



**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING**

**August 6, 2024
6:00 PM**

AGENDA

1. CALL TO ORDER

A. PUBLIC ACCESS TO LIVE MEETING VIA YOUTUBE

Harrisburg Town Hall's Council Chambers will be open for the public to attend the meeting in person. The public has the option to watch the meeting virtually via the YouTube platform using the link below or attend in person.

All persons wishing to address the Board for public comment or speak to a specific agenda item must be present in person.

<https://www.youtube.com/@HarrisburgNC/streams>

B. ROLL CALL

C. SPECIAL PRESENTATIONS

1. Swear in newly appointed Board Members

D. AGENDA ADOPTION

2. CONSENT AGENDA

A. Adopt Minutes from the February 6, 2024 and June 4, 2024 Meetings

B. Adopt the Board of Adjustment 2024-2025 Meeting Calendar

3. PUBLIC HEARINGS - NONE

4. OLD BUSINESS - NONE

5. NEW BUSINESS

A. Elect Chair and Vice Chair of the Board of Adjustment

B. Special Use Permit - Training Case

6. ADJOURNMENT

Vision Statement

Harrisburg will be a distinctive, family-focused community where memories are made.

Mission Statement

Together, we enhance our quality of life by collaborating, planning, and investing to create our community of choice.



TOWN OF HARRISBURG

Agenda Item Details

Title:

Swear in newly appointed Board Members

Presenting Personnel:

Carly Bedgood, Planning Support Specialist

Suggested Motion or Action:

Swear in newly appointed BOA members

Description/Background:

Swear in two newly appointed Board of Adjustment Members:

Sonya Rorie	Alternate #2	7/1/24 - 6/30/2027
Steven Larson	ETJ Member Seat	7/1/24 - 6/30/2027

Recommendation:

Swear in members.

Fiscal Impact:

N/A

Attachments:

None



TOWN OF HARRISBURG

Agenda Item Details

Title:

Adopt Minutes from the February 6, 2024 and June 4, 2024 Meetings

Presenting Personnel:

Carly Bedgood, Planning Support Specialist

Suggested Motion or Action:

Motion to approve minutes for February 6, 2024 and June 4, 2024 meetings, as presented

Description/Background:

In accordance with the Section 5.G. of the "Rules and Regulations" for the Board of Adjustment, the order of business at regular meetings shall include the Board taking action on the minutes of previous meetings.

Recommendation:

Motion to approve minutes of the Board's February 6, 2024 and June 4, 2024 meetings.

Fiscal Impact:

N/A

Attachments:

1. BOA 2-6-24
2. Transcript 2-6-24
3. BOA 6-4-24

**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING
TUESDAY, FEBRUARY 6, 2024
6:00 PM**

MINUTES

1. CALL TO ORDER

Ian Patrick called the meeting to order.

PRESENT: Kevin Schaffner (ALT), Monica Long, Ian Patrick, Michael Branham, Brandon Ross

STAFF: Zac Gordon, Shelley Dehart, Carly Bedgood

2. CONSTENT AGENDA

A. Approval of January 10, 2024, Meeting Minutes

Kevin Schaffner made a motion to approve the meeting minutes. Brandon Ross seconded the motion. **The motion was unanimously approved (5-0).**

3. PUBLIC HEARINGS

A. H-2023-02-A: Venator Chemicals LLC – Appeal of Administrative Decision

Please see the attached transcript of minutes.

VOTE:

The Board voted to uphold the Towns decision to deny the appeal.

Passed 4-1 with Mike Branham voting against.

6. ADJOURNMENT

There being no further business, Monica Long made a motion to adjourn with a second from Kevin Schaffner. **The motion was unanimously approved (5-0).**

Finding of Fact as prepared by Attorney Albert Benshoff are as follow:

**NORTH CAROLINA
CABARRUS COUNTY**

**ORDER OF THE TOWN OF HARRISBURG
ZONING BOARD OF ADJUSTMENT CASE**

Subject Property Address:	5910 Pharr Mill Road, Harrisburg, NC 28075
Parcel ID No.:	5517 69 2881 0000
Total Lot/Tract Size:	100.58 Acres
Property Owner:	Venator Chemicals, LLC
Appellant/Petitioner:	Jonna Stein, EHS Manager, Venator

This matter, concerning a petition of an appeal of Town staff's administration decision came before the Board of Adjustment on Feb. 6, 2024. Applicant Jonna Stein (the "Appellant") appealed Assistant Planning Director Shelley Hart's Nov. 15 . 2023 written determination that

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BOA Minutes

approval of a Special Use Permit was required in order to construct and operate an industrial landfill. The applicant contends that the Aug. 19, 2022. letter from Tom Lesser, Code Enforcement Officer, entitled “Letter of Consistency / Zoning Verification,” is the final administrative decision on the zoning permits required. The Board, having considered the application and considering the evidence and testimony presented by the Appellant and the Town (the Parties), and the Parties’ witnesses, all duly sworn, makes the following:

Findings of Fact

1. The property located at 5910 Pharr Mill Road (the “Property”) is owned by Venator Chemicals, LLC and is zoned Employment Center (EC). The use of the Property is a chemical manufacturing facility operating under a Conditional Use Permit (CUP) issued by the Town of Harrisburg (the “Town”) on March 18, 2002, to Chemical Specialties, Inc. under the zoning ordinance then in effect. The Applicant purchased the Property from Chemical Specialties, Inc. after the CUP was issued. The 2002 CUP was for the addition of a rail spur, storage tanks and a parking area.
2. Beginning on or about June 6, 2022, the Applicant wrote to the Town seeking guidance on the permits required to add an onsite industrial landfill which would accept sediments only from an existing on site pond named SWMU 5 (the “Pond”). Other modifications to the site include reducing the size of the Pond and logging and removing soil from a “borrow area” in order to cap the sediments placed in the new landfill. (See Appellant’s Exhibit (EX) 1.)
3. In response to the Applicant’s request for a letter showing that the uses on the Property complied with the UDO, on August 19, 2022, Tom Lesser, Zoning Code Enforcement Officer sent a letter entitled “Letter of Consistency / Zoning Verification” to the Applicant. This letter is referred to below as the “8/19/2022 Letter”. The 8/19/2022 letter stated:

The purpose of this zoning determination is to comply with NCDEQ solid waste regulations for “Application Requirements for Industrial Solid Waste Landfills” codified in 15A NCAC 13B .0504 (6) which requires a letter from the unit of government having zoning jurisdiction over the site that the proposal meets all of the requirements of the local zoning ordinance, or that the site is not zoned.

The Letter also contained the following, “Parcel ID Number 55176928810000 is currently zoned EC (Employment Center). The property is governed by the rules and regulations of the [UDO];” and “The Town ... is in receipt of a preapplication meeting summary form, site layout map and a proposed site plan which shows the proposed onsite industrial landfill. The current zoning is an approved zoning class for the proposed onsite industrial landfill.” The 8/19/2022 Letter further noted that there were no current or past code violations and that the property as developed met the requirements of the UDO. The Letter also stated that there were no pending applications for development approval. Finally , the letter says, “If you have any further questions, please contact the [Town] Planning and Zoning Department ...” (See EX Town’s Staff Report Attachment 3, Appellant’s EX 6.)

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4. As requested, the Applicant and Town planning staff held pre-application meetings about the proposed onsite industrial landfill. Per standard practice on Nov. 1, 2023, the Applicant presented a “Pre-Application Conference Summary” form to the Town, which was reviewed and returned. . This Form indicates that a Minor Subdivision Application and Site Plan are required, but does not indicate what, if any, other permits are required for development of the onsite industrial landfill. This Form was not signed by the staff in the section labelled “Participant Information and Acceptance of Requirements” (Appellant’s EX 7.)
5. On Nov. 2, 2023, Town Senior Planner Craig Thomas sent a Memorandum to the Applicant stating the Proposed Use is a “Waste Related Services Allowed by Right” and “Onsite Industrial Landfill will only receive onsite generated waste for waste management is “All other waste related services”. C. Thomas’ letter also stated that the “Process” is “Pre-Application; Site Plan Review/SUP; Construction Docs” and “The land use, assembly or processing of chemicals, is characterized as Heavy Industrial in the UDO and requires a Special Use Permit.” (See EX Town’s Staff Report Attachment 2, Appellants EX 8.)
6. The Town’s Planning Director or “their designee” has the authority to interpret UDO provisions per sections 140.02.01 C. 3 *Unlisted Use Categories and Uses*, 140.02.02 C. 3. *Unlisted Use Categories and Uses*, 144.04.02 Planning Director, and 148.01.01 O. *Defined and undefined terms*.
7. On Nov. 15, 2023, Shelly DeHart sent an e-mail to Michael Thomas, subject “Venator Corporation” which states in relevant part, “[B]ased on the site use and proposal, we have determined a Special Use Permit is required.” (See EX Town’s Staff Report Attachment 6, Appellant’s EX. 9.)
8. The “Heavy Industrial” use is defined in the UDO as “[A] use category containing uses engaged in the manufacturing, assembly or processing of chemicals, animal products and metals; the activities of which are likely to have characteristics that discourage adjacency to residential uses. Factory production and industrial yards are located here. Sales to the general public are rare.
Uses in this use category include establishments that manufacture or process: Asphalt & Coal; Cement/Concrete (ready-mix) and Concrete Products; Chemicals; Clay & Brick; Concrete (dry mix); Food; Metals; Petroleum; Stucco and Synthetic Stone; and other uses meeting the definition of Heavy Industrial according to the Director.
Other uses in this use category include: Salvage Yard; Sawmill; Slaughterhouse or Animal Processing.” UDO Chapter 148 Word Usage.
(See EX Town’s Staff Report Attachment 6.)
9. Heavy Industrial uses are only permitted in the EC zoning district and a Special Use Permit is required to establish, expand or modify “All Heavy Industrial Uses” in the EC district as stated in UDO Table 140.02.02-2 Permitted Uses by Non-residential and Mixed-Use Zoning.

10. In the UDO “**Waste Related Use** means a use category containing establishments that receive solid or liquid wastes from others for treatment or transfer to another location and uses that manufacture or produce goods or energy from the large-scale composting of organic material.

Uses in this use category include: Landfill, Demolition; Solid Waste Collection and/or Disposal (Hazardous or Non-Hazardous); Salvage/ Yard; and other uses meeting the definition of Waste-Related Use according to the Director.”

UDO Chapter 148 Word Usage. (See EX Town’s Staff Report Attachment 6.)

Conclusions of Law

1. All of the foregoing Findings of Fact are adopted as Conclusions of Law.
2. All uses currently on the site are Heavy Industrial uses. The proposed on-site industrial landfill is a Heavy Industrial use.
3. It is the Board’s conclusion that the administrative decision of Shelley Dehart on Nov. 15, 2023 was appropriate considering the written record of the case and the evidence presented because: (A) The proposed on-site landfill is a “heavy industrial use” as defined in the UDO and requires a SUP. The proposed on-site industrial landfill is not a “waste related use” because no sediment will be delivered to the site from off-site sources; (B) The Property is operating under a Conditional Use Permit issued in 2002; (C) A new SUP is required to establish heavy industrial uses, including constructing an on-site industrial landfill; and (4) The 8/19/2022 Letter is not a final staff determination. It is a letter requested by the Appellant in order to satisfy the requirements of the N.C. Administrative Code and subsequently provided by Tom Lesser. Code Enforcement Officer.
4. It is the Board’s conclusion that Ms. DeHart’s administrative decision reflects the requirements of the UDO because (1) The proposed on-site landfill is a “heavy industrial use” as defined in the UDO and requires an SUP for the proposed on-site industrial landfill; 2) The proposed on-site industrial landfill is not a “waste related use” because no sediment will be delivered to the site from off-site sources;

ACCORDINGLY, based on the foregoing, the Board of Adjustment hereby **AFFIRMS** the Planning Staff’s zoning administrative decision of Nov 15, 2023, by a vote of **4-1**.

Signed, this the ____ day of _____, 2024.

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BOA Minutes

Ian Patrick, Board Chair

ATTEST:

Carly Bedgood, Clerk to the Board of Adjustment

Adopted on the 2nd of April 2024

Ian Patrick, Chairperson

Carly Bedgood, Board Secretary

STATE OF NORTH CAROLINA
TOWN OF HARRISBURG
BOARD OF ADJUSTMENT

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RE: VENATOR CHEMICALS, LLC -  
APPEAL OF ADMINISTRATIVE DECISION

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February 6, 2024
6:00 p.m.

Harrisburg Town Hall
4100 Main Street
Harrisburg, North Carolina 28075

Page 2 1 APPEARANCES: 2 3 On behalf of Venator Chemicals, LLC: 4 Womble Bond Dickinson, LLP, by 5 MICHAEL C. THELEN, ESQ. 6 555 Fayetteville Street, Suite 1100 7 Raleigh, North Carolina 27601 8 (919) 755-2100 9 michael.Thelen@wbd-us.com 10 11 On behalf of the Town of Harrisburg: 12 Richard Koch Law, by 13 RICHARD M. KOCH, ESQ. 14 Harrisburg Town Attorney 15 3220-201 Prosperity Church 16 Charlotte, North Carolina 28269 17 (704) 503-5700 18 LawOffice@RichardKochLaw.com 19 20 ~ ~ ~ ~ ~ 21 22 23 24 25	Page 4 1 INDEX OF EXHIBITS 2 NUMBER DESCRIPTION MARKED 3 Exhibit Venator Appeal Staff Report... 5 4 Exhibit Venator Point Brief - Final .. 5 and Binding 5 6 Exhibit Venator Exhibits..... 5 7 Exhibit Venator Brief - Permitted 5 Use 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 3 1 TRANSCRIPT INDEX 2 3 APPEARANCES..... 2 4 5 INDEX OF EXHIBITS 4 6 7 REPORTER'S CERTIFICATE..... 185 8 9 EXHIBIT CUSTODY: 10 VENATOR EXHIBITS RETAINED BY COURT REPORTER 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 5 1 - - - - - 2 (Thereupon, Exhibit, Venator Appeal 3 Staff Report, was marked for 4 purposes of identification.) 5 - - - - - 6 (Thereupon, Exhibit, Venator Point 7 Brief - Final and Binding, was 8 marked for purposes of 9 identification.) 10 - - - - - 11 (Thereupon, Exhibit, Venator 12 Exhibits, was marked for purposes of 13 identification.) 14 - - - - - 15 (Thereupon, Exhibit, Venator Brief - 16 Permitted Use, was marked for 17 purposes of identification.) 18 - - - - - 19 20 21 22 23 24 25

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1 PROCEEDINGS 2 - - - - - 3 MR. PATRICK: All right. We'll 4 call this meeting to order. Thank you for 5 those of you joining us in person and also on 6 Zoom. 7 The first item on the agenda is the 8 roll call. So Kevin is going to be our -- 9 standing in as our alternate this evening. 10 Nothing for the board to do on that. 11 The second item is the agenda 12 adoption. 13 Do I have a motion to approve the 14 agenda? 15 MR. SCHAFFNER: Motion to approve 16 the agenda. 17 MR. ROSS: Second. 18 MR. PATRICK: All in favor? 19 Aye. 20 MR. ROSS: Aye. 21 MR. BRANHAM: Aye. 22 MR. SCHAFFNER: Aye. 23 MR. LONG: Aye. 24 MR. PATRICK: Any opposed? 25 The agenda is approved.	1 This is an appeal of an administrative 2 decision. 3 Should we move into the signup 4 sheet? 5 (Discussion had off record.) 6 MR. PATRICK: So let's go ahead and 7 go through the people who signed up on the 8 public hearing first, and then we'll move into 9 those that are on Zoom. 10 The first person on here, I'm 11 sorry, I can't quite make out the last name. I 12 believe it's you, Mike. 13 MR. THELEN: It is. It's Mike 14 Thelen. 15 MR. PATRICK: So we will let you go 16 first. Please come to the desk and state your 17 name and address for the record. 18 MR. GORDON: Mr. Chairman, we need 19 to swear everybody in. 20 MR. PATRICK: Oh, certainly. Fair 21 enough. 22 Anybody in the audience that is 23 wishing to speak needs to stand up and be sworn 24 in. Carly will do that for us. 25 (Thereupon, the Witnesses Sworn In.)
Page 7	Page 9
1 Special presentations, I don't 2 believe we have any. 3 Is that correct, Zac? 4 MR. GORDON: Correct. 5 MR. PATRICK: No special 6 presentations. 7 We'll move into the consent agenda. 8 The only item there is to approve the minutes 9 from the January 10, 2024 meeting. 10 Do I have a motion to approve the 11 consent agenda? 12 MR. SCHAFFNER: Motion to approve 13 the consent agenda. 14 MR. PATRICK: Second? 15 MR. BRANHAM: Second. 16 MR. PATRICK: All in favor? 17 Aye. 18 MR. ROSS: Aye. 19 MR. BRANHAM: Aye. 20 MR. SCHAFFNER: Aye. 21 MR. LONG: Aye. 22 MR. PATRICK: Any opposed? 23 All right. The next item on the 24 agenda is public hearings. We have 25 H-2023-02-A. This is Venator Chemicals, LLC.	1 MS. BEDGOOD: Thank you. 2 - - - - - 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 10 1 OPENING STATEMENT ON BEHALF OF THE APPELLANT 2 - - - - - 3 MR. THELEN: Thank you, 4 Mr. Chairman and Members of the Board. I'm 5 here tonight. My name may Mike Thelen. I'm a 6 Lawyer with Womble Bond Dickinson. My address 7 is 555 Fayetteville Street in Raleigh. I'm 8 here on behalf of the property owner, Venator 9 Chemicals, LLC. 10 We had spoken -- the Town Attorney 11 and the Attorney for the board, Mr. Benshoff 12 and Mr. Koch, and I had talked about an order 13 presentation. As this is -- this is an appeal, 14 so because we bear the burden, we go first as 15 the property owner here. And you'll hear more 16 about what we're appealing, of course. 17 But I'm going to give a brief 18 opening, I'll keep it short, just explain 19 generally what you're going to hear tonight 20 from our perspective. And I'm going to move 21 over to that chair. And the Witnesses -- there 22 will be three Witnesses, two from Venator and 23 one from ERM, which is the site design engineer 24 for Venator for this project, who will come up 25 here and testify, and I'll ask questions over	Page 12 1 owners are entitled to ask for -- and this is 2 both in state law case law and in the town's 3 UDO, as well, to ask for interpretations of the 4 ordinance. This happens quite frequently in my 5 line of work, where I have a client who's going 6 to develop a project, wants to confirm that it 7 can do what it wants to do on the property. 8 It's not seeking a permit to do what it wants 9 to do, but it says, "I want to put a 10 restaurant, is this zoning allowed for 11 restaurant use," something to that effect. And 12 the town writes back, "Yes, it is," or, "No, 13 it's not." 14 And those interpretations, "This 15 property is zoned this, can we do this use on 16 this property," are final and binding on the 17 town and final and bounding on the property 18 owner, as well. They're binding on us, as 19 well, as the property unless either we appeal 20 it or the town appeals it. It's awkward, but 21 the town can appeal its own interpretations. 22 If the town staff says you can do something, 23 and the property owner takes that 24 interpretation and relies on it, and the town 25 does not appeal it, the town is bound by that
Page 11 1 from the side. That's how it will look 2 visually. 3 But moving very quickly into what 4 you'll hear tonight -- and you have this on 5 your monitors, as well -- this is an appeal. 6 It's not -- it's not an appeal of an 7 interpretation of the ordinance, per se. It's 8 an appeal, rather, of the town -- from our 9 perspective, from the town rendering and 10 interpretation of its ordinance at our request, 11 at Venator's request in August of 2022. 12 Venator relied on that interpretation over the 13 course of the next 15 months. That 14 interpretation was confirmed, and you'll hear 15 about this tonight, a couple of times by town 16 staff over that 15-month period. 17 And then in November of 2023, so 15 18 months after that original interpretation that 19 we contend is final and binding on the town, 20 and correct, legally correct, in our opinion, 21 the town changed its interpretation. And 22 you'll hear some more details on that tonight. 23 The first bullet here is just a 24 general, overarching perspective. The town 25 staff is empowered to render and property	Page 13 1 interpretation. And you'll hear more about 2 that tonight. 3 So in June of 2022, and this is an 4 important fact, Venator sends an e-mail and 5 reaches out to town staff and asks some pretty 6 specific questions about what it wants to do on 7 its property. In particular, it is trying to 8 put an onsite landfill on its existing parcel. 9 It's a large parcel. It has a chemical plant 10 on the property. And again, you'll hear more 11 about this. 12 There is a lagoon on the property 13 that houses wastewater from the chemical plant. 14 Venator is trying to shrink the size of that 15 wastewater lagoon. And in doing so, it is 16 going to expose some sediment on the bottom of 17 the lagoon. So we're shrinking the size of the 18 lagoon, exposing some sediment. They want to 19 dig up that sediment, instead of just having it 20 sit there on the property, and move it to 21 another part of the property actually further 22 away from the boundary of the property, further 23 to the interior of the property, and put it 24 into a landfill on the same site. So it's not 25 getting anything from the chemical plant. It's

