

TACHAU MEEK

June 10, 2015

*By Hand Delivery*

Hon. David Proffitt, Chair and  
Members of the Louisville Metro Board of Zoning Adjustment  
c/o Mr. Steve Hendrix  
Louisville Metro Planning and Design Services  
444 South Fifth Street, Suite 300  
Louisville, KY 40202

RE: 14CUP1003

Dear Chairman Proffitt and Members of the Board:

On behalf of Butchertown Neighborhood Association, Inc. ("BNA"), I am writing in opposition to JBS/Swift's application for a conditional use permit authorizing its "potentially hazardous or nuisance use" of the Cabel Street Lot, which is located in the residential core of the Butchertown Neighborhood, a Traditional Neighborhood Form District and a National Register Historic Preservation District.

As Chairman Proffitt, Vice-Chairman Allendorf and Member Jarboe will recall, the Board determined at its hearing of November 16, 2009 that "the subject site is being used for a potentially hazardous or nuisance use and would require approval of a Conditional Use Permit." See Minutes of the November 16, 2009 Meeting of the Board of Zoning Adjustment at 32. The Land Development Code defines "Conditional Use Permit" as "[l]egal authorization to undertake a conditional use." See LDC § 1.2.2. Clearly, JBS/Swift has never obtained legal authorization to engage in the proposed conditional use, and for purposes of the Board's review, must be viewed as proposing a new use (which is undoubtedly how the Board would have considered the application had JBS/Swift properly sought legal authorization to engage in the conditional use before undertaking it).

To do otherwise would not only be contrary to the intent of the Land Development Code, but would encourage others to engage in unauthorized conditional uses without obtaining the Board's prior approval – and then claim an existing use if later required to obtain a conditional use permit (just as JBS/Swift is attempting to do here). In other words, the Board should not reward JBS/Swift for its unauthorized use of the Cabel Street Lot by allowing it to claim an existing use. Plainly, there is no lawfully existing use – and accordingly, JBS/Swift is proposing a new conditional use.

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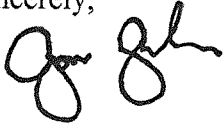
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In any event, as BNA will demonstrate at the Board's upcoming hearing, the controlling provisions of the Land Development Code require the Board to deny JBS/Swift's application for a conditional use permit because:

- (1) the proposed use is in conflict with the goals and plan elements of the Comprehensive Plan and is not consistent with its applicable policies (including, but not limited to, Goals C1, C2, C3, C4; Objectives C2.4, C2.5, C3.2, C4.1, C4.6; Plan Element Guidelines 1, 2, 3, 6, 7, 9, 12; and the Executive Summary of the Butchertown Neighborhood Plan);
- (2) the proposed use will have an adverse effect on neighboring properties and is not compatible with surrounding land uses (because of nuisances including toxic diesel emissions, heavy semi-truck traffic, noise, vibrations, dust, vehicular light pollution and visual impacts);
- (3) the proposed use will not promote the public health, safety and general welfare (and to the contrary, will harm the public health, safety and general welfare); and
- (4) the proposed use is not in compliance with listed standards and requirements of the Land Development Code and other applicable laws and regulations (including, but not limited to, LDC §§ 4.1.6, 4.4.3, 4.4.8, 5.8.1, 10.1.2, 10.2.2, 10.2.3, 10.2.4, 10.2.6, 10.2.10 and 10.2.11).

Please also find attached the Declaration of Sarah Lynn Cunningham, P.E. We look forward to the opportunity to address the Board on Monday.

Sincerely,  


Jon Salomon  
Direct Dial: 502.238.9907

cc: Glenn A. Price, Jr. (by hand delivery)  
Jonathan Baker (by hand delivery)

Attachment

**LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT  
CASE NO. 14CUP1003**

**In re: Conditional Use Permit  
Pursuant to Land Development Code § 4.2.43  
“Potentially Hazardous or  
Nuisances Uses”  
JBS USA, LLC and Swift Pork Company  
151 and 201 Cabel Street**

