

AGENDA

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, September 9, 2019 – 7:30 pm
Southern Lehigh Middle School Auditorium
3715 Preston Lane
Center Valley, PA 18034

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

2. **PLEDGE OF ALLEGIANCE**

3. **NOTIFICATION**

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

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

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

- a. Open public hearing (Night 2)
- b. Introduction by Township Solicitor
- c. Identification of additional Township Exhibits
- d. Continuation of testimony.

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

5. **ADJOURNMENT**

MINUTES

Upper Saucon Township Board of Supervisors
Special Meeting
Monday, September 9, 2019 – 7:30 P.M.
Southern Lehigh Middle School
3715 Preston Lane, Center Valley, PA 18034

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

Staff Attending: Thomas F. Beil, Township Manager
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 7:50 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 2)

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.”

Night 1 of the hearing on this matter was held on August 12, 2019. The Board did not get through all the testimony during Night 1, so the hearing was continued to this evening.

A stenographer was present to record the testimony and evidence presented at the hearing. A copy of the transcript from Night 2 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 Monday, September 30, 2019 at 6:30 pm at the Southern Lehigh Middle School Auditorium.

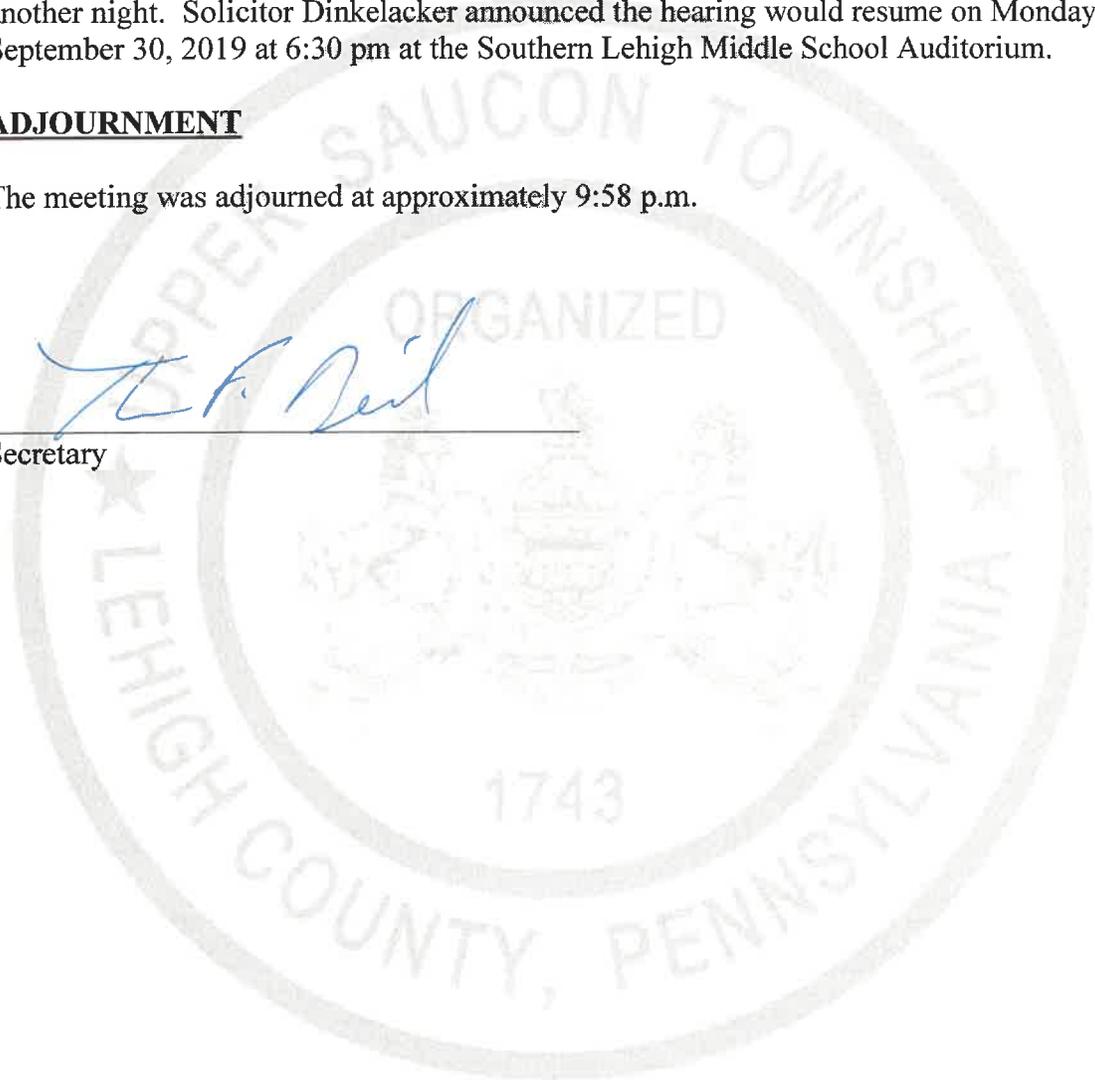
ADJOURNMENT

The meeting was adjourned at approximately 9:58 p.m.



A handwritten signature in blue ink, appearing to read "A. F. Deit", is written over a horizontal line.

Secretary



BEFORE THE BOARD OF SUPERVISORS
OF UPPER SAUCON TOWNSHIP

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

ORIGINAL

A public hearing regarding the above matter held at the Southern Lehigh Middle School Auditorium, 3715 Preston Lane, Center Valley, Pennsylvania, on Monday, September 9, 2019, commencing at 7:30 p.m., stenographically reported by Maureen L. Stewart, Registered Professional Reporter, 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, Pennsylvania 18106
(610) 439-0504/(800) 366-2980

1 APPEARANCES:

2 BROUGHAL & DEVITO, L.L.P.
3 By: JAMES F. PRESTON, ESQ.
38 West Market Street
4 Bethlehem, PA 18018
jamespreston@broughal-devito.com
5 610-865-3664
-- For the Applicant

6 FOX ROTHSCHILD, LLP
7 By: ROBERT W. GUNDLACH, JR., ESQ.
2700 Kelly Road, Suite 300
8 Warrington, PA 18976-3624
rgundlach@foxrothschild.com
9 215-345-7500
-- For the Township

INDEX TO WITNESSES

1			
2	APPLICANT'S WITNESS	PAGE	
3	JASON S. ENGELHARDT		
4	Cross-Exam by Mr. Gundlach	7	
5	CHARLES H. UNANGST, P.E.		
6	Direct by Mr. Gundlach	11, 83	
7	Cross-Exam by Mr. Preston	37, 81, 88	
8	Cross-Exam by Mr. D'Amico	74	
9	Cross-Exam by Mr. Tiemann	78, 89	
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

INDEX TO EXHIBITS

1			
2			PAGE
3	T-16	Public Notice of 9/5/19 Hearing	5
4	T-17	Public Notice Published in Morning Call 8/26/19 & 9/2/19	5
5	T-18	Affidavit of Posting	5
6	T-19	Notification List	5
7	USTS-1	Unangst Resume	11
8	USTS-2	7/2/19 Unangst Ltr.	11
9	USTS-3	Access & Buffer Sketch 6/20/19	11
10	USTS-4	7/2/19 Leidos Ltr.	11
11	USTS-5	US19-42 50.9 Acre Sketch	11
12	USTS-6	US19-42 27.2 Acre Sketch	11
13	USTS-7	CV Trent J. Sear	11
14	USTS-8	CV Harry B. Roth	11
15	USTS-9	6/8/05 Landowners Petition	11
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (Prior to the hearing beginning,
2 exhibits were premarked as T-16 thru T-19.)

3 CHAIRMAN BENNER: The Upper Saucon
4 Township Board of Supervisors special meeting Monday,
5 September 9th, 2019, is now in session. Please rise
6 and pledge the flag.

7 (Pledge recited.)

8 CHAIRMAN BENNER: All public
9 sessions of the Upper Saucon Township Board of
10 Supervisors are electronically recorded. Recordings
11 are maintained as part of the record of the meeting
12 until the minutes are transcribed and approved by the
13 Board.

14 The purpose of the hearing tonight
15 will be to take testimony and to receive evidence in
16 connection with the application filed by Kay Leigh,
17 LLC, claiming that the Upper Saucon Township Zoning
18 Ordinance is exclusionary, arbitrary and unduly
19 restrictive and confiscatory as it relates to
20 warehousing.

21 I am going to turn the meeting now
22 over to our Township Solicitor.

23 MR. DINKELACKER: Thank you, Mr.
24 Chairman.

25 We are going to start out with just

1 a couple very brief housekeeping matters. We have an
2 exhibit, which is Township Exhibit 14, which was the
3 request and the entry of appearance by Renee D'Amico
4 to be considered a party. And her husband Patrick is
5 here tonight. If there is no objection by counsel, I
6 am going to add Patrick D'Amico, Mr. D'Amico, as a
7 party on the appearance filed by Renee.

8 Is there any objection from either
9 of the parties?

10 MR. GUNDLACH: No objection.

11 MR. PRESTON: No objection.

12 MR. DINKELACKER: With that, Mr.
13 D'Amico, you and Mrs. D'Amico will be considered
14 parties in this matter.

15 We have several additional township
16 exhibits that I will identify, and they all relate to
17 tonight's hearing and the public notices and the
18 notice process for the hearing. Township Exhibit T-16
19 is a copy of the public notice for the September 9th,
20 2019, hearing, which was prepared by myself. T-17 is
21 a copy of the public notice that was actually
22 published in the Morning Call newspaper on August
23 26th, 2019, and September 2, 2019. Exhibit T-18 is an
24 Affidavit of Posting signed by Trent Sear, the Zoning
25 Officer, verifying the public notice was posted at the

1 locations designated. And Exhibit T-19 is the
 2 notification list for various parties and individuals
 3 who requested notification of the hearing, and this is
 4 the notification list for this particular hearing.
 5 Those are the additional township exhibits.

6 Are there any objections by any of
 7 the parties to admitting those into evidence?

8 MR. GUNDLACH: No objection.

9 MR. PRESTON: No objection.

10 MR. DINKELACKER: There being no
 11 objection, those will be added then as Township
 12 Exhibits T-16 through T-19.

13 I think that where we were at the
 14 last hearing, I think Attorney Gundlach, on behalf of
 15 the township, had reserved his right to continue
 16 cross-examination of Mr. Engelhardt. Mr. Preston had
 17 not yet commenced any redirect. Ms. D'Amico asked
 18 some questions. So what we are going to do is we are
 19 going to go back and continue with the
 20 cross-examination of Mr. Engelhardt by Mr. Gundlach.

21 * * *

22 EXAMINATION BY MR. GUNDLACH

23 * * *

24 BY MR. GUNDLACH:

25 Q. Mr. Engelhardt, just a few follow-up

1 questions, if I can. Referring you to the exhibit
 2 marked as A-7.2, are you familiar with that exhibit?

3 A. Yes, I am.

4 Q. A-7.2 does show, under parcel 1A, the
 5 Pitt-Ohio existing truck terminal; correct?

6 A. That's correct.

7 Q. And that parcel is adjacent to the subject
 8 property; correct?

9 A. Yes.

10 Q. And that property right now does have
 11 direct access to Route 309; correct?

12 A. It does, yes.

13 Q. And as part of this curative amendment
 14 application, you included a plan that contemplates
 15 changing the Pitt-Ohio access to Route 309; correct?

