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Transcript of Hearing

Date: November 9, 2020

Case: Metro Grounds Management, LLC

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Transcript of Hearing
Conducted on November 9, 2020

1 (1 to 4)

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| 1 | 3 |
| 1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS | 1 A P P E A R A N C E S |
| 2 FOR MONTGOMERY COUNTY, MARYLAND | 2 Nancy P. Regelin, Esq. (Attorney for Applicant) |
| 3 -----x | 3 Shulman Rogers |
| 4 In Re: | 4 12505 Park Potomac Avenue, 6th Floor |
| 5 APPLICATION OF SHELTER DEVELOPMENT, LLC | 5 Potomac, Maryland 20854 |
| 6 -----x | 6 Phone: 301-230-5224 |
| 7 Case No.: CU 16-14 | 7 E-mail: nregelin@shulmanrogers.com |
| 8 | 8 |
| 9 HEARING | 9 Lynn Robeson Hanna, Hearing Examiner |
| 10 Before Hearing Examiner Lynn Robeson Hannan | 10 Nana Yaa Johnson, Montgomery County OZAH |
| 11 Conducted Virtually | 11 Bryan Boughton, Witness, Opposing Party |
| 12 Monday, November 9, 2020 | 12 Geng Chan, Witness, Opposing Party |
| 13 9:32 a.m. EST | 13 Dave Lambert, Witness, Opposing Party |
| 14 | 14 Jennifer Lund, Witness, Opposing Party |
| 15 | 15 Jeffrey O'Toole, Witness, Opposing Party |
| 16 | 16 Janice Quinn, Witness, Opposing Party |
| 17 | 17 John Sekerak, Jr., Witness for Applicant |
| 18 | 18 Chris Kelley, Witness for Applicant |
| 19 | 19 Andy Smith, Witness for Applicant |
| 20 | 20 |
| 21 | 21 |
| 22 | 22 |
| 23 Job: 334548 | 23 |
| 24 Pages: 1 - 285 | 24 |
| 25 Transcribed by: Pamela A. Flutie | 25 |
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| <p>5</p> <p>1 EXHIBITS</p> <p>2 None marked or presented into evidence.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>7</p> <p>1 to do that so that our record is clear.</p> <p>2 I also ask people to turn off their</p> <p>3 video when they are not speaking so that when</p> <p>4 you are speaking, you will -- you will put it</p> <p>5 on, but if you could mute because of background</p> <p>6 noise. We have all sorts, you know, we try to</p> <p>7 do our best and even my phone -- in fact, I'm</p> <p>8 putting my phone right now on do not disturb.</p> <p>9 But if you're not speaking, please mute yourself</p> <p>10 and turn your video off. And my phone is on do</p> <p>11 not disturb now.</p> <p>12 So, that being said, I'm going to say</p> <p>13 that this is an informal hearing, but there are</p> <p>14 certain -- it's a trial-type hearing, but it's</p> <p>15 less formal and the rules aren't as strict as a</p> <p>16 judicial hearing. However, all testimony is</p> <p>17 under oath and subject to cross examination.</p> <p>18 So, after a witness testifies, I will be asking</p> <p>19 people is there anyone with a question for this</p> <p>20 witness. When I ask for questions, it's only</p> <p>21 questions. It's not your time to testify. Just</p> <p>22 keep that in mind. You will get your time to</p> <p>23 testify. The order of proceedings are -- is</p> <p>24 opening statements, then the applicant puts on</p> <p>25 its witnesses, and then the opposition puts on</p> |
| <p>6</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER ROBESON HANNAN: All</p> <p>3 right. I'm calling the case of CU 20-07, the</p> <p>4 application of Metro Grounds Management, LLC to</p> <p>5 operate a conditional use for a landscape</p> <p>6 contracting business, Damascus Road in the AR</p> <p>7 Zone. My name is Lynn [inaudible - audio cut</p> <p>8 out] in the case today. All [inaudible - audio</p> <p>9 cut out] if you disagree with my decision, you</p> <p>10 have the right to request oral argument before</p> <p>11 the Board of Appeals, but it will be based on</p> <p>12 what goes into the record today.</p> <p>13 A couple of points on Microsoft Teams</p> <p>14 Meetings. I'm -- it's more difficult if there</p> <p>15 is crosstalk if people are speaking at once.</p> <p>16 It's more difficult for the court reporter to</p> <p>17 pick up on what's being said. So, if -- what we</p> <p>18 ask you do is if you hover in the middle of your</p> <p>19 screen, you will see a raise your hand button.</p> <p>20 I can monitor the raise your hand buttons. If I</p> <p>21 see a raise your hand button, I will say -- I</p> <p>22 will recognize that person and everyone must</p> <p>23 stop talking immediately. So, please, please</p> <p>24 monitor the raise your hand button. Once you're</p> <p>25 recognized, you can turn it off. But we ask you</p> | <p>8</p> <p>1 their witnesses, and then the applicant is able</p> <p>2 to have rebuttal.</p> <p>3 Is there today -- is there anyone here</p> <p>4 that wishes to testify and is not going to be</p> <p>5 called? I see a number of people -- I recognize</p> <p>6 the names. If you could use the raise your hand</p> <p>7 button as to who would like to testify today. I</p> <p>8 see Mr. O'Toole. Anyone else? Oh, here, Mr. --</p> <p>9 okay -- Boughton. Is it -- I just don't want to</p> <p>10 forget anyone. And you have the right, again,</p> <p>11 when it's the opposition's turn to testify, you</p> <p>12 can still -- this isn't definitive for the rest</p> <p>13 of the hearing.</p> <p>14 JANICE QUINN: I have a question. I'm</p> <p>15 calling in --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Who</p> <p>17 is speaking? Who is -- just a second. Who is</p> <p>18 speaking? You can put your hands down now,</p> <p>19 please.</p> <p>20 JANICE QUINN: Janice Quinn, and I'm</p> <p>21 calling in. So, I don't have that little</p> <p>22 button.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Oh,</p> <p>24 no. Okay. No, well then, you're going to have</p> <p>25 to -- obviously, just because you don't have the</p> |

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3 (9 to 12)

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| 9 | <p>1 button, we're -- you can say something. You can</p> <p>2 -- you can -- what you do is you ask to be</p> <p>3 recognized.</p> <p>4 JANICE QUINN: Okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: So,</p> <p>6 yeah.</p> <p>7 JANICE QUINN: I'll mute myself.</p> <p>8 HEARING EXAMINER ROBESON HANNAN:</p> <p>9 Thank you for the question.</p> <p>10 DAVE LAMBERT: I'd say she just did</p> <p>11 ask to be recognized.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And</p> <p>13 she was recognized. Okay. Now, if people could</p> <p>14 mute their phones unless they want to be --</p> <p>15 unless they're on a phone and want to be</p> <p>16 recognized. If you could mute your -- your</p> <p>17 buttons. I mean mute yourselves so that we</p> <p>18 don't have background.</p> <p>19 DAVE LAMBERT: If you look at the</p> <p>20 participant list, Lynn, you can see that nearly</p> <p>21 everyone has the muted symbol next to their</p> <p>22 name.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I</p> <p>24 see that. I'm just -- I'm just trying to be</p> <p>25 overly cautious. Okay. Now, are there any</p> | 11 | <p>1 address the motion?</p> <p>2 BRYAN BOUGHTON: I -- I know Jack</p> <p>3 Quinn could not be on this. I know [inaudible -</p> <p>4 audio cut out] motion on her behalf. We just</p> <p>5 wanted to, once again, ask for a postponement,</p> <p>6 as we feel we are neighbors in the area and we</p> <p>7 are identified by the applicant's map as being</p> <p>8 part of the neighborhood, but we did not receive</p> <p>9 any mailings, and in my own experience, I did</p> <p>10 not see the signs because you can't see them as</p> <p>11 you're driving by at 30 or 40 miles an hour.</p> <p>12 They are parallel to the road. They're not</p> <p>13 perpendicular where you would see it like a road</p> <p>14 sign. And we only found out about this about</p> <p>15 two weeks ago. So, we have not had any time to</p> <p>16 prepare any experts, and they have told us they</p> <p>17 would not have time to prepare.</p> <p>18 HEARING EXAMINER ROBESON HANNAN:</p> <p>19 Well, have they given you a timeframe for when</p> <p>20 they could have time to prepare?</p> <p>21 BRYAN BOUGHTON: I think Mr. Quinn put</p> <p>22 in his postponement that ninety days would be</p> <p>23 acceptable. But I know an expert would have to</p> <p>24 get on the ground here and review all the</p> <p>25 materials. We've given him some of the exhibits</p> |
| 10 | <p>1 preliminary matters? And I think there's a</p> <p>2 motion to postpone the hearing outstanding.</p> <p>3 Just a minute, Mr. Boughton. Is it</p> <p>4 Boughton or Boughton?</p> <p>5 BRYAN BOUGHTON: It's Boughton.</p> <p>6 HEARING EXAMINER ROBESON HANNAN:</p> <p>7 Okay. Thanks for raising your hand. I'm going</p> <p>8 to first hear from the applicant and then I'm</p> <p>9 going to give you a chance to respond, okay?</p> <p>10 First, can you identify yourself for</p> <p>11 the record?</p> <p>12 NANCY REGELIN: So, my name is Nancy</p> <p>13 Regelin. I'm an attorney at the Law Firm of</p> <p>14 Shulman Rogers at 12505 Park Potomac Avenue, and</p> <p>15 I'm the counsel for the applicant.</p> <p>16 HEARING EXAMINER ROBESON HANNAN:</p> <p>17 Thank you. Okay. We do -- let me -- let me do</p> <p>18 this. Let me recognize Mr. Boughton -- now I've</p> <p>19 forgotten how to pronounce it -- Mr. Boughton.</p> <p>20 BRYAN BOUGHTON: Boughton.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: I'm</p> <p>22 sorry about that.</p> <p>23 BRYAN BOUGHTON: That's fine.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>25 Boughton, let's -- I'd like to -- do you want to</p> | 12 | <p>1 but they just started posting to the web this</p> <p>2 week. You know, we haven't even had time for</p> <p>3 him to look at all of them.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: As I</p> <p>5 said in my -- the notice of hearing has a link</p> <p>6 to the online application and it -- the online</p> <p>7 application goes up two days after it's accepted</p> <p>8 for filing. So, those documents have been</p> <p>9 online since two days after the application was</p> <p>10 filed.</p> <p>11 BRYAN BOUGHTON: Yeah. And again, I</p> <p>12 was unaware that there was even an application</p> <p>13 because I didn't receive a mailing even though I</p> <p>14 can literally see the property from my house and</p> <p>15 the road signs are not visible from a car when</p> <p>16 you're driving by.</p> <p>17 HEARING EXAMINER ROBESON HANNAN:</p> <p>18 Okay, thank you.</p> <p>19 DAVE LAMBERT: I second that.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Just</p> <p>21 a second. Just a second. Who is speaking?</p> <p>22 Please -- I just have to make sure for the</p> <p>23 record that the court reporter knows who's</p> <p>24 speaking. So, thank you for raising your hand.</p> <p>25 I'm going to recognize you, and if you could put</p> |

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| 13 | <p>1 your hand down now. Go ahead.</p> <p>2 DAVE LAMBERT: I second that motion</p> <p>3 and the underlying argument that he's making.</p> <p>4 We live a quarter mile down the road from the</p> <p>5 property. The development sign has not been</p> <p>6 visible at all on Damascus Road. We were not</p> <p>7 aware of the development at all. When we logged</p> <p>8 onto the website, there are sixty-nine exhibits,</p> <p>9 detailed plans that we have had no time to</p> <p>10 review. This is a complicated case. This is a</p> <p>11 substantial business. We're talking about</p> <p>12 twenty-four/seven operation. We're talking</p> <p>13 about ninety-plus parking spaces. I mean, this</p> <p>14 is the size of a small strip mall, right? The</p> <p>15 strip mall where you've got Olney, the Chicken</p> <p>16 Joint and the CVS, I'm not sure there's a</p> <p>17 hundred spots there. So, we're talking about</p> <p>18 dropping -- and that's a two-level office</p> <p>19 building there. You're talking about dropping</p> <p>20 that plus down the road from us sixty-nine</p> <p>21 exhibits and many of us on this call, this is</p> <p>22 the first time that -- that we've been able to</p> <p>23 start looking at this.</p> <p>24 HEARING EXAMINER ROBESON HANNAN:</p> <p>25 Okay. Anyone else before we get to the</p> | 15 | <p>1 HEARING EXAMINER ROBESON HANNAN:</p> <p>2 Thank you, sir.</p> <p>3 JEFFREY O'TOOLE: Good morning and</p> <p>4 thank you. I was one of the parties that joined</p> <p>5 in the original motion for postponement and I</p> <p>6 joined in the motion that Jack Quinn filed on</p> <p>7 Friday. I was one of the few people that</p> <p>8 received a postcard days before the Planning</p> <p>9 Board Hearing, but I join in the rest of the</p> <p>10 comments that while the applicant has had months</p> <p>11 and months to work on this with the staff, as</p> <p>12 evidenced by the exhibits and the correspondence</p> <p>13 in the file, we have had virtually no time, and</p> <p>14 the issues that are before you, which are going</p> <p>15 to require you to make a finding with respect to</p> <p>16 scientific not only aesthetic and noise and site</p> <p>17 pollution type things but traffic and</p> <p>18 groundwater wells and issues that are so dear to</p> <p>19 us and so important to all of us have not been</p> <p>20 addressed. So, we haven't gotten -- had the</p> <p>21 opportunity to have experts either look at the</p> <p>22 groundwater and give an opinion for you so that</p> <p>23 you can use your discretion either -- and we</p> <p>24 haven't had a chance to hire our own traffic</p> <p>25 expert.</p> |
| 14 | <p>1 applicant?</p> <p>2 JANICE QUINN: Yes. This is Janice</p> <p>3 Quinn.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Hi,</p> <p>5 Ms. Quinn. Go ahead.</p> <p>6 JANICE QUINN: Hi. I second -- I echo</p> <p>7 the same sentiment. We did not receive any</p> <p>8 mailing or notice of this. You cannot see the</p> <p>9 signs as you go by. My husband would be here if</p> <p>10 he was not in another trial today. He needs</p> <p>11 time to prepare and that's why he has asked for</p> <p>12 the ninety days, and I just -- we would</p> <p>13 appreciate a postponement so that we can all</p> <p>14 prepare. Everyone's worked very hard to come up</p> <p>15 with their statements, but it also, I think,</p> <p>16 needs further attention. So, that's -- that's</p> <p>17 all I'd like to say.</p> <p>18 HEARING EXAMINER ROBESON HANNAN:</p> <p>19 Thank you. And I see hands up from Mr. O'Toole</p> <p>20 and Mr. Boughton. So, Mr. O'Toole, I don't</p> <p>21 think you've spoken yet. Can you go -- I'm</p> <p>22 going to recognize you, and then Mr. Boughton.</p> <p>23 And Mr. O'Toole, you can put your hand down.</p> <p>24 Thanks.</p> <p>25 JEFFREY O'TOOLE. There you go.</p> | 16 | <p>1 So, I think that while obviously,</p> <p>2 everybody is geared and ready to go and the</p> <p>3 horses are at the starting gate and it is now</p> <p>4 post time, I think I would ask Your Honor to</p> <p>5 exercise your discretion and put this off in a</p> <p>6 seemly way in order for us to get an expert to</p> <p>7 make this a fair fight. That's it. Thank you.</p> <p>8 HEARING EXAMINER ROBESON HANNAN:</p> <p>9 Thank you.</p> <p>10 Mr. Boughton, and then I see Ms. Lund.</p> <p>11 So, Mr. Boughton, go -- you go and then we'll</p> <p>12 hear from Ms. Lund.</p> <p>13 BRYAN BOUGHTON: Okay. I don't know</p> <p>14 if we can show exhibits at this point or how</p> <p>15 that will work in this hearing, but I did want</p> <p>16 to try and show in the -- how the signs are</p> <p>17 posted -- in my Exhibit 58(a) on the fifth</p> <p>18 picture, which is the proposed site as it</p> <p>19 currently exists. You can actually see --</p> <p>20 HEARING EXAMINER ROBESON HANNAN:</p> <p>21 Okay. Just a minute. You said 58(a)?</p> <p>22 BRYAN BOUGHTON: Yes, and it's the</p> <p>23 fifth one in.</p> <p>24 HEARING EXAMINER ROBESON HANNAN:</p> <p>25 Okay. Hold on one second, please.</p> |

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| 17 | <p>1 BRYAN BOUGHTON: Of course.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I</p> <p>3 apologize that we're not -- oh, I see. Somebody</p> <p>4 -- oh you have it up.</p> <p>5 BRYAN BOUGHTON: Yes, I'm holding it</p> <p>6 up.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Oh,</p> <p>8 I see what you did. I was getting confused.</p> <p>9 Okay, go ahead.</p> <p>10 BRYAN BOUGHTON : So --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Ms.</p> <p>12 Regelin, are you -- do you know what --</p> <p>13 NANCY REGELIN: I have it up on the</p> <p>14 screen.</p> <p>15 HEARING EXAMINER ROBESON HANNAN:</p> <p>16 Okay.</p> <p>17 DAVE LAMBERT: Yes, it's visible if</p> <p>18 you open up the file -- the online file. It's</p> <p>19 quite easy to access and look at it.</p> <p>20 HEARING EXAMINER ROBESON HANNAN:</p> <p>21 Okay, go ahead.</p> <p>22 DAVE LAMBERT: Yeah, so you can just</p> <p>23 note that we're all looking at 58(a), the fifth</p> <p>24 photo.</p> <p>25 BRYAN BOUGHTON: So, the photo says</p> | 19 | <p>1 it. So, by placing these signs, I did not even</p> <p>2 know they were there until after my neighbor</p> <p>3 said two weeks before this hearing, "Hey, we</p> <p>4 have this huge development going." So, I just</p> <p>5 wanted to point that out and for some reason,</p> <p>6 the sign was down that day. I think someone has</p> <p>7 fixed it since, but it still is parallel to the</p> <p>8 road, so you don't notice it.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: This</p> <p>10 is the exhibit, correct? I'm looking at 58(a).</p> <p>11 BRYAN BOUGHTON: Yes, that is the</p> <p>12 exhibit. And on the righthand side, do you see</p> <p>13 the large for sale sign, and right below it</p> <p>14 laying on the ground is the white hearing</p> <p>15 notice. Now, it has been up. It was down that</p> <p>16 day. I didn't notice it until after I took the</p> <p>17 picture. But it is literally at the point of</p> <p>18 that real estate sign. So, when you're driving</p> <p>19 at it, you don't see it. You would have to look</p> <p>20 directly to your left or to your right to see it</p> <p>21 as you pass that large sign.</p> <p>22 So, I think as a neighbor who can</p> <p>23 literally see this site from my house and if,</p> <p>24 you know, is going to be impacted both by the</p> <p>25 lights, the traffic, I would have hoped to get</p> |
| 18 | <p>1 it's taken by myself, Bryan Boughton, on the 4th</p> <p>2 of November, and it's the proposed site as</p> <p>3 currently exists for Metro Grounds Management.</p> <p>4 But in that, I just wanted to show that where</p> <p>5 you see the large real estate sign for the lot</p> <p>6 on the righthand side, the white sign lying on</p> <p>7 the ground is the -- the notice of this hearing.</p> <p>8 I didn't notice until after that it was down</p> <p>9 that day. But when it is up, it is</p> <p>10 perpendicular -- it is parallel to the road and</p> <p>11 directly at the point of that triangular-shaped</p> <p>12 sign. So, as you're driving down the road, it</p> <p>13 is not visible from your car unless you are</p> <p>14 specifically stopping and looking for it.</p> <p>15 So, the speed limit there is 40 miles</p> <p>16 an hour. The other sign is to the -- even</p> <p>17 farther to the right, close to a tree line. So,</p> <p>18 you don't see it because you come past the tree</p> <p>19 line if you're coming from Georgia Avenue, and</p> <p>20 it's kind of on the right there, and this one is</p> <p>21 -- basically blends right in. It's parallel to</p> <p>22 the road. They don't catch your attention.</p> <p>23 They're not like a road sign. Even this for</p> <p>24 sale sign is like a triangle shaped so that you</p> <p>25 can see it. I mean, that's the point of selling</p> | 20 | <p>1 the mailing, but I did not because I do not</p> <p>2 adjoin their property.</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 Okay, thank you. Mr. Lambert, I see you. And,</p> <p>5 Mr. O'Toole, do you mind turning your video off</p> <p>6 so I can see the witness that's speaking better?</p> <p>7 Thank you very much. Okay, go ahead.</p> <p>8 DAVE LAMBERT: I agree with Mr.</p> <p>9 Boughton. We live, like I said, about a half</p> <p>10 mile down the road -- a quarter mile down the</p> <p>11 road. We've driven by that property on both</p> <p>12 sides, both Howard Chapel and Damascus Road,</p> <p>13 never saw the sign. I mean, we have driven by</p> <p>14 that property multiple times over the last three</p> <p>15 or four months, and all you can see is that</p> <p>16 giant for sale sign. You cannot see it, and</p> <p>17 there is no way for us to be able to prepare for</p> <p>18 a change of this magnitude based on this several</p> <p>19 days' notice that we essentially have now.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: All</p> <p>21 right. I think, MS. Lund, I think we're getting</p> <p>22 repeats of people. I'm going to recognize Ms.</p> <p>23 Lund, and then I'm going to turn it over to the</p> <p>24 applicant to respond. Ms. Lund, go ahead.</p> <p>25 JENNIFER LUND: Yeah. I first have a</p> |

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| <p>21</p> <p>1 question as regard to what was available two 2 days after the application, and I believe you're 3 referring to Exhibit 1, the one-page application 4 for condition use? That's what I was able to 5 find on the website after posting. Is that what 6 you were referring to?</p> <p>7 HEARING EXAMINER ROBESON HANNAN: No. 8 What I was referring is the Planning Department 9 has a DAIC. The Planning Departments posts 10 everything.</p> <p>11 JENNIFER LUND: Okay. So, my -- 12 HEARING EXAMINER ROBESON HANNAN: If 13 you found the application, you -- that 14 application -- if you found the website, the 15 website has a multitude of resources on it.</p> <p>16 JENNIFER LUND: I -- 17 HEARING EXAMINER ROBESON HANNAN: Just 18 a second -- including a link to the DAIC -- to 19 the online forms.</p> <p>20 JENNIFER LUND: Okay. I respectfully 21 disagree that it is easy to find this stuff.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: 23 Okay.</p> <p>24 JENNIFER LUND: The sign directs you 25 to the OZAH website and never tells you to go to</p> | <p>23</p> <p>1 that have already been addressed in your order 2 of October 29th. And, in fact, in this most 3 recent petition, in item number 13, the 4 petitioners do specifically under a verified 5 complaint indicate that all code-required 6 notices were sent by each of the individual 7 agencies and by the applicant and the notice 8 signs.</p> <p>9 If we address the notice signs, on 10 Exhibit 53 --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Just 12 a second. Let me see if I can -- just a second, 13 please.</p> <p>14 NANCY REGELIN: So, this is an E-mail 15 from the applicant dated May 30th. It's his 16 photos of the signs. There are two E-mails -- 17 one is for the signs that were posted on 18 Damascus Road and two of the signs that were 19 posted on Howard Chapel.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: 21 Okay, I'm sorry. For the record, I've pulled up 22 on the screen Exhibit -- is it 53?</p> <p>23 NANCY REGELIN: This one is 53.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: 25 Thank you. Go ahead.</p> |
| <p>22</p> <p>1 the Planning Board website, so, I'm reasonably 2 good at finding things and --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Just 4 a second.</p> <p>5 JENNIFER LUND: Okay.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: 7 Thank you. The OZAH website -- the general 8 website has a link, an explanation, on how to 9 look up these plans. So, I'm not deciding. I'm 10 just saying that the -- it is -- the directions 11 to look up the application are on the OZAH 12 website.</p> <p>13 Okay, good. So, Ms. Regelin, you've 14 heard these. Why don't you -- this is your 15 opportunity to respond.</p> <p>16 NANCY REGELIN: So, this is 17 essentially a duplicate of the application -- 18 the request for postponement, which was filed on 19 October 25th. It raises the same issues, which 20 is that only adjoining and confronting got 21 mailed notice, not the neighborhood that was 22 identified for the purposes of the condition use 23 permit for compatibility. It raises that the -- 24 that the signs were available but not seen. You 25 know, it raises all of the exact same issues</p> | <p>24</p> <p>1 NANCY REGELIN: So, this exhibit is an 2 E-mail from the applicant dated 5/30, which is 3 the date that the applicant posted the two signs 4 along Damascus Road, and they were posted in 5 accordance with the requirements that they be 6 posted within ten feet of the road and that they 7 be posted -- there's two of them because the 8 frontage of Damascus Road is over 1,000 feet, so 9 there's two signs -- on Damascus Road. There's 10 also two signs that are on Howard Chapel Road.</p> <p>11 And Mr. Boughton's, you know, E-mail 12 shows -- the photo shows that the sign was down. 13 The applicant has been checking these signs from 14 time to time, and if you recall, there was a 15 heavy windstorm that came through, and so, Mr. 16 Kelley went back and checked all the signs after 17 the windstorm and put the signs back up.</p> <p>18 So, this is a picture of the sign 19 right in front of the for sale sign. So, it's 20 even closer to the road than the for sale sign.</p> <p>21 The applicant filed all of its 22 materials initially back in May, that Park and 23 Planning had them posted on their site in late 24 May when they accepted it and transmitted it to 25 the hearing examiner, that we posted the signs</p> |

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7 (25 to 28)

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| 25 | <p>1 basically the day after we received them. These</p> <p>2 are the photos of the signs that they were</p> <p>3 posted, and the adjoining and confronting</p> <p>4 property owners have received notice, as they've</p> <p>5 been required to at the different points of time</p> <p>6 during this proceeding. But it's now been over</p> <p>7 five months that these signs have been up there</p> <p>8 and it's been more than six weeks since the</p> <p>9 notice went out for the hearing from the Hearing</p> <p>10 Examiner's office. It's been more than four</p> <p>11 weeks since the Park and Planning sent out their</p> <p>12 notice of their hearing. So, we do believe that</p> <p>13 the applicant has satisfied all of the notice</p> <p>14 requirements and, you know, we rely on what we</p> <p>15 also filed as our opposition in more detail, and</p> <p>16 I believe that's Exhibit 27.</p> <p>17 So, we would ask that the hearing</p> <p>18 examiner deny this second postponement. It will</p> <p>19 be prejudicial to the applicant.</p> <p>20 HEARING EXAMINER ROBESON HANNAN:</p> <p>21 Well, that's what -- that's what I was going to</p> <p>22 ask you. Why is it prejudicial to you -- to the</p> <p>23 applicant?</p> <p>24 NANCY REGELIN: So, the applicant put</p> <p>25 this property under contract in 2019 and the</p> | 27 | <p>1 down and he went by to check it, and it got put</p> <p>2 up by one of his employees.</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 What's your --</p> <p>5 NANCY REGELIN: So, it's been</p> <p>6 reinstalled promptly after that.</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 What's your position on this argument that</p> <p>9 they're within the surrounding area in the staff</p> <p>10 report but didn't get notice?</p> <p>11 NANCY REGELIN: So, the purpose of</p> <p>12 designating a neighborhood is for the purpose of</p> <p>13 the planner coming to an opinion on</p> <p>14 compatibility of this application, and it's --</p> <p>15 he designates a neighborhood that would be what</p> <p>16 he believes would potentially have impacts from</p> <p>17 this. And so, he has chosen 1,500 feet in the</p> <p>18 directions from this site, and that neighborhood</p> <p>19 was accepted for the purposes of making that</p> <p>20 determination and finding by the Planning Board,</p> <p>21 and it will be proffered to you as well as the</p> <p>22 neighborhood. So, it is distinct from and not</p> <p>23 related to the required notice, which requires</p> <p>24 adjoining and confronting plus there are quite a</p> <p>25 few additional organizations -- citizen</p> |
| 26 | <p>1 seller has asked that they settle by the end of</p> <p>2 2020. So, it will be extremely prejudicial to</p> <p>3 this applicant.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Well, let me -- Ms. -- Mr. -- Mr. Lambert,</p> <p>6 you're not recognized. I have some questions,</p> <p>7 and you've been muted. So, just -- okay.</p> <p>8 Ms. Regelin, what -- what -- so,</p> <p>9 you're saying he has a contract commitment by</p> <p>10 the end of 2020?</p> <p>11 NANCY REGELIN: Correct, to close on</p> <p>12 the property. So, we were expecting to have</p> <p>13 this hearing, get the report of the hearing</p> <p>14 examiner, and have him -- have confidence to</p> <p>15 move forward to acquire the property by the end</p> <p>16 of the year.</p> <p>17 HEARING EXAMINER ROBESON HANNAN:</p> <p>18 Well, the only thing -- what -- what did you --</p> <p>19 what do you say about the sign -- the picture of</p> <p>20 the sign being down?</p> <p>21 NANCY REGELIN: So, that was right</p> <p>22 when there was the heavy windstorm that came</p> <p>23 through as a result of one of the hurricanes,</p> <p>24 and Mr. Kelley and his people have been checking</p> <p>25 the signs from time to time. So, that sign was</p> | 28 | <p>1 associations -- organizations that, you know,</p> <p>2 overlap this area, and so, they also all</p> <p>3 received notice.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Okay. Thank you.</p> <p>6 I see -- I see three hands. I'm going</p> <p>7 to take those hands, and then we're going to</p> <p>8 have to call it quits because these are, you</p> <p>9 know, and then I'll give Ms. Regelin one more</p> <p>10 chance to respond, because that is how it works.</p> <p>11 So, Mr. Chan, do you want to go ahead?</p> <p>12 GENG CHAN: Yes. I just wanted to</p> <p>13 point out a small point reinforcing what --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I'm</p> <p>15 sorry. Are you calling in?</p> <p>16 GENG CHAN: I am -- no, I'm on the</p> <p>17 internet.</p> <p>18 HEARING EXAMINER ROBESON HANNAN:</p> <p>19 Okay, I need -- now, I need you to turn your</p> <p>20 video on.</p> <p>21 GENG CHAN: I don't have a cam.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: You</p> <p>23 don't have a cam? Okay, go ahead.</p> <p>24 GENG CHAN: On the point of the signs,</p> <p>25 you were talking about the information being --</p> |

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8 (29 to 32)

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| <p>29</p> <p>1 Ms. Lund was saying that she couldn't find the 2 information. On the sign, it says website, but 3 it's not a website; it's an E-mail address. So, 4 just to reinforce your point that that's a 5 difficulty. It can be obviously overcome by 6 making the phone call or E-mailing the E-mail 7 address, but it is not a website. So, I just 8 wanted to point that out.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Mr. 10 Lamber. Mr. Chan, can you turn your -- or lower 11 your hand, please? Thank you. Mr. Lambert.</p> <p>12 DAVE LAMBERT: Yeah, a couple points. 13 About 1,500 feet as a distance to determine 14 affected parties in an agricultural area like 15 this is way too small. Fifteen hundred feet out 16 here with farms and acreage the way people have 17 is nothing. So, we're all affected. To think 18 that a hundred parking spaces a quarter mile 19 down the road doesn't affect us or anyone else 20 [inaudible - audio cut out], the scale of this 21 operation and the quality of this agricultural 22 preserve. That's point one.</p> <p>23 Point number two -- and this is 24 directly to counsel for the applicant -- we 25 don't know anything about their real estate</p> | <p>31</p> <p>1 neighborhood was identified by people within 2 1,500 feet, and we will all be impacted by this 3 decision, not just the adjoining or confronting 4 properties. And I find it, you know, I 5 understand that they say it's prejudicial, that 6 he needs a quick decision because of his 7 contract, but as people who already own 8 properties there and will be impacted by this 9 operation if it goes forward, we also deserve 10 time. And as I pointed out and I think you can 11 see from the applicant's exhibit she put up, the 12 signs are not visible from cars driving by. 13 There's no walking path there. We're not 14 walking down that road on a regular basis. It's 15 just not visible, and to say that because we 16 don't confront or abut but we can see the 17 property we don't get the right to get a mailed 18 notice so that we can start researching and 19 looking for things, I think that's very 20 prejudicial to us, and I would hope that we 21 would have some time to develop and look at this 22 and come to some conclusions just like the 23 applicant has.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: 25 Okay. Well, I have -- I have a question for the</p> |
| <p>30</p> <p>1 contract. We don't know what their rights are 2 under that. We don't know when the time for 3 closing is. And there is no way for us to 4 understand what the relationship between the 5 buyer and the seller is, and this has obviously 6 been a long process. They've expected a long 7 process. They've gone through a long process. 8 But almost everyone in this neighborhood who is 9 on this call has had very little time -- we're 10 talking days. They've had months and months and 11 months.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: 13 Okay, that's -- that's point --</p> <p>14 DAVE LAMBERT: That's point two. 15 Point three, that sign is too small. Whenever 16 I've seen a development sign, it is at least 17 four times that size. It's kind of got that 18 blue [inaudible - audio cuts out].</p> <p>19 HEARING EXAMINER ROBESON HANNAN: 20 Okay, thank you. Mr. Lambert, do -- can you put 21 your hand down. Mr. Lambert? Thank you. Mr. 22 Boughton.</p> <p>23 BRYAN BOUGHTON: Thank you. I just 24 wanted to -- to the point that the attorney for 25 the applicant made is that, you know, the</p> | <p>32</p> <p>1 opposition. Has anyone contacted experts about 2 a timeframe less than ninety days, Mr. Lambert?</p> <p>3 DAVE LAMBERT: We've just gotten 4 involved in this process. Ninety days sounds a 5 little long to me, but we can -- we can get up 6 to speed quickly if we're given the opportunity.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: 8 Okay. Can you put your hand down and I'll take 9 Ms. Lund. Ms. Lund?</p> <p>10 JENNIFER LUND: Yes, we did speak with 11 an expert. We contacted him about two weeks 12 ago.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: What 14 type of expert?</p> <p>15 JENNIFER LUND: A land use planner, 16 retired. And he did a very quick review. He 17 spent about three or four hours looking through 18 the exhibits and reading the application to try 19 to give us some framework to form our comments. 20 But he said that, you know, not -- not even 21 considering what other jobs he had, he would 22 need at least a month, if not more, to come here 23 to view the property, to really dig into all the 24 exhibits, look at prior case history. We asked 25 for ninety days just as a generous buffer. But</p> |

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9 (33 to 36)

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| <p>33</p> <p>1 he said he would need at least thirty days, I 2 believe, and Bryan, maybe you can confirm that I 3 am saying that correctly. 4 HEARING EXAMINER ROBESON HANNAN: 5 Okay. I'm going to recognize Mr. Boughton. 6 BRYAN BOUGHTON: Yeah, I believe he 7 spent a little bit of time -- 8 HEARING EXAMINER ROBESON HANNAN: Who 9 did you contact? 10 BRYAN BOUGHTON: I'm sorry? 11 HEARING EXAMINER ROBESON HANNAN: Who 12 did you contact? 13 BRYAN BOUGHTON: His name, I believe, 14 is Joe Davis. He's a former Montgomery County 15 Planning -- Planning -- yeah. 16 HEARING EXAMINER ROBESON HANNAN: I 17 know him. 18 BRYAN BOUGHTON: He spent one weekend 19 -- not this weekend, but the weekend before -- 20 looking at it. He did say he'd need, I think, 21 at least thirty days because he'd have to travel 22 here, look at the site. 23 HEARING EXAMINER ROBESON HANNAN: Oh, 24 yeah. Okay. 25 BRYAN BOUGHTON: But I definitely</p> | <p>35</p> <p>1 risk of losing this property on December 30th. 2 So, for that reason and all the 3 reasons that we've given, I think there has been 4 adequate notice. All of the notice is by code. 5 And the purpose of four signs along this 6 property is to provide notice to anyone driving 7 by to let them know that they need to stop and 8 ask questions if it's in their interest. So, 9 again, we ask that you deny this. 10 HEARING EXAMINER ROBESON HANNAN: 11 Okay. I'm not going to recognize anything else 12 -- anyone else because we've been at this a long 13 time, and I think it's -- I think we've heard a 14 lot of the points. 15 A couple of things. Notice is 16 required by law. It's mandated by law. It's in 17 the zoning ordinance the size of the signs, the 18 text, how big the text has to be, how -- how -- 19 where they have to be posted. And so, if that 20 is -- and this is every case -- every case has 21 the same requirements -- if you feel -- and OZAH 22 has to comply with what the law says. If -- 23 it's almost what you're saying is -- what the 24 opposition is saying the zoning ordinance isn't 25 -- the zoning ordinance isn't fair. And that is</p> |
| <p>34</p> <p>1 think it's something where we need a little bit 2 of time. 3 HEARING EXAMINER ROBESON HANNAN: All 4 right. Ms. Regelin. 5 NANCY REGELIN: So, the applicant in 6 it's original response to the first request for 7 postponement noted that the neighborhood had 8 taken pictures of the sign, had E-mails amongst 9 themselves that indicated should we be opposing 10 this, and those were all dated June 5th. So, 11 there have been people in the neighborhood who 12 noticed the sign -- I believe it was the Lunds - 13 - since back in June, and none of these parties 14 as they have driven past the signs in all of 15 these months -- and there's four signs -- have 16 taken any action to stop, pull into Unity Park, 17 go and look at the signs, call, E-mail, do 18 anything in their own interest to prepare. So, 19 I think it is extremely prejudicial to this 20 applicant, who has had this property and has 21 been working on it for two years, has filed this 22 application back in the earlier part of this 23 year, has been processing it for most of this 24 year, to be asked to do a postponement at the 25 last minute for the second time, when it is at</p> | <p>36</p> <p>1 a matter for, unfortunately, the county council, 2 because we have to follow what the law says. 3 I will -- I'll also say that legally, 4 the surrounding area in a conditional use case 5 does not define who gets notice. The 6 surrounding -- Ms. Regelin accurately -- 7 accurately stated that it -- the surrounding 8 area is a broad brush analysis only to determine 9 compatibility. It does not determine property 10 rights. It does not determine who is required 11 to get notice. 12 And again, when all the notice 13 procedure have been followed, there -- what the 14 opposition is asking is that we make up notice 15 requirements about, you know, everyone in the 16 surrounding area. Fifteen hundred feet of the 17 surrounding area, that is a matter for -- for 18 the -- the hearing if you disagree with that. 19 But the surrounding area does not create 20 property rights. 21 Now, we're dealing with -- Ms. Regelin 22 is an officer of the court, which means that she 23 can't lie about a deadline in a contract. So, 24 my thought is, you know, I understand the 25 feelings -- Mr. Lambert, I can't recognize you</p> |

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10 (37 to 40)

