

Public Hearing Motor Freight Terminal Conditional Use Hearing #7

The North Middleton Township Supervisors held a continued public hearing on January 16, 2008, at the Township Municipal Building, 2051 Spring Road, Carlisle, PA.

Chairman Richard A. Bucher called the hearing to order at 6:30 PM. Board members present were Vice Chairman Robert Shearer, Supervisor Dennis Hurley, Supervisor Robert Reisinger, Supervisor Harry Kelso, Solicitor Mark Allshouse, Manager Deborah Ealer and Recording Secretary Mary Dutchess.

Visitors: See attachment.

The Pledge of Allegiance to the American Flag opened the meeting.

Chairman Bucher asked if any of the Supervisors had any comments. None of them indicated comments at the time, and the hearing was turned over to Solicitor Allshouse. He stated that this was a continued hearing for Third Pine Floor. He also said that the last meeting ended while discussing traffic and that he had seen a letter from Mr. Lucas asking to change up this evening's meeting in a different direction, due to availability of witnesses. Continuation of the subject of "traffic" will be heard at a later date. Solicitor Allshouse further stated that the subject of tonight's hearing would be Liberty Environmental, Inc. and clean air issues. He added that some administrative issues needed to be dealt with first, one of those being that Mr. Lucas had indicated that the hearing scheduled for March 3, 2008, is not available to him due to a prior commitment. A date of March 12, 2008, at 6:30 PM was agreed upon.

Mr. Wolf stated that he had earlier in the day submitted to North Middleton Township his objection to the testimony of Mr. Zaleski, but wished to withdraw that objection. Whereupon, Mr. Lucas called Charles E. Zaleski to the stand.

Before Mr. Zaleski was sworn in, Chairman Bucher asked Mr. Lucas what the purpose of Mr. Zaleski's testimony would be. Mr. Lucas stated that Mr. Zaleski is an expert attorney specializing in land use law. Chairman Bucher asked if Mr. Zaleski was offering any new facts, or only opinion. Mr. Lucas answered that he would be offering opinion. Chairman Bucher stated that it was his feeling that it was not necessary to hear more opinion, as it's not to the point with facts and opinion can be put into a 'brief' format. Solicitor Allshouse asked if Mr. Zaleski would be offering legal opinion. Mr. Lucas said that he would be offering opinion of a planner, and that a review of his resume and experience shows that he is a land use planner and has worked as a land use planner. As such, he has dealt with the interpretation and provisions of a zoning ordinance and will offer opinions as to legal standards, which is permissible under expert testimony. Mr. Lucas estimated Mr. Zaleski's testimony would last approximately twenty (20) minutes and that he did not have a 'report' to present.

Solicitor Allshouse voiced a concern on behalf of the Board that they are not interested in a second verbal brief from someone telling the Board "your ordinance says this" and "you must do this". That would be for a Legal Memorandum. He went on to state that if that type of evidence is going to be offered, it's legal argument, as opposed to fact hearing, and can be supplemented in written report or supplemental brief. Solicitor Allshouse asked the Board if that was the jist of their concern, and Chairman Bucher said that it was his concern. Supervisor Shearer added that he could accept what the

Solicitor was saying, but if Mr. Zaleski starts getting into the facts, counsel has already given a brief on the situation and he wasn't sure what more Mr. Zaleski could add, but that if he began to "cross that line", the Board should indicate it was time to move on. Other Board members stated they had read Mr. Zaleski's resume and would like to hear his testimony and input. At that time, Solicitor Allshouse said to Mr. Lucas that the Board was not excluding Mr. Zaleski's testimony, but was excluding his verbal testimony if it goes into the area of law, in which case the Board would instead take a written report on that information. Chairman Bucher agreed. Solicitor Allshouse further said that the Board was not creating an appealable issue and was not excluding evidence, but that it should be submitted in a different form, as the 100 days are approaching and in order for additional witnesses to be heard and control taxpayers' dollars, the Board would like in a written form things they choose not to hear at tonight's hearing.

Applicant's Testimony - Charles Zaleski

Mr. Lucas called Mr. Zaleski to the stand. He was sworn in by the Court Reporter and seated. Mr. Lucas referred to Mr. Zaleski's biography, marked as Exhibit A-28. Mr. Zaleski stated that he is employed by the law firm of Salzmann Hughes PC in Carlisle, PA. He briefly reviewed his background experience as a practicing attorney and a fully certified planner. Since 1973, he has done a combination of planning and legal practice. He represents municipal clients as well as developer clients. His involvement is from the planning side in terms of the project and reviews; and from the developers' side, it's reviewing plans, dealing with Planning Commissions and obtaining municipal approvals. He indicated he has written hundreds of zoning ordinances over the years and has reviewed likely over a thousand zoning ordinances. He stated he has testified in land use cases as an expert attorney in land use law and as a land planner, primarily in the suburban Philadelphia area and in Bucks and Chester Counties, usually on cases that have some significance in the community.

Mr. Lucas asked if Mr. Zaleski could be presented as an expert in land use and zoning law and as an expert land planner.

Mr. Moore had no objection.

Mr. Wolf indicated he had some questions for Mr. Zaleski. Mr. Wolf asked if Mr. Zaleski was fully certified as a land planner and he said yes. Mr. Wolf asked if he was currently certified and Mr. Zaleski answered he is not currently certified. He is also not a member of the American Institute of Certified Planners. Mr. Wolf clarified that the AICP is the national organization that certifies qualified planners, to which Mr. Zaleski agreed. He also has not served recently as an expert witness in Cumberland County. Mr. Wolf asked that the Board note an objection on the basis that Mr. Zaleski is being offered as an omission to the rule that a land use attorney as a land planner who is not, as he has just acknowledged, currently certified as a land planner. Solicitor Allshouse clarified for the Board that it is the trier of fact and hearer of fact and has the ability to place the proper weight upon evidence presented. He added that Mr. Zaleski had provided a C.V. that, in Mr. Allhouse's opinion, would meet legal criteria that he has more experience than the average person. Mr. Wolf's objection was noted for the record and Solicitor Allshouse asked the Board if they wanted to allow Mr. Zaleski to testify as an expert in land planning. He stated that in his legal opinion, he had met the legal criteria under the law to do so.

