

OBJECTORS' MEMORANDUM #3

From: William L. Horner, Esq. *WLH*
To: Richard P. Coe, Jr., Esq.
Pamela J. Pellegrini, P.E., P.P.
Martin S. Sander, P.E.
Cc: Monroe Township Zoning Board Chair and Members c/o Dawn Farrell, Secretary
Edward J. Hovatter, Esq.
Date: April 1, 2021
Re: **Concerns About Steve Smith/Edward Hovatter Preliminary Site Plan Testimony
Wood Management LLC Use Variance/Site Plan/Minor Subdivision Application
(Monroe Township Block 14301, Lots 4, 4.01, 7, 8, 9 and 10)**

Introduction:

I am writing to express concerns about the testimony and representations of Steven Smith and the applicants' attorney Edward Hovatter at the end of the Zoning Boards' March 23, 2021 preliminary site plan hearing. I believe Mr. Smith's testimony about his purported business-related need for large numbers of vehicles to enter and exit the Peach Country properties via the retail store entrance on North Tuckahoe Road may have created confusion about the types of traffic that currently access the Peach Country properties. I also believe Mr. Smith's testimony disclosed his true intention to use the retail store building, and the section of driveway that extends past it from the parking lot to the rear of the Peach Country properties, not for actual "retail store" purposes as previously indicated, but rather as a "checkpoint" for all incoming and outgoing rear-property recycling- and mulch-related traffic, which usage would constitute a violation of the Airport Drive ingress/egress conditions the Board imposed on Peach Country's use variance approval. Finally, Mr. Hovatter's representations about Peach Country employees needing to move materials to and from the areas in front of the retail store through the gate that will separate the retail store parking lot from the rear areas of the Peach Country properties should *not* be accepted as a basis for maintaining an *open* gate in that location, because no prior site plan approval for the Peach Country properties has allowed, nor does the applicant's currently proposed site plan propose, *any* outdoor storage of materials or equipment in front of the retail store, except perhaps on the sidewalk beneath the retail store roof overhang.

I am writing this memorandum at this time because I expect that, over the coming days and weeks, the Board's professionals will be communicating with the applicants' professionals regarding potential revisions to the final site plan that will eventually be submitted to the Board. I understand that the final site plan will feature a new or relocated fence and gate behind the retail store as proposed by my clients, but that the question of whether the gate will be kept *closed*, as recommended by my clients, remains to be decided. I am sharing these concerns early in the final site plan revision process in hopes that the final site plan will be prepared with an *internal loop driveway* to adequately serve all vehicular operations within the Peach Country site in order to promote compliance with the Board's Airport-Drive-only traffic requirements, regardless of whether the gate is ultimately allowed to be open or required to be closed. Based on Mr. Smith's testimony about his business needs, I believe the internal loop driveway should be configured in a manner that allows a "checkpoint" for recycling and mulch operation-related vehicles to be established somewhere behind the retail store building, in a location that will not necessitate the passage of those vehicles into the retail store parking lot or through the retail store driveway entrance to or from North Tuckahoe Road.

Background:

At the February 23, 2021, use variance hearing, the Zoning Board spent a lot of time discussing traffic ingress to, egress from, and movement within, the Peach Country properties by the various classifications of vehicles that would be frequenting the properties. During that hearing the applicant's representatives repeatedly assured the Board that all traffic relating to rear-property uses (i.e., the contractor/landscaper parking, staging and vehicle/equipment storage; the "traditional" self-storage; and the delivery of raw materials to, and pickup of mulch from, the recycling/composting operations) would be *required* to enter and exit the Peach Country properties only via Airport Drive, and that the retail store entrance along North Tuckahoe Road would be used *only* by retail store customers. These assurances were intended to allay the Board's legitimate concerns about generally-recognized traffic-related problems at the Peach Country retail store entrance, which the applicant's own traffic engineer described as "untenable." At the end of the use variance hearing the Board imposed these ingress and egress requirements as a condition of the applicants' use variance approval.

