

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

*Application by Madison Asphalt, LLC for a Conditional Use Permit
Vol. 3
May 6, 2019*

*Bridges Court Reporting
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STATE OF NORTH CAROLINA) ZONING APPLICATION
COUNTY OF MADISON) BEFORE
MADISON COUNTY BOARD OF ADJUSTMENT

IN RE: Application by Madison Asphalt, LLC
For a Conditional Use Permit

Monday, May 6, 2019
6:04 p.m. - 9:02 p.m.
Marshall, North Carolina

VOLUME III

Reported by:
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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

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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,

May 6, 2019,

(WHEREUPON, due to the room acoustics and the
layout of the courtroom, the following
testimony may contain unclear or
unintelligible speech that was transcribed as
inaudible)

CHAIRMAN KIEHNA: Good evening. This is a
continuation of the April 22nd regular
Madison County Board of Adjustment meeting.
This is a quasi-judicial hearing which is
much like a court proceeding with myself,
Karen Kiehna, Chairman and our other board
members here to hear the -- let me call, I'll
call out our board members. Darlyne
Rhinehart, Mike Tuziw, Ernest Ramsey and
Robert Briggs are here as our board members.
Our secretary and zoning administrator is
Jeff Hyder. Our bailiff -- we do not have a
bailiff this evening -- okay, he's coming in.
We will continue where we left off at
our last -- the last session. I need to
remind everyone this is a quasi-judicial

1 meeting; as such, shall -- let me see if I
2 can do this tonight. This is -- we follow
3 the -- as such, shall be conducted as a court
4 proceeding. Respect the hearing as if you
5 were in court. If circumstances require it,
6 the bailiff will bring the hearing into
7 order. There will be no hand -- holding up
8 your hands, making directions, calling out
9 within the meeting. If so, the bailiff will
10 be directed to remove folks. Please respect
11 the meeting so that we can continue on and be
12 as productive as we possibly can as the
13 board.

14 With that being said, as from our last
15 meeting, it was a cross-examination of Mr.
16 Reed and you can proceed from there. Mr.
17 Reed, please remember that you're still under
18 oath.

19 MR. GULDEN: Thank you, Madam Chairperson.

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

21 Q. Mr. Reed, again, introducing myself, I'm Brian Gulden.
22 I represent the folks in opposition to the asphalt
23 plant.

24 It was last month when you testified, somewhere
25 around April 22nd, if that's correct?

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1 A. Yes, sir.

2 Q. I want to kind of draw your attention back to --
3 briefly, to what you said concerning the traffic. And
4 again, I'm just going to recall for you what I think
5 you said; you let me know if you're -- if it's
6 inaccurate. I think you said every day during your
7 operation when your plant's open you think that there
8 will be increase of about 15 to 20 trucks per day which
9 would include the fuel tank and the asphalt cement
10 trucks and those delivering RAP. But each of those
11 trucks can carry about 15 tons of asphalt?

12 A. Yes, sir; average.

13 Q. Is that -- is that about right on average? Do some of
14 them carry more, some of them carry less?

15 A. Yeah.

16 Q. Your report -- strike that.

17 The TRC report that you had mentioned indicates
18 that you're to make about, or your plant is going to
19 make about 170 tons -- 170 tons of asphalt an hour?

20 A. That's what it's capable of making, yes.

21 Q. Well, I think it's capable of making a lot -- a lot
22 more. Well, I guess, 170 tons is the max, is that what
23 you're going to make every hour you think?

24 A. No. The average is 15 to 20 trucks per day. The
25 rating on the plant is 170 tons per hour.

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1 Q. So if you take --

2 A. That's a 100,000-ton limit per year in our air quality
3 permit.

4 Q. You're going to limit your production of asphalt to
5 100,000 tons a year?

6 A. That's what the permit asks for, yes.

7 Q. You -- and I'm asking you, so you're prepared to limit
8 the production of your plant to 100,000 tons?

9 A. Yes.

10 Q. 100,000 tons?

11 A. Yes.

12 Q. If you operate on 170 tons per hour, which is your
13 maximum, you run 11 hours a day which is -- you said
14 you wanted to run 6:00 a.m. to 5:00 p.m., even if your
15 trucks were carrying 30 tons, you know it's an extra 62
16 trucks a day of traffic?

17 A. Yeah, if we run it wide open that's what it will be,
18 just constantly.

19 Q. So there's going to be some times during the middle of
20 the year, let's say June to August, that you're going
21 to be running wide open so I think your testimony was
22 you wanted to run wide open, that's why you wanted to
23 run 6:00 a.m. to 5:00 p.m.?

24 A. No, I never said I wanted to run wide open.

25 Q. Under your permit, your plants got the ability to

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1 produce 170 tons per hour, that would increase, even a
2 30,000 ton -- strike that, even a 30-ton truck using 30
3 tons is going to increase by 62 trucks a day coming in
4 that?

5 A. That's not at worst; at worst is when we pull up on a
6 job, we have to clean the road, we have to dry the
7 road, we have to set the traffic. We'll fill the silos
8 up real quick. The silos will have the mix in it and
9 then we get it as needed. If we need to start it later
10 in the day we can make it quick once we get going then
11 we shut down. It was a few driveways, they'd call and
12 need mix, I can make it quick for them. But as for
13 running all day long that's, I mean, it won't even
14 happen one day, running continuous like that.

15 Q. Okay. But your permit allows for that to happen up to
16 100,000 tons a year.

17 A. Well, 100,000 tons -- yes, that's the lease permit in
18 Western North Carolina right now.

19 Q. Right. So you're saying you're not going to do it but
20 your permit and your plant would allow you to do that,
21 62 extra trucks.

22 A. It will allow 100,000 tons a year, yeah.

23 Q. Which significantly increases the amount of traffic on
24 that two-lane road where you enter and exit the quarry
25 site?

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1 A. I -- I did the math running wide open; I can't tell you
2 how many trucks it is a day if I run it wide open
3 because that's never been expected.

4 Q. Okay. Well, I'm going to do that for us real quick.
5 If you run it wide open 170 tons an hour times 10 hours
6 a day running wide open?

7 A. 6:00 to 5:00.

8 Q. That's 11 hours.

9 A. Eleven hours.

10 Q. So 11, that's 1800, that's 1,870 tons in that 11-hour
11 period that you're going to make and if you divide that
12 by 15 tons a truck, right? Each truck can carry about
13 15 tons, that's 124 trucks in and out of that quarry
14 site on that two-lane road on a day that you run it
15 wide open, which you can do?

16 A. Right.

17 Q. Have you made any efforts on doing a traffic impact
18 study on how that's going to affect the --

19 A. No, we do have approval from the DOT though, so I
20 assume they know what they're doing.

21 Q. And did you tell them that you were going to run it
22 wide open at 170 tons an hour and increase the traffic
23 by 124 trucks a day?

24 A. I have told nobody I'm going to run it wide open.
25 That's 100 trucks a day. I don't even have 100 trucks,

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1 I only have four.

2 Q. Well, you're going to sell it to other people, aren't
3 you?

4 A. Yeah.

5 Q. Yeah. So other people have trucks.

6 MR. SNEED: Let him finish his answer.

7 A. That's (inaudible).

8 Q. Okay. The problem is you're up there saying that
9 you're never going to do it, you promise. Your plant's
10 not open, is it?

11 A. No, it's not yet.

12 Q. Not yet. And you don't have -- you don't have another
13 facility that you're operating, do you?

14 A. No.

15 Q. And so this facility gives you the option to make that
16 much asphalt and you're asking this board to grant this
17 application with this facility that you could run wide
18 open at 170 tons an hour?

19 A. We did 30,000 tons last year and that's working wide
20 open, Monday through Friday, a Saturday when we need
21 to, a night job when we need to. I don't expect to
22 sell more than -- to anybody else than I sell to myself
23 when we get started. Even later in the years it's
24 never going to produce that much asphalt. 30,000 tons
25 is the hardest we can work.

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1 Q. And did I just hear you say that you're not going to
2 sell your asphalt to anybody else?

3 A. No, I will sell my asphalt. I don't anticipate to sell
4 as much asphalt to other people as I put down myself.

5 Q. You indicate --

6 A. I anticipate about 60,000 tons a year and I asked for
7 100 in case I go a little over that.

8 Q. You're going to do all that in 14 weeks, the 100 tons?
9 100,000 tons, sorry, in 14 weeks, right?

10 A. Fourteen weeks?

11 Q. Yeah.

12 A. Shuts down in December 15th to March 15th, however many
13 weeks that is.

14 Q. Fourteen. So you're going to just run --

15 MR. SNEED: Objection. That's what he shut down,
16 14 weeks.

17 A. Will I shut down for 14 weeks?

18 Q. No.

19 A. No, I won't shut down for 14 weeks.

20 Q. Let me -- let me show you what has already been
21 identified by your expert and testified to, which is
22 your TRC Application for Permit to Construct and
23 Operate. Do you remember talking about the -- you
24 didn't really talk a lot about it, your air quality
25 guy, did. You remember that though?

1 A. Uh-huh.

2 Q. And you represented to the board that this is your
3 application.

4 (WHEREUPON, Applicant Exhibit Number 10 previously
5 marked for identification was passed to the
6 witness for review)

7 Q. You can just look through it.

8 A. Yeah.

9 Q. Is that it? And on the Form B was our -- which are the
10 specific emission sources information related to your
11 hot mix asphalt rotary drum mixer and your hot mix
12 asphalt storage silos and your RAP recycling system,
13 they've got a bunch of specific information related to
14 the emissions and the discharges. You see that right
15 there, we're talking about?

16 MR. SNEED: Which exhibit is that?

17 MR. GULDEN: The TRC application, 6. Thank you.

18 A. Yep.

19 Q. You see that? And so in that application it says
20 you're only going to work eight hours a day, five days
21 a week for 14 weeks.

22 A. That's what it says.

23 Q. That's what you're going to do?

24 A. Most of the time, yeah. The only exception we might
25 work on Saturdays as needed.

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1 Q. And so during the night work and the Saturdays work,
2 there's going to be an increase on traffic, because
3 we're focusing here on traffic and the amount that you
4 can produce, the amount of asphalt that you'd be able
5 to produce and the increase that it'll have on that
6 traffic. So during night work and Saturday work when
7 needed, there will be a potential for a net increase of
8 124 -- I said 6, it's 10, sorry. It's 10, Exhibit 10,
9 Mr. Reed. There's going to be an increase of 124
10 trucks each hour that you're in operation or each day,
11 sorry, strike that, each day.

12 A. 120?

13 Q. 124 extra trucks, we just went through the math. I'm
14 bad at math.

15 A. There's no way there's going to be 124 trucks coming
16 from the asphalt lot each day. I mean, my air quality
17 permit won't let me put any variables, it's pretty much
18 full -- that's what my engineer said.

19 Q. Right. But your air -- but you're not following me.
20 Your air quality permit here is saying you've got a
21 maximum production of 100,000 tons of asphalt that
22 you're going to make in 14 weeks, eight hours a day,
23 five days a week if you break that math down it comes
24 out to about 170 tons an hour. That's what your
25 asphalt plant is capable of producing.

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1 A. That's the limit, yeah, I can't go over that.

2 Q. And that's what you're asking this board and the state
3 of North Carolina, Department of Environmental Quality
4 and the Department of Air Quality, you're asking them
5 to permit you to produce that much asphalt?

6 A. I'm asking them to limit that much asphalt.

7 Q. Right. You're asking -- so you're going to -- you're
8 saying limit, I'm saying produce. It's basically the
9 same thing. You can't produce any more than 100,000
10 tons of asphalt?

11 A. Right.

12 Q. But you can produce 100,000 tons in 14 weeks, no more.

13 A. I can. If it gets warm in February, like it did last
14 year, warm in March, early, I mean, I can pave, I can
15 start it up pave if I want to, which is not DOT work.

16 Q. Right. But your maximum is 100,000 tons?

17 A. That's correct.

18 Q. And that -- if you break it all down, we can do the
19 math again, has the potential to increase the traffic
20 of 124 trucks a day.

21 A. So does the concrete plant and the rock quarry put that
22 out.

23 Q. You're going to have -- the traffic that you bring out
24 is going to have accumulative effect on the impact on a
25 two-lane road, isn't it?

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1 A. On a four-lane, coming out of the top --

2 Q. Right there at the quarry site it just has an
3 acceleration lane and center turn lane.

4 A. Well, it's two lanes and a turning lane and it goes
5 into a four-lane about 100 feet.

6 Q. About 100 feet.

7 A. All traffic goes back to Buncombe County unless they're
8 paving in Madison, the traffic would be coming from --
9 through there anyway.

10 Q. You know you have the high school right up the road.
11 Have you made any kind of safety plans for the trucks
12 driving past the high school?

13 A. The DOT has safety plans for speed limit, red lights.

14 MR. TUZIW: Excuse me, I got a question for you.

15 THE WITNESS: Yes, sir.

16 MR. TUZIW: I want a clarification. You said when
17 he was talking about all these numbers that
18 he's running out at us, you said unless it's
19 DOT, what do you mean by "unless it's DOT"?
20 Unless your jobs --

21 THE WITNESS: Well, the DOT will not let you pave
22 between December 15 and March 15 but
23 residential driveways and parking lots you
24 can pave if it's over 50 degrees.

25 MR. TUZIW: So you're not going to be paving the

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1 rest of the year?

2 THE WITNESS: Do what now?

3 MR. TUZIW: You're not going to be paving the rest
4 of the year?

5 THE WITNESS: I won't be paving any city stuff.

6 If I do parking lot or something, you know,
7 and it's 80 or 60 degrees on a February day,
8 (coughing in audience) when it gets cold shut
9 back down.

10 MR. TUZIW: Thank you.

11 THE WITNESS: Typically during the times like at
12 the end of the year -- you really don't do it
13 unless you got a lot of good weather.

14 MR. TUZIW: So we're really only talking about
15 three and a half month's worth of operation.

16 THE WITNESS: Well, being shut down from -- you're
17 talking about six and a half months, seven
18 and a half months. Yeah, from March 15th
19 until December 15th --

20 MR. TUZIW: I'm a little better at math than he
21 is, 14 weeks doesn't come out to six months.

22 THE WITNESS: Fourteen weeks is when we're shut
23 down, the 14 weeks is --

24 MR. TUZIW: Permit saying you're shut down 14
25 weeks?

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1 THE WITNESS: Yeah.

2 MR. TUZIW: The rest of the year you'll be
3 running?

4 THE WITNESS: Yeah.

5 MR. TUZIW: Sounds like he's saying the permit
6 says that you're only open --

7 THE WITNESS: My permit may say that but it should
8 not. It should be shut down between March
9 and -- through December 15th and March 15th.

10 MR. TUZIW: So the permit is inaccurate too?

11 THE WITNESS: It looks to be, yeah.

12 MR. TUZIW: So that's another document that's not
13 right?

14 THE WITNESS: I assume that, yeah.

15 MR. TUZIW: Thank you.

16 BY MR. GULDEN:

17 Q. Just to clarify, yes, we were arguing about the wrong
18 thing. I was looking at your permit saying you were
19 only operating 14 weeks --

20 A. I was trying to do the math but I ain't that good at
21 math.

22 Q. Nor am I, so I'm with you on that. But 14 weeks, but
23 that's not correct now?

24 A. It's another clerical error.

25 Q. Another mistake. Like the mistake in the --

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1 A. I knew 124 trucks a day was not correct, I knew that.

2 Q. That's a lot of trucks a day, isn't it?

3 A. A lot of trucks, yeah.

4 Q. Yeah. So that is incorrect, the diagram where the
5 silos were the wrong height, that's incorrect. Looking
6 at your TRC application --

7 A. (Inaudible)

8 Q. Yeah, yeah, but the numbers were wrong, yeah, there.
9 Those darn guys.

10 Okay. So have you made any -- as the traffic
11 relates, have you made any plans on traffic flow in
12 your -- on your site once your traffic gets into the --
13 in your site?

