

PLANNING COMMISSION MINUTES
October 18, 2018

PUBLIC HEARING

CASE NO. 17ZONE1041

Request: Change in zoning from R-4 & C-2 to M-2 and a Detailed District Development Plan with Waivers
Project Name: Hay Court
Location: 8325, 8329, and 8401 Nash Road and 711, 715, 717, 719, 801, 803, and 805 Hay Court
Owner: The Bernie R. Elder Living Trust
Applicant: The Bernie R. Elder Living Trust
Representative: Schroll Land Surveying
Jurisdiction: Louisville Metro
Council District: 13 – Vicki Aubrey Welch

Case Manager: Joel Dock, AICP, Planner II

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

03:06:41 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He reviewed the binding elements in the staff report.

The following spoke in favor of this request:

Bill Schroll, Schroll Land Surveying, 5450 Southview Drive, Louisville, KY 40214
Bernie Elder (property owner), 9702 Thixton Lane, Louisville, KY

Summary of testimony of those in favor:

03:10:17 Bill Schroll, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:17:21 In response to a question from Commissioner Carlson, Mr. Schroll said he authored the applicant's "Statement of Compliance". Regarding a statement in the third line, Mr. Schroll said that is an error – the single-family structures will be converted to a contractor's shop and a night watchman's quarters.

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03:18:57 In response to a question from Paul Whitty, legal counsel for the Planning Commission, Mr. Schroll said that no dust abatement was planned. He pointed out the paved areas on an aerial photo.

The following spoke neither for nor against ("Other"):
No one spoke.

The following spoke in opposition to this request:
Ty Schrenger, 8400 Nash Road, Louisville, KY 40214

Summary of testimony of those in opposition:

03:19:57 Ty Schrenger is representing his parents who own property across the street from the site. He said he is not opposed to the rezoning, but there is "severe" infrastructure issues that must be resolved first. His main concerns are flooding and drainage issues. He said no construction fencing or silt fencing was put up before the applicant mowed/bushhogged the area; he now has about 2 inches of mud on his property from a steep embankment because no silt fencing was installed first. He described conversations he has had with MSD. He is also concerned about large trucks running over the gravel driveways causing "massive" amounts of dust. He said his father runs a car lot across the street; since the vegetation barrier has been mowed down, there is now lots of dust settling on the vehicles.

03:24:39 Tony Kelly, representing MSD, discussed erosion control and verified that only mowing/bushhogging was being done. He stated that the whole area is in a floodplain. He said he has been working with Public Works about the size of the pipe and making downstream improvements to hopefully improve the small rain event drainage. He said this is the responsibility of MSD and Public Works, not the applicant. Commissioner Brown confirmed that this is something Public Works can take care of this before the end of this year.

03:26:33 Commissioner Jarboe asked if bushhogging is something a landowner can do without a permit/department approval. Mr. Kelly said that said bushhogging is permitted, but if an applicant is cutting down trees of any nominal size, that is different. It did not appear that the applicant was disturbing any ground. He said he sent an inspector to this site on Monday October 15th to ensure that MSD was policing erosion control. The inspector determined that it was all right as is and that silt fencing was not needed.

Rebuttal

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03:27:54 Mr. Schroll addressed some questions about the gravel. Using aerial photos, he pointed out surrounding lots that are all gravel. He said if there are problems with gravel lots, then there are problems with all lots on Nash Road and Hay Court. He added that the Land Development Code does allow for heavy truck parking on gravel lots.

03:29:19 Commissioner Lewis asked how often the trucks move – are they there for days, or do they move several times per week? In response, Barnie Elder, the property owner, answered questions about truck movements and parking on gravel. Mr. Elder said the bushhogging was done in response to complaints from another person in opposition that he wasn't taking care of his property. He said he has been bushhogging this property for about 10 years.

03:31:03 Commissioner Howard asked Mr. Schroll about a five-foot LBA that is shown on the development plan. She asked if the applicant is aware that they will need to provide a landscape plan. Mr. Schroll said he is aware of that and the applicant will provide the trees that are required along the LBA's.

