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Transcript of Administrative Hearing

Date: June 7, 2019

Case: FM Group d/b/a Francisco Landscaping

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Transcript of Administrative Hearing
Conducted on June 7, 2019

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1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1	A P P E A R A N C E S	3
2	FOR MONTGOMERY COUNTY, MARYLAND	2	FOR MONTGOMERY COUNTY OFFICE OF ZONING AND	
3	-----x	3	ADMINISTRATIVE HEARINGS:	
4	IN RE: :	4	MARTIN GROSSMAN, HEARING EXAMINER	
5	THE APPLICATION OF, : Case No.: CU 19-04	5		
6	FM GROUP d/b/a FRANCISCO :	6	FOR THE APPLICANT:	
7	LANDSCAPING :	7	SEAN PATRICK HUGHES, ESQ.	
8	-----x	8	GEOVANNI ARGUETA, APPLICANT	
9		9	SHAHRIAR ETEMADI	
10	HEARING	10	MICHAEL A. NORTON	
11	Rockville, Maryland	11	SOMER CROSS	
12	Friday, June 7, 2019	12		
13	9:32 a.m.	13	IN OPPOSITION:	
14		14	PATRICIA THOMAS	
15		15	CAROLYN AWKARD	
16		16	CHARLEEN MOORE	
17		17	DESARIEE HASELDEN	
18		18	MICHELE ALBERNOZ	
19		19	JEAN MAUDLIN	
20		20	OLA MYERS	
21		21	MARY HEMINGWAY	
22		22	QUENTIN REMEIN	
23	Job: 248361	23		
24	Pages: 1 - 363	24		
25	Transcribed by: Molly Bugher	25		
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1 EXHIBITS PREVIOUSLY SUBMITTED:	1 EXHIBITS PREVIOUSLY SUBMITTED:
2 NUMBER DESCRIPTION	2 NUMBER DESCRIPTION
3 (p) Letter from DPS re: Combined Stormwater	3 Exhibit 51 3/27/19- Email from Sean Hughes to Nana Johnson
4 Management Concept/Site Development Stormwater	4 with Exhibit SO attached.
5 Management Plan. 12/26/18	5 Exhibit 52 3/27/19- Email from Nana Johnson and Elsabet
6 (q) Request for Tree Specimen Variance. 12/6/18	6 Tesfaye to Sean Hughes; Re: Planning Board Hearing
7 (r) CD of Ex. 39	7 date, 5/23/19 and OZAH hearing date, 6/7/19.
8 Exhibit 40 Technical Staff Report, completed 12/28/18.	8 Exhibit 53 3/27/19- Email from Sean Hughes to Elsabet
9 Exhibit 41 Notice of Motion to Amend Application. Issued	9 Tesfaye confirming Planning Board Date hearing
10 1/3/19	10 change from 5/23/19 to 5/16/19
11 Exhibit 42 Letter submitting Norton Report and DPS Stormwater	11 Exhibit 54 4/17/19- Notice of Public Hearing Set for June 7,
12 Management letter in word searchable format	12 2019
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15 application.	15 Procedures
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17 Exhibit 45 3/6/19- Second Motion to Amend.	17 Supplemental Report
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19 (b) Natural Resource Inventory & Forest Stand	19 56 attached
20 Delineation (L-01)	20 EXHIBITS INTRODUCED AT HEARING:
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4 (13 to 16)

13	<p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER GROSSMAN: Mr. Hughes, are you</p> <p>3 ready to proceed?</p> <p>4 MR. HUGHES: Yes sir, Mr. Grossman.</p> <p>5 HEARING EXAMINER GROSSMAN: All right. Ms. Thomas</p> <p>6 here?</p> <p>7 MS. THOMAS: Here I am.</p> <p>8 HEARING EXAMINER GROSSMAN: Oh, would you come</p> <p>9 forward please, and have a seat at the counsel table? Okay,</p> <p>10 are you ready to proceed also?</p> <p>11 MS. THOMAS: Yes sir.</p> <p>12 HEARING EXAMINER GROSSMAN: All right, then I'm</p> <p>13 going to call the case. This will be a little bit longer</p> <p>14 than the usual introduction. This is a public hearing in the</p> <p>15 matter of conditional use 19-04, FM Group E, doing business</p> <p>16 as Francisco Landscaping. An application for a landscape</p> <p>17 contract of conditional use, under section 59-3.5.5 of the</p> <p>18 2014 zoning ordinance as amended, effective October 22, 2018.</p> <p>19 The use is to be sited on a 6.18-acre property, located at</p> <p>20 15400 Holly Grove Road, Silver Spring Maryland, within the</p> <p>21 RE2C zone. The property is owned by Elba C. Argueta, who</p> <p>22 has authorized this application, Exhibit 5. The conditional</p> <p>23 use site is unplatted, and is identified as parcel P066 of</p> <p>24 the Snowden Manor subdivision, on tax map JS41. On the site,</p> <p>25 is a dwelling unit that is set back 40 feet, 6 inches from</p>	15	<p>1 request, because it is the jurisdiction of the Board of</p> <p>2 Appeals to decide variance requests. Will the parties</p> <p>3 identify themselves please, for the record?</p> <p>4 MR. HUGHES: Good morning Mr. Grossman. Sean</p> <p>5 Hughes, on behalf of the Argueta family.</p> <p>6 HEARING EXAMINER GROSSMAN: All right Mr. Hughes.</p> <p>7 And the witnesses you intend to call today?</p> <p>8 MR. HUGHES: Yes. Mr. Grossman, per our</p> <p>9 prehearing statement, first will be -- we intend to call</p> <p>10 Michael Norton.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay.</p> <p>12 MR. HUGHES: We intend to call Shahriar Etemadi.</p> <p>13 We intend to call Ms. Somer Cross, and we intend to call Mr.</p> <p>14 Geovanni Argueta.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay. Okay, Ms.</p> <p>16 Thomas, will you state your full name and address please?</p> <p>17 MS. THOMAS: I'm Patricia Thomas, 15510 Holly</p> <p>18 Grove Road, Silver Spring Maryland.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. And you are the</p> <p>20 only one who assessed, in effect, an informal opposition</p> <p>21 here. Although we see petitions from others, but you're --</p> <p>22 led the opposition. You indicated in a filing that you</p> <p>23 intend to call a number of witnesses. Can you, once again,</p> <p>24 go over who those will be?</p> <p>25 MS. THOMAS: Yes.</p>
14	<p>1 the nearest property line, and is therefore within the 50-</p> <p>2 foot set back required for a landscape contractor, under</p> <p>3 zoning ordinance section 59-3.5.5 B 2. To remedy this</p> <p>4 situation, the Applicant has also filed an application,</p> <p>5 number A6575, for a variance of 9 feet, 7 inches, pursuant to</p> <p>6 section 59-7.3.2 of the zoning ordinance. The Board of</p> <p>7 Appeals issued a resolution, effective September 27, 2018,</p> <p>8 referring the variance application, A6575, to OZAH, that is</p> <p>9 this office, for a hearing and a recommendation. That's</p> <p>10 Exhibits 32 and 33. In accordance with the request of the</p> <p>11 Applicant, and pursuant to OZAH zoning rule 4.2(g), the</p> <p>12 hearing examiner, on December 7, 2018, ordered conditional</p> <p>13 use application CU 19-04, and variance application A6575,</p> <p>14 consolidated for purposes of OZAH's public hearing. The</p> <p>15 hearing had been scheduled for January 18, 2019, but the</p> <p>16 Planning Board deferred action on the case to allow time, for</p> <p>17 amending the application, in light of objections from the</p> <p>18 neighbors, and the hearing was, therefore, continued. The</p> <p>19 application was amended on March 6, 2019, and at the request</p> <p>20 of the Applicant, a new OZAH hearing date of today, June 7,</p> <p>21 2019, was noticed on April 17, 2019. My name is Martin</p> <p>22 Grossman. I'm the hearing examiner here, which means I will</p> <p>23 take evidence, and I will write a report and decision on the</p> <p>24 conditional use. I will also write a report and</p> <p>25 recommendation to the Board of Appeals on the variance</p>	16	<p>1 HEARING EXAMINER GROSSMAN: And are they here</p> <p>2 today?</p> <p>3 MS. THOMAS: And they are here today.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay.</p> <p>5 MS. THOMAS: Ola Myers, Quentin Remein, Judy</p> <p>6 Mauldin, Mary Hemingway, Joseph Washington.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. You didn't</p> <p>8 mention Carolyn.</p> <p>9 MS. THOMAS: And Carolyn Awkard.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. All right. And</p> <p>11 I see that Quentin Remein is the president of the Cloverly</p> <p>12 Civic Association.</p> <p>13 MS. THOMAS: That's correct.</p> <p>14 HEARING EXAMINER GROSSMAN: Is he here?</p> <p>15 MS. THOMAS: Yes, he is.</p> <p>16 HEARING EXAMINER GROSSMAN: Sir, would you step</p> <p>17 forward please? All right, have a seat.</p> <p>18 MS. THOMAS: And Mr. Grossman?</p> <p>19 HEARING EXAMINER GROSSMAN: Yes.</p> <p>20 MS. THOMAS: I have noticed, there is one neighbor</p> <p>21 whose property abuts the Applicant's property. He's not</p> <p>22 listed on my statement, but he -- if he may speak, I would</p> <p>23 appreciate that.</p> <p>24 HEARING EXAMINER GROSSMAN: Well, certainly.</p> <p>25 Anybody --</p>

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<p>17</p> <p>1 MS. THOMAS: And his name is Everett Pumphrey.</p> <p>2 HEARING EXAMINER GROSSMAN: Everett -- what's the</p> <p>3 last name?</p> <p>4 MS. THOMAS: Pumphrey.</p> <p>5 HEARING EXAMINER GROSSMAN: Pumphrey. Any</p> <p>6 neighbor who wishes to speak, can speak here. They don't</p> <p>7 have to file anything in advance to do so.</p> <p>8 MS. THOMAS: Thank you.</p> <p>9 HEARING EXAMINER GROSSMAN: It's a public hearing,</p> <p>10 and they can submit their statements here. They are</p> <p>11 witnesses -- I'll explain about the proceeding in a minute,</p> <p>12 but Mr. Remein, can you -- are you here today to speak for</p> <p>13 yourself, or for the Civic Association?</p> <p>14 MR. REMEIN: I guess, for the Civic Association.</p> <p>15 Ms. Hemingway: No Quentin, you're speaking for</p> <p>16 yourself.</p> <p>17 MR. REMEIN: Am I speaking for myself? I know I</p> <p>18 represent --</p> <p>19 HEARING EXAMINER GROSSMAN: Why don't you first</p> <p>20 MR. REMEIN: -- Representative of the Civic</p> <p>21 Association.</p> <p>22 HEARING EXAMINER GROSSMAN: So, state your full</p> <p>23 name and address.</p> <p>24 MR. REMEIN: I'm Quentin Remein. I'm at 201</p> <p>25 Bryants Nursery Road, Silver Spring Maryland.</p>	<p>19</p> <p>1 HEARING EXAMINER GROSSMAN: Okay, but that's not</p> <p>2 really the question. I'm just trying to get straight, who</p> <p>3 you're speaking for.</p> <p>4 MR. REMEIN: Right.</p> <p>5 HEARING EXAMINER GROSSMAN: If you're speaking for</p> <p>6 yourself, that's fine.</p> <p>7 MR. REMEIN: I'm speaking for myself then.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. All right. All</p> <p>9 right sir.</p> <p>10 MR. REMEIN: So, you're done with me, or?</p> <p>11 HEARING EXAMINER GROSSMAN: Yes, but you can stay</p> <p>12 there if you wish, and I can -- Mr. Hughes, you can move down</p> <p>13 a smidgen, and give, you know, a bit more room.</p> <p>14 MS. THOMAS: Mr. Grossman?</p> <p>15 HEARING EXAMINER GROSSMAN: Yes.</p> <p>16 MS. THOMAS: There is a statement from Quentin on</p> <p>17 behalf of the Cloverly Civic Association, that's included</p> <p>18 with my materials that I did provide.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. Now, what</p> <p>20 exhibit is that?</p> <p>21 MS. THOMAS: That is -- actually, it's part of the</p> <p>22 Planning Board's materials.</p> <p>23 HEARING EXAMINER GROSSMAN: What do you mean by</p> <p>24 the Planning Board's materials? You mean their letter? The</p> <p>25 only thing that I have -- let me explain a little bit about</p>
<p>18</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Speak up,</p> <p>2 so the court reporter can get all that. And I'm sorry, now,</p> <p>3 are you speaking on behalf of the Civic Association? Did</p> <p>4 they vote to take a position on this? Or are you speaking --</p> <p>5 MR. REMEIN: They did vote to take a position on</p> <p>6 this.</p> <p>7 HEARING EXAMINER GROSSMAN: I'm sorry, what --</p> <p>8 MR. REMEIN: They did vote to take a position on</p> <p>9 it.</p> <p>10 HEARING EXAMINER GROSSMAN: They did? Okay. And</p> <p>11 so, are you speaking for them? Because I did not see any</p> <p>12 filing from you at all, and ordinarily, if a group or</p> <p>13 Association wishes to take a position here, our rules require</p> <p>14 that there be a filing.</p> <p>15 MR. REMEIN: Well, then I'm speaking for myself.</p> <p>16 HEARING EXAMINER GROSSMAN: All right. A</p> <p>17 prehearing filing for the --</p> <p>18 MR. REMEIN: Right.</p> <p>19 HEARING EXAMINER GROSSMAN: All right. So, you're</p> <p>20 speaking for yourself here.</p> <p>21 MR. REMEIN: Patricia is also a member of the</p> <p>22 Civic Association.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay.</p> <p>24 MR. REMEIN: And is in charge of the committee,</p> <p>25 basically, that is in charge of this case.</p>	<p>20</p> <p>1 this -- they planned the technical staff, as you know, of the</p> <p>2 planning department reviews all applications for a</p> <p>3 conditional use, and they produce a report to the Planning</p> <p>4 Board. And in this case, they produced both a report to the</p> <p>5 Planning Board, and a supplemental report. Their initial</p> <p>6 report is Exhibit 40, and their supplemental report is</p> <p>7 Exhibit 56. The Planning Board then meets, in this case</p> <p>8 they've met twice, and it has a public session, at which it</p> <p>9 hears from various people. And then, it produces a letter to</p> <p>10 me, with a recommendation. The part of their transcript, or</p> <p>11 their proceeding itself is not before me, because it is not</p> <p>12 statements under oath. Everybody who is heard here, will</p> <p>13 testify under oath and be subject to cross-examination, and</p> <p>14 everything will be taken down by a court reporter, and there</p> <p>15 will be a transcript. However, the staff reports -- the</p> <p>16 technical staff reports, are automatically part of this</p> <p>17 record, as is the Planning Board's letter. Now -- so, I'm</p> <p>18 not sure what you're referring to Ms. Thomas.</p> <p>19 MS. THOMAS: I'm referring to a letter that was</p> <p>20 part of the Planning Board's material that, obviously, is not</p> <p>21 part of this record, so.</p> <p>22 HEARING EXAMINER GROSSMAN: Yeah, if it hasn't</p> <p>23 been sent here as an exhibit, it wouldn't be part of our</p> <p>24 record.</p> <p>25 MS. THOMAS: Okay, understand.</p>

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6 (21 to 24)

<p>21</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. So, let me 2 explain a little bit about these proceedings. And it's a 3 combination of formality and informality. It's formal. It 4 operates -- we operate, sort of, like a courtroom operates. 5 All witnesses, as I mentioned, are sworn in. All are subject 6 to cross-examination. And there is a court reporter who 7 takes everything down. There will be a transcript. The 8 rules of evidence are similar to, but a bit more relaxed than 9 court. Certain technical differences in terms of hearsay 10 testimony, which I don't need to get into now. This is an 11 application, initially, for a conditional use. Now, a 12 conditional use is not a variance. There is also a variance 13 attached to this application, but for the conditional use, 14 the underlying conditional use -- it used to be called a 15 special exception. It's not -- that was a bit of a misnomer, 16 and somewhat misleading because it led people to think that 17 it was variation from the statute. It is not. A conditional 18 use is a use that's permitted in the zoning ordinance, if 19 certain conditions are met. Those conditions are spelled out 20 in the zoning ordinance. There are both general conditions 21 that all conditional uses must meet, and there are specific 22 ones for this type of conditional use, a landscape 23 contractor. Those are listed in the original technical staff 24 report, if you've seen it. And they're also, as I say, are 25 set forth in the zoning ordinance. A zoning proceeding is</p>	<p>23</p> <p>1 up some preliminary matters. Any new exhibits must be 2 accompanied by electronic copies in Microsoft Word, or a text 3 searchable PDF format for text documents, and PDFs for non- 4 text documents. There was a motion to amend the plans, 5 noticed on March 12, 2019. It was unopposed, and was, 6 therefore, automatically granted. Does the Applicant, Mr. 7 Hughes, wish to adopt the findings and analysis of the 8 technical staff and the staff report, Exhibit 40, and in the 9 supplemental technical staff report, Exhibit 56? 10 MR. HUGHES: Yes sir. 11 HEARING EXAMINER GROSSMAN: Okay. Does the 12 Applicant agree to all the conditions specified by the 13 technical staff, as amended by the Planning Board in Exhibit 14 60? 15 MR. HUGHES: Yes sir. 16 HEARING EXAMINER GROSSMAN: Okay. Looking at the 17 concerns of the opposition, if I were to decide to grant this 18 conditional use, would you be willing to have a work start at 19 7:00 a.m. instead of 6:00 a.m.? You can hold off, and answer 20 that question after consulting with your client, if you wish. 21 MR. HUGHES: Just for clarification, is that a 22 question from the Hearing Examiner, or is that the question 23 that came from somewhere else? 24 HEARING EXAMINER GROSSMAN: That's a question for 25 me.</p>
<p>22</p> <p>1 not a plebiscite. I don't count noses to see how many people 2 are for or against something. I'm not permitted to do that. 3 My job is to look at the zoning ordinance and consider the 4 evidence, and to determine whether or not the Applicant has 5 met the burden of proof here, under the zoning ordinance. 6 And that's what I will be doing here. I should mention that 7 after I produce my report and decision, it is subject to a 8 request for oral argument before the Board of Appeals, but 9 that would only be on the record that's produced here. 10 There's also a variance request here, as I've mentioned, and 11 that would result in a recommendation to the Board of 12 Appeals, which would then act on the recommendation, once 13 again, based on the record that is produced here. Okay. 14 Once again, I guess, I should add on, the County Council 15 plays no part in this role, other than setting up the zoning 16 ordinance. The County Council enacted the zoning ordinance. 17 They don't play a part, specifically, in this proceeding. 18 Okay. Let me mention a little bit more about the variance. 19 The variance here, is a request for a 9-foot, 7-inch variance 20 to allow the house that already exists on the premises, to 21 continue to exist, if the landscape contractor conditional 22 use is approved, because it would be in violation of the 23 specific conditions of the conditional use in the zoning 24 ordinance. And for that, it would require a variance, if the 25 Board of Appeals decides to grant it. All right, let me take</p>	<p>24</p> <p>1 MR. HUGHES: Yes sir. 2 HEARING EXAMINER GROSSMAN: But I've seen that 3 there were concerns raised by others, by neighbors in the 4 case, and so, I do wish to have an answer to that. Do you 5 agree to the definition of the surrounding neighborhood 6 proposed by technical staff, which was a 2,000-foot radius 7 around the subject site? 8 MR. HUGHES: Yes sir. 9 HEARING EXAMINER GROSSMAN: Okay. I would also 10 ask that you have somebody clarify the apparent conflict 11 between the number of vehicles set forth in the technical 12 staff report, and those listed in your statement of 13 justification, Exhibit 2, at page 6, which appears to include 14 an extra trailer, or a crane truck, and two Bobcats not 15 listed by technical staff, at least, that I could find. So, 16 I want to make sure you have somebody clarify that. I also 17 ask that you have your witnesses respond to the concerns 18 raised by Ms. Thomas, in her opposition letter of January 4, 19 2009, Exhibit 43, and in her prehearing statement, Exhibit 20 58. The, allegedly, non-inherent adverse impacts on 21 imperviousness. The watershed, noise, air quality, traffic 22 safety compatibility, master plan compliance, and property 23 values. Those are the issues that she raised in her filings. 24 All right. I should mention that the October 22, 2018 25 amendment of the zoning ordinance expanded that definition of</p>

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<p>25</p> <p>1 landscape contractor, and made some other changes that I 2 think are irrelevant here, but I just want to mention that 3 that was amended on that date, in case anybody's looking at 4 an older version of the zoning ordinance. I'd like to 5 address the opposition for second and ask; Ms. Thomas, if I 6 decide to grant this conditional use, you should consider if 7 there are any conditions which you would recommend, in 8 addition to what the Planning Board recommended, that would 9 alleviate some of your concerns. So, I'd like to hear from 10 you on that. I have, obviously, not made any decision in the 11 case, but it's always helpful for me to hear from the 12 community, as to their concerns, and see if there is some way 13 to alleviate those concerns. And it's recognized -- by the 14 way, the zoning ordinance recognizes that there may be some 15 adverse consequences from any conditional use, in a 16 particular zone. Nevertheless, the Council's decided that 17 whatever the public interest is, in having that particular 18 type of conditional use is appropriate in that zone. And 19 that's why it's broken down the question of adverse 20 consequences into inherent adverse effects and non-inherent 21 adverse effects, as Ms. Thomas recognized in her filings. 22 Those that are inherent. If there are inherent adverse 23 effects, those would be, typically, expected to be involved 24 in this type of conditional use alone. If that's the only 25 type of adverse effect, it's not a basis for denial. If,</p>	<p>27</p> <p>1 MR. HUGHES: Yes sir. 2 HEARING EXAMINER GROSSMAN: All right. It's 3 somewhat problematic. Although, if that's the only thing 4 that's added, maybe it won't be an issue, but it will delay 5 things. And that the opposition will have an opportunity to 6 file a response in writing, as well as to respond at this 7 proceeding. And the technical staff will have an opportunity 8 to review it, and opine on it. And then, I'll give you an 9 opportunity to respond to that, should you wish to. So, it's 10 going to delay any action by me. 11 MR. HUGHES: Thank you, Mr. Hearing Examiner. I 12 understand that. And it was before the Planning Board and 13 staff, on the 16th, but I didn't get it to you properly, 14 right after that, in time. 15 HEARING EXAMINER GROSSMAN: I see. 16 MR. HUGHES: So, my mistake. So, apologies. 17 HEARING EXAMINER GROSSMAN: All right. Ms. 18 Thomas, do you want to be heard on that issue, of amended 19 landscape plan? 20 MS. THOMAS: Yes. 21 HEARING EXAMINER GROSSMAN: Do you wish to say 22 something now about it, as a preliminary matter? 23 MS. THOMAS: I'd like -- my concern relates more 24 to the reforestation plan. 25 HEARING EXAMINER GROSSMAN: You're talking about</p>
<p>26</p> <p>1 however, there are non-inherent adverse effects, those that 2 are created by the particular type of use, or unusual site 3 conditions, that may be a basis for denial. Or any 4 combination of inherent and non-inherent adverse effects may 5 be a basis for denial. Okay. Also, I ask the opposition 6 another thing. I understand that you have challenged 7 technical staff's reference to the western extended portion 8 of Holly Grove Road, as not actually being Holly Grove Road. 9 And so, I looked at the tax authorities. They characterize 10 it as Holly Grove Road, as does Google Maps. So, if there's 11 evidence to the contrary, as to what I should be calling that 12 western portion of the site, that road, I'd like to know 13 that. All right. Any other preliminary matters, Mr. Hughes? 14 MR. HUGHES: Yes sir. One item. We would like to 15 bring in through Michael Norton, who's going to be talking 16 about the plans, a slightly revised landscape plan that I did 17 not get to you ahead of time, based upon Planning Board on 18 May 16. There's -- and it -- we have a red line to show you 19 that just -- it adds some extra trees. Some extra 20 landscaping that was discussed at the Planning Board on the 21 16th, to the west side that you were just talking about. So, 22 we would like for you to consider that as an item that we'll, 23 hopefully, be able to bring in today. 24 HEARING EXAMINER GROSSMAN: All right. So, these 25 extra trees are to add screening?</p>	<p>28</p> <p>1 the preliminary forest conservation plan? 2 MS. THOMAS: Yes. 3 HEARING EXAMINER GROSSMAN: Which was -- 4 MS. THOMAS: Which we just received that document 5 on yesterday. 6 HEARING EXAMINER GROSSMAN: No. I think the 7 preliminary forest conservation plan has been in the record 8 for some time. I think what you received yesterday, I 9 received yesterday, was the resolution from the Planning 10 Board, approving it and the tree variance. 11 MS. THOMAS: Right. What I wanted to discuss with 12 you this morning, was the fact that Ms. -- and one of the 13 reasons why Ms. Awkard is here, is that that plan addresses 14 part of her property. Where trees were taken from her 15 property without her knowledge, and she was not consulted at 16 all about the plan. 17 HEARING EXAMINER GROSSMAN: All right. That may 18 well be a legitimate point, but I have no jurisdiction over 19 the forest conservation plan. That is -- I can impose a 20 condition that it be followed, but it's the Planning Board's 21 jurisdiction over the forest conservation plan. So, I -- 22 that's something she'd have to take up with the Planning 23 Board, because I have no jurisdiction over the actual 24 approval of a forest conservation plan. 25 MS. THOMAS: Okay. And my other comment, with</p>

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<p style="text-align: right;">29</p> <p>1 respect to the landscaping, is that while that plan may 2 address hiding, for lack of a better word, the property, it 3 certainly will not alleviate the noise concerns. 4 HEARING EXAMINER GROSSMAN: I understand. That's 5 a substantive concern. I'm just talking the procedural fact 6 of his -- you don't have an objection to his amending it, to 7 add more screening? Is that correct? 8 MS. THOMAS: That's correct. 9 HEARING EXAMINER GROSSMAN: Okay. All right. So, 10 you will be permitted to -- do you have that -- shall we mark 11 that as an exhibit? 12 MR. HUGHES: Yes sir. Thank you. 13 HEARING EXAMINER GROSSMAN: Is this going to 14 change the conditional use site plan as well, just a 15 landscape plan? 16 MR. HUGHES: It will -- it might. Oh, sorry. Mr. 17 Michael Norton, who worked on the plans, from Norton Plan 18 Design. 19 HEARING EXAMINER GROSSMAN: All right. Mr. 20 Norton. 21 MR. NORTON: No sir. It's strictly to reinforce 22 the perimeter landscape. 23 HEARING EXAMINER GROSSMAN: So, it's -- the only 24 change in the plans, is the landscape plan? 25 MR. NORTON: That's correct.</p>	<p style="text-align: right;">31</p> <p>1 one second. 2 MR. HUGHES: Okay. 3 HEARING EXAMINER GROSSMAN: Okay. Why don't you 4 come forward with that? An affidavit of posting is, the 5 Applicant in a conditional use is required to have a notice 6 sign posted on the property, and is required to keep that 7 notice sign posted until after the decision in this case. 8 They must submit an affidavit to indicate that they have 9 posted the property with the notice sign. And that'll be 10 Exhibit 77. 11 (Exhibit 77 marked for identification) 12 MR. HUGHES: Mr. Grossman, this was signed earlier 13 this week. The witness is here if we need further testimony 14 on that. 15 HEARING EXAMINER GROSSMAN: Okay. This will be 16 Exhibit 77, the affidavit of posting. Any other preliminary 17 matters? 18 MR. HUGHES: I don't believe so, Your Honor. 19 HEARING EXAMINER GROSSMAN: All right. Ms. 20 Thomas, do you have any preliminary matters? 21 MS. THOMAS: No, I don't. 22 HEARING EXAMINER GROSSMAN: Okay. All right. Mr. 23 Hughes, do you wish to make an opening statement? 24 MR. HUGHES: I do. 25 HEARING EXAMINER GROSSMAN: All right. Then you</p>
<p style="text-align: right;">30</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. So, let's make 2 that exhibit -- 3 MR. HUGHES: And Mr. Grossman, what I'd like to 4 recommend is, we have a red line, to really call it out, the 5 changes because they're pretty minor, and then a clean 6 version. And I have full-size in those, and I'd like to hand 7 to Ms. Thomas, and to you, a small version, if that's okay? 8 HEARING EXAMINER GROSSMAN: All right. All right, 9 Exhibit 76 will be the amended landscape plan. 10 MR. NORTON: You said 76? 11 HEARING EXAMINER GROSSMAN: Yes. Exhibit 76-A 12 will be the red line version, and 76-B will be the, I guess, 13 the 11 x 14 -- oh, I guess there's an 11 x 14 of the red line 14 as well, so 11 x 14 version of the plan. And C, 76-C, will 15 be 11 x 14 red line version. 16 MR. HUGHES: C is the red line, Mr. Grossman? 17 HEARING EXAMINER GROSSMAN: Yes. C is the red 18 line version of the 11 x 14 red line version of the amended 19 landscape plan. And B is the 11 x 14 version of the plan. 20 (Exhibit 76(a) to 76(c) marked for identification) 21 HEARING EXAMINER GROSSMAN: All right. Any other 22 preliminary matters, Mr. Hughes? 23 MR. HUGHES: I have an affidavit of posting, Mr. 24 Grossman. 25 HEARING EXAMINER GROSSMAN: Okay. Well, hold on</p>	<p style="text-align: right;">32</p> <p>1 may proceed. 2 MR. HUGHES: Thank you. 3 HEARING EXAMINER GROSSMAN: It seems we have one 4 gentleman who doesn't -- there is a chair there sir, if you 5 want. 6 UNIDENTIFIED SPEAKER: Okay. 7 HEARING EXAMINER GROSSMAN: We had one man 8 standing in the audience, so. 9 MR. HUGHES: Thank you, Mr. Grossman. Sean 10 Hughes, on behalf of Argueta family, Francisco's Landscaping, 11 from Miller Miller & Canby. This -- I want to tell you 12 little bit about how we got here, and a little bit about the 13 case. Thank you for the opportunity. This Argueta family, 14 the Francisco Landscaping, kind of, is a epitome of a small 15 family business. Five family members. Mr. Francisco started 16 it. He's the father, his wife Elba, and the three adult 17 children, they're all here. Mr. Giovanni is one of the adult 18 children who's going to -- is slated to be our, one of our 19 witnesses. It's, as in the staff report and as what we've 20 agreed to, up to 15 employees. Five are immediate family 21 members, and of the other 10, many of them are extended 22 family and friends. So, it's a small family business of 15. 23 As in the staff report and what we accept, it's going to 24 include up to 10 trucks, and of those 10 trucks, typically, 25 about seven are used a day. So, yes, they are requesting a</p>

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<p>33</p> <p>1 conditional use to operate this landscaping contracting 2 business at 15400 Holly Grove Road in Silver Spring, 6.18 3 parcel, or property. It's about 315 feet southwest of Awkard 4 Road and 1,250 off of Holly Grove Road, southwest of that. 5 It also happens to be, roughly, about a quarter of a mile 6 away from, southeast of the Blake High School campus. They, 7 as mentioned, they're also requesting variance, just a little 8 over 9 feet, for the existing 1987 house that was valid then, 9 and remains valid under the zoning for the particular zone 10 setbacks. It exceeds those, but for the 50-foot for all 11 structures on the conditional use, it is a little bit short. 12 HEARING EXAMINER GROSSMAN: So, what you're saying 13 is that it's compliant as far as being a house, once you -- 14 if you have a conditional use there for landscape contractor, 15 it falls short of the 50-foot setback required of the 16 landscape contractors? 17 MR. HUGHES: Correct. 18 HEARING EXAMINER GROSSMAN: Although this -- I 19 take it this house is not used in the business, is that 20 correct? 21 MR. HUGHES: That's correct, Mr. Grossman. 22 HEARING EXAMINER GROSSMAN: Okay. 23 MR. HUGHES: But it, as you know, the code says 24 all structures. 25 HEARING EXAMINER GROSSMAN: Yes.</p>	<p>35</p> <p>1 work. Very thorough, as usual, report. We also -- as noted, 2 they had put some conditions of approval in there, which we 3 accepted. We believe that -- and then, thereafter Planning 4 Board, as you know, they sent over their position, and we've 5 accepted those conditions. We believe they did a nice, 6 thorough legal review. We believe we meet, not only the 7 spirit, but the actual law here. And through the exhibits, 8 and evidence that's in, and what you will hear today, we 9 intend to prove this. So, what we are hoping to show today, 10 Mr. Grossman, is that with these condition of approvals, 11 again, which we're willing to accept, it conforms with all 12 the requirements and regulations for a landscape contractor. 13 The use is consistent with the 1997 Cloverly Master Plan, and 14 compatible with the character of the area. Conditional use 15 won't cause undue harm or adverse impact to the immediate 16 neighborhood. No significant traffic circulation, noise, or 17 environmental issues associated with it, provided the 18 conditions are met, which we agree to. The application, we 19 believe, shows it complies with the Montgomery County 20 environmental regulations and guidelines, and in fact, as 21 noted, the application would result in the impervious going 22 for the six plus acre parcel going down from over 18 percent, 23 to just a little over 13 percent, so pretty significant 24 decrease. Regarding the variance, as was mentioned, it's 25 about 9 plus feet from the 50-foot for structures on</p>
<p>34</p> <p>1 MR. HUGHES: So, yes. It captures this. So, a 2 quick overview of how we got here. Mr. Francisco started the 3 business over 20 years ago in Montgomery County. The family 4 bought the property in January of 2005, and I will note, I 5 think staff had it all right. There was one time when I got 6 confused, and I have 2006 in certain writings, but as the 7 SDAT shows, it was purchased in January of 2005. When they 8 purchased it, they did some modifying and cleaning up of the 9 property, and they, right away, started operating the 10 business openly and continuously since that time. Did so for 11 12-1/2 years, and then the County came out in the summer of 12 2017 and said they need to have a conditional use. They 13 should have known that, they acknowledge that. They didn't 14 understand that, based upon the prior use and representations 15 to them, we think were all in good faith when they purchased 16 the property. But once they were told, within a month, just 17 about a month, as a family, they did file an application with 18 Park and Planning. The Park and Planning, kind of, came back 19 to them and said, this is a good try, but this is pretty 20 involved. You may want to consider hiring an attorney. They 21 interviewed us and others. We helped them bring on some 22 engineers and such. Long story short, the application got 23 back in. We also filed the variance, and here we are today, 24 obviously, requesting the conditional use and the variance. 25 We wanted to commend Park and Planning staff for their fine</p>	<p>36</p> <p>1 landscape contractor. The house was built in 1989, with 2 valid permits. Variance is minor in nature, we believe, and 3 it does meet all the general setbacks for the zone. We 4 believe it's in harmony with the general purpose, and intent 5 and spirit of the code. 6 HEARING EXAMINER GROSSMAN: Let's not make this a 7 closing argument, that's just -- 8 MR. HUGHES: I'm almost done here. I'm sorry, and 9 I -- we would just thank you for the opportunity, and we're 10 ready to call our witnesses. 11 HEARING EXAMINER GROSSMAN: All right. Ms. 12 Thomas, do you wish to make an opening statement? Let me -- 13 are you an attorney Ms. Thomas? 14 MS. THOMAS: No, I'm not. 15 HEARING EXAMINER GROSSMAN: Okay. The reason I 16 ask that question is if you're not an attorney, I want to 17 swear you in. So, if you want to make an opening statement, 18 I will consider it as part of your testimony. So, would you 19 raise your right hand please? Do you swear or affirm to tell 20 the truth, the whole truth, and nothing but the truth, under 21 the penalty of perjury? 22 MS. THOMAS: I do. 23 HEARING EXAMINER GROSSMAN: All right. You may 24 proceed, if you have an opening statement you wish to make. 25 This is not your testimony, per se, but if you want to just</p>

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<p>37</p> <p>1 outline what you intend to prove.</p> <p>2 MS. THOMAS: I would like to outline that the</p> <p>3 application does not satisfy the necessary findings of</p> <p>4 approval, in that there are inherent and non-inherent effects</p> <p>5 associated with the operation of this landscaping company in</p> <p>6 our community. And I really think that this application</p> <p>7 calls into question the true intent of conditional uses,</p> <p>8 particularly in residential zones. And I --</p> <p>9 HEARING EXAMINER GROSSMAN: I'm not sure what you</p> <p>10 mean by that. It calls into question the true intent of</p> <p>11 conditional uses. That's a -- isn't that a legislative</p> <p>12 matter, if you're challenging the idea of conditional uses in</p> <p>13 residential zones, it's not before me. I have to -- I'm -- I</p> <p>14 just follow -- I'm not making policy here. I'm following</p> <p>15 whatever the Council has set forth as policy.</p> <p>16 MS. THOMAS: I understand. I understand.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay.</p> <p>18 MS. THOMAS: And that's just a general statement.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. THOMAS: And that may go further down the road</p> <p>21 that I may pursue further.</p> <p>22 HEARING EXAMINER GROSSMAN: All right.</p> <p>23 MS. THOMAS: Further. I will demonstrate that the</p> <p>24 subject use is inconsistent with the 1997 Cloverly Master</p> <p>25 Plan, and I will present case precedents supporting that.</p>	<p>39</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. I'd need to --</p> <p>2 well, the Planning Board attempted, at least, to address that</p> <p>3 in their suggested -- well, both technical staff first, and</p> <p>4 then the Planning Board, better defining the size of the</p> <p>5 trucks, attempted to address that.</p> <p>6 MS. THOMAS: I think that the Planning Board</p> <p>7 really missed some major, major points. Particularly the</p> <p>8 idea that the road is too narrow. It's 14 feet wide, and</p> <p>9 we'll address that as well. And that it is widely used by</p> <p>10 pedestrians. There is a Montgomery County public school bus</p> <p>11 stop at the intersection of Holly Grove and Norwood Road, and</p> <p>12 there are children who walk to that bus stop every day.</p> <p>13 Particularly the Blake High School students who live in our</p> <p>14 neighborhood. And so, I'm concerned about the students who</p> <p>15 not only, currently, live in the neighborhood, but future</p> <p>16 children who will live in the neighborhood, and will walk to</p> <p>17 that bus stop. In addition to that, on many occasions,</p> <p>18 students who attend Blake High School will walk through Holly</p> <p>19 Grove to get to Stonegate. Particularly when there's early</p> <p>20 dismissal, or for other reasons. If they miss their school</p> <p>21 bus, they'll walk through Holly Grove to get to Blake High</p> <p>22 School. And so, I really think that Park and Planning staff</p> <p>23 missed the boat on that, as well as the noise, which is</p> <p>24 significant. Particularly the predawn noise.</p> <p>25 HEARING EXAMINER GROSSMAN: Yeah, I know that you</p>
<p>38</p> <p>1 And there are significant traffic and noise, as well as</p> <p>2 environmental issues. The property also drains into property</p> <p>3 that is part of the Johnson Road sub watershed, which is</p> <p>4 significant.</p> <p>5 HEARING EXAMINER GROSSMAN: Well, are you</p> <p>6 contending that it will be made worse by this conditional</p> <p>7 use, or that it already exists, and perhaps they've also</p> <p>8 submitted plans for stone water conservation? Would that not</p> <p>9 make it better, or -- we'll hear testimony, I presume, from</p> <p>10 their witnesses about that. What do you think --</p> <p>11 MS. THOMAS: Well, it raises questions of</p> <p>12 imperviousness. And, again, because that property does drain</p> <p>13 into the Johnson Road sub watershed. I'm just concerned</p> <p>14 about the effects on the canopy of that property, with</p> <p>15 respect to exhaust from the number of trucks that they're</p> <p>16 proposing to bring into the property. I would also suggest</p> <p>17 that while the family has been in operation for a number of</p> <p>18 years, the operation has grown; it's been insidious, for lack</p> <p>19 of a better word. Our neighbors, we tend to mind our own</p> <p>20 business, but clearly, over the last two to three years</p> <p>21 there's been increased activity, increased traffic, more</p> <p>22 trucks. And in fact, just the recent introduction of the</p> <p>23 delivery of mulch via tractor-trailer. So, those kinds of</p> <p>24 activities have grown and have increased, which really</p> <p>25 precipitated the complaint a couple of years ago.</p>	<p>40</p> <p>1 submitted a video of a truck, and based on your concern about</p> <p>2 the noise, and I have a question. Did you intend to play</p> <p>3 that during the hearing? How are you going to get that noise</p> <p>4 evidence into evidence here?</p> <p>5 MS. THOMAS: I can -- I have the ability to -- I</p> <p>6 did provide that as part of my evidence submitted, but I have</p> <p>7 the ability to provide that video as well here, this morning.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. Well,</p> <p>9 we'll let you do that when the time comes.</p> <p>10 MS. THOMAS: Okay. And so, I'll just conclude my</p> <p>11 opening statements.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay.</p> <p>13 MS. THOMAS: I do have a witness who will speak</p> <p>14 with respect to the variance, and that we believe that the</p> <p>15 variance is not necessary.</p> <p>16 HEARING EXAMINER GROSSMAN: Yeah. I can't --</p> <p>17 you're not an attorney admitted into the bar, and under the</p> <p>18 bar rules. I can't let you question witness, per se, but</p> <p>19 these witnesses can testify in narrative form, and can state</p> <p>20 whatever they wish to state about it. I think I mentioned</p> <p>21 that in some -- you had filed something, and said you were</p> <p>22 going to be calling a number of people, and I think that I</p> <p>23 had somebody respond saying, I can't have you represent and</p> <p>24 organize the opposition if you're not a member of the bar,</p> <p>25 under bar rules and the statute.</p>

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<p>41</p> <p>1 MS. THOMAS: I don't recall that, but I accept 2 that -- 3 HEARING EXAMINER GROSSMAN: Well, if I did that, I 4 -- but in any event, but they certainly can be heard, and 5 should be heard here. And all the people you listed, as well 6 as anybody else who wishes to be heard, will be heard here 7 today as to any concerns they may have. Also, you're 8 entitled cross-examine witnesses called by the Applicant. 9 And I think the best way to proceed, since we have a fairly 10 large crowd in the audience here, is to allow you to do 11 whatever cross-examination you wish to do. And then, if 12 anybody in the audience has some additional questions that 13 they think ought to be asked, they can talk to you, and the 14 questions can come through you. Would that be agreeable, Ms. 15 Thomas? 16 MS. THOMAS: Yes, sir. 17 HEARING EXAMINER GROSSMAN: Okay. All right. 18 Then why don't we proceed? Mr. Hughes, you may call your 19 first witness. 20 MR. HUGHES: Yes, Mr. Grossman, and apologies. 21 One quick item I'd like to bring up for your consideration, 22 and I guess it is somewhat of a preliminary issue. 23 HEARING EXAMINER GROSSMAN: Yeah. 24 MR. HUGHES: In item 60, the Planning Board letter 25 from May 30th.</p>	<p>43</p> <p>1 Norton. 2 MR. NORTON: Yes. 3 HEARING EXAMINER GROSSMAN: Could you state your 4 full name and business address please? 5 MR. NORTON: Michael Norton, Norton Land Design, 6 5146 Dorsey Hall Drive, 2nd Floor, Ellicott City, Maryland 7 21042. 8 HEARING EXAMINER GROSSMAN: Would you raise your 9 right hand please? Do you swear or affirm to tell the truth, 10 the whole truth, and nothing but the truth, under penalty of 11 perjury? 12 MR. NORTON: Yes. 13 HEARING EXAMINER GROSSMAN: Okay. 14 MR. HUGHES: Mr. Norton, can you tell us what your 15 profession is? 16 MR. NORTON: Landscape architect. 17 MR. HUGHES: And can you tell us a little bit 18 about your educational, and professional background? 19 MR. NORTON: I have a degree in site design, 20 landscape architecture, and a degree in environmental 21 planning as well. 22 MR. HUGHES: Thank you. I'm going to -- 23 HEARING EXAMINER GROSSMAN: Are you licensed by 24 the State of Maryland? 25 MR. NORTON: I am licensed by the state.</p>
<p>42</p> <p>1 HEARING EXAMINER GROSSMAN: Yes. 2 MR. HUGHES: Condition number 1 says, the total 3 number of employees, including family members, must not 4 exceed a maximum of 15. 5 HEARING EXAMINER GROSSMAN: Okay. 6 MR. HUGHES: Which we do accept. I'm just -- for 7 clarification, I'm wondering if they intended, or if Your 8 Honor has a position on it, the total number of employees on 9 site, including family members? 10 HEARING EXAMINER GROSSMAN: That's usually what 11 that refers to, because the question is, how many will be 12 there at any given time, in terms of its imposition on the 13 community? 14 MR. HUGHES: Yes sir. 15 HEARING EXAMINER GROSSMAN: And so, that's the way 16 I would take it, unless I heard something to the contrary. 17 There might be other people who would be employed and not be 18 on site, but the limitation is intended to limit the 19 imposition on the community. 20 MR. HUGHES: Thank you, sir. With that, I would 21 call our first witness, Mr. Michael Norton. 22 HEARING EXAMINER GROSSMAN: Ms. Thomas, do you 23 have any objection to my interpreting it that way? 24 MS. THOMAS: No, I don't. 25 HEARING EXAMINER GROSSMAN: Okay. All right, Mr.</p>	<p>44</p> <p>1 HEARING EXAMINER GROSSMAN: And what's your 2 license number? 3 MR. NORTON: 3310. 4 HEARING EXAMINER GROSSMAN: Okay. 5 MR. HUGHES: Mr. Norton, I'm going to ask you if 6 you can identify this document, which I'm going to give a 7 copy to the hearing examiner, and to Ms. Thomas? Can you 8 tell us what that is, Mr. Norton? 9 MR. NORTON: It's my resume. 10 MR. HUGHES: And Mr. Norton, have you ever been 11 qualified as an expert before this hearing examiner's office? 12 MR. NORTON: Yes. 13 MR. HUGHES: Have you been qualified more than 14 once? 15 MR. NORTON: Yes. 16 MR. HUGHES: Mr. Grossman, I'd like to offer Mr. 17 Norton as an expert in site design and landscape 18 architecture. And Mr. Norton, have you been qualified as a 19 site design and landscape architecture person before? 20 MR. NORTON: Yes, yes. 21 MR. HUGHES: I'd like to offer him in, Your Honor. 22 HEARING EXAMINER GROSSMAN: All right. His resume 23 will be Exhibit 78. 24 (Exhibit 78 marked for identification) 25 MR. HUGHES: Thank you.</p>

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<p>45</p> <p>1 HEARING EXAMINER GROSSMAN: Hold on one second.</p> <p>2 MR. HUGHES: Okay.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Now, what</p> <p>4 happens now is something called the voir dire. That is a</p> <p>5 term referring to an examination of a witness who's been</p> <p>6 called and offered as an expert. This is an opportunity for</p> <p>7 the opposition to question the witness as to his expertise.</p> <p>8 So, Ms. Thomas, do you have any questions regarding this</p> <p>9 witness's expertise?</p> <p>10 MS. THOMAS: No, I do not.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>12 Based on Mr. Norton's resume, Exhibit 78, his prior testimony</p> <p>13 as an expert in site design and landscape architecture, I</p> <p>14 accept him as an expert in this case. As well as his -- the</p> <p>15 fact that he is licensed in in the State of Maryland. I</p> <p>16 should add on, if there are any additional experts, that an</p> <p>17 expert, in terms of a proceeding like this, is not</p> <p>18 necessarily somebody who has a degree, although it's</p> <p>19 certainly helpful, but it's somebody who can offer</p> <p>20 information beyond the ken of an average layman, and on a</p> <p>21 particular subject, that will be helpful to the factfinder in</p> <p>22 this case, I'm the factfinder, in deciding the matter. And</p> <p>23 certainly Mr. Norton qualifies, based on his educational and</p> <p>24 licensing -- his educational background, and his licensing,</p> <p>25 and his prior acceptance as an expert in this type of</p>	<p>47</p> <p>1 Norton, so the audience can hear.</p> <p>2 MR. NORTON: Oh, I'm sorry. I'm sorry.</p> <p>3 UNIDENTIFIED SPEAKER: We can't see Mr. President.</p> <p>4 We can't see.</p> <p>5 MR. NORTON: All right. I can turn this as well,</p> <p>6 for everyone.</p> <p>7 HEARING EXAMINER GROSSMAN: Yeah, turn it, turn it</p> <p>8 so it's flatter.</p> <p>9 MR. NORTON: Sure.</p> <p>10 HEARING EXAMINER GROSSMAN: I should note, this</p> <p>11 may be the last hearing that takes place in this room before</p> <p>12 it's renovated -- The building, and they've promised to give</p> <p>13 us updated electronics, so everybody will be able to see.</p> <p>14 They may replace the pink desk here, but in any event,</p> <p>15 hopefully, in the future. They tell us that we'll be moving</p> <p>16 out of these offices in September, and not returning until</p> <p>17 June or so of next year. At which time, theoretically at</p> <p>18 least, we'll have adequate electronic equipment here.</p> <p>19 MR. HUGHES: 21st century huh.</p> <p>20 HEARING EXAMINER GROSSMAN: Right. Well, at least</p> <p>21 the 20th. We may be moving to the 20th century. Is that</p> <p>22 better everybody?</p> <p>23 UNIDENTIFIED SPEAKER: Yes.</p> <p>24 MR. HUGHES: Everyone can see? And if you could</p> <p>25 speak up. And if you think he's being picked up over there</p>
<p>46</p> <p>1 proceeding. In any event, you may proceed then, Mr. Hughes.</p> <p>2 MR. HUGHES: Thank you, Mr. Grossman. Mr. Norton,</p> <p>3 I'm going to ask you to identify an aerial photograph. Ms.</p> <p>4 Thomas. Would you mind standing up? I think we might have a</p> <p>5 large version. I'm going to give the hearing examiner an 11</p> <p>6 x 17 version. Can you identify what this shows, and tell us</p> <p>7 about it a little bit please?</p> <p>8 HEARING EXAMINER GROSSMAN: Is this already in the</p> <p>9 record?</p> <p>10 MR. HUGHES: No, Your Honor.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. So, why don't</p> <p>12 you mark that -- if we're going to refer to anything in the</p> <p>13 hearing, it should be noted as an exhibit. That'll be</p> <p>14 Exhibit 79, and that is an aerial photo of the site and</p> <p>15 surrounding area. Is that a fair description?</p> <p>16 MR. HUGHES: Yes sir.</p> <p>17 HEARING EXAMINER GROSSMAN: And I'll mark the</p> <p>18 11 x 14 as 79 A. Okay.</p> <p>19 (Exhibit 79 and 76(a) marked for identification)</p> <p>20 MR. HUGHES: Go ahead, Mr. Norton. Can you tell</p> <p>21 us what this shows?</p> <p>22 MR. NORTON: This is an aerial photograph of the</p> <p>23 subject property, and the surrounding area, Holly Grove Road,</p> <p>24 North, is straight under.</p> <p>25 HEARING EXAMINER GROSSMAN: Yeah, speak up Mr.</p>	<p>48</p> <p>1 okay, Mr. Grossman?</p> <p>2 HEARING EXAMINER GROSSMAN: Court reporter, is he</p> <p>3 being picked up?</p> <p>4 MR. NORTON: I'm good?</p> <p>5 THE COURT REPORTER: He is, yes.</p> <p>6 HEARING EXAMINER GROSSMAN: Okay, yeah. If</p> <p>7 necessary, you can set up an additional microphone. Is that</p> <p>8 correct?</p> <p>9 THE COURT REPORTER: Yeah, I can do that. And</p> <p>10 I'll definitely let you know --</p> <p>11 MR. HUGHES: Great, thank you.</p> <p>12 HEARING EXAMINER GROSSMAN: In fact, when we break</p> <p>13 for an -- relatively shortly, perhaps you could set a</p> <p>14 microphone up here, and we would have the witnesses testify</p> <p>15 from here, rather than from the table. Is that -- can you do</p> <p>16 that during the break?</p> <p>17 THE COURT REPORTER: Yeah, I can do that.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay. Thank you.</p> <p>19 MR. HUGHES: So, what we're going to break then?</p> <p>20 HEARING EXAMINER GROSSMAN: No, we're not going to</p> <p>21 break this second, but I'm just saying that there'll be other</p> <p>22 witnesses who testify and not necessarily easy, and I think</p> <p>23 it'll be easier for everybody to see them if they're up here</p> <p>24 at the bench.</p> <p>25 MR. HUGHES: I'm just prepared for the whole day,</p>

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<p>49</p> <p>1 that's all.</p> <p>2 MR. NORTON: This is an aerial photograph of the</p> <p>3 site taken from Google Earth, with North straight up on the -</p> <p>4 - drawn straight, this -- to the ceiling, if you will, as a</p> <p>5 description.</p> <p>6 MR. HUGHES: Okay.</p> <p>7 HEARING EXAMINER GROSSMAN: Shows the existing</p> <p>8 conditions as best we can from available aerial photographing</p> <p>9 at this time.</p> <p>10 MR. HUGHES: And what's the year on the</p> <p>11 photograph?</p> <p>12 HEARING EXAMINER GROSSMAN: This is 2018.</p> <p>13 MR. HUGHES: Okay. And can you point -- it looks</p> <p>14 like there's a marking. What is that marking around that</p> <p>15 area there?</p> <p>16 MR. NORTON: Sure. The orange line around the</p> <p>17 perimeter is the subject property.</p> <p>18 MR. HUGHES: Okay. And how would you get into the</p> <p>19 property there? Where's the road that brings you in, and</p> <p>20 where's the driveway?</p> <p>21 MR. NORTON: Sure. From the north of the</p> <p>22 property, you would travel south on Holly Grove Road. You</p> <p>23 would enter approximately one half of the distance across the</p> <p>24 front of Holly Grove Road turn to the west into the property,</p> <p>25 onto the private gravel drive.</p>	<p>51</p> <p>1 MR. HUGHES: Thank you. Mr. Norton, I'm going to</p> <p>2 ask you to also identify another drawing, I believe your</p> <p>3 office worked on, and have provided copies to Ms. Thomas.</p> <p>4 Can you identify this, and tell us what it is please?</p> <p>5 HEARING EXAMINER GROSSMAN: This'll be Exhibit 80.</p> <p>6 That, the larger version, is 80, and 80(a) will be the 11 x</p> <p>7 14.</p> <p>8 (Exhibit 80 marked for identification)</p> <p>9 MR. HUGHES: Can you tell us what that shows, and</p> <p>10 how it was created, and who created it, Mr. Norton please?</p> <p>11 MR. NORTON: Sure. Exhibit 80 is a rendering</p> <p>12 color drawing of the proposed site conditions.</p> <p>13 MR. HUGHES: I would also add, Mr. Grossman, this</p> <p>14 is in staff report 2, attachment AS.</p> <p>15 HEARING EXAMINER GROSSMAN: Right. It's the --</p> <p>16 it's depicted there, or noted there as the landscape plan. A</p> <p>17 rendering, or an illustrated -- illustrative landscape plan.</p> <p>18 MR. HUGHES: Exactly. Yes sir.</p> <p>19 HEARING EXAMINER GROSSMAN: We sometimes refer to</p> <p>20 exhibits like this as a rendered plan, which just means it's</p> <p>21 colored in essentially.</p> <p>22 MR. HUGHES: Yeah. Yes sir.</p> <p>23 HEARING EXAMINER GROSSMAN: So, that's -- this is</p> <p>24 the same as that staff exhibit?</p> <p>25 MR. HUGHES: Yes, it is.</p>
<p>50</p> <p>1 MR. HUGHES: Very good, thank you. Mr. Grossman,</p> <p>2 I'd like to -- I know we've had this marked. I'd like to</p> <p>3 offer these as exhibits.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. All the</p> <p>5 exhibits -- what we usually do in these proceedings is at the</p> <p>6 end, anybody who wishes to admit exhibits can move to admit</p> <p>7 them.</p> <p>8 MR. HUGHES: At the end? Yes, sir.</p> <p>9 HEARING EXAMINER GROSSMAN: This looks somewhat</p> <p>10 similar to photographs, aerial photographs already presented</p> <p>11 in the staff report, the original staff report. Exhibit 40,</p> <p>12 at page 4, a close-up of the site, and at page 5, to show the</p> <p>13 defined surrounding area. And Mr. Norton, is there any</p> <p>14 significant difference, in terms of -- obviously one, they</p> <p>15 are different sizes, but in terms of the important elements</p> <p>16 of their -- is there something new that is being shown by</p> <p>17 Exhibit 79, that's not depicted in either the photographs on</p> <p>18 page 4, or 5 of the technical staff report?</p> <p>19 MR. NORTON: I believe that the figure 2 in the</p> <p>20 technical staff report is similar to --</p> <p>21 HEARING EXAMINER GROSSMAN: Figure 2 is the one on</p> <p>22 page 4?</p> <p>23 MR. NORTON: Figure 2, page 4 is similar to what</p> <p>24 we currently have.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay. All right.</p>	<p>52</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MR. HUGHES: Right? There's been no changes to</p> <p>3 this one, correct Mr. Norton? This is the one that you</p> <p>4 provided to staff before the second hearing?</p> <p>5 MR. NORTON: That is correct.</p> <p>6 HEARING EXAMINER GROSSMAN: With the second</p> <p>7 Planning Board?</p> <p>8 MR. HUGHES: Yes. The May 16th, yes, sir. And</p> <p>9 what is, just briefly, what does it show us and tell us?</p> <p>10 MR. NORTON: This would -- this is a</p> <p>11 architectural, colored drawing, if you will, of the proposed</p> <p>12 site conditions.</p> <p>13 MR. HUGHES: Thank you. Mr. Norton, we're also</p> <p>14 going to -- your plans -- you've submitted plans for work on</p> <p>15 this project, correct?</p> <p>16 MR. NORTON: That is correct.</p> <p>17 MR. HUGHES: Okay. Mr. Grossman, I'd like to</p> <p>18 provide copies of the full set of the plans, which are filed</p> <p>19 to Ms. Thomas, and to you. And he's just going to talk about</p> <p>20 a few of the pages.</p> <p>21 HEARING EXAMINER GROSSMAN: Well, as I understand</p> <p>22 it, the only thing that's changed is the amended landscape</p> <p>23 plan. Is that correct?</p> <p>24 MR. HUGHES: Correct. Yes.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay.</p>