Page 14 1 only the sediment from the lagoon that's being 2 shrunk in size. 3 So Venator reaches out -- and 4 again, you'll see the contents of the e-mail -- 5 and asks if the proposed onsite landfill is an 6 all other waste related services use permitted 7 by right on the property. That's the specific 8 question that's asked of town staff in June of 9 2022. 10 The town then -- as part of that 11 submission to the town in June, the property 12 owner, Venator, gives a Pre-Application Summary 13 Sheet. And on that sheet, the property owner 14 indicates it is not applying for a Conditional 15 Use Permit, that it believes its property to 16 accommodate the onsite landfill, that the 17 onsite landfill is permitted by right. 18 The town then in July of 2022 19 returns that sheet back to Venator, signing and 20 accepting that Pre-Application Sheet, where 21 Venator does not apply for a Conditional Use 22 Permit because Venator does not believe it 23 needs at that point to obtain a Conditional Use 24 Permit, but it's looking for confirmation from 25 the town.	Page 16 1 Fifteen months later or 2 thereabouts, in November of 2023 -- and you'll 3 see this, as well -- the town issues Venator a 4 memorandum, a written memorandum from the town 5 that says, again, under town laws, the use is 6 waste related services allowed by right. So 7 the town has confirmed, in our estimation, what 8 the town had told us in August of 2022. 9 Then two weeks later, November 15 10 of 2023, 15 months, again, after that 11 interpretation that was given in August and 12 confirmed over the course of the last 15 13 months, Venator gets an e-mail from the town 14 that says that a Special Use Permit is required 15 for the proposed onsite landfill. 16 It's our position that that is a 17 reversal of the interpretation it gave in 18 August of 2022, and the town and the property 19 owner are bound by that, just as if we had not 20 appealed that interpretation, which we did not, 21 we would have been bound by it. If the town 22 told us in August of 2022 that we had to get a 23 Special Use Permit, and we did not appeal that, 24 we are out of luck, we would have to have a 25 Special Use Permit.
Page 15 1 Then in August of 2022 -- this is 2 not the determination at issue in this 3 appeal -- the town then issues a letter, and 4 that letter, from our perspective, was the 5 zoning determination, the written 6 interpretation that's final and binding on the 7 town that says that the property, quote, "is an 8 approved zoning class for the opposed onsite 9 industrial landfill." Neither the town, nor 10 the property owner appeals that determination. 11 That's a letter from the town staff that says 12 that. It says other things, as well. You'll 13 hear more about this letter tonight. No one 14 appeals that determination. 15 While I did say this is not about 16 the interpretation, you will hear about the 17 interpretation, whether the landfill is a waste 18 related use or whether it's some other use. 19 But our position is that we don't have to show 20 that necessarily that's the only correct 21 interpretation. We have to show that that is, 22 in fact, a correct interpretation, that this is 23 a waste related use or otherwise permitted by 24 right. And the town confirmed that with its 25 letter that it sent in August of 2022.	Page 17 1 Here, because we thought that the 2 town issued a final and binding interpretation 3 in August of '22, we relied on that, it was 4 confirmed over 15 months, the town cannot 5 change its position in November of 2023. 6 You're going to hear from three 7 Witnesses tonight. You're going to hear from 8 two folks from Venator who were involved in 9 this. You're going to hear from the civil site 10 engineer at ERM, who is the vendor and the site 11 design engineer for Venator on this project. 12 We will keep this as smooth and as 13 quick as possible. You have binders in front 14 of you that have the paper Exhibits that we'll 15 refer to as we're asking questions. 16 And with that, do we want to -- do 17 we want to have Rich open, as well, or should 18 we just keep it rolling from this perspective? 19 MR. KOCH: I'll let the board 20 decide that. But the staff is going to present 21 their Staff Report, and then I was going to 22 follow that up with my comments. So I'll leave 23 it up to the board as to whether they want to 24 hear from Zac next, before the Witnesses, or 25 whether you'd rather hear from Mr. Thelen's

Page 18 1 Witnesses. 2 MR. PATRICK: Honestly, my 3 preference would be to get through everybody on 4 the signup sheet and then proceed with the 5 order that you just suggested, because it's a 6 public hearing, after all. 7 MR. THELEN: Some of the folks that 8 are signed up on there, Mr. Chairman, are the 9 Witnesses for Venator, Jonna Stein, Kevin 10 Robinson and Dave Wasiela. 11 MR. PATRICK: Okay. That's all I 12 have on the list. 13 MR. THELEN: Okay. 14 MR. PATRICK: So let me check and 15 see if anybody on Zoom wishes to speak, 16 otherwise we'll just proceed with those folks. 17 Nobody is on. 18 Anybody else in the room? 19 MR. SMITH: I was a little bit 20 late, so I'm not on the list. 21 MR. PATRICK: You'll need to be 22 sworn in first. 23 So, Carly, please. 24 (Thereupon, Mr. Smith was sworn in.) 25 MS. BEDGOOD: You'll need to state	Page 20 1 And I haven't had time to read all 2 the documents, but I've looked at some of the 3 annual report groundwater monitoring, 4 groundwater report, and there are parameters 5 that are out of spec, so to speak, and I think 6 that those concerns ought to be considered on a 7 local level. So I'm not a Lawyer. I have no 8 idea about the procedural concerns, but I just 9 wanted to say that I went to the public hearing 10 that was held in December, and I looked forward 11 to digging into this a little more, so I was 12 surprised to find out that the process was 13 going to be derailed. That's about all I have. 14 MR. PATRICK: Thank you, sir. 15 So we do want to do any 16 disclosures, if there are any. So I'll just 17 read this for the board: The parties to this 18 case are entitled to an impartial board. A 19 board member may not participate in this 20 hearing if he or she has a fixed opinion about 21 the matter, a financial interest in the outcome 22 of the matter or a close relationship with an 23 affected person. 24 Does any board member have any 25 partiality to disclose and recusal to offer to
Page 19 1 your name and your address, please. 2 MR. SMITH: My name is Robert 3 Smith. My address is 8258 Quail Hollow Drive, 4 which is in the county technically. 5 I just wanted to say that -- you 6 know, I want to thank the town for at least 7 initially having determined that there would be 8 a Special Use Permit process because I think 9 there are some things that are on the local 10 interest that may not have been, you know, in 11 the awareness of the people at the state level 12 or other levels higher that I think should be 13 considered. And in particular, it's the land 14 across from the Venator site that's now owned 15 by the town, hasn't been owned by the town too 16 long, as far as I understand it, maybe ten 17 years. And it's a historic site where the old 18 mill used to be. And it's also a place where 19 at least there was some discussion, as I 20 understand as an outsider, of possibly being a 21 park. And I have used that property to access 22 the river. I know that other people do the 23 same thing. And so my concern relates to what 24 is done to make sure that water is safe to 25 access.	Page 21 1 the chair? 2 Thank you. 3 So we'll let the town make an 4 opening statement. And then you can do your 5 presentation again with your Witnesses, with 6 cross-examination by the town. 7 MR. BENSHOFF: I'm not sure if the 8 mic is on. The order of the meeting is opening 9 statements, and then the Appellant, Venator, 10 puts their case on, and then you put your case 11 on, so this would be your opening statement and 12 not your whole presentation. 13 MR. GORDON: Frankly, I would just 14 stick to my Staff Report. I don't need to make 15 an opening statement. 16 MR. BENSHOFF: Well, that's not an 17 opening statement. That's your case. 18 MR. GORDON: So if I understand, 19 you want my presentation? 20 MR. BENSHOFF: No. I want to know 21 if you have an opening statement, a summary of 22 your case that you will put on after Venator. 23 - - - - - 24 25

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1 OPENING STATEMENT ON BEHALF OF THE TOWN
2 - - - - -
3 MR. GORDON: I will provide you
4 with a brief summary. So the appeal before you
5 this evening is to determine whether staff's
6 determination -- or to make a decision whether
7 the determination of staff was appropriate,
8 that a Special Use Permit is required for the
9 proposed industrial landfill. We believe that
10 the determination was appropriate based on the
11 ordinance, based on the definitions for heavy
12 industry, light industry, waste disposal
13 services. And we also believe that the letter
14 that was issued was not binding. In fact, it
15 was an assessment of the zoning at the time,
16 not of the proposed use. And that letter did
17 include ample notation that the rules and
18 regulations of the town still had to be adhered
19 to.
20 And so we will present and we will
21 address the issues that were raised by the
22 applicant in their application, primarily two
23 points. The first point was that the letter
24 issued by our Code Enforcement Officer, Tom
25 Lesser, was binding and final. And we'll

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1 address that.
2 And then, secondly, we will address
3 the determination made by staff and the
4 allegations by the applicant that that was
5 erroneous because the use is not heavy
6 industrial, but, in fact, it is light industry,
7 light industrial and/or waste disposal
8 services. So we will address that.
9 And we believe that the
10 determination was appropriate. It was in line
11 with the UDO. And it should be supported.
12 That concludes.
13 MR. PATRICK: Thank you.
14 If you'd like to make your
15 presentation.
16 MR. THELEN: Thank you,
17 Mr. Chairman. I would call Jonna Stein to
18 testify.
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Page 24

1 JONNA STEIN, of lawful age, called for
2 examination, being first duly sworn, was
3 examined and said as follows:
4 EXAMINATION OF JONNA STEIN
5 BY MR. THELEN:
6 Q. Can you state your name and your
7 address?
8 A. Jonna Stein, 1010 Waldorf Avenue,
9 Monroe, North Carolina.
10 MR. THELEN: Can we go back to the
11 beginning of my PowerPoint, if you don't mind?
12 I know we're jumping around here.
13 Sorry about that.
14 Thank you.
15 Q. Okay. Ms. Stein, do you work for
16 Venator Chemicals?
17 A. Yes, I do.
18 Q. What is your title at Venator?
19 A. My title is Environmental Health
20 and Safety Manager.
21 Q. And have you been involved in
22 Venator's efforts to locate the proposed onsite
23 landfill on Venator's property?
24 A. Yes, I have.
25 Q. As part of that involvement, in

Page 25

1 2022 did you discuss with the town staff the
2 proposed onsite industrial landfill and how the
3 town's laws address the permitting of the
4 landfill?
5 A. Yes, I did.
6 MR. THELEN: If you could turn in
7 your binders, please, to Exhibit 1, it's also
8 up here, a portion of which is up here on the
9 slides.
10 Q. Ms. Stein, what is this document
11 behind Page 1?
12 A. This is a document that I
13 sent to -- or sent to Craig Thomas of the town,
14 which basically covers the description of the
15 project that we were doing, and it's also where
16 I submitted the forms required for the zoning
17 determination.
18 Q. And who is Mr. Thomas?
19 A. Mr. Thomas was the Senior Planner
20 at that time.
21 Q. All right. And why did you send
22 this e-mail to Mr. Thomas back in June of 2022?
23 A. So basically the company was
24 undertaking a new project. We knew we would
25 need zoning approval. And the zoning

Page 26 1 determination was also required by the State of 2 North Carolina. So we were seeking to get 3 clarification from the town on whether the site 4 was acceptable for proposed industrial solid 5 waste landfill, and we needed that 6 documentation to send to the state. 7 Q. Okay. And does your e-mail 8 describe the proposed landfill to Mr. Thomas? 9 A. Yeah. Basically it says that it's 10 an industrial solid waste landfill, that it 11 meets the definition of a waste management 12 unit, which is there solely to support the 13 industrial use of the site, that it meets the 14 zoning buffers required by the state, which was 15 200 feet from the property line and 500 feet 16 for residences. And it also indicated that we 17 would not be taking waste from offsite sources, 18 we would only be getting waste from onsite, 19 from the lagoon. So that was part of the 20 description in the e-mail. 21 Q. Thank you. 22 And this e-mail contains some 23 attachments, too; is that correct? 24 A. Yes, sir. It contains basically 25 the e-mail. There was an aerial photograph of	Page 28 1 formed by interpreting Harrisburg's newly 2 adopted UDO. Hopefully you can provide 3 clarification on this issue." 4 Q. Thank you. 5 So with this e-mail, are you 6 seeking the town's interpretation of its UDO as 7 applies to the use that you describe in this 8 e-mail and attachments? 9 A. Yes. 10 Q. Okay. Going back to the 11 attachments to the e-mail, the one that's there 12 on the right, and it's Page 5 of this Exhibit 13 from the pagination standpoint, there's no 14 pagination, but if you turn to the fifth sheet, 15 which is the Pre-Application Meeting Summary, 16 the fifth sheet behind this Tab 1, this is one 17 of the attachments to your June, 2022 e-mail, 18 correct? 19 A. Correct. 20 Q. In the bottom right under 21 Miscellaneous, do you see there at the top 22 there's a bunch of check boxes, and there's one 23 for Conditional Use Permit? 24 Do you see that? 25 A. Yes, I do.
Page 27 1 the site showing the landfill location, the 2 proposed landfill location. That's the picture 3 on the left. And then it had a site plan, 4 which you can see is a more technical document, 5 a drawing of the proposed landfill. And it 6 also had the Pre-Application Form that the town 7 requires. And it also had a table from the UDO 8 that we were specifically asking questions on. 9 Q. Okay. Going back to the e-mail, 10 Ms. Stein, in the third paragraph there that 11 begins with, "Our understanding," can you 12 read -- starting with that second sentence, 13 "From the attached," can you read that all the 14 way to the end of that paragraph into the 15 record, please? 16 A. So, "From the attached land use 17 table from the UDO, development of an onsite 18 industrial landfill that will only receive 19 onsite generated waste for waste management 20 would be deemed 'All other waste related 21 services' and is permanent within EC zoning. 22 We arrive at this conclusion as we are not 23 developing a 'Demolition Landfill' (permitted 24 with limitations) or a 'salvage yard' 25 (permitted as special use). This opinion is	Page 29 1 Q. And that's not checked, is it? 2 A. It is not. 3 Q. Why is that not checked? 4 A. Well, as I said in the introduction 5 to the e-mail, we thought the site was -- met 6 the definition of waste related services, and 7 based on the UDO table, that that would be 8 permitted by right, so we didn't think a 9 Special Use Permit was needed. 10 Q. Thank you. 11 So moving on to Exhibit 2, you can 12 flip the tab to Exhibit 2, what is this 13 document? 14 A. Basically it's a snippet from the 15 town regulations. 16 Q. Okay. And about halfway down, do 17 you see the term "Waste Related" use? 18 A. Yes, I do. 19 Q. So is that the definition from the 20 town's UDO that you were seeking the town's 21 guidance on with your June e-mail? 22 A. Yes. 23 Q. With regard to whether your onsite 24 proposed landfill met that use determination? 25 A. Yes.

Page 30 1 Q. And is that permitted as of right, 2 that particular use on the property? 3 A. According to that UDO table that we 4 sent along with the application, yes, it was. 5 Q. Okay. Did you get a response from 6 Mr. Thomas to your June 6, 2022 e-mail behind 7 Exhibit 1? 8 A. Not right away, so I had to call -- 9 or e-mailed him to follow up with him. 10 MR. THELEN: Okay. Let's go to Tab 11 3, please, everybody, behind Tab 3 in the 12 Exhibit binder. 13 Q. And what is this document, 14 Ms. Stein? 15 A. This is the Pre-Application Meeting 16 Summary. 17 Q. Okay. Does this look like the same 18 summary that you submitted with your June 19 e-mail? 20 A. It's somewhat different. 21 Q. How is it different? 22 A. Because it has fees associated with 23 it. I did not put in any fee when I submitted 24 the form. And then it also has approval 25 signatures on the back page.	Page 32 1 believe a Conditional Use Permit was required 2 because we believed the interpretation of the 3 UDO was waste related services permitted by 4 right within that zoning class. 5 Q. Okay. So this Exhibit 3, it still 6 has the Conditional Use Permit unchecked, but 7 the town at this point, town staff, from your 8 understanding has filled in fee amounts and has 9 signed and accepted this Application Summary 10 Form without that Conditional Use Permit block 11 checked? 12 A. Yes. 13 Q. Okay. Thank you. 14 All right. So you mentioned you 15 didn't hear from Mr. Thomas for a few weeks. 16 Flipping to Exhibit 4 behind your 17 binders, what is this document, Ms. Stein? 18 A. So basically this is an e-mail 19 where I reached out to Craig Thomas checking on 20 the status of the zoning determination. 21 Q. Okay. And how does he respond to 22 you in this e-mail? 23 A. So at this time, when I e-mailed 24 him, he responded by asking for a formal site 25 plan. We were a little surprised by that. We
Page 31 1 Q. Okay. Turning to that back page -- 2 MR. THELEN: And again, thank you 3 all for jumping around. Two, three, four, 4 five -- it's the fifth page of this Exhibit 3. 5 And here it is in front of you, as well, on 6 your monitors. 7 Q. Turn to that fifth page. 8 At the top there do you see where 9 it says "Participant Information and Acceptance 10 of Requirements"? 11 Do you see that, Ms. Stein? 12 A. Yes. 13 Q. And are those signatures -- are 14 those signatures of town staff members? 15 A. Yes. Craig Thomas and Patrick 16 Kennes. 17 Q. Okay. And then going back to the 18 first page -- 19 MR. THELEN: This is the last time, 20 I promise, everyone. 21 Q. Back on the first page of that 22 Exhibit 3, do you see where that Conditional 23 Use Permit block -- do you see how that's 24 been -- does that remain unchecked? 25 A. Right. Once again, we didn't	Page 33 1 didn't think we needed a formal site plan at 2 this point. I told him that we were looking 3 for a zoning determination in order to comply 4 with the state regulations under North Carolina 5 Administrative Code 15A NCAC 13B, which are the 6 application requirements for industrial solid 7 waste landfills. So I specifically called out 8 that we were trying to meet the requirements of 9 that regulation. 10 And basically that regulation 11 requires that the person putting in the 12 landfill get a zoning approval and/or that the 13 property is not zoned. So that's what we were 14 looking for. 15 And then he asked me if I had an 16 example of what was needed. And, you know, I 17 provided I think another follow-up e-mail to 18 him on that. 19 Q. You did. You did. 20 Okay. So if you'll flip to 21 Exhibit 5. 22 What is this document, Ms. Stein? 23 A. This is the draft letter that I put 24 together to send to Craig so he would have a 25 starting point for his zoning determination.

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1 Q. Okay. And then turning to the 2 second page of this Exhibit, is this the 3 language you provided Mr. Thomas, as attached 4 to that e-mail on August 18 of 2022? 5 A. Yes, it is. 6 Q. Okay. So he asks you for a form of 7 letter -- 8 A. He asked me for an example. 9 Q. And this is what you provided to 10 him? 11 A. Yeah. 12 Q. Okay. And did you send that 13 consistent with your understanding at the time 14 that this proposed onsite landfill is a waste 15 related use permitted by right on the property? 16 A. Correct. You know, no uses had 17 changed. Nothing had changed on our side from 18 what we thought was required. 19 Q. Okay. Flipping to Exhibit 6 in 20 your tab, please, what is this document, 21 Ms. Stein? 22 A. So this is the letter that we got 23 from the town on August 19, 2022, a zoning 24 determination letter, which basically said that 25 the proposed industrial landfill zoning was	1 A. So we understood it because the way 2 we phrased the question, that it was a waste 3 related use and it was permitted by right under 4 that UDO chart that we submitted in our e-mail. 5 Q. All right. Now, going back -- 6 MR. THELEN: I'm sorry, again, for 7 the toggling, everybody, but going back to 8 Exhibit 5. 9 Q. Ms. Stein, Exhibit 5, that draft 10 language that you provided to Mr. Thomas in 11 Exhibit 5, and then going to Exhibit 6, to that 12 line at the top of the second page, does that 13 language appear to be the same to you? 14 A. It does. 15 Q. Okay. What did you take away from 16 that? 17 A. Basically the same thing, that the 18 industrial -- the proposed industrial solid 19 waste landfill was a waste related use 20 permitted by right. 21 Q. Did Venator ever appeal that 22 August 19, 2022 letter? 23 A. No. 24 Q. Did the town ever appeal, to your 25 knowledge --
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1 acceptable. 2 MR. KOCH: Objection. She can read 3 from the letter, but she can't characterize. 4 MR. PATRICK: That objection is 5 sustained. 6 Q. Can you read from the second -- 7 A. What do you want me to do? 8 Q. Can you read from that top portion 9 of that second page? 10 A. The third paragraph on the second 11 page? 12 "The Town of Harrisburg is in 13 receipt of a pre-application meeting summary 14 form, site layout map and a preliminary site 15 plan which shows the proposed onsite industrial 16 landfill. The current zoning is an approved 17 zoning class for the proposed onsite industrial 18 landfill." 19 Q. And did you understand this to 20 confirm your e-mail of June, 2022 -- 21 A. We did. 22 Q. -- as to what the use was? 23 A. Yeah, we did. 24 Q. And you understood that -- how 25 specifically did you understand that?	1 A. No, not to my knowledge. 2 Q. -- the August 19, 2022 letter? 3 Did Venator rely on that August, 4 2022 letter as a zoning determination? 5 A. Yeah, very much so. Because we got 6 that zoning determination letter that we 7 thought -- believed that the site was approved 8 for the landfill, we basically began our final 9 design process. So this was a lot of work over 10 15 months to do the design. Some of that 11 design included developing the site suitability 12 report, an environmental justice report, a 13 hydro-geologic report. 14 We also did a postclosure care 15 plan. We did an operating plan. We developed 16 a CQA plan, a construction quality assurance 17 plan. We developed technical specifications 18 for the design of the landfill. We also did 19 numerous engineering drawings and spent a lot 20 of time and effort getting that design work 21 done. 22 And so it really put us in a 23 difficult position when we found out that, you 24 know, we needed a Special Use Permit. But 25 yeah, that's -- we really relied on that

Page 38 1 decision to go forward with the project. 2 Q. So had the town told Venator in 3 August of 2022 that a Special Use Permit was 4 necessary for the proposed project -- 5 A. No. 6 Q. -- would Venator have pursued that 7 permit, moved forward with all those other 8 tasks and approvals that you just mentioned? 9 A. Right, we would have done the 10 Special Use Permit application process before 11 we did the final design work. And, in fact, we 12 submitted that letter to the state. So that 13 approval letter we got on the 19th, we actually 14 submitted to North Carolina DEQ Solid Waste, so 15 this has been moved along the regulatory chain 16 because we believed it was accepted. 17 Q. To your knowledge, has the state 18 accepted that as confirmation that the use is 19 permitted as of right on the property? 20 A. I don't believe we have gotten 21 specific confirmation on that. The application 22 process is still ongoing. 23 MR. THELEN: Okay. Now, if you can 24 turn to Tab 7, Exhibit 7, please, behind your 25 binders.	Page 40 1 A. No, it's not. 2 Q. And this was submitted to the town 3 by Michael Thomas; is that correct? 4 A. Correct. 5 Q. Okay. At the top there, in Line 1, 6 it says "Venator Chemical's Onsite Industrial 7 Landfill"; is that correct? 8 A. That's correct. 9 Q. And had the project changed from a 10 use standpoint -- maybe things had changed on 11 the margins. We'll hear about that. 12 But had the project changed from a 13 use standpoint from the time of the August 14 letter that we just talked about and the 15 submission of this document by Mr. Thomas in 16 November, 2023? 17 A. No, the use has not changed. 18 Q. Now, flipping to the next Exhibit, 19 Exhibit 8, have you seen this document before, 20 Ms. Stein? 21 A. Yes. 22 Q. Okay. What is this document? 23 A. This document is a memo from the 24 Town of Harrisburg, Mr. Craig Thomas, to 25 Venator Chemicals, Mr. Michael Thomas.
Page 39 1 Q. Have you seen this e-mail before? 2 A. Yeah. This is an e-mail to Michael 3 Thomas from Craig Thomas back in November of 4 2023. We were basically checking in looking 5 for the next steps because we were really 6 getting ready to start the project. 7 Q. Who is Michael Thomas? 8 A. Michael Thomas is a Construction 9 Project Manager that we hired to begin the 10 management of the landfill project. 11 Q. If you'll turn to the fourth page 12 of this tab, you'll see a document that begins 13 there. 14 Have you seen this portion of this 15 document before, Ms. Stein? 16 A. Yeah. This is a Pre-Application 17 Summary Form I believe that the town requested 18 that we submit to them. 19 Q. Okay. If you'll go down to 20 Section 2, the Type of Application Required, 21 under Subsection C, where it says "Quasi 22 Judicial Application," do you see where it says 23 "Special Use Permit"? 24 A. Yes, sir. 25 Q. Is that checked?	Page 41 1 Q. You've seen this document before, 2 correct? 3 A. Yes. 4 Q. We talked about who Mr. Thomas is 5 with Venator. 6 If you'll look down in I guess at 7 the bottom half of the first page where it says 8 "Proposed Use," can you tell me what it says 9 going across from "Proposed Use"? 10 A. Right. It says "Landfill" and then 11 it says "Waste Related Services Allowed By 12 Right." 13 Q. Okay. And did you understand that 14 to be, again, consistent with the August, 2022 15 determination? 16 A. Right. This is consistent with our 17 original questions to the town and the 18 documentation that we had been receiving from 19 the town since June of 2022. 20 Q. Okay. And what is this document 21 dated? 22 A. 11-1 -- excuse me, 11-2-2023. 23 Q. So this is from this past November, 24 15 months after that August, 2022 letter? 25 A. Right.

