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Transcript of Hearing, Volume 2

Date: November 16, 2020

Case: Metro Grounds Management, LLC

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Transcript of Hearing, Volume 2
Conducted on November 16, 2020

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: : Case No.</p> <p>5 APPLICATION OF : CU 20-07</p> <p>6 METRO GROUNDS MANAGEMENT, LLC: :</p> <p>7 -----x</p> <p>8</p> <p>9 Hearing</p> <p>10 Before Hearing Examiner Lynn Robeson Hannan</p> <p>11 Conducted Virtually</p> <p>12 Monday, November 16, 2020</p> <p>13 9:31 a.m. EST</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 Job No.: 336204</p> <p>24 Pages: 1 - 297</p> <p>25 Transcribed by: Debra McCostlin</p>	<p>3</p> <p>1 A P P E A R A N C E S</p> <p>2 Nancy P. Regelin, Esq. (Attorney for Applicant)</p> <p>3 Shulman Rogers</p> <p>4 12505 Park Potomac Avenue, 6th Floor</p> <p>5 Potomac, Maryland 20854</p> <p>6 Phone: 301-230-5224</p> <p>7 E-mail: nregelin@shulmanrogers.com</p> <p>8</p> <p>9 Lynn Robeson Hanna, Hearing Examiner</p> <p>10 Nana Yaa Johnson, Montgomery County OZAH</p> <p>11 Bryan Boughton, Witness, Opposing Party</p> <p>12 Dave Lambert, Witness, Opposing Party</p> <p>13 Jeffrey O'Toole, Witness, Opposing Party</p> <p>14 Janice Quinn, Witness, Opposing Party</p> <p>15 Jack Quinn, Witness, Opposing Party</p> <p>16 Kim Caldeira, Witness, Opposing Party</p> <p>17 Danny Williams, Witness, Opposing Party</p> <p>18 Jennifer Chandewar, Witness, Opposing Party</p> <p>19 Rick Conrath, Witness for Applicant</p> <p>20 Devin Kennedy, Witness for Applicant</p> <p>21 Andy Smith, Witness for Applicant</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																
<p>2</p> <p>1 Hearing, conducted virtually.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 Pursuant to agreement, before Lee Utterback, Notary</p> <p>8 Public in and for the State of Maryland.</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>4</p> <p>1 C O N T E N T S</p> <table><tr><td>2 INDEX</td><td>PAGE</td></tr><tr><td>3 RICK CONRATH TESTIMONY</td><td></td></tr><tr><td>4 Direct Examination</td><td>38</td></tr><tr><td>5 Cross Examination</td><td>48</td></tr><tr><td>6 DEVIN KENNEDY TESTIMONY</td><td></td></tr><tr><td>7 Direct Examination</td><td>83</td></tr><tr><td>8 Cross Examination</td><td>126</td></tr><tr><td>9 Re-Direct Examination</td><td>204</td></tr><tr><td>10 ANDY SMITH TESTIMONY</td><td></td></tr><tr><td>11 Direct Examination</td><td>212</td></tr><tr><td>12 Cross Examination</td><td>230</td></tr><tr><td>13 Re-Direct Examination</td><td>273</td></tr><tr><td>14 Re-Cross Examination</td><td>277</td></tr><tr><td>15 Further Direct Examination</td><td>285</td></tr><tr><td>16 Adjourned</td><td>294</td></tr><tr><td>17</td><td></td></tr><tr><td>18</td><td></td></tr><tr><td>19</td><td></td></tr><tr><td>20</td><td></td></tr><tr><td>21</td><td></td></tr><tr><td>22</td><td></td></tr><tr><td>23</td><td></td></tr><tr><td>24</td><td></td></tr><tr><td>25</td><td></td></tr></table>	2 INDEX	PAGE	3 RICK CONRATH TESTIMONY		4 Direct Examination	38	5 Cross Examination	48	6 DEVIN KENNEDY TESTIMONY		7 Direct Examination	83	8 Cross Examination	126	9 Re-Direct Examination	204	10 ANDY SMITH TESTIMONY		11 Direct Examination	212	12 Cross Examination	230	13 Re-Direct Examination	273	14 Re-Cross Examination	277	15 Further Direct Examination	285	16 Adjourned	294	17		18		19		20		21		22		23		24		25	
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<p>5</p> <p>1 E X H I B I T S</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 what -- then I'm going to go over -- we have some rules,</p> <p>2 particular rules for teams hearings and one of them is if</p> <p>3 you wish to be recognized there -- if you hover over your</p> <p>4 screen in the bottom there is a raise your hand button.</p> <p>5 Okay. If you wish to be recognized, use the raise your</p> <p>6 hand button and that way I can keep track of who wants to</p> <p>7 say something. If you're on the phone you can ask to be</p> <p>8 recognized. If you see the raise your hand button go up</p> <p>9 then you need -- whoever is speaking, a witness, if a</p> <p>10 witness is speaking the witness needs to stop speaking</p> <p>11 immediately.</p> <p>12 The other thing is there is -- because this</p> <p>13 is -- to eliminate or to make the transcript</p> <p>14 clearer -- because this is subject to appeal on the basis</p> <p>15 of the record here, to make the transcript clearer you</p> <p>16 cannot interrupt, you cannot cross-talk. Cross-talk is</p> <p>17 when two -- multiple people are speaking at once. That</p> <p>18 makes it very difficult for the court reporter to get a</p> <p>19 clear transcript.</p> <p>20 All right. With that, the other thing I'm going</p> <p>21 to ask is if you speak or wish to be added to the list, we</p> <p>22 need your email address. So if you haven't testified</p> <p>23 before, please -- in addition to your name and address,</p> <p>24 please provide your email address so we can get notices to</p> <p>25 you quickly.</p>
<p>6</p> <p>1 P R O C E E D I N G S</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. This is</p> <p>3 the continuation of the public hearing in OZAH case number</p> <p>4 20-07 Metro Grounds Management, a conditional use</p> <p>5 application for a landscape contractor business at 3731</p> <p>6 Damascus Road, Brookeville, Maryland.</p> <p>7 Will the parties please -- well, Ms. Regelin,</p> <p>8 would you please identify yourself for the record?</p> <p>9 NANCY REGELIN: So good morning. This is Nancy</p> <p>10 Regelin, attorney with Shulman Rogers, here on behalf of</p> <p>11 the applicant, Metro Grounds. And I do have a number of my</p> <p>12 witnesses here with me today. So you'll see a number of</p> <p>13 them. John Sekerak, Devin Kennedy, Sergio Rodriguez --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>15 NANCY REGELIN: -- Andy Smith.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>17 So we don't have to name --</p> <p>18 NANCY REGELIN: Okay.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: -- them but</p> <p>20 thank you.</p> <p>21 Now just a few words. Is there anyone</p> <p>22 participating today that was not present at the last</p> <p>23 hearing?</p> <p>24 JACK QUINN: I am, Ms. Hannan. Jack Quinn.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. This is</p>	<p>8</p> <p>1 Okay. Now is there anyone representing -- yes,</p> <p>2 Ms. Regelin?</p> <p>3 NANCY REGELIN: I was just going to ask, there</p> <p>4 are a number of phone numbers and I know one of them is Mr.</p> <p>5 Utterback but I'm wondering if we could have the other</p> <p>6 phone numbers at least identify who they are.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. That's</p> <p>8 helpful because if you have a phone number we -- even -- we</p> <p>9 don't have any email contact information. So I see one</p> <p>10 phone number. If there's anyone -- I see three phone</p> <p>11 numbers. There is a 461-8790. Can that person identify</p> <p>12 themselves? Oh, okay. I see a 928-9750.</p> <p>13 JANICE QUINN That is me, Ms. Hannan, Janice</p> <p>14 Quinn.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. And I</p> <p>16 think we do have your email address. I see --</p> <p>17 JANICE QUINN Yes.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. I see a</p> <p>19 703-851 number.</p> <p>20 RICK CONRATH: That's me. This is Rick Conrath.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Is that one of</p> <p>22 your experts, Ms. Regelin?</p> <p>23 MS. REGELIN: Yes, that's my architect. Thank</p> <p>24 you.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Those</p>

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<p style="text-align: right;">9</p> <p>1 are all the numbers that I see, phone numbers that I see. 2 Okay. Now is there anyone representing the opposition? 3 Well, we have a couple -- Mr. Quinn, let me ask you. Are 4 you representing the opposition? 5 JACK QUINN: No, Your Honor. 6 HEARING EXAMINER ROBESON HANNAN: Okay. So what 7 we will do is you will have a chance -- this is an informal 8 hearing. It's quasi-judicial, it's trial-type, and it is 9 subject to due process safeguards. Testimony is under 10 oath. It's subject to cross-examination. So you will have 11 a chance to question the witnesses and you will have a 12 chance -- we have not finished the applicant's case. So 13 you will have a chance to testify. So when you ask 14 questions, please limit them to questions, and your chance 15 will come to testify in the case. 16 With that, preliminary matters. We have another 17 motion to postpone. Mr. Quinn, it's your motion. 18 JACK QUINN: Yes, Ms. Hannan. I laid out in -- 19 HEARING EXAMINER ROBESON HANNAN: Can 20 you -- wait. I'm going to stop you one second. Can you 21 turn your video on please? There we go. Thank you. 22 JACK QUINN: All right. 23 HEARING EXAMINER ROBESON HANNAN: New world. 24 JACK QUINN: It's to easy being a dinosaur in a 25 modern age. Ms. Hannan, I had originally filed a motion to</p>	<p style="text-align: right;">11</p> <p>1 respond. 2 HEARING EXAMINER ROBESON HANNAN: I did. I've 3 read your cases and I guess I am unaware of any case, and 4 you can address this, I'm unaware of any case that gives a 5 person in an area a property right in somebody else's 6 zoning. If my experience is -- you know, as you know, as 7 your cases say, there has to be a property right and I 8 don't -- do you have any cases saying that neighbors have a 9 property right in somebody else's rezoning? 10 JACK QUINN: The staffing report as well as the 11 applicant identified individuals as being affected 12 individuals within the neighborhood. I have a property 13 right and when action is taken that would affect that 14 property right I'm entitled to due process of law. So if 15 you're asking for a precise case about that I'd be happy to 16 look at it further, but the cases we've cited say that when 17 your property rights are in fact affected you're entitled 18 to notice which is of a type to provide actual notice. So 19 I'm within the -- 20 HEARING EXAMINER ROBESON HANNAN: Well, just -- 21 JACK QUINN: I'm within the affected 22 neighborhood. My property value will go down as a result 23 of this exercise we contend. I think our safety is 24 affected by what is a catastrophic entrance onto a 40 mile 25 an hour zone by heavy equipment. I think it goes on and</p>
<p style="text-align: right;">10</p> <p>1 postpone. I renewed that and supplemented it with a filing 2 on Friday. Our position is simple. We believe we are 3 individuals who are entitled to due process and we did not 4 receive direct notification. The only notification that 5 potentially could be thought of as having been received is 6 a sign, a relatively small sign, the dimensions are in the 7 record, which is on Damascus Road. 8 Damascus Road, that location, despite what staff 9 recorded it as being, is 40 miles an hour. The sign is 10 placed in such a way that one approaching that sign from 11 the east heading westbound can only see the side of it. We 12 absolutely believe that that sign does not constitute 13 notice actually expected to advise people who have a direct 14 interest in this matter. As a matter of fact, when you're 15 driving at 40 miles an hour you're supposed to keep your 16 eyes on the road. 17 So I've laid out our grounds. We believe -- I 18 have no problem with receiving today but our essential 19 position is we're entitled to a reasonable amount of time 20 to produce experts and to supplement this record for your 21 consideration. The failure to provide that time we believe 22 adds up to a violation of our due process rights associated 23 with the protection of our property under the 14th 24 Amendment. So otherwise, I believe I've laid out our 25 grounds. If you have any questions I'd be happy to try to</p>	<p style="text-align: right;">12</p> <p>1 on, Ms. Hannan, and -- 2 HEARING EXAMINER ROBESON HANNAN: I understand. 3 I read your case however, Griffin v. Biermann (ph), that 4 you cited and it upheld the statutory scheme where actual 5 notice wasn't provided and that was a foreclosure case 6 where clearly, clearly the plaintiff had a property right. 7 So I'm not sure -- let me get this. Let me ask you this. 8 The cases distinguish between spatial challenges to the 9 statute and as applied. Which is yours? 10 JACK QUINN: I think both and I understand that 11 the statutory scheme is what it is. The question about 12 whether or not it comports with due process in this case as 13 applied or generally is a matter that eventually will be 14 decided in this case. 15 HEARING EXAMINER ROBESON HANNAN: Okay. I get 16 it. You're saying you're going to appeal that sign. 17 That's up to you. 18 JACK QUINN: No, what I am saying is that you 19 should allow for all types of reasons the people in this 20 affected neighborhood to have the opportunity to 21 effectively voice their concerns and protect their property 22 interests. That's what I'm saying. 23 HEARING EXAMINER ROBESON HANNAN: Okay. I 24 understand. Thank you. Well, I have one more question. 25 You were not here for the last hearing.</p>

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<p style="text-align: right;">13</p> <p>1 JACK QUINN: That's correct.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: So I guess what</p> <p>3 Ms. Regelin said, and I agree with her, is that the</p> <p>4 surrounding area is not defined in land use law. It does</p> <p>5 not define a property right. It is a broad brush measure</p> <p>6 for determining -- Ms. Regelin, can you explain?</p> <p>7 MS. REGELIN: So we define the neighborhood which</p> <p>8 is the zoning construct in the conditional use permit arena</p> <p>9 in order to evaluate compatibility within an affected</p> <p>10 neighborhood.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Exactly. So</p> <p>12 it's not going through every single property to see whether</p> <p>13 you're affected or not. It's just a broad brush method of</p> <p>14 determining what area to assess for compatibility purposes.</p> <p>15 So have you addressed that issue?</p> <p>16 JACK QUINN: I believe we have addressed the</p> <p>17 issue. What is a sensible interpretation of compatibility?</p> <p>18 How could it be said that this application or this</p> <p>19 conditional use is compatible with the surrounding</p> <p>20 neighborhood when the surrounding neighborhood would incur</p> <p>21 all of the violations that in fact we contend we can</p> <p>22 present if given time? How can it be compatible if that</p> <p>23 driveway exit onto a 40 mile an hour roadway with heavy</p> <p>24 equipment, how can that be compatible?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Well, Mr.</p>	<p style="text-align: right;">15</p> <p>1 from being present.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I have no</p> <p>3 doubt. It's not that at all. It's that --</p> <p>4 JACK QUINN: Okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: -- we've had</p> <p>6 several motions supplemented by your research and that's</p> <p>7 what I mean. I have no doubt that you had several court</p> <p>8 cases. Are they live now?</p> <p>9 JACK QUINN: I was actually supposed to have a</p> <p>10 jury trial today and they went back to --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Oh, I did read</p> <p>12 that.</p> <p>13 JACK QUINN: -- day three of the court system.</p> <p>14 I've been given an opportunity to be heard. I have no</p> <p>15 intention of hesitating to continue to make this record and</p> <p>16 you'll rule as you think best.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: That's fine.</p> <p>18 Thank you. I'm going to -- I see two hands up. Keep in</p> <p>19 mind for those that are going to say something, we are</p> <p>20 governed by unauthorized practice of law. So if you're not</p> <p>21 an attorney and you're not licensed in Maryland you cannot</p> <p>22 make legal arguments. If you want to say something non-</p> <p>23 legal you can, but I'm just trying to protect you from any</p> <p>24 question. So I'm going to recognize Ms. -- with that,</p> <p>25 think through what you're going to say. I have Mr. Lambert</p>
<p style="text-align: right;">14</p> <p>1 Quinn, just a second. There's a landscape contractor right</p> <p>2 next door.</p> <p>3 JACK QUINN: No, there is a landscape contractor</p> <p>4 back behind the woods.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: But it's the</p> <p>6 same driveway.</p> <p>7 JACK QUINN: And at that exit -- no, it's not the</p> <p>8 same driveway. It's not at all the same driveway. If</p> <p>9 that's what's been presented to you --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: No, it hasn't.</p> <p>11 I'm asking you why is this different.</p> <p>12 JACK QUINN: I'm not sure what you're saying, Ms.</p> <p>13 Hannan.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. Let me</p> <p>15 do this. This is the third or fourth -- third iteration of</p> <p>16 this. I understand your argument. I've read your cases.</p> <p>17 I'm going to let Ms. Regelin respond and then I'm not going</p> <p>18 to entertain a postponement again for these same due</p> <p>19 process reasons because we have spent a lot of time on it</p> <p>20 and if we want to get through the case we have to move on,</p> <p>21 but also it's the same arguments essentially that we've</p> <p>22 been making. I'm going to let Ms. Regelin respond.</p> <p>23 JACK QUINN: May I just finish by saying one</p> <p>24 thing? Ms. Hannan, I would have been present at the last</p> <p>25 hearing but I had two court cases that in fact prevented me</p>	<p style="text-align: right;">16</p> <p>1 and Mr. O'Toole with their hands up. But the Court has</p> <p>2 gotten more strict on unauthorized practice. So that being</p> <p>3 said, I'm going not recognize Ms. Regelin and then if you</p> <p>4 have -- if Mr. Lambert and Mr. O'Toole have something non-</p> <p>5 legal to say, that's fine. Okay. Ms. Regelin?</p> <p>6 MS. REGELIN: Good morning. So this is Mr.</p> <p>7 Quinn's third request for postponement on almost the same</p> <p>8 grounds every time and so we're relying in part to the</p> <p>9 written opposition that we've filed in the past. We would</p> <p>10 say briefly that we have complied with all of the statutory</p> <p>11 notice which includes the proper mailing notice to</p> <p>12 adjoining and confronting as well as posting four signs on</p> <p>13 the property. There are two on Damascus Road but they are</p> <p>14 posted as we're required to do at a certain distance, at a</p> <p>15 certain size, et cetera. So we've complied with the</p> <p>16 statutory scheme for providing notice not only to the</p> <p>17 immediately abutting neighbors but to everyone in the</p> <p>18 surrounding neighborhood, and those signs have been posted</p> <p>19 since May 30th of 2020, so five-and-a-half months ago.</p> <p>20 OZAH sent out their notice of the hearing on</p> <p>21 September 17th. The planning board sent out notice of</p> <p>22 their hearing on October 12th. The planning board had a</p> <p>23 hearing on October 22nd. We did have our hearing last week</p> <p>24 on November 9th. I do believe that notice was adequate and</p> <p>25 so we would ask that you deny this postponement.</p>

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5 (17 to 20)

<p>17</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well, let me 2 ask you something. I have to weigh the prejudice to you. 3 So what is the prejudice? I think that Mr. Kelley 4 testified at the last hearing about his contract option and 5 he was under oath, but what is the prejudice to you? 6 MS. REGELIN: So the prejudice is that Mr. Kelley 7 must close on the property by December 30th and so any 8 extension of 90 days -- 9 HEARING EXAMINER ROBESON HANNAN: Do you have a 10 copy of the contract and has he tried to extend that? 11 MS. REGELIN: He has gotten one extension which 12 takes him to December 30th which he has been told that that 13 is it, that that is all that he is going to be able to get. 14 So he will need to close by December 30th. And we can 15 provide his extension which shows that it's December 30th. 16 HEARING EXAMINER ROBESON HANNAN: I think that 17 would be good. 18 MS. REGELIN: Okay. 19 HEARING EXAMINER ROBESON HANNAN: You know, I 20 can't ask you to disclose confidential commercial 21 information, but if you can provide the extension with the 22 extension date that would be good for the record. 23 MS. REGELIN: So I can email my office and have 24 them email me a copy of the extension that he received 25 which takes him to December 30th.</p>	<p>19</p> <p>1 which are commercial businesses, and one citizen. And in 2 terms of actual notice, I wish I could ask you to close 3 your eyes and drive westbound on Damascus Road. All you're 4 going to see if you're paying attention to the roadway is 5 the single tiny side of this sign and the idea that that 6 would be reasonably calculated to provide actual notice to 7 myself or any of the other neighbors whose property is 8 located on Damascus Road is in my view ludicrous. 9 And I personally don't think his real estate 10 contract is proprietary commercial information, not based 11 upon any standard I've ever heard of and I've done 12 commercial litigation for 45 years. So that contract 13 should be in the record. But the viability of that 14 contract is not the responsibility of myself or other 15 individuals entitled to this due process protection and it 16 could have really been cured if in fact the applicant had 17 seen to direct notice to us. They could have done that 18 back in June. We could have had the opportunity -- 19 HEARING EXAMINER ROBESON HANNAN: Mr. Quinn, 20 where do you live? 21 JACK QUINN: I live at 3900 Damascus Road. 22 HEARING EXAMINER ROBESON HANNAN: Okay. I'm 23 going to pull up exhibit I think it's 18 which is a very 24 large exhibit and it takes a minute to load. Okay. I'm 25 going to pull up Exhibit 18. Do you see it there?</p>
<p>18</p> <p>1 HEARING EXAMINER ROBESON HANNAN: And I think he 2 testified that he's tried -- under oath that he's tried to 3 get another extension. 4 MS. REGELIN: Yes. He's been in correspondence 5 with the seller's broker and he's been repetitively told 6 that there would be no further extension. He's reached out 7 to them several times because, if you recall, this was 8 originally set for September and then when it got moved to 9 November he -- you know, he asked several times but he's 10 not been given any additional extension. 11 HEARING EXAMINER ROBESON HANNAN: Mr. Quinn? 12 JACK QUINN: Yes? 13 HEARING EXAMINER ROBESON HANNAN: What do you say 14 to the fact -- there is a photograph in the record, and I 15 can't remember -- with an email of the sign dated June 5th 16 asking someone, I don't have it at the top of my head, 17 should we oppose. So at some point somebody had actual 18 notice. 19 JACK QUINN: Yes. There were individuals with 20 actual notice but they didn't include myself or anyone 21 other than adjoining and confronting landowners and I think 22 the record is, and I'm not sure Ms. Hannan, but -- 23 HEARING EXAMINER ROBESON HANNAN: That's fine. 24 JACK QUINN: -- I believe the record is that 25 three adjacent landowners received actual notice, two of</p>	<p>20</p> <p>1 JACK QUINN: Not -- yes, I do. 2 HEARING EXAMINER ROBESON HANNAN: Actually, 3 you're not under oath so I'm going to quickly put you under 4 oath if that's acceptable to you. 5 JACK QUINN: Okay. Sure. 6 HEARING EXAMINER ROBESON HANNAN: Please raise 7 your right hand. Do you solemnly affirm under penalties of 8 perjury that the statements you're about to make are the 9 truth, the whole truth, and nothing but the truth? 10 JACK QUINN: Yes. 11 HEARING EXAMINER ROBESON HANNAN: Thank you. And 12 just kindly state your address. We have your email, so 13 state your address for the record please. 14 JACK QUINN: 3900 -- 3900 Damascus Road. 15 HEARING EXAMINER ROBESON HANNAN: Okay. So 16 viewing this exhibit is there a way that you can identify 17 your property? 18 JACK QUINN: Yes. 19 HEARING EXAMINER ROBESON HANNAN: Actually, let 20 me do this. Watch your eyes. This gets pretty crazy. 21 JACK QUINN: Okay. 22 HEARING EXAMINER ROBESON HANNAN: It's going to 23 take me a couple of clicks but I'm getting there. Okay. 24 There we go. So for the record I was rotating the exhibit. 25 Okay. So on this map can you identify where your property</p>

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<p>21</p> <p>1 is?</p> <p>2 JACK QUINN: Yes. Take a look at the site and</p> <p>3 the upper left-hand corner of that site. The property</p> <p>4 directly across the street is owned by -- I forget the</p> <p>5 lady's name. I'm the one directly north of that. So if</p> <p>6 you were to move -- exactly. And --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. So --</p> <p>8 JACK QUINN: -- I believe -- I believe, Ms.</p> <p>9 Hannan, that that is part of -- that reflects part of my</p> <p>10 property. I believe it also includes the property of my</p> <p>11 neighbor, Bryan Boughton who has been a part of these</p> <p>12 proceedings.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. So for</p> <p>14 the record it's the property --</p> <p>15 BRYAN BOUGHTON: I'm sorry, Director Hannan.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Just a second.</p> <p>17 Just --</p> <p>18 BRYAN BOUGHTON: Well, hold on. I think there's</p> <p>19 a mistake. I know this map is confusing. I think Jack is</p> <p>20 pointing to the wrong property.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>22 BRYAN BOUGHTON: So can I just explain real</p> <p>23 quick?</p> <p>24 MS. REGELIN: That's what I was going to say as</p> <p>25 well.</p>	<p>23</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yes, it does.</p> <p>2 BRYAN BOUGHTON: If you look at the lower left</p> <p>3 corner of the site right there and Damascus Road runs along</p> <p>4 that bottom line of the site.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>6 BRYAN BOUGHTON: If you continue to the west or</p> <p>7 the left along Damascus on the south side of the road the</p> <p>8 first lot is a neighbor who was notified. Mr. Quinn is the</p> <p>9 next lot to the west.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 BRYAN BOUGHTON: And I am the third lot to the</p> <p>12 west.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>14 you.</p> <p>15 JACK QUINN: And Ms. Hannan, Mr. Boughton is</p> <p>16 exactly correct.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>18 you for that, Mr. Boughton. All right. So final words.</p> <p>19 Wait. I have a hand -- I have two hands. I'm going to</p> <p>20 recognize Mr. O'Toole and then -- and Mr. Lambert and then</p> <p>21 we're going to finish up. Ms. Regelin gets the last say</p> <p>22 and then we're going to move to whatever we move to. So</p> <p>23 Mr. O'Toole, can you put your hand down now please?</p> <p>24 JEFFREY O'TOOLE: Sure.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Mr. Kelley, can</p>
<p>22</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. So who</p> <p>2 is speaking?</p> <p>3 BRYAN BOUGHTON: This is Bryan Boughton, Mr.</p> <p>4 Quinn's neighbor.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. Mr.</p> <p>6 Boughton, if you're going to give facts can you turn your</p> <p>7 video on please? I'm going to swear you in. Please raise</p> <p>8 your right hand. Do you solemnly affirm under penalties of</p> <p>9 perjury that the statements you're about to make are the</p> <p>10 truth, the whole truth, and nothing but the truth?</p> <p>11 BRYAN BOUGHTON: I do.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. Please</p> <p>13 state your address -- and we have your email. Please state</p> <p>14 your address for the record.</p> <p>15 BRYAN BOUGHTON: 4000 Damascus Road.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Brookeville?</p> <p>17 BRYAN BOUGHTON: Gaithersburg, Maryland.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Gaithersburg,</p> <p>19 Maryland. And what's the Zip?</p> <p>20 BRYAN BOUGHTON: 20882.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Now</p> <p>22 would you like to clarify what Mr. Quinn was saying?</p> <p>23 BRYAN BOUGHTON: Yeah, I think because this map</p> <p>24 is a little -- has been rotated and it gets a little</p> <p>25 confusing.</p>	<p>24</p> <p>1 you turn your video off please?</p> <p>2 CHRIS KELLEY: Yes.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>4 Hey. Wait. Wait. What is -- okay. Okay. I don't know</p> <p>5 what that was but -- okay, Mr. O'Toole, I'm going to</p> <p>6 recognize you.</p> <p>7 JEFFREY O'TOOLE: Ms. Hannan, good morning. You</p> <p>8 can take this comment as either legal or non-legal. It's</p> <p>9 your choice. I am a member of the bar licensed to practice</p> <p>10 law in Maryland. You were talking before and asking --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: I, in fact, did</p> <p>12 that.</p> <p>13 JEFFREY O'TOOLE: Well, that's what --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: That's not a</p> <p>15 bad thing.</p> <p>16 JEFFREY O'TOOLE: That's what many judges say,</p> <p>17 Your Honor. Mr. Quinn was addressing the question of</p> <p>18 property rights before and you were wondering if there were</p> <p>19 property rights and I'm looking at the regulations that</p> <p>20 require that the project be compatible with the</p> <p>21 neighborhood and you just saw what the neighborhood is.</p> <p>22 Why else would there be a standard that the project be</p> <p>23 compatible with the neighborhood if the neighborhood didn't</p> <p>24 have a standing to discuss the efficacy and the elements</p> <p>25 that are going into this project? It makes no sense at all</p>

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<p>25</p> <p>1 to say that the neighborhood that's entitled -- the close 2 neighborhood or the ones that is extended in the 3 neighborhood has an ability to question the compatibility 4 without giving a reason for that compatibility. 5 The compatibility is baked into the process. The 6 compatibility is we have a -- we're all here today. All of 7 the people that you see along the bottom of your screen and 8 all the people on the telephone are here because we have a 9 stake in the outcome and we have a stake to argue to you 10 that what is going on here is not compatible. So that is a 11 property right. It's not compatible with what we just like 12 or don't like. The compatibility -- and it gives us a 13 standing to say so is because it makes a difference to us 14 in the value of our property. 15 So I think that's my only comment and, you know, 16 I stand by what Mr. Quinn has written several times. I've 17 joined in it, the very first one, to ask for a postponement 18 which you denied. We simply have not had the ability to 19 address the issues that the applicant has had for years, 20 1.8 years as far as I can see that they've been at this, in 21 communications with the county. We've had weeks to get 22 involved and we have contacted experts in good faith and 23 been told they simply can't help us in the time frame that 24 you've given us. So the last comment I'm going to make -- 25 HEARING EXAMINER ROBESON HANNAN: How many</p>	<p>27</p> <p>1 right. Any contract is simply an agreement to agree. So 2 there we are. I'll turn it over -- I'll turn off my camera 3 and it's all yours. 4 HEARING EXAMINER ROBESON HANNAN: Thank you. 5 Mr. Lambert? Mr. Lambert? 6 DAVE LAMBERT: Give me one second to unmute and 7 get the technology working here. 8 HEARING EXAMINER ROBESON HANNAN: You're unmuted. 9 DAVE LAMBERT: Good morning. 10 HEARING EXAMINER ROBESON HANNAN: And I can see 11 you. Good morning. 12 DAVE LAMBERT: I'm also a licensed attorney. 13 HEARING EXAMINER ROBESON HANNAN: Wow, lots of 14 attorneys. Go ahead. I'm teasing. Go ahead. 15 DAVE LAMBERT: I have two topics I'd like to 16 discuss. One is the definition of the neighborhood. We 17 had discussion with Mr. Sekerak about how he was relying on 18 his judgment to create the neighborhood and that affects 19 the number of people who get this notice and we discussed - 20 - 21 HEARING EXAMINER ROBESON HANNAN: Well, let me 22 stop you right there. It does not affect who gets the 23 notice. The notice is in the zoning ordinance. The 24 neighborhood is typically not defined until several months 25 into the process. The notice is set by the zoning</p>
<p>26</p> <p>1 experts have you contacted? 2 JEFFREY O'TOOLE: The last -- I think I won't 3 address that, but the last comment that I'm going to make 4 is that if the applicant's requirement with his contract is 5 that he can close on December 30th, he has to go to 6 closing, he's not going to have a final decision. Whatever 7 your order is it's not going to be final because there will 8 be an appeal in appellate court. So if his contract is 9 going to be dependent on his having in hand a final order, 10 he's not going to. He's not going to. And that's all I 11 have to say. 12 HEARING EXAMINER ROBESON HANNAN: Well, believe 13 it or not, there is case law saying that he can proceed 14 despite the fact that an order is not final. 15 JEFFREY O'TOOLE: Well, that's his choice. 16 That's his choice. If he wants -- 17 HEARING EXAMINER ROBESON HANNAN: That's his 18 risk. Exactly. 19 JEFFREY O'TOOLE: Right. He can go to closing if 20 he wants to, but he can't on the one hand hold up and 21 say -- in the beginning of the hearing last Monday Ms. 22 Regelin said that the owner, Mr. Abdu, Abdul or whatever 23 his name is, Abdo, prefers to go to closing. And then we 24 heard later on in the day that there was absolutely no room 25 to move on that and I simply don't think that's probably</p>	<p>28</p> <p>1 ordinance. So the neighborhood does not -- the surrounding 2 area does not determine who gets notice. 3 DAVE LAMBERT: Okay. Well, we didn't get notice. 4 We're obviously extremely interested in this development. 5 And the second topic was the purchase agreement for the 6 property. It's my contention that the extension agreement 7 is not sufficient. When I questioned Mr. Kelley he said it 8 was a condition to closing that he obtain the permitting 9 that would be required here and if that's the case we don't 10 know whether that condition is -- what the affect of that 11 condition on the contract is. Simply giving us the 12 extension agreement will not give us the particulars of the 13 contract in enough detail to let us know what his options 14 actually are, what the buyer's and seller's rights are. 15 And one further point on that. We have been [inaudible - 16 audio cut out] on this case -- 17 HEARING EXAMINER ROBESON HANNAN: I'm sorry. You 18 -- 19 DAVE LAMBERT: -- and we asked about -- 20 HEARING EXAMINER ROBESON HANNAN: Let me 21 just -- I couldn't understand what you just said. There 22 was a blip in the transmission. Can you say it again? Do 23 you mind? 24 DAVE LAMBERT: No, not at all. We've been doing 25 some factfinding around the operation of Metro and we asked</p>

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<p style="text-align: right;">29</p> <p>1 about this initially. I asked Mr. Kelley --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Please let me</p> <p>3 stop you again. I apologize but I'm going to have to put</p> <p>4 you -- if you're going to testify as to facts I'm going to</p> <p>5 have to swear you in. So please raise your right hand. Do</p> <p>6 you solemnly affirm under penalties of perjury that the</p> <p>7 statements you're about to make are the truth, the whole</p> <p>8 truth, and nothing but the truth?</p> <p>9 DAVE LAMBERT: I do.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. Go</p> <p>11 ahead.</p> <p>12 DAVE LAMBERT: We've been doing some factfinding</p> <p>13 around the operation of Metro Grounds and I asked Mr.</p> <p>14 Kelley about who the purchaser of the property was and</p> <p>15 initially he said it was me, and I asked if there was</p> <p>16 personnel and he said yes, and then he corrected himself</p> <p>17 and said it was an LLC but he didn't give us a name. And</p> <p>18 our factfinding has uncovered a couple of different</p> <p>19 companies that we think are affiliated or related or may</p> <p>20 even be the same as Metro Grounds: Duffy Development, LLC,</p> <p>21 and Consolidated Commercial Services. And if those</p> <p>22 entities are involved in the purchase of this property or</p> <p>23 this application in any way we have concerns that this is</p> <p>24 not a landscaping activity at all. Those companies do not</p> <p>25 hold themselves out in any way as landscaping and it does</p>	<p style="text-align: right;">31</p> <p>1 complied -- the applicant has complied with all of that.</p> <p>2 So I think when you balance that the applicant</p> <p>3 has complied with all the notice requirements and he's</p> <p>4 going to be ultimately prejudiced if there's a postponement</p> <p>5 and you combine that with already there has been a number</p> <p>6 of weeks that have passed and we're getting some indication</p> <p>7 that the -- certain individuals haven't been able to even</p> <p>8 secure any kind of opposition expert. So I think on the</p> <p>9 balance of all that I think it has to be denied again.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>11 This is what I would like to do. I am unaware and nobody</p> <p>12 has cited to me that there is a property interest that</p> <p>13 requires due process. Under the standard in the case cited</p> <p>14 by Mr. Quinn the statutory scheme has to give reasonable</p> <p>15 notice or reasonably calculated notice. There are</p> <p>16 cases -- in this case individuals did get notice June 5th</p> <p>17 through the sign.</p> <p>18 So given the legal things, the surrounding area</p> <p>19 and land use is, I agree, more of a broad brush approach to</p> <p>20 be able to assess the compatibility of the use but it</p> <p>21 doesn't convey property rights and it's not -- it's not</p> <p>22 even set until, you know, long into the process. So for</p> <p>23 that reason I'm going to deny the motion to postpone. I</p> <p>24 would like to see the contact.</p> <p>25 We are governed by the -- I would like to see the</p>
<p style="text-align: right;">30</p> <p>1 raise some questions about Metro's current operation as a</p> <p>2 landscaper.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>4 you.</p> <p>5 Ms. Regelin, you get to finish up.</p> <p>6 Mr. Lambert, can you put your hand down please?</p> <p>7 Thank you.</p> <p>8 MS. REGELIN: Okay. Nancy Regelin here again. I</p> <p>9 think the issue here on the request for postponement should</p> <p>10 be pretty straightforward. 90 days is the ultimate</p> <p>11 prejudice to this particular applicant and it is Metro</p> <p>12 Grounds Management who is applying to be the holder of the</p> <p>13 conditional use permit. I don't think it matters who is</p> <p>14 the actual -- going to be the actual owner, what entity of</p> <p>15 Mr. Kelley's is going to be the owner. The holder of this</p> <p>16 conditional use permit is going to be the applicant and</p> <p>17 they are going to be bound by all of the requirements if</p> <p>18 this is ultimately approved.</p> <p>19 I think there is -- you can distinguish between</p> <p>20 someone who has standing, which even a taxpayer has</p> <p>21 standing, versus who is required to get notice and in this</p> <p>22 case I think it's a straightforward statutory scheme that's</p> <p>23 been placed into regulation in the zoning ordinance and has</p> <p>24 been this way for quite a long time, decades, of who gets</p> <p>25 notice plus who gets notice by sign and I think we've</p>	<p style="text-align: right;">32</p> <p>1 extension in the record and we can have some follow up</p> <p>2 on -- if we get the extension I'm going to allow follow up</p> <p>3 to have comments on -- from everybody on whether that is,</p> <p>4 you know, sufficient prejudice or whether it somehow gives</p> <p>5 an out, and this -- so this is what I'm going to do. We</p> <p>6 will proceed with the hearing today. We are going to -- I</p> <p>7 don't know -- you had also requested another hearing to</p> <p>8 present a noise expert.</p> <p>9 MS. REGELIN: So I had assumed based on some of</p> <p>10 those discussions that went on at the preliminary matter at</p> <p>11 last meeting that you were giving the community until the</p> <p>12 30th to present witnesses, and I apologize if I</p> <p>13 misunderstood that discussion. And so since in the course</p> <p>14 of the cross-examination noise came up I had secured a</p> <p>15 rebuttal witness as an expert to present noise and so I was</p> <p>16 proffering that we would present our noise expert at the</p> <p>17 same time that the community presented any expert</p> <p>18 witnesses.</p> <p>19 But I had also asked that since it was on a</p> <p>20 constrained time period and I understood that we couldn't</p> <p>21 meet all of the, you know, rules of when expert witnesses</p> <p>22 had to be identified that we could foreshorten that as well</p> <p>23 but at least give the applicant notice of any experts that</p> <p>24 had been secured by identifying them by a certain date,</p> <p>25 providing the outline of what their testimony was, and then</p>

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<p>33</p> <p>1 any written testimony so that we would have a time. So 2 that was assuming that the hearing examiner was going to 3 set another hearing date beyond today for November 30th. 4 So I don't know whether in fact that is going to 5 be the case, whether we're going to get through the case or 6 not today because I know that the neighborhood has sent out 7 emails to the community and has asked for as many people to 8 participate today as possible and to cross-examine in order 9 to extend the hearing for as long as possible. So given 10 that strategy I am a little bit concerned as the applicant 11 that I would appreciate that we discuss some optional days 12 for setting hearings as well and just in case the applicant 13 doesn't get through its case again today because, you know, 14 everyone has an opportunity to cross-examine. That's their 15 right. I just want to make sure that we can keep on 16 schedule and try to finish this case to give the hearing 17 examiner enough time to issue a report so that Mr. Kelley 18 can close with at least knowing what the hearing examiner 19 determined the outcome of this case is. 20 HEARING EXAMINER ROBESON HANNAN: Well, I don't 21 think at this point that it is good for the -- fair to the 22 community to, you know, have a noise expert come at this 23 rather late date. So I suggest we do this, I am going to 24 proceed with the hearing today. There are a couple of 25 options. We can listen to the community and have the</p>	<p>35</p> <p>1 because she just stated here and stated on our phone call 2 that she is aware of the community's plan to approach these 3 hearings. If she is somehow tapping into our emails that 4 would be enormously distressful. The fact that she's in 5 communication with somebody in our neighborhood is also 6 distressful. But I'd like to rule out the former. 7 MS. REGELIN: I am not on anyone's email list. I 8 have not tapped into your email. It was brought to our 9 attention by someone on your email list. 10 HEARING EXAMINER ROBESON HANNAN: Okay. 11 JEFFREY O'TOOLE: I would like to ask who that is 12 for the record. 13 HEARING EXAMINER ROBESON HANNAN: No. That's 14 irrelevant. 15 JEFFREY O'TOOLE: It's not irrelevant but it may 16 not be permissible, but it's certainly not irrelevant. 17 HEARING EXAMINER ROBESON HANNAN: Well, 18 it's -- my standards are does it meet the 19 compatibility -- does it meet the statutory standards. If 20 someone in the community -- we're not going down that road. 21 JEFFREY O'TOOLE: It's a troubling road, I'll 22 tell you. 23 HEARING EXAMINER ROBESON HANNAN: Well, it may be 24 -- 25 DAVE LAMBERT: Ms. Regelin --</p>
<p>34</p> <p>1 community testify and then your witnesses can respond once 2 they've heard all the concerns or we can proceed with the 3 rest of your case. 4 MS. REGELIN: So I'm happy to let the community 5 go today, those that have been participating, and then we 6 can continue our case. I just would make -- I would just 7 ask that we have another date that's set this week 8 potentially to -- 9 HEARING EXAMINER ROBESON HANNAN: Well, 10 that -- I'm going to do that when we see where we are at 11 the end of the day. 12 MS. REGELIN: Okay. 13 HEARING EXAMINER ROBESON HANNAN: Okay. Does the 14 community want to go now or would you prefer to hear the 15 applicant's case? Mr. O'Toole? 16 JEFFREY O'TOOLE: Thank you. I will not be 17 proceeding until the applicant finishes his case. 18 HEARING EXAMINER ROBESON HANNAN: Okay. 19 JEFFREY O'TOOLE: It's their burden and ours is a 20 response. I'd like to comment on one thing and ask you a 21 question if you could help me out here. Ms. Regelin just 22 told you what the plan -- what the emails are back and 23 forth with our community. I'd like to make sure that Ms. 24 Regelin hasn't somehow figured out a way to tap into our 25 emails or is she in communication with one of our neighbors</p>	<p>36</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Hold on a 2 second. Mr. Lambert, I do not recognize you. 3 I am not going to go down who in the community 4 does what. It's not relevant to my review. She's just 5 said she hasn't tapped into the emails. That would be the 6 one concern. So we're not going -- if anybody wants to say 7 anything about who is, you know, supposedly ratting out the 8 community then we're not going there. All right. And 9 that's a ruling. I'm not going to listen to anymore of 10 that. And I need to bring this to a close so that's what 11 we're going to do. We're cutting this off. You have my 12 ruling about the postponement. Whether or not -- you know, 13 Ms. Regelin, I'm not going to take your word about the 14 opposition's tactics. It's irrelevant to me. You know, if 15 they have the right to do it, they have the right to do it. 16 All right. And it doesn't prejudice me one way or the 17 other. They can ask the questions they want to ask. If -- 18 MS. REGELIN: I agree with that. That's what I 19 can acknowledge. 20 HEARING EXAMINER ROBESON HANNAN: And, you know, 21 I don't care what their trial or hearing strategy is 22 because they have the due process right to ask the 23 questions. Now, I have the right under both the zoning 24 ordinance and our rules of procedure which are adopted by 25 the county council to exclude irrelevant, repetitive</p>

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<p>37</p> <p>1 testimony or questions. That's my job as the hearing 2 manager. So I don't care who is -- what your strategy is. 3 I don't care whose strategy is anything. We're going to do 4 this by what's relevant to the rules of procedure. Now 5 we're going to move on. I'm not going to recognize anyone 6 else at this point. We're going to go to Ms. Regelin's 7 next witness.</p> <p>8 DAVE LAMBERT: Then I want -- then I want it on 9 the record that there were questions from members of the 10 opposition on the question of Ms. Regelin's access that I 11 would consider privileged information from the opposition. 12 That's what I want on the record. You may move on.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Oh, thank you. 14 Ms. Regelin?</p> <p>15 MS. REGELIN: I'd like to call as my first 16 witness Rick Conrath who is the applicant's expert 17 architect.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Mr. Conrath, 19 please raise your right hand. Do you solemnly affirm under 20 penalties of perjury that the statements you're about to 21 make are the truth, the whole truth, and nothing but the 22 truth?</p> <p>23 RICK CONRATH: I do.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Please state 25 your name, business address, and email for the record.</p>	<p>39</p> <p>1 Board of Zoning Appeals, the D.C. Advisory Neighborhood 2 Commission, the Old Georgetown Board, the Commission of 3 Fine Arts, and the Historic Preservation Review Board.</p> <p>4 MS. REGELIN: I would like to offer Mr. Conrath 5 as an expert witness in the area of architecture.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Do I hear any 7 objections to qualifying Mr. Conrath as an expert in 8 architecture? Hearing none I'll so qualify him. I 9 see -- Mr. -- okay. Mr. Quinn? Mr. Quinn?</p> <p>10 JACK QUINN: Yes.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: You have your 12 hand up.</p> <p>13 JACK QUINN: Ms. Hannan, I had my hand up before 14 to make a point that the applicant has the burden of proof. 15 I took it down I think. My little circle with my initials 16 is not at the bottom of my screen.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Oh, no.</p> <p>18 JACK QUINN: So I tried my best.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay. I just 20 wanted to check. All right. Thank you.</p> <p>21 Go ahead, Ms. Regelin.</p> <p>22 JACK QUINN: Is it down now?</p> <p>23 HEARING EXAMINER ROBESON HANNAN: No. Are you 24 hovering in the middle of your screen?</p> <p>25 JACK QUINN: I am lowering my hand.</p>
<p>38</p> <p>1 RICK CONRATH: My name is Rick Conrath. I'm a 2 principal with GTM Architects at 7735 Old Georgetown Road, 3 Suite 700, in Bethesda, Maryland. My email address is 4 rconrath@gtmarchitects.com.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Thank you. 6 Ms. Regelin?</p> <p>7 MS. REGELIN: Mr. Conrath, have you submitted 8 your credentials into the record?</p> <p>9 RICK CONRATH: Yes. My resume is Exhibit 40(a).</p> <p>10 MS. REGELIN: Can you provide an overview of your 11 education and experience as an architect for the hearing 12 examiner please?</p> <p>13 RICK CONRATH: Yes, I have a master of landscape 14 architect from Harvard University, a bachelor of 15 architecture from the University of Houston. I have 16 Maryland registration. I'm licensed in other states as 17 well. And I'm a member of the National Council of 18 Architectural Restoration Board -- Registration Board. I 19 have been practicing for over 37 years.</p> <p>20 MS. REGELIN: Have you been previously accepted 21 or testified as an expert in architecture before the 22 hearing examiner's office or any other board or agency in 23 the area?</p> <p>24 RICK CONRATH: Yes, I have testified as an expert 25 witness before boards in the D.C. Metro area to include the</p>	<p>40</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yay. You did 2 it. Thank you.</p> <p>3 JACK QUINN: Thank you.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Go ahead, Ms. 5 Regelin.</p> <p>6 MS. REGELIN: The architectural elevations and 7 floorplans are in the record at Exhibit 36 (a) and (b) and 8 Exhibit 20(b). Were these prepared by you or someone under 9 your supervision?</p> <p>10 RICK CONRATH: Yes, they were prepared in our 11 office under my direct supervision.</p> <p>12 MS. REGELIN: Okay. Can you pull up, Madam 13 Hearing Examiner, Exhibit 48?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on. 15 Now Exhibit 48 is an illustrative. Is that what 16 your -- what you want to see?</p> <p>17 RICK CONRATH: I'd like to, if possible, see that 18 first. I think it would be important to set the stage 19 prior to talking about the elevations and orientation of 20 the building.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: You should be 22 seeing it now.</p> <p>23 RICK CONRATH: Yes.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>25 MS. REGELIN: So can you describe the design</p>