Supervisor Shearer asked what Mr. Zaleski's present association with the Pennsylvania Association of Township Supervisors is. Mr. Zaleski answered that he teaches courses that they offer on land use subjects, zoning ordinances, subdivision ordinances, for approximately thirty years for PSATS, throughout the Commonwealth, as an independent contractor. There is no other affiliation. The last time he presented a course was last Fall, when he presented three of them. The Board allowed Mr. Zaleski to testify.

Mr. Lucas asked Mr. Zaleski if he has done land planning since 1973. He said yes, he has. He said when he is on the municipal side representing municipalities, his clients have included the Lycoming County Planning Commission, where he had previously served as their Director before going to law school. When he returned, he has continued to represent them and provide them advice on many legal and planning issues over the years. He also represents other municipalities, primarily on a contract basis - he is not a Solicitor to any of them in a normal sense, but advises on difficult land use problems. He cited some development concerns in the Poconos. Mr. Zaleski said he is also involved on the developers' side, with engineers, designers and clients at the beginning to plan a project and on into proceeding before Boards to represent them in obtaining municipal approvals. He also participates in Court appeal processes.

Mr. Lucas asked if Mr. Zaleski has reviewed the North Middleton Township Zoning Ordinance. He answered that he has. Mr. Lucas then asked if Mr. Zaleski had had an opportunity to review a copy of the Conditional Use Application narrative that has been identified as Township Exhibit #10. Mr. Zaleski indicated he had. Mr. Lucas asked if he had also reviewed a copy of the Site Plan identified as Exhibit A-4. Again, Mr. Zaleski indicated that he had. Mr. Lucas asked, as a land planner, is it a good practice to define every use? Mr. Zaleski said that when you start drafting ordinances, you clearly want to identify as many terms as you can, especially regarding where, in each district, you list the kind of uses that are allowed, either as permitted uses, a special exception or as a conditional use. He cautioned that this could result in an ordinance that's five pages long and a list of definitions three hundred pages long; therefore, a lot of terms that are used are not defined. As a practical matter, where there are terms that are likely to have some impact, he believes it's a good practice to try to define those kinds of terms.

Mr. Lucas pointed out that the zoning application use is for a motor freight terminal, which is not defined in the Township Zoning Ordinance. He asked in that situation, as a land planner, what has to be looked at? Mr. Zaleski answered that he thought this ordinance has a use category for truck stops or the use that's requested here, and there are a lot of concerns about traffic generation with the residents and municipal officials. He cited a similar incident in Middlesex Township several years ago. He represented this case as an attorney. Supervisor Shearer interrupted him and said he believed this ordinance interpretation had already been done. Mr. Zaleski explained that he had wanted to point out that in that case, that particular ordinance had two uses that were very important to the community, but were not defined and the process became very lengthy in emotions and finances for all parties concerned. In terms of a planning concept, he felt it would have been better had they defined it, and now in North Middleton Township, it has to be defined what constitutes a freight terminal. He reiterated that in terms of general planning concepts and general ordinance drafting, it's

desirable to try to define those terms that you expect will be subject to scrutiny or might cause problems. The current ordinance does not define the term.

Mr. Lucas cited the provisions of the Zoning Ordinance dealing with the motor freight terminal and truck stop special regulations (Section 204.109), and stated that under Subsection A, the provision is to allow 300' of road frontage. He asked if that can be defined, or does the ordinance need to be more specific? Mr. Zaleski stated that you have to look at how the ordinance is structured and what is in it. He added that this ordinance has a normal definition of lot width, from property line to property line. He said that in this district, lot width for this particular use is 150', which is in compliance and not at issue. He also stated that the ordinance does not say that the frontage has to be one long piece and doesn't have to consist of the entire lot width, so the determination needs to be made after all issues are evaluated.

At this point, the supervisors and Solicitor Allshouse stopped Mr. Zaleski and Solicitor Allshouse addressed Mr. Lucas and said that if the purpose of Section No. 1 is that motor freight terminal is not defined and if it's not defined under Pennsylvania case law, the developer gets the reasonable doubt, it's in the brief. The purpose of No. 2 is that the ordinance does not say contiguous, it's not specified and therefore may not be applicable because when the ordinance is not clear, the developer gets the reasonable doubt under Pennsylvania case law - again, it's in the brief. He asked for the next point.

Mr. Lucas then brought up the location of certain uses, in this case, a playground, within 500' of the property. Playground is an undefined term in the ordinance. Solicitor Allshouse asked Mr. Zaleski if he reviewed the ordinance. He answered that he did. Solicitor Allshouse asked then if playground was a defined term, and Mr. Zaleski stated no, it was not. Solicitor Allshouse addressed Mr. Lucas again and stated that if the purpose is that playground is not a defined term under Pennsylvania case law, the developer gets the benefit of the doubt, it's in the brief, and so noted for the record.

Mr. Lucas asked Mr. Zaleski, in writing a zoning ordinance for conditional uses, has he written specific standards for conditional uses within the ordinance? Mr. Zaleski said that he has, many times. Mr. Lucas then asked if the intent was to be as clear and specific as possible. Mr. Zaleski said that the concept of conditional use is similar to special exception. When drafting a zoning ordinance, you designate in each district the uses that are allowed as permitted uses, those allowed as conditional and those allowed as special exceptions. He said that ordinarily, if it's a routine kind of use, when you draft the ordinance, you say these are the uses that are permitted, then you have to meet the general standards and the zoning officer makes sure you have the correct setback and lot size and you receive your permit. Special exception and conditional uses are designed for uses that may have more controversy or a greater opportunity of providing some detrimental effect on the community or neighboring properties. The process there is that you designate those uses in the ordinance when it's drafted or amended - designate the district or designate the use. The courts have also said you need to provide objective specific standards, because you cannot measure compatibility. The procedure is useful because with permitted use, the person comes to the zoning officer during the day, walks out, and the neighbors have no opportunity. With the conditional use, it's mandatory that the planning commission reviews it and gives a recommendation, that the property is posted, and public hearings be held. Neighbors

must have the opportunity to look at it in detail, hear what's going on and have the opportunity to say they favor or oppose it, provide testimony and cross-examine witnesses. He admitted that a motor freight terminal has some potential adverse problems and this proceeding's purpose is to offer the opportunity to look at it and hear all the aspects. Mr. Zaleski said that the courts have said that when you have these kinds of uses, there are certain burdens. The burden's on the applicant to show that they're the kind of use that's authorized by the ordinance. They also have the burden of showing that they meet the specific objective criteria. Once that's done, the burden shifts to the opposition, who, if they want the Board to deny the use, must show that the particular use in question is substantially more harmful than other kinds of uses. Once a determination has been made that this is a compatible use, it must be accepted, allowed and approved, unless there is something exceptionally bad that shows up. This is an industrial district that, although it's called I-2, it's the heavy district, with uses that would be anticipated to have some problems. Mr. Lucas indicated he had no further questions for Mr. Zaleski.

