

In The Matter Of:
*Zoning Application Before the
Madison County Board of Adjustments*

*Application by Madison County Asphalt, LLC for a Conditional Use Permit
April 22, 2019*

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A P P E A R A N C E S

On Behalf of Madison County Board of Adjustments:

Mr. Donny Laws, Esquire

Madison County Zoning Board of Adjustments:

Ms. Karen Kiehna, Chairman

Mr. Ernest Ramsey

Ms. Darlyne Rhinehart

Mr. Mike Tuziw

Mr. Robert Briggs

Also Appearing:

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On Behalf of the Applicant

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On Behalf of the Opposition

Jeff Hyder, Zoning Administrator

* * * * *

Quoted material is verbatim and
may/may not reflect a direct quote.

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P R O C E E D I N G S

Madison County Board of Adjustment Quasi-judicial Public
Hearing,

April 22, 2019,

(WHEREUPON, the following testimony may contain
unclear or unintelligible speech that was
transcribed as inaudible)

CHAIRMAN KIEHNA: At this time, I would like to
ask the parties to come forward. I
understand Mr. Sneed and Mr. Gulden, that you
have stipulated in the pre-trial order that
Mr. Gulden is representing eight individuals
at this proceeding. This issue of your
standing will be determined as they are
called as witnesses.

Is there any other person who contends
that they have standing to participate in
this hearing? If so, if you would -- and you
will need to present evidence that you pass
the threshold with standing and if you want
to be heard, then you will need to be sworn
and present evidence as to the establishment
of standing and be questioned by the
attorneys. Is there anyone that wants to
come forward? I see one, two individuals.

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1 UNIDENTIFIED FEMALE: Could you speak louder,
2 people are having trouble hearing you.
3 UNIDENTIFIED FEMALE: Can't hear what she's
4 saying.
5 CHAIRMAN KIEHNA: I'm -- I'll say it louder, okay.
6 Is there any other person who contends that
7 they have standing to participate in this
8 hearing? If so, you will need to present
9 evidence that you pass the threshold for
10 standing and if you want to be heard then you
11 will need to be sworn and present the
12 evidence as to the established standing and
13 be questioned by the attorneys as to
14 standing. Please stand up, those that --
15 UNIDENTIFIED FEMALE: You want us to stand?
16 CHAIRMAN KIEHNA: Stand please. Please tell us,
17 individually tell us your name.
18 MR. TIBBETTS: My name is James Tibbetts.
19 MS. LONG: Vivian Long, L-o-n-g.
20 CHAIRMAN KIEHNA: Say again.
21 MS. LONG: Vivian Long.
22 MS. MOLLAND: Connie Molland.
23 MR. CARLSON: Andrew Carlson.
24 CHAIRMAN KIEHNA: Would you, please, move over to
25 the jury's box, please.

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1 In the pretrial motion regarding the
2 recusal of board members, I have been
3 provided a letter dated March the 25th, 2019
4 Mr. Sneed where he has challenged two
5 members. I've met with both the members, Ms.
6 Frisbee has recused herself and is not
7 present. Mr. Molland is here and has asked
8 to make a statement. Mr. Molland?

9 MR. MOLLAND: May I make it from the floor from
10 here or do you want me to --

11 CHAIRMAN KIEHNA: From there.

12 MR. MOLLAND: Okay. Pursuant to North Carolina
13 General Statute --

14 UNIDENTIFIED FEMALE: Can you stand up?

15 MR. MOLLAND: Why don't I use the microphone? Can
16 you hear me?

17 UNIDENTIFIED FEMALE: Yes.

18 MR. MOLLAND: Pursuant to the North Carolina
19 General Statute 160A-388 requirement, the
20 members of the quasi-judicial board not
21 participating -- their participation would
22 violate the affected persons' constitutional
23 rights to an impartial decision. As a member
24 of Madison County Board of Adjustment, I have
25 declared the following potential conflicts of

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1 interest.

2 My wife is a downtown Marshall small
3 business owner and one of over 50 members of
4 the Downtown Marshall Association. She is
5 also a silent investor in a building owned by
6 a 501(c)(3) non-profit. I've been contacted
7 by the Madison County attorney to advise me
8 that the Applicant's belief since my wife's
9 business and related affiliations will be
10 affected by the opening of an asphalt plant
11 in the close proximity of the town, I have an
12 inability to be impartial and so I should be
13 disqualified from participating on this board
14 for the duration of this meeting.

15 I'm going to read from -- a letter from
16 Mr. Sneed of the Van Winkle Law Firm. "The
17 one member in question is Richard Molland who
18 volunteered at Flow Gallery and is married to
19 Connie Molland, an owner of Flow Gallery.
20 She signed the attached letters dated
21 February the 5th, 2019 and is a member of the
22 Downtown Marshall Association which
23 petitioned the Town of Marshall to oppose the
24 issuance of the county board of adjustment
25 conditional use permit. The letter of Mr.

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1 Sneed refers to was written to TJ Reed from
2 the board of directors of the Downtown
3 Marshall Association.

4 As part of my career before retiring
5 here in Madison County, I was an internal
6 auditor for two Fortune 500 companies.

7 MR. SNEED: Madam Chairman, I object to the
8 statement (inaudible) he's already made a
9 statement of our evidence you're going to
10 hear. If he's recusing himself, it's not an
11 opportunity for speech about the matter.

12 MR. MOLLAND: I'm not making a speech about the
13 matter, sir.

14 MR. SNEED: Yeah, you are. You sat up here and
15 said her business would be damaged.

16 MR. MOLLAND: No.

17 MR. SNEED: That's a fact that's not true.

18 MR. MOLLAND: I didn't say that.

19 MR. SNEED: Yes, you did.

20 MR. MOLLAND: Let me just continue quoting you,
21 Mr. Sneed.

22 MR. SNEED: Well, it's a matter of public record.
23 If you're recusing yourself because you've
24 got a conflict, then you should just announce
25 that and leave.

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1 MR. MOLLAND: I'm recusing myself because you
2 believe I have a conflict.

3 MR. SNEED: The statute says if your wife, you're
4 to someone who's taken a position on the
5 matter, you're in conflict.

6 MR. MOLLAND: And so be it. I hereby recuse
7 myself.

8 MR. SNEED: Thank you.

9 CHAIRMAN KIEHNA: Thank you. Are there any other
10 issues that need to come up in regard to
11 recusal?

12 MR. SNEED: No, ma'am. I am not aware of anything
13 but I would ask the remaining members if
14 they've had any ex parte contacts with people
15 (inaudible) about this matter.

16 MR. TUZIW: I have a statement I'd like to read.
17 Hopefully, my voice is loud enough.

18 It's my obligation to inform you under
19 ex parte rules that I have attended county
20 commissioner meetings where this issue has
21 been discussed during public comment. I can
22 assure you my decision here tonight will be
23 based solely on the facts as they're
24 presented here and not influenced by public
25 opinion.

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1 MR. SNEED: Anyone else have anything? Yes,
2 ma'am.

3 MS. RHINEHART: I received a packet of information
4 from an individual and I have not opened that
5 packet, but I did put it out there that I did
6 receive it.

7 MR. SNEED: Okay. Do you think you can make a
8 decision based on the evidence --

9 MS. RHINEHART: Yes.

10 MR. SNEED: -- that you hear?

11 MS. RHINEHART: Yes.

12 MR. SNEED: Same with all the rest of you? Then I
13 have no more issues.

14 MR. GULDEN: Just a couple questions. Does
15 anybody have a financial interest in this
16 matter or will their business benefit either
17 directly or indirectly with the approval or
18 denial? Any member of the board? If you
19 could all just say yes or no.

20 ALL MEMBERS: No.

21 MR. GULDEN: And no ex parte which would mean, I
22 understand what you had said, but no ex parte
23 communications from either side? You never
24 engaged in or had a one-on-one conversation
25 with anybody from the Opposition or the

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1 Applicant or its employees about this issue?

2 ALL MEMBERS: No.

3 MR. GULDEN: Those are my questions.

4 MR. SNEED: I'm satisfied.

5 CHAIRMAN KIEHNA: Okay. We're going back to the
6 individuals that had requested to have a
7 standing. I will ask individually for you to
8 come up in the order that you stood up and
9 introduced yourself, if that -- so Mr.
10 Tibbetts, please step forward into the
11 witness stand.

12 JAMES TIBBETTS, being first duly
13 identified and sworn was examined and testified as follows:

14 D I R E C T E X A M I N A T I O N BY MR. SNEED:

15 Q. Mr. Tibbetts, my name is Albert Sneed and I represent
16 French Broad and Madison Asphalt. What do you claim is
17 your basis of standing?

18 A. I have two lots just outside of the -- just at the
19 beginning of Redmon and I'm afraid to develop on those
20 because of the damage this plant caused this town. An
21 evaluation of my property and any investment I put into
22 it will be less than expected as a result of this
23 plant.

24 Q. How far away from the location are you?

25 A. Quarter mile.

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1 Q. Quarter mile?

2 A. Quarter to -- yeah, I'd say.

3 Q. You'll have to forgive me, I don't know the geography
4 but is that north, east, south or west?

5 A. If you go down South Main Street before you turn right
6 up the hill is Redmon Road and there's a trailer home
7 there and then I have the two lots after that. So it's
8 walking distance to town.

9 Q. It's walking distance from?

10 A. From -- from the lots to downtown Marshall it's -- and
11 it is in downtown Marshall. I pay taxes to the town of
12 Marshall.

13 Q. The lots are in downtown Marshall?

14 A. Yes, sir.

15 Q. A mile and a half from the quarry?

16 A. Yes, sir. Well, I'm not sure it's that far but a
17 little over a mile.

18 Q. And what makes you think the affect on you will be
19 different from everybody else in the town of Marshall?

20 A. Well, the proximity of the river and the effect that
21 the inversions will have. I think that emissions will
22 be trapped and coast down the river and stink up the
23 town. As I've said at the commissioners meeting.

24 Q. It'll stink up the town?

25 A. Yes, sir.

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1 Q. Have any of the inversions brought anything from the
2 quarry downtown?

3 A. No, sir, not that I'm aware of.

4 Q. I don't think that's --

5 A. I don't know of anything -- I can't say that. I don't
6 think that there's an order from the quarry and that's
7 what I'm referring to.

8 MR. SNEED: Madam Chairman, I don't believe that
9 he's in a circumstance different from the
10 general public or the general property owners
11 in downtown Marshall. That's an entirely
12 different situation than a person who's
13 directly adjacent to the property.

14 A. I'd like to also point out if I may, that the distance
15 from this proposed plant to downtown Marshall is almost
16 the same as it was from Burnsville to the plant in
17 Burnsville and then the Burnsville plant had multiple
18 complaints about odor that went on for years. So I
19 think I have basis of fact the town of Marshall could
20 be affected.

21 Q. Do you have any evidence that this plant is similar to
22 the Burnsville plant?

23 A. I don't have evidence either way. I don't have
24 specifics on what kind of plant is going to be built
25 here or what kind of emissions controls they'll have.

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1 That information is not available at this time. But I
2 would -- I would say that EPA regulations have not
3 changed significantly since the Burnsville plant has
4 been built, to my knowledge. So I don't -- and it's
5 also a diesel plant both here and in Burnsville which
6 is most of the plants in the country are now natural
7 gas. So I'd say it's similar. It's also a mountainous
8 terrain here in Burnsville which is on like other
9 plants.

10 MR. GULDEN: Madam Chair or Mr. Sneed, are you
11 done asking questions?

12 MR. SNEED: Yes, yes.

13 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

14 Q. Mr. Tibbetts, I heard you testify about several
15 different distances. Could you be exact, if you're
16 talking about not by way of the road but by just direct
17 line, how far are your two lots from the proposed site?

18 A. I'd say less than a mile and a half.

19 Q. Less than a mile and a half?

20 A. Yes, sir.

21 Q. And do you have -- to get to your sites, do you have to
22 travel on any of the roads in and around where the
23 proposed is going to be located?

24 A. Yes, sir.

25 Q. And so do you have any other worries other than these

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1 inversions? Do you have other issues related to how
2 the proposed site or how the proposed plant may affect
3 your property?

4 A. Yes, well, I think dust can be a major issue.

5 Q. And if you're talking about these inversions, you're
6 talking about temperature inversions?

7 A. Yes, sir.

8 Q. And that's -- that's where the kind of cooler air down
9 low is trapped by warmer air up top. Have you ever
10 experienced on your property any kind of temperature
11 inversions that had brought dust or particulate matter
12 from the quarry towards your property?

13 A. No, sir. Not to -- not to my knowledge. Not that I
14 recall.

15 Q. Your --

16 A. But I will say after a blast, certainly, yes.

17 Q. After a -- after a blast?

18 A. Blast, I think there's a great deal of dust raised. I
19 can't say that it's reached my property but I know
20 that's an issue.

21 Q. And Mr. Sneed asked you about issues separate and
22 distinct from the rest of the community, do you think
23 your property value situated less than a mile and a
24 half from the proposed site will be more or less
25 affected than someone -- someone who owns property in

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1 Mars Hill?

2 A. I think it would be more.

3 Q. Yes, and you'll have more of a detrimental effect on
4 your property?

5 A. Absolutely.

6 Q. So is it your testimony that you do have damages or you
7 do think you will have damages that are different than
8 the rest of the community because of the proximity of
9 your property to the proposed site?

10 A. If by community you mean the entire county?

11 Q. Yes, sir.

12 A. Absolutely. Yes, I think the town of Marshall is at
13 great risk from this plant.

14 Q. And you live very close to the town of Marshall?

15 A. I do. I live across the river and my property is part
16 of the town of Marshall as well. My house is not but
17 part of my property is.

18 Q. When the quarry blasts and you see the -- can you see
19 from your property any dust particulate?

20 A. No, the topography is such that I don't see it.

21 MR. GULDEN: I would think that he stated and
22 cogently that he has got a genuine fear about
23 the depreciation of his property value
24 separate and distinct from the rest of the
25 community because of his proximity to the

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1 proposed plant. I would think he has
2 standing.

3 MR. SNEED: Well, I made my point, I think his
4 situation is no different than the general
5 population.

6 CHAIRMAN KIEHNA: Members of the board, do you
7 have questions? Members of the board, it's
8 our decision to determine if he has standing.

9 MR. BRIGGS: My opinion he's too far out.

10 MR. TUZIW: I'm curious to hear what he has to say
11 other than the testimony he's already given.

12 CHAIRMAN KIEHNA: Open to a motion that he has
13 standing.

14 MS. RHINEHART: I make a motion.

15 MR. TUZIW: I'll second it.

16 CHAIRMAN KIEHNA: Motion made by Ms. Rhinehart;
17 seconded by Mike -- help me again, I'm sorry.

18 MR. TUZIW: The number two and the letter Z.

19 CHAIRMAN KIEHNA: Tuziw.

20 MR. TUZIW: There you go.

21 CHAIRMAN KIEHNA: Thank you.

22 MR. GULDEN: Madam Chair, what was the motion? I
23 didn't hear it.

24 CHAIRMAN KIEHNA: The motion was that he does have
25 standing.

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1 MR. GULDEN: Okay. Thank you. I'm sorry.

2 CHAIRMAN KIEHNA: And move on to the next -- oh,
3 I'm sorry, I thought -- could I have a vote?
4 All those in favor. Those nay. Three to
5 two, yes.