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11 (41 to 44)

<p style="text-align: right;">41</p> <p>1 intent of the buildings that you design?</p> <p>2 RICK CONRATH: Yes, our intent was to design a</p> <p>3 building which would provide the facilities needed by Metro</p> <p>4 Grounds Management while blending in with the surrounding</p> <p>5 semi-rural character. The operations and maintenance barn</p> <p>6 provides space for the offices, the employee facility,</p> <p>7 storage, maintenance, and repairs, as well as self-storage,</p> <p>8 and you can see this building is to the lower left as it's</p> <p>9 oriented there. Yes. And then the building is 125 feet by</p> <p>10 80 feet. The 80 foot dimension, the storage side, faces</p> <p>11 Damascus Road, and it's 33-feet high to the top of the</p> <p>12 gable, the very peak of the roof. The building has a</p> <p>13 peaked roof with a building height consistent with a two-</p> <p>14 story barn.</p> <p>15 In this case there's actually only a partial</p> <p>16 mezzanine inside. So roughly in the front piece there's a</p> <p>17 second story just above the office area and I can show that</p> <p>18 on the plan when we get to that. The building is oriented</p> <p>19 on the side with a short side, 80 feet, facing Damascus</p> <p>20 Road so as to minimize the appearance of the building when</p> <p>21 viewed from the road. And when we look at the elevations</p> <p>22 in a second you'll notice that those all face inward that</p> <p>23 we've talked about.</p> <p>24 The other day we talked about the berm or the</p> <p>25 landscaping that you can see to the right of the building,</p>	<p style="text-align: right;">43</p> <p>1 building. The roof will be topped with two painted cupolas</p> <p>2 reminiscent of those typically found on historic barns.</p> <p>3 And the building will also have black metal downlight wall</p> <p>4 sconces adjacent to the doors for exterior lighting. The</p> <p>5 building's finishes are designed to evoke a barn aesthetic,</p> <p>6 functional doors and windows are located mostly along the</p> <p>7 north and east elevations and these align with the interior</p> <p>8 uses of the building and we'll look at that in a second</p> <p>9 when we get to the floor plan. We can go to the floor</p> <p>10 plan, Exhibit 36(a).</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Are you seeing</p> <p>12 it?</p> <p>13 RICK CONRATH: I am. Thank you. So a minute ago</p> <p>14 I mentioned about the mezzanine, the second story interior</p> <p>15 piece, and that's -- if you're looking at item number one,</p> <p>16 the mezzanine plan above, the areas that are diagonal,</p> <p>17 those are crossed out. There's no mezzanine there. The</p> <p>18 only place that a mezzanine would be, that one little front</p> <p>19 piece there.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: On the left</p> <p>21 side of this is --</p> <p>22 RICK CONRATH: On the left-hand side of the</p> <p>23 drawing, upper left.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. Go</p> <p>25 ahead.</p>
<p style="text-align: right;">42</p> <p>1 and then the fact that there's a fence that surrounds the</p> <p>2 entire property and I think that that's the reason I'd like</p> <p>3 to -- that I wanted to bring this up. If we could scroll</p> <p>4 down a bit, I think it's important also to look at the site</p> <p>5 section. So if you see the relative height, if you look at</p> <p>6 this, this is a view looking from Damascus Road at the site</p> <p>7 and you'll notice the landscaping to the left. As you move</p> <p>8 to the right there's the operations barn. There is an</p> <p>9 entrance gate driveway that's screened. And then there's</p> <p>10 the landscape berm and buffer. Okay. I think we can go to</p> <p>11 Exhibit 36(d). Okay.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: You should be</p> <p>13 seeing it.</p> <p>14 RICK CONRATH: Yes, we're seeing it now. Okay.</p> <p>15 The exterior of the building was designed to evoke the form</p> <p>16 of a barn. The siding as we're proposing, it would be a</p> <p>17 forest green color. And so what you're looking at here is</p> <p>18 if you look at the east elevation, the overhead doors that</p> <p>19 you see there, those are the doors that face to the inner</p> <p>20 part of the courtyard. If you look to the right is the</p> <p>21 south elevation. That's the elevation that you'd see</p> <p>22 looking from Damascus Road.</p> <p>23 As part of all of this that door that you're</p> <p>24 seeing, a large center door, there are faux windows, faux</p> <p>25 doors there just to sort of help with the detailing of the</p>	<p style="text-align: right;">44</p> <p>1 RICK CONRATH: If you go down below you'll see</p> <p>2 the first floor plan which basically shows the -- all of</p> <p>3 the spaces and their adjacencies to each other. So on the</p> <p>4 far right-hand side, that would be the side facing Damascus</p> <p>5 Road, and as you work your way left you'll be going through</p> <p>6 the variety of spaces, storage spaces that he'll need, to</p> <p>7 the offices on the far left that open up into the parking</p> <p>8 area. And as I indicated before, on the top side of the</p> <p>9 floor plan, that's where you have the overhead doors that</p> <p>10 face out into the courtyard area. And again, all of this</p> <p>11 is screened either with fence or wall.</p> <p>12 MS. REGELIN: Okay. There's also a proposed</p> <p>13 future storage building. Can you describe the design</p> <p>14 intent of that building?</p> <p>15 RICK CONRATH: Yes, if you can bring up Exhibit</p> <p>16 20(c).</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Is this</p> <p>18 Exhibit 20(c)? Are you seeing that?</p> <p>19 RICK CONRATH: Yes, that's Exhibit 20(c). Thank</p> <p>20 you. This building is a 5,000 square foot, 100 by 50 foot</p> <p>21 building, and this future storage building is designed to</p> <p>22 closely match the operations and maintenance barn,</p> <p>23 basically the same size and shape, but because it's set</p> <p>24 back and behind a fencing and landscaping some of the</p> <p>25 details that were added to the larger building have been</p>

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12 (45 to 48)

<p>45</p> <p>1 removed. It's simply designed as an outbuilding. 2 HEARING EXAMINER ROBESON HANNAN: Okay. 3 MS. REGELIN: Is the height similar to the barn 4 or is this a lower-type building? 5 RICK CONRATH: No, it would be -- it would be 6 lower. It would be lower and smaller. 7 HEARING EXAMINER ROBESON HANNAN: How high is -- 8 MS. REGELIN: Okay. And -- 9 HEARING EXAMINER ROBESON HANNAN: Oh, I see the 10 measurement there. It's 25? 11 RICK CONRATH: Twenty-five feet. Twenty-five 12 feet to the peak. 13 HEARING EXAMINER ROBESON HANNAN: Okay. 14 MS. REGELIN: Okay. In your opinion is the 15 architecture and the scale and massing of the barn and the 16 other structures in the conditional use area compatible 17 with the character of this agriculturally zoned 18 neighborhood? 19 RICK CONRATH: Yes. I hate to keep doing this 20 but let's go back to Exhibit 36(b) just in case there's 21 something to talk about there. 22 HEARING EXAMINER ROBESON HANNAN: Is this what -- 23 RICK CONRATH: Yes. 24 HEARING EXAMINER ROBESON HANNAN: Do you see it? 25 RICK CONRATH: Yes, that's it. Thank you. Yes,</p>	<p>47</p> <p>1 MS. REGELIN: Right. And the height of the 2 outbuilding that is on the east side closest to the single 3 family, is that compatible? 4 RICK CONRATH: Yes, it is. Yeah. So this 5 building here is 33 and then the other one is 25. This 6 building is 80 feet wide and the other is 50. So I think 7 that the size of these structures is certainly compatible 8 with other barn-type buildings and then, you know, there 9 are buildings nearby the site that are very similar in size 10 and scale. 11 MS. REGELIN: So is it your opinion that the 12 architecture in this application is harmonious with and 13 will not alter the character of the surrounding 14 neighborhood inconsistent with what the master plan 15 recommends which Mr. Sekerak testified earlier recommends a 16 mix of agricultural and residential uses with permitted 17 conditional uses? 18 RICK CONRATH: I think this is very consistent 19 and certainly consistent with the agricultural character of 20 the neighborhood in the area. 21 MS. REGELIN: And is it your opinion it will 22 alter the character of the neighborhood? 23 RICK CONRATH: No, I think it -- I do not think 24 it would alter. I think it's consistent with. 25 MS. REGELIN: Okay. That's all the questions we</p>
<p>46</p> <p>1 the scale and massing of the barn and other structures on 2 the property are compatible with the character of the area. 3 The primary structure, the operations and maintenance barn 4 was specifically designed to have a barn aesthetic in its 5 form and details. It is also similar in size and shape to 6 other similar buildings in the area. Further, the forest 7 green color of the barn was selected to help blend the 8 building in with the greenery surrounding the property when 9 viewed from the adjacent roadways. 10 MS. REGELIN: And in your opinion is the 11 architecture scale and massing of the barn and other 12 structures in the conditional use area compatible with the 13 character of the nearby Unity residential neighborhood? 14 RICK CONRATH: Yes, the scale and massing of the 15 barn and other structures on the property are compatible 16 with the character of the nearby residential community. 17 The barn aesthetic of the primary structure blends in well 18 with the surrounding community. The operations and 19 maintenance barn size and shape are comparable to similar 20 buildings that you might see on some of the other 21 properties adjacent nearby. Further, the building has been 22 placed on the property with the short side facing Damascus 23 Road so as to minimize that elevation facing -- it's only 24 50-feet wide so similar to the width of a single-family 25 home.</p>	<p>48</p> <p>1 have for this witness. 2 HEARING EXAMINER ROBESON HANNAN: All right. 3 Questions for the witness? I see -- okay. Mr. Boughton 4 and then Mr. Lambert. 5 BRYAN BOUGHTON: Thank you, Director Hannan. The 6 first question I have on Exhibit 48 if you can bring that 7 up again. 8 HEARING EXAMINER ROBESON HANNAN: Yes. I 9 shouldn't have closed out of it. There we go. Okay. You 10 should be seeing it. 11 BRYAN BOUGHTON: Yes. So if you can scroll down 12 a little bit so we can see the -- yeah, from the street 13 view instead of the overhead. And I brought this up last 14 week, but I just wanted to revisit it to be sure because I 15 actually don't quite understand the phasing but I 16 understand how the architect has described this view that 17 will fit in with the neighborhood or won't change it. 18 But again I'm concerned because in this drawing 19 as you see, the building that is there, the operations 20 barn, is part of the screening of the site from the street, 21 and I believe it is my understanding that is not part of 22 phase one and I just wanted to reconfirm that a fencing 23 will be built in place of that before operations begin, and 24 is that the architect's plan was a fence or something built 25 in so that the site would be screened until that building</p>

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13 (49 to 52)

49	<p>1 is built, when it's built?</p> <p>2 MS. REGELIN: So this is Nancy Regelin. Mr.</p> <p>3 Kelley testified last week that he would fence the entire</p> <p>4 site including the area which will be replaced with a</p> <p>5 perimeter of the operations barn.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>7 MS. REGELIN: So during phase one the entire site</p> <p>8 --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: I thought --</p> <p>10 MS. REGELIN: -- he testified the entire site</p> <p>11 would be fenced.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. Can the</p> <p>13 architect answer the question or not?</p> <p>14 RICK CONRATH: I can't definitively answer that,</p> <p>15 no. It's my understanding, as with everybody else that was</p> <p>16 on the call last, that that's what's his intention, but I</p> <p>17 have not discussed that with him.</p> <p>18 BRYAN BOUGHTON: So but I guess my question for</p> <p>19 the architect is what will -- I mean this is a very pretty</p> <p>20 view that they try and represent to us but what will the</p> <p>21 actual view be when the site goes operational? Do we have</p> <p>22 a drawing that shows what it will look like? What kind of</p> <p>23 planting and fencing will obscure that entire lower left</p> <p>24 corner that is a direct view into the lot and the temporary</p> <p>25 trailer and other things that do not match the</p>	51	<p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 BRYAN BOUGHTON: When is this building going to</p> <p>3 be built in the plan, the large operations building? How</p> <p>4 long will it be before that's built.</p> <p>5 MS. REGELIN: Again, Mr. Kelley testified to that</p> <p>6 and we can address that as well later, but the architect is</p> <p>7 not the appropriate witness.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Yeah, I do</p> <p>9 agree. And Mr. Boughton, I understand your question and I</p> <p>10 do think there was a little bit of confusion last time so</p> <p>11 we'll have Mr. Kelley come back and clarify that.</p> <p>12 BRYAN BOUGHTON: Thank you.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Any other</p> <p>14 questions, Mr. Kelley? I mean Mr., I'm sorry, Mr.</p> <p>15 Boughton?</p> <p>16 BRYAN BOUGHTON: Not at this time.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Let me</p> <p>18 go back and see if there's questions. Okay. I have Mr.</p> <p>19 Quinn and then Mr. Lambert. Mr. Quinn?</p> <p>20 JACK QUINN: Mr. Lambert was first so I'll defer</p> <p>21 to him.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: When I -- okay.</p> <p>23 I didn't mean -- go ahead, Mr. Lambert.</p> <p>24 DAVE LAMBERT: Thank you. Mr. Conrath, who is</p> <p>25 your client?</p>
50	<p>1 neighborhood?</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Let me</p> <p>3 just get -- before you answer for the record I need to</p> <p>4 understand what the lower left corner -- on Exhibit 48</p> <p>5 there's two reddish trees. Is that what you're talking</p> <p>6 about the lower left corner --</p> <p>7 BRYAN BOUGHTON: Yes.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: -- of the site?</p> <p>9 BRYAN BOUGHTON: Yes.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 BRYAN BOUGHTON: Well, and then continuing around</p> <p>12 up the long side of the building which is also I assume</p> <p>13 obscuring the lot.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>15 MS. REGELIN: So can you -- Hannan, we have an</p> <p>16 expert who is coming next who is the --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: A landscape.</p> <p>18 MS. REGELIN: -- site designer and landscape</p> <p>19 architect.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay.</p> <p>21 It would be better for the landscape architect. I agree.</p> <p>22 Mr. Boughton, can you hold that question for the landscape</p> <p>23 architect please?</p> <p>24 BRYAN BOUGHTON: Well, I have one other question.</p> <p>25 Yes, but I do have one other question for the architect.</p>	52	<p>1 RICK CONRATH: Metro Grounds Management.</p> <p>2 DAVE LAMBERT: Are you familiar with Duffy</p> <p>3 Development, LLC?</p> <p>4 RICK CONRATH: No.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. This is</p> <p>6 beyond the scope of what he testified to. He testified</p> <p>7 only to the architecture and not to the entity. So you're</p> <p>8 cross-examination has to be within the scope of what he</p> <p>9 testified to. So do you have questions on the</p> <p>10 architecture?</p> <p>11 DAVE LAMBERT: I have questions on who has input</p> <p>12 on this entire plan and that is as relevant as the size of</p> <p>13 the building and I would say more relevant than the size or</p> <p>14 elevation of the building because if Mr. Conrath's firm has</p> <p>15 been engaged by Duffy Development or Consolidated</p> <p>16 Commercial Services, LLC and hasn't really had any</p> <p>17 substantial interactions with Mr. Kelley then there's I</p> <p>18 would say an underlying flaw in this plan.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Ms. Regelin?</p> <p>20 MS. REGELIN: I believe that GTM indicated -- Mr.</p> <p>21 Conrath indicated his contract is with Metro Grounds</p> <p>22 Management who is the applicant in this case.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MS. REGELIN: You can bring Mr. Kelley on to</p> <p>25 answer other questions later but --</p>

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14 (53 to 56)

53	<p>1 DAVE LAMBERT: I've got a couple follow-up</p> <p>2 questions along those lines.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Well, I'm going</p> <p>4 to overrule them for this witness.</p> <p>5 DAVE LAMBERT: How can you overrule them if you</p> <p>6 haven't heard them?</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Well, you said</p> <p>8 along these lines.</p> <p>9 DAVE LAMBERT: Okay. Then overrule me when I ask</p> <p>10 them.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Very well. Go</p> <p>12 ahead and ask them.</p> <p>13 DAVE LAMBERT: Mr. Conrath, have you worked</p> <p>14 directly with Mr. Kelley?</p> <p>15 RICK CONRATH: Yes, Mr. Kelley directly.</p> <p>16 DAVE LAMBERT: Have you worked with anyone else</p> <p>17 other than Mr. Kelley?</p> <p>18 RICK CONRATH: No.</p> <p>19 DAVE LAMBERT: I have no more questions for this</p> <p>20 witness? You see, Ms. Hannan, right on point, don't you</p> <p>21 think?</p> <p>22 HEARING EXAMINER ROBESON HANNAN: No, but</p> <p>23 I -- you have asked and he answered so -- and they're in</p> <p>24 the record.</p> <p>25 Mr. Quinn?</p>	55	<p>1 RICK CONRATH: Function and aesthetics.</p> <p>2 JACK QUINN: Okay. Did you evaluate as it</p> <p>3 relates to the function of the building what types of</p> <p>4 operations would be conducted in either of the two main</p> <p>5 structures?</p> <p>6 RICK CONRATH: No, basically as the architect I</p> <p>7 would be taking the owner's program and taking that program</p> <p>8 and turning that into the building that you see here.</p> <p>9 JACK QUINN: How detailed would you evaluate the</p> <p>10 owner's program?</p> <p>11 RICK CONRATH: The owner would be the person that</p> <p>12 would tell me how big things needed to be. So to answer</p> <p>13 your question, only that far.</p> <p>14 JACK QUINN: Okay. Were you told about what</p> <p>15 would be stored within either of the two main structures?</p> <p>16 RICK CONRATH: Not in great detail, no.</p> <p>17 JACK QUINN: Well --</p> <p>18 RICK CONRATH: I'm aware of -- I'm aware that he</p> <p>19 has certain pieces of equipment. I'm aware that one of the</p> <p>20 bays was for salt. But to the extent of everything that</p> <p>21 went into each one of those rooms, no.</p> <p>22 JACK QUINN: Were you told that any equipment</p> <p>23 would be stored within either of the two main structures?</p> <p>24 RICK CONRATH: Yes. Not specific which equipment</p> <p>25 but I was told equipment would be stored.</p>
54	<p>1 JACK QUINN: Thank you, Ms. Hannan.</p> <p>2 Mr. Conrath, it's my understanding that this</p> <p>3 project is to be built in phases. Is that your</p> <p>4 understanding as well?</p> <p>5 RICK CONRATH: No.</p> <p>6 JACK QUINN: You were not advised that the</p> <p>7 project would proceed in phases? It would be --</p> <p>8 RICK CONRATH: No.</p> <p>9 JACK QUINN: -- built --</p> <p>10 RICK CONRATH: No, we've never really discussed</p> <p>11 the phasing of the project. The only discussions I've had</p> <p>12 have been related specifically to the design of the</p> <p>13 building.</p> <p>14 JACK QUINN: Okay. So I take it then that you</p> <p>15 did not prepare any drawings about what the project would</p> <p>16 look like during any particular phase?</p> <p>17 RICK CONRATH: That's correct.</p> <p>18 JACK QUINN: Okay. Now, did you evaluate the</p> <p>19 efficacy of the parking at the site from an architectural</p> <p>20 point of view?</p> <p>21 RICK CONRATH: No, that would not be within the</p> <p>22 realm of what I would be evaluating. Like I said, I</p> <p>23 primarily would be evaluating the function of the building.</p> <p>24 JACK QUINN: Okay. The function of the building</p> <p>25 or the aesthetics of the building?</p>	56	<p>1 JACK QUINN: Okay. So you weren't told what</p> <p>2 equipment?</p> <p>3 RICK CONRATH: No.</p> <p>4 JACK QUINN: Okay. Were you told that the</p> <p>5 equipment to be stored would be driven into either of the</p> <p>6 main structures?</p> <p>7 RICK CONRATH: I don't recall whether he</p> <p>8 mentioned driven, pushed, or whatever. I would assume that</p> <p>9 if it was a motorized piece of equipment, and this would be</p> <p>10 my assumption, is that it would be driven through the door,</p> <p>11 but other than that, no, we didn't get into specifics.</p> <p>12 JACK QUINN: Were you provided with the expected</p> <p>13 weight that the flooring was to sustain?</p> <p>14 RICK CONRATH: No, that would come at a</p> <p>15 subsequent phase of the project.</p> <p>16 JACK QUINN: Well, that's kind of why I asked you</p> <p>17 about the phasing. What subsequent phase would deal with</p> <p>18 those issues?</p> <p>19 RICK CONRATH: Well, this wouldn't be a phase</p> <p>20 related to construction. This would be a phase related to</p> <p>21 my scope of work which is we're at the very early concept</p> <p>22 stage now. Typically those kinds of questions wouldn't</p> <p>23 come about until I got into construction drawing.</p> <p>24 JACK QUINN: Well, I asked you before if you</p> <p>25 dealt with issues of function as well as aesthetics. Do</p>

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15 (57 to 60)

<p>57</p> <p>1 you recall that question?</p> <p>2 RICK CONRATH: Yes.</p> <p>3 JACK QUINN: And so tell me what your instruction</p> <p>4 was or your -- what function issues you actually evaluated.</p> <p>5 RICK CONRATH: Well, I'm not evaluating his</p> <p>6 function. That's up to the client to tell me what his</p> <p>7 functions are. Basically during the course of our meeting</p> <p>8 we would go through a program. He would explain to me how</p> <p>9 big the spaces needed to be. So in the end really he's the</p> <p>10 person that's going to be commenting on function as it</p> <p>11 relates to the space.</p> <p>12 JACK QUINN: Then would you --</p> <p>13 RICK CONRATH: I only --</p> <p>14 JACK QUINN: I apologize, Mr. Conrath.</p> <p>15 RICK CONRATH: Yeah, so function is really</p> <p>16 predicated upon the client determining where he would like</p> <p>17 certain things to be, their sizes, and relationships.</p> <p>18 JACK QUINN: So if -- when were you contacted,</p> <p>19 Mr. Conrath?</p> <p>20 RICK CONRATH: I don't recall the exact day.</p> <p>21 JACK QUINN: Can you give me an approximation</p> <p>22 please?</p> <p>23 RICK CONRATH: Well, it would have probably been</p> <p>24 a year-and-a-half to two years ago.</p> <p>25 JACK QUINN: And how long did your evaluation</p>	<p>59</p> <p>1 either of the main structures?</p> <p>2 RICK CONRATH: If mentioned at all it would have</p> <p>3 been very loose.</p> <p>4 JACK QUINN: Okay.</p> <p>5 MS. REGELIN: This is Nancy Regelin. I believe</p> <p>6 that was asked and answered.</p> <p>7 JACK QUINN: I don't think it was but I'll go on.</p> <p>8 Where on your plans were construction materials or</p> <p>9 landscaping materials to be stored?</p> <p>10 RICK CONRATH: I can't answer that.</p> <p>11 JACK QUINN: Was provision made for the storing</p> <p>12 of landscaping materials?</p> <p>13 RICK CONRATH: I think you'd have to ask the</p> <p>14 owner that, the specific function of each room and what</p> <p>15 would be stored in them.</p> <p>16 JACK QUINN: And where was the salt or snow</p> <p>17 removal operations to be stored?</p> <p>18 RICK CONRATH: Well, the salt is stored in the</p> <p>19 section on the floor plan that's indicated as salt storage.</p> <p>20 JACK QUINN: Within the floor plan -- within the</p> <p>21 large barn?</p> <p>22 RICK CONRATH: Yes, within the large barn there</p> <p>23 is a section that's indicated and labeled as salt storage.</p> <p>24 JACK QUINN: Okay.</p> <p>25 RICK CONRATH: And my understanding is that's</p>
<p>58</p> <p>1 process take before you came up with your work product?</p> <p>2 RICK CONRATH: Evaluation process, I'm not sure</p> <p>3 what you mean by evaluation process.</p> <p>4 JACK QUINN: Well, how long did you work on it</p> <p>5 before you came up with this work product?</p> <p>6 RICK CONRATH: Well, I think that what you</p> <p>7 see -- well, first of all, the work product that's on the</p> <p>8 screen right now is not ours. But the work product that</p> <p>9 you have seen represents all of the time that we've spent</p> <p>10 on this project up to the current date. That is we</p> <p>11 have -- we met with the client initially, went through a</p> <p>12 program and design session, and came up with concepts that</p> <p>13 were presented to that the client used in the variety of</p> <p>14 purposes that he would have needed to get this project</p> <p>15 approved, and during this process there would have been</p> <p>16 some minor revisions and some back and forth.</p> <p>17 JACK QUINN: Can you --</p> <p>18 RICK CONRATH: But I can't tell you exactly how</p> <p>19 much time was spent.</p> <p>20 JACK QUINN: I appreciate that, Mr. Conrath, but</p> <p>21 your evaluation took many months, did it not?</p> <p>22 RICK CONRATH: Yes.</p> <p>23 JACK QUINN: Okay. And were you -- I apologize</p> <p>24 if I'm being repetitive. I don't think I am. Were you</p> <p>25 ever told what type of equipment would be stored within</p>	<p>60</p> <p>1 where he was going to store his salt.</p> <p>2 JACK QUINN: Okay. And were you told how much</p> <p>3 salt was stored -- to be stored for snow removal</p> <p>4 operations?</p> <p>5 RICK CONRATH: No.</p> <p>6 JACK QUINN: Did you receive any dimensions about</p> <p>7 how much salt was to be stored?</p> <p>8 RICK CONRATH: No.</p> <p>9 JACK QUINN: So whether or not the area for salt</p> <p>10 storage is sufficient would be the responsibility of the</p> <p>11 owner?</p> <p>12 RICK CONRATH: That's correct.</p> <p>13 JACK QUINN: Okay. Do you deal with highway</p> <p>14 safety issues, Mr. Conrath?</p> <p>15 RICK CONRATH: No, that typically doesn't fall</p> <p>16 within the realm of an architect.</p> <p>17 JACK QUINN: Okay. Can we pull up, Ms. Hannan,</p> <p>18 Exhibit 48 please? Okay.</p> <p>19 Now there's been mention about a berm. Where</p> <p>20 exactly is the berm to be located?</p> <p>21 MS. REGELIN: Again, Nancy Regelin. We do have a</p> <p>22 witness which is next who is the landscape architect who</p> <p>23 will discuss that.</p> <p>24 JACK QUINN: I'm interested in this witness'</p> <p>25 understanding.</p>

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16 (61 to 64)

<p>61</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well, we had a 2 lot of testimony, and I know you weren't here on Monday, 3 about where the berm is going to -- I mean last Monday on 4 where the berm is going to be located. 5 JACK QUINN: Well, I wasn't here because -- 6 HEARING EXAMINER ROBESON HANNAN: No, I know why 7 you weren't here. I guess I'm just saying why are you 8 asking him this question? 9 JACK QUINN: Because I'd like to place the berm 10 on the drawing because I believe that the berm will 11 constitute restrictions on sight distance for vehicles 12 entering and exiting the project. I have no idea why I 13 wouldn't be allowed to ask this witness his understanding 14 of where the berm was to be. 15 MS. REGELIN: And I would object because this is 16 the architect who designed two of the buildings and he has 17 testified to those. We have other witnesses who can 18 address your issue who have expertise in that. 19 JACK QUINN: So if I may respond. Great care was 20 taken by this professional to have the property look 21 aesthetically compatible with the area. The existence of 22 the berm may very well affect that effort and that opinion. 23 I'd like to know if for aesthetic reasons where the berm is 24 located. 25 HEARING EXAMINER ROBESON HANNAN: Well, if you</p>	<p>63</p> <p>1 effort to have this property comport with what he described 2 as a semi-rural area. That's the reason. 3 HEARING EXAMINER ROBESON HANNAN: Well, he 4 testified that the buildings did. He didn't testify that 5 the berm did. But Ms. Regelin, do you want to address this 6 because we're going to move on because I don't see any 7 reason why we should continue this with the architect when 8 they have another witness who will be coming that can 9 address your question. 10 JACK QUINN: So let -- I'm sorry. Go ahead. 11 MS. REGELIN: So yes, all of the opinions that we 12 asked of Mr. Conrath were relative to the architecture on 13 the site and he gave three opinions related to the 14 architecture. We do have a landscape architect who was the 15 site designer who is going to testify next and is probably 16 the more appropriate person for you to ask these questions. 17 JACK QUINN: Well, let's suppose that an 18 architect thinks that the existence of a berm either 19 enhances or it detracts from his effort to place an 20 aesthetically pleasing building at this site. 21 HEARING EXAMINER ROBESON HANNAN: Well, I don't 22 understand your question. 23 JACK QUINN: Well, I -- 24 HEARING EXAMINER ROBESON HANNAN: What are you 25 asking him?</p>
<p>62</p> <p>1 know, you can answer. 2 RICK CONRATH: It's located between the 3 right -- to the right of the grounds maintenance building 4 as indicated on the plan with this row of trees landscaped 5 area and it's right center right there in the right 6 section. 7 JACK QUINN: Okay. It's the center section, Mr. 8 Conrath? 9 RICK CONRATH: Yeah, that's correct. It's the 10 center section to the right of the entrance drive. 11 JACK QUINN: Okay. Is this foliage to be planted 12 within the berm? 13 RICK CONRATH: That's my understanding, yeah. 14 JACK QUINN: Well, did you design the berm? 15 RICK CONRATH: No. 16 HEARING EXAMINER ROBESON HANNAN: Mr. Quinn, they 17 have another witness that is the landscape architect who 18 will be able to answer these questions. 19 JACK QUINN: I -- 20 HEARING EXAMINER ROBESON HANNAN: I don't 21 understand why we're asking the architect these questions. 22 JACK QUINN: Because the architect has testified 23 that he designed a property which was compatible with the 24 what he said was the semi-rural area and I would assume 25 that this berm, as well as that foliage, was a part of his</p>	<p>64</p> <p>1 JACK QUINN: I'm sorry? 2 HEARING EXAMINER ROBESON HANNAN: I don't 3 understand what you're asking him to say. 4 JACK QUINN: Okay. He's designing a site, with 5 buildings on that site, with a general layout on that site. 6 There is a major berm that in fact is to be located there 7 which I believe anybody would say may impact on his efforts 8 to design an aesthetically pleasing site. 9 MS. REGELIN: So I would object because Mr. 10 Conrath is the architect and he designed the building. Our 11 site designer, who is the landscape architect, is the next 12 witness and is the more appropriate person to ask those 13 questions. 14 HEARING EXAMINER ROBESON HANNAN: I'm going to 15 sustain that objection. 16 JACK QUINN: Very well, Ms. Hannan. 17 Sir, have you participated in any effort to send 18 out bids for the construction of these structures? 19 RICK CONRATH: No. 20 JACK QUINN: Are you aware as to whether or not 21 any such effort has been undertaken? 22 RICK CONRATH: I'm not aware of any, no. 23 JACK QUINN: Is that generally a part of what 24 architects do, work with -- into the construction phase to 25 the extent --</p>

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17 (65 to 68)

<p>65</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Mr. 2 Quinn -- Mr. Quinn, what standard -- what is the relevance 3 of whether he's participated in bids? They aren't to the 4 construction phase yet. 5 JACK QUINN: Well, Your Honor, the neighborhood, 6 me, questions whether or not this project will actually be 7 built as it's advertised. There is also quite a bit of 8 concern about whether or not this applicant will build into 9 phase one with a trailer, a trailer, and never proceed to 10 this glorious photo on Exhibit 48. 11 HEARING EXAMINER ROBESON HANNAN: Well, those are 12 for the owner and we can -- because you weren't here we can 13 bring -- let the applicant bring the owner back, but I'm 14 not going to go into bids. That's premature in this 15 process. 16 JACK QUINN: I don't believe it is but I -- 17 HEARING EXAMINER ROBESON HANNAN: I think it is. 18 JACK QUINN: -- respect your ruling, Ms. Hannan. 19 I don't think it's premature at all but I respect your 20 ruling. 21 HEARING EXAMINER ROBESON HANNAN: Well, let me 22 just explain the process. The process, there's one 23 question -- basically he will have to build to what he says 24 he's going to do because that's a condition of approval of 25 the site -- the conditional use plan. The question that</p>	<p>67</p> <p>1 RICK CONRATH: No, I do not. 2 MS. REGELIN: I believe that's also been asked 3 and answered. 4 JACK QUINN: Do you what materials have been 5 suggested for storage in the second building? 6 RICK CONRATH: No. 7 HEARING EXAMINER ROBESON HANNAN: When you say 8 second building are you referring to the smaller building? 9 JACK QUINN: Yes, Your Honor. 10 HEARING EXAMINER ROBESON HANNAN: Okay. Go 11 ahead. 12 RICK CONRATH: No, I do not. 13 JACK QUINN: Okay. Isn't it a function of an 14 architect to evaluate both aesthetics and function? 15 RICK CONRATH: It just depends. I mean that's a 16 pretty broad question. It depends on what the client needs 17 and in this particular instance, no, it wasn't my job to 18 evaluate his function. My job was basically to transpose 19 what he needed in the form of a building. 20 JACK QUINN: Basically a building or buildings of 21 a certain size that you felt were aesthetically pleasing, 22 that's what you did? 23 RICK CONRATH: That's correct. That's correct. 24 JACK QUINN: Nothing further. 25 RICK CONRATH: That's it.</p>
<p>66</p> <p>1 I'm hearing that I don't think Mr. Conrath can answer is 2 the phasing and what's going to look like what when. He's 3 already testified he doesn't know. So that's a question 4 that I'm willing to call Mr. Kelley back for. 5 JACK QUINN: Ms. Hannan, different people speak 6 to the same set of facts. It is common knowledge -- 7 HEARING EXAMINER ROBESON HANNAN: I'm not -- we 8 have -- 9 JACK QUINN: May I finish? May I finish? 10 HEARING EXAMINER ROBESON HANNAN: We have 11 spent -- no, because we have spent a lot of time on this 12 and I see no reason to continue this and I'm going to 13 sustain Ms. Regelin's objection. Move on please. 14 JACK QUINN: Mr. Conrath, can you describe the 15 fencing that you envision being placed around this 16 property? 17 RICK CONRATH: I did not design the fencing so I 18 would have to defer that. 19 JACK QUINN: Do you have an understanding of what 20 fencing is contemplated? 21 RICK CONRATH: No, I do not. 22 MS. REGELIN: I believe he's -- it's been asked 23 and answered. 24 JACK QUINN: Do you know what equipment is being 25 stored in the future storage building?</p>	<p>68</p> <p>1 JACK QUINN: Okay. That's all I have. Thank 2 you, Ms. Hannan. 3 HEARING EXAMINER ROBESON HANNAN: Thank you. I 4 am going to go to Mr. O'Toole please. And then I see Ms. 5 Caldeira. Caldeira. And Mr. Boughton. So let's go with 6 Mr. O'Toole. 7 JEFFREY O'TOOLE: Mr. Conrath, good morning. 8 Sir, without being redundant, is it my understanding that 9 this building, the major building we're talking about, the 10 main building that you designed, is a 10,000 square foot 11 building? 12 RICK CONRATH: That's correct. 13 JEFFREY O'TOOLE: All right. Now in inquiring 14 further with respect to what Mr. Quinn was asking you and 15 just so I'm clear, were you told or asked to design a 16 10,000 square foot building or were you told or directed to 17 design a building that holds the following number of items? 18 RICK CONRATH: We never discussed designing a 19 building to hold any number of items. What we discussed 20 basically was working within a certain size. 21 JEFFREY O'TOOLE: So somebody told you, either 22 Mr. Kelley or somebody told you I want a nice looking 23 building and it's got to be 10,000 square feet; is that 24 right? 25 RICK CONRATH: That's correct. That's correct.</p>

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18 (69 to 72)

<p>69</p> <p>1 JEFFREY O'TOOLE: So you have no idea or didn't 2 have any idea or take into consideration what was going to 3 be put in that building or what would not be able to be fit 4 into that building? 5 RICK CONRATH: Yeah, it wasn't a -- that wasn't a 6 consideration. 7 JEFFREY O'TOOLE: All right. So you have no idea 8 if all of the equipment that's going to be stored indoors 9 would fit or only half of what was going to be stored 10 indoors would fit, correct? 11 RICK CONRATH: That's correct. 12 JEFFREY O'TOOLE: All right. I have no more 13 questions. Thank you. 14 HEARING EXAMINER ROBESON HANNAN: Thank you. 15 Ms. Caldeira? 16 KIM CALDEIRA: Hi. 17 HEARING EXAMINER ROBESON HANNAN: Hi. 18 KIM CALDEIRA: Hi. 19 HEARING EXAMINER ROBESON HANNAN: Ms. Caldeira, 20 would you kindly state your name and address for the record 21 and give us your email please? 22 KIM CALDEIRA: Of course. My name is Kim 23 Caldeira and my address is 3324 Damascus Road, Brookeville, 24 Maryland and -- 25 HEARING EXAMINER ROBESON HANNAN: And your -- oh,</p>	<p>71</p> <p>1 MS. REGELIN: This is Nancy Regelin. So our next 2 witness is the site designer -- 3 KIM CALDEIRA: Oh, okay. 4 MS. REGELIN: -- and he will be able to discuss 5 the whole site. 6 KIM CALDEIRA: Oh, okay. Okay. And also, about 7 the greenhouses. I don't know if that falls under the 8 purview of an architect, but I don't see any designs about 9 the greenhouses. 10 MS. REGELIN: That's correct. This architect did 11 not design the greenhouses. 12 KIM CALDEIRA: Okay. Thank you. That's all I 13 have. 14 HEARING EXAMINER ROBESON HANNAN: Thank you. 15 Mr. Quinn, I don't know if this is intentional or 16 not but your hand is still up. 17 JACK QUINN: Oh, I'm so sorry. 18 HEARING EXAMINER ROBESON HANNAN: It's all right. 19 JACK QUINN: I took it down. 20 HEARING EXAMINER ROBESON HANNAN: Thank you. And 21 Mr. -- okay. So now I have Mr. Boughton. Mr. Boughton, do 22 you want to go ahead please? 23 BRYAN BOUGHTON: Yeah, I just had another 24 question for the architect, a couple questions. 25 So if this CU is approved, what is the timeline</p>
<p>70</p> <p>1 sorry. Go ahead. 2 KIM CALDEIRA: The email is kgmcald@gmail.com. 3 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 4 you. 5 KIM CALDEIRA: And I just have a -- I think a 6 couple of quick questions that I'm just looking -- I'm 7 looking at the two -- I'm sorry. I forgot the exhibit 8 numbers, but the illustration that you're displaying right 9 now. I guess that's Exhibit 48, and I'm just trying to 10 make that match up with the site plan that -- 11 HEARING EXAMINER ROBESON HANNAN: I think the 12 site plan -- let me -- my recollection is Exhibit 33. Ms. 13 -- 14 MS. REGELIN: Yes, I think so. 15 KIM CALDEIRA: So my question is that the 16 illustration doesn't show -- it has a lot of, you know, 17 open field. It doesn't show the existing house and I was 18 just wondering given the concern for aesthetics and the 19 quality of the neighborhood what -- why has the existing 20 house been omitted? I see on the -- I see that the 21 existing shed is supposed to be removed according to the 22 site plan, but could you please shed some light on the 23 status of the existing house? 24 RICK CONRATH: I don't know if I can -- I'm the 25 one that -- I didn't -- yeah. Yeah.</p>	<p>72</p> <p>1 for your role in designing and getting this main 2 operational building ready to go for construction to begin? 3 How long would that normally take and what are the 4 different steps in that process? 5 RICK CONRATH: Well, you asked me about -- your 6 question is sort of multi-tiered. I have not discussed the 7 schedule with the client so anything that I'm telling you 8 right now would be purely theoretical. I don't know that I 9 could really sort of give you a standard. 10 BRYAN BOUGHTON: But I think it would be helpful 11 if you could give us a theoretical schedule to help us 12 better understand when this building could be built 13 assuming the CU gets approved at some point because that 14 is -- one of our questions is how long would it take to 15 have that become part of the view we're seeing from the 16 road. And I know architects usually have several steps and 17 phases so it would be helpful because they also attach 18 timelines to those. For a building like this could you 19 explain some of the phases you go through with your client 20 and how long each takes? 21 MS. REGELIN: And I would raise an objection 22 here. I would just ask that the questions remain relevant 23 to the scope of work that the architect will be doing and 24 not -- 25 BRYAN BOUGHTON: And that's what I'm asking.</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yeah, I 2 think -- I'm going to let him answer. I think that's 3 legitimate. And also Ms. Regelin, I think we should 4 have -- what I'm hearing, the community's concern is that 5 this period of how long is it going to be -- what's it 6 going to look like until it's fully built and what 7 guarantees they have that it will be fully built. That's 8 what I'm gleaned from these questions. So I'm asking you 9 if you can bring at some point Mr. Kelley back because 10 those are legitimate questions. For the time being though 11 I'm going to ask -- let -- Mr. Conrath, please answer the 12 question posed by Mr. Boughton. 13 RICK CONRATH: Okay. He asked a multi-tiered 14 question. He could please repeat the first question that 15 he would like answered? 16 BRYAN BOUGHTON: Yes. I just want to know when 17 the client contracts with an architect there are several 18 phases: test fits, design. They design sign-off, then you 19 walk through different style elements or decisions the 20 client has to make before a project can be going -- go out 21 to bid. I would like to know how long that time takes so 22 we can get an approximation of how long it would be once 23 approval of this project if it happens occurs to even begin 24 the process of bidding and moving forward with building the 25 building.</p>	<p style="text-align: right;">75</p> <p>1 building permit, and the building permit process, I can't 2 comment on that. It just depends. That's a function of 3 however long the county takes to review the drawings. I'm 4 not sure where they are with that process right now. 5 BRYAN BOUGHTON: Can I ask -- 6 RICK CONRATH: I will say that typically -- 7 BRYAN BOUGHTON: No, go ahead. Finish. Sorry. 8 RICK CONRATH: I would typically say that during 9 that time frame of when the building is in for permit, 10 that's typically when you would see things like bidding, 11 you know, selecting a contractor and going through that. 12 So there's typically a simultaneously -- there's a 13 simultaneous effort that occurs between what the owner does 14 with our drawings and also while it's in for permit if that 15 makes sense. 16 BRYAN BOUGHTON: One question though about the 17 permitting process because through my own experience I know 18 in D.C. the permitting process, almost all architects, 19 project managers, and construction folks who it's going to 20 be at least 12 weeks to get through the permitting process. 21 Do you have a sense in Montgomery County how long that 22 permitted process -- 23 RICK CONRATH: I don't and D.C. actually has a 24 velocity program and other programs as well. So, you know, 25 D.C. is probably much worse scenario if you're trying to</p>
<p style="text-align: right;">74</p> <p>1 RICK CONRATH: Okay. So I would say right 2 now -- I would classify where we are as in the early 3 concept design phase. We don't -- since we don't have 4 approval to move forward yet the next step in my job would 5 be developing construction drawings for finalizing a 6 schematic design. So construction drawings for a building 7 of this type -- it's not fairly elaborate, it's fairly 8 simple -- I would say we would probably in the six to eight 9 week time frame to do construction drawings. 10 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Did 11 you say six to eight weeks -- 12 RICK CONRATH: That's correct. 13 HEARING EXAMINER ROBESON HANNAN: -- for 14 construction drawings? Okay. 15 RICK CONRATH: That's correct. 16 HEARING EXAMINER ROBESON HANNAN: Go ahead. I'm 17 sorry. 18 RICK CONRATH: And that's pending all of the 19 design decisions have been made. For instance, that the 20 building's area, height, bulk, and mass has been decided, 21 and there's not programmatic changes in the building 22 footprint. So if we were to go with the building as you 23 see it right now, I would say somewhere between six to 24 eight weeks to do construction drawings. So that basically 25 takes us to the point of building permit, filing for</p>	<p style="text-align: right;">76</p> <p>1 forecast how long it takes to get things done. But 2 Montgomery County, we have a long history of work in 3 Montgomery County so I don't foresee any major issues with 4 us permitting this project. Typically things that might 5 come up would be site related things. So there is a 6 section in this particular timeline related to site 7 development that others should answer as it relates to the 8 time frame. 9 BRYAN BOUGHTON: But for your building itself 10 getting built, what would you -- what type of timelines 11 have you been seeing in other projects in Montgomery 12 County? 13 RICK CONRATH: Well, as far as permitting you're 14 asking? 15 BRYAN BOUGHTON: Yes, the permitting process. 16 RICK CONRATH: So it -- you know, two months, 17 something in that range for something like this. 18 HEARING EXAMINER ROBESON HANNAN: I'm sorry. I 19 couldn't hear what your answer was. 20 RICK CONRATH: I would say approximately two 21 months. 22 HEARING EXAMINER ROBESON HANNAN: Two months. 23 RICK CONRATH: Yes. I don't know where 24 everything is right now with Covid and with the fact that 25 permitting offices are closed and how we're dealing with</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 things so any of my previous experience having worked in 2 Montgomery County for 30 some years, I'm not sure that that 3 is applicable at this time. 4 BRYAN BOUGHTON: Does the operations building 5 pose any problems for the permitting process that you might 6 see or is it pretty straightforward? 7 RICK CONRATH: No, it -- no, it's a very 8 straightforward building. I mean this particular building 9 type is very straightforward and very simple to build and I 10 think once construction starts on something like this I 11 don't foresee any issues. 12 BRYAN BOUGHTON: So you think from the time that 13 you're engaged to move forward, by your estimates here 14 we're looking at four months until they could begin the 15 construction? 16 RICK CONRATH: Something along that -- something 17 along that line. 18 BRYAN BOUGHTON: Okay. Thank you. That's all I 19 have. 20 RICK CONRATH: Okay. 21 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 22 you. Seeing no other hands up, Ms. Regelin, do you have 23 redirect? 24 MS. REGELIN: I do not. We can move on. 25 HEARING EXAMINER ROBESON HANNAN: Okay. We're</p>	<p style="text-align: right;">79</p> <p>1 [Back on the record at 11:35:38 a.m.] 2 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 3 Quinn, are you here? And Mr. Boughton? 4 JACK QUINN: I am here. 5 HEARING EXAMINER ROBESON HANNAN: Okay. Is Mr. 6 Lambert here? 7 DAVE LAMBERT: Present. I am present. 8 HEARING EXAMINER ROBESON HANNAN: All right. So 9 we're going to go back on the record. 10 Ms. Regelin, you're up with your next witness 11 please. Oh, before I start, Ms. Regelin, I did talk to 12 staff during the break and they haven't received a copy of 13 the contract yet. Is that -- 14 MS. REGELIN: Yes, I -- 15 HEARING EXAMINER ROBESON HANNAN: -- yet today or 16 -- 17 MS. REGELIN: Yes. Actually, I just -- while we 18 were taking the five-minute break I looked at my email and 19 I saw it so at the next break I will forward it. 20 HEARING EXAMINER ROBESON HANNAN: Well, why don't 21 we do this. 22 DAVE LAMBERT: Are we talking about the contract 23 or are we talking about the extension? 24 HEARING EXAMINER ROBESON HANNAN: Do you have the 25 extension and the contract, Ms. Regelin?</p>
<p style="text-align: right;">78</p> <p>1 going to take a five minute -- 2 Mr. Conrath, you can be excused. 3 We're going to take a five-minute break and we'll 4 be back. Who is your next witness, Ms. Regelin? 5 MS. REGELIN: Devin Kennedy, our site designer. 6 HEARING EXAMINER ROBESON HANNAN: Can you give me 7 advance -- do you know what exhibits he's going to testify 8 to or -- 9 MS. REGELIN: Hold on. I can tell you his -- 10 HEARING EXAMINER ROBESON HANNAN: I can bring 11 them up more easily if I do that, if I know in advance. 12 MS. REGELIN: He's going to start with Exhibit 13 11, the NRI/FSD. 14 HEARING EXAMINER ROBESON HANNAN: And then what? 15 MS. REGELIN: Exhibit -- and Devin, you can jump 16 in at any time. I think it's Exhibit 32, the preliminary 17 forest conservation plan. Exhibit 12, the site detail 18 sheet. 19 HEARING EXAMINER ROBESON HANNAN: Okay. I assume 20 the landscape plan. 21 MS. REGELIN: He is going to pull up Exhibit 49, 22 48. 23 HEARING EXAMINER ROBESON HANNAN: Okay. Well, we 24 can start there. We'll be back at 11:30. Thank you. 25 [Off the record at 11:25:53 a.m.]</p>	<p style="text-align: right;">80</p> <p>1 MS. REGELIN: I'm opening up my attachment here. 2 Let me see. 3 HEARING EXAMINER ROBESON HANNAN: Wait, there's 4 some -- I'm sorry. There's some background noise that I 5 can't understand. For the record, Ms. Regelin is looking 6 at what's been sent to her vis-à-vis the contract for the 7 property. 8 MS. REGELIN: Correct. So it's the addendum and 9 I will forward it to Nana right now. 10 HEARING EXAMINER ROBESON HANNAN: Thank you. 11 JACK QUINN: May we get a copy of the contract as 12 well? 13 MS. REGELIN: At this point I'm willing to share 14 the extension. I think what you -- what you will see on 15 the extension is that he has provided notice that he's 16 extended his contingency period through June 26th, 2020 and 17 he did not terminate the contract so he has to close by the 18 end of the year, and that's what you'll see in here. 19 HEARING EXAMINER ROBESON HANNAN: Well -- 20 MS. REGELIN: And if not I can send you the 21 contract. 22 HEARING EXAMINER ROBESON HANNAN: Let's -- I'm 23 just letting staff know you're emailing it now. 24 JACK QUINN: Ms. Hannan, I believe the contract 25 should be a part of this record. I make that request.</p>

