

1 PUBLIC HEARING
 2 GREENE TOWNSHIP ZONING HEARING BOARD
 3 -----X
 4 PENN-MAR VARIANCE APPLICATION :
 5 -----X

6
 7 TRANSCRIPT OF PROCEEDINGS
 8 BEFORE: GREENE TOWNSHIP ZONING HEARING BOARD
 9 DATE: April 18, 2005
 10 LOCATION: Greene Township Municipal Building
 11 1145 Garver Lane
 12 Scotland, PA 17254-0215
 13 TIME: 5:00 p.m.

14
 15 BOARD MEMBERS:
 16 Lee Kyler, Chairman
 17 Emery Ebel
 18 Earnie Turner
 19
 20 Also Present:
 21 Travis Brookens, Zoning Officer
 22 Dan Bachman, Assistant Zoning Officer

23
24

1 C O N T E N T S
 2 WITNESS DIRECT CROSS REDIRECT RE CROSS

			GREEN4. TXT	
3	Scott Welsh	10	--	--
4	Mike Buckland	15	65	87
5	DeEtta Antoun	104	---	--
6	John Lucabaugh	112	115	--
7	Glenn Trego	116	120	--
8	Duane School ey	120	---	--
9	Flora LaRue	124	---	--
10	Michael Clough	125	129	130
11	Lucy Carty	131	---	---

12 E X H I B I T S

13 APPELLANT' S

14	No. 1 (Site plan).....	Page	12
15	No. 2 (photo).....	Page	28
16	No. 3 (photo).....	Page	28
17	No. 4 (photo).....	Page	28
18	No. 5 (photo).....	Page	28
19	No. 6 (photo).....	Page	28
20	No. 7 (photo).....	Page	28
21	No. 8 (photo).....	Page	31

22 OPPONENT' S

23	No. 1 (photo).....	Page	105
24	No. 2 (photo).....	Page	105

1 P R O C E E D I N G S

2 MR. CLEAVER: We are going to
3 proceed now with request number four, which is the
4 request of Penn-Mar Ethanol, which I assume you are
5 all here to listen to.

6 I want to tell you how we are
7 going to proceed so you can understand how we are

8 going to conduct this hearing.

9 First of all, I want you to
10 understand that this is a hearing before the Zoning
11 Hearing Board. These three gentlemen are members
12 of the Zoning Hearing Board, not the supervisors.

13 Fortunately, since we have had
14 three requests prior this one, you're familiar
15 with what they do and how they handle it. But the
16 issue here in the Penn-Mar application is a request
17 for a variance and also an interpretation of the
18 actual Zoning Ordinance.

19 As you have heard me say in the
20 three prior applications, a variance has to be
21 based upon hardship. The hardship must arise from
22 the land. The hardship cannot be created by the
23 applicant. So this is one issue on the height in
24 this particular application.

5

1 Also involved in this
2 application is an interpretation of the Zoning
3 Ordinance. The Zoning Ordinance makes a height
4 restriction of 45 feet upon buildings. The Zoning
5 Ordinance in Section 10526-B then exempts from
6 height regulations chimneys, flues, towers, spires,
7 cupola domes, pole masts, antennas, barns, and
8 silos. So that is also an issue before this
9 board.

10 The evidence that will be taken
11 in this proceeding will be limited to the height
12 issue and the interpretation of the ordinance.

13 There will not be any testimony concerning the
14 looks of this, the sound, the sight, any smell.
15 Those are issues for the supervisors and for other
16 proceedings. That is not a zoning issue for this
17 board.

18 So I want to explain to
19 everybody that this is a different type of
20 proceeding than the one that you went to last month
21 in front of the supervisors.

22 Now, the procedure we are going
23 to follow is going to be the same procedure as you
24 have just seen. The applicant will proceed first;

6

1 the applicant being Penn-Mar. Their witnesses will
2 be sworn just as you saw us swear the other
3 witnesses. They will be questioned under oath.

4 They can be questioned by any
5 member of the hearing board or by myself. We are
6 going to permit each witness from Penn-Mar to be
7 questioned by only one person because if you all
8 question them, this hearing will go on probably for
9 several weeks.

10 With that in mind, I want to
11 make you aware of the fact that there are
12 provisions under the Municipalities Planning Code
13 requiring that a notice be given of an appearance,
14 and in this particular case a notice has been filed
15 by Citizens for a Quality Environment, signed by
16 DeEtta Antoun, as director, and I had a brief
17 discussion with Fred Antoun prior to the start of

18 these three prior hearings, and I understand that
19 Mr. Antoun will be questioning the witnesses that
20 are going to be brought forward by the applicant.

21 After the applicant rests, then
22 any opponents to this will be heard. Any witnesses
23 for the opponents will be sworn. They will be
24 questioned under oath. They can also be questioned

7

1 by members of the board or by myself and also by
2 one person from the applicant, which is
3 presumptively the applicant's attorney.

4 Once the opponents have
5 concluded their case -- and I want to again say
6 that the evidence of the opponents should be
7 limited to the issue that we have before us, which
8 is the height and the interpretation of the
9 ordinance -- we will have a conclusion of the
10 evidence. There will be no decision announced
11 tonight by the Zoning Hearing Board.

12 The board has decided that
13 before deciding the case, they want to go to the
14 site and look at the actual site. A decision is
15 required to be made by the zoning hearing board
16 within 45 days of the conclusion of the hearing.

17 I told Mr. Antoun that I hoped
18 we would have that decision within 30 days, maybe
19 sooner, but by law I want you all to know they have
20 45 days, this board, in order to render a decision.

21 The decision will be made by a
22 vote of these three gentlemen, as you have just

23 seen in these prior applications.

24 My role here is merely to

8

1 advise on the law. I do not have a vote. I will
2 not be making a decision in this case. Once the
3 decision is made, it will be handed down in written
4 form. There will be Findings of Fact, and those
5 Findings of Fact will be made solely by these three
6 gentlemen. There will be Conclusions of Law, which
7 will also be made solely by these three gentlemen.
8 I will give them advice on Conclusions of Law, but
9 they may either accept or reject my advice. There
10 will then be a discussion and a decision.

11 Now, as we proceed today in
12 this hearing, I would hope that you all would
13 follow the same type of decorum that you have seen
14 followed in the three previous hearings. We want
15 everybody to please let everybody speak. Only one
16 person at a time.

17 If more than two -- if two
18 people or more than two people are speaking at the
19 same time, nobody can understand what's being said
20 and we will lose decorum. So we would like only
21 one person speak at a time.

22 If anybody says anything, we
23 ask that the audience not react with laughter,
24 snickers, or any comments. Please let's all be

9

1 Ladies and gentlemen and we will proceed with this
Page 6

2 hearing and get it concluded in an orderly fashion.
3 We want this conducted in the same type of decorum
4 as in the court of law and the same type decorum
5 that was observed in three prior proceedings.

6 And they also wanted to
7 announce to you that we have decided that if the
8 evidence is not concluded by 9:00 o'clock p.m.,
9 then the hearing will be adjourned to a later date
10 to take additional evidence, but the drop dead date
11 for tonight is 9:00 o'clock, but if additional
12 evidence is to be presented after that date, we
13 will then reconvene this hearing and accept
14 additional evidence.

15 With that, I ask if the
16 applicant is ready to proceed.

17 MR. ANDERSON: My name is Reed
18 Anderson. I'm with the Law Firm of Stock and
19 Leader in York, Pennsylvania, and I represent
20 Penn-Mar Ethanol.

21 MR. CLEAVER: Would you like to
22 proceed?

23 MR. ANDERSON: As I said, my
24 name is Reed Anderson, I'm the solicitor, counsel

10

1 for Penn-Mar Ethanol, and to just reiterate for a
2 moment the purpose for which we're here and that is
3 that Penn-Mar Ethanol is here to present evidence
4 that there is a necessity for a variance of a
5 building on the property; that being the process
6 building through which evaporators extend through

7 the roof, that the rest of the facilities on the
8 property fall under the definition of structures
9 in your ordinance, which structures are not defined
10 as buildings and they're either exempt by either
11 being structures or exempt because your ordinance
12 makes specific exemptions for, as Mr. Clever says,
13 silos, towers, barns, things of that nature, and
14 then it is our position that the variance being
15 sought by Penn-Mar Ethanol is what has been defined
16 by the court as a diminutive variance, meaning it
17 is relatively small in comparison to the project.
18 It does not violate the tenor or intent of the law
19 or the ordinance, and can be granted with
20 necessarily meeting a lot of the other requirements
21 of the municipal plan. That's just a summary, and
22 my first witness is Mr. Welsh.

23 Whereupon,

24 SCOTT W. WELSH,

11

1 a witness, having been duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ANDERSON:

5 Q. Give us your name and address,
6 please.

7 A. Scott Welsh, 140 Roosevelt
8 Avenue, York, Pennsylvania.

9 Q. What is your title and position?

10 A. My position is project manager with
11 Penn-Mar Ethanol.

12 Q. How long have you been in that
13 position?

14 A. About two and a half years.

15 Q. Are you familiar with the Penn-Mar
16 proposed project in Greene Township?

17 A. Yes, I am.

18 Q. And are you familiar with the
19 proposed site of the project?

20 A. Yes.

21 Q. And where is it located?

22 A. The site is located in Cumberland
23 Valley Business Park, what's called Parcel 29, a
24 small piece is also Parcel 229 B. It would be

12

1 south of our Development Avenue, west of Scale
2 House Road and east of the Warrior Roofing
3 facility.

4 Q. And by whom is the property now
5 owned?

6 A. The property is currently owned by
7 LIDA, the Letterkenny Industrial Development
8 Authority.

9 Q. And has Penn-Mar Ethanol entered
10 into any contract with LIDA concerning the
11 property?

12 A. Yes.

13 Q. What are the pertinent provisions of
14 that contract?

15 A. We have an agreement of sale with
16 LIDA for those parcels.

17 Q. Is that contract still binding and
18 in effect to the best of your knowledge?

19 A. Yes, it is.

20 Q. If you know, how is the property
21 currently zoned?

22 A. It's currently zoned heavy
23 industrial.

24 Q. Scott, I'm going to show you what

13

1 I'll ask be marked as Applicant's Number 1 for
2 identification.

3 (Whereupon, Penn-Mar No. 1,
4 document, was marked for
5 identification.)

6 I will show you what's marked as
7 Number 1 and ask if you can identify that, please?

8 A. This is the site plan that Penn-Mar
9 Ethanol submitted as part of the variance
10 application.

11 Q. By whom was this prepared?

12 A. It was prepared by Buchart Horn
13 Engineers.

14 Q. What is Buchart Horn Engineer's
15 relationship to Penn-Mar?

16 A. They are contracted by us for
17 permitting and land development and local approval
18 engineering work.

19 Q. Was this plan prepared at your
20 direction?

21 A. Yes, it was.

22 Q. Can you briefly describe for the
23 board what this plan depicts?

24 A. Basically, this site plan shows the

14

1 structures and buildings as they would be laid out
2 on the site that are required as part of the
3 ethanol production facility.

4 Q. With respect to size and location of
5 the number and type of facilities, from whom was
6 that information acquired and who gave it to you?

7 A. That information was provided by
8 Lurgi PSI Engineering.

9 Q. What is Lurgi PSI's relationship
10 with Penn-Mar?

11 A. They are contracted by us for
12 engineering work related to the design and
13 construction of the facility.

14 Q. I would draw your attention to the
15 perimeter of the project as it is shown on the site
16 plan, and ask if you can identify and show thereon
17 the various yard set backs?

18 A. Yes, it shows along what would be
19 the north side of the parcel along Development
20 Avenue, the 75-foot front yard set back, the long
21 dashed line, 75 foot set back across the front and
22 it shows the 30-foot side yard set back along the
23 western and the eastern borders of the property.
24 On the west adjacent is Warrior Roofing and on the

15

1 east adjacent to Scale House Road.

2 Q. Is there a rear set back shown on
3 the plot plan?

4 A. There is not.

5 Q. Is there a reason for that?

6 A. Yes, there is a specific exemption
7 in the Greene Township Zoning Ordinance for not
8 requiring a rear yard set back adjacent to a rail
9 yard or a railroad right-of-way.

10 Q. Have you studied this plot plan?

11 A. Yes, I have.

12 Q. Are any of Penn-Mar's proposed
13 facilities placed within the required yard areas?

14 A. No, they are not.

15 MR. ANDERSON: That's all I
16 have of Mr. Welsh.

17 THE CHAIRMAN: Anybody else that
18 would like to speak for -- any questions?

19 MR. CLEAVER: Questions.

20 THE CHAIRMAN: Anybody here
21 would like questions?

22 MR. CLEAVER: Does the board
23 have any questions?

24 (Whereupon, there was no

16

1 response.)

2 MR. ANDERSON: Thank you,

3 Mr. Welsh.

4 Whereupon,

5
6 a witness, having been duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ANDERSON:

10 Q. Mr. Buckland, can you take the stand
11 for us. Give us your name.

12 A. Blake Buckland, 385 North Cross,
13 Orlando, Florida.

14 Q. You stated your name. Thank you.
15 With whom -- by whom are you employed?

16 A. Lurgi PSI, Incorporated.

17 Q. Where is Lurgi PSI located?

18 A. Memphis, Tennessee.

19 Q. What is their address?

20 A. 1790 Kirby Parkway, Memphis,
21 Tennessee.

22 Q. What is your position with Lurgi?

23 A. Project engineer with Lurgi.

24 Q. How long have you been in that

17

1 position?

2 A. Four and a half years.

3 Q. In your position as a project
4 engineer have you experience in designing and
5 building ethanol plants?

6 A. Yes.

7 Q. And how many have you designed or
8 built?

9 A. I have been involved in the design

10 and construction for ethanol plants.

11 Q. Which ones were they?

12 A. First one is Corn Plus in Minnesota,
13 Corn Plus Ethanol. The second is C-Vak (sic.),
14 Tippah Valley Ethanol in Minnesota. The third is
15 Atkins Energy in Illinois, and MGP in Dakota, Iowa.

16 Q. And what type of ethanol plants were
17 they?

18 A. They're all the same design; they're
19 dry mill ethanol plant producing fuel grade
20 ethanol.

21 Q. When you say dry mill, how do you --
22 describe that briefly.

23 A. They take in dried corn and mill it
24 directly and start the ethanol process without

18

1 steeping it in water, which would be the wet mill
2 process.

3 Q. How does that dry mill process
4 relate to the proposed facility of Penn-Mar
5 Ethanol?

6 A. It's the same process design.

7 Q. Are you familiar with the proposed
8 Penn-Mar Ethanol facility?

9 A. Yes, I am.

10 Q. And what is your relationship, the
11 relationship between Lurgi and Penn-Mar?

12 A. We are the engineers for the
13 project. We will be designing and building the
14 project.

15 Q. What other services have you
16 provided thus far to Penn-Mar?

17 A. Engineering support, developmental
18 support, and permitting support.

19 Q. With respect to Exhibit 1 that
20 Mr. Welsh testified to a few moments ago and which
21 is shown on the screen to your right, the
22 components of that site plan, the size, relative
23 location and height, from whom was that information
24 acquired?