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| <p>37</p> <p>1 now -- I understand the feelings of what you're 2 saying. I am willing to give -- if somebody 3 wants to call Joe Davis and say I've just been 4 calculating out how much -- how much of a 5 postponement I can give and still get the 6 decision out by 12/30. I mean, the best I can 7 say is I'm willing if you want to contact Joe 8 Davis, I can give you -- let's see, it takes me 9 thirty days -- my decision is due within thirty 10 days of the public hearing. So, the last day to 11 do it would be 11/30, but I don't know -- I'm 12 going to go check this calendar. Okay, that's a 13 Monday.</p> <p>14 So, I could give you until 11/30 to 15 contact Mr. Davis to see if Mr. Davis can 16 prepare -- that's almost a month. But no, I'm 17 not going to recognize anyone. At some point, 18 this has to come to a close. So, please put 19 your hands down. Mr. Lambert, please put your 20 hand down. Thank you very much.</p> <p>21 So, what I can do is I can say we can 22 have another hearing on 11/30 and allow Mr. 23 Davis, you know, almost a month -- twenty days - 24 - to prepare and in the meantime, we'll proceed 25 with the case today. So, I'm willing to go that</p> | <p>39</p> <p>1 tell you that he has, in fact, agreed to be 2 their expert and number three, what would be the 3 date that they would have to have some sort of 4 expert material, you know, the outline at least 5 --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: I 7 understand. Yes, I understand. Okay. Thank 8 you, Ms. Regelin.</p> <p>9 I'm going to recognize Mr. Lambert.</p> <p>10 DAVE LAMBERT: We are not asking that 11 the notice requirements be changed. We accept 12 that they are what they are. To characterize 13 what we're saying as the notice requirements 14 designated by law are not sufficient is 15 inaccurate.</p> <p>16 What we have said -- what all of us 17 have said on this call who live nearby this 18 proposed business site -- is that we didn't get 19 it. We didn't see it. I have driven down that 20 road countless times and all I have ever seen is 21 that sign for sale -- the giant sign for sale. 22 No one on this call is suggesting that you 23 provide any notice that is not required by law.</p> <p>24 What we are saying is we haven't seen 25 it and there are sixty-nine exhibits and this</p> |
| <p>38</p> <p>1 far. But I will say -- I will say that the 2 notice, you know, the website has a link and 3 instructions how to get to the DAIC and we can't 4 change the notice required in the code or we 5 would be accused of being arbitrary giving some 6 people notice and some people not. So, we have 7 to stick to the code.</p> <p>8 Now, that being said, I'm willing to - 9 - if you wish to contact Mr. Davis and see if he 10 can do the -- appear on -- well, appear 11 virtually on 11/30, I'm willing to allow you 12 some time to do that.</p> <p>13 Okay, now I'll recognize Mr. Lambert - 14 - no, Ms. -- Ms. Regelin, let me hear from you 15 first.</p> <p>16 NANCY REGELIN: Yes, two things. 17 Usually, if there's going to be an expert 18 report, we would get it in advance of the 19 hearing.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: 21 That's true.</p> <p>22 NANCY REGELIN: So, I would ask two 23 things. One is if Mr. Davis would be the sole 24 expert, that they could have testify on the 25 additional date, to what date would they have to</p> | <p>40</p> <p>1 applicant has had months and months to prepare, 2 and all we are asking is the ability to drill 3 down into these files and figure it out what 4 makes sense.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: 6 Okay. Ms. Regelin?</p> <p>7 NANCY REGELIN: Again, we'd like to go 8 forward today. We would like to have advance 9 notice of any experts, which I assume from your 10 conversation is -- would be Mr. Davis, which is 11 the one expert that that have identified. I'd 12 like to have that in advance and I think I'm a 13 little concerned, Ms. Hannan, that having the 14 hearing on November 30th and you having thirty 15 days means that we have to close before we 16 actually get your report, like, we might get the 17 report the morning we have to close. So, I 18 would just --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: I 20 get it. I get that.</p> <p>21 NANCY REGELIN: That makes it very 22 tight.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: 24 Okay. This is what I'm going to do. We're 25 going to go forward today with the applicant's</p> |

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11 (41 to 44)

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| 41 | <p>1 case and the opposition's case subject to the</p> <p>2 possibility of Mr. Davis coming in -- and please</p> <p>3 put your hands down because we've -- we have</p> <p>4 discussed this for an hour, and we're going to</p> <p>5 go forward with the applicant's case -- and</p> <p>6 subject to the possibility of Mr. Davis</p> <p>7 testifying at some point in the future.</p> <p>8 So, let's -- we're going to go</p> <p>9 forward, and Ms. Regelin, your first witness is</p> <p>10 up unless you want to make a pre-hearing</p> <p>11 statement. Your mute is off.</p> <p>12 NANCY REGELIN: Thank you. I'm not</p> <p>13 going to make a large opening statement. I just</p> <p>14 want to make a couple of preliminary, which is</p> <p>15 we have filed the statement of applicant and</p> <p>16 extensive plans and reports into the record, and</p> <p>17 we concur with the Park and Planning technical</p> <p>18 staff report and we also concur with the</p> <p>19 conditions recommended by the Montgomery County</p> <p>20 Planning Board in its unanimous determination</p> <p>21 that the applicant has met the necessary</p> <p>22 findings, and we concur with their conditions</p> <p>23 for -- recommended for approval.</p> <p>24 And today, we do have six witnesses,</p> <p>25 which we will introduce. And I would also like</p> | 43 | <p>1 we -- I've seen Mr. O'Toole's conditions.</p> <p>2 You're saying you have some modifications to</p> <p>3 those conditions?</p> <p>4 NANCY REGELIN: Correct. I commented</p> <p>5 on them and edited them.</p> <p>6 HEARING EXAMINER ROBESON HANNAN:</p> <p>7 Okay.</p> <p>8 NANCY REGELIN: I decided to them, you</p> <p>9 know, in hard copy so that everyone would have</p> <p>10 them, but I didn't know if you wanted them or</p> <p>11 you wanted me to just talk to them when they're</p> <p>12 presented, so.</p> <p>13 HEARING EXAMINER ROBESON HANNAN:</p> <p>14 Well, let's send them to Nana and see if she can</p> <p>15 get it up on the web, and then you can -- you're</p> <p>16 always free, no matter what, you're free to go</p> <p>17 through them. And, if we need to, we'll use</p> <p>18 Mr. O'Toole's conditions and you can address</p> <p>19 your changes that way, too.</p> <p>20 I see Mr. O'Toole's hand up.</p> <p>21 Mr. O'Toole, do you have a comment?</p> <p>22 JEFFREY O'TOOLE: No. I thought -- I</p> <p>23 thought you had addressed whether we wanted to</p> <p>24 make an opening statement, and I can only speak</p> <p>25 for myself that I would reserve any statement</p> |
| 42 | <p>1 to indicate that if you're going to keep the</p> <p>2 record open, we did mark up Exhibit -- and I</p> <p>3 will look up the number -- but the opposition</p> <p>4 did put in a series of proposed amendments --</p> <p>5 conditions, I'm sorry, and we did mark that up,</p> <p>6 which we were going to talk to at the end. But</p> <p>7 I can submit that into the record so that</p> <p>8 everyone can see that in advance of having that</p> <p>9 discussion.</p> <p>10 HEARING EXAMINER ROBESON HANNAN:</p> <p>11 Okay. And can you E-mail it to Nana Johnson?</p> <p>12 Is it up on the website?</p> <p>13 NANCY REGELIN: No. I can E-mail it</p> <p>14 right now if that's helpful.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: If</p> <p>16 you could E-mail it to Nana Johnson.</p> <p>17 NANCY REGELIN: Yep.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: And</p> <p>19 then, we will pull it up.</p> <p>20 NANCY REGELIN: And that -- we can</p> <p>21 talk to that at a later -- at the end because I</p> <p>22 believe Mr. O'Toole or someone is going to</p> <p>23 introduce those conditions in their testimony.</p> <p>24 So, we can talk about it at that point.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Now</p> | 44 | <p>1 with respect to an opening, but then briefly</p> <p>2 comment that Ms. Regelin wants us to limit</p> <p>3 ourselves to one expert. Our -- the impact of</p> <p>4 what we're telling you is that we don't know all</p> <p>5 the experts who we would need, and it's</p> <p>6 certainly not just Mr. Davis. There are experts</p> <p>7 as to water and property value and other experts</p> <p>8 that we would seek to examine and get before</p> <p>9 Your Honor.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I</p> <p>11 understand. But my ruling is if you can get</p> <p>12 experts on, you know, before November 30th, but</p> <p>13 the problem is if legally, I believe the notice</p> <p>14 was adequate and it may not have been -- and</p> <p>15 there is prejudice here. One of the things I</p> <p>16 have to look at as the hearing examiner legally</p> <p>17 is the prejudice to the applicant. I'm trying</p> <p>18 to build in a little leeway. If you have other</p> <p>19 experts you can get in before November 30th,</p> <p>20 I'll -- I'll listen to them. But I do feel that</p> <p>21 the notice was adequate. No, I am not going to</p> <p>22 re -- Mr. Lambert, Mr. O'Toole, the decision is</p> <p>23 made. At some point, we have to move on.</p> <p>24 JEFFREY O'TOOLE: I'm not attempting</p> <p>25 to reargue the point. I'm attempting to make a</p> |

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12 (45 to 48)

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| 45 | 1 clarification. The clarification -- 2 HEARING EXAMINER ROBESON HANNAN: I'm 3 sorry, but I don't know who that is. 4 JEFFREY O'TOOLE: The clarification 5 being that we will find experts to help us do 6 this. They have counsel. We do not, as of yet, 7 and I think we are entitled to seek them out. 8 If we are unable to find experts to meet this 9 deadline, then so be it. But this should not be 10 easy to simply roll into this deadline. If the 11 reports come in at the end of the year and you 12 have to close at 6 p.m. on the last day of the 13 year, you know what, that's when deals get done 14 -- on the last day of the year. 15 HEARING EXAMINER ROBESON HANNAN: 16 Okay. That's -- that's the end of it. Ms. 17 Regelin, you may want to talk to your owner 18 about a possible extension. But for now, we're 19 going to proceed, and I don't -- I am not going 20 to recognize anyone else, because we are going 21 to have to proceed with this hearing. And 22 Mr. O'Toole and Mr. Lambert, please put your 23 hands down so I can follow who is recognized. 24 Thank you very much. 25 Ms. Regelin, please call your first | 47 | 1 JOHN SEKERAK: Yes, that would be 2 Exhibit 37(a). 3 NANCY REGELIN: Okay. And could you 4 quickly provide your education experience as a 5 land planner? 6 JOHN SEKERAK: Sure. Degree of 7 Bachelor of Science in Landscape Architecture, 8 I'm a land use planner certified by the American 9 Institute of Certified Planners, I'm a licensed 10 landscape architect in the state of Maryland, 11 and I've been practicing for something north of 12 thirty-five years. 13 NANCY REGELIN: And have you 14 previously been accepted and testified as an 15 expert in land planning and landscape 16 architecture either before the Hearing 17 Examiner's Office of other boards or agencies in 18 the area? 19 JOHN SEKERAK: Yes, I have, many 20 times. 21 DAVE LAMBERT: Counsel, can we just 22 stipulate to the witness' expertise in this 23 matter to help this move along more quickly? 24 HEARING EXAMINER ROBESON HANNAN: 25 Well, I could -- I'll do this. Does anyone -- |
| 46 | 1 witness. 2 NANCY REGELIN: I'd like to call my 3 first witness, John Sekerak of Stantec 4 Engineering, the applicant's expert in land 5 planning and landscape architecture. So, please 6 state your -- 7 HEARING EXAMINER ROBESON HANNAN: Just 8 a second. Please raise your right hand. Do you 9 solemnly affirm under penalties of perjury that 10 the statements you're about to make are the 11 truth, the whole truth, and nothing but the 12 truth? 13 JOHN SEKERAK: I affirm. Thank you. 14 HEARING EXAMINER ROBESON HANNAN: Ms. 15 Regelin. 16 NANCY REGELIN: Please state your 17 name, company name, title, and address for the 18 record. 19 JOHN SEKERAK: Good morning. My name 20 is John Sekerak, Jr. I am a land use planner 21 and landscape architect with Stantec. Our 22 offices are here at 20440 Century Boulevard, 23 Suite 240 in Germantown, Maryland. 24 NANCY REGELIN: And have you submitted 25 your credentials into the record? | 48 | 1 Mr. Sekerak, you've -- have you testified as an 2 expert before OZAH before? 3 JOHN SEKERAK: Yes, many times, as 4 most recently in May. 5 HEARING EXAMINER ROBESON HANNAN: Is 6 there anyone here who wishes to object to 7 qualifying him as an expert in land use or 8 planning? Seeing none, you are qualified as an 9 expert land planner. 10 JOHN SEKERAK: Thank you. 11 NANCY REGELIN: So, at this time, I 12 would like to advise the hearing examiner that 13 I'm going to go through a number of questions of 14 Mr. Sekerak, but I would like to bring him back 15 and have him do all of his opinions on the 16 findings at the end. And I think that will help 17 move this along a little faster. 18 HEARING EXAMINER ROBESON HANNAN: 19 Yeah, that would help move it along. 20 NANCY REGELIN: Okay. So, have you 21 investigated, analyzed, and made findings with 22 regard to this property and the proposed 23 conditional use? 24 JOHN SEKERAK: Yes, I have. Part of 25 our multidisciplinary project team participate |

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13 (49 to 52)

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| 49 | 1 in the initial investigation, feasibility, 2 design symphysis, and we prepared the 3 application plans. I made sure that the 4 application met all of the regulatory 5 requirements of the zoning ordinance and met the 6 recommendations of the applicable master plans 7 and that was part of the application materials. 8 NANCY REGELIN: Okay. So, that 9 information was also included as input into the 10 statement of applicant that's in the record at 11 Exhibit 27? 12 JOHN SEKERAK: Yes, in addition to the 13 plans and my testimony today, I did contribute 14 to the information in the statement of the 15 applicant. It's already in the records. 16 NANCY REGELIN: Okay. Can you begin 17 by orienting us to where the property is located 18 and within the property, the location, the size 19 and orientation of the proposed conditional use 20 area? 21 JOHN SEKERAK: Yeah. Ms. Hannan, if I 22 could ask you to bring up Exhibit Number 18? 23 HEARING EXAMINER ROBESON HANNAN: 24 Okay. This is a very large exhibit, so. Let me 25 -- let me do this. Okay. I apologize for the | 51 | 1 Go ahead, Mr. Sekerak. 2 JOHN SEKERAK: Okay. If you're able 3 to right click on the image and I believe there 4 will be a menu that would allow you to rotate 5 counter-clockwise. 6 HEARING EXAMINER ROBESON HANNAN: 7 Well, I -- I can't. It doesn't -- 8 JOHN SEKERAK: Okay. No problem. 9 HEARING EXAMINER ROBESON HANNAN: Mine 10 doesn't do that. 11 JOHN SEKERAK: So, very quickly, north 12 is to the right of the screen at this point. 13 Damascus Road, which forms the southern boundary 14 of the property, is along the left -- no that -- 15 yeah, that is Sundown. 16 HEARING EXAMINER ROBESON HANNAN: 17 That's south. 18 JOHN SEKERAK: So, the bold yellow 19 line outlining with the word site in the middle 20 of it is the subject property. That's it, yes. 21 So, Damascus -- 22 HEARING EXAMINER ROBESON HANNAN: I'm 23 circling with my cursor the property labeled 24 site. 25 JOHN SEKERAK: All right. It's a |
| 50 | 1 delay. Okay. 2 JOHN SEKERAK: Okay. And then, 3 unfortunately, the orientation of the link is, 4 you know, unfortunate. So, if you could, do you 5 know how to rotate it counter-clockwise? 6 HEARING EXAMINER ROBESON HANNAN: 7 Counter-clockwise. 8 JOHN SEKERAK: Counter-clockwise, yes. 9 DAVE LAMBERT: I don't think there's 10 much confusion by anyone on the opponent's side 11 as to where this property is located. The 12 development is -- 13 HEARING EXAMINER ROBESON HANNAN: Just 14 a second. 15 DAVE LAMBERT: -- we can move quickly 16 through this, I think. 17 HEARING EXAMINER ROBESON HANNAN: Mr. 18 Lambert, stop talking. We are doing this, and I 19 apologize, but you cannot just jump in. This is 20 a trial-type hearing. The court reporter 21 doesn't know who is talking unless I recognize 22 you, and this goes up on a transcript. So, it's 23 really important -- really important that you do 24 not just jump in. So, if you want to proceed 25 like this, we can do so. | 52 | 1 thirty-acre site at the northeast quadrant of 2 New Hampshire Avenue, which is also Maryland 3 Route 650 and Howard Chapel Road. The 4 conditionally -- conditional use area, which is 5 in a red dashed line in the site, is centrally 6 located in the unforested portion of the thirty- 7 acre site. 8 HEARING EXAMINER ROBESON HANNAN: 9 Okay. 10 JOHN SEKERAK: I can go on and 11 describe the -- the surrounding area. I'll 12 start at the north side of the property, so to 13 the right of the property. 14 HEARING EXAMINER ROBESON HANNAN: 15 Okay. 16 JOHN SEKERAK: Immediately adjoining 17 is a homesite on a large lot, the same thing as 18 going clockwise to the east of the subject 19 property, and as it approaches Damascus Road, 20 another single family lot on an R200 zoned 21 property. By the way, everything on the image - 22 - everything is zoned either RAR or R200 as it's 23 -- 24 HEARING EXAMINER ROBESON HANNAN: 25 Okay. |

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14 (53 to 56)

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| 53 | <p>1 JOHN SEKERAK: -- delineated in that -</p> <p>2 - in that green line. Across the road to our</p> <p>3 south -- so the confronting properties on the</p> <p>4 south side of Damascus Road are again single</p> <p>5 family homesites, Unity Park, and the historic</p> <p>6 Bleakwood House. West of the subject property</p> <p>7 on the other side of Chapel Hill Road are some,</p> <p>8 you know, well, starting at the intersection, a</p> <p>9 parcel that's part of the Waredaca, a complex</p> <p>10 further west, a single family home on a large</p> <p>11 lot, another Waredaca property, and then more</p> <p>12 single family homes on large -- large sites.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Now,</p> <p>14 there's a -- I'm looking at the site -- there's</p> <p>15 a red line outlined on the site. Is that the</p> <p>16 conditional use?</p> <p>17 JOHN SEKERAK: Correct. That red dash</p> <p>18 -- that finer red dashed line --</p> <p>19 HEARING EXAMINER ROBESON HANNAN:</p> <p>20 Okay.</p> <p>21 JOHN SEKERAK: -- shows the subject</p> <p>22 area of the conditional use itself, which is the</p> <p>23 smaller portion of the overall thirty-acre site.</p> <p>24 HEARING EXAMINER ROBESON HANNAN:</p> <p>25 Okay.</p> | 55 | <p>1 image -- there you go. Thank you.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Okay, go ahead. Thank you, Mr. Lambert.</p> <p>4 NANCY REGELIN: So, Mr. Sekerak, can</p> <p>5 we identify the colored outlines here? So, we</p> <p>6 have a yellow, we have a dotted red, we have a</p> <p>7 red, and we have a green.</p> <p>8 JOHN SEKERAK: There it is. The</p> <p>9 subject -- the thirty-acre subject property is</p> <p>10 outlined in the bold yellow line. Other</p> <p>11 departing property lines are in a finer yellow</p> <p>12 line. The green line is the -- delineates the</p> <p>13 zoning categories in the area. So, all the</p> <p>14 property is AR with the exception of the area</p> <p>15 within that very irregular green line that forms</p> <p>16 the R200 zone. The red line is the -- defined</p> <p>17 for the purposes of the planning analysis -- the</p> <p>18 neighborhood delineation. And Ms. Hannan, I've</p> <p>19 already identified the fine red dashed line</p> <p>20 within the thirty-acre site as the conditional</p> <p>21 use area.</p> <p>22 NANCY REGELIN: Okay. So, can you</p> <p>23 describe the existing conditions on the</p> <p>24 property?</p> <p>25 JOHN SEKERAK: All right. Ms. Hannan,</p> |
| 54 | <p>1 JOHN SEKERAK: The balance of the</p> <p>2 property will be, you know, in conservation</p> <p>3 easement for preserving the woodland</p> <p>4 environmental features and be used for</p> <p>5 agricultural use.</p> <p>6 HEARING EXAMINER ROBESON HANNAN:</p> <p>7 Okay.</p> <p>8 JOHN SEKERAK: Yeah. Ms. Regelin,</p> <p>9 you're muted.</p> <p>10 NANCY REGELIN: All right. So, you've</p> <p>11 gone through all of the surrounding uses and --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Ms.</p> <p>13 -- just a second. I see a hand up from Mr.</p> <p>14 Lambert.</p> <p>15 DAVE LAMBERT: Yes. I raised my hand</p> <p>16 as a procedural matter to note that whatever</p> <p>17 you've done to the screen has completely</p> <p>18 obscured the image. If we're going to have a</p> <p>19 conversation about these maps and locations,</p> <p>20 which we are all aware of, then I would ask</p> <p>21 politely that you just unobscure the image. I'm</p> <p>22 seeing a dark rectangle over everything. I</p> <p>23 can't see the red lines. Honestly, I can't see</p> <p>24 anything. So, referring to this photo -- this</p> <p>25 diagram -- that is obscured as part of this</p> | 56 | <p>1 could I ask you to bring up Exhibit 11(a), the</p> <p>2 NRI/FSD.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Just</p> <p>4 a second. I'm sorry. Okay. Let me do this.</p> <p>5 I'm having trouble with the size of these</p> <p>6 exhibits. So, if we could just take a five-</p> <p>7 minute -- go off the record for five minutes. I</p> <p>8 apologize, and I will figure out -- I will get</p> <p>9 it taken care of. I apologize. So, we're off</p> <p>10 the record for five minutes.</p> <p>11 [Off the record at 10:46 a.m.]</p> <p>12 [On the record at 11:57 a.m.]</p> <p>13 NANCY REGELIN: -- that I left you</p> <p>14 with, Mr. Sekerak, is can you describe the</p> <p>15 existing conditions on the property.</p> <p>16 JOHN SEKERAK: Okay, yes. Thank you.</p> <p>17 This is the Natural Resource Inventory, you</p> <p>18 know, mapping and identifying the existing</p> <p>19 conditions on the site. I will give -- excuse</p> <p>20 me while I shut my door -- I will give a, you</p> <p>21 know, just a high-level --</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Can</p> <p>23 I interrupt you for one minute? I just want to</p> <p>24 make sure -- is Mr. Boughton, Mr. Lambert, Mr.</p> <p>25 O'Toole, and Mr. Chan in -- are they present</p> |

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15 (57 to 60)

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| 57 | 1 now? 2 JEFFREY O'TOOLE: This is Jeff 3 O'Toole. I'm present, but somehow my -- my 4 board doesn't have a raise your hand button any 5 more. I'm not quite sure why. 6 HEARING EXAMINER ROBESON HANNAN: 7 Well, you know what? I share your pain because 8 -- 9 JEFFREY O'TOOLE: I'm glad to hear 10 that. 11 HEARING EXAMINER ROBESON HANNAN: If 12 you could -- well then, you're just going to 13 have to do the best you, you know, I will 14 recognize you if you can calmly say please 15 recognize me, okay? 16 JEFFREY O'TOOLE: I'll be as calm as I 17 can. I don't know where it went. It was -- it 18 was there before, but now it's gone. 19 HEARING EXAMINER ROBESON HANNAN: 20 Well, I did a Microsoft Teams meeting yesterday 21 where I was sharing everything, and actually if 22 you want to speak, if you could just do it 23 quietly, okay? 24 JEFFREY O'TOOLE: Thank you. 25 HEARING EXAMINER ROBESON HANNAN: | 59 | 1 you know, the baseline, you know, existing 2 conditions for a property as a first step in the 3 development review process, and it's 4 instrumental in preparation of plans including 5 the forest conservation plans. 6 HEARING EXAMINER ROBESON HANNAN: 7 Thank you. 8 JOHN SEKERAK: The -- again, just 9 briefly, it shows that the southern two-thirds 10 of the property is wide-open land. There is an 11 existing single family home in the lower left- 12 hand corner -- a little bit more -- there it is. 13 There's a home and a few outbuildings with some 14 trees around it in the lower -- lower left-hand 15 corner. 16 HEARING EXAMINER ROBESON HANNAN: I'm 17 sorry, here. 18 JOHN SEKERAK: That's it, right. 19 Other than that, the front two-thirds of the 20 property is -- is wide open. There are hedge 21 rows on both the east and west property lines 22 and framing that open -- open land area. 23 The environmental features of 24 consequence are in the back one-third of the 25 property -- the ten acres of existing forest and |
| 58 | 1 Okay. So, we have the exhibit up. 2 JOHN SEKERAK: Yes, it's Exhibit 3 11(a). Oop, just lost it. 4 HEARING EXAMINER ROBESON HANNAN: Now, 5 you should have it again. 6 JOHN SEKERAK: Yes, I do. All right. 7 HEARING EXAMINER ROBESON HANNAN: 8 Okay. 9 JOHN SEKERAK: All right. This is 10 again mapping of existing conditions on the 11 property. I won't go into any detail. Mr. 12 Kennedy, who prepared the plan, will be 13 testifying about it in more detail later on. 14 But this was, you know, prepared by Mr. Kennedy 15 of our office, reviewed and approved by the 16 Maryland National Park and Planning Commission. 17 HEARING EXAMINER ROBESON HANNAN: For 18 the people that are here, could you briefly just 19 describe with the NRI/FSD is? 20 JOHN SEKERAK: Sure. It stands for 21 Natural Resource Inventory and Forest Stand 22 Delineation. 23 HEARING EXAMINER ROBESON HANNAN: 24 Okay. 25 JOHN SEKERAK: So, it provides the, | 60 | 1 a stream and a farm pond and some associated 2 wetlands all included in the Stream Valley 3 Buffer and that's -- those are, yeah, the Stream 4 Valley -- yeah, that is where your cursor is 5 now, the eastern portion of the forest is 6 outside the Stream Valley Buffer. The western 7 part is mostly within the Stream Valley Buffer. 8 And the Stream Valley Buffer is simply, you 9 know, an area for the benefit of the Planning 10 Board's review, high priority for protection. 11 The -- let's see -- the two areas of 12 hedge rows on -- again, on either side of the 13 property as it departs from the forest area, 14 right, and exiting all the way down to the New 15 Hampshire Avenue frontage. And speaking of the 16 New Hampshire Avenue frontage, there are two 17 driveway entrances to the site. 18 HEARING EXAMINER ROBESON HANNAN: Is 19 it New Hampshire Avenue or Damascus Road? 20 JOHN SEKERAK: Oh, my bad, I'm sorry. 21 Thank you. Damascus Road -- Maryland Route 650. 22 Thank you. Two driveway entrances to the 23 property from Damascus Road -- Maryland Route 24 650 -- one for the single family house and 25 another one centrally located along the |

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16 (61 to 64)

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| 61 | <p>1 frontage, which provides access for farm 2 implements, et cetera to the balance of the 3 property. 4 HEARING EXAMINER ROBESON HANNAN: And 5 that says existing gravel apron, correct? 6 JOHN SEKERAK: Correct. 7 HEARING EXAMINER ROBESON HANNAN: 8 That's marked? 9 JOHN SEKERAK: Yes. 10 HEARING EXAMINER ROBESON HANNAN: 11 Okay. 12 NANCY REGELIN: All right. In the 13 current use of the open space, Mr. Sekerak? 14 JOHN SEKERAK: Farm land. Yeah, the 15 current -- what the crop that's been there most 16 recently has been a sod farm. 17 HEARING EXAMINER ROBESON HANNAN: 18 Okay. 19 NANCY REGELIN: And are there any 20 specific environmental overlays or requirements 21 affecting the property? 22 JOHN SEKERAK: Well, there are no 23 overlay zones associated with the property, 24 environmental or otherwise. But the property is 25 largely within the Patuxent River primary</p> | 63 | <p>1 adequate public facilities is determined by the 2 Planning Board at the time of the preliminary 3 planning. 4 HEARING EXAMINER ROBESON HANNAN: 5 Okay, go ahead. 6 JOHN SEKERAK: And the property will 7 be, you know, recorded as one -- one lot for the 8 entire property. 9 HEARING EXAMINER ROBESON HANNAN: 10 Okay. Are there forest conservation easements 11 on this that do not -- that will be recorded and 12 not disturbed? 13 JOHN SEKERAK: There are no current 14 conservation easements on -- on the property. 15 HEARING EXAMINER ROBESON HANNAN: But 16 will there be? 17 JOHN SEKERAK: Later on in the 18 testimony, Mr. Kennedy will be describing the 19 preliminary forest conservation plan that had 20 been approved by Park and Planning, and he'll be 21 able to identify it. So, but in answer to your 22 question, the entire existing forest will be 23 placed in a category conservation easement. 24 HEARING EXAMINER ROBESON HANNAN: And 25 that forest is generally on this north -- upper</p> |
| 62 | <p>1 management area, as it's called for in the 2 functional master plan for the Patuxent River 3 Watershed, and that is any land within 660 feet 4 of a tributary of the Patuxent River mainstem. 5 So, on this property, the delineation of that 6 660-foot setback to the tributary stream is that 7 long arcing line that goes diagonally through 8 the open part of the property. That -- that's 9 what Ms. Hannan spoke to as the Stream Valley 10 Buffer, the one that parallels that Your Honor 11 verified, that is the primary management area. 12 NANCY REGELIN: Okay. Is the property 13 or the conditional use area currently 14 subdivided? 15 JOHN SEKERAK: No. The entire thirty- 16 acre property identified by deed has not been 17 the subject of the subdivision process. We will 18 be going through the preliminary plan and plat 19 recommendation process. 20 HEARING EXAMINER ROBESON HANNAN: So, 21 you're going to have a do a traffic test at 22 preliminary plan. 23 JOHN SEKERAK: Adequate public -- for 24 these conditional uses that are subject to 25 subdivision -- subsequent subdivision process,</p> | 64 | <p>1 northeast side? 2 JOHN SEKERAK: Yes, the north ten 3 acres. 4 HEARING EXAMINER ROBESON HANNAN: 5 Okay, keep going. 6 NANCY REGELIN: It's not just where 7 your cursor is, Mr. Sekerak, it's the entire 8 width of the property from -- 9 JOHN SEKERAK: Right. 10 NANCY REGELIN: -- Howard Chapel Road 11 to the east boundary line, and it's that north 12 quadrant. 13 HEARING EXAMINER ROBESON HANNAN: 14 Okay. All right. Please keep going. 15 NANCY REGELIN: Okay. Mr. Sekerak, 16 one of the confronting properties across 17 Damascus Road is Bleakwood House. It's a 18 designated historic. Can you provide more 19 context and discuss if the Historic Commission 20 or staff has reviewed and provided comments on 21 this application? 22 JOHN SEKERAK: Yeah. We did reach out 23 the Historic District Commission staff regarding 24 our application, and by E-mail from Rebecca 25 Ballo, Historic Preservation Supervisor at Park</p> |

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17 (65 to 68)

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| <p>65</p> <p>1 and Planning, to Ms. Regelin on February 24, 2 2020, the E-mail reads in part, "I do not think 3 that the proposal will have any impacts, adverse 4 or otherwise, on the historic property. There 5 is no need for HPC review or approval since you 6 are outside of the designated master plan 7 historic site area." So, we did confirm the 8 lack of impacts with Park and Planning staff. 9 NANCY REGELIN: That was concurred in 10 the technical staff report, which is at Exhibit 11 45, correct? 12 JOHN SEKERAK: Yes, correct. 13 NANCY REGELIN: Okay. Could you 14 describe Howard Chapel Road and if it has any 15 special designations. 16 JOHN SEKERAK: Howard Chapel Road is 17 designated as a rustic road in the 1996 18 functional master plan for rustic roads and it's 19 two-lane appropriate designated as rustic. 20 NANCY REGELIN: And does this property 21 have any access points to Howard Chapel Road? 22 JOHN SEKERAK: No. There's no 23 existing access point along Howard Chapel Road, 24 nor are there any plans to provide any access 25 from Howard Chapel Road.</p> | <p>67</p> <p>1 side of the thirty-acre site. 2 NANCY REGELIN: So, Damascus Road is 3 on the left-hand side of the yellow outlined 4 sites? 5 JOHN SEKERAK: Correct. 6 HEARING EXAMINER ROBESON HANNAN: Hang 7 -- I'm rotating it for the record. And while 8 I'm doing that, I do want to say you've heard me 9 call out to a gentleman, I called him John. 10 That is John Frey, our Microsoft Teams guru, and 11 he sits in on these meetings to troubleshoot but 12 does not contribute in any other way. So, I 13 just wanted to -- if you wonder who I'm talking 14 to when I say John, it's John Frey of Montgomery 15 County Department of Technology Services. Okay, 16 go ahead, Mr. Sekerak. 17 JOHN SEKERAK: Okay. 18 NANCY REGELIN: Yeah, and since it's 19 been rotated, will you oriented everyone again 20 to this screen? 21 JOHN SEKERAK: Sure. North is to the 22 top of the page and the site outlined in bold 23 yellow with the word site in the middle of it 24 that sits at the intersection of Damascus Road, 25 that forms its southern boundary, and Howard</p> |
| <p>66</p> <p>1 So, similarly to the historic 2 preservation, we did reach out to the Rustic 3 Roads Advisory Committee and we presented to the 4 advisory committee on June 25th, and that 5 committee unanimously recommended to support the 6 conditional use application from the rustic road 7 in large part due to no impacts to the rustic 8 road. And that recommendation is Exhibit Number 9 24. 10 NANCY REGELIN: Okay. Mr. Sekerak, 11 have you delineated a neighborhood for the 12 purpose of this conditional use application, and 13 you know, has that neighborhood delineation been 14 accepted by Park and Planning? 15 JOHN SEKERAK: Exhibit 18, which shows 16 that delineation. 17 HEARING EXAMINER ROBESON HANNAN: You 18 should be seeing it. 19 JOHN SEKERAK: Outstanding, yes. 20 HEARING EXAMINER ROBESON HANNAN: I 21 can even -- well, just go with this. 22 JOHN SEKERAK: Okay, all right. We 23 won't push our luck, all right. North is to the 24 right of the page. Damascus Road forms the 25 southern boundary of the property along the left</p> | <p>68</p> <p>1 Chapel Road that forms its western boundary. 2 The red outline that you see is the -- 3 the neighborhood determined for the property. 4 Neighborhood, you know, identifies in my 5 professional judgment the area that's most, you 6 know, directly is potentially impacted, if any, 7 by the proposed use. The size of the 8 neighborhood, I took cues from fairly recent 9 conditional use in the area -- the Greenskeeper 10 Landscape Contracting conditional use -- that's 11 for that use -- the staff used a 1,500 linear 12 foot radius around the center of the property. 13 And so, this is more calculated delineation 14 considering characteristics such as views of the 15 property, travel patterns, ownership, and things 16 like that. But respecting the recent findings 17 by, you know, staff and the Hearing Examiner's 18 Office for the Greenskeeper, I kept the extent 19 of it similarly in size. Specifically, it 20 includes those properties that are across the 21 State Highway 650, you know, those confronting 22 properties. It extends further east and west 23 due to travel patterns, and then a little bit 24 further north along Howard Chapel Road to 25 include a number of those properties also.</p> |

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18 (69 to 72)

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| <p>69</p> <p>1 The types of properties within there, 2 there's both, you know, large lot and I will 3 call it medium-sized residential development 4 associated with the Unity Hamlet that's -- 5 HEARING EXAMINER ROBESON HANNAN: 6 Where is that, Mr. Sekerak? 7 JOHN SEKERAK: At the -- at the 8 intersection of Sundown Road and Damascus Road. 9 HEARING EXAMINER ROBESON HANNAN: 10 Okay. So, it's along Damascus. You have to 11 tell -- can you give me an idea of where Sundown 12 is? 13 JOHN SEKERAK: Yeah. It goes -- 14 HEARING EXAMINER ROBESON HANNAN: 15 Here? 16 JOHN SEKERAK: Nope. Diagonally from 17 the lower left-hand corner, and that's the road 18 -- yeah -- follow that road -- 19 HEARING EXAMINER ROBESON HANNAN: Oh, 20 I see it. I see it. Okay, thank you. 21 JOHN SEKERAK: Follow that road along 22 to where it intersects with Damascus Road. 23 HEARING EXAMINER ROBESON HANNAN: I 24 see it. 25 JOHN SEKERAK: Okay. And that would</p> | <p>71</p> <p>1 the west side of Howard Chapel Road as you go 2 northward. 3 HEARING EXAMINER ROBESON HANNAN: 4 Okay. 5 JOHN SEKERAK: The Waredaca has -- 6 well, it has a legal, nonconforming use as a 7 commercial riding stable. It has a conditional 8 use or special exception -- I forget which -- 9 for a daycare and camp for 125 students and a 10 number of staff -- I forget how many -- and it 11 has a permitted use of a brewery on the 12 property. So, a lot going on over there. 13 NANCY REGELIN: So, has Park and 14 Planning accepted this delineation of the 15 neighborhood? 16 JOHN SEKERAK: Yes, they've concurred 17 with this neighborhood as is, and that's in the 18 staff report also. 19 HEARING EXAMINER ROBESON HANNAN: Now, 20 why didn't you do a diameter of 1,500? I know 21 staff tends to do that. I don't necessarily 22 agree with that because, you know, I don't think 23 it fairly captures it. But tell me about why 24 you drew the line to the south along Damascus. 25 JOHN SEKERAK: Damascus is a state</p> |
| <p>70</p> <p>1 be, I mean, it is the Hamlet of Unity or Village 2 of Unity or where -- it's not a defined 3 geographic area. But it's characterized as, you 4 know, that being the general, you know, center 5 of it -- those homes in that area. And so, the 6 subject property forms like a transition as 7 you're leaving the Unity area and those R200 8 zone properties as you head west. So, it 9 includes some of those medium-sized single 10 family lots. It includes a number of the large 11 single family lots. It includes the landscape 12 contractor where your cursor is now, identified 13 with the CU number. That -- that was the 14 Greenskeeper -- yeah, that's it -- that was the 15 Greenskeeper Landscape Contractor use. And it 16 also includes, you know, significantly the 17 Waredaca property to the western extent of the 18 neighborhood. That -- yes, that area there, 19 which also includes a couple of the -- those 20 large lots that front on Howard Chapel Road -- 21 the first and third lots -- that one and the 22 third. 23 HEARING EXAMINER ROBESON HANNAN: The 24 third north from Damascus Road? 25 JOHN SEKERAK: Correct, correct, on</p> | <p>72</p> <p>1 highway with a fair amount of traffic on it. 2 So, that -- it -- to a degree, you know, it 3 enframes a neighborhood. But those lots that 4 are directly confronting it have direct visual 5 access to the property. So, they should be -- 6 those should be included in the neighborhood. 7 The next level of lots to the south 8 are oriented towards Sundown Road. No visual 9 access to the property or travel patterns et 10 cetera aren't as closely related to the subject 11 property. 12 HEARING EXAMINER ROBESON HANNAN: 13 Okay. 14 JOHN SEKERAK: Conversely -- 15 HEARING EXAMINER ROBESON HANNAN: Can 16 you characterize the neighborhood? 17 JOHN SEKERAK: That -- it -- as I 18 described, it's somewhat eclectic going from the 19 -- the center of the Unity Hamlet and as you go 20 westward, it gets more rural. Those properties 21 to the north are large lot residential and to 22 the south similarly. I would call it semi- 23 rural. But again, this -- as a whole and this 24 property being transitioning from less rural to 25 more rural as you go westward.</p> |

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19 (73 to 76)

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| <p>73</p> <p>1 HEARING EXAMINER ROBESON HANNAN: 2 Okay, thank you. 3 JOHN SEKERAK: Um-hum. 4 NANCY REGELIN: So, Mr. Sekerak, in 5 your description of within this neighborhood, 6 there are agricultural uses that are active 7 farming and there are uses that are allowed in 8 the ag zone including some special exceptions, 9 some conditional uses, and some single family 10 homes, correct? 11 JOHN SEKERAK: That is correct. 12 NANCY REGELIN: Okay. Are there -- 13 specifically, I know you mentioned these -- can 14 you just say them again? Are there other 15 special exceptions in this neighborhood? 16 JOHN SEKERAK: Yes, there are two. 17 The CU 1504, which is the landscape contracting 18 use Ms. Hannan had pointed out and then also at 19 the Waredaca Camp, one of the uses on that area 20 is S-2463, and that's for a child care and 21 summer camp of 125 campers and 32 staff members. 22 NANCY REGELIN: Okay. And CU 1504, 23 just for the record, is the Greenskeeper 24 Landscape Contractor, which is three lots over 25 to the east. Okay.</p> | <p>75</p> <p>1 supplies that are stored, parked, serviced, or 2 loaded at the business location. Landscape 3 contractors includes tree installation, 4 maintenance, or removal. Landscape contractor 5 does not include lawn maintenance service with 6 the code reference." 7 So, the proposed use -- that 8 description describes the proposed use very 9 well. The proposed use may include lawn 10 maintenance, but that is a different use when 11 it's independently as a home-based use and is 12 permitted as a limited use in the AR zone. 13 NANCY REGELIN: Are there any specific 14 approvals like a -- 15 HEARING EXAMINER ROBESON HANNAN: Ms. 16 Regelin. 17 NANCY REGELIN: Yes? 18 HEARING EXAMINER ROBESON HANNAN: 19 Before you go to that, I had a question. Can we 20 go back to Exhibit 48? I want to ask where is - 21 - exactly what are the boundaries of this 22 Waredaca? I know that it's the lot at the north 23 -- northwest intersection of Howard Chapel and 24 Damascus, then the third lot to the north. Is 25 it also this -- this large area behind those two</p> |
| <p>74</p> <p>1 What is the actual zoning of the 2 subject property? 3 JOHN SEKERAK: The subject property is 4 in the AR zone. 5 NANCY REGELIN: And is the proposed 6 conditional use permitted in that zone as a 7 conditional use? 8 JOHN SEKERAK: Yes. Landscape 9 contracting use is permitted by conditional use. 10 NANCY REGELIN: And are you familiar 11 with the applicant's proposed use? And do those 12 uses meet the definition of landscape contractor 13 in the zoning ordinance? 14 JOHN SEKERAK: Yes, it does, and bear 15 with me, and I'll go ahead and read the 16 definition of a landscape contractor. This is 17 3.5.5, "Landscape contractor means the business 18 of designing, installing, planting, or 19 maintaining lawns, gardens, hardscapes, water 20 features, outdoor structures, decorative 21 features, stormwater and drainage features, or 22 other activities intended to enhance the 23 appearance or usefulness of outdoor areas. 24 Landscape contractor also means providing snow 25 removal services with vehicles, equipment, and</p> | <p>76</p> <p>1 lots? 2 JOHN SEKERAK: And areas beyond that. 3 It's at least a couple hundred acres. 4 HEARING EXAMINER ROBESON HANNAN: Now, 5 what about south of Damascus Road? 6 JOHN SEKERAK: I do not believe any of 7 that is part of the Waredaca. 8 HEARING EXAMINER ROBESON HANNAN: 9 I guess what I'm looking at -- I'm looking 10 at this neighborhood and I see Manama, which I 11 believe is this parcel. 12 JOHN SEKERAK: I agree. 13 HEARING EXAMINER ROBESON HANNAN: And 14 then, I see Waredaca, and then I see your site. 15 So, I'd like you to address why this isn't a 16 concentration of conditional uses in this zone, 17 I mean, in the surrounding area. 18 JOHN SEKERAK: With only three in an 19 entire neighborhood, that wouldn't be an 20 overconcentration, nor is it, you know, you also 21 need to consider the land area involved. So, 22 for instance, for Waredaca -- 23 HEARING EXAMINER ROBESON HANNAN: Do 24 you know what the land area of the neighborhood 25 is or are all these within 1,500 feet?</p> |