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<p>53</p> <p>1 MR. HUGHES: And we're going to talk a little bit 2 about that as well. So, this is the original set, and I gave 3 you the red line already. Would you like a copy, Mr. 4 Grossman? 5 HEARING EXAMINER GROSSMAN: Sure. Just for easy 6 reference, the originals are in the file folder. 7 MR. HUGHES: Yes sir. Mr. Norton, can you first 8 explain about -- we talked earlier about a red line version 9 of the landscape plan. Can you tell us what that involved, 10 and how that came about? 11 MR. NORTON: Sure. 12 HEARING EXAMINER GROSSMAN: So, now we're talking 13 about Exhibit 76. The amended landscape plan. And by the 14 way, has that been sealed by you, sir? The amended -- 15 MR. NORTON: Yes. 16 HEARING EXAMINER GROSSMAN: Okay. There is a 17 requirement in state law that on a professional -- whether 18 it's a landscape architect, or a surveyor, or an engineer 19 submits a plan to a public body, it should be signed and 20 sealed by that official. 21 MR. NORTON: I can sign that original too 22 (inaudible). The change to the landscape plan, as requested, 23 and discussed with Park and Planning's planning staff, was to 24 the west of the property, and is bubbled in red on this 25 drawing that we can see -- is to reinforce the landscape edge</p>	<p>55</p> <p>1 when I prepare my report and decision, I use the electronic 2 versions of these documents. 3 MR. HUGHES: Yes sir. Mr. Norton, you have a page 4 that's marked existing conditions on your plan. Is that 5 correct? 6 MR. NORTON: Yes. 7 MR. HUGHES: Can you tell us about that, and 8 explain, a little bit, what that shows? 9 MR. NORTON: Sure. The existing conditions in 10 front of everyone right now. The scale is zoomed out, so 11 that you can see the surrounding land use and areas. Right 12 now, what we have on the property is, the gravel is in the 13 hatch is in the middle of the site right now. That is 14 existing gravel. Hard for me to see too. Access, as 15 described earlier, is from Holly Grove Road, about halfway 16 down from the entrance on the street. Buildings are two 17 existing outbuildings right now, that are on the property, 18 and there is one existing house on the property. The house 19 is to the south, along the property line there. The house is 20 a right where I'm pointing right now. It is on the septic. 21 There is a well. There are two outbuildings, that I 22 mentioned before, that do not have -- that are not connected 23 to a well and septic. 24 MR. HUGHES: Mr. Norton, just let me interrupt you 25 real quick.</p>
<p>54</p> <p>1 that is to the rear of the existing house right now. We 2 added additional, large evergreen trees, is essentially what 3 we did. 4 MR. HUGHES: Is it your recollection that the 5 January 10th Planning Board meeting, that the Planning Board 6 had suggested that additional landscape in that area be 7 considered? 8 MR. NORTON: Yes, that's correct. 9 MR. HUGHES: And was this plan provided at the May 10 16 planning board hearing, to give it to staff ahead of time, 11 and to the Planning Board, when they reviewed and recommended 12 approval of this project? 13 MR. NORTON: Yes. 14 MR. HUGHES: Thank you. 15 HEARING EXAMINER GROSSMAN: I presume, by the way, 16 Mr. Hughes, that you have electronic copies of these amended 17 plans? 18 MR. HUGHES: Yes sir. 19 HEARING EXAMINER GROSSMAN: All right. You have 20 them with you now? 21 MR. HUGHES: I do not have them with me, but -- 22 HEARING EXAMINER GROSSMAN: Okay. Would you make 23 sure that you submit them to me promptly? 24 MR. HUGHES: Yes sir. 25 HEARING EXAMINER GROSSMAN: Okay. Because I use,</p>	<p>56</p> <p>1 MR. NORTON: Yes. 2 MR. HUGHES: Is it your understanding that the 3 well and septic have been deemed approvable by the County? 4 MR. NORTON: That's correct. Yes. 5 MR. HUGHES: Thank you. Sorry about that. 6 MR. NORTON: Uh-huh. Currently, the father of the 7 gentleman that they run the landscape business, also enjoys a 8 little bit of growing crops, so there is approximately 1 to 9 1.5-acres that he likes to grow, is on the northeast corner 10 of the property, along Holly Grove Road. So, when you're 11 driving down, it actually looks somewhat like a farm. And 12 there is also a corner in the north where Mr. Argueta enjoys 13 his farming. Currently, there is no existing forest on the 14 property. There is a landscape -- 15 HEARING EXAMINER GROSSMAN: You referred to that 16 portion where he grows things as the northeast. 17 MR. NORTON: That's correct. Yeah. I'm looking 18 right here, so it's, kind of, these, but it's north. North 19 is that direction right there. 20 HEARING EXAMINER GROSSMAN: All right. I guess I 21 -- the question is whether you call it north or not. 22 MR. NORTON: Yeah, we had this discussion. Yes. 23 We can all agree to which direction we'd like. We can use 24 plan north, if you would like, if that would be helpful. 25 HEARING EXAMINER GROSSMAN: All right. I just --</p>

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15 (57 to 60)

<p>57</p> <p>1 it's the question --</p> <p>2 MR. NORTON: It's in the northeast corner of the</p> <p>3 property. It's right there.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay, okay. Fine. I</p> <p>5 understand.</p> <p>6 MR. NORTON: I believe I was talking about the</p> <p>7 landscape on the site right now. There is -- currently,</p> <p>8 there is screening along the north property line, where they</p> <p>9 are existing houses, and there is screening along the south,</p> <p>10 along the private portion of the -- I guess we'll call it the</p> <p>11 road, for the time being -- but the private portion of Holly</p> <p>12 Grove Road, at the parking area that's shown on the plan.</p> <p>13 There is an existing entrance off of the private portion of</p> <p>14 Holly Grove Road that is chained off, and has been screened,</p> <p>15 and is not in use. All access does come off of the gravel</p> <p>16 drive shown on the plan right now. There is woods to the</p> <p>17 rear of the property, and surrounded by residential and one</p> <p>18 church property as well.</p> <p>19 HEARING EXAMINER GROSSMAN: I'm just going to --</p> <p>20 let's return to this question about (inaudible) north a</p> <p>21 second.</p> <p>22 MR. NORTON: Yeah.</p> <p>23 HEARING EXAMINER GROSSMAN: You know, if you think</p> <p>24 of it, in terms of the plan held this way, where north is up</p> <p>25 that way.</p>	<p>59</p> <p>1 MR. HUGHES: Okay.</p> <p>2 HEARING EXAMINER GROSSMAN: Does that -- did that</p> <p>3 -- that term applies to a diagram and submission to the</p> <p>4 technical staff that shows what the property has on it now,</p> <p>5 before anything is changed.</p> <p>6 MR. NORTON: The natural resource inventory which</p> <p>7 show the soils, the existing conditions, if you will, along</p> <p>8 with the environmental conditions.</p> <p>9 MR. HUGHES: Do you have a plan that -- a page</p> <p>10 that you can show us for that? Is it plan L01 and L02? Is</p> <p>11 that correct?</p> <p>12 MR. NORTON: I do have a copy of that.</p> <p>13 MR. HUGHES: If you want to talk to it?</p> <p>14 MR. NORTON: Well, the existing conditions plan</p> <p>15 that is in front of everyone, does incorporate the natural</p> <p>16 resource inventory forest stand delineation.</p> <p>17 HEARING EXAMINER GROSSMAN: Yeah, the NRIFSD filed</p> <p>18 in this case is Exhibit 12.</p> <p>19 MR. HUGHES: Thank you.</p> <p>20 HEARING EXAMINER GROSSMAN: 12 and 12(a).</p> <p>21 MR. HUGHES: Thank you.</p> <p>22 MR. NORTON: The existing conditions plan in front</p> <p>23 of you has the specimen trees, has the relevant information</p> <p>24 for all the natural resources inventory.</p> <p>25 MR. HUGHES: Are there any streams, wetland areas,</p>
<p>58</p> <p>1 MR. NORTON: Right.</p> <p>2 HEARING EXAMINER GROSSMAN: The portion along</p> <p>3 here, that you refer to where planting is occurring, is</p> <p>4 really the southeast. Don't you think? And the -- and the</p> <p>5 portion to the left could be the western portion.</p> <p>6 MR. NORTON: Yeah, yeah that's (inaudible). I'm</p> <p>7 sorry. Yes.</p> <p>8 HEARING EXAMINER GROSSMAN: So, I think that would</p> <p>9 more accurately refer to that portion, when you said planting</p> <p>10 was occurring, the father as being the southeast.</p> <p>11 MR. NORTON: The southeast. Yeah. I apologize.</p> <p>12 Yeah, so we can do southeast. Yes.</p> <p>13 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>14 Sorry, for the record we want --</p> <p>15 MR. NORTON: No, no. I want to be clear about</p> <p>16 that. And I'll hold the drawing this way, so that we all --</p> <p>17 MR. HUGHES: Mr. Norton, has the project received</p> <p>18 an approved NRIFSD?</p> <p>19 MR. NORTON: Yes.</p> <p>20 HEARING EXAMINER GROSSMAN: That's a Natural</p> <p>21 Resource Inventory Forest Stand Delineation.</p> <p>22 MR. HUGHES: Is it your understanding that was</p> <p>23 approved in April 12 of 2018?</p> <p>24 MR. NORTON: I believe that's the case. I don't</p> <p>25 have the date.</p>	<p>60</p> <p>1 or floodplains on the property?</p> <p>2 MR. NORTON: No.</p> <p>3 MR. HUGHES: Are there any features worth noting?</p> <p>4 MR. NORTON: The specimen trees are on the</p> <p>5 property. That would be a regulated feature.</p> <p>6 MR. HUGHES: Okay.</p> <p>7 HEARING EXAMINER GROSSMAN: Is it in a special</p> <p>8 protection area?</p> <p>9 MR. NORTON: It is not.</p> <p>10 HEARING EXAMINER GROSSMAN: Is it in a primary</p> <p>11 management area?</p> <p>12 MR. NORTON: It is not.</p> <p>13 HEARING EXAMINER GROSSMAN: Okay.</p> <p>14 MR. HUGHES: Mr. Norton, could you use your</p> <p>15 conditional use plan to tell us what's being proposed? What</p> <p>16 page is that numbered on your plan?</p> <p>17 MR. NORTON: 1.1 of the conditional use.</p> <p>18 HEARING EXAMINER GROSSMAN: And the conditional</p> <p>19 use plan, exhibit number, in the record, is 45(a) is the</p> <p>20 cover sheet. And then -- let's see. And I should say that</p> <p>21 the -- well, it appears that the NRIFSD was also submitted in</p> <p>22 the amended plan, in March, and that's 45(b) and (c). And</p> <p>23 the conditional use plan itself and those amended submissions</p> <p>24 is 45(e).</p> <p>25 MR. HUGHES: Thank you. Could you explain what</p>

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16 (61 to 64)

<p>61</p> <p>1 your plan shows?</p> <p>2 MR. NORTON: Sure. The conditional use plan that</p> <p>3 is in front of everyone in the room shows the outline of how</p> <p>4 the property is proposed to be used. Right now, there is</p> <p>5 actually an overall reduction of impervious on the site.</p> <p>6 What we started to do with this property, was use the two</p> <p>7 outbuildings that are on the property right now, and began to</p> <p>8 organize the space as how it works within, if you will, the</p> <p>9 center of the property as best we could. Started to look at</p> <p>10 outlining where our parking is, and how vehicles would turn</p> <p>11 around and circulate within this property, using the two</p> <p>12 buildings, like I said. Organizing the material storage</p> <p>13 areas between the two existing buildings. We have material</p> <p>14 storage bins to the north of the cinderblock building. I can</p> <p>15 point to those if you'd like. There is two material storage</p> <p>16 bins. There is also existing -- I'm sorry. Existing portion</p> <p>17 of concrete to the north of the material storage bins that</p> <p>18 where a skidsteer is currently stored on the property. It's</p> <p>19 called out as existing skidsteer storage. The roadway -- the</p> <p>20 driveway has been widened. It is currently 18 feet wide</p> <p>21 right now.</p> <p>22 HEARING EXAMINER GROSSMAN: Which road are you</p> <p>23 talking about?</p> <p>24 MR. NORTON: The driveway. I'm sorry. The drive.</p> <p>25 The entrance is currently 18 feet wide. It is proposed to be</p>	<p>63</p> <p>1 HEARING EXAMINER GROSSMAN: Well, the question I</p> <p>2 have is, there's no forest on the site now, but you're going</p> <p>3 to have an afforestation requirement. What is a requirement?</p> <p>4 How many -- what do you have to plant?</p> <p>5 MR. NORTON: Sure. It's -- I'm sorry. In square</p> <p>6 footage, or acreage, or? We're planting 1.24-acres of forest</p> <p>7 on site.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MR. NORTON: To meet the, I believe right now,</p> <p>10 it's at least 15 percent is the requirement for the zone.</p> <p>11 And then there is -- it is on the forest conservation</p> <p>12 worksheet.</p> <p>13 HEARING EXAMINER GROSSMAN: And before you leave</p> <p>14 the stormwater control issue.</p> <p>15 MR. NORTON: Yes, yes.</p> <p>16 HEARING EXAMINER GROSSMAN: What effect will be</p> <p>17 additional stormwater management have on the property,</p> <p>18 compared to what it has now for runoff onto the other</p> <p>19 properties around?</p> <p>20 MR. NORTON: Sure. Right now, there is no</p> <p>21 stormwater management existing on the property. The property</p> <p>22 is approximately -- going back in my head here -- is 18</p> <p>23 percent impervious. We worked -- originally, when we had</p> <p>24 more parking on the property, we were still able to reduce</p> <p>25 the impervious, I believe, by 2 percent. Somewhere around</p>
<p>62</p> <p>1 20 feet wide, to support fire access to the property. And</p> <p>2 the fire truck actually has -- there is T-turnaround on the</p> <p>3 drawings right now. There is a fire access plan that shows</p> <p>4 how the fire truck would circulate on the property. A fire</p> <p>5 hydrant is being pulled into the property as well, to support</p> <p>6 the use. Right now, we have stormwater management would be</p> <p>7 to the left. The stormwater management plan treats the</p> <p>8 runoff from the parking areas. There is a, what we call, a</p> <p>9 micro bioretention facility, or landscape and filtration</p> <p>10 facility to the west of the proposed eight truck trailer</p> <p>11 parking area, and also to the north of the parking stormwater</p> <p>12 management. Currently, well, as shown on the plan -- I can</p> <p>13 continue on with the conservation easements, if you would</p> <p>14 like.</p> <p>15 MR. HUGHES: Yes, please.</p> <p>16 MR. NORTON: We are proposing to meet forest</p> <p>17 conservation requirements on site, through Category 1</p> <p>18 conservation easement. It will be 1.24-acres. The easement</p> <p>19 is, primarily, to the north of the property. It does</p> <p>20 wraparound slightly to the west, and then, the east as well.</p> <p>21 It's a minimum of 50-foot-wide, forest conservation easement.</p> <p>22 Like I said, there is no forest on the site right now. There</p> <p>23 is one specimen tree that will have to be removed on the</p> <p>24 property, as part of the pulling the fire hydrant into the</p> <p>25 property as well.</p>	<p>64</p> <p>1 that number. And we provided stormwater management. We</p> <p>2 further reduced the property, I believe, another 1 percent,</p> <p>3 down to somewhere in the neighborhood of 13 to 14 percent.</p> <p>4 As working with staff, when we went back and forth, and</p> <p>5 reduced the parking, the stormwater remained the same size</p> <p>6 throughout the process, so we are treating stormwater for the</p> <p>7 original plan of the 16 percent.</p> <p>8 HEARING EXAMINER GROSSMAN: So, my question is,</p> <p>9 what, if any, effect will stormwater management additions to</p> <p>10 the property have on the surrounding neighbors, on the</p> <p>11 abutting neighbors? Will it increase, reduce, or leave the</p> <p>12 same, the amount of stormwater runoff from the property, from</p> <p>13 the subject site onto the neighbors?</p> <p>14 MR. NORTON: Yeah, it will actually reduce.</p> <p>15 HEARING EXAMINER GROSSMAN: Do you have any</p> <p>16 figures on that, or?</p> <p>17 MR. NORTON: I don't have the stormwater</p> <p>18 computations in front of me right now, but the idea is that</p> <p>19 you treat -- the wood is in good condition, compute the math</p> <p>20 for the stormwater management as if the properties and woods</p> <p>21 in good condition, and come up with your cubic feet of</p> <p>22 stormwater volume, and that's what you treat on site.</p> <p>23 HEARING EXAMINER GROSSMAN: Which is environmental</p> <p>24 site design?</p> <p>25 MR. NORTON: Environmental site design. That's</p>

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17 (65 to 68)

<p>65</p> <p>1 correct, yes.</p> <p>2 HEARING EXAMINER GROSSMAN: And will this proposed</p> <p>3 stormwater management plan comply with environmental site</p> <p>4 design requirements of the County and the state?</p> <p>5 MR. NORTON: Yes. We have an approved stormwater</p> <p>6 management concept.</p> <p>7 HEARING EXAMINER GROSSMAN: All right.</p> <p>8 MR. HUGHES: Thank you. Can you identify the</p> <p>9 building locations?</p> <p>10 MR. NORTON: We have one existing cinderblock</p> <p>11 building. We have one existing metal shed. And then we have</p> <p>12 an existing house.</p> <p>13 MR. HUGHES: And you -- is it true that there is</p> <p>14 appropriate parking, and it's identified on your plans?</p> <p>15 MR. NORTON: That is correct.</p> <p>16 HEARING EXAMINER GROSSMAN: What do you mean by</p> <p>17 appropriate, counsel?</p> <p>18 MR. HUGHES: Does it have the parking as called</p> <p>19 out in this Planning Board recommendation?</p> <p>20 MR. NORTON: Yes.</p> <p>21 MR. HUGHES: And does that meet the code</p> <p>22 requirements?</p> <p>23 MR. NORTON: Yes.</p> <p>24 MR. HUGHES: Can you tell us a little bit about</p> <p>25 circulation in here?</p>	<p>67</p> <p>1 MR. HUGHES: Okay. Mr. Grossman, I know it's been</p> <p>2 referenced to the forest conservation preliminary approval</p> <p>3 and approval, which just officially came over last night.</p> <p>4 I'd like to bring forth a copy for the record.</p> <p>5 HEARING EXAMINER GROSSMAN: I actually have one.</p> <p>6 It is now --</p> <p>7 MR. HUGHES: It is in now?</p> <p>8 HEARING EXAMINER GROSSMAN: Exhibit -- when we</p> <p>9 received it, it was marked.</p> <p>10 MR. HUGHES: 76? Would it be 76.</p> <p>11 HEARING EXAMINER GROSSMAN: If I can find the</p> <p>12 exhibit list under here. Exhibit number --</p> <p>13 MR. HUGHES: We were at 75 before last night.</p> <p>14 HEARING EXAMINER GROSSMAN: Yeah, 75.</p> <p>15 MR. HUGHES: Is it 75?</p> <p>16 HEARING EXAMINER GROSSMAN: Forest conservation</p> <p>17 planned resolution.</p> <p>18 MR. HUGHES: Okay, thank you. Do you need me to</p> <p>19 introduce a copy for the record?</p> <p>20 HEARING EXAMINER GROSSMAN: No. It's already in</p> <p>21 the record. Well, it will be introduced as part of the</p> <p>22 record, but it is one of the listed exhibits.</p> <p>23 MR. HUGHES: So, you're aware of the forest</p> <p>24 conservation approval, and you worked on that? Is that</p> <p>25 correct?</p>
<p>66</p> <p>1 MR. NORTON: Sure. Right now, the way that this</p> <p>2 property functions, is that there is -- we talk about it from</p> <p>3 a -- we can start with the fire access, if you will, where we</p> <p>4 would enter the property from Holly Grove Road. You would</p> <p>5 drive back to the parking area. You would pull forward of --</p> <p>6 there is a T-turnaround on the -- shown on the fire access</p> <p>7 plan. You would pull forward, and then you would back into</p> <p>8 the dedicated space for fire, and then you would pull back</p> <p>9 out, do a T-turnaround. The parking would be in and out. It</p> <p>10 is dead end parking right now, for staff. Field crews, the</p> <p>11 trucks, would park on the dedicated areas, and then there is</p> <p>12 parking for vehicles, staff vehicles as well.</p> <p>13 MR. HUGHES: Thank you. Is there any mulch or</p> <p>14 compost manufacturing on site?</p> <p>15 MR. NORTON: Not that I'm aware of.</p> <p>16 HEARING EXAMINER GROSSMAN: Well, I'm not sure</p> <p>17 that that's good enough. The question is, will there be any</p> <p>18 compost --</p> <p>19 MR. HUGHES: I can ask other witnesses. I was</p> <p>20 going to say, is there any called out on the plan?</p> <p>21 MR. NORTON: (inaudible)</p> <p>22 MR. HUGHES: Is this involve any rustic roads?</p> <p>23 HEARING EXAMINER GROSSMAN: You have to speak up a</p> <p>24 little bit.</p> <p>25 MR. NORTON: I'm sorry. No.</p>	<p>68</p> <p>1 MR. NORTON: Yes. That's correct.</p> <p>2 MR. HUGHES: Thank you.</p> <p>3 HEARING EXAMINER GROSSMAN: And it also approved</p> <p>4 the tree variance. By the way, the tree variance -- and we</p> <p>5 refer to variance a couple of times here -- there are two</p> <p>6 different types of variances that we're talking about. The</p> <p>7 tree variance is something that the Planning Board acts on,</p> <p>8 as part of its responsibility to the environment, when there</p> <p>9 is a request for a forest conservation plan. If they find</p> <p>10 that trees are going to be affected or removed, there is a</p> <p>11 requirement before that happens, that the Planning Board</p> <p>12 approve it in what's called the tree variance. That's</p> <p>13 different from the kind of variance that has been requested</p> <p>14 by the Applicant here, in terms of the setback for the house</p> <p>15 that exists on the site. That kind of variance must meet</p> <p>16 specified requirements in the zoning ordinance, and it is --</p> <p>17 has to be approved by the Board of Appeals, as I mentioned</p> <p>18 earlier.</p> <p>19 MR. HUGHES: Thank you. Mr. Norton, this may be</p> <p>20 redundant, since we know that it has the forest conservation</p> <p>21 plan, but Chapter 22-A is for forest conservation, correct?</p> <p>22 MR. NORTON: Yes.</p> <p>23 MR. HUGHES: Do you agree that this plan meets the</p> <p>24 requirements?</p> <p>25 MR. NORTON: Yes.</p>

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18 (69 to 72)

<p>69</p> <p>1 MR. HUGHES: And staff and Planning Board also 2 agreed to that? 3 MR. NORTON: Yes. 4 MR. HUGHES: Thank you. And this has an approved 5 stormwater management plan? 6 MR. NORTON: Yes, correct. Concept. 7 HEARING EXAMINER GROSSMAN: Who approved the 8 stormwater management concept? 9 MR. NORTON: It was approved by Montgomery County 10 department of permitting services. 11 HEARING EXAMINER GROSSMAN: Yeah. I believe a 12 copy of that letter is in the file. 13 MR. HUGHES: It was around December, I believe. 14 HEARING EXAMINER GROSSMAN: 15 A. Let me look at 15 that. 16 MR. HUGHES: It's December 18th, I believe. 17 HEARING EXAMINER GROSSMAN: Oh yes. It's 37 -- 18 no, that's the DPS memo. The fire department access and 19 water supply. I thought I saw it in the file. 20 MR. HUGHES: 42, I think, Mr. Grossman. 21 HEARING EXAMINER GROSSMAN: Okay. I'll pull that 22 out, just to make sure that we're talking about the right 23 thing. 24 MR. HUGHES: Thank you. 25 HEARING EXAMINER GROSSMAN: 42, a letter. No, I'm</p>	<p>71</p> <p>1 of the original staff report, but it's buried in it, probably 2 about halfway through that. It looks like it's about 30 -- 3 20 pages. It's about five back from attachment D. 4 HEARING EXAMINER GROSSMAN: Okay. 5 MR. HUGHES: Dated December 26. Is that your 6 recollection? 7 MR. NORTON: No. It's December 20. 8 MR. HUGHES: Wait. This is stormwater management. 9 MR. NORTON: Concept, yes. 10 HEARING EXAMINER GROSSMAN: There's fire 11 department. 12 MR. HUGHES: From Mark Etheridge; is that your 13 recollection, Mr. Norton? 14 MR. NORTON: Yes. 15 HEARING EXAMINER GROSSMAN: Usually there's a 16 formal letter. 17 MR. HUGHES: Can I bring this up, Mr. Grossman? 18 HEARING EXAMINER GROSSMAN: Yes. 19 MR. HUGHES: I'm looking at the staff report dated 20 December 20. 21 HEARING EXAMINER GROSSMAN: Okay. There is. I 22 see it. Yes, December 26, 2018 letter to Mr. Norton from 23 Mark Etheridge, Manager, Water Resources Section, and saying 24 that the stormwater concept plan is acceptable. 25 MR. HUGHES: Thank you.</p>
<p>70</p> <p>1 not seeing that. I'm seeing 42 as a letter submitting Norton 2 report to DPS stormwater management letter. I know I've seen 3 references to it. I wonder if it was attached to the staff 4 report. 5 MR. HUGHES: Mr. Grossman, if need be I can -- at 6 break, I can grab one from my office. 7 HEARING EXAMINER GROSSMAN: Yeah, but I'd like to 8 -- that would be fine, but I'd like to see if it's already in 9 the file here. I thought I'd seen it. 10 MR. HUGHES: I thought so too. I apologize for. 11 Yes, I think I've found it, Mr. Grossman. 12 HEARING EXAMINER GROSSMAN: All right. 13 MR. HUGHES: I'm trying to see. I'm looking at 14 staff report one, but I don't -- it doesn't have -- 15 (Crosstalk) 16 MR. NORTON: Page 25. 17 MR. HUGHES: It doesn't have an exhibit in front 18 of it, or attachment. 19 HEARING EXAMINER GROSSMAN: First staff report? 20 MR. HUGHES: Yes. It's after -- 21 MR. NORTON: Page 25 has the concept approval of 22 12.3518, permit number 284172. 23 HEARING EXAMINER GROSSMAN: Right. That's the 24 reference to it. 25 MR. HUGHES: It's also in -- it's in attachment C</p>	<p>72</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. That is 2 attached to the text of the of the staff report. I thought 3 we actually had it in as Exhibit 42, but all right. It might 4 be somewhere in the file; I just don't have it. Okay. 5 MR. HUGHES: Thank you. Mr. Norton, is there also 6 an approved fire access plan from the County? 7 MR. NORTON: There is, yes. 8 MR. HUGHES: Mr. Grossman, I don't think this 9 letter's in the record. I'm not certain. I'd like to give 10 you a copy, and give Ms. Thomas a copy. 11 HEARING EXAMINER GROSSMAN: All right. 12 MR. HUGHES: And ask Mr. Norton to identify this. 13 The letter dated March 11. 14 HEARING EXAMINER GROSSMAN: Thank you. That will 15 be Exhibit 81. 16 (Exhibit 81 marked for identification) 17 MR. HUGHES: Mr. Norton, can you tell us what this 18 letter is? 19 MR. NORTON: It is the stamped approval letter 20 from the fire marshal. The fire department access review. 21 MR. HUGHES: And what's the date of that? 22 MR. NORTON: It is stamped March 12, 2019. 23 MR. HUGHES: And what is this telling us? What 24 does this approval provide? 25 MR. NORTON: That the property meets the fire code</p>

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19 (73 to 76)

<p>73</p> <p>1 requirements for circulation per site. 2 MR. HUGHES: Thank you. 3 HEARING EXAMINER GROSSMAN: Okay. 4 MR. HUGHES: Mr. Norton, can you tell us a little 5 bit more about your landscaping plan? And tell us what page 6 that is, you're going to be looking at, please. Can you tell 7 us -- 8 MR. NORTON: (Inaudible), sure. 9 MR. HUGHES: Yeah, tell us little bit about your 10 plan please. 11 MR. NORTON: The landscape plan -- we've always, 12 as you can see on this, also shows the afforestation area to 13 the north, to the east, and partially to the west, where the 14 forest conservation easement stops. The landscape 15 reinforcement, the perimeter landscape if you will, begins to 16 pick up along the side yards. So, if you look on the east, 17 in this area, is a mix of evergreen trees, canopy trees, 18 ornamental trees, and shrubs to screen from the adjacent 19 residential houses. Also, on the west side, it seeks to do 20 the same along the property line of the private road, short 21 of where the forest conservation easement would stop on that 22 side as well. There is canopy coverage shown on the plan, 23 over the parking areas. It is canopy trees. We added in 24 bump outs to get landscape canopy coverage over the parking 25 areas.</p>	<p>75</p> <p>1 buildings that we're calling out as a material storage area. 2 And then we have the bins that landscape contractors use, 3 where there's gravel bins or what have you, mulch bins, seeds 4 or things like that, that will be north of the existing 5 building right now. That is where it's currently located in 6 the plan. 7 MR. HUGHES: And the staff report talks about that 8 there's appropriate lighting existing indoor plan here. Is 9 that your -- do you concur with that? 10 MR. NORTON: Yes. 11 HEARING EXAMINER GROSSMAN: By appropriate, do you 12 mean sufficient, or do you mean lighting that won't impose on 13 the neighbors? 14 MR. NORTON: Lighting that will not impose on the 15 neighbors. There is existing lighting on the buildings right 16 now that they would like to continue to use. We do show on 17 the lighting plan, proposed lighting for the parking lot as 18 well, that would shine interior of the parking area. It does 19 not exceed 0.1-foot candles at the property line (inaudible). 20 HEARING EXAMINER GROSSMAN: And that's you talking 21 about the photometric drawings? 22 MR. NORTON: Photometric drawings as well, yeah. 23 HEARING EXAMINER GROSSMAN: And when I looked at 24 that, it appears from this photometric drawings that it won't 25 even. It's 0.0 with the --</p>
<p>74</p> <p>1 HEARING EXAMINER GROSSMAN: By the way, I have 2 located the DPS letter in the file. It's 39 P, as in Paul. 3 Letter from DPS for a combined stormwater management concept 4 site development. Stormwater management concept. So, that's 5 what the exhibit number is. 6 MR. HUGHES: Thank you. 7 HEARING EXAMINER GROSSMAN: 39(p). 8 MR. HUGHES: And so, your plan calls out the 9 existing landscaping and proposed landscaping, is that 10 correct? 11 MR. NORTON: That is correct. It shows the 12 existing landscape on it. There is existing landscape within 13 the forest conservation easement, along this east property. 14 There is also existing landscape screening that is along the 15 existing gravel right now as well. 16 MR. HUGHES: And as shown on your plan, that gray 17 area, is that more just where the listed operations will 18 occur in the center part of the property? 19 MR. NORTON: The gray area is where the impervious 20 surface is shown, that's correct. That depicts the 21 impervious. 22 MR. HUGHES: And on your plan, you talked about 23 some buildings here. Do you have any other areas where it 24 describes where materials or equipment will be stored? 25 MR. NORTON: We have an area between the two</p>	<p>76</p> <p>1 MR. NORTON: It doesn't get near, that's correct. 2 HEARING EXAMINER GROSSMAN: At the property line? 3 MR. NORTON: That's right. 4 MR. HUGHES: Is it your understanding, that that's 5 for future need? Is it correct? 6 MR. NORTON: If they would like to, that's 7 correct. There's no reason -- the owners do not want to add 8 additional lighting at this time. They'd like to use what's 9 currently existing on the buildings. 10 HEARING EXAMINER GROSSMAN: So, the plans that 11 you're showing have lighting that you will not have? 12 MR. NORTON: Well, it shows proposed lighting, 13 yes. To meet the 1-foot candles, if you will, for the 14 parking area. 15 HEARING EXAMINER GROSSMAN: Well, the reason I ask 16 that question is, this property will be inspected by the 17 Department of Permitting Services for compliance with the 18 plans. And if, in fact, you're showing lighting on there 19 that does not exist on the -- then you'll be cited, if a 20 conditional use is approved. 21 MR. NORTON: Okay. 22 HEARING EXAMINER GROSSMAN: So, my question is, 23 you're saying to me that your plans show lighting that the 24 owners do not plan to install. 25 MR. NORTON: We could install the lighting, yes.</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 HEARING EXAMINER GROSSMAN: Well, I'm not telling 2 you to install it or not. 3 MR. NORTON: Right. 4 HEARING EXAMINER GROSSMAN: I'm just trying to 5 find out what, you know -- whether or not your plans are 6 going to reflect what the site will have. 7 MR. NORTON: We will install the lighting. 8 MR. HUGHES: Unless, if we're fortunate enough to 9 get approval, if there's a possibility that you will allow 10 that for future need down the road. 11 HEARING EXAMINER GROSSMAN: Well, the plan would 12 have to, somehow, indicate that. 13 MR. HUGHES: Time frames. 14 HEARING EXAMINER GROSSMAN: I don't want to be in 15 a situation where approving a plan, if the conditional use is 16 approved, and it doesn't comply with the -- with what you 17 have for them. So, whatever is approved, if it is approved, 18 you would have to comply with it, okay? 19 MR. HUGHES: Yes sir. Thank you. Okay, thank 20 you. I'm, kind of, trying to wrap some of this up, Mr. 21 Norton. Can you give a quick summary of some of the 22 environmental type enhancements that are proposed here, if 23 this was to be approved? 24 MR. NORTON: The environmental enhancements would 25 be the stormwater management and the afforestation areas, and</p>	<p style="text-align: right;">79</p> <p>1 HEARING EXAMINER GROSSMAN: And thank you. All 2 right. We'll break, and -- 3 (Off the record 11:01 a.m.) 4 (On the record 11:14 a.m.) 5 HEARING EXAMINER GROSSMAN: -- So kind as to have 6 the seat up there. 7 MR. NORTON: Oh boy, I will. 8 MR. HUGHES: You need help carrying stuff? 9 MR. NORTON: No, I got it. I didn't bring boxes 10 and stuff for today. I have some paperwork with me. Which 11 seat, the tall seat? 12 HEARING EXAMINER GROSSMAN: Yeah, the tall seat, 13 so that you can see the chart. 14 MR. NORTON: All right. 15 HEARING EXAMINER GROSSMAN: All right. Ms. 16 Thomas, do you have any questions of this witness? 17 MS. THOMAS: Yes, I do. Mr. Norton, in your 18 credentials you indicated that you had been involved with the 19 Goshen project, the Goshen Enterprises project. 20 MR. NORTON: That is correct. 21 MS. THOMAS: That was a landscaping special use, 22 conditional use project. 23 MR. NORTON: It was a conditional use, yes. 24 MS. THOMAS: Can you describe how that project in 25 an agricultural zone, versus a residential zone, how that was</p>
<p style="text-align: right;">78</p> <p>1 their landscaping. 2 HEARING EXAMINER GROSSMAN: I presume you'd 3 include the reduction in imperviousness. 4 MR. NORTON: Oh, I'm sorry, and the reduction and 5 imperviousness. I include that with stormwater management. 6 HEARING EXAMINER GROSSMAN: Okay. All right. 7 MR. HUGHES: Are there any other topics about your 8 plan that you feel important, you'd like to share today? 9 MR. NORTON: I believe that, overall, it's a 10 reduction in the impervious on the site right now. It pulls 11 the site in. It makes it more centered on the property than 12 what it is right now. It's, kind of, typical, but with 13 landscape sometimes, is that it, kind of, goes in different 14 directions, so we attempted to organize the space better, is 15 what this plan does. 16 MR. HUGHES: Thank you, Mr. Norton. 17 HEARING EXAMINER GROSSMAN: All right. And before 18 we allow cross-examination, I'm going to break here for five 19 minutes. Is that sufficient to give you time to set up a 20 microphone here? 21 THE COURT REPORTER: It is, yes. 22 HEARING EXAMINER GROSSMAN: Okay. All right. So, 23 why don't we do that. Make it in front of the second seat, 24 so whoever is there can re-reference the charts too. 25 THE COURT REPORTER: All right.</p>	<p style="text-align: right;">80</p> <p>1 uniquely different? How this current project is uniquely 2 different than the Goshen project? 3 MR. NORTON: As far as the agricultural zone, 4 versus the property being in a residential zone? 5 MS. THOMAS: As far as -- yes, and just the 6 landscaping and the choices that you made, in terms of the 7 types of trees. Just the configuration of the property. 8 MR. NORTON: I'm going to try. Hopefully I 9 understand what you're saying. In the residential zone, this 10 property is obviously much smaller than in the agricultural 11 zone. The use of the property on this project is also much 12 smaller than what the other property was. I don't remember 13 numbers on the Goshen, but it was a much larger operation 14 that they had running out there on that property. Also had 15 another use that was -- I can't remember, grandfathered or 16 what have you. Had a tree farm. Had a lot of things going 17 on that this property does not have. Had several large 18 buildings on the property. It also had real rustic road 19 concerns on that property. Things like that. This is a much 20 more, if you will, compact property. Still meets the zoning 21 requirements of the property. This project does do -- 22 actually, one thing that's interesting about Goshen is that 23 because of the size of the property, we actually carved out 24 the conditional use. So, technically, that project is 25 smaller than this one, if you really want think about it. I</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 believe the Goshen Enterprises, we carved out the conditional 2 use. I believe it's 5.75-acres by the time we were done, so 3 the conditional use area is actually smaller than this 4 property. 5 HEARING EXAMINER GROSSMAN: What was the name of 6 that case? 7 MR. NORTON: I believe it was Goshen Enterprises 8 or Ace Tree Movers. I apologize, I can't remember what the 9 name of it was. 10 HEARING EXAMINER GROSSMAN: I handled the hearing, 11 but I can't remember the name of it either. 12 MR. NORTON: Yeah, that project was unique, in 13 that we did carve out conditional use of the property. This 14 project uses the entire property. 15 HEARING EXAMINER GROSSMAN: That's the one along 16 Zion Road. 17 MR. NORTON: On Zion Road, that's correct. Zion 18 and Riggs. 19 MR. REMEIN: Mr. Grossman, it was CU 18-06. 20 MR. NORTON: In that case, if you go back and look 21 at that plan, the way we did landscaping on it, we actually 22 did landscaping at the conditional use boundary, treating it 23 somewhat of a property, if you will, which is very similar to 24 this project, where you landscape the property line on this. 25 MS. THOMAS: That's helpful. The Goshen property</p>	<p style="text-align: right;">83</p> <p>1 hands-off. Don't go in there. It is treated as an 2 environmental area that is naturally growing. So, that would 3 be to the north and to the two thirds east, if you will. 4 MS. THOMAS: Correct. 5 MR. NORTON: The bottom one third on the east 6 side, and also on the west side, we have six, I believe we 7 have called out in lot of American Hollies on that plan. 8 They are in the 6 to 8-foot range installed, so we were 9 trying to mitigate for headlights, things like that, 10 immediately. This plan also takes advantage of the existing 11 evergreen trees that are out there right now. I apologize, I 12 can't remember if they're cedars or if they're Leyland 13 Cypress, but there are evergreen trees along the gravel 14 parking on the west side, that serve as -- and those are much 15 larger right now. They're probably in the neighborhood of 20 16 feet or so. 15 feet, if I remember correctly. So we try to 17 do a lot of evergreen screening. There are some shrubs in 18 there, and then a mix of canopy trees, and a mix of 19 ornamental trees, to give a nice buffer along those two 20 properties, where the forest conservation easement is not 21 located. 22 MS. THOMAS: And the trees selected for the 23 reforestation piece, are they consistent with the trees that 24 exist, that are existing in that forest? 25 MR. NORTON: I believe that -- I don't recall, but</p>
<p style="text-align: right;">82</p> <p>1 was also surrounded by a large tree farm, as opposed to a 2 residential community, is that correct? 3 MR. NORTON: That is correct. The tree farm was 4 part of the property. 5 MS. THOMAS: Correct. 6 MR. NORTON: Well, I guess I have to be careful 7 about saying that because, I believe, we got into a 8 discussion about what the property is, at that conditional 9 use. It was defined as the conditional use area. 10 MS. THOMAS: Yes. 11 MR. NORTON: So, I have to be careful about that. 12 MS. THOMAS: Yes. Can you describe how you 13 determine the types of trees that will be used to service the 14 screening? 15 MR. NORTON: In the -- well, there's actually -- 16 there's two ways of screening this property on this project. 17 One of them is through the landscape buffer on the plan, and 18 that would be on the west side, and maybe the lower one third 19 of the east side. So, if we hold that separate from the rest 20 of the property to the north, and to the two thirds of the 21 east side, that is forest conservation, so that's a minimum 22 50-foot-wide area of tree plantings. So, those trees would 23 go in, I believe we have them as 2-inch calipers, so they'd 24 be 10 to 12-foot mix of evergreens, canopy trees. That would 25 -- that's category one conservation easement is, basically,</p>	<p style="text-align: right;">84</p> <p>1 they are all native to the area. We typically, on a 2 reforestation area, use oaks, maples, possibly some thuja 3 (phonetic) poplar on the plan, and things like that. So, we 4 try to use all natives to the area. 5 MS. THOMAS: So, the Johnson Road sub watershed is 6 part of the northwest branch? 7 MR. NORTON: Right. 8 MS. THOMAS: Sub watershed. And ideally, 9 according to the Cloverly Master Plan, we try to stay within 10 the 10 to 15 percent impervious. Have you considered even 11 reducing further to that, to get to that 10 percent, which 12 would be ideal? And I'm really thinking about -- 13 HEARING EXAMINER GROSSMAN: Well, one question at 14 a time. 15 MS. THOMAS: Okay, all right. 16 MR. NORTON: Got to -- I have to remember all of 17 this. I believe that the Johnson watershed, I believe the 18 impervious on that is 13.8 percent, if I'm not mistaken. And 19 I believe that that is where we got to, or right around that 20 number. I don't have my impervious numbers in front of me, 21 but I believe we got down to 14 -- 22 HEARING EXAMINER GROSSMAN: No, it's 13 something. 23 MS. THOMAS: 14.8, I believe, is what the staff is 24 suggesting. 25 MR. NORTON: Well, that was what they propose --</p>

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22 (85 to 88)

<p>85</p> <p>1 that's what they thought it would be at the first hearing, if 2 we reduced the parking. We got down further than that, by 3 actually designing the plans. 4 MS. THOMAS: The second part of my question is, is 5 there any consideration to getting to the 10 percent? Given 6 changes in climate, continued development in Holly Grove. 7 The church that's at the intersection of Awkard Lane and 8 Holly Grove Road, has now paved parking. That particular 9 area slopes significantly. 10 MR. NORTON: That -- which particular -- this 11 property? 12 MS. THOMAS: Yes. That portion of Holly Grove 13 Road, Holly Grove Road south. 14 MR. NORTON: Slopes towards? Just help me out on 15 it. 16 MS. THOMAS: It slopes to the south. The terrain 17 of the neighborhood slopes significantly, and now we have 18 another parking lot that has been added to that. 19 HEARING EXAMINER GROSSMAN: You have to be careful 20 not to be testifying in your questions. So, you can ask him 21 a leading question, but let's not supply additional 22 information that may -- 23 MS. THOMAS: Well, I'm just trying to clarify my 24 question. 25 HEARING EXAMINER GROSSMAN: Okay, all right.</p>	<p>87</p> <p>1 over time? 2 MR. NORTON: Well -- 3 MS. THOMAS: Thoughts about that? 4 MR. NORTON: That might be a better question for 5 the owner, but in my experience on these projects, that if 6 mulch is sitting on site, these guys are not making money. 7 They need to get the mulch, load the mulch, spread the mulch 8 to make their money. It should not be stored on-site for -- 9 I don't know. 10 HEARING EXAMINER GROSSMAN: Let me refer to the -- 11 MR. NORTON: I'm not sure I quite understand the 12 question. 13 HEARING EXAMINER GROSSMAN: Just going back to the 14 imperviousness question that was raised. 15 MR. NORTON: Sure. 16 HEARING EXAMINER GROSSMAN: And in the 17 supplemental staff report, Exhibit 56. 18 MR. NORTON: What page is that? I'm sorry. 19 HEARING EXAMINER GROSSMAN: Exhibit 56, page 8, 20 paragraph numbered 7. It indicates that these proposed and 21 required improvements bring the property within the current 22 Johnson Road tributary impervious level of approximately 13.8 23 percent. So, that's what the staff says. Okay, go ahead. 24 I'm sorry. 25 MS. THOMAS: I guess my last question is -- so,</p>
<p>86</p> <p>1 MR. NORTON: Your question, if I'm not mistaken, 2 is have we tried to reduce the impervious further? Is that 3 the -- 4 MS. THOMAS: So, you don't think you can get to 5 the 10 percent? 6 MR. NORTON: Oh, no. No ma'am. I'm trying to 7 understand it. Is that -- that's your question that you're 8 asking me right now? 9 MS. THOMAS: Yes sir. Yes. 10 MR. NORTON: We have not tried to get down to 10 11 percent. A landscape contractor, inherently, they have to 12 have room to function. Just like if I pull up the aerial 13 photograph, you look at the surrounding properties. You have 14 to have room to operate and maneuver on there. It's not a 15 parking lot, in the sense that we're pulling cars in, pulling 16 cars out. I think that's a pretty -- it's okay. It shows 17 what's going on right now, but you have to be able to load 18 these -- the trucks. So, we would have, like, the little 19 skidsteer that's on the plan. That skidsteer has to operate, 20 and then be able to put mulch, what have you, into the 21 trucks, and trucks be able to leave. If we have a 20-foot- 22 wide drive that would not -- it would not function that way. 23 MS. THOMAS: Do you have any experience with the 24 composition of stored mulch, and just how the possibilities 25 of it combusting, for example, and continuing to deteriorate</p>	<p>88</p> <p>1 getting back to the purpose of the screening. Is that more 2 for aesthetic reasons, and blending into the community, as 3 opposed to noise reduction? 4 MR. NORTON: It is actually serving as a screening 5 visual, if you will, for the community. 6 MS. THOMAS: Thank you. 7 HEARING EXAMINER GROSSMAN: That's a great 8 question. Will it have any impact on noise reduction? 9 MR. NORTON: I don't know if I could really speak 10 to that. 11 HEARING EXAMINER GROSSMAN: Okay. All right. 12 MS. THOMAS: Thank you. I have no further 13 questions. 14 HEARING EXAMINER GROSSMAN: All right. Sir, do 15 you have any cross-examination questions? 16 MR. REMEIN: Yes. Referring back to the previous 17 -- the Goshen property. 18 MR. NORTON: Yes. 19 MR. REMEIN: Why -- what is the impervious limit 20 for that property? 21 MR. NORTON: I was not prepared to talk about 22 Goshen today. 23 MR. REMEIN: Okay. 24 MR. NORTON: I can't remember. 25 MR. REMEIN: You haven't any idea of what</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 imperviousness of it was, or what it actually was?</p> <p>2 MR. NORTON: I'm not --</p> <p>3 HEARING EXAMINER GROSSMAN: Why is that relevant</p> <p>4 to this?</p> <p>5 MR. REMEIN: Okay. What I'd like to show is that</p> <p>6 this -- the Goshen property is more intensely developed.</p> <p>7 It's smaller. It has a cold-water stream, type four in the</p> <p>8 state of Maryland, with a recommended impervious limit of 10,</p> <p>9 and its imperviousness was 7.7, according to the plan.</p> <p>10 HEARING EXAMINER GROSSMAN: But how does that</p> <p>11 impact on what I can --</p> <p>12 MR. REMEIN: And this particular property, this</p> <p>13 property is less intensively used. It has the same cold-</p> <p>14 water stream, type four requirement, 10 percent impervious</p> <p>15 limit, and they have an impervious -- they have less parking.</p> <p>16 It's -- the whole project is smaller. They have a larger</p> <p>17 acreage, but the property is -- has a, you know, a</p> <p>18 significantly larger imperviousness, 13 point something.</p> <p>19 HEARING EXAMINER GROSSMAN: So, you're suggesting</p> <p>20 that they could make it less impervious?</p> <p>21 MR. REMEIN: You would think so.</p> <p>22 HEARING EXAMINER GROSSMAN: I'm not sure that the,</p> <p>23 you know -- I'm not sure about the -- I mean, under the case</p> <p>24 law, we're required to consider the particular site we're in,</p> <p>25 rather than other sites throughout the community. And so,</p>	<p style="text-align: right;">91</p> <p>1 next to --</p> <p>2 MS. AWKARD: I am a longtime resident of this</p> <p>3 area.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. Well,</p> <p>5 first of all I have to, before I hear from you, I have to get</p> <p>6 your name and address, and swear you in.</p> <p>7 MS. AWKARD: Okay. My name is Carolyn Awkard.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MS. AWKARD: And I now live on Norwood Road, but I</p> <p>10 grew up on Holly Grove Road.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. And Ms.</p> <p>12 Awkard, would you raise your right hand please? Do you swear</p> <p>13 or affirm to tell the truth, the whole truth, and nothing but</p> <p>14 the truth, under penalty of perjury?</p> <p>15 MS. AWKARD: I do.</p> <p>16 HEARING EXAMINER GROSSMAN: All right. In any</p> <p>17 event, this is cross-examination. I swore you in, in case</p> <p>18 you were going to be offering any testimony as well, but you</p> <p>19 may ask questions of this witness.</p> <p>20 MS. AWKARD: Yes. I wrote down a note. You said</p> <p>21 there is no -- you see, I'm a layperson. I'm not really</p> <p>22 informed on all this technicality, but you -- I wrote down no</p> <p>23 stormwater management yet, is that right? And to enhance the</p> <p>24 Francisco property, they would need stormwater management, is</p> <p>25 that right? Stormwater.</p>
<p style="text-align: right;">90</p> <p>1 I'm not sure whether the environmental requirements are the</p> <p>2 same, because they're in, geographically, considerably</p> <p>3 different areas, whether the environmental requirements are</p> <p>4 the same in this site, as they are at the other one. So, I'm</p> <p>5 not sure what the -- how that would impact on the way I would</p> <p>6 evaluate it. I mean, usually the environmental questions are</p> <p>7 addressed by the planning department and the Planning Board,</p> <p>8 which has imposed the environmental requirements in effect,</p> <p>9 so. But in any event, I think I understand your question.</p> <p>10 He does not -- he cannot answer it, because he doesn't</p> <p>11 recall.</p> <p>12 MR. REMEIN: Okay. Just getting back to her</p> <p>13 suggestion that the imperviousness could be reduced.</p> <p>14 HEARING EXAMINER GROSSMAN: Right. Any other</p> <p>15 questions you have?</p> <p>16 MR. REMEIN: No, that was the only one.</p> <p>17 HEARING EXAMINER GROSSMAN: All right. Ma'am, I</p> <p>18 know that you had some questions.</p> <p>19 MS. AWKARD: Oh, I've had -- I wrote down a note.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay.</p> <p>21 MS. AWKARD: My name's Carolyn Awkard.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay. I'm going to</p> <p>23 let you can forward and have a seat, Carolyn. And I said</p> <p>24 we'd do it through Ms. Thomas, but I don't see anybody else</p> <p>25 who's indicated an interest. There's another seat over here,</p>	<p style="text-align: right;">92</p> <p>1 MR. NORTON: The property right now, as it stands</p> <p>2 existing, does not have stormwater management treating</p> <p>3 runoff, if you will.</p> <p>4 MS. AWKARD: Yes. Uh-huh.</p> <p>5 MR. NORTON: That's right. As part of the</p> <p>6 conditional use, we have proposed stormwater management to</p> <p>7 treat the runoff from the existing.</p> <p>8 MS. AWKARD: And how would that be accomplished?</p> <p>9 MR. NORTON: Well, it -- the way they do is -- I</p> <p>10 guess if I could distill this down a little bit. I believe</p> <p>11 most people are aware of what was called a rain garden, if</p> <p>12 you will. It's a depression in the ground, and it has</p> <p>13 landscape planting, so you really can't see it. It's about,</p> <p>14 maybe, 12 inches, 18 inches deep. It's very similar to that.</p> <p>15 The water sheet flows from the parking, from the drive to</p> <p>16 these facilities, so we grade it, so that water goes in</p> <p>17 there. And then, in a case like this, where you have gravel</p> <p>18 underneath, buried, the water would go down into the gravel</p> <p>19 and infiltrate.</p> <p>20 MS. AWKARD: Would that involve other properties,</p> <p>21 other than the Francisco property?</p> <p>22 MR. NORTON: No.</p> <p>23 MS. AWKARD: Oh.</p> <p>24 MR. NORTON: No, there is no public storm network,</p> <p>25 if that's what you're asking.</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 MS. AWKARD: The other question I would want to</p> <p>2 turn to -- return to the subject of trees. I mean, Mr.</p> <p>3 Grossman, would you be relegated as to the Planning Board, about</p> <p>4 the trees, and so and so forth. Now, Robin Hood's barn, but</p> <p>5 I thought maybe we could discuss it here.</p> <p>6 HEARING EXAMINER GROSSMAN: You can certainly</p> <p>7 discuss the question of trees on the property.</p> <p>8 MS. AWKARD: I want to know, with the first map he</p> <p>9 showed, there is some indication that there has been a bit of</p> <p>10 trespassing and cutting down trees from the Powell property.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. Ms. Awkard,</p> <p>12 what I was saying is that, in terms of the forest</p> <p>13 conservation plan, I don't have any jurisdiction to change</p> <p>14 that. That is strictly a question before the Planning Board.</p> <p>15 However, the question of trees on the property, on the</p> <p>16 subject site, is a question that can be raised here, and you</p> <p>17 can certainly ask a question about it, if you wish.</p> <p>18 MS. AWKARD: Well, that's what I'm asking.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. AWKARD: There is obvious trespassing, isn't</p> <p>21 it?</p> <p>22 HEARING EXAMINER GROSSMAN: Well, what? If</p> <p>23 they're removing trees from your property?</p> <p>24 MS. AWKARD: Yes.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay. Are you</p>	<p style="text-align: right;">95</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. You want to use</p> <p>2 a pointer?</p> <p>3 MR. NORTON: I can just walk over, right here.</p> <p>4 What the community is talking about, is on the -- gosh, I've</p> <p>5 got my north, we'll say on this property line, that there is</p> <p>6 an area of encroachment. If you look at this property line</p> <p>7 all the way through, there is some (inaudible).</p> <p>8 HEARING EXAMINER GROSSMAN: This is the -- let's</p> <p>9 say, the northern property.</p> <p>10 MR. NORTON: Northern property line. There is</p> <p>11 substantial encroachment on to this adjacent property back</p> <p>12 here. You can see it on this property. You can see it on</p> <p>13 this property right here.</p> <p>14 HEARING EXAMINER GROSSMAN: On the north?</p> <p>15 MR. NORTON: On the north. When we did the forest</p> <p>16 stand delineation, when we were contracted to work on this</p> <p>17 project, that area was not -- did not show evidence of recent</p> <p>18 clearing that we had worked on. When I went and looked at</p> <p>19 historic, aerial photographs, 10 years ago it showed the same</p> <p>20 condition that's there right now. The clearing that took</p> <p>21 place, I have no idea who, when, wow, how. What we did, was</p> <p>22 we talked with Planning Board staff, and we said if the</p> <p>23 adjacent owner is interested, we will approach them about</p> <p>24 planting that area back for the mass forest. That's what you</p> <p>25 see on the plans.</p>
<p style="text-align: right;">94</p> <p>1 (inaudible)?</p> <p>2 MS. AWKARD: The map seems to show that. Your</p> <p>3 first map.</p> <p>4 MR. NORTON: The aerial photograph?</p> <p>5 MS. AWKARD: Yes.</p> <p>6 MR. NORTON: We can pull that up, if you like.</p> <p>7 HEARING EXAMINER GROSSMAN: Well, are you planning</p> <p>8 to remove trees from any property outside of the subject</p> <p>9 site?</p> <p>10 MR. NORTON: No.</p> <p>11 (Crosstalk)</p> <p>12 MS. AWKARD: Is there a --</p> <p>13 UNIDENTIFIED SPEAKER: They already did.</p> <p>14 HEARING EXAMINER GROSSMAN: Well, hold on. No</p> <p>15 calling out from the audience please. We'll hear from you,</p> <p>16 if you wish to testify about it, but let's first ask that</p> <p>17 question? Are you planning to remove any trees from property</p> <p>18 outside of your subject site?</p> <p>19 MR. NORTON: No.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay. Have you</p> <p>21 removed any trees already from property outside of the</p> <p>22 subject site?</p> <p>23 MR. NORTON: I think what they're asking about, is</p> <p>24 if you look on the photograph, and I'm going to have to get</p> <p>25 up and point to this.</p>	<p style="text-align: right;">96</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. I can't affect</p> <p>2 what somebody did before this case came to this office. What</p> <p>3 I can do is, if this is approved, I can decide whether to</p> <p>4 approve it or not. I can also, if it is approved, establish</p> <p>5 conditions, but they've already indicated, and their plans</p> <p>6 indicate that there was no plan to remove trees from</p> <p>7 anybody's property other than their own. They're going to</p> <p>8 plant trees on their own property.</p> <p>9 MR. NORTON: I cannot speak to what was done ahead</p> <p>10 of me either, so.</p> <p>11 HEARING EXAMINER GROSSMAN: Did you have any other</p> <p>12 questions?</p> <p>13 MS. AWKARD: No, that's it. Thank you.</p> <p>14 HEARING EXAMINER GROSSMAN: How do you spell your</p> <p>15 last name, because I know the name also applies to a road in</p> <p>16 the area, and has been mentioned here?</p> <p>17 MS. AWKARD: Awkard. There's a Awkard. That's my</p> <p>18 brother-in-law.</p> <p>19 HEARING EXAMINER GROSSMAN: Right.</p> <p>20 MS. AWKARD: A-W-K-A-R-D.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay. So, it's not</p> <p>22 spelled the way the word awkward is spelled.</p> <p>23 MS. AWKARD: No, it's not awkward.</p> <p>24 (Crosstalk)</p> <p>25 HEARING EXAMINER GROSSMAN: So, I just thought for</p>

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25 (97 to 100)

