.**  
16 HEARING EXAMINER: Did they give you a  
17 reason?  
18 **A Because it didn't meet the criteria.**  
19 HEARING EXAMINER: They didn't say  
20 anything other than it didn't meet the criteria?  
21 **A Correct.**  
22 HEARING EXAMINER: You said you got a

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1 lot of notices in 2022.  
2 **A I did.**  
3 HEARING EXAMINER: Can you tell me  
4 what those notices were?  
5 **A Jack Llewellyn came out with sediment**  
6 **control. He had to come out and do the**  
7 **inspection of runoff and sediment, and so forth.**  
8 **I can't remember all the names.**  
9 HEARING EXAMINER: You do not have to  
10 tell me about the people. Tell me about the  
11 notices and what open notices still exist?  
12 **A To my recollection there are no open**  
13 **notices that still exist except for the**  
14 **conforming use or the variance.**  
15 **Everybody has come out and found that**  
16 **there is a slope and a lot to lot issue of water**  
17 **drainage and they have also made the**  
18 **recommendations that you will note later that my**  
19 **engineer, Jim Witmer, will speak to.**  
20 HEARING EXAMINER: The only open  
21 notice of violation that you know of that exists  
22 currently on the property is associated with

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1 your use?  
2 **A That's correct.**  
3 MR. RUHLEN: I think I could help with  
4 additional information to clarify that. That's  
5 all accurate, but I can provide additional  
6 details if that's helpful?  
7 HEARING EXAMINER: If you wouldn't  
8 mind providing that and I can leave the record  
9 open for that, any existing open notices.  
10 MR. RUHLEN: Yes. The way the  
11 enforcement arm of DPS works, there was, I  
12 believe, a District Court action that was put in  
13 place for the conditional use violation and that  
14 is still pending.  
15 HEARING EXAMINER: Right.  
16 MR. RUHLEN: There were, at the time  
17 when this emerged, I don't recall, but I think  
18 it is 2023, when the accompanying District Court  
19 actions went in for one for sediment erosion  
20 control was the initial complaint and the other  
21 for the building permit for the central building  
22 that had to go back and be applied for

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1 retroactively and both of those District Court  
2 cases were closed when DPS withdrew their  
3 complaint.  
4 We can provide those records.  
5 HEARING EXAMINER: You can give me the  
6 history of the notices of violation and then the  
7 ones that are closed essentially the  
8 documentation about how they were closed.  
9 MR. RUHLEN: Sure.  
10 HEARING EXAMINER: All of the  
11 outbuildings have been permitted either at the  
12 time of construction or retroactively?  
13 MR. RUHLEN: Correct.  
14 HEARING EXAMINER: Talk to me a little  
15 bit about operations. You said the crews get  
16 there at 6:45'ish and leave between 7:00 and  
17 7:30 to go to job sites.  
18 What time do they come back? What is  
19 the routine when they come back?  
20 **A It is typically between 5:00 and 6:00.**  
21 **It depends on traffic. Coming from Columbia or**  
22 **coming from D.C or coming from other locations**

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1 **you run into a little bit of traffic heading**  
2 **back.**  
3 HEARING EXAMINER: What is the close  
4 up routine like?  
5 **A The guys come back to the shop.**  
6 **Taking the mowers off the trailers. Taking**  
7 **equipment off the trailers and store them inside**  
8 **Building Number 1 and then they leave.**  
9 HEARING EXAMINER: How many employees  
10 do you have on site? What is the maximum?  
11 **A 20 to 24, depending on the season.**  
12 HEARING EXAMINER: Nine arrive by van?  
13 **A That's correct.**  
14 HEARING EXAMINER: Other than  
15 equipment, fuel, the oil tanks, what else do you  
16 keep on site?  
17 **A I keep bag of salt on pallets. I keep**  
18 **mulch on site.**  
19 HEARING EXAMINER: How much mulch are  
20 we talking.  
21 **A None this year, but in past years it**  
22 **has been about 120 yards in the bin at a time.**



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1 HEARING EXAMINER: Talk to me about  
2 the bathroom situation. Right now you have a  
3 porta-o-potty.  
4 **A That's correct.**  
5 HEARING EXAMINER: Is your house on  
6 well and septic?  
7 **A It is.**  
8 HEARING EXAMINER: Do you have indoor  
9 facilities for use by the staff?  
10 **A If needed.**  
11 MR. RUHLEN: I can note. I am trying  
12 to make sure that I am looking in the right  
13 place, but this issue was discussed with the  
14 Planning Board and the Planning Department, and  
15 there is a note, Mr. Witmer, when he testifies,  
16 he will be able to speak to some of this too,  
17 but as a result of conversations and looking at  
18 that issue with DPS, there was a note put on to  
19 the conditional use plan that has some data for  
20 this. We can also speak to that with Mr.  
21 Witmer.  
22 HEARING EXAMINER: If the port-o-potty

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1 were to go away, the employees would have a  
2 place to go to the bathroom in the house?  
3 **A We would have to look at other**  
4 **arrangements possibly, but I would have it open,**  
5 **if needed.**  
6 HEARING EXAMINER: Maybe this is  
7 something that Mr. Witmer will testify to as far  
8 as the age of the septic system, the capacity,  
9 all of that, is that more of a Mr. Witmer  
10 question?  
11 **A That is a Mr. Witmer question.**  
12 HEARING EXAMINER: Those are all the  
13 questions I have. Do you have any follow-up  
14 questions to my questions before you make your  
15 cross-examination?  
16 MR. RUHLEN: No.  
17 CROSS-EXAMINATION  
18 BY MS. McINTURFF:  
19 Q I do have several questions. If you  
20 can look at Exhibit 36, please. Looking at this  
21 aerial photo, when you purchased the property,  
22 was that in 1998 or 1996?

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1 **A 1996.**  
2 Q The only building in existence was the  
3 residential building up there towards the right?  
4 **A The house was being built in 1996,**  
5 **yes.**  
6 Q You moved in there around December  
7 1997?  
8 **A Correct.**  
9 Q That is where the driveway ended?  
10 **A That is correct.**  
11 Q You actually constructed and extended  
12 this concrete pad that leads to the  
13 outbuildings?  
14 **A There is no concrete pad. It's gravel.**  
15 Q Prior to the gravel that was area  
16 covered by grass, trees?  
17 **A The whole property was covered by rows**  
18 **of trees. As you can see in the top exhibit,**  
19 **those trees are all in rows.**  
20 Q The gravel area is where the new  
21 outbuildings are, those are covered by trees and  
22 grass?

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1 **A Yes, and still have some trees.**  
2 Q That is where their property slopes?  
3 **A The property slopes. Mr. Witmer will**  
4 **speak to it, but it is from this section of the**  
5 **front yard, around the side, and all of this**  
6 **section and some back here, it slopes down here,**  
7 **and then the rest of the land slopes down to one**  
8 **hidden point down in this area.**  
9 Q You constructed those buildings over  
10 the last 25 plus years?  
11 **A Yes.**  
12 Q The first building you constructed,  
13 that one you did obtain a permit for; correct?  
14 **A I did.**  
15 Q Did you do any sediment control when  
16 you constructed that building?  
17 **A It wasn't required at the time. Mr.**  
18 **Witmer will be able to speak to that.**  
19 Q My question is: Did you perform any  
20 sediment control before that building was  
21 constructed?  
22 **A For that building, no.**

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1 Q There was no stormwater management at  
2 that time either?  
3 A No.  
4 Q The second building, is that the  
5 center building, that is the one you  
6 constructed?  
7 A **That's correct.**  
8 Q You didn't obtain a permit at the time  
9 of that construction, did you?  
10 A **No, I did not.**  
11 Q There was no sediment control at that  
12 time?  
13 A **There was not.**  
14 Q No stormwater management?  
15 A **No.**  
16 Q There has been an extension to that  
17 building?  
18 A **Yes.**  
19 Q That likewise had no sediment control?  
20 A **No.**  
21 Q And no permanent?  
22 A **Not at the time.**

66

1 Q You have only retroactively obtained  
2 the permanent since you have a conditional use  
3 violation?  
4 A **That is correct.**  
5 Q When you install this gravel area,  
6 there is concrete in front of the buildings, is  
7 there not?  
8 A **Yes.**  
9 Q That is where the parking pads are as  
10 well?  
11 A **No. The concrete is in front. The  
12 parking is -- for the employees or for the  
13 vehicles?**  
14 Q Why don't you show me both.  
15 A **The employees park along the edge here  
16 on the screen. There is a concrete pad  
17 underneath the five-foot overhang right here  
18 along the front of the building and then there  
19 is a concrete pad on the front here.**  
20 Q Did you install those yourself?  
21 A **No. I had a company do it?**  
22 Q Did they look at any drainage patterns

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1 when they were installed?  
2 A **I didn't know we had an issue, but I  
3 can't speak to what they did.**  
4 Q As far as you know nobody looked at  
5 any drainage patterns when those concrete areas  
6 were installed?  
7 A **No.**  
8 Q You didn't look at any drainage when  
9 you put down the gravel extension to the  
10 driveway?  
11 A **Be more specific.**  
12 Q When you replaced the ground cover  
13 that was already in existence there with the  
14 gravel, you didn't look at what the drainage may  
15 be like going forward?  
16 A **I didn't realize there was an issue,  
17 but yes, we did put gravel over the top of here  
18 and this was actually dirt because we were using  
19 it and parking on the existing area.**  
20 Q About how many square feet is the  
21 gravel extension to the driveway?  
22 A **I have no idea.**

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1 Q Your property line, where does it  
2 border Mr. Lyles?  
3 A **Just about 30-to 40-foot section right  
4 in that corner there.**  
5 Q You had one of your buildings  
6 constructed right up to that line there?  
7 A **I did, but it was approved by  
8 Montgomery County.**  
9 Q But you don't know when or not in the  
10 approval of that permit you know this was for a  
11 landscape business or just another building to  
12 put on the property?  
13 A **I am not aware of that.**  
14 Q Your neighbor, Mr. Nunez, where does  
15 he live?  
16 A **That house right here.**  
17 Q He is not facing your commercial use  
18 of this property. He is actually across the  
19 street?  
20 A **He is not across the street, but he is  
21 the next door neighbor on the shared driveway.**  
22 Q Maybe in front that is essentially of

69  
1 any of the commercial use of the property?  
2 **A That's correct.**  
3 Q Where do the Johnsons and the  
4 Middletons reside?  
5 **A Ms. Middleton live right here and she**  
6 **owned all of this property.**  
7 Q What about the Johnsons?  
8 **A The Johnsons are across the street**  
9 **right at the exit of our driveway.**  
10 Q Have you reviewed the proposed  
11 stormwater management system that your expert  
12 intends to put in?  
13 **A I have.**  
14 Q Do you know where he intends to put in  
15 the sediment pond?  
16 **A I will let Mr. Witmer speak to that.**  
17 Q But you don't know off the top of your  
18 head?  
19 **A No.**  
20 Q Are you aware of whether or not it  
21 will be within 50 feet of Mr. Lyles' property?  
22 **A That, I don't know.**

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1 Q Do you know whether or not the  
2 stormwater management plan has been reviewed by  
3 DPS?  
4 **A It was submitted with our plan.**  
5 **That's all I can tell you.**  
6 Q What plans, if any, have you made to  
7 ensure monitoring that the stormwater management  
8 system is actually diverting water flow?  
9 **A I will have to let Mr. Witmer, the**  
10 **expert, speak to that.**  
11 MS. McINTURFF: I don't have any other  
12 questions.  
13 HEARING EXAMINER: Thank you. Quick  
14 question in follow-up. Did you build the house  
15 that you live in?  
16 **A We did. We had it built.**  
17 HEARING EXAMINER: The area of the  
18 conditional use where the buildings are, what  
19 was there before?  
20 **A It was trees, small little trees at**  
21 **the time.**  
22 HEARING EXAMINER: How much of the

71  
1 area did the trees cover? Would you say it was  
2 your whole backyard? Was it just that back  
3 corner? Did it look like that front yard tree  
4 area?  
5 **A They were much smaller at the time, so**  
6 **they cleared this area out for the septic field**  
7 **to the house, to the drive, and took the wells**  
8 **out front, they cleared that area, yes, and then**  
9 **some sapling trees there from the business.**  
10 HEARING EXAMINER: Thank you. Is  
11 there any rebuttal to the cross-examination?  
12 MR. RUHLEN: I have a couple of  
13 questions on rebuttal on that, yes.  
14 REDIRECT EXAMINATION  
15 BY MR. RUHLEN:  
16 Q Mr. Juneau, are you aware of any  
17 forest conservation easement areas or anything  
18 of that nature on your property that would  
19 restrict removal of trees in that area?  
20 **A I am not.**  
21 Q At the time of your permits, were  
22 there any issues raised by DPS about the

72  
1 installation of the buildings or sediment  
2 control requirements or anything in connection  
3 with the issuance of those permits?  
4 **A No.**  
5 Q Have MCDPS representatives been on  
6 your property since these issues have arisen in  
7 the course?  
8 **A They have, yes.**  
9 Q In connection with those visits, did  
10 the MCDPS representatives raise any issues about  
11 sediment control?  
12 **A No.**  
13 Q Have they in fact rescinded that  
14 sediment erosion control notice of violation  
15 that they issued?  
16 **A They have.**  
17 Q The permits are issued now for those  
18 buildings correct and the buildings will remain  
19 even if the conditional use is not approved?  
20 **A That is correct.**  
21 Q Have DPS officials raised any  
22 questions about permits for the gravel driveway?

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1     **A No, not to my knowledge.**  
2         MR. RUHLEN: That is it for now.  
3 Thank you.  
4         HEARING EXAMINER: Thank you. Is that  
5 it for Mr. Juneau?  
6         MR. RUHLEN: That's it for Mr. Juneau.  
7         HEARING EXAMINER: Thank you, sir. You  
8 are excused. You can call your next witness.  
9         MR. RUHLEN: I would like to call Nick  
10 Driban with Lenhart Consulting.  
11 (Whereupon, Nicholas Driban, sworn.)  
12         DIRECT EXAMINATION  
13 BY MR. RUHLEN:  
14     Q Why don't you go ahead and state your  
15 full name and occupation for the record.  
16     **A Yes, Nick Driban, traffic engineer.**  
17     Q What is the name of your employer?  
18     **A Lenhart Traffic Consulting.**  
19     Q How long have you been employed with  
20 Lenhart Traffic Consulting?  
21     **A I have been with Lenhart for seven**  
22 **years now. I have been in the industry for**

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1 **about 17 in total.**  
2     Q What are the responsibilities of your  
3 current position, if you could describe them?  
4     **A I am the vice president. I am in**  
5 **charge of traffic impact studies, coordinating**  
6 **the agencies for review of development, traffic**  
7 **impacts, expert witness testimony, and generally**  
8 **overseeing the traffic operations department**  
9 **that we have which is a staff of five.**  
10     Q Have you testified before as an expert  
11 before this body?  
12     **A I have, yes.**  
13     Q In what capacity were you qualified to  
14 testify as an expert?  
15     **A Traffic engineering and transportation**  
16 **planning.**  
17     MR. RUHLEN: I move that Mr. Driban be  
18 admitted as an expert in transportation.  
19     HEARING EXAMINER: Admitted.  
20     MR. RUHLEN: Thank you.  
21     Q Mr. Driban, are you familiar with  
22 conditional use case 24-10?

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1     **A Yes, I am.**  
2     Q Can you describe your responsibilities  
3 with regard to this application?  
4     **A Yes. We were contacted to prepare a**  
5 **traffic review of the site including existing**  
6 **conditions and evaluate what the current**  
7 **operations look like and whether the site**  
8 **circulation is appropriate for the use.**  
9     Q Are you familiar with the area and the  
10 surrounding properties?  
11     **A I am, yes.**  
12     Q Did you prepare a transportation  
13 impact study for this application?  
14     **A We did not prepare a traffic impact**  
15 **study or transportation impact study. We**  
16 **prepared a traffic statement which is in**  
17 **accordance with the county's local area**  
18 **transportation review guidelines of sites that**  
19 **have less than 50 peak-hour person trips.**  
20         **So the busiest hour in the morning or**  
21 **evening the number of people entering or exiting**  
22 **that site by any mode, whether walking, biking,**

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1 **transit, shuttle car, if it is less than 50**  
2 **people, peak-hour person trips, then a traffic**  
3 **statement is always required.**  
4         **There is no full evaluation that would**  
5 **be necessary in terms of the transportation**  
6 **impact study.**  
7     Q Your traffic statement, is that  
8 Exhibit 5 in the record? Have you been able to  
9 look at that?  
10     **A Yes, it is.**  
11     Q Can you briefly summarize the findings  
12 of your analysis in that traffic statement?  
13     **A Yes.**  
14     HEARING EXAMINER: Do you need us to  
15 bring it up?  
16     **A I can speak to it without it, but it**  
17 **wouldn't hurt if it is helpful. Sure.**  
18     HEARING EXAMINER: Sometimes it is  
19 helpful for everybody to see it. It's numbers,  
20 right, so it is good to have something to look  
21 at.  
22     **A Yes, absolutely. It's Exhibit 5. We**

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1 prepared a traffic statement, as I said, and the  
2 traffic statement looked at the site's  
3 operations in conformance with the county's  
4 local area transportation review guidelines,  
5 which are the administration of the adequate  
6 public facilities ordinance of Montgomery County  
7 which is the growth infrastructure policy.  
8 HEARING EXAMINER: Is there chart on  
9 there somewhere or no?  
10 A The chart is page 4, I believe. It is  
11 Exhibit 2. It might be page 5. This one, yes.  
12 HEARING EXAMINER: Can you make that  
13 little bigger, please.  
14 A We can start with the top half. When  
15 we look at a site, as I said, the county's  
16 guidelines require us to look at the busiest  
17 hour that we call the peak hour of the morning,  
18 the peak hour of the evening and how much  
19 traffic, how many trips come to and from a site  
20 during that hour.  
21 For most cases, the county's  
22 guidelines recommend that we look at it using

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1 the ITE trip generation manual which is a 900 to  
2 1,000 page document that has all kinds of  
3 different land uses that have been evaluated  
4 throughout the country, and actually counted to  
5 determine the number of trips that cross that  
6 come in and out of those sites.  
7 So if you are looking at a hotel, you  
8 would say how many rooms are in the hotel. You  
9 go to the ITE trip generation manual and it is  
10 going to give you an output for the volume of  
11 traffic that would come into and out of that  
12 site during peak hours.  
13 Landscaping contractor is a little bit  
14 of a unique use in that it is not directly  
15 captured in the ITE trip generation manual.  
16 So when we look at these sites in  
17 Montgomery County, or elsewhere, we typically  
18 look at them in two ways. The first one that you  
19 are seeing on the screen right now is based on  
20 the employer's description of the site traffic  
21 operations.  
22 And as Mr. Juneau discussed, his

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1 shifts, how they come and go, the timing, and  
2 things of that nature, and then the second part  
3 at the bottom of this exhibit, if you will  
4 scroll down quickly, is based on the ITE trip  
5 generation manual for specialty trade  
6 contractor.  
7 It is close to a landscape contractor,  
8 but it's not, again, we have a hotel, and it's a  
9 hotel, this doesn't quite fit which is why we  
10 look at it both ways.  
11 The county standard is 50 or fewer  
12 peak-hour trips is considered a de minimis  
13 impact and does not require transportation  
14 impact study.  
15 If you will please scroll back up to  
16 the top table. This is based on the employer's  
17 description of site operations. As Mr. Juneau  
18 described, there are between 20 and 24 employees  
19 on site on any given day.  
20 He spoke to the fact that during the  
21 morning the vast majority of those employees  
22 arrive from 6:45 to 7:10am window, and then they

80

1 typically depart the site by 7:30.  
2 Essentially, all of those trips are  
3 coming in and out of the site within a single  
4 peak hour. The highest potential trip  
5 generation that we would look at, and again,  
6 Montgomery County is a little unique in that  
7 they use person peak-hour trips as opposed to  
8 vehicular trips as the basis.  
9 But, essentially, 24 people come on  
10 site. Some of them, nine of them, come in a  
11 shuttle. Some of them drive their own vehicles,  
12 and then all 24 of those people, again, leave  
13 the site in the work vehicles within that same  
14 hour.  
15 So our total peak-hour person trips in  
16 the morning is 24 in and 24 out, or 48 peak-hour  
17 person trips.  
18 This is if every employee comes on  
19 site during the same peak hour and then leaves  
20 within that same hour. The site is capturing a  
21 maximum of 24 employees.  
22 HEARING EXAMINER: So the van wasn't

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1 included in the calculation. You did it as each  
2 individual was coming and going?  
3 **A Correct. Where the van factors in is**  
4 **the number of vehicular trips, and so that's a**  
5 **lower number. The person trips is just nine**  
6 **people coming in a van, that's one vehicular**  
7 **trip, but it is nine person trips.**  
8 **The county's threshold is based on**  
9 **person trips which is why I started there. So we**  
10 **are below that 50 peak-hour person trip**  
11 **threshold.**  
12 **The van factors in in that those 48**  
13 **person trips become person trips only translate**  
14 **to 20 vehicular peak-hour person trips.**  
15 **During the busiest hour of the day in**  
16 **the morning between 6:45 and 7:45, there are a**  
17 **total of eight vehicles that come on site and 12**  
18 **vehicles that leave the site.**  
19 **It is 20. That will 20 total**  
20 **peak-hour vehicular trips, but there are 48**  
21 **people in those vehicles.**  
22 HEARING EXAMINER: Take the van out of

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1 the equation, if we had the 24 vehicular trips,  
2 in and out, how would that impact the analysis  
3 and would it put it over the 50-persons  
4 threshold?  
5 **A No. To simplify it, essentially, the**  
6 **way somebody gets to the site doesn't matter in**  
7 **terms of the county's threshold. The county's**  
8 **threshold is simply person trips which is just**  
9 **whether you walk, bike, scooter, take a bus,**  
10 **take a shuttle in or out, did you cross the**  
11 **boundary of that site or not?**  
12 **If you were to remove the shuttle you**  
13 **would have more vehicles entering the site,**  
14 **right, but the county's threshold is people.**  
15 **The number of people doesn't change.**  
16 HEARING EXAMINER: That doesn't  
17 necessarily impact the traffic study.  
18 **A It doesn't at all in terms of the**  
19 **county's guidelines. The county's guidelines**  
20 **are based on people and the maximum number of**  
21 **people you could have is based on 24 maximum**  
22 **employees which is a condition of approval would**

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1 **be 24 coming in and then all of them leaving the**  
2 **site in the same hour.**  
3 HEARING EXAMINER: Thank you. That was  
4 helpful. Sorry, I have a tendency to throw  
5 people off the rails.  
6 **A But I am happy to answer as you have**  
7 **questions. The PM peak hour for the purposes of**  
8 **this, and that was the AM that we were**  
9 **discussing.**  
10 **The PM peak hour, we took a**  
11 **conservative approach, and again looked at it,**  
12 **and we are looking at the busiest hour, so the**  
13 **same would be true if all crews came back within**  
14 **the same hour they take the equipment out of the**  
15 **trucks, and they all left at the same time you**  
16 **could have 24 people coming on to the site, and**  
17 **then 24 leaving, which again, would be a maximum**  
18 **of 48 peak-hour person trips which is what our**  
19 **table reflects here in the yellow highlighted**  
20 **line.**  
21 **Based on what we understand from Mr.**  
22 **Juneau, and similar uses that we evaluated, the**

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1 **PM trips are typically more scattered than that.**  
2 **They are finishing up jobs at**  
3 **different times. You might have a crew of four**  
4 **that comes back at 3:30 and another crew of four**  
5 **that comes back at 5 o'clock and a couple have**  
6 **them come in at 5:30.**  
7 **The PM peak-hour person trips would**  
8 **actually likely be less than the 48 that we are**  
9 **showing here, but either way, at the very**  
10 **maximum potential number of trips it is below**  
11 **the county's threshold where a more detailed**  
12 **study would be required and it is considered a**  
13 **de minimis impact under county standards.**  
14 HEARING EXAMINER: Thank you.  
15 **A Just quickly for the sake of**  
16 **completeness. If you will scroll down to the**  
17 **bottom table, please. This is based on that ITE**  
18 **trip generation manual that I discussed.**  
19 **This isn't the reason we didn't just**  
20 **use this. It is because it is not quite an**  
21 **exact fit for the use. It's close. This would**  
22 **be, again, if we were doing a single-family**

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1 development, or a hotel, or a shopping center,  
2 something that fit very cleanly within the ITE  
3 trip generation manual descriptions, we would  
4 just have this table.  
5 The purpose of showing it here is  
6 based on 24 employees of a specialty trade  
7 contractor the county's typical methodology for  
8 evaluating trips would show that there is  
9 actually a lot less traffic coming to and from  
10 the site during the peak hours than what Mr.  
11 Juneau's own evaluation chose, and in this case,  
12 using ITE, there would be this top line  
13 especially trade contractor employees, 24  
14 employees, you would have 11 trips inbound.  
15 This is vehicles.  
16 11 vehicular trips inbound, 4 outbound  
17 for a total of 15 In the morning, and then 5  
18 inbound and 12 outbound for a total of 17 in the  
19 evening.  
20 The county then has formulas in their  
21 LATR guidelines that translate this.  
22 Sorry. I know this is getting very,

