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# Transcript of Administrative Hearing - Day 2

**Date:** March 5, 2020

**Case:** The Primrose School

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Transcript of Administrative Hearing - Day 2  
Conducted on March 5, 2020

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| 1  | 1  | 1  | 3  |
| 2  | OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS     | 2  | A P P E A R A N C E S                          |
| 3  | FOR MONTGOMERY COUNTY, MARYLAND                  | 3  | FOR MONTGOMERY COUNTY OFFICE OF ZONING AND     |
| 4  | -----x   | 4  | ADMINISTRATIVE HEARINGS:                       |
| 5  | IN RE: :   | 5  | LYNN A. ROBESON HANNAN, HEARING EXAMINER       |
| 6  | THE APPLICATION OF : Case No.: CU 18-08          | 6  | FOR THE APPLICANT:                             |
| 7  | THE PRIMROSE SCHOOL :                            | 7  | JODY S. KLINE, ESQ.                            |
| 8  | -----x   | 8  | 200-B Monroe Street                            |
| 9  | ADMINISTRATIVE HEARING                           | 9  | Rockville, Maryland 20850                      |
| 10 | Rockville, Maryland                              | 10 |  |
| 11 | Thursday, March 5, 2020                          | 11 |  |
| 12 | 9:49 a.m.  | 12 | ALSO PRESENT:                                  |
| 13 |  | 13 | WILLIAM J. CHEN, ESQ.                          |
| 14 |  | 14 | 200-A Monroe Street, Suite 300                 |
| 15 |  | 15 | Rockville, Maryland 20850                      |
| 16 |  | 16 |  |
| 17 |  | 17 | EDUARDO INTRIAGO                               |
| 18 |  | 18 | JONATHAN JOLLEY                                |
| 19 |  | 19 | VINCENT BERG                                   |
| 20 |  | 20 | ALANA CHAMOUN                                  |
| 21 |  | 21 | JENNIFER MITCHELL                              |
| 22 |  | 22 | JAMES DEMPSEY                                  |
| 23 | Job: 291787                                      | 23 | CHARLES AMMERMAN                               |
| 24 | Pages: 1 - 272                                   | 24 | OLGA SABRAN                                    |
| 25 | Transcribed by: Pamela Flutie                    | 25 |  |
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| 14 |  | 14 | EXHIBITS                                       |
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| 16 |  | 16 | EXHIBITS INTRODUCED AT HEARING:                |
| 17 |  | 17 | NUMBER DESCRIPTION                             |
| 18 |  | 18 |  |
| 19 |  | 19 | 183 DOT recommendations on Concept Plan Review |
| 20 |  | 20 | for the Primrose School.                       |
| 21 |  | 21 | 184 PFCP-4 marked with location of SP10        |
| 22 |  | 22 | 185 Resolution                                 |
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| <p>5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER ROBESON HANNAN: This is a</p> <p>3 continuation of the public hearing on the applicant CU</p> <p>4 18-08 for conditional use pursuant to Zoning Ordinance</p> <p>5 593.4.4.F to allow a child daycare center for up to 195</p> <p>6 children on property located at 7430 Needwood Road,</p> <p>7 Rockville, Maryland. Again, my name is Lynn ROBESON</p> <p>8 HANNAN. I'm the hearing examiner assigned to this</p> <p>9 case.</p> <p>10 Are there any individuals as a preliminary --</p> <p>11 well, would the parties identify themselves for the</p> <p>12 record?</p> <p>13 JODY S. KLINE: Good morning. For the record, my</p> <p>14 name is Jody Kline. I'm an attorney of the law from</p> <p>15 Miller, Miller &amp; Canby, with offices at 200-B Monroe</p> <p>16 Street in Rockville, and I represent the petitioner in</p> <p>17 this case, Primrose School, Franchise and Corporation.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>19 WILLIAM J. CHEN: Good morning, Hearing Examiner.</p> <p>20 My name is Bill Chen, and I represent Carol Kosery,</p> <p>21 Paul Posey, and C.C. English.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. Is there</p> <p>23 anyone else here that is going to testify on the</p> <p>24 application that has not already testified that is not</p> <p>25 represented by either Mr. Chen or Mr. Kline? Okay.</p>                       | <p>7</p> <p>1 not think it was -- this forum was the proper place to</p> <p>2 adjudicate that. In talking to Mr. Chen, I either --</p> <p>3 well, I overestimated what he wanted to try and</p> <p>4 accomplish, and I believe Mr. Chen and I have had a</p> <p>5 conversation where I think maybe we've come to an</p> <p>6 understanding about what I'm trying to protect against</p> <p>7 and what he'd like to accomplish, and I'll just defer</p> <p>8 to let him explain what his concern was.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay, why -- let</p> <p>10 me know what you want to accomplish.</p> <p>11 WILLIAM J. CHEN: The issue that I had was the --</p> <p>12 an effort by the petitioner to say that the matters</p> <p>13 that are contained within the approved preliminary</p> <p>14 forest conservation plan, which include the driveway</p> <p>15 and one of the trees could not be address in your</p> <p>16 proceeding.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 WILLIAM J. CHEN: And, in other words, the --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: That's where I</p> <p>20 was getting to in your question. Okay, go ahead.</p> <p>21 WILLIAM J. CHEN: Yeah. And so, that -- that was</p> <p>22 my issue, and it was not a matter of jurisdiction or</p> <p>23 any authority on your side as far as making a ruling on</p> <p>24 the decision of the plaintiff. I was not looking for</p> <p>25 that at all. My concern was the ability to make</p> |
| <p>6</p> <p>1 Seeing none, we're going to proceed with preliminary</p> <p>2 matters. Before we start on the motion in limine, is</p> <p>3 there any other preliminary matters that the party --</p> <p>4 parties have?</p> <p>5 JODY S. KLINE: None on the petitioner's side.</p> <p>6 WILLIAM J. CHEN: After the preliminary matter,</p> <p>7 just a brief observation but it can wait -- the</p> <p>8 appropriate time would be after the preliminary matter.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: All right. So,</p> <p>10 we'll -- thank you -- so, we'll go right into the</p> <p>11 motion in limine. What I'd like to do, Mr. Kline, it's</p> <p>12 your -- I've read the -- the pleadings in detail. Do</p> <p>13 you have, you know, brief, within fifteen minutes, do</p> <p>14 you have anything to add?</p> <p>15 JODY S. KLINE: Yeah. I don't think you need to</p> <p>16 pay any attention to my letter.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Well, I did read</p> <p>18 it.</p> <p>19 JODY S. KLINE: No, I was being too casual. Mr.</p> <p>20 Chen and I had an opportunity to speak. When I filed</p> <p>21 my request for a motion in limine, I was concerned that</p> <p>22 there was going to be a challenge during the</p> <p>23 conditional use review to the validity of the forest</p> <p>24 conservation -- the preliminary forest conservation</p> <p>25 plan, and I did not think that you would be -- I did</p> | <p>8</p> <p>1 inquiry as to matters of land use nature that are</p> <p>2 relative to the approved preliminary forest</p> <p>3 conservation plan. Mr. Kline and I talked, as he said,</p> <p>4 and he doesn't have a problem with that type of an</p> <p>5 inquiry.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>7 WILLIAM J. CHEN: He -- he thought I was trying to</p> <p>8 get an adjudication by you as to the validity of the</p> <p>9 decision of the planning board. I'm not seeking that</p> <p>10 at all</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. All</p> <p>12 right. That -- that's good. With that clarification</p> <p>13 then, I don't need to rule on the motion.</p> <p>14 JODY S. KLINE: So, I -- I would withdraw our</p> <p>15 motion in limine with the understanding that we will</p> <p>16 work it out as we go through the testimony.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Right. And I</p> <p>18 will say, the PFCP could change depending on what</p> <p>19 happens in the conditional use case. So, all right.</p> <p>20 We will -- or could be required to be amended. So,</p> <p>21 that -- that's good. So, with that completed, Mr.</p> <p>22 Chen, did you have another preliminary matter?</p> <p>23 WILLIAM J. CHEN: Oh, yes. Thank you very much.</p> <p>24 Again, in talking with Mr. Kline this morning, the</p> <p>25 issues of numbers of witnesses and length of required</p>  |

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| <p>9</p> <p>1 hearing came up because we're -- we've actually been<br/>2 trying to coordinate the presentation of witnesses.<br/>3 HEARING EXAMINER ROBESON HANNAN: Um-hum.<br/>4 WILLIAM J. CHEN: Today, we're going to have one<br/>5 witness slide in from my clients.<br/>6 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>7 WILLIAM J. CHEN: And tomorrow, Mr. Kline and I<br/>8 talked about the appraisers, and we thought that the<br/>9 most beneficial way to handle that, frankly, is to<br/>10 allow them to testify back to back. And so, again,<br/>11 they'll be -- I don't know what the right word is --<br/>12 sliding an opposition witness --<br/>13 HEARING EXAMINER ROBESON HANNAN: Out of order.<br/>14 WILLIAM J. CHEN: Yes.<br/>15 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>16 WILLIAM J. CHEN: And we would do that Friday<br/>17 afternoon rather than the morning.<br/>18 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>19 WILLIAM J. CHEN: If that's okay with you.<br/>20 HEARING EXAMINER ROBESON HANNAN: I -- I support<br/>21 any agreement that you have come to. No, not always,<br/>22 but I think that's a good and very efficient way of<br/>23 proceeding, actually, so. So, that will be Friday<br/>24 afternoon.<br/>25 WILLIAM J. CHEN: Tomorrow afternoon.</p>              | <p>11</p> <p>1 WILLIAM J. CHEN: I don't want to have to come in<br/>2 here with my calendar and talking about, you know, a<br/>3 sixth day of hearing.<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>5 WILLIAM J. CHEN: We both don't want to do that.<br/>6 HEARING EXAMINER ROBESON HANNAN: Okay. All<br/>7 right. Thank you very much for coordinating that.<br/>8 Anything else?<br/>9 JODY S. KLINE: Well, no, and I would just amplify<br/>10 Mr. Chen's comment by saying I had originally set up my<br/>11 outline of questions to ask my witnesses of going<br/>12 through each individual section of the zoning ordinance<br/>13 by using example of the landscape exhibit -- there's<br/>14 probably six or seven different sectors. I'm going to<br/>15 try and finesse that a little bit by simply saying does<br/>16 your plan meet all the standards of section 6.2 so and<br/>17 so, and then Mr. Chen can ask a question he thinks is<br/>18 relevant. So, I don't want you to think I'm trying to<br/>19 slide over anything. I'm just trying to speed up on<br/>20 some of the things I think are fairly self-evident --<br/>21 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>22 JODY S. KLINE: -- and that are well supported in<br/>23 the record already.<br/>24 HEARING EXAMINER ROBESON HANNAN: Okay, all right.<br/>25 Thank you. All right.</p>                     |
| <p>10</p> <p>1 HEARING EXAMINER ROBESON HANNAN: After lunch, are<br/>2 you saying?<br/>3 WILLIAM J. CHEN: Yes.<br/>4 HEARING EXAMINER ROBESON HANNAN: And that will be<br/>5 dedicated to the appraisal testimony?<br/>6 WILLIAM J. CHEN: It will be -- well, that goes to<br/>7 the point too. We have -- the petitioners and my<br/>8 clients have a common interest in concluding this<br/>9 hearing no later than Tuesday the 10th.<br/>10 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>11 WILLIAM J. CHEN: Accordingly, we -- we have had<br/>12 these discussions. I'm going to -- depending on when<br/>13 the appraisers are done tomorrow, I told Mr. Kline, I'm<br/>14 going to try to slide in two witnesses that I don't<br/>15 think are going to be super long. That would be<br/>16 Mr. Posey and Ms. English.<br/>17 HEARING EXAMINER ROBESON HANNAN: Okay. Do you<br/>18 have an issue with that?<br/>19 JODY S. KLINE: I have no problem with that.<br/>20 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>21 WILLIAM J. CHEN: Essentially, what we're trying<br/>22 to do -- we've had a very candid discussion this<br/>23 morning about who is planning to testify and when, and<br/>24 the effort is to be done with this hearing on the 10th.<br/>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p> | <p>12</p> <p>1 WILLIAM J. CHEN: That's without -- that's without<br/>2 any prejudice to my client --<br/>3 HEARING EXAMINER ROBESON HANNAN: Ability to cross<br/>4 examine on the details.<br/>5 JODY S. KLINE: Understood, correct.<br/>6 HEARING EXAMINER ROBESON HANNAN: I understand<br/>7 that. Okay. Now, today we had a specific -- what is<br/>8 the order of witnesses you're asking for?<br/>9 JODY S. KLINE: Right. It was my intention to<br/>10 initially call Mr. Eduardo Intriago, who is our civil<br/>11 engineer --<br/>12 HEARING EXAMINER ROBESON HANNAN: Um-hum.<br/>13 JODY S. KLINE: Have him go through an amount of<br/>14 testimony -- probably 30 minutes or so of what I call<br/>15 so that you have an understanding of the lay of the<br/>16 land a better feel for what's there and what basically<br/>17 can be there -- and then suspend his testimony at some<br/>18 point in time, 10:30 or 11, call the landscape<br/>19 architect, have him testify, have him be cross-examined<br/>20 and then Mr. Chen's expert witness, Mr. Berg, would<br/>21 then testify on the landscape architecture issues and<br/>22 be cross-examined, and possibly we would even put on<br/>23 some rebuttal, depending on what is said. But, that's<br/>24 going to take us into probably the early to mid-<br/>25 afternoon, I would expect. And we would follow that</p> |

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| <p>13</p> <p>1 with our architect.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: And you agree</p> <p>3 with that, Mr. Chen?</p> <p>4 WILLIAM J. CHEN: Yeah. I mean, I -- again, I</p> <p>5 think we're trying to get this expedited and quite</p> <p>6 candidly, Mr. Berg has got hearing times when he's</p> <p>7 available, and this is candidly as much as an</p> <p>8 accommodation for us as it anything else.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>10 WILLIAM J. CHEN: And then I'm going to hold off</p> <p>11 cross-examining the engineer.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Until he</p> <p>13 finishes after the --</p> <p>14 WILLIAM J. CHEN: Yeah, yeah. The whole --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: -- the</p> <p>16 landscaping.</p> <p>17 WILLIAM J. CHEN: Yeah, yeah.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>19 you. All right. Mr. Kline.</p> <p>20 JODY S. KLINE: Yes, ma'am.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Call your ___ I</p> <p>22 didn't get his name.</p> <p>23 JODY S. KLINE: Sure, no problem.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: But call your</p> <p>25 next witness.</p>  | <p>15</p> <p>1 Please raise -- good morning. Please raise your right</p> <p>2 hand. Do you solemnly affirm under penalties of</p> <p>3 perjury that the statements you're about to make are</p> <p>4 the truth, the whole truth, and nothing but the truth?</p> <p>5 EDUARDO J. INTRIAGO: Yes.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: All right. Mr.</p> <p>7 Kline.</p> <p>8 JODY S. KLINE: Mr. Intriago, would you please</p> <p>9 state and spell your name and give us your business</p> <p>10 address?</p> <p>11 EDUARDO J. INTRIAGO: Yes. My name is Eduardo</p> <p>12 Intriago, E-D-U-A-R-D-O, last name Intriago, I-N-T-R-I-</p> <p>13 A-G-O. I'm sorry, your next question?</p> <p>14 JODY S. KLINE: What is your business address --</p> <p>15 present business address?</p> <p>16 EDUARDO J. INTRIAGO: Present business address is</p> <p>17 333 -- 333 Baldwin Road, Pittsburgh, Pennsylvania</p> <p>18 15205.</p> <p>19 JODY S. KLINE: And what is your profession?</p> <p>20 EDUARDO J. INTRIAGO: I am a civil engineer.</p> <p>21 JODY S. KLINE: Okay. And you are associated with</p> <p>22 what firm?</p> <p>23 EDUARDO J. INTRIAGO: I am associated with Civil</p> <p>24 and Environmental Consultants.</p> <p>25 JODY S. KLINE: And that firm was -- is -- has no</p>                                   |
| <p>14</p> <p>1 JODY S. KLINE: Mr. Intriago, would you please</p> <p>2 come up and take a seat up here in the front? We're</p> <p>3 going to put you up here. And I'm going to ask you to</p> <p>4 start off with some kind of a base drawing, so if</p> <p>5 you'll bring that with you.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Is this in the</p> <p>7 record?</p> <p>8 JODY S. KLINE: I have to see what we're going to</p> <p>9 come up with. Which -- which drawing are you going to</p> <p>10 use?</p> <p>11 EDUARDO J. INTRIAGO: [Inaudible 10:19]</p> <p>12 JODY S. KLINE: So -- so, this is a drawing that</p> <p>13 hasn't changed through the entire time. So, this</p> <p>14 should be Exhibit 14 in the record.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Is this existing</p> <p>16 conditions?</p> <p>17 JODY S. KLINE: Yes, ma'am</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Can you turn</p> <p>19 that so the north arrow -- thank you. All right. Now,</p> <p>20 can people -- can you turn it so Mr. Chen can see it</p> <p>21 and his witness can see it? Okay. And then -- yes, I</p> <p>22 can see it. Okay. Well, I just want to know that he's</p> <p>23 able -- okay, go ahead.</p> <p>24 EDUARDO J. INTRIAGO: Do you want me to sit here?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Yes, please.</p> | <p>16</p> <p>1 role in the preparation of the plans that are appearing</p> <p>2 before the hearing examiner. So, would you explain why</p> <p>3 you're with a different firm than Maser Consulting?</p> <p>4 EDUARDO J. INTRIAGO: Yes, sir. I wasn't planning</p> <p>5 on doing this, but there is an opportunity -- a good</p> <p>6 professional growth opportunity that came upon me, and</p> <p>7 then I accepted it last -- at the beginning of the</p> <p>8 year.</p> <p>9 JODY S. KLINE: Wait, let me go back.</p> <p>10 EDUARDO J. INTRIAGO: Yes.</p> <p>11 JODY S. KLINE: Previously, during the preparation</p> <p>12 and all the plans, you were associated with what firm?</p> <p>13 EDUARDO J. INTRIAGO: I was associated with Maser</p> <p>14 Consulting.</p> <p>15 JODY S. KLINE: And you had a supervisory role in</p> <p>16 the preparation of all those plans?</p> <p>17 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>18 JODY S. KLINE: And then you had an opportunity to</p> <p>19 go somewhere else?</p> <p>20 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>21 JODY S. KLINE: Go ahead and finish out your</p> <p>22 answer.</p> <p>23 EDUARDO J. INTRIAGO: And then I was -- I started</p> <p>24 working with this firm on January 27th after, I guess,</p> <p>25 I put my two-week notice around the beginning of</p> |

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| <p>17</p> <p>1 January and I have been -- I have been working in<br/>2 Pittsburgh since then. I commute every weekend.<br/>3 JODY S. KLINE: And you've had an opportunity to<br/>4 review all of the work you did while associated with<br/>5 Maser related to this application?<br/>6 EDUARDO J. INTRIAGO: I have, sir. I have --<br/>7 JODY S. KLINE: You're familiar with all of these<br/>8 plans you're going to be talking about today?<br/>9 EDUARDO J. INTRIAGO: I am very familiar with all<br/>10 the plans. I've been -- I've been involved since the<br/>11 inception -- since the very beginning and actually, I<br/>12 already went back and refreshed my history before this<br/>13 hearing.<br/>14 JODY S. KLINE: I'd like to submit a copy of the<br/>15 resume if Mr. Intriago. It's an attachment to our pre-<br/>16 hearing submission, but I just want to give a copy.<br/>17 HEARING EXAMINER ROBESON HANNAN: It's already in<br/>18 your pre-hearing?<br/>19 JODY S. KLINE: It's already in the record, yes.<br/>20 I didn't have a chance to check and see what that<br/>21 actual reference was. Mr. Intriago --<br/>22 HEARING EXAMINER ROBESON HANNAN: Wait, hold --<br/>23 hold on one second.<br/>24 JODY S. KLINE: Sure. Do you want us to get that<br/>25 number for you?</p> | <p>19</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going<br/>2 to go ahead. He does have the prior qualifications.<br/>3 Was he qualified as an expert in that case?<br/>4 JODY S. KLINE: Yes, ma'am, in the field of civil<br/>5 engineering.<br/>6 HEARING EXAMINER ROBESON HANNAN: Okay. I'll<br/>7 accept him as an expert.<br/>8 JODY S. KLINE: By a now retired former hearing<br/>9 examiner.<br/>10 HEARING EXAMINER ROBESON HANNAN: Okay. I'll<br/>11 accept him as an expert in civil engineering.<br/>12 JODY S. KLINE: So, Mr. Intriago, you heard me say<br/>13 that I was hoping that you could basically familiarize<br/>14 the hearing examiner and the other folks in the room<br/>15 about the lay of the land. So, you put up on the board<br/>16 a copy of the existing conditions plan that we --<br/>17 HEARING EXAMINER ROBESON HANNAN: Which is 93B?<br/>18 EDUARDO J. INTRIAGO: 93B, yes.<br/>19 JODY S. KLINE: Okay. And what I'd like you to do<br/>20 -- and you're free to stand up and work from the plan<br/>21 if you'd like to do so, just as long as you don't block<br/>22 anybody's view.<br/>23 HEARING EXAMINER ROBESON HANNAN: Or as long as<br/>24 you're close to the mic -- close enough to the mic that<br/>25 he can pick you up. So, go ahead.</p> |
| <p>18</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I just am going<br/>2 to double check it.<br/>3 WILLIAM J. CHEN: Is it 111 possibly?<br/>4 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>5 JODY S. KLINE: Yeah, 111.<br/>6 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.<br/>7 JODY S. KLINE: Mr. Intriago, have you ever<br/>8 qualified as an expert in civil engineering, let's say<br/>9 before the Office of Zoning and Administrative Hearings<br/>10 of Montgomery County?<br/>11 EDUARDO J. INTRIAGO: Yes, sir. I have.<br/>12 JODY S. KLINE: Can you refresh the hearing<br/>13 examiner of the case you were involved in?<br/>14 EDUARDO J. INTRIAGO: Approximately a year or so<br/>15 ago, if my memory serves me right, I was involved in<br/>16 another Primrose case in which it was located on<br/>17 Layhill Road, and it was a very similar project to this<br/>18 one.<br/>19 JODY S. KLINE: And, Mr. --<br/>20 HEARING EXAMINER ROBESON HANNAN: Well, let me ask<br/>21 you. Mr. Chen, are you going -- are you trying to<br/>22 qualify Mr. Intriago as a civil -- as an expert in<br/>23 civil engineering?<br/>24 JODY S. KLINE: That would be my next question.<br/>25 WILLIAM J. CHEN: No problem.</p>   | <p>20</p> <p>1 COURT REPORTER: Before you begin, let me move the<br/>2 mic.<br/>3 EDUARDO J. INTRIAGO: Okay, thank you.<br/>4 JODY S. KLINE: So, I'll just kind of lead you<br/>5 through. So, what is the size of the property we're<br/>6 dealing with?<br/>7 EDUARDO J. INTRIAGO: The size of the property is<br/>8 about approximately 2.94 acres.<br/>9 HEARING EXAMINER ROBESON HANNAN: 2.94?<br/>10 EDUARDO J. INTRIAGO: 2.94 acres, yes.<br/>11 HEARING EXAMINER ROBESON HANNAN: Well, I thought<br/>12 it was -- okay, go ahead.<br/>13 JODY S. KLINE: Okay. And the subdivision status<br/>14 of the property -- what is it -- is it platted?<br/>15 EDUARDO J. INTRIAGO: This property has been<br/>16 platted.<br/>17 JODY S. KLINE: It's been platted?<br/>18 EDUARDO J. INTRIAGO: Yes.<br/>19 JODY S. KLINE: Do you happen to remember the name<br/>20 or number of what it is?<br/>21 EDUARDO J. INTRIAGO: The -- the name and number<br/>22 of the subdivision, I have it --<br/>23 JODY S. KLINE: Don't worry. If you don't have it<br/>24 off the top of your head, don't worry about it.<br/>25 EDUARDO J. INTRIAGO: It has been platted, sir,</p>  |

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6 (21 to 24)

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| <p>21</p> <p>1 yes.</p> <p>2 JODY S. KLINE: Okay, fine.</p> <p>3 EDUARDO J. INTRIAGO: The zoning of the property</p> <p>4 is what?</p> <p>5 EDUARDO J. INTRIAGO: RE-1.</p> <p>6 JODY S. KLINE: Okay, which means what?</p> <p>7 EDUARDO J. INTRIAGO: Which is residential</p> <p>8 property.</p> <p>9 JODY S. KLINE: Okay, fine. And in the RE-1 zone</p> <p>10 were it to be developed in accordance with its</p> <p>11 underlying zoning, it could -- you could create how</p> <p>12 many single-family lots on the property?</p> <p>13 EDUARDO J. INTRIAGO: Well, based on the size of</p> <p>14 the property, we can create up to three single-family</p> <p>15 residential lots, which is 40,000 per.</p> <p>16 JODY S. KLINE: Okay, fine. So, using the</p> <p>17 exhibit, and I see you have footprints of features on</p> <p>18 the property, basically tell us where -- what</p> <p>19 improvements are actually located on the property.</p> <p>20 EDUARDO J. INTRIAGO: Yes, sir. So, This is</p> <p>21 approximately a rectangle-sized property. On the north</p> <p>22 side, we have Needwood Road. On the south side, we</p> <p>23 have a subdivision -- an existing subdivision. On the</p> <p>24 east side, we have two properties. We have the</p> <p>25 property owned by Ms. -- by the Posey family -- I'm</p>  | <p>23</p> <p>1 the width of the right of way is also changed going</p> <p>2 south into that subdivision as well.</p> <p>3 JODY S. KLINE: Okay, so --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: I'm sorry, what</p> <p>5 did you say?</p> <p>6 EDUARDO J. INTRIAGO: The width of the right of</p> <p>7 way --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>9 EDUARDO J. INTRIAGO: -- changes from 40 feet to</p> <p>10 60 feet going south.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>12 JODY S. KLINE: And I can't see if I can see it</p> <p>13 here, but isn't there effectively a hammerhead</p> <p>14 turnaround on south off the drawing?</p> <p>15 EDUARDO J. INTRIAGO: On the south side of the</p> <p>16 drawing, it's like a -- you don't want to call it a</p> <p>17 cul-de-sac -- it's not a compliant cul-de-sac. So,</p> <p>18 it's -- a fire truck could not technically turn around</p> <p>19 in that with the sides. It doesn't meet the --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Wait. Where are</p> <p>21 you talking about?</p> <p>22 EDUARDO J. INTRIAGO: I'm talking about on the</p> <p>23 south side.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: On the south</p> <p>25 side of the fence?</p>  |
| <p>22</p> <p>1 sorry, Kosery family on the south -- southeast corner.</p> <p>2 On the northeast corner, we have a property owned by</p> <p>3 Twui [phonetic] Aung and Mia Aung.</p> <p>4 JODY S. KLINE: And those properties are improved</p> <p>5 with what?</p> <p>6 EDUARDO J. INTRIAGO: They're improved with</p> <p>7 single-family residential homes.</p> <p>8 JODY S. KLINE: Okay, fine.</p> <p>9 EDUARDO J. INTRIAGO: On the other -- on the west</p> <p>10 side of the property, we have a -- what's called a --</p> <p>11 it's the Montgomery County -- Montgomery County right</p> <p>12 of way. It's a 40-foot right of way. It's named</p> <p>13 Carnegie Avenue and it runs from Carnegie Avenue all</p> <p>14 the way down to the southern subdivision but it's</p> <p>15 currently not connected.</p> <p>16 JODY S. KLINE: Okay. Would you just elaborate on</p> <p>17 what is -- what happens when you get to the southern</p> <p>18 end of Carnegie as shown on that drawing?</p> <p>19 EDUARDO J. INTRIAGO: So, when you get to the</p> <p>20 southern end of the -- of Carnegie Avenue at the</p> <p>21 southwest corner of the site, we have an existing fence</p> <p>22 that goes and blocks the connection between what I said</p> <p>23 -- the northern part of Carnegie Avenue and the</p> <p>24 southern part of Carnegie Avenue. And also, I think</p> <p>25 it's important to note that the right of way is also --</p> | <p>24</p> <p>1 EDUARDO J. INTRIAGO: On the fence.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>3 EDUARDO J. INTRIAGO: That's --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Is it like a T</p> <p>5 turnaround?</p> <p>6 EDUARDO J. INTRIAGO: No, it's like a cul-de-sac,</p> <p>7 like a roundabout.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Oh, okay.</p> <p>9 EDUARDO J. INTRIAGO: It's like a cul-de-sac, but</p> <p>10 it doesn't meet the minimum Montgomery County standards</p> <p>11 required --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>13 EDUARDO J. INTRIAGO: -- for a fire truck to go</p> <p>14 around.</p> <p>15 JODY S. KLINE: Okay. So, let's talk about the</p> <p>16 shape of the property. You were -- the shape of the</p> <p>17 subject property.</p> <p>18 EDUARDO J. INTRIAGO: Yes, sir. So, the property</p> <p>19 is approximately -- the width of the property is</p> <p>20 approximately 208 feet -- 229 feet, sorry, as a width</p> <p>21 and approximately 600 feet going north/south -- the</p> <p>22 length of the -- of the property.</p> <p>23 JODY S. KLINE: So, are you telling me the</p> <p>24 property is 8 times longer than it wide? Is that what</p> <p>25 you just said?</p> |

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7 (25 to 28)

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| <p>25</p> <p>1 EDUARDO J. INTRIAGO: It's approximately -- so<br/>2 it's 229 divided by 600 -- so it's like 2 times -- 2.-<br/>3 something times longer.<br/>4 JODY S. KLINE: Okay.<br/>5 EDUARDO J. INTRIAGO: Than wide. So, it's 600<br/>6 divided by --<br/>7 JODY S. KLINE: Okay, fine, fine. So, tell us<br/>8 about the topography of the subject property.<br/>9 EDUARDO J. INTRIAGO: so, the topography of the<br/>10 subject property, you know, the higher side -- on the<br/>11 eastern side of the property where we have the -- our<br/>12 property -- will be the highest part of the property<br/>13 and the site drains to the west of the property.<br/>14 Actually, there's a little portion on the southeast<br/>15 corner that drains to the southeast. I have another<br/>16 drawing. Do you want me to show you that? But every -<br/>17 - the majority of the site tends to drain to the middle<br/>18 of the west side of the property where there's an<br/>19 existing culvert -- it's an existing CMP culvert in bad<br/>20 shape. It's not -- doesn't meet the current MC DOT<br/>21 standards. And then it goes to the property owned by -<br/>22 - by the Tasker [phonetic] family on the southwest<br/>23 corner of the site and the sheet flows and goes into<br/>24 the watershed on the west side.<br/>25 HEARING EXAMINER ROBESON HANNAN: On the what? To</p> | <p>27</p> <p>1 six feet south.<br/>2 EDUARDO J. INTRIAGO: A hundred forty-six feet<br/>3 south of Needwood Road, that's where the 1,200 square<br/>4 foot existing residential home starts, and it's<br/>5 approximately in the middle of the property going east<br/>6 to west. If you go from the western property is 96.46<br/>7 feet, and it is an irregular shape, but it's -- it's<br/>8 approximately 1,200 square feet in area.<br/>9 JODY S. KLINE: Okay.<br/>10 EDUARDO J. INTRIAGO: Additionally, we have also a<br/>11 woodshed that it's approximately 300 feet going south<br/>12 from Needwood Road and probably approximately only 20<br/>13 feet going west from the eastern property line. So,<br/>14 it's an existing woodshed.<br/>15 JODY S. KLINE: Okay. Do you have access to the<br/>16 natural resources inventory so I could ask you to from<br/>17 it? Is it on that bundle of plans?<br/>18 EDUARDO J. INTRIAGO: Yes, I do have the natural<br/>19 resource inventory, sir.<br/>20 JODY S. KLINE: Could you put it up then, please?<br/>21 EDUARDO J. INTRIAGO: Yes, give me one second<br/>22 please.<br/>23 HEARING EXAMINER ROBESON HANNAN: Do you know what<br/>24 exhibit that is?<br/>25 JODY S. KLINE: Well, it should be at the</p> |
| <p>26</p> <p>1 the what?<br/>2 EDUARDO J. INTRIAGO: To the west. The sheet<br/>3 flows to the west.<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>5 JODY S. KLINE: So, go back and tell us again<br/>6 about what are the improvements on the subject<br/>7 property?<br/>8 EDUARDO J. INTRIAGO: Yes, sir. So, improvement<br/>9 on the subject property -- we have -- we have an<br/>10 existing residential home here. It's about 1,200<br/>11 square feet.<br/>12 HEARING EXAMINER ROBESON HANNAN: Wait.<br/>13 EDUARDO J. INTRIAGO: Yes.<br/>14 HEARING EXAMINER ROBESON HANNAN: The record<br/>15 doesn't know what that is.<br/>16 EDUARDO J. INTRIAGO: I understand, sorry.<br/>17 Approximately, let's say --<br/>18 HEARING EXAMINER ROBESON HANNAN: Is there a<br/>19 parcel number there?<br/>20 EDUARDO J. INTRIAGO: A hundred and forty-six feet<br/>21 north from the property line from Needwood road, that's<br/>22 in the middle of the property.<br/>23 HEARING EXAMINER ROBESON HANNAN: That's south.<br/>24 EDUARDO J. INTRIAGO: It's going south.<br/>25 HEARING EXAMINER ROBESON HANNAN: A hundred forty-</p>   | <p>28</p> <p>1 beginning, so I would say -- well --<br/>2 HEARING EXAMINER ROBESON HANNAN: Eighteen?<br/>3 JODY S. KLINE: Well, I see 18 for the cover<br/>4 sheet. I -- I have --<br/>5 [Speaking off mic.]<br/>6 HEARING EXAMINER ROBESON HANNAN: Yeah, okay.<br/>7 Don't talk from --<br/>8 JODY S. KLINE: I'm not sure. What we have here<br/>9 is a bundle together of the cover sheet and we have the<br/>10 plan itself.<br/>11 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>12 JODY S. KLINE: So, if -- it should have been 18-A<br/>13 and B, I think.<br/>14 EDUARDO J. INTRIAGO: Mr. Kline, I have an<br/>15 existing condition from the forest preservation.<br/>16 JODY S. KLINE: No. I don't want -- I'd like the<br/>17 NRI.<br/>18 [Speaking off mic.]<br/>19 HEARING EXAMINER ROBESON HANNAN: Let's go off the<br/>20 record so we don't have confusion in talking.<br/>21 [Off the record at 10:13 a.m.]<br/>22 [On the record at 10:13 a.m.]<br/>23 JODY S. KLINE: Does it say cover sheet?<br/>24 HEARING EXAMINER ROBESON HANNAN: Yes. But I'm<br/>25 not clear. We're discussing Exhibit 18 and we are</p>  |



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8 (29 to 32)

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| <p style="text-align: right;">29</p> <p>1 trying to see -- I have the existing conditions plan,<br/>2 but it's not the NRI-FSD to my knowledge.<br/>3 JODY S. KLINE: Okay.<br/>4 HEARING EXAMINER ROBESON HANNAN: So, I only have<br/>5 -- looking through the original applications here --<br/>6 the original submittal, I only have the cover sheet of<br/>7 the NRI-FSD.<br/>8 JODY S. KLINE: Interesting. Okay.<br/>9 HEARING EXAMINER ROBESON HANNAN: So, if you want<br/>10 to discuss the actual NRI-FSD, we'll have to admit it<br/>11 into the record.<br/>12 JODY S. KLINE: Ms. ROBESON HANNAN, I would ask if<br/>13 what should have been 18-B, had we properly filed it<br/>14 correctly, be made an exhibit in the record of the<br/>15 case.<br/>16 HEARING EXAMINER ROBESON HANNAN: Yeah, but I<br/>17 don't even have -- I don't even see the -- it should<br/>18 have been -- I'm not finding it in here.<br/>19 JODY S. KLINE: I understand. The copies we had<br/>20 were stapled together. So, I'm not sure why you only<br/>21 got one page, but I'm sorry about that.<br/>22 HEARING EXAMINER ROBESON HANNAN: Well, I can look<br/>23 again --<br/>24 JODY S. KLINE: No, I --<br/>25 HEARING EXAMINER ROBESON HANNAN: -- and see if</p>                               | <p style="text-align: right;">31</p> <p>1 going to admit it as 18-A.<br/>2 COURT REPORTER: Lower right corner?<br/>3 HEARING EXAMINER ROBESON HANNAN: Yes, please. I<br/>4 just want to make sure our record is clear.<br/>5 JODY S. KLINE: 18-A. Just I'll fire some quick<br/>6 questions at you. Are there any streams or water<br/>7 courses shown on the NRI on the subject property?<br/>8 EDUARDO J. INTRIAGO: No, sir.<br/>9 JODY S. KLINE: Is there any wetland areas?<br/>10 EDUARDO J. INTRIAGO: No, sir.<br/>11 JODY S. KLINE: Any 100-year floodplains?<br/>12 EDUARDO J. INTRIAGO: No, sir.<br/>13 JODY S. KLINE: Any highly erodible soils?<br/>14 EDUARDO J. INTRIAGO: No, sir.<br/>15 JODY S. KLINE: Okay. And does this drawing show<br/>16 vegetative stands on the property and can you show<br/>17 where they're located and their character?<br/>18 EDUARDO J. INTRIAGO: Yes. On these -- on these<br/>19 NRI -- approved NRI-FSD on the southwest corner of the<br/>20 site, there's an existing forest stand approved on the<br/>21 plan.<br/>22 HEARING EXAMINER ROBESON HANNAN: Wait -- existing<br/>23 forest stand approved? You mean an existed forest<br/>24 stand?<br/>25 EDUARDO J. INTRIAGO: Yeah, an existed forest</p>  |
| <p style="text-align: right;">30</p> <p>1 it's --<br/>2 JODY S. KLINE: Well, as long as I've got it,<br/>3 because I'm not going to spend that much time talking<br/>4 about it.<br/>5 HEARING EXAMINER ROBESON HANNAN: Okay. Well, how<br/>6 about this? Let's -- do you have any objection to<br/>7 admitting this in the record just to --<br/>8 WILLIAM J. CHEN: If you've got it. Yeah.<br/>9 HEARING EXAMINER ROBESON HANNAN: Because I can't<br/>10 -- I have the original submittal in this -- in this<br/>11 box, and don't have -- I have 18, which is the cover<br/>12 sheet, but I don't have the NRI-FSD.<br/>13 WILLIAM J. CHEN: Mr. Kline, do you have an NRI-<br/>14 FSD?<br/>15 JODY S. KLINE: That's it.<br/>16 WILLIAM J. CHEN: Then, why don't we mark it 18-A.<br/>17 JODY S. KLINE: In the lower left-hand corner,<br/>18 does that not say certified or approved?<br/>19 EDUARDO J. INTRIAGO: It says in the upper right<br/>20 here, it says approved, sir -- on the upper right.<br/>21 JODY S. KLINE: Oh, right corner. Sure, all<br/>22 right. So, we have a copy of the approval NRI-FSD<br/>23 approved by Park and Planning Commission.<br/>24 HEARING EXAMINER ROBESON HANNAN: Okay, so can you<br/>25 mark that with a pen? Just put in the bottom, we're</p> | <p style="text-align: right;">32</p> <p>1 stand on the approval plan. I'm sorry.<br/>2 HEARING EXAMINER ROBESON HANNAN: It's okay. I<br/>3 just -- I noticed last time the record wasn't 100<br/>4 percent clear. So, I'm trying to keep it clearer.<br/>5 EDUARDO J. INTRIAGO: So, on the approved plan,<br/>6 there's a forest stand on the south -- southeast corner<br/>7 of the site. And then we have a forest cover -- we<br/>8 have forest cover on the western side of the property.<br/>9 We have forest cover adjacent to Carnegie Avenue. On<br/>10 the eastern side of the property, we have also some<br/>11 forest cover adjacent to the two properties to the<br/>12 east.<br/>13 JODY S. KLINE: Okay. How is access obtained to<br/>14 the subject property today?<br/>15 EDUARDO J. INTRIAGO: Well, the subject property<br/>16 has one driveway connecting to Needwood Road on the<br/>17 north side.<br/>18 JODY S. KLINE: Okay. And does that lead directly<br/>19 to the residence on the property?<br/>20 EDUARDO J. INTRIAGO: That leads directly to the<br/>21 residence, yes sir.<br/>22 JODY S. KLINE: And that's located approximately<br/>23 in the center of the property?<br/>24 EDUARDO J. INTRIAGO: One -- approximately, yes.<br/>25 Probably more toward the east. Yeah, approximately in</p> |

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9 (33 to 36)

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| <p>33</p> <p>1 the center.</p> <p>2 JODY S. KLINE: Have you had an opportunity -- has</p> <p>3 your firm had an opportunity to conduct a line of sight</p> <p>4 study to determine what would be the proper siting of a</p> <p>5 driveway to future development of this property from</p> <p>6 the fact that this was going to be from Needwood Road?</p> <p>7 EDUARDO J. INTRIAGO: Yes, sir. During the</p> <p>8 progress of getting this plan approved, we did -- there</p> <p>9 are studies about the sight business. So, at the end</p> <p>10 of the day, there's a range of distance closer to the</p> <p>11 eastern side of the property, which is the higher side</p> <p>12 of the road. That is a safer side. That is the</p> <p>13 location where it meets the Montgomery County standards</p> <p>14 for line of sight.</p> <p>15 JODY S. KLINE: Okay. Let's take -- let's take it</p> <p>16 a step back and just -- how about just describe the</p> <p>17 elevations and the grade of Needwood Road as it relates</p> <p>18 to the property -- in front of the property so the</p> <p>19 hearing examiner understands the line of sight</p> <p>20 restrictions.</p> <p>21 EDUARDO J. INTRIAGO: Yes, sir. So, on Needwood</p> <p>22 Road, if we're following the north property -- the</p> <p>23 north property that is owned by Jackapundi [phonetic] -</p> <p>24 - the Jackapundi family.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: North of</p> | <p>35</p> <p>1 JODY S. KLINE: All right. So -- so, the current</p> <p>2 driveway is located at the optimum position for access</p> <p>3 to the property.</p> <p>4 EDUARDO J. INTRIAGO: The current driveway is</p> <p>5 located in the optimum position of it.</p> <p>6 JODY S. KLINE: Okay.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Now, can you</p> <p>8 point out where the current driveway is on that plan?</p> <p>9 EDUARDO J. INTRIAGO: It's on -- it's --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Midway.</p> <p>11 EDUARDO J. INTRIAGO: -- midway.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Approximately</p> <p>13 the middle of the property and it's represented by</p> <p>14 hatched -- it looks like hatched lines on the NRI-FSD?</p> <p>15 EDUARDO J. INTRIAGO: Correct.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: To the --</p> <p>17 between the circled letters of 8 and something else.</p> <p>18 EDUARDO J. INTRIAGO: Open field and this open</p> <p>19 field for inner access.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.</p> <p>21 JODY S. KLINE: Okay. So, I'll withdraw my</p> <p>22 question. I understand Mr. Chen's concern. So, you're</p> <p>23 saying that the current driveway is at the crest of</p> <p>24 Needwood Road.</p> <p>25 EDUARDO J. INTRIAGO: The current driveway is at</p>   |
| <p>34</p> <p>1 Needwood.</p> <p>2 EDUARDO J. INTRIAGO: North of Needwood Road.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Yeah, directly</p> <p>4 across the street from this property.</p> <p>5 EDUARDO J. INTRIAGO: Yes.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>7 EDUARDO J. INTRIAGO: Approximately on the eastern</p> <p>8 property line, that's very close to where the existing</p> <p>9 driveway is for the -- for the subject property.</p> <p>10 There's kind of the high point of the road. It's</p> <p>11 approximately -- we see a contour there or 474. So,</p> <p>12 from that location going west and that location going</p> <p>13 east, the road starts going down.</p> <p>14 JODY S. KLINE: So, that's -- so you're --</p> <p>15 EDUARDO J. INTRIAGO: That's the crest.</p> <p>16 JODY S. KLINE: -- you're pointing to the crest of</p> <p>17 the road.</p> <p>18 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>19 JODY S. KLINE: Okay, fine. So, go ahead.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Wait. Okay, go</p> <p>21 ahead.</p> <p>22 JODY S. KLINE: No, go ahead if you have a</p> <p>23 question.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: No, no, go</p> <p>25 ahead.</p>   | <p>36</p> <p>1 the crest of the road, yes.</p> <p>2 JODY S. KLINE: And then -- and the road drops off</p> <p>3 on either side.</p> <p>4 EDUARDO J. INTRIAGO: On both sides, yes.</p> <p>5 JODY S. KLINE: And when you did a line of sight</p> <p>6 study, what did you determine would be the proper --</p> <p>7 well, what did the line of sight study tell you?</p> <p>8 EDUARDO J. INTRIAGO: Well, the line of study --</p> <p>9 we analyzed two locations for the line study. One --</p> <p>10 one of the locations was where we're proposing the new</p> <p>11 driveway that I don't have how to show it on this</p> <p>12 exhibit, but it's a couple feet more to the east of the</p> <p>13 existing driveway, and we also analyzed Carnegie</p> <p>14 Avenue. So -- so, on the eastern side of the property,</p> <p>15 the -- the line of sight could technically be met in</p> <p>16 that location because it's the higher side. Once you</p> <p>17 start going west, you start going faster going down.</p> <p>18 So, that's why when you put a -- a car on Carnegie --</p> <p>19 at Carnegie Avenue and Needwood Road, that means the</p> <p>20 location where you measure the sight of distance for</p> <p>21 county standards looking east, the crest doesn't allow</p> <p>22 it to meet the minimum distance that's required for</p> <p>23 sight distance, so.</p> <p>24 JODY S. KLINE: Okay. So, can you show us where</p> <p>25 on the site are -- where driveway locations could be</p> |

