

BEFORE THE ANNE ARUNDEL COUNTY BOARD OF APPEALS

In the matter of:

THE HALLE COMPANIES
CASE NO. BA 120-90S

CHESAPEAKE TERRACE
CASE NO. BA 26-91S/BA 27-91V

Wednesday, April 29, 1992

Pursuant to Notice, the above-entitled
hearing was held at The Arundel Center, 44 Calvert
Street, Annapolis, Maryland 21404, before BARBARA M.
HALE, CHAIRPERSON, commencing at 2:00 p.m., there being
present:

BOARD MEMBERS PRESENT:

JOSEPH A. JOHNSON
WILLIAM C. EDMONSTON, SR.
P. TYSON BENNETT, ESQUIRE
JOHN R. GREENE, ESQUIRE
F. GEORGE DEURINGER, Vice-Chairman
JOHN W. BORING
ANTHONY V. LAMARTINA
DAVID M. SCHAFER

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ON BEHALF OF THE APPLICANTS:

SUSANNE K. HENLEY, ESQUIRE
80 West Street
Suite 110
P.O. Box 2356
Annapolis, Maryland 21404

and

ANTHONY CHRISTHILF, ESQUIRE
124 South Street
P.O. Box 1524
Annapolis, Maryland 21404

ON BEHALF OF ANNE ARUNDEL COUNTY:

JAMIE BAER, ESQUIRE
2664 Riva Road
Annapolis, Maryland 21401

ON BEHALF OF THE RESPONDENTS:

EDWIN DOSEK

ALSO PRESENT:

KEVIN DOOLEY
GERALD EGOLF

REPORTED BY: DEBORAH S. CONLEY, NOTARY PUBLIC

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1 surroundings of the site. Thank you.

2 CHAIRPERSON HALE: Mr. Christhlf, will you
3 call your first witness.

4 MR. CHRISTHILF: Ms. Henley will do that,
5 Madam Chairman.

6 MS. HENLEY: The applicant calls Mr. J. A.
7 Chisholm as its first witness.

8 Whereupon,

9 J. A. CHISHOLM,
10 a witness, called for examination by counsel for the
11 Applicant, was duly sworn, and was examined and
12 testified as follows:

13 CHAIRPERSON HALE: Give us your name and
14 address for the record, please.

15 THE WITNESS: My name is John A. Chisholm.
16 My address is 10905 Fruitwood Drive, Bowie, Maryland.
17 I'm currently employed with the Halle Companies, as a
18 consulting engineer, registered in the state of
19 Maryland.

20 CHAIRPERSON HALE: Thank you.

21 .

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1 CHAIRPERSON HALE: Is there an objection?

2 MR. DOSEK: Madam Chairman, we don't even
3 know what number this is. It hasn't been marked. It
4 hasn't been asked to be marked. I don't know what we
5 are --

6 CHAIRPERSON HALE: It would be Exhibit Number
7 2, and it will be marked after it is accepted.

8 MR. DOSEK: Okay. No objection here.

9 MS. BAER: No objection.

10 CHAIRPERSON HALE: Exhibit Number 2 is the
11 site plan, with photos, and an overlay.

12 (Whereupon the document was marked for
13 identification Applicant's Exhibit No. 2 and received
14 in evidence.)

15 BY MS. HENLEY:

16 Q Mr. Chisholm, have you also prepared smaller
17 versions of this site plan to submit for the record?

18 A Yes, we have.

19 Q I'm going to show you what I'm going to ask
20 to be marked as Exhibit 3, if you could please explain
21 what Exhibit 3 is.

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1 A Exhibit 3 is -- consists of three separate
2 sheets, which are reductions of the exhibit presented
3 here, with the exception of the photographs.

4 The first sheet is labeled "Existing
5 Conditions," which was the exhibit I showed prior to
6 the overlay.

7 The second sheet is called "Access
8 Alternative A," which shows the access from Conway Road
9 to the proposed mining area.

10 And the "Access Alternative B," which is the
11 third sheet, shows the proposed mining area and the
12 Access Alternative B from Patuxent Road.