<p>97</p> <p>1 the court reporter to know that difference.</p> <p>2 THE COURT REPORTER: I already got that, thank</p> <p>3 you.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. Sure.</p> <p>5 THE COURT REPORTER: Thank you.</p> <p>6 MS. AWKARD: Thank you.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. Are there</p> <p>8 any other questions of this witness?</p> <p>9 MS. THOMAS: May I ask one last question, Mr.</p> <p>10 Grossman please?</p> <p>11 HEARING EXAMINER GROSSMAN: Yes, Ms. Thomas.</p> <p>12 MS. THOMAS: The lighting that was discussed, has</p> <p>13 that been approved?</p> <p>14 MR. NORTON: That is -- well, nothing is,</p> <p>15 technically, approved right now.</p> <p>16 HEARING EXAMINER GROSSMAN: Nothing is approved.</p> <p>17 MR. NORTON: We're here for that reason.</p> <p>18 HEARING EXAMINER GROSSMAN: What's happened is,</p> <p>19 they've proposed it. They have it in a lighting plan. They</p> <p>20 have a photometric study, to show that it -- that if these</p> <p>21 lights are established, that they will not intrude on the</p> <p>22 neighborhood. Technical staff has looked at it and said that</p> <p>23 they will have no impact on the neighborhood. Nothing is</p> <p>24 approved until I act on it. Any other questions? Oh, ma'am?</p> <p>25 MS. MOORE: I'm Charlene Moore, 15520 Holly Grove</p>	<p>99</p> <p>1 outlying properties are on a septic system, as opposed to</p> <p>2 connected the WSSC sewer system?</p> <p>3 MR. NORTON: We do those plans all the time, yes.</p> <p>4 MS. MOORE: Okay.</p> <p>5 MR. NORTON: Yes.</p> <p>6 MS. MOORE: And have you run into any situations</p> <p>7 where there has been an impact?</p> <p>8 MR. NORTON: Not that I'm aware of, no.</p> <p>9 MS. MOORE: Not that you're aware of.</p> <p>10 MR. NORTON: Then -- no.</p> <p>11 HEARING EXAMINER GROSSMAN: Would you be aware of</p> <p>12 it, if it --</p> <p>13 MR. NORTON: You know, the only thing I would</p> <p>14 think is, is somehow it would become regulation a setback</p> <p>15 from the County -- it would have to be -- like a well has a</p> <p>16 setback from a pool, or you know, things like that. There's</p> <p>17 no setbacks of impervious from septic fields.</p> <p>18 MS. MOORE: Well, I ask that because it has been,</p> <p>19 you know, rather challenging, and we don't see that we are</p> <p>20 going to be connected to the WSSC with regard to the sewer.</p> <p>21 We do have connectivity with regard to water.</p> <p>22 MR. NORTON: Mm-hmm.</p> <p>23 MS. MOORE: But runoff from other properties has</p> <p>24 impacted --</p> <p>25 HEARING EXAMINER GROSSMAN: Well, I'm going to</p>
<p>98</p> <p>1 Road.</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Ms. Moore,</p> <p>3 are you going to be a witness here today too, or just asking</p> <p>4 questions?</p> <p>5 MS. MOORE: Just asking a question.</p> <p>6 HEARING EXAMINER GROSSMAN: All right, then I</p> <p>7 won't swear you in. All right.</p> <p>8 MS. MOORE: Thank you, Mr. Norton. With regard --</p> <p>9 MR. NORTON: I'm Mr. Norton.</p> <p>10 MS. MOORE: Hmm?</p> <p>11 MR. NORTON: That's Mr. Grossman.</p> <p>12 HEARING EXAMINER GROSSMAN: Yes.</p> <p>13 (Crosstalk)</p> <p>14 MR. NORTON: All right, yes.</p> <p>15 MS. MOORE: Okay. Are you aware that Holly Grove,</p> <p>16 the homes in Holly Grove Road are on septic systems?</p> <p>17 MR. NORTON: Yes.</p> <p>18 MS. MOORE: Okay. Do you see that black topping</p> <p>19 and grading of the property would impact the neighbor's</p> <p>20 septic systems?</p> <p>21 MR. NORTON: Not that I'm aware of, no.</p> <p>22 MS. MOORE: Do you have any experience in that</p> <p>23 area?</p> <p>24 MR. NORTON: In impact --</p> <p>25 MS. MOORE: Experience with a project where the</p>	<p>100</p> <p>1 stop you, because if you're going to supply us with</p> <p>2 information, I have to swear you in.</p> <p>3 MS. MOORE: Okay.</p> <p>4 HEARING EXAMINER GROSSMAN: So, would you raise</p> <p>5 your right hand please?</p> <p>6 MS. MOORE: Sure.</p> <p>7 HEARING EXAMINER GROSSMAN: Do you swear or affirm</p> <p>8 to tell the truth, the whole truth, and nothing but the</p> <p>9 truth, under penalty of perjury?</p> <p>10 MS. MOORE: I most certainly do.</p> <p>11 HEARING EXAMINER GROSSMAN: And do you adopt the</p> <p>12 statements you've already made?</p> <p>13 MS. MOORE: I do. I own them.</p> <p>14 HEARING EXAMINER GROSSMAN: That's it. Okay, go</p> <p>15 ahead.</p> <p>16 MS. MOORE: Okay. So, my testimony is such that -</p> <p>17 - you know, it's rather difficult, you know, percing, you</p> <p>18 know, to begin with, but there is a water flow from adjacent</p> <p>19 properties impacts our -- other people's septic tanks. And</p> <p>20 you know, that has been an issue in the neighborhood. And</p> <p>21 also, since I live on the front end, I guess you call -- what</p> <p>22 was it? Eastern end of Holly Grove Road. You used the term</p> <p>23 rustic. Well, to me, Holly Grove is a very narrow, rustic</p> <p>24 road, and in fact, it had been featured in a Washington Post</p> <p>25 article as such. And Holly Grove is a straight road, but</p>

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26 (101 to 104)

<p>101</p> <p>1 what we don't call into consideration is that there is at 2 least a 23 percent drop in grade, once you go to the southern 3 end of Holly Grove Road. Were you familiar with that drop- 4 off in grade? 5 MR. NORTON: I've driven the property and Holly 6 Grove Road. 7 MS. MOORE: Okay, in -- 8 MR. NORTON: I didn't measure the percent grade of 9 Holly Grove Road, but I have -- 10 MS. MOORE: No, but on traveling on Holly Grove 11 Road, coming onto the property, did you notice a hill and a 12 drop, and then going back up? 13 MR. NORTON: You would have to give me, maybe, 14 some locations on the plan. I'm not -- 15 MS. MOORE: Okay, where Awkard Lane is. 16 MR. NORTON: Okay. 17 MS. MOORE: Okay. 18 MR. NORTON: Yeah, can you show me on the plan? 19 I'm sorry. I'm trying to understand. Are we still talking 20 about septic? Just so I'm -- or are we talking about -- 21 (Crosstalk) 22 MS. MOORE: Okay. No, I've moved -- I just moved 23 on, in terms of rural, you know, and rustic. 24 MR. NORTON: Oh, okay, okay. I was trying to 25 follow you with septic.</p>	<p>103</p> <p>1 MR. NORTON: Uh-huh. 2 MS. MOORE: Yeah. Did you, you know, witness or 3 experience that? 4 MR. NORTON: I didn't. 5 MS. MOORE: Or notice it? 6 MR. NORTON: I did not. Like I said, I've driven 7 up and down there a few times. I mean, I drive all over. 8 MS. MOORE: Okay. Well, I would just like to -- 9 MR. NORTON: I mean, we do have a traffic engineer 10 here as well. 11 MS. MOORE: Okay. 12 MR. NORTON: I'm not -- 13 MS. MOORE: And then perhaps he can attest to the 14 fact that in traveling that road, it's kind of hard not to 15 notice that. And also, vehicles coming here, you have to be 16 -- oh, excuse me -- coming out of Awkard Lane, or even going, 17 you know, further south on Holly Grove, you have to be 18 extraordinarily cautious, because cars and vehicles occupy 19 the center of the road. It's not a two-lane road. Did you 20 notice that? 21 HEARING EXAMINER GROSSMAN: Okay. Well, we do 22 have -- the Applicant is calling a traffic engineer to 23 testify on that regard, so you can then cross-examine that 24 person, if you like. 25 MS. MOORE: Okay. So, essentially, that's, you</p>
<p>102</p> <p>1 MS. MOORE: And just, it's a safety concern of 2 mine. You know, and even as a neighbor, you know, just still 3 -- okay. Yeah. Okay, Awkard Lane is right here. 4 MR. NORTON: Right. 5 MS. MOORE: This is not flat. You know, you don't 6 really show topography on this (inaudible). 7 HEARING EXAMINER GROSSMAN: This is on the 8 intersection of Awkard and Holly Grove? 9 MR. NORTON: Holly Grove. 10 MS. MOORE: Awkard and Holly Grove. 11 MR. NORTON: Okay, yes. 12 MS. MOORE: So, there is a rather steep drop-off 13 right here. In fact, when you even -- 14 HEARING EXAMINER GROSSMAN: In other words, to the 15 south. 16 MS. MOORE: Yeah. 17 MR. NORTON: Yeah. 18 HEARING EXAMINER GROSSMAN: I'm trying to identify 19 for the record. When you say right here. 20 MS. MOORE: Oh, excuse me. 21 HEARING EXAMINER GROSSMAN: So, it's to the south? 22 MS. MOORE: Yeah. 23 HEARING EXAMINER GROSSMAN: To the south of the 24 intersection. Okay. 25 MS. MOORE: To the south.</p>	<p>104</p> <p>1 know -- I would like to say too that -- and not in reference 2 to your testimony, but just, since I was sworn in, and I'm 3 here, and I don't intend to come back up here -- that, 4 really, the whole tenor of our community, you know, has been 5 changed by this particular operation. I know that we'll say 6 there aren't accidents. Well, there are accidents, but we 7 handle them within the community. We don't report things 8 such as that. We are a residential community. We are a 9 community that takes care of each other. We are all involved 10 in each other's lives and existence, from cradle to grave. 11 And everyone we welcome. Whoever wants to move into our 12 community, we've been open and considerate of all of them, 13 but they came there as neighbors. They didn't come there as 14 entities, changing the whole fabric of our community. That's 15 my testimony. 16 HEARING EXAMINER GROSSMAN: All right. Would you 17 mind having a seat, because now that you've testified -- 18 MS. MOORE: I get to sit here. 19 HEARING EXAMINER GROSSMAN: -- can you sit right 20 there for a minute, and see if there -- anybody has any 21 cross-examination questions. It's unusual to have a witness 22 interrupt another witness, but we're going to have that 23 flexibility here. Mr. Hughes, do you have any question of 24 Ms. Moore? 25 MR. HUGHES: I do not, but I was hoping for a</p>

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27 (105 to 108)

<p>105</p> <p>1 quick, little --</p> <p>2 HEARING EXAMINER GROSSMAN: I'm going to give you</p> <p>3 an opportunity to get back to that.</p> <p>4 MR. HUGHES: Yes sir.</p> <p>5 HEARING EXAMINER GROSSMAN: Anybody else? No?</p> <p>6 All right. Thank you, Ms. Moore.</p> <p>7 MS. MOORE: You're very welcome.</p> <p>8 MS. AWKARD: Is there any indication, whatsoever,</p> <p>9 that the county will broaden that lane? I think of it as a</p> <p>10 lane.</p> <p>11 HEARING EXAMINER GROSSMAN: I can't speak to that,</p> <p>12 but I -- the -- I have no information on that whatever,</p> <p>13 ma'am. Okay.</p> <p>14 MS. HASELDEN: Excuse me, I have a question.</p> <p>15 HEARING EXAMINER GROSSMAN: Yes, ma'am.</p> <p>16 MS. HASELDEN: Okay, and it's just a question.</p> <p>17 HEARING EXAMINER GROSSMAN: What, you have a</p> <p>18 question of the witness?</p> <p>19 MS. HASELDEN: Yes, for his site planner. So --</p> <p>20 HEARING EXAMINER GROSSMAN: Why don't you -- I'd --</p> <p>21 -- have a seat and identify yourself for the record.</p> <p>22 MS. HASELDEN: Okay.</p> <p>23 HEARING EXAMINER GROSSMAN: This is a question,</p> <p>24 not testimony, right?</p> <p>25 MS. HASELDEN: Right, question.</p>	<p>107</p> <p>1 house is here and --</p> <p>2 HEARING EXAMINER GROSSMAN: Here being the</p> <p>3 northeastern --</p> <p>4 MS. HASELDEN: East, yes. The northeast corner.</p> <p>5 MR. HUGHES: Is that Mr. Pumphrey's house? Is</p> <p>6 that correct?</p> <p>7 MS. HASELDEN: Yes.</p> <p>8 MR. HUGHES: Just to identify it for the record?</p> <p>9 MS. HASELDEN: Yes, 15406 Holly Grove Road. So</p> <p>10 you've talked about lighting for the community. You talked</p> <p>11 about these are the storage bins and all that. But the</p> <p>12 impact of the noise and the light is -- with the forest level</p> <p>13 here on the southeast corner, is not going to really help my</p> <p>14 father at the northeast side. What you planning to do for</p> <p>15 that? I've seen your proposed plan, but it doesn't seem like</p> <p>16 it's going to be enough.</p> <p>17 MR. NORTON: Okay.</p> <p>18 HEARING EXAMINER GROSSMAN: Actually, why don't</p> <p>19 you put up the plan itself?</p> <p>20 MR. HUGHES: This is one you want, Mike?</p> <p>21 MR. NORTON: The forest conservation plan. I can</p> <p>22 get up and look as well. I think it's the third one.</p> <p>23 HEARING EXAMINER GROSSMAN: What you put it</p> <p>24 vertical like the other one is.</p> <p>25 MR. HUGHES: Oh, I'm sorry.</p>
<p>106</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. And what's your</p> <p>2 name please?</p> <p>3 MS. HASELDEN: Desariee Haselden.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay.</p> <p>5 MS. HASELDEN: And I'm speaking on behalf of my</p> <p>6 father at 15406, Holly Grove Road, which is the east boundary</p> <p>7 side.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MS. HASELDEN: Excuse me. Here. My question is</p> <p>10 about the forest conservation that you have here, and your --</p> <p>11 HEARING EXAMINER GROSSMAN: Here being the</p> <p>12 southeastern corner of the property?</p> <p>13 MS. HASELDEN: Yes, the southeastern side.</p> <p>14 MR. NORTON: Sean, can you pull the drawing up?</p> <p>15 Maybe we need to use the drawing to -- because you're</p> <p>16 referring to an easement. I just want to make sure we are</p> <p>17 looking --</p> <p>18 MS. HASELDEN: No, I'm talking about the forest</p> <p>19 conservation level. I'm told about this whole east side, but</p> <p>20 not necessarily the easement of it.</p> <p>21 MR. NORTON: Okay.</p> <p>22 MS. HASELDEN: The forest conservation area that</p> <p>23 you have here, are you willing to extend it? Because most of</p> <p>24 the work here, these buildings, storage bins and everything,</p> <p>25 that is going to impact a lot of the noise. My father's</p>	<p>108</p> <p>1 HEARING EXAMINER GROSSMAN: The other way.</p> <p>2 MR. NORTON: Otherwise I will get my North and</p> <p>3 East mixed up.</p> <p>4 HEARING EXAMINER GROSSMAN: Yeah. All right. So</p> <p>5 would you point to the location there were your father's</p> <p>6 house is? Okay. So that looks like it's -- that's right</p> <p>7 around where the forest conservation seems to be at.</p> <p>8 MS. HASELDEN: Well, it's here.</p> <p>9 MR. NORTON: That has -- your father's house</p> <p>10 probably has some of the most substantial forest conservation</p> <p>11 adjacent to it, proposed.</p> <p>12 MS. HASELDEN: He does have forestation.</p> <p>13 MR. NORTON: No, proposed.</p> <p>14 MS. HASELDEN: Okay. So let me ask you a</p> <p>15 question, Mr. Grossman.</p> <p>16 HEARING EXAMINER GROSSMAN: Yes, ma'am.</p> <p>17 MS. HASELDEN: Everything that you approve here</p> <p>18 would be upon -- based on what they propose?</p> <p>19 HEARING EXAMINER GROSSMAN: Well, yes, but there</p> <p>20 could be conditions that would change something, or it could</p> <p>21 be denied. But the point is that they -- as far as the</p> <p>22 forest conservation plan, I can't change the forest</p> <p>23 conservation plan.</p> <p>24 MS. HASELDEN: No.</p> <p>25 HEARING EXAMINER GROSSMAN: That's what the</p>

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28 (109 to 112)

<p>109</p> <p>1 Planning Board has approved. The Planning Board approved a 2 forest conservation plan. It does show a significant amount 3 of -- if in fact your father is located all the way to the 4 north, yeah, it is behind that area of the forest 5 conservation plan being added. See all of that -- 6 MS. HASELDEN: Are you talk about this little 7 small line here? 8 MR. NORTON: So all of that is 50 feet wide right 9 there. That is all going to be planted in forest and hands 10 off. You can't go in there. You can't mow it. You can't do 11 anything in that area. 12 MS. HASELDEN: At what level are these trees? 13 MR. NORTON: The height? 14 MS. HASELDEN: Yes. 15 MR. NORTON: We have 2 inch calipers shown. So I 16 believe I said in my report, my testimony, that they are 17 probably around 10 to 12 feet to start out. And they grow to 18 the size of all these other trees. 19 MS. HASELDEN: But that's growing over time, a 20 significant amount of time. 21 MR. NORTON: Yeah. 22 MS. HASELDEN: I mean, it's not immediate. But 23 the situation would be more immediate as opposed to what is 24 grown -- 25 MR. NORTON: Well, we also have substantial trees</p>	<p>111</p> <p>1 HEARING EXAMINER GROSSMAN: Right. Usually a 2 complaint would be lodged. It can be with the department of 3 permitting services. The department of permitting services 4 or with my office. And it came to my office, it would refer 5 to the department of permitting services to inspect, to make 6 sure that the conditions imposed were carried out by the 7 conditional use holder. One of the conditions that the 8 technical staff has recommended is that the conditional use 9 must comply with the conditions of the final forest 10 conservation plan. So that would be a condition of the 11 conditional use if it were imposed. They would have to 12 comply with the conditions of the forest conservation plan. 13 If they do not, they would get a violation notice. And if it 14 were not corrected, then their conditional use could be 15 revoked. 16 MS. HASELDEN: Okay. And what time frame do you 17 normally give to do that? 18 HEARING EXAMINER GROSSMAN: I don't call the exact 19 timeframe in the code for how it works, but usually there is 20 a violation notice. They're given a certain amount of time 21 to correct it. If they don't, they would be -- there would 22 be a show cause hearing. And then if they don't correct it, 23 the conditional use could be revoked. 24 MS. HASELDEN: Okay. Now, I have one other 25 question, but I guess it's for the owner. And I'm not at --</p>
<p>110</p> <p>1 along the property line. Like this right here, 26 inch red 2 maple that's already there is 40 feet high. 3 MS. HASELDEN: Okay. 4 MR. NORTON: You have screening along those. No, 5 I understand that's further down than your father's house, 6 but this is probably the most forested area is behind all of 7 what is going on on the property back there. 8 MS. HASELDEN: Okay. It's probably going to be 9 because it's not really. There is only a few trees. You're 10 talk about what's in the future. 11 HEARING EXAMINER GROSSMAN: What they are required 12 to do under forest conservation. 13 MR. NORTON: Right. We are planting -- I believe 14 it's -- what we proposed on our plan is 100 trees per acre. 15 This is 1.24 acres. Therefore we would be putting in 124 16 trees within that easement, within that forest conservation 17 easement. 18 MS. HASELDEN: Okay. And Mr. Grossman, this 19 question is for you. Now again, your basis of approval would 20 be based on this whole proposed thing, correct? 21 HEARING EXAMINER GROSSMAN: Yes. 22 MS. HASELDEN: So if in fact you grant approval 23 and they don't do what they're supposed to as -- or what they 24 propose to do, what level would we be able to come back and 25 do this? Because I'm not familiar with the process.</p>	<p>112</p> <p>1 I'm going to be leaving, so I won't have an opportunity to 2 ask him if he weren't -- and since he's not there. 3 HEARING EXAMINER GROSSMAN: Okay. 4 MS. HASELDEN: May ask him directly? 5 HEARING EXAMINER GROSSMAN: Well, no. He hasn't 6 been sworn in, et cetera. 7 MS. HASELDEN: Okay. 8 HEARING EXAMINER GROSSMAN: But what is your 9 question going to be? 10 MS. HASELDEN: The timeframe said they are going 11 to be working around the commercial use, when would the 12 storage bins -- when with a be making entries into the 13 storage during the course of a day? 14 HEARING EXAMINER GROSSMAN: Okay. 15 MS. HASELDEN: Is it morning? Night? All day? 16 HEARING EXAMINER GROSSMAN: All right. Mr. 17 Hughes, I would ask you to have your witness address that 18 question when he testifies, okay? 19 MS. HASELDEN: Okay. I'm done. Thank you for 20 that. 21 HEARING EXAMINER GROSSMAN: Thank you, ma'am. 22 Okay. Then I think we are completed with your testimony. 23 Thank you, sir. 24 MR. HUGHES: Mr. Grossman, could I have a quick 25 question or two to redirect?</p>

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29 (113 to 116)

<p>113</p> <p>1 HEARING EXAMINER GROSSMAN: Oh, okay. Redirect.</p> <p>2 MR. HUGHES: Very quickly. Thank you, sir. Mr.</p> <p>3 Norton, so you testified that right now on our subject</p> <p>4 property, there is no stormwater management, correct?</p> <p>5 MR. NORTON: Correct.</p> <p>6 MR. HUGHES: Okay. But is --</p> <p>7 MR. NORTON: That I'm aware of, no.</p> <p>8 MR. HUGHES: But the proposal -- but you have</p> <p>9 considerable stormwater management proposed; is that correct?</p> <p>10 MR. NORTON: We have stormwater proposed.</p> <p>11 MR. HUGHES: And will that improve the situation</p> <p>12 with runoff?</p> <p>13 MR. NORTON: That will treat the runoff, yes.</p> <p>14 HEARING EXAMINER GROSSMAN: Well, that doesn't</p> <p>15 exactly -- you said it would treat it.</p> <p>16 MR. NORTON: Yeah.</p> <p>17 HEARING EXAMINER GROSSMAN: Will it improve --</p> <p>18 will it reduce the amount of flow on to the neighboring</p> <p>19 properties?</p> <p>20 MR. NORTON: What it does is -- I believe on this;</p> <p>21 we have landscape infiltration. That means that we have</p> <p>22 rates that are good enough for the runoff. Once it gets into</p> <p>23 the storm water management facilities, the two on the plan</p> <p>24 will infiltrate into the ground. So, yes.</p> <p>25 HEARING EXAMINER GROSSMAN: So the answer is, yes,</p>	<p>115</p> <p>1 HEARING EXAMINER GROSSMAN: According to</p> <p>2 everything I've been able to ascertain, it is Holly Grove</p> <p>3 Road, right?</p> <p>4 MR. HUGHES: The community has told --</p> <p>5 HEARING EXAMINER GROSSMAN: That's what the tax</p> <p>6 authority say it is.</p> <p>7 MR. HUGHES: The community has told me enough it's</p> <p>8 private. I believe them at this point.</p> <p>9 HEARING EXAMINER GROSSMAN: I know, but --</p> <p>10 MR. HUGHES: I'm not questioning you Mr. Grossman.</p> <p>11 HEARING EXAMINER GROSSMAN: I know, but I just --</p> <p>12 all I have to go by right now in terms of what's before me is</p> <p>13 what's in the tax records and Google maps.</p> <p>14 MR. HUGHES: Fair enough.</p> <p>15 MR. NORTON: Typically on stormwater management,</p> <p>16 if I'm looking at an aerial photograph or something like</p> <p>17 that, I would look at it see if there's any evidence of the</p> <p>18 stormwater management physically on the ground, and there is</p> <p>19 no evidence.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay.</p> <p>21 MR. HUGHES: And you had talked about this area.</p> <p>22 HEARING EXAMINER GROSSMAN: This area being the</p> <p>23 northwest corner?</p> <p>24 MR. HUGHES: Well, the area -- well, you had</p> <p>25 talked about perhaps -- what's the term you used?</p>
<p>114</p> <p>1 it will reduce the amount of runoff to the neighboring</p> <p>2 properties?</p> <p>3 MR. NORTON: Yes.</p> <p>4 MR. HUGHES: Mr. Norton, are you aware of any --</p> <p>5 if any of the adjoining confronted properties have any</p> <p>6 stormwater management?</p> <p>7 MR. NORTON: I'm not aware of any adjoining or</p> <p>8 confronting neighbors having stormwater management.</p> <p>9 MR. HUGHES: So does the church that is down to</p> <p>10 the -- I'm sorry. What is this? Is the southeast? What are</p> <p>11 we calling this?</p> <p>12 HEARING EXAMINER GROSSMAN: The southeast.</p> <p>13 MR. HUGHES: Are you aware if they have any?</p> <p>14 MR. NORTON: I did not review adjacent properties</p> <p>15 for stormwater management.</p> <p>16 MR. HUGHES: What about Myers Paving around here?</p> <p>17 MR. NORTON: I didn't --</p> <p>18 HEARING EXAMINER GROSSMAN: Myers Paving, which is</p> <p>19 in the northwest corner.</p> <p>20 MR. HUGHES: Yeah, the final house on the private</p> <p>21 drive area.</p> <p>22 HEARING EXAMINER GROSSMAN: On the east -- on the</p> <p>23 west -- well, that was part of Holly Grove Road, you don't</p> <p>24 know if --</p> <p>25 MR. HUGHES: Right.</p>	<p>116</p> <p>1 MR. NORTON: Encroachments?</p> <p>2 MR. HUGHES: Encroachment.</p> <p>3 MR. NORTON: Yes.</p> <p>4 MR. HUGHES: The stuff -- the equipment that's</p> <p>5 shown outside the yellow lines, are you aware if any of that</p> <p>6 is with the Applicant?</p> <p>7 MR. NORTON: Is --</p> <p>8 MR. HUGHES: Are you aware if any of the</p> <p>9 Applicant's materials or operations are outside the yellow</p> <p>10 lines on this picture?</p> <p>11 MR. NORTON: They are not. There appears to be an</p> <p>12 encroachment onto the Applicant's property from the adjacent</p> <p>13 property. And that will have to be removed as part of the</p> <p>14 forest conservation requirements. The impervious that was</p> <p>15 put onto the subject property has to be removed.</p> <p>16 MR. HUGHES: And the encroachment outside the</p> <p>17 yellow line to the northwest, you're not aware that that's</p> <p>18 Francisco's?</p> <p>19 MR. NORTON: As best as I know and with my</p> <p>20 surveyors, that is not associated with this property or this</p> <p>21 property.</p> <p>22 MR. HUGHES: Okay. Thank you, sir.</p> <p>23 HEARING EXAMINER GROSSMAN: Any recross</p> <p>24 examination based on the redirect questions only? No? All</p> <p>25 right. Thank you very much.</p>

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30 (117 to 120)

<p>117</p> <p>1 MR. HUGHES: Wait. Wait.</p> <p>2 MS. ALBORNOZ: Mr. Grossman, may I ask a question,</p> <p>3 please?</p> <p>4 HEARING EXAMINER GROSSMAN: And your name is?</p> <p>5 MS. ALBORNOZ: My name is Michelle Albornoz.</p> <p>6 HEARING EXAMINER GROSSMAN: I'm sorry. Michelle?</p> <p>7 MS. ALBORNOZ: Albornoz. It's A-L-B-O-R-N-O-Z.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. A-L --</p> <p>9 MS. ALBORNOZ: B-O-R-N-O-Z.</p> <p>10 HEARING EXAMINER GROSSMAN: And what's your</p> <p>11 address, please?</p> <p>12 MS. ALBORNOZ: I am 712 Snider Lane. I am in</p> <p>13 Cloverly and have been for many, many years.</p> <p>14 HEARING EXAMINER GROSSMAN: What's your whole</p> <p>15 address? Because --</p> <p>16 MS. ALBORNOZ: 712 Snider Lane, Silver Spring,</p> <p>17 Maryland 20905.</p> <p>18 HEARING EXAMINER GROSSMAN: Are you asking a</p> <p>19 question of this witness?</p> <p>20 MS. ALBORNOZ: I am asking a question. I would</p> <p>21 like to ask --</p> <p>22 HEARING EXAMINER GROSSMAN: Based on the redirect?</p> <p>23 MS. ALBORNOZ: No, I --</p> <p>24 HEARING EXAMINER GROSSMAN: That's all I --</p> <p>25 MS. ALBORNOZ: I wanted to ask a question, but</p>	<p>119</p> <p>1 potentially reforesting that pocket of open area as well.</p> <p>2 And we talked with the owner and they -- not that property</p> <p>3 owner, our client owner. And they said, sure. We will plant</p> <p>4 that area if that property owner would like us to.</p> <p>5 MS. ALBORNOZ: Okay.</p> <p>6 MR. NORTON: So we've shown it for that reason</p> <p>7 only.</p> <p>8 MS. ALBORNOZ: And you have not approached Ms.</p> <p>9 Awkard about that as of today?</p> <p>10 MR. NORTON: Not at this point, no. We have to</p> <p>11 get through one thing at a time.</p> <p>12 MS. ALBORNOZ: Okay. That's it. Thank you.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. Thank you.</p> <p>14 MS. AWKARD: I haven't received any notice.</p> <p>15 MR. NORTON: No, ma'am. You -- is that your</p> <p>16 property?</p> <p>17 MS. AWKARD: I'm the neighbor, I'm representing</p> <p>18 the property.</p> <p>19</p> <p>20 MR. NORTON: You're --</p> <p>21 MS. AWKARD: (inaudible) owner. Call me the</p> <p>22 (inaudible).</p> <p>23 HEARING EXAMINER GROSSMAN: Well --</p> <p>24 MS. AWKARD: That's okay because I am in charge.</p> <p>25 HEARING EXAMINER GROSSMAN: Are you asking a</p>
<p>118</p> <p>1 things were kind of bouncing back and forth, back and forth.</p> <p>2 So my -- I just --</p> <p>3 HEARING EXAMINER GROSSMAN: I'm going to let it</p> <p>4 go. I'm going to let you do it, but have to say, we are not</p> <p>5 going to do that with future witnesses because it makes it an</p> <p>6 unwieldy record and an unwieldy process, taking too long.</p> <p>7 MS. ALBORNOZ: Right.</p> <p>8 HEARING EXAMINER GROSSMAN: So are you going to</p> <p>9 also testify in this case?</p> <p>10 MS. ALBORNOZ: No, I'm not. I just simply have a</p> <p>11 question.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay. All right. Go</p> <p>13 ahead then.</p> <p>14 MS. ALBORNOZ: So in the reforestation plan, it</p> <p>15 shows 1.24 acres of reforesting. Is that simply on site</p> <p>16 within the boundaries of your yellow lines, or does it go</p> <p>17 outside the boundary next to Ms. Powell's property?</p> <p>18 MR. NORTON: The 1.24 acres is on-site.</p> <p>19 MS. ALBORNOZ: So it does not include the Powell</p> <p>20 property or the encroachment (inaudible).</p> <p>21 MR. NORTON: That's correct. Parking and</p> <p>22 Planning, when we prepared the forest conservation plan, said</p> <p>23 that there is a gap in the forest between the property line</p> <p>24 and the adjacent owner. They asked would we, if this project</p> <p>25 moves forward, would we approach that homeowner about</p>	<p>120</p> <p>1 question of this -- you've already had an opportunity. So</p> <p>2 why don't we leave it right there. Okay. All right. Thank</p> <p>3 you. We have to have some limits on how many back and forths</p> <p>4 we have in the preceding if we are ever going to get done.</p> <p>5 MS. AWKARD: Yes.</p> <p>6 HEARING EXAMINER GROSSMAN: All right. Next</p> <p>7 witness, Mr. Hughes?</p> <p>8 MR. HUGHES: Yeah, we call Ms. Somer Cross.</p> <p>9 HEARING EXAMINER GROSSMAN: Please. I think it's</p> <p>10 easier for people to see you and hear you if you are up here.</p> <p>11 MS. CROSS: Well, I can be loud.</p> <p>12 HEARING EXAMINER GROSSMAN: State your full name</p> <p>13 and work address.</p> <p>14 MS. CROSS: My name is Somer Cross. I work at</p> <p>15 Miller Miller & Camby at 200B Monroe Street, Rockville,</p> <p>16 Maryland 20850.</p> <p>17 HEARING EXAMINER GROSSMAN: Would you raise your</p> <p>18 right hand? Do you swear or affirm to tell the truth, the</p> <p>19 whole truth, and nothing but the truth under penalty of</p> <p>20 perjury?</p> <p>21 MS. CROSS: I do.</p> <p>22 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>23 proceed.</p> <p>24 MR. HUGHES: Thank you, Mr. Grossman. Can you</p> <p>25 please tell us about your educational, professional</p>

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31 (121 to 124)

<p>121</p> <p>1 background?</p> <p>2 MS. CROSS: Yes, I am a land planner at the law</p> <p>3 office. I have both a Masters in city and regional planning,</p> <p>4 and I am certified by the American Institute of Certified</p> <p>5 Planners as AISC.</p> <p>6 MR. HUGHES: And have you ever been qualified an</p> <p>7 expert in land planning in this -- before this body?</p> <p>8 MS. CROSS: I have.</p> <p>9 MR. HUGHES: Have you been so qualified more than</p> <p>10 once?</p> <p>11 MS. CROSS: I have.</p> <p>12 MR. HUGHES: A copy of her resume. Mr. Grossman,</p> <p>13 I would like to -- even though it is in our prehearing</p> <p>14 statement, I would like to show her a copy of this document.</p> <p>15 I will give you a copy.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay.</p> <p>17 MR. HUGHES: Can you tell me what this document is</p> <p>18 Ms. Cross?</p> <p>19 MS. CROSS: That is my resume.</p> <p>20 HEARING EXAMINER GROSSMAN: And that is an exhibit</p> <p>21 that's in the prehearing statement?</p> <p>22 MR. HUGHES: Yes, sir.</p> <p>23 HEARING EXAMINER GROSSMAN: What's the number of</p> <p>24 the exhibit, please?</p> <p>25 MR. HUGHES: 337 and -- well, 37(h).</p>	<p>123</p> <p>1 where most of the landscape contracting business will be</p> <p>2 taking place. There is a single -- an existing single-family</p> <p>3 house on the property, a couple of sheds, and, as was</p> <p>4 mentioned, two planting areas, one in the southeastern corner</p> <p>5 and one in the northwestern corner for purposes of the owner.</p> <p>6 MR. HUGHES: Ms. Cross, I'm going to show you an</p> <p>7 aerial photograph that is not in the record yet. I'm giving</p> <p>8 Ms. Thomas a copy and Mr. Grossman, and I will put one up</p> <p>9 there even though it's not full-size, Mr. Grossman. Can you</p> <p>10 tell me what this shows? Were you involved in creating this?</p> <p>11 Could you tell me what it is?</p> <p>12 MS. CROSS: Yes, I created this image. This front</p> <p>13 --</p> <p>14 HEARING EXAMINER GROSSMAN: Let me mark it as an</p> <p>15 exhibit to here first. This will be exhibit -- Mr. Hughes,</p> <p>16 you're making me turn the page here. So Exhibit 82. And</p> <p>17 this is aerial photo of -- what are we seeing? This is a</p> <p>18 broader aerial photo showing the --</p> <p>19 (Exhibit 82 marked for identification)</p> <p>20 MR. HUGHES: Yes, the entire road in and we are</p> <p>21 going to talk about that it does have some markings on it</p> <p>22 with some measurements of distances.</p> <p>23 HEARING EXAMINER GROSSMAN: I'm showing --</p> <p>24 MR. HUGHES: The document at the bottom, Mr.</p> <p>25 Grossman, has kind of a caption. It says Holly Grove Road</p>
<p>122</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. Yes. Okay.</p> <p>2 MR. HUGHES: Thank you. Mr. Grossman, I would</p> <p>3 like to offer her as an expert in land planning.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. Any -- once</p> <p>5 again, voir dire; any questions regarding this witness's</p> <p>6 expertise?</p> <p>7 MS. THOMAS: No.</p> <p>8 HEARING EXAMINER GROSSMAN: Based on Ms. Cross's</p> <p>9 background experience, education, licensing, her resume,</p> <p>10 Exhibit 37(h), I accept her as an expert in land planning.</p> <p>11 MR. HUGHES: Thank you. Ms. Cross, can you --</p> <p>12 looking at this aerial where the plans are (inaudible), can</p> <p>13 you tell us a little bit about the area and the neighborhood?</p> <p>14 MS. CROSS: Sure. Not to rehash too much what Mr.</p> <p>15 Norton has said, it is in a -- along a -- Holly Grove Road.</p> <p>16 It's unusual in that Holly Grove Road dog legs around. And I</p> <p>17 agree with Mr. Grossman. I don't know what else to call it</p> <p>18 because it appears on tax maps and all of the aerial imagery</p> <p>19 resources that I use as Holly Grove Road. So for the</p> <p>20 purposes of my testimony, I would like to continue to call it</p> <p>21 Holly Grove Road. And so this site then fronts on the same</p> <p>22 road twice, which is unusual. It does have, as was brought</p> <p>23 up before, a bit of a slope in the front, which I'm going to</p> <p>24 call the southern side. The topography raises about 25 feet</p> <p>25 and then levels off towards the back half, the northern half,</p>	<p>124</p> <p>1 various widths.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. Showing Holly</p> <p>3 Grove Road various widths. Okay. You may proceed.</p> <p>4 MS. CROSS: So I did create the visual image of</p> <p>5 this. The actual measurements were made by our traffic</p> <p>6 engineer Shahriar Etemadi, who will be testifying later. But</p> <p>7 just giving a general indication of where the measurements</p> <p>8 were taken in showing the straight length of Holly Grove Road</p> <p>9 and the various widths from the intersection of Norwood Road</p> <p>10 all the way to the applicable site.</p> <p>11 MR. HUGHES: And in the top left part, you have a</p> <p>12 box that says 1,600 feet south of intersection. So with that</p> <p>13 star is, is it about 1,600 feet from Norwood Road? Is that</p> <p>14 correct?</p> <p>15 MS. CROSS: That is correct.</p> <p>16 MR. HUGHES: So 1,600 feet is just a little over a</p> <p>17 third of a mile. Is that correct?</p> <p>18 MS. CROSS: 5,280 -- sure.</p> <p>19 HEARING EXAMINER GROSSMAN: I'm a little confused</p> <p>20 as to what exactly I'm seeing. So hold on a second while I</p> <p>21 orient myself.</p> <p>22 MR. HUGHES: Okay.</p> <p>23 HEARING EXAMINER GROSSMAN: What's north on this</p> <p>24 map?</p> <p>25 MS. CROSS: So there is a north arrow up in the</p>

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32 (125 to 128)

<p>125</p> <p>1 top right corner, but if you hold the document more vertical</p> <p>2 said -- or portrait instead of landscape, then --</p> <p>3 HEARING EXAMINER GROSSMAN: This way?</p> <p>4 MS. CROSS: Yeah.</p> <p>5 HEARING EXAMINER GROSSMAN: So where is the</p> <p>6 subject site on this property?</p> <p>7 MS. CROSS: The highlighted yellow box is the --</p> <p>8 HEARING EXAMINER GROSSMAN: The yellow box?</p> <p>9 MS. CROSS: Yes.</p> <p>10 HEARING EXAMINER GROSSMAN: Oh, okay. And it's</p> <p>11 clearly been elongated?</p> <p>12 MS. CROSS: The perspective of Google maps from a</p> <p>13 birds eye view tends to elongate things -- visual.</p> <p>14 HEARING EXAMINER GROSSMAN: Well --</p> <p>15 MS. CROSS: But that is the actual area. You can</p> <p>16 see it the top of the long yellow rectangle, which I'm going</p> <p>17 to say if you're holding it landscape-wise, it would be on</p> <p>18 the right side. You can see where the property still has</p> <p>19 some -- it matches the aerial photograph that you're looking</p> <p>20 at here in Google Earth.</p> <p>21 HEARING EXAMINER GROSSMAN: Now I find it to be a</p> <p>22 confusing view, because as I say, it's not even marginally</p> <p>23 elongated. It's a 2 to 1, at least, elongation. If you look</p> <p>24 at the property on the other aerial photo versus this one, if</p> <p>25 the yellow area is the property --</p>	<p>127</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MR. HUGHES: But I believe that is talking more</p> <p>3 about the fire lane turn around.</p> <p>4 MS. CROSS: Yes.</p> <p>5 HEARING EXAMINER GROSSMAN: Okay. So is it -- is</p> <p>6 there any -- well, all right. So are these figures, the</p> <p>7 other figures that I just read off as to the width of the</p> <p>8 road, are those the width of the paved area? Or are they the</p> <p>9 width of the right-of-way?</p> <p>10 MR. HUGHES: Paved area, sir.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. So you're</p> <p>12 saying that the paved area narrows down as it gets down to</p> <p>13 the subject site? And that the paved area -- ultimately</p> <p>14 reaches 14 feet in width the other side. Is that correct?</p> <p>15 MR. HUGHES: Yes, sir.</p> <p>16 HEARING EXAMINER GROSSMAN: But then you have,</p> <p>17 plus 14 feet, pavement equals 40 feet. What does that mean?</p> <p>18 MR. HUGHES: At the bend there, at the bend of the</p> <p>19 road, there is a -- there will be testimony that in 2016, the</p> <p>20 county came in and paved the road and also did a fire turn</p> <p>21 area there. So that's -- this is indicating the width of</p> <p>22 that curved fire turn area that Mr. Etemadi will talk in more</p> <p>23 detail about.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay. But you're not</p> <p>25 suggesting that the actual paved area of the roadway has been</p>
<p>126</p> <p>1 MS. CROSS: I can see that, yeah.</p> <p>2 MR. HUGHES: Mr. Grossman, I guess what I would</p> <p>3 offer this more to show is just to show going all the way out</p> <p>4 from Norwood to the back part just to give that's our other</p> <p>5 ones don't show that distance of showing the straightness of</p> <p>6 it. As far as the property goes, perhaps not as relevant.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay. So, all right.</p> <p>8 MR. HUGHES: And this --</p> <p>9 HEARING EXAMINER GROSSMAN: You're just showing --</p> <p>10 I understand the reason for using it. I'm not saying you</p> <p>11 can't use it. I'm just saying that the record ought to</p> <p>12 reflect that this is somewhat confusing in that the property</p> <p>13 from this, quote, bird's eye view is -- appears very</p> <p>14 elongated compared to the other more direct, vertical looks</p> <p>15 that -- so what's the -- and so I see that there were</p> <p>16 different widths of the road at -- it's 24 feet wide at or</p> <p>17 near the intersection of Norwood. And then it's 16 feet</p> <p>18 wide, 120 feet south of that intersection. And then it's --</p> <p>19 570 feet south of the intersection it's 18 to 14 feet wide.</p> <p>20 And then it becomes -- well, that's the question. You have</p> <p>21 it as 1,600 feet south of the intersection of Norwood, it's</p> <p>22 20 to 26 feet wide, plus 14 feet of pavement. So you're</p> <p>23 saying the right-of-way is 20 to 26 --</p> <p>24 MR. HUGHES: We will have Mr. Etemadi clear it up</p> <p>25 when he comes here.</p>	<p>128</p> <p>1 increased? It's still 14 feet wide in that area at least up</p> <p>2 to the point between Norwood and up to the point where it</p> <p>3 gets to the subject site's entrance area. Is that correct?</p> <p>4 MR. HUGHES: There is some varying, but yes, by</p> <p>5 and large, yes sir.</p> <p>6 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>7 MR. HUGHES: Thank you. Ms. Cross, can you tell</p> <p>8 us about whether, in your opinion, this conforms with the</p> <p>9 master plan for this area?</p> <p>10 MS. CROSS: Sure. The applicable master plan in</p> <p>11 this situation as the 1997 Cloverly Master plan. There are</p> <p>12 no specific recommendations for this property. However, it</p> <p>13 does generally meet all of the general recommendations. As</p> <p>14 has been brought up on page 22, there is a recommendation</p> <p>15 that subwatershed imperviousness level should remain in the</p> <p>16 10 to 15 percent range for the Northwest branch, which this</p> <p>17 property has done by reducing it from 18 all the way down to</p> <p>18 a little over 13. While there are no specific</p> <p>19 recommendations for the site, there are some specific</p> <p>20 recommendations for special exceptions in the plan. On page</p> <p>21 38 of the Cloverly Master Plan the -- there are some</p> <p>22 additional requirements that should be met before approving a</p> <p>23 special exception; maintenance of a residential appearance,</p> <p>24 which, with the additional landscaping and buffering, all of</p> <p>25 the use will be internal to the site and it will maintain a</p>

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<p>129</p> <p>1 residential appearance. Compatibility with the scale and 2 architecture the adjoining neighborhood; there are no 3 proposed new buildings for this plan. Everything will remain 4 existing. The impact of signs; there are no signs proposed. 5 Lighting, which Mr. Norton testified to the fact that they 6 are at 0 foot candles at all of the property lines. And 7 other physical features on the surrounding residential 8 community, I see no additional changes or differences from 9 this property based on aerial view, and having made a site 10 visit to the property, that would distinguish the appearance 11 after this plan is implemented, that would distinguish it 12 from the neighborhood. Location of parking, loading, and 13 other service areas to maintain residential appearances to 14 the extent feasible. Again, most of the parking and loading 15 will all be interior to the site. Options for landscaping 16 that minimizes the nonresidential appearance of the site and 17 the view from surrounding property and roads, there is 18 proposed a lot of perimeter planting, as Mr. Norton 19 testified, the forest conservation on two sides, and 20 additional perimeter, buffering, screening on the other sides 21 of the property. When special exceptions are adjacent, there 22 are additional requirements. There are no other special 23 exceptions within the area. I believe Mr. Hughes has already 24 accepted staff's definition of the neighboring area as the 25 2,000 foot radius. And there were no special exceptions or</p>	<p>131</p> <p>1 designated as a special exception, if in fact it's doing a 2 commercial operation as Mr. Myers facility apparently is, 3 wouldn't you consider that as, in effect, a special exception 4 in terms of the impact on the neighborhood? 5 MS. CROSS: In effect. In effect somewhat more 6 intrusive than a conditional use because it would have to go 7 through all of the requirements of screening and buffering 8 that a conditional use would have to. However, it also is an 9 argument that it has changed the character of the 10 neighborhood to allow for more commercial uses such as this. 11 HEARING EXAMINER GROSSMAN: And what's your 12 opinion on that issue? Is this still, this particular 13 request a conditional use in this case, still compatible 14 given the existence of this other undesignated, in effect 15 special exception, the Myers Concrete? 16 MS. CROSS: Yes, I feel the location of the two 17 uses around that doglegged end of Holly Grove Road puts it 18 towards the end of the residential -- and compatible similar 19 uses. If you look at the area, there may possibly be other 20 nonconforming commercial uses because of the number of trucks 21 that I see, which again, changes the nature of the 22 neighborhood and would make this very much compatible with 23 the rest of the neighborhood. 24 HEARING EXAMINER GROSSMAN: Okay. And I 25 interrupted while you were listing out the things in the</p>
<p>130</p> <p>1 conditional uses found within that area. 2 HEARING EXAMINER GROSSMAN: Let me stop you for a 3 second, Ms. Cross. Two things. One thing is, what's the 4 page reference for the 10 to 15 percent imperviousness 5 recommendation? 6 MS. CROSS: Yes. That would be page 22. 7 HEARING EXAMINER GROSSMAN: And you indicate there 8 are no other special exceptions in the area. There has been 9 reference to a pavement contractor in the northwest corner. 10 Myers, I believe it was. 11 MS. CROSS: Correct. 12 HEARING EXAMINER GROSSMAN: How is it that that 13 exists without a special exception or conditional use? 14 MS. CROSS: It is our understanding that is a 15 nonconforming commercial use in the neighborhood. 16 HEARING EXAMINER GROSSMAN: And by that you mean 17 that they are not required to have a special exception or 18 conditional use? 19 MS. CROSS: Correct. They were existing prior to 20 the zoning ordinance limiting a commercial use in this 21 residential district. 22 HEARING EXAMINER GROSSMAN: Okay, but when 23 considering the question of compatibility and whether or not 24 there is an excess of special exceptions in the area, as a 25 matter of analysis, whether or not something is -- has been</p>	<p>132</p> <p>1 plan. 2 MS. CROSS: Oh, yes. 3 HEARING EXAMINER GROSSMAN: I stopped you at 4 special exceptions. Go ahead. 5 MS. CROSS: I think there's just one more. Any 6 special exception application that exceeds the recommended 7 imperviousness level for a particular watershed must be 8 reviewed. And as we've mentioned, this one would then meet 9 and exceed in some ways, if 15 percent with a high end. And 10 we are going to 13 percent. So that complies with that 11 requirement. 12 HEARING EXAMINER GROSSMAN: Okay. 13 MR. HUGHES: Ms. Cross, in the Planning Boards 14 recommendation letter, page 2 through 3, they stated, "the 15 Planning Board concurred with the findings and 16 recommendations of the staff report. The Planning Board 17 agreed with technical staff conclusions that the use is 18 compatible with the goals and recommendations of the 1997, 19 87/97 Cloverly Master Plan." Do you agree with their 20 assertion? 21 MS. CROSS: I do. 22 MR. HUGHES: Is it your opinion that you think 23 that it is harmonious with and will not alter the character 24 of the surrounding neighborhood in a manner inconsistent with 25 the plan, is that correct?</p>

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<p>133</p> <p>1 MS. CROSS: Correct.</p> <p>2 MR. HUGHES: Okay. Is it your opinion that this</p> <p>3 will be served by adequate public services and facilities?</p> <p>4 MS. CROSS: Yes. There are no new buildings</p> <p>5 proposed at this time, therefore there is no requirement to</p> <p>6 go through an APF test. However, there is a fire station</p> <p>7 located 3.4 miles away, police station located 3.7 miles</p> <p>8 away. The property, as we discussed earlier, is on well and</p> <p>9 septic, which has been determined to be adequate for the</p> <p>10 existing building. There is no office associated with issues</p> <p>11 to be located on property, therefore there would be no</p> <p>12 additional burden to that well and septic. There are no</p> <p>13 school-age children generated by the use, and therefore it</p> <p>14 meets all of the facility requirements.</p> <p>15 MR. HUGHES: Thank you. Ms. Cross, are you able</p> <p>16 to talk a little bit about 59-73.1 E, G and inherent and non-</p> <p>17 inherent adverse effects?</p> <p>18 MS. CROSS: Sure. The idea is that, in Montgomery</p> <p>19 County (inaudible) the zoning ordinance assumes certain</p> <p>20 inherent adverse effects to conditional uses. With a</p> <p>21 conditional use, if it meets the standards of the zoning</p> <p>22 ordinance and the requirements of the master plan, it's</p> <p>23 generally considered unacceptable use unless there are non-</p> <p>24 inherent adverse effects that are specific to the particular</p> <p>25 use on the particular site. The additional case law in</p>	<p>135</p> <p>1 page 8, also talked about this topic. I want to get your</p> <p>2 opinion on this. It said, "with respect to septic site, the</p> <p>3 proposed conditional use application would subject the</p> <p>4 property to substantial landscaping, forestation, and</p> <p>5 organized site design and a 4 percent reduction in impervious</p> <p>6 area. In addition, the Applicant has offered to rehabilitate</p> <p>7 a destabilized area on adjacent property located to the rear</p> <p>8 of the extending forest plantings. These proposed and</p> <p>9 required improvements bring the property within the Johnson</p> <p>10 Road tributary impervious level approximately 13.8. It would</p> <p>11 help maintain the existing character and scale of development</p> <p>12 in the semi-rural, residential community." Is that a</p> <p>13 statement you agree with as well?</p> <p>14 MS. CROSS: I agree. Without the trigger of a</p> <p>15 conditional use application and requirements, this site was</p> <p>16 at 18 percent imperviousness. It is only through having</p> <p>17 applied for conditional use and meeting all of the standards</p> <p>18 that are required for that, that this is actually benefiting</p> <p>19 the community to have a reduction in impervious area.</p> <p>20 MR. HUGHES: Ms. Cross, I might have jumped ahead</p> <p>21 little bit. Earlier you were talking about some of the</p> <p>22 standards that were in the conditional use application. Did</p> <p>23 you assist with the application and review of those</p> <p>24 standards?</p> <p>25 MS. CROSS: I did.</p>
<p>134</p> <p>1 Montgomery County has identified approximately seven</p> <p>2 different inherent effects of a landscaping contracting</p> <p>3 business. I'm trying to find page 27. One second. Oh,</p> <p>4 there it is. So for landscaping contracting business, I</p> <p>5 agree with the staff reports listing of inherent generic</p> <p>6 physical and operational characteristics associated with such</p> <p>7 a use. Those are buildings, structures, outdoor areas for</p> <p>8 storage of both supplies and equipment, outdoor storage,</p> <p>9 again, of supplies including mulch and landscaping materials,</p> <p>10 on-site storage of business vehicles and equipment, which is</p> <p>11 small trucks and landscaping trailers. I believe there are</p> <p>12 10 trucks and 6 trailers proposed for this use. Traffic</p> <p>13 associated with it for employees and suppliers, trips back</p> <p>14 and forth for employees dealing with off-site activities,</p> <p>15 adequate parking, dust, noise associated with the landscape</p> <p>16 contracting business, and hours of operation, which would be</p> <p>17 early and late.</p> <p>18 MR. HUGHES: Thank you. Ms. Cross, in the</p> <p>19 planning staff report, the first one, page 29 they wrote,</p> <p>20 "with the recommended conditions of approval, the inherent</p> <p>21 and non-inherent impacts associated with the proposed use do</p> <p>22 not rise to a level sufficient to warrant a denial of the</p> <p>23 application." Is that something you would agree with?</p> <p>24 MS. CROSS: I agree with that.</p> <p>25 MR. HUGHES: Ms. Cross, staff report number two,</p>	<p>136</p> <p>1 MR. HUGHES: And can you tell us if it's in</p> <p>2 compliance and talk about the standards a little bit, please?</p> <p>3 MS. CROSS: So there are actually two sets of</p> <p>4 standards for a landscape contractor in that -- and it must</p> <p>5 meet the zoning requirements and then it must also meet the</p> <p>6 additional requirements that are imposed to approve a</p> <p>7 landscape contractor. For purposes of the RE2C zoning</p> <p>8 development standards, it meets or exceeds everything, with</p> <p>9 the exception -- well, I should with the -- a highlight I</p> <p>10 would like to point out on, is that the maximum lot coverage</p> <p>11 for a RE2C zone is 25 percent, but this application proposes</p> <p>12 only 1.2 percent lot coverage.</p> <p>13 HEARING EXAMINER GROSSMAN: You are saying that's</p> <p>14 compliant? Extremely compliant?</p> <p>15 MS. CROSS: It's extremely compliant, exactly.</p> <p>16 The house, the existing residential structure on the site,</p> <p>17 meets all of the RE2C zoning standards and so was built in</p> <p>18 compliance of that. However, when you add the additional</p> <p>19 layer of requirements for a landscape contractor, there is a</p> <p>20 standard that says all buildings on the site must be 50 feet</p> <p>21 from the property lines, and then the house becomes</p> <p>22 noncompliant for that setback. So while it meets the RE2C</p> <p>23 standards and is 40.4 feet away from the property line, it's</p> <p>24 only required to be 20 feet for the RE2C and 50 feet for</p> <p>25 landscape contractor, and therefore a variance is required.</p>

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<p>137</p> <p>1 MR. HUGHES: Thank you. One second, Mr. Grossman, 2 please. 3 HEARING EXAMINER GROSSMAN: Sure. 4 MR. HUGHES: Thank you. Ms. Cross, I'm going to 5 ask you to identify some additional pictures that are not in 6 the record yet. I'll give a copy to Ms. Thomas and also to 7 Mr. Grossman. 8 HEARING EXAMINER GROSSMAN: Thank you, sir. 9 MR. HUGHES: Can you take a look at these 10 photographs and tell us what they are or what they represent? 11 HEARING EXAMINER GROSSMAN: Well, let's identify 12 them first. You say they are not in the record yet? 13 MR. HUGHES: No, sir. 14 HEARING EXAMINER GROSSMAN: All right. So this 15 will be Exhibit 83. 16 MR. HUGHES: 83. 17 HEARING EXAMINER GROSSMAN: And that will be, 18 let's say 83(a). Now, these are photographs of what, 19 overall? Are they the same? 20 MS. CROSS: Street view images. 21 HEARING EXAMINER GROSSMAN: Okay. So photos of 22 street views at the site or around the site? 23 MS. CROSS: Of Holly Grove Road. 24 HEARING EXAMINER GROSSMAN: Okay. Street views of 25 Holly Grove Road.</p>	<p>139</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. So it's in 2 effect, northeast on Holly Grove Road from the driveway. 3 MS. CROSS: Northeast. It's very hard to see, but 4 in the corner is a little Google map showing the direction he 5 is facing. But it's hard to see with this color printing. 6 HEARING EXAMINER GROSSMAN: I see. Okay. So if 7 that compass -- if I read that the compass is pointing north, 8 that in fact this is mostly north, north northeast. 9 MS. CROSS: Northeast. 10 HEARING EXAMINER GROSSMAN: Okay. So north 11 northeast view of Holly Grove Road from the driveway, the 12 site driveway. Okay. 13 MR. HUGHES: Okay. And the second one, (b), can 14 you add anything other than -- to the caption there? Holly 15 Grove Road facing East at intersection with Norwood Road? 16 MS. CROSS: I would add the north northeast again 17 because we are still facing that same direction as 83(a). 18 And this one also shows a little bit of a jut out of Holly 19 Grove Road. 20 MR. HUGHES: Is it your understanding that the 21 little jut out may be used as a stop area or pull off area? 22 MS. CROSS: To pull over, correct. 23 HEARING EXAMINER GROSSMAN: Okay. So this is 24 essentially the same photo with a little extra map below it? 25 MS. CROSS: Exactly. Well actually, this is much</p>
<p>138</p> <p>1 MR. HUGHES: And I believe that we have -- that 2 there is five. 3 HEARING EXAMINER GROSSMAN: Okay. So let's say 4 83(a), the first one. And Mr. Hughes, you can have the 5 witness identified them as you go through asking whatever 6 questions you have. 7 (Exhibit 83 and subparts marked for 8 identification) 9 MR. HUGHES: Yes, sir. Thank you. The first 10 picture here which has a caption, it says view from driveway 11 facing east on Holly Grove Road. Can you tell us what it 12 shows and where it is? 13 MS. CROSS: Pretty much the caption says it all. 14 It's a view from the driveway facing east on Holly Grove Road 15 taken with Google straight view, showing the width of the 16 driveway and the straightness, I would say, of Holly Grove 17 Road. 18 HEARING EXAMINER GROSSMAN: So just so I 19 understand, you said east on Holly Road. Is this in effect 20 going -- looking northeast? Which way -- are we heading 21 towards Awkard or are we -- 22 MR. HUGHES: North. 23 MS. CROSS: So we are heading towards -- 24 MR. HUGHES: Yes, towards Awkard looking this way. 25 MS. CROSS: Yes.</p>	<p>140</p> <p>1 closer to Norwood Road's intersection in the first one. 2 83(a) is that the property entrance. 3 HEARING EXAMINER GROSSMAN: Okay. 4 MS. CROSS: And then if you again can see that 5 little man on the map, it's much closer to Norwood Road. And 6 there is -- again, the color on this, it's hard to tell. But 7 you can see Norwood Road from 83(b). Right near that line, 8 that gray line goes right along the tree line. 9 HEARING EXAMINER GROSSMAN: Oh. 10 MR. HUGHES: Ms. Cross, would it help the stand 11 appear and point at this? Mr. Grossman, would that help? 12 HEARING EXAMINER GROSSMAN: Is that really Norwood 13 or is that Awkard? 14 MS. CROSS: That would be Norwood. 15 MR. HUGHES: Maybe you should point at it and turn 16 it -- I think turn it this way probably. 17 HEARING EXAMINER GROSSMAN: And is that cut out 18 that you're mentioning, is that at the driveway site or is 19 this another -- you said this is further north. 20 MS. CROSS: That is much closer to Norwood. 21 MR. HUGHES: Perhaps you can -- 22 HEARING EXAMINER GROSSMAN: Okay. So this is not 23 from the driveway area? 24 MS. CROSS: No. 25 HEARING EXAMINER GROSSMAN: Okay.</p>