19

1 A. Lurgi.

2 Q. And with respect to that Exhibit 1,
3 as the project engineer what are we looking at.
4 What does it depict?

5 A. It depicts the buildings and
6 structures associated with the typical dry mill
7 ethanol plant.

8 Q. Would the Penn-Mar Ethanol facility
9 be built according to that plan if it were to be
10 built?

11 A. Yes.

12 Q. And are you familiar with the
13 buildings that are to be built as a part of the
14 Penn-Mar facility?

15 A. Yes, I am.

16 Q. Where are these various buildings
17 located on Exhibit 1? And for that purpose, I'm
18 going to ask you if you could mark on Exhibit 1 in
19 red the location of the various actual buildings

20 within that site plan?

21 MR. CLEAVER: Can I interrupt a
22 minute. And you're getting to what was in my own
23 mind. It's going to be difficult as he marks them
24 for us to see what he is marking.

20

1 In my mind I'm interested in
2 what structures are going to exceed 45 feet and
3 what are they?

4 MR. ANDERSON: We will get to
5 that. I thought what I would have him do is mark
6 this plan in red so we have it for the record and
7 then he can go to the board and point out on the
8 board where the buildings are and try not to mark
9 up your screen.

10 MR. CLEAVER: Okay.

11 MR. ANDERSON: If we can follow
12 that process, mark in red the various buildings
13 and let the record reflect that Mr. Buckland is
14 marking those with a red X.

15 BY MR. ANDERSON: (Resumed)

16 Q. Okay. Now, if you would take
17 Exhibit 1 with you, and without the red pen, if you
18 would go to the wall and just point those out and
19 describe which buildings you pointed out and their
20 relative height.

21 A. I'll start you out here and I will
22 work up this way. There are two sheds, two
23 unloading sheds here for grain and DDGS grain
24 unloading and DDGS loading sheds. The rail or

1 truck unloading here for grain.

2 This shed is for truck unloading of
3 DDGS or load out of DDGS which is the cattle feed
4 byproduct of the ethanol. This is the DDGS out
5 shed and this is the corn unloaded shed. This
6 building here is the DDGS storage. The DDGS being
7 the cattle feed byproduct of an ethanol plant.

8 Another building is the main process
9 building. The main process building is right
10 there. This odd shaped building right here. The
11 other building is the boiler building. The boiler
12 will be housed in this building here. There is a
13 small maintenance building right here and the
14 administration building here.

15 Now, the relative height of the
16 building, all of these buildings are below the
17 45-foot height with the exception of a small
18 portion of this process building right here, and
19 the reason this building is above the 45 foot
20 variance is there are a number of vessels,
21 equipments with a number of vessels sticking out
22 through the roof of that building by approximately
23 five feet.

24 Q. Now, with respect to the building,

22

1 the DDGS buildings, the storage building, what is
2 its height, Mr. Buckland?

3 A. The storage building is 43 feet
Page 17

4 high.

5 Q. Is that a peak roof or flat roof
6 building?

7 A. That is a peak roof building.

8 Q. What is the height to the peak, if
9 you know?

10 A. The height to the peak is 50 feet.

11 Q. And what is the height to the eave?

12 A. Thirty-six feet, I think.

13 Q. So the 43 feet that you gave is the
14 average?

15 A. Yes, I'm giving the average height
16 based on the interpretation of the variance.

17 Q. Now, with respect to the other
18 buildings, could you give the same description?

19 A. Right. The unloading shed, the corn
20 unloading shed, is the similar design. I think
21 it's 36 feet by 50-foot peak with an average of
22 43. The DDGS loadout shed again similar. That
23 is -- I have got it written down. I have to refer
24 to my notes here, but that is all -- less than 40

23

1 feet.

2 MR. CLEAVER: I'm sorry. Can
3 we have -- instead of less than, can we have the
4 actual feet?

5 THE WITNESS: Yes, let me get
6 my notes here. Okay. The grain receiving shed is
7 an eave of 38 and a peak of 50. That's an average
8 of 44.

GREEN4.TXT

9 MR. CLEAVER: Ladies and
10 gentlemen, decorum, please.

11 THE WITNESS: The DDGS loadout
12 shed is an eave of 45 and a peak of 40. The DDGS
13 storage is a peak of 50 and an eave of 36.

14 Moving up here, the main
15 process building is two levels. It has a flat roof
16 portion right here, which is 42 feet, and then
17 vessels sticking out from above it. This lower
18 portion here is approximately 35 feet high, 35 foot
19 eave high, along with this section right here. So
20 this portion here, as I said, would be the portion
21 that's above 45 feet.

22 BY MR. ANDERSON: (Resumed)

23 Q. And where you're pointing is the
24 area where the evaporators are shown?

24

1 A. Right.

2 Q. With regard -- I believe you have a
3 maintenance building marked off; is that correct?

4 A. There is a maintenance building
5 right here.

6 Q. What is its height?

7 A. That would be eave height of 25
8 feet.

9 Q. And I believe you have a boiler
10 building?

11 A. Boiler building here has an eave
12 height of 35 feet and a peak of 50.

13 Q. And you have the administration

14 building, I believe, as the final building?

15 A. And that building would also be 25
16 feet.

17 Q. And that's peak height on the
18 administration?

19 A. The 25 feet would be peak on the
20 administration. On the maintenance it would be
21 eave height. Eave height would be slightly higher
22 than that.

23 Q. And how much higher than the boiler
24 building?

25

1 A. The administration building. . . .

2 Q. On the boiler building?

3 A. The boiler building would be 50
4 feet, 35 eave.

5 Q. Okay. Thank you.

6 MR. CLEAVER: Sorry. On the
7 boiler building we have 35 to the peak?

8 THE WITNESS: Boiler is the 50
9 to the peak, 35 to the eave.

10 MR. CLEAVER: What's confusing
11 me is on the plan it says boiler stack 50 feet. Is
12 the 50 feet the stack and also the eave there, are
13 they one in the same?

14 MR. ANDERSON: No, the stack is
15 a separate structure.

16 MR. CLEAVER: Okay. I
17 understand.

18 MR. ANDERSON: Thank you,
Page 20

19 Mike. You may come back to your seat.

20 BY MR. ANDERSON: (Resumed)

21 Q. With regard to the process building
22 which you described in your testimony, I believe
23 you indicated that a portion of that building
24 extends beyond the 45 feet; is that correct?

26

1 A. That's correct.

2 Q. And then, for the record, what
3 portion -- what is it that extends above the 45
4 feet?

5 A. The evaporators.

6 Q. And when you say evaporators, it's
7 obviously plural. How many are there?

8 A. There are eight evaporators.

9 Q. Can you explain briefly what is the
10 purpose of the process building? What is it used
11 for?

12 A. The process building is where the
13 corn, which is primarily starch, is converted
14 through heat and enzymes into ethanol.

15 Q. And is that the heart of the
16 process?

17 A. Yes, it is.

18 Q. Is that also the building in which
19 the personnel who work in this facility would be
20 primarily located?

21 A. Yes, that's correct.

22 Q. What do evaporators do? What is
23 their process?

24 A. Evaporators are essentially large

27

1 heat exchangers. They remove water, evaporate
2 water from one of the byproduct streams that in
3 turn is then mixed with the cattle feed, which is
4 called syrup.

5 Q. And can you describe for the board
6 what an evaporator looks like?

7 A. A tall heat exchange. A tall
8 stainless steel shell with tubes in the center of
9 it. It's difficult to explain it any further than
10 that. It's a large vessel that will sit on a skirt
11 on a concrete foundation, numerous pipes, pumps
12 involved. Steam is added, a heat source is added
13 to it, and it's just a tall, very tall heat
14 exchange.

15 Q. How much of the roof area of the
16 process building is actually utilized by the
17 evaporators, if you know?

18 A. Just a small portion of the process
19 building. Approximately 3600 square feet of the
20 process building would be used by the evaporators.

21 Q. And what is the total roof size of
22 the process building roof?

23 A. Total roof, it's in excess of 20,000
24 feet, square feet.

28

1 Q. What type of materials are the

2 evaporators constructed?

3 A. Stainless steel.

4 Q. Are any personnel at or in the
5 vicinity in the evaporators as a normal part of the
6 ethanol process?

7 A. Not normally. They probably will do
8 a walk-through once a day. That's pretty much the
9 regular routine.

10 Q. By a walk-through you mean they walk
11 by the evaporators on top of the building?

12 A. They would once a day go up there
13 just to make sure everything was in order.

14 Q. Is it possible to construct a
15 process building without the evaporators being
16 where they're designed and located?

17 A. Repeat the question.

18 Q. Would it be possible to construct a
19 process building without having the evaporators
20 extend to the height that they do?

21 A. No. The evaporators' design is
22 pretty much controlled by heat transfer
23 requirements, process requirements.

24 Q. Is it possible that you could

29

1 depress the building into the ground and the
2 evaporators with it to reduce the height?

3 A. It's possible, but, unadvisable.

4 Q. Why?

5 A. Creating a pit for this equipment to
6 sit in would be really more of a safety issue. It

7 would be classified as a confined space. There
8 would be extra measures that would have to be taken
9 place for personnel to enter it. It would be
10 problematic?

11 Q. What kind of things would be placed
12 in the confined space that would create the safety
13 hazard?

14 A. Pumps and instrumentation, piping in
15 there that the operators would have to access
16 periodically, and it would be untypical to do
17 something like that.

18 Q. I am going to show what has been
19 marked Applicant's Exhibits 2 through 7.

20 I'm goes to show you what has been
21 marked Applicants 2 through 7 and ask if you can
22 identify those?

23 (Whereupon, Penn-Mar
24 Applicant's Nos. 2-7,

30

1 documents, were marked for
2 identification.)

3 A. Exhibits 2 is a...

4 Q. Generally, can you identify them?

5 A. Yes, I can identify them, yes.

6 Q. And what do they depict as a group?
7 What are they looking at?

8 A. Photographs of the Atkins Energy
9 project in Illinois.

10 Q. And were you involved in that
11 project?

12 A. Yes, I was.
13 Q. And what was your role? What was
14 your position?
15 A. Project engineer.
16 Q. And you have been to the Atkins site?
17 A. Yes, I have.
18 Q. And how many times?
19 A. Numerous times.
20 Q. Do the pictures before you
21 accurately and fairly depict the Atkins facility?
22 A. Yes, they do.
23 Q. Directing your attention to Exhibit
24 2, can you describe what that -- what you're

31

1 Looking at?
2 A. This is a distance long shot of the
3 plan. It's in operation, as you can see, from the
4 stack.
5 Q. Starting from the left of that
6 picture going to your right, could you describe
7 what facilities are depicted?
8 A. To the left, those two large bins
9 are grain silos. In the center of the bins is an
10 elevator like that's used to transfer grain from
11 the grain unloading shed to those bins.
12 Also, there is a reclaim system that
13 takes grain from the bins and puts it into a small
14 storage tank, which you can see is the white tank
15 on the left bin and into hammermills for the grain
16 to be milled.

17 Q. And the item that is in the middle
18 between the two bins, what is that?

19 A. That is a surge bin on top -- the
20 tall item? It is an elevator lake.

21 Q. That is part of the grain handling
22 equipment?

23 A. Yes.

24 Q. And what are the heights of those

32

1 items at Atkins, if you know?

2 A. I don't precisely know, but it's --
3 the eave height of the bin is approximately 75
4 feet.

5 Q. And the approximate height of the
6 elevator tower?

7 A. It's approximately 110, 120 feet.

8 Q. Going now from left to right, what
9 is the next item that we are seeing of height?

10 A. The stack is the next item. That
11 happens to be the stack for the dryer, the rotary
12 dryer, which is in the foreground there.

13 Q. And that is not the type of dryer
14 that Penn-Mar Ethanol would have?

15 A. No, Penn-Mar would have a ring
16 dryer.

17 (Whereupon, Penn-Mar Applicant's No.
18 8, document, was marked for
19 identification.)

20 BY MR. ANDERSON: (Resumed)

21 Q. I'm going to show you what has been

22 marked as Applicant's Exhibit 8 for identification
23 and ask if you recognize that?

24 A. I recognize -- it's a ring dryer of

33

1 the type that will be installed at Penn-Mar.

2 Q. And what would the approximate
3 height of that be at the Penn-Mar facility?

4 A. Approximately, 115 feet.

5 Q. And that's to the top of the ring
6 that you're looking at or the top of the loop?

7 A. The top of the loop, yes.

8 Q. Back to Applicant's Exhibit Number
9 2, going left to right, what do we next see,
10 albeit, it's a bit blurry on that picture?

11 A. Next you see a series of stainless
12 steel tanks moving to the right.

13 Q. What are the first tanks that we are
14 looking at?

15 A. That tank, the larger tanks, are the
16 cook water tank and the thin stillers tank.

17 Q. Are they the two tanks that look
18 like twins?

19 A. Yes.

20 Q. And what purpose do those items
21 serve?

22 A. They are storage of processed
23 liquids, processed fluids that are used in the
24 conversion process.

34

GREEN4.TXT

1 Q. And then moving further to the
2 right, what are we looking at?

3 A. Those two smaller tanks are called
4 liquefaction tanks, again storage of mash that is
5 used in the conversion process.

6 Q. Moving on?

7 A. The next, which is even more blurry,
8 is the distillation section. It would be three
9 distillation columns, the beer column, the
10 rectifier, and stripper column.

11 Q. If I could, go back to the tanks you
12 already described. What are the heights of the
13 tanks we are looking at, the first two large twin
14 tanks?

15 A. Those -- the larger twin tanks would
16 be in the 40 to 45 foot range.

17 Q. And the next two tanks, the smaller
18 twin tanks?

19 A. Slightly smaller than that, 35 feet
20 or something like that.

21 Q. And then in between the three tanks
22 that you just described there seems to be a
23 structure. What is that?

24 A. I am sorry. Repeat that question.

35

1 Q. In between the two tanks, and then
2 you just started to describe three tanks?

3 A. Yes.

4 Q. In between those two, what is the
5 structure that we are looking at?

GREEN4.TXT

6 A. Those are the distillation columns.

7 Q. Approximately, what height are they
8 and what purpose do they serve?

9 A. Those are around 50 feet, 50-55
10 feet. They convert -- they actually concentrate
11 the ethanol that has been produced in the
12 fermenters to fuel grade, 190 proof, 190 proof
13 ethanol.

14 Q. And the next tanks are what?

15 A. They're the dehydration tanks. They
16 then remove the final percentage of water from the
17 ethanol.

18 Q. Moving to Exhibit 3 for
19 identification, what does that depict?

20 A. Those are the two silos that I
21 referred to earlier, the grain bins.

22 Q. And would the facility at Penn-Mar
23 resemble what we're looking at on item three?

24 A. Yes.

36

1 Q. Directing your attention to Exhibit
2 4, and what does that depict?

3 A. Exhibit 4 is a closer view of the
4 larger tanks that I talked about earlier. The two,
5 the cook water, liquefaction, and those are the
6 three distillation columns that were blurry in the
7 last picture.

8 MAN IN AUDIENCE: Can you have
9 him talk into the like mike? We don't have a
10 picture here and it's unclear and the voice is

11 unclear, too.

12 MR. CLEAVER: Speak into the
13 microphone. It's not only important for the
14 audience to hear, but it's most important for the
15 stenographer. Are you getting this?