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20 (77 to 80)

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| <p>77</p> <p>1 JOHN SEKERAK: I think it's a little 2 further east and west than the 1,500 feet -- 3 HEARING EXAMINER ROBESON HANNAN: 4 Okay. 5 JOHN SEKERAK: -- when it comes to the 6 directions of those two. So, it goes a greater 7 length than that -- the default dimension of 8 1,500 linear feet. So, it extends out and does 9 encompass, for instance, the Greenskeeper, that 10 is a panhandle lot. So, it -- it's not really 11 visible at all. 12 HEARING EXAMINER ROBESON HANNAN: I'm 13 -- I'm using my cursor. There's a lot on the 14 south side that has a little R200 AR. 15 JOHN SEKERAK: Um-hum. 16 HEARING EXAMINER ROBESON HANNAN: And 17 then, just to the west of that is -- is that the 18 pipestem driveway? 19 JOHN SEKERAK: Yes, it is. 20 HEARING EXAMINER ROBESON HANNAN: I 21 guess I just look at this map, and it looks 22 like, you know, just from in terms of land area, 23 you know, that's a lot of land area in 24 conditional use, special exception. 25 JOHN SEKERAK: Because those</p> | <p>79</p> <p>1 existing house on the property. Will it remain? 2 JOHN SEKERAK: No. The existing house 3 is not salvageable. So, it will be demolished, 4 including, you know, the associated 5 outbuildings, which, they're just not reparable, 6 which has the benefit of reducing the impervious 7 area, along with the driveway associated with 8 it. 9 NANCY REGELIN: All right. I think it 10 would be helpful now maybe if we actually 11 focused on the conditional use area. Could you 12 describe that area and the improvements that are 13 proposed in this application? 14 JOHN SEKERAK: Okay. And Ms. Hannan, 15 could you bring up Exhibit 33? 16 HEARING EXAMINER ROBESON HANNAN: 17 Okay. I am going there. I had to actually 18 download all the exhibits onto my computer. 19 JOHN SEKERAK: Wow. 20 HEARING EXAMINER ROBESON HANNAN: I 21 don't -- can we do this? Go ahead. 22 JOHN SEKERAK: Okay. Thank you very 23 much. That's terrific. The, you know, the site 24 design and operations will be described in more 25 detail later on, but in generalities, the access</p> |
| <p>78</p> <p>1 conditional uses are on much larger properties, 2 unlike, for instance, a daycare center on a one- 3 acre property. It consumes the entire property 4 on transportation corridors and such. This, 5 again, going back to Greenskeeper, is on the 6 north side of those single family homes that 7 front along Damascus Road. So, there's no 8 visual appreciation or impacts of that use. And 9 similar to us, the entire back portion of that 10 property, it's really not active landscape 11 contracting use. For Waredaca, you know, that's 12 a huge farm that has the horse riding component 13 to it, it has the brewery, which is, you know, a 14 permitted use in the agricultural zones, but 15 also integrated with that is a daycare center 16 that utilizes the horse riding characteristics 17 presumably. But so it's all part of that same, 18 you know, very large land area. 19 For our property, similarly, the -- 20 and we'll get into the active area of our 21 conditional use, but it's only a very small 22 portion of the thirty-acre property. 23 HEARING EXAMINER ROBESON HANNAN: 24 Okay. All right, go ahead. 25 NANCY REGELIN: So, there is an</p> | <p>80</p> <p>1 to the proposed landscape contracting use is 2 from Damascus Road. There's no access to Howard 3 Chapel Road. That's the access point, yes. So, 4 we're removing the existing gravel apron, the 5 existing residential driveway, and proposing a 6 new access point that's directly confronting the 7 access point to Unity Park for just having, you 8 know, that's a safe, practical location for the 9 -- for the access. 10 BRYAN BOUGHTON: Director Hannan, this 11 is Bryan Boughton. I'd like to ask a question 12 if I can. 13 HEARING EXAMINER ROBESON HANNAN: We 14 have a time. Please write your question down 15 and make a note. It's not quite time for 16 questions. But you will get a time for 17 questions when he's done. 18 BRYAN BOUGHTON: Thank you. 19 HEARING EXAMINER ROBESON HANNAN: 20 Thank you. Okay. So, continue. 21 JOHN SEKERAK: So, we described the 22 driveway entrance and I'll describe the 23 perimeter of the conditional use activity area. 24 The operations barn is the large rectangle to 25 the left of the entrance drive. That's it, yes.</p> |

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21 (81 to 84)

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| 81 | 1 HEARING EXAMINER ROBESON HANNAN: 2 That's proposed building 12,000 and something 3 square feet? 4 JOHN SEKERAK: Yes. 5 HEARING EXAMINER ROBESON HANNAN: Go 6 ahead. 7 JOHN SEKERAK: That's an 80- by 125- 8 foot building, the narrow end oriented toward 9 the street, and it anchors the lower left-hand 10 corner of the activity area. As you go 11 clockwise -- well, just north of that is the 12 parking area for employees. 13 HEARING EXAMINER ROBESON HANNAN: And 14 that's labeled. 15 JOHN SEKERAK: Yes. 16 HEARING EXAMINER ROBESON HANNAN: 17 Okay. 18 JOHN SEKERAK: East of that is other 19 parking area for the landscape contracting use. 20 HEARING EXAMINER ROBESON HANNAN: Now, 21 I did have a question. You say thirty trucks, 22 but it -- I couldn't find anywhere, and maybe it 23 was in your statement -- what kind of trucks 24 comprise the thirty trucks? Do you know that or 25 is that a question for the operator? | 83 | 1 HEARING EXAMINER ROBESON HANNAN: I 2 do. I was trying to read this distance on this 3 arrow that goes from the corner of the material 4 bins to, I guess that's the property line after 5 dedication. What is -- 6 JOHN SEKERAK: One hundred and thirty- 7 two feet. 8 HEARING EXAMINER ROBESON HANNAN: 9 Okay. 10 JOHN SEKERAK: All right. The 11 materials bins area is formed by an eight-foot 12 wall and then on the south side of that eight- 13 foot wall is a landscaped berm -- that bermed 14 area. 15 So, now I want to describe the, you 16 know, the perimeter of the activity area is 17 formed by the eight-foot wall for the -- for the 18 materials bins and the associated berm, all 19 right, and then going westward -- I'll still go 20 around clockwise. 21 HEARING EXAMINER ROBESON HANNAN: So, 22 this is the berm beginning at 546 -- 544 23 elevation going to 550? 24 JOHN SEKERAK: And a little higher. 25 Those are the correct contours, right, |
| 82 | 1 JOHN SEKERAK: I -- he'll be able to 2 answer it much more specifically -- 3 HEARING EXAMINER ROBESON HANNAN: 4 Okay. 5 JOHN SEKERAK: -- and accurately. 6 HEARING EXAMINER ROBESON HANNAN: 7 We'll wait for that. 8 JOHN SEKERAK: Okay. All right. So, 9 for the individual trucks and for the trailers 10 that you often see landscape contractors will 11 pull behind the truck getting there. All right. 12 To the east of that is a smaller 13 secondary building and to the south of that are 14 greenhouses. You'll see four greenhouses there, 15 yes. All right. 16 The area between the greenhouses and 17 the -- the large barn building is the work yard, 18 right. So, there are smaller vehicles, skid 19 steer type of things that you can see the park, 20 you know, the parking area for those just to the 21 left of the greenhouses, right. So, those are 22 used for moving materials -- landscape 23 contracting materials that would be stored in 24 the materials bins area. Do you see the 25 materials bins? | 84 | 1 indicating the gradation up from, you know, the 2 existing grade up to the top of the eight-foot 3 wall. 4 And going westward, you see the 5 entrance gate, and that -- that's a gate in an 6 eight-foot tall, board-on-board fence -- wood 7 fence. 8 HEARING EXAMINER ROBESON HANNAN: 9 Okay. 10 JOHN SEKERAK: That ties into the 11 building itself, and the building provides, you 12 know, some of the perimeter of the activity 13 area. And then in the northwest corner of the 14 building, you can see the fence line beginning 15 again. 16 HEARING EXAMINER ROBESON HANNAN: 17 Right here. 18 JOHN SEKERAK: Yes, wrapping around 19 the parking area. 20 HEARING EXAMINER ROBESON HANNAN: It's 21 the line with the hatches. 22 JOHN SEKERAK: Exactly, yes. 23 HEARING EXAMINER ROBESON HANNAN: 24 Okay. 25 JOHN SEKERAK: And that encompasses |

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22 (85 to 88)

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| <p>85</p> <p>1 the entire future maintenance building, the 2 greenhouses, and then ties back into the eight- 3 foot wall. So, the entire property is wholly 4 enclosed within an eight-foot, board-on-board 5 fence or an eight-foot wall with associated berm 6 and/or agriculturally designed building. 7 HEARING EXAMINER ROBESON HANNAN: 8 Okay. 9 JOHN SEKERAK: All right. And that -- 10 that's where the activity area is for the 11 landscape contractor, and it's approximately a 12 three-acre enclosure, which is one-tenth the 13 size of the property. 14 Now, the conditional use area, we 15 extended that out for a number of reasons beyond 16 -- outside of the fence line or the wall line or 17 the building with buffer plantings for most of 18 that and for the septic area. All right. 19 Ms. Hannan, I -- okay. I'm sorry. I 20 was making sure we had the most current site 21 plan up, but now I see that it is. 22 So, the septic -- the septic area is 23 for both the initial septic trench and future 24 reserve areas. All that is underground, and it 25 would look no different than the existing</p> | <p>87</p> <p>1 area? 2 HEARING EXAMINER ROBESON HANNAN: No, 3 no. I got that. That's 6.33 something. I 4 wanted to know the -- he answered it. 5 NANCY REGELIN: Okay, great. Okay. 6 What are the development standards in the AR 7 that are applicable to the proposed conditional 8 use, and will you let us know if those meets 9 those? 10 JOHN SEKERAK: Yes. The -- on the 11 same exhibit is thorough tabulation of all the 12 applicable development standards, which includes 13 those development standards of the AR zone and 14 as modified by landscape contractor use. So, 15 the tabulation references which -- if there are 16 more than one development standards because of, 17 you know, the marriage of the landscape 18 contracting use and the AR zone, the more 19 restrictive of the two development standards are 20 what are displayed on there. And all the code 21 references are also included so that you can 22 tell if it's either, again, the AR zone or the 23 landscape contracting. You'll -- just as an 24 example, the first one for lot area, the two- 25 acre minimum lot area is a standard for</p> |
| <p>86</p> <p>1 conditions that are out there now. It has no 2 impact visually or otherwise on that. The other 3 areas as you wrap around there, it's at least 4 fifty feet from the -- from the enclosure of the 5 fence line, a little bit more along the south 6 side where the wall is so we can provide the 7 berm and a more robust planting buffer along 8 Damascus Road. 9 HEARING EXAMINER ROBESON HANNAN: 10 Okay. 11 JOHN SEKERAK: So, that's an important 12 distinction between the landscape contracting 13 activity area, which is fully enclosed within 14 those features that I indicated, and the subject 15 -- 16 HEARING EXAMINER ROBESON HANNAN: 17 Yeah. Do you know what the area of the actual 18 landscape contractor's area is? 19 JOHN SEKERAK: Inside the fence and 20 the wall and the outside edge of the building is 21 just a tic under 3 acres -- 2.96 or 2.74. 22 HEARING EXAMINER ROBESON HANNAN: 23 Okay. 24 NANCY REGELIN: But I believe that Ms. 25 Hannan asked what is the actual area of the CU</p> | <p>88</p> <p>1 landscape contracting use. The -- the minimum 2 lot area for the AR zone would be 40,000 square 3 feet, for instance, on a larger property, but 4 the lot area would be 40,000 square feet. So, 5 that's just an example of how we differentiate 6 and demonstrating compliance with the more 7 restrictive when there are multiple development 8 standards for the same element. 9 NANCY REGELIN: Okay. I think to move 10 this along, the development standards are here 11 on this Exhibit 33, so we won't have him go 12 through line by line if it pleases the hearing 13 examiner. 14 HEARING EXAMINER ROBESON HANNAN: No, 15 that's -- that's good. 16 JOHN SEKERAK: I'd be happy -- I don't 17 mean to rush things -- I'd be happy to go over 18 any of these in particular. 19 HEARING EXAMINER ROBESON HANNAN: That 20 -- that was not one of my questions. I did 21 look. It's in the staff report too. 22 NANCY REGELIN: So, Mr. Sekerak, can 23 we move on? Can you describe the setbacks that 24 are provided from the property lines to the 25 conditional use area? I think we probably want</p> |

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23 (89 to 92)

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| <p>89</p> <p>1 to pull up Exhibit 55.</p> <p>2 JOHN SEKERAK: Yes. We did prepare</p> <p>3 and submit an exhibit that provided a wide</p> <p>4 variety of dimensions that we've already</p> <p>5 indicated in red on Exhibit 55. So, this --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: This</p> <p>7 is it.</p> <p>8 JOHN SEKERAK: Yes. That looks great.</p> <p>9 It provides, you know, lots of information on</p> <p>10 there if you want to know the distance between,</p> <p>11 you know, one element and the distance to either</p> <p>12 a property line or -- or edge of right of way or</p> <p>13 anything along those lines, multiple things.</p> <p>14 I'll just highlight that, so, for</p> <p>15 instance, the main proposed barn building is 431</p> <p>16 feet away from Howard -- the edge of Howard</p> <p>17 Chapel Road. It's set back from the edge of</p> <p>18 Damascus Road by 197 feet. The setback of say</p> <p>19 the parking area to the northernmost property</p> <p>20 line is well over 1,000 feet. The future</p> <p>21 maintenance building in the upper right-hand</p> <p>22 corner of the landscape contracting activity</p> <p>23 area is set back 196 feet from the nearest</p> <p>24 property line. So, the applicable development</p> <p>25 standard for landscape contracting buildings,</p> | <p>91</p> <p>1 But I'll just go, you know, highlight some</p> <p>2 applicable sections of the master plan. On page</p> <p>3 17, identified use, you know, this area as being</p> <p>4 within the broader area of the northern Olney</p> <p>5 section of the master plan. A couple of pages</p> <p>6 describing that and its recommendations include</p> <p>7 protect forested areas and wetlands that</p> <p>8 contribute to the health of the drinking water</p> <p>9 supply. So again, we are within the Patuxent</p> <p>10 River primary management area, so that is well</p> <p>11 founded, and we are preserving 100 percent of</p> <p>12 our existing forest on the property which</p> <p>13 comprises about a third of our property.</p> <p>14 On page 42, it has some</p> <p>15 recommendations for special exceptions in</p> <p>16 general and at the time of the writing of this</p> <p>17 master plan, there were referred to as special</p> <p>18 exceptions. Now, you know, now they're referred</p> <p>19 to as conditional uses. So, same thing, but in</p> <p>20 their recommendations regarding special</p> <p>21 exceptions, discourage special exception uses</p> <p>22 along Georgia Avenue and this is, you know,</p> <p>23 allows for special exception uses in the master</p> <p>24 plan area without burdening the Georgia Avenue</p> <p>25 Corridor. Minimize the negative impacts of</p> |
| <p>90</p> <p>1 parking, and operations is a minimum of 50 feet.</p> <p>2 So, you can see how well in excess of the</p> <p>3 minimum standards the proposed use is from the</p> <p>4 requirement of 50 feet to a lot line.</p> <p>5 NANCY REGELIN: Okay. So, Mr.</p> <p>6 Sekerak, are there additional -- you alluded to</p> <p>7 this -- are there additional development</p> <p>8 standards for landscape contractor use, and does</p> <p>9 this application meet those?</p> <p>10 JOHN SEKERAK: Yes. Again, on the</p> <p>11 face of Exhibit 33 for both, you know, landscape</p> <p>12 contracting use or the development standards for</p> <p>13 the AR zone, it demonstrates full compliance</p> <p>14 with all applicable development standards in the</p> <p>15 zoning ordinance regardless of section.</p> <p>16 NANCY REGELIN: Okay. So, could you</p> <p>17 describe what master plans cover this property</p> <p>18 and if there are any specific recommendations</p> <p>19 applicable to the property and if the</p> <p>20 application meets them?</p> <p>21 JOHN SEKERAK: The -- the primary</p> <p>22 master plan is the 2005 adopted and approved</p> <p>23 only master plan. There are no specific</p> <p>24 recommendations for this property or references</p> <p>25 to this property in the -- in the master plan.</p> | <p>92</p> <p>1 special exceptions including, you know, the</p> <p>2 visibility of parking lots, excessive size,</p> <p>3 height and scale of buildings, and intrusive</p> <p>4 lighting. Our parking lot is, you know, there</p> <p>5 will be no visibility because of the perimeter</p> <p>6 that I described earlier. Excessive size --</p> <p>7 it's under a three-acre -- three-acre activity</p> <p>8 area. Height and scale of buildings, you know,</p> <p>9 the proposed operations barn is designed in the</p> <p>10 vernacular of agricultural barns and similarly</p> <p>11 sized as many barns are within -- actually,</p> <p>12 within this neighborhood. And intrusive</p> <p>13 lighting -- that will be described later as we</p> <p>14 are providing all the type of lighting, the</p> <p>15 intensity of lighting, height of lighting, and</p> <p>16 full cutoff, for instance, is very protective</p> <p>17 and inobtrusive.</p> <p>18 And also, page 42, section on special</p> <p>19 exceptions also goes on to discourage special</p> <p>20 exception uses with excessive impervious levels,</p> <p>21 and as will be described in more detail later,</p> <p>22 we are -- we are within the Patuxent River</p> <p>23 primary management area, we are meeting all</p> <p>24 recommendations for 10 percent impervious --</p> <p>25 maximum of 10 percent impervious maximum both</p> |

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24 (93 to 96)

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| 93 | <p>1 within the PMA transition area and for the site</p> <p>2 as a whole.</p> <p>3 Further on in the master plan on page</p> <p>4 106, it references roadway classifications and</p> <p>5 recommended right of way for Maryland Route 650</p> <p>6 New Hampshire Avenue. It recommends a driveway</p> <p>7 with 80 feet, and we are proposing dedication</p> <p>8 along our frontage in order to meet, you know,</p> <p>9 provide that master plan recommended right of</p> <p>10 way for that.</p> <p>11 Same goes for Howard Chapel Road. It</p> <p>12 has a recommended right of way of 70 feet. And</p> <p>13 again, we're -- at time of subdivision, we will</p> <p>14 be dedicating property frontage to meet that</p> <p>15 master plan recommendation.</p> <p>16 There are, you know, a number of other</p> <p>17 functional master plans. You've heard me refer</p> <p>18 to the Patuxent River watershed master plan,</p> <p>19 which includes the Planning Boards environmental</p> <p>20 guidelines by reference. In there, it</p> <p>21 identifies the protections of the Patuxent</p> <p>22 watershed, recommendations on limitation of</p> <p>23 impervious area, and items like that. Also,</p> <p>24 still applicable, is the preservation of</p> <p>25 agriculture and open space, the bicycle master</p> | 95 | <p>1 properties and the activity area of the</p> <p>2 landscape contractor use. The scale is very</p> <p>3 compatible and consistent with other barns in</p> <p>4 the neighborhood, and it's well designed.</p> <p>5 Again, it's earth tone color, its orientation,</p> <p>6 setbacks, et cetera are very compatible with the</p> <p>7 neighborhood.</p> <p>8 The smaller building is, you know,</p> <p>9 further removed from the road and wholly within</p> <p>10 the fenced area. The same goes for the</p> <p>11 greenhouses. They are wholly within the fenced</p> <p>12 area and, you know, the greenhouses are</p> <p>13 agricultural by definition anyway.</p> <p>14 NANCY REGELIN: Okay. Are you</p> <p>15 familiar with the equipment that's proposed to</p> <p>16 be utilized in the conditional use?</p> <p>17 JOHN SEKERAK: Yes, and they are not</p> <p>18 inconsistent with what -- what you would find</p> <p>19 in, you know, farm implements that are used as,</p> <p>20 you know, permitted in the AR zone. The</p> <p>21 implements and the equipment would be thinks</p> <p>22 like, you know, tractors and trucks, harvesters,</p> <p>23 et cetera, and farms receive and deliver</p> <p>24 products. So, not uncharacteristic of</p> <p>25 agricultural uses in the AR zone.</p> |
| 94 | <p>1 plan, and we already referenced earlier the</p> <p>2 rustic roads functional master plan.</p> <p>3 The property and use was designed</p> <p>4 specifically considering all the recommendations</p> <p>5 of those master plans, and it is consistent with</p> <p>6 the recommendations.</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 Okay.</p> <p>9 NANCY REGELIN: Have you reviewed the</p> <p>10 architectural plans for the proposed buildings?</p> <p>11 And, as a planner, what's your position</p> <p>12 regarding the compatibility of those buildings</p> <p>13 with the neighborhood?</p> <p>14 JOHN SEKERAK: I have. They'll be</p> <p>15 described later in much more detail by</p> <p>16 professionals with expertise specifically in</p> <p>17 that. But as a landscape architect and</p> <p>18 landscape planner, I do consider things like,</p> <p>19 you know, the characteristics of design, the</p> <p>20 size, heights, scale, bulk, et cetera and the</p> <p>21 larger building was -- was specifically designed</p> <p>22 in the agricultural vernacular. It's, you know,</p> <p>23 a gable roof with the narrow end oriented</p> <p>24 towards Damascus Road. It provides an</p> <p>25 appropriate buffer between surrounding</p> | 96 | <p>1 NANCY REGELIN: Okay. And we're going</p> <p>2 to come back to what's inherent and noninherent</p> <p>3 in a moment. So, we'll come back to that.</p> <p>4 Is adequate parking under the zoning</p> <p>5 ordinance provided on the site for the number of</p> <p>6 personal vehicles and equipment?</p> <p>7 JOHN SEKERAK: Yes, that tabulation is</p> <p>8 also on Exhibit 33, the site plan for</p> <p>9 conditional use that goes through step by step</p> <p>10 the requirements for both in the zoning</p> <p>11 ordinance and in the AR regarding --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: So,</p> <p>13 I -- I'll get it.</p> <p>14 JOHN SEKERAK: Okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: If</p> <p>16 you want me to.</p> <p>17 JOHN SEKERAK: I don't think it's</p> <p>18 necessary. Similar to the development</p> <p>19 standards, it's all tabulated there. It meets</p> <p>20 or exceeds the requirements for, you know, the</p> <p>21 number of spaces and having it within the</p> <p>22 perimeter of the activity area for both employee</p> <p>23 vehicles, which includes two ADA-compliant</p> <p>24 spaces, and all the equipment that would be</p> <p>25 stored outside. There are places, you know,</p> |

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25 (97 to 100)

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| 97 | <p>1 locations where that fall on the site plan for</p> <p>2 an efficient layout and use within the -- within</p> <p>3 that fenced-in area.</p> <p>4 NANCY REGELIN: Okay.</p> <p>5 JOHN SEKERAK: So, the parking</p> <p>6 tabulation is up a little bit further just to</p> <p>7 the right.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I'll</p> <p>9 get there. It's so teeny, I was going to --</p> <p>10 there.</p> <p>11 JOHN SEKERAK: All right, looks good.</p> <p>12 All right. So, towards the top middle of that</p> <p>13 is where the parking tabulation begins for the</p> <p>14 landscape contractor use. The single family</p> <p>15 detached house is being removed, so there's no</p> <p>16 parking spaces associated with that. It</p> <p>17 indicates how many, you know, there -- yeah,</p> <p>18 thirty-eight parking spaces required for</p> <p>19 employees. We're providing forty, so it</p> <p>20 includes two ADA spaces. And then for all the</p> <p>21 remaining vehicles, which includes the trailers.</p> <p>22 So, you know, a space for both the truck and the</p> <p>23 trailer that would, you know, that would be</p> <p>24 behind it, and then the materials moving</p> <p>25 equipment such as the skid steers, commonly</p> | 99 | <p>1 read the applicable part from that. "As long as</p> <p>2 the plants are used for his business and not for</p> <p>3 sale to other businesses or homeowners, then we</p> <p>4 can concur that this is an agricultural use."</p> <p>5 So, the applicant will be growing stock on the</p> <p>6 property for his own use and that is, you know,</p> <p>7 a bona fide agricultural use for the property.</p> <p>8 Similar to the sod that's being farmed on there</p> <p>9 now. He will likely continue sod for his</p> <p>10 landscape contracting use and likely will expand</p> <p>11 that into plant materials of trees and shrubs.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Was</p> <p>13 the traffic from the agricultural -- well, you</p> <p>14 probably aren't the person to ask. I just have</p> <p>15 a question for later, Ms. Regelin, about whether</p> <p>16 the traffic for the potential agricultural use</p> <p>17 was included in your traffic study. You don't</p> <p>18 have to answer it now. I know that Mr. Sekerak</p> <p>19 isn't the correct person.</p> <p>20 NANCY REGELIN: Thank you.</p> <p>21 Okay. And just for the record, the E-</p> <p>22 mail that Mr. Sekerak just read into the record</p> <p>23 is actually in Exhibit 27, which is the</p> <p>24 statement of applicant, and it's attachment 24.</p> <p>25 So, the entire E-mail is already in the record.</p> |
| 98 | <p>1 referred to as bobcats and front end loader for</p> <p>2 material moving. And then, down below that is</p> <p>3 the parking design standards for the employee</p> <p>4 vehicle parking lot in terms of interior green</p> <p>5 area, setbacks, plantings, and those</p> <p>6 requirements.</p> <p>7 NANCY REGELIN: Okay. So, if we</p> <p>8 actually move to the left on this same exhibit,</p> <p>9 I think it would be helpful to show some of the</p> <p>10 squiggly lines. So, the site plan shows the</p> <p>11 area outside of the conditional use area as</p> <p>12 planting fields.</p> <p>13 JOHN SEKERAK: Yes.</p> <p>14 NANCY REGELIN: Did the applicant seek</p> <p>15 an opinion from DPS regarding whether the</p> <p>16 agricultural use could be co-located on the same</p> <p>17 thirty-acre property with the conditional use,</p> <p>18 and if the applicant could utilize the plants</p> <p>19 harvested from the planting fields in the</p> <p>20 conditional use?</p> <p>21 JOHN SEKERAK: Yes. The team reached</p> <p>22 out to Mark Beall, who is the zoning manager at</p> <p>23 the Department of Permitting Services in</p> <p>24 Montgomery County, and on February 11th of 2020,</p> <p>25 Mark replied by E-mail regarding that, and I'll</p> | 100 | <p>1 HEARING EXAMINER ROBESON HANNAN:</p> <p>2 Okay.</p> <p>3 NANCY REGELIN: From Mark Beall.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Okay.</p> <p>6 NANCY REGELIN: All right. Mr.</p> <p>7 Sekerak, in your opinion, what are the inherent</p> <p>8 characteristics in effect of a landscape</p> <p>9 contractor?</p> <p>10 JOHN SEKERAK: In the staff report,</p> <p>11 the staff had listed what they determined to be</p> <p>12 their opinion of the inherent characteristics of</p> <p>13 a landscape contract being used, and those are</p> <p>14 listed on page 23 of the staff report. I -- I</p> <p>15 simply -- I agree with those listed but I would</p> <p>16 add, you know, large buildings being inherent</p> <p>17 characteristics such as our proposed barn. A</p> <p>18 more detailed description of inherent use for</p> <p>19 landscape contracting use, I looked at other</p> <p>20 recent cases, and I'll read that out from CU</p> <p>21 1904. It's a -- that was a --</p> <p>22 [Inaudible - technical difficulties]</p> <p>23 JOHN SEKERAK: That's it, yes. So, I</p> <p>24 am sorry, I don't have a date for that.</p> <p>25 HEARING EXAMINER ROBESON HANNAN:</p> |

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26 (101 to 104)

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| 101 | <p>1 Yeah, I know that one.</p> <p>2 JOHN SEKERAK: Okay, rather recent.</p> <p>3 So, the -- the inherent characteristics proposed</p> <p>4 by technical staff and accepted by the Hearing</p> <p>5 Examiner's Office were: 1) Buildings,</p> <p>6 structures, outdoor areas for the storage of</p> <p>7 plants and gardening-related equipment; 2)</p> <p>8 Outdoor storage of plant stock, mulch, soil, and</p> <p>9 landscaping materials in bulk and in containers;</p> <p>10 3) Onsite storage of business vehicles and</p> <p>11 equipment including trucks and landscaping</p> <p>12 trailers; 4) Traffic associated with trips to</p> <p>13 the site by employees and suppliers. Trips to</p> <p>14 and from the site by employees engaged in</p> <p>15 offsite landscape activities; 5) Adequate</p> <p>16 parking areas to accommodate employees; 6) Dust</p> <p>17 and noise associated with the movement of</p> <p>18 landscaping products and the loading and</p> <p>19 unloading of equipment associated with</p> <p>20 landscaping businesses; and 7) Hours of</p> <p>21 operation.</p> <p>22 And I -- that -- that's putting a lot</p> <p>23 more nuance on it, but rather similar to what</p> <p>24 the staff report had indicated, but it's just</p> <p>25 much more descriptive, and I would add and</p> | 103 | <p>1 BRYAN BOUGHTON: Thank you. I did</p> <p>2 have one question for Mr. Sekerak. He mentioned</p> <p>3 a traffic study and he actually mentioned a</p> <p>4 Rustic Roads Committee that said there would be</p> <p>5 no impact. But, if you can pull up Exhibit 33</p> <p>6 again, which shows the site in closer detail, my</p> <p>7 -- my question is for the rustic roads, when the</p> <p>8 applicant's team talked to them, it is common</p> <p>9 knowledge -- if you scroll down just a little</p> <p>10 bit -- so, Damascus Road right there at the</p> <p>11 bottom of the drawing where they enter and exit.</p> <p>12 They said there's no entry points off of Howard</p> <p>13 Chapel, so rustic roads did not have anything to</p> <p>14 say. But it is a common practice, because</p> <p>15 Damascus Road, if it continues to the east like</p> <p>16 that, runs into Sundown Road and makes a</p> <p>17 triangle down to the right if this drawing</p> <p>18 continued. So, a lot of people who are trying</p> <p>19 to travel west will cut -- go over to Howard</p> <p>20 Chapel on the left-hand side of the intersection</p> <p>21 -- yep -- and they'll turn left there and go</p> <p>22 down to Sundown, because it's a shortcut</p> <p>23 through, and there is a lot of traffic there.</p> <p>24 And my expectation is we will have the traffic</p> <p>25 of all the vehicles leaving here that want to</p> |
| 102 | <p>1 eighth to that -- fueling capabilities.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Okay, go ahead.</p> <p>4 NANCY REGELIN: Mr. Sekerak, are there</p> <p>5 -- in your opinion, are there any noninherent</p> <p>6 effects as operational with this conditional use</p> <p>7 permit at this location?</p> <p>8 JOHN SEKERAK: No, neither staff nor I</p> <p>9 have been able to identify any non -- any</p> <p>10 noninherent effect -- impacts by this proposed</p> <p>11 use.</p> <p>12 NANCY REGELIN: So, I think at this</p> <p>13 time, Ms. Robeson, I think maybe we'll break</p> <p>14 with Mr. Sekerak's testimony now, and I'll</p> <p>15 reserve the right to bring him back, and we'll</p> <p>16 have him do the findings later, and that way we</p> <p>17 can pause and get some questions in from the</p> <p>18 neighbors.</p> <p>19 HEARING EXAMINER ROBESON HANNAN:</p> <p>20 Yeah, that would be good. All right.</p> <p>21 Now, Mr. -- I see Mr. Lambert's hand</p> <p>22 up, but I had promised Mr. Boughton I would come</p> <p>23 -- oh, his hand is up also. Mr. Lambert, I'm</p> <p>24 going to go with Mr. Boughton first, and then</p> <p>25 we'll come to you.</p> | 104 | <p>1 get to Sundown and head towards Laytonsville or</p> <p>2 the highway will impact Howard Chapel, which is</p> <p>3 a road that can only accommodate one vehicle at</p> <p>4 a time. I guess my question is, was any of that</p> <p>5 presented to Rustic Roads Commission or part of</p> <p>6 this highway traffic study, or did they just</p> <p>7 assume traffic would always go out and not use</p> <p>8 Howard Chapel as most traffic in the area does?</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Now,</p> <p>10 I'm going to switch exhibits, because this helps</p> <p>11 -- it's a bigger scale.</p> <p>12 BRYAN BOUGHTON: Yep.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I</p> <p>14 think this is Exhibit 18, and I wanted to see it</p> <p>15 visually what Mr. Boughton is describing. So,</p> <p>16 Mr. Boughton, you're saying -- can you -- you're</p> <p>17 saying -- and you're --</p> <p>18 BRYAN BOUGHTON: I can provide it to</p> <p>19 you if you want. So, if you put your cursor</p> <p>20 right in the middle of the bottom of the site,</p> <p>21 go to the middle of it. So, if they want to get</p> <p>22 to Sundown, which is the green line straight</p> <p>23 down from you, they can go over and cut down</p> <p>24 this rustic road, Howard Chapel, which is very</p> <p>25 short.</p> |

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27 (105 to 108)

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| <p>105</p> <p>1 HEARING EXAMINER ROBESON HANNAN: 2 Okay. 3 BRYAN BOUGHTON: Or they have to go 4 out and to the east where you see the green and 5 red lines kind of come together, and then they 6 can make a very sharp turn onto Sundown, and 7 most people tend to not do that instead, and I'm 8 assuming since this site is to close to Howard 9 Chapel, Howard Chapel will become a normal cut- 10 through. 11 HEARING EXAMINER ROBESON HANNAN: 12 Okay. I've got to keep you to a question. I 13 think that I -- 14 BRYAN BOUGHTON: That was my question. 15 My question was, was that considered or did they 16 simply say no driveway on Howard Chapel, so the 17 rustic roads did not look at it at all? 18 JOHN SEKERAK: The Rustic Roads 19 Committee is concerned with the character of the 20 roads -- design character and the experience for 21 the traveling public. They do not have the 22 expertise or review traffic impact analysis. 23 So, they were just simply very heartened to hear 24 that we were proposing no impacts that would, 25 you know, add driveway aprons or -- or change</p> | <p>107</p> <p>1 landscaping company not physically affecting a 2 rustic road -- 3 HEARING EXAMINER ROBESON HANNAN: This 4 isn't -- I need a question. I need a question. 5 You will get the time to say this. 6 DAVE LAMBERT: Have -- did you provide 7 any context to the rustic roads contacts you 8 mentioned about the -- that map that we were all 9 looking at? Did they see that map? 10 JOHN SEKERAK: Yes, they did. 11 DAVE LAMBERT: They did? And you 12 personally had discussions with them about the 13 impact of this conditional use exemption on that 14 road? 15 JOHN SEKERAK: It was a similar MS 16 Teams meeting or similar remote meeting with the 17 committee. 18 DAVE LAMBERT: And what was presented 19 to the committee? 20 JOHN SEKERAK: They had copies of the 21 proposed plans, which they distributed to the 22 committee members prior to the -- prior to their 23 meeting. I don't want to call it a hearing, but 24 prior to their meeting. And we were available 25 for questions and answered any questions that</p> |
| <p>106</p> <p>1 the visual character of Howard Chapel Road, 2 especially considering our substantial setbacks. 3 BRYAN BOUGHTON: And the traffic study 4 -- did that take any of this into consideration? 5 JOHN SEKERAK: The traffic analysis 6 will be -- that was prepared and submitted a 7 spart of the application, reviewed, and approved 8 by those folks who do traffic impact analysis at 9 the National Capitol Park and Planning 10 Commission, and there will be an expert who will 11 be testifying to that. 12 HEARING EXAMINER ROBESON HANNAN: I 13 was going to say save that question because 14 there's another gentleman that specializes in 15 traffic. Okay. 16 BRYAN BOUGHTON: Thank you. 17 HEARING EXAMINER ROBESON HANNAN: 18 Thank you. Mr. Lambert and then Ms. Lund. Mr. 19 Lambert? 20 DAVE LAMBERT: Yes, here. I've got a 21 number of questions just amplifying 22 Mr. Boughton. I think the point that he's 23 raising is that we need the opportunity to have 24 context provided to these various organizations. 25 I would suggest that them being heartened by a</p> | <p>108</p> <p>1 they had before they voted unanimously to 2 approve -- to recommend approval. 3 DAVE LAMBERT: And when -- when did 4 you provide the information, and when was the 5 meeting, and when was their decision? 6 HEARING EXAMINER ROBESON HANNAN: Ms. 7 Regelin, I -- I believe this is in the record. 8 Their letter is in the record somewhere. Can 9 you point me to where it might be? 10 NANCY REGELIN: Yeah. The Rustic 11 Roads Commission, we met with them on June 25th, 12 and they submitted directly to the hearing 13 examiner, and I'm looking it up real quick. It 14 is Exhibit 24, the letter from the Rustic Road 15 Commission dated 7/2/20. 16 DAVE LAMBERT: So, sorry, 7/2 was 17 their decision and the meeting was on June 25th, 18 and your material was submitted on what day? 19 NANCY REGELIN: So, the -- I can't 20 testify, Mr. Lambert, but I will answer your 21 question if it pleases the hearing examiner. 22 The Rustic Roads Commission -- 23 HEARING EXAMINER ROBESON HANNAN: 24 There is the letter. You should be able -- they 25 list the landscape or sorry. I have the letter</p> |

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28 (109 to 112)