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1 very technical.  
2 HEARING EXAMINER: That is okay.  
3 A The county then has formulas in the  
4 LATR guidelines that take ITE vehicular trips  
5 and based on county derived standards translate  
6 those person trips.  
7 So the bottom half of the table  
8 starting with the yellow line has taken the  
9 vehicular trips that are highlighted at the top  
10 and converted them based on county factors to  
11 person trips.  
12 Based on ITE standards converted using  
13 the county's factors you would have 15 starting  
14 from the left side on the yellow row, you would  
15 have 15 inbound people to the site during the AM  
16 peak hour, 5 outbound for a total of 20  
17 peak-hour trips during the AM and then 7 in and  
18 16 out for a total of 23 on the PM peak.  
19 The point of the bottom half of the  
20 table is that the typical methodology the county  
21 uses would show that this is even more below the  
22 threshold than sort of the worst case evaluation

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1 that we have conducted in the top half of the  
2 table.  
3 HEARING EXAMINER: Thank you.  
4 Q Thank you for that. That was  
5 excellent. Mr. Driban, are you familiar with the  
6 conditions that the Planning Board recommended  
7 for the use?  
8 A Yes, I am.  
9 Q In your opinion will those conditions  
10 be adequate to ensure that the use continues to  
11 operate consistently with the analysis that you  
12 performed?  
13 A Yes. I believe they will. The key  
14 factors in those conditions, as I understand  
15 them is that it would limit the total number of  
16 work vehicles that are allowed on the site to  
17 12.  
18 It would limit business hours of  
19 operations between 6:45am and 6:00pm, and it  
20 would limit the number of employees on site per  
21 day to no more than 24 which as I just explained  
22 is key in ensuring that the impact is de minimis

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1 and that it remains below the county's threshold  
2 for more detailed traffic evaluation to be  
3 required.  
4 Sorry. I should note as well that I  
5 believe the staff report concurred that this is  
6 a de minimis impact based on the evaluations  
7 conducted in terms of traffic.  
8 Q In your opinion is anything that is  
9 proposed with the conditional use application  
10 going to change anything that we just reviewed  
11 again? Are you aware of anything that alters?  
12 A No. The conditions are consistent  
13 with the analysis that we conducted and I think  
14 that it would put guardrails on what is  
15 happening out there and formalize what they are  
16 allowed to do to ensure that the site remains de  
17 minimis in terms of traffic.  
18 Q In your opinion, the conditional use  
19 satisfies the LATR guidelines as applicable?  
20 A Absolutely, yes.  
21 Q In your opinion, do you think that the  
22 conditional use has an adverse impact on any of

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1 the adjoining properties with respect to traffic  
2 operations?  
3 **A No. This is a really minimal amount**  
4 **of traffic. It's de minimis under the county's**  
5 **guidelines and I don't believe it will have any**  
6 **adverse impact on surrounding properties.**  
7 Q Is there anything else that you would  
8 like to add?  
9 **A No, that's all.**  
10 MR. RUHLEN: That is it for our  
11 questions.  
12 HEARING EXAMINER: Do you have any  
13 cross examination?  
14 CROSS-EXAMINATION  
15 BY MS. McINTURFF:  
16 Q In determining the impact, do you  
17 consider the type of vehicle that is being used?  
18 **A The county's guidelines are simply**  
19 **based on the number of people entering and**  
20 **exiting the site. They have very specific**  
21 **formulas and methodology for determining. It is**  
22 **simply based on the number of person trips to**

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1 and from the site.  
2 Q The vehicle is not considered at all?  
3 **A It is not in terms of the county's**  
4 **guidelines. We did evaluate the site access and**  
5 **I have been out to the site taking a look at**  
6 **what is out there in terms of both the site**  
7 **access on to Maryland 650 which is Damascus Road**  
8 **in this area.**  
9 **In my professional opinion, I think**  
10 **the use that is out there and the vehicles that**  
11 **are on site are consistent with the types of**  
12 **uses in the area with maintaining safe ingress**  
13 **and egress to the site.**  
14 **That is not part of the county**  
15 **specific guidelines for determining adequacy,**  
16 **but that was something that I evaluated as part**  
17 **of my review.**  
18 Q You would agree that a landscape truck  
19 and a trailer is inherently different than a  
20 sedan on the road?  
21 **A I would agree that they have different**  
22 **operating characteristics.**

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1 Q Different ways?  
2 **A Sure.**  
3 Q Different noise output?  
4 **A Likely. I think there are some sedans**  
5 **that might be pretty loud, but yes, generally**  
6 **speaking that's fair.**  
7 MS. McINTURFF: Thank you. I have no  
8 further questions.  
9 HEARING EXAMINER: Quick question.  
10 Was there an SHA letter not required or did  
11 Planning ask for one? Actually, what road type  
12 does this front?  
13 **A Maryland 650, Damascus Road is 650,**  
14 **it's a minor collector, in some states a**  
15 **secondary system. The state's threshold for**  
16 **requiring a traffic study is a higher threshold**  
17 **than in the county's.**  
18 **Theirs is based on vehicular trips,**  
19 **and so as I explained, the vehicular trips in**  
20 **this case are much lower than person trips**  
21 **because of the fact that there is this shuttle**  
22 **coming to the site because of the fact that,**

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1 **typically, landscapers are leaving in crews of**  
2 **two to four.**  
3 **You have 48 people crossing the**  
4 **boundary, but your vehicular trips are less than**  
5 **that. So the state, they don't require anything**  
6 **other than the traffic statement that we**  
7 **submitted.**  
8 HEARING EXAMINER: If the van were to  
9 go away, is that a high enough number to trigger  
10 a state analysis?  
11 **A No. Even if every employee drove**  
12 **individually it still would be well below the**  
13 **state's threshold.**  
14 HEARING EXAMINER: You testified that  
15 you went out to the site. You took a look at  
16 the entrance and the exit.  
17 **A Yes.**  
18 HEARING EXAMINER: In your  
19 professional opinion, talk to me about site  
20 distances, turn radiuses, and all of that.  
21 **A Sure. As you have seen the photos the**  
22 **driveway is a gravel driveway. It is accessing**



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1 part of Maryland 650 that is relatively straight  
2 and relatively flat.  
3 To both east and west, there are  
4 slight vertical curves and I believe to east of  
5 the site there is also a slight horizontal  
6 curve, but both of those are well beyond what  
7 would be required for adequate site distance.  
8 Damascus Road is a 40 mile per hour  
9 speed limit. So having reviewed the site and  
10 seeing the types of trucks that are out there,  
11 the access that exists today is adequate to  
12 safely and effectively facilitate the vehicles  
13 that they are using at the site.  
14 HEARING EXAMINER: Thank you. That's  
15 it for me. If there is any kind of follow-up?  
16 MR. RUHLEN: Maybe a couple of  
17 questions.  
18 REDIRECT EXAMINATION  
19 BY MR. RUHLEN:  
20 Q Can we go to Exhibit 41. Once we get  
21 here, if we go to page 2. Sorry. Let's look at  
22 page 3. This is where the lighting was. This

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1 is a good illustration of the trucks.  
2 Are these the kind of trucks that you  
3 observed on the site that facilitate Mr.  
4 Juneau's operations?  
5 A Yes.  
6 Q As you mentioned, the Planning Board  
7 condition of approval that limits the types of  
8 trucks on site, that's correct?  
9 A That's correct, yes.  
10 Q That condition says that the trucks  
11 will be limited to 12 work vehicles and they  
12 include 7 state body trucks, 4 pickup trucks and  
13 1 passenger van. Those are the types of trucks  
14 that you see in that photo; is that right?  
15 A Yes.  
16 Q You said when you went to the site  
17 that you found these types of trucks to be  
18 compatible with the types of vehicles that you  
19 see in the area?  
20 A Yes. Having done a number of these  
21 types of analyses for landscaping contractors,  
22 these are consistent with the type of trucks

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1 that these businesses use and with other  
2 vehicles that I observed on various roadways.  
3 HEARING EXAMINER: Another question.  
4 Were you able to observe, and maybe this would  
5 have been a better question for Mr. Juneau, when  
6 the trucks come in, it looks like they come in,  
7 go around, and then face back out more so? Did  
8 you observe any of that based on this parking?  
9 A Other than that the photo here, I  
10 don't have specific observations on that. I was  
11 focused more on the access to the adjoining  
12 roadway.  
13 HEARING EXAMINER: No worries. It  
14 probably would have been a better question for  
15 Mr. Juneau?  
16 MR. RUHLEN: I am sure we can get it  
17 answered if you would like.  
18 HEARING EXAMINER: Actually, Mr.  
19 Juneau, you are still under oath. Would you mind  
20 telling me.  
21 MR. JUNEAU: Yes, they do circle  
22 around.

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1 HEARING EXAMINER: When they come back  
2 they come down the driveway. They circle around  
3 to the trees. The ones that are parked in the  
4 back, back in.  
5 MR. JUNEAU: Back in.  
6 HEARING EXAMINER: The ones that are  
7 there just park.  
8 MR. JUNEAU: Park. Correct.  
9 HEARING EXAMINER: Thank you. I just  
10 wanted to make sure my assumption was correct.  
11 MR. RUHLEN: I don't think I have  
12 further questions for Mr. Driban.  
13 HEARING EXAMINER: Thank you.  
14 MR. RUHLEN: I would like to call on  
15 Mr. Witmer.  
16 HEARING EXAMINER: Before Mr. Witmer  
17 starts, is he going to be your last witness?  
18 MR. RUHLEN: Yes.  
19 HEARING EXAMINER: I am someone that  
20 likes to roll. I don't think anybody wants to  
21 come back, so we want to try to conclude as much  
22 as we can today. He will be your last witness.

<p style="text-align: right;">97</p> <p>1 We can break and then you projected one to two 2 hours? 3 MS. McINTURFF: It will be less than 4 that. I do believe we will be able to finish 5 today. The one thing I would ask is if we could 6 have a hygiene break at some point? 7 HEARING EXAMINER: We can do that now. 8 I understand. My philosophy is we go until we 9 can't go anymore. Somebody has to tell me that 10 they do not want to go anymore. 11 Why don't we take a 10-minute break or 12 a little over 10 minutes, and start back up at 13 11:20. We will finish with this witness. Then 14 take a lunch break. These guys, I have to let 15 them go at 4:00. Let's take a break until 16 11:20. We are off the record. 17 (Upon Resuming.) 18 HEARING EXAMINER: Bring forward your 19 next witness. 20 MR. RUHLEN: Yes, I would like to call 21 Jim Witmer. 22 --</p>	<p style="text-align: right;">99</p> <p>1 <b>A Yes. I am licensed in Maryland. I am</b> 2 <b>a professional engineer, professional land</b> 3 <b>surveyor. I am Maryland qualified to prepare</b> 4 <b>forest conservation plans, sediment control</b> 5 <b>certified, certified arborist.</b> 6 Q What is your position. Well, you said 7 self-employed. What is your position with JNM? 8 <b>A President.</b> 9 Q Can you describe your 10 responsibilities? 11 <b>A Yes. We do a lot of small and large</b> 12 <b>development projects. They could be residential,</b> 13 <b>commercial. We do a lot of stormwater</b> 14 <b>management design.</b> 15 <b>We have done some inspections for</b> 16 <b>county governments. We have analyzed large</b> 17 <b>stormwater management facilities down to small.</b> 18 <b>We have done a lot of drainage</b> 19 <b>studies. We do sediment control plans, forest</b> 20 <b>conservation plans, wetland delineation, so we</b> 21 <b>are pretty much a full service firm for any type</b> 22 <b>of land development related.</b></p>
<p style="text-align: right;">98</p> <p>1 -- 2 (Whereupon James Witmer, sworn.) 3 DIRECT EXAMINATION 4 BY MR. RUHLEN: 5 Q If you could state your full name and 6 your primary occupation? 7 <b>A James William Witmer. I am a civil</b> 8 <b>engineer and land surveyor.</b> 9 Q Who is your employer? 10 <b>A I am self-employed.</b> 11 Q The name of your company is? 12 <b>A JNM Engineering.</b> 13 Q Mr. Witmer, how long have you been 14 employed as a civil engineer? 15 <b>A It has been about 16 to 18 years.</b> 16 Q Can you describe your professional 17 educational background? 18 <b>A Bachelor's degree and mostly</b> 19 <b>concentrated in environmental, land development,</b> 20 <b>biology. That's my education background.</b> 21 Q Any professional designations or 22 accreditations?</p>	<p style="text-align: right;">100</p> <p>1 Q Have you ever testified as an expert 2 before the Montgomery County Office of Zoning 3 and Administrative Hearings? 4 <b>A I have not.</b> 5 Q Are you familiar with the Montgomery 6 County Zoning Ordinance including its provisions 7 for uses and development in the AR Zone and for 8 conditional uses? 9 <b>A Yes.</b> 10 Q You are also familiar with the 11 Montgomery County zoning ordinances requirements 12 for conditional use approval? 13 <b>A Yes.</b> 14 Q And the Montgomery County Zoning 15 Ordinance requirements for variance approval? 16 <b>A Yes.</b> 17 Q Have you reviewed the 2005 only master 18 plan which applies to the property that is being 19 discussed today? 20 <b>A Yes, I have.</b> 21 Q You are otherwise familiar with the 22 Montgomery County Code's requirements for land</p>

<p>101</p> <p>1 development including provisions for forest 2 conservation and stormwater management? 3 <b>A Yes, sir.</b> 4 MR. RUHLEN: I would like to move that 5 Mr. Witmer be admitted as an expert in civil 6 engineering in site development and land use 7 planning. 8 HEARING EXAMINER: Any questions or 9 objection? 10 VOIR-DIRE EXAMINATION 11 BY MS. McINTURFF: 12 Q Have you ever been qualified as an 13 expert before any county? 14 <b>A I have not, no.</b> 15 Q Have you submitted any stormwater 16 management plans to any county that have been 17 approved? 18 <b>A Yes, I have.</b> 19 MS. McINTURFF: I don't have any 20 objection. Congratulations. It is your first 21 time. 22 --</p>	<p>103</p> <p>1 of these? 2 <b>A Yes, I did.</b> 3 Q Have you made a personal inspection of 4 the subject property? 5 <b>A Yes, I have.</b> 6 Q Can you describe the property and the 7 surrounding area, and if it helps for exhibits, 8 and I think it would be good if we went to 9 Exhibit 36. Mr. Witmer, there are several 10 slides here, beyond this and you can feel free 11 to get closer. 12 <b>A Can I get closer?</b> 13 HEARING EXAMINER: Absolutely. 14 <b>A This is Jeff's property. This is the 15 property we analyzed. We did the boundary, the 16 topo, throughout. It's kind of characteristic 17 of the area.</b> 18 <b>Single family detached home. They use 19 a shared driveway. Three years on a shared 20 driveway and then also what we are discussing 21 back here is the landscape contractors with the 22 two buildings and some parking area.</b></p>
<p>102</p> <p>1 -- 2 DIRECT EXAMINATION (continued.) 3 Q Mr. Witmer, can you describe your 4 responsibilities with regard to the conditional 5 use application CU 24-10 and to the variance 6 requests that are associated with it Variance A 7 6853? 8 <b>A Mr. Juneau contacted me when all this 9 first started. He had a violation and the 10 county was requesting more information regarding 11 the sediment control status of sediment control. 12 We were hired. What we have been 13 involved with is we did the site survey, 14 topographic, and boundary survey. 15 We completed a natural resources 16 inventory for the property. We had to analyze 17 the existing septic area and make adjustments to 18 the septic reserve area and we also prepared the 19 conditional use plan and the variance exhibits 20 as well.</b> 21 Q Did you attend and participate in the 22 Planning Board's hearing for the conditional use</p>	<p>104</p> <p>1 Q Have you reviewed the zoning map for 2 this property? I think it's actually in the 3 slides if we want to jump forward? 4 <b>A Yes, I have.</b> 5 Q What is the zoning? 6 <b>A AR, agricultural reserve.</b> 7 HEARING EXAMINER: The slide forward? 8 <b>A Forward.</b> 9 HEARING EXAMINER: How many pages? 10 <b>A It may be two pages. Do you have the 11 hard copy of that? It may help me.</b> 12 HEARING EXAMINER: Go back up, the 13 green. 14 Q So that's the zoning map; correct? 15 <b>A Correct.</b> 16 Q The property is in the AR Zone? 17 <b>A Yes.</b> 18 Q The green color indicates that the 19 surrounding properties are also in the area? 20 <b>A Correct. They are all consistent.</b> 21 Q Is a landscape contractor use allowed 22 in the AR Zone?</p>

<p>105</p> <p>1 A <b>Yes, it is permitted.</b></p> <p>2 Q How is it permitted?</p> <p>3 A <b>It is under conditional use.</b></p> <p>4 Q Does the master plan provide any</p> <p>5 specific guidance for development in this</p> <p>6 property?</p> <p>7 A <b>No, it does not. Nothing specific to</b></p> <p>8 <b>this property. It just references that AR Zone</b></p> <p>9 <b>which reinforces the permanent use of the</b></p> <p>10 <b>property.</b></p> <p>11 Q Does the zoning ordinance include</p> <p>12 development standards that would apply to the AR</p> <p>13 Zone into this property?</p> <p>14 A <b>Yes, it does.</b></p> <p>15 Q Is any new development proposed with</p> <p>16 this conditional use?</p> <p>17 A <b>No. So there would not really be</b></p> <p>18 <b>anything that we would be applying through there</b></p> <p>19 <b>because they said everything that is existing</b></p> <p>20 <b>there is going to be no exterior changes</b></p> <p>21 <b>proposed.</b></p> <p>22 Q The existing improvements to your</p>	<p>107</p> <p>1 Q Do you agree with the analysis in the</p> <p>2 staff report and its recommendations for the</p> <p>3 application?</p> <p>4 A <b>I do.</b></p> <p>5 Q Let's go through that in detail.</p> <p>6 Let's start with the criteria and zoning</p> <p>7 ordinance for conditional use approval. I'm</p> <p>8 going to ask you a series of questions based on</p> <p>9 your knowledge of the zoning ordinance and your</p> <p>10 familiarity with the project and your</p> <p>11 professional expertise.</p> <p>12 You have already testified that a</p> <p>13 landscape contractor is allowed in the AR Zone</p> <p>14 conditional use approval. Does the proposed</p> <p>15 conditional use application comply with the</p> <p>16 zoning ordinance standards and requirements for</p> <p>17 landscape contractor use?</p> <p>18 A <b>Yes, it does, although we have to get</b></p> <p>19 <b>some variance for the existing building and</b></p> <p>20 <b>parking in the back.</b></p> <p>21 Q We will get to the variance, but why</p> <p>22 don't we start with reviewing the specific</p>
<p>106</p> <p>1 knowledge have permits?</p> <p>2 A <b>Yes, they do.</b></p> <p>3 Q Did the driveway require any permits</p> <p>4 to your knowledge?</p> <p>5 A <b>It did not.</b></p> <p>6 Q If the conditional use is not</p> <p>7 approved, do those existing improvements remain?</p> <p>8 A <b>Yes, they are all permitted uses. It</b></p> <p>9 <b>all residence based on the residential zoning of</b></p> <p>10 <b>the property, the AG Zone of property they are</b></p> <p>11 <b>permitted, so regardless of whether the</b></p> <p>12 <b>conditional use is there or not.</b></p> <p>13 Q Did you have a chance to review the</p> <p>14 Planning Department Staff's Report for the</p> <p>15 conditional use and variance case?</p> <p>16 A <b>I did.</b></p> <p>17 Q Does the staff report assess the</p> <p>18 compliance of the proposed conditional use and</p> <p>19 variance with the applicable development</p> <p>20 standards as well as the relevant findings for</p> <p>21 approval?</p> <p>22 A <b>It does.</b></p>	<p>108</p> <p>1 provisions of the ordinance. This is going to</p> <p>2 be a little painful to go through these mostly</p> <p>3 because of how they named the sections.</p> <p>4 HEARING EXAMINER: I do have the staff</p> <p>5 report. I would look for testimony to</p> <p>6 supplement what is in the staff report.</p> <p>7 MR. RUHLEN: That's great actually.</p> <p>8 HEARING EXAMINER: Yes, based on your</p> <p>9 expertise, I know there were some statements</p> <p>10 made in the statement and justification.</p> <p>11 I want to hear from you what is not in</p> <p>12 the report. What's different. Or add on to.</p> <p>13 Does that make sense?</p> <p>14 A <b>I don't follow what you mean.</b></p> <p>15 HEARING EXAMINER: For example, it</p> <p>16 says number of vehicles, trailers, equipment</p> <p>17 operated and adequate parking on site.</p> <p>18 Essentially they just reiterate what</p> <p>19 is in the site plan. So tell me why that works.</p> <p>20 A <b>Yes.</b></p> <p>21 HEARING EXAMINER: I am looking for</p> <p>22 meat to go with my potatoes.</p>

<p>109</p> <p>1 <b>A Understood.</b></p> <p>2 Q I will guide you through to cover all</p> <p>3 the bases.</p> <p>4 HEARING EXAMINER: Yes. I don't want</p> <p>5 to throw you off the plan. I have this. I'm</p> <p>6 looking for you to add on to it.</p> <p>7 Q What we are focused on first is</p> <p>8 Section 59 355B for landscape contractor</p> <p>9 conditional uses. These are the requirements for</p> <p>10 conditional use that are specific in that part</p> <p>11 of the ordinance.</p> <p>12 The first one, what I would like to do</p> <p>13 is go through these, get your thoughts, and as</p> <p>14 the Hearing Examiner suggested, if you can give</p> <p>15 your response and explain.</p> <p>16 The first is in the agricultural rural</p> <p>17 residential and residential-type sounds, the</p> <p>18 minimum lot area is two acres. The Hearing</p> <p>19 Examiner may require a larger area of origin by</p> <p>20 size and characteristics of the inventory or</p> <p>21 operations. How large is this property?</p> <p>22 <b>A 4.62 acres.</b></p>	<p>111</p> <p>1 Q Yes. The conditional use area has</p> <p>2 portions that are within the 50 foot.</p> <p>3 <b>A Yes.</b></p> <p>4 Q That are outside of it?</p> <p>5 <b>A Do we have my exhibit?</b></p> <p>6 HEARING EXAMINER: I think it is both</p> <p>7 inside and outside.</p> <p>8 <b>A Yes. There are a couple.</b></p> <p>9 MR. RUHLEN: If we can advance we can</p> <p>10 go to the plan.</p> <p>11 <b>A Yes, the plan would show. The plan</b></p> <p>12 <b>would probably be better. Yes. So this dashed</b></p> <p>13 <b>line here that we have, that is the 50-foot</b></p> <p>14 <b>setback.</b></p> <p>15 <b>As you can see part of this existing</b></p> <p>16 <b>garage here is outside of that setback and then</b></p> <p>17 <b>also the existing parking and gravel, and then</b></p> <p>18 <b>there is the mulch bin here, but that's actually</b></p> <p>19 <b>being relocated. It's going to be relocated.</b></p> <p>20 Q Right, and so the interior center most</p> <p>21 garage is within the requirement setback?</p> <p>22 <b>A Correct, yes.</b></p>
<p>110</p> <p>1 Q It exceeds the two acre?</p> <p>2 <b>A Absolutely.</b></p> <p>3 Q The second requirement under this</p> <p>4 section, building and parking setbacks,</p> <p>5 including loading areas and other site</p> <p>6 operations are a minimum of 50 feet from any lot</p> <p>7 line. That is building and parking setbacks.</p> <p>8 Can you explain how this meets that standard?</p> <p>9 <b>A That is a part of the variance that we</b></p> <p>10 <b>are requesting.</b></p> <p>11 HEARING EXAMINER: We can come back to</p> <p>12 that.</p> <p>13 MR. RUHLEN: We will go back and</p> <p>14 describe the need for the variance when we get</p> <p>15 to that part.</p> <p>16 Q But otherwise, that side of the</p> <p>17 variance area there are areas of the conditional</p> <p>18 use site that are within the 50-foot setback?</p> <p>19 <b>A Well, aside from, you mean?</b></p> <p>20 Q If we can go back to that exhibit.</p> <p>21 <b>A You mean conforming to the 50-foot</b></p> <p>22 <b>setback; is that what you are asking?</b></p>	<p>112</p> <p>1 Q It's both within and out. We will get</p> <p>2 back to the variance. The next criteria under</p> <p>3 Section 59 355B, Number 3, the number of motor</p> <p>4 vehicles and trailers for equipment and supplies</p> <p>5 operated in connection with the contracting</p> <p>6 business are parked on site and must be limited</p> <p>7 by the Hearing Examiner to avoid an adverse</p> <p>8 impact on the abutting uses, adequate parking</p> <p>9 must be provided on site for a total number of</p> <p>10 vehicles and trailers permitted.</p> <p>11 Based on your analysis, does the site</p> <p>12 have adequate parking?</p> <p>13 <b>A It does, yes. We have shown plenty of</b></p> <p>14 <b>parking and actually in reality they are</b></p> <p>15 <b>probably not going to use all that parking that</b></p> <p>16 <b>they need because we provided parking for the</b></p> <p>17 <b>total number of employees, plus the company</b></p> <p>18 <b>vehicles at the same time and they are going to</b></p> <p>19 <b>be coming in and they are going to be moving</b></p> <p>20 <b>around the same time.</b></p> <p>21 <b>I think we have a total of 26 parking</b></p> <p>22 <b>spaces proposed which is far more than what we</b></p>

