

AGENDA

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, August 12, 2019 – 7:30 pm
Southern Lehigh Middle School Auditorium
3715 Preston Lane
Center Valley, PA 18034

1. **CALL TO ORDER** – Dennis E. Benner, Chairman

2. **PLEDGE OF ALLEGIANCE**

3. **NOTIFICATION**

All public sessions of the Upper Saucon Township Board of Supervisors are electronically recorded. The recordings are maintained as part of the record of the meeting until the minutes are transcribed and approved by the Board.

4. **KAY LEHIGH, LLC – CURATIVE AMENDMENT HEARING**

The purpose of the hearing will be to take testimony and receive evidence in connection with the application filed by Kay Lehigh, LLC, claiming that the Upper Saucon Township Zoning Ordinance is exclusionary, arbitrary and unduly restrictive and confiscatory as it relates to “warehousing.”

- a. Open public hearing
- b. Introduction by Township Solicitor
- c. Identification of parties including third parties with standing
- d. Identification of Township Exhibits
- e. Presentation of Applicant’s case
- f. Presentation of Township’s case
- g. Rebuttal and surrebuttal as necessary
- h. Accept public comment and input
- i. Close of record
- j. Board discussion and deliberation as necessary (Executive Session if desired)

****Hearing must end by 9:45 pm as auditorium needs to be vacated by 10:00 pm**

5. **ADJOURNMENT**

MINUTES

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, August 12, 2019 – 7:30 P.M.
Southern Lehigh Middle School
3715 Preston Lane, Center Valley, PA 18034

Members Present: Dennis E. Benner, Chairman
Brian J. Farrell, Vice Chairman
Philip W. Spaeth
Kimberly Stehlik
Stephen Wagner

Staff Attending: Thomas F. Beil, Township Manager
Patrick Leonard, Special Projects Coordinator
Thomas Dinkelacker, Township Solicitor
Charles Unangst, P.E., Township Engineer
Patricia Lang, Director of Community Development
Thomas J. Nicoletti, Chief of Police
Trent J. Sear, Zoning Officer

CALL TO ORDER

Mr. Benner called the meeting to order at 7:35 p.m., in the Southern Lehigh Middle School Auditorium, 3715 Preston Lane, Upper Saucon Township, Lehigh County, PA.

PLEDGE OF ALLEGIANCE

Mr. Benner asked all in attendance to stand and recite the "Pledge of Allegiance."

NOTIFICATION

Mr. Benner announced that all public sessions of the Upper Saucon Township Board of Supervisors are electronically recorded. The recordings are maintained as part of the record of the meeting until the minutes are transcribed and approved by the Board.

KAY LEHIGH, LLC – CURATIVE AMENDMENT HEARING

The Board held a public hearing to take testimony and receive evidence in connection with the application filed by Kay Lehigh, LLC claiming that the Upper Saucon Township Zoning Ordinance is exclusionary, arbitrary and unduly restrictive and confiscatory as it relates to "warehousing."

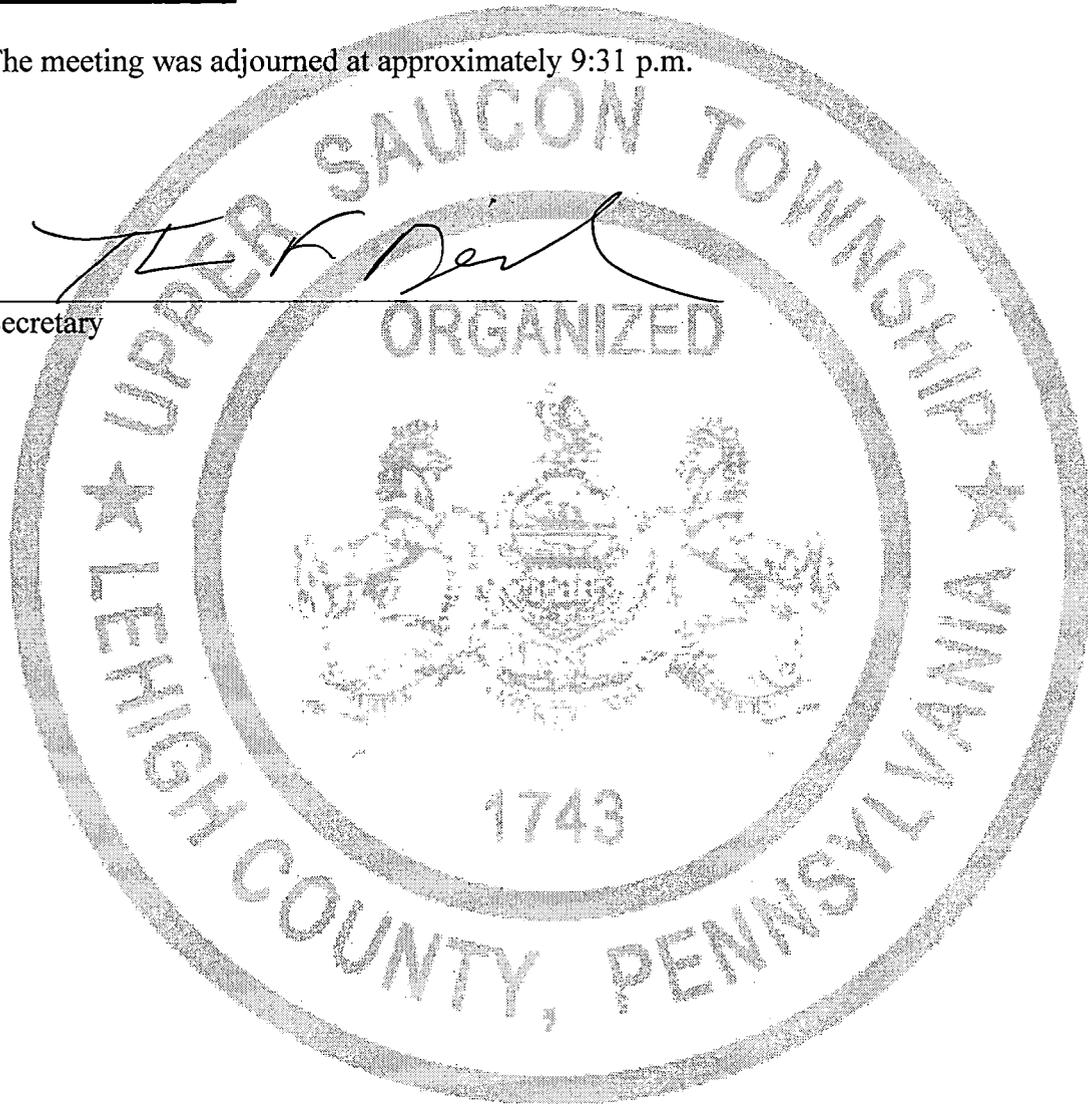
A stenographer was present to record the proceedings. A copy of the transcript from the hearing is attached hereto, made a part hereof and identified as Attachment A.

After approximately two hours of testimony, it was decided to continue the hearing to another night. Solicitor Dinkelacker announced the hearing would resume on Monday, September 9, 2019 at 7:30 pm at the Southern Lehigh Middle School Auditorium.

ADJOURNMENT

The meeting was adjourned at approximately 9:31 p.m.


Secretary



BEFORE THE BOARD OF SUPERVISORS
OF UPPER SAUCON TOWNSHIP

IN RE: CURATIVE AMENDMENT :
FILED BY KAY LEHIGH, LLC :

ORIGINAL

A public hearing regarding the above matter held at the Southern Lehigh Middle School Auditorium, 3715 Preston Lane, Center Valley, Pennsylvania, on Monday, August 12, 2019, commencing at 7:30 p.m., stenographically reported by Shari A. Cooper, RMR, CRR, a Notary Public of the Commonwealth of Pennsylvania.

BEFORE: THE BOARD OF SUPERVISORS

DENNIS BENNER, Chairman
BRIAN J. FARRELL, Vice Chairman
STEPHEN C. WAGNER, Member
PHILIP SPAETH, Member
KIMBERLY STEHLIK, Member

THOMAS H. DINKELACKER, ESQ., Solicitor
TRENT SEAR, Zoning Officer
THOMAS F. BEIL, Township Manager

* * *
GALLAGHER REPORTING & VIDEO, LLC
Mill Run Office Center
1275 Glenlivet Drive, Suite 100
Allentown, PA 18106
(800) 366-2980 / (610) 439-0504
Gallagherreporting@verizon.net

1 APPEARANCES:

2 BROUGHAL & DEVITO, LLP
3 By: JAMES F. PRESTON, ESQ.
3 38 WEST MARKET STREET
4 BETHLEHEM, PA 18018
4 jamespreston@broughal-devito.com
5 610-865-3664
5 -- For the Applicant

6 FOX ROTHSCHILD, LLP
7 By: ROBERT W. GUNDLACH, JR., ESQ.
7 2700 KELLY ROAD
8 SUITE 300
8 WARRINGTON, PA 18976-3624
9 rgundlach@foxrothschild.com
9 215-345-7500
10 -- For the Township

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* * *
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1 (Applicant Exhibits A-1 through A-10.3
2 were marked for identification prior to the hearing.)

3 (Township Exhibits 1 through 13 were
4 marked for identification prior to the hearing.)

5 MR. BENNER: The special meeting of the
6 Upper Saucon Township Board of Supervisors, Monday,
7 August 12, 2019, 7:30 p.m., Southern Lehigh Middle
8 School auditorium, is now in session. Let's rise in
9 pledge to the flag.

10 (Pledge of Allegiance)

11 MR. BENNER: All public sessions of the
12 Upper Saucon Board of Supervisors are electronically
13 recorded. The recordings are being taped as part of
14 the record of the meeting until the minutes are
15 transcribed and approved by the Board.

16 The purpose of the hearing this evening
17 will be to take testimony and receive evidence in
18 connection with the application filed by Kay Lehigh,
19 LLC, claiming that the Upper Saucon Township zoning
20 ordinance is exclusionary, arbitrary and unduly
21 restrictive and confiscatory as it relates to
22 warehousing.

23 The meeting this evening has a lot of
24 legal implications and overtones to it. So I'm going
25 to turn the meeting now over to our solicitor to

1 conduct it, to conduct the rest of this meeting.

2 We're going to go to 9, 9:30 to see
3 where the testimony takes us. I suspect there will
4 be multiple meetings of this nature. So bear with
5 us. We're going to pledge to it. Thank you.

6 Tom.

7 MR. DINKELACKER: Ladies and gentlemen,
8 good evening. What I'd like to do first is give
9 everybody a short introduction to what this is all
10 about and to explain the process as it goes forward.

11 On May 1, 2019, Kay Lehigh, LLC,
12 submitted a request for a hearing and a proposed
13 curative amendment pursuant to the Municipalities
14 Planning Code. Now, a curative amendment is a
15 procedure by which a party challenges the validity of
16 the Zoning Ordinance. And there is a particular
17 provision of the Zoning Ordinance that is being
18 challenged. So our focus in these hearings is going
19 to be the validity of this particular challenged
20 provision. And it relates to truck or motor freight
21 terminals.

22 Very briefly, Kay asserts that -- and I
23 will refer to them as buffer provisions -- that the
24 buffer provisions of the zoning coordinates as they
25 relate to truck or motor freight terminals are

1 arbitrary, unduly restrictive and exclusionary. Kay
2 proposes to eliminate these provisions in their
3 entirety and has provided a proposed amendment to the
4 Zoning Ordinance.

5 Specifically, Kay contends that Section
6 484.E of the Zoning Ordinance is invalid. Now, this
7 subsection reads -- and this is what the hearing's
8 going to be about, this particular subsection of the
9 ordinance; so it's very narrow: "The subject
10 property shall be located no closer than 500 feet
11 from any OSR" -- which is open space residential --
12 "R-1, R-2, R-3 or AQC zoning district and/or property
13 containing a school, daycare facility, park,
14 playground, library, hospital, nursing, rest or
15 retirement home, or medical residential campus."

16 So we are talking -- the evidence,
17 there may be more evidence and it may get a little
18 bit broader, but essentially that this 500 foot
19 buffer provision is not valid because it's unduly
20 restrictive, it's exclusionary, arbitrary and
21 confiscatory.