03:31:36 In response to a question from Commissioner Carlson, Mr. Dock said APCD is a regular reviewed of plans and they did not note any issues or concerns with dust control/mitigation. Commissioner Howard said she suspected that APCD would not request pavement here because this area is in a floodplain, and pavement could make flooding worse.

Deliberation:

03:32:52 Commissioners' deliberation

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning

03:34:16 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Checklist, and the applicant's justification and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and

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manufacturing) and remains consistent with the zoning districts present in the area; the proposal integrates a use and zoning district that is supported by nearby uses requiring heavy trucks for the transport of goods or other industrial uses; the industrial zoning district, specifically the proposed use should be gated from access for safety; and in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no new structures have been proposed; the site is not surrounded by a mixture of metal and concrete buildings serving multiple purposes for the uses from accessory garages to retail/office space and auto sales/repair; the proposal does not constitute an expansion into a residential area as the subject site and area is located in the SW form district; further, Commercial zoning districts operating auto repair, sales and/or salvage/junk yards exists to the North and South of the subject site; opposite Nash Road and in the immediately surrounding area industrial zoning districts are present; a large tract of vacant C-2, commercially zoned property also abuts to the North; no adverse odors or emissions not ordinarily expected in the area would occur as a result of the proposal; access will utilize National Turnpike which is an arterial roadway serving a large variety of industrial users; lighting will comply with LDC 4.1.3; the subject site is located north of the Outer Loop via national Turnpike, an arterial level roadway; Hay Court provides access through similar uses to the subject site from National Turnpike; the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development; the proposed district is compatible with the area; the proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another; the proposed district is compatible with the area; setbacks, lot dimensions and building heights are compatible with those of nearby developments; parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians; the immediately abutting area is predominately industrial and the few remaining residential uses along Nash road are not consistent with the exiting or future growth of the area; the proposal includes screening and buffering of parking and circulation areas adjacent to the street as required landscape areas have been provided abutting Nash Road; no garages proposed; and signage will comply with Ch. 8 of the LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not required and should not be provided, except in the form of tree canopy as the site should be restricted from the public; open space is not required and should not be provided, except in the form of tree canopy as the site should be restricted from the public; and a landscape plan will be provided and demonstrate compliance and preservation of trees; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because a landscape plan will be provided and demonstrate compliance and preservation of trees; buildings on-site will be repurposed; and MSD review and approval has been provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with the zoning districts present in the area; the site is not downtown; the proposed district is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with the zoning districts present in the area; it is also supported by National Turnpike which provides convenient access to I-265 to the south of the subject site; primary access utilizes National Turnpike which provides convenient access to I-265 to the south of the subject site; and National Turnpike provides convenient access to I-265 to the south of the subject site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; the industrial zoning district, specifically the proposed use should be gated from access for safety; in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; the proposal is along or near an arterial level roadway within close proximity to similar industrial activities and provides a supportive use to these industries; the proposal includes the dedication of rights- of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; the proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; the types of uses proposed require facilities to be safe and secure from users outside the limits of the property; stub connections to adjacent properties may not be practical or appropriate due to the needs to safely secure the facilities; further, no structures are being proposed which require connections and the site is located in an area where the majority of abutting uses are built out; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because the types of uses proposed require facilities to be safe and secure from users outside the limits of the property; stub connections to adjacent properties may not be practical or appropriate due to the needs to safely secure the facilities; further, no structures are being proposed which require connections and the site is located in an area where the majority of abutting uses are built out; access to the site is through areas of similar uses and located in a Workplace

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form district; the uses proposed provided supportive uses to the industrial area; Hay Court provides access to an arterial level roadway; and no access to Nash Road will be provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the industrial zoning district, specifically the proposed use should be gated from access for safety; in the event a new use is proposed requiring employment, the plan will be evaluated for its impact on pedestrian and transit connectivity; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because there are no apparent natural corridors on the subject site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities; the proposal has access to an adequate supply of potable water and water for fire- fighting purposes; and the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