<p>113</p> <p>1 <b>would need.</b> 2 HEARING EXAMINER: That includes 3 vehicles for employees as well as the commercial 4 vehicles? 5 <b>A Correct, and in reality too, the</b> 6 <b>number of employees traveling there, I think</b> 7 <b>Jeff spoke to this is they carpool. They have a</b> 8 <b>van. They are actually going to need less</b> 9 <b>parking for the employee vehicles.</b> 10 HEARING EXAMINER: If they did not 11 have the van, is the parking adequate on the 12 site? 13 <b>A Yes, it is. Absolutely.</b> 14 Q The parking is designed for the worst 15 case based on the number of employees that they 16 would be limited to under their conditions of 17 approval? 18 <b>A Correct.</b> 19 Q The next criteria is sale of plant 20 materials, garden supplies, or equipment is 21 prohibited unless a contracting business is 22 associated with a nursery. Are you aware of any</p>	<p>115</p> <p>1 there any new buildings proposed with this 2 application? 3 <b>A No, none at all.</b> 4 HEARING EXAMINER: Basically, but for 5 the setback variances, it meets the minimum 6 requirements under the development standards? 7 <b>A Yes, it does.</b> 8 Q Turning to the required findings for 9 conditional use approval, this is Section 10 7.3.1.E. Let me briefly ask you some questions 11 on these one by one. 12 Are there any previous approvals that 13 apply to the property or impose conditions that 14 require compliance? 15 <b>A No, there are not.</b> 16 Q Is it your opinion that the 17 conditional use satisfies the requirements of 18 the AR Zone, the use standards under 59 3, and 19 to the extent of the Hearing Examiner finds it 20 necessary to ensure compatibility meets the 21 intent of the general requirements of 59, 6? 22 <b>A Yes, it does.</b></p>
<p>114</p> <p>1 sales of plant materials proposed with this 2 application? 3 <b>A No. I haven't seen any evidence of</b> 4 <b>that, existing or based on discussions with</b> 5 <b>Jeff, there is going to be no on site sales at</b> 6 <b>all.</b> 7 Q The next criteria the Hearing Examiner 8 may regulate hours of operation and other on 9 site operations to avoid adverse impacts on a 10 abutting uses. Are you aware of the hours of 11 operation that are proposed? 12 <b>A Yes, 6:45 AM to 6 o'clock PM is what</b> 13 <b>is proposed. I think that sounds great.</b> 14 Q Turning to the general development 15 requirements of the zoning ordinance for the AR 16 Zone, does the proposed application comply with 17 the applicable development standards? 18 <b>A It does. Like I said before, we are</b> 19 <b>requesting the variance part of this, but for</b> 20 <b>the most part everything else it does meet the</b> 21 <b>requirements for the zoning.</b> 22 Q We have asked Mr. Juneau this, but are</p>	<p>116</p> <p>1 Q 59, 6 has a number of things in it. 2 Let's get your thoughts on these one by one so 3 we don't overlook something. Start with access. 4 Can you describe how access is? 5 <b>A Yes, like we showed on the one slide,</b> 6 <b>the access is a shared driveway within a shared</b> 7 <b>easement. Jeff has the right to use and has been</b> 8 <b>using for a while. It leads out to Damascus Road</b> 9 <b>and there are no new improvements proposed for</b> 10 <b>an access. So what is there today is what is</b> 11 <b>going to be utilized in the future.</b> 12 Q The one access point. 13 <b>A Correct. I don't know if you can</b> 14 <b>slide it over. This hatched area here, it is</b> 15 <b>hard to see, but this is the existing gravel</b> 16 <b>area and through here, that is the existing</b> 17 <b>driveway within the easement.</b> 18 HEARING EXAMINER: Remind me. I think 19 the whole drive was gravel; is that right or is 20 that part of it paved? 21 <b>A The residential portions are paved.</b> 22 <b>Here where there is no patching, that is all and</b></p>

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1 **that is gravel.**  
2 HEARING EXAMINER: Thank you.  
3 Q Parking, queuing and loading would be  
4 the next thing under Article 59, 6. You have  
5 spoken to parking. I don't know if we need to  
6 go back to that. Mr. Driban testified about  
7 sort of the queuing and loading issues.  
8 MR. RUHLEN: I will move on to the  
9 next one, unless there are any questions about  
10 parking.  
11 HEARING EXAMINER: No. I don't think  
12 that you testified to the spaces even without  
13 the van. Mr. Juneau talked about starting and  
14 unstarting the vehicles, so there is a queuing  
15 with the use. I am confirming that, right?  
16 **A Yes, no queuing, no.**  
17 Q Open space and recreation.  
18 **A That is not required.**  
19 Q Lighting. Mr. Juneau spoke to the  
20 existing lights in that there were no additional  
21 lights proposed with the conditional use. Were  
22 you here when we went through that?

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1 **A Yes. There is no new lighting. They**  
2 **are just going to be existing lighting.**  
3 HEARING EXAMINER: Let me ask a  
4 question about the lighting. Mr. Juneau showed  
5 the lighting on the front of the outbuilding  
6 structure as facing back towards.  
7 Do you know how far that travels?  
8 Could you tell me a little bit about what that  
9 would be along the lot lines?  
10 **A I can't. I don't get in front of**  
11 **metrics. There hasn't been a photometric study**  
12 **done, but I can tell you that the requirements**  
13 **are a half a foot candle at the property line.**  
14 **So given the landscaping that is**  
15 **already there, and the proposed fencing, my**  
16 **professional opinion is I don't think lighting**  
17 **would be an issue, but if you need something**  
18 **more concrete.**  
19 HEARING EXAMINER: Then my question is  
20 he testified that they were 3,000 lumens, I  
21 think, or 4,000 lumens facing one way. How does  
22 a lumen equate to a foot candle?

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1 **A I couldn't tell you.**  
2 HEARING EXAMINER: Then I might ask  
3 for more anecdotal testimony regarding lighting  
4 from Mr. Juneau and I might ask the same from  
5 Mr. Lyles.  
6 MR. RUHLEN: Sure.  
7 Q Moving on. The next one would be  
8 screening. I think you were here when we were  
9 talking about Mr. Juneau's plans for the fence.  
10 Are you familiar with Section 6.5.3 of  
11 the zoning ordinance that speaks to screening  
12 requirements?  
13 **A Yes.**  
14 Q You have heard that Mr. Juneau intends  
15 to provide the six-foot tall fence along  
16 portions of the southern and the western  
17 property lines. What are your thoughts about  
18 that? In your opinion, do you think that a  
19 six-foot tall fence would be effective?  
20 **A Honestly, I feel that the six-foot**  
21 **fence is a better option for a lot plans that I**  
22 **have done. I don't know if this is relevant, but**

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1 **for landscaping we try to utilize fencing where**  
2 **we can.**  
3 **It is a permanent barrier in terms of**  
4 **when you have vegetation depending on the season**  
5 **sometimes if it is a deciduous tree, sometimes**  
6 **if you don't have leaves on the tree, the sight**  
7 **line you can see through to the property, but if**  
8 **you have a solid six-foot fence, then as long as**  
9 **it is maintained then you are screening sound,**  
10 **you are screening light, and also the visual**  
11 **aspects of it. Honestly, I think a fence is**  
12 **probably the best option.**  
13 HEARING EXAMINER: Tell me a little  
14 bit more about the fence in the proposed  
15 construction of the fence. Is it wood, board on  
16 board or is it that fancy white plastic stuff?  
17 MR. RUHLEN: Mr. Juneau probably could  
18 answer that.  
19 HEARING EXAMINER: Sorry, Mr. Juneau  
20 we might have to bring you back up.  
21 Q In your opinion, would that proposal  
22 for fencing meet the intent of the screening

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1 requirements in the zoning ordinance?  
2 **A Yes.**  
3 Q Outdoor display and storage. Can you  
4 speak to those issues with respect to the  
5 conditional use?  
6 **A No outdoors display because there is**  
7 **no on site sales. The storage areas as we**  
8 **talked about on the bins, the mulch bins, and**  
9 **also the fuel tanks, they are going to be moved**  
10 **to be in conformance with the setback**  
11 **requirements for the vehicle setback so I can**  
12 **show you here again.**  
13 Q It is difficult to see. If you could  
14 call out.  
15 **A Yes. So right here is the existing**  
16 **mulch bin. The existing tanks are right here. We**  
17 **don't show them on the plan because typically we**  
18 **just show more permanent structures on plans.**  
19 **We have relocated the bin or we are**  
20 **just going to relocate is going to be putting**  
21 **the bin up here and then the fuel tanks are**  
22 **going to be placed behind the bin.**

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1 Q What about signage? Is there any  
2 signage proposed?  
3 **A No signage. We realize that if**  
4 **signage is in the future, I don't think they**  
5 **would need any, but if they did we would have to**  
6 **go through it and get required permits for that**  
7 **through DPS.**  
8 Q You testified that you reviewed the  
9 master plan with respect to this property. In  
10 your opinion, does this conditional use  
11 substantially conform with the plan?  
12 **A Yes.**  
13 Q Does the plan have anything specific  
14 to say about this property?  
15 **A In terms of?**  
16 Q Site specific recommendations?  
17 **A Let me look through my notes. If you**  
18 **are talking in terms of the proposed use, the**  
19 **landscape contractors, they are allowed as a**  
20 **conditional use through the special exception.**  
21 **Is that what you're asking?**  
22 Q Yes. Did the master plan have any

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1 specific recommendations for how this site  
2 should be developed?  
3 **A No. It just refers back to the AR**  
4 **Zone. It is not something specific to this.**  
5 Q Right. Continuing with these  
6 findings, and I am now referring to Section  
7 7.3.1.E.D., will the conditional use be, in your  
8 opinion, in harmony with the general character  
9 of the neighborhood?  
10 **A Yes, it would. There are other**  
11 **surrounding properties that have the same type**  
12 **uses, AG uses, with an AG-type business. There**  
13 **are outbuildings, fuel tanks, a barn, a shed,**  
14 **stuff like that. I think it is characteristic**  
15 **with the zoning and the use in the area, yes.**  
16 HEARING EXAMINER: Is there an exhibit  
17 that was submitted about neighboring uses?  
18 MR. RUHLEN: Yes. We can go to that.  
19 HEARING EXAMINER: Can we look at  
20 that?  
21 MR. RUHLEN: Yes. This would be  
22 Exhibit 40. Maybe if we start on this slide

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1 that is right here. We have seen Mr. Juneau's  
2 property.  
3 Q Mr. Witmer, these are other  
4 surrounding areas. There is a location map in  
5 the top left corner.  
6 **A It is hard to see.**  
7 Q Mr. Juneau's is in the top right. Are  
8 these images of some of the other properties  
9 that would be in this neighborhood area?  
10 **A Yes.**  
11 Q Then we can go forward just to see  
12 some examples. These are properties directly to  
13 the south. Going forward again. This Mr. Lyles'  
14 property. When you have been in the area, that  
15 is to the south of Mr. Juneau's property?  
16 **A Yes. Jeff's property is right here.**  
17 **This is actually the back of this building here,**  
18 **just below kind of downhill from here.**  
19 Q If we go forward, these are the  
20 operations on that property?  
21 HEARING EXAMINER: Is this is on Mr.  
22 Lyles' property or the neighboring property?



<p>125</p> <p>1 MR. RUHLEN: This is on Mr. Lyles 2 which is across that property line and it is up. 3 <b>A Yes, it's characteristic.</b> 4 MR. RUHLEN: We can keep going, I 5 think. Just more images. 6 Q Are these also types of conditions 7 that are out there? 8 <b>A Correct, yes, they are. They are very</b> 9 <b>consistent and also this, yes. I don't think</b> 10 <b>Jeff has the dump trucks.</b> 11 Q Right, these are offsite. These are 12 in the neighborhood. 13 <b>A Yes.</b> 14 HEARING EXAMINER: It is in the 15 neighborhood as identified by staff? 16 MR. RUHLEN: Yes. This is actually 17 what staff identified as the home occupation 18 use. We can get to this one momentarily. 19 HEARING EXAMINER: Do you want to 20 leave it up or do you want to go somewhere else? 21 MR. RUHLEN: I think we can leave it 22 up here so that we are ready to talk about it if</p>	<p>127</p> <p>1 commercial use, but I do know that we have some 2 specific questions from the hearing examiner 3 about water and sewer. This might be the 4 appropriate time to explain what you looked at 5 for that. 6 <b>A Yes. So the property is served by</b> 7 <b>private well and septic. When we first started</b> 8 <b>this, that was one of the things we looked at.</b> 9 <b>We looked at the existing size of the</b> 10 <b>existing septic area. We had to adjust the</b> 11 <b>septic area based on the building location</b> 12 <b>slightly, and then with that, we also wanted to</b> 13 <b>take into account the number of employees and</b> 14 <b>then using facilities on site.</b> 15 <b>I jotted in my notes down here. This</b> 16 <b>is on one of the plans. I am reading from my</b> 17 <b>notes.</b> 18 MR. RUHLEN: If it would be helpful. 19 This will take us to a different file, but we 20 can put up the note back to the conditional use 21 plan, 36 again, and this is page 4. 22 <b>A The top left.</b></p>
<p>126</p> <p>1 we want to keep addressing these requirements, 2 we can finish this part. 3 Q Going back to the list of requirements 4 starting again with 7.3.1.E.E, will the 5 conditional use increase the number intensity or 6 scope of conditional uses in the area? 7 <b>A It is consistent with it. It is not</b> 8 <b>going to have any effect. The use of Jeff's</b> 9 <b>property has been there for decades. It is not</b> 10 <b>going to change based on this conditional use</b> 11 <b>and it will remain as it is.</b> 12 Q The next finding, will a conditional 13 use be served by adequate public services and 14 facilities, including schools, police and fire 15 protection, water, sanitary sewer, public roads, 16 storm drainage. 17 Let's try to break this one down a 18 little bit. Did the Planning Board take a look 19 at this requirement in their analysis? 20 <b>A Yes, and they found everything was</b> 21 <b>adequate.</b> 22 Q Schools would not be impacted by a</p>	<p>128</p> <p>1 MR. RUHLEN: If we can get an 2 enlargement in the notes. This is going to go 3 to what Mr. Witmer can explain. Is that septic 4 system note? 5 <b>A Right below the general notes.</b> 6 HEARING EXAMINER: Make that a little 7 bigger. That is better for me. 8 <b>A I will summarize. We looked at the</b> 9 <b>existing system. I had some discussions with</b> 10 <b>the well and septic section and they were saying</b> 11 <b>based on the use they would need 10 gallons per</b> 12 <b>day.</b> 13 <b>We have to assume 10 gallons per day</b> 14 <b>per employee which would equate to 200 gallons</b> 15 <b>per day. Based on that we analyzed the existing</b> 16 <b>septic trenches and septic system and we found</b> 17 <b>out that we would need a total of 708 linear</b> 18 <b>feet of reserve area for the septic and we</b> 19 <b>actually have 1,050. So it is well oversized</b> 20 <b>for what we need.</b> 21 <b>With the additional employees, the</b> 22 <b>existing septic system should be far adequate</b></p>

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1 **for what they are proposing.**  
2 Q To tie that up. You reviewed the  
3 recommendations, the conditions of the Staff  
4 Report of the Planning Board, and one of those,  
5 I believe, says the employees will be required  
6 to have access to a bathroom in the house when  
7 on site.  
8 **A Correct.**  
9 Q This gets to, in your opinion, there  
10 is adequate capacity in the house?  
11 **A Yes, absolutely.**  
12 Q For employees to utilize the restroom.  
13 **A Absolutely. There were also some**  
14 **notes on there, remember, about the existing**  
15 **road, but that's already a build out 80-foot**  
16 **right of way. So there wouldn't be any**  
17 **requirements for improvements.**  
18 Q Right, going back to the criteria if  
19 it is served by adequate public facilities and  
20 services?  
21 **A Correct, yes.**  
22 Q What is the water classification and

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1 the sewer classification?  
2 **A W6S6 which is private well septic.**  
3 Q Next criteria 7.3.1.E.G, will a  
4 conditional use avoid causing harm to the  
5 neighborhood due to inherent or non-inherent  
6 adverse impacts?  
7 **A Yes. I mean the use is compatible**  
8 **with adjoining properties. It has already been**  
9 **there for years. I don't think any conditional**  
10 **use is going to change the character. It is not**  
11 **going to cause any harm or any issues with the**  
12 **property.**  
13 Q Did the Planning Board discuss the  
14 inherent and non-inherent effects issue when we  
15 were before them?  
16 **A Yes, they did.**  
17 Q On the issue of inherent effects, do  
18 you recall that discussion and what the staff  
19 report might have listed?  
20 **A Yes. Let me go through that. Yes,**  
21 **vehicle trips, employee parking, noise, and**  
22 **odors associated with the trucks, yes, those**

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1 **were the big things, what they found as it**  
2 **relates to their recommendation was that**  
3 **contractor use would not cause harmful traffic,**  
4 **noise, odors, dust elimination, and there would**  
5 **be sufficient parking.**  
6 **I agree with that.**  
7 Q That is on the issue of inherent  
8 adverse effects?  
9 **A Correct, yes.**  
10 Q What about non-inherent adverse  
11 effects, do you recall what the Planning Board  
12 identified with respect to that?  
13 **A Stormwater.**  
14 Q Did the Planning Board provide a  
15 recommendation for a condition to address the  
16 stormwater?  
17 **A Yes. They addressed the stormwater or**  
18 **at least analyzed it to figure out what the**  
19 **solution would be to analyze what the downstream**  
20 **impacts might be.**  
21 MR. RUHLEN: Now is the time because I  
22 think this may take a bit of discussion, but we

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1 would be happy to talk about the stormwater in  
2 more detail.  
3 HEARING EXAMINER: Yes.  
4 MR. RUHLEN: In our proposed plan for  
5 addressing that recommendation.  
6 HEARING EXAMINER: That is perfectly  
7 fine. This is a good spot for it.  
8 MR. RUHLEN: We are going to jump  
9 ahead a bit and we will come back. This is the  
10 last criteria in that section and then we can  
11 turn to the variance after we address the  
12 stormwater.  
13 HEARING EXAMINER: Do you want to go  
14 to a particular exhibit?  
15 **A Let's start with the overall drainage**  
16 **area.**  
17 Q Exhibit 36 at page 6, I think is where  
18 we want to start.  
19 **A Yes.**  
20 MR. RUHLEN: I am going to ask you  
21 some questions on this issue of the Stormwater  
22 Management and the Planning Board recommended

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1 condition.

2 Q Have you conducted, Jim, an analysis

3 of the drainage patterns on the property and on

4 the surrounding properties?

5 A Yes, I have.

6 Q We have up here a drainage area map.

7 Is this something you prepared?

8 A I did.

9 Q In addition to this, did you prepare a

10 drainage area analysis that I think is included

11 as Exhibit 34A?

12 A Yes.

13 Q You also prepared a Stormwater

14 Management plan that is in the record as Exhibit

15 34B?

16 A I did.

17 Q We may need to move to all those, but

18 we can start here. Some of them are in this

19 slide deck. Firstly, is the drainage area

20 analysis, and is the stormwater management plan

21 required as part of this conditional use

22 application?

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1 A It is not. A lot of this was just

2 there was some current concern about drainage. I

3 was requested to prepare this study to see.

4 Q Chapter 19 of the county code which

5 pertains to stormwater did not require a

6 stormwater management plan for this application?

7 A No, it didn't.

8 Q And the zoning ordinance provisions

9 for conditional use materials, they didn't

10 require one either because no exterior changes

11 were proposed?

12 A Yes, there is no proposed development.

13 There is nothing that would trigger a storm

14 automation requiring regulatory requirements.

15 Q What was the purpose of preparing the

16 drainage area analysis and the plan?

17 A Jeff requested that I do it.

18 Q This is also to speak to the Planning

19 Board's recommended conditions?

20 A Yes.

21 Q There was also testimony in the record

22 from Mr. Lyles about conservative stormwater?

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1 A Correct.

2 Q Why don't you describe for us with any

3 exhibit that you need us to turn to, we can, but

4 why don't you describe the methodology of your

5 analysis of the drainage area.

6 We have your full report in the

7 exhibits, so if there is anything we need from

8 there we can do that.

9 A This is the overall drainage area map.

10 It is actually a little difficult to see. When

11 I started the study, the first thing we had to

12 do was to identify locations. We call it a study

13 point. Where is the water going to?

14 That is the biggest concern. Where is

15 the water going to? Where is the impact? These

16 dashed, or the little thicker dashed lines are

17 drainage areas and there are several drainage

18 areas. Here is Jeff's property right here.

19 Here are the two garages. Here is the

20 house. Here is the driveway. Part of our study

21 is to say where is the affected area that Jeff's

22 property could have on anything downstream or

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1 anything within the drainage area and we

2 identified this was our first study point.

3 This is the location and actually a

4 berm that was constructed along Mr. Lyles'

5 property years ago, what I was going back to, so

6 our starting point was right here. This is a

7 low point.

8 All the drainage from these

9 surrounding properties all converged right at

10 this point or a little bit lower in Mr. Lyles'

11 property.

12 There was a berm constructed right

13 here years ago that dams up some of the water.

14 This was built offsite. Jeff did not build it.

15 This was built offsite and I think is also some

16 of the problems. We chose that as our first

17 study point for our analysis.

18 Based on that, what we do is we will

19 take cover types, whether they be houses, crop

20 fields, grass, woods, and then soil types based

21 on NRCS and based on that with slopes we will

22 run an analysis to figure for different design

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1 storms, design storms meaning a one-year event,  
2 meaning, a storm that would statistically happen  
3 once a year and in our analysis we also looked  
4 at the one year, two year, and the ten year.  
5 When we did our analysis we did it in  
6 several ways. First, we looked at the property  
7 as it was before it was developed. There was  
8 nothing there before when this was all just  
9 grass or a field.  
10 One of my analyses looked at it  
11 because with one of the old images, it almost  
12 looked like row crops that were planted there  
13 and so there is actually a runoff curve number  
14 for a baseline.  
15 We looked at that first and we figured  
16 out that that is our baseline to say what was it  
17 before anything was out there?  
18 After that, we analyzed the property  
19 based on the development of Jeff's property, the  
20 neighboring properties, the properties over here  
21 where some work was done on Mr. Lyles' property,  
22 and then the changes, meaning, the changes in

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1 use from the grassed area to the paved areas.  
2 Basically what that did is that gave  
3 us a baseline from existing conditions to today  
4 what the conditions would be to that point.  
5 Does that answer your question?  
6 Q Yes. How many total acres are in this  
7 overall range area?  
8 A That is 13.42 acres.  
9 Q You showed us Mr. Juneau's property,  
10 but because I think it is helpful, and it's hard  
11 for me to understand, the outer boundaries of  
12 the whole drainage area where are they on that  
13 image?  
14 A Right here, like I said, this is  
15 Jeff's property.  
16 Q Yes.  
17 A The drainage areas, and there are  
18 multiple drainage areas, so it starts way off  
19 here offsite and the drainage area comes through  
20 here all the way around, through Mr. Lyles'  
21 property, and then comes back around here, all  
22 the way around Jeff's, and then through also the

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1 adjoining property over here.  
2 In terms of impacts to the study  
3 point, Jeff's property is just a small portion  
4 of what actually gets.  
5 HEARING EXAMINER: How is that chosen?  
6 How do you determine the drainage area?  
7 A Just the existing contours.  
8 Q The contours are the jagged lines that  
9 are running through, that is representative of  
10 the grade to the whole area, right?  
11 A Correct, yes.  
12 Q The higher points of those contours  
13 are where?  
14 A Right here. This would be your high  
15 point on this end, and this one over here on  
16 Jeff's property, this would be your high point  
17 right along Damascus Road and then also there is  
18 a drainage divide right here.  
19 You can see from those points, and we  
20 follow the high point here, right here, there is  
21 almost like a natural ridge line that comes  
22 through here and goes around.