22 Now, I think everybody knows, but let's
23 be clear that the Kay property which is the subject
24 of the proceeding is located on the eastern side of
25 Route 309, south of the intersection with Center

1 Valley Parkway. The property contains almost 120
2 acres. It's zoned in part industrial and in part
3 commercial. In fact, it's mostly industrial.

4 The property also has on it the age
5 qualified community overlay. A truck or motor
6 freight terminal -- and you may hear it referred to
7 throughout the proceedings as a warehouse, but under
8 our zoning ordinance a warehouse has a slightly
9 different meaning than a truck or motor freight
10 terminal. So technically it's a truck or motor
11 freight terminal, but if somebody refers to it as a
12 warehouse, we all know that we're talking about the
13 same thing here.

14 But in any event, the truck or motor
15 freight terminal is what is called a conditional use
16 under the Zoning Ordinance. A conditional use, if --
17 a conditional use will have an entirely separate
18 proceeding, the purpose of which will be to determine
19 whether or not -- since it is a conditional use in
20 the industrial zone, whether or not the proposal by
21 the Applicant meets all the conditions of the Zoning
22 Ordinance. Now, there'll be a totally separate
23 hearing apart from this. So this by far is not going
24 to be the only hearing in this process.

25 So what we're here tonight to do -- let

1 me take one more step.

2 There is also a proposed plan for the
3 development. And this will be discussed as part of
4 the case. And that proposed plan will at the
5 appropriate time be the subject of review under other
6 provisions in the Township's ordinances, including
7 the subdivision and land development ordinance.

8 So there are a number of different
9 layers to this process. This is the first. And so
10 we are here tonight to determine whether the
11 Township's zoning ordinance is valid or invalid.

12 Now, we have -- the parties here are
13 going to be Kay Lehigh, LLC, which is represented by
14 Attorney James Preston. The Township Board of
15 Supervisors has retained to represent the Township to
16 defend the ordinance Attorney Robert Gundlach. And
17 these attorneys will be representing these respective
18 parties.

19 So with that in mind, what I'd like to
20 do is turn to the issue of the role of the citizens
21 and those of you that are here tonight and what is
22 proper and what is not proper in terms of this
23 proceeding.

24 There are essentially two categories of
25 participants in this process. As citizens, if you

1 meet certain legal requirements, you can be a party
2 to the proceedings. Now, being a party to the
3 proceedings carries with it certain rights and
4 certain obligations. We'll talk about those in just
5 a moment.

6 The other role that a citizen can play
7 is someone who wants to come up and make a comment.
8 And what we will be doing here is we will be
9 providing an opportunity for comment by citizens at
10 the conclusion of each witness's testimony. And I'll
11 talk to you in a moment about what that opportunity
12 for comment will be and how it will be handled. So
13 whether you're a party or someone who simply wants to
14 comment at the appropriate time, there will be plenty
15 of opportunity to do so.

16 Now, the question of being a party,
17 that is something that we need to take care of right
18 now. We obviously have the first -- we have the
19 principal parties, Kay, and we have the Township.

20 But now talking about those in the
21 audience who may wish to be a party or to be
22 designated a party. First of all, what I'm going to
23 ask you to do, if you want to be a party, I'm going
24 to ask you to come down; we have form entries of
25 appearance, and I'm going to ask you to fill out the

1 entry of appearance.

2 Now, a party is allowed to present
3 witnesses, to present evidence. A party is permitted
4 to cross-examine witnesses and to call their own
5 witnesses and do direct examination. A party can
6 present documentary evidence, make oral arguments,
7 submit briefs. A party can also file an appeal,
8 which in this case would be the Court of Common
9 Pleas, in the event of an adverse decision.

10 A party -- to be a party, you have to
11 have what is called standing, and standing is a
12 technical-legal term. Under the law, under the MPC,
13 you have standing if you are affected. And affected
14 means essentially that you are going to suffer some
15 ascertainable harm as a result of this particular
16 amendment or this particular matter, which is harm
17 that is -- that is more than just harm that is
18 suffered as a citizen of the township. For example,
19 we all know that if you put more tractor trailers on
20 Route 309, people who live in the township may suffer
21 from some increased traffic congestion. Well, just
22 having problems with traffic congestion does not
23 necessarily give you standing. Your harm has to be
24 more than that that would be suffered by the average
25 citizen. And it needs to be concrete; it needs to be

1 ascertainable.

2 The other -- and what we'll do is when
3 you come up, if you want to be considered as a party
4 for standing and you fill out the form, we will ask
5 you to describe for us what the harm is, how you are
6 affected, and why it is different than just the harm
7 that's going to be suffered by the other people who
8 live generally in the township.

9 Now, your proximity to the development,
10 where you live, that could be a factor in terms of
11 whether you have suffered harm necessary to have
12 standing. There are no hard and fast rules here.
13 Generally there are distances that one looks at, but
14 still, I believe that it's appropriate to have some
15 ascertainable harm in addition to the distance.

16 Now, if you are denied standing or if
17 you simply want to comment, the way we would handle
18 that -- and that's a less formal role, and that may
19 be a role that many, if not all, of you want to have
20 because it's the opportunity to come up and speak and
21 not be bound by all of the rules. Comment will be
22 permitted at the end of the questioning of each
23 witness.

24 Now, you won't be allowed to question
25 the witness. You will be allowed to provide comments

1 to the Chairman of the Board, Mr. Brenner. And the
2 comments that you make may lead to questioning of the
3 witness by the Board or questioning of the witnesses
4 by other parties or even taking your comments into
5 consideration at various points during the
6 proceeding.

7 So we have these two standards: party,
8 which requires standing; and a person who is
9 permitted to come up and comment.

10 So let me ask -- first of all, let me
11 ask Attorneys Preston and Gundlach, is there anything
12 that you wish to add to what I've stated regarding
13 standing?

14 MR. PRESTON: I have nothing.

15 MR. GUNDLACH: I have nothing.

16 MR. DINKELACKER: Thank you.

17 So I'm going to open it up to the floor
18 right now. Is there anyone here who wants to be
19 considered for party status?

20 Okay. Ma'am, come on up, please.

21 (Renee D'Amico approached the podium.)

22 MR. DINKELACKER: Ma'am, if you'll just
23 take a moment, please, and fill out the entry of
24 appearance form.

25 And we're going to mark that as a

1 Township exhibit. I think we have premarked Township
2 Exhibits 1-13, so this will be Township Exhibit
3 No. 14.

4 (Township Exhibit 14, Entry of
5 Appearance for Renee D'Amico, was marked for
6 identification.)

7 MR. DINKELACKER: Ma'am, if you could
8 state your full name for the record and your address,
9 and then if you could explain to us how you feel that
10 you are affected by this particular matter.

11 MS. D'AMICO: Thank you. My name is
12 Renee D'Amico. My address 3593 Stonegate Drive,
13 Center Valley, 18034. My backyard literally is next
14 to that field. When I sit on my back porch, that's
15 what I'm looking at.

16 MR. DINKELACKER: Okay. So are you
17 across, is it East Valley Road?

18 MS. D'AMICO: Yes, sir.

19 MR. DINKELACKER: So you're directly
20 across East Valley Road and your property abuts East
21 Valley Road which abuts this property?

22 MS. D'AMICO: Yes. And the concern
23 that we have specifically is certainly aesthetics,
24 noise, and light pollution, but also the extreme
25 decrease in property value that a warehouse on that

1 road will cause.

2 MR. DINKELACKER: Okay. Beyond items
3 like light pollution, noise, 'et cetera, is there
4 anything else that you wish to add?

5 MS. D'AMICO: Yes, sir. Traffic, of
6 course, specifically on East Valley Road and
7 cut-through traffic, understanding that trucks may
8 not be allowed to go through there but certainly
9 people going back and forth to that warehouse. We do
10 have an issue in that neighborhood, to begin with,
11 with some cut-throughs. So that would certainly be
12 an issue.

13 And of course the environmental impact.
14 There's a lot of drainage issues there already, and
15 getting rid of even more permeable surfaces seems to
16 be a problem.

17 MR. DINKELACKER: Renee, about how many
18 feet would you say your property line, your closest
19 property line, is from the property that's at issue
20 here, estimate?

21 MS. D'AMICO: I'm going to estimate 30
22 feet.

23 MR. DINKELACKER: All right.

24 Mr. Preston, do you have any questions
25 for -- I'm sorry, Renee. Your last name?

1 MS. D'AMICO: D'Amico.
 2 MR. DINKELACKER: Ms. D'Amico.
 3 MR. PRESTON: I do not.
 4 MR. DINKELACKER: Mr. Gundlach, do you
 5 have any questions?
 6 MR. GUNDLACH: No questions and no
 7 objection.
 8 MR. DINKELACKER: All right.
 9 Mr. Brenner, what we would do is we would take a vote
 10 on Ms. D'Amico's request for party status, and there
 11 is no objection by Mr. Gundlach. And Ms. D'Amico has
 12 indicated that she is very close to the property.
 13 MR. PRESTON: Do I have a motion that
 14 we will accept Renee D'Amico?
 15 MR. WAGNER: I will.
 16 MS. STEHLIK: Second.
 17 MR. BENNER: All in favor.
 18 (The motion passed unanimously.)
 19 MR. DINKELACKER: Okay. So, Renee, the
 20 Board has voted 5-0 to allow you as a party. You may
 21 wish to come down here and be a little bit closer, so
 22 as a party you will be allowed to ask questions of
 23 the witnesses and play a role beyond simple comment.
 24 MS. D'AMICO: Okay. I have my kids
 25 with me tonight, so I'm going to stick with them

1 tonight.
 2 MR. DINKELACKER: I see them back
 3 there. Thank you.
 4 MS. D'AMICO: Thank you. Thank you
 5 very much. I appreciate it. Thanks.
 6 MR. DINKELACKER: Is there anyone else
 7 who wishes to be listed as a party?
 8 Okay. Let the record reflect a
 9 negative response. And what we will do then is we
 10 will allow for comment.
 11 Oh, I'm sorry. That's the problem when
 12 you sit all the way back there. Do you want to come
 13 on down, please?
 14 (John Tiemann approached the podium and
 15 filled out paperwork.)
 16 (Township Exhibit 15, Entry of
 17 Appearance for John Tiemann, was marked for
 18 identification.)
 19 MR. DINKELACKER: Okay. Sir, would you
 20 state your full name and your address for the record.
 21 MR. TIEMANN: John Tiemann,
 22 T-i-e-m-a-n-n. And it's 4925 East Valley Road.
 23 MR. DINKELACKER: Thank you, John.
 24 John, would you pick up the mike and
 25 try to speak into it? Very hard to hear.

1 MR. TIEMANN: Okay.

2 MR. DINKELACKER: John, 4925 East
3 Valley Road, explain to us your reason for feeling
4 that you are affected by this particular development
5 in a way that I had described earlier.

6 MR. TIEMANN: Same reasons that Miss
7 D'Amico feels. Our property actually faces the
8 proposed project. Our driveway is directly across
9 from them.

10 MR. DINKELACKER: Are you in the
11 Sunrise Valley subdivision as well?

12 MR. TIEMANN: We are right outside of
13 it. We are actually on East Valley Road.

14 MR. DINKELACKER: Okay. And so your
15 property abuts East Valley Road and the property
16 that's at issue.

17 MR. TIEMANN: Our front yard goes
18 directly along that.

19 MR. DINKELACKER: And like Ms. D'Amico,
20 would you say it's about a 30-foot distance? Does
21 that sound about right to you?

22 MR. TIEMANN: It's probably less than
23 that. It's probably about 15.

24 MR. DINKELACKER: Are there any other
25 reasons that you would like to place on the record

1 for supporting the claim that you're affected by
2 this?

