

AGENDA

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, September 30, 2019 – 6:30 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 (Night 3)
- b. Introduction by Township Solicitor
- c. Identification of additional Township Exhibits
- d. Continuation of testimony
- e. Accept public comment and input
- f. Close of record
- g. Board discussion and deliberation as necessary (Executive Session if desired)

5. ADJOURNMENT

MINUTES

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, September 30, 2019 – 6:30 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
Joseph Geib, Assistant 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 6:30 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 (NIGHT 3)

The purpose of this hearing is 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.”

Testimony was previously received on this matter on August 12, 2019 (Night 1) and September 9, 2019 (Night 2). At the conclusion of Night 2, the Board announced the hearing would be continued to September 30, 2019 at 6:30 p.m. (Night 3) to take additional testimony.

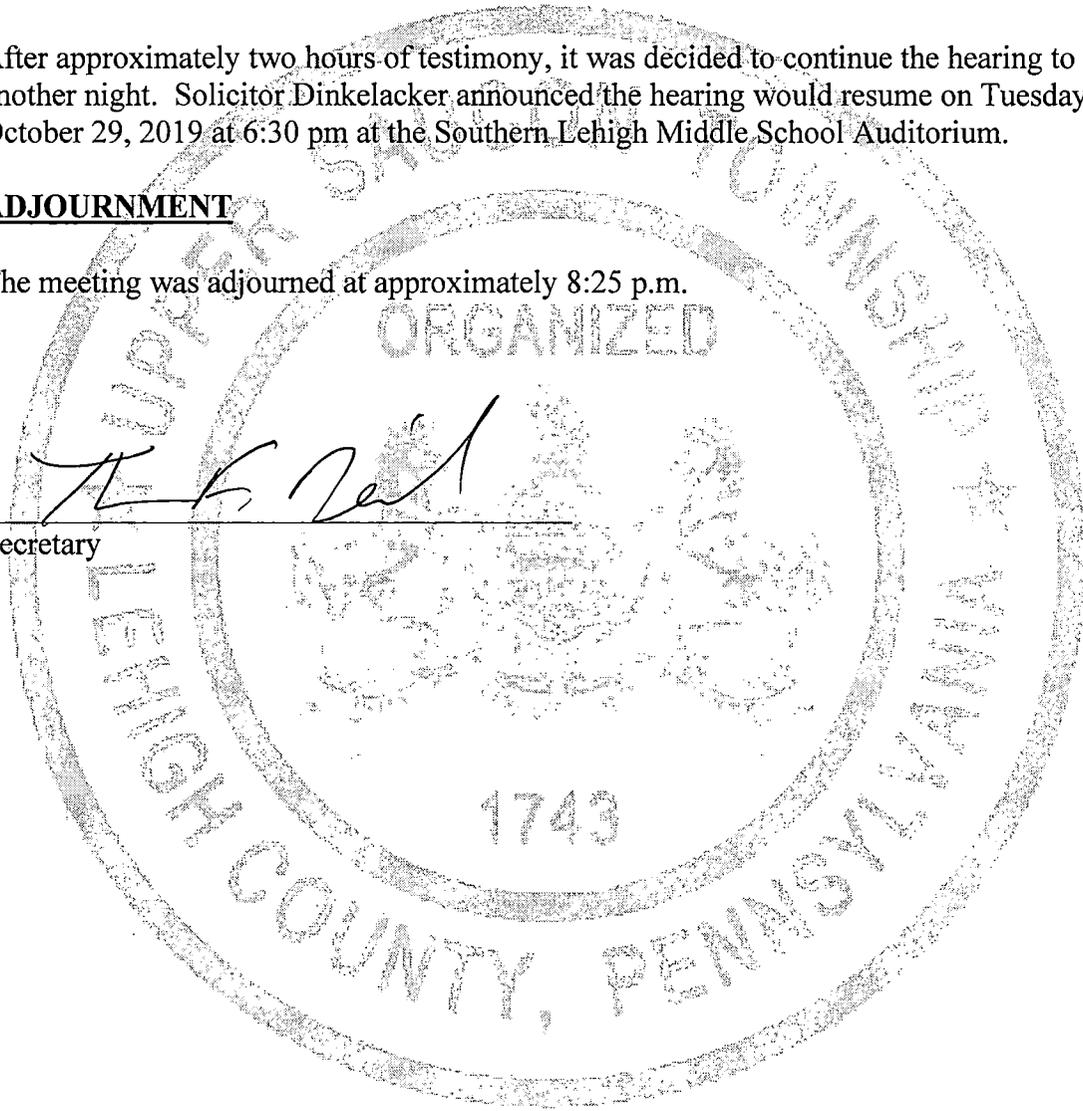
A stenographer was present to record the testimony and evidence presented at the hearing. A copy of the transcript from Night 3 of the hearing is attached hereto, made a part hereof and identified as Attachment A.

After approximately two hours of testimony, it was decided to continue the hearing to another night. Solicitor Dinkelacker announced the hearing would resume on Tuesday, October 29, 2019 at 6:30 pm at the Southern Lehigh Middle School Auditorium.

ADJOURNMENT

The meeting was adjourned at approximately 8:25 p.m.


Secretary



BEFORE THE BOARD OF SUPERVISORS
OF UPPER SAUCON TOWNSHIP

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

A public hearing regarding the above matter held at the Southern Lehigh Middle School, 3715 Preston Lane, Center Valley, Pennsylvania, on Monday, September 30, 2019, commencing at 6:30 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
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10 -- For the Township

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* * *
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1		
2	INDEX TO WITNESSES	
3	TOWNSHIP'S WITNESSES	PAGE
4	CHARLES H. UNANGST, PE, PLS	
5	Direct Examination by Mr. Gundlach	16
	Cross-Examination by Mr. Preston	24
6	Redirect Examination by Mr. Gundlach	31
	Recross-Examination by Mr. Preston	32
7	TRENT J. SEAR	
8		
	Direct Examination by Mr. Gundlach	35
9	Cross-Examination by Mr. Preston	43
	Redirect Examination by Mr. Gundlach	50
10	Recross-Examination by Mr. Preston	51
	Further Redirect Examination by Mr. Gundlach	52
11	Further Recross-Examination by Mr. Preston	54
12	HARRY B. ROTH, AICP	
13	Direct Examination on Qualifications by Mr. Gundlach	56
14	Direct Examination by Mr. Gundlach	58
	Cross-Examination by Mr. Preston	68
15	Cross-Examination by Mr. D'Amico	70
16	HARRY B. ROTH, AICP (Recalled)	
17	Direct Examination by Mr. Gundlach	77
	Cross-Examination by Mr. Preston	79
18		
19	* * *	
20		
21		
22		
23		
24		
25		

1	INDEX TO EXHIBITS	
2	TOWNSHIP'S EXHIBITS	
3	NO. DESCRIPTION	PAGE
4	T-20 Copy of public notice for September 30, 2019 hearing prepared by Township Solicitor	15
5		
6	T-21 Copy of actual public notice published in The Morning Call on September 16, 2019 and September 23, 2019	15
7		
8	T-22 Affidavit of Posting signed by Township Zoning Officer verifying that the public notice was posted on the properties at 4728, 4557, 4677, and 4691 Route 309 on September 18, 2019	15
9		
10		
11		
12	T-23 Notification list for the Kay Lehigh, LLC Curative Amendment hearing on September 30, 2019 prepared by the Township Secretary	15
13		
14		
15	USTS-1 CV of Charles H. Unangst, PE, PLS, President, Hanover Engineering	86
16	USTS-2 Letter from Hanover Engineering dated July 2, 2019, reviewing the Curative Amendment application	86
17		
18	USTS-3 Plan prepared by Hanover Engineering titled "Access and Buffer Sketch" dated June 20, 2019	16
19		
20	USTS-4 Leidos letter dated July 2, 2019	86
21	USTS-5 Aldi Property Sketch	86
22	USTS-6 Lutron Property Sketch	86
23	USTS-7 CV of Trent J. Sear	38
24	USTS-8 CV of Harry B. Roth, Township Land Planner	58
25		
	USTS-9 Petition of Landowners, dated	
	USTS-9 Petition of Landowners, dated	

1 June 8, 2005, to subject a
2 109-acre portion of the property
3 to the AQC Overlay District and
4 Twp. Ordinance No. 79-UU,
5 subjecting a 109-acre portion
6 of the property to the AQC Overlay
7 District 86
8
9 USTS-10 Conceptual Sketch Plan dated 17
10 June 20, 2019
11
12 USTS-11 Chart of sections of Article 4
13 of Upper Saucon Zoning Ordinance
14 of specific land use criteria 77
15
16
17
18
19
20
21
22
23
24
25

1 MR. BENNER: The Upper Saucon Township
2 Board of Supervisors special meeting, Monday,
3 September 30, 2019, is now in session. Let's rise in
4 pledge to the flag.
5 (Pledge of Allegiance)
6 MR. BENNER: All public sessions of the
7 Upper Saucon Township Board of Supervisors are
8 electronically recorded.
9 MULTIPLE AUDIENCE MEMBERS: Can't hear
10 you.
11 MR. BENNER: All public sessions of the
12 Upper Saucon Township Board of Supervisors are
13 electronically recorded. The recordings are
14 maintained as part of the record of the meeting until
15 the minutes are transcribed and approved by the
16 Board.
17 The purpose of the hearing tonight will
18 be to take testimony and receive evidence in
19 connection with the application filed by Kay Lehigh,
20 LLC, claiming that the Upper Saucon Township Zoning
21 Ordinance is exclusionary, arbitrary and unduly
22 restrictive and confiscatory as it relates to
23 warehousing.
24 I'm now going to turn the meeting over
25 to our solicitor to continue night 3 of our hearings.

1 MR. DINKELACKER: Okay. Good evening,
2 everybody. (Turned on microphone.)

3 Good evening, everybody. This is our
4 third hearing in the process, and what I'd like to do
5 is take a couple moments to go through where we are
6 on this. Make sure everybody understands where we
7 are, what we're doing, what the purpose of this
8 hearing is.

9 I discussed this at some length at the
10 very first hearing, but it was pointed out that at
11 the second hearing there were a number of people
12 present that hadn't been here at the first hearing.
13 So I want to go back and I want to make sure that
14 people have a general understanding of what we're
15 doing and why and how the process works.

16 Before that, though, just a couple of
17 announcements quickly. In the past, we stopped at
18 9:45 p.m. We did this because the school district
19 had requested that we exit the auditorium by 10. So
20 9:45 was a stopping point that we could handle that
21 and accommodate the school district, which has
22 graciously allowed us to use these larger facilities.

23 Tonight we're going to go till about 10
24 p.m. or until what is a logical stopping point. We
25 never really know because we don't know how long it's

1 going to take for witnesses to testify and for the
2 cross-examination and comment and everything that we
3 open up to the floor. So we're going to go till 10
4 or about 10 or till a logical stopping point, one of
5 the two.

6 Let me go back for a second also --
7 well, let me say one other thing. I expect, based
8 upon my conversation with attorneys tonight, that the
9 Township should be able to conclude its side of the
10 case in terms of its defense of the ordinance. I
11 anticipate that we will have one more hearing after
12 this, and that will be for Kay Lehigh to call
13 witnesses to rebut the Township case.

14 So I still anticipate one more hearing.
15 That hearing is going to be on Tuesday, October 29,
16 at 6:30 p.m. here at the school district. We'll put
17 that up on the website.

18 Is that right, Tom?

19 MR. BEIL: Yes.

20 MR. DINKELACKER: All right. Again,
21 Tuesday, October 29 at 6:30 p.m., right here in the
22 auditorium. So that will be what I expect to be the
23 last hearing in the matter.