13 They are presented for clarity, without
14 having to look across the room at the small exhibits.

15 Q And have you prepared copies of what I'm
16 going to have marked as Exhibit 3 for the members of
17 the Board?

18 A Yes, I have.

19 MS. BAER: Ms. Henley, do you have an extra
20 copy?

21 MS. HENLEY: I did not know Mr. Dosek was

1 How would this site be accessed?

2 A We propose two alternatives, as Mr.
3 Christhilf mentioned earlier. We have Access
4 Alternative A, which would require truck traffic from
5 the Crofton/424 intersection, to traverse Conway Road.
6 At the intersection with Patuxent Road, it would
7 proceed in a westerly direction, in an area that has
8 sand and gravel operations currently in effect.

9 About a quarter of a mile west of that
10 intersection, we would access, through private
11 property, and we would come in in the southern portion
12 of our site, to access the mining area.

13 Approximately 4,000 feet of private road
14 would be constructed to obtain access to the site.

15 Q Okay. The Access Alternate A is what is
16 shown there. Is that what the developer proposes to do
17 at the present time?

18 A Yes. That is what we propose to do.

19 Q At the time of the original hearing, what was
20 the proposed access to the site?

21 A The proposed access was shown as Alternate B,

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1 which is off Patuxent Road. There is an existing road
2 at the Alternate B point that was used in the past on
3 this site, when the site was farmed, and when there was
4 some mining done on the site.

5 Q Okay. Does the developer, at the present
6 time, have plans to purchase the property that would
7 allow it -- let him have the access on Alternative A,
8 or to get necessary easements from the property owners?

9 A Yes. We have been in contact with the
10 necessary owners and are proceeding towards obtaining
11 the necessary right-of-way acquisitions, in order to
12 construct the Alternate A access.

13 Q Is the applicant requesting the Board of
14 Appeals, if they decide to award this special
15 exception, to give the developer the alternative from
16 either accessing off of Access A or B?

17 A Yes. We would like the option to obtain
18 either of the alternates. We only propose one entrance
19 to the site, not both, and our desire is to access
20 through Alternate A.

21 Q Are as many residential properties impacted

1 if there is access on Alternative A, rather than
2 Alternative B?

3 A It's my opinion that the impact is less off
4 Alternate A, due to the fact that less of the public
5 road is traversed. There is approximately 1.2 miles
6 from the intersection with Conway and Meyers Station,
7 along Patuxent Road that the trucks would have to
8 traverse to get to the site.

9 Conversely, if the Conway Road access is
10 used, it's about a quarter of a mile. Conway Road is
11 currently being used by trucks in the sand and gravel
12 operations. I believe the Chaney Properties have sand
13 and gravel operations down in this area that's shown,
14 near Wilson Town on this map.

15 Q Is this lesser impact why the developer
16 presently chooses to propose accessing through
17 Alternative A?

18 A Yes, it is.

19 Q Mr. Chisholm, you can have a seat now.

20 A Thank you.

21 Q What would the hours of operation be for the

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1 MS. HENLEY: Whatever the Board wants to do
2 just to facilitate things is fine.

3 CHAIRPERSON HALE: All right. Mr. Dosek.

4 MR. DOSEK: I'd like to ask just -- Madam
5 Chairman, I have a few questions I'd like to ask Mr.
6 Chisholm.

7 CROSS-EXAMINATION

8 BY MR. DOSEK:

9 Q You went into a great deal of detail
10 concerning your Access Alternative A. And this is your
11 preferred alternative; is that right?

12 A That's right.

13 Q And I think you've indicated that it is
14 permissible for you to use this?

15 A I indicated that we were in the process of
16 negotiating for that, and that we would like the option
17 of either "A" or "B."

18 Q Have you had any contact with people or
19 residents along Alternative Road A?

20 A Have I personally had any contact?

21 Q Or your organization.

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1 certification.

2 (Whereupon the document was marked for
3 identification County's Exhibit No. 3 and received in
4 evidence.)

5 MS. BAER: If I haven't done so already, I
6 will move for admission of County's 1 through 3.

7 CHAIRPERSON HALE: They're in.

8 MS. BAER: Thank you.

9 BY MS. BAER:

10 Q Does that property description in any way
11 include the site of the off-site support facilities, as
12 shown for Alternate Access A?

13 A No, it doesn't.

14 Q So, in essence, you're asking this Board, as
15 your first choice, to grant a special exception for
16 property that wasn't described in the application, and
17 wasn't described in the advertisement? They are just
18 supposed to create this. Is that essentially correct?