Solicitor Allshouse asked Mr. Moore if he had any questions for Mr. Zaleski. Mr. Moore asked if the 300' is off the table for now. Solicitor Allshouse was confused by the question, and said in an attempt to clarify, that he thought Mr. Zaleski was stating that if an ordinance discusses road frontage, and the ordinance does not say it needs to be contiguous, non-contiguous or doesn't provide an adjective to describe the road frontage, then in his opinion, the benefit of the doubt then goes to the developer because it doesn't say it's contiguous. Mr. Moore said he didn't have any further questions at this time and will wait until it's his turn to present. Solicitor Allshouse then called upon Mr. Wolf.

Mr. Wolf asked Mr. Zaleski about the portion of his testimony where he said that a motor freight terminal has some increased potential for adverse problems and effects. Mr. Wolf asked if essentially the burden that an objector carries is not necessarily limited to the use itself, but can also involve the particular nature of the property or where the property is located. Mr. Zaleski agreed that you would look at more than just the property, but also the surrounding properties and area of location. Mr. Wolf said he had no further questions.

Supervisor Hurley had no questions.

Supervisor Kelso asked, regarding the 300' issue, if Mr. Zaleski had ever seen another applicant or developer use segmented pieces of land to make up a total frontage. Mr. Zaleski said he had seen it before and he attempted to remember where, but wasn't sure. He said it's fairly common where there are large tracts of land, because there are a variety of properties that are often in between. He thought South Middleton Township had a similar occurrence, and that it's fairly common where there is typical suburban growth over the years, and likened it to a 'tooth missing in a Halloween smile'. He has seen the situation in the past, and briefly discussed the Liberty Forge project in Lower Allen Township, which is an existing golf course that they're proposing for senior housing - there are a number of properties along the frontage that are existing residential uses, so there is a piece of frontage and then some intervening properties and then some more frontage, etc. Mr. Zaleski said that he thought it could be a combination; you just total up the frontages unless it's specifically stated in the ordinance that frontage must be

contiguous. Supervisor Kelso asked if only 200' of a 300' requirement was met on one side of the road, but there was additional frontage on the other side of the road of 100', would that still meet the requirement? Mr. Zaleski answered that the other side of the road might not be part of the same parcel of land. If that piece across the road was a connected property but was out of the same parcel it could apply, but maybe not. Supervisor Kelso asked Mr. Zaleski what types of uses the non-contiguous frontage examples he had mentioned had been used for. Mr. Zaleski said they were a variety of uses. Normally, they were commercial, industrial or townhouse-type uses. Supervisor Kelso asked if any were a motor freight terminal. He did not recall any specifically, but did not think the use would make any difference in terms of the concept; whatever is applied in terms of the frontage determination would apply whether it was a single-family house, motor freight terminal or elementary school, etc.

Supervisor Kelso then said that this initially was called a "drop-trailer lot", but now seems to be called a motor freight terminal and he asked if this seemed proper to him in terms of planning. Mr. Zaleski said the concept made sense to him because it improves the flow of trucks in and out of the area, eliminating the problem of trucks having to get to a location early and then sit and idle until they can unload. This project entails a central location where over-the-road drivers come in, drop or unload their trailer and leave. Supervisor Kelso asked how they drop the trailer off, and Mr. Zaleski said a drop-lot is an undefined term and is not used in ordinances very much, although the trucking industry uses the term a lot. He said what is proposed here is that trailers are brought in and dropped off and then the drivers leave. Later, the distribution or destination is ready to receive; local drivers with their own tractors take the trailer on. To him, this makes sense rather than have them sitting on the highway or outside roads, waiting for something to be open. Supervisor Kelso asked, if this facility were a drop-trailer lot, since it's not defined, would it need to go under a special exception issue? Mr. Zaleski answered that when you interpret terms, you first check to see if something falls within a clear definition. When there is not a precise definition, then you use common usage in your area. The concept is to fit wherever possible, the uses, into that. Townships face the problem that courts have said they must provide for all uses somewhere, and if you don't, technically, you can be held to be exclusionary. He said it's a judgment call without a clear line between the black and the white.

Supervisor Reisinger had no questions.

Supervisor Shearer asked if Mr. Zaleski could tell him of any ordinances that use the term "drop-lot" and a definition. Mr. Zaleski answered none that he's dealt with. Supervisor Shearer said that is a new term in the industry and that he believed Mr. Evanko said he was the originator of that term. He added that North Middleton does not have in its ordinance that it's a new term and it's not in anyone's ordinances and there is no definition for it yet, but Mr. Zaleski is saying it's a great idea to be able to drop a trailer off and the client here is trying to fit in the definition of motor freight terminal because that isn't in our ordinance, but it's undefined. Mr. Zaleski offered that he didn't hear the other testimony in terms of what is a drop-lot, and whether that differs from what is proposed here. He indicated the supervisors had to evaluate those to determine whether a drop-lot or the use proposed here, fits under the motor freight terminal concept. Definitions of terminal need to be looked at, which doesn't mean necessarily

that it's where the truck is unloaded, but just handled and then moves on elsewhere. He added that the transportation concept is ever-changing.