3 MR. TIEMANN: No. Everything that has
4 been presented is our concerns as well.

5 MR. DINKELACKER: Okay. So you would
6 have the same reasons as Renee.

7 MR. TIEMANN: That's correct.

8 MR. DINKELACKER: Okay.

9 Any questions for Mr. Preston?

10 MR. PRESTON: I have none.

11 MR. DINKELACKER: Mr. Gundlach?

12 MR. GUNDLACH: No questions. No
13 objection.

14 MR. DINKELACKER: Okay. Mr. Brenner,
15 we have Mr. --

16 MR. TIEMANN: -- Tiemann.

17 MR. DINKELACKER: -- Mr. Tiemann, and
18 he seems to be similarly situated to Miss D'Amico.

19 MR. BENNER: Looking for a motion to
20 add Mr. Tiemann as a party in this matter.

21 MR. WAGNER: So moved.

22 MR. FARRELL: Second.

23 MR. BENNER: All in favor.

24 (The motion passed unanimously.)

25 MR. DINKELACKER: Okay. John, you're a

1 party. You may want to move down a little bit
2 closer.

3 Is there anyone else?

4 Okay. Let the record reflect a
5 negative response. What we're going to do now is
6 move forward with the hearing. And the first thing
7 that I would like to do is to offer into evidence a
8 series of exhibits that the Township wishes to have
9 in the record.

10 The first is Exhibit T-1; Township
11 Exhibit 1 is a complete copy of the request for the
12 hearing on the challenge to the Zoning Ordinance and
13 Curative Amendment filed by Kay Lehigh, LLC.

14 Exhibit T-2 is a letter dated May 3,
15 2019, without attachment from Mr. Beil, transmitting
16 the Curative Amendment to the Upper Saucon Township
17 Planning Commission for review.

18 Exhibit T-3 is a similar letter from
19 Mr. Beil transmitting the Curative Amendment to
20 Lehigh Valley Planning Commission for review.

21 Exhibit T-4 are the review comments in
22 memo form dated July 16, 2019, with the comments of
23 the Upper Saucon Township Planning Commission.

24 Exhibit T-5 are the review comments
25 dated June 6, 2019, of the Lehigh Valley Planning

1 Commission.

2 Exhibit T-6 is a copy of the public
3 notice prepared by myself as township solicitor.

4 Exhibit T-7 is a copy of the actual
5 public notice published in the Morning Call on July
6 29, 2019, and August 5, 2019.

7 Exhibit T-8 is the acknowledgement of
8 receipt that the Curative Amendment was filed with
9 the Morning Call newspaper on July 25, 2019. This is
10 because my public notice contained only a summary of
11 the Curative Amendment.

12 T-9 is a similar acknowledgement of
13 receipt by the Lehigh County Department of Law on
14 July 25, 2019.

15 Exhibit T-10 is an affidavit of posting
16 of the property by the township zoning officer. This
17 verifies the public notice was posted on the
18 properties at 4728, 4557, 4677, and 4691 Route 309 on
19 August 2, 2019.

20 Exhibit T-11 is the notification list
21 for the Curative Amendment hearing prepared by the
22 township secretary. And this is a list of everybody
23 who is entitled to notice as a matter of law as well
24 as those individuals who requested that notice be
25 provided.

1 Exhibit T-12 is a time extension that
2 was granted by Kay Lehigh, LLC, which allows us to
3 hold the hearing tonight instead of earlier in the
4 summer.

5 Exhibit T-13 is the proof of
6 publication for public notice published in the
7 Morning Call on July 29, 2019 and August 5, 2019.

8 We are also, as I noted before, adding
9 as Township Exhibit No. 14 the entry of appearance by
10 Ms. Renee D'Amico and Township Exhibit No. 15, the
11 entry of appearance filed by John Tiemann this
12 evening as well.

13 So those are the Township exhibits.
14 I'd move them into evidence and ask, Jim, do you have
15 objections on behalf of Kay?

16 MR. PRESTON: Only as to T-4 and T-5
17 and not as to authenticity, only as to the
18 particular -- T-5, the comments from the Lehigh
19 Valley Planning Commission. I've looked at those,
20 they're just simply not accurate. Factual
21 misstatements in there. As long as we have the
22 understanding that they're not being admitted for the
23 truth of the matter asserted.

24 MR. DINKELACKER: What we'll do is
25 we'll work through the factual statements.

1 Let me ask, Mr. Gundlach, what is your
2 position on that objection?

3 MR. GUNDLACH: I have no objection to
4 any of the exhibits, and I believe they're
5 appropriate. And certainly Mr. Preston can present
6 witnesses to provide testimony to any of them, to T-4
7 and T-5 if he deems appropriate.

8 MR. DINKELACKER: Sure.

9 And, Ms. D'Amico and Mr. Tiemann, this
10 is where you get a chance to chime in if you wish.
11 Do you have any objections to any of the documents I
12 just referenced?

13 MS. D'AMICO: No, sir.

14 MR. DINKELACKER: Let the record
15 reflect a negative response.

16 We're going to admit T-1 through 15.
17 (Township Exhibits 1-15 were admitted
18 into evidence.)

19 MR. DINKELACKER: Jim, I will sort
20 through what is accurate in the Lehigh Valley
21 Planning Commission letter. My position is that the
22 MPC specifically requires that we obtain that comment
23 letter, and it was provided pursuant to statutory
24 authority, and therefore we'll admit it on that basis
25 with the understanding that obviously we'll sort

1 through inaccuracies.

2 MR. PRESTON: Understood.

3 MR. DINKELACKER: Okay. At this point
4 in the proceeding, I think we are at the point where
5 we are going to have the presentation of the
6 Applicant's case.

7 And I understand that the witness is
8 going to be sitting to the left of Mr. Preston. The
9 witness's testimony is being stenographically
10 recorded.

11 I'm going to ask, sir, that you speak
12 into the mike and speak up so that everybody out
13 there can hear you. Okay?

14 MR. ENGELHARDT: Understood.

15 MR. DINKELACKER: Thank you very much.
16 Jim, I'll turn it over to you.

17 MR. PRESTON: Thank you.

18 And my name is Jim Preston. I am the
19 attorney for the Applicant.

20 Members of the Board, thank you.

21 Staff, and members of the public.

22 Good evening. This is not the easiest
23 format for presenting this type of thing, but as
24 Attorney Dinkelacker said, my witnesses will be
25 seated to my left. What I've done is we've taken the

1 opportunity to prepare our exhibits and package
2 those. And because Attorney Gundlach is representing
3 the Township in this matter, I'll make those
4 available to him.

5 Here's multiple copies that can be
6 shared with the Board and with the staff. I've
7 already made a copy available to Attorney Gundlach.
8 So those are the exhibits that we will be presenting.
9 We have them on boards, and as we introduce them,
10 we'll be placing them on the boards so that the
11 public can view them. But everything that the public
12 will be seeing is contained within that package.

13 And with that --

14 MR. DINKELACKER: Let me ask first --

15 Rob, do you have any objections -- have
16 you had an opportunity to review the exhibits yet,
17 and if so, do you have any objections at this point
18 that you want to raise, or do you want to reserve?

19 MR. GUNDLACH: I'll reserve that as we
20 go through them just because I haven't had an
21 opportunity to go through them all.

22 MR. DINKELACKER: Do you object to me
23 handing these exhibits out to the supervisors at this
24 point in time?

25 MR. GUNDLACH: No objection to that.

1 MR. DINKELACKER: Then I will hand the
2 package of exhibits, Kay's exhibits, to the
3 supervisors.

4 Thank you, gentlemen.

5 Let me ask this: Do we have any extras
6 that we can provide to Ms. D'Amico and Mr. Tiemann?
7 And I understand that we didn't -- that you didn't
8 make a bunch of exhibits anticipating --

9 MR. PRESTON: Can they share one? I
10 can probably get rid of one more.

11 MR. DINKELACKER: Yes, we have one
12 extra copy that we can share.

13 Ms. D'Amico and Mr. Tiemann, what do
14 you want to do?

15 MS. D'AMICO: That's fine. If
16 Mr. Tiemann would like to take it, I can follow off
17 of him. We can just swap it.

18 MR. DINKELACKER: Thank you, Jim. We
19 appreciate it.

20 MR. PRESTON: I thought I made more
21 than we needed.

22 MR. GUNDLACH: Can we get authorization
23 for the township manager after tonight's meeting to
24 put all these on the township website so that others
25 can look at them and have them available? And we'll

1 do the same with the Township exhibits as we offer
2 them at future hearings.

3 MR. DINKELACKER: I think that's a
4 great idea.

5 MR. PRESTON: No objection here.

6 MR. DINKELACKER: Okay. So for
7 everybody's benefit, the exhibits that are -- as we
8 receive exhibits, following the hearing the township
9 manager will place them on the township website for
10 everyone to take a look at.

11 MR. PRESTON: And, Attorney Gundlach,
12 we do have them on electronic form. We can make them
13 available.

14 MR. DINKELACKER: Okay. So we're going
15 to proceed with Mr. Preston's first witness.

16 MR. PRESTON: Okay. And I understand
17 we have to be out of here what time?

18 MR. DINKELACKER: We need to vacate the
19 building by 10. I think ideally we would like to be
20 wrapping up by 9:30.

21 MR. PRESTON: Okay. Thank you. Then
22 I'm going to move right into this.

23 Most of the -- the factual basis is set
24 forth in our petition. I'm not going to reread the
25 petition. We're here for the property identified in

1 the petition and for the reasons set forth in the
 2 petition. And once -- as the evidence comes in, I
 3 think that'll clarify the petition in ways much
 4 better than I could do here with an opening statement
 5 that nobody wants to listen to, anyway.

6 So I'm going to call my first witness.
 7 And my first witness is Mr. Jason Engelhardt.

8 * * *

9 Whereupon, JASON ENGELHARDT,
 10 having been called as a witness and duly sworn, was
 11 examined and testified as follows:

12 * * *

13 DIRECT EXAMINATION ON QUALIFICATIONS

14 BY MR. PRESTON:

15 Q. Jason, would you spell your last name for
 16 the record, please.

17 A. My name is name is Engelhardt,
 18 E-n-g-e-l-h-a-r-d-t.

19 Q. And what do you do for a living?

20 A. I'm a civil land development engineer for
 21 Langan Engineering and Environmental Services.

22 Q. I'm handing you a document that's been
 23 marked as A-1. Do you recognize that?

24 A. Yes. Exhibit A-1 is my resumé, my CV.

25 Q. Is that a true and accurate summary of your

1 professional credentials as of this evening?

2 A. Yes, it is.

3 Q. Would you just briefly summarize your
 4 education, training and background as it relates to
 5 civil engineering?

6 A. Sure. I have a bachelor's of civil
 7 engineering from University of Maryland, a master's
 8 from New Jersey Institute of Technology. I've been
 9 working in the field since 1993. I'm a partner at
 10 Langan Engineering and Environmental Services, and
 11 I've been running the office in Bethlehem for the
 12 last 11 years.

13 Q. And your firm, Langan Engineering, they
 14 provided the professional engineering services as
 15 needed for this Curative Amendment petition; is that
 16 correct?

17 A. That is correct.

18 Q. And you were personally involved in the
 19 preparation of the petition?

20 A. Yes, I was.

21 Q. You're familiar with the use that's being
 22 proposed by the Petitioner?

23 A. I am, yes.

24 Q. And you and your firm prepared the exhibits
 25 that we intend to introduce this evening; is that

1 correct?

2 A. That is correct.

3 Q. Are you familiar with the Upper Saucon
4 Township zoning ordinance, at least as it relates to
5 this petition?

6 A. Yes.

7 Q. And prior to this evening, have you
8 testified as an expert witness in the area of civil
9 engineering?

10 A. I have many times.

11 MR. PRESTON: At this point I'd ask
12 that Mr. Engelhardt be accepted and be allowed to
13 testify as an expert in the area of civil
14 engineering.

15 MR. DINKELACKER: Mr. Gundlach, any
16 questions?

17 MR. GUNDLACH: No questions and no
18 objections to him being admitted as an expert in the
19 field of civil engineering.

20 MR. DINKELACKER: Mr. Engelhardt will
21 be -- are there any questions by the Board with
22 respect to the qualifications of Mr. Engelhardt as a
23 civil engineer?

24 There are none.

25 Mr. Tiemann and Ms. D'Amico, any

1 questions?