6 The next individual is Vivian Long.

7 VIVIAN LONG, being first duly identified
8 and sworn was examined and testified as follows:

9 CHAIRMAN KIEHNA: Please state your name.

10 THE WITNESS: My name is Vivian Long.

11 D I R E C T E X A M I N A T I O N BY MR. SNEED:

12 Q. Ms. Long, my name is Albert Sneed. What basis do you
13 believe you have standing?

14 UNIDENTIFIED FEMALE: Could I, please, request
15 that you speak into the microphone, we cannot
16 hear your questions?

17 MR. SNEED: I'm sorry.

18 Q. My name is Albert Sneed.

19 CHAIRMAN KIEHNA: Mr. Sneed -- there is no
20 conversation.

21 UNIDENTIFIED FEMALE: I'm sorry, I just cannot
22 hear his questions.

23 Q. Can you tell me what basis you claim standing?

24 A. I live at 140 Sams Road, which is -- and I am a new
25 resident. I'm building a house and starting an organic

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1 orchard. I'm exactly one mile from the proposed site.
2 I don't know that I do have standing over many other
3 people. I'm sure that there are many people here and
4 in the community who would also have standing. I think
5 I do have standing based our proximity to the quarry
6 and to the proposed site of the asphalt plant. We do
7 experience -- and my basis would be on both property
8 value and on quality of life issues.

9 We experience a lot of noise from the quarry and
10 sometimes it's just, you know, out of a noise that's
11 out there. Other times it's kind of a slightly
12 obnoxious noise and then there are the times when it's
13 really loud. And we also get -- we do get the dust
14 whenever they blast on our site. We are at about 2,000
15 feet in altitude and I believe the quarry is at about
16 2,020 feet so we're on a ridge over from them so I
17 think that the noise is much louder than it might be if
18 you were down closer to the river or somewhere because
19 the sound kind of travels across. Like, for example,
20 we are above the town of Marshall but, you know, other
21 than the train and some traffic noise we don't hear a
22 lot of the town noise but we do hear the people on the
23 other side of the river at about the same altitude,
24 sometimes like they're in the yard. So the sound can
25 definitely travel from ridge to ridge. So that's just

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1 one of the things.

2 And then the property value issue has to do with
3 the fact that we're building a new house. My husband
4 and I put in -- I mean, I don't know how much detail
5 you want to hear, but we had --

6 Q. You just started building a house?

7 A. We just started building a house. We're living on the
8 property and basically we've invested our life savings
9 into this property, developing it as an orchard and
10 building a house. And I personally would not have
11 bought this property had I known an asphalt plant was
12 going to be built a mile away. And I have great
13 concerns that if we need to sell because of, you know,
14 any problems with the asphalt plant that affect our
15 lives, then we probably would not get what we put into
16 it.

17 Q. So you're north of the quarry?

18 A. I think -- no, the quarry would be to our, I get kind
19 of turned around. I think they're kind of northeast of
20 us.

21 Q. So you're on the other side?

22 A. I'm -- we're towards Marshall. We're above the town of
23 Marshall.

24 Q. You're talking about (inaudible)?

25 A. We're off of Hill Street.

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1 Q. Okay. And how long have you owned the property?

2 A. I think about three years.

3 Q. So you bought the property when the quarry was there?

4 A. Yes. But the issue between -- the difference between
5 the quarry and the asphalt plant, in my understanding,
6 the quarry operates basically during working hours
7 weekdays. So summer evenings, you know, we can still
8 sit outside and experience the peace and quiet that,
9 you know, we moved here for. And my understanding an
10 asphalt plant can be running 24 hours a day during the
11 summer months, the very months that we would want to be
12 outside and we would want to have our windows open.

13 And --

14 Q. So if that turned out to be false, would that make you
15 feel better?

16 A. That would probably make me feel better. I would say
17 there are still other issues that concern me, but I'd
18 certainly be pleased to hear that it's not going to be
19 running late into the evening and all summer long. But
20 I think that I would still have concerns about property
21 values and other possible toxins or odor which I think
22 would affect, again, whether or not we could sleep with
23 the windows open.

24 MR. SNEED: That's all.

25 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

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1 Q. Ms. Long, I'm Brian Gulden and I'm an attorney here in
2 town and I represent some other folks who oppose the
3 application.

4 From what I understand you're saying that property
5 values, you have a fear that your property value is
6 going to be depreciated because several things, dust,
7 noise, potential pollution. That you bought it to
8 begin or start an organic orchard. Do you think -- do
9 you think any of the dust, noise or potential pollution
10 would have a direct or secondary effect on your ability
11 to have a successful organic orchard?

12 A. I do have those fears, yes.

13 Q. And so you do believe that if approved you wouldn't be
14 able to utilize your property for its intended purpose?

15 A. That's correct.

16 Q. And you're within a mile of the proposed site?

17 A. Yes, sir.

18 Q. Did that summarize your testimony fairly well?

19 A. Pretty well. Like I say, I, you know, could probably
20 add other things to that but --

21 MR. GULDEN: Those would be my questions for Ms.
22 Long, Madam Chair.

23 CHAIRMAN KIEHNA: Board members, do you have
24 questions for Ms. Long?

25 MR. TUZIW: Do you have any evidence to present

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1 other than just your opinions?

2 THE WITNESS: Evidence as to --

3 MR. TUZIW: Factual evidence.

4 THE WITNESS: Evidence as to the noise from the
5 quarry or from the dust or --

6 MR. TUZIW: To your claims. All of your claims
7 that you stated here, do you have evidence to
8 back them all up or is it opinion? Is it
9 your personal opinion that these things will
10 all affect you or do you have evidence to
11 back it up, because this is a factual
12 evidence-based hearing.

13 THE WITNESS: Well, I could probably go out and
14 get some dust samples for you and --

15 MR. TUZIW: I only care about what you've got
16 tonight.

17 THE WITNESS: I didn't realize I was actually
18 going to be providing testimony tonight. I
19 thought I was going to be signing up to
20 provide testimony later, but as for evidence,
21 we don't have an asphalt plant there yet so I
22 really don't -- can't say exactly what effect
23 it will have. I can only say how the quarry
24 affects us and I mean, I could get out there
25 with a sound meter or something, but I'm not

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1 real sure what kind of evidence I can
2 actually provide other than my actual
3 experience. It's not just my opinion, it's
4 my experience.

5 MR. BRIGGS: How long have you lived there?

6 THE WITNESS: I've been living on the site for a
7 year continuously and on and off before that
8 for a number of years.

9 MR. BRIGGS: And you were aware there was a
10 quarry?

11 THE WITNESS: I was aware of the quarry.

12 MR. BRIGGS: When you purchased the property?

13 THE WITNESS: Well, actually, not when I purchased
14 the property because when I came out and saw
15 the property it was on a weekend. But, you
16 know --

17 MR. BRIGGS: I don't know but I was curious, does
18 an asphalt plant produce dust?

19 THE WITNESS: They produce other chemical
20 pollutants. They also can produce a lot more
21 noise unless they are a contained facility,
22 so I think, and as far as I know this is
23 planned as an open facility, so the noise can
24 be probably not as loud as the blast but
25 possibly as loud or louder than the ambient

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1 noise from the quarry. And as to the
2 pollutants I'm sure you will hear other
3 evidence based on -- but I am not an
4 authority on asphalt plants.

5 MR. BRIGGS: What kind of trees are you going to
6 grow? What kind of fruit?

7 THE WITNESS: Apples, I'm hoping. Apples, pears,
8 persimmons and plums. We'll see.

9 MR. BRIGGS: How many trees do you think you're
10 going to plant?

11 THE WITNESS: I've got about 25 planted so far and
12 I will continue to plant.

13 CHAIRMAN KIEHNA: Additional questions? May I ask
14 how many acres you have?

15 THE WITNESS: 114.

16 CHAIRMAN KIEHNA: Members of the board, can I hear
17 a motion?

18 MR. BRIGGS: So moved.

19 CHAIRMAN KIEHNA: To?

20 MR. BRIGGS: That she has standing.

21 CHAIRMAN KIEHNA: She has standing. Do I hear a
22 second?

23 MS. RHINEHART: Second.

24 CHAIRMAN KIEHNA: I hear a motion from Mr. Briggs
25 and a second from Ms. Rhinehart. All those

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1 in favor that she does have standing, please,
2 by raising your hand. Four. Those that say
3 no. Four, one. Move on.

4 UNIDENTIFIED MALE: I'd like to add myself over
5 here if it's possible.

6 CHAIRMAN KIEHNA: Sorry?

7 UNIDENTIFIED MALE: Well, I was under the
8 impression that they needed technical
9 evidence and stuff like that --

10 CHAIRMAN KIEHNA: Sir, you cannot speak out. This
11 is a quasi-judicial hearing; there is no
12 speaking out in the meeting.

13 UNIDENTIFIED MALE: My apologies.

14 CHAIRMAN KIEHNA: The next person is Connie
15 Molland. Connie, will you, please, step to
16 the witness stand?

17 CONNIE MOLLAND, being first duly
18 identified and sworn was examined and testified as follows:

19 D I R E C T E X A M I N A T I O N BY MR. SNEED:

20 Q. Ms. Molland, my name is Albert Sneed. Can you tell me
21 what facts you have that you think gives you standing,
22 makes your situation different than the general public,
23 show special damages?

24 A. Thank you for the opportunity to be here. And I am the
25 immediate past president of the Downtown Marshall

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1 Association. And I represent the businesses and the
2 individuals, 60 of them that are members of the
3 association. And we have a collective fear of our
4 investments in downtown Marshall, including, and I'll
5 just mention one out there, there is a gentleman that
6 is in the process of doing an investment with the
7 (inaudible) Mill property which is a \$5.6 million
8 investment and these members have reached out to me.
9 They have given me the go-ahead to come by and testify
10 on their behalf.

11 Q. What makes their -- what makes their claims different
12 from the general population around the area? What
13 makes their claims sufficient to say they have some
14 special damages that other people might not have?

15 A. Downtown Marshall is within a mile and a half of the
16 proposed plant. And the -- what I have heard is that
17 within that distance property values, there was
18 testimony at the commissioners meeting, property values
19 will be affected by an asphalt plant being so close.
20 There are all these businesses that have been here for
21 a long time. The businesses that have just recently
22 opened, Flow Gallery, that I'm part owner of, we've
23 been there for nine years. We are afraid that our
24 property value, our business, we will lose that tourism
25 dollar that the town really relies on. Can't remember

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1 the exact number, I think it's thirty-some million
2 dollars comes into our county from tourists and
3 downtown Marshall is now on the map; people want to
4 come here.

5 Q. Have you ever been to Hendersonville?

6 A. I have been to Hendersonville. I did a show there
7 once.

8 Q. Did you drive up to Asheville Highway to go into town?

9 A. I did not. I don't know which way I -- I didn't pay
10 attention, I was focused on being in the show, so I
11 never -- I've never gone to Hendersonville to just be
12 there. I was working.

13 Q. I think they do quite well with tourism and values of
14 property in Hendersonville, don't they?

15 A. I don't have that information. I don't know enough
16 about -- I can't speak to it.

17 MR. SNEED: That's all.

18 MR. GULDEN: Thank you, Madam Chair.

19 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

20 Q. Ms. Molland, do you know that as part of the
21 application process, Mr. Sneed filed a paper asking
22 that your husband recuse himself? He filed that on
23 March 25th, 2019, do -- and you heard us talking about
24 that today?

25 A. Yes.

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1 Q. Do you realize that in that public document Mr. Sneed
2 asked that your husband be recused because you -- he
3 has a familial relationship with an affected person.
4 That affected person is you, correct?

5 A. Yes.

6 Q. You're married to him?

7 A. Yes.

8 Q. Mr. Sneed, by his own admission says that you are
9 affected by this asphalt plant.

10 A. I have been very silent throughout this whole process.
11 I did sign a letter that my two degrees -- I'm sorry,
12 Regina, you're shaking your head. I did sign that
13 letter. I was a part of that because at that time we
14 had no idea how far this was going to go. And we -- I
15 sent out that letter with my colleagues on the board.
16 We sent it directly to the Reed family and said, please
17 don't do this. This is going to affect hundreds of
18 peoples' lives and we asked you at that point and then
19 I backed off because at that time I didn't know that my
20 husband being on the board of adjustments we'd have to
21 get into the position that he got into. I backed off
22 and didn't participate in anything. I felt bad because
23 obviously now I'm here today because he was -- is
24 married to an affected person.

25 Q. And notwithstanding the statement that is part of the

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1 public record saying you're an affected person, I want
2 to ask you a couple of questions. Do you own the Flow
3 Gallery?

4 A. I'm one of five people that own the Flow Gallery.

5 Q. And in order --

6 A. I'm the founding member too. I'm the last of the
7 founding members, just want to throw that out there.

8 Q. To get to that -- it's located downtown, here?

9 A. Yep.

10 Q. In order to get to there, do any of your customers have
11 to or will they have to drive by the proposed asphalt
12 plant on 25/70?

13 A. Yes. We track where our customers come from.
14 Fortunately, about 40 to 45 percent of our customers
15 are Madison County but the other 60 percent come from
16 out of state, out of town and Asheville and
17 Hendersonville. In fact, I get a lot of people from
18 Hendersonville; they come into Flow and shop. And so
19 they drive up from Asheville. We don't get a lot of
20 people just come -- and Hot Springs, there's some
21 people that come in from Hot Springs too.

22 Q. Do any of those people, will any of those people and
23 are you aware of any of those people driving by the
24 proposed asphalt plant to get to your shop?

25 A. The proposed asphalt plant is on 25/70 --

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1 Q. Yeah.

2 A. -- yeah, the entrance, they would be driving right past
3 where all the trucks would be.

4 Q. And do you think that would have a primary or secondary
5 effect? Could it have a primary or secondary effect on
6 your business that you conduct at Flow Gallery?

7 A. I believe it would have a huge impact for two reasons.
8 One is, the truck noise, the truck smells. The other
9 is the people who drive on 25/70 and there's all those
10 trucks there, they would be maybe more inclined to
11 drive onto River Road. That's where the cyclists are.
12 We would lose a lot of the cyclists and we have about
13 500 cyclists a weekend that come up River Road. They
14 would be affected. This was a quote 10 years ago when
15 they started --

16 MR. SNEED: I object. I object to this. We're
17 not talking about the cyclists. The question
18 is whether she has standing.

19 Q. Thank you. We'll continue. The -- that secondary
20 effect, you think that it would have an effect on the
21 income generated at the Flow Gallery?

22 A. Absolutely. I am very afraid of that.

23 Q. And is that -- is that potential for depreciation or a
24 decrease in the income to your business, is that
25 different than, let's say, a restaurant or gallery in

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1 Mars Hill?

2 A. If an asphalt plant were to come in and negatively
3 create toxins, smells, fumes, yes, we would lose our
4 customer base as would the restaurants, as would the
5 other businesses. That's why they asked me to testify
6 on their behalf. The developers who have invested
7 (inaudible) is that same -- the same person that's
8 building the \$5.6 million investment over across the
9 way and we're all very afraid that we are affected
10 because of the proximity to the asphalt plant. If we
11 were in Mars Hill this wouldn't be an issue.