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<p>141</p> <p>1 MS. CROSS: (a) is from the driveway and (b) is --</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MR. HUGHES: Could you point to -- on Exhibit 82,</p> <p>4 and show roughly where it is to Mr. Grossman, and to the</p> <p>5 audience?</p> <p>6 MS. CROSS: I would say it's approximately at the</p> <p>7 120 foot mark on this image.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MR. HUGHES: Thank you. And the third picture,</p> <p>10 (c), Holly -- it says Holly Grove Road facing East showing</p> <p>11 vehicle on the road. It looks like that's almost at the</p> <p>12 intersection of Holly Grove and Awkard. Is that correct?</p> <p>13 MS. CROSS: Awkard, that is correct.</p> <p>14 MR. HUGHES: Thank you. And then the fourth one,</p> <p>15 (d) --</p> <p>16 HEARING EXAMINER GROSSMAN: Hold on one second.</p> <p>17 MR. HUGHES: Sorry, Mr. Grossman.</p> <p>18 HEARING EXAMINER GROSSMAN: This is --</p> <p>19 MR. HUGHES: So is that the intersection of Awkard</p> <p>20 and Holly Grove pretty much.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay. And you're</p> <p>22 looking -- I don't see a little man here.</p> <p>23 MR. HUGHES: We are looking --</p> <p>24 HEARING EXAMINER GROSSMAN: Are we still looking</p> <p>25 in the same direction?</p>	<p>143</p> <p>1 HEARING EXAMINER GROSSMAN: All right.</p> <p>2 MS. CROSS: (c) is at the intersection with</p> <p>3 Awkard.</p> <p>4 HEARING EXAMINER GROSSMAN: All right.</p> <p>5 MS. CROSS: (d) is back here beyond the property</p> <p>6 at the curb, beyond the property entrance at the curb.</p> <p>7 HEARING EXAMINER GROSSMAN: Right, but it's, in</p> <p>8 effect, south of the -- yeah, I thought you were pointing to</p> <p>9 the other end of the thing.</p> <p>10 MR. HUGHES: Sorry.</p> <p>11 HEARING EXAMINER GROSSMAN: But that's why I</p> <p>12 thought you were supposed to, yes. Okay.</p> <p>13 MS. CROSS: And then (e) would be a little beyond</p> <p>14 the curb facing --</p> <p>15 HEARING EXAMINER GROSSMAN: Well, it's (d) first</p> <p>16 of all. Let me get (d).</p> <p>17 MR. HUGHES: Yes.</p> <p>18 HEARING EXAMINER GROSSMAN: This is the -- which</p> <p>19 direction am I looking in here at this curb?</p> <p>20 MR. HUGHES: You're looking west. You're looking</p> <p>21 west. It says facing west.</p> <p>22 MS. CROSS: (Inaudible).</p> <p>23 HEARING EXAMINER GROSSMAN: Curve at bend in Holly</p> <p>24 Grove Road past the site?</p> <p>25 MR. HUGHES: Yes, sir.</p>
<p>142</p> <p>1 MS. CROSS: Yes, same direction, north northeast.</p> <p>2 HEARING EXAMINER GROSSMAN: At Awkard</p> <p>3 intersection. Okay.</p> <p>4 MR. HUGHES: Thank you, Mr. Grossman. And in the</p> <p>5 fourth one, (d), the caption says, pull off area along curve</p> <p>6 of Holly Grove Road facing West, correct? Is that at the</p> <p>7 bend essentially?</p> <p>8 MS. CROSS: That is at the bend.</p> <p>9 MR. HUGHES: Is that where we were talking about</p> <p>10 earlier where it might be as wide as close to 40 feet and</p> <p>11 that might be a fire turnaround there?</p> <p>12 MS. CROSS: Correct.</p> <p>13 HEARING EXAMINER GROSSMAN: This is the bend</p> <p>14 already south of the subject site? Or this is --</p> <p>15 MS. CROSS: Yes, the main bend of Holly Grove</p> <p>16 Road.</p> <p>17 MR. HUGHES: Going to the private area road or the</p> <p>18 nonprivate?</p> <p>19 HEARING EXAMINER GROSSMAN: Well, wait. I thought</p> <p>20 that was referring to the other side.</p> <p>21 MR. HUGHES: Sorry, Mr. Grossman. I apologize.</p> <p>22 MS. CROSS: So they are a little bit jumpy here.</p> <p>23 So (a) is from the start.</p> <p>24 HEARING EXAMINER GROSSMAN: Right.</p> <p>25 MS. CROSS: (b) is approximately this 120 mark.</p>	<p>144</p> <p>1 MS. CROSS: Correct.</p> <p>2 HEARING EXAMINER GROSSMAN: I guess we would say</p> <p>3 south of the site. All right. And (e)?</p> <p>4 MR. HUGHES: It says at the bottom, area north of</p> <p>5 curve for Holly Grove Road at southwest corner of subject</p> <p>6 property. Is that correct? It's going up around the bend</p> <p>7 where it dead ends? Were Holly Grove dead ends?</p> <p>8 MS. CROSS: Correct.</p> <p>9 HEARING EXAMINER GROSSMAN: Okay. Okay. So it's</p> <p>10 Holly Grove Road west of subject site. Okay.</p> <p>11 MR. HUGHES: Ms. Cross, we talked earlier about</p> <p>12 the distance roughly from Norwood Road out to the bend of</p> <p>13 Holly Grove Road is about 1,600 feet or so. Is that your</p> <p>14 understanding?</p> <p>15 MS. CROSS: Yes.</p> <p>16 MR. HUGHES: So a little less -- a little over a</p> <p>17 third of a mile. And these five pictures we just talked</p> <p>18 about, if there is an occasion where there might be multiple</p> <p>19 cars coming, could these areas -- are you able to point out -</p> <p>20 - do these pictures serve as areas where there could be pull</p> <p>21 off areas?</p> <p>22 MS. CROSS: Yes, exactly. That is what these</p> <p>23 areas are trying to show is that there are multiple areas,</p> <p>24 spaces of paved, additional paved areas along Holly Grove</p> <p>25 where people can pull off.</p>

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<p>145</p> <p>1 MR. HUGHES: Is your understanding that, in the</p> <p>2 staff report they talked about that there are pull off areas</p> <p>3 if needed?</p> <p>4 MS. CROSS: They did. And they also mentioned the</p> <p>5 fact that the truck widths are about 8 feet. So that's still</p> <p>6 adequate amount of space along Holly Grove Road.</p> <p>7 MR. HUGHES: Thank you, Ms. Cross. Ms. Cross,</p> <p>8 could you talk a little bit about the requirements for a</p> <p>9 landscape contractor and if you could, criteria met in this</p> <p>10 application?</p> <p>11 MS. CROSS: Landscape contract requirements are</p> <p>12 found in 59-3.5.5 B. The property does meet all requirements</p> <p>13 of a landscape contractor, with the exception as I mentioned,</p> <p>14 the existing -- or the existing single-family house does --</p> <p>15 would not meet the setback requirements of 50 feet and would</p> <p>16 require a variance. The additional standards are that it be</p> <p>17 a minimum of 2 acres. This one is over 6 acres. The minimum</p> <p>18 50 feet I just mentioned, and then the prohibited sale of</p> <p>19 plant materials and garden supplies. There will be no sales</p> <p>20 on site for this use. And then the additional requirements</p> <p>21 may be determined by the Hearing Examiner.</p> <p>22 MR. HUGHES: Thank you. Ms. Cross, the Applicant</p> <p>23 was also asking for a variance related to the existing house.</p> <p>24 I think was built in 1989. Can you explain to us why the</p> <p>25 variance is needed?</p>	<p>147</p> <p>1 this situation, there is an extraordinary condition of the</p> <p>2 fact that the straight bends around. So there is an</p> <p>3 additional side setback. It is unusual to have the double</p> <p>4 facing --</p> <p>5 HEARING EXAMINER GROSSMAN: Well, let me stop you</p> <p>6 for second. As I read the criteria, the first one is denying</p> <p>7 the variance would result in no reasonable use of the</p> <p>8 property. Does it qualify for that?</p> <p>9 MS. CROSS: No.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay.</p> <p>11 MS. CROSS: However, there is an or.</p> <p>12 HEARING EXAMINER GROSSMAN: It's a disjunctive and</p> <p>13 the or -- or you could meet each of the following.</p> <p>14 MS. CROSS: And then A, finding one or more of the</p> <p>15 unusual or extraordinary situations or conditions and that</p> <p>16 this is -- it's an extraordinary condition or unusual in that</p> <p>17 the road does bend around the property. The house actually</p> <p>18 faces the side street that I guess what -- what did we decide</p> <p>19 to call that?</p> <p>20 MR. HUGHES: Local road. Let's call it a local</p> <p>21 road.</p> <p>22 MS. CROSS: Local Road.</p> <p>23 HEARING EXAMINER GROSSMAN: Well, I call it the</p> <p>24 West --</p> <p>25 MS. CROSS: West side --</p>
<p>146</p> <p>1 MS. CROSS: The variance is needed because the</p> <p>2 house was built under the requirements of RE2C and that the</p> <p>3 site setback, there is an additional requirement for a</p> <p>4 landscape contractor to have an even greater setback. And</p> <p>5 therefore, the house would not be in compliance.</p> <p>6 MR. HUGHES: And can you tell us in your</p> <p>7 professional opinion if it meets the criteria for a variance</p> <p>8 in this case? And then explain why?</p> <p>9 MS. CROSS: Sure. The standards of variance are</p> <p>10 found in 7.3.1 E for necessary findings.</p> <p>11 HEARING EXAMINER GROSSMAN: No, I don't think so.</p> <p>12 MR. HUGHES: 28?</p> <p>13 HEARING EXAMINER GROSSMAN: It's 7.3.2. 1 E is the</p> <p>14 conditional use.</p> <p>15 MS. CROSS: 1 E.</p> <p>16 HEARING EXAMINER GROSSMAN: 1 E is the conditional</p> <p>17 use.</p> <p>18 MS. CROSS: Sorry.</p> <p>19 MR. HUGHES: I think it's 2 E.</p> <p>20 MS. CROSS: I will go straight to the book. I</p> <p>21 will get my copies.</p> <p>22 HEARING EXAMINER GROSSMAN: It's 7.3.2 of the</p> <p>23 zoning ordinance is the variance.</p> <p>24 MS. CROSS: .2, sorry. Yes, E, necessary</p> <p>25 findings. Finding that one or more the following exists in</p>	<p>148</p> <p>1 HEARING EXAMINER GROSSMAN: Until I hear evidence</p> <p>2 to the contrary, that's the western segment of Holly Grove</p> <p>3 Road.</p> <p>4 MS. CROSS: And that it was an existing structure</p> <p>5 to begin with and only in the situation comes about because</p> <p>6 of the conditional use. B, the special circumstances or</p> <p>7 conditions are not the result or actions of the Applicant.</p> <p>8 The Applicant did not build the structure. It's been in</p> <p>9 existence before they purchased the property. The requested</p> <p>10 variance is the minimum necessary to overcome the practical</p> <p>11 difficulties. Yes, all we are asking for is that 9 plus foot</p> <p>12 setback, which is the minimum necessary to achieve the 50</p> <p>13 foot setback required by a landscape contractor. Where was</p> <p>14 I? D, the variance can be granted without substantial</p> <p>15 impairment to the intent and integrity of the general plan</p> <p>16 and applicable master plan. The master plan does not speak</p> <p>17 again to this particular site and therefore would be in</p> <p>18 compliance. Granting the variance will not be adverse to the</p> <p>19 use and enjoyment of abutting or confronting property owners.</p> <p>20 The house has been in existence for -- since I believe 1989,</p> <p>21 and would not be adverse to the enjoyment. It's an</p> <p>22 established building.</p> <p>23 HEARING EXAMINER GROSSMAN: Does it have any</p> <p>24 function in the landscape operation?</p> <p>25 MS. CROSS: And it has no function whatsoever in</p>

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<p>149</p> <p>1 the landscape contractor.</p> <p>2 HEARING EXAMINER GROSSMAN: Let me return to 2A</p> <p>3 for second. Which one of these exceptional conditions, or</p> <p>4 unusual or actual situations did you say apply to this? They</p> <p>5 are listed, I.</p> <p>6 MS. CROSS: Yes. Other extra ordinary conditions</p> <p>7 peculiar in the fact that it was an existing, approved. It</p> <p>8 has a two-sided street.</p> <p>9 HEARING EXAMINER GROSSMAN: Other existing</p> <p>10 conditions?</p> <p>11 MS. CROSS: (Inaudible).</p> <p>12 HEARING EXAMINER GROSSMAN: It has a list of --</p> <p>13 there is a list of five choices here. Which one of those</p> <p>14 five choices are you --</p> <p>15 MS. CROSS: One.</p> <p>16 HEARING EXAMINER GROSSMAN: Number one,</p> <p>17 exceptional narrowness, shallowness, shape, the topographical</p> <p>18 conditions or other extraordinary conditions --</p> <p>19 MS. CROSS: Other extraordinary conditions.</p> <p>20 HEARING EXAMINER GROSSMAN: And the extraordinary</p> <p>21 condition that you say is what?</p> <p>22 MS. CROSS: It fronts on the same road on both</p> <p>23 sides.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay.</p> <p>25 MS. CROSS: And it's a pre-existing building that</p>	<p>151</p> <p>1 MS. CROSS: Yes. It is my opinion that it meets</p> <p>2 the requirements.</p> <p>3 HEARING EXAMINER GROSSMAN: Okay.</p> <p>4 MR. HUGHES: Thank you. Ms. Cross, are there any</p> <p>5 other points or sections that you would like to talk about in</p> <p>6 your testimony?</p> <p>7 MS. CROSS: No, I believe we hit all of the</p> <p>8 points.</p> <p>9 MR. HUGHES: I hope so too. I believe I'm done</p> <p>10 with direct with Ms. Cross, Mr. Grossman.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. I have a</p> <p>12 couple of questions and I'm going to pose them to you, but</p> <p>13 then I'm going to let you think about it and we are going to</p> <p>14 break before we go any further on cross examination because</p> <p>15 I'm afraid it will run out of food in the cafeteria for you</p> <p>16 folks if we don't break at a reasonable time here.</p> <p>17 MR. HUGHES: Thank you.</p> <p>18 HEARING EXAMINER GROSSMAN: What I wanted to</p> <p>19 address is -- which I don't think has been addressed</p> <p>20 sufficiently yet, the concerns -- and some of the concerns</p> <p>21 raised by Ms. Thomas and others. Noise, air quality. You</p> <p>22 mentioned to some extent, compatibility, and property values,</p> <p>23 which you didn't touch on the impact on that. You did</p> <p>24 address imperviousness in the watershed, traffic and safety,</p> <p>25 and you addressed the master plan, course. Traffic and</p>
<p>150</p> <p>1 was built in compliance.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay, the pre-</p> <p>3 existing, I guess I understand. But why does the front on</p> <p>4 both sides have any bearing on whether or not there is a</p> <p>5 variance here or that's extraordinary?</p> <p>6 MS. CROSS: Well, I believe that it was built to</p> <p>7 the Western part of Holly Grove Road. The house actually</p> <p>8 faces that. So it was built closer to the -- that road.</p> <p>9 HEARING EXAMINER GROSSMAN: I understand.</p> <p>10 MS. CROSS: I don't know the history of the site,</p> <p>11 but as Mr. Norton testified, there is an additional entrance</p> <p>12 that's been gated off. Perhaps when it was originally</p> <p>13 planned, that was going to be the main entrance for the</p> <p>14 property.</p> <p>15 HEARING EXAMINER GROSSMAN: Right.</p> <p>16 MS. CROSS: And so therefore, it was probably</p> <p>17 built closer to the road thinking it would maintain the</p> <p>18 character of the neighborhood.</p> <p>19 HEARING EXAMINER GROSSMAN: One of the conditions</p> <p>20 I believe prohibits the use of that entrance as a --</p> <p>21 MS. CROSS: It does, yes. They no longer use it,</p> <p>22 but I'm wondering if that was the original intent.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay. All right. So</p> <p>24 in your opinion, this is application meet the requirements</p> <p>25 for a variance in the zoning ordinance 59-7.3.2</p>	<p>152</p> <p>1 safety will be addressed by Mr. Etemadi as I understand it.</p> <p>2 MS. THOMAS: Yes.</p> <p>3 HEARING EXAMINER GROSSMAN: But I would like to</p> <p>4 hear about noise, air quality impacts, and compatibility.</p> <p>5 But once again, I'm going to let you think about that. And</p> <p>6 let's come back. We will recess until 1:45 and resume then.</p> <p>7 I'm sorry; until 1:30. It is now 12:45. Let's just make it</p> <p>8 a 45 minute break.</p> <p>9 MR. HUGHES: Yes, sir. Thank you, Mr. Grossman.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. 1:30.</p> <p>11 (Off the record at 12:41:38 p.m.)</p> <p>12 (On the record at 1:36:09 p.m.)</p> <p>13 HEARING EXAMINER GROSSMAN: -- On the record.</p> <p>14 Okay Ms. Cross, I left you with a couple of questions;</p> <p>15 respond to concerns raised by the Opposition.</p> <p>16 MS. CROSS: Would you mind taking them again for</p> <p>17 me?</p> <p>18 HEARING EXAMINER GROSSMAN: All right. Sure.</p> <p>19 MS. CROSS: One by one.</p> <p>20 HEARING EXAMINER GROSSMAN: Noise, air quality --</p> <p>21 I will give you the list and I'll --</p> <p>22 MS. CROSS: Okay.</p> <p>23 HEARING EXAMINER GROSSMAN: Noise, air quality,</p> <p>24 compatibility, and property values.</p> <p>25 MS. CROSS: Okay.</p>

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<p>153</p> <p>1 HEARING EXAMINER GROSSMAN: Noise?</p> <p>2 MS. CROSS: Noise. I would say with regard to</p> <p>3 noise, that as I explained before, there are certain</p> <p>4 considerations of inherent characteristics of the landscape</p> <p>5 contractor. One of them is noise. I agree with the staff</p> <p>6 report on page 28 that talks about dust and noise associated</p> <p>7 with the movement of landscaping products and the loading and</p> <p>8 unloading of equipment associated with landscaping</p> <p>9 businesses. This is a small operation that has -- it is not</p> <p>10 composting mulch on the property. It is just picking up and</p> <p>11 deliver -- well, the mulch is being delivered, but it is</p> <p>12 loading and unloading of their landscape contracting supplies</p> <p>13 and equipment and then moving it off-site. So it's a very</p> <p>14 inherent part of their operation. Nothing excessive with</p> <p>15 regards with what they plan to do. So I would argue that</p> <p>16 it's considered an inherent adverse effect, but it's</p> <p>17 considered part of the natural operation of a landscape</p> <p>18 contracting business.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. CROSS: Air quality?</p> <p>21 HEARING EXAMINER GROSSMAN: Hold on one second.</p> <p>22 They are prohibited by one of the conditions or recommended</p> <p>23 conditions. It said no mulch manufacturing, composting, or</p> <p>24 retail sales. So I take it that -- shall be conducted on the</p> <p>25 site. I take it that the prohibition from -- is the mulch</p>	<p>155</p> <p>1 non-inherent aspects of air quality that this use would</p> <p>2 produce.</p> <p>3 HEARING EXAMINER GROSSMAN: I see one -- it says</p> <p>4 on the list of equipment, one chipper. If they are not going</p> <p>5 to be chipping, why do they need the chipper?</p> <p>6 MR. HUGHES: Mr. Grossman, if I -- sorry to</p> <p>7 interrupt.</p> <p>8 HEARING EXAMINER GROSSMAN: Yes, sir.</p> <p>9 MR. HUGHES: One of the family members can talk to</p> <p>10 that. But just to give you a little -- a chipper is one of</p> <p>11 the items that gets pulled behind the vehicles and usually</p> <p>12 will go out with them when they have to work and take trees</p> <p>13 down.</p> <p>14 HEARING EXAMINER GROSSMAN: I see.</p> <p>15 MS. CROSS: Off-site.</p> <p>16 MR. HUGHES: And that might clarify one of -- I'm</p> <p>17 jumping ahead a little bit. One of your points you asked</p> <p>18 about discrepancy in the number of trailers and in equipment.</p> <p>19 HEARING EXAMINER GROSSMAN: Right.</p> <p>20 MR. HUGHES: We might have miscommunicated with</p> <p>21 staff. Those are the items that go out on the road. We did</p> <p>22 all -- initially in my statement, we talked about the two</p> <p>23 skidders, or type of Bobcats that stay on site, which we are</p> <p>24 hopeful, if we're looking up to get approved, that those</p> <p>25 would be part of the operation. They don't go out on the</p>
<p>154</p> <p>1 manufacturing as distinguished from composting means they</p> <p>2 can't chop up --</p> <p>3 MS. CROSS: They are not chopping up. They have</p> <p>4 an additional supplier to which the owner I believe will</p> <p>5 testify a little bit more detail later. But again, one of</p> <p>6 the conditions was to limit that delivery time frame as well</p> <p>7 for the mulch.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. So, in your</p> <p>9 opinion, would noise produced by this operation be an</p> <p>10 inherent adverse affect on the -- or a non-inherent adverse</p> <p>11 effect?</p> <p>12 MS. CROSS: It is an inherent quality of a</p> <p>13 landscape contractor.</p> <p>14 HEARING EXAMINER GROSSMAN: All right. What about</p> <p>15 impacts on air quality?</p> <p>16 MS. CROSS: Well, with air quality, I feel like,</p> <p>17 again, there's no production on the site. So therefore,</p> <p>18 there would be no additional air quality impacts from</p> <p>19 shipping and other things like that. The application of the</p> <p>20 conditional use will actually improve the air quality, the</p> <p>21 dust in the air, because the parking area will be paved</p> <p>22 versus the stone dirt road that we have now. So as the</p> <p>23 trucks go up and down, it won't be disturbing all of the</p> <p>24 dust. So with the conditional use, the air quality will</p> <p>25 actually improve. And other than that, I don't see any other</p>	<p>156</p> <p>1 roads. So I think we miscommunicated with staff about that</p> <p>2 particular topic.</p> <p>3 HEARING EXAMINER GROSSMAN: You mean -- well, in</p> <p>4 your statement it said seven flatbed --</p> <p>5 MR. HUGHES: And we've agreed to six now, six</p> <p>6 trailers we have agreed to.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay. So you're</p> <p>8 knocking one of those down.</p> <p>9 MR. HUGHES: Yes, sir.</p> <p>10 HEARING EXAMINER GROSSMAN: And you said one crane</p> <p>11 truck and two Bobcats.</p> <p>12 MR. HUGHES: We do need the two bobcats. We</p> <p>13 agreed to staff -- one of the things we did for this original</p> <p>14 statement is we also reduced the number of overall trucks.</p> <p>15 We are able to live with 10 trucks.</p> <p>16 HEARING EXAMINER GROSSMAN: Well, the Bobcats</p> <p>17 should be included in staff's list. Is that what you're</p> <p>18 saying?</p> <p>19 MR. HUGHES: Yes, sir.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay. And the crane</p> <p>21 truck?</p> <p>22 MR. HUGHES: That was a -- when we came in with a</p> <p>23 slight expansion request. We have backed off now. We are</p> <p>24 going to stay with what we have now.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay.</p>

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<p>157</p> <p>1 MR. HUGHES: So that can come off. It has been</p> <p>2 described what the 10 trucks are. They are accurately</p> <p>3 described and we accept those conditions for those.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. So the only</p> <p>5 thing added to staff's list are two Bobcats?</p> <p>6 MR. HUGHES: Yes, sir. For on-site, staying on</p> <p>7 site.</p> <p>8 HEARING EXAMINER GROSSMAN: So, all right. That</p> <p>9 should be noted when the amended plans go back to staff for</p> <p>10 their review. It should be noted that there would be two</p> <p>11 Bobcats in addition to the things that are in the list.</p> <p>12 MR. HUGHES: Thank you.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. Did you</p> <p>14 finish that answer with air quality?</p> <p>15 MS. CROSS: I did with air quality. Now to</p> <p>16 compatibility.</p> <p>17 HEARING EXAMINER GROSSMAN: Well, compatibility</p> <p>18 and property values was what --</p> <p>19 MS. CROSS: As to compatibility, I feel like we</p> <p>20 mentioned that before about the additional buffering, the --</p> <p>21 aforestation around the property to make it blend in with the</p> <p>22 residential appearance of the neighborhood.</p> <p>23 HEARING EXAMINER GROSSMAN: Right.</p> <p>24 MS. CROSS: I have not done any research myself</p> <p>25 about property values and that's not my background. So I</p>	<p>159</p> <p>1 designate Holly Grove Road as predominantly used by local</p> <p>2 residents?</p> <p>3 MS. CROSS: It does.</p> <p>4 MS. THOMAS: Does the master plan designate Holly</p> <p>5 Grove Road as a narrow, 14 foot asphalt road with no</p> <p>6 shoulder?</p> <p>7 MS. CROSS: It does.</p> <p>8 MS. THOMAS: Is Holly Grove Road a dead end road</p> <p>9 at that -- south of Norwood Road?</p> <p>10 MS. CROSS: It does, yes, dead end.</p> <p>11 MS. THOMAS: And the residents who live on Awkard</p> <p>12 Lane need to use Holly Grove Road to get onto Norwood Road</p> <p>13 and out of the neighborhood?</p> <p>14 MS. CROSS: Awkard Lane is also a dead-end, yes.</p> <p>15 MS. THOMAS: Have you ever heard a Bobcat in use</p> <p>16 loading and unloading materials?</p> <p>17 MS. CROSS: Yes.</p> <p>18 MS. THOMAS: Have you ever seen mulch being loaded</p> <p>19 and unloaded from a trailer? First, have you ever seen mulch</p> <p>20 being unloaded from a trailer?</p> <p>21 MS. CROSS: Yes.</p> <p>22 MS. THOMAS: Have you ever seen mulch being loaded</p> <p>23 onto a truck?</p> <p>24 MS. CROSS: Yes.</p> <p>25 MS. THOMAS: Have you ever seen fumes in that</p>
<p>158</p> <p>1 can't speak to that. However, I would just add that</p> <p>2 conditional use is a legislatively approved use within each</p> <p>3 zone based on expert staff research and opinion as to what</p> <p>4 uses would be allowed in each zone. And it's a policy</p> <p>5 decision of the County to allow for landscape contractors</p> <p>6 within residential districts. And so it is considered a</p> <p>7 desirable use that if it meets the conditions of the master</p> <p>8 plan, which I discussed before it does, therefore it should</p> <p>9 be considered not to bring down residential property values.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. I'm not sure</p> <p>11 that really addresses that point, but I understand what</p> <p>12 you're saying.</p> <p>13 MS. CROSS: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. Let me open it</p> <p>15 up to cross-examination by Ms. Thomas.</p> <p>16 MS. THOMAS: Thank you. Ms. Cross, are you aware</p> <p>17 of the objectives? Are you familiar with the Cloverly Master</p> <p>18 Plan and its goals and objectives?</p> <p>19 MS. CROSS: Yes.</p> <p>20 MS. THOMAS: Would you say that one of the</p> <p>21 objectives of the Cloverly Master Plan is to reinforce the</p> <p>22 strength of residential areas and to enhance the quality of</p> <p>23 life in those residential areas?</p> <p>24 MS. CROSS: Yes.</p> <p>25 MS. THOMAS: Does the Cloverly Master Plan,</p>	<p>160</p> <p>1 process, from the mulch? Dust?</p> <p>2 MS. CROSS: I would say debris, not necessarily</p> <p>3 fumes.</p> <p>4 MS. THOMAS: Have you ever seen dust rising from</p> <p>5 the mulch in that process?</p> <p>6 MS. CROSS: To a -- yes.</p> <p>7 MS. THOMAS: You have. So would you conclude that</p> <p>8 the loading and unloading of mulch on this property would not</p> <p>9 produce dust?</p> <p>10 MS. CROSS: I'm not saying that there would be no</p> <p>11 dust produced. However, I am saying that it's considered an</p> <p>12 inherent use -- or an inherent quality of the landscape</p> <p>13 contractor to have a little bit of dust, a little bit of --</p> <p>14 with mulch, which is expected to be part of the landscape</p> <p>15 contracting business. I would also add that the mulch</p> <p>16 container on this property is right in the middle of the</p> <p>17 property, the central area, and therefore buffered around the</p> <p>18 whole -- from other residential abutting properties.</p> <p>19 MS. THOMAS: Would you acknowledge that the area</p> <p>20 of the property where the majority of the work is being</p> <p>21 handled is that the narrow end of that property? Do you</p> <p>22 notice that the property is elongated and that -- and I can</p> <p>23 actually point to the area. Would that help, Mr. Grossman,</p> <p>24 if I pointed to what I'm talking about?</p> <p>25 HEARING EXAMINER GROSSMAN: Sure.</p>

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<p>161</p> <p>1 MS. THOMAS: So this is the north end of the</p> <p>2 property. The southern end of the property is on, my</p> <p>3 understanding, where the garden is located. And this area,</p> <p>4 the northern part of the property is primarily where the</p> <p>5 landscaping operation would occur.</p> <p>6 MS. CROSS: Right in the middle almost, yes.</p> <p>7 MS. THOMAS: And in closer proximity to most of</p> <p>8 the homes as opposed to in this area?</p> <p>9 HEARING EXAMINER GROSSMAN: This area being the</p> <p>10 southern area.</p> <p>11 MS. CROSS: The southern part?</p> <p>12 MS. THOMAS: The southern area. Is that correct?</p> <p>13 MS. CROSS: Well, it would be close to the homes</p> <p>14 in the front if it was located close to the Holly Grove Road</p> <p>15 on the (inaudible).</p> <p>16 MS. THOMAS: Well, there is one home. I'm</p> <p>17 suggesting the majority of the homes. There is one home</p> <p>18 here. One home.</p> <p>19 HEARING EXAMINER GROSSMAN: And here being off the</p> <p>20 map grid?</p> <p>21 MS. THOMAS: And this is property. There are no</p> <p>22 homes here?</p> <p>23 MS. CROSS: Correct.</p> <p>24 HEARING EXAMINER GROSSMAN: You're talking about</p> <p>25 no homes across confronting Holly Grove --</p>	<p>163</p> <p>1 those were areas where, as someone unfamiliar with the</p> <p>2 neighborhood, would pull off to allow for a larger truck to</p> <p>3 come by or something to allow for little more space.</p> <p>4 MS. THOMAS: But thank you. I think you did just</p> <p>5 answer one of my questions. Are you familiar with the</p> <p>6 neighborhood?</p> <p>7 MS. CROSS: I have been to the site, yes.</p> <p>8 MS. THOMAS: How frequently have you been to the</p> <p>9 neighborhood?</p> <p>10 MS. CROSS: I have only been once.</p> <p>11 MS. THOMAS: Let me see. In terms of the</p> <p>12 residents and individuals who live in the community,</p> <p>13 individuals who may be interested in purchasing property in</p> <p>14 the community, do you -- is it your opinion that those</p> <p>15 individuals would be more concerned with aerial views of the</p> <p>16 land or actual frontage views of the property?</p> <p>17 MS. CROSS: As a planner, I look at both.</p> <p>18 MS. THOMAS: But what do --</p> <p>19 MS. CROSS: I would assume more people would drive</p> <p>20 down the road and be concerned with how it looked from the</p> <p>21 road.</p> <p>22 MS. THOMAS: Thank you. My last question is, you</p> <p>23 -- actually, my last two questions. You indicated that there</p> <p>24 are other consistent uses or compatible uses. In fact, you</p> <p>25 compared Meyer's Paving -- in looking at the footprint, would</p>
<p>162</p> <p>1 MS. THOMAS: Correct.</p> <p>2 HEARING EXAMINER GROSSMAN: Confronting the</p> <p>3 subject site across Holly Grove Road?</p> <p>4 MS. THOMAS: Correct.</p> <p>5 HEARING EXAMINER GROSSMAN: There is a religious</p> <p>6 social institution there, the Afghan --</p> <p>7 MS. THOMAS: Yes, which is actually located at the</p> <p>8 intersection of Norwood and Awkard Lane.</p> <p>9 HEARING EXAMINER GROSSMAN: They seem to own all</p> <p>10 that property all the way down there.</p> <p>11 MS. THOMAS: Yes.</p> <p>12 HEARING EXAMINER GROSSMAN: But the actual</p> <p>13 building, it looks like it's on Awkard.</p> <p>14 MS. THOMAS: That's correct. On this most recent</p> <p>15 road width map that was provided, and unfortunately, the</p> <p>16 audience doesn't have the ability to see that. But can you</p> <p>17 describe or tell me exactly what are these pull offs? And</p> <p>18 these pull offs are also mentioned on the staff report on</p> <p>19 page 7. The pull off -- there are some pull off areas. I</p> <p>20 would like to know what those pull off areas are. Can you</p> <p>21 tell me what they are as they are depicted on this photo?</p> <p>22 MS. CROSS: So I'm going to suggest that you ask</p> <p>23 that question to the traffic engineer as he comes forward.</p> <p>24 But I can say, as to driving there myself and having not been</p> <p>25 familiar with the neighborhood and using Google street maps,</p>	<p>164</p> <p>1 you think that those -- the footprint of the Francisco</p> <p>2 property as opposed -- in comparison to the footprint of the</p> <p>3 Meyer's property, do you find those -- that compatible?</p> <p>4 MS. CROSS: So Meyer's property was one of the</p> <p>5 properties that I would say has more impervious per square</p> <p>6 foot of property. So I've not done any calculations as to</p> <p>7 what the percentages of impervious on that property. The</p> <p>8 subject site is one of the largest lots out there. Well,</p> <p>9 parcels out there. So therefore, it's in ratio to the size</p> <p>10 of the parcel. You're going to have a bigger impervious</p> <p>11 space. But when compared to a smaller lot or parcel, I do</p> <p>12 feel like the percentages would be similar on the Meyer's</p> <p>13 site as well as at least three or four other properties in</p> <p>14 the neighborhood.</p> <p>15 MS. THOMAS: But you did not measure the</p> <p>16 imperviousness of -- so that's more of a guess on your part?</p> <p>17 MS. CROSS: That is a --</p> <p>18 MS. THOMAS: That's not accurate? You also</p> <p>19 mentioned that you observed other trucks on property. Did</p> <p>20 those other trucks, or do those of the properties have as</p> <p>21 many as 10 vehicles? As many as five commercial vehicles?</p> <p>22 MS. CROSS: So from the aerial, I cannot tell</p> <p>23 whether they are commercial or not commercial. However, they</p> <p>24 are the large size. From the aerials, it looks like yes,</p> <p>25 there are multiple properties with, I would say, at least</p>

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<p>165</p> <p>1 five trucks on site.</p> <p>2 MS. THOMAS: Can you identify where those sides</p> <p>3 are?</p> <p>4 MS. CROSS: I do not have an aerial in front of</p> <p>5 me. This would include Holly Grove Road and Awkard. I do</p> <p>6 have this map for an aerial with (inaudible).</p> <p>7 MR. HUGHES: The first area that -- I can do it on</p> <p>8 redirect. I don't think this is an evidence yet, Mr.</p> <p>9 Grossman, but I do have some further aerial that might help</p> <p>10 with this line of questioning.</p> <p>11 HEARING EXAMINER GROSSMAN: What was the question</p> <p>12 again, Ms. Thomas?</p> <p>13 MS. THOMAS: I was asking if she would identify</p> <p>14 the other properties in the neighborhood where she has</p> <p>15 observed five or more commercial vehicles.</p> <p>16 HEARING EXAMINER GROSSMAN: I see.</p> <p>17 MS. CROSS: It would be hard for me to identify.</p> <p>18 HEARING EXAMINER GROSSMAN: You can offer the map</p> <p>19 --</p> <p>20 MS. CROSS: The actual lot is what I was -- or the</p> <p>21 property address. I can just point to it.</p> <p>22 HEARING EXAMINER GROSSMAN: Right.</p> <p>23 MS. CROSS: So there is these trucks up here along</p> <p>24 --</p> <p>25 HEARING EXAMINER GROSSMAN: But I can't --</p>	<p>167</p> <p>1 then back here, along the southwest portion of Holly Grove</p> <p>2 Road, there is a large paved area back there. But I have not</p> <p>3 seen trucks in the historic aerials on that site, but it led</p> <p>4 me to believe that, to have that large of an impervious</p> <p>5 surface, is where you would do a lot of parking. You are</p> <p>6 probably have a lot of trucks there (inaudible) the day we</p> <p>7 took the aerial.</p> <p>8 MS. THOMAS: However, you did not observe a lot of</p> <p>9 trucks there?</p> <p>10 MS. CROSS: I did not.</p> <p>11 MS. THOMAS: So, thank you.</p> <p>12 HEARING EXAMINER GROSSMAN: All right. Any other</p> <p>13 cross-examination questions? Seeing none, any redirect?</p> <p>14 MR. REMEIN: From any -- from anybody or --</p> <p>15 UNIDENTIFIED SPEAKER: (Inaudible).</p> <p>16 HEARING EXAMINER GROSSMAN: All right. All right.</p> <p>17 UNIDENTIFIED SPEAKER: I have one.</p> <p>18 HEARING EXAMINER GROSSMAN: We will take Mr.</p> <p>19 Remein first.</p> <p>20 MR. REMEIN: Okay. On page 22 of the master plan,</p> <p>21 you cited the 10 to 15 percent impervious limitation. What</p> <p>22 do you think the master plan says 10 to 15? If you have a</p> <p>23 limit, you just describe one number.</p> <p>24 MS. CROSS: Probably to allow for range, though</p> <p>25 I'm not qualified to say.</p>
<p>166</p> <p>1 MS. THOMAS: I'm talking other than the Meyer's</p> <p>2 property.</p> <p>3 MS. CROSS: The Meyer's place. It was down here.</p> <p>4 HEARING EXAMINER GROSSMAN: Down here, that's to</p> <p>5 the --</p> <p>6 MS. CROSS: That would be the --</p> <p>7 HEARING EXAMINER GROSSMAN: Southeast or south of</p> <p>8 the property?</p> <p>9 MS. CROSS: Southeast along Awkard right here.</p> <p>10 HEARING EXAMINER GROSSMAN: Right.</p> <p>11 MS. THOMAS: That's one.</p> <p>12 MS. CROSS: There is -- across the street from</p> <p>13 Awkard, there is -- it's hard to tell within this square-ish</p> <p>14 paved plot. I don't know what the property numbers are.</p> <p>15 HEARING EXAMINER GROSSMAN: All right. That's</p> <p>16 north of Awkard.</p> <p>17 MS. THOMAS: That's two.</p> <p>18 MS. CROSS: I believe this was the other there.</p> <p>19 Though it's hard to tell with the aerial on the tree covers,</p> <p>20 but there seem to be a number of trucks back there.</p> <p>21 FEMALE VOICE: Excuse me. My I go over these?</p> <p>22 Because it looks like my property that you're pointing to.</p> <p>23 And that happens to be a stall, a horse stall.</p> <p>24 MS. CROSS: Okay. And they are not trucks, but</p> <p>25 impervious area would be up here in these driveways. And</p>	<p>168</p> <p>1 HEARING EXAMINER GROSSMAN: You're clearly calling</p> <p>2 for speculation unless you know why they --</p> <p>3 MS. CROSS: Do not know.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay.</p> <p>5 MR. REMEIN: Okay.</p> <p>6 HEARING EXAMINER GROSSMAN: Why do you think they</p> <p>7 --</p> <p>8 MR. REMEIN: Why do I know? Because I helped to</p> <p>9 write it.</p> <p>10 HEARING EXAMINER GROSSMAN: Oh, okay. Well, we</p> <p>11 will let you testify about that.</p> <p>12 MR. REMEIN: Okay. The clue is in the next</p> <p>13 sentence. But anyway, it says the -- if I can read that, it</p> <p>14 says, "the ultimate" --</p> <p>15 HEARING EXAMINER GROSSMAN: Well, what we wait</p> <p>16 until your testimony for you --</p> <p>17 MR. REMEIN: I'm not testifying. I'm asking a</p> <p>18 question.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. I thought you</p> <p>20 were going back to that statement.</p> <p>21 MR. REMEIN: It just says, "the ultimate watershed</p> <p>22 impervious level should remain in generally acceptable limits</p> <p>23 for the protection of cold water stream systems in Maryland."</p> <p>24 What is the impervious level for cold water stream systems in</p> <p>25 Maryland?</p>

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<p>169</p> <p>1 MS. CROSS: I would -- the way this is written, I</p> <p>2 actually do not know the answer to that. But it seems like a</p> <p>3 number of 10 to 15 was chosen because that is the amount</p> <p>4 required by Maryland.</p> <p>5 MR. REMEIN: Well, we'll have to wait until to my</p> <p>6 testimony to get the answer.</p> <p>7 HEARING EXAMINER GROSSMAN: Yes. Thank you. All</p> <p>8 right. Are you finished, sir?</p> <p>9 MR. REMEIN: Do you know -- do you -- have you</p> <p>10 looked at the watersheds that are in this property is part</p> <p>11 of?</p> <p>12 MS. CROSS: Yes I --</p> <p>13 MR. REMEIN: And how many watersheds is this</p> <p>14 property part of?</p> <p>15 MS. CROSS: This property seemed to have only go</p> <p>16 on the one. Not a branch.</p> <p>17 MR. REMEIN: Okay. And what is the primary source</p> <p>18 of imperviousness in this watershed?</p> <p>19 MS. CROSS: I do not know.</p> <p>20 MR. REMEIN: Okay. Thank you.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. Ma'am, you</p> <p>22 said you had questions. Could you state your name? Why</p> <p>23 don't you come forward and sit in this chair up here?</p> <p>24 MS. HEMINGWAY: Well, I would like to tell you I</p> <p>25 will be testifying later, but part of what I would like to</p>	<p>171</p> <p>1 MS. CROSS: Yes, ma'am.</p> <p>2 MS. HEMINGWAY: Would you like to look at the</p> <p>3 definition for lot line front? Or do you know it offhand?</p> <p>4 MS. CROSS: I don't.</p> <p>5 MS. HEMINGWAY: Have a look.</p> <p>6 MS. CROSS: Okay. A lot line abutting a right-of-</p> <p>7 way or common open space on a corner lot, the owner must</p> <p>8 elect which lot line is the front line.</p> <p>9 MS. HEMINGWAY: All right. Okay. Just lot line</p> <p>10 front is good enough. Okay. You mentioned in your testimony</p> <p>11 regarding the variance that it fronted on two spots; I don't</p> <p>12 recall them both. You implied, or thought I understood you</p> <p>13 to say, you're just calling them both lot line front.</p> <p>14 MS. CROSS: Well, there is a front lot line and a</p> <p>15 side street lot line.</p> <p>16 MS. HEMINGWAY: Okay, but that's not the words</p> <p>17 that you used.</p> <p>18 MS. CROSS: Okay. I apologize. What the -- Holly</p> <p>19 Grove Road, to the south, is the frontage. The Holly Grove</p> <p>20 Road to the west is the side street.</p> <p>21 MS. HEMINGWAY: Okay.</p> <p>22 HEARING EXAMINER GROSSMAN: Ms. Hemingway, I just</p> <p>23 don't understand where you are going.</p> <p>24 MS. HEMINGWAY: Okay.</p> <p>25 HEARING EXAMINER GROSSMAN: What -- why does that</p>
<p>170</p> <p>1 ask about does involve my testimony. How will that work?</p> <p>2 HEARING EXAMINER GROSSMAN: Well, here is the</p> <p>3 opportunity to ask a question, not to testify. But you are</p> <p>4 welcome to ask a cross-examination question based on her</p> <p>5 direct. Or you can wait and give your own testimony, or</p> <p>6 both.</p> <p>7 MS. HEMINGWAY: I will ask a question.</p> <p>8 HEARING EXAMINER GROSSMAN: All right, ma'am.</p> <p>9 First state your full name and address for the record.</p> <p>10 MS. HEMINGWAY: Mary Hemingway, 718 Snider Lane,</p> <p>11 Silver Spring, Maryland 20905.</p> <p>12 HEARING EXAMINER GROSSMAN: All right, ma'am. You</p> <p>13 can have a seat. And did I -- I don't recall swearing you</p> <p>14 in. I might --</p> <p>15 MS. HEMINGWAY: You did not.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. Would you raise</p> <p>17 your right hand please? Do you swear or affirm to tell the</p> <p>18 truth, the whole truth, and nothing but the truth under</p> <p>19 penalty of perjury?</p> <p>20 MS. HEMINGWAY: I do.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay. So when you</p> <p>22 testify, you are already sworn in.</p> <p>23 MS. HEMINGWAY: Thank you. Okay. Are you</p> <p>24 familiar with section 59-1 that gives the definitions to be</p> <p>25 used in the zoning code?</p>	<p>172</p> <p>1 -- you don't have to stand up. Just let me --</p> <p>2 MS. HEMINGWAY: Will actually, Ms. Thomson, I</p> <p>3 would like to have those maps. And if you would --</p> <p>4 HEARING EXAMINER GROSSMAN: I'm just trying to</p> <p>5 understand why this distinction makes a difference to you.</p> <p>6 MS. HEMINGWAY: Well, because part of the</p> <p>7 reasoning for the variance, a part of the explanation as to</p> <p>8 why the variance should be granted, is that it is on the --</p> <p>9 it fronts on two lot lines. That's the way it is worded. So</p> <p>10 if you go with the definition of lot line front, which was</p> <p>11 her implication, Ms. Cross's implication in her earlier</p> <p>12 testimony, then I'm bringing up the definition along with</p> <p>13 some maps that have been printed from the State Department of</p> <p>14 Taxation for Maryland, showing that -- I can distribute these</p> <p>15 -- showing that Holly Brook Road only fronts on two houses on</p> <p>16 the west side.</p> <p>17 HEARING EXAMINER GROSSMAN: Right. I mean, it may</p> <p>18 not -- it may have once fronted there and no longer, but I</p> <p>19 don't think that was central point that she was making. If I</p> <p>20 understood her testimony, her point was that it is unusual if</p> <p>21 -- the variance question asks if there are extraordinary</p> <p>22 conditions peculiar to it. And it is peculiar to have one</p> <p>23 tree, Holly Grove Road in this case, winding around and there</p> <p>24 being instances at least at one point on both sides on the</p> <p>25 same street. It's unusual is what she was saying. I don't</p>

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<p>173</p> <p>1 think this is a great significance to me on this issue of the 2 variance. I'm not sure why it would be of great significance 3 to you. 4 MS. HEMINGWAY: It was -- 5 HEARING EXAMINER GROSSMAN: And that's what I'm 6 trying to find out. 7 MS. HEMINGWAY: It was written in the Planning 8 Board staff report as a rationale for the variance. 9 HEARING EXAMINER GROSSMAN: Okay. And you think 10 that -- I take it you think the variance should not be 11 granted because you don't agree with that rationale; that is 12 not really a definition, only a frontage. Is that what you 13 mean? 14 MS. HEMINGWAY: I feel that it's not accurate. 15 HEARING EXAMINER GROSSMAN: All right. Let's say 16 we forget about whether it's a frontage or not, but it's just 17 one street that is on both sides, two sides of one property. 18 Would you consider that to be unusual? 19 MS. HEMINGWAY: The same named street on two sides 20 of one property? 21 HEARING EXAMINER GROSSMAN: Yeah. 22 MS. HEMINGWAY: I really don't know. 23 HEARING EXAMINER GROSSMAN: I think that was the 24 point that they were making, that it was the same named 25 street on two sides of one property and that was unusual. So</p>	<p>175</p> <p>1 Holly Grove Road for purposes of mail delivery. This also is 2 from the ESDAT. And it shows -- may I bring it? 3 HEARING EXAMINER GROSSMAN: Sure. Sure. 4 MS. HEMINGWAY: And I will have one for you also. 5 HEARING EXAMINER GROSSMAN: Be careful (inaudible) 6 if it requires two. Thank you. I'm going to have this 7 marked. This will be Exhibit 84. 8 (Exhibit 84 marked for identification) 9 MR. HUGHES: Thank you. Mr. Grossman, would it be 10 inappropriate to ask -- to whisper something in Ms. Cross's 11 ear real quick? 12 HEARING EXAMINER GROSSMAN: Don't do that. 13 MR. HUGHES: Okay. 14 HEARING EXAMINER GROSSMAN: Not a good -- 15 MR. HUGHES: I understand. 16 HEARING EXAMINER GROSSMAN: -- plan to talk to a 17 witness on the stand off the record. 18 MR. HUGHES: Yeah, she is still going. You're 19 right. I'm sorry. Yeah. 20 HEARING EXAMINER GROSSMAN: And this is ESDAT -- I 21 guess of it, it a diagram, a map of the site and area. All 22 right. 23 MS. HEMINGWAY: I also have this. That was blown 24 up so that you could see -- oh, I should give you one. 25 MS. CROSS: Just peeking over his shoulder.</p>
<p>174</p> <p>1 they threw it into that category of a peculiar situation, 2 which is one of the categories they ask about in satisfying 3 the variance. Whether you call it a frontage or not, to me, 4 that's not critical in this question. The question of the 5 variance is -- one of the questions they asked in the 6 variance was whether this was unusual. 7 MS. HEMINGWAY: Well, this is for you, Mr. 8 Grossman. You mentioned that you didn't know what to call 9 the west side. 10 HEARING EXAMINER GROSSMAN: Right. Well, I call 11 that Holly Grove Road because when I looked up -- I actually 12 went to ESDAT, the tax authority, and looked up what Meyer's 13 concrete or pavement was called in terms of an address. And 14 it was an address on Holly Grove Road. Since it was all the 15 way at the end there, the far end of Holly Grove Road after 16 the turn, I said, well, that some evidence. And the Google 17 maps seemed to refer to it as Holly Grove Road. But I would 18 be interested if you have other evidence that is not Holly 19 Grove Road. I guess I just -- to me, that doesn't make a 20 difference as far as I can say so far from the evidence as to 21 whether it should be granted or not. But I just want to 22 refer to it as whatever it is, accurately. And I haven't 23 seen anything that tells me it shouldn't be called Holly 24 Grove Road. 25 MS. HEMINGWAY: From what I can tell, it is called</p>	<p>176</p> <p>1 HEARING EXAMINER GROSSMAN: All right, this is -- 2 MS. HEMINGWAY: This is blown up so you can see 3 that three of the properties on the road where the Meyer's 4 property is, do not go right up against the lot line 5 (inaudible) and that you can see that P47 and P101 all have 6 Holly Grove Road in front of them. So according to this 7 ESDAT site, all -- yes, there is a road there, but it's on 8 private property. 9 HEARING EXAMINER GROSSMAN: So you are saying the 10 very end of the road is on private property? Or are you 11 saying -- well, let's put it this way. Does it make a 12 difference to my decision here as to whether or not it's a 13 private road or should -- is there any reason I shouldn't 14 refer to this as Holly Grove Road extended or west, if you 15 want, west of the site? 16 MS. HEMINGWAY: For the purposes of your decision 17 on the conditional use, the answer is, it doesn't make any 18 difference. 19 HEARING EXAMINER GROSSMAN: Okay. Thank you. 20 Then I don't think we have to explore it any further then. 21 MS. HEMINGWAY: For the variance, I feel that it 22 does make a difference. 23 HEARING EXAMINER GROSSMAN: Okay. Then it would 24 make a difference. I have to make a recommendation on the 25 variance.</p>

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<p>177</p> <p>1 MS. HEMINGWAY: Oh, okay.</p> <p>2 HEARING EXAMINER GROSSMAN: So tell me why it</p> <p>3 would make a difference on the variance.</p> <p>4 MS. HEMINGWAY: Could you wait until my testimony?</p> <p>5 HEARING EXAMINER GROSSMAN: Sure.</p> <p>6 MS. HEMINGWAY: Okay.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. Are you</p> <p>8 finished questioning this witness then?</p> <p>9 MS. HEMINGWAY: Yes, thank you.</p> <p>10 HEARING EXAMINER GROSSMAN: All right. Thank you.</p> <p>11 All right. I'm seeing no other hands. Is there any redirect</p> <p>12 of this witness?</p> <p>13 MR. HUGHES: Just very quickly.</p> <p>14 HEARING EXAMINER GROSSMAN: Be careful of the</p> <p>15 water there.</p> <p>16 MR. HUGHES: Ms. Cross, you testified about</p> <p>17 compatibility a few moments ago. How would you describe the</p> <p>18 structures on site and some of the other items on site as far</p> <p>19 as compatibility with the area?</p> <p>20 HEARING EXAMINER GROSSMAN: So there are really</p> <p>21 only three structures on site. One is a single family home,</p> <p>22 existing building. It says it's approximately 1,250 square</p> <p>23 feet, which meets -- it's similar in structure and the type</p> <p>24 of other houses that you find in the neighborhood. In the</p> <p>25 other two buildings are sheds, which again, you would find</p>	<p>179</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Mr.</p> <p>2 Etemadi, would you please state your full name and work</p> <p>3 address, please?</p> <p>4 MR. ETEMADI: My name is Shahriar Etemadi. My</p> <p>5 address is 6449 Red Keel; K-E-E-L; Columbia, Maryland 21044.</p> <p>6 HEARING EXAMINER GROSSMAN: Would you raise your</p> <p>7 right hand, please? Do you swear or affirm to tell the</p> <p>8 truth, the whole truth, and nothing but the truth under</p> <p>9 penalty of perjury?</p> <p>10 MR. ETEMADI: I do.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>12 proceed.</p> <p>13 MR. HUGHES: Thank you. Mr. Etemadi, can you tell</p> <p>14 us a little bit about your professional and educational</p> <p>15 backgrounds?</p> <p>16 MR. HUGHES: I have a master's degree in community</p> <p>17 resource planning, specializing in transportation and</p> <p>18 engineering. And I have more than 30 years of experience in</p> <p>19 planning and transportation and traffic engineering.</p> <p>20 MR. HUGHES: Okay. Have you ever been accepted as</p> <p>21 an expert witness in transportation planning or traffic</p> <p>22 engineering before this body?</p> <p>23 MR. ETEMADI: Yes.</p> <p>24 MR. HUGHES: Have you -- has that occurred more</p> <p>25 than one occasion?</p>
<p>178</p> <p>1 many of the sheds on properties in the neighborhood. There</p> <p>2 are no new buildings proposed for this application.</p> <p>3 MR. HUGHES: Thank you. Also, there was some</p> <p>4 discussion about the center of the property where the</p> <p>5 operations are and distances to offsite properties. Is that</p> <p>6 something that, on the plans that have been submitted, can be</p> <p>7 scaled off just to be noted what the distances are to</p> <p>8 properties and the houses?</p> <p>9 MS. CROSS: Yes, I'm going to -- these are Mr.</p> <p>10 Norton's plans.</p> <p>11 MR. HUGHES: And I'm not going to ask you to scale</p> <p>12 them right now. But I just --</p> <p>13 MS. CROSS: They are all the scale. And in fact,</p> <p>14 he even provides, on the conditional use plan, a dimensioning</p> <p>15 plan to show the distance from those buildings to the</p> <p>16 property lines. And with a slight adjustment, you can get to</p> <p>17 the center of the paved area where the crux of the operation</p> <p>18 will take place.</p> <p>19 MR. HUGHES: Thank you. Those are my questions,</p> <p>20 Mr. Grossman.</p> <p>21 HEARING EXAMINER GROSSMAN: Any recross just as to</p> <p>22 the questions that were asked on redirect? Thank you, very</p> <p>23 much. All right. Your next witness, Mr. Hughes.</p> <p>24 MR. HUGHES: Yes, sir. I would call Mr. Shahriar</p> <p>25 Etemadi.</p>	<p>180</p> <p>1 MR. ETEMADI: Yes.</p> <p>2 MR. HUGHES: I would like to show you a document</p> <p>3 and give a copy to Ms. Thomas and to Director Grossman, and</p> <p>4 ask you if you can identify this document. It does have a</p> <p>5 front and a back. I was just trying to save papers.</p> <p>6 HEARING EXAMINER GROSSMAN: Yeah.</p> <p>7 MR. HUGHES: I should do that on more items, but</p> <p>8 this won't --</p> <p>9 MR. ETEMADI: This is my resume.</p> <p>10 MR. HUGHES: Thank you. Is that 84, Mr. Grossman?</p> <p>11 HEARING EXAMINER GROSSMAN: I was just looking to</p> <p>12 see if you previously submitted --</p> <p>13 MR. HUGHES: It was. It is in our prehearing</p> <p>14 statement.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay.</p> <p>16 MR. HUGHES: So I guess we don't --</p> <p>17 HEARING EXAMINER GROSSMAN: Yeah, we don't have to</p> <p>18 have new --</p> <p>19 MR. HUGHES: We have enough already, right?</p> <p>20 HEARING EXAMINER GROSSMAN: Right.</p> <p>21 MR. HUGHES: What exhibit number was it in the</p> <p>22 pre-hearing statement?</p> <p>23 MR. HUGHES: It's --</p> <p>24 HEARING EXAMINER GROSSMAN: Resume of -- it's</p> <p>25 37(g).</p>