2 Okay. There are none.

3 So Mr. Engelhardt will be admitted as
4 an expert in the field of civil engineering.

5 MR. PRESTON: Thank you.

6 * * *

7 DIRECT EXAMINATION

8 BY MR. PRESTON:

9 Q. Do you mind if I call you Jason?

10 A. Please.

11 Q. Jason, I'm handing you what's been marked as
12 Exhibit A-2. Do you recognize that?

13 A. I do, yes.

14 Q. And what is A-2?

15 A. A-2 is the Upper Saucon Township Natural and
16 Cultural Features Map. It's from the Township zoning
17 ordinance.

18 Q. And with reference to that plan, can you
19 identify or locate the subject property?

20 A. Yes. So the only modifications we've made
21 to this document is we drew the subject property on
22 the map that's in your packet and labeled this as
23 Exhibit A-2. The subject property is located along
24 309 and it's highlighted in red on the exhibit that
25 you have in front of you.

1 Q. Okay. And you've given some other -- or I
2 should say, more detail concerning the project was
3 included in the project narrative that was submitted
4 with the petition; is that correct?

5 A. That is correct.

6 Q. And that was, I believe, admitted as part of
7 the Township's exhibits; specifically, I believe it
8 was T-1.

9 UNIDENTIFIED PERSON: Sir?

10 MR. DINKELACKER: Yes.

11 UNIDENTIFIED PERSON: Are we supposed
12 to be able to see this from the audience? We cannot
13 see that.

14 MR. DINKELACKER: Well, that's --

15 MR. PRESTON: You can come down, if
16 you'd like.

17 UNIDENTIFIED PERSON: No, why don't you
18 put it up there where we can all see it.

19 MR. DINKELACKER: Well, I don't know
20 that we have it loaded into the system.

21 UNIDENTIFIED PERSON: It has no value
22 to anyone here.

23 MR. DINKELACKER: Well, sir, with all
24 due respect, if you want to go there and look at it.

25 We have to do the best we can under the

1 circumstances. We'll do better at the next hearing.
2 But anybody in the audience should feel free to get
3 up and walk down and look at the exhibit, by all
4 means.

5 Thank you. I appreciate your comment.

6 MR. PRESTON: May I continue?

7 MR. DINKELACKER: Sure.

8 BY MR. PRESTON:

9 Q. Now, Jason, I'm handing you what's been
10 marked as A-3. Take a look at that. Tell me if you
11 recognize that?

12 A. I do, yes.

13 Q. And what is A-3?

14 A. A-3 is a site plan for the proposed
15 property, the property -- the subject property that
16 was submitted with the Curative Amendment
17 application.

18 Q. Is that plan that's marked as A-3, is that
19 identical to the plan that was submitted and made
20 part of the Curative Amendment petition?

21 A. Yes, it is.

22 Q. So that is the site plan that we're
23 discussing here this evening?

24 A. That's correct.

25 Q. Now, before we discuss the nature of the

1 use, let's take a moment; just describe the layout of
2 the site, if you would.

3 A. Do we want to put the site plan on the board
4 behind me as well?

5 Thank you.

6 As was discussed, the site is roughly 119
7 acres, of which all but 4 1/2 are in the industrial
8 zone. The plan that is marked as Exhibit A-3
9 includes roughly 1.5 million square feet of truck
10 terminal buildings. Building A is roughly 306,000
11 square feet; Building B, 563,000 square feet; and
12 Building C, 654,000 square feet. It also illustrates
13 truck parking. Illustrates car parking in accordance
14 with the township ordinance. It illustrates required
15 setbacks as well as proposed storm water management
16 locations, at least conceptually, and was laid out to
17 address the requirements of the ordinance.

18 Q. I want to talk about the use now. And as
19 Attorney Dinkelacker sort of intimated here at the
20 opening, the buildings are sometimes referred to as
21 warehouses and sometimes referred to as truck
22 terminals; is that correct?

23 A. That's correct.

24 Q. And we'll get into the reasons for that.
25 And I wanted to do that -- let me -- I'm going to

1 hand you a document that's been marked as Exhibit
2 A-4. Do you recognize that?

3 A. Yes.

4 Q. What is A-4?

5 A. A-4 is a document that includes the truck
6 terminal warehouse definitions from Section 113 of
7 the Township Zoning Ordinance.

8 Q. Those are taken verbatim from the ordinance;
9 is that correct?

10 A. That's correct.

11 Q. The --

12 UNIDENTIFIED PERSON: Excuse me, it's
13 very hard to hear what he's saying. You might ask if
14 the audience can hear. I certainly can't.

15 MR. DINKELACKER: Jason, do your best
16 to be candid. Speak directly into the mike. And I
17 think probably you can take the mike out of the
18 holder.

19 MR. ENGELHARDT: I'll get as close as I
20 can.

21 MR. BEIL: You're going to have to find
22 a distance. Maybe five, six inches.

23 MR. ENGELHARDT: Can you hear me now?

24 MR. BEIL: There you go.

25 BY MR. PRESTON:

1 Q. Okay. Now, so A-4 are the definitional
2 terms for a truck or motor freight terminal; is that
3 correct?

4 A. That is correct.

5 Q. As well as a warehouse or wholesale trade
6 establishment; is that correct?

7 A. Yes, that's correct.

8 Q. Now, before we get into the definitions,
9 could you describe for the record, without reference
10 to those definitions, what it is that's being
11 proposed here in this Curative Amendment? Describe
12 the use that Kay intends to make of the property.

13 A. We're planning to develop structures that
14 will be used for --

15 MULTIPLE AUDIENCE MEMBERS: We can't
16 hear you.

17 THE WITNESS: We are planning to
18 develop structures --

19 (Multiple voices speaking.)

20 MR. DINKELACKER: Guys, hold on,
21 please. No comments from the audience. If people
22 are out of order, you're going to be asked to leave.
23 This is a hearing. We will not put up with that.

24 If people are having trouble hearing,
25 come down a little bit closer. There's loads of

1 seats up front.

2 (Mikes were switched.)

3 THE WITNESS: Doesn't seem like that's
4 better.

5 MR. GUNDLACH: Jason, try this one.

6 (Handed microphone.)

7 THE WITNESS: Is that any better?

8 MULTIPLE AUDIENCE MEMBERS: Yes.

9 THE WITNESS: Thank you.

10 MR. PRESTON: Thank you, Attorney

11 Gundlach.

12 THE WITNESS: So I believe the last
13 question was how we're intending, or what are we
14 intending to develop on the site.

15 BY MR. PRESTON:

16 Q. That's correct.

17 A. We're planning to develop structures that
18 will be used to store goods, products and materials
19 that will be sold or distributed later. This could
20 be more than one company in a specific building.

21 Q. So there will be buildings that will be
22 built, and product will be brought to the buildings;
23 is that correct?

24 A. That's correct.

25 Q. They'll be brought by truck; is that

1 correct?

2 A. Yes.

3 Q. And product will be stored in the buildings?

4 A. It will.

5 Q. And then distributed after some time again
6 by truck; is that right?

7 A. Yes.

8 Q. Why is there concern over the distinction
9 between truck or motor freight terminal and warehouse
10 or wholesale trade establishment, the two definitions
11 that we've identified on Exhibit A-4?

12 A. So again, if you refer to Exhibit A-4, those
13 two definitions are listed there. And the warehouse
14 and wholesale trade establishment is specifically a
15 principle use where goods, products and/or materials
16 of a single company or organization are stored
17 awaiting further processing. We don't intend
18 necessarily to use these buildings for a single
19 company organization; hence the truck or motor
20 freight terminal definition is being used and
21 proposed here.

22 Q. So truck or motor freight terminal is a
23 principle use contained on a single property; is that
24 what we have here?

25 A. Yes.

1 Q. And it says, "to which materials and
2 products are imported for their redistribution and
3 export by commercial truck or other modes of
4 transport." Is that what's happening here?

5 A. That's correct.

6 Q. And that is in fact what happens at a
7 warehouse, is it not?

8 A. In my experience, that is the case.

9 Q. Okay. But in fact, if someone were to bring
10 materials here from more than a single company or
11 organization, it would not be defined as a warehouse
12 under this ordinance; is that correct?

13 A. Yes. Under the township ordinance, that's
14 correct.

15 Q. It would be a truck or a motor freight
16 terminal?

17 A. Correct.

18 Q. Now, are warehouses -- are warehouses
19 permitted in the township? And if so, where are they
20 permitted?

21 A. Warehouses are permitted as a conditional
22 use in the industrial zone.

23 Q. And they're only permitted subject to the
24 provisions of a certain ordinance section; is that
25 right?

1 A. That's correct.

2 Q. In fact, that section is 488.G; am I correct

3 in that?

4 A. You are, yes.

5 Q. I'm going to hand you something that I've

6 marked -- that's been marked as A-5. Take a look at

7 that; tell me if you recognize that.

8 A. Yes, I do recognize that.

9 Q. What is A-5?

10 A. A-5 is from the Upper Saucon Township Zoning

11 Ordinance. It's Sections 484.E and 488.G, one

12 concerning truck and motor freight terminals and one

13 concerning warehouses.

14 Q. Let's start with the one that talks about --

15 let's start with Section 484, Truck or Motor Freight

16 Terminal. And in particular, if you look in the

17 Ordinance Section 484, there's a list of

18 requirements; am I correct in that?

19 A. You are correct, yes.

20 Q. And one of those requirements, subpart E,

21 reads as stated on Exhibit A-5; is that correct?

22 A. That's correct.

23 Q. Would you read that into the record, please?

24 A. "484.E: The subject property shall be

25 located no closer than 500 feet from any OSR, R-1,

1 R-2, R-3, and AQC zone and/or property containing a

2 school, daycare facility, park, playground, library,

3 hospital, nursing, rest or retirement home, or

4 medical residential campus."

5 Q. And for reasons that we'll get into later,

6 the 484.E would disqualify the subject property, that

7 is, the property that's the subject of this petition?

8 A. That is correct.

9 Q. It would disqualify for use as a truck or

10 freight terminal use; is that correct?

11 A. Yes.

12 Q. And on that same exhibit we have Section

13 488, which talks about warehousing and wholesale

14 trade establishments. And I believe that Section 488

15 follows the same methodology; it lists certain

16 requirements for warehousing and wholesale trade

17 establishments; is that correct?

18 A. That is correct.

19 Q. And one of the subparts of 488.G is very

20 similar to what you just read from 484.E; is that

21 correct?

22 A. That is correct.

23 Q. Would you read 488.G into the record,

24 please.

25 A. "488.G: The subject property shall be

1 located no closer than 500 feet from any OSR, R-1,
 2 R-2, R-3 and AQC zone and/or property containing a
 3 school, daycare facility, park, playground, library,
 4 hospital, nursing, rest, or retirement home, or
 5 medical residential campus."

6 Q. So if our use were deemed to be a warehouse
 7 use, we would not be able to establish the warehouse
 8 use on the subject property based on 488.G; is that
 9 correct?

10 A. That's correct. That ordinance provision
 11 disqualifies the subject property in its entirety.

12 Q. In which zoning are truck terminals allowed,
 13 if any?

14 A. In the industrial district, that is a
 15 conditional use.

16 Q. And warehouses, which zoning districts are
 17 they allowed, if any?

18 A. Also in the industrial zoning district as a
 19 conditional use.

20 Q. Subject to the provisions that we just
 21 discussed?

22 A. That's correct.

23 Q. Now, with respect to our plan, if we were to
 24 take a look at Section 484, with all its subparts,
 25 would -- and again, leaving out subpart E; I want you

1 to pretend that subpart E is not a part of 484; all
 2 the other parts are there except for the one that
 3 we've identified. 484, leaving aside subpart E, do
 4 you have an opinion to within a reasonable degree of
 5 engineering certainty whether our proposed plan would
 6 comply with Section 484?

7 A. Yes, I believe it would comply.

8 Q. Now, if we add back in Section 484.E, I
 9 believe you stated that it would not comply, right?

10 A. That's correct.

11 Q. And you're pretty certain?

12 A. Yes, I'm certain.

13 Q. And why wouldn't it comply?

14 A. It wouldn't comply because that provision,
 15 again, disqualifies the subject property in its
 16 entirety.

17 Q. Is that because we're in proximity to those
 18 zones?

19 A. That's correct.

20 Q. And we'll get into that a little bit here in
 21 a little more detail.

22 Can the subject property be made to comply
 23 with Section 484.E?

24 A. No.

25 Q. Now, I want to change our attention. I want

1 to start talking about the township as a whole. And
 2 it's true that truck terminals and warehouses are
 3 permitted in the industrial zone only, correct?