24 Let me go back for a moment to run
25 through exactly why we're here, what the process is,

1 what people's roles are in this process.
 2 On May 1, 2019, Kay Lehigh, LLC,
 3 submitted a request for a hearing, and it proposed a
 4 curative amendment pursuant to the Municipalities
 5 Planning Code, which is the law in Pennsylvania that
 6 governs how we do zoning and how we do land
 7 development and a few other things as well.

8 A curative amendment is a procedure by
 9 which a party challenges the validity of a zoning
 10 ordinance or a particular provision of the zoning
 11 ordinance.

12 Now, here we're looking at a particular
 13 provision of the zoning ordinance, and in that
 14 respect the hearing is relatively narrowly focused on
 15 that particular provision. And I'll read that
 16 provision for you in a moment, as I think every one
 17 knows at this point relates to truck or motor freight
 18 terminals. And there's a very similar provision that
 19 relates to warehouses, and I think you've heard some
 20 testimony regarding the differences between
 21 warehouses and truck terminals.

22 Very briefly, as Chairman Brenner just
 23 read, Kay asserts that -- and what I refer to as
 24 buffer provisions I think Kay refers to them as
 25 exclusionary provisions -- that these provisions of

1 the zoning ordinance as they relate to truck or motor
 2 freight terminals are arbitrary, unduly restrictive
 3 and confiscatory. Kay's curative amendment proposes
 4 to eliminate the provision in its entirety; and Kay,
 5 pursuant to the law, has provided a proposed
 6 amendment to the zoning ordinance that omits the
 7 provision.

8 The provision is identified as Section
 9 484.E; and 484.E reads generally as follows: The
 10 subject property, meaning the property where the
 11 trucking terminal would be located -- the subject
 12 property shall be located no closer than 500 feet
 13 from any open space residential, R-1, R-2, R-3 or AQC
 14 zoning district, and/or property which contains a
 15 school, a daycare facility, a park, a playground,
 16 library, hospital, nursing, rest or retirement home,
 17 or medical residential campus.

18 We're going to be taking, as everybody
 19 knows -- I'm sure everybody here has been to at least
 20 one of the two hearings and maybe both -- we're
 21 taking evidence in forms of documents and taking
 22 evidence in forms of testimony that relate to whether
 23 or not, how this provision works in the context of
 24 the property in particular and other properties and
 25 how this provision is applied in the ordinance.

1 The Kay property itself -- again, I'll
 2 discuss it. I think everybody's generally familiar
 3 with it, but it's located on the eastern side of
 4 Route 309, south of the intersection with Center
 5 Valley Parkway. It contains about 120 acres. It is
 6 zoned in part industrial and in part commercial, but
 7 most of it is industrial.

8 The property has what is called an
 9 age-qualified community overlay, meaning that as an
 10 alternative you can put age-restricted housing. But
 11 a truck or motor freight terminal -- sometimes also
 12 might be just referred to as a warehouse, but under
 13 zoning warehouse is a little bit different. A truck
 14 or motor freight terminal is a conditional use,
 15 meaning that if it meets the various conditions in
 16 the ordinance, it is essentially a permitted use.

17 Now, what we're talking about here,
 18 again, this particular section, which has this
 19 500-foot distance from those zoning districts or from
 20 those other types of uses, that is what is at issue,
 21 whether or not that is a valid provision.

22 There are other proceedings which
 23 follow because, since this is a conditional use under
 24 the zoning ordinance, there is a conditional use
 25 hearing, when there's a land development plan that's

1 been filed and a land development plan is pending
 2 before the Township Planning Commission, although
 3 there have been extensions granted as to these other
 4 hearings and these other reviews.

5 Now, in terms of who the parties are,
 6 again, we have Kay Lehigh, LLC, represented by
 7 Mr. Preston. We have the Township as -- is defending
 8 the ordinance, and the Township is represented by
 9 Attorney Robert Gundlach. And I think you've heard
 10 both attorneys ask questions and perform
 11 cross-examination and offer evidence.

12 The role of the Board of Supervisors is
 13 to act as the judge. Under the law the supervisors
 14 are designated or they're called a quasi-judicial
 15 body. They're like the Zoning Hearing Board but
 16 they're also like a judge. And as a judge, the
 17 supervisors are required to be neutral and they are
 18 required to listen to the evidence and listen to the
 19 argument. And in addition, we're going to have
 20 public comment. And I know that everybody wants an
 21 opportunity to comment or make sure that others have
 22 the opportunity to comment, and that's going to be
 23 done. But the Board of Supervisors acts as a neutral
 24 hearing body, a quasi-judicial body. As the
 25 solicitor, I'm the legal advisor to the Board of

1 Supervisors. Supervisors does not take a position in
2 this. The Township takes a position through
3 Mr. Gundlach, and Kay takes a position through
4 Mr. Preston.

5 As you know also, there have been --
6 citizens have been essentially broken up into two
7 categories. Citizens who have asked for and have
8 been given party status, meaning that they are
9 parties to the hearing and they can participate in a
10 more formal way in the hearing process, and that is
11 Mr. and Mrs. D'Amico and Mr. Tiemann. At this point
12 in terms of any more citizen parties, that time has
13 passed because the request to become a party has to
14 be timely made, which would be at the beginning of
15 the hearing.

16 People, however -- citizens have the
17 right to make comment, and what we're doing is we're
18 breaking comment up into two parts. The first part
19 of the comments -- and this is what I said back on
20 day 1 -- there will be opportunity for a citizen to
21 make comment at the end of each witness. What I ask
22 that citizens do is, if you want to comment after
23 each witness, to please make your comment relevant to
24 what the witness said. Your comment might spark some
25 additional questions from counsel or questions from

1 the Board or something of that effect, but it's a
2 comment to the Board; it's not a questioning of the
3 witness.

4 There will also be at the end of the
5 hearing before we close the record, there will be the
6 opportunity for anybody who wants to to make more
7 general comment regarding what's going to happen with
8 respect to the property and the general issues in the
9 case, not limited to one particular witness or what
10 one particular witness is saying.

11 If the comment that you have is a more
12 generalized comment, you're going to have the
13 opportunity to make that comment; but it's just not
14 going to be right now, because getting to the general
15 comments at the end of each witness simply is going
16 to derail our process and detract from the hearing,
17 which is a more formal process than a typical
18 supervisors meeting.

19 So where we are at this point is, it's
20 been asked that -- there are some additional
21 questions by counsel of Mr. Unangst. We're going to
22 go through those additional questions, and then we
23 will allow citizen comment with respect to
24 Mr. Unangst's testimony. But if you're going to get
25 up and comment, I ask that you keep your comment

1 narrowly tailored to the testimony. The more general
2 comment we will handle at the end of the evidentiary
3 process but before the record is closed. So you will
4 have that opportunity.

5 Okay. With that, it's my
6 understanding, Mr. Gundlach, that you are asking some
7 additional questions of Mr. Unangst.

8 Oh, and I apologize. One other thing.
9 There are additional Township exhibits which relate
10 to the hearing tonight: Exhibits T-20, which is a
11 copy of the public notice for September 30, 2019
12 hearing prepared by the solicitor; T-21, which is the
13 actual public notice published in The Morning Call on
14 September 16 and September 23, 2019; T-22, the
15 affidavit of the posting by the township zoning
16 officer; and T-23, the notification list for parties
17 and individuals for this particular hearing.

18 Are there any objections to the
19 admission of Township Exhibits T-20 through T-23?

20 MR. PRESTON: No objection here.

21 MR. GUNDLACH: No objection.

22 MR. DINKELACKER: Okay. Thank you.

23 Those exhibits will be admitted into evidence.

24 I'm sorry, Mr. Gundlach. It's all
25 yours.

1 MR. GUNDLACH: Thank you. As
2 referenced, I intend to call Mr. Unangst to provide
3 some testimony as to follow up questions at the last
4 hearing. After he is concluded, I intend to call
5 Mr. Sear, the township zoning officer, and then
6 Mr. Roth, the township land planner.

7 * * *

8 Whereupon, CHARLES H. UNANGST, PE, PLS,
9 having been previously called as a witness and sworn,
10 was examined and testified as follows:

11 * * *

12 DIRECT EXAMINATION

13 BY MR. GUNDLACH:

14 Q. With that, Mr. Unangst.

15 A. Yes.

16 Q. You've previously been sworn. You're still
17 under oath?

18 A. I am.

19 Q. At the last hearing, you testified about a
20 plan you prepared titled the "Buffer and Access
21 Sketch" plan, which we marked as USTS-3. Do you
22 recall that testimony?

23 A. Yes, I do.

24 Q. You further testified that, in your opinion,
25 that the property could accommodate a mixed use

1 development of approximately 1 million square feet of
 2 truck terminal or warehouse use and a variety of
 3 other commercial uses while still respecting the
 4 provision that's being challenged in these
 5 proceedings. Do you recall that testimony?

6 A. Yes, I do.

7 Q. And at the last hearing the Applicant's
 8 counsel asked you if you had prepared a sketch plan
 9 that showed a layout of the mixed uses and square
 10 foot that you described. Do you recall that
 11 testimony?

12 A. Yes.

13 Q. And you didn't have that plan with you at
 14 the last hearing but you brought that plan with you
 15 this evening, correct?

16 A. That is correct.

17 Q. And I've marked the document titled
 18 "Conceptual Sketch Plan" dated June 20, 2019 as
 19 Exhibit USTS-10. Are you familiar with that plan?

20 A. I am.

21 Q. I'd like you to review what's shown on this
 22 plan, and I'd like to --

23 MR. GUNDLACH: I provided to counsel a
 24 copy, to counsel for the Applicant. I'd like to hand
 25 a copy to the Board and ask that you review what's

1 shown on this plan.

2 MR. DINKELACKER: Okay. Jim, is there
 3 any objection to the Board seeing these?

4 MR. PRESTON: No objection.

5 MR. DINKELACKER: Thank you.

6 (Distributed documents.)

7 MR. GUNDLACH:

8 Q. So this plan is and has been designed in
 9 accordance with the road layout that you previously
 10 showed to the Board as part of USTS-3; is that
 11 correct?

12 A. That is correct.

13 Q. So you took the USTS plan and you filled in
 14 uses and buildings on the plan?

15 A. Correct.

16 Q. So can you please explain what's shown on
 17 this plan?

18 A. Okay. So as you just stated, the -- on the
 19 USTS-3, the access and buffer sketch plan reviewed
 20 last hearing, we just -- that plan basically just
 21 broke the property in -- or divided the property into
 22 separate areas, areas -- it also showed the 500-foot
 23 separation distance from the R-2 and R-3 districts
 24 adjoining the property.

25 What the new plan does show is an option,

1 one and only one option, that may be feasible within
 2 a property of this shape, with the, I'll call it
 3 warehousing or trucking businesses as I discussed
 4 last time on the 10-acre site, the 50-acre site in
 5 what I'll call the middle, and the 5-acre site to the
 6 south. And then the area within the 500-foot
 7 separation hatched area along 309 and along the rear
 8 of the property we have shown some office space, like
 9 a healthcare center, hotel along 309, bank -- a bank
 10 pad, and just general retail.

11 So as you look on the screen or on the plan,
 12 the lower part of the property is the 309 corridor
 13 and the upper part is what I refer to as the rear of
 14 the property.

15 Q. So you show three separate buildings that
 16 could be used for a warehouse or a truck terminal?

17 A. That's correct.

18 Q. And they total 912,000 square feet for one;
 19 135,000 square feet for the second; and 72,000 square
 20 feet for the third?

