

**APPROVED
SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
FEBRUARY 4, 2016**

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chairman
John Schmitt
Sande Cunningham
David Seiler

ALSO IN

ATTENDANCE: John Luciani, Acting Zoning Officer
Gavin Markey, Solicitor
Charles Rausch, Solicitor
Christopher King, Solicitor
Sue Sipe, Stenographer

NOT PRESENT: James Deitch

1. CALL TO ORDER:

A. Pledge of Allegiance

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board.

B. 2016 Reorganization of Officers

MOTION MADE BY MR. SCHMITT TO ACCEPT THE FOLLOWING SLATE OF OFFICERS FOR 2016:

**CHAIRMAN – DALE ACHENBACH
VICE CHAIRMAN – DAVID SEILER
SECRETARY – SANDE CUNNINGHAM**

MS. CUNNINGHAM SECONDED. MOTION UNANIMOUSLY CARRIED.

C. Appointment of David Seiler

It was noted that Mr. Seiler has officially been appointed as a voting member of the Zoning Hearing Board. It was also noted in regards to the Case of Z-15-10 being continued for this meeting, that Mr. Seiler will remain as an Alternate for this case.

2. ACTION ON THE MINUTES

A. JANUARY 7, 2016

MOTION MADE BY MR. SEILER TO APPROVE THE MINUTES OF JANUARY 7, 2016 AS PRESENTED, MS. CUNNINGHAM SECONDED. MOTION UNANIMOUSLY PASSED.

Chairman Achenbach asked Mr. Luciani if the cases were properly advertised. He responded that

notifications had been made.

3. NEW BUSINESS

A. Case Z-16-01 NorthPoint Development

Attorney Larry Lipinski, Northpoint Development
Timothy Beiber, Consultant

General Case Summary:

Article XXVII, Accessory Uses

325-134. Accessory Use Development Requirements

B. Location. An accessory building or structure must be located to the rear of the principal building or structure. The rear setback shall be 10 feet. All required side setbacks shall be maintained.

Comments: The Applicant is requesting a variance to allow for the construction in the front yard setback area of a water storage tank and related pump house for the fire suppression system. Staff has attached an aerial of the site to reflect the character of the area along with materials supplied by the applicant.

Recommendations: The zoning officer's determination is that the parcel is affected by certain constraints due to the alignment of Eden Road.

Mr. Lipinski indicated they met with the Planning Commission. He noted the property was the former HD site, at the location of Route 30 and Eden Road. He pointed out on the plan the location of the new HD plant on the plan and the existing HD plant. Mr. Lipinski stated the applicant is proposing to build a new 750,000 sq. ft. bulk distribution warehouse facility. They began working with the YCIDA approximately eight months ago for a property title working through some of the various environmental issues. The issue under discussion is due to the alignment of Eden Road which wraps around their proposed building creating a unique condition of having three front yards. He noted the site contains a water tank in the front - front yard and also a water tank in the rear front yard. They are requesting to relocate the water tank in the front yard over to the side front yard. The footprint of the new building encompasses where the water tank exists currently which is 30 years old. They are proposing to demolish that water tank and build a new one with a new pump house.

Mr. Beiber indicated there is no tenant for the proposed development but they know from the water pressure and the available capacity that a fire suppression tank and pump house will be necessary for the occupant when it is established. The fire protection design will need to be reevaluated to make sure it meets the tenant requirements at that time. Both tanks served the HD facility. Currently they are both on the NorthPoint property. The fire storage tank is on HD property and serves this location. Because these are considered accessory structures they are not allowed within the front setback of the property. With their property having three street frontages it provides a challenge to place a fire tank close to the existing water main which runs along the old Eden Road and is where they are proposing to locate the new structure. Mr. Beiber noted they are in excess of the 35 foot setback requirement for the Flexible Development Overlay District.

Chairman Achenbach asked if anyone in attendance wished to speak for or against the applicant.

Blanda Nace

Mr. Nace stated he is Executive Director of the Redevelopment Authority for York County. He also noted he is the Project Manager for the Industrial Development Authority who recently sold the land to NorthPoint

development. He is also VP of Community Affairs at the YC Economic Alliance. Mr. Nace stated they fully support this zoning appeal.

Mr. Luciani as Acting Zoning Officer indicated they had discussion with the developer and determined they are well on their way through the development process. He confirmed the developer has agreed the color of the proposed water tank will coordinate with the building and of a neutral tone color scheme.

Mr. Lipinski concurred and pointed out the exhibit which provides the building elevations along with a rendering and they also have samples of the paint scheme – neutral earth tone type colors. Noted as Applicant’s Exhibit #1.

Mr. Luciani also noted that because of the triple frontage lot situation there is no opposition to the proposed variance from the Township’s perspective.

Attorney Markey indicated he reviewed the application and the testimony as indicated noting the three front yards. He noted in the past under similar circumstances that the imposition of multiple front yards constitutes an unnecessary hardship for purposes of supporting variances. There are also unique physical features associated with the three front yards and as the testimony, application and photographs indicate the imposition of this pump house and tank should have no detrimental effect on the surrounding properties. In this instance the variances would be justified. Attorney Markey recommended if the Board is inclined to approve the application, imposing a condition on the variance that the color of the tank and associated facilities shall be coordinated with the color renderings of a neutral tone as depicted on Applicant’s Exhibit #1.