4 A. That's correct.

5 Q. I'm going to hand you what's been marked as
 6 A-6. Take a look at that; tell me if you know what
 7 that is.

8 A. Yes. A-6 is an exhibit we prepared that
 9 illustrates the township's zoning map and highlights
 10 four areas, Area A, B, C and D, which are all the
 11 industrial zones within the township.

12 Q. So with reference to A-6, if I were to look
 13 at A-6 and I were to look at Zones A, B, C and D --
 14 and what color are those on that exhibit?

15 A. They're outlined in a black outline.

16 Q. Okay. And they're lettered on the exhibit;
 17 is that correct?

18 A. That's correct.

19 Q. Those are the industrial zones?

20 A. They are, yes.

21 Q. Are there any other industrial zones other
 22 than those industrial zones in the township?

23 A. No.

24 Q. So then those are the only places where one
 25 could establish, if they met all the requirements,

1 either a warehouse or a truck terminal; is that
 2 correct?

3 A. That's correct.

4 Q. Now, let's take a look at each one of those
 5 particular zones.

6 MR. PRESTON: Now, just for the sake of
 7 the Board's edification, the next set of exhibits are
 8 in your packet. So you're going to see an Exhibit
 9 7.1, 7.2 and 7.3, and the same methodology, 8.1, 8.2
 10 and 8.3. Each of those are going to deal with A, B,
 11 C and D from the original zoning map. So then
 12 they'll present the same information in the same
 13 order. We just did that for ease of understanding.

14 BY MR. PRESTON:

15 Q. Jason, let me hand you what's been marked as
 16 Exhibit A-7.1. Do you recognize that?

17 A. I do, yes.

18 Q. And what is A-7.1?

19 A. A-7.1 is a -- kind of a blow-up of the Area
 20 A designated on the overall zoning map that was A-6,
 21 and it includes the subject property.

22 Q. Now, there are -- there are numbers I see
 23 with -- numbers in black with an arrow that points to
 24 the interior of the zone. What's the significance of
 25 those things?

1 A. The numbers identify each property within
2 the industrial zone.

3 Q. And those are listed in the packet at
4 Exhibit A, that would be 7.3; is that correct?

5 A. That's correct. A-7.3 includes a listing
6 with some general information, size of the property
7 and ownership of the property.

8 Q. Okay. Then with reference to -- let me do
9 this, because you can use both of these exhibits
10 together. I'm going to hand you the next exhibit,
11 which has been marked as A-7.2. If you recognize
12 that, please tell us what that is.

13 A. Exhibit A-7.2 is an aerial map that also
14 designates each property within the industrial zone
15 and denotes what some of the existing uses are onsite
16 as well surrounding the property.

17 Q. So A-7.1 and A-7.2 show roughly the same
18 information except that 7.1 is a drawn pictorial
19 depiction and 7.2 is that same information posed over
20 an aerial?

21 A. Generally, yes.

22 Q. Okay. What's happening with A-7.1 and 2?
23 Tell me what that information -- how that
24 information's relevant to this petition.

25 A. On A-7.1, again, the subject property is

1 identified in yellow in outlines. The subject
2 property as denoted on this plan includes 7A, 2A, 3A
3 and 4A.

4 In addition, this plan illustrates a
5 500-foot line. The 500-foot line is the distance
6 from the surrounding residential zones or uses that
7 were described in Section 484.E. and what you'll see
8 is that that 500-foot line bisects all of the
9 properties, all of the eight properties that are
10 identified on this sheet.

11 Q. So that 500-foot line, by bisecting every
12 property within that particular industrial zone,
13 disqualifies each and every one of those properties;
14 is that -- do I understand your testimony?

15 A. That is correct.

16 Q. Now, let's talk about that for a minute,
17 this 500-foot zone, because those of us that are
18 involved in land use are very familiar with what I
19 believe Attorney Dinkelacker referred to as a buffer
20 zone or a setback or something like that, where a use
21 must be set back, say, 100 feet or 50 feet, whatever,
22 where there must be a buffer zone established between
23 use and an adjoining property. Is that how this
24 500-foot zone works?

25 A. No, no. It's not a setback and it's not a

1 buffer. It's essentially, I would describe it as an
2 exclusionary from one property to another property.

3 Q. So that if your property comes within 500
4 feet of one of those disqualifiers, that property in
5 its entirety could not contain that use; do I
6 understand that correctly?

7 A. That is correct.

8 Q. And that's different than a setback, is it
9 not?

10 A. Absolutely.

11 Q. And so just to -- before you move on from
12 those exhibits, 7.1, 7.2, they show the same
13 information and they confirm that the application of
14 that 500-foot, I believe you called it exclusionary
15 zone, disqualifies each and every property within
16 that particular zone; is that right?

17 A. That's correct. The information shown is
18 slightly different, but yes, that's correct.

19 Q. So you can't put a truck terminal in there;
20 is that right?

21 A. That's right.

22 Q. Can't put a warehouse in there either; is
23 that right?

24 A. No.

25 Q. And why is that?

1 A. Because, again, that provision disqualifies
2 the subject property in its entirety from either
3 warehouses or trucks.

4 Q. That exclusion applies both to warehouses
5 and truck terminals, right?

6 A. It does, yes.

7 Q. Let's take a look at now, okay, Exhibit 7.3.

8 MR. PRESTON: It's in the packet. You
9 have that. That just simply provides the information
10 on the tax map parcels. I don't think we necessarily
11 need to go into that.

12 BY MR. PRESTON:

13 Q. Except you'll confirm with me that 7.3 is
14 true and accurate, Jason?

15 A. Yes, based on information from Real Quest.

16 Q. Okay. Then let's move to Exhibit A-8.1.
17 I'm going to hand you A-8.1. Tell me if you
18 recognize that.

19 A. Yes. We prepared A-8.1, which is a blowup
20 of the Area B industrial zone.

21 Q. Okay. Same thing here: 8.2, do you
22 recognize that? A-8.2, sorry.

23 A. Yes, which is an aerial plan illustrating
24 the same area.

25 Q. Now, just as before, those are two different

1 depictions of the same information; is that correct?

2 A. That's correct.

3 Q. And now we've moved from what on A-6 you
4 identified as A, Industrial Zone A; we're moving to
5 Industrial Zone B; is that correct?

6 A. That's correct.

7 Q. Hopefully we're going to hit them all,
8 right?

9 A. Yes.

10 Q. So let's go to B now. With respect to
11 Exhibits 7.1 -- I'm sorry -- 8.1 and 8.2, can you
12 tell us whether or not any of those properties can be
13 used to site a truck terminal?

14 A. No, they cannot.

15 Q. Could you explain it to the record a little
16 more detail why they cannot?

17 A. As with the previous area, Area A, we
18 plotted a 500-foot line from all the, either
19 residential R-2, R-3 zones as well as the uses such
20 as Penn State Lehigh Valley as a school; and that
21 bisects all the properties within this area, within
22 this zone, with the exception of 1B and 2B.

23 Q. So if I apply the ordinance 500-foot
24 exclusionary zone to Industrial Zone B, the result is
25 that it disqualifies each and every one of the

1 existing tax map parcels for use as a truck terminal;
2 is that correct?

3 A. It does. I would just point -- just note
4 that for 1B and 2B, those aren't excluded from the
5 500 feet but they'd be excluded because of the size
6 of the property and the amount of frontage that those
7 properties have on a collective road.

8 Q. That's relevant as well. Just take a minute
9 to explain that so we don't --

10 A. Under Section 484.D, "The subject property
11 shall have a minimum of 300 feet of contiguous road
12 frontage along and vehicular access onto an arterial
13 and/or collector road as listed in Section 320 of
14 this Ordinance."

15 Q. So there's two parcels that fall outside the
16 exclusion zone on that exhibit, and that's 1B and 2B;
17 is that right?

18 A. That's correct.

19 Q. But those are not eligible and that's why,
20 again?

21 A. Because they don't have the requisite
22 frontage.

23 Q. What about warehouses? Do the same -- does
24 the same analysis carry through for warehouses?

25 A. It's very similar.

1 Q. Let's take a look now --

2 MR. PRESTON: And again, just for the
3 record, Exhibit 8.3 is simply a list of the affected
4 parcels. It identifies the owners, it identifies the
5 tax map parcels, and it identifies the acreage.

6 BY MR. PRESTON:

7 Q. Jason, is 8.3 a true and accurate
8 representation of the information set forth in the --

9 A. Yes.

10 Q. Now, I want to move to Exhibit A-9.1. Take
11 a look at that; tell me if you recognize that.

12 A. Yes. A-9.1 is the Area C blowup similar to
13 the previous exhibits we've discussed.

14 Q. And A-9.2, I'll hand you that now. What is
15 A-9.2?

16 A. A-9.2 illustrates the same area over an
17 aerial photo.

18 Q. So following the methodology that we've been
19 using here, we have two exhibits that depict more or
20 less the same information; is that correct?

21 A. That's correct.

22 Q. And we've looked at Area A from Exhibit A-6,
23 we've looked at Area B from Exhibit A-6, and now
24 we're looking at Area C; is that correct?

25 A. That's correct.

1 Q. And why don't you go ahead and tell us your
2 conclusions, back to Area C.

3 A. So Area C includes a total of 14 properties.
4 Again, the 500-foot line was plotted on this exhibit
5 from the R-3 and R-2 zones as well as any uses that
6 met the section we have been discussing, that those
7 lines bisect every property within -- every one of
8 those 14 properties within the area, again,
9 essentially disqualifying them from being used as a
10 truck terminal.

11 Q. And with respect to Exhibit A-9.3, A-9.3 is
12 a list that correlates with, you know, the numbers
13 that you have on your Exhibit A-9.1; is that correct?

14 A. That's correct.

15 Q. And it identifies the property owners, the
16 tax map parcels and so forth, acreage. Is that --
17 take a look at that and tell me if that's a true and
18 accurate representation.

19 A. It is. Again, from Real Quest data.

20 Q. Okay. I believe we only have one more
21 industrial zoning district left, which was marked as
22 Industrial Zoning District D on the Exhibit A-6. So
23 let's take a look at that.

24 I'm going to hand you an exhibit marked as
25 A-10.1. Do you recognize that?

1 A. Yes. This is the exhibit of Zone D blowup
2 of that area.

3 Q. Here's Exhibit A-10.2. Do you recognize
4 that?

5 A. I do, yes.

6 Q. And what is that?

7 A. It's an aerial photo of the same area
8 designated.

9 Q. And again, we're following the same
10 methodology that we did with the other zones; is that
11 correct?

12 A. That's correct.

13 Q. Then you know the drill. Why don't you take
14 us through; explain to the Board whether or not any
15 of the parcels within that zone that remain
16 industrial zone can be developed with either a truck
17 terminal or a warehouse?

18 A. So this zone is somewhat unique in that it's
19 almost an island to itself of Upper Saucon Township,
20 because you've got Springfield Township to the
21 southeast and Coopersburg Borough surrounding it on
22 all other sides.

23 Q. Are you saying it's not physically
24 contiguous with the rest of the township?

25 A. I am saying that, yes.

1 Q. Go ahead.

2 A. As with the other exhibits, the 500-foot
3 line was plotted here, in this case from the nursing
4 home use. So that, that 500-foot line, along with
5 the requirements for road frontage, disqualify these
6 nine lots for use as a truck terminal.

7 Q. And with reference to Exhibit A-10.3, which
8 I believe is, again, following the same methodology,
9 correlates with the tax map parcels that you've
10 identified on your A-10.1 and A.2 [sic] exhibit, it
11 identifies the addresses, tax map parcels, acreage
12 and other owner information. Just take a look at
13 that; tell me if that's true and accurate.

14 A. That is true and accurate, and it's worth
15 noting that many of these parcels in this area extend
16 over the township line.

17 Q. We've covered all of the industrial zoning
18 districts in Upper Saucon Township, I believe?

19 A. Yes.

20 Q. And you were not able to identify any
21 properties that could be developed with a warehouse
22 or trucking terminal; is that correct?