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1 The thing is, the grades are what they  
2 are. It is something that the contours, they  
3 might have been adjusted slightly, but this  
4 drainage area is probably consistent with how it  
5 has always been.  
6 Q When it rains, water hitting the  
7 uphill parts, runs, if it's a substantial rain  
8 event, the water flows?  
9 A Correct.  
10 Q The water flows in which direction?  
11 A This is hard to see this. This is a  
12 called a TC, timer concentration. These are  
13 flow paths. We have separate drainage areas.  
14 The drainage area, this isn't part of  
15 Jeff's property, but the drainage area, not  
16 including Jeff's property, is 6.24 acres, and it  
17 has a time and concentration that runs, and you  
18 can see it right down through here, that leads  
19 right to that study point.  
20 I keep going back to the study point  
21 because that's our analysis. That is where we  
22 are trying to figure out what the discharge

<p style="text-align: right;">141</p> <p><b>1 rates are at that point.</b> <b>2 Q Right. I see it on there, close to</b> <b>3 the study point, by Mr. Lyles' house with the</b> <b>4 complaint on the flooding, is that in close</b> <b>5 proximity?</b> <b>6 A Yes. This is the house right here.</b> <b>7 This is Mr. Lyles' house right there.</b> <b>8 Q Close to the study point?</b> <b>9 A Correct. It is actually just uphill.</b> <b>10 That is the tough part with this analysis.</b> <b>11 Sometimes with our designs, our analysis, you</b> <b>12 can kind of figure out solutions and things to</b> <b>13 do and what to do.</b> <b>14 The problem here is Mr. Lyles' house</b> <b>15 is right here, and if you look, he gets drainage</b> <b>16 from three sides. It is not just Jeff's</b> <b>17 property, but it is this whole other side down</b> <b>18 here. You can see if you have ever read</b> <b>19 concurs before, this is a contour here, and you</b> <b>20 follow this V and this V is the low point.</b> <b>21 That's the channel. Well, I shouldn't</b> <b>22 say channel. That is a drainage path. Under</b></p>	<p style="text-align: right;">143</p> <p><b>1 Q What is the area that is in Mr.</b> <b>2 Juneau's property?</b> <b>3 A About 3.94 acres.</b> <b>4 Q Did you happen to look at that as a</b> <b>5 percentage of the overall area?</b> <b>6 A I think it is roughly 30% to 34%</b> <b>7 somewhere around that number.</b> <b>8 Q How would you describe the impact of</b> <b>9 the existing improvements on the property for</b> <b>10 stormwater runoff and drainage in that portion</b> <b>11 of the site?</b> <b>12 A In terms of this portion of the site,</b> <b>13 if you construct anything whether it's a patio,</b> <b>14 pool, any new impervious area, there is going to</b> <b>15 be a difference in runoff.</b> <b>16 But analyzing this drainage area as a</b> <b>17 whole the contribution from Jeff's property in</b> <b>18 my opinion is somewhat minor just because of the</b> <b>19 drainage area.</b> <b>20 It would be different if it was just</b> <b>21 Jeff's property drained to one point, but it is</b> <b>22 such a large drainage area, once you start</b></p>
<p style="text-align: right;">142</p> <p><b>1 existing conditions, 20 years ago, whenever,</b> <b>2 this was always where that drainage wanted to</b> <b>3 go.</b> <b>4 Q This may be hard to see on this plan,</b> <b>5 if you need a different exhibit on the screen,</b> <b>6 I'm sure we can put it up.</b> <b>7 Were you able to identify the portion</b> <b>8 of the overall drainage area that would fall</b> <b>9 within Mr. Juneau's property?</b> <b>10 A Yes. There is a site only drainage</b> <b>11 area.</b> <b>12 Q It may be in your analysis. We have</b> <b>13 the stormwater plan. We have your full analysis</b> <b>14 package. It would be in your hydrology report.</b> <b>15 A It might. I could still use this.</b> <b>16 Q That is the variance plan.</b> <b>17 A You can see it up here. All the</b> <b>18 numbers are here, but you can see up here.</b> <b>19 There are 3.94 acres.</b> <b>20 Q Can we zoom in on that?</b> <b>21 A If you can see that little area right</b> <b>22 there.</b></p>	<p style="text-align: right;">144</p> <p><b>1 getting the larger storms, large enough even a</b> <b>2 pervious area runs off, so even grass, you get</b> <b>3 summer storms, even grass area you are going to</b> <b>4 get some runoff.</b> <b>5 That's what we are fighting. This</b> <b>6 isn't an issue of just an impervious area. It</b> <b>7 has a lot to do with drainage area as well.</b> <b>8 Just the size of drainage area.</b> <b>9 Q To the extent that the improvements</b> <b>10 would have an effect, are there other</b> <b>11 improvements in the drainage area beyond Mr.</b> <b>12 Juneau's property?</b> <b>13 A Absolutely. If we can scroll down a</b> <b>14 little bit. A portion of this property, and I</b> <b>15 will go over a couple of them, but a portion of</b> <b>16 this property right here it's row crop and</b> <b>17 surprisingly row crops there is a fairly</b> <b>18 substantial amount of runoff that comes off of</b> <b>19 those just because they have been tilled,</b> <b>20 compacted and tilled over the years.</b> <b>21 That actually has a significant effect</b> <b>22 and then also, right here, the other section of</b></p>

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1 Mr. Lyles' property, where I think we saw those  
2 pictures with the gravel and everything like  
3 that, that also is going to produce runoff, it's  
4 going to drain out through there. There is also  
5 some houses and then the shared driveway and  
6 other contributing factors to that as well.  
7 Q Even though it is the case that there  
8 is a larger drainage area that contributes to  
9 the overall runoff situation, did you prepare a  
10 stormwater management facility plan for Mr.  
11 Juneau's property?  
12 A I did.  
13 Q What would the intent of that plan be?  
14 A I think I stressed this in my report.  
15 We can mitigate what is on our site, like Jeff's  
16 site, I say we, but Jeff's site, we can mitigate  
17 for any new impervious or existing pervious area  
18 one that.  
19 It is not a requirement, but it's  
20 something that can help Jeff and that is what we  
21 will do. If we can scroll down a little bit?  
22 If we could go to the stormwater management

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1 plan.  
2 Q I think it's on this slide. I think  
3 it's the next page.  
4 A This is my proposed stormwater  
5 management. When I looked at this, I looked at  
6 this from a quantity because the current  
7 regulations for new development have a quality  
8 and quantity component. This is more of just a  
9 volume and runoff-type thing.  
10 We look at this in terms of the  
11 quantity of water. When we first started  
12 talking about this when we do our analysis, we  
13 look at the land cover types. We look at soils.  
14 We look at the slopes, the drainage areas to  
15 figure out what the discharge is and we  
16 calculate that in cubic feet per second.  
17 Based on an analysis we came up with a  
18 raw numbers that would be for Jeff's property as  
19 it is today and then Jeff's property as if there  
20 was no contractor use there.  
21 Based on the difference of those two  
22 discharges in CFS, we designed the stormwater

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1 management device. It's a detention facility.  
2 It is not a retention. So it doesn't retain  
3 water. It just detains it.  
4 Temporarily detains the water usually  
5 over 24 to 48 hours. They call it a drawdown.  
6 It will release the water so you don't have to  
7 worry about mosquitoes or any other pests or  
8 anything like that.  
9 Based on this facility and the  
10 drainage we were able to get there, we were  
11 actually able to reduce the runoff from Jeff's  
12 property to a condition equivalent to this being  
13 grass or woods.  
14 It would be as we would retain enough  
15 storage in here to where the runoff conditions  
16 would be similar to if it was just Jeff's house  
17 here, the driveway, and grass.  
18 Q In your opinion, and you have already  
19 testified that you are familiar with the  
20 Planning Board's recommended conditions, in your  
21 opinion, does this plan address the Planning  
22 Board's recommendation to provide stormwater for

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1 the existing development on site?  
2 A It exceeds it, yes.  
3 Q To be clear. This plan is limited  
4 just to Mr. Juneau's portion of this drainage  
5 problem. Correct?  
6 A Yes. I will go back to that. That is  
7 the kind of the issue here where Mr. Lyles'  
8 property is, I call it where he is in almost the  
9 bottom of a bowl on three sides.  
10 All the water around here is going to  
11 go to one point. It doesn't matter what  
12 stormwater management Jeff does here, water  
13 still going to get to this point.  
14 There is a large contributing drainage  
15 area over here, six acres, and then also some  
16 Mr. Lyles' property here and some property over  
17 here that are going to continue to drain there  
18 uncontrolled. There is nothing we can do about  
19 that.  
20 It's not on Jeff's property. It is not  
21 contributed to by Jeff's property. It is just  
22 what it is. We can manage on site what Jeff's

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1 contribution is to this. We can do a design for  
2 this. It is over and above what is required.  
3 We can do it, but the thing is that  
4 they is still going to be water. There is still  
5 going to be a problem not because of Jeff's, but  
6 just because of where the house is located,  
7 where the property is located, in relation to  
8 the drainage area, and also too, I mentioned  
9 before there is the existing berm that exists  
10 right here and some of the pictures you can see  
11 there is ponding water that is back here which  
12 sits for days or weeks.  
13 That is a big part of the problem.  
14 When you detain, or retain water,  
15 there should be a design. It should be  
16 engineered. You have to figure out if I'm going  
17 to retain that water, how is that going to  
18 affect drainage? How is it going to affect  
19 storage? Are there going to be any pest  
20 problems?  
21 I know there was some discussion about  
22 mosquito issues. I would say a lot of that will

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1 be contributed because that water just sits  
2 there.  
3 Q Could we go to Exhibit 40 again, and  
4 this is where we had the photo of the berm and  
5 that might be helpful.  
6 A Yes.  
7 Q Mr. Witmer, is this berm condition  
8 that you are talking about?  
9 A Yes, it is.  
10 Q Would you orient us to it?  
11 A Yes. Here is the berm right here.  
12 The upside, the storage part of the berm, or I  
13 should say the uphill side of the berm is over  
14 here and that is actually not on Jeff's  
15 property. That is actually on Jeff's neighbor's  
16 property.  
17 Q The image on the left, to the right is  
18 the uphill portion of the land and to the left  
19 is descending down into the downhill portion?  
20 A Correct, you got it.  
21 Q The berm is the green?  
22 A Yes.

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1 Q That we see?  
2 A Yes. It looks like it is partially  
3 mowed and partially has natural vegetation on  
4 it.  
5 Q I would like to ask you, in the record  
6 as Exhibit 26, there is an email. It is  
7 identified as Exhibit 28, correspondence from  
8 Oscar Lyles sent to Planning Board received  
9 after the February 16, 2024 staff import.  
10 Have you reviewed that exhibit?  
11 A I have.  
12 Q In that exhibit there is a string of  
13 correspondence in one portion of this, and in  
14 particular, there is an email dated January 30,  
15 2024, from Linda Kowbilsky. She was the  
16 Division Chief of Land Development in the  
17 Montgomery County Division, Montgomery County  
18 Department of Permitting Services, did you view  
19 that portion?  
20 A Yes.  
21 Q Is this email from Ms. Kowbilsky says,  
22 it is it's to Mr. Lyles, it says "The berm

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1 constructed approximately nine years ago is  
2 blocking the natural flow of water and creating  
3 the issues you have with mosquitoes and  
4 potential contamination with your well."  
5 "We strongly recommend the berm be  
6 removed or relocated and additional grading be  
7 performed with guidance from a design  
8 professional."  
9 Do you agree with that?  
10 A Absolutely. Yes, that's dead on. I  
11 want to stress, too, that the issue with the  
12 water, in my opinion, It's not a volume problem.  
13 It is a conveyance problem.  
14 When creating a berm on the property,  
15 you are creating an uncontrolled situation. If  
16 you can convey water, that is why those  
17 properties will have a storm drain system, a  
18 swale system, and it will be engineer designed  
19 so that when it rains, the water comes through,  
20 and you move it quickly and safely as possible  
21 to its discharge point to a stream headwaters,  
22 something like that.

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1 **But when you have a condition where**  
2 **you build a berm or something that is going to**  
3 **dam the water, there is no way to tell what's**  
4 **going to happen until it starts happening, but**  
5 **in this case, it is ponding, it is creating**  
6 **issues, it's back watering on the nearest**  
7 **property. I know it is causing some of the trees**  
8 **and vegetation back here to die because it is**  
9 **inundated.**  
10 **Obviously there is the mosquito**  
11 **problem. Any type of stormwater management**  
12 **device that is utilized today under the current**  
13 **regulations, you can't have the water ponding**  
14 **over this 24 or 48 hour period.**  
15 **That is a state standard and is the**  
16 **reason because of that, the reason they have**  
17 **that regulation is because of past problems with**  
18 **stagnation.**  
19 Q Thank you for doing a very thorough  
20 job of running through that. I imagine we will  
21 get back to still water. I believe you said  
22 this, but just to reiterate.

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1 In your opinion, the proposed  
2 stormwater management facilities for Mr.  
3 Juneau's property are sufficient to address the  
4 Planning Board's recommended condition to  
5 provide stormwater management for the existing  
6 development?  
7 A **Absolutely.**  
8 HEARING EXAMINER: The stormwater  
9 management device, it is placed close to the  
10 property line. Are there any setback issues with  
11 stormwater management devices?  
12 A **No. Typically, the only thing they**  
13 **have in terms of requirements for setbacks for**  
14 **stormwater is the outfall.**  
15 **The reason they stress on the outfall**  
16 **is because they want to be able to, if there is**  
17 **an erosion or something that needs to be fixed,**  
18 **you can get to it and access it.**  
19 HEARING EXAMINER: With the normal  
20 structures, that would not apply to this type of  
21 stormwater management device?  
22 A **It would not.**

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1 MR. RUHLEN: That actually is the end  
2 of the findings criteria, so we can turn to the  
3 variance and this will be the last part of Mr.  
4 Witmer's testimony. We are almost there.  
5 Q Thank you, Mr. Witmer, I know we are  
6 covering a lot of ground. Let's talk briefly  
7 about the variance requests. We are back to  
8 Exhibit 36 and we are on page 5. Is this the  
9 variance plan that goes with the variance  
10 application?  
11 A **Yes, it is.**  
12 Q Can you describe more specifically the  
13 existing conditions and the locations where the  
14 variance would be requested from the zoning  
15 ordinance requirement for buildings and  
16 structures?  
17 A **It's really hard to see here, as we**  
18 **kind of covered before, it mostly relates to the**  
19 **gravel area as well as the existing garage here**  
20 **at the overhang.**  
21 **I will read from my notes now, but**  
22 **along the southern property line from the gravel**

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1 **area we are looking for a 15 and a half foot**  
2 **relief for a setback of 34.4 feet. That will be**  
3 **over here.**  
4 HEARING EXAMINER: Could you point  
5 that out to me.  
6 A **Sorry, the southern property. It's**  
7 **going to be right here. That little section**  
8 **right there.**  
9 HEARING EXAMINER: 15.6.  
10 A **Yes, and then the lean to overhang**  
11 **which is this guy over the garage, that is not**  
12 **enclosed. It is for storage there. They are**  
13 **asking for a 16.3 foot relief to do a total of**  
14 **33.7 foot setback. I apologize. It would be a**  
15 **lot easier to get through this if I could see**  
16 **these dimensions.**  
17 HEARING EXAMINER: We can blow it up a  
18 little bit, that corner.  
19 A **Yes, that corner from the southern lot**  
20 **line. Yes, so this way.**  
21 HEARING EXAMINER: Can you see it now?  
22 A **Yes. It is a little better to explain**



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1 **it. The other one is going to be from the**  
2 **western property line which is down here and we**  
3 **want the actual 50-foot relief along the**  
4 **property line so they could utilize what is**  
5 **already out there. Then for the lean to, we**  
6 **would like the 47.3 foot relief because it is**  
7 **set back 2.7 feet.**  
8 HEARING EXAMINER: Show me the lean to  
9 again.  
10 **A The lean to is right in this point**  
11 **right here. Here is the garage. Right here is**  
12 **where the lean to starts and continues.**  
13 Q Thank you, Mr. Witmer. Have you  
14 reviewed the variance criteria in the zoning  
15 ordinance and they are outlined in Section  
16 7.3.2.E?  
17 **A Yes.**  
18 Q Turning to those findings, in your  
19 opinion, does the proposed variance satisfy the  
20 requirement for at least one unusual or  
21 extraordinary condition listed in the zoning  
22 ordinance to exist for variance relief?

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1 **A Yes. I saw two that I know of. One**  
2 **in terms of the landscape contractors' business,**  
3 **a lot of the uses around here that are similar,**  
4 **they have a lot of their structures, buildings,**  
5 **parkings, they are more towards the street line.**  
6 **They are more noticeable.**  
7 **I hate to use the word less out of**  
8 **character, but in terms of Jeff's property, this**  
9 **is more in conformance to that and then also**  
10 **too, in regards to the setbacks from the**  
11 **building it is very common to see in any**  
12 **property, whether it be AG, whether it be**  
13 **contractors, or whatever, you are going to have**  
14 **buildings, sheds, whatever, that are typically a**  
15 **few feet off the property line.**  
16 Q I think that list of criteria include  
17 the ones that you are referring to in Section 59  
18 732.E.2.A.5, one of them is the proposed  
19 development substantially conforms with the  
20 established historic or traditional development  
21 pattern of a street or neighborhood, you would  
22 agree that it does?

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1 **A I would agree, yes.**  
2 Q I believe the other one that you are  
3 speaking to is Section 59 732.B.2.A.2, that the  
4 proposed variance would use an existing legal  
5 non-conforming property or structure; is that  
6 what you are saying with what you just said that  
7 there would be structures close to the property  
8 line?  
9 **A I am just reading through this**  
10 **section. Yes. Yes.**  
11 HEARING EXAMINER: Are you  
12 specifically speaking to that first structure  
13 that Mr. Juneau talked about that he constructed  
14 when they first moved into the property, that is  
15 what is falling under little (i) 2?  
16 MR. RUHLEN: Yes, and that is a very  
17 good question because, again, it takes us back  
18 to the boundary of that setback line is.  
19 Q So Mr. Witmer, this is what I was  
20 getting at earlier today. The second building  
21 that is more centrally located, is that actually  
22 located outside of the required setback or is

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1 the central building, would it need a variance?  
2 **A The central building would not.**  
3 Q Right. So it's just the southern?  
4 **A It is just the southern building.**  
5 HEARING EXAMINER: We are calling that  
6 the southern building?  
7 MR. RUHLEN: Yes.  
8 HEARING EXAMINER: I identified it as  
9 like the white roof, gray roof.  
10 MR. RUHLEN: That's better with our  
11 black and white plans, I think it's harder.  
12 HEARING EXAMINER: Yes, there is no  
13 color there.  
14 Q Going on with the variance criteria,  
15 Section 59 732.E.2.B speaks to whether the  
16 unusual or extraordinary conditions are the  
17 result of the petitioner's actions, what is your  
18 take on that?  
19 **A No. These buildings have been there**  
20 **regardless of, and like I said, if this was just**  
21 **residential use, then there would be no issue at**  
22 **all. He could use it. There wouldn't be any**

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1 **issues. It is only when we are applying for its**  
2 **conditional use for this issue arises.**  
3 HEARING EXAMINER: Say that again?  
4 **A As it sits today, it conforms based**  
5 **on, like if it's residential use, if it is just**  
6 **a residential structure, then it would conform,**  
7 **it had no issues, he could use it, it's**  
8 **permitted, everything's good.**  
9 Q You are saying that there is no need  
10 for the variance to the extent they would be  
11 used for the residents?  
12 **A Yes.**  
13 Q You are saying, is it correct, given  
14 that they are permitted, they are also allowed  
15 to remain to the extent they are used to.  
16 HEARING EXAMINER: At the risk of  
17 being impolite, you are leading the heck out of  
18 him.  
19 Q If you could go on and just explain.  
20 **A Yes, that is what I am trying to say.**  
21 **You have the existing structure. The structure**  
22 **could be used. It could remain regardless if**

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1 **this is approved or not. The structure would**  
2 **remain. It would be acceptable use. They**  
3 **received all their permits. They wouldn't have**  
4 **any violations with it. They could just continue**  
5 **to go use it as it is today.**  
6 HEARING EXAMINER: Mr. Juneau, if he  
7 had the residential use and he wanted to put  
8 another outbuilding today under today's code and  
9 standards, could he put it that close to the lot  
10 line? O am just talking residential use, do you  
11 know?  
12 **A I would have to look.**  
13 HEARING EXAMINER: Because I can't  
14 imagine any code section under today's code  
15 where there is not some kind of setback.  
16 But, with that said.  
17 **A Yes, I will have to check the zoning**  
18 **standards at the time to look at that to see**  
19 **what that would be.**  
20 HEARING EXAMINER: I am asking you the  
21 reverse question. If we were to do new  
22 construction today, could you get that building

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1 today? If you don't know that, that is fine.  
2 **A I will have to look at the setback,**  
3 **the current setbacks.**  
4 HEARING EXAMINER: I guess this is  
5 more of a hypothetical question. Go ahead.  
6 Q Continuing on. Again, I apologize for  
7 having to go through these requirements.  
8 HEARING EXAMINER: Yes, they are  
9 important. Like I said, I want the meat with the  
10 potatoes.  
11 Q So Section 59 732.E.2.D, speaks to a  
12 finding requiring that the variances can be  
13 granted without substantially impairing the  
14 intent or integrity of the general plan or the  
15 master plan. Can this variance be granted  
16 without impairing the intent of the master  
17 plans?  
18 **A Could you repeat that? I'm sorry.**  
19 Q The finding speaks to whether there is  
20 a master plan whether the variance can be  
21 granted consistent with the master plan.  
22 **A You are saying master plan. Not**

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1 **zoning?**  
2 Q Correct, master plan.  
3 **A Yes, so the master plan does not touch**  
4 **on this property. It would just fall back to**  
5 **the existing zoning.**  
6 Q Moving on. Section 59 732.E.2.E, will  
7 granting the variance be compatible with the use  
8 and enjoyment of an abutting and confronting  
9 properties?  
10 **A Yes, that's consistent with other**  
11 **properties in the neighborhood.**  
12 HEARING EXAMINER: Did you miss C, the  
13 requested variances the minimum necessary to  
14 overcome?  
15 Q Yes, I did. Thank you very much. Yes.  
16 Section 59 732.E.2.C, in your opinion, is the  
17 variance, the minimum necessary to overcome the  
18 practical difficulties that full compliance  
19 would involve due to the unusual or  
20 extraordinary conditions?  
21 **A Yes.**  
22 HEARING EXAMINER: How?

<p>165</p> <p>1 <b>A The variance is based solely on the</b> 2 <b>location of the portions of the existing</b> 3 <b>improvements in the required setback and no</b> 4 <b>external changes are proposed.</b> 5 Q In other words, you have testified 6 that there are no additional buildings proposed 7 with this application? 8 <b>A Correct.</b> 9 Q There is nothing additional proposed 10 that would exacerbate that would be more than 11 the minimum needed with the variance request? 12 <b>A Correct.</b> 13 Q The variance request is only to the 14 extent necessary to accommodate the existing 15 conditions? 16 <b>A Yes.</b> 17 Q In summary, is it your opinion that 18 the variance satisfies the requirements for 19 variance approval? 20 <b>A Yes, it does.</b> 21 MR. RUHLEN: Mr. Witmer, we have 22 reached the end of the direct questions unless</p>	<p>167</p> <p>1 out for yourself to inspect the property on days 2 when precipitation was happening? 3 <b>A No, I did not.</b> 4 Q In visiting Mr. Juneau's property, you 5 are aware that it consists of several 6 outbuildings and gravel road and some parking 7 lots? 8 <b>A Yes.</b> 9 Q When those were constructed, were you 10 also aware that there was no stormwater 11 management in place? 12 <b>A Yes, I am aware.</b> 13 Q There was no sediment control in 14 place? 15 <b>A Correct. At the time they wouldn't</b> 16 <b>have been required.</b> 17 Q Today there's still no stormwater or 18 sediment management? 19 <b>A Correct, yes, there is no stormwater.</b> 20 Q You prepared a stormwater management 21 plan; is that right? 22 <b>A I have.</b></p>
<p>166</p> <p>1 there is anything else that you would like to 2 add? 3 <b>A Not that I can think of. I think I</b> 4 <b>have covered everything.</b> 5 MR. RUHLEN: Thank you. No further 6 questions. 7 CROSS-EXAMINATION 8 BY MS. McINTURFF: 9 Q Good afternoon. It is a pleasure to 10 finally meet you. In preparing your report, did 11 you visit Mr. Juneau's property? 12 <b>A I did.</b> 13 Q How many times did you visit his 14 property? 15 <b>A Probably four to five times.</b> 16 Q What were the weather conditions on 17 the days that you visited his property? 18 <b>A Dry.</b> 19 Q There was no precipitation on the days 20 your visited before or after? 21 <b>A There was not, no.</b> 22 Q Did you ever have an opportunity to go</p>	<p>168</p> <p>1 Q What plan, if any, is there to follow 2 up and ensure that your proposed plan is 3 adequate working to reduce the flow of water 4 onto Mr. Lyles', and the neighboring properties? 5 <b>A We could definitely coordinate with</b> 6 <b>DPS to share our hydraulics and hydrology</b> 7 <b>analysis with them to make sure that they are in</b> 8 <b>agreement with our report and our study.</b> 9 <b>That primarily would be what I would</b> 10 <b>like to do or what I would propose to do to make</b> 11 <b>sure that there will be an agreement that at</b> 12 <b>least what Jeff's contributing runoff in terms</b> 13 <b>of mitigation we could address with Jeff's</b> 14 <b>runoff would be for the property.</b> 15 Q In designing these management systems, 16 you would agree with me that it is crucial to 17 consider factors like precipitation levels; 18 correct? 19 <b>A Yes.</b> 20 Q Would you say that your analysis 21 typically involves evaluating potential impacts 22 of the stormwater runoff on the surrounding</p>

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1 environment including water quality?  
2 **A Yes, we do. It is tough because you**  
3 **have to analyze it. There are a couple of**  
4 **different ways to analyze it.**  
5 **I think you touched on it. There is**  
6 **the quantity and quality component of**  
7 **stormwater. What we have looked at, what we**  
8 **have analyzed is we want to address the quantity**  
9 **and quantity.**  
10 **In terms of quality, just**  
11 **enhancements, to the drainage itself. Like I**  
12 **said, I think, honestly, a large part of this**  
13 **might be the berm in terms of allowing that**  
14 **water.**  
15 Q I am talking about the drainage coming  
16 from Mr. Juneau's property.  
17 **A Yes. We looked at that from a water**  
18 **quantity.**  
19 Q But not quality.  
20 **A Correct.**  
21 Q Did you conduct any analysis to assess  
22 the potential impact of the runoff from Mr.

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1 Juneau's property on nearby well water or  
2 groundwater sources?  
3 **A No.**  
4 Q Are you aware that Mr. Lyles and other  
5 properties runoff well water?  
6 **A I am, yes.**  
7 Q Would it be possible that this  
8 stormwater runoff from Mr. Juneau's property  
9 could contaminate the nearby well water, and  
10 groundwater sources?  
11 **A Yes. We didn't do any type of study.**  
12 **I don't get involved with their studies, but**  
13 **yes, I imagine. I don't know. I imagine it**  
14 **could.**  
15 Q Even if ponding systems are in place,  
16 there is still the possibility of those measures  
17 can still result in flooding or pollution if not  
18 adequately managed; is that correct?  
19 **A Correct. I don't know about**  
20 **polluting, but yes, correct. To function**  
21 **properly, it should be adequately maintained.**  
22 Q What measures are in place to ensure

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1 that this management system continues to  
2 function properly?  
3 **A I know that there are specific county**  
4 **and state standards for maintaining stormwater**  
5 **device depending on the type of a device. A**  
6 **device like this we would prepare what they call**  
7 **it an operation and maintenance schedule where**  
8 **you would after a heavy storm event you go down**  
9 **and clean debris out of it, keep it mode, you**  
10 **have to check any orifices to make sure that**  
11 **they are not clogged up or there is no cracking**  
12 **or breaking in the piping.**  
13 **You look for any erosion. You address**  
14 **those as needed. Any type of stormwater**  
15 **management design that we do with the final**  
16 **design, the construction specifications, there**  
17 **is also the aspect of operation and maintenance.**  
18 Q That would be contingent on Mr. Juneau  
19 following up on those?  
20 **A Correct, yes.**  
21 HEARING EXAMINER: Excuse me. Are you  
22 getting feedback? Turn your microphone off.