16 BY MR. ANDERSON: (Resumed)

17 Q. Again, directing your attention to
18 Exhibit 4, looking to the left there are two tanks.
19 They are the methanator tank?

20 A. That's the cook water tank and thin
21 stillage tank.

22 Q. Next to them?

23 A. Liquefaction tanks, the two smaller
24 ones.

37

1 Q. Then the columns with the loop on
2 the top are the distillation columns?

3 A. That's correct.

4 Q. And to the far right, there are
5 three columns, and they are what?

6 A. Those are the dehydration columns
7 called molecular sieves.

8 Q. And beyond those there is a
9 structure relatively low in comparison. What is
10 that -- that has some steam?

11 A. That's the cooling tower.

12 Q. And how high is the cooling tower?

13 A. Approximately, 30 feet.

14 Q. Drawing your attention to Exhibit 5,
15 which, correct me, it's another view of the items

16 you just testified to; is that correct?

17 A. That's correct.

18 Q. Drawing your attention to the top of
19 the building that is shown on that photograph, what
20 are we looking at?

21 A. Those are the heads of the
22 evaporator bodies that I referred to earlier.

23 Q. Those are the three domed items --
24 small domes on top, is that what we're looking at?

38

1 A. Yes, that's piping on top.

2 MR. CLEAVER: You lost me.

3 MR. ANDERSON: Number 5.

4 MR. CLEAVER: We are on this
5 one.

6 MR. ANDERSON: Go one more.

7 MR. CLEAVER: This one?

8 THE WITNESS: Yes, sir.

9 BY MR. ANDERSON: (Resumed)

10 Q. Now, with regard to Number 5, you
11 had testified that the distillation tanks are
12 shown, I believe, there is four of them shown on
13 this photograph; is that correct?

14 A. Distillation tanks?

15 Q. Five, I stand corrected.

16 A. No.

17 Q. And we can see...

18 A. Those are evaporators.

19 Q. I'm sorry. The evaporators that run
20 through the building?

21 A. Yes.

22 Q. I believe in your testimony earlier
23 you testified that the only portion of the process
24 building that would be at the height in question is

39

1 that portion accompanying -- accommodating the
2 evaporators. Does this picture depict the same
3 thing at the Atkins facility?

4 A. Yes. If you can see the step down on
5 the right-hand edge of the photograph, you will see
6 how the building steps down from 42 feet to around
7 35 feet. So the high point of the process
8 building -- you're looking at the high point of the
9 process building in this photograph.

10 Q. Is the rest of the process building
11 roof then at 35 feet?

12 A. Approximately.

13 Q. Drawing your attention to Exhibit 6,
14 what does that depict?

15 A. A closer view, but it also includes
16 the front of the tanks and to the right.

17 Q. Are we again looking at the process
18 building?

19 A. Yes, the process building.

20 Q. And on the top of it we are seeing
21 the evaporators?

22 A. Correct.

23 Q. And then finally picture seven, and
24 what does that depict?

1 A. Again, the same process building and
2 a closer view of the fermented tanks.

3 (Whereupon, Penn-Mar
4 Applicant's Number 9,
5 document, was marked for
6 identification.)

7 BY MR. ANDERSON: (Resumed)

8 Q. Now Mr. Buckland, I'm going to refer
9 to you what has been marked as Applicant's Number 9
10 for identification, and ask if you can generally
11 identify that document?

12 A. Yes, I see.

13 Q. And by whom is that prepared, if you
14 know?

15 A. By Buchart Horn.

16 Q. The information on which it was
17 prepared was provided by who?

18 A. By Lurgi.

19 Q. So that the items shown and the
20 heights shown were given by you?

21 A. By Lurgi, yes.

22 Q. Does this depict all of the
23 facilities that are to be constructed on the
24 Penn-Mar Ethanol site?

41

1 A. I wouldn't say all of them.

2 Q. Which ones may be missing in these
3 site views?

4 A. Well, I think some of the buildings,
5 some of the structures, may be hidden by the
6 structures in front here, so I would say the
7 maintenance building doesn't show up here. Well,
8 some of the smaller structures or buildings behind
9 this equipment would be blocked by this view.

10 Q. So you think it's not shown because
11 it's shorter than that?

12 A. Exactly.

13 Q. And the dotted line that runs
14 horizontally through both of these profiles
15 represents what?

16 A. Well, that would be the 45 feet
17 height.

18 Q. Mr. Buckland, I'm going to ask you
19 if you can then describe for me and point out to
20 the board the equipment that we will have at
21 Penn-Mar if we are permitted to go, and if you
22 could please give the heights of those items as
23 planned for these, and then if you would describe
24 what each of these -- well, let's take one thing at

42

1 a time. Starting at the top, the profile looking
2 west, the first item shown is what?

3 A. Grain unloading shed.

4 Q. And that is the shed you had
5 previously testified to as to having an eave, I
6 believe, of 38 feet and a peak of 50; is that
7 correct?

8 A. That's correct.

9 Q. And what would that be building be
10 constructed?
11 A. Metal siding, structure frame with
12 metal siding.
13 Q. Moving next, what is the next item
14 that is shown?
15 A. The DDGS elevator.
16 Q. And what is its purpose and what is
17 its height?
18 A. Eighty-five feet to transfer DDGS
19 cattle feed to the shed, to the unloading shed.
20 Q. And what is the elevator constructed
21 of?
22 A. Steel.
23 Q. And can you describe a little more
24 what kind of elevator we would have?

43

1 A. It would be a bucket elevator.
2 Q. To what is the elevator attached?
3 A. That particular elevator is attached
4 to the DDGS building.
5 Q. And it's an affixed building in what
6 manner?
7 A. Structure support, steel support.
8 Q. The next item that's shown is what?
9 A. The grain receiving elevator, 160
10 feet.
11 Q. And how is it constructed?
12 A. Again, steel.
13 Q. And can you again describe the type

14 of elevator?

15 A. Again, a bucket elevator. I really
16 can't describe it anymore, but it would be a steel
17 elevator.

18 Q. Its purpose is to convey corn?

19 A. Yes, to lift corn from the unloading
20 shed to the grain silos.

21 Q. And the grain silo is next shown; is
22 that correct?

23 A. Yes.

24 Q. What is its size, approximate

44

1 diameter and height?

2 A. It's shown as 92 feet height,
3 overall height. There are 105 foot diameter and 92
4 feet high to the peak.

5 Q. And how would you describe the shape
6 of the item?

7 A. It's round.

8 Q. What is its construction?

9 A. Again metal. Galvanized metal.

10 Q. How is it affixed to the ground?

11 A. It will be on a concrete
12 foundation.

13 Q. And exactly...

14 A. And anchored.

15 Q. Bolted down?

16 A. Yes.

17 Q. Is the item moveable if it were ever
18 chosen not to be used any further?

19 A. I guess it could be moved with some
20 difficulty, but it would have to be dismantled in
21 order to move it.

22 Q. Does it have any doors or windows in
23 it to speak of?

24 A. It would have some access doors.

45

1 Q. Access for what purpose?

2 A. For cleaning out the bin
3 periodically.

4 Q. Would any personnel work inside of
5 it as a regular part of the process?

6 A. As a regular part, no, not at all.

7 Q. The next item that is shown, I
8 believe, is the DDGS storage building.

9 A. Right, that's behind the elevator,
10 behind the bin.

11 Q. And you had previously testified to
12 it having a 36 foot eave, 50 foot peak?

13 A. That's correct.

14 Q. And adjacent to that what are we
15 looking at?

16 A. Adjacent to this is the grain
17 cleaning and milling leg, so that would be --
18 that's 135 feet.

19 Q. And how would you describe that
20 facility?

21 A. That is really called a reclaim
22 system. The corn, after it's been stored, will be
23 reclaimed from the bin and sent to a milling

24 section. It will be -- cleaning and milling

46

1 section. The grain will be cleaned of any debris
2 or foreign material and then sent to hammermills.

3 Q. Is there any building associated
4 with that?

5 A. No.

6 Q. What is that structure? What is it
7 constructed?

8 A. It's a steel frame.

9 Q. And to what is it affixed and how?

10 A. It will be anchored to a concrete
11 foundation.

12 Q. And is it moveable?

13 A. Yes, it's theoretically moveable,
14 yes.

15 Q. Next in line is what?

16 A. The ring dryer.

17 Q. And you had testified briefly to, I
18 think, it was Exhibit 8?

19 A. Yes.

20 Q. And that's what you were referring
21 to?

22 A. That's correct.

23 Q. I believe you testified to its
24 height. What are the other measurements?

47

1 A. The height would be 115 feet. This
2 100 foot was an earlier iteration of that design.

3 Q. The sum of this height differed a
4 little bit from information provided to the
5 township earlier in the process?

6 A. Yes, primarily -- yes, there are a
7 few. I can address those as I go through.

8 Q. Okay, if you would. And the ring
9 dryer, what other -- how wide might it have been?

10 A. Well, primarily, it's a large ring.
11 What you will see from a distance is that ring,
12 that drying ring, in which the DDGS is transferred
13 at high temperature.

14 Q. And of what is the ring dryer
15 constructed?

16 A. Steel.

17 Q. And how is it affixed to the ground?

18 A. It will be anchored to the ground on
19 a concrete foundation.

20 Q. And is it attached to any building
21 of any sort?

22 A. The ring dryer will not be attached
23 to any building.

24 Q. Will any of these items that you

48

1 testified to at this time be a part of or attached
2 to any building?

3 A. No. Other than the DDGS elevator, I
4 think we talked about that.

5 Q. That goes to the DDGS building?

6 A. Yes.

7 Q. Excluding buildings that you

8 testified to, are any of these structure attached
9 to or a part of the building?

10 A. No.

11 Q. The next item that we are looking
12 at.

13 A. Is the methanator feed tank.

14 Q. What is its size, diameter?

15 A. Sixty feet, 25-foot diameter.

16 Q. And how is it constructed?

17 A. Steel, stainless steel on a concrete
18 foundation, anchored on concrete foundation.

19 Q. Is it part of or attached to any
20 building?

21 A. No.

22 Q. What is it attached to, if at all?

23 A. Just to the concrete foundation and
24 some piping.

49

1 Q. And the next item shown is what?

2 A. Next item is the process building
3 shown, 42 feet.

4 Q. And that's the building you
5 testified to earlier that is the subject of this
6 variance request?

7 A. Yes.

8 Q. And next is shown what?

9 A. The syrup tank, 48 feet.

10 Q. And what is its shape?

11 A. Again, round, steel, concrete
12 foundation, independent for building. It will be

13 connected by piping.

14 Q. Shown behind it, I believe, is
15 another item. What is that?

16 A. Behind the syrup tank, again, is the
17 process building.

18 Q. And next?

19 A. Next would be a column and the
20 rectified column. These were previously given as
21 48 feet, but...

22 Q. What is their height?

23 A. Actually, the beer column is 56
24 feet. The rectified column is 52 feet, and the

50

1 stripper column, which is not shown here, is 48
2 feet.

3 Q. And the stripper column is not shown
4 because it is where?

5 A. It will be hidden. It's in line
6 with the beer column and the rectified column.

7 Q. So you can't see it where the two
8 are depicted on the exhibit?

9 A. That's correct.

10 Q. And as to the beer column and
11 rectifier column, stripper column, how would you
12 describe -- first of all, what's their diameter of
13 this item?

14 A. They're approximately ten feet in
15 diameter. The stripper column is smaller. I think
16 the rectifier is 10 feet. The beer column may be 9
17 feet. I don't have the exact figures here, but

18 they're approximately ten foot in diameter with the
19 stripper column being smaller.

20 Q. What is the construction of these
21 tanks?

22 A. Steel.

23 Q. Stainless steel?

24 A. Again, concrete foundation.

51

1 Q. Are these items moveable if you had
2 to move them?

3 A. Yes.

4 Q. Do any of these items that you
5 testified to -- going back to -- I believe I last
6 asked this question on grain storage silo. Do any
7 those -- any of these items, as far as the
8 rectifier column and beer column, do they have
9 doors or windows?

10 A. They would have what's typically
11 manways for a person of maintenance to access
12 during shutdown for cleaning and inspection.

13 Q. During the regular process are they
14 accessible or do people take access to them?

15 A. During the regular process, no.

16 Q. So no personnel work within any of
17 those items?

18 A. Correct.

19 Q. What are we looking at next?

20 A. Next is the RT0 stack, 125 feet.

21 Q. And you say RT0 stack, describe what
22 it is?

23 A. It's a metal stack. It is attached
24 to the -- the oxidizer that will be a part of this

52

1 process.

2 Q. And what is its purpose?

3 A. Its purpose is to treat the
4 emissions from the grain dryer.

5 Q. What does the stack transport?

6 A. Exhaust vapors from the ring dryer.

7 Q. Next we are looking at, I believe,
8 it's the evaporators that we had previous testimony
9 on; is that correct?

10 A. That's correct.

11 Q. Go on.

12 A. And these are 50 feet. They
13 protrude through the process building. The next is
14 the beer one.

15 Q. Could you...

16 A. It's 64 feet along with fermenters.
17 Previously that was given as 60 feet, so this is a
18 correction to that.

19 Q. What is it made of?

20 A. Stainless steel, metal sheeting,
21 metal sheets. Again, anchored to a concrete
22 foundation.

23 Q. Does it have any doors or windows in
24 it for access?

53

1 A. It would have manway accesses for
2 access during maintenance and inspection.

3 Q. And would anyone be working inside
4 of it during the normal operations?

5 A. No.

6 Q. And moving onto the next item.

7 A. The next one is the process water
8 and fire water tank, 50 feet.

9 Q. Let's back up. I think on mine
10 fermenters are next.

11 A. Yes, fermenters.

12 Q. That's plural. How many are there?

13 A. Four.

14 Q. What is their size?

15 A. They're 64 feet high and 50 feet in
16 diameter.

17 Q. And of what are they constructed?

18 A. Stainless steel.

19 Q. And how are they affixed to the
20 ground?

21 A. Again, anchored to concrete
22 foundation.

23 Q. Going back to the beer well -- and
24 if I didn't ask it, the rectifier column, the

54

1 stripper, and beer column, how are they affixed to
2 the ground?

3 A. They're all anchored to concrete
4 foundation.

5 Q. Are any or all of them part of a

6 bui l di ng?
7 A. No.
8 Q. With regard to the fermenters,
9 again, do they have any doors or windows?
10 A. No, just manways.
11 Q. And that's -- do any personnel work
12 inside of these facilities on a regular base?
13 A. No.
14 Q. Next we move to what?
15 A. The process water and fire water
16 tank, 50 feet and another metal tank anchored to a
17 foundation.
18 Q. What is its diameter?
19 A. That diameter -- bear with me a
20 second. I don't have it right here, but it's
21 40-foot diameter.
22 Q. Thank you. Moving further we next
23 look at two further items. What are they?
24 A. The last two items are the cooling

55

1 tower and then the chiller and MCC building.
2 Q. Now, with respect to the profile
3 that is shown to the lower half of this exhibit,
4 there are a couple of items on it that are not
5 shown on the top; is that correct?
6 A. Yes, this view is looking south. So
7 there will be items hidden.
8 Q. Going over to approximately halfway
9 through that is a biogas flare. What is that and
10 how is it constructed and what is its purpose?