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21 (81 to 84)

<p>81</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Ms. Regelin?</p> <p>2 MS. REGELIN: I don't think the contract is</p> <p>3 relevant. I think the extension -- the addendum is very</p> <p>4 clear that he is still proceeding to closing and so he has</p> <p>5 not exercised his contingency to terminate the contract and</p> <p>6 so I think it's pretty clear on its face that he has to go</p> <p>7 --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: What we</p> <p>9 typically do is we do get contracts in the record but they</p> <p>10 redact out things like the rental and, you know, other</p> <p>11 things. Can he provide the contract with those types of</p> <p>12 terms redacted out?</p> <p>13 MS. REGELIN: I will ask Mr. Kelley, but we could</p> <p>14 redact it but I can't do it in the next five minutes</p> <p>15 because I don't even have the contract right here to email</p> <p>16 you, but I will forward this extension so you can see</p> <p>17 fairly clearly.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Forward the</p> <p>19 extension and we'll get that up on the web. Okay. And</p> <p>20 then see what you can do as far as getting the contract in</p> <p>21 the record. All right?</p> <p>22 MS. REGELIN: Certainly.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>24 JACK QUINN: Ms. Hannan, I think the -- I think</p> <p>25 the exhibit also be -- should also be all previous</p>	<p>83</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Mr.</p> <p>2 Kennedy, please raise your right hand. Do you solemnly</p> <p>3 affirm under penalties of perjury that the statements</p> <p>4 you're about to make are the truth, the whole truth, and</p> <p>5 nothing but the truth?</p> <p>6 DEVIN KENNEDY: I do.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Go ahead, Ms.</p> <p>8 Regelin.</p> <p>9 MS. REGELIN: So please state your name, your</p> <p>10 company name, title, and address for the record.</p> <p>11 DEVIN KENNEDY: Yeah, my name is Devin Kennedy.</p> <p>12 I work with Stantec. I'm a landscape architect and ISA</p> <p>13 certified arborist. My address is 20440 Century Boulevard,</p> <p>14 Suite 240, Germantown, Maryland 20874.</p> <p>15 MS. REGELIN: And have you submitted your</p> <p>16 credentials into the record?</p> <p>17 DEVIN KENNEDY: Yes, my resume is Exhibit 37(b).</p> <p>18 MS. REGELIN: And can you quickly provide an</p> <p>19 overview of your education and experience as a landscape</p> <p>20 architect and arborist.</p> <p>21 DEVIN KENNEDY: Sure. I have a Bachelor's of</p> <p>22 Science from Penn State University in landscape</p> <p>23 contracting. I've been practicing landscape architecture</p> <p>24 since 2008. I've been a registered landscape architect</p> <p>25 since 2014 and I've been a certified arborist since 2008.</p>
<p>82</p> <p>1 extensions to put it in context.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Do you have</p> <p>3 that, Ms. Regelin?</p> <p>4 MS. REGELIN: I will have to see if there were</p> <p>5 any prior extensions.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: I thought you</p> <p>7 said there was one?</p> <p>8 MS. REGELIN: Hold on. I'm the land use</p> <p>9 attorney, not the settlement attorney, so I apologize.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. Well --</p> <p>11 MS. REGELIN: This is not my document.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: I'm going to</p> <p>13 leave the record open after -- we leave it open anyway, but</p> <p>14 I'm going to leave the record open to get both the contract</p> <p>15 and the extension in if you can provide that.</p> <p>16 MS. REGELIN: Okay. I think this one extension</p> <p>17 actually clarifies that, but I just forwarded it.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>19 just double -- just double check please.</p> <p>20 MS. REGELIN: Certainly will do.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Now</p> <p>22 let's go forward with your next witness.</p> <p>23 MS. REGELIN: So I'm calling Devin Kennedy, our</p> <p>24 expert in site design and landscape architecture and a</p> <p>25 certified arborist.</p>	<p>84</p> <p>1 MS. REGELIN: Have you previously been accepted</p> <p>2 and testified as an expert in landscape architecture before</p> <p>3 the hearing examiner's office or any other board or agency?</p> <p>4 DEVIN KENNEDY: Yes, I was an expert witness and</p> <p>5 testified for the hearing examiner as a landscape architect</p> <p>6 and a certified arborist for a project called Friends House</p> <p>7 back in 2014.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MS. REGELIN: I'd like to offer Mr. Kennedy as an</p> <p>10 expert in the site design, landscape architecture, and</p> <p>11 certified arborist.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Do I hear any</p> <p>13 objections? Okay. Hearing and seeing none I will so</p> <p>14 qualify him.</p> <p>15 MS. REGELIN: So Mr. Kennedy, are you familiar</p> <p>16 with the property and have you walked the property?</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Yes, I prepared</p> <p>18 the natural resources inventory and forest and delineation</p> <p>19 for the property which required me to go to the site, to</p> <p>20 walk, observe, and analyze the entire property. I've also</p> <p>21 prepared the preliminary forest conservation plan, and I</p> <p>22 also designed the site layout for conditional use area as</p> <p>23 well as the landscape and lighting plan.</p> <p>24 MS. REGELIN: And can you describe the existing</p> <p>25 conditions that were found on the property as shown in the</p>

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22 (85 to 88)

<p>85</p> <p>1 NRI/FSG which is Exhibit 11? And is that the first exhibit 2 you'd like to go, Mr. Kennedy? 3 DEVIN KENNEDY: Yes, please. Thank you. So this 4 is -- looking at the natural resources inventory, forest 5 and delineation, the number is 420192170. This was 6 prepared by me and approved by Park and Planning on August 7 12th, 2019. So overall, you know, we've seen the site 8 several times now, but it's -- the site is 30.94 acres 9 total. 10.86 of that is forested and 20.08 acres consists 10 of a sod farm and then a single-family residence. There 11 are two existing entrances off of Damascus Road: one 12 entrance for the house and one entrance for the farm 13 vehicles to service the farm area. 14 The forested area -- the property is located on 15 the northern third of the tract area. Within this area 16 there's approximately one acre of wetland. There's also an 17 old farm pond that exists there. Then there's a perennial 18 and intermittent stream all with associated environmental 19 buffers. Generally speaking, the site is flat but there is 20 a slope. It slopes away from Damascus Road towards the 21 forest of the northern end. 22 There is a 660 foot PMA setback which is the 23 Montgomery County Primary Management Area per the 24 guidelines for environmental management of development. So 25 you can see that line. It runs from southwest to northeast</p>	<p>87</p> <p>1 conservation plan recorded as CU 20-2007 was approved and 2 accepted by Park and Planning staff and the planning board 3 on October 22nd, 2020. A copy of the resolution is on 4 record as Exhibit 65. The preliminary forest conservation 5 plan was prepared as a part of this conditional use 6 application. Land use category is agricultural and 7 resource area. This stipulates a 20 percent afforestation 8 and a 50 percent reforestation threshold. This comes out 9 to a 3.74 acre afforestation and a 9.35 acre reforestation, 10 respectively. The breakeven point or the amount of forest 11 that can be removed without mitigation of any kind is 1.51 12 acres per the forest conservation worksheets. 13 The applicant is proposing to retain all existing 14 forests and actually encumber all forests in a permanent 15 category one conservation easement. Therefore, this 16 project satisfies all regulatory requirements in regards to 17 forest conservation and actually exceeds it by 1.51 acres. 18 A tree variance was granted as part of this application, 19 Exhibit 63 and 65. The variance covers the proposed 20 impacts to three specimen trees. One tree is impacted by 21 the proposed driveway, and two would be impacted by the 22 removal of the existing home and associated outbuildings 23 and driveway. 24 Park and Planning staff and the planning board 25 have approved of the shown impacts and granted variance for</p>
<p>86</p> <p>1 toward the middle of the property. It's a lighter line. 2 There you go right there. So -- 3 HEARING EXAMINER ROBESON HANNAN: And when he 4 says right there, is that labeled on the plan? 5 DEVIN KENNEDY: It is. It's just a lighter 6 gradient -- 7 HEARING EXAMINER ROBESON HANNAN: Okay. 8 DEVIN KENNEDY: -- so they'll be easier to see 9 than the other lines. 10 HEARING EXAMINER ROBESON HANNAN: Just for the 11 record I want to make sure. Go ahead. 12 DEVIN KENNEDY: So we have stream value buffer 13 setbacks from the stream which are also shown sort of 14 parallel to the PMA setback there. Yeah, that's a darker 15 line. So the area from that stream value buffer to the PMA 16 setback is considered the PMA transition area. So that is 17 an environmental constraint that exists on the site. 18 There are no rare or threatened species were 19 observed or have been recorded on the site per DNR. Our 20 proposed conditional use area is well outside of any of 21 these environmental features, the hard features of the 22 site. So that's generally a description of the site. 23 MS. REGELIN: Okay. Can you provide an overview 24 of the preliminary forest conversation plan? 25 DEVIN KENNEDY: Yeah. The preliminary forest</p>	<p>88</p> <p>1 the trees impacted, specimen trees, on October 22nd, 2020. 2 HEARING EXAMINER ROBESON HANNAN: I'm sorry. 3 What -- Mr. Kennedy, which exhibit is the PSCP? 4 DEVIN KENNEDY: That is the -- 5 HEARING EXAMINER ROBESON HANNAN: Exhibit 32 for 6 -- 7 DEVIN KENNEDY: 32, yes. 8 HEARING EXAMINER ROBESON HANNAN: Okay. 9 DEVIN KENNEDY: So you're on it right there. 10 HEARING EXAMINER ROBESON HANNAN: All right. 11 DEVIN KENNEDY: I believe this is 32. Yeah, 12 that's correct. 13 HEARING EXAMINER ROBESON HANNAN: Can you 14 describe the area? Is it a category one, did you say, 15 forest conservation easement? 16 DEVIN KENNEDY: That's correct. So if you 17 look -- you might need to zoom in a little bit but, yeah, 18 where you have your cursor is delineating that dash line. 19 HEARING EXAMINER ROBESON HANNAN: Does it 20 go -- but it goes -- 21 DEVIN KENNEDY: No, that's encumbered -- that's 22 part of the easement. So it just -- 23 HEARING EXAMINER ROBESON HANNAN: Okay. 24 DEVIN KENNEDY: It really just bisects the site 25 there from --</p>

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23 (89 to 92)

<p>89</p> <p>1 HEARING EXAMINER ROBESON HANNAN: That's what I -</p> <p>2 -</p> <p>3 DEVIN KENNEDY: -- west to east.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>5 DEVIN KENNEDY: So as far as back to the trees,</p> <p>6 the variance, the tree variance, the applicant plans on</p> <p>7 mitigating any impact to these trees by providing tree</p> <p>8 protection measures and retaining the specimen trees.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Where are the</p> <p>10 tree variance trees?</p> <p>11 DEVIN KENNEDY: All right. I think you will have</p> <p>12 to actually zoom in a little bit on this one. So if you go</p> <p>13 to the proposed entrance right at the -- you'll see the</p> <p>14 Tree 62 I believe is to the left of the entrance there.</p> <p>15 Yeah, that's it right there.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: It has a 70 on</p> <p>17 it. I don't think --</p> <p>18 DEVIN KENNEDY: Oh, 70. Yeah, sorry. Yeah,</p> <p>19 that's 70. And then the other two trees are around the</p> <p>20 existing house to the left.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: 62 and 63?</p> <p>22 DEVIN KENNEDY: It was -- yes. 62 and 63, yeah.</p> <p>23 Let me double check that. Yeah. So, sorry. Tree 70 is</p> <p>24 the one near the proposed driveway and then Tree 63 and 66</p> <p>25 are the specimen trees impacted by the -- would be impacted</p>	<p>91</p> <p>1 Thank you.</p> <p>2 DEVIN KENNEDY: Okay. I think --</p> <p>3 MS. REGELIN: I apologize.</p> <p>4 DEVIN KENNEDY: Sorry.</p> <p>5 MS. REGELIN: Are you ready for the next?</p> <p>6 DEVIN KENNEDY: Yes, please.</p> <p>7 MS. REGELIN: Are you ready for the next or</p> <p>8 you -- okay.</p> <p>9 DEVIN KENNEDY: I'll take that now.</p> <p>10 MS. REGELIN: We've heard descriptions of the</p> <p>11 conditional use site plan from the prior witnesses. Can</p> <p>12 you describe how you designed the site plan and determined</p> <p>13 the limits of the conditional use permit area and within</p> <p>14 the areas of your expertise and the particular constraints</p> <p>15 and opportunities that there are on the property?</p> <p>16 DEVIN KENNEDY: Yes. So regarding the</p> <p>17 conditional use site plan, I guess first looking into the</p> <p>18 project --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Do you want to</p> <p>20 pull that -- this is the exhibit. Is this the exhibit you</p> <p>21 want to pull up? This is Exhibit 33 which is the site</p> <p>22 plan.</p> <p>23 DEVIN KENNEDY: Yeah, that's fine. I think that</p> <p>24 will work for what we're talking about here. Can you just</p> <p>25 zoom out a little bit to get a little -- just to reference</p>
<p>90</p> <p>1 by the demolition of the existing house.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>3 you.</p> <p>4 DEVIN KENNEDY: Yes.</p> <p>5 MS. REGELIN: And just to clarify, they're</p> <p>6 impacted because of the work that will be done to remove</p> <p>7 the house and the driveway but they are not planned to be</p> <p>8 removed.</p> <p>9 DEVIN KENNEDY: Correct.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: It's in the</p> <p>11 critical root zone, is that it?</p> <p>12 DEVIN KENNEDY: Yeah, so anytime there's a</p> <p>13 specimen tree's critical root zone, which is determined by</p> <p>14 the diameter of the tree --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>16 DEVIN KENNEDY: -- is impacted then you -- yeah,</p> <p>17 you need to request variance for those impacts --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>19 DEVIN KENNEDY: -- with planning boards.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. But</p> <p>21 they're not being taken down. They're going to remain.</p> <p>22 DEVIN KENNEDY: Yeah. So the applicant would</p> <p>23 like to preserve these trees. So we'll be providing</p> <p>24 appropriate protections and mitigation for the impacts.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: All right.</p>	<p>92</p> <p>1 the overall site? So as you can see, the entire site is</p> <p>2 30.94 acres. 10.86 of that is forested and will remain</p> <p>3 forested. So that gave us approximately 20.08 acres to</p> <p>4 sort of -- of usable siting for the proposed work area.</p> <p>5 So we knew that we wanted to come up with a</p> <p>6 compact design that would include all design elements that</p> <p>7 are required for the business operations needed by the</p> <p>8 clients. So this also includes -- you know, we wanted to</p> <p>9 limit the amount of impervious area associated with those</p> <p>10 uses. The building, parking lots, parking area, work yard,</p> <p>11 and storage were all consolidated into an area between two-</p> <p>12 and-a-half and three acres. So for the entire site being</p> <p>13 30 acres, the actual operations portion of that 30 acres is</p> <p>14 less than three acres.</p> <p>15 So once we came up with the design program as far</p> <p>16 as including all elements needed for the operations, we</p> <p>17 wanted to locate that specific program with particular</p> <p>18 sensitivity to the overall environmental recommendations as</p> <p>19 described in the guideline for environmental management of</p> <p>20 development in Montgomery County. This meant locating the</p> <p>21 designed area outside of all environmental buffers and</p> <p>22 setbacks, and importantly, under ten percent impervious</p> <p>23 within the transition area that I described earlier as part</p> <p>24 of the NRI, and also ten percent of the entire site as a</p> <p>25 whole.</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 So that's sort of -- in a design perspective it</p> <p>2 kind of resulted in -- you know, we wanted to have it set</p> <p>3 back from the road a decent amount to provide visual</p> <p>4 buffering but also not far back that we were intruding onto</p> <p>5 these environmental recommendations. So that kind of like</p> <p>6 led to where the site is sited on the plan here.</p> <p>7 So once we found our sweet spot, so to speak,</p> <p>8 location within the site we then assigned our conditional</p> <p>9 use area outside of that operations area. So this -- it</p> <p>10 was ultimately delineated around all elements that were</p> <p>11 related specifically to the conditional use. So this</p> <p>12 includes the work yard area, the buildings, the parking,</p> <p>13 the fence itself, the screen fence, the driveways, buffer</p> <p>14 plantings, septic area, and all of this comes to about 6.43</p> <p>15 acres.</p> <p>16 Because of the overall site characteristics and</p> <p>17 where we sited the design program, we were able to provide</p> <p>18 in my opinion substantial screening of the actual business</p> <p>19 activities. So getting into more design specifics, we</p> <p>20 decided to remove the two existing access points and</p> <p>21 provide one entrance driveway which is proposed at the</p> <p>22 point directly across from the park entrance. So this</p> <p>23 connecting driveway is 24 feet wide. It will allow for</p> <p>24 comfortable two-way for work trucks in and out of the site.</p> <p>25 The main -- I'm sorry. I'm sort of going through</p>	<p style="text-align: right;">95</p> <p>1 employee parking. The entire site design and work area is</p> <p>2 enclosed by an eight-foot tall board-on-board wooden fence</p> <p>3 that travels the entire perimeter of the site effectively</p> <p>4 screening anything within -- behind the fence.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Mr. Kennedy,</p> <p>6 there were some questions, and I want to understand because</p> <p>7 they were valid questions, about the board-on-board fence.</p> <p>8 Does that include the operation -- I think you call it the</p> <p>9 operations building, the large building? Is there going to</p> <p>10 be an eight-foot board-on-board fence in front of that?</p> <p>11 DEVIN KENNEDY: The design is not -- you know,</p> <p>12 what you're seeing here is not showing the fence around the</p> <p>13 building itself. So once this building is built there is</p> <p>14 no need to have a fence delineated along its footprint. So</p> <p>15 I understand there was a question earlier regarding if</p> <p>16 there would be a fence prior to the main building being</p> <p>17 built and --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>19 DEVIN KENNEDY: -- and my understanding is, yes,</p> <p>20 that's the plan is to have the perimeter fencing built. So</p> <p>21 effectively the --</p> <p>22 HEARING EXAMINER ROBESON HANNAN: So that would</p> <p>23 be the same perimeter fencing -- is that the eight-foot</p> <p>24 tall board-on-board that would be there?</p> <p>25 DEVIN KENNEDY: Correct. Yeah, it would be the</p>
<p style="text-align: right;">94</p> <p>1 the design description a little bit so it may help to zoom</p> <p>2 in a little bit on the actual design elements. Maybe a</p> <p>3 little bit more. Okay. That's probably good. So I'm</p> <p>4 starting here with our entry drive into the site. So it's</p> <p>5 about a 200-foot driveway length from the Damascus Road</p> <p>6 'til you get to the fence work yard area.</p> <p>7 The main operations and maintenance barn anchors</p> <p>8 that southwest corner of the work area. So this 80 by 125-</p> <p>9 foot building was oriented north and south to have its</p> <p>10 short gable end facing Damascus Road and the broad side,</p> <p>11 125 foot long broad side was screening the work yard from a</p> <p>12 western viewpoint.</p> <p>13 To the east of the main building is the work yard</p> <p>14 area and a work yard -- work truck parking and trailers.</p> <p>15 It was a major design priority to screen the entire</p> <p>16 business operations in the center of the site as it stands.</p> <p>17 The main view from Damascus Road towards the work yard is</p> <p>18 screened by an eight-foot tall densely planted berm. On</p> <p>19 the northside of this berm is the material storage and work</p> <p>20 yard which has the eight-foot tall wall backing behind it.</p> <p>21 It's completely screened from Damascus Road. All visual</p> <p>22 screening is satisfied.</p> <p>23 Along the east edge of the work area are four</p> <p>24 greenhouses and one storage building. Along the north edge</p> <p>25 is truck parking. The northwest corner contains the</p>	<p style="text-align: right;">96</p> <p>1 same fencing that circulates the entire area.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Now is the</p> <p>3 eight-foot board-on-board on top of the berm?</p> <p>4 DEVIN KENNEDY: No.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. What's</p> <p>6 on top of the berm?</p> <p>7 DEVIN KENNEDY: So the berm itself just runs up</p> <p>8 to the top of the wall and then from the top of the wall is</p> <p>9 eight foot -- the wall is eight-feet tall and all of your</p> <p>10 storage and work yard area is behind here. So the berm</p> <p>11 itself is screening the activities --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. So --</p> <p>13 DEVIN KENNEDY: -- and then you have your</p> <p>14 plantings on top of the berm here.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: So I'm</p> <p>16 pointing -- there's a thing that says materials bins.</p> <p>17 DEVIN KENNEDY: Yes.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: There is -- it</p> <p>19 looks like a wall there, a wall that goes east to an X and</p> <p>20 then a wall that starts where this hatched line is. So</p> <p>21 is -- so that's not going to have this fence either; is</p> <p>22 that what I'm hearing?</p> <p>23 DEVIN KENNEDY: Yeah, all of that will be --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: I just can't</p> <p>25 figure it out.</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 DEVIN KENNEDY: Yeah. So the wall will be eight</p> <p>2 feet the whole way. It is buried by the berm in the front</p> <p>3 part but as it slopes away to meet grade, you know, the</p> <p>4 fence will make up that -- the difference leading up to the</p> <p>5 wall. So as you have the plan here --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>7 DEVIN KENNEDY: -- you can see the fence, you</p> <p>8 know, starts at that point of the wall.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: The fence is</p> <p>10 this line with the hatching, correct?</p> <p>11 DEVIN KENNEDY: That's correct. Yes.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. So --</p> <p>13 MS. REGELIN: So Mr. Kennedy, just to be clear,</p> <p>14 that wall is a concrete wall that's eight-feet tall?</p> <p>15 DEVIN KENNEDY: That's correct.</p> <p>16 MS. REGELIN: And in front of it is the berm?</p> <p>17 DEVIN KENNEDY: Yes.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. I -- so</p> <p>19 the eight-foot wall here is at grade with the berm?</p> <p>20 DEVIN KENNEDY: Right. Right.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: That's what I</p> <p>22 was trying to figure out.</p> <p>23 DEVIN KENNEDY: Yeah, it --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: And then you're</p> <p>25 putting landscaping -- okay. I understand. I didn't</p>	<p style="text-align: right;">99</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. So it's</p> <p>2 this?</p> <p>3 DEVIN KENNEDY: That's the gate. The one right</p> <p>4 below it is showing the paneling.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I see.</p> <p>6 DEVIN KENNEDY: Yeah, that's it. But they match</p> <p>7 in design. So --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. All</p> <p>9 right. I've just been trying -- I'm not making a judgment</p> <p>10 one way or the other. I'm just trying to understand</p> <p>11 because I thought the community had some good questions</p> <p>12 from the last time. Okay. Keep going.</p> <p>13 DEVIN KENNEDY: So yeah, just to reiterate, the</p> <p>14 fencing, getting out there and screening everything is a</p> <p>15 major, you know, priority as far as phasing goes. But</p> <p>16 continuing on. So along the east edge we have the</p> <p>17 greenhouses, the northwest is the employee parking. We did</p> <p>18 the -- sorry, I'm just trying to get track on my notes</p> <p>19 here.</p> <p>20 So outside of that wooden fence that actually</p> <p>21 screens the activity, you know, completely there is</p> <p>22 additional buffer plantings in strategic areas on the site</p> <p>23 to further soften those operations. So effectively, you</p> <p>24 know, we're having our major screens but then we're</p> <p>25 actually softening that, you know, with some more</p>
<p style="text-align: right;">98</p> <p>1 understand that before.</p> <p>2 DEVIN KENNEDY: Yeah, it's effectively a</p> <p>3 retaining wall for the berm.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Go</p> <p>5 ahead.</p> <p>6 DEVIN KENNEDY: All right.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Now what's</p> <p>8 going to be there? To your knowledge, if you know, is the</p> <p>9 berm being constructed with the temporary operation?</p> <p>10 DEVIN KENNEDY: Yeah, so the -- yeah, before any</p> <p>11 buildings are built the plan is to, you know, build the</p> <p>12 surfaces, the berms, and then, you know, the plantings as</p> <p>13 appropriate in the season. So get all the screen elements</p> <p>14 into -- onto the site as soon as possible.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Does that</p> <p>16 include the board-on-board fence?</p> <p>17 DEVIN KENNEDY: Yes, it does.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: So the</p> <p>19 area -- and the -- okay. Okay. I understand. Do you have</p> <p>20 a site detail of the board-on-board fence?</p> <p>21 DEVIN KENNEDY: Yeah, there's an image of it on</p> <p>22 the detail sheet which I believe is -- let me check one</p> <p>23 second.</p> <p>24 MS. REGELIN: It's Exhibit 7.</p> <p>25 DEVIN KENNEDY: Exhibit 7. Thank you.</p>	<p style="text-align: right;">100</p> <p>1 supplemental plantings.</p> <p>2 The set back from each property line to the</p> <p>3 physical elements of the proposed design are as follows.</p> <p>4 From the east property line is 196 feet, from the north</p> <p>5 over 800 feet to the closest item, and then from the west</p> <p>6 it's 405 feet, and then from the Damascus Road setback to</p> <p>7 the wall is 132 feet.</p> <p>8 So we have designed the conditional use area to</p> <p>9 use extensive setbacks, buildings, opaque fencing,</p> <p>10 landscape to screen the activity in the work yard and to</p> <p>11 minimize all noise or light spillage. So I think</p> <p>12 that's -- yeah, that's it for the site plan. Thank you,</p> <p>13 Nancy.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Ms. Regelin?</p> <p>15 MS. REGELIN: I apologize. Is there additional</p> <p>16 perimeter existing plantings in the property that would be</p> <p>17 in addition to what this applicant introduces onto the</p> <p>18 site?</p> <p>19 DEVIN KENNEDY: Yeah, I was -- yeah, to further</p> <p>20 reiterate the existing conditions combined with what we're</p> <p>21 proposing, there is buffer -- existing trees and vegetation</p> <p>22 buffers along both property lines, so on the Howard Chapel</p> <p>23 side and then also on the east property line. And also</p> <p>24 there's mature trees that are existing around the single-</p> <p>25 family house there that are planning to be retained, and</p>

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<p>101</p> <p>1 along the existing driveway as well. So those large 2 evergreen trees will, you know, also act as a buffer to 3 the -- from looking to the southwest portion of the work 4 area. 5 MS. REGELIN: So can you point out like the 6 grouping of the trees that are on the Howard Chapel side of 7 the conditional use that are around the existing house? 8 DEVIN KENNEDY: Oh, sure. Yeah. 9 MS. REGELIN: Can you tell us or describe us a 10 little bit about those? 11 DEVIN KENNEDY: So the ones -- if you look right 12 at the driveway entrance for the house there's I think 13 three -- the existing driveway to the west, the existing 14 entrance there. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Right 16 here? 17 DEVIN KENNEDY: Yes. That. So you can see kind 18 of ghosted in there the tree symbols and then the actual 19 rough canopy limits shown. So those are all groupings of 20 large mature trees. The ones along the driveway are 21 evergreen, larger trees. Same with the ones behind the 22 single-family house. So those three, yes. And then the 23 ones around the building itself are deciduous but they're 24 large shade trees. So I think that effectively as it is 25 is, you know, just adds to the over-the-top -- you know, in</p>	<p>103</p> <p>1 material bins, what is the surface there? 2 DEVIN KENNEDY: So yeah, anything that's stored 3 or parked or anything on top of the impervious -- they have 4 gravel which is considered impervious. So any materials or 5 vegetation or whatever is desired by the business 6 operations is sitting on top of an impervious surface. 7 That's correct. 8 MS. REGELIN: Okay. And if necessary, in the 9 material bins, they could replace that since it's already 10 impervious with asphalt or concrete if they needed to? 11 DEVIN KENNEDY: Yeah, correct. 12 MS. REGELIN: Can you focus on the design of the 13 driveway access? 14 DEVIN KENNEDY: Sure. The proposed driveway 15 access, if we go back to the site plan exhibit, is located 16 directly across from the confronting park entrance. So 17 it's located approximately right around the high points of 18 the Damascus Road which provides adequate sight lines to 19 both the east and west. It's a flat road. You're at 20 roughly the high point elevation wise and there's no 21 physical obstructions to view. So it's considered a safe 22 location around midway through the property. 23 The proposed entrance will be SHA standard apron 24 will be provided and compliant with fire department access. 25 So in regards to turning radius width of that nature. The</p>
<p>102</p> <p>1 my opinion over-buffered area. Or not over-buffered but 2 adequately buffered above and beyond I would say. 3 MS. REGELIN: Okay. How is the project designed 4 to keep down dust? 5 DEVIN KENNEDY: So the -- our proposed entrance 6 driveway is asphalt and the remaining work yard area and 7 site is gravel. There's concrete sidewalks and ADA spacing 8 is also concrete. So just in relation to your question, as 9 a part of the fire access compliance would be a long-term 10 maintenance agreement will have to be executed that intends 11 to provide access standards appropriate for a fire 12 apparatus in perpetuity. So this mean, you know, you 13 maintain those drivable surfaces, don't let them get muddy 14 or, you know, inappropriate for a fire apparatus truck to 15 maneuver. 16 So the gravel itself that's being proposed is 17 number 57 stone which are -- you know, it's a little bit 18 larger stone, not as dusty as a typical, you know, junk 19 gravel-type stone. But any dust particles that would be 20 generated by work vehicles within the site, the work yard 21 area, you have over 200 feet of asphalt to kind of disperse 22 any dust from the tires from actually existing the site. 23 MS. REGELIN: And is the yard impervious -- 24 DEVIN KENNEDY: Yes. 25 MS. REGELIN: -- even with the gravel? So the</p>	<p>104</p> <p>1 connecting driveway is 24-foot wide and 200-feet long which 2 connects the Damascus Road to the work area. It is my 3 opinion that the access to the conditional use area meets 4 the requirements of Montgomery County Code and zoning 5 ordinance and provides for safe and convenient turns into 6 and out of the property. 7 MS. REGELIN: Was it intentional to design this 8 site so that all of the entrances to the barn and the 9 future building entered into the yard? 10 DEVIN KENNEDY: Yeah, so we -- yeah, the design, 11 back to sort of the original idea, was to have a self- 12 contained work yard area. So as part of that all entrances 13 to the buildings would be facing the interior of the site 14 area, you know, from fully screened from outside 15 observations. 16 MS. REGELIN: So the one area of the operations 17 barn indicates it's for salt storage. That doorway into 18 the yard actually exits onto asphalt, correct? 19 DEVIN KENNEDY: Yes. Yeah, all -- yeah, all 20 entry and exit out of that main building is onto the 21 asphalt shown on the plan. 22 MS. REGELIN: Let's move onto the landscape plan. 23 DEVIN KENNEDY: Okay. 24 MS. REGELIN: Our landscape lighting plan is 25 shown at Exhibit 38 and it's rendered on Exhibit 48. So</p>

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<p>105</p> <p>1 which exhibit would you like pulled up?</p> <p>2 DEVIN KENNEDY: I think 48 would be good to show</p> <p>3 the rendering.</p> <p>4 MS. REGELIN: Okay. Then could you go forward</p> <p>5 and describe the landscape plan in more detail and the</p> <p>6 parking lot plan?</p> <p>7 DEVIN KENNEDY: Yeah, so the -- you know, just to</p> <p>8 circle back again, a major design priority was to comply</p> <p>9 with our screening requirements listed in the zoning</p> <p>10 ordinance and, more importantly, to adequately buffer the</p> <p>11 surrounding properties.</p> <p>12 Along the north edge of the conditional use area</p> <p>13 we are providing just the eight-foot tall board-on-board</p> <p>14 fence, but there's over 800 feet to the property line of</p> <p>15 the north, to the north, and 430 feet of that setback is</p> <p>16 actual forest. So we felt that that was an adequate screen</p> <p>17 for the site from that direction.</p> <p>18 The east edge of the conditional use area is</p> <p>19 enclosed by again the eight-foot tall board-on-board opaque</p> <p>20 fence. Just outside of that fence we're providing a</p> <p>21 generous dense buffer, a planting of overstory, understory,</p> <p>22 shrubs, and evergreens are all mixed in a more naturalized</p> <p>23 pattern to further buffer the fence as well.</p> <p>24 In addition to that, buffer wise there is an</p> <p>25 existing strip of vegetation that runs along the property</p>	<p>107</p> <p>1 substantial berm which is heavily planted using overstory,</p> <p>2 understory shrubs and evergreens in a naturalized pattern.</p> <p>3 All proposed plantings are considered native to the region.</p> <p>4 Just to kind of go back and point out what we're</p> <p>5 looking at on this rendering, where the greenhouses are on</p> <p>6 the northeast corner there, we propose some evergreen</p> <p>7 trees. So this is to further sort of -- the idea was to</p> <p>8 try to fill in any gaps that might exist as you're</p> <p>9 traveling down the road. So the evergreens are kind of</p> <p>10 located in that transition area where the berm is sloping</p> <p>11 down and then the fence is there, but the evergreen trees,</p> <p>12 you know, further buffer and screen that specific area from</p> <p>13 looking northwest from the road.</p> <p>14 So now continuing on the west edge of the</p> <p>15 conditional use area. Again, we're utilizing our eight-</p> <p>16 foot tall board-on-board fence to screen the parking area</p> <p>17 as well as the broad side of the operations barn which</p> <p>18 further acts as a screen. And then outside of the building</p> <p>19 there we are providing a couple of overstory trees that</p> <p>20 just sort of provide a softening of the façade there which</p> <p>21 is further -- sort of buffers the façade of the building.</p> <p>22 So now more into the parking area. So the</p> <p>23 northwest corner there, that's the employee parking. So</p> <p>24 we're proposing shade trees around all the employee area.</p> <p>25 This is intended to provide the minimum 25 percent canopy</p>
<p>106</p> <p>1 line between the neighbor to the east. So those proposed -</p> <p>2 -</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Is that a hedge</p> <p>4 row or is that -- what is that vegetation?</p> <p>5 DEVIN KENNEDY: It's like a massing of vegetation</p> <p>6 and there's some trees in there sort of outside the</p> <p>7 definition of what would be a forest but it's just a</p> <p>8 narrow -- you know, there are larger trees but it's mostly</p> <p>9 just a massing of vegetation.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 DEVIN KENNEDY: So in addition to all that, you</p> <p>12 know, we're set back 196 feet. You know, 50-foot setbacks</p> <p>13 are sort of the minimum requirements but we're well</p> <p>14 exceeding that. And within that setback as part of</p> <p>15 operations there will be nursery stock, you know,</p> <p>16 potentially in that transition area as well. So in</p> <p>17 particular from this neighbor, you know, you'll have the</p> <p>18 existing vegetative buffer along the property line that</p> <p>19 then goes to nursery planting, and then we'll have our</p> <p>20 proposed buffer plantings outside the fence, and then you</p> <p>21 have an eight-foot tall fence.</p> <p>22 So along that south edge of the property that</p> <p>23 faces Damascus Road, it's also enclosed by the eight-foot</p> <p>24 tall fence where it meets the berm and then the berm acts</p> <p>25 as the screen as we were mentioning before. This is a</p>	<p>108</p> <p>1 coverage for that parking facility per the zoning ordinance</p> <p>2 requirements.</p> <p>3 So again, we're -- you know, we're balancing</p> <p>4 multiple elements with regards to screening. You know, we</p> <p>5 have our large setbacks. So from the west side we're 400</p> <p>6 feet. We have the existing vegetation along the property</p> <p>7 lines. We have our proposed nursery stock, and then we</p> <p>8 also have our buffer plantings in front of the fence and</p> <p>9 then we have our eight-foot tall fence.</p> <p>10 It is my opinion that the landscape plan for</p> <p>11 conditional use area complies with the requirements of the</p> <p>12 Zoning Ordinance 59-3 and 59-6. Planning staff concurred</p> <p>13 with this in their report as well, Park and Planning.</p> <p>14 MS. REGELIN: And does the landscaping comply</p> <p>15 with the zoning ordinance for a parking facility?</p> <p>16 DEVIN KENNEDY: Yes. Correct. The 25 percent</p> <p>17 canopy coverage over the parking facility does comply, yes.</p> <p>18 MS. REGELIN: Okay. Can you go and describe the</p> <p>19 details of the lighting on the property as shown on the</p> <p>20 landscape and lighting plan at Exhibit 38 and the details</p> <p>21 which are on Exhibit 7? And which exhibit would you like</p> <p>22 pulled up?</p> <p>23 DEVIN KENNEDY: Yeah. So a photometric analysis</p> <p>24 was prepared. The lighting details are shown on Exhibit 7</p> <p>25 but then the photometrics are Exhibit 10. Maybe start with</p>

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28 (109 to 112)

<p>109</p> <p>1 the photometrics.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Just a second.</p> <p>3 DEVIN KENNEDY: There we go. It's a little bit</p> <p>4 tough to see. You might have to zoom in. I can kind of</p> <p>5 point out the --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>7 DEVIN KENNEDY: Yeah. I know. I'm sorry. But</p> <p>8 the -- in regards to the lighting design, the intent was to</p> <p>9 provide adequate coverage for the vehicles in the work area</p> <p>10 and access for employee movement to meet the general</p> <p>11 outdoor lighting requirements of the zoning ordinance. So</p> <p>12 the main requirements of the lighting plan include</p> <p>13 illumination of the site entrance and visibility lighting</p> <p>14 in the parking areas for the employees and the work yards.</p> <p>15 The entrance lighting is satisfied by two ten-</p> <p>16 foot tall pole lights on either side of the gate and one</p> <p>17 outside of the main entrance of the operations building.</p> <p>18 Area lighting will be provided throughout the employee</p> <p>19 parking area and work yard utilizing nine pole lights that</p> <p>20 are all under the maximum height of 30 feet. All proposed</p> <p>21 fixtures are LED. They provide no direct light or light</p> <p>22 glare and are considered full cutoff.</p> <p>23 Per the photometric plan the lighting will not</p> <p>24 cause glare on adjoining properties nor will it exceed the</p> <p>25 .1 foot candle standard at the side and rear property or</p>	<p>111</p> <p>1 requirements. I'm just -- I'm not aware of whenever</p> <p>2 those -- where those locations would need to be. I mean</p> <p>3 generally speaking it would be above any door entry, but I</p> <p>4 do not know. It's not my experience.</p> <p>5 So the -- we're back onto -- and then the actual</p> <p>6 entrance lighting will be on a timer or trigger -- motion</p> <p>7 sensor, sorry. So those will be off as well except if, you</p> <p>8 know, approaching car or somebody were coming onto the site</p> <p>9 for whatever reason. So it is my opinion that the lighting</p> <p>10 plan complies with the requirements of Section 644 of the</p> <p>11 zoning ordinance for outdoor lighting.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Ms. Regelin?</p> <p>13 MS. REGELIN: Yeah. Sorry. I was playing with</p> <p>14 my -- trying to get this to work. Mr. Kennedy, the details</p> <p>15 for the lighting are actually on that site detail sheet,</p> <p>16 Exhibit 7, correct --</p> <p>17 DEVIN KENNEDY: That's correct.</p> <p>18 MS. REGELIN: -- for reference. Okay. And the</p> <p>19 lighting is shown on the architectural elevations as well,</p> <p>20 some of those on the doors, the architect, correct?</p> <p>21 DEVIN KENNEDY: Yes. Yeah, the visual is shown</p> <p>22 on there. That's correct.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: On the</p> <p>24 architectural elevations?</p> <p>25 DEVIN KENNEDY: Yeah, I think they are shown on</p>
<p>110</p> <p>1 the .5 foot candle standard along Damascus Road frontage</p> <p>2 and Howard Chapel Roads. In fact, this photometric plan</p> <p>3 shows -- we get readings of 0.0 well short of any property</p> <p>4 line, more than 50 feet.</p> <p>5 So I understand this is a county where people</p> <p>6 appreciate a dark night sky. So as the applicant had</p> <p>7 previously testified, the pole lighting in the yard will be</p> <p>8 turned off at nighttime except for during snow events but</p> <p>9 just to not affect the night sky. The building will --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Define -- just</p> <p>11 a second. Define nighttime.</p> <p>12 DEVIN KENNEDY: So nighttime is after operations.</p> <p>13 6:00 I believe is the cutoff time for the lights.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. I just</p> <p>15 wasn't sure what you meant. Okay. Go ahead.</p> <p>16 DEVIN KENNEDY: Yes. Okay. But the building</p> <p>17 wall sconces or downlighting will have to remain on per</p> <p>18 whatever code requirements. And the entry lying -- the</p> <p>19 entry lights --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Now when you</p> <p>21 say building wall sconces, where -- are they on this main</p> <p>22 operations building? Are they also on this building?</p> <p>23 DEVIN KENNEDY: I do not have that in -- you</p> <p>24 know, I don't have that information. It's not -- it would</p> <p>25 be whatever is per the building permit or building code</p>	<p>112</p> <p>1 there.</p> <p>2 MS. REGELIN: Yes, the architect testified about</p> <p>3 the sconces that are over the doors.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Do you know</p> <p>5 what exhibit that was?</p> <p>6 MS. REGELIN: The architect's exhibit is --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: I'm looking at</p> <p>8 A -- 20(a).</p> <p>9 MS. REGELIN: The Exhibit 36(b).</p> <p>10 HEARING EXAMINER ROBESON HANNAN: So Mr. Kennedy,</p> <p>11 can you just tell us what on this -- or where on this</p> <p>12 exhibit the sconces are?</p> <p>13 DEVIN KENNEDY: Sure. Yeah, if you can pull it</p> <p>14 up I'll try to talk you through it. It's generally right</p> <p>15 above all the doors. Let's see.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Or is it this?</p> <p>17 DEVIN KENNEDY: That's it. Yeah, so those are --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: What I'm</p> <p>19 pointing to for the record is a small round shape between</p> <p>20 the doors of the main operations facility.</p> <p>21 DEVIN KENNEDY: Right. So --</p> <p>22 MS. REGELIN: And to be clear, those are in -- on</p> <p>23 the inside the east facing wall, correct?</p> <p>24 DEVIN KENNEDY: Yes, those are the east facing</p> <p>25 walls. That's the main door as well. There's a sconce</p>