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10 (37 to 40)

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| <p>37</p> <p>1 located that would meet the line of sight requirements<br/>2 of DOT?<br/>3 EDUARDO J. INTRIAGO: So, without having an exact<br/>4 location of that, it would be between the eastern<br/>5 property line and probably 20 feet to the west of<br/>6 existing driveway -- 30 feet to the west of the<br/>7 existing driveway. So, basically the east side of the<br/>8 property is the -- is the safer place to put a<br/>9 driveway. The closer to the height of the crest, the<br/>10 greater the sight distance is. But we have -- we only<br/>11 need to meet a certain limit on distance per county<br/>12 requirements.<br/>13 JODY S. KLINE: Okay, fine. So then, let me take<br/>14 you back to the road on the other side on Carnegie<br/>15 Avenue.<br/>16 EDUARDO J. INTRIAGO: Yes.<br/>17 JODY S. KLINE: Carnegie Avenue is -- has what<br/>18 status on the county's road network?<br/>19 EDUARDO J. INTRIAGO: Well, the -- Carnegie Avenue<br/>20 is a county road, but it's a road that has not been<br/>21 accepted for maintenance.<br/>22 JODY S. KLINE: So, it's been platted by plat.<br/>23 HEARING EXAMINER ROBESON HANNAN: Mr. -- I'm<br/>24 letting a lot of leading questions go, but --<br/>25 JODY S. KLINE: Oh, okay.</p>   | <p>39</p> <p>1 has a 44-foot right of way and this one only has 40,<br/>2 and on top of that, it doesn't have any of the -- the<br/>3 road sections in Montgomery County standards. This is<br/>4 just a gravel road that doesn't meet any of the county<br/>5 standards for maintenance. So, right now it's<br/>6 currently used as a driveway that I think it's only<br/>7 serving at this point Mr. [?].<br/>8 JODY S. KLINE: Okay. Could -- could the<br/>9 applicant approve -- could the applicant improve<br/>10 Carnegie Road to make it as a point of access to the<br/>11 subject property?<br/>12 EDUARDO J. INTRIAGO: Mr. Kline, that -- that<br/>13 actually possibly was discussed at one point.<br/>14 Actually, we had a meeting on February 26 with Park and<br/>15 Planning staff in which they actually very -- they<br/>16 requested strongly for us to improve that -- that road<br/>17 on which we had to give an additional 4-foot right of<br/>18 way to meet the minimum standards, which at the end of<br/>19 the day ended up being 5 feet instead of dedicating 4.<br/>20 The client on the other property ended up dedicating 5<br/>21 with our proposed plans. But we went through the<br/>22 exercise of trying to start with a design, we did a<br/>23 road design aligning with -- doing the lining of it.<br/>24 HEARING EXAMINER ROBESON HANNAN: Okay. Where are<br/>25 we going with this? Why are we discussing what could</p> |
| <p>38</p> <p>1 HEARING EXAMINER ROBESON HANNAN: -- can you --<br/>2 JODY S. KLINE: Sure, okay.<br/>3 HEARING EXAMINER ROBESON HANNAN: -- steer away<br/>4 from them?<br/>5 JODY S. KLINE: How is the roadway created?<br/>6 EDUARDO J. INTRIAGO: The road was created by plat<br/>7 -- plat number 1713.<br/>8 JODY S. KLINE: Okay. And you said the width of<br/>9 the road shown on that plat was --<br/>10 EDUARDO J. INTRIAGO: Forty feet? Okay. And I<br/>11 interrupted you. You said something about the county's<br/>12 position regarding the road.<br/>13 EDUARDO J. INTRIAGO: Well, it's my understanding<br/>14 that this road, it's a county road, but it's not<br/>15 maintained by Montgomery County right now, because it's<br/>16 not been accepted -- because it doesn't meet the<br/>17 minimum standards for Montgomery County to be able to<br/>18 accept that road.<br/>19 JODY S. KLINE: And what does that mean?<br/>20 EDUARDO J. INTRIAGO: Well, it could mean many<br/>21 different things, and what I mean to say -- let me<br/>22 rephrase what I said. The -- with Needwood Road, that<br/>23 could be kind of close to meeting the standards over<br/>24 here and would be a tertiary road with Montgomery<br/>25 County. But the problem with that one is that that one</p> | <p>40</p> <p>1 have happened with Carnegie Road?<br/>2 JODY S. KLINE: Because it -- essentially what the<br/>3 conclusion of his testimony is going to be is that<br/>4 Carnegie Road is not available for public use. It<br/>5 cannot be improved to be used.<br/>6 HEARING EXAMINER ROBESON HANNAN: And what does<br/>7 that have to do with this?<br/>8 JODY S. KLINE: Because it means then the driveway<br/>9 can only come in from Needwood Road directly on the<br/>10 site on the eastern side of the property, and that<br/>11 dictates where the driveway access to the property is.<br/>12 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>13 WILLIAM J. CHEN: There's going to be a dispute on<br/>14 that.<br/>15 HEARING EXAMINER ROBESON HANNAN: Okay. That's --<br/>16 let's keep -- I'll let -- I just needed to know where<br/>17 we were going. Okay.<br/>18 JODY S. KLINE: Yeah.<br/>19 HEARING EXAMINER ROBESON HANNAN: Go ahead.<br/>20 EDUARDO J. INTRIAGO: So, there was a lot of<br/>21 discussion of this kind with MC DOT, with right of way,<br/>22 about the type of improvements we're going to do, what<br/>23 the meetings done about it, and then -- and then, MC<br/>24 DOT came and said that they were not going to be able<br/>25 to approve these improvements to this road because it</p>   |

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11 (41 to 44)

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| <p>41</p> <p>1 was not safe.</p> <p>2 JODY S. KLINE: And it was not safe because why?</p> <p>3 EDUARDO J. INTRIAGO: Because the -- the -- this</p> <p>4 intersection of Carnegie Avenue with Needwood Road does</p> <p>5 not meet the minimum sight distance. It -- right now,</p> <p>6 it's not meeting the sight distance to make it safe.</p> <p>7 So, whoever is using that driveway to get out of there</p> <p>8 looking -- looking east, they're not really seeing</p> <p>9 who's coming from that side with the minimum distance</p> <p>10 required. It's an existing problem on that site.</p> <p>11 JODY S. KLINE: In light of the determination by</p> <p>12 the Department of Transportation, the applicant made a</p> <p>13 proposal for access to the site including -- that</p> <p>14 included what components?</p> <p>15 EDUARDO J. INTRIAGO: Well, there is -- there is</p> <p>16 -- these plans have been going through a lot of</p> <p>17 iterations. One of the iterations that we looked into</p> <p>18 was to try to abandon the right of way and try to give</p> <p>19 50 percent to each of the properties. And then we were</p> <p>20 looking to put a -- a driveway on the west side of the</p> <p>21 property and try to provide a cross-access easement for</p> <p>22 the people that were -- can use it in a location that</p> <p>23 as far as we can so it could have been safe for sight</p> <p>24 distance. But that was also turned down at one point.</p> <p>25 So, we were actually trying to close -- solve the</p>  | <p>43</p> <p>1 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>2 JODY S. KLINE: And what was the forum for that</p> <p>3 proposal?</p> <p>4 EDUARDO J. INTRIAGO: Sorry?</p> <p>5 JODY S. KLINE: You presented a concept plan to</p> <p>6 what agency?</p> <p>7 EDUARDO J. INTRIAGO: It was to Park and Planning</p> <p>8 if I recall correctly, and so I was --</p> <p>9 JODY S. KLINE: Do you remember the name of the</p> <p>10 committee you appeared before?</p> <p>11 EDUARDO J. INTRIAGO: It was before the Park and</p> <p>12 Planning Commission we appeared. I don't --</p> <p>13 JODY S. KLINE: All right. Okay, so you don't</p> <p>14 have it. Okay, fine. But in any event, the formal</p> <p>15 proposal was rejected?</p> <p>16 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>17 JODY S. KLINE: Okay. So, what did you then work</p> <p>18 out as actual proposal that got incorporated in the</p> <p>19 application that we're looking at?</p> <p>20 EDUARDO J. INTRIAGO: So, after that -- so, we</p> <p>21 went up to the drawing board for probably the tenth</p> <p>22 time and we tried looking at the driveway on the safer</p> <p>23 side and complying with the other requirements for the</p> <p>24 Commission like parking in the back and a couple</p> <p>25 different things. So, basically we went back and --</p>  |
| <p>42</p> <p>1 problem with the existing problem and trying to provide</p> <p>2 access to Mr. -- the [?] family through this</p> <p>3 development with an improved road that we were going to</p> <p>4 put into our plans. We also worked very hard on that</p> <p>5 one, but it was turned down at the end.</p> <p>6 JODY S. KLINE: Okay.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: By whom?</p> <p>8 EDUARDO J. INTRIAGO: Well, it was many different</p> <p>9 discussions between the Park and Planning and the fire</p> <p>10 department because they were asking for a big T-</p> <p>11 turnaround at the end of that and that was going to be</p> <p>12 the whole -- in other words, on the south side of the</p> <p>13 road of Carnegie Avenue since remember I was telling</p> <p>14 you this -- this roundabout doesn't meet the minimum</p> <p>15 standards. If they want to close this for good, they</p> <p>16 wanted us to get a bunch of property from -- from Mr.</p> <p>17 [?] to be able to put this roundabout in his property.</p> <p>18 So, that would eliminate the possibility of putting any</p> <p>19 type of forest conservation, and that's what we're</p> <p>20 using that area for and it was just a lot of</p> <p>21 imperviousness that would have no use for that. So,</p> <p>22 Park and Planning and a lot of people, DOT and MC DOT,</p> <p>23 just said that that was not a viable option.</p> <p>24 JODY S. KLINE: Did the applicant make a proposal</p> <p>25 -- a formal proposal to abandon Carnegie Avenue?</p> | <p>44</p> <p>1 originally, one of the first concepts that we had, we</p> <p>2 had the driveway on Needwood Road. That was rejected</p> <p>3 as well. I neglected to say that, but that was way at</p> <p>4 the beginning of the project. So, we went and put the</p> <p>5 driveway on the east side of the property where it</p> <p>6 meets the -- the standards for sight distance and we</p> <p>7 abandoned the driveway that we had kind of on the west</p> <p>8 to try to combine it with --</p> <p>9 JODY S. KLINE: And did the applicant agree to</p> <p>10 create any additional right of way for Carnegie Avenue</p> <p>11 and for what purpose?</p> <p>12 EDUARDO J. INTRIAGO: Yeah, I mean, in that -- we</p> <p>13 -- the client -- or the property owner in this case, he</p> <p>14 agreed, of course, to dedications. He agreed to the</p> <p>15 dedications on Carnegie Avenue to meet the tertiary</p> <p>16 right of way and he also agreed to the dedication -- I</p> <p>17 think, if I recall right, it's 15 feet on Needwood Road</p> <p>18 to be able to meet the Needwood Road right of way</p> <p>19 width, which is basically matching the right of way</p> <p>20 from the Aung family on the east side. So, we're</p> <p>21 matching the right of way on the east side of our</p> <p>22 property so it's a consistent right of way along the</p> <p>23 Needwood Road.</p> <p>24 JODY S. KLINE: Excuse me.</p> <p>25 EDUARDO J. INTRIAGO: Yes, sir?</p> |

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12 (45 to 48)

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| <p>45</p> <p>1 JODY S. KLINE: This dedication is on Needwood not<br/>2 Carnegie?<br/>3 EDUARDO J. INTRIAGO: Needwood, yes. So, I said<br/>4 it was two dedications we're proposing.<br/>5 HEARING EXAMINER ROBESON HANNAN: How much on --<br/>6 I'm sorry -- how much on Needwood?<br/>7 EDUARDO J. INTRIAGO: Fifteen.<br/>8 HEARING EXAMINER ROBESON HANNAN: Fifteen.<br/>9 EDUARDO J. INTRIAGO: And then 5 on Carnegie<br/>10 Avenue.<br/>11 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.<br/>12 JODY S. KLINE: There -- there was at one time --<br/>13 there was a Department of Transportation dedication<br/>14 circulating on a 10-foot dedication. Why was --<br/>15 HEARING EXAMINER ROBESON HANNAN: On which road?<br/>16 JODY S. KLINE: I'm sorry, on Carnegie -- Carnegie<br/>17 Avenue. And why is there only a 5-foot dedication now<br/>18 proposed?<br/>19 EDUARDO J. INTRIAGO: Well, the discussion I was<br/>20 telling you in February was about when everybody came<br/>21 to an agreement that, you know, we only have a certain<br/>22 amount of right away, so the road that was going to fit<br/>23 the best need in that particular situation was a<br/>24 tertiary road with only 44 feet. But at one point,<br/>25 they were saying -- the conversation with Park and</p>  | <p>47</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Do you have a<br/>2 response?<br/>3 JODY S. KLINE: I do. And the record is void on<br/>4 having -- why we're having 5 foot instead of 10 feet.<br/>5 HEARING EXAMINER ROBESON HANNAN: Why does the 5<br/>6 foot versus 10 feet matter?<br/>7 JODY S. KLINE: Well, the only reason -- the only<br/>8 reason I asked the question was because that was a<br/>9 question that came up in the first hearing that there<br/>10 was -- there is a DOT E-mail that says 10 -- DOT<br/>11 expects 10-foot dedication and that the ultimate amount<br/>12 of dedication in accordance with the condition and the<br/>13 conditional use approval is 5 feet, it was approved by<br/>14 Park and Planning. But there is no paperwork that we<br/>15 can find that says let's go down from 10 to 5. So, I<br/>16 just wanted him to explain what -- why that happened,<br/>17 even though there's no paperwork that explains it.<br/>18 HEARING EXAMINER ROBESON HANNAN: I guess I'm just<br/>19 having problems. Why does this matter?<br/>20 JODY S. KLINE: I only brought it up simply to try<br/>21 to answer a question that came up at the first hearing<br/>22 what -- where is the record to say it should be a 5-<br/>23 foot dedication instead of a 10-foot dedication.<br/>24 WILLIAM J. CHEN: If I may respond to that. I can<br/>25 tell you why it matters or I can try through cross</p> |
| <p>46</p> <p>1 Planning and everybody voted, MC DOT, was, you know,<br/>2 the first would be to try to dedicate that same amount<br/>3 of property from the west side that from the east side.<br/>4 But the problem was that --<br/>5 HEARING EXAMINER ROBESON HANNAN: Wait, the west<br/>6 side of what?<br/>7 EDUARDO J. INTRIAGO: Oh, Carnegie Avenue.<br/>8 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>9 EDUARDO J. INTRIAGO: Yeah, sorry. So, but --<br/>10 WILLIAM J. CHEN: Excuse me just for a minute.<br/>11 I'm going to avoid cross, but I do want to note an<br/>12 objection.<br/>13 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>14 WILLIAM J. CHEN: Because the gentleman is<br/>15 testifying about decisions made by county agencies and<br/>16 discussions that were made at meetings and things of<br/>17 that nature. I don't want to impugn his integrity, but<br/>18 the applicant's witnesses descriptions of what a<br/>19 government agency agreed to or did not agree to,<br/>20 particularly now we're talking about dedication, I<br/>21 object to. That if the government has agreed to any<br/>22 type of a dedication arrangement or agreement or<br/>23 whatever it may be -- and this came up on the first day<br/>24 of hearing -- then, there should be in the record the<br/>25 government's position on that.</p> | <p>48</p> <p>1 later on or probably through one of my own witnesses<br/>2 why the different -- the 5- to 10-foot dedication issue<br/>3 is relevant.<br/>4 JODY S. KLINE: Okay.<br/>5 WILLIAM J. CHEN: Relevance may be not the right<br/>6 word in light of the application but why it has some<br/>7 significance to this particular application.<br/>8 HEARING EXAMINER ROBESON HANNAN: Okay. So,<br/>9 you're going to address that. So, you feel that it's<br/>10 significant. Do you have a proffer as to -- to --<br/>11 WILLIAM J. CHEN: Yeah. The proffer is if the 10-<br/>12 foot requirement -- and that's in the record, you've<br/>13 got a DRC minutes -- you could not put this building<br/>14 where it's located.<br/>15 HEARING EXAMINER ROBESON HANNAN: I see. I<br/>16 understand. Because it -- okay, because of the --<br/>17 yeah, all right. I'm not going to say why I understand<br/>18 that that's a critical issue. I'm going to let you<br/>19 proceed.<br/>20 JODY S. KLINE: Sure, okay.<br/>21 HEARING EXAMINER ROBESON HANNAN: But I will say<br/>22 this, I will give it -- it is hearsay. We can take<br/>23 hearsay but I'm going to give it the weight it<br/>24 deserves, which is, you know, unverified, and I do find<br/>25 it a little unusual that there's no documentation,</p>  |

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13 (49 to 52)

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| <p>49</p> <p>1 particularly typically Planning staff sends -- there's<br/>2 E-mails from Planning staff to MC DOT saying what's<br/>3 your position, and then they get comments back. So,<br/>4 I'll give it the weight it deserves.<br/>5 JODY S. KLINE: I understand. Well, let me then -<br/>6 - the following couple of questions are just to give<br/>7 you a little bit more background. So --<br/>8 HEARING EXAMINER ROBESON HANNAN: Wait, what are<br/>9 you handing to me?<br/>10 JODY S. KLINE: I'm handing to you basically notes<br/>11 from -- you can see in the upper left-hand corner.<br/>12 HEARING EXAMINER ROBESON HANNAN: Yeah.<br/>13 JODY S. KLINE: These are comments from<br/>14 Deepak Somarajan, who is an employee of the Montgomery<br/>15 County Department of Transportation, making comments to<br/>16 the Development and Review Committee at Park and<br/>17 Planning Commission on a concept plan review for the<br/>18 subject property.<br/>19 WILLIAM J. CHEN: What's the exhibit number?<br/>20 JODY S. KLINE: We're just -- I just -- it has to<br/>21 be made an exhibit for the record.<br/>22 WILLIAM J. CHEN: Oh, I'm sorry.<br/>23 HEARING EXAMINER ROBESON HANNAN: Well, do you<br/>24 have any foundation -- does he have any foundation for<br/>25 this document?</p> | <p>51</p> <p>1 WILLIAM J. CHEN: Regarding my objection --<br/>2 HEARING EXAMINER ROBESON HANNAN: Huh?<br/>3 WILLIAM J. CHEN: You said you were going to allow<br/>4 it -- you've noted my --<br/>5 HEARING EXAMINER ROBESON HANNAN: No, I said this<br/>6 -- I said I'm marking it. I'm asking for a foundation.<br/>7 WILLIAM J. CHEN: Okay.<br/>8 HEARING EXAMINER ROBESON HANNAN: To you, as to<br/>9 your objection, what I heard was that it's hearsay that<br/>10 isn't backed up, and I guess what I want to do right<br/>11 now is deal with this document. I -- I will note a<br/>12 continuing objection if you wish.<br/>13 WILLIAM J. CHEN: Yes.<br/>14 JODY S. KLINE: Would you allow me to do this by<br/>15 way of proffer, and it will save me having to take five<br/>16 minutes of questioning then?<br/>17 HEARING EXAMINER ROBESON HANNAN: No.<br/>18 JODY S. KLINE: No? Okay, fine. Mr. Intriago,<br/>19 are you familiar with this document that I've just<br/>20 given you --<br/>21 EDUARDO J. INTRIAGO: Yes, sir.<br/>22 JODY S. KLINE: -- which has been marked as<br/>23 Exhibit 183? And these are comments received from the<br/>24 Department of Transportation on the concept plan for<br/>25 Primrose School, correct?</p>          |
| <p>50</p> <p>1 JODY S. KLINE: He -- he attended the meeting, and<br/>2 he would have been involved in the correspondence, yes.<br/>3 HEARING EXAMINER ROBESON HANNAN: Well, I'll let<br/>4 you lay the foundation --<br/>5 JODY S. KLINE: Sure.<br/>6 HEARING EXAMINER ROBESON HANNAN: -- and then Mr.<br/>7 Chen can decide whether he wishes to object.<br/>8 JODY S. KLINE: Okay.<br/>9 WILLIAM J. CHEN: Do you have a number?<br/>10 HEARING EXAMINER ROBESON HANNAN: We'll mark it as<br/>11 -- it's not admitted -- but we'll mark it as 183, but<br/>12 it's not admitted yet.<br/>13 WILLIAM J. CHEN: And Mr. Kline, what is the<br/>14 description? They're minute notes or notes of the<br/>15 meeting?<br/>16 JODY S. KLINE: I would say it's DOT<br/>17 recommendations on concept plan review for the Primrose<br/>18 School.<br/>19 HEARING EXAMINER ROBESON HANNAN: All right. Go<br/>20 ahead.<br/>21 EDUARDO J. INTRIAGO: [Inaudible] dedications in<br/>22 February.<br/>23 HEARING EXAMINER ROBESON HANNAN: Wait, wait,<br/>24 wait. I need a question on the table. First, we're<br/>25 going to take a look at this copy.</p>  | <p>52</p> <p>1 EDUARDO J. INTRIAGO: That's correct, sir.<br/>2 JODY S. KLINE: As it states in the upper right --<br/>3 HEARING EXAMINER ROBESON HANNAN: Have you seen<br/>4 this document before?<br/>5 EDUARDO J. INTRIAGO: Yes, ma'am. That was done -<br/>6 -<br/>7 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>8 EDUARDO J. INTRIAGO: -- from formal concept<br/>9 submission that we did at the beginning of the project.<br/>10 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>11 JODY S. KLINE: And why did you do a concept plan<br/>12 submission?<br/>13 EDUARDO J. INTRIAGO: We wanted to make sure that<br/>14 we have addressed -- we have -- we wanted to have a<br/>15 formal stance from -- from staff, meaning like<br/>16 everybody involved, Park and Planning, DPS -- about<br/>17 what they thought about the -- their comments on the<br/>18 project. And this is one of the comments we have from<br/>19 Mr. Deepak.<br/>20 JODY S. KLINE: And wasn't the proposal of<br/>21 abandonment? Well, was proposal for abandonment<br/>22 considered at the time the concept plan --<br/>23 EDUARDO J. INTRIAGO: Yes, sir. Yes.<br/>24 JODY S. KLINE: Okay, fine. The concept plan is<br/>25 not the application that's before the hearing examiner</p> |

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14 (53 to 56)

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| <p>53</p> <p>1 today, is it?</p> <p>2 EDUARDO J. INTRIAGO: No, it's not sir. It's a</p> <p>3 different concept.</p> <p>4 JODY S. KLINE: So, was there subsequent later DOT</p> <p>5 comments on the conditional use plan --</p> <p>6 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>7 JODY S. KLINE: -- as compared to the concept</p> <p>8 plan?</p> <p>9 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>10 JODY S. KLINE: So, the 10 -- the number of 10 --</p> <p>11 where does the number of 10 feet come around? Was</p> <p>12 there a subsequent later DOT recommendation for other</p> <p>13 than 10 feet?</p> <p>14 EDUARDO J. INTRIAGO: Yes, sir. That's the</p> <p>15 discussion I'm telling you that we were going to have a</p> <p>16 tertiary road, which is the 44-foot right of way.</p> <p>17 JODY S. KLINE: And have you ever seen any</p> <p>18 paperwork that said we will expect a 5-foot dedication?</p> <p>19 EDUARDO J. INTRIAGO: Well, we -- that's what we</p> <p>20 proposed in the plans. But the discussion that I</p> <p>21 recall was that we wanted it to be a tertiary road, 44-</p> <p>22 foot right of way, we needed 4 and we are now</p> <p>23 dedicating 5 at that point.</p> <p>24 JODY S. KLINE: So, the conditional use plan that</p> <p>25 you will be showing us after we have a break here in a</p>             | <p>55</p> <p>1 WILLIAM J. CHEN: If I may.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>3 WILLIAM J. CHEN: What was the nature of your</p> <p>4 exchange with --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: It wasn't an</p> <p>6 exchange with --</p> <p>7 WILLIAM J. CHEN: Oh, okay.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: -- or I would</p> <p>9 have put it. It was an exchange with Mana [phonetic]</p> <p>10 and Mana forwarded it to me because she didn't know</p> <p>11 which plan -- now, they found the plan without my</p> <p>12 intervention, which is why I never -- apparently, she</p> <p>13 wanted us to send her the plan, and apparently she</p> <p>14 ended up coming and looking at the file. So, I have no</p> <p>15 idea what happened. So, it didn't occur to me to put</p> <p>16 it in the record until I'm hearing this. So, I am</p> <p>17 disclosing that.</p> <p>18 JODY S. KLINE: Okay.</p> <p>19 WILLIAM J. CHEN: Can I ask one question?</p> <p>20 HEARING EXAMINER ROBESON HANNAN: And if you want</p> <p>21 me to see if I can dig up the E-mails, I can put them</p> <p>22 in the record.</p> <p>23 WILLIAM J. CHEN: On behalf of my clients, it</p> <p>24 doesn't sound like you were involved in anything.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I -- they -- she</p>   |
| <p>54</p> <p>1 little while --</p> <p>2 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>3 JODY S. KLINE: -- does have dedication that was</p> <p>4 accepted by the staff of Park and Planning?</p> <p>5 EDUARDO J. INTRIAGO: Yes, sir.</p> <p>6 JODY S. KLINE: Okay. No further questions.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: I am going to</p> <p>8 note for the record, I didn't -- until this discussion,</p> <p>9 I -- we did get inquiries, and I'm not sure they're in</p> <p>10 the case file, from a Meredith -- well, from Meredith</p> <p>11 Wellington, who apparently is a legislative and policy</p> <p>12 analyst --</p> <p>13 JODY S. KLINE: Former member of the planning</p> <p>14 board?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Former member of</p> <p>16 the planning board about dedication on this property.</p> <p>17 I don't know why I didn't put it in the record. I just</p> <p>18 -- it's just she was looking for a particular plan</p> <p>19 showing dedication. That's all I know. It didn't hit</p> <p>20 home to me that this would have anything to --</p> <p>21 JODY S. KLINE: No, well thank you for disclosing</p> <p>22 that, yeah.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: -- do with this,</p> <p>24 but I'm disclosing it, and if I can dig it up, I'll put</p> <p>25 it in the record.</p> | <p>56</p> <p>1 came and looked at the file. That's --</p> <p>2 WILLIAM J. CHEN: If we're not yet done with this</p> <p>3 document, Exhibit 183, do we have a date?</p> <p>4 JODY S. KLINE: Yeah, I'd have to go back and</p> <p>5 check my calendar to find out what was the date of the</p> <p>6 Development Review Committee that considered the</p> <p>7 concept plan.</p> <p>8 WILLIAM J. CHEN: Okay.</p> <p>9 JODY S. KLINE: Yeah, I just don't have it right</p> <p>10 in front of me.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Was --</p> <p>12 okay, go ahead. So, are you finished?</p> <p>13 JODY S. KLINE: Yeah. The reason I'm chuckling is</p> <p>14 I'm sitting here looking at other -- never mind, never</p> <p>15 mind. No further questions.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: You want to move</p> <p>17 on? Is that what you're saying?</p> <p>18 JODY S. KLINE: Yeah, well, no. It would -- it</p> <p>19 would -- I have correspondence, but it would further</p> <p>20 confuse the matter. So, I'm trying to demonstrate to</p> <p>21 you or show you that there is no paper guidance from</p> <p>22 DOT that we have seen to Park and Planning Commission</p> <p>23 that said 10 versus 5. And so, the last question I</p> <p>24 would ask is, is our plan in accordance with the</p> <p>25 dedication requirements expected by Park and Planning</p> |

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15 (57 to 60)

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| <p>57</p> <p>1 staff?</p> <p>2 EDUARDO J. INTRIAGO: Yeah.</p> <p>3 WILLIAM J. CHEN: Those are --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: So. Well, let</p> <p>5 me finish with the Wellington correspondence.</p> <p>6 JODY S. KLINE: Yeah.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: She does -- it</p> <p>8 was clear from her correspondence that she works for</p> <p>9 the county executive. So, I'm just disclosing this on</p> <p>10 the record.</p> <p>11 JODY S. KLINE: Okay, okay. All right.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And it never</p> <p>13 occurred to me that this was even an issue, and I'm</p> <p>14 still not clear why, but I'm sure that Mr. Chen will</p> <p>15 give us. So, the question now -- we're down to now is,</p> <p>16 is this document -- do you have an objection to</p> <p>17 admission of the -- the document that's been marked as</p> <p>18 183?</p> <p>19 WILLIAM J. CHEN: I don't think so, no. As I</p> <p>20 understand the proffer from Mr. Kline that these are</p> <p>21 just notes or minutes or something provided by DOD.</p> <p>22 JODY S. KLINE: They're recommendations by DOT.</p> <p>23 WILLIAM J. CHEN: Their comments -- on their</p> <p>24 comments.</p> <p>25 JODY S. KLINE: All on the concept plan.</p>                 | <p>59</p> <p>1 now, then we'll --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Continue.</p> <p>3 I digress.</p> <p>4 JODY S. KLINE: Yeah. I actually think I've</p> <p>5 reached a point where we've tried to speak on the lay</p> <p>6 of the land literally and figuratively and would like</p> <p>7 to recess and call Mr. Jolley, the landscape architect,</p> <p>8 to go through the packet face-to-face that we talked</p> <p>9 about earlier. If you want to take a break, I wouldn't</p> <p>10 mind that.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: We can take a</p> <p>12 10-minute break. So, we'll come back at 5 to 11.</p> <p>13 Wait, am I reading that right? Yes, 5 to 11.</p> <p>14 [Off the record at 10:46 a.m.]</p> <p>15 [On the record at 10:59 a.m.]</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Are the parties</p> <p>17 ready?</p> <p>18 JODY S. KLINE: We're ready for my clients, Madam</p> <p>19 Examiner.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. I did</p> <p>21 want to let you know, after -- because we have no</p> <p>22 cafeteria here, behind that screen are water and</p> <p>23 snacks.</p> <p>24 JODY S. KLINE: Snacks?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Because I'm not</p>  |
| <p>58</p> <p>1 WILLIAM J. CHEN: And you're going to give us a</p> <p>2 date that we can put on there?</p> <p>3 JODY S. KLINE: I'll get you a date.</p> <p>4 WILLIAM J. CHEN: Okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. So, we'll</p> <p>6 accept this into the record as the DOT recommendation</p> <p>7 of concept plan review for Primrose School.</p> <p>8 WILLIAM J. CHEN: At some point in time in the</p> <p>9 past.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Subject to</p> <p>11 verification of the date.</p> <p>12 WILLIAM J. CHEN: Yeah. Respectfully, the only</p> <p>13 reason I say that is there's been so many iterations --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>15 WILLIAM J. CHEN: -- of the plan that that's what</p> <p>16 I'm trying to --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: It puts it in</p> <p>18 context of where it was in the process.</p> <p>19 JODY S. KLINE: And -- and the reason I want to</p> <p>20 put it in was the 10-foot number came out of a plan</p> <p>21 that was not the conditional use plan.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>23 You guys are getting along way too well today. I'm not</p> <p>24 used to this.</p> <p>25 JODY S. KLINE: If you can say this four days from</p> | <p>60</p> <p>1 -- I can't -- I had to break a hearing the other day</p> <p>2 because someone had low blood sugar and had a 911 call.</p> <p>3 Not -- no, they didn't actually call 911, but she had</p> <p>4 to eat immediately. So, I have snacks in the back,</p> <p>5 separately wrapped and bottles -- little bottles of</p> <p>6 water and napkins, okay? So, just in case you want</p> <p>7 some.</p> <p>8 WILLIAM J. CHEN: We will break for lunch though?</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Huh?</p> <p>10 WILLIAM J. CHEN: We will break for lunch?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: No, I don't</p> <p>12 know. They may be a substitute. Let's go. I</p> <p>13 apologize for this -- go ahead.</p> <p>14 JODY S. KLINE: Mr. Jolley, would you please state</p> <p>15 and spell your name and give us your business address?</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Oh, wait.</p> <p>17 Please raise your right hand. Do you solemnly affirm</p> <p>18 under penalties of perjury that the statements you're</p> <p>19 about to make are the truth, the whole truth, and</p> <p>20 nothing but the truth?</p> <p>21 JONATHAN JOLLEY: I do, yes.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: All right. I'm</p> <p>23 hearing some conversation in the back. Can you please</p> <p>24 -- that interferes, believe it or not, with the</p> <p>25 recording. Okay. Feel free to go outside and -- and</p> |



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16 (61 to 64)

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| 61 | <p>1 discuss it. Okay. Go ahead, Mr. Kline.</p> <p>2 JODY S. KLINE: Mr. Jolley, would you please state</p> <p>3 and spell your name and give us your business address?</p> <p>4 JONATHAN JOLLEY: Yes. My name is Jonathan</p> <p>5 Jolley. First name J-O-N-A-T-H-A-N, last name Jolley,</p> <p>6 J-O-L-L-E-Y. My business address -- my firm is Maser,</p> <p>7 M-A-S-E-R, Consulting. My business address is 22375</p> <p>8 Broderick, it's B-R-O-D-E-R-I-C-K, Drive, Suite 110,</p> <p>9 that's in Sterling, Virginia 20166.</p> <p>10 JODY S. KLINE: And you are employed by what firm?</p> <p>11 JONATHAN JOLLEY: Maser Consulting.</p> <p>12 JODY S. KLINE: And your profession is?</p> <p>13 JODY S. KLINE: Landscape architect.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Before you get</p> <p>15 into this, Mr. Chen, are you going to object to his</p> <p>16 qualification? You're -- I --</p> <p>17 WILLIAM J. CHEN: No, I'll accept him as a</p> <p>18 landscape architect.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Landscape --</p> <p>20 landscape architect?</p> <p>21 JODY S. KLINE: I was going to ask him to be</p> <p>22 qualified as a landscape architect.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. I will</p> <p>24 qualify you as a landscape architect.</p> <p>25 JODY S. KLINE: Thank you.</p>   | 63 |
| 62 | <p>1 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>2 Before that, have you ever qualified as an expert in</p> <p>3 landscape architecture?</p> <p>4 JONATHAN JOLLEY: I have qualified in multiple</p> <p>5 cases in multiple states. I have not qualified in a</p> <p>6 specific zoning hearing examiner's case in Montgomery</p> <p>7 County.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: But you have</p> <p>9 qualified elsewhere?</p> <p>10 Jonathan JOLLEY: Yes, I have.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>12 JODY S. KLINE: Mr. Jolley, were you responsible</p> <p>13 for preparation of things like the national resources</p> <p>14 inventory, the forest conservation plan, and the</p> <p>15 landscaping plan for the proposed Primrose School in</p> <p>16 Derwood?</p> <p>17 JONATHAN JOLLEY: Yes, sir.</p> <p>18 JODY S. KLINE: Okay. You put up here, I guess,</p> <p>19 what is this? Is this the NRI?</p> <p>20 HEARING EXAMINER ROBESON HANNAN: That's 18-A.</p> <p>21 Yes, it's the NRI.</p> <p>22 JONATHAN JOLLEY: So, we're looking at Exhibit 18-</p> <p>23 A, forest stand plan.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay, now I</p> <p>25 can't see.</p>   | 64 |
|    | <p>1 JONATHAN JOLLEY: Oh, sorry ma'am.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: We're actually</p> <p>3 getting high tech if we ever go back to the COB. Go</p> <p>4 ahead.</p> <p>5 JONATHAN JOLLEY: In the small room. Okay, so</p> <p>6 yes, this is the same exhibit that Mr. Intriago was</p> <p>7 discussing earlier --</p> <p>8 JODY S. KLINE: If I could reiterate the -- the</p> <p>9 hearing examiner's admonition of pointing doesn't do</p> <p>10 it.</p> <p>11 JONATHAN JOLLEY: No. I will.</p> <p>12 JODY S. KLINE: Very good. So, tell us from your</p> <p>13 perspective as a landscape architect, what are the</p> <p>14 features that are shown on the NRI that are relevant to</p> <p>15 this application?</p> <p>16 JONATHAN JOLLEY: Generally, when we begin the</p> <p>17 analysis of the subject site, we -- after performing</p> <p>18 the general survey, we walk the property to identify</p> <p>19 the major features. Some of the major features are, as</p> <p>20 noted earlier, I'll start from the north end of the</p> <p>21 property along the right of way of Needwood Road</p> <p>22 working south. So, as you enter the property from</p> <p>23 Needwood Road, you enter an open area that is -- is</p> <p>24 grasslands with the select specimen -- specimen trees</p> <p>25 as you move further south. Centrally located, there is</p> |    |

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17 (65 to 68)

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| <p style="text-align: right;">65</p> <p>1 is a small area of what we consider to be forest stand<br/>2 -- qualification of forest stand that is interconnected<br/>3 with the tree cover along the eastern property line but<br/>4 also importantly, it's also connected to the greater<br/>5 forest area to the east of the neighboring parcel.<br/>6 Along the southernmost property line, there is also<br/>7 limited tree cover along there and then as you travel<br/>8 west from the southwest corner of the subject site,<br/>9 across Carnegie Avenue, there are several additional<br/>10 specimen trees off the property on the adjacent<br/>11 residential parcel.<br/>12 JODY S. KLINE: And you have an obligation to<br/>13 identify trees not only on the subject property but how<br/>14 -- what proximity to the subject property?<br/>15 JONATHAN JOLLEY: Approximately within 100 feet we<br/>16 try to identify everything, sir.<br/>17 JODY S. KLINE: Okay, fine.<br/>18 JONATHAN JOLLEY: Would you like me to go into --<br/>19 JODY S. KLINE: Well, let me -- the question I<br/>20 wanted to ask you is are you confident that what is<br/>21 shown on the natural resource inventory is an accurate<br/>22 depiction of what is found in the field?<br/>23 JONATHAN JOLLEY: No, sir. There was, subsequent<br/>24 to the initial NRI, we did visit the subject site and<br/>25 we did identify with the legal walking on the eastern</p> | <p style="text-align: right;">67</p> <p>1 the entire audience.<br/>2 HEARING EXAMINER ROBESON HANNAN: I don't have an<br/>3 extra copy up here because that -- this is the one that<br/>4 we added to the record. Go ahead.<br/>5 JONATHAN JOLLEY: Yes. There is -- there was a<br/>6 tree located -- there was a tree located on the eastern<br/>7 property, offsite, that is of considerable size. It is<br/>8 a large Silver Maple. We are going to denote that tree<br/>9 as SP10. It is a 37-inch diameter Silver Maple that<br/>10 was walked with staff and I believe the property owner<br/>11 as well was present, if I'm not mistaken.<br/>12 HEARING EXAMINER ROBESON HANNAN: I thought they<br/>13 were supposed to walk this stuff before they approved<br/>14 the NRI.<br/>15 JONATHAN JOLLEY: We walked the --<br/>16 HEARING EXAMINER ROBESON HANNAN: This is the<br/>17 second case I've had where --<br/>18 JONATHAN JOLLEY: Yeah, you can -- it's -- it's<br/>19 not --<br/>20 HEARING EXAMINER ROBESON HANNAN: Okay. Well, it<br/>21 doesn't matter. Go ahead. So, there's a Silver Maple<br/>22 -- a 37-inch Silver Maple on the eastern property<br/>23 immediately to the east.<br/>24 JONATHAN JOLLEY: Eastern abutting property.<br/>25 Correct. It's actually right there.</p> |
| <p style="text-align: right;">66</p> <p>1 property line, there is a tree that we will now -- we<br/>2 discussed with staff, Katherine Nelson, we will be<br/>3 denoting a tree called SP10 that is located on the --<br/>4 let me just not trip myself here -- the tree will be<br/>5 located approximately --<br/>6 JODY S. KLINE: I think you're going to have to<br/>7 back up a little bit.<br/>8 HEARING EXAMINER ROBESON HANNAN: Why don't you do<br/>9 this -- why don't you move the easel forward, and that<br/>10 will give you more opportunity to get around the back.<br/>11 JONATHAN JOLLEY: Try not to --<br/>12 HEARING EXAMINER ROBESON HANNAN: Well, that --<br/>13 JODY S. KLINE: Well she --<br/>14 JONATHAN JOLLEY: And then you can't see.<br/>15 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>16 JONATHAN JOLLEY: I'll work -- I'll work my way<br/>17 here.<br/>18 HEARING EXAMINER ROBESON HANNAN: Well, I still<br/>19 can't see. If you could just angle it a little bit<br/>20 this way. Thank you. I can see. Uh, a little bit<br/>21 more. Thank you. Okay, go ahead.<br/>22 JONATHAN JOLLEY: Everybody good?<br/>23 JODY S. KLINE: She -- she's the primary audience,<br/>24 so, I'll give her --<br/>25 JONATHAN JOLLEY: Yeah, I just wanted to be fair to</p>   | <p style="text-align: right;">68</p> <p>1 WILLIAM J. CHEN: Pardon me, if I may. Could we<br/>2 maybe have that tree marked?<br/>3 JONATHAN JOLLEY: Yes, sir. I've got a red -- I<br/>4 actually have that on the preliminary --<br/>5 JODY S. KLINE: Let me --<br/>6 WILLIAM J. CHEN: Okay, fine.<br/>7 JODY S. KLINE: Let me suggest it, yeah. Right,<br/>8 exactly. It is accurately shown on the forest<br/>9 conservation plan. I don't think we ought to be<br/>10 adulterating the NRI that's been approved.<br/>11 JONATHAN JOLLEY: Okay.<br/>12 WILLIAM J. CHEN: We didn't want to modify that<br/>13 particular exhibit.<br/>14 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.<br/>15 JODY S. KLINE: But we acknowledge where --<br/>16 WILLIAM J. CHEN: And you have an exhibit that<br/>17 shows it?<br/>18 JODY S. KLINE: Yes, yes.<br/>19 WILLIAM J. CHEN: Fine.<br/>20 JONATHAN JOLLEY: Additionally, there was one tree<br/>21 that was not initially measured because it was under<br/>22 the 24-inch size definition. But we have a Red Pine --<br/>23 after discussion with staff -- in the northwest corner<br/>24 of the subject site, and that's -- and that tree is<br/>25 going to be also -- it's going to be denoted as CHI Red</p>   |

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18 (69 to 72)