11 A. The biogas is constructed of steel
12 and its purpose is to flare any excess methane
13 that's created in the biomethanators.

14 Q. Moving further to the right, I
15 believe there is an indication of a boiler stack;
16 is that correct?

17 A. That is correct.

18 Q. And of what is it constructed? What
19 is its purpose?

20 A. It's constructed of steel again and
21 its purpose is to vent waste gases, exhaust gases
22 from the combustion gases for the boiler.

23 Q. On the list of the facility on
24 Exhibit 1, there is reference made to a cook water

56

1 tank, which is not shown on the exhibit; is that
2 correct?

3 A. Yes.

4 Q. Why is it not shown on this exhibit?

5 A. That is hidden by the methanator.

6 Q. What is the size of the cook water
7 tank?

8 A. Again, 60.

9 Q. Excuse me?

10 A. Sixty feet high.

11 Q. And describe for us what it is and
12 what purpose it serves?

13 A. Cook water, it's a stainless steel
14 tank, anchored to a foundation and it is really to
15 collect, store the process water that's used in the

16 cooking section of the plant.

17 Q. How is it constructed? Of what
18 material?

19 A. Steel, stainless steel.

20 Q. And does it have any doors or
21 windows?

22 A. It will have access manways for
23 inspection and maintenance.

24 Q. Is it a part of or connected to a

57

1 building?

2 A. No, it's outside the building.

3 Q. Correct me, I believe, you did
4 testify to the thin stillage tank as being one of
5 the ones hidden by the beer column. No, sorry.
6 That was the stripper. The thin stillage tank is
7 shown on Exhibit 1, and where -- what are its
8 facilities?

9 A. Again, it's a similar tank, similar
10 to the other tanks. It is hidden by the methanator
11 tank. It would be the same diameter, but slightly
12 shorter than the other tanks.

13 Q. And what height would it have?

14 A. Fifty-five feet.

15 Q. And what is its purpose?

16 A. Thin stillage is to store the beer
17 hop from the centrifuges prior to being intrafused
18 into the evaporators.

19 Q. What is it constructed?

20 A. Stainless steel.

- 21 Q. Is it a separate item?
22 A. Yes, separate from the buildings.
23 Q. Does it have doorways within it?
24 A. Manways.

58

- 1 Q. Is there any persons working inside
2 of there as part of the normal process?
3 A. No, none at all.
4 Q. I believe on the prior exhibits
5 reference was made to liquefaction tanks. Where
6 are they on the facility -- on the site?
7 A. They're actually just north of
8 the -- they are hidden by the whole stillage and
9 syrup tanks.
10 Q. That's looking at the top of Exhibit
11 9, behind those items?
12 A. Yes. They're behind the syrup tank.
13 Q. And when you say they, how many are
14 there?
15 A. There are two.
16 Q. What is the height, size, and
17 diameter?
18 A. Forty-eight feet high and,
19 approximately, I think, 15 feet in diameter.
20 Q. And of what are they constructed?
21 A. Steel, stainless steel, concrete
22 foundation.
23 Q. And how are they affixed to the
24 foundation?

59

1 A. Anchored.

2 Q. Do they have doors or windows?

3 A. Manways only.

4 Q. Any personnel working inside those

5 as a regular part of the ethanol process?

6 A. No.

7 Q. And, finally, I believe the whole

8 stillage tank, where is that and where is it

9 located?

10 A. Cold storage tank is hidden by the

11 syrup tank. It's the same height, 48 feet, same

12 diameter.

13 Q. And what is its purpose?

14 A. Stillage collection stores from the

15 distillation, the solids and water from

16 distillation prior to being introduced to the

17 centrifuge.

18 Q. What is the manner of construction?

19 A. Stainless steel, round metal vessel

20 tank, anchored again to a concrete foundation.

21 Q. Does it have doors or windows?

22 A. No.

23 Q. Do any personnel work inside it on a

24 regular basis?

60

1 A. No.

2 Q. You had indicated that a couple of

3 the heights of the items you just testified to

4 differed of these structures from some previous

5 information; is that correct?
6 A. That's correct.
7 Q. And why are they changed?
8 A. Because of a more precise review of
9 the actual tanks, including agitators that are on
10 top of the tanks. These tanks are agitators, so we
11 add the height of the agitators to the tank.
12 Q. Other than the evaporators that you
13 testified to as being part of the process building,
14 are they -- of the other facilities or structures
15 that you testified to -- a part of or connected to
16 a building?
17 A. No.
18 Q. Are there any other buildings on
19 this facility, to the best of your knowledge, that
20 exceed 45 feet?
21 A. To best of my knowledge, no.
22 Q. Excuse me just a moment, if you
23 would. Those are the only questions I have of this
24 witness.

61

1 THE CHAIRMAN: You
2 spoke of the ring dryer. Is that this?
3 (Indicating)
4 THE WITNESS: That's it.
5 THE CHAIRMAN: What does that
6 do? I don't quite understand that.
7 THE WITNESS: The products of
8 the ethanol plant: Ethanol, carbon dioxide, and
9 DDGS, which is a high protein cattle feed, which is

10 all solids, the remaining solids from the ethanol
11 conversion process, that ring dryer will be used to
12 dry that to about 10 percent moisture, remaining
13 moisture, so it's sold on the market as cattle
14 feed.

15 THE CHAIRMAN: Okay. Thank
16 you.

17 MR. EBEL: Is it steam only?

18 THE WITNESS: No, the stacks
19 will emit a variety of gases, combustion products.

20 MR. EBEL: No visible smoke?

21 THE WITNESS: Right. What's
22 visible is the steam, the water vapor.

23 MR. TARNER: As you get
24 approvals on these, whatever, in the past -- I

62

1 guess what I'm trying to ask is does the federal
2 government or any other agencies require a certain
3 height on these stacks or different dryers or
4 evaporators?

5 THE WITNESS: Not that I know
6 of. Stacks are typically based on equipment.

7 MR. TARNER: Regulations
8 federal or state?

9 THE WITNESS: I'm not
10 particularly an expert in modeling, but the certain
11 height stack will be required for a certain
12 velocity or a certain amount of vapor that's being
13 emitted.

14 MR. CLEAVER: Anybody else?

GREEN4.TXT

15 THE COURT: I have no more
16 questions.

17 MR. CLEAVER: I have a couple.
18 Are there any buildings that
19 are proposed here that would exceed 45 feet and a
20 building that would be so permanent that you would
21 actually have to come in and use demolition in
22 order to destroy it and turn it down?

23 THE WITNESS: Could you repeat
24 the question?

63

1 MR. CLEAVER: Are there any
2 buildings in this ethanol plant, and by building I
3 mean something that would be so physically
4 constructed that you would have to come in with a
5 wrecking crew and destroy it and tear it down. Are
6 there any buildings meeting that definition that
7 exceed 45 feet?

8 THE WITNESS: No.

9 MR. CLEAVER: Okay. What do
10 the evaporators actually do? They're carrying
11 something up in the air?

12 THE WITNESS: No, nothing comes
13 out of the evaporators into the air. It's just a
14 shell and tube for heat exchange. On the shell
15 side steam will go in. On the tube side will be
16 water and solids, and the objective is to remove as
17 much water and condense that water somewhere else.

18 MR. CLEAVER: So that water
19 will come back down, it will fall with gravity?

GREEN4.TXT

20 THE WITNESS: It will be
21 removed as vapor and be condensed somewhere else in
22 the process.

23 MR. CLEAVER: Okay. Aside from
24 my definition of building, the question I just

64

1 asked you, these other structures that exceed 45
2 feet, as I'm listening to you testify, I think
3 you're telling me that they are basically steel,
4 stainless steel, or something to that effect and
5 they are anchored to a concrete foundation?

6 THE WITNESS: The buildings or
7 the tanks?

8 MR. CLEAVER: Not the
9 buildings. I'm not talking about buildings. I
10 asked you a question about buildings. Forget about
11 the question about buildings. These other things
12 that you have described...

13 THE WITNESS: Structures.

14 MR. CLEAVER: Other structures,
15 when you were going through Exhibit 9 and you told
16 us there were things we don't see on Exhibit 9 that
17 do exceed 45 feet. My question is: Are all of
18 those some kind of steel that is then anchored to a
19 concrete foundation?

20 THE WITNESS: Yes.

21 MR. CLEAVER: And my follow-up
22 question is: Are there any of those that would
23 have to be removed by a demolition-type thing like
24 bringing in a wrecking ball?

1 THE WITNESS: No, not a
2 wrecking ball, no.

3 MR. CLEAVER: That's the only
4 questions I have. We are going to take a recess.

5 MR. KYLER: We are going to
6 take about five minutes for everybody to get up and
7 stretch and get right back and cool down.

8 (Whereupon, a recess was held
9 at 7:10 p.m.)

10 (Whereupon, the hearing resumed
11 at 7:30 p.m.)

12 MR. CLEAVER: Ladies and
13 gentlemen, if you can take seats, please. We are
14 going to continue with the hearing.

15 As I announced earlier, we are
16 going to go to 9:00 o'clock. Hopefully, we will
17 get done tonight. I think everybody wants this
18 hearing concluded tonight.

19 As I explained to you in the
20 beginning, after presentation of the witnesses, the
21 witness would be cross-examined had by one person.
22 Mr. Antoun has entered an appearance on behalf of
23 several named residents and the Citizens for a
24 Quality Environment, and Mr. Antoun will now

1 cross-examine the witness.

2 MR. ANTOUN: I moved over one

3 chair length away so we wouldn't get face-to-face.
4 This is an unusual arrangement, but we will give it
5 a go. Anyway, my name is Fred Antoun, Junior, and
6 I do represent the named individual property owners
7 listed on the notice and also a locally based
8 citizen's organization.

9 CROSS EXAMINATION

10 BY MR. ANTOUN:

11 Q. Your testimony was rather lengthy
12 and somewhat complicated, but I take it from your
13 testimony that you see a difference between a
14 building and a structure. How do you
15 define a building?

16 MR. ANDERSON: I don't think
17 that's in his realm to give an opinion. That's the
18 realm of the Zoning Hearing Board, and I will
19 object to that question.

20 MR. CLEAVER: I think whether
21 or not something is a building is a conclusion of
22 law to be made by the board. Is that your
23 objection?

24 MR. ANDERSON: Yes.

67

1 MR. ANTOUN: No, I'm not asking
2 what you think, but when I say it's raining out,
3 it's raining a lot, we need to know what we're
4 doing.

5 I understand you're going to
6 make the legal conclusion, but I want to know when
7 he says building what does he mean as an engineer

8 so I understand it because otherwise I can't talk
9 to him about it.

10 MR. CLEAVER: Well, I think a
11 building is a conclusion of law to be made by this
12 board in interpreting the Zoning Ordinance.

13 MR. ANTOUN: I understand
14 that.

15 MR. CLEAVER: Would you agree
16 with me on that?

17 MR. ANTOUN: Not as to his
18 testimony, only as to the ultimate conclusions. If
19 I say I live in a building, you might ask me what
20 do you mean by that and I might say an old
21 remodeled barn. That way I understand what you
22 mean by a building.

23 MR. CLEAVER: First of all, I'm
24 going to sustain the objection and the first thing

68

1 you have to do is ask the witness whether or not he
2 actually is qualified to determine whether it's a
3 building.

4 MR. ANTOUN: If he wasn't
5 qualified, he shouldn't have used the term, should
6 he.

7 MR. CLEAVER: That's the problem
8 we get into here.

9 MR. ANTOUN: It certainly is.
10 You have an engineer who is not qualified to decide
11 what a building is. So I'll move along.

12 BY MR. ANTOUN: (Resumed)

13 Q. How many of the buildings or
14 structures -- you used those two terms and since we
15 can't find out what you he meant by them -- how
16 many of them put together are over 45 feet?

17 A. You will have to be clearer on
18 that. You have to be clearer on that.

19 Q. You talked about buildings and you
20 talked about structures and you talked about a
21 number of them. Can you tell me how many total
22 buildings and structures we are talking about here?

23 A. Well, I could spend some time and
24 count them all if you want.

69

1 Q. That would be good.

2 A. Just the ones that are over 45 feet?

3 Q. I want to know how many all total,
4 and then I want to know how many are over 45 feet
5 at maximum height?

6 A. Okay.

7 Q. And if you are off by one or two we
8 won't hold you to it. I understand there is a lot
9 of them.

10 A. This could take some time.

11 MR. CLEAVER: Just answer the
12 question, please.

13 MR. ANTOUN: I'll wait.

14 THE WITNESS: Approximately
15 40.

16 BY MR. ANTOUN: (Resumed)

17 Q. And of those 40, that's the

18 combination, so we are clear here, of buildings and
19 structures, correct? Assuming those are different
20 things for the sake of argument?

21 A. Sure.

22 Q. So there is 40, and how many of
23 those 40 are over 45 feet, and, again, we are using
24 the maximum height of the building or structure?

70

1 A. Twenty-two.

2 Q. Okay. In your testimony you
3 indicated that you do have experience with ethanol
4 plants. I think you mentioned the names of several
5 of them. In your opinion, how many of these
6 buildings could be reduced in size in height and
7 still build an ethanol plant?

8 A. Yes, some of them could be reduced
9 in height.

10 Q. And did Penn-Mar ask you to reduce
11 any of them in height to come in compliance with
12 the Township Ordinance?

13 A. I didn't ask personally, no.

14 Q. Now, when we talk about the
15 structures or the towers or the tubes or whatever
16 you want to call them, would a lot more of them be
17 shorter, i.e. not as tall if the facility only
18 produced 20 million gallons of ethanol a year?

19 A. Some of them would be smaller, yes.

20 Q. So, basically, the height of these
21 buildings is governed by how much ethanol you want
22 to produce?

- 23 A. Only some of them, yes.
- 24 Q. What about the size of the tanks?

71

1 As I traveled around through New Jersey, for
2 example, in the Philadelphia area here I see tank
3 storage places or refineries and some have great
4 big tall tanks and some have very short round large
5 diameter tanks. Does the ethanol industry use the
6 large diameter tanks?

7 A. Some of the tanks are considered
8 large diameter. It depends on your definition of
9 large, I suppose.

10 Q. If I enlarge the diameter of the
11 tank, do I normally decrease the height of the
12 tank if I want to hold the same gallonage?

13 A. If you enlarge the diameter?

14 Q. Yes.

15 A. Then you have to increase the height
16 if you wanted to hold the same gallonage.

17 Q. By enlarging the diameter...

18 A. Oh, if you enlarge the diameter..

19 Q. Yes.

20 A. You have to decrease the height.

21 Q. Relative to the actual ethanol
22 manufacturing process, which was described it as a
23 manufacturing process, but we will get into that
24 later, but relative to the ethanol distilling

72

1 process is it important how high the tanks are, and

GREEN4.TXT

2 if so, which tanks require height to function?
3 A. You will have to be more specific.
4 Q. Let's take the storage tanks for
5 ethanol. Is there some scientific or engineering
6 reason why they have to be a certain height as
7 opposed to a larger diameter?
8 A. It's typical to try to keep them at
9 those particular tanks on one-to-one diameter in
10 height.
11 Q. But not necessary?
12 A. No, not necessary.
13 Q. How big is this site that the
14 ethanol plant is going on; do you know?
15 A. Not precisely, but 50 acres,
16 something like that.
17 Q. Is that an adequate size?
18 A. Yes.
19 Q. Which of these structures could you
20 remove and still make ethanol? What do you have
21 that's unnecessary? You don't have anything that's
22 unnecessary, do you?
23 A. I doubt pretty much we have anything
24 superfluous.