12 Q. That was my question, so if you were in Mars Hill it
13 wouldn't be an issue?

14 A. Correct.

15 MR. GULDEN: We'll move that she has standing,
16 Madam Chair.

17 MR. SNEED: Well, I have one question.

18 R E D I R E C T E X A M I N A T I O N BY MR. SNEED:

19 Q. Do you have any evidence or are we just talking about
20 fears?

21 A. It's on how you look at evidence. And I don't -- I
22 don't know if I can answer. If you ask me a question
23 directly, do I have facts behind that, I'm a business
24 major so I understand the dollars and cents of when you
25 lose money and the economies and --

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1 Q. Do you have any evidence about the asphalt plant having
2 this kind of impact a mile and a half away?

3 A. I personally have not read any -- I have not studied
4 any of the evidence. That is not my role. My role is
5 to be the person on behalf of the Downtown Marshall
6 Association and all of the member businesses.

7 MR. SNEED: I don't think she has shown standing
8 and on the basis to present a speech about
9 bicycles.

10 MR. GULDEN: If I could just follow up on the
11 questions.

12 R E C R O S S - E X A M I N A T I O N BY MR. GULDEN:

13 Q. And we're not going to ask you about bicycles anymore,
14 but the asphalt plant hasn't been built yet, has it?

15 A. Not to my knowledge.

16 Q. But you understand, have you seen their application and
17 the amount of asphalt that they want to produce?

18 A. I personally have not looked at any of the documents to
19 be honest, it's just --

20 Q. Do you understand that an asphalt plant will increase
21 the traffic on Highway 25/70?

22 A. I have heard that, yes.

23 Q. And does that tell -- do you have evidence that -- I
24 mean, are you testifying now before the board saying
25 that an increase in traffic related to the proposed

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1 asphalt plant will have a negative effect on the income
2 to your business?

3 A. That was a long question.

4 Q. Yes, it was. It was horribly worded and I apologize.

5 A. So help me understand it and kind of break it apart.

6 Q. So it goes back to traffic. The asphalt plant hasn't
7 been built yet, has it?

8 A. Right.

9 Q. Is it your understanding that asphalt plants have a
10 significant amount of material delivered to their sites
11 and removed from their sites?

12 A. It has to. In fact, I -- well, my brother-in-law is a
13 road and bridges guy and I talked to him about his
14 experience with asphalt plant and he said one, you will
15 smell it. Two, the whole reason why they're doing the
16 asphalt plant is to -- to --

17 MR. SNEED: I object to the hearsay.

18 Q. Yeah. So don't testify to what your brother said. But
19 you had said you understand that there's going to be an
20 increase in traffic?

21 A. Increased traffic, I had heard that, yes.

22 Q. Is it your testimony that an increase in heavy truck
23 traffic on 25/70 where the majority of your customers
24 will drive past, will have a detrimental effect on your
25 business income?

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1 A. Yes.

2 Q. That's your testimony?

3 A. That is my testimony.

4 Q. Thank you.

5 MR. GULDEN: Thank you, Madam Chair.

6 CHAIRMAN KIEHNA: Board members, do you have
7 questions?

8 MR. TUZIW: I think he said it, you can't have it
9 both ways. Can't kick Rick Molland off and
10 then say -- because it's a conflict and then
11 say she's not standing. Either she has
12 standing and he's not here or she doesn't
13 have standing and he is here. I make a
14 motion she has standing.

15 MS. RHINEHART: I second that motion.

16 CHAIRMAN KIEHNA: I have a motion and a second.
17 All who's in favor. It's unanimous, five,
18 zero.

19 Andrew. Andrew, would you state your
20 full name?

21 MR. CARLSON: Andrew Carlson. My name is Andrew
22 Carlson.

23 ANDREW CARLSON, first duly identified
24 and sworn was examined and testified as follows:

25 D I R E C T E X A M I N A T I O N BY MR. SNEED:

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1 Q. Mr. Carlson, my name is Albert Sneed and I'm asking you
2 on what basis do you believe you have standing?

3 A. Good evening, Mr. Sneed, thank you for your question.
4 There are several reasons where I believe I have
5 standing. I have several serious health challenges. I
6 have leukemia. I have heart disease and respiratory
7 problems and to be within less than a mile from the
8 asphalt plant would be detrimental to my health. I'd
9 like to add that as a 20-year-old man, as I was putting
10 myself through school I worked for an asphalt plant and
11 I left after a few days because it was so toxic it
12 sickened me. It made me sick so I didn't last long.
13 So I have firsthand experience with asphalt plants.

14 Q. When was that?

15 A. That was back in 1978.

16 Q. Where do you live?

17 A. I live right in downtown Marshall. I live in the
18 biggest work home known as the Colonel Allen House. My
19 wife and I put a large amount of time and money into
20 renovating this home. I think, we agree that that we
21 have been doing a good job thus far and the fact that
22 again, we're just under a mile from a asphalt plant
23 would impact the (inaudible).

24 Q. Which -- which part of town is that home in?

25 A. It's in the downtown Marshall area. It's closer to the

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1 south end. We're on the south -- the South Main
2 Street.

3 Q. Do you have any evidence about the effects of toxicity
4 upon your health from an asphalt plant?

5 A. I shared with you the personal experience so there's
6 evidence in that regard. When I heard that this
7 asphalt plant was being considered I did some internet
8 research. I don't have of those documents with me; I
9 have them all on my computer back in my home. But
10 there is a plethora of information about the health
11 impacts on, you know, especially the elderly, the
12 infirm and the young. And in my exploration where the
13 site is it's well within less than a quarter of a mile
14 from some elderly people, from children daycare centers
15 and other people that would be severely impacted by the
16 health -- healthfully impacted, excuse me.

17 Q. So -- so they're all in the same sort of situation you
18 claim? You're not affected, they are?

19 A. I'm saying that I'm more affected and that's why I'm
20 sitting here doing what -- this. This is not very
21 (inaudible) but I am stepping forward because it needs
22 to be said.

23 Q. Thank you. That's all I have.

24 A. Thank you very much.

25 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

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1 Q. Mr. Carlson, I'm Brian Gulden. I'm a local attorney
2 here representing some groups in opposition to the
3 asphalt plant. You'd indicated that you have a myriad
4 of health concerns. One of the reasons why you're
5 claiming, or is it my understanding that one of the
6 reasons why you're claiming you have standing is
7 because of the potential effect the asphalt plant and
8 its, I guess, pollutants could have on your health?

9 A. Yes, sir.

10 Q. And you live within a mile of that asphalt plant?

11 A. Yes, sir.

12 Q. And is that concern -- would you have that same concern
13 if you lived Spring Creek?

14 A. I'm not sure where Spring Creek is. I --

15 Q. Hot Springs.

16 A. Hot Springs --

17 Q. Do you think your -- so my question is would your
18 health be affected the same way you contend it to be
19 affected here if you lived in Hot Springs?

20 A. I do not believe so. There are the thermal inversions
21 which would get it all the way down to Hot Springs, but
22 I don't know that for a fact so I would say that it
23 would not impact me in Hot Springs like it will affect
24 me in downtown Marshall.

25 MR. GULDEN: Those would be my questions, Madam

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Chair.

CHAIRMAN KIEHNA: Board members, do you have questions? Not hearing any questions, do I hear a motion? Not hearing a motion, the statement, it dies, that he does not have standing due to lack of a motion.

THE WITNESS: May I add something else to maybe reconsider?

MR. GULDEN: That would be up to Madam Chair.

THE WITNESS: I'm asking --

MR. GULDEN: Oh, okay.

CHAIRMAN KIEHNA: Yes, go ahead.

THE WITNESS: Yes. I did not mention this because Ms. Molland mentioned it. My wife is a co-owner of the Flow Gallery and it is a very strong possibility of detriment to my current income because she gets -- she gets paid through -- through her work at the Flow Gallery. And I would like to say that the bicycles are a valid point because 500-plus people come through every weekend and a lot of those people go to restaurants and they go to the galleries and so it is not a -- it is not a tangential question. So that's what I had.

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1 CHAIRMAN KIEHNA: Thank you. Do I hear a motion?

2 Not hearing a motion it fails with --

3 MR. TUZIW: Chairman, can you, please, hold for a
4 second?

5 CHAIRMAN KIEHNA: Do I hear a motion? Hearing no
6 motion.

7 THE WITNESS: Thank you very much.

8 CHAIRMAN KIEHNA: Mr. Sneed, would you like to
9 make opening statements?

10 MR. SNEED: Yes, but I thought there was one more
11 --

12 CHAIRMAN KIEHNA: Oh, no. We had four. They've
13 all been heard.

14 O P E N I N G S T A T E M E N T BY MR. SNEED:

15 So I represent the Madison Asphalt and French
16 Broad River Paving known by the same family that owns
17 Madison Asphalt. And the only issue before you is
18 whether or not this asphalt plant will adversely affect
19 the health or safety of persons working or residing in
20 the neighborhood, or whether or not it would be
21 detrimental to public welfare or injurious to the
22 public -- to property or public improvements in the
23 neighborhood. That's the only issue. If you answer
24 that no, and the county commissioners have already
25 determined that an asphalt plant is permitted in this

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1 area and subject to conditions if you want to put some
2 conditions on it. It's not a question of whether or
3 not it's appropriate to have an asphalt plant in this
4 zone, it is appropriate if you answer those questions
5 no, it's not going to have damage on property and
6 persons in the neighborhood or property in the
7 neighborhood.

8 I'm asking you to listen to some of the evidence
9 that we have because there are a number of features
10 that made this plant safer. It's located down inside
11 an operating quarry which is about 100 feet from the
12 boundary of the quarry, and there's a ridge along that
13 boundary covered with trees for some distance.

14 This is not a batch mix plant and a batch mix
15 plant is different. This is a continuous mixing plant.
16 And the reason I mention that is because a batch mix
17 plant is dirtier than this one and there have been --
18 there will be some comparisons to batch mix plants and
19 you need to pay attention to that.

20 This proposed asphalt plant has a condenser on the
21 tank that holds the hot asphalt cement which has
22 volatile organic compounds in it and the gases come off
23 and this condenser catches the gas and liquefies them
24 and puts them back down in the tank so they don't
25 escape into the air. This asphalt plant is a counter

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1 flow heating so the heat comes in one way and the
2 aggregate goes in the other way. And the purpose of
3 this is to make sure the flame never touches the
4 asphalt and you don't get the blue smoke that you get
5 in some parallel -- where the aggregate and the ash
6 keep moving in the same direction. It's a small plant,
7 rated for 170 tons per hour, and you'll hear evidence
8 about much, much larger plants in Western North
9 Carolina, Buncombe County. It burns number two diesel.
10 While it could be permitted to burn recycled oil it
11 burns number two diesel which is much cleaner. There's
12 a cover over the entire built that takes the asphalt up
13 to the top of the silo and puts it in the silo; it's
14 enclosed all the way from where the asphalt goes on and
15 all the way up to the top. And when it goes in the
16 only hole in it is the hole where the asphalt falls
17 down in the silo. So it's enclosed.

18 These are important because they're comparisons to
19 larger plants, though half those features is
20 misleading. It's an apples to apples -- to oranges
21 situation. And you will hear evidence of a 2007 study
22 that was conducted for two years on an asphalt plant in
23 Salisbury by the CDC, the Center for Disease Control,
24 which concluded that it is not a hazard to health. And
25 you can see the pictures of how close the homes to that

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1 plant were.

2 There's a lot of overheated language but asphalt
3 plants are not -- modern day asphalt plants are not a
4 major source of pollution. The evidence will show that
5 the emissions from this plant are barely over the
6 threshold required to even get a air permit. You'll
7 see exactly how low those emissions are. Three of the
8 five categories requiring permits are below the
9 threshold.

10 The particulate matter, you'll hear evidence that
11 the particulate matter from this plant is equivalent to
12 running a 300-horse power diesel engine in the quarry
13 2,000 hours a year. You'll hear evidence that the --
14 all of the allowable ambient concentration for benzene,
15 formaldehyde, arsenic and nickel, which were the ones
16 we had the -- a lot of the air dispersing models on,
17 that the output from this plant is 38 percent of the
18 benzene level. It's 10 percent of the formaldehyde
19 level. It's six percent of the arsenic level and it's
20 12 percent of the nickel level. The emissions from
21 this plant are very low. I would ask that you to
22 listen carefully how the state sets these standards.
23 There'll be a lot of evidence about the (inaudible) as
24 well.

25 And then final point here, the state requires that

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1 the air -- air emissions modeling. Assume that this
2 plant runs 24 hours a day, seven days a week, 365 days
3 a year, so the numbers that are in modeling have been
4 done on that basis. The owner plans to run the plant
5 maybe 2700 hours a year, 6:00 to 5:00 in the -- 6:00 in
6 the morning to 5:00 six days a week, or 2700 hours, not
7 the 8760 hours that the modeling requires. So we can't
8 tell you how much less but we know to a certainty that
9 the amounts of these air modeling issues will be much
10 less than the model shows.

11 So at this point I'd call Mr. Reed, if you'll come
12 up and be sworn.

13 MR. GULDEN: I just --

14 CHAIRMAN KIEHNA: -- opening --

15 MR. GULDEN: Yeah, and I'm happy to reserve my
16 opening statement, but I think that we have
17 to have at least the introduction of the
18 application Mr. Hyder testify first before
19 Mr. Reed can get up.

20 MR. LAWS: Do you want to make your opening
21 statement?

22 MR. GULDEN: I'm happy to make my opening
23 statement now.

24 O P E N I N G S T A T E M E N T BY MR. GULDEN:

25 Give me a little more brief, of course, because

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1 we're behind the eight-ball, we don't know what kind of
2 plant it is; it's not our plant. We're looking at the
3 application.

4 Mr. Sneed is correct in one sense that this a
5 industrial piece of property, zoned industrial but the
6 board itself has in its charging documents in the
7 zoning ordinance itself, must look at to ensure to, to
8 permit this kind of use. This board has to make sure
9 that -- or this board has to impose conditions or deny
10 it in order to prevent or abate the potential
11 detrimental effects which would have an injurious
12 effect on adjacent properties and the general welfare
13 of the community. I'm reading directly out of the
14 zoning ordinance section 3- -- 3.6.8 Industrial
15 District Conditional Use.

16 This board looks at a community-wide standard. In
17 the conditional use the three factors when they're
18 looking at this community-wide standard are, will the
19 use adversely affect the health, safety of persons
20 residing and working in the neighborhood? There will
21 be evidence presented by the opposition that for a
22 myriad of reasons, whether it's traffic, lights, odor,
23 pollutants, thermal inversions, that the health and
24 safety of persons working and residing will be
25 adversely affected.

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1 Also, the board is to look at to make sure if it's
2 going to approve a conditional use permit, that it will
3 not be detrimental to the public welfare. Public
4 welfare is not defined anywhere. It's a pie in the sky
5 idea, but it is what makes the community better.
6 That's the public welfare; that's your community
7 standard. This board is charged with looking at the
8 community standard. When you have homes, and there
9 will be testimony of this, that are 800 feet from the
10 proposed site, when you have residential property that
11 is within 200 feet of this proposed site, when you have
12 ball fields, daycare centers, convalescent centers,
13 nursing homes, schools, restaurants, all up and down
14 Highway 25/70, where you have a corridor of tourists
15 coming during the summer, this will all be testified
16 to, this outdoor corridor, because of the increase in
17 traffic.