**Applicant: JBS USA, LLC & Swift Pork  
Company**

**Council District 4:  
David Tandy**

**Staff Case Manager:  
Steve Hendrix, Planning Supervisor**

**Declaration of Sarah Lynn Cunningham, P.E.**

Sarah Lynn Cunningham, P.E., declares as follows:

1. My name is Sarah Lynn Cunningham, PE. I earned an interdisciplinary Bachelor of Applied Science degree in environmental engineering in 1981, and an interdisciplinary Master of Science degree in environmental education and environmental history in 2006, both from the University of Louisville.
2. I have practiced environmental engineering for 34 years. (See curriculum vitae as Attachment A.) I am a Professional Engineer, licensed by the Commonwealth of Kentucky (#16592).
3. As an environmental regulator, I have been responsible for the drafting, adoption, communication, compliance inspection and enforcement of ordinances, regulations and programs for protecting environmental and public health. On behalf of a regulated permit holder, I have been responsible for the development and implementation of internal administrative programs to ensure compliance with similar laws and regulations.
4. I have frequented Butchertown throughout my life, and I am well acquainted with it. My mother’s ancestors settled there upon arriving in the United States about a century ago, and worked there as butchers and brewers. For over fourteen years, I worked for the Louisville & Jefferson County Metropolitan Sewer District (“MSD”), which operated the large industrially zoned, subject site until late-2002.
5. As a member of the now-defunct Bicycle and Pedestrian Advisory Committee of the Kentuckiana Planning and Development Agency (the local metropolitan planning organization (MPO)) and related community groups, I have seen, analyzed and discussed data on automobile-pedestrian and automobile-bicycle collisions in Metro Louisville, including locations, contributing factors, driver characteristics, etc.
6. I have observed, measured and/or photographed the following locations on weekdays and weekends, during dayside and evening shifts, in July 2006, October and November 2009 and/or February and June 2015:

- a. All parcels comprising the subject site in question (hereafter “JBS/Swift Terminal”), albeit limited to observations from outside its perimeter fence, due to its no-trespassing signs.
  - b. The JBS/Swift facilities between Story Avenue, Bickel Street, East Main Street and Beargrass Creek.
  - c. The public streets between and/or near the above sites.
7. As I understand JBS/Swift’s operations, the following activities occur every day during which it is in production, if not on additional days before and after production days:
- a. Over-the-road tractor drivers deliver empty transport refrigeration units (“TRU’s”) to the JBS/Swift Terminal via area interstate highways, the semi-truck routes known as Mellwood, Frankfort and Story Avenues, as well as various residential and mixed-use Butchertown streets, including Cabel, Adams, Spring, Washington and Webster Streets.

Some TRU’s are under contract with JBS/Swift and others, with JBS/Swift’s customers. Many TRU’s are unmarked, suggesting that they are operated by independent drivers. I recently observed 18 freight lines among them. JBS/Swift reports that it has instructed its and its customers’ drivers to avoid residential streets. However, some drivers fail to receive or ignore those instructions—a problem exacerbated by the added congestion from the Ohio River Bridges Project.

- b. Empty pallets are unloaded from trailers and they are hosed clean of debris remaining from previous loads into a pitched loading dock. Non-soluble debris is shoveled into a nearby dumpster. Because some of it is putrescible, that dumpster’s seemingly always open lid appears to be a health code violation due to its ability to attract and support rodent infestations.
- c. Smaller, apparently unregistered and unlicensed shag vehicles pull the unloaded trailers from the JBS/Swift Terminal to its plant docks for loading product, via a hard left onto Cabel Street, through the floodwall and four-way stop at Washington Street, a hard right into its parking lot opposite the plant and across Story Avenue.
- d. Once loaded, shag vehicles return the TRU’s back to the JBS/Swift Terminal, using the above route through its parking lot and down Cabel Street.
- e. Over-the-road heavy truck drivers haul away the loaded TRU’s from the JBS/Swift Terminal to distributors, retailers and/or larger consumers via the above-mentioned residential and mixed-use streets, truck routes and highways. However, my understanding is that the loaded TRU’s sit at the JBS/Swift terminal site—their chillers burning diesel fuel—from several hours to several days before they are hauled away. (Federal rules require drivers to rest for 10 hours periodically.)