MR. SEILER MOVED TO APPROVE CASE Z-16-01 FOR A VARIANCE FOR A FIRE SUPPRESSION SYSTEM, WATER STORAGE TANK AND RELATED PUMP HOUSE WITH THE CONDITION STATED BY ATTORNEY MARKEY. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.

B. Z-16-02 Master G. Group, LLC

Casey Deller

All witnesses were sworn in.

General Case Summary:

Article XXVII, Accessory Uses

325-134. Accessory Use Development Requirements

A. Ownership. Accessory uses shall be operated and maintained under the same ownership and on the same building lot as the primary use.

Comments: The Applicant is requesting a special exception to allow for the expansion of a parking lot accessory to the First Post restaurant on an adjacent parcel. Staff has attached an aerial of the site to reflect the character of the area along with materials supplied by the applicant.

Recommendations: The zoning officer’s determination is that a parking area is an allowable principal use in the C-H District. However the parking is being used as an accessory use to a separate principal use on an adjacent parcel and the situation is not in the spirit of the zoning ordinance. The restaurant parcel does not have sufficient parking. The parking requirement is met with the spaces provided on Parcel 43. At any future time Parcel 43 could be sold creating a nonconforming condition for the restaurant. The zoning

officer recommends a condition be applied whereby a legal instrument is established to prevent any kind of nonconformity for either parcel.

Mr. Deller indicated the First Post Restaurant is located at the corner of East Market Street and Davies Drive, which reopened in 2015 after extensive renovations utilizing the existing building structure and parking lot. The applicant submitted a land development plan to expand the existing parking area. The current facility has approximately 90 parking spaces and they are proposing to reconfigure the parking lot on the side of the creek opposite the main building to add 57 additional parking stalls. They are requesting a special exception due to a provision in the Ordinance 325-116D which states "parking spaces may be located on a lot other than that containing the principal use as a special exception." Mr. Deller presented two plans from the land development plan sets to illustrate C1.00 at the bottom of the existing conditions plans and C4.00 which is the site grading and utility plan both from the land development plan set submitted to the Township. These were labeled Applicant's Exhibit A-1 and A-2. Exhibit A-1 labeled as C1.00 on the existing conditions plan is highlighted to show the subject land exists as two properties on the same deed. Mr. Deller highlighted the property lines delineating the two parcels. The front parcel closest to E. Market Street on the right hand side illustrates the restaurant, the parking area and exterior improvements around the building. The creek lies on the front parcel. The second parcel is the section to the north moving back Davies Drive which is a separate parcel on the same deed that houses the existing parking lot. Mr. Deller noted it was done that way because at one point in time there was a residence on that piece of ground which has since been taken down. C4.00 shows the proposed parking lot addition and the property lines.

Mr. Deller stated the request is in conformance with both sections of the zoning ordinance and the comp plan and will not detract from the neighborhood.

Discussion was held regarding the possibility of doing a reverse subdivision as opposed to the special exception. Mr. Deller noted that option was considered and discussed with Staff. It was noted a reverse subdivision would take longer and involve additional expense to the applicant to provide a full property line survey for the property.

In regards to the parcel numbers, it was clarified that 4300 is actually 43D0.

Mr. Luciani as Acting Zoning Officer indicate he discussed the case with Attorney Markey and voiced concern regarding the possibility in the future if the tract was subdivided causing the necessity for the new parking area to be removed from use.

Chairman Achenbach asked if anyone in attendance wished to speak for or against the applicant.

Attorney Markey indicated because this is a special exception therefore a permitted use there are no specific criteria in that regard but there are general criteria which would be public safety, health and welfare and the additional parking would weigh in favor of the special exception. Attorney Markey confirmed he was in contact with the engineer for the applicant as well as the interim zoning officer for the Township on the project. He recommended if the Board was inclined to approve the special exception a condition be placed that a recorded legal instrument or binding condition on the final land development plan restriction shall be imposed and prevent the creation of any non-conformity in the event of a transfer of ownership of Parcel 43.D or 43 in the future. The restriction shall be imposed on 43D and 43 approved by the Springettsbury Township solicitor as part of the final land development process.

MR. SCHMITT MOVED IN THE CASE OF Z-16-02 TO APPROVE THE APPLICATION FOR SPECIAL EXCEPTION FOR EXPANSION OF PARKING LOT ACCESSORY FOR THE FIRST POST RESTAURANT ON ADJACENT PARCEL SUBJECT TO THE CONDITION AS STATED BY ATTORNEY MARKEY. MR. SEILER SECONDED. MOTION PASSED. MS. CUNNINGHAM OPPOSED.

Chairman Achenbach called for a recess waiting for the arrival of the stenographer. 6:40 PM

Chairman Achenbach reconvened the meeting at 7:10 PM with the stenographer present.

4. OLD BUSINESS

A. Case Z-15-10 Darrah Motorsports

Attorney John Ogden

Jerry Stahlman, Engineer

Joe Darrah, Owner/Applicant

Witnesses were sworn in.

Attorney Markey stated the Township would present their side of the case and then the applicant would offer rebuttal.

Attorney Ogden indicated his understanding was at the January meeting the chairman asked for clarification or information on the standard. Also, the township solicitor would provide letters discussed at the January meeting to the applicant for his review and response at this meeting prior to the Township solicitors presenting.

Attorney Markey was in agreement with Attorney Ogden reiterating the standards to be applied in making a decision. His recommendation was to allow Attorney Ogden to address the letters briefly and then the Township would present their case.