(Applicant's Justification) WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because it is located within adjoining commercial and industrially zoned properties. It utilizes existing structures and site conditions and eliminates the residentially zones properties that did not fit within the goals of the suburban workplace form district. This site will provide a contractors office, in a structure that was a single family residence, and heavy truck parking in an area that is along an area that has access to the regional transportation system; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2-Centers because the proposed zoning change will utilize the existing buildings and site conditions; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3-Compatibility because the proposed use of the site is compatible with the

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surrounding uses in the area. It is located along National Turnpike that is a mixture of commercial and industrial uses and that use National Turnpike as a connection to the nearby highway system. The property is located within a workplace from district; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6-Economic Growth and Sustainability because it encourages the industrial use of the property and takes advantage of the need for the proposed use in an area that has industrial subdivisions nearby; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7 & 8- Circulation and Transportation Facility Design because Hay Court is located just of National Turnpike which is a minor arterial in close proximity to the Outer Loop and Gene Synder Freeway, both major arterial roadways. The existing roadway system is adequate for this site and its proposed us; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10 & 11 - Flooding and Stormwater-Water Quality because the property will utilize the existing sewer and drainage facilities that are already in place. No additional impervious surfaces are proposed with this plan. The site is located within the 100-year flood hazard area, which will require special approval for any new construction; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14- Infrastructure because the subject site has existing access to utilities and water; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4, Single-Family Residential & C-2, Commercial to M-2, Industrial be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of Land Development Code, section 10.2.4 to allow truck maneuvering within 15' LBA

03:39:00 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as all planting material will be provided and abutting users are similar in intensity; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020 as the plan calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development and the proposal provides all planting material required and abutting users are similar in intensity; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all planting material will be provided and gravel is currently present; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the Comprehensive Plan calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development and the proposal provides all planting Material required and abutting users are similar in intensity; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of Land Development Code, section 10.2.4 to allow truck maneuvering within 15' LBA.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Detailed District Development Plan and binding elements

03:40:29 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Commission further finds that all landscaping plan will be provided which demonstrates tree canopy and landscaping compliance on the subject site; and

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WHEREAS, the Commission further finds that the proposed use will be gated and secured from public access for safety; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided on a landscaping plan that demonstrates tree canopy and landscaping compliance on the subject site; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area as industrial uses dominate the immediate vicinity; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan. The proposed use is supported by uses in the immediately surrounding area (auto salvage, warehousing, and manufacturing) and remains consistent with this area.. The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development as the proposed district is compatible with the area. Access will utilize National Turnpike which is an arterial roadway serving a large variety of industrial users. The use will be gated from public access for safety; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A road closure application for portions of Hay Court as shown on the preliminary development plan shall be submitted. Said closure shall be approved and recorded within 6 months of final action by the Louisville Metro Council.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. The property shall be fully gated and secured from public access along all road frontages.
7. Heavy truck access shall be prohibited from Nash road.

The vote was as follows:

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YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

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OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

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New Business

Case No. 17ZONE1041

Request:	Change in zoning from R-4 and C-2 to M-2 and a Detailed District Development Plan
Project Name:	Hay Court
Locations:	806 Hay Court and 8325 Nash Road
Owner:	The Barnie R. Elder Living Trust
Applicant:	The Barnie R. Elder Living Trust
Representative:	Schroll Land Surveying
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Aubrey Welch

Case Manager: **Joel Dock, AICP, Planner II**

Notices were sent by first-class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:09:11 Joel Dock presented the case (see staff report and recording for detailed presentation.) He noted that proposed Tract 2 is being subdivided off from the subject site and is not being considered for the rezoning, nor will it be part of the development plan. He said he has asked for some clarifications on the development plan prior to the public hearing; therefore, Item #2 in the staff report technical review has been resolved.

01:13:34 In response to questions from Commissioner Brown, Mr. Dock discussed the mixture of zoning categories on Nash Road and the area surrounding the subject site. They also discussed a related street closure.