16 A. Yes. It contemplates a full access to
 17 that location with a signal.

18 Q. And to complete that access, as reflected
 19 on your plan that accompanied the application, you
 20 would need to use land that is currently owned by
 21 Pitt-Ohio to do so; correct?

22 A. That's correct.

23 Q. And then they would be reconfiguring their
 24 internal access to use that shared new access; is that
 25 correct?

1 A. Yes.
 2 Q. Now, in looking at that same Exhibit
 3 A-7.2, the subject property is currently comprised of
 4 four separate parcels; correct?

5 A. Yes.

6 Q. And you included a plan with the
 7 application that is titled Site Plan prepared by your
 8 office; correct?

9 A. We did.

10 Q. And that plan contemplates combining all
 11 four parcels and then subdividing them into two, the
 12 industrial portion and the commercial portion;
 13 correct?

14 A. Yes.

15 Q. So currently there are four parcels of
 16 land; correct?

17 A. Yes.

18 Q. And if your plan that you implemented was
 19 to move forward, there would be two parcels of land;
 20 correct?

21 A. That's correct.

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

23 MR. DINKELACKER: Okay. At this
 24 point, what we'll do is we will go back since Mr.
 25 Gundlach just finished his recross -- or I'm sorry,

1 his cross-examination -- are there any questions by
 2 members of the Board for Mr. Engelhardt?

3 (No response.)

4 MR. DINKELACKER: There appear to be
 5 none.

6 Ms. D'Amico, do you have any other
 7 questions that you want to raise at this point in time
 8 on cross-examination?

9 MR. WAGNER: No, sir.

10 MR. PRESTON: Mr. Tiemann -- is Mr.
 11 Tiemann in the audience? Anything, Mr. Tiemann?

12 MR. TIEMANN: No.

13 MR. DINKELACKER: Then we'll turn it
 14 over to Mr. Preston for redirect.

15 MR. PRESTON: No questions.

16 MR. DINKELACKER: That being the
 17 case, Jim, are you resting your case or do you have
 18 additional evidence that you would like to present?

19 MR. PRESTON: We are resting our
 20 case at this time -- our case in chief. We reserve
 21 the right to place a rebuttal case.

22 MR. DINKELACKER: Are you moving
 23 your exhibits into evidence? I don't know if they
 24 have been offered yet. I don't recall.

25 MR. PRESTON: We do move for the

1 admission of our exhibits.

2 MR. DINKELACKER: Any objection?

3 MR. GUNDLACH: We are referring to

4 the exhibits that were contained in the Applicant's

5 booklet A-1 through A-10.3?

6 MR. DINKELACKER: That's the list

7 that I have.

8 MR. GUNDLACH: No objection.

9 MR. DINKELACKER: Ms. D'Amico, do

10 you have any objection to the admission of those

11 exhibits?

12 MS. D'AMICO: No.

13 MR. DINKELACKER: Seeing there are

14 no objections, then Applicant's Exhibits 1 through

15 10.3 are admitted into evidence.

16 I think we are over now to the

17 township side.

18 (Prior to the examination beginning

19 by Mr. Gundlach, exhibits were premarked as USTS-1

20 thru USTS-9.)

21 MR. GUNDLACH: Yes. I'll call my

22 first witness.

23 * * *

24 CHARLES H. UNANGST, P.E., having

25 been duly sworn, was examined and testified as

1 follows:

2 * * *

3 EXAMINATION BY MR. GUNDLACH

4 * * *

5 BY MR. GUNDLACH:

6 Q. Please state your full name, for the

7 record.

8 A. Charles Henry Unangst.

9 Q. What is your occupation?

10 A. Civil engineer, land surveyor.

11 Q. Could you briefly describe your

12 educational background?

13 A. Attended Penn State University and since

14 then taken miscellaneous courses at Penn State and

15 also Drexel to further my education.

16 Q. You started out as a surveyor; correct?

17 A. That is correct.

18 Q. And now you are a licensed Professional

19 Engineer in the State of Pennsylvania?

20 A. That is correct.

21 Q. And where are you currently employed?

22 A. Hanover Engineering Associates.

23 Q. How long have you been employed at

24 Hanover?

25 A. Thirty-six years.

1 Q. And what is your title there?
 2 A. President.
 3 Q. And what type of firm is Hanover
 4 Engineering?
 5 A. It's a civil, structural, environmental
 6 engineering firm.
 7 Q. Could you, generally, describe the type of
 8 clients that you represent and the type of work you
 9 perform for those clients?
 10 A. We do perform work for both private
 11 clients, land development, land development for energy
 12 companies, but also represent about 45 municipalities
 13 across Pennsylvania.
 14 Q. Is Hanover Engineering the appointed
 15 engineer for Upper Saucon Township?
 16 A. Yes, we are.
 17 Q. How long has Hanover Engineering been in
 18 that position?
 19 A. Since 2015.
 20 Q. And do you serve as the primary contact
 21 for that account?
 22 A. Yes, I do.
 23 Q. I am going to show you a document that we
 24 have marked as your resume.
 25 MR. GUNDLACH: I was going to mark

1 these as USTS -- since I think we already marked some
 2 as township -- standing for Upper Saucon Township
 3 Staff, and I am going to premark some of mine.
 4 MR. DINKELACKER: Jim, do you have
 5 any problem with me providing these to the supervisors
 6 to follow along?
 7 MR. PRESTON: No problem with that.
 8 MR. DINKELACKER: Thank you.
 9 BY MR. GUNDLACH:
 10 Q. So the document I have marked as USTS-1
 11 and marked as your CV, you're familiar with that
 12 document?
 13 A. I am.
 14 Q. Does this document accurately reflect your
 15 credentials in the field of civil engineering?
 16 A. I believe so.
 17 MR. GUNDLACH: I would ask that the
 18 board recognize Mr. Unangst as an expert in the field
 19 of civil engineering.
 20 MR. DINKELACKER: Jim, do you have
 21 any questions on cross?
 22 MR. PRESTON: No questions and no
 23 objections.
 24 MR. DINKELACKER: Okay.
 25 Ms. D'Amico, do you have any

1 questions?

2 MS. D'AMICO: No, sir.

3 MR. DINKELACKER: The board will

4 recognize Mr. Unangst as an expert in civil

5 engineering.

6 BY MR. GUNDLACH:

7 Q. Are you familiar with the property that's

8 the subject of this hearing?

9 A. I am.

10 Q. And where is it located?

11 A. It is just south of the Center Valley

12 Parkway east of existing Route 309 and west of East

13 Valley Road.

14 Q. Have you visited the property?

15 A. I have.

16 Q. And can you, generally, describe its

17 current condition?

18 A. Most of the property is farm. It is made

19 up of farmland and tree rows and it is approximately

20 119 acres, as noted in the application.

21 Q. Does it have split zoning?

22 A. It is zoned industrial and also a small

23 portion near the Pitt-Ohio property that is zoned

24 commercial.

25 Q. Is it approximately 114.7 acres zoned

1 industrial and 4.4 zoned commercial?

2 A. Yes, approximately.

3 Q. Is it subject to an overlay?

4 A. Yes, it is.

5 Q. And what would that be?

6 A. AQC overlay.

7 Q. What does that stand for?

8 A. Age qualified.

9 Q. And under the existing industrial zoning

10 district, is the enterprise use or enterprise -- the

11 uses permitted in the enterprise zoning district

12 permitted in the industrial district?

13 A. Yes.

14 Q. Are you familiar with the Upper Saucon

15 Township Zoning Ordinance?

16 A. Yes, I am.

17 Q. Are you familiar with the Upper Saucon

18 Township map?

19 A. Yes.

20 Q. The zoning map, that is?

21 A. Yes.

22 Q. Do you work with those documents on a

23 regular basis?

24 A. Yes, I do.

25 Q. Are you also familiar with the Upper

1 Saucon Township Subdivision and Land Development
 2 Ordinance?
 3 A. Yes.
 4 Q. And do you review that document on a
 5 regular basis?
 6 A. I do.
 7 Q. Are you familiar with the challenge that
 8 has been filed by the applicant in these proceedings?
 9 A. Yes, I am.
 10 Q. Have you performed a review of the
 11 application, the site plan and the other information
 12 that accompanied that application?
 13 A. Yes, for the curative amendment.
 14 Q. And is that something you regularly do as
 15 the engineer for Upper Saucon Township?
 16 A. Yes, I do.
 17 Q. And did you issue a letter containing your
 18 evaluation of the challenge and the site plans and
 19 other information that was submitted with it?
 20 A. Yes, I did.
 21 Q. Is that a letter dated July 2, 2019?
 22 A. It is.
 23 Q. I'm showing you a document that we have
 24 marked as USTS-2. Is that the letter you are
 25 referencing?

1 A. That is the letter, yes.
 2 Q. And you presented this letter previously
 3 to the township's planning commission?
 4 A. I did.
 5 Q. Did you identify any compliance issues
 6 with the applicant's site plan when you reviewed it?
 7 A. Yes, I did.
 8 Q. What were they?
 9 A. The one was of Section 484.E. of the
 10 Township Zoning Ordinance, which required -- actually,
 11 the definition out of the ordinance -- the section out
 12 of the ordinance states that the subject property
 13 shall be located no closer than 500 feet from any OSR,
 14 R1, R2, R3 and AQC Zone and/or property containing a
 15 school, daycare, park, playground, library, hospital,
 16 nursing, rest or retirement home, or medical
 17 residential campus.
 18 Q. What is the purpose of that requirement?
 19 A. In my opinion, it is to protect the
 20 residential properties from impacts, such as, noise
 21 or glare associated with that type of use.
 22 Q. It's a separation requirement?
 23 A. Yes, that's what I would call it.
 24 Q. What specifically concerning the
 25 applicant's site plan did it run afoul to under that

1 Subsection 484.E?
 2 A. On the east side of the site is East
 3 Valley Road, which is a residential neighborhood. The
 4 only thing separating that neighborhood from this site
 5 is East Valley Road. Also, on the -- adjacent to on
 6 the opposite side of Route 309, which is on what I'll
 7 call the west side of the project is another
 8 residential area and, again, the only thing separating
 9 those -- that area from this tract or the sketch is
 10 the actual Route 309 itself.
 11 Q. So is it your testimony that the
 12 applicant's site plan did not comply with the 500-foot
 13 separation requirements from the R2 and the R3 zoning
 14 districts?
 15 A. That is correct.
 16 Q. Were there any other non-compliant areas
 17 that you identified on their site plan?
 18 A. I did identify the sketch as presented did
 19 show access out to Route 309 across the adjoining
 20 property -- adjacent property owner and I was not
 21 aware of any agreement or approval that they may have
 22 had to depict a driveway that way and/or construct a
 23 driveway in that manner. Also, just in general, even
 24 though it was not submitted as a land development plan
 25 or an application at that time, I felt the plan still

1 needed to address general information dealing with
 2 landscape screening, buffering, site lighting and
 3 environmental standards just to show their impact on
 4 the general area and the residential neighborhood.
 5 Q. Now, you reviewed the applicant's
 6 challenge in this case; correct?
 7 A. I have, yes.
 8 Q. Is the applicant alleging that the
 9 500-foot separation requirement in Section 484.E. when
 10 applied to this property makes it so that the property
 11 cannot be developed for a proposed truck terminal or
 12 warehouse use?
 13 A. That is my understanding, yes.
 14 Q. And based upon your review of the Zoning
 15 Ordinance and their site plans, do you agree with that
 16 position?
 17 A. I do not.
 18 Q. Why not?
 19 A. In looking at the -- I'll just use general
 20 terms -- the 119-acre site, I believe that it can be
 21 configured to require a -- or to accept the
 22 construction or development of a truck terminal.
 23 Q. Now, we're going to get into a little more
 24 specifics when we refer to the plan that you did, but
 25 let's talk for a minute about the AQC overlay. Are

1 you familiar with that overlay?