19 A We are asking the Board to allow us the
20 option of pursuing Alternative A or Alternative B.

21 Q Which -- and Alternative A was not advertised

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CASE NO. BA 120-90S :

CHESAPEAKE TERRACE :
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Wednesday, May 6, 1992

Pursuant to Notice, the above-entitled
hearing was held at The James Senate Office Building,
Room 200, Annapolis, Maryland 21404, before BARBARA M.
HALE, CHAIRPERSON, commencing at 2:00 p.m., there being
present:

BOARD MEMBERS PRESENT:

JOSEPH A. JOHNSON
WILLIAM C. EDMONSTON, SR.
NANCY DAVIS-LOOMIS, ESQUIRE
F. GEORGE DEURINGER, Vice-Chairman
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1 of Chisholm, and are ready for you to call your next
2 witness.

3 MS. HENLEY: Is the Board through asking
4 questions?

5 CHAIRPERSON HALE: Was there any objection to
6 the on-site arrangements?

7 MS. HENLEY: No. I just -- at the time that
8 we broke last time, the Board was still questioning and
9 there was an outstanding question.

10 CHAIRPERSON HALE: Right.

11 MS. HENLEY: And I just wanted to make sure
12 that the Board had finished.

13 CHAIRPERSON HALE: I think that I had a silly
14 one that I was willing to let go. But if someone wants
15 to tell me what rumble strips are.

16 MS. HENLEY: I believe we can do that.
17 Whereupon,

18 J. A. CHISHOLM,
19 a witness, called for examination by counsel for the
20 Applicants, having been duly sworn, was examined and
21 testified as follows:

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1 THE WITNESS: Have you ever approached the
2 toll booth --

3 CHAIRPERSON HALE: Yes.

4 THE WITNESS: -- and your tires start to make
5 a lot of noise? Well, the rumble strips also serve to
6 help remove any material that's stuck on tires.

7 CHAIRPERSON HALE: I thought it would be an
8 easy question. That's why I was willing to let it go.
9 That was the only one I had remaining, and I don't
10 think there were any others.

11 MS. HENLEY: Madam Chairman, I'd keep Andy at
12 the stand for purposes of redirect at this time.

13 REDIRECT EXAMINATION

14 BY MS. HENLEY:

15 Q Mr. Chisholm, if the Board does not allow an
16 amendment to our application for special exception to
17 include the support facilities off site, as you have
18 pictured on the board, in the exhibit that was entered
19 at the last hearing, can the -- can they be located on
20 site?

21 A Yes, they can.

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1 Q And where would they be located on site?

2 A They would generally be located within the
3 area that is proposed for disturbance. We would not
4 propose additional disturbance on the mining plan.

5 Q Have you had opportunity, since the last
6 hearing, to make inquiry within your organization as to
7 what has been done to acquire the properties that need
8 to be acquired in order to access this site, off the
9 Conway Road access?

10 A Yes, I have.

11 Q And what efforts have been made by your
12 principal, with regards to acquiring that property?

13 A There are two properties that would require
14 acquisition. Mr. Halle and Mr. Vannoy of our office
15 have been in contact with the owners and the owners'
16 representatives, and have secured a verbal commitment
17 from one, and a written commitment from the other, to
18 give us the right-of-way, or to work with us in
19 obtaining the right-of-way.

20 Q With respect to the support facilities, would
21 they need to be in place to begin sand and gravel

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1 1989, and historically there is a five year life to a
2 special exception. That would mean that it has
3 approximately two more years to run.

4 The other sand and gravel operations in the
5 area are existing and would be -- should be subject to
6 the same timetable.

7 As I stated previously, the Seven Oaks
8 project, specifically, has a minimum of ten years of
9 proposed development. So the existing facilities would
10 or should be closed before our need for the facilities
11 are completed.

12 BY MS. HENLEY:

13 Q Are you still anticipating using all the sand
14 and gravel material for Halle Company projects?

15 A Yes.

16 Q And is there any benefit to the community
17 from Halle having the availability of its own sand and
18 gravel?

19 A The availability of the sand and gravel under
20 -- strictly controlled by Halle, the benefit would be
21 that we would have a continued reliable source of the

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1 material necessary for our subdivision projects.