73

1 Q. As an engineering firm you wouldn't
2 have extraneous items?
3 A. It's a very competitive world we
4 live in.
5 Q. So I take it most of these
6 structures are not connected to each other. You

7 have been describing them as separate units
8 somehow, so I take it that they do something
9 individually and they're not connected?

10 A. They are connected by piping.
11 They're connected by conveyors. They are always
12 connected because it's a continuous process.

13 Q. So it's an entire continuous
14 process. You can't do without any of these units
15 as far as you know sitting here today; is that
16 correct?

17 A. That's a fair statement, yes.

18 Q. So, basically, this is one large
19 distillery; am I correct?

20 A. It's one large ethanol production
21 facility, yes.

22 Q. And I saw that you have beer in
23 there, but I presume that is not drinkable beer?

24 A. No, you get a headache.

74

1 Q. These manways that you described in
2 these structures that are all part of the one large
3 facility, could I walk into them?

4 A. Crawl into them.

5 Q. They're not six-foot high?

6 A. No, they're 30 inches, 36 inches.

7 Q. And then once I get inside them, is
8 there something I would stand on or a ladder that I
9 would climb?

10 A. Typically, no. It's just the floor
11 of the vessel.

12 Q. So I would be walking in onto the
13 floor of the unit?

14 A. Right.

15 MR. CLEAVER: Could I
16 interrupt? We have so many here. What units are
17 we talking about?

18 MR. ANTOUN: All of the tanks,
19 he described the manways for.

20 MR. CLEAVER: Okay.

21 BY MR. ANTOUN: (Resumed)

22 Q. So is there something -- are any of
23 the tanks open to the air, to the sky?

24 A. Some of the tanks have small vents

75

1 on them, six-inch or eight-inch vents, but most of
2 them are sealed.

3 Q. Do they have a roof on them or is it
4 a cap?

5 A. A cap, yes.

6 Q. So in laymen's terms the rain
7 couldn't come down inside the tank?

8 A. No, they are sealed. For all
9 intents and purposes, they are completely sealed.

10 Q. And are any of these structures,
11 tanks or storage devices that you testified were
12 made of steel that stand alone -- and I asked this
13 in a different way before -- that stand alone and
14 are not connected as part of the process?

15 A. I would doubt it very much. A stand
16 alone tank would serve no purpose.

17 Q. Now, when you design one of these
18 facilities, do you have someone come in and design
19 components of it or typically in your practice
20 would your company design the whole facility?

21 A. We typically design the process, the
22 process, the mechanical aspects of it and
23 electrical.

24 Q. Now, earlier there was some exhibits

76

1 passed out, which I use to have here. I think
2 these are mine. Are all these pictures marked from
3 one to -- I have one to seven.

4 MR. ANDERSON: Actually two to
5 eight.

6 BY MR. ANTOUN: (Resumed)

7 Q. Are all these photos two to eight,
8 are they all of the same plant?

9 A. Two through seven are the same
10 plant.

11 Q. And Number 8 would be a different
12 plant?

13 A. That's correct.

14 Q. Now, the devices in picture Number
15 3, are they -- what are they directly connected to
16 in the process?

17 A. Well, the elevator leg is connected
18 to the silos. It's also connected to -- through
19 conveyors to the unloading shed where the corn is
20 dumped by the truck.

21 Q. Is the corn carried from these

22 devices into the grinding or fermentation area?

23 A. That's correct.

24 Q. And is it carried by truck or

77

1 automated?

2 A. Automated.

3 Q. And would that be on some type of a
4 conveyor?

5 A. Yes, you can see the conveyors right
6 here running along this support structure.

7 Q. And that looks like it's uncovered?

8 A. That's correct.

9 Q. So if it would be raining, the corn
10 would get wet in this case?

11 A. No, the conveyor is completely
12 sealed. The support structure itself is open.

13 Q. So that's part of the process. Now,
14 where does the corn go from these buildings or
15 these structures, whatever they are?

16 A. It goes into the process building.

17 Q. Is there any gap between this
18 conveyor and these structures in Picture 3 and the
19 process building or is it a direct connection?

20 A. This conveyor goes right into the
21 process building and drops into one other conveyor
22 and then into the process tank.

23 Q. These structures here in the
24 foreground on Picture 4, the large cylinder, metal?

78

GREEN4.TXT

- 1 A. Yes.
- 2 Q. What are they connected to?
- 3 A. They are connected to the process
- 4 through piping.
- 5 Q. And what do they store?
- 6 A. They store liquid.
- 7 Q. Would it be ethanol or pre-ethanol
- 8 product?
- 9 A. It would be pre- and post-ethanol
- 10 product.
- 11 Q. So some of them would store the
- 12 finished product...
- 13 A. No, not finished product. It's just
- 14 processed liquids at different stages in the
- 15 conversion process.
- 16 Q. Before they become ethanol?
- 17 A. For all intents and purposes, yes.
- 18 Q. Would it be pre-distillation?
- 19 A. The first tank is pre-distillation,
- 20 the second tank is post distillation.
- 21 Q. So those tanks are connected to the
- 22 process building, too, then?
- 23 A. They are connected by piping, yes.
- 24 Q. And the purpose of the piping is to

79

1 what?

2 A. So you can pump that liquid to

3 different parts in the process.

4 Q. Okay. And the tube structures next

5 to it that are greater and have curved shaped tubes
6 on the top of them, what are they again?

7 A. They're the distillation columns.

8 Q. What are they connected to?

9 A. They're connected through piping,
10 through different parts of the process.

11 Q. And they're only connected through
12 piping?

13 A. That's correct.

14 Q. Are they on the same pad as the
15 structure next to them? It looks like one big
16 cement pad there?

17 A. Yes.

18 Q. How about the tanks next to them?
19 Are they on the same foundation also?

20 A. Which tanks?

21 Q. The one on the far left.

22 A. These tanks, no, they are on
23 independent foundations.

24 Q. The ones in the center are on the

80

1 same large foundation?

2 A. That's correct.

3 Q. Is that for some sort of structural
4 stability because the smaller the pad the less
5 stability you would have?

6 A. Well, actually those vessels are on
7 their own foundation for stability, but there
8 happens to be a containment pad poured around them
9 to collect any spills.

10 Q. And how deep is the containment
11 area?
12 A. Approximately, 12 inches.
13 Q. So it would be more like a lip on
14 the end of the concrete to prevent things from
15 going over the edge?
16 A. That's correct.
17 Q. And then the structure behind the
18 two gray towers, again what is that?
19 A. That is -- you're talking about the
20 structure or....
21 Q. It's a large complex with something
22 round and square and the tubes on it. It looks
23 like a building with some attached devices.
24 A. That's the building. That's the

81

1 process building.
2 Q. Which is what the previous two
3 devices were connected to?
4 A. These two tanks here, through
5 piping, connected the pumps that sit inside the
6 process building, yes.
7 Q. And these tanks here are also
8 connected -- they're on the same pad and they're
9 connected to the process building, right?
10 A. Yes, through piping and they will
11 connect to the process building.
12 Q. Now, I'm going to take a wild guess
13 that I don't go out and turn valves to control this
14 piping in your operation, would that be correct?

15 A. That's correct.
16 Q. Everything is automated?
17 A. Most of it is automated.
18 Q. And is it run by a computer?
19 A. That's correct.
20 Q. And I presume the computer has
21 operators that monitor things and make changes and
22 let things flow where they need to go?
23 A. Yes.
24 Q. Are there different computers for

82

1 each of the structures?
2 A. No, there is one master computer.
3 Q. Does that control the whole process
4 that all of these computers are tied into?
5 A. Yes.
6 Q. Five is just another picture of the
7 devices we talked about, correct?
8 A. That's correct.
9 Q. And six is yet, again, another
10 close-up picture?
11 A. That's correct.
12 Q. Of the side of the devices that we
13 just talked about?
14 A. That's correct.
15 Q. Is Number 8 just a different view of
16 the process building or is that something else?
17 A. Number 8 is the ring dryer from a
18 different plant. It's not the...
19 Q. There is going to be a different

20 dryer on this plant you said?

21 A. This will be similar to this design.

22 Q. And what's that connected to?

23 A. That is a -- it's independent. It's
24 connected to the process through conveyors.

83

1 Q. And it's not connected to this
2 building right next to it. In the picture it looks
3 like it is.

4 A. It's connected in that conveyors or
5 equipment or feed of that dryer from that
6 building.

7 Q. Now, we know it's connected by
8 piping. We know it's connected by conveyors, as
9 you testified. We know it's connected by
10 computers. I presume the computers have wires
11 leading out from them that also connect the
12 electrical and control systems?

13 A. That's correct.

14 Q. Now, you had testified that it was
15 possible to build evaporators in a pit but you
16 wouldn't advise it because of safety hazards. I
17 don't want to apply that to any of these other
18 structures, 22 of them that are higher, and I guess
19 that's where the question came in, but why
20 evaporators? Why not sink them into the ground?

21 A. Well, actually, I'm talking about
22 any of the structures that would require periodic
23 personnel access, it would be unadvisable to put
24 them below ground.

1 Q. Because?

2 A. Because personnel would have to
3 access it. It becomes a confined space, which is a
4 safety issue.

5 Q. Well, once I'm inside this tank
6 having gone through a little three-foot hole, what
7 difference does it make whether I'm two feet under
8 ground or three feet under ground or at ground
9 level?

10 A. Well, you go in that tank once or
11 twice a year. It would be controlled access. You
12 have safety people with you. The sort of access
13 I'm talking about is the daily access that they
14 need to have just in executing the job.

15 Q. So the reality is people do have to
16 check these things every day?

17 A. That's true.

18 Q. This thing about people don't go in
19 there very often, that's not true, is it? Do
20 people go in each one of these tanks if they're not
21 full or if they are full and check them every day?

22 A. No.

23 Q. They don't check them every day?

24 A. They check the outside. They check

1 the pumps, they check the electronics, they take
2 samples, but they only go into these tanks during a
3 major shutdown when maintenance or cleaning is

4 required.

5 Q. Okay. Now, this is a dry as opposed
6 to a wet plant; is that correct?

7 A. That's correct.

8 Q. And would there be any height
9 differences if this were a wet plant?

10 A. I'm not familiar with wet plant
11 design.

12 Q. Okay. What happens in the beer
13 column? This is as much curiosity for myself as it
14 may be for the members of the Zoning Hearing Board.

15 A. The mash, the beer, that's produced
16 in fermentation, the ten percent concentration
17 beer, is pumped from the permanent -- there is a
18 pump from the beer well to the beer column. In
19 that column the ethanol is separated. The alcohol
20 is separated from the water and the solids. The
21 alcohol will leave the top of the column and the
22 water and the solids will leave the bottom of the
23 column.

24 Q. And that is pre any distilling

86

1 process?

2 A. That's the beginning of the
3 distilling process.

4 Q. And do you use heat in that
5 particular tank?

6 A. Yes.

7 Q. Is it the same level of heat as you
8 use in the final distilling process?

9 A. It is -- typically, it's the only
10 heat. Most of the heat is required that's put into
11 that vehicle for all of the distilling.

12 Q. So that is, in effect, akin to the
13 process if I have an old copper still, that would
14 be the slight heating process there only on a large
15 commercial scale?

16 A. Correct.

17 Q. I don't have -- one minute. For the
18 sake of brevity, this gentleman wanted to ask a
19 question. So I'm going to...

20 (Counsel confers off the record.)

21 Q. Is there lighting designed for the
22 tops of these towers or the mid-sections of the
23 structures?

24 A. I don't know that.

87

1 Q. Is it important when you're
2 designing these facilities to know if there is an
3 airport or helicopter landing area nearby?

4 A. Absolutely.

5 Q. And are you aware that there is an
6 airport zoned very close by?

7 A. I am not directly involved in the
8 civil -- that part of the design.

9 Q. Are you aware that the Army has a
10 helipad very close by?

11 A. I'm not aware of that.

12 Q. As far as you know, have any
13 provisions been made for safety in your design for

14 the location near a helipad or an airport?

15 A. We will take that into consideration
16 definitely.

17 Q. But you haven't made any height
18 analysis based on that?

19 A. There are probably rules and
20 regulations to the height and we will have to
21 follow those.

22 Q. But before you can get a zoning
23 variance, are you aware that the FAA has height
24 restrictions?

88

1 A. I am aware of it.

2 Q. But sitting here today we don't know
3 whether you're in compliance with those; is that
4 correct?

5 A. I can't answer that question.

6 Q. That is something we would have to
7 look into?

8 A. Yes.

9 MR. ANTOUN: That's all I
10 have.

11 MR. CLEAVER: Any redirect?

12 MR. ANDERSON: I have a
13 question concerning the helipad.

14 REDIRECT EXAMINATION

15 BY MR. ANDERSON:

16 Q. Mr. Buckland, are you aware of the
17 fact that the helipad is being removed?

18 A. I was not aware of that.

19 Q. And do you know whether, in fact,
20 the civil engineers have done the overlay required
21 concerning the vicinity of air traffic and an
22 airport?

23 A. No, I was not aware of that.

24 MR. ANDERSON: Okay. That's

89

1 all I have.

2 MR. CLEAVER: Any re-cross,
3 Mr. Antoun?

4 MR. ANTOUN: No.

5 MR. CLEAVER: The witness may
6 step down.

7 MR. ANDERSON: If it would
8 please the board, that concludes the applicant's
9 case. I would move into evidence the Applicant's
10 Exhibits 1 through 9. I would ask they be admitted
11 as Applicant's Exhibits 1 through 9 for the
12 record.

13 MR. CLEAVER: Any objection?

14 MR. ANTOUN: No.

15 MR. CLEAVER: All right. They're
16 admitted. Any further from the applicant?

17 (Whereupon, Applicant's Exs.
18 1-9, documents, were admitted
19 into evidence.)

20 MR. ANDERSON: No.

21 MR. CLEAVER: Mr. Antoun, do
22 you want to proceed?

23 MR. ANTOUN: Yes.

24

MR. CLEAVER: Do you want a

90

1 couple minutes?

2

MR. ANTOUN: I need a computer

3 guy. I talked to Travis earlier, and because there

4 are so many people here, we are going to put

5 everything on the screen so everybody can see it.

6

Let me start out by introducing

7 myself. My name is Fred Antoun. I do represent

8 the citizens group and the individuals whose name

9 you saw there. I'm going to try to do this fairly

10 quickly.

11

If I go too fast, and I don't

12 think that's possible because we want to move

13 along, but if I do, please slow me down.

14

The first part of my

15 presentation has to do with why you folks shouldn't

16 even be hearing this and why you shouldn't make

17 this decision into the future.

18

Let me start this with some

19 common sense that you may have seen in the paper,

20 and that is that this is the biggest development

21 you all have ever seen, right? Yet it's not going

22 to go before the supervisors; it's going to come

23 here because it was ruled to be a permitted use.