- f. I have observed stainless steel tank trailers labelled, “Inedible Animal Food,” at the JBS/Swift Terminal, leading me to believe that JBS/Swift continues to collect its offal (butchering byproducts), store it at its Terminal and sell it to pet-food factories, to generate additional revenue and reduce its waste-disposal costs. If so, JBS/Swift would be replicating the above transportation practices for its offal as well.
  - g. Loaded TRU’s must operate their refrigeration units to prevent spoilage. Some models have thermostats and run off-and-on, as needed; others operated non-stop. The TRU’s at the JBS/Swift Terminal appear to run on diesel fuel. The accepted rate of combustion is one gallon of fuel per hour of operation.
8. I have reviewed JBS/Swift’s application for a Conditional Use Permit (hereafter “CUP”) and its attachments. I offer the following observations, that lead me to question whether it truly demonstrates compatibility with surrounding land uses and compliance with the Land Development Code’s requirements for protecting the public health, safety and general welfare — even if various improvements were implemented (and no significant improvements appear to have been offered by JBS/Swift):
- a. Tab E:
    - i. §4, Page 3, “Surfactant application to gravel areas:” It is unclear when JBS/Swift plans to start using the referenced dust suppression agent. During my most recent visit in June 2015, I saw thick dust within the terminal site being kicked up at least five feet into the air—high enough to be blown off site. When a fast-moving automobile drove through the dust spilled onto Cabel Street at the entrance to the terminal, dust was remarkably extensive, both in breadth and height, especially after the wind picked it up. I believe that the levels of fugitive dust that I witnessed violate the related regulations of the Metro Air Pollution Control District (hereafter “APCD”).
    - ii. §6, Page 4-8, “Air Quality Analysis ...:” JBS/Swift’s application states that the average number of TRU’s staged at the JBS/Swift Terminal is 21-24. It notes that additional TRU’s are stored on-site. I regularly observe at least 70 trailers at the JBS/Swift Terminal. However, vegetation, TRU’s parked to block sight lines, perimeter fencing and no-trespassing signs preclude precise counts or independent verification except with JBS/Swift approval and by appointment.
    - iii. The Air Pollution Control District regularly issues “Air Quality Alerts,” advising “sensitive groups,” including children, older adults, active adults and anyone with heart and/or lung ailments, to stay indoors as much as possible. It should be stressed that the hotter the weather, the more likely APCD will have to issue an alert and the more diesel fuel the TRU’s must burn into that dirtiest ambient air. These alerts are typically for ozone and/or particulate matter, both of which diesel exhaust exacerbate.

Comparing the emissions of the JBS/Swift Terminal to ambient air-quality conditions of the surrounding area is improper for several reasons, starting with the direct impact of the Terminal on the nearest residential uses.

- iv. §8, Page 8, “Closest Distance from a TRU to a residence”: JBS/Swift’s application states that the closest home is 1301 Washington St and 405 feet from a TRU. Whether or not this is accurate (and it is difficult to verify because the TRU’s can be moved within the site), the U.S. Environmental Protection Agency treats homes within 600 feet of the source of concentrations of tailpipe emissions as impacted negatively. More to the point, those negative impacts are more a function of wind speed and direction and the location of deflectors, such as the floodwall, than distance. In any event, there are a number of residentially-zoned and used properties well within 100 feet of the property line of JBS/Swift Terminal, which is the measurement typically considered by the Land Development Code (which makes sense because the TRU’s can be moved within the site).
- b. Tab 6 – Cabel Street Lot Diesel Emissions Modeling
- i. Mr. Royer’s analysis does not appear to have involved any actual empirical measuring of diesel emissions on or around the JBS/Swift Terminal. Instead, Mr. Royer attempts to predict the amount of diesel emissions using assumptions that appear to have been provided to him by JBS/Swift.
  - ii. To that point, the fine print of Mr. Royer’s analysis includes the following “Disclaimer: The emissions estimates and modeling results presented in this document are based on site conditions, discussions with JBS USA LLC staff, and other information generally applicable as of the date of this report. URS has relied on this information as furnished. These assumptions, although thought to be reasonable and appropriate, may not prove to be true in the future.”
  - iii. Mr. Royer’s analysis does not take account of dust emissions caused by the operation of the JBS/Swift Terminal.
  - iv. Mr. Royer does not explain any correlation or other relationship between the hog slaughtering throughput of the JBS/Swift plant and the number of TRU’s staged at the JBS/Swift Terminal (in fact, Mr. Royer does not appear to ever address the number of TRU’s staged at the JBS/Swift Terminal).
  - v. Mr. Royer does not explain how he selected the locations used for purposes of his modeling.
  - vi. Mr. Royer does not appear to dispute that the operation of the JBS/Swift Terminal increases the level of diesel emissions near residential uses.