At the March 23, 2021, preliminary site plan hearing, the applicant's representatives reiterated the same assurances about rear-property traffic being required to use Airport Drive only,

and the Board emphasized the need to ensure compliance with, and facilitate municipal enforcement of, these traffic-related requirements.

When given the opportunity to speak on behalf of my clients at the March 23, 2021 hearing I told the Board that the only way to *ensure* that all rear-property traffic would use the Airport Drive access points rather than the retail store driveway entrance would be to require the applicants to install a fence and gate behind the retail store building, *and to keep the gate closed* at all times except for rare occasions when a retail customer vehicle, a vehicle servicing the retail store, or an emergency vehicle needs to pass from the retail store parking lot directly into the rear areas of the Peach Country properties and then out again. The purpose of the fence and gate would be to serve as a *physical barrier* against any rear-property traffic improperly using the retail store driveway as a direct entrance or exit point to or from North Tuckahoe Road, thereby effectively controlling the movements of the numerous independent drivers who would be operating within the site. This, in turn, would make compliance with, and municipal enforcement of, the Airport-Drive-only ingress/egress condition much easier by substantially diminishing any chance of violation. I also recommended, on my clients' behalf, an internal loop driveway within the Peach Country properties to ensure proper movement of all rear-property traffic within the site, and in and out of the site via Airport Drive.

After my presentation Mr. Smith objected to my clients' proposed closed-gate requirement, insisting instead that proper conduct of his business operations would depend on the gate remaining *open* during all retail store hours of operation (i.e., for approximately twelve hours per day, six days per week) so that vehicles could pass freely between the rear property areas and North Tuckahoe Road via the retail store driveway entrance. It was only later that I realized the vehicles Mr. Smith was referring to in his testimony were not retail store customer vehicles in the commonly understood sense, but rather the numerous trucks that routinely drive in and out of the retail store driveway entrance on North Tuckahoe Road and past the retail store building to and from the applicants' rear-property recycling, composting and mulch operations.

After Mr. Smith's testimony Mr. Hovatter stated that, based on his own personal observations of the site, the applicants' employees will need to be able to move materials back and forth between the front and rear areas of the retail store, and that, in his opinion, these activities would be unduly impeded by a closed gate.

The Board granted preliminary site plan approval at the end of the March 23, 2021 hearing and required the fence and gate as requested by my clients. Due to Mr. Smith's objections, the

Board elected to postpone any decision on whether the gate should be required to be closed or allowed to be open during retail store business hours.

Mr. Smith's Testimony (Improper Use of Retail Store as Recycling Operations Checkpoint):

In his testimony Mr. Smith objected to keeping the gate closed, stating that it would interfere with his business operations. Mr. Smith alluded to approximately one hundred vehicles per day which use the retail store entrance for "drop-offs and pickups" and to "check in" and pay. At the time it sounded as though Mr. Smith might have been talking about retail store customers, but after reflection it became clear that he was referring to traffic relating to the rear-property recycling and composting operations at the site, those being the numerous trucks that enter and exit the site to deliver raw materials to be processed into mulch, and that enter and exit the site to purchase and pick up finished mulch (both of which traffic categories probably include some of the landscapers who also conduct vehicle/equipment storage and staging activities at the Peach Country properties).

Mr. Smith also testified that he is not comfortable with the idea of creating a separate driveway entrance from the rear of Lot 4 onto Airport Drive for the recycling, composting, and mulch-related traffic because he is concerned about nighttime trespassing upon the rear areas of the property, and because he does not want to encroach on the farmed portions of Lot 4. (The applicant's engineer, Walter Bronson, also expressed concerns about the applicants' farmland.)

Taking all of the above into consideration, it is clear that, despite the Board's Airport-Drive-only access condition of the use variance approval, Mr. Smith intends to continue to use the retail store driveway and its parking lot as the primary and perhaps only point of ingress and egress to the Peach Country properties, and also as the sole "checkpoint" and point of payment, for *all* of the truck traffic relating to the applicants' recycling, composting, and mulch operations. These intentions are further confirmed by a sign that has been installed near the Peach Country retail store building, clearly visible from North Tuckahoe Road and observed by my clients, that reads "Every Truck Must Stop In Office First."