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<p>113</p> <p>1 over that.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: They're -- I</p> <p>3 see now they're labeled on the plan. Some of them are</p> <p>4 labeled on the plan.</p> <p>5 DEVIN KENNEDY: Uh-huh. So that's the top</p> <p>6 elevation facing Damascus Road there and there's only one</p> <p>7 above the access door there, side access, to the right side</p> <p>8 of the wall there. Yeah. And then I don't believe there's</p> <p>9 any on the north or west side.</p> <p>10 MS. REGELIN: Okay. So can we move then -- if</p> <p>11 everyone is ready we can move onto the signs proposed by</p> <p>12 the applicant.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Do you have an</p> <p>14 exhibit for that?</p> <p>15 DEVIN KENNEDY: We can see it on the detail</p> <p>16 sheet. It's Exhibit 7 has a good image of the road -- the</p> <p>17 entry sign. But this is good too as well. That shows it</p> <p>18 on the -- that will show the other sign. So that -- yeah,</p> <p>19 those are a good mockup. The applicant proposes the</p> <p>20 following signs as part of the landscape contract or</p> <p>21 conditional use. So for the temporary office trailer there</p> <p>22 will be a temporary wall-mounted sign on the field</p> <p>23 operations trailer which is 40 square feet. That has no</p> <p>24 illumination and this sign will be relocated to the field</p> <p>25 operations barn once it's constructed.</p>	<p>115</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Will it</p> <p>2 be visible from the road?</p> <p>3 DEVIN KENNEDY: No.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Go</p> <p>5 ahead.</p> <p>6 DEVIN KENNEDY: And then the last sign, the</p> <p>7 second sign, I guess the permanent sign would be the</p> <p>8 driveway entrance sign, another 40 square foot sign.</p> <p>9 That's the one that's on Exhibit 7, the details. So that's</p> <p>10 four feet by ten foot, the actual sign dimension, and it's</p> <p>11 mounted on six-by-six posts. There will be no illumination</p> <p>12 up lighting associated with this sign either.</p> <p>13 A separate sign permit will be pursued. No</p> <p>14 waivers are being requested for any of this just, you know,</p> <p>15 as part of going forward before we construct these signs.</p> <p>16 That's just what we're pursuing. So it is my opinion that</p> <p>17 these signs comply with the requirements of Section 59-67</p> <p>18 of the zoning ordinance.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Would the</p> <p>20 applicant -- if this is approved would the applicant agree</p> <p>21 to a condition saying no illumination of the sign?</p> <p>22 DEVIN KENNEDY: Yeah, we're not proposing</p> <p>23 illumination. Yeah, that's not a plan so I assume that</p> <p>24 that would be fine for a condition.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Ms.</p>
<p>114</p> <p>1 If you want to pull up the elevations we were</p> <p>2 just looking at and you can see the outline of where the</p> <p>3 sign would go.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: You have to</p> <p>5 tell me what -- this here?</p> <p>6 DEVIN KENNEDY: Yes. Sorry. Yes. That is the</p> <p>7 south elevation number two elevation there. You'll see</p> <p>8 above the faux doors -- that's it right there. So that is</p> <p>9 the wall-mounted sign field operations building. That's</p> <p>10 also 40 square feet, no illumination. It will be the</p> <p>11 relocated one from the trailer.</p> <p>12 The driveway entrance sign is --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Where is it</p> <p>14 going to be when the trailer is there?</p> <p>15 DEVIN KENNEDY: It will be located on the trailer</p> <p>16 itself. Similar to how it is on this building. It will</p> <p>17 just be on the -- one of the sides of the office trailer.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. What</p> <p>19 side of the office trailer?</p> <p>20 DEVIN KENNEDY: I have it -- it would</p> <p>21 probably -- I don't know for sure, I'd have to confirm with</p> <p>22 the client, but either the approaching façade, the narrow</p> <p>23 end, or the -- next to the actual front -- the long end</p> <p>24 where you would walk into the trailer. So the south or</p> <p>25 west facades.</p>	<p>116</p> <p>1 Regelin?</p> <p>2 MS. REGELIN: Mr. Kennedy, the data table showing</p> <p>3 all the sign calculations are on exhibit -- the site plan</p> <p>4 at Exhibit 33, correct?</p> <p>5 DEVIN KENNEDY: Yeah.</p> <p>6 MS. REGELIN: So for the hearing examiner, on 33</p> <p>7 which was the site plan, all those data tables that we</p> <p>8 looked at before for parking and all of that includes the</p> <p>9 data table for the signage.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Oh, I see.</p> <p>11 MS. REGELIN: Mr. Kennedy, is it your opinion</p> <p>12 that the application will not cause undue harm to the</p> <p>13 neighborhood as a result of non-inherent adverse effects</p> <p>14 alone or in combination with inherent or non-inherent</p> <p>15 adverse effects with regard to impact such as elimination</p> <p>16 or dust?</p> <p>17 JACK QUINN: I object. That's more than a little</p> <p>18 leading.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: All right. Can</p> <p>20 you rephrase, Ms. Regelin?</p> <p>21 MS. REGELIN: It is exactly the requirement but</p> <p>22 is it your -- what is your opinion regarding the adverse</p> <p>23 impact of this application?</p> <p>24 DEVIN KENNEDY: It is my opinion that the</p> <p>25 application will not cause undue harm to the neighborhood</p>

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<p>117</p> <p>1 due to adverse effects as a result of non-inherent or a 2 combination of inherent or non-inherent adverse effects 3 arising from illumination or dust from the conditional use. 4 MS. REGELIN: Okay. At this time I would like to 5 just go back and look at Exhibit 49 and then we'll look at 6 the new street view, Mr. Kennedy. 7 DEVIN KENNEDY: Okay. 8 MS. REGELIN: But let's look at Exhibit 49 first 9 which are the street views that had the corners. 10 DEVIN KENNEDY: Yes. 11 MS. REGELIN: And when it's pulled up will you 12 just describe what is shown on this exhibit please? 13 HEARING EXAMINER ROBESON HANNAN: It should be 14 up. 15 DEVIN KENNEDY: So this is just exhibit we wanted 16 to show the existing buffers along the property lines along 17 Howard Chapel Road and then the east property. So those 18 letters correspond to the photos that are shown below from 19 that direction. So starting with the first one -- this one 20 you might want to zoom in a little bit just to get a better 21 image. So these are in order A, B, C, D as we saw. 22 So from -- this is looking east from Howard 23 Chapel Road. So you can see that there's the existing 24 tree, vegetation line buffer. So you really can't even see 25 the property until you get past Howard Chapel Road.</p>	<p>119</p> <p>1 see here? 2 DEVIN KENNEDY: Yeah. So this is I think a handy 3 little exhibit here. This is looking -- you know, 4 traveling on Google Street view along Damascus Road. So I 5 don't have a total context clip but this is 6 generally -- you can see the sign for Unity there. So this 7 is east of the property prior to the Sundown split of 8 Damascus Road going west direction towards our site. So 9 each subsequent photo in this exhibit will represent 10 traveling forward to the next visual line. So sort of 11 like, you know, as you go to the next slides you'll see 12 that we're -- 13 HEARING EXAMINER ROBESON HANNAN: Okay. I don't 14 have another -- oh, I see. I do. Okay. Keep going. 15 DEVIN KENNEDY: All right. So yeah, so this is 16 just a good context of, you know, whatever, you know, we're 17 talking about with the surrounding area and the 18 neighborhood and -- 19 HEARING EXAMINER ROBESON HANNAN: Well, tell us 20 where you are on this one. 21 DEVIN KENNEDY: So this one is again, you know, 22 we're approaching the Sundown Road split. So it's 23 just -- we're still sort of outside of our, you know, our 24 immediate neighborhood but it's -- you know, we're 25 progressing towards the site. So it's just more of like a</p>
<p>118</p> <p>1 And then as we scroll down a little bit more 2 we'll see -- this is from looking on Damascus Road but from 3 the property out to the west. So you're looking through 4 the same buffer that was shown in the previous photo, which 5 you can see the existing vegetation. 6 And then if we keep scrolling down to C, now this 7 is looking along the east property line from our property 8 out. So you can see that vegetation line along the 9 property there. And then the next photo will be looking 10 from that east property line into the property so you can 11 see pretty noticeable buffer that's existing currently. 12 HEARING EXAMINER ROBESON HANNAN: Is that a 13 deciduous buffer? 14 DEVIN KENNEDY: Mostly deciduous, yes, but it's 15 very dense deciduous. So that just means that you have a 16 mix of your taller tree and then your understory and 17 shrubs. 18 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. 19 Regelin? 20 MS. REGELIN: I'm sorry. Exhibit 73. Mr. 21 Kennedy, you asked us to submit Exhibit 73 which is the 22 street view along Damascus Road -- 23 DEVIN KENNEDY: Oh, yes. 24 MS. REGELIN: -- as part of what you took into 25 consideration. Could you just describe what we're going to</p>	<p>120</p> <p>1 visual tour of the area as you're approaching our proposed 2 use. So just kind of want to give -- you know, you can see 3 the single-family houses to the right that are, you know, 4 closer to the road. You see the farmland on the left. 5 So then as you're continuing forward, you know, 6 there's just more density of actual residences in this 7 portion of the focus area. So we can continue moving 8 forward west and now we're past that initial residence. 9 There's a field on the right; cornfield and agriculture. 10 Same thing on the left. And then we continue to progress 11 west here. Same deal. We're starting to get closer to the 12 Sundown Road. You know, you can see the -- I'm going to 13 move this up a little bit. You start to see some more 14 single-family houses on the right. You can keep -- yeah, 15 so there's -- 16 MS. REGELIN: And I think you can see here, Mr. 17 Kennedy, was there a speed limit as well? 18 DEVIN KENNEDY: Right. So we're in the 30 mile 19 per hour portion of Damascus Road currently, yes. It says 20 30 miles per hour. So keep moving forward and now this 21 is -- you know, we're still sort of in the -- where the 22 single-family houses are. There's a road exiting off of 23 Damascus Road here that extends properties farther back 24 behind. 25 MS. REGELIN: Mr. Kennedy, is that the</p>

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<p>121</p> <p>1 Greenskeeper entrance?</p> <p>2 DEVIN KENNEDY: That is I believe, yes, correct.</p> <p>3 So Greenskeeper, the landscape company, they enter and exit</p> <p>4 the site form this driveway. And then next to -- abutting</p> <p>5 the road there a little bit farther down is another single-</p> <p>6 family house that's closer to the road, very close to the</p> <p>7 road. You can scroll down. You can get a better view of</p> <p>8 that. There it is.</p> <p>9 And then there's another -- let's see. So now we</p> <p>10 are approximately -- let's see. Yeah, we haven't reached</p> <p>11 Sundown yet so we got to keep going. And then now we</p> <p>12 are -- so now you can kind of get a general feel of the</p> <p>13 character of this particular portion of Damascus Road where</p> <p>14 we have, you know, our single-family residential up</p> <p>15 against -- close to the road mixed, you know, with the</p> <p>16 landscape contracting behind.</p> <p>17 And then we can continue moving forward. Same</p> <p>18 deal. We have the mix of agricultural stuff to the left,</p> <p>19 single-family to the right closer to the road. No real</p> <p>20 visual setback or buffering from, you know, the actual</p> <p>21 looking from the road.</p> <p>22 I guess keep going, keep going. Same thing. Now</p> <p>23 we're getting closer to the site. There's our Sundown</p> <p>24 split to the left and then you have a residence to the</p> <p>25 right, large parking area, many cars. You know, sort of</p>	<p>123</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well, can you</p> <p>2 give me an idea in this photo? Can you see where it will</p> <p>3 be located?</p> <p>4 DEVIN KENNEDY: I think it's outside of the view.</p> <p>5 You might --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>7 DEVIN KENNEDY: If you kind of go all the way to</p> <p>8 the edge you might be able to see the edge of the new</p> <p>9 agricultural building, I'm sorry, the operations building.</p> <p>10 You might get a better view from the other perspective.</p> <p>11 So if we keep going. There is the existing</p> <p>12 single-family house and outbuildings that are on site and</p> <p>13 you see all of these large mature trees are all proposed to</p> <p>14 be remained on the site. So effectively we'll have another</p> <p>15 shot I think in the next photo. That's also the -- so</p> <p>16 that's the existing driveway and then you can see the</p> <p>17 house. All of that is proposed for removal from the site.</p> <p>18 I think the next one we show a 180 degree -- oh,</p> <p>19 so this is the western property. We saw this in an earlier</p> <p>20 photo, the existing vegetation buffer. And I think I</p> <p>21 slipped one in of turning back and facing east next. There</p> <p>22 it is. So as you can see this is looking east from the</p> <p>23 west property line. You can see the single-family house</p> <p>24 but very notable are the existing evergreen trees along the</p> <p>25 driveway that on the other side of that back where the park</p>
<p>122</p> <p>1 keeping in the same feel of the area, sort of mixed usage</p> <p>2 and, you know, close to the road buildings.</p> <p>3 So now we're getting closer to our site. Just</p> <p>4 keep going down Damascus. This is our -- one of a single-</p> <p>5 family residential next to -- about two lots down from our</p> <p>6 site. As you can see it's much closer to the road but</p> <p>7 generally all of it is sort of in the same character.</p> <p>8 Keep moving forward and keep going. So this is</p> <p>9 our closest neighbor to the east there. That's their house</p> <p>10 and then our vegetation property -- buffer,</p> <p>11 sorry -- vegetation buffer that we were looking at earlier.</p> <p>12 This is relative -- the same perspective. And then now I</p> <p>13 think we'll reach our site. There's the buffer again from</p> <p>14 the east property. And then once we get past this you'll</p> <p>15 get a view of the overall site. There's the open area</p> <p>16 similar to agricultural use that's it's used for. And</p> <p>17 this -- the next few shots will just be a continuance of</p> <p>18 the views going down Damascus Road.</p> <p>19 And then -- yeah. So actually stop right here.</p> <p>20 This is right where our entrance will go. So you can see</p> <p>21 the park entrance to the left side. So we'll be aligned</p> <p>22 with that and that -- you know, that's one of the specimen</p> <p>23 trees we are protecting as far as our -- you know, going</p> <p>24 forward. So that will remain. And the -- our site will be</p> <p>25 located approximately 132 feet back there, yes.</p>	<p>124</p> <p>1 entrance is will be the operations building.</p> <p>2 So those are the trees there that we were just</p> <p>3 looking at. And then the building itself, you know, from</p> <p>4 this perspective anyway, you know, will be very well, you</p> <p>5 know, set back much farther behind those trees. We'll have</p> <p>6 our own softening of the building and the operations as</p> <p>7 well that we described earlier outside the fence, but I</p> <p>8 just wanted to -- I thought this picture gave a good</p> <p>9 example of the trees that are proposed to remain and also</p> <p>10 in addition to all the other buffering that we are</p> <p>11 proposing, you know, these will also remain as mature</p> <p>12 screen.</p> <p>13 All right. Let's -- I guess we can continue past</p> <p>14 our side toward -- this is Howard Chapel Road here with our</p> <p>15 horses on the right here. That's Howard Chapel Road, yeah.</p> <p>16 So now we're sort of back into the less dense portion of</p> <p>17 our site, you know much larger land areas, open areas for</p> <p>18 agricultural purposes.</p> <p>19 If we continue -- I think we go for another few</p> <p>20 slides after this. So this is continuing. Now you can see</p> <p>21 our -- you can actually see the Waredaca buildings from all</p> <p>22 the way here. We're just past Howard Chapel and we can see</p> <p>23 them for pretty substantial distance compared to what you</p> <p>24 would be able to view on our site. So these are roughly</p> <p>25 approximate same size stuff that we're doing for our</p>

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<p style="text-align: right;">125</p> <p>1 proposed buildings. And then you can also see the single- 2 family houses on the left side of the road. So these are 3 just comparable sizes and design characteristics that we're 4 proposing. 5 And then so we get a little better view. 6 Continue east where we can still the barn and outbuildings 7 and Waredaca structures and then you can see the large, 8 excuse me, the larger single-family houses on the left and 9 also the, you know, approximate garage to the roads. 10 All right. If we continue there's some more 11 shots of the same house. And we can see a couple different 12 houses. So these are effectively size wise not much 13 different than our proposed barn size wise, you know, as 14 far as counting the entire footprint. But generally 15 speaking these are just large buildings that are out there 16 currently in the area. 17 So now we're continually getting closer to the 18 Waredaca entrance where you can still see the barn 19 buildings. Let's keep going. There's existing house 20 near -- this is the house out front of Waredaca, the lot in 21 between Waredaca and Damascus Roads. 22 And we're still moving forward just to get a good 23 view of the large houses. And there's a good shot of their 24 main building there, Waredaca. So as you can see it's set 25 back similar to ours, probably a little bit farther, but</p>	<p style="text-align: right;">127</p> <p>1 greenhouse. 2 KIM CALDEIRA: Okay. So one thing I'm a little 3 confused about is whether things in the plan that you have 4 laid out so nicely, are they -- you know, are they -- to 5 what extent are the various elements of that plan 6 commitments or definite things that are going to be built 7 or just proposed or optional things that they might -- you 8 know, that might come up such as the proposed -- you know, 9 the proposed nursery plantings, the -- that makes me 10 wonder, well, you know, is the fence just proposed? Is the 11 main operational building just proposed? You know, can the 12 owner -- you know, will they have discretion about picking 13 and choosing which elements of this plan they decide to 14 implement? 15 DEVIN KENNEDY: In that regard, you know, the 16 main phasing portion that the client is proposing is to 17 build the operations area, so the surfaces that you need, 18 the parking, the berms, the plantings, the fences. All of 19 that outside of the buildings 100 percent would be built 20 first. So the operations building would be the second 21 phase, the large main building. And then the third story, 22 or the second building, the third phase would be the 23 storage building and then the greenhouses. 24 KIM CALDEIRA: So is it conceivable that they 25 might just stop after phase one?</p>
<p style="text-align: right;">126</p> <p>1 generally there's no buffering or anything for any of these 2 buildings. And there's their main entrance. And then a 3 couple shots of just looking back. That's -- Waredaca is 4 on the left now and then the single-family houses on the 5 right. And then this is past everything. And then that's 6 it. 7 MS. REGELIN: Yeah. Okay. So that's all the 8 questions that I have for Mr. Kennedy. 9 HEARING EXAMINER ROBESON HANNAN: Okay. 10 Questions for Mr. Kennedy? Mr. Quinn. And I have Ms. 11 Caldeira. Go ahead, Mr. Kennedy. And Mr. Boughton. 12 JACK QUINN: I'd let Ms. Caldeira go first. 13 HEARING EXAMINER ROBESON HANNAN: Ms. Caldeira, 14 do you have any questions? 15 KIM CALDEIRA: Hello. Yes. Thank you. 16 So I wanted to -- I have a variety of questions. 17 I asked the previous witness about the greenhouse design. 18 I was wondering if you have any better -- any additional 19 information about the greenhouses on this plan, if there is 20 a design for how they will be built. 21 DEVIN KENNEDY: There is no set design picked 22 out. We have our general footprint that we would -- you 23 know, that the client would like to use for a greenhouse 24 but a specific design has not been selected. It would be a 25 typical greenhouse. You know, one-story, long house-style</p>	<p style="text-align: right;">128</p> <p>1 DEVIN KENNEDY: I don't think so. I mean I think 2 the client has been on record that he -- the reason he 3 wants to move to the site is so he can build a building 4 to -- you know, for his operations. You know, that's the 5 main goal of his. 6 KIM CALDEIRA: Do you have -- and forgive me if 7 this is outside your scope of knowledge on this project, 8 but do you have a sense of why the applicant chose this 9 site in particular for this function? Like why -- is there 10 something advantageous about this site for the functions 11 that he is proposing? 12 DEVIN KENNEDY: I mean I can't speak to all the 13 decisions but in my opinion it's a good candidate because 14 of the already existing agricultural area that, you know, 15 which has been another desire of his business is to be able 16 to grow his own crop, you know, grow his own plants so he 17 can use them in his operation. So in that regard, you 18 know, he already has an existing agricultural area that he 19 can utilize. 20 In regards to the environmental setbacks, you 21 know, it's -- all of the things -- he has a good amount of 22 area to work with outside of restrictions and it's a good 23 flat site for planting. You know there's various reasons 24 why I think it's a good candidate for his use. But yeah, 25 that's -- you know, that's definitely factored into his</p>

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<p>129</p> <p>1 decision I'm sure.</p> <p>2 KIM CALDEIRA: Because I noticed that the</p> <p>3 business is described as a commercial landscaping and snow</p> <p>4 removal and it just makes me curious why he wouldn't want</p> <p>5 to be positioned more proximal to commercial areas if those</p> <p>6 are his clients.</p> <p>7 DEVIN KENNEDY: Yeah, I can't speak to that.</p> <p>8 That would be his prerogative.</p> <p>9 KIM CALDEIRA: Of course. So getting back to the</p> <p>10 PMA setback, one of the earlier exhibits you showed. Why</p> <p>11 is it okay -- could you please explain why it's okay for</p> <p>12 the site, the construction site to be located inside the</p> <p>13 PMA setback?</p> <p>14 DEVIN KENNEDY: Sure. Yeah. Do you want to pull</p> <p>15 up -- the site plan I think would show, Exhibit -- sorry.</p> <p>16 I keep forgetting which one is which.</p> <p>17 KIM CALDEIRA: Okay. So --</p> <p>18 DEVIN KENNEDY: Yeah, there it is.</p> <p>19 KIM CALDEIRA: Okay. Yeah.</p> <p>20 DEVIN KENNEDY: So --</p> <p>21 KIM CALDEIRA: Yeah. I just wonder what's the</p> <p>22 impact on the stream and -- you know, because that is part</p> <p>23 of the headwaters of the Patuxent River and it's not very</p> <p>24 far -- you know, it's all connected.</p> <p>25 DEVIN KENNEDY: Yeah. Yeah. You know,</p>	<p>131</p> <p>1 strict environmental setbacks you would start with your</p> <p>2 stream valley buffer which is 150-foot setback from the</p> <p>3 river, from the stream itself, sorry.</p> <p>4 KIM CALDEIRA: Okay.</p> <p>5 DEVIN KENNEDY: So that's the dark line.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Can you point</p> <p>7 out where that is? Oh, is see.</p> <p>8 DEVIN KENNEDY: If you look at the stream and the</p> <p>9 pond, it's parallel to that 150 feet. It's kind of a</p> <p>10 gloved-shaped -- yeah, that -- there you go. So that would</p> <p>11 be --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: It's the inner</p> <p>13 darker line.</p> <p>14 DEVIN KENNEDY: Right, the inner darker line. So</p> <p>15 that's sort of, you know, the no-no line. You're not doing</p> <p>16 any grading or anything sort of activity within that. We</p> <p>17 also have shown on there the septic setback which is 200</p> <p>18 feet. So we're showing our reserve area outside of that</p> <p>19 environmental setback as well. And then -- you know, as</p> <p>20 part of the stream valley buffer, you know, you see you</p> <p>21 have the wetland in there as well, but the wetland, which</p> <p>22 is a 50-foot setback, is combined with the stream valley</p> <p>23 buffer to make one buffer. So that's why the shape you're</p> <p>24 getting.</p> <p>25 And then the PMA, because we're -- you know,</p>
<p>130</p> <p>1 we're -- we are very much wanting to follow the</p> <p>2 recommendations that are setout in environmental</p> <p>3 guidelines. So the PMA, the primary management area for</p> <p>4 the Patuxent River is laid out in description of the</p> <p>5 guidelines and the specific -- in regards to your question</p> <p>6 regarding the transition area, they state -- you know, they</p> <p>7 recommend maximum ten percent of that whole area, that</p> <p>8 transition area, be impervious. So we are -- you can tell</p> <p>9 we're way outside of any stream valley buffers, wetland</p> <p>10 buffers, septic setbacks, all your traditional</p> <p>11 environmental setbacks. We're very much not impacting in</p> <p>12 any way. And then this additional recommendation is just</p> <p>13 less than ten percent impervious in this transition area.</p> <p>14 KIM CALDEIRA: Okay. And would you mind -- and</p> <p>15 I'm sorry if this is redundant with what you already said</p> <p>16 earlier.</p> <p>17 DEVIN KENNEDY: Sure.</p> <p>18 KIM CALDEIRA: Could you point out again on this</p> <p>19 plan how close are we -- which of the boundary lines would</p> <p>20 apply to further restrictions? In other words, the</p> <p>21 area -- I think what you're saying is the area that we are</p> <p>22 in is only subject to the ten percent -- less than ten</p> <p>23 percent impervious rule, but where -- how close are we to a</p> <p>24 line that would have stricter requirements?</p> <p>25 DEVIN KENNEDY: So I guess in the hierarchy of</p>	<p>132</p> <p>1 because we have a PMA setback on our site there's really</p> <p>2 two recommendations regarding impervious area. One is ten</p> <p>3 percent within that transition area. So you would flood</p> <p>4 that whole area between the stream valley buffer and the</p> <p>5 PMA line and your impervious has to be ten -- no, all the</p> <p>6 way to the -- yeah. Your impervious here has to be ten</p> <p>7 percent of that or less than ten percent of that. And then</p> <p>8 also your total impervious area is recommended to be ten</p> <p>9 percent of the entire 30-acre site. So we have</p> <p>10 demonstrated that we are well -- you know, we're under both</p> <p>11 of those thresholds.</p> <p>12 KIM CALDEIRA: Okay. Thank you. Do you have</p> <p>13 more information about the submerged gravel wetlands that's</p> <p>14 proposed?</p> <p>15 DEVIN KENNEDY: Yeah, we'll have our engineer,</p> <p>16 Sergio, who is the design for the -- you know, he'll have</p> <p>17 more detailed information on the actual gravel wetland. So</p> <p>18 I'll defer to him.</p> <p>19 KIM CALDEIRA: Okay. And information about the</p> <p>20 soil composition, soil characteristics, and drainage, is</p> <p>21 that for --</p> <p>22 DEVIN KENNEDY: He would -- yeah, he has much</p> <p>23 more expertise in that regard.</p> <p>24 KIM CALDEIRA: Okay. Has there been any</p> <p>25 assessment of the potential impact on wildlife? I know</p>

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<p>133</p> <p>1 especially this area there's a -- this site is a -- there's 2 a lot of wildlife traffic. It's a part of a greenway kind 3 of in a sense between the state park on the river there and 4 the Rachel Carson Conversation Area, and I just wonder if 5 there's any -- is anyone taking that into account with this 6 plan or -- 7 DEVIN KENNEDY: Yeah. It's part of getting a 8 NRI, natural resources inventory. You have to coordinate 9 with Maryland DNR regarding any endangered species in the 10 area and they just do a sort of preliminary record check to 11 see what's around there and they look at your -- I wouldn't 12 say it's super detailed look but they'll provide 13 recommendations for setbacks for anything regarding work 14 done or proposed disturbances if they feel it's necessary 15 or if they feel they need to opine on it. So we have a 16 letter from them that documents that they have no record of 17 any species on our site specifically or that we just -- our 18 impacts are not notable enough I guess. We're proposing 19 any removal to any trees or natural elements of the site 20 other than our proposed stuff and grading. 21 KIM CALDEIRA: Okay. Thank you. I think that's 22 all I have for now. I have -- I think I'll save my other 23 questions for the other witness coming up. Thank you. 24 DEVIN KENNEDY: All right. Thank you. 25 HEARING EXAMINER ROBESON HANNAN: Thank you.</p>	<p>135</p> <p>1 DEVIN KENNEDY: I guess it might be easier to 2 look at the site plan actually just because -- 3 BRYAN BOUGHTON: Sure. 4 DEVIN KENNEDY: -- the roof line is a little bit 5 tough. So all right. So if we're looking here we see our 6 ultimate design, right? So your question is what's going 7 to happen before this building is going to be built and how 8 do you deal with the building as it's being built. So the 9 fence will continue along either the footprint of the 10 building or outside of the footprint and then connect back 11 to the gate, how it's shown. So you can just imagine the 12 actual fence running along the footprint. If we need to we 13 can set it back a little bit farther so they can 14 still -- all access for construction will be coming from 15 the inside of the site. So they would be doing all the 16 installation from the center out. So the fence itself 17 would remain during construction and then subsequently be 18 connected to the building and once it's up and removed. 19 BRYAN BOUGHTON: So while that temporary fence is 20 in place what type of plantings in phase one which you've 21 proposed that go the entire west side of the site to give 22 us an idea of how that fence itself will be obscured some? 23 DEVIN KENNEDY: I think in that section just the 24 fence itself will act as the screen. We have those -- we 25 went back and saw those existing larger trees that are</p>
<p>134</p> <p>1 Okay. I have Mr. Quinn and then Mr. Boughton. 2 JACK QUINN: I'll have Mr. Boughton go first if 3 that works. 4 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 5 Boughton, you're up. 6 BRYAN BOUGHTON: Thank you. 7 So if we could go back to Exhibit 33. These are 8 some of the questions that the architect could not answer 9 that I was told you could. 10 HEARING EXAMINER ROBESON HANNAN: Do you see it? 11 BRYAN BOUGHTON: Actually, I wanted to go to the 12 color drawing which would be -- hold on. 13 HEARING EXAMINER ROBESON HANNAN: 48? 14 BRYAN BOUGHTON: Yes, that one. Yes, that works. 15 So part of our concern was about what will shield 16 the site from view on Damascus Road and of particular 17 concern to me was the southwest corner there where the 18 building may or may not be constructed early on in this 19 project. And it was stated that there would be a board-on- 20 board fence even though it's not indicated in any plans 21 that would encapsulate the area where the future building 22 will go. So my question on that is where would that fence 23 go and would it impede with the construction of the 24 building or would they put it farther out around that area? 25 Where would the fence track?</p>	<p>136</p> <p>1 outside of the single-family house there. So all of that 2 right there is a good existing buffer as is without 3 anything -- without any fence, you know, as far as just the 4 initial buffer. The fence itself will screen all 5 operations just on its own. It's an opaque fence. I 6 don't -- you know, I don't have anything proposed for 7 softening that per our landscape plan but I think the 8 existing -- between the setback from the property line, the 9 existing vegetation, and the fence itself I think 10 adequately serves its job. 11 BRYAN BOUGHTON: So but around the existing 12 property, can you point again to which of those large trees 13 will be removed? 14 DEVIN KENNEDY: None. 15 BRYAN BOUGHTON: Around the house right now, none 16 of those are impacted? 17 DEVIN KENNEDY: They're impacted but they're 18 proposed to remain. 19 BRYAN BOUGHTON: Okay. So all -- it looks like 20 one, two, three, four, five, six, seven, eight -- all nine 21 of those will remain? 22 DEVIN KENNEDY: Correct. 23 BRYAN BOUGHTON: So none of those will be taken 24 down. 25 DEVIN KENNEDY: Correct.</p>

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<p>137</p> <p>1 BRYAN BOUGHTON: And then why is there no plan 2 for vegetation along that long board fence on the west side 3 that faces Howard Chapel? I know your pictures showed 4 quite a green screen from Howard Chapel but if you walk out 5 there now you can clearly see through that vegetation. It 6 doesn't last all year long. So I noticed on the other side 7 you said you had quite a bit of plantings, and if we look 8 at that color drawing again, Exhibit 48 I think it was, you 9 had some plantings in there but are you eliminating some of 10 those along the house you just mentioned, in the front and 11 then along the western side?</p> <p>12 DEVIN KENNEDY: Those will be planted -- yeah, we 13 can leave those planted and still construct the building. 14 You know, so those will act as your buffer to the fence.</p> <p>15 BRYAN BOUGHTON: But what about if the --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Can I jump in? 17 I'm confused. When you build the fence, all right, you're 18 going to -- I thought the condition you're proposing is 19 that you have to build the fence temporarily and all the 20 vegetation within the first planting season. That's what I 21 heard you say.</p> <p>22 DEVIN KENNEDY: Yeah, that's correct.</p> <p>23 BRYAN BOUGHTON: Mr. Lambert, you're kind of 24 talking over us here. I'm sorry, Director Hannan. What 25 were you saying?</p>	<p>139</p> <p>1 of the screening plants that will go in in that first 2 phase?</p> <p>3 DEVIN KENNEDY: Correct.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Well, where is 5 your land -- if you want to see exactly -- where is your 6 landscape plan, Ms. Regelin, the most recent one?</p> <p>7 MS. REGELIN: Exhibit 31.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. So this 9 is the details of the landscape plan. This narrows down by 10 species what's in there.</p> <p>11 BRYAN BOUGHTON: So all of these plantings will 12 take place in that first phase one?</p> <p>13 DEVIN KENNEDY: Yes.</p> <p>14 BRYAN BOUGHTON: And what will be the size of 15 these plantings? We've had an expert tell us that four to 16 six-inch calipers should be the minimum size of any 17 deciduous trees with heights of six to ten feet at 18 planting. Evergreens should be a minimum of eight feet at 19 planting. Is that the realm we're looking at or are we 20 looking at smaller?</p> <p>21 DEVIN KENNEDY: We are -- the thing with the 22 planting materials in my opinion -- everybody likes to 23 plant large things immediately to get the immediate effect 24 and I understand that and a lot of times it's appropriate. 25 When you're planting new plant material taken from another</p>
<p>138</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I guess I'm 2 trying to get this transition straight and I think that's 3 what you're doing too.</p> <p>4 BRYAN BOUGHTON: Yes.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: So you're going 6 to -- I think it would be better if you could get not just 7 the board-on-board fence here but the landscaping around 8 this area as well as an initial phase rather than just a 9 board -- I thought I heard you say a couple of minutes ago 10 it's just going to be a board-on-board and my question is 11 is it going to be the board-on-board opaque fence or is it 12 going to be the board-on-board opaque fence with planting 13 in the first planting season?</p> <p>14 DEVIN KENNEDY: All the plants -- all the buffer 15 plantings and parking plantings will be planted with the 16 first planting season. This fence will also be installed 17 prior to the building. So those plantings, and the fence, 18 and the 400-foot setback from the property line, and the 19 existing vegetation along the property line, and the mature 20 trees are all part of the buffering. That's all -- you 21 know, that's all part of it.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Yeah, I 23 just -- I wanted to make sure I understood.</p> <p>24 BRYAN BOUGHTON: So is this drawing here 25 representative of the type -- of how many and the placement</p>	<p>140</p> <p>1 site onto your site there's a balance between the size and 2 the viability of the species. So the larger stuff that you 3 plant is less likely to survive than smaller stuff so you 4 kind of want to find a good balance where you're going to 5 get coverage, likelihood of survival, and the actual size 6 of the tree. So we're proposing two-and-a-half inch 7 caliper trees, two to two-and-a-half inch, and then seven 8 to eight-foot tall evergreen trees.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: What kind of 10 evergreens are you planting?</p> <p>11 DEVIN KENNEDY: Just American holly are the 12 evergreen trees and then -- yeah, so that's the evergreen.</p> <p>13 BRYAN BOUGHTON: And what are the deciduous trees 14 that are two to two-and-a-half?</p> <p>15 DEVIN KENNEDY: We have red maples, we have 16 American hornbeam, we have redbuds, yellowwood, sycamore, 17 and northern red oak.</p> <p>18 BRYAN BOUGHTON: And is it your belief that 19 bigger trees four to six inches in caliper or six to ten 20 feet at the time of planting would be no more effective in 21 screening this area?</p> <p>22 DEVIN KENNEDY: Well, I don't -- those 23 specifications are a little bit non-typical I would say. I 24 mean if you have a four to six-inch tree diameter wise, and 25 you said how tall?</p>

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<p>141</p> <p>1 BRYAN BOUGHTON: Six to ten feet.</p> <p>2 DEVIN KENNEDY: So a six to ten-foot tree, that's</p> <p>3 just -- I don't know. You know, that's just like a stump.</p> <p>4 That's what that -- I don't -- you wouldn't -- I don't</p> <p>5 think you would order that from a nursery. They wouldn't</p> <p>6 have that in supply.</p> <p>7 BRYAN BOUGHTON: Well, that's a minimum size. So</p> <p>8 you obviously if you have the caliper you could go with a</p> <p>9 tree much taller. I don't think we would object to taller.</p> <p>10 But it sounds like what you're proposing are very young</p> <p>11 trees, two inch --</p> <p>12 DEVIN KENNEDY: No, these are typical -- this is</p> <p>13 like a typical -- you know, we're above our minimum size, I</p> <p>14 would say, typical for planting.</p> <p>15 BRYAN BOUGHTON: Above what minimum? I'm sorry.</p> <p>16 DEVIN KENNEDY: They're just like the two-inch</p> <p>17 minimum I think is the minimum size required. So we're</p> <p>18 about two-and-a-half inch.</p> <p>19 BRYAN BOUGHTON: So these are -- for reference, I</p> <p>20 don't know, a shade tree that's two-and-a-half inch caliper</p> <p>21 is probably around 15-foot tall.</p> <p>22 DEVIN KENNEDY: Fifteen to twenty feet.</p> <p>23 BRYAN BOUGHTON: And how tall are the evergreens</p> <p>24 going to be that you're talking about?</p> <p>25 DEVIN KENNEDY: Seven to eight feet. So</p>	<p>143</p> <p>1 additional nursery plantings?</p> <p>2 DEVIN KENNEDY: I mean in regards to the</p> <p>3 specifics it's just -- you know, it's dependent on</p> <p>4 whatever, you know, is -- that he wants to plant. So it</p> <p>5 could be shrubs, it could be red maples, it could be sod.</p> <p>6 The point I was making is just this area isn't just going</p> <p>7 to be bare. There will be at some point in the future</p> <p>8 going forward -- you know, there will be vegetation here.</p> <p>9 It's not just an open field. It's a potential additive to</p> <p>10 the already designed buffer.</p> <p>11 BRYAN BOUGHTON: So a question I have though is</p> <p>12 in the driving tour that we got that you walked us through</p> <p>13 earlier, visible from the road I did not see any eight-foot</p> <p>14 board-on-board fences for a large area. So I guess I keep</p> <p>15 going back to the fence because in itself I don't -- I find</p> <p>16 that changing the neighborhood's look, an eight-foot tall</p> <p>17 impervious fence. There's a lot of horse fences here in</p> <p>18 this area but I don't see an impervious wall like that.</p> <p>19 So I think it's very important that we understand</p> <p>20 that the plantings will conceal not only the operation but</p> <p>21 the board-on-board fence, which is not typical to the</p> <p>22 neighborhood, not by a majority in any way. So the</p> <p>23 plantings do make a difference I think. And then the</p> <p>24 seasonal plantings that he may or may not do in the future</p> <p>25 further kind of go to that. They seem very in question.</p>
<p>142</p> <p>1 already -- you know, right at the fence height pretty much.</p> <p>2 BRYAN BOUGHTON: And you mentioned as part -- as</p> <p>3 you were explaining the site you said there's -- if we go</p> <p>4 from the inside out there's the board-on-board fence, then</p> <p>5 there's these plantings, and then you mentioned the</p> <p>6 plantings in the outside area would screen it. But when I</p> <p>7 look at the phase plan, the plantings for the field are not</p> <p>8 included in that other than as other. They're not part of</p> <p>9 a phase. So is it more realistic to say that it's only</p> <p>10 been planned for the fence and the plantings along it as a</p> <p>11 screen?</p> <p>12 DEVIN KENNEDY: It's the setback from the</p> <p>13 property. So the, you know, 130-foot, 400-foot, 800-foot</p> <p>14 setbacks. It's the fence that you can't see through. So</p> <p>15 the fence itself is a screen. You can't see through the</p> <p>16 fence. Then you got the buffer that really just soften the</p> <p>17 fence. And then you have existing vegetation on</p> <p>18 both -- both on the perimeter of the property and within</p> <p>19 the site itself that all act together as design elements</p> <p>20 that function as a screen or a softening.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: So what I hear</p> <p>22 him asking --</p> <p>23 DEVIN KENNEDY: But -- sorry. Go ahead.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: What I hear him</p> <p>25 asking I think is, well, is it certain that we'll have the</p>	<p>144</p> <p>1 So my question is this, the board-on-board fence</p> <p>2 itself, will that be easily seen for the first several</p> <p>3 years with these plantings that are fairly -- they may be</p> <p>4 tall but it sounds like they're very narrow, you know,</p> <p>5 trunks going up to above the fence. So we'll see a big</p> <p>6 fence and then green above it or are we going to obscure</p> <p>7 the fence itself?</p> <p>8 DEVIN KENNEDY: Well, it's -- I mean it depends</p> <p>9 on where you're looking at the fence. So --</p> <p>10 BRYAN BOUGHTON: So if --</p> <p>11 DEVIN KENNEDY: Sorry. Go ahead.</p> <p>12 BRYAN BOUGHTON: Yeah. So if I'm on Damascus</p> <p>13 Road near the property to the east and I'm driving west and</p> <p>14 I'm looking at where the, you know, the fence turns, the</p> <p>15 fence comes down, it turns, and then it hits a block wall,</p> <p>16 which I believe you explained the berm would be tapering</p> <p>17 off there so we'll see some of the block wall. What is</p> <p>18 going to block out the fencing and the block wall on</p> <p>19 that -- from that view on the right.</p> <p>20 DEVIN KENNEDY: So that's part of our -- you</p> <p>21 know, we wanted to kind of fill in any potential gaps like</p> <p>22 you're explaining. So if you look on the planting plan</p> <p>23 here we have a massing of shrubs right at that corner you</p> <p>24 were just describing where the fence meets the wall. So</p> <p>25 that will act as sort of buffering the exposed wall at that</p>

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<p>145</p> <p>1 point. And also a seven to eight-foot tall evergreen trees 2 are right in front of the fence. So right when you install 3 it will be close to the top of the fence. And then as you 4 turn north we -- similarly, we wanted to sort of have a 5 more naturalized -- instead of just doing a line of trees 6 or something, you know, you want to soften it. You don't 7 want to just necessarily block it. So that's why it's a 8 mix of shrubs, understory, and overstory. So it's kind of, 9 you know, height variations. You'll have a different 10 cadence. It's not just a uniform sort of block. But all 11 of these things will soften or in some spots just block the 12 fence completely. 13 BRYAN BOUGHTON: So -- 14 DEVIN KENNEDY: And also -- sorry, go ahead. 15 BRYAN BOUGHTON: No, no, finish. 16 DEVIN KENNEDY: I was just going to say back to 17 interfacing with the berm itself, you know, the fence will 18 be blocked where it berms -- where it meets the berm and 19 the berm itself is the most prominent sort of feature, 20 right. So that's what you're going to notice. So you 21 won't see the fence at that location. It won't be -- you 22 know, the fence won't be the prominent visual, you know, 23 aspect looking along the front there. You would just see a 24 natural berm hiding everything behind it. 25 BRYAN BOUGHTON: So when you go to the west side</p>	<p>147</p> <p>1 need for any softening. 2 BRYAN BOUGHTON: So I live three houses to the 3 left. If you stay right on this line I'll just explain. 4 I'm three houses to the west and I can see the existing 5 house through the vegetation now and I'm on the other side 6 of the road. So I guess I'm concerned that that fence will 7 be a very prominent feature because it's on the same line 8 of sight as that existing house, which is under trees that 9 I can see, all the way to the fence behind which is not 10 being -- again, I don't consider a board-on-board fence 11 part of the natural landscape. I think you need to 12 consider some plantings, and maybe it should be a 13 condition, on the outside of that fence and not just inside 14 at the parking. What could you put there to screen that 15 fence? 16 DEVIN KENNEDY: It would take some looking into. 17 I don't want to try to speculate on record here but I 18 understand your concerns and I will definitely take it into 19 account. 20 BRYAN BOUGHTON: One question about the sign you 21 mentioned. When the operational building gets built, 22 assuming it does get built, you mentioned there would be a 23 sign on the front of it and then a sign I assume on the 24 posts, what you showed us, out on the street. What would 25 be the purpose of having two signs facing the street</p>
<p>146</p> <p>1 then, it looks like the tree plantings in the back around 2 the employee parking are inside the fence and what will -- 3 DEVIN KENNEDY: Yeah. 4 BRYAN BOUGHTON: What will cover the board-on- 5 board fence there so it doesn't stand out as this eight- 6 foot impervious wall? 7 DEVIN KENNEDY: I think on this side where the 8 setback we're about 400 feet from the road itself and 9 setback, you know, probably another 200 feet. You know, 10 we're talking about the actual parking lot itself. So in 11 regards to that, just the dimension of the setback itself. 12 It's just a little bit different situation where we 13 don't -- you know, I don't feel like we need to do the same 14 treatment as along where the single-family house is. So 15 that's why the fence on its own is effectively acting as a 16 screen in combination with the existing vegetation buffer 17 along Howard Chapel. 18 So really to see that façade of that tree outside 19 of that parking you would have to -- you know, it would be 20 very difficult to even see it through -- you know, because 21 as you come around the buffer along the property line, you 22 look left, you see existing mature trees that are -- and 23 then you see -- the actual fence is back another 300 feet 24 or so. So it's just not something that's -- I don't think, 25 you know, it's visually prominent at all so I didn't see a</p>	<p>148</p> <p>1 especially if neither is going to be lit? Couldn't the 2 same be accomplished with one sign? 3 DEVIN KENNEDY: Just for reference for people 4 traveling. They just know what building to go into. So 5 the entry sign for way finding to the site and then 6 internal directions for the actual building sign. 7 BRYAN BOUGHTON: But wouldn't that sign be inside 8 the fence line on the building -- 9 DEVIN KENNEDY: Are you -- 10 BRYAN BOUGHTON: -- instead of facing the street? 11 DEVIN KENNEDY: Are you talking about the 12 trailer, for the trailer? 13 BRYAN BOUGHTON: No, I'm talking about when this 14 operations building gets built you mentioned -- 15 DEVIN KENNEDY: No. 16 BRYAN BOUGHTON: -- above the faux doors 17 there -- okay. 18 DEVIN KENNEDY: It's facing south above -- on the 19 gable end. If you want to show the -- 20 BRYAN BOUGHTON: Right, but it's on the outside 21 of the site. So once you're inside the site it would not 22 direct you to where to go. 23 DEVIN KENNEDY: I think it's like if you're 24 driving to the site and you enter the main driveway you see 25 a building with a sign on it and you know to go to that</p>