18 And Mr. Sneed talked about the plant and how
19 wonderful it's going to be and it's not going to
20 pollute. But he didn't talk to you about all the
21 equipment that's going to be, or all the trucks that
22 are going to be coming in; all the diesel trucks that
23 are going to be sitting there idling. All of the
24 fugitive dust that's going to be out there. Odor,
25 noise, the traffic, all of these things, does it have a

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1 detrimental effect on the public welfare? That
2 community standard. We're to be saved up, we'll
3 present evidence that there is going to be this
4 detrimental effect on the community standard.

5 And lastly, the use cannot be injurious to the
6 property or public improvements in the neighborhood.
7 In the neighborhood, again, not defined but certainly
8 we are going to show evidence that the adjoining
9 property and properties within a certain area, within a
10 mile, will have a detrimental effect to their values
11 based upon all of the adverse effects of the proposed
12 plan. Light, noise, pollution, traffic, fugitive dust.
13 All of that commingling with the uses that are already
14 out there. And for all of those reasons at the end of
15 the hearing we're going to come back to the board and
16 ask them to deny this application.

17 CHAIRMAN KIEHNA: Thank you. I would like to take
18 10-minute break. Be back here at 10 minutes
19 after 8:00.

20 (WHEREUPON, the hearing was recessed at 8:01 p.m.
21 and reconvened at 8:12 p.m.)

22 CHAIRMAN KIEHNA: Again, since there are folks,
23 individuals that have come into the room that
24 were not here at the very beginning, I want
25 to reiterate that this meeting a quasi-

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1 judicial meeting. It will run as a court
2 proceeding. We will not have any outbursts,
3 comments. It will, the meeting will be run
4 as a court proceeding.

5 Call the meeting back to order. I'd
6 like to call Jeff Hyder to present the
7 application as it was presented to him as
8 zoning officer.

9 JEFF HYDER, being first duly identified
10 and sworn was examined and testified as follows:

11 CHAIRMAN KIEHNA: Please speak into -- directly
12 into the microphone and I ask this of
13 everyone that is speaking to speak -- please
14 speak loud enough so that you can be heard.
15 We have challenges within this room being
16 able to be heard. Thank you.

17 MR. HYDER: I received from Madison Asphalt, LLC
18 an application for an asphalt plant located
19 on 3807 West 25/70, part of the quarry tract
20 which is approximately 134 acres and their
21 intent was to lease a two-acre parcel on it.
22 They have met all the setback requirements
23 for that. They've met the restrictions --
24 requirements for that. Also, as fire marshal
25 I haven't had a turnaround for a fire

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1 apparatus to the application as well. I had
2 it advertised in the newspaper, the affidavit
3 for that. I've had the posting at the
4 location that was put on there on 4/3,
5 disappeared approximately one hour later.
6 Thank you someone. So we put another one on
7 there. Also, I sent a letter to all
8 adjoining property owners. And I believe
9 that's all I've had for this application that
10 I submitted.

11 CHAIRMAN KIEHNA: In conclusion, it has met all
12 the --

13 MR. HYDER: It has met all the requirements based
14 as a zoning administrator and fire marshal to
15 be submitted.

16 CHAIRMAN KIEHNA: Thank you. Mr. Laws, would you
17 --

18 MR. LAWS: I'll ask him my two questions on behalf
19 of the board. Mr. Hyder, if you'll be
20 seated.

21 D I R E C T E X A M I N A T I O N BY MR. LAWS:

22 Q. Do you have a copy of the application with you?

23 A. Yes, I do.

24 Q. And have you marked that application as Board's Exhibit
25 Number A?

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1 A. Yes.

2 Q. Could I see that, please?

3 MR. LAWS: Do each of the board members have a
4 copy of the application? Do you have a copy
5 of it, Mr. Sneed?

6 MR. SNEED: Maybe. Board's Number 1, the
7 application, yes, I have a copy of it.

8 MR. LAWS: Do you have a copy of it, Mr. Gulden?

9 MR. GULDEN: Mr. Laws, I'm certain I have a copy
10 of an application, not seeing this one that
11 you have in front of you, I don't know if
12 it's the same one. I do not have a copy of
13 this application. It looks like it has an
14 extra document in it.

15 Q. Mr. Hyder, once you received this application did you
16 go through the process of providing the procedural
17 notices that were required that we would have this
18 hearing?

19 A. Yes.

20 Q. And did that entail sending letters to the applicant?

21 A. Applicant abutting property owners.

22 Q. And all abutting property owners as well as the owner
23 of the property also?

24 A. Correct.

25 Q. And you were required to send those between 10 and 25

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1 days prior to the hearing?

2 A. Correct.

3 Q. And you did so send those letters, is that correct?

4 A. Yes.

5 Q. Were you also required to prominently post the notice
6 of this hearing on the property?

7 A. Yes, we did.

8 Q. And did you do that?

9 A. Yes, sir.

10 Q. Did you do that timely?

11 A. Yes, sir.

12 Q. And according to our ordinance you were also obligated
13 to run a notice of this public hearing in a local
14 newspaper, is that right?

15 A. Correct.

16 Q. And did you do that?

17 A. Yes, sir.

18 Q. And do you have the application or the affidavit of
19 publication in a local newspaper?

20 A. Yes, I do.

21 Q. Do you have that with you?

22 A. Right over here, yes, I do.

23 MR. LAWS: We would tender for the record the
24 Exhibit A, Exhibit 1, the application and
25 would also tender for the record as our

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1 Exhibit Number 2, the affidavit of
2 publication of newspaper.

3 (WHEREUPON, Board Exhibit Numbers 1 and 2 were
4 entered into evidence)

5 MR. LAWS: That's all the questions I would have.

6 MR. SNEED: I have no questions.

7 MR. GULDEN: I have a few brief questions.

8 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

9 Q. Mr. Hyder, you had indicated, I think you just
10 testified that all of the requirements as far as you
11 know in the zoning ordinance were met by this
12 application?

13 A. Correct.

14 Q. And in the application they submitted a site plan, did
15 they not?

16 A. Yes.

17 Q. If I just may approach with that. And I'm going to
18 hand to you what you all have marked Board's Exhibit
19 Number 1. And isn't there -- wasn't there submitted
20 with that application an amended site plan?

21 A. Yes, I believe I had it and put in my box.

22 Q. If you can get that and maybe we could mark that as the
23 Board's Number 3?

24 And Mr. Hyder, while everyone's looking, I'm going
25 to get Mr. Laws to, with Mr. Sneed's approval, to mark

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1 that as Board's Exhibit Number 3. If you can do that
2 and then I'm going to hand that up to you.

3 We're looking at Board's Exhibit Number 1 and it
4 contains several, one, two, three, four, five pages and
5 then a site plan. Are you aware of whether there was
6 an amended site plan ever submitted by the applicant?

7 A. Yes, I was.

8 Q. All right. And I'm going to hand up to you what's been
9 marked Board's Number 3.

10 (WHEREUPON, Board Exhibit Number 3 was marked for
11 identification and passed to the witness for
12 review)

13 Q. If you can look at that and identify that for the
14 board.

15 A. This is the amended site plan that was submitted.

16 Q. And that amended site plan is not included in the
17 Board's Exhibit 1?

18 A. Correct.

19 Q. And I have -- and does that fairly and accurately, I
20 suppose, represent the -- a copy of the site plan that
21 was given to you?

22 A. Yes.

23 Q. This is just a -- well, what is this, if you can
24 identify this for the board?

25 A. It's a version of the smaller one that I have.

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1 Q. Okay. And outside or with the exception of -- with the
2 exception of the seal that is there, the engineer's
3 seal, does that look like an identical copy of what's
4 been marked as Board's Exhibit Number 3?

5 A. Yes.

6 Q. All right. And we're going to go through some of these
7 requirements. The requirements that you referred to
8 that you said had all been met, where did you pull
9 those out of?

10 A. It's in the land use ordinance book.

11 Q. And that's the requirements basically for the
12 dimensional requirements out of the industrial code?

13 A. Correct.

14 Q. One of those is front and rear setbacks. Your front
15 setback has to be 40 feet, is that correct?

16 A. Forty feet from high to low.

17 Q. All right. And that front setback is indicated right
18 here, is that correct? You can look on the smaller
19 one.

20 A. Yes.

21 Q. All right. And so the -- they've indicated the front
22 setback and they've got 40 BSL, building setback line.
23 What's allowed to be built inside a building setback
24 line?

25 A. Anything that's not above four feet.

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1 Q. And did you verify or did they have anywhere in their
2 site plan that the aggregate stockpile area, this
3 building is not above four feet?

4 A. I do not see that on the sheet but I was told it would
5 be under four feet.

6 Q. But is it in their application?

7 A. Yes and no. I was told it would be under four feet but
8 it's not there.

9 Q. Okay. And did they tell you what it is, what's it
10 going to be made out of?

11 A. No, they did not.

12 Q. But where in the ordinance, can you just direct me
13 where anything under four feet can be constructed in
14 the --

15 A. It's not in the ordinance. Anything above four feet
16 would have to have a permit.

17 Q. So in your ordinance what --

18 A. See, it's not considered a structure unless it's four
19 foot tall.

20 Q. Okay. So it's not a structure. You can't have a
21 structure in the building setback line. This is not a
22 structure?

23 A. Correct.

24 Q. Because it's not over four feet tall?

25 A. Correct.

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1 Q. You just got verbal confirmation nothing in the
2 application?

3 A. Correct.

4 Q. All right. The opposite of this front is a rear
5 setback, correct or rear yard? And those have to be 10
6 feet, correct?

7 A. Correct.

8 Q. And do you know what the definition of a lot width is?

9 A. It's the width of the lot.

10 Q. And do you know where they measure it from?

11 A. From the corners.

12 Q. So a lot width as defined in your zoning ordinance,
13 page 15, the distance between the side lot lines -- the
14 distance between the side lot lines, right? So if this
15 is the front, which ones would be the side lot lines?

16 A. They'll be the back side.

17 Q. This here?

18 A. Yes.

19 Q. So this is north, you're southern border, your southern
20 property line or lot line is the front. Your northern
21 lot line is the rear and the east-west are, basically,
22 your side lot lines?

23 A. Correct.

24 Q. One of the requirements in your industrial zoning
25 regulations says that your lot width has to be how many

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1 feet?

2 A. I can't remember off the top of my head.

3 Q. Okay. And I'll just show you and then you can just
4 testify. What -- and I'm just going to hand up to you
5 what the lot --

6 MR. TUZIW: What page are you on?

7 MR. GULDEN: Excuse me?

8 MR. TUZIW: What page are you on?

9 THE WITNESS: 48

10 MR. GULDEN: 48.

11 MR. TUZIW: Thank you.

12 A. Lot width 200 feet.

13 Q. Okay. And so we've established that the northern
14 boundary line property line is the lot width if you
15 measure it, it's got to be 200 feet. Do you know what
16 134.7 feet plus 61.7 feet is?

17 A. Approximately 200 feet.

18 Q. It's approximately 196.4 feet. Does that meet 200 foot
19 requirement?

20 A. No, sir.

21 Q. So your testimony with the exception of the 200-foot
22 lot line requirement, the application may have met all
23 the zoning requirements?

24 A. Correct.

25 Q. All right. If you can turn to -- if you can look back

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1 again at the application, it has some dimensional
2 requirements for the two 100-ton hot mix asphalt silos.
3 You see that on your little one over there?

4 A. Sorry, which dimension?

5 Q. The two 100 silos right there. All right. And they
6 have -- they have actual measurements for the lot, or
7 strike that, for the silos' width and length, do they
8 not, on that little map?

9 A. Yes.

10 Q. And over -- they also have the approximate structure
11 cables, the little key in that upper lefthand corner.

12 MR. TUZIW: Mr. Gulden?

13 MR. GULDEN: Yes?

14 MR. TUZIW: Can you bring that closer so we can
15 actually see it?

16 MR. GULDEN: Absolutely.

17 MR. TUZIW: Since we don't have a copy of it.

18 Thank you.

19 MR. GULDEN: I thought it was part of the
20 application so I didn't make extra copies. I
21 apologize. If you don't care, I'll stand up
22 and ask my questions up here.

23 Q. And so they have the measurements -- they have the
24 measurements and then they have the key over here, is
25 that correct?

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1 A. Correct.

2 Q. And so on the two 100-ton silos they have a measurement
3 of 14.7 length -- strike that, width, correct?

4 A. Correct.

5 Q. But in the key it says 14.5.

6 A. Correct.

7 Q. All right. So they rounded down it looks like. For
8 the length they've got 24.9 but in the key they've got
9 it at 24.5.

10 A. Correct.

11 Q. Correct? They've rounded down again. For the height
12 of those two 100-foot silos they've got it at 49.5
13 feet. Did you ask them and get a verbal confirmation
14 that they didn't round down on that number?

15 A. No, sir.

16 Q. So they could have rounded down and that very well may
17 exceed the 50 foot height requirement. Did you ask
18 them about that?

19 A. No, sir.

20 Q. Did you get any kind of profile of the two 100-ton
21 silos so that you personally could verify that they
22 weren't going to be over 50 feet?

23 A. Not that I can recall.

24 Q. And what does that -- what does that 49.5 feet -- what
25 does that 49.5 feet represent? Does it represent the

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1 silo itself? Does it represent the silo on top of the
2 stilts? Does it represent the fencing on top of the
3 silo? Did you ask what that represented?

4 A. No, sir.

5 Q. All right. Wouldn't that be important to know so that
6 you could determine if, in fact, it met the height
7 requirement?

8 A. Yes.

9 Q. And what is the height requirement, if you know?

10 A. Fifty feet.

11 Q. Fifty feet. And so nothing over 50 feet -- it excludes
12 a few things like conveyor belts, right? The ordinance
13 does. But did you ask anything in particular about
14 that to verify for your own knowledge that, in fact,
15 they hadn't round down and nothing was going to be over
16 50 feet?

17 A. No, I did not.

18 Q. They also -- there's also a -- they also have a
19 requirement, the ordinance has a requirement for lot
20 coverage.

21 MR. GULDEN: I'm on page 48 for the board members.

22 Q. How do you interpret lot coverage? What does that
23 mean?

24 A. That whoever would cover any part of the property.

25 Q. So whatever would cover any part of the property, like

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1 aggregates -- aggregate stone, the stockpile area,
2 that's all part of lot coverage?

3 A. Correct.

4 Q. They submitted with their Board's Exhibit Number 1 an
5 aerial photograph -- well, strike that, let me back to
6 that lot coverage, because I hadn't seen this.

7 Do you know when this was made part of the
8 application?

9 A. It was made part today.

10 Q. Thank you.

11 MR. GULDEN: Madam Board, or Madam Chair, members
12 of the board, I asked a specific question
13 about this, that was the page, Mr. Laws, that
14 I said that I hadn't seen before part of the
15 application.

16 Q. And you're testifying today that this description and
17 the area, the square footage and the built-upon
18 percentage was submitted to you today?

19 A. Correct.

20 Q. Did -- have you given it to anybody that you know of?
21 Did anybody ask for it? Did you notify anybody?

22 A. I continually accepted work on (inaudible).

23 Q. And so when you made --

24 A. The piece of paper was submitted today.

25 Q. When you made the packets for the board and sent them

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1 out to them, did it include this with it?