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| <p style="text-align: right;">69</p> <p>1 Pine. It's approximately 19 inches in diameter.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: And where is</p> <p>3 that?</p> <p>4 JONATHAN JOLLEY: That is going to be located --</p> <p>5 it's in the northwest --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Northwest.</p> <p>7 JONATHAN JOLLEY: -- corner of the subject site.</p> <p>8 That tree will -- you will be able to see as well, sir,</p> <p>9 on the preliminary forest conservation plan.</p> <p>10 JODY S. KLINE: And it wasn't initially denoted?</p> <p>11 JONATHAN JOLLEY: It was not initially denoted.</p> <p>12 We did not feel that it was -- demanded to be measured</p> <p>13 as a specimen tree. However, after further evaluation</p> <p>14 with -- with Katherine Nelson in particular, they did</p> <p>15 some additional research and that particular tree is</p> <p>16 denoted as a champion species in the county, and we are</p> <p>17 preserving that tree.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>19 JODY S. KLINE: And it's a champion species</p> <p>20 because that's a rare species in the county?</p> <p>21 JONATHAN JOLLEY: Yeah. It meets the -- it meets</p> <p>22 at least 75 percent of the -- the qualification of the</p> <p>23 largest tree species in the county.</p> <p>24 JODY S. KLINE: All right. Thank you.</p> <p>25 JONATHAN JOLLEY: So, it's a significant tree. It</p>  | <p style="text-align: right;">71</p> <p>1 The significance of the forest stand on the eastern</p> <p>2 abutting property at the southeast corner of the</p> <p>3 subject site is -- is a nice -- a very nice feature in</p> <p>4 regards to the fact that -- that some of the vegetation</p> <p>5 densities in this particular area match up well with</p> <p>6 the continuation of the habitat on the rear of the</p> <p>7 eastern property line abutting the southeast corner.</p> <p>8 So, from a design standpoint from the landscape</p> <p>9 architect's view, is that forest serves a purpose. It</p> <p>10 serves a purpose to -- to provide habitat benefit to</p> <p>11 the species and animals and it also would be enhanced</p> <p>12 if we could locate a primary forest -- a forest station</p> <p>13 area in the rear of the subject site, which would be</p> <p>14 the southern edge of the property. So, in my -- our</p> <p>15 opinion -- my opinion, it would benefit eventually in</p> <p>16 regards to that forest matures and grows, it will add</p> <p>17 to a larger continuous forest habitat along the</p> <p>18 southern property line of the site.</p> <p>19 So, that being said, you want to protect that</p> <p>20 area. You are going to focus your -- you're going to</p> <p>21 focus your development opportunities toward the central</p> <p>22 spine of the property and moving up toward northern --</p> <p>23 moving south to north the central spine of the property</p> <p>24 up to the northern corner of the subject site along</p> <p>25 Needwood Road and Carnegie Avenue. Now, of course, you</p> |
| <p style="text-align: right;">70</p> <p>1 a relatively -- I don't want to say extremely rare --</p> <p>2 but rare.</p> <p>3 JODY S. KLINE: Okay. So, you have the approved</p> <p>4 NRI as sort of a foundation. What is the purpose of</p> <p>5 the NRI and what is the guidance it gives to you?</p> <p>6 JONATHAN JOLLEY: So, the NRI is generally used as</p> <p>7 your -- as your blueprint for the planning team, for</p> <p>8 the engineers on staff, for everyone involved in -- in</p> <p>9 the design development process. So, I won't completely</p> <p>10 review everything in regards to Mr. Intriago's</p> <p>11 testimony in regards to the topography, but generally</p> <p>12 yes, he stated it's -- that the site is sloping --</p> <p>13 generally sloping from northeast to southwest and then</p> <p>14 from the southeast over again, there's a little bit of</p> <p>15 a saddle in the southern end of the property going</p> <p>16 Carnegie Avenue. As you look at the open spaces on the</p> <p>17 property, obviously the northern end of the subject</p> <p>18 site is relatively open in regards to having isolated</p> <p>19 trees that are specimens and significant trees. You</p> <p>20 have a forest stand, as noted earlier, along the -- or</p> <p>21 tree cover area -- along the eastern property line.</p> <p>22 You also have a tree cover area along the western</p> <p>23 property line abutting Carnegie. But as you travel</p> <p>24 south through the site you're relatively open and</p> <p>25 gently sloping along the central spine of the property.</p> | <p style="text-align: right;">72</p> <p>1 will have some impacts. There are -- there is a large</p> <p>2 specimen tree adjacent to the front entrance driveway</p> <p>3 of the existing -- the existing residential home.</p> <p>4 There is a, you know, we have one -- yeah, two -- one</p> <p>5 specimen tree there which is -- it is a large tree.</p> <p>6 However, we will mitigate that tree with additional</p> <p>7 plantings as we move forward with our final forest</p> <p>8 conversation plan process. So, in addition to the</p> <p>9 forest -- the afforestation that we are proposing, we</p> <p>10 will have additional plantings to offset some of that</p> <p>11 caliper loss and tree color loss specifically for the</p> <p>12 impacts of those trees. I think that's it.</p> <p>13 JODY S. KLINE: Are we at a point where you should</p> <p>14 transfer over to the forest conservation plan or the</p> <p>15 preliminary forest conservation plan --</p> <p>16 JONATHAN JOLLEY: Sure.</p> <p>17 JODY S. KLINE: -- and use that to explain to us</p> <p>18 what you've been doing there.</p> <p>19 JONATHAN JOLLEY: I believe this might be the</p> <p>20 best.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: And I believe</p> <p>22 this is 95 unless there was a revised one.</p> <p>23 JODY S. KLINE: Yeah, that's what I was doing</p> <p>24 before.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I just want to</p>   |

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19 (73 to 76)

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| <p style="text-align: right;">73</p> <p>1 make sure we're looking -- we know which one we're<br/>2 talking about. I believe this -- the last forest<br/>3 conservation plan we have is from 10/16/19, Exhibit 95.<br/>4 JONATHAN JOLLEY: D and E.<br/>5 HEARING EXAMINER ROBESON HANNAN: Correct.<br/>6 JODY S. KLINE: So, Mr. Jolley, using what's been<br/>7 identified as Exhibit 95 A through F in the record of<br/>8 the case, can you please tell us about what's shown on<br/>9 the forest conservation plan? But let me ask you first<br/>10 of all, what are the qualifications required for<br/>11 someone to prepare a forest conservation plan? Are<br/>12 there qualifications to be able to have a legitimate<br/>13 forest conservation plan?<br/>14 JONATHAN JOLLEY: Yes. The state of Maryland<br/>15 requires you can be -- you can qualify from -- via<br/>16 several lines. You could be a licensed landscape<br/>17 architect, which I am. You can be a state -- you can<br/>18 be a forester -- trained licensed forester, or they<br/>19 also have been known as other qualified professionals.<br/>20 Other qualified professionals can be individuals who<br/>21 have taken special training courses for -- for forestry<br/>22 and to help prepare these types of documents.<br/>23 JODY S. KLINE: And you qualify under at least one<br/>24 of those.<br/>25 JONATHAN JOLLEY: Oh, yes sir. Yes, sir, I'm a</p> | <p style="text-align: right;">75</p> <p>1 know that we pay attention to you, I noticed your head<br/>2 kind of snap up when we used the number 2.94 when Mr.<br/>3 Intriago was talking about the lot area, and it has<br/>4 been brought to my attention that there is a<br/>5 discrepancy between that number and the number that<br/>6 appears in the technical staff report, which is 2.54.<br/>7 HEARING EXAMINER ROBESON HANNAN: Yeah, that's<br/>8 exactly --<br/>9 JODY S. KLINE: I went and checked the record plat<br/>10 that created the lot was actually over 3 acres of land<br/>11 area. So, what I'd like to do, we could not get a<br/>12 State Department of Assessment and Taxation form that<br/>13 would show what they think it is, but when Mr. Intriago<br/>14 comes back to testify, he was going to get the survey.<br/>15 So, we're going to try to give you a specific number.<br/>16 HEARING EXAMINER ROBESON HANNAN: Okay. That's --<br/>17 that would be helpful. Thank you.<br/>18 JODY S. KLINE: Because I, you know, we -- there<br/>19 was confusion --<br/>20 HEARING EXAMINER ROBESON HANNAN: Half an acre.<br/>21 But, yeah. Okay, thank you.<br/>22 JODY S. KLINE: Okay. So, for right now, we're<br/>23 going to work on the assumption that our 2.94 is the<br/>24 valid number.<br/>25 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> |
| <p style="text-align: right;">74</p> <p>1 licensed landscape architect.<br/>2 JODY S. KLINE: Very good. Okay. So, using<br/>3 Exhibit 95-A, et cetera --<br/>4 HEARING EXAMINER ROBESON HANNAN: D and E.<br/>5 JODY S. KLINE: Thank you, yeah.<br/>6 JONATHAN JOLLEY: Okay. So --<br/>7 HEARING EXAMINER ROBESON HANNAN: So, D is PFCP-4.<br/>8 Is that what we're looking at?<br/>9 JONATHAN JOLLEY: Yes, we are looking at<br/>10 preliminary forest conservation plan titled PFCP-4.<br/>11 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>12 JODY S. KLINE: Well, let me start with sort of<br/>13 doing the numerical stuff first of all. With a<br/>14 property of this size and whatever the determinants<br/>15 are, what is the amount of forest conservation that is<br/>16 expected to be provided by this proposal?<br/>17 JONATHAN JOLLEY: This particular process, we<br/>18 utilize the forest conservation worksheet and you<br/>19 prepare the worksheet utilizing -- it's a standard<br/>20 worksheet provided by the county and the state. And<br/>21 the first thing we do is we look at the entire project<br/>22 area. Now, the project area is denoted as 2. -- as we<br/>23 stated earlier -- it was the 2.94 acres; however, --<br/>24 JODY S. KLINE: Can I interrupt for a second?<br/>25 Madam Chair -- or sorry -- Mr. Robeson, just so you</p>  | <p style="text-align: right;">76</p> <p>1 you.<br/>2 WILLIAM J. CHEN: It will change. The number will<br/>3 change.<br/>4 HEARING EXAMINER ROBESON HANNAN: It may change.<br/>5 JODY S. KLINE: I'm not sure it will change.<br/>6 WILLIAM J. CHEN: Oh, okay.<br/>7 JODY S. KLINE: Yeah. Yeah, I'm -- I'm hoping<br/>8 that the technical staff is the one that's inaccurate<br/>9 and not our survey, but we'll find that out.<br/>10 HEARING EXAMINER ROBESON HANNAN: Is it on -- did<br/>11 you -- you didn't survey for the NRI-FSD?<br/>12 JODY S. KLINE: Well, I'll --<br/>13 HEARING EXAMINER ROBESON HANNAN: No, he can --<br/>14 no, he can. Don't do that if we can resolve it, I'd<br/>15 rather go forward with his.<br/>16 JODY S. KLINE: That's fine. Mr. Jolley, I'm<br/>17 sorry to have interrupted you.<br/>18 JONATHAN JOLLEY: That's okay.<br/>19 JODY S. KLINE: We had a little diversion. Please<br/>20 continue.<br/>21 JONATHAN JOLLEY: So, the first we did was in<br/>22 preparation for the preliminary forest conservation<br/>23 plan was we -- we evaluated the site in regards to what<br/>24 would be required from an afforestation perspective of<br/>25 the subject site. Like I said earlier, I'll use the</p>   |

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20 (77 to 80)

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| <p>77</p> <p>1 base number. We included the base site area plus the<br/>2 area -- an area of disturbance offsite as well. So, we<br/>3 were taking into account what we will disturb offsite<br/>4 as well for our total project area for -- from an<br/>5 impact stance. That calculation started off at 3.2 --<br/>6 that was 3.2 acres total. That includes 0.26 acres of<br/>7 offsite limit of disturbance. We subtract out 0.15<br/>8 acres of land dedication, and we end up with a net<br/>9 tract area of 3.05 acres. You then look up the<br/>10 requirements for the area. We are designated as medium<br/>11 density residential. That has a 20 percent<br/>12 afforestation requirement. That would result in 0.61<br/>13 acres total.<br/>14 WILLIAM J. CHEN: What was that number again?<br/>15 JONATHAN JOLLEY: 0.61 acres, sir.<br/>16 HEARING EXAMINER ROBESON HANNAN: Did you say that<br/>17 was a forestation requirement or an afforestation?<br/>18 JONATHAN JOLLEY: Well, the -- the -- the --<br/>19 presently you have afforestation and reforestation<br/>20 preservation -- you have preservation as well.<br/>21 HEARING EXAMINER ROBESON HANNAN: Right. You --<br/>22 it doesn't mean you have to put 20 percent of the tract<br/>23 area, which is the 3.05 into forest.<br/>24 JONATHAN JOLLEY: Yes. We need to forest that<br/>25 cover. Yes, we have to cover at least 0.61 acres in</p> | <p>79</p> <p>1 yeah, 0.61 acres.<br/>2 JODY S. KLINE: So, you -- go ahead.<br/>3 WILLIAM J. CHEN: Pardon me.<br/>4 JODY S. KLINE: No, go ahead.<br/>5 WILLIAM J. CHEN: I'm adding 0.78 with 0.5 --<br/>6 JONATHAN JOLLEY: No, no, no. Not 0.78. It's<br/>7 0.07 plus 0.5 or 0.54.<br/>8 WILLIAM J. CHEN: Okay, and your total?<br/>9 JODY S. KLINE: So, you're proposing to add<br/>10 landscaping to create forest in the amount of --<br/>11 JONATHAN JOLLEY: 0.54, yeah.<br/>12 JODY S. KLINE: Yeah.<br/>13 JONATHAN JOLLEY: So, it's not landscaping. It<br/>14 will be -- it will be preserved and protected. We will<br/>15 work through -- as we work through the process, the<br/>16 entire southern -- as the design stands right now --<br/>17 the entire southern not quite a third, but you know,<br/>18 the rear end -- the southern edge of the subject site<br/>19 will be forest and it is intended to be protected long<br/>20 term via easement. That easement will be signed and<br/>21 fenced so that the encroachments into it can be<br/>22 limited.<br/>23 The -- then we overlay the -- the site layout. As<br/>24 you can see, it will be based on talking about the --<br/>25 getting back to the geometry of the site, because it is</p>  |
| <p>78</p> <p>1 forest. Of -- of the 0.7 -- of the 0.61 acres, we have<br/>2 identified, like I mentioned earlier, the southeast<br/>3 corner of the subject site, we have the neighboring<br/>4 property to the southeast has a forest stand. This<br/>5 piece of the property, I believe I identified as<br/>6 qualifying as a forest stand.<br/>7 JODY S. KLINE: And you're pointing to the lower -<br/>8 -<br/>9 JONATHAN JOLLEY: Lower, I'm sorry, I made a<br/>10 mistake. On the southeast corner of the subject site<br/>11 we have 0.7 acres of forest stand that is contiguous<br/>12 with the offsite forest in the southeast corner<br/>13 abutting property. So, the 0.7 acres of existing<br/>14 forest, from a design standpoint, we thought it made<br/>15 perfect sense to then add additional forest cover in<br/>16 the southern edge of the property. So, we then added<br/>17 approximately -- well, actually not approximately --<br/>18 0.54 acres of additional forest for a total of 0.61.<br/>19 WILLIAM J. CHEN: What is that total again?<br/>20 JONATHAN JOLLEY: It was --<br/>21 WILLIAM J. CHEN: Speak up if you would.<br/>22 JONATHAN JOLLEY: Sorry, I keep -- I'm trying not<br/>23 to speak as loud as I might. It's 0.54 acres added in<br/>24 the rear of the southern portion of the site and the<br/>25 existing retained is 0.7, so we have a total of 0.6 or</p>                   | <p>80</p> <p>1 long and narrow, it is long in regards to a northern<br/>2 southerly direction and a relatively narrow eastern<br/>3 westerly direction. The site layout, you can see, did<br/>4 tend to focus along that central spine of the property.<br/>5 So, Mr. Intriago can speak to the -- just the logistics<br/>6 of the siting of the driveway in regards to the site<br/>7 distances and the circulation patterns. But from a<br/>8 landscaping perspective as well -- I -- we won't jump<br/>9 ahead to that, but in regards to the layout, we do,<br/>10 with this layout, have several impacts. We will have a<br/>11 -- we are proposing the removal of SP9 specimen tree.<br/>12 We are also removing ST6, ST1.<br/>13 HEARING EXAMINER ROBESON HANNAN: Wait, wait. ST6<br/>14 and 1 --<br/>15 JONATHAN JOLLEY: ST.<br/>16 HEARING EXAMINER ROBESON HANNAN: -- are the ones<br/>17 -- SP are the ones --<br/>18 JONATHAN JOLLEY: So, it's going to --<br/>19 HEARING EXAMINER ROBESON HANNAN: No, no. Are<br/>20 they along the eastern property boundaries?<br/>21 JONATHAN JOLLEY: Yes, yes, traveling --<br/>22 HEARING EXAMINER ROBESON HANNAN: So, you're<br/>23 removing the three specimen trees --<br/>24 JONATHAN JOLLEY: Not all specimens.<br/>25 HEARING EXAMINER ROBESON HANNAN: Oh, go ahead.</p> |

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21 (81 to 84)

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| <p>81</p> <p>1 JONATHAN JOLLEY: So, I'll start again so it's<br/>2 clear for the record.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: I just want --<br/>4 yeah.</p> <p>5 JONATHAN JOLLEY: Yes. I understand where I'm not<br/>6 being understood for the record. Starting in the<br/>7 central portion of the eastern property line,<br/>8 approximately just east of what is shown as the micro-<br/>9 bioretention facility of the -- of the subject site and<br/>10 the central parking lot, we will have -- we are<br/>11 proposing the removal of specimen tree SP, as in Peter,<br/>12 9. We will be -- as you travel northerly looking at<br/>13 this plan, you will then intersect, you will see an X<br/>14 denoting the removal. This is tree ST, as in Tom, 6.<br/>15 That is a 27-inch Norway Spruce. Traveling further<br/>16 east or north along the eastern property line, we will<br/>17 unfortunately have to remove tree ST, as in Tom, 1,<br/>18 which is a Black Cherry, approximately 27 inches in<br/>19 diameter. As you move -- as you look at the plan in<br/>20 the proposed building location --</p> <p>21 WILLIAM J. CHEN: And, Mr. Jolley, before you go<br/>22 there --</p> <p>23 JONATHAN JOLLEY: Yes, sir.</p> <p>24 WILLIAM J. CHEN: All those trees are being<br/>25 removed because of a driveway to --</p> | <p>83</p> <p>1 reason for the removal of that particular tree, sir, is<br/>2 that the building is directly over top of it. One<br/>3 additional tree at this time is ST2 -- I'm sorry --<br/>4 moving westerly from tree SP1, you will intersect a<br/>5 tree denoted as ST, as in Tom, 2, and that tree will be<br/>6 -- also need to be removed, and that is also a Silver<br/>7 Maple of 27-inch diameter.</p> <p>8 JODY S. KLINE: What is causing the removal of<br/>9 that --</p> <p>10 JONATHAN JOLLEY: The removal of the last tree,<br/>11 ST2, will be because of grading operations, compaction,<br/>12 and also it would be located within the playground area<br/>13 of the proposed daycare facility.</p> <p>14 JODY S. KLINE: So, well then parenthetically on<br/>15 that, why can't you have a tree in the playlot area?</p> <p>16 JONATHAN JOLLEY: You -- you could if you had zero<br/>17 impact in regards to the construction activity, which<br/>18 is impractical if not impossible in that scenario. You<br/>19 would need with the building located as it is today --<br/>20 and that's depicted on this plan -- you're going to<br/>21 have logistical operations to construct a facility that<br/>22 would just not be feasible in my personal -- in my<br/>23 professional opinion to save that particular tree.</p> <p>24 JODY S. KLINE: Okay. Please continue. Are there<br/>25 any other trees that will be affected?</p>   |
| <p>82</p> <p>1 JONATHAN JOLLEY: I can get into it. I was going<br/>2 to go through all --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Yeah. I'm<br/>4 trying not to get leading.</p> <p>5 WILLIAM J. CHEN: Okay, yeah.</p> <p>6 JONATHAN JOLLEY: I was just going to get through<br/>7 them all and then talk about why.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. If it<br/>9 moves it on, and you don't object, okay.</p> <p>10 JODY S. KLINE: That's what I thought he was<br/>11 doing. Well, what is the feature that causes the<br/>12 removal?</p> <p>13 JONATHAN JOLLEY: Okay. So, the feature that<br/>14 causes the removal of the three trees that I just<br/>15 mentioned, SP9, ST6, and ST1, primarily going to be --<br/>16 because of the proposal of the eastern -- the driveway<br/>17 along the eastern property line.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. There we<br/>19 go.</p> <p>20 JONATHAN JOLLEY: There will be impacts because of<br/>21 grading and some, you know, detrimental root<br/>22 destruction there. Sorry if I'm moving too slowly.</p> <p>23 Moving centrally, where the proposed building is, we do<br/>24 have tree SP, as in Paul, 1. That is a 45-inch Silver<br/>25 Maple and that is obviously going to be removed. The</p>   | <p>84</p> <p>1 JONATHAN JOLLEY: There -- there will be. There<br/>2 are some offsite trees in regards to the western<br/>3 property line when you talk about some of the critical<br/>4 root zone issues that would -- might be of interest to<br/>5 some of the neighboring property owners. They are<br/>6 along -- if you travel along Carnegie Avenue southerly,<br/>7 there are several specimen trees along the southwest --<br/>8 opposite of the southwest corner of the subject site in<br/>9 front of the residential home abutting Carnegie Avenue.</p> <p>10 There are several specimen trees along that area. Now,<br/>11 that area is well -- these particular trees are well<br/>12 outside of the -- the limit of disturbance. There will<br/>13 be -- there will be some fencing and construction<br/>14 fencing that we are going to have to -- the engineers<br/>15 are going to propose that -- are going to limit,<br/>16 obviously, encroachment onto someone else's private<br/>17 property, number one, and any damage on -- onto those -<br/>18 - onto those trees. There will be some excavation<br/>19 along the eastern right of way of Carnegie Avenue that<br/>20 will go through a critical root zone area. However,<br/>21 with -- without -- with protecting the trees from<br/>22 further encroachment onto the private property, I feel<br/>23 that the risk could be mitigated in regards to their<br/>24 long-term survival because we're not going to be adding<br/>25 to the compaction issues, which is usually a primary</p> |

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22 (85 to 88)

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| <p>85</p> <p>1 concern of mine. We never want tractors constantly<br/>2 running over a tree. Envision the tree and a beautiful<br/>3 lawn. If you have people driving equipment, vehicles,<br/>4 storing materials, then you will have impacts of that<br/>5 to that root zone even if you said you were going to<br/>6 preserve the tree. So, we would limit those impacts.<br/>7 Along the eastern property line, there will be<br/>8 grading operations along to enter this driveway.<br/>9 That's -- that's an inevitable fact. To do that -- to<br/>10 limit a potential further damage to offsite property in<br/>11 regard to the tree and critical root zones, you know,<br/>12 the [inaudible] will be established. It will establish<br/>13 the -- remove the minimal amount of soil that you would<br/>14 need to require to construct their driveway and then<br/>15 the fencing and the ENS measures will protect any<br/>16 encroachment. Immediately upon the installation of<br/>17 that, I would -- we'll work this out with staff -- but<br/>18 it will be my opinion to make sure that once the -- the<br/>19 curbing is installed as well. We could install at that<br/>20 time additional protective fencing and start to improve<br/>21 the -- where we till all the beds and everything to<br/>22 prepare for the landscaping and then protect that area<br/>23 from any storage of construction materials or<br/>24 additional vehicles driving across that to the best of<br/>25 our ability during construction operations. I think</p> | <p>87</p> <p>1 around that tree. As you travel southward -- south<br/>2 along Carnegie Avenue, the -- the trees I mentioned<br/>3 previously, SP6, SP5, SP7, ST8, and ST3 that are on the<br/>4 opposite south -- they're opposite the southwest corner<br/>5 of the -- of the site, those will be -- those are<br/>6 obviously on private property. The limited disturbance<br/>7 for development will be contained within our property<br/>8 along there with the exception of the offsite storm<br/>9 drainage that will be proposed. Mr. Intriago will talk<br/>10 about that. But the portion will be limited by the<br/>11 limited disturbance that's delineated.<br/>12 JODY S. KLINE: So, did you give me a total number<br/>13 then?<br/>14 JONATHAN JOLLEY: I can give you a total number.<br/>15 Let's see -- it should be eight trees, sir.<br/>16 JODY S. KLINE: Okay. And the new tree -- I'm<br/>17 sorry.<br/>18 JONATHAN JOLLEY: No, I just didn't make mention<br/>19 of any of the trees that were located across Needwood,<br/>20 but those would have -- there would be really no impact<br/>21 to those at all.<br/>22 JODY S. KLINE: So, how about the tree -- the<br/>23 offsite trees -- any offsite trees?<br/>24 JONATHAN JOLLEY: I had just mentioned some of the<br/>25 offsite trees.</p> |
| <p>86</p> <p>1 that would address most of the concerns.<br/>2 JODY S. KLINE: So, if I can just put it in<br/>3 numerical sense, how many specimen trees will need to<br/>4 be removed to implement the plan?<br/>5 JONATHAN JOLLEY: Currently, we are removing SP9,<br/>6 which is one -- specimen trees -- it's one, two -- two<br/>7 specimen trees and the specimen trees to be removed are<br/>8 SP9 and SP1.<br/>9 JODY S. KLINE: Okay. And how many trees will be<br/>10 --<br/>11 JONATHAN JOLLEY: It is --<br/>12 JODY S. KLINE: -- will be impacted -- the<br/>13 critical root zone will be impacted?<br/>14 JONATHAN JOLLEY: There are -- on the -- on our<br/>15 subject site or abutting?<br/>16 JODY S. KLINE: Break it down to two parts. Do<br/>17 the onsite first.<br/>18 JONATHAN JOLLEY: Well, onsite, we are preserving<br/>19 -- I'll start with my directions -- the northwest<br/>20 corner of the subject site, we do have the Red Pine.<br/>21 There would be a very small impact to the -- to that<br/>22 tree's root zone with the connection of the driveway<br/>23 that the engineers have proposed to connect to Needwood<br/>24 Road. The tree would be protected with fencing and<br/>25 tree fencing and to ensure that there is no traffic</p>   | <p>88</p> <p>1 JODY S. KLINE: Yeah, right.<br/>2 JONATHAN JOLLEY: Did you want me to --<br/>3 JODY S. KLINE: No, you already did.<br/>4 JONATHAN JOLLEY: I'm sorry.<br/>5 JODY S. KLINE: I mean, we're all here concerned<br/>6 about the one on Dr. Kosery's property.<br/>7 JONATHAN JOLLEY: Okay, yes.<br/>8 JODY S. KLINE: So, let's hear about that.<br/>9 JONATHAN JOLLEY: Okay, so --<br/>10 HEARING EXAMINER ROBESON HANNAN: Is -- is --<br/>11 which is the one that staff did not recommend a<br/>12 variance for? Is that what you're going to address<br/>13 that staff didn't recommend a variance for but the<br/>14 planning board did?<br/>15 JODY S. KLINE: That was not what my question was<br/>16 but --<br/>17 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry.<br/>18 JODY S. KLINE: No, but that's a good question.<br/>19 You've got your pencil pointed to --<br/>20 JONATHAN JOLLEY: Yes, I have my pencil pointed to<br/>21 SP9.<br/>22 JODY S. KLINE: Okay.<br/>23 JONATHAN JOLLEY: That is a specimen tree that was<br/>24 -- go ahead, I'm sorry.<br/>25 JODY S. KLINE: Well, no -- well you heard Ms.</p>   |

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23 (89 to 92)

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| <p style="text-align: right;">89</p> <p>1 Robeson's question.</p> <p>2 JONATHAN JOLLEY: Um-hum.</p> <p>3 JODY S. KLINE: And I think she'd probably like an</p> <p>4 understanding of why staff recommended retention --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Well, I don't</p> <p>6 need that. I'm sure that's in the report. I just</p> <p>7 wanted to know which one it is.</p> <p>8 JONATHAN JOLLEY: That -- that is tree SP9.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay, thank you.</p> <p>10 Now, you continue with your tree.</p> <p>11 JODY S. KLINE: Yes, ST or whatever 10.</p> <p>12 JONATHAN JOLLEY: SP10. So, as we previously</p> <p>13 discussed on the NRI, we subsequently went back and</p> <p>14 revisited the Kosery property. Tree SP10 was</p> <p>15 identified and SP10 was denoted as a large -- that is a</p> <p>16 -- excuse me so I can find my notes over here -- SP10</p> <p>17 is a 37-inch Silver Maple -- another significant Maple,</p> <p>18 which his prevalent in this area. Subsequent</p> <p>19 conversations with -- with the property owner, they did</p> <p>20 not quite agree to the location of this, and we have</p> <p>21 sent out -- we sent out the survey team -- I don't know</p> <p>22 the specific date -- but we have an exact location of</p> <p>23 that tree because if my memory serves me correctly, I</p> <p>24 believe it's closer to the property line. Because they</p> <p>25 felt it was closer to the property line, it would</p> | <p style="text-align: right;">91</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Now, I</p> <p>2 have to mark this as -- if we're going to use your</p> <p>3 marking, we can't put --</p> <p>4 JONATHAN JOLLEY: I wouldn't qualify that as a</p> <p>5 survey mark, but --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Well, if I'm</p> <p>7 going to rely on it as an approximately location --</p> <p>8 JONATHAN JOLLEY: Okay, yeah.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: -- do you have</p> <p>10 an objection to marking this particular exhibit as</p> <p>11 whatever 10- the last -- add an exhibit?</p> <p>12 [Simultaneous speakers.]</p> <p>13 WILLIAM J. CHEN: Are we on 95-A? Are we -- Jody,</p> <p>14 are we on 95-A?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: No, this is 95D.</p> <p>16 JODY S. KLINE: No, we're right after -- D, yeah,</p> <p>17 right.</p> <p>18 WILLIAM J. CHEN: Oh.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: I'd rather just</p> <p>20 add it at the end so I know -- so staff knows what they</p> <p>21 need to do. So, I'm going to make it 184, PFCP marked</p> <p>22 to show approximate location of SP10.</p> <p>23 WILLIAM J. CHEN: PFC.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: PFCP marked to</p> <p>25 show approximate location of SP10.</p>   |
| <p style="text-align: right;">90</p> <p>1 obviously have potential for critical root zone impact</p> <p>2 because if you were to move that circle closer westerly</p> <p>3 towards our property, that would be inevitable. We</p> <p>4 have surveyed that. We did not change the record plan,</p> <p>5 and we spoke with staff.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: When you say</p> <p>7 record plan, do you mean the PFCP?</p> <p>8 JONATHAN JOLLEY: The PFCP since it was filed.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 JONATHAN JOLLEY: We spoke with staff, which is</p> <p>11 Katherine Nelson. That tree will have, field verified</p> <p>12 via survey, will be located on the final forest</p> <p>13 conservation plan.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: So, it is closer</p> <p>15 to the property --</p> <p>16 JONATHAN JOLLEY: It is slightly closer, that's</p> <p>17 correct. So, we believe it's approximately right here</p> <p>18 on this exhibit -- I'm sorry, right here does not work.</p> <p>19 JODY S. KLINE: Go ahead and mark it on there if</p> <p>20 you want.</p> <p>21 JONATHAN JOLLEY: There is a shed -- if this pen</p> <p>22 works -- there is a shed on the property line actually</p> <p>23 directly east of SP9 -- tree SP9 if you travel east.</p> <p>24 We believe that tree is actually slightly closer to</p> <p>25 that location. We did not --</p>   | <p style="text-align: right;">92</p> <p>1 JODY S. KLINE: And could I add maybe sheet 4, I</p> <p>2 think it is?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Oh, yes. So,</p> <p>4 PFCP-4.</p> <p>5 WILLIAM J. CHEN: Sheet 4?</p> <p>6 JODY S. KLINE: Yes.</p> <p>7 WILLIAM J. CHEN: PFCP-4.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Now, can Mr. --</p> <p>9 wait a minute. Okay, so that would be 184. Can you</p> <p>10 take a pen and mark in the lower right corner by the</p> <p>11 firm logo there, just mark Exhibit 184?</p> <p>12 JONATHAN JOLLEY: 184?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: 184, or just</p> <p>14 write 184. You don't have to write exhibit. Okay,</p> <p>15 thank you. Go ahead.</p> <p>16 JONATHAN JOLLEY: So, that is the tree that we</p> <p>17 would also be concerned about. We wouldn't want it to</p> <p>18 be detrimentally impacted. There will be further</p> <p>19 analysis and working with staff to determine the exact</p> <p>20 critical root zone impact and then we will provide, if</p> <p>21 necessary, given additional measures whatever staff</p> <p>22 would like in addition to restricting any potential</p> <p>23 obviously encroachment into the zone, limit the</p> <p>24 construction compaction within those areas as much as</p> <p>25 possible after the construction of the initial</p> |



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24 (93 to 96)

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| <p>93</p> <p>1 driveway. We will work with them diligently to try and<br/>2 mitigate that.<br/>3 JODY S. KLINE: Mr. Jolley, what -- what is the<br/>4 amount of --<br/>5 HEARING EXAMINER ROBESON HANNAN: Why don't they<br/>6 make you go revise the PFCP?<br/>7 JONATHAN JOLLEY: This -- this -- that's a good<br/>8 question. They actually stated that we would work it<br/>9 out through the final. Because this is preliminary,<br/>10 they expect that there will be some back and forth.<br/>11 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>12 JONATHAN JOLLEY: And that we would address final<br/>13 comments from everyone involved during -- on the final.<br/>14 JODY S. KLINE: Including the property owner.<br/>15 JONATHAN JOLLEY: Including the property owner,<br/>16 correct.<br/>17 JODY S. KLINE: So, the staff can control what the<br/>18 private property owner does.<br/>19 HEARING EXAMINER ROBESON HANNAN: Okay, okay. We<br/>20 don't have to -- just a second.<br/>21 JONATHAN JOLLEY: Okay.<br/>22 HEARING EXAMINER ROBESON HANNAN: We don't have to<br/>23 characterize it now. I understand more about the case<br/>24 now. Go ahead.<br/>25 JODY S. KLINE: Sure.</p> | <p>95</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I'm sorry?<br/>2 JONATHAN JOLLEY: The covered -- the canopy -- the<br/>3 canopy of the tree.<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>5 JONATHAN JOLLEY: so, if you were to shave off 30<br/>6 percent of that approximately, you would -- you would<br/>7 want to limit that for maximum [inaudible - trails<br/>8 off.]<br/>9 JODY S. KLINE: Maybe the hearing examiner is<br/>10 asking you, how do you figure out what the canopy is.<br/>11 HEARING EXAMINER ROBESON HANNAN: Thank you, yeah.<br/>12 JONATHAN JOLLEY: Oh, the canopy -- the canopies<br/>13 are -- I'm sorry -- I'll grab this real quick. I have<br/>14 to find the right plan here. So, the critical root<br/>15 zone -- forgive me, I do not have that exact<br/>16 calculation on me -- but the critical root that you --<br/>17 you set the -- you set the diameter --<br/>18 COURT REPORTER: Please speak up, sir. I<br/>19 apologize, could you speak up?<br/>20 JONATHAN JOLLEY: Yes, sir. I'm sorry, I do not<br/>21 have that exact calculation written down here on my<br/>22 notes, but.<br/>23 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>24 JODY S. KLINE: Just the formula. What is the<br/>25 formula.</p> |
| <p>94</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I just don't<br/>2 want to characterize it. Go ahead.<br/>3 JONATHAN JOLLEY: No, I didn't mean to say that we<br/>4 were --<br/>5 HEARING EXAMINER ROBESON HANNAN: You -- you have<br/>6 made it clear. I understand. Go ahead.<br/>7 JONATHAN JOLLEY: Okay, okay.<br/>8 JODY S. KLINE: So, what is the amount of<br/>9 encroachment into the critical root zone that is sort<br/>10 of the -- the line as to whether you can save the tree<br/>11 or you might lose the tree?<br/>12 JONATHAN JOLLEY: Generally, you don't want -- you<br/>13 wouldn't -- you wouldn't want to exceed 30 percent.<br/>14 That's -- that's generally a threshold and in my<br/>15 opinion --<br/>16 HEARING EXAMINER ROBESON HANNAN: The CRZ is 90.<br/>17 Is it 90 feet in diameter?<br/>18 JONATHAN JOLLEY: I don't have the exact -- oh<br/>19 that specific tree?<br/>20 HEARING EXAMINER ROBESON HANNAN: Okay. When you<br/>21 say 30 percent, is it 30 percent of what?<br/>22 JONATHAN JOLLEY: Of -- of if you were going to --<br/>23 HEARING EXAMINER ROBESON HANNAN: Of diameter?<br/>24 JONATHAN JOLLEY: -- of the tree -- the covered<br/>25 zone.</p>   | <p>96</p> <p>1 JONATHAN JOLLEY: The formula is you want to<br/>2 measure the diameter of the tree and then you multiply<br/>3 that times, I believe --<br/>4 HEARING EXAMINER ROBESON HANNAN: The diameter of<br/>5 the trunk?<br/>6 JONATHAN JOLLEY: The diameter of the trunk.<br/>7 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>8 JONATHAN JOLLEY: And then you will multiply that<br/>9 by a factor generally of 1.5.<br/>10 HEARING EXAMINER ROBESON HANNAN: Oh, so it's a<br/>11 formula. Okay.<br/>12 JONATHAN JOLLEY: Yeah, there's a formula.<br/>13 HEARING EXAMINER ROBESON HANNAN: Based on the<br/>14 diameter. All right. That helps.<br/>15 JONATHAN JOLLEY: Yeah, so every tree has a<br/>16 measurement and then that projects your critical root<br/>17 zone mass.<br/>18 HEARING EXAMINER ROBESON HANNAN: Okay. And it's<br/>19 an -- at 30 percent of the square footage of the<br/>20 critical root zone.<br/>21 JONATHAN JOLLEY: Of the area, correct.<br/>22 HEARING EXAMINER ROBESON HANNAN: Okay. Thank<br/>23 you.<br/>24 JONATHAN JOLLEY: Yes. Getting back to SP1 or<br/>25 SP9, which is -- and the other trees along the eastern</p>  |

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25 (97 to 100)

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| <p>97</p> <p>1 property line, obviously they would be severely<br/>2 impacted because we are literally -- it would be curbed<br/>3 right up to the trunk line.<br/>4 JODY S. KLINE: Well, going back to SP10 or<br/>5 whatever it is.<br/>6 JONATHAN JOLLEY: Yes.<br/>7 JODY S. KLINE: Are you comfortable that the<br/>8 amount of encroachment on the critical root zone will<br/>9 be less than 30 percent on that tree?<br/>10 JONATHAN JOLLEY: Yes, I am.<br/>11 JODY S. KLINE: Okay. Now --<br/>12 JONATHAN JOLLEY: We will -- we will prove that<br/>13 factually and we will have -- we have the survey and we<br/>14 will submit the documentation.<br/>15 JODY S. KLINE: Well, I mean, that's my question.<br/>16 How can you come to that conclusion if we haven't<br/>17 surveyed yet to know exactly how far it is from the<br/>18 driveway?<br/>19 JONATHAN JOLLEY: I did visit the property. We --<br/>20 we looked at the -- the trees. We looked at the<br/>21 canopies in regard to the -- the coverage onto -- the<br/>22 coverage of that tree and how it -- and how it will<br/>23 potentially -- it crosses a little bit of the eastern<br/>24 property line. I feel that the -- there will be an<br/>25 impact. I feel that it will be less than 30 percent,</p>   | <p>99</p> <p>1 second.<br/>2 JONATHAN JOLLEY: Yes, yes.<br/>3 HEARING EXAMINER ROBESON HANNAN: Are you saying<br/>4 no construction activity at all?<br/>5 JONATHAN JOLLEY: That's correct. You are not --<br/>6 we are not permitted to enter the Kosery property.<br/>7 Yes.<br/>8 HEARING EXAMINER ROBESON HANNAN: I just want to<br/>9 clarify what you meant by --<br/>10 JONATHAN JOLLEY: Correct, sorry.<br/>11 HEARING EXAMINER ROBESON HANNAN: -- nothing.<br/>12 Okay.<br/>13 JODY S. KLINE: And by construction, do you mean<br/>14 no land disturbance?<br/>15 JONATHAN JOLLEY: No land disturbance.<br/>16 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>17 JONATHAN JOLLEY: No equipment, construction<br/>18 materials, construction workers, no one entering the<br/>19 private property of the Kosery residence. That is a --<br/>20 would not be permitted. We would install tree fencing<br/>21 along there as well and then when the additional<br/>22 operations are to construct the driveway along the<br/>23 eastern property line, you would -- after we install<br/>24 the curbing, what I'd like to do is then -- which would<br/>25 be worked out in the final forest conservation plan --</p>  |
| <p>98</p> <p>1 and I also feel that working with the property owner<br/>2 and with staff, that we can do -- that we can perform<br/>3 measures to ensure the limit of encroachment and<br/>4 compaction because compaction is my primary concern<br/>5 when it comes to trees. The -- any compaction directly<br/>6 underneath a tree in a significantly large area would<br/>7 have a negative impact. So, it would be my opinion to<br/>8 work with -- or not my opinion -- my preference once<br/>9 we've worked with staff and the property owner, we<br/>10 would have an exhibit. We can discuss that and we can<br/>11 discuss additional measures as well for protection if<br/>12 there's something above and beyond.<br/>13 JODY S. KLINE: Would you -- would you describe<br/>14 some of the measures that you think might be applicable<br/>15 in this instance?<br/>16 JONATHAN JOLLEY: Sure. Depending upon the final<br/>17 calculated impact, obviously I had mentioned earlier<br/>18 that we would -- the first thing is to ensure nothing<br/>19 goes past our limit of disturbance. So, limit of<br/>20 disturbance is essentially the eastern property line of<br/>21 the subject site. And then as you travel west into --<br/>22 HEARING EXAMINER ROBESON HANNAN: When you say<br/>23 nothing, are you talking --<br/>24 JONATHAN JOLLEY: Nothing -- it's --<br/>25 HEARING EXAMINER ROBESON HANNAN: -- just a</p> | <p>100</p> <p>1 provide some additional fencing for any potential<br/>2 storage of materials during the construction of the<br/>3 building or -- yeah, building materials in general is<br/>4 what I would be concerned about -- stacking of bricks<br/>5 or anything like that. We could provide additional<br/>6 securing along there and sign it for no storage, no<br/>7 vehicles, et cetera in that particular area, because<br/>8 their construction activity will be ongoing for the<br/>9 building and the parking lot. So, we can prevent, at<br/>10 least, mistaken or storage of anything that could<br/>11 potentially have further impacts to any of the -- any<br/>12 of the neighboring property's vegetation.<br/>13 And if -- if we -- ultimately, honestly, if we<br/>14 ultimately determine that there was any -- any negative<br/>15 impacts whatsoever going through the process, someone<br/>16 did store something, then we could recommend some<br/>17 mitigation measures with some injection or loosening of<br/>18 the soils or even some fertilization to help boost the<br/>19 -- the robustness of those trees.<br/>20 JODY S. KLINE: So, I heard what you said you were<br/>21 going to be doing. Would the applicant accept a<br/>22 condition if the conditional use is approved that no<br/>23 final preliminary -- no final forest conservation plan<br/>24 would be implemented until there was coordination with<br/>25 Park and Planning and probably the county arborist and</p> |

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26 (101 to 104)

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| <p>101</p> <p>1 the property owner adjacent?</p> <p>2 JONATHAN JOLLEY: I -- I would let the applicant</p> <p>3 answer it as well, but I would believe that the</p> <p>4 applicant would agree to that.</p> <p>5 Q. That would be consistent with what your</p> <p>6 program of --</p> <p>7 JONATHAN JOLLEY: Correct, it would.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: What was the</p> <p>9 condition? I --</p> <p>10 JODY S. KLINE: Yeah. Well, I guess I was</p> <p>11 thinking ahead of Mr. Chen's comment about are you</p> <p>12 really going to involve the property owner, and so I</p> <p>13 was suggesting --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Oh, you're</p> <p>15 saying -- okay.</p> <p>16 JODY S. KLINE: We wouldn't --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>18 JODY S. KLINE: Nothing happens until we all sit</p> <p>19 down at a table and try and come up with the best</p> <p>20 solution. It maybe not be totally satisfactory to the</p> <p>21 adjacent property owner, but we will certainly try our</p> <p>22 best.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I understand. I</p> <p>24 didn't understand what you were saying. Okay.</p> <p>25 JODY S. KLINE: I'll be glad to write something up</p>   | <p>103</p> <p>1 you want me to -- how can I get that evidence in front</p> <p>2 of you without having to call Mr. Jolley back as a</p> <p>3 witness?</p> <p>4 WILLIAM J. CHEN: Well, isn't he coming -- oh, I</p> <p>5 see. I apologize. Go ahead.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: I'm going to</p> <p>7 call a 5-minute break.</p> <p>8 JODY S. KLINE: And we'll talk.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: And you talk.</p> <p>10 I'd like to get through cross exam now of Mr. --</p> <p>11 JODY S. KLINE: Before lunch?</p> <p>12 HEARING EXAMINER ROBESON HANNAN: I've got snacks</p> <p>13 over there.</p> <p>14 JODY S. KLINE: Yeah, right. Well, and I still</p> <p>15 have the landscaping plan to do also. So, I'm probably</p> <p>16 another 30 minutes probably.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay, all right.</p> <p>18 We'll -- we can convene -- did -- we can convene or --</p> <p>19 if you want to discuss this, we can convene for lunch</p> <p>20 now.</p> <p>21 WILLIAM J. CHEN: I don't think we need to have a</p> <p>22 5-minute break to talk about it. I think it's more</p> <p>23 important to get this gentleman -- at least this direct</p> <p>24 concluded before lunch break.</p> <p>25 JODY S. KLINE: Okay.</p>  |
| <p>102</p> <p>1 and submit it if you would like, but I think you get</p> <p>2 the gist of what --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: No, I think -- I</p> <p>4 get the gist.</p> <p>5 WILLIAM J. CHEN: Yeah, and just to that point, on</p> <p>6 behalf of my clients, we have a general objection to</p> <p>7 that course of action so that if you're going to</p> <p>8 entertain anything in writing, certainly I want to</p> <p>9 comment on it. But, as of right now, I will tell you</p> <p>10 my clients will not agree to that at all.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay, all right.</p> <p>12 JODY S. KLINE: Could I have one second please?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>14 [Off the record at 11:54 a.m.]</p> <p>15 [On the record at 11:55 a.m.]</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Do you need a</p> <p>17 minute?</p> <p>18 JODY S. KLINE: No. I guess what I'd like to do</p> <p>19 is Mr. Intriago has told me that, in fact, the survey</p> <p>20 is available as to the exact location of the tree and</p> <p>21 from which Mr. Jolley could make a specific</p> <p>22 determination whether there was a 30 percent</p> <p>23 encroachment rather than speculating like we just did.</p> <p>24 Unfortunately, that survey is not available to us</p> <p>25 today. I just wondered -- I don't think -- well, do</p> | <p>104</p> <p>1 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>2 Let's --</p> <p>3 JODY S. KLINE: If you want to go until 12:30, we</p> <p>4 will try and finish all of his testimony before 12:30</p> <p>5 and we'll worry about this issue over lunch.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay. That --</p> <p>7 that's good. Okay. Thank you. Let's go with this.</p> <p>8 JODY S. KLINE: Mr. Jolley, the only other</p> <p>9 questions I think I'm going to ask you about the forest</p> <p>10 conservation plan is you prepared and -- what did you</p> <p>11 prepare in terms of justifying the removal of specimen</p> <p>12 trees and how was it processed?</p> <p>13 JONATHAN JOLLEY: We did provide a --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I'm -- I</p> <p>15 apologize. I -- this is not -- this -- the impact to</p> <p>16 this tree did not require any variance, correct?</p> <p>17 JONATHAN JOLLEY: Correct.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. I'm</p> <p>19 sorry.</p> <p>20 JONATHAN JOLLEY: Not at that time.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: I'm just --</p> <p>22 okay, go ahead. I apologize.</p> <p>23 JODY S. KLINE: The direct answer to your question</p> <p>24 is it was not -- it was not submitted at the time the</p> <p>25 request when it simply because it hadn't been</p> |