24 The fact of it is that under the law if a permitted

91

1 use determination has been made by the zoning

2 officer or engineer or whoever can make it, you
3 fellows have to decide if that was the right
4 decision.

5 And the other fact of the
6 matter is that if I don't raise it now, I waive
7 it. Your authority over it is sufficient enough
8 that the Supreme Court of Pennsylvania has said if
9 I don't speak up now I don't get a chance...

10 MR. ANDERSON: I think at this
11 point I'm going to object to the fact that -- he is
12 getting an opportunity, which would normally be to
13 present evidence contrary to the applicant's
14 evidence which it has put in, and this sounds to me
15 like this is purely legal argument and there are
16 other avenues by which that issue can become before
17 this board for determination.

18 MR. CLEAVER: I'm going to
19 allow him to make that presentation. I will give
20 you the opportunity to address it.

21 MR. ANTOUN: The board has
22 always heard legal arguments, and I don't want to
23 prevent them from making their statement either as
24 well as submitting any briefs that the

92

1 board would...

2 MR. CLEAVER: I am going to ask
3 you both to submit briefs, yes.

4 MR. ANDERSON: Thank you very
5 much.

6 MR. ANTOUN: The Zoning Hearing

7 Board has exclusive jurisdiction over the appeals
8 from the determination of the zoning officer, and
9 if you can scroll down a little bit, and over
10 variances in the zoning, you know, the zoning
11 ordinance. Keep going down. And, however -- just
12 keep rolling. I'll tell you when to stop. I wish
13 I had a little mouse. The governing body has
14 exclusive jurisdiction over conditional uses, so
15 the first question somebody has when they come in
16 is is this a permitted use or conditional use.

17 You can't decide things having
18 to do with conditional uses. That has a separate
19 procedure, which we will get to in a minute. You
20 can use the next page or keep scrolling.

21 Right here is your township
22 section. I'm going to give you all these things.
23 You already, I'm sure, know about it, which says,
24 "District Use Regulations." It says if you want to

93

1 determine whether or not something is a permitted
2 use, if it's not specifically listed, you got to go
3 through a procedure. I'm talking to the choir
4 here, but you all know why you got to go through
5 that procedure because if you never heard about the
6 thing and you don't know what it is and you don't
7 know how it works, the State of the Pennsylvania,
8 the Township, no offense, Travis, didn't vest power
9 in one man to make that decision. Okay. If it's
10 not specifically listed, you're supposed to check
11 it out.

12 Nobody here knows what an
13 ethanol facility does. We don't know what an
14 ethanol plant does. We don't know how it works,
15 and just today we learned how many units it had and
16 how many things it had. So our argument here is
17 very simple. This is not a permitted use.

18 I'm told that -- go ahead
19 down. Because it's not specifically listed, the
20 first question that you have to decide when you're
21 looking at a permitted use is what's the use, what
22 is it. Now, things may be bad, but we know what
23 they are like gas stations, Sheetz Stores, which
24 I'm having trouble with at the corner of Route 11

94

1 and 997 because they're doing so well. We can't
2 get in and out of there. We understand those uses
3 and we have requirements for them.

4 This is the crop insurance
5 thing -- the publication of the department -- oh, I
6 don't believe it. It's invisible. Technology.
7 Pass them out, please. We are having the same
8 problem everywhere. Well, it doesn't do that on
9 our computer. That's a highlighting section that I
10 don't know why it's doing that.

11 The point of it is -- the
12 document that is shown on the screen is behind Tab
13 3 in your book. It's a publication of the
14 Pennsylvania Department of Agriculture, and there
15 is a quote in here by the President of Penn-Mar
16 which says that we are distilling ethanol, and if I

17 can find it specifically, it's referred to twice as
18 an ethanol distillery.

19 You're not going to be
20 surprised when I tell you a distillery is not a
21 permitted use in the Township, are you?

22 Now, the President of Penn-Mar
23 told the Department of Agriculture that he was
24 building a distillery, an ethanol distillery. An

95

1 ethanol distillery is not a permitted use in your
2 Township.

3 Under Tab 4, you will see the
4 Rady (sic.) Group, which is a local organization.
5 These aren't people that I have any control over
6 and they also refer to this as a distillery. It
7 should come as no surprise that one of the
8 byproducts that comes out of this, the mash that
9 they have been selling for years out of Jack
10 Daniels, is dried and it's called distillers
11 solubles and distillers grain because this is a
12 distillery.

13 Behind that page are a number
14 of other pages that all come off the Web, all that
15 you have access to, and there is hundreds more. I
16 put some examples in there of people, including
17 engineering companies and states that call this a
18 refinery.

19 So it's kind of
20 interchangeable. Some people call it distillery,
21 some people call it refinery. Refinery is not a

22 permitted use ordinance. Behind that is something
23 that's very interesting. This is the introduction
24 and summary that Penn-Mar submitted to the

96

1 Pennsylvania Department of Environmental
2 Protection. I believe the Township has or will
3 receive a plan.

4 This is the actual Penn-Mar
5 submission, a portion of it, to the Department of
6 Environmental Protection. And what they say in
7 this plan is we are going to distill stuff, and
8 they use the word distill, distillation. I don't
9 have the highlighted version, so -- unless anybody
10 can make that black show up on the yellow, I don't
11 want to talk to them.

12 They say it's a distillery.
13 They talk about fermentation, they talk about
14 brewing, they talk about distilling. Guess what?
15 None of those are listed uses, none of them.

16 I didn't write this. Penn-Mar
17 wrote it. Now, the problem is that I think
18 somebody in the Township made the decision that
19 this was a permitted use before they had any of the
20 this stuff. They did not have any plans, they
21 didn't have any statements, they didn't have
22 anything. They just said let's just have it be a
23 permitted use.

24 Now, one of the theories was if

97

GREEN4.TXT

1 we don't let it be a permitted use, we are zoning
2 out a use, but that's bunk. That's what
3 conditional uses are all about. There is permitted
4 uses and conditional uses. Permitted uses are
5 stuff we know about and the supervisors can put in
6 an ordinance and have public hearings, have
7 everybody go to, pass the ordinance, and we permit
8 that.

9 If it's a conditional use, it
10 doesn't mean it can't happen, but it does mean we
11 have to take a few extra steps. So, if they wanted
12 to put Cape Kennedy or Houston Launch Control here
13 in Greene Township, we might not turn them away,
14 but we would say that's a conditional use, fellows.
15 We got to figure out if there is some additional
16 requirements to protect the health, safety, and
17 welfare, because to do otherwise it's just shirking
18 the duties of the Township Supervisors.

19 To say I don't understand it, I
20 don't know what it is, I don't know how it works,
21 but bring it on. That is improper.

22 Look at Tab 6 you will see
23 something that is actually funny, and that is
24 Penn-Mar, when they came to you, rewrote what you

98

1 saw on Tab 5, and all of a sudden, after having
2 read the ordinance, you see what the heading is at
3 the top? Ethanol distilling becomes large scale
4 manufacturing plant. You know why that happened?
5 I know why it happened. It's no secret. The

6 newspapers know why it happened. Everybody knows
7 why it happened. It's because their use wasn't in
8 the specific uses, so they decided they were going
9 to manufacture ethanol, and you don't manufacture
10 ethanol, you distill ethanol. You don't
11 manufacture ethanol, you may refine ethanol.

12 According to the literature and
13 the previous statements of Penn-Mar, you can see on
14 the next Tab I just have your ordinance there for
15 your convenience, but it also points out on the
16 second page of Tab 7 that if you're not a permitted
17 use, you're not frozen out. You're not frozen
18 out. You have to do things right. It's -- you
19 have to have a board like you and gentlemen like
20 these two sitting next to you that say wait a
21 minute, I know we don't have a requirement for
22 that, but that's a danger and you ought to do X and
23 work with the developer to get the agreement.

24 The next Tab -- this case gets

99

1 even more confusing -- but the next Tab is
2 Mr. Fischer's opinion letter to counsel. No,
3 that's -- that's his letter to me. And in his
4 letter he has a number interesting statements, and
5 while I'm doing this, I'm going to walk over here
6 for a minute.

7 One of the statements he has in
8 here is that he says, you know, this isn't really
9 listed per se. Well, I'm a lawyer and we lawyers
10 use words like per se, but I suggest if you

11 exchange the word for "per se" for "specifically,"
12 it means the same darn thing.

13 So, after some looking at this,
14 Mr. Fischer says, well, I guess it really wasn't,
15 you know, listed per se, and he also says in there
16 that the decision to decide who is large scale
17 manufacturing took a lot of discussion and it took
18 a lot of hard work, and Mr. Brookens couldn't
19 decide on his own. He had to meet with the
20 Solicitor, they had to meet with the Township
21 Chairman, with the Board of Supervisors and they
22 had to kind of scope this thing out, and it took,
23 quote, considerable judgment and, quote,
24 interpretation. Well, there is a big problem with

100

1 that and the problem is the State law doesn't let
2 him use those, doesn't let him use judgment,
3 doesn't let him use considerable judgment, doesn't
4 let him use interpretation. Why? We go back to
5 why. Because the law says one guy shouldn't run
6 the show. That is why they have your board and why
7 they have the Township supervisors.

8 So in this letter, if you read
9 it, and, obviously, I hope you will. I don't have
10 the highlighted areas of it, so it's going -- I
11 didn't highlight your copy, but if you read it, you
12 will see about the judgment, about it not being
13 listed per se, about the hard time that they had in
14 making the decision.

15 Well, I have a question for
 Page 83

16 this board and for the solicitor. What law
17 establishes the Chairman of the Board of
18 Supervisors, the solicitor and the zoning officer
19 to be a body that can make decisions?

20 The problem is, if you look at
21 Tab 9, you will see that the real decision was made
22 by Welton Fischer. I wrote Mr. Fischer a letter
23 after he gave me this decision in January 11th and
24 he said that's the decision of the Township, and I

101

1 pointed out to him in three or four places it says
2 "In my opinion, in my opinion, in my opinion." And
3 I said, Welton, we respect you, I love you, but you
4 are not the supervisors, you're not the zoning
5 officer, and you're not the Zoning Hearing Board.

6 In the letter you just looked
7 at in Tab 8 he says, yes, but that really was the
8 decision of the Township and here is how it was
9 made. So, we still don't have a letter. If this
10 is compliant with the law, what we would have is a
11 letter that says the use is a permitted use. You
12 don't have to talk with people, you don't have to
13 meet with anybody.

14 Now the earlier section I
15 showed you, 10511 B, I'll get to in a minute, but
16 turn to Tab 10. That states the zoning officer
17 shall administer the Zoning Ordinance in accordance
18 with its literal terms. That's in the center --
19 that one is highlighted. We did okay on that one.
20 In accordance with its literal term.

21 Once again, I'm not making this
22 stuff up. The reason the state law says he has to
23 do that is because they don't want some zoning
24 officer running every township. As good of a job

102

1 as Travis does, they don't want him to have the
2 final judgment. That's why you're here. That's
3 why there is three of you instead of one and that's
4 why you're appointed to the Zoning Hearing Board
5 and the supervisors exist.

6 So what's supposed to happen if
7 it's not a permitted use? If Travis can't find
8 it's a permitted use, if you flip to Tab 11, you
9 will see what your township ordinance says. Again,
10 I didn't write it, but it's real simple. It's in
11 English.

12 It says, okay, if the zoning
13 officer doesn't find that it's specifically listed,
14 and Welton's letter in Tab 8 says, oh, you got a
15 book -- it wasn't specifically listed, per se,
16 lots of discretion, lots of interpretation, mashing
17 of teeth to decide it was a permitted use. This
18 sets off the procedure that's not specifically
19 listed, which it isn't, and it's not listed as a
20 conditional use, which it isn't, the zoning officer
21 is supposed to get a plan and say, hey, guys what
22 is this ethanol thing you want to do, instead of
23 saying come on into our township, no questions
24 asked.

103

1 We understand that the deal has
2 been made with LIDA and we want to cooperate.
3 That's not how we work in Greene Township. How we
4 work is we get a plan, get comments according to
5 your ordinance from the Planning Commission and the
6 County Planning Commission, and then good news for
7 you guys, it doesn't come back here. It goes to
8 the Board of Supervisors, and that's where the
9 ordinance says it's suppose to go because the state
10 law says conditional uses goes to the Board of
11 Supervisors.

12 Now, I know this is a little
13 complex, but I'm not making it complex to be
14 tricky. If you work through each one of these
15 things, the law is very clear, and it says exactly
16 what it says in these items here.

17 The bottom line is, and I
18 certainly expect in a moment we will address the
19 other issues, but the bottom line is that our
20 position is real simple. Penn-Mar's proposed use
21 is not a permitted use in an HR district in Greene
22 Township.

23 They want to build a massive
24 distillery, taking great pains here trying to get

104

1 to the variance issues by making each one of these
2 funny tubes sticking up don't have anything to do
3 with the other one.

4 Well, the testimony is they're
5 all connected, they're all part of the same large
6 facility. Arguing about what a building is, if we
7 want to get into that, I can argue that a tower is
8 a building because it has a roof and it has sides.
9 So we don't need to go there because this is not a
10 permitted use. It is not specifically listed in
11 the ordinance and no one can tell me it's even
12 contemplated.

13 If the contemplation, by the
14 way, as Mr. Fischer argues in support of his
15 earlier decision in his letters, was that
16 everything would fall into a large manufacturing
17 category -- are you with me? That's what he says.
18 Well, it's just a catch-all. If that was the case,
19 we wouldn't need conditional uses, would we? We
20 would never have a conditional use since everything
21 was large scale manufacturing. So we wouldn't need
22 that. So that's obviously not the situation.

23 This is a permitted use -- This
24 is -- pardon me, this is not a permitted use. It's

105

1 a conditional use. This Board has the authority to
2 find that it's not a permitted use, and you're
3 going to have to scratch very long and very hard
4 when you need two or three, three or four page
5 letters from your lawyer to figure out what you're
6 dealing with, you don't have a permitted use. We
7 all know what permitted uses are. They're
8 specifically listed in the list. If it ain't

GREEN4.TXT

9 there, it goes to a conditional use hearing. And
10 that's all I have to say on that issue. I now have
11 witnesses on the variance issue.

12 I would like to call DeEtta
13 Antoun.

14 Whereupon,

15 DeETTA ANTOUN,

16 a witness, having been duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ANTOUN:

20 Q. State your name.

21 A. My name is DeEtta Antoun, 4857
22 Letterkenny Road West, Chambersburg, Pennsylvania.

23 Q. I want to show you what's been
24 marked -- and I apologize for not having a lot of

106

1 these. Maybe we can put them up on the screen.

2 I want to show you what's been
3 marked as Exhibit 0-1, and ask you if you took that
4 photo, and if so, tell me what it depicts?

5 (Whereupon, Opponent's 1,
6 document, was marked for
7 identification.)

8 A. Yes, that's Warrior Roofing.
9 That's the view from the road in front of our
10 property, Letterkenny Road West. It's the view
11 from Letterkenny Road West looking back toward
12 Warrior Roofing in Cumberland Valley Business Park
13 across the field.