2 A. I am.

3 Q. With respect to the subject property, is
4 the applicant reserving any lands for development
5 under the AQC overlay?

6 A. It does not appear so.

7 Q. In your professional opinion, would this
8 500-foot separation requirement be applicable to the
9 AQC portion of the property?

10 A. If they were developing part of their
11 property as AQC, then the 500-foot separation I feel
12 would need to be maintained. But, again, in the
13 sketch that was provided, no part of this property was
14 planned to be AQC developed.

15 Q. So is it your professional opinion that
16 the setback to -- or excuse me -- the separation
17 distance from the AQC would not be applicable to the
18 development as proposed by the applicant?

19 A. That is my opinion, yes.

20 Q. And, also, I believe Mr. Engelhardt gave
21 an opinion that the specific uses that required the
22 500-foot separation, as identified in 484.E., were not
23 located within 500 feet of this property. Do you
24 agree with his testimony?

25 A. State that again.

1 Q. Sure. Section 484.E. provides that there
2 must be a 500-foot separation requirement to a school.

3 Do you agree with Mr. Engelhardt that there is no
4 school within 500 feet of the subject property?

5 A. I do agree.

6 Q. And do you also agree with that same
7 testimony as to a daycare facility, park, playground,
8 library, hospital, nursing or rest or retirement home,
9 or a medical residential campus?

10 A. I do agree with those.

11 Q. Now, after completion of the development
12 of the property as proposed by the applicant on the
13 site plan, will there be any remaining undeveloped
14 lands that are subject to the AQC zoning district?

15 A. It does not appear so.

16 Q. Scratch that. The AQC overlay district?

17 A. It does not appear to.

18 Q. Now, is it your testimony then that this
19 500-foot separation requirement does apply to the
20 adjacent R2 and R3 properties?

21 A. Yes.

22 Q. And it is your testimony that the
23 applicant's plan that accompanied their application
24 does not comply with this 500-foot separation
25 requirement from the R2 and R3 zoning districts; is

1 that correct?

2 A. That is correct.

3 Q. Now, did perform an investigation as to
4 the ability to develop the property for the truck
5 terminal and warehouse use while respecting the
6 500-foot separation provision as to the adjacent R2
7 and R3 zoning districts?

8 A. Yes. We have looked into possible ways of
9 developing this site while maintaining those 500-foot
10 separation provisions.

11 Q. What did you conclude by your
12 investigation?

13 A. In my opinion, you can develop the
14 property with the improvement of a collector road
15 through the property and which would allow being
16 compliant with Section 484.E. of the ordinance and
17 still be allowed to construct or develop a truck
18 terminal.

19 Q. Now, did you prepare a plan showing the
20 construction of a collector road in order to
21 facilitate development of a truck terminal or
22 warehouse use?

23 A. We have, yes.

24 Q. I am referring you now to USTS-3 in the
25 binder, which is a plan prepared by Hanover

1 Engineering titled, Access and Buffer Sketch, dated
2 June 20th, 2019. Are you familiar with that document?

3 A. I am.

4 Q. Could you please describe what that plan
5 shows?

6 A. We laid the -- I'll use the term the
7 119-acre parcel; we took an aerial view of that, and
8 we depicted the 500-foot separation district or
9 distance along the residential, the R2 and R3
10 districts, and then we kept the proposed driveway
11 access to 309 at the same location that it was
12 depicted on the applicant's plan and we drew in a
13 possible road configuration through the property,
14 which would require a subdivision or create new
15 property lines for parcels -- not the No. 4 -- for
16 parcels that are outside the 500-foot separation, but
17 also in the industrial district that could be
18 developed in some sort of truck terminal or other
19 industrial use if wanted.

20 Q. Now, referring to that plan, you say you
21 proposed a connector road and that runs through the
22 site in a loop manner?

23 A. It does.

24 Q. It also shows a tail off to the Parkway
25 titled, future connection; is that correct?

1 A. That is correct.

2 Q. And the future connection, is that
3 required in order to make the remainder of the road
4 deemed a connector road under the township ordinances?

5 A. It is not by ordinance, no.

6 Q. It is not required?

7 A. No.

8 Q. It would just be an additional benefit or
9 improvement to have additional access to the site?

10 A. Correct.

11 Q. Now, I believe on this plan you identify
12 parcels that are crosshatched and parcels that are not
13 crosshatched; correct?

14 A. That is correct.

15 Q. Are the crosshatched parcels subject to
16 the 500-foot separation requirement?

17 A. Yes. The crosshatching does designate a
18 500-foot separation area.

19 Q. And you had said four parcels, but there
20 is three parcels shown on your plan that are part of
21 the subject application; correct?

22 A. That is correct. It was not the No. 4.
23 It was for, F-O-R, not F-O-U-R.

24 Q. For, gotcha.

25 A. It was for the purpose of industrial use.

1 Q. So it's the three parcels that are
2 designated as 50 acres, ten acres and five acres;
3 correct?

4 A. Correct.

5 Q. And have you performed an investigation,
6 based upon your familiarity with the township's zoning
7 ordinance, as to the square footage of buildings to be
8 used for truck terminal or warehouse use that could be
9 located within those three parcels?

10 A. Yes, we have.

11 Q. And what did you conclude?

12 A. Laying out some rough sketches and
13 complying with parking regulations, square footage,
14 impervious coverage and loading spaces, in total
15 between the three of them, our estimate is one million
16 to 1.1 million square foot of warehouse or truck
17 terminal could be built. That's between the three
18 parcels combined.

19 Q. And that's in compliance with Section
20 484.E. that provides for the 500-foot separation
21 provision?

22 A. That is correct.

23 Q. And that estimated square footage could be
24 located in three separate buildings located on those
25 three separate parcels identified on your plan as 50

1 acres, ten acres and five acres; correct?

2 A. That is correct.

3 Q. Now, would the applicant then have a right

4 to develop other uses within the shaded area that

5 comprises the 500-foot separation requirement?

6 A. Yes.

7 Q. And what type of uses could be developed

8 in those areas?

9 A. The area adjacent to the proposed driveway

10 along Route 309 is zoned commercial, so that could

11 still be used as commercial uses. The other site that

12 was zoned industrial, there are other industrial uses,

13 such as, hotels or medical office buildings, fitness

14 clubs, regular offices, items like that, that are

15 allowed in their zoning ordinance in industrial use.

16 Q. And a bank would be one of those; correct?

17 A. A bank, correct.

18 Q. So have you performed an investigation as

19 to the square footage of building area that could be

20 located within the shaded area on the plan that you

21 identified as being within the 500-foot separation

22 requirement?

23 A. Yes, we have.

24 Q. And what was that estimate?

25 A. It is approximately 200,000 square feet of

1 various uses in there which -- and we did look at

2 parking and impervious coverage items or requirements.

3 Q. So in summary, your investigation

4 concluded that under the current zoning ordinance the

5 applicant could develop somewhere between one million

6 to 1,100,000 square feet of truck terminal or

7 warehouse use and approximately 200,000 square feet of

8 commercial-type other uses?

9 A. Correct.

10 Q. Now, are you familiar with the Lehigh

11 Valley Planning Commission?

12 A. Yes, I am.

13 Q. Do they perform reviews of applications

14 similar to the one that is before the board this

15 evening?

16 A. Yes, they do.

17 Q. Have they completed a review of this

18 curative amendment application?

19 A. Yes. By letter dated June 6th, they

20 provided comments on the curative amendment

21 application.

22 Q. And that has already been marked for the

23 board as T-5 and I included an additional copy in our

24 binder. Did you review that letter?

25 A. Yes, I have read that.

1 Q. And was that presented at the Township
 2 Planning Commission meeting?
 3 A. It was, yes.
 4 Q. And what was the recommendation of Lehigh
 5 Valley Planning Commission as reflected in their
 6 letter of June 6th?
 7 A. They concluded that the applicant's
 8 proposed use as they had it depicted is not consistent
 9 with the County Comprehensive Plan and they also
 10 stated that the challenge does not have merit.
 11 Q. And what did they base this recommendation
 12 or conclusion on?
 13 A. In their letter, it is stated the close
 14 proximity to residential uses on both sides and the
 15 intensive industrial use and traffic that may be
 16 associated with the density of the use.
 17 Q. Now, did you attend the Township Planning
 18 Commission meeting when it made its recommendation
 19 concerning this curative amendment application?
 20 A. Yes.
 21 Q. And was that reviewed by the Township
 22 Planning Commission?
 23 A. Yes, it was.
 24 Q. Did the applicant attend and participate
 25 in that meeting before the Township Planning

1 Commission?
 2 A. No.
 3 Q. But you attended and participated?
 4 A. Yes.
 5 Q. And you reviewed the review letter that we
 6 just marked as USTS-2 with the Planning Commission at
 7 that meeting?
 8 A. Yes, along with my letter I prepared for
 9 the review.
 10 Q. Now, I have marked -- or excuse me -- the
 11 township has marked as T-4 the recommendation of the
 12 Township Planning Commission and they recommended
 13 against approval of the curative amendment
 14 application; correct?
 15 A. Yes.
 16 Q. And what was the basis for their
 17 recommendation?
 18 A. They concluded that they feel the
 19 challenge did not have merit.
 20 Q. Why is that?
 21 A. Based similarly to the Lehigh Valley
 22 Planning Commission that the terminal and warehouse
 23 use can be developed on the property as it -- maybe
 24 not to the density or intensity that they are
 25 proposing, but it could be developed and then the

1 concerns about the neighboring properties.

2 Q. And does that document, marked as T-4,
3 accurately reflect the recommendation of the Township
4 Planning Commission concerning this application?

5 A. Your T-4 -- excuse me?

6 Q. I am going to show you what we marked as
7 T-4, which is the memo prepared by Trisha Lang,
8 Director of Community Development for Upper Saucon
9 Township, to the Upper Saucon Township Board of
10 Supervisors dated July 16th, 2019. I believe you have
11 seen that memo; correct?

12 A. That is correct.

13 Q. And does that memo accurately reflect the
14 recommendation of the Township Planning Commission
15 concerning this application?

16 A. Yes, it does.

17 Q. A few final questions. Does the township
18 have a hydrogeologic consultant on its staff?

19 A. Yes, Leidos Engineering.

20 Q. Leidos Engineering?

21 A. Yes.

22 Q. Does Leidos routinely review development
23 applications for Upper Saucon Township?

24 A. Yes, they do.

25 Q. And has Leidos performed a preliminary

1 review of the plan that accompanied this curative
2 amendment application?

3 A. Yes, they have.

4 Q. And are their findings set forth in a
5 letter dated July 2, 2019, that's been marked as
6 USTS-4?

7 A. Yes, it does cover a few items of concern.

8 Q. And that's a preliminary review; correct?

9 A. That is correct. It is of the preliminary
10 plan or of the sketch that was presented with the
11 application.

12 Q. And what were the items that were raised
13 in the Leidos letter?

14 A. Concerns about the carbonate geology,
15 surface and subsurface investigations, environmental
16 impacts and the quality of air and the potential
17 impact of this development on the neighboring
18 developments.

19 Q. Would they do a more detailed review as
20 part of a full subdivision and land development plan
21 submission?

22 A. Yes, definitely.

23 Q. Now, were you here at the last hearing
24 when the applicant testified as to certain exhibits
25 concerning the subject property and other properties?