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27 (105 to 108)

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| <p>105</p> <p>1 identified.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>3 WILLIAM J. CHEN: That's correct. It came up</p> <p>4 during the course of these proceedings with my client.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Oh, I -- okay.</p> <p>6 I get it.</p> <p>7 WILLIAM J. CHEN: What happened, yeah, we informed</p> <p>8 the staff that they had missed things. That's how this</p> <p>9 came about.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 WILLIAM J. CHEN: That's my understanding.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Go ahead. Oh, I</p> <p>13 -- okay. I'm putting all the trees together now.</p> <p>14 JODY S. KLINE: Okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Go ahead, sorry.</p> <p>16 JODY S. KLINE: You don't have to go into details,</p> <p>17 but did you prepare a justification for the removal of</p> <p>18 the trees that you've identified today?</p> <p>19 JONATHAN JOLLEY: Yes. Yes, we did, sir.</p> <p>20 JODY S. KLINE: And that was processed through the</p> <p>21 normal --</p> <p>22 JONATHAN JOLLEY: Yes, that was processed through</p> <p>23 the normal channels. We provided the document to MNC,</p> <p>24 PPC for request for tree variance for critical root</p> <p>25 zone impacts and removal of SP1 and SP9.</p>                                       | <p>107</p> <p>1 issue. If they're in, they're in. But if this</p> <p>2 gentleman is talking about some other document --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Well, I can't</p> <p>4 approve the conditional use without the -- I have the -</p> <p>5 - I take it I have the actual approval of the planning</p> <p>6 board resolution approving the PFCP in here?</p> <p>7 WILLIAM J. CHEN: Madam Examiner, I apologize. I</p> <p>8 couldn't find that with an exhibit. Do you have the</p> <p>9 resolution of I think it's December 17? If I may</p> <p>10 approach?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>12 JODY S. KLINE: That was transmitted.</p> <p>13 WILLIAM J. CHEN: I didn't see it. I mean I --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I don't see</p> <p>15 anything dated 12/17 unless it's an E-mail with --</p> <p>16 nope, that's not it.</p> <p>17 WILLIAM J. CHEN: It -- may I approach, Madam</p> <p>18 Examiner?</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>20 WILLIAM J. CHEN: I was using this for another</p> <p>21 matter that got resolved. But, I'm handing you the</p> <p>22 resolution of Montgomery County Planning Board</p> <p>23 approving the preliminary forest conservation including</p> <p>24 the variance, which was part of that, and it's -- it's</p> <p>25 a document entitled resolution dated December 17, 2019.</p>                                   |
| <p>106</p> <p>1 JODY S. KLINE: And do you feel that the</p> <p>2 justifications for the removal of the trees were in</p> <p>3 accordance with applicable law for that action?</p> <p>4 JONATHAN JOLLEY: I do, sir.</p> <p>5 WILLIAM J. CHEN: Well, is this going to be</p> <p>6 offered into evidence or is already in evidence?</p> <p>7 UNIDENTIFIED MALE SPEAKER: I believe you already</p> <p>8 put it in evidence.</p> <p>9 JODY S. KLINE: Well, it -- it should be in the</p> <p>10 record, but I -- I take that back. I believe it's in</p> <p>11 the record of the Circuit Court case. I don't believe</p> <p>12 it's in the record of this case because it was handled</p> <p>13 in a separate matter.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Well, we</p> <p>15 typically have the staff report on the PFCP in our</p> <p>16 record.</p> <p>17 JODY S. KLINE: You do have that, correct?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: I don't know if</p> <p>19 we have it. It's been, you know --</p> <p>20 UNIDENTIFIED MALE SPEAKER: I mean, I'm on the</p> <p>21 horn to the --</p> <p>22 WILLIAM J. CHEN: Quite frankly, we've looked at</p> <p>23 documents that were filed and available through the</p> <p>24 record and certainly if it's among those documents that</p> <p>25 were filed with those, we're not going to have an</p> | <p>108</p> <p>1 I looked -- at one point, I looked for this document in</p> <p>2 your -- OSA file and I could not find it.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: I don't see it</p> <p>4 there, so.</p> <p>5 WILLIAM J. CHEN: Okay, may I?</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Do you have any</p> <p>7 objection to this?</p> <p>8 JODY S. KLINE: Oh no, not at all. No. Thank you.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: And, but I do</p> <p>10 have, correct, the actual -- the plan -- the PFC and</p> <p>11 plan -- PFC and plan form approved -- that was</p> <p>12 approved.</p> <p>13 WILLIAM J. CHEN: The document that is in the --</p> <p>14 the exhibit list is -- predates the planning board</p> <p>15 action. So, one of my questions was going to be did</p> <p>16 you know in October when you submitted the preliminary</p> <p>17 forest conservation plan -- and this is not a challenge</p> <p>18 -- it's just the documents that we've been taking about</p> <p>19 -- these exhibits -- were filed in October and the</p> <p>20 hearing of the planning board was not until November,</p> <p>21 and their approval by the resolution was not until</p> <p>22 December. So, unless somebody knew in October that</p> <p>23 that particular document was going to be the finally</p> <p>24 approved preliminary forest conservation plan, who</p> <p>25 knows what it is. And I defer to Mr. Kline.</p> |

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28 (109 to 112)

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| <p>109</p> <p>1 JODY S. KLINE: Sure.</p> <p>2 WILLIAM J. CHEN: I'm not trying to --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going</p> <p>4 to -- first let me take care of this resolution,</p> <p>5 because I'm going to add it at the end of the exhibit</p> <p>6 list because I can't consider -- I can't -- well, you</p> <p>7 know -- under the code, I have to have an approved PFCP</p> <p>8 --</p> <p>9 JODY S. KLINE: Yeah.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: -- before I can</p> <p>11 decide. So, I'm putting the resolution in as 185 and</p> <p>12 then I need some confirmation that Exhibit 95-D is the</p> <p>13 plan that was approved by the planning board.</p> <p>14 JODY S. KLINE: Can I have -- maybe can I get to</p> <p>15 this last Mr. Jolley question? Do you -- do you know</p> <p>16 the preparation date of this plan that you've been</p> <p>17 testifying to today?</p> <p>18 JONATHAN JOLLEY: [Speaking off mic - inaudible]</p> <p>19 this was originally dated -- the drawing was originally</p> <p>20 dated April 3rd of 2019. There was a revision date of</p> <p>21 10/2 and a revision date of 10/4/19. I'm sorry -- I'm</p> <p>22 sorry. My eyes are bad. Revision date one is October</p> <p>23 21, 2019. Plans were revised per comments received up</p> <p>24 until 10/16/19. And then revision number two shown on</p> <p>25 this page, PFCP-4 was per Katherine -- revisions per</p> | <p>111</p> <p>1 saying the resolution will follow --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Ahh.</p> <p>3 JODY S. KLINE: And apparently that's what the</p> <p>4 problem is.</p> <p>5 WILLIAM J. CHEN: Yeah. That's -- in fact, that's</p> <p>6 where I'm coming from on no resolution.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. So, I've</p> <p>8 got the resolution.</p> <p>9 WILLIAM J. CHEN: And you've got the staff report</p> <p>10 at 106.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>12 WILLIAM J. CHEN: And its attachments.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I see it.</p> <p>14 WILLIAM J. CHEN: Now, Mr. Davis said --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>16 WILLIAM J. CHEN: -- what you have to be sensitive</p> <p>17 to are the -- whether you have the attachments.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: I have</p> <p>19 attachment A, but --</p> <p>20 WILLIAM J. CHEN: There are several attachments.</p> <p>21 That's why on your list it says attachments, plural,</p> <p>22 and what I'm telling you is that even though you may</p> <p>23 have attachments to Exhibit 106, you have to -- you</p> <p>24 can't do it right now -- you have to go through it</p> <p>25 slowly to make sure you have all of the attachments.</p>  |
| <p>110</p> <p>1 our discussions with Katherine Nelson's plan screening</p> <p>2 comments and that was revision number two, October 24th</p> <p>3 of 2019.</p> <p>4 JODY S. KLINE: So, Ms. Robeson, the preliminary</p> <p>5 forest conservation plan technical staff report on the</p> <p>6 PFCP was dated the 25th of October and was reviewed by</p> <p>7 the planning board on the 7th of November.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Well, normally I</p> <p>9 get that staff report too. I don't have -- I would</p> <p>10 like that in the record. I see what you're saying.</p> <p>11 JODY S. KLINE: Yeah.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: But I want that</p> <p>13 -- I would like that in the record too.</p> <p>14 JODY S. KLINE: Well, I believe that was submitted</p> <p>15 simultaneously with the planning board's letter --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Maybe I have it.</p> <p>17 JODY S. KLINE: saying --</p> <p>18 WILLIAM J. CHEN: 106-A.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: What does it</p> <p>20 say?</p> <p>21 WILLIAM J. CHEN: I thought it was in the record</p> <p>22 too.</p> <p>23 JODY S. KLINE: Yeah, with a note --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: It may be.</p> <p>25 JODY S. KLINE: Yeah, I think it is with a note</p>  | <p>112</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 WILLIAM J. CHEN: Because some of the attachments</p> <p>3 have attachments.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>5 let's -- where are we with this witness?</p> <p>6 JODY S. KLINE: Well, yeah. Frankly, I'm at a</p> <p>7 point in time where I think I've exhausted the things I</p> <p>8 wanted to get in about the forest conservation plan.</p> <p>9 We'd like the opportunity to try to give you a hard</p> <p>10 number in terms of tree S whatever it is -- T10. But I</p> <p>11 would finish up with just landscaping issues and try</p> <p>12 and do it because I don't think that's -- well, I'm</p> <p>13 just trying to just do a real quick job on the</p> <p>14 landscaping issues.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>16 JODY S. KLINE: Okay. Mr. Jolley, were you</p> <p>17 instrumental in the preparation of a landscape plan for</p> <p>18 the subject property?</p> <p>19 JONATHAN JOLLEY: Yes, I was.</p> <p>20 JODY S. KLINE: Okay. Using a copy of the</p> <p>21 landscape plan, would you please describe the details</p> <p>22 of that plan?</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Wait -- don't,</p> <p>24 don't. Give me a minute to catch up. No cross talk,</p> <p>25 just -- I'm just looking. I do have attachment B, the</p> |

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29 (113 to 116)

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| <p>113</p> <p>1 recommendation for the PF -- staff recommendation for<br/>2 the PFCP.<br/>3 JODY S. KLINE: Which number was that?<br/>4 HEARING EXAMINER ROBESON HANNAN: That's 106-A,<br/>5 attachment B.<br/>6 JODY S. KLINE: Oh, okay. Okay.<br/>7 HEARING EXAMINER ROBESON HANNAN: But what I don't<br/>8 see, that has an attachment which is the preliminary<br/>9 forest conservation plan and the tree variance request<br/>10 letter that is not in this exhibit.<br/>11 WILLIAM J. CHEN: That's exactly --<br/>12 JODY S. KLINE: That, I can provide to you now.<br/>13 HEARING EXAMINER ROBESON HANNAN: No, not now. So<br/>14 -- so, let's move on unless you want those documents<br/>15 before you can cross, or do you already have them?<br/>16 WILLIAM J. CHEN: I'm going to -- look, pardon me.<br/>17 We want to finish this hearing.<br/>18 HEARING EXAMINER ROBESON HANNAN: Okay, so --<br/>19 WILLIAM J. CHEN: So --<br/>20 HEARING EXAMINER ROBESON HANNAN: Let's finish,<br/>21 but I'm going to need all those attachments in the<br/>22 record.<br/>23 WILLIAM J. CHEN: Yeah.<br/>24 JODY S. KLINE: Yes, ma'am.<br/>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>                           | <p>115</p> <p>1 JODY S. KLINE: I actually see submission 103-A.<br/>2 WILLIAM J. CHEN: Okay. Yes, yes. I'm sorry.<br/>3 Sorry, I should know that.<br/>4 JODY S. KLINE: So, 103-A is the revised<br/>5 landscaping plan CUP-9, which is what we have on the<br/>6 board here. So, using that exhibit, Mr. Jolley, would<br/>7 you please describe the elements of the landscape plan?<br/>8 Start with your sort of general concept and then take<br/>9 us through the details of the specifics.<br/>10 JONATHAN JOLLEY: Okay. Starting at the northern<br/>11 end of the property, the - let's start at the northwest<br/>12 corner of the subject site -- Needwood Road and<br/>13 Carnegie Avenue. We will have the preservation of the<br/>14 previously mentioned Red Pine. The tree will remain in<br/>15 place and it will be protected throughout the<br/>16 construction. As you travel easterly along Needwood<br/>17 Road towards the entrance to the subject site, you<br/>18 encounter the driveway to the -- to the rear parking<br/>19 lot. As you enter the driveway on the eastern portion<br/>20 of the subject site, travel south, and along the --<br/>21 from the base of curb along the driveway closest or the<br/>22 easternmost base of curb closed to the Kosery property,<br/>23 you will have a landscape treatment along the entire<br/>24 eastern property line beginning with its intersection<br/>25 with Needwood Road following south -- traveling south -</p> |
| <p>114</p> <p>1 WILLIAM J. CHEN: And as I said, you really have<br/>2 to be careful when you go through it -- that's why I<br/>3 said you couldn't do it sitting here -- to make sure<br/>4 that as you go through it, you have all the attachments<br/>5 with all their attachments. It took me -- it took me a<br/>6 while to figure it out, honestly.<br/>7 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>8 WILLIAM J. CHEN: But that's me. I'm slow.<br/>9 HEARING EXAMINER ROBESON HANNAN: Now, I didn't<br/>10 mean to be abrupt. So, keep going Mr. Kline. Let's --<br/>11 let's finish this witness.<br/>12 JODY S. KLINE: So, let me -- let's get a number<br/>13 for the exhibit that we put up on the board here -- 95,<br/>14 96, 97 --<br/>15 WILLIAM J. CHEN: 93.<br/>16 HEARING EXAMINER ROBESON HANNAN: Is this the<br/>17 landscaping plan?<br/>18 WILLIAM J. CHEN: Yes.<br/>19 JONATHAN JOLLEY: Jody, 93-I?<br/>20 JODY S. KLINE: What's the number of the plan<br/>21 you've got -- what's it called?<br/>22 JONATHAN JOLLEY: The plan will be depicted as<br/>23 landscape plan. It is sheet number CUP-9.<br/>24 WILLIAM J. CHEN: Is it understood, Mr. Kline,<br/>25 we're talking about 93-I?</p> | <p>116</p> <p>1 - all the way down to approximately the location --<br/>2 well, actually to the location of the southernmost<br/>3 point of the proposed parking lot. Can I continue with<br/>4 that section and move westerly?<br/>5 JODY S. KLINE: That would be a good way to do it<br/>6 yes.<br/>7 JONATHAN JOLLEY: Okay. The proposed treatment of<br/>8 the -- of the landscaping along this area -- we are<br/>9 going to propose at this time a 6-foot fence. We are<br/>10 calling that out as an opaque fence. The specific<br/>11 material can be discussed with the owner and other<br/>12 parties.<br/>13 HEARING EXAMINER ROBESON HANNAN: And this is on<br/>14 the eastern property?<br/>15 JONATHAN JOLLEY: The eastern property line.<br/>16 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.<br/>17 JONATHAN JOLLEY: So, starting along the eastern<br/>18 property line, I'm describing the landscape treatment<br/>19 between the eastern property line and the driveway up<br/>20 along our property, the entrance to the rear. So, that<br/>21 area will have a treatment of large shade trees --<br/>22 well, eventually they will be large. They will<br/>23 proposed at 2 to 2-1/2-inch caliber trees. We are<br/>24 installing approximately, I believe, it's 15 along that<br/>25 area. We will be -- and that's going to be intended to</p>   |

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30 (117 to 120)

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| <p>117</p> <p>1 be an upper story eventually. They are an upper story<br/>2 canopy. Then, we will provide a treatment of lower<br/>3 story with Red Buds, which are an ornamental tree but<br/>4 native to the area at a rate of 2:1, so approximately<br/>5 30 of those. Then, we will have a variety of shrubs<br/>6 along there. They are also going to be various sizes,<br/>7 but they're all evergreen in nature. So, you will have<br/>8 a treatment with evergreen shrubs to help the long-term<br/>9 buffering year-round instead of a deciduous nature.<br/>10 HEARING EXAMINER ROBESON HANNAN: Buffering from<br/>11 what?<br/>12 JONATHAN JOLLEY: Just from -- mostly my concern<br/>13 is any sort of light trespass as well from [inaudible.]<br/>14 So, you have a lower story treatment --<br/>15 HEARING EXAMINER ROBESON HANNAN: I thought the<br/>16 fence was opaque.<br/>17 JONATHAN JOLLEY: It is, but it helps. It's just<br/>18 another level, plus it's beautiful when you have<br/>19 multilayer treatments of landscaping instead of just a<br/>20 row of trees down the side of the property line.<br/>21 Through the parking lot area, we also provide shade<br/>22 tree cover. That shade tree cover is intended to meet<br/>23 our parking lot requirements for green area and/or tree<br/>24 canopy coverage, which we meet those expectations or<br/>25 requirements. They will have a central -- in our</p>  | <p>119</p> <p>1 the driveway and then the property line -- and I say<br/>2 that in the context of is there enough depth to<br/>3 basically support all of the trees and vegetation that<br/>4 you're talking about?<br/>5 JONATHAN JOLLEY: Yes, I believe there is. We<br/>6 have approximately -- we have actually 12 feet from the<br/>7 eastern property line to the back face of -- the face<br/>8 of curb.<br/>9 JODY S. KLINE: What's the required planning<br/>10 strip?<br/>11 JONATHAN JOLLEY: Minimum of 10.<br/>12 JODY S. KLINE: Okay.<br/>13 JONATHAN JOLLEY: It does flare out slightly along<br/>14 the entrance. As you enter the northeast corner of the<br/>15 sight, there is slightly more open space in that area,<br/>16 and as you travel south along the eastern property<br/>17 line, that landscape area does open up as you go --<br/>18 continue southerly towards the forest area or proposed<br/>19 forest on the rear of the property -- the south of the<br/>20 property.<br/>21 JODY S. KLINE: Are you familiar with the relative<br/>22 grades of the -- the land and particularly the Kosery<br/>23 property and say land adjacent to it to the west?<br/>24 JONATHAN JOLLEY: Kosery property?<br/>25 JODY S. KLINE: Yes, sir.</p>  |
| <p>118</p> <p>1 parking lot as proposed now along the southern portion<br/>2 of the property, south-faced elevation of the building<br/>3 -- you have a bioretention -- micro-bioretention basin<br/>4 that will ultimately have even more specific plantings<br/>5 in -- within those, as they're typically done a little<br/>6 further down the line. As you travel west along the --<br/>7 the parking lot traveling towards Carnegie Avenue, we<br/>8 do have parking that would be perpendicular to that<br/>9 right of way along Carnegie, so that would require<br/>10 screening to screen that parking lot. We're proposing<br/>11 a variety of large shade trees, and we're also provided<br/>12 a continuous hedge row along that entire -- entire<br/>13 frontage to screen that. The remaining areas along --<br/>14 around the building will be treated with sod for<br/>15 maintenance and there will be a tree or two and shrub<br/>16 just scattered about here or there for interest. But<br/>17 the main concentration of the landscaping is around the<br/>18 parking lot area and along the rear or easterly<br/>19 property line with the forest area or the area being<br/>20 retained for afforestation along the rear of the<br/>21 property, and that will be detailed with specific<br/>22 species as we go through the process.<br/>23 JODY S. KLINE: Mr. Jolley, I'm not sure I heard<br/>24 you said. If you did, I'll just -- what's the width of<br/>25 the planting strip between the easternmost curb line of</p> | <p>120</p> <p>1 JONATHAN JOLLEY: And our property?<br/>2 JODY S. KLINE: Yes. So, what's the relative<br/>3 elevations?<br/>4 JONATHAN JOLLEY: Well, personally speaking, when<br/>5 I was standing along the property line when I last<br/>6 visited the property, this in here, it's --<br/>7 JODY S. KLINE: This in here being --<br/>8 JONATHAN JOLLEY: Oh, I'm sorry, sorry.<br/>9 Centrally located about 50 percent of the way south as<br/>10 you travel from the northeast corner of the subject<br/>11 site down the eastern property line, approximately in<br/>12 the center of the eastern property line point, you --<br/>13 the grades are generally gentle and flat across here.<br/>14 There is not -- I don't see --<br/>15 HEARING EXAMINER ROBESON HANNAN: Sloping which<br/>16 way?<br/>17 JONATHAN JOLLEY: Well, you're sloping -- you're<br/>18 generally sloping northeast towards the west --<br/>19 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>20 JONATHAN JOLLEY: -- and then again over here, and<br/>21 then this goes down here. Sorry, I keep saying here.<br/>22 Yes, I am familiar with this sorry.<br/>23 JODY S. KLINE: My question is going to be, if<br/>24 you're standing in the backyard of the Kosery property,<br/>25 what will those improvements -- the fence and the trees</p> |

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| <p>121</p> <p>1 -- what effect will it have on the visibility of the<br/>2 activity --<br/>3 JONATHAN JOLLEY: Okay.<br/>4 JODY S. KLINE: -- on the property to the<br/>5 west?<br/>6 WILLIAM J. CHEN: The question is asking the<br/>7 landscape architect his opinion of what the viewshed<br/>8 would be -- that's my word -- or the view from my<br/>9 client's property.<br/>10 HEARING EXAMINER ROBESON HANNAN: Well, I think<br/>11 he's entitled as a landscape architect to look at the<br/>12 view -- to give an opinion. You're welcome to cross<br/>13 examine the accuracy of his opinion. So, I'm going to<br/>14 let it in.<br/>15 JONATHAN JOLLEY: Okay. The intent of my -- the<br/>16 landscape treatment along --<br/>17 HEARING EXAMINER ROBESON HANNAN: Well, not the<br/>18 intent.<br/>19 JONATHAN JOLLEY: Well --<br/>20 HEARING EXAMINER ROBESON HANNAN: The question is<br/>21 --<br/>22 JONATHAN JOLLEY: When I use the design intent for<br/>23 the landscaping, what I'm thinking about is the design<br/>24 for that part of the property.<br/>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>   | <p>123</p> <p>1 not ultimate. Then, below --<br/>2 JODY S. KLINE: Before you leave that, I think you<br/>3 didn't quite hear her question.<br/>4 JONATHAN JOLLEY: Okay.<br/>5 JODY S. KLINE: I think her question was<br/>6 confirmation of the height of the fence.<br/>7 JONATHAN JOLLEY: Oh, the height of the fence, I'm<br/>8 sorry, is 6 -- is proposed at this time 6 feet high.<br/>9 HEARING EXAMINER ROBESON HANNAN: Okay, thank you.<br/>10 JONATHAN JOLLEY: Okay. And the -- it's opaque in<br/>11 regards to allowing a direct line of sight through --<br/>12 through the fence.<br/>13 JODY S. KLINE: And the species of canopy trees<br/>14 that you're talking about should reach a height of<br/>15 what?<br/>16 JONATHAN JOLLEY: Oh, well in excess of 50 -- 50-<br/>17 plus feet.<br/>18 JODY S. KLINE: Thank you, go ahead.<br/>19 JONATHAN JOLLEY: With the exception of the<br/>20 ornamental trees -- the ornament trees.<br/>21 JODY S. KLINE: I understand.<br/>22 JONATHAN JOLLEY: So, it's just the -- so, you<br/>23 have the vertical element of the fence, larger canopy<br/>24 shade trees along the planting area. Within that, I<br/>25 mentioned earlier, you have the lower ornamental trees</p>  |
| <p>122</p> <p>1 JODY S. KLINE: What will the effect be?<br/>2 JONATHAN JOLLEY: The effect will be you will have<br/>3 a -- you will have a vertical element screen of 6 feet<br/>4 along the entire property line from the point of<br/>5 essentially the intersection with Needwood Road south<br/>6 all the -- south along the property line -- along the<br/>7 eastern property line, and it will terminate<br/>8 approximately around where the tree forest preservation<br/>9 area or the forest retention -- afforestation area will<br/>10 be proposed. So, you have a vertical element of 6 feet<br/>11 height on the western side of that fence on the<br/>12 applicant's property -- the subject site. We will then<br/>13 have shade trees, which will eventually provide an<br/>14 upper canopy visibility or -- or cover as they mature<br/>15 with age.<br/>16 HEARING EXAMINER ROBESON HANNAN: How high is this<br/>17 fence?<br/>18 JONATHAN JOLLEY: They generally -- 2-1/2 -- 2- to<br/>19 2-1/2-inch caliber tree. It varies a little bit,<br/>20 because obviously they're living. You're looking at<br/>21 approximately 10-ish -- 10 to 12 feet with -- with for<br/>22 most nurseries of that size, that's a general nursery<br/>23 standard.<br/>24 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>25 JONATHAN JOLLEY: Now, that's at time of planting,</p> | <p>124</p> <p>1 and then a shrub treatment just for the aesthetics as<br/>2 well traveling along that property line.<br/>3 JODY S. KLINE: The Red Buds could get to what<br/>4 possible height?<br/>5 JONATHAN JOLLEY: Being native, they get larger.<br/>6 I mean, you're looking at 15 feet max really in a<br/>7 condition like this. They're not native, they're not -<br/>8 - I mean, they are native, they're not in a forest.<br/>9 But you'll have a mid-level -- the intent is to have a<br/>10 mid-level screening, so those should eventually exceed<br/>11 the height of the fence. You have the upper level<br/>12 canopy of the deciduous trees and the lower level of<br/>13 the shrubs in regards to layers of cover.<br/>14 JODY S. KLINE: and will that pattern of planting<br/>15 obscure the views of the parking lot and the building<br/>16 from the adjacent Kosery property?<br/>17 WILLIAM J. CHEN: Same objection.<br/>18 HEARING EXAMINER ROBESON HANNAN: Noted.<br/>19 JONATHAN JOLLEY: I would say that the parking lot<br/>20 ground plan, if you are -- if you are at the level of<br/>21 the parking lot, you will have an obstructed view -- or<br/>22 from -- well, actually, I could -- I can't say for a<br/>23 fact. Obviously, I'm not standing there. I haven't<br/>24 been inside the residence. I won't state that. The<br/>25 intent of the vertical screen -- can I state -- correct</p> |



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32 (125 to 128)

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| <p>125</p> <p>1 me if I'm wrong -- the intent of the vertical screen is<br/>2 to block a direct line of sight from essentially a --<br/>3 an equal grade as you walk along that eastern property<br/>4 line. So, at any point, if you walk along the eastern<br/>5 property line, you will have a fence traveling that<br/>6 grade and you will have a 6-foot height on that. So,<br/>7 I'm a 6-foot tall individual, so, essentially I am the<br/>8 height of that fence along the entire eastern property<br/>9 line. It is meant to obscure the view of that parking<br/>10 lot, sir, and vehicles within it. Our building is a<br/>11 larger element, so we could not effectively completely<br/>12 screen that view from it with a fence. Did I answer<br/>13 the question or did I go off?<br/>14 HEARING EXAMINER ROBESON HANNAN: No, you did. It<br/>15 gets confusing.<br/>16 JODY S. KLINE: This is not an exhibit in the<br/>17 record of the case.<br/>18 JONATHAN JOLLEY: Oh, yes. Great exhibit.<br/>19 HEARING EXAMINER ROBESON HANNAN: Okay. You can -<br/>20 - I'll mark it for identification as 186.<br/>21 UNIDENTIFIED FEMALE SPEAKER: No, that should be<br/>22 148. You did it in November.<br/>23 HEARING EXAMINER ROBESON HANNAN: What? Just<br/>24 don't -- don't talk. No offense.<br/>25 JODY S. KLINE: All right. I appreciate the help,</p> | <p>127</p> <p>1 JODY S. KLINE: Okay. May I -- may I?<br/>2 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>3 JODY S. KLINE: It is -- is not a new rendering.<br/>4 The only -- well, it is a new rendering. The only<br/>5 thing that's different is the sidewalk from Carnegie<br/>6 Road sidewalk to the front door of the building, which<br/>7 was not available on the previous plan. That's the<br/>8 only change to the plan.<br/>9 WILLIAM J. CHEN: Which sidewalk?<br/>10 HEARING EXAMINER ROBESON HANNAN: Well, let's get<br/>11 that -- let's ask him what the differences are.<br/>12 JODY S. KLINE: Sure, sure. Yeah. So, first of<br/>13 all, how is this created? They want a foundation.<br/>14 HEARING EXAMINER ROBESON HANNAN: This is only<br/>15 marked, Mr. Chen. I understand.<br/>16 JODY S. KLINE: So, they want to understand, how<br/>17 did you put this together? How -- how reliable is what<br/>18 it's showing?<br/>19 JONATHAN JOLLEY: The -- so, the -- essentially<br/>20 the underlaying of this is the boundary survey. We<br/>21 take the site plan generated by the engineers, combine<br/>22 the two, we overlay with the rendering.<br/>23 HEARING EXAMINER ROBESON HANNAN: Well, let me --<br/>24 let me start you --<br/>25 JONATHAN JOLLEY: Okay.</p> |
| <p>126</p> <p>1 but in fact it's a different exhibit.<br/>2 HEARING EXAMINER ROBESON HANNAN: It is a<br/>3 different exhibit. Okay. So, I'm going -- can you<br/>4 mark it for identification? Just put 186 on it. And<br/>5 what do you call this, Mr. Kline?<br/>6 WILLIAM J. CHEN: What's the name of the plan?<br/>7 JODY S. KLINE: It's a -- it's actually a<br/>8 colorized version of CUP-9 landscape plan. So --<br/>9 WILLIAM J. CHEN: Rendered by --<br/>10 JODY S. KLINE: It's a rendered landscape plan.<br/>11 Mr. Jolley --<br/>12 WILLIAM J. CHEN: If I may, is this the<br/>13 appropriate to --<br/>14 HEARING EXAMINER ROBESON HANNAN: We're going to<br/>15 ask him to lay a foundation if that's your question.<br/>16 JODY S. KLINE: Yes, that's where I was going to<br/>17 start.<br/>18 WILLIAM J. CHEN: No, it isn't. Before that --<br/>19 HEARING EXAMINER ROBESON HANNAN: Oh.<br/>20 WILLIAM J. CHEN: I mean, there have been<br/>21 previously filed renderings that my clients and I have<br/>22 utilized and looked at as part of the filing. So, here<br/>23 we are on the second day of hearing, which was three<br/>24 months since the first day of hearing and we now have a<br/>25 new rendering that we have not seen.</p>  | <p>128</p> <p>1 HEARING EXAMINER ROBESON HANNAN: -- here, if you<br/>2 can answer. Is a version of this in our record<br/>3 already? Do you know?<br/>4 JONATHAN JOLLEY: Yes, it is -- it in the record.<br/>5 It's in the -- one of the --<br/>6 JODY S. KLINE: I'm checking.<br/>7 JONATHAN JOLLEY: Yeah, I believe -- okay, let him<br/>8 check first.<br/>9 JODY S. KLINE: Yeah. Others have better memory<br/>10 of what we put into the record before.<br/>11 HEARING EXAMINER ROBESON HANNAN: Well, we have<br/>12 some help of one -- what was it -- 148? 148 is<br/>13 rendered version of site plan -- of landscaping plan<br/>14 from 11/22/19. Thank you.<br/>15 JODY S. KLINE: That would have been something Mr.<br/>16 Wolford would have testified.<br/>17 HEARING EXAMINER ROBESON HANNAN: Okay. So, have<br/>18 you -- have you made alterations to that 148?<br/>19 JONATHAN JOLLEY: The -- the only alteration --<br/>20 HEARING EXAMINER ROBESON HANNAN: Did you make<br/>21 them?<br/>22 JONATHAN JOLLEY: Part of my team made them.<br/>23 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.<br/>24 JONATHAN JOLLEY: We -- we added -- there was<br/>25 discussion to have a -- a connection from the proposed</p>   |

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| <p>129</p> <p>1 Carnegie Avenue sidewalk to the sidewalk to our parking<br/>2 lot here. So, we added a -- a -- actually a gravel<br/>3 pathway for an intermediate connection knowing it's<br/>4 going to be rarely used. So, that's the only change<br/>5 that we completed on this document.<br/>6 HEARING EXAMINER ROBESON HANNAN: So, are you<br/>7 saying that other than that gravel pathway, that's the<br/>8 only change you've made?<br/>9 JONATHAN JOLLEY: I believe so, yes, because none<br/>10 of the site elements changed. We did not propose any<br/>11 relocation of any of the site features or the<br/>12 landscaping since our last --<br/>13 WILLIAM J. CHEN: To Exhibit 148?<br/>14 JONATHAN JOLLEY: Correct.<br/>15 HEARING EXAMINER ROBESON HANNAN: Okay. The<br/>16 sidewalk on Carnegie was shown on 148?<br/>17 [Whispering and speaking off mic.]<br/>18 JONATHAN JOLLEY: This sidewalk is now shown<br/>19 because that was discussed as an option. That was not<br/>20 on the that original exhibit.<br/>21 HEARING EXAMINER ROBESON HANNAN: That was not on<br/>22 148?<br/>23 JONATHAN JOLLEY: No, it does not look -- it does<br/>24 not look to be on there. Well, what was discussed was<br/>25 the sidewalk, correct and then a connection, right, for</p> | <p>131</p> <p>1 WILLIAM J. CHEN: -- from what I've heard, I don't<br/>2 think the witness knows. I don't think Mr. Kline<br/>3 knows.<br/>4 HEARING EXAMINER ROBESON HANNAN: Well, I think<br/>5 what we're going to do is not admit 186. We're not<br/>6 admitting it. We're going to rely on 148. If you need<br/>7 the official 148 --<br/>8 JONATHAN JOLLEY: Yeah.<br/>9 HEARING EXAMINER ROBESON HANNAN: -- as long as<br/>10 you give it back.<br/>11 JONATHAN JOLLEY: May I use this?<br/>12 HEARING EXAMINER ROBESON HANNAN: And I'm going to<br/>13 mark this as not admitted.<br/>14 WILLIAM J. CHEN: Okay.<br/>15 HEARING EXAMINER ROBESON HANNAN: There's actually<br/>16 two sheets there. I need them both back.<br/>17 JONATHAN JOLLEY: Oh, okay.<br/>18 HEARING EXAMINER ROBESON HANNAN: I don't know --<br/>19 [Whispering off mic.]<br/>20 JONATHAN JOLLEY: Can I give them back to you both<br/>21 at the same time, or do you need me to take that off.<br/>22 HEARING EXAMINER ROBESON HANNAN: Yes, yes.<br/>23 JONATHAN JOLLEY: Okay.<br/>24 HEARING EXAMINER ROBESON HANNAN: Okay. Now,<br/>25 we're looking at 148.</p>   |
| <p>130</p> <p>1 these -- this right here?<br/>2 HEARING EXAMINER ROBESON HANNAN: I see -- I see a<br/>3 sidewalk on 148. I do not see --<br/>4 JONATHAN JOLLEY: On the version I was looking at<br/>5 on here, I did not see that. Oh, there you go, okay.<br/>6 HEARING EXAMINER ROBESON HANNAN: There's this --<br/>7 I see the connection.<br/>8 JONATHAN JOLLEY: Yeah, okay. I didn't think it<br/>9 was on there.<br/>10 HEARING EXAMINER ROBESON HANNAN: Mr. Chen -- Mr.<br/>11 Chen, do you want to -- do you want to come forward and<br/>12 look at 148, because both those items are shown.<br/>13 WILLIAM J. CHEN: They are. I was looking at the<br/>14 staff report -- the colored version of that -- and it<br/>15 did not have that on there.<br/>16 HEARING EXAMINER ROBESON HANNAN: I'll tell you<br/>17 what. We're not going to admit that. We'll stick with<br/>18 148.<br/>19 WILLIAM J. CHEN: I just want to make sure. I'm<br/>20 not trying to be difficult. I just want to make sure<br/>21 that we have a new document today, and if the document<br/>22 that we have today is showing new vegetation or -- or<br/>23 any changes in vegetation, then, you know, I need to<br/>24 know that. I don't --<br/>25 HEARING EXAMINER ROBESON HANNAN: I understand.</p>    | <p>132</p> <p>1 JONATHAN JOLLEY: Correct.<br/>2 JODY S. KLINE: Mr. Jolley, very simply, a black<br/>3 and white drawing just doesn't do justice to a<br/>4 landscape plan, so I'd like you to use that Exhibit 148<br/>5 just to go back and highlight some of the features that<br/>6 you had described earlier just so we have a better<br/>7 sense of what this is going to look like in actuality.<br/>8 JONATHAN JOLLEY: Okay, okay. Starting at the<br/>9 northwest corner again of the subject site -- Needwood<br/>10 Road and Carnegie Avenue -- you have -- we have a<br/>11 depiction of the existing -- existing tree to be<br/>12 reserved -- the champion tree -- proposing another<br/>13 existing ornamental tree along the front for some<br/>14 aesthetic purposes. The majority of the area --<br/>15 actually, I'll go the same way I was before. As you<br/>16 enter the property along the driveway, you have a<br/>17 landscaped screen area along the entire easterly<br/>18 property line that is depicted on this exhibit in a<br/>19 lighter green/darker green shades of -- of color with -<br/>20 - for the proposed canopy trees. It's very difficult<br/>21 to show the shrubbery in this layer, but the -- that is<br/>22 the plan of design for the entire easterly property<br/>23 landscape buffer.<br/>24 As you travel through the parking lot, you can see<br/>25 the shade trees provided within the parking lot for</p> |

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| <p>133</p> <p>1 shade cover. The darker areas of green with the dashed<br/>2 line, as you can see here, are the micro-bioretentation<br/>3 basins. Additional landscape screening along the<br/>4 western -- I'm sorry -- the eastern right of way line<br/>5 of Carnegie Avenue between the proposed parking lot<br/>6 that is perpendicular to that right of way. As you<br/>7 travel further down the site south -- southerly down<br/>8 the site, you will see a portion of the existing forest<br/>9 area and the -- the intent is that the remaining area<br/>10 in green will also be along the southern property be<br/>11 added for the additional long-term reforestation of the<br/>12 property. Did I get everything?<br/>13 JODY S. KLINE: Yeah. That's good enough on that.<br/>14 JONATHAN JOLLEY: Okay.<br/>15 JODY S. KLINE: Mr. Jolley, there are provisions<br/>16 in Section 596.4 of the zoning ordinance dealing with<br/>17 general landscaping requirements.<br/>18 JONATHAN JOLLEY: Um-hum.<br/>19 JODY S. KLINE: Rather than go through them<br/>20 individually, does the landscaping plan that you have<br/>21 provided satisfy all of the requirements in the zoning<br/>22 ordinance for things like canopy, perimeter planning,<br/>23 coverage -- does it meet all those standards?<br/>24 JONATHAN JOLLEY: Yes, sir.<br/>25 JODY S. KLINE: Okay. And that's confirmed</p> | <p>135</p> <p>1 compatibility is not landscape, you know, compatibility<br/>2 is a much broader land use, land planning opinion, and<br/>3 I have a problem with this gentleman rendering an<br/>4 opinion in that area. And number two, the question as<br/>5 posited is too indefinite. We just don't know.<br/>6 HEARING EXAMINER ROBESON HANNAN: Mr. Kline.<br/>7 JODY S. KLINE: So, is a timing question? In<br/>8 other words --<br/>9 HEARING EXAMINER ROBESON HANNAN: I think it's<br/>10 both.<br/>11 JODY S. KLINE: Yeah.<br/>12 HEARING EXAMINER ROBESON HANNAN: I think he's<br/>13 saying he can't testify as to -- well, correct me if<br/>14 I'm wrong.<br/>15 WILLIAM J. CHEN: Compatibility.<br/>16 HEARING EXAMINER ROBESON HANNAN: He can't testify<br/>17 as to the compatibility of the neighborhood because<br/>18 he's not a land planner and hasn't characterized the<br/>19 neighborhood, et cetera, et cetera.<br/>20 JODY S. KLINE: Okay.<br/>21 HEARING EXAMINER ROBESON HANNAN: The second<br/>22 objection that I hear is his -- if he can testify as to<br/>23 compatibility, is it compatible immediately, is it<br/>24 compatible 20 years from now. So, let's start with the<br/>25 compatibility issue first -- whether he can testify.</p>  |
| <p>134</p> <p>1 by the staff report?<br/>2 JONATHAN JOLLEY: Correct.<br/>3 JODY S. KLINE: Is that confirmed by the staff<br/>4 report?<br/>5 JONATHAN JOLLEY: Correct. Yes, it is, sir.<br/>6 JODY S. KLINE: Mr. Jolley, in your opinion as a<br/>7 landscape architect, are the proposed improvements<br/>8 harmonious with and will not alter the character of the<br/>9 surrounding neighborhood?<br/>10 JONATHAN JOLLEY: I believe they are harmonious<br/>11 with the character of the neighborhood.<br/>12 JODY S. KLINE: And are the --<br/>13 WILLIAM J. CHEN: Excuse me. Two issues. This<br/>14 gentleman is a qualified landscape architect. He has<br/>15 not been qualified to express an opinion about<br/>16 compliance with the zoning ordinance provisions, number<br/>17 one. And number two, at what point in time is the<br/>18 question. I mean, is the proposed improvements<br/>19 harmonious with -- we're talking about vegetation. I<br/>20 just -- I just want to know when is -- when is it<br/>21 harmonious? If you're going to allow him to testify to<br/>22 an opinion about compliance with the zoning ordinance<br/>23 on -- on compatibility, that's really my issue. I'm<br/>24 not -- you didn't hear me raise an issue about<br/>25 compliance with landscape requirements. But</p>   | <p>136</p> <p>1 JODY S. KLINE: Sure.<br/>2 HEARING EXAMINER ROBESON HANNAN: Do you have any<br/>3 opinion on that?<br/>4 JODY S. KLINE: It -- it's probably using -- using<br/>5 the phrase altering the character of the neighborhood<br/>6 probably is beyond what I should have asked him. It's<br/>7 probably better is the landscaping plan proposed allow<br/>8 this use to be compatible with its neighbors.<br/>9 WILLIAM J. CHEN: Same objection.<br/>10 HEARING EXAMINER ROBESON HANNAN: I do -- I do<br/>11 think it gets to the same objection. You know, I guess<br/>12 you could ask does it adequately screen.<br/>13 JODY S. KLINE: I was just going to say, I could<br/>14 break it down into components. With the fence, will<br/>15 there be any light from moving vehicles penetrating the<br/>16 fence? Will there be any light penetrating the fence?<br/>17 JONATHAN JOLLEY: No. No, but from the ground<br/>18 plane of a vehicle, the 6-foot high opaque fence, the<br/>19 direct light shine would be obscured from them.<br/>20 JODY S. KLINE: Will the fence and the proposed<br/>21 landscaping obscure views of the parking lot itself?<br/>22 JONATHAN JOLLEY: Yes.<br/>23 JODY S. KLINE: Okay. And will they obscure views<br/>24 of vehicles moving along the driveway?<br/>25 JONATHAN JOLLEY: Yes.</p> |