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<p>181</p> <p>1 MR. HUGHES: Yes, thank you. Director Grossman, I 2 would like to offer Mr. Etemadi as an expert in 3 transportation planning and traffic engineering. 4 HEARING EXAMINER GROSSMAN: Okay. Any questions, 5 Ms. Thomas, regarding this witness' qualifications? 6 MS. THOMAS: No. 7 HEARING EXAMINER GROSSMAN: Okay. Yeah. Based on 8 Mr. Etemadi's educational background and experience, his 9 resume, Exhibit 37(g), and his prior testimony as an expert 10 before this body in transportation planning and traffic 11 engineering, I accept him as an expert in those fields. 12 MR. HUGHES: Thank you. Mr. Etemadi, in 13 preparation for this day, is it correct that you prepared a 14 report dated 8/31/18 and then an updated report of 11/26/18, 15 and also a response letter dated 11/26 that were submitted as 16 part of our prehearing statement at 37(a)? 17 MR. ETEMADI: Yeah. Yes. 18 HEARING EXAMINER GROSSMAN: I think 37(b) is the 19 response. 20 MR. HUGHES: Yeah (a) and (b), I apologize. 21 HEARING EXAMINER GROSSMAN: And (a) is the traffic 22 statements. 23 MR. HUGHES: Statements. 24 HEARING EXAMINER GROSSMAN: And the amended 25 traffic statements.</p>	<p>183</p> <p>1 going to say from now on is based on those adjusted trip 2 generation for 15 employees versus 19. So I have a few 3 comments and statements and then conclusion and findings for 4 you here today. This application basically doesn't generate 5 any trips at all, because it's only going to have 15 6 employees on-site. 7 HEARING EXAMINER GROSSMAN: It doesn't generate 8 new trips? 9 MR. ETEMADI: New trips, sorry. 10 HEARING EXAMINER GROSSMAN: It does generate 11 trips? 12 MR. ETEMADI: It does, yes. Correct. According 13 to the planning staff and their research, there has been no 14 accident on Holly Grove Road for the past 10 years. 15 Therefore, I can conclude that the road can be safe and 16 efficiently accommodating the few trips that generated by the 17 homes in the area as well as the landscape business here. 18 Almost all of the trips that are being generated currently 19 from the landscape business is outside of the peak hours. 20 There are a few that could probably fall into peak hours. 21 And that means their trips do not coincide with the trips 22 that will be on the road from other homes and other 23 businesses. I would like to put in perspective the number of 24 trips that are being generated from this business. 25 Conservatively, on average, about one trip is on the road</p>
<p>182</p> <p>1 MR. HUGHES: Okay. Thank you. Regarding your 2 traffic statement and your revised traffic statement, can you 3 tell us about it and some of your conclusions? 4 MR. ETEMADI: Yes. The original report that we 5 submitted to the planning department was dated August 14, 6 2018, which was a traffic statement. 7 HEARING EXAMINER GROSSMAN: It's actually -- oh, I 8 see; August 14. There's a (inaudible) that says August 21. 9 MR. ETEMADI: Correct. And that is in order to 10 show that this application is not subject to transportation, 11 adequate public facilities. The ordinance is we had to 12 submit these traffic statement to show that this application 13 does not generate enough traffic to have a complete traffic 14 study and be tested for APF. At that time in this statement, 15 August 14, 2018, we assumed trip generation based on 14 16 employees. Since then, the Applicant has been conditioned to 17 limit the number of employees to 15. 18 HEARING EXAMINER GROSSMAN: You actually wrote 19 down -- you wrote down 19. Originally it was 19. 20 MR. ETEMADI: 19. I'm sorry, yes. Yes, correct. 21 HEARING EXAMINER GROSSMAN: That's on page 4. 22 MR. ETEMADI: Correct. My apologies. And now 23 they have been conditioned to limit the number of employees 24 on-site to 15. So we have adjusted the numbers, the trip 25 numbers, from that original traffic statement. So what I'm</p>	<p>184</p> <p>1 every 5-1/2 minutes in the morning peak hour, not even the 2 peak hours, outside of the peak hours because they come to 3 work at 6:00 and they leave by 7:00 which is outside. But 4 that would be 5-1/2 minutes before one car from this business 5 gets on the road. In the evening, because the time period 6 coming in and out of the site is about two hours, that will 7 be one car every 13 minutes on Holly Grove Road. So what 8 that tells me is that there is very little chance that some 9 of these trips will be passing other trips in the road during 10 those hours. So on a couple of occasions that I have been at 11 the site, I have looked at the grass area, if we're going to 12 -- if we want to call it shoulder, to the road; I have never 13 seen any tire tracks on those grasses, telling me that 14 basically no car is really passing each other, that one of 15 them be forced to go on the shoulder in order for the other 16 one to pass. We have measured the width of the road from -- 17 I think we have a map here. And Ms. Cross has really put it 18 together for us. I appreciate it. 19 MR. HUGHES: This is 82, Mr. Grossman. 20 MR. ETEMADI: Correct. So at the intersection of 21 Norwood, we have about 24 feet wide and that provides for 22 cars to safely and efficiently get on or off of Holly Grove 23 Road. And then it changes to 16, about 120 feet south. That 24 would be south of Norwood. Am I correct? 25 MR. HUGHES: Yes.</p>

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<p>185</p> <p>1 MR. ETEMADI: That would be West.</p> <p>2 MR. HUGHES: Southwest, maybe?</p> <p>3 MR. ETEMADI: Southwest. And then as you continue</p> <p>4 going down the road, it will change to 14 to 18. It just</p> <p>5 keeps changing, the width of the road. And then, this is the</p> <p>6 subject of what we discussed before, I think, regarding the</p> <p>7 location of the pavement with -- at the bend of the road.</p> <p>8 There we have about 14 feet of pavement width for the road</p> <p>9 itself. And then when Montgomery County Department of</p> <p>10 Transportation paved the road, they created an area there for</p> <p>11 trucks and emergency vehicles to be able to turn around</p> <p>12 easily. So that additional pavement that they have put there</p> <p>13 and is attached to the pavement of the road itself, it comes</p> <p>14 to about 40 feet wide. And then, in addition to that, there</p> <p>15 are some graveled areas surrounding the pavement area, which</p> <p>16 provides additional space for the trucks and emergency</p> <p>17 vehicles to turn around. The speed on the road is 25 mph. I</p> <p>18 basically talked about the accidents that they have not --</p> <p>19 there has not been an accident for 10 years. There are</p> <p>20 sufficient and safe site distance for the site access as well</p> <p>21 as every other access points to the road. Basically, because</p> <p>22 the road is very straight and is very flat, except for the</p> <p>23 bend. And then at the bend, because it is a sharp curve, I</p> <p>24 don't think that the cars or trucks can go more than 10 or 15</p> <p>25 mph to navigate that bend, that curvature. And therefore --</p>	<p>187</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>2 Other questions?</p> <p>3 MR. HUGHES: Thank you, yes. I have a few</p> <p>4 questions. You are familiar with the staff reports that have</p> <p>5 been written on this?</p> <p>6 MR. ETEMADI: Yes.</p> <p>7 MR. HUGHES: Okay. Staff report case 26, it says</p> <p>8 staff noted that, "site distance is excellent along this very</p> <p>9 flat and straight route section." Do you concur with that?</p> <p>10 MR. ETEMADI: Yes.</p> <p>11 MR. HUGHES: Okay. It also noted in staff report</p> <p>12 2, page 7, it said, "site distance is clear and straight</p> <p>13 between Norwood Road and the entrance to the subject</p> <p>14 property, which is a stretch of approximately 1,400 feet with</p> <p>15 varying width ranging from 24 to 14 feet." Is that</p> <p>16 consistent with your information?</p> <p>17 MR. ETEMADI: Yes, correct.</p> <p>18 MR. HUGHES: And staff report 2 also said, on page</p> <p>19 7, "there are some pull off areas and some widened driveway</p> <p>20 accesses that serve as pull offs if need arises." Does that</p> <p>21 -- do you concur with that?</p> <p>22 MR. ETEMADI: Yes.</p> <p>23 HEARING EXAMINER GROSSMAN: And staff report 2 you</p> <p>24 are referring to is the supplemental staff report, which is</p> <p>25 Exhibit 56?</p>
<p>186</p> <p>1 and when you're coming to that, the road curvature, you</p> <p>2 actually have a very good site distance to see if the car is</p> <p>3 coming from the opposite side.</p> <p>4 HEARING EXAMINER GROSSMAN: So you mean if you're</p> <p>5 coming out of the extended western portion of Holly Grove</p> <p>6 Road, because you have to -- trucks or whatever, would have</p> <p>7 to slow down making that hard turn to the left, they would</p> <p>8 have sufficient site distance to see trucks or whatever</p> <p>9 coming out of the driveway?</p> <p>10 MR. ETEMADI: Yes, correct. Correct. And as I</p> <p>11 said, there has been no accident on this road for the past 10</p> <p>12 years. I don't know if there has been any before that, but</p> <p>13 there is no indication or record of accidents. So based on</p> <p>14 these statements that I have made, I have concluded that this</p> <p>15 road provides for a safe and efficient operation of traffic</p> <p>16 on the road. And this application is not really adversely</p> <p>17 impacting the transportation system here.</p> <p>18 HEARING EXAMINER GROSSMAN: What about on-site</p> <p>19 access and circulation are smart is that safe and efficient?</p> <p>20 MR. ETEMADI: Absolutely. There is an area where</p> <p>21 the emergency trucks can use the paved area as a T to make a</p> <p>22 turn. Mr. Norton can you point to it please?</p> <p>23 MR. NORTON: Yes.</p> <p>24 MR. ETEMADI: So you can -- and then the parking</p> <p>25 is safe, easy to get in and out of the site.</p>	<p>188</p> <p>1 MR. HUGHES: Yes. Thank you, Mr. Grossman. And</p> <p>2 in initial staff report, staff report 1 --</p> <p>3 HEARING EXAMINER GROSSMAN: That's Exhibit 40.</p> <p>4 MR. HUGHES: Exhibit 40. Page 28, they noted,</p> <p>5 "there is no accident data or report of another incident that</p> <p>6 brings to question the safety of the road due to the</p> <p>7 operation of the landscape contractor business using an</p> <p>8 adjoining local road." Is that something you concur with?</p> <p>9 MR. ETEMADI: Correct, yes.</p> <p>10 MR. HUGHES: Okay. Staff report item 40, page 8,</p> <p>11 wrote, "proposed hours of operation are such that vehicles</p> <p>12 come" -- "that vehicles from the contractor's business leave</p> <p>13 the property long before the pickup time of school buses and</p> <p>14 return to property several hours after drop off time for</p> <p>15 school buses." Is that consistent with your understanding?</p> <p>16 MR. ETEMADI: Yes.</p> <p>17 MR. HUGHES: And the last one; again, 40, staff</p> <p>18 report page 7. It says, "given the crash data, which</p> <p>19 indicates no report" -- "reported incidents in the past</p> <p>20 decade, the contractor business current level of operation</p> <p>21 added to the traffic generated by other business in the area</p> <p>22 doesn't appear to cause any increase of negative impact on</p> <p>23 the safety of the residents in the area." Is that what you</p> <p>24 agree with in your professional opinion?</p> <p>25 MR. ETEMADI: Yes.</p>

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<p>189</p> <p>1 MR. HUGHES: Okay. Thank you. Those are my 2 questions for the witness, Mr. Grossman. 3 HEARING EXAMINER GROSSMAN: Okay. Ms. Thomas, 4 questions on the issue? 5 MS. THOMAS: Yes. Mr. Madi. 6 HEARING EXAMINER GROSSMAN: Etemadi. 7 MS. THOMAS: The reports that you provided in 8 August of 2018 and November of 2018 -- 9 MR. ETEMADI: Yes. 10 MS. THOMAS: For each of those reports, what was 11 the period of time or the weeks or months that you actually 12 observed the traffic that led up to those reports? 13 MR. ETEMADI: Actually, I -- on one occasion I 14 have been to the site in August before I wrote my first -- 15 and then on the second occasion, I honestly don't remember 16 the date, but it would've been some time in fall. 17 MS. THOMAS: In the fall. Okay, thank you. So 18 you actually visited twice? 19 MR. ETEMADI: Yes. 20 MS. THOMAS: You observed the traffic on two 21 occasions? 22 MR. ETEMADI: Yes. Yes. 23 MS. THOMAS: And so when doing that August visit, 24 schools were not in session. Is that correct? 25 MR. ETEMADI: I don't --</p>	<p>191</p> <p>1 MR. ETEMADI: Correct. Actually, it's called the 2 reported accidents. And how they define that in traffic in 3 general is if the cars can leave the scene of the accidents 4 without any problem, mechanical problem or injuries or any 5 issues like that, then it's not called the reported 6 accidents. 7 MS. THOMAS: Correct, okay. Thank you. 8 MR. ETEMADI: So what we are talking about here 9 are reported accidents, meaning accidents that had caused 10 mechanical damage to the car or injuries, or anything like 11 that. 12 MS. THOMAS: So you can't speak to accidents 13 otherwise that may have just involved minor damage? 14 MR. ETEMADI: There is no -- 15 MS. THOMAS: Or taking down of someone's mailbox, 16 for example. 17 MR. ETEMADI: There is no record of that. 18 MS. THOMAS: Thank you. Did you interview any 19 other residents of the community to find out what -- how many 20 vehicles there are per household? What traffic work 21 schedules are? When folks do actually leave and engage in 22 their activity? Whether it's work or doctor appointments or 23 shopping? Did you look at any of that? 24 MR. ETEMADI: No, I did not interview anybody. 25 However, for the purpose of calculating two generations, we</p>
<p>190</p> <p>1 MS. THOMAS: And so you would not have been able 2 to observe children? 3 MR. ETEMADI: Correct, I agree. 4 MS. THOMAS: And then the November period of time 5 -- so obviously, you don't recall the day, but is it possible 6 to consider that it would've been less likely for leisure 7 activity in the fall as opposed to spring and summer when 8 more folks are walking and riding bikes and engaging? Is 9 that a reasonable conclusion? 10 MR. ETEMADI: Yes, it could be. 11 MS. THOMAS: Thank you. In looking at the school 12 data, I did see the reports that included the bells when the 13 schools open and close. 14 MR. ETEMADI: Yes. 15 MS. THOMAS: And that was considered. Did you 16 also look at the actual school bus schedules to determine 17 when the school buses pick up the children and drop them off? 18 MR. ETEMADI: I personally haven't. 19 MS. THOMAS: You have not. Did you also consider 20 pre and afterschool activities that children may engage in 21 such as athletics or other extracurricular activities? 22 MR. ETEMADI: No. 23 MS. THOMAS: In terms of the accident reports, are 24 you referring to major accidents where police or emergency 25 vehicles would've been involved as opposed to fender benders?</p>	<p>192</p> <p>1 go to a manual, the Institute of Transportation Engineers 2 Traffic Trip Generation Manual, where the data is based on 3 hundreds and hundreds of studies that have been done all over 4 the country for different kind of land use. So in your 5 neighborhood, we all have single-family homes. So we have 6 looked at that manual, and based on the data there, we have 7 done some calculation for how many trips would've been 8 generated from all the homes that is getting access from 9 Holly Grove Road. Okay. I can tell you that it may not be 10 exact number if we surveyed everybody, but I think it would 11 be a very close to the trip -- the data that we get from the 12 trip generation manual. 13 MS. THOMAS: I see. When you did visit the site, 14 was that during peak hour times only or throughout the day? 15 MR. ETEMADI: No. No, it was during the off-peak 16 hours. One was, I would say, like early afternoon. And the 17 other one was probably close to the evening time, later 18 afternoon. 19 MS. THOMAS: Okay. Did you report, reflect, or 20 consider traffic on Norwood Road particularly during the peak 21 hours? 22 MR. ETEMADI: I'm sorry. I didn't understand your 23 question. 24 MS. THOMAS: Does your report or your observations 25 include Norwood Road traffic?</p>

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<p>193</p> <p>1 MR. ETEMADI: Observation, yes. I didn't take any 2 traffic counts on Norwood. But my observation being on 3 Norwood Road, not only for this project. I actually had 4 another project nearby and I had to visit this road before. 5 I have never really seen any situation where the traffic 6 congestion is near your intersection, near the intersection 7 of Holly Grove Road. The traffic is fairly light and moving 8 well.</p> <p>9 MS. THOMAS: During peak hours on Norwood Road?</p> <p>10 MR. ETEMADI: In my observation. My observation, 11 yes. I mean, for the classification of the road, the traffic 12 is light I think.</p> <p>13 MS. THOMAS: Let's see. I have two other 14 questions, if you will. You indicated that it is your 15 opinion that the road is flat?</p> <p>16 MR. ETEMADI: I can't say that it was exactly 100 17 percent flat, but it's flat enough that you can see for a 18 long distance on the road if you --</p> <p>19 MS. THOMAS: So when you -- oh, I didn't mean to 20 interrupt you. Go ahead.</p> <p>21 MR. ETEMADI: Yeah. If you, for example, standing 22 at the Norwood Road, you can see a long stretch of the road. 23 Or if you are standing at the site access point, you can see 24 a long stretch of road each way in each direction.</p> <p>25 MS. THOMAS: If you're standing at the</p>	<p>195</p> <p>1 shoulder, the clearance that if there is a need to pull off 2 you can pull off.</p> <p>3 MS. THOMAS: So can you define for me, shoulder? 4 Because according to the Cloverly Master Plan and according 5 to Park and Planning's reports on page 7, there are no 6 shoulders on Holly Grove Road.</p> <p>7 MR. ETEMADI: Shoulders, I didn't mean to say 8 shoulders in a traffic/engineering definition. I meant that 9 there are some clear area along each side of the road that 10 you can pull off easily.</p> <p>11 MS. THOMAS: Is it safe to say that those would be 12 driveways and residents' property?</p> <p>13 MR. ETEMADI: Well, I'm not just talking about the 14 driveways. I'm talking about if you're going -- if you look 15 at some of these pictures here, for example, you can see that 16 there is areas clear on both sides that people can pull off 17 if they have to. But they can -- as I said, and my 18 observation, I did not see any tire tracks on these grassy 19 areas that indicate that people had to pull off.</p> <p>20 MS. THOMAS: But because you did not see the tire 21 tracks, that does not suggest necessarily that someone --</p> <p>22 MR. ETEMADI: It never happens, yes.</p> <p>23 MS. THOMAS: So, for example, I mean, I have -- 24 for the record, I have provided a photo. I'm happy to show 25 it to you.</p>
<p>194</p> <p>1 intersection of Norwood Road and Holly Grove Road, are you 2 suggesting that you could see a vehicle approaching from the 3 south at the intersection of Awkard Lane? Or conversely, if 4 you're standing at the entrance to the Francisco property 5 looking north, you could see a vehicle approaching at 15500 6 Holly Grove Road?</p> <p>7 MR. ETEMADI: Well, the location that you're 8 giving me, right now I cannot tell you exactly how many feet 9 is that. So I can't tell you. My observation that -- how 10 many feet you can actually see where you stand. But my 11 observation is that, at any location along the road, access 12 points. If you are trying to depart your homes or site 13 access, you have sufficient sight distance in each direction 14 to avoid an accident. And that is based on the speed of 15 traffic on the road. That's how it's calculated.</p> <p>16 MS. THOMAS: Based on speed?</p> <p>17 MR. ETEMADI: Yes.</p> <p>18 MS. THOMAS: Right, I --</p> <p>19 MR. ETEMADI: Speed and the sight distance 20 clearance.</p> <p>21 MS. THOMAS: Can you identify these pull offs?</p> <p>22 MR. ETEMADI: Actually, the pull offs, except for 23 the one that is at the bend, the road bend, the curvature 24 that I described, there is no paved pull off. But all along 25 the road, there is enough shoulder, if you want to call it</p>	<p>196</p> <p>1 MR. ETEMADI: Yeah. No, I --</p> <p>2 MS. THOMAS: In the snow where there was tire 3 tracks.</p> <p>4 MR. ETEMADI: Yes, I agree. Yes.</p> <p>5 MS. THOMAS: And that is my front yard where a 6 truck pulled over --</p> <p>7 MR. ETEMADI: Okay, yes.</p> <p>8 MS. THOMAS: And could not get by.</p> <p>9 MR. ETEMADI: No, I'm not saying that it never 10 happens but I'm saying that, on the grassy shoulder -- I 11 shouldn't say shoulder. This grassy area along the road, I 12 did not observe any tire tracks. It doesn't mean that it 13 never happens, but very seldom. And then the other reason 14 that I gave for this is because so few cars are on this road 15 and very seldom two cars have to pass each other at the same 16 time in order to be forced to pull off.</p> <p>17 MS. THOMAS: I appreciate what you're saying.</p> <p>18 MR. ETEMADI: Yes.</p> <p>19 MS. THOMAS: I'm just trying to clarify what these 20 pull off areas are and these widened driveway accesses that 21 Mr. Grossman could potentially say --</p> <p>22 MR. ETEMADI: The pull off area is not like a 23 paved area.</p> <p>24 MS. THOMAS: -- yes, that the Applicants can pull 25 over into my driveway if they need to, or my neighbor's</p>

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<p>197</p> <p>1 driveway.</p> <p>2 MR. ETEMADI: Well, I'm saying that those are not</p> <p>3 a paved pull off that has been in that report. I did not</p> <p>4 indicate that there are pull offs in any of my reports.</p> <p>5 MS. THOMAS: And would you consider the fact that</p> <p>6 that would be a non-inherent affect because there is no</p> <p>7 shoulder on Holly Grove Road?</p> <p>8 MR. ETEMADI: Well --</p> <p>9 MS. THOMAS: A non-inherent adverse effect? Not</p> <p>10 the fault of the Applicant at all, but because of the</p> <p>11 configuration of the roadway and the width of the roadway?</p> <p>12 MR. ETEMADI: Well, I don't know if, you know,</p> <p>13 very seldom a car pulls off, how that would be considered an</p> <p>14 adverse impact on the traffic operation or traffic situation.</p> <p>15 I just don't see that as an adverse impact.</p> <p>16 MS. THOMAS: I have one last question for you,</p> <p>17 sir. You indicated that Montgomery County paved --</p> <p>18 MR. ETEMADI: The pull --</p> <p>19 MS. THOMAS: -- A portion of the roadways in order</p> <p>20 to allow emergency vehicles to --</p> <p>21 MR. ETEMADI: In 2016, Maryland Department of</p> <p>22 Transportation -- please correct me if I'm wrong. Is in</p> <p>23 2016, I think they paved the road. And at that time, they</p> <p>24 did not consider necessity to widen the road. So they</p> <p>25 thought that narrow road, 14 feet, 18 feet pavement that is</p>	<p>199</p> <p>1 losing my voice. I only had a Snickers bar at lunch. My</p> <p>2 address is 15520 Holly Grove Road, Silver Spring, Maryland.</p> <p>3 HEARING EXAMINER GROSSMAN: And how do you spell</p> <p>4 your last name?</p> <p>5 MS. MAULDIN: M-A-U-L-D-I-N. Good afternoon.</p> <p>6 MR. ETEMADI: Good afternoon to you.</p> <p>7 HEARING EXAMINER GROSSMAN: Are you going to be</p> <p>8 testifying today or just --</p> <p>9 MS. MAULDIN: I will be testifying. I'm going to</p> <p>10 save most -- I mean, pretty much I'm just going to be asking</p> <p>11 questions. But if you just want to whatever, be my --</p> <p>12 HEARING EXAMINER GROSSMAN: I can swear you in</p> <p>13 now. Just --</p> <p>14 MS. MAULDIN: Okay.</p> <p>15 HEARING EXAMINER GROSSMAN: Could you raise your</p> <p>16 right hand, please?</p> <p>17 MS. MAULDIN: Certainly.</p> <p>18 HEARING EXAMINER GROSSMAN: Do you swear or affirm</p> <p>19 to tell the truth, the whole truth, and nothing but the truth</p> <p>20 under penalty of perjury?</p> <p>21 MS. MAULDIN: I absolutely do.</p> <p>22 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>23 proceed with your questions.</p> <p>24 MS. MAULDIN: Yes. Sir, I was looking through the</p> <p>25 supplemental information. I believe it started on page 179.</p>
<p>198</p> <p>1 already there would be sufficient for the amount of traffic</p> <p>2 that would be on the road. So my conclusion is DOT</p> <p>3 determined that there is no need for widening the road or</p> <p>4 widening the pavement, therefore -- and that is based on</p> <p>5 their assessment of the number of traffic or trips that are</p> <p>6 going to be on the road. Now, at the end of this road where</p> <p>7 their maintenance ends, they added pavement for their trucks</p> <p>8 to be able to turn around.</p> <p>9 MS. THOMAS: And that's what I was wondering if</p> <p>10 you would identify.</p> <p>11 MR. ETEMADI: Correct.</p> <p>12 MS. THOMAS: But there is no other point along</p> <p>13 Holly Grove Road where (inaudible) could turn around?</p> <p>14 MR. ETEMADI: They can turn around. For trucks,</p> <p>15 no.</p> <p>16 MS. THOMAS: Thank you, sir.</p> <p>17 MR. ETEMADI: No. But they have to go out to the</p> <p>18 end and then to run.</p> <p>19 MS. THOMAS: Yes. Yes.</p> <p>20 MR. ETEMADI: Right.</p> <p>21 HEARING EXAMINER GROSSMAN: Any other cross-</p> <p>22 examination questions of this witness? Ma'am? Come on</p> <p>23 forward, please, so that the microphone is going to pick you</p> <p>24 up, and identify yourself, name and address, for the record.</p> <p>25 MS. MAULDIN: Hi. My name is Judy Mauldin. I'm</p>	<p>200</p> <p>1 MR. ETEMADI: Is it the --</p> <p>2 MS. MAULDIN: From the planning --</p> <p>3 MR. ETEMADI: Oh, the staff reports?</p> <p>4 MS. MAULDIN: The original application that was</p> <p>5 submitted to the Planning Board, the 216 page report. And in</p> <p>6 that --</p> <p>7 MR. ETEMADI: The staff report?</p> <p>8 MS. MAULDIN: Yes.</p> <p>9 MR. ETEMADI: Correct.</p> <p>10 HEARING EXAMINER GROSSMAN: I'm sorry, which --</p> <p>11 what we looking for? I'm sorry.</p> <p>12 MS. MAULDIN: I was looking for -- okay, let me --</p> <p>13 because I want to be specific so we can all be on the same</p> <p>14 thing. This is the supplemental information and supporting</p> <p>15 documents that the planning staff submitted, Park and</p> <p>16 Planning.</p> <p>17 HEARING EXAMINER GROSSMAN: The supplemental</p> <p>18 report?</p> <p>19 MS. MAULDIN: Yeah, attachment C.</p> <p>20 HEARING EXAMINER GROSSMAN: Exhibit 56? Pardon</p> <p>21 me?</p> <p>22 MS. MAULDIN: Attachment (c).</p> <p>23 HEARING EXAMINER GROSSMAN: Okay.</p> <p>24 MS. MAULDIN: It's listed as the supplemental</p> <p>25 information supporting documents. It starts on page 179 of</p>

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<p>201</p> <p>1 that report, which was 216 pages long.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MS. MAULDIN: And it's, I believe --</p> <p>4 HEARING EXAMINER GROSSMAN: Mine is not broken --</p> <p>5 I mean the attachments are not broken down by page number on</p> <p>6 my copy.</p> <p>7 MS. MAULDIN: I don't --</p> <p>8 HEARING EXAMINER GROSSMAN: So what specifically -</p> <p>9 -</p> <p>10 MS. MAULDIN: It is the sustainable transportation</p> <p>11 planning, engineering, a letter dated November 8, 2018, to</p> <p>12 Ms. Tesfaye.</p> <p>13 HEARING EXAMINER GROSSMAN: Tesfaye yes.</p> <p>14 MR. ETEMADI: By Mr. -- I'm -- is it Etemadi?</p> <p>15 MR. ETEMADI: Yes.</p> <p>16 HEARING EXAMINER GROSSMAN: Etemadi, yes.</p> <p>17 MS. MAULDIN: I don't want to butcher your name.</p> <p>18 MR. ETEMADI: You did very well.</p> <p>19 MS. MAULDIN: So get everybody on the same page.</p> <p>20 HEARING EXAMINER GROSSMAN: Oh, this is -- okay.</p> <p>21 I think you are talking about this Exhibit 39 something. One</p> <p>22 second, 37 the (inaudible) November 8.</p> <p>23 MS. MAULDIN: There is a November 8. And then I</p> <p>24 think attached to it (inaudible) go through it all. And then</p> <p>25 there is -- yeah, the November 26 and November 8.</p>	<p>203</p> <p>1 HEARING EXAMINER GROSSMAN: Yes.</p> <p>2 MR. ETEMADI: We are referring to first November -</p> <p>3 - well, the next -- but I think it goes straight and page</p> <p>4 180, which is the November 26 letter. And then right behind</p> <p>5 it you have the November 8th letter. So there are two</p> <p>6 letters from you.</p> <p>7 MR. ETEMADI: Correct.</p> <p>8 MS. MAULDIN: So my question before I reference</p> <p>9 those letters is the -- you had stated that there is a reason</p> <p>10 there was not a traffic study was because there was not a</p> <p>11 significant amount of traffic generated by the current</p> <p>12 landscaping company and their future use.</p> <p>13 MR. ETEMADI: Correct.</p> <p>14 MS. MAULDIN: Is that correct?</p> <p>15 MR. ETEMADI: Correct. I can explain what I mean</p> <p>16 by that.</p> <p>17 MS. MAULDIN: Are you referring to the LATR?</p> <p>18 MR. ETEMADI: Correct.</p> <p>19 MS. MAULDIN: Okay. And that a minimum of 50?</p> <p>20 MR. ETEMADI: There was a -- 30.</p> <p>21 MS. MAULDIN: 30?</p> <p>22 MR. ETEMADI: Well, recently, it has changed. The</p> <p>23 traffic study guidelines were updated a couple of years ago.</p> <p>24 Before that it was based on the 30 peak hour trips, new</p> <p>25 trips, not existing trips. And then they have changed that.</p>
<p>202</p> <p>1 HEARING EXAMINER GROSSMAN: I wonder if it's the</p> <p>2 first (inaudible).</p> <p>3 MS. MAULDIN: And there's two letters.</p> <p>4 MR. ETEMADI: Yes.</p> <p>5 HEARING EXAMINER GROSSMAN: It's the first</p> <p>6 (inaudible)?</p> <p>7 MR. ETEMADI: Yes.</p> <p>8 HEARING EXAMINER GROSSMAN: (Inaudible). Do you</p> <p>9 know where it is in here in the attachment?</p> <p>10 MR. HUGHES: I think it's the first thing behind</p> <p>11 attachment (c). Is that correct?</p> <p>12 MS. MAULDIN: Yes.</p> <p>13 HEARING EXAMINER GROSSMAN: Okay first behind</p> <p>14 attachment (c)?</p> <p>15 MR. HUGHES: First page behind attachment (c).</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. Ah-hah.</p> <p>17 MR. ETEMADI: That's November 8.</p> <p>18 HEARING EXAMINER GROSSMAN: I will return this to</p> <p>19 you.</p> <p>20 MS. MAULDIN: An ah-ha there.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>22 proceed.</p> <p>23 MS. MAULDIN: My question regarding the traffic</p> <p>24 study in the reason that there was not a --</p> <p>25 MR. ETEMADI: Are we referring to November 8?</p>	<p>204</p> <p>1 The new guidelines that was adopted a couple of years ago,</p> <p>2 they -- we have to translate that into person trips, the</p> <p>3 vehicle trips to person trips. And so, based on that new</p> <p>4 guidelines, we actually calculated the person trips. And the</p> <p>5 person trips did not reach the point of requiring a traffic</p> <p>6 study. There were no new trips that triggers a traffic</p> <p>7 study.</p> <p>8 MS. MAULDIN: New trips meaning the --</p> <p>9 MR. ETEMADI: Meaning that whatever they are</p> <p>10 generating right now, that is not counted. Then anything</p> <p>11 above that, when somebody submits a new application, we</p> <p>12 looked at if there is an existing building on site, the</p> <p>13 calculated trip generation for the existing building, and</p> <p>14 then what they are proposing. And the delta between existing</p> <p>15 and the proposed has to be 50 person trip in order to trigger</p> <p>16 a traffic study. And in this case, obviously, it did not</p> <p>17 reach that point.</p> <p>18 MS. MAULDIN: So we are referring to a current</p> <p>19 residential home as being a residential home that is</p> <p>20 currently being used as a commercial landscaping business.</p> <p>21 So that threshold, are you comparing it as a residential or</p> <p>22 are you comparing as the current use as a landscaping</p> <p>23 contracting company with the trucks and people?</p> <p>24 MR. ETEMADI: Actually, for this particular</p> <p>25 project, this particular application, we had to come up to a</p>

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<p>205</p> <p>1 scope of work with transportation planning staff, how they 2 want us to calculate the trips, because this business has a 3 lot of carpooling. A lot of employees are coming with one 4 car, carpooling to the work. 5 MS. MAULDIN: Okay. 6 MR. ETEMADI: Some family members were actually 7 living in the place and working there. So obviously, they 8 are not generating any trips so we went back and forth. And 9 based on all the information we have regarding the carpool, 10 regarding the number of employees who live on site, the 11 planning staff told us to calculate the trip generation for 12 19 employees based on that, which came to -- based on 19 13 employees, it came to 14 total vehicular trips in the a.m. 14 and p.m. peak hours. 15 HEARING EXAMINER GROSSMAN: Well, let me interrupt 16 you there, because I think Ms. Mauldin brings up a very 17 important question. The distinction between new trips from - 18 - considering that this is already a landscaping operation 19 there, and new trips, if you consider this as a residential 20 home. 21 MR. ETEMADI: A home. 22 HEARING EXAMINER GROSSMAN: And then any -- 23 because the trips that are being generated now before the 24 conditional use are improperly generated, one could argue, 25 because they are not supposed to be operating this facility.</p>	<p>207</p> <p>1 MS. MAULDIN: So my question -- 2 MR. ETEMADI: So if we assume this is residential, 3 then we have to assume how many homes can be here. One? 4 Two? And then if we look at the difference in trips, then it 5 would be actually less than what we calculated here. 6 MS. MAULDIN: It would be less? 7 MR. ETEMADI: It would be less, because you -- 8 HEARING EXAMINER GROSSMAN: But I think what 9 you're saying is -- 10 MR. ETEMADI: The difference -- 11 HEARING EXAMINER GROSSMAN: It would be 2 trips if 12 they were residents and there would be 19 trips or whatever 13 number. 14 MR. ETEMADI: 14. 15 HEARING EXAMINER GROSSMAN: Or 19. Whatever 16 number; the 19 employees that you would assume would be 17 generated. And you would subtract out the residential ones 18 and whatever. And what you said is what your study -- if I 19 understand you correctly, your study just assumed -- 20 MR. ETEMADI: The whole thing. 21 HEARING EXAMINER GROSSMAN: -- The number of trips 22 generated by 19 employees. 23 MR. ETEMADI: Yes, sir. 24 HEARING EXAMINER GROSSMAN: So they assumed it 25 going from 0 to 19.</p>
<p>206</p> <p>1 MR. ETEMADI: Yeah. 2 HEARING EXAMINER GROSSMAN: So are the new trips 3 you are talking about assuming that there is already an 4 operational conditional -- an operational business there? Or 5 are they new trips from what you expect in a residential -- 6 MR. ETEMADI: Actually, that is a very good point. 7 In this particular case, we treated this, actually, not just 8 the new trips. You see, they already had 15 employees. They 9 were asking to increase it to 19, okay. We actually did not 10 calculate the trip generation based on 15 versus 19. We 11 actually calculated for the whole trips, their existing and 12 additional trips, what I'm giving you here. Now, your 13 question and her question I think is, that if we compare that 14 to a residential trips, what would be the difference. Isn't 15 that what you are asking, correct? 16 HEARING EXAMINER GROSSMAN: Yes, essentially. 17 MR. ETEMADI: That's correct? 18 MS. MAULDIN: I'm sorry (inaudible), but I got 19 more, but go ahead. 20 MR. ETEMADI: All right. So actually, if we do 21 just worst-case scenario looking at the business versus 22 residential, which is generating thus fewer cars, we still 23 looked at 19 employees and generating 14 trips, which is more 24 than residential. But it still does not reach the threshold 25 for doing a traffic study.</p>	<p>208</p> <p>1 MR. ETEMADI: Correct. 2 HEARING EXAMINER GROSSMAN: So they have taken it 3 into consideration. And I think that that was a very 4 legitimate question, because a lot of times if you have an 5 operation on a site, let's say there is a childcare facility 6 that's operating legitimately on the site and they want to 7 add on some kind of -- expand it to a bigger childcare 8 facility, and you want to see if the expansion will create a 9 lot of new trips, you would subtract out the number of trips 10 that are already on the site and add on new ones to determine 11 whether or not you're going to need a full traffic study. 12 And what he is saying here is, okay, that's essentially -- 13 they didn't have to do that here. They just looked at all of 14 the trips that were going to be generated by this proposed 15 facility, and that for 19 employees -- it's going to be fewer 16 than 19 on site. It's going to be 15. But assuming there 17 were 19 employees as if there was nothing going on there now, 18 it still would not trigger the LATR requirements for a full 19 traffic study. That's what I understand. 20 MR. ETEMADI: Exactly right. Exactly right. 21 MS. MAULDIN: And again, the LATR in order to be 22 in compliance for a traffic study is 50 or 30? 23 MR. ETEMADI: Okay. Used to be 30 vehicle trips. 24 MS. MAULDIN: Per day? 25 MR. ETEMADI: No, you need one peak hour.</p>

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<p>209</p> <p>1 MS. MAULDIN: Peak hour.</p> <p>2 MR. ETEMADI: Now the new guidelines says 50</p> <p>3 person trips. It used to be vehicle trip. Now it's person</p> <p>4 trip.</p> <p>5 HEARING EXAMINER GROSSMAN: And that includes</p> <p>6 bicycles, people walking in and out.</p> <p>7 MS. MAULDIN: Walking.</p> <p>8 MR. ETEMADI: Walking everything. So we have a</p> <p>9 mechanism, a table that we can convert vehicle trips to</p> <p>10 person trips. In different part of the county because some</p> <p>11 areas they have more bicyclists than walking than other</p> <p>12 places.</p> <p>13 MS. MAULDIN: Okay. So specifically Holly Grove.</p> <p>14 MR. ETEMADI: Yes.</p> <p>15 MS. MAULDIN: Let's just get back to Holly Grove.</p> <p>16 MR. ETEMADI: Correct.</p> <p>17 MS. MAULDIN: In your letter you stated -- in this</p> <p>18 letter, the one that's dated November 8, you said there are</p> <p>19 30 single-family homes accessing Holly Grove Road and they</p> <p>20 are projected to generate 26 a.m. and 32 p.m. hour trips.</p> <p>21 MR. ETEMADI: Yes.</p> <p>22 MS. MAULDIN: Are those person trips?</p> <p>23 MR. ETEMADI: No, those are vehicular.</p> <p>24 MS. MAULDIN: Are we speaking apples and apples?</p> <p>25 MR. ETEMADI: No.</p>	<p>211</p> <p>1 HEARING EXAMINER GROSSMAN: That seems fair.</p> <p>2 MS. MAULDIN: Thank you, so much. So my question</p> <p>3 is, if, in your statement you said that there is not a lot of</p> <p>4 traffic generated, therefore it didn't trigger this traffic</p> <p>5 study. So based upon your analysis, study report, the use of</p> <p>6 Holly Grove, the 14 foot, narrow road with no shoulders, you</p> <p>7 say that -- I believe it's in the first page on your letter</p> <p>8 to Ms. Tesfaye November 8, 2018, the bottom, you said that</p> <p>9 there are 30 single-family homes accessing Holly Grove Road</p> <p>10 and they are projected to generate 26 a.m. and 32 p.m. hour</p> <p>11 trips.</p> <p>12 MR. ETEMADI: Vehicle trips.</p> <p>13 MS. MAULDIN: I have a question.</p> <p>14 MR. ETEMADI: Yes. Yes, ma'am.</p> <p>15 MS. MAULDIN: With that being said, you then going</p> <p>16 to say the largest truck used by the Francisco landscaping</p> <p>17 company has a width no more of 8 feet and these trucks can</p> <p>18 easily pass an oncoming automobile knowing the light traffic</p> <p>19 occurrence is low. With that in mind, my question is; if</p> <p>20 there are 30 single-family homes generating 26 a.m. trips and</p> <p>21 32 p.m. trips, and then you have the Francisco Landscaping</p> <p>22 per person carpool, whatever, what is the actual number of</p> <p>23 peak trips for the Francisco Landscaping company? Not</p> <p>24 projected, but their current use, but their commercial and</p> <p>25 residential. Because I understand have a lot of renters in</p>
<p>210</p> <p>1 MS. MAULDIN: These are vehicular?</p> <p>2 MR. ETEMADI: These are vehicle trips. And I have</p> <p>3 to make one comment here. I know it is kind of difficult for</p> <p>4 -- in areas where we don't have too many transit trips, too</p> <p>5 many bicyclists, too many people walking, like your area --</p> <p>6 MS. MAULDIN: That's not true, but -- well, I</p> <p>7 disagree.</p> <p>8 MR. ETEMADI: Well, based on the table that the</p> <p>9 County has given us to translate --</p> <p>10 MS. MAULDIN: Based on the table, but not real</p> <p>11 life.</p> <p>12 MR. ETEMADI: Well, actually, there is some basis</p> <p>13 for that logic.</p> <p>14 MS. MAULDIN: Okay.</p> <p>15 MR. ETEMADI: But I don't want to go into that.</p> <p>16 We are all going to get confused. But anyway, in your area</p> <p>17 in Cloverly, the vehicle trip is pretty close to person trip</p> <p>18 because we don't have too many transit users or bicyclists,</p> <p>19 or walking to work.</p> <p>20 MS. MAULDIN: Okay.</p> <p>21 MR. ETEMADI: Okay.</p> <p>22 MS. MAULDIN: Can I just get back to asking you my</p> <p>23 questions?</p> <p>24 MR. ETEMADI: Yes.</p> <p>25 MS. MAULDIN: Because --</p>	<p>212</p> <p>1 this house as well as the commercial.</p> <p>2 MR. ETEMADI: Yes, 11.</p> <p>3 MS. MAULDIN: So what is the -- so it's just 11?</p> <p>4 MR. ETEMADI: Total of 11 based on 15 employees.</p> <p>5 MS. MAULDIN: Total of 11?</p> <p>6 MR. ETEMADI: Yes.</p> <p>7 MS. MAULDIN: So with that being said then, the</p> <p>8 analysis --</p> <p>9 MR. ETEMADI: 11 coming in and out, both ways.</p> <p>10 MS. MAULDIN: 11 coming in and out. And this was</p> <p>11 dated the -- was there a report sent out telling us that</p> <p>12 there was corrections that it was reduced to 11?</p> <p>13 MS. MAULDIN: No, because we just got the Planning</p> <p>14 Commission conditioning the Applicant to limit the number of</p> <p>15 employees on-site to 15. So I -- at the time that we were --</p> <p>16 before the Planning Board, we were still assuming 19</p> <p>17 employees, at least from my point of view. Now, the</p> <p>18 condition has put on them for 15 employees. The numbers that</p> <p>19 I'm giving to you, 11 trips, is adjusted from 19 employees to</p> <p>20 15.</p> <p>21 MS. MAULDIN: Okay.</p> <p>22 MR. ETEMADI: So we went from 14 trips to 11</p> <p>23 trips.</p> <p>24 MS. MAULDIN: Okay. In your analysis that I</p> <p>25 believe is dated -- I don't know what page number it's on.</p>

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<p>213</p> <p>1 But it follows the other two; the letter dated November 26th, 2 the letter dated November 8th, and then there is something 3 dated August 14th, 2018. 4 MR. ETEMADI: August 18, yes, correct. 5 MS. MAULDIN: Is there actual analysis that was 6 done? 7 MR. ETEMADI: Yes. August 14 was the original 8 traffic statement that was submitted to planning department 9 based on 19 employees and total number of trips, existing and 10 future. 11 MS. MAULDIN: Right. With that being said, in 12 that particular analysis, that's when you, as you said to 13 your point, it was 19 employees. And you said it resulted in 14 18 trips during the a.m. and p.m., correct? 18 peak? 15 MR. ETEMADI: 14. 16 MS. MAULDIN: Well, it says 19, but now you've 17 reduced it. 18 MR. ETEMADI: No, 19 employees, vehicular trip, 19 14. In the a.m., and 14 in the p.m. 20 MS. MAULDIN: Are you looking at page 3? 21 MR. ETEMADI: I'm on page 4 of -- 22 MS. MAULDIN: Oh, you are ahead of me. 23 MR. ETEMADI: Page 4 of August 14. 24 MS. MAULDIN: Okay. I was looking at page 3. 25 MR. ETEMADI: Look at the table. It's easier to</p>	<p>215</p> <p>1 just simple math, I'm saying if you add 26 and 14 you now 40 2 vehicles in the peak hour, if it's a perfect world, utilizing 3 this 14 foot wide road with no shoulders. And it's a 4 combination of schoolchildren walking, residents going to 5 work, trucks going in and out, and also carpools using a road 6 that you described. It is straight. You can see and -- 7 HEARING EXAMINER GROSSMAN: Well, let him answer. 8 Is that a fair statement? 9 MS. MAULDIN: So this is what my question -- 10 MR. ETEMADI: No. Respectfully, I disagree. 11 MS. MAULDIN: Okay. 12 MR. ETEMADI: And I tell you why. 13 MS. MAULDIN: Okay. 14 MR. ETEMADI: We calculated the number of trips 15 being generated by the homes is for one peak hour. For them, 16 for the business, in the afternoon their vehicles coming in 17 and out is during two hours at least, the period of two hours 18 in the afternoon between 4:00 and 6:00 because they don't all 19 come in one peak hour. So their trips is not for one peak 20 hour. It's for two hour period. 21 MS. MAULDIN: Okay. 22 MR. ETEMADI: Homeowners traffic calculation is 23 for one hour. 24 MS. MAULDIN: In the morning? 25 MR. ETEMADI: In the morning and in the afternoon.</p>
<p>214</p> <p>1 look at. 2 MS. MAULDIN: Okay. So what I am asking, and 3 based on your experience, and you have a wealth of 4 experience, if there are 26 -- let's say that the residents 5 of Holly Grove are rigid in terms of they conform to a table, 6 and there are 26 trips in the morning, which I find that hard 7 to believe. But let's just say it is just for this 8 question's sake. And then there are 14 landscaping trips, 9 they are occurring at the same time on the same road, 10 correct? 11 MR. ETEMADI: No. No. For the business, for the 12 landscape business, it happens not during one hour. It 13 happens in two hours. Because, for example, in the morning, 14 they are come in at 6:00 and they leave about 7:00. 15 Everybody is gone almost, outside of the peak hour. 16 MS. MAULDIN: But they are accessing the same 17 road. To come in, they have to come into Holly Grove? 18 MR. ETEMADI: Right. Right. 19 MS. MAULDIN: But to leave they have to come into 20 Holly Grove irregardless if it's an hour or two hours. 21 MR. ETEMADI: Right. 22 MS. MAULDIN: My question sir, is simply that if 23 there are -- if you calculated that there are 26 trips by 24 residents and then there are 14 trips by the landscaping 25 company in their adjusted use from 19 to 15, so there's 14,</p>	<p>216</p> <p>1 MS. MAULDIN: In the afternoon. 2 MR. ETEMADI: But not for them. 3 MS. MAULDIN: Okay. 4 MR. ETEMADI: So it is basically not the same 5 thing. But again, I have to go back and put it in 6 perspective for you. Their trips, total trips, I'm not 7 talking about new trips. They don't have any new trips. 8 Their total trips in the morning, very conservatively 9 estimated will be one car or one truck every 5-1/2 minutes. 10 In the afternoon, because the time period is longer, every 13 11 minutes, one of their cars or trucks will be on the road. So 12 it's just basically, if you want to round it up, in one peak 13 hour they have 4 cars or trucks altogether coming in and out 14 from them like every 13 minutes. 15 MS. MAULDIN: In my very last question, because I 16 will save a lot of this for my testimony, not to belabor the 17 point. In your calculation in terms of their trips, did you 18 also include any deliveries that may be servicing the -- and 19 let me finish my question. 20 MR. ETEMADI: Yes (inaudible). 21 MS. MAULDIN: -- servicing the landscaping 22 company, which also includes 65 foot tractor-trailers that 23 don't necessarily comply with peak hours and off-peak hours? 24 MR. ETEMADI: Exactly. Exactly. We calculated 25 the worst case scenario, which would be in the peak hours.</p>

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<p style="text-align: right;">217</p> <p>1 We don't look at, like for example, between 8:00 or 9:00 in 2 the morning until 4:00 that maybe one truck comes in and out. 3 That is not the worst case scenario. We always look at the 4 worst-case scenario and then if we have a roadway that can 5 accommodate the worst-case scenario, obviously it can 6 accommodate other traffic during off-peak hours. So no, we 7 did not look at the off-peak because that's not the worst- 8 case scenario. 9 HEARING EXAMINER GROSSMAN: Okay. 10 MS. MAULDIN: Okay. 11 HEARING EXAMINER GROSSMAN: I think we've 12 exhausted that area. Is there any -- 13 MS. MAULDIN: That's all my questions for now. 14 HEARING EXAMINER GROSSMAN: Any redirect? 15 MR. HUGHES: No, sir. 16 HEARING EXAMINER GROSSMAN: All right. Yes, sir? 17 MR. REMEIN: I have a couple questions. In the 18 document that says -- 19 MR. HUGHES: I guess I reserve -- 20 HEARING EXAMINER GROSSMAN: I understand. 21 MR. REMEIN: The Applicant's prehearing statement, 22 there is a document dated November 26 that you wrote 23 regarding right-of-way. 24 MR. ETEMADI: Yes. 25 MR. REMEIN: And so my question is, are there</p>	<p style="text-align: right;">219</p> <p>1 that is right-of-way on Awkard Lane, but not on Holly Grove 2 Road. Is that incorrect? 3 MR. ETEMADI: I cannot say it's not incorrect. 4 MR. REMEIN: Is that -- 5 MR. ETEMADI: It may be correct. I haven't really 6 examined Awkard Road. 7 HEARING EXAMINER GROSSMAN: What difference does 8 it make to my consideration whether Awkard has an official 9 right-of-way? 10 MR. REMEIN: Well because if any street interior 11 to another street has right-of-way in the street which those 12 people go through doesn't have a right-of-way, it's likely to 13 consider that Holly Grove should have a right-of-way also. 14 HEARING EXAMINER GROSSMAN: Well, I'm not making a 15 decision as to whether or not Holly Grove gets a right-of- 16 way, County right-of-way. It's not within my purview. 17 MR. REMEIN: So anyway, you are asked by MCDOT in 18 comment 1, whether Holly Grove -- whether this road should 19 have -- or about the right-of-way, how would the right-of-way 20 be accomplished. 21 MR. HUGHES: Can I respond? 22 HEARING EXAMINER GROSSMAN: Let him finish his 23 question. 24 MR. REMEIN: That's not my question. You 25 responded that there is no need for it because it there was a</p>
<p style="text-align: right;">218</p> <p>1 right-of-ways on Holly Grove Road? 2 MR. ETEMADI: Any right-of-way? 3 MR. REMEIN: What is the right-of-way on Holly 4 Grove Road? 5 MR. ETEMADI: Actually, this is a prescriptive 6 right-of-way, meaning that the county doesn't really own the 7 right-of-way for the road, but everybody has agreed that it 8 becomes a road so everybody can access their homes or 9 businesses. So the county takes care of the maintenance, 10 pavement, removing snow, whatever it is, because they have 11 agreed to maintain the road. So it's not a county right-of- 12 way, no. 13 MR. REMEIN: And is there a right-of-way on Awkard 14 Lane? 15 MR. ETEMADI: No, I don't believe so. 16 MR. REMEIN: Because the paper that Ms. Hemingway 17 just -- 18 HEARING EXAMINER GROSSMAN: No, no, no. You can't 19 testify as to -- 20 MR. REMEIN: But -- 21 HEARING EXAMINER GROSSMAN: Are you asking a 22 question? 23 MR. REMEIN: I'm asking a question. 24 HEARING EXAMINER GROSSMAN: What is the question? 25 MR. REMEIN: The question is; her document shows</p>	<p style="text-align: right;">220</p> <p>1 right-of-way there would be a little sliver of roadway that 2 would be dedicated to a right-of-way outside of the road. 3 However, the land records show that the two property owners 4 on the other side -- 5 HEARING EXAMINER GROSSMAN: Hold on a second. 6 Hold on a second. Now you're testifying as to what land 7 records show. All I'm saying is you can ask the man a 8 question, but you can't testify now. 9 MR. REMEIN: All right. My question is; what you 10 said couldn't be done was done already on Holly Grove Road. 11 There is a little sliver of road that has been dedicated by 12 two landowners on the other side of the road. 13 HEARING EXAMINER GROSSMAN: Well -- 14 MR. REMEIN: How do these two statements -- why 15 would not Francisco Landscaping dedicate land when other 16 people have already dedicated land? 17 MR. ETEMADI: Well, I -- 18 HEARING EXAMINER GROSSMAN: I'm not going to allow 19 the question because it's just beyond the scope of anything 20 here why -- and this witness, why somebody would or had not 21 dedicated something is not within his purview. 22 MR. REMEIN: Well, it seems to me the county is 23 going to -- he is expert on traffic. He would know why -- 24 how land gets dedicated for the roadway and how -- why it has 25 progressed this way and why would be different for this.</p>

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<p>221</p> <p>1 HEARING EXAMINER GROSSMAN: I'm going to let him 2 answer, but I'm going to say you are really far field of 3 anything that's within my control, okay. I don't determine 4 that. But go ahead. 5 MR. HUGHES: Mr. Grossman? 6 MR. ETEMADI: Yes, my -- 7 MR. HUGHES: Can I interject or not? 8 HEARING EXAMINER GROSSMAN: Yes, go ahead. 9 MR. HUGHES: There is a point in the staff report 10 with a talk about if at some point the county wants to take 11 over this road, there will be a good chance that our client 12 and others might have to dedicate it. 13 HEARING EXAMINER GROSSMAN: Right. 14 MR. HUGHES: I don't know if that -- 15 HEARING EXAMINER GROSSMAN: I understand, but I 16 don't know that there is anything I can do regarding -- 17 MR. HUGHES: I agree. 18 HEARING EXAMINER GROSSMAN: Whether I grant or 19 deny the conditional use, I can't say there is going to be 20 more dedication here or not if the county hasn't required. 21 If the county required it, then I would be -- end up being a 22 condition in the conditional use it were granted. But if 23 it's not, there's nothing for me to act on here. So I don't 24 want to waste a lot of time on something I can't have any 25 effect on. What did you have to say Mr. Etemadi?</p>	<p>223</p> <p>1 right hand please? Do you swear or affirm to tell the truth, 2 the whole truth, and nothing but the truth under penalty of 3 perjury? 4 MR. ARGUETA: I do. 5 HEARING EXAMINER GROSSMAN: All right. You may 6 proceed. 7 MR. HUGHES: Thank you. Mr. Argueta, your family 8 owns the business for the application we are here today, 9 Francisco's Landscaping. Is that correct? 10 MR. ARGUETA: Correct. 11 MR. HUGHES: Okay. And you have been designated 12 as the family spokesperson today. Is that correct? 13 MR. ARGUETA: Yes, that's correct. 14 MR. HUGHES: Okay. And who else is involved in 15 the family business? 16 MR. ARGUETA: In the family business there is me 17 and my brother, my sister, my dad. My mom helps out. We 18 have an uncle and two cousins that work with us as well. 19 MR. HUGHES: Okay. And who is here today with 20 you? 21 MR. ARGUETA: It's my family; my father, my 22 brother, dad, and mom. 23 MR. HUGHES: Okay. 24 HEARING EXAMINER GROSSMAN: And the FM Group, but 25 the name of the company is not Francisco?</p>
<p>222</p> <p>1 MR. ETEMADI: Well, my response to that 2 recommendation from the DOT was twofold. One, if you -- if 3 we want Holly Grove to have a -- to become a public road and 4 have a public right-of-way that owned by the county, every 5 homeowner has to agree to dedicate the right-of-way in order 6 for DOT to take it over, it becomes a county road, becomes a 7 public road. I don't know how this applicant is going to 8 convince all the homeowners on Holly Grove to dedicate part 9 of their land so that DOT can have a public road. It doesn't 10 make any sense. 11 HEARING EXAMINER GROSSMAN: I'm going to stop you 12 there. Whether or not it makes sense or anything, it's still 13 speculative and not a point that before me. All right. Any 14 redirect after that? 15 MR. HUGHES: No, sir. 16 HEARING EXAMINER GROSSMAN: No? All right. Thank 17 you, Mr. Etemadi. And then your last witness, sir? 18 MR. HUGHES: Yes, I would call Mr. Giovanni 19 Argueta. 20 MR. ARGUETA: Been a long day. 21 HEARING EXAMINER GROSSMAN: They all are. Please 22 state your full name and address? 23 MR. ARGUETA: Giovanni Argueta, 240 Randolph Road, 24 Silver Spring, Maryland 20904. 25 HEARING EXAMINER GROSSMAN: Would you raise your</p>	<p>224</p> <p>1 MR. ARGUETA: Am I repeating myself? 2 HEARING EXAMINER GROSSMAN: You are doing business 3 as Francisco Landscaping. 4 MR. ARGUETA: Yes. 5 HEARING EXAMINER GROSSMAN: But the name of your 6 company is FM Group, right? 7 MR. ARGUETA: FM Group Inc., yes. 8 HEARING EXAMINER GROSSMAN: Okay. 9 MR. HUGHES: That's a legal name. 10 MR. ARGUETA: Yes, correct. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MR. HUGHES: Gotcha. Okay. If you're fortunate 13 enough to get the approval for this conditional use, do you 14 commit that you and your family will ensure compliance with 15 the terms and conditions of the approval? 16 MR. ARGUETA: Yes, that's correct. 17 MR. HUGHES: Can you tell us a little bit about 18 how Francisco Landscaping started? 19 MR. ARGUETA: It started about 30 plus years ago. 20 It was my dad and my uncle. Started with a lawnmower in the 21 back of a pickup truck. Now they've been able to grow. And 22 actually, my uncle still works with us 30 plus years later. 23 MR. HUGHES: Right. And can you explain what type 24 of work does Francisco Landscaping do? 25 MR. ARGUETA: We do everything from tree service</p>

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<p>225</p> <p>1 to landscape maintenance, minor stonework, planting, 2 mulching. Simple stuff like that. 3 MR. HUGHES: Okay. 4 MR. ARGUETA: Including the landscaping. 5 MR. HUGHES: And can you briefly explain why we 6 are here today? 7 MR. ARGUETA: My parents, off of good faith when 8 they bought the property, the realtor told them the property 9 was eligible for the use that we are using it now. And the 10 people that lived there prior told us it also was available 11 for that use. So we went off of good faith. Not the 12 smartest thing to do, but it happens. And then we've been 13 working there since 2005 and we got the citation in 2017. 14 And that's kind of what I started trying to figure out how to 15 get this solved and figured out. 16 MR. HUGHES: Okay. And can you explain why this 17 application request is important your family? 18 MR. ARGUETA: It's our bread and butter. This is 19 kind of what we make our money. Like I said, we are all 20 involved. We don't really have anything else to lean back 21 on. 22 HEARING EXAMINER GROSSMAN: I can't consider any - 23 - the only thing I can consider is whether or not the 24 applicant meets the standards required by the zoning 25 ordinance.</p>	<p>227</p> <p>1 MR. ARGUETA: In general and Holly Grove. Like 2 they've been saying, we try to avoid kids going to school and 3 all of that. And 6:00, most kids are still getting ready for 4 school, any of that nature. 5 HEARING EXAMINER GROSSMAN: Okay. 6 MR. ARGUETA: And it's -- you know, most of our 7 business is out of Potomac. So getting out there we try to 8 avoid as much traffic as possible early in the morning. 9 HEARING EXAMINER GROSSMAN: Okay. So I guess you 10 partially answered my question. You are saying that is 11 preferable because you avoid traffic and you avoid the 12 schoolchildren going to school. But can you function if the 13 hours were made 7:00 a.m.? Can you function on that? 14 MR. ARGUETA: We could, but we are running on peak 15 hours, which we've been trying to avoid, kind of like the 16 street engineer has been saying. 17 HEARING EXAMINER GROSSMAN: I understand. Okay. 18 MR. HUGHES: If you started an hour later, do you 19 believe the business would have to run an hour later as well? 20 MR. ARGUETA: I mean honestly, yeah. We would be 21 impacted a lot. You are adding an extra two hours of driving 22 time just to get out there and probably get back. 23 MR. HUGHES: Because when you -- is it correct 24 when you get on the road, traffic is fairly light for 25 Montgomery County?</p>
<p>226</p> <p>1 MR. HUGHES: Fair enough. Sorry Mr. Grossman. 2 Yes, sir. And can you tell us -- can you tell us -- excuse 3 me, one second. And if you are fortunate enough to gain 4 approval, are you willing to accept the conditions that have 5 been recommended by the Planning Board? 6 MR. ARGUETA: Yes. 7 MR. HUGHES: Okay. And what are the hours of 8 operations being proposed? 9 MR. ARGUETA: As of right now, it's 6:00 to 7:00 10 weekdays. And then 7:00 to 5:00 I believe, Saturday. 11 MR. HUGHES: Okay. And do you guys do snow 12 removal in inclement months? 13 MR. ARGUETA: Yes. 14 MR. HUGHES: Okay. 15 HEARING EXAMINER GROSSMAN: I'm only interested 16 since you mentioned hours, the question I posed at the very 17 beginning. 18 MR. ARGUETA: Yes, sir. 19 HEARING EXAMINER GROSSMAN: Can you function if 20 your hours begin at 7:00 a.m. rather than 6:00 a.m.? 21 MR. ARGUETA: In all honesty, we prefer 6:00 22 because of the traffic issue that you've been kind of 23 addressing for that past hour. We try to avoid traffic. 24 HEARING EXAMINER GROSSMAN: Traffic on Holly Grove 25 or traffic in general?</p>	<p>228</p> <p>1 MR. ARGUETA: Yeah, around 6:00 in the morning, 2 yeah. 3 MR. HUGHES: Okay. Do you have -- do you or your 4 family have other occasions that -- strike that, Mr. 5 Grossman. Sorry. 6 HEARING EXAMINER GROSSMAN: As long as you don't 7 strike Mr. Grossman. 8 MR. HUGHES: Will any plant materials, garden 9 supplies, or garden equipment be sold from the property? 10 MR. ARGUETA: No. 11 MR. HUGHES: Okay. Do you have any retail sales 12 business or customers coming to the property? 13 MR. ARGUETA: No. 14 MR. HUGHES: Okay. Who currently lives in the 15 residence on the property? 16 MR. ARGUETA: Right now it's my son's aunt and 17 three of our employees. 18 MR. HUGHES: Okay. And in the past, have you had 19 any other family members that there? 20 MR. ARGUETA: Actually, the uncle that lived with 21 my father -- I mean, that started the business with my 22 father, is the one that lived there for long time when we 23 first bought the property until about two years ago. 24 MR. HUGHES: And why did he leave about two years 25 ago?</p>