14 Q. Does that accurately depict what you
15 would see if you would stand at the location you
16 just described?

17 A. Yes.

18 Q. I show you what's marked 0-2 and ask
19 if you could tell me what that is?

20 A. This is a closer picture of Warrior
21 Roofing in the field. It's a little bit closer.

22 (Whereupon, Opponent's 2,
23 photo, was marked for
24 identification.)

107

1 Q. Do you know where the proposed
2 ethanol plant facility would be located according
3 to the township drawings?

4 A. Yes, as you're looking at this
5 picture it would be to the right of the picture at
6 the very top right next to Warrior Roofing.

7 Q. And if you were to make an educated
8 guess from your knowledge of height of the various
9 buildings and structures, how high would you say
10 the existing buildings out there are?

11 A. The existing building.

12 Q. That would be Warrior and the
13 building next to it. Are they under or over 45
14 feet?

15 A. Definitely under 45 feet. Just a
16 clarification, the blue stacks are Warrior Roofing,
17 so we know that they're attached to that building.

18 Q. In addition, where do you he reside

19 again?

20 A. 4857 Letterkenny Road West.

21 Q. So in addition to owning property
22 across from the site, are you also involved with
23 the Citizens for a Quality Environment?

24 A. Yes, I'm the director of Citizens

108

1 for a Quality Environment.

2 Q. How many members do you have in your
3 organization?

4 A. We have over 300 members at this
5 point.

6 Q. This facility is in Letterkenny and
7 Greene, how many in Letterkenny and Greene?

8 A. Over 200 in Letterkenny and Greene
9 Township combined.

10 Q. Have you circulated petitions
11 regarding this development?

12 A. Yes, we have.

13 Q. Are people concerned about it?

14 A. Extremely concerned about it.

15 Q. And how many people have signed the
16 petition in Greene Township?

17 A. Our count as of right now is over
18 1300 signatures on the petition in opposition to
19 this ethanol plant.

20 Q. Do you recall attending a Greene
21 Township meeting on February 22, 2005

22 A. Yes.

23 Q. And do you recall the issue of

24 whether the Penn-Mar plant is a permitted use or a

109

1 conditional use coming up?

2 A. Yes.

3 Q. Did anyone on the township board
4 address that issue?

5 A. In a way. Dave Jamison addressed it
6 by saying that it was not on the table. The plan
7 had not been submitted yet, and he said -- I can't
8 quote Dave exactly, but he said words to the effect
9 that we will not be discussing an ethanol plant.

10 Q. So on February 22, did you know that
11 it was the township's position that it had made a
12 determination in the form of an opinion letter from
13 Welton Fischer to Mr. Hass (sic.) on January 11?

14 A. No.

15 Q. And had you seen that letter at that
16 time?

17 A. No.

18 Q. Did you attend the LIDA Board
19 meeting on March 7, 2005?

20 A. Yes.

21 Q. And what was the topic at that
22 meeting?

23 A. That meeting was to -- for the
24 Letterkenny Industrial Development Authority to

110

1 either vote to stop -- to discontinue the agreement
2 of sale to Penn-Mar or to accept the agreement of

3 sale and continue with the sale.

4 Q. Was anyone there from Penn-Mar?

5 A. Yes.

6 Q. Who was there from Penn-Mar?

7 MR. ANDERSON: If I may, I
8 object to the line of questioning. I don't see its
9 relevance whatsoever to the variance application
10 that was before you this evening nor even to the
11 presentation or legal argument that was provided to
12 you. I fail to see its relevant.

13 MR. CLEAVER: What is the
14 relevance?

15 MR. ANTOUN: I apologize. I
16 can ask one more question and that will make the
17 relevance clear.

18 MR. CLEAVER: That's fine.

19 BY MR. ANTOUN: (Resumed)

20 Q. Did Mr. Brian Utz, the Penn-Mar
21 founder and director, make a statement at that
22 meeting?

23 A. Yes.

24 Q. What did he say?

1 A. He said we are not a chemical plant,
2 we are distillers.

3 Q. Quickly, is there anything else you
4 would like to say with regard to this request for a
5 variance on behalf of the organization?

6 A. Yes, it's the Citizens for a Quality
7 Environment's position that we would like this

8 variance -- the application for this variance be
9 denied.

10 Our members oppose granting of this
11 variance for height. Greene Township and Franklin
12 County and the Cumberland Valley are noted for
13 their scenic beauty. In fact, from the Cumberland
14 Valley Business Park's Web site I quote, "Fresh
15 air, mountain views, cultural, recreational
16 opportunities and a lower cost of living are among
17 the many amenities that create comfortable living
18 in Franklin County, Pennsylvania, the heart of the
19 Cumberland Valley. That scenic beauty is one of
20 the major reasons Franklin County is the
21 destination for new residents and businesses all
22 seeking the calming quality of life and friendly
23 environment we find here."

24 The current 45 foot height limits

112

1 allow development while maintaining scenic views.
2 Because we are concerned about the great number of
3 buildings the variance application includes, not
4 just one tower but a mini city, buildings and
5 structures, that would change the view of our --
6 for our resident's home and from their land from
7 the scenic mountains to one of a New Jersey
8 refinery complex. Because of the height of the
9 buildings, we will see a glowing space port
10 emanating from the property that has up to now been
11 a scenic area. People walk there and run there and
12 ride their bikes there.

13 If that is what the township wants,
14 they need to revise their zoning ordinances. Thank
15 you.

16 MR. CLEAVER: Anything further
17 with this witness?

18 MR. ANTOUN: No.

19 MR. CLEAVER: Any cross?

20 MR. ANDERSON: No.

21 MR. CLEAVER: Next witness.

22 MR. ANTOUN: Mrs. LaRue.

23 MS. LaRUE: No.

24 (Whereupon, a recess was held.)

113

1 MR. ANTOUN: Mr. Lucabaugh.

2 Whereupon,

3 JOHN LUCABAUGH,

4 a witness, having been duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ANTOUN:

8 Q. State your name.

9 A. John Lucabaugh, 2683 Johnson Drive.

10 Q. Mr. Lucabaugh, can you see the
11 proposed construction site from your property?

12 A. Yes, I can.

13 Q. And are you familiar with the area?

14 A. Yes.

15 Q. My witness took my photos.

16 Referring to exhibits 0-1, is that an accurate
17 depiction?

GREEN4.TXT

18 A. Yes, it is.

19 Q. Is it fair to state that picture
20 shows the view of some trees and the mountain
21 behind it?

22 A. Yes, you can see the mountains and
23 trees currently.

24 Q. What about 0-2. Is that an accurate

114

1 depiction of your view?

2 A. Yes, it is.

3 Q. And, again, what do you see behind
4 the industrial structures there?

5 A. I see trees and I see the mountains.

6 Q. Okay. Now, if you can look in the
7 foreground in front of what a previous witness
8 identified as Warrior Roofing, do you see any
9 trees?

10 A. Yes, I do.

11 Q. Now, are there trees in front of
12 some of the other building at Letterkenny?

13 A. Yes, there is trees in front of the
14 buildings on the right.

15 Q. Without being qualified as a tree
16 expert, do you know of any trees around here that
17 rapidly grow to 75 or 100 feet?

18 A. No, I do not.

19 Q. Do you have any specific concerns
20 about the number and quantity of the height
21 limitations?

22 A. I guess I have specific concerns at
Page 95

23 this point because during the original presentation
24 it was very unclear as to whether we are talking

115

1 about different definitions of things, whether it
2 was peaks or whether it was maximum heights, how
3 many buildings there were, which are some basic
4 fundamental things we want to know from the very
5 beginning of a project like this.

6 Currently, it was said with a 45
7 height limit, with those buildings they have the
8 trees in front so the skyline is not impacted. You
9 go back to what you talked about with the scenic
10 views. Part of the reason why we moved where we
11 moved was so that we could see those mountain
12 views, see those trees and see those sunsets.

13 I am highly concerned with regards
14 to the 22 structures that are all connected that
15 are part of the proposed plan, and based on that,
16 with the fact that they're made of galvanized steel
17 and they're made of galvanized metal and steel and
18 the peaks are unclear. I think that picture that
19 we just looked at will be dramatically changed and
20 that's a concern to me.

21 MR. ANTOUN: Okay. Thank you
22 very much.

23 MR. CLEVER: Any
24 cross-examination?

116

GREEN4.TXT
CROSS EXAMINATION

1

2 BY MR. ANDERSON:

3 Q. Mr. Lucabaugh, the picture I believe
4 you testified to 0-1, where is your property
5 relative to the point where this picture was taken?

6 A. This is actually at the end of our
7 driveway.

8 Q. So your house sits immediately to
9 the back of the person who took the picture?

10 A. Our house is actually back a private
11 drive and from my driveway -- this is at the edge
12 of my driveway where my mail box is. I can see
13 this view perfectly.

14 Q. And how far is that view from your
15 house?

16 A. I don't know the exact
17 approximation. I would assume it's several feet.
18 I can tell you that when you're standing in my
19 driveway, because I did it tonight, I can still see
20 that Warrior Roofing Plant, I can still see those
21 trees, and I can still see those mountains. I
22 confirmed that before I came here tonight.

23 MR. ANDERSON: Thank you.

24 MR. CLEAVER: Any redirect?

117

1 MR. ANTOUN: No.

2 MR. CLEAVER: You may be
3 excused.

4 MR. ANTOUN: Glenn Trego.

5 Whereupon,

GREEN4.TXT
GLENN TREGO,

6
7 a witness, having been duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ANTOUN:

11 Q. State your name.

12 A. Glenn Trego, representing
13 Letterkenny Army Depot.

14 Q. Mr. Trego, you indicated in your
15 introduction that you were representing Letterkenny
16 Army Depot?

17 A. That is correct.

18 Q. You have a statement to make on
19 behalf of Letterkenny Army Depot?

20 A. Yes.

21 Q. Go right ahead.

22 A. I would like to wish everyone a good
23 evening. Again, you heard my name is Glenn Trego.

24 I'm speaking on behalf of Colonel Guinn the

118

1 Commander of Letterkenny Army Depot.

2 Letterkenny Army Depot is designated
3 as the Army center of technical excellence,
4 prepared defense systems, and as such has a
5 critical mission to rebuild, test, and field
6 various radar units.

7 The testing of the radars is
8 accomplished at a radar test site located in a
9 secured area of the Depot which is in constant
10 use.

11 As part of their testing these
12 radars track aircraft coming from or going to major
13 airports. Letterkenny Army Depot has been working
14 with the local community on the joint land use
15 study which addresses possible land encroachment
16 issues that may adversely impact local community as
17 well as the mission of the Depot.

18 The Joint Land Use Study is in the
19 final stages of completion; however, the proposed
20 ethanol plant is not in the study, and the possible
21 encroachment impacts have not been discussed or
22 addressed to date.

23 Possible issues are electrical
24 interference with operational radar tests. We are

119

1 concerned about the height of a number of the
2 structures associated with the plant and the
3 possible effects they may have on our radar
4 pre-ancillary testing.

5 We are also concerned about the
6 possible impacts of the Penn-Mar plant to our Army
7 missions in regard to frequency bands associated
8 with our radar units and frequency bands, if any,
9 of equipment planned for the ethanol plant.

10 The current zoning restriction
11 insured no impact on the Army radar testing. We
12 have very little information concerning design,
13 siding, or operation of the plant. The only
14 information the Army has on the ethanol plant's
15 structure height is what has been in the local

16 newspaper.

17 We neither support nor oppose the
18 plant. I am here to express the potential concern
19 that the Army and community may have issues with
20 this proposed plant and should be discussed.
21 That's the end of my statement.

22 Q. You mentioned in your statement that
23 you have no problems with the current zoning
24 restrictions that insure that there is going to be

120

1 no impact to your operation. Were you referring to
2 the 45-foot height limitation?

3 A. Yes, sir.

4 Q. I don't know if you know anything
5 about this, but I'll be brave and ask because --
6 the first rule is don't ask a question you don't
7 know the answer to, but I'm going to do it anyway.

8 There was some going back and forth
9 here about helipad is going to be closed. I said
10 it could be a problem because of the height of the
11 towers and there was a statement that it's going to
12 be closed. Is it being closed or what's the story
13 there?

14 A. Being the Deputy Director of Public
15 Works, I can address that. During BRAC
16 realignment, excess of a lot of property, part of
17 that property was the existing helipad. We have
18 since installed a second helipad which is a new
19 helipad. That helipad is now located at the test
20 track area, which is just northwest of the proposed

21 plant location. So the original helicopter pad is
22 to be closed down per LIDA; however, we still have
23 an active pad at the test pad.

24 Q. Is the new pad closer or further

121

1 away from the Penn-Mar Ethanol plant than the old
2 one?

3 A. It's actually closer.

4 Q. Okay. Has anybody done any studies
5 about what effect these towers will have on the
6 choppers coming in and out of there in times of
7 emergency?

8 A. Again, I can't really address that.
9 I can say there has been no study because we, the
10 Army, really have no information on this plant
11 whatsoever.

12 Q. Okay. I don't have any other
13 questions.

14 MR. CLEAVER: Cross examine.

15 CROSS EXAMINATION

16 BY MR. ANDERSON:

17 Q. Are you aware there have been
18 attempts to reach the Colonel to discuss this but
19 he has not been available to us, to Penn-Mar?

20 A. I can't address that.

21 MR. CLEAVER: Any other
22 questions. Any redirect?

23 MR. ANTOUN: No.

24 MR. CLEAVER: The witness may

122

1 be excused. Next witness.

2 Whereupon,

3 DUANE SCHOOLEY,

4 a witness, having been duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ANTOUN:

8 Q. State your name.

9 A. Duane Schooley, 4905 Letterkenny
10 Road West, Chambersburg.

11 Q. Duane, where is your property
12 located by description of the crossroads that these
13 gentlemen might understand?

14 A. Well, if you go down Letterkenny
15 Road West toward Warrior Roofing where Gate 17 use
16 to be down by the chapel in Letterkenny, I live
17 right on the corner of Letterkenny Road West and
18 Rocky Spring Road that takes you back to the old
19 Rocky Spring Church.

20 Unfortunatley, I will be able to
21 view this ethanol plant right off my front porch of
22 all times.

23 Q. Have you heard the other witnesses
24 testify about the height and the view?

1 A. Yes.

2 Q. Do you agree or disagree with what
3 they said?

4 A. Well, I agree that the view is going
Page 102

5 to have a major impact, you know, on what we see at
6 all times. Right now, you know, we can see,
7 basically, the top of Warrior Roofing at this
8 height of the trees. This is going to just blow
9 everything else out of the water.

10 We built our house there
11 approximately 20 years ago, and Letterkenny
12 basically was in full swing at that time, but what
13 Letterkenny had and has now pales in comparison to
14 the proposed height of the ethanol plant.

15 You know, while their attorney was
16 trying to establish that each piece is an
17 individual, that, you know, therefore, our zoning
18 laws they can apply it -- I'm no attorney, but when
19 you put everything together, you got one big
20 humungous structure. If I drive around Greene
21 Township and see a silo here another one here, a
22 smoke stack here, those are basically what we are
23 talking about with our zoning laws, but this is
24 going to be gargantuan. We are going to have

124

1 towers and stacks concentrated on 55 acres.