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| <p>137</p> <p>1 JODY S. KLINE; Okay. And will they obscure views<br/>2 of the building?<br/>3 JONATHAN JOLLEY: Portions of the building, sir.<br/>4 JODY S. KLINE: Okay. And, to use Mr. Chen's<br/>5 comment, how long is it going to take before that's<br/>6 really effective? Give us some sort of a maturity<br/>7 range. When you put it in day one, what's it going to<br/>8 do, and how long is it going to take?<br/>9 JONATHAN JOLLEY: I would -- I would expect at<br/>10 least 12-foot high -- a 10- to 12-foot high initial<br/>11 shade trees -- large shade trees as you see along the<br/>12 eastern property line. Generally, you're looking at<br/>13 establishment taking about a year with care and then<br/>14 approximately over the life of the tree -- another 10<br/>15 years -- you -- you're going to get growth every year.<br/>16 The first year, typically, you're -- you're just trying<br/>17 to maintain the health of that tree, get it to take<br/>18 root in its new home, and then over the course of<br/>19 another -- the next five to ten years, you will see an<br/>20 acceleration of growth at that point. So, you will<br/>21 have a screening -- a vegetative screen beginning at<br/>22 certain points when the trees are planted from the 6-<br/>23 foot -- when you look at the fence starting at 6 feet<br/>24 high going up toward the sky. You will have<br/>25 intermittent breaks of the vegetation. As that</p> | <p>139</p> <p>1 It's 12:40.<br/>2 HEARING EXAMINER ROBESON HANNAN: I will -- I<br/>3 understand. I guess we can break for lunch. I know<br/>4 that we don't have facilities here. I would prefer to<br/>5 give you an hour and fifteen minutes for lunch rather<br/>6 than an hour and a half. So, we would be back here --<br/>7 well, we can be back here, I guess, that would be 2.<br/>8 JODY S. KLINE: 2:00.<br/>9 HEARING EXAMINER ROBESON HANNAN: 2 p.m.<br/>10 JODY S. KLINE: Okay.<br/>11 HEARING EXAMINER ROBESON HANNAN: All right?<br/>12 Thank you very much.<br/>13 [Off the record at 12:40 p.m.]<br/>14 [On the record at 2:03 p.m.]<br/>15 HEARING EXAMINER ROBESON HANNAN: We were on cross<br/>16 examination of our landscape architect, which, I<br/>17 believe means that Mr. Chen is up.<br/>18 WILLIAM J. CHEN: Thank you. Mr. Jolley --<br/>19 HEARING EXAMINER ROBESON HANNAN: You're still<br/>20 under oath, Mr. Jolley. Go ahead.<br/>21 WILLIAM J. CHEN: What is your position again with<br/>22 Maser?<br/>23 JONATHAN JOLLEY: Landscape architect.<br/>24 WILLIAM J. CHEN: And you're on the team -- the<br/>25 Maser team for this conditional use application?</p>  |
| <p>138</p> <p>1 vegetation grows, obviously that upper canopy and<br/>2 screening will -- will obscure taller elements behind<br/>3 it.<br/>4 JODY S. KLINE: With regard to the tree, we talked<br/>5 about the SP or ST10, will the proposal cause any undue<br/>6 hardship on that tree?<br/>7 JONATHAN JOLLEY: I do not believe so.<br/>8 JODY S. KLINE: And will the improvements that<br/>9 you've described show on this exhibit? Basically,<br/>10 protect the use, peaceful enjoyment, and development<br/>11 potential of the adjacent properties?<br/>12 WILLIAM J. CHEN: Objection.<br/>13 HEARING EXAMINER ROBESON HANNAN: Sustained.<br/>14 That's -- we're back at the same issue.<br/>15 JODY S. KLINE: Okay.<br/>16 HEARING EXAMINER ROBESON HANNAN: I mean, he's<br/>17 testified about screening --<br/>18 JODY S. KLINE: Yeah, okay.<br/>19 HEARING EXAMINER ROBESON HANNAN: -- which he's<br/>20 allowed to do.<br/>21 JODY S. KLINE: Okay, okay. Then, I've completed<br/>22 my examination of Mr. Jolley.<br/>23 HEARING EXAMINER ROBESON HANNAN: All right.<br/>24 Thank you both. Anything else?<br/>25 WILLIAM J. CHEN: I'd like cross examination.</p>  | <p>140</p> <p>1 JONATHAN JOLLEY: Correct, sir.<br/>2 WILLIAM J. CHEN: And what was your role as a<br/>3 member of that team?<br/>4 JONATHAN JOLLEY: Primarily to provide services<br/>5 for the NRI-FSD work for preliminary forest<br/>6 conservation plan as part of the team and landscape<br/>7 design services.<br/>8 WILLIAM J. CHEN: Okay. And we've had prior<br/>9 testimony that the building that is proposed is the<br/>10 prototypical Primrose Building. Is that correct, sir?<br/>11 JONATHAN JOLLEY: That is my understanding, sir.<br/>12 But, I'll default to the architect if he wants to give<br/>13 you the specifics or any tweaks to it.<br/>14 WILLIAM J. CHEN: I understand. And the -- as I<br/>15 understand it, this proposal -- this application<br/>16 reflects the Primrose program that they utilize. Is<br/>17 that right?<br/>18 JONATHAN JOLLEY: Correct, sir.<br/>19 WILLIAM J. CHEN: And that is 193 children, 30<br/>20 staff, and 2 -- 30 staff and 2 administrators.<br/>21 JODY S. KLINE: Objection. I don't think that was<br/>22 covered on his testimony. It seems to be not an<br/>23 appropriate cross examination.<br/>24 WILLIAM J. CHEN: Oh, I can get into the details<br/>25 of what the -- this ties back to landscaping required</p> |

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| 141 | <p>1 for the site.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I know it does,</p> <p>3 but he doesn't have the programmatic --</p> <p>4 WILLIAM J. CHEN: I don't know, he didn't answer.</p> <p>5 If he doesn't, I appreciate that. All he has to say I</p> <p>6 don't know.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. If you</p> <p>8 know.</p> <p>9 JONATHAN JOLLEY: I'm not an expert on the</p> <p>10 programmatic elements.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: No, just do you</p> <p>12 know how many are proposed here or not?</p> <p>13 JONATHAN JOLLEY: I believe there are -- I don't</p> <p>14 know. I don't know for an exact answer. So, I have to</p> <p>15 state that as a fact.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>17 WILLIAM J. CHEN: That's fine.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay, that's</p> <p>19 fine. That's fine.</p> <p>20 JONATHAN JOLLEY: Yeah.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>22 WILLIAM J. CHEN: So, as I understand it, the site</p> <p>23 that you have been assigned to do the landscaping work</p> <p>24 is for this specific project.</p> <p>25 JONATHAN JOLLEY: Correct, sir.</p>   | 143 | <p>1 for this specific project.</p> <p>2 JONATHAN JOLLEY: Correct.</p> <p>3 WILLIAM J. CHEN: Okay. And by project, you mean</p> <p>4 the layout you see in front of you, correct, not the</p> <p>5 site in general, like for every --</p> <p>6 JONATHAN JOLLEY: Yeah, okay. I'm talking about -</p> <p>7 - I just want to make sure I answered your question.</p> <p>8 WILLIAM J. CHEN: As I understand the building was</p> <p>9 there, the parking that was going to be required, the</p> <p>10 access --</p> <p>11 JONATHAN JOLLEY: Correct.</p> <p>12 WILLIAM J. CHEN: You were -- you are providing</p> <p>13 the landscape services for that project.</p> <p>14 JONATHAN JOLLEY: That's correct.</p> <p>15 WILLIAM J. CHEN: And help me for a minute. Is</p> <p>16 that Exhibit 148?</p> <p>17 JONATHAN JOLLEY: Yes. This is Exhibit 148.</p> <p>18 WILLIAM J. CHEN: Did you prepare that exhibit,</p> <p>19 sir?</p> <p>20 JONATHAN JOLLEY: No, members of my team prepared</p> <p>21 the exhibit. I am not that technically competent to</p> <p>22 throw together that level of details. It's a</p> <p>23 combination of a couple programs.</p> <p>24 WILLIAM J. CHEN: I'm sympathetic to that. Can</p> <p>25 you ascribe any particular point in time of growth that</p> |
| 142 | <p>1 WILLIAM J. CHEN: And that is driven by the size</p> <p>2 of the building and other requirements for the Primrose</p> <p>3 operations. Is that right sir?</p> <p>4 JONATHAN JOLLEY: Correct, sir.</p> <p>5 WILLIAM J. CHEN: Okay. And as I understand your</p> <p>6 testimony -- and please, I don't want to -- this is not</p> <p>7 your area but it ties to landscaping.</p> <p>8 JONATHAN JOLLEY: Okay.</p> <p>9 WILLIAM J. CHEN: You were not given an assignment</p> <p>10 for any other type of project on this property other</p> <p>11 than what Primrose gave you.</p> <p>12 JONATHAN JOLLEY: I have not personally worked on</p> <p>13 any other uses, if that's what you mean. Are you</p> <p>14 talking about like a --</p> <p>15 WILLIAM J. CHEN: No, I mean on this property.</p> <p>16 JONATHAN JOLLEY: There were evaluations</p> <p>17 throughout the project as Mr. Intriago stated earlier -</p> <p>18 - there were some evaluations.</p> <p>19 WILLIAM J. CHEN: Right.</p> <p>20 JONATHAN JOLLEY: And he can get into that for</p> <p>21 conceptual layouts.</p> <p>22 WILLIAM J. CHEN: Yeah, but is that in your area?</p> <p>23 JONATHAN JOLLEY: He was focused on that.</p> <p>24 WILLIAM J. CHEN: Okay, fine. So, coming back to</p> <p>25 landscaping, the services that you were providing, it's</p> | 144 | <p>1 the landscaping that is depicted on 148 is --</p> <p>2 JONATHAN JOLLEY: Are you talking about existing</p> <p>3 vegetation or --</p> <p>4 WILLIAM J. CHEN: No, I mean the landscaping.</p> <p>5 JONATHAN JOLLEY: Oh, proposed vegetation?</p> <p>6 WILLIAM J. CHEN: Yes.</p> <p>7 JONATHAN JOLLEY: I cannot state that at this time.</p> <p>8 WILLIAM J. CHEN: But I take it on 148, sir, you</p> <p>9 are showing canopies with the trees. Is that right,</p> <p>10 sir?</p> <p>11 JONATHAN JOLLEY: Yes, to show the design along</p> <p>12 the edge for proposed trees. That is correct, sir.</p> <p>13 WILLIAM J. CHEN: Okay. By the way, when you were</p> <p>14 testifying about the screen --</p> <p>15 JONATHAN JOLLEY: Yes, sir.</p> <p>16 WILLIAM J. CHEN: -- have you ever conducted any</p> <p>17 type of test for this specific project for the</p> <p>18 screening from the Posey/Kosery property looking west</p> <p>19 at the site?</p> <p>20 JONATHAN JOLLEY: As if I was physically standing</p> <p>21 on their property --</p> <p>22 WILLIAM J. CHEN: Yes, yes.</p> <p>23 JONATHAN JOLLEY: -- and looking in?</p> <p>24 WILLIAM J. CHEN: Yes.</p> <p>25 JONATHAN JOLLEY: I have not physically stepped to</p>  |

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| 145 | <p>1 encroach upon their property out of respect, but I</p> <p>2 tried to get as close to possible standing right there</p> <p>3 looking in.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Where is there?</p> <p>5 JONATHAN JOLLEY: Oh, I'm sorry, ma'am, sorry</p> <p>6 about that.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>8 JONATHAN JOLLEY: Let's say approximately three-</p> <p>9 quarters of the way down the eastern property line</p> <p>10 abutting property adjacent to the -- just west of the</p> <p>11 existing shed on -- on the property.</p> <p>12 WILLIAM J. CHEN: Did you, sir, conduct any</p> <p>13 specific test to measure screening in regards to --</p> <p>14 JONATHAN JOLLEY: Physical, in the field tests?</p> <p>15 WILLIAM J. CHEN: Or some kind of test even in an</p> <p>16 office?</p> <p>17 JONATHAN JOLLEY: There are -- I don't know what</p> <p>18 you mean by test.</p> <p>19 WILLIAM J. CHEN: Well, I mean how -- you've</p> <p>20 testified that the screen -- the fence would screen a</p> <p>21 lot.</p> <p>22 JONATHAN JOLLEY: Yeah.</p> <p>23 WILLIAM J. CHEN: Okay. Did you do any tests to,</p> <p>24 you know, figure that out?</p> <p>25 JONATHAN JOLLEY: I can't say -- I can't say that</p>  | 147 | <p>1 higher than the fence, you would have potential views</p> <p>2 that could not be obscured. I'll let, to the lighting,</p> <p>3 the other --</p> <p>4 WILLIAM J. CHEN: I understand.</p> <p>5 JONATHAN JOLLEY: Okay.</p> <p>6 WILLIAM J. CHEN: So, you're -- please, I'm just</p> <p>7 trying to be clear on what you were testifying about.</p> <p>8 JONATHAN JOLLEY: I completely understand.</p> <p>9 WILLIAM J. CHEN: So, the exception to your</p> <p>10 testimony would be, as I take it, the parking lot</p> <p>11 lighting that's up on poles. You didn't deal with</p> <p>12 that.</p> <p>13 JONATHAN JOLLEY: I did not, sir.</p> <p>14 WILLIAM J. CHEN: Fine. That's fine. And I</p> <p>15 understand that you also testified that the landscape</p> <p>16 that you're proposing is compliant with the zoning</p> <p>17 ordinance, and I think it's 59.6.4. Am I -- have I got</p> <p>18 that right?</p> <p>19 JONATHAN JOLLEY: I'm looking at my</p> <p>20 requirements/compliance chart right now.</p> <p>21 WILLIAM J. CHEN: Yeah, I'm just going -- I'm not</p> <p>22 looking at your chart, I'm just going by what your</p> <p>23 testimony was.</p> <p>24 JONATHAN JOLLEY: Yes.</p> <p>25 WILLIAM J. CHEN: Okay. And those are the minimum</p> |
| 146 | <p>1 I tested -- I conducted a test on a specific fence.</p> <p>2 But I can state that the -- the -- we are stating the</p> <p>3 use of an opaque fence, of which we have not selected a</p> <p>4 final model. But the design intent of that fence is to</p> <p>5 specify a fence that will prevent the direct -- well,</p> <p>6 primarily the direct glare of a vehicle. That would be</p> <p>7 my primary concern from a -- from a -- as you're</p> <p>8 driving around the rear parking lot area south of the</p> <p>9 building, anyone pointing toward the east with their</p> <p>10 headlights, that would be the aim. Have I tested it</p> <p>11 specifically with a light and a car, I have not.</p> <p>12 WILLIAM J. CHEN: Okay. So, you're just going by</p> <p>13 your experience with fences?</p> <p>14 JONATHAN JOLLEY: Experience with fences, yes.</p> <p>15 WILLIAM J. CHEN: How about the -- the lighting on</p> <p>16 -- on the poles in the parking area?</p> <p>17 JONATHAN JOLLEY: That --</p> <p>18 JODY S. KLINE: Can I just interrupt for a second?</p> <p>19 Yeah, I do have a separate witness testifying with the</p> <p>20 lighting fixtures. Maybe that --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: To the extent</p> <p>22 you can.</p> <p>23 JONATHAN JOLLEY: Okay. To the extent I can, I</p> <p>24 have the design for the light -- for the light</p> <p>25 fixtures. Obviously, if there is an element that is</p> | 148 | <p>1 requirements. Is that right, sir?</p> <p>2 JONATHAN JOLLEY: That's correct. They're stated</p> <p>3 minimums.</p> <p>4 WILLIAM J. CHEN: Yeah, okay. Do you have, sir,</p> <p>5 the parking lot requirements in your hand under the</p> <p>6 zoning ordinance?</p> <p>7 JONATHAN JOLLEY: I do have some reference</p> <p>8 material from that.</p> <p>9 WILLIAM J. CHEN: If you go to --</p> <p>10 JONATHAN JOLLEY: I don't have the actual copy, so</p> <p>11 I'm looking at my compliance chart, sir.</p> <p>12 WILLIAM J. CHEN: Okay.</p> <p>13 JONATHAN JOLLEY: It's on my landscape sheet.</p> <p>14 WILLIAM J. CHEN: I -- I would refer you then to</p> <p>15 59.6.2.9C1, which is landscaped area where it talks</p> <p>16 about 10 or more spaces.</p> <p>17 JONATHAN JOLLEY: Yes, sir.</p> <p>18 WILLIAM J. CHEN: Now, do you want me to give you</p> <p>19 those again slowly, because I --</p> <p>20 JONATHAN JOLLEY: Yeah, say that again. I don't -</p> <p>21 - I just don't have that whole folder in front of me.</p> <p>22 WILLIAM J. CHEN: Sure, 59 --</p> <p>23 JONATHAN JOLLEY: Okay.</p> <p>24 WILLIAM J. CHEN: -- point 6, point 2, point 9,</p> <p>25 point capital C, and that -- that section is entitled</p>                          |

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| <p>149</p> <p>1 parking lot requirements for 10 or more --</p> <p>2 JONATHAN JOLLEY: Yeah, I --</p> <p>3 WILLIAM J. CHEN: And then you have -- you have</p> <p>4 then setback is 1, 2, and 3.</p> <p>5 JONATHAN JOLLEY: Correct.</p> <p>6 WILLIAM J. CHEN: And as I understand your</p> <p>7 testimony, this landscaping plan is compliant with that</p> <p>8 requirement -- those requirements.</p> <p>9 JONATHAN JOLLEY: Yes, sir. I can go through</p> <p>10 those if you wish.</p> <p>11 WILLIAM J. CHEN: No. I -- if you tell me it is,</p> <p>12 I'm okay.</p> <p>13 JONATHAN JOLLEY: Okay.</p> <p>14 WILLIAM J. CHEN: And, as I understand it though,</p> <p>15 and I think you already answered this, these are the</p> <p>16 minimum requirements that you've provided.</p> <p>17 JONATHAN JOLLEY: They're -- no. There are</p> <p>18 portions that we have exceeded the minimum.</p> <p>19 WILLIAM J. CHEN: Oh, is that right? Can you tell</p> <p>20 me what they are?</p> <p>21 JONATHAN JOLLEY: Sir, landscape area, we have a</p> <p>22 surface parking lot must have a landscape island that</p> <p>23 are a minimum of 100 square feet -- each comprising a</p> <p>24 minimum of 5% of the total area of the surface of the</p> <p>25 parking lot. So, we -- our landscape islands far</p>  | <p>151</p> <p>1 20 years of growth.</p> <p>2 JONATHAN JOLLEY: That's correct for the -- yes,</p> <p>3 that's correct.</p> <p>4 WILLIAM J. CHEN: Yeah, okay. Now, drop down to 3</p> <p>5 on the perimeter planting.</p> <p>6 JONATHAN JOLLEY: Yes.</p> <p>7 WILLIAM J. CHEN: In that regard, as I understand</p> <p>8 again your comments or your testimony, you're at the</p> <p>9 minimum except that it's 12 feet wide?</p> <p>10 JONATHAN JOLLEY: Yes. We have 12 feet wide --</p> <p>11 WILLIAM J. CHEN: Okay.</p> <p>12 JONATHAN JOLLEY: -- from the eastern face of the</p> <p>13 curb to the property line.</p> <p>14 WILLIAM J. CHEN: Okay. But otherwise, it's --</p> <p>15 it's the minimum.</p> <p>16 JONATHAN JOLLEY: It's 10 feet. It exceeds 10</p> <p>17 feet -- I'm speaking about the eastern property line</p> <p>18 landscape area -- from the eastern property line</p> <p>19 traveling west toward the site, we will have 12 feet</p> <p>20 minimum throughout that -- through the north and south</p> <p>21 access along the eastern property line. There are</p> <p>22 areas, if you look at where I'm pointing in the</p> <p>23 northeast corner of the driveway, that have some</p> <p>24 additional green space and then as you travel south</p> <p>25 along the existing --</p> |
| <p>150</p> <p>1 exceed that minimum in their individual elements.</p> <p>2 WILLIAM J. CHEN: Okay.</p> <p>3 JONATHAN JOLLEY: And as you calculate it for the</p> <p>4 overall square footage, sir, you would require based on</p> <p>5 our parking area 1,422 square feet of green space as</p> <p>6 well. We are providing 1,725 square feet, sir.</p> <p>7 WILLIAM J. CHEN: Okay.</p> <p>8 JONATHAN JOLLEY: We have a tree canopy</p> <p>9 requirement as a sub-item. We are required to provide</p> <p>10 a canopy coverage at 20 years' growth with shade trees</p> <p>11 that are provided through the site, and you project --</p> <p>12 WILLIAM J. CHEN: Just on that -- just for one</p> <p>13 minute.</p> <p>14 JONATHAN JOLLEY: Yeah.</p> <p>15 WILLIAM J. CHEN: As I understand your earlier</p> <p>16 testimony --</p> <p>17 JONATHAN JOLLEY: I didn't want to go too far.</p> <p>18 WILLIAM J. CHEN: You described what was being</p> <p>19 removed, and as I understand it, what you're now doing</p> <p>20 with the perimeter, you are compliant with the zoning</p> <p>21 ordinance in that you are replacing the existing trees</p> <p>22 and forest areas as you described.</p> <p>23 JONATHAN JOLLEY: Um-hum.</p> <p>24 WILLIAM J. CHEN: By compliance with subsection 2,</p> <p>25 which is -- which will provide 25 percent coverage at</p> | <p>152</p> <p>1 WILLIAM J. CHEN: Yeah, I --</p> <p>2 [Simultaneous speakers.]</p> <p>3 WILLIAM J. CHEN: I don't need you to over all</p> <p>4 that.</p> <p>5 JONATHAN JOLLEY: Okay, that's fine.</p> <p>6 WILLIAM J. CHEN: Do you know what the setback</p> <p>7 area is -- if this was developed with a dwelling?</p> <p>8 JONATHAN JOLLEY: I have not analyzed the</p> <p>9 residential landscaping components of that, sir.</p> <p>10 WILLIAM J. CHEN: Okay.</p> <p>11 JONATHAN JOLLEY: I would defer to that.</p> <p>12 WILLIAM J. CHEN: That's okay.</p> <p>13 JODY S. KLINE: Can I ask for clarity -- are you</p> <p>14 asking about structures or drive lanes or what?</p> <p>15 WILLIAM J. CHEN: No, I was not talking about</p> <p>16 travel lanes. In residential, you don't have to worry</p> <p>17 about it. I'm talking about the structure.</p> <p>18 JODY S. KLINE: Okay.</p> <p>19 WILLIAM J. CHEN: Do you know what, if any,</p> <p>20 elevation differential there is between the Kosery</p> <p>21 property and the subject property? Do you know the</p> <p>22 elevation differences, if any?</p> <p>23 JONATHAN JOLLEY: I don't know the specific</p> <p>24 elevations off the top of my head, no.</p> <p>25 WILLIAM J. CHEN: Okay. And, as I understand also</p>                       |

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| <p>153</p> <p>1 your testimony, the 12-foot setback is assuming<br/>2 approval of a parking waiver. Is that right, sir?<br/>3 JONATHAN JOLLEY: That is correct.<br/>4 WILLIAM J. CHEN: And as I also understand, you've<br/>5 done no calculations based on a survey with regard to<br/>6 the impact on tree SP10.<br/>7 JONATHAN JOLLEY: Sir, we have -- we have surveyed<br/>8 that tree. We have calculated the difference. I did<br/>9 not have that with me when I testified earlier. We<br/>10 will supply an exhibit for your review.<br/>11 WILLIAM J. CHEN: Well, it's not my review.<br/>12 JONATHAN JOLLEY: Well, the court -- everyone's<br/>13 review. We have calculated tree SP10. It is<br/>14 approximately -- right now, without having the plan in<br/>15 front of me -- it's 13 percent impact on the critical<br/>16 root zone for that tree. That will be shown on the<br/>17 exhibit for submission, and if you accept it, that be<br/>18 submitted as early as tomorrow. So, you will have a<br/>19 document --<br/>20 WILLIAM J. CHEN: We'll have it tomorrow?<br/>21 JONATHAN JOLLEY: You will have a document on the<br/>22 record --<br/>23 WILLIAM J. CHEN: Okay.<br/>24 JONATHAN JOLLEY: -- based on the surveyed<br/>25 location of the tree.</p> | <p>155</p> <p>1 JONATHAN JOLLEY: So, she asked us to verify that,<br/>2 and we did. We did survey that, and it will be shown<br/>3 on the plan.<br/>4 WILLIAM J. CHEN: Okay.<br/>5 JONATHAN JOLLEY: And that it will --<br/>6 HEARING EXAMINER ROBESON HANNAN: On which plan?<br/>7 JONATHAN JOLLEY: It will be shown on that exhibit<br/>8 tomorrow that I will prepare.<br/>9 HEARING EXAMINER ROBESON HANNAN: Oh, I see.<br/>10 JONATHAN JOLLEY: And them ultimately upon the<br/>11 final forest conservation plan.<br/>12 WILLIAM J. CHEN: Part of my problem is that you<br/>13 say -- and I picked up this -- you said several times<br/>14 during Mr. Kline's questioning that this issue of SP10<br/>15 will be resolved at final tree forestation plan.<br/>16 JONATHAN JOLLEY: Okay.<br/>17 WILLIAM J. CHEN: Now, the issue and the way you<br/>18 explained it is the parties to that will be, I guess,<br/>19 you or someone on behalf of Primrose -- someone from<br/>20 the staff of Park and Planning Commission --<br/>21 JONATHAN JOLLEY: Correct.<br/>22 WILLIAM J. CHEN: -- any my client, of course.<br/>23 How does that work? I mean, suppose my client is not<br/>24 happy with what Primrose proposes or what staff<br/>25 proposes, and we're out beyond the conditional use</p> |
| <p>154</p> <p>1 WILLIAM J. CHEN: Gotcha. I mean, I just want to<br/>2 know we're going to have it tomorrow.<br/>3 JONATHAN JOLLEY: You will have a document.<br/>4 WILLIAM J. CHEN: Don't get me wrong, I don't want<br/>5 it next week or two weeks.<br/>6 JONATHAN JOLLEY: No, you will have it -- you will<br/>7 have it tomorrow.<br/>8 WILLIAM J. CHEN: And you're also testifying that<br/>9 the limits of disturbance will go to the eastern<br/>10 property line and not beyond it.<br/>11 JONATHAN JOLLEY: That is correct, sir. That is -<br/>12 - that is the plan of development and the limits of<br/>13 disturbance are along the eastern property line.<br/>14 WILLIAM J. CHEN: Now, when did you first learn<br/>15 about tree SP10?<br/>16 JONATHAN JOLLEY: Tree SP10 was -- I don't know<br/>17 the specific date -- but it was obviously after the<br/>18 original --<br/>19 WILLIAM J. CHEN: Yes.<br/>20 JONATHAN JOLLEY: -- conduction or inspection.<br/>21 There were discussions with Katherine Nelson.<br/>22 Katherine Nelson also coordinated with others in our --<br/>23 our office and it was discovered that that tree was not<br/>24 correctly depicted.<br/>25 WILLIAM J. CHEN: Okay.</p>   | <p>156</p> <p>1 stage. The applicant chose to submit a preliminary<br/>2 forest conservation plan. It had an option. It could<br/>3 have filed a final but they filed a preliminary. So,<br/>4 as I understand your testimony that the ultimate<br/>5 decision relative to SP10 is going to be a process for<br/>6 a final that will involve the staff and Primrose.<br/>7 JONATHAN JOLLEY: Yes, it would be the process of<br/>8 going from the preliminary through the final and then<br/>9 discussions with staff.<br/>10 WILLIAM J. CHEN: But the preliminary that we have<br/>11 doesn't show that tree.<br/>12 JONATHAN JOLLEY: That's correct. Well, it's been<br/>13 -- it will -- we can amend that if they want that.<br/>14 They direct -- the direction was to just include it<br/>15 through the process of turning preliminary into a<br/>16 final.<br/>17 WILLIAM J. CHEN: Okay. I just want clarification<br/>18 on one thing. When you were talking about tree ST2,<br/>19 remember that tree? It's a 27-inch Silver Maple, I<br/>20 believe.<br/>21 JONATHAN JOLLEY: Yeah, ST2?<br/>22 WILLIAM J. CHEN: Yes.<br/>23 JONATHAN JOLLEY: Correct.<br/>24 WILLIAM J. CHEN: You said that what's going to --<br/>25 is -- that's in the upper northwest corner?</p>                            |



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| <p>157</p> <p>1 JONATHAN JOLLEY: ST2 is right here, sir.</p> <p>2 WILLIAM J. CHEN: I'm sorry, upper northwest</p> <p>3 corner of the subject site, right. That one doesn't</p> <p>4 have to be removed as I understand it. Is that right?</p> <p>5 JONATHAN JOLLEY: In my opinion, it does need to</p> <p>6 be removed.</p> <p>7 WILLIAM J. CHEN: Oh, I'm sorry, that's right.</p> <p>8 JONATHAN JOLLEY: And the -- there was one</p> <p>9 additional -- one additional element that I didn't</p> <p>10 mention earlier. Technically, that tree also falls</p> <p>11 within the playground area of -- of the proposed use</p> <p>12 and that would be not acceptable to Primrose from a</p> <p>13 safety standpoint, so I just want to let you know that.</p> <p>14 WILLIAM J. CHEN: Yes, and I put -- you said, and</p> <p>15 I put it in quotes in my notes that it had to be</p> <p>16 removed because it was within the playground area and</p> <p>17 there's grading and compaction impact.</p> <p>18 JONATHAN JOLLEY: Um-hum.</p> <p>19 WILLIAM J. CHEN: With it -- with the building as</p> <p>20 located and depicted --</p> <p>21 JONATHAN JOLLEY: Yes, sir.</p> <p>22 WILLIAM J. CHEN: -- that that was going to be</p> <p>23 required. Is that right?</p> <p>24 JONATHAN JOLLEY: In my opinion, yes.</p> <p>25 WILLIAM J. CHEN: Okay. So, if there's a different</p> | <p>159</p> <p>1 WILLIAM J. CHEN: And in your testimony -- the</p> <p>2 early part of your testimony, you use one of the other</p> <p>3 exhibits to show all the existing trees and forested</p> <p>4 area that's on the site, and you talked about coming</p> <p>5 down the eastern side that there were trees in that</p> <p>6 area culminating in the forest area in the further</p> <p>7 southeast.</p> <p>8 JONATHAN JOLLEY: Yeah, right.</p> <p>9 WILLIAM J. CHEN: And what's going to happen is</p> <p>10 that all of that's coming down and instead the -- I</p> <p>11 guess the Primrose will install the landscaping that</p> <p>12 you've proposed to go along that eastern side.</p> <p>13 JONATHAN JOLLEY: That is correct, sir.</p> <p>14 WILLIAM J. CHEN: As I understand your testimony -</p> <p>15 - this is probably the end -- the landscaping</p> <p>16 assignment that you were given by Primrose provided for</p> <p>17 that 12-foot setback on the eastern side, correct?</p> <p>18 JONATHAN JOLLEY: The site is laid out by the</p> <p>19 engineering when they worked with Primrose and provided</p> <p>20 for that dimensional area to work with, that's correct.</p> <p>21 WILLIAM J. CHEN: So, that -- you were not offered</p> <p>22 an option with your assignment to utilize a greater</p> <p>23 setback on the eastern side. It was always the 12-foot</p> <p>24 setback.</p> <p>25 JONATHAN JOLLEY: I don't know if previous</p> |
| <p>158</p> <p>1 building with different location, different</p> <p>2 configuration, it might not have to come down.</p> <p>3 JONATHAN JOLLEY: Potentially.</p> <p>4 WILLIAM J. CHEN: I mean, all I'm trying to be</p> <p>5 clear about it is --</p> <p>6 JONATHAN JOLLEY: As you see that building, that</p> <p>7 is correct in my opinion.</p> <p>8 WILLIAM J. CHEN: Yeah. I mean, as a landscape</p> <p>9 architect, you're working with what Primrose has given</p> <p>10 you as the building.</p> <p>11 JONATHAN JOLLEY: Correct.</p> <p>12 WILLIAM J. CHEN: You told us that, correct?</p> <p>13 JONATHAN JOLLEY: Correct.</p> <p>14 WILLIAM J. CHEN: And similarly, you also, as I</p> <p>15 understand it, when you were talking about the impacts,</p> <p>16 the tree SP9 --</p> <p>17 JONATHAN JOLLEY: Yes, sir.</p> <p>18 WILLIAM J. CHEN: Because it's located within the</p> <p>19 driveway parking area, I think your testimony was the</p> <p>20 inevitable -- "inevitable fact" is that it has to come</p> <p>21 down and it has to come down because of those</p> <p>22 improvements on site.</p> <p>23 JONATHAN JOLLEY: Correct. You are essentially</p> <p>24 constructing a curb -- a curb line right up to the</p> <p>25 foundation of that tree.</p>   | <p>160</p> <p>1 iterations had that or not. I don't believe so, but I</p> <p>2 can't say if that's a fact.</p> <p>3 WILLIAM J. CHEN: Yes, I'm only asking you.</p> <p>4 JONATHAN JOLLEY: I cannot -- yeah, I don't</p> <p>5 believe.</p> <p>6 WILLIAM J. CHEN: From -- from the assignment</p> <p>7 given to you as part of the team -- the Maser team --</p> <p>8 the provision for landscaping on the east was within</p> <p>9 that 12-foot wide area.</p> <p>10 JONATHAN JOLLEY: That is correct.</p> <p>11 WILLIAM J. CHEN: Okay. No other widths were</p> <p>12 offered to you or alternatives.</p> <p>13 JONATHAN JOLLEY: That's correct.</p> <p>14 WILLIAM J. CHEN: That's all I've got.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Did I hear you</p> <p>16 say -- I have one question and I'll give Mr. Chen an</p> <p>17 opportunity after Mr. Kline to cross on this question -</p> <p>18 - did I hear you say you haven't designed the 6-foot</p> <p>19 opaque fence yet?</p> <p>20 JONATHAN JOLLEY: We haven't selected a final -- a</p> <p>21 final manufacturer for that.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. So, is it</p> <p>23 -- so, it's not shown on the landscape plan?</p> <p>24 JONATHAN JOLLEY: No, it's on a specified --</p> <p>25 manufacturer's specified, you know, fence that you</p>  |

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| <p>161</p> <p>1 could just go purchase tomorrow. That is usually<br/>2 worked out with staff as you proceed through. The<br/>3 remaining engineers, they make engineering approvals.<br/>4 They may have a specific type --<br/>5 HEARING EXAMINER ROBESON HANNAN: Well, what -- I<br/>6 don't think they're -- but engineering?<br/>7 JONATHAN JOLLEY: Not engineering, but ultimately<br/>8 I may hear --<br/>9 HEARING EXAMINER ROBESON HANNAN: There are no<br/>10 subsequent approvals. There's no site plan here.<br/>11 JONATHAN JOLLEY: Well, we have to go -- we have<br/>12 to go through our -- our detailed site plan.<br/>13 HEARING EXAMINER ROBESON HANNAN: No, you don't.<br/>14 JONATHAN JOLLEY: The package for engineering.<br/>15 Someone's going to have feedback on the fence, you<br/>16 know, so yeah.<br/>17 HEARING EXAMINER ROBESON HANNAN: I just -- okay.<br/>18 JONATHAN JOLLEY: I could select a model right<br/>19 now. Is that -- is that a concern?<br/>20 HEARING EXAMINER ROBESON HANNAN: No, I'm not<br/>21 asking you to select a model.<br/>22 JODY S. KLINE: Well, I'm going to ask him to do<br/>23 that.<br/>24 [Speaking off mic.]<br/>25 HEARING EXAMINER ROBESON HANNAN: I'm finished.</p>  | <p>163</p> <p>1 fence?<br/>2 WILLIAM J. CHEN: Right.<br/>3 JONATHAN JOLLEY: Ultimately, I assume the county<br/>4 can -- they can vote and decide to move forward with<br/>5 the model that they're satisfactory with.<br/>6 WILLIAM J. CHEN: Who? I mean, I assume the fence<br/>7 is going to be on the Primrose property?<br/>8 JONATHAN JOLLEY: Oh, yeah, of course.<br/>9 WILLIAM J. CHEN: So, my clients can say you can't<br/>10 put something on my property.<br/>11 JONATHAN JOLLEY: Correct.<br/>12 WILLIAM J. CHEN: And if my clients look at what<br/>13 is being offered and they -- they don't like what's<br/>14 being offered --<br/>15 JONATHAN JOLLEY: Well, we could certainly work<br/>16 with them and select many, many different options to<br/>17 work and void that problem, in my opinion.<br/>18 WILLIAM J. CHEN: Are you aware of one of the<br/>19 recommended conditions of approval for --<br/>20 JONATHAN JOLLEY: For the fence?<br/>21 WILLIAM J. CHEN: -- private fencing, yeah?<br/>22 JONATHAN JOLLEY: Can you read it to me?<br/>23 WILLIAM J. CHEN: Sure. It's condition number 5.<br/>24 JONATHAN JOLLEY: Okay.<br/>25 WILLIAM J. CHEN: A fence must be constructed</p>   |
| <p>162</p> <p>1 WILLIAM J. CHEN: Well, I was confused. And thank<br/>2 you, Madam Examiner. You're saying that at some point<br/>3 in time -- at least in your prior testimony, Mr. Kline<br/>4 may have some more to add -- but at this phase after<br/>5 today's hearing, after approval when the staff of Park<br/>6 and Planning and Primrose get together and they meet<br/>7 with my clients and Primrose says we're going to put a<br/>8 6-foot fence up, who gets to approve that fence?<br/>9 JONATHAN JOLLEY: Ultimately, the approval is the<br/>10 county for the final construction documents.<br/>11 WILLIAM J. CHEN: You're saying that the --<br/>12 JONATHAN JOLLEY: Are you talking about the legal<br/>13 entity for approval to construct and break ground?<br/>14 WILLIAM J. CHEN: Don't get me wrong. Suppose my<br/>15 clients are sitting in a meeting --<br/>16 JONATHAN JOLLEY: Yeah.<br/>17 WILLIAM J. CHEN: -- with you and Park and<br/>18 Planning Commission staff and my clients say we don't<br/>19 like the fence. What happens -- what happens then?<br/>20 JONATHAN JOLLEY: Okay. You're asking for --<br/>21 WILLIAM J. CHEN: Yeah, what happens -- what<br/>22 happens?<br/>23 JONATHAN JOLLEY: If they do not like --<br/>24 WILLIAM J. CHEN: Yeah, right.<br/>25 JONATHAN JOLLEY: If your client does not like the</p> | <p>164</p> <p>1 along the eastern property line adjacent to the parking<br/>2 lot and driveway capable of blocking headlight glare.<br/>3 Prior to the public hearing with the hearing examiner,<br/>4 the design and materials must be approved by Planning<br/>5 Department staff.<br/>6 JONATHAN JOLLEY: Okay.<br/>7 WILLIAM J. CHEN: I mean, that's the condition.<br/>8 JONATHAN JOLLEY: Okay.<br/>9 WILLIAM J. CHEN: And respectfully, I don't think<br/>10 we have that information, and I think at a minimum, my<br/>11 clients are entitled to hear about it --<br/>12 JONATHAN JOLLEY: Okay.<br/>13 WILLIAM J. CHEN: -- and comment on it now rather<br/>14 than waiting to a post-decision process with the staff<br/>15 of Park and Planning.<br/>16 JONATHAN JOLLEY: Okay.<br/>17 WILLIAM J. CHEN: I mean, I don't know how you<br/>18 deal with that, but that's a recommended condition, and<br/>19 quite frankly, I think what I just went through with<br/>20 you -- and you were very cooperative and candid -- the<br/>21 practical consequences is what you've described unless<br/>22 this condition is satisfied.<br/>23 HEARING EXAMINER ROBESON HANNAN: Do you -- is<br/>24 there a question there?<br/>25 WILLIAM J. CHEN: No, I apologize.</p> |

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| <p>165</p> <p>1 JONATHAN JOLLEY: Yeah, we don't -- today as we</p> <p>2 sit here today, we don't have what's -- we do not have</p> <p>3 the design and materials that had been approved by the</p> <p>4 staff. We can -- now we know, just a second. I can --</p> <p>5 just like that, I can supply additional materials if</p> <p>6 you would wish to review during this proceeding.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Well, that's up</p> <p>8 to you.</p> <p>9 JODY S. KLINE: When you're ready, I'll -</p> <p>10 WILLIAM J. CHEN: Well, go ahead. Go right ahead.</p> <p>11 JODY S. KLINE: Sure. I think part of the</p> <p>12 conversation Mr. Chen pointed out something very</p> <p>13 accurate. I thought that we had a specification fence</p> <p>14 on the landscaping plans. I realize now that that's</p> <p>15 not correct. It's the design specification is on the</p> <p>16 drawings.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Right, I saw</p> <p>18 that.</p> <p>19 JODY S. KLINE: So, I had been expecting him to</p> <p>20 say oh, here's sheet such and such.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Well, I'm not</p> <p>22 even sure --</p> <p>23 JODY S. KLINE: Well, what I'm trying to do is I'm</p> <p>24 trying to solve the problem.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Yes, I know.</p>  | <p>167</p> <p>1 JONATHAN JOLLEY: They tend to be very</p> <p>2 structurally stable and --</p> <p>3 JODY S. KLINE: Is there any type of wood material</p> <p>4 you would recommend?</p> <p>5 JONATHAN JOLLEY: I would just go with pressure-</p> <p>6 treated -- you could either go with pressure-treated</p> <p>7 pine, and that lasts years and years with the</p> <p>8 treatments they have today.</p> <p>9 JODY S. KLINE: And leave it natural or would you</p> <p>10 pain it or what?</p> <p>11 JONATHAN JOLLEY: I would leave it natural to age</p> <p>12 because the paint can peel.</p> <p>13 JODY S. KLINE: Thanks for answering. I'll keep</p> <p>14 going or do you have some more, Bill?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well, I was -- I</p> <p>16 was asking the questions.</p> <p>17 JODY S. KLINE: I'm sorry.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: I started that</p> <p>19 one.</p> <p>20 JODY S. KLINE: Yeah.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: All right. I'm</p> <p>22 going to let you, Mr. Kline -- well, we can go to Mr.</p> <p>23 Chen. Do you have any questions on my questions?</p> <p>24 WILLIAM J. CHEN: No, we've been through them.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>  |
| <p>166</p> <p>1 I'm sorry. I just -- yeah. I don't --</p> <p>2 JODY S. KLINE: Mr. Jolley, if you can tell it's</p> <p>3 expected that we provide more specificity than we have</p> <p>4 so far, so I want you to right now describe what the</p> <p>5 fence is going to look like and then you'll deliver a</p> <p>6 specification of that fence tomorrow.</p> <p>7 JONATHAN JOLLEY: Okay. As of right now, it is my</p> <p>8 desire -- I can -- will provide a specification</p> <p>9 tomorrow for a 6-foot opaque fence. That style fence</p> <p>10 will be a board-on-board style fence that is going to</p> <p>11 provide a direct line of obscurity so that headlight</p> <p>12 minimum -- the headlights from vehicles are obscured.</p> <p>13 That's my goal for the fence primarily.</p> <p>14 JODY S. KLINE: And using your hands, graphically</p> <p>15 show the hearing examiner what board-on-board means.</p> <p>16 JONATHAN JOLLEY: Board-on-board is you have a --</p> <p>17 you have a central spine of a fence -- imagine two</p> <p>18 sticks going horizontally in front of me. On each side</p> <p>19 of the fence, you have a -- a slat of specified width,</p> <p>20 and that board offset by on the opposite and this side,</p> <p>21 and then they will alternate each side, so that you</p> <p>22 cannot have a direct line of sight through them. But,</p> <p>23 however, it allows a little bit of air movement, which</p> <p>24 is good.</p> <p>25 JODY S. KLINE: Is there any --</p> | <p>168</p> <p>1 WILLIAM J. CHEN: Thank you very much.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, do</p> <p>3 you have any redirect?</p> <p>4 JODY S. KLINE: Yeah, just some real quick</p> <p>5 questions. Sort of in order the questions came up --</p> <p>6 you were saying that your design was driven by a factor</p> <p>7 of Primrose's sort of program, but there are other</p> <p>8 factors that determined your landscaping plans,</p> <p>9 correct?</p> <p>10 JONATHAN JOLLEY: Of course.</p> <p>11 JODY S. KLINE: Such as?</p> <p>12 JONATHAN JOLLEY: Such as the requirements within</p> <p>13 the ordinance and also just the general character of</p> <p>14 the property. I like to use -- most of the material</p> <p>15 are native -- I think actually all of them are native -</p> <p>16 - and it's intended to enhance not just only the nature</p> <p>17 of the area, but also complement the reforestation area</p> <p>18 in the rear of the property. But, yes, the program</p> <p>19 element by Primrose was not the only directive.</p> <p>20 JODY S. KLINE: The comment was made that the</p> <p>21 applicant could have filed a final for his conservation</p> <p>22 plan but opted to file a preliminary for his</p> <p>23 conservation plan. Is that the proper sequencing of</p> <p>24 the review of a forest conservation plan?</p> <p>25 JONATHAN JOLLEY: Preliminary is always first.</p> |