14 A. I haven't done really to the quarries -- state road
15 through there. The quarry entrance is DOT approved.

16 Q. Yeah. Bad question on my part. If you look at your
17 site plan on there, my question is, how is the traffic
18 going to flow inside your site plan? And the site plan
19 was a separate exhibit to the TRC report because that
20 wasn't included. I think it may have been Exhibit 2 to
21 -- maybe 10A, yeah, that's beside the plant, right,
22 that's in the --

23 A. They pull in, they go north and they around and loop
24 out.

25 Q. So they're going to come in --

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1 A. We have a 30-foot right-of-way outside the plant so
2 they can pass.

3 Q. So that's what you're talking about right there, right?
4 That's the one we just looked at.

5 A. Yeah.

6 Q. Will you come down here with the board so you can show
7 them?

8 (WHEREUPON, the witness steps down to the easel in
9 front of the board members)

10 Q. Mr. Reed, if you want to come around and show the board
11 your -- so you're going to come in here. This is the
12 quarry and property around. This is your site lane,
13 you're going to enter in here on this dead-end approved
14 -- is this going to be paved?

15 A. No, just that down there, to show where the (inaudible)
16 can turn at.

17 Q. And which way are they going to go? Are they going to
18 go around this way and out -- and then out? And you're
19 going to -- the east left up here, you've got this
20 mobile toilet right here. What efforts have you had --
21 well, who is going to be using that mobile toilet right
22 there?

23 A. People in the back, I mean, the control house in the
24 back.

25 Q. So while these big trucks carry 15 tons of asphalt are

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1 moving around this area, you got folks crossing across
2 there to go to that mobile toilet?

3 A. Yeah.

4 Q. You've got them crossing underneath all of this
5 equipment to go to the mobile toilet?

6 A. (Inaudible)

7 Q. In and around all of this equipment to get to that --

8 A. As long as they got hard hats on.

9 Q. Do you -- any other restroom, bathroom, water closet
10 facility other than this mobile toilet?

11 A. No, we decided to just to do a port-o-john.

12 Q. Was that port-o-john approved by the Madison County
13 Sanitation Director as part of this plan?

14 A. Not yet, I was under the impression it didn't have to
15 be until I had the permit passed.

16 Q. So did you talk to the sanitation director about the
17 use of that mobile toilet?

18 A. I talked to Jamie List.

19 Q. Who's that?

20 A. She said she didn't have a problem with it.

21 Q. Do you have -- is there going to be running water in
22 your east lab?

23 A. Yes.

24 Q. Are you going to have --

25 A. Not drinking water, I'm going to buy drinking water.

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1 It's an industrial well.

2 Q. That's going to be an industrial well so there's going
3 to be no drinking water --

4 A. We'll buy the water.

5 Q. -- no hand washing?

6 A. You can wash your hands, just can't drink it. We'll
7 buy drinking water.

8 Q. What about if someone gets something in their eye, some
9 of the hazardous material, some of the asphalt, cement
10 in their eye, where are they going to wash out, clean
11 out their eye?

12 A. They can wash it in the lab.

13 Q. An industrial well is going to supply the water to wash
14 out someone's eyes? You can't drink it but you can
15 wash eyes out --

16 A. -- separate tank, it's inside this building. It's got
17 a pump on it.

18 Q. So where is the water going to be in that -- where are
19 they going to wash their eyes out in the east lab?

20 A. In the east lab, yes.

21 Q. With the industrial water?

22 A. No. With the water that is provided in the bottle that
23 pumps out in the eyewash --

24 Q. Where is it going to drain into?

25 A. It has a pan beneath the eyewash station.

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1 Q. And you're going to just empty out the eyewash stuff
2 out there --

3 A. I suppose.

4 Q. Well, I mean, say you have something hazardous on your
5 hands or in your eyes, you wash it out, it goes into a
6 -- goes into a pan where you collect it, don't you have
7 another issue then when you take that, whatever that
8 hazardous stuff was, walk out the east lab door and
9 then just dump it on the ground?

10 A. Well, I didn't say I was going to do that.

11 Q. Well, where are you going to put it?

12 A. Put it in the port-o-john and they'll come pump it out.
13 I mean, I'll get rid of it. I'm not going to just -- I
14 don't think it's going to be hazardous from washing
15 your eyes out. I don't understand where you're going.

16 Q. Well, no, so all of the materials that go into making
17 hot asphalt or, yeah, the asphalt mix, contains
18 hazardous materials, right? You know that. I mean,
19 it's got --

20 A. It's rock and liquid asphalt, yeah.

21 Q. And liquid asphalt. You hate to get the liquid asphalt
22 in your eye.

23 A. Yeah. (Inaudible)

24 Q. You have to wash it out -- yeah, yeah, I mean, you have
25 to wash it out, I imagine. And so I'm just checking

1 the folks that are working in there. How safe is it
2 going to be? I just want to make sure that they've got
3 the right cleansing area.

4 A. They will. The DOT has to come in and approve that and
5 that's one of the approvals before they'll ever let us
6 operate a lab, yeah.

7 Q. If you want you can go sit back down.

8 We saw some pictures of the elevation of that
9 site. Did you, during any period of time when you were
10 contemplating this, go around to the individuals in the
11 surrounding neighborhood that are going to be able to
12 see your proposed facility, whether it's the stackhouse
13 or the baghouse or any of those conveyors?

14 A. I didn't, no.

15 Q. You didn't go around. You realize that there's going
16 to be a significant number of people who are going to
17 be able to see your site or some part of it?

18 A. I realize there's a lot of people that don't like bars
19 in Marshall but they don't -- the bars (inaudible)
20 asking if it was approved.

21 Q. I'm just asking you.

22 A. Well, that's fine, that's the way I --

23 Q. But you didn't have to ask anybody because there's bars
24 in downtown Marshall?

25 A. I thought about it because they're on the other side of

1 the river looking at a quarry currently. I didn't
2 think adding an asphalt plant and a quarry would be
3 detrimental to their view if they were already looking
4 at the quarry.

5 Q. Okay. You don't think -- what your thought was, that's
6 why you didn't ask, you didn't go around to the
7 neighbors and ask anybody?

8 A. That's the reason I didn't go across the river, nobody
9 can see it except people across the river, if that was
10 your question.

11 Q. What about the individuals who are on the same
12 topographic elevation as the top of your smokestack
13 that live about 800 feet away? You think they would be
14 able to see it, won't they, especially during the
15 winter?

16 A. There's a hill that's level to our smokestack, I don't
17 know about across the river how -- I don't know --

18 Q. What about Doug Bruggeman who lives 800 feet away?

19 A. He's on the backside, yeah, of the quarry.

20 Q. You don't think he'll be able to see it from anywhere
21 on his property?

22 A. I doubt it.

23 Q. You don't think so?

24 A. I don't think so. (Inaudible) his property but I
25 looked at before.

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1 Q. And it did -- and you didn't go over -- you didn't talk
2 to him, you didn't talk to anybody?

3 A. I did not, no.

4 Q. Have you been out there since the -- I'm going to say
5 Good Friday flood event, have you been out there?

6 A. Yeah.

7 Q. Did you see all of the runoff that occurred of the site
8 itself?

9 A. I saw a check dam next to our side. I didn't go to the
10 rest of the quarry. I just went to our side to the
11 check dam.

12 Q. Yeah. And what's a check dam.

13 A. It's like a big dam that's built about 40 foot deep.

14 Q. Where's that -- there's a big dam on your property?

15 A. It's on --

16 Q. I'm going to show you a series of pictures. I guess I
17 can mark them --

18 MR. GULDEN: Madam Court Reporter, I think I'm on
19 Exhibit 3, Opposition 3?

20 THE REPORTER: Yes.

21 (WHEREUPON, Opposition Exhibit Number 3 was marked
22 for identification and passed to the witness
23 for review)

24 Q. I'm going to hand you -- and it's a group of maybe 11
25 pictures, you can count them when you go through them.

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1 If you can look through these and identify, and maybe
2 you can't. I don't know.

3 A. That's the site.

4 Q. So those are pictures of your site?

5 A. Someone's been trespassing.

6 Q. Do you have -- do you own that property?

7 A. It's leased, currently leased, yes.

8 Q. Yeah, but so this is your site. Did you post no
9 trespassing signs?

10 A. We didn't know -- think we had to -- state of North
11 Carolina without written permission (inaudible).

12 Q. Do you know where this --

13 MR. SNEED: Speak up please, when you talk, speak
14 up.

15 A. I said I didn't have to post no trespassing -- have it
16 posted and you're not supposed to be on people's
17 property without written permission in North Carolina.

18 Q. Do you know where these pictures were taken from?

19 MR. SNEED: I object to these pictures. Who took
20 them? You haven't identified who took them.

21 Q. Do you recognize these pictures that are of your site?

22 A. They're of my site but I didn't take them.

23 Q. Right, you didn't take them. But they accurately
24 reflect what your site looks like?

25 A. Yeah. I've not touched the site. I don't have a

1 permit so I haven't done any grading to the site, any
2 ditching, any soil sampling, none of the stuff that
3 comes once you get a -- haven't done anything.

4 Q. On your plan through TRC we heard testimony that there
5 are no stormwater and erosion control measures in
6 place.

7 A. But there will be, yes.

8 Q. Where?

9 MR. SNEED: I object to this line of questioning.
10 It's been established that that comes if we
11 get a permit. You don't have to get that for
12 the permit. Once you get the permit you have
13 to go get that.

14 THE WITNESS: Before you can do --

15 MR. GULDEN: And I will say that has not been --
16 that hasn't been established, Mr. Sneed.
17 What's been established --

18 MR. SNEED: She has sustained my objection.

19 THE COURT: I sustained.

20 Q. You had indicated that there was a -- not a
21 possibility, that some of the neighbors, some of the
22 people, might get a whiff of odor.

23 A. I did say that.

24 Q. You did say that?

25 A. Yes.

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1 Q. What measures have you taken to reduce the odor?

2 A. Put a condenser on the AC tank. None of the plants in
3 Western North Carolina have condenser noise.

4 Q. And how does that reduce odor?

5 A. The biggest time you get odor is when you transfer
6 material from the tanker into the tank. The AC takes
7 the fumes and blue smoke that comes off the tank and --
8 or the condenser and liquefies it, turns it back into
9 liquid, it runs back into the tank.

10 Q. Notwithstanding the condenser, you still expect some
11 folks living in and around the area to get this whiff
12 of odor?

13 A. If the wind is blowing the right direction and the
14 trucks are loading at that time that's when the whiff
15 will come. It's not -- not a steady smell, just a
16 whiff and that's only for a few people that --

17 Q. What kind of security lighting are you going to have?

18 A. Security lighting, we're going to have security
19 cameras. I'll have some lights pointing at the ground
20 at night for nightwork if we're running nights. If
21 we're not running nights, we won't have lights on.

22 Q. And I guess I should have asked, but I started to say,
23 what kind of lighting are you going to have on the
24 facility? You going to have -- other than when you're
25 working you're not going to have lights on at all?

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1 A. There's a little red light that works on the -- other
2 than that, no, not really.

3 CHAIRMAN KIEHNA: May I ask a question?

4 MR. GULDEN: Sure.

5 CHAIRMAN KIEHNA: Mr. Reed, you had stated that,
6 if I'm correct you stated that you did go out
7 and visit the site on the day of the -- Good
8 Friday before Easter?

9 THE WITNESS: Well, I currently went after. I
10 didn't go that day.

11 CHAIRMAN KIEHNA: How many days after did you go?

12 THE WITNESS: It was -- it was probably about
13 seven days after. You can see, the pictures
14 you have, it's got streams on it that have --
15 level it up a little bit and smooth it out
16 and they were washed in the check dam, the
17 dam area, there's a few of those down in
18 there.

19 CHAIRMAN KIEHNA: Where is this dam area? Can you
20 show us?

21 THE WITNESS: Yeah. When I had spoke with TRC
22 about the erosion plans and spill control, we
23 talked about doing additional around the
24 outside of the property down to this side.

25 MR. TUZIW: Keep going.

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1 THE WITNESS: Okay. And doing like a little water
2 catch for where we could test the water on
3 our property before it runs down into Pat
4 McCurry's check dam. That way we could test
5 the water separately and anything -- if there
6 was anything there it would be pouring on my
7 property.

8 MR. TUZIW: So you're going to be using McCurry's
9 check dam for yours also?

10 THE WITNESS: Yes.

11 MR. TUZIW: Is it large enough of a tank for both
12 sites?

13 THE WITNESS: It is, it's huge, it's massive. I
14 think, I'm not sure but I believe he has
15 another one down below it way before the
16 regular one.

17 MR. TUZIW: I'd hold up on that drain.

18 THE WITNESS: There's no water in it. There's
19 some screenings washed around the edge of it
20 but there's no water in it when I got there.
21 That was seven days later but it looked
22 pretty dry.

23 MR. TUZIW: Yeah, but you could see the damage if
24 it had damaged --

25 THE WITNESS: Yeah, you saw a little trench

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1 running downstream from us, but you know,
2 once, if it gets approved, we won't have
3 screenings so there won't be washing anymore.

4 MR. SNEED: You don't have what?

5 THE WITNESS: Screenings.

6 MR. SNEED: Streams?

7 THE WITNESS: Screenings.

8 MR. SNEED: Screening?

9 THE WITNESS: Yes.

10 MR. BRIGGS: Explain what screenings --

11 CHAIRMAN KIEHNA: Right.

12 THE WITNESS: They're like the -- like they put on
13 the agriculture center for the horse rink.
14 They're the fine asphalt crushings that they
15 -- they compact hard when it rains in one
16 area like it is right now on that side that
17 it makes a little rut and washes down and
18 that's what happened. It'd washed down.

19 MR. TUZIW: Are they permeable?

20 THE WITNESS: Are they what?

21 MR. TUZIW: Permeable. They absorb the water and
22 the soil through them or is it holding the
23 water on top -- is it -- permeable means soil
24 is able to absorb moisture.

25 THE WITNESS: Oh, yeah, it's a lot like mud, it

1 gets really hard when it starts raining
2 outside.

3 MR. TUZIW: When the water runs across it, it
4 won't be absorbing any of the chemicals or
5 any of the soil. It's going to run off to
6 that pond.

7 THE WITNESS: Yeah. And that's what -- we'll have
8 a pond here to check down our -- what all the
9 runoff will be funneled from one area and
10 it'll have a buildup before it goes over in
11 heavy rain so that we can test it if need be.

12 MR. TUZIW: And he has a second pond after a
13 rainfall --

14 THE WITNESS: And a huge -- there's a huge check
15 dam down here, it's massive. You can
16 literally put the whole plant in it.

17 MR. TUZIW: I'm going to ask the question you
18 probably don't know the answer to, but do you
19 know what the state requires him to have, how
20 big of a pond and whether he's at --

21 THE WITNESS: I don't know what he requires, no.
22 But I'd spoke with the EPA about it, I mean,
23 the, yeah, the EPA. I spoke with the EPA,
24 the state of North Carolina about it and they
25 told me that they couldn't do anything until

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1 the permit was approved, that I didn't need
2 to do it but they told me that it should be
3 sufficient as long as I had Pat's permission
4 and I had the pool here to catch --

5 MR. TUZIW: You're kind of in a catch 22, you
6 can't get answers until some of the questions
7 until you have a permit.