- c. Tab 7 – Evaluation of Potential Air Exposures
    - i. Mr. Long’s analysis appears to rely entirely on Mr. Royer’s analysis – which itself was based on assumptions provided to Mr. Royer by JBS/Swift.
    - ii. Like Mr. Royer, Mr. Long did not conduct any empirical measuring of diesel emissions associated with JBS/Swift’s operation of the JBS/Swift Terminal.
    - iii. Like Mr. Royer, Mr. Long does not appear to dispute that the operation of the JBS/Swift Terminal increases the level of diesel emissions near residential uses.
  - d. Tab 8—Noise Analysis:
    - i. Mr. Kaufell concedes that the operations of the JBS/Swift Terminal were audible at his monitoring locations, and that sounds emitted include “trailer jockeying, intermittent air brake release and axle release, truck idling and other miscellaneous sounds created by the washing and storage facility.”
    - ii. Mr. Kaufell concedes that the controlling local noise ordinance does not “specify the magnitude of sound level that would constitute a noise impact,” and instead makes unlawful “any unreasonably loud, harsh or excessive noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.”
    - iii. Mr. Kaufell’s proposed noise screening wall is not sufficiently defined, e.g., hard surfaces, vegetation, etc.
    - iv. Mr. Kaufell does not opine on whether blocking the line of sight between the JBS/Swift Terminal and other uses (including right-of-ways) would comply with other applicable regulations.
9. I offer the following additional recent observations relevant to the Board’s consideration of JBS/Swift’s application:
- a. The perimeter fencing does not appear to be compliant with applicable regulations.
  - b. At least four 55-gallon drums labelled “aluminat” were sitting beside the Terminal’s entrance gate—seemingly a poor choice of location, given the tall, heavy traffic swinging wide to get through that gate.
  - c. In addition to the TRU’s, idling over-the-road heavy semi-trucks are common within the terminal site.
  - d. The over-the-road heavy semi-trucks, shag vehicles and TRU’s are currently powered by burning diesel fuel. The related emissions have been determined to carry the following significant health risks by the US Environmental Protection

Agency, International Agency for Research on Cancer, National Academy of Science and numerous other researchers:

- i. Surpassed by only forest fires, diesel engine emissions are the nation's biggest source of fine particulate matter ( $PM_{2.5}$ ), defined as being less than 2.5 micrometers in diameter, which has been linked to serious respiratory damage and premature death.
- ii. Diesel emissions contribute significant quantities of nitrous oxides ( $NO_x$ ), which are ozone precursors; ozone has long been known to cause and aggravate respiratory and heart disease.
- iii. Because diesel emissions contain air toxics (e.g., 1, 3-butadiene, benzene, formaldehyde, toluene, etc), the EPA's Office of Research and Development, the International Agency for Research on Cancer and other agencies have concluded that chronic environmental exposure to diesel emissions likely poses a lung cancer hazard to humans.

The most vulnerable populations are children and anyone with respiratory and/or heart disease. The American Lung Association of Kentucky estimates that 100,000 residents of the Louisville area suffer from respiratory disease(s); a significant number of Butchertown residents are presumably among them.

In 2000, the USEPA ordered the manufacturers of diesel-powered heavy-duty highway trucks to reduce  $PM_{2.5}$  and  $NO_x$  emissions by 90 percent, beginning in the 2007 model year (the "2007 Highway Rule"). To meet that goal, the EPA also ordered the manufacturers of diesel fuel to reduce the sulfur content of diesel fuel by 97 percent.