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| <p>169</p> <p>1 JODY S. KLINE: so, under what circumstances could</p> <p>2 we have directly filed a final forest conservation plan</p> <p>3 to be reviewed as part of the conditional use</p> <p>4 application, if you know?</p> <p>5 JONATHAN JOLLEY: I don't believe you can, and I've</p> <p>6 never been through that before.</p> <p>7 WILLIAM J. CHEN: Take a look at the application</p> <p>8 requirements.</p> <p>9 JONATHAN JOLLEY: I mean, it may be possible.</p> <p>10 I've never experienced that.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: It's, you know,</p> <p>12 that's a legal issue that I -- you've answered to the</p> <p>13 extent you can.</p> <p>14 JONATHAN JOLLEY: Yeah, okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: But the code has</p> <p>16 the requirement. You can look at it.</p> <p>17 JODY S. KLINE: Okay. There has been testimony</p> <p>18 from Mr. Wolford, I'm sure, and Mr. Intriago about</p> <p>19 there had been iterations of the design. So, were you</p> <p>20 asked to participate in how landscaping would be and</p> <p>21 forest conservation would be provided for each of the</p> <p>22 iterations and designs, not just this plan?</p> <p>23 JONATHAN JOLLEY: Yes. We have looked with the</p> <p>24 other design -- the other conceptual design layouts.</p> <p>25 We did look at them -- I did look at them for the</p>   | <p>171</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Was that a</p> <p>2 double negative? Okay. Mr. -- well, are we -- what</p> <p>3 witness -- is there a -- okay.</p> <p>4 JODY S. KLINE: Well, the agreement was we would</p> <p>5 recess our -- our having mr Intriago return and go</p> <p>6 ahead and have Mr. Chen call his landscape architect.</p> <p>7 WILLIAM J. CHEN: Yeah. Can I just have a moment</p> <p>8 to find him?</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Yes. Okay. So,</p> <p>10 are we having the -- your civil engineer come back or</p> <p>11 are we having Mr. Chen's landscape architect?</p> <p>12 JODY S. KLINE: I thought that was the</p> <p>13 arrangement.</p> <p>14 WILLIAM J. CHEN: Yes, Vince Berg, I apologize.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Oh, okay. So,</p> <p>16 please raise your right hand -- you're ahead of me --</p> <p>17 do you solemnly affirm under penalties of perjury that</p> <p>18 the statements you're about to make are the truth, the</p> <p>19 whole truth, and nothing but the truth?</p> <p>20 VINCENT BERG: I do.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Thank you. Go</p> <p>22 ahead, Mr. Chen.</p> <p>23 WILLIAM J. CHEN: All right. Mr. Berg, would you</p> <p>24 please give us your full name and address?</p> <p>25 VINCENT BERG: Close enough now? Is that good?</p>  |
| <p>170</p> <p>1 purpose of forest conservation area as well. I didn't</p> <p>2 detail design every specific conceptual layout to be</p> <p>3 compatible with the ordinance, but I did have input on</p> <p>4 hey, where are we going to put the forest that's</p> <p>5 required on the property.</p> <p>6 JODY S. KLINE: And there's a question about the</p> <p>7 trees along the east side of the property -- the</p> <p>8 existing trees along the east side of the property.</p> <p>9 What is the quality of that -- that tree line, and what</p> <p>10 will be the quality after the placement?</p> <p>11 JONATHAN JOLLEY: I mean generally, the character</p> <p>12 of the trees along the eastern property line, they're</p> <p>13 in good condition. There wasn't anything of major</p> <p>14 concern from a safety factor on the trees that we need</p> <p>15 to remove or we're removing. And then, we will be</p> <p>16 protecting them along the LOD and supplying new</p> <p>17 landscaping along the eastern property line, which will</p> <p>18 be young and healthy and preserved and enhance it in</p> <p>19 the long run.</p> <p>20 JODY S. KLINE: Thank you. I have no further</p> <p>21 questions of Mr. Jolley.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: All right. Mr.</p> <p>23 Chen, did you already not need a question based on my</p> <p>24 question?</p> <p>25 WILLIAM J. CHEN: I'm satisfied.</p> | <p>172</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Just a second.</p> <p>2 He has to get his phone.</p> <p>3 VINCENT BERG: Full name Vincent H. Berg, civil</p> <p>4 engineer consultant, professional engineer. Address,</p> <p>5 204 Halpine Walk Court, Rockville, Maryland 20851.</p> <p>6 WILLIAM J. CHEN: Mr. Berg, if I may, let me show</p> <p>7 you what's been marked as Exhibit 115-C. Can you</p> <p>8 identify what this is, sir?</p> <p>9 VINCENT BERG: This is -- this is my resumé.</p> <p>10 JODY S. KLINE: Oh, okay.</p> <p>11 WILLIAM J. CHEN: Madam Examiner, you've got a</p> <p>12 copy of this.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>14 WILLIAM J. CHEN: Mr. Berg, could you please give</p> <p>15 the Examiner fairly briefly but expansively your career</p> <p>16 and your background, sir?</p> <p>17 VINCENT BERG: I have a 45-year career -- 46 years</p> <p>18 actually -- starting off with Montgomery County</p> <p>19 Department of Transportation for several years in their</p> <p>20 design, and then with the Montgomery County Department</p> <p>21 of Environmental Protection in their stormwater and</p> <p>22 sediment control section reviewing and approving all of</p> <p>23 the development plans here in the county. Then, I went</p> <p>24 to Park and Planning for a year and reviewed and did</p> <p>25 planning with the Park and Planning Commission. Then,</p> |

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| <p>173</p> <p>1 I was appointed State Director of Sediment and<br/>2 Stormwater for the Maryland Department of the<br/>3 Environment and that lasted about four years -- four a<br/>4 a half years. Then, I began my own consulting<br/>5 businesses and I did Berg Engineering where I did<br/>6 consulting work, and then I began a company called<br/>7 Forestry and Conservation for the last 25 years where<br/>8 we developed offsite forest mitigation projects, over<br/>9 650 acres of mitigation, for mostly Montgomery County<br/>10 but for other counties as well. And then, I also had a<br/>11 stormwater management consulting business that I did<br/>12 also as part of my independent consulting business.<br/>13 WILLIAM J. CHEN: You've testified as an expert<br/>14 witness. Isn't that right, sir?<br/>15 VINCENT BERG: Yes, in courts and in the Board of<br/>16 Appeals.<br/>17 WILLIAM J. CHEN: And how do you generally inform<br/>18 the examiner your areas of expertise that you've been<br/>19 recognized at?<br/>20 VINCENT BERG: Stormwater, sediment control, and<br/>21 forestry.<br/>22 WILLIAM J. CHEN: Okay. Madam Examiner, Mr. Kline<br/>23 can examine him. I offer Mr. Berg as an expert witness<br/>24 in the areas he's identified.<br/>25 HEARING EXAMINER ROBESON HANNAN: Do you have any</p> | <p>175</p> <p>1 JODY S. KLINE: You do not. Well, that sort of<br/>2 gets me to the point where I find it hard to believe he<br/>3 can be an expert to critique testimony on forest<br/>4 conservation plan if he does not have the credentials<br/>5 to prepare and certify one himself. So, I have no<br/>6 problem with Mr. Berg's expertise in stormwater<br/>7 management-related areas, but I don't believe that he's<br/>8 qualified to critique the forest conservation, at least<br/>9 as an expert, let me put it that way.<br/>10 WILLIAM J. CHEN: Mr. Berg, my questions don't go<br/>11 to plan of forest preservation, it goes to forestation<br/>12 and trees and in that area, as I understand, you have<br/>13 been recognized as an expert. Is that right?<br/>14 VINCENT BERG: I have quite a bit of experience --<br/>15 25 years of experience creating forest mitigation<br/>16 banks, also was on the Forestry Board here for the<br/>17 county for a number of years. So, I've had quite a bit<br/>18 of experience and also with Park and Planning, we had<br/>19 -- forest conservation was part of the issue. It was<br/>20 beginning at that time.<br/>21 WILLIAM J. CHEN: Now, in this particular case, we<br/>22 have a landscape plan that involves a proposal for<br/>23 different types of vegetation that would be planted<br/>24 pursuant to an approval for conditional use. Is that<br/>25 right?</p> |
| <p>174</p> <p>1 objection, Mr. Kline?<br/>2 JODY S. KLINE: Have you ever been qualified as an<br/>3 expert in -- as a landscape architect before the<br/>4 hearing examiner?<br/>5 VINCENT BERG: No.<br/>6 JODY S. KLINE: When you were qualified as an<br/>7 expert in forestry, what was the -- what was the<br/>8 subject of the testimony that -- what was the subject<br/>9 of testimony?<br/>10 VINCENT BERG: That would have been in<br/>11 relationship to sediment control, stormwater<br/>12 management, and planning.<br/>13 JODY S. KLINE: Okay. You are here to critique<br/>14 Mr. Jolley's testimony on the forest conservation plan<br/>15 and landscaping plan?<br/>16 VINCENT BERG: I don't know if that's true or not<br/>17 true.<br/>18 JODY S. KLINE: Well, Mr. Chen is going to ask you<br/>19 some questions, and presumably they're going to be in<br/>20 response to what Mr. Jolley has been saying, and that's<br/>21 what you'll be talking about?<br/>22 VINCENT BERG: Yes.<br/>23 JODY S. KLINE: Do you have the qualifications to<br/>24 prepare a forest conservation plan yourself?<br/>25 VINCENT BERG: I do not.</p>   | <p>176</p> <p>1 VINCENT BERG: Yes, correct.<br/>2 WILLIAM J. CHEN: Okay. And I've asked you to<br/>3 review those types of plans. Isn't that correct?<br/>4 VINCENT BERG: Yes.<br/>5 WILLIAM J. CHEN: Okay. And it's those types of<br/>6 plans that you are prepared to offer your comments and<br/>7 opinions. Is that right?<br/>8 VINCENT BERG: Correct.<br/>9 WILLIAM J. CHEN: Okay. Have I asked you to<br/>10 review or to offer any opinions about a preliminary<br/>11 forest conservation plan which is a totally different<br/>12 exhibit?<br/>13 VINCENT BERG: No.<br/>14 WILLIAM J. CHEN: Okay.<br/>15 HEARING EXAMINER ROBESON HANNAN: I'm going to<br/>16 accept him as an expert in -- what are you proffering<br/>17 him as, an expert in forestry?<br/>18 WILLIAM J. CHEN: In forestry and stormwater<br/>19 management, yes.<br/>20 HEARING EXAMINER ROBESON HANNAN: I'll -- I'll<br/>21 accept him as an expert in forestry.<br/>22 JODY S. KLINE: I'm okay with those areas, yeah.<br/>23 WILLIAM J. CHEN: Okay. We should have had a<br/>24 conversation about that too. Mr. -- Mr. Berg, you've<br/>25 conducted a site visit on this property. Isn't that</p>   |

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| <p>177</p> <p>1 right, sir?</p> <p>2 VINCENT BERG: Yes.</p> <p>3 WILLIAM J. CHEN: In fact, you've also been onsite</p> <p>4 with staff of the Maryland National Capital Park and</p> <p>5 Planning Commission.</p> <p>6 VINCENT BERG: They were at the same site visit,</p> <p>7 yes.</p> <p>8 WILLIAM J. CHEN: And you reviewed the application</p> <p>9 documents that have been filed in this case by Primrose</p> <p>10 as previously identified.</p> <p>11 VINCENT BERG: Yes.</p> <p>12 WILLIAM J. CHEN: Okay. Have you reviewed the</p> <p>13 Maryland National Capital Park and Planning Commission</p> <p>14 staff report including the report of its environmental</p> <p>15 planner?</p> <p>16 VINCENT BERG: Yes.</p> <p>17 WILLIAM J. CHEN: Do you agree with that report?</p> <p>18 VINCENT BERG: I agree with the planner's</p> <p>19 statements in the report, which specifically ask for</p> <p>20 SP9 not to be removed.</p> <p>21 JODY S. KLINE: Objection. I mean, I think this</p> <p>22 is the very thing I just said that he wasn't qualified</p> <p>23 to be testifying about.</p> <p>24 WILLIAM J. CHEN: He's talking about a tree.</p> <p>25 That's all he's talking about.</p>   | <p>179</p> <p>1 WILLIAM J. CHEN: Okay.</p> <p>2 VINCENT BERG: But she, very specifically, asked</p> <p>3 that SP9 not be removed because it was a significant</p> <p>4 tree that should be preserved.</p> <p>5 WILLIAM J. CHEN: I -- I take it from what you've</p> <p>6 just said that apparently you do agree with the report</p> <p>7 done by Ms. Nelson.</p> <p>8 VINCENT BERG: Yes, and then I think some of the</p> <p>9 other trees also should be -- the significant trees</p> <p>10 should be preserved also.</p> <p>11 WILLIAM J. CHEN: Fine.</p> <p>12 JODY S. KLINE: Ms. Robeson, I guess I'm just</p> <p>13 going to have a register a complaint because the report</p> <p>14 that we're talking about is on the forest conservation</p> <p>15 plan. It is not the technical staff report of the</p> <p>16 conditional use application. And I think that this is</p> <p>17 getting into an area of is this -- why -- well, it's</p> <p>18 should this tree be saved or not, and I just think</p> <p>19 that's dealing with the waiver issue --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Well, I'm not</p> <p>21 sure 100 percent where he's going with it. What I'd</p> <p>22 like to do is just -- we're not going -- I've made it</p> <p>23 clear we're not going to relitigate the variance or</p> <p>24 whatever -- we're not relitigating the PFCP. Now, I'm</p> <p>25 going to give him some leeway to tie it to the</p> |
| <p>178</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>2 which report are you -- are you talking about the PFCP</p> <p>3 staff report?</p> <p>4 WILLIAM J. CHEN: There -- there is a Park and</p> <p>5 Planning Commission staff report, yes. But there's</p> <p>6 also --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: So, the PFCP?</p> <p>8 WILLIAM J. CHEN: Yes, and there's also an</p> <p>9 environmental staff report that is not limited to the</p> <p>10 overall preliminary forest conservation plan. That</p> <p>11 report deals with trees and removal of trees.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. I will</p> <p>13 accept it if you keep it away from the criteria for</p> <p>14 approval of the PFCP.</p> <p>15 WILLIAM J. CHEN: We're not even going there.</p> <p>16 That -- we're not in that area.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 JODY S. KLINE: So, then I guess you need to</p> <p>19 repeat the question so I can catch up.</p> <p>20 WILLIAM J. CHEN: Okay. Well, the question was,</p> <p>21 do you agree with the report that was submitted by the</p> <p>22 environmental planner, Ms. Nelson?</p> <p>23 VINCENT BERG: The report that Ms. Nelson wrote</p> <p>24 had several specific things she recommended that the</p> <p>25 planning board did not accept.</p> | <p>180</p> <p>1 conditional use.</p> <p>2 WILLIAM J. CHEN: That's exactly where I'm going.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. So, but</p> <p>4 we're not relitigating the PFCP.</p> <p>5 WILLIAM J. CHEN: No, no. But, as I said earlier</p> <p>6 today, there's parts of the preliminary forest</p> <p>7 conservation plan that involve trees, and where they</p> <p>8 are and what's going to happen to them.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Well, if you can</p> <p>10 tie to the criteria -- his evidence to the criteria for</p> <p>11 a conditional use as opposed to the PFCP, then I'd be</p> <p>12 interested in hearing it.</p> <p>13 WILLIAM J. CHEN: That's fine and let me back up</p> <p>14 on that. You've read the staff report prepared by</p> <p>15 Katherine Nelson. Is that right?</p> <p>16 VINCENT BERG: Correct.</p> <p>17 WILLIAM J. CHEN: And that report is part of the</p> <p>18 material that has been submitted in support of this</p> <p>19 conditional use. Is that your understanding?</p> <p>20 VINCENT BERG: That's my understanding.</p> <p>21 WILLIAM J. CHEN: Okay. And that is the report</p> <p>22 that I'm asking your opinion and your comments on. I'm</p> <p>23 not asking them for any of the standards for a</p> <p>24 preliminary forest conservation plan. I'm asking about</p> <p>25 the report that deals with trees and tree removals.</p>                          |

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| <p>181</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 WILLIAM J. CHEN: Sir, please explain to the</p> <p>3 Hearing Examiner your opinions and evaluation of that</p> <p>4 staff report. Don't go beyond it and stick with trees.</p> <p>5 VINCENT BERG: Katherine Nelson has been there a</p> <p>6 long time. I've known her a long time. We've worked</p> <p>7 on many projects together. She had specific</p> <p>8 recommendations in the report that she recommended, and</p> <p>9 I concur with her on those recommendations.</p> <p>10 WILLIAM J. CHEN: Stick with those for the time</p> <p>11 being. Please explain to the Hearing Examiner those</p> <p>12 that you concur.</p> <p>13 VINCENT BERG: She very specifically said SP9</p> <p>14 should not be removed and I agree with her.</p> <p>15 WILLIAM J. CHEN: Why?</p> <p>16 VINCENT BERG: It's a significant tree. It's a</p> <p>17 large -- it's right on the property line -- almost on</p> <p>18 the property line, it's very close to it -- and it will</p> <p>19 have significant impact to the neighboring property if</p> <p>20 it's removed.</p> <p>21 WILLIAM J. CHEN: In what regard?</p> <p>22 VINCENT BERG: Visual impact, screening,</p> <p>23 landscaping, it will change the character of the</p> <p>24 neighborhood and the neighbor property.</p> <p>25 WILLIAM J. CHEN: Okay. Now, if I may, you've</p> | <p>183</p> <p>1 them with.</p> <p>2 VINCENT BERG: Right. They're going to remove</p> <p>3 most of the eastern forest that's on the site now.</p> <p>4 WILLIAM J. CHEN: Okay. And you heard him</p> <p>5 describe what the replacement is going to be. Isn't</p> <p>6 that right?</p> <p>7 VINCENT BERG: Yes.</p> <p>8 WILLIAM J. CHEN: Okay. And how long -- if you</p> <p>9 have an opinion -- based upon your experience with</p> <p>10 forest, afforestation, reforestation, you've testified</p> <p>11 a lot in 25 years -- do you have opinion as to how long</p> <p>12 it will take what they are proposing to plan to become</p> <p>13 a forested or treed area that would provide the type of</p> <p>14 buffer that exists there today?</p> <p>15 VINCENT BERG: The trees that are going to be</p> <p>16 planted along the eastern boundary.</p> <p>17 WILLIAM J. CHEN: Yes.</p> <p>18 VINCENT BERG: Those trees are going to be --</p> <p>19 they're supposed to be 3-inches in diameter at breast</p> <p>20 height, but some of the plans show them as 1-1/2 to 3</p> <p>21 inches. So, they should be a minimum of 3 inches and</p> <p>22 they will take a while to grow out. It'll be slow for</p> <p>23 the first 2-3 years, like because they've been dug up</p> <p>24 and replanted, so they're going to be slow to get</p> <p>25 established. And then it'll take probably a full 20</p> |
| <p>182</p> <p>1 also reviewed Mr. Jolley's landscape plan. Is that</p> <p>2 right, sir?</p> <p>3 VINCENT BERG: I looked at it, yes.</p> <p>4 WILLIAM J. CHEN: Okay. And do you agree with the</p> <p>5 provisions that that plan calls for for the development</p> <p>6 of the conditional use?</p> <p>7 VINCENT BERG: Correct.</p> <p>8 WILLIAM J. CHEN: You've looked at it?</p> <p>9 VINCENT BERG: Yes.</p> <p>10 WILLIAM J. CHEN: Okay. Do you agree with what</p> <p>11 that plan is proposing to do for this site for the</p> <p>12 conditional use?</p> <p>13 VINCENT BERG: I don't want to comment on the</p> <p>14 landscaping because I'm not the landscape architect,</p> <p>15 but that wouldn't be the way I would have preferred to</p> <p>16 see the site laid out.</p> <p>17 WILLIAM J. CHEN: Looking at the site as it exists</p> <p>18 today -- and you've seen it, you've conducted a site</p> <p>19 visit -- how does -- do you have an opinion as to</p> <p>20 whether or not that landscape plan in any way is not</p> <p>21 consistent with the existing conditions on the site?</p> <p>22 VINCENT BERG: Did he represent all of the things</p> <p>23 correctly? I believe so.</p> <p>24 WILLIAM J. CHEN: No. No, I'm saying compared to</p> <p>25 what's there today and what they're going to replace</p>   | <p>184</p> <p>1 years to really fully canopy out to their full canopy.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I'm sorry, how</p> <p>3 many years?</p> <p>4 VINCENT BERG: Twenty.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Twenty.</p> <p>6 WILLIAM J. CHEN: Can you -- you also reviewed the</p> <p>7 plans for the storm drain system. Isn't that right,</p> <p>8 sir?</p> <p>9 VINCENT BERG: Yes.</p> <p>10 WILLIAM J. CHEN: Where does that connect to</p> <p>11 offsite? Where does it go?</p> <p>12 VINCENT BERG: It connects downstream below the</p> <p>13 property, through the existing subdivision. It's</p> <p>14 approximately 1,100 feet of new -- new and replacement</p> <p>15 storm drains.</p> <p>16 WILLIAM J. CHEN: Can you explain to the Hearing</p> <p>17 Examiner how that system that's being proposed may or</p> <p>18 may not have an impact on Crabbs Branch Creek?</p> <p>19 VINCENT BERG: I can.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Can you explain</p> <p>21 the drainage? I wasn't following you. When you said</p> <p>22 it crosses the subdivision, are you talking this lot or</p> <p>23 are you talking the subdivision to the south?</p> <p>24 JODY S. KLINE: May I make a suggestion?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Yeah.</p>  |

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47 (185 to 188)

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| 185 | <p>1 JODY S. KLINE: There is an exhibit -- I</p> <p>2 gratuitously have one here that's a much larger area.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>4 JODY S. KLINE: It might give Mr. Berg a little</p> <p>5 bit better --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: I think it's</p> <p>7 Exhibit 149 I ended up putting up there with the other</p> <p>8 one.</p> <p>9 JODY S. KLINE: I believe this was marked as an</p> <p>10 exhibit at the first hearing -- this is 149.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Do you just want</p> <p>12 to hand 148 back to me, because that's my exhibit.</p> <p>13 JODY S. KLINE: I wasn't sure if you were finished</p> <p>14 with it.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>16 just leave it up there for the time being.</p> <p>17 JODY S. KLINE: And do you want me to rearrange</p> <p>18 this?</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yes, if you</p> <p>20 don't mind. Thank you.</p> <p>21 WILLIAM J. CHEN: And maybe Mr. Kline may be</p> <p>22 using that exhibit and 93-G.</p> <p>23 [Shuffling through exhibits and speaking off mic.]</p> <p>24 HEARING EXAMINER ROBESON HANNAN: I have to ask</p> <p>25 someone to angle it.</p>  | 187 | <p>1 that's failed and it's now a gully.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you</p> <p>3 for that.</p> <p>4 VINCENT BERG: Impacts to Crabbs Branch will</p> <p>5 include water quality, increased erosion along Crabbs</p> <p>6 Branch, change in temperature down Crabbs Branch, which</p> <p>7 is a class 4 stream. Class 4 streams are basically put</p> <p>8 and take trout streams. I built the large Crabbs</p> <p>9 Branch facility upstream, which has kept the stream in</p> <p>10 pretty good condition until recently. It used to be in</p> <p>11 very good condition going downstream toward Rock --</p> <p>12 main stem of Rock Creek, but in recent years, that</p> <p>13 quality has turned from good to not so good to poor.</p> <p>14 So, it's gotten worse over the last several years, and</p> <p>15 I have to account that just to development in the area.</p> <p>16 WILLIAM J. CHEN: Now how is this proposal going</p> <p>17 to have any impact on what the conditions you've just</p> <p>18 described?</p> <p>19 VINCENT BERG: Well, this will continue that</p> <p>20 exacerbation of water quality within the Crabbs Branch</p> <p>21 stream system.</p> <p>22 WILLIAM J. CHEN: Does 93-G give the -- the amount</p> <p>23 of new -- excuse me. As I understand, 93-G is showing</p> <p>24 new piping. Is that right, sir?</p> <p>25 VINCENT BERG: It's about 1,100 feet -- a little</p>                                     |
| 186 | <p>1 WILLIAM J. CHEN: I'll take care of it.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: We will actually</p> <p>3 hopefully have screens. Now, can you push it a little</p> <p>4 toward me and can you see it, Mr. Berg?</p> <p>5 VINCENT BERG: Just barely.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Do you not need</p> <p>7 it?</p> <p>8 VINCENT BERG: I don't --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Oh, you have the</p> <p>10 little one. Okay, 93-G. All right. Thank you.</p> <p>11 WILLIAM J. CHEN: I believe the question was --</p> <p>12 the Examiner's question was asking Mr. Berg --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>14 WILLIAM J. CHEN: -- to edify her on where the --</p> <p>15 the storm drain system is going and describe it. I</p> <p>16 think that was your question essentially.</p> <p>17 VINCENT BERG: Based on 93-G, you can see that it</p> <p>18 connects from -- it looks like it's Needwood, Carnegie</p> <p>19 -- Carnegie down -- down Carnegie, down through</p> <p>20 Ottenbrook Terrace.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: I see it.</p> <p>22 VINCENT BERG: Then, back through the backyards of</p> <p>23 several homes and then to an outfall, which then</p> <p>24 discharges, which had been a level spreader, which was</p> <p>25 supposed to sheet flow it down to Crabbs Branch, but</p> | 188 | <p>1 bit more than 1,100 feet.</p> <p>2 WILLIAM J. CHEN: Okay. And does this show the --</p> <p>3 I guess no. This is -- this is a public storm drain.</p> <p>4 Is that right?</p> <p>5 VINCENT BERG: Public storm drain to public</p> <p>6 standards, yes. DOT standards.</p> <p>7 WILLIAM J. CHEN: So, for what essentially in</p> <p>8 layman's description is they're taking the -- the</p> <p>9 stormwater rain -- the rain stormwater runoff from this</p> <p>10 site after development and they're adding it into this</p> <p>11 piping, which feeds other communities or other</p> <p>12 subdivisions, taking it down to the Crabbs Branch.</p> <p>13 VINCENT BERG: Right. Even though they are</p> <p>14 providing stormwater management controls --</p> <p>15 WILLIAM J. CHEN: They are onsite, right?</p> <p>16 VINCENT BERG: Onsite. They are not providing the</p> <p>17 quantity controls, 2 or 5 or 10-year storms. Drains</p> <p>18 are designed for 10-year storms. So, all the high-flow</p> <p>19 intense storms will go off the site and off the</p> <p>20 watershed and be collected by the storm drain system</p> <p>21 and because they did not have adequate capacity, which</p> <p>22 were originally designed based on master plan zoning</p> <p>23 for the area. So, that would be mostly the 1-acre and</p> <p>24 whatever smaller lots in that sub-watershed are there.</p> <p>25 Since this will change that proposed land use from the</p> |



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| 189 | <p>1 residential to something more intense, the size of the</p> <p>2 pipes was not adequate, and that's why all these -- all</p> <p>3 this piping was needed.</p> <p>4 WILLIAM J. CHEN: It's replacement piping for this</p> <p>5 type of use.</p> <p>6 VINCENT BERG: It's replacement -- some</p> <p>7 replacement and some new.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Now, okay.</p> <p>9 WILLIAM J. CHEN: Did this come within what would</p> <p>10 be called a major infrastructure improvement?</p> <p>11 VINCENT BERG: This is going to be, I would</p> <p>12 estimate, at least \$200,000 worth of improvements here.</p> <p>13 WILLIAM J. CHEN: and that's a major</p> <p>14 infrastructure improvement?</p> <p>15 VINCENT BERG: Oh yeah, that's a big project, and</p> <p>16 it's going to be deep. Some of these pipes are going to</p> <p>17 be 8, 9, 10 feet in the ground.</p> <p>18 WILLIAM J. CHEN: I have no further questions.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Well, I do. Are</p> <p>20 you saying that the applicant is going to pay for a</p> <p>21 major construction project to these pipes, or are you</p> <p>22 saying that's what needs to be done to get these pipes</p> <p>23 working again?</p> <p>24 VINCENT BERG: I don't know who's paying for it.</p> <p>25 I -- I'm assuming the applicant.</p> | 191 | <p>1 VINCENT BERG: They're only going to be doing</p> <p>2 water quality and small storms, less than a 1-year</p> <p>3 storm.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: That's what I</p> <p>5 couldn't remember, okay.</p> <p>6 VINCENT BERG: The 1-year storm.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: So, it's a 1-</p> <p>8 year storm. Okay. So, then let me ask you. With --</p> <p>9 with the -- so, you're saying they're going to put or</p> <p>10 they're going to contribute to a project. Okay, you</p> <p>11 don't know.</p> <p>12 VINCENT BERG: I don't know how it's going to get</p> <p>13 split.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. If they</p> <p>15 did this project --</p> <p>16 VINCENT BERG: Yes.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: -- if somebody</p> <p>18 does it.</p> <p>19 VINCENT BERG: Yes.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. Would</p> <p>21 water -- is water quality still going to --</p> <p>22 VINCENT BERG: Be installed? Yes.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: No, no. Is it</p> <p>24 still doing to degrade Crabbs Branch Creek -- sorry,</p> <p>25 yes -- if they do this whole project?</p>  |
| 190 | <p>1 HEARING EXAMINER ROBESON HANNAN: Well, who's --</p> <p>2 who's proposing it?</p> <p>3 VINCENT BERG: The applicant.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: The applicant.</p> <p>5 Oh, but you don't know if it's a public works project.</p> <p>6 VINCENT BERG: I -- they have a program or they</p> <p>7 used to have a program to pay part with public funds</p> <p>8 and part with private funds.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 VINCENT BERG: They used to have a special capital</p> <p>11 program that would share.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: But according to</p> <p>13 you, that's a partial -- that's not -- they're not</p> <p>14 completing the entire program -- the entire</p> <p>15 improvement?</p> <p>16 VINCENT BERG: They're going to do all 1,100 feet,</p> <p>17 yes. It all needs to be --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: That's shown on</p> <p>19 this 93-G?</p> <p>20 VINCENT BERG: Yes.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Onsite</p> <p>22 storm water.</p> <p>23 VINCENT BERG: Yes.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Treats -- what</p> <p>25 does it treat to now in terms of storm?</p>  | 192 | <p>1 VINCENT BERG: Yeah. This is carrying the larger</p> <p>2 flows.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>4 VINCENT BERG: Only the small flows are going to</p> <p>5 be treated. Larger flows -- the ones that we see in</p> <p>6 the streets --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Outfall to this.</p> <p>8 VINCENT BERG: Yes. They'll discharge to this</p> <p>9 system. So, if you have a 5-year storm or a 10-year</p> <p>10 storm --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: But my -- my</p> <p>12 question is, assume this system -- what's shown on here</p> <p>13 is entirely replaced tomorrow.</p> <p>14 VINCENT BERG: Um-hum.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: What would</p> <p>16 happen to the water in Crabbs Branch Creek? Is it</p> <p>17 going to be better? Is it going to be worse?</p> <p>18 VINCENT BERG: Storm --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: With this</p> <p>20 improvement on it.</p> <p>21 VINCENT BERG: Storm -- storm drains in general</p> <p>22 always make things worse.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 VINCENT BERG: Unless there's an awful lot of</p> <p>25 sedimentation going on and you can prevent that by</p> |

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| <p>193</p> <p>1 having storm drains.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>3 VINCENT BERG: If you had like a gully and then</p> <p>4 you put a storm drain in, that could improve it. But</p> <p>5 if you normally have sheet flow and you're putting a</p> <p>6 storm drain in and all the water is going into storm</p> <p>7 drains and inlets, and the outfalls very quickly at the</p> <p>8 outlet, that's going to erode the area around it and</p> <p>9 it's going to increase the peaks within the major</p> <p>10 stream -- this one being Crabb's Branch.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. I got</p> <p>12 you. All right. Sorry, I just want to be clear.</p> <p>13 WILLIAM J. CHEN: And in this case, the new flow</p> <p>14 is coming from a non-residential use. Isn't that</p> <p>15 right?</p> <p>16 VINCENT BERG: Correct.</p> <p>17 WILLIAM J. CHEN: Actually, Madam Examiner.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Um-hum.</p> <p>19 WILLIAM J. CHEN: There's a question that I forgot</p> <p>20 to ask unrelated to storm water that I forgot to ask</p> <p>21 Mr. Berg.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Well, it's still</p> <p>23 your direct. Yeah, I just had a question, so I got in</p> <p>24 the middle.</p> <p>25 WILLIAM J. CHEN: I know. You took over my</p>   | <p>195</p> <p>1 building -- I don't know, I'd have to look at it</p> <p>2 closely. But it could avoid and then come back onto a</p> <p>3 loop. You will need a lot of traffic control people</p> <p>4 out there during school hours, no question about that.</p> <p>5 You might even have to have a one-way street for part</p> <p>6 of this operation.</p> <p>7 WILLIAM J. CHEN: But essentially, the building</p> <p>8 would have to change.</p> <p>9 VINCENT BERG: Yes. Something would have to and</p> <p>10 playgrounds may have to change, the building may have</p> <p>11 to change.</p> <p>12 WILLIAM J. CHEN: I have no further questions.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Mr Kline.</p> <p>14 JODY S. KLINE: Just a couple quick ones. So, all</p> <p>15 of your reference to Katherine Nelson's report and your</p> <p>16 concurrence with what her recommendations were, that</p> <p>17 deals with the forest conservation plan not the</p> <p>18 conditional use application, correct?</p> <p>19 VINCENT BERG: The condition use report that they</p> <p>20 -- that was brought before the planning board.</p> <p>21 JODY S. KLINE: So, I'm sitting her looking at the</p> <p>22 conditional use report right now, and when it talks</p> <p>23 about environment, there is nothing about what you just</p> <p>24 said. So, Ms. Nelson's comments must be somewhere</p> <p>25 else.</p> |
| <p>194</p> <p>1 question.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I did.</p> <p>3 WILLIAM J. CHEN: I understand. Mr. Berg, you</p> <p>4 were present during the testimony this morning relative</p> <p>5 to -- from both I think the engineer and Mr. Jolley</p> <p>6 about the access onto the subject property and the line</p> <p>7 of trees on the eastern boundary. Is that right?</p> <p>8 VINCENT BERG: Correct.</p> <p>9 WILLIAM J. CHEN: Okay. You know, dealing with</p> <p>10 those trees again, the testimony that the applicant has</p> <p>11 offered is that by having access on the eastern side</p> <p>12 with the driveway on the eastern side of the boundary,</p> <p>13 there is going to be removal of trees and then</p> <p>14 replacement with the trees that you've described. Is</p> <p>15 there a way that that access can be provided on site</p> <p>16 without having to remove those forested areas on the</p> <p>17 eastern boundary?</p> <p>18 VINCENT BERG: The answer is yes, but you're going</p> <p>19 to have to change the layout of the site.</p> <p>20 WILLIAM J. CHEN: In what way, sir?</p> <p>21 VINCENT BERG: Well, you've got a point for sight</p> <p>22 distance that you have to hit, which is at the end</p> <p>23 right there at Needwood. A road could come around and</p> <p>24 avoid the trees. You'll have to move the building --</p> <p>25 the orientation and the size potentially of the</p> | <p>196</p> <p>1 VINCENT BERG: I'm pretty sure it was that report,</p> <p>2 but.</p> <p>3 JODY S. KLINE: If you've got a page that would</p> <p>4 help.</p> <p>5 VINCENT BERG: I have it here somewhere, so let me</p> <p>6 just -- yeah, it's the report from November 7th. It</p> <p>7 says condition -- forest conservation plan preliminary,</p> <p>8 Primrose School.</p> <p>9 JODY S. KLINE: Yeah, you answered my question.</p> <p>10 It's on the forest conservation plan not on the</p> <p>11 conditional use application.</p> <p>12 VINCENT BERG: Okay. All right.</p> <p>13 JODY S. KLINE: Agreed?</p> <p>14 VINCENT BERG: That -- that's the one I read, yes.</p> <p>15 JODY S. KLINE: Okay.</p> <p>16 VINCENT BERG: I don't have -- is that the Nelson</p> <p>17 report?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>19 VINCENT BERG: Okay, okay. December --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: No, it's the</p> <p>21 attachment.</p> <p>22 VINCENT BERG: 11/7/19, title Primrose School,</p> <p>23 preliminary forest conservation plan, CU 2018-08.</p> <p>24 JODY S. KLINE: Yeah.</p> <p>25 VINCENT BERG: That's the report I read.</p>  |

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| <p>197</p> <p>1 JODY S. KLINE: Which I think we concluded this<br/>2 morning is not in the record, right?<br/>3 [Simultaneous speakers.]<br/>4 JODY S. KLINE: It's an attachment. Okay, okay.<br/>5 WILLIAM J. CHEN: Madam Examiner, this is the<br/>6 document -- one of the documents that we did talk about<br/>7 this morning that both Mr. Kline and I are not sure is<br/>8 in the record.<br/>9 HEARING EXAMINER ROBESON HANNAN: Well, I have the<br/>10 attachment B, but then attachment B, which is, I think,<br/>11 supposed to cover -- hold on one second. Attachment B<br/>12 says forest -- it's entitled forest conservation plan<br/>13 recommendations.<br/>14 JODY S. KLINE: That -- that sounds right.<br/>15 HEARING EXAMINER ROBESON HANNAN: And --<br/>16 JODY S. KLINE: But you don't have the plan,<br/>17 right?<br/>18 HEARING EXAMINER ROBESON HANNAN: But there's an -<br/>19 - I don't have a plan and there is a summary of the<br/>20 variance requests, but there are two additional<br/>21 attachments which are the PF-4 conservation plan itself<br/>22 and the tree variance request letter. And those are not<br/>23 in my records.<br/>24 JODY S. KLINE: Okay. Mr. Berg, were you present<br/>25 when the planning board reviewed the conditional use</p> | <p>199</p> <p>1 questions about the storm drains, I'm going to reserve<br/>2 for Mr. Intriago because it's really a civil<br/>3 engineering issue rather than a landscape issue.<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>5 WILLIAM J. CHEN: May Mr. Berg be excused?<br/>6 HEARING EXAMINER ROBESON HANNAN: Well, this is<br/>7 his -- your chance to cross examination.<br/>8 JODY S. KLINE: That was just it.<br/>9 HEARING EXAMINER ROBESON HANNAN: Okay. All<br/>10 right. I'm just making sure we're all --<br/>11 VINCENT BERG: I'm not coming back.<br/>12 HEARING EXAMINER ROBESON HANNAN: What, we didn't<br/>13 feed you enough or something?<br/>14 UNIDENTIFIED MALE SPEAKER: There's some snacks in<br/>15 the back.<br/>16 WILLIAM J. CHEN: He's leaving town.<br/>17 HEARING EXAMINER ROBESON HANNAN: Okay. All<br/>18 right. Are you finished? Do you have any redirect?<br/>19 WILLIAM J. CHEN: No, ma'am.<br/>20 HEARING EXAMINER ROBESON HANNAN: Okay. Thank<br/>21 you, Mr. Berg, you're excused.<br/>22 WILLIAM J. CHEN: Can we take a quick break --<br/>23 JODY S. KLINE: Yeah, good idea.<br/>24 WILLIAM J. CHEN: -- to get these exhibits<br/>25 straightened out?</p>   |
| <p>198</p> <p>1 application and its report and the forest conservation<br/>2 plan and its report?<br/>3 VINCENT BERG: I was not at the -- those hearings.<br/>4 JODY S. KLINE: I believe you do know what<br/>5 happened though.<br/>6 VINCENT BERG: I understand what happened.<br/>7 JODY S. KLINE: Could you explain to the Hearing<br/>8 Examiner what happened?<br/>9 VINCENT BERG: Ms. Nelson objected to the removal<br/>10 of SP9 and then the planning board over her objection<br/>11 voted to approve the plan.<br/>12 JODY S. KLINE: And are you aware of any other<br/>13 presentation by staff explaining why they thought Ms.<br/>14 Nelson's decision was not the staff position?<br/>15 VINCENT BERG: I don't know of any other<br/>16 discussion. There may have been but I don't know about<br/>17 it.<br/>18 JODY S. KLINE: I understand. Fine, thank you.<br/>19 And I guess the last question I would say is if the<br/>20 trees we were to plant are 2-1/2-inch caliper BBH, the<br/>21 heights that Mr. Jolley mentioned at installation,<br/>22 those were reasonable and accurate. Would you agree?<br/>23 VINCENT BERG: Yeah. Yes. At installation, yes,<br/>24 those are all pretty accurate, yes.<br/>25 JODY S. KLINE: I have no further questions. The</p>        | <p>200</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>2 [Off the record at 3:13 p.m.]<br/>3 [On the record at 3:30 p.m.]<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay. I<br/>5 understand that we have some people that have come in<br/>6 to testify. Is that correct? That wish to testify?<br/>7 If you wish to testify, can you raise your hand? One,<br/>8 two, three, four. This is -- okay. This is what I'm<br/>9 going to try to do. We can only go until 5 because I<br/>10 don't have a court reporter after 5. So, we're going -<br/>11 - we're going to try to get you on at quarter after 4.<br/>12 Let me just say that we don't have the capability of<br/>13 taking just walk-in -- we do have the capability take<br/>14 walk-in people, but it disrupts the order of hearing<br/>15 because we're in the middle of cross examination of<br/>16 expert witnesses. To the extent you can, I'm asking<br/>17 the community if they wish, that you can come for<br/>18 testimony, but let us know in advance so that we can<br/>19 make sure we can accommodate you on a particular day.<br/>20 So, today I have no choice but to cut off at 5.<br/>21 The other thing is that while I have the ability<br/>22 so that we can get through this hearing, which is<br/>23 already expected to go through Tuesday, I can exclude<br/>24 redundant testimony. In other words, if somebody's<br/>25 already made your point, I -- there's no need to make</p> |

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51 (201 to 204)

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| <p>201</p> <p>1 it again. We have the transcript -- we put the<br/>2 transcripts of all our hearings on the website. There<br/>3 is one up there from November 22nd with everybody's<br/>4 testimony about traffic -- a lot of the concern was<br/>5 traffic. So, we want to hear from you, but I also --<br/>6 part of my job is to get through all the testimony we<br/>7 need to make a decision in the case. So, to the extent<br/>8 possible, if you talk to people that want to testify,<br/>9 please tell us so we can notify the attorneys in<br/>10 advance and we can plan our witnesses in advance. All<br/>11 right? That would make things much easier.<br/>12 Now, with that, Mr. Chen, do you -- you want -- we<br/>13 have the engineer --<br/>14 JODY S. KLINE: Continuance.<br/>15 HEARING EXAMINER ROBESON HANNAN: -- continuance,<br/>16 okay. We're going to continue with the expert in<br/>17 engineering until 4:15. I will let those four who<br/>18 raised their hand come in and testify. Please let us<br/>19 know beforehand in the future when you're able to come<br/>20 so we can work with the parties to get through the<br/>21 hearing more quickly. Thanks. Okay, Mr. Intriago.<br/>22 And please, you know, look at what people have<br/>23 already testified to on the web. This transcript won't<br/>24 be out by the time we finish our hearing, but you can<br/>25 definitely see the transcript from November 22nd. All</p> | <p>203</p> <p>1 EDUARDO J. INTRIAGO: Okay. I'll be careful.<br/>2 Okay.<br/>3 JODY S. KLINE: Would you make sure that that's<br/>4 angled enough.<br/>5 HEARING EXAMINER ROBESON HANNAN: Can I -- I can't<br/>6 see it. Can you -- thank you.<br/>7 EDUARDO J. INTRIAGO: All right. Okay?<br/>8 HEARING EXAMINER ROBESON HANNAN: Can the audience<br/>9 see it?<br/>10 EDUARDO J. INTRIAGO: I will try to stay out of<br/>11 the way.<br/>12 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>13 EDUARDO J. INTRIAGO: All right. So, this site<br/>14 plan -- this conditional use plan that we have in front<br/>15 of us which is Exhibit --<br/>16 HEARING EXAMINER ROBESON HANNAN: 148.<br/>17 EDUARDO J. INTRIAGO: -- 148, it's the process of<br/>18 many different iterations that we went through on this<br/>19 project. I've been involved with this project since<br/>20 2017 in which we've had many different meetings,<br/>21 concepts, layouts, that we have, you know, now that we<br/>22 have come to this. So, first of all, one of the things<br/>23 I would like to talk about was the -- let me start from<br/>24 the north. Starting from the north, at one point, we<br/>25 have -- let's talk about the access. So, we had many</p> |
| <p>202</p> <p>1 right, Mr. Intriago, you're still under oath.<br/>2 EDUARDO J. INTRIAGO: Yes, ma'am.<br/>3 HEARING EXAMINER ROBESON HANNAN: All right. Go<br/>4 ahead.<br/>5 JODY S. KLINE: Mr. Intriago, we kind of left you<br/>6 at a point where I was, as I said, having you describe<br/>7 the lay of the land and with that testimony as<br/>8 foundation and to some extent folding in Mr. Jolley's<br/>9 comments, I'd like you just to kind of explain as you<br/>10 looked as the civil engineer of the property, what the<br/>11 land was telling you how it should be developed -- how<br/>12 you should organize the different functions on the<br/>13 property. So, could you please explain using whatever<br/>14 exhibit -- tell us what exhibit you're going to use.<br/>15 EDUARDO J. INTRIAGO: Well, I am going to use your<br/>16 -- the last rendered plan. I also would like to use<br/>17 the exhibit, I think, Mr. Kline, tell me if this is in<br/>18 the record. The one that you prepared that showed the<br/>19 area where the parking is along the front -- the<br/>20 rendering that you put together.<br/>21 JODY S. KLINE: Well, we'll use it later.<br/>22 EDUARDO J. INTRIAGO: Okay.<br/>23 HEARING EXAMINER ROBESON HANNAN: So, we're going<br/>24 back to 148, I believe, which is on the back -- unroll<br/>25 that and you'll -- no, no.</p>   | <p>204</p> <p>1 multiple discussions about the location of the access -<br/>2 - where it should be, where it shouldn't be, where it's<br/>3 safe to meet all the standards. So, basically, one of<br/>4 the iterations that was the one that we did back in<br/>5 January of 2018 that we presented, that was the comment<br/>6 that Mr. Kline submitted to the record for the date<br/>7 that Mr. Chen, you were asking for the date. The date<br/>8 of that -- those comments was January 25, 2018.<br/>9 WILLIAM J. CHEN: Thank you.<br/>10 EDUARDO J. INTRIAGO: So, um --<br/>11 HEARING EXAMINER ROBESON HANNAN: That was the<br/>12 comments on the conceptual plan?<br/>13 EDUARDO J. INTRIAGO: That is correct.<br/>14 HEARING EXAMINER ROBESON HANNAN: The DOT<br/>15 comments?<br/>16 EDUARDO J. INTRIAGO: Concept plan.<br/>17 HEARING EXAMINER ROBESON HANNAN: 183.<br/>18 EDUARDO J. INTRIAGO: That is correct.<br/>19 WILLIAM J. CHEN: Those were the notes that --<br/>20 those were the DOT notes?<br/>21 EDUARDO J. INTRIAGO: Yes, sir.<br/>22 WILLIAM J. CHEN: All right, January --<br/>23 HEARING EXAMINER ROBESON HANNAN: What was the<br/>24 date?<br/>25 EDUARDO J. INTRIAGO: January 25th, and the</p>                        |