Page 42 1 Q. If you'll flip the page and you'll 2 look at the top there, where it says 3 "Phase 1" -- 4 A. Right. 5 Q. -- can you read to me what it says 6 across from "Phase 1"? 7 A. It says, "This would require the 8 removal of some existing heritage trees. 9 Applicant is aware tree mitigation is required 10 and has ample space to re-plant trees elsewhere 11 on site. Onsite industrial landfill will only 12 receive onsite generated waste for waste 13 management is "All other waste related 14 services." 15 Q. Okay. Is that also consistent with 16 what you understood from that August, 2022 17 letter confirming what you understood to be in 18 your June, 2022 letter? 19 A. Correct, waste related uses 20 permitted by right. 21 Q. Okay. And then moving up a bit -- 22 I'm sorry, going back to the first page -- and 23 I apologize for toggling -- where it says 24 "Process," do you see that halfway down or 25 about maybe two-thirds of the way down the page	Page 44 1 A. Yeah, that that was related to the 2 chemical manufacturing process, production of 3 finished goods and such, but not this waste 4 related use of the landfill. We saw that as 5 two, separate things. 6 Q. So your understanding of this memo 7 is that that was confirming again, in November 8 of '23, what you understood the town had 9 determined in August of '22; is that correct? 10 A. Right. It seemed very consistent 11 with everything else we had gotten from the 12 town. 13 Q. Okay. If you'll flip to the next 14 Exhibit, Exhibit 9, have you seen this e-mail 15 before? 16 A. Yes. This is an e-mail from the 17 town, Shelley DeHart, to Michael Thomas of 18 Venator Chemicals, November 15, 2023. And it 19 basically states very surprisingly to us, after 20 15 months of going through this zoning process, 21 that the site now needs a Special Use Permit. 22 Q. Okay. Was this a surprise to 23 Venator? 24 A. Yes, very much so. 25 Q. Why was it a surprise to Venator?
Page 43 1 on the first page? 2 A. I see Site, Zoning, Proposed Use. 3 Oh, Process. Okay. Got it. 4 Q. Do you see where it says 5 "Pre-Application; Site Plan Review/SUP; 6 Construction Docs"? 7 A. Correct. 8 Q. Did that set off any bells or any 9 alarms in Venator's mind in terms of a 10 departure from what Venator understood was a 11 use permitted by right? 12 A. No, it didn't really. If anything, 13 it would have applied -- we thought it would 14 have applied to the chemical manufacturing 15 processing itself, which is totally separated. 16 We have 104 acres, so it's very separate from 17 this proposed landfill. The use is very 18 different. 19 Q. Okay. At the bottom there of that 20 same page, the second paragraph where it says 21 "The land use, assembly or processing of 22 chemicals, is characterized as Heavy Industrial 23 in the UDO and requires a Special Use Permit," 24 did you feel that was the same in terms of how 25 you understood that middle section?	Page 45 1 A. Well, because we had that zoning 2 determination letter from August, 2022, which 3 we had submitted in our application process to 4 the state, and we felt that we were approved 5 from a zoning perspective. 6 Q. Did you believe the August, 2022 7 determination to have answered your e-mail in 8 June of '22? 9 A. I did. 10 Q. Did you believe it to be correct? 11 A. I did. 12 Q. Do you believe that this 13 interpretation is correct, that the use 14 requires a Special Use Permit? 15 A. So this one we disagreed with, 16 right. We thought that our landfill was a 17 different use all together, it was that waste 18 related services, and based on our 19 interpretation of the UDO Table, that that was 20 permitted by right. 21 MR. THELEN: Thank you. I have 22 nothing further, Mr. Chairman. 23 MR. PATRICK: Thank you. 24 Your Witness. 25 MR. KOCH: Yes, thank you.

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1 - - - - - 2 CONTINUED EXAMINATION OF JONNA STEIN 3 BY MR. KOCH: 4 Q. Ms. Stein, how long have you been 5 with Venator Chemicals? 6 A. Twenty-two years. 7 Q. And when did Venator acquire the 8 Chemical Specialties site out here in 9 Harrisburg; do you know? 10 A. I think it dates back to 1965. 11 Q. So Venator has owned -- 12 A. Oh, you mean -- 13 Q. How long have they owned it? 14 A. Venator? 15 Q. Yes. 16 A. 2014. I think it was 2014. We 17 were acquired by Huntsman, and then Huntsman 18 had a spinoff, and it became Venator Chemicals 19 I think around 2014. 20 Q. All right. So prior to that were 21 you familiar with the approvals for that site 22 by the town with reference to all the 23 activities that are out there in connection 24 with that chemical plant? 25 A. So if -- not really. If you're	1 Permit; isn't that correct? 2 A. As I said, I thought the Special 3 Use Permit was related to more of the chemical 4 manufacturing use of it. But we did see this, 5 yes. 6 Q. I understand you understood that. 7 I will ask you, if you look at the 8 memo, it says "Proposed Use" "Landfill." 9 Does that say anything about the 10 chemical plant itself anywhere in here? 11 A. No. It says "Landfill." 12 Q. Okay. And this is one parcel 13 that's over 100 acre; is that right? 14 A. Yes, to the best of my knowledge. 15 Q. Have you been out to the site? 16 A. To our site? 17 Yes, sir. I'm there every day. 18 Q. Okay. There had been a chemical 19 plant out there for as long as you've been 20 involved with it; is that correct? 21 A. That's correct. 22 Q. And that chemical plant develops 23 waste; doesn't it? 24 A. It does. 25 Q. And that waste is what was placed
Page 47	Page 49
1 referring to the 2002 Special Use Permit 2 required, no, that was before I came on site. 3 I didn't come on site until 2005. 4 Q. But you are aware of that, it's 5 actually your Exhibit 8, that that was 6 mentioned in this memo? 7 A. I'm aware of it because Ms. DeHart 8 sent that to us when she told us that the town 9 had changed their position and they now wanted 10 this Special Use Permit. That's when I became 11 aware of it. 12 Q. Well, I will object to you saying 13 the town changed its position. The documents 14 speak for themselves. 15 But that's how you interpreted it? 16 A. That's how I interpreted it, that 17 the town changed its position. 18 Q. So you did not investigate the 19 history of this site back to the time that it 20 became Chemical Specialties, prior to the time 21 that Venator took it over; is that correct? 22 A. I did not. 23 Q. But now you see in this memo, 24 Exhibit 8, that there had been some changes to 25 this site and that they required a Special Use	1 in the lagoon; isn't that correct? 2 A. From a regulatory standpoint, it's 3 not waste. It's wastewater treatment 4 discharge. The regulatory definition does make 5 a difference, so it is wastewater treatment 6 discharge. The lagoon is part of a permitted 7 NPDS system. 8 Q. But it also has some solid waste in 9 the bottom of it? 10 A. It does create a sediment, yes, 11 sir. 12 Q. And that basically came from the 13 chemical manufacturing; did it not? 14 A. It comes from the chemical 15 manufacturing. 16 Q. And that's done on site? 17 A. The chemical manufacturing is done 18 on site, correct. 19 Q. So really this proposed new use 20 that you are describing is really just a change 21 in the way you're going to deal with the waste 22 that you generate from the chemical plant 23 that's on that same parcel, right? 24 A. No. The waste management -- the 25 wastewater treat -- the waste from the

Page 50 1 manufacturing process is not going to change. 2 It's still going to go to the lagoon. And the 3 sediments we're proposing go from the lagoon to 4 landfill. So the waste is not going to change 5 or the way we deal with it will not change. 6 Q. But you're not bringing in waste 7 from off site? 8 A. We are not. 9 Q. This is all what is generated by 10 the chemical plant on that parcel? 11 A. That's correct. 12 Q. And you don't know what the history 13 is of that -- of the site when there have been 14 changes to the chemical plant, do you? 15 A. Well, I know a lot of regulatory 16 history. I don't know the zoning history. So 17 let me clarify that. So, you know, I'm an 18 Environmental Health and Safety Manager, so I 19 know a lot about the regulatory history. But 20 I'm not a zoning expert on the history of the 21 site, so that I don't know as much about. 22 Q. Now, having said that, are you 23 aware that there are NOBs that have not been 24 complied with on that site with reference to 25 the way the waste has been handled on that site	Page 52 1 When you made your determination of 2 the UDO described in this e-mail, did you look 3 at Table 140.02.02-2 that has the zoning 4 obligations? 5 A. Can you send me to an Exhibit? 6 I don't have that. 7 Q. It's actually in your Attorney's 8 point brief. It's labeled as Exhibit 1. I can 9 hand it to you. 10 A. I think I've got it. Yeah. 11 Q. That looks like it? 12 A. Yes, this is the portion of the 13 table that we looked at, yes, sir. 14 Q. And are you aware of what the 15 zoning is for this property? 16 A. It's EC, Employment Center. 17 Q. It's one parcel, correct? 18 A. Correct. 19 Q. That includes the chemical plant? 20 A. Correct. 21 Q. And what does EC zoning say about 22 Heavy Industrial? 23 A. According to this table, it says 24 "S." 25 Q. What does "S" stand for according
Page 51 1 from the chemical manufacturing? 2 MR. THELEN: I'll object to that, 3 Mr. Chairman. That's irrelevant. 4 MR. PATRICK: Objection sustained. 5 Q. Let me take you back to your first 6 Exhibit, No. 1. That was that e-mail from you 7 to Craig Thomas -- 8 A. Right. 9 Q. -- and other people in which you 10 describe that you've looked at the Harrisburg 11 UDO and made some determinations on your own; 12 is that correct? 13 A. That's correct. 14 Q. And did you not just tell me that 15 you don't know that much about zoning? 16 A. I'm not a zoning expert. 17 Q. Okay. 18 A. But we did work with ERM, and based 19 on their experience and other experiences that 20 they've had with other landfills, we do look at 21 regulations quite a bit, so we did read the 22 regulations and try to make an interpretation. 23 Q. But this is your e-mail? 24 A. Yes, it is. 25 Q. This is what you said.	Page 53 1 to the table? 2 A. Permitted as Special Use. 3 Q. All right. Do you dispute that a 4 chemical plant is not Heavy Industrial? 5 A. Well, I would have to go back to 6 the zoning definitions to make that 7 determination. That would be how I would 8 handle that as a regulatory person. I always 9 go back to my definitions to look at the 10 regulatory definition. I don't have that 11 memorized. 12 Q. It's actually Exhibit 11 in your 13 book. 14 A. Exhibit 11. Okay. 15 Did you want me to read it? 16 Q. Could you read it? 17 A. Out loud? 18 Q. You can. You can go ahead and read 19 the whole definition of Heavy Industrial. You 20 can start with Paragraph 2 if you want. 21 A. Okay. "Uses in this category 22 include establishments that manufacture or 23 process: Asphalt & Coal; Cement/Concrete 24 (ready-mix) and Concrete Products; Chemicals; 25 Clay & Brick; Concrete (dry mix); Food; Metals;

Page 54 1 Petroleum; Stucco and Synthetic Stone; and 2 other uses meeting the definition of Heavy 3 Industrial according to the Director." 4 Q. So "Chemicals" is included in that? 5 Would you not agree that the 6 chemicals that are manufactured by Venator in 7 that plant would be considered Heavy 8 Industrial? 9 A. Certainly that part of the 10 manufacturing process could be considered Heavy 11 Industrial. 12 Q. And that's what it says in the memo 13 that is Exhibit 8, does it not, under Findings? 14 A. Under Findings? 15 Q. Does it not state that? 16 A. Let's see. Yes, in the second 17 paragraph, "The land use, assembly," that 18 sentence, yes. 19 Q. So despite all this language in 20 here under Findings and what you said about the 21 Process, which doesn't say anything about 22 chemicals in that part of it, it just talks 23 about what would be needed in terms of 24 documentation, you believe that this just 25 applied to -- you believe that that just	Page 56 1 of the property. 2 Q. They're still part of chemical 3 manufacturing; would you not say that? 4 A. I'll agree to that. 5 Q. The Pre-Application Meeting Summary 6 that's under Exhibit 3, that was filled out by 7 Venator, by you; was it not? 8 A. Correct. 9 Q. And it's not completely filled in, 10 is it, it's just partially filled in, correct? 11 A. We filled in what we believed to be 12 applicable. 13 Q. And didn't fill in what you didn't 14 believe to be completely applicable; is that 15 right? 16 A. We filled in what we believed to be 17 applicable. 18 Q. But it wasn't a completed document, 19 it was just submitted with what you felt like 20 you needed to submit? 21 A. This document -- this is a document 22 required by the town. You know, it's -- 23 they're requesting that the applicant submit 24 them, so we filled them out to the best of our 25 ability.
Page 55 1 applied to the chemical plant that's on part of 2 this same parcel, and this didn't apply to what 3 you're talking about here with reference to the 4 waste that comes from it? 5 A. Right, because the landfill is so 6 different in terms of use from the chemical 7 plant, in my mind, they're just two, separate 8 things. 9 Q. Would you say that about the dock, 10 the loading dock at the chemical plant? 11 Wouldn't that be a different use 12 from manufacturing chemicals? 13 A. It could be. I mean, it's kind of 14 an ancillary function. It's not actually the 15 manufacturing. I guess it's an ancillary 16 function of chemical manufacturing. 17 Q. So what you're saying to this board 18 is that if you separate out -- you can separate 19 out different parts of the chemical 20 manufacturing process, the actual manufacturing 21 from the sales from the distribution of the 22 chemicals and from the waste that's produced 23 from the chemicals that are stored on the site, 24 those are all separate? 25 A. They're certainly different pieces	Page 57 1 Q. And then that was actually sent 2 back to you from the town at a later point; is 3 that right? 4 A. Yes. 5 Q. All right. Now, let me direct you 6 to your Exhibit 4. And these are the e-mails 7 that went back and forth between you and Craig 8 Thomas with the town. 9 And we could read through them, but 10 would you believe that when you got the 11 responses from Craig, that it appeared to you 12 that he was confused, confused about what you 13 wanted? 14 Would that be a fair statement? 15 A. I don't know that he was confused. 16 I think he just was asking for -- because it 17 specifically had to comply with that 18 15A NCAC 13B, so I think he was looking for 19 what the requirements were from that regulatory 20 statute. 21 Q. But later in these Exhibits didn't 22 you send him the language because he did not 23 have it? 24 A. I sent him one paragraph on this 25 particular application to that regulatory

Page 58 1 citation. 2 Q. Which is language that you wanted 3 to be put into the letter; is that correct? 4 A. It's language I thought would 5 comply with the regulation, yes. 6 Q. That was a state regulation? 7 A. It is a state regulation. 8 Q. Not a town regulation? 9 A. Correct. 10 Q. And so for that letter to be 11 prepared, the town used your language that was 12 put in the letter -- 13 A. Yes. 14 Q. -- rather than its own language? 15 A. Yes. 16 Q. Would that not indicate to you that 17 Mr. Thomas was confused about what was needed 18 in the letter? 19 A. I don't really want to comment -- 20 do I have to comment on whether he was confused 21 or not? 22 Q. Well -- 23 A. I don't know. I was just trying to 24 provide guidance. 25 Q. If he knew what to do, he could	Page 60 1 A. Last year, 2023. 2 Q. So it wasn't submitted right after 3 that letter? 4 A. No. We had to develop all that. 5 That was part of the 15 months of work after we 6 thought we were approved. We did all this 7 engineering work. And that was submitted to 8 the state in November. 9 Q. But not submitted to the town? 10 A. No. The engineering drawings came 11 to the town. But these are documents that are 12 required by Solid Waste. 13 Q. The letter that you say you're 14 relying on was not written by Mr. Thomas, was 15 it? 16 A. I think the signatory was 17 Mr. Lesser; was it not? 18 Exhibit -- what Exhibit is that? 19 MR. THELEN: "6." 20 Q. Exhibit 6. 21 He's listed as Code Enforcement 22 Officer for the town; is that right? 23 A. Correct. 24 Q. And so this letter was not written 25 by the Planning Director for the town?
Page 59 1 have developed his own letter without your 2 language; could he not have? 3 A. I was providing guidance on that 4 one regulatory citation. I don't know if he 5 was confused or not. 6 Q. Because that's what you needed? 7 A. It is what I needed. It's what we 8 needed to comply with the regulation. 9 Q. Now, you talked about all this 10 reliance that you've done on that letter. 11 A. Uh-huh. 12 Q. I haven't seen any documentation on 13 any of that. We've heard what you said, that 14 you did all these studies and whatnot. I 15 haven't seen any of that in your submittals. 16 I would ask you, you've not started 17 actual work on that site, have you? 18 A. No. But that documentation was all 19 submitted to the North Carolina DEQ in November 20 of 2023, so it's public record. It's out 21 there. In fact, many of those same engineering 22 drawings were provided to the town, so we do 23 have it. It is public record, so it's out 24 there. 25 Q. What year did you say that was?	Page 61 1 The Zoning Verification Letter was 2 not written by the Planning Director, was it? 3 A. Correct. It was signed by Tom 4 Lesser. 5 Q. I think I'm just about finished. 6 MR. KOCH: That's all the questions 7 I have, Mr. Chairman. 8 MR. PATRICK: Thank you. 9 Does the board have any questions 10 for the Witness? 11 Ms. Stein, are you -- is your 12 operation currently operating under a Special 13 Use Permit? 14 MS. STEIN: I believe an addition 15 to the plant made in 2002 to the ACQ tank farm 16 was that piece of it. Those are 18 tanks and a 17 truck loading area that fall under that Special 18 Use Permit. Other than that, I'm not aware of 19 any. 20 MR. PATRICK: For the entire site? 21 MS. STEIN: I don't know how that 22 works, so I don't know. 23 MR. BRANHAM: What about the 24 existing closed landfill that's there now? 25 MS. STEIN: So the existing closed

Page 62 1 landfill that's there now is there under a RCRA 2 Part B Operating Permit for Postclosure Care of 3 Landfill. 4 MR. BRANHAM: But did it have a 5 Special Use Permit? 6 MS. STEIN: I don't know. I don't 7 know the answer to that question. It's deed 8 restricted, but I don't know about the 9 permitting. That was done, gosh, like in the 10 Eighties, Nineties. It's been closed for well 11 over 30 years. 12 MR. BRANHAM: So there is no 13 landfill on the property now? 14 MS. STEIN: No, it's still there. 15 There's a closed landfill on the site. 16 MR. BRANHAM: So what are you using 17 today as a landfill? 18 MS. STEIN: We don't have a 19 landfill on site, an active landfill. So that 20 closed landfill is not related to the current 21 operation or the lagoon or the new landfill. 22 It was from a remediation that was done on site 23 back in the 1980s. 24 MR. BRANHAM: Today your waste goes 25 in the lagoon?	Page 64 1 unit is anywhere a chemical is. It's really 2 not related to the landfill issue. These are 3 issues related to the chemical manufacturing 4 process more so. 5 MR. PATRICK: Can you help clarify 6 something for me? 7 I see a Pre-Application Conference 8 Summary here. 9 MS. STEIN: Which Exhibit? 10 MR. PATRICK: Tab 7. It was 11 submitted by Michael Thomas, I understand. I 12 have some confusion because the date on this 13 Exhibit says November 1, '20. 14 MS. STEIN: It's 11-1-2023. 15 MR. PATRICK: Okay. So he 16 submitted it -- it's from the e-mail 11-1-2023. 17 MS. STEIN: Yeah, I think that went 18 to Craig via e-mail. 19 MR. PATRICK: Okay. So the date is 20 incorrect on the Pre-Application? 21 MS. STEIN: It looks -- yeah, it's 22 wrong. It says 11-1-20. 23 MR. PATRICK: Any other questions? 24 MR. BENSHOFF: Just for the record, 25 Ms. Stein, not everybody knows what RCRA is, if
Page 63 1 MS. STEIN: The treated wastewater 2 goes into the lagoon, the solids settle to the 3 bottom of the lagoon, and those waters are 4 discharged to the Rockey River under an NPDS 5 Permit. 6 MS. LONG: So how many solid waste 7 management units are currently on the subject? 8 MS. STEIN: The site? 9 MS. LONG: Yes. 10 MS. STEIN: 112. Now, these aren't 11 lagoons. But you asked me about a very 12 specific regulatory term, which is "solid waste 13 management unit," which can be anyplace that 14 you had a chemical stored or you used a 15 chemical. All that's documented very clearly 16 in our RCRA Part B Permit and it's part of the 17 history of the site. So you can't think about 18 those things in terms of a lagoon because 19 they're not. 20 MS. LONG: In terms of the 112, how 21 many are active? 22 MS. STEIN: Most of them are 23 closed, but some of them are in active 24 production areas. So I don't want you to get 25 the wrong impression. A solid waste management	Page 65 1 you could say what the acronym stands for. 2 MS. STEIN: So RCRA is the Resource 3 Conservation and Recovery Act. It's a part of 4 the EPA waste regulations. And as I said, the 5 site is regulated under RCRA because of 6 activities that took place back in the 1980s, 7 1990s. There were other lagoons on the site. 8 They were cleaned up and remediated. They were 9 put in a closed landfill. And that's why we 10 have a permit for a closed landfill on site. 11 So all that was managed through the state, 12 North Carolina DEQ Solid Waste Management. 13 MR. BENSHOFF: Thank you. 14 MR. PATRICK: Okay. Thank you, 15 Ms. Stein. 16 Do you have additional Witnesses? 17 MR. THELEN: I do. I do, 18 Mr. Chairman. I call Kevin Robinson. 19 - - - - - 20 21 22 23 24 25