Chairman Bucher stated that the applicant's concept is technically more like a drop-lot and there are no overnight facilities or restaurants being planned there. They are dropping the trailer off. He asked if it's a better term use with motor freight terminal, or drop-lot. Mr. Zaleski said the ordinance addresses 'truck stop' or 'motor freight terminal'. Truck stop is defined and includes three or more activities (gasoline sales, restaurant, showers, etc.) This definition would not apply in this case. The motor freight terminal would fit currently, but he restated that the supervisors need to make that determination.

Supervisor Shearer asked him, as a planner, would he recommend PSAT have a definition for trailer drop-lots? Mr. Zaleski said if it's in an area where that is a potential concern, yes, especially for communities along an interstate highway. Supervisor Shearer then asked if separate definitions for motor freight terminal and trailer drop lots would be recommended. Mr. Zaleski said yes, but the supervisors would make that choice when they amend the ordinance, as land planners give advice, but elected officials have to decide what they want to define and not define. He said he would define it because these are new uses, and once it's defined, it becomes "the bible". He said until then, when in doubt, rule on the least restrictive application of the ordinance because the ordinance interferes with property rights.

Supervisor Hurley asked for more clarification of 300' frontage, and stated he was surprised that Mr. Zaleski could not think of a specific example where non-contiguous frontages were used to make up the 300'. Mr. Zaleski said he would research that and if there is no objection, will provide it in writing. Supervisor Hurley said if he couldn't come up with one, he (Supervisor Hurley) was going to dismiss everything Mr. Zaleski had said today.

Mr. Lucas revisited Mr. Zaleski's statement regarding the least restrictive application of the ordinance being applied for the property owner when in doubt. Mr. Zaleski stated this is court law and is contained in Section 603.1 of the Pennsylvania Municipalities Planning Code, which is the state law that allows townships to enact zoning ordinances. Mr. Lucas then referred to Mr. Wolf's question concerning conditional uses, looking at the potential for adverse effect, and confirmed with Mr. Zaleski that he had stated that when looking at conditional use, you look at its impact and whether the impact from that use is greater than the anticipated impact of a particular use; in other words, if it was a motor freight terminal, whether the impact was greater than expected from a motor freight terminal. Mr. Zaleski confirmed that, and said it would have to be an impact greater than other motor freight terminals would generate. He said any development would increase traffic and you can't deny something just because traffic increases. But if the amount of traffic is substantially more than other similar uses, and it creates a high probability of risk to health and safety, the Board can either deny it or address it through conditions, which would be the preferable way of doing it.

Mr. Lucas then restated Supervisor Hurley's question asking if Mr. Zaleski could provide examples of where a zoning ordinance requires frontage without the terms contiguous or continuous or using lot width. Supervisor Hurley added that he would need it to be substantiated. Mr. Lucas indicated he had no further questions.

Mr. Moore was asked if he had any questions. He stated that we are back into term definitions and into the 300', and said instead of waiting, he would ask his question now. He stated that he lives immediately west of the driveway and if, hypothetically, there was a dirt mound as a shield on his property, and the same for his neighbor who lives immediately east of the driveway, would that help define what the request of 300' really meant? Mr. Zaleski answered no, because there are three parcels of land that front on Neville Road and they would totally need to add up to 300'. The dirt mounds would not make a difference. Frontage is how much of the property actually abuts the road, regardless of how many pieces of land there are. Mr. Zaleski further explained, after Mr. Moore discussed how many of the residents desired to be shielded from the truck traffic, that when the ordinance was adopted, there were a number of residential properties that were actually zoned Industrial. He felt if the Township had wanted them to be screened by vegetation or earthen embankments, it should be put into the ordinance and it currently is not. The homes are in nonconforming uses. Solicitor Allshouse addressed Mr. Moore that Mr. Lucas suggested that maybe Mr. Zaleski could provide the Board with some additional information by form of letter of an example with regard to the 300' issue. He asked if Mr. Moore had any objection to Mr. Zaleski doing so. Mr. Moore said he did not. Solicitor Allshouse asked Mr. Wolf if he had any objection to Mr. Zaleski doing so, and he indicated he did not. Solicitor Allshouse then asked Mr. Wolf to proceed with re-cross.

Mr. Wolf asked, going back to the non-contiguous 300' issue, if there was a 150' piece of frontage that met a lot width requirement, and there were ten 15', or fifteen 10' other pieces of frontage, that ordinance does not restrict that use? Mr. Zaleski said that was correct.

The Board members had no further questions. Mr. Lucas indicated that he would like to admit Exhibit A-28 into evidence. There were no objections.

Solicitor Allshouse stated for clarification to Mr. Zaleski that he had said, "if it's not defined, the Board should apply the least restrictive definition", and asked if that was correct. Mr. Zaleski answered that if it's not defined, there is no definition. Therefore, it should be the least restrictive to the landowner's rights. Solicitor Allshouse then said, for clarification, if it's not defined, you should apply the common usage within the area, and asked if that was correct, to which Mr. Zaleski answered that that was part of the interpretation. He said that you look at what is common usage, what is dictionary definitions, etc. Solicitor Allshouse then asked if the common usage in the area is opposite of the least restrictive interpretation, what should the Board do? Mr. Zaleski said he thought the common usage should be applied. Solicitor Allshouse then called the next witness.

Applicant's Testimony – Gavin L. Biebuyck

Attorney Terry Bossert presented Gavin L. Biebuyck, Principal Consultant for Liberty Environmental, Inc. Mr. Biebuyck was sworn in. Solicitor Allshouse requested Mr. Bossert to turn in all his contact information. Solicitor Allshouse stated that for the record, Mr. Bossert is representing Third Pine Floor for the purposes of providing testimony of a proposed witness from Liberty Environmental, Inc.