2 A. No.

3 Q. So you just gave them that today?

4 MR. GULDEN: What I would like to do is mark that
5 as just the Board's Exhibit 4 as a separate
6 entire exhibit.

7 Q. Because in essence this wasn't part of the original
8 application, was it?

9 A. Correct.

10 MR. GULDEN: It wasn't part of the original
11 application.

12 MR. LAWS: Mr. Gulden?

13 MR. GULDEN: Yes.

14 MR. LAWS: Do we have a -- do you have a -- is
15 there a separate page of this that we can
16 just mark as Exhibit Number 4? Do you have
17 another one of these?

18 MR. GULDEN: Mr. Hyder might.

19 THE WITNESS: I probably do, yes.

20 MR. LAWS: Do you have one Mr. Sneed?

21 MR. SNEED: No.

22 MR. LAWS: Would you look and see if you've got
23 one so that we can mark it separately for the
24 record?

25 MR. GULDEN: Thank you, Mr. Laws.

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1 MR. LAWS: Can I give this back to you, Mr.
2 Gulden?

3 (WHEREUPON, Board Exhibit Number 4 was marked for
4 identification)

5 MR. LAWS: Mr. Gulden, if you will have him just
6 introduce it. If you'll just have him
7 identify --

8 Q. Mr. Hyder, I'm going to hand up to you what I've marked
9 as Board's Exhibit 4. If you can just identify that
10 for the board.

11 A. It's a sheet that shows the density of each item on the
12 property.

13 Q. And testimony -- does that fairly and accurately
14 reflect a copy of what you received today?

15 A. Yes.

16 Q. And who gave that to you today?

17 A. Mr. Reed.

18 Q. Who?

19 A. Mr. Reed.

20 Q. Okay. And that has calculations on it, is that
21 correct?

22 A. Correct.

23 Q. And that's -- that is -- that has calculations on it
24 because as part of the application process there's a
25 specific question in section 2-B(2)(a) that asks for a

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1 tabulation of the total land area and a designation
2 thereof for various uses, correct, so they had to
3 tabulate that. And so when you got your original
4 application back in February and you got your updated
5 site plan sometime thereafter, you still didn't have a
6 tabulation of the total lot coverage, did you?

7 A. Correct.

8 Q. You got that today?

9 A. Correct.

10 Q. And what does it say? Does it -- did you verify that
11 it includes all of those areas that are going to be
12 covered with anything?

13 MR. SNEED: Objection.

14 MR. GULDEN: What did you --

15 MR. SNEED: There's no requirement that covers
16 with anything in the zoning ordinance.

17 MR. GULDEN: He testified that lot coverage means
18 anything that's covered. That was his
19 testimony.

20 MR. SNEED: With a structure.

21 MR. GULDEN: He didn't say that. I would object
22 to your testifying to what he said. He said
23 lot coverage is anything that's covered.

24 Q. So my question to you is, did you verify on their site
25 plan that all of the areas that are going to be covered

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1 are included in that tabulation?

2 A. Yes.

3 Q. And when did you do that?

4 A. When I got the piece of paper.

5 Q. When did you get that piece of paper?

6 A. This morning.

7 Q. All right. What time?

8 A. Around 10:30, 11:00.

9 Q. And how did they calculate the aggregate stone area?

10 That area that's identified as aggregate stockpile
11 area?

12 A. Square footage.

13 Q. Yeah. And did they just take the square footage of the
14 area itself, measured from corner to corner?

15 A. I'm not quite sure how they arrived at the calculation;
16 didn't add it myself.

17 Q. Did they -- you didn't add it yourself?

18 A. No.

19 Q. And so you just took what they gave you and basically
20 you didn't do any independent verification?

21 A. Correct.

22 Q. So if stone would pour out of the recycled asphalt area
23 that's designated for the recycled asphalt, if area --
24 if stone and aggregate were to pour out of the
25 stockpile areas, wouldn't that need to be included in

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1 lot coverage to make a determination?

2 A. Yes and no because that would be temporary. It
3 wouldn't be there on a permanent basis.

4 Q. All right. All right. Fair enough. Did you know --
5 did they calculate the parking spaces?

6 A. Truck loading area.

7 Q. All right. There's a -- and those are all my questions
8 on that issue because I just haven't seen it before so
9 I haven't had an opportunity to calculate it.

10 There's also a requirement of a lot of being one
11 acre, correct?

12 A. Minimum of one acre.

13 Q. Minimum one acre, and they have -- what does their
14 application say, they're going to have --

15 A. Two acre.

16 Q. Two acre. And they sent with their application a
17 aerial photograph that showed the approximate location
18 of the site, correct?

19 A. Correct.

20 Q. And you had already testified that there's a quarry
21 operating on this 137 acres, right?

22 A. Yes.

23 Q. Did you already testify? And if you look at the aerial
24 photograph that they submitted with their application
25 and the proposed location of the site, doesn't it

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1 appear to be going exactly over where the quarry is
2 stockpiling some of its rock?

3 A. I'm not sure I could tell from the aerial photo.

4 Q. So I'm going to hand to you what I will mark as Opp
5 Number 1, Opposition, I guess is good as anything.

6 (WHEREUPON, Opposition Exhibit Number 1 was marked
7 for identification and passed to the witness
8 for review)

9 Q. And can you identify that for the board?

10 A. It's a marked photo of the rock quarry.

11 Q. And do you recognize that as being taken from Madison
12 County GIS?

13 A. It appears to be so, yes.

14 Q. And does it fairly and accurately represent an aerial
15 photo -- well, have you been to the site?

16 A. Yes, I have.

17 Q. All right. Does that picture fairly and accurately
18 represent a photograph, an aerial photograph of what
19 the site looks like?

20 A. I think it's changed since this photograph because the
21 photograph was taken April of 2018.

22 Q. What has changed about it?

23 A. Some of forest that's on here is no longer there and I
24 really can't disseminate where the stockpiles are at on
25 this aerial photo as well.

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1 Q. Okay. So some of the forest is no longer there, is
2 that what you said?

3 A. Uh-huh.

4 Q. So some of the trees along which property line?

5 A. It'd be this east -- western property line.

6 Q. Western property line, and is that property line --
7 what does that adjoin, what kind of -- or strike that.

8 What kind of zoning district?

9 A. That is residential as well.

10 Q. Okay. And since you've been out there and since this
11 photograph that I've marked as Opposition 1, they've
12 removed additional trees adjacent to a residential
13 property line?

14 A. Yes, but not that close -- I just, I can -- since I've
15 been at that site and I work there almost every day, I
16 know there's a portion of these trees are no longer
17 there. Based on my site visit and the aerial photo.

18 Q. And so you're not able to tell from the aerial
19 photograph looking at the site plan that was submitted
20 with their application, as to whether or not where the
21 site's actually going to be located on the quarry
22 property?

23 A. Not to 100 percent, no.

24 Q. And if the quarry's using some of that property where
25 they're going to locate the asphalt plant, are you

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1 including that in the lot size requirement minimums
2 such that if you've got two uses on the same piece of
3 property are you actually, are you using the full two
4 acres?

5 A. I can't really answer that question. I don't
6 understand when you're using the two acres.

7 Q. Well, so there's a minimum requirement that the lot has
8 to be two acres?

9 A. Correct.

10 Q. And that's for the asphalt plant?

11 A. Correct.

12 Q. And that's what the application said. But the quarry's
13 using some of that area because it says that -- it
14 shows that on the application. So does that reduce the
15 lot size itself?

16 A. I cannot say whether the quarry's using that lot size
17 or not.

18 Q. But you've been out there?

19 A. I've been out there.

20 Q. Were there not stockpiles out there as shown on the
21 aerial photograph?

22 A. At the time I was there there was no stockpiles on the
23 two-acre site.

24 Q. As the zoning administrator, you are familiar with what
25 is located in and around that property, are you not?

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1 What's in and around -- around the proposed site. Do
2 you know, are there any daycare facilities in and
3 around the proposed site?

4 A. What's in and around?

5 Q. Well, what does --

6 A. What's your definition of in and around, that's my
7 question.

8 Q. For -- if I could just have you read this requirement,
9 the conditional uses, and what's the standard that it
10 gives us there?

11 A. "Which will prevent or abate the potential detrimental
12 effect which would have an injurious effect on adjacent
13 properties and the general welfare of the community."

14 Q. Okay. And so that's just the standard that your
15 ordinance gives out. Injurious effect on adjacent
16 property and the general welfare of the community. How
17 close is the closest daycare to the proposed site, if
18 you know?

19 A. I don't know exactly how close.

20 Q. Do you know where it is located?

21 A. Not exactly, no.

22 Q. Where is the closest nursing home to the proposed site?

23 A. Approximately 1,000 feet.

24 MR. SNEED: Madam, Madam Chairman, I object to
25 this line because what he's going -- is doing

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1 is the very first part of the zoning
2 ordinance says in order to provide for the
3 general welfare of the community, that's not
4 what's before this board. What's before this
5 board comes from the conditional use permit
6 requirements and it specifically says all
7 you're looking at is whether it's injurious
8 to that language that I have quoted to you
9 earlier.

10 UNIDENTIFIED FEMALE: Speak up.

11 MR. SNEED: So I object to this line just talking
12 about the -- that you have or what the zoning
13 department has a duty to look out for the
14 general welfare. The only issue before this
15 board is whether or not it's injurious to
16 neighboring property or persons in the
17 neighborhood.

18 MR. GULDEN: And Madam Chair, if I may just
19 address, I'm reading, and I had Mr. Hyder
20 read directly from your zoning ordinance,
21 page 47, directly reading from it. And so
22 the conditional use specifically says, "The
23 following uses shall be permitted subject to
24 a finding by the Board of Adjustment that
25 additional conditions be provided and met

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1 which will prevent or abate the potential
2 detrimental effects which would have an
3 injurious effect on adjacent properties and
4 the general welfare of the community."

5 MR. SNEED: That's for the conditions, correct.

6 MR. GULDEN: That's for a conditional use, is it
7 -- I'm just reading it straight, page 47.

8 Q. The conditional uses which is on page 69 of the zoning
9 ordinance, the three standards, if you can read those
10 for the board.

11 A. "The following standards shall apply to all conditional
12 uses applications. The Board of Adjustment shall
13 define that each will not: a. will not adversely
14 affect the health or safety of persons residing or
15 working in the neighborhood of the proposed use, b.
16 will not be detrimental to the public welfare, c. will
17 not be injurious to property or public improvements in
18 the neighborhood."

19 Q. So the public welfare, is that defined in your
20 ordinance? Is it defined in your public welfare?

21 A. No.

22 Q. And so back to, where's the closest nursing home to
23 this proposed site?

24 A. Approximately 1,000 feet.

25 Q. And is that on -- where is that located?

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- 1 A. It would be to the east.
- 2 Q. Okay. To the east, yeah. Where is the closest school?
- 3 A. If you would consider A-B Tech.
- 4 Q. School, yeah. Where's the -- how far away is that?
- 5 A. I'd say it's a quarter of a mile.
- 6 Q. Where's the closest ballfield?
- 7 A. Twelve hundred feet.
- 8 Q. Close to the nursing home?
- 9 A. Yeah, it's just above.
- 10 Q. Where's the closest preschool?
- 11 A. That I'm not aware of.
- 12 Q. Where's the closest co-op extension center?
- 13 A. It's by the plant.
- 14 Q. How close is the French Broad River?
- 15 A. It depends on where you're at in the property. Say, 50
- 16 feet if you're at the head of the property at the
- 17 southern end.
- 18 Q. Well, from the proposed site.
- 19 A. From the proposed site it's 800 feet. These are all
- 20 approximations.
- 21 Q. And as it stands now, this asphalt plant doesn't exist?
- 22 A. Correct.
- 23 Q. Oh, let me ask you this, how close is the closest
- 24 residential structure to the proposed facility?
- 25 A. Six hundred feet.

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1 Q. Six hundred feet?

2 A. That's approximately again.

3 Q. Those will be all my questions.

4 C R O S S - E X A M I N A T I O N BY MR. SNEED:

5 Q. Mr. Hyder, during the last several months, you've asked
6 the applicant to make changes, provide additional
7 information on several different occasions, have you
8 not?

9 A. I've attempted my best, yes.

10 Q. And you've requested this lot coverage calculation they
11 delivered today?

12 A. Yes.

13 Q. Now, you've told them that they could build four feet
14 high within the setback?

15 A. Correct.

16 Q. You stored -- record of it?

17 A. That's correct.

18 Q. And when people go in and you given them a permit to
19 build something and they go in and violate the permit,
20 don't you have the power to make them take it down?

21 A. Correct.

22 Q. So if the silo and the coverage is up over 49.5 feet or
23 over 50 feet, you have the power to make them take it
24 down?

25 A. Lower or remove it.

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1 Q. Lower it or remove it. Now, a setback picture here, I
2 think you've got that up there and I'll put this one
3 back on the -- can I look at the one that you have up
4 here? Now, with respect to Board Exhibit Number 3 --

5 UNIDENTIFIED FEMALE: Speak up.

6 Q. With respect to Board Exhibit Number 3, the front
7 setback line is right there, is that correct?

8 A. Correct.

9 Q. It's 40 feet in?

10 A. Yes.

11 Q. And showing you the zoning ordinance, what does it say
12 where you measure the lot width?

13 A. The distance between side lot lines measured at the
14 building setback line.

15 Q. So you measure the width at the setback line 40 feet
16 back, right down here, is that right? Not at the back
17 of the lot but at the building setback line? That's
18 what it says, isn't it?

19 A. Yeah, but all the lines could be considered building
20 setback lines.

21 Q. So which one is it?

22 A. It could be all of them. Because --

23 Q. The width is right here is a setback line.

24 A. That particular line, yes.

25 Q. And that line's more than 200 feet, isn't it?

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1 A. It is.

2 Q. And if you put a wood pile on the property is that
3 considered coverage?

4 A. A wood pile would not be considered coverage; it's
5 temporary.

6 Q. I'm going to show you this definition here about walls,
7 freestanding walls. Read that in orange there --

8 A. "Anything constructed or erected that requires location
9 excluding swimming pools, fences and freestanding walls
10 uses fences."

11 Q. Excluding freestanding walls used in fences. And
12 aren't these --

13 A. They'd be a fence to hold the gravel.

14 Q. To hold the gravel. They're freestanding.

15 A. Sure.

16 Q. So they're excluded from structures?

17 A. Correct.

18 Q. Can you tell me whether or not it's still your opinion
19 that the application complies with the (inaudible)?

20 A. I'm sorry, what was that?

21 Q. Is it still your opinion that the application complies
22 with the zoning requirements?

23 A. It doesn't meet the 200 foot.

24 Q. Well, unless you measured along the front setback line.

25 A. But it doesn't define which setback line you're

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1 supposed to measure. It doesn't define whether that
2 200 width is the front, back, sides. So it could be
3 either of the setback lines, what has to be a minimum
4 of 200 feet.

5 Q. The big setback is the 40-foot setback, right?

6 A. Correct.

7 Q. The normal use of the term building setback is from the
8 front, is it not?

9 A. It could be from any property because you have to be so
10 far from that property line whether it's the front,
11 back or side. You can't build a house if it's a side
12 setback right on the setback line. You have to be at a
13 10 foot minimum.

14 Q. Same in back, right?

15 A. Correct. It'd be -- in industrial it'd be 10 foot on
16 all sides and the front would be 44.

17 Q. But if a reasonable reading of this ordinance is, that
18 it refers to the building setback line being the front
19 setback, this application complies, does it not?