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<p style="text-align: right;">229</p> <p>1 MR. ARGUETA: He had to get knee surgery and he 2 needed to get -- pretty much get taken care of to get around. 3 And he's finally back up and running and he's possibly 4 thinking about moving back in. 5 MR. HUGHES: Okay. There was a condition in the 6 staff report and it was also carried over from the Planning 7 Board, about the mulch deliveries. Can you accept that 8 condition of mulch deliveries up to two times a week between 9 hours of 10:00 and 2:00 p.m. during prime mulch season of 10 March 1 through April 30? 11 MR. ARGUETA: Yes. 12 HEARING EXAMINER GROSSMAN: Well also, the 13 Planning Board added a weight limitation on the trucks. 14 MR. HUGHES: Oh, yes. I was in the wrong -- 15 you're right, Mr. Grossman. That's right. 16 HEARING EXAMINER GROSSMAN: Can you live with 17 that? The weight limitation at it on? 18 MR. HUGHES: Class VII or -- 19 MR. ARGUETA: Class VII. 20 MR. HUGHES: Or class -- 21 HEARING EXAMINER GROSSMAN: Yes, it says, 22 "semitrucks not higher than gross vehicle weight rating class 23 VII, shall visit the subject property for mulch deliveries up 24 to two times a week between the hours of 10:00 a.m. and 2:00 25 p.m. during prime mulch season only, March 1 through April</p>	<p style="text-align: right;">231</p> <p>1 Cross-examination Ms. Thomas? 2 MS. THOMAS: Can you clarify for me what hours of 3 operation are? I'm a bit confused. We were talking about 4 the window 6:00 to 7:00 p.m. So is that when you are on your 5 -- on site in Potomac or is that -- does 6:00 to 7:00 p.m. 6 include when you are entering to get your trucks, to get your 7 supplies and then you are back in Holly Grove by 7:00 p.m. 8 Is that what that means? 9 MR. ARGUETA: From what the Planning Board has 10 discussed, 6:00 to 7:00 on the hours that we are allowed to 11 work on that property. 12 HEARING EXAMINER GROSSMAN: But I can tell you 13 what it means to me. And that means that all operations stop 14 at 7:00 p.m. They don't begin before 6:0 a.m. and they stop 15 at 7:00 p.m. They don't begin before 6:00 a.m., and they 16 stop at 7:00 PM on the property. That's what it means. 17 MS. THOMAS: So have there been -- 18 HEARING EXAMINER GROSSMAN: That's for the 19 weekdays. And Saturdays 7:00 a.m. to 5:00 p.m. 20 MS. THOMAS: Okay. Thank you. So have there been 21 instances -- 22 HEARING EXAMINER GROSSMAN: Except for snow 23 removal. 24 MS. THOMAS: Where work as occurred prior to 6:00 25 a.m. and after 7:00 p.m.?</p>
<p style="text-align: right;">230</p> <p>1 30." 2 MR. ARGUETA: Yes. 3 HEARING EXAMINER GROSSMAN: You can live with 4 that? 5 MR. ARGUETA: Yeah. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MR. HUGHES: Thank you. 8 HEARING EXAMINER GROSSMAN: And I think that was a 9 direct response to the concern about the noise from those 10 heavier than ordinary trucks. And part of it was a sound 11 recording made by Ms. Thomas. 12 MR. HUGHES: And you can also accept a limit of 10 13 vehicles for the business? 14 MR. ARGUETA: Yes, that's correct. 15 MR. HUGHES: Mr. Argueta, do you currently have 16 any business signs on the property? 17 MR. ARGUETA: No, we don't. 18 MR. HUGHES: Are you requesting any business signs 19 on the property? 20 MR. ARGUETA: No. 21 MR. HUGHES: One second Mr. Grossman, please. 22 HEARING EXAMINER GROSSMAN: Sure. 23 MR. HUGHES: Those would be my direct questions, 24 Mr. Grossman. 25 HEARING EXAMINER GROSSMAN: Okay.</p>	<p style="text-align: right;">232</p> <p>1 MR. ARGUETA: Work? 2 MS. THOMAS: Does that occur? 3 MR. ARGUETA: No, unless it's a snow emergency and 4 we are going out for snow removal. Our business doesn't 5 start until 6:00. 6 MS. THOMAS: I understand you provide wood as well 7 for your customers. 8 MR. ARGUETA: Yes. 9 MS. THOMAS: So where does the wood come from and 10 how does it -- 11 MR. ARGUETA: We used to cut wood from jobs that 12 we did. We have no longer continue that since. 13 HEARING EXAMINER GROSSMAN: So you don't provide 14 wood anymore? 15 MR. ARGUETA: Not anymore. 16 MS. THOMAS: No -- 17 MR. ARGUETA: But we did. I would rather state 18 that. 19 MS. THOMAS: And so no more wood? 20 MR. ARGUETA: No. 21 MS. THOMAS: Oh, okay. I just wanted to get back 22 a little bit more to the history. So you were -- the 23 operation has been in business for 30 years. Where were you 24 relocated prior to coming to the Holly Grove community? 25 MR. ARGUETA: We started at 909 White Hall.</p>

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<p style="text-align: right;">233</p> <p>1 Actually, before that, we -- Paddington Squares Apartment 2 where we used to live. Then we moved to 909 White Hall. 3 Then from that, the company expanded so much that we moved 4 over to 15400 Holly Grove. That's back in 2005. 5 MS. THOMAS: Have you ever -- has the business 6 ever been cited prior to 2017? 7 MR. ARGUETA: Not to my knowledge. 8 MS. THOMAS: Had not operated other than the White 9 Hall? 10 MR. ARGUETA: Correct. 11 MS. THOMAS: So you also indicated -- and so your 12 son and three employees are currently living in the house? 13 MR. ARGUETA: No, my son's aunt and three 14 employees, yes. 15 MS. THOMAS: Oh, your son's aunt and three 16 employees. Oh, okay. I thought earlier you you're your son 17 would -- 18 MR. ARGUETA: No. No. 19 MS. THOMAS: Okay. So I was really thrown off on 20 that one. 21 MR. ARGUETA: No. 22 MS. THOMAS: Okay. So the principal residence for 23 your mom is where? 24 MR. ARGUETA: I'm sorry? 25 MS. THOMAS: The principal residence for your</p>	<p style="text-align: right;">235</p> <p>1 sure that I should be considering it. 2 MS. THOMAS: Okay. All right. I will strike that 3 question, that comment. 4 HEARING EXAMINER GROSSMAN: I just don't know that 5 it's anything that I should be inquiring into. Although, it 6 would be a legitimate question I guess for the taxing 7 authorities. 8 MS. THOMAS: In terms of the reforestation and 9 some of the trees that were cut down on the Powell property, 10 did your family cut those trees down or do you -- are you 11 aware of who cut the trees down? 12 MR. ARGUETA: I'm not sure. 13 MS. THOMAS: Okay. In terms of the mulch 14 deliveries, what will be -- how will you resolve request from 15 one of your customers who needs mulch in the fall, for 16 example? Or there is a new home that needs mulch in August? 17 What do you do? 18 MR. ARGUETA: I mean, honestly, there is no -- I 19 don't know if they put a requirement between months. 20 HEARING EXAMINER GROSSMAN: Yes. 21 MR. ARGUETA: I think they strike that -- I think 22 they striked it at our last hearing. 23 HEARING EXAMINER GROSSMAN: No, here's what the 24 requirement says. "Semitrucks not higher than gross vehicle 25 weight rating class VII shop is that the subject property for</p>
<p style="text-align: right;">234</p> <p>1 mother, she's -- 2 HEARING EXAMINER GROSSMAN: Why is that relevant? 3 What is it relevant where -- 4 MS. THOMAS: Because I -- 5 HEARING EXAMINER GROSSMAN: The only question is 6 if his mother lived on the property, that might be a question 7 because she might be a witness to something. But why is it 8 relevant other than that where his mom lives? 9 MS. THOMAS: Because it's my understanding that 10 she's listing this property as her principal residence for 11 tax purposes. 12 HEARING EXAMINER GROSSMAN: All right. I don't 13 know that that's truly before me. You know, maybe -- maybe 14 it shouldn't be listed that way and that would be as separate 15 tax enforcement question. But I don't know if that's 16 something I should be considering. Is there a reason why I 17 should be considering that under the zoning ordinance? 18 MS. THOMAS: I'm trying to get to a pattern of 19 getting correct information. 20 HEARING EXAMINER GROSSMAN: Well, I know, but it's 21 got to be correct and relevant. I mean, there are times 22 where I do take that into consideration when it's a factor 23 such as somebody wanting an accessory apartment, they have 24 to, you know, make it a primary residence, but if it's not 25 listed as a requirement in the zoning ordinance, I'm not so</p>	<p style="text-align: right;">236</p> <p>1 most deliveries up to two times a week between the hours of 2 10:00 and 2:00 p.m. during prime all season only, March 1 3 through April 30." 4 MR. ARGUETA: Okay. 5 MR. HUGHES: Mr. Grossman, just for clarification 6 if it's okay. So at the Planning Board meeting, there was 7 some discussion about that. The chair had talked about maybe 8 making it all year round, but the written decision is what 9 Mr. Grossman says. 10 MR. ARGUETA: Okay. Well, if that's the case, we 11 would just go pick it up at a different location. We would 12 have to go buy a truckload then. 13 MS. THOMAS: So could you not just consider 14 picking up mulch at another location period and not having 15 mulch delivered to Holly Grove? 16 MR. ARGUETA: No. When you're doing, like you 17 said, a random job that way, it's a lot smaller order. We 18 can then do that buy one truckload, not having to have a 19 whole truck delivered when we have nearly a whole week of 20 just mulch delivery, you know, season. 21 MS. THOMAS: I don't have any other questions at 22 this time. 23 HEARING EXAMINER GROSSMAN: All right. Is there 24 any further cross-examination? 25 MS. MAULDIN: I just --</p>

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<p>237</p> <p>1 HEARING EXAMINER GROSSMAN: Yes, ma'am. Come 2 forward. 3 MS. MAULDIN: I promise I'll be quick. 4 HEARING EXAMINER GROSSMAN: Just so the record 5 knows who is -- identify your name please. 6 MS. MAULDIN: Judy Mauldin. 7 HEARING EXAMINER GROSSMAN: Okay. 8 MS. MAULDIN: Good afternoon. 9 MR. ARGUETA: Good afternoon, ma'am. 10 MS. MAULDIN: How are you? 11 MR. ARGUETA: Good. 12 MS. MAULDIN: Quick question. Just in terms of 13 the business, you had said that you have been in business for 14 30 plus years. 15 MR. ARGUETA: Correct. 16 MS. MAULDIN: Your family, not you. 17 MR. ARGUETA: Yes. 18 MS. MAULDIN: So my question is, also you had 19 discussed the various locations where you went from an 20 apartment building, I think you said, into another location 21 on White Street. 22 MR. ARGUETA: White Hall Street. 23 HEARING EXAMINER GROSSMAN: White Hall. 24 MS. MAULDIN: White Hall Street, okay. And then 25 from there to Holly Grove, correct?</p>	<p>239</p> <p>1 MR. ARGUETA: That's what we had agreed to, yes. 2 MS. MAULDIN: Okay. Just wanted to get an 3 understanding. So there will be no additional expansion 4 whatsoever? 5 MR. ARGUETA: Correct. Correct. 6 MS. MAULDIN: Okay. That's my only question. 7 HEARING EXAMINER GROSSMAN: Thank you. If there 8 is no other cross-examination, any redirect? 9 MR. HUGHES: No, sir. 10 HEARING EXAMINER GROSSMAN: All right. Thank you, 11 Mr. Argueta. 12 MR. ARGUETA: Thank you. 13 HEARING EXAMINER GROSSMAN: All right. Does that 14 complete your witnesses, Mr. Hughes? 15 MR. HUGHES: It does, Mr. Grossman. 16 HEARING EXAMINER GROSSMAN: All right. Let me 17 turn to Ms. Thomas. Do you wish to testify? 18 MS. THOMAS: Yes. 19 HEARING EXAMINER GROSSMAN: And I believe I've 20 sworn you in already. Is that correct? 21 MS. THOMAS: Yes, you have, sir. 22 HEARING EXAMINER GROSSMAN: Okay. You are still 23 under oath. Do you prefer do it -- it may be easier for you 24 to do it from where you are seated rather than, come up here. 25 I think that would be okay.</p>
<p>238</p> <p>1 MR. ARGUETA: Correct. 2 MS. MAULDIN: So clearly your business has grown. 3 MR. ARGUETA: Yes, in 30 plus years. 4 MS. MAULDIN: Which is a good thing. 5 MR. ARGUETA: Yeah. 6 MS. MAULDIN: So my question to you is based on 7 the Park and Planning hearing. Initially the scope of your 8 business was going to be something like 45 parking spaces. 9 It was going to be very large. And now it's been reduced. 10 MR. ARGUETA: Yes. 11 MS. MAULDIN: There seems to be a pattern where 12 your business expands. So now in order to get a conditional 13 use permit in Holly Grove, that means that you have to reduce 14 the size and scope of your business. 15 MR. ARGUETA: We are not reducing. We are staying 16 where we are at. 17 MS. MAULDIN: You're going to stay where you are 18 at? 19 MR. ARGUETA: Yes. 20 MS. MAULDIN: So you don't intend to grow your 21 business? 22 MR. ARGUETA: Yes, exactly. That's what we agreed 23 -- 24 MS. MAULDIN: And the number of employees that you 25 have now?</p>	<p>240</p> <p>1 MS. THOMAS: Please, if I may. 2 HEARING EXAMINER GROSSMAN: Because you have a lot 3 of paper. 4 MS. THOMAS: I do. And unfortunately, I'm not an 5 attorney like Mr. Hughes. So I'm trying to get my act 6 together now. 7 HEARING EXAMINER GROSSMAN: Well, you are doing 8 great. 9 MS. THOMAS: Before we begin, I appreciate the 10 opportunity to speak to you this afternoon. 11 HEARING EXAMINER GROSSMAN: Most certainly. We 12 want to hear from the residents. It's very important for us 13 to get input, as much input as we can on any of these 14 applications. I'm very happy to have you and the other 15 members of the community here. 16 MS. THOMAS: This application is inconsistent with 17 the Cloverly Master Plan, which just calls for the 18 preservation of residential community and the peace and 19 enjoyment of a residential community. There are no existing 20 conditional uses in Holly Grove. There are landscaping 21 businesses in the Cloverly community and all of them are 22 located on major dual lane roadways, Norwood Road, Route 198, 23 New Hampshire Avenue, Layhill Road, Norbeck Road extended. 24 They are in the commercial designated zones consistent with 25 the master plan or in the ag zone consistent with the master</p>

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<p>241</p> <p>1 plan. None of them are within the residential, the RE2C. 2 Since 2005, the operation of Francisco in Holly Grove has 3 grown significantly. It has changed, and it has grown, and 4 it has changed. I would submit to you that there are flaws 5 in the reports from Park and Planning and from the traffic 6 report that we just heard. They visited our community on two 7 occasions. One in the summer and one in the fall. It does 8 not really provide an opportunity to really paint the picture 9 of what is occurring in terms of traffic and pedestrian use 10 in Holly Grove. Again, the road is narrow. It's -- for the 11 most part, it's 14 feet wide. These reference to pull offs 12 are driveways on people's property. It's a narrow road with 13 no shoulder. It's a dead end road. And again, residents on 14 Awkard Lane also need to access Holly Grove to get out of the 15 community. There is absolutely, significant particularly 16 this time of year, pedestrian use. Children, again, are 17 walking to the bus stop at the intersection of Norwood Road 18 and Holly Grove Road. And there are a number of children in 19 the neighborhood. And hopefully there will continue to be 20 children in the neighborhood as it grows. I'm very concerned 21 about the noise. And I am able to play and put it up to the 22 microphone to give you an example of what it sounds like when 23 mulch is being loaded and unloaded onto the trucks. 24 HEARING EXAMINER GROSSMAN: And this is -- you are 25 going to play the sound recording? Or it's actually a video</p>	<p>243</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MS. THOMAS: Again, the landscaping is going to 3 deal with the visual aspects of what the abutting properties 4 will see. 5 HEARING EXAMINER GROSSMAN: Right. 6 MS. THOMAS: But it's what they will hear. And 7 again, at 10:00 in the morning -- and I have one of our 8 residents here now, Mr. Pumphrey, he is at home at 10:00 in 9 the morning. He is retired fortunately. Lucky him. And 10 there are other residents who are at home at 10:00 in the 11 morning and they need to be subjected to this? I think 12 that's -- 13 HEARING EXAMINER GROSSMAN: Well, all right. I'm 14 not sure that your smartphone speaker is going to capture the 15 essence of what you are trying to display. But go ahead and 16 try it. 17 MS. THOMAS: Let me -- can I try it? 18 HEARING EXAMINER GROSSMAN: Sure. 19 FEMALE VOICE: Give it the old college try. 20 MS. THOMAS: And again, these were taken at around 21 6:00 in the morning, predawn. 22 HEARING EXAMINER GROSSMAN: Right. 23 MS. THOMAS: It was working for me earlier. 24 Geeze, I'm having technical difficulty. 25 HEARING EXAMINER GROSSMAN: I'll tell you what</p>
<p>242</p> <p>1 recording with sound that you filed with us. Is that what 2 you're going to play? 3 MS. THOMAS: That's correct. 4 HEARING EXAMINER GROSSMAN: And let me just 5 identify the exhibit number here so everybody knows what 6 we're talking about. 7 MS. THOMAS: Q, well -- 8 HEARING EXAMINER GROSSMAN: I'm looking. It's 58. 9 Yeah, it's (q), the flash drive. 58(q), a flash drive 10 containing video of speeding, Francisco vehicles attached to 11 that (inaudible) speeding. 12 MS. THOMAS: Are you prepared to hear that now or 13 would you want me to conclude my comments? 14 HEARING EXAMINER GROSSMAN: No, you can -- if you 15 have something that you can play so that we can hear it now 16 so that the people at the hearing can hear it as well. 17 MS. THOMAS: Yes, if I can put -- 18 HEARING EXAMINER GROSSMAN: Because I was 19 concerned about what really is in the record when you have a 20 sound recording or a video for that matter. I have accepted 21 them in the past, videos that people can see at the hearing. 22 Do you have something you want to project everyone and you 23 just want to play the sound? What's your -- 24 MS. THOMAS: I think the sound is what is really 25 important.</p>	<p>244</p> <p>1 we'll do. You can -- when the next witness testifies, you 2 can work on it and then we will take it out of order. 3 MS. THOMAS: Okay. All right. Thank you. 4 HEARING EXAMINER GROSSMAN: How is that? Just 5 remind me. 6 MS. THOMAS: All right. I will work on that. 7 There is reference to existing businesses that have been 8 grandfathered in that have existed in the community as long 9 as I've been on the planet, which is a long time, many, many 10 decades. 11 HEARING EXAMINER GROSSMAN: I don't think as long 12 as I have. 13 MS. THOMAS: And these individuals -- these 14 individuals actually live in Holly Grove. They've lived in 15 Holly Grove and their businesses were in operation prior to 16 zoning coming into effect and clearly prior to the master 17 plan. But none of these businesses are operating 10 trucks, 18 including Myer's. I believe they operate -- when business is 19 good for them, they may have three trucks. Mr. Washington, 20 who lives on Awkard Lane, operates one truck, one trailer. 21 There is a gentleman who lives at the intersection of Holly 22 Grove and Norwood Road who was working for Long Fence. He 23 has his own business now. He drives one truck. There is 24 another dump truck on Awkard Lane, one truck. Nunez, Mr. 25 Nunez drives one dump truck.</p>

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<p>245</p> <p>1 HEARING EXAMINER GROSSMAN: You know, that 2 evidence cuts two ways because the -- while you're saying 3 that this operation is somewhat unusual for the neighborhood, 4 it also -- one of the criteria we have to look at in the 5 zoning ordinance is whether there are other activities; other 6 special exceptions or conditional uses, which combined with 7 this proposed one, would create a excessive amount of 8 imposition on the neighborhood. The more that you say there 9 are very few trucks, the more one indicates that we are not 10 violating -- that this conditional use would not violate that 11 criteria in the zoning ordinance. I understand why you are 12 saying it, but it does cut two ways.</p> <p>13 MS. THOMAS: I understand. But I'll just going to 14 say that again, there are very few. There is also a business 15 or residence on Awkard Lane who are in air-conditioning and 16 they drive two vans. But my point is, these individuals live 17 in Holly Grove. Particularly the Washingtons and the Myers, 18 they have been grandfathered in. But we have enough trucks. 19 We don't need 10 more trucks in Holly Grove. And as much as 20 I love the Myers, if they were asking for conditional use 21 today, just coming into Holly Grove and moving in, I would be 22 opposed to them. But we have enough trucks. We don't need 23 10 more trucks and folks. None of these other businesses 24 that I'm referencing are bringing in employees, carpools of 25 employees. They live in Holly Grove. They get in their</p>	<p>247</p> <p>1 testimony correctly.</p> <p>2 MS. THOMAS: What I'm saying is, I would have 3 preferred that they would go back to the level before the 10 4 trucks arrived on Holly Grove. The existing trucks, the Myer 5 truck, the Washington truck, the Nunez truck, enough trucks. 6 Enough trucks.</p> <p>7 HEARING EXAMINER GROSSMAN: I understand.</p> <p>8 MS. THOMAS: We don't need a -- and again, the 9 landscaping businesses in Cloverly are located on roadways 10 that can really provide the access, the ingress and egress 11 that they need, dual lane roadways. Not a single, primarily 12 residential road, which is what Holly Grove was intended for.</p> <p>13 HEARING EXAMINER GROSSMAN: I do have to point out 14 to you, the only evidence I have now in terms of traffic 15 safety is from the technical staff and from the Applicant's 16 expert. I don't have any expert evidence, nor has anybody 17 proposed that there would be expert evidence proposed to me, 18 indicating that the conditional use would actually be unsafe 19 from a traffic expert's point of view. I know -- I 20 understand that you have a concern and others have expressed 21 a concern about safety, but that's arrayed against the expert 22 evidence, which is from the Applicant's expert and the 23 technical staff.</p> <p>24 MS. THOMAS: Mr. Grossman, but even -- the traffic 25 expert visited the community twice on two occasions.</p>
<p>246</p> <p>1 trucks. They leave for the day. They are gone. They come 2 back again.</p> <p>3 HEARING EXAMINER GROSSMAN: Well, if I understood 4 Mr. Argueta's testimony, they're not going to be 10 more 5 trucks. There's not going to be any more activity there than 6 exists today. Is that correct or is that -- am I not 7 understanding?</p> <p>8 MS. THOMAS: Well, I'm unclear about that because 9 again, it grows. And what they described in 2005 --</p> <p>10 HEARING EXAMINER GROSSMAN: Well, he can't grow 11 beyond the 15 --</p> <p>12 MS. THOMAS: There weren't 10 trucks in 2005 when 13 they moved in.</p> <p>14 HEARING EXAMINER GROSSMAN: No, whatever exists 15 now. As I understand it, is not going beyond what exists now 16 as I understand it.</p> <p>17 MS. THOMAS: Right. What I'm suggesting is what 18 exists now as unacceptable. There are too many. There are 19 too many trucks.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay.</p> <p>21 MS. THOMAS: Too many trucks.</p> <p>22 HEARING EXAMINER GROSSMAN: But what you were 23 saying is, we don't need more, 10 more trucks. But it wasn't 24 going to be 10 more. It would be the 10 that are there now. 25 If I understand correctly. If I have understood the</p>	<p>248</p> <p>1 HEARING EXAMINER GROSSMAN: I understand.</p> <p>2 MS. THOMAS: I live there. I'm there 365 days a 3 year.</p> <p>4 HEARING EXAMINER GROSSMAN: Right. I'm not I 5 can't consider that. And I have in the past considered 6 traffic evidence from non-experts and it has impacted what 7 I've done on applications. I'm just saying that right now, 8 in terms of traffic safety issues, that's -- there have not 9 been -- do you dispute that there have not been any reported 10 accidents and 10 years? I mean, no reported accidents on 11 Holly Grove Road for 10 years? And then you had the expert 12 saying safe site distances and there are pull off areas, even 13 if they are not technically a shoulder area. I have to 14 consider that evidence too, not just your concern about it.</p> <p>15 MS. THOMAS: So I would just ask that driveway -- 16 resident's driveways and resident's property are not 17 acceptable pull off areas. And I do ask that you consider, 18 again, for someone who actually lives in Holly Grove, that 19 there is more traffic than what was described. The 20 description reminds me of what it was like growing up in 21 Holly Grove in the 50s where we can play hopscotch in the 22 road for hours and not be disturbed. It's not like that 23 anymore. The blatant statement from Park and Planning that 24 there are no -- there are no pedestrians, that there is no 25 pedestrian use, that is simply not true; it's simply not</p>

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<p style="text-align: right;">249</p> <p>1 true. And I believe I am sure that I provided evidence of 2 individuals walking their dogs, individuals taking leisurely 3 strolls, et cetera, on Holly Grove Road. 4 MS. AWKARD: I was one -- may I make a statement? 5 HEARING EXAMINER GROSSMAN: You would have to wait 6 your turn. Right now it's Ms. Thomas' turn. 7 MS. THOMAS: I've addressed the bus stop issue. 8 I'm going to just stop and bring your attention now to some 9 case precedents, which I think is really significant. 10 HEARING EXAMINER GROSSMAN: Okay. All right. 11 MS. THOMAS: And the first case goes back to 1987. 12 And that was a landscaping application on Norwood Road. 13 Lancaster was the name of the company. And the Board -- 14 HEARING EXAMINER GROSSMAN: This was 1987? 15 MS. THOMAS: Yes, sir. It was case S 13-12. And 16 at that time, the Board did recognize that -- and they were 17 called special exceptions back then. 18 HEARING EXAMINER GROSSMAN: Right. 19 MS. THOMAS: It was approved in the RA2C zone. 20 However, the Board found that when they were existing 21 nurseries. They were called nurseries at that time. Today I 22 think they do call landscaping businesses. They were already 23 granted in this neighboring one family residential area. But 24 this particular, this special exception, and I'm going to now 25 say this conditional use request, increases the number,</p>	<p style="text-align: right;">251</p> <p>1 MS. THOMAS: And again -- and in that case, the 2 neighbors talked about the offensive odor from the mulch. 3 The hearing examiner contemplated the serious adverse 4 consequences of the commercial traffic, the noise generated 5 by the trucks and the Bobcats that seriously disturbed the 6 adjacent neighbors. 7 HEARING EXAMINER GROSSMAN: Right. 8 MS. THOMAS: And again, with the close proximity 9 of the adjacent neighbors to that property. 10 HEARING EXAMINER GROSSMAN: It was close proximity 11 to the driveway. I'm not sure that that analogy holds 12 completely, but I understand where you're coming from. 13 MS. THOMAS: The third case, again, just relates 14 to Goshen, which was approved. But Goshen was approved in an 15 ag zone. It was a -- 16 HEARING EXAMINER GROSSMAN: I approved it. So I'm 17 familiar. 18 MS. THOMAS: But in an agricultural zone 19 surrounded by a tree farm. 20 HEARING EXAMINER GROSSMAN: Right. And that did 21 play a part in my consideration for sure. 22 MS. THOMAS: I think that that concludes -- again, 23 I do want to point out some misleading statements, sir, that 24 -- for you to consider. 25 HEARING EXAMINER GROSSMAN: Okay, sure.</p>
<p style="text-align: right;">250</p> <p>1 intensity, and scope of this special exception uses in a 2 predominantly residential area. The board considered the 3 intensity and the character of the activity generated by the 4 special exception and noted that it would not be in harmony 5 with the general character of the neighborhood. And that 6 granting the special exception would be detrimental to the 7 use, the peaceful enjoyment of the surrounding properties, 8 would cause objectionable noise, which I will display in a 9 little bit, and physical activity. And it was denied. Then 10 I'm going to reference a case in 2010. And that was 11 Montgomery County Maryland vs. Melody Butler. 12 HEARING EXAMINER GROSSMAN: I'm very familiar with 13 the Butler decision. 14 MS. THOMAS: That was case 305115-V. And that 15 went as far as the Circuit Court for Montgomery County. 16 HEARING EXAMINER GROSSMAN: It went up to the 17 Court of Appeals of Maryland, not just the Circuit Court. 18 And that's located at 417 Md. 271, 9 A3d 824. It's a 2010 19 decision by the Maryland Court of Appeals. And there are 20 similarities in that that was denied and denial was upheld 21 based on the fact that the site condition was a relatively 22 narrow driveway surrounded nearby by residents. And the 23 hearing examiner felt that it was too much of an imposition 24 on the community based on the evidence in that case. So it's 25 not that there aren't similarities.</p>	<p style="text-align: right;">252</p> <p>1 MS. THOMAS: Again, it was proposed that initially 2 when the family moved in, they really didn't understand the 3 processes, weren't sophisticated, I think was the term that 4 Mr. Hughes used. And again, I would just argue that a 5 business that had been in operation 20 years prior to moving 6 into the neighborhood understands the processes. I would 7 also like to point out that they were cited in 2004 at the 8 property on 240 Randolph Road and I can -- 9 HEARING EXAMINER GROSSMAN: The only problem is, 10 it's technically -- there's only one reason why that kind of 11 evidence would get before me. And that is question of 12 credibility of the witness. That's how it came, to some 13 extent, came in to being in that other case you cited, it was 14 considered -- the credibility issue was considered by the 15 hearing examiner in that case. It doesn't really bear 16 directly on the issues before me. The only real issue before 17 me is the compliance with the zoning ordinance and its 18 compatibility and so on. 19 MS. THOMAS: Yes, sir. 20 HEARING EXAMINER GROSSMAN: Not whether or not the 21 family knew or should have known that this -- that they 22 required a conditional use back then. That's not technically 23 before me. What's technically before me is whether or not 24 they can -- whether they have met their burdens of 25 demonstrating compliance with the zoning ordinance. That's</p>

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<p>253</p> <p>1 what's truly before me, not whether or not they had a 2 violation in the past. I mean, they have a violation now. 3 They were cited with a violation. So I have to really 4 address what's before me. But I understand the credibility 5 issue can be an issue.</p> <p>6 MS. THOMAS: Yes, which brings me to the hours of 7 operation because I have demonstrated that Francisco has 8 operated beyond the 7:00 p.m. I have recorded the trucks 9 coming in 8:00 at night for example.</p> <p>10 HEARING EXAMINER GROSSMAN: Right.</p> <p>11 MS. THOMAS: Again, this video is going to -- and 12 the audio portion is activity occurring prior to 6:00 a.m.</p> <p>13 HEARING EXAMINER GROSSMAN: Right. I suggest that 14 if that occurs and if this conditional use is granted and you 15 hear that kind of thing going on, that you record it on a 16 device such as a phone that would record the time and date 17 that it's being recorded. And then you can file a complaint 18 of violation of the conditional use, if in fact it's granted. 19 So there is an enforcement mechanism and they can be revoked 20 if in fact they are not complying. And I think there is a 21 very strong incentive for business to comply given that they 22 can be revoked that way. They've gone to a lot of expense to 23 get the conditional use.</p> <p>24 MS. THOMAS: Right. And that places burden on the 25 neighborhood as well. I've spent an inordinate amount of</p>	<p>255</p> <p>1 acknowledging that.</p> <p>2 HEARING EXAMINER GROSSMAN: I understand that.</p> <p>3 MS. THOMAS: It is really -- it's not ideal. And 4 then lastly, I am deeply concerned, and I regret that I 5 considered at the Park and Planning hearing, the suggestion 6 that there be a community liaison. I don't think that's 7 going to be very effective. I think that's an unfair burden 8 and not really the purpose of the civic association. And 9 frankly, sir, I don't think we would get anywhere with that 10 kind of resolution. And that goes back to the credibility 11 piece. But I will give you an example. We did meet with the 12 Applicant during a January Cloverly civic associating 13 meeting. And their plans were presented. And during that 14 meeting, the noise issue really emerged. There was a great 15 deal of disagreement about the noise issue. What was cited 16 was a generator that was being run all night long that was 17 waking up the neighbors in the abutting properties. But as a 18 response to that, just a matter of weeks later is then when 19 we discover the delivery of mulch via tractor-trailer and the 20 loading of mulch at 6:00 in the morning, when the roosters 21 are still crowing.</p> <p>22 HEARING EXAMINER GROSSMAN: Is the generator issue 23 still going? AN ongoing issue?</p> <p>24 MS. THOMAS: Maybe -- I think one of our witnesses 25 will be able to testify to that.</p>
<p>254</p> <p>1 time recording video, et cetera. I work full-time. I work 2 seven days a week sometimes and is very, very difficult for 3 me to --</p> <p>4 HEARING EXAMINER GROSSMAN: Yeah, there is 5 enforcement by the department of permitting services. They 6 will inspect, I believe, on an annual basis. On the other 7 hand, they are not going to be around all the time. So yes, 8 if there are violations at 5:00 in the morning, you are going 9 to be the one that hears it, not the department of permitting 10 services. That's why I say if you do monitor something like 11 that, record it so that you can have strong evidence there.</p> <p>12 MS. THOMAS: Sir, I also ask that you really, 13 again, strongly consider the description of Holly Grove Road 14 as part of Park and Planning's report as well as the 15 application. Again, it is a narrow road. It is very, very 16 deceptive. I have provided evidence, you know, a truck 17 approaching from the south heading north on Norwood Road. 18 That hill at the intersection of Awkard Lane and Holly Grove 19 Road. And I'm driving and I'm in a truck. And I provided 20 that picture. It's very difficult to see what's coming over 21 that hill. And trucks don't stop on a dime. And so if a 22 truck is coming the other way, that --</p> <p>23 HEARING EXAMINER GROSSMAN: It's not ideal. Sure 24 it's not ideal to have a 14 foot road.</p> <p>25 MS. THOMAS: Is not ideal. Thank you for</p>	<p>256</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MS. THOMAS: Because my property does not abut the 3 property. But noise is an issue from my standpoint because I 4 can hear Blake High School's marching band when they're on 5 their football field from my house. And there's several 6 acres of woods between my home and Blake High School. And so 7 if I can hear a snare drum a quarter of a mile away I just 8 can't imagine what my neighbors are hearing when they are 9 listening to a Bobcat loading and unloading mulch.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay.</p> <p>11 MS. THOMAS: I am going to stop and I will ask 12 other witnesses to come forward.</p> <p>13 HEARING EXAMINER GROSSMAN: And Mr. Hughes, I 14 would be interested in hearing -- I haven't heard about a 15 generator problem before the hearing. I would be interested 16 in hearing about that if that's --</p> <p>17 MR. HUGHES: My position, and I can do rebuttal if 18 you need to, but we don't have a generator. We don't have a 19 need for a generator. We would have no problem if you said no 20 generators.</p> <p>21 HEARING EXAMINER GROSSMAN: Was there a generator 22 on the property?</p> <p>23 MR. HUGHES: We're not aware of it being on our 24 property. It may be somewhere else in the neighborhood.</p> <p>25 HEARING EXAMINER GROSSMAN: I see.</p>

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<p>257</p> <p>1 MR. HUGHES: Or something that sounded like is, 2 I'm not sure. 3 HEARING EXAMINER GROSSMAN: Okay. All right. Do 4 you have cross-examination questions of Ms. Thomas? 5 MR. HUGHES: No, sir. 6 HEARING EXAMINER GROSSMAN: Okay. Anybody else? 7 MS. AWKARD: I'm just going to mention the fact 8 that Holly Grove Road is a dangerous road. 9 HEARING EXAMINER GROSSMAN: No, no, no. I'm 10 asking if you wish to cross-examine Ms. Thomas. 11 MS. AWKARD: Oh, okay. 12 HEARING EXAMINER GROSSMAN: All right. 13 MS. THOMAS: Oh, I'm sorry, Mr. Grossman. There 14 was one other point that was in the reports that I'm going to 15 clarify. The discrepancy that there was a great deal of 16 support from the neighborhood for this application; and that 17 is absolutely not true. You did receive -- 18 HEARING EXAMINER GROSSMAN: Well, the Applicant 19 filed, I think seven form letters, if I recall signed by 20 residents. 21 MS. THOMAS: Correct. And what is misleading is 22 that some of the letters of support are from neighbors who, 23 at the time, did not fully understand the scope and what the 24 application entailed. And then when I was able to actually 25 sit down and meet with them and talk to them and explain and</p>	<p>259</p> <p>1 Because there is not. 2 HEARING EXAMINER GROSSMAN: No. Well, what I 3 would write in my report is that I received these letters or 4 whatever support I have received in opposition. There was X 5 amount of testimony. Obviously testimony at the hearing 6 carries a greater amount of weight because it's subject to 7 cross-examination. So the fact that people vote with their 8 feet and come to the hearing and testify and are subject to 9 being cross-examined has some weight. 10 MS. THOMAS: Okay. 11 HEARING EXAMINER GROSSMAN: But regardless of that 12 I have to consider the evidence and whether or not they have 13 made their case and you know, you always have to bear in mind 14 as you obviously know from what you've submitted and I have 15 read everything you've submitted, that the zoning ordinance 16 essentially says if there's no non-inherent adverse impacts 17 that I shouldn't deny it. And a landscape contractor 18 operation is going to have some inherent impacts on the 19 surroundings. So all of that has to play in what I decide. 20 A lot depends on the site situation as it did in Butler, the 21 case you -- one of the cases you relied on. The site 22 conditions make a whole lot of difference. 23 MS. THOMAS: Uh-huh. 24 HEARING EXAMINER GROSSMAN: And I will look at all 25 that. All right. You said you had no cross-examination for</p>
<p>258</p> <p>1 show them the information they were opposed to the 2 application. 3 HEARING EXAMINER GROSSMAN: Right. 4 MS. THOMAS: Including neighbors abutting the 5 property. 6 HEARING EXAMINER GROSSMAN: And some of them have 7 both signed both ways. Both petitions. 8 MS. THOMAS: That's because they didn't fully 9 understand. 10 HEARING EXAMINER GROSSMAN: Right. 11 MS. THOMAS: They really, fully, did not 12 understand what was going on and I will also introduce 13 additional -- 14 HEARING EXAMINER GROSSMAN: It's not what -- 15 MS. THOMAS: -- letters in opposition from other - 16 - 17 HEARING EXAMINER GROSSMAN: As I said before, at 18 the very beginning. It's not a plebiscite. I don't count 19 how many people oppose it or are for it. I'm not permitted 20 to do that. As the case law says, I can't -- it's not 21 something that people vote on. It's whether or not the 22 applicant has met the burden under the zoning ordinance. 23 MS. THOMAS: So you would not consider them -- the 24 statement in Park and Planning's report as well as the 25 Applicant's that there is significant community support?</p>	<p>260</p> <p>1 Ms. Thomas? 2 MR. HUGHES: That's correct. 3 HEARING EXAMINER GROSSMAN: Okay. And who's the 4 next witness? Shall we hear from Mr. Remein? 5 MR. REMEIN: In the interest of time it would 6 probably be more efficient for some of the other community 7 members to speak and then I won't have to face repeating what 8 they've said. 9 HEARING EXAMINER GROSSMAN: Okay. Well, that's 10 fine. 11 MR. REMEIN: Does that sound fair? 12 HEARING EXAMINER GROSSMAN: Sure. 13 MR. REMEIN: Thank you. 14 HEARING EXAMINER GROSSMAN: Let's see who we have 15 in our list here. Or if somebody wants to step up while I'm 16 finding my -- 17 MS. MAULDIN: I'd be happy to step up. 18 HEARING EXAMINER GROSSMAN: All right, come on. 19 Once again, just identify yourself for the record. You've 20 already been sworn in. 21 MS. MAULDIN: I have. Any particular place you'd 22 like me to be? 23 HEARING EXAMINER GROSSMAN: Well, whatever you're 24 comfortable. You can sit up here if you like, that might be 25 better.</p>

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<p>261</p> <p>1 MS. MAULDIN: I kind of like the perch. No 2 buttons I have to push or anything? 3 HEARING EXAMINER GROSSMAN: No buttons. 4 MS. MAULDIN: Hopefully I have everything. 5 HEARING EXAMINER GROSSMAN: Just once again state 6 your name for the record, and you're under oath. 7 MS. MAULDIN: My name is Judy Mauldin. And thank 8 you so much for your time and consideration. 9 HEARING EXAMINER GROSSMAN: Certainly. 10 MS. MAULDIN: This is a very important matter to 11 all of us. And give me a second while I get my act together. 12 HEARING EXAMINER GROSSMAN: Certainly. 13 HEARING EXAMINER GROSSMAN: And his daughter is 14 the one who testified earlier? 15 MS. MAULDIN: I have a question, Mr. Grossman, 16 because of the antiquated building that you mentioned 17 earlier. I brought some pictures which would give you a very 18 great idea and concept of Holly Grove and some of the matters 19 that I was going to use in my discussion, but they are -- 20 would need to be projected. They're actually on a USB. So 21 is it something that I can just give you? 22 HEARING EXAMINER GROSSMAN: Well, they have to 23 really be presented. But there are lots of pictures in the 24 case already. Have you looked at those? 25 MS. MAULDIN: I have some other pictures that I</p>	<p>263</p> <p>1 MS. MAULDIN: That would be awesome. Thank you so 2 much. Okay. Where to begin. I -- again my name is Judy -- 3 HEARING EXAMINER GROSSMAN: You can do it -- by 4 the way you can do it electronically also. The ones you send 5 me I need an electronic copy as well as the hard copy. 6 MS. MAULDIN: Oh, you need it both ways? 7 HEARING EXAMINER GROSSMAN: Yes. 8 MS. MAULDIN: Okay. Let me make a note of that. 9 I don't want to forget that. Okay. All right. One other 10 question? 11 HEARING EXAMINER GROSSMAN: Yes. 12 MS. MAULDIN: So I also testified before Park and 13 Planning on January 10th, and then the hearing on the 16th, 14 May 16th, and I submitted information and I don't think, 15 based on the listing that I saw outside, that any of my 16 information was provided as record. And I -- 17 HEARING EXAMINER GROSSMAN: The only thing -- the 18 only record that I will have is the testimony here, the 19 exhibits that are accepted into evidence here. 20 MS. MAULDIN: Okay. 21 HEARING EXAMINER GROSSMAN: And those would have 22 been either submitted at the hearing or already in the file. 23 The hearing before the Planning Board itself, that record is 24 not ordinarily before me. If all the parties want it to be 25 before me, and they agree that it should be before me, I</p>
<p>262</p> <p>1 printed, but -- 2 HEARING EXAMINER GROSSMAN: You have pictures that 3 are printed out? 4 MS. MAULDIN: But they are not all of them. 5 HEARING EXAMINER GROSSMAN: I understand. Do you 6 -- I mean there are many pictures in the staff report and 7 others that have been submitted by other people. So maybe 8 those pictures cover what you want to show? 9 MS. MAULDIN: No, because mine actually go with 10 the grade and the view and the slopes and the marks and 11 pedestrians actually using, and joggers, and people who are - 12 - 13 HEARING EXAMINER GROSSMAN: Well, how about if we 14 do this. Since the record is going to have to remain open 15 for a while given that there has been a new amended landscape 16 plan submitted, if you submit your pictures within a couple 17 of days and send copies to the other parties here -- 18 MS. MAULDIN: Counsel? 19 HEARING EXAMINER GROSSMAN: Yeah. 20 MS. MAULDIN: Okay. 21 HEARING EXAMINER GROSSMAN: We will consider that, 22 okay? 23 MS. MAULDIN: That would be awesome. 24 HEARING EXAMINER GROSSMAN: As an exhibit. It 25 will be considered as an exhibit, okay?</p>	<p>264</p> <p>1 ordinarily would accept it if all the parties agree to that. 2 But other than that, it's not before me. 3 MS. MAULDIN: Okay. All right. Well, let me just 4 get this show on the road for time's sake. First of all, 5 what I wanted to speak on is that there is an effect, a 6 negative effect on the neighborhood and the community in 7 terms of the ability for the reasonable use, for us to use 8 and enjoy the road, traffic concerns which are pretty much 9 outlined in my picture. Also, concerns regarding crime, 10 noise and the fact that the nuisance of it all. 11 HEARING EXAMINER GROSSMAN: Crime? How does crime 12 come into it? 13 MS. MAULDIN: Well, crime in the sense that there 14 was an incident, in particular, that I can think of where at 15 one point the family landscaping business was allowing people 16 to, I guess lease space, their vehicles, a food truck and a 17 boat. And at one point the people didn't pay to park their - 18 - didn't pay whatever they were charging them to lease a 19 space to store their boat and their food truck, and it was 20 set outside of the driveway and police were called. And that 21 provides a disturbance to the neighborhood because of the -- 22 if you have to involve the police and the actual, I think, 23 the criminal implications because somebody could -- it 24 escalated, but the police came and calmed -- and allowed the 25 people to remove their stuff. But that is a concern in terms</p>

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<p>265</p> <p>1 of -- that the property would be properly utilized for -- 2 HEARING EXAMINER GROSSMAN: Yes. Well, we 3 certainly want the property properly utilized. I'm not sure 4 that I can consider that. 5 MS. MAULDIN: All right, well, we'll call it a 6 safety issue. 7 HEARING EXAMINER GROSSMAN: Well, I don't know if 8 that's a safety issue or not, or a crime. And you have 9 raised -- and you and others have raised safety issues. But 10 I don't know about criminal. I don't know that this family 11 business produces criminal activity. 12 MS. MAULDIN: Okay. 13 HEARING EXAMINER GROSSMAN: Or that there is a 14 risk of that. 15 MS. MAULDIN: Okay. Well, maybe I should rephrase 16 that. 17 HEARING EXAMINER GROSSMAN: All right. 18 MS. MAULDIN: Okay. So a safety issue. What I 19 would like to speak on and -- is the traffic. And I want to 20 get back to the transportation report and the traffic report 21 and some of the -- a letter in particular that I had received 22 from Mr. Hughes, and then as well, statements from the 23 community. I personally went and visited the neighbors and I 24 -- when I first -- this was first brought to my attention, 25 and the reason it was brought to my attention was I was</p>	<p>267</p> <p>1 HEARING EXAMINER GROSSMAN: I didn't say it 2 couldn't be utilized. People have sent me petitions in 3 opposition. There was a form petition in opposition, as well 4 as form letters in support that have been filed with us and 5 we receive them, as long as they have a name, signed and 6 addressed. 7 MS. MAULDIN: Okay. 8 HEARING EXAMINER GROSSMAN: And we do receive 9 them. What I'm saying is that you can't testify as to what 10 other people told you, if you're thinking to introduce it to 11 prove the truth of what's asserted therein (inaudible) 12 hearsay. 13 MS. MAULDIN: Of course. 14 HEARING EXAMINER GROSSMAN: That's the definition 15 of hearsay. We're more relaxed here about hearsay in an 16 administrative proceedings. On the other hand, something 17 that goes to what a person thinks as opposed to just 18 receiving a document, I'm very hesitant to do it. But 19 hearsay there are lots of people here to state their own 20 position. And if your neighbors are opposed, they can say 21 so. Those that have done it in writing have said so. Those 22 that want to testify can say so. 23 MS. MAULDIN: Okay. So if I have letters with 24 signatures from people, can I read their statement in -- 25 HEARING EXAMINER GROSSMAN: Don't read them</p>
<p>266</p> <p>1 walking my dog, which I do often, and that's when I saw the 2 sign that this particular family was applying for this 3 zoning. And at that time, I wasn't even aware of the fact 4 that they were operating their business without a permit. I 5 thought that their operation was legitimate. So it had 6 concerned me because of all this time when I'm walking my 7 dog, again I walk the dog on the road. So you're in the 8 road. We don't have a sidewalk. And my concern was 9 sometimes trucks would go by pretty fast by me and of course, 10 I'm concerned about my dog who is afraid of everything. So 11 it certainly limited the use of the road and so at that point 12 I felt there was a kind of a call to action. And I went out 13 and visited some of the neighbors. And I found out from the 14 neighbors that they too were very concerned and opposed the 15 fact that this particular -- 16 HEARING EXAMINER GROSSMAN: Don't tell me what 17 your neighbors said. 18 MS. MAULDIN: Well, the reason I -- 19 HEARING EXAMINER GROSSMAN: They would have to 20 submit that themselves. 21 MS. MAULDIN: Well, let me ask you this. Okay. 22 With that being said, because I did go by and I actually 23 collected -- and I heard you telling Ms. Thomas that this 24 could not be utilized, but I did collect signatures of people 25 --</p>	<p>268</p> <p>1 We'll just have them marked. 2 MS. MAULDIN: We'll just submit them? 3 HEARING EXAMINER GROSSMAN: Yes. 4 MS. MAULDIN: Okay. Well, then I have several 5 things that I guess I would like to take. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MS. MAULDIN: And these are adjoining and abutting 8 neighbors regarding the air quality, noise and all of that 9 stuff. 10 HEARING EXAMINER GROSSMAN: Okay. 11 MS. MAULDIN: So I would like to submit that. 12 HEARING EXAMINER GROSSMAN: Okay. Let me mark 13 them. 14 MS. MAULDIN: And that's from Mr. Hudson, Mr. 15 Pumphrey and Ms. Washington. 16 HEARING EXAMINER GROSSMAN: Okay. 17 MS. MAULDIN: And those are all abutting and 18 adjoining properties. And then also, another from -- 19 HEARING EXAMINER GROSSMAN: Well, hold on a second 20 and let me get these in. 21 MS. MAULDIN: Okay. 22 HEARING EXAMINER GROSSMAN: If I can find my 23 exhibit list, which is now buried under some other papers 24 somewhere. All right. I must have put it down somewhere. 25 MR. HUGHES: Are you looking for what number it is</p>

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<p style="text-align: right;">269</p> <p>1 or your list itself?</p> <p>2 HEARING EXAMINER GROSSMAN: No, I want to write on</p> <p>3 the exhibit list. Oh, here it is. Okay. I can't even blame</p> <p>4 my wife, she's not here.</p> <p>5 MR. HUGHES: You could try.</p> <p>6 MS. MAULDIN: Nobody will listen.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. Let's see.</p> <p>8 This will be 86. I'll say letters in opposition from -- you</p> <p>9 say they are abutting neighbors?</p> <p>10 MS. MAULDIN: Abutting and -- yeah, abutting</p> <p>11 neighbors.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay. And that is</p> <p>13 86(a) will be from Gerald Hudson.</p> <p>14 MS. MAULDIN: That's just thick paper.</p> <p>15 HEARING EXAMINER GROSSMAN: Yeah, heavy grade</p> <p>16 paper. 86(b) from Dorothy Washington, and 86(c) from Herbert</p> <p>17 Pumphrey.</p> <p>18 MS. MAULDIN: Herbert Pumphrey, uh-huh. And then</p> <p>19 we have a (d).</p> <p>20 HEARING EXAMINER GROSSMAN: Okay. And his</p> <p>21 daughter is the one who testified earlier?</p> <p>22 MS. MAULDIN: That's correct.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay. And 86 --</p> <p>24 MS. MAULDIN: And that would be my mother.</p> <p>25 HEARING EXAMINER GROSSMAN: -- (d), is from Jean</p>	<p style="text-align: right;">271</p> <p>1 And this is even thicker paper. All right. Let me just get</p> <p>2 these -- I don't know if I've received a list, not the</p> <p>3 petition. I've received the copies of the petition but --</p> <p>4 MS. MAULDIN: And that should be 37 signatures</p> <p>5 representing 24 households in Holly Grove and Awkard Lane.</p> <p>6 HEARING EXAMINER GROSSMAN: All right. So --</p> <p>7 MS. MAULDIN: And that was submitted before but</p> <p>8 not directly to you.</p> <p>9 HEARING EXAMINER GROSSMAN: Well, somebody</p> <p>10 submitted --</p> <p>11 MS. MAULDIN: Did they?</p> <p>12 HEARING EXAMINER GROSSMAN: -- petitions to me.</p> <p>13 MS. MAULDIN: Okay. Well, that's good.</p> <p>14 HEARING EXAMINER GROSSMAN: Unless I'm thinking of</p> <p>15 some different case, and I don't think I am. Let me see.</p> <p>16 (Pause)</p> <p>17 MR. HUGHES: Thank you Mr. Grossman.</p> <p>18 HEARING EXAMINER GROSSMAN: You're welcome, sir.</p> <p>19 And I'll tell what, there's no point in my spending a lot of</p> <p>20 time trying to figure that out so I'll just take these in.</p> <p>21 MS. MAULDIN: Okay.</p> <p>22 HEARING EXAMINER GROSSMAN: And this will be 87,</p> <p>23 list of signatures to opposition petition.</p> <p>24 (Exhibit 87 marked for identification)</p> <p>25 HEARING EXAMINER GROSSMAN: And then Exhibit 87(a)</p>
<p style="text-align: right;">270</p> <p>1 Moore. Okay.</p> <p>2 (Exhibits 86(a) through 86(d) marked for</p> <p>3 identification)</p> <p>4 MS. MAULDIN: And then I --</p> <p>5 HEARING EXAMINER GROSSMAN: Have you seen these at</p> <p>6 all Mr. Hughes?</p> <p>7 MR. HUGHES: No, sir.</p> <p>8 HEARING EXAMINER GROSSMAN: I'm sorry. Let me</p> <p>9 show you these.</p> <p>10 MR. HUGHES: Thank you.</p> <p>11 MS. MAULDIN: I think he's seen the one from my</p> <p>12 mother. That was the letter to the Planning Commission. Do</p> <p>13 I give you these as well?</p> <p>14 HEARING EXAMINER GROSSMAN: What are they?</p> <p>15 MS. MAULDIN: It's just in case you can't</p> <p>16 understand the handwriting; these are the 37 signatures of</p> <p>17 opposition.</p> <p>18 HEARING EXAMINER GROSSMAN: I think I have</p> <p>19 received --</p> <p>20 MS. MAULDIN: Those?</p> <p>21 HEARING EXAMINER GROSSMAN: -- probably all of</p> <p>22 these.</p> <p>23 MS. MAULDIN: Okay. And then the clinging sheets,</p> <p>24 so you actually understand their -- I'm a little, you know --</p> <p>25 HEARING EXAMINER GROSSMAN: All right. Maybe.</p>	<p style="text-align: right;">272</p> <p>1 through whatever. How many pages are there?</p> <p>2 MS. MAULDIN: I don't know, you're going to have</p> <p>3 to count them.</p> <p>4 HEARING EXAMINER GROSSMAN: (a) through -- let</p> <p>5 staff count that out; are the actual petitions in opposition.</p> <p>6 Okay.</p> <p>7 MS. MAULDIN: So last night when I was thinking</p> <p>8 about all this it seemed pretty straightforward, the method</p> <p>9 to my madness, but as I stated that I believe that this will</p> <p>10 have harm on the community. I -- for me personally it</p> <p>11 affects the peaceful enjoyment. The traffic with the cars,</p> <p>12 the trucks, and as well as the health and safety of the</p> <p>13 welfare of the community. I wanted to, if I could just go</p> <p>14 through and some of this I had touched on with the traffic</p> <p>15 report. But I had the great idea to take what Mr. -- I don't</p> <p>16 want to butcher his name again. Mr. Etemadi --</p> <p>17 HEARING EXAMINER GROSSMAN: Etemadi, yes.</p> <p>18 MS. MAULDIN: -- had put together and the traffic</p> <p>19 reports and distance. And as I started to read the letter</p> <p>20 particularly dated November 8th, 2018 that he had written to</p> <p>21 Ms. Tesafaye as I went through this I just started to think,</p> <p>22 I need to get a measuring wheel and get out and measure some</p> <p>23 of these things because the Holly Grove that I know, and let</p> <p>24 me also say that I was born and raised there, I'm not afraid</p> <p>25 to say it; I'm 58. And I was three months old when I moved</p>