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| <p>109</p> <p>1 up on the screen and there is some statement 2 there about what was presented. 3 DAVE LAMBERT: I'm only asking 4 questions about material that the witness has 5 explicitly addressed. I'm sorry if it's not top 6 of mind of everyone. It's certainly not top of 7 mind for us considering -- 8 HEARING EXAMINER ROBESON HANNAN: 9 Okay, I'm -- I'm -- 10 DAVE LAMBERT: But I'm simply asking a 11 followup question about his -- about the 12 decision that he referenced by rustic roads. 13 HEARING EXAMINER ROBESON HANNAN: 14 Okay, that's fine. Answer, if you can, Mr. 15 Sekerak. 16 JOHN SEKERAK: I'm sorry, when -- when 17 the information was supplied to the Rustic Roads 18 Committee? Is that the question? 19 DAVE LAMBERT: I'm just thinking about 20 the timeline -- the material that was submitted, 21 when it was submitted, there -- your meeting -- 22 that looks like it's clear, June 25th, and then 23 their decision. 24 JOHN SEKERAK: So, you've already 25 heard when the meeting was and there's the</p> | <p>111</p> <p>1 DAVE LAMBERT: Got it. Thank you. 2 You mentioned in the beginning of your 3 discussion about the neighborhood delineation 4 and that you -- that it was a question of 5 judgment. Can you describe what went into your 6 judgment in determining the neighborhood 7 delineation? 8 JOHN SEKERAK: I -- I believe I did 9 that with Ms. Hanna's request. Yeah. I will 10 not pretend that it's a formula or a science. 11 It's part science based on thirty-seven years of 12 professional judgment of those impacts. 13 HEARING EXAMINER ROBESON HANNAN: 14 Well, why don't you -- why don't you address the 15 -- how -- 16 DAVE LAMBERT: Ms. Hannan, why don't 17 you let me ask the question. My question is, 18 what were the factors that went into your 19 judgment? I understand you have expertise in 20 this -- over thirty-five years -- and I would be 21 interested to hear what you brought to bear into 22 this particular application. 23 HEARING EXAMINER ROBESON HANNAN: 24 Well, that's what I was trying to say. But go 25 ahead, Mr. -- he did testify to it, but I'm</p> |
| <p>110</p> <p>1 document of when the decision was documented, 2 and I would have to do some digging regarding 3 how long before their hearing or their meeting 4 that -- how long they had to review the 5 information. 6 DAVE LAMBERT: Thank you. Mr. 7 Sekerak, is any of your compensation dependent 8 upon the conditional use exemption being 9 approved? 10 JOHN SEKERAK: I'm sorry. Could you 11 repeat that? 12 DAVE LAMBERT: My question is, is any 13 of your compensation dependent upon the approval 14 of the conditional use exception? In other 15 words, are you being paid as you go, or is your 16 payment -- your firm's payment conditioned on 17 approval in steps? Maybe it's, you know, you 18 get approval of the Rustic Roads Commission, you 19 get approval of this, there's certain threshold 20 decisions that might trigger payment of 21 compensation. 22 JOHN SEKERAK: I get paid for my 23 professional services for design and planning 24 and it's not dependent on the success or not of 25 this conditional use.</p> | <p>112</p> <p>1 going to ask him to reiterate it again. 2 JOHN SEKERAK: Okay. 3 HEARING EXAMINER ROBESON HANNAN: Do 4 you need the exhibit? 5 JOHN SEKERAK: Yeah. Yeah, it would 6 be helpful. It would probably be helpful for 7 the viewers while I'm -- while I'm describing 8 this. So, I'm very familiar with the area, 9 visiting it often. So, that's part of the 10 initial research. I also researched the 11 neighborhood for, you know, very similar use 12 nearby and fairly recently to find out -- to 13 take cues from what others have deemed to be the 14 appropriate neighborhood. And so, for the 15 Greenskeeper conditional use, that was 16 indicated, you know, as a 1,500 linear foot 17 radius. So, the extent of this neighborhood is 18 very consistent with that, but I went into more 19 detail to -- to make it more, you know, I don't 20 want to say arbitrary -- that a 1,500-foot 21 radius is arbitrary -- but being consistent with 22 that, not cutting properties in half where half 23 of the property would be in a neighborhood and 24 half wouldn't. But I did make an exception for 25 that for Waredaca because the other parts of</p> |

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29 (113 to 116)

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| <p>113</p> <p>1 Waredaca extend so far removed from this 2 property, I didn't think it appropriate. So, 3 it's those properties -- 4 HEARING EXAMINER ROBESON HANNAN: I 5 don't think -- what I -- what I would like you 6 to do is say what impacts do you -- what 7 specific impacts do you look at? Are you 8 laughing, Mr. -- 9 DAVE LAMBERT: No, there's a cat 10 sitting on my lap. I was trying to get it out. 11 HEARING EXAMINER ROBESON HANNAN: I 12 have one sleeping on my bed. 13 DAVE LAMBERT: You can take her off, 14 and she keeps running back up. That's what 15 we're laughing at. 16 HEARING EXAMINER ROBESON HANNAN: 17 Okay. Go ahead, Mr. Sekerak. 18 JOHN SEKERAK: Okay. Visual impacts 19 are one of the -- one of the primary ones who 20 can, you know, who has direct views of the 21 property and it extends beyond that. So, for 22 instance, even though those confronting 23 properties are on the other side of a highway, 24 they still have direct visual access, especially 25 of the orientation of this site into -- into the</p> | <p>115</p> <p>1 for the record, he said that those impacts could 2 go beyond the 1,500-foot mark. 3 HEARING EXAMINER ROBESON HANNAN: 4 Well, the record speaks for itself. You will 5 get a verbatim transcript of this. 6 DAVE LAMBERT: And so, you looked at 7 the Greenskeeper application. Have you looked 8 at any other conditional use exemptions in this 9 area other than Greenskeeper and Waredaca? 10 JOHN SEKERAK: Conditional uses, not 11 exemptions, but the conditional uses. Those are 12 -- [audio cut out.] 13 DAVE LAMBERT: Did you look beyond the 14 defined neighborhood to see what other 15 conditional use applications may have been a 16 relevant precedent? 17 JOHN SEKERAK: I looked at a lot of 18 conditional uses. I'm not sure how far beyond 19 the neighborhood. The purpose of the 20 neighborhood is to be able to review those 21 properties within the neighborhood. I have not 22 exhaustively also researched properties outside 23 of that neighborhood. 24 DAVE LAMBERT: You set the 25 neighborhood though, right, yourself? You</p> |
| <p>114</p> <p>1 property. So, it included those with direct 2 visual impact. And then those who would travel 3 past this site more regularly. So, as you get 4 further removed, you have other options for 5 choosing your routes and would drive by here 6 less -- less often. And then the noise, odor, 7 light, that type of thing that would potentially 8 be impacted by any proposed conditional use. 9 DAVE LAMBERT: Is it your conclusion 10 then that noise, odor, traffic, visual is best 11 addressed by a 1,500-foot designation of this 12 neighborhood? 13 JOHN SEKERAK: That has -- that has 14 been the, we'll call it an industry standard 15 for, I mean, obviously properties beyond that 16 1,500-foot could -- could also be impacted. But 17 it has been an industry standard as the 18 appropriate extent for the purposes of planning 19 studies such as this. 20 DAVE LAMBERT: What industry are you 21 referring to? Are you referring to planning 22 industry or the industry of the applicant? 23 JOHN SEKERAK: Planning. I'm sorry, 24 my industry as a professional planner. 25 DAVE LAMBERT: And just to be clear,</p> | <p>116</p> <p>1 decided what the neighborhood would be, correct? 2 JOHN SEKERAK: Correct. 3 DAVE LAMBERT: Right. Are you 4 familiar with any conditional use exemptions 5 that go beyond 1,500 feet? 6 JOHN SEKERAK: The entire county has 7 conditional uses or special exceptions, I'm 8 sorry. So, yes. 9 DAVE LAMBERT: I'm sorry. I'm a 10 little bit new to this area, but if I'm -- you 11 get my gist. I'm asking if there are 12 neighborhoods that have more than 1,500 feet as 13 their defining limit? 14 JOHN SEKERAK: I'm sorry, bad 15 question. Yeah, the extent of a neighborhood is 16 also relative to the nature of the area that 17 it's in and the nature of the use. If this was 18 a -- a huge high-impact use, the neighbor -- the 19 area that would be -- could be impacted would be 20 larger. 21 DAVE LAMBERT: Okay. 22 JOHN SEKERAK: Conversely, if this was 23 a, I don't know, a small office, you know, or 24 daycare or homecare type of thing in a more 25 urban setting, it would be smaller. So, that</p> |

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30 (117 to 120)

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| <p>117</p> <p>1 kind of context does inform the professional 2 when we provide, you know, this delineation. 3 DAVE LAMBERT: What would be an 4 example of a high impact operation? You said 5 you wouldn't consider this high impact. I'm 6 wondering what you would consider high impact. 7 JOHN SEKERAK: Yeah. Something with 8 more visual impact than what -- what this is 9 proposing, something that was in a homogenous 10 residential neighborhood would have a higher 11 impact. 12 DAVE LAMBERT: So, when you say more 13 visual, you mean taller? Like a tall building? 14 JOHN SEKERAK: That would be one 15 element. 16 DAVE LAMBERT: Uh-huh. 17 JOHN SEKERAK: Or -- or -- 18 DAVE LAMBERT: Let's just say, for 19 example, I mean, let's make it easy. How about 20 a nuclear power plant? 21 JOHN SEKERAK: Well, that -- that -- 22 DAVE LAMBERT: I mean, I'm just trying 23 to figure out -- 24 JOHN SEKERAK: One end of the 25 spectrum.</p> | <p>119</p> <p>1 JOHN SEKERAK: I do not recall the 2 number of bathrooms. But the design -- or the 3 fixtures within the bathrooms is more accurate 4 -- but the septic field was designed and 5 reviewed for the number of proposed. 6 DAVE LAMBERT: For ninety employees. 7 JOHN SEKERAK: I believe the number is 8 seventy-six. 9 DAVE LAMBERT: Oh, okay. Sorry. So, 10 enough for seventy-six employees? 11 JOHN SEKERAK: Yes. 12 HEARING EXAMINER ROBESON HANNAN: Mr. 13 Lambert, there will be a civil engineer 14 testifying that may be able to answer with more 15 specificity those questions. 16 DAVE LAMBERT: I'll raise them then, 17 thanks. You've -- you talked about the storage 18 of what sounds like mulch and the rest. What's 19 the plan for -- for storing salt and gasoline 20 and diesel? 21 JOHN SEKERAK: The salt will be in the 22 main barn building, so protected from the 23 elements. Fueling will be by an underground 24 tank in the work yard. 25 DAVE LAMBERT: And how large is the</p> |
| <p>118</p> <p>1 DAVE LAMBERT: Yeah. I'm just trying 2 to define the scale. So, on one end of the 3 spectrum, we could put a nuclear power plan. On 4 the other end, are we going to say daycare? Is 5 that the lower end? 6 JOHN SEKERAK: For just a handful of 7 kids? That would be -- that would be at the 8 lower end. So, great. I love your, you know, 9 providing the spectrum. So, the nuclear power 10 plant would have a huge neighborhood -- 11 DAVE LAMBERT: Yeah. 12 JOHN SEKERAK: -- regardless of the 13 area, and a daycare center would have 14 considerably smaller. 15 DAVE LAMBERT: On the septic reserve, 16 why does this property need a reserve for 17 septic? 18 JOHN SEKERAK: All contemporary uses 19 that don't use public sewer that rely on 20 individual sewage disposal -- onsite sewage 21 disposal systems are sized to accommodate the 22 proposed use and reserve fields if, for whatever 23 reason, that initial field fails. 24 DAVE LAMBERT: How many -- how many 25 bathrooms are architected for this site?</p> | <p>120</p> <p>1 tank? 2 JOHN SEKERAK: I do not know. 3 DAVE LAMBERT: Just one tank? 4 JOHN SEKERAK: I do not know. Fueling 5 area sufficient to serve the landscape 6 contracting vehicles. 7 NANCY REGELIN: We will have other 8 witnesses to answer that question. 9 DAVE LAMBERT: Who will that be? 10 NANCY REGELIN: We have both the 11 applicant testifying and the site designer. 12 DAVE LAMBERT: Okay, great. No, not 13 done, sorry. You talked about the compatibility 14 of this site and you said you looked at other 15 sites. You also, in particular, talked about 16 other barns in the area. What -- what other 17 barns were you looking at in this area? As 18 someone who lives here and is very familiar with 19 the barns that are here, I'm curious to know 20 what barns you're talking about. 21 JOHN SEKERAK: Excuse me. Waredaca 22 has a barn, other barns off of Sundown Road. 23 There's a large barn on -- behind a property on 24 Damascus Road. 25 DAVE LAMBERT: Yeah, that might be</p> |

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31 (121 to 124)

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| <p>121</p> <p>1 mine, which houses horses, or the one next door 2 that is a hay farmer. And when you looked at 3 those, did you look at the number of pieces of 4 equipment that are located at those places as in 5 trucks and skid loaders and tractors? 6 JOHN SEKERAK: No, I did not. 7 DAVE LAMBERT: No? 8 JOHN SEKERAK: I would have no reason 9 to. 10 DAVE LAMBERT: Well, you did say that 11 the number of -- if I'm correct in remembering - 12 - you said that it was consistent with the types 13 of equipment and the amount of equipment that is 14 used by similar barns in this area. 15 JOHN SEKERAK: I -- I figured you may 16 be conflating to two different parts of the 17 testimony. 18 DAVE LAMBERT: No. I'm recalling -- I 19 took notes where you said, in particular, that 20 they had similar kinds of equipment and similar 21 amount of equipment. 22 JOHN SEKERAK: For agricultural uses. 23 That was not associated with the size of a barn. 24 DAVE LAMBERT: Okay, right. For 25 similar agricultural uses. And so, that's why</p> | <p>123</p> <p>1 area? 2 JOHN SEKERAK: I didn't find any 3 testimony regarding the number of parking spaces 4 for a farm. This -- this is a condition use for 5 landscape contracting use. It has employees, 6 and we need to provide appropriate parking for 7 those employees. 8 DAVE LAMBERT: My recollection and my 9 notes that I took are in the same vein that you 10 were talking about the equipment being 11 comparable, you talked about the parking, you 12 also referenced the -- the inflow and outflow 13 being similar to the applicant as it would for 14 another barn. That -- that was my recollection. 15 Are you saying you did not testify to that? 16 JOHN SEKERAK: I'm saying that a -- a 17 farm would have large pieces of equipment coming 18 and going from the property, and this 19 conditional use also has large pieces of 20 equipment -- large -- all relative -- coming and 21 going from the property. This is not an 22 agricultural use. I'm just highlighting some 23 similarities. 24 DAVE LAMBERT: Right. And the 25 similarity being that there are large pieces of</p> |
| <p>122</p> <p>1 I'm asking, how can you say that this 2 applicant's use of equipment is similar to the 3 other agricultural uses -- 4 JOHN SEKERAK: Sorry, similar 5 equipment in terms of tractors, farm implements, 6 harvesting things. So, in an agricultural area, 7 large pieces of equipment are not uncommon. 8 DAVE LAMBERT: I would agree with that 9 -- that a farmer has large pieces of equipment. 10 Do you think that the amount of equipment that a 11 farmer in this area has is equivalent to the 12 amount of equipment that the applicant will 13 have? 14 JOHN SEKERAK: Probably not 15 equivalent, no. Similar in characteristics, but 16 probably not in number. 17 DAVE LAMBERT: In that same vein, you 18 talked about again the characteristics of a farm 19 in this area and you talked about parking. 20 Could you explain to me what your thinking is 21 around the parking? You also talked about 22 delivery that happens at farms. How are the 23 characteristics of the applicant's use similar 24 to the characteristics around parking and 25 delivery at a -- at a rural -- at a farm in this</p> | <p>124</p> <p>1 equipment that are located at barns and farms 2 and there will be large pieces of equipment 3 located at Metro's facility, right? 4 JOHN SEKERAK: That's correct. 5 DAVE LAMBERT: And there will be 6 inflow and outflow from both of those 7 facilities. 8 JOHN SEKERAK: Yes. 9 DAVE LAMBERT: And on some level, they 10 both need parking. 11 JOHN SEKERAK: Onsite, yes. 12 DAVE LAMBERT: But you would also 13 agree that the -- the level -- the intensity and 14 level and just sheer amount that will be taking 15 place at Metro versus a barn in this area are of 16 a very different degree, correct? 17 JOHN SEKERAK: Correct. This is not 18 an agricultural use. This is a landscape 19 contracting conditional use. Its -- its 20 characteristics are not identical. 21 DAVE LAMBERT: Thank you. Is there 22 any planned use for solar or wind power at the 23 proposed facility? 24 JOHN SEKERAK: Not -- not that I'm 25 aware of. It's just not the subject of this</p> |

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32 (125 to 128)

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| 125 | <p>1 conditional use.</p> <p>2 DAVE LAMBERT: Will there be anyone</p> <p>3 who will be able to answer that question later</p> <p>4 on in this hearing today?</p> <p>5 NANCY REGELIN: The applicant will be</p> <p>6 on.</p> <p>7 DAVE LAMBERT: Who is that?</p> <p>8 NANCY REGELIN: The applicant will --</p> <p>9 the applicant will testify next.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: That</p> <p>11 was Ms. Regelin, correct?</p> <p>12 NANCY REGELIN: This is Ms. Regelin.</p> <p>13 HEARING EXAMINER ROBESON HANNAN:</p> <p>14 Okay.</p> <p>15 DAVE LAMBERT: Moving on to the</p> <p>16 planting fields, I don't understand -- I guess I</p> <p>17 understand the sod part of it. What are they</p> <p>18 growing stock for -- trees and shrubs -- how</p> <p>19 does that fit into this application?</p> <p>20 JOHN SEKERAK: It -- it is not part of</p> <p>21 this application in the sense of growing nursery</p> <p>22 stock of trees, shrubs, and sod is an</p> <p>23 agricultural use. So, that is permitted by</p> <p>24 right on the balance of the property. Yeah, the</p> <p>25 open area of the property, as it's used now.</p> | 127 | <p>1 jumping in and clarifying. Now, do you have --</p> <p>2 I think what's he's trying to say is that the</p> <p>3 farmer or the owner of the property could, by</p> <p>4 right, without any other approval, grow nursery</p> <p>5 stock there. They could grow plants and trees</p> <p>6 and sell them because it's an agricultural use.</p> <p>7 Now, if anyone can tell me, I would like to look</p> <p>8 at DPS's -- did you say you had an</p> <p>9 interpretation on that from DPS?</p> <p>10 JOHN SEKERAK: Yes, yes.</p> <p>11 HEARING EXAMINER ROBESON HANNAN:</p> <p>12 Well, you look for the exhibit number, and I'll</p> <p>13 let Mr. Lambert -- because I was interested in</p> <p>14 seeing that.</p> <p>15 JOHN SEKERAK: Ms. Regelin, was the</p> <p>16 February 11th E-mail from Mark Beall, the zoning</p> <p>17 manager, to you --</p> <p>18 NANCY REGELIN: It is in the Exhibit</p> <p>19 27, which is the statement of justification.</p> <p>20 It's the statement of applicant, and I believe</p> <p>21 it's attachment 24, and it has my E-mail with</p> <p>22 the basis to Mark Beall, and then Mark Beall</p> <p>23 consulted with the county attorney and then</p> <p>24 responded with an interpretation from DPS.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Can</p> |
| 126 | <p>1 DAVE LAMBERT: So, we're talking about</p> <p>2 the ability of Metro to plant trees and shrubs</p> <p>3 in the open area?</p> <p>4 JOHN SEKERAK: Correct.</p> <p>5 DAVE LAMBERT: I don't -- I don't</p> <p>6 understand what -- what -- is that going to be</p> <p>7 part of their business or are we just talking</p> <p>8 about planting for planting sake?</p> <p>9 JOHN SEKERAK: Planting for use in his</p> <p>10 landscape contracting business.</p> <p>11 DAVE LAMBERT: So, that means like --</p> <p>12 like the greenhouses then? He's going to be</p> <p>13 growing items and then selling them for use to</p> <p>14 his clients?</p> <p>15 JOHN SEKERAK: No. Well, he'll be</p> <p>16 using them in his -- in his installation of</p> <p>17 landscape projects. So, landscape contractor,</p> <p>18 as they plant trees, shrubs, and sod, he will be</p> <p>19 supplying that himself.</p> <p>20 DAVE LAMBERT: Ms. Hannan, why were</p> <p>21 you shaking your head when I asked that</p> <p>22 question? It sounds like you wanted to say no</p> <p>23 to that, and he said yes.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>25 I didn't want to say no. I was thinking of</p> | 128 | <p>1 you tell me, is it a page number on this because</p> <p>2 this is a big document. I'm scrolling through</p> <p>3 it now.</p> <p>4 NANCY REGELIN: Hold on.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: And</p> <p>6 then, for everyone listening, I'm going to post</p> <p>7 it. I just don't think you need to scroll</p> <p>8 through the sixty-six --</p> <p>9 NANCY REGELIN: It starts on page 55</p> <p>10 of the statement of applicant and it's listed as</p> <p>11 Exhibit 24. It's our attachment 24, DPS's</p> <p>12 zoning interpretive guidance.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Page</p> <p>14 55. Okay, I'm getting there. I just wanted to</p> <p>15 take a look at that.</p> <p>16 NANCY REGELIN: Right. So, page 56 is</p> <p>17 my initial E-mail to him with the background of</p> <p>18 the question and then 55 is the first -- is his</p> <p>19 response.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay</p> <p>21 and hold on one second. Okay, that's yours and</p> <p>22 this -- I'm going to share the screen here for</p> <p>23 everybody's benefit if that's constructive.</p> <p>24 Here it is.</p> <p>25 JEFFREY O'TOOLE: Could you please</p> |

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33 (129 to 132)

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| 129 | 1 tell us what exhibit number this is again? 2 HEARING EXAMINER ROBESON HANNAN: This 3 is Exhibit 29, but this is attachment 24 to 4 Exhibit 29. 5 JEFFREY O'TOOLE: Thank you. 6 NANCY REGELIN: So, it's Exhibit 27? 7 HEARING EXAMINER ROBESON HANNAN: I 8 mean 27, I apologize. Attachment 24 to Exhibit 9 27. 10 DAVE LAMBERT: That's exactly what I 11 heard and why I was confused. If they start 12 selling to other contractors and the general 13 public, then they will have to be changed to a 14 full sale or retail nursery. I don't understand 15 how growing them and selling them to a client 16 who is a landscaping client, hardscaping client, 17 snowplow client -- how that's not selling stock 18 to the public. I'll phrase that as a question. 19 That's what Alex Trebek would say. 20 HEARING EXAMINER ROBESON HANNAN: Oh, 21 that's so sad. 22 DAVE LAMBERT: How does the 23 applicant's use of raising agriculture and using 24 it in its business -- not just planting for 25 planting sake -- but then selling it to clients | 131 | 1 have to come back for either a wholesale or 2 retail nursery use permit. 3 DAVE LAMBERT: All I see is the -- the 4 letter here that's on the screen, and it says 5 that as long as they're not for sale to other 6 businesses -- okay, I would check the box on 7 that one -- or homeowners -- well, I don't know. 8 I mean, he probably has both commercial and 9 homeowners as clients. But either way, if he's 10 growing stock and using it in his business to 11 sell it, I don't know how that's not retail. 12 The comfort here, I feel, is pretty cold. I 13 don't -- I don't understand how -- 14 NANCY REGELIN: So, I think we'll 15 stand by this interpretation, which is in the 16 record. We asked a specific question, and this 17 is the interpretation we got from DPS. 18 DAVE LAMBERT: Understood. Going back 19 to the concentration of conditional use 20 applications in this area, I -- I'd just like to 21 go back and understand if that -- how you 22 analyzed the -- what is three significant 23 conditional uses all on the same side of the 24 road to being the exact same business and their 25 effect on both determining the neighborhood and |
| 130 | 1 differ from what is said in this E-mail? 2 NANCY REGELIN: So, we asked the 3 question specifically of DPS for an 4 interpretation if we applied for a land use -- 5 landscape contractor conditional use and there 6 was additional planting area, whether -- in 7 agricultural zoned land -- whether he could use 8 those plants in his landscape contractor and 9 whether we had to include it in the landscape 10 contractor area or whether it was deemed by Park 11 and Planning -- who has the interpretation of 12 the zoning ordinance as under their authority -- 13 whether it was agricultural use. And DPS, after 14 conferring with the county attorney, came back 15 with this answer that said that the owner of 16 agricultural land is allowed to use their 17 property for agricultural uses, and the fact 18 that the owner of this land would be solely 19 using those plants in his landscape contractor 20 business, which is on the same property and not 21 selling it to the general public and not selling 22 it full sale, that that was agricultural use and 23 could be permitted, and if, in the future, they 24 would ever want to sell any of those planting 25 products wholesale or retail, that they would | 132 | 1 the effects. 2 JOHN SEKERAK: There are -- will be 3 three conditional uses. The fact that they're 4 on the same side of the road really doesn't have 5 any impact for, for instance, the -- the daycare 6 -- yeah, daycare and summer camp. Waredaca, 7 it's set so far back off the road and on such a 8 significant property, it doesn't, you know, move 9 the needle when it comes to saturation of uses. 10 There is a similar use in terms of the 11 Greenskeeper use. It is set back, you know, 12 back behind single family homes in the Unity 13 area. So, again, no -- no visual impacts, you 14 know, no site smells, odors, et cetera to the 15 same properties. 16 We only have, you know, of our thirty- 17 acre site, our activity area is only three 18 acres, so only one-tenth of it. 19 So, yes, there are three but in terms 20 of the relative to the overall size of the 21 neighborhood and the properties they're on, it 22 mitigates that tremendously. 23 DAVE LAMBERT: It mitigates it because 24 you designed this to be on six acres and not 25 thirty? |

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34 (133 to 136)

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| <p>133</p> <p>1 JOHN SEKERAK: The size of the 2 proposed use is a contributing factor relative 3 to the size of the neighborhood and the size of 4 the properties is a contributing factor to my 5 professional opinion regarding the impacts -- 6 the cumulative impacts of the uses. 7 DAVE LAMBERT: So, it would be -- it 8 would be more impactful if it was on fifteen 9 acres of the thirty as opposed to being held on 10 six. 11 NANCY REGELIN: I believe -- this is 12 Nancy Regelin -- I think this is starting to get 13 very speculative. Mr. Sekerak has given his 14 opinion. 15 HEARING EXAMINER ROBESON HANNAN: 16 Well, I guess what I'm going to do because it's 17 not what the standard is, and I'm looking up the 18 standard in the zoning ordinance right now. I 19 think that it's -- the standard is whether it 20 alters the character of the neighborhood. And I 21 recall when evaluated in conjunction with 22 existing and improved conditional uses in any 23 neighboring residential detached zone. So, it 24 doesn't matter if it's in an agricultural zone, 25 but it does matter if it's in a residential</p> | <p>135</p> <p>1 Well, Mr. Lambert is asking. Let's do it now. 2 JOHN SEKERAK: So, the -- the specific 3 finding -- the e of some section -- says it will 4 not -- when evaluated in conjunction with 5 existing and approved conditional uses in any 6 neighboring residential detached zone increase 7 the number intensity or scope of conditional 8 uses sufficiently to affect the area adversely 9 or alter the predominantly residential nature of 10 the area. The conditional use application that 11 substantially conforms with the recommendations 12 of a master plan does not alter the nature of an 13 area. So, none of the existing or approved 14 conditional uses are in a residential detached 15 zone. 16 And then secondly, it has been my 17 testimony and confirmed by staff that the 18 conditional use application substantially 19 conforms with the master plan. So, it does not 20 alter the nature of the area. 21 HEARING EXAMINER ROBESON HANNAN: 22 Well, does it alter -- wait a minute. Does it - 23 - doesn't it -- even if it's not in -- let me 24 read it again. It doesn't have to say -- well 25 not -- in any neighboring. Oh, you're saying</p> |
| <p>134</p> <p>1 detached, and we have the R200. So, it will not 2 increase the number, intensity, or scope of 3 conditional uses sufficient to affect the area 4 or alter beyond the residential nature of the 5 area. 6 So, I think that's -- I would like to 7 secure it to just address that and it also in a 8 manner that does not conform with the master 9 plan. So, if we're going to get into this, you 10 did testify about impacts, but I guess the thing 11 is you have -- this only addresses the 12 residential detached R200 homes, correct? 13 So, I guess what I would like you to 14 do is address -- I have your description of the 15 area as transitioning from less rural to more 16 rural from east to west and you say it's 17 eclectic. I have eclectic written down. So, I 18 guess I'm asking you if you could specifically 19 address the standard, which is it doesn't alter 20 the character -- the residential character of 21 the neighborhood. 22 JOHN SEKERAK: And I was prepared to 23 do that in the second half of my testimony when 24 I come back addressing all the -- 25 HEARING EXAMINER ROBESON HANNAN:</p> | <p>136</p> <p>1 you can't consider the residential -- you can't 2 consider anything outside the residential 3 detached zone? 4 JOHN SEKERAK: I -- I believe 5 technically that's what the condition says. But 6 I'll also rely on that this does not alter the 7 nature of the area. 8 HEARING EXAMINER ROBESON HANNAN: 9 Well, how about the nature of the -- let's just 10 do this. How about an -- Mr. Lambert, I'm going 11 to let you finish, but I -- I -- I want to get 12 this -- understand what you're saying. 13 So, say overconcentration in any zone 14 -- just say that -- cannot affect the area of a 15 neighboring residential detached zone. Okay, 16 just say it reads like that. Will this affect 17 the -- given all the conditional uses -- all the 18 conditional use and special exceptions in the 19 area, will this alter the residential detached 20 properties within the surrounding area? 21 JOHN SEKERAK: So, that would be the 22 R200 property -- 23 HEARING EXAMINER ROBESON HANNAN: 24 Along Damascus Road. 25 JOHN SEKERAK: -- just to our east of</p> |

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35 (137 to 140)

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| <p>137</p> <p>1 the property.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Correct.</p> <p>4 JOHN SEKERAK: Yeah and confronting</p> <p>5 properties along Damascus Road.</p> <p>6 HEARING EXAMINER ROBESON HANNAN:</p> <p>7 Correct.</p> <p>8 JOHN SEKERAK: It's somewhat</p> <p>9 informative that the Historic Preservation</p> <p>10 Office confirmed that the historic home that's</p> <p>11 directly confronting the subject property,</p> <p>12 properties to the east are, you know, buffered</p> <p>13 from the proposed use by the hedgerow and</p> <p>14 distance. It's just a well-designed facility.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: And</p> <p>16 then you've got -- okay. So, you're -- you're</p> <p>17 using the Preservation Commission's or the</p> <p>18 planning staff's -- yeah, okay -- as evidence</p> <p>19 that it doesn't alter it to the south and then</p> <p>20 you've got that spike of R200 to the east, and</p> <p>21 what's your position on that?</p> <p>22 JOHN SEKERAK: So, those are in the --</p> <p>23 in the Hamlet of Unity and this property has</p> <p>24 always been a, you know, transitioning from that</p> <p>25 more residential-leaning area to more rural</p> | <p>139</p> <p>1 JOHN SEKERAK: Yes. Well, I drove</p> <p>2 into the park.</p> <p>3 DAVE LAMBERT: Did you stop in at the</p> <p>4 Sunshine Store and get a burger?</p> <p>5 JOHN SEKERAK: I have in the past,</p> <p>6 nothing recent. Thank you for asking. I've</p> <p>7 heard good things about them.</p> <p>8 DAVE LAMBERT: That's all my</p> <p>9 questions. Thank you for your time.</p> <p>10 HEARING EXAMINER ROBESON HANNAN:</p> <p>11 Thank you. Okay. Ms. Lund, I have you next and</p> <p>12 then Mr. O'Toole. So, you're up, Ms. Lund. And</p> <p>13 if you could -- could you put your hand down so</p> <p>14 I can keep -- thank you. Go ahead.</p> <p>15 JENNIFER LUND: Yes, okay. Yes, thank</p> <p>16 you. I just have a couple of quick questions</p> <p>17 for Mr. Sekerak, one of which was about the</p> <p>18 parking and perhaps he's not going to be the</p> <p>19 right person to answer that. But the first two</p> <p>20 questions were regarding the definition of</p> <p>21 landscape contractor which you read to us, and</p> <p>22 then you referred to some inherent effects from</p> <p>23 the staff report, and then you referred to some</p> <p>24 other inherent effects from another case number</p> <p>25 -- and I'm sorry, I didn't write it down, so I</p> |
| <p>138</p> <p>1 areas to the west.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Okay.</p> <p>4 DAVE LAMBERT: Sorry, going back. Did</p> <p>5 you -- you're saying that it's more -- less</p> <p>6 rural to the east and more rural to the west?</p> <p>7 JOHN SEKERAK: Yes.</p> <p>8 DAVE LAMBERT: How many visits did you</p> <p>9 make to the property approximately?</p> <p>10 JOHN SEKERAK: I haven't counted. I</p> <p>11 drive by there often in my thirty years here in</p> <p>12 Montgomery County. A lot more often recently</p> <p>13 now that I've been part of this application.</p> <p>14 DAVE LAMBERT: I meant as part of this</p> <p>15 application. How many physical visits did you</p> <p>16 make to the property approximately?</p> <p>17 JOHN SEKERAK: Since I've been</p> <p>18 involved in this project, I'll -- yeah, right in</p> <p>19 front of this probably ten or twelve times.</p> <p>20 DAVE LAMBERT: Um-hum, over what</p> <p>21 period of time?</p> <p>22 JOHN SEKERAK: I've been on this for</p> <p>23 something more than a year, less than two years.</p> <p>24 DAVE LAMBERT: Did you walk across the</p> <p>25 street into the park?</p> | <p>140</p> <p>1 didn't catch what case number you were referring</p> <p>2 to.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: CU</p> <p>4 1904 and that is listed on OZAH's website under</p> <p>5 a dropdown menu under special -- conditional</p> <p>6 uses reports.</p> <p>7 MS. LUND: Okay.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: But</p> <p>9 it was CU 1904, I think, Francisco Landscaping.</p> <p>10 JENNIFER LUND: So, in the definition</p> <p>11 of landscape contractor, which you read to us,</p> <p>12 it included supplies being stored at the</p> <p>13 business location, and then you read some</p> <p>14 examples of supplies that were inherent, which</p> <p>15 were piles of mulch, dirt, I can't remember all</p> <p>16 of them. Is that correct? Am I remembering</p> <p>17 that correctly?</p> <p>18 JOHN SEKERAK: I read the definition</p> <p>19 of a landscape contractor out of the zoning</p> <p>20 ordinance and would you like me to read it</p> <p>21 again?</p> <p>22 JENNIFER LUND: I have it in front of</p> <p>23 me, and I see that it does have supplies listed,</p> <p>24 and then when you read some of the inherent</p> <p>25 conditions from CU 1904, you specifically listed</p> |

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| <p>141</p> <p>1 mulch, dirt, and I can't remember what else. 2 JOHN SEKERAK: Plants, stock, mulch, 3 soil, and landscaping materials in bulk and in 4 containers. 5 JENNIFER LUND: Okay. So, my question 6 is that specifically does not list trash, grass 7 clippings, landscaping waste, or other waste 8 materials as supplies that are stored as 9 inherent use of a landscape contractor? I 10 didn't hear trash or clippings in that list. 11 JOHN SEKERAK: Trash was not in that 12 list. 13 JENNIFER LUND: Okay. And then, you 14 added a condition 8, which you said refueling. 15 But when I read the definition of landscape 16 contractor, I don't see where in there there's 17 anything that bulk fuel storage is part of the 18 definition of a landscape contractor. 19 JOHN SEKERAK: That's correct. It's 20 just a logical extension that if you have those 21 vehicles, you would have the capabilities of 22 fueling them. 23 JENNIFER LUND: But nothing about an 24 underground tank for fuel storage, which is more 25 like a gas station really.</p> | <p>143</p> <p>1 occupants per vehicle arriving between 5:30 a.m. 2 and 6:30 a.m. Is that your contention? 3 JOHN SEKERAK: 2.2? 4 JENNIFER LUND: Well, two of the 5 spaces were ADA spaces. So, I eliminated those, 6 and then there were six managers. So, I was 7 counting the seventy employees and the thirty- 8 eight spaces. 9 JOHN SEKERAK: So -- 10 JENNIFER LUND: Either way. Suppose 11 it's two. Your contention is that at least -- 12 there will be at least two employees per vehicle 13 arriving between 5:30 a.m. and 6:30 a.m. every 14 day? 15 JOHN SEKERAK: All right, two points. 16 The 0.5 spaces per employee is not my finding or 17 -- or judgment. That's the zoning ordinance -- 18 the Montgomery County Zoning Ordinance based on 19 the long-term experience of -- of parking needs 20 for similar uses. In terms of -- so, this is -- 21 this is a tabulation demonstrating compliance 22 with all the regulations of the zoning 23 ordinance. 24 Conversations with the owner, who has 25 been operating a landscape contracting business</p> |
| <p>142</p> <p>1 JOHN SEKERAK: Nope, an underground 2 tank for fueling the landscape contracting 3 equipment. 4 JENNIFER LUND: Okay. So, you see 5 that as a logical extension of their use is to 6 store fuel? 7 JOHN SEKERAK: Yes. The list also 8 does not include bathrooms, for instance. 9 There, you know, it is not an exhaustive list, 10 but it's indicative of what's necessary to 11 support the use. 12 JENNIFER LUND: Okay. And my other 13 question was about the employee parking, which 14 you referenced on the site plan and minimum 15 requirements, 0.5 spaces per employee, which was 16 in the text in the corner. And I assume that 17 the spirit of that requirement is that employees 18 come and go, and it's really not necessary to 19 have one parking place for every single employee 20 because people start at different times and so 21 on. But the applicant has between 5:30 a.m. and 22 6:30 a.m. all seventy-six employees to fit in 23 thirty-eight parking places, and there's no 24 public transportation here and you cannot walk 25 here, so that implies that there are 2.2</p> | <p>144</p> <p>1 for years, has confirmed that that is consistent 2 with his experience. So, no more than -- we 3 don't want to do fewer, we need to meet the 4 requirements of the zoning ordinance -- nor do 5 we want to do more than what is necessary in 6 order to minimize impervious area. 7 JENNIFER LUND: All right. That's 8 all, thank you. 9 HEARING EXAMINER ROBESON HANNAN: 10 Thank you. Okay, I see Mr. O'Toole with a hand 11 up -- hand up. Mr. O'Toole? 12 JEFFREY O'TOOLE: Did you call it a 13 handful? Is that what you said? 14 HEARING EXAMINER ROBESON HANNAN: No. 15 JEFFREY O'TOOLE: Okay, thank you. 16 HEARING EXAMINER ROBESON HANNAN: Go 17 ahead, please. 18 JEFFREY O'TOOLE: Thank you very much. 19 HEARING EXAMINER ROBESON HANNAN: You 20 can put your hand down now so I can just track 21 anybody else. 22 JEFFREY O'TOOLE: All right. Sir, you 23 talked about how long you've been on this 24 project. You said -- did I understand you to 25 say you've been working on this project for two</p> |