Through testimony by Attorney Ogden Mr. Stahlman stated the applicant Darrah Motor Sports has applied for a change of use. Attorney Ogden asked Mr. Stahlman to state the standard the Board is supposed to follow and the section to be used to proceed.

Attorney Rausch objected stating that Mr. Stahlman is not an attorney and cannot give a legal opinion as to what the zoning ordinance means.

Attorney Ogden indicated that Mr. Stahlman was going to explain what the provision was to clarify Attorney Ogden's memo which he distributed to the Board. He noted his memo cites the different places in the Ordinance referring to a non-conforming use of a building or land may be changed to a use of equal or more restrictive classification.

Chairman Achenbach expressed concern that the Township should not be confronted with part of a process unexpected and may not be properly prepared to address. He noted they want to get to a point where the Township is not at a disadvantage and does not have to deal with new information, new facts or new presentation of law and be caught unprepared.

Attorney Markey indicated the Township received Attorney Ogden's memo just this evening and that it does appear as if it is highly weighted towards provisions of the zoning ordinance and case law. He did not believe that it would be necessary to have Mr. Stahlman walk through all the provisions of the zoning ordinance if Attorney Ogden can argue from a legal perspective and the Township can take judicial notice of the Ordinance in any event.

Attorney Ogden indicated they were going to address the classification part of it from a factual point of view with Mr. Stahlman which would answer the chairman's question about the standards. He referred to Page

161, line 19 of the transcript from the October Zoning Hearing Board meeting indicating Mr. Markey is speaking at line 19: "The problem is that we're now getting these additional correspondence and there may be issues related to these additional correspondence that present themselves that may necessitate further direct testimony in fairness to the applicant." Attorney Rausch: "And we want to be fair but yet we do have some legal guidelines to follow, but I think the core thought for everyone involved is to keep in mind the establishment of the existing non-conforming use and matching against that what the testimony and the evidence produces as to what the effects are and the consequences are of the proposed new use. And we match those two aspects against that standard that is contained in our zoning ordinance. So the best the attorney can do to preserve and present that and match them against the ordinance is really where we need to focus and they need to focus." Attorney Ogden on page 162 at line 15: "And so I understand that to mean we can represent if we get evidence and we can get evidence on our side to show the conditions or lack of conditions on the current use, is that correct?" Mr. Markey: "I think we should. I think to make fair informed decisions the technical fact that Attorney Ogden rested and all these issues were opened up afterwards require that at least give them an opportunity to reasonably present additional evidence and testimony regarding the circumstances of the existing use." Chairman Achenbach: "Circumstances of what?" Attorney Ogden: "The existing use, Chairman Achenbach. Of course the proposed use but we know what the proposed use is." Chairman Achenbach: "Okay so we had requested additional information regarding the existing use so to the extent that you can satisfy that. That would be one agenda item on the next session and then the other agenda item is the Township going to present its case."

Attorney Ogden indicated that was his understanding that they would have a chance to present clarification on what the existing use is as opposed to the new use.

Attorney Rausch stated Mr. Stahlman was introduced as a witness at the October hearing as a civil engineer. His testimony was taken; he was cross examined and he finished his testimony. He noted he conceded to Mr. Stahlman testifying as to the content of the letters that were produced but short of that would object because he is not an attorney and he cannot give a legal opinion as to what the zoning ordinance means.

Attorney Ogden agreed noting that Mr. Stahlman is a factual witness for the part in the transcript at line 162 where Attorney Ogden says "So I understand that to mean we can represent if we get evidence and if we get evidence on our side to show the conditions or lack of conditions on the current use. Is that correct?" Attorney Markey: "I think we should".

Attorney Ogden stated that is the part they want to talk about specifically about the current classification of the property and secondly what conditions were imposed upon the property. He noted that is why they have exhibits and he would have Mr. Darrah testify about the current use of the property and explain the exhibits.

Attorney Rausch reiterated that Mr. Stahlman is not qualified to testify about the classifications of the property or conditions, since he wasn't there in 2007 when the property was classified. Township has already introduced into the record the occupancy permit which is also attached to Attorney Ogden's supplemental letters.

Attorney Markey stated his advice to the Board would be to allow Attorney Ogden to address the supplemental correspondence the township solicitor had distributed and to reserve until the next meeting when the Township has had the opportunity to brief and provide us with the law. At that point in time both parties will have a full opportunity to make an argument regarding classification standards within the ordinance, terms and definitions to alleviate having a factual witness like Engineer Stahlman. He recommended that Attorney Ogden confine his discussions to those correspondences as closely as possible and to move on to the Township for the presentation of their case. He determined that action would honor what that transcript said from Attorney Ogden.

Attorney Markey marked the package of correspondence dated October 6, 2015 under the Blakey-Yost-

Bupp-Rausch letterhead from Attorney King consisting of 9 letters as Township Exhibit T-31 for future reference.

Attorney Ogden asked Mr. Darrah if he looked at the letters that were sent by the Township with the cover letter dated October 6, 2015. Mr. Darrah responded yes. He noted there was also email correspondence and verbal discussions with the attorneys and the Township as to what he was permitted to do at the property.

Attorney Ogden referred to Exhibit #6 which is a photocopy of an email sent to Mr. Darrah from Attorney Stacey MacNeal.

Attorney King objected to the exhibit noting it contains double hearsay about what was said and it is not contained in the Township records, and was doubtful that it could be verified from the Township's perspective.