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<p style="text-align: right;">273</p> <p>1 into Holly Grove. And I'm very intimate, of course, with 2 Holly Grove the surrounding and growing up there, open space. 3 We would play softball in the field, which now is homes. 4 That particular property at 15400 was a field where we played 5 softball, so I'm very accustomed to it always having open 6 spaces. We have horses and we live in a residential area and 7 certainly would want to keep it a residential area. So open 8 spaces doesn't necessarily mean to create entities to 9 commercialize, to me, and I'm a country girl. And then also 10 in terms of the rural roads, I am so much of a country girl 11 that to get more country I purchased about 100 acres in 12 Western North Carolina, and I'm very familiar with rural 13 roads and routes when they give you an address. For example, 14 my address is on a road, but my mailbox is at the public 15 road. And I say that to say that when we talk about Holly 16 Grove the end of Holly Grove ends right before that the end 17 that everyone was speaking of as the end of the maintenance. 18 And then from going up, we used to call that Pumphrey Lane, 19 because that was all the family of Pumphrey and the Myers. 20 She actually was a Pumphrey and married -- they were just all 21 related. So we just considered that to be Pumphrey. And I 22 say that again to say that Google Maps even calls my private 23 road that I have in North Carolina that's about a mile and a 24 half long, they give it the name of my -- if the mailman 25 could deliver to me, that street address. So I say that all</p>	<p style="text-align: right;">275</p> <p>1 MS. MAULDIN: Well, for example, in the report -- 2 HEARING EXAMINER GROSSMAN: Oh, I see, you're 3 going to go through -- 4 MS. MAULDIN: Well, like distance and widths. 5 HEARING EXAMINER GROSSMAN: Oh, I see. So you're 6 critiquing the traffic report or -- 7 MS. MAULDIN: Exactly. 8 HEARING EXAMINER GROSSMAN: Okay. 9 MS. MAULDIN: Because it contradicts, in a lot of 10 different ways, and it's inaccurate. 11 HEARING EXAMINER GROSSMAN: Okay. Well, just tell 12 me what's inaccurate. 13 MS. MAULDIN: Okay. So on the first page when it 14 said on page -- I'm looking at November 8, 2018, and in the 15 report, where it states that "Holly Grove is provided with 16 excellent, and then more sufficient sight distance clearance 17 at its intersection with Norwood Road and other intersecting 18 made along its length, and at least a seven-foot grass 19 shoulder is provided on each side of the road." That doesn't 20 exist. And in my pictures it will show that the grass is 21 actually lawns. And there is absolutely no shoulder 22 whatsoever. Also, number 1 says that, "Norwood Road 23 intersection is a 20-foot wide, large turning radius." At 24 the intersection of Norwood Road, Norwood Road is a very busy 25 intersection and you cannot turn. I mean you can, but it's</p>
<p style="text-align: right;">274</p> <p>1 to say is that private roads in rural areas, typically the 2 mail people will give it whatever the closest public county 3 maintenance road attached to. They'll call it that way and 4 then Google maps likes to do that also because people like to 5 get -- 6 HEARING EXAMINER GROSSMAN: Once again, it doesn't 7 make a difference in terms of my decision in this case. 8 MS. MAULDIN: Okay. 9 HEARING EXAMINER GROSSMAN: But I just want to 10 refer to it as what it is, and the closest I've got to an 11 official statement on it is the SDAT records which call it 12 Holly Grove Road, even the extended area of Pumphrey. So I'm 13 going to call it that in my report. It doesn't make a 14 particle of difference as to how it's cited. 15 MS. MAULDIN: Okay. So if I could, I'm just going 16 to read through the things that I've highlighted, and all of 17 this information is already on record, so it's not as if I'm 18 introducing any new things, other than the photographs that I 19 have to support this. But I will have to the then -- 20 HEARING EXAMINER GROSSMAN: I prefer if you don't 21 read through a document. You can file the document with me 22 if that's what you want to do and -- 23 MS. MAULDIN: In terms of the corrections? 24 HEARING EXAMINER GROSSMAN: Oh I don't know. What 25 do you mean, corrections?</p>	<p style="text-align: right;">276</p> <p>1 illegal and you will cause a lot of accidents. And that 2 particular -- I measured it. It is not 24 feet wide. It's 3 actually 22 feet wide. Then it goes on to say, "the 4 approximately 120 feet south of Norwood Road intersection the 5 road narrows to 16 feet." It's 14 feet. And I think that 6 that's very important because when you look at the fact that 7 the trucks that are being cited in the Applicant's 8 application, they actually demonstrated and showed pictures 9 of suggested vehicles, and not the actual vehicles that are 10 being used. And the actual vehicles are wider than eight 11 feet. And in my pictures you'll see where one of their 12 trucks kind of went by me real fast and I shot a picture and 13 you could see it literally left me a very -- I'm not a large 14 person, but it left me very little room. So you could see 15 that it is definitely -- the trucks are wider than eight 16 feet. Also, point 3, it says, "at 570 feet south of Norwood 17 Road, the road expands to 18 feet." Again, the road is 18 pretty much consistently 14 feet, and when you're widening 19 it, again, you're going into other people's property, or the 20 apron of a driveway. 21 HEARING EXAMINER GROSSMAN: All right. 22 MS. MAULDIN: The only other points that I wanted 23 to make is that when I talked about the road continuing south 24 to the property at 155400 and they talk about the elbow turn 25 being a turnaround, that is not accurate. Or to put it in a</p>

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<p style="text-align: right;">277</p> <p>1 better perspective, the driveway that faces Holly Grove on 2 the south end of the property, you literally have to go 300 3 feet past their driveway to get to this the end so -- and 4 head out to what I call Pumphrey Lane or where the Myers 5 live. So it's -- to me it's a little deceptive in the 6 description because it's as if that curve is kind of near and 7 the trucks could turn around, and I'm not sure if you get a 8 better picture --</p> <p>9 HEARING EXAMINER GROSSMAN: Yeah, but I would 10 assume that if it is up to 300 feet away from that curve, 11 that it actually gives you more of a sight line so that 12 people rounding that corner can see if there is some other 13 truck coming out of the driveway. So that is actually better 14 in terms of --</p> <p>15 MS. MAULDIN: Okay. Well, I'm going to quit while 16 I'm ahead on that. The other thing then, let me get through 17 this. Again, the concern about the light traffic being 18 generated on and off peak hours. In my pictures, for 19 example, one day I was home and it was raining. Of course we 20 can't predict when it's going to rain, or snow, or have 21 adverse weather, but it was raining, and I believe it was 22 about 1:00, and my pictures our time, date stamped, and it 23 shows their trucks coming in at about 12:46 because I guess 24 it was raining and they had to finish early. So my point in 25 that is that when you look at the traffic counts, and they</p>	<p style="text-align: right;">279</p> <p>1 highway department's manual, they look -- they determine 2 whether or not there is an undue delay in an intersection. 3 So they study it further if, in fact, it's an indication that 4 during the peak hours there's going to be traffic over a 5 certain point. So when it's not during the peak hours the 6 assumption is that it's not adversely impacting traffic in 7 the same way. Now, maybe if you're riding through your 8 neighborhood you're going to see them at lunch time rather 9 than in the morning, but it's not impacting traffic in the 10 same way. That's the distinction.</p> <p>11 MS. MAULDIN: Okay. Well, I guess my point, of 12 what I was trying to make, is that Holly Grove is not 13 typical. Not only in the fact that it is a narrow road, but 14 the fact that many of the residents are retired and they're 15 active too. So they still get out and drive around and I 16 think of my 89-year-old mother who drives a Jeep and at 12:00 17 or 1:00 in the afternoon, in the middle of the day, when 18 these vehicles are coming and she encounters them and it 19 concerns me deeply, that safety. And she's not the only one. 20 Some of them are here today. Mr. Everett actually drove 21 himself, and they are still driving and moving around. And 22 so just to have to navigate and compete with these trucks, it 23 worries me to death. And so that is a safety issue that 24 greatly concerns me. So only to say that we should focus on, 25 or I would like for focus to also be on the use of the road,</p>
<p style="text-align: right;">278</p> <p>1 are just estimating morning as if nothing happens in between 2 the days. It's happened on more than one occasion and I have 3 pictures over several days that show trucks, Francisco 4 trucks, coming in during the day. So it's not as if they 5 load in at 6:00 or 8:00 in the morning and leave and you 6 never see them again until the afternoon.</p> <p>7 HEARING EXAMINER GROSSMAN: I think what Mr. 8 Etemadi is saying is that he assumes that the traffic 9 studies, and even the traffic statements, they assume the 10 worst case scenario of what happens during the peak hours. 11 And if they come back in the middle of the afternoon they're 12 not going to in the peak hours. So that's, in terms of total 13 traffic imposition on the roadway that it's less of an 14 imposition if they come back in the middle of the time, 15 rather than in a peak hour. That's what he's getting at.</p> <p>16 MS. MAULDIN: I --</p> <p>17 HEARING EXAMINER GROSSMAN: Because usually the 18 traffic studies are done to look at the peak hour traffic in 19 position because that's going to be the worst imposition. 20 And if it's a problem then usually we go on to the next stage 21 in that. If, in the traffic study, they find that there's a 22 certain amount of traffic, coming and enough to warrant a 23 further study, they look at what's happening at each 24 intersection, and they determine whether or not, sometimes by 25 something called, quick lane volume, sometimes using the</p>	<p style="text-align: right;">280</p> <p>1 period, during the day. As a matter of fact my mother had a 2 doctor's appointment at 11:30, and then had to take her cat 3 to the doctor at 3:00. That's just one household. And there 4 are other people that are just as active in using the road. 5 And so they are competing with very large trucks, not just 6 commercial trucks, but again, even sometimes the deliveries.</p> <p>7 HEARING EXAMINER GROSSMAN: Right.</p> <p>8 MS. MAULDIN: But I'm going to move, -- I'm going 9 to keep us moving.</p> <p>10 HEARING EXAMINER GROSSMAN: No, I consider. 11 That's an issue that's a safety issue.</p> <p>12 MS. MAULDIN: Yes.</p> <p>13 HEARING EXAMINER GROSSMAN: To me, it's not a 14 traffic issue.</p> <p>15 MS. MAULDIN: It's a safety issue.</p> <p>16 HEARING EXAMINER GROSSMAN: It's a traffic safety 17 issue.</p> <p>18 MS. MAULDIN: Yes.</p> <p>19 HEARING EXAMINER GROSSMAN: I think it's a 20 legitimate traffic safety issue and should be considered.</p> <p>21 MS. MAULDIN: And then -- I think Mr. Etemadi kind 22 of spoke on this. I think it's, again, my concern with 23 safety and traffic is the volume of traffic. This particular 24 landscaping company may have been going on an operating for 25 several years, but I can say in the last two years since they</p>

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<p>281</p> <p>1 were issued a citation, since May of 2017, to me it actually 2 has increased. It wasn't the -- I would say probably in the 3 last -- after this last hearing, like maybe March, April, it 4 slowed down a little bit. And I think it -- I won't even try 5 to interpret the reasons. But, I can say that for the last 6 two years that this particular community, and I know 7 particularly in my household, we feel like we've been on a 8 hamster wheel of injustice, and just went around in circles 9 because if someone is issued a violation, and they are 10 continuing to operate even though they are in violation, it 11 puts a burden on us as, you know, law-abiding citizens. And 12 so basically we've been living this for two years. When is 13 this going to stop? And even though permitting has done 14 their due diligence and they have actually been to court to 15 testify when they were doing the abatement, to cease and 16 desist, to stop. Well, get legitimized, you know. And the 17 end, if, you are, start. but it's never stopped and it's 18 continued. So that is a concern. 19 HEARING EXAMINER GROSSMAN: Well, this is the 20 process by which they get legitimized if they can. 21 MS. MAULDIN: But -- 22 HEARING EXAMINER GROSSMAN: But if they can't, 23 then they have to stop. 24 MS. MAULDIN: Well, so they are able to continue 25 to do business and operate an hour -- and this is our humble</p>	<p>283</p> <p>1 something that would have been brought up earlier, as this is 2 not their first goat roping show. If you were in violation 3 one time then you know -- and you're a business person. My 4 father was an entrepreneur as well. You know you know that 5 there are certain things that you have to do in order to be a 6 business owner. The other thing in the letter it says that 7 the other family business -- it said something about other 8 family businesses had trucks. Oh, I'm sorry. The planning 9 staff report has some data saying that there were no -- that 10 there's no traffic accidents and that they are not aware of 11 any single reported accident. That concerned me because when 12 I looked in the supplemental report, that Park and Planning 13 had put together, there is an actual email between Ms. 14 Tesfaye, and it's filed in this report, where they said that 15 there were five traffic accidents at Holly Grove. So I just 16 thought it was kind of strange that if there were no 17 accidents in your letter then -- 18 HEARING EXAMINER GROSSMAN: What is that attached 19 to? Which report? 20 MS. MAULDIN: It is under the supplemental -- 21 HEARING EXAMINER GROSSMAN: The supplemental 22 report? 23 MS. MAULDIN: Uh-huh. I'm going to find it. Oh, 24 here it is. It is an email between a Chris Van Ostein to Ms. 25 Tesafaye, where he says, "reviewing the data, I see that</p>
<p>282</p> <p>1 opinion, illegally, and cause a affect on us. 2 HEARING EXAMINER GROSSMAN: I understand that. 3 And I think that's a legitimate concern too. I don't control 4 that. 5 MS. MAULDIN: I know you don't. 6 HEARING EXAMINER GROSSMAN: The only thing I can 7 do is act on the application that's before me. 8 MS. MAULDIN: Okay. So last, but not least, and 9 let me just look over this because I might just be wrapping 10 this up. Is, there was a letter that Mr. Hughes sent to, I 11 guess he sent it to Ms. Elsbett Tesfaye, dated March 6, 12 2019, and I received a copy. 13 HEARING EXAMINER GROSSMAN: Okay. 14 MS. MAULDIN: And this will probably be something 15 else. He generated the letter so I'm quite sure he knows. I 16 just want to point out some things, inconsistency in this 17 letter. 18 HEARING EXAMINER GROSSMAN: Okay. 19 MS. MAULDIN: In this letter, on the very first 20 page, where he said the business had operated at 15400 Holly 21 Grove Road since January 2006 without government involvement 22 until the citation. It's true that the citation was in May 23 of 2017, but I think Ms. Thomas also was trying -- had spoke 24 of the fact that they were cited in 2004. I know that's not 25 before you, but it just seems to me that that would have been</p>	<p>284</p> <p>1 there are five crashes that involved Holly Grove Road." None 2 of it specifically, but four at Holly Grove and Norwood Road 3 and then one at Holly Grove and Bryants Nursery. But it does 4 mention Holly Grove and Norwood Road which is where they were 5 cited -- 6 HEARING EXAMINER GROSSMAN: Who is the gentleman 7 that you are talking about? Who is he with? 8 MS. MAULDIN: He is Montgomery County Planning, 9 and this is an email that he sent to Eli Glazier. It's part 10 of your supplemental report. Let me give you the exact page. 11 It's under that supplemental (c). Where is it? 12 MR. HUGHES: I think it's in (d). 13 MS. MAULDIN: It's in (d)? 14 MR. HUGHES: It's (d) and it's the third from last 15 page. 16 MS. MAULDIN: Thank you. I knew it was toward the 17 end. 18 MR. HUGHES: And Mr. Grossman, I mean what it says 19 is, you can take a look at it -- 20 MS. MAULDIN: It's an email exchange. 21 MR. HUGHES: It says, "reviewing the data, I see 22 that there are five crashes that involve Holly Grove Road. 23 None on it specifically, but four at Norwood/Holly Grove, and 24 one at Bryants Nursery at Holly Grove." 25 HEARING EXAMINER GROSSMAN: And so they weren't on</p>

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<p>285</p> <p>1 Holly Grove Road?</p> <p>2 MR. HUGHES: Right, not on this part.</p> <p>3 MS. MAULDIN: It was at the intersection of</p> <p>4 Norwood and Holly Grove Road. That something was reported.</p> <p>5 HEARING EXAMINER GROSSMAN: But according to what</p> <p>6 Mr. Hughes just read these accidents were not reported on</p> <p>7 Holly Grove Road. They were at Norwood -- on Norwood</p> <p>8 apparently because it wasn't on Holly Grove Road.</p> <p>9 MS. MAULDIN: Well, it says Norwood/Holly Grove.</p> <p>10 UNIDENTIFIED SPEAKER: That is nearby.</p> <p>11 MR. HUGHES: Well, it's a big road that we're</p> <p>12 talking about. I mean --</p> <p>13 HEARING EXAMINER GROSSMAN: Okay.</p> <p>14 MS. MAULDIN: I'm just bringing it up because an</p> <p>15 error in the statement and even Mr. Etemadi said that Norwood</p> <p>16 doesn't have a lot of traffic and just the -- you'll see the</p> <p>17 picture, just the idea that it seems like it's a smaller</p> <p>18 road. I guess I'm just going to kind of wrap it up because I</p> <p>19 think my pictures that you're going to allow me to send will</p> <p>20 illustrate the road, the use of the road; the type of trucks</p> <p>21 and vehicles that are coming through the road and then some</p> <p>22 of the traffic concerns. But I've -- because I can't testify</p> <p>23 based on other witnesses --</p> <p>24 HEARING EXAMINER GROSSMAN: Can you identify from</p> <p>25 those pictures that those trucks that you say that they</p>	<p>287</p> <p>1 the whole quality of life for everyone at Holly Grove that</p> <p>2 bought into Holly Grove --</p> <p>3 HEARING EXAMINER GROSSMAN: Do you have any cross-</p> <p>4 examination questions?</p> <p>5 MR. HUGHES: No, sir.</p> <p>6 MS. MAULDIN: Okay. Good. Thank you for your</p> <p>7 time.</p> <p>8 HEARING EXAMINER GROSSMAN: Before we go to the</p> <p>9 next witness, because we are running low on time, I want to</p> <p>10 know if the court reporter and Mr. Hughes and others can stay</p> <p>11 over past 5:00? Can you?</p> <p>12 MR. HUGHES: I can.</p> <p>13 THE COURT REPORTER: Yes, sir.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>15 Because we may -- I can see us running over at the rate we're</p> <p>16 going. And we may, if we can't finish it today we will set</p> <p>17 up another day. But of course we would like to finish it</p> <p>18 today if we can. I also -- I just want to make sure that you</p> <p>19 have an opportunity to respond on the record to the</p> <p>20 allegation that there was an earlier violation notice. Which</p> <p>21 was not mentioned in Mr. Argueta's testimony. Do you want to</p> <p>22 have him make a statement about that; as to whether there was</p> <p>23 an earlier violation notice at a different location?</p> <p>24 MR. HUGHES: I would -- this is the first I've</p> <p>25 ever heard of it. So I would --</p>
<p>286</p> <p>1 depict are from this Applicant?</p> <p>2 MS. MAULDIN: Absolutely. Their name is written</p> <p>3 all on the side of it.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>5 Yeah, submit them. As I say it's Friday now; let's say by</p> <p>6 Wednesday of next week?</p> <p>7 MS. MAULDIN: I will do that.</p> <p>8 HEARING EXAMINER GROSSMAN: And send a copy to Mr.</p> <p>9 Hughes as well.</p> <p>10 MS. MAULDIN: Okay.</p> <p>11 HEARING EXAMINER GROSSMAN: And are --</p> <p>12 MS. MAULDIN: I think I am. I just, again I just</p> <p>13 want to wrap up in terms of -- and I hope you do read -- this</p> <p>14 is a lot of stuff to read, but it really is and we're adding</p> <p>15 more and more on, but this has just been a nightmare for us.</p> <p>16 And inasmuch as I totally respect families and</p> <p>17 entrepreneurial businesses -- and I do also believe that</p> <p>18 businesses grow and expand -- again, my father was an</p> <p>19 entrepreneur and worked here. I just think --</p> <p>20 HEARING EXAMINER GROSSMAN: I'm going to cut you</p> <p>21 off because there are a lot of people waiting to testify.</p> <p>22 MS. MAULDIN: Okay.</p> <p>23 HEARING EXAMINER GROSSMAN: And we're running out</p> <p>24 of time and I don't want to --</p> <p>25 MS. MAULDIN: All right. I'm just concerned about</p>	<p>288</p> <p>1 HEARING EXAMINER GROSSMAN: Well, that's why I'm</p> <p>2 giving you an opportunity because the allegation's been made</p> <p>3 and the question is, you know, is there a credibility issue?</p> <p>4 So I guess I would like to hear from him as to whether or not</p> <p>5 --</p> <p>6 MR. HUGHES: I guess we could do that. I don't</p> <p>7 know if there was -- I guess there was testimony but I don't</p> <p>8 know where it came from; what evidence --</p> <p>9 HEARING EXAMINER GROSSMAN: Well, that's what</p> <p>10 we'll -- I was just going to ask him that. Mr. Argueta, just</p> <p>11 you're still under oath. Can you answer that question? Was</p> <p>12 there an earlier violation notice against --</p> <p>13 MR. ARGUETA: Not to my knowledge.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay.</p> <p>15 MR. ARGUETA: Back to the fact when we purchased</p> <p>16 this property we were under the impression that we could</p> <p>17 operate our business there.</p> <p>18 HEARING EXAMINER GROSSMAN: No, I don't mean at</p> <p>19 this property. It was at another property earlier --</p> <p>20 MR. ARGUETA: No, I understand that; but not to my</p> <p>21 knowledge.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay.</p> <p>23 MR. ARGUETA: So back to -- at this property we</p> <p>24 thought we were in the right.</p> <p>25 HEARING EXAMINER GROSSMAN: And I've just been</p>

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<p>289</p> <p>1 handed by Ms. Thomas -- let's see it looks like a complaint 2 SR number 199917092, dated 8/02/2004 at 240 Randolph Road and 3 it says, "caller stated an oversized commercial vehicle on 4 property. Service request resolution. I was initially 5 called directly by the complainant. I found that oversized 6 truck parked in the driveway. While I spoke with the 7 resident, two men showed up at the property and got into the 8 truck. I returned on 8/3/04 and found the truck gone. I 9 spoke to Mr. Romero, owner/occupant who said he made other 10 arrangements. I will close this." Now, is this -- I don't 11 know who Mr. Romero is. 12 MR. ARGUETA: That's my father. 13 HEARING EXAMINER GROSSMAN: Oh, okay. And so I 14 take it this pertains to the earlier property at 240 Randolph 15 Road? 16 MR. ARGUETA: That's our residence. That's where 17 we live, and our office. 18 HEARING EXAMINER GROSSMAN: So there was a -- 19 MR. ARGUETA: We keep two pickups there which are 20 my dad's personal truck and my brother's personal truck; 21 that's it. 22 HEARING EXAMINER GROSSMAN: You didn't operate the 23 business out of that address? 24 MR. ARGUETA: No. 25 HEARING EXAMINER GROSSMAN: Okay. I don't know</p>	<p>291</p> <p>1 earlier as an indication that this family should have known 2 that you can't illegally operate what amounts to a 3 conditional use without getting a conditional use or a 4 special exception at the time. This particular Exhibit 88 5 doesn't show that this would give any such notice. It's just 6 a truck that somebody complained about in a neighborhood. 7 It's not necessarily -- it was not a violation notice; and it 8 was not operating in any way as a business, per se, at that 9 location. Okay. Who's the next victim? 10 PATRICIA THOMAS: Teresa Myers. 11 HEARING EXAMINER GROSSMAN: Hi. Hello, Ms. Myers. 12 MS. MYERS: Hi. 13 HEARING EXAMINER GROSSMAN: Would you have the hot 14 seat, please? 15 MS. MYERS: My name is Ola Myers and I live at 16 15301 Holly Grove Road, Silver Spring, Maryland. 17 HEARING EXAMINER GROSSMAN: Okay. You said Ola, 18 how do you spell that? 19 MS. MYERS: O-L-A. 20 HEARING EXAMINER GROSSMAN: Okay. Somebody said 21 Teresa Myers. 22 MS. MYERS: Well, that's my middle name. Everyone 23 calls me that, but officially I'm Ola Myers. 24 HEARING EXAMINER GROSSMAN: All right. And would 25 you raise your right hand please?</p>
<p>290</p> <p>1 that this pertains at all because it doesn't sound like 2 something that would have given them notice of an illegal 3 operation of what should have had a conditional use since 4 this was just reporting a truck at a residence. So I don't 5 know that this has any bearing. I'm going to mark it as an 6 exhibit just because I've read from it. 7 (Exhibit 88 marked for identification) 8 HEARING EXAMINER GROSSMAN: But -- and it doesn't 9 indicate that there was actually a violation notice issued. 10 It just says caller stated oversized commercial vehicle on 11 the property. All right. It's -- 12 PATRICIA THOMAS: But that occurred in 2004 and 13 which just points out the idea that there was some 14 indication, at least in 2004 about where commercial vehicles 15 can and cannot be parked. 16 HEARING EXAMINER GROSSMAN: I don't think that 17 points it out. 18 MS. THOMAS: Well -- 19 HEARING EXAMINER GROSSMAN: I don't think it has 20 any bearing on this case. I think this, you know, there's 21 enough evidence besides here that we shouldn't -- 22 MS. THOMAS: I disagree with that. 23 HEARING EXAMINER GROSSMAN: You're entitled to do 24 that. We shouldn't be bogged down with an issue that's not 25 really an issue in this case. I mean it was mentioned</p>	<p>292</p> <p>1 MS. MYERS: Yes. 2 HEARING EXAMINER GROSSMAN: Do you swear or affirm 3 to tell the truth, the whole truth and nothing but the truth 4 under penalty of perjury? 5 MS. MYERS: Yes. 6 HEARING EXAMINER GROSSMAN: All right. And by the 7 way, make sure I have a key to that -- my colleague in my 8 offices will be locking up. Everybody who testifies here 9 today will get a copy of the notice of my decision. 10 Everybody who testifies here today is considered a party of 11 record in this case. You don't get to be a party of record 12 just by writing a letter, but if you testify here you're 13 automatically a party of record under our rules. So make 14 sure that your address is on the list, the sign in list -- 15 MS. MYERS: It is. 16 HEARING EXAMINER GROSSMAN: -- so that we can send 17 it to the -- and I'm addressing everybody here. So that we 18 make sure that when we send out the notice of my decision you 19 all get a copy. The decision itself will be on our website 20 and you'll have a cite to that website there. What will come 21 to you is just a brief statement of what the decision is and 22 if it's granted and any conditions that are imposed. But as 23 I say, you can go to the website to see the whole -- the 24 entire decision. 25 MS. MYERS: Okay.</p>

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<p style="text-align: right;">293</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. Go ahead.</p> <p>2 MS. MYERS: Most of my issues have been addressed</p> <p>3 by Ms. Thomas and others as well.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay.</p> <p>5 MS. MYERS: As far as how the business first came</p> <p>6 to Holly Grove and has grown and the issues of other people</p> <p>7 having truck, including my family, having trucks in the</p> <p>8 community as well. And so I don't want to just keep</p> <p>9 repeating what everyone else has said.</p> <p>10 HEARING EXAMINER GROSSMAN: We appreciate that.</p> <p>11 MS. MYERS: Because it's getting late. But I do</p> <p>12 have concerns -- I forgot your name, the lady in the white</p> <p>13 blouse.</p> <p>14 MS. CROSS: Somer Cross.</p> <p>15 MS. MYERS: I have a concern when you talk about</p> <p>16 how many -- and look at this.</p> <p>17 HEARING EXAMINER GROSSMAN: Yes.</p> <p>18 MS. MYERS: That -- is it this one? Okay. I'm</p> <p>19 going to turn it the way that I see Holly Grove.</p> <p>20 HEARING EXAMINER GROSSMAN: Right. That's the</p> <p>21 rendered -- you're holding the rendered landscape plan.</p> <p>22 MS. MYERS: Right. Okay. I live on the northwest</p> <p>23 branch. Here we are. Okay. And we do have some trucks and</p> <p>24 travel --</p> <p>25 HEARING EXAMINER GROSSMAN: You're the Myers of</p>	<p style="text-align: right;">295</p> <p>1 HEARING EXAMINER GROSSMAN: That's --</p> <p>2 MS. MYERS: -- a break in the wooden fence.</p> <p>3 HEARING EXAMINER GROSSMAN: That's where the house</p> <p>4 is on the western side of the property?</p> <p>5 MS. MYERS: Yes. This is the house.</p> <p>6 HEARING EXAMINER GROSSMAN: Right.</p> <p>7 MS. MYERS: Now, I've been in Holly Grove since</p> <p>8 1982, but I've met the family and I've been going out there</p> <p>9 since 1975. So I know when this house was built. I knew the</p> <p>10 prior owners when the house was built. We socialized with</p> <p>11 them, so I know the property as well, there was no fence.</p> <p>12 They installed the fence and they brought -- it's too far</p> <p>13 over because they also planted trees that is parallel with</p> <p>14 their property line. So I want it on record -- I know that</p> <p>15 we may be a couple of feet over, but they are more over on</p> <p>16 the fence and then we are. And if they're going to get</p> <p>17 granted and plant trees or whatever, I want them to address</p> <p>18 that their fence, it needs to be moved back on their property</p> <p>19 and as far as this of being part of Holly Grove, I don't know</p> <p>20 about all this Google stuff, but our family and the</p> <p>21 neighbors, Mr. Pumphrey's father bought and built this house</p> <p>22 in 1950, and his brother built after --</p> <p>23 HEARING EXAMINER GROSSMAN: That's the house</p> <p>24 that's to the of your property?</p> <p>25 MS. MYERS: And his brother built this house at</p>
<p style="text-align: right;">294</p> <p>1 the paving company?</p> <p>2 MS. MYERS: Yes, we are. Yes, we are. Okay. So</p> <p>3 I'm not going to drag on who's got and whatever. But I have</p> <p>4 a concern with what she said about if approved you're going</p> <p>5 to plant some trees and whatever and that we are engrossing</p> <p>6 or whatever --</p> <p>7 HEARING EXAMINER GROSSMAN: Encroaching, yes.</p> <p>8 MS. MYERS: Encroaching on some of their property.</p> <p>9 Well, I just want it on record too, that they installed a</p> <p>10 wooden fence starting from here--</p> <p>11 HEARING EXAMINER GROSSMAN: Well, I can't see</p> <p>12 where you're pointing to.</p> <p>13 MS. MYERS: Okay. I'm sorry. Starting from --</p> <p>14 when they bought the property, after a year or two they</p> <p>15 installed a wooden fence coming from Mr. Everett Pumphrey's</p> <p>16 easement, coming down and then coming up, all the way to my</p> <p>17 neighbor here.</p> <p>18 HEARING EXAMINER GROSSMAN: That's just to the</p> <p>19 south of you.</p> <p>20 MS. MYERS: And that fence is over their property</p> <p>21 line. And when they first moved there I did go over there to</p> <p>22 address it. And I went to the front door and no one came.</p> <p>23 And I left and I went back the next day. No one came, but as</p> <p>24 I was walking back because there was a -- where the gate is,</p> <p>25 the gate wasn't there at that time because it was just --</p>	<p style="text-align: right;">296</p> <p>1 the same time.</p> <p>2 HEARING EXAMINER GROSSMAN: To the south of that?</p> <p>3 MS. MYERS: They are identical houses. This was</p> <p>4 dirt and gravel, right? And the Myers did most of this</p> <p>5 paving. The County came in in 2016 --</p> <p>6 HEARING EXAMINER GROSSMAN: Ma'am, you're going</p> <p>7 far afield as to what's relevant to me.</p> <p>8 MS. MYERS: I know you said it's not going to</p> <p>9 matter about where the road is but I just want --</p> <p>10 HEARING EXAMINER GROSSMAN: No, no. I didn't say</p> <p>11 it's not going to matter where the road is. I said that the</p> <p>12 name of the road doesn't matter to me.</p> <p>13 MS. MYERS: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: Except to make sure</p> <p>15 that I accurately call it. It's not where it is. Where it</p> <p>16 is obviously does matter. The next question is; is the fence</p> <p>17 that you're talking about still there?</p> <p>18 MS. MYERS: Yes.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. And you're</p> <p>20 saying that there's a fence there that's --</p> <p>21 MS. MYERS: It's over the line --</p> <p>22 HEARING EXAMINER GROSSMAN: -- on your property?</p> <p>23 MS. MYERS: -- the property line. Right. Well,</p> <p>24 all of ours. It's over all of ours. They're -- when I first</p> <p>25 started coming up here in 1975 there was a sign right here</p>

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<p>297</p> <p>1 that said end of the county maintenance.</p> <p>2 HEARING EXAMINER GROSSMAN: I can't see where</p> <p>3 you're pointing.</p> <p>4 MS. MYERS: Right here. It said end county</p> <p>5 maintenance.</p> <p>6 HEARING EXAMINER GROSSMAN: The southwest corner.</p> <p>7 MS. MYERS: When the prior owners, the Hammonds</p> <p>8 were there, their son, Angelo, or someone mowing knocked it</p> <p>9 down and never -- you know erected it back up. And this was</p> <p>10 gravel and dirt. And over the years as we had a little extra</p> <p>11 asphalt my husband and his family were building it up. In</p> <p>12 2016 I called the County because we had a bad winter --</p> <p>13 HEARING EXAMINER GROSSMAN: Wait a minute. Ma'am?</p> <p>14 MS. MYERS: Uh-huh.</p> <p>15 HEARING EXAMINER GROSSMAN: I can't resolve every</p> <p>16 interaction you've had with your neighbors here. That's not</p> <p>17 what this is about.</p> <p>18 MS. MYERS: Right.</p> <p>19 HEARING EXAMINER GROSSMAN: So just have a seat</p> <p>20 for a second.</p> <p>21 MS. MYERS: Okay.</p> <p>22 HEARING EXAMINER GROSSMAN: And let me ask --</p> <p>23 MS. MYERS: I just mainly wanted on record that -</p> <p>24 MR. HUGHES: Mr. Grossman, I would be willing to -</p> <p>25 - first of all, a survey that didn't show this. But we would</p>	<p>299</p> <p>1 HEARING EXAMINER GROSSMAN: Is what you're</p> <p>2 suggesting?</p> <p>3 MS. MYERS: I just want that noted.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. That's</p> <p>5 certainly a relevant consideration to consider for a</p> <p>6 variance.</p> <p>7 MS. MYERS: Uh-huh.</p> <p>8 HEARING EXAMINER GROSSMAN: Well, you're on the --</p> <p>9 yes, sir?</p> <p>10 MR. NORTON: There is fence on the -- I'm looking</p> <p>11 at the preliminary forest conservation. The preliminary,</p> <p>12 final forest conservation plan. In the corner of -- in the</p> <p>13 south corner of the property where we're talking about</p> <p>14 whether it is the private versus the public, there is a fence</p> <p>15 that does go past the property line, and it goes up to the</p> <p>16 existing paved entrance off the property.</p> <p>17 HEARING EXAMINER GROSSMAN: And so that fence is</p> <p>18 entirely off the property?</p> <p>19 MR. NORTON: It is, yes.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay.</p> <p>21 MS. MYERS: And that paved area you're addressing,</p> <p>22 that was never an entrance for the prior owners. In fact,</p> <p>23 the apron on record -- now, the apron on record when the</p> <p>24 prior owners built house should have been right here because</p> <p>25 we installed it for them, and it was through the Montgomery</p>
<p>298</p> <p>1 be willing to proffer if we are off our property we will fix</p> <p>2 that fence.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Yeah.</p> <p>4 That was what I was about to ask your expert as to whether or</p> <p>5 not the fence it shows up as being outside of the property</p> <p>6 line?</p> <p>7 MS. MYERS: Because she's saying that's a --</p> <p>8 MR. NORTON: Those lines are too small.</p> <p>9 MS. MYERS: -- variance.</p> <p>10 MR. NORTON: My drawings are too small to see.</p> <p>11 HEARING EXAMINER GROSSMAN: All right.</p> <p>12 MR. NORTON: I can check while you're talking. I</p> <p>13 will check the big drawings.</p> <p>14 MS. MYERS: Because while the lady was saying they</p> <p>15 are short of a 9 foot variance and that they need, I'm</p> <p>16 wondering are they going by the fence measuring back or what?</p> <p>17 Because they're fence is partially on the neighbors on my</p> <p>18 sides property.</p> <p>19 HEARING EXAMINER GROSSMAN: I see. So actually</p> <p>20 they --</p> <p>21 MS. MYERS: And that's the house behind --</p> <p>22 HEARING EXAMINER GROSSMAN: -- what you're saying</p> <p>23 is they might be even closer to the property line than they</p> <p>24 thought?</p> <p>25 MS. MYERS: Uh-huh.</p>	<p>300</p> <p>1 County DOT.</p> <p>2 HEARING EXAMINER GROSSMAN: I don't know where</p> <p>3 right here is. What can you tell me --</p> <p>4 MS. MYERS: The Hammonds moved it. The Hammonds</p> <p>5 did, they moved it over there.</p> <p>6 HEARING EXAMINER GROSSMAN: Where is Ms. Myers</p> <p>7 referring to?</p> <p>8 MR. NORTON: I believe she's referring to the</p> <p>9 middle of the southern property line.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. All right. So</p> <p>11 -- and Ms. Myers raised a question as to whether or not you</p> <p>12 were measuring the distance of the house from the lot line.</p> <p>13 You measured from the fence or the actual lot line?</p> <p>14 MR. NORTON: We measure from the property lines on</p> <p>15 our drawings.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. All right. So</p> <p>17 the variance request is --</p> <p>18 MR. NORTON: Our dimensions are from the property</p> <p>19 line, correct.</p> <p>20 HEARING EXAMINER GROSSMAN: So Mr. Hughes, you</p> <p>21 said that your client will remove, or move that fence and</p> <p>22 back onto your property?</p> <p>23 MR. HUGHES: Yes, sir.</p> <p>24 HEARING EXAMINER GROSSMAN: I mean you can</p> <p>25 certainly talk off line with the Myers and see if that's what</p>

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76 (301 to 304)

<p>301</p> <p>1 they desire, but it appears that you're actually, if that 2 fence runs all along that western line, and it's over the 3 property line on the entire area then you might have to talk 4 to the other owners -- well you would have to talk to the 5 other owners because it's on their land. From what I'm 6 gathering, from what's just been said. 7 MR. HUGHES: At a minimum, we need to move it 8 back, for sure. 9 HEARING EXAMINER GROSSMAN: Well, the other owners 10 might not want you to move it. I don't particularly care if 11 all the owners on both sides want the fence where it is, to 12 remain where it is, it's no problem for me. To you and the 13 others -- it's a matter between you and the other owners. I 14 just don't want to -- 15 MR. HUGHES: Correct. The only thing that helps 16 is that there is the road in between us. It's not like it's 17 on their -- the road separates -- 18 HEARING EXAMINER GROSSMAN: It's on the road and 19 in effect, the right-of-way. 20 MR. HUGHES: Right. So their property, it sounds 21 like a little bit of their property goes over the road. So 22 if we were to move it back, it's not technically impacting 23 the yards that they use. 24 HEARING EXAMINER GROSSMAN: Okay. I understand. 25 MS. MYERS: I'm not sure what you said.</p>	<p>303</p> <p>1 MR. HUGHES: No, sir. 2 MS. MYERS: Okay. You done with me? 3 MS. HEMINGWAY: I wanted to ask you where the 4 mailboxes were. It's a curiosity question. Are they at your 5 residence, or are they -- 6 MS. MYERS: Uh-huh. 7 MS. HEMINGWAY: At your residence? 8 MS. MYERS: My mailbox is -- 9 HEARING EXAMINER GROSSMAN: Can you identify 10 yourself again for the record so that the -- you don't have 11 to move, just tell us. 12 MS. HEMINGWAY: Mary Hemingway. 13 HEARING EXAMINER GROSSMAN: Okay, Ms. Hemingway. 14 MS. HEMINGWAY: I have my answer. 15 MS. MYERS: My mailbox is here, my neighbors is 16 here, here, there. 17 HEARING EXAMINER GROSSMAN: All right. None of 18 that - - 19 MS. MYERS: And this is vacant. No house on this 20 property. 21 HEARING EXAMINER GROSSMAN: None of that 22 information will appear in the record, here, here, and here, 23 it doesn't translate in the record. That's why -- 24 MS. MYERS: And I do have one more question. 25 HEARING EXAMINER GROSSMAN: Yes, ma'am?</p>
<p>302</p> <p>1 HEARING EXAMINER GROSSMAN: He's saying that 2 between the fence and your property is a roadway? 3 MS. MYERS: Uh-huh. 4 HEARING EXAMINER GROSSMAN: So what he's saying is 5 if he moves the fence -- the fence where it is, is not 6 impacting on the property that you are using. It's only 7 impacting on that roadway, I guess it's what you're saying? 8 MR. NORTON: Well, I'm saying -- if we moved it 9 back, it's not a fence that they are using, per se. I 10 understand. We can try to talk to them, but if we can't 11 communicate at all, if we move it back it's not going to hurt 12 -- in my mind it's not going to harm the other folks. 13 HEARING EXAMINER GROSSMAN: It's not o-fensive, 14 right? All right. It's a little late for (inaudible). 15 Okay. Did you have anything else to say Ms. Myers? 16 MS. MYERS: That's really it. I just wanted it 17 noted because of what I heard her talking about. 18 HEARING EXAMINER GROSSMAN: Okay. 19 MS. MYERS: Because I know that we may be a little 20 on theirs, and we can move it back too. 21 HEARING EXAMINER GROSSMAN: Right. 22 MS. MYERS: But in the same mode, where they're 23 fence is, over the fence, they move that back. 24 HEARING EXAMINER GROSSMAN: Fair point. Any 25 cross-examination questions?</p>	<p>304</p> <p>1 MS. MYERS: Could someone please outline to me 2 what you are referring to as a prescriptive right-of-way? 3 Where does it start, and where does it end? 4 MR. ETEMADI: May I? 5 HEARING EXAMINER GROSSMAN: Yes, Mr. Etemadi. 6 MR. ETEMADI: The -- if we look at the tax map, do 7 you have a copy? 8 HEARING EXAMINER GROSSMAN: Without referring to 9 it, just -- 10 MR. ETEMADI: If we look at the tax map, the 11 sliver of land that the road is sitting on, it is a separate 12 piece of property that is a public right-of-way. If we do 13 not have that sliver of land where the roads are, it is 14 called prescriptive right-of-way. Meaning that, you -- each 15 property owner on each side of the road owns the land to the 16 center of the road, basically. 17 MS. MYERS: Okay. 18 MR. ETEMADI: So -- yeah, so exactly. Well, this 19 is actually definitely right. So these people actually own 20 the road all the way -- I mean their property comes all the 21 way here but -- 22 HEARING EXAMINER GROSSMAN: You're being the 23 middle of the -- 24 MR. ETEMADI: This piece of land is prescriptive, 25 right of way, meaning that it is a right-of-way that is not</p>

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<p>305</p> <p>1 owned by government, but government is using it as a road and 2 maintains it.</p> <p>3 MS. MYERS: Okay. And what about if you go --</p> <p>4 MR. ETEMADI: Does it make sense?</p> <p>5 MS. MYERS: -- toward Norwood?</p> <p>6 MR. ETEMADI: Okay. So --</p> <p>7 MS. MYERS: This whole road is prescriptive?</p> <p>8 MR. ETEMADI: Basically, yes, most of it. There 9 are some of the small areas that were -- that are not 10 prescriptive.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. With deference 12 to everybody else here who wants to be heard I want to move 13 along.</p> <p>14 MS. MYERS: Okay. That's all. I'm done.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay.</p> <p>16 MS. MYERS: Thank you.</p> <p>17 HEARING EXAMINER GROSSMAN: Who's next?</p> <p>18 MS. THOMAS: Mary or Quentin, are you --</p> <p>19 MR. REMEIN: I want to be last, go ahead.</p> <p>20 MS. THOMAS: Oh, you wish to be last. Okay.</p> <p>21 MR. REMEIN: So I don't have to talk about 22 variances.</p> <p>23 MS. THOMAS: All right. Well. Mary.</p> <p>24 MS. HEMINGWAY: All right. Hang on, I wasn't 25 ready.</p>	<p>307</p> <p>1 situation that the property fronts on the same road on both 2 its Western and its southern property lines." All been 3 covered. Their second reason is, "the property is accessed 4 from a road that is publicly maintained and 14 feet wide in 5 front of the property." That's on the southern side.</p> <p>6 HEARING EXAMINER GROSSMAN: Right.</p> <p>7 MS. HEMINGWAY: Okay. Regarding reason number 1, 8 well, there's nothing exceptional about the shape of the 9 property. Larger than most on Holly Grove. P933 is the next 10 largest. The property is not exceptionally narrow. The 11 front property line is about 463 feet, the back about 263 12 feet. The west side approximately 737 feet, and the east 13 side approximately 774 feet. This was taken off of the 14 drawing on the computer using a program that measured lot 15 lines.</p> <p>16 HEARING EXAMINER GROSSMAN: Right.</p> <p>17 MS. HEMINGWAY: Okay. The fact that Holly Grove 18 Road bends at the southwestern end of the property and wraps 19 around the property creating a situation that the property 20 fronts the same road on both its western and southern 21 property lines is not extraordinary. There are plenty of 22 roads that bend. And I don't know that Northwind Road on the 23 2090 -- between Bonifant and Notley Road, it curves. But 24 there's houses on both sides of the line and indirectly, in 25 its curving it would have the property lines move. People at</p>
<p>306</p> <p>1 HEARING EXAMINER GROSSMAN: All right, Ms. 2 Hemingway, state your full name for the record again.</p> <p>3 MS. HEMINGWAY: Mary Hemingway.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. And you wish to 5 heard? You've already been sworn in, I believe?</p> <p>6 MS. HEMINGWAY: I have been sworn in, yes. Okay. 7 I have attended a variance hearing at the Board of Appeals. 8 And the first thing the board did was ask the Applicants if 9 any of these situations or conditions listed on the 59-7, et 10 cetera --</p> <p>11 HEARING EXAMINER GROSSMAN: Right.</p> <p>12 MS. HEMINGWAY: -- applied to the Applicants 13 property. In other words, I've watched a variance hearing. 14 Now, the reasoning submitted for requesting the variance 15 comes from Section 7.3.2.E.2.8, exception, "narrowness, 16 shallowness, shape, topographical conditions, or other 17 extraordinary conditions peculiar to this property."</p> <p>18 HEARING EXAMINER GROSSMAN: Right.</p> <p>19 MS. HEMINGWAY: So they covered it under other, 20 extraordinary conditions peculiar to this property. This is 21 in the Planning Board staff report.</p> <p>22 HEARING EXAMINER GROSSMAN: Right.</p> <p>23 MS. HEMINGWAY: Okay. First reason was "Holly 24 Grove Road, which is a local road, vents at the Southwestern 25 in of the property, wraps around the property, creating a</p>	<p>308</p> <p>1 the -- you know.</p> <p>2 HEARING EXAMINER GROSSMAN: So your point is that 3 their basis for claiming a variance of extraordinary 4 conditions peculiar to a specific property are not that 5 extraordinary or peculiar?</p> <p>6 MS. HEMINGWAY: Correct.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay.</p> <p>8 MS. HEMINGWAY: Thank you.</p> <p>9 HEARING EXAMINER GROSSMAN: I get you. And I 10 think that's certainly an issue here and on the other hand 11 the actual building in question is not one that truly is part 12 of the landscape operation, and so there is a certain amount 13 of balancing, perhaps, that's called for there because if 14 they had a landscaping shed there and that was the question, 15 you know, that's directly what the zoning ordinances angling 16 at and its 50 foot setback. Here, it's probably not even 17 aiming at the fact that there is a residence within 50 feet. 18 It just said structures for the conditional use, and one 19 could argue about whether or not this structure is of that 20 conditional use, but it is on the site. So it is arguably 21 applicable. So there is a little bit -- there is a waffle on 22 either side there as to whether or not it's really intended 23 to apply here and you make a good point that there is a 24 question as to whether or not it is truly extraordinary in 25 the sense that a variance would ordinarily demand. So yes,</p>

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<p>309</p> <p>1 it is a consideration.</p> <p>2 MS. HEMINGWAY: Question then?</p> <p>3 HEARING EXAMINER GROSSMAN: Yes?</p> <p>4 MS. HEMINGWAY: There was a question about the</p> <p>5 occupants of the house?</p> <p>6 HEARING EXAMINER GROSSMAN: Yes.</p> <p>7 MS. HEMINGWAY: And an aunt and renters. Was that</p> <p>8 the reply?</p> <p>9 HEARING EXAMINER GROSSMAN: And aunt and three --</p> <p>10 MR. HUGHES: Employees.</p> <p>11 HEARING EXAMINER GROSSMAN: Employees.</p> <p>12 MS. HEMINGWAY: Employees. Okay. Would the fact</p> <p>13 that the employees reside in the house have any bearing on --</p> <p>14 HEARING EXAMINER GROSSMAN: It might. That makes</p> <p>15 it more a part of the landscape operation than it would if</p> <p>16 they were not employees there, I would agree with that. So</p> <p>17 yes, that would -- you could consider that to be part of that</p> <p>18 consideration as well. You're right. It's not a given this</p> <p>19 variance request.</p> <p>20 MS. HEMINGWAY: Okay. I'm not going to fuss about</p> <p>21 lot lines front because we've been through that. But by</p> <p>22 definition the lot line front for the property is on the</p> <p>23 south side. Nobody's disagreeing? Okay. Regarding reason</p> <p>24 number 2. It is correct that the property is accessed from a</p> <p>25 road that is publicly maintained, and 14 feet wide at lot</p>	<p>311</p> <p>1 site since it is proven there was no applicable previous</p> <p>2 approval on the subject site." It certainly is not</p> <p>3 justification for a variance.</p> <p>4 HEARING EXAMINER GROSSMAN: Well, I mean that's a</p> <p>5 provision in the conditional use evaluation. That's</p> <p>6 7.3.1.E.1 is in the conditional use requirements, not in the</p> <p>7 variance.</p> <p>8 MS. HEMINGWAY: The 50 feet. No --</p> <p>9 HEARING EXAMINER GROSSMAN: You quoted from</p> <p>10 7.3.1.E.</p> <p>11 MS. HEMINGWAY: Right.</p> <p>12 HEARING EXAMINER GROSSMAN: Which is actually --</p> <p>13 MS. HEMINGWAY: -- that's for a variance.</p> <p>14 HEARING EXAMINER GROSSMAN: No. 7.3.1.3 is for a</p> <p>15 conditional use. 7.3.2.E is for the variance.</p> <p>16 MS. HEMINGWAY: I missed a number.</p> <p>17 HEARING EXAMINER GROSSMAN: So the standards for</p> <p>18 the variance are 1 -- and you hit some of them. That denying</p> <p>19 the variance would result in no reasonable use of the</p> <p>20 property, or -- and they are not relying on number 1. "Each</p> <p>21 of the following apply." And then there's an a. "One or</p> <p>22 more of the following unusual, or extraordinary situations or</p> <p>23 conditions exist." And they have chosen this exceptional</p> <p>24 shape or extraordinary conditions. And then they list these</p> <p>25 two items to support that. And one could, as you have done,</p>
<p>310</p> <p>1 line front. This is not an extraordinary condition when the</p> <p>2 other houses on the road also have 14 feet in front of them.</p> <p>3 And I think the 24 feet that's mentioned in the staff report</p> <p>4 is up at Norwood Road, and it was measured by -- I'm bad with</p> <p>5 names, that it is actually 22 feet wide.</p> <p>6 HEARING EXAMINER GROSSMAN: Yeah, I don't know</p> <p>7 which one is accurate in their measurement.</p> <p>8 MS. HEMINGWAY: It doesn't really matter. It's</p> <p>9 pretty much -- once you have enough room to get two car side-</p> <p>10 by-side at the intersection of Notley Road and Holly Grove</p> <p>11 Road, after that drive with care. Okay. Continuing on with</p> <p>12 the Planning Board's staff report regarding the variance. Do</p> <p>13 you have that report?</p> <p>14 HEARING EXAMINER GROSSMAN: Yes, I do. That's in</p> <p>15 there, at Exhibit 40. And that's the end of their -- the</p> <p>16 staff report.</p> <p>17 MS. HEMINGWAY: It's at the tail end. The last</p> <p>18 paragraph on page 29 attachment (c) explains and that the,</p> <p>19 "existing home was constructed in 1989 with a building</p> <p>20 permit, and met all requirements for a residential building,</p> <p>21 and it has not changed." And then that paragraph, I think,</p> <p>22 goes over to 30 -- page 30. It goes on to say that there was</p> <p>23 evidence of landscaping use prior to 2005. The provision in</p> <p>24 the code says "7.3.1.E.1.8 is a necessary finding that</p> <p>25 satisfies any applicable previous approval on the subject</p>	<p>312</p> <p>1 you know, one could question that.</p> <p>2 MS. HEMINGWAY: Say that again, please?</p> <p>3 HEARING EXAMINER GROSSMAN: One could question, as</p> <p>4 you have done, whether or not the conditions are</p> <p>5 extraordinary so as to warrant a variance, I will look at</p> <p>6 that as an issue when I decide this.</p> <p>7 MS. HEMINGWAY: Okay.</p> <p>8 HEARING EXAMINER GROSSMAN: Or when I make a</p> <p>9 recommendation.</p> <p>10 MS. HEMINGWAY: Well, continuing on with the list,</p> <p>11 now. We've gotten to E.3; where the special circumstances</p> <p>12 are not a result of the actions by the Applicant.</p> <p>13 HEARING EXAMINER GROSSMAN: Right.</p> <p>14 MS. HEMINGWAY: Okay. Agreed, the Applicant did</p> <p>15 not build the house which met the set-back requirements when</p> <p>16 it was built. "But when the Applicant applied for</p> <p>17 conditional use after complaints were made to DPS the</p> <p>18 Applicant should have been aware of the 50-foot requirement</p> <p>19 of the property lines."</p> <p>20 HEARING EXAMINER GROSSMAN: Well, and that's --</p> <p>21 MS. HEMINGWAY: Oh, yeah.</p> <p>22 HEARING EXAMINER GROSSMAN: In fairness I don't</p> <p>23 think that the criteria about the special circumstances or</p> <p>24 condition are not the result of the actions by the Applicant.</p> <p>25 The Applicant -- the house was there and therefore I don't</p>

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<p>313</p> <p>1 think I have --</p> <p>2 MS. HEMINGWAY: Yeah. It was -- I was just</p> <p>3 covering the - -</p> <p>4 HEARING EXAMINER GROSSMAN: -- to rule that</p> <p>5 against the factual --</p> <p>6 MS. HEMINGWAY: -- the points going down the staff</p> <p>7 report from the Planning Board.</p> <p>8 HEARING EXAMINER GROSSMAN: Right.</p> <p>9 MS. HEMINGWAY: Okay. Just an interesting note on</p> <p>10 that. "The requested variance is 9.6 feet. The exiting side</p> <p>11 street setback on the west side is 40.33 feet from the</p> <p>12 property line." This is in the staff report. Now, they are</p> <p>13 calling this portion of Holly Grove Road a side street,</p> <p>14 whereas, in the request for the variance they were calling it</p> <p>15 a front street. Okay. So -- and so having it front the</p> <p>16 property on both the south and the west side. So they're</p> <p>17 contradicting themselves.</p> <p>18 HEARING EXAMINER GROSSMAN: Well, yeah but I - -</p> <p>19 MS. HEMINGWAY: Yeah, so --</p> <p>20 HEARING EXAMINER GROSSMAN: I'm not looking for</p> <p>21 technicalities here, I'm looking to see whether they have</p> <p>22 satisfied the conditions for a variance and for a conditional</p> <p>23 use.</p> <p>24 MS. HEMINGWAY: Just one more technicality.</p> <p>25 HEARING EXAMINER GROSSMAN: All right.</p>	<p>315</p> <p>1 section of Holly Grove rode with the addresses of 5301 to</p> <p>2 15317. What other people have called Pumphrey Road.</p> <p>3 HEARING EXAMINER GROSSMAN: Yes.</p> <p>4 MS. HEMINGWAY: Okay. And this is from the map</p> <p>5 that I submitted to you earlier.</p> <p>6 HEARING EXAMINER GROSSMAN: Yes.</p> <p>7 MS. HEMINGWAY: But just to use this map for</p> <p>8 talking, there is a 50' right-of-way right there where this</p> <p>9 road is. This is property, you know, private property,</p> <p>10 private property, and private property.</p> <p>11 HEARING EXAMINER GROSSMAN: Just so everybody else</p> <p>12 knows what you're talking about, you're referring to the area</p> <p>13 in front of the Myers property here, does not show a roadway.</p> <p>14 MS. HEMINGWAY: Correct.</p> <p>15 HEARING EXAMINER GROSSMAN: I (inaudible) Holly</p> <p>16 Grove on her tax map. And the area to the -- then it's Holly</p> <p>17 Grove road here in front of the properties labeled P47 and</p> <p>18 P101.</p> <p>19 MS. HEMINGWAY: Yes.</p> <p>20 HEARING EXAMINER GROSSMAN: And then there's</p> <p>21 something called Stonegate and that doesn't show the road.</p> <p>22 So I'm not sure what significance should I draw from that.</p> <p>23 MS. HEMINGWAY: If -- to continue. There is a</p> <p>24 very large available piece of land -- let me get things</p> <p>25 straight here. This one doesn't have it. It's actually --</p>
<p>314</p> <p>1 MS. HEMINGWAY: Concerning the request in 9.6</p> <p>2 variance; 40.33 plus 9.6 equals 49.33.</p> <p>3 HEARING EXAMINER GROSSMAN: Right. And I think</p> <p>4 what I have here is actually a variance of 9 feet 7 inches;</p> <p>5 not 6 inches.</p> <p>6 MS. HEMINGWAY: Well, 9 feet 7 inches is not 9.6</p> <p>7 feet. You're going to have to take .6 over --</p> <p>8 HEARING EXAMINER GROSSMAN: I mean I can look back</p> <p>9 at their actual document but yes, I mean it could be a</p> <p>10 variance -- it could be that they are requesting an extra</p> <p>11 half an inch or whatever it is. I don't know. I haven't</p> <p>12 looked at it.</p> <p>13 MS. HEMINGWAY: Okay. Well, it should be --</p> <p>14 HEARING EXAMINER GROSSMAN: I would have to look</p> <p>15 at the actual figures, but I haven't examined it that closely</p> <p>16 yet.</p> <p>17 MS. HEMINGWAY: Six tenths of -- it should be six</p> <p>18 tenths of 12.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. HEMINGWAY: That will give you your inches.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. I'll</p> <p>22 figure it out when I have to.</p> <p>23 MS. HEMINGWAY: I know. I know. But I just</p> <p>24 thought it was interesting. It's a technicality. Okay.</p> <p>25 It's a possible conflict with the future right-of-way on the</p>	<p>316</p> <p>1 HEARING EXAMINER GROSSMAN: Well, let's tie it</p> <p>2 into this. What significance am I talking about?</p> <p>3 MS. HEMINGWAY: Okay. The significance is at the</p> <p>4 end of Pumphrey Lane/Holly Grove Road there is a large piece</p> <p>5 of property belonging to the lady with the hat.</p> <p>6 UNIDENTIFIED SPEAKER: Howard.</p> <p>7 MS. HEMINGWAY: No, not the Myers. Awkard --</p> <p>8 Powell. Belong to Mrs. Powell, okay?</p> <p>9 HEARING EXAMINER GROSSMAN: Okay.</p> <p>10 MS. HEMINGWAY: Should that property ever get sold</p> <p>11 and is developed in the RE2 cluster it is entirely possible</p> <p>12 that an access point coming out will be here.</p> <p>13 HEARING EXAMINER GROSSMAN: Here being along the -</p> <p>14 -</p> <p>15 MS. HEMINGWAY: Here being along Pumphrey</p> <p>16 Road/Holly Grove Road and then all the way -- the rest of the</p> <p>17 way up. And it is entirely possible that it will become a</p> <p>18 county road and it will get widened. Or, it's also possible</p> <p>19 the country --</p> <p>20 HEARING EXAMINER GROSSMAN: How does that affect</p> <p>21 what I have to decide here?</p> <p>22 MS. HEMINGWAY: The County can come along and</p> <p>23 decide to widen the road and get a actual official right-of-</p> <p>24 way instead of a prescriptive right-of-way. If that occurs</p> <p>25 the property line on the Applicant's property is going to be</p>