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1 Mr. Harris is the only one listening in. Is he  
2 still there?  
3 MR. RUHLEN: No.  
4 HEARING EXAMINER: Let's keep all of  
5 our microphones off.  
6 MR. RUHLEN: I still hear it.  
7 (After Rectifying the Audio Issue.)  
8 Q Going back to your specific  
9 recommendations in this case, you have proposed  
10 a detention pond to manage the stormwater  
11 runoff?  
12 **A Correct.**  
13 Q This pond was designed based on  
14 certain assumptions about precipitation levels  
15 and land use?  
16 **A Yes.**  
17 Q You would agree with me that these  
18 projections are subject to uncertainty and  
19 deviations from the projected conditions that  
20 could impact the effectiveness of the ponds?  
21 **A Do you mean in terms of additional**  
22 **development?**

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1 Q Additional development or an increase  
2 in water runoff?  
3 A **Absolutely, yes.**  
4 Q There is still a risk of overflow  
5 during extreme storm events?  
6 A **Yes. When we look at stormwater, for  
7 the county, the typical analysis is you look at  
8 the one-year event, two-year event, and you go  
9 upwards of ten-year event.**  
10 Like I said before, the 10-year event,  
11 that basically statistically is a storm event  
12 that would happen once every ten years and that  
13 is what we designed that peak for this analysis  
14 for.  
15 Q We have been seeing an increase those  
16 types of storms recently, have we?  
17 A **We have.**  
18 Q Ellicott City is probably the most  
19 famous for having 100-year flood every year?  
20 A **Yes. They have a thousand-year flood.**  
21 Q While this may mitigate some of the  
22 issues, it is not foolproof and will not really

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1 necessarily eliminate the runoff issues that Mr.  
2 Lyles is experiencing?  
3 A **Yes. That goes back to,  
4 unfortunately, if we have all the designs that I  
5 have ever done when we analyze stormwater  
6 management we pre-and-post cues, the runoff  
7 before the development and the runoff afterward  
8 and you analyze that to say, "Under these storm  
9 events, the one to ten year, under these storm  
10 events our post development runoff has to meet  
11 predevelopment conditions or better."  
12 That is the standard that is used.  
13 That's what we did here. Yes, there will be  
14 outliers in terms of larger storm events, those  
15 that nobody can really account for.**  
16 You design based on what the state  
17 standards are and what the county standards are,  
18 but there are other types storm events out  
19 there, and like you said, there could be  
20 development. Obviously, the requirements for  
21 development are a lot more stringent than they  
22 used to be.

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1 **Back when Jeff's first building was  
2 built, that was prior to any state stormwater  
3 management regulation so there was no  
4 requirement at the time.**  
5 **Now that the county and state, they  
6 look at these things a lot more closely. To go  
7 back to your one question where you asked about  
8 the changes in land use, a lot of times now when  
9 you have those, the county when you go for  
10 permits, that is one of the first things they  
11 will look at to say where is the stormwater?**  
12 Q In your description of the properties,  
13 you describe Mr. Juneau's property as  
14 essentially on an incline.  
15 A **Yes.**  
16 Q At least as to Mr. Lyles' property?  
17 A **Yes.**  
18 Q Could that incline potentially affect  
19 the efficiency of the ponding system?  
20 A **No. Not necessarily. No, it wouldn't  
21 because as long as we are designed, as long as  
22 we design the facility correctly and it is**

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1 **constructed correctly, we can capture that water  
2 regardless of the shape of Jeff's property as  
3 long as we capture it and get it to the  
4 facility, then we can release it in a controlled  
5 manner.**  
6 Q Is the water in your proposed plan  
7 being captured from each building on Mr.  
8 Juneau's property?  
9 A **Can we go to this one site storm plan  
10 again?**  
11 MS. McINTURFF: What exhibit is that?  
12 MR. RUHLEN: 36, and the page, was it  
13 6? No, 7.  
14 A **Yes. Let me explain what I did here.  
15 The answer is no. It does not capture both  
16 buildings and there is a reason for that. This  
17 is the low point of Jeff's property. Right  
18 here.**  
19 **This is the lowest point where  
20 everything is going to drain to. When we design  
21 a stormwater facility, we don't want to design  
22 it at the bottom of the hill because as I said**

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1 before you have to have room for your discharge.  
2 You have to have room for your  
3 outfall. You have got to have safe conveyance.  
4 So safe conveyance. We can't design a facility  
5 down here in the very bottom as that would  
6 capture every little part of the improvements up  
7 here.  
8 One, there wouldn't be enough room.  
9 Two, we wouldn't be able to discharge it the way  
10 we should. What we have done in lieu of that is  
11 we have moved the facility further up.  
12 You can't see it here, but we propose  
13 a high capacity that would capture the majority.  
14 We are not capturing this little sliver here.  
15 Right here. This is going to release.  
16 But the remaining of Jeff's property  
17 up here would actually be captured and run to  
18 the facility.  
19 Even though this little section is  
20 still not being captured, we are overdesigning  
21 for this section, so we are compensating for it.  
22 This area is being compensated for it in this

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1 area and that is standard for being able to get  
2 these drainages, because, like I said, you can  
3 never really capture every drop of these things  
4 just because of outfall and things like that and  
5 so you have got to make adjustments.  
6 Q Which building is not being captured  
7 by the stormwater management plan? Is it the  
8 central, southern, the white gray roof?  
9 A The further one down here with the  
10 overhang.  
11 Q That would be the one actually  
12 abutting Mr. Lyles' property line?  
13 A Yes. It is the closer one, probably,  
14 yes.  
15 Q You would not be collecting the water  
16 runoff from that building?  
17 A We would not, no.  
18 Q In drafting that stormwater management  
19 plan, did you determine where the volume of  
20 water was coming from on Mr. Juneau's property?  
21 A You have got to look at this in its  
22 entirety, so yes, there is a contributing volume

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1 here. You are going to get more runoff from  
2 this portion of the property just because it is  
3 considered an impervious area, but when you  
4 consider that this goes back to that, to what I  
5 discussed before, it is not so much the  
6 impervious area, it is the size of the drainage  
7 areas which is giving you the larger  
8 contributing factor of the property.  
9 Q If the water is being directed off and  
10 around that building, and we cannot do  
11 stormwater management for it, that is still  
12 going to be coming on to Mr. Lyles' property?  
13 A Yes, but we still manage. We are  
14 still going to manage enough water to where the  
15 runoff that is coming off Jeff's property is  
16 going to be equivalent to a grass condition like  
17 a front yard.  
18 We are making this facility larger to  
19 account for this water here, but we are just  
20 doing it in this section here if that makes  
21 sense.  
22 Q That facility, is that the ponding

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1 system that you are referring to?  
2 A Yes, right here. I'm sorry.  
3 Q That is also Mr. Lyles' boundary line?  
4 A No. I don't know who this property  
5 owner is here, but Mr. Lyles is here.  
6 Q It is just north of it?  
7 A Yes, correct.  
8 Q But on the boundary line?  
9 A Yes. The boundary line is right where  
10 my pen is.  
11 Q Did you review any of the videos or  
12 photos that Mr. Lyles had submitted regarding  
13 the water runoff?  
14 A I did.  
15 Q In those videos where was the water  
16 runoff coming from?  
17 A I believe the ones that I remember  
18 more specifically, the water comes down right  
19 through here, right through this area along the  
20 front of the garage building, and then continues  
21 down here to where the berm is located.  
22 Q In the area where it would not be

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1 captured by that stormwater management?  
2 **A Yes, but that is not where the water**  
3 **is coming from. The water is coming from up here**  
4 **and it is getting to here.**  
5 **If you were to take this small section**  
6 **of area here, and dump water on it, you wouldn't**  
7 **have that much wrong. The larger contributing**  
8 **factor to that drainage to this point isn't**  
9 **right here. It is up here that we have captured.**  
10 **That is where I get into the overcompensation**  
11 **environment.**  
12 Q The pond itself, it is ultimately  
13 going to still drain into the surrounding areas.  
14 It just captures it for a day or two.  
15 **A Correct.**  
16 Q But it is still going to have water  
17 released onto these other properties.  
18 **A Yes.**  
19 Q It is also contingent on essentially a  
20 piping system to divert the water, is it not?  
21 **A Yes. The high-capacity inlet which**  
22 **would be placed here, and yes, it would be piped**

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1 **in the pipe and actually the pipe has been sized**  
2 **for a 10-year storm event.**  
3 **That means not only is the pond size**  
4 **for a 10-year storm event, but also the**  
5 **conveyance system.**  
6 Q The opening on pipe is about two to  
7 three inches, is it not?  
8 **A That is for the release. That's the**  
9 **detention part of it. If you have a cup with a**  
10 **hole on the bottom of it, you fill that cup up**  
11 **with water, it is not all going to rush out at**  
12 **the same time but a little trickle. That is the**  
13 **concept of it.**  
14 **But this, the pipe here, that, I**  
15 **believe, we sized that to 12 or 18 inch, but**  
16 **regardless of the size for the ten-year event.**  
17 Q Would water rushing over it be able to  
18 be captured in that inlet even if it is a heavy  
19 stream?  
20 **A Yes. That is why we would use a high**  
21 **capacity.**  
22 Q In the same way in the waterfall that

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1 you have seen in Mr. Lyles' videos, would that  
2 be able to be captured?  
3 **A Yes. We would make sure that it is**  
4 **sized properly for that. With any type of inlet**  
5 **you use, they have flow curves that basically**  
6 **tell you that this type of inlet can capture**  
7 **this much runoff, this cubic feet per second, it**  
8 **can take that. We can size based on that.**  
9 Q The uncaptured water, though, that  
10 would remain flowing onto Mr. Lyles' property?  
11 **A Yes. This little section down here,**  
12 **correct, yes, it will.**  
13 Q To your knowledge, has DPS reviewed  
14 and signed off on this plan?  
15 **A They have not, no.**  
16 Q Has it been submitted to them?  
17 **A It has not. Like I said, we will have**  
18 **to have a discussion. I would like to have a**  
19 **discussion with DPS about this because the**  
20 **stormwater that we would be proposing is not a**  
21 **stormwater that is a regulatory requirement.**  
22 **DPS, when you submit a stormwater plan**

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1 **to DPS, it is triggered by a construction or**  
2 **some development that is based on their code.**  
3 **This is an outlier outside of the**  
4 **code. There is no regulatory requirement to do**  
5 **this and so it would be us, actually, and I am**  
6 **fine doing that, but we could present this to**  
7 **them and just say "This is our proposal. Is**  
8 **this something that you would see as a viable**  
9 **solution?"**  
10 Q The water runoff coming from Mr.  
11 Juneau's property, that comes down regardless of  
12 whether or not Mr. Lyles has a berm on his  
13 property; correct?  
14 **A That water does get there, yes.**  
15 Q You are aware that Mr. Lyles has  
16 experienced flooding in his home and basement  
17 over the years prior to the berm being built?  
18 **A Yes, I saw the reports.**  
19 Q His neighbors have also reported  
20 similar instances of their fields being flooded  
21 and their septic's backed up due to the water  
22 runoff from Mr. Juneau's property?

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1 **A I wouldn't necessarily say from Mr.**  
2 **Juneau's property. It is contributing.**  
3 Q While there may be a berm there, the  
4 water runoff is at least coming from Mr.  
5 Juneau's property to Mr. Lyles' property?  
6 **A Yes.**  
7 Q You would agree with me that the  
8 constructed buildings on Mr. Juneau's property,  
9 those are not residential buildings?  
10 **A These buildings here?**  
11 Q Correct.  
12 **A They could be used.**  
13 Q They are not. They are similar to the  
14 building.  
15 **A I cannot speak to intersections in the**  
16 **one building that you talked about was storing a**  
17 **car, Jeff's vehicle, or something like that. I**  
18 **can't speak to the specifics of what actually.**  
19 Q They are not a residence.  
20 **A Okay, and this building, I know, yes,**  
21 **this building is used for the commercial use.**  
22 Q He constructed those buildings

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1 himself.  
2 **A I don't know.**  
3 Q You don't know whether or not they  
4 were on a property at the time he purchased it  
5 or if they were constructed later?  
6 **A Him personally constructed, I don't**  
7 **know if he did, but no, they were not on the**  
8 **property when he purchased the property if that**  
9 **is what you are asking.**  
10 Q His actions actually are what placed  
11 these buildings within 50 feet of the boundary  
12 lines, are they not?  
13 **A They are, yes. That is where they**  
14 **were constructed.**  
15 MS. McINTURFF: We have no further  
16 questions.  
17 HEARING EXAMINER: I do have some  
18 questions though. What is the size or the  
19 disturbance area for the work that you would  
20 need to do here for the drainage, for the  
21 stormwater management device? What are we  
22 talking in square footage?

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1 **A For a roundabout, I would probably say**  
2 **about maybe 4,000 or 5,000 square feet.**  
3 HEARING EXAMINER: Would you need a  
4 permit such as a disturbance permit?  
5 **A If it is over 5,000 square feet, yes.**  
6 HEARING EXAMINER: That is what I was  
7 getting at. If you are going to build this, you  
8 would need a permit?  
9 **A Potentially, yes.**  
10 HEARING EXAMINER: I have seen other  
11 stormwater management devices where maintenance  
12 agreements are recorded in land records, but  
13 those are usually larger homeowners association  
14 type for bigger residential developments.  
15 My question is for any stormwater  
16 management device that is permitted through the  
17 county, is there a maintenance agreement  
18 requirement?  
19 **A Yes.**  
20 HEARING EXAMINER: Is that normally  
21 recorded in land records?  
22 **A Yes, for a transfer and that is where**

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1 **we will have to have the discussion with DPS**  
2 **because that goes back to, for some plan**  
3 **submittals that goes through DPS, it has got to**  
4 **fall into that category for that regulatory**  
5 **requirement.**  
6 HEARING EXAMINER: Right.  
7 **A We have to figure out what category**  
8 **that would fall under.**  
9 HEARING EXAMINER: Have you ever  
10 submitted something like this to DPS? Would  
11 that be asked?  
12 **A No. No. We haven't for this project,**  
13 **no, we haven't submitted any.**  
14 HEARING EXAMINER: Have you ever done,  
15 essentially, what is a voluntary stormwater  
16 management?  
17 **A I have done in other counties but not**  
18 **Montgomery.**  
19 HEARING EXAMINER: So in other  
20 counties, were they permitted?  
21 **A No. It is voluntary. They construct**  
22 **the facility on their own. Obviously, if it's**



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1 **over 5,000 square foot disturbance, they are**  
2 **going to look at some control measures to make**  
3 **sure the seeding, mulching, everything is there**  
4 **but a lot of times they won't look specifically**  
5 **write it in.**  
6 HEARING EXAMINER: The only trigger  
7 for a permit would be size?  
8 **A Disturbance.**  
9 HEARING EXAMINER: Would be 5,000  
10 square foot disturbance. We are unsure if you  
11 are going to meet that threshold or not for a  
12 permit to be required because it is not  
13 considered a structure.  
14 That, you would need a building permit  
15 regardless of size. It would be a grass area  
16 disturbance, essentially, grading disturbance of  
17 greater than 5,000 square feet.  
18 **A I think there is a cubic yard**  
19 **requirement too. We won't know until we get**  
20 **into more of the detail about the trenching, and**  
21 **how far we have got to dig down for the piping**  
22 **and the outfall. To stabilize the outfall and**

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1 **dig for that.**  
2 HEARING EXAMINER: Do you have an  
3 estimate of the percentage of water runoff that  
4 will be reduced if this device is constructed?  
5 **A In terms of just Jeff's property or**  
6 **the entire drainage area?**  
7 HEARING EXAMINER: The stormwater  
8 management device is going to capture more than  
9 just Jeff's property, right, because water runs  
10 onto his property that will then further run  
11 down?  
12 **A No.**  
13 HEARING EXAMINER: This is just for  
14 his property?  
15 **A Because of the high point. Here is**  
16 **Damascus Road here.**  
17 HEARING EXAMINER: That is the high  
18 point.  
19 **A Yes, that is essentially the high**  
20 **point.**  
21 HEARING EXAMINER: What is then the  
22 distinction between the percentage of runoff

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1 from his property versus the percentage of  
2 runoff from the other properties, do you know?  
3 **A Yes. This is a 3.46 acre drainage**  
4 **area and then the total drainage area, and let**  
5 **me looking at notes.**  
6 HEARING EXAMINER: I think he did say  
7 it earlier.  
8 **A The total was 13.42.**  
9 HEARING EXAMINER: This is 4-ish acres  
10 versus the total of 13 plus. Can you tell me  
11 what the percentage of the overall reduction  
12 would be?  
13 **A In terms of overall, it is going to**  
14 **where we can make a dent in it in terms of what**  
15 **we are putting in here, the percentage, it**  
16 **wouldn't be 50%. We would not be controlling**  
17 **50%, it would be lower just because we are such**  
18 **a small part of the entire.**  
19 **But in terms of Jeff's contribution.**  
20 HEARING EXAMINER: What is the  
21 rejection for Jeff's contribution, is the better  
22 question?

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1 **A It is more in terms where we will be**  
2 **taking, and I can tell you specific numbers, and**  
3 **this is in the hydraulic report at page 6 of**  
4 **Exhibit 34A. This is I think what you were**  
5 **asking.**  
6 HEARING EXAMINER: Right.  
7 **A The peak flow from Jeff's property --**  
8 **sorry -- this would be assuming known pervious**  
9 **area. This would just be grass. This would be**  
10 **best scenario. For the 10 year, you would have**  
11 **7.78 CFS coming off it's property.**  
12 HEARING EXAMINER: Tell me what a CFS  
13 is again?  
14 **A Cubic feet per second. With the**  
15 **installation of the stormwater management**  
16 **device, we have actually reduced that from 7.78**  
17 **CFS to 6.86 CFS and that is even going further**  
18 **assuming because this analysis assumed that**  
19 **there was no commercial permitted. That was our**  
20 **baseline as I like to start with a baseline to**  
21 **be more conservative.**  
22 HEARING EXAMINER: That is helpful.

<p style="text-align: right;">193</p> <p>1 Thank you. I don't have any further questions. 2 MR. RUHLEN: I have just a couple. 3 REDIRECT EXAMINATION 4 BY MR. RUHLEN: 5 Q You had a question from Ms. McInturff 6 about whether stormwater management or sediment 7 control was required in connection with the 8 permits for the existing buildings and what was 9 the answer? <b>10 A No. They weren't required.</b> 11 Q I think your testimony was that it 12 wasn't required at the time. If the conditional 13 use were not to be approved, is there any 14 requirement to provide stormwater management or 15 sediment control for the existing buildings? <b>16 A No. No, there are none.</b> 17 Q Is it correct that that is because 18 they have permits? <b>19 A Yes, they have permits and they don't</b> <b>20 retroactively ask for stormwater.</b> 21 Q With this proposal, the conditional 22 use proposes to provide stormwater management</p>	<p style="text-align: right;">195</p> <p>1 grading permit has nothing to do with function 2 or operation of the existing stormwater 3 management device. 4 It is simply to capture that 5 disturbance. You don't go over. You put the 6 erosion control things in place and all of that 7 good stuff. 8 MR. RUHLEN: I think those are my only 9 questions. Yes. 10 HEARING EXAMINER: It is almost 1:05. 11 Before I jump in there, I think I did have a 12 question or two for Mr. Juneau? 13 MR. RUHLEN: Sure. 14 HEARING EXAMINER: I don't remember 15 100% what they were now. 16 MR. RUHLEN: The fence. 17 HEARING EXAMINER: The fence. That's 18 right. I think you can answer from there, Mr. 19 Juneau. I am just reminding you that you are 20 still under oath. 21 Can you tell me about the -- 22 MS. McINTURFF: I can add to that. I</p>
<p style="text-align: right;">194</p> <p>1 that otherwise is not going to be provided? <b>2 A Correct.</b> 3 Q The questions from the Hearing 4 Examiner, depending on the trigger, if it's 5 5,000 square feet of disturbance would be 6 whether it requires a sediment erosion control 7 permit? <b>8 A Correct.</b> 9 Q But if it requires a permit, your 10 understanding is that the petitioner would apply 11 for the permit? <b>12 A Yes, and that gets to gray area as</b> <b>13 well, I want to include, because if we are over</b> <b>14 that 5,000 square foot threshold, it means we</b> <b>15 need a permit, but it doesn't mean that we need</b> <b>16 stormwater.</b> 17 HEARING EXAMINER: Right. It is 18 essentially a grading permit. <b>19 A Yes. I wasn't sure if I was clear</b> <b>20 with that.</b> 21 HEARING EXAMINER: I understand that, 22 but just so everyone is clear permitting wise a</p>	<p style="text-align: right;">196</p> <p>1 think the questions were the lighting, the 2 fencing? 3 HEARING EXAMINER: That was it. 4 MS. McINTURFF: Moving mulch and the 5 fuel tanks. 6 HEARING EXAMINER: Yes. Do you mind if 7 we take 15 minutes to ask him those questions 8 and then take a break? Mr. Juneau, let me 9 remind you that you are still under oath. 10 Tell us about the proposed fence 11 construction material type and how you are 12 planning on the design. 13 MR. JUNEAU: It is going to be a 14 six-foot pressure. 15 HEARING EXAMINER: Board on board. 16 MR. JUNEAU: Board on board with 17 fence. 18 HEARING EXAMINER: The lighting on the 19 garages or on the outbuildings, they are forward 20 facing back to your property. Do you keep them 21 on all night? You talked about how they were on 22 a switch.</p>

Transcript of Hearing  
Conducted on May 2, 2024

197	1 MR. JUNEAU: They are on a photocell 2 and I do have switches. 3 HEARING EXAMINER: Are they motion? 4 MR. JUNEAU: No. 5 HEARING EXAMINER: No. They are on a 6 switch, but they are solar generated? 7 MR. JUNEAU: Correct. Here's my 8 electrician. 9 HEARING EXAMINER: Then I can ask you 10 when you come up. My question is, anecdotally, 11 when you are out in the evening in the dark on 12 the property, can you see the light emitting 13 from those at the rear of the property or along 14 the property line? 15 MR. JUNEAU: Maybe slightly, but not 16 to my knowledge. It's not like a headlight 17 actually. 18 HEARING EXAMINER: It was lighting 19 fence view. Mulch and fuel tanks, yes. 20 MR. JUNEAU: I propose to move all of 21 that to the center of the property within my 22 50-foot setback.	199	1 HEARING EXAMINER: We talked about the 2 oil drums. The empty ones you kept on the 3 outside of the garage. The ones you were 4 filling you kept on the inside. 5 MR. JUNEAU: I get them full. 6 HEARING EXAMINER: This is fill. 7 MR. JUNEAU: Brand new oil. It is 8 clean oil. 9 HEARING EXAMINER: All clean oil. 10 MR. JUNEAU: And depth for the trucks 11 because it is required. I had those tanks 12 inside one of the shops. I have old oil tanks 13 that I was sitting beside the building to wait 14 for a company to come get them and they were 15 sitting out there probably for two years and I 16 probably had 12 or 13 of them sitting on the 17 side. 18 HEARING EXAMINER: What is the current 19 condition now? 20 MR. JUNEAU: They are gone. All 21 clean. 22 HEARING EXAMINER: What is your plan
198	1 HEARING EXAMINER: Within the 50-foot 2 setback. 3 MR. JUNEAU: Outside of how you want 4 it to determine. 5 HEARING EXAMINER: They move in the 6 remain, the 50-foot setback. 7 MR. JUNEAU: That is right. 8 HEARING EXAMINER: When you remove the 9 wall, what are you going to do as far as to 10 repair that area? 11 MR. JUNEAU: That will come up through 12 part of it. I am proposing to put some 13 screening along that area. 14 HEARING EXAMINER: Once those things 15 are removed, once the concrete wall comes down, 16 the fence will come past that or to that. 17 MR. JUNEAU: It should come up to the 18 parking area. 19 HEARING EXAMINER: To the parking 20 area. 21 MR. JUNEAU: Where I have existing 22 trees.	200	1 for maintaining the empty oil drums going 2 forward? Where would they be located? 3 MR. JUNEAU: I guess I would keep them 4 in the shop from here out or within the 50-foot 5 setback behind the concrete. 6 HEARING EXAMINER: You say you don't 7 have any mulch on site now. If you do intend to 8 get mulch in the future, how will that be 9 corralled for lack of a better word? 10 MR. JUNEAU: I am going to use the 11 same type of system with the concrete wall in 12 the center of that circle. 13 HEARING EXAMINER: Is there one now or 14 you would build one? 15 MR. JUNEAU: I would just take the 16 existing concrete and move it over. They are 17 interlocking like legos. 18 HEARING EXAMINER: You can take them 19 apart and put them back? 20 MR. JUNEAU: Yes. 21 HEARING EXAMINER: It's not truly a 22 structure. Just a form.