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| 145 | 1 years? 2 JOHN SEKERAK: I -- I don't know when 3 I started on the project. I'm recalling it 4 being more than one year, less than two years. 5 JEFFREY O'TOOLE: And has your 6 interaction been just with the applicant during 7 that time or also with the staff? 8 JOHN SEKERAK: With Park and Planning 9 staff also, yes. 10 JEFFREY O'TOOLE: Okay. So, over the 11 course of a period of time of more than one 12 year, you've been working on this project and 13 working with the Montgomery County staff? 14 JOHN SEKERAK: Yes. 15 JEFFREY O'TOOLE: All right. You said 16 that your -- you told Mr. Lambert that your 17 contract is not contingent on the result. Is 18 that correct? 19 JOHN SEKERAK: That's correct. 20 JEFFREY O'TOOLE: Were there any -- is 21 there any component for bonuses paid to your 22 firm if the application is approved? Aside from 23 the contract itself, are there bonuses 24 available? 25 JOHN SEKERAK: No. | 147 | 1 and the noise for three would be 3x -- would 2 that cause you to change your mind? 3 JOHN SEKERAK: I'm not sure I was 4 following your -- the character of your example. 5 Let me see if I can phrase it in another way. 6 Yes, there could be one characteristic that is 7 so predominant amongst multiple conditional uses 8 that cumulatively they could cause an adverse 9 effect -- an unacceptable adverse effect to the 10 neighborhood, which means -- 11 JEFFREY O'TOOLE: Good. That's 12 exactly -- that's exactly what I wanted to know. 13 Let me ask you this. Did you -- have you 14 visited the Greenskeeper's site? 15 JOHN SEKERAK: I -- I did not trespass 16 on their property, but yes, I've been past it. 17 JEFFREY O'TOOLE: No, I didn't ask you 18 whether you trespassed. Did you invite yourself 19 in or did you say I'm with this firm, and I'm 20 doing a study. I'd like to look at your site. 21 Did you do that? 22 JOHN SEKERAK: I did not, not that 23 site. 24 JEFFREY O'TOOLE: Did you or anybody 25 that you know of measure the noise that emanates |
| 146 | 1 JEFFREY O'TOOLE: All right. Let's 2 talk for a minute about the overconcentration of 3 conditional uses. And there's been a lot of 4 conversation, so I'll try to get to the -- get 5 to it. When Ms. Hannan asked you whether this 6 was an overconcentration, your response quickly 7 was, "No, it was not." And is that a subjective 8 finding by you, or is that some sort of an 9 objective finding? 10 JOHN SEKERAK: It's my professional 11 judgment. 12 JEFFREY O'TOOLE: Okay. So, it was 13 you who decided that the answer to that question 14 is this is not an overconcentration of 15 conditional uses? 16 JOHN SEKERAK: I indicated it's my 17 professional judgment, and I can also indicate 18 that's what the findings by the Parks and 19 Planning staff and the Planning Board were. 20 JEFFREY O'TOOLE: Is one of the -- is 21 one of the factors in that overconcentration the 22 adverse effect of any particular conditional 23 use? Let me be specific. Let's say with 24 respect to noise and if the noise from one was x 25 and the noise from two conditional uses was 2x | 148 | 1 from the Greenskeeper's property in, let's say, 2 in the morning between 5:30 and 7:30? 3 JOHN SEKERAK: I did not measure that. 4 JEFFREY O'TOOLE: All right. Let's 5 focus on the very northern part of the property 6 at subject on Howard Chapel Road, the very 7 northern corner of this and I'll tell you that 8 our property is right at that northern corner of 9 this property, okay? 10 HEARING EXAMINER ROBESON HANNAN: Can 11 you just hold up? I want to pull up Exhibit -- 12 it would show on Exhibit 33, correct? 13 JEFFREY O'TOOLE: I think it would, 14 yeah. Yeah. 15 HEARING EXAMINER ROBESON HANNAN: 16 Okay. Let me just pull that up so we know what 17 we're talking about. 18 JEFFREY O'TOOLE: Okay. 19 HEARING EXAMINER ROBESON HANNAN: 20 Okay. Okay, you should have it. And your -- I 21 see it says Jeffrey O'Toole in this upper north 22 right -- 23 JEFFREY O'TOOLE: There you go. There 24 you go. Exactly. 25 HEARING EXAMINER ROBESON HANNAN: |

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| <p>149</p> <p>1 Sorry. Go ahead, okay.</p> <p>2 JEFFREY O'TOOLE: All right. So,</p> <p>3 thank you. All right. So, this -- this</p> <p>4 proposed 2.9 acres is very close to that piece</p> <p>5 of property -- the O'Toole property, right?</p> <p>6 JOHN SEKERAK: The 2.9 acres is over</p> <p>7 1,000 feet.</p> <p>8 JEFFREY O'TOOLE: All right. Now, but</p> <p>9 that's a lot closer than the property at</p> <p>10 Greenskeepers from that same piece of property,</p> <p>11 correct? I'm talking about the other</p> <p>12 conditional use that you said is not an</p> <p>13 oversaturation -- an overconcentration.</p> <p>14 DAVE LAMBERT: It's much further away.</p> <p>15 JEFFREY O'TOOLE: Okay. And I forget</p> <p>16 if I asked you, but did anybody -- did you or</p> <p>17 anybody in your operation --</p> <p>18 NANCY REGELIN: So, I'm not sure who</p> <p>19 answered that question. This is Nancy Regelin.</p> <p>20 It wasn't the applicant.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>22 JEFFREY O'TOOLE: I'm sorry. I'm</p> <p>23 sorry. I didn't catch what you just said.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Can</p> <p>25 you ask -- do you recall the question, Mr. --</p> | <p>151</p> <p>1 of conditional uses and you just told us that</p> <p>2 there is, say, a zen diagram of circular</p> <p>3 conditions from different conditional uses which</p> <p>4 might converge, if the noise from the</p> <p>5 Greenskeeper's property emanates all the way to</p> <p>6 the very northern piece of this property, does</p> <p>7 it stand to reason that similar noise from this</p> <p>8 landscaping company will emanate to that same</p> <p>9 piece of property in a far greater degree?</p> <p>10 JOHN SEKERAK: This use on the</p> <p>11 proposed property or other uses on other</p> <p>12 properties are not required to be silent. They</p> <p>13 are required to be in conformance with Chapter</p> <p>14 31(b) of the county code, and that includes the</p> <p>15 residential properties or any of the -- any of</p> <p>16 the properties along there. They're subject to</p> <p>17 that.</p> <p>18 HEARING EXAMINER ROBESON HANNAN:</p> <p>19 Well, let me ask. The code says 65 dBA during</p> <p>20 the day and 55 dBA, and I don't know how they --</p> <p>21 what hour the noise ordinance -- what the day</p> <p>22 and evening is. But --</p> <p>23 JOHN SEKERAK: That is defined in</p> <p>24 31(b).</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Huh?</p> |
| <p>150</p> <p>1 JEFFREY O'TOOLE: Sure, I can. All</p> <p>2 right. What I'd like to know, sir, is did you</p> <p>3 or anybody from your operation measure the noise</p> <p>4 that emanates from the Greenskeeper's property -</p> <p>5 -</p> <p>6 JOHN SEKERAK: No.</p> <p>7 JEFFREY O'TOOLE: -- between the hours</p> <p>8 of 5:30 in the morning and 7:30 in the morning</p> <p>9 during the week?</p> <p>10 JOHN SEKERAK: Nor any other time.</p> <p>11 JEFFREY O'TOOLE: All right. Would it</p> <p>12 surprise you to know that during that time</p> <p>13 period from 5:30 to 7:30, the sounds emanating</p> <p>14 from the Greenskeeper's property emanates and</p> <p>15 can clearly be heard each day from the</p> <p>16 Greenskeeper's property to a radius which</p> <p>17 includes the O'Toole property? Would that</p> <p>18 surprise you?</p> <p>19 JOHN SEKERAK: I -- I don't know if my</p> <p>20 level of surprise is necessary.</p> <p>21 JEFFREY O'TOOLE: Is that something</p> <p>22 that you would have considered had you thought</p> <p>23 about it? In other words, what I'm trying to</p> <p>24 find out -- what I'm trying to find out sir is,</p> <p>25 when we're talking about the overconcentration</p> | <p>152</p> <p>1 JOHN SEKERAK: The hours are --</p> <p>2 daylight -- daytime and nighttime are defined in</p> <p>3 the definitions in 31(b).</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Okay. Do you have any witness that can address</p> <p>6 the noise levels in combo with Mamana?</p> <p>7 NANCY REGELIN: So, this is Nancy</p> <p>8 Regelin. So, the applicant is going to testify</p> <p>9 a little bit about noise later today.</p> <p>10 HEARING EXAMINER ROBESON HANNAN:</p> <p>11 Okay.</p> <p>12 JEFFREY O'TOOLE: Let me ask you, sir.</p> <p>13 In the process of your evaluating the various</p> <p>14 adverse -- potential adverse effects from this</p> <p>15 project, did you have occasion to visit Metro</p> <p>16 Grounds property over on Brook Road in Sandy</p> <p>17 Spring?</p> <p>18 JOHN SEKERAK: Yes, I did.</p> <p>19 JEFFREY O'TOOLE: All right. Did you</p> <p>20 have an opportunity to talk to the neighbors and</p> <p>21 learn that virtually every neighbor is disturbed</p> <p>22 by the noise that comes from this Metro Grounds</p> <p>23 property on Brook Road?</p> <p>24 JOHN SEKERAK: I did not talk to the</p> <p>25 neighbors at that location.</p> |

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| <p>153</p> <p>1 JEFFREY O'TOOLE: And why not?</p> <p>2 JOHN SEKERAK: It's not the subject of</p> <p>3 this proposed application.</p> <p>4 JEFFREY O'TOOLE: Did you measure the</p> <p>5 sound coming from the property on Brook Road as</p> <p>6 it relates to what the sound might be coming</p> <p>7 from this project -- the proposed project?</p> <p>8 JOHN SEKERAK: I -- I have not taken</p> <p>9 any sound measurements.</p> <p>10 JEFFREY O'TOOLE: Isn't it a fact that</p> <p>11 the sound emanating from this project is a</p> <p>12 potential adverse effect?</p> <p>13 JOHN SEKERAK: If it exceeded the</p> <p>14 county requirements of 31(b).</p> <p>15 JEFFREY O'TOOLE: Right. So, it's a</p> <p>16 potential adverse effect, right?</p> <p>17 JOHN SEKERAK: If it exceeded county</p> <p>18 regulations be it noise or any others.</p> <p>19 JEFFREY O'TOOLE: Right. The fact</p> <p>20 that it could exceed it what makes it --</p> <p>21 HEARING EXAMINER ROBESON HANNAN:</p> <p>22 Okay. I think he answered your question.</p> <p>23 JEFFREY O'TOOLE: All right. Can you</p> <p>24 tell me why it wouldn't have been important for</p> <p>25 you to evaluate Metro Grounds existing place of</p> | <p>155</p> <p>1 JEFFREY O'TOOLE: All right. Is such</p> <p>2 a trailer -- is such a trailer consistent and</p> <p>3 compatible with --</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Wait, Mr. O'Toole, let Mr. Sekerak answer,</p> <p>6 please.</p> <p>7 JEFFREY O'TOOLE: I apologize. It's</p> <p>8 difficult to hear if one of us is talking or</p> <p>9 two. But go ahead.</p> <p>10 JOHN SEKERAK: I'm sorry. I'm</p> <p>11 refreshing my -- yeah, just for accuracy, the</p> <p>12 office trailer is 11 by 55.</p> <p>13 JEFFREY O'TOOLE: Thank you. That was</p> <p>14 just from memory. But go ahead. Thank you for</p> <p>15 the clarification. So, is such a trailer</p> <p>16 compatible with the nature of this neighborhood?</p> <p>17 JOHN SEKERAK: That's why it's</p> <p>18 interior to the perimeter buffering.</p> <p>19 JEFFREY O'TOOLE: So, like other</p> <p>20 findings of compatibility, it's compatible if</p> <p>21 it's hidden. Is that right?</p> <p>22 JOHN SEKERAK: It -- it doesn't cause</p> <p>23 incompatibility if it cannot be seen or</p> <p>24 appreciated by the surrounding area.</p> <p>25 JEFFREY O'TOOLE: It looked to me --</p> |
| <p>154</p> <p>1 business as it relates to the neighbors nearby</p> <p>2 on Brook Road just by way of comparison to what</p> <p>3 is going to be testified to here today?</p> <p>4 JOHN SEKERAK: I visited the site to</p> <p>5 understand the nature of his landscape</p> <p>6 contracting business and have applied the nature</p> <p>7 of that business to a site designed on the</p> <p>8 subject property for the purposes of preparing</p> <p>9 this conditional use application to ensure that</p> <p>10 a well-designed project would not have adverse</p> <p>11 impacts to the surrounding neighborhood, that it</p> <p>12 would be consistent with the requirements of the</p> <p>13 zoning ordinance and other sections of the code,</p> <p>14 and advance the recommendations of the master</p> <p>15 plan.</p> <p>16 JEFFREY O'TOOLE: I think I understand</p> <p>17 it. Let me ask you this. You talked about the</p> <p>18 compatibility of the buildings and you talked</p> <p>19 about the building is going to be put in -- a</p> <p>20 10,000 square foot building or a 12,000 square</p> <p>21 foot building -- and it's going to look like the</p> <p>22 barns nearby. On this 2.9 acres, is there also</p> <p>23 going to be a trailer that's about 25 feet by 75</p> <p>24 feet?</p> <p>25 JOHN SEKERAK: Yes.</p> | <p>156</p> <p>1 and tell me if I'm wrong -- that the trailer was</p> <p>2 going to be alongside the large building, which</p> <p>3 is right at the other end of the driveway, which</p> <p>4 one would see from Damascus Road. Isn't that</p> <p>5 right?</p> <p>6 JOHN SEKERAK: The large building is</p> <p>7 intentionally placed there, yes. The large</p> <p>8 building can be seen. The trailer would not be.</p> <p>9 And the nature of the phasing is that the</p> <p>10 proposed office trailer would be there -- and</p> <p>11 this may not be germane to the point you might</p> <p>12 be trying to make -- but the trailer would be</p> <p>13 there on a temporary basis, and then once the</p> <p>14 proposed building is constructed and</p> <p>15 operational, the office trailer would be</p> <p>16 removed.</p> <p>17 JEFFREY O'TOOLE: You -- you raise a</p> <p>18 point that I wanted to get to. What is the</p> <p>19 proposed building that you refer to?</p> <p>20 JOHN SEKERAK: The -- the 80 by 125</p> <p>21 foot building.</p> <p>22 JEFFREY O'TOOLE: I see. So, when</p> <p>23 that -- when that big building goes in, the</p> <p>24 trailer is going to leave?</p> <p>25 JOHN SEKERAK: It will become</p> |

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40 (157 to 160)

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| 157 | <p>1 unnecessary, yes.</p> <p>2 JEFFREY O'TOOLE: Well, no. It will -</p> <p>3 - not unnecessary, but it's also going to vacate</p> <p>4 the premises?</p> <p>5 JOHN SEKERAK: [Audio garbled] and</p> <p>6 then remove office trailer, yes.</p> <p>7 JEFFREY O'TOOLE: Okay. And that's --</p> <p>8 so, as soon as that 10,000 square foot building</p> <p>9 is built, your understanding is that the trailer</p> <p>10 will be gone?</p> <p>11 JOHN SEKERAK: Yes, that's in our</p> <p>12 development program of phasing on the face of</p> <p>13 the plan at Exhibit 33.</p> <p>14 JEFFREY O'TOOLE: We talked about this</p> <p>15 landscaping company being a permitted use in the</p> <p>16 AR reserve. Is that correct?</p> <p>17 JOHN SEKERAK: Permitted by</p> <p>18 conditional use.</p> <p>19 JEFFREY O'TOOLE: Okay. And is that -</p> <p>20 - is that because landscaping sounds like it's a</p> <p>21 neighbor or relative of agriculture?</p> <p>22 JOHN SEKERAK: It's -- it's a use</p> <p>23 determined by District Council to be consistent</p> <p>24 with the other uses in the agricultural zone as</p> <p>25 long as it meets certain conditions, ergo the</p> | 159 | <p>1 testimony anybody wants to submit, you can do in</p> <p>2 writing.</p> <p>3 CAROLINE TAYLOR: I apologize. This</p> <p>4 is Caroline Taylor. I did not know. My</p> <p>5 apologies.</p> <p>6 JEFFREY O'TOOLE: That's all right.</p> <p>7 No, that's all right. I'm glad you --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: It's</p> <p>9 a brave new world.</p> <p>10 JEFFREY O'TOOLE: No, no. It's a</p> <p>11 little scary. Let me -- but let me ask you</p> <p>12 this, sir. A permitted use would be a</p> <p>13 landscaping company. How about a -- how about a</p> <p>14 large plumbing company that used the same number</p> <p>15 of trucks and had the same number of employees?</p> <p>16 Would a large-scale plumbing operation be a</p> <p>17 permitted use?</p> <p>18 NANCY REGELIN: I mean, I would object</p> <p>19 because that's not the application before the</p> <p>20 hearing examiner.</p> <p>21 HEARING EXAMINER ROBESON HANNAN:</p> <p>22 Yeah. I don't see -- I don't see the relevance</p> <p>23 of that, I guess.</p> <p>24 JEFFREY O'TOOLE: Let me try -- let me</p> <p>25 see if I can make it relevant, Ms. Hannan.</p> |
| 158 | <p>1 name conditional use.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>3 O'Toole, I'm sorry. I'm going to stop you for a</p> <p>4 moment.</p> <p>5 JEFFREY O'TOOLE: Sure.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: I</p> <p>7 have somebody texting testimony in the meeting</p> <p>8 chat. We do not use the meeting chat feature.</p> <p>9 So, the record is going to stay open for a while</p> <p>10 after this hearing. You can repeat -- there's a</p> <p>11 conversation going on about the aquifer, and I'm</p> <p>12 sorry -- I see a sorry -- thank you. I'm sorry</p> <p>13 to you, Mr. O'Toole. The reason we don't use</p> <p>14 the chat is some -- we can't have ex parte -- I</p> <p>15 can't be seeing that and nobody else checking</p> <p>16 it. So, we're not going to use the chat.</p> <p>17 JEFFREY O'TOOLE: Are you thinking I</p> <p>18 was using the chat, because I don't know what a</p> <p>19 chat is.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Well</p> <p>21 that -- that's why we don't -- no, I wasn't</p> <p>22 thinking you were using it, but that's why we</p> <p>23 don't use it.</p> <p>24 JEFFREY O'TOOLE: Right.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Any</p> | 160 | <p>1 HEARING EXAMINER ROBESON HANNAN:</p> <p>2 Okay.</p> <p>3 JEFFREY O'TOOLE: What I'm trying to</p> <p>4 find out, sir, is we have a -- we have a</p> <p>5 permitted use here that has x number of trucks</p> <p>6 -- and we've heard how many there are -- x</p> <p>7 number of employees and how many cars they're</p> <p>8 going to take to get them there, and what the</p> <p>9 size of these trucks are and the nature of the</p> <p>10 trucks and trying to figure out if that business</p> <p>11 is a permitted use in this agricultural reserve</p> <p>12 has -- has a bunch of different components to</p> <p>13 it. And I'm curious if an excavating company,</p> <p>14 which his not a permitted use, or if a plumbing</p> <p>15 company, which is not a permitted use, had the</p> <p>16 same size trucks and the same number of</p> <p>17 employees would -- would be permitted to be on</p> <p>18 this piece of property. And the reason I ask</p> <p>19 that is to try to get a sense of what it is</p> <p>20 about this "landscaping company" that you think</p> <p>21 finds itself compatible with this agricultural</p> <p>22 reserve area.</p> <p>23 NANCY REGELIN: So, I would just note</p> <p>24 for the record -- this is Nancy Regelin -- I</p> <p>25 have some objection to this kind of question,</p> |

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41 (161 to 164)

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| <p>161</p> <p>1 which asks Mr. Sekerak to speculate about things 2 that are black and white in the zoning ordinance 3 about what uses are permitted or not, that have 4 been balanced by the county council as to what 5 can be a conditional use or not, and this 6 application is simply on what we're presenting 7 today for this particular use. 8 JEFFREY O'TOOLE: I think one of the 9 -- one of the factors that this gentleman has 10 come up with is whether this exceeds the size or 11 whether it's over -- overconcentration or a lot 12 of different subjective factors that he has put 13 his opinion to or will put his opinion to. So, 14 I think it is relevant to find out what exactly 15 is it about this use that makes it -- because 16 he's made a decision that it's compatible -- 17 whether it's the barn that looks -- it's a 18 building that looks like a barn or a property 19 that looks like it's going to be planted as if 20 in an agricultural reserve. I think it's 21 relevant to know what about these trucks and 22 these employees in these seventy parking places 23 is -- is different than it would be for some 24 other nonpermitted use. 25 HEARING EXAMINER ROBESON HANNAN: I'm</p> | <p>163</p> <p>1 the gist of it has been answered. I think Ms. 2 Hannan understands the question and the issue. 3 I'll leave it there. 4 I have just one or two more related 5 questions -- related to your testimony before. 6 You testified that this 2.9 or 2.4 -- whatever 7 number of acres it is, just I think you said 8 just a tic down from 3 acres -- is only one- 9 tenth of the size of the whole piece of 10 property. You understand that it is the 2.4 11 acres that the opposition is complaining about, 12 and it's not the forest, and it's not the 13 planting fields that we have a problem with as 14 being inconsistent with the neighborhood, 15 correct? 16 JOHN SEKERAK: Understood. Just 17 didn't want to be characterized as a thirty-acre 18 landscape contracting use. 19 JEFFREY O'TOOLE: Right. We all know 20 that. And you also know that what we're really 21 talking about is this 2 point let's say 8 acres, 22 2.9 acres. That's what we're concerned about. 23 You understand that, correct? 24 JOHN SEKERAK: Yes, I do. 25 JEFFREY O'TOOLE: All right. So, does</p> |
| <p>162</p> <p>1 -- that is a little bit too far field, and the 2 reason is, you know, we could go through a host 3 of other uses. As I think Ms. Regelin said, 4 it's a legislative determination. 5 Now, he did say -- he did -- Mr. 6 Sekerak, you did -- I think you said the 7 vehicles were similar to a farm use. So, I 8 think you could ask the question -- it's my 9 recollection that's what you said -- that, you 10 know, you would get heavy equipment on a farm. 11 But you could ask -- well, I'll ask. Is heavy 12 equipment limited to agricultural uses? 13 [Cross talking] 14 JEFFREY O'TOOLE: Sir, would you 15 answer that question. 16 HEARING EXAMINER ROBESON HANNAN: I'll 17 tell him to answer. Mr. Sekerak, are there 18 other nonagricultural uses that might also have 19 heavy equipment? 20 JOHN SEKERAK: Sure, yes. And any use 21 that needs heavy equipment could be of similar 22 character as farm implements and harvesters and 23 tractors and such. I'm not sure if I'm 24 following the intent of the question. 25 JEFFREY O'TOOLE: I think -- I think</p> | <p>164</p> <p>1 the -- and also in your testimony answering to, 2 I think, Mr. Lambert, you said -- and I wrote it 3 down with quotations -- this 2.9 acres that 4 we're talking about, you said this is not an 5 agricultural use. The 2.9 acres, you said, is 6 not agricultural. The agricultural use, as I 7 understood it, was the plantings or the green 8 houses or something else that's outside of this 9 2.9 acres. Is that correct? 10 JOHN SEKERAK: That's correct. 11 JEFFREY O'TOOLE: All right. So, what 12 Ms. Hannan has to decide, if I understand it 13 correctly, is over opposition by the entire 14 neighborhood, this 2.9 acres, which you say is 15 not an agricultural use, is -- is -- has to 16 stand on its own, notwithstanding if they're 17 going to plant some trees elsewhere on the 18 property, correct? 19 JOHN SEKERAK: Sure. It -- it's -- 20 the agricultural use is a characteristic of the 21 balance of the property. 22 JEFFREY O'TOOLE: Right. But all 23 we're -- 24 JOHN SEKERAK: The landscape 25 contracting use needs to meet the required</p> |

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42 (165 to 168)

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| <p>165</p> <p>1 findings of the zoning.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Well, wait, wait. I don't want to go -- this is</p> <p>4 a legal question, and I will say I can take</p> <p>5 existing conditions into account. So, it's not</p> <p>6 like the legal standard is. You don't just look</p> <p>7 at this one pod and nothing around it, okay?</p> <p>8 So, if there's -- if this were on a hundred --</p> <p>9 in the middle of a hundred-acre property, I</p> <p>10 could take -- I could take that into account</p> <p>11 before we get off into a wrong framework, and</p> <p>12 maybe that wasn't your question, but.</p> <p>13 JEFFREY O'TOOLE: It sort of is the</p> <p>14 question. But what if the landowner only wanted</p> <p>15 to sell five acres -- he only wanted to sell</p> <p>16 five acres and all Mr. Kelley needed was 2.9</p> <p>17 acres to house all of his trucks and all of his</p> <p>18 employees and all of his bathrooms and all of</p> <p>19 his sixteen-foot lights. He only needed three</p> <p>20 acres for that, and that three acres was 60</p> <p>21 percent of the five acres that the landowner was</p> <p>22 selling to Mr. Kelley. You would certainly take</p> <p>23 that into consideration, correct?</p> <p>24 HEARING EXAMINER ROBESON HANNAN:</p> <p>25 Correct.</p> | <p>167</p> <p>1 of woods are going to be left there. And that</p> <p>2 to me seems like -- and this is the question --</p> <p>3 isn't -- aren't all those other considerations</p> <p>4 merely masking the fact that this is a three-</p> <p>5 acre parking lot for -- for business trucks in</p> <p>6 our neighborhood?</p> <p>7 JOHN SEKERAK: [Inaudible - audio cut</p> <p>8 out] on a property that will be -- that is</p> <p>9 currently wooded and will be protected in a</p> <p>10 conservation easement, so it will remain in</p> <p>11 forest in perpetuity and the balance of the</p> <p>12 property will remain in agricultural use. That</p> <p>13 -- that's the context of the three-acre</p> <p>14 landscape contracting use.</p> <p>15 JEFFREY O'TOOLE: All right. Ms.</p> <p>16 Hannan, would you put up Exhibit 24 again,</p> <p>17 please?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Is</p> <p>19 That --</p> <p>20 JEFFREY O'TOOLE: This is the one --</p> <p>21 the Rustic Roads Advisory Committee, Exhibit 24.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Oh,</p> <p>23 okay. I've got it.</p> <p>24 JEFFREY O'TOOLE: It's been up before</p> <p>25 but I --</p> |
| <p>166</p> <p>1 JEFFREY O'TOOLE: All right. And the</p> <p>2 fact is -- is the --</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 Well, wait. Can you -- I don't want to be under</p> <p>5 cross examination. You're very good, by the</p> <p>6 way. You're very good. Can you just tell me --</p> <p>7 explain to me the point you're trying to make.</p> <p>8 JEFFREY O'TOOLE: What I'm trying to</p> <p>9 make is that throughout the testimony and</p> <p>10 throughout the staff report, a lot -- this is</p> <p>11 just my observation and I'll talk about it later</p> <p>12 but -- and this is meant to be a question for</p> <p>13 this gentleman -- is it seems to me and it seems</p> <p>14 to maybe others --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>16 just speak for yourself.</p> <p>17 JEFFREY O'TOOLE: All right. I'll</p> <p>18 just speak for me, myself and I. This -- this</p> <p>19 2.9 acres becomes tolerable and becomes</p> <p>20 compatible with the neighborhood only when you</p> <p>21 do two things. You hide it so nobody can see it</p> <p>22 -- that's the visual part -- and you take into</p> <p>23 consideration the dozens of acres that are maybe</p> <p>24 going to be planted with sod or maybe going to</p> <p>25 put a tree here or there or maybe the ten acres</p> | <p>168</p> <p>1 HEARING EXAMINER ROBESON HANNAN:</p> <p>2 You're right. You're absolutely right. This?</p> <p>3 JEFFREY O'TOOLE: And could you --</p> <p>4 could you bring it into the middle of that so we</p> <p>5 can see the middle paragraph? It may be -- I</p> <p>6 can't see it on mine -- there you go. And I</p> <p>7 can't read it on there, but I happen to have a</p> <p>8 copy, and I'm going to read to you the part,</p> <p>9 sir, that I'm interested in. In the middle of</p> <p>10 that paragraph -- the indented paragraph -- it</p> <p>11 says that "The proposed landscape contractor's</p> <p>12 operation will be well removed from Howard</p> <p>13 Chapel Road and effectively buffered from view</p> <p>14 by the existing roadside hedgerow, the grade</p> <p>15 change, and by the proposed nursery plantings</p> <p>16 consistent with the property's existing</p> <p>17 agricultural use."</p> <p>18 So, is it your understanding that this</p> <p>19 Rustic Roads Advisory Committee letter was put</p> <p>20 into evidence to -- or you considered it to</p> <p>21 support the idea that this rustic road -- Howard</p> <p>22 Chapel Road -- was not going to be adversely</p> <p>23 affected by this project?</p> <p>24 JOHN SEKERAK: Yes, that it -- it</p> <p>25 would be consistent with the rustic roads master</p> |

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43 (169 to 172)

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| <p>169</p> <p>1 plan.</p> <p>2 JEFFREY O'TOOLE: Okay. Have you</p> <p>3 driven down Howard Chapel Road in the last week?</p> <p>4 JOHN SEKERAK: This is Monday, Tuesday</p> <p>5 -- last Tuesday.</p> <p>6 JEFFREY O'TOOLE: All right. And you</p> <p>7 -- it's true, isn't it, that the existing</p> <p>8 hedgerow along Howard Chapel are all deciduous</p> <p>9 trees, most of which are garbage trees and most</p> <p>10 of it -- all of them have lost their leaves by</p> <p>11 now? Did you notice that?</p> <p>12 JOHN SEKERAK: It is a deciduous</p> <p>13 hedgerow.</p> <p>14 JEFFREY O'TOOLE: All right. Do you</p> <p>15 know what was proposed -- the proposed nursery</p> <p>16 plantings consistent with the property's</p> <p>17 existing agricultural use? Do you know whether</p> <p>18 it was anticipated that the proposed plantings</p> <p>19 would -- would actually hide this 10,000 square</p> <p>20 foot building and the fencing from Howard Chapel</p> <p>21 Road?</p> <p>22 JOHN SEKERAK: The -- what plantings</p> <p>23 are in the agricultural area will be -- that</p> <p>24 could evolve. It could be -- it could be sod,</p> <p>25 it could be trees, it could be shrubs.</p> | <p>171</p> <p>1 NANCY REGELIN: It's Chris Kelley, the</p> <p>2 owner of Metro Grounds Management -- the</p> <p>3 applicant.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Good, okay. I think it's better if we can keep</p> <p>6 the right question with the right witness. So,</p> <p>7 we'll come back at -- well, now we'll come back</p> <p>8 at 2:40 -- 2:42.</p> <p>9 [Off the record at 2:35 p.m.]</p> <p>10 [On the record at 2:46 p.m.]</p> <p>11 NANCY REGELIN: I would like to call</p> <p>12 Chris Kelley, the principle of Metro Grounds</p> <p>13 Management.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Good</p> <p>15 morning, Mr. Kelly. Please raise your right</p> <p>16 hand. Do you solemnly affirm under penalties of</p> <p>17 perjury that the statements you're about to make</p> <p>18 are the truth, the whole truth, and nothing but</p> <p>19 the truth? Okay. I think you could be -- are</p> <p>20 you on mute? I think you're on mute. Are you</p> <p>21 on your phone? It looks like you might be on</p> <p>22 your phone and the camera. No. You can't --</p> <p>23 NANCY REGELIN: I'm calling him to</p> <p>24 make sure he can get to the unmute.</p> <p>25 [Off the record at 2:48 p.m.]</p> |
| <p>170</p> <p>1 JEFFREY O'TOOLE: It's pretty --</p> <p>2 [Cross talking.]</p> <p>3 JOHN SEKERAK: -- this time. It will</p> <p>4 change from, you know, one year to the next.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: You</p> <p>6 know, that could be a question for -- I want to</p> <p>7 get everybody in including those who want to</p> <p>8 oppose the application. I would make that a</p> <p>9 question for the applicant -- the operator --</p> <p>10 the owner.</p> <p>11 JEFFREY O'TOOLE: Okay.</p> <p>12 HEARING EXAMINER ROBESON HANNAN:</p> <p>13 Okay?</p> <p>14 JEFFREY O'TOOLE: All right. With</p> <p>15 that, Ms. Hannan, I have no more questions.</p> <p>16 Thank you for your -- thank you for the time.</p> <p>17 HEARING EXAMINER ROBESON HANNAN:</p> <p>18 Thank you very much. Ms. -- Ms. Regelin,</p> <p>19 redirect? Ms. Regelin?</p> <p>20 NANCY REGELIN: Ms. Hannan, I think at</p> <p>21 this point, let's move on to the next expert.</p> <p>22 HEARING EXAMINER ROBESON HANNAN:</p> <p>23 Okay. We're going to take a five-minute break,</p> <p>24 come back at 2:40. My time is 2:34. We'll come</p> <p>25 back at 2:41. Who is the next witness?</p> | <p>172</p> <p>1 [On the record at 2:50 p.m.]</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>3 Kelley, did you hear me give you -- ask you if</p> <p>4 you would affirm under penalty --</p> <p>5 CHRIS KELLEY: Yes.</p> <p>6 HEARING EXAMINER ROBESON HANNAN:</p> <p>7 Okay. Ms. Regelin.</p> <p>8 NANCY REGELIN: Okay. Hopefully, we</p> <p>9 won't get flashbacks. Chris, while you're</p> <p>10 continuing, at some point you should try to keep</p> <p>11 hitting your microphone.</p> <p>12 CHRIS KELLEY: [Inaudible.]</p> <p>13 UNIDENTIFIED MALE SPEAKER: This is</p> <p>14 inaudible. I'm sorry.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: It</p> <p>16 is inaudible. Ms. Regelin, can you proceed with</p> <p>17 another witness and give Mr. Kelley time to see</p> <p>18 if he can't straighten out the problem?</p> <p>19 Mr. Kelly, if you go to your calendar,</p> <p>20 there -- the meeting -- or to OZAH's website,</p> <p>21 the meeting -- the dial-in information is on the</p> <p>22 screen.</p> <p>23 So, we're going to ask, Ms. Regelin,</p> <p>24 if you could proceed with another witness</p> <p>25 because I can't make out what he's saying.</p> |

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| 173 | <p>1 NANCY REGELIN: Okay. And what we'll</p> <p>2 do is we'll try to have Mr. Kelley maybe log out</p> <p>3 of this meeting and come back in.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 That's fine, but we'll be there.</p> <p>6 NANCY REGELIN: We can try to do that.</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 Yeah. The meeting --</p> <p>9 NANCY REGELIN: So, Chris, why don't</p> <p>10 you do that. Why don't you end out of this</p> <p>11 meeting and then log back in. Okay.</p> <p>12 So, we're actually going to go -- let</p> <p>13 me keep going here. Okay. Our next witness is</p> <p>14 Andy Smith, which we're going to offer up as an</p> <p>15 expert witness in the area of traffic</p> <p>16 engineering.</p> <p>17 HEARING EXAMINER ROBESON HANNAN:</p> <p>18 Okay. Mr. Smith, are you there?</p> <p>19 ANDY SMITH: I'm here.</p> <p>20 HEARING EXAMINER ROBESON HANNAN:</p> <p>21 Okay. Please raise your right hand. Do you</p> <p>22 solemnly affirm under penalties of perjury that</p> <p>23 the statements you're about to make are the</p> <p>24 truth, the whole truth, and nothing but the</p> <p>25 truth?</p> | 175 | <p>1 reporter. I can hear him.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>3 Utterback, did you say you could hear him?</p> <p>4 COURT REPORTER: Yes, ma'am.</p> <p>5 HEARING EXAMINER ROBESON HANNAN:</p> <p>6 Good. Okay, we can proceed with Chris Kelley.</p> <p>7 Mr. Kelley, I'm going to start all over and just</p> <p>8 say do you solemnly affirm under penalties of</p> <p>9 perjury that the statements you're about to make</p> <p>10 are the truth, the whole truth, and nothing but</p> <p>11 the truth?</p> <p>12 CHRIS KELLEY: Yes.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Go</p> <p>14 ahead, Ms. Regelin.</p> <p>15 NANCY REGELIN: All right. Mr.</p> <p>16 Kelley, will you please state your name, your</p> <p>17 company name, your title, and address for the</p> <p>18 record?</p> <p>19 CHRIS KELLEY: Chris Kelley, Metro</p> <p>20 Grounds Management, owner. Address is 18201</p> <p>21 Brook Road, Sandy Spring, Maryland.</p> <p>22 NANCY REGELIN: Okay. Could you</p> <p>23 please describe your responsibilities with Metro</p> <p>24 Grounds Management?</p> <p>25 CHRIS KELLEY: So, we started the</p> |
| 174 | <p>1 ANDY SMITH: I affirm.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Okay, thank you. Go ahead, Ms. Regelin.</p> <p>4 NANCY REGELIN: All right. Will you</p> <p>5 please state your name, your company name, your</p> <p>6 title, and address for the record.</p> <p>7 ANDY SMITH: My name is Andy Smith of</p> <p>8 the civil engineering firm, Kimley-Horn and</p> <p>9 Associates. I'm a project manager, and my</p> <p>10 office is located at 11400 Commerce Park Drive,</p> <p>11 Suite 400, Reston, Virginia 20191.</p> <p>12 CHRIS KELLEY: Nancy, I think I'm</p> <p>13 back. Is it working?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>15 NANCY REGELIN: Yes, we can hear you</p> <p>16 now.</p> <p>17 CHRIS KELLEY: Okay.</p> <p>18 NANCY REGELIN: So, Mr. Smith, why</p> <p>19 don't we have you wait and we'll go to Chris.</p> <p>20 HEARING EXAMINER ROBESON HANNAN:</p> <p>21 Yeah, let's do that. I just want to make sure.</p> <p>22 Can everyone else hear Mr. Kelley now?</p> <p>23 UNIDENTIFIED MALE SPEAKER: Yes.</p> <p>24 UNIDENTIFIED MALE SPEAKER: Yes.</p> <p>25 COURT REPORTER: This is the court</p> | 176 | <p>1 company in 2009. I run the company with a small</p> <p>2 management team, hands-on daily operations,</p> <p>3 client relations, quality control, employment,</p> <p>4 procurement, financial management, and long-</p> <p>5 range planning.</p> <p>6 NANCY REGELIN: Okay. Can you give us</p> <p>7 a bit of your background and experience in</p> <p>8 landscape contracting?</p> <p>9 CHRIS KELLEY: Sure. I've been in the</p> <p>10 landscape field for fourteen years, since I</p> <p>11 graduated from the University of Maryland. I've</p> <p>12 been operating and owning Metro Grounds for a</p> <p>13 little over twelve years now. We have been</p> <p>14 growing in the DC area because we provide</p> <p>15 fantastic service throughout the area.</p> <p>16 NANCY REGELIN: Okay. So, what</p> <p>17 interest do you have in the property at 3731</p> <p>18 Damascus Road?</p> <p>19 CHRIS KELLEY: I'm the contract</p> <p>20 purchaser. It's my intent to close on the</p> <p>21 property this year once I receive the</p> <p>22 conditional use permit as approved.</p> <p>23 NANCY REGELIN: Okay. And I had</p> <p>24 indicated earlier that your contract requires</p> <p>25 you to close by December 30th. Is that correct?</p> |