Though the fuel reductions have been implemented, regulators assume that 15-20 years must lapse (from 2007) before the full effect of the rule will occur because diesel trucks are commonly driven 20-25 years before being retired. The following EPA projections for annual benefits to public health and economic health—only upon full implementation—suggest that health risks to Butchertown residents are still quite significant:

- i. 8,300 fewer premature deaths
  - ii. 5,500 fewer cases of chronic bronchitis
  - iii. 17,600 fewer cases of acute pediatric bronchitis
  - iv. 360,000 fewer asthma attacks
  - v. 1.5 million fewer lost workdays
  - vi. 7,100 fewer hospitalizations
  - vii. 2,400 fewer emergency room visits
- e. Noise. Two factors exacerbate the inherent incompatibility between operation of the JBS/Swift Terminal and nearby existing residences: First, the floodwall throws the sound up to second-floor bedroom windows. That trailers are delivered and retrieved around the clock allows residents no peace. (Indeed,



several residents have complained to me about this noise awakening them at all hours of the night, and preventing them from falling back to sleep.) Science has established that chronic sleep interruptions and, more so, sleep deprivation, can cause serious harms to health and wellness. On one recent evening, I could also hear diesel engines idling from the corner of Washington and Webster Streets to the corner of Washington and Cabel Streets.

- f. Premise Sanitation. I continue to observe other signs of poor premise sanitation, as recently as June 2015 (e.g., litter and junk, high weeds, peeling paint, missing fence slats, etc.) Mosquitoes have plenty of opportunity to breed within some of the debris, neglected guttering, etc. In addition, MSD signage still hangs on the buildings that JBS/Swift now owns, suggesting that citizen complaints will be misdirected.
- g. Drainage. This site lacks modern, engineered on-site drainage infrastructure. Precipitation carries oils, motor fluids and salt wherever gravity dictates. JBS/Swift proposes to pave much of the graveled area, which would multiply run-off volumes in an area with limited stormwater capacities. TRU's sometimes drip condensed water onto the ground beneath them, potentially allowing disease-vectoring mosquitoes to breed.
- h. Vibrations. Nearby residents complain of vibrating walls, windows, furniture and china from impacts caused by the loading and unloading of trailers from cabs and heavy semi-truck traffic, particularly when heavy trucks hit the flat place in otherwise sloping streets where they intersect with the floodwall (e.g., Adams Street). The heavy semi-truck traffic appears to have damaged the pavement on Cabel Street between the floodwall and Terminal entrance, which adds noise with each passing vehicle.
- i. Pedestrian and Bicyclist Safety. I have concluded that the traffic related to the activities at and between the JBS/Swift plant and the JBS/Swift Terminal pose significant safety risks to pedestrians and bicyclists in the Butchertown neighborhood (which includes several designated bicycle routes). On one recent afternoon weekday hour during the dayside shift, I counted eight shag vehicle runs. Even a conservative calculation of JBS/Swift's use of these Butchertown neighborhood streets based on two-thirds of that hourly rate times eight hours per day—and doubling to account for the related over-the-road tractor trips—totals 96 trips per day (6 trips/hr x 8 hrs x 2 runs).

The general population routinely disregards posted speed limits, red lights, stop signs and the safety of pedestrians, cyclists and other motorists. Worse, research also shows that the bigger the vehicle, the more likely the operator will adopt a "might makes right" attitude, drive carelessly and risking the safety of others (collisions between automobiles and pedestrians in Metro Louisville increased significantly in 2008 to 424; automobile-bicycle collisions increased similarly.) I have observed that rolling stops and wide turns are common at the intersections between the JBS/Swift plant and the JBS/Swift Terminal, apparently as a result of inadequate turning radii and failure to slow down.

The American Association of State Highway and Traffic Officials (AASHTO) sets U.S. standards for new road construction. Its standards call for lane widths of at least 12 feet. The narrowest lane width for existing streets allowed is 9 feet.