The following spoke in favor of the request:

Bill Schroll, Schroll Land Surveying LLC, 5450 Southview Drive, Louisville, KY 40214

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Barnie Elder, 9702 Thixton Lane, Louisville, KY 40291

Summary of testimony of those in favor:

01:15:18 Bill Schroll, the applicant's representative, pointed out the location of an R-4 property that belongs to Louisville Metro Public Works (see recording for detailed presentation.) He said flooding was an issue brought up during the neighborhood meetings, and that the applicant is not proposing any site disturbance other than the tree plantings and fencing. The applicant will provide a landscape buffer to the south.

01:17:10 In response to a question from Commissioner Brown, Mr. Schroll said the applicant does not have to provide any on-site detention because there will be no increase in impervious surface.

The following spoke in opposition to the request:

Ty Schrenger, 8400 Nash Road, Louisville, KY 40214

Frank Kerr, 8205 Nash Road, Louisville, KY 40214

Summary of testimony of those in opposition:

01:18:21 Ty Schrenger spoke in opposition. He said the property in question consists of 10 addresses, and he read those addresses into the record (see recording.) He said the application states that the applicant is seeking a rezoning from R-4 and C-2 to M-2, but he says all of the property is R-4 and there is no C-2 there. He discussed his concerns about flooding, and drainage, and described the conversations he has had with MSD and Public Works about this issue. He said Public Works uses the property across the street as "a junkyard". He expressed concerns about junk deposited on Public Works property; infrastructure (particularly roads); traffic and access on Nash Road; and structures being built on the site, after promising not to.

01:26:06 Frank Kerr, a Nash Road resident, said this property has been "abused" for many years. The owner is already keeping trucks on the property; leaking diesel fuel and oil from oil changes. He is concerned about heavy trucks running at night. He said the grass is not cut, there is trash on the property; and

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the person living in the existing guard shack has shot at people on the neighboring property. He said the person is dangerous, and the landlord has never addressed this. Mr. Kerr also expressed concerns about flooding and drainage.

The following spoke neither for nor against the proposal:

No one spoke.

Rebuttal:

01:29:57 Mr. Schroll said both existing structures are single-family residences. No new structures are being proposed on the site. Before the current owner purchased the property, it was owned by another trucking company. He explained that part of the proposal is to consolidate the lots that Mr. Schrenger listed. There will be no access onto Nash Road from this property.

01:32:22 In response to questions from Commissioner Lewis, Mr. Schroll said no new graveled area will be added; it is all existing. He pointed out two areas that will be paved.

01:34:01 Commissioner Carlson suggested a binding element prohibiting overnight truck idling.

01:34:35 Commissioner Carlson also asked Tony Kelly, MSD representative, to discuss drainage, and compact gravel vs. asphalt for water runoff / reabsorption (see recording for detailed explanation.)

01:36:13 Mr. Schrenger resumed the podium and asked if there was existing gravel on the north of Hays Court. Mr. Schroll used the site plan to point out graveled and non-graveled areas. Mr. Schrenger also asked about the two existing residential structures on the site. Mr. Schroll said one residence will be used as a watchman's facility; the other will be used as a contractor's shop. Neither will be used as residences. He added that he did not know what type of contractor will end up leasing that building.

01:38:29 In response to a question from Commissioner Lewis, Mr. Schroll said the watchman's facility will be staffed 24/7.

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01:39:12 Mr. Kerr asked how spilled oil and fuel can be removed from gravel. Gravel cannot hold spillages of hazardous materials. Commissioner Carlson said that if it comes to the attention of emergency response teams, they will bring it to the attention of MSD/Water Co/etc. There are provisions for removal of hazardous material spills.

01:42:51 Bernie Elder, the applicant, said he has mowed and sprayed the grass growth in the graveled areas. He said that, if he gets a call about a spill, he goes to the property and attends it. He said he is there 2-3 times per week.

01:43:24 Commissioners' deliberation

An audio/visual recording of the Land Development and Transportation Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

The Committee by general consensus scheduled this case to be heard at the **October 18, 2018** Planning Commission public hearing.