Attorney Ogden stated this email dated 12/19/08 is a correspondence which provides information on the evolving use of this property over a period of several years.

Attorney Markey indicated formal rules of evidence do not apply so he was agreeable to allow the record to be developed fully and allow Attorney Ogden to proceed.

Chairman Achenbach acknowledged Attorney King's objection noting there is contest regarding this email and also the fact that Attorney King did not see Exhibit 6 previously.

Mr. Darrah through testimony by Attorney Ogden stated the following:

The last letter the Township provided was March 26, 2008. Mr. Darrah's attorneys were still working towards exactly what could be done on the property. Occupancy of the property was obtained in 2010.

Exhibit 3 is a copy of the occupancy permit issued from the Township. The final date of inspection is July 14, 2011.

Attorney Ogden noted they have letters from the Township starting with May 14, 2007 and continuing to March 26, 2008. The occupancy permit was not granted until July 14, 2011. Mr. Darrah confirmed the reason was he was still in negotiations with the Township in getting building permits.

Mr. Darrah indicated he started putting race cars on the property in 2007.

Attorney Ogden asked Mr. Darrah why was it necessary to make improvements to that building and get certain permits Mr. Darrah stated the building was broken into, the front window and door was broken. There was also an issue with the Township requesting handicap parking be installed. Mr. Darrah noted he had to get a permit for that but later on DEP said that it had to be removed because it was in a flood zone. Mr. Darrah confirmed all those things prevented him from getting the final permits until it was worked out with the Township. He noted there were pre-existing women's and men's bathrooms but they were not handicap equipped.

Attorney Ogden asked Mr. Darrah to read the first three sentences of Exhibit #6 an email dated 12/19/2008 from his attorney Stacey MacNeal. "Sounds like we have a plan. Harish says that he spoke with you a couple of days ago about the HC improvements. Harish told me he has no problem with Darrah Motorsports hiring employees as long as the type of work occurring and the intensity of the work does not change. So installing improvements seems to make sense."

Mr. Darrah confirmed that he spoke with Mr. Rao who was the zoning officer at the time, on a frequent basis

concerning his property.

Mr. Darrah also confirmed that he spoke with Mr. Jim Baugh who was Mr. Rao's successor. Mr. Darrah confirmed that after he received this email which referred to hiring employees he hired an employee at that location who was full time. He also confirmed he had two part time employees. This was around December 2008.

Mr. Darrah confirmed that the final inspection was done by "Henry". He also confirmed that several inspections were done and it was known that he had employees.

Attorney Ogden noted on the occupancy permit #3 it indicates description private garage for race car hobby and then it says conditions occupancy load 14. Mr. Darrah confirmed that he never had 14 people working at that location.

Attorney Ogden indicated it says reduced for IBC 1004.11 exception one bathroom, noting that to mean a reduction in the number of people so only one bathroom was required. Mr. Darrah confirmed and noted there are actually two bathrooms existing in the building.

Mr. Darrah confirmed at the time the Township issued the occupancy permit there were no letters indicating any restrictions.

Mr. Darrah established that Exhibit #5 is a bill from Hoosier Tire Mid-Atlantic which is the company where tires were purchased between the years 2012 and 2015. He noted that Hoosier would deliver and pick up tires every other week. He noted his bill was \$61,000.

Mr. Darrah indicated that Exhibit #7 was a bill from Kelly Racing Fuel from Reading, PA and they delivered fuel for a weekly rate. This occurred every week during the racing season.

Mr. Darrah indicated that Fed Ex, UPS made frequent deliveries to the site at various times of the work day. There were also part suppliers, including Winters Performance who delivered parts at various times.

Mr. Darrah noted if neither he, Cody nor one of his employees were not there they provided a magnet on the door to instruct Fed Ex or UPS where to put the parts or either leave a trailer door open and they would put them in there.

Mr. Darrah confirmed that utilities such as electric and propane for heat still exist at the site.

It was noted that Exhibit #2 which is a diagram of the shop was introduced at the previous meeting.

In cross examine by Attorney King, Mr. Darrah confirmed he identified the email dated December 19, 2007 as coming from his Attorney, Stacey MacNeal.

Attorney King asked if he had any written documentation or correspondence in 2009, 2010 or 2011 that was introduced to Township Staff. Mr Darrah said no.

Attorney Rausch referred Mr. Darrah to Exhibit #2 as a letter from Harish Rao from 8/27/2007. He asked Mr. Darrah if any restriction on employees was noted in the letter. Mr. Darrah responded no.

Attorney Rausch referred to the exhibit previously marked as T-3 as a letter from Attorney Katherman to Mr. Rao specifically the second paragraph where Attorney Katherman states "there will be no employees".

Mr. Darrah responded at that time it was just going to be a hobby. He also noted that was before he

purchased the property.

Attorney Rausch asked Mr. Darrah if shortly after purchasing the property if he moved box trailers onto the Graham Street property in 2007.

Mr. Darrah responded yes they were for Darrah Motorsports.

Attorney Rausch asked if the outside storage was the subject of zoning enforcement with the Zoning Hearing Board hearing the case concerning the outside storage of trailers.

Mr. Darrah stated it was two different issues, noting he moved Cody's operation from another building, putting it inside three trailers. He brought them to the site and unloaded them. He noted the issue he came to the Township for was to take the back part of that property and lease it to J&K to start a trailer rental business, for which he was denied.