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| 177 | <p>1 CHRIS KELLEY: That's correct, yes.</p> <p>2 NANCY REGELIN: Okay. What services</p> <p>3 does Metro Grounds Management provide?</p> <p>4 CHRIS KELLEY: We're a full service</p> <p>5 commercial landscape company providing services</p> <p>6 on commercial properties throughout the DMV. We</p> <p>7 include landscape install, maintenance, design</p> <p>8 build, snow and ice management, concrete repair,</p> <p>9 irrigation, hardscapes, erosion control,</p> <p>10 specialty outdoor services, athletic fields,</p> <p>11 putting greens, and artificial turf.</p> <p>12 NANCY REGELIN: Okay. And are these</p> <p>13 typical landscape contractor activities?</p> <p>14 CHRIS KELLEY: Yes.</p> <p>15 NANCY REGELIN: And do you work on a</p> <p>16 twelve-month basis?</p> <p>17 CHRIS KELLEY: Yes.</p> <p>18 NANCY REGELIN: Okay. And do you</p> <p>19 currently wholesale or retail nursery stock to</p> <p>20 any third parties?</p> <p>21 CHRIS KELLEY: No.</p> <p>22 NANCY REGELIN: And are you planning</p> <p>23 to wholesale or retail nursery any stock to</p> <p>24 third parties?</p> <p>25 CHRIS KELLEY: No, I'm not. No.</p> | 179 | <p>1 very long time -- many years. They have used</p> <p>2 large harvesting equipment already on the farm.</p> <p>3 They have used tractor trailers to pick up the</p> <p>4 sod after they harvest it. They have used</p> <p>5 tractors to mow it -- large diesel tractors,</p> <p>6 which Laytonsville right down the street they</p> <p>7 have like over 200 or 300 acres in this area.</p> <p>8 The equipment has been used already on the farm.</p> <p>9 My trucks are smaller than their trucks that</p> <p>10 they use, and large mowing equipment. Tractors</p> <p>11 are equal or my machines are a little smaller.</p> <p>12 NANCY REGELIN: All right. Did you</p> <p>13 install the notice signs?</p> <p>14 CHRIS KELLEY: Yes. I installed</p> <p>15 notice signs. I put two on Damascus Road and</p> <p>16 two along Howard Chapel Road. I had a lot of</p> <p>17 neighbors stop.</p> <p>18 NANCY REGELIN: Did you get any</p> <p>19 neighbors --</p> <p>20 CHRIS KELLEY: Yes.</p> <p>21 NANCY REGELIN: Okay.</p> <p>22 CHRIS KELLEY: Yeah. I had a lot of</p> <p>23 them stop and talk to me while I was putting out</p> <p>24 the signs. But this happened when -- back in</p> <p>25 May when I first put them up and then also</p> |
| 178 | <p>1 NANCY REGELIN: Okay. Why did you</p> <p>2 choose this property?</p> <p>3 CHRIS KELLEY: I wanted a large enough</p> <p>4 property to have my landscape operations, but at</p> <p>5 the same time, I wanted to have farmland for</p> <p>6 plantings. This property has an existing turf</p> <p>7 farm, which also has been managed by winter</p> <p>8 crop, and the planting fields already exist.</p> <p>9 The property is large enough with heavy forest</p> <p>10 areas on the northern half and wide frontage</p> <p>11 along Damascus Road to set back the landscape</p> <p>12 contractor yard very far away from any</p> <p>13 properties neighboring along the road.</p> <p>14 In addition, the site directly</p> <p>15 accesses Damascus Road, Maryland 650, which also</p> <p>16 provides access to Georgia Avenue, New Hampshire</p> <p>17 Avenue, and the Beltway.</p> <p>18 NANCY REGELIN: And is that because</p> <p>19 your customers are throughout the DMV?</p> <p>20 CHRIS KELLEY: Yes, correct.</p> <p>21 NANCY REGELIN: And so, the property</p> <p>22 has existing agriculture activity on it?</p> <p>23 CHRIS KELLEY: Yes, it's a turf farm</p> <p>24 and, from my understanding from Laytonsville Sod</p> <p>25 who leased the farm, it was a turf farm for a</p> | 180 | <p>1 recently when I was checking the signs and</p> <p>2 checking out the farm, some of the neighbors did</p> <p>3 stop. I also knocked on some doors. The owner</p> <p>4 directly across from Damascus Road, Steve</p> <p>5 Fisher, which is the historic house, had said he</p> <p>6 had no problem. I've talked to him many times</p> <p>7 over the course of the contract. I've also</p> <p>8 spoken to the owner and operator at Greenskeeper</p> <p>9 Landscape Business down on Damascus Road, and I</p> <p>10 have also stopped in and seen the owner of</p> <p>11 Waredaca on the west side of the property past</p> <p>12 Howard Chapel Road.</p> <p>13 NANCY REGELIN: Okay. Let's go ahead</p> <p>14 and start discussing your operations, and if the</p> <p>15 hearing examiner can pull up the statement of</p> <p>16 applicant, which is Exhibit 27, and go to page</p> <p>17 9.</p> <p>18 HEARING EXAMINER ROBESON HANNAN:</p> <p>19 Okay. You should have it.</p> <p>20 NANCY REGELIN: Okay. We just need to</p> <p>21 roll up just a little bit. Okay. Okay. Could</p> <p>22 you describe your hours of operation, please?</p> <p>23 CHRIS KELLEY: Yes. Our hours of</p> <p>24 operation vary throughout the year but are</p> <p>25 generally from 5:30 a.m. to 5 p.m. in the</p> |

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| 181 | <p>1 evening Monday through Friday. During our busy 2 season, we work Saturdays from 8 a.m. to 4 p.m. 3 and are added on an as-needed basis. Generally, 4 this occurs in the spring and early summer but 5 it could be scheduled throughout the year if 6 it's a mild summer or mild fall and the spring 7 comes early.</p> <p>8 The exception to these hours occur 9 during the winter season during a snow event. 10 Snow removal services operate 24/7, basis as 11 needed. Most of our equipment and personnel are 12 deployed offsite during snow and ice.</p> <p>13 NANCY REGELIN: Okay. And then we can 14 stay on this page, but how many employees will 15 you have and when will they arrive and leave the 16 property?</p> <p>17 CHRIS KELLEY: Well, we will have a 18 total of seventy-six. We have a high number of 19 car pools. Many crews are family and neighbors 20 that like to drive together. Our first shift 21 will start at 5:30 and go to 4 p.m., the second 22 shift will be at 6 a.m. to 4:30, and the third 23 shift is 6:30 in the morning until 5 p.m.</p> <p>24 NANCY REGELIN: And then your managers 25 generally --</p> | 183 | <p>1 NANCY REGELIN: Okay. Okay. And 2 then, you indicated that a number of your 3 employees come in carpools.</p> <p>4 CHRIS KELLEY: Yes.</p> <p>5 NANCY REGELIN: How do they actually 6 leave the property?</p> <p>7 CHRIS KELLEY: They leave in the 8 trucks. Most of our trucks are company 9 vehicles, are crew cabs or extended cabs. 10 There's always a back seat and there are two to 11 four people together. We use crew cab pickups, 12 which all have four doors. The crews start on 13 the early shifts to avoid travel time at 14 commuter peak hours and get to the job sites, 15 which sometimes they can be up to fifty miles 16 away, Loughton County, Queen Anne's County. 17 Crews return to the property when the job site 18 is completed, sometimes in the early afternoon.</p> <p>19 NANCY REGELIN: And so, there's no set 20 time when all the crews return in the afternoon. 21 They come in continuously throughout the 22 afternoon?</p> <p>23 CHRIS KELLEY: Yes, correct.</p> <p>24 NANCY REGELIN: Okay. What activity 25 specifically occurs on the site in the early</p> |
| 182 | <p>1 HEARING EXAMINER ROBESON HANNAN: What 2 was the third shift? Oh, it's right there. I 3 see it, I'm sorry. Go ahead.</p> <p>4 NANCY REGELIN: Your managers 5 generally work what time?</p> <p>6 CHRIS KELLEY: Our managers are 6 a.m. 7 to 5 p.m. generally.</p> <p>8 NANCY REGELIN: All right. And, Mr. 9 Kelley, after 5 p.m., as the owner of the 10 property, do you sometimes remain on the 11 property to do paperwork?</p> <p>12 CHRIS KELLEY: Yes. Yes, I do.</p> <p>13 NANCY REGELIN: And during that time, 14 after 5 p.m., are you doing any activity in the 15 yard or are you just in the office?</p> <p>16 CHRIS KELLEY: No, just in the office, 17 just catching up on paperwork because most of 18 the time, there's nobody at the farm during the 19 day. We're all out working. When I come back 20 is when we -- us managers usually catch up -- 21 myself and managers catch up on paperwork.</p> <p>22 NANCY REGELIN: Okay. So, to be 23 clear, the operations end at 5:00, but you 24 personally may remain on the site afterwards.</p> <p>25 CHRIS KELLEY: Correct, yes.</p> | 184 | <p>1 morning hours?</p> <p>2 CHRIS KELLEY: The crews will park and 3 check in with their managers. They will get any 4 tools or materials that they need for the day's 5 projects. If needed, they'll load up some 6 trucks with materials and the crews will go 7 ahead and get on the road, get it to the job 8 sites. The managers oversee the shifts once the 9 crews get on the road and then they leave the 10 property as well to go out and check on the 11 jobsites.</p> <p>12 NANCY REGELIN: And what activity is 13 generally occurring on the site during the day?</p> <p>14 CHRIS KELLEY: Either myself or my 15 management team will be working in the offices 16 before they leave for the jobsites, maintenance 17 or repair of equipment in the operations barn, 18 deliveries or organizing materials and supplies, 19 set up for job materials for the next day. 20 Generally, there is less than five people on the 21 site during the day at all times.</p> <p>22 NANCY REGELIN: So, what activities 23 generally occur on the site as the crews return 24 to the property in the late afternoon or early 25 evening?</p> |

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| <p>185</p> <p>1 CHRIS KELLEY: They will park the 2 trucks, do their time sheets, clean out the 3 trucks, throw away any trash. Foremans will 4 check in with the managers for their 5 assignments. Some crews will arrange materials 6 in the trucks. 7 NANCY REGELIN: Okay. 8 CHRIS KELLEY: I want to also assure 9 that waste that we -- that is cleared from the 10 trucks that day is actually most -- most of the 11 time organic material, which we reuse for our 12 business for planting. If we bring back 13 hardscape materials, those are stored for future 14 jobs, and we do not do any burning of materials 15 onsite. 16 NANCY REGELIN: Okay. So, you said 17 there's about five employees on the site during 18 the day. Can you basically tell us who they are 19 and what they might be doing? 20 CHRIS KELLEY: Yes. It varies, but 21 generally less than five people on the site all 22 day. Generally, it's me, a maintenance mechanic 23 or one of my mangers will be here as well doing 24 paperwork. Once the greenhouses are in place, 25 during certain seasons, there could be a few</p> | <p>187</p> <p>1 did you give a general number of how many 2 deliveries you get per week? 3 CHRIS KELLEY: No, I haven't. You 4 know, because this week I don't have any 5 deliveries. So, it kind of varies. I might 6 have two or three, maybe five, or nothing. It 7 kind of just depends on -- like I said also, I 8 said most of materials, you know, [inaudible - 9 audio cut out] movement here at the shop because 10 all of our vendors are typically, you know, 11 within this area. 12 HEARING EXAMINER ROBESON HANNAN: 13 Okay. 14 NANCY REGELIN: So, what type of 15 trucks do you expect to be making deliveries to 16 the site? 17 CHRIS KELLEY: Some deliveries will be 18 made by tractor trailer, but most supplies will 19 arrive by smaller truck. 20 HEARING EXAMINER ROBESON HANNAN: And 21 when you say smaller, can you be more specific? 22 CHRIS KELLEY: Well, tractor trailer 23 is generally over 26,000 pounds and you need a 24 CDL. Most of our other deliveries, depending on 25 what material we get, is under 26,000 pounds.</p> |
| <p>186</p> <p>1 employees working on the plants in the 2 greenhouses during the day. 3 NANCY REGELIN: Okay. Do your 4 customers generally visit the site? 5 CHRIS KELLEY: No. Work is performed 6 at the customer's location and business 7 development and sales occur via phone or in- 8 person meetings at the customer's location. So, 9 the customers do not visit the site for work 10 purposes. 11 NANCY REGELIN: Okay. How frequent 12 are deliveries to the property? 13 CHRIS KELLEY: We do have deliveries 14 of materials onsite. Delivery of materials are 15 made during normal business hours and 16 operations, generally between 9 a.m. and 4 p.m. 17 Delivery days may vary. We order materials on 18 an as-needed basis for all of our projects and 19 they are delivered as we need them. Most times 20 -- 21 HEARING EXAMINER ROBESON HANNAN: I'm 22 sorry, I missed -- what are the hours of your 23 delivery? 24 CHRIS KELLEY: 9 a.m. to 4 p.m. 25 HEARING EXAMINER ROBESON HANNAN: And</p> | <p>188</p> <p>1 HEARING EXAMINER ROBESON HANNAN: 2 Well, okay. Can you just give me, like is it a 3 FedEx truck size, is it -- 4 CHRIS KELLEY: Oh, okay. 5 HEARING EXAMINER ROBESON HANNAN: How 6 many axels? Is it two axels? 7 CHRIS KELLEY: Well, it depends on 8 what I'm getting. So, if we're getting some 9 plants for a job, I might just need a flatbed 10 with two axels to drop off the plants at the 11 yard. If we're getting, you know, a load of 12 mulch, then yeah, it's going to come on a 13 tractor trailer load. 14 HEARING EXAMINER ROBESON HANNAN: 15 Right. 16 CHRIS KELLEY: But typically, I get a 17 lot of my materials -- sod and, you know, mulch 18 -- I get dumped at the jobsite because it's such 19 a -- it's easier for me to manage the material 20 when it's already on site. That way I don't 21 have to haul it again. 22 HEARING EXAMINER ROBESON HANNAN: 23 Right. Okay, thank you. 24 CHRIS KELLEY: Yes. 25 NANCY REGELIN: Okay. So, could you</p> |

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| 189 | <p>1 go through what kinds of cars, trucks, and</p> <p>2 equipment you're planning on having onsite.</p> <p>3 And, Ms. Hannan, if you move the screen up a</p> <p>4 little bit, you can see the list a little bit</p> <p>5 better.</p> <p>6 CHRIS KELLEY: Sure, sure. We have</p> <p>7 thirty trucks. I know Ms. Hannan talked about</p> <p>8 earlier what type of trucks.</p> <p>9 HEARING EXAMINER ROBESON HANNAN:</p> <p>10 Yeah.</p> <p>11 CHRIS KELLEY: And so, right now, we</p> <p>12 have pickup trucks, which are Ford F250s and</p> <p>13 350s, and right now we have some 450 stake</p> <p>14 bodies, which is a landscape -- landscape truck.</p> <p>15 We don't have anything that requires a</p> <p>16 commercial driver's license or anything. So,</p> <p>17 all of our trucks are under 26,000 pounds, which</p> <p>18 you just need a DOT certificate to drive them.</p> <p>19 We have fifteen trailers that we use on the</p> <p>20 jobsite, and those go with our crews, hook up to</p> <p>21 the trucks. We also have eleven large loaders.</p> <p>22 One of the frontend loaders will be used to move</p> <p>23 material to load up trucks in the morning and</p> <p>24 the afternoon. The remaining ten loaders will</p> <p>25 be stored in the maintenance barn until we need</p> | 191 | <p>1 any commercial trucks or commercial driver's</p> <p>2 licensed operators.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Is</p> <p>4 it the commercial trucks that have the Jake</p> <p>5 brakes?</p> <p>6 CHRIS KELLEY: Yes, correct.</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 Okay.</p> <p>9 CHRIS KELLEY: And also, the truck --</p> <p>10 NANCY REGELIN: You anticipated, yeah,</p> <p>11 my next question. But go ahead, Chris, finish</p> <p>12 that up.</p> <p>13 CHRIS KELLEY: Yeah. None of our</p> <p>14 trucks are any larger than any person could go</p> <p>15 rent a U-Haul or a truck to move -- move a house</p> <p>16 or move their kid into college or anything. So,</p> <p>17 I just wanted to add that.</p> <p>18 NANCY REGELIN: Do any of your trucks</p> <p>19 have any Jake brakes, and can you explain what</p> <p>20 that is?</p> <p>21 CHRIS KELLEY: No, none of our trucks</p> <p>22 have Jake brakes -- Jake brakes or air brakes.</p> <p>23 Some large trucks have exhaust brake in the</p> <p>24 engine that actually uses the engine to slow</p> <p>25 down before the truck may apply the regular</p> |
| 190 | <p>1 them for a snow event. We have eight skid</p> <p>2 steers, which you know as Bobcats.</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 Right.</p> <p>5 CHRIS KELLEY: It's a smaller big</p> <p>6 piece of equipment that we use to load up</p> <p>7 pallets of sod, pallets of pavers, plants</p> <p>8 sometimes, trees that have large root balls that</p> <p>9 we need to load on trucks. Also onsite, there</p> <p>10 will be personnel vehicles of the management and</p> <p>11 crew employees. We have thirty-eight personal</p> <p>12 vehicles, which is more adequate for our</p> <p>13 experience over the years.</p> <p>14 NANCY REGELIN: Okay. So, when you</p> <p>15 say that none of your vehicles need commercial</p> <p>16 driver's license, like what does that mean, a</p> <p>17 26,000-pound truck?</p> <p>18 CHRIS KELLEY: Any of the GBWs 26,000</p> <p>19 and under, you don't need a CDL license, and all</p> <p>20 of our trucks are 26,000 and under. Right now,</p> <p>21 our biggest truck is F450, which I think is</p> <p>22 about 16,000 pounds. Sometimes -- I just got</p> <p>23 some new ones and every couple of years, they</p> <p>24 might change the GBW, but I believe it's around</p> <p>25 14 or 16,000 pounds. And we do not have any --</p> | 192 | <p>1 braking system, and we do not have any of those.</p> <p>2 NANCY REGELIN: Okay. And do you</p> <p>3 expect any of the delivery trucks -- you said</p> <p>4 some of them could be a tractor trailer to have</p> <p>5 Jake brakes -- and would you anticipate that</p> <p>6 they would use them at this site?</p> <p>7 CHRIS KELLEY: Where the site is</p> <p>8 located on Damascus Road, the speed limit is 30</p> <p>9 miles an hour through the Unity neighborhood and</p> <p>10 at our entrance and only rises to 40 as you</p> <p>11 approach Howard Chapel Road. Trucks will e</p> <p>12 moving at a relatively slow speed approaching</p> <p>13 the property entrance and can use their regular</p> <p>14 braking system. Our property has a circulation</p> <p>15 system that does not allow for speed, and the</p> <p>16 distance from the gate to Damascus Road is not</p> <p>17 long enough for a truck to gain much speed.</p> <p>18 Therefore, Jake brakes, air brakes, are not</p> <p>19 needed to slow down the engine before they apply</p> <p>20 their regular braking system.</p> <p>21 NANCY REGELIN: Will you prohibit the</p> <p>22 use of Jake brakes on the property by any your</p> <p>23 outside vendors?</p> <p>24 CHRIS KELLEY: Yes. If any commercial</p> <p>25 trucks have Jake brakes, I will prohibit the use</p> |

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49 (193 to 196)

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| <p>193</p> <p>1 of any braking system from any of my suppliers 2 once they approach the property. And all my 3 suppliers, I've been dealing with for years and 4 have regulations with them. And I will make 5 sure that they will not use any of the Jake 6 brakes or air brakes as they approach the 7 property. 8 NANCY REGELIN: So, does any of your 9 equipment have backup signals, and about how 10 many of those would that be? 11 CHRIS KELLEY: [Audio cut out] 12 required by law for safety. I only have a 13 handful of vehicles that require backup signals, 14 and most of them are off the property during the 15 day. Backup signals are an exception to the 16 Montgomery County noise regulations because they 17 are a safety item. 18 NANCY REGELIN: Okay. Are you 19 planning to phase-in operations? And if we can 20 ask the hearing examiner to bring up Exhibit 48, 21 which is the rendered site plan. Okay. So, can 22 you talking about the phasing-in and maybe if we 23 do a close-in of just the activity area so that 24 you can see the buildings and all of that. 25 HEARING EXAMINER ROBESON HANNAN:</p> | <p>195</p> <p>1 greenhouses will be on an as-needed basis. 2 HEARING EXAMINER ROBESON HANNAN: 3 Okay. Can I just -- I -- I want to make sure I 4 understand this. I'm pointing to a gray-type 5 structure here. Is that the temporary office 6 trailer? 7 CHRIS KELLEY: Yes. 8 HEARING EXAMINER ROBESON HANNAN: 9 Right here? Okay. And then the berm -- 10 CHRIS KELLEY: Yeah, right in there. 11 Yes. Yeah, right up in there, correct. 12 HEARING EXAMINER ROBESON HANNAN: So, 13 the landscaping is going to be on top of the 14 berm? 15 CHRIS KELLEY: Yes, correct. 16 HEARING EXAMINER ROBESON HANNAN: 17 Okay. 18 CHRIS KELLEY: Correct. 19 HEARING EXAMINER ROBESON HANNAN: All 20 right. That was -- those were my questions. 21 CHRIS KELLEY: Okay. 22 NANCY REGELIN: All right. And then 23 the final phase? 24 CHRIS KELLEY: Phase 1 will start as 25 soon as we have the permits and approval we</p> |
| <p>194</p> <p>1 Okay. 2 CHRIS KELLEY: Yes, the first thing we 3 will do is install the fencing around the site. 4 We will install the berm, which is for screening 5 activities from the concrete wall. Plant the 6 trees and other landscaping around the fencing 7 and the berm will be installed as soon as 8 weather -- 9 HEARING EXAMINER ROBESON HANNAN: 10 Sorry, I'm sorry. 11 CHRIS KELLEY: That's all right. 12 HEARING EXAMINER ROBESON HANNAN: Let 13 me see if I can just get the closeup. There. 14 Okay, go ahead. 15 CHRIS KELLEY: Okay. We will install 16 this by no later than six months after the 17 operations on the site is started. We will work 18 on the septic field and stormwater management 19 facilities at the start. Before and while the 20 maintenance barn operations is being built, we 21 will temporarily move an office trailer onto the 22 site and install up to three storage sheds. 23 Phase 2, we will include the 24 completion of operations barn and removal of the 25 office trailer and installation of one or more</p> | <p>196</p> <p>1 need. Phase 2 will be implemented as soon as we 2 have permits for the maintenance and operations 3 barn. And there's no time table on phase 3. We 4 will construct additional storage building and 5 greenhouses as we need them. 6 NANCY REGELIN: So, the final storage 7 building is the one up in the top right-hand 8 corner of the yard, correct? 9 CHRIS KELLEY: Yes. 10 NANCY REGELIN: Okay. 11 HEARING EXAMINER ROBESON HANNAN: Is 12 that phase 3, the storage building? 13 CHRIS KELLEY: Yeah, the one at the 14 top right is phase 3. Yes, correct. 15 HEARING EXAMINER ROBESON HANNAN: 16 Okay. But the bigger one in the lower left is 17 -- is the main storage barn -- the main 18 operations. 19 CHRIS KELLEY: Yes, ma'am. 20 HEARING EXAMINER ROBESON HANNAN: 21 Okay. 22 NANCY REGELIN: So, if we could bring 23 up Exhibit 36(a), which is the floor plan of the 24 operations barn. 25 HEARING EXAMINER ROBESON HANNAN:</p> |

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50 (197 to 200)

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| <p>197</p> <p>1 That's part of --</p> <p>2 NANCY REGELIN: Yeah, this may be b.</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 Okay.</p> <p>5 NANCY REGELIN: And the floor plan is</p> <p>6 a.</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 Okay. I think I -- I think I've got it. Is</p> <p>9 that it?</p> <p>10 CHRIS KELLEY: Yes.</p> <p>11 HEARING EXAMINER ROBESON HANNAN:</p> <p>12 Okay.</p> <p>13 NANCY REGELIN: All right. Can you</p> <p>14 tell us what operations are going to occur in</p> <p>15 the operations and maintenance barn?</p> <p>16 CHRIS KELLEY: Yes. Offices,</p> <p>17 maintenance, equipment, and material storage,</p> <p>18 salt, and employee's facility including a break</p> <p>19 room and bathroom. The office is along the</p> <p>20 northern exterior wall. The maintenance</p> <p>21 facility will be accessible by rollup doors from</p> <p>22 inside the fenced-in yard. Equipment storage</p> <p>23 takes up a section of the barn. The salt</p> <p>24 storage is located inside the operations barn to</p> <p>25 contain any road salt from the soil and air.</p> | <p>199</p> <p>1 have asked that there be a condition on no fuel</p> <p>2 tank. The tank is not in the ground. It can be</p> <p>3 found on most farms. And if a house is served</p> <p>4 by fuel oil, this type of above-ground tank can</p> <p>5 also be found on many home sites in the AG zone.</p> <p>6 The fuel tank is necessary for our business</p> <p>7 because we have so many pieces of fuel-powered</p> <p>8 equipment and vehicles. Not everything we use</p> <p>9 is on the road. They have suggested that we be</p> <p>10 limited to 5-gallon handheld gas containers.</p> <p>11 That would make it impossible to operate the</p> <p>12 landscape contractor business.</p> <p>13 NANCY REGELIN: Okay. Mr. Sekerak</p> <p>14 testified that the planting field shown is</p> <p>15 outside the conditional use area. Will you be</p> <p>16 filing a declaration of intent when you buy the</p> <p>17 property to maintain the forest and the planting</p> <p>18 fields and agricultural use after closing?</p> <p>19 CHRIS KELLEY: Yes. We expect to file</p> <p>20 a declaration of intent to maintain the</p> <p>21 agriculture use on a large portion of the</p> <p>22 property outside of the landscape contractor use</p> <p>23 area when we buy the property. It is our intent</p> <p>24 to utilize the planting field for turf, plants,</p> <p>25 and trees for our own use.</p> |
| <p>198</p> <p>1 NANCY REGELIN: Okay. That's the</p> <p>2 roof. Okay, we need to go down.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: I</p> <p>4 just want -- I couldn't read the little teeny</p> <p>5 writing. So, I just brought it up.</p> <p>6 NANCY REGELIN: So, there was a</p> <p>7 question earlier, Chris, how many bathrooms were</p> <p>8 provided for your seventy-six employees.</p> <p>9 CHRIS KELLEY: Um-hum. I think</p> <p>10 there's one, two, three. There's three in</p> <p>11 there. It looks like three to me.</p> <p>12 NANCY REGELIN: Okay. All right. We</p> <p>13 can take this down for now. Do you plan to have</p> <p>14 a fuel tank on the site?</p> <p>15 CHRIS KELLEY: Yes. It is needed to -</p> <p>16 - it is needed to refuel our equipment and</p> <p>17 trucks each day. It is standard for a landscape</p> <p>18 contractor yard and can be found on most farms.</p> <p>19 It is above ground and over a containment sand</p> <p>20 pit designed to prevent leakage into the ground,</p> <p>21 which I've never had -- I've never experienced a</p> <p>22 problem with a fuel tank. We lease the fuel</p> <p>23 tanks from Griffith Energy. They handle any</p> <p>24 inspections.</p> <p>25 I know that -- I know the neighbors</p> | <p>200</p> <p>1 NANCY REGELIN: The site plan shows</p> <p>2 pole lights to light up the landscape contractor</p> <p>3 yard inside the fence. You know, what is your</p> <p>4 plan for lighting at night?</p> <p>5 CHRIS KELLEY: The light poles will be</p> <p>6 turned off at night. Security lights --</p> <p>7 HEARING EXAMINER ROBESON HANNAN:</p> <p>8 Which exhibit are you on?</p> <p>9 NANCY REGELIN: So, hold.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I've</p> <p>11 got the site plan, and it looks like I see some</p> <p>12 things that might be pole lights.</p> <p>13 NANCY REGELIN: Yes, and we actually -</p> <p>14 - our landscape architect and site designer is</p> <p>15 going to testify exactly where all the pole</p> <p>16 lights are.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Oh,</p> <p>18 okay. All right.</p> <p>19 NANCY REGELIN: He's going to go</p> <p>20 through the photo metric.</p> <p>21 HEARING EXAMINER ROBESON HANNAN:</p> <p>22 Okay.</p> <p>23 NANCY REGELIN: So, I think Chris is</p> <p>24 just talking about operations right now.</p> <p>25 HEARING EXAMINER ROBESON HANNAN:</p> |

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51 (201 to 204)

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| 201 | <p>1 Okay, that's fine. We don't -- go ahead.</p> <p>2 CHRIS KELLEY: So, the pole lights</p> <p>3 will be turned off at night. The security</p> <p>4 lights at the building entrances will remain on.</p> <p>5 We have full cutoff to direct the light down.</p> <p>6 During a snow event when our operations can go</p> <p>7 to 24 hours as needed, the lights in the yard</p> <p>8 will remain on for safety of the operations of</p> <p>9 the duration as needed in detail only for a snow</p> <p>10 event.</p> <p>11 NANCY REGELIN: Okay. So, how long</p> <p>12 have you been looking for a property to purchase</p> <p>13 for your business?</p> <p>14 CHRIS KELLEY: We've been leasing at</p> <p>15 the location since 2016. It was supposed to be</p> <p>16 temporary. It took me two years to find a</p> <p>17 property that would work for our landscape</p> <p>18 contracting business. I finally got this</p> <p>19 property under contract two years ago. I spent</p> <p>20 all of 2019 doing due diligence, testing like</p> <p>21 perc test, septic, preliminary design to make</p> <p>22 sure the property will work.</p> <p>23 I've been pursuing the conditional use</p> <p>24 permit for almost all of 2020. I've already</p> <p>25 invested a lot to secure the contract on the</p> | 203 | <p>1 location only because the community has placed a</p> <p>2 number of exhibits into the record. So, I just</p> <p>3 want to briefly -- we're going to do it at a</p> <p>4 very high level and then, you know, we'll come</p> <p>5 back later.</p> <p>6 At your lease location, did you take</p> <p>7 over a site that had been used by a prior</p> <p>8 landscape contractor?</p> <p>9 CHRIS KELLEY: Yes. The landlord told</p> <p>10 me the lease location had been used by Arbor</p> <p>11 Landscapers since the '60s. There are no</p> <p>12 permanent buildings here. I only have my office</p> <p>13 trailer and some sheds and tents. I'm hoping to</p> <p>14 get this conditional use permit so I can</p> <p>15 purchase the new property by the end of this</p> <p>16 year and get the property ready for use as</p> <p>17 quickly as I can by getting the final approvals</p> <p>18 and permits I need.</p> <p>19 NANCY REGELIN: And does your landlord</p> <p>20 lease part of his farm at your current location</p> <p>21 to other businesses?</p> <p>22 CHRIS KELLEY: Yes. There are several</p> <p>23 other businesses on the larger property where I</p> <p>24 lease other than mine.</p> <p>25 NANCY REGELIN: And is your lease</p> |
| 202 | <p>1 property, get through all the diligence testing</p> <p>2 and engineering, and the processing of this</p> <p>3 conditional use permit.</p> <p>4 NANCY REGELIN: So, why did you want</p> <p>5 to own your own location?</p> <p>6 CHRIS KELLEY: When you are a tenant,</p> <p>7 the landlord determines who the property looks</p> <p>8 like, and others who can use the property. You</p> <p>9 have no control. A professional landscape</p> <p>10 contracting business location should reflect the</p> <p>11 level of work, expertise they have in the</p> <p>12 landscape business. I wanted a location where I</p> <p>13 could have permanent buildings instead of</p> <p>14 trailers and tents and could landscape it</p> <p>15 properly to reflect the type of commercial</p> <p>16 properties I handle.</p> <p>17 The new property will look nothing</p> <p>18 like my lease location because there are</p> <p>19 multiple companies at that site. At the</p> <p>20 property on Damascus Road, I'm building a 50 by</p> <p>21 100-foot barn where I will be able to store a</p> <p>22 lot of my equipment and materials inside the</p> <p>23 barn, which are outside now.</p> <p>24 NANCY REGELIN: And, Ms. Hannan, I'm</p> <p>25 going to go into a little bit about his existing</p> | 204 | <p>1 location adjacent to single family homes or near</p> <p>2 them?</p> <p>3 CHRIS KELLEY: Yes. There are single</p> <p>4 family developments near the current farm, but</p> <p>5 my business is on the far distance away from the</p> <p>6 single family homes. It's located on the</p> <p>7 backside of the property and screened by forest.</p> <p>8 The other businesses are next to the homes along</p> <p>9 the fence areas.</p> <p>10 NANCY REGELIN: Have you received any</p> <p>11 complaints or citations for noise or other</p> <p>12 nuisances from the single family homes or the</p> <p>13 county?</p> <p>14 CHRIS KELLEY: No, I have not.</p> <p>15 NANCY REGELIN: Do you deal with</p> <p>16 screening and noise reduction in your landscape</p> <p>17 contractor work?</p> <p>18 CHRIS KELLEY: Oh, we do at times.</p> <p>19 While I'm not a noise expert, we do deal with</p> <p>20 client's requests to reduce noise for their</p> <p>21 outdoor spaces. Often, commercial buildings</p> <p>22 deal with street noise affecting their open</p> <p>23 spaces and the key is to put up areas to prevent</p> <p>24 direct travel and sound from the noise sources.</p> <p>25 We put up solid fences, concrete walls, earth</p> |

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52 (205 to 208)

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| <p>205</p> <p>1 and berms to serve as noise barriers to reduce 2 the noise. Landscape planning does not mitigate 3 noise by itself. Large setbacks also mitigate 4 noise. 5 I wanted to make sure that my new 6 location would work from a noise perspective 7 since there are single family homes about a 190 8 feet to the east of my proposed yard. I used 9 one of the online noise distance calculators at 10 omnicalculator.com to check what the noise 11 generated by a frontend loader would be at the 12 closest property line with the house to the 13 east. The frontend loader is about 85 dBA, 14 which is equal to the sound generated by a 15 pickup truck. For the test, I inserted 85 dBA 16 to increase -- and I increased it to 100 dBA. 17 At 190 feet, the sound level was reduced to 55 18 dBA at the property line with the residential 19 property next door. I also checked what the 20 noise would be on Howard Chapel Road and 21 Damascus Road. These also showed the distance 22 reduced the sound below the code. 23 I then checked the calculations on a 24 second noise calculator at Georgia State 25 University and I got the same results. I have</p> | <p>207</p> <p>1 be security lighting on the buildings. 2 NANCY REGELIN: Okay. At this time, 3 we'd like to make Chris Kelley available for 4 questions from the hearing examiner and cross 5 from the neighbors. 6 HEARING EXAMINER ROBESON HANNAN: 7 Okay. My question is is the -- is the frontend 8 loader your loudest truck? 9 CHRIS KELLEY: Yes, ma'am, it is. 10 HEARING EXAMINER ROBESON HANNAN: 11 Okay. I'm going to open it up to questions from 12 the -- those in opposition. I see Mr. Boughton 13 and then we'll take Mr. Lambert. So, Mr. 14 Boughton, do you want to go? 15 BRYAN BOUGHTON: Yes, please. 16 Actually, if you can pull up Exhibit 58(b), 17 which are pictures of the current worksite. 18 HEARING EXAMINER ROBESON HANNAN: 19 Okay, is this -- this is -- what I have is 20 58(b). 21 BRYAN BOUGHTON: Yes, that is the 22 first page. Mr. Kelley, I assume that is the 23 location of your current site based on the 24 address and a google search of where you're 25 working from?</p> |
| <p>206</p> <p>1 printed these out for the hearing examiner and 2 can E-mail them for the record if the hearing 3 examiner will accept. 4 I would actually expect the sound 5 level to be reduced even lower at the property 6 line because the frontend loader and the house 7 next door to the buildings with a board-on-board 8 solid fence, which are solid barriers, which 9 would knock down the noise even further. And, 10 of course, I tested that at 100 dBA, not just 11 85, so the results should be even lower. 12 With the extended setbacks in all 13 directions, solid fencing, concrete wall, and 14 berm, with all the buildings along the perimeter 15 of the yard, I believe that the equipment in the 16 yard will comply with the county noise laws, 17 even at a lower 55 dBA standard in the early 18 morning hours when the crews arrive and are 19 leaving for the day. Except for a snow event, 20 there won't be much activity in the yard during 21 the overnight. 22 NANCY REGELIN: Will the site be 23 secured? 24 CHRIS KELLEY: Yes. The conditional 25 use site will be fenced and gated. There will</p> | <p>208</p> <p>1 CHRIS KELLEY: Yes. 2 BRYAN BOUGHTON: Okay. If you go to 3 the next page, Director Hannan, it should show 4 the site from behind with the neighborhood in 5 front of it. Mr. Kelley, is that your portion 6 of the site on the righthand side behind the 7 woods from the neighborhood? 8 CHRIS KELLEY: Yes. 9 BRYAN BOUGHTON: And is anything -- 10 there's like a concrete drive down the middle of 11 the site there -- is anything to the left of 12 that fence yours? 13 HEARING EXAMINER ROBESON HANNAN: Left 14 of the road you mean? 15 BRYAN BOUGHTON: Yes, left of the 16 road. I see the series of white trailers parked 17 against a fence there. I believe to the right 18 of that is Mr. Kelley's site. Is anything yours 19 to the left of that concrete drive? 20 CHRIS KELLEY: To the left? No, 21 nothing to the left. 22 BRYAN BOUGHTON: Okay. Director, if 23 you can go to the next page, I'm just trying to 24 give another view, and I think I've highlighted 25 what is --</p> |

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53 (209 to 212)

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| <p>209</p> <p>1 HEARING EXAMINER ROBESON HANNAN: 2 Sorry, go ahead. 3 BRYAN BOUGHTON: I think I've 4 highlighted with yellow what I believe is your - 5 - 6 HEARING EXAMINER ROBESON HANNAN: 7 Okay. 8 BRYAN BOUGHTON: Is that correct, Mr. 9 Kelley? 10 CHRIS KELLEY: Yes. 11 BRYAN BOUGHTON: So, Director, if you 12 go to the next page, I'm going to zoom in a 13 little bit on the site that Mr. Kelley has 14 described for us, and so, everything -- you can 15 kind of see the fence that runs right down that 16 [audio cut out]. So, everything to the left of 17 that is, I assume, Mr. Kelley's as he said. And 18 as you get closer, it does look like he has the 19 landscape trailers there for his trucks and then 20 there is a -- I assume that is your office 21 trailer at the back right corner of the lot. 22 CHRIS KELLEY: Yes. 23 BRYAN BOUGHTON: Okay. If you go -- 24 you can jump two pictures forward, please. I'm 25 trying to speed this up as much as I can.</p> | <p>211</p> <p>1 this question before I move to another exhibit. 2 What about all the -- what looks like broken 3 pallets and stuff to the right of that large 4 pile? And if you look at the lower panel, there 5 is a skid loader that actually looks like it has 6 some broken pallet parts in it. What is that 7 pile of rubbish? 8 CHRIS KELLEY: Well, that's our 9 pallets that also the same contractor recycles 10 when he hauls away everything. All of our hard 11 woody growth, he also hauls away, which he's 12 doing right now. He does it about once a month. 13 He's going to clean out everything. Probably 14 around Thanksgiving, he'll take everything out 15 and clean it out and my pallets most of the 16 times, the vendor that I buy from, we do a 17 pallet return. So, they send their trucks on 18 the next delivery, we load them up, and they 19 take back their pallets. 20 BRYAN BOUGHTON: And then to the right 21 of the pile of broken pallets, it appears to be 22 storage of a damaged truck missing the front 23 end. Is that something that occurs on your lot 24 also? 25 CHRIS KELLEY: No, that actually was a</p> |
| <p>210</p> <p>1 HEARING EXAMINER ROBESON HANNAN: 2 Okay. 3 BRYAN BOUGHTON: If you scroll two 4 pages down. 5 HEARING EXAMINER ROBESON HANNAN: Oh, 6 two more pages? 7 BRYAN BOUGHTON: Two more pages. 8 HEARING EXAMINER ROBESON HANNAN: Is 9 this what you want? 10 BRYAN BOUGHTON: Yeah, that'll work. 11 That'll work. So, we have this closeup image of 12 this -- what appears to be a waste on your lot, 13 and it does appear that's in operation. There 14 is different colors of yard waste. You said you 15 don't store any waste, so what does this pile 16 represent then? 17 CHRIS KELLEY: Well, that is our waste 18 that we haul out when we come back from our 19 jobsites. That's organic leaves, some shrubs. 20 When we do our leaf removal and when we do our 21 projects, we bring it back to the shop and then 22 we haul it out, which is going on right now 23 actually. We do it about once a month. 24 BRYAN BOUGHTON: It's quite a large 25 pile. I would ask on the -- well, let me ask</p> | <p>212</p> <p>1 truck that was damaged pretty bad and with the 2 MVA that closed down recently, we have to get 3 title on it because it's deemed a loss and we 4 can't get rid of it until we get the title. So, 5 I'm working on that to get that out of there. 6 BRYAN BOUGHTON: Okay. So -- so, 7 there are things that are stored on your lot 8 that were not kind of spelled out in the nice 9 diagram and the site plan because I don't 10 remember on the site plan seeing anything for 11 waste. 12 I also noticed on the left-hand side 13 where the tent is, what is all that which looks 14 like it could be PVC pipe and other long things 15 and a lot of stuff piled up? 16 CHRIS KELLEY: Well -- well, if you 17 looked at the diagram of the shop, you could see 18 that we're going to have storage buildings, and 19 you can by your pictures, there's no buildings 20 up, and that was one of the main points of 21 purchasing a property. That way, we would have 22 our own buildings, and there wouldn't be 23 anything outside, and that was one of the main 24 points -- to get a building, get a property, get 25 the buildings up so there wouldn't be anything</p> |

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54 (213 to 216)