Mr. Biebuyck provided his name and address for the record. He stated his duties and occupation with Liberty Environmental as an Air Quality Specialist, and said that he does primarily air quality permitting, but also does air quality planning, prepares permit applications for industrial sources, performs air emissions testing, air quality monitoring and environmental auditing. Mr. Biebuyck's resume was marked as Exhibit A-29, and he testified that it is current and accurate. He reviewed his experience and background. He stated that he has made hundreds of estimates of air emissions (air emission inventory) over the years and managed the preparation of these inventories. Over the past three years, he has worked with Berks County on air quality planning related to non-attainment status for fine particulate matter and ozone. He explained that particulate matter is traditionally considered dust, but Mr. Biebuyck indicated over the last ten years, there has been increasing attention and regulation of the very small particles, fine particulate matter is his term for particles less than 10 microns in diameter (pm10) or particles less than 2.5 microns (pm2.5) in diameter. He has evaluated sources of pm10 and pm2.5. As a result, he has produced written materials in which he looked at speciated fine particulate matter at eight different locations in southeastern PA, using PA DEP monitoring data, and assessed what comprises fine particulate. He defined speciation as referring to the chemical composition with regard to particles. He described how the particles are captured and analyzed. Mr. Biebuyck has testified as an expert in one other zoning/air quality matter in Berks County (West Reading), Mr. Bossert then offered Mr. Biebuyck as an expert in the area of air quality assessment and evaluation and air quality planning as an environmental consultant.

Mr. Moore had no objections, but asked if Mr. Biebuyck had any formal training in how diesel engines work. Mr. Biebuyck answered that he has received formal training from US EPA in air pollution and air emissions estimation but not specifically in diesel engines operation.

Mr. Wolf noted that Mr. Biebuyck's background has been in physics and computer sciences academically. He asked if Mr. Biebuyck had received any specialized training in toxicology or chemistry. Mr. Biebuyck answered none in toxicology, but that he has taken numerous courses in air pollution, air pollution regulations and air emissions estimation. He has no medical credentials. He also does not hold any certifications in air quality consulting, as there are no such thing. There also are no certifications in air quality assessment. There are no objective criteria necessary to meet in order to do air quality assessment. Mr. Wolf asked what was the nature of the expertise Mr. Biebuyck offered in the matter in which he testified in West Reading. Mr. Biebuyck responded that he was testifying regarding air permitting issues associated with a funeral home that was wanting to install a crematorium, as well as air quality impact associated with the proposed crematorium stack and its relation to neighboring properties. Mr. Wolf indicated no objections to Mr. Biebuyck testifying as an expert.

The Board also accepted Mr. Biebuyck as an expert.

Mr. Bossert asked Mr. Biebuyck if he was retained to evaluate air quality-related matters for the project currently before the Board. He said he was, and that he was told there were concerns with particulate matter pollution in the general Carlisle area and North Middleton Township, and that he was asked to evaluate and estimate the particulate matter air emissions associated with the truck traffic proposed for this site. He described

how he went about the evaluation by looking at the traffic impact study and the degree of traffic proposed for the site and used US EPA air emissions factors for heavy-duty truck diesel exhausts. Two components were looked at - mobile operations where trucks were moving onsite and idling operations (travel less than 5 mph). Conclusions were drawn as to the amount of particulate emissions expected, on a daily basis, weekends and annually (in tons per year). Mr. Biebuyck made comparisons with emissions that would occur from a typical motor freight terminal based on industry average traffic data per acre. He also compared emissions with other existing sources of air pollution in Cumberland County, and also with a couple of hypothetical permitted industrial uses that could occur at the site. His evaluation and conclusions were set forth in a report, marked as Exhibit A-30. Mr. Biebuyck reviewed the report and stated that it reflects his evaluations and conclusions previously summarized in testimony. The conclusions he reached are held with a reasonable degree of scientific certainty.

Mr. Bossert asked about the relationship between pm2.5 and pm10. Mr. Biebuyck explained the difference in the two and how they relate to each other, in that pm2.5 is a sub-set of pm10. Mr. Biebuyck said he was aware of the existence of the Clean Air Board and their concerns about pm2.5, and that he routinely followed PA DEP's news releases and was aware of DEP's installation of a second pm2.5 monitor in the Carlisle area. He discussed his involvement in monitoring eight DEP monitoring sites where they were collecting speciated data in the southeastern PA area, which also included parts of Adams and Perry counties. There is a concern with pm2.5 in that most of this region is classified as non-attainment with the federal pm2.5 standards. PA DEP has recognized that pm2.5 is a regional issue that crosses many counties, and they keep relevant data that is available to the public. Cumberland County is classified as non-attainment. He described the two standards categories (annual standard and 24-hours standard). With the annual standard, York, Lancaster and Berks counties are the highest, in the 17 range (15 is standard). Cumberland tracks similarly to Dauphin County at a little under 15. Cumberland is not the most "out of attainment".

Mr. Bossert began then to ask questions of Mr. Biebuyck regarding the various charts and figures shown in his report (Exhibit A-30). He explained aspects of chemical compositions of fine particles. He stated that nitrates and sulfates form secondarily in the atmosphere and are not emitted directly from pollution sources, as opposed to nitrogen oxides and sulfur dioxide, which are emitted directly from pollution sources. He described how soot (elemental carbon) is formed. Common sources are wood-fired stoves, open burning of any kind, forest fires, diesel exhaust and car exhaust and residential furnaces. Mr. Biebuyck believes there is not much difference in the data from the Harrisburg monitoring site and the Carlisle monitoring site, and stated that EPA has begun regulating emissions. The projected pounds per day and tons per year are estimated to decrease over the next three years. No assumptions were made regarding turnover of the truck fleet due to meet new EPA requirements. Mr. Biebuyck indicated that they used US EPA estimates of average truck engine turnover.

Mr. Biebuyck, for comparison purposes, also looked at emissions estimated to be generated by two other permitted uses, a food processing plant and a wood furniture plant. The details were provided on Tables 6 and 7, respectively. Most food processing plants use steam to cook the food and many include a boiler to generate the steam, so they looked at a mid-sized oil-fired boiler (rated at 9M btu/hour) associated with such a

plant. They estimated pm10 emissions for emissions to be consistent with the site. This boiler could be installed without the need for an air permit and get emissions of approximately 3 lbs./day. The wood furniture plant estimation is a permitted use under the zoning code and many plants like these generate a lot of sawdust. They also often install small sawdust-fired boilers to produce heat and to process steam for laminating and drying ovens. The sawdust-fired boiler they looked at would be nearly four times smaller than the oil-fired boiler (2.4M btu/hour). It is just below the permitting threshold for wood-fired boilers. This type of boiler could be installed without the need for an air permit, but emissions would be fairly substantial. Wood combustion results in fairly high elemental carbon or soot emissions, and using EPA emissions factors, they estimated 15 lbs./day would occur.