23 A. That's correct.

24 Q. Do you know if there are any conforming
25 truck terminals in Upper Saucon Township?

1 A. I did some research, based on the current
2 zoning ordinance, and I do not believe there are.

3 Q. What about warehouses? Do you believe there
4 are any conforming warehouses in Upper Saucon
5 Township?

6 A. I don't believe so, not conforming to the
7 current zoning.

8 Q. But there is at least one warehouse; is that
9 correct? Aldi's, is that --

10 A. Yes, Aldi's, I guess because it would be a
11 single tenant, single user, would be considered a
12 warehouse. But that location is immediately adjacent
13 to a residential zone, as was illustrated on one of
14 the exhibits we reviewed.

15 Q. So that would not conform with the ordinance
16 if they were to do that, try to attempt to construct
17 that today; is that right?

18 A. That's right. If that property was
19 undeveloped and they proposed to develop it today,
20 they could not, based on the provision we discussed.

21 Q. I believe Pitt Ohio is another well-known
22 establishment. Are you familiar with that?

23 A. I am, yes. It's adjacent to the subject
24 property.

25 Q. That's probably more of a true truck

1 terminal, is it not?

2 A. In my view of what a truck terminal is, yes.

3 Q. Could you build that today under the
4 existing ordinances?

5 A. No, you could not.

6 Q. And why not?

7 A. Because it's within 500 feet of a number of
8 residential zones.

9 Q. So, not to go over this -- I believe you
10 testified that there were no conforming truck
11 terminals in the township; is that right?

12 A. Yes. Based on my research, that's correct.

13 Q. And even to put a finer point on that, are
14 there any truck terminals in Upper Saucon Township
15 that would satisfy the criteria of 484.E, which is
16 the --

17 A. No.

18 Q. Does the Upper Saucon Township zoning
19 ordinance as written make it impossible to locate a
20 truck terminal on any existing parcels in Upper
21 Saucon Township?

22 A. Yes.

23 Q. Are there any conforming warehouses in Upper
24 Saucon Township?

25 A. Not that I found.

1 Q. And again, same analysis, are there any
2 warehouses in Upper Saucon Township that, while they
3 may be nonconforming, do satisfy the criteria of this
4 488.G, which applies to warehouse establishments?

5 A. No.

6 Q. Does the Upper Saucon Township zoning
7 ordinance, again, as written, make it impossible to
8 locate a warehouse on any existing parcels in Upper
9 Saucon Township?

10 A. Yes.

11 Q. So to sum up, there are currently no
12 conforming truck terminals in Upper Saucon Township;
13 and under the current township zoning ordinance,
14 there's currently no place to put one, and there are
15 currently no conforming warehouses -- I'm sorry.
16 Just answer that question.

17 Let me do the question again. There are
18 currently no conforming truck terminals in Upper
19 Saucon Township; and under the current township
20 zoning ordinance, there's currently no place to put
21 one; is that correct?

22 A. That's correct.

23 Q. And there are currently no conforming
24 warehouses in Upper Saucon Township; and under the
25 current township zoning ordinance, there's currently

1 no place to put one; is that correct?

2 A. That's correct, based on my review.

3 MR. PRESTON: No further questions.

4 MR. DINKELACKER: Mr. Gundlach.

5 MR. GUNDLACH: Yes.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. GUNDLACH:

9 Q. Good evening, Mr. Engelhardt.

10 MR. GUNDLACH: I've got a blown mike.

11 BY MR. GUNDLACH:

12 Q. Mr. Engelhardt, you're familiar with the
13 Curative Amendment application that has been marked
14 as an exhibit?

15 A. I am, yes.

16 Q. And the challenge under that application is
17 limited to 484.E; isn't that correct?

18 A. I believe that is correct.

19 Q. And 484 deals with the truck or motor
20 freight terminal use, correct?

21 A. Yes.

22 Q. And there's a separate use identified as
23 488, which is a warehouse use, correct?

24 A. Correct.

25 Q. And you testified that has a similar

1 500-foot provision, correct?

2 A. It does, yes.

3 Q. But the Applicant's not challenging that
4 provision, correct?

5 A. The challenge is as listed in the Curative
6 Amendment paperwork.

7 Q. It's limited to the 484 truck or motor
8 freight terminal use, correct?

9 A. Yes. It references 484.E.

10 Q. And I believe you testified that, in your
11 professional opinion, that the remaining provisions
12 in 484, that is, all the provisions except 484.E, in
13 your opinion are reasonable and valid, correct?

14 A. I believe I testified that the remaining
15 provisions are ones we could comply with.

16 Q. You reviewed those provisions, correct?

17 A. I did.

18 Q. As a civil engineer, would you agree that
19 those are reasonable provisions that are commonly
20 found in a zoning ordinance for this type of use?

21 A. Uh, I don't know if I'd go as far as saying
22 reasonable provisions, but again, I believe we can
23 comply with them. But the majority of them I would
24 say are reasonable.

25 Q. You'd say what?

1 A. The majority of them I would say are
2 reasonable.

3 Q. Okay. The relief that's being requested in
4 the application is to strike 484.E in its entirety,
5 correct?

6 A. That's correct.

7 Q. Now, 484.E is really separated into two
8 parts, that is, the 500-foot setback from certain
9 zoning districts and a 500-foot setback from certain
10 uses, correct?

11 A. I wouldn't view it as a setback. I would
12 view it as an exclusionary area.

13 Q. So, but would you agree with me it really
14 breaks it into two parts, one dealing with its
15 application to zoning districts and one dealing with
16 its application to uses?

17 A. I would agree with you, although it's
18 specific to properties that contain those uses.

19 Q. And with respect to the plan that you've
20 developed for the subject property, the issues that
21 you are referencing as troublesome deal with the
22 application of the R-2 and R-3 provisions, correct?

23 A. There's varying situations, some with R-2
24 and R-3, some with uses such as Penn State Lehigh
25 Valley as a school, and nursing homes.

1 Q. So let's go through each of those. The
2 first reference is to OSR. And OSR is not an issue,
3 correct?

4 A. Are we referring specifically to the subject
5 property?

6 Q. Yes.

7 A. As I answer your questions, I'm going to
8 refer back to Exhibit A-7.1, which illustrates the
9 township zoning map blowup of the area that includes
10 the subject property.

11 And to answer your question, it does not
12 appear that OSR is adjacent to the subject property,
13 so it would not be a part of the conversation.

14 Q. And you would also agree the same as to R-1,
15 correct?

16 A. That's correct.

17 Q. And since you're developing the entire
18 property that's zoned industrial, the AQC zone would
19 also not be applicable, correct?

20 A. We would be developing with the underlying
21 industrial zoning, correct.

22 Q. So that's correct, right?

23 A. Correct.

24 Q. Your plan that you're referencing as A-7.1
25 does set back from the R-2 and R-3 zoning districts,

1 correct?

2 A. That's correct.

3 Q. Now, with respect to the remainder of 484.E,
4 does the subject property have any issues complying
5 with the 500-foot provision with respect to those
6 identified uses?

7 A. I think you need to restate that question.

8 Q. Let's take a look at the remainder of 484.E.
9 It references a 500-foot provision with respect to a
10 school, a daycare facility, a park, a playground, a
11 library, a hospital, a nursing, a rest or retirement
12 home, or a medical campus, correct?

13 A. That's correct.

14 Q. And when you located your 500-foot line on
15 A-7.1, did you take into account and set that line
16 back for any of those uses I just read?

17 A. Not for the subject property, no.

18 Q. In fact, none of those uses are within 500
19 feet of the subject property, correct?

20 A. That's correct.

21 Q. So with respect to 484.E and the subject
22 property, it's only the R-2 and the R-3 provisions
23 that have -- cause you to render the opinion you've
24 rendered tonight, correct?

25 A. That's correct.

1 Q. Now, you're familiar with the regulations
2 contained in the industrial district, correct?

3 A. I am, yes.

4 Q. And the setbacks in the industrial district
5 for the truck terminal use that you've proposed are
6 limited to a front yard of 50 feet and a side and
7 rear yard of 30 feet, correct?

8 A. That's correct, as well as a residential
9 buffer strip.

10 Q. That's different from the term "setback,"
11 right?

12 A. That's correct.

13 Q. So we have a 50-foot front yard, a 30-foot
14 side yard, and a 30-foot rear yard setback, and then
15 a 75-foot buffer strip from adjacent residential
16 properties, correct?

17 A. The 75-foot buffer strip appears to be from
18 residential zones, the OSR, R-1, R-2, or R-3 zone.

19 Q. And with respect to the subject property,
20 you apply that from the R-2 and R-3 zones, correct?

21 A. It has to be adjoining land, so from the R-2
22 zone.

23 Q. And the 500-foot provision that we're
24 discussing tonight with respect to a truck terminal
25 is intended to provide greater setbacks for adjacent

1 residential homeowners than the 50- or 75-foot
2 provisions we just discussed, right?

3 MR. PRESTON: I'm going to object to
4 the extent that it calls for the intention of the --

5 MR. DINKELACKER: I'm sorry, Jim.
6 Could you state that --

7 MR. PRESTON: I'm going to object to
8 the extent that it calls for him to draw a conclusion
9 as to the intent of the provision. I don't know that
10 he can tell you what the intent was.

11 MR. DINKELACKER: Let's let
12 Mr. Gundlach ask the question and see where it goes.

13 THE WITNESS: Can you repeat the
14 question, please?

15 BY MR. GUNDLACH:

16 Q. Yes. The 500-foot provision that we're here
17 to discuss tonight in 484.E is proposed in the zoning
18 ordinance to be in addition to the setback or buffer
19 provisions that I previously identified, correct?

20 A. Uh, I don't know that I can draw conclusions
21 in why this provision was added to the ordinance.

22 Q. I didn't ask you why it was there; I asked
23 you if it's in addition to the setback and buffer
24 provisions.

25 A. Again, it's not a setback or a buffer.

1 Q. I didn't describe it as a setback or a
2 buffer. I'm describing it as a 500-foot provision.
3 Let's call it the 500-foot 484.E provision. That's
4 in addition to the setback and the buffer provisions,
5 correct?

6 A. It is an additional requirement, yes.

7 Q. And it is, by its nature, pushing truck
8 terminals further away from residential districts
9 than the 75-foot buffer, correct?

10 A. It's precluding the use of properties --

11 Q. Now you're advocating. I'm asking the
12 questions here. I'm suggesting to you that it
13 provides additional distance, correct?

14 MR. PRESTON: You're arguing with the
15 witness. He's not advocating. He's trying to answer
16 the question.

17 MR. DINKELACKER: I think the question
18 was simple. That was, did it push it back? So I
19 think Mr. Engelhardt can answer that question.

20 THE WITNESS: And again, it effectively
21 -- it's a factual answer. It effectively eliminates
22 the ability to use those properties.

23 BY MR. GUNDLACH:

24 Q. So it's your testimony that 484.E, as
25 applied to the subject property, would eliminate the

1 ability under any circumstances to use it for the
2 truck terminal use?

3 A. Yes. For the subject property, that's
4 correct.

5 Q. There's no way in which a plan could be
6 developed or designed on the subject property to
7 comply with the 484.E provision, in your opinion?

8 A. Not in combination with all the requirements
9 of Section 484, in particular the frontage
10 requirement.

11 Q. Now, let's look at the site plan which was
12 identified in the packet, I believe, as Exhibit A-3.

13 Now, the plan proposes primary access from
14 Route 309, correct?

15 A. That's correct.

16 Q. And the plan shows that access across an
17 adjacent property; is that correct?

18 A. That's correct.

19 Q. With the application, did it include any
20 authorization or easement document or agreement of
21 sale from that adjacent property owner?

22 A. I didn't see one with the application.

23 Q. That property is owned by Pitt Ohio,
24 correct?

25 A. That's correct.

1 Q. And in order for this Applicant to construct
2 that roadway, they would either need to acquire that
3 land from Pitt Ohio or acquire an easement, correct?

4 A. Yes. An easement or some kind of agreement
5 would be reached.

6 Q. Now you're also showing on 309 on the site
7 plan multiple left turns, right turns, into and out
8 of the site, correct?