21 A. That is correct as they are shown.

22 Q. And that total is approximately 1,114,000
 23 square feet of warehouse or truck terminal building
 24 area?

25 A. Yeah, approximately 1,119,000.

1 Q. And you show the connector -- or collector
 2 road, excuse me -- the collector road on the site?

3 A. That's correct.

4 Q. And the area that's shown cross-hatched in
 5 red, is that the 500-foot separation area that's
 6 required under Section 484.E?

7 A. Yes. That is the 500-foot separation from
 8 the zoning line which runs in the road.

9 Q. And within that 500-foot separation area,
 10 you show the additional commercial type of uses?

11 A. That is correct.

12 Q. And that's what you described in your
 13 testimony at the last hearing?

14 A. That is correct.

15 Q. And the legend in the bottom right-hand
 16 corner of the plan corresponds with those uses?

17 A. That is correct.

18 Q. Now, is this the only way the property could
 19 be laid out in compliance with the 500-foot
 20 separation requirement, or is it just an example of
 21 how it could be laid out?

22 A. It's an example.

23 Q. Now, in your professional opinion, has this
 24 plan been designed in compliance with the requirement
 25 of Section 484.E as the 500-foot separation

1 requirement?

2 A. Yes, it has.

3 Q. And in your professional opinion, has this
4 plan been designed in compliance with the use and
5 commercial requirements of the industrial zoning
6 district?

7 A. Yes, it has. And I'll clarify that these
8 are just possible allowed uses shown within the
9 500-foot separation, that depending on the exact use
10 that is proposed, certain additional requirements may
11 be imposed on the property.

12 Q. Now, is this what engineers refer to as a
13 fully engineered plan?

14 A. No, it is not.

15 Q. What is it?

16 A. Basically a sketch plan.

17 Q. Concept plan?

18 A. Concept plan, yes.

19 Q. And what's the difference between a fully
20 engineered plan and a sketch or concept plan?

21 A. We did not look into details of lighting,
22 truck turning, storm water. We just used a general
23 rule of thumb or so to lay out areas and the amount
24 of open space or undeveloped space required per lot.

25 Q. Now, on the left-hand side of the plan, you

1 show some zoning tables.

2 A. Correct.

3 Q. And do you show the plan being compliant
4 with the commercial requirements for the Upper Saucon
5 Township industrial zoning district?

6 A. Yes.

7 Q. And do you show the plan as being in
8 compliance with the Upper Saucon Township commercial
9 zoning district?

10 A. Yes.

11 Q. And that commercial zoning district is
12 applicable as to the 4.7-acre area hatched within the
13 green area along Route 309; is that correct?

14 A. That is correct.

15 Q. And you also have some plan notes here?

16 A. That is correct.

17 Q. And do you want to describe what plan notes
18 you've included on this plan?

19 A. Okay. The notes, number one, it's just we
20 did not do a property survey or take any property
21 boundary off of the Applicant's plans. We just used
22 the current GIS data to, tax parcel information to
23 lay out the property boundaries. Again, as noted
24 before, the plan just represents a possible layout
25 that's shown. Depending on actual ownership, you may

1 want to have a different layout or a different
2 configuration of different uses.

3 And then, again, we did not look into
4 traffic studies, access, lighting, noise, glare,
5 dust, odor, stormwater or show anything like
6 landscaping on this plan, or provide any geotechnical
7 investigation at this point.

8 And then the parking requirements, I just
9 noted that, again, they -- they would change
10 depending on the actual use and how the use would be
11 laid out on the property. So this, what we showed is
12 a potential layout. Parking was laid out based off
13 of the square footage shown, but that would change if
14 a developer would want to change the dimensions of
15 the building.

16 Q. So in summary and your professional opinion,
17 this plan represents the type of layout that the
18 owner of this property could design and still comply
19 with the 500-foot separation requirement which is the
20 subject of these proceedings?

21 A. That is my opinion, yes.

22 MR. GUNDLACH: That's all I have.

23 MR. DINKELACKER: Mr. Preston?

24 MR. PRESTON: Yes.

25 * * *

CROSS-EXAMINATION

1 BY MR. PRESTON:

2 Q. Good evening, Mr. Unangst.

3 MR. PRESTON: Is this on? Hello.

4 Okay.

5 BY MR. PRESTON:

6 Q. Now, Mr. Unangst, you testified that this
7 plan that you are talking about this evening is the
8 same plan that you had alluded to in your earlier
9 testimony; is that correct?

10 A. The layout of the collector road throughout
11 the property and the property boundary and the
12 500-foot separation is mirrored from the previous
13 plan, yes.

14 Q. Right. But I had asked you if you had done
15 a plan; you said that you did. I asked if you had it
16 with you; you said you did not. And so the purpose
17 of this evening is for you to bring it back and share
18 it with us --

19 A. Right.

20 Q. -- is that correct? But this is not that
21 plan, is it?

22 A. The layout of the site is exactly the same
23 thing.

24 Q. Okay. This has a revision date of --

1 A. Most likely today, sir.

2 Q. Yeah. What was revised between --

3 A. The Note No. 4 was put on, and the second --

4 the second chart down, parking chart on the -- or the

5 zoning data chart up on the upper left-hand corner

6 was added.

7 Q. Okay. Since the last hearing?

8 A. That is correct.

9 Q. The plan that you're providing here, this is

10 not necessarily a plan for a warehouse development,

11 is it? It's actually a mixed use development; isn't

12 that correct?

13 A. It has a warehouse and other uses on the

14 same property.

15 Q. And the uses that you identified in your

16 testimony I think were some -- like a medical office?

17 A. Correct.

18 Q. Or some other types of more benign uses?

19 They're not the only uses that can go in here; is

20 that correct?

21 A. That is correct, yes.

22 Q. There are other uses that can be put in

23 those perimeter lines?

24 A. That is correct.

25 Q. Up against the residential zones?

1 A. That is correct.

2 Q. And that would include manufacturing; is

3 that correct?

4 A. Per -- and I'll go through them. Per

5 Section 230.B, uses permitted by right in the

6 industrial zone --

7 Q. Well, just answer my question. I can put

8 the manufacturing in there; is that correct? No. 15,

9 if you want to take a look.

10 A. Manufacturing, packaging, storage and

11 wholesale of following.

12 Q. Machine, tool, die, metal fabrication shops?

13 A. That is correct.

14 Q. Welding shops?

15 A. Correct.

16 Q. So there are other uses other than the ones

17 that you described that can go up against those --

18 A. Yes, there are.

19 Q. -- those boundaries?

20 Now, when you testified before, you talked

21 about this road that you had that goes up the Center

22 Valley Parkway; I believe it's called the future

23 connection. Do you see that?

24 A. Yes, I do.

25 Q. And you testified that that's not necessary

1 for the plan itself?

2 A. It's my understanding, correct. Yes.

3 Q. And that that road actually goes across

4 property that's not owned by anyone that's a part of

5 these hearings?

6 A. That is correct.

7 Q. You're aware of that?

8 A. That is correct.

9 Q. But it's your testimony that the plan that

10 you've provided contains a collector -- is it a

11 collector road?

12 A. Correct.

13 Q. Have you ever seen a collector road that was

14 a dead end road?

15 A. A collector -- yes, I have, actually. Yes.

16 Q. And with respect to this ordinance, the

17 ordinance itself -- we went through this a little

18 bit, but since it's come back up, the ordinance

19 itself says that for the warehouse use, you need a

20 minimum of 300 feet of contiguous road frontage along

21 and vehicular access onto an arterial or collector

22 road as listed in Section 320 of the ordinance.

23 You're familiar with that?

24 A. I am, yes.

25 Q. And the definition of a collector road says

1 that it is a, quote, road that is designed to provide

2 for a balance of vehicle mobility and vehicular

3 access to adjoining property. See Section 320 for a

4 listing of collector roads. You're familiar with

5 that as well?

6 A. I am.

7 Q. And you're familiar with Section 320?

8 A. The section where it noted "collector road"

9 that we spoke about last hearing, yes.

10 Q. Okay. And your road doesn't appear in that

11 list at 320, does it?

12 A. That is correct.

13 MR. PRESTON: I have no further

14 questions.

15 MR. DINKELACKER: Any --

16 MR. PRESTON: I'm sorry. Excuse me.

17 There's one other topic I did want to cover.

18 BY MR. PRESTON:

19 Q. With respect to the warehouse that you have

20 shown here.

21 A. Okay.

22 Q. What is the depth of that warehouse, the

23 912,000-square-foot warehouse?

24 A. As we are looking at the plan that's on the

25 screen, to use that just for reference, up-and-down

1 dimension is 660 feet.

2 Q. So --

3 A. And --

4 Q. Go ahead.

5 A. -- and left to right is 1,380.

6 Q. So let's look at the 660-foot dimension. If

7 I see at the top of your plan, at the top of that

8 building I see 76 truck docks; is that correct?

9 A. Correct.

10 Q. So those truck docks are aligned along the

11 top portion of that building?

12 A. That's correct.

13 Q. Is that the only place on that particular

14 building that there are truck docks?

15 A. As we showed them at this point, yes.

16 Q. Isn't it a little unusual to have a

17 660-foot-deep warehouse that's not cross-docked? If

18 you know.

19 A. You mean docks on both sides?

20 Q. Yes.

21 A. What was shown with this plan, there is

22 adequate space on the downside, downhill -- or bottom

23 of the page. We laid out the docks on the upper side

24 and then put the worker parking, 942 spaces on the

25 opposite side. Depending on how you would want to

1 develop it, it could be docked on both sides and the

2 parking could be split accordingly.

3 Q. But my question goes to the design of the

4 building. I have a building that's 660 feet deep,

5 but it's only docked on the one side. Isn't that

6 unusual? If the truth be told, that's an odd --

7 that's not standard, is it? You usually have docking

8 on both sides.

9 A. Maybe.

10 Q. Maybe?

11 A. Yeah. Depends on the user and the owner.

12 Q. And if I wanted to dock it on both sides,

13 then I would have to surrender that 942 spaces; is

14 that correct?

15 A. Or shift them.

16 Q. Shift them to where?

17 A. Partially to the north -- or to the up side

18 -- to the top of the building. If you would want to.

19 I mean, it depends on what you want, Mr. Preston. If

20 you want all docks along both sides, then you need to

21 find additional space for the parking, if you have

22 that many employees.

23 MR. PRESTON: Okay. I have no further

24 questions.

25 MR. DINKELACKER: Redirect?

1 MR. GUNDLACH: Yes, just a couple.

2 * * *

3 REDIRECT EXAMINATION

4 BY MR. GUNDLACH:

5 Q. Now, when you use the term warehouse on this
6 plan, are you using it as the Applicant did in their
7 challenge as the warehouse or the truck terminal
8 uses?

9 A. Yes.

10 Q. And you were asked a question as to whether
11 manufacturing could be installed or other uses could
12 be installed within the 500-foot area. Do you recall
13 those questions?

14 A. I do.

15 Q. And all those uses would be subject to the
16 specific requirements or specific criteria contained
17 in Article 4, correct?

18 A. I'm not familiar with Article 4.

19 Q. (Showed document.)

20 Article 4 lists each and every use within
21 the township, right?

22 A. That is correct. And as I --

23 Q. You are familiar with it, then?

24 A. I am.

25 Q. This article?

1 A. Yes.

2 Q. And there's a different use described within
3 Article 4, correct? Like, for example, a truck
4 terminal?

5 A. Correct.

6 Q. And that has its own set of requirements?

7 A. Correct.

8 Q. And so in answer -- and I'm following up on
9 Mr. Preston's question. But those other uses that
10 could potentially be installed within the 500 feet
11 would have to comply with any specific criteria
12 related to them as set forth in Article 4?