1 A. Yes. Yes, I was.

2 Q. I'm going to review with you a few of

3 those exhibits that were submitted starting with

4 Exhibit A-7.2 showing the subject property and

5 identifying the parcels reflected on that exhibit.

6 Are you familiar with that exhibit?

7 A. Yes, I am.

8 Q. And do you agree with Mr. Engelhardt that

9 the Pitt-Ohio truck terminal is located immediately

10 adjacent to the subject property?

11 A. Yes, that's correct.

12 Q. And does the site plan that was included

13 with the application require the granting of land or

14 an easement by Pitt-Ohio to facilitate the access to

15 309 that is being proposed by the applicant?

16 A. That is correct.

17 Q. Have you seen any documentation to date

18 reflecting Pitt-Ohio's agreement to convey that land

19 or easement?

20 A. I have not.

21 Q. And does Pitt-Ohio propose then, as part

22 of that site plan that was included with the

23 applicant, to reconfigure their entranceway into their

24 property?

25 A. That, I am not sure of. I have not -- I

1 don't remember seeing that.

2 Q. Now, let me refer you to the next set of

3 exhibits which were A-8.1 through A-8.3. Are you

4 familiar with those exhibits?

5 A. Yes, I am.

6 Q. And those exhibits primarily concern

7 properties referred to as the Aldi and Eastern

8 Industries' properties; correct?

9 A. Yes.

10 Q. Is the Aldi property currently being used

11 for a warehouse use?

12 A. Yes, it is.

13 Q. And who uses that?

14 A. Aldi.

15 Q. What type of activities take place on that

16 property?

17 A. Whatever Aldi does. I believe they are

18 only shipping items into and out of their facility

19 that they use.

20 Q. Would you agree with me that it could

21 commonly be referred to as a truck terminal with a

22 single user?

23 A. It could be, yes.

24 Q. Now, the plans that the applicant have

25 shown on these three exhibits reference eight separate

1 parcels; is that correct?
2 A. I believe so, yes.
3 Q. Now, have you performed an investigation
4 as to the development potential of these eight parcels
5 for the truck terminal use if all of the buildings on
6 them were demolished and all eight parcels were
7 combined?
8 A. Yeah. We took --
9 Q. Is that yes?
10 A. Yes.
11 Q. What did your investigation conclude?
12 A. We took a copy of Exhibit A-8.1 which
13 shows the 500-foot separation off of the R3 zones --
14 the zones that are required to have a 500-foot
15 separation from -- just to determine the amount of
16 space available if these lots were consolidated that
17 would fall outside that 500-foot separation.
18 Q. Is that information reflected on a sketch
19 you prepared that we have marked as USTS-5?
20 A. Yes.
21 Q. And does that show, approximately, 50.9
22 acres available for the truck terminal use?
23 A. Yes, that's correct.
24 Q. Now, let me refer you to the next set of
25 exhibits that the applicant submitted marked A-9.1

1 through A-9.3. Are you familiar with those exhibits?
2 A. Yes, I am.
3 Q. And, similarly, did you perform an
4 investigation as to the ability to redevelop the
5 parcels that are referenced in these exhibits for the
6 truck terminal use if those parcels were combined and
7 all of the parcels were eligible for redevelopment?
8 A. Yes, I have.
9 Q. And based upon your investigation, how
10 many acres would be available for development of truck
11 terminal use on those parcels that we're going to
12 commonly refer to as the Lutron parcels?
13 A. Approximately 27 acres would be outside of
14 the area impacted by the 500-foot separation.
15 Q. And is that information reflected on the
16 plan that you prepared we have marked as USTS-6?
17 A. Yes, it does.
18 Q. And I referred to that as the Lutron
19 parcel because the main acreage that is identified
20 there with buildings is owned by Lutron; is that
21 correct?
22 A. That is correct.
23 Q. There are other parcels owned by other
24 property owners, but Lutron made up the bulk of the
25 land area?

1 A. Yes.

2 Q. Now, you heard Mr. Engelhardt's testimony

3 earlier as to their plan to combine the four parcels

4 that comprise the subject property and resubdivide

5 them into two parcels; correct?

6 A. Correct.

7 Q. And could that be referred to, generally,

8 as a reverse subdivision or a lot line change?

9 A. Yes.

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

11 MR. DINKELACKER: Cross-examination

12 by Mr. Preston.

13 MR. PRESTON: Thank you.

14 * * *

15 EXAMINATION BY MR. PRESTON

16 * * *

17 BY MR. PRESTON:

18 Q. Mr. Unangst, good evening.

19 A. Good evening.

20 Q. At one point in your testimony, Attorney

21 Gundlach was asking you about the ordinance

22 provision -- give me a second -- Section 484.E.

23 A. Okay.

24 Q. And the fact that it not only requires

25 that the subject property be located no closer than

1 500 feet from any of those zones identified, but that

2 the subject property can be no -- also be separated by

3 500 feet from any school, daycare. Do you remember

4 that?

5 A. Yes.

6 Q. And you said that the subject property was

7 not within 500 feet of any school, daycare facility,

8 park?

9 A. Yes, to my knowledge, it is not.

10 Q. And the subject property, as you are using

11 it, is the applicant's property; is that correct?

12 A. That is correct.

13 Q. So the subject property in that analysis

14 is the property that was submitted with the

15 application?

16 A. Yes, approximately the 119-acre area.

17 Q. Let's start at the end and work our way

18 back. You were just talking about some of the

19 exhibits that were submitted and -- let me do it this

20 way. How long have you been the township engineer?

21 A. Since 2015.

22 Q. And, I believe, you testified that you are

23 very familiar with the ordinances that govern land use

24 in the township?

25 A. We work with them on pretty much a weekly

1 or, if not, daily basis.

2 Q. That is certainly SALDO and the Zoning

3 Ordinance; is that correct?

4 A. Yes.

5 Q. You are familiar with them as they affect

6 or as they relate to this curative amendment petition?

7 A. I reviewed your curative amendment appeal

8 in reference to the ordinances and, I believe, I'm

9 familiar with them in that manner.

10 Q. In fact, you wrote a memo to the Planning

11 Commission --

12 A. My letter, yes.

13 Q. -- purporting to analyze the curative

14 amendment?

15 A. Yes.

16 Q. And you said that you were at the Planning

17 Commission meeting where they considered the curative

18 amendment?

19 A. I was.

20 Q. And did they have this letter with them?

21 A. Yes, they did.

22 Q. So it is fair to say that their

23 conclusions and opinions were colored by this letter?

24 Is that a fair statement?

25 A. I did -- I went over my letter and my

1 comments to the Planning Commission before they made

2 any decision or any statements at the end of their

3 meeting.

4 Q. So they had this letter and they had your

5 opinions personally delivered to them prior to making

6 their decision, as Mr. Gundlach I think alluded to, to

7 recommend against the curative amendment petition; is

8 that correct?

9 A. They had my letter to make their

10 recommendation, correct.

11 Q. Now, your letter also includes a plan at

12 the back as an exhibit, I believe?

13 A. Correct.

14 Q. Are you the author of that plan?

15 A. Yes. Our office is, but, yes, I was

16 directing the preparation of that plan.

17 Q. You state in your letter that the

18 property -- the subject property does not comport with

19 Section 484.E. of the Zoning Ordinance. Do I have

20 that correct?

21 A. That the plan as presented does not comply

22 with 484.E.

23 Q. Well, the subject property -- I am

24 referring to the same property you were referring to

25 when you were talking about not being in proximity to

1 schools, houses, churches.

2 A. Okay.

3 Q. That property; right?

4 A. Okay. It is impacted by the 500-foot

5 separation.

6 Q. So the subject property is impacted by the

7 500-foot -- you are calling it a separation distance;

8 I am curious about that. The 500 feet -- you are

9 familiar with setback requirements?

10 A. Yes.

11 Q. What is a setback requirement?

12 A. It's a requirement that is depicted in the

13 ordinance for setbacks such as parking lots,

14 buildings, various parts of a proposed development.

15 Q. But setbacks occur on the same property

16 where the development is occurring, do they not?

17 A. Yes.

18 Q. Say, for example, you didn't want this

19 truck terminal use within 500 feet of a residential

20 zone. You could impose a setback requirement that

21 would keep any of the use from encroaching within 500

22 feet of any of those zones, could you not?

23 A. Did you say you could or could not?

24 Q. You could impose a setback requirement of

25 500 feet, couldn't you?

1 A. I believe so.

2 Q. And that would keep any of these buildings

3 or any of these uses from being within 500 feet of any

4 of these zones that are identified?

5 A. I believe you are correct.

6 Q. That's not what this ordinance does; is

7 that correct?

8 A. That is correct.

9 Q. What does this ordinance do?

10 A. First of all, I believe your setbacks go

11 from your property lines. This goes -- this

12 500-foot -- I'll use the term separation -- goes from

13 the zoning line. So it is not -- it is not from

14 the -- you could have a property line or a property in

15 between your applicant's property and the R3 district,

16 but, yet, the 500 foot is from the R3. It is not from

17 your property line or -- if you understand, it is a

18 span -- it could even span a neighboring tract and

19 still impact your property or your applicant's

20 property.

21 Q. So if I wanted to develop a truck terminal

22 use, the property on which I want to develop the use

23 could not be within 500 feet of any of these zones; is

24 that correct?

25 A. That is what it states, yes.

1 Q. And that does not matter -- it doesn't
2 matter how big the property is -- the subject
3 property; is that correct?

4 A. That is correct.

5 Q. So you could literally site a truck
6 terminal a mile away from any of these affected areas,
7 any of these zones, but if any point of the subject
8 property was within 500 feet, you wouldn't be allowed
9 to do that; is that correct?

10 A. The ordinance -- that section does state,
11 the subject property.

12 Q. So is that a yes?

13 A. That is correct.

14 Q. Now, in your letter you identified, I
15 believe correctly, that the plan that is submitted
16 along with the curative amendment petition is not
17 required to meet the standards described for a
18 preliminary, tentative or final approval so long as it
19 provides reasonable notice of the proposed use for
20 development and sufficient basis for evaluating the
21 challenged ordinance. Did I read that properly?

22 A. That's correct.

23 Q. Then you go on to say that there are
24 certain things missing. It says that the submitted
25 documentation does not provide adequate supporting

1 information to determine if the plan is in compliance
2 with the requirements in the Zoning Ordinance dealing
3 with landscaping, screening, buffering, internal
4 circulation, and non-site lighting. That information
5 is not required to be submitted with this type of
6 plan, is it?

7 A. By the letter of the ordinance, you are
8 correct. In my first statement, the previous one,
9 through the MPC, we already read out of there, that
10 you don't need the preliminary and final details. I
11 feel that it is important to have that type of item --
12 those items as you just mentioned at least addressed
13 because of their impact on the adjoining properties.

14 Q. Understood.

15 But you also say that this plan was
16 not reviewed for compliance with preliminary or final
17 plan requirements?

18 A. That is correct.

19 Q. And it would need to be?

20 A. That's correct.

21 Q. In No. 2, on Page 2, you state that the
22 site layout appears to comply with lot coverage,
23 parking, and typical yard setback requirements of the
24 Upper Saucon Township Zoning Ordinance. Take a look
25 at that. Tell me if I have that right.

1 A. That is correct.

2 Q. Now, you were asked about a letter from
3 the Lehigh Valley Planning Commission dated June 6th.
4 I believe you are going to enter that as an exhibit?