9 A. That's correct.

10 Q. You're expanding that intersection, correct?

11 A. Yes, that's correct.

12 Q. Now, right of way would be needed from
13 surrounding property owners to complete that work,
14 correct?

15 A. Yes, right of way would be needed. That
16 information's illustrated based on the approved point
17 of access study that was created for previous
18 application on the property.

19 Q. But you haven't identified on this plan that
20 we've marked as A-3 the right of way that's needed to
21 facilitate those roadway improvements, correct?

22 A. That's correct.

23 Q. And you're also contemplating a new traffic
24 signal at that location, correct?

25 A. Yes.

1 Q. And that requires a PennDOT approval for
2 that, correct?

3 A. Again, this was approved as part of the
4 original point of access study for the previous
5 application.

6 Q. It was not approved for this application,
7 correct?

8 A. It was not, no.

9 Q. Now, for each of these buildings, you're
10 showing dock spaces and trailer spaces, correct?

11 A. That's correct.

12 Q. Can you explain the difference between the
13 two?

14 A. Trailer spaces are for dropping off
15 trailers, and dock spaces are for loading and
16 unloading.

17 Q. So in terms of this use, you talked about
18 not just one company but multiple companies, correct?

19 A. Certainly the possibility of having multiple
20 companies, yes.

21 Q. So they would be trucks owned, operated,
22 controlled by multiple users, correct?

23 A. That's as a potential, yes.

24 Q. It's a potential, right?

25 A. Yes.

1 Q. And with respect to the operations, this
 2 facility would be 24/7, correct?
 3 A. I don't know that.
 4 Q. But it could be, right?
 5 A. I imagine it could, unless there was an
 6 ordinance provision that disallowed that.
 7 Q. Did you note any ordinance provision in the
 8 township zoning ordinance that disallowed a truck
 9 terminal operating 24 hours a day, seven days a week?
 10 A. I didn't specifically look for that
 11 provision, but I didn't notice that.
 12 Q. Are you generally familiar with truck
 13 terminals?
 14 A. Generally.
 15 Q. Have you done design work on truck terminals
 16 before?
 17 A. I have, yes.
 18 Q. Have you inspected them when they're in
 19 operation?
 20 A. I have, yes.
 21 Q. Is it fair to say that many of those truck
 22 terminals operate 24 hours a day?
 23 A. I imagine that is fair to say.
 24 Q. And you identify on your plan here, and you
 25 just defined for us, the dock space and the trailer

1 space, correct?
 2 A. That's correct.
 3 Q. Dock space are where trucks park where
 4 they're loading or unloading; is that correct?
 5 A. Yes.
 6 Q. So how many total dock spaces have you
 7 identified on this plan?
 8 A. I only have the reduced version. I have to
 9 get a larger plan. But if you wanted to read the
 10 number off the plan in front of you, you can.
 11 (Exhibit was retrieved.)
 12 Are you looking for a specific building?
 13 Q. I'm looking at the total docks. Is it
 14 reflected in the chart as 413 dock spaces?
 15 A. Yes, that's correct.
 16 Q. So 413 trucks could be parked at these
 17 buildings at any one time loading and unloading,
 18 correct?
 19 A. That's possible.
 20 Q. And there could be another 414 trailers
 21 waiting to get to those docks, correct?
 22 A. I think it would be unusual for them to be
 23 at full capacity, but yes.
 24 Q. Possible they could be at full capacity,
 25 right?

1 A. Yes, that's possible.

2 Q. And if it was at full capacity and you
3 turned each dock two times, that is, the truck parked
4 there and the truck waiting, that would be 817 trucks
5 a day per your site plan, correct?

6 A. I think you would be referring to an
7 absolute maximum, which would be an unlikely
8 circumstance, but I think that's possible based on
9 the map.

10 Q. Unlikely, but show me in the application or
11 plan where you limit it by condition anywhere the
12 number of trucks that could be using this in any one
13 day. It's not on there, is it?

14 A. I'm not aware of any limit, no.

15 Q. So it's possible that if we turn these
16 trucks, the ones that were waiting and the ones at
17 the docks, it could be 817 trucks a day, correct?

18 A. Again, I think very unlikely, and I think
19 that would be described much further through a
20 traffic study, but I guess it is possible.

21 Q. And if each truck represents two trips a
22 day -- one in, one out -- that's potentially 1,634
23 truck trips per day possible, correct?

24 A. Again, absolute maximum and unlikely and
25 probably varies from what the ITE rates are for these

1 type of uses, but possible.

2 Q. You could have reduced the number of dock
3 spaces on this plan to reduce the number of trips,
4 correct?

5 A. No. There's not a direct correlation
6 between the number of dock spaces and the number of
7 trips.

8 Q. Were you instructed to maximize out on this
9 plan the number of box spaces that could be shown?

10 A. No. We used experience to lay out the plan.

11 Q. Nobody told you, max this site out in laying
12 out the buildings, the dock spaces, or the trailer
13 spaces?

14 A. Not as it relates to dock spaces and trailer
15 spaces, no.

16 Q. Who gave you guidance as to the layout of
17 this plan?

18 A. I honestly don't recall. I imagine it was
19 coordination between my client and my office.

20 Q. So your client gave you direction as to how
21 to lay out this plan in terms of the layout, the
22 buildings, the docks, the spaces?

23 A. Generally, although he relies on my
24 experience more in this circumstance because my
25 client is based as a residential builder, not an

1 industrial developer.

2 Q. Could you fit another -- could you fit any
3 more buildings, docks or truck parking spaces on this
4 plan than what you've shown?

5 A. Potentially.

6 Q. You could? Where would you fit that on this
7 plan?

8 A. Right now you're asking me to redesign a
9 plan, but I know that we're 5% under the maximum
10 allowable impervious surface, so that would allow
11 room to add additional impervious surface if we
12 chose.

13 Q. So it's your testimony that you could get
14 more building coverage and docks on this plan and
15 have a viable layout, or does this plan represent you
16 maxing out the site for this proposed truck terminal
17 use?

18 A. No. I could get more square footage on this
19 plan.

20 Q. Where would you put it?

21 A. Again, I would have to take time and draw up
22 a plan, but add 5% more impervious surface that's
23 allowable under the ordinance.

24 Q. But, Mr. Engelhardt, you've got to admit to
25 me here now that this plan, if it's not maxed out,

1 it's pretty darn close to maxed out, correct?

2 MR. PRESTON: It's been asked and
3 answered. He gave you the answer.

4 MR. DINKELACKER: One more time. We
5 won't be over-repetitive.

6 THE WITNESS: Can you repeat the
7 question, please?

8 BY MR. GUNDLACH:

9 Q. If you're saying this plan isn't maxed out,
10 would you agree with me that this plan is pretty darn
11 close to being maxed out?

12 A. Again, we're at 65% impervious coverage.
13 You're allowed 70. So if you view that as pretty
14 close to maxed out, then yes.

15 Q. Now, I see there's a note on the plan here
16 that says that East Valley Road is for cars and
17 emergency access vehicles only, no trucked permitted,
18 correct?

19 A. That's correct.

20 Q. Is there a gate or some restriction that I'm
21 missing that's shown on the plan to prevent trucks
22 from going in and going out?

23 A. Not currently proposed on this conceptual
24 site plan, no.

25 Q. So if this site is being used by multiple

1 parties and multiple truck drivers and multiple
2 companies, there's a possibility that a truck driver
3 could use East Valley Road as reflected on your site
4 plan, correct?

5 A. The intent is not for them to use East
6 Valley Road.

7 Q. I understand, but it's possible here.
8 There's no restriction shown on your plan, correct?

9 A. If you're saying there's no restriction,
10 like physical restriction like a gate, that's
11 correct.

12 Q. Okay. Was there any investigations in
13 designing this plan as to other alternative access
14 routes?

15 A. Alternative as far as an alternative to the
16 access out on East Valley for just cars?

17 Q. Alternatives in general. Other routes other
18 than your access points you have now to Route 309 and
19 to East Valley Road.

20 A. The original point of access study allowed
21 for an alternate location for the access out on Route
22 309 that didn't involve Pitt Ohio's driveway. So
23 that can and was done.

24 Q. It was in the same approximate location but
25 didn't use a portion of their property?

1 A. It was -- (reviewed exhibit) -- probably
2 six, seven hundred feet to the west.

3 Q. Did you do any investigation as to your
4 ability to obtain land or an easement to directly
5 access Center Parkway?

6 A. There was some investigation completed under
7 the previous town center proposal and discussions
8 with the adjoining property owner.

9 Q. But you haven't shown that access as a
10 possibility on this plan, correct?

11 A. That's correct.

12 Q. Now, you indicate on your plan a total
13 number of car parking spaces of 1,525 spaces,
14 correct?

15 A. That's correct.

16 Q. And if this facility operates on a 24/7
17 basis, those parking spaces could be turned over two
18 or three times, potentially, correct?

19 A. The number of parking spaces that we
20 illustrated on the plan for cars was based on the
21 township ordinance that requires one for every
22 thousand square feet of area. In my experience that
23 far exceeds the needs of these type of buildings,
24 with the rare exception of an Amazon-type use.

25 Q. Now, when you say your experience, it's your

1 experience in designing these facilities, correct?

2 A. Yes, in my experience with working with
3 developers in these types of --

4 Q. Do you have experience with operating truck
5 terminals?

6 A. Not personally, no.

7 Q. So potentially what I'm saying to you is,
8 some of those spaces could be turned over more than
9 one time if the facility is operating 24 hours a day,
10 seven days a week, correct?

11 A. It's possible that there'd be shift work
12 where some would leave and some would come. But
13 again, the number of parking spaces that are
14 illustrated on the plan are there to meet the
15 ordinance requirements. Based on my experience and
16 based on my discussions with operators, the number
17 here far exceeds what's necessary.

18 Q. But if this facility needs those spaces,
19 given the number of employees in the buildings,
20 they're there for those employees, correct?

21 A. Yes. I would imagine we would be asking the
22 Township, should this plan proceed forward, to allow
23 us to reduce the number of car parking spaces
24 significantly.

25 Q. Has the Applicant identified any specific

1 users for these fill-ins?

2 A. No.

3 Q. So you have no firsthand information as to
4 the number of employees that any of the users would
5 have, correct?

6 A. That's correct.

7 Q. So potentially there's no limit by this plan
8 as to how many of those cars that are parking onsite
9 use East Valley Road, correct?

10 A. That would be correct.

11 Q. So the car driver, any one of those 1,525
12 drivers, could use either Route 309 or East Valley
13 Road, correct?

14 A. Again, I think the number would be
15 significantly lower than that, but that's correct.

16 Q. Let me take a look at your exhibit book,
17 starting with Exhibit 7.1.

18 The subject property has a yellow line
19 around it, correct?

20 A. That's correct.

21 Q. And you apply the 500-foot provision from
22 484.E with the dashed pink line, correct?

23 A. Yes.

24 Q. And in preparing this design, you didn't
25 show the subdivision of the subject property or the

1 construction of any collector road, correct?

2 A. We're not proposing a subdivision on the
3 subject property.

4 Q. That wasn't my question. When you did your
5 analysis, did you -- you did not consider the
6 possible subdivision of this property and the
7 construction of a collector road, correct?

8 A. I accepted the subject property as it exists
9 today, so no.

10 Q. No, you did not, correct?

11 A. That's correct.

12 Q. With respect to the exhibit that you've
13 marked as A -- before we go to that one -- yeah,
14 A-8.1, that was Area B that you show similarly the
15 500-foot provision overlaid on the industrial zoning,
16 correct?

17 A. That's correct.

18 Q. And for that site, similarly, you didn't
19 look at or investigate the ability to subdivide that
20 property and to install a collector road to satisfy
21 the requirements of 484.E, correct?

22 A. No, I did not. I evaluated the properties
23 as they exist today.

24 Q. And that's the site that contains the
25 existing Aldi distribution center, correct?

1 A. Which site are you referring to?

2 Q. The B site, the location B as reflected in
3 your plan A-8.1, A-8.2, and A-8.3.

4 A. The existing Aldi distribution center is on
5 4B on Exhibit A-8.1.

6 Q. And that would qualify as a warehouse use
7 under the 488 regulations if it was a single user and
8 as a truck terminal under 484 if it was used by
9 multiple parties, correct?