13 A. Absolutely, yes.

14 Q. So sitting here now, could you say
15 affirmatively and without reviewing all those
16 criteria whether any specific use can fit in there
17 and meet each and every one of those requirements?

18 A. No, I can not.

19 Q. You'd have to look at that?

20 A. I would.

21 MR. GUNDLACH: That's all I have.

22 MR. DINKELACKER: Recross, Jim?

23 MR. PRESTON: Yeah, just --

24 * * *

25 RECCROSS-EXAMINATION

1 BY MR. PRESTON:

2 Q. So, Mr. Unangst, I think I just heard you

3 say that every single use in the township is listed

4 in Article 4?

5 A. There are a number of uses in Article 4; and

6 as I stated earlier, anything being proposed on this

7 site, they have specific requirements for each one.

8 So whether any use, how the industrial list would be

9 able to fit within that 500-foot separation, it may

10 not be.

11 Q. Where do you -- we've established that

12 machine, tool, and die and metal fabrication shops

13 are allowed here, correct?

14 A. By Section 230, 2-3-0, B.

15 Q. Right. Where are they further limited in

16 Article 4?

17 A. I'm not sure, sir. You'd have to --

18 Q. Yeah, I don't think they are.

19 A. Okay.

20 Q. So you're not exactly certain about that?

21 A. I am not, no.

22 MR. PRESTON: Okay. Then I have

23 nothing further.

24 MR. GUNDLACH: Nothing further.

25 MR. DINKELACKER: Any questions by the

1 Board of Supervisors of Mr. Unangst?

2 There appear to be none.

3 Mr. D'Amico, do you have any questions

4 for Mr. Unangst?

5 MR. D'AMICO: I do not.

6 MR. DINKELACKER: Hearing none,

7 Mr. Tiemann, do you have questions?

8 MR. TIEMANN: I do not.

9 MR. DINKELACKER: Do not.

10 Is there any public comment with

11 respect to Mr. Unangst's testimony? Does anybody

12 wish to comment on that?

13 Okay. There's a negative response.

14 All right. We'll go on to the next

15 witness, please.

16 MR. GUNDLACH: I'd like to call Trent

17 Sear.

18 Before I do that, just a housekeeping

19 item, if I can. Mr. Solicitor, under the prior

20 transcript, I believe, in two places, page 24, line

21 21, and page 25, line 4, the word "connector" was

22 transcribed before the word "road." I believe the

23 intent was "collector." Either I misspoke and said

24 "connector" instead of "collector" or it was

25 transcribed improperly. Those words were being used

1 interchangeably, and I just wanted to confirm for the
2 record that the intention was collector at those two
3 locations.

4 MR. DINKELACKER: Mr. Preston, do you
5 have anything in response?

6 MR. PRESTON: I obviously haven't
7 looked at those, but I think that Attorney Gundlach's
8 correct. We've been talking about collector roads,
9 and I don't have any reason to believe that he would
10 tell us anything other than what needs to be done.

11 MR. DINKELACKER: I agree. I recall
12 the testimony being about collector roads as opposed
13 to connector. Since that was the standard in the
14 zoning ordinance.

15 Okay. With that matter, we'll move on
16 to the testimony of Mr. Sear.

17 * * *

18 Whereupon, TRENT J. SEAR,
19 having been called as a witness and duly sworn, was
20 examined and testified as follows:

21 * * *

22 DIRECT EXAMINATION

23 BY MR. GUNDLACH:

24 Q. Please state your full name.

25 A. Trent J. Sear.

1 Q. And are you the zoning officer for Upper
2 Saucon Township?

3 A. Yes.

4 Q. And how long have you served in this role?

5 A. Approximately 15 years.

6 Q. Do you serve as the zoning officer for any
7 other municipalities?

8 A. I had previously performed zoning officer
9 services at Lower Nazareth Township in Northampton
10 County and did some zoning work at the City of Easton
11 before that.

12 Q. And please describe your educational
13 background.

14 A. I have an undergraduate degree in regional
15 planning and a graduate degree in geography and
16 public administration.

17 Q. And where are these degrees from?

18 A. The undergraduate degree from Indiana
19 University, Pennsylvania; graduate degree from West
20 Chester University.

21 Q. So your education is in planning?

22 A. Planning and public administration.

23 Q. Have you obtained or -- any specialized
24 training or certifications in order to serve as
25 municipal zoning officer?

1 A. No formal certificate to perform as zoning
 2 officer.

3 Q. There's no licensing in Pennsylvania for a
 4 land planner zoning officer, correct?

5 A. Correct.

6 Q. Do you attend seminars related to land
 7 planning work?

8 A. Yes.

9 Q. What type of seminars do you attend?

10 A. Typically seminars that engage in
 11 engineering, legal issues, code enforcement; those
 12 types of issues.

13 Q. And as part of the educational work and your
 14 seminars and your prior employment, did you currently
 15 review municipal land use ordinances?

16 A. To some degree, yes.

17 Q. Could you generally describe your job duties
 18 as the Upper Saucon Township zoning officer.

19 A. I manage the day-to-day activity of issuing
 20 zoning permits, making determinations of compliance
 21 with the ordinance; things of that nature.

22 Q. And when you say making determinations,
 23 that's a role that is required upon you under the
 24 Municipalities Planning Code as the zoning officer
 25 for Upper Saucon Township; is that correct?

1 A. Yes.

2 Q. That's a formal role you play?

3 A. Yes.

4 Q. And you play that as an independent, in an
 5 independent role; is that correct?

6 A. Yes.

7 Q. Is the document that we've premarked as
 8 USTS-7 a true copy of your CV?

9 A. Yes.

10 Q. Are you familiar with the subject property?

11 A. I am.

12 Q. And you're familiar with the zoning of the
 13 subject property?

14 A. Yes.

15 Q. And as previously testified, you agree that
 16 approximately 4.4 acres along 309 is zoned commercial
 17 and approximately 114.7 is zoned industrial?

18 A. That's my understanding, and the industrial
 19 has the AQC overlay, of course.

20 Q. And you confirmed that by reviewing the
 21 zoning map for the township?

22 A. Yes.

23 Q. Are you familiar with the curative amendment
 24 challenge that has been filed by the Applicant and
 25 the site plan that they included for the property

1 with that challenge?

2 A. Yes.

3 Q. Has the Applicant proposed to develop the

4 property under the AQC overlay district?

5 A. No.

6 Q. And what does AQC stand for?

7 A. Age-qualified community.

8 Q. And that would be a residential community

9 where residents are generally 55 and over, correct?

10 A. Generally, yes.

11 Q. And has the Applicant proposed to develop

12 the property under the industrial zoning district?

13 A. Yes.

14 Q. Under the township zoning ordinances --

15 ordinance, are the uses that are permitted in the

16 township's enterprise zoning district also allowed in

17 the township's industrial district?

18 A. Yes, they are.

19 Q. The Applicant has challenged the validity of

20 the 100-foot separation requirement by --

21 A. 500.

22 Q. 500-foot, thank you -- 500-foot separation

23 requirement set forth in Section 484.E of the zoning

24 ordinance; is that correct?

25 A. Yes.

1 Q. And you've reviewed their challenge?

2 A. Yes, I've seen -- yes.

3 Q. And are you familiar with the Applicant's

4 position that the 500-foot separation provision makes

5 it impossible to develop this property for a truck

6 terminal or warehouse use?

7 A. Am I familiar with the position?

8 Q. Yes.

9 A. Yes.

10 Q. You've heard their position and testimony

11 here?

12 A. I've been through the hearings; yes, I'm

13 aware of that.

14 Q. As the zoning officer of the township, do

15 you agree with that position?

16 A. No.

17 Q. Why not?

18 A. Well, I think, for starters, that the

19 Applicant is incorrectly applying the 500-foot

20 separation provisions to the portions of the tract

21 that are -- that have the AQC overlay. And secondly,

22 I think as has been shown on the plan that was up on

23 the screen that a collector road can be brought into

24 the tract, allowing for subdivision and elimination

25 of the 500-foot separation provisions.

1 Q. So let's talk about those two points
2 briefly.

3 First, let's discuss the AQC overlay. Is
4 there a difference between an underlying zoning
5 district and an overlay?

6 A. I believe there is, yes.

7 Q. And what is that difference?

8 A. To me, the underlying zone -- in this case,
9 the industrial zone -- is the base zone of what you
10 can do at that property. Whereas, to me, the AQC
11 overlay is just another development option that
12 provides a little bit of different types of land uses
13 that the developer can choose to do if they wish to.

14 Q. In this case and based upon your review of
15 the plan that accompanied the Applicant's
16 application, has the Applicant chosen to develop any
17 portion of the subject property using the AQC overlay
18 provisions?

19 A. No.

20 Q. In your opinion, does that fact render the
21 500-foot separation requirement as to the AQC overlay
22 not applicable?

23 A. Yes, not applicable.

24 Q. Are you familiar with the two plans that
25 Mr. Unangst testified to that we've marked as Exhibit

1 USTS-3 and USTS-10?

2 A. Yes, I've seen them.

3 Q. And do both of these roads show a collector
4 road in an area where a truck terminal used to be
5 constructed?

6 A. Yes.

7 Q. As the township zoning officer, do these two
8 plans comply with the 500-foot separation requirement
9 in Section 484.E?

10 A. I've looked at the plans and in a general
11 standpoint only, but I believe that they comply with
12 that standard.

13 Q. Looking at the plan we've marked as USTS-10,
14 titled "Conceptual Sketch Plan," in your opinion as
15 the zoning officer, does the layout that's shown on
16 this plan comply with the commercial requirements of
17 the township zoning ordinance?

18 A. I've generally reviewed it -- that plan
19 against the general zoning ordinance, and it appears
20 that that particular arrangement could comply.

21 Q. And, in your opinion, are the uses that's
22 shown on this plan in compliance with the industrial
23 and commercial zoning district requirements?

24 A. I think so, yes.

25 Q. And, finally, do you agree that the three

1 buildings that have been marked as warehouse that can
 2 be used as a truck terminal or warehouse use can be
 3 constructed on the subject property as depicted on
 4 the sketch plan and in compliance with the 500-foot
 5 separation requirement set forth in Section 484.E?

6 A. Yes.

7 Q. And that's your opinion as the zoning
 8 officer for the township?

9 A. It is.

10 MR. GUNDLACH: I have nothing further.

11 MR. DINKELACKER: Mr. Preston?

12 * * *

13 CROSS-EXAMINATION

14 BY MR. PRESTON:

15 Q. Mr. Sear, would you agree with me that none
 16 of the parcels shown on Mr. Unangst's plan exist
 17 today?

18 A. Can you repeat that?

19 Q. Sure, I can. Would you agree that none of
 20 the parcels identified or shown on Mr. Unangst's plan
 21 exist today?

22 A. I agree.

23 Q. Are you familiar with the parcels that are
 24 there now?

25 A. Somewhat. The four parcels?

1 Q. Yeah.

2 A. Somewhat.

3 Q. In their current configuration, are they
 4 able to be developed in any way with a warehouse use
 5 under this ordinance?

6 A. Can you rephrase, can you run that by me one
 7 more time?

8 Q. It's not a trick question. Can you develop
 9 the property as it sits today without subdividing,
 10 without changing the boundaries; just the parcels
 11 that are there as they sit today, can you develop
 12 those with a warehouse use or a truck terminal use?

13 A. I don't know if you could. I'd have to see
 14 a specific plan.

15 Q. So --

16 A. I would prefer to see a plan and review it
 17 and comment, not on a hypothetical. I'd prefer not
 18 to comment on a hypothetical.