201

1 MR. JUNEAU: It is just a form.  
2 HEARING EXAMINER: So it is not really  
3 a block wall in that it has footers and a  
4 foundation?  
5 MR. JUNEAU: No.  
6 HEARING EXAMINER: That was cement all  
7 put together with mortar. It is just a form?  
8 MR. JUNEAU: I do have a small section  
9 of cement within that area, so I don't scoop up  
10 rocks.  
11 HEARING EXAMINER: That will be moved  
12 outside the area?  
13 MR. JUNEAU: Yes.  
14 HEARING EXAMINER: That gives me a  
15 better picture. Then the fuel tanks also,  
16 again, outside the boundary more to the interior  
17 of the property?  
18 MR. JUNEAU: Correct. They will be  
19 sitting behind the concrete wall. I only have  
20 view of them. Not the neighbors.  
21 HEARING EXAMINER: I think that was it  
22 for my operational questions for Mr. Juneau.

202

1 MS. McINTURFF: I do have a question  
2 based on what you just asked him.  
3 BY MS. McINTURFF:  
4 Q With respect to moving the mulch and  
5 the oil tanks to the center of that parking  
6 area, those are where those trucks are parking  
7 already.  
8 A Yes.  
9 Q Where would those vehicles be moved  
10 to?  
11 A Probably towards my yard.  
12 Q Is that towards your residence?  
13 A Yes. I actually have enough spots for  
14 the trucks themselves that are parked in the  
15 center. It just makes a little more room for  
16 me.  
17 Q If you move the mulch and the oil  
18 tanks within the existing 24 spots that you  
19 have?  
20 A Whatever they said, yes.  
21 HEARING EXAMINER: Would it be helpful  
22 to pull the picture up that showed the garage

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1 lighting.  
2 MR. RUHLEN: Or even the conditional  
3 use plan because it shows the parking space.  
4 HEARING EXAMINER: That is exhibit?  
5 MR. RUHLEN: Exhibit 36, page 4. Yes,  
6 that's it. That's probably good.  
7 Q If you could point out where --  
8 A Here is my property line right here.  
9 Q Right.  
10 A Here is my mulch bin, and so my  
11 proposal is to go back over here with the mulch  
12 bin. That is where the trucks are parked in  
13 that area right there.  
14 Q Then where would the trucks go?  
15 A The trucks anywhere over in this area  
16 here or along here or up in here.  
17 MR. RUHLEN: I don't know if Jeff  
18 knows, can see the details, but Jim may be able.  
19 HEARING EXAMINER: Then we are going  
20 to do the dueling witnessing. We are formal,  
21 but we are also informal. Please show us where  
22 these trucks would go if they are not going to

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1 be where they were before.  
2 A Yes, it is hard to see. The existing  
3 gravel here, right, we have shown the lines  
4 parking spaces along here, so yes, the parking  
5 space is here, then they can also park right in  
6 front of the garage door here, and then spaces  
7 in front of this other existing garage here and  
8 that will give you all the spaces you need.  
9 HEARING EXAMINER: They can be moved  
10 to any of those three locations. The parking  
11 that is closest to the neighboring property, Mr.  
12 Juneau, you described that more as the employee  
13 parking.  
14 That is where they come to pull, so  
15 then those commercial trucks would more than  
16 likely be in front of the two outbuildings.  
17 A Down in these areas. I think you saw  
18 the picture of the trucks sitting in front.  
19 HEARING EXAMINER: I did, right, and  
20 that was my question that they come in, they  
21 pull, and they come around. If you moved the  
22 fuel tanks and the mulch bins to where they were

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1 sitting, then they will have to go to those  
2 other locations.  
3 **A Correct.**  
4 HEARING EXAMINER: Does that help?  
5 MS. McINTURFF: Yes.  
6 HEARING EXAMINER: That helps me too.  
7 Any other questions that you have?  
8 MS. McINTURFF: No.  
9 HEARING EXAMINER: It is now almost  
10 1:15. Let's come back at 2 o'clock. I am  
11 assuming that that concludes your case in chief?  
12 MR. RUHLEN: Yes.  
13 HEARING EXAMINER: You will have the  
14 opportunity to present your witnesses and your  
15 testimony when we come back. See everybody back  
16 here at 2:00.  
17 (Upon Resuming.)  
18 HEARING EXAMINER: We are back on the  
19 record here. It is almost 2 o'clock. Excellent  
20 timing everyone. We will pick up now with the  
21 opposition's case.  
22 MS. McINTURFF: Thank you. We are

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1 calling Mr. Lyles.  
2 (Whereupon, Oscar Lyles, sworn.)  
3 DIRECT EXAMINATION  
4 BY MS. McINTURFF:  
5 Q Please state your name for the record?  
6 **A Oscar Lyles.**  
7 Q Are you the owner of 6340 Damascus  
8 Road?  
9 **A Yes.**  
10 Q How long has that property been in  
11 your family?  
12 **A Since 1970.**  
13 Q Have you resided there off and on  
14 since that time?  
15 **A Oh, yes.**  
16 Q You have other family in the  
17 neighborhood?  
18 **A Yes.**  
19 Q Do you have an aunt that resides  
20 there?  
21 **A Yes.**  
22 Q How long has she resided in the

207

1 neighborhood?  
2 **A Since the 1960s.**  
3 Q If we could look at Exhibit 36 very  
4 quickly. Can you see the highlighted area on  
5 Exhibit 36?  
6 **A Yes.**  
7 Q Where is your property in relation to  
8 this highlighted area?  
9 **A Right there.**  
10 Q That is your property down there?  
11 **A Right here.**  
12 Q I apologize if I butcher this name.  
13 Are you familiar with the Capanelli family?  
14 **A Yes, she lives right here. Capanelli?**  
15 Q Yes.  
16 **A Yes.**  
17 Q What about the Stoolchase family?  
18 **A They live right here.**  
19 Q That is all downwards and to the side  
20 of Mr. Juneau's property.  
21 **A Yes.**  
22 Q Mr. Lyles, you can come back.

208

1 MS. McINTURFF: Can we please look at  
2 Exhibit 35, page 1. Just the photos on that.  
3 Just scroll down to there.  
4 Q At the bottom of page 1, you see two  
5 different photos there. One is from 1993 and one  
6 1998.  
7 **A Yes.**  
8 Q The one on the left representing the  
9 1993 photo, is that typical of the historic  
10 characteristics of the land in this area?  
11 **A Yes.**  
12 Q Historically, the land in that area,  
13 was it used for fields?  
14 **A When we first moved in there, it was**  
15 **like a solid field, and then as time went on**  
16 **they planted trees in it.**  
17 Q Have the characteristics of that  
18 property changed over time?  
19 **A Oh, yes.**  
20 Q But prior to that change, did you  
21 experience any water runoff coming from what is  
22 now Mr. Juneau's property?

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1 A Yes.  
2 Q Was that prior to the change?  
3 A Prior to the change, yes. After they  
4 started changing stuff.  
5 Q After he started changing stuff.  
6 A Yes.  
7 Q Before he put up his buildings, were  
8 you experiencing the water runoff?  
9 A No, no.  
10 Q Did you experience any flooding prior  
11 to him putting up those buildings?  
12 A No.  
13 Q Did you experience any standing water  
14 on the property prior to him putting up those  
15 buildings?  
16 A No.  
17 Q Did come a time when Mr. Juneau did  
18 move in as your neighbor, do you recall that?  
19 A Yes.  
20 Q He has added several constructions to  
21 his property, has he not?  
22 A Yes.

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1 Q Have you had the opportunity to view  
2 what he has placed on his property?  
3 A Yes.  
4 Q To your knowledge, what has he placed  
5 on his property?  
6 A It was like two buildings and then  
7 over 11,000 square feet of parking lot area, and  
8 then he added on to both of the buildings.  
9 Q That has been since 1998 or so?  
10 A Yes.  
11 MS. McINTURFF: If we could actually  
12 scroll to page 3, please. Go up one.  
13 Q Is this representative of what Mr.  
14 Juneau's property looks like today?  
15 A Yes.  
16 Q Where that arrow is, what is that?  
17 A What is?  
18 Q Do you see the arrow pointing to the  
19 boundary line?  
20 A Yes.  
21 Q What is there? What exists there?  
22 A The fuel tanks.

211

1 Q You can go up to look.  
2 A That is where you got the mulch and  
3 the fuel tanks and all that, yes.  
4 Q Downwards from that, there is what we  
5 will call it the white roof building?  
6 A Yes. When I first put the berm up, he  
7 only had a little more than half of that  
8 building and that is when I put the swell up  
9 which is the first building he built and then I  
10 put the swell up.  
11 Q That building has been extended since  
12 he initially constructed it?  
13 A Yes.  
14 Q The building to the right, that has  
15 also been constructed since he moved in?  
16 A Yes. He built this middle piece first  
17 and then he added onto both ends of it.  
18 Q In front of these buildings, have you  
19 been able to observe whether or not there is  
20 concrete or gravel?  
21 A Both. Because this is gravel, but  
22 right here in front of the building he got a

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1 concrete swale and that is what diverts the  
2 water over to our property.  
3 Q The area that is now gravel, did that  
4 used to be to your knowledge ground cover?  
5 A Yes. All that was ground cover.  
6 Q In the areas where the buildings are  
7 now, are those also ground cover?  
8 A Yes, all the way up through here.  
9 Q I think they described it as a swell  
10 in front of the buildings. Could you just  
11 describe that a little bit more, please?  
12 A What it is is all of his water, all of  
13 this right here, you see, this was his runoff  
14 for his house. Once he puts his ground right  
15 here in front of the building, he put like a  
16 concrete swale of about 10 feet, 8 feet long,  
17 and it's like a swale.  
18 So when the water comes off this hill  
19 it diverts the polluted water over there to our  
20 property.  
21 Q Is it that the concrete inclines up at  
22 a certain point?

<p style="text-align: right;">213</p> <p>1 A Yes, and I have a picture.</p> <p>2 Q That prevents the water from going in</p> <p>3 his own building?</p> <p>4 A Yes. It gets all the water off of his</p> <p>5 property on to our property.</p> <p>6 Q Since he has constructed these</p> <p>7 buildings and made these improvements to the</p> <p>8 property, have you noticed a difference in the</p> <p>9 water flow to your own property?</p> <p>10 A Oh, yes, it is like a river that comes</p> <p>11 in through there.</p> <p>12 Q When there is a heavy rainfall, can</p> <p>13 you describe the water that is coming onto your</p> <p>14 property?</p> <p>15 A It is like a little river coming out.</p> <p>16 Q On that screen, can you show us where</p> <p>17 the water comes from, from Mr. Juneau's property</p> <p>18 to your own property?</p> <p>19 A It comes right here. It used to come</p> <p>20 right down through here, but then once he put</p> <p>21 that concrete swale over there, it moves it over</p> <p>22 15 feet on the property line which diverts the</p>	<p style="text-align: right;">215</p> <p>1 and I just told him that water would come into</p> <p>2 the property.</p> <p>3 Q When that water was coming in it's</p> <p>4 earlier stage one of construction on Mr.</p> <p>5 Juneau's property, when that water was coming</p> <p>6 onto your property, were you experiencing</p> <p>7 standing water and flooding at that time as</p> <p>8 well?</p> <p>9 A Yes.</p> <p>10 Q Did the water come up to the</p> <p>11 foundation of your residence?</p> <p>12 A It ran in the basement and flooded the</p> <p>13 basement out. It had come into the basement,</p> <p>14 through the windows and was right by the doors.</p> <p>15 It just overwhelmed and ran inside the basement.</p> <p>16 Q Prior to the construction of that</p> <p>17 building, you never experienced that from about</p> <p>18 1970 until after 1998, 2000?</p> <p>19 A Yes.</p> <p>20 Q Did there come a time that you also</p> <p>21 helped your aunt with water damage to her</p> <p>22 property?</p>
<p style="text-align: right;">214</p> <p>1 water where it is coming down off the property</p> <p>2 over to ours, but then on the backside, he has a</p> <p>3 pillar swale too which diverts his water over</p> <p>4 this way to keep everything away from his stuff</p> <p>5 so we get the impact of his water.</p> <p>6 Q How consistently is the water coming</p> <p>7 on to your property?</p> <p>8 A How is what?</p> <p>9 Q How consistently does the water come</p> <p>10 onto your property?</p> <p>11 A Every time it rains on top of the</p> <p>12 berm.</p> <p>13 Q Mr. Juneau's first construction was</p> <p>14 about 1998 or edition?</p> <p>15 A Yes.</p> <p>16 Q After that, did you notice an increase</p> <p>17 in water to your property from Mr. Juneau's</p> <p>18 property?</p> <p>19 A Yes.</p> <p>20 Q Did you discuss that with Mr. Juneau</p> <p>21 at the time?</p> <p>22 A Yes, because I put a little berm up</p>	<p style="text-align: right;">216</p> <p>1 A Yes. Because the water used to hit</p> <p>2 our home and it goes around and it goes out to</p> <p>3 saturate our drain field, well then she can't</p> <p>4 use the bathroom in the house until the water</p> <p>5 leave.</p> <p>6 Q To prevent the water from flooding and</p> <p>7 coming into your own house, at that time of the</p> <p>8 event, you built an incremental berm?</p> <p>9 A Yes.</p> <p>10 Q You discussed that with Mr. Juneau at</p> <p>11 the time your concerns regarding the water</p> <p>12 coming onto your property?</p> <p>13 A Yes.</p> <p>14 Q Was your father residing at the</p> <p>15 property at that time?</p> <p>16 A Yes, he was.</p> <p>17 Q Did you discuss flood insurance with</p> <p>18 your father?</p> <p>19 A Yes, and it got so bad in 2011, we got</p> <p>20 flood insurance for the house, but then the</p> <p>21 floods every time he would panic out every time</p> <p>22 something happened. That is why I constructed a</p>

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1 **bigger berm to hold all the water back over**  
2 **there.**  
3 Q That was preventing it from causing  
4 further damage and flooding to your basement?  
5 **A Yes, and made the choice to either**  
6 **keep the one back there to keep it out of the**  
7 **basement.**  
8 Q Does that at least contain it somewhat  
9 from your aunt's property as well?  
10 **A Yes.**  
11 Q After speaking to Mr. Juneau about  
12 this, to your knowledge, did he take any actions  
13 to abate the runoff to your properties?  
14 **A No. He just kept adding more**  
15 **buildings and parking lots.**  
16 Q Did you notice an effect on the runoff  
17 to your property as he was building those  
18 additions?  
19 **A Yes. It just kept getting worse and**  
20 **worse with the berm. I added to the berm like**  
21 **two or three times.**  
22 Q In your observations the water runoff

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1 coming to your property, have you ever noticed  
2 the water coming into your property from any  
3 other neighbor's property?  
4 **A No.**  
5 Q Have you ever noticed water running  
6 off coming across the road on the other side of  
7 Mr. Juneau's home that was somehow directed to  
8 your house?  
9 **A No. That water, as the river come**  
10 **down.**  
11 Q What is the volume of the water that  
12 is coming onto your property from his?  
13 **A How much? A lot. I don't know. I**  
14 **mean the back of the berm it would be like a**  
15 **pond back there and that is with the mosquitoes**  
16 **and at least 25 feet from my well.**  
17 **I had to make a choice to either put**  
18 **the berm up or have water in the house. It is**  
19 **messing up the well now at the house.**  
20 Q After really in the Phase 2 of Mr.  
21 Juneau's construction, did you have any further  
22 conversations with him regarding the water

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1 runoff to you property?  
2 **A The last time I talked to him, when I**  
3 **called and told him about all mosquito problems**  
4 **that we were having, and the water there, so he**  
5 **came and talked to me and he asked me if there**  
6 **was any way we can get the water around there to**  
7 **the house and I told him how saturated my aunt's**  
8 **drain was so I can't do that neither and then he**  
9 **said "We can't call the county." I said, "What**  
10 **do you mean we can't call the county?" and he**  
11 **said that he don't have permits for none of this**  
12 **stuff.**  
13 **I said "You don't have no permits?"**  
14 Q This would have been pre-2022?  
15 **A Yes.**  
16 Q At that time it was your understanding  
17 from Mr. Juneau that he did not have permits for  
18 those buildings?  
19 **A Yes.**  
20 Q To your knowledge after this  
21 discussion with him, did he take any action to  
22 abate the water runoff onto your property?

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1 **A No.**  
2 Q How has the water runoff from Mr.  
3 Juneau's property affected your property?  
4 **A We have not lived in the home in two**  
5 **years because of the water that had come onto my**  
6 **property was contaminated water because of the**  
7 **oil, the equipment, and all that that, that is**  
8 **washed into the swale with the salt that he got**  
9 **up there.**  
10 **That water is contaminated, and so I**  
11 **can't have my family living in the home. The**  
12 **mosquitoes are so bad.**  
13 Q You are on well water?  
14 **A Yes.**  
15 Q What are your concerns regarding the  
16 well water?  
17 **A That it can be contaminated.**  
18 Q The water at your house, have you  
19 noticed any change or difference to it?  
20 **A Oh, yes.**  
21 Q What have you noticed?  
22 **A It is brown. It just don't smell**



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1 **right. It don't smell the best.**  
2 MS. McINTURFF: If we could please go  
3 to page 4 of this exhibit.  
4 **A This is behind the house.**  
5 Q That is the ponding that you are  
6 suffering?  
7 **A Yes.**  
8 Q That is behind your house?  
9 **A Yes, I was right there and I put the**  
10 **berm up because that water used to shoot**  
11 **straight to the house and in the house.**  
12 Q So that's covering a large area right  
13 there.  
14 **A Yes.**  
15 Q What about the picture to the right,  
16 what is that place?  
17 **A That one is like when it don't rain**  
18 **for about a month. That is what it looks like.**  
19 **Water lays back there sometimes too a few**  
20 **months.**  
21 MS. McINTURFF: Can we scroll to the  
22 next page, please? Right there.

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1 Q Could you please describe what those  
2 are?  
3 **A These are the oil barrels. What he**  
4 **does is he uses the oil barrels, so when he**  
5 **changes the equipment, he dumps his old oil in**  
6 **these barrels. That's why you see the dark oil**  
7 **around the bottom of it, and once he moves it,**  
8 **you see it all over that port-o-potty, but when**  
9 **he changes the equipment he puts his old oil in**  
10 **these barrels.**  
11 Q Is that what causes you concern with  
12 the quality of your well water presently?  
13 **A Yes, and you can see that here.**  
14 Q What is the picture to the left,  
15 please?  
16 **A That is his full tank that has been**  
17 **there for years, and as you can see, the fuel is**  
18 **running all around, changes the filter, he just**  
19 **dumps it all around there, and when it rains,**  
20 **all that is above it, it all washes down.**  
21 Then over there further where he  
22 washes his trucks at, then comes the salt,

223

1 **spraying the salt and stuff off the trucks and**  
2 **all of that just goes into that concrete swale**  
3 **in front of his shop and shoots the water over**  
4 **into the property.**  
5 Q If you can please get to page 6. Can  
6 you please describe what these two top photos  
7 are?  
8 **A This one, right here, this is the**  
9 **concrete swale I was telling you about, how all**  
10 **this water from everywhere comes right here and**  
11 **it comes over to the property. You can even**  
12 **see.**  
13 Q How the water flows through?  
14 **A Yes. It comes right there and there**  
15 **is a little swale and all the water comes this**  
16 **way. Right here. That is where the oil drums and**  
17 **he dumps the old oil in them.**  
18 Q That is the port-o-potty to the left  
19 of that?  
20 **A Yes, that is the toilet potty but most**  
21 **of the time they go back here and use the**  
22 **bathroom.**

224

1 Q When you say "they go back here and  
2 use the bathroom," it's more than one person?  
3 **A Oh, yes, the workers.**  
4 Q It has been multiple people over a  
5 period of years?  
6 **A Yes. I have seen them and I call the**  
7 **police on. I had my granddaughter out there. I**  
8 **see a guy over there, so I call the police. It**  
9 **is just an ongoing problem.**  
10 Q The fact that you are able to see this  
11 from your property and see the current screening  
12 or national tree barriers are not enough to  
13 provide privacy?  
14 **A No.**  
15 Q What is your concern regarding  
16 standing against the back of that wall there in  
17 the right picture?  
18 **A That is like where all the oil is. He**  
19 **takes all his junk and builds it back in here.**  
20 **He took everything back up here around the back**  
21 **of it so he has a beautiful yard but we have got**  
22 **to see all the stuff that he does not want to**

<p style="text-align: right;">225</p> <p>1 see.</p> <p>2 Q That is because this is the back of</p> <p>3 his own residence; correct?</p> <p>4 A Yes.</p> <p>5 Q But it is facing your residence?</p> <p>6 A Yes. <b>His house sits up over this hill</b></p> <p>7 <b>over here.</b></p> <p>8 Q You had also mentioned, again with the</p> <p>9 "they," how many people do you typically see</p> <p>10 during the day at his property?</p> <p>11 A <b>At least 20.</b></p> <p>12 Q Is that consistent throughout the time</p> <p>13 period?</p> <p>14 A <b>Yes, in the summertime, yes.</b></p> <p>15 Q Has that affected the noise to your</p> <p>16 property at all?</p> <p>17 A <b>Yes. Definitely.</b></p> <p>18 Q You have also raised concerns</p> <p>19 regarding Mr. Juneau's trucks idling. Can you</p> <p>20 please describe what those concerns are?</p> <p>21 A <b>Sometimes they will idle for forever.</b></p> <p>22 <b>I don't know what they are doing, but yes.</b></p>	<p style="text-align: right;">227</p> <p>1 A <b>Yes. He wants to keep them, but his</b></p> <p>2 <b>is the main one he wants to keep, and that is</b></p> <p>3 <b>why they want had to put that berm so they can</b></p> <p>4 <b>keep doing what they are doing.</b></p> <p>5 Q You have previously provided videos</p> <p>6 and footage of this water runoff as well?</p> <p>7 A <b>Yes.</b></p> <p>8 MS. McINTURFF: I just note that that</p> <p>9 is Exhibit 23.</p> <p>10 Q Have you noticed any effects of the</p> <p>11 trucks and the traffic going to and from Mr.</p> <p>12 Juneau's home?</p> <p>13 A <b>Yes. This is a lot of trucks. His</b></p> <p>14 <b>business is just too big for this area. It is</b></p> <p>15 <b>just too much. Even when they come out the lane,</b></p> <p>16 <b>they have to cross to the other side of the road</b></p> <p>17 <b>in order to make the right hand turn.</b></p> <p>18 Q Based on your observations, when the</p> <p>19 vehicles are leaving Mr. Juneau's property, what</p> <p>20 did they have to do to leave?</p> <p>21 A <b>When they make a right hand turn, well</b></p> <p>22 <b>they cannot just turn into the lane. They have</b></p>
<p style="text-align: right;">226</p> <p>1 Q You mentioned the one swale in front</p> <p>2 of that building on Mr. Juneau's property. Are</p> <p>3 there any other swales to your knowledge on his</p> <p>4 property?</p> <p>5 A <b>Yes, on the backside of this building</b></p> <p>6 <b>right here, he has a swale there too, and that</b></p> <p>7 <b>one comes 15 feet on the property line too.</b></p> <p>8 <b>This is the berm that he is trying to</b></p> <p>9 <b>keep so he can just keep going into our property</b></p> <p>10 <b>even though there is some control so that it is</b></p> <p>11 <b>not going to go uphill.</b></p> <p>12 Q Is that the white roofed building or</p> <p>13 the black roofed building?</p> <p>14 A <b>This is the white.</b></p> <p>15 Q There are two swales there, one in the</p> <p>16 front and one in the back that are diverting</p> <p>17 water runoff to your property?</p> <p>18 A <b>Over to our property, so that way he</b></p> <p>19 <b>can get the water off of his property.</b></p> <p>20 Q Those are part of what is being</p> <p>21 requested in Mr. Juneau's variances to keep</p> <p>22 those two swales?</p>	<p style="text-align: right;">228</p> <p>1 <b>to go into oncoming traffic lane.</b></p> <p>2 Q Does that raise safety concerns for</p> <p>3 you?</p> <p>4 A <b>Yes. Because we have a neighbor that</b></p> <p>5 <b>put in a complaint one time about them and those</b></p> <p>6 <b>guys were yelling at her so she made a complaint</b></p> <p>7 <b>about it.</b></p> <p>8 Q You said that "this operation is too</p> <p>9 big for the neighborhood." This is an</p> <p>10 agricultural country neighborhood; is that</p> <p>11 right?</p> <p>12 A <b>Yes.</b></p> <p>13 Q People have various farming type areas</p> <p>14 or small businesses?</p> <p>15 A <b>Yes. It is mom and pop type</b></p> <p>16 <b>businesses, yes, and it is perfect. But not a</b></p> <p>17 <b>corporation.</b></p> <p>18 Q To your knowledge, is anybody else</p> <p>19 running an operation the size of Mr. Juneau's?</p> <p>20 A <b>No.</b></p> <p>21 Q Are you aware of anybody else who has</p> <p>22 approximately two dozen employees at their site</p>

229

1 every day?  
2 **A No.**  
3 Q Are you aware of anybody else that has  
4 multiple parking pads to accommodate their  
5 commercial vehicles and employees?  
6 **A No.**  
7 Q Are you aware of anyone else who has  
8 the same number or equivalent of commercial  
9 trucks as Mr. Juneau's?  
10 **A No.**  
11 Q You have some trucks of your own?  
12 **A Yes.**  
13 Q You run a landscaping business?  
14 **A Yes.**  
15 Q It is residential?  
16 **A Yes.**  
17 Q Smaller in size?  
18 **A Yes.**  
19 Q Is there any employee there besides  
20 yourself?  
21 **A No. I mean I got family that come and**  
22 **go, but it is me. I am the only employee there.**

230

1 Q How many trucks do you have for your  
2 business?  
3 **A Two, but I only use one though, yes.**  
4 Q One of the trucks is in disrepair and  
5 being removed?  
6 **A Yes.**  
7 Q That is typical and consistent with  
8 the neighborhood?  
9 **A Yes.**  
10 Q But 12 trucks is not consistent with  
11 the neighborhood?  
12 **A No.**  
13 Q Are you aware of anybody else in the  
14 neighborhood that has replaced ground cover with  
15 large parking pads?  
16 **A No.**  
17 Q Not to that extent?  
18 **A No. Never. It has been that forever.**  
19 **We look out for each other.**  
20 Q You have had concerns regarding the  
21 sediment control at Mr. Juneau's property over  
22 the years, is that right?