8 THE WITNESS: Right.

9 MR. TUZIW: And you can't get a permit until we
10 have answers --

11 THE WITNESS: A lot of these questions I --

12 MR. BRIGGS: Who requires check dams?

13 THE WITNESS: The state of North Carolina requires
14 a stormwater drainage as spill control and
15 outlet.

16 MR. TUZIW: Is this required to, like Pat McCurry,
17 this is part of his permit process?

18 THE WITNESS: I'm sure it is, yeah, when we spoke
19 about it, I'm sure it is.

20 MR. BRIGGS: Do they have to maintained on a
21 regular basis?

22 THE WITNESS: I'd say they do. He looks like he
23 maintains it. There's a couple of little
24 trees growing in it. As far as the dam area
25 it's very -- it's very built up and overdone

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1 -- of course, I'm not -- so I don't really
2 know the specifics of it but it's massive.

3 MR. BRIGGS: How are they inspected by the state
4 agency?

5 THE WITNESS: I do not know that.

6 MR. BRIGGS: Are they inspected at all?

7 THE WITNESS: I don't know that either. They
8 wouldn't really talk to me about that, so --
9 a building permit.

10 MR. TUZIW: Did they tell you you'll be required
11 to have them?

12 THE WITNESS: Yeah.

13 MR. TUZIW: They haven't told you how big it would
14 have to be?

15 THE WITNESS: No.

16 MR. TUZIW: He won't tell you whether or not you
17 can use his along with -- as yours?

18 THE WITNESS: The guy that I talked to he told me
19 he didn't see why as long as had Pat's
20 permission.

21 MR. TUZIW: Do you have his permission?

22 THE WITNESS: Yeah.

23 MR. TUZIW: Thank you.

24 BY MR. GULDEN:

25 Q. Just a couple of follow-ups because you indicated, do

1 these three, four pictures demonstrate the testimony
2 that you were testifying to the board about, about the
3 runoff, the, you called it screenings?

4 A. Screenings.

5 Q. Screenings?

6 A. Yeah.

7 Q. But is this the runoff that you were kind of talking
8 about that some of the site lost its compaction and
9 drained into a, you said, a big dam?

10 A. I can't tell what this is really, have not been there.
11 Looks like it's down on the side of the dam.

12 Q. Down inside the dam?

13 A. Uh-huh. That's what it looks like.

14 MR. RAMSEY: What's inside the dam? I mean, is it
15 a stream --

16 THE WITNESS: No, it's --

17 Q. If you want to testify to these four pictures, I can
18 hand them out to the board.

19 MR. GULDEN: Albert, you've got them in there.

20 A. It'd be retention ponds is what it looks like, just a
21 big, huge retention pond. Anything that goes over the
22 pond toward the river has got to be like 30 or 40 feet
23 deep before it ever spilled over. Asphalt doesn't hurt
24 anybody though, the only thing could ever spill and go
25 that far like diesel fuel. That's why we're doing

1 double spill control and double-wall tank, just to make
2 sure of that.

3 Q. And so you're talking about this, it's hard for the
4 board to see but I can hand it to them. That is the
5 dam you think this is all that's down inside of the
6 dam. Is that what you're testifying --

7 A. It looks to be. I can't testify that it is because I
8 didn't take these pictures.

9 Q. And you hadn't been there down in that?

10 A. I haven't been down in that hole, no.

11 MR. RAMSEY: So the big rock formation that's in
12 the distance in the picture, that is the dam?

13 THE WITNESS: That looks like the dam.

14 MR. SNEED: Madam Chairman, these pictures were
15 taken illegally. I don't know what they
16 represent. There's a lot of innuendo and
17 stuff suggesting that that's what the site
18 looks like. Why don't the board and the two
19 lawyers go down there so you can see it for
20 yourself? Be happy to arrange that. Let's
21 us know when you would like to go.

22 CHAIRMAN KIEHNA: I believe that would be a good
23 idea.

24 MR. GULDEN: Yeah, I don't have an objection to
25 that.

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1 MR. BRIGGS: Ask him who took these pictures.
2 MR. GULDEN: It's not the -- Albert, it's not the
3 fact of who took them. It's what they
4 represent.
5 MR. SNEED: Well, I'd like to talk with the person
6 who took them. We can see this dam area when
7 they go and look.
8 MR. GULDEN: That's exactly right, yes.
9 MR. RAMSEY: Well, I want to know who took them
10 just out of curiosity.
11 MR. GULDEN: They were taken with a drone.
12 MR. RAMSEY: With a drone?
13 MR. GULDEN: With a drone, you know, one of those
14 little things, bzzz.
15 MR. SNEED: Which is illegal to take pictures of
16 people's property with a drone.
17 MR. GULDEN: For surreptitious purposes, it's
18 illegal.
19 MR. SNEED: No, no.
20 MR. GULDEN: Yes, absolutely.
21 MR. SNEED: No, it says any kind of picture
22 without permission.
23 THE WITNESS: Regardless, we haven't -- because we
24 don't have a permit.
25 MR. BRIGGS: Can we get down there to look it? If

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1 it was only accessible with a drone, you
2 going to fly us down there, Counsel?

3 MR. SNEED: You can drive right down to the site.

4 You can drive to the site as I understand it.

5 MR. TUZIW: Where the pond is?

6 MR. SNEED: You can see the pond.

7 MR. TUZIW: We can get close enough to be able to
8 see it?

9 THE WITNESS: Yeah, there's another way you can
10 walk down also. You don't have to go down
11 into the woods there.

12 MR. RAMSEY: I'd like to see it.

13 CHAIRMAN KIEHNA: Yes. I think we need to make a
14 site visit.

15 MR. GULDEN: Madam Chair, I wouldn't object to
16 that. The lawyers, Mr. Laws, we can all
17 schedule a time to do that.

18 CHAIRMAN KIEHNA: We'll schedule a time.

19 MR. GULDEN: Okay. That will be perfect.

20 MR. BRIGGS: Counsel, I don't want to prejudice
21 your case or be premature or anything, but
22 what exactly -- what point were you going to
23 get to about the check dam or what did you
24 call it?

25 THE WITNESS: I call it a check dam.

1 MR. TUZIW: Retention pond.

2 MR. BRIGGS: Retention pond.

3 MR. GULDEN: If he doesn't know, it was a -- Mr.
4 Board member, it was about the erosion and
5 sedimentation control measures in effect,
6 whether they are effective but he doesn't
7 know the answer to any of those other than he
8 testified about some of the -- I thought he
9 said stream but it was screen.

10 THE WITNESS: Screenings.

11 MR. GULDEN: Screenings in the pond. We had
12 pictures of that so to demonstrate his
13 testimony we offered that but if he doesn't
14 know anything about the erosion control,
15 stormwater runoff, I'm not asking him about
16 that anymore. And my objection was -- or
17 sustained, so we've moved on. But that is
18 what it was for. Those would be my
19 questions.

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

21 Q. So Mr. Reed, how many days last year did you work
22 paving?

23 A. We worked about Christmas -- about to Christmas.

24 Q. When did you start?

25 A. We started -- it got warm in February, I believe, and

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1 we worked two weeks in February, then had to quit again
2 because of cold weather and then we started back about
3 the middle of March to the best of my recollection.

4 Q. And were you paving pretty much every week when the
5 weather was decent?

6 A. Yeah. Some -- well, we do but we also do turnkey jobs
7 so we do the concrete side, we do the grading on some,
8 we do the sidewalk, we do the milling, we do the
9 patching. Patch days, you know, we'll work like crazy
10 all day. We'll put down 60 tons some days.

11 Q. How much asphalt did you put down last year, all year?

12 A. 30,000 tons, right at 30,000, I don't know the exact
13 number. It's right around 30,000 tons.

14 Q. And that was working all the good days you could work
15 Monday through Saturday from February until December?

16 A. It's mostly Monday through Friday. We don't like to
17 work weekends.

18 Q. Monday through Friday?

19 A. Yeah, we work a few Saturdays, not many though.

20 Q. If you're doing 30,000 tons how many truckloads would
21 there be, 15, 20 a day?

22 A. Less than that.

23 Q. Be less than that?

24 A. Yes.

25 Q. And do you know for your own personal knowledge whether

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1 this Form B is incorrect or not?

2 A. The air permit I just looked at?

3 Q. Yeah. Where he says the sources can operate 14 weeks a
4 year, eight hours a day.

5 A. That is incorrect. We will operate more than 14 weeks
6 a year. I don't know why it's incorrect but it is.

7 Q. Well, could it be that that's -- that your permit only
8 allows you to produce 100,000 tons?

9 A. Maybe.

10 Q. And the actual number of days it takes to produce that?

11 A. Maybe. That may be why they done that. I don't know.

12 Q. If you don't know, you don't know, that's fine. Now,
13 let me show you Exhibit 49 and ask you to identify it.

14 (WHEREUPON, Applicant Exhibit Number 49 was marked
15 for identification and passed to the witness
16 for review)

17 A. That's the revision of the site plan that Mr. Gulden
18 had pointed out errors in so I had it revised.

19 Q. So did you get permission to amend the site?

20 A. I did, yes, sir.

21 Q. Amend the lease?

22 A. I did, I got permission from Pat and we had it surveyed
23 and then we had a site plan and they had to meet all
24 the zone plans and we had the labels changed.

25 MR. SNEED: And we'd like to offer Exhibit 49.

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1 (WHEREUPON, Applicant Exhibit Number 49 was
2 offered into evidence)

3 Q. So this site plan is now how many feet across the back?

4 A. The very top is 221.7 -- 221 feet, seven inches.

5 Q. So it's 200 feet across all the way down or more than
6 200 feet?

7 A. Yes, sir, the back setback line would 201 foot and
8 seven inches. All the setback lines are --

9 Q. And then the structures table, was that corrected?

10 A. It was, yes, sir.

11 Q. They switched up the ones they had cross referenced?

12 A. We did, (inaudible) and AC tank are now correct --
13 correctly labeled.

14 Q. So we would offer Exhibit 40.

15 MR. GULDEN: That would be 49 and.

16 MR. SNEED: And ask that it be added to the permit
17 application.

18 MR. GULDEN: That's, I guess, what I would object
19 to. When you have an application that comes
20 before the board three days into the hearing,
21 you come and you submit an amended site plan
22 which corrects any potential errors that have
23 been pointed out, I think it's too late to
24 offer that to the board now as part of the
25 site plan. It just, it affects the due

1 process that's owing to all the citizens of
2 Madison County to have everything together so
3 that people can go and look at it and review
4 it and see if it complies. It didn't comply;
5 they testified to the fact that it didn't
6 comply and now they just go back and they
7 say, oh, well, we're just amending the site
8 plan to have it be 201 feet and we're asking
9 that it be admitted to the application.

10 I object to that. I mean, that's --
11 that is patently unfair and that's a bad term
12 to use.

13 MR. SNEED: Actually it's not unfair. You got an
14 ordinance that says 200 feet from the
15 setback. The normal setback people think
16 about is the front. Is it 200 feet
17 everywhere? What if you had a triangle lot?
18 But instead of getting bogged down in all
19 that, we amended the lease and got this plan
20 so that that's no longer an issue and we have
21 the property leased for extra land. Because
22 the ordinance doesn't say which setback.

23 THE WITNESS: I guess that's why I also asked Jeff
24 Hyder and the town of Marshall if everything
25 was correct before we submitted the final and

1 it was overlooked by them as well.

2 MR. GULDEN: Then they just need to start the
3 process -- I don't want them to start the
4 process over, but that's what they should
5 have done if they have an amended site plan.
6 Again, it is -- if you're looking at it for
7 what processes do you have notice
8 requirements so that people can go down, they
9 can look at the site plan and they can pick
10 out issues and say, no, it looks good to me.
11 I don't have any issues with it because we
12 were here at the hearing taking issue with
13 part of their site plan that didn't meet the
14 zoning ordinance. They had every opportunity
15 to say, let's strike this site plan, go back,
16 reapply, get this matter on with the proper
17 site plan. But to come three days later,
18 it's been days later; but during the third
19 day of testimony, it is unfairly prejudicial
20 to my clients.

21 MR. SNEED: And how could that be? It's 200 feet
22 everywhere. I think the ordinance is
23 improperly interpreted by your administrator
24 because he says it's got to be everywhere,
25 but it's 200 feet in the front. That's an

1 issue they raised so we just corrected it,
2 correct the lease and this can't be an issue
3 anymore. How is anybody prejudiced by that?
4 This is an operation gotcha, to try and make
5 us go back and start over again. That's
6 prejudicial.

7 CHAIRMAN KIEHNA: I'm thinking through this whole
8 discussion.

9 MR. LAWS: If there has been prejudice, Mr.
10 Gulden, what is the prejudice other than a
11 technical violation in the application?

12 MR. GULDEN: The technical violation, the board is
13 charged with -- in a conditional use permit,
14 to ensure that the site plan, and it
15 specifically says and I don't have it, if you
16 gave me a minute I could find it, but it says
17 when the board is charged with the obligation
18 to approve the site plan for compliance with
19 the zoning ordinance as in this case, it has
20 to -- in order to decide in favor of the
21 applicant, it has to make sure that all of
22 the specific requirements in the zoning
23 ordinance are met.

24 MR. LAWS: I understand that and that could simply
25 be satisfied by putting a condition on the

1 permit that it be 200 feet in width.

2 MR. GULDEN: So the triangle lot is the best --

3 MR. LAWS: I mean, what we're talking about is
4 that your argument was that it was 191 or 192
5 feet in width at its widest -- at its
6 narrowest point, correct?

7 MR. GULDEN: Yeah.

8 MR. LAWS: So it was short by nine foot, right?

9 MR. GULDEN: Whatever it was, 196.4 so it would be
10 3.6.

11 MR. LAWS: So it's less than ten foot? Okay. And
12 you've been preparing a defense based upon it
13 only being 195 foot? What are you going to
14 offer any different based upon it being 195
15 feet as to 200 feet other than just argument?
16 I mean, is this a technical violation?

17 MR. GULDEN: So there's more to our case than just
18 it fails to meet the 200-foot setback but
19 that is an aspect of it that is a technical
20 violation that when it was advertised and
21 individuals came down to look at the plan,
22 the plan showed inaccuracies that we've
23 pointed out that they've corrected. It
24 showed lot widths that were too small making
25 it unsuitable for an industrial setting of

1 this nature. And then to -- then to be able
2 to say, well, we're going to correct all of
3 that, so that it is now suitable, is an
4 unfair prejudice in the sense that we have
5 been working diligently to try to contest
6 this case and if all it takes is now to have
7 TRC go back and correct this permit to have
8 the applicant go back and correct the site
9 plan, what's to stop them from the day before
10 the board starts to deliberate to say, oh,
11 any other issues that you have, we're just
12 going to submit more information. We just
13 don't have any opportunity to review the
14 application in its complete form. That's the
15 prejudice.

16 MR. LAWS: Do you have any support for that, any
17 case law or anything that says this Court --
18 that this board does not have the authority
19 or doesn't have jurisdiction to hear the
20 matter if the application is deficient due to
21 technical violations?

22 MR. GULDEN: No. Well, the ordinance itself if I
23 can take a minute but I don't need to; we
24 should just move on with questioning. But
25 the ordinance itself says they have to show

1 compliance. Had I known they were going to
2 amend their site plan, again, had I known, I
3 could have been here prepared to argue it.
4 But then to all of a sudden to say, oh, by
5 the way, bingo, here you go, I don't have a
6 case that says that. Why? Because I didn't
7 know about it. I just didn't know about it.
8 I'm happy to look and bring some supporting
9 documents if there are any out there, I don't
10 know. But my objection is as I stated, it's
11 an unfair prejudice.

12 MR. SNEED: In granting such permit, the board of
13 adjustments, may designate such conditions in
14 connection therewith as well in its opinion
15 assure that the proposed use will conform to
16 the requirements and the spirit of this
17 ordinance.

18 (UNIDENTIFIED FEMALE): Are you speaking on the
19 record?