10 A. Yes.

11 Q. And that is a legally permitted use in this
12 township, correct?

13 A. A warehouse is a legally permitted use in
14 the industrial district.

15 Q. I'm saying this Aldi distribution center,
16 it's legally permitted, correct?

17 A. It would not be permitted under this section
18 that the ordinance section that we're discussing.

19 Q. Well, I drove by today. I saw trucks
20 driving in and out. Were those trucked illegally
21 using the property?

22 A. Maybe an existing nonconformity, based on
23 the current ordinance.

24 Q. Did you pull the records as to that specific
25 project?

1 A. No.

2 Q. So you don't know if the zoning was the same
3 when they were approved or different?

4 A. I do not know that, no.

5 Q. Do you know if they obtained a variance from
6 the Zoning Hearing Board?

7 A. No.

8 Q. And a variance is a means by which an
9 applicant can obtain relief from a specific provision
10 under the zoning ordinance when they have hardship,
11 correct?

12 A. Of course.

13 Q. Did this Applicant in this case apply to the
14 Zoning Hearing Board for any relief from that section
15 that you cited in 484.E?

16 A. I don't know.

17 Q. You have no idea?

18 A. No. My review was limited to applying the
19 zoning ordinances that exist today.

20 Q. Are you aware of any application to the
21 Zoning Hearing Board for relief from 484.E?

22 A. I'm not aware, but I did not research that,
23 no.

24 Q. So you have no information as to -- you have
25 no firsthand information as to whether or not the

1 Aldi distribution center is a conforming or
2 nonconforming use as it's currently situated?

3 A. No. As we just discussed, I have no -- I
4 haven't researched the Aldi use, whether or not they
5 were granted variances or the ordinance provision
6 didn't exist when they proposed.

7 Q. Because you did testify that -- you
8 testified that there was no conforming warehouse
9 located in this township, correct?

10 A. Based on my review of the current ordinance
11 provisions.

12 Q. Not your review of the files as to any
13 specific warehouse used, correct?

14 A. That's correct.

15 Q. So if that Aldi was permitted by variance,
16 that would be a permitted conforming use, correct?

17 MR. PRESTON: Objection. That calls
18 for a legal conclusion.

19 MR. GUNDLACH: This witness has already
20 given his opinions.

21 MR. DINKELACKER: I think a number of
22 the opinions that the witness -- I apologize --

23 THE WITNESS: Mr. Engelhardt.

24 MR. DINKELACKER: -- Mr. Engelhardt's
25 testified to has legitimately raised the questions

1 Mr. Gundlach is asking.

2 THE WITNESS: You're going to have to
3 repeat the question.

4 BY MR. GUNDLACH:

5 Q. If that Aldi warehouse was permitted by a
6 variance, then it would be a legally permitted
7 conforming use, correct?

8 A. Yes.

9 Q. And that would contradict the opinion you
10 gave that there were no conforming warehouses in the
11 township, correct?

12 A. I think I qualified my opinion based on my
13 reading of the current ordinance.

14 Q. Fair enough. Not your review of any files
15 on those warehouse or truck terminal facilities,
16 correct?

17 A. That's correct.

18 Q. Similarly, you talked about a Pitt Ohio
19 truck terminal that's located adjacent the subject
20 property, correct?

21 A. That's correct.

22 Q. Did you review any of the records of the
23 township to determine if that was a legally permitted
24 use?

25 A. No, I did not.

1 Q. And they're currently operating at that
2 location as a truck terminal, correct?

3 A. That's correct.

4 Q. So it is a legally permitted use in the
5 township, correct?

6 A. Yes. Potentially an existing nonconformity,
7 but yes.

8 Q. Let me go to the next exhibit, A-9.1, where
9 you looked at Area C and you applied in Area C the
10 same 500-foot 484.E provision overlaid on the
11 industrial, correct?

12 A. That's correct.

13 Q. And again, isn't it correct that you did not
14 look at a possible subdivision or construction of a
15 collector road with respect to the parcels in Area C?

16 A. No. I looked at the properties as they
17 exist today.

18 Q. And finally, you looked on Exhibit A-10.1 at
19 Area D, zoned industrial, correct?

20 A. Correct.

21 Q. And you did not look at a possible
22 subdivision or construction of a collector road with
23 respect to the parcels identified within Zone D,
24 correct?

25 A. That's correct. I looked at the parcels as

1 they exist today.

2 MR. GUNDLACH: I don't have any further
3 questions tonight, but I would ask if Mr. Engelhardt
4 could come back to the next meeting so I can have my
5 proposed witnesses and consultants review some of the
6 materials we received tonight to determine if I have
7 any questions. If I don't have any other questions,
8 I will certainly let Mr. Preston know that there's no
9 need to bring him back.

10 MR. DINKELACKER: Jim, I assume there's
11 no objection, or is there an objection?

12 MR. PRESTON: Oh, there's no objection.
13 But I'll need to -- when he's done, when he's done.

14 MR. DINKELACKER: Let's do this. We'll
15 go around through all the parties first and then
16 we'll do -- you can do redirect.

17 MR. PRESTON: Well, no, I'm not -- not
18 till he's done.

19 MR. DINKELACKER: Oh, okay. I'm sorry.

20 MR. GUNDLACH: I'm done for tonight.
21 I'm just reserving.

22 MR. DINKELACKER: That's fine, Jim.
23 You can wait. We'll go through the other parties.

24 First to the Board. If any members of
25 the Board have questions for Mr. Engelhardt, now

1 would be an appropriate time to direct those
2 questions.

3 There appear to be none.

4 Let's go first to Ms. D'Amico. Do you
5 have any questions for Mr. Engelhardt?

6 MS. D'AMICO: I do have just one.
7 Would you like me to come to the podium?

8 MR. DINKELACKER: Come to the podium.
9 And is it, Mr. Tiemann, wherever you
10 are, if you want to ask questions, you can come to
11 the podium as well.

12 MR. DINKELACKER: Okay. Ms. D'Amico.

13 MS. D'AMICO: And my question can be
14 directed --

15 MR. DINKELACKER: You can make your
16 question directed to Mr. Engelhardt.

17 MS. D'AMICO: All right. Thank you.

18 * * *

19 CROSS-EXAMINATION

20 BY MS. D'AMICO:

21 Q. I just have one question. I'm looking back
22 and forth at Exhibit A-3, which is the plan itself,
23 as well as Exhibit A-7.1. And my question is, as you
24 were giving your testimony in the beginning of the
25 evening, I heard you say pretty often that there was

1 no possibility with the 500-foot ordinance to move
 2 forward with your plan; there was just no way to do
 3 it. And I can understand that and it makes sense,
 4 given the maps and the grids and it's all very clear.
 5 So I do appreciate very much that that was put
 6 together for a layman like myself.

7 With that being said, you said there's no
 8 way to build a warehouse or a trucking warehouse
 9 within the ordinance, within the zoning laws right
 10 now. I'm looking at Exhibit A-3, and I'm seeing
 11 three pretty large warehouses and trucking terminals.
 12 And I -- with full transparency, I do not have a
 13 degree in engineering, I do not have the background,
 14 and certainly there's a lot more to this that I do
 15 not understand. But I have played a lot of blocks
 16 with my kids, and I've played a lot of bubbles with
 17 my kids. And in my opinion it looks to me, if you
 18 were to take one of those out and shift things
 19 around, you would very easily be able to build within
 20 that 500-foot ordinance. So my question really is,
 21 you say there's no way to put a warehouse or trucking
 22 terminal; is it more accurate to say you can't put
 23 three warehouses or trucking terminals?

24 A. No, it isn't, and that's because of the way
 25 this section is worded that's being challenged with

1 our Curative Amendment. It essentially says that the
 2 entire property is excluded if it's within 500 feet
 3 of certain zones or certain uses. It's not a buffer;
 4 it's not a setback, where in those cases if it were a
 5 setback, we could potentially move the buildings
 6 around. But that's not the case here.

7 Q. Okay. Was there ever a plan to propose to
 8 the Township or to the Board within those five --
 9 that 500 setback ordinance, what have you, that this
 10 is what you'd like to build? As opposed to
 11 maximizing every square inch and saying, this is what
 12 we want, was there ever, like, plan B to say, okay,
 13 if we need to live within this, this is what we can
 14 build and this is how we can partner with your
 15 community?

16 A. Again, it's not a buffer or setback
 17 discussion. This would preclude the use in its
 18 entirety. And that's really what we're challenging
 19 here tonight.

20 Q. Okay.

21 A. There will be other times, assuming we move
 22 forward, where we'll discuss the plan itself, with
 23 conditional use and development plans. This
 24 particular discussion is about that one section.

25 Q. Okay. I appreciate that. But just so I can

1 understand and relay back to my family and my
 2 neighbors, what you're saying is, the way that it
 3 states right now, nothing can be built, not even one
 4 in the center of that, not even one building plopped
 5 right in the center with the parking spaces for that
 6 one building; not even that can be built, if I'm
 7 understanding that correctly?

8 A. Right. Because the subject property
 9 involves that 119 acres, and that 500-foot line
 10 intersects all the properties, our subject property,
 11 then yes, they cannot be built.

12 Q. Okay. Well, I appreciate your explaining
 13 that. Thank you.

14 MR. DINKELACKER: Mr. Tiemann, do you
 15 have any questions?

16 Okay. Mr. Tiemann has no questions.
 17 And I think at this juncture, we've decided that
 18 Mr. Engelhardt may well come back. And, Jim, you can
 19 do your redirect at that time.

20 MR. PRESTON: That's correct.

21 MR. DINKELACKER: We're at 9:30 anyway,
 22 and this would appear to be a good time to stop for
 23 the evening. Does anybody else have anything they
 24 would like to address before we adjourn for the
 25 evening?

1 MR. GUNDLACH: Just one question. I'd
 2 just ask that Mr. Engelhardt be instructed he's on
 3 cross-examination, so there shouldn't be any
 4 consultation regarding the cross itself. Certainly
 5 no objection to matters unrelated to the cross, but I
 6 would ask that that be respected.

7 MR. DINKELACKER: I agree, and I see
 8 Jim --

9 MR. PRESTON: Understood. Yes,
 10 understood.

11 MR. DINKELACKER: And, Mr. Engelhardt,
 12 you understand that admonition, correct?

13 MR. ENGELHARDT: I believe I do.

14 MR. DINKELACKER: You do, correct?

15 MR. ENGELHARDT: I do.

16 MR. DINKELACKER: Thank you. So we're
 17 going to adjourn for the evening, and thank you very
 18 much everybody, and thank you for coming out and
 19 listening patiently.

20 (Discussion took place off the record.)

21 MR. DINKELACKER: Folks, before
 22 everyone leaves, we want to announce the date of the
 23 next hearing. And we will do it at this time and it
 24 will appear on the township website, and we're going
 25 to look for the next date. And we may be able to --

1 in terms of participation tonight, we may be able to
 2 hold the meeting at the township building, where I
 3 think the acoustics and everything else will be
 4 better for everyone.

5 MR. GUNDLACH: Do you want to add it to
 6 the end of one of your meetings, or do you want to
 7 put it at a separate date?

8 MR. DINKELACKER: I think for now we
 9 would add it to one of the meetings. We have 60
 10 days.

11 MR. GUNDLACH: I think we have to
 12 announce it tonight. So can we go off the record for
 13 selecting the date?

14 MR. DINKELACKER: Sure.

15 So everybody, if you want to stand by
 16 for a few moments, we'll announce the second date as
 17 soon as we have it.

18 (A discussion took place off the
 19 record.)

20 MR. DINKELACKER: Okay. So we're going
 21 to go back on the record, and we have an
 22 announcement. The next hearing will be, I think it's
 23 Monday -- Monday, September 9, 7:30, and the location
 24 will be here again. So Monday, September 9, here at
 25 the middle school auditorium at 7:30.

1 Here, right here. Come back to the
 2 same spot.

3 Okay. Thank you, everybody. We're
 4 going to go off the record now. Have a good night.

5 (The matter concluded at 9:31 p.m.)

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8/27 _____, 2019

I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the within hearing, and that this is a correct transcript of the same.

Shari A Cooper
Shari A. Cooper
Registered Merit Reporter
Certified Realtime Reporter
Notary Public