Page 66	Page 68
1 KEVIN ROBINSON, of lawful age, called for 2 examination, being first duly sworn, was 3 examined and said as follows: 4 EXAMINATION OF KEVIN ROBINSON 5 BY MR. THELEN: 6 Q. Would you state your name and your 7 address for the record, please, Mr. Robinson? 8 A. It's Kevin Robinson, 9905 Lariat 9 Court, Huntersville, North Carolina. 10 Q. Do you work for Venator Chemicals? 11 A. I do. 12 Q. What is your title with Venator? 13 A. I'm the Site Manager. 14 Q. And have you been involved in 15 Venator's efforts to locate the proposed onsite 16 landfill on the property? 17 A. Yes. Since I started in October of 18 2022, yes, I have been. 19 Q. Okay. And as part of that 20 involvement, did you know about Ms. Stein's 21 June, 2022 e-mail that we discussed earlier 22 that is behind Tab 1 of the Exhibits? 23 A. Yes. 24 Q. Were you part of that analysis 25 where she came up with the question as to	1 of other waste related uses, and, therefore, 2 was permitted on site by right. 3 Q. Thank you. 4 And in your capacity as Site 5 Director, is it fair to say that you're -- 6 you're Site Manager, is that correct? 7 A. Yes. 8 Q. Is it fair to say that you're 9 intimately involved with the project and how 10 it's going to function on the property as a 11 whole? 12 A. Yeah, I stay well informed. The 13 EHMS staff keeps me well informed of the 14 developments, and I try to attend as many of 15 the Steering Committee meetings as I can. 16 Q. If you could turn Tab 2, the UDO 17 defining waste related use, if you could -- you 18 don't have to read it back into the record 19 there, but if you'll recall from Ms. Stein's 20 testimony and from Exhibit 1, that is, in fact, 21 the use that Ms. Stein was asking the town 22 staff to confirm as to whether or not the 23 proposed onsite landfill met the definition, is 24 that correct, to your understanding? 25 A. Yes, that is correct.
Page 67	Page 69
1 whether the proposed onsite landfill is 2 considered a waste related use use under the 3 town's UDO? 4 A. I was not. 5 Q. Okay. And as part of the 6 involvement, did you know about the town's 7 August, 2022 letter responding to the June, 8 2022 e-mail from Ms. Stein? 9 A. I did. As I was getting up to 10 speed on the project after I started, yes, I 11 was made aware of that. 12 Q. When did you first learn about that 13 approximately? 14 A. It would have been soon after I 15 started in October of '22. 16 Q. Okay. So not too long after the 17 August letter was sent? 18 A. That is correct. 19 Q. Okay. And what was your 20 understanding of that letter from the town 21 dated August, 2022 with regard to the zoning 22 interpretation aspect of it? 23 A. That it was a zoning determination, 24 that basically confirmed that the proposed 25 onsite industrial landfill met the conditions	1 Q. Okay. And reading this definition, 2 does this seem an appropriate definition, in 3 your opinion, for the proposed onsite landfill 4 as you understand it? 5 A. Yes, that was my understanding. 6 MR. KOCH: Objection. I'm not sure 7 he has the ability to testify to that based on 8 the question that was asked. 9 MR. PATRICK: Can you repeat the 10 question? 11 MR. KOCH: The interpretation of 12 the ordinance. 13 Q. Based on your familiarity with the 14 project and looking at this definition that's 15 before you, is it your opinion that this is the 16 definition that would be appropriately applied 17 to the use? 18 A. Yes, that would be my interpretation. 19 Q. Okay. At the end of the definition 20 there, you'll see there's about five lines in 21 the definition, and there's a provision there 22 that says, "and other uses meeting the 23 definition of Waste Related Use according to 24 the Director." 25 Do you see that language?

Page 70 1 A. I do. 2 Q. And would it be your understanding, 3 therefore, that the town is giving a 4 nonexclusive list of things that are included, 5 and that the Director, whoever that might be 6 under the ordinance, is there to make a 7 determination as to what uses actually meet the 8 definition of Waste Related Use? 9 A. That's how I would interpret that. 10 Q. Okay. We've heard a little bit 11 about -- I don't want to preview too much of 12 the testimony here that Mr. Wasiela will give, 13 but can you explain very briefly to the board 14 how the planned proposed onsite landfill will 15 function with regard to the property as a whole 16 in terms of its purpose, what it's there for? 17 A. Yeah. It's really there as we look 18 to reconfigure the existing lagoon that's on 19 site. It's the sediment lagoon that does allow 20 the sediment to settle out from the water on 21 top. So what we're looking to do as part of 22 the remediation and reconfiguration of that 23 lagoon is to remove that sediment, move the 24 berm of the lagoon farther away from the river, 25 and then be able to relocate those sediment	Page 72 1 of Accessory Use? 2 A. Yes. 3 Q. Can you read that? 4 A. "Accessory Use means on subordinate 5 Use of a Building or other Structure, or Use of 6 land which is: A. Conducted on the same Lot as 7 the principal Use to which it is related, and 8 B. Clearly incidental to, and customarily found 9 in connection with, such principal use." 10 Q. Okay. Thank you. 11 And in your understanding of the 12 proposed onsite landfill, was it possible that 13 the proposed onsite landfill met this 14 definition of accessory use within the town's 15 UDO? 16 A. Yes, that could also be an 17 acceptable interpretation. The landfill itself 18 is located on the same lot as the principal 19 use. It is subordinate to that use. And it is 20 incidental to and customarily found in 21 connection with such facilities as the 22 Harrisburg Venator facility. And so, 23 therefore, I think from that definition would 24 also be permitted by right. 25 Q. Okay. So the accessory use and the
Page 71 1 solids into the proposed onsite industrial 2 landfill. 3 Q. Okay. So this is the use that is 4 going to receive solid waste only; is that 5 correct? 6 A. Yes, onsite solid waste. 7 Q. Onsite solid waste. 8 It won't be receiving waste from 9 any other property or any other use? 10 A. That is correct. 11 Q. Okay. And this is for the service 12 of shrinking the onsite lagoon to a smaller 13 size and then housing the sediment at the 14 bottom of the portion of the lagoon that has 15 been drained; is that correct? 16 A. Yes. 17 Q. Okay. If you could turn in your 18 book to Tab 10, please. 19 Do you know what this document is, 20 Mr. Robinson? 21 A. Yes. It's a portion of the 22 definitions from the Code of Ordinances for the 23 Town of Harrisburg. 24 Q. All right. And about three-fourths 25 of the way down there do you see the definition	Page 73 1 waste related use that you read earlier in the 2 definition are both permitted as of right on 3 the property; is that correct? 4 A. To my understanding, yes. 5 Q. So with those in mind, did you 6 believe the August, 2022 town letter -- did you 7 understand that to be correct and defensible 8 and, therefore, binding on you and the town in 9 interpretation of the town's UDO? 10 MR. KOCH: Objection. 11 A. In my opinion -- 12 MR. PATRICK: Objection sustained. 13 Q. If you could turn to Tab 11, 14 please, in your binder. If you'll read -- it 15 doesn't have to be read into the record here 16 again as Ms. Stein did, but the definition 17 there under Heavy Industrial, do you see that 18 definition, Mr. Robinson? 19 A. Yes. 20 Q. Can you review that to yourself? 21 A. (Witness complies with request.) 22 Yes. 23 Q. In your view, based on your 24 understanding of the proposed onsite landfill, 25 did that meet this definition of Heavy

Page 74 1 Industrial use as defined by the town's UDO? 2 A. In my opinion, no, because the 3 landfill was -- 4 MR. KOCH: Objection. 5 MR. PATRICK: Can you rephrase the 6 question, please? 7 You're asking the Witness to make a 8 professional judgment. 9 MR. THELEN: Sure. 10 Q. Based on your understanding of the 11 proposed onsite landfill, was it your 12 understanding that the use as described would 13 meet this definition as set forth in the town's 14 UDO for Heavy Industrial? 15 MR. THELEN: Do you want to object? 16 MR. KOCH: I think I will. I think 17 that sort of dealt with part of my objection, 18 but I think you're still asking him to make -- 19 give an opinion on the ultimate issue in this 20 case, and I don't think he can do that. That's 21 for the board to decide. 22 MR. THELEN: I wouldn't say we're 23 asking the ultimate issue. I'd say we're 24 asking if he, therefore, believed the August, 25 2022 letter to be correct and defensible, as	Page 76 1 August, 2022 determination from the town to be 2 a determination that the use is, in fact, 3 permitted by right under the town's UDO? 4 A. I did. I did. 5 Q. All right. Finishing up here, if 6 you can flip to Tab 9, please, to the 7 previously-identified Exhibit by Ms. Stein, the 8 November 15 e-mail to Mr. Thomas. 9 Have you seen this e-mail before? 10 A. Yes. 11 Q. Okay. And did you view this as a 12 change from the August, 2022 letter from the 13 town? 14 A. Yes. 15 Q. Okay. And how was this a change, 16 in your view? 17 A. It seemed from the August, 2022 18 zoning determination letter that we received 19 that we were permitted by right to proceed with 20 the design and development of the project. And 21 this seemed to contradict that original 22 determination. 23 Q. Okay. And had the use changed at 24 all between August, 2022 and November of 2023? 25 A. No, it had not.
Page 75 1 opposed to clearly off base. 2 MR. BENSHOFF: At the Board of 3 Adjustment hearings, the Rules of Evidence are 4 somewhat relaxed, but since Counsel is present, 5 we need to adhere pretty carefully to the 6 rules. 7 It's a little awkward because every 8 time there's an objection, we have to have a 9 consultation, so you need to give us a minute, 10 please. 11 MR. PATRICK: So we'll sustain the 12 objection. We'd like you to consider that the 13 Witness obviously can testify to his opinion on 14 the matter and how he interprets it, but not to 15 make a determination on the ultimate decision, 16 which is this board's prerogative. 17 MR. THELEN: Thank you, Mr. Chairman. 18 MR. PATRICK: Thank you. 19 Q. One more, Mr. Robinson, on this. 20 Based on your review -- your 21 understanding of the proposed use and based on 22 your review of the definitions of the Waste 23 Related Services, based on the definition of 24 Accessory Use and based on the definition of 25 Heavy Industrial, did you understand the	Page 77 1 MR. THELEN: That's all I have, 2 Mr. Chairman. 3 MR. PATRICK: Thank you. 4 Your Witness. 5 MR. KOCH: Thank you. 6 - - - - - 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 78 1 CONTINUED EXAMINATION OF KEVIN ROBINSON 2 BY MR. KOCH: 3 Q. Mr. Robinson, I think you stated 4 that you're the Site Manager? 5 A. Yes. 6 Q. That's your title? 7 A. It is. 8 Q. And can you tell me what your job 9 duties are? 10 A. They involve a number of different 11 things, including overseeing the Environmental 12 Health and Safety Program, overseeing the 13 production, the chemical production, 14 manufacturing that we do on site, managing all 15 of the personnel, the managers who report to me 16 and then those who report down the reporting 17 structure. 18 Q. So as Site Manager would it be fair 19 to say that you're the person in charge of this 20 plant here? 21 A. Yes, sir. 22 Q. In charge of all phases of it? 23 A. Yes, sir. 24 Q. So when you're speaking of the 25 site, we're talking about the whole 100 acres?	Page 80 1 waste; is it not? 2 A. It's part of the wastewater 3 treatment process that we have on site, yes. 4 Q. The wastewater treatment, do you 5 consider that an accessory use? 6 A. I do, yes. 7 Q. So anything that's not exactly the 8 manufacturing of chemicals you would consider 9 an accessory use to a chemical manufacturing 10 plant; is that what you're saying? 11 A. Yes. 12 Q. And where do you find support for 13 that in the ordinance? 14 A. Let me find the -- which Exhibit is 15 the definitions? 16 MR. THELEN: It's 10, Kevin, if 17 that's the one you're looking for. 18 A. Yeah, so for Accessory Use it 19 "means a subordinate Use of a Building or other 20 Structure, or Use of land which is" "Conducted 21 on the same Lot as the principal Use to which 22 it is related, and" "Clearly incidental to, and 23 customarily found in connection with, such 24 principal Use." 25 So I think that pretty clearly
Page 79 1 A. That is correct, the entire 2 property. 3 Q. So that would include the chemical 4 manufacturing, that would include anything that 5 goes on with reference to that business on that 6 site -- 7 A. Yes, that's correct. 8 Q. -- you're in charge of it? 9 A. Yes. 10 Q. So would you consider your dock to 11 be an accessory use to your chemical plant? 12 A. I do think it's an accessory use, 13 yes. 14 Q. So you would say that that could be 15 permitted by right on that site if you made a 16 change to your dock, it would not require a 17 Special Use Permit; is that right? 18 A. I would review the zoning, but, I 19 mean -- and maybe even ask the town for 20 clarification, but, I mean, I would think that 21 would be the case, but we would still ask the 22 town for a determination to provide that. 23 Q. What about the wastewater that's in 24 the lagoon, that's part of your chemical 25 manufacturing process and what you do with your	Page 81 1 defines that anything like that could be an 2 accessory use. 3 Q. That's what you believe? 4 A. That is correct. 5 Q. What is your background in dealing 6 with zoning matters? 7 A. I have not been involved in a whole 8 lot of zoning matters, but a few here and 9 there, yes. 10 Q. So have you had any experience with 11 interpreting zoning ordinances? 12 A. I have since I've been here. 13 Q. Since November of 2022? 14 A. October, yes, sir. 15 Q. Basically what you're talking about 16 is this situation? 17 A. That's correct. 18 Q. And so that's really been your 19 first experience of having to interpret 20 ordinances, zoning ordinances? 21 A. I had one previous. This is my 22 second, yes. 23 Q. You say that you -- excuse me. 24 Did you start with Venator in 25 November, 2022?

Page 82	Page 84
1 A. October, 2022. 2 Q. You've not been with them prior to 3 that as Chemical Specialties? 4 A. Correct. 5 Q. Did you ever -- once you took over, 6 did you do an investigation of the zoning with 7 reference to that property prior to this matter 8 involving this lagoon? 9 A. Specifically as part of this 10 project, yes. But if you're talking about 11 outside of this project, no. 12 Q. Okay. Well, that's what I'm asking 13 about, is outside of this project. 14 A. No. 15 Q. The chemical plant has been there 16 for a long time; has it not? 17 A. Maybe 60 years. 18 Q. And are you aware of any of the 19 interactions between the town and the occupier 20 of that property with reference to zoning 21 during that 60 years, what had gone on prior to 22 the time you became involved with the company? 23 A. The only one that I am familiar 24 with is the one from when the tank farm was put 25 in place with a -- I forget -- it wasn't called	1 MR. THELEN: Objection. He's not 2 qualified to testify to how the ordinance would 3 make a distinction between those two things. 4 MR. KOCH: He's done a lot of 5 testifying to it up to this point. 6 MR. PATRICK: Objection overruled. 7 Please answer. 8 THE WITNESS: Can you repeat the 9 question? 10 Q. I'm trying to determine whether -- 11 at what point something becomes an accessory 12 use under the ordinance on this property. 13 And you said that basically, you 14 know, anything that was connected with it that 15 wasn't exactly chemical manufacturing would be 16 an accessory use, but yet these storage tanks 17 that deal -- they're not part of the 18 processing, they're part of the storage; are 19 they not? 20 Wouldn't that be an accessory use? 21 A. Somebody might -- could interpret 22 it that way. 23 Q. And it required a Special Use 24 Permit; didn't it? 25 A. At the time it required a
Page 83	Page 85
1 a Special Use Permit, it was another definition 2 back then, but yeah. 3 Q. Continual Use? 4 A. Conditional Use Permit. Thank you. 5 Q. And would that not be considered an 6 accessory use of the property? 7 A. I'm not sure about that. 8 Q. It sounds like, from what you said 9 the definition was, what you read in the 10 ordinance, that that would be another use 11 that's connected with the chemical 12 manufacturing. 13 It would be an accessory use that 14 requires a Special Use Permit, right? 15 A. No, I didn't say that. 16 Q. I'm saying it. 17 Do you not agree with me? 18 Is that not the same thing as what 19 you were talking about earlier? 20 A. I don't think it is because the 21 storage tanks are actually part of the chemical 22 process. 23 Q. So where does the chemical process 24 start and the accessory uses start, in your 25 opinion?	1 Conditional Use Permit. 2 Q. Well, Conditional Use Permit, the 3 statute just changed the name of it to Special 4 Use Permit, but it's the same thing; do you 5 understand that? 6 A. I have not seen the exact document 7 that says that the Conditional Use Permit was 8 changed to Special Use Permit. 9 Q. Well, it's in Chapter 160(D) of the 10 North Carolina General Statutes. You can 11 actually ask your Lawyer about that part. 12 What about -- don't you all have a 13 rail spur? 14 A. Yes, we do. 15 Q. Didn't you also have a parking lot 16 expansion that was part of that Special Use 17 Permit? 18 A. I'm not familiar with that piece of 19 it. 20 Q. Well, that was in March of 2002. 21 That was part of the Special -- the Conditional 22 Use Permit at that time; was it not? 23 A. I don't know. 24 Q. I thought I understood that you 25 said you went back and looked at that.

Page 86 1 A. I did, but I don't recall seeing 2 anything regarding a parking lot. 3 MR. KOCH: I think that's all the 4 questions I have. 5 MR. PATRICK: Questions from the 6 board? 7 MR. SCHAFFNER: Going off of the 8 accessory use string here, if the retention or 9 the solid waste disposal was not on site, would 10 that chemical production be able to take place 11 or would you have to come up with a different 12 strategy on how to finish that process? 13 MR. ROBINSON: If I'm just strictly 14 speaking about the chemical process itself, no. 15 We would just have to find alternative ways to 16 handle the waste. 17 MR. BRANHAM: So it could be done 18 without adding this pond -- or this dump? 19 MR. ROBINSON: If I'm strictly 20 answering the question, if it could physically 21 be done, the answer is yes. 22 MR. SCHAFFNER: And you may know 23 the answer to this: I think the proposed 24 landfill is a concrete-lined landfill, the 25 existing one is just a sediment pond.	Page 88 1 DAVID WASIELA, of lawful age, called for 2 examination, being first duly sworn, was 3 examined and said as follows: 4 EXAMINATION OF DAVID WASIELA 5 BY MR. THELEN: 6 Q. Can you state your name and your 7 address for the record, Mr. Wasiela? 8 A. David Wasiela. I live at 9 317 Brixham Place, Fort Mill, South Carolina. 10 Q. Thank you, Mr. Wasiela. 11 By whom are you employed? 12 A. ERM, Environmental Resources 13 Management, at the Charlotte office. 14 Q. What are your responsibilities at 15 ERM? 16 A. I'm the Senior Engineer and also 17 Technical Advisor for primarily solid waste 18 related projects. 19 Q. Have you been involved in Venator's 20 efforts to locate the onsite landfill that 21 we're talking about tonight? 22 A. Yes, I have. 23 Q. In what ways have you been 24 involved, Mr. Wasiela, generally speaking? 25 A. Generally speaking, we started in
Page 87 1 Is there any reason, in your 2 professional experience, that that new solid 3 waste disposal site would have to be concrete 4 lined? 5 MR. ROBINSON: I would have to 6 defer -- John is actually the person who knows 7 the detail on that. 8 MR. SCHAFFNER: So we can ask him 9 when he's up here. 10 MR. ROBINSON: Okay. Yeah. Sure. 11 MR. SCHAFFNER: Thank you. 12 MR. PATRICK: Thank you, 13 Mr. Robinson. 14 Do you have additional Witnesses? 15 MR. THELEN: I do, Mr. Chairman. 16 I'll call Dave Wasiela to the stand, please. 17 - - - - - 18 19 20 21 22 23 24 25	Page 89 1 2017, 2018 assisting Venator in, number one, 2 evaluating the waste that we currently have on 3 site and the best ways to manage that waste. 4 We went through several, different 5 scenarios. We looked at transporting off site. 6 One candidate was the Charlotte Motor Speedway 7 Landfill, which I know everybody here is 8 familiar with. They were looking at it as a 9 possibility of daily cover for their waste. We 10 actually got DEQ approval to run a pilot 11 demonstration project. Republic ended up not 12 wanting to use it as an alternate daily cover, 13 so that option went away. 14 We looked at de-watering and 15 sediment tubes, or geo-tubes, which you take 16 the sediment and you let it naturally de-water 17 and then haul it off site. That ended up not 18 being very cost effective for us to manage. 19 And then additionally, other 20 transport off sites were -- a lot of landfills 21 in this area are going to be out of air space, 22 you know, within 10 to 15 years, so it really 23 wouldn't be a long-term solution to haul off 24 site. 25 So after we evaluated how the