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<p>149</p> <p>1 building even if you see it from the outside. Do you know 2 what I mean? 3 BRYAN BOUGHTON: I would also state as a 4 condition of this getting approved I would think you don't 5 need two signs outside. That would be more appropriate 6 once you're past the gate and inside. It seems duplicative 7 to have one at the road and one on the building. And 8 it -- I think it causes the site to look less like the 9 agricultural/residential area it is. 10 HEARING EXAMINER ROBESON HANNAN: So are you 11 suggesting signage -- I'm trying to remember the exhibit. 12 DEVIN KENNEDY: It was the elevations, 13 the -- hang on. 14 HEARING EXAMINER ROBESON HANNAN: Yeah, 32. No. 15 DEVIN KENNEDY: Exhibit 36(b). 16 HEARING EXAMINER ROBESON HANNAN: Huh? 17 DEVIN KENNEDY: Sorry. Exhibit 36(b). 18 HEARING EXAMINER ROBESON HANNAN: So you're -- so 19 a possibility could be signage right here. 20 BRYAN BOUGHTON: Yes, inside the -- inside the 21 working lot instead of with elevation number two there 22 where it's facing the road outside the sign -- 23 HEARING EXAMINER ROBESON HANNAN: Right. 24 BRYAN BOUGHTON: -- (indiscernible). 25 HEARING EXAMINER ROBESON HANNAN: And just for</p>	<p>151</p> <p>1 wall that you were referencing. 2 HEARING EXAMINER ROBESON HANNAN: But I thought I 3 asked you earlier whether that wall was at grade with the 4 berm and you said yes. 5 DEVIN KENNEDY: Oh, it is -- it's just the 6 corner -- yeah, it's at grade and it slopes down right at 7 the end to get -- 8 HEARING EXAMINER ROBESON HANNAN: Oh, I see what 9 you're saying. Right here. 10 DEVIN KENNEDY: Yeah, you can see where the top 11 of the walls are -- 12 HEARING EXAMINER ROBESON HANNAN: Right here. 13 DEVIN KENNEDY: Uh-huh. 14 HEARING EXAMINER ROBESON HANNAN: Yeah, I'm 15 pointing to the east and south jag of the wall. Okay. 16 BRYAN BOUGHTON: And why was eight feet chosen 17 for the berm? Is that -- 18 DEVIN KENNEDY: Eight feet was considered 19 sufficient enough to, you know, -- 20 JACK QUINN: He's gone. He left. 21 HEARING EXAMINER ROBESON HANNAN: Wait. Mr. 22 Quinn, you're talking over -- can you mute? I see your 23 hand up and I'll get to you but Mr. Boughton is asking 24 questions right now. 25 JACK QUINN: Ms. Hannan, I didn't say a word nor</p>
<p>150</p> <p>1 the record because the record doesn't know what here is, 2 I'm pointing to the entrance door on the east elevation 3 shown on Exhibit 36. 4 BRYAN BOUGHTON: Is any of the block wall going 5 to be exposed where you can see it? And if so, what would 6 it look like because some of the temporary landscaper block 7 walls I've seen are not very appealing. Is that the type 8 that's going to be there or is this a poured cement wall? 9 HEARING EXAMINER ROBESON HANNAN: When you say 10 block wall, are you talking about the material -- 11 BRYAN BOUGHTON: Yeah. 12 HEARING EXAMINER ROBESON HANNAN: -- the wall 13 against the berm? 14 BRYAN BOUGHTON: Yes, at the front of the site. 15 HEARING EXAMINER ROBESON HANNAN: Okay. I just 16 don't -- 17 BRYAN BOUGHTON: Yeah. 18 HEARING EXAMINER ROBESON HANNAN: Go ahead. 19 BRYAN BOUGHTON: And at one corner it was said 20 the berm would taper away and we would see the block wall 21 where it joined into the board-on-board fence. 22 DEVIN KENNEDY: Yeah, so the intent is to fully 23 screen any exposed wall. So we're densely planting the 24 shrubs and evergreen trees around those parts but the wall 25 most likely would be the concrete block wall, the typical</p>	<p>152</p> <p>1 did -- I'm in my office and there isn't a single person 2 there. So -- 3 HEARING EXAMINER ROBESON HANNAN: Well, I'm sorry 4 I -- I'm sorry I wrongly accused you. 5 JACK QUINN: I usually am blamed. 6 HEARING EXAMINER ROBESON HANNAN: I just heard 7 some background talking and I didn't know where it was -- I 8 thought it was you. 9 JEFFERY O'TOOLE: I have to confess it might have 10 been O'Toole because he got lost, but he has been found. 11 HEARING EXAMINER ROBESON HANNAN: Okay. Go 12 ahead, Mr. Boughton. 13 BRYAN BOUGHTON: I was just asking why the height 14 of the berm in the front is eight feet. Why that height 15 was chosen. 16 DEVIN KENNEDY: It was just a height that was 17 appropriate to screen the operations. 18 BRYAN BOUGHTON: And is that -- because I notice 19 that's where the materials will be stored. Is that because 20 those materials won't go above that height? 21 DEVIN KENNEDY: You know, I don't -- I'm not 22 sure. Not likely, yeah. I mean that's generally -- not 23 going to have much stuff stacked higher than eight feet 24 typically. 25 BRYAN BOUGHTON: Okay. And then what -- the</p>

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<p style="text-align: right;">153</p> <p>1 plantings will not be on the berm. Will they be in front 2 of it or at the top of it? Will they extend that berm's 3 height or where are those plantings going to be done? 4 DEVIN KENNEDY: Yeah, they're kind of proposed on 5 the slope. You don't really want to plant stuff right on 6 top of a berm just because of the nature of drying out. So 7 it's just -- and also having it a little bit lower allows 8 that canopy to -- you know, the lower portion of the canopy 9 to act more of a screen, the branching, the lower 10 branching. So generally, yeah, it's on the slope of the 11 berm as it heads back down. 12 BRYAN BOUGHTON: Last question and this may or 13 may not be for you. Where the proposed septic field is, 14 will there be the ability to put plantings there once that 15 is built? 16 DEVIN KENNEDY: You can use some plantings. I'll 17 have to default to engineer, but generally speaking you are 18 allowed to do some types of planting usually. Like sod, 19 for example, is already out there on top of their existing 20 septic reserve. But mainly smaller stuff. I don't think 21 you would want to do like a large tree in there but I don't 22 know -- I don't know exactly what the limitations are. 23 BRYAN BOUGHTON: Well, would you be limited right 24 along that board-on-board fence at the northwest corner 25 going down towards Damascus, putting screening there where</p>	<p style="text-align: right;">155</p> <p>1 processes to get to where we are now. So I'd say the whole 2 time maybe. I don't know. I mean -- yeah. 3 JACK QUINN: Okay. How long has -- did your firm 4 prepare Exhibit 31? Is that the exhibit -- or that's 33 5 that's on the screen. Did your firm prepare that? 6 DEVIN KENNEDY: I'm sorry. Which exhibit 7 exactly? 8 JACK QUINN: I think on my screen it's -- 9 HEARING EXAMINER ROBESON HANNAN: Sorry. Go 10 ahead. 11 JACK QUINN: Is it Exhibit 33, Your Honor? 12 HEARING EXAMINER ROBESON HANNAN: Exhibit 33 is 13 the site plan. 14 JACK QUINN: Yes. 15 HEARING EXAMINER ROBESON HANNAN: Are you 16 talking -- okay. 17 JACK QUINN: It's on my screen. I assume it's on 18 everyone's screen. 19 HEARING EXAMINER ROBESON HANNAN: It should be. 20 JACK QUINN: Okay. Did your firm, Mr. Kennedy, 21 prepare that exhibit? 22 DEVIN KENNEDY: Yes. 23 JACK QUINN: Okay. And how long has that exhibit 24 been prepared? 25 DEVIN KENNEDY: I can't recall exactly.</p>
<p style="text-align: right;">154</p> <p>1 we talked about earlier against that fence? 2 DEVIN KENNEDY: It depends on what type of -- you 3 might be -- I don't know exactly the limitations. I can't 4 really -- there could be. I'm not -- I don't know exactly 5 what they are, but yeah. 6 BRYAN BOUGHTON: Okay. That is all I had, 7 Director Hannan. 8 HEARING EXAMINER ROBESON HANNAN: Thank you, Mr. 9 Boughton. 10 Mr. Quinn, are you ready yet? 11 JACK QUINN: I've been ready. I was born ready. 12 HEARING EXAMINER ROBESON HANNAN: Now can 13 you -- yeah, there you go. You got it. Thank you. 14 JACK QUINN: So Mr. Kennedy, when were you first 15 approached to perform services in this matter? 16 DEVIN KENNEDY: I was -- early 2019. 17 JACK QUINN: And how long did it take for your 18 firm to perform these professional services? 19 DEVIN KENNEDY: I'm not sure. I mean we -- what 20 services are you specifically talking about? 21 JACK QUINN: Well, you're here testifying as to 22 the professional efforts that you made. How long did those 23 efforts take? 24 DEVIN KENNEDY: I mean it's just from the 25 beginning we've been doing little, you know, developmental</p>	<p style="text-align: right;">156</p> <p>1 It's -- you know, developmental process, you kind of go 2 through different iterations. So, you know, I -- I would 3 say earlier this year maybe in 2020, like February, March. 4 JACK QUINN: Okay. And this is meant to reflect 5 your vision of how this conditional use is sited, correct? 6 DEVIN KENNEDY: Yeah. 7 JACK QUINN: Okay. Now is it within your purview 8 to access the safety conditions existent at the -- for 9 vehicles entering and leaving the conditional use? 10 DEVIN KENNEDY: It's a factor in the design, yes. 11 JACK QUINN: Okay. And do you have any safety 12 concerns about this driveway entrance onto Damascus Road? 13 DEVIN KENNEDY: I think where it's sited is an 14 appropriate location. 15 JACK QUINN: That really wasn't my question. Do 16 you have any safety concerns -- 17 DEVIN KENNEDY: No. 18 JACK QUINN: -- about the placement of this 19 driveway on Damascus Road? 20 DEVIN KENNEDY: No. 21 JACK QUINN: Okay. When was the last time you 22 were out there? 23 DEVIN KENNEDY: I was out there in -- it was 24 summertime, in August I think. 25 JACK QUINN: Of 2020, sir?</p>

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<p>157</p> <p>1 DEVIN KENNEDY: Yes.</p> <p>2 JACK QUINN: Okay. And did you happen to travel</p> <p>3 eastbound along Damascus Road along the site?</p> <p>4 DEVIN KENNEDY: I don't recall. You know, I</p> <p>5 don't know exactly what direction. I guess I would have</p> <p>6 been coming from east to west.</p> <p>7 JACK QUINN: East to west. Okay. So would you</p> <p>8 accept my representation that coming from west to east</p> <p>9 about 50 to 100 feet west of the driveway entrance there is</p> <p>10 a speed limit sign of 40 miles per hour? Would you accept</p> <p>11 that representation?</p> <p>12 DEVIN KENNEDY: So -- yes, there's a -- so you're</p> <p>13 saying there's a speed limit sign out there of 40 miles an</p> <p>14 hour --</p> <p>15 JACK QUINN: Yes.</p> <p>16 DEVIN KENNEDY: -- on the west side of the</p> <p>17 property? Yes.</p> <p>18 JACK QUINN: Okay. So the speed limit at least</p> <p>19 for vehicles traveling east is 40 miles an hour at that</p> <p>20 approximate site, correct?</p> <p>21 DEVIN KENNEDY: Yes.</p> <p>22 JACK QUINN: Okay. Do you know what it was prior</p> <p>23 to the 40 mile per hour speed limit sign?</p> <p>24 DEVIN KENNEDY: Do I know what was prior, the</p> <p>25 speed limit?</p>	<p>159</p> <p>1 that?</p> <p>2 DEVIN KENNEDY: Yes.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. What</p> <p>4 exhibit are you looking at?</p> <p>5 JACK QUINN: It's the one we've been working</p> <p>6 with, Your Honor, Exhibit 33.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Oh, okay.</p> <p>8 JACK QUINN: Okay.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. I see.</p> <p>10 JACK QUINN: Okay. And Exhibit 33 shows this</p> <p>11 drift to the left of Damascus Road. Do you see that?</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Just for the</p> <p>13 record, we don't -- the court reporter doesn't know the</p> <p>14 orientation so we can't use left or right, but I think what</p> <p>15 you're saying is the drift to the north.</p> <p>16 JACK QUINN: Yes, I think that's fair, northeast.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Northeast.</p> <p>18 Okay. That's good. Go ahead.</p> <p>19 JACK QUINN: Thank you.</p> <p>20 Do you see that drift, sir?</p> <p>21 DEVIN KENNEDY: Yes.</p> <p>22 JACK QUINN: That would diminish sight distance,</p> <p>23 would it not?</p> <p>24 DEVIN KENNEDY: No.</p> <p>25 JACK QUINN: By the way, did you see the zoning</p>
<p>158</p> <p>1 JACK QUINN: Speed limit, sir.</p> <p>2 DEVIN KENNEDY: Do I know what it was prior? I</p> <p>3 am not sure I understand.</p> <p>4 JACK QUINN: Well, I think it's -- you're having</p> <p>5 trouble because it's a bad question. So for vehicles</p> <p>6 traveling eastbound on Damascus Road we know the speed</p> <p>7 limit near the driveway entrance and exit is now 40 miles</p> <p>8 an hour. How about for vehicles further westbound but</p> <p>9 traveling east? Was the speed limit 40 miles an hour or 50</p> <p>10 miles an hour?</p> <p>11 DEVIN KENNEDY: I don't know.</p> <p>12 JACK QUINN: Sir, in your assessment --</p> <p>13 MS. REGELIN: Objection because I'm not sure</p> <p>14 that's relevant beyond the frontage of the site.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well, I'm going</p> <p>16 to give him the opportunity because I think there's</p> <p>17 relevance. I can see relevance coming so I'm going to let</p> <p>18 you explore it. I will say there is a transportation</p> <p>19 planner but I'm going to let you go forward, Mr. Quinn.</p> <p>20 JACK QUINN: Thank you, Ms. Hannan.</p> <p>21 Sir, did you measure the sight distance at that</p> <p>22 driveway?</p> <p>23 DEVIN KENNEDY: No.</p> <p>24 JACK QUINN: Further eastbound on Damascus Road</p> <p>25 the property line or Damascus Road drifts left. Do you see</p>	<p>160</p> <p>1 sign on any of the photographs you went through traveling</p> <p>2 eastbound -- or westbound on Damascus Road?</p> <p>3 DEVIN KENNEDY: The zoning signs? No.</p> <p>4 JACK QUINN: The zoning hearing signs to alert</p> <p>5 the world.</p> <p>6 DEVIN KENNEDY: No.</p> <p>7 JACK QUINN: Did you perform any calculations</p> <p>8 about the rate of acceleration for landscape vehicles from</p> <p>9 the driveway onto Damascus Road?</p> <p>10 DEVIN KENNEDY: I just -- this is probably more</p> <p>11 appropriate for a traffic engineer. The technical stuff I</p> <p>12 just -- you know, I'm not really -- it's not my -- you</p> <p>13 know, I'm not comfortable answering.</p> <p>14 JACK QUINN: Okay. That's fair enough, Mr.</p> <p>15 Kennedy. And you're not possessed of a professional</p> <p>16 opinion that that driveway entrance onto Damascus Road is</p> <p>17 safe, are you?</p> <p>18 DEVIN KENNEDY: I think the sight lines are more</p> <p>19 than open. There's no -- there's nothing obscuring your</p> <p>20 vision as you're approaching a relatively straight road</p> <p>21 that's flat on the near high point. I don't -- I think</p> <p>22 it's more than adequate sight lines for entering and</p> <p>23 exiting the site.</p> <p>24 JACK QUINN: Okay. So you didn't calculate the</p> <p>25 rate of acceleration for landscape-type vehicles onto</p>

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<p>161</p> <p>1 Damascus Road, correct?</p> <p>2 DEVIN KENNEDY: I did not calculate, no.</p> <p>3 JACK QUINN: And accordingly, you couldn't form</p> <p>4 an opinion as to whether or not vehicles entering a 40 mile</p> <p>5 an hour zone on Damascus Road could do so safely, correct?</p> <p>6 DEVIN KENNEDY: Yeah, I have no comment on that.</p> <p>7 I don't know -- yeah, I did not factor that in.</p> <p>8 JACK QUINN: All right. The most you can say is</p> <p>9 there appears to be a straight line sight distance for some</p> <p>10 length at that driveway; is that correct?</p> <p>11 DEVIN KENNEDY: I think the sight lines are, yes,</p> <p>12 are adequate and safe for the site.</p> <p>13 JACK QUINN: Okay. And I'm confused. Did you</p> <p>14 take those photographs or are those photographs -- do they</p> <p>15 come from any particular source?</p> <p>16 DEVIN KENNEDY: What photographs? I'm sorry.</p> <p>17 JACK QUINN: The photographs you went through</p> <p>18 incrementally showing traffic proceeding eastbound and</p> <p>19 westbound.</p> <p>20 DEVIN KENNEDY: You're referring to the Exhibit</p> <p>21 73 I believe.</p> <p>22 JACK QUINN: I think that's right, Mr. Kennedy.</p> <p>23 DEVIN KENNEDY: Yeah, those are taken from Google</p> <p>24 Street View.</p> <p>25 JACK QUINN: Okay. All right. And do you have</p>	<p>163</p> <p>1 want to, you know, opine on the technical stuff that I have</p> <p>2 not -- you know, I have not looked into.</p> <p>3 JACK QUINN: Okay. So we can agree you haven't</p> <p>4 looked into those issues personally?</p> <p>5 DEVIN KENNEDY: Well, personally -- I don't know</p> <p>6 what these issues are referring -- I mean I guess the</p> <p>7 questions you're asking me is what you're saying?</p> <p>8 JACK QUINN: Yes, sir.</p> <p>9 DEVIN KENNEDY: Yeah, I -- I, you know.</p> <p>10 JACK QUINN: Can we agree that at least as to</p> <p>11 phase one -- well, strike that. Phase one consists of a</p> <p>12 board fence surrounding a work area dominated by a trailer.</p> <p>13 Is that a fair description of phase one?</p> <p>14 DEVIN KENNEDY: I wouldn't use the word</p> <p>15 dominating. There's a trailer.</p> <p>16 JACK QUINN: Okay. What else is there besides</p> <p>17 the trailer and this fence?</p> <p>18 DEVIN KENNEDY: There would be all the work</p> <p>19 surfaces. So all the asphalt driveway, the gravel, the</p> <p>20 parking, the landscaping, the fence, and the trailer.</p> <p>21 Maybe some sheds as well.</p> <p>22 JACK QUINN: Okay. I thought the plantings were</p> <p>23 going to be done in the first planting season.</p> <p>24 DEVIN KENNEDY: That's correct.</p> <p>25 JACK QUINN: Okay. And the board fence was going</p>
<p>162</p> <p>1 any sense of when they were taken, what time of day?</p> <p>2 DEVIN KENNEDY: It was probably midday. Usually</p> <p>3 it's like midday, yeah, typically.</p> <p>4 JACK QUINN: Have you been out to the site either</p> <p>5 early in the morning or later in the afternoon?</p> <p>6 DEVIN KENNEDY: I've been later in the afternoon,</p> <p>7 yes.</p> <p>8 JACK QUINN: Okay. Did you observe the sight</p> <p>9 distance issues associated with the setting sun in the west</p> <p>10 for vehicles traveling westbound?</p> <p>11 DEVIN KENNEDY: I did not notice anything</p> <p>12 particular.</p> <p>13 JACK QUINN: Okay. Did you notice then -- did</p> <p>14 you notice the restricted sight distance in the photographs</p> <p>15 that you produced as a part of Exhibit 73?</p> <p>16 DEVIN KENNEDY: I don't know what you're</p> <p>17 referring to.</p> <p>18 JACK QUINN: Okay. All right. Are you familiar</p> <p>19 with concepts about stopping distance?</p> <p>20 DEVIN KENNEDY: I -- yeah. Uh-huh.</p> <p>21 JACK QUINN: Okay. Did you perform an analysis</p> <p>22 as to this driveway exit and entrance?</p> <p>23 DEVIN KENNEDY: I just think these types of</p> <p>24 questions are technical. It's just more -- I would rather</p> <p>25 have the traffic engineer give testimony. I just don't</p>	<p>164</p> <p>1 to be put up immediately?</p> <p>2 DEVIN KENNEDY: Correct.</p> <p>3 JACK QUINN: Okay. And the -- is it your</p> <p>4 testimony, sir, that the paving is going to be done</p> <p>5 immediately?</p> <p>6 DEVIN KENNEDY: All of this -- all the earth</p> <p>7 work, paving, and fencing, this is all part of the same</p> <p>8 mobilization. I don't know exactly what's first and what's</p> <p>9 second but it's all a planned work scope.</p> <p>10 JACK QUINN: Okay. A planned work scope. And</p> <p>11 how long does this planned work scope take?</p> <p>12 DEVIN KENNEDY: I don't know.</p> <p>13 JACK QUINN: Prior to the completion of the</p> <p>14 planned work scope we can at least assume that the</p> <p>15 applicant is going to place a trailer on the property to</p> <p>16 work from, correct?</p> <p>17 DEVIN KENNEDY: Yeah.</p> <p>18 JACK QUINN: And is that placement of the trailer</p> <p>19 compatible with the surrounding area?</p> <p>20 DEVIN KENNEDY: I don't know. I haven't factored</p> <p>21 that in.</p> <p>22 JACK QUINN: Okay. How many times have you been</p> <p>23 out to this area, Mr. Kennedy?</p> <p>24 DEVIN KENNEDY: Like four or five times.</p> <p>25 JACK QUINN: Okay. Did you see any other</p>

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165	167
1 trailers?	1 JACK QUINN: And then is there to be parking in
2 DEVIN KENNEDY: Not that I can recall.	2 phase one on pavement, do you know?
3 JACK QUINN: Okay. Did you see any other big	3 DEVIN KENNEDY: The parking is on gravel but,
4 board fences?	4 yes, it's proposed. The ADA spaces will be on concrete.
5 DEVIN KENNEDY: Probably. I can't recall them.	5 HEARING EXAMINER ROBESON HANNAN: I'm sorry.
6 I can't think of a specific example but --	6 Just a second. I'm hearing somebody talking and for once
7 JACK QUINN: Okay. Can we agree that a trailer	7 I'm not accusing Mr. O'Toole. Whoever it is, can you mute
8 placed within the perimeter surrounded by an eight board	8 your background noise please? Thank you. Go ahead. I
9 fence is not compatible with the surrounding area?	9 apologize for interrupting. Continue.
10 DEVIN KENNEDY: No.	10 JACK QUINN: Just for the record, I felt really
11 JACK QUINN: We can't agree to that?	11 bad because you accused me, Ms. Hannan, but --
12 DEVIN KENNEDY: No.	12 HEARING EXAMINER ROBESON HANNAN: Sure.
13 JACK QUINN: Okay. All right. You don't	13 JACK QUINN: I'll go on. I also had some trouble
14 remember any eight board fences and you didn't see any	14 hearing Mr. Kennedy.
15 trailers but it's compatible. Is that your testimony, Mr.	15 So this parking, is this parking to be on
16 Kennedy?	16 pavement?
17 DEVIN KENNEDY: Yeah, I did not, you know.	17 DEVIN KENNEDY: The parking is partially asphalt,
18 HEARING EXAMINER ROBESON HANNAN: Okay. Mr.	18 partially concrete, and partially gravel.
19 Quinn, he already answered that.	19 JACK QUINN: Okay. All right. Did you perform
20 JACK QUINN: Okay. All right.	20 any parking analysis?
21 Did you view from Howard Chapel Road the extent	21 DEVIN KENNEDY: Specific to what?
22 of the screen? The effectiveness of the screening, Mr.	22 JACK QUINN: Well, whether or not the site would
23 Kennedy?	23 allow for the parking suggested while at the same time
24 HEARING EXAMINER ROBESON HANNAN: Wait, are you	24 allowing vehicles to maneuver within this suggested parking
25 talk -- can I ask for a clarification? Are you talking	25 area. Did you analyze that?
166	168
1 about the existing vegetation? Is that what you're talking	1 DEVIN KENNEDY: Yes.
2 about?	2 JACK QUINN: Okay. And did you prepare something
3 JACK QUINN: Yes, Ms. Hannan.	3 like a study?
4 HEARING EXAMINER ROBESON HANNAN: Okay. Go	4 DEVIN KENNEDY: A study?
5 ahead. You can answer.	5 JACK QUINN: Yeah.
6 DEVIN KENNEDY: What is the question? I didn't	6 DEVIN KENNEDY: A parking study or --
7 hear the question.	7 JACK QUINN: Sure.
8 JACK QUINN: Okay. Did you stand on Howard	8 DEVIN KENNEDY: No.
9 Chapel Road and look at the screening provided by the	9 JACK QUINN: You didn't?
10 existing vegetation towards the site?	10 DEVIN KENNEDY: I'm not sure what you mean by a
11 DEVIN KENNEDY: Yeah. I've been -- walked all	11 study exactly.
12 through that area.	12 JACK QUINN: Okay. Did you record any
13 JACK QUINN: Did you take any photographs of the	13 calculations?
14 existing screening?	14 HEARING EXAMINER ROBESON HANNAN: Sorry, Mr.
15 DEVIN KENNEDY: I don't have any -- I don't know	15 Quinn. I'm sorry again. There's someone here that has
16 if I did. I might have. I don't have any. I can't	16 background coming through. If you have a phone, I see a
17 recall.	17 couple of new phone numbers, can you mute your phone when
18 JACK QUINN: Okay. The site calls for the	18 you're not talking? There. That's much better. So go
19 existence of parking, correct?	19 ahead. I apologize again. Go ahead, Mr. Quinn.
20 DEVIN KENNEDY: The site calls for the existence	20 JACK QUINN: Mr. Kennedy, did you perform
21 of parking?	21 calculations in order to assure yourself that vehicles
22 JACK QUINN: Yes, sir.	22 could not only fit in a parking space at the site but could
23 DEVIN KENNEDY: Yes. Yes.	23 also maneuver safely within this site in light of the
24 JACK QUINN: Okay.	24 parking requirements?
25 DEVIN KENNEDY: There is parking proposed.	25 DEVIN KENNEDY: Yeah, the parking lot has been

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<p>169</p> <p>1 designed to, you know, provide adequate spacing, turning 2 radius, and circulation. 3 JACK QUINN: Okay. And are those design 4 calculations and analysis a part of the record? 5 DEVIN KENNEDY: I don't know -- I'm not sure if 6 you're asking for a specific item or -- it's all part of 7 the site plan and the development standards. 8 JACK QUINN: Okay. Did you -- 9 DEVIN KENNEDY: So it's all located on the site 10 plan. 11 JACK QUINN: Okay. Sometimes different 12 professionals use different terms. Did you prepare any 13 work papers associated with the parking issues in this 14 case? And when I say you I mean your firm. 15 DEVIN KENNEDY: No, I don't think -- 16 JACK QUINN: Okay. 17 DEVIN KENNEDY: I don't think so. 18 JACK QUINN: All right. So -- 19 HEARING EXAMINER ROBESON HANNAN: Mr. Quinn, are 20 you talking about parking or -- you're talking about 21 circulation? 22 JACK QUINN: I'm talking about parking issues 23 which, Your Honor, require analysis of the capacity for 24 circulation. 25 HEARING EXAMINER ROBESON HANNAN: Okay. That's</p>	<p>171</p> <p>1 JACK QUINN: Okay. And can we agree that 2 aesthetically that's much different than eight-foot board- 3 on-board? 4 DEVIN KENNEDY: Yeah, it's a different design. 5 JACK QUINN: Is it fair to say that most of the 6 properties within a few hundred yards of this site have 7 horses? 8 DEVIN KENNEDY: Yeah, I think so. 9 JACK QUINN: Okay. Have you addressed or 10 attempted to address any concerns about the safety issues 11 associated with heavy equipment around horses? 12 DEVIN KENNEDY: We don't have any horses on our 13 site so I don't -- yeah, I -- it wasn't pertinent to the 14 design. 15 JACK QUINN: So the answer is no you didn't 16 consider any safety issues associated with horses in the 17 vicinity of this heavy equipment, correct? 18 DEVIN KENNEDY: No. 19 JACK QUINN: Now you testified as to a lighting 20 on the site. 21 DEVIN KENNEDY: Yes. 22 JACK QUINN: Okay. And there was a suggestion, I 23 think I heard this, that the lighting during the nighttime 24 and exclusive of snow removal times would be limited to the 25 sconces alongside the building?</p>
<p>170</p> <p>1 what I thought. That's -- 2 JACK QUINN: Okay. 3 HEARING EXAMINER ROBESON HANNAN: We call them 4 circulation plans. I just -- 5 JACK QUINN: Okay. 6 HEARING EXAMINER ROBESON HANNAN: I just wanted 7 to make sure I understood what you were asking. Go ahead. 8 JACK QUINN: Thank you. 9 Now this eight-foot board-on-board fence, the 10 photograph that's up, and it's Exhibit 73, do you have that 11 in front of you, Mr. Kennedy? Photograph -- 12 DEVIN KENNEDY: I don't. I don't. I don't have 13 it in front of -- oh, wait. Hold on. Maybe I do. No. 14 JACK QUINN: Okay. 15 HEARING EXAMINER ROBESON HANNAN: Is it not on 16 your screen? 17 DEVIN KENNEDY: Yes. I can see it. Sorry. It 18 just keeps going in and out. I don't know why. 19 HEARING EXAMINER ROBESON HANNAN: There. 20 DEVIN KENNEDY: There we go. 21 JACK QUINN: Okay. Now that fencing is the 22 fencing that exists -- that type of fencing, three or four- 23 board fencing is the type of fencing that exists in this 24 rural agricultural area, correct? 25 DEVIN KENNEDY: Yes.</p>	<p>172</p> <p>1 DEVIN KENNEDY: Correct. 2 JACK QUINN: Okay. Now so is there a suggestion 3 that work would not be ongoing after dark or before 4 daylight within the work area of the site? 5 DEVIN KENNEDY: The work will not be conducted 6 outside of the hours specified by the applicant. 7 JACK QUINN: Yeah, that's not really what I 8 asked. I asked if work was going to be done before 9 daylight and after dark. Is that your understanding one 10 way or the other? 11 DEVIN KENNEDY: I assume you're asking if 12 work -- if they're proposing to do work outside of the work 13 operations hours. Is that what you're saying? 14 JACK QUINN: Well, focus on these two words if 15 you would, Mr. Kennedy, daylight and dark. 16 DEVIN KENNEDY: Daylight. 17 JACK QUINN: Okay. 18 DEVIN KENNEDY: Daylight and dark. Okay. 19 JACK QUINN: And dark. 20 DEVIN KENNEDY: Okay. 21 JACK QUINN: Is there any understanding of work 22 being done in that work area when it's dark? 23 DEVIN KENNEDY: Yeah, in the morning it will be 24 dark and they will be operating in the mornings. Yeah. 25 So -- but yeah.</p>

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<p>173</p> <p>1 JACK QUINN: Wouldn't there be a requirement for</p> <p>2 lighting other than or supplemental to the sconces during</p> <p>3 that work area before daylight?</p> <p>4 DEVIN KENNEDY: Wouldn't there be -- what do you</p> <p>5 mean?</p> <p>6 JACK QUINN: I mean you have a bunch of people</p> <p>7 and a bunch of vehicles moving around in the common work</p> <p>8 area without lighting, correct?</p> <p>9 DEVIN KENNEDY: No. The lights would be on.</p> <p>10 JACK QUINN: But the only lights would be the</p> <p>11 sconce lights?</p> <p>12 DEVIN KENNEDY: When they're conducting business</p> <p>13 operations they will have lights on.</p> <p>14 JACK QUINN: And what lights will they have on</p> <p>15 when they're conducting business operations in the dark?</p> <p>16 DEVIN KENNEDY: The work light, the area</p> <p>17 lighting.</p> <p>18 JACK QUINN: What area lighting is that sir?</p> <p>19 DEVIN KENNEDY: The area lighting of the parking</p> <p>20 area and the work yards.</p> <p>21 JACK QUINN: And what lighting in the work area</p> <p>22 and the parking lot? What does that lighting consist of?</p> <p>23 DEVIN KENNEDY: It's area lighting, pole lights.</p> <p>24 JACK QUINN: Pole lights. And --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I think he</p>	<p>175</p> <p>1 the -- if he's testified contradictorily that's a valid use</p> <p>2 of cross-examination. I guess I'm not clear on where</p> <p>3 you're going with this or maybe I'm missing the</p> <p>4 contradiction.</p> <p>5 JACK QUINN: I'm trying to establish that there</p> <p>6 will be bright lights way above the eight-foot wall and</p> <p>7 berm and eight-foot fence in order to illuminate work</p> <p>8 activities at the site after dark.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 JACK QUINN: That's what I want to establish.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Do you</p> <p>12 agree -- so did you hear -- say that's the form of the</p> <p>13 question.</p> <p>14 DEVIN KENNEDY: Yeah, the pole lights extend up</p> <p>15 higher than the fence. That's correct.</p> <p>16 JACK QUINN: That really wasn't my question.</p> <p>17 What is the degree of illumination to be produced by those</p> <p>18 pole lights 25 foot over the -- off the ground?</p> <p>19 DEVIN KENNEDY: The photometric plan shows all of</p> <p>20 that. That indicates the lighting characteristics.</p> <p>21 JACK QUINN: I'm asking you, sir. What is the</p> <p>22 degree of illumination?</p> <p>23 DEVIN KENNEDY: It's well, well -- you know,</p> <p>24 enough to cover operations I guess. I'm sorry. I just</p> <p>25 don't know what -- the pole lights are there so they</p>
<p>174</p> <p>1 already testified but you can repeat what your -- I mean</p> <p>2 it's on a plan. It's on the lighting plan.</p> <p>3 JACK QUINN: Okay. If I could explore this a</p> <p>4 little further, Ms. Hannan?</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>6 JACK QUINN: Thank you.</p> <p>7 These pole lights, how tall are the pole lights?</p> <p>8 DEVIN KENNEDY: Pole lights are 25-foot tall on a</p> <p>9 three-foot pedestal.</p> <p>10 JACK QUINN: And what is the -- what's an</p> <p>11 indication of the brightness of the lights that will be</p> <p>12 used on this 25-foot pole during operations during the dark</p> <p>13 at this facility?</p> <p>14 DEVIN KENNEDY: The --</p> <p>15 MS. REGELIN: I believe -- this is Nancy Regelin.</p> <p>16 I would object. There has been testimony regarding all of</p> <p>17 the pole lights. We've discussed the site detail which has</p> <p>18 all of that information. And there's been a photometric</p> <p>19 that Mr. Kennedy has testified to.</p> <p>20 JACK QUINN: This is cross-examination and I</p> <p>21 assume cross-examination is the same phenomenon here that</p> <p>22 it would be in court. I am testing this witness' testimony</p> <p>23 which I find contradictory but maybe I'm wrong. It's a</p> <p>24 totally proper question on cross-examination.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Well, I guess</p>	<p>176</p> <p>1 can -- you know, they can run their business. So there's</p> <p>2 enough coverage so that they can have access to whatever</p> <p>3 they need to over there but it's not overly done. You</p> <p>4 know, it's just what they need to work.</p> <p>5 JACK QUINN: Okay. So if you're across the</p> <p>6 street on either Damascus Road or Howard Chapel would you</p> <p>7 be able to see those pole lights?</p> <p>8 DEVIN KENNEDY: You would see a light, yes.</p> <p>9 JACK QUINN: You would see a light.</p> <p>10 DEVIN KENNEDY: I mean I guess it depends on</p> <p>11 where you're standing, but yeah. I mean --</p> <p>12 JACK QUINN: The entire point of those lights is</p> <p>13 to illuminate the work yard and make it safe, correct?</p> <p>14 DEVIN KENNEDY: Right.</p> <p>15 JACK QUINN: And people from way down Damascus</p> <p>16 Road and Howard Chapel Road could see what is a lit work</p> <p>17 yard, correct?</p> <p>18 DEVIN KENNEDY: I'm not sure what way down</p> <p>19 refers -- you know, what unit of measurement that is</p> <p>20 exactly.</p> <p>21 JACK QUINN: Well, let's say within 500 yards.</p> <p>22 DEVIN KENNEDY: 500 yards from what, the</p> <p>23 property?</p> <p>24 JACK QUINN: From the work area being illuminated</p> <p>25 by the pole lights.</p>

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<p>177</p> <p>1 DEVIN KENNEDY: I'm sorry. I just can't -- I</p> <p>2 can't -- you know, I understand the point you're making.</p> <p>3 You will see lights. That is correct. You will see</p> <p>4 lights. We are not spilling any light over any property</p> <p>5 lines. We are in compliance with all lighting standards</p> <p>6 set out in the zoning ordinance.</p> <p>7 JACK QUINN: So --</p> <p>8 DEVIN KENNEDY: I don't know who to answer your</p> <p>9 question more than that.</p> <p>10 JACK QUINN: Is it a fair statement that you will</p> <p>11 see lighting consistent with a work area from distances of</p> <p>12 3-, 4-, 500 yards?</p> <p>13 DEVIN KENNEDY: I mean I don't really know</p> <p>14 because, you know, I just haven't been able to see it</p> <p>15 myself. I mean like we were talking before, there's those</p> <p>16 existing vegetative buffers along each property line itself</p> <p>17 so that alone sort of obscures the site from -- until</p> <p>18 you're directly in front of it in regards to the pole</p> <p>19 lights. So probably -- I mean I don't know for sure, but</p> <p>20 yeah. I mean that's -- that's what, you know, my instinct</p> <p>21 is telling me. I don't know.</p> <p>22 JACK QUINN: Okay. Mr. Boughton asked you a</p> <p>23 question about that jut out of the wall and he asked you a</p> <p>24 question about whether or not vegetation of six, eight, ten</p> <p>25 feet might obscure it. He was concerned about that,</p>	<p>179</p> <p>1 DEVIN KENNEDY: But I don't --</p> <p>2 JACK QUINN: But you haven't seen anything like</p> <p>3 that, have you?</p> <p>4 DEVIN KENNEDY: Not that I can recall but then</p> <p>5 again I haven't driven there, you know.</p> <p>6 JACK QUINN: Have you seen any lit work areas in</p> <p>7 the surrounding area?</p> <p>8 DEVIN KENNEDY: No.</p> <p>9 JACK QUINN: You seem to indicate that questions</p> <p>10 with regard to water management would best be answered by</p> <p>11 others. Is that a fair statement?</p> <p>12 DEVIN KENNEDY: Yeah, a civil engineer --</p> <p>13 JACK QUINN: Okay.</p> <p>14 DEVIN KENNEDY: -- would be better directed</p> <p>15 towards.</p> <p>16 JACK QUINN: Okay. And were you told what type</p> <p>17 of nursery stock was being planned?</p> <p>18 DEVIN KENNEDY: No. Not specifics, no.</p> <p>19 JACK QUINN: Okay. And were you told what types</p> <p>20 of nurseries the indoor greenhouses were being planned?</p> <p>21 DEVIN KENNEDY: Yeah, those will be annuals</p> <p>22 typically for a greenhouse.</p> <p>23 JACK QUINN: I was thinking more along the type</p> <p>24 of construction. Were you given any information about</p> <p>25 that?</p>
<p>178</p> <p>1 correct?</p> <p>2 DEVIN KENNEDY: Yeah, I believe so.</p> <p>3 JACK QUINN: Okay. We're talking about 25-foot</p> <p>4 poles with bright lights bright enough to render that work</p> <p>5 area safe. Do you think Mr. Boughton would see that?</p> <p>6 DEVIN KENNEDY: Boughton on -- off -- like</p> <p>7 through the vegetative hedge along Howard Chapel, right, is</p> <p>8 that where you're talking about?</p> <p>9 JACK QUINN: It's 25-foot, Mr. Kennedy. Yes,</p> <p>10 above the six, eight, ten foot screen.</p> <p>11 DEVIN KENNEDY: I honestly -- I mean I don't know</p> <p>12 because --</p> <p>13 JACK QUINN: Okay. All right. You don't know.</p> <p>14 DEVIN KENNEDY: I just don't -- I don't know</p> <p>15 honestly.</p> <p>16 JACK QUINN: Assuming that people in the affected</p> <p>17 area could see these 25-foot pole lamps, do you believe</p> <p>18 that those pole lamps are compatible with the surrounding</p> <p>19 area?</p> <p>20 DEVIN KENNEDY: The lights, I don't know. I</p> <p>21 don't know.</p> <p>22 JACK QUINN: Okay.</p> <p>23 DEVIN KENNEDY: I don't think anybody has lights</p> <p>24 now.</p> <p>25 JACK QUINN: Okay.</p>	<p>180</p> <p>1 DEVIN KENNEDY: Just the dimensions, the</p> <p>2 footprint dimensions.</p> <p>3 JACK QUINN: Okay. And were you told whether or</p> <p>4 not these greenhouses would be on slab or pavement?</p> <p>5 DEVIN KENNEDY: No.</p> <p>6 JACK QUINN: Okay. So in your calculations</p> <p>7 with -- well, let me ask you this. Did you perform</p> <p>8 calculations about the imperviousness of this site?</p> <p>9 DEVIN KENNEDY: Yes.</p> <p>10 JACK QUINN: And did you include the greenhouse</p> <p>11 area as a part of those calculations?</p> <p>12 DEVIN KENNEDY: Yes.</p> <p>13 JACK QUINN: And so the assumption was they would</p> <p>14 be on slab?</p> <p>15 DEVIN KENNEDY: Well, it's a building so it's</p> <p>16 impervious. It doesn't matter what it's on.</p> <p>17 JACK QUINN: Okay. All right. Well, that's all</p> <p>18 I have and thank you very much, Mr. Kennedy.</p> <p>19 DEVIN KENNEDY: All right. Thank you.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>21 you. I see -- I don't know who came first. Ms. Caldeira</p> <p>22 has already asked questions. I'll go next to Mr. O'Toole</p> <p>23 and then we can follow up with Ms. Caldeira.</p> <p>24 Mr. O'Toole, go ahead.</p> <p>25 JEFFREY O'TOOLE: Thank you very much.</p>

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<p>181</p> <p>1 HEARING EXAMINER ROBESON HANNAN: I'm sorry. 2 JEFFREY O'TOOLE: Mr. Kennedy, go ahead. 3 I'm sorry? 4 HEARING EXAMINER ROBESON HANNAN: Mr. Quinn -- 5 JEFFREY O'TOOLE: What was that? 6 HEARING EXAMINER ROBESON HANNAN: I'm saying if 7 Mr. Quinn could put his hand down that would be great. 8 JEFFREY O'TOOLE: He was born with his hand up, 9 Your Honor. 10 JACK QUINN: I did, Your Honor. 11 HEARING EXAMINER ROBESON HANNAN: Oh, it's still 12 showing up. Okay. Keep going Mr. O'Toole. 13 JEFFREY O'TOOLE: Okay. Keep going or get 14 started? 15 HEARING EXAMINER ROBESON HANNAN: Get -- 16 JEFFREY O'TOOLE: All right. Here we go. 17 HEARING EXAMINER ROBESON HANNAN: Get started. 18 JEFFREY O'TOOLE: Mr. Kennedy, good afternoon, 19 sir. Just to start where Mr. Quinn was talking about the 20 lighting, I just -- I only have a few questions leftover 21 from other questions, but you talked about the lighting 22 going off at night so when the day is done the lights go 23 off and the day is done we're told is 5:30 or so; is that 24 right? 25 DEVIN KENNEDY: I think 6:00.</p>	<p>183</p> <p>1 DEVIN KENNEDY: I -- yeah, I don't know. Sorry. 2 JEFFREY O'TOOLE: There's been a lot of talk 3 about the deciduous trees and the hedge row along Howard 4 Chapel. 5 Ms. Hannan, would you put on Exhibit 24 please? 6 HEARING EXAMINER ROBESON HANNAN: Is this the one 7 you want Mr. -- 8 JEFFREY O'TOOLE: It is. It is. Thank you. 9 HEARING EXAMINER ROBESON HANNAN: Okay. 10 JEFFREY O'TOOLE: Mr. Kennedy, are you aware that 11 the Rustic Roads Advisory Committee weighed in on this 12 project? 13 DEVIN KENNEDY: Yes. 14 JEFFREY O'TOOLE: All right. And is it 15 fair -- I'm sorry? Is it fair to say that their concern or 16 one of their concerns was that Howard Chapel Road, which is 17 a domestic, or excuse me, a rustic road was sufficiently 18 shielded from this project. Is that fair to say? 19 DEVIN KENNEDY: Yeah. Yes. Correct. 20 JEFFREY O'TOOLE: All right. In that indented 21 paragraph on Exhibit 24, and I'll read it to you, it says 22 that the proposed landscape contractor's operations will be 23 well removed from Howard Chapel Road and effectively 24 buffered from view by existing roadside hedge row, the 25 grade change, and by proposed nursery plantings consistent</p>
<p>182</p> <p>1 JEFFREY O'TOOLE: 6:00. So during the 2 summertime, the spring the lights won't even be on even to 3 begin with by that time, right? 4 DEVIN KENNEDY: Yeah, I guess if it's unnecessary 5 they wouldn't be on, correct. 6 JEFFREY O'TOOLE: So what we're talking about are 7 lights from 5:30 in the morning on; is that right? 8 DEVIN KENNEDY: I believe whenever the operations 9 start would be when they would end and start, at that time. 10 JEFFREY O'TOOLE: All right. You talked about 11 lights on a -- triggered by motion and I wasn't sure what 12 lights you were talking about. What lights are those? 13 DEVIN KENNEDY: So those would be specific to the 14 entrance, the shorter lights, you know, that would frame 15 the entrance at the gates and then one outside of the main 16 entrance to the operations building. 17 JEFFREY O'TOOLE: Are the sconce lights, the five 18 or six sconce lights on the side of the building, on the 19 east side of the building, are those lights on a timer or 20 are those on all night long? 21 DEVIN KENNEDY: I don't know the specifics. 22 That's more related to building codes so I would have -- I 23 just don't know the specifics on that exactly. 24 JEFFREY O'TOOLE: So as far as you know there 25 might be some lights on the building all night long, right?</p>	<p>184</p> <p>1 with the properties existing agricultural use. Do you 2 happen to know what exist -- what proposed plantings 3 they're talking about there? 4 DEVIN KENNEDY: Well, they're referring to the 5 nursery stock. So that's the specific -- the area that's 6 delineated by the lines on the site plan. 7 JEFFREY O'TOOLE: So the nursery stock is not 8 going to block any view from Howard Chapel Road to the 9 buildings that are proposed, right? The building stock are 10 low profile? 11 DEVIN KENNEDY: I mean it just depends on what it 12 is, you know. When you don't know specifics, you know, I 13 don't know. 14 JEFFREY O'TOOLE: Did I hear you tell Mr. Quinn 15 that you haven't been to the property since summertime? 16 DEVIN KENNEDY: Yeah. Correct. 17 JEFFREY O'TOOLE: Right. And if I were to tell 18 you that the hedge row along -- let me ask you this. Do 19 you know how wide the hedge row is along Howard Chapel 20 Road? 21 DEVIN KENNEDY: The hedge row would be -- let's 22 see. I guess it varies to 25 feet at the narrowest maybe. 23 JEFFREY O'TOOLE: Is it fair to say that the 24 hedge -- the trees along that hedge row are what I would 25 call because I'm not a planter but are sort of garbage</p>