Butchertown's streets were constructed many decades prior to the existence of heavy semi-truck trailers, much less today's 53-foot-long models, and include the following substandard widths that render them inherently more dangerous than would be modern streets designed to accommodate bigger rigs:

- i. North of Story Avenue, Adams Street has two center lanes for two-way travel and two perimeter, parking lanes, and is only 39 feet wide.
- ii. At their intersection, Washington and Cabel Streets are two-way and have two center travel lanes and two perimeter, parking lanes. Cabel Street north of its intersection with Washington Street is less than 36 feet wide; however, due to uneven lane division, the northbound lanes total less than 18 feet. South of that intersection, Cabel Street is only 38 feet wide. Washington Street is only 36 feet wide.
- iii. At its intersection with one-way Story Avenue, Cabel Street has two center travel lanes and two perimeter, parking lanes. It is only 40 feet wide, though uneven lane division limits the northbound lanes to a total of 21 feet and the southbound lanes, only 19 feet.

The substandard lane widths render turning radii problematically substandard, too. Semi-truck operators must swing far into adjacent lanes—some with on-coming traffic—to negotiate corners, especially when parked cars constrict them. When semi-truck operators' maneuvers require backing into space shared by pedestrians, bicyclists and other motorists, safety risks inevitably increase.

Further exacerbating the safety risks of adding the heavy truck traffic to residential streets are the following special situations:

- i. To successfully discourage pollution and obesity and encourage clean air and fitness, communities must actively strive to provide pedestrians and cyclists with safe places to walk and ride bicycles. Louisville long ago designated Adams and Washington Streets as bicycle routes. North of Story Avenue, Adams Street is posted as a Class III bicycle route, meaning bicycles and motor vehicles commingle in shared lanes. South of Story Avenue, Adams Street is posted as a Class II bicycle route, meaning narrow bicycle lanes are painted onto the pavement, alongside lanes for motorized traffic. Cyclists, pedestrians and skateboarders, many of whom are less-than-road-savvy children, increasingly use these bike routes to travel to and from Slugger Field, Waterfront Park, the Big Four Bridge, the River Walk, the Butchertown Greenway and the Extreme Park.

- ii. JBS/Swift's semi-truck traffic operates between many Butchertown families' homes and the closest K-5 school (Lincoln Elementary School on East Main Street.)
  - iii. Customers of the many small businesses on Adams, Washington, Webster and other Butchertown streets may not realize the need to take the sort of cautions appropriate for commingling with heavy semi-truck traffic.
  - iv. Without special mirrors, tractor-trailer drivers have a blind spot that makes right turns especially risky. Such drivers using Butchertown streets lined with both trees and parked cars are especially vulnerable to turning into pedestrians and cyclists that happen to be those blind spots.
10. Based on the above findings and my understanding of the Land Development Code, I conclude that JBS/Swift's proposed use of the JBS/Swift Terminal poses the types and severity of hazards and nuisances to Butchertown residents that cannot satisfy the controlling criteria for the Board's approval of a Conditional Use Permit.
11. If the Board is nonetheless inclined to approve a Conditional Use Permit (which I believe would be in contravention of the Land Development Code), I note that the following measures should serve as conditions of use in order to at least partially mitigate nuisances associated with the JBS/Swift Terminal and to better protect the public health, safety and general welfare:
  - a. The Board should require all diesel-burning equipment at the JBS/Swift Terminal to be retrofitted with Diesel Particulate Filters (DPF's). As a local example, the Transit Authority of River City has retrofitted its older buses with DPF's, and found them both effective at reducing the most dangerous types of diesel emissions and relatively maintenance free.
  - b. To better protect the public health, safety and general welfare, the use of TRU's at the JBS/Swift Terminal should be restricted to hybrid diesel/electric units (which are readily available and already widely employed in several states). Moreover, JBS/Swift should install electrical-power sources to power the hybrid TRU's while on the JBS/Swift Terminal, in lieu of round-the-clock combustion of diesel fuel.
  - c. Per the Land Development Code, JBS/Swift's operations at the JBS/Swift terminal may not be conducted between the hours of 10:00 p.m. and 7:00 a.m. These operating hours restrictions, which are already required by the LDC, apply expressly under the circumstances present at the JBS/Swift Terminal to the idling of heavy or medium trucks on property within 100 feet of any residential use (as measured from the closest property line of the proposed use), and will have the intended effect of reducing nearby residents' exposure to dangerous diesel emissions while they are most likely to be at home and sleeping.