231

1 **A Yes.**  
2 Q Did you contact the county about that  
3 at any point?  
4 **A Yes. I just always tried to work with**  
5 **him because I thought we were friends, but when**  
6 **I seen, when I went to see what was going on, so**  
7 **I called the county. My dad passed away and**  
8 **were going to move into the house, but between**  
9 **the mosquitoes and the water, we just can't go.**  
10 Q To your knowledge did the county issue  
11 him a citation regarding that sediment  
12 disturbance?  
13 **A Yes, Johnny Campbell and Jacqueline**  
14 **Luis came out there and cited him with sediment**  
15 **control over 11,000 square feet of ground cover**  
16 **and disturbance.**  
17 MS. McINTURFF: You can sit back down.  
18 We do not want to keep you up there.  
19 Q Was that citation later dismissed?  
20 **A Yes.**  
21 Q What was your understanding of why it  
22 was dismissed?

232

1 **A Tom Wheaton, he dismissed it. He said**  
2 **because there was no active of site when he went**  
3 **out there, but he didn't realize that it was a**  
4 **citation. He thought it was a violation, but he**  
5 **would double check and see and get back with me**  
6 **and he never got back with me.**  
7 Q Are you aware of whether or not there  
8 is a service request currently open and pending  
9 regarding Mr. Juneau's extension to one of the  
10 commercial buildings?  
11 **A Yes. He stood it up and open.**  
12 Q Have you had the opportunity to review  
13 the stormwater management proposal submitted by  
14 Mr. Juneau?  
15 **A Yes.**  
16 Q Do you have any concerns with that  
17 proposal?  
18 **A Yes. To me it's not going to work by**  
19 **the grade of the land. The water is not going to**  
20 **go up in the hill and put a pipe. It's not**  
21 **going to work. That is why they want to keep a**  
22 **variance to just keep what is going on and going**

233

1 **on. It is just unsafe.**  
2 Q Is it your understanding that with the  
3 variance the way that the swales are still  
4 sloped, that is not going to be captured by the  
5 stormwater management plan?  
6 A No.  
7 Q Do you have any other concerns  
8 regarding the stormwater management proposal?  
9 A **Yes. I have done this type of work**  
10 **for years. It is just not going to work because**  
11 **of the grade of the land.**  
12 Q You have done this work over that  
13 period of years?  
14 A Yes.  
15 Q Have you put in stormwater abatement?  
16 A Yes.  
17 Q Have you put in sediment control?  
18 A Yes.  
19 Q This is in your professional capacity?  
20 A Yes.  
21 Q Not like Mr. Juneau's properly. Based  
22 on your experience, it is your understanding

234

1 that this stormwater management proposal will  
2 not be effective to abate the runoff to your  
3 property?  
4 A **Yes. It won't work. We are going to**  
5 **have the problem. This is not going to fix it.**  
6 Q Mr. Juneau is also seeking variances.  
7 Are you aware of that?  
8 A Yes.  
9 Q You have highlighted and are opposed  
10 to those variances as well, haven't you?  
11 A Yes.  
12 Q What is your opposition to those  
13 variances?  
14 A **To not give it to him because if he**  
15 **gets them then our home is useless unless he**  
16 **fixes this problem over there.**  
17 Q One of the variances he is requesting  
18 is because one of his commercial buildings is  
19 right on the property line.  
20 A Yes.  
21 Q Then there is the other variance which  
22 has the swales in existence?

235

1 A Yes.  
2 Q If he is permitted that, will that  
3 keep the water continuing onto your property?  
4 A **Yes. I mean I didn't think it was a**  
5 **hardship for he can get a variance. He has done**  
6 **all of this illegally. The problem he has why**  
7 **he cannot get a variance is this is something**  
8 **that he caused, but we are taking the punishment**  
9 **for it.**  
10 Q Are you opposing the use of the  
11 conditional use permit and the variances?  
12 A Yes.  
13 Q Is that based on the fact that it is  
14 preventing you from using your property?  
15 A Yes.  
16 Q That is due to the water runoff?  
17 A **Yes. It is the polluted water, but it**  
18 **is not just polluted water. It is the chemicals**  
19 **and all this stuff coming over to within 25 feet**  
20 **from my well. My family can't live in that**  
21 **place like this.**  
22 MS. McINTURFF: I have no further

236

1 questions on direct.  
2 HEARING EXAMINER: Have you had an  
3 opportunity to have your well tested?  
4 A **No, I haven't. Not until I get the**  
5 **problem fixed, I didn't think there was no**  
6 **reason to get it tested because if it is not**  
7 **contaminated, if the problem keeps going on,**  
8 **then it will be contaminated.**  
9 HEARING EXAMINER: The swale, the  
10 concrete in front of the buildings goes like  
11 that?  
12 A Yes.  
13 HEARING EXAMINER: It creates a swale  
14 funnel?  
15 A Yes.  
16 HEARING EXAMINER: If that swale  
17 funnel was removed and it was a concrete pad  
18 versus a directed swale, what is your opinion of  
19 that?  
20 A **The water is still going to come out**  
21 **there because it is all on a downgrade and that**  
22 **helps it to come down more. If it was a**

237

1 straight thing, the water would still come over  
2 that away, but it would just go into a garage  
3 and come that way. He got the swale so that it  
4 will not go into his garage.  
5 But if you make it flat it still  
6 slopes down and so it is just going to go into a  
7 garage and come over to us.  
8 HEARING EXAMINER: When the engineer  
9 testified, he talked about the trench that would  
10 be out in front of those buildings to capture  
11 that runoff. If the swales went toward the  
12 trench, would it capture more of that runoff?  
13 A No. Not enough to make a difference  
14 because it is going to be open at the end of it,  
15 but then the pipe is going to be in the ground,  
16 three feet or so into the thing and so the water  
17 is over top of that is just going to keep doing  
18 what it is doing.  
19 HEARING EXAMINER: When was the last  
20 time somebody lived in the property?  
21 A Two years ago, two and a half years  
22 ago. Man, we were going to move up there. I

238

1 have a home in Germantown and we were going to  
2 move up there but with these problems we can't  
3 move up there like that.  
4 HEARING EXAMINER: Does your aunt  
5 still live in the property?  
6 A Yes.  
7 HEARING EXAMINER: To the right are  
8 the Capanellis, that is to the right, and then  
9 your property is at that point where Mr.  
10 Juneau's property is straight back?  
11 A Yes.  
12 HEARING EXAMINER: Where is your  
13 aunt's property in conjunction to that?  
14 A It is right on the other side of my  
15 property.  
16 HEARING EXAMINER: Just on the other  
17 side of the property.  
18 A Yes.  
19 HEARING EXAMINER: Your house and then  
20 your aunt's house?  
21 A Yes.  
22 HEARING EXAMINER: Is this further

239

1 south?  
2 A Yes.  
3 HEARING EXAMINER: I just want to get  
4 my bearings. Do you still operate your business  
5 from the property?  
6 A Yes. I have an occupant license to  
7 run my business.  
8 Q Do you have a home occupation?  
9 A Yes, I do, but that's kind of like  
10 Jeff had thought that I didn't have one, and  
11 then when he found out that I had one, then that  
12 is when everything went haywire because he  
13 didn't have one.  
14 HEARING EXAMINER: I don't have any  
15 further questions. No, thank.  
16 A Thank you.  
17 HEARING EXAMINER: Cross-Examination.  
18 CROSS-EXAMINATION  
19 MR. RUHLEN: It may be helpful to  
20 start, if you could look at Exhibit 35 which was  
21 the opposition's prehearing statement. If you  
22 can go back, I think it was page 1 or 2. Right

240

1 there. Thank you.  
2 Q If I understand this report right, the  
3 aerial photo showed development conditions in  
4 1993 on the left and development conditions in  
5 1998 on the right, is that your understanding?  
6 A Yes.  
7 Q Is your property shown on here?  
8 A Yes.  
9 Q Which properties are yours again?  
10 A The one right there.  
11 Q With the building in the center?  
12 A Yes.  
13 HEARING EXAMINER: Why don't you go up  
14 and show him. We apparently did not have color  
15 in 1998 or 1993.  
16 Q They are in the middle and then you  
17 also own the property that is over to the west?  
18 A Yes.  
19 Q So in the picture in 1998 when we were  
20 talking about how the area has developed over  
21 time, what is the condition on the property that  
22 you own that is shown there in the bottom left

241

1 corner of the right picture?

2 **A What you see.**

3 Q Was that under construction also at

4 the time there was construction activity there

5 as well?

6 **A This one?**

7 Q Yes.

8 **A I don't know what we were doing at the**

9 **time.**

10 Q If we could go back. You have seen

11 these exhibits.

12 **A The water leaves back behind this berm**

13 **right here. This right here come down this way**

14 **onto my other property. So this has nothing to**

15 **do with the berm. I am just giving you some**

16 **facts here.**

17 **The berm is right here, right, so this**

18 **water come down through here and this is my**

19 **property too. If this was Jeff's property it**

20 **wouldn't be a problem, but the problem is it is**

21 **my problem and I can't live in my house.**

22 Q You are saying the water is coming

242

1 from that direction as well?

2 **A No. This is the only. Right here,**

3 **the water come right here. The water right here**

4 **it's no problem. We have been there for 30 years**

5 **and never was a problem.**

6 **When something starts changing back**

7 **here it was just done and you see right here**

8 **where he just put the building right here, this**

9 **is when I put the berm up.**

10 **The engineer has in his report, I put**

11 **the berm up in 2004 and after 2004, Jeff built**

12 **another building, right, and then added to this**

13 **building he put a bigger parking lot and then**

14 **added on both of those buildings.**

15 **So the only construction was done on**

16 **this side of the thing was Jeff's property.**

17 Q But there is also construction shown

18 on you said --

19 **A We could have been planted grass. I**

20 **don't know.**

21 MR. RUHLEN: Can we go to Exhibit 40

22 again. If we could put forward to the

243

1 beginning. Stop there. Go down.

2 Q Those are the properties. That

3 actually shows footprints of the structures and

4 driveway over there. Could that have been what

5 was being constructed?

6 **A Yes.**

7 MR. RUHLEN: Go down again.

8 Q Those are your properties?

9 **A Yes.**

10 Q What are the improvements there on the

11 left side?

12 **A Right here, but you have to realize**

13 **this is like family. I got like nine siblings**

14 **and they will all be coming here to hang out and**

15 **stuff.**

16 **But all this right here is not a**

17 **problem. The problem is I put this berm up**

18 **because the water was coming into the house this**

19 **way.**

20 **The natural flow of this water, it**

21 **comes down and it flows like this, but the only**

22 **thing that changed is on Jeff's property where**

244

1 **all of that water of his is coming right here.**

2 Q It is your testimony that you put in

3 the berm at the time, but then you expanded onto

4 the berm?

5 **A At least twice, yes. Because the more**

6 **Jeff built on his property the more water and so**

7 **the more berm was needed to hold it back.**

8 Q You testified that you are running a

9 landscape business on your property; is that

10 what that is?

11 **A Yes.**

12 Q You are the operator?

13 **A Yes.**

14 Q Are you residing on the property?

15 **A What do you mean?**

16 Q Do you live there?

17 **A I can't live there because of all of**

18 **Jeff's water and the mosquitoes right there.**

19 Q When did you become the owner of the

20 property?

21 **A It has been a couple years. Maybe**

22 **about a year ago. My dad passed away about two**

245

1 **years ago.**  
2 MR. RUHLEN: If we can go forward.  
3 Q I think you have testified that for  
4 your business you have two trucks?  
5 **A Yes.**  
6 MR. RUHLEN: Can we go forward a page.  
7 Q Are these the trucks?  
8 **A No. Those two trucks right there**  
9 **belong to my brother. He happened to have right**  
10 **now because he is working on them.**  
11 Q But they are parked on your property?  
12 **A Yes.**  
13 MR. RUHLEN: If we can go forward  
14 again.  
15 Q That's your brother's?  
16 **A Yes, my brother is Timmy Lyles and I**  
17 **am Oscar Lyles.**  
18 Q But he is parking the trucks there?  
19 **A He has been working on them, but he**  
20 **don't keep them all the time.**  
21 MR. RUHLEN: We can go forward again.  
22 Q What about these materials?

246

1 **A Yes. The problem here is with the**  
2 **water.**  
3 MR. RUHLEN: If we could go forward  
4 again.  
5 Q That's another view of the trucks?  
6 **A Yes. That is my nephew and he had**  
7 **that towed out of there.**  
8 Q You testified you have two trucks.  
9 Are your trucks separate trucks from these?  
10 **A No. So I will say this one more time.**  
11 **These are my brother Tim's trucks, my brother's**  
12 **truck. This is my nephew's truck and I got a**  
13 **couple of pickup trucks.**  
14 Q Those are not shown.  
15 **A They are showing there somewhere.**  
16 MR. RUHLEN: We can go forward.  
17 Q All of these trucks are out there,  
18 your brother's trucks, your nephew's trucks,  
19 your trucks?  
20 **A Yes.**  
21 Q You said that you had a home  
22 occupation?

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1 **A Yes.**  
2 MR. RUHLEN: No further questions for  
3 Mr. Lyles. We would have some more if we can  
4 call for additional rebuttal. I don't know when  
5 that will happen.  
6 HEARING EXAMINER: The way that the  
7 process will work is she will complete her full  
8 opposition testimony. Then our other  
9 independent witness will testify and then the  
10 applicant gets the last word in the rebuttal and  
11 whoever you choose to call for rebuttal will be  
12 limited to the testimony that was raised in  
13 opposition.  
14 MR. RUHLEN: Thank you.  
15 HEARING EXAMINER: I am sure that you  
16 have some follow up.  
17 REDIRECT EXAMINATION  
18 BY MS. McINTURFF:  
19 Q Mr. Lyles, your father passed a year  
20 or two ago.  
21 **A Yes.**  
22 Q Prior to that, did you also reside at

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1 the property?  
2 **A Yes.**  
3 Q You resided there growing up?  
4 **A Yes.**  
5 Q Over the years as well?  
6 **A Always there, yes.**  
7 Q You are there almost on a daily basis?  
8 **A Yes.**  
9 Q The trucks that you have at your  
10 property right now, it is your two pickup  
11 trucks?  
12 **A Yes.**  
13 Q There are two trucks from your  
14 brother?  
15 **A Yes.**  
16 Q And a truck that your nephew crashed  
17 that you took out?  
18 **A Yes.**  
19 Q Is that typical what is stored at your  
20 property?  
21 **A My nephew's truck, it had been there**  
22 **for a year, but I got it towed out.**

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1 Q Is that more in line of what the  
2 neighborhood uses their property for as well?  
3 A **No. Oh, the other people in the**  
4 **neighborhood you are talking about?**  
5 Q Yes.  
6 A **Oh, yes.**  
7 Q More typically there would be two to  
8 five trucks on the property?  
9 A **Yes.**  
10 MS. McINTURFF: No further questions.  
11 HEARING EXAMINER: I do have one. You  
12 have your dwelling, the house?  
13 A **Yes.**  
14 HEARING EXAMINER: That is used as a  
15 residence. Are there any other outbuildings?  
16 A **Yes. We got a couple buildings up**  
17 **there. Okay.**  
18 HEARING EXAMINER: Are any of those  
19 used for residences or are they all for the  
20 business?  
21 A **No, there is just the one that is used**  
22 **for the business.**

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1 HEARING EXAMINER: How many buildings  
2 would you say you have on your property?  
3 A **Two.**  
4 HEARING EXAMINER: You have got the  
5 residence and then one outbuilding or two  
6 outbuildings?  
7 A **Two outbuildings. I got the**  
8 **residence. This is two separate building lots.**  
9 HEARING EXAMINER: Right.  
10 A **So one lot is the house, and on the**  
11 **other lot, I got my shop.**  
12 HEARING EXAMINER: That is closer to  
13 the street.  
14 A **Yes.**  
15 HEARING EXAMINER: So your shop and  
16 then he had like --  
17 A **It is like a dog kennel, yes.**  
18 HEARING EXAMINER: More shed like or  
19 shop like?  
20 A **Shop like, yes, but no diverted water**  
21 **people property. None of that. I promise you.**  
22 HEARING EXAMINER: That was all that I

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1 had. I just wanted to confirm the buildings I  
2 saw. Thank you.  
3 MS. McINTURFF: We call Tracy Horn  
4 next.  
5 (Whereupon, Tracy Horn, sworn.)  
6 DIRECT EXAMINATION  
7 BY MS. McINTURFF:  
8 Q What is your name, please?  
9 A **My name is Tracy Horn.**  
10 Q Are you Mr. Lyles' longterm partner?  
11 A **Yes, for almost 30 years. Very long**  
12 **term.**  
13 Q Do you presently live with Mr. Lyles?  
14 A **Yes.**  
15 Q Are you and Mr. Lyles able to reside  
16 at the Damascus Road property?  
17 A **No. We can't.**  
18 Q Why are you not able to reside there?  
19 A **Because of the well water. I**  
20 **definitely don't want to bathe myself in it. I**  
21 **am not going to drink it. Also because of the**  
22 **mosquitoes. My dad, about ten years ago, got bit**

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1 **by a mosquito and ended up in intensive care.**  
2 **He had encephalitis.**  
3 **He luckily came out of it because most**  
4 **patients don't. But he suffers. He has**  
5 **darkening of his lobe. He suffers from short**  
6 **term memory and he suffers seizures from it.**  
7 **I am definitely afraid of the**  
8 **mosquitoes because I have seen the effects. I**  
9 **know they carry diseases. I try to avoid the**  
10 **property when I can. So I'm out. I'm out by**  
11 **11 3:00. Definitely out.**  
12 Q So you are at the property during the  
13 day, but you try to leave by 3:00?  
14 A **Definitely.**  
15 Q Over the last 30 years that you have  
16 been with Mr. Lyles, you have resided at the  
17 property at times?  
18 A **Yes, I have.**  
19 Q In the last 30 years have you noticed  
20 any changes in the water runoff to the property?  
21 A **Oh, yes, absolutely.**  
22 Q What are those changes?



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1 A Just a heavy flow of Jeff's water that  
2 comes down and floods the basement. We have had  
3 that happen several times.  
4 I have actually had to help him clean.  
5 I was actually called in to help clean up the  
6 basement when his father and stepmother were  
7 standing there in the water. We helped clean  
8 that up a couple times, actually.  
9 Q Do you have any concerns regarding the  
10 conditional use permit that Mr. Juneau has  
11 sought?  
12 A Yes.  
13 Q What are those concerns?  
14 A I am still worried that he is not  
15 going to control the water. That we will never  
16 move into the house. We have always had this  
17 mosquito problem, so I will fear living there.  
18 With nine siblings of Oscar's, there  
19 are 28 grandkids. I can't even tell you about  
20 great grandkids. The family can't even come and  
21 enjoy the property.  
22 Q Is this something historically that

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1 the family had done to enjoy the property?  
2 A Oh, my gosh, yes, absolutely.  
3 Q Do you have family cookouts and  
4 barbecues?  
5 A Oh, yes, definitely.  
6 Q Are you able to use the property for  
7 that now?  
8 A I am out by 3:00. If anybody else  
9 wants to risk the mosquitoes, they are more  
10 willing to, but we don't usually let the  
11 grandkids come down there later in the evening  
12 time.  
13 He won't bring his grandkids, I should  
14 say, because his one granddaughter Lauren – I  
15 mean London, was down there in the evening.  
16 He picked them up from his son's  
17 house, brought them into the house, was  
18 unloading equipment, she ran around, and the  
19 next thing you know she just had huge welts all  
20 over. We won't allow the kids there because the  
21 mosquitoes are so bad.  
22 Q Have you observed the water runoff

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1 from Mr. Juneau's property?  
2 A I have.  
3 Q How would you describe it?  
4 A It is like a small gush of river water  
5 coming in your direction.  
6 Q Does that happen every time it rains?  
7 A On a light rain, not so much, but you  
8 can definitely on the hard rains, yes, it was  
9 definitely flooding.  
10 Q Have you noticed water intruding from  
11 any other property?  
12 A No. I have been around it for almost  
13 30 years, so no.  
14 MS. McINTURFF: I have no further  
15 questions.  
16 HEARING EXAMINER: Any  
17 cross-examination.  
18 MR. RUHLEN: No cross-examination.  
19 HEARING EXAMINER: Thank you so much.  
20 MS. McINTURFF: That is our case.  
21 HEARING EXAMINER: Whenever you would  
22 like to start rebuttal.

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1 MR. RUHLEN: Thank you. If I could  
2 call Mr. Juneau. That is the right starting  
3 point.  
4 HEARING EXAMINER: Mr. Juneau, I  
5 remind you that you are still under oath.  
6 DIRECT EXAMINATION (recalled)  
7 BY MR. RUHLEN:  
8 Q Just a couple of things I want to ask  
9 about. We heard from Mr. Lyles about it in the  
10 last conversation with you. Can you describe  
11 that conversation?  
12 A The conversation about the water was I  
13 met with Oscar and I asked him why he had to  
14 call the county. "Can't we work this out?" He  
15 says, "No, Jeff, we can't."  
16 Q You were speaking about the water and  
17 the situation that we have seen the photos of?  
18 A That's correct.  
19 Q You testified earlier today that you  
20 had been on the property for a long time and you  
21 were familiar with your neighbors.  
22 Are you aware of any complaints from

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1 your conversations with your neighbors, any  
2 complaints about flooding of the Lyles' property  
3 before your time in the residence?  
4 **A There has been some hearsay, but my**  
5 **neighbor, Ms. Middleton, had built in 1978 who**  
6 **owned the property, she told me that Johnny**  
7 **Lyles had a complaint about her then that water**  
8 **was coming down from --**  
9 MS. McINTURFF: Objection hearsay.  
10 HEARING EXAMINER: It is hearsay.  
11 **A That is what I'm saying.**  
12 HEARING EXAMINER: I will tell you  
13 that I will give it the weight it deserves.  
14 MR. RUHLEN: Thank you.  
15 **Q We saw some oil barrels in the photos**  
16 **and you testified earlier that the oil barrels**  
17 **have been collected and moved.**  
18 Are those the barrels?  
19 **A That's correct.**  
20 **Q Your impressions of the conditions**  
21 **that were there, there was some description of**  
22 **oil on the sides and such? How would you**

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1 describe it?  
2 **A Yes. You are going to get oil on top**  
3 **of your can when you have a dispenser and it**  
4 **splashes on top and then we moved the barrels**  
5 **out and has oil that sits on top of the barrel,**  
6 **and then the rainwater will probably splash it**  
7 **and it got on to the bathroom and the side of**  
8 **the building.**  
9 **Q But those have now been moved?**  
10 **A Right. It is not like oil what was**  
11 **dumped or this or that. It is excess oil that**  
12 **was sitting on top of the barrels.**  
13 **Q The last question for you. There was a**  
14 **description about concrete swales along the back**  
15 **of one of the buildings being concrete? Is that**  
16 **accurate? Is that concrete?**  
17 **A That is not correct.**  
18 **Q What is back there?**  
19 **A It is Class A1 1A riprap. That is**  
20 **20 down through the channel.**  
21 **Q Can you describe what that is?**  
22 **A It is just probably eight-to-nine inch**

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1 **stone that is in more of a riprap area where the**  
2 **flow of the water to disperse it and slow it**  
3 **down.**  
4 MR. RUHLEN: I think that is it.  
5 **A Mr. Lyles actually submitted a picture**  
6 **of it with somebody standing on top of it. So**  
7 **it's stone. Not concrete.**  
8 HEARING EXAMINER: When was that  
9 installed?  
10 **A Probably 2014-2015.**  
11 HEARING EXAMINER: Why did you install  
12 it?  
13 **A Because there was water still coming**  
14 **off the property. So I wanted to slow the**  
15 **property, the flow of the water down, so it**  
16 **would not just keep eroding. It is on the**  
17 **backside of the property.**  
18 **Those trees have grown up quite large**  
19 **now and you cannot get anything to grow**  
20 **underneath them in the proposed water retention**  
21 **area.**  
22 **Q Is that a landscaping practice that**

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1 you would utilize in that kind of condition?  
2 **A Absolutely.**  
3 MR. RUHLEN: That is enough for Mr.  
4 Juneau. I think it might be helpful to ask a  
5 couple more questions of Mr. Witmer, if I may?  
6 HEARING EXAMINER: But first, there is  
7 still the opportunity for the opposition for  
8 cross.  
9 CROSS-EXAMINATION  
10 BY MS. McINTURFF:  
11 **Q The swale in the back you are saying**  
12 **is rock, but the one in the front that is**  
13 **concrete; correct?**  
14 **A Correct.**  
15 **Q The oil barrels being moved, have you**  
16 **done anything to clean up the site of the excess**  
17 **oil?**  
18 **A I have not. We have raked it clean**  
19 **and that is about it.**  
20 MS. McINTURFF: No other questions.  
21 HEARING EXAMINER: Thank you. Is that  
22 it for Mr. Juneau?