Existing stationary sources of pm10 emissions in Cumberland County were also looked at. Two industrial sources emit 7 tons/year and 15 tons/year; and the Carlisle Barracks emits about .7 ton/year.

Mr. Biebuyck incorporated data from Table 1 to produce some bar graphs (Exhibit A-31), which he outlined for the Board. As there are no regulations for existing stationary sources that are exempt from permitting, there will not be a reduction in emissions from existing small boilers. There is no regulation on the horizon that will address either fuel oil quality or burner combustion technology for small boilers that will force them to reduce emissions over the period to 2020, as there is for trucks and tailpipe emissions. Therefore, emissions would likely stay constant for wood-fired or oil-fired boilers whereas truck emissions will go down as federal standards come into effect. Mr. Biebuyck's conclusions were the particulate matter emissions associated with the proposed project will be very small relative to other permitted uses that could occur on site, and the impact of particulate matter emissions would be relatively low.

Mr. Bossert had no further questions.

Solicitor Allshouse asked Mr. Moore if he had any questions. Mr. Moore referred to Table 2, and asked if an idling engine in 2009 emits 2.52 grams per hour, but the truck burns 8 lbs/hour of fuel when it's idling, and takes in about 20 times that of air, all of that went out the stack and all of it wouldn't be in the "10" category, as some of it is water; why is the emissions rate so high? Mr. Biebuyck explained that when diesel fuel is combusted perfectly, it results in carbon dioxide and water because you're burning a hydrocarbon (fuel oil). There is also sulfur in diesel and nitrogen in air. The vast majority of emissions associated with combustion would be in the form of carbon dioxide which is not a pollutant and water. EPA, based on testing, has established a low emissions factor for trucks and it gets lower as the years go on as the particulate filters are introduced. Mr. Moore asked what elements coming out of the stack were dangerous to health. Mr. Biebuyck reiterated that he does not have a medical background and therefore cannot address that type of question. He stated that there are national ambient air quality standards set by the federal government for various pollutants and one of the prime concerns is pm2.5 with respect to human health. The other concern is ozone in southeastern Pennsylvania. There is a much higher standard for pm10, and the concern in Pennsylvania is pm2.5 and to a lesser degree, ozone.

Mr. Biebuyck further explained in response to a question Mr. Moore asked that he hadn't wanted to make assumptions about this site and what the composition of trucks would be because there are going to be a number of different trucks and he was told it would be similar to the average mix in the U.S. Because of that, he used the standard EPA estimates based on the average mix of trucks projected by the EPA. Mr. Moore said that then, under certain circumstances, it could be much higher or much lower, depending on what the diesel engine is doing at the time. Mr. Biebuyck said that if there were all older trucks on site at the same time, then the emissions would be closer to what's shown for 2009. If in a more reasonable scenario, there was a mix of newer trucks as time goes on, the emissions would be expected to go down, as shown for 2010 and 2020. Mr. Moore referred to Table 3 and asked some technical hypothetical questions regarding emissions varying during idling vs. mobile emissions. Mr. Biebuyck said the idling emissions are higher than on-the-road emissions, but EPA emissions factors were used. Mr. Moore then explained the health condition in his family that drives his concern about the fine particulate matter. Mr. Biebuyck said again that he does not have a medical background, but that diesel engine emissions are going to continue to be reduced dramatically over the coming years with the new, cleaner fuel going in and that EPA projects a 95, 97 and 90 percent reduction for the three primary pollutants to 2020.

Mr. Moore asked if emissions tend to rise in the air when they come out of a truck's stack, or fall to the ground. Mr. Biebuyck answered that they tend to rise due to the high temperature of the diesel exhaust, the exit velocity and the direction of the stack. The emissions would normally disperse very quickly and not fall back down to the earth, particularly since it is the pm2.5. Mr. Moore had no further questions.

Mr. Wolf asked if Mr. Biebuyck's assessments addressed the aldehydes present in pm2.5 from diesel exhaust. Mr. Biebuyck said no, that they looked at particulate matter emissions which include a wide variety of very fine particles, but aldehydes are gas, an organic carbon material in the BOC category, and those were not assessed. Mr. Wolf asked about nitrogen oxide and Mr. Biebuyck said that wasn't looked at either, as he understood the concern was with fine particulate matter. The nitrogen oxide would contribute to the regional issue more than locally. Mr. Wolf asked if prevailing winds could disperse pm2.5 to other counties where ratings are higher. Mr. Biebuyck said not to counties that are not downwind from Cumberland County. Mr. Wolf asked if it was true that there are over thirty toxic contaminants in the diesel emission particulate. Mr. Biebuyck said that may be correct, that he hasn't analyzed the composition of diesel particulate but he was aware that there is a range of organic polycyclates and some are toxic. He has not done any ambient testing, but his firm has in the area. He began this assessment about four months ago, and it was made on certain assumptions. Mr. Biebuyck clarified that 20 minutes per trip were used in his assessment, and that was figured on one trip per truck traveling one way. Mr. Wolf said that in earlier testimony on October 29, 2007, Mr. Peters testified that the worst-case assumption would be approximately an hour on site, which would increase this time by one third. Mr. Lucas stated that Mr. Peters testified that they would be idling approximately 20 minutes per trip, which are two trips for one truck and 40 minutes of idling. Mr. Wolf referred to page 33 (line 7, 7:29 PM) through page 34 (line 10) of the October 29th hearing, which discussed the conservative estimate of up to an hour if there were no unexpected problems such as with an air line, etc. Mr. Wolf said that to him, that meant two 30-

minute trips; therefore, as opposed to 40 minutes in and out, it would be 60 minutes in and out.

Mr. Bossert objected to Mr. Wolf's question relating to the 20 minutes, and then he stated instead of 40 minutes in and out, it would be 60 minutes in and out - Mr. Bossert believed Mr. Wolf was asking it misunderstanding the document because the 20 minutes referred to is only in the idling chart, not in the mobile emissions chart. Solicitor Allshouse sustained the objection.