19 Q. Are the properties that are there now within
 20 500 feet of an R-1, R-2 or R-3 zone?

21 A. What's that?

22 Q. Are the properties that exist today --

23 A. Right.

24 Q. -- at the site, aren't they all within 500
 25 feet of an R-1, R-2 or R-3 zone?

1 A. I don't know if all of the parcels are
 2 completely in the 500-foot separation barrier. I
 3 don't know for a fact.

4 Q. But if they were, then they wouldn't be
 5 eligible for the truck terminal use; is that correct?

6 A. If the entire parcels were?

7 Q. If any one of them, all of them, included,
 8 collectively, each and every one.

9 A. Yes.

10 Q. They would not be eligible for a truck
 11 terminal use; isn't that correct?

12 A. If they were all, all in there now? Can you
 13 run that -- can I have that --

14 Q. No, that's all right. We'll keep moving.
 15 You give the -- you deliver zoning
 16 interpretations; did I hear you say that?

17 A. Yes.

18 Q. And you don't consider yourself infallible,
 19 do you?

20 A. No.

21 Q. In fact, your opinions can be challenged and
 22 have been challenged on appeal to the Zoning Hearing
 23 Board; is that correct?

24 A. Yes.

25 Q. And you're employed tonight here as an

1 employee of Upper Saucon Township?

2 A. Yes.

3 Q. Now, any property containing a truck
 4 terminal use must have 300 foot of frontage on an
 5 arterial or collector road as listed in Section 320
 6 of the zoning ordinance; isn't that correct?

7 A. Yes. I agree.

8 Q. Doesn't, in fact, the definition of a
 9 collector road require or speak to it being listed in
 10 Section 320 of the zoning ordinance?

11 A. Yes.

12 Q. And when I look at Section 484.E -- I'm
 13 sorry -- D, it says, with respect to truck terminals,
 14 that the property shall have a minimum of 300 feet of
 15 contiguous road frontage along and vehicular access
 16 onto an arterial or collector road -- wait for it --
 17 as listed in Section 320 of this ordinance. Are you
 18 familiar with that?

19 A. Okay.

20 Q. Are you familiar with that?

21 A. Yes.

22 Q. Are you familiar with Section 320?

23 A. Yes.

24 Q. And your job is to apply the written
 25 language of the zoning ordinance, is it not?

1 A. Yes.

2 Q. And so, in interpreting the zoning
3 ordinance, you don't ignore the explicit language of
4 the ordinance in order to achieve a desired result;
5 is that --

6 A. Yes.

7 Q. -- that's fair?

8 Do you have Section 320 available?

9 A. No -- oh.

10 MR. GUNDLACH: I have a copy I can show
11 him.

12 MR. PRESTON: If you would please,
13 thank you.

14 THE WITNESS: Okay.

15 BY MR. PRESTON:

16 Q. Do you see the list of arterial and
17 collector roads identified in 320?

18 A. Yes.

19 Q. Do you see Mr. Unangst's road on that list?

20 A. No.

21 Q. You're not able to add or delete roads from
22 the list in Section 320, are you?

23 A. I could not, no. Personally, no.

24 Q. And Mr. Unangst, to the best of your
25 understanding, he's not able to add or delete roads

1 from the list in Section 320, is he?

2 A. No.

3 Q. Is that -- sorry.

4 A. He could not add new streets to these lists
5 either, no.

6 Q. That would have to be done by zoning
7 amendment?

8 A. Yes. That's my opinion, yes.

9 Q. So as we sit here tonight, the road that
10 Mr. Unangst shows on his plan, that's not a collector
11 road, is it?

12 A. That's not identified in the table, yeah.

13 Q. That wasn't my question. As we sit here
14 tonight, that road is not a collector road, is it?

15 MR. GUNDLACH: Objection. Asked and
16 answered. He gave his statement as to that question.

17 MR. PRESTON: No, he didn't. He dodged
18 it.

19 MR. DINKELACKER: Overruled. Go ahead.

20 THE WITNESS: I don't see Mr. Unangst's
21 road in the table.

22 BY MR. PRESTON:

23 Q. So it's not a collector road, is that
24 correct?

25 A. I don't see it in the table. I don't know

1 what kind of a road is it. I don't see it in the
 2 table, so --

3 Q. It's a yes-or-a-no question. Is it a
 4 collector road? Are you adding it to the list?

5 A. I would have to -- I would have to research
 6 that.

7 Q. Okay. Let's back up. You identified that
 8 you can't add roads to the list; is that correct?

9 A. I cannot add roads to the list.

10 Q. And that road does not appear in the list;
 11 is that correct?

12 A. It does not appear in the list.

13 Q. So that's not a collector road; isn't that
 14 correct?

15 A. I'd prefer to research that question.

16 Q. You don't like that question?

17 A. Hmm?

18 Q. You don't care for that question?

19 A. Well, I don't have an opinion about it. I'd
 20 prefer to research that question a little bit rather
 21 than shoot from the hip.

22 Q. Shoot from the hip?

23 A. I'd rather research that question, yes.

24 Q. You can't see -- can you see the list?

25 A. I'd rather research -- I don't see that road

1 in the table; but to the question of is it a
 2 collector road, I'd want to research that.

3 Q. Okay. Well, if it turned out not to be a
 4 collector road, then as we sit here tonight,
 5 Mr. Unangst's plan would not comply with the zoning
 6 ordinance; is that correct?

7 A. If it were not a collector road, yeah, I
 8 would agree.

9 MR. PRESTON: I have no further
 10 questions.

11 MR. DINKELACKER: Redirect?

12 * * *

13 REDIRECT EXAMINATION

14 BY MR. GUNDLACH:

15 Q. In the heading on -- can you read the
 16 heading in Section 320.A above the chart?

17 A. Roadway classifications and required future
 18 right of way list.

19 Q. The word "future" is in that line; is that
 20 correct?

21 A. Yes.

22 Q. And were you here during Mr. Unangst's
 23 testimony that in his opinion that the word "future"
 24 covers new or additional roads?

25 A. I was here.

1 Q. Now, this chart lists a number of roads
 2 there, correct? I think there's somewhat of --
 3 A. Approximately 20 to 25 roads, yes.
 4 Q. -- of 20 to 25 roads?
 5 A. As collector roads.
 6 Q. Were all those roads constructed on the same
 7 day?
 8 A. No.
 9 Q. Are they constructed over time?
 10 A. Yes.
 11 Q. Was that chart supplemented as roads were
 12 constructed?
 13 A. I -- this chart is from 2009. I don't know
 14 that -- if any of those roads are newer than that.
 15 Q. And if a new collector road was constructed,
 16 would it be your recommendation as the zoning officer
 17 for the township to include it on the chart?
 18 A. If it were a collector road, yeah, the chart
 19 should be amended to include a new -- any new
 20 collector road.
 21 MR. GUNDLACH: That's all I have.
 22 * * *
 23 RE-CROSS-EXAMINATION
 24 BY MR. PRESTON:
 25 Q. Just briefly, why does the chart need to be

1 amended to include a new collector road?
 2 A. Why does the -- why would the chart need to
 3 be amended?
 4 Q. Yeah.
 5 A. If a new collector road were built, then it
 6 would need to be included in the table.
 7 Q. Because if it's not included in the table,
 8 it's not a collector road; is that what you're
 9 saying?
 10 A. If it's not in the table, it's not a
 11 collector road? It's not currently a collector road.
 12 It's not in the table.
 13 Q. Understood. Thank you.
 14 MR. PRESTON: That's all I have.
 15 MR. DINKELACKER: Mr. Gundlach, any
 16 redirect?
 17 * * *
 18 FURTHER REDIRECT EXAMINATION
 19 BY MR. GUNDLACH:
 20 Q. Is there a definition on page 15 of the
 21 zoning ordinance for a collector road?
 22 A. Yes.
 23 Q. Can you read that definition? How many
 24 sentences are there?
 25 A. Two.

1 Q. Read the first sentence, please.

2 A. "A road that is designed to provide for a
3 balance of vehicle mobility and vehicular access to
4 adjoining property."

5 Q. And the second sentence?

6 A. "See Section 320 for a listing of collector
7 roads."

8 Q. So there's two separate sentences that
9 define the term collector road, correct?

10 A. Yes.

11 Q. And on the chart that we talked about in
12 320, it includes the word "future," correct?

13 A. And the table says roadway classifications
14 and required future right of way. So the word
15 "future" is in the title.

16 Q. And does it also indicate that a collector
17 road needs to be 70 feet in width?

18 A. Yes. There's a -- the 70-foot width is
19 listed under collector.

20 Q. For the right of way width, correct?

21 A. For the required right of way.

22 Q. So to the best of your understanding, does
23 Mr. Unangst's plan provide for a 70-foot-wide right
24 of way?

25 A. Yes.

1 MR. GUNDLACH: That's all I have.

2 MR. DINKELACKER: Mr. Preston.

3 * * *

4 FURTHER RECROSS-EXAMINATION

5 BY MR. PRESTON:

6 Q. Yes, the word "future" -- you pointed out
7 that the word "future" appears in this section. What
8 does the word "future" refer to, in your reading of
9 that?

10 A. I'll have to look at it.
11 (Reviewed document.)
12 The word "future" would appear to apply to
13 the right of way widths.

14 Q. Right of way width; isn't that correct?

15 A. Yes.

16 Q. It doesn't say future collector roads; is
17 that correct?

18 A. Roadway classifications and required future
19 rights of way width.

20 Q. And in fact --

21 A. Perhaps Mr. Roth could comment? I don't
22 know for sure that it solely relies only on right of
23 way width or future collector roads.

24 Q. That's fine. Understood. But you've agreed
25 that Mr. Unangst's road doesn't appear anywhere in

1 this list in terms of interstates, arterials,
 2 collectors or scenic roads?
 3 A. I have agreed that it's not in the table.
 4 Q. And what does the last one, local roads, 50
 5 feet, what does that say? Read what those are.
 6 A. (Reviewed document.)
 7 What does the local category stand for?
 8 Q. Yeah, read the definition of that. What
 9 does it say there?
 10 A. All roads not otherwise listed.
 11 MR. PRESTON: I have nothing further.
 12 MR. GUNDLACH: That's all I have.
 13 MR. DINKELACKER: Are there any
 14 questions by the Board?
 15 There being none, Mr. D'Amico? None.
 16 Mr. Tiemann? None.
 17 Is there any public comment with
 18 respect to Mr. Sear's testimony?
 19 There appears to be none. Then we will
 20 -- Mr. Gundlach, the next witness.
 21 MR. GUNDLACH: Yes. Harry Roth.
 22 * * *
 23 Whereupon, HARRY B. ROTH, AICP,
 24 having been called as a witness and duly sworn, was
 25 examined and testified as follows:

1 * * *
 2 DIRECT EXAMINATION ON QUALIFICATIONS
 3 BY MR. GUNDLACH:
 4 Q. Please state your full name for the record.
 5 A. Harry B. Roth.
 6 Q. And what is your occupation?
 7 A. I am a community planning consultant.
 8 Q. What does a community planning consultant do
 9 on a day-to-day basis?
 10 A. Well, most of my work is involved in serving
 11 municipalities. I write comprehensive plans, zoning
 12 ordinances and recreation and open space plans.
 13 Q. And as part of your day-to-day work, do you
 14 review zoning ordinances?
 15 A. Yes.
 16 Q. And do you propose revisions to
 17 municipalities related to zoning ordinances?
 18 A. Yes.
 19 Q. How long have you been a professional
 20 community planner?
 21 A. Since 1978.
 22 Q. And is there a particular area that you
 23 specialize?
 24 A. I am specialized in community planning.
 25 Q. And are you self-employed?