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1 MR. RUHLEN: That's it. If I can call  
2 Mr. Witmer and I will be brief with these  
3 questions because we have already discussed much  
4 about the stormwater in the record.  
5 DIRECT EXAMINATION (recalled.)  
6 BY MR. RUHLEN:  
7 Q Mr. Witmer, there was testimony about  
8 the berm and the function of the berm. You  
9 testified earlier that that your finding is that  
10 the berm is likely playing a role in retaining  
11 water?  
12 **A Absolutely.**  
13 Q Your testimony was that the berm is  
14 contributing to the flooding conditions on the  
15 neighboring property?  
16 **A Absolutely.**  
17 Q You also testified that the larger  
18 drainage area covers the properties that we saw  
19 and were also on Mr. Lyles' properties?  
20 **A Correct.**  
21 Q Your opinion will be the water from  
22 the drainage area even across those properties

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1 is heading towards the residence in the study  
2 point?  
3 **A Yes.**  
4 MR. RUHLEN: One final question, and I  
5 don't know if you can answer it, but I am going  
6 to ask it.  
7 Q Do you have any thoughts about if  
8 Permitting Services were to get a building  
9 permit today for a residence that is in the  
10 location where the Lyles' residence is, would  
11 they analyze the drainage area in connection  
12 with that permit review?  
13 **A Absolutely.**  
14 MS. McINTURFF: Objection. That's  
15 outside of rebuttal.  
16 HEARING EXAMINER: It is.  
17 **A So I don't answer.**  
18 HEARING EXAMINER: No.  
19 MR. RUHLEN: I don't have any further  
20 questions.  
21 HEARING EXAMINER: Do you have any  
22 questions?

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1 --  
2 --  
3 CROSS-EXAMINATION  
4 BY MS. McINTURFF:  
5 Q The berm doesn't contribute from the  
6 runoff from Mr. Juneau's property. That all  
7 comes from Mr. Juneau's property or is directed  
8 through Mr. Juneau's property. It has no effect  
9 on when it comes through his property?  
10 **A It has no effect on --**  
11 Q I understand your argument that you  
12 are saying what happens afterwards, but the  
13 amount of water coming through Mr. Juneau's  
14 property is the amount of water coming through  
15 Mr. Juneau's property?  
16 **A Correct.**  
17 Q That swale that he has constructed in  
18 the back, as he put it, to reduce the erosion  
19 and redirect the water away from his own  
20 building, now contributes to the runoff to Mr.  
21 Lyles' property?  
22 **A That would actually be beneficial**

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1 **because it slows the water down.**  
2 Q It slows it down, but it is still  
3 directing it towards his property?  
4 **A It was already directed there. So it**  
5 **is one of those. Like I said, the one drainage**  
6 **area map shows all that drainage goes to one**  
7 **point. It doesn't matter what has been built,**  
8 **how it has been built, all the drainage is going**  
9 **to go to there.**  
10 **It is just a matter of how it's**  
11 **conveyed. How quickly it gets there. The**  
12 **attributes that you have to look at in this**  
13 **situation, and I have talked about this before**  
14 **is the cover type, the flood pads, the drainage**  
15 **system, or the lack thereof, those are the**  
16 **things that you have to analyze.**  
17 **The water that is going to get there**  
18 **is going to get there. There is nowhere else for**  
19 **the water to go.**  
20 Q But the waters is going onto Mr.  
21 Juneau's property.  
22 **A Partially, yes.**

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1 MS. McINTURFF: Thank you.  
2 HEARING EXAMINER: Quick question. We  
3 talked about this a little bit with Mr. Lyles.  
4 I asked him about the trench and the pipe where  
5 you had designed the stormwater management  
6 device, there was the large pipe and it sat in  
7 front of the southern white/gray roof building?  
8 **A Yes.**  
9 HEARING EXAMINER: But you also  
10 testified that that white/gray roof building,  
11 and the area to the side, will not be captured  
12 by the stormwater management device?  
13 **A Correct, yes.**  
14 HEARING EXAMINER: How doe that pipe  
15 work? Is it only capturing things that come  
16 downhill? Does it capture things that stay  
17 right there? Is it possible to capture things  
18 that come off the front of that building based  
19 on the design and slope?  
20 **A Yes. I am glad you said that because**  
21 **that is what we are fighting a slope and grade.**  
22 **The reason we place the inlet where we**

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1 **did is so we could have an upgrade and fall**  
2 **where the water captured in the inlet could be**  
3 **piped to the stormwater facility. It allows us**  
4 **to have enough elevation difference so we have**  
5 **slope on the pipe to make that work.**  
6 **If we were to move the facility down**  
7 **on the bottom of the property, there is no way**  
8 **to capture that water, retain it, and slowly**  
9 **disperse the water or slowly release the water**  
10 **because you have to have a stable outfall and**  
11 **you have got to be able to maintain that**  
12 **outfall. That is one of the reasons why we**  
13 **choose the location where we did.**  
14 HEARING EXAMINER: I'm a visual  
15 person. So the water comes down and like a  
16 gutter in a storm drain, hits the gutter, goes  
17 to the storm drain, but anything based on the  
18 angle behind it or south of it isn't going to be  
19 captured?  
20 **A We hold true to our drainage area**  
21 **because a lot of stuff sometimes when these**  
22 **things are built we do a construction stakeout**

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1 **to make sure of everything.**  
2 **We could grade part of the gravel area**  
3 **to make sure everything gets to that point,**  
4 **everything above it.**  
5 HEARING EXAMINER: Right.  
6 **A But everything below it.**  
7 HEARING EXAMINER: Everything below it  
8 is not going to be captured.  
9 **A Correct. That is what we had talked**  
10 **about. This is common practice. You are never**  
11 **going to capture all of it.**  
12 HEARING EXAMINER: Right.  
13 **A But you account for it in your design.**  
14 **You oversize your facility further up to**  
15 **accommodate what is down below.**  
16 HEARING EXAMINER: The intent is to  
17 capture as much as possible uphill because you  
18 know you will not capture everything downhill?  
19 **A Correct.**  
20 HEARING EXAMINER: That is what you  
21 mean by oversize?  
22 **A Yes. So we overcompensate how a little**

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1 **higher up to account for what is going on.**  
2 HEARING EXAMINER: What is the square  
3 footage of Mr. Juneau's property you think you  
4 are not capturing?  
5 **A I would have to look at the numbers.**  
6 HEARING EXAMINER: Can you give me a  
7 visual?  
8 **A If we have the stormwater plan, I can**  
9 **show you. Back to 36, page 7. You see right**  
10 **here is the area that would not be captured.**  
11 **We could actually alter our design**  
12 **slightly and we might be able to get this little**  
13 **section here, but then that will leave just this**  
14 **portion of it.**  
15 HEARING EXAMINER: If you were to  
16 alter the design to capture that, how  
17 significant a change is that?  
18 **A Minor. But we could. If it is one of**  
19 **those things where you say every drop, then we**  
20 **could squeeze out what we can.**  
21 **We have to check the slopes on the**  
22 **pipes, but I think we can make that work with a**

<p style="text-align: right;">269</p> <p>1 <b>shallow inlet.</b> 2 HEARING EXAMINER: Then that would 3 capture the water in front of the building that 4 is not in the setback area, so then that would 5 just leave the water around the building to the 6 back? 7 <b>A Correct. By that design those large</b> 8 <b>amounts of runoff that they are seeing is going</b> 9 <b>to be captured and placed in this facility.</b> 10 <b>Basically you would have a trickle coming down</b> 11 <b>from here.</b> 12 HEARING EXAMINER: In my head, looking 13 at that design, to me it looks like a Y, right, 14 those lines, so I thought everything to the 15 right would be captured. 16 <b>A Oh, you mean --</b> 17 HEARING EXAMINER: Yes, do you see 18 that? It looks like a Y. Let me come over 19 there. Yes, I am a visual person. 20 This to me is a Y. In my head, it was 21 everything like this was to be captured and this 22 was the only thing not to be captured. What you</p>	<p style="text-align: right;">271</p> <p>1 for you. If there is any follow up or any 2 rebuttal based on those questions from anyone? 3 MS. McINTURFF: I do not. 4 MR. RUHLEN: We don't have any further 5 testimony. 6 HEARING EXAMINER: Then closing 7 arguments. 8 MS. McINTURFF: Was there not a -- 9 HEARING EXAMINER: Oh, wait. I almost 10 forgot you. I am so sorry. You have been 11 waiting here patiently the whole time. Please 12 come on up. He can sit next to counsel. If you 13 could state your name and spell it for our court 14 reporter. 15 MR. LOPEZ: My name is Yarid Lopez. I 16 go by Tony. My first name Y-A-R-I-D and 17 L-O-P-E-Z. I live at 8404 Damascus Road. 18 (Whereupon, Yarid (Tony) Lopez, sworn.) 19 STATEMENT OF MR. LOPEZ 20 HEARING EXAMINER: What would you like 21 to tell us? 22 <b>A All of this was brought to my</b></p>
<p style="text-align: right;">270</p> <p>1 are telling me in the existing design is this is 2 not captured? 3 <b>A Correct. Right up there.</b> 4 HEARING EXAMINER: Oh, the dot dot 5 dot? 6 <b>A Yes.</b> 7 HEARING EXAMINER: But you could amend 8 it so that it captures everything except for 9 this? 10 <b>A Yes, we could. But the big thing is</b> 11 <b>of this study was to show that we could take and</b> 12 <b>capture that required volume to offset any</b> 13 <b>disturbance.</b> 14 HEARING EXAMINER: When I will read 15 this transcript, I am going to kick myself 16 square in the touche because I am going to hear 17 this, that, up, down. So I have made myself 18 some notes as to what this means. 19 The direction you are talking about is 20 north and south. Let me make a note about the 21 this, the that, and the why. 22 Those are all the questions that I had</p>	<p style="text-align: right;">272</p> <p>1 <b>attention about two and a half years ago when</b> 2 <b>Mr. Lyles' son came over to my property to ask</b> 3 <b>me what I was going to do about the standing</b> 4 <b>water issue.</b> 5 <b>I moved into this property in August</b> 6 <b>2019, so I am pretty new to the area there. I</b> 7 <b>didn't know any of the stuff that was going on.</b> 8 <b>I had no idea when I bought the property that</b> 9 <b>there was a flooded section also.</b> 10 <b>I discussed with Mr. Lyles that I am</b> 11 <b>willing to do what I could. I proposed putting</b> 12 <b>a little pond in that area, digging down,</b> 13 <b>putting a liner in, stock it with some fish so</b> 14 <b>my kids can go ahead and fish on it if they</b> 15 <b>wanted to.</b> 16 <b>I proposed having a workaround between</b> 17 <b>Mr. Juneau and Mr. Lyles to see whether we can</b> 18 <b>divert the water some way. I tried to play</b> 19 <b>neutral when it comes to stuff like this. I</b> 20 <b>want to live in peace where I live and I don't</b> 21 <b>want to have any problems with anyone.</b> 22 <b>I didn't really get involved with the</b></p>

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1 situation until probably six months ago when the  
2 county was calling me about the water standing  
3 there.  
4 Like I said to both of them, Oscar and  
5 Jeff, I was trying to stay neutral and get out  
6 of it, let them fight it out, I would be okay,  
7 but once I got involved in it, then I needed to  
8 put my two cents in.  
9 I don't have any issue whatsoever with  
10 either of them running their business out of  
11 their home. They can definitely make their  
12 money, do what they have to do in order to have  
13 to do it.  
14 I don't want to have almost an acre of  
15 my property flooded because I am the one getting  
16 flooded. I honestly should probably be here  
17 suing both of them, but I'm not doing that  
18 because I am trying to keep the peace between  
19 everybody here.  
20 We will see what happens after today,  
21 but I can understand why Mr. Lyles put the  
22 burden on saving his property from getting

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1 damaged.  
2 I am not upset at him for putting the  
3 berm up and flooding my property, which I don't  
4 really use that little section. I am not going  
5 to lie. I don't use it. But I am having a lot  
6 of trees fall over. A lot of trees are just  
7 getting waterlogged and falling over.  
8 I tried to clean up the area as much  
9 as possible trying to take as much of the canopy  
10 of the trees there so the sun can hit the water  
11 and evaporate it faster.  
12 I have done quite a few things there  
13 to try to minimize or help relieve the situation  
14 between us.  
15 Yes, that is pretty much all I had to  
16 say when it comes to that. I have heard while  
17 sitting here the testimony of the gentleman that  
18 was talking about the way the water runoff comes  
19 up. I am not negating that my property doesn't  
20 have water runoff. Every property has water  
21 runoff.  
22 I just don't think that I should be

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1 having sections of my property be a foot and a  
2 foot and half deep when I walk in it because  
3 that is exactly what is going on with the water  
4 coming in and also the burden of it being put  
5 there.  
6 So yes, I do know that there is a lot  
7 of touch and go here when it comes to feelings  
8 and I know Mr. Lyles has lived there for a long  
9 time. His father lived there for a long time.  
10 His family lives around there all the time and  
11 Mr. Juneau has been there for almost 30 years.  
12 I am sure there are some feelings  
13 about all of that too. I just want a solution.  
14 Like I told both of them that's all I want. I  
15 want the water problem fixed.  
16 I don't want to come here and say,  
17 "No, Jeff, I don't want you to run your business  
18 out of your property." Just like I wouldn't do  
19 that to Oscar because Oscar does run a business  
20 out of his property too.  
21 I don't want to be able to go there  
22 and say, "No, I don't want you to run it. I

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1 don't want you to do it."  
2 I don't want to do that. I just want  
3 the water issue fixed. If the water issue is  
4 not fixed, then I am going to pay the lawyer  
5 that I have already spoken to, and I am going to  
6 have to do what I need to do in order to protect  
7 myself. That's pretty much it. I don't know if  
8 anybody has any questions.  
9 HEARING EXAMINER: Thank you, counsel  
10 do you have any questions. No. Thank you  
11 appreciate your coming. You sat for a long  
12 time. We appreciate it when people sit and they  
13 listen and we accept your testimony.  
14 A I have one thing for you. The foot  
15 candles on those lights.  
16 HEARING EXAMINER: Yes, that's right.  
17 A One foot candle is the equivalent of  
18 10.7 lumens.  
19 HEARING EXAMINER: I knew that at one  
20 point in my life.  
21 A At 3,000 lumens light, you divide that  
22 by 10.6, if I remember, and that gives you what

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1 your foot candles are, and obviously, in this  
2 case that would be around 300. So it would be  
3 300 feet before you can hit one-foot candle.  
4 HEARING EXAMINER: 300 feet per  
5 one-foot candle.  
6 A Right. The closer you get to the  
7 light the brighter it is.  
8 HEARING EXAMINER: So the further away  
9 you get from the light, the less it is.  
10 A Yes.  
11 HEARING EXAMINER: Does direction  
12 matter?  
13 A Obviously direction matters, but the  
14 lights that I installed for Jeff there was  
15 approximately two and a half years ago, three  
16 years ago, as a favor to him when I put them in  
17 for him, these cast light at, basically, I'm  
18 going to say, 180 degrees.  
19 HEARING EXAMINER: So the building is  
20 flush out?  
21 A For flush out, but it doesn't go above  
22 where the light goes, where the light is. So all

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1 the light goes down from there.  
2 HEARING EXAMINER: So it is down and  
3 out?  
4 A Yes, pretty much.  
5 HEARING EXAMINER: That's very  
6 helpful.  
7 A Then the one that is in the furthest  
8 building back, that one is up maybe about 15  
9 feet up in the air, but pointing down also. I  
10 don't know if that answers your question.  
11 HEARING EXAMINER: It actually does.  
12 It's very helpful. Obviously, it is not  
13 measured in distance, but the impact, it's a  
14 little bit of practical common sense, but I  
15 still like to hear testimony.  
16 A The color spectrum of that is 5,000  
17 Kelvin. The way the light is nowadays with  
18 LEDs, the lower the Kelvin rating, the yellower  
19 it is.  
20 HEARING EXAMINER: So you always want  
21 a lower yellow.  
22 A It depends on what it is for. I don't

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1 prefer anything higher than 3,500 Kelvin because  
2 to me it's too bright in my own house, like  
3 inside my house. Outside, you obviously want to  
4 have a little bit more visibility, but the  
5 higher the spectrum you go the blue the light  
6 is.  
7 HEARING EXAMINER: That's very  
8 helpful. I thank you so much. I appreciate your  
9 time.  
10 A Thank you.  
11 HEARING EXAMINER: If there is no one  
12 else who is here to testify, I think we can now  
13 move to closing argument. We will start with  
14 the applicant.  
15 CLOSING STATEMENT OF PETITIONER  
16 MR. RUHLEN: Thank you. We appreciate  
17 the opportunity to present the case today. We  
18 would submit that through the evidence and the  
19 testimony presented we have demonstrated that  
20 the insurance proposal for landscape contractor  
21 use on a property that will be able to meet the  
22 standards and requirements of the zoning

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1 ordinance and the requested variance will also  
2 satisfy the required findings.  
3 As we have heard the petitioner has  
4 reviewed the conditions proposed for the use by  
5 the Planning Board and staff and agrees with  
6 them.  
7 The petitioner believes that these  
8 conditions will provide an appropriate framework  
9 for operating the business moving forward as  
10 well as parameters procedures for addressing  
11 future concerns or issues.  
12 The petitioner also believes that  
13 having those procedures in place would be  
14 mutually beneficial for both him and his  
15 neighbors.  
16 With respect to the issue of  
17 stormwater, the petitioner's experts have  
18 explained that the property is located inside of  
19 and is just one part of a larger drainage area  
20 that naturally empties to a low point located to  
21 the south and west of the subject property.  
22 Petitioner can only address these

<p style="text-align: right;">281</p> <p>1 contributions to that larger drainage problem, 2 but the petitioner is eager to do this and with 3 the conditional use they are proposing the 4 stormwater management facilities that we have 5 been speaking about to address their 6 contribution. 7 To say more simply. With the proposed 8 stormwater facilities, the petitioner's 9 application becomes an opportunity for those 10 measures to be implemented and without the 11 application being approved the petitioner's 12 opportunity is going to be missed and the 13 existing improvements will remain as accessories 14 to the residential use. 15 The petitioner, as we have heard, has 16 proposed fencing in the rear and western lot 17 lines and would be amenable to a condition for 18 the fencing. 19 The petitioner and its experts 20 testified that fencing is at the six-foot height 21 will be more effective in their opinion than the 22 cross section of the zoning ordinance would</p>	<p style="text-align: right;">283</p> <p>1 concerns that otherwise is not present. 2 For all of those reasons, we 3 respectfully request approval for the 4 application subject to the conditions of 5 approval and for the variance and we thank you 6 for your time. 7 HEARING EXAMINER: Thank you. 8 CLOSING STATEMENT OF OPPOSITION 9 MS. McINTURFF: You are probably not 10 as surprised to hear that Mr. Lyles is opposing 11 the granting of the conditional use permit and 12 the variances. 13 I am not going to repeat all the 14 testimony that we have heard today that is on 15 the record which is certainly before you after 16 sitting here we have heard at all. 17 In Mr. Lyles' opinion, and in my 18 opinion, they simply have not met the standards 19 required to obtain a conditional use permit or 20 the variances. 21 We hear petitioner on his suggestions 22 at this point to remedy his past errors which is</p>
<p style="text-align: right;">282</p> <p>1 require and would establish privacy, but 2 frankly, again, for the mutual benefit of the 3 properties and do it in a faster way than the 4 planting section would. 5 We understand that Mr. Lyles has 6 concerns about the application, but we would 7 emphasize that the petitioner has been operating 8 for a long time without these concerns emerging. 9 The long standing operation 10 demonstrates that the use has been largely 11 compatible and when the petitioner became aware 12 of the zoning violation, it began to take all of 13 the necessary steps to correct the issue and 14 that is why we are here when we have been going 15 through this process. 16 The petitioner believes that he has 17 been attentive to those concerns. It is 18 primarily reflected in the stormwater facility 19 plan, but it is also going to be other measures 20 that he is proposing to incorporate. 21 With those measures this application 22 becomes a means to address some of these</p>	<p style="text-align: right;">284</p> <p>1 this water flow, the lack of screening. There 2 are a number of issues. 3 The hesitancy, one, is that these past 4 issues have got ignored for a number of years. 5 Everyone has agreed that they had been 6 progressing and that it has been over years and 7 during that time they were ignored. There is 8 concern in there that there is going to be no 9 follow through. 10 Even more than that is that the Board 11 did recognize this non-inherent impact due to 12 the existing development associated with the 13 requested use and that is the water runoff, the 14 water damage, that is being caused to his 15 property and they recommended that stormwater 16 management be had for each of the buildings east 17 of the development on Mr. Juneau's property. 18 As we heard today in his proposed 19 stormwater management plan is that it is not 20 touching each of those properties as recommended 21 as it is capturing a piece of the water but not 22 from these existing buildings and these existing</p>



<p style="text-align: right;">285</p> <p>1 buildings were put in, in some cases, without 2 permits, without sediment control, without any 3 existing stormwater management so that this 4 would essentially continue in many ways along 5 the lines that it has been. 6 That alone is a reason to deny the 7 conditional use permit, but there are other 8 reasons that we heard today as well. 9 We have the building and permit 10 setbacks which are well within 50 feet of the 11 boundary lines. There is the excessive use of 12 vehicles throughout the day. There is obviously 13 a number of agricultural uses of this 14 neighborhood, but nowhere near the size, scope 15 or scale of Mr. Juneau's which is contributing 16 to the problems. 17 It is simply not akin to the small mom 18 and pop shops that are operating in the area. 19 There is cause for undue harm to the 20 neighbors through Mr. Juneau's use of his 21 property where he went ahead and did it. He did 22 not ask for permission, but his now begging for</p>	<p style="text-align: right;">287</p> <p>1 which Mr. Juneau can move his parking pads, can 2 move his commercial buildings on his lot that 3 don't impact the use and enjoyment of the 4 neighbors. 5 Mr. Lyles is simply asking that Mr. 6 Juneau's request be denied. 7 HEARING EXAMINER: Thank you. That 8 completes testimony and that concludes the 9 hearing. 10 I did ask for those documents from 11 DPS, so notices of violation, and then any 12 confirmation of resolution of either citations 13 or notices of violation. 14 Because this is not potentially within 15 your control when you have to get these from 16 DPS, what is the estimated time do you think 17 that it would take or do you have them? 18 MR. RUHLEN: Mr. Juneau actually just 19 gave me some of them, but I would like to 20 correlate them back with the court cases to make 21 sure that we have got all the materials. I 22 think we can have them in the next week.</p>
<p style="text-align: right;">286</p> <p>1 forgiveness? 2 But in his request for forgiveness he 3 is not remedying the problems. That remains an 4 issue and it remains a reason why the 5 conditional use permit should be denied. 6 If the conditional use permit is 7 denied, we simply can't permit the variances. 8 But even assuming it is granted, the 9 variances should not be granted. There is simply 10 no reason why his building, his structures, have 11 to be right there on the property line. 12 He chose to put them there. It is not 13 some preexisting condition that he is trying to 14 work around. It is not a narrow land property. 15 He has the biggest lot. There is a lot 16 of open space and open land there, but instead, 17 he chose to build right up to Mr. Lyles' line. 18 But now he is begging for forgiveness, 19 instead of asking for permission for the 20 condition that he himself created. 21 There is reasonable use without this 22 variance because there is plenty of land on</p>	<p style="text-align: right;">288</p> <p>1 HEARING EXAMINER: Ten days is 2 sufficient? 3 MR. RUHLEN: Not a problem. 4 HEARING EXAMINER: Normally, what I 5 would do at this point is we have identified 6 that the hearing is concluded. I am going to 7 leave the record open for ten calendar days. 8 Within those ten calendar days, if you 9 could get those documents to me and please also 10 provide them to the opposition and that will 11 give the court reporter enough time to generate 12 the transcript for me. 13 Upon receipt of the transcript which 14 generally comes on day ten, we will close the 15 record. 16 If you are unable to get the documents 17 within the next ten days, I do need you to reach 18 out to Ms. Johnson. 19 Actually, you can copy me on that 20 because I believe she is going to be away during 21 the next ten days. I don't want something to 22 get missed.</p>

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1 Normally, I would say no, don't talk  
2 to me at all, but in this instance because she  
3 might be away, please copy me on any email to  
4 her regarding the ability to get those  
5 documents.

6 Upon the close of the record, a  
7 decision will be rendered within 30 days of the  
8 date that the record is finally closed so  
9 approximately 45 days from today.

10 I will do my best to get this decision  
11 together. I make the final decision on the  
12 conditional use. However, the Board makes the  
13 final decision on the variance.

14 I will make a recommendation. So no  
15 matter what happens, the variance will have to  
16 go before the Board for their final decision.

17 I want to thank you, counsel. Great  
18 job, both of you. I appreciate all of the  
19 neighbors coming. Thank you so much.

20 We are off the record.

21  
22

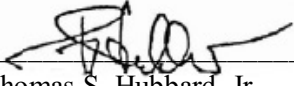
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1 CERTIFICATE OF COURT REPORTER

2  
3 STATE OF NORTH CAROLINA  
4 COUNTY OF CRAVEN:

5  
6 I, Thomas S. Hubbard, Jr., do hereby  
7 certify that the foregoing proceedings were reported  
8 and transcribed by me the undersigned of the  
9 above-styled cause and constitute a true and  
10 accurate record of the herein proceedings.

11  
12 I further certify that I am not an  
13 attorney or counsel of any parties, nor a relative  
14 or employee of any Commission Member or counsel or  
15 party connected with the herein proceedings nor am  
16 I financially interested in the action;

17  
18   
19 Thomas S. Hubbard, Jr.

20 Freelance Court Reporter North Carolina

21  
22

Transcript of Hearing  
Conducted on May 2, 2024

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