Attorney Rausch asked Mr. Darrah if he fought with the Township over the storage of trailers for a number of years since he bought the property.

Attorney Ogden objected to the word "fight" noting Mr. Darrah applied and was denied.

Attorney Rausch asked if in 2011 the trailers were removed from the property.

Mr. Darrah said yes but they were for Darrah Motorsports not for J& K.

Attorney Rausch noted that one of Mr. Darrah's issues was with DEP concerning the moving of earth at the property.

Mr. Darrah stated when he bought the property a truck got stuck in the back of the property. In the undertakings to get it removed it was determined by DEP that the property was in the wetlands. When reviewed by the Army Corp of Engineers they suggested to put a berm between the building and the wetlands.

Attorney Ogden referenced the letter Mr. Rausch indicated as Exhibit T-3 from Attorney Katherman in 2007 where he indicated a list of things, including there would be no employees since it was going to be a hobby shop. He asked Mr. Darrah if he owned the property at the time that letter was written. Mr. Darrah indicated he did not.

Mr. Darrah confirmed that was when he first approached the Township to try and determine what could be done with the property. He indicated the first employee at the site was in December 2008. Mr. Darrah also confirmed that Township members came to the property frequently to take pictures of the property and would have seen his employees.

Attorney Ogden asked Mr. Darrah if he was ever required to obtain a non-conforming use certificate. Mr. Darrah responded no and also indicated that he never had to come in front of this Board to get approvals or fill out an application for approval.

Chairman Achenbach advised the Township to present their case.

Mr. Luciani was sworn in. He indicated he is a professional engineer with the firm of First Capital Engineering at 48 S. Richland Avenue. He is a professional engineer in the states of PA, MD, NY, NJ and WV. He noted he worked in Scranton, PA as the Chief City Engineer. In that capacity he dealt with flood management. He outlined his experience in flood design and flood projects. He noted he has been qualified

by the Zoning Hearing Board as an expert in those areas previously identified. Currently, Mr. Luciani serves as the municipal engineer and is also assisting as the interim zoning officer, and in that role serves as custodian of Township zoning records. He indicated he also served as zoning officer in a number of communities in York County on an interim basis including Hellam Township and prior with Springettsbury Township.

Attorney King indicated he would offer Mr. Luciani as an expert in the areas of zoning and municipal engineering.

Chairman Achenbach confirmed acceptance.

Attorney King asked Mr. Luciani if he was familiar with the property located at 1190 Graham Street. Mr. Luciani indicated he was.

Attorney King referred to Exhibit T-5 and asked Mr. Luciani to identify it.

Mr. Luciani indicated it was an aerial photograph showing a building at Graham Street located at I-83 with a labeled blocked building, driveway and open area to the south end of the building. The photo was taken around 2005-2006.

Attorney King asked Mr. Luciani if he knew when the applicant purchased this property. Mr. Luciani responded the official closing date according to the deed was July 31, 2007.

Attorney King asked Mr. Luciani to identify Exhibit 27 which the Township had previously introduced in October.

Mr. Luciani indicated it is a December 17 letter to Attorney Katherman who at the time represented Mr. Darrah. The subject is a notice of violation for 1190 Graham Street which is the parcel showing in the previous photograph. Mr. Luciani clarified this letter is dated after this building was purchased in July 31, 2007. Mr. Luciani identified the list of numbers and violations number 5-7:

- #5 - No public will be permitted to visit
- #6 - No signage
- #7 - No advertisement, banners or endorsements
- #8 - The property will be kept and maintained neat at all times

Mr. Luciani read a response letter from the office of Katherman, Heim and Perry who at the time represented Mr. Darrah. The letter is addressed to Charles Rausch, Solicitor of the Township and is dated January 22, 2008. "Dear Charlie in response to your question, I submit this material to you for your review and further discussion, as you can see from the correspondence by and between Harish and myself. I met with Harish on several occasions in his office to review my client's proposed use of the Graham Street property. Our position is that my July 5, 2007 letter remains as an accurate reflection of what we want to do and equally important what by law we are allowed to do at the property".

Attorney King asked Mr. Luciani to identify the ordinances that are applicable to this particular property. Mr. Luciani responded there are two primary provisions – first is an open space zone. Open space zones have very limited uses, i.e., parks and farming. The other critical component of the open space zone is they allow very little paved coverage - 5%. Secondly, there is a flood plain overlay which occurs whenever the stream or river is mapped and those flood plain overlays restrict what can be stored there as well as what kind of business can be sited there. Mr. Luciani identified §325-72 in the zoning ordinance as open space district and identified §325-75 as the flood plain overlay.

Attorney King asked Mr. Luciani to explain Exhibit T-6. Mr. Luciani indicated this is a FEMA flood map.

The map shows I-83 on the upper part of the page and Graham Street. The hatched area on the right side of the map to the left side shows numbers 389, 382, 377, 376...373 as you approach what would be Eberts Lane. This is demonstrating in a 100 year flood event what would be the height of the water at each of those intervals. At the 375 line you can see the shades of Mr. Darrah's building at that location.

The blue and red striped area as defined on the front page shows it is part of the flood plain. On the front cover sheet of T6 it shows it is a special flood hazard area, which means in a 100 year event it is under water. The white lines show the limits of the flood way which is water moving at a higher speed. There are more restrictions on the flood way than there is on the flood plain. Both have restrictions so you do not want to put buildings, cars or trucks, or storage in the floodway. In a severe storm it would be carried downstream.