5 A. Yes.

6 Q. Do you want to get that in front of you
7 there?

8 A. Yes.

9 Q. That letter -- I believe it is Page 2 of
10 the letter, even though the pages aren't numbered.
11 The first word at the top of the page is, furthermore.

12 A. Correct.

13 Q. So if I go down one, two, three, four,
14 five, to the fifth paragraph, do you see where it
15 begins with, it appears?

16 A. I do.

17 Q. So the Lehigh Valley Planning Commission
18 is saying that it appears that a land development plan
19 for warehousing would be viable were the extent of the
20 development reduced to comply with Sections 230.E and
21 230.F.

22 A. Okay.

23 Q. Do you see that?

24 A. Okay.

25 Q. But didn't you just say in your review

1 letter that we do comply with those sections? Aren't
2 those the lot coverage, parking, yard setback
3 requirements of Upper Saucon Township?

4 A. As far as those coverages, I state in my
5 letter, the applicant did provide a table on the plan
6 which included parking calculations, impervious
7 coverage calculations, noted setbacks and such and the
8 information as they provided did comply with the
9 sections of the ordinance I reviewed.

10 Q. So the Lehigh Valley Planning Commission's
11 letter is not correct; is that right?

12 A. I did not write that letter, so.

13 Q. Understood.

14 The Lehigh Valley Planning
15 Commission letter, I believe it is on Page 1, under
16 land use -- do you see that?

17 A. Okay.

18 Q. The heading is titled, land use. It's the
19 last paragraph. It says, that the particular area in
20 question is not a good location for such facilities.
21 It says that the properties lie between two existing
22 moderately dense residential areas and a recreational
23 golf course that represent incompatible uses.

24 Is that a correct statement?

25 A. Again, I didn't write the letter. It's

1 not my --

2 Q. I know you didn't.

3 A. It's not my opinion whether it is

4 compatible or not.

5 Q. But it is not correct? There is no golf

6 course there anymore; is there?

7 A. To my knowledge -- the property is still

8 there, but to my knowledge -- it is no longer an

9 active golf course as of today. Whether they could

10 open it up tomorrow, I am not sure.

11 Q. It is pretty overgrown, isn't it?

12 A. It is. They are farming most of the

13 fairway.

14 Q. There are things in the Lehigh Valley

15 Planning Commission letter that are just not accurate;

16 is that a fair statement?

17 A. Yes.

18 Q. Now, when you did your memo and you drew

19 your plan, I believe that what you did was you

20 subdivided the property; isn't that right?

21 A. The plan attached to my letter?

22 Q. Yes.

23 A. I, more or less, combined the parcels of

24 the property.

25 Q. Well, how were you able to get past the

1 500-foot isolation distance, i.e. the truck terminal

2 cannot be on any property that is within 500 feet of

3 any of those affected zones? How did you get past

4 that?

5 A. You are correct. The concept was a

6 proposed subdivision, consolidate the lots and then

7 resubdivide.

8 Q. So your solution then is to create new

9 parcels?

10 A. Yes.

11 Q. Parcels that don't exist today, as we sit

12 here this evening?

13 A. Correct.

14 Q. And that are not part of the subject

15 property, is that correct, the same subject property

16 that you identified as not being near --

17 A. They are not existing parcels as of today.

18 Q. So in order to put a truck terminal at the

19 subject property, the owner has one of two choices --

20 so just stay with me -- either they commit to a

21 development plan that subdivides the property and

22 establishes a mix of uses as opposed to simply a truck

23 terminal use -- is that one of the options they have?

24 A. Yes.

25 Q. Or they can encircle the truck terminal

1 use with a line of newly created buffering lots and
2 surrender the use of those lots; is that another
3 option they have?

4 A. If that's what they would want to do.

5 Q. Do they have any other options?

6 A. This is just one option for a potential
7 use of this property. Your engineer may be able to
8 come up with other uses.

9 Q. But one thing is for certain, the property
10 as it sits today, the subject property, cannot be used
11 for a truck terminal use absent a subdivision?

12 A. Absent the subdivision?

13 Q. Yes, without a subdivision.

14 A. Based off of 484.E., the property must be
15 more than 500-foot separation.

16 Q. Now, under your proposal, the land has to
17 be subdivided, the subject property, to create new
18 lots and then the truck terminal can be placed on
19 the -- only on the innermost lot surrounded by newly
20 created buffering lots?

21 A. A larger truck terminal could be on the
22 50-acre internal loop. The five-acre parcel to the
23 south could also be used for trucking or a truck
24 terminal and the ten acres to the northeast can be
25 also used for a trucking --

1 Q. And then any of the setback or buffering
2 requirements that the ordinance requires for the
3 trucking terminal use would then be applied to the
4 boundary of that innermost lot; is that correct?

5 A. That is correct.

6 Q. So they would be reduced further?

7 A. To the extent that the existing -- the
8 presented plan had the buffering on that was presented
9 by your engineer, those same setbacks would apply to
10 these lots.

11 Q. Now, the plan that you provided -- I will
12 get to that in a second.

13 There is one other thing I'm curious
14 about. You said you were familiar with the
15 ordinances. Given your familiarity with the
16 ordinances, it says here, in 484.E., let's assume --
17 again, this is just for the sake of argument. Let's
18 assume that you are correct and you can do what it is
19 that you are identifying in your exhibit to your
20 letter to get past 484.E.

21 A. Okay.

22 Q. I still have to comply with the balance of
23 Section 484 in order to institute my truck or motor
24 freight terminal; isn't that correct?

25 A. Correct.

1 Q. 484.C -- I'm sorry, 484.D -- take a look
2 at that. I'll give you a chance to -- do you have
3 that in front of you?

4 A. 300 feet of contiguous road frontage.

5 Q. Yes. It says that the subject property
6 shall have a minimum of 300 feet of contiguous road
7 frontage along and vehicular access onto an arterial
8 and/or collector road as listed in Section 320 of this
9 ordinance. Are you familiar with that section?

10 A. Yes.

11 Q. The subject property, that is, the
12 property that we have submitted in our curative
13 amendment, that property does have the necessary
14 frontage along the required roadway; isn't that
15 correct?

16 A. Yes, 309.

17 Q. 309.

18 Now, on the other side of 309 is an
19 R3 zoning district; isn't that correct?

20 A. Correct.

21 Q. And so you have now imposed an intervening
22 subdivided row of properties, right, that separates
23 your truck terminal property from 309; isn't that
24 correct?

25 A. On my sketch?

1 Q. Yes.

2 A. Correct.

3 Q. So that property no longer has the
4 frontage along 309, does it not?

5 A. That is correct.

6 Q. But if you are going to have a truck
7 terminal use, you need to have vehicular access onto
8 an arterial or collector road and 300 feet of
9 contiguous road frontage on an arterial or collector
10 road as listed in Section 320; isn't that correct?

11 A. Yes.

12 Q. Have you looked at Section 320?

13 A. I have, but I will again.

14 MR. GUNDLACH: What page are you
15 referring to?

16 MR. PRESTON: It is 163, I believe,
17 in the Zoning Ordinance.

18 THE WITNESS: Okay.

19 BY MR. PRESTON:

20 Q. Do you have that in front of you?

21 A. I do.

22 Q. Section 320, road classifications, scenic
23 roads and front yard setbacks; is that the heading of
24 that section?

25 A. Yes.

1 Q. Now, it has a chart there; do you see
2 that?

3 A. I do.

4 Q. It says, roadway classifications and
5 required future right-of-way widths. Are you familiar
6 with that?

7 A. Yes.

8 Q. I assume you are since you are familiar
9 with the ordinances.

10 Do you see where it identifies the
11 arterials?

12 A. Correct.

13 Q. And it has Route 309?

14 A. Yes.

15 Q. That's the arterial that our property has
16 frontage on; isn't that correct?

17 A. Yes.

18 Q. Which of the roads in the arterial or
19 collector column are you relying on for your frontage
20 on your plan?

21 A. You would be constructing or a new
22 collector would be constructed.

23 Q. That's not what this says, though. This
24 says, roadway classifications and required future
25 right-of-way widths, and they are identified in here

1 as arterials, collectors, scenic roads, local. And
2 what this says -- and I am not trying to argue with
3 you. I just want to make sure you understand the
4 question. 484 says, onto an arterial or collector
5 road as listed in Section 320 of this ordinance.

6 So your property that you want to
7 put your trucking terminal on must have an arterial or
8 collector road as listed in Section 320 of this
9 ordinance. So which of the roads, listed in Section
10 320 of this ordinance, is your truck terminal on?

11 A. As I stated, you would have to build a new
12 collector road. And as in the chart, under 320.A.,
13 roadway classifications and required future
14 right-of-way widths to create one of those roads. So
15 you can create a new road, being a collector road,
16 just like Center Valley Parkway was built a few years
17 ago.

18 Q. So you could amend this?

19 A. You could amend this, yes.

20 Q. Right, I see.

21 But that's not what it reads now?

22 A. I take it, that it is what it reads
23 because this chart deals with future right-of-ways
24 also.

25 Q. I don't see -- where do you see the future

1 right-of-way listed?

2 A. Right across the top of the chart:
3 Roadway classification and required future
4 right-of-way widths.

5 Q. Right. And where, on the chart, is the
6 one for your particular truck terminal use?

7 A. It is not on this chart, other than it
8 deals with future right-of-ways, which then could be
9 put on this chart.

10 Q. Now, the plan that you submitted with your
11 letter, that plan does not include site lighting,
12 landscaping and so forth, does it?

13 A. Not at all, no. It does not provide any
14 details of development or driveways or anything to
15 that effect.

16 Q. And it doesn't need to, to give reasonable
17 notice of a sketch plan of what can be developed
18 there; is that correct?

19 A. Well, this is more of a parcel layout
20 plan, not a development plan of the individual
21 parcels.

22 Q. Now, at one point Attorney Gundlach was
23 talking to you about the Aldi property.

24 A. Yes.

25 Q. And in talking about that use, he asked

1 you whether that is commonly referred to as a truck
2 terminal with a single user and, I believe, you
3 agreed? You know where I am going. Is that a truck
4 terminal?

5 A. There has been a number of -- as also in
6 your -- or the application, it uses
7 cross-referencing -- it uses both truck terminal and
8 warehouse. By definition warehouse more is a single
9 user trucking facility. A truck terminal is more of a
10 facility that brings in material from various -- I am
11 not quoting the ordinance here, but various users to
12 put back on trucks and ship elsewhere.

13 Q. Well, let's do this. Let's quote from the
14 ordinance because I want to be clear here that I don't
15 believe Aldi's is a truck terminal with a single user,
16 at least to the extent that we are trying to create a
17 legal record here. Let's take a look at a truck or
18 motor freight terminal. Now, we introduced this in
19 our exhibit package as A-4. Do you have access to our
20 exhibits?

21 A. I do not.

22 Q. Do you have the Zoning Ordinance?

23 A. I do.

24 Q. Let's do it that way.

25 A. Under definition?

1 Q. Yes, just under definition.

2 MR. PRESTON: Can we approach the
3 witness?

4 MR. DINKELACKER: Sure, by all
5 means.

6 BY MR. PRESTON:

7 Q. Mr. Unangst, we'll just give you -- that's
8 the exhibit that we introduced, to save some time.

9 Mr. Gundlach, that is our Exhibit A-4.

10 MR. ENGELHARDT: I gave you A-5.

11 MR. PRESTON: We gave you the wrong
12 page.

13 PUBLIC: Excuse me. Is there a way
14 to get anything up on the screen so people can see
15 what is being referred to? I know that was happening
16 the last time. Is there any way to do that this time?