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<p>185</p> <p>1 trees? They're not tall. They're not very heavy. They're 2 sort of thin trees that look like they are natural growing. 3 DEVIN KENNEDY: They're very naturalized. Very 4 natural. 5 JEFFREY O'TOOLE: But they're not specimen trees 6 by any means, are they? 7 DEVIN KENNEDY: There's no specimen trees in 8 regards to -- well, there's one specimen tree there. 9 JEFFREY O'TOOLE: And is it fair to say that if 10 you drive along Howard Chapel this time of year that you're 11 not -- the hedge row that's there provides exactly almost 12 no sight blockage from Howard Chapel Road to the building 13 that is existing on the property? 14 DEVIN KENNEDY: I would say like the combination 15 of the hedge row and then the grade change is also a factor 16 where it's a big higher so it has like a natural berm along 17 Howard Chapel which, you know, effectively asks as a buffer 18 existing. 19 JEFFREY O'TOOLE: Would you accept that 20 those -- if I told you that those driving along Howard 21 Chapel Road today for instance, the building and the site 22 is in plain view from Howard Chapel Road? Would that be 23 fair to -- would you accept that? 24 DEVIN KENNEDY: Yeah, I don't know. I mean I 25 just --</p>	<p>187</p> <p>1 that it's not always as easy as putting a berm down is all 2 I'm saying. 3 JEFFREY O'TOOLE: You're not testifying that by 4 putting a berm up there you would jeopardize those scrub 5 trees, are you? 6 DEVIN KENNEDY: I think I would have to think 7 about the design a little bit and locate it in a way to 8 mitigate, but there's a good chance that you would 9 be -- you know, you could impact the existing vegetation by 10 adding soil to the root zones. 11 HEARING EXAMINER ROBESON HANNAN: What if the 12 berm were outside -- I'm sorry, Mr. O'Toole. 13 JEFFREY O'TOOLE: No, please, go ahead. Please, 14 yeah. 15 HEARING EXAMINER ROBESON HANNAN: What if the 16 berm were outside of the root zones? 17 DEVIN KENNEDY: Yeah, I mean we have a berm along 18 the front, you know, that's outside of the root zone. So 19 it's just a matter of how much -- you know, a big part of 20 wanting to be able to utilize this area for his plantings 21 so you kind of want to balance that with the area where the 22 berm would go. But yeah, I mean you could do a design 23 solution, sure. 24 JEFFREY O'TOOLE: Okay. So if we're in agreement 25 that the Rustic Roads Advisory Committee had in mind the</p>
<p>186</p> <p>1 JEFFREY O'TOOLE: Because you haven't been there 2 since the trees were there with the leaves on them. 3 DEVIN KENNEDY: I haven't been -- I have not been 4 since the leaves -- since the foliage is down but -- 5 JEFFREY O'TOOLE: Okay. 6 DEVIN KENNEDY: -- it's very shrubby. I remember 7 there's a lot of understory growth and sort of stuff that's 8 like even if you lose foliage it's -- you know, there's 9 dense sticks and branching and stuff like that. But yeah, 10 I don't know from experience. I'm just trying to remember. 11 JEFFREY O'TOOLE: From your observation of the 12 plan, the site plan, and from your knowledge of what's to 13 the east of these scrubby trees on Howard Chapel, if Ms. 14 Hannan were to find that as a condition you were required 15 to put in a four, six, eight-foot berm planted along Howard 16 Chapel, there's nothing about that that would interrupt 17 with the plans that the applicant has now for that 18 property; is that right? 19 DEVIN KENNEDY: I mean only thing I would mention 20 about that is anytime you add additional soil adjacent to 21 an existing vegetative buffer you could be impacting those 22 trees. So if you go out there and you put a berm right 23 outside of the existing vegetation then you could actually 24 be damaging that. So you could -- you know, I'm not saying 25 I'm opposed to it or anything. I just want it to be clear</p>	<p>188</p> <p>1 protection from the sight line along Howard Chapel we can 2 agree that, as the director just told us, if a berm were 3 put up there consistent with what you're talking about that 4 would certainly be consistent with the Rustic Roads 5 Advisory Committee's sentiments, right? 6 DEVIN KENNEDY: Well, I think the -- you know, 7 back to referring to this paragraph. They're indicating 8 the existing grade and it's effectively acting as a screen 9 as is. So the way they're describing it here is the 10 existing conditions as today without -- you know, and I do 11 agree that our site and the house, you know, is high 12 elevation so it effectively acts as an existing berm 13 existing now. 14 HEARING EXAMINER ROBESON HANNAN: How high -- how 15 much -- oh, I keep jumping in. 16 JEFFREY O'TOOLE: No, go ahead. 17 HEARING EXAMINER ROBESON HANNAN: How high is the 18 grade differential there, elevation differential there? 19 DEVIN KENNEDY: So it goes -- like if you look at 20 the wetlands -- if you want to go to the site plan we can 21 kind of walk through it a little bit. 22 HEARING EXAMINER ROBESON HANNAN: I'm going. 23 Exhibit 30. 24 DEVIN KENNEDY: So up on Howard Chapel, you know, 25 once -- so basically the forest is going to start</p>

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<p>189</p> <p>1 your -- you know, once you get past the tree line there 2 that's going to be your narrower vegetation. So from there 3 that's sort of the low point and it looks like on 12. So 4 then from that point up to the house I guess we could say - 5 - 6 HEARING EXAMINER ROBESON HANNAN: Wait. 7 Which -- this house, the existing house? 8 DEVIN KENNEDY: Yes. Yeah. Sorry. 9 HEARING EXAMINER ROBESON HANNAN: Okay. 10 DEVIN KENNEDY: Just to give a point of 11 reference, you know, that people say you can see the house 12 from Howard Chapel or whatever. I don't know, you know. 13 So it goes -- 20, 22 -- so that's like 22 feet higher. 14 HEARING EXAMINER ROBESON HANNAN: Okay. 15 DEVIN KENNEDY: And you can tell like if you look 16 at the -- it might be hard to tell but it does really slope 17 up fast right after you get past the wetlands. So that, 18 you know, effectively is -- 19 HEARING EXAMINER ROBESON HANNAN: What's -- do 20 you have an idea of the grade? 21 DEVIN KENNEDY: Yeah, it's about ten feet from 22 the road to -- and I'm not -- you know, this is just 23 generalizations, but 60-foot setback from the road is about 24 ten feet at the -- where the wetland is if you're looking 25 toward the house. So you can tell the slope there, you</p>	<p>191</p> <p>1 lower than the road and there's water down there. There's 2 a lake and -- 3 DEVIN KENNEDY: Yes. 4 JEFFREY O'TOOLE: Right? 5 DEVIN KENNEDY: That's where the wetland is, 6 yeah. 7 JEFFREY O'TOOLE: Right. Right. So as you -- so 8 the only part you're talking about that's higher grade is 9 the first 50 to 85 yards perhaps of Howard Chapel Road, 10 correct? 11 DEVIN KENNEDY: Well, it's all -- I mean it's 12 all -- from the wetlands south it's all higher. 13 JEFFREY O'TOOLE: All right. But the wetland 14 along -- from the north to the south comprises 15 approximately half of that stretch; isn't that true? 16 DEVIN KENNEDY: I'm not sure -- I don't know. I 17 think this is kind of -- I'm hard to visualize what you're 18 kind of describing I guess. 19 JEFFREY O'TOOLE: Well, I guess I'd ask you to 20 look at it and if you have -- if you think I'm wrong come 21 back and tell Ms. Hannan, but I'm telling you my belief is 22 that approximately half of that period -- that section 23 between the north and the south section of Howard Chapel 24 Road, more than half of it as at grade of the road. But 25 let's leave that.</p>
<p>190</p> <p>1 know, it does -- it does go up pretty good. I mean it's a 2 pretty good -- 3 HEARING EXAMINER ROBESON HANNAN: Well, do you 4 have -- I mean do you have the percentage grade? 5 DEVIN KENNEDY: Oh, the percentage -- oh, you're 6 going to make me get my calculator out. Hold on. 7 HEARING EXAMINER ROBESON HANNAN: Rise over run. 8 DEVIN KENNEDY: I mean it's much steeper at the 9 road. Let's do it at the steepest point here. So the 10 steepest point is about 18 percent slope but average over 11 that run is about six percent or so. 12 HEARING EXAMINER ROBESON HANNAN: Okay. But 13 you've got a grade in there of 18. 14 DEVIN KENNEDY: Yeah, that's like where it kind 15 of -- the sharp point where it cuts down to Howard Chapel 16 there. 17 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 18 O'Toole, I apologize for interrupting. Go ahead. 19 JEFFREY O'TOOLE: No, it's fine but I'm not 20 sure -- I'm not sure it's made it any clearer to me. 21 Just so that I can be clear, Mr. Kennedy, the 22 higher grade that you're talking about is in the first 100 23 or 50 yards or so of Howard Chapel Road going north, 24 correct? And then as you get further along on Howard 25 Chapel Road going north the grade gets down actually even</p>	<p>192</p> <p>1 DEVIN KENNEDY: Oh, okay. I guess -- 2 JEFFREY O'TOOLE: Correct? 3 DEVIN KENNEDY: I mean I think like if you were 4 to look from the house, the existing house, to like due 5 west. Is that kind of what you're saying, like that 6 portion? 7 JEFFREY O'TOOLE: Yes. 8 DEVIN KENNEDY: Yeah. So that's higher. That's 9 higher. 10 JEFFREY O'TOOLE: Right. That's higher. 11 HEARING EXAMINER ROBESON HANNAN: What's higher, 12 the house? 13 DEVIN KENNEDY: The house is higher, yeah. 14 JEFFREY O'TOOLE: The house is higher but as you 15 go north from the house up it gets decreasing high to the 16 point where about halfway up it's at grade with the road, 17 correct? 18 DEVIN KENNEDY: It's all higher elevation. I 19 mean at the lowest -- let's see, yeah, maybe four feet. 20 But it -- you know. 21 JEFFREY O'TOOLE: I think -- I think -- 22 DEVIN KENNEDY: It's all about four-foot minimum 23 sort of height differential. 24 JEFFREY O'TOOLE: You're not saying that the 25 grade is above the road from down by the wetlands, are you?</p>

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<p>193</p> <p>1 DEVIN KENNEDY: No.</p> <p>2 JEFFREY O'TOOLE: The wetlands -- from the</p> <p>3 wetlands the grade is below the road, correct?</p> <p>4 DEVIN KENNEDY: Oh, yeah. I was referring</p> <p>5 to -- I mean because, you know, once you get past the</p> <p>6 forest it's just forest. So I was just kind of referring</p> <p>7 from the forest, from the wetland, the low point, on south</p> <p>8 is kind of what I thought we were talking about.</p> <p>9 JEFFREY O'TOOLE: All right. So we've agreed</p> <p>10 that at least the protection of the Rustic Roads was a</p> <p>11 consideration of the Rustic Roads Committee so that if</p> <p>12 there were a condition that put a berm of some sort along</p> <p>13 the southern half perhaps of Howard Chapel Road that would</p> <p>14 not do any harm to the applicant's process, correct?</p> <p>15 DEVIN KENNEDY: Yeah. I mean I think there -- it</p> <p>16 seems like -- granted, I can't -- you know, I did not meet</p> <p>17 with them personally, but just based on the paragraph</p> <p>18 they're effectively saying as long as existing conditions</p> <p>19 stay as is then, you know, they don't see that it would</p> <p>20 impact.</p> <p>21 JEFFREY O'TOOLE: At some point I think you spoke</p> <p>22 to Mr. Boughton and said that -- I think it was in response</p> <p>23 to one of his questions -- that if you're traveling east on</p> <p>24 Howard Chapel Road and approaching -- or rather east on</p> <p>25 Damascus Road, traveling east toward Sunshine and the</p>	<p>195</p> <p>1 Would you explain to me what one candlelight</p> <p>2 amount of light is?</p> <p>3 DEVIN KENNEDY: A foot candle is the amount of</p> <p>4 one -- hang on one second. A foot candle -- so it's</p> <p>5 defined as one foot candle, one lumen per square foot. But</p> <p>6 I think -- I know I'm missing a portion of that. Hang on.</p> <p>7 So one candle at a distance of one foot is equal to one</p> <p>8 lumen incident per square foot.</p> <p>9 JEFFREY O'TOOLE: Can you tell me what that means</p> <p>10 in respect to say the five sconce lights on the building?</p> <p>11 How many foot candles does that represent?</p> <p>12 DEVIN KENNEDY: They were not included in the</p> <p>13 photometrics.</p> <p>14 JEFFREY O'TOOLE: But they are lights that you</p> <p>15 think may be on all night long?</p> <p>16 DEVIN KENNEDY: I don't know.</p> <p>17 JEFFREY O'TOOLE: So those are lights -- so those</p> <p>18 are lights that are going to be on that were not part of</p> <p>19 your calculation?</p> <p>20 DEVIN KENNEDY: Well, I don't know if they're</p> <p>21 going to be on, and no they weren't included in the</p> <p>22 calculation.</p> <p>23 JEFFREY O'TOOLE: All right. In terms of the</p> <p>24 plantings, you talked about it's better to plant a smaller</p> <p>25 two-and-a-half inch caliper tree than a larger tree.</p>
<p>194</p> <p>1 property is on your left as you're going east, you said you</p> <p>2 wouldn't even see the property until you get beyond Howard</p> <p>3 Chapel Road. Was that your testimony?</p> <p>4 DEVIN KENNEDY: Yeah, I think you won't get a</p> <p>5 direct, you know, visual -- you know, that's like the point</p> <p>6 where you pass that buffer I guess. You know, there's --</p> <p>7 JEFFREY O'TOOLE: But that is only -- that's only</p> <p>8 during the few months or the half a year when those trees</p> <p>9 have leaves on them, correct?</p> <p>10 DEVIN KENNEDY: Well, in my opinion even foliage--</p> <p>11 less forest edge is still a buffer, still acts as a buffer</p> <p>12 in some way. It doesn't -- it might not directly obscure</p> <p>13 all visual cues but it's still a buffer. I mean it just</p> <p>14 depends what the makeup is. But I don't -- yeah, I don't</p> <p>15 think --</p> <p>16 JEFFREY O'TOOLE: With all --</p> <p>17 DEVIN KENNEDY: -- just because it's deciduous</p> <p>18 it's not --</p> <p>19 JEFFREY O'TOOLE: With all respect -- with all</p> <p>20 respect I invite you to come out today when you get done</p> <p>21 with your testimony --</p> <p>22 DEVIN KENNEDY: Sure.</p> <p>23 JEFFREY O'TOOLE: -- and take a look and see if</p> <p>24 maybe you'd want to change your testimony in that regard.</p> <p>25 Indulgence for a minute.</p>	<p>196</p> <p>1 There's nothing that would prevent them from adding trees</p> <p>2 that are larger than two-and-a-half inches. Let me ask you</p> <p>3 this, how long does it take for a two-and-a-half inch</p> <p>4 caliper tree to grow to say a six-inch caliper tree?</p> <p>5 DEVIN KENNEDY: It depends on the species</p> <p>6 obviously but generally --</p> <p>7 JEFFREY O'TOOLE: You said you're going to plant</p> <p>8 red maples so let's take a red maple.</p> <p>9 DEVIN KENNEDY: There's some red maples, yeah.</p> <p>10 So a red maple would be a good example. You could see a</p> <p>11 six-inch tree probably within five years.</p> <p>12 JEFFREY O'TOOLE: All right. So we're</p> <p>13 talking -- we're talking at least -- at least five years to</p> <p>14 get to a size that might start blocking some of this stuff</p> <p>15 that's being put up in the neighborhood. Is there anything</p> <p>16 about the plantings that would prohibit them from ramping</p> <p>17 up, from having Ms. Hannan decide that a small caliper tree</p> <p>18 is just not enough?</p> <p>19 DEVIN KENNEDY: I think in the intent of the</p> <p>20 design here with the plantings a two-and-a-half inch</p> <p>21 caliper tree would immediately serve a function as far as</p> <p>22 softening the fence, providing overstory shade for the</p> <p>23 parking area. I feel -- you know, I don't -- you know, I</p> <p>24 think they would have an immediate impact for sure. But</p> <p>25 yeah, I agree with you there's nothing that you can plant</p>

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<p>197</p> <p>1 whatever size I guess. You know, there's nothing 2 preventing it, you know. 3 JEFFREY O'TOOLE: Are there any plans for putting 4 in trees such as Leyland Cypress? 5 DEVIN KENNEDY: No. 6 JEFFREY O'TOOLE: Why? 7 DEVIN KENNEDY: We don't like those. 8 JEFFREY O'TOOLE: What don't you like of them? 9 DEVIN KENNEDY: They've very shallow rooted. 10 They can fall over easily. They get pests. They're just 11 not -- you know, they're not a good tree to plant in my 12 opinion. 13 JEFFREY O'TOOLE: All right. How about a tree 14 called -- was it called the green giant? Was that a tree 15 you -- 16 DEVIN KENNEDY: Arborvitae? Those are good. I 17 like those. Those are good. 18 JEFFREY O'TOOLE: All right. And they're fast- 19 growing trees, aren't they? 20 DEVIN KENNEDY: Yes. 21 JEFFREY O'TOOLE: How about if the applicant were 22 to plant a series of arborvitae along Howard Chapel Road? 23 DEVIN KENNEDY: In my opinion -- I mean you 24 can -- the idea is to kind of have a naturalized planting 25 scheme so you want to have semi-irregular groupings,</p>	<p>199</p> <p>1 JEFFREY O'TOOLE: How far from -- how far from 2 the eastern boundary of the property -- how far do you go 3 from the eastern boundary to where the berm starts? 4 DEVIN KENNEDY: Maybe like 250 feet. 5 JEFFREY O'TOOLE: So if -- 6 DEVIN KENNEDY: 280 feet, something like that. 7 JEFFREY O'TOOLE: If one is driving along 8 Damascus Road from east to west, the berm -- the land would 9 be un-bermed. It would not be covered by a berm for the 10 first 250 feet? 11 DEVIN KENNEDY: Yeah, there's like a -- there 12 would be a gap between, you know, once you pass the 13 vegetation buffer on the property line -- 14 JEFFREY O'TOOLE: Right. 15 DEVIN KENNEDY: -- and then the buffer. But in 16 that gap period there's the American holly evergreens, our 17 naturalized plantings, and the shrub masses. 18 JEFFREY O'TOOLE: So it would be along -- it 19 would be along Howard -- 20 DEVIN KENNEDY: So we -- we factored that into 21 the design. 22 JEFFREY O'TOOLE: I'm sorry. I overtalked you. 23 Say it again, the last part. 24 DEVIN KENNEDY: I was just saying that was a 25 factor in the design was the actual viewpoint, the view</p>
<p>198</p> <p>1 various heights, this and that. I like arborvitae in a 2 forest setting. I don't know if they're appropriate. 3 They've just very linear and it's almost just like a green 4 wall. But I mean, again, if you're just trying to block 5 something you could -- you know, it would function as a 6 screen, yes, but I don't know -- 7 JEFFREY O'TOOLE: If the neighbors -- if the 8 neighbors were to ask for a condition if this project were 9 to go through and the neighbors wanted to have a screen put 10 along Howard Chapel Road to block the view from along 11 Damascus Road or from along Howard Chapel, there's no 12 reason that such a screening couldn't be put in -- 13 DEVIN KENNEDY: No. 14 JEFFREY O'TOOLE: -- possibly or just -- 15 DEVIN KENNEDY: I mean you could plant -- yeah, 16 you could plant trees out there. Yes. 17 JEFFREY O'TOOLE: All right. What percentage of 18 Damascus Road is being planted or being situated with the 19 berm? 20 DEVIN KENNEDY: I don't have -- 21 JEFFREY O'TOOLE: How much of Damascus -- how 22 much of Damascus Road is going to have the berm that we 23 talked about? 24 DEVIN KENNEDY: I would say 35 percent roughly, 25 something like that, 30 percent.</p>	<p>200</p> <p>1 shed as you get into the site. So your perspective going 2 forward. 3 JEFFREY O'TOOLE: All right. So as I'm looking 4 at the picture that's up now there are -- 5 HEARING EXAMINER ROBESON HANNAN: Sorry. For the 6 record, this is Exhibit 48. 7 JEFFREY O'TOOLE: Okay. So Mr. Kennedy, on 8 Exhibit 48, if the applicant were to promise to put in a 9 berm from the eastern boundary all the way along to where 10 the berm now is that would more effectively hide this 11 project from those driving along Damascus Road, wouldn't 12 it? 13 DEVIN KENNEDY: I can't -- yeah, it's just we 14 have to think about drainage as well. So the berm has to 15 provide -- we have to allow positive drainage away from the 16 Damascus Road there. So we couldn't just do a full berm 17 the whole way. That would not -- 18 JEFFREY O'TOOLE: And what is it about a berm 19 that would affect drainage? 20 DEVIN KENNEDY: It would just block the flow. So 21 it would just -- you know, you wouldn't be able to get the 22 water back behind -- you know, positive drainage away from 23 the site. 24 JEFFREY O'TOOLE: What if there were breaks in 25 the berm? How about if the berm went for 20 feet and then</p>

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<p>201</p> <p>1 stopped for ten feet and went -- I guess what I'm trying to 2 ask you is isn't there a way that the applicant could more 3 aggressively plant and place a berm along Damascus Road so 4 that as you come through Sunshine into Unity and all of a 5 sudden come across what used to be a big field and now 6 there's a big industrial complex, if there were a berm 7 effectively along that area wouldn't that assist in 8 shielding some of the view of this from sight? 9 DEVIN KENNEDY: Yeah. Sure. 10 MS. REGELIN: So this is Nancy Regelin. This 11 whole line of questioning is what is all possible. That is 12 not what the applicant is proposing. So he's asking Mr. 13 Kennedy to in some way speculate. So, you know, I think 14 this line of questioning goes on farther than it should. 15 JACK QUINN: Ms. Regelin, I appreciate that. But 16 Ms. Hannan, what we're getting at here is that at the end 17 of this we're going to be asking for some conditions which 18 are far beyond or somewhat beyond what this applicant has 19 asked for. 20 HEARING EXAMINER ROBESON HANNAN: And I think 21 that's fair. So -- 22 JEFFREY O'TOOLE: So part of what we're asking 23 here is what is possible and what you can consider as a 24 condition even though the applicant did not. 25 HEARING EXAMINER ROBESON HANNAN: And that's fair</p>	<p>203</p> <p>1 Mr. Williams? 2 DANNY WILLIAMS: Yes. 3 HEARING EXAMINER ROBESON HANNAN: Okay. 4 DANNY WILLIAMS: Hello. 5 HEARING EXAMINER ROBESON HANNAN: Do you have 6 questions for this witness? 7 DANNY WILLIAMS: Yes, I do. Sorry. And Kim 8 Caldeira was actually going to ask them. She had to step 9 away so I'm going to try and do my best [inaudible -- audio 10 cut out]. 11 HEARING EXAMINER ROBESON HANNAN: Okay. Go 12 ahead. 13 DANNY WILLIAMS: The first question was 14 regarding -- with regard to the submerged gravel wetland. 15 We did some research into the stormwater management plan 16 that was done. Do you know what size storm was used for 17 that, for the person who did that design? 18 MS. REGELIN: So Nancy Regelin objecting. This 19 is more appropriate for another witness. 20 HEARING EXAMINER ROBESON HANNAN: I agree. There 21 will be an engineer that will testify that can testify as 22 to stormwater. 23 DANNY WILLIAMS: Okay. 24 HEARING EXAMINER ROBESON HANNAN: He's 25 not -- he's -- his expertise doesn't include that.</p>
<p>202</p> <p>1 so I'm going to let it -- I think in general what I'm 2 hearing is you want some additional screening along Howard 3 Chapel and Damascus Road. Is that what I'm hearing from 4 you? 5 JEFFREY O'TOOLE: At a minimum. Well said. And 6 with that -- 7 DEVIN KENNEDY: I just -- 8 JEFFREY O'TOOLE: Go ahead. Go ahead. 9 DEVIN KENNEDY: No, it's fine. Sorry. 10 JEFFREY O'TOOLE: And with that, Ms. Hannan, I 11 have no more questions. Thank you. 12 HEARING EXAMINER ROBESON HANNAN: Okay. I'm 13 going to go to -- I saw someone with their hand up and 14 now -- it was Ms. -- I don't see it now. It was Ms. 15 Caldeira that had her hand up. Okay. Let me ask 16 you -- let me go to redirect. And then I see some phone 17 numbers here and some names that weren't on before so I'm 18 going to ask you for your -- who you are and -- just so we 19 can keep our records correct and know how to contact you. 20 But first we'll go to redirect from Ms. Regelin. 21 Go ahead, Ms. Regelin. Wait, I see -- Ms. 22 Regelin, before you start, I see one person, Danny 23 Williams, that has a hand raised. 24 Mr. O'Toole, do you mind putting your hand down 25 please?</p>	<p>204</p> <p>1 DANNY WILLIAMS: That's fine. That's fine. 2 Understood. Does that also hold true for the perc tests 3 that were done on the site? Would that be more appropriate 4 for the other expert? 5 MS. REGELIN: That's correct. 6 HEARING EXAMINER ROBESON HANNAN: Typically it 7 would be. Did you say that's correct, Mr. Regelin? 8 MS. REGELIN: Yes, that will be addressed by the 9 civil engineer. 10 DANNY WILLIAMS: Okay. Then I'll hold my 11 questions for them. That's all I had. 12 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 13 you. 14 Redirect, Ms. Regelin? 15 MS. REGELIN: Okay. These may be all over the 16 board since we had a lot of people ask questions. 17 HEARING EXAMINER ROBESON HANNAN: I know. 18 MS. REGELIN: Mr. Kennedy, Mr. Conrath testified 19 that the height of the operations barn was 33 feet. Is 20 that higher than the light poles? 21 DEVIN KENNEDY: The peak, yeah, yeah, it's 22 higher. 23 MS. REGELIN: Okay. So the barn is 100-feet long 24 and so on the Howard Chapel Road, the west boundary, the 25 barn itself will obscure for 100 feet the light poles in</p>

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<p style="text-align: right;">205</p> <p>1 the yard, correct?</p> <p>2 DEVIN KENNEDY: That's correct.</p> <p>3 MS. REGELIN: And lighting is typical in a</p> <p>4 landscape contractor yard, correct?</p> <p>5 DEVIN KENNEDY: Yes.</p> <p>6 MS. REGELIN: Okay. So it's inherent to this</p> <p>7 use? It's typical in this use?</p> <p>8 DEVIN KENNEDY: Yes. Correct. Sorry. Yeah.</p> <p>9 MS. REGELIN: Okay. You show and a number of the</p> <p>10 citizens asked about the split-rail fence. The purpose of</p> <p>11 a split-rail fence is not to screen a property, correct?</p> <p>12 DEVIN KENNEDY: That is correct.</p> <p>13 MS. REGELIN: Okay. The purpose of the board-on-</p> <p>14 board fence is for the purpose of screening the active area</p> <p>15 of the landscape contractor use, correct?</p> <p>16 DEVIN KENNEDY: That's correct.</p> <p>17 MS. REGELIN: And is the board-on-board fence</p> <p>18 opaque?</p> <p>19 DEVIN KENNEDY: Yes.</p> <p>20 MS. REGELIN: And do you know whether it will be</p> <p>21 left natural to weather naturally or will it be painted, do</p> <p>22 you know?</p> <p>23 DEVIN KENNEDY: I believe it's just natural. I</p> <p>24 can't -- yeah, I think so.</p> <p>25 MS. REGELIN: Okay. Do you know the height of</p>	<p style="text-align: right;">207</p> <p>1 DEVIN KENNEDY: Or -- okay. So the berm is about</p> <p>2 100 feet from the road at the -- sort of the toe, the toe</p> <p>3 slope.</p> <p>4 MS. REGELIN: Okay. And did you measure the</p> <p>5 distance from the driveway to the west to Howard Chapel</p> <p>6 Road and to the east to the property line?</p> <p>7 DEVIN KENNEDY: So from the driveway center to</p> <p>8 the west property line of Howard Chapel is 535 feet. And</p> <p>9 then from -- to the east it is 620-ish feet. That's</p> <p>10 approximate.</p> <p>11 MS. REGELIN: Okay. And the parking facility</p> <p>12 layout, that's been designed by county code; the size of</p> <p>13 the spaces, the width of the drive lanes between, correct?</p> <p>14 DEVIN KENNEDY: Correct.</p> <p>15 MS. REGELIN: And that's been reviewed and Park</p> <p>16 and Planning has approved it?</p> <p>17 DEVIN KENNEDY: Correct.</p> <p>18 MS. REGELIN: Okay. The internal circulation was</p> <p>19 also tested for a fire engine, correct?</p> <p>20 DEVIN KENNEDY: Yes.</p> <p>21 MS. REGELIN: And did the Department of</p> <p>22 Permitting Services Fire Safety agree that the fire access</p> <p>23 internal was adequate?</p> <p>24 DEVIN KENNEDY: Yes.</p> <p>25 MS. REGELIN: And that would have tested a full</p>
<p style="text-align: right;">206</p> <p>1 the trailer that's going to be brought onto the site</p> <p>2 temporarily? Is it single story?</p> <p>3 DEVIN KENNEDY: It's single story trailer,</p> <p>4 correct.</p> <p>5 MS. REGELIN: Okay. And the trailer is wholly</p> <p>6 within the screened fencing, correct?</p> <p>7 DEVIN KENNEDY: That's correct.</p> <p>8 MS. REGELIN: Okay. Is it easy to find -- is it</p> <p>9 as easy to find larger caliper trees than the two to two-</p> <p>10 and-a-half inch caliper trees?</p> <p>11 DEVIN KENNEDY: It's much harder to find larger</p> <p>12 caliper trees.</p> <p>13 MS. REGELIN: And that's because you actually</p> <p>14 have to relocate it from someplace where it's matured for a</p> <p>15 long time?</p> <p>16 DEVIN KENNEDY: Yeah, it just depends on the</p> <p>17 stock, yeah, and what they have available. But typically</p> <p>18 it's not any high requested item so the availability is</p> <p>19 much less.</p> <p>20 MS. REGELIN: Okay. Could you give us a distance</p> <p>21 of how far the berm when it actually hits grade is to when</p> <p>22 you hit Damascus Road? Like how much -- how far set back</p> <p>23 is the berm?</p> <p>24 DEVIN KENNEDY: To like the bottom of the berm?</p> <p>25 MS. REGELIN: Yes.</p>	<p style="text-align: right;">208</p> <p>1 fire truck?</p> <p>2 DEVIN KENNEDY: Yes, that's their -- yeah, that's</p> <p>3 correct.</p> <p>4 MS. REGELIN: Okay. And so that's larger than</p> <p>5 most of the vehicles because that's a commercial --</p> <p>6 DEVIN KENNEDY: Yeah, that's going to be --</p> <p>7 MS. REGELIN: -- safety vehicle.</p> <p>8 DEVIN KENNEDY: -- a deciding factor for far and</p> <p>9 away above anything that would be on this property in terms</p> <p>10 of circulation, turning radius, and stuff like that.</p> <p>11 MS. REGELIN: Okay. So the berm that is in front</p> <p>12 of the material bins along Damascus Road, you testified</p> <p>13 that the trees and the shrubs there would be along the</p> <p>14 slope. So what is the effective height basically on the</p> <p>15 day of planting for the screening that is on, you know, the</p> <p>16 combination of the berm to the top of the landscaping?</p> <p>17 What would your estimate be?</p> <p>18 DEVIN KENNEDY: So I guess like -- I'm sorry.</p> <p>19 Would you mind just sort of re-asking?</p> <p>20 MS. REGELIN: When you -- since you're doing</p> <p>21 plantings on the berm the plantings actually have</p> <p>22 additional height because you testified that you wanted to</p> <p>23 put the trees on the slope so that the canopy of the trees</p> <p>24 was actually at about the level of the concrete wall.</p> <p>25 DEVIN KENNEDY: Uh-huh.</p>

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53 (209 to 212)

<p>209</p> <p>1 MS. REGELIN: So, but what you didn't testify to 2 was when you added that like what do you think the height 3 would be of the landscape screening -- 4 DEVIN KENNEDY: Yeah, I got you. So we have a -- 5 MS. REGELIN: -- from grade -- 6 DEVIN KENNEDY: Yeah. 7 MS. REGELIN: -- to the top of the canopy? 8 DEVIN KENNEDY: So from grade to top of 9 canopy -- granted, this is naturalized planting but it's a 10 mix of understory shrubs, overstory. You'll have effective 11 screen from grade up to 20 feet I would say. So you'll 12 just -- you know, varying throughout the plantings but 13 generally that's the range of strata that's being covered. 14 HEARING EXAMINER ROBESON HANNAN: Is that at 15 maturity? 16 DEVIN KENNEDY: That would be both at maturity 17 and plant -- well, when you -- your initial planting 18 everything is thinner obviously but that strata is still 19 represented but over time it will just fill in more and 20 greater. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MS. REGELIN: And the planting of a berm along 23 Howard Chapel Road, would that take land out of 24 agricultural use? 25 DEVIN KENNEDY: Yes.</p>	<p>211</p> <p>1 is -- we're alternating. He's Pramod Chandewar. 2 HEARING EXAMINER ROBESON HANNAN: Okay. 3 JENNIFER CHANDEWAR: And my first name is 4 Jennifer. And our address is 3601 Sundown Road, 20833. 5 HEARING EXAMINER ROBESON HANNAN: Okay. And an 6 email address please? 7 JENNIFER CHANDEWAR: Sure. Pgchande, that's 8 C-H-A-N-D-E, at Gmail dot com. pgchande@gmail.com. 9 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 10 you very much. 11 JENNIFER CHANDEWAR: You're welcome. 12 HEARING EXAMINER ROBESON HANNAN: Thank you. 13 Anyone else that has not given their name, address, and 14 email to us so we can continue to contact you? 15 KIM CALDEIRA: This is Kim Caldeira. I just 16 wanted to identify the phone number because I had to leave 17 my -- I had to leave my workstation and so now I'm 18 just -- I called in. So if you see a strange phone number 19 that's -- I'm the number ending 1392. 20 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 21 you, Ms. Caldeira. 22 KIM CALDEIRA: Of course. 23 HEARING EXAMINER ROBESON HANNAN: All right. 24 With that we're going to take a 15-minute break. Thank 25 you. We'll be back at 3:15. Thank you.</p>
<p>210</p> <p>1 MS. REGELIN: Okay. I think that will be enough. 2 That will be enough for my cross, for my -- 3 HEARING EXAMINER ROBESON HANNAN: Okay. 4 MS. REGELIN: -- rebuttal testimony. 5 HEARING EXAMINER ROBESON HANNAN: For your 6 redirect. Is there any recross? Okay. Seeing none what 7 I'd like to do is take a 15-minute break, but before I go I 8 just -- if there is anyone on this -- in this 9 meeting/hearing that -- whether it's a phone number, 10 whether you're calling in, can you please identify yourself 11 with your name, address, and email if you haven't done so 12 already before? I see a -- because we have -- for certain 13 things we need to know who you are and how to get you. I 14 see a Pramod Chandewar. Mr. Chandewar, are you with the 15 applicant's team or are you an individual? 16 JENNIFER CHANDEWAR: We're homeowners, yes. 17 HEARING EXAMINER ROBESON HANNAN: Okay. Do you 18 mind giving me your name and address and email please? 19 JENNIFER CHANDEWAR: Yes, through the tag feature 20 or do you want me to just say? 21 HEARING EXAMINER ROBESON HANNAN: No. 22 JENNIFER CHANDEWAR: Okay. 23 HEARING EXAMINER ROBESON HANNAN: Speak it on the 24 record please. 25 JENNIFER CHANDEWAR: Okay. My husband</p>	<p>212</p> <p>1 [Off the record at 2:56:25 p.m.] 2 [Back on the record at 3:16:26 p.m.] 3 HEARING EXAMINER ROBESON HANNAN: Thank you. Is 4 everyone else ready? Or let me ask this, is there 5 any -- well, no, I can't do that either. Hearing none, Ms. 6 Regelin, do you want to call your next witness? 7 MS. REGELIN: Yes, I'm going to call Andy Smith, 8 our traffic engineer. 9 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 10 Smith, please put your video on please. 11 ANDY SMITH: I'm here. 12 HEARING EXAMINER ROBESON HANNAN: Can you put 13 your video on? There you go. 14 ANDY SMITH: Yes, video should be on. Sorry. 15 HEARING EXAMINER ROBESON HANNAN: It is. Okay. 16 Please raise your right hand. Do you solemnly affirm under 17 penalties of perjury that the statements you're about to 18 make are the truth, the whole truth, and nothing but the 19 truth? 20 ANDY SMITH: I do. 21 HEARING EXAMINER ROBESON HANNAN: All right, Ms. 22 Regelin. 23 MS. REGELIN: Mr. Smith, can you please state 24 your name, your company name, your title, and address for 25 the record?</p>

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<p>213</p> <p>1 ANDY SMITH: My name is Andy Smith of the firm 2 Kimley-Horn & Associates. I'm a project manager and our 3 office is located 11400 Commerce Park Drive, Suite 400, 4 Reston, Virginia 20191. 5 MS. REGELIN: Have you submitted your credentials 6 into the record? 7 ANDY SMITH: Yes, my resume is Exhibit 37(d). 8 MS. REGELIN: Can you quickly provide an overview 9 of your education and experience as a traffic engineer? 10 ANDY SMITH: Sure. I have a Bachelor's of 11 Science in Civil Engineering from the University of 12 Virginia. I'm a licensed professional engineer in Maryland 13 and D.C. and Virginia. And since 2009 I've worked as a 14 traffic engineer at Kimley-Horn preparing traffic impact 15 analyses, operations analyses, and traffic engineering 16 design, and I first got my license in 2014. 17 HEARING EXAMINER ROBESON HANNAN: Okay. 18 MS. REGELIN: Have you been previously accepted 19 or testified as an expert in traffic engineering before the 20 hearing examiner's office or any other board or agency in 21 the area? 22 ANDY SMITH: Yes, I've testified at public 23 hearings for Montgomery County Planning Board and the Board 24 of Appeals for Montgomery County as well as other county 25 boards and commissions in the D.C. area.</p>	<p>215</p> <p>1 Transportation, and the Maryland State Highway 2 Administration or SHA as I'll refer to them. 3 MS. REGELIN: And they have been accepted at each 4 of those agencies, correct? 5 ANDY SMITH: That is correct. 6 MS. REGELIN: Okay. Did you prepare an initial 7 traffic scoping for approval by Park and Planning staff? 8 ANDY SMITH: Yes. The initial traffic scoping 9 form was prepared according to the county guidelines, the 10 LATR guidelines. The trip generation was prepared as a 11 part of the scoping form and it indicated that the impact 12 during the peak hours was less than a requirement for a 13 full traffic study, which that requirement threshold is 14 generating 50 peak-hour person trips. Only a traffic 15 statement is required for those types of developments, but 16 after discussions with Park and Planning staff and the 17 client we decided it would be beneficial to prepare the 18 full LATR traffic study for this location in order to full 19 analyze the peak hour impacts for the application and 20 conditional use permit. The assumptions that were included 21 in scoping were agreed upon by Park and Planning staff. 22 MS. REGELIN: Okay. Did you do the traffic 23 counts before Covid? 24 ANDY SMITH: Yes, the traffic counts were 25 prepared in June -- or collected, I should say, June 6th of</p>
<p>214</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. 2 MS. REGELIN: So at this time we'd like to offer 3 up Mr. Smith as an expert witness in the area of traffic 4 engineering. 5 HEARING EXAMINER ROBESON HANNAN: Okay. Do I 6 hear any objections? Okay. Hearing and seeing none I'll 7 so -- is his specialty traffic engineering as opposed to 8 transportation planning? 9 ANDY SMITH: I use them interchangeably. In this 10 case they can be used interchangeably. 11 HEARING EXAMINER ROBESON HANNAN: But you are a 12 civil? 13 ANDY SMITH: Civil is the classical training but 14 transportation is a part of that. So I do not specialize 15 in civil engineering. 16 HEARING EXAMINER ROBESON HANNAN: Okay. Okay. 17 Go ahead, Ms. Regelin. 18 MS. REGELIN: Mr. Smith, did you prepare a 19 traffic analysis for the proposed conditional use permit? 20 ANDY SMITH: Yes. The report is on the record as 21 Exhibit 6. So Ms. Hannan, if you can pull that up I will 22 be referring to it later. This report has -- this report 23 has been accepted and reviewed by staff from three 24 different agencies. That would include Park and Planning 25 staff, MCDOT which is Montgomery County Department of</p>	<p>216</p> <p>1 2019. School was in session at this time. 2 MS. REGELIN: Okay. And how did you come up with 3 a trip generation rate for this use? 4 ANDY SMITH: So because the peak hour trip 5 generation rate for a landscape contracting facility is 6 unique from the other land uses and unique from the 7 Institute of Transportation Engineers Trip Generation 8 Manual which is what we typically use to estimate trip 9 generation we felt that it was more characterized based on 10 shift schedule, employee commuting tendencies, and the 11 operations plan for the facility. So with this we observed 12 operations at the applicant's existing site to determine 13 peak hour -- 14 HEARING EXAMINER ROBESON HANNAN: Can I interrupt 15 for a second? Does the ITE manual have a trip generation 16 rate for this use? 17 ANDY SMITH: No, it does not. 18 HEARING EXAMINER ROBESON HANNAN: Peak rate? All 19 right. Go ahead. 20 ANDY SMITH: Sure. The observations showed that 21 there was heavy use of carpooling for the commuting to and 22 from the facility, and also a high occupancy of crews 23 within the work trucks headed to and from their job sites. 24 We also saw that there were staggered arrivals throughout 25 the afternoon as those crews did finish up for the day.</p>

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<p>217</p> <p>1 We did see that crews arrived and left for the</p> <p>2 job sites before -- excuse me -- came back -- before the</p> <p>3 a.m. peak hour and came back early enough in the afternoon</p> <p>4 to be trips that happened well outside of the p.m. peak</p> <p>5 hour as well. And we did prepare an observations</p> <p>6 memorandum that we submitted to Park and Planning staff and</p> <p>7 they agreed upon that trip generation methodology.</p> <p>8 MS. REGELIN: So what intersections were studied?</p> <p>9 ANDY SMITH: So the part of this -- and again,</p> <p>10 the agreed upon scoping with Park and Planning staff we</p> <p>11 observed the -- or excuse me. We studied the intersections</p> <p>12 of Georgia Avenue and New Hampshire Avenue on the east side</p> <p>13 of Damascus Road, on the west side Damascus Road and</p> <p>14 Sundown Road, and Damascus Road and Howard Chapel Road, and</p> <p>15 finally, you know, the actual site entrance was the -- it's</p> <p>16 not an existing intersection as it is proposed to be laid</p> <p>17 out but that was also looked at as a part of the study.</p> <p>18 MS. REGELIN: So on -- to the hearing examiner,</p> <p>19 if we bring up page 17 of the exhibit that you're on it</p> <p>20 should indicate that it's Figure 9.</p> <p>21 ANDY SMITH: That's the one.</p> <p>22 MS. REGELIN: Okay. All right. So those three</p> <p>23 intersections are identified as number one, number two, and</p> <p>24 number three on this Figure 9, page 17 of Exhibit 6?</p> <p>25 ANDY SMITH: That's correct.</p>	<p>219</p> <p>1 ANDY SMITH: So as with any LATR study we</p> <p>2 collected vehicles, heavy vehicle -- heavy vehicles aren't</p> <p>3 necessarily called for as a part of the LATR guidelines but</p> <p>4 we do collect that data separate from just personal</p> <p>5 cars -- pedestrian data and bicycle data. And as noted</p> <p>6 earlier, this was done pre-Covid so that's not -- that does</p> <p>7 not have an affect on the analysis results.</p> <p>8 We also prepared a pedestrian and bicycle impact</p> <p>9 statement which included an evaluation of existing</p> <p>10 pedestrian and bicycle facilities in the area, which there</p> <p>11 are few as most people around here know. You know, we did</p> <p>12 see that there was some bicycle activity as has been noted</p> <p>13 during the p.m. peak hour. Or excuse me, peak period I</p> <p>14 should say, which is separate from a peak hour. The p.m.</p> <p>15 peak hour is a part of the period. But what we saw was</p> <p>16 that there were just a couple of bikes on Howard Chapel</p> <p>17 Road during the p.m. peak hour of that intersection and two</p> <p>18 bikes during that period, but we did see some bicycle</p> <p>19 activity certainly after the p.m. peak hour, maybe after</p> <p>20 people are getting home from work. So there were I believe</p> <p>21 up to 32 bicycles counted between 6:00 and 7:00 p.m. at</p> <p>22 that intersection.</p> <p>23 We also saw that there was no pedestrian activity</p> <p>24 in the counts, which is not surprising given that there's</p> <p>25 really no sidewalks in this rural type of area. And the</p>
<p>218</p> <p>1 MS. REGELIN: Okay. How did you determine the</p> <p>2 distribution of traffic from the site through those</p> <p>3 intersections?</p> <p>4 ANDY SMITH: So the distribution of traffic was</p> <p>5 developed based on likely travel paths from the conditional</p> <p>6 use to or from either the workers' homes, so commuting</p> <p>7 trips, or to and from the job site trips. So that was</p> <p>8 really an estimation of access and how you would move</p> <p>9 around the area. The distribution was, again, a part of</p> <p>10 the scoping form that was submitted to Park and Planning</p> <p>11 staff and was agreed upon by that staff.</p> <p>12 MS. REGELIN: Okay. And what are the a.m. and</p> <p>13 p.m. peak hours for each of those intersections?</p> <p>14 ANDY SMITH: So in Montgomery County we look at</p> <p>15 a.m. and p.m. peak hours of individual intersections. They</p> <p>16 don't all have to be the same. The a.m. -- for Georgia</p> <p>17 Avenue and Damascus Road the a.m. peak hour is 7:15 to 8:15</p> <p>18 and the p.m. peak hour is 4:45 to 5:45 p.m. Damascus Road</p> <p>19 and Sundown Road, the a.m. peak hour was 7:00 to 8:00 a.m.</p> <p>20 and 5:00 to 6:00 p.m. for the p.m. peak hour. And for</p> <p>21 Damascus Road and Howard Chapel Road, the a.m. peak hour</p> <p>22 was 7:15 to 8:15 a.m. and the p.m. peak hour was 5:15 to</p> <p>23 6:15 p.m.</p> <p>24 MS. REGELIN: Okay. Per the LATR guidelines what</p> <p>25 other transportation data did you collect and study?</p>	<p>220</p> <p>1 a.m. peak period showed that there were four to five</p> <p>2 percent of the vehicles are heavy vehicles running through</p> <p>3 the study -- excuse me -- the study area, and in the p.m.</p> <p>4 peak period it was a little bit lower at two percent heavy</p> <p>5 vehicles.</p> <p>6 MS. REGELIN: So can you provide an overview of</p> <p>7 the impact on the intersection?</p> <p>8 ANDY SMITH: Absolutely. Generally we found</p> <p>9 minimal impacts to peak hour operations and it's important</p> <p>10 to reiterate this because a lot of the (indiscernible) do</p> <p>11 not occur during the peak hours so that they intentionally</p> <p>12 do not add traffic during the worst part of the day. At</p> <p>13 the intersection of Damascus Road and Howard Chapel Road</p> <p>14 there negligible impact. There was no increase to the</p> <p>15 a.m. -- critical a.m. volume or CLV as the term of art that</p> <p>16 we use, and an increase of one CLV from 373 to 374 CLVs</p> <p>17 during the p.m. peak hour. I should note that --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Could you hold</p> <p>19 on second? Did you say --</p> <p>20 ANDY SMITH: Sure.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: -- 373,873?</p> <p>22 3,000?</p> <p>23 ANDY SMITH: No, I may have misspoke. I</p> <p>24 apologize. It was from -- it increased with one CLV from</p> <p>25 373 to 374.</p>