1 A. I own the firm Roth Plan.
 2 Q. You're the president?
 3 A. I'm the principal.
 4 Q. Can you describe the type of clients that
 5 you represent?
 6 A. Well, again, most of my clients have been
 7 municipalities. However, I have also represented
 8 numerous landowners and citizens groups.
 9 Q. And for the municipalities, do you work and
 10 assist them with their comprehensive plans, their
 11 zoning ordinances, and their other land use related
 12 ordinances?
 13 A. Yes.
 14 Q. Are you a member of any land planning
 15 related organizations?
 16 A. Yes.
 17 Q. What would that be?
 18 A. I'm a member of the American Certified --
 19 Institute of Certified Planners, the American
 20 Planning Association, and the Pennsylvania Planning
 21 Association.
 22 Q. Do you regularly attend land planning
 23 related seminars?
 24 A. Yes.
 25 Q. What is your role at Upper Saucon Township?

1 A. I have been their community planning
 2 consultant for about 20 years.
 3 Q. And in this position, are you familiar with
 4 the Upper Saucon Township Zoning Ordinance?
 5 A. Yes, I am.
 6 Q. And are you generally familiar with their
 7 other land use ordinances?
 8 A. Yes.
 9 Q. Is the document that we have marked as
 10 USTS-8 a true and correct copy of your resumé and
 11 does it reflect your credentials in the field of
 12 community planning?
 13 A. Yes.
 14 MR. GUNDLACH: I would ask that the
 15 Board recognize Mr. Roth as an expert in the field of
 16 land planning.
 17 MR. DINKELACKER: Any questions,
 18 Mr. Preston -- or objection?
 19 MR. PRESTON: No objection.
 20 MR. DINKELACKER: With the Board's
 21 permission, we'll accept Mr. Roth as an expert, if
 22 the Board agrees. Thank you.
 23 * * *
 24 DIRECT EXAMINATION
 25 BY MR. GUNDLACH:

1 Q. Mr. Roth, are you familiar with the property
2 which is the subject of these proceedings?

3 A. Yes.

4 Q. Are you familiar with its current zoning as
5 industrial and commercial?

6 A. Yes.

7 Q. Are you also familiar with the AQC overlay
8 on the industrial portion of the property?

9 A. I am.

10 Q. Have you reviewed the curative amendment
11 challenge application that was filed by the Applicant
12 and the site plan that went with it?

13 A. I am familiar with it.

14 Q. Have you reviewed the exhibits that the
15 Applicant has submitted to date as to the subject
16 property?

17 A. Yes.

18 Q. Based upon your review of the site plan, has
19 the Applicant proposed to develop this property under
20 the AQC overlay?

21 A. No.

22 Q. Has the Applicant proposed to develop the
23 property under the industrial zoning district?

24 A. Yes.

25 Q. Do you agree that the uses permitted in the

1 enterprise zoning district are also allowed in the
2 industrial zoning district?

3 A. They are.

4 Q. Now, let's discuss the subject of these
5 proceedings, and specifically Section 484.E of the
6 zoning ordinance. You're aware that the Applicant
7 has challenged the validity of the 500-foot
8 separation requirement in Section 484.E of the zoning
9 ordinance?

10 A. Yes.

11 Q. And you're familiar with this section of the
12 zoning ordinance?

13 A. Yes. I drafted it for the township.

14 Q. Okay. Could you please explain the purpose
15 of this section?

16 A. This is a requirement that is meant to
17 filter locations within the township suitable for
18 this type of land use. It is a use separation
19 setback that applies externally to a proposed
20 development.

21 Typically, zoning ordinances impose what I
22 would call internal setbacks, where buildings and
23 parking lots and other physical improvements are
24 required to be set back internally from lot lines.

25 In this case we have a setback that is

1 applied externally from the property line to an
2 adjoining land use. So it's meant to separate land
3 uses from one another.

4 Q. And does this -- this section specifically
5 references residential and other identified uses; is
6 that correct?

7 A. It does.

8 Q. And why does it do that?

9 A. Because those uses are particularly
10 vulnerable to the impacts of the proposed truck
11 terminal. This is a fairly routine practice that,
12 again, separates incompatible land uses.

13 Another thing that it does is it enables the
14 developer to make efficient use of their development
15 property. By imposing this setback, we allow
16 intervening properties within the 500-foot setback to
17 be used for other land uses, as reflected on the
18 concept plan presented earlier tonight.

19 Rather than impose some 500-foot setback
20 between the use and the adjoining property line, we
21 allow that 500-foot setback to be devoted to an
22 additional industrial land use. That makes the
23 return on the property much better, makes more
24 efficient use of the industrial zoning within the
25 township, and still provides protection between the

1 truck terminal and the vulnerable residential
2 neighborhoods, schools, parks, libraries and so
3 forth.

4 Q. In your professional opinion, is this type
5 of separation requirement used by other
6 municipalities to protect adjacent residential and
7 other sensitive uses from adverse impacts associated
8 with intensive industrial uses?

9 A. Yes, and others.

10 Q. At the last hearing there was some testimony
11 as to the specific setback between the buildings
12 proposed by the Applicant and the existing adjacent
13 residential dwellings rather than the property line
14 of the dwellings. Do you recall this testimony?

15 A. I do.

16 Q. As a land planner, in your opinion, do you
17 agree with measuring a separation or setback
18 requirement from a building, a residential building,
19 versus a property line for that residence?

20 A. No, I don't agree with that.

21 Q. And why not?

22 A. Well, when person buys a property, they are
23 entitled to use and enjoy the entire property. We're
24 not just protecting the house location itself.
25 Landowners make use of their properties for all sorts

1 of reasons. And the entire property deserves
2 protection.

3 Q. If the 500-foot separation requirement set
4 forth in 484.E did not exist, how would the nearby
5 residents be protected from the intensive industrial
6 uses in the industrial district?

7 A. Well, I mean, as it currently stands, we
8 have a 75-foot set residential buffer strip, which
9 is, again, one of those internal setbacks that I
10 described earlier. But if we didn't have this
11 500-foot setback, we would have to impose some other
12 form of protection within the zoning ordinance. Some
13 type of a performance standard could be used.

14 I recently amended a zoning ordinance with
15 this very specific issue at hand. A municipality in
16 Lancaster County decided that they wanted to reduce
17 the land area between the proposed warehouse and an
18 adjoining residential neighborhood. And the
19 compromise that we came up with in that situation
20 required a 12-foot-high berm, landscape berm, to
21 attenuate the noise, dust and lighting associated
22 with a warehouse from the adjoining residential
23 neighborhood.

24 So if we were to get rid of this 500-foot
25 setback, we'd have to come up with something onsite

1 to provide the same level of protection.

2 Q. So the Applicant's plan simply proposes a
3 75-foot buffer strip between their improvements and
4 the property line on East Valley Road?

5 A. Yes.

6 Q. In your opinion, if the 500-foot separation
7 requirement was not here, would that 75-foot buffer
8 be sufficient to protect those adjacent residents
9 from that truck terminal use and the activities that
10 go with it?

11 A. No.

12 Q. Why not?

13 A. Well, because it's too intensive.

14 The other thing that you have to keep in
15 mind in this instance is, it is not the building
16 that's creating the impact. Truck terminals often
17 have very small buildings and huge lots of trucks
18 that are called into service. These trucks are
19 coming and going all hours of the day and night.
20 They show up at the property; sometimes they can't
21 get on the site because it's too early and they have
22 to park along streets. So by separating these land
23 uses by a distance, we allow these impacts to be
24 diffused before they reach the adjoining neighborhood
25 boundary.

1 Q. So some of these either techniques for
2 separation and for buffering, are they, in your
3 opinion and based upon your work on this ordinance,
4 not included because of the fact of this 500-foot
5 separation requirement?

6 A. Exactly. The other thing that's also
7 important to know is, the intervening land uses that
8 can be proposed also act as buffers. When we have an
9 intervening land use, that can also be used to
10 attenuate impact. The buildings themselves and the
11 setbacks imposed on those sites also help to
12 attenuate impacts between the truck terminal and the
13 adjoining residential neighborhood.

14 Q. Would that include the location for truck
15 terminal loading spots, for instance?

16 A. Yes, of course.

17 Q. Do you agree with the Applicant's position
18 that the 500-foot separation provision in Section
19 484.E makes it impossible to develop this property
20 for a truck terminal or warehouse use?

21 A. No.

22 Q. Why not?

23 A. Because we've shown, we've demonstrated
24 through the concept plan that there is a reasonable
25 use of this property for a truck terminal that does

1 comply with the 500-foot requirement, setback
2 requirement.

3 Q. And are you familiar with the plans that
4 we've marked as UTST-3 [sic] and UTST-10 [sic]?

5 A. Yes.

6 Q. And did you work with the township engineer
7 and provide input in connection with the completion
8 of these plans?

9 A. Yes.

10 Q. Do both of these plans show a collector road
11 as that term is defined in the zoning ordinance?

12 A. It does.

13 Q. Are you familiar with the chart -- first of
14 all, are you familiar with the definition of a
15 collector road?

16 A. I am.

17 Q. And you're familiar with the chart marked in
18 Section 320.A that lists collector roads?

19 A. Yes.

20 Q. And what is your position as to this
21 proposed collector road and the chart that is -- had
22 the word "future" on the chart and the ability to add
23 new collector roads?

24 A. Well, this is a proposed collector road. It
25 does not exist. The proposed nature of this road

1 would not provide for it to appear within that chart.
 2 There's no -- there's no name on it. There's nothing
 3 that we could use to identify it. It is merely a new
 4 road that is proposed within the township to serve a
 5 proposed development. It's no different from any
 6 other proposed road that would appear on any
 7 subdivision or land development plan.

8 Q. Now, the 500-foot separation requirement,
 9 there was a question from the board members about the
 10 ability for the owner of the land to still use and
 11 develop that 500 feet.

12 A. Yes.

13 Q. You're not prohibiting -- it's not your
 14 position that that 500 feet completely removes any
 15 possibility of those lands being developed?

16 A. (Shook head negatively.) To the contrary,
 17 it provides for it to be developed. If we get rid of
 18 it and we require a 500-foot setback internal to the
 19 property line, then we've taken it and we can't make
 20 use of it; we can't make efficient use of it.

21 Q. As a land planner, based upon your
 22 familiarity with this sketch plan we've marked as
 23 USTS and your work in connection with it, is it your
 24 opinion this provides a reasonable development
 25 opportunity for the property while still allowing a

1 truck terminal or warehouse use?

2 A. Yes.

3 MR. GUNDLACH: That's all I have.

4 MR. DINKELACKER: Cross-examination?

5 MR. PRESTON: Yes, please.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. PRESTON:

9 Q. Mr. Roth, good evening.

10 A. Good evening.

11 Q. Let's start with the development plan that I
 12 -- did you say you helped Mr. Unangst develop that
 13 plan?

14 A. Conceptually, yes.

15 Q. Conceptually. That's not really a truck
 16 terminal plan, is it? That's a mixed use plan,
 17 right?

18 A. Well, it's a development plan that includes
 19 a truck terminal component -- three truck terminal
 20 components.

21 Q. Understood. But it's a mixed use
 22 development, isn't it?

23 A. You can call it whatever you want. I mean

24 --

25 Q. Well, okay. Let's not call it anything.

1 A. Yeah.

2 Q. It has more than a truck terminal on it,
3 does it not?

4 A. It does.

5 Q. In fact, truck terminals can't go anywhere
6 within that 500-foot boundary area that you've
7 created; isn't that correct?

8 A. The trucks themselves can cross through the
9 buffer. The location of the property cannot violate
10 the 50-foot setback; that's correct.

11 Q. So that property, any of the property
12 containing the truck warehouse cannot encroach within
13 500 feet of that boundary along the residential zone;
14 is that correct?