Page 90 1 material or the sediments that we have on site 2 behave, the ability to manage it and be able to 3 dry them out and dispose of it as a solid 4 waste, and do it on site and manage our own 5 destiny long-term on site, know it's done the 6 right way, was the appropriate way to go. 7 Q. Can you describe the proposed 8 onsite landfill and specifically why we're 9 putting this landfill on this property, why 10 Venator is putting this landfill on this 11 property, and how it's going to function on the 12 property in a little more detail than we've 13 heard tonight, but not saying anything too 14 detailed, that a Special Use Permit would be 15 necessary? 16 A. I'll tell you what, I'll cover it 17 in general, and then if you have any follow-up 18 questions about the details, feel free to ask 19 afterwards. 20 The onsite landfill is being, 21 number one, located where it is because it is 22 in very close proximity to our existing 23 Lagoon 5. Lagoon 5 sits in very close 24 proximity to the Rocky River. The landfill is 25 essentially being developed because the bigger	Page 92 1 The industrial landfill, that will 2 initially receive, just to put it in 3 perspective, about 30,000 to 35,000 cubic yards 4 of sediments out of the existing lagoon, so 5 it's a good chunk that has to be dealt with. 6 It will have a liner system, you know, included 7 in the high-density polyethylene liner, as 8 well. 9 MR. KOCH: I don't want to cut him 10 off, but I'm going to object. I don't think 11 any of this testimony is relevant to the issue 12 that's before this board tonight. I think 13 that's more in line with any questions we may 14 have on a Special Use Permit and what the core 15 project is about. 16 MR. PATRICK: Objection sustained. 17 Q. Mr. Wasiela, have you worked on the 18 design and construction of onsite landfills for 19 other industrial uses? 20 A. Yes, I have. 21 Q. Okay. And approximately how many 22 ballpark? 23 A. Ballpark, probably ten to twelve 24 for different industries, battery 25 manufacturers, fiberglass manufacturers and the
Page 91 1 fish to fry on site is, Lagoon 5, which has 2 been in operation since sometime in the 3 Seventies and has functioned well and served 4 its purpose, but you can imagine just a tiny 5 bit of sediment at over 50 years adds up. 6 We're getting to the point of a capacity issue 7 in the near-term future, and we need to do 8 something to clean the pond out. 9 That initially started the need for 10 the onsite landfill, how to manage those 11 sediments we clean out, and be able to manage 12 them effectively. 13 Number two is the existing lagoon 14 is unlined. It was built in the Seventies. 15 Regulations were, let's just say, not as 16 stringent as today's. And we see an 17 opportunity to install a liner system in the 18 new lagoon and still continue to use it as a 19 wastewater treatment receiving lagoon for the 20 facility, but install high-density polyethylene 21 liners, the same liner system you see in your 22 municipal solid waste landfills throughout the 23 country. That is where it will have a concrete 24 liner on top of that liner system for 25 protection.	Page 93 1 pulp and paper industry -- 2 Q. Okay. In your -- 3 A. -- and power industry. 4 Q. In your experience, are onsite 5 landfills, like the one proposed, customarily 6 found in connection with industrial uses such 7 as Venator's chemical plant? 8 A. Yes, they are quite commonplace and 9 we see them throughout the Carolinas. I will 10 say you can consider it to be commonplace even 11 further because North Carolina has a separate 12 set of regulations just for onsite industrial 13 landfills that only receive waste generated on 14 site. 15 Q. Okay. Can you turn to Tab 1 very 16 quickly, which is Exhibit 1? 17 It's the June, 2022 e-mail from 18 Ms. Stein to the town's staff. 19 A. Yes. 20 Q. And you're copied on that e-mail; 21 is that correct? 22 A. Yes. 23 Q. Okay. In your experience working 24 on onsite landfills in other jurisdictions, is 25 zoning a part of the construction process or at

Page 94 1 least with regard to the development process of 2 those onsite landfills? 3 A. I would say it's more fair to say 4 it's one of the first steps in the permitting 5 process for the majority of the landfill types. 6 Q. Is that why you're on this e-mail, 7 because this is at the outset more or less of 8 this process? 9 I know you mentioned 2017. 10 But is this part of that zoning 11 process that you mentioned with regard to 12 onsite landfills? 13 A. Yes, that would be correct. 14 Q. Okay. And is it your understanding 15 that this e-mail is sent because town codes can 16 be confusing, they can be broad, they can 17 overlap, and so a property owner or an engineer 18 like yourself might want to seek confirmation 19 from a jurisdiction as to how the zoning 20 process would play out with regard to the 21 proposed use? 22 A. Yes, that is standard practice. 23 Q. Okay. Is this e-mail, in your 24 view, that standard practice in written form? 25 A. Yes, I would agree.	Page 96 1 CONTINUED EXAMINATION OF KEVIN ROBINSON 2 BY MR. KOCH: 3 Q. I'm trying to make sure I pronounce 4 your name correctly. 5 A. Wasiela. 6 Q. Thank you. 7 A. Thank you for asking. 8 Q. Mr. Wasiela, dealing with the 9 zoning is not part of what your job is, is it? 10 A. No, sir, not primarily. 11 Q. And did I understand you to say 12 that with reference to dealing with the waste 13 for this project or for this property and this 14 chemical plant, you've gone through several 15 different ways to try to deal with it; is that 16 right? 17 A. Different options were considered. 18 Q. So this has been going on for a 19 long time before 2021; is that correct? 20 A. For evaluating the best ways to 21 approach the project, yes. 22 Q. And as you said, zoning becomes an 23 issue at the very start with reference to what 24 kind of project you're going to propose; does 25 it not?
Page 95 1 MR. THELEN: Okay. I have nothing 2 further, Mr. Chairman. 3 MR. PATRICK: Thank you. 4 - - - - - 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 97 1 A. It does for site suitability 2 requirements for a landfill. 3 Q. So if you were going to do 4 something on site, you would have to consider 5 the zoning; is that correct? 6 A. Depending on the activity chosen, 7 yes. 8 Q. So there has been quite a bit of 9 activity with reference to what ultimately 10 became the project you settled on prior to this 11 project being the one that you settled on; is 12 that correct? 13 A. Yes, there was consideration of the 14 other options. 15 Q. The ones that you described earlier? 16 A. Yeah. Those weren't all, I was 17 just -- 18 Q. There were more? 19 So how long have you been working 20 on this? 21 A. I believe we started in the 2017, 22 2018 time frame. 23 MR. KOCH: That's all the questions 24 I have. That's all the questions I have. 25 MR. PATRICK: Okay. Questions from

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1 the board? 2 MR. BRANHAM: So Venator was given 3 several options to pick from, and this is the 4 one they chose? 5 MR. WASIELA: I would rephrase 6 that. Not to pick from. We were working with 7 Venator throughout the process, kind of -- we 8 worked with a corporate person out of England, 9 as well as the folks on site, because the 10 people on site have to deal with the waste 11 every day, so it's only correct to have them 12 involved in the process, as well. 13 So, you know, we just bounced ideas 14 off of each other. We coined the phrase 15 "optioneering," is what we were doing. We were 16 trying to figure out the different avenues we 17 could follow. 18 MR. BRANHAM: And how much did cost 19 come into the decision? 20 MR. WASIELA: Actually, cost, the 21 one on the table wasn't the cheapest. The one 22 that we were really hoping for was that 23 Charlotte Motor Speedway could use the 24 sediments as alternative daily cover for their 25 waste. But also, like I said, we're starting	1 MR. PATRICK: So you were hired to 2 review the applicability of what -- 3 MR. WASIELA: To advise. 4 MR. PATRICK: To advise? 5 MR. WASIELA: Yeah. 6 MR. PATRICK: Okay. It seems like 7 you are more -- since you are a PE and what you 8 do, that you would be more -- you would be the 9 person to be answering this question. 10 Why was it decided for Ms. Stein to 11 submit the applications and generate all these 12 e-mails if you were hired for that role? 13 MR. WASIELA: For the clarification 14 in the letter we needed from Harrisburg to 15 submit for a permit application. That's why we 16 were making the request. 17 MR. PATRICK: I'm a little confused. 18 You were hired to review the zoning 19 of the property to make sure it worked? 20 MR. WASIELA: No. I'm sorry. No. 21 One of our application for permit requirements 22 is to receive a letter from the Town of 23 Harrisburg, since you're the local municipality 24 government where the property is located. So I 25 reached out to Jonna and said, "We need to get
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1 with 30 to 35,000 cubic yards of material in 2 the lagoon that needs to come out so we can 3 reconstruct the lagoon. That would have put 4 about three to 4,000 trucks on the road leaving 5 the facility and going to the landfill nonstop 6 for three to four months, which nobody wanted 7 either. 8 MR. BRANHAM: Thank you. 9 MR. PATRICK: Are you a 10 Professional Engineer in the State of North 11 Carolina? 12 MR. WASIELA: Yes. I am a 13 Professional Engineer licensed in North 14 Carolina, South Carolina and Arkansas. 15 MR. PATRICK: And were you hired by 16 Venator to review the zoning and those items or 17 just investigate the processing of the waste? 18 MR. WASIELA: My role is to review 19 the state regulations for the permitting of the 20 landfill. Part of that and the site 21 suitability requirements is to receive a letter 22 from -- that's why I advised Jonna Stein to use 23 that specific language from NC DEQ Regulations, 24 to make sure we were meeting the requirements 25 of the Solid Waste Permit needed.	1 this letter from the Town of Harrisburg. And 2 this is the permit requirement or the 3 regulation requirement we need to meet." 4 MR. PATRICK: So you did not 5 independently evaluate the uses as per the 6 attachment as part of Exhibit A? 7 MR. WASIELA: I reviewed it in the 8 sense that I found out that it was UDO adopted 9 not too long ago before we started this 10 process, and I did look at the different uses. 11 I was quite surprised -- I have never heard of 12 Employment Center before. I do recall reading 13 that part and finding a chemical manufacturing 14 facility as an Employment Center. I remember 15 that seemed odd to me. So I did review it. 16 I mean, this is, you know, some 17 time ago now, so I'm trying to remember 18 specifics. But I do remember asking Jonna to 19 get our specific language included in a letter 20 from the town so we could meet the state 21 requirements. 22 MR. PATRICK: As part of the 23 letter? 24 MR. WASIELA: As part of the 25 letter.

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1 MR. PATRICK: But you did not 2 independently evaluate whether the zoning was 3 permitted, for instance, by right of requiring 4 a Special Use Permit, and didn't communicate 5 that to Venator? 6 MR. WASIELA: I'm trying to 7 understand your -- oh, from what I read, and I 8 did review it, it seemed that it was permitted 9 by right when I looked at permitting and 10 industrial landfills on site. 11 MR. PATRICK: And that was -- you 12 communicated that to your client? 13 MR. WASIELA: Yes. But I enforced 14 that we still needed the letter confirming that 15 from the Town of Harrisburg. 16 MR. PATRICK: So your goal was to 17 achieve the letter, and that was about it? 18 MR. WASIELA: Yes. I live in that 19 permitting world. 20 MR. PATRICK: Okay. No further 21 questions. 22 Do you have any more Witnesses? 23 MR. THELEN: No, I do not, 24 Mr. Chairman. Thank you. 25 MR. PATRICK: Thank you very much.	1 (Recess taken.) 2 - - - 3 MR. PATRICK: We'll reconvene. At 4 this time, the town staff will give their 5 presentation. 6 MR. GORDON: Good evening, board 7 members. My name is Zac Gordon. I'm the 8 Planning Director for the Town of Harrisburg 9 since October of 2022. Prior to that, I have 10 30-plus years' experience in varying 11 capacities, including Planning Director for the 12 City of Kannapolis prior to Harrisburg. 13 Let me just run through this 14 quickly. I don't want to belabor the point. I 15 want to get right to the fact of the matter. 16 So it's already been pointed out 17 there was a Conditional Use Permit granted 18 to -- by the town to Chemical Specialties for 19 additional storage tanks, a rail spur and 20 parking lot expansion. There was a lot of 21 discussion about this being an accessory use. 22 I'd like to just read from the 23 order that was granted back in 2002. This was 24 the unanimous vote, five zero, for the 25 Conditional Use Permit granted. The order was
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1 It's five till eight. I think what 2 we'll do is take probably a five to ten-minute 3 recess, and then we'll come back and the staff 4 will present, and then they will have an 5 opportunity to cross-examine staff, and any 6 other Witness testimony that's necessary. 7 Obviously you both will have an 8 opportunity for rebuttal. And then we'll 9 basically turn it over -- we'll close the 10 evidentiary portion of the hearing, and then 11 the board will go through some findings of 12 facts, and then we'll get to the end of this 13 thing. 14 So if there's a motion to take a 15 short recess, I'd appreciate it. 16 MR. SCHAFFNER: Motion. 17 MR. BRANHAM: Second. 18 MR. PATRICK: All in favor? 19 Aye. 20 MR. SCHAFFNER: Aye. 21 MR. BRANHAM: Aye. 22 MR. ROSS: Aye. 23 MS. LONG: Aye. 24 MR. PATRICK: Ten minutes, 25 everybody.	1 the 25th day of March, 2002. "It is the 2 Board's conclusion that the proposed 3 construction of the 1,825,500 gallon storage 4 tank, a railroad spur to the proposed tank's 5 location, and an additional parking area will 6 meet the requirements of the Unified 7 Development Ordinance that has been adopted 8 about the Town of Harrisburg, in addition to 9 the conditions set forth by the this board to 10 the study by the Cabarrus County 11 Planning Department concerning the need for an 12 access turn lane at Chemical Specialties on 13 Pharr Mill Road, and the need for additional 14 screening and/or buffering." 15 And I won't get into the findings 16 of fact, but just to point out that this was a 17 significant addition. And I certainly would 18 not characterize it as accessory. Accessory 19 uses are typically those uses which do not 20 require the approval of either this board or a 21 legislative body, but they are administrative 22 in nature. Think of a garage or swimming pool 23 or even a small cooler on the side of a 24 restaurant. 25 So in the spring, 2022, there is a

Page 106 1 Pre-Application Meeting, which you've already 2 heard about, with Venator for a proposed 3 industrial landfill on site. You've heard 4 about the letter, August 19, 2022, from the 5 Code Enforcement Officer, Tom Lesser, to Jonna 6 Stein with Venator Chemicals regarding -- and I 7 will get into this a lot more -- the proposed 8 use for the site. 9 Following the Pre-App Meeting, 10 there was a follow-up meeting with the town and 11 with Venator to discuss the proposed use. And 12 that is a use that we're still processing. And 13 I will point this out -- well, let me wait 14 until my next slide. 15 And so in October we did provide 16 some additional guidance on the site plan 17 approval process. 18 In November, November 2, there was 19 a summary of a Pre-Application Meeting. And in 20 that Pre-Application Summary, the findings were 21 very clearly that a Special Use Permit was 22 required. That was very clear. 23 November 15, Shelley DeHart, 24 Assistant Planning Director, sends an e-mail to 25 Michael Thomas reiterating the need for a	Page 108 1 landfill use. That essentially is what the 2 representation in the application is stating. 3 The appeal application states this, quote, "The 4 Zoning Verification Letter issued August 19, 5 2022 represents 'a final and binding 6 interpretation' of the town's laws, that the 7 proposed onsite industrial landfill is 8 permitted as of right on the property and does 9 not require a Special Use Permit." Pretty 10 definitive statement. 11 MR. BRANHAM: Now, is that from you 12 or from them? 13 MR. GORDON: That is from them. 14 That's from their application. That's from 15 their appeal application. That's their 16 representation. 17 Our response is that the Zoning 18 Verification Letter does not indicate a Special 19 Use Permit is not required. You can read that 20 letter over and over. You're not going to find 21 anything in this letter that indicates a 22 Special Use Permit is not required, number one. 23 The letter does state that, "Any 24 proposed use must secure all appropriate and 25 necessary approvals from all regulatory
Page 107 1 Special Use Permit for the proposed industrial 2 landfill by Venator Chemicals. 3 November 15 -- yes, I'm sorry. 4 That's a repeat. 5 December 1, Special Use Permit 6 submitted by the applicant, by Venator, for the 7 proposed industrial landfill. 8 December 15, Venator submits an 9 appeal to the administrative decision by town 10 staff that the Special Use Permit was required 11 for the proposed industrial landfill. And 12 that's why we're here. 13 So I'm going to focus on the 14 appeal. And I'm going to focus on the 15 allegations in the appeal. 16 You've seen this visual. This is 17 the site map. You can see the location of the 18 proposed industrial landfill on the site. And 19 you've heard testimony about the process for 20 that. And I'm not going to go over that. I 21 think that's something that would be the 22 subject of a Special Use Permit. 23 So let's get right to the 24 application points of appeal. The August 19 25 Zoning Verification Letter approves the	Page 109 1 agencies for which the parcel is located." 2 As noted, staff advised Venator on 3 November 2 and November 15 of the need for a 4 Special Use Permit for the proposed industrial 5 landfill. 6 The letter further notes the 7 property is governed by the rules and 8 regulations by the Harrisburg Unified 9 Development Ordinance. I think that's 10 important to point out. 11 Let me continue. Neither of these 12 statements in the August 19 letter that I just 13 quoted from represent that a Special Use Permit 14 is not required. 15 It's stated in the letter that the 16 property conforms to all requirements of the 17 Harrisburg Unified Development Ordinance, which 18 refers to the current, not the future use of 19 the property, as there were no final approvals 20 granted by the town for site development. So 21 that was a snapshot. 22 A Zoning Verification Letter, which 23 this was, essentially will tell you whether the 24 proposed -- or the use that you have planned or 25 will do is allowed. And so the statement in

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1 the letter that indicates the current zoning is 2 an approved zoning class for the proposed 3 onsite industrial landfill, that is a true 4 statement, subject to a Special Use Permit. 5 And as I already said, there was a requirement 6 that you meet all the rules and regulations for 7 the town of Harrisburg per the UDO. 8 In addition, I would just point out 9 that an administrative officer is not empowered 10 to waive a requirement in this case for a 11 Special Use Permit in the town's Unified 12 Development Ordinance. It doesn't have that 13 right. 14 The other representation that was 15 made in the appeal application is that the 16 November 15 e-mail determination for Special 17 Use Permit is erroneous. So if you look up the 18 word "erroneous," that means wrong or in error. 19 Very important. I want you to remember that. 20 The appeal application states the 21 proposed onsite industrial landfill is not a 22 Heavy Industrial use. That's a pretty 23 definitive statement. Our response is that 24 within the EC Zoning District, Heavy Industrial 25 uses within the EC Zoning Districts require a	1 the ordinance where you would process that 2 Special Use Permit. 3 The second point that I would make 4 or that was made in the application is the 5 follow-up to what I just shared, that the 6 e-mail determination is erroneous. And it goes 7 on to say that "The proposed industrial 8 landfill is either a light industrial use or a 9 waste related use, both of which are permitted 10 by right." 11 Okay. So my job as the Planning 12 Director and our job as the staff of the town 13 is to apply the zoning ordinance, the UDO, to 14 interpret the ordinance, to read the ordinance. 15 So let's look at what Light Industrial says. 16 "Light Industrial means a use category 17 containing uses engaged in the manufacturing, 18 assembly, or processing of industrial, business 19 or consumer goods; usually from basic finished 20 inputs such as metal, stone, glass, plastic, or 21 rubber. Contractors and building maintenance 22 services and similar uses perform services 23 off-site. Few customers, especially the 24 general public, come to the site." 25 You'll notice that there's one word
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1 Special Use Permit in accordance with 2 Section 140.04.06-D. 3 Now, the applicant's claim that the 4 proposed industrial use is not Heavy 5 Industrial, staff would refer the board to the 6 definition for Heavy Industrial found within 7 the UDO. And I'm just going to read a portion 8 of this. "Heavy Industrial means a use 9 category containing uses engaged in the 10 manufacturing, assembly or processing of 11 chemicals," "Factory production and industrial 12 yards are located here." I'm not going to go 13 through the rest of the uses. The key word 14 there is "chemicals." 15 Based on this definition, the 16 proposed landfill is a Heavy Industrial use, 17 which is why the determination was made that a 18 Special Use Permit is required. 19 This is the Table of Uses, 20 Table 140.02.02 02, Permitted Uses by 21 Nonresidential and Mixed-Use Zoning District. 22 And you can see that I've circled "Heavy 23 Industrial" uses. You can see for the EC Zone, 24 it's permitted by Special Use Permit, and you 25 see the reference to the applicable section of	1 missing from this description, and that is the 2 word "chemical" or "chemicals." 3 Let's pick up the second part of 4 the representation: "The proposed onsite 5 industrial landfill is either a light 6 industrial use or a waste related use, both of 7 which are permitted by right." 8 So let's look at the waste related 9 use. There was a lot of discussion about what 10 a waste related use is. Let's look at what the 11 ordinance says it is. "Waste related use means 12 a use category containing establishments that 13 receive" -- a very important word, "that 14 receive solid or liquid waste from others" -- 15 "others" is another important word -- "for 16 treatment or transfer to another location and 17 uses that manufacture or produce goods or 18 energy from the large-scale composting of 19 organic material." 20 By the testimony and 21 representations of Counsel for the application, 22 as well as the Witnesses, there is no receipt 23 of solid or liquid waste from others, and it is 24 not being transferred anywhere else. It is 25 staying on the site. So Waste Related Use

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1 means the proposed industrial landfill would 2 have to be receiving something from outside, 3 and that is not the case. The proposed 4 industrial landfill would not qualify as a 5 Waste Related Use since it would not receive 6 solid or liquid waste from others for treatment 7 or transfer to another location. 8 Venator's appeal is based on two 9 arguments, that the August 19, 2022 letter from 10 Tom Lesser to Jonna Stein approves the proposed 11 landfill use, and, second, the November 15, 12 2023 e-mail regarding industrial landfill use 13 incorrectly or erroneously, as the applicant's 14 application reads, is classified as a Heavy 15 Industrial Use, and that the use is allowed by 16 right as either light industrial or a waste 17 related use. 18 And so again, in summary, our 19 response is that the 8-19-22 letter neither 20 approved the proposed industrial landfill use, 21 nor relieved the applicant from the requirement 22 for Heavy Industrial use to obtain a Special 23 Use Permit. 24 Second, an Administrative Officer 25 for the town cannot unilaterally waive a UDO	1 MR. PATRICK: Okay. Does the board 2 have any questions? 3 MR. ROSS: I have one. 4 Did I hear y'all say that Venator 5 did submit a Special Use Permit in December? 6 MR. GORDON: Yes. 7 MR. ROSS: Okay. 8 MR. PATRICK: On that Permit 9 Application did they -- was there a space or 10 did they indicate what the use was? 11 MR. GORDON: Well, the use was for 12 the industrial land use. 13 MR. PATRICK: Did they have to 14 indicate the zoning classification, in other 15 words, light industrial waste, heavy? 16 MR. GORDON: I don't recall. 17 MR. PATRICK: You don't recall. 18 This property is currently under a 19 Special Use Permit that was previously known as 20 a Conditional Use Permit. 21 MR. GORDON: Yes. 22 MR. PATRICK: On the original 23 application of March, I think you said, of 24 2022, did that application indicate whether it 25 was Heavy Industrial waste or otherwise?
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1 requirement, in this case, the requirement for 2 a Special Use Permit. 3 With respect to the 11-15-2023 4 e-mail, the UDO definition clearly identifies 5 the proposed industrial landfill as a, quote, 6 Heavy Industrial use, as it is involved in the 7 processing of chemicals. The argument that the 8 proposed industrial landfill is a use permitted 9 by right because it is either light industrial 10 or waste related use is also not supported by 11 the definitions for these uses, and these are 12 the definitions that we refer to for this use, 13 for any use that comes before us. 14 In conclusion, based on the facts 15 that we've presented, town staff believes the 16 determination of a requirement for a Special 17 Use Permit was properly made, is consistent 18 with the UDO and, therefore, should be upheld 19 by the Board of Adjustment. 20 I'm available for questions. 21 MR. KOCH: Mr. Chairman, I'm not 22 going to ask a staff member questions, but 23 certainly he can be cross-examined. 24 MR. THELEN: I don't have any 25 questions on cross, Mr. Chairman.	1 MR. GORDON: I'm just pulling it up 2 right now. 3 The application indicates only that 4 the current zoning classification at the time 5 was I-1, which is light industrial. The 6 existing land use is manufacture of industrial 7 inorganic chemicals. And that was it. That's 8 all we got. And then, of course, the storage 9 tanks, the railroad spur and the parking lot 10 expansion were all part of that. 11 MR. PATRICK: And you were not the 12 Director at the time? 13 MR. GORDON: No. That was 2010. 14 MR. PATRICK: And the UDO was 15 rewritten and adopted when? 16 MR. GORDON: August, 2021. 17 MR. PATRICK: Prior to any of this 18 taking place? 19 MR. GORDON: Correct. 20 MR. BRANHAM: Okay. Tom Lesser was 21 an Administrative Officer? 22 MR. GORDON: Tom Lesser is a Code 23 Enforcement Officer for the town. 24 MR. BRANHAM: So at the time of the 25 August 19, 2022 letter, he was authorized to