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| <p>213</p> <p>1 stored outside.</p> <p>2 BRYAN BOUGHTON: Okay. Director</p> <p>3 Hanna, if you can go back to Exhibit 33, which</p> <p>4 is the site plan for the new site.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Can</p> <p>6 you see it?</p> <p>7 BRYAN BOUGHTON: Yes, we can. Thank</p> <p>8 you. So, where will this huge brush pile be on</p> <p>9 this site inside the fences here? I don't see</p> <p>10 that marked out, and it looked like a very</p> <p>11 significant pile, which you said is about a</p> <p>12 month's worth of stuff. So, every month, you</p> <p>13 will have that pile. Where is that going to be</p> <p>14 on this site plan?</p> <p>15 CHRIS KELLEY: It mostly accumulates</p> <p>16 starting in September, October when the leaves</p> <p>17 fall. That's our big leaf cleanup and then our</p> <p>18 mulch distributor who does our mulching -- who</p> <p>19 we buy from -- he comes and picks it up and</p> <p>20 takes it out and I don't really know where I'm</p> <p>21 going to put the pile. I mean, probably mostly</p> <p>22 in the bins, which is really screened very well</p> <p>23 out front.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Are</p> <p>25 the bins -- I'm looking just behind the berm.</p> | <p>215</p> <p>1 you said you have no commercial vehicles. Does</p> <p>2 the large dump truck on your current site --</p> <p>3 that is not a commercial vehicle?</p> <p>4 CHRIS KELLEY: No. That's a two-axel,</p> <p>5 tri-axel truck. It's not -- it's not over</p> <p>6 26,000 pounds.</p> <p>7 BRYAN BOUGHTON: Okay. And then, we</p> <p>8 talked about the phasings of your building.</p> <p>9 What will obscure the temporary trailer -- well,</p> <p>10 Director Hannan, if you could go back to that</p> <p>11 Exhibit 33 again, I wanted to ask --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Oh,</p> <p>13 I'm sorry.</p> <p>14 BRYAN BOUGHTON: No, that's okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN:</p> <p>16 Okay, you should see it.</p> <p>17 BRYAN BOUGHTON: Yeah. So, the large</p> <p>18 building seemed later in the project and as</p> <p>19 described by the expert early on about the site,</p> <p>20 the building itself will be part of the</p> <p>21 screening for that corner of the lot, which is</p> <p>22 directly viewed from Damascus Road. What will</p> <p>23 you use to screen it temporarily if you're not</p> <p>24 going to build that building on day one? That</p> <p>25 whole corner will be open to us to see the</p> |
| <p>214</p> <p>1 CHRIS KELLEY: Yes, that's where they</p> <p>2 are, correct.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: The</p> <p>4 bins?</p> <p>5 CHRIS KELLEY: Yes. That's them,</p> <p>6 correct.</p> <p>7 BRYAN BOUGHTON: So, you're gonna --</p> <p>8 you're gonna add this detritus to those bins</p> <p>9 where -- when you look at your current site that</p> <p>10 we were just looking at -- is where you store</p> <p>11 mulch and gravel and other items that you use on</p> <p>12 a daily basis?</p> <p>13 CHRIS KELLEY: Possibly, yes.</p> <p>14 BRYAN BOUGHTON: So, you don't have a</p> <p>15 plan for that huge file. You're kind of</p> <p>16 composing it now or --</p> <p>17 CHRIS KELLEY: No, no. I mean, once I</p> <p>18 get things finalized, then I'll go ahead and</p> <p>19 make that decision.</p> <p>20 BRYAN BOUGHTON: Do you see how that</p> <p>21 could be a concern for us?</p> <p>22 CHRIS KELLEY: I mean, you're not</p> <p>23 going to see it. It's going to be covered by</p> <p>24 the earth and berm and all the plants.</p> <p>25 BRYAN BOUGHTON: Okay. What about --</p> | <p>216</p> <p>1 trailer and the parking and the main entrance</p> <p>2 there. What will hide that from view of all the</p> <p>3 neighbors? Because right now, this field is</p> <p>4 flat and does not have any trees or anything, I</p> <p>5 think, that would obscure that whole corner.</p> <p>6 Are you going to do something to hide that site</p> <p>7 until that building is built?</p> <p>8 CHRIS KELLEY: Yeah. I think I said</p> <p>9 we're going to first put up the fence and</p> <p>10 screening and everything before we get in. So,</p> <p>11 yes. Our plan is to put the fence up all the</p> <p>12 way around it even though -- I will put the</p> <p>13 fence up twice -- even around the building even</p> <p>14 though the building is not there. I will put up</p> <p>15 the fence and the screening and the earth and</p> <p>16 berm and the concrete wall before I do any of</p> <p>17 that. That way, the whole site is fully</p> <p>18 screened.</p> <p>19 BRYAN BOUGHTON: I'm sorry, I'm</p> <p>20 mistaken then, because I think the site planner</p> <p>21 explained that the building itself would act as</p> <p>22 the screen on that corner.</p> <p>23 CHRIS KELLEY: Yeah, well once -- once</p> <p>24 we get everything up and running. But our --</p> <p>25 the plan is to put up the fence, earth and berm,</p> |

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55 (217 to 220)

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| <p>217</p> <p>1 concrete wall, and then all of the plants. That 2 way, you guys, you know, if you're driving on 3 the road, nobody sees everything. 4 BRYAN BOUGHTON: So where -- I'm sorry 5 to interrupt. 6 CHRIS KELLEY: No, go ahead. Go 7 ahead. 8 BRYAN BOUGHTON: So, where is the 9 earth and berm on the building side there? I 10 see where it is fronting the road, but I don't 11 see a berm indicated along the building. 12 HEARING EXAMINER ROBESON HANNAN: 13 There -- let me just -- to speed this along, the 14 earth and berm -- as I understand it, and 15 correct me if I'm wrong -- is along this -- east 16 of the entryway but the board-on-board fence is 17 surrounding -- I remember Mr. Sekerak testified 18 that the board-on-board fence is here. 19 BRYAN BOUGHTON: I remembered him 20 testifying the building would be the shield on 21 that side. I didn't -- 22 HEARING EXAMINER ROBESON HANNAN: He 23 -- I -- 24 DAVE LAMBERT: Ms. Hannan, Ms. Hannan. 25 I'd prefer that if the applicant responded to</p> | <p>219</p> <p>1 That's what I'm -- I feel like some of these are 2 going -- the same question over and over, and I 3 have discretion if things get repetitive, I have 4 discretion to speed them up. 5 BRYAN BOUGHTON: Director Hanna, I 6 understand that. This is Bryan again. Can I 7 just restate -- looking at the plan, where it is 8 indicated there is board-on-board fence around 9 the two sides of that building, it is not 10 indicated that I can tell. But again, I can't 11 see -- 12 HEARING EXAMINER ROBESON HANNAN: It's 13 -- I -- I asked Mr. Sekerak about it, and his 14 testimony was this hatched -- this line with the 15 hatchings in between -- see the little hatchings 16 -- 17 BRYAN BOUGHTON: Yes, I see those. 18 HEARING EXAMINER ROBESON HANNAN: -- 19 was the fence. 20 BRYAN BOUGHTON: Yeah. See, 21 unfortunately, I do not see those along the left 22 side or the front of the building. But maybe if 23 you zoom in, we could see that better. 24 HEARING EXAMINER ROBESON HANNAN: 25 Well.</p> |
| <p>218</p> <p>1 these questions rather than you. 2 HEARING EXAMINER ROBESON HANNAN: 3 Well, you know what? I'm running this meeting, 4 that's one. Two -- 5 BRYAN BOUGHTON: And I respect that, 6 Director Hannan. 7 HEARING EXAMINER ROBESON HANNAN: Two, 8 I don't like it when there's a misquote of the 9 record. I can't do, you know, I remember what 10 he testified and he didn't say -- he said long- 11 term, the building would screen it, but he also 12 said the board-on-board fence. So, I'm not 13 going to have misquoted testimony and spend an 14 hour on misquoted testimony. 15 DAVE LAMBERT: We're not spending an 16 hour on it. We're spending the amount of time 17 that's required for this, and the applicant's 18 counsel, I think, is perfectly situated to 19 respond to those exact comments. 20 HEARING EXAMINER ROBESON HANNAN: 21 Well, he just -- he just did. Didn't he? 22 CHRIS KELLEY: Yes. 23 BRYAN BOUGHTON: If I could ask the 24 question. 25 HEARING EXAMINER ROBESON HANNAN:</p> | <p>220</p> <p>1 NANCY REGELIN: This is Nancy Regelin. 2 Perhaps if I could just ask the question 3 directly to Mr. Kelley. Mr. Kelley, are you 4 going to install board-on-board fencing around 5 the entire site before there is any construction 6 of any buildings? 7 CHRIS KELLEY: Yes. 8 NANCY REGELIN: And will part of that 9 fence be replaced by the proposed operations and 10 maintenance barn? 11 CHRIS KELLEY: Yes. 12 HEARING EXAMINER ROBESON HANNAN: Now, 13 I see -- all zoomed in? 14 BRYAN BOUGHTON: Yes, we are. 15 HEARING EXAMINER ROBESON HANNAN: 16 There's a board-on-board fence eight feet high. 17 It goes from the gate here -- here where this 18 hatch mark is. So, is there a fence on the 19 southern and western side of the proposed 20 building? 21 CHRIS KELLEY: Yes. 22 HEARING EXAMINER ROBESON HANNAN: All 23 right. That's how I read it. 24 NANCY REGELIN: So, just to be clear 25 though, when in fact you build the proposed</p> |

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56 (221 to 224)

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| 221 | <p>1 building, you will take out that section of 2 fencing and it will be the building face that 3 will -- 4 CHRIS KELLEY: Yes, correct. 5 NANCY REGELIN: -- complete the 6 perimeter. 7 HEARING EXAMINER ROBESON HANNAN: 8 That's what I heard him say. 9 CHRIS KELLEY: Yes. 10 BRYAN BOUGHTON: So, Director Hanna, a 11 question just for you since I'm not an expert in 12 this. So, even if it's not indicated a plan, 13 since it's been testified to here, we can expect 14 that fence will be required until the building 15 is built? 16 HEARING EXAMINER ROBESON HANNAN: 17 Well, I can put a condition in there saying 18 there will be a board-on-board fence around the 19 entire site until the building is built. 20 BRYAN BOUGHTON: Thank you. 21 NANCY REGELIN: Since that's the 22 intention of the applicant, that's fine. 23 BRYAN BOUGHTON: Those are the 24 questions I had for the applicant. Thank you, 25 Mr. Kelley.</p> | 223 | <p>1 recently learned of this, so we have some 2 questions. 3 CHRIS KELLEY: Sure. 4 DAVE LAMBERT: Did you say that there 5 was no underground tank, that it was an above- 6 ground tank for storing diesel? 7 CHRIS KELLEY: Yes, it is an above- 8 ground tank. 9 DAVE LAMBERT: And what -- what size? 10 CHRIS KELLEY: Right now, I have a 11 250-gallon tank from Griffith Energy. 12 DAVE LAMBERT: You're going to move 13 that from the existing facility? 14 CHRIS KELLEY: Well, it's not mine; 15 it's theirs. But I'm going to get some new ones 16 once I move. So, I don't plan on taking those. 17 I plan on taking some new tanks. 18 DAVE LAMBERT: Right. So, you're -- 19 you're going to have [audio cut out.] 20 CHRIS KELLEY: I'm going to have a gas 21 tank and a diesel tank. 22 DAVE LAMBERT: And they're both going 23 to be 250 gallons or more? 24 CHRIS KELLEY: Yes, correct. That's 25 what I'm planning on.</p> |
| 222 | <p>1 CHRIS KELLEY: Thank you very much. I 2 appreciate it. 3 HEARING EXAMINER ROBESON HANNAN: 4 Okay. Mr. Boughton, can you put your hands down 5 -- hand down? Thank you. 6 Now, I had Mr. -- I'm sorry -- Mr. 7 Lambert's hand raised. 8 DAVE LAMBERT: Yes, I'm here. Thank 9 you. 10 HEARING EXAMINER ROBESON HANNAN: Did 11 you have questions? 12 DAVE LAMBERT: Yes, I do. 13 HEARING EXAMINER ROBESON HANNAN: 14 Okay. 15 DAVE LAMBERT: Mr. Kelley, thank you. 16 CHRIS KELLEY: Thank you. 17 DAVE LAMBERT: Thank you for the work 18 that you've gone through to do this. We 19 understand you want to upgrade your present 20 facility. That makes a lot of sense. Those 21 pictures were a bit jarring to us. We 22 understand you have expended a lot of time and 23 effort and resources in putting this plan 24 together. It is complicated to work through 25 this. But many of us, as you've heard, only</p> | 224 | <p>1 HEARING EXAMINER ROBESON HANNAN: And 2 they're all going to be at this location shown 3 on the site plan where it says fuel tank? 4 CHRIS KELLEY: Yes, correct. 5 DAVE LAMBERT: Can -- just going back 6 to the aerial photos in our exhibit, those -- 7 those look like dumpster cannisters maybe next 8 to the tent. How are -- are those your dumpster 9 cannisters? 10 CHRIS KELLEY: Yes. Yes, we have a 11 trash company that comes and takes everything 12 out on an as-needed -- oh, those are sea 13 containers actually. No, those are not going to 14 be -- those will not be coming with me. Those 15 are -- 16 HEARING EXAMINER ROBESON HANNAN: Can 17 you orient -- just a second. 18 CHRIS KELLEY: Okay. 19 HEARING EXAMINER ROBESON HANNAN: Can 20 you orient us to what photograph you are 21 referring to so I can see what you're talking 22 about? 23 DAVE LAMBERT: I'm in the aerial 24 photos. 25 HEARING EXAMINER ROBESON HANNAN: You</p> |

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57 (225 to 228)

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| <p>225</p> <p>1 should be too.</p> <p>2 DAVE LAMBERT: The closeup view.</p> <p>3 CHRIS KELLEY: You had it.</p> <p>4 DAVE LAMBERT: It's 58(b). I think</p> <p>5 it's the fourth one in.</p> <p>6 CHRIS KELLEY: They're sea containers,</p> <p>7 and I'm not going to be taking them with me.</p> <p>8 DAVE LAMBERT: And how are you going</p> <p>9 to dispose of the waste that's in them now?</p> <p>10 CHRIS KELLEY: I have a -- I have a</p> <p>11 trash company. They come and they clean</p> <p>12 everything out and take it away for me.</p> <p>13 DAVE LAMBERT: Uh-huh. And how often</p> <p>14 -- how often does that happen?</p> <p>15 CHRIS KELLEY: I said that earlier.</p> <p>16 They come about once a month.</p> <p>17 DAVE LAMBERT: Will they be the same</p> <p>18 vendor at the new site?</p> <p>19 CHRIS KELLEY: If their pricing stays</p> <p>20 the same, quite possibly yes.</p> <p>21 DAVE LAMBERT: How many waste</p> <p>22 containers will you have at the new place?</p> <p>23 CHRIS KELLEY: I don't know yet.</p> <p>24 That's a good question. I haven't really</p> <p>25 decided that. We haven't gotten that far along</p> | <p>227</p> <p>1 ladder that --</p> <p>2 CHRIS KELLEY: Yeah, I can see it</p> <p>3 right there. I can see it right there. Yeah,</p> <p>4 those are sea containers, and that's just stuff</p> <p>5 -- that's just storage containers. They lock</p> <p>6 up. We put a lock on them and, you know, we</p> <p>7 were just putting -- someone probably got a</p> <p>8 ladder to go up top and get some -- some</p> <p>9 materials or something.</p> <p>10 DAVE LAMBERT: You -- you're saying</p> <p>11 that those are sealed containers that are</p> <p>12 holding equipment.</p> <p>13 CHRIS KELLEY: Sea. Sea containers.</p> <p>14 Like a sea container. That's what they're</p> <p>15 called.</p> <p>16 HEARING EXAMINER ROBESON HANNAN:</p> <p>17 S-E-A.</p> <p>18 CHRIS KELLEY: It's not -- yeah. It's</p> <p>19 not a trash container. It's not a dumpster, a</p> <p>20 30-yard or 40-yard container.</p> <p>21 DAVE LAMBERT: What's on top of it?</p> <p>22 CHRIS KELLEY: I just said that. I</p> <p>23 just said they're probably -- they put stuff on</p> <p>24 top of it. It has a roof. It's a box. It's a</p> <p>25 complete box with a roof on it and doors.</p> |
| <p>226</p> <p>1 yet.</p> <p>2 DAVE LAMBERT: Those -- those -- you</p> <p>3 could understand how that aspect alone raises a</p> <p>4 lot of concerns for us.</p> <p>5 CHRIS KELLEY: Those aren't -- those</p> <p>6 aren't waste containers, the ones that are</p> <p>7 circled. Those are sea containers. Those are</p> <p>8 storage containers if that's what you're</p> <p>9 referring to.</p> <p>10 DAVE LAMBERT: Yeah, they are circled</p> <p>11 in this one, and one of them looks like it's got</p> <p>12 a ladder. If you want to drop stuff in it --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Just</p> <p>14 a second. For the record, I'm looking at a</p> <p>15 photograph dated October 28, 2020. Is this the</p> <p>16 one we're all talking about?</p> <p>17 DAVE LAMBERT: No, no. Go further</p> <p>18 down. They're all -- they're all the same date.</p> <p>19 There's one that's -- that's highlighted in</p> <p>20 yellow. Right there.</p> <p>21 HEARING EXAMINER ROBESON HANNAN:</p> <p>22 Okay.</p> <p>23 DAVE LAMBERT: And if you look at the</p> <p>24 original online, not through your machine, it's</p> <p>25 actually quite a lot clearer. You can see the</p> | <p>228</p> <p>1 DAVE LAMBERT: Okay.</p> <p>2 NANCY REGELIN: And I don't know how</p> <p>3 relevant it is since Mr. Kelley has testified</p> <p>4 that those are not going to the new location.</p> <p>5 DAVE LAMBERT: Well, what's relevant</p> <p>6 is the way in which Mr. Kelley intends to</p> <p>7 operate his facility.</p> <p>8 CHRIS KELLEY: I told you that once I</p> <p>9 get buildings put up, it's not going to be like</p> <p>10 this. Because I don't have buildings, that's</p> <p>11 why the condition is what it is.</p> <p>12 DAVE LAMBERT: Right. I really hope</p> <p>13 that you can fundamentally change the way that</p> <p>14 you operate your business, and that's why I'm</p> <p>15 asking these questions to understand how much</p> <p>16 change --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>18 Lambert, stop talking. Stop. He's already</p> <p>19 asked -- you're -- I understand what you're</p> <p>20 trying to do. You looked at the old photos.</p> <p>21 Now, you're trying to see if the same things are</p> <p>22 going to occur. So, you don't have to say that,</p> <p>23 and that's fine. He's already -- if there's --</p> <p>24 it's asked and answered. He has already</p> <p>25 answered that it's not going to be there.</p> |

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58 (229 to 232)

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| <p>229</p> <p>1 DAVE LAMBERT: I'm sorry. I didn't 2 understand what these were. All I can see is 3 what the photo has. I'm sorry it wasn't clear 4 to me. I'm just trying to get clarification. 5 HEARING EXAMINER ROBESON HANNAN: And 6 you did. 7 DAVE LAMBERT: Are you -- are you 8 planning to use any solar or wind power at your 9 facility? 10 CHRIS KELLEY: No, sir. 11 DAVE LAMBERT: What is your experience 12 in using greenhouses and growing? It doesn't 13 look like you've got any of that available at 14 your current premises. 15 CHRIS KELLEY: No, I don't. I 16 currently buy all my plants wholesale. I have 17 many contacts throughout the state of Maryland 18 and my plan is to grow my own trees and shrubs 19 and some annuals in the greenhouses. 20 DAVE LAMBERT: What -- what kind of 21 plants do you plan on putting in the 22 greenhouses? 23 CHRIS KELLEY: Annuals, which are 24 flowers, pansies, begonias, petunias, all of 25 which I use at my own sites.</p> | <p>231</p> <p>1 Grounds, if that's clearer for you. 2 DAVE LAMBERT: And when did you sign 3 the contract? 4 CHRIS KELLEY: Some time in 2019. I 5 don't know the exact date, but it was early 6 2019. 7 DAVE LAMBERT: Is it a condition to 8 closing that you obtain the permits that are 9 required under local law? 10 CHRIS KELLEY: Is it -- it is in the 11 contract I have a contingency for the contract 12 to purchase to happen if I get the conditional 13 use of the property. 14 DAVE LAMBERT: What other aspects of 15 the contract are -- need to be completed before 16 you can close other than the approvals that 17 we're talking about today? 18 CHRIS KELLEY: I don't -- I can't -- I 19 don't know off the top of my head. I haven't 20 looked at the contract in a long time and my 21 realtor, Shulman Rogers, has handled everything 22 with the contract. 23 DAVE LAMBERT: I'm just looking 24 through my notes. Bear with me for a second. 25 CHRIS KELLEY: Sure.</p> |
| <p>230</p> <p>1 DAVE LAMBERT: Thank you. You said 2 that you're the purchaser under the property. 3 You personally are the buyer of the property? 4 CHRIS KELLEY: Yes. 5 DAVE LAMBERT: So, as an individual, 6 you're going to own this land? 7 CHRIS KELLEY: Yes, correct. 8 DAVE LAMBERT: Your company will not 9 be owning the land? 10 CHRIS KELLEY: Metro Grounds? No, 11 we're buying it in a different LLC. Metro 12 Grounds will not own it. 13 DAVE LAMBERT: Okay. If you're buying 14 it in an LLC, you're not personally buying it. 15 CHRIS KELLEY: I know, but you said 16 Metro Grounds. Metro Grounds is not going to be 17 the LLC. 18 DAVE LAMBERT: I asked you if you were 19 personally the buyer of it and you said yes. I 20 understand maybe my question wasn't clear. 21 CHRIS KELLEY: Yes, sir. 22 DAVE LAMBERT: I mean personally, are 23 you the buyer of -- 24 CHRIS KELLEY: The LLC is going to buy 25 the farm, which is not going to be Metro</p> | <p>232</p> <p>1 DAVE LAMBERT: Have you had any 2 regulatory inquiries on your business in any 3 respect in your current location or prior to 4 that? 5 CHRIS KELLEY: I'm not aware of 6 anything, no. 7 DAVE LAMBERT: And you said you've 8 been at the current location since 2016. Where 9 were you before that? 10 CHRIS KELLEY: I was down in Silver 11 Spring. 12 DAVE LAMBERT: How long were you 13 there? 14 HEARING EXAMINER ROBESON HANNAN: Just 15 a second. I don't understand the relevance. 16 What's the relevance of how long he was 17 somewhere? 18 DAVE LAMBERT: You are -- you, the 19 hearing examiner, are objecting to the relevance 20 of my questions? 21 NANCY REGELIN: So, I will state that 22 it is the applicant's counsel who is objecting 23 to the relevance. We addressed the existing 24 location because the community put in exhibits. 25 But anything prior to this is not in the record</p> |

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| <p>233</p> <p>1 and is not part of this application. So, we do 2 object to the relevance. 3 HEARING EXAMINER ROBESON HANNAN: Just 4 a second. I'm confused. I'm -- part of my job 5 is to manage the hearing. I don't see what the 6 complaint is. My job is to get to the relevant 7 testimony. So, I can go -- it's -- I see no 8 reason why I can't move it along if I don't see 9 the relevance. And I said, I don't see -- I 10 invited you to tell my why it's relevant, but 11 you seem to think I shouldn't be doing that. 12 Why is that? 13 DAVE LAMBERT: It's relevant because 14 we'd like to understand the history of this 15 business -- how long it's been in existence, how 16 many different locations it's been at, and 17 that's important context for us. 18 HEARING EXAMINER ROBESON HANNAN: 19 Well, that may be important context, but that's 20 not my legal standard, and -- and I -- I have to 21 stick to whether my legal standards and what's 22 relevant to that. You can communicate with the 23 applicant later and you can get all the 24 information that you want from them. But I am 25 not going to have somebody say to me as the</p> | <p>235</p> <p>1 tried to make it look like if you're driving 2 down the road, you wouldn't even see it. You'd 3 just see some trees and a barn. That was my 4 first thought. 5 But in terms of other landscape 6 companies, I mean Ruppert is right down the 7 street. That was my first one and probably my 8 only one because they have the nicest looking 9 shop and the nicest looking frontage. So, that 10 was -- that was the conclusion, we'll make it 11 look like Ruppert and make it look like a barn 12 so it blends into the aesthetics of the area. 13 DAVE LAMBERT: You say Ruppert, what 14 does that mean? 15 UNIDENTIFIED FEMALE SPEAKER: Ruppert 16 Nurseries. 17 DAVE LAMBERT: Oh. 18 HEARING EXAMINER ROBESON HANNAN: Do 19 you have an architect that's going to testify, 20 Ms. Regelin? 21 NANCY REGELIN: Yes, we do. 22 HEARING EXAMINER ROBESON HANNAN: You 23 may want to address those kind of questions to 24 the architect. 25 DAVE LAMBERT: No, I think Mr. Kelley</p> |
| <p>234</p> <p>1 hearing examiner that I can't go in and see what 2 the relevance is. My job is to manage the 3 hearing, to make sure everybody gets heard, and 4 to keep it to the facts that are relevant to my 5 decision, which is not his entire business 6 history. 7 DAVE LAMBERT: Understood. 8 Mr. Kelley, I'm wondering if there -- 9 in terms of your design of this property, are 10 there any -- are there any particular locations 11 that you looked at to help you think about what 12 this should look like? I mean, there are 13 obviously Greenskeeper, as we've seen referred 14 to, but there are other landscape buildings. 15 CHRIS KELLEY: Sure. 16 DAVE LAMBERT: And I'm just wondering 17 what you're thinking this -- this should look 18 like as you were building it, you know? What 19 other operators might you have looked at to say, 20 you know, that's the kind of professional 21 appearance we're going for. 22 CHRIS KELLEY: Well, for the building 23 standpoint, I wanted it to blend in to the 24 neighborhood, to the area. So, I looked at 25 barns driving down Damascus Road. You know, I</p> | <p>236</p> <p>1 answered it quite well. Thank you. 2 Is it -- are you allowed to burn at 3 your current site? 4 CHRIS KELLEY: I don't know. I don't 5 do burning here. 6 DAVE LAMBERT: Would you ever apply 7 for an application for burning at the new 8 facility? 9 CHRIS KELLEY: No. 10 HEARING EXAMINER ROBESON HANNAN: Do 11 you object -- just a second -- would you object 12 to a condition prohibiting burning at the site? 13 CHRIS KELLEY: I'm sorry, say that 14 again. I couldn't hear you. 15 HEARING EXAMINER ROBESON HANNAN: 16 Would you object to a condition that prohibits 17 burning at this -- 18 CHRIS KELLEY: No. No, I have no 19 problem with that. I don't -- I've never 20 burned. I don't do that. I mean, I haul my 21 stuff away and that's it. I don't -- I don't do 22 any burning. So, I wouldn't have a problem with 23 that. 24 DAVE LAMBERT: Mr. Kelley, you 25 testified earlier that you said you were going</p> |

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| <p>237</p> <p>1 to prohibit your vendors from using Jake brakes. 2 How would you intend to do that? 3 CHRIS KELLEY: I would tell them once 4 they get close, they need to slow down so you 5 don't have to use them. That's -- in all my -- 6 like I said, all my vendors that I need to use, 7 I've been using for years and years. I have 8 great relationships with them. So, that would 9 be a mandatory if they want my services and they 10 don't listen to me, I'll find somebody else. 11 But I would make that mandatory for all my 12 vendors who enter the shop that prohibits them 13 from using Jake brakes or air brakes at all 14 times. No exceptions. 15 DAVE LAMBERT: Do you use GPS on your 16 vehicles to track speed and location and those 17 sorts of things, braking -- severe braking? 18 CHRIS KELLEY: Actually, I do. 19 DAVE LAMBERT: You do? 20 CHRIS KELLEY: Yes, I do. I've had it 21 for a few years now. It's pretty good -- pretty 22 decent service. I still have to get a couple. 23 I haven't had a chance to get it installed 24 recently because of all the COVID stuff because 25 they won't come out. But I do have them in --</p> | <p>239</p> <p>1 Kelley, good afternoon. 2 CHRIS KELLEY: Good afternoon, Mr. 3 O'Toole. 4 NANCY REGELIN: Ms. Hannan, I don't 5 know if we need this exhibit. 6 JEFFREY O'TOOLE: No, if you could 7 leave it up, I think we will need it. I kind of 8 like looking at it. Bear with me just a minute. 9 I'm sorry. 10 Mr. Kelley, there was some -- a 11 discussion this morning about your contract to 12 close on this property, and this morning it was 13 said that the seller wanted to close by the end 14 of the year, and this afternoon there was some 15 talk about it being a requirement. Is it -- 16 isn't it true that if you needed to extend the 17 closing date for whatever reason and your seller 18 agreed with you, that there would be no problem 19 extending it for a brief amount of time? Yeah, 20 if both and the seller wanted to extend it 21 because you had some more things to work on, you 22 could do that, couldn't you? 23 CHRIS KELLEY: But the seller has 24 already told my agent and his agent, he will not 25 extend it.</p> |
| <p>238</p> <p>1 currently in some of my trucks. 2 DAVE LAMBERT: Some? Do you want to 3 provide a range, like 25 percent or 85 percent? 4 CHRIS KELLEY: Fifty or sixty percent, 5 something like that. 6 DAVE LAMBERT: Did you testify that 7 your employees are driving for their personal 8 use? 9 CHRIS KELLEY: No. My managers take 10 the trucks -- my company trucks home. But 11 that's it. 12 DAVE LAMBERT: So -- and so, how many 13 managers do you have driving? 14 CHRIS KELLEY: Six. Six. 15 DAVE LAMBERT: Uh-huh. So, they're 16 driving company cars home. 17 CHRIS KELLEY: Yes, correct. Those 18 trucks are not at the site overnight. 19 DAVE LAMBERT: That's all the 20 questions I have. Thank you. 21 CHRIS KELLEY: Thank you. 22 HEARING EXAMINER ROBESON HANNAN: 23 Okay. Ms. Lund -- or no, Mr. O'Toole and then 24 Ms. Lund. 25 JEFFREY O'TOOLE: All right. Mr.</p> | <p>240</p> <p>1 JEFFREY O'TOOLE: So, your contract to 2 close has to be done absolutely positively by 3 the end of the year? 4 CHRIS KELLEY: Yes, sir. 5 JEFFREY O'TOOLE: And that's your 6 testimony today? 7 CHRIS KELLEY: Yes, sir. 8 JEFFREY O'TOOLE: All right. 9 HEARING EXAMINER ROBESON HANNAN: Mr. 10 O'Toole, excuse me. Can you just put your hand 11 down so I can keep track of who wants to ask 12 questions? Thank you. Thank you. 13 JEFFREY O'TOOLE: Is that better? 14 HEARING EXAMINER ROBESON HANNAN: Yes, 15 thank you. 16 JEFFREY O'TOOLE: All right. It was 17 distracting me too. 18 Mr. Kelley, you talked about talking 19 to the neighbors and that you've been involved 20 with the neighbors here in Sunshine for quite a 21 while, and you actually mentioned the name Steve 22 Fisher. When you spoke to Steve Fisher a year 23 or two ago, did you tell him that the entire 24 three acres of the development was going to be 25 at the very back of the property?</p> |

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| <p>241</p> <p>1 CHRIS KELLEY: I can't remember 2 exactly what our conversation was explaining to 3 him -- 4 JEFFREY O'TOOLE: It wouldn't surprise 5 you if Mr. Fisher said that when he looked at 6 the plans ten days ago, he was shocked to see 7 that the development was right on Damascus Road 8 and not back by the woods? That wouldn't 9 surprise you, would it? 10 CHRIS KELLEY: I don't know what he 11 said. 12 NANCY REGELIN: Objection. 13 JEFFREY O'TOOLE: I'm asking whether 14 you would be surprised. 15 CHRIS KELLEY: I don't know. 16 JEFFREY O'TOOLE: You don't know. So, 17 you don't remember if you told him -- 18 HEARING EXAMINER ROBESON HANNAN: 19 Asked and answered, Mr. O'Toole. Asked and 20 answered. 21 JEFFREY O'TOOLE: I think it's a 22 different question if I could just ask it. 23 Is it your testimony that you did not 24 tell him that the property was going to be 25 developed back by the woods on the north end of</p> | <p>243</p> <p>1 CHRIS KELLEY: I don't know. 2 JEFFREY O'TOOLE: How many acres of 3 your property do you plan to sod? 4 CHRIS KELLEY: Well, I was planning on 5 sodding all the way -- if I do it would be in 6 the back. That way I'll keep the screening up 7 along the front and along the roads to hide it. 8 JEFFREY O'TOOLE: How many acres of 9 sod? 10 CHRIS KELLEY: I -- I don't know yet. 11 I don't know. 12 JEFFREY O'TOOLE: Do you have any -- 13 you have no other places on your property that 14 you're growing trees now, do you? 15 CHRIS KELLEY: No. 16 JEFFREY O'TOOLE: There was some 17 testimony earlier about the rustic road -- 18 Howard Chapel Road. 19 CHRIS KELLEY: Um-hum. 20 JEFFREY O'TOOLE: And the Rustic Road 21 Committee approved the -- the project as it 22 relates to the rustic road because the trees 23 along Howard Chapel and the proposed plantings 24 along Howard Chapel were going to hide the 25 project from Howard Chapel. Can you tell us</p> |
| <p>242</p> <p>1 the property? 2 CHRIS KELLEY: I don't remember. 3 JEFFREY O'TOOLE: You don't remember. 4 All right. Do you have among your lists of 5 equipment that's going to be on this property a 6 sod harvester? 7 CHRIS KELLEY: On the -- on the 8 paperwork? Yeah, there's -- 9 JEFFREY O'TOOLE: Do you own -- 10 CHRIS KELLEY: There's no sod 11 harvester on the paperwork. 12 JEFFREY O'TOOLE: Do you own a sod 13 harvester? 14 CHRIS KELLEY: Currently, at this 15 moment? 16 JEFFREY O'TOOLE: Right. 17 CHRIS KELLEY: No. 18 JEFFREY O'TOOLE: Are you planning to 19 buy a sod harvester? 20 CHRIS KELLEY: Possibly. 21 JEFFREY O'TOOLE: Do you plan to 22 harvest your own sod? 23 CHRIS KELLEY: Possibly, yes. 24 JEFFREY O'TOOLE: What's the 25 likelihood?</p> | <p>244</p> <p>1 what planting you plan to plant? What trees you 2 plan to plant along Howard Chapel Road? 3 CHRIS KELLEY: I don't know. I don't 4 have an idea of what I'm going to plant along 5 Howard Chapel Road. I'm not there yet in the 6 process. 7 JEFFREY O'TOOLE: We asked the 8 planning fellow. We asked the planning expert, 9 and then we were told that the best person to 10 ask would be you. 11 CHRIS KELLEY: Sure. 12 JEFFREY O'TOOLE: This is your 13 property, and the rustic road is an integral 14 part of whether this is accepted or not. What 15 is your plan for trying to hide this project 16 from Howard Chapel Road? 17 CHRIS KELLEY: Well, I mean, if you 18 look -- if you're on Howard Chapel, you can see 19 where I'm proposing the building. It's already 20 at a lower elevation. The high point of the 21 property is right along Howard Chapel Road. 22 JEFFREY O'TOOLE: I don't understand 23 what you're saying. 24 CHRIS KELLEY: The high point of the 25 property is along Howard Chapel Road. It</p> |

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| <p>245</p> <p>1 descends down.</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 Wait. Are you -- I'm confused too. Are you</p> <p>4 saying the conditional use area is lower than</p> <p>5 Howard Chapel Road? Is that what you're saying?</p> <p>6 CHRIS KELLEY: There's -- the high</p> <p>7 point of the property is along Howard Chapel</p> <p>8 Road. The low point is where the building is</p> <p>9 going to be. So, the building will be lower</p> <p>10 because of the natural grade.</p> <p>11 JEFFREY O'TOOLE: But the building is</p> <p>12 going to be thirty-some feet tall, right?</p> <p>13 CHRIS KELLEY: Yeah. So, you'll see</p> <p>14 -- you'll probably see something, you know,</p> <p>15 during the winter months when the trees --</p> <p>16 because those trees are deciduous along that</p> <p>17 road.</p> <p>18 JEFFREY O'TOOLE: And the trees are</p> <p>19 already -- the trees have already lost their</p> <p>20 leaves now along Howard Chapel.</p> <p>21 CHRIS KELLEY: Sure.</p> <p>22 JEFFREY O'TOOLE: I'll tell you what.</p> <p>23 I'll talk, and then you talk, and we'll go back</p> <p>24 and forth, okay? And that will work better, I</p> <p>25 think.</p> | <p>247</p> <p>1 should ask about what kind of plantings you plan</p> <p>2 to protect the rustic road of Howard Chapel.</p> <p>3 So, I asked you, do you know what kind of</p> <p>4 plantings you propose for along Howard Chapel to</p> <p>5 satisfy the Rustic Road Committee.</p> <p>6 CHRIS KELLEY: The trees will either</p> <p>7 be --</p> <p>8 NANCY REGELIN: This is Nancy --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Just</p> <p>10 a second. Ms. Regelin -- she's his counsel, so</p> <p>11 she -- what are you going to say?</p> <p>12 NANCY REGELIN: So, what we indicated</p> <p>13 earlier was that we would have both Mr. Kelley</p> <p>14 as the owner of the property but also the site</p> <p>15 designer, who is the landscape architect, would</p> <p>16 be testifying later. And he will be able to</p> <p>17 identify exactly what trees and where are</p> <p>18 proposed rather than Mr. Kelley.</p> <p>19 HEARING EXAMINER ROBESON HANNAN:</p> <p>20 Okay.</p> <p>21 JEFFREY O'TOOLE: Mr. Kelley, I want</p> <p>22 to ask you a question about your trucks, if I</p> <p>23 could.</p> <p>24 CHRIS KELLEY: Sure.</p> <p>25 JEFFREY O'TOOLE: You talked before</p> |
| <p>246</p> <p>1 If you drive along Howard Chapel now,</p> <p>2 you can see straight across the property because</p> <p>3 the leaves are gone, correct?</p> <p>4 CHRIS KELLEY: Um-hum.</p> <p>5 JEFFREY O'TOOLE: All right. So, what</p> <p>6 kind of planting -- evergreens or --</p> <p>7 CHRIS KELLEY: There's deciduous trees</p> <p>8 --</p> <p>9 JEFFREY O'TOOLE: Do not interrupt.</p> <p>10 If you could not interrupt me, I won't interrupt</p> <p>11 you.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: One</p> <p>13 a time. Let's do this. Mr. O'Toole, please ask</p> <p>14 your questions. Your questions -- you ask your</p> <p>15 question.</p> <p>16 JEFFREY O'TOOLE: That was my -- that</p> <p>17 was exactly what I was doing. Mr. --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: I</p> <p>19 know. I just needed to get one at a time.</p> <p>20 That's all I was doing.</p> <p>21 JEFFREY O'TOOLE: Thank you.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Do</p> <p>23 you mind asking your question again?</p> <p>24 JEFFREY O'TOOLE: Certainly. Mr.</p> <p>25 Kelley, we were told that you're the one we</p> | <p>248</p> <p>1 about the backup sound of the trucks. Have you</p> <p>2 ever heard of white noise alarms or broadband</p> <p>3 backup alarms?</p> <p>4 CHRIS KELLEY: I have not but I did</p> <p>5 call my Ford guy and he's researching it because</p> <p>6 I'm trying to be open, and if that's a</p> <p>7 possibility, then we'll make it happen.</p> <p>8 JEFFREY O'TOOLE: All right. If</p> <p>9 that's a possibility, you'll make it happen.</p> <p>10 CHRIS KELLEY: Yes.</p> <p>11 JEFFREY O'TOOLE: All right. You said</p> <p>12 something before that really got me interested.</p> <p>13 A lot of us have been concerned -- and there has</p> <p>14 been talk today -- about the backup sounds that</p> <p>15 all trucks make -- the beep, beep, beeping. Any</p> <p>16 large trucks, right?</p> <p>17 CHRIS KELLEY: Yeah, sure.</p> <p>18 JEFFREY O'TOOLE: And we've been</p> <p>19 talking about how we can hear it from</p> <p>20 Greenskeepers all the way -- as far away as they</p> <p>21 are -- all the way to Howard Chapel every</p> <p>22 morning, we can hear it, all right? And it's --</p> <p>23 it's a lot, all right? So, we're thinking that</p> <p>24 it's going to be a lot -- even more and closer -</p> <p>25 - from yours, right?</p> |