20 A. I cannot say that the setback line is defined on any --

21 Q. I said if it is.

22 A. If it was, yes.

23 Q. If it was the front setback, then it would comply?

24 A. You're correct.

25 Q. Thank you.

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1 MR. GULDEN: It's not -- oh, are you done, Mr.
2 Sneed? I'm sorry.

3 MR. TUZIW: I have a question. So if the setback
4 -- what you're saying, if there was
5 triangular lot that wouldn't work at all
6 then, right because the rear would be one
7 foot?

8 THE WITNESS: Well, you'd still have setback
9 lines. You'd have to define what your front
10 and your back is.

11 MR. TUZIW: But it wouldn't comply with the rear
12 because of the fact that on a triangular lot
13 you would have nothing.

14 THE WITNESS: According to ordinance all those
15 lines would still have to meet the 200-foot
16 width.

17 MR. TUZIW: Thank you.

18 THE WITNESS: Even if it was a triangle.

19 MR. TUZIW: Thank you.

20 R E C R O S S - E X A M I N A T I O N BY MR. GULDEN:

21 Q. I think that was going to be generally my question.
22 The ordinance doesn't define where you take the
23 measurement and you just testified that they all must
24 meet the 200-foot width?

25 A. It doesn't define which -- what side.

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1 Q. And 196.4 feet is less than 200 feet?

2 A. Yes.

3 MR. GULDEN: No further questions other than just
4 to have that Board Exhibit 4 admitted.

5 R E D I R E C T E X A M I N A T I O N BY MR. LAWS:

6 Q. Mr. Hyder, the Board's Exhibit Number 1, what we
7 tendered as the application, was actually the first
8 document that you received from the applicant, is that
9 not right?

10 A. Yes.

11 Q. And then after that they -- you requested additional
12 information from them, is that correct?

13 A. Correct.

14 Q. And that is when you were provided with Board's Exhibit
15 Number 3 which was the site plan --

16 A. Correct.

17 Q. -- correct? And then after that you had requested
18 additional documentation which was the density site
19 plan --

20 A. Correct.

21 Q. -- all the measurements. And that is what has been
22 offered as Board's Exhibit Number 4, is that correct?

23 A. Yes.

24 Q. So all of those documents together constitute the
25 application as it exists at the time this hearing

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1 commenced, is that correct?

2 A. Yes.

3 MR. LAWS: Madam Court Reporter, do you have the
4 other exhibits, have we given those to you?

5 THE REPORTER: No.

6 MR. LAWS: We could gather those up so that you'll
7 have those.

8 THE REPORTER: Oh, he's got them here.

9 (WHEREUPON, went off the record)

10 MR. GULDEN: And Mr. Laws, if I may just address
11 the applicant -- or strike that, the Board's
12 Exhibit Number 4, we would just reserve our
13 right and object to that in that it
14 prejudices our client by not having it in
15 sooner than today at this hearing at eight
16 o'clock.

17 MR. SNEED: Can I call my next witness?

18 MR. LAWS: Finished with Mr. Hyder.

19 MR. SNEED: I call Mr. TJ Reed.

20 TJ Reed, being first duly identified and
21 sworn was examined and testified as follows:

22 D I R E C T E X A M I N A T I O N B Y M R . S N E E D :

23 Q. Mr. Reed, will you tell the board your name, address
24 and occupation?

25 A. My name is TJ Reed. I live at 725 Peachtree Road,

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1 Marshall, North Carolina.

2 Q. And what's your business?

3 A. Paving for a long time, since 1997 --

4 Q. Since 1997?

5 A. 1997, yeah.

6 Q. And do you and your family own French Broad Paving?

7 A. We do.

8 Q. And how long have you done that?

9 A. Well, I haven't been doing it that long. I started
10 while -- I've done it for a couple years now, part of
11 it.

12 Q. All right. Could you speak up so people can hear you.

13 A. I'm sorry.

14 Q. And what is your experience in the asphalt business?

15 A. I've got -- I went and got my highway contractor's
16 license in North Carolina and we had it moved to
17 unlimited and I qualified in highway roadway
18 certification technician.

19 Q. And so you've been working continuously in asphalt
20 every year since 1997?

21 A. I took a semester and went to college and I come back
22 to the plant.

23 Q. And you are familiar with the asphalt plants in the
24 area?

25 A. I am, yes, lots of them.

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1 Q. And when did you decide that you might need to have an
2 asphalt plant for French Broad Paving?

3 A. A few years ago our company started to grow to where we
4 were -- we had too much overhead to go and do driveways
5 at a affordable cost for people in the neighborhood and
6 community. And then I started bidding on bigger jobs
7 like we've been -- we started out with MSD work doing
8 construction work 15 years ago, give or take, and then
9 we, you know, we got so big and we needed so much help
10 with traffic control, flagging, concrete work, grading,
11 planning that we ended up having to hire more help.

12 And then we got to a point to where all the competitors
13 were APAC group and they all have their own asphalt
14 mixing facilities. They make their own mix and they
15 pave the same jobs that they bring the mix to and we --

16 Q. So they -- they pave, they make the asphalt and they
17 pave it?

18 A. They do, yes, sir.

19 Q. And they're direct competitors?

20 A. They are, yes.

21 Q. And so what's the pricing like when you're buying from
22 APAC for asphalt?

23 A. It's -- it's up and down. They want to charge you by
24 the -- how far you haul it instead of giving you a
25 price from where you haul it. It's -- then they third-

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1 party subcontracted all their billing so we get bills
2 four, five times a day sometimes and their prices are
3 up and down. We had to hire extra people in the office
4 just to do the billing. But it's a mess, really.

5 Q. Was there any other reason you want to put -- have an
6 asphalt plant in Madison County?

7 A. Well, we want our tax money to go to Madison County
8 that we're putting in Buncombe County. There's three
9 asphalt plants in Buncombe County and last year we
10 brought \$2.4 million worth of asphalt in Buncombe
11 County at 2.25 percent county tax, which equates around
12 50,000, 55.

13 Q. All right. Now --

14 A. It also --

15 Q. -- when you started thinking about building an asphalt
16 plant did you make any investigations?

17 A. I did, yeah. I'd already been to numerous asphalt
18 plants all over the Western North Carolina, Virginia,
19 Tennessee, South Carolina and I knew the locations and
20 asphalt plants and I know the surrounding communities
21 and I've watched the way they will grow; Enka exploded
22 and watched other communities like that, just really
23 boom. And a lot of them have ballfields and stuff
24 which is one of the things that I really, really want
25 in my community is a sports complex. And I watched the

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1 -- and other counties have stuff that we want. That's
2 one of the things about --

3 Q. Well, let me show you a chart marked Exhibit 1 and see
4 if you can identify that from way up there.

5 (WHEREUPON, Applicant Exhibit Number 1 was marked
6 for identification)

7 Q. Can you see it?

8 A. Not real good, I can though.

9 Q. Well, let me see if I can get it up where you can see.
10 What --

11 A. It looks the Black Mountain facility.

12 Q. All right. That's the -- that's Black Mountain?

13 A. Black Mountain, yes, sir.

14 Q. And it's about -- can you describe what's around it?

15 A. Well, that big huge building is Ingle's warehouse which
16 has tripled in the last little while. There are lots
17 and lots of trucks in and out of there. There's a KOA
18 camp ground beside it, Owen Middle School is less than
19 half a mile from it. Their ballfields and pools are
20 less than half a mile from it. The quarry, Pisgah
21 Brewing is like two tenths of a mile from it for
22 outside venues. And there's also an asphalt emulsions
23 plant next to the asphalt plant.

24 Q. Next to that plant.

25 A. And there's a KOA down there too which, one of the

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1 things I stated the KOA because, you know, people when
2 they go camping they spend money and they're quick to
3 review their experience. And what I've found -- I
4 found 1,000 reviews. I didn't read them all, you know,
5 a lot of them, they had 4.5 stars out of 1,000 reviews
6 and most of them was mad because they didn't cut the
7 grass.

8 Q. They didn't cut the grass?

9 A. Right.

10 Q. Anybody say anything about the asphalt smell?

11 A. Not that I read. Now, I didn't read them all.

12 MR. SNEED: We'd offer Exhibit 1.

13 (WHEREUPON, Applicant Exhibit Number 1 was offered
14 into evidence)

15 (WHEREUPON, Applicant Exhibit Number 2 was marked
16 for identification)

17 Q. What's Exhibit 2?

18 A. That's the Enka plant, and area.

19 Q. Have you been out there and looked at that?

20 A. Yes, I've been there many times, all up through Enka,
21 like in Enka Village not too long ago, a few months ago
22 when I first started thinking about this.

23 Q. What's close to that plant within the mile?

24 A. Enka High School, Enka Middle School, Hominy Valley
25 Elementary School, Hominy Valley Health Clinic, Health

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1 Department. There's a trailer park real, real close.
2 I think it's just a few hundred feet maybe, from the
3 actual load-up on the silos. And then there's Enka, of
4 course Enka Lake and Enka Village. There's over 700
5 homes in Enka Village. They average out like \$600,000
6 a home.

7 Q. That's Biltmore Lake?

8 A. Biltmore Lake, yes, sir.

9 Q. And they're selling lots for four and \$500,000?

10 A. They are and there's lots of future development going
11 on there currently. And then I looked at the size of
12 that plant compared to the size of my plant. That's a
13 big plant.

14 Q. How big?

15 A. I know, like, I've got one AC tank with a condenser on
16 it. They've got either three or four that don't have
17 condenser on any of them.

18 Q. About 400,000 tons a year?

19 A. I think they're at 810,000 tons a year. That's what
20 they're permitted for. I think they move 300 an hour
21 but I can't say for sure, but three or 400 an hour.

22 (WHEREUPON, Applicant Exhibit Number 3 was marked
23 for identification)

24 Q. What is Exhibit 3?

25 A. That's Hendersonville. The three plants in

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1 Hendersonville. They each have a mile radius and you
2 can see where they overlap in the center there.

3 CHAIRMAN KIEHNA: Mr. Sneed, would you speak up,
4 please?

5 MR. SNEED: Yes, ma'am. I'm sorry.

6 Q. So they've got residential neighborhoods around?

7 A. Yeah, there's retirement centers, nursing homes.
8 There's schools around it. Right at the edge of the
9 mall which is closer to all three of those plants than
10 Marshall is, our side is Sam's, the movie theater,
11 there's all kinds of stuff there. I can't remember all
12 that's there, but there's a lot. The Department of
13 Human -- Health and Human Resources is near one of
14 those plants, Subaru dealerships, Fire & Rescue squads,
15 schools. There may not be a school, I can't remember
16 what's around now, I can't see it.

17 Q. All right. Let's just move on. As part of your
18 investigation did you look up the Weaverville Plant?

19 (WHEREUPON, Applicant Exhibit Number 4 was marked
20 for identification)

21 A. I have, yeah. That's the plant we usually haul out of
22 so I've watched Weaverville grow since -- now, I drove
23 a dump truck for a few years too for our company. I
24 spent a lot of time watching the on that road. Right
25 next to the Weaverville plant is the Austin Powder that

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1 makes dynamite as well, and it's on top of the ridge.

2 It's fairly close to the river as well.

3 Q. Have they got -- the park's along the river right next
4 to it?

5 A. Yes.

6 Q. And this is Exhibit 4.

7 (WHEREUPON, Applicant Exhibit Number 5 was marked
8 for identification)

9 Q. I'm going to show you Exhibit 5. What's that?

10 A. That's our proposed site with a mile radius.

11 Q. All right. And within that mile radius you've got the
12 Elderberry Nursing Home?

13 A. Yes, sir.

14 Q. You've got the ballfields?

15 A. Yes, sir.

16 Q. Do your kids practice at the ballfields?

17 A. I coach at the ballfields; yes, sir.

18 Q. And you all own some property there too, don't you?

19 A. We own a shop right across the US 25/70 there.

20 Q. Would that be --

21 A. It's right at the A in Asphalt.

22 Q. Right there and the A in Asphalt? And is that your
23 offices?

24 A. It is. We have three acres there and my family spend a
25 lot of time there. Too much sometimes.

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1 Q. All right. Now, did you engage in other investigations
2 besides looking at these asphalt plants?

3 A. I did. I scheduled a sit-down with Harold Grady at the
4 DEQ, he was still at the DEQ. I sat down with him and
5 I believe one of them was Patrick Mallard. There was
6 another gentleman and a lady that does stormwater spill
7 controls and runoff and stuff like that. She does the
8 state permitting for water and soil.

9 Q. And did he give you any advice about the asphalt plant
10 that you were planning to do?

11 A. Well, at first he wanted to know the location, was the
12 first thing he asked me. And I showed him on the map
13 similar to that on my phone actually, and told him
14 about the elevation was on the ridge line, a small
15 ridge line around one side about 15, 20 foot in
16 elevation where the homeowners are. And then we talked
17 about the wind prominently blowing. He said that --

18 MR. GULDEN: I'll just object to what Mr. Grady
19 said unless he's coming to testify?

20 MR. SNEED: No.

21 THE WITNESS: Well, I'm just saying what I talked
22 about --

23 MR. GULDEN: You -- yeah, that's right. We just
24 would object because he said, and "he said"
25 and I was assuming you're talking about Mr.

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1 Grady said something. We would object to
2 that.

3 CHAIRMAN KIEHNA: Sustained.

4 Q. And did you inquire from him for advice about how to
5 structure your plant?

6 A. Well, he wanted to know what kind of plant I was
7 looking at and I took two or three different --
8 different client bids, I guess, proposals of three
9 different companies. And I got -- he run a spreadsheet
10 on all three of them.

11 Q. All right. And did you -- did he give you advice about
12 what kind of equipment to put in there?

13 A. Well, he wanted to know if I could go natural gas, was
14 his first question. I told him it wasn't available in
15 this area. And he asked me if I was going to do number
16 two heating oil and I told him that's what I want to
17 do, something you can use in your homes.

18 Q. And did he give you any advice as to whether or not to
19 buy -- what kind of drum to buy?

20 A. I told him the different drums I was looking at and he
21 told me that --

22 MR. GULDEN: Well, I --

23 Q. Let me just ask you, did you take his advice?

24 A. I did take his advice, yes.

25 Q. Now, did you learn about any legal issues regarding

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1 asphalt plants during your investigation?

2 A. Any legal issues?

3 Q. Well, issues for example, the (inaudible) asphalt
4 plant?

5 A. I couldn't hear you, I'm sorry.

6 Q. How does the EPA treat asphalt plants?

7 A. Oh, they were -- they were delisted in 2002 as a major
8 source of pollution.

9 Q. They were delisted?

10 A. Delisted in 2002, yes, sir.

11 Q. Did you have any occasion to understand that there was
12 a study of a asphalt plant in Salisbury?

13 A. I did, yes, sir. There was a study of a asphalt plant.
14 It was an APAC plant and associated asphalt, I believe,
15 the same study together. It was a associated asphalt
16 roads liquid emulsion plant. It makes kind of like
17 what's next to the Black Mountain plant there. It just
18 stores liquid asphalt.

19 Q. And who did the study?

20 A. The CDC did the study.

21 Q. The Center for Disease Control?

22 A. Yes, sir.

23 Q. How long did they do the study?

24 A. I thought it was seven years. It was a few years. I
25 can't remember, I thought it was seven.

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1 Q. And did they make a conclusion?

2 A. What I read the conclusion was that that dust was the
3 most effective thing. There was no long or short-term
4 adverse effects; the dust was the worse part.