Page 118 1 write this letter? 2 MR. GORDON: Tom will write Zoning 3 Verification Letters. In looking at this 4 Zoning Verification Letter, again, I think that 5 at least to me it's very clear that this is a 6 very pro forma letter. It tells you who the 7 owner is, the location, the zoning. It tells 8 you whether there is a conditional use overlay, 9 are there any special exemptions, not a special 10 exception, are there any violations, is it 11 located within the town's limits, what are the 12 abutting uses, any violations, et cetera, 13 et cetera. 14 Again, this letter essentially is a 15 snapshot of the site. This letter is not an 16 approval. It is in effect an administrative 17 assessment of the use currently. And at this 18 point -- or at that point, again, I pointed out 19 I think several references to compliance with 20 rules and regulations of the Town of 21 Harrisburg. So the applicant is not absolved 22 from those requirements. And again, we are 23 processing that application as we speak. 24 MR. BRANHAM: I'm still having a 25 hard time wrapping my head around the current	Page 120 1 Use Permit is the piece of evidence that they 2 require ultimately, not an administrative 3 statement that it's eligible for a use 4 potentially. 5 MR. THELEN: I'll object to that 6 statement at the end, Mr. Chairman, as being 7 speculative. 8 MR. PATRICK: Could we ask you to 9 clarify what you meant by what DEQ -- 10 MR. GORDON: Sure. So DEQ -- and 11 again, the letter references the applicable 12 code, 15A NCAC 13B.0504. DEQ requires the 13 local government -- somewhat of a chicken-egg 14 situation. They want to know that you're going 15 to approve it before they approve it because 16 they don't want to approve something that 17 requires an approval that if you grant it would 18 be a moot point, and they go through all of 19 their processes. 20 But at the outset, what the state 21 requires is -- and they make this 22 determination, whether the site is suitable for 23 the proposed use, in this case, an industrial 24 landfill. Again, to my knowledge, that site 25 suitability has not been granted. And I did
Page 119 1 zoning is an approved zoning class for proposed 2 onsite industrial landfill. I mean, if 3 somebody tells me that, I'm going to go build a 4 landfill. 5 Why wouldn't I? 6 Who was authorized to tell this 7 company they could build this landfill? 8 MR. GORDON: Yeah, and again, in my 9 mind, this statement, "current zoning is an 10 approved zoning class for the proposed onsite 11 industrial landfill," that's a true statement, 12 however, there's also a requirement for a 13 Special Use Permit for an industrial heavy use. 14 And that's the point that I think is critical. 15 There is nothing in this letter which said that 16 a Special Use Permit was not required and that 17 the use could proceed. 18 As a matter of fact, this 19 particular letter would have to be followed up 20 by at least a site plan approval. You could do 21 nothing without that. 22 I would also point out that to our 23 knowledge, there still has not been any site 24 suitability approval granted for this site. 25 And I suspect that may be because the Special	Page 121 1 not hear anything tonight that says it has been 2 granted. Without that site suitability 3 determination, there is no permit. That's a 4 precursor to the granting of a permit for the 5 use that's being proposed. So it is a state 6 process. 7 MS. LONG: So how complete do you 8 consider the August 19 letter for consistency, 9 that the town's Code Enforcement Officer, Tom 10 Lesser, sent out? 11 How complete do you consider that, 12 given that you stated that that line on the top 13 of current zoning is an approved zoning class 14 for the proposed onsite industrial landfill, 15 and you stated subject to an SUP? 16 How complete is this letter? 17 Is it misleading? 18 MR. GORDON: So the statement that 19 it's an approved zoning class would mean that 20 the EC Zone would be a zoning class for which 21 you could conduct a certain use. Again, it is, 22 in my mind, conspicuous by its absence that 23 there's no mention about a need for a Special 24 Use Permit or no need for a Special Use Permit. 25 And so this is why we've been processing this

Page 122 1 again since November. We let the applicant 2 know that, we made the determination, they 3 submitted an application, and we're proceeding 4 with the review of the Special Use Permit. And 5 that's underway as we speak. 6 But as far as the zoning, again, I 7 think the representation was that this letter 8 was in part crafted by the applicant, and I 9 would say that it was probably inartfully done 10 because that is not a -- this statement should 11 not be -- you should not read into this 12 statement that anything you wanted to do then 13 would be admissible -- permissible under that 14 statement. That's a pretty broad statement. 15 Certainly not an accessory use that would 16 involve the placement of an industrial landfill 17 on a site. 18 MR. SCHAFFNER: Is it safe to say 19 that a landfill is a permitted use, but 20 requires a Special Use Permit in order to be 21 constructed? 22 MR. GORDON: Correct. 23 MR. SCHAFFNER: That's basically 24 what you're saying? 25 MR. GORDON: Right.	Page 124 1 table and you said, "Well, it's zoned 2 residential." 3 And they said, "Well, I need a 4 letter for my bank, before they'll loan me 5 money for this property, that I can put a house 6 on this property." 7 MR. GORDON: Right. 8 MR. PATRICK: And if they asked you 9 for that letter, you would produce a similar 10 letter to this, I would expect, yes? 11 MR. GORDON: We would produce a 12 similar letter. Obviously the facts would be 13 different. But yes, we would make a 14 determination and address the -- either 15 approval or it not being approved or 16 appropriate for that zoning. 17 MR. PATRICK: And I think it would 18 be unreasonable to say, "However, you can't 19 build right up to the property line, it can't 20 be ten stories tall, it has to have egress 21 openings in every bedroom," on down the line 22 for everything that the code requires, just 23 that a house can be built on that property, you 24 must follow everything else? 25 MR. GORDON: Yes. So the permit
Page 123 1 MR. SCHAFFNER: That's what 2 Table 140.02.02-2 describes, is that it is a 3 permitted use, it's not a prohibited use, it's 4 not prohibited or permitted with limitations, 5 but it does require a Special Use Permit in 6 order to be constructed? 7 MR. GORDON: Yes. 8 MR. SCHAFFNER: Thanks. 9 MR. PATRICK: Before we get too far 10 away, you had an objection, and we need to make 11 sure we deal with that. 12 MR. THELEN: The restatement of the 13 answer cleaned up the issue about which I was 14 objecting, which is the speculation of why the 15 state has not approved the site suitability. 16 MR. PATRICK: So you're satisfied 17 with the clarification? 18 MR. THELEN: Yes, I'm satisfied. 19 The first answer, no, but the clarification. 20 MR. PATRICK: So can I put a 21 hypothetical out there to try to distill this a 22 little bit? 23 Let's say someone came to you and 24 said, "I want to build a house on my property." 25 And you went and you looked at the	Page 125 1 would be issued by us, and all our permits 2 specifically for homes would then be subject to 3 the regulations of the Cabarrus County 4 Building Department, which would then be 5 managed by them at that point. But there's a 6 process. 7 MS. LONG: Is it standard operating 8 procedure for staff to request that applicants 9 or their representatives take what they want to 10 see in a letter in terms of an approval or such 11 situation as we have here with the former 12 employee for the town? 13 MR. GORDON: So let me address that 14 this way: I became Planning Director in 15 October of 2022. The letter that you're 16 referring to, August 19, was prior to my 17 becoming the full-time Planning Director for 18 the town. There was an interim period. During 19 that interim period, I was an employee of 20 another firm, and I was providing services to 21 the town. In that capacity, it was primarily 22 maintenance and making sure that everything was 23 being processed accordingly. But when I became 24 Planning Director, the process and the 25 procedures were reviewed, and I can tell you

Page 126 1 that at this point in time, we would not 2 request guidance from an applicant as to how we 3 should write our zoning clearance letter. 4 MR. PATRICK: Any more questions? 5 MS. LONG: Is there a standard 6 format when you, from your perspective, of 7 course, make a final determination as far as 8 zoning? 9 Is there a standard letter, other 10 than this letter of consistency that we are 11 looking at, that's like, "Okay, I'm Director, 12 this is it, this is the final ruling, this is 13 my final interpretation"? 14 Is there a standard letter of some 15 sort, other than this letter about consistency? 16 MR. GORDON: I don't have a 17 standard form, but we do use a standard form 18 letter that would insert as appropriate 19 whatever the -- whatever would be the 20 appropriate approval or language for that use. 21 And again, these letters are issued for 22 everything from mortgage companies, title 23 searches, you know, someone who is perhaps 24 doing a due diligence search of a property and 25 wanting to know if there's any violations, Page 127 1 confirming zoning. So this is a fairly routine 2 matter. But every letter can be different. 3 You know, there's really not too many that are 4 exactly the same. They're all different. 5 MS. LONG: Okay. So when you 6 receive a Pre-Application Meeting such as 7 Exhibit 3, which I believe the applicant 8 completes, and it was mentioned that 9 Conditional Use Permit was not checked, the box 10 was not checked, do you expect this document to 11 be like pristine and thorough with every box 12 checked and it's just almost like a final 13 product or is this something that's somewhat 14 breathing and living and you guys meet together 15 and you make changes as necessary or do you 16 take into consideration there may be an 17 oversight, something left off that should have 18 been there or maybe the applicant didn't know? 19 How do you expect to see this 20 Pre-Application Meeting Summary in terms of its 21 completeness and accuracy? 22 MR. GORDON: So again, I'm speaking 23 from my tenure as Planning Director. We do 24 review these. We make sure that they're 25 correct and appropriate. And that is our	Page 128 1 procedure. And that's our process. 2 So I will say this: The process 3 has been going on now for 18 months, 15 months, 4 and ultimately we got to the right decision. I 5 would say that it is a contributing factor, 6 there was a transition period, and there could 7 have been some gaps. So, you know, I would say 8 that we landed where we should have landed, and 9 that's what matters, and the ordinance is 10 upheld, and we're not going to approve 11 something that requires a Special Use Permit 12 unless a Special Use Permit is acquired. 13 MR. PATRICK: Are there any other 14 Witnesses? 15 MR. KOCH: Mr. Chairman, I don't 16 know if Mr. Thelen has any more questions. 17 MR. PATRICK: I'll give him an 18 opportunity in just a second. 19 MR. KOCH: What we had planned to 20 do was have the Planning Director testify from 21 the Staff Report, which pretty much covers the 22 evidence from the town's perspective. 23 And then we do have Mr. Lesser and 24 Ms. DeHart that are available, they're here in 25 the room in the back, as Witnesses if anyone Page 129 1 wanted to ask them questions. Our intention 2 was not to separately call them because I think 3 most of what they can testify to -- maybe all 4 of what they could testify to has already come 5 into evidence, it came in through the Staff 6 Report. 7 MR. PATRICK: Well, certainly 8 they're available to be called on. I think the 9 board understands that. 10 MR. KOCH: I don't have any 11 questions of them. I don't plan to call them 12 as Witnesses. 13 MR. PATRICK: So you have no 14 additional Witnesses? 15 MR. KOCH: No additional Witnesses. 16 MR. PATRICK: Okay. Understood. 17 MR. KOCH: Sorry for the 18 long-winded answer. 19 MR. PATRICK: Understood. 20 Would you like to provide a 21 rebuttal to his presentation? 22 MR. THELEN: No. Thank you, 23 Mr. Chairman. 24 We did discuss, though, the motion 25 of closing. I would have just a brief closing,
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Page 130 1 maybe five to seven minutes at the end of all 2 the testimony before you go to break, 3 Mr. Chairman. 4 MR. PATRICK: I think that's 5 reasonable. 6 MR. KOCH: That's where I come in, 7 is I'm going to do the closing for the town. 8 MR. PATRICK: Okay. 9 MR. THELEN: I would also move for 10 the admission of all of my Exhibits. I'm 11 sorry, Mr. Chairman, I neglected to do so at 12 the close of our case. I'd move for the 13 admission of our Exhibits 1 through 12 in the 14 binder, for the record. 15 MR. PATRICK: Any objection? 16 MR. KOCH: No objection. And I 17 need the same for the Staff Report. 18 MR. PATRICK: Any objection? 19 MR. THELEN: No. 20 MR. PATRICK: So both the Staff 21 Report and your materials will be admitted into 22 evidence. 23 I did have one final question for 24 Venator, probably Ms. Stein. 25 Could you come up to the podium,	Page 132 1 our thought was to try to keep our options open 2 and work both paths in parallel. However, I 3 think an unintended consequence of that is that 4 the town decided, "Well, let's just proceed 5 with the appeal and then decide whether or not 6 we would then need to proceed to a Special Use 7 Permit hearing." 8 And like Jonna mentioned, the 9 consideration was there's a specific time 10 window during the year -- there's a tricolored 11 bat in the area, and so you can't cut or grub 12 trees during their nesting period, which I 13 think is from April 1 to like November 15, 14 somewhere around in there, so we're pushing up 15 against that, so we were trying to work both of 16 those paths in parallel. That's the reason 17 that the Special Use Permit Application was 18 submitted. 19 MR. PATRICK: If there are no more 20 questions, we'll let you do your closing 21 remarks. 22 MR. THELEN: Can you go back to 23 Slide 7 in the PowerPoint? 24 Thank you. 25 - - - - -
Page 131 1 please? 2 Could I ask why Venator submitted a 3 Special Use Permit if you do not believe that 4 it's required? 5 MS. STEIN: I think we were advised 6 by Counsel to submit the Special Use Permit. I 7 think that's the way that happened. 8 Is that the way you remember it? 9 I can speak to that. So we're on 10 some regulatory deadlines for this project. We 11 have bats in the area. We have only certain 12 time periods to cut trees. And so we were 13 trying to expedite the process so that we could 14 meet the deadline for the project. And I think 15 we were trying to work a parallel time with the 16 appeal and the permit. And the town come back 17 and said, "Let's deal with the appeal, and then 18 if we need to, we'll deal with the Special Use 19 Permit." 20 MR. PATRICK: Mr. Robinson, did you 21 want to add something? 22 MS. STEIN: That's the way I 23 remember it. 24 MR. ROBINSON: Yes, that's exactly 25 what I was going to say, as part of trying --	Page 133 1 CLOSING ARGUMENTS ON BEHALF OF THE APPELLANT 2 - - - - - 3 MR. THELEN: While the PowerPoint 4 is loading, I did want to make one point of 5 clarification. 6 The Conditional Use Permit that's 7 being talked about was issued in 2002, not 8 2022. I think there's been some typos. 2002 9 was the Conditional Use Permit. The UDO was 10 newly adopted, as noted by Mr. Gordon, in 2021. 11 So the terminology changed, but the whole law 12 changed, that's why you heard the property 13 referred to as Light Industrial under the prior 14 UDO or the UDO that was in effect in 2002. Now 15 it's EC, Employment Center, an entirely 16 different set of laws, which I'll get to in a 17 second. 18 Thank you again for your time. 19 I'll keep this quick. I think it's 20 important -- there's been a lot of discussion 21 about what this use is and what it is not. And 22 that's important to the extent that the issue 23 really, from our perspective is, the 24 interpretation given, in our view, is permitted 25 as of right, and we think the interpretation

Page 134 1 given that it is a waste related use -- is that 2 reasonable? 3 Is that defensible? 4 And that's important because going 5 back to Ms. Stein's e-mail from June, is that 6 she's giving her analysis and saying, "This is 7 the use that we're describing." Remember, she 8 had attached, you know, the site plan, the 9 preliminary site plan and the site submittal. 10 And she sends the e-mail where she says, "This 11 is what I think this use is." 12 Now, I do this all the time. 13 There's been a lot of talk about these 14 interpretation requests. I do this all the 15 time. When you're developing a project, I 16 always go and I say, "This is what I'm 17 developing, this is the use that I'm going to 18 develop." 19 You don't get into site plans. You 20 don't get into measurements. You might have a 21 question about measurements. You say, "I can't 22 quite tell how your ordinance treats this 23 particular thing, this particular use, this 24 particular setback, is it measured from the 25 wall, is it measured from the parapet," and you	Page 136 1 Board Member Long about is this a living 2 document, it may be a living document, but 3 again, you'll see on the first page and on the 4 second page the notion of Conditional Use 5 Permit is blank, because that is what Venator 6 thought was consistent with its June 6 e-mail. 7 That third page, though, is that 8 it's showing -- look at the top. It says 9 "Accepted." Mr. Thomas and the town here 10 accepted. So now Venator is understanding, all 11 right, this is now all going in the same 12 direction. 13 Again, the question that's been 14 asked, the use that's been described, "Is our 15 use a waste related use," and the town could 16 have told them it was something else. The town 17 did not do so. Instead the town says, "Give me 18 some draft language." 19 Venator didn't send language and 20 say, "Sign this letter." It says, "Can you 21 confirm this use?" 22 The town then says to Venator, 23 "Send us the language you want." 24 The answer comes from Ms. Stein. 25 She provides the language.
Page 135 1 ask for a clarification and interpretation from 2 the town as to how the town interprets its 3 ordinance and how they would apply the 4 ordinance to your particular question. 5 So this is not an e-mail saying, 6 "Can I just go ahead and build my landfill?" 7 It's saying, "We think our landfill 8 as we've described it, including these 9 attachments" -- so there's some description 10 here. It's not just in a vacuum. It's pretty 11 descriptive in saying, "We think that we are an 12 all other waste related services use permitted 13 in EC zoning." She's asking that question. 14 And the letter can't just be 15 viewed -- the August, 2022 letter cannot be 16 viewed simply within the question of a letter 17 itself. It needs to be viewed within the 18 context of the question that was asked. And 19 the question is, "This is what I think we are, 20 can you provide clarification on this issue?" 21 That's what she's asking. That's 22 what Venator is asking of the town. 23 And then also the town, as part of 24 this, again, after the e-mail, takes the 25 Pre-Application Form, and to the question from	Page 137 1 If someone asks me a question and 2 then I say, "Well, give me the answer that you 3 think it is" -- and that question, by the way, 4 has the answer within it. She doesn't say, 5 "What use am I," and then gives them this 6 language. She says, "I think I'm an other 7 waste related services use permitted by right." 8 The town says, "Give us some 9 language." And the town puts that language 10 into its letter verbatim. And this is not -- 11 this is just what Venator understood. This is 12 not trying to say that somebody did something 13 wrong. In fact, we don't think the town did 14 anything wrong. In fact, we think the town did 15 something defensible. We think the town gave 16 us an answer to a question that was asked, that 17 Venator thought was right, that Ms. Stein 18 thought was right, and confirmed it. 19 And again, this is a common 20 practice in the zoning world, to ask for an 21 interpretation of an ordinance, to accept that 22 interpretation, and either appeal it, and we'd 23 be here saying -- maybe the town says we need a 24 Special Use Permit, and Venator disagrees with 25 that, and then Venator says, "We'll appeal that

Page 138 1 determination." 2 Frankly, I don't know, it's 3 speculation, if Venator would have said, "Fine, 4 we'll go with the Special Use Permit," but it 5 got this interpretation in August that said it 6 was permitted by right, and all this time 7 passes. 8 So the question asked is the 9 question answered. That's the point here. I 10 know that's clear at this point, but it's not 11 just what the letter said, it's what the letter 12 said in the context of the question that was 13 asked. 14 Mr. Gordon is right, the letter 15 does not say a Special Use Permit is not 16 required. But it doesn't say one is required. 17 It doesn't say anything with regard to a 18 Special Use Permit. And that's part of the 19 problem within the context of the question 20 that's asked. 21 There's the language from 22 Ms. Stein's e-mail and there's the operative 23 language from the August letter that we're 24 talking about. And then again there's a 25 submission in November. And this is not trying	Page 140 1 how that would work anyway if the town could 2 say, "Well, you asked me, but he wrote the 3 letter." It's on town letterhead. The town 4 knew about it. It's signed by the town. The 5 town never appealed it or cancelled it or 6 withdrew it. 7 So then in response to that 8 November 1 application is that Venator gets 9 this memo the next day back from the town. And 10 it does say in there that -- I can't quite read 11 it, but at the bottom there, on the left, your 12 left, is that it does say that, "Yeah, the land 13 use requires a Special Use Permit." 14 Okay. We also heard the testimony 15 that Venator understood that to mean, yeah, if 16 there's an expansion of the chemical plant, 17 that's a Special Use Permit. 18 But if you go higher, with the 19 proposed use -- this memo is saying the 20 proposed use is a landfill. And that's what's 21 being talked about here. And then next to that 22 it says, "waste related services permitted by 23 right." 24 No one is pointing a finger, again. 25 It's just saying this is just consistently
Page 139 1 to point fingers. This is simply to say this 2 is all consistent with what Venator thought. 3 So Venator still thinks in November of 2023 4 that it doesn't need a Special Use Permit. It 5 submits a Pre-Application Summary Form, as you 6 see on the right there. And again, leaves it 7 blank. There's no Special Use Permit required. 8 Venator is trying to figure out -- 9 now it believes that the town has 10 interpreted -- Venator back in '22 is trying to 11 figure out what the town's laws are. It's not 12 trying to tell the town what the laws are. 13 It's trying to dot its I's and cross its T's. 14 It thought it was doing so. 15 And again, the town is -- I don't 16 have the ordinance permission here, but the 17 town is specifically authorized -- you saw it 18 at the outset, that that state law and town law 19 authorized town staff to issue these kinds of 20 determinations, and authorizes specific people. 21 And it's broad. It's any designee of staff. 22 And so the e-mails -- Tom Lesser 23 sent the letter back, but no one said, "Yeah, 24 but he's not authorized." 25 I'm not sure about that, frankly,	Page 141 1 telling Venator what it thought it knew in 2 June -- or August of 2022. And this is 3 consistent. And it's not whether it's the only 4 correct answer or whether it's absolutely 5 correct. This is waste related services and 6 nothing else. It can't be Heavy Industrial. 7 It's just whether it's defensible. 8 And we looked at the definition of 9 waste related services. You heard Mr. Gordon 10 talk about how it can't be that because it does 11 not -- it doesn't receive from other sites. 12 No. It also says at the end, "or any other use 13 the Director determines it shall need." 14 Also, to that point, that's why 15 they sought the interpretation. These 16 definitions are hard to get your hands around. 17 They're hard to understand. And they're 18 constantly interpreted by town staff. And 19 they're constantly interpreted in a way that 20 sometimes can be helpful, sometimes be 21 disagreeable, and then the applicant or the 22 property owner has rights in that regard. 23 If you send a letter saying, "Can I 24 build a house on this property," and the town 25 writes back, "Your property is properly zoned,"