Attorney King referred to Exhibits T9 through T12, noting back in October the Township had introduced evidence of flooding that occurred on this property. He asked Mr. Luciani to explain these exhibits which are additional photos.

Mr. Luciani reviewed the photos:

T-9 - Shows standing at Eberts Lane the bridge over I-83 looking upstream towards Mt. Rose Avenue. There are trucks under water at that location on the left side of the stream. The photos were taken in September 2011 at the time of Tropical Storm Lee.

T-10 - Shows trucks off load. At this point the water is receding. The photo is time stamped 16:39. Mr. Luciani explained that Mill Creek's head waters are in Windsor Township near the shopping center. So for that water to get from Windsor Twp. to this property could take place in less than an hour.

T-11 - Several trucks are showing parked out there and the water is running around Mr. Darrah's building.

T-12 - This shows evidence that this is the floodway not a floodplain. If it were a floodplain the truck that says J&K storage on it would not have been pushed downstream.

Attorney King mentioned in this photo T-12 there is a pole in the front and it shows at the bottom some residue on the pole. Mr. Luciani indicated that is the high water mark with debris sticking to the pole. That is evidence the water is now receded.

Attorney King asked Mr. Luciani to continue with Exhibits T-14 through T-17:

T-14 dated October 11, 2013 is a more recent storm. This view is looking south toward the traffic in the northbound lane. You can see the signage that says J&K Salvage. Looking along 83 there is a gate with an access road which is at the end of Graham Street. The access road is blocked and its purpose is to allow Township sewer crews to get to a sewer line located in that area. The photo also shows again ponding water on either side of Graham Street.

T-15 is a northbound view and you can see the water inundated. The bridge in the distance may be Eberts lane so this is taken further in.

T-16 is a view looking south showing there is a depth of water in and around the property.

T-17 is a view of Mill Creek showing current as it flows downstream. The photo is dated 10/11/2013.

Attorney King asked Mr. Luciani to explain a floodway as defined by the zoning ordinance. Mr. Luciani responded the floodway is the area where water will have direction and velocity. Within that floodway there are more restrictive limits than in the floodplain overlay, which does not allow buildings or storage of materials or hazardous chemicals to be stored in that area. The uses allowed are minimal, parks, open space,

etc., no buildings or structures that could be washed downstream, get damaged or cause damage.

Attorney King asked Mr. Luciani if in his professional opinion a flood way is a suitable location for a towing operation. Mr. Luciani responded that based on the photographic evidence he did not believe it is a suitable location.

Attorney King asked Mr. Luciani if in his professional opinion the proposed use would have any adverse impact on the Township. Mr. Luciani responded yes since vehicles are being towed to the site there would be various types of fluids and chemicals which is a concern. Secondly in the event of flood, a disabled car could be flooded and would be damaged as a result of a severe weather event.

Attorney King asked Mr. Luciani if in his professional opinion the applicant's proposed use would be a use that is of an equal or more restrictive classification. Mr. Luciani responded he believed the use proposed for a towing operation would be a more intense use.

Attorney King referred to Exhibit T-18 to which Attorney Ogden objected since he felt it contained argument that is factually incorrect.

Attorney King countered that he believed it identifies factually things that are allowed when property is a race car hobby vs. things that would occur if it were a towing operation.

Attorney Ogden stated their objection is this is basically argument on the ultimate question of what is the use classification, but no employees. Mr. Darrah just testified that the Township was well aware and allowed him to have employees so that is factually incorrect. No public at the site – public did come to the site. Race car people came to the site. No traffic to the site – there was testimony about traffic to the site. He believed this is basically an argument at the end - it is not something for an expert to testify to because Mr. Luciani has no knowledge of these things.

Attorney King stated his purpose in presenting T-18 was for it to be conclusive distinction between the uses to support Mr. Luciani's analysis.

Chairman Achenbach clarified that T-18 is a written record that creates certain facts about the use of the property, permissions restrictions etc. However, there is testimony that implies there were uses on the property that were not necessarily part of the written record but that occurred and were allowed and therefore indirectly condoned by the Township.

Attorney King indicated he would remove T-18.

Attorney King asked Mr. Luciani where a commercial towing company would fit within the Township zoning district.

Attorney Ogden objected stated this is a non-conforming use and they are not trying to fit into a zoning district.

Attorney King indicated it is relevant to present testimony as to where it is appropriate in the Township.

Chairman Achenbach allowed him to proceed.

Mr. Luciani stated a towing operation would typically be allowed in the Industrial zone.

Attorney King referred to the applicant's previous testimony in October where he indicated there would be no outside storage if the proposed use is approved. He asked Mr. Luciani if he was aware of any outside

storage that has been occurring on the property.

Attorney Ogden objected, stating Mr. Darrah indicated that if the use is approved he would not have outside storage. The current use is a race car operation and whatever the restrictions are for that is what they are. He further noted their testimony and our position is still if this is approved the race car operation gets moved out and there would be no outside storage on the property other than the tow trailers that are allowed by Judge Ren.

Attorney King countered they introduced an injunction that said there is no outside storage on the property except for the two trailers. His witness will present evidence that outside storage is occurring on the property.

Attorney Ogden argued that does not have anything to do with the change of use here. It sounds like that is an enforcement hearing

Attorney King stated it is a credibility issue.