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52 (205 to 208)

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| <p>205</p> <p>1 submission, I think, if I recall correctly, is January<br/>2 4th of '18 was when we formally submitted the -- the<br/>3 conceptual plan. It's an online submission in which<br/>4 you put the existing conditions, the concept plan, and<br/>5 a couple other documents as justification by Mr. Kline<br/>6 that he put together and back in January of 2018,<br/>7 that's when we submitted it. Two weeks later, we got<br/>8 comments from all the -- all the parties involved,<br/>9 Fire, DPS, including MC DOT, which is the letter that<br/>10 you're referring to. Unfortunately, he never put a<br/>11 date on the actual document. But I have on my records<br/>12 a reference that we received that on the 25th of<br/>13 January of 2018.<br/>14 WILLIAM J. CHEN: That's this document?<br/>15 EDUARDO J. INTRIAGO: Yes, sir. That document<br/>16 right there. If you --<br/>17 WILLIAM J. CHEN: Just for the record, that's<br/>18 Exhibit 183.<br/>19 EDUARDO J. INTRIAGO: Thank you, sir. If you read<br/>20 through it, he makes reference to what's highlighted in<br/>21 yellow that he's making reference to the concept plan<br/>22 submission. That's the one I'm making reference to.<br/>23 So, on that concept, we had -- we had a driveway<br/>24 slightly to the -- slightly to the west of the<br/>25 property, which is the one that we're trying to -- all</p>  | <p>207</p> <p>1 lane that we have here that is 20-feet wide, which is<br/>2 the minimum driveway width in order to be able to have<br/>3 two-way access. So, that's why it's in the entrance a<br/>4 little bit.<br/>5 Now, I cannot put it any further west because I<br/>6 still need to get a fire truck to get in and meander<br/>7 through that entrance.<br/>8 JODY S. KLINE: Mr. Intriago.<br/>9 EDUARDO J. INTRIAGO: Yes, sir.<br/>10 JODY S. KLINE: Primrose's normal design standards<br/>11 for internal driveway would be how much?<br/>12 EDUARDO J. INTRIAGO: I'm sorry?<br/>13 JODY S. KLINE: Primrose's normal standards for<br/>14 driveway would normally be more than 20 feet.<br/>15 EDUARDO J. INTRIAGO: Oh, yes sir. Normally the<br/>16 normal concept that they have is 24 feet -- 24 feet<br/>17 wide.<br/>18 JODY S. KLINE: Okay.<br/>19 EDUARDO J. INTRIAGO: The reason who is we have<br/>20 moms with kids in the back and they're, you know,<br/>21 helping them and driving at the same time. So, they<br/>22 try to have wider -- wider roads to be able to<br/>23 maneuver. So, that's the way it was explained to me.<br/>24 And I told them unfortunately, no can do. We need to<br/>25 make it as small as possible to minimize the -- the</p>   |
| <p>206</p> <p>1 the parking was on the west side, and we're trying to<br/>2 get an access -- a shared access, for lack of a better<br/>3 term -- so Mr. Tapscott could access Mr. Shrikan's<br/>4 property to get in and out through the driveway on a<br/>5 safe location that we're going to put on the -- on the<br/>6 west side of the property. Right. That didn't -- that<br/>7 didn't -- was not favorable to staff, so we went back<br/>8 again to the drawing board and we came with this<br/>9 concept of which we had all the parking in the back. I<br/>10 don't want to go -- there's been so many of them -- but<br/>11 at one point, we have a configuration just like the one<br/>12 on the exhibit that we have in front of you, but with<br/>13 access directly, you see there is access directly to<br/>14 Carnegie Avenue. Once again, safety purposes, Carnegie<br/>15 Avenue doesn't comply with safety purposes, and then we<br/>16 keep -- we -- even though we tried so many different<br/>17 things, we kept going back to let's put the access on<br/>18 the highest point of the hill -- the crest of the hill<br/>19 -- which is the safest location and that way, you know,<br/>20 the people that are using this facility will be able to<br/>21 see east and west and not being in an unsafe situation<br/>22 with line of sight.<br/>23 So, going like that, if you can see, the original<br/>24 intent was to try to keep it as away as possible from<br/>25 the -- the road that we have here -- the access drive</p> | <p>208</p> <p>1 footprint of the road, and that was a comment that we<br/>2 had through the process with Park and Planning. So,<br/>3 that's how it ended up being 20 feet wide, and that's<br/>4 how it ended up being, you know, as far as possible as<br/>5 I could to at least try to comply with the northeast<br/>6 corner of the property and try to go back as much as I<br/>7 can with the 34-foot separation.<br/>8 JODY S. KLINE: So, to how much extent were you<br/>9 able to increase the landscaping strip on the east side<br/>10 by shrinking the road?<br/>11 EDUARDO J. INTRIAGO: I would say originally it<br/>12 was 10 feet and then we were able to increase it to 12.<br/>13 JODY S. KLINE: The strip was --<br/>14 EDUARDO J. INTRIAGO: The strip, yes.<br/>15 JODY S. KLINE: -- 10 feet.<br/>16 EDUARDO J. INTRIAGO: Now, I just want to make<br/>17 sure that I -- I expand on something that Mr. Jolley<br/>18 was saying. We have a couple of things about landscape<br/>19 buffers. We have a perimeter planting, which is the 10<br/>20 feet that Mr. Jolley was talking about, which is the<br/>21 perimeter of planting for the parking, which is right<br/>22 there in the extent where you have the parking area,<br/>23 okay? And we also have the building screening. The<br/>24 building screening, there are two -- there's two ways<br/>25 to comply with building screening for this type of use.</p> |

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53 (209 to 212)

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| <p>209</p> <p>1 Either we have an 8-foot screen with a 4-foot opaque<br/>2 fence -- the code calls for 4 feet -- so, we went 2<br/>3 feet above that. And then, that allows you to have an<br/>4 8-foot buffer with landscape requirements. So, what we<br/>5 did, we put the fence. We put 6 feet instead of 8,<br/>6 which we are going to provide detail tomorrow, which<br/>7 the architect, Mr. Ault already has the detail that is<br/>8 standard detail that they use for all their Primroses<br/>9 so we can share with staff and also with Madam. So,<br/>10 that's what we've got there, and so that's how the<br/>11 landscape buffer is on the east side.<br/>12 So, let me go back to the location of the<br/>13 building. So, based on the discussion that we had --<br/>14 multiple discussions with staff -- we're having two<br/>15 fronts on this side. We have the front of Carnegie<br/>16 Avenue and we have the front of Needwood Road. So, the<br/>17 fronts require a 50-foot setback requirement for the<br/>18 building on both sides. There is no concern about the<br/>19 north. Basically, on the north, we're trying to --<br/>20 even though we're slightly -- we're slightly ahead of<br/>21 the -- of the property -- let me rephrase that. I<br/>22 mean, we're in front of the property that is right next<br/>23 to us to the east in a sense of building setback, we<br/>24 are in line with where the church is to the east, and<br/>25 if you see the new house -- the new house on the west</p> | <p>211</p> <p>1 for that -- for the principle structure.<br/>2 JODY S. KLINE: Well, let me stop you for a<br/>3 second. I'm asking yo on the Needwood Road frontage, I<br/>4 thought I understood you to say you set the building to<br/>5 line up with the church and house to the left.<br/>6 EDUARDO J. INTRIAGO: This is a combination of<br/>7 things. Yes, that's considered when we put that<br/>8 building. But also, as I was saying at the beginning,<br/>9 we still need to meander the driveway, get it in,<br/>10 there's a couple other things considered when we<br/>11 actually put the building. But that was one of the<br/>12 considerations we had, okay?<br/>13 JODY S. KLINE: Okay.<br/>14 EDUARDO J. INTRIAGO: So, if I may continue, going<br/>15 back to the -- to the location of the building. So, I<br/>16 have -- I'm hoping I established that that's the<br/>17 further I can put the building towards the west. So,<br/>18 after that, I got -- I was given a building footprint<br/>19 by -- by Primrose, which is the one I'm using, and then<br/>20 on the eastern side of the building, I have a narrow<br/>21 sidewalk -- I think it's 5-foot wide -- that will take<br/>22 the children from their classes to their individual<br/>23 playground areas -- they are based by age -- and then,<br/>24 we have -- I don't know if you can see it here -- after<br/>25 that sidewalk to the west -- to the east of it, it's</p>  |
| <p>210</p> <p>1 side -- it's actually a little bit further -- closer to<br/>2 the right of way.<br/>3 JODY S. KLINE: Which is not shown on 128.<br/>4 EDUARDO J. INTRIAGO: Which is not shown because<br/>5 by the time we had this -- this exhibit, it was not<br/>6 built. All right. So, in my personal practice, what I<br/>7 used to do, I tend to put the building a foot or foot<br/>8 and a half away from the building setback because you<br/>9 always have -- Mr. Ault always puts these building<br/>10 finishes that end up being 4 inches, and then all of a<br/>11 sudden, I'm not compliant. This building that you see<br/>12 in front of you on this exhibit or on the conditional<br/>13 use plan, it's 1.5 feet further from the building<br/>14 setback. So, I cannot take the building any closer to<br/>15 Carnegie Avenue. I can push it north and south as need<br/>16 be, but not any closer to Carnegie Avenue.<br/>17 JODY S. KLINE: And, Mr. Intriago, and you say<br/>18 building setback -- do you mean building setback or do<br/>19 you mean the effective building line along the street<br/>20 determined by the other structure?<br/>21 EDUARDO J. INTRIAGO: Yeah. So -- so, on Carnegie<br/>22 Avenue -- you go to the code, I don't recall the<br/>23 section of the code right now, I can look it up for<br/>24 you, sir -- but there's a -- based on avoiding right of<br/>25 way, there's a 50 -- five zero -- foot building setback</p>   | <p>212</p> <p>1 like a 4-foot landscape buffer, where I'm putting a<br/>2 safety fence -- I call it safety fence because it's<br/>3 preventing anybody or the kids to run out or stuff like<br/>4 that, and there's also a standard that Mr. Ault can<br/>5 provide for the requirement of that fence. And then I<br/>6 have a 6-foot wide sidewalk that is just out right<br/>7 there. It's used to provide many different things --<br/>8 ADA access to the main road, which is Needwood Road,<br/>9 and that complies with the minimum width span that<br/>10 Montgomery County has. So, I have taken from -- I have<br/>11 explained from east to west what I have -- sorry --<br/>12 from west to east how we laid out that building. Then,<br/>13 after that, we have your 20-foot driveway and after<br/>14 that, we ended up having the 12 feet of buffer that,<br/>15 you know, we ended up having on that side.<br/>16 Continuing to my explanation -- with my<br/>17 explanation, going south, we put all the parking stalls<br/>18 on the back side of the building to comply with code<br/>19 and we complied also -- something that was very much<br/>20 considered and Mr. Jolley already explained was on the<br/>21 southeast portion of the site, we had an existing<br/>22 forest conservation -- an existing forest stand to be<br/>23 proper. So, Mr. Jolley, his direction was to grow from<br/>24 that forest stand and put the requirement of our<br/>25 required forest preservation on the southern portion of</p> |

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| <p>213</p> <p>1 the property. That will also serve as a buffer between<br/>2 this development and the development from the south,<br/>3 which is the subdivision on the south. So, we're<br/>4 talking about 143 feet between the property line and<br/>5 the back of the curb for the first parking stall that<br/>6 we have in here. So, that's a -- that's -- all that<br/>7 will be forest area. I'm not a landscape architect. I<br/>8 cannot talk about when or how that will be executed.<br/>9 That's why I have Mr. Jolley as the professional<br/>10 helping me with that site.<br/>11 So, other things I would like to talk about here.<br/>12 At the end -- not at the end -- I think towards the end<br/>13 of before planning board things that Mr. -- Mr. Kline<br/>14 was talking about, there's -- there's a proffer or<br/>15 conditional approval that required the applicant to<br/>16 provide a sidewalk along the east side of Carnegie<br/>17 Avenue. So, we went ahead and provided that. One of<br/>18 the things that was required there is that they wanted<br/>19 to have an access from Carnegie Avenue to the main<br/>20 entrance of the building. What we explained to staff<br/>21 was that was not something that would be useable --<br/>22 JODY S. KLINE: And before you go a little further<br/>23 on that, I remember when you said we have two fronts.<br/>24 But where is actually the front door?<br/>25 EDUARDO J. INTRIAGO: The front door is actually</p> | <p>215</p> <p>1 EDUARDO J. INTRIAGO: -- that'd we'd like to --<br/>2 oh, why did you do this before planning board -- why<br/>3 did you do this before planning board? So, one of the<br/>4 things we did was -- that we were asked was to put that<br/>5 access. What I explained to Mr. Kline and I explained<br/>6 to staff that the access on the -- that goes from the<br/>7 sidewalk that runs north-south on Carnegie Avenue to<br/>8 the main sidewalk that is in front of the main entrance<br/>9 to the building, I could provide that -- that access.<br/>10 The problem they had with that, it was not ADA<br/>11 compliant, because a separation of elevation between<br/>12 the sidewalk and the main building was not allowing me<br/>13 that, especially having all the matching facilities.<br/>14 Even further than that, I also explained to them that<br/>15 per ADA guidelines, we only need to provide one access<br/>16 to a right of way, which we were compliant with the<br/>17 sidewalk along the east side of the road. They<br/>18 accepted that. We don't -- they -- they actually<br/>19 emphasized saying we don't care if it's not ADA, we<br/>20 just would like to have a -- a trail. It was like a<br/>21 mulch trail. You remember the -- the type of trail<br/>22 that we talked about. It's shown on this exhibit,<br/>23 which is 148 --<br/>24 HEARING EXAMINER ROBESON HANNAN: Yes.<br/>25 EDUARDO J. INTRIAGO: -- that goes from the</p> |
| <p>214</p> <p>1 facing south. That's the main door.<br/>2 JODY S. KLINE: Could you -- could you point that<br/>3 out?<br/>4 EDUARDO J. INTRIAGO: Yes, sir. It's the -- it's<br/>5 -- if you look at the building, the south face of the<br/>6 building is the main access of the building. The --<br/>7 it's my understanding -- I'm not an architect -- but<br/>8 based on the discussion and the meetings I was a part<br/>9 of, Mr. Ault worked very closely with staff to change<br/>10 the architectural façade of the building on the front<br/>11 so it would look like it would be more like a<br/>12 residential look to it. Once again, I am not an expert<br/>13 on that side. That's only what I heard that they<br/>14 worked with staff -- architect staff -- on that regard.<br/>15 So, can I talk about the access here?<br/>16 JODY S. KLINE: Please do.<br/>17 EDUARDO J. INTRIAGO: Yes. So, after we submitted<br/>18 the condition plan -- use plan and everything went<br/>19 through, towards the end, we always -- we were getting<br/>20 kind of mad comments at the end. So, one of --<br/>21 HEARING EXAMINER ROBESON HANNAN: You were getting<br/>22 what comments?<br/>23 EDUARDO J. INTRIAGO: Comments or final renditions<br/>24 at the end --<br/>25 HEARING EXAMINER ROBESON HANNAN: Oh.</p>  | <p>216</p> <p>1 sidewalk to -- the sidewalk on Carnegie Avenue to the<br/>2 sidewalk in front of the main entrance of the building.<br/>3 JODY S. KLINE: Okay. So, the -- so, condition<br/>4 number 4 in the staff recommendation says a minimum 3-<br/>5 foot wide gravel or natural surface pathway must be<br/>6 constructed running from Carnegie Avenue to the main<br/>7 building entrance on the south side of the building.<br/>8 This sidewalk satisfies that?<br/>9 EDUARDO J. INTRIAGO: Correct.<br/>10 JODY S. KLINE: It wasn't on the original plan, as<br/>11 you said, because --<br/>12 EDUARDO J. INTRIAGO: It was discussed at the end<br/>13 -- towards the end of the planning board and then that<br/>14 was what happened.<br/>15 JODY S. KLINE: All right. Ms. Tapscott, at the<br/>16 hearing we had here before, said well, what's going to<br/>17 happen is people are going to park on Carnegie Street<br/>18 and then they're going to basically walk their kids up<br/>19 there. Is that why that sidewalk was put in?<br/>20 EDUARDO J. INTRIAGO: Actually, no. That sidewalk<br/>21 was not put in there for that. Actually -- we actually<br/>22 didn't want the sidewalk because -- the reason why the<br/>23 sidewalk was there is because, of course, a lot of<br/>24 people here know the neighborhood, there is an access -<br/>25 - an existing access -- not an access -- there's an</p>  |

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| <p>217</p> <p>1 opening in the fence. There's a fence on the south<br/>2 side of the property. So, there's an opening in the<br/>3 fence that people use to cross from the south<br/>4 subdivision just to walk north on Carnegie Avenue. So,<br/>5 what happens is staff said, you know, provide us with a<br/>6 sidewalk. My position was if or when you come and<br/>7 redevelop that -- that road, you know, that sidewalk<br/>8 might not want to be in the location that we have it in<br/>9 there. It might not serve you any purpose, because the<br/>10 tertiary road section, you know, has specific<br/>11 dimensions on where to put your sidewalk, and I -- I<br/>12 don't believe that that will be -- you might have to<br/>13 reassess that if or when you build that road to the<br/>14 right standards. So, that was my position. They said<br/>15 we still want it, and we said you got it.<br/>16 So, we don't think -- we don't believe -- Primrose<br/>17 does not believe, based on my conversation with them,<br/>18 that most none of their customers -- not customers --<br/>19 of their parents will kind of walk from south -- I<br/>20 don't think -- from -- walk on that sidewalk to get<br/>21 their people -- their kids to -- to school. Most<br/>22 likely, they're going to drive, get in here, drop them<br/>23 off, and move on.<br/>24 JODY S. KLINE: Condition number 3 talks about a<br/>25 6-foot sidewalk along Carnegie Avenue. That was a</p> | <p>219</p> <p>1 JODY S. KLINE: Well, let me ask it this way then.<br/>2 Does anything that we are doing preempt or complicate<br/>3 the ability to make it into a public road in the<br/>4 future?<br/>5 EDUARDO J. INTRIAGO: No, sir. Actually, we are<br/>6 improving it because we are giving a 5-foot right of<br/>7 way for them to be able to achieve the -- at least the<br/>8 right of way width that they need to -- to make the<br/>9 improvements. But, even if they have the right of way<br/>10 width, they need to overcome the line of sight problem.<br/>11 So, that's my opinion.<br/>12 JODY S. KLINE: Okay.<br/>13 HEARING EXAMINER ROBESON HANNAN: Is the sidewalk<br/>14 you're showing along Carnegie, is that in the right of<br/>15 way?<br/>16 EDUARDO J. INTRIAGO: That's in the right of way.<br/>17 HEARING EXAMINER ROBESON HANNAN: In the existing<br/>18 right of way or what you're dedicating?<br/>19 EDUARDO J. INTRIAGO: I think it's -- it's hard --<br/>20 I think it's right at the edge of the existing right of<br/>21 way because I'm looking at it right now. No, I'm<br/>22 sorry, it's in the existing right away because I -- if<br/>23 I may say -- I can see here the existing right of way<br/>24 line and the proposed right of way line. So, the<br/>25 sidewalk is completely in the current right of way.</p> |
| <p>218</p> <p>1 staff recommendation because they wanted to what?<br/>2 EDUARDO J. INTRIAGO: Continue the -- the existing<br/>3 walk, which is -- there's no walk there right now.<br/>4 It's just a gravel road. So, people are just using the<br/>5 gravel road to walk.<br/>6 JODY S. KLINE: Right.<br/>7 EDUARDO J. INTRIAGO: So, they just want a<br/>8 sidewalk, I guess.<br/>9 JODY S. KLINE: So, for the Hearing Examiner,<br/>10 would you describe the package of improvements that<br/>11 you're talking about making on Carnegie Road as it<br/>12 relates to the potential possible future development as<br/>13 a public street?<br/>14 EDUARDO J. INTRIAGO: Yes. And -- and, yes. I<br/>15 mean, that road, as discussed previously, has a lot of<br/>16 challenges to make it a public road. The major<br/>17 challenge that we discussed is the line of sight for<br/>18 safety. So, if you're asking about my professional<br/>19 opinion, if that road is going to -- that right of way<br/>20 is ever going to be a Montgomery County road, I -- I<br/>21 doubt it unless they solve the bigger problem. I think<br/>22 it's more like a planning problem than anything else,<br/>23 because that road was put in the wrong location or the<br/>24 right of way was put in the wrong location to rephrase<br/>25 it correctly.</p>   | <p>220</p> <p>1 It's -- it's showing these two right of way lines in<br/>2 the -- on the west. For the record, on the western<br/>3 side of the property, on Exhibit 148, there are two<br/>4 right of way lines on the -- on the western side. The<br/>5 darker one is the proposed one. The lighter one is the<br/>6 existing one. And the sidewalk that I'm being asked<br/>7 about is in the existing right of way.<br/>8 HEARING EXAMINER ROBESON HANNAN: And your<br/>9 dedication that they're requiring is 5 feet?<br/>10 EDUARDO J. INTRIAGO: Yes, so --<br/>11 HEARING EXAMINER ROBESON HANNAN: And then, what's<br/>12 the -- how short are you on the setback on the other<br/>13 side?<br/>14 EDUARDO J. INTRIAGO: Setback in what regards,<br/>15 Madam Examiner?<br/>16 HEARING EXAMINER ROBESON HANNAN: On the -- on the<br/>17 east side. You're -- you don't comply with the setback<br/>18 for parking by how much?<br/>19 EDUARDO J. INTRIAGO: Correct.<br/>20 HEARING EXAMINER ROBESON HANNAN: How much?<br/>21 EDUARDO J. INTRIAGO: So, on that one, we don't<br/>22 comply by 22 feet.<br/>23 HEARING EXAMINER ROBESON HANNAN: Hum, okay. Go<br/>24 ahead.<br/>25 EDUARDO J. INTRIAGO: So, I can go now talking</p>  |



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56 (221 to 224)

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| <p style="text-align: right;">221</p> <p>1 about -- now that I explained from west to east, I can<br/>2 talk about that. So, based on all those requirements,<br/>3 we located parking and everything else. There is no<br/>4 other way -- there is no other location that, you know,<br/>5 so putting the building all the way to the west, that<br/>6 was the only logical location for my 20-foot driveway.<br/>7 And then as quick as I could after the building, we<br/>8 tried to push the parking stalls completely outside of<br/>9 that setback. One of the things that I did was, the<br/>10 end of the actual parking stall on the -- the<br/>11 easternmost parking stall on my parking bay is exactly<br/>12 at 34 feet. So, that's the best I was able to get it<br/>13 out. So, the only thing that is in the -- in the<br/>14 setback is the driving lane that leads you to the<br/>15 parking spaces. I actually had this discussion with<br/>16 Mr. Kline about how the code read, and what the intent<br/>17 of the code was, and he explained to me that the old<br/>18 code was talking about driveways and parking stalls,<br/>19 when the new code only says parking. So, it's -- it's<br/>20 -- and Mr. Kline explained to me that intent of the<br/>21 code was driveways and parking stalls. So, okay. Mr.<br/>22 Kline.<br/>23 JODY S. KLINE: Well, let me give you some help.<br/>24 EDUARDO J. INTRIAGO: Yeah.<br/>25 JODY S. KLINE: So, you've told us about where the</p> | <p style="text-align: right;">223</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I got it. He's<br/>2 going to have some kind of façade.<br/>3 JODY S. KLINE: The building will not exceed.<br/>4 HEARING EXAMINER ROBESON HANNAN: Yeah.<br/>5 EDUARDO J. INTRIAGO: Will not exceed thirteen<br/>6 thousand square feet.<br/>7 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>8 JODY S. KLINE: Around the building or at least to<br/>9 the north and west, there's a slightly different green<br/>10 shade. Would you explain what that is.<br/>11 EDUARDO J. INTRIAGO: Yes, sir. So, this is not<br/>12 my area of expertise. What I -- what I do know is that<br/>13 there is a minimum area of requirement. State code<br/>14 requires minimum area per child to be able to provide<br/>15 outdoor play. So, there is one, two, three -- I think<br/>16 there's four different age groups in this playground<br/>17 area that depending on where the kids are in their<br/>18 classrooms, they go directly out into their playground.<br/>19 So, that's the playground area that Mr. Ault can<br/>20 probably expand on that how they calculated or designed<br/>21 that.<br/>22 JODY S. KLINE: Okay. So, the line that wraps<br/>23 around the darker green is -- what does that line<br/>24 represent?<br/>25 EDUARDO J. INTRIAGO: That is the safety fence</p> |
| <p style="text-align: right;">222</p> <p>1 building is located. What's the size of the building?<br/>2 EDUARDO J. INTRIAGO: Twelve thousand -- almost<br/>3 thirteen thousand square feet. I see twelve thousand<br/>4 seven hundred -- don't quote me on that. But in my --<br/>5 JODY S. KLINE: No, actually, you need to know the<br/>6 size of the building.<br/>7 EDUARDO J. INTRIAGO: I know that -- that the<br/>8 problem is that in the condition use plan, we -- we<br/>9 specified as thirteen thousand leaving the leeway for<br/>10 the architect to be able to have that -- that three<br/>11 hundred square feet of wiggle room. So, the<br/>12 application says thirteen thousand.<br/>13 HEARING EXAMINER ROBESON HANNAN: Wait, how much<br/>14 square feet?<br/>15 EDUARDO J. INTRIAGO: The application for the<br/>16 conditional use says thirteen thousand square feet.<br/>17 HEARING EXAMINER ROBESON HANNAN: But what does<br/>18 your conditional use plan show?<br/>19 EDUARDO J. INTRIAGO: Thirteen thousand square<br/>20 feet.<br/>21 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>22 EDUARDO J. INTRIAGO: So, yes. To answer your<br/>23 question, it's thirteen thousand square feet.<br/>24 JODY S. KLINE: I'll -- we'll have the architect<br/>25 explain.</p>  | <p style="text-align: right;">224</p> <p>1 that they put around so that the kids would be safe<br/>2 inside that playground.<br/>3 JODY S. KLINE: And do you know the details of<br/>4 that fence or will Mr. Ault describe that?<br/>5 EDUARDO J. INTRIAGO: Mr. Ault can describe it<br/>6 better, but I think it's a vinyl fence.<br/>7 JODY S. KLINE: Okay. But that --<br/>8 EDUARDO J. INTRIAGO: Vinyl siding --<br/>9 JODY S. KLINE: -- green area --<br/>10 EDUARDO J. INTRIAGO: He will explain it better.<br/>11 Sorry, let me retract that. He will explain that.<br/>12 JODY S. KLINE: Okay. That green area will be<br/>13 broken up into four separate play areas.<br/>14 EDUARDO J. INTRIAGO: Yes, sir.<br/>15 JODY S. KLINE: Okay. And within those play<br/>16 areas, what features will there be for the benefit of<br/>17 the children?<br/>18 EDUARDO J. INTRIAGO: Well, I think -- it's my<br/>19 understand that there are like, you know, Mr. Kline, I<br/>20 -- I know there's playground things. I just don't know<br/>21 what they are. I didn't design them.<br/>22 JODY S. KLINE: Age appropriate?<br/>23 EDUARDO J. INTRIAGO: They are age appropriate.<br/>24 That's what I know. But I did not design them. Mr.<br/>25 Ault did the design for that area.</p>  |

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| <p>225</p> <p>1 JODY S. KLINE: Okay. What is the material -- the<br/>2 surface material of that green area?<br/>3 EDUARDO J. INTRIAGO: That material is -- is a<br/>4 turf. So, basically you have a layer that's a turf.<br/>5 There will be a layer of sand, then a layer of rock.<br/>6 HEARING EXAMINER ROBESON HANNAN: When you say<br/>7 turf, are you talking grass turf of --<br/>8 EDUARDO J. INTRIAGO: No, it's artificial turf.<br/>9 HEARING EXAMINER ROBESON HANNAN: Artificial turf.<br/>10 EDUARDO J. INTRIAGO: Yeah. And we provided<br/>11 detail to DPS when we submitted the management plan.<br/>12 So, because we were under the impression that that<br/>13 could be considered pervious, DPS disagreed with us.<br/>14 We provided them with detail. They still disagreed<br/>15 with us. So, we assumed -- from my computations, I<br/>16 assume that that was -- that was impervious land or<br/>17 cover.<br/>18 JODY S. KLINE: I'd like to take you to the<br/>19 parking area -- the parking lot itself.<br/>20 EDUARDO J. INTRIAGO: Yes, sir.<br/>21 JODY S. KLINE: Okay. So, the -- the size of the<br/>22 spaces are how much -- parking spaces -- each space?<br/>23 EDUARDO J. INTRIAGO: 8-1/2 by 18.<br/>24 JODY S. KLINE: Okay. And how many parking spaces<br/>25 are you showing?</p>                                    | <p>227</p> <p>1 EDUARDO J. INTRIAGO: One second. I don't<br/>2 remember that by -- let me -- I'm going to try to find<br/>3 the exhibit that is in the record for the conditional<br/>4 use plan that has my computation in there.<br/>5 HEARING EXAMINER ROBESON HANNAN: Well, let me ask<br/>6 you this. Is it based on the metric in 16.4 of the<br/>7 county code? Is that --<br/>8 EDUARDO J. INTRIAGO: Yes, ma'am. That sounds<br/>9 accurate. I just need to find my conditional use plan.<br/>10 [Shuffling through exhibits.]<br/>11 EDUARDO J. INTRIAGO: I think this is Exhibit 93-D<br/>12 -- D -- 93-D, ma'am, 93-D like in David. I know you<br/>13 like it to be facing north, but I can read better this<br/>14 way. So, the parking complications were based on 3 per<br/>15 1,000 square foot of floor area. That came out to be<br/>16 39 spaces -- 3 per 1,000 -- 13,000 square feet, 39<br/>17 spaces.<br/>18 JODY S. KLINE: And you said you're providing how<br/>19 many?<br/>20 EDUARDO J. INTRIAGO: Forty-four.<br/>21 JODY S. KLINE: Okay. Do you have any ADA spaces?<br/>22 EDUARDO J. INTRIAGO: I have two, sir.<br/>23 JODY S. KLINE: Where will they be located?<br/>24 EDUARDO J. INTRIAGO: They'll be in the -- at the<br/>25 closest proximity to the -- to the main door -- on the</p>   |
| <p>226</p> <p>1 EDUARDO J. INTRIAGO: Forty-four.<br/>2 JODY S. KLINE: Forty-four. And that number was<br/>3 selected because why?<br/>4 EDUARDO J. INTRIAGO: That's the -- it was my --<br/>5 per my coordination with Primrose, that's their magical<br/>6 number operation-wise for them even though the<br/>7 requirement for the site is 39.<br/>8 JODY S. KLINE: Okay. So, give me a little bit<br/>9 more explanation of why Primrose things 44 is adequate.<br/>10 EDUARDO J. INTRIAGO: Well, 44 -- basically, they<br/>11 have many -- I don't know how many years of experience<br/>12 has Primrose doing these things all over the nation --<br/>13 but the way it was explained to me is based on the<br/>14 number of employees and, you know, that they have<br/>15 onsite plus their internal calculation of the time that<br/>16 it takes for parents to drop off their kid and get out<br/>17 of the parking stall. So, there was a computation --<br/>18 it was like 30 plus the 12 or 14 that they require for<br/>19 that operation is the number -- the 44 parking spaces.<br/>20 JODY S. KLINE: Okay. You -- you started off by<br/>21 saying the required number is 39, and that's based on<br/>22 what formula?<br/>23 EDUARDO J. INTRIAGO: That's based on -- may I<br/>24 look at the formula?<br/>25 JODY S. KLINE: Yeah, sure.</p> | <p>228</p> <p>1 -- facing the south side of the building.<br/>2 JODY S. KLINE: And they're marked on that plan?<br/>3 EDUARDO J. INTRIAGO: They're marked on the<br/>4 conditional use plan, Exhibit 93-D, CUP-4.<br/>5 JODY S. KLINE: Do we have a dumpster in the<br/>6 parking lot somewhere?<br/>7 EDUARDO J. INTRIAGO: We do, sir.<br/>8 JODY S. KLINE: Whereabouts is that?<br/>9 EDUARDO J. INTRIAGO: So, the dumpster would be<br/>10 located on the southwest corner of the park -- or the<br/>11 parking bay, and it's right -- right to the east of<br/>12 stormwater management facility number two -- to the<br/>13 southeast of stormwater management facility number two.<br/>14 JODY S. KLINE: Okay. Are -- are any of the<br/>15 parking spaces that I will call long-term parking --<br/>16 for instance, staff who wouldn't be dropping a child<br/>17 off for something? Are those sized any differently and<br/>18 in any event, where is the staff parking to be located?<br/>19 EDUARDO J. INTRIAGO: Well, the -- they're not<br/>20 sized any differently, but it's the understanding -- as<br/>21 far as I know operation-wise, staff parks as away as<br/>22 possible from the main entrance, allowing parents to --<br/>23 to park and do the drop-off operation as close as<br/>24 possible from the main entrance.<br/>25 JODY S. KLINE: Okay. Do we have bicycle parking?</p> |

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| <p>229</p> <p>1 EDUARDO J. INTRIAGO: Yes, we do, sir. So, based<br/>2 on code, we need to provide three bicycle parking, and<br/>3 again, based on code, we -- 85 percent of that parking<br/>4 has to be permanent parking. So, basically 85 percent<br/>5 of 3 -- is 3. So, we're providing 3 long-term bike<br/>6 lockers at the southeast corner of the main building as<br/>7 shown on Exhibit 93-D. It's labeled on the plan as<br/>8 well.</p> <p>9 JODY S. KLINE: Within the parking lot -- and<br/>10 probably use the rendered version -- 148 would be best<br/>11 -- would you just explain where the pedestrian movement<br/>12 will occur within the parking lot as people are going<br/>13 and walking to the building.</p> <p>14 EDUARDO J. INTRIAGO: So, the -- so, the intent of<br/>15 the parking lot, like I said, would reserve the closest<br/>16 12 parking spaces for parents. So, it's my<br/>17 interpretation that the 12 would be the ones that right<br/>18 -- facing the south side of the building and some like<br/>19 immediately to the -- to the west of them until they<br/>20 meet the 12 spaces, and there's no exact numbers as I<br/>21 understand, Mr. Kline. That's just a -- a -- an<br/>22 operation standard number that I've been given by -- by<br/>23 Primrose.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: The 12 -- is<br/>25 that for staff or --</p> | <p>231</p> <p>1 doing that. I need you to take your -- are those<br/>2 yours?</p> <p>3 EDUARDO J. INTRIAGO: Yes.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Yes. Just leave<br/>5 it there -- just leave it there. Okay. Would the<br/>6 first person -- we have until 5:00. I lose the court<br/>7 reporter at 5:00. Could -- would the first person,<br/>8 sorry, who wishes to testify please come forward, okay?<br/>9 Yes, right there where he's setting up that microphone.</p> <p>10 Okay. Do you solemnly -- can you raise your right<br/>11 hand, please? Do you solemnly affirm under penalties<br/>12 of perjury that the statements you're about to make are<br/>13 the truth, the whole truth, and nothing but the truth?</p> <p>14 ALANA CHAMOUN: I do.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Please state<br/>16 your name and address for the record.</p> <p>17 ALANA CHAMOUN: Alana Shamoun. I live on 5713<br/>18 Lake Christopher Drive, Derwood, Maryland.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Can you spell<br/>20 Shamoun?</p> <p>21 ALANA CHAMOUN: Yes. It's C-H-A-M as in Mike-O-U-<br/>22 N as in Nancy.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. And just<br/>24 one word for all the witnesses that are testifying, you<br/>25 will get notices about this case. There is a sign-in</p>  |
| <p>230</p> <p>1 EDUARDO J. INTRIAGO: No, that would be for<br/>2 parents, ma'am.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Twelve for<br/>4 parents, okay.</p> <p>5 JODY S. KLINE: Well and explain how you got to<br/>6 the 12 in terms of 44 less staff.</p> <p>7 EDUARDO J. INTRIAGO: Yeah, so it's basically 30 -<br/>8 - it's 30 employees plus 2 administrative is 32 plus 12<br/>9 is at 44. So, that's how they -- we came up with that<br/>10 computation or that's how Primrose came up with that<br/>11 computation, not us -- I'm not that smart.</p> <p>12 JODY S. KLINE: Ms. Robeson, I'm at kind of a<br/>13 point where I -- my next question or my next sort of<br/>14 discussion would get into some deeper stuff that I<br/>15 really would have trouble stopping in ten minutes. So,<br/>16 I'm almost to a point where I think I've exhausted the<br/>17 kind of trifling stuff that we can talk about right<br/>18 now.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Mr. Chen, do you<br/>20 have an objection if we take the --</p> <p>21 WILLIAM J. CHEN: No, let the folks testify.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. All<br/>23 right. Hearing that, I see -- are there still four<br/>24 people who wish to testify? Five? Oh, six. Okay.<br/>25 All right. Mr. Intriago, can you move -- oh, you're</p>  | <p>232</p> <p>1 sheet right outside the door. Please put an E-mail<br/>2 address on the sign-in sheet or you will not get the<br/>3 notices, okay? So, please make sure it's clearly<br/>4 written on that sign-in sheet. Okay, Ms. Chamoun.<br/>5 What would you like to say?</p> <p>6 ALANA CHAMOUN: Thank you for letting me kind of<br/>7 barge in and talk. I don't have a -- I don't have many<br/>8 prepared remarks, so I hope to be brief. But I'm<br/>9 hoping that my perspective is helpful to you. So, I<br/>10 live on Lake Christopher, which is on the other side of<br/>11 Needwood Park. My mother and sister-in-law live on<br/>12 7309 Needwood Road, which is essentially not directly<br/>13 across from Primrose, but pretty close to it. We also<br/>14 have a condo that we own in the Park Overlook<br/>15 community, also on Needwood Road, but across Redland,<br/>16 and we rent that condo to my brother-in-law. We<br/>17 purposely bought our house on Lake Christopher knowing<br/>18 that our house would be here, my mother-in-law's house<br/>19 would be there, and the Shady Grove Metro would be just<br/>20 after it. So, I have three -- three children -- three<br/>21 girls, 7, 3, and 1, and the 7-year-old attends<br/>22 elementary school at Candlewood in the neighborhood.<br/>23 She catches the bus actually at Lake -- excuse me -- on<br/>24 Needwood Road at my mother-in-law's house because the<br/>25 two younger girls go to my mother-in-law's in-home</p> |

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59 (233 to 236)

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| <p>233</p> <p>1 daycare. So, again, I'm dropping off them at the<br/>2 daycare, I'm dropping of my daughter so she can catch<br/>3 the bus, and then off I go down to Shady Grove.<br/>4 So, I'm kind of talking about my mother and<br/>5 sister-in-law's perspective as daycare operators. They<br/>6 have an at-home daycare. They have a total of 12<br/>7 students from ages like 6 weeks up to age 5<br/>8 essentially. From their perspective as a daycare<br/>9 operator, it actually -- the Primrose -- the Primrose<br/>10 development would almost be a benefit to them, because<br/>11 to have such a large center across the street, you have<br/>12 a constant stream of 195 parents who are obviously<br/>13 interested in a daycare facility, and for them to see<br/>14 my mother-in-law's daycare that's much smaller, home-<br/>15 based, from my perspective, I think that would be<br/>16 pretty -- pretty, you know, pretty enticing to see that<br/>17 daycare center versus a larger center, but so, we would<br/>18 almost be in favor of this development. But, as<br/>19 residents of Needwood Road and people whose children<br/>20 catch the bus on this road, play on this road, I drive<br/>21 on that road every single day, the -- such a large<br/>22 center is actually something that we're concerned about<br/>23 because we think it would really add an unhealthy,<br/>24 dangerous level of congestion and traffic to what<br/>25 frankly is already full of cars and congestion and</p>               | <p>235</p> <p>1 there.<br/>2 And again, listening to what the gentleman said<br/>3 about the parking spots. Having -- if I'm not mistaken<br/>4 -- 12 or so parking spaces are intended for the parents<br/>5 for pickup and drop-off, for such a large center, I<br/>6 would be extremely concerned that those parking spaces<br/>7 are not numerous enough. Again, speaking from my<br/>8 experience at my mother-in-law's in-home daycare,<br/>9 again, 12 students total, period, she has a circular<br/>10 driveway that, you know, the parents come, you park at<br/>11 the very end, the parents come right behind you, and<br/>12 then you're essentially -- during morning hours and<br/>13 evening hours, that parking -- that driveway is<br/>14 constantly filled with at least 2 cars, 3 cars, 4 cars,<br/>15 as many as 4 or 6 cars, and that's for a total of 12<br/>16 kids. So, you're expanding the number of 12 kids to<br/>17 195 and you're only giving them 12 spaces? Where are<br/>18 those people going to go when they're waiting, because<br/>19 everyone comes and picks up their kid around 5:00,<br/>20 5:30, 6:00, especially if you're coming from the Metro.<br/>21 If you want to get to downtown DC like I do, I have to<br/>22 drop off my kids by -- well, I should drop them off by<br/>23 7:45, but that often doesn't happen until 8 or 8:15.<br/>24 So, you know, everybody -- in order to get to the<br/>25 Metro, you've got to be -- you've got to -- you've got</p>  |
| <p>234</p> <p>1 traffic constantly. I don't know if there's a way for<br/>2 me to present photographs from my cell phone of me<br/>3 sitting in traffic just on Monday backed up almost to<br/>4 my mother-in-law's house, but essentially to the<br/>5 Taiwanese church waiting to turn left onto Redland from<br/>6 -- yeah, onto Redland from Needwood Road at 8:30 on any<br/>7 old Monday morning. I mean, that scene happens all the<br/>8 time, and I would think that adding such a large center<br/>9 -- 200 -- well, 195 children -- I think just adds to<br/>10 that, especially, you know, thinking about if you're<br/>11 going to make a left onto the Primrose property from<br/>12 Needwood Road, you know, that left is -- you've got to<br/>13 wait for oncoming traffic. It's just going to add more<br/>14 -- more traffic.<br/>15 And then, you know, just kind of listening to --<br/>16 I've only been here for the last 30 minutes, but I've<br/>17 just kind of listened to the gentleman speak earlier<br/>18 about the entrance that the plans include for the --<br/>19 for the development. Again, I feel like the -- that<br/>20 entrance, because of the limitations of the area around<br/>21 it and the setbacks, it's already a hard left or even a<br/>22 hard righthand turn to make. So, in order to make that<br/>23 turn, I feel like again, you're going to have to slow<br/>24 down even further, which it just has this domino effect<br/>25 to the -- to the traffic that is already -- already</p> | <p>236</p> <p>1 to drop off your kid at essentially the same time. And<br/>2 again, all of these parents -- where are they going to<br/>3 drive? Are they going to drive around the<br/>4 neighborhood? Are they going to go through? Are they<br/>5 going to sit and park on the side of the road because I<br/>6 see a lot of grassy area -- probably. It just adds yet<br/>7 again more congestion, more danger frankly for people<br/>8 who live in the area who are walking to and from the<br/>9 Metro. I read the traffic study, and I thought that it<br/>10 -- well, I didn't think it -- it truly only focused on<br/>11 Needwood Road -- the stoplight that's over here at<br/>12 Redland Road and the stoplight that's down by<br/>13 Moncaster. But it didn't speak at all about the cut-<br/>14 through neighborhood. There's a -- there's a road,<br/>15 Grande Vista Drive, I think, it was silent on the<br/>16 effects of this daycare on that road, and I know that<br/>17 if I'm trying to make a left-hand turn onto Needwood<br/>18 Road from Redland during morning rush hour morning or<br/>19 evening rush hour, that -- that left-hand turn is<br/>20 extremely hard to make, and I often will turn instead -<br/>21 - instead of turning onto to Needwood Road, I will<br/>22 often turn onto Grande Vista, and I have to imagine<br/>23 that if I'm a parent who's now bringing my children --<br/>24 my child to this very large daycare center, that's<br/>25 going to add to more people like me who are going to be</p> |

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60 (237 to 240)