Mr. Wolf then asked if the traveling speed on the site is estimated at entirely under a certain threshold. Mr. Biebuyck answered that the idling emissions were used for truck traffic under 5 mph, associated with hooking up and unhooking trailers. Mr. Wolf asked how much time on the site did he estimate was idling time, including travel under 5 mph, vs. time on the site that is not idling time? Mr. Biebuyck said they were estimating 20 minutes idling per trip, and two trips per truck, so that could be up to 40 minutes. The remainder of the time would be travel of .5 miles per trip, which could be a total of 1 mile on site while the cab is mobile. Emissions are shown separately for those, based on .5 miles per trip using different emissions factors, the EPA mobile emissions factors, for that time period.

Mr. Wolf then said that earlier testimony and the application had stated that the truck would be onsite for up to an hour. He asked if Mr. Biebuyck was saying that 20 minutes of that time would be spent going either in one direction of the lot or back the other as traveling time. Mr. Biebuyck said presumably, and that he had been given information that the maximum of 20 minutes would be associated with idling, with the remainder of time being mobile. He believes the miles traveled onsite are conservative, and he did not evaluate the total time associated with the mobile travel vs. the idling.

Mr. Wolf re-stated that Mr. Biebuyck's testimony was that Cumberland County does not meet air quality attainment standards for pm2.5. Mr. Biebuyck agreed that Cumberland County is classified as non-attainment. Mr. Wolf asked if he relied on the 1999 data to help establish the existing conditions for future emissions. He answered no, that the 1999 emissions were just used to show what recorded actual emissions were from stationery sources at that time. Mr. Wolf said his testimony had stated that generally, the EPA would update these figures on a 5-6 year basis, and that it has been almost 9 years since it's been updated. Mr. Biebuyck agreed and said 1999 was the most up-to-date emissions data they could find on the EPA database. Mr. Wolf asked where the Harrisburg monitor is located. Mr. Biebuyck stated it is at the UPS center east of Harrisburg off I-83 on the east shore. The Carlisle monitor is located north of the PA Turnpike in Carlisle Springs and it is still collecting data. Figure 1 data used Harrisburg data because there is no speciated pm2.5 monitor in Cumberland County, as they are very expensive, so EPA only operates a few of them. The Harrisburg monitor data was used because EPA lumps together Cumberland/Dauphin/Lebanon counties as one non-attainment planning area. They therefore thought that would be more representative.

Mr. Wolf asked if DEP had installed an air quality monitor within 2 miles of the subject site on the Macaluso farm. Mr. Biebuyck responded yes, but that he has only informally analyzed the data DEP emailed him from that monitor, and added that a year's worth of data needs to be available to properly analyze it.

Mr. Wolf then asked if Carlisle Carrier had provided him with any historic idling data for its truck fleet to assist him in formulating projections. Mr. Biebuyck said the 20 minutes per trip information came from his client, through Carlisle Carrier, from site-specific estimates. After further questioning from Mr. Wolf, Mr. Biebuyck stated that particulate matter reductions would come from a combination of some 2007 engines being introduced in to the fleet, along with the use of the ultra low-sulfur diesel; however, he went on to state that the majority of particulate matter reductions would come from the 2007 and beyond model year engines equipped with the particulate matter filters.

Mr. Wolf asked about the examples of two other permitted uses generating particulate matter. Mr. Wolf asked if those generate pm10, or is it possible for them to generate pm2.5? Mr. Biebuyck said that they certainly can generate pm2.5, however, there are pm2.5 science factors for both combustion types. The oil-fired boiler is a dirtier fuel than what is used in a diesel truck. Mr. Wolf asked if the particulate matter data collected by the air quality monitors is differentiated by source. Mr. Biebuyck said no, it just shows total particulate matter in ambient air (air the public can breathe). EPA criteria states the monitors have to be located 1000 feet from heavily traveled highways, 100 feet from lesser-traveled roads. Mr. Wolf asked in Figure 1, if Mr. Biebuyck concluded the source of the pm2.5 was diesel emissions. Mr. Biebuyck said no, he had not drawn any conclusions about the source, except that the diesel particulate would be a fraction of the elemental carbon pie slice and it could contribute nothing or up to 5%. Mr. Wolf asked if he had testified that the worse he had seen in the elemental carbon was 6%. Mr. Biebuyck said he's seen it range from between 3-6%. 3% would be rural areas, and 6% was seen in the Elizabeth, NJ, area outside of Newark near highways, refineries and extreme population density.

Mr. Wolf asked if the trip assumptions and time idling, time traveling onsite and .5-mile average per trip factors only into emissions onsite. Mr. Biebuyck said that was correct, they had not looked at emissions on public roads on the way to or leaving the site. Mr. Wolf then asked if Mr. Moore's questions regarding vehicles entering, exiting, acceleration and deceleration patterns were not captured in the assessment. Mr. Biebuyck stated they did not estimate emissions from the public road and include those. They would have included emissions associated within the .5 mile per trip and since it's a conservative number, it likely gets them out to the public road. The objective was to look at the emissions onsite, on the property itself.

Mr. Wolf said Mr. Biebuyck had identified Cumberland County was rated 15th in the annualized standard for DEP. He asked what it had been on the 24-hours standard. Mr. Biebuyck said in December 2007, PA DEP provided recommendations to the EPA on which counties should be included as non-attainment for the 24 hours. In that document on the DEP Air Quality website, the design values are shown and Mr. Biebuyck remembered Cumberland County was in the top ten. He said both Dauphin and Cumberland Counties appeared to be slightly over the 24-hours standard of 35 at 37.5 each. Mr. Wolf had no further questions.

Solicitor Allshouse asked if any Board members had questions. Supervisor Hurley had no questions.

Supervisor Kelso asked if Mr. Biebuyck had ever been to the site. He said he had not, although he has seen many aerials. Supervisor Kelso asked if he knew how close to the residences the site is and he answered yes. Supervisor Kelso asked who had chosen wood furniture and food canning as the worst-case scenarios. Mr. Biebuyck said he had picked them as typical industrial activities, not necessarily worst-case scenarios. Supervisor Kelso asked if they used natural gas, would there be less emissions? Mr. Biebuyck said there would be less than using wood or oil. Supervisor Kelso asked Mr. Biebuyck to clarify idling time and travel time again. After doing some calculations regarding number of trips and trucks, Supervisor Kelso asked if it would be fair to say that the closer people lived to the site, the more they would be impacted by the emissions. Mr. Biebuyck said it would certainly be reasonable to say, and that there would certainly be some impacts associated with the site. Supervisor Kelso asked if pm2.5 ever sinks to the ground. Mr. Biebuyck responded that it disperses like a gas, but does not sink to the ground and deposit. Concentrations of particulate would drop off with distance.