Attorney Markey concurred stating that is how it goes into the record. Township ultimately will decide between township witnesses and applicant's witnesses as to who has credibility, as justification for their decision. He indicated the Township be allowed to go forward with their position.

Attorney Ogden indicated his other objection is the injunction Attorney King referred to which does not say outside storage it says outside storage of trailers.

Attorney King objected stating that is a miss-characterization.

Attorney King asked Mr. Luciani to describe Exhibits T-21 through T- 26 which are photographs.

T-21 is a photo showing the side of the building and showing off in the distance is the retaining walls with a sign and window. In the foreground is a sign on a skid. The time stamp is 9-15-2015.

T-22 is another portable type mobile sign showing there is something under the tarp – storage of something else at that location.

T-23 is a different view.

T-24 is a different view showing the sign. The time stamp is 10-7-2015

T-25 is a different date 10-8-2015- the tarp covering shows the sign is still there.

T-26 is a different date 10-13-2015 - showing the sign and tarp.

Attorney King stated the applicant has testified that he has employees at the property. He asked Mr. Luciani if he was aware of any contradictory testimony that the applicant has provided concerning whether he has employees at the site. Mr. Luciani responded that he heard Mr. Darrah indicate that he has employees at the site. He referred to the documentation from Mr. Rao that this was going to be a hobby shop for relaxation, not professional and not for profit. Mr. Luciani indicated there are documents from Attorney Katherman which reaffirm that in December 2008 they would not have employees at the site.

Attorney King asked Mr. Luciani to identify Exhibit T-29. Mr. Luciani indicated this is a transcript of a special exception being sought dated May 1, 2008 which was after the purchase of the property by the applicant.

Attorney King asked Mr. Luciani to read line 1 through 10 on Page 7 of Exhibit T-29 where Mr. Darrah is being questioned by his attorney Robert Katherman. Mr. Luciani read "Question - do you have any

employees at this site? Answer - No. Question – do any employees ever go to stay at this site? Answer - other than dropping a trailer, picking a trailer up. Question – so the only time anyone working for you comes to the site and coming there with a tractor and pick up a trailer or they come there with a tractor-trailer and drop the trailer? Answer- Yes”

Att King asked Mr. Luciani to turn to page 44 and read lines 19-22.

Attorney Ogden objected stating this exhibit has to do with the request for special exception for a storage trailer business. It had nothing to do with the race car business. He felt it was totally taking it out of context, since Attorney Katherman was asking questions about the trailer storage business not the race car business.

Mr. Darrah added at that time he wanted to rent that to J&K Salvage to store storage trailers.

Attorney Rausch stated the testimony was taken under oath and was describing current conditions – he did not have approval to put storage trailers on the site. So if he is talking about employees he has to be talking about employees at the use he was permitted in 2007 which was a private race car business.

Attorney Ogden stated that is completely wrong. T-29 says special exception is sought from the Board to place storage trailers at the floodway on 1190 Graham Street. It was a total separate business than the race car business.

Attorney King indicated the question is straight forward and it goes to the witness’s credibility.

Chairman Achenbach asked for clarification on what came first – the racing use or the trailer storage use.

Attorney King noted on the top of page two of T-29 it states that the application is by Darrah’s Motorsports which is the entity that owns 1190 Graham Street.

Attorney Ogden countered by noting that the owner has to file the application or a contract purchaser.

Attorney King reiterated the owner was asked whether he had employees at the site and his answer under oath was no.

Attorney Ogden replied that was for the J&K site.

Attorney Rausch responded to Chairman Achenbach’s question stating the race car hobby came first, and was established in 2007 after Mr. Darrah purchased the property. In addition, when Mr. Darrah moved in trailers was sent an enforcement notice and that is what triggered the appeal before the Zoning Hearing Board.

Chairman Achenbach noted they are now being asked to distinguish between the use of employees for trailer storage and the use of employees for race car business and to substantiate this testimony has to be directed at one.

Attorney Rausch stated Township’s position is representations were made that we as a Board were inclined to believe there would never be any employees on this site. The applicant is saying that is only for trailer storage not for Darrah Motorsports.

Attorney Ogden asked in reference to T-6 when the map was adopted. Mr. Luciani stated it was in 2009 and there was also a FEMA website which was adopted December 16, 2015.

Attorney Ogden asked who took the photos referenced in Exhibits T-21, 22, 23, 24 25, 26. Mr. Luciani

responded Township staff took the photos.

Attorney Ogden asked if T-21 dated 9-15-15 was after Mr. Darrah had filed for his change of use on the property. Mr. Luciani responded yes.

Attorney Ogden asked if before that time the Township had ever sent Mr. Darrah an enforcement notice on storing signs like this outside. Mr. Luciani responded yes and it was sent in 2011.

Attorney Ogden asked if the photo in T-21 dated 9-15-15 generated an enforcement notice about outside storage. Mr. Luciani stated he thought there was already an action on file so it did not generate a new one.

Attorney Rausch verified that Mr. Darrah was sent a letter in July of 2015 concerning outside storage, indicating that he was violating the permanent injunction.

Attorney Ogden asked if the signs showing on T-21, 22, 23, 24, 25 were all the same sign. Mr. Luciani indicated he believed they are – from different angles.

Attorney Ogden referred to Mr. Luciani's testimony about the flood zone on this property. He asked if he had been inside that building. Mr. Luciani responded that he had and it was after a flood before Mr. Darrah owned the property, and it was a granite business.