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<p>317</p> <p>1 moved back in 25 feet.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MS. HEMINGWAY: And if it's moved back in 25 feet</p> <p>4 and next to the house, that is 40.33 feet from the property</p> <p>5 line, then --</p> <p>6 HEARING EXAMINER GROSSMAN: Then it will be even</p> <p>7 closer to the property line, but it won't matter in terms of</p> <p>8 they'll already have a variance that allows it and they won't</p> <p>9 be affected if the County comes in after the fact and does</p> <p>10 that, it won't change things.</p> <p>11 MS. HEMINGWAY: Okay. This is something I was not</p> <p>12 knowledgeable about. But it was just a thought that I had.</p> <p>13 HEARING EXAMINER GROSSMAN: You can't ex-post-</p> <p>14 facto make (inaudible).</p> <p>15 MS. HEMINGWAY: Uh-huh.</p> <p>16 HEARING EXAMINER GROSSMAN: If they get a variance</p> <p>17 and the conditional use and the County came in later and</p> <p>18 established a right-of-way there that wouldn't change their</p> <p>19 right to it.</p> <p>20 MS. HEMINGWAY: Okay.</p> <p>21 HEARING EXAMINER GROSSMAN: But I mean somebody</p> <p>22 else, I guess, could come in and challenge it later but</p> <p>23 that's why they pay lawyers. But that would be my off the</p> <p>24 cuff opinion.</p> <p>25 MS. HEMINGWAY: Okay. Well, that was just</p>	<p>319</p> <p>1 MR. HUGHES: No, sir.</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Anybody?</p> <p>3 I think you are free and clear. Thank you very much. Would</p> <p>4 you hand this to Mr. Hughes? I just want to make sure he</p> <p>5 gets a chance to look at the exhibit.</p> <p>6 MR. HUGHES: There are some petitions and</p> <p>7 statements.</p> <p>8 HEARING EXAMINER GROSSMAN: I think I already</p> <p>9 have all the petitions --</p> <p>10 MS. HEMINGWAY: Oh, okay.</p> <p>11 HEARING EXAMINER GROSSMAN: -- I can possibly</p> <p>12 handle.</p> <p>13 (Crosstalk)</p> <p>14 HEARING EXAMINER GROSSMAN: Are these any</p> <p>15 different than the ones that were already received?</p> <p>16 MR. REMEIN: Yes. I don't guarantee it but --</p> <p>17 HEARING EXAMINER GROSSMAN: Looks similar. I</p> <p>18 think --</p> <p>19 MR. REMEIN: These are all people that signed the</p> <p>20 petition to you, as opposed to the Planning Board.</p> <p>21 HEARING EXAMINER GROSSMAN: Yeah, but it looks to</p> <p>22 me like what might have been attached to maybe something Ms.</p> <p>23 Thomas had.</p> <p>24 MR. REMEIN: Those are new petitions that are</p> <p>25 signed since --</p>
<p>318</p> <p>1 something additional for thought.</p> <p>2 HEARING EXAMINER GROSSMAN: You were discussing it</p> <p>3 in terms of whether or not it would have any adverse effect</p> <p>4 on usage or abutting or confronting property.</p> <p>5 MS. HEMINGWAY: Yes, that actually got accidentally</p> <p>6 sent over last night or can I just submit to you --</p> <p>7 HEARING EXAMINER GROSSMAN: I'm not sure what</p> <p>8 accidentally got sent over last night. I know you sent some</p> <p>9 pictures over last night.</p> <p>10 MS. HEMINGWAY: Pictures over and they were of the</p> <p>11 maps.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay. Yeah. Now, I</p> <p>13 didn't receive this which is --</p> <p>14 MS. HEMINGWAY: No, that's basically what I was</p> <p>15 commenting from today.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. And you want</p> <p>17 this in the record?</p> <p>18 MS. HEMINGWAY: Yes, please.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. So let me mark</p> <p>20 this as Exhibit 89 as statement of Mary Hemingway. Okay.</p> <p>21 (Exhibit 89 marked for identification)</p> <p>22 MS. HEMINGWAY: Questions?</p> <p>23 HEARING EXAMINER GROSSMAN: Are you finished?</p> <p>24 MS. HEMINGWAY: I am finished.</p> <p>25 HEARING EXAMINER GROSSMAN: Any cross-examination?</p>	<p>320</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Well, I'll</p> <p>2 mark --</p> <p>3 MR. REMEIN: They're different.</p> <p>4 HEARING EXAMINER GROSSMAN: -- them and if they're</p> <p>5 the same --</p> <p>6 MR. REMEIN: It's a different petition. It's been</p> <p>7 done since the Planning Board meetings.</p> <p>8 HEARING EXAMINER GROSSMAN: Are you batting</p> <p>9 cleanup or is there somebody else that wishes to go?</p> <p>10 MR. REMEIN: No, I'm batting cleanup.</p> <p>11 HEARING EXAMINER GROSSMAN: Anybody else who</p> <p>12 wishes to be heard? No. Okay. So let me mark this as</p> <p>13 Exhibit 90. First of all it's under the heading of Cloverly</p> <p>14 Civic Association</p> <p>15 MR. HUGHES: Mr. Grossman, I'm going to give this</p> <p>16 back since it's the only copy.</p> <p>17 HEARING EXAMINER GROSSMAN: Yes, thank you.</p> <p>18 MR. HUGHES: Thank you, sir.</p> <p>19 HEARING EXAMINER GROSSMAN: And I'll just say</p> <p>20 petitions in opposition. Okay.</p> <p>21 (Exhibit 90 marked for identification)</p> <p>22 HEARING EXAMINER GROSSMAN: And you also handed me</p> <p>23 a letter. Also on Cloverly Civic Association stationary.</p> <p>24 This letter says, "The Cloverly Civic Association at its</p> <p>25 regular meeting on March 25, 2019 voted unanimously to</p>

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<p>321</p> <p>1 recommend denial of the conditional use, CU 19-04," et 2 cetera, et cetera. Okay. And I'm going to mark this. I 3 don't know what -- there seems to be stuff attached here. So 4 you've done a point by point response, Mr. Remein? 5 MR. REMEIN: Yes? 6 HEARING EXAMINER GROSSMAN: You've got a point by 7 point response to statements in the staff report. Is that 8 the idea of what this is? 9 MR. REMEIN: It's a point by point response to -- 10 basically to the findings and fact, and conclusions of law. 11 That' the primary -- they did summarize some of the things 12 and I'll refer to just a couple of them. 13 HEARING EXAMINER GROSSMAN: Okay. 14 MR. REMEIN: They have -- 15 HEARING EXAMINER GROSSMAN: I'm going to mark this 16 as Exhibit 91, statement of Cloverly Civic Association. 17 (Exhibit 91 marked for identification) 18 HEARING EXAMINER GROSSMAN: And Mr. Hughes. And 19 I'm going to give you an opportunity to respond to this also 20 since we obviously have to keep the record open anyway to get 21 the -- have your amended landscape plan and other exhibits 22 considered by the technical staff. So I'm going to give you 23 -- is a week sufficient for you to respond to this or do you 24 want 10 days? What would you like? 25 MR. HUGHES: Ten days is appropriate.</p>	<p>323</p> <p>1 201 Bryants Nursery Road. And I served on the master plan 2 advisory committee -- 3 HEARING EXAMINER GROSSMAN: Well, let's get you 4 sworn in first. 5 MR. REMEIN: Thank you. 6 HEARING EXAMINER GROSSMAN: Do you swear or affirm 7 to tell the truth, the whole truth and nothing but the truth 8 under penalty of perjury? 9 MR. REMEIN: Yes, I do. 10 HEARING EXAMINER GROSSMAN: Okay. And I think 11 I've been mispronouncing your name all along . It's Remein? 12 MR. REMEIN: Remein. 13 HEARING EXAMINER GROSSMAN: Okay. 14 MR. HUGHES: Mr. Grossman? A procedural question. 15 I think I know where you were at, at the beginning you were 16 asking Mr. Remein if he was speaking as an individual or for 17 the Association? 18 HEARING EXAMINER GROSSMAN: Right. 19 MR. HUGHES: I just am trying to figure out how 20 that ties in now and with this report. 21 HEARING EXAMINER GROSSMAN: Yes. It seems to 22 vacillate somewhat and -- 23 MR. REMEIN: I'm speaking as myself right now, but 24 I am using the format and referring to items in the Cloverly 25 Civic Association report to save you paperwork and to</p>
<p>322</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. All right. So 2 let me hand this to you to take a look at. Do you have a 3 copy? 4 MR. REMEIN: He has a copy. 5 HEARING EXAMINER GROSSMAN: Oh, he has a copy. 6 Okay. So this is Exhibit 91. 7 MR. REMEIN: The only copy is his copy is -- 8 MR. HUGHES: This is thicker. 9 HEARING EXAMINER GROSSMAN: Yeah, mine -- 10 MR. REMEIN: -- is missing is the decision of 11 Lancaster. 12 HEARING EXAMINER GROSSMAN: Oh, I see. So -- 13 MR. REMEIN: And I forgot to give you a copy of -- 14 HEARING EXAMINER GROSSMAN: -- this is thicker 15 because Lancaster is -- 16 MR. REMEIN: Is not included. 17 HEARING EXAMINER GROSSMAN: Is not included. 18 MR. REMEIN: And I'll get him the pictures. Okay. 19 HEARING EXAMINER GROSSMAN: All right. And I 20 can't remember any more, it's been so long, did I swear you 21 in at the beginning? 22 MR. REMEIN: No. 23 HEARING EXAMINER GROSSMAN: All right. First of 24 all state your first name and your address. 25 MR. REMEIN: My name is Quentin Remein. I live at</p>	<p>324</p> <p>1 facilitate this presentation. And I would just pick out 2 various items here that haven't been brought up. 3 HEARING EXAMINER GROSSMAN: Yeah, I will say, if 4 this were the last day and the record was going to close 5 after this hearing today, I would probably act differently. 6 But right now, since it's not and the record's going to 7 remain open as a result of the amended filing I don't see 8 much prejudice to you and I'll be happy to listen to your 9 response if you wish to, to let Mr. Remein speak and refer to 10 his filing in Exhibit 91 and have that as part of the 11 Cloverly Civic Association filing. But I'll hear from you if 12 you have an objection. 13 MR. HUGHES: No, I'll reserve judgement. I mean I 14 think -- I just wanted a point of clarification which I got, 15 so thank you. 16 HEARING EXAMINER GROSSMAN: All right, sir, you 17 may proceed. 18 MR. REMEIN: So I think I just want to go through 19 the items that are germane that haven't been brought up to 20 this point in time. I think I'll skip to the bottom of page 21 3 where the conditions for approval, and actually if we skip 22 to page 4. I feel that the hours of operation should conform 23 to the noise ordinance which is Monday through Friday from 24 7:00 to 7:00, and Saturday from 9:00 to 5:00. Item 8 is 25 written very -- I'm very confused. If you go back and read</p>

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<p>325</p> <p>1 the item you might consider that only during the mulch season 2 between the hours of 10:00 and 2:00 can deliveries be made 3 two times a week. The rest of the time they could have five 4 a day, or anytime. There's no restriction. It's just poorly 5 worded.</p> <p>6 HEARING EXAMINER GROSSMAN: Yes, I agree that can 7 be better worded. And I take it to mean that it can only be 8 during the prime mulch season of March 1 through March 30, 9 and during that season, or any other -- but only be during 10 the listed -- between those hours.</p> <p>11 MR. REMEIN: So Cloverly Civic hasn't mentioned 12 that they would prefer that the vehicles shall not make 13 deliveries to the subject property -- that no trucks higher 14 than that class rate make deliveries to the subject property. 15 And that all truck deliveries be made between 10:00 and 2:00.</p> <p>16 HEARING EXAMINER GROSSMAN: Is that alternative 17 wording listed in your submission?</p> <p>18 MR. REMEIN: That's listed right there in item 8, 19 on page 4 at the bottom.</p> <p>20 HEARING EXAMINER GROSSMAN: Oh, at the bottom of 21 page 4. Okay. I see it.</p> <p>22 MR. REMEIN: And then I would just like to point 23 out that the Cloverly Civic Association was not consulted by 24 staff or the Planning Board regarding hosting a community 25 liaison group to meet twice a year at the Cloverly Civic</p>	<p>327</p> <p>1 procedure. It's been proposed in the past, back when we used 2 to have a people's counsel here, he used to see it as an ex 3 officio member of those and try to facilitate the relations 4 between a conditional use holder, or special exception holder 5 and the community; and it seemed to help. It gave people an 6 area of conversation, et cetera. Is there a particular 7 reason -- I understand that you're saying now that Cloverly - 8 -</p> <p>9 MR. REMEIN: I don't have -- personally I don't 10 have any objection if they hold it. I think what Cloverly 11 Civic is saying is we just don't have the resources to be 12 involved in that process. Their meetings are not monthly. 13 Their meetings are, at the most, five times a year, and we 14 meet only for an hour. And Cloverly Civic has a pretty big 15 agenda of the items that are covered. So we just don't have 16 -- it wouldn't be feasible. If they want to have another 17 group sponsor it, that's fine.</p> <p>18 HEARING EXAMINER GROSSMAN: All right. Well --</p> <p>19 MR. REMEIN: That's their feeling</p> <p>20 HEARING EXAMINER GROSSMAN: I would say that the 21 Planning Board, neither I Planning Board, can impose on the 22 Cloverleaf Civic Association a meeting they don't want to 23 hold. So I mean we can impose it on the Applicant, but it 24 makes it kind of difficult if the place he is supposed to 25 meet is not holding a meeting and refuses to hold it there.</p>
<p>326</p> <p>1 meeting between the Holly Grove residents and the Francisco 2 landscape business.</p> <p>3 HEARING EXAMINER GROSSMAN: Were you present at 4 that Planning Board meeting at which that was --</p> <p>5 MR. REMEIN: I read the report.</p> <p>6 MS. THOMAS: No, he wasn't present.</p> <p>7 HEARING EXAMINER GROSSMAN: You weren't present?</p> <p>8 MR. REMEIN: No.</p> <p>9 MS. THOMAS: I was present.</p> <p>10 MR. REMEIN: I wasn't present.</p> <p>11 HEARING EXAMINER GROSSMAN: But that's not my 12 question.</p> <p>13 MR. REMEIN: No, I was not present.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay.</p> <p>15 MR. REMEIN: And unfortunately hosting this 16 liaison group is outside the function and mission of the 17 Cloverly City Association. I know that listening to the 18 meeting, which I was able to do -- a Planning Board member, I 19 believe it was Casey Anderson, pointed out that resolution 20 differences between the community and businesses is best 21 carried out by the Montgomery County governing agencies and 22 the courts; and I think that's best handled through the 23 normal procedures.</p> <p>24 HEARING EXAMINER GROSSMAN: Well, by the way, 25 these community liaison committees is not an unusual</p>	<p>328</p> <p>1 MR. REMEIN: Right.</p> <p>2 HEARING EXAMINER GROSSMAN: So given that 3 statement, I guess that condition would have to be modified. 4 I'm not sure that it wouldn't be a good idea to have some 5 kind of -- in spite of what Ms. Thomas says, to have some 6 kind of a relationship formalized if, in fact, the 7 conditional use is approved.</p> <p>8 MR. REMEIN: I mean personally, you know, it's not 9 my concern. You can do what you want, or they can do what 10 you want. I think Cloverly Civic has made its point, so 11 that's the way they decided to go. And I'm not the dictator 12 of --</p> <p>13 HEARING EXAMINER GROSSMAN: Well, none of us is 14 the dictator. So I can't tell Cloverly Civic Association 15 what to do. You're not an Applicant here. And so I can't 16 impose a condition on Cloverly Civic Association.</p> <p>17 MR. REMEIN: Yes, I'm just pointing that out.</p> <p>18 HEARING EXAMINER GROSSMAN: And I suspect the 19 Planning Board can't either. But they will have to figure 20 that out.</p> <p>21 MR. REMEIN: Right.</p> <p>22 HEARING EXAMINER GROSSMAN: I'm the one who has to 23 make the decision as to the conditional use and if I approve 24 it whether or not there's some way to make an arrangement -- 25 but I hear Ms. Thomas, she doesn't want a meeting. You don't</p>

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<p>329</p> <p>1 mind, do I hear you correctly? You don't want to have any 2 regular contact if in fact, the conditional use is -- 3 MS. THOMAS: It's not that I don't want it, I'm 4 not sure that it will be effective. 5 HEARING EXAMINER GROSSMAN: Well, I understand. 6 Nobody's sure of anything these days. Just the question is 7 do you not want it? I get the sense from you that you don't 8 want it. As the technical staff got that sense and that's 9 why they didn't include it in their recommendations. 10 MS. THOMAS: I hate to be -- I'm not -- I don't 11 see the value at this juncture. I -- 12 HEARING EXAMINER GROSSMAN: I'm not going to force 13 it on you. 14 MS. THOMAS: And as you had pointed out there, 15 there is a mechanism in place that if there is a -- if this 16 is approved and there's a violation of the conditions there 17 is a method to resolve it. 18 HEARING EXAMINER GROSSMAN: There is definitely a 19 mechanism if you look in the zoning ordinance, it explains 20 that mechanism is. 21 MS. THOMAS: Yes. 22 HEARING EXAMINER GROSSMAN: All right. So Mr. 23 Remein do you want to continue with your testimony? 24 MR. REMEIN: Thank you. On page 5 we went through 25 some of the findings of fact and conclusions of law from our</p>	<p>331</p> <p>1 property owner would still on the property and so -- 2 MR. REMEIN: Right. I guess -- 3 HEARING EXAMINER GROSSMAN: They could do what 4 they wanted with the property other than violate the zoning 5 ordinance. So I'm not sure that this position would improve 6 the imperviousness they -- I mean, the perfect would be the 7 enemy of good, as the saying goes. 8 MR. REMEIN: Well, I just point out that in a 9 similar case OZAH approved a conditional use application with 10 a 7.7 percent impervious where the application was larger and 11 the Goshen Enterprises which you're familiar with, where the 12 same 10 percent impervious was in place. So we're really, 13 for the master plan and protecting the environment. However, 14 that's best done -- 15 HEARING EXAMINER GROSSMAN: Right. I'm just 16 saying I'm not sure which -- 17 MR. REMEIN: I'm leaving that up to you but -- 18 HEARING EXAMINER GROSSMAN: I'm not sure which -- 19 well, actually it's mostly -- 20 MR. REMEIN: It could be done by conditions or by 21 not approving their -- by denying their use. 22 HEARING EXAMINER GROSSMAN: Most of these -- 23 protection of the environment is mostly done by the Planning 24 Board and the Planning Department. And I obviously rely 25 heavily upon their recommendation on environmental issues</p>
<p>330</p> <p>1 perspective. I just thought I'd skip down to the bottom of 2 the page. Item C regarding the master plan issues. The 3 Cloverly Master Plan brings up on page 22, it was cited. I 4 would just like to point out that although it says 10 to 15 5 percent, it does say the ultimate sub watershed -- to be in 6 the sentence at the bottom of the page, "the ultimate sub 7 water impervious level should remain at the generally 8 accepted limit for the protection of the cold water stream 9 systems in Maryland." And that is where the -- we feel the 10 numbers should -- for this application should be 10 percent 11 because the -- in the upper northwest branch watershed the 12 Cloverly Master Plan discourages impervious levels above 10 13 percent, which is the Maryland use class for an acceptable 14 limit for the protection of cold water stream systems. The 15 Applicants are proposing 13.8. 16 HEARING EXAMINER GROSSMAN: Does it make any 17 difference to you that they are improving it? The granting 18 of the conditional use would improve the impervious and is 19 significantly above what it is now? 20 MR. REMEIN: Well, hopefully if the property was 21 returned to its original state as a residence, the property 22 would probably be a 5 percent impervious, or some lower 23 number. 24 HEARING EXAMINER GROSSMAN: I don't know that we 25 would, even if the conditional use were not granted the</p>	<p>332</p> <p>1 because that is their charge. 2 MR. REMEIN: Right. 3 HEARING EXAMINER GROSSMAN: But once again, I mean 4 if, in fact, the conditional use is approved it would improve 5 the impervious situation. So I'm not sure that the fact that 6 it wouldn't go all the way down to 10 would be the criteria. 7 But I think I understand your point. 8 MR. REMEIN: That's our -- I mean my concern is 9 that it be lower. And I think when the Cloverly Master Plan 10 was written, residents in the Holly Grove area were 11 instrumental in trying to get these particular provisions 12 into the master plan, and they were agreed by all of us. And 13 it's people who live in Cloverly subscribe to the provisions 14 of the master plan and the provisions of the master plan 15 means a lot to -- people decide to live in Cloverly and 16 because of the master plan to some extent. So I think this 17 is very important to us. 18 HEARING EXAMINER GROSSMAN: I say at best the 19 master plan is ambiguous on this point, as pointed out by Ms. 20 Cross' testimony versus your testimony. 21 MR. REMEIN: Well, the times have changed and this 22 was done in -- this plan is 20 years old so maybe our -- we 23 didn't quite hit the bull's-eye in figuring what might happen 24 in the future. But I mean that was -- I think we did, at 25 least we identified the fact that that we wanted to use the</p>

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<p>333</p> <p>1 Maryland categories for stream analysis and this is the basis 2 of our numbers, rather than assigning a number to it. 3 Because there is not a number assigned to that. 4 HEARING EXAMINER GROSSMAN: Well, I'm just saying 5 that -- 6 MR. REMEIN: And it's the same thing -- the same 7 thing exists in the Olney Master Plan also. So -- 8 HEARING EXAMINER GROSSMAN: Yeah, but you have 9 another sentence that gives a range of permitted 10 imperviousness. 11 MR. REMEIN: I'm just pointing out -- 12 HEARING EXAMINER GROSSMAN: And when I have a 13 specific statement like that with a range, generally in 14 interpreting the statutes or regulations you use the specific 15 over the general. 16 MR. REMEIN: All right. I'm just qualifying the 17 10 to 15 percent as, in this case they are quoting for the 10 18 percent. 19 HEARING EXAMINER GROSSMAN: Okay. 20 MR. REMEIN: Fifteen percent -- 21 HEARING EXAMINER GROSSMAN: I'll let you have the 22 last word on it. 23 MR. REMEIN: Fifteen percent elsewhere. 24 HEARING EXAMINER GROSSMAN: Go ahead. 25 MR. REMEIN: Okay. Moving on to the next page, I</p>	<p>335</p> <p>1 defeats the purpose of that, but I'm not going to -- it's not 2 a big point. 3 HEARING EXAMINER GROSSMAN: Well, I would -- it's 4 a -- 5 MR. REMEIN: It's a small amount of feet so I'm 6 not -- 7 HEARING EXAMINER GROSSMAN: If the house were 8 truly part of the landscaping operation I would certainly 9 agree with that. But it's not, as a practical matter, unless 10 you consider the fact that the three employees live there, 11 which I will consider. It may not be considered part of the 12 operation and as a result I'm not sure that the rationale for 13 the 50 foot set-back really applies in this particular case. 14 MR. REMEIN: Moving on to Section E. Basically, 15 evaluating in conjunction with existing approved conditional 16 uses we're looking, I think here at non-conforming uses. I 17 just want to point out too that the Lancaster case, S 13-12 18 was recommended for denial by practically everyone; by the 19 Planning Board and it went through more than one reiteration. 20 It went through two reviews. So it was very carefully 21 considered the denial and -- basically. I also included a 22 copy -- the complete Lancaster report, which I couldn't find 23 in the County records. So maybe you have it somewhere, but I 24 just attached that. 25 HEARING EXAMINER GROSSMAN: I'm not sure. But it</p>
<p>334</p> <p>1 think I'll skip down to item D. The rest of that item is 2 pretty much covered -- been covered by other people. 3 MR. REMEIN: Basically, I just want to mention 4 that the lifestyle includes a lot of self-reliance and self- 5 employment activities were permitted through this community 6 which was -- which basically has existed since the 1800s. 7 And these people were given land grants, land grants that 8 they have. These land grants included a large part of the 9 Cloverly planning area. And so therefore, they've had 200 10 years or more to do a lot of things on their property and so 11 a lot of these things have been grandfathered in, such as the 12 business of the Myers and other ones. It seems like 13 different groups gravitate toward different things. They 14 seem to gravitate toward making deliveries using dump trucks, 15 and basically the go out in the morning and they pick up a 16 load of gravel or something from the gravel pits or pick up 17 some paving material and use it outside of the community 18 wherever the work site is and they return home with their 19 empty trucks. And that is -- anyway. Also, I just want to 20 point out in this section that the purpose of the 50 feet in 21 the conditional use is to keep the conditional use as far 22 away from adjoining property -- at least 50 feet from the 23 adjoining properties. 24 HEARING EXAMINER GROSSMAN: Right. 25 MR. REMEIN: And to approve a variance sort of</p>	<p>336</p> <p>1 supports -- 2 MR. REMEIN: But I attached that for your -- and 3 then I also added Mrs. Ralph Neiman's issue. And I think 4 that's important because Ralph Neiman was a friend of mine 5 and he was very concerned about his property. And his 6 property already listed -- next to another landscape 7 property. And he made numerous complaints. He gained a lot 8 of experience from living next to a landscaper and the issues 9 that a citizen is going to find. Being involved with the 10 Cloverly area for 20 or 30 years, I don't want to say too 11 many, but it's these types of issues with landscapers have 12 constantly come up and I'll just say this was a landmark case 13 for us because since 1987 there haven't been any more 14 conditional uses approved that are still operational in the 15 Cloverly area to my knowledge. And there are, however, a lot 16 of non-conforming uses that have been called grandfathered 17 uses and so we are not short on experience with landscapers. 18 We have more than our share already. And I will point out a 19 few of them that are located close to this particular 20 property in Holly Gove in the RE2 area. 21 HEARING EXAMINER GROSSMAN: You know, you 22 mentioned that in Lancaster, and I am not that familiar with 23 the case. I haven't looked at it, if at all, in a long time. 24 But the -- you mentioned that the technical staff and the 25 Planning Board recommended against approval. Here, we have</p>

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<p>337</p> <p>1 exactly the opposite situation, where the Board is charged 2 with this kind of review of recommended approval. Does that 3 have any impact on whether or not the landscaper -- Lancaster 4 case is really a -- it's a 32-year-old case, (inaudible) 5 really become a true precedent here for me. 6 MR. REMEIN: Well, I think -- 7 HEARING EXAMINER GROSSMAN: And the other thing is 8 -- 9 MR. REMEIN: -- it becomes a precedent is that 10 there haven't -- have been no conditional uses approved since 11 that one was denied. So if there is something that has 12 changed in the law, we've had -- 13 HEARING EXAMINER GROSSMAN: Has anybody applied in 14 Cloverly since that time? 15 MR. REMEIN: Anybody applied for a conditional 16 use? 17 HEARING EXAMINER GROSSMAN: A conditional use for 18 landscape contractor there? 19 MR. REMEIN: No. 20 HEARING EXAMINER GROSSMAN: So I'm not sure that 21 it -- if nobody else has applied, I'm not sure I can reach 22 any conclusions about that, what the impact of that is. The 23 other thing is even more directly, each of these cases 24 depends on a particular site. Just as, I mean it's certainly 25 specific site in the case law that I had mentioned earlier</p>	<p>339</p> <p>1 community and he has -- they have been cited already but -- 2 already there is interest in duplicating that. So the fear 3 of the community -- 4 HEARING EXAMINER GROSSMAN: Cited. Who's 5 operating at 15500? 6 MR. REMEIN: I don't know anybody. There's 7 somebody that's just been cited for operating a landscape -- 8 a commercial activity at 15500 Holly Grove Road, which is two 9 or three doors from this particular site. And the concern of 10 the community is, how many of these are we going to -- if 11 this is approved, how many are we going to get? And Holly 12 Grove is the most difficult place to have a landscaper 13 because of the road. The roads are a dead end so that 14 circulation is very poor. It's just not good. So myself, on 15 Bryants Nursery Road we have -- all you need is a piece of 16 property. You don't need to have -- you really don't need to 17 have water, septic, anything. You can just -- all you need 18 is a dud piece of property. You know a piece of property 19 that cannot be developed. And we have a large number of 20 those in Cloverly. And so somebody can buy the property and 21 set up a conditional use. And so how many of these are we 22 going to have now come to Cloverly because, you know, this 23 one gets approved and this one, in my judgment, you know, 24 I've written the plan and everything -- this one is the most 25 difficult. (phone ringing) My wife's telling me I have to</p>
<p>338</p> <p>1 makes a big difference. And how this site will compare with 2 others in other cases, it's more difficult to do that. And 3 the case law really, in general, says you shouldn't assume 4 the application of one site to another site. You should look 5 at each site and see what its conditions are. And that's 6 what I would look at here. I would look at this site and how 7 close the neighbors are and how much the impacts are and the 8 roadway and so on. 9 MR. REMEIN: I think I'd just like to point out 10 one thing, in this case unfortunately, we have an Applicant 11 who has already gone onto the property and started his 12 business and has been operating a conditional use for a long 13 time without any advice from the Planning Board or you or any 14 agency and so, therefore, we're stuck right now in the 15 position of having to approve something because he's invested 16 a lot of his time and money in building this business and now 17 he's invested a lot of legal time and effort and expense in 18 developing this. And so it's very difficult to deny him 19 this. But on the other hand, you've heard for 13 years, and 20 especially in the recent years, this has become a real 21 problem in the community. So you're already starting to see 22 some of the problems that Ralph Neiman was -- brought up in 23 his paper and I think even worse than that is we're seeing 24 that things are happening in the community. Now there's 25 another person operating at 15500 Holly Grove Road in the</p>	<p>340</p> <p>1 come home. 2 HEARING EXAMINER GROSSMAN: That's the 3 (inaudible), right. 4 MR. REMEIN: I'll get back to her. 5 HEARING EXAMINER GROSSMAN: At your peril. 6 MR. REMEIN: If I dare. 7 MR. HUGHES: She may call back. 8 MR. REMEIN: Right. She knows. So this is a real 9 concern of the community that the -- how many -- we've 10 already -- you know, the citizens seem to feel that, from the 11 presentation here, that there are already enough businesses 12 on the Holly Grove property. And I feel, as a neighbor on 13 Bryants Nursey Road, we have a lot of properties that could 14 become -- and we have some landscapers operating individually 15 that are small operators. Now, they could say oh, we can 16 expand our business too. 17 HEARING EXAMINER GROSSMAN: Well -- 18 MR. REMEIN: And if we don't tell the government, 19 we'll even get approved. 20 HEARING EXAMINER GROSSMAN: I understand your -- 21 MR. REMEIN: Okay. 22 HEARING EXAMINER GROSSMAN: -- the concerns you 23 express, but really I have to focus on this application at 24 this site, and not consider whether or not somebody in the 25 future will say, oh, they've got a landscape contractor,</p>

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<p>341</p> <p>1 conditional use, and therefore I'm going to apply for one. 2 It's not something I'm allowed to consider. I have to look 3 at the impacts and the qualifications at this particular site 4 of this particular Applicant. That's what I have to address. 5 MR. REMEIN: And then moving down to the bottom of 6 the page there, section ii, the technical staff report didn't 7 seem to indicate the septic system was adequate for the 8 number of employees. Also, the community is not served by 9 storm water -- storm drainage facilities, Holly Grove Road 10 and Awkard Lane. Both are paved narrow roadways with a 11 minimum of 14 feet of paved surface. They have no storm 12 water drainage and no swales. And with global warming this 13 is a consideration. This is a concern to the community that 14 if there is excessive rain. Already, the community -- one 15 person mentioned it, and it's been -- it's a been an issue 16 before the citizens in our area that they have a drainage 17 problem. And the master plan did mention that there is a 18 drainage problem along the Johnson Road tributaries, and it's 19 causing flooding back in 1997 in the Stonegate area. 20 HEARING EXAMINER GROSSMAN: Well, if this is 21 granted, they are going to be required to install storm water 22 management system that will improve the storm water 23 management and bring it up to the required -- 24 MR. REMEIN: It will only -- 25 HEARING EXAMINER GROSSMAN: -- regulation.</p>	<p>343</p> <p>1 I avoid that section of the road in the morning. I quite 2 often and traveling from 6 -- before 7:00 between 20 to 6:00 3 and 7:00 and then after 8:00, and there is extreme traffic on 4 Norwood Road because Norwood Road -- because Georgia Avenue 5 and Norwood Road are the two roads that connect Olney. Olney 6 is -- roads are in very bad -- are overcrowded because of 7 overdevelopment, and Georgia Avenue is no longer a very quick 8 traffic lane. So a lot of people are using sort of the back 9 door, which is Norwood Road. 10 HEARING EXAMINER GROSSMAN: Is that intersection 11 at Norwood and Holly Grove Road, is that controlled by any -- 12 MR. REMEIN: No. 13 MS. THOMAS: No. 14 HEARING EXAMINER GROSSMAN: Stop signs? 15 MR. REMEIN: No. 16 MS. THOMAS: There's a stop sign at Holly Grove, 17 but not at -- it's not a four way. 18 HEARING EXAMINER GROSSMAN: It's not a four way. 19 Okay. 20 MR. REMEIN: But there's a -- Blake High School 21 has a light, but -- and the traffic is -- and then this 22 doesn't really -- there is a lot of traffic generated by 23 churches and many churches meet evenings, and after -- you 24 know, late afternoons. So that's probably not too big of an 25 issue for --</p>
<p>342</p> <p>1 MR. REMEIN: It will only improve it for storms up 2 to a certain capacity, and we are getting storms that are 3 well above that capacity. 4 HEARING EXAMINER GROSSMAN: I agree. And maybe 5 somebody has to rewrite those environmental site design rules 6 because we're getting 100 year storm's every few years it 7 seems like. 8 MR. REMEIN: Right. 9 HEARING EXAMINER GROSSMAN: But I -- 10 MR. REMEIN: I know that's not your concern but -- 11 HEARING EXAMINER GROSSMAN: I have to go by the 12 regulation. 13 MR. REMEIN: That's our concern. 14 HEARING EXAMINER GROSSMAN: And they are going to 15 improve the situation if the conditional use is approved. 16 They will improve the storm water runoff situation above what 17 it is now, which is there is no storm water runoff control 18 now. 19 MR. REMEIN: And so moving on to page 8, the 20 traffic noise. I would just like to point out one thing 21 about -- that hasn't been mentioned. Most students at Blake 22 High School use sections of Norwood Road and arrive before 23 7:30, and return home after 2:30. Blake has 31 buses as well 24 as -- 31 buses that go along that section of Norwood Road, as 25 well as faculty and students who drive on the road. Myself,</p>	<p>344</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MR. REMEIN: And a number of churches, like for 3 example, I know the People's Baptist Church has about 40 4 employees that work with the church. 5 HEARING EXAMINER GROSSMAN: Okay. Anything else, 6 sir? 7 MR. REMEIN: I think I maybe missed something 8 here. There's just one more. I just wanted to point out 9 that there are two watersheds that are part of this 10 particular piece of property. One is -- I ran stream stat 11 reports from the geological survey on both of the two 12 watersheds. The northern watershed is 24.9 percent 13 impervious, and the southern one is 19.7. And these are a 14 lot higher than -- the way that the geological survey gets 15 information from the county and the state, and then they have 16 a national system. The purpose of the system is to predict 17 flooding. 18 HEARING EXAMINER GROSSMAN: How am I supposed to 19 evaluate the impact of that? 20 MR. REMEIN: So you're supposed to evaluate this 21 by realizing that the numbers that Park and Planning -- Park 22 and Planning does -- and draws a line around the -- according 23 to the staff there they identify the watershed by hand, and 24 so they are drawing a line around it. I would say, that a 25 lot of times in their lines sometimes don't really hit the</p>

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<p>345</p> <p>1 mark whereas geological survey knows the elevations of every 2 piece of property. They know where every drop of water is 3 going to fall, and they need to know that. And based on the 4 impervious data that's given by the county and transmitted to 5 the state into their system, I think their system is more 6 accurate. I have proposed this to the Park and Planning and 7 they --</p> <p>8 HEARING EXAMINER GROSSMAN: No, but how does that 9 impact on anything I could --</p> <p>10 MR. REMEIN: Well, to realize that there are other 11 people who have other numbers of imperviousness and the 12 imperviousness is -- the problem of imperviousness is greater 13 than what Park and Planning has in their report. And 14 therefore, it's more imperative that properties, as the 15 Master Plan stated, properties keep the imperviousness as low 16 as possible. And I think, you know -- personally, I think 17 the fact that they have four people commuting -- four cars 18 commuting to work seems to me like they have -- I think that 19 they maybe could drop a few parking places. They have four 20 people commuting and then they have other people who are 21 commuting to the site in trucks that are -- that leave the 22 site again, who don't really need to park at the site. So 23 you know, maybe something -- maybe you could consider 24 reduction in the number of parking places. I don't know how 25 to solve the problem. Okay. "A landscape conditional use</p>	<p>347</p> <p>1 forth. I don't think that they've gone beyond redemption, 2 that these people are older, they are retiring. They will 3 probably be somewhat of a reduction of these properties but 4 certainly the number of trucks that Francisco is adding is 5 going to be --</p> <p>6 HEARING EXAMINER GROSSMAN: But they're not adding 7 them to what's already --</p> <p>8 MR. REMEIN: They're adding to the community.</p> <p>9 HEARING EXAMINER GROSSMAN: They are not adding 10 any additional trucks beyond what they already have. And 11 they've had --</p> <p>12 MR. REMEIN: Well, they've added a lot of trucks 13 since they started.</p> <p>14 HEARING EXAMINER GROSSMAN: Yeah, I understand 15 that. And I think that's a legitimate concern that a 16 business has operated illegally for all this time, or at 17 least without a permit. And so I factor that in too, but in 18 terms of what's there at the present time they are not asking 19 to add any.</p> <p>20 MR. REMEIN: So then the next picture is of Garden 21 Gate, which is a conditional use that was approved -- a 22 special exception rather than that was approved in 1969. It has 23 basically changed that neighborhood from a residential 24 community. Now it's two more churches have been added and 25 there are some other --</p>
<p>346</p> <p>1 brings inherent problems to the residential community. These 2 uses cannot be located in close proximity to residential 3 communities such as Holly Grove."</p> <p>4 HEARING EXAMINER GROSSMAN: I think you've covered 5 that.</p> <p>6 MR. REMEIN: Unfortunately projects such as 7 Francisco Landscape should be denied. And then on the end 8 here, I've made a table comparing Francisco Land -- or 9 Cloverly Civic, made a chart here comparing Francisco, 10 Lancaster, and Goshen, and included the numbers from the 11 stream stat report for those properties. The next thing, I 12 just wanted to go through the pictures in the back. And the 13 first one is the same as was presented by staff here of the 14 Holly Grove area. The second one I wanted to show you was 15 the -- at the end of your report was the Francisco 16 Landscaping and you can tell by the map here it occupies a 17 huge portion of the Holly Grove community. So it's -- I mean 18 here's the Holly Grove community, and here is this -- there's 19 you know, 20 homes there. There's one property here. It's a 20 huge part of the community is taken up by this particular --</p> <p>21 HEARING EXAMINER GROSSMAN: Okay.</p> <p>22 MR. REMEIN: And then I would just like to move on 23 - I showed Myers Paving and it takes up another chunk of it 24 and there's some -- you can see on the map it's already been 25 pointed out there's some other trucking businesses and so</p>	<p>348</p> <p>1 HEARING EXAMINER GROSSMAN: Let's not -- once 2 again it's a different --</p> <p>3 MR. REMEIN: There's a number of --</p> <p>4 HEARING EXAMINER GROSSMAN: -- site and a 5 different location.</p> <p>6 MR. REMEIN: -- home businesses in the community 7 and there have been a lot of forestry problems in the 8 community.</p> <p>9 HEARING EXAMINER GROSSMAN: It's not -- I can't 10 consider all of the conditional uses in 18 other sites all 11 over the place. That's not what I can address here.</p> <p>12 MR. REMEIN: But what you can address --</p> <p>13 HEARING EXAMINER GROSSMAN: I just can't --</p> <p>14 MR. REMEIN: -- is what these --</p> <p>15 HEARING EXAMINER GROSSMAN: -- possibly address 16 it.</p> <p>17 MR. REMEIN: -- you know what these properties 18 will become, and these photographs show all the nonconforming 19 uses and what is on the property, and how the County has 20 maintained their control over these properties. They do not 21 respond. And they haven't.</p> <p>22 HEARING EXAMINER GROSSMAN: You have other 23 properties on other sites.</p> <p>24 MR. REMEIN: Okay. So let me just --</p> <p>25 HEARING EXAMINER GROSSMAN: Some islands turn into</p>

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<p>349</p> <p>1 Manhattan other islands turn into Hawaii. You know, I just 2 can't -- 3 MR. REMEIN: But these are in our community. 4 HEARING EXAMINER GROSSMAN: No, but -- 5 MR. REMEIN: And these are what we live with. 6 HEARING EXAMINER GROSSMAN: Do you understand the 7 point that I am making? I can't -- 8 MR. REMEIN: I understand your point. 9 HEARING EXAMINER GROSSMAN: It's not evidence to 10 me as to what I can do on this site because you showed me a 11 picture of some other site and what's happened in that 12 community. 13 MR. REMEIN: Well, I would like you to consider 14 Garden Gate because Garden Gate -- 15 HEARING EXAMINER GROSSMAN: I will not. 16 MR. REMEIN: -- is one -- 17 HEARING EXAMINER GROSSMAN: I will not consider 18 another site. 19 MR. REMEIN: -- is 1.5 miles from this site. So 20 it's within its -- within the community of the site. So it's 21 the same with Solar Gardens is 1.3 miles from this site. 22 HEARING EXAMINER GROSSMAN: I'm sorry. I'm not 23 going to consider that, so you can stop that testimony. 24 MR. REMEIN: Okay. 25 HEARING EXAMINER GROSSMAN: It's nothing -- you</p>	<p>351</p> <p>1 to find them and use those properties as opposed to the Holly 2 Grove property which is in the middle of a residential 3 community. So that is our concern. 4 HEARING EXAMINER GROSSMAN: Okay. 5 MR. REMEIN: And I don't think that, you know, you 6 can just go ahead and do what you want and then be rewarded 7 with a conditional use, you know, 13 years later. 8 HEARING EXAMINER GROSSMAN: I agree with that. 9 You can't just do what you want -- 10 MR. REMEIN: It's caused a lot of problems in the 11 community. 12 HEARING EXAMINER GROSSMAN: -- and then be 13 rewarded with a conditional use. But if you meet the 14 criteria you get a conditional use. 15 MR. REMEIN: Right. 16 HEARING EXAMINER GROSSMAN: If you meet then. All 17 right. 18 MR. REMEIN: So your advice to us is to get the 19 law changed? 20 HEARING EXAMINER GROSSMAN: I am not giving any 21 advice to anybody. I am just saying that I have to consider 22 what the zoning ordinance says. I can't address the others. 23 Those are other considerations beyond my jurisdiction. Any 24 cross-examination questions, Mr. Hughes? 25 MR. HUGHES: No, sir.</p>
<p>350</p> <p>1 submitted the written thing. 2 MR. REMEIN: Okay. 3 HEARING EXAMINER GROSSMAN: And I have that, but I 4 am not going to consider other sites other than the one that 5 is before me. 6 MR. REMEIN: Okay. 7 HEARING EXAMINER GROSSMAN: That's what I take the 8 case law to tell me to do. 9 MR. REMEIN: Well, I understand your point. So I 10 think though our concern is the proliferation of the change 11 in the rules. Why Park and Planning has done this. I know, 12 but I cannot say, so that would not be germane. 13 HEARING EXAMINER GROSSMAN: I'm not sure what that 14 means, but I will press you on it. 15 MR. REMEIN: It wouldn't be germane to this 16 discussion. 17 HEARING EXAMINER GROSSMAN: Okay. 18 MR. REMEIN: So we are not opposed to the 19 landscape, but there are certainly properties, Solar Gardens 20 was recently purchased by somebody and is located in our 21 community. There is another property on the other side of 22 Blake High School that could easily have been used for a 23 landscaper property, and it's isolated from residential uses. 24 There are properties in Cloverly that are isolated, and had 25 he gone through the normal channels he would have been forced</p>	<p>352</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. You're being 2 merciful in light of the fact that it is now 2 minutes to 3 6:00. All right. Shall we -- 4 MR. REMEIN: Thank you. 5 HEARING EXAMINER GROSSMAN: Thank you. I take it 6 there is no more testimony here, so let's hear -- do you have 7 a closing statement you wish to make? 8 MR. HUGHES: A brief closing, yes, sir. 9 HEARING EXAMINER GROSSMAN: Okay. 10 MR. HUGHES: Mr. Grossman, thank you. So thank 11 you for your time. I'll start out by this zone does allow 12 this particular use by this conditional use process. If you 13 meet the criteria it is approvable. We contend that we do 14 meet the criteria, as has been recommended by both the 15 professional planning staff, and the County Planning Board 16 with conditions, and we fully accept the conditions that 17 haven't been -- 18 HEARING EXAMINER GROSSMAN: What do you think 19 about the changes suggested by Mr. Remein -- 20 MR. HUGHES: No community liaison? 21 HEARING EXAMINER GROSSMAN: Well, no community 22 liaison because his -- 23 MR. HUGHES: The two sides have to agree to it. 24 HEARING EXAMINER GROSSMAN: -- Cloverly doesn't 25 want it there. So --</p>

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<p>353</p> <p>1 MR. REMEIN: I didn't say it wouldn't happen. I 2 just said Cloverly wouldn't participate with it. That is 3 what they have said. 4 HEARING EXAMINER GROSSMAN: Well, I mean I can't 5 require it. The way it's worded I can't impose that against 6 the wishes of the association. So that's one. And the other 7 is to change the wording of condition 8 so it's not 8 ambiguous. 9 MR. HUGHES: Well, we certainly support if you 10 need to clarify that we are in support of that. And you 11 know, we were supportive of a type of -- an opportunity to 12 try to communicate, but we have talked in good faith with the 13 neighbors. They've been very kind with their time to me, and 14 us. If they are not in favor of it, obviously -- we would 15 like it. But if they are not in favor of that we understand 16 it probably could not be a condition if were fortunate enough 17 to get the approval. 18 HEARING EXAMINER GROSSMAN: Okay. Did you have a 19 -- I'm sorry. I cut you off. 20 MR. HUGHES: Yeah, that's okay. So we believe we 21 need the conditions so we ask, and hope we will get approval 22 here. This is a small family business, a small operation. 23 It's on 6 acres, only 2 is required for this use, so it's 24 over 3 times the size of it. It will provide significant 25 improvements environmentally to the property and the area.</p>	<p>355</p> <p>1 and 8-15. And Fidelis/Flower Valley Landscaping which was 2 OZAH 07-19. And that was -- 3 HEARING EXAMINER GROSSMAN: So these are samples 4 of ones where they did not have the special exception or 5 conditional use and nevertheless were granted -- 6 MR. HUGHES: I believe every one of those is 7 correct. And in every one of those besides Butler, was 8 approved, is my recollection. 9 HEARING EXAMINER GROSSMAN: And that's why -- your 10 siding it for the proposition that just because you were 11 operating there illegally doesn't mean you can't get the 12 conditional use? 13 MR. HUGHES: Correct. And I go back to your 14 statement before. I agree that this is judged on what's 15 before you, what's in the evidence. 16 HEARING EXAMINER GROSSMAN: Right. Okay. 17 MR. HUGHES: And that's the -- we respectfully -- 18 the family thanks you for the time, and we ask for approval. 19 HEARING EXAMINER GROSSMAN: Okay. Ms. Thomas, do 20 you wish to make a closing statement? 21 MS. THOMAS: I do. And I don't want to -- I'm 22 afraid that the video will not come through, but you do have 23 it on the flash drive that I sent. I can send it again to 24 you. 25 HEARING EXAMINER GROSSMAN: No, you don't have to</p>
<p>354</p> <p>1 Storm water management at four stations, additional 2 landscaping, stabilization; we've had -- the staff report and 3 Planning Board and agree that the road is sufficient. We've 4 had testimony from our expert traffic engineer and road 5 engineer about this. We believe the variance is approvable 6 as well based on the staff report and the testimony of Ms. 7 Cross, a professional planner. We do agree with what you've 8 been saving several times here today that every case has to 9 be examined on the body of what's been proposed, and in the 10 application. We do agree with that, and we ask that you do 11 that. Just as a quick aside, I will say, and you're probably 12 well aware of them because it has been brought up, a few 13 quick points about Butler. First of all, Butler was 2.68 14 acres. It had a driveway that was within 22 feet of the 15 nearest property line. 42 feet from a neighbor's residence, 16 and one of the other reasons cited it was reverse trucking 17 noises for 130 feet. They had to back it up every time. So 18 you have the Butler case. You know there are several others 19 that are similar in nature and that there were landscape 20 operations that either didn't know, or were operating without 21 approvals that have gone through this office the last several 22 years -- 10 years. I'll just give you the numbers and I 23 won't talk about them anymore; Kline, OZAH number 11-31; 24 Manmaniya Greenkeeper, CU 15-04; Acana Inwood Stone Group, 25 OZAH 10-11; Natural Surrounding & Roach which was OZAH 8-14</p>	<p>356</p> <p>1 send it again, because I do have the flash drive. 2 MS. THOMAS: Okay. 3 HEARING EXAMINER GROSSMAN: I'll make it 4 available. Why don't we do this. If you wish to listen to 5 it, if you haven't heard it Mr. Hughes, the flash drive with 6 the -- which has a video of one of the trucks early in the 7 morning and the noise of it, I will make it available for you 8 to listen to so that I can consider it as part of my 9 consideration. 10 MR. HUGHES: I believe I got it from staff. But 11 I'll double check on that. 12 HEARING EXAMINER GROSSMAN: Oh, okay. 13 MR. HUGHES: And I think you for the offer. 14 HEARING EXAMINER GROSSMAN: Okay. All right. So 15 then you don't have to play it here. I think that we -- 16 (Audio playing) 17 MS. THOMAS: I mean -- and it's not coming across 18 as loudly on this phone. 19 HEARING EXAMINER GROSSMAN: Right. 20 MS. THOMAS: But to hear this at any time of the 21 day for these neighbors to have to hear this -- 22 HEARING EXAMINER GROSSMAN: I understand. 23 MS. THOMAS: So I would really, respectfully, ask 24 that you consider not having mulch delivered at all. There 25 is a business on Layhill Road, RELS, where they can get their</p>



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<p>357</p> <p>1 mulch any time they want.</p> <p>2 HEARING EXAMINER GROSSMAN: Well, they have</p> <p>3 testified -- Mr. Argueta testified that that doesn't work for</p> <p>4 his overall operation. So I --</p> <p>5 MS. THOMAS: But what doesn't work for us is the</p> <p>6 noise is -- it's just --</p> <p>7 HEARING EXAMINER GROSSMAN: It's noisy.</p> <p>8 MS. THOMAS: It's ridiculous. And these houses</p> <p>9 are too close to have to --</p> <p>10 HEARING EXAMINER GROSSMAN: But, of course, that</p> <p>11 was a mulch delivery at 6:00 in the morning. Before that --</p> <p>12 MS. THOMAS: No, that wasn't a mulch delivery.</p> <p>13 HEARING EXAMINER GROSSMAN: Oh.</p> <p>14 MS. THOMAS: That was them loading the mulch onto</p> <p>15 their trucks to go out.</p> <p>16 HEARING EXAMINER GROSSMAN: I see.</p> <p>17 MS. THOMAS: Prior, beginning before 6:00 in the</p> <p>18 morning.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. THOMAS: That's what that was.</p> <p>21 HEARING EXAMINER GROSSMAN: Are you saying that</p> <p>22 would not be covered by the condition that was proposed by</p> <p>23 the Planning Board because it's not -- is that what you're</p> <p>24 saying?</p> <p>25 MS. THOMAS: The Planning Board is saying okay,</p>	<p>359</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>2 Before we adjourn I take it that you all would like the</p> <p>3 exhibits that have been filed with me. That's numbers 1</p> <p>4 through 91 and their subparts to be admitted into evidence as</p> <p>5 well as the additional exhibits that will be filed within the</p> <p>6 coming week.</p> <p>7 MR. HUGHES: Yes, Mr. Grossman.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. Any objection?</p> <p>9 Hearing none, Exhibits 1 through 91 and their subparts will</p> <p>10 be admitted as will the other exhibits that will be filed</p> <p>11 relatively shortly.</p> <p>12 (Exhibits 1 through 91 admitted into the record as</p> <p>13 well as exhibits to be submitted)</p> <p>14 HEARING EXAMINER GROSSMAN: Let's talk for a</p> <p>15 minute now about dates.</p> <p>16 MR. REMEIN: Excuse me. Is the record open for</p> <p>17 everyone for --</p> <p>18 HEARING EXAMINER GROSSMAN: Well, it's open for</p> <p>19 certain things. It's not open for everything because the</p> <p>20 reason why we have a hearing date is so that people have an</p> <p>21 opportunity to testify about what's been filed and so on. So</p> <p>22 if things are filed afterwards that people do not have an</p> <p>23 opportunity to respond to, I mean the photos that I said</p> <p>24 could come in, fine. We understand they're going to come in.</p> <p>25 But it's not fair to just leave it open completely, okay?</p>
<p>358</p> <p>1 well, you know, let's allow them to do it during this -- what</p> <p>2 they determined was mulch season, which, and I'm a gardener,</p> <p>3 and mulch season is more than the month of March and April.</p> <p>4 But anyway --</p> <p>5 HEARING EXAMINER GROSSMAN: No, I know. But their</p> <p>6 accommodation specifically limited --</p> <p>7 MS. THOMAS: To 10:00 in the morning. Well, what</p> <p>8 about Mr. Pumphrey, Mr. Hudson who is on oxygen, by the way,</p> <p>9 Mrs. Myers, there are elderly people who don't need to hear</p> <p>10 it at 10:00 in the morning either, frankly.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>12 MS. THOMAS: That's my point. But again, there's</p> <p>13 misleading information from Park and Planning. I think they</p> <p>14 did a very sloppy job as well. The business has been</p> <p>15 insidious in its growth for over 10 years, and so what</p> <p>16 happened when they first moved here is not what is happening</p> <p>17 in the last two years in terms of the number of vehicles, and</p> <p>18 the operation of Francisco in Holly Grove. There, again, as</p> <p>19 far as the master plan is concerned and other landscaping</p> <p>20 operations they are located in areas that are not smack dab</p> <p>21 in the middle of a residential neighborhood. They are</p> <p>22 accessible by two lane main roads and I described those roads</p> <p>23 earlier. The neighbors overwhelmingly do not support this</p> <p>24 operation. And I respectfully ask that you deny this</p> <p>25 request.</p>	<p>360</p> <p>1 All right. So it is now June 6 -- 7, okay.</p> <p>2 MR. HUGHES: 7 Judge.</p> <p>3 HEARING EXAMINER GROSSMAN: Pushing on 8.</p> <p>4 MR. HUGHES: Indeed.</p> <p>5 HEARING EXAMINER GROSSMAN: So you wanted 10 days</p> <p>6 to respond to these additional filings that have been made.</p> <p>7 I can't recall the exhibit numbers but that one was of</p> <p>8 course, the Cloverly Civic Association magnus opus, Exhibit</p> <p>9 91, and there was another one also. But I'm going to give</p> <p>10 you the option of responding to those couple of exhibits; 10</p> <p>11 days. So that will take you to June 16, which is a Sunday so</p> <p>12 we'll make that June 17. So June 17, 2019 for Applicant's</p> <p>13 responses to newly filed exhibits. And I guess we said in a</p> <p>14 few days you would file the photographs?</p> <p>15 MS. MAULDIN: Correct.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. So that will be</p> <p>17 --</p> <p>18 MS. MAULDIN: I think you gave us until Wednesday?</p> <p>19 HEARING EXAMINER GROSSMAN: Right. June 12 for</p> <p>20 the photos. And then we have to give the community and staff</p> <p>21 an opportunity to respond to the amended landscape plan. And</p> <p>22 we'll also give them 10 days for that. So that would be June</p> <p>23 17, 2019 for staff and opposition to respond to amended</p> <p>24 landscape plan, and any other exhibits you filed for the</p> <p>25 first time today.</p>

Transcript of Administrative Hearing
Conducted on June 7, 2019

91 (361 to 364)

<p>361</p> <p>1 MR. HUGHES: Okay. Yes, sir.</p> <p>2 HEARING EXAMINER GROSSMAN: By Applicant at the</p> <p>3 hearing. Now, these responses must be addressed to those</p> <p>4 specific things. It's not just an open broadside to have</p> <p>5 another 18 petitions or whatever filed. It's addressed to</p> <p>6 these specific things, because we have to have some closure.</p> <p>7 And then I'm going to give you three more days to respond to</p> <p>8 any filings that have been made. So by June 20 the Applicant</p> <p>9 should respond to any of the June -- any of the replies from</p> <p>10 the staff or the community. And the record will close at the</p> <p>11 close of business on June 20th if that's agreeable with</p> <p>12 everybody.</p> <p>13 MR. HUGHES: It's agreeable -- it's okay with me.</p> <p>14 HEARING EXAMINER GROSSMAN: Everybody else agree?</p> <p>15 IN UNISON: Agreed.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. At least you're</p> <p>17 all worn down by this time.</p> <p>18 UNIDENTIFIED SPEAKER: We should be, but it's not</p> <p>19 possible.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay. Is there</p> <p>21 anything else I need to decide or consider? Anybody? No.</p> <p>22 All right. Well, I think it's Friday so I'm going to adjourn</p> <p>23 and say thank you all, and have a great weekend.</p> <p>24 (Off the record at 6:12 p.m.)</p> <p>25</p>	<p>363</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Molly Bugher, do hereby certify that the</p> <p>3 foregoing transcript is a true and correct record of the</p> <p>4 recorded proceedings; that said proceedings were transcribed</p> <p>5 to the best of my ability from the audio recording and</p> <p>6 supporting information; and that I am neither counsel for,</p> <p>7 related to, nor employed by any of the parties to this case</p> <p>8 and have no interest, financial or otherwise, in its outcome.</p> <p>9</p> <p>10 </p> <p>11 _____</p> <p>12 Molly Bugher</p> <p>13 DATE: June 18, 2019</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>362</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Lee Utterback, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby certify that said</p> <p>4 proceedings were electronically recorded by me; and that I am</p> <p>5 neither counsel for, related to, nor employed by any of the</p> <p>6 parties to this case and have no interest, financial or</p> <p>7 otherwise, in its outcome.</p> <p>8</p> <p>9 </p> <p>10 _____</p> <p>11 Lee Utterback, Court Reporter</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	