Supervisor Reisinger asked about the particulate threshold and Mr. Biebuyck said 5 tons per year is a common threshold, which translates into 1-1/2 lbs. per hour or close to 30 lbs. per day.

Supervisor Shearer asked whether the 1999 EPA data was provided along with more current data being substantiated. Mr. Biebuyck answered that unfortunately, Pennsylvania does not have emissions data readily available on the website and that his firm could substantiate more recent current data, but they would have to schedule a file review and collect the data. He surmised that data could likely include the year 2005, but does not believe the 2006 data has been processed yet. He doesn't expect that emissions would be substantially different or lower unless production went down because there haven't been any particulate regulations come into effect over the past 8 years in Pennsylvania. Supervisor Shearer pointed out that in Mr. Biebuyck's Executive Summary, he believed there was an untrue factual statement regarding Carlisle Barracks, and stated that their boiler was closed down three years ago. He went on to state that they now use a groundwater source that is a thermosource to heat the entire Barracks. He felt if specific statements like that were made, he wondered about the validity of the rest of the figures presented. Mr. Biebuyck replied that the statement had been based on the 1999 data and that he should have identified that. He added that he had identified it on the Tables.

Supervisor Shearer then asked if Mr. Biebuyck had stated that the idling times had been provided by Carlisle Carrier. He said yes, he had, and Supervisor Shearer said that he understood Carlisle Carrier would be a tenant onsite but if they don't become the primary tenant on this site, he asked if those figures could change. Mr. Biebuyck said that the amount of time onsite shouldn't change and no particular carrier was relied upon for representations of what kinds of trucks would be used at the site.

Supervisor Shearer referred to the motor truck terminal terminology and asked if motor truck terminal was the same as motor freight terminal, and used the example of Roadway vs. a truck stop. Mr. Biebuyck said they did not look at truck stops and that the terminology is beyond him as to what the site should be called.

Chairman Bucher asked if the most harmful particulate matter is born in the area or blown in. Mr. Biebuyck answered that from an EPA perspective, it is mostly blown in and it's secondary. There is an initiative to control power plants east of the Mississippi River under the Clean Air Interstate Rule. He explained the rule. Chairman Bucher asked if the overwhelming majority of pollutants are then from outside the area. Mr. Biebuyck said that more than half of it is, from data gathered from 2005 to 2006.

Mr. Bossert then referred to the 1999 data again and asked if there was anything other than Table 4 in the report that used the 1999 data. Mr. Biebuyck said no, that they only looked at existing sources based on 1999 because that was the latest data they could get from EPA readily. Everything else was based on EPA emissions factors that were provided over the last year, projected over 2007. Mr. Bossert reaffirmed that the 1999 data was used only for comparison purposes. He referred to Mr. Wolf's question regarding certain toxic elements in diesel emissions. He asked if Mr. Biebuyck would also expect to find toxics in heating oil burning in a boiler and he replied yes. Mr. Bossert asked if there would be any fundamental difference in diesel fuel and fuel oil in terms of the toxins they both emit. Mr. Biebuyck said no and that heating oil may well be more toxic. Mr. Bossert asked if the data in either Carlisle monitor is speciated. He said no, it was daily total pm2.5 concentration data. Mr. Bossert asked if the breakdown of speciation shown in Table 1 was done by Mr. Biebuyck or DEP. Mr. Biebuyck replied it was done in the past by DEP, but Mr. Biebuyck's firm did it as part of their paper by taking the DEP data and reconstructing it. Mr. Bossert confirmed that DEP has not done it on either Carlisle monitor, and Mr. Biebuyck said they have not chosen to install a speciated pm2.5 monitor in Cumberland County.

Supervisor Shearer asked if the Barracks' 1999 information is irrelevant, why was it included in the testimony? He said he felt it was used to try to cloud the entire issue. He said if Mr. Biebuyck was going to give testimony, it should be up-to-date testimony. Mr. Bossert said they were trying to show a comparison of the emissions that would come from this site, compared to what could be seen at other facilities that would not be considered offensive. He said this was the data that was on the EPA website, readily available, and the data was used to show this is the kind of emissions you would see from a facility like the Barracks, and the EPA's data showed the 1999 data from the Barracks. He added that as far as he knew, no one was clamoring to have those kinds of facilities shut down, and it was just for purposes of comparison. He said he would have loved to have had 2007 data, but that was not possible.

Mr. Moore merely re-stated that the reason he is concerned about the health issue is because a member of his family has a health concern.

Supervisor Hurley stated that he would like to hear a medical expert testify, since Mr. Biebuyck does not have a medical background.

Supervisor Kelso asked why Mr. Biebuyck did most of his analysis on the pm2.5 and is it the same particulate matter found at Carlisle Barracks and Shippensburg University. Mr. Biebuyck said it's identical particulate matter from the standpoint of the size of the particles and ability to get into the lungs. He said they are all treated generically. Whether particulate is generated from wood combustion or diesel combustion or heating oil combustion in your furnace, it all results in the same pollution.

Supervisor Reisinger had no further questions.

Mr. Bossert moved to have Exhibits A-28, A-29, A-30 and A-31 moved into evidence. Mr. Moore had no objections, nor did Mr. Wolf. Solicitor Allshouse stated the exhibits would be moved into evidence.

Solicitor Allshouse asked for a motion to continue the hearing and Chairman Bucher made the motion. It was seconded by Supervisor Reisinger. The next hearing date was scheduled for January 29, 2008, at 6:30 PM. Mr. Lucas indicated the hearing would be concerning traffic.

The hearing adjourned at 9:39 PM.

Respectfully submitted,

Deborah Ealer
Township Secretary

Mary Dutchess
Recording Secretary