5 Q. No long-term or short-term? What kind of effects?

6 A. Adverse effects.

7 Q. On health?

8 A. Health, yes, sir.

9 Q. And there was a -- had a subdivision right across the
10 street?

11 A. There was a lot of stuff around there. There was no
12 quarry; It wasn't in the quarry. It was a concrete
13 plant --

14 Q. And can you tell me whether or not it was a batch
15 plant?

16 A. It was a batch plant, yes, sir.

17 Q. Now, have you calculated the distance to the neighbors?

18 A. Yes, a few of them.

19 Q. Which ones?

20 A. I did a distance to Doug Bruggeman's house, hope I said
21 it right. And Ed, I can't remember his name right off
22 the top of my head, the northwest neighbors.

23 Q. Let me show you Exhibits 11, 12 and 13 and see if you
24 can identify them, each having two pages.

25 (WHEREUPON, Applicant Exhibit Numbers 11, 12 and

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1 13 were marked for identification and passed
2 to the witness for review)

3 Q. What's Exhibit 11?

4 A. This is Adam Reda's house, the distance from the
5 proposed asphalt site.

6 Q. And how much is it?

7 A. 1323 feet.

8 Q. And does the second page also show the distance to the
9 concrete plant?

10 A. Yes. Yes, it's a concrete plant.

11 Q. How did you obtain these pictures?

12 A. I got on the site and found the property, I matched the
13 names to it and then I got on Google Earth Probe and I
14 drew a line and straight shot it.

15 Q. And that's the calculation done by Google Earth is that
16 right?

17 A. It is. Yeah --

18 Q. Show you Number 12. What's Exhibit Number 12?

19 A. This is Doug Bruggeman's house, from the proposed site
20 with a measurement.

21 Q. How are is he from the site?

22 A. 1,095.31 feet.

23 Q. The second page shows how close he is to the --

24 A. The concrete plant, 808.12 feet.

25 Q. And what's Exhibit 13?

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1 A. Ed Feldmann's house to the proposed site, 817.27 feet.

2 Q. All right. The second page shows him, the distance to

3 --

4 A. To the concrete plant, yes.

5 Q. It shows -- actually these pages are mixed up. The
6 second page does it show from his house to the concrete
7 plant?

8 A. It does.

9 Q. Okay. So let me show those to the board.

10 MR. SNEED: So we'd offer these into evidence, if
11 we may, along with these posters.

12 (WHEREUPON, Applicant Exhibit Numbers 11, 12, and
13 13 were offered into evidence)

14 Q. Now, there's been a lot of talk about traffic. What
15 amount of traffic do you believe you will have out on
16 your asphalt plant every day?

17 A. Every day?

18 Q. Yeah.

19 A. We did some estimations and I believe that between 15
20 and 20 trucks a day.

21 Q. That includes delivery of the asphalt --

22 A. It does, yes. That's -- includes getting a fuel tank
23 every day or other day and a asphalt cement tank every
24 day, other day.

25 Q. And trucks -- trucks that go out on the four-lane

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1 bypass?

2 A. Yes.

3 Q. To exit?

4 A. Yes. All trucks will go out unless they're going
5 through Madison and then they will be going through
6 Madison anyway.

7 Q. And how much tons does a truck take?

8 A. On average it's about 15 tons.

9 Q. Fifteen tons?

10 A. Yes, sir.

11 Q. So 15 trucks will be over 200 tons?

12 A. Yes, sir.

13 Q. And that's about the capacity for a couple of hours of
14 operation, is that right?

15 A. Yes, sir.

16 Q. What hours do you plan to operate?

17 A. 6:00 to 5:00.

18 Q. 6:00 a.m. to 5:00?

19 A. And weekends if needed. I don't know --

20 Q. Weekends if needed?

21 A. Yeah.

22 Q. And would there ever be a time when you would operate
23 at night?

24 A. Only if it was like a busy road to keep traffic moving.

25 Q. If somebody, if the state or somebody said the work had

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1 to be done --

2 A. Right, if it has to be done at night it's the only time
3 we get it done.

4 MR. SNEED: That's all I have.

5 C R O S S - E X A M I N A T I O N BY MR. GULDEN:

6 Q. So you want the ability to work at night?

7 A. I don't like working at night. I want the ability to
8 be able to work at night so I can build a job that
9 requires working at night.

10 Q. So there is going to be a potential for some work at
11 night?

12 A. There's a possibility for some work at night, yeah.

13 Q. When you open up at 6:00 a.m., what time do you have to
14 turn your burners on?

15 A. Well, I want to unlock the gate 6:00 a.m. and start the
16 burners by 6:30.

17 Q. All right. And they make a significant amount of
18 noise, those burners?

19 A. Not a lot. Not as much as your rock crusher.

20 Q. And you're comparing that rock crusher to the quarry?

21 A. Yes, sir.

22 Q. The -- your proposed facility is moving into the
23 neighborhood; people aren't moving -- it's not already
24 established, is it, your facility?

25 A. It's not built, no.

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1 Q. No. And so you're coming to the neighborhood?

2 A. I am, yes.

3 Q. An addition to -- that you showed your Exhibits 9, 10
4 and 11, were distances to the house, not to the
5 property line?

6 A. Right. Correct. I did it to their house. Yeah.

7 Q. And what was the reason why you were testifying the
8 distance to the homes and not the property lines?

9 A. Because they show how close they are to the concrete
10 plant as well.

11 Q. All right. You're -- but you're saying that was just a
12 distance. You were just -- you were using that
13 distance to show where it was in relation to your
14 proposed facility and the concrete plant?

15 A. Yes, just a comparison.

16 Q. Do you know where the closest \$500,000 lot in Enka
17 facility is in relation to the structure, the asphalt
18 plant there?

19 A. It's within a mile.

20 Q. It's within a mile?

21 A. Yeah.

22 Q. And so are you making a comparison that because Enka,
23 your testimony, has exploded, you don't think that the
24 houses that are within 800 feet of your proposed
25 facility are going to have any detrimental effect as

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1 far as property values?

2 A. I don't -- I don't think they're going to have any
3 detrimental effect because they're not going to hear it
4 or smell it.

5 Q. They're not going to -- I didn't hear you.

6 A. They're not going to hear it or smell it all the time.

7 Q. Not all the time, but they're going to hear it and
8 smell on -- on occasion --

9 A. I don't think they'll hear it at all really. They
10 might get a whiff of it, but I don't think they're
11 going to hear it.

12 Q. All right. So they are going to get a whiff of it
13 because they're 800 feet from it. You don't think that
14 they can hear those rock crushers?

15 A. I don't.

16 Q. All right. And yours -- you're burning number two
17 diesel, it's a -- what did you say, a 300-horse power
18 diesel engine, you don't think early in the morning at
19 six o'clock they're going to be able to hear it?

20 A. I don't know. I don't think so, no.

21 Q. Did you -- any of these houses that you measured, did
22 you go and talk to them before you decided to site your
23 asphalt plant at that proposed location?

24 A. I have not, no.

25 Q. You did not?

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1 A. Uh-uh.

2 Q. You went to the DEQ guy but didn't talk to any of your
3 neighbors?

4 A. I did not, that's correct.

5 Q. You identified in Exhibit 5 you were saying that within
6 a mile you've got some ballfields and Elderberry
7 Nursing Home. Where is the daycare facility?

8 A. It's right next to the ballfield.

9 Q. All right. So it's within a mile too.

10 A. Yes, sir, it is.

11 Q. And why are you using this circumference of a mile --

12 A. As comparison to the Enka and Hendersonville and the
13 other ones.

14 Q. But what's the significance of the mile, where did you
15 get that from?

16 A. I just chose a mile. I didn't really think about it.

17 Q. And you testified in general distances related to these
18 other asphalt plants. What other asphalt plant has
19 three homes within the staying distance that your
20 proposed asphalt plant's going to have?

21 A. Homes?

22 Q. Yeah.

23 A. Enka's got a whole (inaudible) next to it, 600 people
24 live --

25 Q. When did Enka -- when did that asphalt plant get

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1 established?

2 A. It was opened in the '70s.

3 Q. Yeah, it was open 1969, is that correct?

4 A. '69, yeah.

5 Q. Do you know when those homes moved there?

6 A. I do not.

7 Q. All right. And so gain, you're not established, you're
8 coming into the neighborhood, do you know whether
9 Biltmore Lake came to the neighborhood after the
10 asphalt plant was established?

11 A. Biltmore Farms did, Enka Lake --

12 Q. Yeah, Biltmore Farms did, Enka Lake --

13 A. -- Biltmore Farms because it was like (inaudible) --

14 Q. And it was already done after. And those were the
15 homes that you're saying are valued at, or lots are
16 valued at \$500,000?

17 A. They are, yeah.

18 Q. All right. But you don't know whether the Weaverville
19 plant, the Hendersonville plant, the Black Mountain
20 plant have any homes within 817 feet?

21 A. Hendersonville has some close homes. So did
22 Weaverville. I didn't measure if it was accurate, I
23 just knew they were close.

24 Q. And so when you were talking about the site distances
25 here, all of those distances you testified to are just

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1 guesses? You didn't measure them out?

2 A. What's that?

3 Q. You testified to the -- to these distances but now
4 you're saying that you didn't really measure them out?

5 A. I measured the mile out, yes, sir.

6 Q. Right, but you didn't measure other homes in the other
7 facilities?

8 A. No, I didn't individually measure every home like that,
9 no.

10 Q. And so when you were testifying about those other
11 facilities, those measurements probably weren't
12 accurate.

13 A. Did I -- I did measure the trailer park.

14 Q. Yeah, you did --

15 A. I testified to that.

16 Q. Yeah. But you --

17 A. And I did measure the home right on the edge of the
18 mile range, the six or the \$500,000 lots they sold.

19 Q. Yeah, right inside the mile range?

20 A. Yes.

21 Q. But other than that, any of the --

22 A. Those are the only two I testified to.

23 Q. -- measurement -- okay, those are the only ones that
24 you testified to.

25 How close is Hendersonville downtown to the

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1 Hendersonville plant?

2 A I don't know.

3 Q. Did you not measure that out?

4 A. I didn't measure it up this --

5 Q. How close is Black Mountain, downtown Black Mountain to
6 the Black Mountain plat?

7 A. I didn't measure that out either, sir.

8 Q. How close is downtown Asheville or Candler to the Enka
9 plant?

10 A. I didn't measure that either.

11 Q. How close is downtown Marshall to your proposed site?

12 A. It's over a mile and a half.

13 Q. Would it surprise you if it was 1.23 miles?

14 A. It would surprise me. Can I see that closer?

15 Q. Oh yeah, yeah. I'm going to bring it up to you. I'm
16 going to show you this exhibit and it's got your mile
17 radius in it. And if I can just have you look at it
18 and kind of tell me does it fairly and accurately
19 represent an aerial photograph of what you were
20 testifying to on Exhibit -- I can't even see that far
21 -- does this fairly and accurately represent an aerial
22 overview of your proposed facility?

23 A. Yeah, the circle does --

24 Q. Right, and --

25 A. -- I measured down to the center of town probably, a

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1 little farther --

2 MR. SNEED: Can't hear you.

3 MR. GULDEN: He said he measured down to the
4 center of downtown Marshall to get a little
5 further down the street.

6 Q. Is that what you said?

7 A. Well, I said the center of the street. I didn't say --

8 Q. Center of the street, sorry.

9 CHAIRMAN KIEHNA: Can you tell us what exhibit
10 number that is?

11 MR. GULDEN: It's not an exhibit yet. But I will
12 mark it as Opposition 2.

13 (WHEREUPON, Opposition Exhibit Number 2 was marked
14 for identification)

15 Q. And in looking at Opposition 2, are these the
16 approximate values as far as you know, of the distances
17 of the ballfield, the Printpak, the Co-op, the child
18 development center, the Elderberry Nursing Home and the
19 A-B Tech Center?

20 A. (Inaudible)

21 MR. SNEED: Can't understand you.

22 MR. GULDEN: He said, he asked me -- go ahead.

23 A. Yeah, I measured it right before you get to the health
24 department, it was a mile; correct.

25 Q. So inside of a mile you've got a school, A-B Tech.

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1 You've got Elderberry Nursing Home about a half a mile,
2 a little bit more. You got Madison Child Development
3 at less than a half mile. You have the Co-op Extension
4 Center at less than a half mile. You have Printpak
5 facility about a little more than a half mile. And
6 baseball field exactly at a half mile?

7 A. Right.

8 Q. That's --

9 MR. TUZIW: Can we see that?

10 MR. GULDEN: Yes.

11 Q. And so that distance was fairly accurate as far as your
12 proposed facility to downtown Marshall?

13 A. Yes.

14 Q. And did you measure the Weaverville facility to
15 downtown Weaverville?

16 A. I did not, no.

17 Q. Would it surprise you if it was 2.85 miles away? I'll
18 let you look at it --

19 A. I thought it would be farther.

20 Q. So it's -- it's over double what the distance between
21 Marshall and your proposed plant?

22 A. Yeah.

23 Q. You testified about Black Mountain, you know how far
24 the Black Mountain proposed -- or strike that, the
25 Black Mountain facility is to downtown Black Mountain?

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1 A. Two and half miles.

2 Q. Two and a half miles? Again, over twice the distance
3 between downtown Marshall and your proposed facility.
4 So those facilities really are not to comparison, are
5 they?

6 A. Depends on how you look at it.

7 Q. What other ones -- what other ones have --

8 A. Schools, nursing homes?

9 Q. Yeah, yeah. Co-op Extension Center, ballfields, child
10 development lab, a nursing home and a school?

11 A. Enka does.

12 Q. And again, Enka -- Enka was established in 1969 and
13 people moved to that facility, correct?

14 A. The schools wasn't there in 1969.

15 Q. No, no, the facility was, the asphalt plant.

16 A. Right.

17 Q. Yeah. So they came with the knowledge that that
18 asphalt plant was there.

19 A. Right. The schools did, yeah.

20 Q. Are you -- are you giving Doug Bruggeman the
21 opportunity to move here after -- well, you're not
22 giving Doug the opportunity to move here after your
23 plant's been built because you're coming here, are you
24 not?

25 A. Right. I come here because it was, in the land use

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1 laws it was allowed here.

2 Q. In the industrial -- in an industrial -- you're saying
3 you have to get a conditional use permit?

4 A. Yeah.

5 Q. You aware that case law says if you have to get a
6 conditional use permit it is in fact, not allowed until
7 you get that conditional use permit?

8 A. I'm aware of that.

9 Q. Yeah. So it's -- so it's only allowed if you meet the
10 standards set out in the zoning ordinance to get a
11 conditional use permit.

12 A. Right.

13 Q. Who did the calculations of your lot coverage area?

14 A. TRC Environmental did.

15 Q. And you have that, you submitted that today?

16 A. I did today, yes, sir.

17 Q. What --

18 A. We missed that question. Mr. Hyder had called today
19 and told me I missed it, that we needed to get it
20 before the hearing today and that's what I did.

21 Q. Is the majority of the work that you do in Buncombe
22 County?

23 A. It is now, yes, sir.

24 Q. And the majority of the hot asphalt mix that you're
25 going to be making, you're going to be using yourself?

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1 A. Yes, sir.