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| <p>237</p> <p>1 making those turns and cutting through Grande Vista<br/>2 and, you know, that's a problem because the people who<br/>3 live along Grande Vista, most of them don't -- who have<br/>4 children who attend Candlewood Elementary -- most of<br/>5 them are not eligible for the bus service, so those<br/>6 kids are walking along Grande Vista up to a mile, and<br/>7 if you're adding yet more through traffic of people who<br/>8 are in a rush trying to get to work, often like I am,<br/>9 you know, again, that just adds yet more traffic<br/>10 congestion and just unnecessary danger where a center<br/>11 like this belongs in Montgomery County for sure -- we<br/>12 all know that we need -- we need more daycare -- but I<br/>13 just don't see how it could be wedged into what is<br/>14 supposed to be a low-density residential neighborhood.<br/>15 And I think -- I don't think I have anything else.<br/>16 Okay.<br/>17 HEARING EXAMINER ROBESON HANNAN: All right. Any<br/>18 questions Mr. Chen, Mr. Kline?<br/>19 JODY S. KLINE: Does your mom's operation have a<br/>20 set time for arrival for the kids? Are they all<br/>21 supposed to be there at 8:30 or is it come when --<br/>22 ALANA CHAMOUN: They open at 7:30 and they have to<br/>23 be picked up by 5:30.<br/>24 JODY S. KLINE: Sure. How about --<br/>25 ALANA CHAMOUN: But there's no -- there's not like</p> | <p>239</p> <p>1 concern you have about that?<br/>2 ALANA CHAMOUN: So, my concern is that anybody who<br/>3 is making -- who's attempting to make a left-hand turn<br/>4 from Redland Road onto Needwood Road.<br/>5 JODY S. KLINE: So, this movement and make a left.<br/>6 ALANA CHAMOUN: That's a stoplight, and there is<br/>7 no --<br/>8 HEARING EXAMINER ROBESON HANNAN: Now, when you<br/>9 say that, you're talking about the intersection of<br/>10 Redland and Needwood.<br/>11 ALANA CHAMOUN: Thank you, yes. The intersection<br/>12 of Redland and Needwood does not have a designated left<br/>13 turn arrow. So, if you're making a left-hand turn,<br/>14 you're waiting for the oncoming traffic on Redland<br/>15 before you can make that turn. And in rush hour -- in<br/>16 the mornings and the evenings -- that's very hard to<br/>17 do. And so, what I often do is instead of making a<br/>18 left onto Needwood, I will make a left onto Grande<br/>19 Vista and then make a right onto Needwood if I have to<br/>20 go pick up the girls or, you know, left if I'm going<br/>21 home.<br/>22 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>23 JODY S. KLINE: So, you know, that just kind of<br/>24 adds traffic to this road then.<br/>25 ALANA CHAMOUN: Yes.</p> |
| <p>238</p> <p>1 a program start and a program end.<br/>2 JODY S. KLINE: Okay, fine. Simply because I<br/>3 don't know where Grande Vista is, I'm hoping you can<br/>4 give me a little bit of orientation based on this<br/>5 exhibit which is, I think, 149. Can you see this from<br/>6 there? We've got Redland here and Needwood here, and<br/>7 here's the subject property. So, this would be<br/>8 Carnegie on this side.<br/>9 ALANA CHAMOUN: Yes.<br/>10 JODY S. KLINE: Where -- where is that road you<br/>11 were talking about?<br/>12 ALANA CHAMOUN: I'll just get up and show you.<br/>13 JODY S. KLINE: Okay.<br/>14 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>15 JODY S. KLINE: Okay. So, you pointed to a road<br/>16 that's south of the subject property, perpendicular --<br/>17 almost perpendicular to Needwood Road. I guess where<br/>18 I've got my pencil right now.<br/>19 ALANA CHAMOUN: Yes.<br/>20 JODY S. KLINE: And it -- it basically -- okay,<br/>21 does it connect to Redland? Is that what the bypass<br/>22 effect is?<br/>23 ALANA CHAMOUN: Yes. It will eventually connect<br/>24 to Redland. I guess that's more.<br/>25 JODY S. KLINE: So -- so -- and what was the</p>   | <p>240</p> <p>1 JODY S. KLINE: Okay.<br/>2 HEARING EXAMINER ROBESON HANNAN: Grande Vista.<br/>3 ALANA CHAMOUN: Grande Vista.<br/>4 JODY S. KLINE: Okay, thank you.<br/>5 HEARING EXAMINER ROBESON HANNAN: Mr. Chen? All<br/>6 right. Thank you. You may be excused. Okay. Who<br/>7 would like to testify next? Okay, please come forward.<br/>8 And make sure you sign in on the sign-in sheet with<br/>9 your name, address, and E-mail. Right up here, please.<br/>10 Please raise your right hand. Do you solemnly affirm<br/>11 under penalties of perjury that the statements you're<br/>12 about to make are the truth, the whole truth, and<br/>13 nothing but the truth?<br/>14 JENNIFER MITCHELL: Yes, I do.<br/>15 HEARING EXAMINER ROBESON HANNAN: Okay. Please<br/>16 state your name and address for the record.<br/>17 JENNIFER MITCHELL: My name is Jennifer Mitchell,<br/>18 and I live at 7500 Needwood Road.<br/>19 HEARING EXAMINER ROBESON HANNAN: Can you spell --<br/>20 it Mitchell M-I-T-C-H-E-L-L?<br/>21 JENNIFER MITCHELL: C-H-E-L-L, correct.<br/>22 HEARING EXAMINER ROBESON HANNAN: Okay. And what<br/>23 was your address?<br/>24 JENNIFER MITCHELL: 7500 -- seven five zero zero.<br/>25 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead,</p>             |

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| <p>241</p> <p>1 Ms. Mitchell.</p> <p>2 JENNIFER MITCHELL: So, I'll just point out that I</p> <p>3 am the house on the lot directly to the west of the</p> <p>4 proposed development on the other side of Carnegie</p> <p>5 Avenue that's not shown on any of the pictures. That's</p> <p>6 where our home is. So, it was --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. Here, I'm</p> <p>8 going to - do you want this? Do you want to mark 148?</p> <p>9 Can you give an approximate location of where your</p> <p>10 house is?</p> <p>11 JENNIFER MITCHELL: Sure.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: On what -- she's</p> <p>13 marking 148 in blue pen.</p> <p>14 JENNIFER MITCHELL: So, there's a telephone pole</p> <p>15 here -- that's our property -- our property corner, and</p> <p>16 our driveway is right next to the -- right next to</p> <p>17 that. So, our property is like that and like this.</p> <p>18 So, that's our -- can you see all that?</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay, thank you.</p> <p>20 JENNIFER MITCHELL: So, we purchased the home in</p> <p>21 September 2019, but it had been on the market since</p> <p>22 October 2018. So, they broke ground sometime in 2018 -</p> <p>23 - I'm not sure when. And when we purchased the home --</p> <p>24 we moved from northeast DC and we moved to Montgomery</p> <p>25 County. I've lived in DC and Montgomery County</p>   | <p>243</p> <p>1 houses all around in the neighborhood. So, I'll note</p> <p>2 that the site drawing takes off all the trees that are</p> <p>3 currently on the west side of the property to provide</p> <p>4 room for the playgrounds but does not put up any</p> <p>5 screening at all. So, our view from our bedroom, our</p> <p>6 kitchen, our living room, our dining room, our kids'</p> <p>7 playroom, and our walkout basement is now going to be</p> <p>8 the back of a commercial building that's three-sized</p> <p>9 the time -- the size of our house, and we have a</p> <p>10 decent-sized house. So, we'd be looking at the back of</p> <p>11 the building and playgrounds, and I believe that's</p> <p>12 their generators and HVAC units, which will be the</p> <p>13 direct view from our bedroom and our kitchen and all of</p> <p>14 our living area, and HVAC units and generators run all</p> <p>15 the time and at all hours. In addition, the lighting</p> <p>16 for a commercial building -- the artificial lighting is</p> <p>17 really going to be problematic. Right now, we have our</p> <p>18 shades up, we can see the stars at night. But, this is</p> <p>19 going to be like living in the city again. This is not</p> <p>20 -- commercial lighting is not appropriate for this</p> <p>21 neighborhood, certainly not like this close to other</p> <p>22 people's houses and, as mentioned by the landscape</p> <p>23 expert or the individual that was presenting the</p> <p>24 landscape plan, it's going to take 20 years for these</p> <p>25 to mature, and that will only block our view of the</p> |
| <p>242</p> <p>1 throughout my life. We have young kids, 5 and 2, so</p> <p>2 schools were a concern and just getting a larger home,</p> <p>3 more for your money. So, we decided to move out of DC</p> <p>4 and we found this home and we loved it because it was</p> <p>5 walking distance from the Metro and it was lovely and</p> <p>6 beautiful, and it had a country feel. It was very</p> <p>7 quiet streets, big open backyard, probably way more</p> <p>8 than we need. So, we purchased the home and we moved</p> <p>9 in probably October of this past year. So, we are</p> <p>10 opposed to the development of the site as this 195-</p> <p>11 student daycare as it's currently laid out for a number</p> <p>12 of reasons, and I'll try not to duplicate what others</p> <p>13 have said, but it's going to have an impact on the</p> <p>14 peaceful use and enjoyment of our property and other</p> <p>15 surrounding properties. It's significantly going to</p> <p>16 increase traffic on an already congested road, as</p> <p>17 others have mentioned. It's going to dramatically</p> <p>18 change the character of the neighborhood -- the</p> <p>19 residential neighborhood, and it will have an adverse</p> <p>20 impact on our property value and of property values of</p> <p>21 other homes in the area -- obviously the ones closer to</p> <p>22 the property more so, but it is going to decrease the</p> <p>23 value of the surrounding properties.</p> <p>24 I'll try to focus mainly on our -- the impacts on</p> <p>25 us, but it's going to have similar impacts on the</p> | <p>244</p> <p>1 parking lot a little bit. It's not going to block our</p> <p>2 view of the facility at all.</p> <p>3 So, that's what we're going to see all day long</p> <p>4 and all evening long. We're going to have the lights.</p> <p>5 We're going to have to sleep with our windows shut, our</p> <p>6 curtains shut, get blackout shades. I mean, just the</p> <p>7 thought of it is -- is distressing. And we'll have to</p> <p>8 spend our own money to minimize these impacts because</p> <p>9 they haven't done anything on our side, I guess because</p> <p>10 our house wasn't there at the time, I don't know.</p> <p>11 In addition to the light pollution, there's going</p> <p>12 to be noise pollution from the increased traffic</p> <p>13 starting at 6:30 in the morning when staff starts to</p> <p>14 arrive, deliveries, trash trucks, noise on the road,</p> <p>15 and again, the HVAC and generator units that will run</p> <p>16 in the evenings and even when schools are out of</p> <p>17 session. So, it's really going to have an impact.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: What's your</p> <p>19 position -- have you read their plans for the number of</p> <p>20 children outside at one time?</p> <p>21 JENNIFER MITCHELL: I haven't. I don't know how</p> <p>22 many children are allowed to be out at once -- one time</p> <p>23 based on their plan. It's not having a few children</p> <p>24 out that bothers me, it's the overall noise -- people</p> <p>25 coming and going, car doors shutting all morning long</p>  |

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| <p style="text-align: right;">245</p> <p>1 because you can't get out of a car without shutting the<br/>2 door, so that's going to be starting at 6:30 in the<br/>3 morning. And --<br/>4 HEARING EXAMINER ROBESON HANNAN: Have you<br/>5 presented -- are we still waiting for the operations<br/>6 person?<br/>7 JODY S. KLINE: You are.<br/>8 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.<br/>9 JENNIFER MITCHELL: So, in addition, my property -<br/>10 - our property -- the Primrose development site slopes<br/>11 down to Carnegie Avenue and then it also slopes down<br/>12 even further onto our property. So, it's a pretty<br/>13 steep decline -- net decline. And we already have<br/>14 standing water in our backyard at various, you know,<br/>15 areas when it's a heavy rain and literally running<br/>16 water coming down when it's a significant storm, and<br/>17 I'm concerned that they have not adequately addressed<br/>18 that issue. Based on the amount of impervious surface<br/>19 that they're adding with the driveway and the parking<br/>20 lot and I know that the fake turf or whatever it's<br/>21 called -- I don't know the right name -- it gets some<br/>22 drainage, but it's not the same drainage as grass would<br/>23 get and the building. So, I'm very concerned about<br/>24 that -- how that's going to impact the surrounding<br/>25 homes and the runoff onto Needwood Road, and I just</p>  | <p style="text-align: right;">247</p> <p>1 past our house, kind of turns into two lanes right at<br/>2 the light. So, there have been some times where we've<br/>3 pulled out and a car comes over the hill, but I'm able<br/>4 to go kind of -- the window of cars coming into<br/>5 oncoming traffic to get to that lane. So, it is<br/>6 dangerous even at that part of the intersection with<br/>7 the current amount of traffic. And because people, I<br/>8 mean, to be honest, I would do it if I was dropping off<br/>9 my kid and was in a rush and had to run them over to<br/>10 school and there was a long time because I've taken my<br/>11 kids to daycare for years and parked in neighborhoods<br/>12 to do so, I would park on the gravel road. But that's<br/>13 going to further, you know, impact the issue of getting<br/>14 out of my driveway or getting out of frankly any -- any<br/>15 of the driveways along Needwood Road in both<br/>16 directions. So, I'm really concerned about the impact<br/>17 it's going to have on the -- on the safely entering and<br/>18 exiting in addition to just increased traffic in<br/>19 general. My son also gets picked up right in front of<br/>20 our house, and other kids do, and I've walked him to<br/>21 school at Candlewood on numerous times, and it is hard<br/>22 to cross Needwood Road. There's not crosswalks to<br/>23 cross Needwood Road. So, you just have to wait for<br/>24 someone to be nice and kind of let you pass. But with<br/>25 an extra 195 cars, you're going to be waiting even</p> |
| <p style="text-align: right;">246</p> <p>1 think that's going to deteriorate the gravel road. So,<br/>2 they're putting in the walkway, which I just learned<br/>3 about, which is nice. We walk in the gravel road all<br/>4 the time. But then, the water's just going to roll off<br/>5 the sidewalk onto the gravel road and just further<br/>6 deteriorate it, and there are some people use the<br/>7 gravel road to access the property behind ours.<br/>8 With respect to traffic, trying not to duplicate<br/>9 what others said, people are absolutely going to park<br/>10 along Carnegie Avenue to drop off their kids and along<br/>11 Deer Park, the next street down because when people<br/>12 come in and out, it's really difficult to get out. So,<br/>13 I understand why they moved the entrance because of<br/>14 line of sight. But, to get out of Carnegie Avenue or<br/>15 our driveway, we literally have to gun it to be safe<br/>16 only because if it's open, it's open for a second, but<br/>17 then someone's coming over the hill. So, even if we<br/>18 don't see a car, like we step on the gas to get out of<br/>19 the driveway. So, we're -- we're already doing that<br/>20 during rush hour, but to be safe, you know, we move<br/>21 when we get out of our driveway, and with 195 at least<br/>22 extra cars during the day during rush hour, that's<br/>23 going to continue to happen, and that's after we wait a<br/>24 cycle or two to get out of our driveway during rush<br/>25 hour. Now, we're a little lucky because Needwood, just</p> | <p style="text-align: right;">248</p> <p>1 longer to do it safely. So, I'm really concerned about<br/>2 the impact on us getting out but also the neighbors<br/>3 generally and people walking and biking along the path.<br/>4 I think that this just -- as I mentioned, we moved<br/>5 out from DC and there are things I loved about living<br/>6 in DC, but we moved out to be more country, more rural,<br/>7 but still walking distance from the Metro. But we<br/>8 specifically chose it because it was a residential<br/>9 neighborhood and having this facility next to us, three<br/>10 times the size of our house with all this lighting,<br/>11 even if they make it, you know, put pretty siding on<br/>12 it, it's still going to be this huge monstrosity next<br/>13 to our house. Maybe not monstrosity -- it's still<br/>14 going to be this huge commercial building next to our<br/>15 house with no screening or landscaping blocking the<br/>16 view from the main road or from our house. So, we<br/>17 definitely have concerns about the impact on the<br/>18 overall residential feel of the neighborhood, and it<br/>19 just doesn't blend in with the neighborhood. There's a<br/>20 few churches and other home businesses, home daycare, a<br/>21 landscaping company on the other side of me, but<br/>22 they're tucked back behind homes, you know, people's<br/>23 homes and tucked away. Even the tractor trailers on<br/>24 Needwood, you can't see them from behind. It's tucked<br/>25 away. You don't see it. So, I just think this is a</p>    |

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| <p>249</p> <p>1 huge change from the residential nature of the<br/>2 neighborhood overall.<br/>3 And I am very concerned about the impact it's<br/>4 going to have on the value of our property based on the<br/>5 way it's set up, the increased traffic, the -- just<br/>6 being able to be outside and enjoy our property, no<br/>7 screening at all, and just the overall change. We did<br/>8 call the number on the sign before we purchased the<br/>9 home and were informed that interested parties would<br/>10 receive notice of the hearing 30-45 days before the<br/>11 hearing date, which was scheduled for November, but<br/>12 since we weren't interested parties, we weren't<br/>13 entitled to any other information. And this was before<br/>14 we purchased, because I was also trying to see if they<br/>15 would waive my son and let him -- he has a September<br/>16 birthday, and I wanted to make sure they would waive<br/>17 him in the school before we put an offer on the house.<br/>18 So, this was before we had a final offer signed. But I<br/>19 thought, there's no way they're going to approve this<br/>20 huge 195-kid daycare like in between all these homes,<br/>21 so I did take a risk. But if this is approved, it will<br/>22 have a -- we'll be immediately upside down in our<br/>23 property, and it's going to be worth far less than we<br/>24 paid for it. So, for all those reasons and in addition<br/>25 to the other statements and comments that others have</p> | <p>251</p> <p>1 information specifically that I was told. We were not<br/>2 -- interested parties would receive notice. And I<br/>3 don't think -- now -- what I've learned now -- well,<br/>4 certainly I think anyone who is entitled to drive by,<br/>5 there's a notice posted for a reason. It could have<br/>6 been a little more helpful and I think in the spirit of<br/>7 the county helping the applicant work through the<br/>8 process and being objective, who is not a local<br/>9 resident, I don't feel that I was -- we were afforded<br/>10 the same assistance and help.<br/>11 JODY S. KLINE: No further questions.<br/>12 WILLIAM J. CHEN: I take it this was during the<br/>13 period of time that the Offices of the Zoning<br/>14 Administrative Hearings was being relocated from the<br/>15 county office building to this location. Is that<br/>16 right?<br/>17 JENNIFER MITCHELL: I have learned that since.<br/>18 WILLIAM J. CHEN: Okay.<br/>19 HEARING EXAMINER ROBESON HANNAN: Okay. Well, you<br/>20 should just -- for the record -- you shouldn't -- I<br/>21 don't know what was said. But our files are open to<br/>22 the public and the applications are posted on the<br/>23 website and our files are open to the public to -- for<br/>24 anyone who wants to come review them. But, okay. Any<br/>25 other questions? All right. Thank you.</p> |
| <p>250</p> <p>1 made, we think that the development as proposed should<br/>2 be -- should not be approved.<br/>3 HEARING EXAMINER ROBESON HANNAN: Thank you. Mr.<br/>4 Kline?<br/>5 JODY S. KLINE: Refresh my memory, you said you<br/>6 settled when?<br/>7 JENNIFER MITCHELL: We settled the end of -- I<br/>8 think it was the last day of September.<br/>9 JODY S. KLINE: Of 2019?<br/>10 JENNIFER MITCHELL: Um-hum.<br/>11 JODY S. KLINE: Yeah. But you had seen the signs<br/>12 on the property.<br/>13 JENNIFER MITCHELL: Um-hum.<br/>14 JODY S. KLINE: You got the number off it.<br/>15 JENNIFER MITCHELL: Yep.<br/>16 JODY S. KLINE: I was going to ask you the<br/>17 question, you must have made a decision that if it does<br/>18 get approved that we can live with it, but I'm<br/>19 gathering with your comment that's not true. You just<br/>20 took a bet and said we don't think it will get<br/>21 approved, therefore --<br/>22 JENNIFER MITCHELL: Well, we weren't -- we didn't<br/>23 know the nature and extent of it, and I realize that a<br/>24 certain amount of that falls on us. But I did call the<br/>25 number on the sign that was posted, and that was the</p>  | <p>252</p> <p>1 JENNIFER MITCHELL: Thanks.<br/>2 HEARING EXAMINER ROBESON HANNAN: Okay. Next -<br/>3 who would like to come next? Okay, come on up. Oh, he<br/>4 just got in there. I'm trying to get everybody in as I<br/>5 can. Please raise your right hand. Do you solemnly<br/>6 affirm under penalties of perjury that the statements<br/>7 you are about to make are the truth, the whole truth,<br/>8 and nothing but the truth?<br/>9 JAMES DEMPSEY: I do.<br/>10 HEARING EXAMINER ROBESON HANNAN: Please state<br/>11 your name and address for the record.<br/>12 JAMES DEMPSEY: My name is James Dempsey, and my<br/>13 address is 7500 Quincewood Court, Derwood, Maryland.<br/>14 HEARING EXAMINER ROBESON HANNAN: And just spell<br/>15 Dempsey for the court reporter, please.<br/>16 JAMES DEMPSEY: D-E-M-P-S-E-Y.<br/>17 HEARING EXAMINER ROBESON HANNAN: Okay, thank you.<br/>18 WILLIAM J. CHEN: What street was that, sir?<br/>19 JAMES DEMPSEY: Quincewood Court. That's in the<br/>20 Park Overlook development. I'm right on the other side<br/>21 of the Redland/Needwood intersection.<br/>22 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>23 JAMES DEMPSEY: So, I very much appreciate the<br/>24 opportunity to speak, and I want to echo some of the<br/>25 sentiments but not repeat some of the previous</p>   |



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| <p>253</p> <p>1 speakers. So, I'll try to keep my comments to two<br/>2 specific areas both on this property and partially<br/>3 affecting the precedent that I'm concerned about on the<br/>4 property.<br/>5 My personal position is I'm not in favor of the<br/>6 development of this particular property. I think the<br/>7 traffic issues have been fairly well documented. One<br/>8 thing that I was specifically curious about in<br/>9 Montgomery County is they're promoting a new vision<br/>10 zero project that is supposed to end traffic safety<br/>11 deaths to pedestrians by the year 2030. I didn't see<br/>12 anything in the literature that I saw online in any of<br/>13 the documents that addressed whether or not those<br/>14 recommendations or those concepts had been addressed<br/>15 and, you know, I apologize if I don't have -- if I<br/>16 haven't read everything that's been posted or seen all<br/>17 of the testimony thus far. But I did have that general<br/>18 observation. The -- the off-street customer parking, I<br/>19 think notionally it's about 10 spots is the<br/>20 understanding. I do think that there is going to be a<br/>21 concentration, and that's unfortunate, for the drop-off<br/>22 and pickup of children. I think from what I've seen on<br/>23 the earlier documentation provided by the plaintiffs,<br/>24 that they indicated that it was roughly rated at about<br/>25 150 pickups and drop-offs in the morning with 125 in</p> | <p>255</p> <p>1 the property -- I didn't hear much discussion of the<br/>2 food services or food preparation aside from hearing<br/>3 that it's possible that it was going to be a delivered<br/>4 service and not so much an onsite kitchen. I feel like<br/>5 that decision would have been made in order to account<br/>6 for the lack of available space on the property. And<br/>7 granted, that's just an opinion, but the concern is,<br/>8 you know, we're trying to be ecologically minded, and<br/>9 if we're going to have a lot of deliveries of what can<br/>10 only be presumed as disposable food portions for a<br/>11 workday or a school day that is going to start at 6<br/>12 a.m. and go to 6 p.m. roughly, that seems like multiple<br/>13 food opportunities per child per day. So, it seems<br/>14 like that's -- that's something that would need to be<br/>15 mitigated and I'm not sure if the plaintiff has<br/>16 addressed that.<br/>17 The trash collection and the fire truck discussion<br/>18 that the gentleman has who was explaining the property<br/>19 did seem like it would have been awkward and difficult<br/>20 to get that much access down that narrow pathway, and I<br/>21 was kind of drawn to the number of compromises that<br/>22 were made due to just the nature of the property<br/>23 itself, and there are certain things that are unable to<br/>24 be changed. But due to all those compromises, it<br/>25 seemed like it was already a design that was not</p> |
| <p>254</p> <p>1 the evening. I'm sure the plaintiffs can probably<br/>2 speak to the exact numbers. But based on that, if you<br/>3 average 6-10 minutes per family drop-off an pickup,<br/>4 you've already kind of exceeded those numbers for sure<br/>5 on the morning period of time and then in the evening,<br/>6 it seems like it's still pretty close, and that's<br/>7 before the property is even opened. So, it strikes me<br/>8 as you've already taken a property and developed it to<br/>9 its maximum potential on day one of the opening, which<br/>10 doesn't apply a lot of opportunity for growth or<br/>11 adjustment once the operation is -- is underway. So,<br/>12 that -- that struck me as an area for further<br/>13 clarification.<br/>14 So, the access issue, I did kind of have a<br/>15 question about the -- the fence construction that was<br/>16 mentioned that was going to be on the east side of the<br/>17 property. It sounded like that was partially put in<br/>18 place to mitigate the effective headlights for traffic<br/>19 both turning on and off of the property. The issue I<br/>20 kind of had with that is if it's going to be a board-<br/>21 on-board type of style as -- as discussed, it strikes<br/>22 me as that sort of works against the light mitigation<br/>23 issue of those headlights. So, I don't know if that -<br/>24 that can be addressed as well.<br/>25 I also kind of thought the ecological impact of</p>                     | <p>256</p> <p>1 optimal for the property, and it was almost an<br/>2 acknowledgement by the proposer.<br/>3 So, the -- the other thing is as I'm going through<br/>4 Montgomery County zoning documentation, I see there are<br/>5 a lot of different categories of zoning that you could<br/>6 apply to a particular site, and this was, I believe,<br/>7 already RE1 zone. I've looked for opportunities to buy<br/>8 in this area before and was struck with the challenges<br/>9 and the thoroughness that is needed to go from RE1 to<br/>10 maybe even a slightly larger property to put a duplex,<br/>11 a triplex, some sort of multifamily townhouse and<br/>12 everything, and it seemed like for the character of the<br/>13 neighborhood and what the surrounding facilities have<br/>14 that it was quite a leap to go from RE1 zoned property<br/>15 to a commercial daycare larger than 30 and, you know,<br/>16 that's certainly within the rights of the applicant to<br/>17 elect for that, but within the character of the<br/>18 neighborhood, within, you know, a lot of the --<br/>19 residents of Needwood pointed out, it was quite an<br/>20 impact and quite a difference to the community.<br/>21 I also noted that 13,000 square feet for that<br/>22 property puts it roughly five times the average<br/>23 structure that's in that neighborhood in that area.<br/>24 You know, I think you have a couple of examples,<br/>25 there's a community center a little further closer to -</p>   |

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| <p style="text-align: right;">257</p> <p>1 - to Redland, there is the cultural center that's off<br/>2 of there. The differences there are the amount of time<br/>3 that those facilities are utilized, and that's not a<br/>4 five days a week continual working process with both<br/>5 cleaning services, delivery, trash collection,<br/>6 potential for emergency vehicles, all those things also<br/>7 weighed in on top of those areas.<br/>8 So, that is on the property itself that I kind of<br/>9 had questions about and didn't feel like the<br/>10 documentation that I saw adequately described it.<br/>11 The other aspect I had was if this is okay and<br/>12 this is approved, does this mean that a property like<br/>13 this could be developed for other similar use<br/>14 properties in that general area, and where -- what<br/>15 would be the point of demarcation between this type of<br/>16 property as a daycare, which is noble in its intention,<br/>17 I understand that, it's trying to meet a need. But at<br/>18 the same time, why is that different than the same<br/>19 rights that a convenience store or a nail salon or a<br/>20 fast food place or, you know, a UPS store or maybe an<br/>21 insurance agency, something like that -- why couldn't<br/>22 those be afforded the same opportunity as a property<br/>23 like this?<br/>24 So, that overall covers the concerns that I had.<br/>25 I feel like there's a lot there, but at the same time,</p> | <p style="text-align: right;">259</p> <p>1 CHARLES AMMERMAN: A-M-M-E-R-M-A-N. The address<br/>2 is 16132 Deer Lake Road.<br/>3 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead,<br/>4 Mr. Ammerman.<br/>5 CHARLES AMMERMAN: So, my wife and I and our two<br/>6 kids moved to the neighborhood in 2013. It took us two<br/>7 years to find our house that I've claimed that I will<br/>8 never move from because I love it that much. And we<br/>9 found this neighborhood. It took us so long because we<br/>10 were looking for a place that was in the country, a<br/>11 place that had a neighborhood -- that was in a<br/>12 neighborhood, a place that our kids would be able to<br/>13 safely ride their bicycles around, and a place that was<br/>14 in close proximity to the normal conveniences,<br/>15 especially Metro, because our two kids are both in high<br/>16 school. My son actually takes the Metro to high school<br/>17 each day. So, although we drop him off in the morning,<br/>18 it's not uncommon for him to walk back home from the<br/>19 bus stop on Redland Road. So, he walks down Needwood<br/>20 to get to Deer Lake. We were thrilled, because both of<br/>21 our kids enjoy riding their bicycles around the<br/>22 neighborhood. They ride throughout. They use<br/>23 Carnegie, actually. They do cut through that area<br/>24 where the fence is not, but they use that as a loop.<br/>25 They go down Carnegie and down Needwood, and then back</p>                   |
| <p style="text-align: right;">258</p> <p>1 you know, I recognize that coming into this process<br/>2 after, maybe some of that has been covered, and I look<br/>3 forward to being able to read more about it. That's<br/>4 all I have.<br/>5 HEARING EXAMINER ROBESON HANNAN: Thank you.<br/>6 Questions?<br/>7 JODY S. KLINE: No, thank you.<br/>8 HEARING EXAMINER ROBESON HANNAN: Questions, Mr.<br/>9 Chen?<br/>10 WILLIAM J. CHEN: No. No, thank you.<br/>11 HEARING EXAMINER ROBESON HANNAN: Okay. Thank<br/>12 you. You can be excused. Let me get this gentleman<br/>13 who's been trying to testify. Do you still want -- I<br/>14 assume you still want to testify? Okay. Why don't you<br/>15 come forward? We may only have time for one more<br/>16 person, but we'll do our best. Please raise your right<br/>17 hand. Do you solemnly affirm under penalties of<br/>18 perjury that the statements you're about to make are<br/>19 the truth, the whole truth, and nothing but the truth?<br/>20 CHARLES AMMERMAN: I do.<br/>21 HEARING EXAMINER ROBESON HANNAN: Please state<br/>22 your name and address for the record.<br/>23 CHARLES AMMERMAN: Charles Ammerman.<br/>24 HEARING EXAMINER ROBESON HANNAN: Can you spell<br/>25 Ammerman please for the court reporter?</p>   | <p style="text-align: right;">260</p> <p>1 onto Deer Lake. They also go up Needwood with their<br/>2 friends on their bicycles or walking to go to the new<br/>3 Starbucks that's on Crabbs Branch Way over by the<br/>4 Metro.<br/>5 So, we are not in favor of the daycare center<br/>6 principally for two reasons. One, safety. Pedestrian<br/>7 and bicycle safety is a major concern of ours. The<br/>8 projected volume of vehicles entering and exiting the<br/>9 facility during peak hours, which would be consistent<br/>10 with the time in which both our son who goes -- uses<br/>11 the Metro and our neighbors who walk to the Metro --<br/>12 during that time the Primrose projects 180 vehicles<br/>13 entering into the site and 173 vehicles exiting the<br/>14 site in the evening hours. Personally, I have trouble<br/>15 piecing together those numbers. There's a -- if you<br/>16 deduct 32 employees from that number, they are not<br/>17 nearly at capacity for their number of children that<br/>18 would be actually going there unless you have large<br/>19 groups of families coming in. Nonetheless, it's a<br/>20 large volume of vehicles going in and out of what is<br/>21 originally a residential drive. That also is 180<br/>22 vehicles that are at danger of hitting pedestrians<br/>23 making their way to the Metro in the morning and<br/>24 returning home in the evening, especially when during<br/>25 the winter season when the lighting isn't as good.</p> |

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| <p style="text-align: right;">261</p> <p>1 Similarly, with bicyclists, the same danger is at play.<br/>2 The other aspect that's of significant concern to<br/>3 us is the reason we moved here -- the atmosphere of the<br/>4 neighborhood. We didn't move to -- we moved from<br/>5 Gaithersburg -- from where the Rio is now developed<br/>6 because it was building up -- it was being<br/>7 commercialized. There is logically a sign that's<br/>8 proposed to advertise the site, but just generally, the<br/>9 volume of vehicles going in and out of what was<br/>10 intended to be a residence for people, is not<br/>11 consistent with the atmosphere that we bought into and<br/>12 that our neighbors bought into. There -- so, we feel<br/>13 that it will have an adverse effect on the atmosphere.<br/>14 We feel it will have a negative impact on the safety<br/>15 for pedestrians and bicyclists going up and down<br/>16 Needwood.<br/>17 Lastly, there was a traffic study. There were two<br/>18 traffic studies that were conducted. I've gone through<br/>19 them. Both traffic studies were conducted on a single<br/>20 day. The initial traffic study was conducted in<br/>21 August, which was not conducive for normal traffic<br/>22 patterns for the summertime. The second traffic study<br/>23 was conducted on a Tuesday in May 2017 -- granted the<br/>24 traffic on the roadways has changed since then -- but<br/>25 that traffic study was conducted on one day. And the</p> | <p style="text-align: right;">263</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Can you spell<br/>2 your last name for the court reporter?<br/>3 OLGA SABRAN: S-A-B-R-A-N.<br/>4 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>5 OLGA SABRAN: And address is 7501 Needwood Road,<br/>6 Derwood, Maryland 20855.<br/>7 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.<br/>8 OLGA SABRAN: I and my family live right across<br/>9 the planned facility -- right across Carnegie avenue.<br/>10 I'm supporting all the points that were made and I will<br/>11 try to not duplicate them. I have others to make. So,<br/>12 the increased traffic, yes, for the residents,<br/>13 especially kids and elderly is a big concern because of<br/>14 a very dangerous situation that it is right now, as<br/>15 Jennifer Mitchell mentioned, that we have to literally<br/>16 dash through the road, which is difficult for me to do<br/>17 in my shape, but almost undoable for our parents who<br/>18 have bad knees and hips and they are helping with the<br/>19 childcare for my son and they are regularly there. And<br/>20 it is already a challenge to go for a walk in the<br/>21 neighborhood to cross the road, and they need to do<br/>22 that for a walk every day to continue staying more or<br/>23 less healthy. So, it is already a challenge in the<br/>24 current situation, and we see that with the property<br/>25 that is, you know, 200-plus kids will be an amazingly</p> |
| <p style="text-align: right;">262</p> <p>1 basis for those results from that one day are being<br/>2 implied to five days of operation, fifty-two weeks a<br/>3 year, and we're very uncomfortable with that. I<br/>4 wouldn't go and predict the weather based on one day<br/>5 for the rest of the year. And we don't believe that<br/>6 that is sufficient for approving a facility such as<br/>7 this to illustrate it's safe, and to illustrate it's<br/>8 not going to have an adverse on the atmosphere of the<br/>9 neighborhood. And that's the end of my testimony.<br/>10 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>11 CHARLES AMMERMAN: Thank you.<br/>12 HEARING EXAMINER ROBESON HANNAN: Thank you. Any<br/>13 questions?<br/>14 JODY S. KLINE: I don't believe so.<br/>15 HEARING EXAMINER ROBESON HANNAN: Mr. Chen? Okay.<br/>16 Thank you. You can be excused. And does anyone have<br/>17 testimony they feel they can fit in in ten minutes?<br/>18 Yes, come forward. Please raise your right hand. Do<br/>19 you solemnly affirm under penalties of perjury that the<br/>20 statements you're about to make are the truth, the<br/>21 whole truth, and nothing but the truth?<br/>22 OLGA SABRAN: I do.<br/>23 HEARING EXAMINER ROBESON HANNAN: Okay. Please<br/>24 state your name and address for the record.<br/>25 OLGA SABRAN: Olga Sabran.</p>  | <p style="text-align: right;">264</p> <p>1 huge increase in traffic, which is absolutely<br/>2 unimaginable for us. We hope that will never happen.<br/>3 And the intersection of the Redland Road and<br/>4 Crabbs Branch Way, which is the next intersection from<br/>5 Needwood Road, is a death trap. It was called that<br/>6 quite officially and --<br/>7 HEARING EXAMINER ROBESON HANNAN: Which<br/>8 intersection is that? Redland and Needwood?<br/>9 OLGA SABRAN: Redland and Crabbs Branch.<br/>10 HEARING EXAMINER ROBESON HANNAN: Oh.<br/>11 OLGA SABRAN: It's right next intersection from<br/>12 Needwood --<br/>13 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>14 OLGA SABRAN: -- going towards the Shady Grove<br/>15 Metro station. It's very close to the Needwood and<br/>16 Redland --<br/>17 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>18 OLGA SABRAN: -- Road intersection. And the<br/>19 approval of Primrose Child Care Center does not meet<br/>20 the vision zero initiative of Montgomery County of no<br/>21 traffic deaths by 2030.<br/>22 HEARING EXAMINER ROBESON HANNAN: Okay.<br/>23 OLGA SABRAN: We have already five deaths on that<br/>24 intersection recently, and we just cannot allow<br/>25 anymore, especially there are so many kids, that we</p>   |



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| <p>265</p> <p>1 need to continue to play safely in our neighborhood.<br/>2 Just a few days ago, there was another terrible traffic<br/>3 accident at the death trap intersection.<br/>4 Our family and the family of Jennifer Mitchell,<br/>5 who testified earlier from the adjacent property, have<br/>6 young kids who will be directly in danger. And when we<br/>7 were buying our property, we also could not even<br/>8 imagine that to happen.<br/>9 In the current traffic situation, we already have<br/>10 quite a trouble pulling out from our driveway onto the<br/>11 Needwood Road, which is crowded in both directions in<br/>12 the morning hours, especially, and in the evening. But<br/>13 in the morning, we are dropping off our kids at school<br/>14 in Candlewood School, and the Grande Vista Road that<br/>15 was mentioned here is quite heavily used by residents<br/>16 for that purpose -- to pick up and drop off the kids<br/>17 and to drive to Candlewood Elementary School, we need<br/>18 to turn left onto the Needwood Road from our house,<br/>19 right across Carnegie Avenue, which is in the very<br/>20 close proximity from the planned Primrose Child Care<br/>21 main entrance driveway, which you can imagine how much<br/>22 it will impact our difficulty to pull out from our<br/>23 driveway already and how much it will -- having that<br/>24 facility, how much it will slow down the traffic with<br/>25 all the delivery trucks, supplies delivered, trash</p> | <p>267</p> <p>1 that both signs face Carnegie?<br/>2 OLGA SABRAN: All the signs that I -- that our<br/>3 family saw and that I heard neighbors saw was placed<br/>4 along Carnegie Road and far away close to that hole in<br/>5 the fence that the gentleman mentioned at some point,<br/>6 so very hidden like in the --<br/>7 HEARING EXAMINER ROBESON HANNAN: But you didn't<br/>8 see a sign on Needwood?<br/>9 OLGA SABRAN: No, there was no sign on Needwood.<br/>10 So, that's -- I think that's a very important concern<br/>11 that I've heard that people have. So, that is<br/>12 important to take into account. I'd appreciate it.<br/>13 So, about the environment and infrastructure.<br/>14 Also, rivers around the property and flooding in the<br/>15 garage and basement is already a big trouble. So, with<br/>16 all what I've studied and heard with the facility in<br/>17 place, it will be quite a big issue and much worse than<br/>18 it is.<br/>19 So, with the -- so, most of us here have<br/>20 experienced dropping off and picking up our kids from<br/>21 school and know how much time it takes and how much<br/>22 congestion it -- it makes, even, you know, with much<br/>23 smaller number of kids. And 12 parking spots for 200-<br/>24 plus kids are definitely not enough, and I envision<br/>25 lots of festivities and events and cars that will park</p> |
| <p>266</p> <p>1 removal, service vehicles, et cetera and all the other<br/>2 traffic increase, not talking about parents dropping<br/>3 off and picking up kids.<br/>4 And also -- thank you -- also working two jobs, we<br/>5 already cannot afford much unfortunately, and we rely a<br/>6 lot on equity of our home for our child -- child's<br/>7 future, college funds, and everything, and we cannot<br/>8 allow a decrease in our property value, which will<br/>9 absolutely definitely happen and it will probably<br/>10 affect us equally in different situations with our<br/>11 neighbors right adjacent and across who did not -- it<br/>12 is just not fair. We made our plans to purchase that<br/>13 property, not ever imagining that commercial property can<br/>14 just change the profile or our neighborhood so<br/>15 dramatically.<br/>16 And also, I want to mention the sign issue a<br/>17 little bit that we felt was not properly handled, that<br/>18 the signs were placed along Carnegie Avenue, that does<br/>19 not have much traffic, like not many people saw the<br/>20 sign, and I absolutely believe in that -- that it was<br/>21 almost a miracle that we saw the sign and heard the<br/>22 same conversation from the neighbors. So, we would<br/>23 appreciate if the awareness of that is raised and it is<br/>24 transparent. Thank you so much for taking this.<br/>25 HEARING EXAMINER ROBESON HANNAN: Are you saying</p>   | <p>268</p> <p>1 up and down Needwood Road during rush hour, which<br/>2 frankly, I cannot even imagine. It is such a difficult<br/>3 situation already on Needwood Road, which my family<br/>4 wanted to take to Montgomery County and try to resolve<br/>5 with more of maybe even a light stop, maybe, you know,<br/>6 some measures in place for safety, because it is not<br/>7 safe for elderly, it is not safe for kids.<br/>8 And another point that I would like to finish with<br/>9 that this large well-founded commercial out-of-state<br/>10 franchiser who is planning to build this property<br/>11 positioned this as a community service, and I think<br/>12 that if it was meant to serve the Needwood Road<br/>13 neighborhood community, this multibillionaire dollar<br/>14 firm would take into account hundreds of objections<br/>15 raised by the community. I would really appreciate<br/>16 that. Thank you so much.<br/>17 HEARING EXAMINER ROBESON HANNAN: Thank you. Just<br/>18 a second. Do you have any questions, Mr. Kline or Mr.<br/>19 Chen?<br/>20 JODY S. KLINE: No, ma'am.<br/>21 HEARING EXAMINER ROBESON HANNAN: Mr. Chen? You<br/>22 may be excused.<br/>23 OLGA SABRAN: Thank you.<br/>24 HEARING EXAMINER ROBESON HANNAN: Thank you.<br/>25 Okay. With that, I'm going to have to call a close to</p>  |

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| <p>269</p> <p>1 testimony. If -- if you would like, you can let us<br/>2 know you're coming in advance and we can let the<br/>3 attorneys know and if you want to come back, let us<br/>4 know, and we can try and schedule time for you to -- if<br/>5 you want to add to the testimony you've heard. Let us<br/>6 know, and we can try. That will give us some advance<br/>7 notice. It also allows us -- it's too late for me to<br/>8 get a court reporter tomorrow that might go passed<br/>9 5:30. I can't do that tomorrow. So, if you can let<br/>10 our office know, coordinate with those you can so we<br/>11 can -- we know of a time we might be able to fit more<br/>12 people in, okay?<br/>13 All right. So, with that, I had a couple of<br/>14 things for Mr. Kline, but I'll go through them tomorrow<br/>15 morning, because he really does have to go. Yes, Mr.<br/>16 Chen?<br/>17 WILLIAM J. CHEN: Just one last thing, do you want<br/>18 to announce to the assemblage that you are starting<br/>19 tomorrow at 9:30?<br/>20 HEARING EXAMINER ROBESON HANNAN: Oh, yes. We are<br/>21 starting tomorrow at 9:30. I do appreciate there are a<br/>22 lot of the same letters coming in from different<br/>23 individuals. It's a form letter. Zoning is what they<br/>24 call -- we cannot base our decision on the number of<br/>25 people who object. That's not legal for us to do. I</p> | <p>271</p> <p>1 CERTIFICATE OF COURT REPORTER<br/>2 I, Collins Ukegbu, the officer<br/>3 before whom the foregoing proceedings were taken,<br/>4 do hereby certify that said proceedings were<br/>5 electronically recorded by me; and that I am<br/>6 neither counsel for, related to, nor employed by<br/>7 any of the parties to this case and have no<br/>8 interest, financial or otherwise, in its outcome.<br/>9<br/>10<br/>11 <br/>12<br/>13 Collins Ukegbu, AAERT CER, Court Reporter<br/>14 For the State of Maryland<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                  |
| <p>270</p> <p>1 understand that. But the same form letter from<br/>2 hundreds of people, it -- it doesn't help us assess the<br/>3 case and it takes a lot. We have two staff people, and<br/>4 we're short on them right now. So, if you feel the<br/>5 need to send a form letter, of course I'm not going to<br/>6 stop you. But I am saying to you, we cannot base our<br/>7 decision solely on the basis that many, many -- on the<br/>8 number of people who oppose it. We can only look at<br/>9 the criteria in the zoning ordinance, which are in<br/>10 Section 593 -- 7.3.1 and also there are some criteria<br/>11 in 593.3.F. So, those are -- if you go online and look<br/>12 at the staff report in this case -- the planning staff<br/>13 report -- that might be the easiest thing. You can<br/>14 google it under the application number. That staff<br/>15 report will list all the criteria and that is our<br/>16 criteria. Okay. With that, I'm going to have to call<br/>17 -- we're going to continue this case to tomorrow at<br/>18 9:30 and we're going to adjourn it right now. We're<br/>19 off the record. Thank you.<br/>20 [Whereupon the hearing was concluded.]<br/>21 [Off the record at 5:03 p.m.]<br/>22<br/>23<br/>24<br/>25</p>   | <p>272</p> <p>1 CERTIFICATE OF TRANSCRIBER<br/>2 I, Pamela Flutie, do hereby certify that the<br/>3 foregoing transcript is a true and correct record of<br/>4 the recorded proceedings; that said proceedings were<br/>5 transcribed to the best of my ability from the audio<br/>6 recording and supporting information; and that I am<br/>7 neither counsel for, related to, nor employed by any of<br/>8 the parties to this case and have no interest,<br/>9 financial or otherwise, in its outcome.<br/>10<br/>11<br/>12 <br/>13<br/>14 Pamela A. Flutie<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> |

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