20 MR. TUZIW: I don't have the first page.

21 (WHEREUPON, there was an off-the-record
22 discussion)

23 MR. LAWS: And might I suggest that we just
24 reserve ruling on the objection, allow the
25 parties to proceed and if Mr. Gulden has any,

1 give him an opportunity to come forward with
2 any supporting documentation that he might
3 have to support his objection at a later
4 time.

5 MR. TUZIW: Give us a chance to -- everybody read
6 what we're talking about.

7 BY MR. SNEED:

8 Q. Mr. Reed, let me show you Exhibit 47.

9 MR. TUZIW: If you'll hold on a second and let us
10 finish what we're working on.

11 MR. SNEED: Oh, I'm sorry.

12 MR. LAWS: So that would be my suggestion to defer
13 our -- I suggest that you defer ruling on
14 this and allow the parties to resume and then
15 give both parties an opportunity to address
16 the issue at -- before we make a decision but
17 go ahead and hear the evidence, if you're
18 agreeable.

19 CHAIRMAN KIEHNA: I'm agreeable, yes.

20 MR. LAWS: Is the whole board, I think for the
21 record --

22 CHAIRMAN KIEHNA: Are we going --

23 MR. TUZIW: State what it is so we know exactly
24 what we're talking about here. You're asking
25 us to --

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1 MR. LAWS: I think Mr. Gulden has objected to the
2 entry into evidence of the revised site plan
3 and at this time we would move forward and
4 not make a ruling on it but allow the parties
5 to continue with their questions regarding
6 the site plan and allow Mr. Gulden to address
7 the issue as to whether the board has
8 jurisdiction and what the effect of
9 proceeding with the site plan would be at a
10 later time and allow Mr. Sneed to respond to
11 that. But for the interest of time go ahead
12 and proceed at this time.

13 MR. GULDEN: I'd agree to that, thank you.

14 MEMBERS: Yes.

15 MR. SNEED: May I proceed now?

16 MR. TUZIW: Before you go on I have a question
17 now. Since we're going to go ahead with this
18 and we're going to take into account as if
19 these new facts and new changes are on there,
20 correct me if I'm not mistaken here, but
21 weren't there also issues of numbers that
22 were rounded down? At the next meeting can
23 we expect to see in the application with
24 those fixed?

25 THE WITNESS: The 14.5 and 14.7, on the silo

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1 elevation?

2 MR. TUZIW: But there were numbers, if I remember
3 correctly, Mr. Gulden was pointing out that
4 they had been rounded down.

5 MR. SNEED: I think the testimony from the
6 engineer was it was based on the tank and
7 that's why tank was for (inaudible) --

8 MR. TUZIW: I'm not talking about the numbers that
9 were flip-flopped that you fixed this time.

10 MR. SNEED: No, they're numbers --

11 MR. TUZIW: There was an issue of numbers that
12 were rounded down so they would look better,
13 will those be fixed at the next meeting?

14 THE WITNESS: They are fixed right now.

15 MR. TUZIW: They are fixed?

16 THE WITNESS: I forgot to mention that. They went
17 from 14.7 on this one.

18 MR. TUZIW: Are they fixed on those too?

19 THE WITNESS: Yeah.

20 MR. TUZIW: Okay. Just wanted to make sure we've
21 got the actual accurate numbers of really
22 what's going to happen, not something that
23 was just like thrown together.

24 THE WITNESS: (Inaudible)

25 MR. TUZIW: Okay. I'm done, thank you.

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1 MR. SNEED: We'd offer Exhibit 47.

2 (WHEREUPON, Applicant Exhibit Number 47 was
3 offered into evidence)

4 A. It also has, somewhere on here, it has one 2,000 number
5 two fuel, two 20,000 number four fuel, three 30,000
6 (inaudible) and propane.

7 Q. How does that compare to yours?

8 A. I have one diesel fuel tank and one AC tank.

9 Q. Let me show you Exhibit 48.

10 (WHEREUPON, Applicant Exhibit Number 48 was marked
11 for identification and passed to the witness
12 for review)

13 Q. Ask you if you can identify that?

14 A. This is the air quality permit from Rogers plant in
15 Hendersonville.

16 Q. Where is that located in Hendersonville?

17 A. It's right on Hendersonville Highway or -- Asheville
18 Highway, sorry.

19 Q. Where did you get this?

20 A. From the DAQ, the regional office from the guy over
21 Henderson.

22 Q. And does it show capacity on that plant? Page 8.

23 A. Yeah, 300,000 tons per year is their limit and 250 tons
24 per hour.

25 Q. 250 tons per hour and how much per year?

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1 A. 300,000. Both these plants do shingles as well.

2 MR. SNEED: We'd offer Exhibit 48.

3 (WHEREUPON, Applicant Exhibit Number 48 was
4 offered into evidence)

5 Q. Now, you had an overview of that Rogers plant, did you
6 not?

7 A. Yes.

8 Q. Could you come down here and point it out? This is
9 Exhibit 3.

10 A. (Inaudible)

11 (WHEREUPON, the witness steps down to the easel in
12 front of the board members)

13 MR. GULDEN: You might need to speak up. Madam
14 Court Reporter, can you hear him?

15 THE REPORTER: No, I cannot.

16 Q. Got to speak loud.

17 A. All this is residential, all this is residential
18 (pointing at easel, Exhibit 3) down here on
19 Hendersonville, I don't know exactly where it starts.
20 The city limits comes out here somewhere. (Inaudible)
21 all of them together just outside of -- well, there's
22 three plants here.

23 Q. I'm just talking about this plant, is it bigger than
24 your proposed plant?

25 A. Yes.

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1 Q. Right next to Asheville Highway?

2 A. Yes.

3 MR. TUZIW: Before you go, all this residentials
4 you just pointed out, how many of them were
5 there before the plant was built?

6 THE WITNESS: I don't know when that plant went in
7 exactly.

8 Q. I know the answer to that. It's an older neighborhood.

9 (WHEREUPON, the witness returns to the stand)

10 A. I did study on that map a little bit for Rogers.
11 There's seven homes within 800 foot of that plant.

12 Q. Within what?

13 A. Within 800 foot.

14 Q. Eight hundred foot?

15 A. Yeah. The APAC plant that's on that map, there's
16 around 14 homes and two churches within 800 foot. The
17 closest house is around 215, 220 foot.

18 Q. And I wanted to go over the issues of your plan of
19 operation. Your planned hours of operation are what?

20 A. 6:00 to 5:00, Monday through Friday, weekends if I have
21 to, nights if it's required by the DOT or City of
22 Asheville or something.

23 Q. Now, will your drum mixer be running all the time?

24 A. No. It will come on to fill up the silos and then it
25 will go off.

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1 Q. What kind of rules are you going to put in place
2 regarding the trucks that are sitting in line to fill
3 up?

4 A. I like to do a no idle policy so that don't sit there
5 and idle while they're waiting because sometimes trucks
6 wait for an hour or two and just don't see any sense in
7 them sitting there with the motors running. I'd like
8 to do that and I'd also like to have all the lights
9 pointing down, nothing shining toward the river or
10 anything.

11 Q. Now, you've got an office just across from the entrance
12 of the bypass, right?

13 A. We do, that's correct.

14 Q. And can you hear the quarry?

15 A. I can hear the crusher that's on the far side from the
16 bypass when it starts up but the big jaw is down next
17 to where our plant's proposed supposed site, I can't
18 hear it unless I go in the quarry.

19 Q. That's the big jaw crusher?

20 A. Yeah.

21 Q. Are you worried -- after your investigation can you
22 tell us whether or not you're worried about any
23 pollution at your office?

24 A. No, I'm not worried about pollution.

25 Q. Or at the playground?

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1 A. No.

2 MR. SNEED: That's all.

3 MR. TUZIW: I have a question. You said you'd
4 like to have a no idle policy. What would
5 prohibit you from having one?

6 THE WITNESS: Well, making people cut their trucks
7 off and they got the air conditioner running
8 is always a --

9 MR. TUZIW: But it's your plant so --

10 THE WITNESS: Right, I'll definitely try to
11 enforce -- (inaudible).

12 MR. GULDEN: Can I ask a couple questions unless
13 the board has any more questions?

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

15 Q. The reason that -- you've introduced two air quality
16 permits related to Rogers Plant and the Goldenvue
17 asphalt plant, is that because you're just saying those
18 plants are bigger than your plants?

19 A. I was showing the size of those plants and their
20 document, yes.

21 Q. Those plants make noise and you're aware of all the
22 noise complaints related to each of those plants?

23 A. Yeah. Those plants have been there a long time though.

24 Q. You know the Rogers Plant was only permitted in 2001?

25 A. 2001?

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1 Q. 2001.

2 A. That's probably right.

3 Q. Right. And you know how old that subdivision is that's
4 right next to it, built in the 80s?

5 A. I don't. APAC was there before Rogers I assume.
6 There's three plants right there.

7 Q. There's three plants right there. Did you know that
8 all of those plants came in at a time when there was no
9 zoning, Henderson County had no county-wide zoning? Do
10 you know that?

11 A. Uh-uh.

12 Q. No? Yes or no?

13 A. I didn't know that, no.

14 Q. And so you're basically saying these plants are going
15 to produce more than what your plant produces. These
16 plants are going to be closer to Buncombe County than
17 your plant is going to be, is that correct?

18 A. I don't know if it's closer to Buncombe County.

19 Q. You don't know? You don't know how far it is from
20 Buncombe County from these plants?

21 A. It's close to Buncombe County from our site.

22 Q. Yeah. Do you --

23 A. I don't know the difference.

24 Q. Do you do -- the majority of your work is in Buncombe
25 County?

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1 A. It is.

2 Q. Why aren't you using -- why don't you use these plants
3 to buy your asphalt?

4 A. Because our trucks end up sitting on 26 for three or
5 four hours a day sometimes and it's expensive. I can't
6 compete; those are my competitors that I have to buy
7 from.

8 Q. Are you going to introduce new corrected TRC report
9 next time we have a hearing?

10 A. I don't know that that report is not right. I'm not an
11 air permit guy.

12 Q. But it's limiting you to 14 weeks a year.

13 MR. SNEED: Objection. It does not say that.

14 A. Doesn't say that.

15 Q. I mean --

16 MR. SNEED: It states the assumptions for the
17 calculations.

18 Q. Does it -- let me just --

19 MR. GULDEN: Well, Madam Chairperson, I didn't
20 catch the rule on that.

21 CHAIRMAN KIEHNA: I would have to be able to see
22 and read it so that I can make that
23 determination.

24 MR. GULDEN: You all have Exhibit 10 and I'm just
25 pointing that out right there. Who has a

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1 copy of the exhibits? Your board members are
2 asking for exhibits.

3 THE REPORTER: I have the board's exhibits. He
4 has his. I only have the Board's 1 through 5
5 -- 4.

6 MR. SNEED: Madam Chairman, may I be heard on
7 that?

8 CHAIRMAN KIEHNA: Yes.

9 MR. SNEED: I think that is --

10 MR. GULDEN: If they can see yours, Al.

11 MR. SNEED: It says 14 weeks, eight hours a day
12 and I think that is the assumptions that are
13 limited because it's limited to 100,000 hour
14 -- 100,000 ton output.

15 MR. TUZIW: (Inaudible) or no?

16 MR. SNEED: This is for the air quality, not
17 saying what they are supposed to operate.

18 MR. TUZIW: I'd still like to see what it says.

19 MR. SNEED: Yes, sir, it's right there on Exhibit
20 B. The air quality permit makes you assume
21 the maximum intensity of operation and that's
22 what Mr. Vandenmeiracker talked about, that
23 you have to assume the most intense
24 operation. So the most intense operation for
25 170-ton would be -- the whole -- eight hours

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1 a day for 14 weeks. But that's actually, as
2 he said it's going to be spread out over a
3 much longer time but the state makes you
4 assume the most intense operation. That is
5 not a limitation on the operation. The
6 permit is for up to 100,000 tons a year and
7 we can produce 170 an hour but we don't -- we
8 can choose which hours to produce it. It's
9 not a limitation of what the operation is.

10 MR. TUZIW: So what you're saying is the state is
11 taking worst case scenario that they're
12 putting in there, showing that with maximum
13 amount this plant can do, based on those
14 hours of operations that many days a week, he
15 would use it up in 14 weeks is what you're
16 saying -- is implying that he could only run
17 full force for 14 weeks. What he's implying
18 is that he's only asking to do it for 14
19 weeks, so it's up to us to determine which
20 one we think that the state actually is --

21 MR. SNEED: I can get the man who wrote that
22 report back here to answer the question for
23 you but I believe that it is -- that they
24 make you assume the worst case scenario in
25 each of these accounts that you look at. And

1 I can have him back here next time to answer
2 that question.

3 MR. BRIGGS: So this is by tonnage? Talking about
4 expect to schedule eight hours a day, five
5 days a week, 14 weeks that would be at 171
6 tons per hour? He's to have his 100,000 tons
7 done in 14 weeks.

8 MR. SNEED: The fastest we could get it done, so
9 that they can look at the worst case scenario
10 of all the emissions that would be out there.

11 MR. TUZIW: So if he were to run it that way, when
12 he hits his 100,000 in 14 weeks --

13 MR. SNEED: He's not --

14 MR. TUZIW: -- based on what he's trying to tell
15 us, he'd have to shut down for the rest of
16 the year.

17 MR. SNEED: That's right.

18 MR. TUZIW: So you know, we have to lay a little
19 common sense into all this too. Like I
20 always tell my wife, if common sense were
21 truly common everybody would have it. We
22 have to assume that he can't run it and won't
23 run it that way because what's he going to do
24 for the rest of the year other than twiddle
25 his thumbs and go fishing, although that

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1 might not be a bad idea, right?

2 Okay. It makes more sense to me now. I
3 got what they're doing. They're just --
4 they're doing their governmental, here's the
5 worst case scenario if the world was ending
6 tomorrow, you could run for 14 weeks and
7 that's it. We all know that your cap of
8 100,000 and you won't run for 14 weeks and
9 then quit. So you're going to spread it out
10 so it's going to be the --

11 THE WITNESS: Yes.

12 MR. TUZIW: Thank you.

13 CHAIRMAN KIEHNA: So we are letting the document
14 speak for itself and moving forward?

15 MR. TUZIW: I do have one or two more questions if
16 you guys are done with him for now?

17 MR. GULDEN: Please continue.

18 MR. TUZIW: My memory is not what it used to be.
19 I have great short-term memory; it's just
20 really, really short. So I'm thinking back
21 to when you were on the stand before and I
22 asked you about the sales tax and when I'm
23 given time to think about things that come
24 I'll ask cool questions. So just so I can
25 clarify in my mind you had testified that, if

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1 I remember correctly, that you're doing the
2 majority of your business in Buncombe County
3 and you're paying roughly 80 to \$85,000 a
4 year in sales tax to them?

5 THE WITNESS: We did 2.4 million in Buncombe
6 County last year at 2.25 percent, what's that
7 leave us, about 55,000.

8 MR. TUZIW: I had written in my notes 80 to 85,
9 maybe it's my mistake, but still 50 to 55 to
10 Buncombe County?

11 THE WITNESS: Yeah.

12 MR. TUZIW: Is that because you're buying from
13 them in Buncombe County or because the
14 majority of your jobs are being done in
15 Buncombe County?

16 THE WITNESS: It's because I'm buying --

17 MR. TUZIW: So it's --

18 THE WITNESS: That's where we buy the materials.

19 MR. TUZIW: So the sales tax is calculated based
20 on where you're purchasing from?

21 THE WITNESS: Yes.

22 MR. TUZIW: So if you get this plant, French Broad
23 is going to be buying from --

24 THE WITNESS: Madison Asphalt.

25 MR. TUZIW: -- Madison Asphalt.

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1 THE WITNESS: Yes.

2 MR. TUZIW: And paying Madison Asphalt sales tax
3 that they're going to collect in Madison
4 County which will then be given to Madison
5 County. But you made a comment that night
6 about -- when I asked about the state jobs
7 when I was questioning whether the state pays
8 sales tax or not?