2 By having such a resource available, it would
3 allow us to be competitive in the marketplace. When we
4 deliver finished lots and also finished houses, those
5 savings that we realize can be passed through in
6 allowing us to be competitive with housing.

7 MS. HENLEY: I have no further questions.

8 CHAIRPERSON HALE: Mr. Dosek?

9 MR. DOSEK: I have no further questions.

10 CHAIRPERSON HALE: Ms. Baer?

11 MS. BAER: I have a few.

12 RECROSS EXAMINATION

13 BY MS. BAER:

14 Q You assume that the current special
15 exceptions have a five year life span. Isn't it true,
16 under the new special exception criteria for sand and
17 gravel extraction, that the five year limitation is no
18 longer a part of the code?

19 A I was under the understanding that that would
20 apply to special exceptions for sand and gravel that
21 were submitted after the criteria came into effect.

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1 Q Does that mean you don't know?

2 A I don't know what their material is, beyond
3 what they have now.

4 Q Okay. You indicated that there have been
5 some commitments regarding land acquisition that would
6 be needed.

7 Can you tell me which properties are going to
8 be required for that proposal for Alternate Number 1?

9 A Which parcels on the tax map, or which
10 property owners?

11 Q Which property owners, and which parcels?
12 And, even better, as a third element, if you could show
13 us on one of your diagrams.

14 A I believe I can show on this diagram. We
15 have two parcels which are separated by BG&E power
16 lines. I believe they are shown as Parcel 29 on Tax
17 Map 36. Those are owned by Mr. Frank Stachitas.

18 The second parcel is owned by KMS
19 Partnership, or Piney Orchard, and that is to the north
20 of the Stachitas property, and it shows up in this area
21 here, approximately, on the exhibit.

1 Q What is the parcel number on that?

2 A The KMS or the Piney Orchard?

3 Q Yes, please.

4 A I believe it's Parcel 21.

5 Q Would you also require permission to go
6 through the BG&E right-of-way?

7 A Yes. That is correct.

8 Q And have you obtained, or approached BG&E?

9 A Specifically to -- going through the right-
10 of-way?

11 Q Right.

12 A We have contacted BG&E concerning their
13 requirements for crossing the right-of-way. The deed
14 to the Stachitas property indicates the right to cross
15 the right-of-way. When they were -- when they conveyed
16 the property to BG&E, they reserved the right of
17 ingress and egress across the BG&E right-of-way. It's
18 a matter of complying with setbacks specific to BG&E
19 from their transmission towers.

20 Q I'm interesting in why you believe that the
21 positioning of the support facilities at the

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1 A It is not a sanitary municipal landfill.

2 Q Is the types of wastes accepted at a rubble
3 fill regulated?

4 A Yes. Regulated by COMAR, Title 26.

5 Q And does the county regulate with reference
6 to the state COMAR regulations?

7 A Yes, they do.

8 Q Mr. Chisholm, I'm going to refer to Exhibit
9 -- it was Exhibit 3A, B, and C.

10 How do you propose to access this particular
11 site? I would ask that Exhibit 2 from the previous
12 hearing be marked as Exhibit 9, and that Exhibit 3A, B,
13 and C be marked as Exhibit 10.

14 MS. BAER: I'm sorry. Could you run that
15 past me again?

16 CHAIRPERSON HALE: Exhibit 9 would now be --

17 MS. HENLEY: And ten.

18 CHAIRPERSON HALE: -- the prior Exhibit
19 Number 2. And Exhibit 10 would be prior Exhibit Number
20 3.

21 MS. BAER: I have no problem with that. No

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1 objection.

2 MR. DOSEK: No objection.

3 MS. HENLEY: And I ask that they be entered.

4 (Whereupon, the documents were marked
5 for identification Applicant's Exhibit Nos. 9 and 10
6 for Rubble Fill Special Exception and Variance, and
7 received in evidence.)

8 BY MS. HENLEY:

9 Q Mr. Chisholm, how do you propose to access
10 the rubble landfill site?

11 A We propose the Alternative A and Alternative
12 B accesses that we detailed in the sand and gravel
13 operation.

14 We would propose that one access be used, and
15 that the support facilities and locations for the site
16 access be the same as proffered for the sand and
17 gravel.

18 Q And would it be the developer's choice to
19 access off of Conway Road, which is Alternate A?

20 A That's correct.

21 Q What type of support facilities do you

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