17 MR. DINKELACKER: I don't have that
18 ability. I don't know, Joe or Tom, do we have the
19 ability to put exhibits up on the screen?

20 PUBLIC: Thank you.

21 MR. DINKELACKER: Let's just take a
22 brief recess for just about five minutes. We are at
23 recess for five minutes until 9:05.

24 (Whereupon, a break was taken.)

25 MR. DINKELACKER: We're going to

1 resume, ladies and gentlemen.

2 But this is a good breaking spot for
3 Mr. Preston with his cross-examination of Mr. Unangst,
4 and I neglected to allow public comment at the close
5 of Mr. Engelhardt's testimony. So what I am going to
6 do, at this point in time, if anybody would like to
7 come up and make a comment. And if you remember, at
8 the hearing the other night, we discussed that public
9 comment is not questioning the witnesses. It is a
10 comment to the supervisors regarding the plan and
11 regarding the issues and in particular with respect to
12 the testimony of Mr. Engelhardt.

13 So let me take a moment then and
14 ask, is there anyone who would like to come up and
15 comment? I would just ask for name and address.

16 Yes, sir, come on up to the podium.

17 MR. GUNDLACH: Mr. Dinkelacker, can
18 I make a comment and just a confirmation that there
19 will be public comment on any subject at the end of
20 the presentation of the witnesses; correct?

21 MR. DINKELACKER: At the end of the
22 presentation of the witnesses, before we close the
23 record finally, we will allow another opportunity for
24 public comment. And just so the people -- and the
25 reason for doing it at the end of each witness is, if

1 there is something that is fresh in your mind and you
2 would like to come up and comment.

3 There will be at least one more
4 hearing, likely two, but at least one. So if you are
5 not ready tonight, that's okay. You will still have
6 an opportunity.

7 Okay. Sir, thank you.

8 PUBLIC: Before I decide whether to
9 speak, I think my comments go beyond this witness's
10 and attorney's testimony. I can share them now. I
11 want to be able to share them. Shall I do it now?

12 MR. DINKELACKER: Sir, I think, if
13 you are going to have a broader comment, that might be
14 better at the end of the hearing. If you only have
15 something with respect to Mr. Engelhardt's testimony
16 tonight, why don't we keep it to that. But you'll get
17 another chance if you want to.

18 PUBLIC: I want to be sure I do.

19 MR. DINKELACKER: You will. And if
20 I don't, remind me.

21 PUBLIC: I will certainly do that.

22 MR. DINKELACKER: People have yelled
23 at me before, as many people in the audience know.

24 PUBLIC: Okay, thank you.

25 MR. DINKELACKER: Okay. Thank you,

1 sir.

2 Is there anyone else who wishes to
3 comment right now with respect to Mr. Engelhardt? And
4 you won't be precluded from commenting later.

5 (No response.)

6 MR. DINKELACKER: Okay. It looks
7 like there is no one else who wants to comment at this
8 point.

9 So Jim, we'll continue on with your
10 cross-examination of Mr. Unangst.

11 MR. PRESTON: Thank you.

12 BY MR. PRESTON:

13 Q. Mr. Unangst, I want to move now to some of
14 the exhibits that -- some of the applicant's
15 exhibits -- petitioner exhibits that you had commented
16 on and I want to start with Exhibit A-8.1, which I
17 believe includes the Aldi property.

18 MR. GUNDLACH: Jim, do you want to
19 go back to the definition? You had stopped just
20 before that.

21 MR. PRESTON: Oh, okay. Yes, we can
22 go back to that. Thank you, Attorney Gundlach, for
23 pointing that out.

24 MR. GUNDLACH: Sure.

25

1 BY MR. PRESTON:

2 Q. Actually, yes, where we left off was with
3 the definition of a truck or motor freight terminal
4 and definition of a warehouse and wholesale trade
5 establishments. So you were asked if the Aldi's was
6 actually a truck terminal with a single user, and you
7 said it could be characterized as that?

8 A. That is correct.

9 Q. But, actually, the ordinance is very
10 particular in its definitions, is it not?

11 A. It is to the point of -- well, let me --
12 I'll read out of the definitions of truck or motor
13 freight terminal. A principle use contained on a
14 single property, which Aldi's is, to which materials
15 and products are imported for their redistribution and
16 exported by commercial trucks or other modes of
17 transportation.

18 I guess, the best way of saying it,
19 I am not 100 percent sure exactly what Aldi's does.
20 So whether it is a truck terminal or a warehouse, I
21 can't -- I am not 100 percent sure of that.

22 Q. Well, let's take a look at the definition
23 of a warehouse. I believe that a defining
24 characteristic is that a warehouse is, more or less,
25 identical to a truck or motor freight terminal except

1 that warehouses are single user operations.

2 A. It does state where a single -- where
3 materials of a single company or organization are
4 stored awaiting further process.

5 Q. So it is a single company, it's a single
6 user?

7 A. That's what it says.

8 Q. Right.

9 So if it had goods from multiple
10 users coming in and being distributed to various
11 users, it wouldn't be a warehouse, by the definition?

12 A. For multiple users being distributed to
13 multiple -- can you state that again?

14 Q. If there were multiple users in a
15 warehouse. So if there was the product from multiple
16 manufacturers coming into the warehouse to be stored
17 and then distributed to different end users, they may
18 be -- it may be Weis Markets, it may be Dollar
19 General, it may be Best Buy. If they are going out to
20 different users, that's not a warehouse; isn't that
21 correct?

22 A. In my opinion, it is not, but I am not the
23 Zoning Officer also, so.

24 Q. So your use of the terminology is, what,
25 not important? What are you saying?

1 A. No. I am just saying that's my -- in my
2 opinion, multiple users coming in, multiple users
3 going out is not a warehouse.

4 Q. And the use that is being proposed in the
5 curative amendment is the truck terminal use -- truck
6 or motor freight terminal; is that correct?

7 A. That is my understanding, yes.

8 Q. And that is simply a warehouse or can be a
9 warehouse where the goods are coming in from multiple
10 sources and going back out to multiple end users?

11 A. That's my understanding, yes.

12 Q. Now, I want to take a look at -- let's
13 take a look at applicant's exhibit or petitioner's
14 Exhibit A-8.1.

15 A. 8.1.

16 Q. 8.1, which is the Aldi's property. I
17 believe you had that in your packet.

18 Now, you testified that the
19 properties in that zoning district could be
20 reconfigured to accommodate a truck terminal use; is
21 that correct?

22 A. Yes. What we did was to look at the area
23 that was outside of the 500-foot separation to
24 determine that acreage, that if the lots were
25 combined, what size acreage that would allow and

1 whether it could be used for a trucking facility.

2 Q. And so you would have to acquire the
3 property that is owned by PPL, 1.6 acres, is that
4 correct?

5 A. We would have to acquire the parcels
6 that -- at least 1B, 2B, 3B and 4B.

7 Q. And that is the property that is owned by
8 PPL, 1.6 acres?

9 A. Yes.

10 Q. If you look at Exhibit A-8.3, they are
11 listed there.

12 A. Pennsylvania Power & Light, 1B, that area
13 to make up the 50 acres, yes. It would not -- 1B
14 being owned by PPL -- 1.6 acres. If you would not
15 purchase that one, it would be roughly 48 acres.

16 Q. So according to your solution that you
17 have drawn out here, in order to pull that off, you
18 would need to acquire the 1.6 acres owned by PPL,
19 according to your drawing?

20 A. Correct.

21 Q. And the 1.04 acres owned by Upper Saucon
22 Township?

23 A. Correct.

24 Q. And also 40.3 acres that is owned by
25 LUP15, LLC; is that correct?

1 A. That is correct.

2 Q. And 65.90 acres that is owned by Aldi,

3 Inc.; is that correct?

4 A. Correct.

5 Q. Then you would have to combine all of

6 those?

7 A. Correct.

8 Q. And remove the buildings?

9 A. Correct.

10 Q. And assuming you could accomplish that and

11 did accomplish that, where would the collector or

12 arterial frontage occur?

13 A. I believe along Camp Meeting Road.

14 Q. And you would have to tear down the

15 buildings; right?

16 A. Documents were prepared to determine -- to

17 see possibly what acreage could be combined -- what

18 parcels could be combined and how much land could be

19 available for a trucking --

20 Q. In theory?

21 A. In theory.

22 Q. Not necessarily with an eye towards the

23 practical?

24 A. It depends on pricing and businesses.

25 Q. Well, in your exhibits, you have a

1 building there. I believe that's the Aldi's building,

2 is it not?

3 A. That's correct.

4 Q. And you show some parking facilities, does

5 it not?

6 A. Yes.

7 Q. And those all encroach within your red --

8 what did you call that, separation?

9 A. Yes.

10 Q. They are all in there, aren't they? They

11 encroach within that?

12 A. Currently, yes.

13 Q. They currently do.

14 So they currently do not comply with

15 the section that's at issue; is that correct?

16 A. Yes, they do not comply with the 500-foot

17 separation.

18 Q. Now, the next property you looked at --

19 and this would be in Applicant's A-9.1. If you would,

20 just go ahead a few. I believe you referred to it as

21 the Lutron property.

22 I guess, just for the edification of

23 the audience, we had done this once before, but they

24 really couldn't see this. That blue section that's on

25 the exhibit, that is the I zone, is it not?

1 A. Yes, that's correct.

2 Q. And each of those black numbers identifies

3 a separate parcel within the I zone; is that correct?

4 A. That is correct.

5 Q. And the dotted line, the purple dotted

6 line, that's this 500-foot requirement that the

7 ordinance imposes, is it not?

8 A. That is correct.

9 Q. So any of the properties that are

10 contaminated by or, I guess, touching or within

11 that -- that are encumbered by that purple line cannot

12 be used for a truck terminal use; is that correct?

13 A. That is correct.

14 Q. And as it sits there today, there are no

15 properties in that zone, that particular blue area,

16 that are not encumbered by that line; is that correct?

17 A. That is correct.

18 Q. So your solution is to do, what, to

19 acquire certain of those properties?

20 A. The same as with the last sketch is, if

21 certain properties were acquired and combined, they

22 could be -- there would be a 27-acre -- in the ideal

23 world or however the term you gave before -- a 27-acre

24 parcel in the industrial zone that could be -- that is

25 outside the 500-foot separation.

1 Q. And which properties would need to be

2 acquired? You have a table there.

3 A. How about if I just point to them. So you

4 would need the property 13C.

5 Q. 13C -- hold on a minute. That's a

6 property that is 53.18 acres owned by Ralph B. Army.

7 Okay. What else?

8 A. 10C.

9 Q. 10C, 12.62 acres, Spira Millennium II is

10 the owner.

11 What else?

12 A. 6C.

13 Q. 6C, 2.51 acres owned by the LCIDA.

14 A. 3C.

15 Q. 3C, which is 3.6 acres owned by Jacoby

16 Kermit.

17 A. And 12C.

18 Q. 12C, which is 12.62 acres and, again, that

19 is Spira Millennium II.

20 So you would have to acquire all of

21 those properties?

22 A. If you would purchase the property, the

23 27.2 acres as shown on my sketch.

24 Q. And then merge them?

25 A. Correct.

1 Q. And remove any buildings?

2 A. Correct.

3 Q. And where would the collector arterial

4 road be on that?

5 A. The collector arterial would have to go

6 across a commercial lot to the northwest, which is lot

7 13C as depicted, out to Route 309.

8 Q. But the lot that you are proposing doesn't

9 have frontage on 309?