9 THE WITNESS: Yes, sir.

10 MR. TUZIW: And you said that they still pay the
11 sales tax but you made a comment that stuck
12 in my head about how they charge it back.
13 Can you explain to me what you meant by that?

14 THE WITNESS: When we do a job, our office
15 separates all the taxes that we do for like,
16 the City of Asheville. And then we turn in
17 the City of Asheville and then the finance
18 department for the City of Asheville, I
19 forget her name and she's over all that, she
20 told me that they turn it in at the end of
21 the year and get reimbursed from it. Now,
22 where that comes from, I don't know but hat's
23 what she told me.

24 MR. TUZIW: So it sounds to me like what they're
25 doing is they're non-profit. I mean, I'm a

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1 non-profit and when I buy stuff, we pay sales
2 tax and then at the end of the year we file
3 to get our sales tax back. Sounds to me like
4 that's what the state is doing?

5 THE WITNESS: I guess it could be.

6 MR. TUZIW: So in essence then the state's going
7 to -- you're going to pay Madison County the
8 sales tax and then the state is going to
9 charge it back to Madison County and take it
10 away from us so we're having a net zero sales
11 tax per year?

12 THE WITNESS: I don't know where the state gets it
13 from. That could be correct, I'm not sure.

14 MR. TUZIW: Well, they get it back from the
15 counties that collect it, then that's --

16 THE WITNESS: Is that how it works? She didn't
17 elaborate on how it works. She just, she
18 sent me an email for when they get
19 reimbursed.

20 MR. TUZIW: I fill out a form that states what my
21 sales tax purchases were in each county that
22 I bought them in because then they turn
23 around and they go back to the county and get
24 that money refunded back from the county. So
25 if you're collecting it from Madison County

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1 and then the state is refunding it back,
2 Madison County is not getting a penny of it.

3 THE WITNESS: Well, private jobs they would,
4 driveways, parking lots and all that they
5 would.

6 MR. TUZIW: But didn't you state -- what
7 percentage did you state of your business is
8 coming from the state?

9 THE WITNESS: A lot of my business comes from the
10 city, a lot of it does, MSD, different
11 things. We have other subcontractors, we do
12 subdivisions and tennis courts and stuff too.

13 MR. TUZIW: So the majority of their business is
14 coming from government?

15 THE WITNESS: The majority of it is coming from
16 government, yes.

17 MR. TUZIW: So our net gain is going to be none?

18 THE WITNESS: I don't know exactly, I'm hoping it
19 will be about the same, half local and half
20 of the subdivisions and parking lots and half
21 of that (inaudible). We also looked into --
22 hopefully we've been talking that we'd like
23 to start a gravel crew if we get it up and do
24 a lot more local stuff in Madison. We would
25 like to.

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1 MR. TUZIW: Okay. That's all I have, thank you.

2 CHAIRMAN KIEHNA: One more and this is just
3 clarification. So I believe we are now clear
4 that you are actually closed 14 months,
5 approximately 14 months a year -- 14 weeks.
6 That you're closed 14 weeks but last year
7 there was two extra weeks so --

8 THE WITNESS: Yeah, it was a few extra weeks last
9 year, got a little warmer.

10 CHAIRMAN KIEHNA: So you're open 38 to 40 weeks a
11 year?

12 THE WITNESS: Probably around somewhere in there.

13 CHAIRMAN KIEHNA: 52 minus --

14 THE WITNESS: It varies --

15 CHAIRMAN KIEHNA: Right. Not knowing, you know,
16 if you've got a warm fall, you get to carry a
17 week or two longer.

18 THE WITNESS: Correct. Has to be like, a couple
19 of weeks of warm weather before we can start
20 it up.

21 CHAIRMAN KIEHNA: So it's just -- it's just flip
22 it on its head and not open 14 but closed 14,
23 open 38?

24 THE WITNESS: Yeah.

25 CHAIRMAN KIEHNA: Okay. Thank you.

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1 THE WITNESS: You're welcome.

2 BY MR. GULDEN:

3 Q. Mr. Reed, just briefly, I'm going to clarify all this
4 math for everybody and I think the board members have
5 an understanding but if you look at that TRC permit, if
6 you take 170 tons per hour and you times that by five
7 days a week, eight hours a day that it says in your
8 permit you come up with, I think it's like 6,800 tons
9 per that week. It would take you producing 14 weeks at
10 6800 tons a week to run up against your 100,000 ton
11 limit? That's what the math is. I'm not going to do
12 it. I'm really bad at math, but I think I did it while
13 we were standing here, that's all you're saying.

14 That's all that that permit is doing is it's saying
15 give you were full 170 tons an hour, 40 hours a week,
16 it would take you 14 weeks to max out 100,000 tons?

17 A. I don't know how they do it. I guess that's how they
18 do it. I don't know. I really don't.

19 Q. Okay. And I don't want to belabor the point but your
20 testimony is that you're not going to be full-on --

21 A. I don't want to comment on the air quality permit
22 because I didn't do it myself. I don't know how to do
23 it.

24 Q. Thank you.

25 MR. SNEED: I call -- you may come down, I call

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1 Lynn Carmichael.

2 LYNN CARMICHAEL, being first duly
3 identified and sworn was examined and testified as follows:

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

5 Q. Ms. Carmichael, if you will tell the board your name,
6 address and occupation, please.

7 A. Lynn Carmichael. My address is 15 Dansford, Arden,
8 North Carolina and I'm a general appraiser.

9 Q. And what sort of qualifications do you have as an
10 appraiser?

11 A. I am a North Carolina general certified appraiser and I
12 have the MAI designation through the Appraisal
13 Institute.

14 Q. Is that the American Appraisal Institute?

15 A. Yes, it is and the MAI designation is the highest
16 designation a general appraiser can get.

17 Q. And how long have you had that designation?

18 A. I've had that designation approximately five years.

19 Q. Have you -- who do you do appraisals for?

20 A. My clients include most of the banks in Western North
21 Carolina. Some of the insurance companies, lawyers,
22 accountants and private citizens.

23 Q. And do they regularly rely on your appraisals?

24 A. Always.

25 Q. Have you ever testified in court as an expert

1 appraiser?

2 A. Yes, I have.

3 Q. Can you tell me whether or not you were engaged to do a
4 study on the effect of asphalt plants on adjacent
5 property values?

6 A. Yes, I was.

7 Q. Did you do such a study?

8 A. Yes, I did.

9 Q. Let me show you Exhibit -- and would you tell me how
10 you did that study?

11 A. What I did is I took a look at the website for the --
12 for the pavers association and took a look at what
13 plants were operating in Western North Carolina. And I
14 took the seven plants that were within closest
15 proximity to the subject site and that included plants
16 in Henderson County, Buncombe County, Transylvania
17 County and there was one in Burnsville also. And what
18 I did was I took a look at with that -- with those
19 plants I took a look at the mean and median values of
20 residential property within a half acre, within a half
21 mile, one mile and five-mile radius. And since --
22 since the area of the site includes industrial
23 properties, residential properties, a mixed use, I also
24 took a look at a control site within close proximity of
25 each asphalt plant and I also took a look at the mean

1 and median values of the control site within a half
2 mile, one mile and five-mile radius. And then I
3 analyzed the difference between the mean and median
4 values between the half mile, one mile and five-mile
5 radius. And I -- then I took a look at the difference
6 between the values, what percentage difference between
7 the asphalt plant and the control site. And --

8 Q. And the control site was another site which was a
9 industrial site?

10 A. It was another site within close proximity to each
11 asphalt plant that I analyzed that had the same sort of
12 makeup as the subject site permanently has.

13 Q. And what did your analysis show?

14 A. My analysis showed that there was no impact on the
15 residential values with the -- because of the asphalt
16 plant.

17 Q. So --

18 A. No negative impact.

19 Q. No negative impact. And did you do further follow-up
20 studies on the Rogers asphalt plant in Hendersonville?

21 A. Yes, I did.

22 Q. And what did you find?

23 A. Well, what I did --

24 Q. Tell the board what you did first.

25 A. Sorry?

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1 Q. Tell the board what you did first.

2 A. Okay. What I did, is that plant was constructed in
3 2001 so I took a look at the mean values within the
4 half mile, one mile and five-mile radius and I started
5 in 1999 and went through to 2005 because I wanted to
6 take a look at the impact on the median values before
7 the asphalt plant was constructed, the year it was
8 constructed and for the four years following the
9 construction of the asphalt plant.

10 My findings were that for the two years preceding
11 the construction of the asphalt plant the mean value
12 within a half-mile radius, one year it was -- it was
13 lower within the half-mile radius as it was -- as
14 opposed to the one-mile radius. The following year it
15 was higher than that half-mile radius as opposed to the
16 one-mile radius. And if there's a negative impact on
17 value I would expect that the value would be lower
18 within the half-mile radius as opposed to the one-mile
19 radius because the further you get away, if there's a
20 negative impact from the asphalt plant the values are
21 going to rise. So in the two years preceding the
22 construction -- so totally opposite -- opposite
23 results. One year it was lower then the following year
24 it was higher within the half-mile radius as opposed to
25 the one-mile radius.

1 The year of construction, 2001, the medium --
2 median values were higher within the half-mile radius
3 as opposed to the one-mile radius which tells me that
4 the year of construction of that asphalt plant there
5 was absolutely no impact on the residential values
6 within -- within proximity to that asphalt plant. For
7 the four years after the construction of the asphalt
8 plant, and that is 2002 to 2005, there's only one year
9 that the median values were lower within the half mile
10 as opposed to the one mile. The other three years the
11 median values were higher within the half-mile radius
12 as opposed to the one-mile radius, which I have to
13 conclude that there's no impact, no negative impact on
14 the residential values within proximity to that asphalt
15 plant.

16 Q. And what -- what -- was there a trend from 2001
17 forward?

18 A. Well, certainly the values increased, you know, as time
19 went on. But in 2005, for example, the last year that
20 I looked at, within a half-mile radius of the asphalt
21 plant the value -- the median value for residential
22 properties was 172,500. And in the one-mile radius the
23 median value was 139,750. So a significant difference
24 in the median values in the half mile as opposed to the
25 one mile and that significant difference tells me that

1 asphalt plant is having no negative impact on the
2 residential values.

3 MR. TUZIW: Quick question. The rate of increase,
4 before the percentage each year how it goes
5 up, was it comparable after also? Because
6 you say it went up, it had gone up a tenth of
7 a percent versus two percent, a big
8 difference. Was it comparable to what the
9 rate of increase in values were before the
10 plant went in?

11 THE WITNESS: Okay. I did not -- I did not study
12 that. I did not analyze the rate of increase
13 from year to year. I just took a look at the
14 difference in the values between the half
15 mile, one mile and five-mile radius.

16 MR. TUZIW: So you're saying it wasn't a
17 significant impact, we don't know the true
18 impact because we don't know whether it
19 continued its trend going up or if the trend
20 slowed down, staggered after?

21 THE WITNESS: Well, I would -- I would -- if there
22 was a negative impact from the plant, the
23 asphalt plant, I would expect to see lower
24 values within the half-mile radius as opposed
25 to the one mile and five-mile radius.

1 MR. TUZIW: Lower values is a relative term.
2 You're looking at -- this was 2001 to 2005.
3 Those were the years the exuberance going up
4 to the -- or burst; things were growing
5 rapidly, it didn't matter what you did
6 everything was going up, if you throw money
7 at it, you made money. The question is, did
8 the rate of increase taper off or did it stay
9 at that continual upward trend?

10 THE WITNESS: Well, if -- if I take a look at
11 2001, the year that the actual plant was
12 constructed the median value within a half-
13 mile radius of the plant was 139,000. By
14 2005 it was up to 172,500. Within a one --
15 and that's within the half-mile radius.

16 MR. TUZIW: Okay. I'm doing math in my head.
17 Unlike him, I don't have that problem.

18 THE WITNESS: Well, I can't do math in my head, I
19 need my calculator. But that's a significant
20 increase, significant. Within the one-mile
21 radius for the year 2001 the plant -- the
22 year the plant was constructed, the median
23 value was 110,000. By 2005 that increased to
24 139,750. So a significantly lower increase
25 within the one-mile radius as opposed to the

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1 half-mile radius, which again, if there was a
2 greater increase on that -- over that time
3 period, within the half-mile radius as
4 opposed to the one-mile radius tells me that
5 there's no negative impact on the residential
6 values resulting from the asphalt plant.

7 MR. TUZIW: Okay. I got my numbers.

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

9 CHAIRMAN KIEHNA: If it's all right, it's 20
10 minutes to 8:00; I think folks would be ready
11 for a break and then we will come back to
12 questions. Ten-minute break.

13 (WHEREUPON, the hearing recessed at 7:40 p.m. and
14 reconvened at 7:58 p.m.)

15 MR. SNEED: I've got a couple more questions if
16 you don't mind, Madam Chair.

17 CHAIRMAN KIEHNA: Please.

18 BY MR. SNEED:

19 Q. So in doing the analysis, the initial analysis, how
20 many properties, individual properties did you look at?

21 A. 7,606 in total.

22 Q. And then doing your subsequent analysis how many
23 properties did you look at?

24 A. There were 832 properties within that final
25 geographical area.

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1 Q. And based upon those analyses, do you have an opinion
2 as to whether or not this asphalt plant will be
3 detrimental to property values around it?

4 A. Based on my analysis, no, there will be no detrimental
5 impact on residential property values because of the
6 asphalt plant.

7 Q. Thank you.

8 MR. TUZIW: I have a question. Do you have an
9 analysis on something that's more current
10 than 14 years ago?

11 THE WITNESS: Well, my -- my initial analysis is
12 current, okay. I just went back -- the
13 primary analysis I did was current, just
14 based on current values within the one year
15 immediately preceding the date I looked at
16 this and that was April 4th, so -- of 2019.
17 So I went from -- and that's when I did the
18 initial analysis was April 4th, 2019. So I
19 went back exactly one year and did a one-year
20 analysis on the half mile, one mile and five-
21 mile radius on each asphalt plant and each
22 control property. The only reason I went
23 back and did a historical look at the plant
24 at 2700 Asheville Highway is so that I could
25 take a look at the median values within the

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1 three radiuses prior to the construction of
2 the asphalt plant and then after the
3 construction of the asphalt plant.

4 MR. TUZIW: Okay. So I'm confused because you
5 gave us detailed figures of property values
6 from '99 to 2005, but you're saying this is a
7 current study as of 2019 --

8 THE WITNESS: Okay --

9 MR. TUZIW: -- I'll get my question if you'll give
10 me a chance.

11 THE WITNESS: Sorry.

12 MR. TUZIW: Do you have historical values and
13 property values more current than dating back
14 to 2005 that you can give us detailed numbers
15 to instead of just saying it didn't show any
16 decline? I want the same numbers I got
17 before for a time period more relevant to
18 where we are today.

19 THE WITNESS: The initial study I did looked at
20 seven asphalt plants and control property
21 within close proximity to each asphalt plant.
22 And for that study I took a look at -- I did
23 that study on April 4th, 2019, and I took a
24 look at the mean and median values for all
25 sales recorded in the MLS for the one-year

1 period immediately prior to the date of my
2 study. So I took a look at April 5th, 2018
3 through to April 4th, 2019 for each of the
4 seven asphalt plants and each of the seven
5 control properties. So all those numbers are
6 current right now.

7 MR. TUZIW: So you can only give me detailed data
8 of property values for one year, '18 and '19?
9 You can't tell me what the values were in '16
10 through '19 so I -- I want historical chart
11 of how the values change like you did in the
12 '99 to '05, can you tell me what they were
13 one and two years before the plant and what
14 they were for the four years after the plant.
15 I want to know more current data similar to
16 that in reference to today's economic
17 environment, not the numbers from when
18 everything just went bunkers no matter what
19 you did. I mean, back then it was hard to
20 lose money; I'd really be stupid to lose
21 money. Everything was going crazy. And then
22 2008 hit and the economy went down because of
23 all the mortgage problems.