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<p style="text-align: right;">221</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 ANDY SMITH: And if you pull up Exhibit 6 I will</p> <p>3 direct you to the table that has all of these values which</p> <p>4 is on page 20 I believe. Just one second. Yes, page 20.</p> <p>5 There you go. That's the table.</p> <p>6 So that was at the intersection of Damascus Road</p> <p>7 and Howard Chapel Road. I should note that the critical</p> <p>8 lane volume standard or the CLV standard in this area is</p> <p>9 1,350. So it's well below that standard.</p> <p>10 At the intersection of Damascus Road and Sundown</p> <p>11 Road we also found negligible impact. The a.m. and p.m.</p> <p>12 CLVs increased by just three and two, respectively. And</p> <p>13 again, those final numbers ended up being 743 CLVs in the</p> <p>14 a.m. peak hour and 869 CLVs in the p.m. peak hour.</p> <p>15 When we looked at Georgia Avenue, that</p> <p>16 intersection exceeds the CLV standard under existing</p> <p>17 conditions. So the LATR guidelines call for a more</p> <p>18 detailed Highway Capacity Manual or HCM analysis performed</p> <p>19 and we did that using the Synchro software. We found that</p> <p>20 the existing intersection exceeds the delay standards</p> <p>21 during both the a.m. and p.m. peak hours under existing</p> <p>22 conditions without any traffic from our site. That delay</p> <p>23 standard is 41 seconds in this rural area I should note.</p> <p>24 And then when we analyzed the impact of adding the</p> <p>25 conditional use's site traffic we found that the site would</p>	<p style="text-align: right;">223</p> <p>1 and there's very few that last later into the evening</p> <p>2 before heading home.</p> <p>3 And the capacity analysis, which is one of the</p> <p>4 main portions of what we analyze as a part of any LATR</p> <p>5 study for motor vehicle adequacy, found that the area</p> <p>6 intersections will operate similarly during the a.m. and</p> <p>7 p.m. peak hours as they would without the conditional use.</p> <p>8 They would operate similarly as existing with the</p> <p>9 conditional use in place. So the peak hour impact to area</p> <p>10 intersections is negligible and all intersections will</p> <p>11 operate within the delay standard for this policy area with</p> <p>12 the exception of Georgia Avenue and Damascus Road, which I</p> <p>13 already explained exceeds that congestion standard already.</p> <p>14 And finally I would just note -- I apologize. I</p> <p>15 would just note that the roadway network can accommodate</p> <p>16 the conditional use and adequate public facilities for</p> <p>17 traffic are present and that the roadways can safely and</p> <p>18 efficiently handle the minor impact of the traffic during</p> <p>19 the a.m. and p.m. peak hours.</p> <p>20 MS. REGELIN: Did you prepare any supplemental</p> <p>21 analysis?</p> <p>22 ANDY SMITH: Yes. Park and Planning staff asked</p> <p>23 us to review the intersection of Georgia Avenue and</p> <p>24 Damascus Road. I mentioned that there was minimal impact</p> <p>25 but there was some impact there of .4 seconds in the</p>
<p style="text-align: right;">222</p> <p>1 have a minimal impact on the area roadway network as</p> <p>2 evidenced by increases of less than one second of average</p> <p>3 delay in both peak hours. So it was .4 seconds in the a.m.</p> <p>4 peak hour and .8 seconds in the p.m. peak hour. Thus we</p> <p>5 found that the development will have minimal impact to peak</p> <p>6 hour operations.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>8 MS. REGELIN: So is that your conclusions of your</p> <p>9 report for the traffic impact analysis of this conditional</p> <p>10 use permit?</p> <p>11 ANDY SMITH: Yes, in a general sense that's one</p> <p>12 of the conclusions of our report. There were several. One</p> <p>13 was that the observations of existing travel patterns for</p> <p>14 the applicant's current operations showed that a majority</p> <p>15 of vehicle trips occur outside of the a.m. and p.m. peak</p> <p>16 hours. Another point was that a high vehicle -- there's a</p> <p>17 high vehicle occupancy for both commuting trips, so getting</p> <p>18 those crews coming to work in their personal vehicles and</p> <p>19 leaving in their personal vehicles.</p> <p>20 But also in addition to that, not surprisingly,</p> <p>21 for the job site trips where you have the larger crew cabs</p> <p>22 as has been testified earlier. Not today necessarily but</p> <p>23 probably last Monday. Vehicles arrive in a staggered way</p> <p>24 throughout the early afternoon and crews based on our</p> <p>25 observations tend to head home prior to the p.m. peak hour</p>	<p style="text-align: right;">224</p> <p>1 morning and .8 seconds in the evening peak hour. So we</p> <p>2 performed a supplemental analysis to determine if minor</p> <p>3 signal timing adjustments could mitigate that impact and</p> <p>4 the supplemental report is in the record as Exhibit 38.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: And could they?</p> <p>6 ANDY SMITH: Yes. Ms. Hannan, to answer your</p> <p>7 question, the conclusion of that report was that the .4</p> <p>8 seconds and .8 seconds of delay respectively for the a.m.</p> <p>9 and p.m. peak hours could be eliminated by just minor</p> <p>10 signal timing adjustments, yes.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: And is the</p> <p>12 state going to do it, make those signal timing adjustments?</p> <p>13 ANDY SMITH: Because signal timing adjustments do</p> <p>14 have impacts -- so we found that the overall intersection</p> <p>15 could be brought down to the pre-development levels --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>17 ANDY SMITH: -- but those decisions are always up</p> <p>18 to the DOT. They are the controllers of signal timings.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Right. Okay.</p> <p>20 MS. REGELIN: There is another landscape</p> <p>21 contractor in the area, Greenskeeper, who has an entrance</p> <p>22 several hundred feet east of Sundown Road. Are</p> <p>23 those -- are their trips in your traffic count?</p> <p>24 ANDY SMITH: So because that land use is already</p> <p>25 in operation those counts were -- or the trips from that</p>

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<p>225</p> <p>1 development are included in our existing counts for the 2 intersections. 3 MS. REGELIN: Okay. So is it your opinion that 4 this application will not have an adverse impact on the 5 local roadways and intersections? 6 ANDY SMITH: Yes. It is my opinion this 7 application will not have adverse impacts on the local 8 roadways and intersections. The reason being is that the 9 characteristics of the roadway will operate very similar in 10 the same way that they do currently. 11 MS. REGELIN: Is it your opinion that this 12 application meets the adequate public facilities test for 13 transportation at this location? 14 ANDY SMITH: Yes, it does meet the adequate 15 public facilities test for motor vehicles per the LATR 16 guidelines. 17 MS. REGELIN: And is it your opinion that the 18 application will not cause undue harm to the neighborhood 19 as a result of a non-inherent adverse effect due to traffic 20 or traffic related safety? 21 ANDY SMITH: It's my opinion there are no non- 22 inherent characteristics with this application that would 23 cause harm to the neighborhood. 24 MS. REGELIN: Is it your opinion that access is 25 safe and convenient and will not adversely impact traffic</p>	<p>227</p> <p>1 MS. REGELIN: Right. 2 ANDY SMITH: And as shown in the exhibit that you 3 have pulled up here, this entrance has good sight distance 4 in both directions for turns from this site given the flat 5 nature and being located right near the middle of the 6 property. And this has been mentioned a couple times 7 before in testimony, but the speed limits along the 8 frontage are 30 miles per hour in the westbound direction. 9 So as you cross the site from the east to the west it's 30 10 miles per hour and it's not posted as 40 miles per hour 11 until just beyond Howard Chapel Road. And it is 40 miles 12 per hour in the eastbound direction, so as you head from 13 west to east. So in the -- the speed limits essentially 14 will allow for safe deceleration and turns into the 15 entrance and also safe exits and turns from the site. 16 MS. REGELIN: Have you reviewed any traffic 17 accident data for this area? 18 ANDY SMITH: We have looked at traffic data that 19 is available from Montgomery County and the repository that 20 Montgomery County has for data. We found that there -- in 21 the past five years -- there was some earlier testimony, I 22 don't believe it was a part of this hearing but it may have 23 been a part of the planning board hearing, anecdotally 24 about several deaths. We did not find that there were 25 crash fatalities in this area. There was one fatality, I</p>
<p>226</p> <p>1 congestion? 2 ANDY SMITH: Yes. And Ms. Hannan, if you can 3 please show Exhibit 73. That's the one with a lot 4 of -- the Google Street View pictures. And if you could go 5 to I guess slide or page 16 of that one. 6 HEARING EXAMINER ROBESON HANNAN: Are they 7 numbered? 8 ANDY SMITH: It would just be page 16 of 9 the -- if you typed in the sixteenth page of the PDF it 10 should show, but I don't believe it's numbered, no. Yeah, 11 [inaudible - audio cut out]. 12 HEARING EXAMINER ROBESON HANNAN: That one? 13 ANDY SMITH: So I do believe it is safe and 14 convenient, will not adversely impact traffic congestion 15 during the peak hours. It's appropriate that the access is 16 on Damascus Road which is a state maintained 17 Maryland -- state maintained highway, as well all know, 18 Maryland Route 650. It's also appropriate that we don't 19 have any access provided on Howard Chapel Road because 20 that's designated as a rustic road. 21 The alignment of the new conditional use entrance 22 with Unity Park entrance meets best practices for 23 transportation safety since you don't have vehicles 24 overlapping and stopping at different locations very close 25 to each other.</p>	<p>228</p> <p>1 believe it was in 2015, and that was located just west of 2 Griffith Road to the west but none in the direct vicinity 3 of our site, thank goodness. And that there was one 4 bicycle accident that was located at Howard Chapel Road. 5 That's not every accident that could have occurred. Some 6 accidents are not recorded. We can't look at data that's 7 not recorded. And we were unable to look at the maps for 8 every crash type. We looked at those fatal crashes and we 9 looked at bicycle and pedestrian crashes and that's what we 10 found. 11 MS. REGELIN: Is it your opinion that the on-site 12 circulation is safe? 13 ANDY SMITH: Yes. The on-site circulation in my 14 opinion is safe. One thing that helps that is the distance 15 between Damascus Road and the conditional use gate which is 16 approximately 138 feet. So that allows for vehicles to cue 17 as they're entering the site if they have to stop at the 18 gate for some reason before entering. There's plenty of 19 room for vehicles to stop there and get out of the roadway. 20 This includes any deliveries from third-party suppliers 21 that may occasionally come through including a full-sized 22 semi-trailer if that ever happened. 23 And, you know, vehicles can turn down the 24 driveway completely out of the travel lanes on Damascus 25 Road even if the gate is closed. The driveway is a</p>

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<p style="text-align: right;">229</p> <p>1 standard -- meets standard widths and radii and the apron 2 is appropriately sized for access for all proposed 3 vehicles. Sometimes you'll see older entrances that don't 4 meet those standards. This does meet the standard. And 5 on-site circulation is adequate and safe. I believe, you 6 know, it was mentioned that this has been reviewed for fire 7 circulation so in my opinion the on-site circulation is 8 safe. 9 MS. REGELIN: So is there any aspect of this 10 particular property that having the conditional use located 11 here creates more of a traffic impact? 12 ANDY SMITH: No, there are no special aspects of 13 this particular property that create more of a traffic 14 impact for this use than elsewhere in the zone. So it's my 15 opinion that this location and -- the location of this 16 property and the location of the conditional use area set 17 back significantly from the roadway, you know, within the 18 much larger property with direct access to the state route 19 and with the entrance located midway along a very flat 20 unobstructed frontage, you know, this all kind of works 21 together to lessen the impact of -- or lessen the traffic 22 impacts inherent to this conditional use. 23 MS. REGELIN: Okay. And is it your opinion that 24 cars can turn safely in and out at -- between the 30 and 40 25 mile per hour range that's in the front of this site?</p>	<p style="text-align: right;">231</p> <p>1 case. So I deliberately drove through the area to do some 2 additional review on the way to somewhere else. 3 JACK QUINN: Okay. So you passed by the area, 4 correct? 5 ANDY SMITH: That's correct. 6 JACK QUINN: Okay. And had you passed by the 7 area before? 8 ANDY SMITH: Yes. 9 JACK QUINN: Okay. Had you ever investigated the 10 site while being present on the premises? 11 ANDY SMITH: Not on the premises, no. 12 JACK QUINN: Okay. Where did you investigate the 13 site from? 14 ANDY SMITH: From the roadways. 15 JACK QUINN: By passing by? 16 ANDY SMITH: That's correct. 17 JACK QUINN: Okay. So you never really did an 18 investigation or an analysis of the traffic safety issues 19 associated with landscaping vehicles entering onto Damascus 20 Road, correct? 21 ANDY SMITH: No. As a part of the LATR studies 22 we typically don't look at how vehicles -- we look sort of 23 from a -- I'll call it a qualitative nature of whether an 24 entrance is safe and how it's located within the roadway 25 network, but typically -- under the current LATR guidelines</p>
<p style="text-align: right;">230</p> <p>1 ANDY SMITH: Yes. 2 MS. REGELIN: Okay. We'll -- at this time that 3 will be the end of my questions and we can make him 4 available for cross. 5 HEARING EXAMINER ROBESON HANNAN: All right. Any 6 questions for Mr. Smith? I thought I saw someone's hand up 7 briefly. 8 JACK QUINN: You saw mine at least, Ms. Hannan. 9 Jack Quinn. 10 HEARING EXAMINER ROBESON HANNAN: Okay. 11 JACK QUINN: Okay. Mr. Smith, you mentioned 12 several times that we did this, we did that. I assume 13 you're talking about work performed within your firm? 14 ANDY SMITH: I can't say that every time I said 15 "we", but I would be using the term "we" to determine -- to 16 describe Kimley-Horn's -- 17 JACK QUINN: Have you ever been to the site? 18 ANDY SMITH: Yes. 19 JACK QUINN: And when were you last at the site? 20 ANDY SMITH: I was last at the site two weekends 21 ago, so I believe that was the 6th. 22 JACK QUINN: Was that in connection -- 23 ANDY SMITH: Of November. 24 JACK QUINN: -- with this? 25 ANDY SMITH: I made it in connection with this</p>	<p style="text-align: right;">232</p> <p>1 there is no safety analysis that is included with that. 2 JACK QUINN: Okay. And that's why your rather 3 lengthy report had no information with regard to the safety 4 features of the planned driveway as it intersected with 5 Damascus Road, correct? 6 ANDY SMITH: It did not have any quantitative 7 safety analysis since that was not called for as a part of 8 the LATR guidelines -- 9 JACK QUINN: Okay. 10 ANDY SMITH: -- and was not commented on by SHA, 11 DOT, or Park and Planning. 12 JACK QUINN: Okay. And that's what you did. You 13 engaged in an analysis of the traffic impact of this 14 location, correct? 15 ANDY SMITH: That is correct. 16 JACK QUINN: Okay. And you never really did a 17 safety analysis except this qualitative analysis of driving 18 by, correct? 19 ANDY SMITH: We did also look at the existing 20 crash patterns as I mentioned earlier in the testimony and 21 the crash history. Typically in the traffic industry for 22 these types of development studies, even is a crash 23 analysis is included we do not project or try to 24 investigate how many additional crashes may be caused 25 because that really isn't as good of a science for</p>

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<p style="text-align: right;">233</p> <p>1 development projects on how many crashes will be caused if 2 a development goes in. 3 JACK QUINN: Okay. 4 ANDY SMITH: Again, what we try to do is look at 5 the qualitative safety of an entrance which is, you know, 6 what I commented on as part of this testimony and it may 7 not have been explicit in the study but it is something 8 that we looked at. 9 JACK QUINN: Okay. So let me ask you this, what 10 in the world are you referring to as a qualitative analysis 11 of the safety features of this intersection? 12 HEARING EXAMINER ROBESON HANNAN: Can I interrupt 13 one minute? Which intersection? Are you talking about the 14 driveway, Mr. Quinn? 15 JACK QUINN: Yes, I am. 16 HEARING EXAMINER ROBESON HANNAN: Okay. Go 17 ahead. 18 ANDY SMITH: So what I would call the qualitative 19 analysis would be what I mentioned just a moment ago in my 20 testimony. It's looking at the various factors that go 21 into -- that I as a traffic engineer see as potential 22 safety issues and that's what I found through that analysis 23 was already included in my testimony. 24 JACK QUINN: So the only factors I heard you 25 consider are the accident frequency in the general area,</p>	<p style="text-align: right;">235</p> <p>1 there are crew, excuse me, crew trucks which are 2 essentially pickup trucks that carry the trailers that go 3 off site. 4 JACK QUINN: Okay. 5 ANDY SMITH: I believe that there are a few other 6 types of vehicles on site that were described in earlier 7 testimony. 8 JACK QUINN: Well, you'd want to know the rates 9 of acceleration for those vehicles to analyze the safety 10 features of that intersection, would you not? 11 ANDY SMITH: Actually the rate of acceleration of 12 a vehicle is not explicit in the sight distance 13 calculations. So the actual variable that is used is time 14 gap. So it is the gap of time that a vehicle needs or 15 perceives as being needed to enter the roadway, and the 16 time gap extends as you move into larger vehicles. So 17 AASHTO, which is -- I want to make sure to read this 18 because I don't want to get it wrong, especially not under 19 oath. Pardon me for a second. I just call it AASHTO as a 20 traffic engineer. 21 HEARING EXAMINER ROBESON HANNAN: All right. 22 JACK QUINN: I'm familiar with AASHTO. 23 ANDY SMITH: Okay. So American Association of 24 State Highway and Transportation Officials for everyone 25 else who is maybe less aware. The green book, as it is</p>
<p style="text-align: right;">234</p> <p>1 the drive-by that you engaged in perhaps on more than one 2 occasion, and the speed limits, correct? 3 ANDY SMITH: Sight distance as well. 4 JACK QUINN: Okay. And what is the sight 5 distance at that intersection? 6 ANDY SMITH: So I don't have the exact distance 7 for that location. As I said, it was more qualitative. 8 What I can tell you is the required sight distance for 9 maneuvers for vehicles coming out of that intersection. I 10 can step through that if you'd like but I don't know if 11 that's the question that you asked. 12 JACK QUINN: Okay. What -- did you ever measure 13 the sight distance? 14 ANDY SMITH: No, I did not measure sight 15 distance. That was -- the way that I assessed sight 16 distance was through -- 17 JACK QUINN: Driving by? 18 ANDY SMITH: -- using Google Earth. By driving 19 by and using Google Earth and making a professional opinion 20 on it. 21 JACK QUINN: Okay. Do you know what kind of 22 vehicles are employed by this landscaper? 23 ANDY SMITH: Yes. So there's personal vehicles. 24 Obviously, crews have to get there. There are manager 25 trucks. So that's pickup trucks for managers. And then</p>	<p style="text-align: right;">236</p> <p>1 most -- as it is lovingly called by our industry, has three 2 different types of vehicles. So there are passenger 3 vehicles. There are single unit trucks and there are 4 combination trucks, and they all have different time gaps. 5 So the time gap is really where that acceleration is -- I 6 would say it's baked into that variable. But you do not 7 need to know the acceleration of vehicles. You simply have 8 to categorize as one of those three types. 9 JACK QUINN: Okay. And let me ask you a 10 question. You're under oath. The first time you 11 considered the safety features was following the planning 12 board hearing, correct? 13 ANDY SMITH: No, because we really need to think 14 about that as a part of LATR study because -- 15 JACK QUINN: Why didn't you -- 16 ANDY SMITH: -- if you make the statement 17 that -- I'm sorry? 18 JACK QUINN: No, I interrupted you. I apologize. 19 ANDY SMITH: I was just saying we need to -- if 20 we make the statement that it would -- or a conclusion that 21 the roadway intersections will operate safely and 22 efficiently we do have to put some thought into whether 23 they actually will operate safely and efficiently. 24 JACK QUINN: Okay. What calculations did you 25 make?</p>

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<p style="text-align: right;">237</p> <p>1 ANDY SMITH: There are no calculations that were 2 a part of the LATR study that had to do with safety. 3 JACK QUINN: What memo was prepared about the 4 safety features of -- or lack of safety features of that 5 intersection? 6 ANDY SMITH: There are no -- there's nothing 7 within a memo that's a part of this -- of the exhibits for 8 this testimony that document that. 9 JACK QUINN: Okay. 10 ANDY SMITH: Even the crash data that I did look 11 up is not a part of -- it's not a part of the LATR 12 guidelines or LATR study I should say, but it is 13 included -- it's data that is readily available from 14 Montgomery County. 15 JACK QUINN: That's the record of other 16 accidents? 17 ANDY SMITH: That's correct. 18 JACK QUINN: Okay. So no form of mathematical 19 analysis was performed with regard to this intersection, 20 correct? 21 ANDY SMITH: Nothing that is an exhibit, no. 22 JACK QUINN: Okay. And are you suggesting, sir, 23 it was performed? 24 ANDY SMITH: Since you actually asked about it I 25 did make sure to pull what the required -- or what I would</p>	<p style="text-align: right;">239</p> <p>1 ANDY SMITH: The current observations, no I spent 2 several hours on site watching for the trip generation 3 purposes. 4 JACK QUINN: When did this occur? 5 HEARING EXAMINER ROBESON HANNAN: Just a second. 6 What site are you referring to, Mr. Smith? 7 ANDY SMITH: The applicant's current site where 8 current operations are occurring. 9 HEARING EXAMINER ROBESON HANNAN: Okay. Go 10 ahead, Mr. O'Toole. 11 JACK QUINN: Okay. Quinn. 12 HEARING EXAMINER ROBESON HANNAN: I'm sorry. 13 JACK QUINN: That's okay. 14 So you spent a couple hours on site? 15 ANDY SMITH: That's correct. 16 JACK QUINN: Okay. And the site is the current 17 operations, right? 18 ANDY SMITH: That's correct. Yes. 19 JACK QUINN: And when did that happen? 20 ANDY SMITH: That occurred winter of this year. 21 Let me see if I can pull that information up. 22 JACK QUINN: It was actually January 21st, 2019, 23 correct? 24 ANDY SMITH: That is incorrect. 2020. 25 JACK QUINN: January 21st, 2020?</p>
<p style="text-align: right;">238</p> <p>1 perceive as the required sight distance would be needed but 2 that has not been reviewed by anyone else so it is -- I 3 would hesitate to use it as absolute testimony in this 4 case. 5 JACK QUINN: And you didn't measure the sight 6 distance? 7 ANDY SMITH: No. Not as a part of the LATR 8 study, no. 9 JACK QUINN: Did you measure it for any reason? 10 ANDY SMITH: No, I did not measure it. I 11 assessed the sight distance qualitatively to be able to say 12 that I believe that that's a safe entrance. 13 JACK QUINN: Did you inquire of the owner what 14 types of vehicles -- the entire constellation of types of 15 vehicles might enter that roadway? 16 ANDY SMITH: I did not inquire that. I made my 17 own assessment as to the fact that I knew the crew trucks 18 that would be using that entrance. And as stated, you 19 could have deliveries of larger trucks going to that 20 entrance. 21 JACK QUINN: Do you even know what kinds of 22 vehicles this contractor possesses? 23 ANDY SMITH: Yes, I have observed the current 24 operations of the site. 25 JACK QUINN: Okay. And driving by?</p>	<p style="text-align: right;">240</p> <p>1 ANDY SMITH: I believe that is correct. 2 JACK QUINN: Okay. And that was -- you were 3 present personally on the site? 4 ANDY SMITH: Yes. 5 JACK QUINN: Okay. And what was the weather like 6 that day? 7 ANDY SMITH: It was cold. I would perceive it as 8 cold. 9 JACK QUINN: Okay. It was below freezing, was it 10 not? 11 ANDY SMITH: I don't recall if it was below 12 freezing. 13 JACK QUINN: And the weather records indicate it 14 was well below freezing and there was no precipitation on 15 the ground. Do you recall that? 16 ANDY SMITH: I do not recall. I don't recall any 17 precipitation on the ground. 18 JACK QUINN: Okay. And did you -- what did you 19 do to determine that in this below freezing weather there 20 was a normal workforce on site on Brooke Road? 21 ANDY SMITH: I had to -- I relied on the 22 information from the owner. 23 JACK QUINN: And did your -- 24 ANDY SMITH: But I did -- 25 JACK QUINN: I'm sorry.</p>

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<p>241</p> <p>1 ANDY SMITH: No. No. Go ahead.</p> <p>2 JACK QUINN: Did the owner provide any of that</p> <p>3 information in writing?</p> <p>4 ANDY SMITH: No.</p> <p>5 JACK QUINN: What did the owner tell you?</p> <p>6 ANDY SMITH: That it was a normal workday.</p> <p>7 JACK QUINN: Okay. And he was paying a full</p> <p>8 staff on a day in which it was below freezing with no</p> <p>9 precipitation on the ground. Did he tell you that?</p> <p>10 ANDY SMITH: He made no mention that I can recall</p> <p>11 about the actual number of specific staff on site.</p> <p>12 JACK QUINN: Okay. And how many were there?</p> <p>13 ANDY SMITH: I don't have that number.</p> <p>14 JACK QUINN: Okay. Was there other people on</p> <p>15 that site on Brooke Road?</p> <p>16 ANDY SMITH: Can you specify what you mean by</p> <p>17 that?</p> <p>18 JACK QUINN: Well, they're -- I'm told, Mr.</p> <p>19 Smith, that there are other businesses operated on that</p> <p>20 site. Were there other businesses in operation on that</p> <p>21 site?</p> <p>22 ANDY SMITH: It's hard for me to tell. When I</p> <p>23 drove in I did see vehicles that were -- appeared to be</p> <p>24 coming from other splits of the driveway than the Metro</p> <p>25 site.</p>	<p>243</p> <p>1 ANDY SMITH: That's correct.</p> <p>2 JACK QUINN: Okay. And these traffic counts that</p> <p>3 you referenced, Mr. Smith, they were during peak hours?</p> <p>4 ANDY SMITH: Which traffic counts? The on-site</p> <p>5 observations or the --</p> <p>6 JACK QUINN: On Damascus Road.</p> <p>7 ANDY SMITH: I'm sorry. I couldn't hear you.</p> <p>8 Oh, Damascus Road. They were during the peak periods from</p> <p>9 6:30 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m.</p> <p>10 JACK QUINN: Okay. Am I correct you didn't</p> <p>11 measure the traffic volume during any other periods of</p> <p>12 time?</p> <p>13 ANDY SMITH: We measured as the standard is for</p> <p>14 an LATR study for those periods.</p> <p>15 JACK QUINN: Okay. So you assume the peak volume</p> <p>16 times were 6:30 to, what did you say, 7:45?</p> <p>17 ANDY SMITH: The peak hour for the traffic counts</p> <p>18 on Damascus Road?</p> <p>19 JACK QUINN: Yes, sir.</p> <p>20 ANDY SMITH: We assumed that the peak</p> <p>21 hour -- excuse me. That the peak hour would occur during a</p> <p>22 peak period that was sometime between 6:30 and 9:30 a.m.</p> <p>23 JACK QUINN: Okay. And just so we're clear, you</p> <p>24 didn't do any traffic counts, reference any traffic counts</p> <p>25 prior to that time?</p>
<p>242</p> <p>1 JACK QUINN: So how did you determine the</p> <p>2 individuals that were supposedly associated with Metro were</p> <p>3 in fact Metro employees?</p> <p>4 ANDY SMITH: Because they headed into the Metro</p> <p>5 site.</p> <p>6 JACK QUINN: Okay. And describe the Metro site</p> <p>7 for me on Brooke Road.</p> <p>8 ANDY SMITH: It's hard for me to describe. It is</p> <p>9 off Brooke Road. It is a long pipe stem. There are some</p> <p>10 exhibits that we have gone over previously in testimony</p> <p>11 that show what the site looks like. It's kind of difficult</p> <p>12 for me to describe without the aid of those and I don't</p> <p>13 have the exhibits -- I don't know which exhibits off-hand</p> <p>14 but --</p> <p>15 JACK QUINN: Did Metro have a trailer there?</p> <p>16 ANDY SMITH: Yes.</p> <p>17 JACK QUINN: Okay. And were these individuals</p> <p>18 going in and out of that trailer?</p> <p>19 ANDY SMITH: I do not recall. I was closer</p> <p>20 toward the entrance so I could see as vehicles entered and</p> <p>21 existed.</p> <p>22 JACK QUINN: Okay. All right. So your</p> <p>23 assessment, because you couldn't assume normal traffic</p> <p>24 volume, your assessment was predicated on a visit on</p> <p>25 January 21st, 2020. That's what it's based on, right?</p>	<p>244</p> <p>1 ANDY SMITH: That is correct.</p> <p>2 JACK QUINN: Okay. And would that be the case</p> <p>3 with regard to the afternoon hours as well, sir?</p> <p>4 ANDY SMITH: The afternoon hours, typically we</p> <p>5 look at 4:00 -- I should say we, the traffic industry,</p> <p>6 anyone who is doing a LATR study looks at the hours of 4:00</p> <p>7 p.m. to 7:00 p.m. unless there's some other circumstance</p> <p>8 that would -- there would be a reason to look at peaks at</p> <p>9 another time. But the commuter peak hours in Montgomery</p> <p>10 County typically fall within those peak periods and what we</p> <p>11 found is at each one of the three intersections the crest</p> <p>12 or the peak, the total -- the highest volumes for any hour</p> <p>13 within that period did occur centrally within the period.</p> <p>14 So it wasn't at the very beginning of the period, it wasn't</p> <p>15 at the very end of the period, which would indicate to me</p> <p>16 that the peak hours do occur during the peak period.</p> <p>17 JACK QUINN: So you did your own traffic counts?</p> <p>18 ANDY SMITH: That was a subcontractor that</p> <p>19 provided the traffic count data.</p> <p>20 JACK QUINN: And for what period of time?</p> <p>21 ANDY SMITH: The counts were collected on June</p> <p>22 6th. I'm not sure what else the question you might be</p> <p>23 asking is.</p> <p>24 JACK QUINN: Okay. And is the traffic count</p> <p>25 subcontractor report a part of your report, sir?</p>

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<p>245</p> <p>1 ANDY SMITH: Yes, is it in the appendix of that 2 report. 3 JACK QUINN: Okay. Okay. So you basically 4 assumed peak hours and then you rely on another firm to 5 tell you what the traffic counts are during those peak 6 hours. That's what you do? 7 ANDY SMITH: I would say that we assume that the 8 peak hour will occur during assumed period, but we actually 9 determine what the peak hour is. It's not assumed. But 10 the subcontractor -- I'm sorry. I forgot the second part 11 of your question. 12 JACK QUINN: You didn't look outside of the 13 assumed peak hours? 14 ANDY SMITH: That is correct. We do not do that 15 for typical LATR studies unless directed to as a part of 16 scoping. 17 JACK QUINN: Who went with you to Brooke Road on 18 January 21st, 2020 or were you by yourself? 19 ANDY SMITH: I was by myself. 20 JACK QUINN: Okay. And who told you about this 21 carpooling while traveling to work? Anybody? 22 ANDY SMITH: You'd see -- that was actually for 23 the -- for that type of land use, anecdotally we've heard 24 both through the applicant and through testimony from other 25 landscaping contractor uses that carpooling is common among</p>	<p>247</p> <p>1 Metro. 2 JACK QUINN: Okay. How many vehicles came back? 3 ANDY SMITH: I'm sorry? 4 JACK QUINN: How many vehicles came back? 5 ANDY SMITH: I do not recall off the top of my 6 head. I can look in the appendix and try to get an idea of 7 that if you will give me just a moment. 8 JACK QUINN: Sure. 9 ANDY SMITH: Between 3:00 and 3:30 I saw eight 10 vehicles, eight crew vehicles come through. 11 JACK QUINN: Okay. 12 HEARING EXAMINER ROBESON HANNAN: Between what 13 times, Mr. Smith? 14 ANDY SMITH: Between 3:00 and 3:30. 15 JACK QUINN: Eight vehicles? 16 ANDY SMITH: Yes. There was evidence that 17 several vehicles had come before that time, before I 18 started observing as there were more trucks there on site, 19 more crew trucks on site than what I saw when I left the 20 site in the morning. 21 JACK QUINN: Could you assume that those crew 22 trucks never left the premises if the weather was below 23 freezing? Would that be an assumption that's reasonable? 24 ANDY SMITH: I don't know the answer to the 25 question that you're asking but I'll say this is that I did</p>
<p>246</p> <p>1 the commuters, the crew workers commute -- as 2 provided -- as the testimony that was provided earlier, 3 last Monday, a lot of these -- I don't want to misquote, 4 but a lot of these people may be families or just they 5 commute and that's what we saw when we observed commuters 6 leaving the site at the end of the day. 7 JACK QUINN: On Brooke Road, yes? 8 ANDY SMITH: On Brooke Road. 9 JACK QUINN: Okay. So you made those assumptions 10 and you saw a bunch of people on Brooke Road coming back 11 the end of the day, yes? 12 ANDY SMITH: That's correct. 13 JACK QUINN: And you don't know whether they were 14 going to Metro or anywhere else? 15 ANDY SMITH: We do know that they were Metro. 16 When they arrived in the evening they came back in Metro's 17 vehicles. So you saw them enter through the site. I was 18 observing close to the entrance to Metro's portion of the 19 overall site. I will say that there -- if I'm not 20 mistaken, the way that I remember it that there was a 21 gate -- there was a gate that you could close to Metro's 22 specific portion of the overall existing site off of Brooke 23 Road. So I watched vehicles enter through that gate. I 24 watched the employees leave and go to the employee parking 25 area and that is how I assumed that they were employees of</p>	<p>248</p> <p>1 see -- there were -- I counted the number of crew trucks 2 that I saw on site when I left in the morning and when I 3 arrived in the early afternoon to start observing vehicles 4 coming back, there were more crew trucks on site at that 5 time than there were when I left in the morning. 6 JACK QUINN: And how many were there that you 7 counted when you left in the morning? When you came in the 8 morning? 9 ANDY SMITH: I don't recall off-hand. 10 JACK QUINN: Okay. What time did you get there? 11 ANDY SMITH: In the morning I arrived at just 12 before 6:00 p.m., excuse me, just before 6:00 a.m. 13 JACK QUINN: Okay. All right. There is a 14 request associated with this conditional use for a 15 contractor who works on Saturdays, correct? 16 ANDY SMITH: I believe that is correct, yes. 17 JACK QUINN: Okay. Did you perform -- 18 ANDY SMITH: I believe that's -- if I recall 19 correctly, I think that's occasional, not every Saturday. 20 I'm not the best one to answer that. I apologize. 21 JACK QUINN: Did you perform any kind of study, 22 analysis, drive-by, whatever about how many bicyclists are 23 on Damascus Road on a Saturday morning or Saturday 24 afternoon? 25 ANDY SMITH: No, we did not collect the data for</p>

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<p>249</p> <p>1 Saturday.</p> <p>2 JACK QUINN: Okay. Would it surprise you that</p> <p>3 they go by by the dozens every hour?</p> <p>4 ANDY SMITH: If you're telling me that that's</p> <p>5 what happens I have to assume that, but I don't know if</p> <p>6 surprise has anything to do with it.</p> <p>7 JACK QUINN: Okay. These construction</p> <p>8 vehicle -- or landscaping vehicles are wide by nature,</p> <p>9 correct?</p> <p>10 ANDY SMITH: The landscaping trucks?</p> <p>11 JACK QUINN: Yeah.</p> <p>12 ANDY SMITH: I can't speak as to the</p> <p>13 actual -- the width of them. I know that they are not</p> <p>14 CD -- you don't need a CDL license to drive them which</p> <p>15 means that they -- they are limited by the weight of the</p> <p>16 vehicle, but they are I believe F250s, F350s which is a</p> <p>17 pickup truck that you could see on any -- you know, in</p> <p>18 anyone's front yard or any shopping center driving along</p> <p>19 the way.</p> <p>20 JACK QUINN: Why didn't you take a look at the</p> <p>21 bicycle traffic on Saturdays?</p> <p>22 ANDY SMITH: Looking at Saturday counts is</p> <p>23 typically not a part of LATR studies. The reason being is</p> <p>24 one of the biggest factors that we look at motor vehicle</p> <p>25 adequacy, we're looking at the capacity of intersections to</p>	<p>251</p> <p>1 about that.</p> <p>2 ANDY SMITH: Sure. Sure.</p> <p>3 KIM CALDEIRA: And, you know, I know from</p> <p>4 personal experience -- my personal experience traveling</p> <p>5 through that intersection in the afternoon hours, long</p> <p>6 before rush hour, it can be backed up very far to where</p> <p>7 you're sitting and waiting in traffic for, you know, maybe</p> <p>8 10, 15 minutes you might be waiting just to get to that</p> <p>9 light. It can be quite absurd. Even as early as 4:00</p> <p>10 p.m., at least when we're not in a pandemic. So, you know,</p> <p>11 did you look at -- did you look at the impacts at other</p> <p>12 hours? I mean I understand that it's procedure for you to</p> <p>13 focus on the so-called peak hours but given the traffic</p> <p>14 patterns of this type of business being earlier in the</p> <p>15 afternoon, I think you talked about that, shouldn't we also</p> <p>16 be looking at the impacts in the hours when the business is</p> <p>17 likely to be doing their peak travel? Does that -- sorry,</p> <p>18 that was a long question. I hope that was understood.</p> <p>19 ANDY SMITH: No, I think I understood your</p> <p>20 question. I think it's still appropriate to look at the</p> <p>21 a.m. and p.m. commuter peak hours in this case because</p> <p>22 those are the worst periods of travel. You are not going</p> <p>23 to get heavier delays than you would see at the a.m. or the</p> <p>24 p.m. peak hour, even if we're looking at an hour before</p> <p>25 that, for instance, and there is some additional traffic</p>
<p>250</p> <p>1 handle traffic during the a.m. and the p.m. peak hours</p> <p>2 which are typically the worst travel -- the highest I</p> <p>3 should say, or worst depending on if you're in it, but the</p> <p>4 highest traffic volumes through an intersection and</p> <p>5 typically weekends do not carry those types of traffic</p> <p>6 volumes nearly as high as the weekdays.</p> <p>7 JACK QUINN: I see. Because really what you did</p> <p>8 was traffic counting, not focus on safety, correct?</p> <p>9 ANDY SMITH: We prepared an LATR traffic study.</p> <p>10 JACK QUINN: Is it true, sir, that not only isn't</p> <p>11 there any bicycle lanes for bicyclists on Saturday or any</p> <p>12 other time but there is also no shoulder?</p> <p>13 ANDY SMITH: That is correct.</p> <p>14 JACK QUINN: Ms. Hannan, those are all the</p> <p>15 questions I have.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. Ms.</p> <p>17 Caldeira?</p> <p>18 KIM CALDEIRA: Thank you. Yes. I -- sorry, I</p> <p>19 raised my hand a while ago. Just jogging my memory.</p> <p>20 Right. Okay. So I was thinking -- I was curious about the</p> <p>21 impact on the traffic congestion during non-peak hours</p> <p>22 because the -- it's already, as you mentioned, you know,</p> <p>23 the Georgia Avenue and 650 intersection is already, you</p> <p>24 know, exceeding the capacity. I mean I don't know the</p> <p>25 right words but you mentioned something in your report</p>	<p>252</p> <p>1 from this use. It's not going to be any worse than it is</p> <p>2 capacity wise than in the peak hours.</p> <p>3 But I'll also say that while the number of trips</p> <p>4 generated by this use are typically outside of the p.m.</p> <p>5 peak hours, it is not a -- given the occupancy of vehicles</p> <p>6 it's not exceedingly large amount of traffic that is coming</p> <p>7 in and out of the site. For instance, in the morning at</p> <p>8 5:30 you have -- the shift has 30 crew members. Given the</p> <p>9 tendency for carpooling that may be, and this is an</p> <p>10 estimate, but it's somewhere between, you know, 10 to 14</p> <p>11 vehicles and they're arriving over the course of -- you</p> <p>12 know, anybody would know who's gone to their job that</p> <p>13 starts at a certain time some people arrive 20 minutes,</p> <p>14 some people arrive five minutes late. So if you think</p> <p>15 about that, that's 12 vehicles arriving over a period of</p> <p>16 maybe 15, 20 minutes which ends up being, you know, about a</p> <p>17 little less than maybe a vehicle a minute on average.</p> <p>18 Now there are -- you know, you do start shift so</p> <p>19 maybe it's a little bit more clumped than that, but that's</p> <p>20 kind of trying to give you context of how many vehicles</p> <p>21 occur outside of the p.m. peak hour as well. When we get</p> <p>22 to 6:00 that's when the managers show up and they typically</p> <p>23 drive themselves so there's no carpooling there. So let's</p> <p>24 say that's six managers, six vehicles inbound in the</p> <p>25 morning, and then you have a shift of 20 crew members and</p>

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<p>253</p> <p>1 that's somewhere between six and eight, you know, 2 additional vehicles driving in, commuter vehicles I should 3 say. And then again another 30 minutes later is when the 4 next shift starts. So that's another eight or so vehicles 5 that we would estimate. Over the course of those 90 6 minutes you're really seeing one vehicle -- if you do the 7 math, you're seeing one vehicle every two-and-a-half 8 minutes.</p> <p>9 So it's not -- while we didn't study the impact 10 as a part of the LATR analysis, we did look at that and 11 that's kind of a sense of how many vehicles that you would 12 see during those periods. But at the same time, even 13 outside the p.m. peak -- or outside of the a.m. or p.m. 14 peak hours you're not going to see the higher volumes that 15 you would see during those peak hours. So it's still 16 appropriate to study just the a.m. and p.m. peak hours for 17 capacity reasons.</p> <p>18 KIM CALDEIRA: So I'm not sure I follow 19 everything you're saying. Thank you for explaining that 20 but I -- it still to me stands to reason -- and more so 21 than thinking about employees arriving and leaving the 22 worksite for the day I'm thinking about the trucks and all 23 of the trips that they're taking to and from the site 24 during the -- you know, throughout the day and the impact 25 of that on traffic at that intersection which is already</p>	<p>255</p> <p>1 And I'll try to explain this and I apologize if 2 my point doesn't come across but I'm going to use 3 hypothetical terms as far as traffic is concerned. If you 4 have 700 vehicles going through an intersection during the 5 peak hour, some of those are commercial vehicles. As our 6 data showed, there are heavy vehicles that travel on this 7 road already, but some of those are already commercial 8 vehicles. The a.m. peak hour has 700 vehicles entering an 9 intersection. Let's say the hour before the a.m. peak hour 10 there's only 555 vehicles entering that intersection.</p> <p>11 So when you add the ten trucks from the site 12 you're still going to have significantly less volume than 13 during the peak hour and that's why we analyze the peak 14 hour rather than other hours for this. And that's 15 hypothetical as far as the numbers are concerned. I 16 can't -- I do have the traffic count data with me but it's 17 kind of hard for me to pull that as a part of the example 18 here.</p> <p>19 KIM CALDEIRA: Thank you.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. I'm 21 going to just -- for one moment I'm going to -- we're going 22 to go on a five second recess. Just a second.</p> <p>23 I apologize. Go ahead. Is that the end of your 24 questions, Ms. Caldeira?</p> <p>25 KIM CALDEIRA: Yes, I'm -- that's all I have.</p>
<p>254</p> <p>1 congested. Have you accounted for that traffic, the 2 trucks, the volume of -- the number of trips that trucks 3 are taking on and off the property throughout the day? 4 What can we estimate about that given the number of trucks 5 they are planning to have and the nature of the work?</p> <p>6 ANDY SMITH: So to give an idea of the number of 7 trucks that we would expect to leave the site in the 8 morning -- and again, these trucks aren't going in and out 9 of the site over the course of the day. They're leaving 10 once in the morning and coming back once in the evening for 11 most daily operations I would say.</p> <p>12 So if we look at 5:30, those 30 crew members, 13 they're coming in. If they -- if there's three to a truck 14 that would equate to ten trucks leaving sometime shortly 15 after 5:30, and they do try to stagger the arrival but also 16 try to leave pretty much as soon as possible to avoid 17 traffic wherever they're going for the day. So at 5:30 you 18 would have ten crew trucks leaving for that shift. For the 19 6:00 shift you have 20 crew members, assuming three people 20 in a crew truck. And again, it could be anywhere from two 21 to four, possibly more, but assuming three on average crew 22 members in a truck, you'd have seven vehicles leaving for 23 that next shift that started at 6:00. And then for the 24 final shift that started at 6:30, you'd have 20 crew 25 members that would leave in seven trucks.</p>	<p>256</p> <p>1 Thank you.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. I 3 see -- Mr. Quinn, is your hand supposed to be up 4 or -- well, I don't know if he's --</p> <p>5 JACK QUINN: No.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Thank you. I'm 7 just -- and Ms. Caldeira, would you kindly put yours down 8 please? Okay. And that leaves us with Mr. Lambert. Mr. 9 Lambert, go ahead.</p> <p>10 DAVE LAMBERT: Yes. Thank you, Mr. Smith. You 11 said you visited the site of the current operations of 12 Metro Grounds; is that right?</p> <p>13 ANDY SMITH: That is correct.</p> <p>14 DAVE LAMBERT: How were you able to distinguish 15 their trucks and their equipment from the other sites that 16 are there? Their markings seem to us to be a bit confused, 17 sometimes inaccurate. Also, the locations of their 18 property doesn't seem to be clear.</p> <p>19 ANDY SMITH: From what I recall the Metro Grounds 20 site does have a gate around the area and the trucks are 21 all parked within that gate. So the crew drivers would 22 either leave through that gate or enter back through that 23 gate.</p> <p>24 DAVE LAMBERT: You don't recall it as being sort 25 of one main road that goes into several open areas where it</p>