10 A. They would have to buy 13C.

11 Q. In order to acquire frontage on 309?

12 A. Or extend an arterial style -- or not an

13 arterial -- a collector style dimensional road into

14 the property.

15 Q. Assuming that you're correct and the

16 ordinance doesn't require that it be in that list.

17 A. Correct.

18 Q. But there is no frontage at all on that

19 lot, is there, the lot that you are talking about?

20 A. It is minor roads in the neighborhood.

21 Q. It is, what?

22 A. There's minor roads, I believe, in --

23 throughout the -- I believe there is a road coming

24 down along this -- between 2C and 3C, I believe, there

25 is a road in there currently. It's not a connector

1 style or -- a standard road.

2 Q. Mr. Unangst, with respect to your proposed

3 development plan, the one that was attached as an

4 exhibit to your letter, the parcel layout plan, I

5 believe you called it?

6 A. Yes.

7 Q. You testified that you could get one to

8 1.1 million square feet of warehouse on that?

9 A. Yes.

10 Q. How do you propose to do that? How does

11 that happen? How does that get laid out?

12 A. I'll start by, while he's looking that

13 up, we have also -- as an engineering company, we have

14 worked on a number of warehouse and distribution

15 centers in Eastern Pennsylvania and using some of

16 those as square footage versus acreage as a comparison

17 with parking and loading docks, we have used that as a

18 comparison to come up with what we feel is a

19 legitimate layout for this type of facility.

20 Q. Mr. Unangst, I am familiar with your firm

21 and I am familiar with you and I know that you guys do

22 a lot of work with warehouses. I am not questioning

23 that.

24 My question is, with respect to this

25 particular site because there seems to be some unique

1 features here in terms of roadway. I am looking at
2 parcel five, this five-acre piece over here. I don't
3 see how you do it. So I'm just asking you with
4 respect to this, not just the general acreage.

5 A. I was just starting off while he was
6 pulling up the plan.

7 If he does not pull up the plan, on
8 the 50-acre site in the middle, we laid out a sketch
9 of about 900,000 square feet on the 50 acres and then
10 on the 10-acre site 130,000 square feet and about
11 70,000 square feet on the five-acre site.

12 Q. And you actually did a proposed layout for
13 those buildings?

14 A. Yes, and maintaining setbacks as required
15 for the driveways, put in a number of truck docks
16 assumed off of square footage of the building and
17 parking for the office people.

18 Q. You don't have that plan, do you, that you
19 drew -- the warehouse plan?

20 A. No.

21 Q. I know that you had told Attorney Gundlach
22 that you routinely review the curative amendments that
23 are filed in the township.

24 A. The term routinely is -- how often do they
25 come into the township. I have been involved with

1 three of them in the last ten years. That's it.

2 MR. PRESTON: I have no further
3 questions.

4 MR. DINKELACKER: We're going to go
5 to the board. Does the board have any questions for
6 Mr. Unangst?

7 MR. FARRELL: Yes, I do.

8 Charlie, on your sketch plan of your
9 parcels, would Pitt-Ohio or Aldi's fit there? Could
10 they theoretically have the same type of facility on
11 your sketch plan, your access and buffer sketch, the
12 one we have just been looking at? Just
13 hypothetically, if you were able to lift it, would
14 they be able to function on your sketch plan the way
15 it is laid out?

16 THE WITNESS: Well, on the sketch
17 plan you can see the size of Pitt-Ohio now. So you
18 can see the size that, that would be compared to the
19 size parcels that we have on our site. So, yes, then
20 Aldi's -- I am trying to think of how large the Aldi's
21 site is. Aldi's site is 65 acres, according to
22 Exhibit A-8.3, so -- you know, depending on -- the
23 Aldi's site has, I'll call it, some odder dimensions
24 and points and such. So depending on the
25 configuration and the configuration of the middle

1 50-acre site. I would say, yes, but I haven't done a
2 sketch on it.

3 MR. FARRELL: Thank you.

4 MR. DINKELACKER: Any other
5 questions by the board?

6 MR. WAGNER: I have one question.
7 Mr. Unangst, can you explain or explore the importance
8 of a traffic light on Route 309 for this property?
9 There is none now, which I think everyone is well
10 aware of.

11 THE WITNESS: The traffic light --
12 it's our understanding, through previous meetings with
13 PennDOT on this development and just within other
14 developments in the area -- and I don't know exactly
15 what you are asking, but they would require a traffic
16 light at this location, to my knowledge, with any
17 future development of this parcel. But then what that
18 would also do is -- it's my understanding that PennDOT
19 would want to make other or have other adjustments
20 made to the 309 corridor to block some of the left
21 turn lanes or the median breaks. So I don't --
22 without having a more detailed plan in front of me, I
23 would rather not get into -- I don't know exactly
24 where all of that is happening.

25 What question are you asking?

1 MR. WAGNER: That's all I'm asking.
2 Thank you.

3 MR. DINKELACKER: Any other
4 questions by board members?

5 (No response.)

6 MR. DINKELACKER: There appear to be
7 none.

8 Mr. or Mrs. D'Amico, do either of
9 you have questions for Mr. Unangst? I'm going to ask
10 that just one of you ask on behalf of --

11 MR. D'AMICO: Yes, understood.

12 * * *

13 EXAMINATION BY MR. D'AMICO

14 * * *

15 MR. D'AMICO: Mr. Unangst, thank
16 you. And I hope counsel will bear with me. I am not
17 an attorney.

18 Mr. Unangst, just to clarify, you
19 were asked by counsel if the 50-foot setback could
20 supply for a warehouse that's a mile away from an
21 adjacent property. So in other words, with a
22 warehouse, were it put on a property that were
23 adjacent to a residential property, it could arguably
24 be a mile away from any residential structure;
25 correct?

1 THE WITNESS: Yes. One second --
2 the section of the ordinance states that the subject
3 property -- no, wrong one -- yes, the subject property
4 shall be located no closer than 500 feet from the
5 district.

6 MR. D'AMICO: Understood.

7 So counsel's statement then would be
8 true, arguably, a warehouse could be literally a mile
9 from a residential property?

10 THE WITNESS: Correct.

11 MR. D'AMICO: Of a residential
12 structure, but not necessarily a property.

13 So with regard to the property in
14 question though, the removal of 500-foot -- forgive
15 me -- I'm going to use setback. I don't know if
16 that's the correct terminology -- removing that
17 setback, though, would not be a mile from current
18 residential structures.

19 How close to residential structures
20 would the warehouse be?

21 THE WITNESS: That would depend on
22 the developer and what they would want to --

23 MR. D'AMICO: Based on the plan
24 that's been submitted, and understanding the
25 residential properties on East Valley, just an

1 estimate, how close would that warehouse building be
2 to existing residential structures, not residential
3 properties, residential homes, the structures
4 themselves?

5 THE WITNESS: One second. It is
6 approximately -- off of East Valley Road, there is
7 approximately a 75-foot buffer shown and then a
8 30-foot driveway, so 105 to 110 foot off of the
9 property line.

10 MR. D'AMICO: Off the property
11 line -- front of the property line or the rear of the
12 property line closest to the warehouse?

13 THE WITNESS: From the closest
14 corner of the warehouse to the property line along
15 East Valley Road.

16 MR. D'AMICO: Would be about 100
17 feet, you are saying?

18 THE WITNESS: Yes.

19 MR. D'AMICO: So, again, just to
20 clarify, we're not talking the distance of a mile. I
21 appreciate counsel pointing that out.

22 The next question is the zoning
23 requirement of 500 feet and you responded to the
24 question regarding the reason for the 500-foot setback
25 was, in your words, more or less, to protect

1 residential properties from noise and those sorts of
2 things.

3 THE WITNESS: Correct.

4 MR. D'AMICO: Do you believe in the
5 plan that's been submitted that it is adequately
6 addressed, a reason why that protection for residents
7 in the township should be ignored or rescinded for the
8 purposes of putting a warehouse on the property? In
9 other words, if the ordinance is there to protect
10 residents from infringement on their property from
11 noise, lights and traffic, do you see any plan that --
12 or is it a reasonable expectation for residents of the
13 community that are living adjacent to that property,
14 that, that should be eliminated?

15 THE WITNESS: It is my opinion that
16 the property can be developed in accordance with the
17 ordinance.

18 MR. D'AMICO: With the 500 feet
19 being maintained?

20 THE WITNESS: Correct.

21 MR. D'AMICO: Thank you.

22 Just in your experience, obviously,
23 you have done a lot of work, what do you typically see
24 as the buffer today -- I understand that we have
25 circumstances from the past -- the buffer today

1 between warehousing properties and existing
2 residential communities in your work that you are
3 doing?

4 THE WITNESS: That truly does differ
5 by municipality and zoning district.

6 MR. D'AMICO: Okay, thank you.

7 And then, lastly, I know there was a
8 lot of talk about the Aldi property as well as the
9 Lutron property. And as somebody listening here, I
10 think that takes away from what was addressed at the
11 end, which is that the plan you submitted suggests 1.1
12 million square feet could fit within that while
13 maintaining the setbacks; is that correct?

14 THE WITNESS: That's our opinion,
15 yes.

16 MR. D'AMICO: And, I guess, the only
17 thing that brings into question, which I am not sure
18 what your policy is, why the setback should be removed
19 for the purpose of fitting a million and a half square
20 feet versus 1.1 million? I don't think that's a
21 question I can pose to you to answer, but I just want
22 to restate that 1.1 million can fit in the property
23 with the setbacks maintained. Thank you.

24 MR. DINKELACKER: Mr. Tiemann, do
25 you have any questions?

* * *

EXAMINATION BY MR. TIEMANN

* * *

MR. TIEMANN: Mr. Unangst, Exhibit A-3, the applicant in their proposal shows a 75-foot buffer zone adjacent to East Valley Road.

THE WITNESS: Correct.

MR. TIEMANN: Across the street to East Valley Road, there is a significant dense development of \$500,000 homes, half-million dollar homes. The 75 feet, in your opinion, is that adequate to prevent the kind of noise, poor aesthetics, light pollution that could or would cause diminished resale value to those properties?

THE WITNESS: I can't talk to that. I reviewed the ordinance to determine compliance with the ordinance of this proposed development, and that's what I -- those were my comments.

MR. TIEMANN: And in your opinion, a reasonable buffer between residential and what is being proposed to prevent some of those, what would that look like?

THE WITNESS: That, again, it depends on your municipality and your location and the actual development that is going in. And this drawing

is at the point of the use that's going in, but the amount of detail that if the project would move forward would have to deal with the items like buffering, landscaping, lighting and all of the other impacts that -- all of the other items that could or would have impacts, positive or negative, on the surrounding properties.

MR. TIEMANN: And the proposal plan that you have set forth today is only one solution; is that correct?

THE WITNESS: It's a possible solution, yes.

MR. TIEMANN: So the applicant could use this or generate their own proposal -- new proposal that would comply with the zoning code?

THE WITNESS: That's my opinion, yes.

MR. TIEMANN: Thank you.

MR. DINKELACKER: I see it is 20 to ten and we're scheduled to be out of here by 9:45. Normally, Rob, we would do redirect.

MR. GUNDLACH: I have no redirect. I would like to finish this witness tonight if we can. I don't think there is anything left.

MR. DINKELACKER: So there is no

1 redirect.

2 Jim, do you have any questions any
3 recross based on the comments?

4 MR. PRESTON: Yes, I do based on the
5 questions that were just asked because I think there
6 may be a misunderstanding as to what the defect is
7 that we are claiming.