24 THE WITNESS: True. The reason -- the reason I
25 took a look at 1999 to 2005 for that one

1 specific plant was just to take a look at
2 what happened prior to construction of the
3 plant and what happened after construction of
4 the plant. And the study of the seven plants
5 is based on current numbers and it was just
6 to take a look at, is there a negative
7 impact. And to take a look at if there's a
8 negative impact, yes, you can go back one
9 year, three years, five years, whatever the
10 case may be, but if I'm taking a look at
11 seven different plants, if I take a look at
12 one year I'm going -- again, I took -- take
13 a look at seven different plants, I'm going
14 to get a random sampling of what's happening
15 with the values. And if the random sampling
16 of those values shows that there's no
17 negative impact, there's no real purpose to
18 go back another year and another year and
19 another year. You would just assume that
20 it's going to show the same pattern of
21 values.

22 MR. TUZIW: So what --

23 THE WITNESS: I could -- I could, yes --

24 MR. TUZIW: So what was the purpose of going back
25 in 2005 for four years if there was no reason

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THE WITNESS: Okay --

MR. TUZIW: If there was no reason with just a one-year study which only can show at best an anomaly of what a 12-month period could be, what was the purpose of going back and doing a four, five and six-year study back from '99 to '05 that you don't have the same reason to do it here now? Because I still am sitting here going, you're giving me numbers on one year and you want me to be able to determine whether property values are affected by asphalt plants based on a 12-month span? I mean, if we can't even go through a regular cycle of economics without it being two, three or four years for the President being in and how that affects just -- just Congress changing every two years affects our economy.

So how can I tell a one-year sampling is going to give me if you can't tell me anything more than that when I know for a fact that just the generalization of how the economics works? There's just no way you can say something works in just 12 months. You can tell me in a one-year span, I know what

1 it's going to do? I mean, these plants can
2 -- cannot affect property values. Your study
3 back in '99 to '05 covers a six-year span,
4 gives me numbers where I can see a trend.
5 Are you going to give me month-by-month
6 numbers now since you only have 12 months
7 here in your study so I can see a trend?

8 THE WITNESS: The reason I took a look at one year
9 is my rationale for this study was that if
10 there was a negative impact on value because
11 of an asphalt plant, then I would see the
12 lower values within a half-mile radius and
13 then values spiking within the -- within a
14 one mile and then again within the five-mile
15 radius. And if I see that on a consistent
16 basis then I can conclude that there is a
17 negative impact because of the asphalt plant.

18 MR. TUZIW: How can you have a consistent basis
19 over a 12-month span?

20 THE WITNESS: Okay. If I take a look at seven
21 different properties, or actually 14
22 different properties, seven asphalt plants
23 and seven control properties, and if I see
24 that there is this pattern happening on a
25 consistent basis between all seven plants and

1 all seven control properties then I can
2 conclude that there's a negative impact.
3 However, I did not see that consistent
4 pattern. Yes, I only looked at one year, one
5 year. But one year looking at all seven
6 asphalt plants and all seven control
7 properties I should see -- I should see a
8 pattern of lower values within the half-mile
9 radius of the asphalt plant and higher values
10 as that radius goes out and I should see a
11 more level change in values in the control
12 property. I did not see that in my study.

13 MR. TUZIW: What were those dates again?

14 THE WITNESS: It was April -- April 5th, 2018 to
15 April 4th, 2019.

16 MR. TUZIW: So that was right in the middle of a
17 time when our stock market was surging 15, 20
18 percent and everything else was going good,
19 housing values were increasing and once
20 again, we only have a one-year window to look
21 at.

22 THE WITNESS: But -- okay, yes, we have a one-year
23 window to look at; however, I -- if there was
24 a negative impact because of the asphalt
25 plant we would see either a decrease or much

1 less lower increase, percentage increase, in
2 the values within a half-mile radius of the
3 asphalt plant as opposed to the control plant
4 and as opposed to the one mile and the five-
5 mile radius.

6 MR. TUZIW: So you're going to sit there and tell
7 me you honestly believe that you can tell the
8 difference in how housing prices are moving
9 without even having an asphalt plant involved
10 in it in just a one-month span, I mean a one-
11 year span?

12 THE WITNESS: What I can say is that based on my
13 research the median values, mean and median
14 values within the half-mile radius of seven
15 different asphalt plants in Western North
16 Carolina did not show any negative impact as
17 opposed to the one-mile radius and five-mile
18 radius and a control plant within proximity
19 to each asphalt plant.

20 MR. TUZIW: So out of these seven plants, how many
21 of them were built after an established
22 community was already in?

23 THE WITNESS: I cannot give you a definite answer
24 on that but I can tell you the one that I
25 looked at in more detail, the 2700 Asheville

1 Highway, there were -- there are -- well,
2 there are residential properties that are in
3 all of them, let's put it that way, they're
4 in all of them. There's mixed uses around
5 all the properties I looked at. How many
6 residential properties were established when
7 the plant was built, I did not look into
8 that.

9 MR. TUZIW: So you don't know the plant affected
10 the prices like that? Because, I mean, the
11 plant's already there and people come and
12 build it's not going to affect the price of
13 the property because, hey, they knew what it
14 was worth when they went in because they knew
15 the plant was there. If they're already
16 there and then the plant comes in, that
17 affects the property. It's going to take
18 more than a year for you to really realize
19 how much that's going to affect their
20 property.

21 THE WITNESS: Sorry, I did not understand what
22 your question is.

23 MR. TUZIW: It wasn't a question, it was a
24 statement.

25 MR. BRIGGS: What information is used to start

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1 your basic, you know, where did you to gather
2 the property values from?

3 THE WITNESS: From the regional MLS. So all the
4 numbers are taken from the regional MLS which
5 --

6 MR. BRIGGS: What is that?

7 THE WITNESS: It's the Multiple Listing Service
8 which is a service that brokers use to
9 advertise their property. It shows active
10 listings; it shows properties under contract
11 and it shows a historic -- historical data
12 from all the properties that have been sold.

13 MR. BRIGGS: So it only reflects property that was
14 actually bought and sold, correct?

15 THE WITNESS: Yes.

16 MR. BRIGGS: Okay. So if someone lived there
17 before, during or after an asphalt plant's
18 constructed but didn't know it, their --
19 property didn't change hands, property didn't
20 sell, then their property is not in the ratio
21 at all?

22 THE WITNESS: No, I was just looking at properties
23 that have sold within -- within that time
24 period and the mean and median values of all
25 properties that have sold within each radius.

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1 MR. BRIGGS: Would county tax, you know, prices, I
2 mean, would that be -- would that reflect, I
3 know the market is different, you know,
4 property value, tax assessment value is
5 different than for a property to sale but
6 does county tax statements, do they not
7 reflect that if a property value goes up or
8 down? I know they're reassessed several
9 times in the past few years.

10 THE WITNESS: Yes. I find the MLS is a more
11 accurate reflection of what the market values
12 are because assessments are only done every
13 four years, every four to eight years,
14 reassessments are done. So reassessments can
15 be sometimes -- if you're looking in the
16 seventh year of an eight-year cycle, the
17 value is not reflective of the current
18 market. I find the MLS numbers are more --
19 well, they're actual market values. They're
20 current sales.

21 MR. BRIGGS: Well, I'm kind of curious. So after
22 2008 a lot of property values dropped
23 considerably and I'd like to, I don't know,
24 I'd kind of like to see what a property
25 around an asphalt plant, say, the one in '99

1 and see it every year and see how, you know,
2 I know you haven't done that --

3 THE WITNESS: I haven't done that, no, sir. And I
4 could certainly do it. I could certainly add
5 in the numbers from 2005 right up to current
6 for that particular plant so you could see
7 the numbers.

8 MR. SNEED: If I --

9 MR. TUZIW: (Inaudible) is about how that affects
10 the numbers because we really need to see how
11 it affects today, not how it affected back
12 then.

13 BY MR. SNEED:

14 Q. But the first study that you did looked to see whether
15 or not the closer you got to an asphalt plant whether
16 the average prices were less, is that right?

17 A. Exactly, yes. I took a look at the mean and median
18 values.

19 Q. And what you found was in many cases the closer you got
20 to the asphalt plant, the values were up, is that
21 right, they were higher than they were half a mile
22 away?

23 A. Out of the seven properties analyzed, five out of the
24 seven, the values were not affected at all. The values
25 were higher but often within a half-mile radius as

1 opposed to a one-mile radius.

2 Q. In some places they were higher the closer you got?

3 A. Yes, yes.

4 MR. TUZIW: Are you referring to the '99 to '05
5 study?

6 MR. SNEED: No. I'm talking about the study that
7 she did last year, that was all she did was,
8 if I understand, you looked at all the sales
9 around those plants and looked to see whether
10 or not there was a pattern with lower prices
11 close to the asphalt plant.

12 MR. TUZIW: So you're talking about the '19 -- '18
13 to '19 studies?

14 THE WITNESS: Yes, the '18 to '19 study where I
15 looked at seven plants and seven control
16 properties.

17 MR. TUZIW: One that's only 12 months long doesn't
18 really give an accurate assessment of what
19 longevity over time, how that affects prices.

20 THE WITNESS: It was a snapshot. It is a snapshot
21 to see --

22 MR. TUZIW: It was a JPEG.

23 THE WITNESS: It is a snapshot just to see what --
24 and if there was a negative impact from the
25 asphalt plant you would see a consistent

1 pattern; there was no consistent pattern,
2 absolutely not. And it doesn't matter
3 whether it was one year or ten years, if you
4 don't see a consistent pattern then there's
5 no impact from that plant.

6 BY MR. SNEED:

7 Q. But you did, if I understood, you did see in several
8 cases, a pattern that the prices were higher the closer
9 you got in the half mile than they were in the mile?

10 A. Yes. Yes, in several cases it was -- the values were
11 higher than half mile as opposed to a mile radius,
12 which you have to conclude the asphalt plant is then
13 not affecting the residential values if the values are
14 higher within a half-mile radius as opposed to a one-
15 mile radius.

16 MR. TUZIW: Are we taking into account the asphalt
17 plant. Those other that are further out,
18 you're not taking into account anything else
19 could be around them that would be affecting
20 their prices?

21 THE WITNESS: Exactly. There may be other things
22 but what I was looking at is the asphalt
23 plant. Is there -- and if the negative
24 impact was because of the asphalt plant then
25 I could see a consistent pattern of the

1 values within a half-mile radius of each of
2 the seven asphalt plants be lower than the
3 values within a one-mile radius. And I only
4 saw that in two of the seven plants. The
5 other five did not show that. There was not
6 a consistent pattern; therefore, I had to
7 conclude that there is no negative impact
8 because of the asphalt plant. Within the
9 one-mile radius there may be other things
10 impacting it, but there's no negative impact
11 because of the asphalt plant when I don't see
12 a consistent pattern.

13 CHAIRMAN KIEHNA: Proceed.

14 BY MR. SNEED:

15 Q. Would you be willing to total the numbers up on
16 comparing the values in the residential areas around
17 the Rogers plant from 2005 to 2019?

18 A. Yes. Well, I will continue with this half mile and
19 five-mile radius with the mean values from 2006 through
20 2019, year-to-date 2019.

21 MR. TUZIW: Can you give us a break point? I want
22 to take 2008 run-up and fall apart out of the
23 equation. I'd really like to see that. I
24 don't know what others would like to see but
25 I'd really to see about 2011 to date. That

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1 kind of takes away the run-up skewing the
2 numbers and the fall off the cliff skewing
3 the numbers the other way. And I think even
4 if it was just a five or six-year, most
5 recent, but give us a better, more accurate
6 description of what today's current pricing
7 evaluations are affecting it.

8 THE WITNESS: Okay. And that is within the half
9 mile, one mile and five-mile radius of the
10 plant at 2700 Asheville Highway?

11 MR. TUZIW: You can pick whatever plant you want.

12 THE WITNESS: I will do that, absolutely. So
13 2008, or sorry, that was 2011.

14 MR. TUZIW: '11 to '19 would be great.

15 THE WITNESS: '11 to '19.

16 MR. TUZIW: That would probably be more than we
17 need, but that gets the economic disasters
18 that we've had out of the equation where we
19 can more accurately see what is actually
20 happening in our community today and how it
21 ran up to where we got to today.

22 THE WITNESS: Absolutely, I will run those numbers
23 and get them to Mr. Sneed.

24 MR. TUZIW: That would be great.

25 MR. BRIGGS: Does your information come out on a

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1 spreadsheet or is it --

2 THE WITNESS: Yes, it's an Excel spreadsheet, yes.

3 MR. BRIGGS: Could you bring a copy of that?

4 THE WITNESS: Yes, I can bring a copy of that.

5 MR. BRIGGS: So maybe we put it on there and take
6 a look at it. I need visual aids, I'm sorry.

7 THE WITNESS: No problem.

8 MR. TUZIW: What's your educational background on
9 that?

10 MR. GULDEN: I object to that. That's a dig at
11 me.

12 MR. TUZIW: I'm just -- it isn't intended to be
13 directed at you. I didn't ask for eighth
14 grade math. I just want to know your
15 college. Were you a statistical -- what was
16 your major?

17 THE WITNESS: Business, business management.

18 MR. TUZIW: Emphasis on?

19 THE WITNESS: Personnel actually. I worked in
20 personnel for a number of years, but through
21 the -- getting the MAI designation, is --
22 it'd be equivalent to a masters.

23 MR. TUZIW: Statistical analysis --

24 THE WITNESS: It's a lot of that and a lot of math
25 --

1 MR. TUZIW: I'm a math guy, that's why I'm asking.

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

3 Q. Just a few questions which is hard to believe, I'll be
4 brief. But you had indicated that five out of your
5 seven plants had no negative impact. What about the
6 other two, what two plants were those?

7 A. The two plants that showed a -- the two plants that
8 showed a decrease, okay -- okay, let me just see here
9 now. The one at the 1188 Smokey Park Highway in
10 Candler showed a -- the smallest mean and median values
11 were within the half-mile radius and there was a spike
12 to the one-mile radius which is what I would expect to
13 see if there's a negative impact on value. But if it's
14 specific to the asphalt plant I would expect to see
15 that for all seven asphalt plants. I saw that for only
16 two. The other plant was the one at 5057 Grovestone
17 Road in Black Mountain where there is significant
18 industrial development around that plant too.

19 Q. Like a cement plant?

20 A. Yes.

21 Q. That's around that one. And the quarry --

22 A. Yes, and the quarry -- and the quarry.

23 Q. -- is also around that one.

24 A. And there's an industrial property that's approximately
25 four acres of industrial building.

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1 Q. You understand that that Black Mountain plant might be
2 more closely aligned to this facility with the rock
3 quarry and the cement plant and 137, 132 acres of
4 industrial site right there. So why didn't you use
5 that one as your statistical analysis?

6 A. Okay. I used the 2700 Asheville Highway because it was
7 built in 2001, so it was more recent and easy to take a
8 look at the mean and median values surrounding the pre-
9 construction and the post-construction of the plant.

10 Q. Do you understand that up in Avery County there is an
11 asphalt plant built in 2001 also, did you look at that
12 one?

13 A. No. The Avery County plant did not show up, was not
14 included in my analysis.

15 Q. Considering where the location of the asphalt plant is
16 in Hendersonville, wouldn't the Avery County plant have
17 been a better indicator of whether property values are
18 going to increase and decrease based upon Madison
19 County, more closely aligned to Avery County as opposed
20 to Henderson County? Did you consider that in your
21 analysis?

22 A. I do not have access to the Avery County MLS. Okay.
23 So I could not look at Avery County information. I had
24 access to all the MLS for the properties I looked at
25 and could look in detail.