2 Q. So there really is no sales tax that benefits Madison
3 County?

4 A. French Broad Paving will be buying it from Madison
5 Asphalt. The county will get all the sales tax.

6 MR. SNEED: I can't understand you.

7 THE WITNESS: I said First Broad Paving will be
8 buying the asphalt from Madison Asphalt so
9 the county will get all the sales tax.

10 Q. The site plan that you submitted on the original
11 application, been marked as Board's Exhibit Number 1,
12 and it shows an aerial photograph at the proposed
13 location of your facility, does it not?

14 A. It does.

15 Q. And on that proposed location it looks like you're
16 siting it right over where the quarry has their
17 stockpile of rock?

18 A. Yes, that's correct. The stockpiles were there at the
19 time this photo was taken.

20 Q. They were there at the time the photo was taken?

21 A. Yes, sir.

22 Q. All right. Are you going to make the quarry remove all
23 of their rock and stockpile from that area?

24 A. He's agreed to remove the stockpiles from --

25 Q. You been out there lately?

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1 A. I haven't been out there in a couple of weeks.

2 Q. Did you go there after Friday's significant rainfall?

3 A. I have not, no, sir.

4 Q. You aware of the significant stormwater and erosion
5 control, or strike that.

6 Are you aware of the significant stormwater runoff
7 that occurred on Friday?

8 A. No, sir, not there, not at that location, haven't been
9 there.

10 Q. What did you say?

11 A. I haven't been there since Friday, well since a couple
12 weeks.

13 Q. Okay. You have got on that application you submitted
14 an updated site plan. This updated site plan's got
15 your asphalt cement tank and your diesel fuel tank, is
16 that correct? Is that what that shows?

17 A. That's correct.

18 Q. And now, TRC has stamped that and it shows the asphalt
19 concrete, or strike that, the asphalt cement and diesel
20 fuel tanks. Are they about the same size in
21 circumference?

22 A. In circumference.

23 Q. Yeah, so they're about the same size of circumference,
24 right? One holds 15,000, one holds 30,000?

25 A. Yeah, that's right. One's taller than the other one.

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1 Q. Right. So they're the same circumference and you've
2 got your 15,000-gallon tank, about 47 feet tall, right?

3 A. I believe that's what it says.

4 Q. Yeah, the 15,000 is going to be 47 feet high. So it's
5 the same circumference as the 15,000 asphalt concrete
6 plant --

7 A. Those numbers are backwards.

8 Q. And -- and that bigger one with the same circumference
9 that holds twice as much shows that it is significantly
10 smaller?

11 A. Yeah, those should be swapped.

12 Q. But TRC certified it, right?

13 A. They did.

14 Q. Yeah, so something's wrong with those measurements.

15 A. The measurements are the same, the labels are
16 backwards. The measurements are correct, the labels
17 are backwards.

18 Q. All right. And you think that TRC will confirm that
19 when they come and testify?

20 A. Yeah, I think so.

21 Q. Because you know enough about asphalt plant that that
22 doesn't make any sense to have the same circumference
23 but a tank that's twice as big being half as small?

24 A. Right.

25 Q. That don't make any sense.

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1 A. Well, yeah, they're backwards.

2 Q. On the silos that talk about 49.5, kind of describe the
3 silo for me.

4 A. They stand on metal high beams and truck drives under
5 the silo and it dumps from the bottom load up on the
6 silo. The drag conveyor is sealed it goes to the top
7 of the silo and carries the material towards the silo
8 and then truck drives under the silo.

9 Q. And there's equipment or safety fencing, there's
10 something on top of those silos, correct?

11 A. They are the loadout points on top the silos.

12 Q. What is that?

13 MR. SNEED: They are what?

14 A. The loadout points where it loads the silo, you know,
15 the truck loadout points --

16 Q. Yeah, so you've got (inaudible) and it shows it on that
17 site plan. It shows like a conveyor belt going up to
18 the top of the silo.

19 A. It does, yes.

20 Q. Do you have here or does TRC have a profile of those
21 silo tanks?

22 A. Yeah, we have it.

23 Q. Do you have it here?

24 A. I don't know, I should have it here, Albert --

25 MR. GULDEN: Yeah. I just want to look at the

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1 profile of one of those silo tanks.

2 Q. Because what's on top of it? You said the loadout -- I
3 haven't been working in asphalt since 1997 so I don't
4 know what that is.

5 A. Where the drag connects to the top, the materials
6 transfer at the top and fills the silo at that point.

7 Q. So the conveyor belt's going to stand above and higher
8 than the silo tank itself?

9 A. It's considered the silo. It's all considered the
10 same, even the high beams.

11 MR. GULDEN: Mr. Sneed, do you have the profile
12 with that?

13 MR. SNEED: We got the manufacturer here that
14 would testify exactly how high it is.

15 MR. GULDEN: Perfect.

16 MR. SNEED: The total structure.

17 MR. GULDEN: Thank you, Mr. Sneed.

18 Q. So the conveyor belt that goes up to the top is part of
19 the entirety of the structure?

20 A. Yes, sir.

21 Q. You've got -- on that site plan, you've got around the
22 asphalt, cement and the diesel tank, what looks like a
23 big square.

24 A. Right.

25 Q. What is that?

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1 A. I put that in there for spill control it will be
2 implemented after the building.

3 Q. All right. And what's that going to be constructed of
4 and how much is it going to be able to contain in the
5 event of a spill?

6 A. My engineers at TLC can explain that better to you, but
7 it is a double-wall tank which you don't have a
8 building around, it was double-walled --

9 Q. Okay. So that's double-wall tanks. Do you know what's
10 the -- is it -- if there's a spill of the full 45,000
11 gallons, is that going to be able to contain 45,000
12 gallons of asphalt, cement and diesel fuel?

13 A. That's a question for TRC Engineering. They're working
14 it up for me.

15 Q. You've got this baghouse, right? You see that right
16 there?

17 A. Yeah.

18 Q. What kind of experience do you have with working in and
19 around and maintaining these baghouses?

20 A. I know about them I'm the person who worked on them.

21 Q. Do you know -- you taken any training courses on them
22 to learn what the best management practices are for the
23 care and maintenance of those baghouses?

24 A. Not yet, no.

25 Q. Do you know what the daily regimen is in order to keep

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1 those things clean and safe?

2 A. No, I don't.

3 Q. Do you know what the quarterly regimen would be to keep
4 those baghouses clean and safe for proper maintenance?

5 A. No, sir, I do not right now.

6 MR. TUZIW: Can you tell us what a baghouse is?

7 Q. Can you tell us what a baghouse is?

8 A. It's the filter system on it that sucks all the dust
9 and the drums and the conveyors that are pulling the
10 drum. It pulls off the -- it filters out all the dust
11 and 99.9 percent usually emissions --

12 MR. TUZIW: Thank you.

13 Q. And it has a -- it catches a lot of that dust, some of
14 the particulate matter gets through, some of the very
15 fine particulate matter gets through? You understand
16 that, right?

17 A. I understand that, yes.

18 Q. And those baghouses are prone to fires, you understand
19 that, don't you?

20 A. I assume they are. I assume anything is that's not
21 maintained.

22 Q. Yeah. Well, I mean, you've been working in the
23 industry since 1997, you're aware of fires that occur
24 at asphalt plants, aren't you?

25 A. I've never seen a fire hazard, never heard one in our

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1 region.

2 Q. Never heard of one in our region?

3 A. Not in our area.

4 Q. Which ones have you heard about?

5 A. I mean, I'm sure you can Google one and find one on the
6 internet somewhere.

7 Q. Did you hear about the one in Avery County?

8 A. Where?

9 Q. Avery County.

10 A. Avery County?

11 Q. Maybe it was Watauga County?

12 A. Uh-uh.

13 Q. No? That might not be in our area though.

14 A. It's not in my area.

15 Q. Is Salisbury in your area?

16 A. Salisbury is not in my area, no.

17 Q. You testified about a CDC report about a study that
18 they did related to children and the elderly. What did
19 you say that they found, the CDC report found?

20 A. It said there wasn't -- they didn't find any adverse
21 long-term or short-term health effects.

22 Q. Do you -- are you aware that in that report that you
23 just quoted from when it talked about child health
24 considerations, and effects that asphalt plants can
25 have includes children can be at greater risk than our

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1 adults from certain kinds of exposures to hazardous
2 substances. Are you aware that this report said that?

3 A. I am, yes, it's talking about the dust, and that's I
4 said the dust was the worst thing.

5 Q. Yeah. And that children play outdoors and sometime
6 engage in hand-to-mouth behaviors that increase their
7 exposure potential to certain kind of chemicals trapped
8 in the dust.

9 A. Right.

10 Q. Right. And you've got ballfields here where kids are
11 playing ball, it's dusty out there at times?

12 A. Yes.

13 Q. Yeah.

14 A. It's dusty at the ballfield. Hopefully they won't be
15 playing quarry, though.

16 Q. No. But the -- but they're less than half a mile away
17 or they're about a half mile away?

18 A. Right.

19 Q. So kids are at an increased risk even according to your
20 Salisbury study?

21 A. Dust, yes, sir, from dust.

22 Q. Right. But --

23 A. Dust isn't very healthy for you just from blasting.

24 Q. Right. Dust isn't very health, but dust contaminated
25 with pollutants from asphalt plants is clearly not

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1 healthy for anybody, is it?

2 A. Doesn't sound like it would be. Dust with probably
3 anything wouldn't be healthy for anybody.

4 Q. Right. And you understand that although you're just
5 right above the threshold, there still is a threshold
6 of pollutants that you're going to be emitting?

7 A. I understand, yes, it will.

8 Q. Right. And you're emitting hazardous air pollutants
9 like formaldehyde, benzene, arsenic and nickel, isn't
10 that correct?

11 A. Those are on there, yes.

12 Q. Yeah, that's going to be part of your air quality
13 permit?

14 A. They are, yes, sir.

15 Q. Yeah, and so those pollutants, they're going to be
16 emitted -- emitted with an "e." They're going to then
17 get discharged and lay on the ballfields, on the
18 playgrounds that these children play at and according
19 to your own Salisbury study, those kids are going to be
20 at an increased risk for their exposure potential?

21 A. To dust, yes, sir.

22 Q. Yeah. Contaminated with formaldehyde, benzene, arsenic
23 and nickel.

24 A. I don't think that, no, sir. I think the EPA in the
25 state of North Carolina sets our guidelines to what we

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1 -- clean air. And I'm way above their guidelines.

2 Q. Yeah. And --

3 A. But I have specialists here that can explain it better
4 than me.

5 Q. I got you. Yeah, I know. But I'm here just asking
6 you.

7 A. Well, I know you are.

8 Q. There's a -- did you review a thought about this site,
9 did you consider at all the cumulative effect that a
10 concrete plant, an asphalt plant and a quarry have on
11 the surrounding property owners the kids and the
12 medically fragile?

13 A. I did, yes, sir.

14 Q. All right. And what did you -- what did you consider
15 about that, what did you find out?

16 A. I found out that the concrete plant's air quality
17 permit was so low that they didn't have to get one
18 anymore.

19 Q. You know they got one in 2014 that's good to 2020?

20 A. Yeah, they did.

21 Q. So they have one right now that exists.

22 A. They do.

23 Q. Right. And so they have levels of air toxins that they
24 admit -- emit?

25 A. They do, yeah.

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1 Q. And the quarry has a significant amount of dust, isn't
2 that correct?

3 A. It does, yes.

4 Q. And they've got an air quality permit too.

5 A. They do.

6 Q. With significant amount of particulate matter that --
7 that happens, that gets disbursed when they do their
8 blasting?

9 A. Get more dust.

10 Q. Yeah, and so when you come in and you have your
11 emissions, it's going to mix in with all of the
12 existing emissions, will it not?

13 A. I mean, it's just -- yeah, some of it's going to mix
14 in. When you drive a car into the quarry that's going
15 to mix in too.

16 Q. Yeah. All of that's going to mix in. And so my
17 question is, did you consider placing your plant there
18 knowing that there was going to be this cumulative
19 effect of all these air toxins on the neighbors who
20 live 817 feet away or 1,000 feet away?

21 A. I did, yes, sir.

22 Q. All right. And you still decided to come and do it?

23 A. Yes, when I found that it's very, very small compared
24 to lots of things --

25 Q. You -- when you were --

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1 MR. GULDEN: Madam Chair, it's 9:52 and I have --
2 I have another line of questioning that would
3 end up probably taking 45 more minutes. I'm
4 happy to stop here.

5 MR. LAWS: Probably take this 10 minutes and
6 determine some times that we can recess to.

7 MR. TUZIW: Before we do that can I ask a
8 question?

9 THE WITNESS: Yes, sir.

10 MR. TUZIW: Your testimony about the sales tax,
11 I'd like to know ballpark because I know you
12 probably don't have these off the top of your
13 head, what percentage of your business is
14 residential?

15 THE WITNESS: Residential, it's very small right
16 now, but we're hoping if we get the plant
17 passed that we can have another paving crew
18 to do residential.

19 MR. TUZIW: What percentage of your business is
20 state?

21 THE WITNESS: The state, I don't do much state. I
22 do a lot of city and infrastructure stuff for
23 the city of Asheville.

24 MR. TUZIW: Do they pay sales tax?

25 THE WITNESS: Do they pay sales tax? Yeah, I pay

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1 the sales tax in Buncombe County for the
2 material then I go and do their jobs and then
3 they write off the material that I bought.

4 MR. TUZIW: So they pay sales tax. So anything
5 that you're doing on this new plant by state
6 or government contracts will, they will pay
7 sales tax to Madison County?

8 THE WITNESS: Yeah.

9 MR. TUZIW: Okay.

10 THE WITNESS: Yes, sir.

11 MR. TUZIW: Thank you.

12 THE WITNESS: And then they -- and then the county
13 write it off as well so it's kind of like a
14 double tax in a lot of things, towns and
15 stuff; the city of Asheville does it, MSD
16 does it.

17 MR. TUZIW: Thank you.

18 Q. Just a follow-up question and then we can quit. Are
19 you certain that there's tax paid on state and county
20 jobs?

21 A. Whoever buys the material has to pay taxes on it.

22 Q. So it would be your company paying the tax because
23 you're buying it from your company?

24 A. Or anybody -- anybody that buys from Madison Asphalt,
25 including my company, will have the county tax.

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MR. GULDEN: Okay. I'm at a fine stopping point right now, but I still have some more questions. So I'm done with a specific line of questioning before I go into another one. I'm happy to -- because it's ten o'clock.

MR. LAWS: If you and Mr. Sneed want to approach and talk to the board about a date to recess to.

(WHEREUPON, this proceeding on April 22, 2019, was concluded at 9:54 P.M.; to be continued on April 24, 2019)

* * * * *

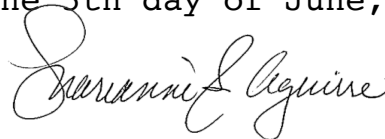
STATE OF NORTH CAROLINA)
)
 COUNTY OF RUTHERFORD)

C E R T I F I C A T E

I, Marianne S. Aguirre, Verbatim Reporter and Notary Public, do hereby certify that the aforesaid testimony was transcribed by me and that the foregoing pages constitute a verbatim and complete transcription of the testimony conducted herein as can be obtained from the audio record thereof.

I do further certify that I am not of counsel for or in the employment of any parties to this action, nor do I have any interest, financial or otherwise, in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 5th day of June, 2019.



Marianne S. Aguirre
 Notary No.: 19961490099

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