2 I don't think our laws, as they are
3 now, you know, we can grant variances on something
4 like that. But anyway...

5 Q. Okay. He gets to ask you
6 questions.

7 MR. ANDERSON: No questions.

8 MR. ANTOUN: We are going to try
9 to do this quickly. Mrs. LaRue, do you want to

10 take the oath and confirm. You don't have to talk
11 a lot.

12 MS. LARUE: 1929.

13 Whereupon,

14 FLORA K. LaRUE,

15 a witness, having been duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ANTOUN:

19 Q. Where is your house in relation to
20 Mr. Schooley's?

21 A. Mr. Schooley is two houses down to
22 the left on Letterkenny Road West.

23 Q. Do Exhibits 0-1 and 2 in front of
24 you represent the view that you would generally get

125

1 from your yard?

2 A. Yes, that's part of the view I get
3 from my yard. It's what I get off to the left.

4 Q. Did you agree or disagree with the
5 concerns and the objections that your neighbors
6 have about granting the variance for the 22 out of
7 40 structures in this facility?

8 A. No, I really object to the whole
9 facility. I just think it's too much all in one
10 place and in a bad place for the rest of us here.

11 I do have a lovely view and it's a
12 beautiful part of Pennsylvania, and I really hate
13 to see it obliterated.

14 Q. Okay. Anything else?

GREEN4. TXT

15 A. No, I just object.

16 Q. Okay.

17 MR. ANDERSON: I have nothing.

18 Whereupon,

19 MICHAEL CLOUGH,

20 a witness, having been duly sworn, was examined and

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ANTOUN:

24 Q. State your name.

126

1 A. Michael Clough, C-L-O-U-G-H. 5121

2 Innovation Way, Chambersburg.

3 Q. Are you a resident of Greene

4 Township?

5 A. Actually, I am not. I am a resident

6 of Shippensburg. I work in the Cumberland Valley

7 Business Park.

8 Q. Over close to where the proposed

9 ethanol plant is?

10 A. Yes.

11 Q. And what is your business?

12 A. We are a men's apparel company.

13 Q. And what's the name of the company

14 that -- the company line that we would know?

15 A. It's actually mail order for higher

16 end, Bullock and Jones, and the parent company

17 some of you might know, Franklin Clothing, IEG

18 Franklin Clothing Pant Factory in Shippensburg.

19 Q. And what type of facility do you

20 have in the business park?

21 A. We have a renovated warehouse from
22 the military.

23 Q. And is it a portion of what we know
24 as the Tom James facility?

127

1 A. Yes.

2 Q. And are you familiar with -- you are
3 now, you sat through the hearing. Are you familiar
4 with the proposed ethanol plant?

5 A. Yes, I was at the LIDA meeting in, I
6 guess it was, early March, and I was also at the
7 Greene Township, Letterkenny Township meeting
8 several weeks ago.

9 Q. Are the zoning rules and ordinances
10 in Greene Township important to you as a
11 businessman, and if so, why?

12 A. They're very important. As I have
13 discussed with our corporate lawyer, we wouldn't
14 have located our business here if just anybody
15 could set up shop beside us. And our particular
16 company, apparel, if you get fumes and so forth in
17 the clothing, they're useless. So we are very
18 concerned about the effects which are slightly
19 outside the scope of this hearing, but we are very
20 concerned.

21 Q. What about the height limitations,
22 the 45-foot height in the ordinance? Have you
23 found any problems with that in your personal
24 experience in the business park?

1 A. My personal experience, yes. I have
2 a membership at the golf course and I would like
3 the views off the holes, but other than that, I'm
4 typically inside the building, but I feel for all
5 the residents who have homes and would see out to
6 the mountains and lose their view.

7 Q. Let's go back to the golf course.
8 Can you see the site down over to Warrior Roofing
9 to the golf course, to most of the golf course?

10 A. Actually, I think it's off of hole
11 7 -- so -- I'm typically in the rough so, at this
12 point, hole 7.

13 Q. Let's assume from the site you can
14 jack up what you see now by anywhere between 50 and
15 160 feet, would that improve or detract from your
16 view?

17 A. It would detract. I probably would
18 choose to play golf somewhere else.

19 Q. As a business person, do you place
20 any reliance on the rules here at Greene Township
21 and how they're administered?

22 A. Yes, we abide by the rules, so we
23 expect that everybody else would abide by the
24 rules.

1 MR. ANTOUN: I don't have any
2 other questions.

3 MR. CLEAVER: Any cross?

4 CROSS EXAMINATION

5 BY MR. ANDERSON:

6 Q. Prior to locating your facility, did
7 you check into the zoning?

8 A. Actually, I was not involved in the
9 actual picking of the facility.

10 Q. But have you looked -- did you look
11 into the zoning and advise them?

12 A. They actually -- I believe part of
13 the LIDA agreement was that they would not sell
14 property to anyone who would quote, unquote would
15 be a nuisance, whether it be noise or pollution.

16 Q. You talked about fumes. Are you
17 aware that they can do food processing in a heavy
18 industrial district?

19 A. I'm aware that it's not 100 percent.

20 Q. Are you aware they can do a resource
21 recovery facility in there?

22 A. No, I'm not.

23 Q. So you're not familiar with all the
24 uses are in the heavy industrial district, you just

130

1 don't like ethanol?

2 A. I have no problem with ethanol.

3 MR. ANDERSON: Thank you.

4 That's all.

5 MR. ANTOUN: I have a question.

6 We're here talking about the height restriction?

7 THE WITNESS. Yes.

8

9 BY MR. ANTOUN:

10 Q. When you say that when you bought or
11 located in the LIDA Business Park they had certain
12 uses based on Greene Township that wouldn't be
13 allowed, was a building above 45 feet among them?

14 A. Sorry.

15 Q. When you bought in the LIDA
16 Business Park, you said you were advised that the
17 businesses in the park had to abide by the Township
18 Ordinance?

19 A. Correct.

20 Q. I'm assuming you're also including
21 the height limitations?

22 A. Correct.

23 Q. Are you aware that in your agreement
24 with LIDA they copied the Greene Township

131

1 Ordinances and gave them to you and the other
2 members and saying everyone will abide by these
3 rules?

4 A. Yes.

5 Q. Do you abide by them?

6 A. As far as I know.

7 MR. ANTOUN: Okay. That's all
8 I have.

9 MR. CLEAVER: You may be
10 excused.

11 Whereupon,

12 LUCY K. CARTY,

13 a witness, having been duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ANTOUN:

17 Q. State your name

18 A. Lucy Carty, 4006 Rocky Spring Road,
19 Chambersburg.

20 Q. How long have you lived in Franklin
21 County?

22 A. I have lived in Franklin County my
23 entire life.

24 Q. That's enough. I just realized that

132

1 we were following up Mrs. LaRue's statement...

2 A. Accept for two months.

3 Q. Since you lived your entire life, we
4 don't want a further answer. Do you ever come out
5 to the intersection of Rocky Spring Road and
6 Letterkenny Road West?

7 A. Every day that I can walk that
8 park.

9 Q. Do you drive that far?

10 A. I drive that far almost every day as
11 well.

12 Q. So would you pass in the area that
13 is depicted in the two pictures?

14 A. Absolutely.

15 Q. Are the views in the Franklin County
16 and Greene Township, including this view, important
17 to you?

18 A. Very important to me. I grew up on
19 a dairy farm exactly one mile from where I live for
20 the past 33 years -- excuse me 30 years.

21 I now live on a small 65 acre horse
22 farm, which I have lived on the last 30 years, and
23 I just realized, as I was listening to some of this
24 testimony, that this 55-acre ethanol plant, if it's

133

1 built, is going to be just about the size of our
2 entire farm and that's pretty big.

3 Q. With regard to the earlier zoning
4 variances that you heard about when you were here
5 at the earlier hearings, what did you find
6 different about this one from the earlier two or
7 three?

8 A. The earlier two or three that we had
9 tonight were very small variations, a few inches to
10 divide two lots. It's ten inches less of grass
11 that two homeowners are going to have to mow.
12 Having as many as eight horses on my property at
13 one time or another, most recently down to five,
14 and one more horse with the provisions that the
15 gentleman tonight had sounded pretty reasonable. I
16 forget what the other one was. So, this is huge
17 compared to what those three requests were for a
18 variance from the Township.

19 Q. When you first heard about this,
20 were you surprised that no one at the Township had
21 done any research, answered any questions about it?

22 A. Very surprised.

23 Q. Is this hearing the first hearing
24 you have gone to about this matter?

134

1 A. About the ethanol plant.

2 Q. Yes.

3 A. It's the first hearing. I have been
4 to a few meetings.

5 Q. But the first public meeting was
6 cancelled, correct?

7 A. Correct.

8 Q. And what did the supervisors -- they
9 had some rule for that public meeting. They were
10 going to ask questions or not answer them. What
11 was that?

12 A. There was something about we were
13 supposed to submit questions in writing. We
14 wouldn't necessarily get answers. They didn't want
15 the Penn-Mar people to say anything at that
16 meeting. They wanted them to sit there and listen
17 to our questions.

18 Q. And do you have any idea why they
19 weren't going to answer your questions?

20 A. I have a feeling...

21 MR. ANDERSON: If I may
22 object. I don't know what the relevance is of
23 this.

24 MR. CLEAVER: Let the woman

135

1 testify.

GREEN4.TXT

2 THE WITNESS: I would guess
3 maybe it's because they weren't sure what the
4 answers they should give.

5 MR. ANTOUN: That's all I
6 have.

7 MR. CLEAVER: Cross examine.

8 MR. ANDERSON: Nothing.

9 MR. CLEAVER: You may be
10 excused.

11 MR. ANTOUN: Those are all the
12 witnesses we have to call at this time.

13 MR. CLEAVER: Does anybody have
14 anything else at this time?

15 MR. ANTOUN: I want to make a
16 brief statement regarding this issue since we
17 didn't address the variance at the beginning.

18 MR. ANDERSON: I believe at
19 this point, in lieu of the time and because you
20 have asked for us to offer briefs, I would suggest
21 that we just submit our legal arguments in the form
22 of briefs, and that will defer any oral arguments.

23 MR. CLEAVER: I think that's
24 a good suggestion. Mr. Antoun, and you can put

136

1 your arguments in the brief. You can give us case
2 law, you can give us your entire argument.

3 MR. ANTOUN: I don't have a
4 legal argument. I have one statement to make. The
5 statement is you saw here tonight what happens when
6 you break the rules as a township. You saw that

7 the county's largest employer, which we are trying
8 to keep as a large employer, doesn't even know
9 what's going on because we did not treat this as a
10 conditional use. We slid it in with some letters
11 that you have in your book as a permitted use. It
12 is not a permitted use.

13 No number of lawyers, no number
14 of judges can change the fact that we all know that
15 this is not a permitted use in your township, and
16 what should have happened and what still can happen
17 if the Zoning Hearing Board makes it happen, is
18 that this should be determined not to be a
19 permitted use so that Letterkenny can come in and
20 we can figure out if we need some special
21 provisions for the radar, if we need special
22 provisions for the helipad, if we need special
23 provisions for things that they will have to tell
24 you about in secret that we don't know about.

137

1 Because we agreed with them that when they gave us
2 the land that we would involve them in everything
3 we did. LIDA kept them in the dark because they
4 might have objected. Greene Township kept them in
5 the dark because they might have objected and they
6 did the same thing against the citizens. Not only
7 against the cases that are in your book and the
8 cases in our brief, but it's plain wrong. And we
9 ask that you determine that the permitted use
10 decision was incorrect, that this is not a
11 permitted use, not specifically listed, and as soon

12 as you say it's not specifically listed, then
13 Travis will have to go out and get all the things
14 from Penn-Mar and Letterkenny will come in and meet
15 with the supervisors and the people that are in the
16 business park and they will meet with them and
17 figure out how to do this deal if it can be done in
18 a fair and correct way. Thank you.

19 MR. CLEAVER: Mr. Anderson, do
20 you have any comments to the board?

21 MR. ANDERSON: I'm going to
22 brief. I'll be glad to address all the questions
23 Mr. Antoun has presented tonight in the form of a
24 brief because they are legal issues.

138

1 To the extent of which he is
2 alleging that Travis Brookens and the supervisors
3 did something surreptitiously and illegal is
4 completely farfetched and off base.

5 Your own ordinance calls for
6 the use of heavy industrial district, and I'm
7 reading out of Mr. Antoun's folder here under
8 Tab 7, "That the heavy industrial district is for
9 uses engaged in basic processing and manufacturing
10 of materials or products from extracted or raw
11 materials," and it does specifically address large
12 scale manufacturing. That is a use. And I suggest
13 to you, and I will in my brief confirm -- In my
14 brief I will address the issues that had come
15 before the board tonight that you're called upon to
16 make. Thank you for your patience.

GREEN4.TXT

17 MR. CLEAVER: Counsel, within
18 which time frame can you submit a brief to us?

19 MR. ANDERSON: A week.

20 MR. ANTOUN: You want
21 simultaneous briefs?

22 MR. CLEAVER: What I would like
23 to have is simultaneous briefs with you supplying
24 each to the other, and then each one of you would

139

1 have seven days thereafter to file any reply brief,
2 so that we would have everything before us in
3 briefs within 14 days of today's date, and then we
4 would hope -- as I said to everybody in the
5 beginning, we have 45 days to file a decision, but
6 I would hope that if I can have these briefs, share
7 them with the members of the board, that hopefully
8 we can have a decision within 30 days.

9 MR. ANDERSON: And we will talk
10 about close of business next Monday?

11 MR. CLEAVER: If you have it in
12 the mail to me by close of business next Monday
13 that's fine and serve copies on each other, and
14 then reply within close of business the following
15 Monday, have it in the mail then. Mr. Antoun, is
16 that acceptable?

17 MR. ANTOUN: No problem.

18 MR. ANDERSON: That's fine.

19 Thank you.

20 MR. CLEAVER: Yes.

21 MAN IN AUDIENCE: How can we
Page 116

22 the citizens get informed of whatever happens
23 between these two gentlemen?

24 MR. CLEAVER: Well, a decision

140

1 actually will be filed and it will be made public,
2 and we will be sending a decision to Mr. Antoun and
3 Mr. Antoun can then disseminate that to you.

4 MR. ANTOUN: We will post our
5 brief on the Web site, and it will be up to
6 Penn-Mar whether they opt to post theirs.

7 (Whereupon, the hearing was
8 concluded at 9:30 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 C E R T I F I C A T E

2 I, MARI OVER, Court Reporter in and for the
3 County of Franklin, Commonwealth of Pennsylvania, do
4 hereby certify:

5 That prior to being examined, the witness
6 named in the foregoing deposition were duly sworn
7 to testify the truth, the whole truth, and nothing
8 but the truth.

9 That said hearing was taken before me at the
10 time and place set forth and was taken down by me in
11 shorthand and thereafter reduced to computerized
12 transcription under my direction and supervision,
13 and I hereby certify the foregoing hearing is a
14 full, true and correct copy of the transcript of my
15 shorthand notes so taken.

16 I further certify that I am neither counsel
17 for nor related to any party to said action nor in
18 any way interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto
20 subscribed my name this ____ day of
21 _____, 2005.

22

23

24

Mari J. Over