Page 142 1 and then you build the house, and they say, 2 "No, no, no, that's not what we meant, 3 that's" -- "We didn't say that it has to be a 4 house like this or it has to be a blue house" 5 or something like that, but that's a question 6 asked and a question answered in Venator's 7 mind. 8 Venator is not the zoning expert. 9 There was a question, "Are you a zoning 10 expert," and Venator is saying they're not the 11 zoning experts. I was not involved in this 12 interpretation. They didn't have a Lawyer at 13 that point in time. That's why they're asking 14 these questions, to try to get interpretation 15 and confirmation from the town as to how it's 16 going to interpret its laws. 17 And then we get the e-mail at the 18 end. 19 All of this comes into -- and 20 there's a definitive case. And we submit a 21 point brief on this. And I'll keep this quick 22 and fast. But the definitive case on use 23 interpretations is S.T. Wooten. And the facts 24 there do match up to the facts here. 25 And I'll conclude on this: The	Page 144 1 Director for the Town of Zebulon in this case. 2 The letter mentioned that a building permit 3 would be needed before Petitioner could begin. 4 Construction does not convert his unequivocal 5 zoning interpretation into an advisory opinion. 6 The town argued that, and 7 understandably so, "Yeah, but we said you've 8 got to get other permits, you've got to have a 9 site plan." 10 Venator knows that. Venator knows 11 it has to get site plan approval. It doesn't 12 just get to walk out of here if y'all find that 13 the August letter was a binding determination 14 that it's permitted as of right. Venator still 15 has to go through the site plan process of the 16 town. It does not have to go through the 17 special use process of the town. It does not 18 have to come back here and go through an 19 evidentiary hearing. It will if it has to. 20 But there is still a site plan process. There 21 are still state regulations that apply. This 22 is not a way out of regulation. It's just a 23 way through straight to the site plan process 24 between Venator and the administrative staff of 25 the town.
Page 143 1 facts in S.T. Wooten -- so the facts on your 2 left are S.T. Wooten. The facts on the right 3 are what we've done here. These are quotes 4 from S.T. Wooten. It's Court of Appeals case 5 from 2011 here in North Carolina. The 6 Petitioner, "the landowner, specifically 7 requested the Planning Director interpret the 8 Zebulon Ordinance and determine whether an 9 asphalt plant was a permitted use." 10 That's what happened. Venator 11 requested clarification whether permitted uses 12 included all other waste related services 13 within the EC zoning. So Venator gets an 14 interpretation that adopts Venator's proposed 15 language. It's trying to get the 16 interpretation that the property owner was 17 seeking in Wooten. 18 The interpretation in Wooten -- and 19 this is an important part, because there's been 20 some talk about the language in the August 21 letter about how other regulations apply, 22 permits need to be sought. That didn't matter 23 in the context of Wooten. And you see there 24 specifically at the end, the fact that 25 Mr. Frangos -- Mr. Frangos was the Planning	Page 145 1 Then just like in Wooten -- just 2 like here, there were confirmations in Wooten. 3 So it wasn't just that the letter was written. 4 It was that that interpretation was confirmed. 5 And you heard us talk here about 6 the Pre-Application Summary that said no 7 Conditional Use Permit was being sought, and 8 that was accepted and signed by town staff in 9 July of '22. 10 Then you also saw the November, '23 11 memorandum where it says, "proposed use 12 landfill waste related services permitted by 13 right." So just like in Wooten, here we had 14 confirmation. 15 Again, in Wooten and here, you 16 heard Venator talk about how they relied on the 17 interpretation. It wasn't like the 18 interpretation was given on a Monday and then 19 they appealed it on Friday, or they got a 20 different one on Friday and they appealed it on 21 a Monday. They got the interpretation in 22 August of '22, they relied on it, it was 23 confirmed, they did a bunch of stuff, and then 24 it was upended. It is Venator's position it 25 was reversed in November of '23.

Page 146 1 They may have gotten it right 2 eventually, as Mr. Gordon said, but that's not 3 how the law works unfortunately. If you render 4 the interpretation, if it's defensible, which, 5 by the way, we would posit that it was, which 6 is why the town gave it, as we would say -- the 7 town, unless it appeals its own 8 interpretation -- and it can do that. Towns do 9 that all the time. Unless they do that, they 10 are bound, just as we're bound if we do not 11 appeal. They have rights. We have rights. 12 They don't get a way out of those rights. And 13 we would have been stuck if we hadn't appealed 14 it. 15 Then in the end, just like in 16 Wooten, just like here -- the language in 17 Wooten, and it's weird, is that neither the 18 town had the authority to render a contrary 19 decision or collaterally attack a 2001 20 interpretation. 21 We would say here that there was no 22 authority to issue the November 15, '23 e-mail 23 that says, "You've got to get a Special Use 24 Permit" because they already rendered their 25 binding and final interpretation that the use	Page 148 1 CLOSING ARGUMENTS ON BEHALF OF THE TOWN 2 - - - - - 3 MR. KOCH: I think one thing that 4 we need to look at to start out with, what I 5 want to say, is that when they get into this 6 discussion about accessory uses and other waste 7 disposal, they're trying to pull out this 8 3.68-acre parcel from the entire 100 acres, 9 this one parcel that has the chemical plant on 10 it. 11 This parcel had been developed as a 12 chemical plant. And part of the area that had 13 previously been developed as part of the 14 chemical plant wasn't the area for disposal of 15 their waste. You've heard a lot of discussion 16 about that. And they've got their lagoon out 17 there that they're going to change as part of 18 this project. But that's all part of the 19 chemical plant. And it's not an accessory use. 20 It's not a light industrial use. If you read 21 the definitions under the UDO, chemical plants 22 are heavy industrial uses. And this part of 23 the property is part of the chemical plant 24 operation. 25 They have to do something with
Page 147 1 was permitted as of right. 2 We're not asking you to reverse the 3 November 15, '23 e-mail from Ms. DeHart. We're 4 asking you to uphold the August, '22 5 interpretation that was confirmed over time, 6 that the use is permitted as of right, the 7 onsite landfill as described and is shown in 8 June is permitted as of right on the property. 9 And that's our conclusion. 10 So with that, thank you very much 11 for your time. I'm happy to answer any 12 questions. I know it's been a lot, so we 13 appreciate the time and attention. 14 MR. PATRICK: Thank you. 15 MR. THELEN: Thank you. 16 MR. KOCH: Mr. Chairman, can I stay 17 right here? 18 MR. PATRICK: Yes, sir. 19 - - - - - 20 21 22 23 24 25	Page 149 1 their waste. To say that it's some sort of an 2 accessory use, and you can pull out this 3 3.68-acre parcel and treat it different than 4 the way they treat all the rest of the property 5 is just -- is not what is occurring here. It's 6 one parcel. It's one project. And it's just 7 another thing that they're going to do on this 8 property that's related to the chemical plant. 9 Now, you've heard a lot about some 10 of the history. And I thought it was 11 interesting when you listen to the Witnesses 12 from Venator that really no one looked at the 13 history of this property and its relationship 14 to the town as it related to its zoning. And I 15 think that because of that, now they want to 16 look at the present situation differently from 17 what it's always been, which was as a special 18 use situation, a chemical plant, everybody here 19 knows where it is, and it's been there for 60 20 years, as you've heard. And they didn't look 21 into that to see what the relationship was. 22 It's almost -- what I've gotten out 23 of all of this evidence is that they didn't 24 want to look at that. They were looking for a 25 way to do this project without having to get a

Page 150 1 Special Use Permit and to deal with it as a 2 matter of right so they wouldn't have to go 3 through the procedures that require a public 4 hearing on this new way they want to treat 5 their waste. I think that's what it has really 6 came down to. And they were hoping to avoid a 7 Special Use. And that's why we get into all 8 this back and forth about the letter and what 9 needs to go into it. 10 I'm not going to say they were 11 disingenuous about it, I'm just saying they 12 didn't want to have to do a Special Use and 13 they were hoping to avoid a public hearing, and 14 that is part of what would occur with a Special 15 Use Permit, and just be able to take care of 16 this change that they want to make as something 17 that no one outside of them and maybe some of 18 the town officials would know about. That's 19 really what we're dealing with here when they 20 look at just part of the property and they say 21 that it's an accessory use, that they can do it 22 by right instead of looking at the totality of 23 what's going on here. 24 And I think that was basically 25 shown by the testimony of the Witnesses, that	Page 152 1 basically has the same, exact facts as this 2 case. And I'm going to point out to you some 3 of the big differences between the decision in 4 Wooten and this situation here. And because 5 it's not on all fours, it really isn't 6 precedent for how you make your decision in 7 this case. 8 Now, in Wooten, the Planning 9 Director wrote a couple of letters in which he 10 clearly stated that the asphalt plant that they 11 were asking for in Wooten fell within the 12 definition of the zoning for Wooten's property. 13 They were operating a concrete plant on that 14 property at that time, and they wanted to 15 expand into asphalt. And this is the Town of 16 Zebulon, so it's not Harrisburg. It's a 17 different town, different ordinance. But the 18 definitions under their ordinance said that 19 asphalt would be a related type of use because 20 it was in a Heavy Industrial Zoning District. 21 And his letters that he wrote to 22 them were directly to them and were very 23 directly dealing with that issue. It wasn't 24 like Mr. Lesser's letter which was ambiguous 25 and didn't cover all the things that maybe it
Page 151 1 they were looking for a different way to look 2 at this as an accessory use or as a waste 3 related matter instead of the fact that we're 4 dealing with a chemical plant, and part of the 5 processes of that chemical plant would include 6 dealing with their own waste that comes from 7 the process. 8 If they had done their research, 9 they would have known that they would have 10 needed a Special Use Permit, and they wouldn't 11 have gone through all this back and forth about 12 the letter and what needed to go in the letter. 13 So I think that has been shown by the evidence. 14 And I would point out that the 15 burden of proof in these types of hearings is 16 on the Applicant, is on Venator, to prove to 17 you that this was a matter of right under the 18 ordinance. 19 Now, I want to talk about the 20 Wooten case, as well. Mr. Thelen has given you 21 his interpretation of it. And I've got a copy 22 of it right here. It's a Court of Appeals case 23 from 2011. And it does have some similarities 24 to this situation, but it is not on all fours, 25 which means that it's not precedent that	Page 153 1 could have covered. But in Wooten, it said 2 that an asphalt plant would be permitted by 3 right, and basically was just straight out that 4 you could do it in that way, that you didn't 5 need any Special Use Permit or anything. So in 6 that situation, when I say there was no 7 ambiguity, it was very clear. 8 And then here is what happened in 9 the Wooten case after that. And that was 10 written in 2001, that those letters were 11 written. In Wooten, the company started using 12 the property as an asphalt plant in 2009, and 13 received a Zoning Permit from the town that 14 year. It was not until after the Zoning Permit 15 was issued in 2009 and after the plant had 16 happened and they were operating it that the 17 town notified them that they would have to have 18 a Special Use Permit. So that was basically 19 eight years after the letter was issued, not 15 20 months, as here. It was a long time. And the 21 plant was actually up and operating. It wasn't 22 just something that they're still thinking 23 about doing. As I think it was pointed out, 24 the project hasn't started on the ground here 25 at all. So that was a huge difference in the

Page 154 1 Wooten case, it was eight years, and the fact 2 that the plant was already up and operating. 3 Wooten also divided the property 4 into two parts, so the concrete plant would be 5 on one side and the asphalt plant on the other. 6 And I say it was up and operating. In that 7 eight years they had spent over \$300,000 -- 8 this is all in the opinion -- on putting the 9 asphalt plant in. And they obtained all the 10 state and local permits that they needed to 11 operate it. And that's not the case here 12 either. 13 The Court of Appeals in the opinion 14 makes a distinction between authoritative 15 opinions in zoning letters and one in which the 16 official is just expressing a view or an 17 opinion or a belief. So in Wooten, the opinion 18 was that of a Planning Director, who clearly 19 had the authority to issue the permit -- or 20 issue the letter, and the letter was clear. 21 As I say in this situation, for 22 Mr. Lesser, who's the Zoning Enforcement 23 Officer, issued the letter, but as was pointed 24 out in our Staff Report, there are some 25 ambiguities in it, and it doesn't say anything	Page 156 1 another line of cases that say that the town 2 cannot be estopped or prevented from enforcing 3 the ordinance that it has on the books, which 4 it's pretty clear that our UDO would require a 5 Special Use Permit in this situation, as 6 Ms. DeHart wrote in her memo. So that's how we 7 contend the law shapes up. And it's not in 8 favor of Venator. It actually is in favor of 9 the town, that we have the ability to correct 10 what may look like an error earlier, or it 11 really in some ways is not an error, the letter 12 just is ambiguous, and it's not something that 13 they could have relied on as they say they did. 14 I would also point out that when 15 they talk about what they've done with this 16 project, nothing is in evidence to this board 17 that they spent all this money and relied on 18 that letter in some way like Wooten did in 19 their situation. Like I say, the project is 20 not started yet. There's nothing on the ground 21 out there that's changed from what the 22 situation was. So it's just not the same as 23 the Wooten case. 24 And I think that this board has the 25 ability under the Law of North Carolina to
Page 155 1 about the Conditional Use Permit one way or the 2 other. So that's another distinction. 3 There's a line of cases that are 4 cited in this opinion that basically are -- 5 come to a different result from the Wooten 6 case. And I'm not going to go into all that. 7 But to say that in that line of cases 8 there's -- they site a provision in North 9 Carolina Law that says that a town or local 10 government cannot be estopped from enforcing a 11 zoning ordinance against a violator due to the 12 conduct of the Zoning Officer in encouraging or 13 permitting the violation. Basically what that 14 says is that if you issue a letter like this in 15 error, you can go back and correct it, the town 16 is not stopped under the law from going back 17 and requiring a provision of the ordinance 18 that's in there that it didn't require in the 19 letter. 20 So like I say, under the law and 21 under Wooten, there's some significant 22 differences between our situation here and the 23 facts in that case, which I will contend make 24 it not a precedent for this situation. 25 I think what's more precedent is	Page 157 1 require that they have a Special Use Permit in 2 this case. Your decision actually here would 3 be that you would uphold the staff's 4 determination and deny the appeal. That's what 5 the town would ask for in this hearing. So we 6 would ask that you do that. That's all. 7 MR. PATRICK: Okay. You're welcome 8 to ask questions. 9 MR. SCHAFFNER: So it is a law that 10 you can go back three years later and say, "We 11 screwed up and approved something, and now we 12 can change that approval?" 13 MR. KOCH: That's what that line of 14 cases says. If it's in your ordinance, you're 15 always entitled to enforce your ordinance. And 16 you can have either a mistake or maybe in some 17 cases even a situation where the responsible 18 official just kind of looks the other way and 19 doesn't really uphold the ordinance, but in 20 either situation, if you find that you made a 21 mistake, you can go back and correct it and 22 require that the property owner comply with the 23 ordinance. That's what we contend the law 24 says. And there's a whole line of cases. 25 Actually, the case that I cited

Page 158 1 that from, I didn't give you the name of it, 2 but it's Winston-Salem versus a concrete 3 company. That was another Court of Appeals 4 case. 5 MR. BRANHAM: So three or four 6 times somebody can say, "Yes, yes, yes," and 7 then three years later they can say, "No"? 8 MR. KOCH: Well, it creates a tough 9 situation, it really does. And I understand 10 where you're headed with that. But that's why 11 I pointed out that despite what's been in some 12 of the testimony, there's been nothing to show 13 you that there really has been some sort of 14 detrimental reliance on that letter. The 15 project hasn't started. There may have been 16 some designs drawn up, but that can be dealt 17 with through the Special Use part of any 18 matter. 19 It's not like the project was built 20 and they were operating it, and then all of a 21 sudden we came back, after they spent all this 22 money and done like they did in Wooten, and the 23 town said, "Oh, no, you can't have an asphalt 24 plant even though you've got one out there that 25 we approved, and you've got all your permits	Page 160 1 If you look at the definition, does 2 it fit squarely? 3 No. 4 Does it fit squarely into Heavy 5 Industrial? 6 No. It's not engaged in the 7 manufacture. It's just on the property. In 8 fact, it's not accepting waste from the 9 chemical plant directly. It's from the lagoon. 10 And we understand that that is open to 11 interpretation. And that is a reasonable 12 interpretation, just as a heavy industrial 13 interpretation is a reasonable interpretation. 14 But in terms of the town not being 15 estopped, in that line of case law, it said 16 you're told yes, yes, yes, and it's something 17 that's clearly wrong by some rogue staff 18 member, the town then cannot be bound by what's 19 clearly an erroneous interpretation. 20 A common example would be in the 21 context of notices of violation. If someone is 22 doing something clearly in violation of an 23 ordinance, and the Code Enforcement Department 24 never picks it up, it cannot then be said by 25 the property owner, "Well, you never enforced
Page 159 1 and it's been up and operating." That was the 2 fact situation in Wooten. And that's not the 3 fact situation before you. 4 MR. PATRICK: Thank you. 5 Any other questions either for the 6 town or the property owner? 7 MR. THELEN: Can I just add a point 8 of clarification, Mr. Chair? 9 In response to Board Member 10 Branham's question, I would answer it 11 differently in that this notion of being 12 estopped is that if somebody went -- if Venator 13 had gone to the town and said, "We believe this 14 to be a day care center," and everybody knows 15 that it's a landfill, and they get an 16 interpretation that says it's a day care center 17 because it's a rogue staff member, and 18 everybody knows it's clearly an erroneous 19 interpretation, then Venator cannot go and rely 20 on the interpretation that's clearly erroneous. 21 Part of what we're articulating 22 here is that nobody knew what the use was. We 23 don't think it is part of the chemical plant. 24 We don't think it's a heavy industrial use. We 25 think it's a waste related use.	Page 161 1 it against me, so now you can't enforce it 2 against me now, I've relied on your lack of 3 enforcement." 4 Well, it's clearly a violation. 5 That's not the dispute. The dispute is the 6 passage of time and the lack of enforcement. 7 The issue is not whether the interpretation is 8 good or bad. It's just, "Well, you gave me 9 one, and I got it and I relied on it." 10 This is a reasonable interpretation 11 for the town to have given in '22, and for 12 Venator to have relied upon. And that is the 13 essence of our position. 14 MR. KOCH: What we're saying on 15 behalf of the town, in response to what 16 Mr. Thelen said, is that there's no evidence 17 before you of really any reliance. If you're 18 relying on Wooten as a statement of law, it's 19 so much different from the situation here. 20 Plus, that's where this part about the history 21 comes in of the property, that it's been 22 subject to conditional use throughout its 23 history. And that's something that when asking 24 questions, they really didn't look into. And 25 so they should have known what the zoning was.