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| 249 | <p>1 CHRIS KELLEY: Hmm.</p> <p>2 JEFFREY O'TOOLE: You said just a</p> <p>3 little while ago that the backup beepers are</p> <p>4 exempted sounds because they related to safety.</p> <p>5 Is that what you said?</p> <p>6 CHRIS KELLEY: Let me look here.</p> <p>7 JEFFREY O'TOOLE: I think I can quote</p> <p>8 you if you can't find it.</p> <p>9 CHRIS KELLEY: Let me just double</p> <p>10 check real quick. Yes, Montgomery County law,</p> <p>11 they are exempt.</p> <p>12 JEFFREY O'TOOLE: So, does that mean -</p> <p>13 - let me see if I can extend that out to logical</p> <p>14 extension -- no matter how noisy, no matter how</p> <p>15 many of your trucks have the beep, beep,</p> <p>16 beeping, no matter if every one of them has it</p> <p>17 and they're going at the same time, that's not</p> <p>18 something anybody can complain about or stop</p> <p>19 because that noise is related to safety and is</p> <p>20 an exempted sound in our neighborhood?</p> <p>21 CHRIS KELLEY: I don't know. You'd</p> <p>22 have to -- I don't know.</p> <p>23 JEFFREY O'TOOLE: Well, I'm just</p> <p>24 following up on what you said.</p> <p>25 NANCY REGELIN: I would object because</p> | 251 | <p>1 safety related. All I'm asking is to extend</p> <p>2 that out, that does it -- does it follow that</p> <p>3 even if all of his trucks are making noise at</p> <p>4 the same time, there's nothing anybody can do</p> <p>5 about it, there's no complaint that can be made</p> <p>6 that can address that because that kind of noise</p> <p>7 related to safety is exempted. It's a very</p> <p>8 simple question.</p> <p>9 CHRIS KELLEY: And I don't know. If</p> <p>10 you want to make a complaint, you can make a</p> <p>11 complaint. I mean, you're asking me if you can</p> <p>12 do it.</p> <p>13 JEFFREY O'TOOLE: That's my point.</p> <p>14 CHRIS KELLEY: I don't know.</p> <p>15 JEFFREY O'TOOLE: That's my point, Ms.</p> <p>16 Hannan. My point is --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>18 I understand. I do understand your point and I</p> <p>19 think that what we're dealing with here -- what</p> <p>20 we're dealing with here is there's two things.</p> <p>21 One is Mr. Kelley has testified he's not a noise</p> <p>22 expert. Now, you can't get blood out of a</p> <p>23 turnip. If he can't answer your question, that</p> <p>24 goes to the burden of proof. Do you follow what</p> <p>25 I'm saying?</p> |
| 250 | <p>1 Mr. Kelley has indicated at the very first that</p> <p>2 he's not a noise expert.</p> <p>3 JEFFREY O'TOOLE: No, I'm not -- I'm</p> <p>4 not claiming -- Ms. -- I'm not claiming that --</p> <p>5 HEARING EXAMINER ROBESON HANNAN:</p> <p>6 Don't -- wait for me. She's got an objection on</p> <p>7 the table. What's your objection, Ms. Regelin?</p> <p>8 Nancy REGELIN: Sorry. So, Mr.</p> <p>9 O'Toole is just asking now if there's multiple</p> <p>10 and, you know, he's asking him to extrapolate as</p> <p>11 if he were to ask a noise expert that question.</p> <p>12 Mr. Kelley testified as to what his</p> <p>13 understanding of the law was, but he did</p> <p>14 indicate that he's not a noise expert. So, when</p> <p>15 he started his answer that he didn't know and</p> <p>16 that should be sufficient.</p> <p>17 JEFFREY O'TOOLE: Ms. Hannan, if I</p> <p>18 could respond to that.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yes,</p> <p>20 um-hum.</p> <p>21 JEFFREY O'TOOLE: That's simply an</p> <p>22 inadequate objection. Mr. -- Mr. Kelley</p> <p>23 testified earlier under oath that it's his</p> <p>24 understanding that his trucks -- whatever noise</p> <p>25 they make will be exempted because that noise is</p> | 252 | <p>1 JEFFREY O'TOOLE: Not exactly but I'll</p> <p>2 stick with you.</p> <p>3 HEARING EXAMINER ROBESON HANNAN:</p> <p>4 Okay. I'm saying that we can't force him to</p> <p>5 answer a question under oath that he doesn't</p> <p>6 know the answer to.</p> <p>7 JEFFREY O'TOOLE: All right. I'm</p> <p>8 sorry, go ahead.</p> <p>9 HEARING EXAMINER ROBESON HANNAN:</p> <p>10 Okay. And he -- if it's a legal nicety that he</p> <p>11 doesn't understand or, you know, he can say</p> <p>12 that's his misunderstanding. But at the end of</p> <p>13 the day, if there's no noise expert, even if he</p> <p>14 can't say it, that goes to the applicant's --</p> <p>15 whether the applicant has met its burden of</p> <p>16 proof.</p> <p>17 JEFFREY O'TOOLE: All right.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: So,</p> <p>19 what I'm trying to say is you can't force him to</p> <p>20 say something he's not sure of.</p> <p>21 JEFFREY O'TOOLE: No, and I'm not</p> <p>22 trying to do that, and please don't hear me to</p> <p>23 say that. All I'm --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>25 I understand.</p> |

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| 253 | <p>1 JEFFREY O'TOOLE: Pardon me?</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I</p> <p>3 understand, but you can't keep asking him.</p> <p>4 JEFFREY O'TOOLE: All right.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: And</p> <p>6 you -- what you do is, if you want to say, you</p> <p>7 know, use it in terms of the credibility of the</p> <p>8 witness, you can do that. You know, you can say</p> <p>9 they haven't met their burden of proof. But you</p> <p>10 can't keep hammering to get an answer that he</p> <p>11 can't answer.</p> <p>12 JEFFREY O'TOOLE: All right. I think</p> <p>13 that's fair, and I don't mean to hammer you, Mr.</p> <p>14 Kelley. I really don't want to hurt your</p> <p>15 feelings or call into question your credibility.</p> <p>16 But I do want to cement one thing and then I'll</p> <p>17 leave and go to the next question. Is it your</p> <p>18 testimony that if it is possible to equip your</p> <p>19 trucks with the white noise backup warnings, you</p> <p>20 will do that to each of your trucks for which it</p> <p>21 is possible?</p> <p>22 CHRIS KELLEY: I'm not agreeing to</p> <p>23 anything because I don't know the calls of what</p> <p>24 my gentleman from Ford is researching it for.</p> <p>25 JEFFREY O'TOOLE: All right.</p> | 255 | <p>1 JEFFREY O'TOOLE: We're going to ask</p> <p>2 you for a condition -- we're going to ask you to</p> <p>3 make a condition that these -- I'm sorry, I</p> <p>4 don't mean to talk over you. Go ahead.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>6 your point is made. I get it.</p> <p>7 JEFFREY O'TOOLE: All right. Could</p> <p>8 you -- would you put up Exhibit 58 again, if</p> <p>9 it's not still up?</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Just</p> <p>11 a second.</p> <p>12 JEFFREY O'TOOLE: 58(b).</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Do</p> <p>14 you have it?</p> <p>15 JEFFREY O'TOOLE: I do. All right.</p> <p>16 All right. Mr. Kelley, do you see 58(b)?</p> <p>17 CHRIS KELLEY: Yes.</p> <p>18 JEFFREY O'TOOLE: And for the most</p> <p>19 part, these pictures are taken of your present</p> <p>20 location, right?</p> <p>21 CHRIS KELLEY: The area of top left,</p> <p>22 yes.</p> <p>23 JEFFREY O'TOOLE: Do you have any idea</p> <p>24 -- because I don't know -- what is the acreage</p> <p>25 of your present location?</p> |
| 254 | <p>1 CHRIS KELLEY: Earlier, I said that</p> <p>2 I'm looking into it and we'll see how it goes.</p> <p>3 But at this point, I'm not agreeing with it,</p> <p>4 because I don't know what it entails.</p> <p>5 JEFFREY O'TOOLE: And I don't mean to</p> <p>6 be argumentative.</p> <p>7 CHRIS KELLEY: I'm just telling you</p> <p>8 the facts. You asked me a question, and I gave</p> <p>9 it to you.</p> <p>10 HEARING EXAMINER ROBESON HANNAN:</p> <p>11 Okay, okay. Mr. Kelley -- Mr. Kelley. I think</p> <p>12 I hear you saying you'll consider it.</p> <p>13 CHRIS KELLEY: Yes.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: But</p> <p>15 you can't commit.</p> <p>16 CHRIS KELLEY: Exactly. Yes, ma'am.</p> <p>17 Correct.</p> <p>18 JEFFREY O'TOOLE: All right. And all</p> <p>19 I want to say to close this and I'll move to the</p> <p>20 next thing, Ms. Hannan, is that fifteen minutes</p> <p>21 ago he said if it's possible, I will do it, and</p> <p>22 that's a big difference than I'll consider it.</p> <p>23 That's all I'm asking.</p> <p>24 HEARING EXAMINER ROBESON HANNAN:</p> <p>25 Well, that --</p> | 256 | <p>1 CHRIS KELLEY: No, sorry. I don't</p> <p>2 know.</p> <p>3 JEFFREY O'TOOLE: I mean, is it more</p> <p>4 than an acre, less than an acre?</p> <p>5 CHRIS KELLEY: I don't know. I -- I</p> <p>6 can't comment on it because I don't know.</p> <p>7 JEFFREY O'TOOLE: Your job is to -- is</p> <p>8 with respect to land and measurements and all</p> <p>9 that kind of stuff. You must be able to give us</p> <p>10 an estimate.</p> <p>11 CHRIS KELLEY: I'm not a land -- no,</p> <p>12 I'm not a land surveyor.</p> <p>13 JEFFREY O'TOOLE: You've been at your</p> <p>14 property for two years and you have no idea?</p> <p>15 CHRIS KELLEY: I'm not a land</p> <p>16 surveyor. I don't know what the acreage is.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>18 O'Toole, what's your point? You don't have to -</p> <p>19 - your point is made, okay?</p> <p>20 JEFFREY O'TOOLE: That wasn't even my</p> <p>21 point. I was -- I'm just getting started here.</p> <p>22 What I want to find out is this. The -- the</p> <p>23 projected property that you're going to develop</p> <p>24 for your parking lot and your truck parking lot</p> <p>25 and your building is approximately three acres.</p> |

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| <p>257</p> <p>1 Is that right?</p> <p>2 CHRIS KELLEY: I believe John stated</p> <p>3 the size of the property earlier.</p> <p>4 JEFFREY O'TOOLE: All right. And</p> <p>5 that's approximately three acres?</p> <p>6 CHRIS KELLEY: I believe John stated</p> <p>7 the property size earlier.</p> <p>8 JEFFREY O'TOOLE: And would you</p> <p>9 confirm that your understanding is that it's</p> <p>10 approximately three acres?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Mr.</p> <p>12 O'Toole, it's all over the record what it is.</p> <p>13 So [audio cut out.]</p> <p>14 JEFFREY O'TOOLE: Well, there is --</p> <p>15 there is, Judge or Ms. Hannan. That's why I'm</p> <p>16 asking. That's why I just want to form a</p> <p>17 foundation.</p> <p>18 So, here's -- here's the question, Mr.</p> <p>19 Kelley. You -- you've talked about phases and</p> <p>20 you've talked about your plans to build a 10,000</p> <p>21 square foot building, which is not built yet.</p> <p>22 But before you build it, you're going to put a</p> <p>23 board-on-board fence around the entire to-be-</p> <p>24 developed piece of property, correct?</p> <p>25 CHRIS KELLEY: Yes.</p> | <p>259</p> <p>1 proposed shop of how everything is going to be</p> <p>2 laid out.</p> <p>3 JEFFREY O'TOOLE: Mr. Kelley, I'm</p> <p>4 going to ask you the question again and ask Ms.</p> <p>5 Hannan to ask him to answer the question that</p> <p>6 I'm asking. I know what the site plan says.</p> <p>7 I'm saying, are you committing to keeping all of</p> <p>8 the equipment, all of the trucks, all of the gas</p> <p>9 tanks, all of the rubbish, all of the -- the</p> <p>10 crates, and all of the barrels that you bring</p> <p>11 back to the site to get recycled, all of that</p> <p>12 will be kept inside of the board fence?</p> <p>13 CHRIS KELLEY: Yes.</p> <p>14 JEFFREY O'TOOLE: All right. Is it</p> <p>15 your testimony that nothing will be store, even</p> <p>16 temporarily, outside of the bermed fenced area?</p> <p>17 CHRIS KELLEY: Correct.</p> <p>18 JEFFREY O'TOOLE: Thank you. Do you</p> <p>19 have a chipper?</p> <p>20 CHRIS KELLEY: Yes.</p> <p>21 JEFFREY O'TOOLE: Do you chip your --</p> <p>22 your brush?</p> <p>23 CHRIS KELLEY: Not at the farm.</p> <p>24 Everything is done onsite. I don't sit here and</p> <p>25 chip. I do not do that.</p> |
| <p>258</p> <p>1 JEFFREY O'TOOLE: All right. Is it</p> <p>2 your testimony today that everything that we see</p> <p>3 in Exhibit 58(b), all those different pictures,</p> <p>4 all those things will be inside of this three-</p> <p>5 acre proposed conditional use?</p> <p>6 CHRIS KELLEY: Most of that stuff I'm</p> <p>7 not taking with me, so.</p> <p>8 JEFFREY O'TOOLE: Well, either this</p> <p>9 stuff or things like it. Whatever you use --</p> <p>10 CHRIS KELLEY: Everything --</p> <p>11 everything's on the site plan.</p> <p>12 JEFFREY O'TOOLE: Would you please not</p> <p>13 interrupt me, Mr. Kelley. Please don't</p> <p>14 interrupt me, and I won't interrupt you, I</p> <p>15 promise. Is -- let me ask the question in a</p> <p>16 different way. Is it your testimony today that</p> <p>17 everything that you use and every truck that you</p> <p>18 will be keeping on that property will be inside</p> <p>19 of that three acres -- inside that three-acre</p> <p>20 fence?</p> <p>21 CHRIS KELLEY: The site plan shows the</p> <p>22 layout of the proposed shop.</p> <p>23 JEFFREY O'TOOLE: So, is that a yes or</p> <p>24 no?</p> <p>25 CHRIS KELLEY: The site plan shows the</p> | <p>260</p> <p>1 JEFFREY O'TOOLE: So, a chipper won't</p> <p>2 be at this place?</p> <p>3 CHRIS KELLEY: It will be there.</p> <p>4 JEFFREY O'TOOLE: But you won't run</p> <p>5 it.</p> <p>6 CHRIS KELLEY: No, I don't -- exactly,</p> <p>7 I don't do that.</p> <p>8 HEARING EXAMINER ROBESON HANNAN:</p> <p>9 Wait. I couldn't understand. I couldn't hear</p> <p>10 what he said. You -- you have the chipper</p> <p>11 onsite but you won't chip at the site.</p> <p>12 CHRIS KELLEY: Some people sit there -</p> <p>13 - yeah, some people will sit there and chip</p> <p>14 everything. I don't do that.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: But</p> <p>16 you're talking about -- wait.</p> <p>17 CHRIS KELLEY: A wood chipper.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: No</p> <p>19 chipping on the conditional use area.</p> <p>20 CHRIS KELLEY: Yes, correct.</p> <p>21 HEARING EXAMINER ROBESON HANNAN:</p> <p>22 That's what I wanted to check.</p> <p>23 CHRIS KELLEY: Okay, thank you.</p> <p>24 JEFFREY O'TOOLE: Your indulgence for</p> <p>25 just a moment. I'm almost done, I think. I</p> |

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66 (261 to 264)

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| <p>261</p> <p>1 think I missed this before because I turned my 2 head away from that for a second. Would you 3 tell me the timing of the different phases? The 4 first thing, you've got to go in and build a 5 fence around the whole place and then -- and 6 you're going to have a trailer in there for your 7 office, and then you're going to build a 8 building at some point. When will the building 9 be built? In what phase will that be built? 10 CHRIS KELLEY: I mean, that's really 11 out of my control. I have to get the permits 12 and everything in order to do that. 13 JEFFREY O'TOOLE: You will be starting 14 -- you'll be starting the business -- starting 15 operations before the building is built? 16 CHRIS KELLEY: Nancy, are we allowed 17 to do that? I don't know. I don't know the 18 answer to that. 19 JEFFREY O'TOOLE: So, it's conceivable 20 you will not be even starting operations until 21 that 10,000 square foot building is erected? 22 CHRIS KELLEY: I just said I don't 23 know the timeline until I get all the permits. 24 That's number one. I can't build anything until 25 --</p> | <p>263</p> <p>1 the main building, correct? 2 CHRIS KELLEY: Yes, correct. 3 NANCY REGELIN: And to start 4 operations. 5 CHRIS KELLEY: Yes, correct. 6 JEFFREY O'TOOLE: Thank you. So, my 7 question -- 8 NANCY REGELIN: The only delayed phase 9 is phase 3, which is no deadline, which is what 10 you testified -- the additional storage building 11 later is without a deadline. 12 CHRIS KELLEY: Yes, as needed. Yes. 13 Yes, correct. 14 JEFFREY O'TOOLE: So, Mr. Kelley, just 15 to finish and put a point on this. Until that 16 building is built, your [audio cut out] will be 17 outside, the bathrooms will be Porta-Pottys 18 outside. There will be nothing inside a 19 building because the building won't exist. So, 20 until you can get the permits and until you can 21 build that building, which is going to take 22 time, everything else -- your operation will 23 begin and all the trucks, all the employees, and 24 all of the parking will all be happening while 25 you're getting a permit. Is that correct?</p> |
| <p>262</p> <p>1 DAVE LAMBERT: That is absolutely not 2 what I understood to be his testimony earlier -- 3 HEARING EXAMINER ROBESON HANNAN: 4 Wait, who's speaking? 5 DAVE LAMBERT: This is David Lambert - 6 - to be the prepared remarks by Mr. Kelley in 7 answering the questions posed by his counsel. 8 Phase 1 is going to begin as soon as he is able 9 to obtain the permits before the building is 10 built. 11 HEARING EXAMINER ROBESON HANNAN: Ms. 12 Regelin, do you want to comment? 13 NANCY REGELIN: So, everything is 14 consistent. Here on the site plan, you see the 15 development program. Mr. Sekerak testified a 16 little bit and Mr. Kelley did testify. There's 17 three phases. The first is the fencing, the 18 landscaping, the start of all the permitting. 19 He's going to gravel out the yard. He's going 20 to put in his trailer and start operations. 21 The second phase is the construction 22 of the new building, which will take additional 23 time just because of the permitting and size and 24 getting the septic field in. But, Mr. Kelley, 25 it's your intention to start the permitting for</p> | <p>264</p> <p>1 CHRIS KELLEY: Yes, correct. 2 JEFFREY O'TOOLE: How long do you 3 project the building will take to build once you 4 get the permits? 5 CHRIS KELLEY: I haven't picked out a 6 contractor yet for that. So, I'm still in the 7 process of doing that. 8 JEFFREY O'TOOLE: When do you hope -- 9 if this building -- if this -- this project is 10 approved and your contract is signed and it 11 changes hands on New Year's Day, when do you 12 expect to start operations? 13 CHRIS KELLEY: It depends on the 14 permits for us to move in, and we have to go 15 ahead and construct everything. 16 JEFFREY O'TOOLE: No, forget about the 17 building. You just said you're going to start 18 operations before the building is erected. So, 19 what else do you need to start operations? 20 CHRIS KELLEY: We still have to do the 21 -- we still have to do the fencing and 22 everything though, the earth and berm. Okay, we 23 have to do the parking lot. That's going to 24 take some time in order for us to move in. So, 25 I have not done a bar graph on how long it's</p> |

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67 (265 to 268)

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| <p>265</p> <p>1 going to take to move in because I'm waiting 2 until everything is final. 3 JEFFREY O'TOOLE: But at this point, 4 you haven't even picked out a contractor to 5 build your building. 6 CHRIS KELLEY: No, I haven't. 7 JEFFREY O'TOOLE: Who is going to 8 build your berm? 9 CHRIS KELLEY: I don't know yet. 10 JEFFREY O'TOOLE: Who is going to 11 erect your fence -- your board-on-board fence? 12 CHRIS KELLEY: I don't know yet. 13 JEFFREY O'TOOLE: Who is going to put 14 in the parking lot? 15 HEARING EXAMINER ROBESON HANNAN: Mr. 16 O'Toole. 17 NANCY REGELIN: I object, yeah. These 18 effects are repetitive questions, which all 19 pertain to the exact same thing. 20 HEARING EXAMINER ROBESON HANNAN: I'm 21 not sure what your point is by -- by all those 22 questions. 23 JEFFREY O'TOOLE: The point -- the 24 point is -- 25 HEARING EXAMINER ROBESON HANNAN:</p> | <p>267</p> <p>1 approval -- can he operate until the perimeter - 2 - perimeter screening is in place? 3 NANCY REGELIN: So, he is committing 4 to put in the perimeter fence and the 5 landscaping at the -- you know, within the next 6 planting season. So, the perimeter fencing will 7 be in before there are any operations on the 8 property, and legally, there are additional 9 approvals beyond this conditional use permit 10 that need to be secured for him to be able to do 11 some work to prep the site. So, you know, it's 12 not going to happen the day after he closes. He 13 does have to get additional approvals. 14 HEARING EXAMINER ROBESON HANNAN: So, 15 can we go back to Mr. O'Toole for a minute? 16 JEFFREY O'TOOLE: I'm sitting right 17 here. 18 HEARING EXAMINER ROBESON HANNAN: So, 19 what is your point? I don't -- you -- he's 20 saying that he's going to start operations after 21 the landscaping perimeter screening is in. 22 JEFFREY O'TOOLE: Right. 23 HEARING EXAMINER ROBESON HANNAN: So, 24 what -- so, you're saying so, what's he going to 25 do with all the stuff until the buildings are</p> |
| <p>266</p> <p>1 Well, don't do that until they know they have 2 the property. 3 JEFFREY O'TOOLE: No, I understand 4 that. I understand that. But he's been -- he's 5 been in preparation for two years trying to get 6 to this point now, and so, that's two years. 7 But he -- he's told us that he wants to start 8 operations before that building is built and the 9 operations will have to be going on while all 10 the things that are proposed to be inside the 11 building are outside, and I think you would want 12 to know -- we certainly want to know -- what 13 that means. You know, is this going to be -- 14 HEARING EXAMINER ROBESON HANNAN: I 15 just -- stop talking for a second. I'd like to 16 go back to Exhibit 33, if I could. Okay. Ms. - 17 - Ms. Regelin, do you want to address this? 18 What I -- 19 NANCY REGELIN: So, go ahead. 20 HEARING EXAMINER ROBESON HANNAN: No, 21 go. Okay. I think -- 22 NANCY REGELIN: So -- sorry. 23 HEARING EXAMINER ROBESON HANNAN: What 24 will happen? Can he operate under this phase -- 25 development program, which will be condition of</p> | <p>268</p> <p>1 in? 2 JEFFREY O'TOOLE: Right. We talked 3 about -- one of the things we were concerned 4 about from talking to EPA is that the salt is 5 sitting outside in piles. We heard in the 6 proposal that they were going to put all the 7 snowplows inside the building, right? They were 8 going to put all -- and Mr. Kelley told us today 9 -- that all these other things are going to be 10 in the building out of sight. We're not going 11 to see it. But now we know as soon as the fence 12 is put up and the berm is up -- but the berm is 13 not going to have plantings on it that are going 14 to hide anything -- and we don't know how long 15 it's going to take to get the building built. 16 HEARING EXAMINER ROBESON HANNAN: 17 Well, we haven't been through what the plantings 18 are. 19 JEFFREY O'TOOLE: Okay. 20 HEARING EXAMINER ROBESON HANNAN: So, 21 this -- 22 JEFFREY O'TOOLE: I strike that part. 23 I strike that part of it. But just to respond 24 to you and then I'll be quiet. My concern is -- 25 I think all of our concern is not only the</p> |

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| <p>269</p> <p>1 noise, not only the light, not only the 2 pollution and the trash, but the visual part of 3 this is that we don't know how long he's going 4 to be operating with a naked berm and an eight- 5 foot fence. I can reach up and touch an eight- 6 foot fence.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: 8 Yeah, okay. I-- I do -- I understand now. It 9 took me a while to get -- understand what you 10 were saying. But I think I do. What I would 11 like to do is this. We don't have the benefit 12 -- you've obviously done some research about EPA 13 and the salt and everything -- I would like to 14 get through Ms. Regelin's witnesses and then 15 hear from the community so I can -- sometimes 16 when you're coming in with all these questions, 17 I don't know the context of your questions. I 18 would like to try and get through these 19 witnesses and obviously you'll have a chance to 20 question, but it would help me then to hear 21 substantively what the community has to say 22 rather than try to piece it through cross- 23 examination questions if that makes any sense.</p> <p>24 JEFFREY O'TOOLE: It does, and I thank 25 you for your patients. My wife says most people</p> | <p>271</p> <p>1 Montgomery County passed a new herbicide law 2 recently. So, here in Montgomery County, we 3 haven't used any of her herbicides.</p> <p>4 And then, your other question was 5 about what type of plants we're going to be 6 planting around there.</p> <p>7 JENNIFER LUND: Any pesticides or -- 8 CHRIS KELLEY: We don't -- sorry, 9 sorry, go ahead.</p> <p>10 JENNIFER LUND: -- for, you know, like 11 insects, for example that are going to harm your 12 plantings and fertilizers.</p> <p>13 CHRIS KELLEY: Okay. We have 14 fertilizers we'll just use and, you know, we're 15 licensed by MDA. MDA comes once a year and 16 checks on our holding areas for the fertilizers 17 and herbicides. We have an inspection every 18 year, and if we need to treat anything, we'll go 19 ahead and treat the plants as needed based on 20 the insecticides or what we need. And the 21 fertilizers, if we use anything at the farm for 22 our plants or the sod, it would just be a basic 23 starter fertilizer.</p> <p>24 JENNIFER LUND: Is this type of 25 information contained in the landscaping plan</p> |
| <p>270</p> <p>1 don't have patience with me. You're exhibiting 2 more than I -- than I would expect. So, thank 3 you.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: 5 Okay. So, it is -- at this point, should I go 6 to Ms. Lund? Does anyone object if I go to Ms. 7 Lund?</p> <p>8 JEFFREY O'TOOLE: No, I'm done.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: 10 Okay. Ms. Lund, are you there?</p> <p>11 JENNIFER LUND: Yes, I'm here.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Do 13 you mind putting your hands down -- hand down?</p> <p>14 JENNIFER LUND: Okay. Hand down.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: 16 Questions?</p> <p>17 JENNIFER LUND: I have two quick 18 questions, and if they should be deferred to a 19 different person -- to the landscape person -- 20 then regarding the planting fields and the 21 proposed plantings outside, and I wonder, Mr. 22 Kelley, what types of herbicides and pesticides 23 and fertilizers and that type of thing you'll be 24 using in that area.</p> <p>25 CHRIS KELLEY: Okay. Well, you know,</p> | <p>272</p> <p>1 we're going to see later? I'm not sure --</p> <p>2 CHRIS KELLEY: I mean, what we just 3 discussed, I don't know. I don't know if that's 4 in there.</p> <p>5 JENNIFER LUND: Okay.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Ms. 7 Regelin, do you want to address that?</p> <p>8 NANCY REGELIN: So, I would note that 9 we're talking about the planting fields that are 10 outside of the conditional use area, and those 11 are agricultural uses. So, he'll be doing that 12 as part of an agricultural use as part of the 13 farm.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: 15 Which is permitted by right.</p> <p>16 NANCY REGELIN: Okay. I'm just -- 17 yes. He'll be doing agricultural activities on 18 the remainder of the farm outside of the CU 19 area.</p> <p>20 JENNIFER LUND: All right. My second 21 question was regarding the screening plantings, 22 which are the mix of deciduous trees and so on, 23 and my question is, how many years do you 24 anticipate before those plantings provide any 25 type of screening?</p> |

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| <p>273</p> <p>1 NANCY REGELIN: So, I will note for 2 the records -- yeah, this Nancy Regelin -- that 3 we do have an expert landscape architect who did 4 the site design who is going to testify, and so 5 those will be appropriate questions for that 6 expert. 7 JENNIFER LUND: Okay, that's fine. 8 I'll hold the question until then. Thank you. 9 CHRIS KELLEY: Thank you. 10 HEARING EXAMINER ROBESON HANNAN: 11 Okay. Seeing no other hands raised, is there 12 anyone on the phone that would like to ask 13 questions? Okay, hearing none -- 14 DAVE LAMBERT: Hold on, hold on. Dave 15 Lambert. 16 HEARING EXAMINER ROBESON HANNAN: Yes? 17 DAVE LAMBERT: I just wanted to go 18 back to that conversation with Mr. O'Toole. I 19 think it is very obvious from our perspective 20 what he was trying to get at there, which is the 21 construction -- the beginning of operation of 22 this business prior to construction of -- of the 23 large barn will be very different than the nice 24 drawings that we've seen and it could persist 25 over a very long period of time. And that is, I</p> | <p>275</p> <p>1 proposed at your new location, correct? 2 CHRIS KELLEY: Yes. 3 HEARING EXAMINER ROBESON HANNAN: Oh, 4 you're saying that the bins would be utilized to 5 store material? 6 Okay, this is what I'm going to do. 7 Let's set another date, all right? I think it's 8 been a long day, and part of it was, you know, 9 we had a delay at the beginning. So, let's set 10 a second date. But what I am going to ask 11 everybody to do -- everybody that's on the call 12 talk to each other so everybody to the extent 13 that you can work out whatever questions you may 14 have, it will speed the process a lot if you can 15 talk to the applicant and the opposition. I 16 really strongly suggest that you talk to each 17 other during the hiatus and see -- understand 18 what everybody's concerns are, okay? 19 Now, I'm going to the calendar. When 20 is your next -- I have -- I could do it Friday 21 the 13th, but if you need more time. Let me do 22 one thing. Do I hear suggestions for dates is 23 what I'm saying. 24 NANCY REGELIN: Yeah. I mean, I would 25 suggest that we try to do this as quickly as</p> |
| <p>274</p> <p>1 think, very relevant to determining the -- the 2 characteristics of this -- this use and what it 3 means to the neighborhood. 4 HEARING EXAMINER ROBESON HANNAN: Yes, 5 and I did understand after -- my only point was 6 sometimes through cross-examination -- we can do 7 this, Ms. Regelin. We can go to the citizens so 8 they can tell us upfront what their problems 9 are, and then we can go to the rest of your 10 witnesses and have them address it. 11 NANCY REGELIN: I mean, I'm -- we can 12 do that as well. It is already quarter to five, 13 and I don't know what the hearing examiner 14 intends to do and whether we should already be 15 planning a second hearing like for next week. 16 HEARING EXAMINER ROBESON HANNAN: 17 Well, first let me do this. Do you have 18 redirect of Mr. Kelley? 19 NANCY REGELIN: Yeah. So, the only 20 question that I wanted, which is pretty minor, 21 which is on your existing site, you know, we 22 talked about the bins, Mr. Kelley, and you have 23 two bins, I think, that were shown on that 24 Exhibit 58(a), which are the concrete [audio cut 25 out]. You have additional bins that are</p> | <p>276</p> <p>1 possible after today. So, the only thing is 2 that I would ask on this call are Devin Kennedy, 3 Sergio Rodriguez, and Andy Smith, and to make 4 sure that if you're proposing Friday that 5 they're available on that day. I just want to 6 make sure. Oh, and Mr. Conrath, the architect. 7 HEARING EXAMINER ROBESON HANNAN: This 8 includes the opposition too. Do you want to go 9 off the record and you discuss it amongst 10 yourselves and come up with a mutual day? 11 DAVE LAMBERT: Sure. 12 NANCY REGELIN: Yeah. So, would you 13 like to offer a couple of options on your 14 calendar? 15 HEARING EXAMINER ROBESON HANNAN: 16 Yeah. I just need to -- I just need to get to 17 my work computer, which I'm doing right now. I 18 think Wednesday is Veterans Day. So, I think 19 the county will be closed on that day. 20 DAVE LAMBERT: It is. 21 HEARING EXAMINER ROBESON HANNAN: 22 Okay. I am free tomorrow, not the 12th, the 23 13th, the 17th. I might be able to do the 16th 24 -- no, that's probably not good because -- 25 NANCY REGELIN: So, Ms. Hannan, you</p> |


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| <p>277</p> <p>1 said the 11th, the 13th.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: No,</p> <p>3 not the 11th. The 10th, the 12th, and the 13th.</p> <p>4 CHRIS KELLEY: I can do the 10th.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Who</p> <p>6 was that?</p> <p>7 CHRIS KELLEY: That was Chris Kelley,</p> <p>8 the applicant.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>10 NANCY REGELIN: So, I think if you</p> <p>11 give us some dates, we'll go off the record,</p> <p>12 convene with our team, and come back online in a</p> <p>13 few minutes.</p> <p>14 HEARING EXAMINER ROBESON HANNAN:</p> <p>15 Okay. How about the opposition? Can you do</p> <p>16 that as well?</p> <p>17 BRYAN BOUGHTON: We can do it, Ms.</p> <p>18 Hannan, but what I see preliminarily is that</p> <p>19 nobody is available this week. It would have to</p> <p>20 be the first two days of next week or the days</p> <p>21 of the following week.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Let</p> <p>23 me call my staff. We -- no, I need -- what I'm</p> <p>24 trying to do is avoid having the exhibits taken</p> <p>25 down off the website and then put back up,</p> | <p>279</p> <p>1 understand that, and I have downloaded</p> <p>2 everything. So, I just -- I think that would</p> <p>3 work -- another link.</p> <p>4 HEARING EXAMINER ROBESON HANNAN:</p> <p>5 Okay. If we could do -- because I can tell you</p> <p>6 --</p> <p>7 DAVE LAMBERT: I don't understand</p> <p>8 that, I'm sorry.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: It</p> <p>10 takes a good one to two days to take these down</p> <p>11 and put them back up again.</p> <p>12 DAVE LAMBERT: So, don't put them</p> <p>13 down.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I</p> <p>15 have another hearing on Monday.</p> <p>16 DAVE LAMBERT: That -- that occupies</p> <p>17 the same database?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Huh?</p> <p>19 Well, I'm not -- this is what I'm telling you.</p> <p>20 I don't know if I can put up a separate link. I</p> <p>21 don't know. It's not --</p> <p>22 NANCY REGELIN: Ms. Hannan.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: It's</p> <p>24 not a database. It's a website link, and I --</p> <p>25 I'm not going to tell you for sure. I'm willing</p> |
| <p>278</p> <p>1 because that's a -- believe it or not, that's an</p> <p>2 extremely time-consuming process for my staff,</p> <p>3 and we have a hearing on Monday the 16th. Now,</p> <p>4 this is what I'll do. Let me see if I can reach</p> <p>5 my staff and see if we can have two hearings set</p> <p>6 up on the same day.</p> <p>7 NANCY REGELIN: Okay.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I've</p> <p>9 never done that before, so I don't want to</p> <p>10 promise it. But if you want to wait for a few</p> <p>11 minutes. I have literally available, I have the</p> <p>12 16th and the 17th. The other option -- the</p> <p>13 other option would be I could do it this way</p> <p>14 because we have a hearing that they have to post</p> <p>15 exhibits for on the 16th. If you want it down -</p> <p>16 - you can download. I'll tell her not to take</p> <p>17 those exhibits down. If you can download by</p> <p>18 Thursday all the exhibits that are up there --</p> <p>19 it doesn't take that long -- then I can just</p> <p>20 send -- I can just put a different link on the</p> <p>21 website, if that makes any sense.</p> <p>22 BRYAN BOUGHTON: Yes.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Who</p> <p>24 is saying yes?</p> <p>25 BRYAN BOUGHTON: Mr. Boughton. I</p> | <p>280</p> <p>1 to try to do it, but as a fallback, I can send</p> <p>2 everyone -- I can post another -- another</p> <p>3 meeting link. But it's very difficult for staff</p> <p>4 to get ready to post all -- let me back up.</p> <p>5 DAVE LAMBERT: You know, you should do</p> <p>6 -- you should do whatever is easiest for you and</p> <p>7 your staff, and we'll figure out how to work</p> <p>8 around the mechanical aspects of these</p> <p>9 documents.</p> <p>10 HEARING EXAMINER ROBESON HANNAN:</p> <p>11 Well, let me suggest this. You download -- I --</p> <p>12 I can do it on the 16th. Literally, I can do</p> <p>13 it. I'm going to talk to our -- I would ask you</p> <p>14 -- I will try to get an answer from our -- the</p> <p>15 council's website manager if we can post two</p> <p>16 links to two different hearings. And the only</p> <p>17 reason I say that is I just literally don't</p> <p>18 know. So, if I can do that, I'm going to send</p> <p>19 another meeting -- or you can keep this meeting</p> <p>20 -- I'll send another meeting invite, okay? If</p> <p>21 we could keep this link -- you can keep the same</p> <p>22 -- same meeting invite. Just come at -- hold</p> <p>23 on. I know why we can't leave this link open,</p> <p>24 because people can come in and alter the -- add</p> <p>25 to the hearing without anybody being there. So,</p> |

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| <p>281</p> <p>1 we can't leave this link open. So, if I can 2 have two links on the website, I will do that. 3 If I can't, I will tell you by Thursday. 4 Now, does everybody -- does Nana have 5 -- I don't -- that were on the hearing today 6 that I'm not sure we have -- it doesn't identify 7 who it is, so I'm not sure we have their E-mail 8 addresses to get a new link. But if I can post 9 a new link on the website, I'll do that, all 10 right? If I can't post a new link on the 11 website, just I'll tell you by Thursday, and 12 everybody just download the documents that are 13 up there, and I can just send a meeting invite. 14 But if there's anybody that was participating by 15 phone, we need your E-mails to make sure we 16 don't lose communication. So, you would need to 17 get that to us by Thursday close of business. 18 But either way, and I can't leave this 19 meeting open because people can go in and say 20 anything they want and it goes into the record 21 and it's not monitored. So, I have to adjourn 22 this Microsoft Teams Meeting, but the hearing is 23 still going. So, you will hear either -- if you 24 can make sure and get Nana Johnson of our office 25 your E-mail address as quickly as you can, you</p> | <p>283</p> <p>1 continue to download during that interim period 2 while the other items are up. So, if they can't 3 download, they could go to a link that we 4 provide. 5 HEARING EXAMINER ROBESON HANNAN: Does 6 -- is there any objection to that? All right. 7 Hearing none, that will be our backup. Is there 8 anything else? Okay, hearing none, what I'm 9 going to do is adjourn this meeting and until 10 November 16th at 9:30, we -- please check the 11 website and if you can provide Nana your E-mail, 12 we will get you an invitation to the Microsoft 13 Teams Meeting. If we can get the website, you 14 can always just go on our website and -- and 15 click in without an invitation. Anything else? 16 Okay, with that, we're adjourned. Thank you. 17 [Whereupon the hearing was adjourned.] 18 [Off the record.] 19 20 21 22 23 24 25</p> |
| <p>282</p> <p>1 can download the documents, and I will let you 2 know what form that we can do, whether we can 3 just post two more links -- two links on the 4 website by Thursday. 5 I'm sorry, I just say Jennifer Lund's 6 hand. 7 JENNIFER LUND: Yeah. I just wanted 8 to offer, I have downloaded all of the documents 9 to a USB thumb drive, and I can happily make a 10 copy of that for anyone who is having difficulty 11 knowing how to download them. 12 HEARING EXAMINER ROBESON HANNAN: Any 13 help you could be -- provide would be greatly 14 appreciated. I just don't know -- I never dealt 15 with our website before, so I don't want to 16 promise something and then not be able to do it. 17 Ms. Regelin, I see your hand up. 18 NANCY REGELIN: Yeah. So, Stantec 19 also could download all of it and provide you a 20 link to an FTP site, and you could post that 21 link, and then everyone would have access to 22 everything exactly the way that you see it on 23 your current schedule. So, as a backup, I can 24 have Stantec do that -- provide OZAH the link to 25 that site, and then anyone could go in and</p> | <p>284</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Lee Utterback, the officer before whom 3 the foregoing deposition was taken, do hereby 4 certify that said proceedings were 5 electronically recorded by me; and that I am 6 neither counsel for, related to, nor employed by 7 any of the parties to this case and have no 8 interest, financial or otherwise, in its 9 outcome. 10 IN WITNESS WHEREOF, I have hereunto set my 11 hand and affixed my notarial seal this 9th day 12 of November, 2020. 13 14 Lee Utterback, Notary Public for the State of 15 Maryland 16 17 18 19  20 _____ 21 Lee Utterback 22 23 24 25</p> |

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I, Pamela A. Flutie, do hereby certify
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financial or otherwise, in its outcome.



Pamela A. Flutie

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