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1 Q. Did you know -- did you have access to the tax records
2 for Avery County that you could have looked at?

3 A. I could, yes; however, that would be quite a laborious
4 task to compile all the property, assessed values
5 within each radius.

6 Q. What about property that is within 800 feet of the
7 asphalt plant as is the case in this situation? Could
8 you have done that for the Avery County facility?

9 A. I could but as I said earlier, the assessed values most
10 often are not reflective of the current market value.
11 Quite often they're historical because they're only
12 done every four to eight years and I don't know how
13 often they're done in Avery County, but typically in
14 the more rural counties they're only done every eight
15 years. So the MLS, the actual sales number give a more
16 accurate reflection of what the market value is.

17 Q. And that goes to my -- you would classify Madison
18 County as a rural county, correct?

19 A. I would, yes.

20 Q. And Henderson County is not nearly as rural?

21 A. Not nearly as rural.

22 Q. Avery County, rural or urban?

23 A. Rural.

24 Q. So wouldn't it have been more appropriate in your
25 analysis to view properties similarly situated in rural

1 communities within 800 feet as is the case here to
2 conduct your study? Wouldn't that have been better?
3 A. No, I don't believe so because I'm doing a -- I'm not
4 doing -- I'm doing a general assessment to see if
5 there's a negative impact on values for residential
6 properties within proximity to an asphalt plant. So it
7 doesn't matter whether I'm in Avery County, Henderson
8 County, Buncombe County or whatever county I'm in, if
9 there's going to be a negative impact on values from an
10 asphalt plant it's going to show up in any county
11 anywhere. And given the same mix as was -- as is the
12 case in the Madison County prior to the construction of
13 the asphalt plant, that's why I took a look at control
14 properties and by taking a look at control properties
15 within proximity to each asphalt plant, that takes out
16 the differences between Avery County as opposed to
17 Buncombe County or Henderson County. I took a look at
18 each asphalt plant and the control properties within
19 proximity and took a look at those plants. So within
20 each grouping there was no consistent pattern.
21 Q. You're saying that there -- you treated all market
22 drivers equally and said, Henderson County, Avery
23 County, Madison County, they're all equal without
24 considering the move for retired folks to go to
25 Hendersonville, the move for northern people to come

1 and move into Buncombe county. You're saying that
2 there are no different market drivers for each one of
3 these areas that you studied?

4 A. I'm not saying that, no. I'm absolutely not saying
5 that. I'm saying that I took a look at asphalt plants,
6 what is the impact of an asphalt plant as opposed to a
7 control property within proximity and is there a
8 negative impact on value because of that asphalt plant.
9 And that -- that is -- and I took a look in Western
10 North Carolina -- Western North Carolina. So it is --
11 yes, I would say that there are some -- there are
12 differences between Madison County and Buncombe County
13 and Henderson County, absolutely. Okay. But I took a
14 general look at the impact of an asphalt plant on
15 residential values within close proximity. And my
16 study showed that overall there were -- there was no
17 consistent pattern of a negative impact on the values;
18 therefore, I conclude that the inclusion of an asphalt
19 plant given the current makeup, there was no impact,
20 negative impact on the values.

21 Q. Except if your asphalt -- you're buying property on
22 Smokey Park Highway or in Black Mountain, then it has a
23 negative impact?

24 A. There could have been other things in there, okay. If
25 the negative impact was because of the asphalt plant

1 specifically then I would have seen that same pattern
2 in all seven properties I looked at. Since I only saw
3 it in two, not all seven, I have to conclude that the
4 negative impact was not because of the asphalt plant.

5 Q. What was your control property? You keep talking about
6 this control property? Is that --

7 A. I took a look at each -- for each asphalt plant, I took
8 a look within proximity of that asphalt plant, what is
9 another area that has the same type of makeup that the
10 site currently has. None of them had quarries. I can
11 tell you that. The quarries were mostly right by the
12 asphalt plants. But I took a look at something with
13 mixed use, something that had industrial, residential
14 and commercial uses all within a close area, and that
15 was my control property. So industrial, commercial,
16 residential uses all together.

17 Q. Does the Rogers plant have a concrete plant close to
18 it?

19 A. I'm not -- I can't tell you that right off the top of
20 my head.

21 Q. Is the Rogers plant located on a quarry site?

22 A. I can't tell you that. I just looked, took a look at
23 that address and in the radiuses. I did not take a
24 look at the specifics of what is in that plant. In my
25 control property I took a look at, it had to include

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1 industrial, commercial and residential.

2 Q. You didn't get any more specific than the half mile,
3 mile and five-mile radius such as around any of these
4 plants, did you look at the impact that the asphalt
5 plant will have on properties that are within 800 feet
6 of that site?

7 A. No, I did not look at the 800 feet, no.

8 Q. Do you know how close the properties are to the
9 proposed site here in this application?

10 A. No, I don't. Just from listening, that's the only
11 knowledge that I have.

12 Q. And you're aware that in Avery County the facilities
13 that were there next to the Maymead plant had become
14 economically obsolete? You're aware of that, aren't
15 you?

16 A. No, I'm not aware of that.

17 Q. And you're aware that in Avery County on a public
18 record, the tax assessor's office, I can hand it up to
19 you, that talks about one of the --

20 MR. SNEED: I object to him introducing evidence
21 she doesn't know anything about.

22 MR. GULDEN: It's public record. It's like the
23 CDC reports, it's a public record. I'm just
24 handing it up, see if she knows about it,
25 haven't even asked my question yet. Sorry,

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1 Madam Chair, I haven't let you rule. I
2 haven't let you rule.

3 CHAIRMAN KIEHNA: She has already stated that she
4 has no knowledge of Avery County from the MLS
5 perspective.

6 MR. GULDEN: And this is not the MLS perspective.
7 This is public record, just like the DAQ
8 permits for the two asphalt plants that were
9 admitted and I'm asking her if she knows and
10 if she has seen what this document is going
11 to say and I'm --

12 CHAIRMAN KIEHNA: Proceed to see if she knows
13 anything about it.

14 BY MR. GULDEN:

15 Q. Do you know anything about this document which is from
16 Avery County Clerk of Court indicating that one of the
17 facilities next to the Maymead plant says that Maymead
18 plant ruined this property? You see that?

19 A. Okay. That's certainly what this document says.

20 Q. Do you know how close that property was to the Maymead
21 plant?

22 A. No, I'm not aware of that property. I have not looked
23 at that property. I have not studied that property. I
24 have no knowledge of that property.

25 Q. Those would be my questions.

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1 MR. TUZIW: Can I ask -- we said when we're
2 talking about her given more information, we
3 said any plant. (Audience member coughing)
4 not be from Buncombe County?

5 THE WITNESS: Not be from Buncombe County.

6 MR. TUZIW: Get something that's more to where we
7 live?

8 THE WITNESS: Okay. I though you wanted more
9 information on the property at 2700 Asheville
10 Highway that's in Henderson County.

11 MR. SNEED: Let me --

12 MR. TUZIW: What do you guys want to know about? I
13 want to see statistical how it affects them
14 but we don't know how Buncombe County affects
15 prices too. If we get something out of
16 Buncombe County --

17 CHAIRMAN KIEHNA: : It's not in Buncombe County.
18 She was using the one in Henderson County.

19 MR. TUZIW: It's in Henderson County? Okay. I
20 just don't want anything in Buncombe County.
21 I did tell her any plant. I just want to
22 make sure we're not getting Asheville's
23 inflation.

24 CHAIRMAN KIEHNA: Yes.

25

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1 (WHEREUPON, Applicant Exhibit Number 35 was marked
2 for identification and passed to the witness
3 for review)

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

5 Q. What is this Exhibit 35? I should have shown you that
6 earlier.

7 A. That exhibit is what I used to determine what plants I
8 was going to look at. It's the map from the
9 Association of Asphalt Pavers association.

10 MR. SNEED: So we'd offer Exhibit 35.

11 Q. And if I understand, you looked at the Burnsville?

12 A. I tried to look at the Burnsville one but there was no
13 information around it. I could not get enough
14 information to draw any conclusions.

15 Q. You looked at Weaverville?

16 A. Yes.

17 Q. Candler?

18 A. Yes.

19 Q. Waynesville?

20 A. Yes.

21 Q. Pisgah Forest?

22 A. Yes.

23 Q. And two -- three in Hendersonville?

24 A. Yes.

25 MR. SNEED: We'd offer 35.

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1 (WHEREUPON, Applicant Exhibit Number 35 was
2 offered into evidence)

3 Q. That's all I have.

4 MR. GULDEN: Nothing further from me.

5 CHAIRMAN KIEHNA: Conclude?

6 MR. SNEED: Yes, ma'am.

7 MR. GULDEN: You done Mr. Sneed?

8 MR. SNEED: Yes. Yes, that's all the evidence I
9 have at this time.

10 MR. GULDEN: We would call Doug Bruggeman briefly.

11 CHAIRMAN KIEHNA: Would you state your name?

12 MR. BRUGGEMAN: Doug Bruggeman, I live at 606
13 Coates Road, Marshall, North Carolina.

14 DOUG BRUGGEMAN, being first duly
15 identified and sworn was examined and testified as follows:

16 D I R E C T E X A M I N A T I O N BY MR. GULDEN:

17 Q. Doug, could you state your address again for the board?

18 A. 606 Coates Road, Marshall, North Carolina.

19 Q. Are you familiar with the asphalt plant that we're
20 talking about here?

21 A. I'm afraid so.

22 Q. Yeah, how close is your home to that property?

23 A. It adjoins it. It's my neighbor and the proposed
24 location of the plant based on my GIS analysis is 620
25 feet.

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1 Q. From your property line?

2 A. Property line.

3 Q. How close is it to your house?

4 A. I didn't do that analysis, I don't know.

5 Q. But from your property line the proposed site is 600-
6 something feet?

7 A. Right.

8 Q. Tell me a little bit about your education.

9 A. I've got a bachelors and masters in environmental
10 biology. I have a PhD in fish and wildlife biology
11 with a focus on ecological economics and specializing
12 estimating the impact of environmental hazards on
13 natural resource boundaries. I also have a real estate
14 license in North Carolina.

15 Q. Tell me briefly what ecological economics is.

16 A. So ecological economics is focused on incorporating the
17 value of the natural resources into traditional market
18 mechanisms. So understanding how hazards degrade
19 economic values or benefits through economic value. So
20 externalities, things that are not normally included
21 within market decisions. A negative externality would
22 be pollution from an asphalt plant; a positive
23 externality would be the French Broad River.

24 Q. You also are a licensed real estate broker or agent?

25 A. I am the provisional broker here --

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1 Q. That's different than an MAI appraiser?

2 A. Correct.

3 Q. Are you familiar with how to research MLS and how to
4 research sale prices of properties?

5 A. Indeed, I do it all the time, yeah.

6 Q. And ultimately you are going to give an opinion about
7 the value of your property. But in determining the
8 potential impact this asphalt plant would have on your
9 property did you do any analysis, market studies by
10 pulling data?

11 A. I did indeed. I went into the Multiple Listing System
12 into the Statistical Analysis Module, SAM, and
13 downloaded data for asphalt plants for closing price
14 within one mile of an asphalt plant.

15 Q. And did you create a report related to the -- well, is
16 it just statistical data that you pulled?

17 A. I analyzed the data. I conducted a Welch's t-test to
18 incorporate -- to account for the nonparametric nature
19 of data, you know, means are not reliable in this case
20 so it would be a median accounting for differences in
21 variation in sample sizes.

22 Q. Is this part of something that you have done or that
23 you are able to do because of your education, your PhD
24 and your real estate license?

25 A. Yeah. Mostly my PhD. I've had five graduate courses

1 in statistics and did a post-op in quantitative
2 simulation modeling in Germany.

3 Q. Okay. And I'm going to hand to you what I'm going to
4 mark as Exhibit 4.

5 (WHEREUPON, Opposition Exhibit Number 4 was marked
6 for identification and passed to the witness
7 for review)

8 Q. And see if you can identify this for the board.

9 A. Yeah. So this is the analysis I did of property values
10 with the -- radius of five plants in Western North
11 Carolina. And so basically what I did is that I looked
12 at all closing events within 15 years, within the past
13 15 years within one-mile radius of an asphalt plant and
14 we called around to make sure all those asphalt plants
15 had been in operation for at least 15 years. We had a
16 hard time getting employees of an asphalt plant on the
17 phone to ask them questions.

18 Q. Were you able to determine whether all of these asphalt
19 plants that you did your report on had been in
20 existence for the last 15 years?

21 A. Yes, we did verify that. And so I did an analysis
22 comparing those closings over 15 years with closings
23 for the entire zip code. I did not choose control
24 sites because I knew how easily it would be to
25 criticize the selection of control sites.

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1 Q. And in pulling your data tell the board what you did
2 and what you found.

3 A. So I pulled data on closings for each month over the
4 last 15 years and I pulled it into the R programming
5 language and then ran the Welch's t-test to compare the
6 distributions to determine if the distributions were
7 actually significantly different or not. I plotted
8 those distributions for those five plants and found a
9 significant difference in four out of the five plants
10 due to the presence of an asphalt plant

11 Q. And when you say you found a significant difference,
12 you found a significant difference in what?

13 A. That the closing price within one mile of an asphalt
14 plant, in the four out of five, was significantly less
15 than the closing price per zip code.

16 Q. And so looking at that -- do you have your report there
17 in front of you?

18 A. I do indeed.

19 Q. When you looked at the statistical depreciation of an
20 area within a half mile of the asphalt plant for the
21 Weaverville plant, what did you find out about the
22 decrease in property values?

23 A. So -- so in Weaverville we found a 12.7 percent
24 decrease in property values within one mile of the
25 asphalt plant. In Enka we found a five percent

1 decrease in property values. Hendersonville found a 24
2 percent decrease in property values and Black Mountain
3 a 13 percent decrease in property values and finally in
4 Weaverville a 24 percent decrease in property values
5 across those 15 years.

6 Q. Is that Weaverville or Waynesville? I know your
7 eyesight is bad.

8 MR. TUZIW: What page of the report are you on?

9 A. Oh, I'm sorry. Thank you, thank you, that's
10 Waynesville. Thank you for that.

11 MR. GULDEN: I believe that's 2 and 3, yeah.

12 A. So yeah, so Weaverville was 13 percent.

13 Q. And is this the Hendersonville plant that you found
14 that had a 23 or 24 percent decrease in value related
15 to the asphalt plant, is that this Rogers plant that
16 the appraiser, Ms. Lynn Carmichael was just talking
17 about?

18 A. Well, it has the same address. It's the
19 Hendersonville, like 2700 Asheville Highway.

20 Q. Can you explain how you found a decrease over a 15-year
21 period wherein she gave the opinion that it had no
22 effect?

23 A. I can't explain it because I don't know her methods.
24 I'm very concerned about the methods she chose. The
25 use of control sites, it leads to selection bias. So I

1 can't explain why she (audience member coughs).

2 Q. And so based upon the information that you gathered
3 related to these asphalt plants that have been in
4 existence over a 15-year period, what effect do you
5 think it will have on your property if this proposed
6 asphalt plant is approved?

7 A. It will daily impact my property. My property went on
8 the market in October. I had an offer right away and
9 that didn't work out and shortly after that the asphalt
10 plant was announced and I went from getting two calls a
11 week on our property to none.

12 Q. And have you -- what effect though do you think, as it
13 relates to value of your property, what effect will
14 this asphalt plant if approved have on the value of
15 your property?

16 A. It will decrease my property value by at least 56
17 percent based on the Avery study and if we were able to
18 get a buyer I will reach out to Lynn for the appraisal
19 (laughter).

20 Q. You indicated that your house was up for sale recently.
21 Have you had a contract for sale? And what was it
22 contingent on it if you did?