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<p>257</p> <p>1 might be difficult to tell which truck is going where and 2 which truck is associated with which operation? 3 ANDY SMITH: So the pipe stem that leads to 4 several different operations, as you said, there is a pipe 5 stem that does lead to several but there is a gated off 6 area for Metro Grounds. 7 DAVE LAMBERT: And so your counts then were 8 counts of trucks and equipment that were going in and out 9 of theirs. 10 ANDY SMITH: That's correct. 11 DAVE LAMBERT: And you don't know if any of the 12 other trucks that might be associated with either Duffy, or 13 Consolidated Commercial, or any of the other operations 14 that are on that space were actually -- had any relation to 15 Metro Grounds' operations? 16 ANDY SMITH: No, I cannot comment to that. 17 DAVE LAMBERT: Okay. Did your report include any 18 examination of the affect that traffic on the road would 19 have for animals and people who were handling animals, 20 arriving animals? As you know, this is a rural area with 21 horse riders, other livestock in the area. There's cattle 22 and sheep and goats here. 23 ANDY SMITH: Yes, I know that from everyone 24 else's testimony. I thank them for that. What can I say 25 is that the conditions of the roadways will not change</p>	<p>259</p> <p>1 study that so I don't feel comfortable saying. 2 DAVE LAMBERT: And the day you examined this is 3 January 21st? 4 ANDY SMITH: That is the day that we observed the 5 Metro Grounds current operations. The traffic counts were 6 performed on June 6th, 2019. 7 DAVE LAMBERT: I see. And how would you describe 8 looking -- the day in which you looked at the applicant's 9 current facility in terms of -- okay. Sure. No further 10 questions. 11 ANDY SMITH: Thank you. 12 HEARING EXAMINER ROBESON HANNAN: Okay. I 13 see -- I think -- okay. Mr. O'Toole? 14 JEFFREY O'TOOLE: Thank you. 15 I'm going to demonstrate some traffic study 16 ignorance and please bear with me. My questions to you, 17 Mr. Smith, are really just I think I don't understand what 18 you did and tell me if this is what you did. You studied 19 the traffic in and out of the Brooke Road present site for 20 Metro Grounds back in January, on a cold day in January. 21 And then you applied those numbers of the people coming and 22 going from the Metro Grounds present site to the traffic 23 counts that you did a year ago for Damascus Road and 24 Sundown, Damascus Road and Howard Chapel, and Georgia and 25 New Hampshire; is that correct?</p>
<p>258</p> <p>1 based on this conditional use. So as I mentioned a couple 2 of times, there is already -- there are already vehicles on 3 the road before the -- basically throughout that p.m. peak 4 period. It's not like there's no volume at all. And there 5 is a four to five percent heavy vehicles on Damascus Road 6 currently as shown by or evidenced by our traffic counts. 7 DAVE LAMBERT: And for trailers, livestock 8 trailers, horse trailers coming out, did your report 9 address how the neighborhood and others that have access to 10 Damascus Road will be affected by the proposed use? 11 ANDY SMITH: I'm sorry. There was a bit of an 12 audio issue at the very beginning of your question. I'm 13 sorry. Can you repeat it? 14 DAVE LAMBERT: Oh, the question is did your 15 report examine the effect that the increased traffic will 16 have on the existing landowners with access to Damascus 17 Road who are pulling out with livestock trailers or horse 18 trailers in light of the increased traffic that we'll see 19 from a commercial operation on this road? 20 ANDY SMITH: I did not analyze every individual 21 driveway. We analyzed the study area intersections and the 22 driveway for the conditional use and what we found was that 23 there was a negligible impact during the peak hours and 24 that is what we found. I don't want to speculate how it 25 would affect each individual driveway because I didn't</p>	<p>260</p> <p>1 ANDY SMITH: I believe -- I might describe it a 2 little bit differently but I think the essence of what 3 you're saying is correct. What we do with any traffic 4 study where we look at a development or any LATR study, so 5 I'll use the same terminology, we count the existing 6 traffic volume so we have a baseline for what is currently 7 out within the site. And there is requirements for the 8 existing counts, when those can be done, you know, when in 9 the week they can be done, that type of thing. What we do 10 after that -- 11 HEARING EXAMINER ROBESON HANNAN: Wait. Hold on. 12 You're talking about you do existing traffic counts at the 13 proposed property -- 14 ANDY SMITH: At the study intersections. 15 HEARING EXAMINER ROBESON HANNAN: -- not 16 the -- wherever the -- I can't remember where the existing 17 site is. But when you say existing site are you referring 18 to you do traffic counts at the application site that he's 19 applying to use; is that correct? 20 ANDY SMITH: Yeah, I apologize for the confusion. 21 I'll try to specify exactly. I'll use the term -- 22 HEARING EXAMINER ROBESON HANNAN: That would be 23 great. 24 ANDY SMITH: I'll use the term Brooke Road site 25 existing --</p>

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<p>261</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Brooke Road, 2 that's it.</p> <p>3 ANDY SMITH: The Brooke Road site for 4 observations. We didn't -- counts aren't a part of that 5 but I'll say at the Brooke Road site is when I'm referring 6 to the existing Metro Ground operation.</p> <p>7 For any typical LATR study what we will do is 8 count existing traffic data at the study area 9 intersections. For this particular development, instead of 10 estimating trip generation based off of ITE, because ITE 11 did not have a land use that was equivalent to the 12 landscape contracting land use, we did observations at the 13 Brooke Road site. That is not something that is typical of 14 every LATR study that we would do or that you'll see if you 15 studied every preliminary plan in the county.</p> <p>16 The process, however, after getting the existing 17 counts at study area intersections along Damascus Road, on 18 top of that we do what's called a background -- a 19 background analysis or a future without the development 20 because we need to have a baseline to compare it to given 21 that there are -- in a lot of places there are pipeline 22 developments, so developments that have been approved but 23 have not yet been constructed. So we want to account for 24 that traffic as well. In this study the only approved and 25 unbuilt or pipeline development was called Mariam Fathers</p>	<p>263</p> <p>1 JEFFREY O'TOOLE: Here's more of my ignorance and 2 my confusion. And I don't understand why you did it the 3 way you did it and maybe you can tell me. You took a 4 number of landscaping employees who were working from a 5 site on Brooke Road in January and you took that number and 6 you plugged it into three intersections near the 7 neighborhood of where this project is going to go, but you 8 have no idea if the number of people going in and out on a 9 cold January day represents who is going to be working from 10 a landscaping company in the heat of the summer in our 11 neighborhood.</p> <p>12 Why wouldn't you take the number of employees who 13 are going to work here? There are going to be 70 14 landscaping employees who come and go in their own cars and 15 there are going to be six supervisors who presumably will 16 go as well in their pickup trucks to the sites. So now we 17 have 76 employees coming and going during the daytime and 18 you can figure out from that number whether -- and there 19 are teams of two or three or four -- what the actual number 20 is. Why do you go to Brooke Grove -- Brooke Road 21 rather -- and come up with a number in the middle of 22 wintertime for a landscaping company and try to come up 23 with an impact on our neighborhood?</p> <p>24 ANDY SMITH: The first is the number of employees 25 is the current number of employees that are employed at</p>
<p>262</p> <p>1 (ph). It's a residential development that is located just 2 north of Olney and we found that it ended up having I 3 believe it was one vehicle during the p.m. peak hour that 4 would have gone through one of our study area intersections 5 so we accounted for that.</p> <p>6 And then finally we did the total future analysis 7 which looks at the future with the development in place and 8 what we did to develop total future traffic volumes for 9 that analysis was layer on top what the peak hour traffic 10 volumes would be based off of the Brooke Road site onto the 11 existing plus the pipeline developments at the study area 12 intersections.</p> <p>13 JEFFREY O'TOOLE: Ms. Hannan, are you done?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>15 JEFFREY O'TOOLE: Okay.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Oh, I should --</p> <p>17 ANDY SMITH: I'm sorry. I thought I was still 18 addressing you.</p> <p>19 JEFFREY O'TOOLE: I think he was answering -- I 20 think he was answering your question and I was waiting for 21 you to be done.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Oh, I thought 23 he was -- okay. Go ahead.</p> <p>24 ANDY SMITH: It was a little bit of both, I would 25 say. I apologize for --</p>	<p>264</p> <p>1 Brooke Road. So the -- and the number of employees at the 2 proposed development is limited to the same number if I'm 3 mistaken. Nancy, please step in. That's the way I 4 understand it.</p> <p>5 JEFFREY O'TOOLE: I don't know how many -- I 6 don't know how many employees you have at the present site. 7 I know that the applicant is applying for 70 landscapers 8 here along with six supervisors.</p> <p>9 ANDY SMITH: That's --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. Well, 11 that's --</p> <p>12 ANDY SMITH: That's what I'm trying to tell you 13 is that that number is the existing -- the number of 14 existing employees at the site, at the Brooke Road site I 15 should say.</p> <p>16 JEFFREY O'TOOLE: All right. So why wouldn't you 17 just use that number, those 76 people coming and going in 18 June when landscaping is at its height instead of taking 19 some number from Brooke Road in the middle of wintertime 20 with no snow on the roads?</p> <p>21 ANDY SMITH: So the importance of looking at the 22 existing Brooke Road site was to determine how many trips 23 actually occur during the a.m. and the p.m. peak hours and 24 that's what we studied as a part of our analysis. What we 25 found was that there were very few -- given the existing</p>

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<p>265</p> <p>1 number of employees there were still so very few trips 2 during the a.m. and p.m. peak hours. What trips there were 3 we projected onto the a.m. and p.m. peak hours if the site 4 were to be located where the conditional use is located. 5 JEFFREY O'TOOLE: Okay. Would you stop right 6 there for a second? You said there were so few trips. You 7 mean so few trips on January 21st of 2020; is that right? 8 ANDY SMITH: That's correct. 9 JEFFREY O'TOOLE: Right. 10 ANDY SMITH: When the landscape contracting use 11 was in normal operations, yes. 12 JEFFREY O'TOOLE: Right. Now why wouldn't we 13 have a -- isn't normal operations for what we classically 14 think as a contractor when they're bringing in mulch and 15 they're bringing in other equipment and plants and products 16 and wrapped up sod and using 70 people? How many people 17 were employed at the Brooke Road site on January 21st? Is 18 that a figure you know? 19 ANDY SMITH: From the way I understand it the 20 number of employed was 70 crew employees and six managers 21 and that -- 22 JEFFREY O'TOOLE: And that number was -- that 23 number is consistent all year long even in the wintertime? 24 ANDY SMITH: I can't -- you'd have to ask the 25 applicant that.</p>	<p>267</p> <p>1 BRYAN BOUGHTON: Okay. That's -- I just wanted 2 to clarify those things. Thank you. 3 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. 4 Caldeira, is your hand up? 5 KIM CALDEIRA: Yes, it is. 6 HEARING EXAMINER ROBESON HANNAN: Okay. We've 7 given you several -- I'll let you ask final questions but 8 after that I have to cut it off. 9 KIM CALDEIRA: I understand. I'm sorry I 10 neglected to ask this earlier. I wanted to ask about the 11 road speeds. Did you do any -- did you collect any data 12 about actual road speeds -- well, did you do anything about 13 road speeds? 14 ANDY SMITH: We did not collect speed data as a 15 part of the data collection for this. 16 KIM CALDEIRA: How much of your safety assessment 17 was contingent on the posted speed limits? 18 ANDY SMITH: It was qualitative and what we can 19 say is that the sight distance requirements, which is not a 20 part of the LATR study. If I am -- I don't believe that 21 I'm mistaken in this that the sight distance triangles and 22 the requirements that are necessary for those come as a 23 later part of the plans and are actually reviewed by Park 24 and Planning at a later date, but they are -- the way I 25 understand it that they are based off of the speed limits.</p>
<p>266</p> <p>1 JEFFREY O'TOOLE: I'm asking you. I mean you did 2 the -- 3 ANDY SMITH: I don't know the answer. 4 JEFFREY O'TOOLE: You did the site check and you 5 went in and you drove into this long road and you went to 6 the Brooke Road site, right? 7 ANDY SMITH: Uh-huh. 8 JEFFREY O'TOOLE: Did anybody tell you how many 9 employees were working on that day? 10 ANDY SMITH: No. 11 JEFFREY O'TOOLE: I have no more questions. 12 Thank you. 13 ANDY SMITH: Thank you. 14 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 15 Boughton? Thank you. 16 BRYAN BOUGHTON: I just wanted to try and see if 17 I could clarify a fact. You did this study at the Brooke 18 Road site on what date? 19 ANDY SMITH: In all this time I still haven't had 20 time to go back and double check that number. Just one 21 moment please. Tuesday, January 21st, 2020. 22 BRYAN BOUGHTON: And when did you do an analysis 23 of the traffic at the proposed site? 24 ANDY SMITH: The traffic counts were collected on 25 June 6th, 2019.</p>	<p>268</p> <p>1 KIM CALDEIRA: And so in a situation where there 2 are a lot -- there's a lot of traffic exceeding the speed 3 limit, would that tend to undermine your -- the safety 4 conclusion? I mean for traffic that's trying to come out 5 onto the road and the speeds are -- around here the speeds 6 are very much higher than the posted speed limit and I'm 7 just wondering if we can do anything to take that into 8 account. 9 ANDY SMITH: Well, I would say that the violation 10 of speed limits is not something that is going to be -- the 11 conditions of the roadways are not changed by -- in my 12 assessment are not changed by this use. If speeding is an 13 existing issue then that is an issue of enforcement. 14 That's maybe up to SHA as they're the owners of Damascus 15 Road and they maintain Damascus Road. 16 I mean I did notice that there is a -- for Howard 17 Chapel Road, you know, as a part of my looking at this 18 intersection and determining safety, there is a warning 19 sign for Howard Chapel Road in one direction and not the 20 other. So SHA may decide that an intersection warning sign 21 would be appropriate for the westbound direction. I don't 22 know the history of that particular intersection and 23 whether that sign was there ten years ago or not, but it 24 seemed like in looking at that that sign could be missing. 25 So that's something that could be added, you know, given</p>

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<p style="text-align: right;">269</p> <p>1 that that is a location where we've been told there are 2 horses crossing, there are bicyclists crossing that 3 that's -- that's something again that -- 4 HEARING EXAMINER ROBESON HANNAN: Well, what's 5 the warning sign for? 6 ANDY SMITH: Those types of warning signs 7 typically just show a -- it's a yellow sign with a black 8 cross that shows that an intersection is upcoming. 9 HEARING EXAMINER ROBESON HANNAN: Oh, like -- oh, 10 an inter -- okay. 11 ANDY SMITH: But again, our -- the conditional 12 use is not changing the conditions of the roadway so if 13 there's a speeding issue that's really not something that 14 is caused by this site. 15 KIM CALDEIRA: So I think -- correct me if I'm 16 wrong, are you saying that the calculations regarding sight 17 distance and so on that would be dependent on speed, those 18 would be things that would come up later in the process; is 19 that right? 20 ANDY SMITH: I believe so and the site engineer 21 may be better to ask that question. 22 KIM CALDEIRA: I'm sorry. The -- 23 HEARING EXAMINER ROBESON HANNAN: Just a second. 24 We've had cases where an engineer comes in with the sheet 25 from SHA and says sight distance is adequate because SHA</p>	<p style="text-align: right;">271</p> <p>1 ANDY SMITH: It's not heavily wooded. So -- 2 HEARING EXAMINER ROBESON HANNAN: Let me just ask 3 you. So you were able to -- how do you measure it from 4 Google Earth? 5 ANDY SMITH: Google Earth allows you to right- 6 click and measure a distance from one point to another. 7 HEARING EXAMINER ROBESON HANNAN: Okay. And then 8 from there you take the speed and the type of vehicle for 9 the gap? 10 ANDY SMITH: Correct. So for instance, 11 calculating the sight distance that's required for a driver 12 looking to the left, because the speed limit is 30 miles 13 per hour you would plug 30 miles per hour into a 14 calculation which also -- basically you -- I'm getting a 15 little bit deep into the weeds here, but there is a 16 calculation where you input the speed. There's a 17 conversion factor to go from miles per hour into feet per 18 second, and then you multiply that by the time gap and that 19 time gap, for instance if it were a single unit truck, is 20 nine-and-a-half seconds. 21 So the sight distance looking to your left ends 22 up being 418.95 feet, so about 420 feet that you would need 23 to see along the roadway to safely make the maneuver out 24 into the roadway. The sight distance to the right needs to 25 be a little bit longer because you have a higher speed</p>
<p style="text-align: right;">270</p> <p>1 requires this and this is the sight distance. 2 ANDY SMITH: And again, that's more tied to the 3 site design which is not something that I get into. I 4 certainly can run calculations and figure out what that -- 5 HEARING EXAMINER ROBESON HANNAN: Usually it's an 6 engineer but -- 7 ANDY SMITH: Correct. 8 HEARING EXAMINER ROBESON HANNAN: -- you don't 9 have that -- that. 10 ANDY SMITH: I don't have that. I have -- I 11 have, again, numbers that -- 12 HEARING EXAMINER ROBESON HANNAN: You keep saying 13 you have a qualitative -- you did a qualitative analysis. 14 I don't understand that. What does that mean? 15 ANDY SMITH: I'm saying that basically -- all I 16 can say definitively is that in my opinion the sight 17 distance is appropriate. Having had the chance to look at 18 Google Earth and measure out what would be the required 19 sight distance, measure that out on the roadway using 20 Google Maps, and looking at street view of the ends of what 21 would be the sight triangle for the entrance it appears to 22 be -- I mean as we saw from the exhibits, it is a flat area 23 where you have good visibility despite the fact that you 24 have a curve on the east side of the site. 25 HEARING EXAMINER ROBESON HANNAN: Well --</p>	<p style="text-align: right;">272</p> <p>1 limit along that direction. So you'd use the same equation 2 but 40 miles per hour. So for that same -- so for all the 3 same conditions but looking to the right, that sight 4 distance required would be approximately 550 -- 560 feet to 5 the right. 6 And when I say qualitative, what I did was I 7 looked at Google. I measured from the location of the 8 proposed site entrance, drew a sight triangle based on 9 those distances, and found that there were no continuous 10 obstruction -- you know, there may be one tree which we 11 want to keep on the site but it doesn't block a driver 12 trying to exit the site from seeing vehicles that are 13 oncoming in either direction. 14 And I will also note that intersection sight 15 distance or the sight distance for someone turning from the 16 entrance like onto Damascus Road is always longer than 17 stopping sight distance. Stopping sight distance is for a 18 driver on Damascus Road to have enough time to stop before 19 they see somebody pulling out. 20 HEARING EXAMINER ROBESON HANNAN: Right. Okay. 21 I'm going to let Ms. Regelin redirect and then we'll have 22 recross. Ms. Regelin, how many more witnesses do you have? 23 MS. REGELIN: So we have the civil engineer that 24 will go through the stormwater and the septic and the 25 environmental. So that's Mr. Rodriguez. And then of</p>

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<p>273</p> <p>1 course we'd like to bring in the noise expert. So that 2 would be the end. I do want to make sure we have enough 3 time to discuss, you know, how we're going to move forward 4 from today so if we could leave enough time for that. So 5 perhaps if I do my redirect of Mr. Smith maybe we can move 6 onto what is the next date. 7 HEARING EXAMINER ROBESON HANNAN: Okay. Now I 8 have to go back and check OZAH's rules. It's my 9 recollection that you have to give -- well, there's no 10 restriction -- well, let's finish this witness and then 11 we'll get to the other matters. So do your redirect of Mr. 12 Smith and they'll be recross and then we'll go to the other 13 outstanding issues. 14 MS. REGELIN: Okay. Mr. Smith, when you do trip 15 generation rate for a particular use, the owner testified 16 that he only has 30 trucks, so did you take that into 17 consideration to -- you know, as a double check to make 18 sure that your trip generation rate doesn't exceed the 19 number of vehicles that a user actually has? 20 ANDY SMITH: I'm sorry. What was the question 21 with that? 22 MS. REGELIN: So when you do your trip generation 23 rate and you're figuring it out and you're averaging the 24 number of people in a crew cab, et cetera, there is an 25 ultimate number which is the number of trucks that a user</p>	<p>275</p> <p>1 the distance from the driveway to the property lines in 2 each direction, correct? 3 ANDY SMITH: That's -- 4 MS. REGELIN: Like there's enough distance there 5 along the frontage, correct? 6 ANDY SMITH: That's correct. If I were to look 7 at what I would consider the worst case scenario for sight 8 distance or basically meaning the slowest type of vehicle 9 or the largest type of vehicle for sight distance, the 10 proposed entrance appears to have sight distance that meets 11 those requirements, yes. 12 MS. REGELIN: Okay. In your distribution of 13 traffic did you limit the amount of traffic going down 14 Howard Chapel Road? 15 ANDY SMITH: Specifically it was not limited down 16 Howard Chapel Road and the reason why that did not show up 17 is because there's so few trips during the peak hours that 18 none of the trips that do occur during the peak hours were 19 assigned to Howard Chapel Road. That being said, you know, 20 when we observed the area we did find that Howard Chapel 21 Road, particularly in between Sundown Road and Damascus 22 Road is very narrow and does not have a center line and 23 would not be appropriate for crew vehicles with trailers. 24 If we had had enough -- 25 HEARING EXAMINER ROBESON HANNAN: Can you tell us</p>
<p>274</p> <p>1 has on site, which Mr. Kelley has testified is 30. So do 2 you balance your trip generation rate or do a double check 3 to make sure that it's in line with the total number of 4 trucks that could be on the site that could be leaving? 5 ANDY SMITH: That's correct. Again, the trip 6 generation that we used for the LATR study 7 was -- considering that this use has a lot of -- most of 8 its trips outside of the peak hours, it doesn't 9 necessarily -- it's not the limiting factor for peak hour 10 trips for the LATR study. But looking at how many trips 11 are occurring throughout the day, yes, that is a limiting 12 factor. 13 HEARING EXAMINER ROBESON HANNAN: Okay. Because 14 what -- because incoming arrivals in the morning isn't 15 controlled by the number of vehicles that the owner has. 16 Now trips in the day and return trips might be but not the 17 a.m. peak. 18 ANDY SMITH: Not the inbound a.m. trips or the 19 outbound p.m. trips. 20 HEARING EXAMINER ROBESON HANNAN: Okay. Just 21 making sure. Keep going. 22 MS. REGELIN: In your explanation of the sight 23 distance, the qualitative one that you did with regard to 24 speed and what it would have to be, are the numbers that 25 you gave for looking right and looking left, they're within</p>	<p>276</p> <p>1 where that area is again? 2 ANDY SMITH: Sure. 3 HEARING EXAMINER ROBESON HANNAN: If I pulled up 4 exhibit -- 5 ANDY SMITH: If I can find it in my file here. 6 HEARING EXAMINER ROBESON HANNAN: If I pull up 7 Exhibit 48 if I still have it up here. Okay. 8 ANDY SMITH: I can tell you where it is 9 on -- with that one or within the study as well, but you 10 may be pulling up a map for the area. 11 HEARING EXAMINER ROBESON HANNAN: Okay. Study 6. 12 Okay. 13 ANDY SMITH: Exhibit 6. And really any of the 14 figures will show the area except for the first one is a 15 little too zoomed out I would say. So page 5, for 16 instance, will show you Howard Chapel Road. 17 HEARING EXAMINER ROBESON HANNAN: Okay. So where 18 is it narrow, too narrow? 19 ANDY SMITH: I can't see the example if you're 20 showing it to everyone. 21 HEARING EXAMINER ROBESON HANNAN: Oh, okay. All 22 right. Okay. Can you see it now? 23 ANDY SMITH: Yes. So the number three in the 24 map, on either end of that is Howard Chapel Road. 25 HEARING EXAMINER ROBESON HANNAN: Right.</p>

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<p>277</p> <p>1 ANDY SMITH: And it was mentioned in earlier 2 testimony that Howard Chapel Road for other drivers tends 3 to be a cut through if you want to head west down Sundown 4 Road, but we recognize that that is not appropriate for 5 crew vehicles with trailers so we would not assign trips 6 down Howard Chapel Road as a part of the analysis if we had 7 enough trips that the distribution would be spread amongst 8 several roadways through the area.</p> <p>9 MS. REGELIN: And Mr. Smith, we had a discussion 10 that the applicant is willing to keep his heavy trucks, 11 which are anything other than the personal vehicles, off of 12 Howard Chapel Road, correct?</p> <p>13 ANDY SMITH: That is -- that is the way I 14 understand it, yes.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well --</p> <p>16 MS. REGELIN: As a condition.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Well, 18 you need to tell me what -- you don't have to do it now 19 because we're not going to finish tonight, but if you want 20 a condition like that I need to know what -- exactly what 21 trucks you're saying shouldn't be on Howard Chapel Road.</p> <p>22 MS. REGELIN: Yeah, I bring this up right now 23 because the traffic engineer is here but you indicated you 24 also wanted to bring Mr. Kelley back and I thought I would 25 discuss conditions --</p>	<p>279</p> <p>1 you saying that you measured sight distance using Google 2 Maps or Google Earth, whatever it is?</p> <p>3 ANDY SMITH: Yes.</p> <p>4 JACK QUINN: Okay. And when did you do that, 5 sir?</p> <p>6 ANDY SMITH: I pulled that information together 7 to be able to talk to it today.</p> <p>8 JACK QUINN: When did you do that analysis?</p> <p>9 ANDY SMITH: So the qualitative analysis, so 10 fully -- let me put it this way because I'm starting to mix 11 actual data and equations with what initially is what I did 12 which was the qualitative analysis. So before today I 13 looked at the -- I evaluated the sight distance in a fairly 14 qualitative way and looked at the sight lines -- not 15 looking at -- not measuring the -- not measuring distances 16 along Damascus Road but looking at the sight lines and 17 basing on my judgment that the sight lines were clear well 18 beyond what would be needed for appropriate sight distance.</p> <p>19 Today I wanted to -- in order to give a little 20 bit more backing to that I wanted to explain the sight 21 distance equation since we brought -- you had asked about 22 acceleration and I wanted to discuss the actual equation 23 that go into sight distance. But I -- and given a -- I am 24 able to tell you that given sort of the most conservative 25 scenario what those -- the sight distance requirements</p>
<p>278</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. All 2 right.</p> <p>3 MS. REGELIN: -- when I have Mr. Kelley.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>5 MS. REGELIN: Okay. I think no further 6 questions.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Any recross? 8 Okay. Just a second. I have Mr. Boughton and Mr. Quinn.</p> <p>9 JACK QUINN: Go ahead, Bryan.</p> <p>10 BRYAN BOUGHTON: Yeah, I just wanted to bring up 11 the point the engineer was just making about Howard Chapel 12 not being wide enough for these vehicles and I'm just 13 asking you, Director Hannan, how that works because what 14 would -- as a condition could we actually limit their 15 vehicles using that because it is very narrow. Even two 16 cars cannot pass.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Yes. The 18 answer is yes.</p> <p>19 BRYAN BOUGHTON: Okay. So that's something we 20 can prepare for the next meeting?</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Yes. 22 Mr. Quinn?</p> <p>23 JACK QUINN: So Mr. Smith, I asked you on 24 multiple occasions about your qualitative analysis and I 25 just want to be clear about what you're now saying. Are</p>	<p>280</p> <p>1 would be based on my assessment, but I don't want to call 2 it a qualitative analysis because it has not been 3 submitted. I'm only looking at Google Earth. That is not 4 perfectly exact. It gives you a great idea. I love using 5 it as a tool but I don't consider it necessarily the 6 required engineering to say quantitatively that the sight 7 distance is there. That stage has not come yet and that's 8 typically done by the engineer, not the traffic engineer.</p> <p>9 JACK QUINN: Okay. The site engineer?</p> <p>10 ANDY SMITH: Correct.</p> <p>11 JACK QUINN: Okay. I thought he suggested you're 12 the person who is supposed to evaluate that and that's not 13 true?</p> <p>14 ANDY SMITH: As a part of what I -- my role on 15 this team is for the traffic engineering expert witness 16 testimony and the preparation of the LATR study, 17 coordination with the various agencies, but my role is not 18 to look at the sight distance that would eventually be 19 required as a part of whatever plan or -- I'm not doing 20 any -- I'm not preparing any of the plans.</p> <p>21 JACK QUINN: Okay. So most professional 22 testimony is given to a reasonable degree of professional 23 certainty or probability. You're not giving that kind of 24 testimony today.</p> <p>25 ANDY SMITH: I will say I have prepared sight</p>

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<p>281</p> <p>1 distance exhibits in the past many times. I'm very 2 familiar with sight distance requirements and the 3 equations, and that's what I can say to that. 4 JACK QUINN: Okay. You gave us sight distances 5 for various speeds. You did not give us the sight distance 6 that's available at that driveway, correct? 7 ANDY SMITH: That is correct, yes. 8 JACK QUINN: Okay. And I want to get back to 9 that in a moment, but the exhibit that's on the screen as 10 Exhibit 6, do you see that sir? 11 ANDY SMITH: I see Exhibit 6, yes. 12 JACK QUINN: Yes. Okay. And we talked about 13 exhibit -- the section from Howard Chapel Road from 14 Damascus Road to Sundown Road and now we all agree that's 15 not a possible route for construction vehicle or 16 landscaping vehicles, correct? 17 ANDY SMITH: For landscaping vehicles with 18 trailers. 19 JACK QUINN: Okay. 20 ANDY SMITH: It does not in my assessment seem 21 appropriate for that and I believe the applicant agrees. 22 That is a public road where any member of the public can 23 drive down, however. That's what I would say about that. 24 JACK QUINN: Okay. Number two reflects the 25 intersection of Damascus Road and Sundown Road. Do you see</p>	<p>283</p> <p>1 turn down Laytonsville I believe to get -- to point west, 2 or would have to go to Georgia Avenue and make a right turn 3 for those landscaping vehicles with the trailers. Personal 4 vehicles would be able to make that turn just like any 5 other. 6 JACK QUINN: Yeah. So it's impossible at that 7 intersection without going into the I guess northeast lane 8 of traffic on Sundown Road, correct? 9 ANDY SMITH: I don't know about impossible but I 10 would say it's improbable for sure. 11 JACK QUINN: Okay. All right. Can we pull up 12 Exhibit 73 which are these Google views please? 13 HEARING EXAMINER ROBESON HANNAN: I'm coming. 14 Okay. They should be up. 15 JACK QUINN: Okay. Now first of all, I really 16 would like a direct answer to my question. What time of 17 today is it that you came up with your sight distance 18 calculations? 19 ANDY SMITH: I don't know that I can give you an 20 exact time of today, but when sight distance -- when one of 21 the other engineers or one of the other experts was being 22 questioned I wanted to make sure that I had the information 23 to be able to give a little bit more -- I would say a 24 little bit more backing to what I'm saying about the sight 25 distance calculations.</p>
<p>282</p> <p>1 that? 2 ANDY SMITH: Yes. 3 JACK QUINN: Okay. And Sundown Road might be 4 considered the main artery from this area to western 5 Montgomery County? 6 ANDY SMITH: It is a route that does lead to 7 western Montgomery County. 8 JACK QUINN: Okay. 9 ANDY SMITH: Or at least points west to some of 10 those more populated areas, yes. 11 JACK QUINN: Okay. And that intersection is 12 fairly close to being a switchback, is it not? 13 ANDY SMITH: It is. 14 JACK QUINN: Okay. 15 ANDY SMITH: It is a very steep right turn for 16 vehicles headed eastbound, correct. 17 JACK QUINN: And it's impossible for landscaping 18 vehicles pulling a landscaping sled to make that turn 19 without turning into ongoing traffic on Sundown Road, isn't 20 it? 21 ANDY SMITH: I would agree that for landscaping 22 trucks with the trailers that would be not an impossible 23 turn but not one that I would recommend making certainly if 24 any vehicles are in the area therefore any landscaping 25 trucks would need to either head west on Damascus Road and</p>	<p>284</p> <p>1 JACK QUINN: Okay. So all these safety -- all 2 this -- this is a safety observation and professional 3 opinion derived today, correct? 4 ANDY SMITH: That is not correct, no. 5 JACK QUINN: Sir, on the picture that is on the 6 screen, that's a picture of traffic heading west on 7 Damascus Road. Do you see that? 8 ANDY SMITH: Yes. 9 JACK QUINN: And would you consider there to be 10 sight distance obstructions in that photograph? 11 ANDY SMITH: Certainly for drivers -- maybe from 12 one of the driveways on the other side of the road. 13 HEARING EXAMINER ROBESON HANNAN: Well, first of 14 all, for the record -- just a second. For the record I 15 need some way -- okay. This is page 16 of this report, and 16 I need to be -- just so the record knows, what are we 17 looking at? Is that the site driveway? 18 ANDY SMITH: That is not the site driveway. That 19 is -- the left side of the image is the south side of 20 Damascus Road. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 ANDY SMITH: The proposed driveway would be 23 located on the right side of Damascus Road or the north 24 side of Damascus Road. 25 HEARING EXAMINER ROBESON HANNAN: Okay. Now you</p>

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<p>285</p> <p>1 can continue.</p> <p>2 JACK QUINN: Okay. Any obstruction to sight</p> <p>3 vision?</p> <p>4 ANDY SMITH: For the proposed -- I'll only speak</p> <p>5 to the proposed entrance location and from this image and</p> <p>6 having gone through street view along here and driven</p> <p>7 through there, the sight distance to the proposed entrance</p> <p>8 does not appear to be obstructed by the -- as I mentioned,</p> <p>9 there appear to be a couple of trees on site and those</p> <p>10 would not block sight distance for --</p> <p>11 JACK QUINN: Okay.</p> <p>12 ANDY SMITH: -- people exiting.</p> <p>13 JACK QUINN: Okay. How about for vehicles</p> <p>14 heading eastbound? Wouldn't the driveway be behind those</p> <p>15 trees?</p> <p>16 ANDY SMITH: I don't believe that there is an</p> <p>17 image in this exhibit to give us context to what you're</p> <p>18 saying because I believe most of them are in the westbound</p> <p>19 direction.</p> <p>20 JACK QUINN: All right. You never evaluated the</p> <p>21 sight distance for this particular site, did you?</p> <p>22 ANDY SMITH: A full quantitative sight distance</p> <p>23 evaluation was not a part of the LATR study and it is not</p> <p>24 prepared as a part of this.</p> <p>25 JACK QUINN: I didn't think so. That's all I</p>	<p>287</p> <p>1 center of the image with the subject property to the right</p> <p>2 of the page.</p> <p>3 MS. REGELIN: Okay. And there is a tree shown on</p> <p>4 this property, correct?</p> <p>5 ANDY SMITH: That's correct.</p> <p>6 MS. REGELIN: And is the distance of the tree to</p> <p>7 the pavement of Damascus Road sufficient to provide clear</p> <p>8 sight distance in either direction?</p> <p>9 ANDY SMITH: Yes, it appears to be as sight</p> <p>10 distance is measured -- typically measured fourteen-and-a-</p> <p>11 half feet back from the edge of the travel way.</p> <p>12 MS. REGELIN: And that tree is more than</p> <p>13 fourteen-and-a-half feet back?</p> <p>14 ANDY SMITH: It appears to be. You could ask the</p> <p>15 landscape architect for -- to measure that on the plans</p> <p>16 but, yes, it appears to be.</p> <p>17 MS. REGELIN: Okay. No further questions.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>19 With that we're going to move on.</p> <p>20 Thank you, Mr. Smith. You can be excused.</p> <p>21 ANDY SMITH: Thank you.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: So now we will</p> <p>23 move onto scheduling. I had a question of Ms. Regelin. I</p> <p>24 don't recall saying for sure that you could have -- well,</p> <p>25 let's find a date to continue this and then we'll talk</p>
<p>286</p> <p>1 have.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: All right. Ms.</p> <p>3 Regelin, you get final redirect and then we're going to</p> <p>4 finish.</p> <p>5 JACK QUINN: And I'd ask that she not lead the</p> <p>6 witness which she's been doing all day.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>8 MS. REGELIN: So this page is page 18?</p> <p>9 HEARING EXAMINER ROBESON HANNAN: 16 I thought it</p> <p>10 was. Here, let me go back. I just closed out of it. So</p> <p>11 that's not it. Here it is. Do you have it up now?</p> <p>12 MS. REGELIN: Yes.</p> <p>13 So this shows the proposed intersection with</p> <p>14 Unity Park confronting it?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well, wait. He</p> <p>16 just asked -- why don't you just ask him what this shows?</p> <p>17 I don't know what it shows. I assume the property is on</p> <p>18 the right, but have the witness tell us what it shows.</p> <p>19 ANDY SMITH: Can you ask the question again</p> <p>20 please?</p> <p>21 MS. REGELIN: So this page 16, what is this photo</p> <p>22 showing? Could you describe the conditions that we're</p> <p>23 seeing?</p> <p>24 ANDY SMITH: This shows the entrance to Unity</p> <p>25 Park on the left and it shows Damascus Road going down the</p>	<p>288</p> <p>1 about the noise expert. All right? So I'm just looking at</p> <p>2 my calendar, and we could do something later this week.</p> <p>3 Tomorrow?</p> <p>4 JACK QUINN: I am not available tomorrow. I also</p> <p>5 think I made my position clear with regard to needing</p> <p>6 additional time to retain experts and fully participate in</p> <p>7 this hearing.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I understand.</p> <p>9 I think I've made my position clear too, but I do -- if you</p> <p>10 want you can make a continuing objection if you'd like to</p> <p>11 do that.</p> <p>12 JACK QUINN: Yeah, that probably would be a good</p> <p>13 idea, Ms. Hannan.</p> <p>14 JEFFREY O'TOOLE: Ms. Hannan, this is Jeff</p> <p>15 O'Toole. Being as somebody who is working full time</p> <p>16 elsewhere, I'm not available the rest of this week as it</p> <p>17 turns out, but Monday, Tuesday, and Wednesday of next week</p> <p>18 I am available.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Well, what we</p> <p>20 could do is this, Ms. Regelin. We could reserve Monday,</p> <p>21 Tuesday, and Wednesday, OZAH can, and that way we can make</p> <p>22 sure and finish it up. Wait. I think your -- you may be -</p> <p>23 -</p> <p>24 MS. REGELIN: Yeah. There's two things that</p> <p>25 needs to happen. One is for us to complete Mr. Rodriguez</p>


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<p>289</p> <p>1 and bringing back Mr. Kelley, but we do need to also give 2 time for all of the opposition to speak. 3 HEARING EXAMINER ROBESON HANNAN: Right. And 4 that's why I'm saying we need three days. We need one or 5 two -- at least two days. 6 MS. REGELIN: Yeah, so I would -- where I was 7 getting to is I would agree that I'd like to reserve as 8 many days as possible and start at the earliest day and to 9 continue until we're finished. 10 HEARING EXAMINER ROBESON HANNAN: So right now I 11 can look at the 23rd. Let me -- I have to get my reading 12 glasses. The 23rd, the 24th, and the 25th. 13 JACK QUINN: I'm available. 14 JEFFREY O'TOOLE: When I said that I was 15 available on those days, I'm available probably on one of 16 those days. I just can't take three days or even two full 17 days in a three-day week. 18 MS. REGELIN: So we can arrange for Mr. O'Toole 19 to give his testimony on whatever day he's available that 20 we're meeting. 21 JEFFREY O'TOOLE: All right. 22 HEARING EXAMINER ROBESON HANNAN: Well, then I'll 23 reserve those three days and then if particular witnesses 24 want to testify on particular days then I would like, if 25 you have the schedule, please email Nana Johnson of our</p>	<p>291</p> <p>1 MS. REGELIN: So next Monday is the 23rd which is 2 the date. That potentially is the first day that we would 3 have -- because today is already the 16th. So that would 4 be Monday, the 23rd. 5 HEARING EXAMINER ROBESON HANNAN: I mean the 6 alternative is to have another hearing. Who was it that 7 couldn't make it this week? I apologize. Was it Mr. 8 O'Toole? 9 JEFFREY O'TOOLE: Correct. 10 JACK QUINN: I also have scheduling problems 11 towards the end of the week. 12 HEARING EXAMINER ROBESON HANNAN: Towards the end 13 of the week. 14 BRYAN BOUGHTON: And Mr. Boughton is not 15 available for the rest of this week. 16 HEARING EXAMINER ROBESON HANNAN: Okay. So Ms. 17 Regelin, can you contact this expert and see if he can get 18 it? Let us know as soon as he can get it. 19 MS. REGELIN: Yes. As soon as this is over he is 20 waiting for me to call so I will get a date when we could 21 have something in writing. 22 HEARING EXAMINER ROBESON HANNAN: Okay. And -- 23 MS. REGELIN: Because I did identify them last 24 week as a rebuttal witness but -- 25 JEFFREY O'TOOLE: Didn't we discuss at one time,</p>
<p>290</p> <p>1 office with a copy to Ms. -- to all the parties. Okay. So 2 that's what we'll do. I'll set aside those three days. 3 Now, the noise expert. The noise expert, this 4 is -- our rules say you have to file the report I think at 5 least ten days in advance if he has a written report, and 6 you have to notify everybody. Now there's no -- there's 7 not that restriction on rebuttal. And I always say this to 8 those in opposition, you can get his testimony upfront. 9 You can waive the restriction on having it in the pre- 10 hearing statement, but she does under the rules get to have 11 it on rebuttal. 12 So that's -- if she goes -- if she gives it after 13 whoever is next, the engineer is next, if she gives it 14 after the engineer is next then you have time to digest it 15 before the completion of your case, but she does have the 16 right alternatively to do it on rebuttal and you have the 17 right to cross-examine her on it. 18 JEFFREY O'TOOLE: Well, how long -- can we ask 19 how long it would take her to get that report to us? 20 HEARING EXAMINER ROBESON HANNAN: Ms. Regelin? 21 MS. REGELIN: We were attempting to have it ready 22 by Monday and I can find out if I can get anything earlier 23 than that. 24 JEFFREY O'TOOLE: By Monday, this Monday or next 25 time we have a Monday?</p>	<p>292</p> <p>1 Ms. Hannan, about having a hearing on the 30th of November? 2 HEARING EXAMINER ROBESON HANNAN: We did. 3 JEFFREY O'TOOLE: Well, how about if we did it on 4 the 30th and we just tried to make sure we wrapped 5 everything up on that one day? 6 MS. REGELIN: So I'm not comfortable with that. 7 I would like to go forward and get my case done in chief 8 and get as many opposition witnesses to finish -- 9 HEARING EXAMINER ROBESON HANNAN: Well, let's -- 10 MS. REGELIN: -- on the early part of the 23rd, 11 24th. 12 HEARING EXAMINER ROBESON HANNAN: Well, let's go 13 back to what I think it was Mr. O'Toole said. What I can 14 do is do the 23rd, the 24th, and the 30th, and that way it 15 will be on rebuttal to the opposition. I'd like to get the 16 opposition's testimony in also. I want to make sure we get 17 everybody in. So we could do it that way. She could put 18 the report in on rebuttal but get it to us -- if he can get 19 it to us on the 23rd that would be helpful. 20 MS. REGELIN: Okay. 21 HEARING EXAMINER ROBESON HANNAN: Now whenever we 22 get through the opposition we've got the civil for Ms. 23 Regelin, then we've got those in opposition, then her 24 rebuttal will start and what I'd like you all to do is if 25 you have proposed conditions, get them in the record this</p>

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<p>293</p> <p>1 week, if you can. If you can't it's okay because part of 2 what we need to do is get together with Mr. Kelley and see 3 what he'll agree to and what he won't. 4 Now Ms. Regelin, I think -- what I think would 5 help in the record is I have a landscape plan for the 6 ultimate product, okay. I don't have a landscape plan for 7 temporary use and people have a lot of questions about the 8 temporary use and I understand that. So I think -- and 9 plus, if GTS has to enforce the temporary use or even if 10 you go to preliminary plan they may want to see it. So I 11 would think it would be cool of you to have a landscape -- 12 MS. REGELIN: For phase one, yeah. 13 HEARING EXAMINER ROBESON HANNAN: -- for phase 14 one and that way we all know what we're talking about. And 15 I think there were legitimate issues raised to the extent 16 you can look at the septic field. I mean I know you can't 17 plant corn on it but I don't know what else you can't 18 plant, but if you can check and see if there's any 19 additional screening outside that fence, that would be 20 helpful. Any additional screening along Howard Chapel 21 Road, that would be helpful. Any other traffic 22 considerations you would consider. Let me just go through 23 my list. I've been jotting down notes. 24 Oh, I have a question and this is for your -- I 25 may -- it may be for your landscape architect, but my</p>	<p>295</p> <p>1 will definitely have the sound person on the 30th. All 2 right? So with -- 3 JACK QUINN: Yes, ma'am. 4 HEARING EXAMINER ROBESON HANNAN: So with 5 that -- with that we will adjourn this hearing until 6 Monday, November 23rd at 9:30 via remote teams. We have 7 figured out we do have a hearing on Friday, this coming 8 Friday, but we do have the capability of putting two 9 meeting invites up. We did explore that. So when you go 10 to -- on OZAH's website, when you go to public hearing and 11 remote access that link you're going to see two hearings 12 underneath. Now they'll be titled so you'll know this is 13 20-07, but I just want you to be aware there's going to be 14 two hearings when you click on that link. So just stay 15 with this link for the 20-07 hearing, all right, but we can 16 do two at the same time. So this one is going to stay up. 17 And the last housekeeping item I can think of is 18 if there is anybody on the call that please send us your 19 email and address so we know how to send you notices. 20 Okay. We really need that. What we've found is we have to 21 have you send that in. All right. So with that, we'll 22 adjourn to Monday, November 23rd at 9:30. Thank you very 23 much. 24 [Whereupon the hearing was adjourned.] 25</p>
<p>294</p> <p>1 question was we've had cases in dark sky areas before 2 about -- out in the ag preserve and there is this cutoff 3 light, cutoff fixture that they call dark sky cutoff 4 fixtures. Now whether it's just a regular cutoff fixture 5 or not, have you explored that? Okay. 6 MS. REGELIN: Yeah, I believe that Mr. Kennedy's 7 testimony was that actually on these pole lights are what's 8 called full cutoffs. So all of the light is directed down. 9 There is no light that is directed up. 10 HEARING EXAMINER ROBESON HANNAN: Okay. And is 11 that on your landscape -- do you have the actual fixtures 12 on your landscape plan? 13 MS. REGELIN: I will double check but I believe 14 that they are on the site detail plan. 15 HEARING EXAMINER ROBESON HANNAN: Well, just 16 double check that you've got -- 17 MS. REGELIN: Yeah, we'll double check. 18 HEARING EXAMINER ROBESON HANNAN: And I'm not 19 saying at all what I'm going to decide. I'm just -- I'm 20 just exploring things at this moment. Okay. That I think 21 is all of my outstanding issues. So with that what we'll 22 do is we'll have -- finish Ms. Regelin's case-in-chief on 23 the 23rd and then follow up with testimony from the 24 citizens, those who want to testify, and then we will 25 have -- I don't know when we'll fit Mr. Kelley in but we</p>	<p>296</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, LEE UTTERBACK, the officer before whom the 3 foregoing deposition was taken, do hereby certify that said 4 proceedings were electronically recorded by me; and that I 5 am neither counsel for, related to, nor employed by any of 6 the parties to this case and have no interest, financial or 7 otherwise, in its outcome. 8 IN WITNESS WHEREOF, I have hereunto set my hand 9 and affixed my notarial seal this 25th day of November, 10 2020. 11  12 13 Lee Utterback, Notary Public 14 for the State of Maryland 15 16 17 18 19 20 21 22 23 24 25</p>

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CERTIFICATE OF TRANSCRIBER

I, DEBRA MCCOSTLIN, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Debra McCostlin

DEBRA MCCOSTLIN
NOVEMBER 25, 2020

A			
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