15 A. That is correct.

16 Q. And so you've placed other uses in there, is
17 that correct, other than a truck terminal use?

18 A. Yes.

19 Q. Very good.

20 The -- you said you're familiar with the --
21 you're familiar with the definition of collector
22 road?

23 A. Yes.

24 Q. And the definition says to see Section 320
25 for a listing of those?

1 A. Yes.

2 Q. And the section we're talking about says,
3 see Section 320 for the listing of those, right?

4 A. Yes.

5 Q. And the road that you're proposing isn't on
6 that list; is that correct?

7 A. No. It is a proposed road.

8 Q. Understood.

9 A. And a proposed subdivision.

10 Q. Understood. Understood.

11 MR. PRESTON: I have no further
12 questions.

13 MR. DINKELACKER: Redirect?

14 MR. GUNDLACH: Nothing.

15 MR. DINKELACKER: Any questions by the
16 board of Mr. Roth? (No response.)

17 Mr. D'Amico, any questions?

18 MR. D'AMICO: Yeah, I have just one
19 question.

20 * * *

21 CROSS-EXAMINATION

22 BY MR. D'AMICO:

23 Q. Mr. Roth, I just want to -- just out of
24 curiosity, based on your experience you mentioned
25 that you attend many of these sort of hearings and

1 proceedings and you mentioned that one recent one
2 in -- I believe you said Lancaster County?
3 A. Right.
4 Q. There was a compromise reached?
5 A. Correct.
6 Q. In your professional experience, is it your
7 experience that within these hearings there is a
8 collaborative nature between the representatives of
9 the developer as well as those on the residential
10 side?
11 A. Not typically.
12 Q. Okay. All right. So, but in reaching a
13 compromise in that nature, how is that done?
14 MR. GUNDLACH: I'm going to object to
15 that. That's beyond the nature of these proceedings
16 here.
17 MR. DINKELACKER: Yeah. I think,
18 Mr. D'Amico, we're -- in terms of I think questions
19 regarding compromise at this point, I think that's
20 well beyond what Mr. Roth testified to in terms of
21 how compromises come about, whether they're
22 appropriate.
23 MR. D'AMICO: That's fair. So stick to
24 -- the discussion of compromise in his experience is
25 not relevant at this time.

1 MR. DINKELACKER: Right. What we're
2 looking at right now is the validity of this
3 particular --
4 MR. D'AMICO: Understood. Okay.
5 MR. DINKELACKER: If you have anything
6 else, you're welcome to ask.
7 MR. D'AMICO: No, that's fine. Thank
8 you.
9 MR. DINKELACKER: Okay. Mr. Tiemann,
10 any questions?
11 MR. TIEMANN: None.
12 MR. DINKELACKER: Are there any
13 questions -- let me go first to the audience. Are
14 there any questions of Mr. Roth or any comments from
15 the audience? Okay. We have a hand.
16 Yes, sir, why don't you come on up.
17 (John Owen approached the podium.)
18 MR. GUNDLACH: Just to be clear,
19 though, it wouldn't be a question because they're not
20 parties.
21 MR. DINKELACKER: Right. I apologize.
22 It would be a comment.
23 And, sir, I'm going to need you to
24 identify -- or state your name and your address,
25 please.

1 MR. OWEN: John Owen, 4343 Colonial
 2 Lane.
 3 MR. DINKELACKER: Can you spell the
 4 last name, please?
 5 MR. OWEN: O-w-e-n.
 6 MR. DINKELACKER: Thank you.
 7 MR. OWEN: Looking at this plan, I
 8 wanted to ask the planner that it seems like there's
 9 no truck staging area. Anytime you have warehouses
 10 where you have a number of trucks coming in and out,
 11 you usually have an area like a parking lot or some
 12 area to stage trucks. And you certainly don't want
 13 to stage your trucks on the road where you have the
 14 500-foot gap.
 15 Likewise, with the 600-foot width, you
 16 will get trucks unloading on both sides. And when
 17 you unload trucks on both sides, you've lost the car
 18 parking because you're not going to park
 19 car-truck-car-truck. So you also will need another
 20 large parking area for the workers.
 21 MR. DINKELACKER: Okay. I understand.
 22 And keep in mind, this is comment as opposed to
 23 questioning. But your comments may certainly lead to
 24 questions.
 25 Is there anyone else who would like to

1 come up and make a comment, again, concerning the
 2 testimony of Mr. Roth?
 3 MR. SIDHU: I will.
 4 MR. DINKELACKER: Yes. I'm sorry, sir.
 5 Come on up.
 6 (Ravi Sidhu approached the podium.)
 7 MR. DINKELACKER: And, sir, can you
 8 give us your name and address, please?
 9 MR. SIDHU: Sure. My name is Ravi
 10 Sidhu, 3578 Stonegate Drive.
 11 (The reporter requested clarification.)
 12 MR. SIDHU: R-a-v-i; last name Sidhu,
 13 S-i-d-h-u.
 14 So my comment is -- it's a general
 15 comment. It seems to me you get a lot of trucks in
 16 this development. You have Aldi; you have that truck
 17 terminal; and now this big proposed warehouse or
 18 trucking multi-use development -- whatever you want
 19 to call it. Is there limitation on the number of
 20 trucks per capita in an area? I mean, I'm talking
 21 about the environmental effects, the noise pollution
 22 effects in a township.
 23 MR. DINKELACKER: First of all, your --
 24 as I understand your comment, your comment is with
 25 respect to whether there are limitations on -- I'm

1 sorry -- the numbers?

2 MR. SIDHU: The number of trucks to the
3 number of people.

4 MR. DINKELACKER: Number of trucks,
5 number of people. At this point I don't know that
6 your question can be answered, but again, I
7 understand your comment about the numbers. Is there
8 anything in particular that you want to tie into
9 this -- into the testimony of Mr. Roth in terms of
10 your comment about the numbers or --

11 MR. SIDHU: Well, speaking to his
12 experience, you know, he probably may know that
13 there's got to have some impact to the environment
14 and neighborhood with pollution and so forth. That's
15 my question.

16 MR. DINKELACKER: Okay. And again, at
17 this point we're looking at the validity of a, you
18 know, some fairly narrow, a fairly narrow provision
19 of the ordinance. Your comment may have relevance
20 down the road. I'm not sure. But again, if it's --
21 your comment is here. It may spark some additional
22 questions by the parties.

23 MR. SIDHU: Fair enough.

24 MR. DINKELACKER: We appreciate that.
25 Thank you.

1 MR. SIDHU: Thank you.

2 MR. DINKELACKER: Is there anyone else
3 who would like to make a comment?

4 (No response.)

5 There does not appear to be anyone.

6 What I'd like to do, then, is, based upon the
7 comments, let's go back; and, Mr. Gundlach, do you
8 have any questions based upon the comments?

9 MR. GUNDLACH: No further questions.

10 MR. DINKELACKER: Mr. Preston, do you
11 have any questions based upon the comments?

12 MR. PRESTON: No questions.

13 MR. DINKELACKER: Okay. And the Board,
14 are there any questions based upon the comments that
15 you've heard?

16 (No response.)

17 Then I believe that's everything from
18 Mr. Roth. And is there anything else for the
19 Township, Mr. Gundlach?

20 MR. GUNDLACH: Nope. The Township has
21 no further witnesses and would just offer for
22 admittance the exhibits that we've marked for
23 purposes of the record.

24 MR. DINKELACKER: Okay. So we have
25 Upper Saucon Township Staff Exhibits 1 through 10.

1 Mr. Preston, are there any objections
2 to those exhibits?

3 MR. GUNDLACH: I'm sorry, there is one
4 more exhibit. 11. I'm going to have to recall
5 Mr. Roth. That was my bad because there is an 11
6 that I handed to Mr. Preston and he could certainly
7 entertain questions about it.

8 * * *

9 Whereupon, HARRY B. ROTH, AICP,
10 having been recalled as a witness and previously
11 sworn, was examined and testified as follows:

12 * * *

13 DIRECT EXAMINATION

14 BY MR. GUNDLACH:

15 Q. Mr. Preston [sic], are you familiar with an
16 exhibit that we've marked as USTS-11?

17 MR. PRESTON: That's Mr. Roth.

18 BY MR. GUNDLACH:

19 Q. I'm sorry.

20 A. I am familiar with this.

21 Q. And could you please describe what's
22 referenced on this exhibit?

23 A. This a reference to land uses within Upper
24 Saucon Township that have --

25 MR. DINKELACKER: Hold on, Mr. Roth.

1 Jim, any objection to me showing this
2 to the Board?

3 MR. PRESTON: No.

4 MR. DINKELACKER: Thank you. I'm
5 sorry.

6 THE WITNESS: This is a reference to
7 sections within Article 4 of the Upper Saucon
8 Township Zoning Ordinance which are the specific
9 criteria attached to specific land uses. Each of the
10 land uses listed in here have a similar provision to
11 the one that is the subject of this hearing. By that
12 I mean it has requirements that uses be separated
13 from one another.

14 BY MR. GUNDLACH:

15 Q. And behind this chart are the specific
16 sections that you referenced?

17 A. That's correct.

18 Q. And this is taken directly from the zoning
19 ordinance?

20 A. From the Upper Saucon Township Zoning

21 Ordinance.

22 MR. GUNDLACH: That's all I have.

23 MR. DINKELACKER: Jim, do you have any
24 cross-examination based upon that?

25 MR. PRESTON: Yes.

1 MR. DINKELACKER: Do you need a moment?

2 MR. PRESTON: No. I think I can -- I
3 think I can handle this. Just looking for some notes
4 that I had here.

5 MR. DINKELACKER: I think -- Jim, I
6 think the Board would like to take a recess for a
7 moment.

8 MR. PRESTON: That's fine.

9 MR. DINKELACKER: Let's reconvene in 10
10 minutes. How's that?

11 MR. PRESTON: Okay.

12 (A short break was taken.)

13 MR. DINKELACKER: Ladies and gentlemen,
14 we're going to start back up.

15 Okay. Mr. Preston, I think that you
16 are going to ask the questions of Mr. Roth.

17 MR. PRESTON: Yes. Okay.

18 * * *

19 CROSS-EXAMINATION

20 BY MR. PRESTON:

21 Q. Mr. Roth, let's take a look at Exhibit
22 USTS-11.

23 UNIDENTIFIED PERSON: Is your mike on?
24 We can't hear you.

25 MR. PRESTON: I'll move it in closer.

1 BY MR. PRESTON:

2 Q. We're going to work with USTS-11, which was
3 the last exhibit that was submitted. Did you have a
4 hand in creating that?

5 A. Yes.

6 Q. In fact, you put that together; is that
7 correct?

8 A. I did.

9 Q. And that purports to talk about separation
10 buffers that are listed in the ordinance; is that
11 correct?

12 A. Yes.

13 Q. I just want to correct something that was
14 said earlier. One of the witnesses mentioned that
15 each of the uses permitted in the I zone have some
16 corollary in Section 4; in other words, some
17 buffering requirements in Section 4. That's not
18 correct, is it?

19 A. There are many uses that have no specific
20 criteria within the zoning ordinance.

21 Q. Okay. That's what I thought. So, for
22 example, I think we pointed to machine, tool and die
23 and metal fabrication. That's one that doesn't have
24 a set of restrictions in Section 4; is that correct?

25 A. That is correct.

1 Q. Now, you've -- this looks to me as if you've
2 identified various uses from the I zone and then
3 highlighted those separations, what you're calling
4 separations?