23 A. I did have a -- we had to get it under contract right
24 away which means to price it aggressively because I'm
25 an entrepreneur try to stay competitive and, you know,

1 the equity in my home was an important part of that
2 competitiveness but that buyer last minute asked for
3 11,000 off and it was an as-is contract so I told him
4 that would not work. And then shortly after that the
5 asphalt plant was announced.

6 Q. And have you had any buyers or --

7 A. Yeah. So since then I did have one buyer get pretty
8 aggressive with me, really interested in it, wanting to
9 buy it for cash but they were concerned about the
10 asphalt plant. It's been very public. And so they are
11 waiting to see how this goes.

12 Q. And so in your report if you can explain just briefly
13 if you haven't already, explain briefly to the board
14 how did you come to the statistical conclusion that
15 asphalt plants, these asphalt plants related to these
16 five sites have a decrease, a negative impact on
17 property values, surrounding property values.

18 A. Yeah. So like I collected the data and I compared the
19 distributions using Welch's t-test, which is
20 nonparametric test, it accounts for differences in
21 sample sizes and differences in variation. So if
22 you're not accounting for differences in the
23 distribution of the data, you really can't be confident
24 of the differences that you're concluding.

25 Q. And all of that is way over my head but what -- so is

1 it a program, Welch's t-test?

2 A. Welch's t-test, you know, put it into Google, Wikipedia

3 --

4 Q. No, no, I'm asking you is it a computer-based --

5 A. Yeah. So it's a -- so I work in the R programming
6 language as a professional --

7 MR. TUZIW: Can I ask -- can I ask you to slow
8 down just a little bit?

9 THE WITNESS: I know, it's getting late and --

10 MR. GULDEN: Yeah, thank you, that would make me
11 see that he was going so fast --

12 MR. TUZIW: Hear -- hear how fast I'm talking?
13 That's how fast I listen.

14 THE WITNESS: All right. My apologies.

15 Q. So start again.

16 A. Right. So I started -- I work with the R programming
17 language. It's kind of like SAS but -- and then you
18 put the data in there and you call to a Welch's t-test
19 and Welch's t-test organizes the data to --

20 Q. Slow down.

21 A. -- to compare the distributions so it looks at all the
22 data and looks at the distribution of the data, the
23 variation. And then makes a comparison between the two
24 and discerns whether it's a significant difference or
25 not.

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1 Q. And did one of the -- did you do an analysis on which
2 one of these plants is more closely aligned or
3 similarly situated to this site, Madison site?

4 A. Yeah, for sure. So because the differences that I
5 found across the sites, there are big differences in
6 the impact of asphalt plants on property values. And
7 so that reflects market differences across our region,
8 right. So then I went back to the MLS and plugged the
9 data on metrics of the market demand, like how hot is
10 the market, what's the demand within the market. So
11 things like the days to close, percent of asking price,
12 and also the months of supplied homes on the market and
13 compare -- I added Marshall -- Marshall, Madison into
14 the mix of the other five plants and graphed those
15 distributions and also then did a crucible balls test
16 to determine the differences among those market demand
17 trackers.

18 Q. And you're talking all this language. I don't think
19 anybody understands other than you, this crucible ball
20 test, whatever you just said. Is that, again, another
21 program that you can use or that you have used in your
22 education to just put in statistics or data to come up
23 with the answer?

24 A. That's correct. It's a method within the R programming
25 language you can use to test the differences in median

- 1 values across treatments and treatments in this case
2 are the real estate markets to test the hypothesis that
3 all real estate markets are the same in terms of their
4 market demand and I was able to reject that hypothesis.
5 It's showing that the markets vary greatly in terms of
6 market demand. And then from there I went in and did a
7 pairwise comparison to figure out which markets differ
8 and by how much and then found how different Marshall
9 is from Hendersonville and Buncombe County markets.
- 10 Q. And when you pulled this data and you found that they
11 were different, were the Hendersonville and Buncombe
12 County markets different than your Madison County
13 market as it relates to real estate values or the
14 property?
- 15 A. Yeah. So the Hendersonville and the Buncombe County
16 market demand is very different from Marshall market
17 demand based on those metrics which -- as I described
18 in my report.
- 19 Q. And so which plant was more similar to the proposed
20 site? You may have already said it.
- 21 A. Yeah. So Waynesville was very similar in terms of
22 metrics of market demand and I showed that using the
23 pairwise comparison called a Dunn's test.
- 24 Q. And what was the reduction in the property values
25 around the Waynesville asphalt plant?

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1 A. 23.9 percent.

2 Q. And if there's a reduction in property value, knowing
3 that you're a real estate licensed -- does that also
4 have a reduction in tax value that the property is
5 assessed?

6 A. Yeah, for sure. I would argue that all property
7 owners, 333 property owners within one mile of the
8 plant, will be impacted by building a plant and we're
9 going to be very vocal about having our property being
10 reassessed to reduce the tax value. So I took that 24
11 percent and applied it -- I took that, I got the GIS
12 data from Jeff in Madison County and looked at the
13 appraised value so there's 8.8 million --

14 Q. What page are you looking on right here?

15 A. So let's see, this is --

16 Q. Page 7?

17 A. So the -- the total appraised tax value within one mile
18 of the proposed plant is 3.7 million. That's the
19 appraised value. That's not the market value as Lynn
20 -- that's where we highlighted it, I took that as the
21 economic value. So but if you were take that 24
22 percent and apply that to the personal loss of income
23 that those 333 homeowners will enjoy, that's a loss of
24 \$8.7 million of people, citizens, also trying to stay
25 competitive.

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1 Q. And those 300 that you're talking about to the board,
2 are the ones, the 300, in a half mile radius around
3 this proposed site?

4 A. A mile radius, 333 properties within a mile radius.

5 Q. And what governmental entity is going to lose on the --
6 if the appraised values are lower?

7 A. So then I applied that to -- using the MLS rate for
8 Madison County and that was a loss of \$45,624 per year
9 in tax revenue loss per year.

10 Q. To Madison County?

11 A. To Madison County.

12 MR. GULDEN: That would be all.

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

14 Q. So Mr. Bruggeman --

15 A. It's Dr. Bruggeman.

16 Q. Doctor, I'm sorry. You're saying that it would be a 56
17 -- what percent decrease in --

18 A. 23.9 percent.

19 Q. 23.9 percent and you derived that from Waynesville?

20 A. Yes, sir.

21 Q. And what you did was you looked at the value of
22 properties within a mile of the Waynesville asphalt
23 plant?

24 A. Correct.

25 Q. And then you compared it to the entire 28786 zip code?

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1 A. That's correct.

2 Q. And what did you do, just average or mean, take the
3 mean of the properties within a mile, mean value of the
4 properties within a mile?

5 A. No. So for -- within Madison County, I did --

6 Q. No, I'm talking about Waynesville.

7 A. And so in Waynesville I looked at -- so I got a
8 difference by comparing the zip code values to the mile
9 within the Waynesville plant, that's how I got the
10 difference.

11 Q. So you took the mean of the values in the zip code and
12 the mean of the values in the one mile?

13 A. I -- the median, I took the median because it's more
14 rigorous.

15 Q. Median, okay. So it's a median. And that means half
16 the values were above and half the values were below?

17 A. That's correct, within a sample point.

18 Q. And what's a sample point?

19 A. So I looked at on a per monthly basis over 15 years.
20 And so within each month I selected the median from
21 within each month.

22 Q. And then what did you do with the 15 years' worth of
23 monthly medians?

24 A. I then analyzed those using a Welch's t-test and the R
25 programming language.

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1 Q. R programming?

2 A. Yes, sir.

3 Q. You have to spell that out for me.

4 A. It's R then programming.

5 Q. R programming. And it showed that the monthly prices,
6 medians, for the monthly prices within a month and it
7 compared those to the monthly prices, median prices for
8 all of the other homes sold in the zip code?

9 A. Right.

10 Q. And so you compared them with a Waynesville Country
11 Club homes and all the homes built on the mountain out
12 behind -- whatever that little town is out there, all
13 the mountaintop homes and everything?

14 A. Yes. I looked at the entire zip code so I would not be
15 criticized over selection bias by picking control
16 sites.

17 Q. And you compared the median prices in the zip code with
18 the median prices within a mile?

19 A. That's correct.

20 Q. And you found that there was --

21 A. 24 percent difference.

22 Q. 23.9 percent difference?

23 A. Yes.

24 Q. Now, can you hear the quarry when it's running?

25 A. Absolutely.

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1 Q. Can you hear it only when there's one or do you hear it
2 when there's just one or whether there are two?

3 A. Like, what do you mean one or two --

4 Q. They've got two crushers in there.

5 A. You know, I hear noise. I'm not able to determine
6 whether it's one or two crushers. You know, I know
7 it's louder sometimes; it's not as loud other times.

8 Q. And you knew that was there when you bought this
9 property?

10 A. I knew the quarry was there for sure. I did not know
11 that they're looking at a cement plant or that an
12 asphalt plant was proposed and I could have definitely
13 sued the real estate agent.

14 Q. So you think that the quarry is some detriment to your
15 property?

16 A. The quarry doesn't help but I think the asphalt plant
17 is a bigger detriment.

18 Q. Why is that?

19 A. Because of the contamination associated with asphalt.

20 Q. What contamination?

21 A. Like there's pH's, there's sulphur, there's some heavy
22 metals. So I'm concerned about health effects. I do
23 have asthma. I do like to run around when I have to
24 work on my property. Then my major concern is that
25 smokestack ends basically at the elevation my property

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1 begins. So you think back to the Industrial Revolution
2 the advents of smokestacks was an innovation because
3 houses were getting dirty and there's a lot of
4 contamination. So in this case a smokestack is no
5 innovation because it's ending right where my property
6 elevation starts.

7 Q. And how much higher are you than this property?

8 A. Well, based on Mr. Reed's testimony, it's right at the
9 elevation. The smokestack would end right at where my
10 -- at where my hill is to my property.

11 Q. So you're not -- you're above the quarry property?

12 A. I am indeed.

13 Q. How much?

14 A. I don't know. How tall is the smokestack?

15 Q. Fifty feet, 40 feet.

16 A. Okay. 50 feet.

17 Q. You think that you'll be right at that level?

18 A. Based on Mr. Reed's testimony, yes.

19 Q. But your property has appreciated quite well with being
20 next to the quarry, hasn't it?

21 A. I did not say that. There's no data to support that.
22 I have built a barn. I've done some clearing. I put a
23 lot of effort into that land and I think the
24 appreciation is the result of my hard work. I don't
25 think it's because it's next to the quarry. What's the

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1 added benefit of being next to the quarry?

2 Q. I'm saying that it appreciated in spite of the quarry.

3 A. It could be. I've not seen any results of an
4 appraisal.

5 Q. And the county's valuation of your property has gone
6 up?

7 A. It hasn't, no.

8 Q. It hasn't?

9 A. No. Tax assessor was out there this week and they gave
10 me an earful about this asphalt plant.

11 Q. Well, it was appraised in 2018 at a higher number.

12 A. A little bit.

13 Q. \$20,000 more, is that correct?

14 A. Probably, yeah, I don't recall.

15 Q. You didn't use any of the mean, the average prices, you
16 just used the medians?

17 A. That's correct. I used medians and so if you looked at
18 my report you looked at the distributions, you can see
19 why I chose medians instead of means based on the
20 distributions. Most of them are not normally
21 distributed.

22 Q. Prices are not normally from the medians, but the
23 averages?

24 A. The distribution, the data comes in distributions,
25 right? There's a variation of the data and so in using

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1 the mean you're assuming that the data are normally
2 distributed.

3 Q. Half on one side and half on the other.

4 A. Right. But in this case real estate data are often not
5 normally distributed. And so in that case because
6 they're not normally distributed I used a median as a
7 better index of essential tendencies for non-normal
8 data.

9 Q. So zip code had a lot of expensive houses in
10 Waynesville up on the mountain, both sides. And when
11 you put that in that's going to move the median up?

12 A. Sure. Yeah, but I mean, you're characterizing
13 distribution but it would move the mean up much
14 quicker.

15 Q. Yeah, but it moves the median up --

16 A. It moves the median up a little bit but the mean would
17 be more sensitive to that.

18 Q. Well, that's right, the average would.

19 A. Yeah.

20 Q. But there are also a lot more expensive houses over
21 there than are some other places in that zip code.

22 A. Sure. I mean, there are variations of property values
23 everywhere and so the question to you is why is there
24 less variation in property values near an asphalt
25 plant?

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1 Q. Because it's in a different type of land. You know,
2 you could go out there in the country and go up Fines
3 Creek somewhere and take a mile around some farm where
4 it's steep as it could be and you'd probably find the
5 same distribution, wouldn't you?

6 A. No, I can't say that.

7 Q. Hadn't done it?

8 A. Well, look, I mean, the value of anything is based on
9 how much someone is willing to pay for it.

10 Q. Right.

11 A. Right. So the presence of an asphalt plant, I mean,
12 I'm sure you could find a certain percentage of the
13 population that doesn't care about an asphalt plant and
14 if so, send them to buy my house. Okay. But the
15 majority of people I find are concerned when they go to
16 buy a house near an asphalt plant.

17 Q. And until they see it running and then see that it's
18 not a problem.

19 A. I tell you what, so you guys wanted to gamble, Mr. Reed
20 clearly does not like bars but he's willing to gamble.
21 He's gambling with my health and my economical gain.
22 So let's equate this gamble right now. I'll sell him a
23 bond, a bond worth 56 percent of the value of my house,
24 okay, like \$140,000. And if I sell my house it doesn't
25 impact my property values, I'll give him that money

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1 back. But if my property values are impacted, I keep
2 the money. Are you guys willing to make that gamble
3 with 333 property owners in Madison County?

4 Q. How much was your contract that you had under --

5 A. I'm not going to disclose that.

6 UNKNOWN SPEAKER: Did you file bankruptcy?

7 MR. GULDEN: Objection to that -- who asked that
8 question?

9 BAILIFF: Keep your comments to yourself, you in
10 the crowd, if you call out again, I'll --
11 leave.

12 MR. GULDEN: Unless, Mr. Sneed, you asked that
13 question, I didn't --

14 MR. SNEED: I didn't ask it.

15 MR. GULDEN: Oh, okay.

16 Q. Did you file a bankruptcy?

17 A. I'm not going to disclose.

18 Q. That's all I have.

19 CHAIRMAN KIEHNA: It's nine o'clock. Do you have
20 --

21 MR. GULDEN: Nothing, unless you all have
22 questions, nothing further for Mr. Bruggeman,
23 for Dr. Bruggeman.

24 MR. RAMSEY: The Waynesville plant, where's it
25 located at?

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THE WITNESS: Well, the address --

MR. RAMSEY: Kind of give me the general area.

THE WITNESS: I can't describe the general area,
it's like 1950 Allens Creek Road.

MR. RAMSEY: Let me ask Mr. Reed. Mr. Reed,
where's that plant generally located?

MR. REED: I've never been to it.

MR. RAMSEY: Maybe somebody can find it for the
next meeting. I'd like to know the general
location of that plant. Thank You. That's
all I got.

CHAIRMAN KIEHNA: It's two minutes after 9:00. We
will -- if both of the attorneys will come
forward, we'll set the date to continue.

(WHEREUPON, this proceeding on May 6, 2019, was
concluded at 9:02 P.M.; to be continued on
May 8, 2019)

* * * * *

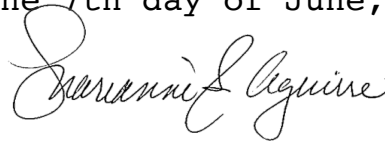
STATE OF NORTH CAROLINA)
)
 COUNTY OF RUTHERFORD)

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 7th day of June, 2019.



Marianne S. Aguirre
 Notary No.: 19961490099

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