Page 162 1 The UDO in some places was changed 2 from what it was. We didn't even have a UDO, 3 if I recall, back in 2002. I think that came 4 along later. But it basically -- there was a 5 zoning ordinance, and it basically said that 6 for that type of property, heavy industrial in 7 that location, that it required a Special Use 8 for any changes that were made to it. 9 Like I say, you all know what's out 10 there and what's around it, and so that's why 11 there are certain restrictions on what you can 12 do on a Heavy Industrial property, so that, you 13 know, it doesn't -- the zoning -- or the 14 changes to the property don't impact the 15 neighboring properties in any adverse way. And 16 so that's why that's been that way, you know, 17 for -- I can't say 60 years. I've only been 18 doing work for the town for 30 years. But I've 19 been involved in some of the past stuff that 20 was involved with that property. 21 But you heard from the Planning 22 Director that, you know, it wasn't just some 23 tanks, which they tried to say it was just part 24 of the chemical manufacturing process, but it 25 actually involved a rail spur and changes to	Page 164 1 the board, like the PowerPoints from both 2 parties, as part of the record. The UDO is 3 certainly a part of the record. The Staff 4 Report was put into evidence. There was 5 discussion of a 2002 permit, which is not in 6 the record because it has not been presented to 7 the board tonight. 8 So is there anything else any of 9 you want to submit into the record? 10 MR. THELEN: There's nothing from 11 Venator. 12 MR. KOCH: Well, I'm not sure I 13 heard the last part of what you said, 14 Mr. Benshoff. 15 Are you saying the prior Special 16 Use Permit was not put in the record? 17 MR. BENSHOFF: Not yet. 18 MR. KOCH: We had testimony about 19 it. 20 MR. BENSHOFF: We had testimony 21 about it. But if Mr. Gordon would like to hand 22 it up, it can be part of the record. 23 MR. KOCH: We'll go ahead and make 24 it part of the record. 25 MR. GORDON: Please.
Page 163 1 the parking lot and some other things. And 2 those kind of changes, like changes to how you 3 deal with your waste on site, you know, have to 4 be looked at and need to be passed on, you 5 know, through a public hearing, which is what 6 the Special Use requires. So that's where the 7 town -- how the town would answer what 8 Mr. Thelen has had to say. 9 MR. PATRICK: Okay. So I think 10 we've been through all the process here. The 11 board may have some clarifying questions for 12 you all, so we'll leave that sort of open for 13 now. 14 But the board Attorney, 15 Mr. Benshoff here, is going to give the board a 16 little direction on a finding of facts, which 17 is our next order of business. 18 So if you wouldn't mind, sir, kind 19 of helping the board navigate that item. 20 MR. BENSHOFF: Thank you, 21 Mr. Patrick. 22 Before I do that, let me say that, 23 if I can talk to the parties and their Counsel 24 about the record for a minute, I would consider 25 anything presented tonight that was shown to	Page 165 1 MR. PATRICK: Any objection? 2 MR. THELEN: I would also move for 3 the admission, then, of the UDO as it existed 4 at the time in 2002, if one can be located. 5 MR. BENSHOFF: I think that's 6 reasonable. 7 MR. KOCH: No objection. Both of 8 those should come in as part of the record. 9 MR. PATRICK: We'll admit the 10 original application and the UDO as it existed. 11 MR. GORDON: And just to tie it up 12 in a nice, little, neat bow, the index of 13 record documents Appeal of Administration 14 Decision provided to the board dated 15 February 6, 2024, that was the full package 16 that we -- separate from the Staff Report and 17 attachments. 18 MR. BENSHOFF: I'm sorry, there's 19 another set of documents? 20 MR. GORDON: You have those. 21 MR. PATRICK: As opposed to the 22 PowerPoint presentation. 23 MR. BENSHOFF: We have this, but it 24 doesn't have the -- 25 MR. GORDON: It was part of the

Page 166 1 agenda package. I just wanted to make sure to 2 add that on. 3 MR. BENSHOFF: It's part of the 4 agenda package. I'm sorry, I don't have the 5 agenda package in front of me. 6 MR. KOCH: That was circulated 7 prior to the agenda. And I think everybody 8 received it. 9 MR. PATRICK: We did. 10 MR. BENSHOFF: All right. 11 MR. KOCH: That's what he's talking 12 about. The Special Use Permit from back in 13 2002 was not in there. It's not in that 14 packet. So that's what we need to put in 15 there. 16 MR. PATRICK: We're putting in the 17 2002 Special Use Permit and the UDO as it 18 existed at the time without objection by either 19 of you. 20 MR. THELEN: Yes. 21 MR. PATRICK: Anything else? 22 MR. BENSHOFF: Not about the 23 record. 24 Okay. It's the board's task now, 25 having heard the evidence and the testimony and	Page 168 1 the board's power to stop the meeting at this 2 point or at any point and make findings of fact 3 and conclusions of law at another session if 4 you wish. Put another way, you're not required 5 to stay here indefinitely until you're 6 finished. 7 MR. PATRICK: Yes. Thank you, sir. 8 So yeah, you have the processes for 9 this review in front of you. I'm happy to open 10 it up to the board for any discussion and take 11 them point by point if you'd like. But really 12 remember, we're here because they're appealing 13 the decision, a decision that was made by the 14 town that they required a Special Use Permit. 15 So that's the umbrella that we're operating 16 under. There are other facts that we may want 17 to make clear, but that's sort of the umbrella 18 we're under. 19 MS. LONG: It seems to be a fact 20 that the subject property is a Heavy Industrial 21 Use based upon the definition of Heavy 22 Industrial as part of the UDO, which includes 23 the phrase "processing of chemicals." And down 24 further in the definition, again, "use of this 25 category includes establishments that
Page 167 1 considering what the sworn Witnesses said and 2 the documents and Exhibits, to make findings of 3 fact that support your conclusions of law, 4 unlike your typical cases for variance, for 5 example, where there are four conclusions of 6 law listed in the statute that you must find 7 for an appeal of an administrative decision, 8 there are no criteria except those listed in 9 this section of the UDO, 145.04.04 10 Subsection D. And if you will see those, 11 they're very conclusory. 12 The first one is the administrative 13 decision was appropriate considering the 14 written record of the case and the evidence 15 presented, and the decision reflects the 16 requirements contained in the UDO. 17 I believe it's the board's job to 18 determine what is a fact from the testimony 19 that you heard with particular attention given 20 to making sure that the facts support your 21 ultimate conclusion about the appeal. And it 22 may be that there will be several sessions of 23 making a finding of facts as you clarify your 24 thinking and give it some consideration. 25 I would also say that it's within	Page 169 1 manufacture or process asphalt, coal," on and 2 on, "and chemicals." That to me is a fact, the 3 way I'm reading this information. 4 MR. PATRICK: I've got to tend to 5 agree with you. 6 MR. BENSHOFF: To clarify, are you 7 saying that the proposed solid waste landfill 8 is a Heavy Industrial Use? 9 MS. LONG: I am. 10 MR. BENSHOFF: Okay. 11 MR. SCHAFFNER: I piggy-back off 12 that and say according to the UDO and table, 13 Heavy Industrial Use requires a Special Use 14 Permit, which is what that property has been 15 clarified as multiple times in this hearing. 16 MR. BRANHAM: I agree. I don't 17 think that there's any question that a Special 18 Use Permit would be required. 19 The question here is, do they need 20 a Special Use Permit based on the e-mail from 21 November of 2022, or was it already approved 22 without the Special Use Permit? 23 I'm still hung up on that, that 24 language. 25 MR. SCHAFFNER: So nowhere in any

Page 170 1 of the things that we were presented did it say 2 "permitted by right." It said "permitted use," 3 right? 4 So we've been told it says, 5 "permitted by right." So that was an 6 interpretation. But when you review these and 7 you look through the letters that were in this 8 packet and others, it doesn't say, "permitted 9 by right." It just says it's a permitted use, 10 which coincides with what the Table of Uses are 11 in the UDO. It just requires a Special Use 12 Permit in order to construct that facility. 13 In the e-mail from Don Lesser it 14 also said any approved use must secure all 15 approvals, which in this case would be a 16 Special Use Permit. 17 MR. PATRICK: And to keep in mind, 18 part of this Chapter 145 specific review 19 criteria for us is D-2, which is that the 20 decision reflects the requirements contained in 21 this UDO, the specific requirement that this 22 board must take under consideration in this 23 quasi judicial process. So again, I don't 24 think there's any question that this is a Heavy 25 Industrial Use --	Page 172 1 composting of organic material." And it goes 2 on to say, "and other uses meeting the 3 definition of waste related use according to 4 the Director." 5 So based on this definition, it 6 does not appear to me or sound as if the 7 proposed use is a waste related use as defined 8 in the ordinance. And it seems as if the 9 officer, Mr. Tom Lesser -- it seems that that 10 letter of consistency just wasn't complete. It 11 wasn't fully complete. So then the Director, 12 who has the authority to interpret, I would add 13 the final authority to interpret the UDO, has 14 made an interpretation. 15 MR. SCHAFFNER: In his letter, he 16 specifically states, "Any proposed use must 17 secure all appropriate and necessary approvals 18 from all regulatory agencies for which this 19 parcel is located," which would, in my opinion, 20 include a Special Use Permit at that point. 21 MS. LONG: That sounds reasonable. 22 MR. PATRICK: Is the town 23 considered a regulatory agency? 24 MR. BENSHOFF: Sure. 25 MR. PATRICK: Are they?
Page 171 1 MR. BRANHAM: I agree. 2 MR. PATRICK: -- property. 3 MR. BRANHAM: I agree. 4 MS. LONG: Based on the definition 5 of water related -- I'm trying to find -- water 6 related and related uses -- 7 MR. BENSHOFF: You mean waste? 8 MS. LONG: Can anybody find that 9 definition? 10 MR. BENSHOFF: Which one, waste 11 related? 12 MS. LONG: Waste related use, it 13 mentioned that the waste would come from 14 others. 15 MR. PATRICK: That's right. 16 MS. LONG: So there's not any waste 17 coming from others. The waste would be coming 18 from the subject property and be going into the 19 proposed landfill. 20 "Waste related use," there it is 21 finally, "means a use category containing 22 establishments that receive solid or liquid 23 waste from others for treatment or transfer to 24 another location, and uses that manufactured or 25 produced goods or energy from the large scale	Page 173 1 MR. SCHAFFNER: They enforce 2 regulations and ordinances. 3 MR. BRANHAM: Further down in the 4 letter, conditional special use zone or 5 overlay, there is no special use zone or 6 overlay district on this site, no special 7 exemptions, no legal nonconforming issues on 8 the site, no outstanding zoning violations on 9 file. 10 MR. SCHAFFNER: That would be a 11 district that would have something that would 12 be conditioned per the town that would imply 13 multiple parcels. That wouldn't necessarily be 14 parcel specific, that conditional special use 15 zone. 16 MR. BENSHOFF: Mr. Schaffner, 17 what's the date of that letter? 18 There's a lot of letters. 19 MR. SCHAFFNER: August 19, 2022. 20 MR. BRANHAM: I would imagine if 21 that came into Zac's shop this week, there 22 would be no question, Special Use Permit, done 23 deal, right? 24 MR. PATRICK: I think so. 25 MR. BRANHAM: But it didn't come

Page 174 1 into Zac's shop this week, it came in a long, 2 long time ago, just before Zac came in, so 3 we're here to determine if they need it, if 4 they can get by with what was submitted then, 5 or if it has to go back through this whole 6 process; is that correct? 7 MR. BENSHOFF: Yes, I think that's 8 correct. If the board finds that Shelley 9 DeHart's letter of November 15, 2023 -- and I'm 10 saying the date from memory -- is not in error, 11 then a Special Use Permit would be required. 12 MR. SCHAFFNER: And the UDO that's 13 current, based on what we heard, was August 9, 14 2021, and that letter from Mr. Lesser was 15 August 19, 2022, which means it would be in 16 that ordinance that we've been referring to, 17 and as such, as an EC, Employment Center, as is 18 listed on Mr. Lesser's letter on August 19, 19 2022, would require, per the table, a Special 20 Use Permit. That's how I interpret it. 21 MS. LONG: And again, I want to add 22 that I think the August 19 letter of 23 consistency lacks some completeness. 24 MR. SCHAFFNER: I would agree. 25 MS. LONG: However, that second	Page 176 1 UDO requirements, the decision reflects the 2 requirements contained in the UDO, let's button 3 that up. 4 We all agree that it's Heavy 5 Industrial, and Heavy Industrial requires a 6 Special Use Permit? 7 MR. SCHAFFNER: Correct. 8 MR. PATRICK: Then the question 9 becomes, again, Item 1 there, Records in 10 Evidence, "The administrative decision is 11 appropriate considering the written record of 12 the case and evidence presented," so that's 13 kind of -- 14 MR. BRANHAM: Sticky. 15 MR. PATRICK: It's a sticking point 16 for you. 17 MR. BRANHAM: Can you build the 18 ten-story house? 19 MR. PATRICK: You can build the 20 house, but you should have known you can't 21 build a ten-story house. 22 MR. SCHAFFNER: The UDO clearly 23 says you can't build a ten-story house. 24 MR. BRANHAM: Next to the property 25 line.
Page 175 1 sentence, "Any proposed use must secure all 2 appropriate and necessary approvals from all 3 regulatory agencies for which the parcel is 4 located." And then the last sentence of the 5 paragraph on the first page, the last 6 paragraph, "The property is governed by the 7 rules and regulations of the Harrisburg UDO." 8 So incomplete, but it mentions the 9 other requirements, that there are other 10 requirements in addition to this letter. That 11 was issued by someone who was not a Director of 12 Planning and did not have the full latitude I 13 think to make a final decision. 14 MR. SCHAFFNER: At the same time, 15 going off of what Chairman Patrick said 16 earlier, if they were to list everything in the 17 UDO that they have to abide by, it would be a 18 very lengthy document for review, and it's not 19 on the town necessarily to do that for every 20 inquiry such as this. It's on the applicant to 21 make sure that all UDO, town, county and state 22 regulations are in accordance with the laws of 23 the state. 24 MS. LONG: I agree. 25 MR. PATRICK: So Item No. 2, the	Page 177 1 MR. PATRICK: Did the town have an 2 incomplete letter? 3 Perhaps. 4 Did Venator hire someone who was 5 competent and capable and understood zoning to 6 make sure that everything was on the up and up 7 before they did this? 8 Perhaps not, based on what I've 9 heard. 10 Did they review their existing land 11 records and realize that they were under a 12 Special Use Permit already? 13 Our Harrisburg UDO says that if you 14 want to make a change to any of your Special 15 Uses that you're under, you've got to come back 16 for a modification. 17 MS. LONG: Well, they did. 18 There was a Special Use 19 Application, correct? 20 MR. PATRICK: And they've done it 21 once. 22 MS. LONG: What was the date on 23 that? 24 Was it December? 25 MR. PATRICK: 2002.

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1 MS. LONG: No, not 2002. The one 2 that was just recent. 3 MR. PATRICK: Well, now because 4 they want to do a parallel track. 5 MS. LONG: They did that Special 6 Use Permit after the fact. There was no 7 consistency, but nonetheless, it was submitted. 8 MR. PATRICK: It was. 9 I guess I was referring to the 10 original, the 2002. 11 MR. SCHAFFNER: The one the 12 property is currently under. 13 MR. PATRICK: The property is under 14 Special Use, which used to be called 15 Conditional Use. And the UDO says if you make 16 changes to any of that, you've got to come 17 back. 18 MR. SCHAFFNER: I think the key 19 point there, too, is that it applies to the 20 entire parcel. It's not just one activity. 21 It's specific to the whole thing. So if this 22 were to go without a Special Use Permit, 23 anything can be done out there by right that 24 wouldn't normally be allowed. 25 MR. PATRICK: I mean, because I	1 you answer the questions that were asked in the 2 appeal. And there were two. 3 The first one is, is the August 19, 4 2022 letter a final and binding interpretation 5 of the town's laws that the proposed onsite 6 industrial landfill is permitted as of right. 7 That's the first question. 8 MS. LONG: Which he didn't answer. 9 MR. BENSHOFF: Sure. Is the 10 August 19, 2022 letter, that lacks the 11 consistency letter, a final and binding 12 interpretation of the town's ordinances that 13 the proposed onsite industrial landfill is 14 permitted as of right? 15 MR. BRANHAM: Is that a statement? 16 MR. BENSHOFF: That's the question 17 that's in the appeal. 18 So, in other words, is the town 19 bound by the August 19, 2022 letter? 20 And then the other question is, is 21 Shelley DeHart's letter of November 15, 2023 in 22 error or is that correct? 23 And they're related. 24 MR. PATRICK: The first question, 25 I'm not sure I buy the framing because it says,
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1 didn't see any evidence that said, "No, we just 2 want to talk about this little piece," right, 3 or anything in any of the letters that said, 4 "No, we're just talking about this little 5 piece." Everything was, "This is our site." 6 The letter the town sent was, "This is the 7 parcel number." It was never just a little 8 piece of this parcel or anything like that. It 9 was this parcel. 10 MR. SCHAFFNER: That's how 11 Mr. Lesser would have interpreted that, as 12 well, with an inquiry about the parcel, 13 providing the information of the parcel, not 14 specific to -- 15 MR. PATRICK: 100 acres. 16 MR. SCHAFFNER: Yep. 17 MR. PATRICK: Other discussion? 18 Any points that we need to make 19 sure that we get in here? 20 MR. BENSHOFF: Mr. Gordon or 21 Mr. Thelen, do you have a copy of the Appeal 22 Application that I can look at? 23 MR. THELEN: I have it 24 electronically, if that would be helpful. 25 MR. BENSHOFF: I want to make sure	1 is the August 19, 2022 letter correct that it's 2 permitted by right? 3 But nowhere in the letter does it 4 say, "permitted by right." So I take issue 5 with the question to begin with. 6 Is the town bound -- let's just say 7 we set that aside for a second. 8 Is the town bound by it. 9 No, I don't believe so, because the 10 UDO is about as crystal clear as it can be, 11 that it's Heavy Industrial, and Heavy 12 Industrial requires a Special Use. 13 MR. SCHAFFNER: I agree. 14 MR. PATRICK: The second question 15 was -- 16 MR. BENSHOFF: Is Ms. DeHart's 17 letter of November 15, 2023 correct or is it in 18 error, in other words, is a Special Use Permit 19 required? 20 MR. SCHAFFNER: Based on the logic 21 we just described, I believe it is correct. 22 MR. BRANHAM: Absolutely. 23 MR. PATRICK: Just to be clear, it 24 was a November 15 e-mail. It was an e-mail. 25 MR. BENSHOFF: It was an e-mail.

Page 182 1 So I think the board's requirement 2 then is to either approve or deny the appeal at 3 this point. So if there's a motion for that or 4 any other discussion, we can get into that. 5 MR. ROSS: I'll make a motion to 6 deny the appeal. 7 MR. PATRICK: Is there a second? 8 MR. SCHAFFNER: I'll make a second. 9 MR. PATRICK: All in favor? 10 Aye. 11 MS. LONG: Aye. 12 MR. SCHAFFNER: Aye. 13 MR. ROSS: Aye. 14 MR. PATRICK: Any opposed? 15 MR. BRANHAM: Opposed. 16 MR. PATRICK: One opposed. Simple 17 majority, the appeal is denied. 18 One thing I would ask for the board 19 is to adopt a motion allowing the board 20 Attorney to prepare the written order, and the 21 Chair may sign the order outside the session, 22 that we don't have to come back to another 23 session to approve the order that he's going to 24 write up for us. And so we'll need a motion to 25 approve that process.	Page 184 1 MS. LONG: Aye. 2 MR. BRANHAM: Aye. 3 MR. ROSS: Aye. 4 MR. SCHAFFNER: Aye. 5 MR. PATRICK: Opposed? 6 We're adjourned. 7 - - - - - 8 (Proceedings adjourned at 9:54 p.m.) 9 - - - - - 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 183 1 MR. SCHAFFNER: A motion for the 2 Chair to be able to sign the order outside of 3 the session? 4 MR. BENSHOFF: And directing me to 5 prepare an order based on the findings of fact 6 that I heard you make and tried to write down. 7 MR. PATRICK: Okay. I have a 8 motion on the floor. 9 MR. ROSS: I'll second. 10 MR. PATRICK: All in favor? 11 Aye. 12 MS. LONG: Aye. 13 MR. ROSS: Aye. 14 MR. SCHAFFNER: Aye. 15 MR. BRANHAM: Aye. 16 MR. PATRICK: Any opposed? 17 Motion carries. 18 Okay. Back to our agenda, we have 19 no old business. We have no new business. The 20 last thing I have is adjournment. 21 MS. LONG: Motion to adjourn. 22 MR. PATRICK: Is there a second? 23 MR. SCHAFFNER: Second. 24 MR. PATRICK: All in favor? 25 Aye.	Page 185 1 REPORTER'S CERTIFICATE 2 3 4 I, Joyce Lynn Shannon, RPR, do 5 hereby certify that as such Reporter I took 6 down in Stenotypy all of the proceedings had in 7 the foregoing transcript; that I have 8 transcribed my said Stenotype notes into 9 typewritten form as appears in the foregoing 10 transcript; that said transcript is the 11 complete form of the proceedings had in said 12 cause and constitutes a true and correct 13 transcript therein. 14 15  16 17 18 Joyce Lynn Shannon, RPR, Notary 19 Public within and for the State of 20 North Carolina 21 22 My commission expires August 17, 2025. 23 24 25

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[zoning - zoom]

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**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING
TUESDAY, JUNE 6, 2024
6:00 PM**

MINUTES

1. CALL TO ORDER

Ian Patrick called the meeting to order.

PRESENT: Kevin Schaffner (ALT), Monica Long, Ian Patrick, Michael Branham, Brandon Ross

ABSENT: Kevin Hutchins, Shelley DeHart

STAFF: Zac Gordon, Carly Bedgood

B. ROLL CALL

C. AGENDA ADOPTION

Kevin Schaffner made a motion to adopt the agenda as presented. Brandon Ross seconded.
The motion was unanimously approved (5-0).

D. SPECIAL PRESENTATION- NONE

2. CONSTENT AGENDA

Michael Branham made a motion to approve the April 2, 2024, minutes with a second from Kevin Schaffner.
The motion was unanimously approved (5-0).

3. PUBLIC HEARINGS

4. OLD BUSINESS – NONE

5. NEW BUSINESS

A. Planning Project Updates

Planning Director, Zac Gordon, started the meeting letting the board know that staff have two special use permits in the queue that they could be seeing in the next few months. Zac went over a couple of the planning project updates that are currently in review. Westgate is a request for annexation and rezone for a mixed-use development on a 3+ acre lot located at the corner of Morehead and Hwy 29. He then spoke on three residential developments that should soon be going to the Planning Board- Tramore II, McKinley, and Shamrock. All three projects are conditional rezonings and annexations. Zac then spoke about three long-range projects that the staff is working on. The Strategic Economic development plan, which is underway, Town Center Overlay plan that should be started by the Town in the next fiscal year and the Strategic comprehensive land use plan that is also currently underway.

6. ADJOURNMENT

There being no further business, Ian Patrick made a motion to adjourn with a second from Michael Branham. **The motion was unanimously approved (5-0).**

Adopted on the 6th of August 2024

Ian Patrick, Chairperson

Carly Bedgood, Board Secretary



TOWN OF HARRISBURG

Agenda Item Details

Title:

Adopt the Board of Adjustment 2024-2025 Meeting Calendar

Presenting Personnel:

Carly Bedgood, Planning Support Specialist

Suggested Motion or Action:

Motion to adopt the Board of Adjustment 2024-2025 Meeting Calendar as proposed.

Description/Background:

In accordance with Section 5. of the "Rule of Procedure" for the Board of Adjustment, regular meetings of the Board shall be held on the first Tuesday of each month at 6:00 p.m. in the Council Chambers of Town Hall, provided that regular meetings and hearings may be rescheduled if a scheduled meeting or hearing cannot be held because of a holiday. With the exception of the November Board meeting (rescheduled to November 12th from the 5th because of Election Day), all other meetings of the Board will occur as normally scheduled for the 3rd Tuesday of the month at 6:00 pm. Historically, the practice of the Board has been to adopt an annual meeting schedule at its first meeting of the year (July). However, since the Board did not meet in July, the annual meeting schedule is proposed for adoption at the Board's August 6th meeting.

Recommendation:

Adopt the Board of Adjustment 2024-2025 Meeting Calendar as proposed.

Fiscal Impact:

None

Attachments:

1. BOARD OF ADJUSTMENT 2024-2025



**BOARD OF ADJUSTMENT
2024-2025 MEETING CALENDAR
FIRST TUESDAY OF EACH MONTH AT 6 PM
HARRISBURG TOWN HALL**

JULY 2, 2024

AUGUST 6, 2024

SEPTEMBER 3, 2024

OCTOBER 1, 2024

NOVEMBER 12, 2024*

DECEMBER 3, 2024

JANUARY 7, 2025

FEBRUARY 4, 2025

MARCH 4, 2025

APRIL 1, 2025

MAY 6, 2025

JUNE 3, 2025

***Moved for Election Day**



TOWN OF HARRISBURG

Agenda Item Details

Title:

Special Use Permit - Training Case

Presenting Personnel:

Shelley DeHart, Assistant Planning Director

Suggested Motion or Action:

Staff to participate in the training.

Description/Background:

Planning staff have previously conducted training sessions for the Board on a variety of topics, including the consideration and processing of various cases that may come before the Board. In a continuation of this practice, staff will be presenting a training case to the Board that is focused on the conduct of a Special Use Permit public hearing.

Recommendation:

Staff presentation of training case for a Special Use permit

Fiscal Impact:

N/A

Attachments:

None