8 * * *

9 RE-EXAMINATION BY MR. PRESTON

10 * * *

11 BY MR. PRESTON:

12 Q. Mr. Unangst, now, absent your plan to
13 combine, subdivide and create new parcels and on some
14 of these areas to tear down existing buildings and
15 collect properties from various owners and merging
16 them together and tearing down buildings and all of
17 the solutions that you came up with, the question I
18 have for you is a simple one. Assuming that -- or
19 assume for me that the properties in the township
20 remain as they are, as we sit here today, that all of
21 the existing tax map parcels, all of the lots are as
22 they are today without your resubdividing and
23 recombining. Are there any places in the township
24 where one can locate one of these truck
25 terminals/warehouses?

1 A. On the existing parcels as they sit here
2 today?

3 Q. As they exist today.

4 A. Along collector roads --

5 Q. Anywhere in the township. Is there any
6 existing land in the township configured as it is
7 today in its current configuration?

8 A. To my knowledge, no.

9 Q. There is nowhere you can put it in the
10 township today without having to do the things that
11 you are talking about?

12 A. Zoned industrial land with --

13 Q. Well, it is required to be zoned
14 industrial, is it not?

15 A. I am just stating, yes. You are correct,
16 to my knowledge, there are no parcels in the township
17 without adjusting lot lines and/or building roads,
18 there are none, yes.

19 Q. Are there any facilities in the
20 township -- truck terminals, these truck/warehouse
21 terminals today that exist here today that comply with
22 that section, Section 484?

23 A. The only truck terminal, based off of our
24 previous discussion, a motor freight terminal in the
25 township that I am aware of is the Pitt-Ohio.

1 Q. Does that conform?

2 A. That does not conform. There is
3 residential development across 309 and to the south.

4 Q. And the Aldi's, depending, I guess, on how
5 you classify it, would that comply, that facility
6 comply with 484?

7 A. Well, there is currently a school across
8 the street from it.

9 Q. So it doesn't comply?

10 A. Correct.

11 Q. So there is none that do comply and there
12 is no place to put one; is that right?

13 A. As the lots are configured today.

14 MR. PRESTON: Very good, no further
15 questions.

16 MR. GUNDLACH: Just a few follow-up
17 questions.

18 * * *

19 RE-EXAMINATION BY MR. GUNDLACH

20 * * *

21 BY MR. GUNDLACH:

22 Q. The applicant is proposing to resubdivide
23 their property as part of this proposal; correct?

24 A. Yes, consolidate lots.

25 Q. They have four lots now; correct? And as

1 part of their plan, they are proposing to change lot
2 lines, resubdivide, and end up with two lots; correct?

3 A. Yes.

4 Q. And per your investigation, if the
5 applicant would simply subdivide this property in a
6 different manner than they are proposing and install a
7 collector road, they could by right comply, in your
8 professional opinion, with the 500-foot separation
9 requirement; correct?

10 A. That is correct.

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

12 MR. PRESTON: Nothing further.

13 MR. DINKELACKER: Any questions by
14 members of the board based on the questions that you
15 just heard from both counsel?

16 MS. STEHLIK: To clarify, that 500
17 foot, is there any possibility of building anything in
18 that 500 foot or is that -- what is the expectation
19 that would happen within that 500 foot in between the
20 residents and --

21 THE WITNESS: If you are looking at
22 my -- the plan in the exhibit?

23 MS. STEHLIK: Correct.

24 THE WITNESS: Yes. If you see where
25 there is a 50-acre area within the circle -- I'll call

1 it the circle. There is a five-acre at the bottom of
 2 the page and there is a ten-acre to the northeast or
 3 upper right corner. Those would be in the industrial
 4 zone and not within the 500-foot separation area.

5 MS. STEHLIK: So they would be able
 6 to be built upon?

7 THE WITNESS: They would be able to
 8 be built upon with a truck terminal and many other
 9 things in accordance with the industrial zone. The
 10 area in hatching along Route 309 or the left side and
 11 where it says 11 acres, 13 acres and the area along
 12 East Valley Road where it says 22 acres, those could
 13 be developed with anything else in the industrial zone
 14 that does not have the 500-foot separation
 15 requirement. So the warehouse and trucking terminal
 16 has the 500 foot. Those areas that are hatched could
 17 be banks, hotels, medical office space, regular office
 18 space.

19 The commercial lot, which is down
 20 towards the intersection -- the new intersection, that
 21 would have to be a commercial use because that's zoned
 22 different than the industrial. So yes, you could
 23 build -- and I use the term -- on all of the lots, you
 24 could. It is just the trucking or warehousing --

25 MS. STEHLIK: So 500 feet doesn't

1 necessarily mean that it is 500 feet of unused land in
 2 that respect. That 500 feet, that buffer is just
 3 specific to the truck terminal/warehouse concept and
 4 not --

5 THE WITNESS: That is correct.

6 MS. STEHLIK: -- devoiding another
 7 usage that would be put into play?

8 THE WITNESS: Correct.

9 MR. GUNDLACH: Can we go off the
 10 record and pick a date for the next hearing?

11 MR. DINKELACKER: Hold on. Mr.
 12 Spaeth has questions.

13 MR. GUNDLACH: Oh, I am sorry.

14 MR. DINKELACKER: We're going to
 15 finish the witness, so we're going to go to Mr.
 16 D'Amico and Mr. Tiemann if they have any follow-up.

17 MR. SPAETH: Just a follow-up on Kim
 18 Stehlik's question, those 22 acres, there are a
 19 variety of different applications or uses that could
 20 go in there, but there is also a lot of
 21 restrictions -- if you go through all of the different
 22 permitted uses and special exceptions in the
 23 industrial zone, there are certain requirements that
 24 would preclude a lot of them from going in there.
 25 Like, I think some of them have 1,000-foot setbacks or

1 buffers. So, therefore, if it is only 500 feet, those
2 obviously wouldn't be able to go in there. So I don't
3 think it is fair to say that anything could go in
4 there other than a warehouse.

5 Certain things can go in there, but
6 not everything that is included in the industrial
7 zone. Is that true?

8 THE WITNESS: That could be. I
9 mentioned a few items to Kim and those are -- those
10 all can be put in there: A medical office, a fitness
11 facility, hotels, banks. That type of facility can go
12 in. There may be some that can't, but it is not --
13 the land is not dormant or left dormant.

14 MR. SPAETH: That's all I have.

15 MR. WAGNER: I have one question for
16 Mr. Unangst. Exhibit USTS-3 shows a so-called donut
17 with the 50-acres and so on. Is it correct to state
18 that there are potentially other configurations that
19 would also meet the requirements that is not -- in
20 other words, that's not the only conceivable
21 arrangement?

22 THE WITNESS: I believe that's
23 correct.

24 MR. WAGNER: Thank you.

25 MR. DINKELACKER: Any other

1 questions from the board?

2 (No response.)

3 Since there are no other questions,
4 we can go to Mr. D'Amico. Do you have anything
5 further that you would like to raise based on these
6 questions?

7 MR. D'AMICO: Just one question.
8 The 500-foot setback, is that based on -- is that a
9 local township ordinance or is that based on a
10 state --

11 MR. DINKELACKER: It is a provision
12 of the township ordinance. It is Section 484.E.

13 MR. D'AMICO: Does it mirror or is
14 it devised based on a similar state ordinance?

15 MR. DINKELACKER: I don't know and I
16 don't think -- Mr. Unangst, I am going to ask him to
17 pose that question to you, if you know the answer.

18 THE WITNESS: I do not. That
19 section has been in this ordinance long before I have
20 been an engineer in the township.

21 MR. D'AMICO: Understood. Thank you
22 very much.

23 MR. PRESTON: Can I follow-up on
24 that?

25 MR. DINKELACKER: Sure.

* * *

RE-EXAMINATION BY MR. PRESTON

* * *

BY MR. PRESTON:

Q. Mr. Unangst, in your experience, as an engineer, have you ever seen a provision that excluded a property -- I am not talking about a setback or an isolation distance or a buffer yard -- that simply excluded an entire property if it was in proximity to a residential zone?

MR. GUNDLACH: Objection. This is beyond the scope of that question. That was only about state requirements. We're reopening this all up again and we are going in circles.

MR. PRESTON: No, I don't believe that we are. The man asked where that rule came from.

MR. DINKELACKER: I am going to let the question. Jim, go ahead. Charlie, answer the question, please.

THE WITNESS: I have not.

BY MR. PRESTON:

Q. You have never seen that before?

A. I have not.

MR. PRESTON: Thank you.

MR. DINKELACKER: Rob, do you have

any follow-up on that question based on that?

MR. GUNDLACH: No.

MR. DINKELACKER: Mr. Tiemann, do you have any questions you would like to ask further?

MR. TIEMANN: We purchased our home last year on East Valley Road and we did so with the understanding that the zoning code provided for that 500-foot separation from residential areas such as mine and my neighbors.

Mr. Unangst, is it reasonable to believe that Kay builders also had access to that same information?

THE WITNESS: Yes. The ordinance has been in place for a number of years.

MR. TIEMANN: Thank you.

MR. DINKELACKER: Any further questions based upon any of these by Mr. D'Amico or Mr. Tiemann?

(No response.)

MR. DINKELACKER: Okay. What we're going to do -- there is no further questions. There is public comment, but we are not -- this hearing was supposed to be over at 9:45. So what we're going to do --

(Public making comments.)

1 MR. DINKELACKER: What we're going
2 to do is, when we come back at the next hearing, we're
3 going to start with public comment. We're going to
4 start with public comment at the next meeting. Mr.
5 Unangst will be here.

6 (Public making comments.)

7 PUBLIC: You promised me my freedom
8 to speak.

9 MR. DINKELACKER: Excuse me, sir.
10 What I said was that, at the end of the hearing, we
11 had a -- you heard me say, we have at least one more
12 night and possibly two. And if you had a broad
13 hearing-related comment on a broad issue, that
14 everybody would be given a chance to provide comment
15 at the end of the hearing as well as comment at the
16 end of each witness based upon the witness's
17 testimony. Now, we're going to do that comment, but
18 we're going to do it at the beginning of the next
19 hearing because this hearing is ending at 9:45 and
20 we're already beyond. So at the very next hearing we
21 are going to start with comment based upon Mr.
22 Unangst's testimony. So that's where we are going to
23 be and that's what we're going to do.

24 PUBLIC: Are you going to start on
25 time the next time? Start on time.

1 MR. DINKELACKER: We're done, folks.
2 The hearing at this point is over for the night.

3 MR. GUNDLACH: Hold on. We need to
4 announce the date for the next hearing.

5 MR. DINKELACKER: Right. We have to
6 get a date and time for the next hearing.

7 PUBLIC: When is the next meeting?

8 MR. GUNDLACH: Hold on. We're going
9 to go off the record.

10 MR. DINKELACKER: We are going to do
11 that now.

12 (Whereupon, a break was taken.)

13 MR. DINKELACKER: Ladies and
14 gentlemen, the next hearing is going to be Monday,
15 September 30th. It will be at 6:30 p.m. It will be
16 here, at the middle school auditorium. So, again,
17 Monday, September 30th, at 6:30 p.m., here at the
18 middle school auditorium.

19 (Whereupon, the hearing adjourned at
20 approximately 9:50 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Sept 19, 2019

I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the testimony held in the above-captioned Board of Supervisors of Upper Saucon Township special public meeting, and that this is a correct transcript of the same.

Maureen L. Stewart
Maureen L. Stewart
Registered Professional Reporter
Notary Public