5 A. Well, it's not just the I zone. I mean,
6 it's any number of zones within the township.

7 Q. Very good. And I noticed that there seems
8 to be -- they seem to fall into one of two
9 categories. One seems to be -- I think you
10 identified them as external and internal -- and just
11 work with me here because I'm not that familiar with
12 those terms.

13 A. Okay.

14 Q. So, for example, adult uses, it talks about
15 the use shall be located -- no adult use shall be
16 located within a thousand feet of any parcel of land
17 which contains -- and then there's certain things.
18 That's the use itself; is that correct?

19 A. Well, the use -- the use is not just the
20 building. A use of property is the property itself.
21 The subject property. So we're not necessarily
22 referring to, in that instance, an adult bookstore.
23 It's the use that encompasses the subject property.

24 So all of the attendant setbacks and parking
25 areas and so forth that are required to serve the

1 adult bookstore are part of that setback, are
2 required to be set back.

3 Q. So if I had an adult bookstore on a
4 particular piece of property and all of the -- all
5 the attributes of the use were 2,000 feet away, would
6 I still -- because the property abutted one of these
7 uses, would I still need to subdivide off the first
8 thousand feet?

9 A. I'm not sure I understand. Are you saying
10 you're going to put an adult bookstore on a property
11 that has a dimension of 2,000 feet? Is that what
12 you're saying?

13 Q. No. I'm trying to understand what this
14 says. It says no adult use shall be located within a
15 thousand feet of any parcel of land which contains
16 any one or more of the following specified land uses.

17 So let's choose one. Let's choose amusement
18 park. And let's say I have a piece of property and
19 it's 80 acres, and I'm going to put it a quarter mile
20 away, my adult bookstore, from the amusement park.

21 A. Okay.

22 Q. Am I able to do that if my property is
23 within a thousand feet of the amusement park?

24 A. Yes.

25 Q. Okay.

1 A. Yes. What no one has seemed to mention up
 2 until this point is that, if you look at Article 4,
 3 the first page, there's a provision at the bottom of
 4 that page which talks about the fact that the subject
 5 property does not necessarily have to be a subdivided
 6 lot or a lease line. It can be an area that is
 7 designated within a property that meets the zoning
 8 criteria.

9 Q. Okay.

10 A. So it doesn't -- so if you have a
 11 hundred-acre parcel and you want to use an acre out
 12 of that hundred acres, you can do that and only
 13 identify the acre as the subject property. And that
 14 would therefore then comply with the required
 15 setback.

16 Q. Okay. I gotcha. So in each of these, where
 17 it says, for example, the subject property shall be
 18 set back -- I'm talking about automobile filling
 19 stations.

20 A. Okay.

21 Q. Set back from at least 300 feet from any lot
 22 containing a school, daycare facility, park,
 23 playground, hospital, nurse -- that would be similar
 24 to what we have with the trucking terminal, the
 25 subject property?

1 A. Yes.

2 Q. So in order to institute this automobile
 3 filling station use, I'd have to, what, subdivide off
 4 the first 300 feet?

5 A. Well, I mean, most typically, developments
 6 are located on a particular piece of property. So
 7 you'd -- most typically, you'd have one use per
 8 property, but that is not necessarily required. We
 9 can have land developments that have multiple land
 10 uses on the same parcel. What the point I'm trying
 11 to make is, that separation can be accomplished
 12 without requiring you to confiscate the entire
 13 parcel. In Section 400 --

14 MR. GUNDLACH: E.

15 THE WITNESS: Is it 400.E? 400.E talks
 16 about how you measure setbacks. And it talks about
 17 the fact you don't have to -- doesn't have to
 18 necessarily be the entire property but it can be a
 19 portion of it.

20 BY MR. PRESTON:

21 Q. Okay. Now, the Section 484.E, which is the
 22 one that's at issue here, that sets the minimum
 23 distance between a trucking terminal use and --
 24 actually, the property on which it sits, the subject
 25 property -- and any adjoining residential use; is

1 that correct?

2 A. I think it's adjoining residential zones.

3 Q. Or, adjoining residential zone? It's a

4 distance of 500 feet?

5 A. Okay.

6 MR. GUNDLACH: You're at Tab 10?

7 MR. PRESTON: Yes.

8 THE WITNESS: Yeah, that's -- the 500

9 feet is from any residential zone, and then also any

10 property containing any of those particular land

11 uses.

12 MR. PRESTON: Okay. I have no further

13 questions.

14 MR. DINKELACKER: Any redirect?

15 MR. GUNDLACH: Nothing further.

16 MR. DINKELACKER: Any questions from

17 the Board regarding Mr. Roth's testimony?

18 (No response.)

19 Mr. Roth, I just have one question.

20 You had referenced there was a provision of Article 4

21 that had not been discussed. Is that 400.E that

22 you're referring to?

23 THE WITNESS: It is.

24 MR. DINKELACKER: Okay. Thank you.

25 Mr. D'Amico, do you have any questions?

1 MR. D'AMICO: No.

2 MRS. D'AMICO: In terms of the

3 testimony here?

4 MR. DINKELACKER: Yes. In terms of

5 Mr. Roth.

6 MRS. D'AMICO: No, sir.

7 MR. DINKELACKER: Okay. Mr. Tiemann?

8 MR. TIEMANN: No.

9 MR. DINKELACKER: Are there any other

10 comments regarding Mr. Roth's testimony? Anybody

11 wishes to get up and comment?

12 (No response.)

13 Okay. So now I think we're back at

14 exhibits?

15 MR. GUNDLACH: Yes. Exhibits 1 through

16 11.

17 MR. DINKELACKER: USTS-1 through 11.

18 MR. GUNDLACH: Correct.

19 MR. DINKELACKER: And, Jim, do you have

20 any objections to 1 through 11?

21 MR. PRESTON: No.

22 MR. DINKELACKER: So we will admit into

23 evidence Upper Saucon Township Staff Exhibits 1

24 through 11. With that, does the Township rest?

25 MR. GUNDLACH: Yes.

1 MR. DINKELACKER: Okay. Thank you.

2 And, Jim, at this point the ball shifts
3 to you for rebuttal.

4 MR. PRESTON: Yes, and we do reserve
5 the right to rebut. We're not prepared to proceed
6 this evening, having just heard the testimony a
7 matter of moments ago.

8 MR. DINKELACKER: Okay. Well, we have
9 selected a hearing date for Tuesday, October 29.

10 Mr. Gundlach, do you have any objection
11 to Mr. Preston's request to move rebuttal to that
12 date?

13 MR. GUNDLACH: No objection.

14 MR. DINKELACKER: Okay. Are there any
15 objections by the Board to moving -- or to hearing
16 rebuttal on October 29th?

17 Okay. So what we will do, then, is we
18 will adjourn for tonight. On October 29, here's what
19 we're going to do. We're going to hear the rebuttal
20 testimony.

21 Jim, do you have any estimate as to how
22 long your rebuttal testimony will take? And I'm not
23 holding you to it.

24 MR. PRESTON: Yeah, okay. I would say
25 probably an hour.

1 MR. DINKELACKER: Okay. So we will be
2 starting at 6:30. We will estimate about one hour
3 for the rebuttal, maybe a little bit more. We will
4 then have public comment regarding the -- regarding
5 the curative amendment generally. So this will be an
6 opportunity to get up and to speak. If you do not
7 want to speak but you want to make comment, we will
8 accept comments in writing. We will identify them
9 for the record and they will be included in the
10 record and they will become part of the record. So
11 the option is to speak or to provide the comment in
12 writing, whatever you would like to do.

13 At that point what we'll do is, I would
14 ask that counsel, because the Board has requested
15 some argument and the opportunity to possibly ask
16 counsel some questions regarding the factual and
17 legal issues. And we would accept memoranda of law
18 that night as well. So that would all be for
19 Tuesday, October 29, at 6:30 p.m. here in this
20 auditorium at the Southern Lehigh School District.

21 Are we in good shape? Are there any
22 other questions or issues?

23 MR. GUNDLACH: Well, given the fact
24 that testimony won't be concluded until the 29th, I
25 would ask for two weeks thereafter to submit findings

1 and memorandum of law to the Board or a week after or
2 some period of time so we can address the comments in
3 that testimony.

4 MR. PRESTON: And I would support that
5 request.

6 MR. DINKELACKER: Okay. Then what
7 we'll do is -- is seven days enough to submit the
8 memorandum of law for -- so that would make it
9 October -- Tuesday, November 5, I guess that would
10 be.

11 MR. PRESTON: Good here.

12 MR. DINKELACKER: That's Election Day.
13 But that's just going to be a written submission. So
14 is that okay with counsel for Tuesday, November 5?

15 MR. GUNDLACH: Yes.

16 MR. DINKELACKER: Okay. So what we'll
17 do is we'll have submission of written memorandum on
18 Tuesday, November 5. And then what we'll do is, with
19 the Board, we'll figure out how we're going to
20 deliberate and address the issue.

21 Sir, did you have a question?

22 MR. WISNOSKI: Yes. There's public
23 that have been here for the last few weeks that I'm
24 sure have comments.

25 MR. DINKELACKER: Yes.

1 MR. WISNOSKI: Can we make our comments
2 now?

3 MR. DINKELACKER: Sir, since this is
4 not -- this is done, it's done as a public meeting in
5 terms of advertising and with respect to the public
6 comment, but it really is a hearing. And as a
7 hearing process, we try to maintain a certain order
8 in how it's done. And I think that it's better if we
9 have all comments after the principal cases are done.
10 Because Mr. Preston will still have some witnesses to
11 present and still have some more evidence.

12 So I think we need to have certain
13 regularity in terms of how we handle this and a
14 certain order that we follow. I understand. I do
15 appreciate what you said, but it is a hearing
16 process. Sometimes these hearings go quick.
17 Sometimes there are many, many hearings, far more
18 than even this.

19 MR. GUNDLACH: Mr. Dinkelacker, if I
20 could also add in there, Mr. Preston and I both agree
21 we have no objection to any statements that want to
22 be provided in writing. So if somebody couldn't make
23 it or wants to give a quick summary and hand up their
24 statement in writing, they can bring that to the next
25 hearing or submit it to the township for

1 presentation.

2 MR. DINKELACKER: Yes. I would add
3 that, again, I mentioned that if you want to put a
4 comment in writing, you may do so. And if you don't
5 want to wait till the hearing to present that,
6 there's no problem with you submitting it to the
7 township. It will be circulated to everyone and it
8 will be included in the information that's online.

9 Is that correct, Tom?

10 MR. BEIL: Yes.

11 MR. DINKELACKER: So there will be --
12 there is the opportunity to handle it that way as
13 well. But I understand the comment and I do
14 appreciate the frustration. I understand.

15 (The court reporter requested
16 clarification.)

17 MR. DINKELACKER: Sir, can we have your
18 name, please? Just for the record, your name.

19 MR. WISNOSKI: Richard Wisnoski.

20 MR. DINKELACKER: Richard Wisnoski.

21 W-e-s?

22 MR. WISNOSKI: W-i-s-n-o-s-k-i.

23 MR. DINKELACKER: Thank you,

24 Mr. Wisnoski. Appreciate it.

25 Okay. So we're going to adjourn for

1 tonight. Is that the game plan?

2 MR. GUNDLACH: I think you mentioned
3 that there will be no further advertisement, that
4 this is it, to the date certain, to the 29th.

5 MR. DINKELACKER: I'm not sure. Yes,
6 well, we've announced it on the record, so we have a
7 date certain. So I don't know if Tom wants to do an
8 advertisement or not.

9 I know Tom wants to do an
10 advertisement.

11 MR. GUNDLACH: All right. Thank you.

12 (The matter concluded at 8:24 p.m.)

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_____, 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
Registered Merit Reporter
Certified Realtime Reporter
Notary Public