This intended usage of the retail store driveway is contrary to the applicants' previous representations and assurances, and would violate the Board's condition of use variance approval requiring all non-retail store traffic to use Airport Drive. In order to uphold the Board's use variance condition; to compel post-development compliance with that condition in a manner that facilitates and perhaps even obviates the need for municipal enforcement; to cause the retail store

to look and function like a true “retail store;” and to cause the applicants’ rear-property operations to function in a manner akin to a “business park” in keeping with Master Plan objectives, it is critical that the gate should remain *closed* at all times except when otherwise necessitated by a retail store customer, a retail store delivery, or an emergency, and that all recycling, composting, and mulch-related traffic should be required to enter and leave the site via Airport Drive.

In consideration of the above I ask the Board’s professionals to engage in problem-solving discussions with the applicants’ professionals during the applicants’ preparation of the final site plan, to create an internal loop driveway within the Peach Country properties that will eliminate the need for any rear-property traffic to pass into the retail store parking lot; to establish an appropriately located “checkpoint” behind the retail store, perhaps in or near one of the existing storage buildings, that can be used to adequately monitor and serve the recycling-, composting-, and mulch-related traffic that circulates within the site; and to create sufficient additional safe and secure driveways within or near Lot 4 by which such vehicles can enter and exit the Peach Country properties via Airport Drive without disrupting the applicants’ other categories of rear-property traffic.

Mr. Hovatter’s Representations (Improper Outdoor Storage of Materials at Retail Store):

After Mr. Smith’s testimony, Mr. Hovatter opined that keeping the gate between the rear and front areas of the retail store closed during retail store business hours might impede the applicants’ employees’ movements of equipment and materials between those areas. However, there is no need for such movement of equipment and materials because the applicants have never received approval for any outdoor storage in the areas in front of the retail store, except perhaps directly in front of the store on the sidewalk beneath the roof overhang. The other types of outdoor storage that are currently being conducted in the front areas of the Peach Country properties, mainly to the north of the retail store parking lot, violate the applicants’ existing site plan approvals, and no outdoor storage is being proposed in the applicants’ current site plan. Accordingly, nothing more than an open “person-sized” gate in the new fence (in addition to the closed vehicle gate) would be needed to allow sufficient movement of materials between the front sidewalk area and rear areas of the retail store. Moreover, there should be little if any need for movement of employee *vehicles* through the gate but, if such need were to arise from time to time, the gate could simply be opened momentarily to allow an employee vehicle to pass through and

then closed behind it. For these reasons Mr. Hovatter's representations about the applicants' employees' need for an open gate should be disregarded.

Conclusion:

For all of the above reasons my clients request that the Board's professionals, during their interactions with the applicants' professionals in connection with completion of the final site plan, insist on the creation of a looped internal driveway within the properties that will allow all rear-property traffic to enter and exit the properties only via Airport Drive, and by which the existing buildings and other areas behind the retail store building can be appropriately accessed as a checkpoint and/or payment location for the applicants' recycling, composting, and mulch operations-related traffic. With a reasonable degree of planning this could be surely accomplished in a manner that would not compromise the after-hours security of the site or disrupt existing Lot 4 agricultural operations, particularly if new driveways and security fencing were placed in areas currently occupied by illegal berms.

If, on the other hand, the final site plan were to be completed and presented to the Board with the currently proposed straight driveway that passes directly from the rear of the site, past the retail store building, and through the retail store parking lot to North Tuckahoe Road, and if, in such event, the applicants' representatives were to allege that the final site plan was prepared *in collaboration with* the Board's professionals, the Board members might feel unduly constrained to view the open gate as an operational necessity despite the previously imposed use variance condition, and grant final site plan approval without further revision. Such an approval would leave the Township and its Zoning Official in the untenable position of being unable to effectively control any improper, excessive, and unsafe usage of the retail store entrance on North Tuckahoe Road, or even to effectively ascertain, and prove in municipal court, the true identities and operational affiliations of the numerous and various drivers who engage in such improper usage.