Attorney Ogden asked if he observed any damage to the inside of the building at that time. Mr. Luciani responded he remembered seeing a high water mark which was not documented.

Attorney Ogden asked Mr. Luciani if he knew if there was any changes after Darrah Motorsports brought the property to prevent water from coming into the building. Mr. Luciani responded no. He also indicated he did not know if any of the garage doors or man doors were open to let the water in. He did not know if the granite business sustained any losses or casualties.

Attorney Ogden referred to pictures of several floods in that area as evidenced on Exhibits T-11 and T-13. Also Exhibits T-7, 8, 9, 10 which Mr. Luciani confirmed were from the 9/1/2011 flood.

Attorney King stated these exhibits were introduced during cross examination of Mr. Darrah so Mr. Luciani did not speak to these photographs.

Attorney Ogden asked Mr. Luciani if he was at the building at the time of flooding or shortly thereafter. Mr. Luciani stated he toured the grounds shortly after the flooding.

Attorney Ogden referred to a red truck in the photo which he indicated looked like it was built up on cement blocks. He asked Mr. Luciani if that represented the height of the building. Luciani responded the building is higher than that by several feet. Mr. Luciani did not know if flooding occurred inside the building during this time.

Attorney Ogden asked if he knew if Mr. Darrah ever experienced flooding inside the building. Luciani responded he believed there was water in that building during one of these events.

Attorney Ogden asked if he knew if Mr. Darrah ever made any complaint with the Township or anyone from the Township saw any water inside that building. Mr. Luciani stated he did not know.

Attorney Ogden asked if he was aware from being in that building and inspecting it that Mr. Darrah painted the entire inside of the building. Mr. Luciani indicated no.

Attorney Ogden referred to Exhibit T-14 which referenced the 2013 flood. He asked Mr. Luciani if he was in in the building during that flood. Mr. Luciani responded no. He also indicated he did not know if Mr. Darrah lost any property as a result of either of these floods from inside the building.

Attorney Ogden asked if there is any regulation in the Township in regards to the floodplain regulations which indicates that a commercial building could not store materials inside if they were in a floodplain. Mr. Luciani responded yes - hazardous materials are prohibited from being stored.

Attorney Ogden asked is there any regulations that says a vehicle cannot be stored inside a commercial building within a flood plain. Mr. Luciani indicated that the flood plain ordinance lists prohibitions as to what can and cannot be stored including a vehicle containing chemicals. It was noted it is also referenced in the Zoning Ordinance §25-78F.1 and §325-79 4-6 pages Section D.13 fuel supplies and gas systems.

Attorney Ogden asked if the Township gave permission for Mr. Darrah to store his race cars and his personal cars in that building. Mr. Luciani replied yes.

Attorney Ogden stated so these regulations apparently did not prohibit that. He also noted the occupancy permit does not have any restrictions. Mr. Luciani responded he believed that is unrelated to the flood plains.

Attorney Ogden asked if Jim Baugh issued this permit. Mr. Luciani indicated the copy in his file is unsigned but it is in the same time frame.

Attorney Ogden asked if he knew if his policy was if there was a restriction such as no employees, a limited number of cars, etc., he would put that on the permit.

Attorney Rausch objected pointing out the testimony that says this is a building permit.

Attorney Ogden questioned if an occupancy permit is issued and there are restrictions how is that memorialized. Mr. Luciani responded it gets put it on the plan and goes through the land development process so it can be reproduced.

Attorney Ogden asked in a case like this how would it be memorialized other than attaching it or referring to it in the occupancy permit. Mr. Luciani stated it would be on the agreement.

Attorney Ogden asked if that agreement would have to be approved by the board or the supervisors.

Attorney Rausch objected citing this was already introduced into the record by way of a letter from May 5, 2007 from the zoning officer indicating the grant of change of use with the conditions listed and that is where the restrictions are listed.

Attorney Ogden asked to proceed with a rebuttal from Mr. Darrah as to the Township's testimony that water would get inside his building and that the building is not waterproofed or floodproofed.

Attorney King pointed out that Mr. Darrah already testified at the October meeting that water did not enter his building and he didn't file any insurance claims or suffer any property damage.

Attorney Ogden stated based on that testimony they would rest.

Chairman Achenbach referred to Attorney Markey for input on concluding proceedings.

Attorney Markey recommended that both parties prepare for the next hearing with proposed arguments regarding their position clearly defining the issue at hand, offering supporting evidence and facts as to why

they believe their position is legally correct. Then the Zoning Hearing Board can review those in advance of next month's hearing. The conclusions must be submitted directly to the Township who will distribute them to the Zoning Hearing Board members no less than a week in advance of the March 3 meeting. The Zoning Hearing Board will review each party's position and their evidence and legal arguments. At the next meeting an executive session will be held for quasi-judicial deliberations after the meeting is opened up. The decision will ultimately be announced in public with the Township's rationale. The written decision would be issued 45 days following the March 3 meeting.

Attorney Rausch reminded the Board once testimony closes the time is 45 days. Attorney Markey asked Mr. Ogden if he would agree to an extension of time to prepare the written decision after the verbal decision next month. Attorney Ogden agreed and will send a letter to Attorney Rausch and Attorney Markey to document the time extension.

7. ADJOURNMENT

CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 9:00 P.M.

Respectfully submitted,

Secretary

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